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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 57, No. 185
Wednesday, September 23, 1992

Agricultural Marketing Service
PROPOSED RULES
Lemons grown in California and Arizona, 43943
Mushroom promotion, research, and consumer information order, 43943

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Special programs:
Administrative appeal process, 43937

Agriculture Department
See Agricultural Marketing Service
See Agricultural Stabilization and Conservation Service
See Animal and Plant Health Inspection Service
See Forest Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
October, 43980
October and November, 43981

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Animal products and materials from restricted countries, 43885

Army Department
NOTICES
Environmental statements; availability, etc.:
South Florida limestone mining, fresh water lake belt plan, FL, 43965
Meetings:
Science Board, 43965

Centers for Disease Control
NOTICES
Meetings:
Vital and Health Statistics National Committee, 43982

Coast Guard
NOTICES
Pollution:
Ports or terminals holding certificates of adequacy; lists, 44010

Commerce Department
See National Oceanic and Atmospheric Administration
RULES
Audit requirements for institutions of higher education and other nonprofit organizations, 43892

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 43963
Taiwan, 43963

Consumer Product Safety Commission
NOTICES
Agency information collection activities under OMB review, 43964
Meetings:
Consumer Product Safety Act, substantial product hazard reporting requirements; seminars, 43965

Defense Department
See Army Department

Education Department
PROPOSED RULES
Elementary and secondary education:
Drug-free schools and communities counselor training grants program, 44046
NOTICES
Meetings:
National Assessment Governing Board, 43965

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Air quality planning purposes: designation of areas:
Arizona et al. [**Editorial Note:** This document, appearing on page 43732 of the **Federal Register** of September 22, 1992, was incorrectly indexed in that issue's table of contents.]
NOTICES
Atomic energy agreements; subsequent arrangements, 43969
Grant and cooperative agreement awards:
Northwest Missouri State University, 43966
Recommendations by Defense Nuclear Facilities Safety Board:
Hanford site, WA—
Multi-function waste tank facility, 43967

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 43905
Toxic substances:
Significant new uses—
2-Butenedioic acid (Z), mono(2-((1-oxo-propenyloxy))ethyl), etc., 44050
PROPOSED RULES
Air and water programs:
Pulp, paper, and paperboard industry rulemaking; meeting, 43956
Air quality implementation plans; approval and promulgation; various States:
California, 43957, 43959
NOTICES
Clean Air Act:
Confidential business information and data transfer to contractors, 43970
Pesticide registration, cancellation, etc.:
Allium sativum, 43971
Citric acid, 43971
Dettelbach Chemical Co. et al., 43972
Diversey Corp., 43974

Indole-3-butyric acid, 43977
Putrescent whole egg solids, 43978
Toxic and hazardous substances control:
Premanufacture exemption approvals, 43977

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 43890
PROPOSED RULES
Airworthiness directives:
Boeing, 43944

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Texas, 43979
Meetings:
Security Practices Board of Review, 43979

Federal Energy Regulatory Commission
NOTICES
Environmental compliance training courses, 43966
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Colorado Oil & Gas Conservation Commission, 43969
Applications, hearings, determinations, etc.:
Iroquois Gas Transmission System, L.P., 43970
Mid-Louisiana Gas Co., 43970
Natural Gas Services, Inc., 43968
Texas Sea Rim Pipeline, Inc., 43968
Trunkline Gas Co., 43970

Federal Financial Institutions Examination Council
NOTICES
Home Mortgage Disclosure Act:
Disclosure statements and aggregate MSA reports; income categorization, 43979

Federal Reserve System
RULES
Bank holding companies and change in bank control, and membership of State banking institutions (Regulations H and Y);
Capital adequacy; risk-based capital guidelines, 43889

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 43985

Forest Service
NOTICES
Environmental statements; availability, etc.:
Payette National Forest, ID, 43962

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration
See Centers for Disease Control
See Health Care Financing Administration
See Public Health Service
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Health, 43980

Health Care Financing Administration
RULES
Medicaid and medicare:
Long-term care facilities (skilled nursing and intermediate care) requirements; correction, 43922
Revaluation of assets, 43906
NOTICES
Privacy Act:
Computer matching programs, 43982

Health Resources and Services Administration
See Public Health Service

Indian Affairs Bureau
NOTICES
Agency information collection activities under OMB review, 43983

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Elections under the Technical and Miscellaneous Revenue Act of 1988 and other temporary election regulations, 43893
Oil and gas wells; percentage depletion limitations, 43897
PROPOSED RULES
Income taxes:
Foreign corporations; determination of interest expense deduction
Hearing, 43945

International Trade Commission
NOTICES
Import investigations:
Dry peas and lentils; conditions of competition between U.S. and Canada in third-country markets, 43985

Interstate Commerce Commission
RULES
Motor carriers:
Nonoperating carries; undercharges collection, 43925
NOTICES
Motor carriers:
Finance applications, 43986
Rail carriers:
Cost recovery procedures—
Adjustment factor, 43986

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Utah, 43983
Meetings:
Vale District Grazing Advisory Board, 43983
Vale District Multiple-Use Advisory Council, 43984
Realty actions; sales, leases, etc.:
Utah, 43984
Resource management plans, etc.:
Jackson District, FL, 43984

Martin Luther King, Jr. Federal Holiday Commission
NOTICES
Meetings, 43987

National Foundation on the Arts and Humanities
NOTICES
Meetings:
Arts National Council [**Editorial Note:** This document, appearing on page 43755 of the **Federal Register** of September 22, 1992, was inadvertently omitted in that issue's table of contents.]

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish and groundfish fishery of the Bering Sea and Aleutian Islands, 43926

National Space Council
NOTICES
Meetings, 43987

Nuclear Regulatory Commission
RULES
Production and utilization facilities; domestic licensing:
Plant modifications implementation; integrated schedules; policy statement, 43886
NOTICES
Meetings:
Reactor Safeguards Advisory Committee et al., 43987
Applications, hearings, determinations, etc.:
Allied-General Nuclear Services, Inc., 43989

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Letter-size Zip+4 rate and Zip+4 barcoded rate mailings; preparation requirements, 43956

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration
See Centers for Disease Control
NOTICES
Meetings:
Scientific Integrity Advisory Committee, 43980

Resolution Trust Corporation
NOTICES
Coastal Barrier Improvement Act; property availability:
Falcon Crest Ranch II, CA, 44005
Harmony Road, CO, 44005

Saint Lawrence Seaway Development Corporation
NOTICES
Meetings:
Advisory Board, 44005

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 43990
Applications, hearings, determinations, etc.:
G.T. Global Growth Series, et al., 43992
SPDR Trust, Series 1, et al., 43996
WestLB Finance USA Inc., et al., 44001

State Department
NOTICES
Agency information collection activities under OMB review, 44004

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky, 43946–43952
Ohio, 43954

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Ogden First Federal Savings & Loan Association, 44005

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Saint Lawrence Seaway Development Corporation

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Active military service determinations, 43904
NOTICES
Agency information collection activities under OMB review, 44006
Committees; establishment, renewal, termination, etc.:
Prosthetics Services Advisory Committee, 44007
Rehabilitation Research and Development Scientific Review and Evaluation Board, 44007
Privacy Act:
Systems of records, 44007

Separate Parts In This Issue

Part II
Department of Transportation, Coast Guard, 44010

Part III
Department of Education, 44046

Part IV
Environmental Protection Agency, 44050

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
780.....43937
910.....43943
1209.....43943

9 CFR
94.....43885

10 CFR
50.....43886

12 CFR
208.....43689
225.....43889

14 CFR
39.....43890
Proposed Rules:
39.....43944

15 CFR
29b.....43892

26 CFR
1 (2 documents).....43893, 43897
5c.....43893
5f.....43893
5h.....43893
6.....43893
7.....43893
7a.....43893
10.....43893
13.....43893
14.....43893
14a.....43893
18.....43893
19.....43893
301.....43893
602 (2 documents).....43893, 43897
Proposed Rules:
1.....43945

30 CFR
Proposed Rules:
917 (4 documents).....43946–43952
935.....43954

34 CFR
Proposed Rules:
231.....44046
238.....44046

38 CFR
3.....43904

39 CFR
Proposed Rules:
111.....43956

40 CFR
52.....43905
721.....44050
Proposed Rules:
Ch. I.....43956
52 (2 documents).....43957, 43959

42 CFR
413.....43906
431.....43922
442.....43922
447 (2 documents).....43906, 43922
483.....43922
488.....43922
489.....43922
498.....43922

49 CFR
1321.....43925

50 CFR
672.....43926
675.....43926

Rules and Regulations

Federal Register
Vol. 57, No. 185
Wednesday, September 23, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 91-153-2]

Transit of Animal Products From Restricted Countries Through the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing certain animal products to be moved through the United States from countries that are declared free of foot-and-mouth disease but that are subject to certain restrictions, and from countries that are considered free of swine vesicular disease but that are subject to certain restrictions, even if the animal products do not originate in establishments approved by the United States Department of Agriculture. We have determined that this action will provide shippers in foreign countries additional cargo routes to foreign destinations, without increasing the risk of introducing animal diseases into the United States.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. John Gray, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) regulate, among other things, the importation into the United States of certain animals, meat, and animal products. These regulations are designed, among other things, to prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholera, swine vesicular disease, and velogenic viscerotropic Newcastle disease.

The regulations in § 94.11 list countries in which rinderpest and foot-and-mouth disease are not considered to exist, but that, because of importation practices or geography, present some risk of exporting products contaminated by those diseases. Similarly, the regulations in § 94.13 list countries in which swine vesicular disease is not considered to exist, but that, because of importation practices or geography, present some risk of exporting products contaminated by that disease.

The regulations include provisions allowing certain meat and meat products to be imported from these countries, provided they are prepared and imported under certain conditions. One of these conditions is that the meat and meat products be prepared in inspected establishments that are eligible to have their products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the regulations in 9 CFR 327.4. Additionally, the meat and meat products must be accompanied by certification relating to standards promulgated by the Food Safety and Inspection Service (FSIS), United States Department of Agriculture.

On June 23, 1992, we published in the **Federal Register** (57 FR 27951-27953, Docket No. 91-153) a proposal to allow certain meat and meat products to be imported into the United States, for transit through the United States for immediate export, even if those articles are not prepared in the inspected establishments described above. We also proposed to remove the requirement that the meat and meat products be accompanied by certification relating to FSIS standards.

Comments on the proposed rule were required to be received by the Animal and Plant Health Inspection Service on or before July 23, 1992. We received three comments by that date. The comments were from a shipping line, a foreign ministry of agriculture, and food supply company. Two of the commenters supported the proposal as written. The third commenter supported the proposal, but requested two clarifications, as discussed below.

The commenter requested clarification as to whether the proposed regulation would apply to all animals, rather than just to ruminants and swine as written. The requirements we are eliminating, that certain meat and meat products from the countries in question be prepared in FSIS-approved establishments and that specified certification accompany the articles, apply only to meat and meat products from swine and ruminants. There are no equivalent requirements for products from other animals. Therefore, there was no need to address products from other animals in the proposal.

Our proposal defined "immediate export" as "the period of time determined by APHIS, based on shipping routes and timetables, to be the shortest practicable interval of time between the arrival in the United States of an incoming carrier and the departure from the United States of an outgoing carrier, to transport a consignment of products." One commenter requested that we clarify whether overland shipments, such as those through the United States to Canada or Mexico, would be allowable under this definition of "immediate export." We recognize that in certain cases it will be most cost effective for shipments to move overland through the United States. The intent of the regulations as written is to allow such overland shipments, provided they are carried out within the shortest time practicable.

Therefore, based on the rationale in the proposed rule and in this document, we are adopting the proposed rule with one nonsubstantive change.

Effective Date

Mr. Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by making this rule effective upon signature. This rule relieves certain restrictions on the importation into the United States of animal products for transit to another country, if those animal products come from countries that are free of rinderpest and foot-and-mouth disease but that are subject to certain restrictions, or from countries that are free of swine vesicular disease but that are subject to certain restrictions. This rule will open up additional trade routes for certain products currently not eligible to transit

the United States. It will benefit shipping handlers at United States ports, exporters of animal products, shipping lines, domestic specialized transport companies, and domestic brokerage houses.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 604, we have prepared a Final Regulatory Flexibility Analysis, set forth in the following paragraphs, regarding the impact of this rule on small entities.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction into the United States from a foreign country of any contagious, infectious, or communicable disease of animals. We are revising sections of 9 CFR part 94 to allow animal products from certain countries to transit the United States in order to be shipped to third countries for which they are destined, even if the animal products are not prepared in inspected establishments that are eligible to have their products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the regulations in 9 CFR 327.2, and are not accompanied by the USDA-approved foreign meat inspection certificate prescribed in 9 CFR 327.4. We believe these changes will open up additional trade routes for animal products not prepared in the described establishments or accompanied by the described certification, without increasing the risk of the introduction of disease into the United States.

This rule will create no new restrictions. We are aware that implementation of this rule may generate the transit of additional shipments of animal products through United States ports. In particular, we are aware of a large volume of intended shipments originating from European countries (specifically, Great Britain and Northern Ireland), and destined for Caribbean countries and Mexico, that are likely to transit the United States. This is because major shipping lines use the United States and its ports as a major shipping hub.

There will be a beneficial impact from any increase in the volume of shipments handled at United States ports. The exporters of animal products, shipping lines, consumers in recipient countries, domestic specialized transport companies, and domestic brokerage houses will also benefit from this action.

As an alternative to the changes made by this rule, we considered making no changes to the regulations. We rejected this alternative because it would have continued to impose unnecessary restrictions on the movement of certain animal products.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY; PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 94.0 is amended by adding a definition of "Immediate export", in alphabetical order, to read as follows:

§ 94.0 Definitions.

* * * * *

Immediate export. The period of time determined by APHIS, based on shipping routes and timetables, to be the shortest practicable interval of time between the arrival in the United States of an incoming carrier and the departure from the United States of an outgoing carrier, to transport a consignment of products.

* * * * *

3. Section 94.15 is amended by adding a new paragraph (c) to read as follows:

§ 94.15 Animal products and materials; movement and handling.

* * * * *

(c) Meat and other products of ruminants or swine from countries listed in § 94.11(a) and pork and pork products from countries listed in § 94.13 that do not meet the requirements of § 94.11(b) or § 94.13(a) may transit through the United States for immediate export, provided the provisions of paragraph (a) of this section are met, and provided all other applicable provisions of this part are met.

Done in Washington, DC, this 16th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-22948 Filed 9-22-92; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Integrated Schedules; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement on integrated schedules.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing its Final Policy Statement on Integrated Schedules. This policy statement describes the policy the Commission intends to use to promote voluntary implementation of licensee integrated schedules for regulatory requirements and other activities at nuclear power plants. The primary focus of the policy addresses the way licensees may establish realistic integrated schedules and the ways the Commission intends to interact with these licensees. It also documents the Commission's support for the establishment of integrated schedules at each nuclear power plant.

Integrated schedules for plant modifications and activities will permit the NRC, the nuclear industry, and the public to focus on safety issues while forecasting and maintaining long-term schedules and will permit more effective use of licensee resources to implement these plant changes and NRC resources to review them.

EFFECTIVE DATE: November 23, 1992.

FOR FURTHER INFORMATION, CONTACT: Claudia M. Abbate, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 504–1281.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 1987, the "Proposed Policy Statement on Integrated Schedules for Implementation of Plant Modifications" was published in the **Federal Register** (52 FR 45345). The proposed policy statement described the policy the Commission intended to use to promote the development of voluntary integrated schedules for implementing regulatory requirements and other improvements in nuclear power plants. The comment period ended on January 25, 1988. The staff received and evaluated 19 sets of comments. Seven facilities implemented the proposed policy on integrated schedules.

On December 27, 1990, the NRC requested comments on SECY–90–347, "Regulatory Impact Survey Report," in the **Federal Register** (55 FR 53220). SECY–90–347 included a discussion of the proposed integrated regulatory requirements implementation schedule (IRRIS) concept. The staff developed IRRIS to better manage the impact on licensees of implementing generic requirements. During the 30-day comment period, the NRC received and evaluated 22 sets of comments that addressed IRRIS.

On June 7, 1991, SECY–91–172, "Regulatory Impact Survey Report—Final," was issued which stated that the staff would not go forward with the IRRIS program, but would revise the 1987 proposed policy by integrating the proposed integrated schedule policy, the IRRIS program, as well as the experience gained from licensees that have implemented integrated schedules.

Summary of Public Comments

All but two comments received regarding the proposed policy on integrated schedules were from licensees. Most comments opposed the policy statement as written for several reasons. First, some respondents stated that too much emphasis was placed on incorporating integrated schedules into the operating license through a license condition. There was a concern that licensees not requesting a license condition would not receive equal consideration of schedular issues as licensees that did request a license condition. Second, respondents indicated that development of a negotiated integrated schedule by licensees with good regulatory compliance records is neither necessary nor appropriate. The respondents believe an amendment to the operating license would require additional resources on their part as well as the NRC and would not significantly enhance the effort to complete licensing activities. Third, respondents indicated that all work efforts should be included in the schedule rather than just NRC-initiated tasks as was discussed in the proposed policy statement. Respondents felt that only including part of the tasks in the schedule may not show that regulatory requirements are receiving timely attention.

Respondents submitting comments regarding the IRRIS program as proposed in SECY–90–347 stated that IRRIS would only address the symptoms of cumulative generic requirements and would not address the problem of management of generic requirements at the front-end of the process. The respondents commented that the IRRIS program should: (1) Include all regulatory actions and information requests; (2) be implemented through a pilot program with appropriate guidelines and evaluation of the pilot program, (3) have provisons to eliminate low priority items, and (4) remove the freeze on the schedule one year before an outage.

Operational Experience

The licensees for seven operating facilities (including two multi-unit sites) have implemented integrated schedules. The licensees include all activities above a certain threshold (such as number of person-hour or cost) in the integrated schedule. Such items would include NRC-mandated items, commitments to NRC generic letters and bulletins, significant actions to resolve items from NRC inspection reports and licensee event reports (LERs), and licensee-initiated actions. Most of these licensees implement a two- or three-tier approach with NRC rules being one tier and the other tiers consisting of commitments and licensee-initiated projects.

The licensees submit integrated schedules to the NRC semi-annually. The priorities are determined by different methodologies, but are based upon general considerations such as safety significance, cost, availability of the plant and of resources. One licensee used the integrated schedule to delay implementation of items indefinitely. In a few cases the NRC has disagreed with the licensees' priority of certain items. However, the process has generally benefitted both the NRC and the licensees.

The proposed policy statement was revised as a result of the comments and feedback from licensees' experience in implementing the integrated schedule. Although the Commission believes that integrated schedules should be developed, licensees are not required to participate in the program or incorporate an integrated schedule into the operating license. Licensees may voluntarily develop and coordinate an integrated schedule with the NRC. Those licensees already implementing an integrated schedule may continue with their current program or adopt a program consistent with the final policy.

Final Commission Policy

The Commission believes the implementation of integrated schedules on a plant-specific basis will provide a systematic method of coordinating, managing, and scheduling major modifications and activities initiated by both the NRC and licensees. Integrated schedules could enhance timely compliance with regulatory requirements and accommodate licensee-initiated activities. The integrated schedule provides a major benefit in its flexibility to assign or reassign resources in recognition of the safety significance.

The integrated schedule program, including the prioritization methodology, the schedule, and periodic schedule updates will be determined by the licensee and submitted to the NRC for review. The major elements of an integrated scheduling program should include the following:

1. A systematic process for identifying and defining those activities to be scheduled;

2. A process for prioritizing and a process for scheduling the individual actions, taking into account factors such as safety, plant availability, radiation exposure, procurement requirements, and costs;

3. A plan for maintaining and updating implementation schedules;

4. A provision for NRC review of the prioritization and scheduling process, the initial schedule and updates;

5. A provision for requesting schedular relief on NRC-initiated schedules; and

6. A process for evaluating a licensee's maintenance of schedules through the issuance of periodic reports on actions completed, schedules for new actions, and schedule changes that result from new actions or implementation problems.

Licensees who volunteer will develop a program which will result in an integrated schedule containing three levels. Items contained in level 1 of the integrated schedule will be those items with specific implementation dates to be implemented in response to a rule, order, or license condition, including Technical Specifications and amendments. These items will be included in the integrated schedule to provide a complete view of the items that the NRC requires to be implemented. The licensee cannot change the implementation schedules for these items through the integrated schedule program. The licensee must request schedule changes for these items in accordance with standard procedures for applications for license amendments or exemptions.

Items contained in level 2 of the integrated schedule will result from licensee commitments of NRC actions, including generic communications (generic letters and bulletins). Licensees will have the flexibility to establish and revise their schedular commitments for level 2 items. When an NRC communication is issued, licensees with an integrated schedule will review the recommended implementation date, will include the item in the integrated schedule, and will prioritize the item among other NRC items in the integrated schedule. The licensee will then provide the NRC with the proposed implementation date in the initial response to the NRC communication. If other items of more significance to safety prevent the licensee from scheduling the newly-initiated item by the date recommended in the NRC correspondence, the licensee will submit to the NRC the justification for the proposed schedule in the initial response to the NRC communication.

The licensee with an integrated schedule program will be able to substitute licensee-initiated safety enhancements in place of NRC-recommended initiatives in those instances in which the licensee's initiatives yield an equivalent safety benefit. The licensee will submit the proposed schedule for the licensee-initiated item and the justification for the substitution.

The NRC staff will have 90 days to review the proposed schedule for implementing level 2 items (90-day negative consent). If the schedule cannot be agreed upon by both parties and if the staff believes that a significant safety concern exists, the staff at any time can issue an order to implement such items. The staff can take this action whether or not a licensee has an integrated schedule.

The licensee can request relief from implementing specific NRC items in level 2 that have not been implemented over a number of years because of their low safety significance. The licensee will need to obtain specific NRC approval for removal of these items. The 90-day negative consent process does not apply.

Items contained in level 3 of the integrated schedule will be other activities such as licensee-initiated projects, LER follow-up, and INPO or NUMARC initiatives. The licensee will identify items to include in level 3 and the threshold above which level 3 tasks will be included in the integrated schedule. The integrated schedule will include only those items above the threshold. Licensees will schedule items in level 3 consistent with commitments and other items in the schedule. Level 3 activity schedules will be submitted to the NRC, but no formal review will be performed by the staff on these items. They are included so the staff can obtain a complete overview of licensee activities.

The licensee will not be required to incorporate the integrated schedule into the operating license as a license condition. Licensees who volunteer for the program will develop and submit the integrated schedule program, the detailed integrated schedule for a fuel cycle, and a less detailed schedule for future fuel cycles to the NRC. Thereafter, the licensee will submit the detailed integrated schedule for the upcoming fuel cycle and a less detailed schedule for items to be implemented in future fuel cycles. The staff will have a 90-day negative consent period to respond to the integrated schedule proposed by the licensee.

A fundamental premise of integrated schedules is that plant tasks can and should be prioritized. This can also apply to design engineering and analysis efforts that require substantial resources for an extended period of time. The prioritization of these projects can provide a consistent and defensible basis for the initial implementation schedule and for negotiating future changes or additions.

As the prioritization method will be based on a number of factors, many of which will be plant specific, the Commission has concluded that the licensee should select the prioritization methodology, except to the extent that items in level 1 may have to be implemented by specific dates in accordance with the regulation, order, or license condition. Although integrated schedules will be developed and proposed by the licensee, the licensee is obligated to describe the process comprehensively to the NRC. The Commission must understand the planning and scheduling practices and have an overview of ongoing activities at the plant to ensure that licensees are establishing realistic and timely implementation schedules.

The NRC's Divisions of Reactor Projects in the Office of Nuclear Reactor Regulation will manage the implementation of the integrated schedule program. The staff will work with the licensees and other NRC offices, such as the responsible regional office, to develop mutually acceptable schedules.

Licensees currently implementing an integrated schedule may continue their program or adopt the program outlined above. Licensees may withdraw from the program upon notifying the NRC.

This policy statement contains information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by Office of Management and Budget approval number 3150–0168, which expires August 31, 1995.

Public reporting burden for this collection of information is estimated to average 300 hours annually per licensee. In addition, there is a one-time burden of 300 hours per licensee for submittal of the initial program and a one-time burden of 40 hours for termination of the program. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), Division of Information Support Services, Office of Information and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to Ronald Minsk, Office of Information and Regulatory Affairs (3150–0168), NEOB–

3019, Office of Management and Budget, Washington, DC 20503.

Dated at Rockville, MD, this 17th day of September, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-23034 Filed 9-22-92; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-0776]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule.

SUMMARY: The Board is proposing to modify its risk-based capital guidelines for state member banks and bank holding companies to include the European Bank for Reconstruction and Development, the International Finance Corporation, and the Nordic Investment Bank in the list of named multilateral lending institutions that are eligible for a 20 percent risk weight. This proposed modification would conform the Board's risk-based capital guidelines more closely to interpretive guidance adopted by the other G-10 countries that are signatories to the Basle Accord.

DATES: The interim rule is effective as of September 23, 1992. Comments must be received by October 23, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0776, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room B-1122 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Rhoger H Pugh, Assistant Director (202/728-5883), Kelly S. Shaw, Supervisory Financial Analyst (202/452-3054), Norah Barger, Supervisory Financial Analyst (202/452-2402), Division of Banking Supervision and Regulation; and Brian E. J. Lam, Attorney (202/452-2067), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: Under the risk-based capital framework established by the Basle Accord, claims on, and claims guaranteed by, multilateral lending institutions and regional development banks in which G-10 countries are shareholding members may be accorded, at national discretion, a 20 percent risk weight. Like the Basle Accord, the Board's risk-based capital guidelines specify five multilateral lending institutions and regional development banks[1] that are eligible for the 20 percent risk weight. The guidelines further state that other multilateral lending institutions and regional development banks may be accorded a 20 percent risk weight if the U.S. government is a shareholder or contributing member.

The Board has received a number of requests concerning the risk weight of claims on, and investments in securities issued by, the European Bank for Reconstruction and Development (EBRD), the International Finance Corporation (IFC), and the Nordic Investment Bank (NIB). In response to these requests, the Board is proposing to clarify that bank holding companies and state member banks may assign a 20 percent risk weight to claims on, or guaranteed by, the EBRD or the IFC. The U.S. is a contributing shareholder of the EBRD, but it was established after the original publication of the capital adequacy guidelines. Since the IFC is a subsidiary of the World Bank, an organization that the guidelines specifically name as an institution eligible for the 20 percent risk weight, it already implicitly is included in the 20 percent risk category. However, since numerous inquiries have been received with regard to the appropriate risk category for the IFC, the Board is proposing to include it in the list of multilateral lending institutions and regional development banks specifically named in the guidelines as eligible for the 20 percent risk weight.

The Board is also proposing to permit bank holding companies and state member banks to assign a 20 percent risk weight to claims on, or guaranteed by, NIB. Under the current guidelines, NIB would not qualify for a 20 percent risk weight as the U.S. is neither a shareholder nor a contributing member. However, the Basle Committee on Banking Supervision has interpreted the criteria in the Basle Accord for assigning a multilateral lending institution to the 20 percent risk category to mean that any country may include NIB in this preferential risk category since Sweden, a G-10 country, is a shareholder in NIB. Thus, adding NIB to the list of named multilateral lending institutions eligible for a 20 percent risk weight would serve to conform the Board's risk-based capital guidelines more closely to the interpretative guidance adopted by the other G-10 countries that are signatories to the Basle Accord.

The proposed modifications to the risk-based capital guidelines would have the effect of allowing claims collateralized by securities issued by the EBRD, IFC, and NIB to be included in the 20 percent risk category.

The Board is seeking comment on the proposed change to its risk-based capital guidelines. Because the Board wishes to implement in an appropriate and expeditious manner guidance adopted by the G-10 countries in connection with the Basle Accord, and because the proposed revision would reduce rather than expand the regulatory burden on state member banks and bank holding companies, the Board is implementing the proposed change immediately as an interim rule.

Regulatory Flexibility Act Analysis

The Federal Reserve Board does not believe adoption of this proposal would have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In this regard, the proposed revision would reduce certain regulatory burdens on bank holding companies as it would reduce the capital charge on certain transactions. In addition, because the risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Federal Reserve

[1] International Bank for Reconstruction and Development (World Bank), Latin American Development Bank, Asian Development Bank, African Development Bank, and the European Investment Bank.

System. Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844 (b)), and section 910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), the Board is amending 12 CFR parts 208 and 225 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 is revised to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321-338, 248(a), 248(c), 461, 481-486, 601 and 611, respectively); sections 4, 13(j), and 18(o) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814, 1823(j), and1828(o), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907-910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906-3909); sections 2, 12(b), 12(g), 12(i), 15(c) (5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c) (5), 78q, 78q-1, and 78w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101-1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331-3351).

2. Appendix A to part 208 is amended by revising the second sentence of the second paragraph in III.C.2 to read as follows:

Appenix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

C. * * *

2. ***In addition, this category also includes claims on, and the portions of claims that are guaranteed by, U.S. government-sponsored[32] agencies and claims on, and the portions of claims guaranteed by, the International Bank for Reconstruction and Development (World Bank), the International Finance Corporation, the Interamerican Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, the European Bank for Reconstruction and Development, the Nordic Investment Bank, and other multilateral lending institutions or regional development banks in which the U.S. government is a shareholder or contributing member.***

* * * * *

[32] For this purpose, U.S. government-sponsored agencies are defined as agencies originally established or chartered by the federal government to serve public purposes specified by the U.S. Congress but whose obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. government. These agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA). Claims on U.S. government-sponsored agencies include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that Bank.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j) (13), 1818(b), 1828(o), 1831i, 1843(c) (8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, 3331-3351, and sec. 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)).

2. Appendix A to part 225 is amended by revising the second sentence of the second paragraph in III.C.2 to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

C. * * *

2. ***In addition, this category also includes claims on, and the portions of claims that are guaranteed by, U.S. government-sponsored[35] agencies and claims on, and the portions of claims guaranteed by, the International Bank for Reconstruction and Development (World Bank), the International Finance Corporation, the Interamerican Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, the European Bank for Reconstruction and Development, the Nordic Investment Bank, and other multilateral lending institutions or regional development banks in which the U.S. government is a shareholder or contributing member.***

* * * * *

[35] For this purpose, U.S. government-sponsored agencies are defined as agencies originally established or chartered by the federal government to serve public purposes specified by the U.S. Congress but whose obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. government. These agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA). Claims on U.S. government-sponsored agencies include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that Bank.

Board of Governors of the Federal Reserve System, September 16, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-23025 Filed 9-22-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-115-AD; Amendment 39-8373; AD 92-19-15]

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 707 and 720 series airplanes, that currently requires inspections of the inboard engine nacelle strut attach structure to detect cracks, and repair, if necessary. This amendment requires improved repetitive inspections to detect cracks in the inboard nacelle strut midspar fittings, and replacement, if necessary. In addition, this AD significantly decreases the repetitive inspection intervals. This amendment is prompted by two recent reports of engine and pylon separations on Model 707 series airplanes and numerous reports of cracks found in the midspar fittings. The actions specified in this AD are intended to prevent separation of an inboard engine from an airplane.

DATES: Effective on October 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1992.

Comments for inclusion in the Rules Docket must be received on or before November 23, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-115-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW.,

Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2772; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On October 31, 1988, the FAA issued AD 88-24-10, Amendment 39-6063 (53 FR 46434, November 17, 1988), to require inspections of the inboard engine nacelle strut attach structure to detect cracks, and repair, if necessary. That action was prompted by a report of an engine separating from an airplane. The actions required by that AD are intended to prevent separation of an inboard engine from an airplane.

Since the issuance of that AD, there have been two recent reports involving the separation of the number 3 engines and pylons from Model 707 series airplanes. One report indicated that the number 3 engine and pylon separated from the airplane, impacting the number 4 engine upon separation. Subsequently, the number 4 engine and pylon also separated from the airplane, and a fire occurred in the wing area where the number 3 pylon broke off. Investigation revealed that the number 3 pylon separated from the airplane as a result of the failure of the inboard midspar fitting, which attaches the pylon to the wing. Analysis indicates that the inboard midspar fitting failed due to fatigue cracking. Failure to detect and repair cracks in this area could lead to the separation of an inboard engine from an airplane.

While these two reports occurred on airplanes that had been modified in accordance with Supplemental Type Certificate (STC) SA2699NM to include engine "hush kits," numerous cracks have been found in the midspar fittings on unmodified Model 707 and 720 series airplanes as well. This AD addresses certain unmodified Model 707 and 720 series airplanes, in addition to airplanes that have been modified in accordance with the aforementioned STC (SA2699NM) and two STC's that are of similar design, SA3595NM and SA4015NM.

The FAA has reviewed and approved Boeing Service Bulletin 3183, Revision 4, dated July 8, 1992, which describes improved procedures to perform repetitive close visual inspections to detect cracks in both midspar fittings on each inboard strut.

The Boeing Company has designed a replacement fitting, which, if installed, would correct the fatigue cracking problem addressed in this AD. This replacement fitting is described in Boeing Service Bulletin 3183, Revision 1, dated May 17, 1977, and Revision 2, dated January 28, 1988, and is included as an optional terminating action in this AD. The FAA plans further rulemaking to require installation of the midspar fittings with these improved fittings as terminating action for the repetitive inspections on all Boeing Model 707 and 720 series airplanes. Therefore, this AD is considered to be interim action.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 88-24-10 to require improved repetitive inspections to detect cracks in the inboard nacelle strut midspar fittings, and replacement, if necessary. This AD also decreases the repetitive inspection intervals based on recent service history of these airplanes in order to ensure that cracks are detected and repaired in a timely manner.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-115-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6063 (53 FR 46434, November 17, 1988), and by adding a new airworthiness directive (AD), amendment 39-8373, to read as follows:

92-19-15. Boeing: Amendment 39-8373. Docket 92-NM-115-AD. Supersedes AD 88-24-10, Amendment 39-6063.

Applicability: Model 707 and 720 series airplanes; line numbers 1 through 906, inclusive; including Model 707 and 720 series airplanes that have been modified in accordance with Supplemental Type Certificates (STC's) SA2699NM, SA3595NM, or SA4015NM; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent separation of an inboard engine from an airplane, accomplish the following:

(a) Perform a close visual inspection of the midspar fittings to detect cracks in accordance with Boeing Service Bulletin 3183, Revision 4, dated July 8, 1992, unless accomplished previously in accordance with Boeing Service Bulletin 3183, Revision 2, dated January 28, 1988, at the times specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4), of this AD, as applicable.

(1) For Model 707-300B/C series airplanes modified by installation of a "hush kit" in accordance with Supplemental Type Certificate (STC) SA2699NM, at the later of the times specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 650 flight hours or 250 flight cycles after the effective date of this AD, whichever occurs first.

(2) For Model 707-100B and 720B series airplanes modified by installation of a "hush kit" in accordance with STC SA3595NM or SA4015NM, at the later of the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 650 flight hours or 325 flight cycles after the effective date of this AD, whichever occurs first.

(3) For Model 707-300, 707-400, and 707-300B/C series airplanes, at the later of the times specified in paragraph (a)(3)(i) or (a)(3)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 1,100 flight hours or 400 flight cycles after the effective date of this AD, whichever occurs first.

(4) For Model 707-100, 707-100B, 707-200, 720 and 720B series airplanes, at the later of the times specified in paragraph (a)(4)(i) or (a)(4)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 1,100 flight hours or 550 flight cycles after the effective date of this AD, whichever occurs first.

(b) Repeat the inspection required by paragraph (a) of this AD thereafter at the intervals specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable, in accordance with Boeing Service Bulletin 3183, Revision 4, dated July 8, 1992.

(1) For Model 707-300B/C series airplanes modified by installation of a "hush kit" in accordance with STC SA2699NM: At intervals not to exceed 750 flight hours or 300 flight cycles, whichever occurs first.

(2) For Model 707-100B and 720B series airplanes modified by installation of a "hush kit" in accordance with STC SA3595NM or SA4015NM: At intervals not to exceed 750 flight hours or 375 flight cycles, whichever occurs first.

(3) For Model 707-300, -400, and -300B/C series airplanes: At intervals not to exceed 1,200 flight hours or 450 flight cycles, whichever occurs first.

(4) For Model 707-100, 707-100B, 707-200, 720, and 720B series airplanes: At intervals not to exceed 1,200 flight hours or 600 flight cycles, whichever occurs first.

(c) If any cracks are found in the midspar support fittings as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight: Conduct an eddy current inspection, replace both midspar support fittings, and modify or repair all other structure specified in the service bulletin, in accordance with Boeing Service Bulletin 3183, Revision 1, dated May 13, 1977, or Revision 2, dated January 28, 1988. If a currently-installed fitting is replaced by a new fitting of the same part number, that new fitting must be inspected in accordance with the compliance times and procedures required by paragraphs (a) and (b) of this AD.

(d) Replacement of the fittings with new, improved fittings, in accordance with Boeing Service Bulletin 3183, Revision 2, dated January 28, 1988, constitutes terminating action for the repetitive inspections required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections, replacement, and modification or repair shall be done in accordance with Boeing Service Bulletin 3183, Revision 4, dated July 8, 1992, Boeing Service Bulletin 3183, Revision 1, dated May 13, 1977, and Boeing Service Bulletin 3183, Revision 2, dated January 28, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on October 8, 1992.

Issued in Renton, Washington, on August 27, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-23001 Filed 9-22-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

15 CFR Part 29b

[Docket No. 911200-2073]

RIN 0605-AA07

Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations

AGENCY: Department of Commerce.

ACTION: Affirmation of interim final rule.

SUMMARY: This rule adopts as final, Department of Commerce interim regulations amending 15 CFR part 29b, "Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations," to incorporate new guidance from the Office of Management and Budget (OMB). As a result of this final rule, the Department of Commerce is requiring educational institutions and other nonprofit organizations that receive Federal assistance to follow the provisions of OMB's "Compliance Supplement for Audits of Institutions of Higher Education and Other Nonprofit Institutions" when performing the organization-wide audits currently required under this part.

DATES: The provisions of this final rule became effective February 7, 1992, and apply to audits of educational and nonprofit institutions initiated after March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara Lambis, Director, Office of Federal Assistance, U.S. Department of Commerce, HCHB Room 6054, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-5817.

SUPPLEMENTARY INFORMATION: On February 7, 1992, the Department of Commerce published an interim final rule amending part 29b (57 FR 4715), and allowed interested persons 30 days to comment. No comments were received and the Department of Commerce is adopting the amendment as a final rule without change.

This is not a major rule within the meaning of Section 1 of Executive Order

12291. It will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because this rule relates to public property, loans, grants, benefits and contracts, it is exempt from the requirements of notice and opportunity to comment and the 30-day delayed effective date (5 U.S.C. 553(a)(2)). No other law requires that notice and opportunity for comment on this final rule be given.

Since notice and opportunity to comment are not required to be given for this final rule under Section 553 of the Administrative Procedure Act or any other law, no initial or final Regulatory Flexibility Analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

Paperwork Reduction Act

This final rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by OMB under control number 0991–0003. The public reporting burden for this collection of information is estimated to average five (5) hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 15 CFR Part 29b

Accounting, Colleges and universities, Grant programs, Nonprofit organizations, Reporting and recordkeeping requirements.

Under authority of 5 U.S.C. 301, the interim final rule published at (57 FR 4715) amending Part 29b to Title 15, Subtitle A of the Code of Federal Regulations is adopted as final without changes.

Sonya G. Stewart,

Director for Federal Assistance and Management Support.

[FR Doc. 92–23104 Filed 9–22–92; 8:45 am]

BILLING CODE 3510-FA-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5c, 5f, 5h, 6, 7, 7a, 10, 13, 14, 14a, 18, 19, 301, and 602

[T.D. 8435]

RIN 1545-AN09

Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988 and the Redesignation of Certain Other Temporary Elections Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the time and manner for making certain elections under the Technical and Miscellaneous Revenue Act of 1988. It also redesignates certain other temporary elections regulations that were issued pursuant to various other tax acts. These final and temporary regulations provide guidance to taxpayers making the elections.

EFFECTIVE DATES: The provisions relating to § 301–9100–8 formerly § 5h.6 are effective November 10, 1988. All other provisions are effective on September 23, 1992.

FOR FURTHER INFORMATION CONTACT: Grace Matuszeski at 202–622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information requirements contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)), under control number 1545–1112. The estimated annual burden per respondent varies from 15 minutes to 2 hours, depending on individual circumstances, with an estimated average of .28 hour.

These estimates are approximations of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On September 22, 1989, the Internal Revenue Service published in the **Federal Register** (54 FR 38979) temporary regulations (T.D. 8267) relating to certain elections under various sections of the Internal Revenue Code of 1986 (Code) and the Technical and Miscellaneous Revenue Act of 1988, 102 Stat. 3342. A contemporaneous cross-reference notice of proposed rulemaking was published at 54 FR 39002. This Treasury decision adopts those temporary regulations as final regulations, subject to minor modifications, and moves them from part 5h of the Code of Federal Regulations to part 301. In addition, many of the other temporary regulations that relate to various other elections are redesignated for the purpose of moving them to part 301 as well.

With respect to the temporary regulations that were published on September 22, 1989, no request for a public hearing was received; therefore, none was held.

Explanation of Provisions

Temporary regulations § 5h.6 are adopted as final regulations and are redesignated § 301.9100.8. Temporary regulations §§ 5c.0, 5f.0, 5h.4, 5h.5, 6.1, 6.2, 6.3, 7.0, 7a.1, 7a.2, 7a.3, 10.2, 13.0, 13.1, 14.1–1, and 19.2–1 are given redesignations that move them to § 301.9100 also. The following table illustrates the new section numbers:

Old section number	Redesignation
§ 5c.0	§ 301.9100–4T
§ 5f.0	§ 301.9100–5T
§ 5h.4	§ 301.9100–6T
§ 5h.5	§ 301.9100–7T
§ 5h.6	§ 301 9100–8
§ 6.1	§ 301.9100–9T
§ 6.2	§ 301.9100–10T
§ 6.3	§ 301.9100–11T
§ 7.0	§ 301.9100–12T
§ 7a.1	§ 301.9100–13T
§ 7a.2	§ 301.9100–14T
§ 7a.3	§ 301.9100–15T
§ 10.2	§ 301.9100–16T
§ 13.0	§ 301.9100–17T
§ 13.1	§ 301.9100–18T
§ 14.1–1	§ 301.9100–19T
§ 19.2–1	§ 301.9100–20T

References and citations within title 26 of CFR to any of the redesignated sections have been updated to reflect the redesignations.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the final regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of the final regulations is Grace Matuszeski, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.61–1 through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.401–0 through 1.419A–2T

Bonds, Employee benefit plans, Income taxes, Pensions, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

26 CFR 1.451–1 through 1.458–10

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.636–1 through 1.636–4

Income taxes, Mineral resources.

26 CFR 1.701–1 through 1.709–2

Income taxes.

26 CFR 1.856–0 through 1.858–1

Income taxes, Investments, Trusts and trustees.

26 CFR Part 5c

Accounting, Banks, Banking, Income taxes, Reporting and recordkeeping requirements, Savings and loan associations.

26 CFR Part 5f

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5h

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 6

Banks, Banking, Holding companies, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 7

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 7a

Bankruptcy, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 10

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 13

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 14

Income taxes, Small business.

26 CFR Part 14a

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 18

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 19

Income taxes.

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Final Regulations and Redesignation of Temporary Regulations

Accordingly, parts 1, 5c, 5f, 5h, 6, 7, 7a, 10, 13, 14, 14a, 18, 19, 301, and 602 of title 26 of the Code of Federal Regulations are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Section 301.9100–4T also issued under 26 U.S.C. 168(f)(8)(G). Section 301.9100–7T also issued under 26 U.S.C. 42(f)(1), 42(g)(1), 42(i)(2), 42(j)(5), 48(b)(2), 56(f)(3)(B), 83(c)(3), 141(b)(0), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 145(d), 147(b)(4)(A), 165(l)(1), 168(b)(5), 168(f)(1), 168(g)(7), 168(h)(6)(F)(ii), 216(b)(3), 263(i), 263A(d)(3), 382(l)(5)(H), 448(d)(4), 453C(b)(2)(B), 453C(e)(4), 468B, 469(j)(9), 474, 585(c)(3)(A)(iii)(I), 585(c)(4), 616(d), 617(h), 1059(c)(4), 2632(b)(3), 2652(a)(3), 3121(w)(2), 4982(e)(4), and 7701(b). Section 301.9100–7T also issued under the Tax Reform Act of 1986, 100 Stat. 2746, sections 203(a)(1)(B), 204(e), 243(a), 243(b), 311(d)(2), 646, 801(d)(2), 806(e)(2)(C), 905(c), 1704(b), 1801(a), 1802(a), and 1804(e)(4). Section 301.9100–8 also issued under 26 U.S.C. 1(i)(7), 41(h), 42(b)(2)(A)(ii), 42(d)(3), 42(f)(1), 42(g)(3), 42(i)(2)(B), 42(j)(5)(B), 121(d)(9), 142(i)(2), 165(l), 168(b)(2), 219(g)(4), 245(a)(10), 263A(d)(1), 263A(d)(3)(B), 263A(h), 460(b)(3), 643(g)(2), 831(b)(2)(A), 835(a), 865(f), 865(g)(3), 865(h)(2), 904(g)(10), 2056(b)(7)(c)(ii), 2056A(d), 2523(f)(6)(B), 3127, and 7520(a); the Technical and Miscellaneous Revenue Act of 1988, 102 Stat. 3324, sections 1002(a)(23)(B), 1005(c)(11), 1006(d)(15), 1006(j)(1)(C), 1006(t)(18)(B), 1012(n)(3), 1014(c)(1), 1014(c)(2), 2004(j)(1), 2004(m)(5), 5012(e)(4), 6161(c)(2), and 6277; and under the Tax Reform Act of 1986, 100 Stat. 2746, section 905(a). Sections 301.9100–9T, 301.9100–10T and 301.9100–11T also issued under 26 U.S.C. 1103 (g) and (h) and 6158(a). Sections 301.9100–13T, 301.9100–14T and 301.9100–15T also issued under 26 U.S.C. 108(d)(8) and 1017(b)(3)(E). Section 301.9100–16T also issued under 26 U.S.C. 463(d).

Par. 2. Section 301.9100–21 is added to read as follows:

§ 301.9100–21 References to other temporary elections under various tax acts.

Regulations regarding elections under various other tax acts are found at the following sections in title 26 of the Code of Federal Regulations:

Section of 26 CFR	Description of election
5c.168(f)(8)–2	Election to characterize transaction as a section 168(f)(8) lease, under the Economic Recovery Tax Act of 1981.
5c.1256–1	Election with respect to property held on June 23, 1981, under section 508(c) of the Economic Recovery Tax Act of 1981.
5c.1256–2	Election with respect to taxable years beginning before June 23, 1981, and ending after June 22, 1981, under section 509 of the Economic Recovery Tax Act of 1981.
7.48–1	Election to have investment credit for movie and television films determined in accordance with previous litigation, under the Tax Reform Act of 1976.
7.48–2	Election of forty-percent method of determining investment credit for movie and television films placed in service in a taxable year beginning before January 1, 1975, under the Tax Reform Act of 1976.

Section of 26 CFR	Description of election
7.48–3	Election to apply the amendments made by sections 804 (a) and (b) of the Tax Reform Act of 1976 to property described in section 50(a) of the Code.
7.57(d)–1	Election with respect to straight line recovery of intangibles, under the Tax Reform Act of 1976.
11.402(a)(4)(B)–1	Election to treat an amount as a lump sum distribution, under the Employee Retirement Income Security Act of 1974.
11.410–1	Election by church to have participation, vesting, funding, etc., provisions apply, under the Employee Retirement Income Security Act of 1974.
11.412(c)–7	Election to treat certain retroactive plan amendments as made on the first day of the plan year, under the Employee Retirement Income Security Act of 1974.
11.412(c)–11	Election with respect to bonds, under the Employee Retirement Income Security Act of 1974.
11.415(c)(4)–1	Special elections for section 403(b) annuity contracts purchased by educational institutions, hospitals and home health service agencies, under the Employee Retirement Income Security Act of 1974.
12.4	Election of Class Life Asset Depreciation Range System (ADR), under the Revenue Act of 1971.
12.7	Election to be treated as a DISC, under the Revenue Act of 1971.
12.8	Elections with respect to net leases of real property, under the Revenue Act of 1971.
12.9	Election to postpone determination with respect to the presumption described in section 183(d), under the Revenue Act of 1971.
15.1–1	Elections to deduct, relating to exploration expenditures in the case of mining.
15.1–2	Revocation of election to deduct, relating to exploration expenditures in the case of mining.
15.1–3	Elections as to methods of recapture, relating to exploration expenditures in the case of mining.
18.1361–1	Election to treat qualified subchapter S trust as a trust described in section 1361(c)(2)(A)(i), under the Subchapter S Revision Act of 1982.
18.1362–1	Election to be an S corporation, under the subchapter S Revision Act of 1982.
18.1362–3	Revocation of election, under the subchapter S Revision Act of 1982.
18.1362–5	Election not to have new passive income rules apply during 1982, under the subchapter S Revision Act of 1982.
18.1371–1	Election to treat distributions as dividends during certain post-termination transition periods, under the subchapter S Revision Act of 1982.
18.1377–1	Election to terminate year, under the subchapter S Revision Act of 1982.
18.1379–2	Special rules for all elections, consents, and refusals, under the subchapter S Revision Act of 1982.
22.0	Certain estate taxes elections under the Economic Recovery Tax Act of 1981.
23.1	Election and eligibility to treat interests in property held jointly on December 31, 1976, as qualified joint interests, under the Revenue Act of 1978.

PART 5c—TEMPORARY INCOME TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

Par. 3. The authority citation for part 5c continues to read as follows:

Authority: Secs. 168(f)(8)(G) and 7805 of the Internal Revenue Code of 1954 (95 Stat. 216; 26 U.S.C. 168(f)(8)(G), and 68A Stat. 916; 26 U.S.C. 7805), unless otherwise noted.

§ 5c.0 [Redesignated as § 301.9100–4T]

Par. 4. Section 5c.0 is redesignated § 301.9100–4T.

PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 5. The authority citation for part 5f continues to read in part:

Authority: 26 U.S.C. 7805 * * *

5f.0 [Redesignated as § 301.9100–5T]

Par. 6. Section 5f.0 is redesignated § 301.9100–5T.

PART 5h—TEMPORARY REGULATIONS—ELECTIONS UNDER VARIOUS PUBLIC LAWS

§§ 5h.4, 5h.5, and 5h.6 [Redesignated as §§ 301.9100–6T, 301.9100–7T, and 301.9100–8]

Par. 7. Sections 5h.4, 5h.5, and 5h.6 are redesignated §§ 301.9100–6T, 301.9100–7T, and 301.9100–8, respectively.

PART 5h—[REMOVED]

Par. 8. Part 5h is removed.

PART 301—[AMENDED]

§ 301.9100–8 [Amended]

Par. 9. In newly designated § 301.9100–8(a)(1) table, the fourth column ("Availability of election") is amended as follows:

1. For the 3rd item, the first column of which reads "1002(1)(1)(A)", the language "and before January 1, 1990 (before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code)," is removed.

2. For the 4th item, the first column of which reads "1002(1)(2)(B)", the language ", and before January 1, 1990 (after December 31, 1987, and before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code)" is removed and "." is added in its place.

3. For the 5th item, the first column of which reads "1002(1)(4)", the language ", and before January 1, 1990 (after December 31, 1987, and before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code)." is removed and "." is added in its place.

4. For the 6th item, the first column of which reads "1002(1)(12)", the language ", and before January 1, 1990 (after December 31, 1987, and before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code)." is removed and "." is added in its place.

5. For the 7th item, the first column of which reads "1002(1)(19)(B)", the language ", and before January 1, 1990 (after December 31, 1987, and before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code)." is removed and "." is added in its place.

6. For the 15th item, the first column of which reads "1010(f)(2)", the language "Effective January 1, 1963." is removed and the language "Available for taxable years beginning after December 31, 1986." is added in its place.

7. For the 28th item, the first column of which reads "4004(a)", the language "and before January 1, 1990 (after December 31, 1987, and before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code)." is removed.

8. For the 31st item, the first column of which reads "5031(a)", the language following the first sentence is removed and the following language is added in its place: "The election is made by attaching a statement to the last income, estate, or gift tax return filed before the due date, or if a timely return is not filed, the first return filed after the due date. The statement shall contain the following: (1) A statement that an election under section 7520(a) is being made; (2) the transferor's name and taxpayer identification number as they appear on the return; (3) a description of the interest being valued; (4) the recipients, beneficiaries, or donees of the transferred interest; (5) the date of the transfer; (6) the Applicable Federal Midterm rate that is used to value the

transferred interest and the month to which the rate pertains."

9. For the 32nd item, the first column of which reads "5033(a)(2)", the following language is added at the end: "However, elections made on or after May 5, 1991, may not be made on any return filed more than one year after the time prescribed for filing the return (including extensions)."

§ 301.9100–8 [Amended]

Par. 10. Newly designated § 301.9100–8(a)(4)(ii) is amended by adding "5031(a) (Code section 7520(a))," between "2004(j)(1)," and "6026(c)".

§ 301.9100–7T [Amended]

Par. 11. In newly designated § 301.9100–7T(f), first sentence, "§ 5h.6(d)" is removed and "§ 301.9100–8(d)" is added in its place.

PART 6—TEMPORARY INCOME TAX REGULATIONS UNDER THE BANK HOLDING COMPANY TAX ACT OF 1976

§§ 6.1, 6.2, and 6.3 [Redesignated as §§ 301.9100–9T, 301.9100–10T and 301.9100–11T]

Par. 12. Sections 6.1, 6.2, and 6.3 are redesignated §§ 301.9100–9T, 301.9100–10T, and 301.9100–11T, respectively.

PART 6—[REMOVED]

Par. 13. Part 6 is removed.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Par. 14. The authority citation for part 7 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

§ 7.0 [Redesignated as § 301.9100–12T]

Par. 15. Section 7.0 is redesignated § 301.9100–12T.

PART 7a—TEMPORARY INCOME TAX REGULATIONS UNDER THE BANKRUPTCY TAX ACT OF 1980

§§ 7a.1, 7a.2, and 7a.3 [Redesignated as §§ 301.9100–13T, 301.9100–14T and 301.9100–15T]

Par. 16. Sections 7a.1, 7a.2, and 7a.3 are redesignated §§ 301.9100–13T, 301.9100–14T, and 301.9100–15T, respectively.

PART 7a—[REMOVED]

Par. 17. Part 7a is removed.

PART 10—TEMPORARY INCOME TAX REGULATIONS UNDER PUBLIC LAW 93–625

§ 10.2 [Redesignated as § 301.9100–16T]

Par. 18. Section 10.2 is redesignated § 301.9100–16T.

PART 10—[REMOVED]

Par. 19. Part 10 is removed.

PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

Par. 20. The general authority for part 13 is revised to read as follows:

Authority: 26 U.S.C. 7805.

§§ 13.0 and 13.1 [Redesignated as §§ 301.9100–17T and 301.9100–18T]

Par. 21. Sections 13.0 and 13.1 are redesignated §§ 301.9100–17T and 301.9100–18T, respectively.

PART 14—[REMOVED] REGULATIONS UNDER ACT OF APRIL 14, 1966, RELATING TO ELECTING SMALL BUSINESS CORPORATIONS

§ 14.1–1 [Redesignated as § 301.9100–19T]

Par. 22. Section 14.1–1 is redesignated § 301.9100–19T.

PART 14 [REMOVED]

Par. 23. Part 14 is removed.

PART 19—TEMPORARY REGULATIONS UNDER THE REVENUE ACT OF 1964

Par. 24. The general authority for part 19 is revised to read as follows:

Authority: 26 U.S.C. 7805.

§ 19.2–1 [Redesignated as § 301.9100–20T]

Par. 25. Section 19.2–1 is redesignated § 301.9100–20T.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Par. 26. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

§ 1.162–10T [Amended]

Par. 27. In § 1.162–10T, A–1, last sentence, "§ 10.2" is removed and "§ 301.9100–16T" is added in its place.

§ 1.169(j)–1T [Amended]

Par. 28. In § 1.169(j)–1T, A–10, fifth sentence, "§ 5h.4(a)" is removed and "§ 301.9100–6T(a)" is added in its place.

§ 1.404(a)–1T [Amended]

Par. 29. In § 1.404(a)–1T, A–1, last sentence, "§ 10.2" is removed and "§ 301.9100–16T" is added in its place.

§ 1.404(b)–1T [Amended]

Par. 30. In § 1.404(b)–1T, A–1, last sentence, "§ 10.2" is removed and "§ 301.9100–16T" is added in its place.

§ 1.404(d)–1T [Amended]

Par. 31. In § 1.404(d)–1T, A–1, last sentence, "§ 10.2" is removed and "§ 301.9100–16T" is added in its place.

§ 1.453C–3T [Amended]

Par. 32. In § 1.453C–3T(c)(4), last sentence, "26 CFR 5h.5" is removed and "§ 301.9100–7T of this chapter" is added in its place.

§ 1.453C–8T [Amended]

Par. 33. In § 1.453C–8T(a)(1), first sentence of the concluding language, "26 CFR 5h.5" is removed and "§ 301.9100–7T of this chapter" is added in its place.

§ 1.636–4 [Amended]

Par. 34. In § 1.636–4(c)(2), fourth sentence, the language "part 13 of this chapter (Temporary Income Tax Regulations Under the Tax Reform Act of 1969) is not required to amend statements previously furnished which meet the requirements of paragraph (b)(1)(ii) of § 13.0 of part 13" is removed and "§§ 301.9100–17T and 301.9100–18T of this chapter are not required to amend statements previously furnished which meet the requirements of § 301.9100–17T(b)(1)(ii) of this chapter" is added in its place.

§ 1.702–3T [Amended]

Par. 35. In § 1.702–3T(c), "§ 5h.5" is removed and "§ 301.9100–7T of this chapter" is added in its place.

§ 1.856–9 [Amended]

Par. 36. In § 1.856–9(d)(2), first sentence, "§ 7.0(c)(1)" is removed and "§ 301.9100–12T(c)(1)" is added in its place.

PART 14a—TEMPORARY INCOME TAX REGULATIONS RELATING TO INCENTIVE STOCK OPTIONS

Par. 37. The general authority for part 14a is revised to read as follows:

Authority: 26 U.S.C. 7805.

§ 14a.422A–1 [Amended]

Par. 38. In § 14a.422A–1, A–4, the first, second and third sentences, "§ 5c.0(d)" is removed and "§ 301.9100–4T(d) of this chapter" is added in its place.

PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTER S REVISION ACT OF 1982

Par. 39. The authority citation for part 18 is revised to read as follows:

Authority: 26 U.S.C. 7805 and sec. 6(c)(3)(B)(iii) of the Subchapter S Revision Act of 1982 (96 Stat. 1669).

§ 18.1366–5 [Amended]

Par. 40. In § 18.1366–5(c), "§ 5h.5" is removed and "§ 301.9100–7T of this chapter" is added in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 41. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 42. The table of control numbers in § 602.101(c) is amended by removing the following entries: "5c.0 * * * 1545–0016, 1545–0042, 1545–0074, 1545–0129, 1545–0172, 1545–0619",
"5h.4 * * * 1545–0872",
"5h.5 * * * 1545–0982, 1545–0999, 1545–1016", "5h.6 * * * 1545–1112",
"6.3 * * * 1545–0123", "7.0 * * * 1545–0026, 1545–0074, 1545–0172, 1545–1027",
"7a.1 * * * 1545–0046",
"7a.2 * * * 1545–0046",
"7a.3 * * * 1545–0046", and
"10.2 * * * 1545–0152".

§ 602.101 [Amended]

Par. 43. The table of control numbers in § 602.101(c) is amended by adding in numerical order the following entries: "301.9100–4T * * * 1545–0016, 1545–0042, 1545–0074, 1545–0129, 1545–0172, 1545–0619", "301.9100–6T * * * 1545–0872", "301.9100–7T * * * 1545–0982, 1545–0999, 1545–1016", "301.9100–8 * * * 1545–1112", "301.9100–11T * * * 1545–0123", and "301.9100–12T * * * 1545–0026, 1545–0074, 1545–0172, 1545–1027", "301.9100–13T * * * 1545–0046", "301.9100–14T * * * 1545–0046", "301.9100–15T * * * 1545–0046", and "301.9100–16T * * * 1545–0152".

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

Dated: September 1, 1992.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–22685 Filed 9–18–92; 2:22 pm]

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26 CFR Parts 1 and 602

[T.D. 8437]

RIN 1545–AP56

Limitations on Percentage Depletion in the Case of Oil and Gas Wells

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to final regulations that clarify the circumstances under which percentage depletion is available in the case of oil and gas wells. The final regulations in this document reflect changes to the applicable law that were made by the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Energy Tax Act of 1978, the Technical Corrections Act of 1982, the Subchapter S Revision Act of 1982, the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Revenue Reconciliation Act of 1990.

DATES: These regulations are effective for taxable years beginning after May 13, 1991, except as provided below. A partnership may elect to apply the provisions relating to the reallocation of partnership basis, for taxable years beginning on or before May 13, 1991. Certain of these provisions apply to transfers of proven property after May 13, 1991, but a taxpayer may elect to apply these rules to transfers occurring after October 11, 1990, and on or before May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Brenda M. Stewart, 202–622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1251. The estimated annual burden per respondent varies from 10 minutes to 30 minutes, depending on individual circumstances, with an estimated average of 20 minutes.

These estimates are an approximation of the average time expected to be necessary to collect information. They are based on the information available to the Internal Revenue Service. Individual respondents may require more time or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

Proposed regulations under section 613A clarifying the circumstances under which percentage depletion is available in the case of oil and gas wells were published in the **Federal Register** on May 13, 1991. The provisions concerning oil and gas property held by partnerships were published as proposed regulations in the **Federal Register** on May 13, 1991 (56 FR 21965 (May 13, 1991)) because the partnership provisions in the 1991 proposed regulations under section 613A differ substantially from the partnership provisions in the 1977 proposed regulations. Other amendments proposed on May 13, 1991 reflect changes to the applicable law after the issuance of the 1977 proposed regulations under section 613A. These final regulations conform the regulations to section 501 of the Tax Reduction Act of 1975, section 2115(c) of the Tax Reform Act of 1976, section 403(a)(2)(B), (b), and (c) of the Energy Tax Act of 1978, sections 202(d)(2) and 203(b)(3)(B) of the Technical Corrections Act of 1982, section 3(a) of the Subchapter S Revision Act of 1982, sections 25(b) and 722(e)(1) of the Tax Reform Act of 1984, section 412(a)(1) of the Tax Reform Act of 1986, and sections 11521 and 11522 of the Revenue Reconciliation Act of 1990.

Explanation of Provisions

I. Reallocation of Partnership Basis

Proposed § 1.613A–3(e)(3)(ii) provides that in the case of an entry of a new partner (or an additional contribution by an existing partner), a partnership must allocate to the new partner the partner's share of the aggregate of the partners' adjusted bases in each partnership oil or gas property. Concurrently, each existing partner is required to reduce the partner's basis in each partnership oil or gas property by the percentage of the partnership's aggregate basis in the property that has been allocated to the new partner. Proposed § 1.613A–3(e)(iii) provides that the partnership may determine the partners' aggregate bases by using data submitted by partners or by using certain assumptions.

If a partner does not inform the partnership of the partner's basis in an oil or gas property, the partnership must use the following assumptions to

determine the basis: (1) The partner deducted the partner's share of deductions under section 263(c) in the first year in which the partner could claim a deduction for such amounts, unless the partnership elected to capitalize such amounts, (2) the partner was not subject to the 65 percent-of-taxable income limitation of section 613A(d)(1) with respect to the partner's depletion allowance under section 611, and (3) the partner was not subject to the taxable income limitation of section 613(a), the depletable quantity limitations of section 613A(c), or the limitations of section 613A)(d) (2), (3), and (4), except to the extent the limitation is applied at the partnership level.

Use of the assumptions may result in the loss of a portion of the partners' collective basis in partnership property upon reallocation to an entering partner. A partnership may avoid the loss of any portion of the collective basis, however, by using written data submitted by partners.

In the case of the withdrawal of a partner, the withdrawing partner's adjusted basis in each oil and gas property must be allocated to the remaining partners. If assumptions are used to determine the withdrawing partner's basis in the oil and gas property, a portion of the partners' collective basis may also be lost.

Commentators have argued that a withdrawing partner may have little or no incentive to provide the partnership with the necessary data. Therefore, the partnership would be forced to use the assumptions set forth in proposed § 1.613A–3(e)(3)(iii)(C). The commentators suggested that a partnership be permitted to rebut the assumptions by showing that the use of the assumptions would result in inequitable treatment and a loss of partnership basis.

The final regulations reflect the commentators' suggestion that a partnership be permitted to rebut the assumptions in the case of a withdrawing partner. However, the final regulations limit the opportunity to rebut the assumptions to the assumption relating to the status of the withdrawing partner as a retailer or refiner. A partnership may rebut the assumption that the withdrawing partner is not a retailer or a refiner by demonstrating that the withdrawing partner is a retailer or refiner. The opportunity to rebut the assumptions is limited to the retailer or refiner assumption because this is the only assumption rebuttable with the use of information in the public domain. See § 1.613A–3(e)(3)(iv)(B).

II. Transfers After October 11, 1990

Proposed § 1.613A–3(i)(2) reflects the repeal by section 11521 of the Revenue Reconciliation Act of 1990 of section 613A(c)(9), the "transfer rule," which made transferred proven properties ineligible for percentage depletion. Proposed § 1.613A–3(i)(2)(ii) interpreted the term "transfer," for purposes of determining whether a transfer occurs following the effective date of the repeal, in the same manner as it was interpreted under prior law. The repeal of the transfer rule is effective for transferees of proven properties transferred after October 11, 1990. Under proposed § 1.613A–3(i)(2)(ii) the term "transfer" has the same meaning as under § 1.613A–7(n), which defines "transfer" under repealed section 613A(c)(9).

Commentators expressed concern that the rules set forth in proposed § 1.613A–3(i)(2) regarding the repeal of the transfer rule are too restrictive and suggested that a facts and circumstances test would best implement the intent of Congress. Specifically commentators suggested a rule that would provide that a transfer after October 11, 1990 will restore percentage depletion on a proven property if the transfer is undertaken for: (1) A valid business purpose, (2) another valid non-tax reason (e.g., transfer at death), or (3) the purpose of lowering the income tax liability of the transferee if the transfer was undertaken with the expectation that it would encourage better utilization of the percentage depletion benefit.

The commentators' suggestion was not adopted because it would treat a disposition of property as a transfer even if the beneficial interest in the property is still retained by the transferor (e.g., the transfer of property to a partnership for a partnership interest). Had Congress intended to permit the restoration of percentage depletion without the transfer of the beneficial interest in property, the repeal of the transfer rule would have been effective as of a certain date, without regard to any transfer. Moreover, Congress provided a definition of the term "transfer" in repealed section 613A(c)(9). Because Congress also used the term "transfer" in the effective date of the repeal of section 613A(c)(9), it is reasonable to interpret the term as having the same meaning. Accordingly, proposed § 1.613A–3(i)(2)(ii) remains unchanged in the final regulations.

III. Transfer of Proven Property in Exchange for Stock

Under former section 613A(c)(10), a transfer of proven property by an individual to a qualified transferee corporation solely in exchange for stock of that corporation was excepted from the transfer rule. If the transferor of the property disposed of the stock at any time during the transferor's lifetime, however, the depletable quantity of the transferee corporation would be reduced by an amount bearing the same ratio to the total depletable quantity as the fair market value of the stock disposed of bore to the aggregate fair market value of the stock of the corporation.

Commentators have requested that the regulations make clear that for purposes of transfers of property occurring before October 12, 1990 under section 613A(c)(10), prior to its repeal, the transfer of stock after October 11, 1990 by a transferor will not result in a reduction in the depletable quantity of the transferee corporation.

The comments are consistent with the intention of the final regulations that no transaction after October 11, 1990 will cause a property to become ineligible for percentage depletion. Accordingly, the final regulations provide that the disposition of stock received in exchange for proven property will not result in a reduction of the transferee corporation's depletable quantity under section 613A(c)(10)(F) (prior to its repeal). See § 1.613A–3(i)(2).

IV. Bonuses and Advanced Royalties

Consistent with *Commissioner* v. *Engle*, 464 U.S.C. 206 (1984) (which holds that section 613A was not intended to disallow percentage depletion on a lease bonus or advanced royalty payment even when there is no actual production in the year of receipt), the final regulations under section 613A provide rules allowing percentage depletion for lease bonuses and advanced royalties received or accrued before August 17, 1986. However, section 412(a)(1) of the Tax Reform Act of 1986 added section 613A(d) (5) to the Code which overrules *Engle*. Thus, proposed § 1.613A–3(j)(1) provides that any advanced royalty (to the extent that actual production during the taxable year is insufficient to earn such royalty), lease bonus, or other amount payable without regard to production that is received or accrued after August 16, 1986, is not taken into account in computing the percentage depletion allowance pursuant to section 613A(c). This provision remains unchanged in the final regulations.

V. Conforming Changes to Section 1.705–1(a)(4)

Proposed § 1.705–1(a)(4) provided that the basis of any oil or gas property was decreased (but not below zero) by the amount of the partner's deduction for depletion allowable under section 611 for any partnership oil or gas property. Commentators noted that this provision did not reflect the changes to section 705(a)(3) by section 722(e)(1) of the Tax Reform Act of 1984.

Accordingly, § 1.705–1(a)(4) of the final regulations provides that the basis of any oil or gas property is decreased (but not below zero) by the amount of the partner's deduction of depletion of any partnership oil and gas property to the extent the deduction does not exceed the proportionate share of the adjusted basis of the property allocated to the partner under section 613A(c)(7)(D).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Walter H. Woo, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR 1.611–0 through 1.617–4

Income taxes, Natural resources, Reporting and recordkeeping requirements.

26 CFR 1.701–1 through 1.771–1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Paragraph (a) of § 1.613–1 is amended by revising the second sentence to read as follows:

§ 1.613–1 Percentage depletion; general rule.

(a) * * * The deduction shall not exceed 50 percent (100 percent in the case of oil and gas properties for taxable years beginning after December 31, 1990) of the taxpayer's taxable income from the property (computed without regard to the allowance for depletion). * * *

* * * * *

§ 1.613A–0 [Amended]

Par. 3. Section 1.613A–0 is amended as follows:

1. The entry for § 1.613A–3(e) is amended by removing the language "[Reserved]" and adding new paragraph headings to read as set forth below.

§ 1.613A–3(f) [Amended]

2. The entry for § 1.613A–3(f) is amended by removing the language "[Reserved]".

§ 1.613A–3(i)(2) [Amended]

3. The entry for § 1.613A–3(i)(2) is amended by removing the language "[Reserved]" and adding new paragraph headings to read as set forth below.

§ 1.613H–3(j)(1) [Amended]

4. The entry for § 1.613A–3(j)(1) is amended by removing the language "[Reserved]".

§ 1.613A–7(e) [Amended]

5. The entry for § 1.613A–7(e) is amended by removing the language "[Reserved]".

§ 1.613A–0 Limitations on percentage depletion in the case of oil and gas wells; table of contents.

* * * * *

§ 1.613A–3 Exemption for independent producers and royalty owners.

* * * * *

(e) *Partnerships.*

(1) General rule.

(2) Initial allocation of adjusted basis of oil or gas property among partners.

(i) General rule.

(ii) Allocation methods.

(3) Adjustments by partnership to allocated adjusted bases.

(i) Capital expenditures by partnership.

(ii) Admission of a new partner or increase in partner's interest.

(A) In general.

(B) Allocation of basis to contributing partner.

(C) Reduction of existing partners' bases.

(iii) Determination of aggregate of partners' adjusted bases in the property.

(A) In general.

(B) Written data.

(C) Assumptions.

(iv) Withdrawal of partner or decrease in partner's interest.

(A) In general.

(B) Special rule for determining a withdrawing partner's basis in the property.

(v) Effective date.

(4) Determination of a partner's interest in partnership capital or income.

(5) Special rules on allocation of adjusted basis to partners.

(6) Miscellaneous rules.

(7) Examples.

* * * * * * *

(i) *Transfer of oil or gas property.*

* * *

(2) Transfers after October 11, 1990.

(i) General rule.

(ii) Transfer.

(iii) Transferee.

(iv) Effective date.

(v) Examples.

* * * * *

Par. 4. Section 1.613A–2 is amended by revising paragraph (a)(3), redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding a new paragraph (b), to read as follows:

§ 1.613A–2 Exemption for certain domestic gas wells.

(a) * * *

(3) Any geothermal deposits in the United States or in a possession of the United States that is determined to be a gas well within the meaning of former section 613(b)(1)(A) (as in effect before enactment of the Tax Reduction Act of 1975) for taxable years ending after December 31, 1974, and before October 1, 1978 (see section 613(e) for depletion on geothermal deposits thereafter).

(b) For taxable years ending after September 30, 1978, the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to any qualified natural gas from geopressured brine (as defined in paragraph (e) of § 1.613A–7), and 10 percent shall be deemed to be specified

in section 613(b) for purposes of section 613(a).

* * * * *

§ 1.613A-3 [Amended]

Par. 5. Section 1.613A–3 is amended as follows:

1. The text of paragraphs (e) and (f) is added as set forth below.

2. Paragraph (h)(1) is amended by revising the last sentence to read as set forth below.

3. The text of paragraph (i)(2) is added as set forth below.

4. The text of paragraph (j)(1) is added as set forth below.

§ 1.613A–3 Exemption for independent producers and royalty owners.

* * * * *

(e) *Partnerships*—(1) *General rule.* In the case of a partnership, the depletion allowance under section 611 with respect to production from domestic oil and gas properties shall be computed separately by the partners and not by the partnership. The determination of whether cost or percentage depletion is applicable is to be made at the partner level. The partnership must allocate to each partner the partner's proportionate share of the adjusted basis of each partnership oil or gas property in accordance with the provisions of paragraphs (e)(2) through (e)(6) of this section. This allocation of the adjusted basis of oil or gas property does not affect a partner's adjusted basis in his or her partnership interest.

(2) *Initial allocation of adjusted basis of oil or gas property among partners*—(i) *General rule.* Each partner shall be allocated his or her proportionate share of the adjusted basis of each partnership domestic oil or gas property. The initial allocation of adjusted basis is to be made as of the later of the date of acquisition of the oil or gas property by the partnership or January 1, 1975.

(ii) *Allocation methods.* Except as otherwise provided in paragraph (e)(5) of this section, the provisions of this paragraph (e)(2)(ii) govern the determination under paragraph (e)(2)(i) of this section of a partner's proportionate share of the adjusted basis of oil or gas property. Each partner's proportionate share is determined in accordance with the partner's proportionate interest in partnership capital at the time of the allocation unless both—

(A) The partnership agreement provides that a partner's share of the adjusted basis of one or more properties is determined in accordance with his or her proportionate interest in partnership income; and

(B) At the time of allocation under the partnership agreement the share of each partner in partnership income is reasonably expected to be substantially unchanged throughout the life of the partnership, other than changes merely to reflect the admission of a new partner, an increase in a partner's interest in consideration for money, property, or services, or a partial or complete withdrawal of an existing partner.

If the requirements of paragraph (e)(2)(ii) (A) and (B) of this section are met, a partner's proportionate share is determined in accordance with his or her proportionate interest in partnership income. The partners' shares of adjusted basis are determined on a property-by-property basis. Accordingly, the basis of one property may be allocated in proportion to capital and the basis of another property may be allocated in proportion to income. See §§ 1.613A–3(e)(5) and 1.704–1(b)(4)(v) for special rules concerning allocation of the adjusted basis of oil and gas properties.

(3) *Adjustments by partnership to allocated adjusted bases*—(i) *Capital expenditures by partnership.* Appropriate adjustments shall be made to the partners' adjusted bases in any domestic oil and gas property for any partnership capital expenditures relating to such property that are made after the initial allocation. These adjustments shall be allocated among the partners in accordance with the principles set forth in paragraph (e)(2)(ii) of this section.

(ii) *Admission of a new partner or increase in partner's interest*—(A) *In general.* Upon a contribution of money, other property, or services to the partnership by a new or existing partner ("contributing partner") as consideration for an interest in the partnership, the partnership shall allocate, in accordance with paragraph (e)(3)(ii)(B) of this section, a share of the partnership's basis in each existing oil and gas property to the contributing partner, and each existing partner shall reduce, in accordance with paragraph (e)(3)(ii)(C) of this section, his or her share of the partnership's basis in such property.

(B) *Allocation of basis to contributing partner.* The partnership shall allocate to a contributing partner his or her proportionate share (determined under paragraph (e)(2)(ii) of this section in accordance with the partner's proportionate interest in partnership capital or income) of the partnership's adjusted basis in each existing partnership oil or gas property. For purposes of this allocation, the partnership's adjusted basis in such property equals the aggregate of its partner's adjusted bases in the property, as determined under paragraph (e)(3)(iii) of this section.

(C) *Reduction of existing partners' bases.* Each existing partner's basis in each existing partnership oil or gas property is reduced by the percentage of the partnership's aggregate basis in the property that is allocated to the contributing partner. Thus, if one-third of the partnership's aggregate basis in a property is allocated to a contributing partner because the contributing partner has a one-third interest in partnership capital, after the admission of the contributing partner each existing partner's basis (including the contributing partner's pre-existing basis if such partner is also an existing partner) in each property equals the partner's basis (prior to the admission) reduced by one-third.

(iii) *Determination of aggregate of partners' adjusted bases in the property*—(A) *In general.* To determine the aggregate of its partners' adjusted bases for purposes of this paragraph (e)(3), the partnership must determine each partner's adjusted basis under either paragraph (e)(3)(iii)(B) (written data) or paragraph (e)(3)(iii)(C) (assumptions) of this section. The partnership is permitted to determine the bases of some partners under paragraph (e)(3)(iii)(B) of this section and of others under paragraph (e)(3)(iii)(C) of this section. For this purpose, a partner's basis in an oil or gas property does not include any basis adjustment under section 743(b).

(B) *Written data.* A partnership may determine a partner's basis in an oil or gas property by using written data provided by a partner stating the amount of the partner's adjusted basis or depletion deductions with respect to the property unless the partnership knows or has reason to know that the written data is inaccurate. In determining depletion deductions, a partner must treat as actually deducted any amount disallowed and carried over as a result of the 65 percent-of-income limitation of section 613A(d)(1). If a partnership does not receive written data upon which it may rely, the partnership must use the assumptions provided in paragraph (e)(3)(iii)(C) of this section in determining a partner's adjusted basis in an oil or gas property.

(C) *Assumptions.* Except as provided in paragraph (e)(3)(iv)(B) of this section, a partnership that does not use written data pursuant to paragraph (e)(3)(iii)(B) of this section to determine a partner's basis must use the following assumptions to determine the partner's

adjusted basis in an oil and gas property:

(*1*) The partner deducted his or her share of deductions under section 263(c) in the first year in which the partner could claim a deduction for such amounts, unless the partnership elected to capitalize such amounts;

(*2*) The partner was not subject to the 65 percent-of-income limitation of section 613A(d)(1) with respect to the partner's depletion allowance under section 611; and

(*3*) The partner was not subject to the following limitations, with respect to the partner's depletion allowance under section 611, except to the extent a limitation applied at the partnership level: the taxable income limitation of section 613(a); the depletable quantity limitations of section 613A(c); the prohibition against claiming percentage depletion on transferred proven property under section 613A(c)(9), prior to its repeal; or the limitations of section 613A(d) (2), (3), and (4) (exclusion of retailers and refiners).

(iv) *Withdrawal of partner or decrease in partner's interest*—(A) *In general.* Upon a distribution of money or other property to a withdrawing partner as consideration for an interest in the partnership, the withdrawing partner's adjusted basis in each domestic oil or gas property that continues to be held by the partnership is allocated to the remaining partners in proportion to their proportionate interest in partnership capital or income after taking into account any increase or decrease as a result of the event giving rise to the reallocation. A similar rule shall apply in the case of a diminution of a continuing partner's interest in the partnership.

(B) *Special rule for determining a withdrawing partner's basis in the property.* If a partnership is required to determine a withdrawing partner's adjusted basis using the assumptions under paragraph (e)(3)(iii)(C) of this section, the partnership may rebut the assumption in paragraph (e)(3)(iii)(C)(*3*) of this section that the withdrawing partner was not subject to the limitations of sections 613A(d) (2), (3), and (4) exclusion of retailers and refiners) by demonstrating that the withdrawing partner was subject to the limitations of sections 613A(d) (2), (3), or (4).

(v) *Effective date.* The provisions of § 1.613A–3(e)(3) (i) through (iv) are effective for taxable years beginning after May 13, 1991. However, a partnership may elect to apply these provisions to taxable years beginning on or before May 13, 1991.

(4) *Determination of a partner's interest in partnership capital or income.* For purposes of this paragraph (e), a partner's interest in partnership capital or income is determined by taking into account all facts and circumstances relating to the economic arrangement of the partners. See the factors listed in § 1.704–1(b)(3)(ii).

(5) *Special rules on allocation of adjusted basis to partners.* An allocation or reallocation of the adjusted basis of oil or gas property is pursuant to this paragraph (e) of this section deemed to be in accordance with the partner's proportionate interest in partnership capital or income for purposes of this paragraph (e) where so provided in § 1.704–1(b)(4)(v). In addition, in connection with a revaluation described in § 1.704–1(b)(2)(iv)(*f*), the basis of an oil or gas property is allocated among the partners based on the principles used under § 1.704–1(b)(4)(i) of allocating tax items to take into account variations between the adjusted basis of the property and its fair market value. In the case of an oil or gas property contributed to a partnership by a partner, section 704(c) is taken into account in determining the partner's share of the adjusted basis.

(6) *Miscellaneous rules*—(i) Each partner must separately keep records of his or her share of the adjusted basis in each domestic oil or gas property of the partnership, adjust his or her share of such basis pursuant to section 1016 (including adjustments for any depletion allowed or allowable with respect to such property), and use that adjusted basis each year in the computation of his or her cost depletion or in the computation of his or her gain or loss on the disposition (including abandonment) of the property by the partnership.

(ii) The adjusted basis of a partner's interest in a partnership is decreased (but not below zero) pursuant to section 705(a)(3) by the amount of the depletion deduction allowed or allowable to the partner with respect to a domestic oil or gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to the partner under section 613A(c)(7)(D), as adjusted by the partner after the initial allocation. Section 705(a)(1)(C) does not apply to depletion deductions that are not included in a partner's distributive share under section 702. Accordingly, the adjusted basis of a partner's interest in a partnership is not increased under section 705(a)(1)(C) with respect to depletion of oil or gas properties. See § 1.705–1(a)(2)(iii).

(iii) Upon the disposition of an oil or gas property by the partnership, each partner must subtract the partner's adjusted basis in the property from his or her allocable portion of the amount realized from the sale of the property to determine gain or loss. The partner's allocable portion of amount realized must, except to the extent governed by section 704(c) (or related principles under § 1.704–1(b)(4)(i)), be determined in accordance with § 1.704–1(b)(4)(v). Except as otherwise provided (e.g., section 751), the sale of a partnership interest is not treated as a sale of an oil and gas property.

(iv) In the case of a transfer of an interest in a partnership, the transferor partner's adjusted basis in each partnership oil or gas property carries over to the transferee partner. If an election under section 754 (relating to optional adjustment to the basis of partnership property) is in effect, such basis is adjusted in accordance with section 743.

(v) For purposes of section 732 (relating to basis of distributed property other than money) and section 734(b) (relating to optional adjustment to basis of partnership property), the partnership's adjusted basis in oil and gas property is an amount equal to the aggregate of its partners' adjusted bases in the property as determined under the rules provided in paragraph (e)(3) of this section.

(7) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. A, B, and C have equal interests in capital in Partnership ABC. On January 1, 1990, the partnership acquired a producing domestic oil property. The partnership's basis in the property was $90x. The partnership allocated the adjusted basis of the property to each partner in proportion to the partner's interest in partnership capital. Accordingly, each partner was allocated an adjusted basis of $30x. Each partner must separately compute his or her depletion allowance. The amount of percentage depletion allowable for each partner for 1992 was $10x. On January 1, 1993, each partner's adjusted basis in the property was $20x ($30x minus $10x). On January 1, 1993, the oil property was sold for $150x. Each partner's gain was $30x ($50x allocable share of amount realized minus the partner's adjusted basis of $20x). Each partner must adjust the partner's adjusted basis in his or her partnership interest to reflect the gain.

Example 2. The facts are the same as in *Example 1* except that on January 1, 1993, the property was not sold but transferred by the partnership to partner A. A's basis in the property was $60x (the sum of A's, B's, and C's adjusted bases in the property).

Example 3. The facts are the same as in *Example 1* with the exception that in 1990 C was a retailer of oil and gas and was only entitled to a cost depletion deduction of $5x. C's gain from the sale of the mineral property

on January 1, 1993, was $25x ($50x allocable share of amount realized minus C's adjusted basis of $25x ($30x minus $5x)).

Example 4. D, a calendar year taxpayer, is a partner in Partnership DEF which owns a domestic producing oil property. On January 1, 1993, the partnership's adjusted basis in the property was $900x. On January 1, 1993, D's adjusted basis in D's partnership interest was $300x and D's adjusted basis in the partnership's oil property was $300x. D's allowable percentage depletion for 1993 with respect to production from the oil property was $50x. On January 1, 1994, D's adjusted basis in D's partnership interest was $250x and D's adjusted basis in the partnership's oil property was $250x ($300x minus $50x).

Example 5. On January 1, 1993, G has an adjusted basis of $5x in partnership GH's proven domestic oil property, which is the sole asset of the partnership. On January 1, 1993 G sells G's partnership interest to I for $100x when the election under section 754 is in effect. I has a special basis adjustment for the oil property of $95x (the difference between I's basis, $100x, and I's share of the basis of the partnership property, $5x). I is not entitled to percentage depletion with respect to I's distributive share of the oil property income because I is a transferee of an interest in a proven oil property. However, I is entitled to cost depletion and for this purpose I's interest in the oil property has an adjusted basis to I of $100x ($5x, plus I's special basis adjustment of $95x).

Example 6. On January 1, 1960, Partnership JK acquired a domestic producing oil property. On January 1, 1993, the partnership's adjusted basis in the property was zero. On January 1, 1993, L is admitted as a partner to the partnership. Since the partnership's adjusted basis in the the oil property is zero, L's proportionate share of the basis in the property is also zero. L is not entitled to percentage depletion because L is a transferee of a proven oil property (see paragraph (g) of this section). Since the property's basis is zero, L is also not entitled to any cost depletion with respect to production from the property.

Example 7. (i) O and P have equal interests in capital in Partnership OP. On January 1, 1993, the partnership acquired an uproven domestic oil property X the basis of which is $200x to the partnership. The partnership allocates $100x of the basis of the property to each partner in accordance with each partner's proportionate interest in partnership capital. For the 1993 taxable year, O has a $10x cost depletion allowance and P has a $25x percentage depletion allowance. Accordingly, at the end of the 1993 taxable year, O's adjusted basis in the property is $90x, and P's adjusted basis in the property is $75x. On January 1, 1994, Q is admitted as an equal partner. The partnership does not use written data from the partners and must therefore assume that each partner was entitled to $25x depletion based on the assumptions provided in § 1.613A–3(e)(3)(iii). This would result in a $50x combined depletion allowance for the partners and an aggregate adjusted basis in the oil property of $150x. Accordingly, the partnership allocates $50x of the basis of the property to Q, one-third of the aggregate adjusted basis determined by the partnership. O and P must each reduce their basis in the property by one-third. Accordingly, after the admission of Q, O's adjusted basis in the property is $60x ($90x minus $30x), and P's adjusted basis in the property is $50x ($75x minus $25x).

(ii) Assume the same facts as in paragraph (i) of this *Example 7* except that O informs the partnership that its adjusted basis in the property is $90x (determined without regard to section 613A(d)(1)). The partnership uses the written data provided by O and determines the aggregate adjusted basis in the property to be $165x ($90x + $75x). Accordingly, the partnership allocates $55x (⅓ of $165x) of the basis of the property to Q, and O and P must each reduce their adjusted basis in the property by one-third, as in paragraph (i) of this *Example 7*. Thus, after the admission of Q, O's adjusted basis in the property is $60x and P's adjusted basis in the property is $50x.

(f) *S corporations.* For purposes of section 613A(c)(13), adjustments to shareholders' adjusted bases in any domestic oil or gas property to reflect capital expenditures by S corporations, the addition of a new shareholder or an increase in a shareholder's interest by reason of a contribution to the S corporation, the redemption of a shareholder's interest, or other appropriate transaction shall be made in accordance with principles similar to the principles under § 1.613A–3(e) applicable to the entry or withdrawal of a partner.

* * * * *

(h) * * *

(1) * * * Accordingly, the group shares the depletable oil (or natural gas) quantity prescribed for a taxpayer for the taxable year and the secondary production (to which gross income from the property is attributable before January 1, 1984) of a member of the group will reduce the other members' share of the group's depletable quantity.

* * * * *

(i) * * *

(2) *Transfers after October 11, 1990*—(i) *General rule.* Section 613A(c) (9) and (10), as in effect prior to the Revenue Reconciliation Act of 1990 (relating to prohibition of percentage depletion on transferred proven properties) has been repealed effective for transfers after October 11, 1990. Accordingly, a transferee of a proven oil or gas property transferred after October 11, 1990 is permitted to claim percentage depletion with respect to production from the property. For purposes of transfers of property occurring before October 12, 1990 under section 613A(c)(10), prior to its repeal, the disposition of stock after October 11, 1990 by a transferor will not result in a reduction in the depletable quantity of the transferee corporation under section 613A(c)(10)(F).

(ii) *Transfer.* The term "transfer" has the same meaning as under § 1.613A–7(n).

(iii) *Transferee.* A person shall not be treated as a transferee with respect to a transferred property to the extent that such person held an interest in the property but was not entitled to a percentage depletion allowance on mineral produced with respect to the property immediately before the transfer. Thus, for example, if a taxpayer who is not entitled to claim percentage depletion on a proven property transfers the property to a partnership for an interest in the partnership, the taxpayer is not a transferee with respect to the property in the hands of the partnership.

(iv) *Effective date.* The provisions of paragraph (i)(2) of § 1.613A–3 are effective for transfers occurring after May 13, 1991. However, a taxpayer may elect to apply these provisions to transfers occurring after October 11, 1990 and on or before May 13, 1991.

(v) *Examples.* The examples below illustrate the provisions of this subparagraph. The examples ignore the application of any restriction on percentage depletion other than the proven property transfer rule.

Example 1. On December 31, 1991, A transfers a proven oil property to B. B may claim percentage depletion with respect to production from the property regardless of whether production from the property was eligible for percentage depletion in A's hands (even if A were a retailer or refiner of oil or gas).

Example 2. On October 10, 1990, A transfers a proven oil property to B. B may not claim percentage depletion with respect to production from the property.

Example 3. On January 1, 1990, C purchases a proven oil property. Because C is a transferee of a proven property, production from the property is not eligible for percentage depletion in C's hands. On December 31, 1991, C contributes the property to Corporation M, an S corporation in which C owns 100 percent of the stock. The contribution of the property is a transfer, but C is not a transferee with respect to the property in the hands of the corporation. Accordingly, C may not claim percentage depletion with respect to production from the property. However, if prior to the contribution C had been entitled to claim percentage depletion with respect to production from the property, C would be entitled to claim percentage depletion with respect to production from the property after the contribution.

Example 4. On December 31, 1991, C contributes a proven oil property (with respect to which C is not entitled to claim percentage depletion) to Corporation N, an S corporation in which C owns 30 percent and D owns 70 percent of the stock. The contribution of the property is a transfer, but

C is not a transferee with respect to the property in the hands of the corporation. Accordingly, C may not claim percentage depletion with respect to C's share of the production from the property. D is a transferee with respect to the property in the hands of Corporation N, and may claim percentage depletion with respect to D's share of production from the property.

Example 5. On December 31, 1991, D transfers a proven oil property (with respect to which D is not entitled to claim percentage depletion) to DE, an equal partnership between D and E. E is a transferee with respect to the property and may claim percentage depletion with respect to production from the property allocated to E under the DE partnership agreement. D is not a transferee with respect to the property, and may not claim percentage depletion with respect to production from the property allocated to E under the DE partnership agreement. However, if D had been entitled to claim percentage depletion with respect to production from the property, then D would be entitled to claim percentage depletion with respect to production from the property in the hands of DE.

Example 6. On January 1, 1990, Corporation P contributes a proven property to Corporation O, its wholly owned subsidiary. Under § 1.613–7(n)(4), the contribution is not treated as a transfer, but only for so long as the tentative quantity is required under section 613A(c)(8) to be allocated between P and O. On December 31, 1991, P sells 90% of the O stock to an unrelated person; accordingly, the tentative quantity is no longer required under section 613A(c)(8) to be allocated between P and O. After the sale of O stock, production from the property in O's hands is eligible for percentage depletion because a transfer of a proven property is deemed to occur upon the transfer of the stock.

Example 7. On October 10, 1990, G transfers a proven oil property to his minor son, H. G had been entitled to claim percentage depletion with respect to production from the property. Under § 1.613A–7(n)(5), H is permitted to claim percentage depletion for so long as G and H are related persons under section 613A(c)(8)(C). On December 31, 1991, H reaches majority and is no longer related to G under section 613A(c)(8)(C). H is entitled to continue to claim percentage depletion on production from the property because the property is treated as being transferred to H on December 31, 1991.

Example 8. On December 31, 1991, I sells a proven property to J, her husband. I had not been entitled to claim percentage depletion with respect to production from the property. Under § 1.613A–7(n)(5), the sale is not a transfer because it is made between persons related under section 613A(c)(8). Accordingly, J may not claim percentage depletion with respect to production from the property. If, however, I had been entitled to claim percentage depletion with respect to production from the property, J would be entitled to claim percentage depletion with respect to production from the property.

Example 9. On December 31, 1991, L inherits a proven property from K. K had not been entitled to claim percentage depletion with respect to production from the property. Under § 1.613A–7(n)(1), the inheritance is not a transfer. Accordingly, L may not claim percentage depletion with respect to production from the property. If, however, K had been entitled to claim percentage depletion with respect to production from the property, L would be entitled to claim percentage depletion with respect to production from the property.

Example 10. On December 31, 1991, Corporation R, a calendar year taxpayer, made an S election effective for the taxable year beginning January 1, 1992 and succeeding taxable years. Since Corporation R is deemed to have transferred its oil and gas properties on January 1, 1992, the shareholders of Corporation R are eligible to claim percentage depletion with respect to the production from the properties.

Example 11. Assume the same facts as in *Example 10* except that Corporation R makes the S election on December 31, 1989, effective for the taxable year beginning January 1, 1990 and succeeding taxable years. Since Corporation R is deemed to have transferred its oil and gas properties on January 1, 1990, the shareholders of Corporation R are not eligible to claim percentage depletion with respect to the production from the properties.

(j) *Percentage depletion with respect to bonuses and advanced royalties*—(1) *Amounts received or accrued after August 16, 1986.* In computing the percentage depletion allowance pursuant to section 613A(c) with respect to amounts received or accrued after August 16, 1986, there shall not be taken into account any advance royalty (to the extent that actual production during the taxable year is insufficient to earn such royalty), lease bonus, or other amount payable without regard to production, even though the amount may be taken into account for purposes of sections 61 and 612 (relating to definitions of gross income and cost depletion, respectively).

* * * * *

Par. 6. Section 1.613A–7 is amended as follows:

1. The text of paragraph (e) is added as set forth below.

2. Paragraph (f)(1) is amended by revising the last sentence to read as set forth below.

3. Paragraph (h) is revised as set forth below.

4. Paragraph (n) is amended by adding a sentence immediately following the first sentence to read as set forth below.

5. Paragraph (o) is amended by revising the first sentence to read as set forth below.

6. Paragraph (r)(1), concluding text, is amended by adding a sentence immediately following the first sentence to read as set forth below.

§ 1.613A–7 Definitions.

* * * * *

(e) *Qualified natural gas from geopressured brine.* The term "qualified natural gas from geopressured brine" means any natural gas which is determined in accordance with section 503 of the Natural Gas Policy Act of 1978 to be produced from geopressured brine and which is produced from any well the drilling of which began after September 30, 1978, and before January 1, 1984.

(f) * * *

(1) * * * Average daily production does not include production resulting from secondary or tertiary processes to which gross income from the property is attributable before January 1, 1984.

* * * * *

(h) *Depletable oil quantity.* The taxpayer's depletable oil quantity, within the meaning of section 613A(c)(1)(A), shall be equal to the tentative quantity determined under the table contained in section 613A(c)(3)(B) and paragraph (b) of § 1.613A–3 (except that, in the case of determinations with respect to days prior to January 1, 1984, such quantity shall be reduced (but not below zero) by the taxpayer's average daily secondary or tertiary production for the taxable year).

* * * * *

(n) * * * For taxable years beginning after 1982, the term "transfer" includes an election by a C corporation to be an S corporation (properties deemed transferred by the C corporation on the day the election first becomes effective) and a termination of an S election (each shareholder's pro rata share of assets of S corporation deemed transferred to C corporation on the day that the termination first becomes effective).

* * *

* * * * *

(o) The term "transferee", as used in section 613A(c)(9), paragraph (i)(1) of § 1.613A–3, and this section includes the original transferee of proven property and his or her successors in interest (excluding successors in interest of proven property transferred after October 11, 1990). * * *

* * * * *

(r) * * *

(1) * * *

* * * Bulk sales made after September 18, 1992, of aviation fuels to the Department of Defense shall be also disregarded. * * *

* * * * *

Par. 7. Section 1.705–1 is amended by:

1. Revising paragraph (a)(2)(iii) to read as set forth below.

2. Redesignating paragraph (a)(4) as paragraph (a)(6) and adding paragraphs

(a)(4) and (a)(5) to read as set forth below.

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(2) * * *

(iii) The excess of the deductions for depletion over the basis of the depletable property, unless the property is an oil or gas property the basis of which has been allocated to partners under section 613A(c)(7)(D).

* * * * *

(4) The basis shall be decreased (but not below zero) by the amount of the partner's deduction for depletion allowable under section 611 for any partnership oil and gas property to the extent the deduction does not exceed the proportionate share of the adjusted basis of the property allocated to the partner under section 613A(c)(7)(D).

(5) The basis shall be adjusted (but not below zero) to reflect any gain or loss to the partner resulting from a disposition by the partnership of a domestic oil or gas property after December 31, 1974.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101(c) [Amended]

Par. 9. Section 602.101(c) is amended by adding the entry "1.613A–3(e)—1545–1251" to the table.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 6, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–23097 Filed 9–22–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF92

Active Military Service Certified Under Section 401 of Public Law 95–202

AGENCY: Department of Veterans Affairs.

ACTION: Final Regulation.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning persons who are included as having served on active duty. The need for this action results from recent decisions of the Secretary of the Air Force that the World War II service of members of U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL), Who Served Overseas as a Result of UAL's Contract With the Air Transport Command and members of U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., Who Served Overseas as a Result of TWA's Contract With the Air Transport Command constitutes active military service in the Armed Forces of the United States for purposes of all laws administered by VA. The effect of this action is to confer veteran status for VA benefit purposes on former members of these groups who were discharged under honorable conditions.

EFFECTIVE DATE: The effective date is May 13, 1992, the date on which the Secretary of the Air Force determined that such service constitutes active duty.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 401 of Public Law 95–202 authorized the Secretary of Defense to determine whether the service of members of civilian or contractual groups shall be considered active duty for the purposes of all laws administered by VA.

A notice of certification of the following group by the Secretary of the Air Force appeared in the **Federal Register** of June 9, 1992, 57 FR 24478: U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL), Who Served Overseas as a Result of UAL's Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945.

A notice of certification of the following group by the Secretary of the Air Force also appeared in the **Federal Register** of June 9, 1992, 57 FR 24479: U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., Who Served Overseas as a Result of TWA's Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945.

VA is issuing a final rule to amend the provisions of 38 CFR 3.7(x). This change is necessary to expand the regulatory provisions in accordance with the May 13, 1992, determinations of the Secretary of the Air Force, which are binding on VA. Because this amendment implements a determination of the Secretary of the Air Force in accordance with Public Law 95–202, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C., sections 601–612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: July 31, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.7, remove the authority citation following paragraph (x)(21).

3. In § 3.7, paragraphs (x) (22) and (23) and an authority citation are added to read as follows:

§ 3.7 Persons included.

* * * * *

(x) *Active military service certified as such under section 401 of Pub. L. 95–202.*

* * *

(22) U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL), Who Served Overseas as a Result of UAL's Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945.

(23) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., Who Served Overseas as a Result of TWA's Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945.

(Authority: Sec. 401, Pub. L. 95-202, 91 Stat. 1450)

* * * * *

[FR Doc. 92-22995 Filed 9-22-92; 8:45 am]
BILLING CODE 6320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA7-2-5566; A-1-FRL-4205-7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; CEMS for NO_x From Large Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision consists of an amended regulation which adds monitoring requirements for sources of nitrogen oxides (NO_x). The regulation requires that operators of large combustion units with heat input rates equal to or larger than 250 million Btu, continuously monitor NO_x and to properly report the findings of such monitoring. The intended effect of this action is to approve an amended regulation submitted by the Commonwealth of Pennsylvania Department of Environmental Resources as a SIP revision rendering its monitoring requirements as federally enforceable. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective November 23, 1992, unless notice is received by October 23, 1992, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 2357, Executive House—2nd & Chestnut Streets, Harrisburg, Pennsylvania 17120.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, (215) 597-9781.

SUPPLEMENTARY INFORMATION: On January 11, 1991, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of an amended regulation, title 25 Pa. Code, chapter 123, section 123.51, Monitoring Requirements, containing monitoring requirements for sources of nitrogen oxides (NO_x). This regulation requires that operators of 250 million Btu combustion units install, operate, and maintain NO_x continuous emission monitoring systems (CEMS); submit the results to the Pennsylvania Department of Environmental Resources on a regular schedule; and meet minimum data availability requirements.

Summary of SIP Revision

The revision adds monitoring requirements for sources of nitrogen compound emissions. The revision specifically establishes a CEMS requirement in Pennsylvania for major sources of NO_x to provide a reliable data base concerning NO_x emissions. This data will enable Pennsylvania to assure that the forthcoming requirements of subchapter IV of the Clean Air Act (Acid Deposition Control), as amended by the Clean Air Act Amendments of 1990, will be appropriately implemented throughout the State.

The purpose of the revision is to address the acid deposition problem in Pennsylvania. The new monitoring requirements will allow Pennsylvania to assess the magnitude and extent of NO_x emissions in the Commonwealth, permitting it to track the development of one of the precursors of acid rain. By requiring large combustion sources to continuously monitor NO_x emissions, the Commonwealth will be able to track approximately 80% of all NO_x emissions created within the State.

Specifically, the revision adds a new regulation which provides that all combustion units with a rated heat input of 250 million Btu per hour or greater and with an annual average capacity factor of greater than 30% shall:

1. Install, operate and maintain CEMS for NO_x,
2. Submit the results to the Pennsylvania Department of Environmental Resources on a regular schedule, and
3. Meet minimum data availability requirements set forth in the previously approved Title 25 Pa. Code, Chapter 139. (See 49 FR 30184.)

EPA Evaluation

EPA has evaluated Pennsylvania's SIP revision request and makes the following conclusions:

1. The monitoring requirements will not adversely affect Pennsylvania's ability to enforce the current applicable emission limitations which adequately protect the NAAQS for NO_x,
2. The monitoring requirements are clearly enforceable, and
3. The applicable requirements of 40 CFR part 51 have been met. A more detailed evaluation is provided in a Technical Support Document available upon request from the Regional EPA office listed in the **ADDRESSES** section of this notice.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on November 23, 1992.

Final Action

EPA is approving the amended regulation, title 25 Pa. Code, chapter 123, section 123.51, Monitoring Requirements, submitted by the Commonwealth of Pennsylvania Department of Environmental Resources

as a revision to the Pennsylvania SIP. The regulation requires that the operators of large combustion units, continuously monitor NO_x emissions and report the findings to the Pennsylvania Department of Environmental Resources.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis for would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

This SIP revision requiring large combustion units in Pennsylvania to continuously monitor NO_x emissions has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue that temporary waiver until such time as it rules in EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 23, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: September 8, 1992.

W. Wisniewski,

Acting Regional Administrator, Region III.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart NN—Pennsylvania

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

PART 52—[AMENDED]

2. Section 52.2020 is amended by adding paragraph (c)(74) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(74) Revisions to the State Implementation Plan submitted by the Pennsylvania Department of Environmental Resources on January 11, 1991.

(1) *Incorporation by reference.* (A) Letter from the Pennsylvania Department of Environmental Resources dated January 11, 1991 submitting a revision to the Pennsylvania State Implementation Plan.

(B) Amendment to 25 Pa. Code Chapter 123.51 "Monitoring Requirements", concerning continuous nitrogen oxides monitoring, effective October 20, 1990.

(ii) *Additional materials.* (A) Remainder of the State Implementation Plan revision request submitted by the Pennsylvania Department of Environmental Resources on January 11, 1991.

[FR Doc. 92–23002 Filed 9–22–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 413 and 447

[BPD–311–F]

RIN 0938–AB68

Medicare and Medicaid Programs; Revaluation of Assets

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the Medicare and Medicaid regulations that are affected by section 2314 of the Deficit Reduction Act of 1984 and sections 9110 and 9509 of the Consolidation Omnibus Budget Reconciliation Act of 1985. Those provisions amended sections 1861(v)(1) and 1902(a)(13) of the Social Security Act. This rule describes new limitations on the valuation of assets acquired as the result of changes in ownership occurring on or after July 18, 1984. These changes affect hospitals and skilled nursing facilities under the Medicare program and hospitals, nursing facilities, and intermediate care facilities for the mentally retarded under the Medicaid program.

EFFECTIVE DATE: This final rule is effective on October 23, 1992.

ADDRESSES: If you wish to submit comments on the information collection requirements contained in this final rule, you may submit comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bruce Oliver—Medicare Provisions, (301) 966–4519; Betty Kern—Medicaid Provisions, (301) 966–4580.

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SUPPLEMENTARY INFORMATION

I. Background

A. Deficit Reduction Act of 1984

Section 2314 of the Deficit Reduction Act of 1984 (Pub. L. 98–369), enacted on July 18, 1984, amended sections 1861(v)(1) and 1902(a)(13) of the Social Security Act (the Act) by adding new provisions concerning valuation of assets, that is, determining historical costs applicable to assets of hospitals, skilled nursing facilities (SNFs), intermediate care facilities (ICFs), and intermediate care facilities for the mentally retarded (ICFs/MR) that undergo a change of ownership on or after July 18, 1984. Previously, historical cost had been limited to the lowest of (1) the purchase price, (2) the fair market value, or (3) depreciated reproduction cost.

Section 1861(v)(1) of the Act was amended by the addition of a new paragraph (O), which provides for the following:

- In establishing an appropriate allowance under Medicare for payment of providers for depreciation expense, interest on capital indebtedness, and (if applicable) a return on equity capital, for an asset of a hospital or SNF that undergoes a change of ownership, the value of the asset after the change of ownership is the lesser of the allowable acquisition cost of the asset to the owner of record as of July 18, 1984 (or, in the case of an asset not in existence as of July 18, 1984, the first owner of record after that date), or the acquisition cost of the asset to the new owner.
- Recapture of depreciation in the manner as provided in regulations in effect on June 1, 1984; that is, if disposal of a depreciable asset results in a gain or loss, an adjustment is necessary in the provider's allowable cost. The amount of a gain included in the determination of allowable cost is limited to the amount of depreciation previously included in Medicare allowable costs. The amount of a loss to be included is limited to the undepreciated basis of the asset permitted under Medicare.
- The costs (for example, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation and settlement of the sale or purchase of any capital asset (by acquisition or merger) for which payment has previously been made by the Medicare program may not be recognized as reasonable cost in the provision of health care services.

Section 1902(a)(13) of the Act was amended by the addition of a new paragraph (B), which requires that a State must provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals, SNFs, ICFs, and ICFs/MR can reasonably be expected not to increase these payments, solely as a result of a change of ownership, in excess of the increase that would result from the application of the Medicare requirements of section 1861(v)(1)(O) of the Act.

B. Consolidated Omnibus Budget Reconciliation Act of 1985

Section 9110 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), enacted on April 7, 1986, amended section 1861(v)(1)(O) of the Act by adding a new provision applicable to changes in ownership of State hospitals to nonprofit corporations without monetary consideration. This new provision requires that, in the case of a transfer of ownership of a State hospital to a nonprofit corporation for which there was no monetary consideration, the basis of the assets to the new owner (the nonprofit corporation) to be used for the purpose of computing capital allowances is the book value of the assets as shown on the State's books at the time of the transfer.

Section 9509 of Public Law 99–272 of the Act also limited (B) to hospitals and added a new paragraph (C) to section 1902(a)(13) of the Act that is applicable to SNFs, ICFs, and ICFs/MR that change ownership on or after October 1, 1985. Prior to the enactment of section 2314 of Public Law 98–369 and section 9509 of Public Law 99–272, the only upper payment limit restriction imposed on States in establishing payment rates was the application of section 1902(a)(30) of the Act. This section required that State plan methods and standards used to determine payment rates result in payments that are consistent with efficiency, economy and quality, of care. Historically, through regulations, we interpreted this requirement to mean that a State's aggregate payment amounts cannot exceed payment amounts calculated based on Medicare payment principles. The new paragraph (C) of section 1902(a)(13) of the Act requires a State to provide assurances satisfactory to the Secretary that the valuation of capital assets for purposes of determining payment rates for SNFs, ICFs, and ICFs/MR will not be increased beyond certain levels. The valuation of the asset may not increase (as measured from the date of acquisition by the seller to the date of the change of ownership), solely as a result of a change of ownership, by more than the lesser of—

- One-half of the percentage increase (as measured over the same period of time specified above, or if necessary, as extrapolated retrospectively by the Secretary) in the Dodge construction index applied in the aggregate with respect to those facilities that have undergone a change of ownership during the Federal fiscal year; or
- One-half of the percentage increase (as measured using the same period of time stated above) in the Consumer Price Index for All Urban Consumers (United States city average).

Congress intended for section 1902(a)(13)(C) of the Act to impose a statutory ceiling on the revaluation of assets as the result of a change in ownership. This section does not set any specific payment level for capital costs. States are free to continue to apply payment rates and standards that are consistent with the more stringent payment ceiling imposed on hospitals by section 1902(a)(13)(B) of the Act. States may also require the recapture of depreciation, as is authorized by the reference to section 1861(v)(1)(O) of the Act in section 1902(a)(13)(B) of the Act, in order to assure that the Medicaid program pays for an asset only once.

Section 9509 of Public Law 99–272 further provides that if a change to the existing State plan methodology is necessary in order for the plan to meet the requirements of section 1902(a)(13)(C) of the Act, and this methodology change cannot be effectuated without a State legislative change, the State agency will not be regarded as failing to comply with the requirements of section 1902(a)(13)(C) solely on the basis of its failure to meet these section 1902(a)(13)(C) requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after April 7, 1986.

Both Public Law 98–369 and Public Law 99–272 impose specific effective dates that are set forth in section V.A of this preamble.

C. Omnibus Budget Reconciliation Act of 1987

Section 4211(h) (2)(C) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), enacted on December 22, 1987, amended section 1902(a)(13)(C) of the Act to reflect the elimination of

separate criteria for certifying SNFs and ICFs under Medicaid effective October 1, 1990. The Medicaid statute now recognizes one type of facility that provides long term care: nursing facilities (NFs). Consequently, States are required to provide needed assurances for NFs and ICFs/MR. We are revising the regulations to reflect this change in terminology.

II. Provisions in the Proposed Rule

On October 26, 1987, we published a proposed rule (52 FR 39927) that described new limitations on the valuation of assets acquired as the result of changes in ownership occurring on or after July 18, 1984. In the preamble of that proposed rule, we described our policies concerning allowable costs and patient-care-related capital costs prior to the enactment of Public Law 98–369 and Public Law 99–272, and proposed the following changes to the regulations that would implement the new provisions.

A. Medicare

1. Changes Resulting From Section 2314 of Public Law 98–369

a. *Sale and leaseback arrangements.* In § 413.130(b), which governs the inclusion of lease and rental costs in a provider's capital-related costs, we proposed, for sale and leaseback arrangements entered into by hospitals and SNFs on or after the effective date of this final rule, limiting the amount providers may include as patient-care-related capital costs for rental or lease expense to the amount a provider would have included in patient-care-related capital costs had the provider retained legal title to the asset. This proposed change was not explicitly required by law. However, based on the language of the conference report (H.R. Rep. No. 861, 98th Cong., 2nd Sess. 1339 (1984)), we believe that Congress recognized that this proposed change was needed to prevent circumvention of the revaluation of asset limitation imposed by section 1861(v)(1)(O).

In addition, we proposed new §§ 413.134(h) (1) through (3) that would govern the amount of lease or rental expense that providers may include in allowable costs under sale and leaseback transactions. Proposed §§ 413.134(h) (1) and (2) set forth our long-standing policy, currently in section 110.A of the Provider Reimbursement Manual, and applicable to all providers, governing the amount a provider may include in allowable costs under sale and leaseback agreements. Proposed § 415.134(h)(3), which is consistent with new § 413.130(b)(4), would apply to hospitals and SNFs only and would limit the amount of lease or rental expense that a hospital or SNF may include in allowable costs under a sale and leaseback transaction entered into on or after the effective date of this final rule to the amount the hospital or SNF would have included in allowable costs had the hospital or SNF retained legal title to the asset.

b. *Revaluation of a capital asset.* Congress enacted section 1861(v)(1)(O) of the Act to ensure that the Medicare program does not pay for the same capital asset more than once. This provision is intended to limit the revaluation of an asset for purposes of determining depreciation, interest expense of capital indebtedness, and (if applicable) return on equity capital to the allowable acquisition cost to the individual or entity who was the owner for Medicare purposes on July 18, 1984. The purchasing entity's valuation is the lesser of its own acquisition cost or the allowable acquisition cost of the previous owner (not reduced by accumulated depreciation). We proposed to amend § 413.134 to conform the regulations to the limitation on revaluation of assets set forth under section 1861(v)(1)(O) of the Act, as follows:

- We proposed revising § 413.134(b), which describes historical cost, by adding a new paragraph (b)(1)(ii) to implement the statutory limitation applicable to hospitals and SNFs for assets acquired on or after July 18, 1984 and not subject to an enforceable agreement entered into before that date.
- In a new § 413.134(b)(1)(ii)(B), we proposed that the term "asset not in existence as of July 18, 1984" include any asset that physically existed, but was not owned by a provider participating in the Medicare program as of July 18, 1984.
- For purposes of calculating the historical cost limitation, we proposed a new § 413.134(b)(1)(ii)(C) providing that the acquisition cost to the owner of record (the previous owner) on July 18, 1984 would be subject to any limitation on historical costs imposed by Medicare prior to that time, and that this cost would not be reduced by any depreciation taken by that owner of record. We also explained that the purchase of land, which is neither depreciable nor amortizable under any circumstances, would be subject to the historical cost limitation for the purpose of determining allowable interest expense for both proprietary and nonproprietary providers, and (if applicable) return on equity capital for proprietary providers only.
- In a new § 413.134(b)(1)(ii)(D), we proposed that, for application of the limitation, the cost to the owner of record would include the costs of betterments and improvements that extend the useful life of the asset at least two years beyond its original estimated useful life, or increases the productivity of an asset significantly over its original productivity.
- We proposed a new § 413.134(b)(1)(ii)(E), which provided that, for assets acquired prior to a provider's entrance into the Medicare program, the acquisition cost to the owner of record is the historical cost of the asset when acquired, rather than when the provider entered the program.
- In a new § 413.134(b)(1)(ii)(F), we proposed to further explain the determination of the acquisition cost to the owner of record for assets subject to the optional depreciation allowance described in § 413.139.
- In a new § 413.134(b)(1)(ii)(G), we proposed excluding from historical cost the costs attributable to the negotiation or settlement of the sale or purchase (by acquisition, merger, or consolidation) of any capital asset for which any payment was previously made by the Medicare program.
- Because the limitation set forth in § 413.134(b)(1)(ii) applies only to hospitals and SNFs, in a new § 413.134(b)(1)(iii), we proposed that if a change of ownership occurs that involves assets of a hospital-based provider other than a SNF or a SNF-based provider (to which section 1861(v)(1)(O) of the Act does not apply), a reasonable allocation of the purchase price must be made so that the non-hospital or non-SNF provider would not be affected by the limitation imposed by section 1861(v)(1)(O) of the Act, but rather would be subject to the limitations imposed prior to the implementation of that section that continue to control changes of ownership involving nonhospital and non-SNF providers.
- Finally, we proposed adding a new paragraph to § 413.134(g), which governs the establishment of the cost basis for assets obtained in the purchase of a facility as an ongoing operation, to limit the historical cost of assets of hospitals and SNFs acquired on or after July 18, 1984 and not subject to an enforceable agreement entered into before that date. Under proposed § 413.134(g)(3), the limit would be the lower of the allowable acquisition cost of the asset to the owner of record as of July 18, 1984, or the acquisition cost to the new owner.

2. Changes Resulting from Section 9100 of Public Law 99–272

Section 9110 of Public Law 99–272, enacted section 1861(v)(1)(O)(iv) of the Act to provide a special rule for valuing assets for Medicare purposes for State hospitals that are transferred without monetary consideration to nonprofit corporations. We proposed the following changes to implement this section:

• We proposed to add § 413.134(b)(8) that provides a rule for donated asset consistent with the discussion in section 104.15 of the Provider Reimbursement Manual. We also proposed clarifying in § 413.134(b)(8) that, if an asset is exchanged for new debt or the assumption of debt, then the transaction is considered a sale and not a donation.

• We proposed to consolidate, in § 413.134(j), the regulations governing donations to providers. This included a special rule to implement section 1861(v)(1)(O)(iv) of the Act, which governs the transfer of a State hospital to a nonprofit corporation without monetary consideration. This special rule provides that, in the case of a transfer of ownership of a State hospital to a nonprofit corporation for which there was no monetary consideration, the new owner's depreciable basis is the net book value of the assets as recorded on the State's books at the time of the transfer.

3. Other Changes

In §§ 413.130(b) (8) and (9), we proposed changes that would be applicable to lease purchase transactions entered into on or after the effective date of this final rule. Specifically, we proposed new criteria that would redefine lease purchase transactions. These criteria are the same as the criteria used to identify capital lease transactions under generally accepted accounting principles (GAAP) and, for that purpose, are also set forth in the Statement of Financial Accounting Standards Number 13, "Accounting for Leases," (SFAS 13) issued by the Financial Accounting Standards Board. In addition, we proposed that, for lease purchase transactions in which the lessee becomes the owner of the leased asset and subsequently disposes of the asset, the total amount considered as depreciation for the purpose of computing the limitation on allowable lease or rental costs (as required by new paragraph (b)(9)(i) of § 413.130) must be included in calculating the limitation on adjustments to depreciation for the purpose of determining any gain or loss realized upon disposal of the asset. We stated that the purpose of this latter provision was to prevent providers that obtained assets through lease purchase transactions and subsequently disposed of these assets from having an unfair advantage over providers that bought assets outright and subsequently disposed of them.

We proposed clarifying in § 413.134(f)(1) that the gain or loss on the disposition of depreciable assets has no retroactive effect on a proprietary provider's equity capital for years prior to the disposition.

We also proposed clarifying § 413.134(f)(4) to include donations in the category of asset dispositions for which gains or losses are not included in allowable costs.

We proposed new sections 413.134(h) (4) through (7) that would govern the amount a provider may include in allowable costs under lease purchase transactions. Proposed §§ 413.134(h) (4) and (5) set forth our long-standing policy, currently in section 110.B of the Provider Reimbursement Manual, governing the amount of lease or rental expense a provider may include in allowable costs under a lease purchase transaction. In addition, in new §§ 413.134(h) (6) and (7), we proposed changes applicable to lease purchase transactions entered into on or after the effective date of this final rule. These changes include new criteria to redefine lease purchase transactions and describe a special rule with respect to the determination of the gain or loss adjustment upon disposition of an asset acquired through a lease purchase transaction and are consistent with the changes for lease purchase transactions described for § 413.130(b), above.

We explained that we were considering applying the limitations on asset valuations under section 2314 of Pub. L. 98–369 to all providers under both Medicare and Medicaid programs, and we requested public comments on that proposal.

We also discussed the application of "fair market value" as an additional limitation on the valuation of an asset acquired on or after July 18, 1984. In that discussion, we pointed out that although the language of section 1861(v)(1)(O) of the Act does not explicitly include the fair market value of an asset in the historical cost limitation, it would be contrary to general reasonable cost principles in section 1861(v)(1)(A) of the Act for Medicare to recognize more than the fair market value of an asset. Therefore, we explained that in those instances in which the fair market value of an asset is less than both the allowable acquisition cost of the asset to the owner of record as of July 18, 1984 and the acquisition cost of the asset to the new owner, we would apply the regulations contained in §§ 413.134(g)(4) and 413.9 to limit the historical cost of the asset to the new owner to the fair market value for purposes of establishing an appropriate allowance under Medicare for depreciation, interest on capital indebtedness, and (if applicable) a return on equity capital.

B. Medicaid Changes Resulting From Sections 1902(a)(13) (B) and (C) of the Act

As described in section I.B above, sections 1902(a)(13) (B) and (C) of the Act limit State Medicaid payment for the patient-care-related capital costs associated with the sale or transfer of hospitals or nursing facilities. We proposed the following amendments to 42 CFR part 447, subpart C, which governs payment for inpatient hospital and long-term care facility services.

• We proposed amending § 447.250, which describes the basis and purpose of subpart C, by adding a new paragraph (c) that explains that §§ 447.253 (c) and (d) implement sections 1902(a)(13)(B) and 1902(a)(13)(C) of the Act.

• We proposed amending § 447.253, which describes other requirements concerning State assurances, to include the assurances required by sections 1902(a)(13)(B) and 1902(a)(13)(C) of the Act for changes in ownership. Congress intended that the assurances apply to increases that are solely a result of a change in ownership. We proposed that the assurance for each level of care (that is, hospital, SNF, ICF, and ICF/MR) be based on the increase in payments to all facilities within that class of facilities that have a change in ownership during a specified period.

With respect to section 1902(a)(13)(C) of the Act, section 9509 of Public Law 99–272 specifically states that the amendments mandated by this section shall apply to medical assistance furnished on or after October 1, 1985, but only with respect to changes of ownership occurring on or after such date that were not subject to an enforceable agreement entered into prior to October 1, 1985.

III. Discussion of Public Comments

In response to the October 26, 1987 proposed rule, we received 12 timely items of correspondence. The comments were submitted by three health care associations, four providers, a provider chain organization, a fiscal intermediary, an appraisal firm, and two State agencies. The specific comments

made by the commenters and our responses follow.

A. General

Comment: Two commenters suggested that failure to recognize fair market value of assets when change of ownership occurs is contrary to the movement of the Medicare program to a market-driven system. The commenters asserted that if Medicare does not recognize fair market costs, increased costs must be borne by non-Medicare patients. The commenters stated that section 1861(v)(1)(O) of the Act and the proposed regulations act as a disincentive for the health care delivery system to consolidate and to recognize the economies of scale as a means of spreading the risk inherent in a market-driven system. They asserted that this section of the Act should be repealed and the proposed regulations should not become effective.

Response: Since the enactment of section 2314 of Public Law 98–369, no evidence has been brought to our attention that would indicate that the new limitation on revaluation of assets has had a significant impact on provider decisions regarding mergers and acquisitions. We believe this is due to the weight of factors like tax incentives, increased buying power and increased market entry which, we believe, have offset any perceived disincentives caused by this provision. Moreover, we believe the rule, as proposed, fairly reflects the intent of Congress that the Medicare program should pay for the use of an asset only once. In effect, Congress has redefined Medicare's share of allowable costs to exclude excess costs that result solely from changes in ownership of assets. In any event, there are statutory provisions that we must implement and that only Congress can revise or repeal.

Comment: One commenter is concerned that the provisions of section 2314 of Public Law 98–369, combined with the capital reduction provisions of section 9303 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) and section 4006 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) (which both reduce by specified percentages the amount payable for capital-related costs of most hospitals paid under the prospective payment system), represent a fragmented approach that will result in significant shortfalls in capital payment and lead to increased deficiencies in patient care. The commenter asserted that this approach will result in more providers being cited for building deficiencies. The commenter recommended that we implement the capital reduction factors expressed in Public Law 99–509, but not those expressed in Public Law 100–203. In addition, the commenter recommended that we do not implement section 2314 of Public Law 98–369. Rather, the commenter recommended that we use a local construction index as a limitation on asset revaluations. In other words, if an asset changed ownership after July 18, 1984, the new owner's basis would be limited to the lesser of the undepreciated historical costs as of July 18, 1984, inflated to the date of the change of ownership by a local construction index, or the acquisition cost to the new owner. The effect of this recommendation would be to permit limited upward revaluations of assets when the assets undergo a change of ownership.

Response: Congress has permitted no leeway in implementation of these very specific provisions from section 2314 of Public Law 98–369, section 9303 of Public Law 99–509, and section 4006 of Public Law 100–203. Since receipt of this comment, Congress has extended the capital-related cost reduction factor by enactment of section 6002 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) and section 4001(a) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). However, there is no evidence in the legislative history of these provisions that would suggest that Congress intended these capital-related cost reduction facors to supersede the limitation on asset revaluations expressed in section 2314 of Public Law 98–369.

Although the asset revaluation provisions and capital reduction provisions both have as their purpose the promotion of economies in the Medicare program, they affect the determination of reasonable costs in different ways. For example, section 2314 of Public Law 98–369 applies to both hospitals and SNFs and serves to limit the valuation of assets that undergo a change in ownership. On the other hand, the capital-related cost reduction provisions of Public Law 99–509 and Public Law 100–203 apply only to the inpatient capital-related costs of hospitals paid under the prospective payment system and do not affect payment for the capital-related costs of SNFs. With such distinct differences in the application and intended effect of these provisions, we have no reason to believe that the capital-related cost reduction factors were intended to replace the revaluation of assets limitation.

Comment: Three commenters urged that the final rule not be applied to all types of providers. They argued that to do otherwise would go beyond Congressional intent and would be contrary to a market-driven system. Further, they argued, it would hinder provider flexibility in financing and structuring services. However, one commenter, an intermediary, believes that the intent of Congress to pay for an asset only once can be accomplished only if the limitation is extended to all types of providers. The commenter stated that not to do so would place additional administrative and audit burdens on fiscal intermediaries to properly account for different limitations for each type of provider.

Response: We agree that extending this rule to all types of providers would make administration of the Medicare program easier. Moreover, extending the rule to cover all types of providers would increase the economies that Congress envisioned would result from this legislation. However, we are not taking such action at this time. Rather, we will continue to consider whether we should extend this rule to cover all types of providers and, if so, whether such an extension should be made through a further revision to the regulations or through further legislation.

B. Sale and Leaseback Arrangements and Lease Purchase Transactions—Effective Dates

Comment: Two commenters asked us to verify that the proposed changes to lease arrangements would be applied prospectively, and would be applied only to binding agreements entered into on or after 30 days following publication of the final rule. One of these commenters requested that the final rule clarify the prospective nature of the provisions regarding calculation of a gain or loss upon position of an asset that was acquired through a virtual purchase.

Response: As stated in the proposed rule (at 52 FR 39932), these changes take effect 30 days after publication of this final rule. Therefore, they apply only to binding agreements entered into on or after October 23, 1992. With respect to sale and leaseback agreements and lease purchase transactions entered into prior to the effective dates of these changes, the regulations at § 413.130(b)(2) through (5) and sections 110.A and B of the Provider Reimbursement Manual apply.

C. Sale and Leaseback Arrangements

Comment: Two commenters expressed their belief that our rules

regarding sale and leaseback arrangements that were in effect prior to this final rule provided adequate safeguards against the payment of unreasonable costs. Those rules, set forth in § 413.130(b) (2) and (3) and in section 110.A of the Provider Reimbursement Manual (HCFA Pub. 15–1), permitted a provider to include the full amount of the lease payments incurred under a sale and leaseback arrangement in its allowable costs if (1) the lease payments were reasonable, (2) adequate, alternate facilities were not available at a lower cost and (3) the leasing was based on economic and technical considerations. If these three criteria were not met, the provider would not be permitted to include the full amount of the lease payments in allowable costs. Rather, the allowable lease payments would be limited to the amount the provider could have included in allowable cost had it retained ownership of the assets (the "costs of ownership"). Further, if the provider and the lessor were considered related organizations under § 413.17, the lease payments would not be permitted at all, and instead the provider could include in allowable costs only the costs of ownership. The commenters stated that our proposed rule inappropriately treats all sale and leaseback transactions entered into by hospitals or SNFs as related organization transactions in that it would limit the costs that a provider may include in allowable costs to the costs that were incurred prior to the sale and leaseback (i.e., the costs of ownership). They believe our proposed treatment of sale and leaseback arrangements exceeds Congressional intent by applying the same restrictive regulatory provisions to both transactions involving related organizations and transactions involving organizations that are not related. The commenters believe that our proposal could have a serious and irreversible impact on many contemporary, cost-effective capital financing programs. As an alternative to our proposed rule, one of the commenters suggests that we not apply the proposed rule to transactions involving organizations that are unrelated, including arrangements with capital syndications and real estate investment trusts.

Response: We do not agree. In the conference report that accompanied Public Law 98–369, Congress expressed concern that the limitation on revaluation of assets could be circumvented by certain sale and leaseback arrangements and directed the Secretary to take into account the limitation on the revaluation of assets in determining the reasonableness of lease or rental costs. Specifically, the conference report states:

> The conferees recognize that the limitation on the revaluation of assets acquired by hospital or nursing homes could be circumvented by certain sale/lease-back or sale-rental agreements. The conferees expect that the Secretary will determine the reasonableness of any lease or rental costs involving a depreciable asset which has undergone a change in ownership taking into account the limitation on the revaluation of assets. (H.R. Rep. No. 861, 98th Cong., 2nd Sess. 1339 (1984).)

Moreover, the same conference report explains that the purpose of the revaluation of assets limitation is to prevent Medicare from paying for the same capital asset more than once. In a sale and leaseback arrangement, the asset is sold by the provider and then leased back, often, if not always, at an amount that exceeds the costs of ownership that the provider incurred prior to the sale. If Medicare recognized the full lease amount over the remaining life of the asset, Medicare would be paying more for the same asset solely as a result of the sale and leaseback transaction, contrary to the expressed intent of Congress. By limiting the amount that a hospital or SNF may include in allowable costs after a sale and leaseback to the same amount that was included in allowable costs before the transaction, we are ensuring that Medicare pays for the asset only once. Thus, we believe that the proposed rules do not exceed Congressional intent. Due to the prospective effective date of the rules governing sale and leaseback arrangements, we do not agree that the rules will negatively impact contemporary capital financing arrangements. Rather, by applying the rules prospectively, hospitals and SNFs will have the opportunity to consider the impact of the rules before entering into capital financing arrangements, including capital syndications and real estate investment trusts, that involve sale and leaseback arrangements.

Comment: One commenter believes that in a sale and leaseback situation, if the lessor sells the asset at the end of the lease period, the resultant gain or loss should be used to adjust the aggregate amount that a provider claimed as rental or lease expense over the life of the lease. Proposed §§ 413.130(b)(4) and 413.134(h)(3) provide that the amount a provider may include in its capital-related costs and allowable costs as rental or lease expense may not exceed the amount that the provider would have included in its capital-related costs and allowable costs had the provider retained legal title to the facilities or equipment. The commenter believes that if this adjustment is not made, Medicare payment could be more or less than the provider's original acquisition cost.

Response: We agree with the commenter that absent such an adjustment Medicare payment could be more or less than the provider's original acquisition cost. However, we do not believe that we have the authority to make the recommended adjustment unless the provider and the lessor are related organizations under the provisions of § 413.17. In a sale and leaseback arrangement, when the asset is sold by the provider to the entity that then becomes the lessor, an adjustment is made to the provider's allowable cost for any gain or loss incurred on the sale, in accordance with § 413.134(f), because the provider, having received the proceeds from the sale, incurs the gain or loss. However, if the lessor ultimately sells the asset at the end of the lease period, the lessor receives the proceeds from that subsequent sale, and thus incurs the gain or loss. Because the lessor incurs the gain or loss, rather than the provider, we believe that we should not adjust the provider's allowable costs for this gain or loss, unless, as stated above, the parties are related organizations.

Comment: One commenter stated that the rule should include a "carry forward" provision to provide for situations in which the rent paid in the early years of the lease is greater than the amount of rent allowed as a capital cost under the annual limitation. The commenter suggested the excess rent paid in the early years should be "carried forward" and allowed in any year in which lease cost is less than annual limitation.

Response: We agree with the commenter. Therefore, in this final rule, we explicitly provide that if, in the early years of the lease, the annual rental or lease costs exceed the annual costs of ownership, but in the later years of the lease, the annual rental or lease costs are less than the annual costs of ownership, the provider may carry forward amounts of rental or lease costs that were not included in capital-related costs or allowable costs in the early years of the lease due to the costs of ownership limitation, and include these amounts in capital-related costs or allowable costs in the years of the lease when the annual rental or lease costs are less than the annual costs of ownership. This new language is in §§ 413.130(b)(4)(ii) and 413.134(h)(3)(ii).

Comment: One commenter suggested that the final rule specify that the useful

life of an asset cannot be changed after the sale and leaseback transaction. Otherwise, he suggested, providers could circumvent the annual limitation by shortening the estimated useful life of the asset.

Response: A provider cannot change an asset's useful life after it has been sold because the provider no longer owns it.

D. Lease-purchase Transactions

Comment: Two commenters asserted that HCFA has used the term "program initiative" to expand the definition of when a lease is considered a lease purchase transaction, implying that the proposed revised definition did not come directly from section 2314 of Public Law 98-369. One of these commenters recommended that the costs of ownership under a virtual purchase should be allowed consistent with the costs allowed under a purchase of assets. The other commenter recommended that the final rule clarify the purpose of this new definition, its application, and its potential effects.

Response: The commenters are correct that the revised definition of a lease purchase transaction did not come from section 2314 of Public Law 98-369. Rather, the new definition is based on the criteria used to identify capital lease transactions under generally accepted accounting principles (GAAP), as reflected in the Statement of Financial Accounting Standards Number 13, "Accounting for Leases," (SFAS 13) issued by the Financial Accounting Standards Board. In the proposed rule (52 FR 39932), we inadvertently stated that the change is intended to prevent possible circumvention of the revaluation of assets limitation required by sections 1861(v)(1) and 1902(a)(13) of the Act. We should have characterized the change as a "program initiative" intended to provide a more objective standard for defining a lease purchase transaction and to end the disputes that have arisen under the current definition concerning whether particular lease arrangement constitute lease purchase transactions.

For reasons of consistency with generally accepted accounting principles, providers have urged us to adopt in its entirety the Statement of Financial Accounting Standards Number 13 (SFAS 13) for purposes of accounting for leases under Medicare. We continue to believe that we should not fully adopt SFAS 13 for Medicare payment purposes because SFAS 13 permits methods of accounting for leased assets that are not recognized by Medicare for owned assets. For example, SFAS 13 accounts for capital leases as if the asset were owned and, in so doing, permits the use of accelerated methods of depreciation. Medicare has prohibited the use of most accelerated methods of depreciation for owned assets since August 1, 1970. Therefore, if Medicare were to fully adopt SFAS 13, providers would use accelerated methods of depreciation on certain leased assets that they could not use if the asset were owned outright. We believe that this would create an inappropriate incentive toward leasing. Although we have not fully adopted SFAS 13, we have adopted the same criteria for identifying a lease purchase transaction as SFAS 13 uses for identifying a capital lease. Due to the objective nature of these criteria, their adoption should greatly reduce the number of disputes that have arisen in the past over whether particular leases are lease purchase transactions. This change should also reduce the administrative burden of both providers and fiscal intermediaries because a lease will have to be compared with only one set of criteria to determine whether it is a capital lease under GAAP and whether it is a lease purchase arrangement under Medicare. We will continue to treat the costs incurred under a lease purchase in the same manner as before this change, subject to the limitation on revaluations of assets. That is, we will limit the lease or rent expense to the costs that would have been incurred had the provider purchased the asset outright (that is, the costs of ownership).

Any excess of lease or rental payment over the costs of ownership will be deferred until either of two events occurs: (1) The leased asset is returned to the lessor, in which case the entire deferred amount will be allowed in the year the asset is returned; or (2) the provider obtains legal title to the asset, in which case the deferred amount becomes part of the historical cost of the asset, subject to the limitation on revaluations of assets, and is depreciated over the remaining useful life of the asset. Because we have no data on the number of leases that are considered capital leases for purposes of GAAP, but are currently not considered lease purchase transactions for Medicare purposes, we are unable to predict the impact of this change in the definition of lease purchase transactions.

Comment: One commenter is concerned that the rule computes the present value of the minimum lease payments using the lower of the lessee's incremental borrowing rate or the "lessor's implicit rate." The commenter suggests that the term "lessor's implicit rate" should be replaced with the term "interest rate implicit in the lease" to be consistent with generally accepted accounting principles.

Response: We agree with the commenter. Therefore, we have revised §§ 413.130(b)(8)(iv) and 413.134(h)(6)(iv) accordingly.

Comment: One commenter stated that when a lessee becomes the owner of a leased asset and subsequently sells the asset, requiring imputed depreciation to be included in the gain or loss computation conflicts with generally accepted accounting principles. The commenter recommends adopting SFAS 13 for administrative simplicity.

Response: We do not agree with the commenter. We have already explained our reason for not fully adopting SFAS 13. However, as indicated above, we have adopted SFAS 13 in part, and this partial adoption should make administration of the Medicare program easier.

E. Historical cost

Comment: One commenter is concerned that although the preamble to the proposed rule states that the historical cost will be limited to the fair market value if that value is less than the limitation in § 413.134(b)(1)(ii)(A), the regulations text does not seem to use fair market value as a limit for historical cost. The commenter recommends that, rather than relying exclusively on the general rule defining reasonable cost (§ 413.9(b)(1)) to establish a fair market value limitation, we include an explicit fair market valuation in § 413.134(b)(1)(ii)(A).

Response: Although Congress did not explicitly include a fair market value limitation in section 1861(v)(1)(O) of the Act, we do not believe that Congress intends that the Medicare program pay more than fair market value for an asset. For Medicare to recognize more than the fair market value would be inconsistent with section 1861(v)(1)(A) of the Act, since payments would exceed the cost actually incurred. Therefore, we proposed to apply the regulations at §§ 413.134(g)(4) and 413.9(b)(1), which have as their basis section 1861(v)(1)(A) of the Act, to impose a fair market value limitation in a situation in which the fair market value of the asset is less than the limitation in § 413.134(b)(1)(ii)(A). However, we agree with the commenter that including an explicit fair market value limitation in the regulations is preferable. Thus, we have revised §§ 413.134(b)(1)(ii)(A) and 413.134(g)(3) in this final rule to add the fair market value limitation.

Comment: One commenter is concerned that the proposed rule did not

include the assets of the home office of a nursing facility or hospital. The commenter suggests revising the rule to clarify that it applies to all assets, whether recorded on the books of the provider or the home office. Also, the commenter recommends revising the rule to make clear that the sale or purchase of individual assets is not covered by the proposed rule.

Response: The related organization rules at § 413.17 impose the same general limitations on related organization costs, including those costs of home offices of nursing facilities or hospitals, as are imposed on provider costs. Thus, the provisions of this final rule apply to assets of home offices of hospitals and nursing facilities, as well as other organizations related to hospitals and nursing facilities. Also, we believe that Congress clearly intended that the limitation apply not only to the sale or purchase of groups of assets, but also to the sale or purchase of individual assets.

F. Application to Hospitals or Nursing Facilities for Which Program Payments Have Been Suspended Under § 405.370

Comment: One commenter is concerned that the proposed rule inappropriately limits application of the law to exclude assets of a hospital or nursing facility for which program payments have been suspended under § 405.370. Specifically, the commenter believes that the language in proposed § 413.134(b)(1)(ii)(B), by including in the concept of "an asset not in existence" any asset that physically existed but was not owned by a hospital or nursing facility participating in the Medicare program, would preclude application of the law to assets of hospitals and nursing facilities for which program payment has been suspended under § 405.370.

Response: A hospital or nursing facility for which program payments have been suspended under § 405.370 is, nevertheless, participating in the Medicare program. Therefore, the language in proposed § 413.134(b)(1)(ii)(B) would not exclude the assets of these providers from application of the law.

G. Costs of Land

Comment: One commenter suggested that costs incurred for land be recognized as capital-related costs, and stated that there are a number of decisions by U.S. Courts of Appeals that have determined that there are allowable capital costs related to land. The commenter suggests that to deny that there are capital costs related to land, including land use costs, goes beyond the Congressional intent of sections 1861(v)(1) and 1902(a)(13) of the Act.

Response: The Medicare program has never allowed depreciation expense on land. This is consistent with Generally Accepted Accounting Principles that recognize land as a permanent asset, not subject to physical wear and tear. Although a few courts have allowed amortization of land use costs in cases where the provider's ownership was for a fixed period of time (for example, *Villa View Community Hospital* v. *Heckler*, 720 F.2d 1086 (9th Cir. 1983)), we think those cases are limited to their particular facts. Medicare does recognize certain capital costs related to land. We recognize land rental (or lease) costs, interest expense on the purchase of land, and for those providers entitled to a return on equity capital, we include the cost of land in the return on equity computation. However, we find nothing in the Congressional language of section 1861(v)(1) or 1902(a)(13) of the Act to suggest that Medicare should begin recognizing the depreciation or amortization of land costs.

Comment: One commenter stated that it is inappropriate to deny payment to a hospital for interest expense on debt used to purchase land that is priced at fair market value but is considered excessive based on the historical cost limitation. The commenter argues that because hospitals cannot avoid these costs, some of the financial burden will be shifted to other payors.

Response: We believe that the clear language of section 1861(v)(1)(O)(i) of the Act, "In establishing an appropriate allowance for * * * interest * * * with respect to an asset * * *" leaves us no discretion on this question. Land, although not a depreciable asset, is an asset of a hospital or an SNF. The statute does not limit the application of this provision to "depreciable" assets. Moreover, the prohibition against cost shifting is part of the definition of reasonable costs in section 1861(v)(1)(A) of the Act. Costs in excess of the limitation are unreasonable costs, and, as such, are not subject to the prohibition against cost shifting.

Comment: One commenter stated that the proposed rule is not clear as to whether leasing costs incurred on land would be considered payable. The commenter urged that the rule be clarified to state that the cost of leasing land from an unrelated party would be paid under a straight lease transaction.

Response: We agree with the commenter and have revised the language at § 413.130(b)(1) accordingly.

H. Costs Attributable to the Negotiation or Settlement

Comment: One commenter suggests that the term "for which any payment" in proposed § 413.134(b)(1)(ii)(G) should be revised to read "for which a particular type or category of payment" because Congress intended that each type or category of these costs (for example, legal fees, accounting and administrative costs, travel costs, feasibility study costs) be viewed individually. For example, the result of such an interpretation would be the following: If in a prior sale of a particular asset, the purchaser incurred, and consequently Medicare paid a share of, only legal fees and accounting costs, and in a subsequent sale of the same asset, the subsequent purchaser incurs feasibility study costs, Medicare should share in the costs of the feasibility study because this type of cost was not paid by Medicare previously.

Response: Section 1861(v)(1)(O)(iii) of the Act treats these negotiation and settlement costs as a homogeneous group. It states that the regulations "shall not recognize, as reasonable in the provision of health care services, costs * * * attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this title." We interpret this language to mean that if Medicare has previously paid for any of these costs, then no costs in this category will be recognized as reasonable. Therefore, we believe that excluding all subsequent negotiation or settlement costs, even if only one type was previously paid, is consistent with Congressional intent.

Comment: The commenter further believes that § 413.134(b)(1)(ii)(G) should be revised to allow payment for an appraisal if Medicare requires the appraisal for properly determining payment.

Response: We agree with the commenter and have revised § 413.134(b)(1)(ii)(G) accordingly.

Comment: One commenter believes that the proposed rule should provide examples of the type of administrative and accounting costs that are considered costs of negotiating and settling the sale and, thus, are not payable by Medicare. These costs are usually recorded as overhead costs and are not normally associated with a specific function.

Response: The proposed rule excludes from the historical cost of an asset the accounting and administrative costs attributable to the negotiation and

settlement of a sale or purchase. The very act of recording certain accounting and administrative costs as overhead (that is, as operating costs instead of as capital costs) excludes these costs from the historical cost of the asset. However, whether the costs are recorded as general overhead or as an element of the historical cost of the asset, these costs are not considered reasonable Medicare costs if they have been paid for previously under Medicare.

Comment: One commenter suggested that if part of a feasibility study addresses the sale or purchase of a facility, the cost of the study should be allocated between allowable and nonallowable cost. The commenter recommended that the regulations should specifically provide a mechanism for this allocation.

Response: We agree with the commenter that an allocation must be made in these cases, and we will include an allocation method in the program instructions.

Comment: One commenter pointed out that section 1861(v)(1)(O)(iii) of the Act uses the parenthetical phrase "(acquisition or merger)" to modify the phrase "sale or purchase of any capital asset", but the proposed rule has substituted the phrase "merger or consolidation" for the phrase "acquisition or merger." The commenter suggested that the final rule should use the statutory language or explain the difference in meaning between the language in regulations and the language in section 1861(v)(1)(O)(iii) of the Act.

Response: We agree with the commenter. Therefore, we will modify § 413.134(b)(1)(ii)(G) to read "acquisition, merger, or consolidation." This will not be inconsistent with the statutory language because consolidation is a form of acquisition; however, it will be more descriptive of the types of transactions applicable under this section of the regulations.

I. Hospital Based Providers Other Than SNFs

Comment: One commenter recommended that the final rule prescribe the method of allocation to be used for hospital-based providers other than SNFs.

Response: We do not currently specify a method of allocation (although the cost reporting forms "recommend" square feet), and we believe providers are better served if we continue the current flexibility. In general, this allocation is made on the basis of square feet, consistent with other space-related costs.

Comment: One commenter would like the title and text of § 413.134(b)(1)(iii), which concerns the hospital-based providers other than SNFs, to be revised to recognize SNF-based providers.

Response: We agree with the commenter and have revised the language accordingly.

J. Useful Life of Assets

Comment: One commenter stated that the proposed rule does not include a provision governing the useful life of the assets after a purchase and that a logical assumption would be to use the prior owner's remaining useful life. The commenter recommends including in regulations at § 413.134(b)(7) language similar to that set forth in the fifth paragraph of section 104.17 of the Provider Reimbursement Manual (HCFA Pub. 15–1), which states that a different useful life may be approved by the intermediary if the provider's request is properly supported by acceptable factors which affect the determination of useful life.

Response: Regulations at § 413.134(b)(7) comprise essentially the same language in section 104.17 of the Provider Reimbursement Manual. Thus, we do not believe that any purpose would be served by revising § 413.134(b)(7) at this time. Published useful life guidelines do not exist for used assets (which are the subject of this final rule). However, a logical starting point in establishing a useful life for a used asset is the original estimated useful life modified by those factors described in the regulations at § 413.134(b)(7). This is the approach we described in the preamble to the October 26, 1987 proposed rule.

K. Gains and Losses

Comment: Two commenters stated that the "program initiative" to clarify that a gain or loss incurred upon disposition of a depreciable asset has no retroactive effect on the prior year's equity capital should be applied prospectively. The commenters believe that to apply this change retroactively would violate the Administrative Procedure Act. They further stated that it is inconsistent to recapture a gain from a prior year's depreciation and not recompute the equity capital. The commenters suggested that this policy is both incongruous and unreasonable.

Response: As explained in the proposed rule, we are amending the regulations to codify our longstanding policy that a gain or loss on the disposal of depreciable assets has no effect on a proprietary provider's equity capital for years prior to the year of disposition. This policy has been in effect since the beginning of the Medicare program. In 1984, to clear up a misunderstanding of this policy, we issued a clarification to section 130 of the Provider Reimbursement Manual that included the same language that we are now codifying in the regulations. Since we are merely restating this longstanding policy in the regulations, we are not required to give it only prospective effect.

In addition, we do not agree that this policy is unreasonable. The basis for the policy is that a gain or loss does not exist until the year of disposal, and therefore cannot be taken into account in the computation of equity capital for prior years. This policy was recently upheld by the U.S. District Court for the District of Columbia in *Hassler Nursing Center* v. *Sullivan* (New Developments), Medicare and Medicaid Guide (CCH) paragraph 39,631 (D.D.C. Oct. 10, 1991). We continue to believe that it is reasonable.

Comment: One commenter asserted that the rules regarding recapture of depreciation should be revised to reflect the decision of the U.S. District Court for the Middle District of Florida in *Mercy Community Hospital* v. *Heckler* (1988 Transfer Binder), Medicare and Medicaid Guide (CCH) paragraph 36,716 (M.D. Fla. Nov. 24, 1987). That is, the commenter believes that Medicare should seek to recapture depreciation only to the extent that the depreciation claimed did not reflect actual consumption of assets used for patient care. The commenter believes that Medicare should exclude recapture of depreciation if the gain results from inflation or supply and demand characteristics.

Response: The decision cited resulted from remand in the case of *Mercy Community Hospital* v. *Heckler*, 781 F. 2d 1552 (11th Cir. 1986). However, we believe that a more recent decision of the United States Court of Appeals for the First Circuit, *Hoodkroft Convalescent Center* v. *the State of New Hampshire, Division of Human Resources, 879 F. 2d 968 (1st Cir. 1989), cert. denied* 110 S. Ct. 729 (1990), affirms our methodology with respect to adjusting for gains and losses. The First Circuit recognized that the approach urged by the commenters, in which Medicare would attempt to distinguish between gain attributable to less than expected wear-and-tear and gain attributable to inflation and various market factors, would pose substantial administrative problems. The *Hoodkroft* decision was recently followed by the U.S. District Court for the District of Columbia in *Whitecliff, Inc.* v. *Sullivan*

(New Developments), Medicare and Medicaid Guide (CCH) paragraph 39,630 (D.D.C. Oct. 10, 1991).

Section 1861(v)(1)(O)(ii) of the Act requires that our regulations provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984. The *Hoodkroft* and *Whitecliff* decisions affirm our policy in effect on June 1, 1984. Accordingly, we believe the statute authorizes continuation of the current method of adjusting for gains and losses.

L. Medicaid Comments

Comment: One commenter asked that the term "solely" (as used in the phrase in § 447.253 "* * solely as a result of a change in ownership * * *") be defined.

Response: The use of the term "solely" is meant to apply the limit in increases in the valuation of assets only to those increases that are a direct result of a change of ownership. Increases resulting from other factors, such as an annual inflation adjustment applied to the rate, are not included under this term.

If a State's methodology provides for an increase in the valuation of an asset that is neutral with regard to changes of ownership, the increase in the valuation of the asset would not be limited by these provisions. When HCFA incorporates this provision into the State Medicaid Manual, this definition will be included.

Comment: One commenter asked that we specify in a regulation that fair rental value systems are excluded from limitation on the revaluation of assets.

Response: Sections 1902(a)(13) (B) and (C) of the Act require a State to submit an assurance regarding compliance with the limit on the revaluation of assets if there has been a change in ownership. Neither provision provides for an exception to this assurance requirement if a State has adopted a fair rental value system for the payment of capital costs.

These provisions only limit increases that result from a change in ownership. Therefore, in determining whether a State plan methodology is consistent with the statutory requirements, only increases in capital cost payment that have resulted from a change in ownership are subject to this limit. Thus, a State is still required to provide the required revaluation of asset assurance, even though it may be using a fair rental value methodology.

Comment: One commenter recommended that the new provisions in § 447.253 be moved to another location in the regulations to avoid confusion.

Response: These new provisions require that an assurance be submitted by a State regarding the revaluation of assets. This requirement adds another assurance to the existing list of assurances that a State must submit to HCFA before a plan amendment can be approved. The existing assurances are specified in the regulations at § 447.253. Therefore, it is appropriate to incorporate the newest assurance in the same section.

Comment: One commenter wants the final rule to specify that Medicaid capital cost payment for providers that have changed ownership on or after October 1, 1985, is no longer subject to the Medicare upper payment limit rule under § 447.253(b)(2).

Response: Prior to October 1, 1984, the only upper payment limit on Medicaid payment to nursing homes was the Medicare upper payment limit, as specified at § 447.253(b)(2). This limit was not applied to any individual cost item but rather was applied in the aggregate to payments made to long-term care facilities. Section 2314 of Public Law 98–369 established an additional limit for increases in payments for capital costs that result from a revaluation of assets due to a change in ownership.

The intent of Congress in enacting this provision was not to liberalize payment for capital costs for Medicaid providers; rather, the intent was to add an additional limit on a specific cost item. The Conference Report that accompanied Public Law 98–369 (H.R. Rep. No. 861, 98th Cong., 2nd Sess. 1339 (1984)) explains that Congress wished to prohibit artificial increases in capital costs that are due solely to a change in ownership.

In section 1902(a)(13)(C) of the Act as enacted effective October 1, 1985 by section 9509 of Public Law 99–272, Congress intended to allow partial recognition of increases in the valuation of assets limited to one-half of the percentage increase in a specified inflation index. The legislative history of this provision does not support an interpretation that Congress intended to remove capital costs from all of the prior limits. Rather, it is our belief that the purpose of Congress in adding section 1902(a)(13)(C) of the Act was to replace the stringent Medicaid limit required by section 2314 of Public Law 98–369 with a provision that would allow for a limited upward revaluation of assets when there has been a change in ownership. Again, we believe it important to emphasize that the revaluation of asset assurance pertaining to changes of ownership is an additional requirement, separate and distinct from the Medicare upper payment limit requirement described in § 447.253(b)(2).

IV. Regulatory Impact Analysis

A. Executive Order 12291 and Regulatory Flexibility Act

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major" rule"; that is, that will be likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or any geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States—based enterprises to compete in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. This final rule will affect hospitals and skilled nursing facilities under the Medicare program and hospitals, nursing facilities, and intermediate care facilities for the mentally retarded under the Medicaid program. For purposes of the RFA, we consider all of these provisions to be small entities.

This final rule revises the Medicare and Medicaid regulations that are affected by section 2314 of Public Law 98–369, enacted on July 18, 1984, and sections 9110 and 9509 of Public Law 99–272, enacted on April 7, 1986. This rule describes new limitations on the valuation of assets acquired as the result of changes in ownership occurring on or after July 18, 1984.

The statutory changes were largely self-implementing and have already created significant savings for the Medicare and Medicaid programs, starting in 1984. These regulations will create little incremental effect. The only consequential new effect will arise from provisions concerning lease purchase agreements entered into after the regulations become effective. We do not believe that a substantial savings will result from this, or that many such transactions will be significantly affected. Therefore, we certify that this final rule will not have a significant effect on a substantial number of small entities. However, we have prepared the following analysis covering the impact of the above statutory provisions and the final rule, taken together.

In the period beginning September 1, 1989 and ending March 31, 1991, there have been the following changes of ownership of active providers by facility type:

TABLE I.—CHANGES OF OWNERSHIP OF ACTIVE PROVIDERS BY FACILITY TYPE

[September 1, 1989 to March 31, 1991]

	Total No. of facilities	No. of facilities with changes of ownership
SNFs		
Medicare	723	15
Medicare/Medicaid	8,709	661
NFs (Medicaid only)	6,394	395
ICFs/MR (Medicaid only)	5,800	136
Hospitals (Medicare or Medicare/Medicaid	6,531	162

1. Background

Since the beginning of the Medicare and Medicaid programs, providers increasingly have been involved in mergers and acquisitions. These transactions have involved both chain organizations and single facilities. Under current payment rules, mergers and acquisitions most often result in increased levels of Medicare and Medicaid payments. This occurs because the acquiring entity usually pays more for the acquired assets than the amount at which they are carried on the records of the prior owner. This higher amount, then, becomes the basis upon which Medicare and Medicaid payments are determined. There has been a justified concern that the Medicare and Medicaid programs are paying more for the same assets, solely as a result of changes in ownership, with no concurrent increase in patient care. The changes in this final rule are intended to promote economy in these programs. We have also gathered information on several of the recent major multifacility acquisitions. We are examining this information to determine the potential consequences of these mergers and acquisitions on Medicare and Medicaid program costs.

Effective October 1, 1991, the Medicare payment methodology for inpatient capital-related costs for hospitals paid under the prospective payment system has been revised (56 FR 43196). A prospective payment methodology has replaced the reasonable cost-based payment methodology for capital-related costs. However, SNFs are still paid for their patient-care-related capital costs on a reasonable cost basis; that is, for SNFs, Medicare generally pays the percentage of capital costs that reflect the ratio of Medicare utilization to total utilization.

Available data indicate a great variation among hospitals in terms of the ratio of capital costs to total operating costs. For about one quarter of the hospitals, capital costs are less than 4 percent of operating costs. Slightly over one half of the hospitals claim capital costs between 4 and 10 percent. The remaining number of hospitals have capital cost to operating cost ratios of between 10 and 20 percent.

Currently, under Medicaid, States have broad discretion in designing payment methods and standards for hospital, nursing facility, and ICF/MR services. States have used that discretion to implement a wide variety of payment methodologies and policies to account for providers' capital expenditures. Only a few States reference and adopt Medicare principles in accounting for capital costs for long-term care payment. Some States have established their own limits on payment of these costs. Due to this variation in State practices and the absence of data about Medicaid capital expenditures, we are not able to estimate current Federal or State Medicaid expenditures for capital expenses.

2. Effect on Providers

It is clear that Congress intends to limit upward revaluations of assets upon a change of ownership of a hospital, SNF, nursing facility or an ICF/MR. Thus, these entities are affected by these provisions in several ways.

Since the enactment of section 2314 of Public Law 98–369, we have not been made aware of any evidence that would suggest that these provisions would have a significant effect on provider decisions regarding mergers and acquisitions. Mergers and acquisitions evolve from a pro-merger environment that is caused by factors such as excess bed capacity, new technologies, and changes in social demographics (for example, changes in the composition of the service area's population that, in turn, would affect utilization and have an effect on revenues). Consequently, the hospital and long-term care facility industries have been restructuring themselves primarily to take advantage of the current pro-merger environment.

Economics is often the driving force in mergers and acquisitions. For many providers facing financial difficulties and looking for sources of funding for the needs of operations and capital formation, mergers and acquisitions offer an attractive alternative to prolonged financial difficulty. Thus, we believe that factors like tax incentives, increased buying power, and market entry initiatives for corporate expansion, which were not affected by section 2314 of Public Law 98–369 and will not be affected by this final rule, have and will continue to offset in good measure any disincentives that might be created with respect to decisions to merge or acquire. Therefore, on balance, we believe that neither section 2314 of Public Law 98–369 nor this final rule will inhibit current levels of merger or acquisition activities.

However, providers have been and will continue to be affected by the reduction of Medicare and Medicaid payment for capital expenses as a result of the enactment of section 2314 of Public Law 98–369. We are not able to estimate the effect this provision has had or will have on Medicare payments to providers because we do not have data that would indicate the number of transactions involving revaluations of assets that have been affected by section 2314 of Public Law 98–369, nor do we have data that estimate the number of future transactions that will be affected by the provisions of the legislation in this final rule. Absent this information, we could not predict the value of the transactions, with the result that information concerning the original cost of each acquisition to determine depreciation costs is not available. Therefore, a detailed analysis of the effect of this final rule on the Medicare and Medicaid program expenditures is not possible at this time. Nonetheless, despite this limitation, program experience allows us to analyze and rank the potential effects of several of the key provisions of this rule, as follows:

a. *Depreciation and interest expense.* These provisions have had and will continue to have the most significant effect on the Medicare and Medicaid programs. Our experience indicates that many provider acquisitions are for amounts as much as two to five times the cost to the previous owner, who may not have been the owner of record under the proposed historical cost definitions. Eliminating the upward revaluation of assets in these acquisitions maintains a level historical cost basis for purposes of computing depreciation and interest expense. This change, coupled with the exclusion of costs attributable to the negotiation or settlement of the purchase or sale of any capital asset for which any Medicare payment has previously been made, has resulted and will continue to result in significant savings.

b. *Sale and leaseback arrangements and lease purchase transactions.* We believe that these provisions rank second in terms of potential program savings and could affect many providers. The provisions effecting sale and leaseback arrangements will avoid possible provider circumvention of the revaluation of assets limit that restricts payment of patient-care-related capital costs. Beginning with the effective date of this final rule, October 23, 1992, we are limiting allowable costs under all sale and leaseback arrangements entered into by hospitals and SNFs to the amount the provider would have included in its allowable costs had the provider retained legal title to the facilities or equipment. Also, as a program initiative not related to section 2314 of Public Law 98–369, we are implementing new criteria for defining lease purchase agreements. In addition, we explain that the limitation on adjustments to depreciation for the purpose of determining any gain or loss upon the disposal of lease purchase assets includes any amount considered as depreciation for the purpose of computing the limitation on allowable rental costs. It is our belief that savings will increase under these provisions.

c. *Return on equity capital of proprietary SNFs.* Nonprofit providers and proprietary providers other than SNFs are not subject to the return on equity changes, and, therefore, will not be affected by them. However, with respect to proprietary SNFs, limiting the historical cost of assets by prohibiting upward revaluations of assets has reduced the basis of the assets used in the computation of the return on equity capital. Moreover, we are continuing our existing policy that any loan, or portion thereof, that is made to finance the excess of the total acquisition cost over the allowable acquisition cost of a facility, or of any tangible assets of a facility, would be excluded from the equity capital computation, because such excess is not considered related to patient care. Thus, we are not paying for the increased financial liability incurred by proprietary SNFs in their mergers and acquisitions of other facilities and assets.

3. Medicaid Provisions

We do not have a basis on which to estimate or rank the effect of the Medicaid provisions. Most States have initiated a variety of actions to control provider payment, including payment for capital costs. We believe there will be Federal and State savings resulting from these actions, but due to the variation in State practices, and because of the absence of good data about the effect of State payment policies, we cannot estimate the budgetary effect on the Medicaid program.

B. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612). For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural hospital impact statement since we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

C. Summary

In summary, we expect that this final rule, by limiting upward revaluations of assets upon a change of ownership of a hospital, SNF, nursing facility, or ICF/MR, will promote economy in the Medicare and Medicaid programs. Many of these policies are already in effect; the regulations text is merely being conformed to them. We have noted our limitations in estimating the effect of this final rule, but we are certain that both Medicare and Medicaid program savings will result from the implementation of this final rule. Further, the effect on hospitals in the Medicare program would be limited because the new prospective payment system for capital related costs is in effect for cost reporting periods beginning on or after October 1, 1991.

V. Other Required Information

Paperwork Reduction Act

Regulations at § 447.253(a) refer to § 447.255, which contains information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The information collection requirements concern the revaluation of assets assurance required by sections 1902(a)(13)(B) and (C) of the Act. The respondents who will provide the information include Medicaid State agencies. Public reporting burden for this collection of information is estimated to be no more than one hour per State plan amendment. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the OMB official whose name appears in the "ADDRESS" section of this preamble.

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Clinics, Contracts (Agreements), Copayments, Drugs, Grant-in-Aid Program—Health, Health facilities, Health professions, Hospitals, Medicaid, Nursing homes, Payments for services: General, Payments: Timely claims, Reimbursement, Rural areas.

42 CFR chapter IV is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for part 413 continues to read as follows:

Authority: Sec. 1102, 1814(b), 1815, 1833 (a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886, of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100–360 as amended by sec. 608(d)(3) of Pub. L. 100–485 (42 U.S.C. 1395ww (note)); and sec. 101(c) of Pub. L. 101–234 (42 U.S.C. 1395ww (note)).

B. Part 413, subpart G is amended as follows:

Subpart G—Capital-Related Costs

1. In § 413.130, paragraphs (b)(1) and (b)(2) are revised; paragraphs (b)(4), (b)(5), and (b)(6) are redesignated as paragraphs (b)(5), (b)(6), and (b)(7) respectively; new paragraph (b)(4) is added; newly redesignated paragraph (b)(5) is revised; newly redesignated paragraph (b)(6)(i) is amended by revising the cross reference "(b)(4)" to read "(b)(5)"; and new paragraphs (b)(8) and (b)(9) are added to read as follows:

§ 413.130 Introduction to capital-related costs.

* * * * *

(b) *Leases and rentals.*

(1) Subject to the qualifications of paragraphs (b) (2), (4), (5), and (8) of this section, leases and rentals, including licenses and royalty fees, are includable in capital-related costs if they relate to the use of assets that would be depreciable if the provider owned them outright or they relate to land, which is neither depreciable nor amortizable if

owned outright. The terms *"leases"* and *"rentals of assets"* signify that a provider has possession, use, and enjoyment of the assets.

(2) For sale and leaseback agreements for hospitals and SNFs entered into before October 23, 1992 and for sale and leaseback agreements for other providers entered into at any time, a provider may include incurred rental charges in its capital-related costs, as specified in a sale and leaseback agreement with a nonrelated purchaser (including shared service organizations not related within the meaning of § 413.17) involving plant facilities or equipment only if the following conditions are met:

(i) The rental charges are reasonable based on the following—

(A) Consideration of rental charges of comparable facilities and market conditions in the area;

(B) The type, expected life, condition, and value of the facilities or equipment rented; and

(C) Other provisions of the rental agreements.

(ii) Adequate alternative facilities or equipment that would serve the purpose are not or were not available at lower cost.

(iii) The leasing was based on economic and technical considerations.

* * * * *

(4) For sale and leaseback agreements for hospitals and SNFs entered into on or after October 23, 1992, the amount a provider may include in its capital-related costs as rental or lease expense may not exceed the amount that the provider would have included in capital-related costs had the provider retained legal title to the facilities or equipment, such as interest expense on mortgages, taxes, depreciation, and insurance costs (the costs of ownership). This limitation applies both on an annual basis and over the useful life of the asset.

(i) If in the early years of the lease, the annual rental or lease costs are less than the annual costs of ownership, but in the later years of the lease the annual rental or lease costs are more than the annual costs of ownership, in the years that the annual rental or lease costs are more than the annual costs of ownership, the provider may include in capital-related costs annually the actual amount of rental or lease costs. The aggregate rental or lease costs included in capital-related costs may not exceed the aggregate costs of ownership that would have been included in capital-related costs over the useful life of the asset had the provider retained legal title to the asset.

(ii) If in the early years of the lease, the annual rental or lease costs exceed the annual costs of ownership, but in the later years of the lease the annual rental or lease costs are less than the annual costs of ownership, the provider may carry forward amounts of rental or lease costs that were not included in capital-related costs in the early years of the lease due to the costs of ownership limitation, and include these amounts in capital-related costs in the years of the lease when the annual rental or lease costs are less than the annual costs of ownership.

(iii) In any given year the amount of actual annual rental or lease costs plus the amount carried forward to that year may not exceed the amount of the costs of ownership for that year.

(iv) In the aggregate, the amount of rental or lease costs included in capital-related costs may not exceed the amount of the costs of ownership that the provider could have included in capital-related costs had the provider retained legal title to the asset.

(5) For lease purchase transactions entered into before October 23, 1992, a lease that meets the following conditions establishes a virtual purchase:

(i) The rental charge exceeds rental charges of comparable facilities or equipment in the area.

(ii) The term of the lease is less than the useful life of the facilities or equipment.

(iii) The provider has the option to renew the lease at a significantly reduced rental, or the provider has the right to purchase the facilities or equipment at a price that appears to be significantly less than what the fair market value of the facilities or equipment would be at the time acquisition by the provider is permitted.

* * * * *

(8) For lease purchase transactions entered into on or after October 23, 1992, a lease that meets any one of the following conditions establishes a virtual purchase:

(i) The lease transfers title of the facilities or equipment to the lessee during the lease term.

(ii) The lease contains a bargain purchase option.

(iii) The lease term is at least 75 percent of the useful life of the facilities or equipment. This provision is not applicable if the lease begins in the last 25 percent of the useful life of the facilities or equipment.

(iv) The present value of the minimum lease payments (payments to be made during the lease term including bargain purchase option, guaranteed residual value, and penalties for failure to renew) equals at least 90 percent of the fair market value of the leased property. This provision is not applicable if the lease begins in the last 25 percent of the useful life of the facilities or equipment. Present value is computed using the lessee's incremental borrowing rate, unless the interest rate implicit in the lease is known and is less than the lessee's incremental borrowing rate, in which case the interest rate implicit in the lease is used.

(9)(i) If a lease establishes a virtual purchase under paragraph (b)(8) of this section, the rental charge is includable in capital-related costs to the extent that it does not exceed the amount that the provider would have included in capital-related costs if it had legal title to the asset (the cost of ownership). The cost of ownership includes straight-line depreciation, insurance, and interest. For purposes of computing the limitation on allowable rental cost in this paragraph, a provider may not include accelerated depreciation.

(ii) The difference between the amount of rent paid and the amount of rent allowed as capital-related costs is considered a deferred charge and is capitalized as part of the historical cost of the asset when the asset is purchased.

(iii) If an asset is returned to the owner instead of being purchased, the deferred charge may be included in capital-related costs in the year the asset is returned.

(iv) If the term of the lease is extended for an additional period of time at a reduced lease cost and the option to purchase still exists, the deferred charge may be included in capital-related costs to the extent of increasing the reduced rental to an amount not in excess of the cost of ownership.

(v) If the term of the lease is extended for an additional period of time at a reduced lease cost and the option to purchase no longer exists, the deferred charge may be included in capital-related costs to the extent of increasing the reduced rental to a fair rental value.

(vi) If the lessee becomes the owner of the leased asset (either by operation of the lease or by other means), the amount considered as depreciation, for the purpose of having computed the limitation on rental charges in paragraph (b)(9)(i) of this section, must be used in calculating the limitation on adjustments for the purpose of determining any gain or loss under § 413.134(f) upon disposal of an asset.

* * * * *

2. In § 413.134, the introductory text of paragraph (a) is republished; paragraph (a)(2), the heading of paragraph (b), and

paragraph (b)(1) are revised; new paragraphs (b)(8) and (b)(9) are added; paragraphs (f)(1), (f)(4) and (g)(2) are revised; paragraph (g)(3) is redesignated as (g)(4) and revised; a new paragraph (g)(3) is added; newly redesignated paragraph (g)(4) is revised; current paragraphs (h) through (k) are redesignated as paragraphs (i) through (l), respectively; a new paragraph (h) is added; and newly redesignated paragraph (j) is revised to read as follows:

§ 413.134 Depreciation: Allowance for depreciation based on asset costs.

(a) *Principle.* An appropriate allowance for depreciation on buildings and equipment used in the provision of patient care is an allowable cost. The depreciation must be—

* * * * *

(2) Based on the historical cost of the asset, except as specified in paragraph (j) of this section regarding donated assets; and

* * * * *

(b) *General rules.*—(1) Historical cost. Historical cost is the cost incurred by the present owner in acquiring the asset.

(i) *All providers.* For depreciable assets acquired after July 31, 1970, and for a hospital or a SNF, acquired before July 18, 1984, the historical cost may not exceed the lower of current reproduction cost adjusted for straight-line depreciation over the life of the asset to the time of the purchase or the fair market value of the asset at the time of its purchase.

(ii) *Hospitals and SNFs only.* (A) For assets acquired on or after July 18, 1984 and not subject to an enforceable agreement entered into before that date, historical cost may not exceed the lowest of the following:

(*1*) The allowable acquisition cost of the asset to the owner of record as of July 18, 1984 (or, in the case of an asset not in existence as of July 18, 1984, the first owner of record of the asset after that date);

(*2*) The acquisition cost of the asset to the new owner; or

(*3*) The fair market value of the asset on the date of acquisition.

(B) For purposes of applying paragraph (b)(1)(ii)(A) of this section, an asset not in existence as of July 18, 1984 includes any asset that physically existed, but was not owned by a hospital or SNF participating in the Medicare program as of July 18, 1984.

(C) The acquisition cost to the owner of record is subject to any limitation on historical costs described in paragraphs (b)(1)(i) or (g)(1) and (2) of this section, and is not reduced by any depreciation taken by the owner of record. This limitation on historical cost is also applied to the purchase of land, a capital asset that is neither depreciable nor amortizable under any circumstances. (See §§ 413.153(d) and 413.157(b) for application of the limitation to the cost of land for purposes of determining allowable interest expense and return on equity capital or proprietary providers.)

(D) Acquisition cost to the owner of record includes the costs of betterments or improvements that extend the estimated useful life of an asset at least two years beyond its original estimated useful life or increase the productivity of an asset significantly over its original productivity.

(E) For assets acquired prior to a hospital's or SNF's entrance into the Medicare program, the acquisition cost to the owner of record is the historical cost of the asset when acquired, rather than when the hospital or SNF entered the program.

(F) For assets subject to the optional depreciation allowance as described in § 413.139, the acquisition cost to the owner of record is the historical cost established for those assets when the hospital or SNF changed to actual depreciation as described in § 413.139(e). If the hospital or SNF did not change to actual depreciation, as described in § 413.139(e), for optional allowance assets, the acquisition cost to the owner of record is established by reference to the hospital's or SNF's recorded historical cost of the asset when acquired. If the hospital or SNF has no historical cost records for optional allowance assets, the acquisition cost to the owner of record is established by appraisal.

(G) The historical cost of an asset acquired on or after July 18, 1984 may not include costs attributable to the negotiation or settlement of the sale or purchase (by acquisition, merger, or consolidation) of any capital asset for which any payment was previously made under the Medicare program. The costs to be excluded include, but are not limited to, appraisal costs (except those incurred at the request of the intermediary under paragraph (f)(2)(iv) of this section), legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies.

(iii) *Hospital-based providers other than SNFs and SNF-based providers.* For changes of ownership that involve assets of a hospital-based provider other than a SNF, or assets of a SNF-based provider, the provisions of paragraph (b)(1)(ii) of this section are not applicable. A reasonable allocation of the purchase price must be made, so that the hospital-based provider other than a SNF, or a SNF-based provider, is not affected by the limitations described in paragraph (b)(1)(ii) of this section. The historical cost of assets of providers other than hospitals and SNFs is governed by paragraph (b)(1)(i) of this section.

* * * * *

(8) *Donated asset.* An asset is considered donated when the provider acquires the asset without making payment in the form of cash, new debt, assumed debt, property or services. Exempt as provided in paragraph (j)(*3*) of this section, if a provider makes payment in any form to acquire an asset, the payment is considered the purchase price for the purpose of determining allowable historical cost.

(9) *Net book value.* The net book value of an asset is the depreciable basis used for the Medicare program by the asset's last participating owner less depreciation recognized under the Medicare program.

* * * * *

(f) *Gains and losses on disposal of assets—(1) General.* Depreciable assets may be disposed of through sale, scrapping, trade-in, exchange, demolition, abandonment, condemnation, fire, theft, or other casualty. If disposal of a depreciable asset results in a gain or loss, an adjustment is necessary in the provider's allowable cost. The amount of a gain included in the determination of allowable cost is limited to the amount of depreciation previously included in Medicare allowable costs. The amount of a loss to be included is limited to the undepreciated basis of the asset permitted under the program. The treatment of the gain or loss depends upon the manner of disposition of the asset, as specified in paragraphs (f) (2) through (6) of this section. The gain or loss on the disposition of depreciable assets has no retroactive effect on a proprietary provider's equity capital for years prior to the year of disposition.

* * * * *

(4) *Exchange, trade-in or donation.* Gains or losses realized from the exchange, trade-in, or donation of depreciable assets are not included in the determination of allowable cost. When the disposition of an asset is by means of exchange, trade-in, or donation, the historical cost of the new asset is the sum of the undepreciated cost of the asset disposed of and the additional cash or other assets transferred (or to be transferred) to acquire the new asset. However, if the asset disposed of was acquired by the provider before its participation in the

Medicare program and the sum of the undepreciated cost and the cash or other assets transferred (or to be transferred) exceed the list price or fair market value of the new asset, the historical cost of the new asset is limited to the lower of its list price or fair market value.

* * * * * *

(g) *Establishment of cost basis on purchase of facility as an ongoing operation.* * * *

(2) *Assets acquired after July 31, 1970 and, for hospitals and SNFs, before July 18, 1984.*

For depreciable assets acquired after July 31, 1970 and, for hospitals and SNFs, before July 18, 1984, in addition to the limitations specified in paragraph (g)(1) of this section, the cost basis of the depreciable assets may not exceed the current reproduction cost depreciated on a straight-line basis over the life of the asset to the time of the sale.

(3) *Assets acquired by hospitals and SNFs on or after July 18, 1984 and not subject to an enforceable agreement entered into before that date.*

Subject to paragraphs (b)(1)(ii) (B) through (G) and (b)(1)(iii) of this section, historical cost may not exceed the lowest of the following:

(i) The allowable acquisition cost of the asset to the owner of record as of July 18, 1984 (or, in the case of an asset not in existence as of July 18, 1984, the first owner of record of the asset);

(ii) The acquisition cost to the new owner; or

(iii) The fair market value of the asset on the date of acquisition.

(4) *Transactions other than bona fide.* If the purchaser cannot demonstrate that the sale was bona fide, in addition to the limitations specified in paragraph (g)(1), (2), and (3) of this section, the purchaser's cost basis may not exceed the seller's cost basis, less accumulated depreciation.

(h) *Sale and leaseback agreements and other lease transactions.* (1) For sale and leaseback agreements for all providers, and for sale and leaseback agreements for hospitals and SNFs entered into before October 23, 1992, a provider may include in its allowable costs incurred rental charges, as specified in a sale and leaseback agreement with a nonrelated purchaser involving plant facilities or equipment, only if—

(i) The rental charges are reasonable based on consideration of rental charges of comparable facilities and market conditions in the area; the type, expected life, condition, and value of the facilities or equipment rented; and other provisions of the rental agreement;

(ii) Adequate alternate facilities or equipment that would serve the purpose are not or were not available at lower cost; and

(iii) The leasing was based on economic and technical considerations.

(2) If the conditions of paragraph (h)(1) of this section are not met, the amount a provider may include in its allowable costs as rental or lease expense under a sale and leaseback agreement may not exceed the amount that the provider would have included in its allowable costs had the provider retained legal title to the facilities or equipment such as interest expense on mortgages, taxes, depreciation, and insurance costs.

(3) For hospitals and SNFs entering into sale and leaseback agreements on or after October 23, 1992, the amount a provider may include in its allowable costs as rental or lease expense may not exceed the amount that the provider would have included in its allowable costs had the provider retained legal title to the facilities or equipment for costs such as interest expense on mortgages, taxes, depreciation, and insurance costs (the costs of ownership). This limitation applies both on an annual basis and over the useful life of the asset.

(i) If in the early years of the lease, the annual rental or lease costs are less than the annually costs of ownership, but in the later years of the lease the annual rental or lease costs are more than the annual costs of ownership, in the years that the annual rental or lease costs are more than the costs of ownership the provider may include in allowable costs annually the actual amount of rental or lease costs. The aggregate rental or lease costs included in allowable costs may not exceed the aggregate costs of ownership that would have been included in allowable costs over the useful life of the asset had the provider retained legal title to the asset.

(ii) If in the early years of the lease, the annual rental or lease costs exceed the annual costs of ownership, but in the later years of the lease the annual rental or lease costs are less than the annual costs of ownership, the provider may carry forward amounts of rental or lease costs that were not included in allowable costs in the early years of the lease due to the costs of ownership limitation, and include these amounts in allowable costs in the years of the lease when the annual rental or lease costs are less than the annual costs of ownership. In any given year the amount of actual annual rental or lease costs plus the amount carried forward to that year may not exceed the amount of the costs of ownership for that year.

(iii) In the aggregate, the amount of rental or lease costs included in allowable costs may not exceed the amount of the costs of ownership that the provider could have included in allowable costs had the provider retained legal title to the asset.

(4) For lease transactions of all providers entered into before October 23, 1992, a lease that meets the following conditions establishes a virtual purchase:

(i) The rental charge exceeds rental charges of comparable facilities or equipment in the area.

(ii) The term of the lease is less than the useful life of the facilities or equipment.

(iii) The provider has the option to renew the lease at a significantly reduced rental, or the provider has the right to purchase the facilities or equipment at a price that appears to be significantly less than what the fair market value of the facilities or equipment would be at the time acquisition by the provider is permitted.

(5)(i) If a lease is a virtual purchase under paragraph (h)(4) of this section, the rental charge is includable in allowable costs only to the extent that it does not exceed the amount that the provider would have included in allowable costs if it had legal title to the asset (the cost of ownership), such as straight-line depreciation, insurance, and interest. For purposes of computing the limitation on allowable rental cost in this paragraph, a provider may not include accelerated depreciation.

(ii) The difference between the amount of rent paid and the amount of rent allowed as rental expense is considered a deferred charge and must be capitalized as part of the historical cost of the asset when the asset is purchased.

(iii) If an asset is returned to the owner instead of being purchased, the deferred charge may be expensed in the year the asset is returned.

(iv) If the term of the lease is extended for an additional period of time at a reduced lease cost and the option to purchase still exists, the deferred charge may be expensed to the extent of increasing the reduced rental to an amount not in excess of the cost of ownership.

(v) If the term of the lease is extended for an additional period of time at a reduced lease cost and the option to purchase no longer exists, the deferred charge may be expensed to the extent of increasing the reduced rental to a fair rental value.

(6) For lease transactions entered into on or after October 23, 1992, a lease that meets any one of the following

conditions establishes a virtual purchase:

(i) The lease transfers title of the facilities or equipment to the lessee during the lease term.

(ii) The lease contains a bargain purchase option.

(iii) The lease term is 75 percent or more of the useful life of the facilities or equipment. This provision is not applicable if the lease begins in the last 25 percent of the useful life of the facilities or equipment.

(iv) The present value of the minimum lease payments (that is, payments to be made during the lease term, including bargain purchase option, guaranteed residual value, or penalties for failure to renew) equals 90 percent or more of the fair market value of the leased property. This provision is not applicable if the lease begins in the last 25 percent of the useful life of the facilities or equipment. The present value is computed using the lessee's incremental borrowing rate, unless the interest rate implicit in the lease is known and is less than the lessee's incremental borrowing rate, in which case, the interest rate implicit in the lease is used.

(7)(i) If a lease is a virtual purchase under paragraph (h)(6) of this section, the rental charge is includable in allowable costs only to the extent that it does not exceed the amount that the provider would have included in allowable costs if it had legal title to the asset (the costs of ownership), such as straight-line depreciation, insurance, and interest. For purposes of computing the limitation on allowable rental cost as described in this paragraph, a provider may not include accelerated depreciation in its allowable costs.

(ii) The difference between the amount of rent paid and the amount of rent allowed as rental expense is considered a deferred charge and is capitalized as part of the historical cost of the asset when the asset is purchased.

(iii) If an asset is returned to the owner instead of being purchased, the deferred charge may be expensed in the year the asset is returned.

(iv) If the term of the lease is extended for an additional period of time at a reduced lease cost and the option to purchase still exists, the deferred charge may be expensed to the extent of increasing the reduced rental to an amount not in excess of the cost of ownership.

(v) If the term of the lease is extended for an additional period of time at a reduced lease cost and the option to purchase no longer exists, the deferred charge may be expensed to the extent of increasing the reduced rental to a fair rental value.

(vi) If the lessee becomes the owner of the leased asset (either by operation of the lease or by other means), the amount considered as depreciation, for the purpose of having computed the limitation expressed in paragraph (h)(7)(i) of this section, must be used in calculating the limitation on adjustments to depreciation for the purpose of determining any gain or loss upon disposal of an asset under paragraph (f) of this section.

* * * * *

(j) *Basis of assets donated to a provider*—(1) Assets not used or depreciated under the Medicare program. If an asset has never been used or depreciated under the Medicare program and is donated to a provider, the basis for the purpose of calculating depreciation and equity capital (if applicable) is the fair market value of the asset at the time of donation.

(2) *Assets used or depreciated under the Medicare program.* If an asset has been used or depreciated under the Medicare program and is donated to a provider, the basis for the purpose of calculating depreciation and equity capital (if applicable) is the lesser of—

(i) The fair market value at the time of donation; or

(ii) The net book value in the hands of the owner last participating in the Medicare program.

(3) *Transfers of State hospitals to nonprofit corporations without monetary consideration.* If a State transfers a hospital to a nonprofit corporation without monetary consideration on or after July 18, 1984, the depreciable basis of the assets to the new owner is the net book value of the assets as recorded on the State's books at the time of the transfer. For purposes of this section, monetary consideration includes cash, new debt, and assumed debt.

* * * * *

C. Part 447, subpart C is amended as set forth below:

PART 447—PAYMENTS FOR SERVICES

Subpart C—Payment for Inpatient Hospital and Long-Term Care Facility Services

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 447.250, paragraph (c) and (d) are redesignated as paragraphs (d) and (e), respectively; and a new paragraph (c) is added to read as follows:

§ 447.250 Basis and purpose.

* * * * *

(c) Sections 447.253 (c) and (d) implement sections 1902(a)(13)(B) and 1902(a)(13)(C) of the Act, which require a State Medicaid agency to make certain assurances to the Secretary regarding increases in payments resulting solely from changes in ownerships of hospitals, NFs, and ICFs/MR.

* * * * *

3. In § 447.253, paragraph (a) is amended by changing "paragraphs (b) through (g)" to "paragraphs (b) through (i);" paragraphs (c) through (g) are redesignated as paragraphs (e) through (i), respectively; and new paragraphs (c) and (d) are added to read as follows:

* * * * *

(c) *Changes in ownership of hospitals.* In determining payment when there has been a sale or transfer of the assets of a hospital, the State's methods and standards must provide that payment rates can reasonably be expected not to increase in the aggregate solely as a result of changes of ownership, more than the payments would increase under Medicare under §§ 413.130, 413.134, 413.153, and 413.157 of this chapter, insofar as these sections affect payments for depreciation, interest on capital indebtedness, return on equity capital (if applicable), acquisition costs for which payments were previously made to prior owners, and the recapture of depreciation.

(d) *Changes in ownership of NFs and ICFs/MR.* In determining payment when there has been a sale or transfer of assets of an NF or ICF/MR, the State's methods and standards must provide the following depending upon the date of the transfer.

(1) For transfers on or after July 18, 1984 but before October 1, 1985, the State's methods and standards must provide that payment rates can reasonably be expected not to increase in the aggregate, solely as the result of a change in ownership, more than payments would increase under Medicare under §§ 413.130, 413.134, 413.153 and 413.157 of this chapter, insofar as these sections affect payment for depreciation, interest on capital indebtedness, return on equity capital (if applicable), acquisition costs for which payments were previously made to prior owners, and the recapture of depreciation.

(2) For transfers on or after October 1, 1985, the State's methods and standards must provide that the valuation of capital assets for purposes of determining payment rates for NFs and ICFs/MR is not to increase (as measured

from the date of acquisition by the seller to the date of the change of ownership) solely as a result of a change of ownership, by more than the lesser of—

(i) One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership, or, if necessary, as extrapolated retrospectively by the Secretary) in the Dodge construction index applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year; or

(ii) One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U) (United States city average) applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 93.773, Medicare-Hospital Insurance Program and No. 93.778, Medical Assistance Program)

Dated: November 9, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: March 3, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–22582 Filed 9–22–92; 8:45 am]

BILLING CODE 4120-01-M

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42 CFR Parts 431, 442, 447, 483, 488, 489, and 498

[BPD–396–F]

RIN 0938–AD 12

Medicare and Medicaid; Requirements for Long Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: In **Federal Register** document 91–22274, published on Thursday, September 26, 1991, beginning on page 48826, we amended Medicare and Medicaid rules applicable to requirements for long term care facilities. In addition to correcting typographical errors, we are making a limited number of technical corrections to our September 26, 1991 document to take into account changes made by other regulations, but not included in the document, or inconsistencies between preamble statements and the regulations text. All such technical corrections are explained in the preamble to this rule.

EFFECTIVE DATES: This final rule is effective on September 23, 1992.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Lindsay, (410) 966–4673.

SUPPLEMENTARY INFORMATION: On September 26, 1991, in the **Federal Register** document 91–22274, we published a final rule, Requirements for Long Term Care Facilities, that included revisions to 42 CFR parts 442, 447, 483, 488, 489, and 498. The document contained a number of typographical errors and inadvertent omissions. This final rule corrects those obvious errors.

We are deleting § 431.610(g)(1)(ii) from the Medicaid regulations as a conforming technical correction, since the corresponding § 488.11(d) was removed from the Medicaid regulations by the final rule (56 FR 48879). The long term care facility staffing information required by this regulation is no longer required of the facility. States must still submit some full-time equivalent staffing information as part of their submission of HCFA Form 671, which in turn is reviewed by the survey team and input into the Health Care Financing Administration Online Survey Certification and Reporting System.

In preparing the final rule, we failed to take into account changes made to part 442, Standards for Payment for Skilled Nursing and Intermediate Care Facility Services, by a final rule entitled, Correction and Reduction Plans for Intermediate Care Facilities for the Mentally Retarded, published on July 5, 1991 (56 FR 30696). As a result, we inadvertently included obsolete regulatory text in §§ 442.105(e) and 442.110(a) and we are deleting that material.

In our review of the correctness of part 442, we determined that an error had occurred in a final rule with comment, Requirements for Long Term Care Facilities (54 FR 5316), that we published on February 2, 1989. In that rule, we deleted § 442.251 which had required that intermediate care facilities (ICFs) meet requirements for State licensure, because the requirements for ICFs had been subsumed by the new requirements for nursing facilities (NFs). However, we failed to note that the deleted requirement not only applied to ICFs but to ICFs for the mentally retarded (ICFs/MR) as well. As a result of this deletion, there is no regulation requiring ICFs/MR to be licensed. Because this subject is now included in part 483, Requirements for States and Long Term Care Facilities, we are adding a new § 483.410(e) to restore this requirement.

We are making a technical correction to § 483.10, Resident Rights. In paragraph (b)(2)(i), which concerns notice of rights and services, we reflect a statutory clarification (enacted in sections 4008(h)(2)(H) and 4801(e)(9) of the Omnibus Budget Reconciliation Act of 1990) that was inadvertently omitted from the regulations. The correction clarifies that the resident's right of access to clinical records within 24 hours of request refers to all current records pertaining to the resident, and excludes weekends and holidays in determining the 24-hour period. In addition, we are correcting § 483.10(c)(4)(ii) by adding the word "and" before the phrase "on request" to comply with the change explained in the preamble on 56 FR 48838. That is, in addition to providing information concerning a resident's personal funds on request to the resident and his or her legal representative, a nursing facility must also provide this information on a quarterly basis. We are also making a technical correction to § 483.10(g)(1), regarding examination of survey results, to include a clarification discussed in the preamble to the interim final rule published on February 2, 1989 (54 FR 5348). We clarify that, while a facility must make survey results available in a readable form for examination in a place readily accessible to residents, the facility need only "post" (i.e., affix to a wall) a notice of the availability of the survey results, rather than the entire set of documents comprising the results themselves.

We are making a technical correction to § 483.20(d)(1), by revising unclear language in the second sentence. This language was intended to explain the relationship of the plan of care to the requirement contained in the introductory statement to § 483.25. The latter provision reflects provisions in sections 1819(b)(2) and 1919(b)(2) of the Act, which require a facility to provide the services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care. In attempting to meet this broad mandate, a facility may sometimes encounter conflicts between its overall responsibility to provide services and the resident's exercise of specific rights under § 483.10. For example, a resident, in exercising the right to refuse treatment (§ 483.10(b)(4)), may decline a particular service for which the facility would normally be responsible under § 483.25. However, we note that § 483.25 mandates the facility to provide services only to the extent that such action is in accordance with the resident's plan of care. Further, § 483.20(d)(2)(ii) provides

that, to the extent practicable, each resident participates in preparing his or her own plan of care. Thus, while a facility cannot induce residents to refuse needed care, routine resident participation in developing and updating the care plan can enable the facility to ascertain any preferences residents themselves may have regarding services they do not wish to receive. When a resident refuses necessary services, and that refusal is documented in the plan of care, the facility is not obligated under the regulations (§ 483.25) to provide those services. In situations where a resident refuses a service, the facility must continue to meet the requirements of § 483.25 with respect to other services. We also suggest that in such situations, the facility assess the reasons for the resident's refusal, educate the resident as to the consequences of his or her refusal, and offer alternative treatment to alleviate those consequences.

We are making a technical correction to § 483.70, Physical Environment. In paragraph (a)(2), which concerns life safety from fire, we delete the phrase ", or in the case of a nursing facility (including a dually participating facility), the State survey agency", in order to make this provision consistent with section 1919(d)(2)(B) of the Act, which provides that only the Secretary can grant Life Safety code waivers. We are also making a technical correction to paragraph (d), Resident Rooms. In paragraph (d)(1)(v) we correct the certification date to March 31, 1992. As discussed in the preamble to the final rule (56 FR 48861), we are making this change to carry out our intention that this provision apply to facilities certified when these regulations are effective, i.e., on April 1, 1992.

We are making a technical correction to § 483.75, Administration. In paragraph (o), which concerns quality assessment and assurance, we add a new paragraph (o)(4) to specify that good faith attempts by the committee to identify and correct quality deficiencies will not be used as a basis for sanctions. In the preamble to the final rule (56 FR 48862), we stated that we were adding this language, but inadvertently omitted it from the regulations.

We are making a number of technical corrections in part 498, Appeals Procedures for Determinations that Affect Participation in the Medicare Program. We make a technical correction to substitute "ICF/MR" for "SNF" (Skilled Nursing Facility) and "ICF" (Intermediate Care Facility) in §§ 498.3(b) (Scope and Applicability, Initial Determinations by HCFA) and 498.5(j) (Appeal Rights for Medicaid SNFs and ICFs terminated by HCFA) to reflect the nomenclature required by the Omnibus Budget Reconciliation Act of 1987 (OBRA 87). We are also updating the statutory citation found in § 498.3(b)(8). Former section 1910(c) of the Act was redesignated as section 1910(b) by section 4212(e)(3)(C) of OBRA 87, but this change was inadvertently omitted from the regulations.

Waiver of Notice of Proposed Rulemaking and Delay of Effective Date

We ordinarily publish a general notice of proposed rulemaking in the **Federal Register** and invite prior public comment on a proposed rule. Final rules generally have a 30 day or longer prospective effective date. However, this final rule only makes typographical and a limited number of technical corrections to final rules published on September 26, 1991 (56 FR 48826), July 5, 1991 (56 FR 30696) and a final rule with comment published on February 2, 1989 (54 FR 5316). It would be impracticable, unnecessary and contrary to the public interest to publish a proposed rule and solicit comments since this rule is designed to conform the regulations to statutory provisions and other regulations already in effect. Similarly, it would serve no useful purpose to delay the effective date of corrections, since the rules they correct are already in effect. We, therefore, find good cause to waive notice of proposed rulemaking and our usual delay in the effective date.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Medicaid, Nursing homes, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR chapter IV is amended as follows:

A. Part 431 is amended as follows:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. In subpart M, § 431.610(g), the introductory text is republished and paragraph (g)(1) is revised to read as follows:

Subpart M—Relations With Other Agencies

§ 431.610 Relations with standard-setting and survey agencies.

* * * * *

(g) *Responsibilities of survey agency.* The plan must provide that, in certifying skilled nursing and intermediate care facilities, the survey agency designated under paragraph (e) of this section will—(1) Review and evaluate medical and independent professional review team reports obtained under part 456 of this subchapter as they relate to health and safety requirements;

* * * * *

B. Part 442 is amended as follows:

PART 442—CONDITIONS FOR PAYMENT FOR NURSING FACILITY SERVICES AND FOR INTERMEDIATE CARE FACILITY SERVICES FOR THE MENTALLY RETARDED

1. The authority citation for part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In part 442, we are making the following amendments:

(a) In § 442.1(a), the entries for sections 1905 (c) and (d) and 1913 are revised and a separate entry for section 1905(d) is added to read as follows:

§ 442.1 Basis and purpose.

* * * * *

Section 1905(c), definition of nursing facility; Section 1905(d), definition of intermediate care facility for the mentally retarded;

* * * * *

Section 1913, hospital providers of nursing facility services; and

* * * * *

(b) Section 442.13(c)(2) is revised to read as follows:

§ 442.13 Effective date of agreement.

* * * * *

(c) * * *

(2) The date on which a NF is found to meet the applicable requirements or an ICF/MR is found to meet all conditions of participation, and the facility submits an acceptable correction plan for lower level deficiencies, or an approvable waiver request, or both.

§ 442.40 [Amended]

(c) In § 442.40, paragraph (b)(1), "not been" is substituted for "not be".

§ 442.101 [Amended]

(d) In § 442.101, paragraph (c), "ICFs/MR.". is substituted for "ICF/MR.".

§ 442.105 [Amended]

(e) In § 442.105, paragraph (e) is removed.

§ 442.110 [Amended]

(f) In § 442.110, paragraph (a), the second sentence is removed.

C. Part 447 is amended as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In Part 447 we are making the following revisions:

§ 447.255 [Amended]

(a) In § 447.255, paragraph (a), the phrase "rate for each type of provider" is submitted for "rate for each type of provider".

§ 447.272 [Amended]

(b) In § 447.272, paragraph (a), "(ICFs/MR))" is substituted for "(ICFs/MR)".

SUBCHAPTER E—STANDARDS AND CERTIFICATION

D. Part 483 is amended as follows:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 is revised to read as follows:

Authority: Sec. 1102, 1819(a)–(f), 1861(j) and (1), 1863, 1871, 1902(a)(28), 1905(a), (c) and (d), and 1919(a)–(f) of the Social Security Act (42 U.S.C. 1302, 1395(i)(3)(a)–(f), 1395x (j) and (l) 1395hh, 1395z, 1396(a)(a)(28), and 1396d (c) and (d), and 1396r(a)–(f), unless otherwise noted.

§ 483.1 [Amended]

2. In § 483.1, paragraph (a)(1), the phrase "Sections 1819 (a), (b), (c), and (d) of the Act" is substituted for "Sections of the Act 1819(a), (b), (c), and (d)".

§ 483.5 [Amended]

3. In § 483.5, the phrase "sections 1819 or 1919" is substituted for "sections 1819 and 1919"; the phrase "or § 440.150" is removed and "§ 440.150" is substituted for "§ 440.150(c)".

§ 483.10 [Amended]

4. Section 483.10 is amended as follows:

(a) In paragraph (b)(2)(i), the phrase "including current clinical records within 24 hours (excluding weekends and holidays); and" is substituted for "including clinical records within 24 hours; and".

(b) In paragraph (c)(4)(ii), the word "and" is added before the phrase "on request" so that this paragraph reads as follows: "The individual financial record must be available through quarterly statements and on request to the resident or his or her legal representative."

(c) In paragraph (g)(1), the phrase "The facility must make the results available for examination in a place readily accessible to residents, and must post a notice of their availability; and" is substituted for the phrase "The results must be made available for examination by the facility in a place readily accessible to residents; and".

(d) In paragraph (g)(2), "contract" should read "contact".

(e) In paragraph (j)(1)(iv), "State" should read "State".

(f) In paragraph (j)(2), "anytime." should read "any time.".

(g) In paragraph (m), "arrangement" should read "arrangement.".

(h) In paragraph (o)(1), "facility" should be changed to "institution" every place it appears.

(i) In paragraph (o)(1)(ii), "If a resident" should read "A resident"

(j) In paragraph (o)(2), "Medicaid benefits" should read "Medicare or Medicaid benefits".

§ 483.12 [Amended]

5. Section 483.12 is amended as follows:

(a) In paragraph (a)(5)(D), "(a)(2)(ii)" should read "(a)(2)(i)".

(b) In paragraph (a)(6), "For nursing facilities, the written notice" should read "The written notice".

(c) In paragraph (d)(1)(ii), "Medicare benefits" should read "Medicare or Medicaid benefits".

§ 483.13 [Amended]

6. Section 483.13 is amended as follows:

(a) In paragraph (c)(1)(ii)(A), "mistreating individuals" should read "mistreating residents".

(b) In paragraph (c)(1)(iii), "other NF staff" should read "other facility staff".

§ 483.15 [Amended]

7. Section 483.15 is amended as follows:

(a) In paragraph (a), "individuality" should read "individuality.".

(b) In paragraph (f)(2)(i), "who is—" should read "who—".

(c) In paragraph (f)(2)(i)(A), "Licensed" should read "Is licensed".

(d) In paragraph (f)(2)(i)(B), "Eligible" should read "Is eligible".

(e) In paragraph (f)(2)(i)(B), "on Ocotber 1, 1990" should read "on or after October 1, 1990".

§ 483.20 [Amended]

8. Section 483.20 is amended by:

(a) Substituting in paragraph (e) the phrase "anticipates discharge," for "anticipates discharges".

(b) Substituting in paragraph (f)(1)(i)(B), the phrase "whether the individual requires specialized services; or" for "whether specialized services the individual requires active treatment for mental illness; or".

(c) Substituting in paragraph (f)(1)(ii)(B), "specialized services" for "active treatment".

(d) Revising paragraph (d)(1) to read as follows:

§ 483.20 Resident assessment.

* * * * *

(d) *Comprehensive care plans.* (1) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The care plan must describer the following—

(i) The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under § 483.25; and

(ii) Any services that would otherwise be required under § 483.25 but are not provided due to the resident's exercise of rights under § 483.10, including the

right to refuse treatment under § 483.10(b)(4).

* * * * *

§ 483.25 [Amended]

9. Section 483.25 is amended as follows:

(a) In paragraph (g)(2), "feeding function." should read "eating skills.".

(b) In paragraph (1), "*Unnecessary drug.*" should read "*Unnecessary drugs.*".

§ 483.30 [Amended]

10. In § 483.30. paragraph (d)(1)(iv), "Americans" is substituted for "American".

§ 483.45 [Amended]

11. Section 483.45 is amended as follows:

(a) In paragraph (a), "and health rehabilitative services" should read "and mental health rehabilitative services".

(b) In paragraph (a)(2), "§ 483.75(j) of this part)" should read "§ 483.75(h) of this part)".

§ 483.60 [Amended]

12. In § 483.60, paragraph (d), "and include" is substituted for "and including".

§ 483.65 [Amended]

13. In § 483.65, paragraph (c), "infection." is substituted for "infection".

§ 483.70 [Amended]

14. Section 483.70 is amended as follows:

(a) In paragraph (a)(1)(ii), "wavers" should read "waivers".

(b) In paragraph (a)(2), after "HCFA" remove ", or in the case of a nursing facility (including a dually participating facility), the State survey agency". As corrected, § 483.70(a)(2) reads as follows: "After consideration of State survey agency findings, HCFA may waive specific provisions of the Life Safety Code which, if rigidly applied would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of residents or personnel."

(c) In paragraph (d)(1)(v), "March 31, 1992" is substituted for "September 30, 1990".

§ 483.75 [Amended]

15. Section 483.75 is amended as follows:

(a) In paragraph (j)(2)(i), "attending physicians;" should read "attending physician;".

(b) In paragraph (j)(2)(iii), "needs assistance." should read "needs assistance; and".

(c) In § 483.75, a new paragraph (o)(4) is added to read as follows:

§ 483.75 Administration.

* * * * *

(o) * * *

(4) Good faith attempts by the committee to identify and correct quality deficiencies will not be used as a basis for sanctions.

* * * * *

16. In § 483.410, a new paragraph (e) is added to read as follows:

§ 483.410 Condition of participation: Governing body and management.

* * * * *

(e) *Standard: Licensure.* The facility must be licensed under applicable State and local law.

E. Part 488 is amended as follows:

PART 488—SURVEY AND CERTIFICATION PROCEDURES

1. The authority citation for part 488 is revised to read follows:

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881, 1883, and 1913 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, 1395tt, and 1396l).

§ 488.56 [Amended]

2. Section 488.56 is amended as follows:

(a) In paragraph (a) introductory text, the reference "483.20" should read "483.30".

(b) In paragraphs (b) introductory text and (b)(2) the reference "§ 488.75(k)" should read "§ 483.75(i)".

F. Part 498 is amended as follows:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

1. The authority citation for part 498 continues to read as follows.

Authority: Secs. 205(a), 1102, 1869(c), 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395ff(c), 1395hh, and 1395ii), unless otherwise noted.

2. The part heading is revised to read as follows:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

§ 498.3 [Amended]

3. In § 498.3, paragraph (b)(8), "ICF/MR" is substituted for "SNF or ICF" and "1910(c)" should read "1910(b)".

§ 498.5 [Amended]

4. In § 498.5, paragraph (j), "ICF/MR" is substituted for the phrase "SNF or ICF" every place it appears.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare Hospital Insurance, No. 93.778, Medical Assistance Program)

Dated: May 12, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: June 5, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-22313 Filed 9-22-92; 8:45 am]

BILLING CODE 4120-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1321

[Ex Parte No. MC-208]

Nonoperating Motor Carriers—Collection of Undercharges

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; delay of effective date.

SUMMARY: To facilitate consideration of various petitions for administrative stay pending judicial review, the Commission on September 18, 1992, extended the date at which the regulations promulgated in this proceeding will become effective until October 8, 1992. The rules were previously to become effective on September 23, 1992. The final rules were published on September 8, 1992 at 57 FR 40857.

EFFECTIVE DATE: The final rules are effective on October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Felder, (202) 927-5610, (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 289-4357.

Authority: 49 U.S.C. 10322(g).

Decided: September 18, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23084 Filed 9-22-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 920531-2221]

RIN 0648-AD76

Groundfish of the Gulf of Alaska, and Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final regulations to implement Amendment 19 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 24 to the FMP for Groundfish of the Gulf of Alaska (GOA). These regulations implement FMP amendments which establish 1992 Pacific halibut bycatch limits for trawl and non-trawl gear in the BSAI and authorize regulatory amendments that would provide for inseason time/area closures to further reduce prohibited species bycatch rates. In addition, existing regulations are amended to revise the management and monitoring of prohibited species bycatch amounts and the vessel incentive program to reduce prohibited species bycatch rates. These actions are intended to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMPs that govern these fisheries.

EFFECTIVE DATES: Effective September 30, 1992, except for changes to regulations at §§ 672.26 and 675.26, which will become effective at 12 noon, Alaska local time, January 20, 1993. Regulations at § 675.21(a)(5) are suspended effective September 30, 1992. This suspension will terminate December 31, 1992.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed by the Secretary of Commerce (Secretary) in accordance with the BSAI and GOA FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries are implemented at 50 CFR part 620.

During its December 3–9, 1991, meeting, the Council adopted Amendments 19/24 for review by the Secretary under section 304(b) of the Magnuson Act. Section 304(b) requires the Secretary or her designee to approve, disapprove, or partially disapprove FMPs or FMP amendments any time after the 60th day from receipt and before the close of the 95th day following receipt. During its December 1991 meeting, the Council also adopted for Secretarial review regulatory amendments that would revise the management and monitoring of prohibited species bycatch and the vessel incentive program to reduce prohibited species bycatch rates. A notice of availability of Amendments 19/24 was published in the **Federal Register** (57 FR 17879, April 28, 1992). It invited review of, and comment on, the amendments until June 22, 1992. A notice of proposed rulemaking was published in the **Federal Register** on May 29, 1992 (57 FR 22695). It invited comments on the proposed rule implementing Amendments 19 and 24 and associated regulatory amendments. The comment period ended July 13, 1992. Twenty-one letters of comments were received. They are summarized and responded to below in the "Response to comments" section.

The final rule implementing Amendments 19 and 24 will:

(1) For 1992, reduce the Pacific halibut prohibited species catch (PSC) limit established for BSAI trawl gear from 5,333 metric tons (mt) to 5,033 mt, but retain the primary halibut PSC limit at 4,400 mt;

(2) For 1992, establish a 750 mt Pacific halibut bycatch mortality limit for BSAI fixed gear; and

(3) Establish FMP authority to develop and implement regulatory amendments that provide for time/area closures to reduce prohibited species bycatch rates.

In addition to the above FMP amendments, the following amendments to current regulations are implemented:

(1) Revise BSAI fishery definitions for purposes of monitoring fishery specific bycatch allowances and assigning vessels to fisheries for purposes of the vessel incentive program;

(2) Revise the definition and accountability of BSAI trawl fishery categories that are eligible to receive prohibited species bycatch allowances;

(3) Expand the vessel incentive program to address halibut bycatch rates in all trawl fisheries;

(4) Delay the season opening date of the BSAI and GOA groundfish trawl fisheries to January 20 of each fishing year to reduce chinook salmon and halibut bycatch rates;

(5) Further delay the season opening date of the GOA trawl rockfish fishery to the beginning of the weekly reporting period closest to July 1 to reduce halibut and chinook salmon bycatch rates; and

(6) Change directed fishing standards to further limit halibut bycatch associated with bottom trawl fisheries.

A full description of these measures and their justification is presented in the May 29, 1992, notice of proposed rulemaking (57 FR 22695). The prohibited species bycatch allowances implemented for the 1992 BSAI trawl fisheries under this action are listed in Table 1. Table 1 includes the adjustment to the 1992 Pacific herring bycatch limit and associated fishery apportionments that were implemented on August 3, 1992 (57 FR 35489, August 10, 1992). The 1992 seasonal apportionments of the 5,033 mt halibut bycatch limit established for the BSAI trawl fisheries are listed in Table 2.

For purposes of monitoring the 750 mt halibut PSC limit for non-trawl gear, the Director, Alaska Region, NMFS (Regional Director), will use observed halibut bycatch rates and reported groundfish catch to project when the 750 mt mortality limit is reached. For purposes of this rule, non-trawl gear means hook-and-line, jig, and groundfish pot gear. Based on information contained in the final 1992 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 1991, the assumed mortality rate of Pacific halibut that are caught as bycatch in the hook-and-line and jig gear fisheries is 16 percent. The assumed mortality rate of halibut incidentally taken in the groundfish pot gear fisheries is 10 percent. Staff of the International Pacific Halibut Commission (IPHC) have recently asserted that the assumed halibut mortality rate in the hook-and-line fisheries may be further reduced by

50 percent if halibut are not brought on board a vessel to remove the hook but are released by cutting the gangion line. Therefore, the Regional Director will assume an 8 percent mortality rate for those halibut that are observed by NMFS certified observers to be released using this method. Based on these mortality rates, the 750 mt halibut mortality limit established by Amendment 19 has been reached.

The Council recommended that the 5,033 mt halibut PSC limit for trawl gear and several of the regulatory measures listed above be implemented under emergency interim rulemaking during the period the Secretary was reviewing Amendments 19/24 and associated regulatory amendments. The first emergency rule was implemented on March 30, 1992 (57 FR 11433, April 3, 1992), and was extended for an additional period of 90 days (57 FR 29223, July 1, 1992). A correction to the emergency rule was published on April 22, 1992 (57 FR 14667). A technical amendment to the emergency rule was published May 20, 1992 (57 FR 21355). A second emergency rule was implemented May 21, 1992 (57 FR 22162, May 27, 1992) to respond to unexpectedly high bycatch amounts in the BSAI pollock fishery and to maintain halibut bycatch amounts within the halibut bycatch limit established for the 1992 trawl fisheries.

The Secretary has reviewed each of the measures under Amendments 19 and 24 and associated regulatory amendments and the reasons for them. She has determined that each measure is necessary for conservation and management of the groundfish fisheries off Alaska and has approved them.

The effective date of the amendments to regulations that implement the vessel incentive program (§§ 672.26 and 675.26) is delayed until January 20, 1993, when the 1993 trawl season opens under §§ 672.23 and 675.23. The Secretary has delayed the effective date of the revised incentive program until such time that standard product recovery rates (PRRs) are published in the **Federal Register**. For the purposes of the vessel incentive program, standard PRRs must be promulgated by regulations to support amended fishery definitions that was based on retained catch composition rather than observed total catch composition. Standard PRRs will be used to estimate catch weights of retained species. Based on this information, vessels will be assigned to vessel incentive program fisheries under the revised fishery definitions at §§ 672.26(b) and 675.26(b) to facilitate the enforcement of the incentive program and the prosecution of violation. At this time, NMFS anticipates that a final rule implementing standard PRRs will be effective by the start of the 1993 trawl season on January 20, 1993. Until then, the current vessel incentive program will remain in place.

Numerous trawl fishery closures have been implemented under the March 30, 1992, emergency rule (57 FR 11433, April 3, 1992), as corrected and amended (57 FR 14667, April 22, 1992 and 57 FR 21355, May 20, 1992). These closures became effective upon the attainment of fishery prohibited species bycatch allowances specified under the emergency rule and will remain in effect under the same bycatch allowances specified under the final rule. **Federal Register** citations for each of the closures implemented under the emergency rule are as follows: 57 FR 18093, April 29, 1992; 57 FR 20207, May 12, 1992; 57 FR 20655, May 14, 1992; 57 FR 23347, June 3, 1992; 57 FR 24559, June 10, 1992; 57 FR 29656, July 6, 1992; 57 FR 29806, July 7, 1992; 57 FR 31129, July 14, 1992; 57 FR 35489, August 10, 1992).

When effective, the final rule implementing Amendments 19/24 and associated regulatory amendments will supersede the March 30, 1992, emergency rule, which is effective through September 30, 1992.

Changes in the Final Rule From the Proposed Rule

This final rule includes changes from the proposed rule. These changes are described as follows:

1. In § 672.20(f), references to joint venture processing (JVP) apportionments of halibut bycatch limits are no longer applicable to the groundfish fishery and are deleted. Also, the term "seasonal allocation" of halibut bycatch allowances is changed to "seasonal apportionment" for regulatory consistency of terms. Technical amendments to implement these editorial changes are found at § 672.20 (f)(1)(i), (f)(1) (iii) through (v), (f)(2)(ii), (f)(2)(iii), and (f)(2)(v).

2. The directed fishing standard for GOA rockfish at § 672.20(g)(2) is changed to expand its application to all gear types and to clarify that this standard excludes demersal shelf rockfish species that are addressed under existing directed fishing standards at § 672.20(g)(1)(ii) and (g)(2)(ii).

3. Editorial changes are made to directed fishing standards at §§ 672.20(g)(3) and 675.20(h)(1) to clarify that these standards apply to groundfish species caught with pelagic trawl gear rather than to vessels using pelagic trawl gear.

4. The definition of the midwater pollock fishery for purposes of the vessel incentive program at 50 CFR 672.26(b) is changed to clarify that the halibut bycatch rate standard specified for the midwater pollock fishery will become effective only after directed fishing is closed for pollock by vessels using trawl gear other than pelagic trawl gear. This intent was set forth in the preamble to the proposed rule and was inadvertently deleted from the proposed rule itself.

5. The definition of trawl fisheries included under the BSAI vessel incentive program at 50 CFR 675.26(b) is revised by removing reference to fishery definitions at § 675.21(b) and adding revised fishery definitions that aggregate fisheries with similar halibut and red king crab bycatch rates. The purpose of this change is to provide more sampled hauls per vessel to support statistically valid estimates of monthly bycatch rates relative to the expanded incentive program.

Public comment on the aggregation of BSAI trawl fisheries for purposes of the vessel incentive program was specifically solicited in the preamble to the proposed rule. During its June 24–28, 1992, meeting, the Council commented that the 7 incentive program fisheries set forth under the proposed rule should be reduced to 4 fisheries (midwater pollock, yellowfin sole, bottom pollock, and other trawl fisheries), and that the final rule implementing the revised incentive program should be changed accordingly. Additional public comment on the proposed rule further supported this change. Without this change, implementation of the expanded incentive program would be less effective.

6. Consistent with the above change, 50 CFR 675.26(a)(2)(ii)(A) and (B) are revised to refer to appropriate fishery definitions for purposes of the incentive program.

7. In § 675.26(d)(3)(i)(C), reference to chinook salmon bycatch rates was erroneously included in the proposed rule and is deleted in the final rule because this species is not addressed under the current vessel incentive program.

8. A new paragraph is added to 50 CFR 672.7 and 675.7 to clarify and facilitate the enforcement of directed fishing closures that are implemented when either directed fishing allowances or prohibited species bycatch allowances are reached. When a directed fishery closure is implemented under existing regulations, fishing operations are allowed to continue if retained amounts of groundfish do not

exceed specified bycatch levels. The ability of vessels to continue to fish under directed fishing closures makes these closures difficult to monitor and enforce except by intrusive and costly at-sea boarding or by observing shoreside landings of catch. Regulations are clarified so that when directed fishing in an area for all groundfish species by vessels using a specified gear type is closed, fishing for groundfish with that gear type will also be prohibited in that area. Under this prohibition, no gear of the affected type could be deployed by a Federally permitted vessel in the area, thus facilitating effective and efficient aerial surveillance of fishery closures. Exceptions to this prohibition are made for vessels participating in the Pacific halibut fishery using hook-and-line gear.

9. The values stated in Table 1 under the section for Pacific herring prohibited species bycatch allowances for midwater pollock and yellowfin sole in the BSAI were increased from 573 and 134 mt to 1,668 and 391 mt, respectively, as a result of an inseason Pacific herring bycatch management measure (57 FR 35490, August 10, 1992).

Response to Comments

Twenty-one letters of comments were received during the comment period. Fifteen of these letters addressed the 750 mt halibut bycatch mortality limit proposed for non-trawl gear. Four letters were submitted by government agencies that expressed no comment on the proposed rule. Two letters were submitted on proposed changes to the vessel incentive program and enhancement of enforcement of directed fishing closures. The Council also commented on these last two issues during its June 24–28, 1992, meeting. Comments are summarized and responded to below:

Comment 1: A 750 mt halibut bycatch mortality limit is too constraining to non-trawl gear fisheries during the current developmental phase of these fisheries. Halibut bycatch rates and handling mortality will decrease with fleet experience and with incorporation of "sanctioned" methods for decreasing handling mortality. Domestic trawl fisheries were able to develop in the early 1980's without the encumbrance of burdensome management measures to control halibut bycatch. Management of the developing non-trawl fisheries should be provided the same latitude as that provided for the trawl fisheries.

Response: The 750 mt halibut bycatch mortality limit is only implemented for 1992. This limit was adopted by the Council under the assumption that it would not significantly constrain the hook-and-line fishery for Pacific cod during 1992 based on bycatch rates experienced by the hook-and-line fishery during 1991. The Council further intended that actual bycatch needs experienced by the 1992 fisheries would provide guidance in the development of bycatch management measures implemented for 1993 and beyond. Although recent halibut bycatch rates experienced in the 1992 hook-and-line fishery for Pacific cod are higher than expected, the initial total allowable catch (TAC) of Pacific cod will be harvested prior to the effective date of the 750 mt mortality limit. The harvest of Pacific cod by the non-trawl fisheries has significantly increased during the past 3 years due to premature closures of the Pacific cod trawl fishery that resulted from the attainment of trawl bycatch allowances of prohibited species.

NMFS anticipates that the 1992 harvest of Pacific cod by non-trawl gear will be about 130 percent of the total 1991 non-trawl harvest of this species. The Council has also initiated analyses of management measures that would provide the authority to allocate preferentially Pacific cod to non-trawl gear fisheries. If implemented, these measures would provide additional support for the developing non-trawl fisheries in a manner that approaches that provided to domestic trawl operations in the early 1980's.

Comment 2: The Amendment 19 halibut bycatch mortality limit for non-trawl gear, 750 mt, is arbitrary and unfair. The amount was not tied to groundfish harvest projections for 1992, does not support the current fleet groundfish harvest needs, and does not allow the non-trawl harvest of Pacific cod to increase.

Response: The non-trawl halibut limit, 750 mt, is neither arbitrary nor unfair. It was derived from the amount of halibut bycatch mortality accrued by non-trawl gear in 1991, plus an additional amount which would allow a 1992 harvest of Pacific cod at 150 percent of 1991 levels, at similar bycatch rates. Some growth of the BSAI non-trawl fleet and associated groundfish harvest was anticipated, although the magnitude of increase, particularly of the Pacific cod fishery, could not be quantified with any certainty. As mentioned in the response to Comment 1, constraints to the non-trawl fisheries arise primarily from the competition with the trawl fleet for the available amounts of Pacific cod under TAC limitations, not 1992 halibut bycatch restrictions. Amendment 19 does not constrain future expansion of the non-trawl fleet or associated groundfish harvest because the halibut limit on non-trawl gear is only implemented for 1992.

Comment 3: The 750 mt halibut bycatch mortality limit proposed for non-trawl gear is too low, and is unduly restrictive. The Council did not intend the 1992 halibut bycatch mortality limit to constrain non-trawl fisheries. Non-trawl fisheries are unable to harvest available Pacific cod TAC with a 750 mt halibut mortality limit.

Response: The 750 mt mortality limit established for the 1992 non-trawl fisheries will be reached because segments of the hook-and-line fleet experienced bycatch rates that were much higher than rates experienced in 1991. See also responses to Comments 1 and 2.

Prohibited species bycatch limits have been implemented to control the take of halibut, crabs, and herring in groundfish fisheries. The Council has the task of allocating bycatch limits among competing fisheries, with the understanding that such policies might constrain certain gears or target fisheries, but that bycatch amounts cannot be limited under existing management regimes without such constraints. The Council has also made a commitment to further reduce the bycatch mortality of halibut in all groundfish fisheries.

Comment 4: National standard 1 mandates the achievement of optimum yield (OY). The judicious use of longline gear and improved halibut handling techniques offer the only practical conservation-oriented method of achieving the BSAI Pacific cod OY in 1992. A 750 mt bycatch mortality limit for the 1992 longline fishery will constrain the ability of the longline fleet to take the Pacific cod OY.

Response: The 750 mt bycatch mortality limit established for non-trawl gear in 1992 is consistent with national standard 1. This standard requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry. NMFS anticipates that the 1992 Pacific cod fishery will harvest the initial TAC by late August 1992, prior to the effective date of regulations implementing the 750 mt mortality limit. Therefore, with respect to Pacific cod the Secretary finds that regulations implementing the 750 mt bycatch limit, by themselves, will not jeopardize achievement of the OY.

Comment 5: Imposition of the 750 mt bycatch mortality limit for the 1992 non-trawl fisheries will cause a net economic loss to the nation. The value of halibut as bycatch mortality in non-trawl

groundfish fisheries is much greater than the value of halibut taken in a directed halibut fishery, and also greater than the same differential calculated for trawl gear.

Response: The United States has assumed international obligations to support the directed Pacific halibut fishery. These obligations are met, in part, by the implementation and enforcement of halibut bycatch restrictions in the Alaska groundfish fisheries. The EA/RIR/FRFA developed in support of Amendment 19 acknowledges that prohibited species bycatch limits are costly to the Alaska groundfish industry. The Council recognized these costs when it adopted the halibut bycatch limits implemented under Amendment 19. The Secretary also acknowledges that the halibut bycatch limits established for the Alaska groundfish fisheries are an expensive way to control halibut bycatch mortality in these fisheries. She has determined, however, that the bycatch limits implemented under Amendment 19 and the resulting allocation of Pacific halibut among groundfish fishermen using trawl and non-trawl gear, and among halibut fishermen, are consistent with the national standards and with international agreements to support the traditional setline halibut fishery.

Comment 6: Implementing a halibut bycatch mortality limit for non-trawl gear in the BSAI will cause serious economic disruption to a segment of the groundfish industry. Closure of the hook-and-line fishery for Pacific cod under a halibut bycatch mortality limit will impose serious economic hardship for individuals and companies who recently entered the BSAI Pacific cod fishery. Additional economic hardship will be incurred by individuals who made investments in harvesting, processing, or marketing operations, and by support industries depending on a stable and growing fishery, including overseas markets and an emerging squid fishery that supplies bait for the hook-and-line cod fishery.

Response: One of the Council's stated management objectives for the BSAI groundfish fishery is to "minimize the impact of groundfish fisheries on prohibited species and continue the rebuilding of the Pacific halibut resource." Consistent with this objective, numerous management measures have been implemented to control prohibited species bycatch amounts with the understanding that such actions might be constraining to the groundfish industry. The non-trawl fishery for BSAI groundfish, particularly for Pacific cod, has entered a growth phase at a time when the Council is considering action to restrict additional entry into what is widely considered to be a substantially overcapitalized fishery. At present, Pacific cod is available to the non-trawl gear fleet because of prohibited species bycatch controls placed on the established trawl fishery. Open access fisheries offer no guarantee of available groundfish TAC, of prohibited species bycatch to support fishing operations, or of freedom from competition from other harvesters and suppliers of similar products. A decision to enter the industry at any given time places an investment risk on each individual fishing, processing, marketing, or support operation.

Comment 7: The 750 mt limit is discriminatory against the non-trawl groundfish fleet for the following reasons: (1) trawl gear fisheries have a disproportionate share of halibut mortality; (2) trawl gear fisheries have many target species options and the ability to "self allocate" halibut among targets to mitigate economic effects on the fleet, whereas the non-trawl gear fisheries, which are primarily dependent on Pacific cod, have a single bycatch allowance; and (3) trawl gear fisheries are allowed to accrue halibut bycatch designated limits, but the non-trawl gear fisheries are not.

Response: The 750 mt bycatch mortality limit is not discriminatory. Allocations of groundfish TAC amounts and supporting prohibited species bycatch limits are established through the Council process after consultation with scientists, industry, and the general public. Under this process, the 1992 BSAI halibut bycatch limit established for trawl gear fisheries was reduced from 5,333 mt to 5,033 mt for 1992. This reduction was partially intended to provide amounts of halibut bycatch mortality for non-trawl fisheries under Amendment 19. The 750 mt bycatch mortality limit for non-trawl gear fisheries established under this amendment provides substantially more halibut for non-trawl fisheries than needed for these fisheries the previous year. Conversely, the historical magnitude of groundfish harvest in established trawl fisheries warrants the larger share of available bycatch.

Most vessels using non-trawl gear to fish for BSAI groundfish target on Pacific cod, although sablefish, Greenland turbot, and arrowtooth flounder have also been harvested by non-trawl gear during recent years. The 1992 bycatch mortality limit established for non-trawl gear under Amendment 19 is not apportioned among different non-trawl gear fisheries. The Council did not recommend separate bycatch allowances for the 1992 non-trawl gear fisheries, because vessels were expected to continue to fish predominantly for Pacific cod. At its June 24–28, 1992, meeting, however, the Council adopted FMP authority to exempt specified non-trawl gear fisheries from halibut bycatch restrictions under the criteria set forth under proposed Amendment 21 to the BSAI FMP. If approved by the Secretary, this amendment would provide the authority to establish separate halibut bycatch allowances for the non-trawl fisheries and exempt specified non-trawl gear fisheries from bycatch restrictions in 1993 and beyond.

Although regulatory provisions are made to exempt the pelagic trawl pollock fishery from halibut and crab bycatch restrictions to account for the fishery's low bycatch rates, vessels participating in this fishery must not exceed a 0.1 percent halibut bycatch rate standard under the vessel incentive program.

Comment 8: The 16 percent mortality assumption for halibut bycatch in hook-and-line fisheries is too high. Handling mortality is greatly reduced when fish are released by cutting gangions or by shaking or twisting fish off hooks. Many vessels have been using such practices in 1992, and estimates of halibut bycatch mortality should be adjusted downward accordingly.

Response: The IPHC has recently asserted that assumed mortality assumptions for halibut taken in the hook-and-line fisheries may be reduced to 8 percent if halibut are not brought on board a vessel to remove the hook but instead, fish are released by cutting the gangion line. In response, NMFS has initiated the collection of observer data that allows for an 8 percent mortality assessment for those halibut observed to be released by cutting of gangions. A 16 percent assumption is retained for unobserved halibut or halibut observed to be released by other methods. NMFS will continue to work with the IPHC in assessing halibut mortality and deriving the best estimate available for assumed mortality rates in the hook-and-line fishery. Consistent, observed action taken by the hook-and-line fleet to reduce halibut handling mortality may be reflected in future downward adjustments of assumed mortality rates.

Comment 9: Halibut which are not brought on board a vessel and which are released by cutting of gangions or by carefully removing the hook should not be considered as bycatch.

Response: As noted in the response to Comment 8, NMFS will adjust mortality

assumptions for halibut observed to be released by cutting of gangions. Other methods of releasing halibut are observed, but vary too much in technique and accompanying mortality for consistent use in inseason mortality adjustments. NMFS will continue to monitor the amount of all halibut taken in the non-trawl fisheries, not just those halibut brought on board a vessel. Appropriate mortality assumptions will be applied against estimated bycatch amounts and the hook-and-line fleet will benefit from taking action to reduce handling mortality by cutting gangions.

Comment 10: The proposed changes to the vessel incentive program for the BSAI trawl fisheries should be revised so that bycatch rate standards are specified for the following three fisheries: yellowfin sole, midwater trawl pollock, and bottom trawl pollock. A global default standard should be specified for all other trawl fisheries. Assignment of vessels to these 4 fishery categories should be based on retained catch composition.

Response: For reasons discussed under "Changes in the final rule from the proposed rule," the Secretary has approved changes in the final rule that will establish four trawl fishery categories for purposes of the expanded vessel incentive program. The intent of this change is to provide sufficient numbers of sampled hauls to provide statistically reliable information about each vessel's monthly bycatch rate. As stated in the preamble to the proposed rule, NMFS recognizes the importance of using retained catch to assign vessels to fishery categories under the incentive program. Effective enforcement of bycatch rates calculated from retained catch will require that standard PRRs be established to calculate round weight equivalents of retained catch. Therefore, NMFS intends to delay the effective date of the expanded vessel incentive program until such time that standard product recovery rates are published in the **Federal Register**. NMFS anticipates that a final rule will be effective by the start of the 1993 trawl season on January 20.

Comment 11: Enforcement efforts require that fishing regulations facilitate investigations of fishing violations using methods which are cost-effective and minimally intrusive to fishing operations. Prohibiting fishing with a gear type and in an area for which all directed fisheries are closed would allow simplified monitoring and enforcement of fishing activity using aerial surveillance.

Reponse: The Secretary concurs. As described under "Changes in the final rule from the proposed rule," the intent of this comment will be implemented under §§ 672.7 and 675.7 of the final rule.

Comment 12: Prohibiting all fishing with a gear type in an area for which all directed fisheries are closed could preclude non-groundfish fisheries, such as those for shrimp and saffron cod, which might use that gear type in that area.

Response: At present, the only significant non-groundfish fishery which might be adversely affected by a prohibition of groundfish gear deployment in an area is the hook-and-line fishery for Pacific halibut. Therefore, the final rule exempts this fishery from such closures under §§ 672.2 and 675.7. Nonetheless, the Secretary concurs that fishermen using trawl, hook-and-line, or groundfish pot gear to participate in other non-groundfish fisheries could be prevented from doing so if the use of that gear is prohibited in an area to support directed fishing closures for groundfish. The Secretary, however, has determined that this clarification of directed fishing closures is necessary to simplify and reduce the burden to industry of surveillance and enforcement of groundfish fishery regulations. If required in the future, additional regulatory amendments may be implemented to provide exemptions to other non-groundfish fisheries. A proposed rule is in preparation which will provide trawl gear test areas for use during periods when the deployment of trawl gear may be prohibited.

Classification

NMFS determined that Amendments 19/24 and associated regulatory amendments are necessary for the conservation and management of the groundfish fisheries off Alaska. This final rule implementing Amendments 19/24 is published under section 305(a)(1) of the Magnuson Act that requires the Secretary to publish regulations that are necessary to carry out a plan or plan amendment. The Secretary has determined that Amendments 19/24 and associated regulatory amendments are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

NMFS has determined that delaying the effectiveness of this final rule for the entire 30 days under the Administrative Procedure Act, 5 U.S.C. 552(d), is impracticable and contrary to the public interest in orderly conduct of the fisheries in the EEZ. This rule implements regulations and associated regulatory amendments to supersede the March 30, 1992, emergency rule, as corrected and amended (57 FR 14667, April 22, 1992 and 57 FR 21355, May 20, 1992), which is effective through September 30, 1992. Without implementing regulations in place, NMFS has determined that the same fishery conservation and management problem that Amendment 19/24 was intended to resolve, would occur. Therefore, NMFS is waiving a portion of the 30-day delayed effectiveness period for this final rule to correspond with the expiration of the emergency rule.

The Council prepared an EA for Amendments 19/24 and associated regulatory amendments. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), found that no significant impact on the quality of the human environment will result from this rule. A copy of the EA may be obtained from the Council (See **ADDRESSES**).

NMFS has determined that none of the management measures implemented under the final rule would adversely affect endangered or threatened species. Therefore, formal consultation pursuant to section 7 of the Endangered Species Act is not required for the implementation of this rule.

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the EA/RIR/FRFA prepared by the Council. A copy of the EA/RIR/FRFA may be obtained from the Council (See **ADDRESSES**).

The Assistant Administrator concluded that this rule will have significant effects on small entities. These effects have been discussed in the EA/RIR/FRFA, a copy of which may be obtained from the Council (See **ADDRESSES**).

This rule contains no collection-of-information requirements for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Consistency is automatically inferred, because the appropriate State agency did not reply within the statutory time period.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 16, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

Note: Tables 1 and 2 will not appear in the Code of Federal Regulations.

TABLE 1.—1992 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL FISHERIES

Fisheries	Zone 1	Zone 2	Zones 1+2H	BSAI-wide
Yellowfin sole	75,000			
Rcksol/oth. flat [1]	85,000			
Turb/arrow/sab. [2]	0			
Rockfish	0			
Pacific cod	10,000			
Pick/Atka/othr [3]	30,000			
Total	200,000			
C. bairdi Tanner crab, number of animals:				
Yellowfin sole	100,000	1,225,000		
Rcksol/othr flat	700,000	300,000		
Turb/arrow/sabl	0	0		
Rockfish	0	50,000		
Pacific cod	75,000	712,500		
Pick/Atka/othr	125,000	712,500		
Total	1,000,000	3,000,000		
			Primary halibut	Secondary halibut
Pacific halibut, metric tons:				
Yellowfin sole			743	849
Rcksol/othr flat			660	755
Turb/arrow/sabl			0	0
Rockfish			175	200
Pacific cod			1,343	1,537
Pick/Atka/othr			1,479	1,692
Total			4,400	5,033
Pacific herring, metric tons:				
Midwater pollock				1,668
Yellowfin sole				391
Rcksol/othr flat				0
Turb/arrow/sabl				0
Rockfish				10
Pacific cod				29
Pick/Atka/othr [4]				210
Total				2,308

[1] Rock sole and other flatfish fishery category.
[2] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[3] Pollock, Atka mackerel, and "other species" fishery category.
[4] Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category.

TABLE 2.—SEASONAL APPORTIONMENT OF THE 1992 HALIBUT BYCATCH ALLOWANCES

Fishery	Seasonal bycatch allowance (mt halibut)
Yellowfin sole:	
May 01–Aug. 02	424
Aug. 03–Dec. 31	425
Total	849
Rock sole/"other flatfish":	
Jan. 01–Mar. 29	566
Mar. 30–Jun. 28	95
Jun. 29–Sep. 27	94
Sep. 28–Dec. 31	remainder
Total	755
Turbot/arrowtooth flounder/ sablefish:	
Jan. 01–Dec. 31	0
Rockfish:	
Jan. 01–Mar. 29	20
Mar. 30–Jun. 28	60
Jun. 29–Sep 27	120
Sep. 28–Dec. 31	remainder
Total	200
Pacific cod:	
Jan. 01–Jun. 28	1,301
Jun. 29–Sep. 27	236
Sep. 28–Dec. 31	remainder
Total	1,537
Pollock/Atka mackerel/ "other species":	
Jan. 01–Apr. 15	1,221
Apr. 16–May 31	0
Jun. 01–Dec. 31	471
Total	1,692
Total 1992 Halibut bycatch limit.	5,033

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.7, paragraphs (g), (h), and (i) are redesignated as paragraphs (h), (i), and (j), and a new paragraph (g) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(g) Fish for groundfish in an area with a vessel using a specified gear type when directed fishing for all groundfish by vessels using that gear type is closed

under §§ 672.20(c)(2) or 672.20(f)(1) of this part, except that fishing for Pacific halibut by vessels using hook-and-line gear will be permitted during seasons governed by 50 CFR part 301. This means that when fishing for groundfish by vessels using a specified gear type is prohibited in an area, that gear type shall not be deployed in that area.

* * * * *

3. In § 672.20, paragraphs (g)(2) and (g)(3) are redesignated as paragraphs (g)(4) and (g)(5) respectively, newly redesignated paragraphs (g)(5) and existing paragraphs (f)(1)(i), (f)(1)(iii) through (v), the first sentence of (f)(2)(ii), the introductory text of (f)(2)(iii), the first sentence of the introductory text of (f)(2)(v), and (h)(2) are revised, and new paragraphs (g)(2) and (g)(3) are added to read as follows:

§ 672.20 General limitations.

* * * * *

(f) * * *

(1) * * *

(i) *Trawl gear.* If, during the fishing year, the Regional Director determines that the catch of halibut by operators of vessels using trawl gear to participate in a directed fishery for groundfish will reach the halibut PSC limit, or seasonal apportionment thereof, provided for under paragraph (f)(2) of this section, NMFS will publish a notice in the **Federal Register** prohibiting directed fishing for groundfish by vessels using trawl gear, except for pollock by vessels using pelagic trawl gear, for the remainder of the season to which the halibut PSC limit or seasonal apportionment applies.

* * * * *

(iii) *Pot gear.* If, during the fishing year, the Regional Director determines that the catch of halibut by operators of vessels using pot gear to participate in a directed fishery for groundfish will reach the halibut PSC limit, or seasonal apportionment thereof, provided for under paragraph (f)(2) of this section, NMFS will publish a notice in the **Federal Register** prohibiting directed fishing for groundfish by vessels using pot gear for the remainder of the season to which the halibut PSC limit or seasonal apportionment applies.

(iv) Unused seasonal apportionments of halibut PSC limits specified for trawl, hook-and-line, or pot gear will be added to the respective seasonal apportionment for the next season during a current fishing year.

(v) If a seasonal apportionment of a halibut PSC limit specified for trawl, hook-and-line, or pot gear is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year.

(2) * * *

(ii) *Notices of final halibut PSC limits.* The Secretary will consider comments received on proposed halibut PSC limits and, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final halibut PSC limits and seasonal apportionments thereof. * * *

(iii) The Secretary will base any seasonal apportionment of the halibut PSC limits on the following types of information: * * *

* * * * *

(v) When the vessels to which a halibut PSC limit applies have caught an amount of halibut equal to that PSC, the Regional Director may, by notice in the **Federal Register**, allow some or all of those vessels to continue to fish for groundfish using non-pelagic trawl gear under specified conditions, subject to the other provisions of this part. * * *

* * * * *

(g) * * *

(2) *Rockfish of the genera Sebastes and Sebastolobus, except demersal shelf rockfish.* The operator of a vessel is engaged in directed fishing for rockfish if he retains at any particular time during a trip an aggregate amount of rockfish species for which a directed fishery closure applies except for demersal shelf rockfish, that is equal to or greater than the sum of 15 percent of the aggregate amount of deep-water flatfish, flathead sole, sablefish, and other rockfish species for which directed fisheries are open, retained at the same time on the vessel during the same trip, and 5 percent of the total amount of other fish species retained at the same time on the vessel during the same trip.

(3) *Using pelagic trawl gear for groundfish species closed to directed fishing.* The operator of a vessel is engaged in directed fishing for groundfish species or species groups for which directed fishing is closed under paragraphs (c)(2) or (f)(1) of this section, if he retains at any time during a trip an aggregate amount of these groundfish species or species groups caught using pelagic trawl gear equal to or greater than 7 percent of the amount of other fish or fish products, in round weight equivalents, retained at the same time on the vessel during the same trip.

* * * * *

(5) *Other.* Except as provided under paragraphs (g)(1) through (g)(4) of this section, the operator of a vessel is engaged in directed fishing for a specific species or species group if he retains at any particular time during a trip that species or species group in an amount equal to or greater than 20 percent of the amount of all other fish species retained at the same time on the vessel during the same trip.

(h) * * *

(2) *Trip.* For purposes of this section, the operator of a vessel is engaged in a single fishing trip in an area from the commencement of, or continuation of, fishing after the effective date of a notice prohibiting directed fishing in the area under paragraphs (c)(2) or (f)(1) of this section until:

(i) The end of a weekly reporting period;

(ii) The vessel enters or leaves an area to which a directed fishing prohibition applies; or

(iii) Until any offload or transfer of any fish or fish product from that vessel, whichever occurs first.

* * * * *

4. In § 672.22, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, paragraph (a) is revised, and a new paragraph (b) is added, to read as follows:

§ 672.22 Inseason adjustments.

(a) *General.*

(1) Inseason adjustments issued by the Secretary under this paragraph include:

(i) The closure, extension, or opening of a season in all or part of a management area;

(ii) Modification of the allowable gear to be used in all or part of a management area;

(iii) The adjustment of TAC and PSC limits; and

(iv) Interim closures of statistical areas, or portions thereof, to directed fishing for specified groundfish species.

(2) Any inseason adjustment taken under paragraphs (a)(1) (i), (ii), or (iii) of this section must be based on a determination that such adjustments are necessary to prevent:

(i) The overfishing of any species or stock of fish or shellfish; or

(ii) The harvest of a TAC for any groundfish species or the taking of a PSC limit for any prohibited species that, on the basis of the best available scientific information, is found by the Secretary to be incorrectly specified; or

(iii) The underharvest of a TAC or gear share of a TAC for any groundfish species when catch information indicates that the TAC or gear share has not been reached.

(3) Any inseason closure of a statistical area, or portion thereof, under paragraph (a)(1)(iv) of this section, must be based upon a determination that such closures are necessary to prevent:

(i) A continuation of relatively high bycatch rates of prohibited species specified under § 672.20(e) of this part in a statistical area, or portion thereof;

(ii) The take of an excessive share of PSC limits or bycatch allowances established under § 672.20(f)(2) of this part by vessels fishing in a statistical area, or portion thereof;

(iii) The closure of one or more directed fisheries for groundfish due to excessive prohibited species bycatch rates occurring in a specified fishery operating within all or part of a statistical area; or

(iv) The premature attainment of established PSC limits or bycatch allowances and associated loss of opportunity to harvest the groundfish OY.

(4) The selection of the appropriate inseason management adjustments under paragraphs (a)(1)(i) and (a)(1)(ii) of this section must be from the following authorized management measures and must be based upon a determination by the Regional Director that the management adjustment selected is the least restrictive necessary to achieve the purpose of the adjustment:

(i) Any gear modification that would protect the species in need of conservation, but which would still allow other fisheries to continue; or

(ii) An inseason adjustment which would allow other fisheries to continue in noncritical areas and time periods; or

(iii) Closure of a management area and season to all groundfish fishing; or

(iv) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species or the "other species" category.

(5) The adjustment of a TAC or PSC limit for any species under paragraph (a)(1)(iii) of this section must be based upon a determination by the Regional Director that the adjustment is based upon the best available scientific information concerning the biological stock status of the species in question and that the currently specified TAC or PSC limit is incorrect. Any adjustment to a TAC or PSC limit must be reasonably related to the change in biological stock status.

(6) The inseason closure of a statistical area, or a portion thereof, under paragraph (a)(1)(iv) of this section shall not extend beyond a 60-day period unless information considered under paragraph (b) of this section warrants an extended closure period. Any closure of a statistical area, or portion thereof, to reduce prohibited species bycatch rates requires a determination by the Regional Director that the closure is based on the best available scientific information concerning the seasonal distribution and abundance of prohibited species and bycatch rates of prohibited species associated with various groundfish fisheries.

(b) *Data.* All information relevant to one or more of the following factors may be considered in making the determinations required under paragraphs (a) (2) and (3) of this section:

(1) The effect of overall fishing effort within a statistical area;

(2) Catch per unit of effort and rate of harvest;

(3) Relative distribution and abundance of stocks of groundfish species and prohibited species within all or part of a statistical area;

(4) The condition of a stock in all or part of a statistical area;

(5) Inseason prohibited species bycatch rates observed in groundfish fisheries in all or part of a statistical area;

(6) Historical prohibited species bycatch rates observed in groundfish fisheries in all or part of a statistical area;

(7) Economic impacts on fishing businesses affected; or

(8) Any other factor relevant to the conservation and management of groundfish species or any incidentally caught species that are designated as prohibited species or for which a PSC limit has been specified.

* * * * *

5. In § 672.23, paragraph (a) is revised, and new paragraphs (d) and (e) are added to read as follows:

§ 672.23 Seasons.

(a) Fishing for groundfish in the regulatory areas and districts of the Gulf of Alaska is authorized from 00:01 a.m., Alaska local time (A.l.t.), January 1, through 12 midnight, A.l.t., December 31, subject to the other provisions of this part, except as provided in paragraphs (c) through (e) of this section.

* * * * *

(d) Directed fishing for rockfish of the genera *Sebastes* and *Sebastolobus* with trawl gear is authorized from 12 noon, A.l.t., on the first day of the third quarterly reporting period of a fishing year, through 12 midnight, A.l.t., December 31, subject to other provisions of this part.

(e) Notwithstanding other provisions of this part, fishing for groundfish with trawl gear in the Gulf of Alaska is prohibited from 00:01 a.m., A.l.t. on January 1, through 12 noon, A.l.t., January 20.

6. In § 672.26, paragraphs (a)(2)(ii) and (b) are revised as follows:

§ 672.26 Program to reduce prohibited species bycatch rates.

(a) * * *

(2) * * *

(ii) *Bycatch rate* refers to the ratio of the total round weight of halibut, in kilograms, to the total round weight, in metric tons, of groundfish for which a TAC has been specified under § 672.20 of this part while participating in the midwater pollock or "other trawl" fisheries as defined in paragraph (b) of this section.

* * * * *

(b) *Fisheries.* A vessel will be subject to this section if the groundfish catch of the vessel is observed on board the vessel, or on board a mothership processor that receives unsorted codends from the vessel, at any time during a weekly reporting period, and the vessel is assigned under paragraph (d)(3)(i)(A) of this section to either the midwater pollock fishery or the "other trawl" fishery as defined in paragraphs (b) (1) and (2) of this section. During any weekly reporting period, a vessel's observed catch composition of groundfish species for which a TAC has been specified under § 672.20 of this part will determine the fishery to which the vessel is assigned, as follows:

(1) The *midwater pollock fishery* means fishing with trawl gear that results in an observed groundfish catch during any weekly reporting period that is composed of 95 percent or more of pollock when the directed fishery for pollock by vessels using trawl gear other than pelagic trawl gear is closed.

(2) The *other trawl* fishery means fishing with trawl gear that results in an observed groundfish catch during any weekly reporting period that does not qualify as a midwater pollock fishery under paragraph (b)(1) of this section.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

7. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

8. In § 675.7, paragraphs (h), (i), and (j) are redesignated as paragraphs (i), (j), and (k) and a new paragraph (h) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(h) Fish for groundfish in an area with a vessel using a specified gear type when directed fishing for all groundfish by vessels using that gear type is closed under §§ 675.20(a)(8) or 675.21 (c) or (d)

of this part, except that fishing for Pacific halibut by vessels using hook-and-line gear will be permitted during seasons governed by 50 CFR part 301. This means that when fishing for groundfish by vessels using a specified gear type is prohibited in an area, that gear type shall not be deployed in that area.

* * * * *

9. In § 675.20, paragraphs (h)(1) and (i)(2) are revised as follows:

§ 675.20 General limitations.

* * * * *

(h) * * *

(1) *Using pelagic trawl gear for groundfish species closed to directed fishing.* The operator of a vessel is engaged in directed fishing for groundfish species or species groups for which directed fishing is closed under paragraph (a)(8) of this section or § 675.21(c) of this part, if he retains at any time during a trip an aggregate amount of these groundfish species or species groups caught with pelagic trawl gear equal to or greater than 7 percent of the amount of other fish or fish products, in round weight equivalents, retained on the vessel at the same time during the same trip.

* * * * *

(i) * * *

(2) *Trip.* For purposes of this section, the operator of a vessel is engaged in a single fishing trip in an area from the commencement of, or continuation of, fishing after the effective date of a notice prohibiting directed fishing in the area under paragraph (a)(8) of this section or § 675.21 (c) or (d) of this part until:

(i) The end of a weekly reporting period;

(ii) The vessel enters or leaves an area to which a directed fishing prohibition applies; or

(iii) Until any offload or transfer of any fish or fish product from that vessel, whichever occurs first.

* * * * *

10. In § 675.21, paragraph (a)(5) is suspended through December 31, 1992; paragraph (b) heading and paragraphs (b)(1), (b)(2), (b)(4), (c) and (d) are revised; paragraphs (e) and (f) are removed; and new paragraphs (a)(7) and (a)(8), are added to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) * * *

(8) *Applicable through December 31, 1992.* The secondary PSC limit of Pacific halibut caught while conducting any trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during 1992 is an amount of Pacific halibut equivalent to 5,033 mt.

(9) *Applicable through December 31, 1992.* The PSC limit of Pacific halibut caught while conducting any non-trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during 1992 is an amount of Pacific halibut equivalent to 750 mt of halibut mortality.

(b) *Apportionment of PSC limits established for trawl gear fisheries.* (1) *Apportionment to trawl fishery categories.* The Secretary, after consultation with the Council, will apportion each PSC limit into bycatch allowances that will be assigned to fishery categories specified in paragraph (b)(4) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

(i) For purposes of this section, the trawl PSC limits for red king crab, *C. bairdi* Tanner crab, and Pacific halibut will be apportioned to the fishery categories listed at paragraphs (b)(4) (ii) through (vi) of this section. Any amount of red king crab, *C. bairdi* Tanner crab, or Pacific halibut that is incidentally taken in the midwater pollock fishery, as defined at paragraph (b)(4)(i) of this section, will be counted against the bycatch allowances specified for the pollock/Atka mackerel/"other species" category defined at paragraph (b)(4)(vi) of this section.

(ii) For purposes of this section, the PSC limit for Pacific herring will be apportioned to the fishery categories listed at paragraphs (b)(4) (i) through (vi) of this section.

(2) *Seasonal apportionments of bycatch allowances.*

(i) The Secretary, after consultation with the Council, may apportion fishery bycatch allowances on a seasonal basis. The Secretary will base any seasonal apportionment of a bycatch allowance on the following types of information:

(A) Seasonal distribution of prohibited species;

(B) Seasonal distribution of target groundfish species relative to prohibited species distribution;

(C) Expected prohibited species bycatch needs on a seasonal basis relevant to change in prohibited species biomass and expected catches of target groundfish species;

(D) Expected variations in bycatch rates throughout the fishing year;

(E) Expected changes in directed groundfish fishing seasons;

(F) Expected start of fishing effort; or

(G) Economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry.

(ii) Unused seasonal apportionments of fishery bycatch allowances made under paragraph (b)(2)(i) of this section will be added to its respective fishery bycatch allowance for the next season during a current fishing year.

(iii) If a seasonal apportionment of a fishery bycatch allowance made under paragraph (b)(2)(i) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from its respective apportionment for the next season during a current fishing year.

* * * * *

(4) For purposes of apportioning trawl PSC limits among fisheries, the following fishery categories are specified and defined in terms of round weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 675.20.

(i) *Midwater pollock fishery.* Fishing with trawl gear during any weekly reporting period that results in a catch of pollock that is 95 percent or more of the total amount of groundfish caught during the week.

(ii) *Flatfish fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rock sole, "other flatfish," and yellowfin sole that is greater than the retained amount of any other fishery category defined under paragraph (b)(4) of this section.

(A) *Yellowfin sole fishery.* Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under paragraph (b)(4)(ii) of this section and results in a retained amount of yellowfin sole that is 70 percent or more of the retained aggregate amount of rock sole, "other flatfish," and yellowfin sole.

(B) *Rock sole/"other flatfish" fishery.* Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under paragraph (b)(4)(ii) of this section and is not a yellowfin sole fishery as defined under paragraph (b)(4)(ii)(A) of this section.

(iii) *Greenland turbot/arrowtooth flounder/sablefish fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Greenland turbot, arrowtooth flounder, and sablefish that is greater than the retained amount of any other fishery category defined under paragraph (b)(4) of this section.

(iv) *Rockfish fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rockfish species of the genera *Sebastes* and *Sebastolobus* that is greater than the retained amount of any other fishery category defined under paragraph (b)(4) of this section.

(v) *Pacific cod fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish category defined under paragraph (b)(4) of this section.

(vi) *Pollock/Atka mackerel/"other species."* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of pollock other than pollock harvested in the midwater pollock fishery defined at paragraph (b)(4)(i) of this section, Atka mackerel, and "other species" that is greater than the retained amount of any other fishery category defined under paragraph (b)(4) of this section.

(c) *Attainment of a trawl fishery bycatch allowance.*

(1) *Attainment of a trawl bycatch allowance for red king crab, C. bairdi Tanner crab, or Pacific halibut.*

(i) *Zone 1 red king crab or C. bairdi Tanner crab bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(4) (ii) through (vi) of this section will catch the Zone 1 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraphs (b) (1) through (3) of this section, NMFS will publish a notice in the **Federal Register** closing Zone 1 to directed fishing for aggregate species within that fishery category for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(ii) *Zone 2 red king crab or C. bairdi crab bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(4) (ii) through (vi) of this section will catch the Zone 2 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* crab specified for that fishery category under paragraphs (b) (1) through (3) of this section, NMFS will publish a notice in the **Federal Register** closing Zone 2 to directed fishing for aggregate species within that fishery category for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(iii) *Primary halibut bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(4) (ii) through (vi) of this section in the Bering Sea and Aleutian Islands Management Area will catch the primary halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraphs (b) (1) through (3) of this section, NMFS will publish a notice in the **Federal Register** closing Zones 1 and 2H to directed fishing for aggregate species within that fishery category for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(iv) *Secondary halibut bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b)(4) (ii) through (vi) of this section in the Bering Sea and Aleutian Islands Management Area will catch the secondary halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraphs (b) (1) through (3) of this section, NMFS will publish a notice in the **Federal Register** closing the entire Bering Sea and Aleutian Islands Management Area to directed fishing for aggregate species within that fishery category for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(2) *Attainment of a trawl bycatch allowance for Pacific herring.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(4) (i) through (vi) of this section in the Bering Sea and Aleutian Islands Management Area will catch the herring bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraphs (b) (1) through (3) of this section, NMFS will publish a notice in the **Federal Register** closing the Herring Savings Areas to directed fishing for aggregate species within that fishery category, except that:

(i) When the midwater pollock fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, the Herring Savings Areas are closed to directed fishing for pollock with trawl gear; and

(ii) When the pollock/Atka mackerel/"other species" fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, only the Herring Savings Areas are closed for directed fishing for pollock to trawl vessels using nonpelagic trawl gear.

(d) *Applicable through December 31, 1992. Attainment of the halibut PSC limited established for non-trawl gear.* If, during the 1992 fishing year, the Regional Director determines that U.S. fishing vessels participating in any non-trawl gear fishery will catch the Pacific halibut PSC limit established for non-trawl gear at paragraph (a)(9) of this section, NMFS will publish a notice in the **Federal Register** closing the entire Bering Sea and Aleutian Islands Management Area to directed fishing for groundfish by vessels using non-trawl gear for the remainder of the year.

11. In § 675.23, paragraph (a) is revised, and new paragraph (d) is added as follows:

§ 675.23 Seasons.

(a) Fishing for groundfish in the subareas and statistical areas of the Bering Sea and Aleutian Islands is authorized from 00:01 a.m., Alaska local time (A.l.t.), on January 1, through 12 midnight, A.l.t., December 31, subject to the other provisions of this part, except as provided in paragraphs (c) through (d) of this section.

* * * * * *

(d) Notwithstanding other provisions of this part, fishing for groundfish with trawl gear in the Bering Sea and Aleutian Islands is prohibited from 00:01 a.m., A.l.t. on January 1, through 12 noon, A.l.t., January 20.

12. In § 675.26, paragraphs (a)(2)(ii)(A), (a)(2)(ii)(B), (b), (d)(3)(i)(A), (d)(3)(i)(B), and (d)(3)(i)(C) are revised to read as follows:

§ 675.26 Program to reduce prohibited species bycatch rates.

(a) * * *

(2) * * *

(ii) * * *

(A) The ratio of total round weight of halibut, in kilograms, to the total round weight, in metric tons (mt), of groundfish for which a TAC has been specified under § 675.20 of this part while participating in any of the trawl fisheries defined under § 675.26(b) of this section;

(B) The ratio of number of red king crab to the total round weight, in mt, of groundfish for which a TAC has been specified under § 675.20 of this part while participating in the yellowfin sole and "other trawl" fisheries, as defined under § 675.26(b) of this section.

* * * * *

(b) *Fisheries.* A vessel will be subject to this section if the groundfish catch of the vessel is observed on board the vessel, or on board a mothership processor that receives unsorted codends from the vessel, at any time during a weekly reporting period, and the vessel is assigned under paragraph (d)(3)(i)(A) of this section to the midwater pollock fishery, the yellowfin sole fishery, the "bottom pollock" fishery or the "other trawl" fishery as defined in paragraphs (b) (1) through (4) of this section. During any weekly reporting period, a vessel's observed catch composition of groundfish species or species groups for which a TAC has been specified under § 675.20 of this part, in round weight equivalents, will determine the fishery to which the vessel is assigned, as follows:

(1) *Midwater pollock fishery.* Fishing with trawl gear that results in an observed groundfish catch during any weekly reporting period that is composed of 95 percent or more of pollock when the directed fishery for pollock by vessels using trawl gear other than pelagic trawl gear is closed.

(2) *Yellowfin sole fishery.* Fishing with trawl gear that results in a retained aggregate amount of rock sole, "other flatfish," and yellowfin sole during any weekly reporting period that is greater than the retained amount of any other fishery defined under paragraph (b) of this section and results in a retained amount of yellowfin sole that is 70 percent or more of the retained aggregate amount of rock sole, "other flatfish," and yellowfin sole.

(3) *"Bottom pollock" fishery.* Fishing with trawl gear that results in a retained amount of pollock during any weekly reporting period other than pollock harvested in the midwater pollock fishery defined at paragraph (b)(1) of this section, that is greater than the retained amount of any other fishery defined under paragraph (b) of this section.

(4) *"Other trawl" fishery.* Fishery with trawl gear that results in a retained amount of groundfish during any weekly reporting period that does not qualify as a midwater pollock, yellowfin sole, or "bottom pollock" fishery under paragraphs (b) (1) through (3) of this section.

* * * * *

(d) * * *

(3) * * *

(i) * * *

(A) *Assignment of vessels to fisheries.* (*1*) Catcher processor vessels will be assigned to fisheries at the end of each weekly reporting period based on the round weight equivalent of the retained groundfish catch composition reporting on a vessel's weekly production report that is submitted to the Regional Director under § 675.5(c)(2) of this part.

(*2*) Catcher vessels that deliver to mothership processors in Federal waters during a weekly reporting period will be assigned to fisheries based on the round weight equivalent of the retained groundfish catch composition reported on the weekly production report submitted to the Regional Director for that week by the mothership under § 672.5(c)(2) of this part.

(*3*) Catcher vessels delivering groundfish to shoreside processors or to mothership processors in Alaska State waters during a weekly reporting period will be assigned to fisheries based on the round weight equivalent of the groundfish retained by the processor and reported on an Alaska Department of Fish and Game fish ticket as required under Alaska State regulations at A.S. 16.05.690.

(B) At the end of each fishing month during which an observer sampled at least 50 percent of a vessel's total number of trawl hauls retrieved while an observer was on board (as recorded in the vessel's daily logbook required under § 675.5 of this part), the Regional Director will calculate the vessel's bycatch rate based on observer data for each fishery specified in paragraph (b) of this section to which the vessel was assigned for any weekly reporting period during that fishing month. Only observed data that have been checked, verified, and analyzed by NMFS will be used to calculate vessel bycatch rates for purposes of this section.

(C) The bycatch rate of a vessel for a fishery described under paragraph (b) of this section during a fishing month is a ratio of halibut to groundfish that is calculated by using the total round weight of halibut (in kilograms), or total number of red king crab or chinook salmon, in samples during all weekly reporting periods in which the vessel was assigned to that fishery and the total round weight of the groundfish (in metric tons) for which a TAC has been specified under § 675.20 in samples taken during all such periods.

* * * * *

[FR Doc. 92-22800 Filed 9-22-92; 8:45 am]
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Proposed Rules

Federal Register
Vol. 57, No. 185
Wednesday, September 23, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 780

Administrative Review Regulations

AGENCIES: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes changes to the interim rule published in the **Federal Register** on November 25, 1991 (56 FR 59207). This proposed rule implements changes made by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act) (enacted November 25, 1990), which amended title IV of the Agricultural Act of 1949 (the 1949 Act) with respect to the Agricultural Stabilization and Conservation Service (ASCS) administrative review process. This rule amends the ASCS appeal regulations to provide for:

(1) The procedures for the filing of requests for administrative reviews of adverse determinations issued by county and State Agricultural Stabilization and Conservation (ASC) Committees (county and State committees), the Deputy Administrator State and County Operations (DASCO), and the National Appeals Division (NAD); (2) procedures for administrative review hearings; and (3) the delegation of powers to hearing officers of NAD.

DATES: Comments must be received by November 23, 1992 in order to be assured of consideration.

ADDRESSES: Send comments on this proposed rule to Director, National Appeals Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415. All written submissions made pursuant to this rule will be available for further inspection in room 2741, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Burchett, Director, National Appeals Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–5533.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures which implement Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

The Executive Vice President of the Commodity Credit Corporation (CCC) (Administrator of ASCS) certifies that this rule will not have a significant impact on a substantial number of participating individuals and entities because the procedure set out in this rule would not increase, but would rather decrease, the time and paperwork necessary to process an administrative review.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This proposed rule has been reviewed in accordance with Executive Order 12778. This proposed rule does not have any preemptive effect with respect to State laws and is not retroactive.

The information collections required by this rule have been approved for use through September 30, 1994, by the Office of Management and Budget (OMB), and assigned OMB No. 0560–0137. Public reporting for these collections is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An interim rule was published in the **Federal Register** on November 25, 1991 (56 FR 59207) to implement changes made by the 1990 Act (enacted on November 28, 1990), which amended title IV of the 1949 Act with respect to the ASCS administrative appeal process. The interim rule amended the ASCS appeal regulations at 7 CFR part 780 to: (1) Provide for the establishment of NAD within ASCS; (2) establish the authority for the Director of NAD to issue final appeal determinations; and (3) provide specific procedures for filing requests for reconsiderations and appeals to county and State committees and NAD.

The public was given 30 days to submit written comments on the interim rule published in the **Federal Register** on November 25, 1991 (56 FR 59207).

The Department received one timely-filed comment.

Background

Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590h(b)), provides for the establishment of "local and State committees" to be used in carrying out the provisions of that act. These local committees are commonly referred to as county committees. County and State committees have been used extensively in the past to implement various other programs that are conducted by CCC and the Department of Agriculture, including the price support and production adjustment programs of CCC. The method for selecting these committees and their general duties are set forth in 7 CFR part 7.

A major function of county and State committees is to serve as a decision-making and reviewing authority with respect to the implementation and administration of the various conservation, price support, and production adjustment programs. Included in this function is the participation of county and State committees in the administrative review process that is made available to

producers and other program participants who believe that an erroneous determination concerning their participation in such a program has been made. The administrative appeal process is set forth at 7 CFR part 780. These regulations generally provide that if a program participant is dissatisfied with the initial determination by either the county or State committee, such participant may request that the determination be reconsidered by the authority which issued the initial determination. If the program participant is dissatisfied with this subsequent determination, an appeal may be filed with the next higher reviewing authority. Prior to implementation of the provisions of section 426 of the 1949 Act, DASCO was the final reviewing authority.

Throughout the current appeal procedure, the participant pursuing the appeal is entitled to an informal hearing. Upon appeal, the appropriate reviewing authority convenes a hearing in which the appellant is provided the opportunity to present relevant facts and evidence.

Interim Rule

Under the interim rule published in the **Federal Register** on November 25, 1991 (56 FR 59207), an appeal determination of a State committee or an initial determination rendered by DASCO, or any other employee or agent of ASCS or CCC, may be appealed to NAD, which constitutes the final level of appeal.

This rule amended the prior provisions of 7 CFR part 780 in several respects for clarity and deleted obsolete references. This rule also made editorial changes to all sections of 7 CFR part 780, and reorganized the information in a more logical sequence. The following is a summary of the major amendments made by the interim rule.

Section 780.1 was amended to conform to changes required under the Act and established the effective date for changes required in the administrative review process.

Section 780.2 was amended to specify that the provisions of this part are applicable to any determinations made by county or State committees, DASCO, or any other employee or agent of ASCS or CCC. Appealable issues were also specified in this section.

Section 780.3 was expanded to include additional definitions for terminology used in this part, including new definitions for changes required under the Act.

Sections 780.4 through 780.6 were reserved for future use.

Section 780.7 provided for reconsideration by a county committee, appeal of the county committee determination to the State committee, and reconsideration by the State committee.

Section 780.8 was added to specify conditions under which an appeal may be filed with NAD.

Section 780.9 specified the general procedure for appeal hearings before the county and State committee and NAD.

Sections 780.10 through 780.14 were reserved for future use.

Sections 780.15 and 780.16 specified the applicable time limitations and requisite form for filing an appeal.

Section 780.17 set forth the purpose and effect of appeal determinations by the county or State committee or by NAD. Section 780.17 also specified those technical decisions and determinations which were not appealable.

Section 780.18 specified when a hearing could be reopened at the discretion of ASCS or CCC for good cause.

Section 780.19 was added to specify the additional requirements included in the Act for proceedings for appeals to NAD with respect to the duties and responsibilities of the Director, including, if appropriate, the authority to require the attendance of witnesses and the production of documentary evidence by subpoena. This section also specified the authority for the Director to issue final determinations.

Section 780.20 was added to specify the conditions under which a participant may request the Director of NAD to issue subpoenas for the attendance of witnesses or for the production of documentary evidence.

Section 780.21 and 780.22 were reserved for future use.

Section 780.23 stated the authority of the Administrator of ASCS or the Executive Vice President of CCC to review and in any way modify any determination made by a county or State committee. New provisions were included in this section to allow either the Administrator of ASCS or the Executive Vice President of CCC to review and in any way modify determinations made by the Director of NAD.

Proposed Rule

This rule proposes to amend the current provisions of 7 CFR part 780 in several respects. The primary purpose of the proposed rule is to give participants a clearer description of this administrative review process. The proposed rule describes in greater detail: (1) The various levels of administrative review; (2) the options for seeking further review of a particular determination; and (3) the procedures governing reviews. The proposed rule also makes editorial changes and reorganizes the information contained in the interim rule in a more logical sequence. The following is a summary of the major amendments proposed by this rule.

Section 780.1 is amended to remove the reference to "Chapters VII and XIV" because the provisions of this part are applicable to regulations which are codified outside of Chapters VII and XIV of this title, such as the swampbuster and sodbuster regulations which are currently codified in part 12, subtitle A, of this title.

Section 780.2 is amended to combine paragraphs (a)(3) and (a)(4) into one shorter paragraph. This section was also amended by redesignating §§ 780.17 (b), (b)(2) as §§ 780.2 (b)(1), and (c), (c)(1), and (c)(2), respectively. This was done to emphasize the fact that technical determinations of the Forest Service or the Soil Conservation Service, as well as determinations regarding the content of general provisions or statutory requirements that are applicable to all participants, are not subject to review pursuant to the provisions of this part.

Section 780.3 is amended by revising the definitions of the terms "Appeal," "Hearing Officer," "Participant," and "Verbatim Transcript." This section also adds definitions of the terms "Person," "Relief," "Review," "Reviewing Authority," and "Secretary." These definitions are added to clarify the meaning of these terms for the purposes of this part. This section is also amended by adding a definition of the term "Cooperative" as part of an amendment proposed by the timely comment received during the comment period for the interim rule. A more detailed discussion of this amendment is provided below.

Section 780.7 is revised to describe more clearly the procedures applicable to appeals and reconsiderations of determinations issued by individual reviewing authorities. In general, determinations issued by county committees are appealable to the applicable State committee; determinations issued by State committees are appealable to NAD; and determinations issued by agents or employees of ASCS or CCC at the National level are appealable to NAD. However, initial determinations issued by a county committee must be reconsidered by the county committee before such determinations may be appealed to the State committee; initial determinations issued by a State

committee must be reconsidered by the State committee before it may be appealed to NAD; and initial determinations issued by agents or employees of ASCS or CCC at the National level must be reconsidered by such agents or employees before it may be appealed to NAD. In addition to those instances where a participant must request that a determination be reconsidered before it can be appealed to a higher level, a participant in most cases has the option of requesting a reconsideration of any determination regarding program eligibility issued by a reviewing authority, with the exception of determinations issued by the Secretary of Agriculture, Administrator of ASCS, or the Executive Vice President of CCC, as well as most reconsideration determinations issued by NAD. This section also provides that reviewing authorities conducting reconsideration reviews have the discretion to offer the participant a hearing.

Section 780.8 is redesignated as §§ 780.7 (a) (2) and (3) and (b) (2) and (3) and revised. Accordingly, § 780.9 is redesignated as § 780.8. Section 780.8 is amended by emphasizing in paragraph (b) that all reviews conducted pursuant to the provisions of this part are *de novo*. Thus, the reviewing authority's scope of review of a matter under review is not limited to the issues raised by the participant, by the determination of a lower reviewing authority, or by the previous determination of the reviewing authority. Paragraph (i) was added to emphasize that participants are not entitled to hearings when a review is being conducted by the Secretary, the Administrator of ASCS, or the Executive Vice President of CCC.

Sections 780.17 (b), (b)(1), and (b)(2) are redesignated as §§ 780.2 (c), (c)(1), and (c)(2), respectively. Section 780.17(b)(3) is removed. Accordingly, § 780.17(c) is redesignated as § 780.17(b); § 780.17(d) is redesignated as § 780.17(c).

Section 780.19 was revised to list specifically the powers given to hearing officers by the Director to conduct NAD hearings. Sections 780.19(a) (7) and (8) are redesignated as §§ 780.19(a) (6) and (7), respectively. Paragraph (d) has been added to this section to provide the address at which to obtain the administrative procedures governing NAD hearings.

Section 780.20 is amended to include the procedures governing requests by participants that the Director of NAD issue subpoenas on their behalf to obtain documents or to require the testimony of a third party at NAD hearings. This section also is amended to include the procedures governing requests by participants to the Director requesting the appearance of USDA employees or representatives at NAD hearings.

Section 780.22 is added to describe the procedures governing the review of requests for relief. This section has been added to clarify the distinction between:

(1) Appeals, which are requests for review based on a claim of eligibility to benefits pursuant to the provisions of the program; and (2) requests for relief, which are requests for review based on a claim to benefits even though the participant failed to meet applicable program requirements. This distinction, and the separate procedures contained in the proposed rule, stem from the different powers reviewing authorities have in granting requests for relief as opposed to appeals. This section also clarifies the fact that the Director of NAD has broad powers to grant relief during a NAD review.

During the comment period for the interim rule, a comment was received from a cotton cooperative. The cotton cooperative requested that § 780.7 be revised to extend the same administrative review rights afforded to individual participants to cooperatives and the collective membership of cooperatives. The comment stated that cooperatives need a similar review process, and that cooperatives often have to request reviews from the authority which issued the initial determination.

Cooperatives have previously had the right to request a review of adverse determinations made by the initial decision-maker. Under the prior appeal regulations, some issues were handled as reviews with hearings conducted before representatives of DASCO under the prior appeal regulations. The only specific reference to cooperatives' administrative review rights was published at 7 CFR part 1425, which afforded the rights to pursue an adverse determination in accordance with 7 CFR part 780.

As a result, the proposed rule defines the term "participant" to include cooperatives. Thus, under the proposed rule, a cooperative will have the right under § 780.7 to request an administrative review to the appropriate reviewing authority on behalf of its collective membership. If the review is pursued by a cooperative and the determination is adverse, the individual members will not have further review rights with respect to the issue under review, except at the discretion of the Director of NAD.

List of Subjects in 7 CFR Part 780

Administrative practices and procedures.

Proposed Rule

Accordingly, 7 CFR part 780 is revised to read as follows:

PART 780—ADMINISTRATIVE REVIEW REGULATIONS

Sec.

780.1 General statement.
780.2 Applicability.
780.3 Definitions.
780.4–780.6 [Reserved]
780.7 Requests for review.
780.8 Hearing procedures.
780.9–780.14 [Reserved]
780.15 Time limitations for filing requests for review.
780.16 Form of request for review.
780.17 Determinations.
780.18 Reopening of hearing.
780.19 Procedure governing reviews by National Appeals Division.
780.20 Participant requests for exercise of subpoena powers for the appearance of USDA representatives.
780.21 [Reserved]
780.22 Authority to grant relief.
780.23 Delegation of authority.
780.24 OMB-control numbers assigned pursuant to Paperwork Reduction Act.

Authority: 7 U.S.C. 1433e; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h .

§ 780.1 General statement.

This part sets forth the regulations to provide for an administrative review process for adverse determinations issued with respect to programs which are administered by the Agricultural Stabilization and Conservation Service (ASCS). These programs also include programs administered by ASCS on behalf of the Commodity Credit Corporation (CCC) and are generally set forth in 7 CFR. This part also establishes the National Appeals Division (NAD) within ASCS, which will administer the provisions of this part. This part is applicable to any adverse determination made by any State or county Agricultural Stabilization and Conservation Committee (State committee and county committee, respectively) or personnel of ASCS or agents of CCC after November 28, 1990, which had not otherwise become final by November 25, 1991.

§ 780.2 Applicability.

(a) The regulations contained in this part are applicable to determinations made by county and State committees and any other personnel of ASCS or by agents of CCC, except as otherwise may be provided in individual program regulations. These regulations prescribe the rules and procedures that must be

followed by a person who seeks review of a determination made with respect to:

(1) Denial of participation in such a program;

(2) Compliance with program requirements; and

(3) The making of payments or other programs benefits.

(b) Reviews under this part are limited to individual program determinations made with respect to those persons meeting the requirements of paragraph (a) of this section. Accordingly, there is no right to review under this part with respect to general program requirements which are applicable to all program participants or procedures.

(c) Except as provided in § 780.23, notwithstanding any other provision in this part, determinations:

(1) Made under a conservation or environmental program involving a finding or certification by a representative of the Soil Conservation Service or Forest Service, or determinations of a technical nature by any Federal agency, other than a determination made by ASCS, shall not be reviewable; and

(2) Which are solely due to the general program provisions or statutory requirements which are applicable to all participants or producers are not reviewable.

§ 780.3 Definitions.

Appeal means a written request by a participant asking a reviewing authority to review an adverse determination made by a subordinate reviewing authority concerning the participant's eligibility for benefits issued under programs governed by this part, pursuant to the applicable program requirements.

CCC means the Commodity Credit Corporation, a wholly-owned Government corporation within the United States Department of Agriculture.

Cooperative means a cooperative that has been approved by CCC under the provisions of 7 CFR 1425 to participate in price support programs with respect to one or more authorized commodities, and which acts on behalf of its collective membership.

County Committee means a county Agricultural Stabilization and Conservation (ASC) committee established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

DASCO means the Deputy Administrator, State and County Operations of ASCS.

Director means the Director of NAD.

Hearing means an informal proceeding to afford a participant the opportunity to present testimony or documentary evidence or both, to have a previous determination reversed, and to show why an adverse determination was not proper. Hearings before NAD may include compulsory attendance of witnesses, compulsory production of documentary evidence, and the administering of oaths and affirmations if the Director of NAD or other designated authority determines such requirements are necessary.

Hearing Officer means an individual who is a representative of NAD and is assigned the responsibility of conducting a hearing for a request for review filed by a participant with the Director or other appropriate official in accordance with this part.

Initial Determination means the first program determination that contains a particular finding which adversely affects a participant as provided in § 780.2.

NAD means the National Appeals Division, the ASCS division established for the purpose of hearing and reviewing requests for reviews under this part.

Participant means any person whose right to participate in, or to receive payments or other benefits in accordance with, any of the programs to which these regulations apply is affected. An authorized representative of the participant, including a cooperative acting on behalf of its collective membership, shall be considered to be a participant.

Person means an individual, partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity and, whenever applicable, a State, political subdivision of a State or any agency thereof.

Reconsideration is a subsequent review of a prior determination made by the same reviewing authority which issued the prior determination.

Relief is the right to receive a benefit in accordance with a program governed by this part, even though the participant has not satisfied all applicable program requirements.

Review is the consideration of a participant's right to receive benefits in accordance with a program governed by this part. Reviews include appeals, reconsiderations, and considerations of requests for relief.

Reviewing Authority is any county committee, State committee, DASCO, or NAD which is responsible under this part for examining and determining any matter under a request for a review. The Secretary, the Administrator of ASCS, or the Executive Vice President of CCC, may on their own motion serve as final reviewing authorities.

Secretary means the Secretary of Agriculture.

State Committee means a State ASC committee established in accordance with section (8b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) including, insofar as is practical, the Director of the Caribbean Area ASCS Office for Puerto Rico and the Virgin Islands.

Verbatim Transcript is an official, written record of proceedings in a hearing which has been transcribed by a transcription service whose appearance is arranged for in accordance with these regulations.

§ 780.4–780.6 [Reserved]

§ 780.7 Requests for review.

(a) *Appeals.* (1) A participant that believes an initial determination by a county committee, that has been reconsidered by the same county committee, was not proper may appeal the determination and request a hearing by filing a written appeal with the appropriate State committee.

(2) A participant that believes an initial determination by a State committee that has been reconsidered by the same State committee was not proper, that any other determination by a State committee was not proper, the participant may appeal the determination and request a hearing by filing a written appeal with NAD.

(3) A participant that believes a determination by an agent or representative of ASCS or CCC at the National level, after being reconsidered by such agent or representative, may appeal the determination and request a hearing by filing a written appeal with NAD.

(b) *Reconsideration.* (1) A participant that believes an initial determination by a county committee was not proper must timely request in writing a reconsideration of such determination by the county committee before it may be appealed to the applicable State committee.

(2) A participant that believes an initial determination by a State committee was not proper must timely request in writing a reconsideration of such determination by the State committee before it may be appealed to NAD.

(3) A participant that believes an initial determination by an agent or representative of ASCS or CCC at the National level was not proper must timely request in writing a reconsideration of such determination

by the agent or representative who issued the initial determination before it may be appealed to NAD.

(4) A participant may request a reconsideration of any determination made by a reviewing authority. Such request will be granted at the discretion of the reviewing authority.

(5) A request for reconsideration must be in writing and must:

(i) Explain why the determination was not proper and not made in accordance with applicable program regulations; or

(ii) Identify facts that were not considered with respect to the determination.

(6) Unless the determination otherwise indicates, reconsideration is not available from:

(i) A determination issued by the Secretary, the Administrator of ASCS, or the Executive Vice President of CCC;

(ii) A reconsidered determination issued by NAD, provided such determination does not contain an initial determination; or

(iii) A determination with respect to requests for relief.

(7) The party conducting the reconsideration pursuant to the provision of this part has the discretion to allow the participant to make an oral presentation in support of its request for reconsideration.

§ 780.8 Hearing procedures.

(a) The hearing shall be held at the time and place designated by the reviewing authority.

(b) The hearing shall be part of a *de novo* review of the participant's case conducted by the reviewing authority, or a representative of the reviewing authority, in the manner determined by CCC or ASCS to be most likely to obtain the facts relevant to the matter at issue. The reviewing authority may confine the presentation of facts and evidence to pertinent matters and may exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions.

(c) When the participant requests copies of documents, information, or evidence upon which a determination is made or which will form the basis of the determination, copies of all program documents, information or evidence, including minutes from county committee or State committee proceedings, shall be made available to the participant.

(d) The reviewing authority shall, before the hearing, prepare a written record which contains a clear, concise statement of the facts as asserted by the participant and the material facts found by the reviewing authority. The names of interested individuals appearing at the hearing shall be included.

(e) A verbatim transcript of the hearing may be made if:

(1) The participant requests, not later than 7 calendar days before the date of the scheduled hearing, that the reviewing authority arrange for such a transcript and agrees to pay the expense thereof; or

(2) The reviewing authority determines that such a transcript is appropriate.

(f) Unofficial recording of a hearing by an audio or video recorder or by an unauthorized transcription service is prohibited.

(g) The participant shall be given a full opportunity to present facts and information relevant to the matter at issue and may present oral or documentary evidence. At its discretion, the reviewing authority may request or permit individuals other than those appearing on behalf of the participant to present information or evidence at such hearing, and, in such event, may permit the participant to question such individuals.

(h) If, by the time the hearing is scheduled to begin, the participant is absent and no appearance is made on behalf of the participant or no arrangements have been made for rescheduling the hearing, the reviewing authority shall, after a reasonable period of time, conclude the hearing or may, at its discretion, accept information and evidence submitted by other individuals present at the hearing.

(i) The provisions of this section shall not be applicable to reviews conducted by the Secretary, the Administrator of ASCS, or the Executive Vice President of CCC.

§ 780.9–780.14 [Reserved]

§ 780.15 Time limitations for filing requests for review.

(a) A request for review shall be filed within 15 calendar days after written notice of the determination which is the subject of such request is mailed to or otherwise made available to the participant. Such a request shall be considered to have been "filed" when personally delivered in writing to the appropriate reviewing authority or when postmarked.

(b) Whenever the final date for filing a request for review prescribed in paragraph (a) of this section falls on a Saturday, Sunday, legal holiday or other day on which the appropriate office is not open for the transaction of business during normal workhours, the time for filing shall be extended to the close of business on the next workday.

(c) Any request for review may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (a) or (b) of this section if, in the judgment of the reviewing authority with whom such request is filed, the circumstances warrant such action. If the applicable reviewing authority declines acceptance of a late-filed request, such refusal is not subject to further review.

§ 780.16 Form of request for review.

Each request for review shall be in writing and signed by the participant. Each request shall be supported by a written statement of facts, which may be submitted with, or as a part of, the request or at any time before the scheduled hearing. The participant may request that a determination be made by the reviewing authority without a hearing on the basis of the written statement submitted and other information available to the reviewing authority. If the participant does not appear at the scheduled hearing or otherwise make arrangements for a rescheduled hearing, the reviewing authority shall make its determination based on the facts available, including any additional material subsequently submitted by the participant.

§ 780.17 Determinations.

(a) The reviewing authority, before making a determination, may request the participant to produce additional evidence which it may deem relevant, or develop additional evidence from other sources. Upon review and within program authorities, the reviewing authority may affirm, modify, or reverse any determination made by it initially or made by a lower reviewing authority, or may remand the matter to a lower reviewing authority for such further consideration as is deemed appropriate. The participant shall be notified in writing of the determination. The notification shall clearly set forth the basis for the determination, as established by applicable regulations, and the facts and circumstances in the case record. Any other persons identified as being adversely affected directly by the determination shall be notified in writing of the determination.

(b) Program determinations issued by a State or county committee, or employees of such committees, made in good faith in the absence of misrepresentation, false statements, fraud, or willful misconduct by the participant, unless otherwise reviewed under these regulations or modified under § 780.23 within 90 calendar days, shall be final, and no action shall be

taken to recover amounts found to have been disbursed thereon in error unless the person had reason to believe that the determination was erroneous.

(c) Notwithstanding the provision of paragraph (b) of this section, representatives of ASCS and CCC may correct all errors in entering data on program contracts, loan agreements, and other program documents as well as the results of computations or calculations made pursuant to the contract or agreement.

§ 780.18 Reopening of hearing.

The reviewing authority, at its discretion, may for any reason it deems appropriate, or upon request of the participant when such request is accompanied by production of new and substantive information which could have a bearing on the prior determination, reopen any hearing for the purposes of conducting a further review of a prior determination unless the matter has been or is being appealed to a higher reviewing authority or is otherwise being considered by the appropriate ASCS or CCC official in accordance with the general program provisions set forth in 7 CFR.

§ 780.19 Procedure governing reviews by National Appeals Division.

(a) The Director:

(1) Upon request, shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available that relate to programs and operations with respect to which a request for review has been taken;

(2) May request such information or assistance as may be deemed necessary from any Federal, State, or local governmental agency or unit thereof;

(3) May require the attendance of witnesses, the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to the proper resolution of reviews;

(4) May, if appropriate, require the attendance of witnesses and production of documentary evidence by subpoena, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court;

(5) May administer oaths and affirmations, whenever necessary in the process of a hearing;

(6) Shall make all determinations with respect to reviews to NAD based on a copy of the record, certified and presented by the hearing officer to the Director; and

(7) May order further proceedings in order that the record presented for review may be complete or in order to hear new or additional evidence.

(b) Hearing officers are authorized to:

(1) Request access to all records, reports, audits, reviews, documents, papers, recommendations, or other available material that relate to the programs and operations with respect to which a review has been taken;

(2) Request such information or assistance as may be necessary from any Federal, State, or local governmental agency;

(3) Require the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence; and

(4) Administer oaths and affirmations.

(c) In addition to the requirements set forth at section 780.8, additional requirements, as determined necessary, may be established by the Director.

(d) A copy of the administrative procedures governing NAD hearings can be obtained from the Director at the following address: Director, NAD, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415.

§ 780.20 Participant requests for exercise of subpoena powers or for appearance of USDA representatives.

(a) A participant may request that the Director of NAD issue a subpoena as provided in section 780.19 to obtain documents and the testimony of witnesses, if:

(1) The request is made in writing to the Director of NAD within 15 calendar days of the date of NAD's notification of review to the participant;

(2) The request establishes that:

(i) Production of documentary or oral evidence pursuant to the subpoena is reasonably calculated to lead to information which would affect the final determination, or is necessary to fully present the participant's case before NAD;

(ii) The NAD subpoena is the only reasonable way this information can be presented to NAD; and

(3) The participant pays for the costs of serving the subpoena, copying costs for the production of documents subpoenaed, and travel costs of witnesses subpoenaed.

(b) A participant may request the Director of NAD to require the appearance of USDA representatives at a hearing before NAD if:

(1) The request is made in writing to the Director of NAD within 15 calendar days of the date of NAD's notification of review to the participant; and

(2) The request establishes that a representative of USDA possesses information that is pertinent and necessary for the disclosure of all relevant facts which could affect the final determination and the information cannot be obtained except through the testimony of the USDA representative.

(c) Testimony by USDA representatives may, at the discretion of the Director of NAD, be presented in person or by telephone.

§ 780.21 [Reserved]

§ 780.22 Authority to grant relief.

(a) In accordance with this section, a participant may request that relief be granted by a county committee, State committee, or NAD regarding a determination made by any official of ASCS or CCC (excluding the Administrator, ASCS, or the Executive Vice President, CCC). If such reviewing authority lacks the authority to grant relief, it may seek authority to grant the requested relief from an appropriate representative of ASCS or CCC.

(b) If the county committee denies a participant's request for relief, the participant may make a written request to the State committee to review that determination.

(c) If the State committee or any other representative of ASCS or CCC (excluding the Administrator, ASCS, and the Executive Vice President, CCC) denies the request for relief, the participant may make a written request to NAD to review that determination.

(d) The Director of NAD may grant requests for relief to the same extent as is delegated to any other representative of CCC or ASCS, excluding the authority granted to the Administrator, ASCS, and the Executive Vice President, CCC.

(e) The provisions of this part shall not preclude DASCO or its designee from making determinations regarding requests for the authority to grant relief submitted and approved by State committees.

§ 780.23 Delegation of authority.

Nothing contained in the regulations of this part shall preclude the Secretary, the Administrator of ASCS, or the Executive Vice President of CCC, or a designee, from determining at any time any question arising under the programs

to which the regulations in this part apply, or from reversing or modifying in writing, with sufficient reason given therefore, any determination made by a county committee, State committee, the Director of NAD, or any other employee or representative of ASCS or CCC.

§ 780.24 OMB-control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 780) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560–0137.

Signed on September 16, 1992 at Washington, DC.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–23012 Filed 9–22–92; 8:45 am]

BILLING CODE 3710–04–M

Agricultural Marketing Service

7 CFR Part 910

[Docket No. FV–92–076]

Lemons Grown in California and Arizona; Proposed Weekly Volume Regulations; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule; Correction.

SUMMARY: This action corrects a proposed rule which invites comments on the quantities of fresh California-Arizona lemons that may be shipped weekly to domestic markets.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson (202) 690–3670.

SUPPLEMENTARY INFORMATION: This action corrects a proposed rule which appeared in the **Federal Register** (57 FR 39368, August 31, 1992). The meeting date, time, and location on page 39370, item 4, is corrected to read as follows:

"4. Committee Meeting Date: September 29, 1992.

Time: 1 p.m.

Location: Red Lion Hotel, 222 North Vineyard, Ontario, California 91764."

Dated: September 17, 1992.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 92–23017 Filed 9–22–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1209

[FV–91–276B]

Mushroom Promotion, Research, and Consumer Information Order; Extension of Voting Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to referendum order.

SUMMARY: This action extends the voting period for the referendum during which mushroom producers and importers will vote on whether the mushroom Promotion, Research, and Consumer Information Order will become effective. The voting period has been extended an additional 14 days to conclude on September 28, 1992, rather than September 14, 1992.

DATES: A referendum shall be conducted from August 24, 1992, through September 28, 1992.

ADDRESSES: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2533–S, P.O. 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard Schultz at the above address or telephone (202) 720–5976.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Proposed Rule published in the October 4, 1991, issue of the **Federal Register** (56 FR 50283); Proposed Rule and meeting Notice published in the January 15, 1992, issue of the **Federal Register** (57 FR 1666); Proposed Rule and Referendum Order published in the June 10, 1992, issue of the **Federal Register** (57 FR 24719); and Amendment to Referendum Order published in the August 14, 1992, issue of the **Fedral Register** (57 FR 36610).

The June 10 referendum order specified that the voting period would be from July 22, 1992, through August 12, 1992. That voting period was delayed due to court action. Subsequently, a referendum order was initially amended in order to reschedule the voting period. Pursuant to the amendment, the voting period began on August 24, 1992, and was scheduled to end on September 14, 1992. However, a printing error on the envelopes used in the referendum ballot package which was mailed to all known mushroom producers and importers has been detected. These envelopes were imprinted with an incorrect business reply mail permit number. Consequently, not all of the referendum ballot packages may have been delivered to potentially eligible voters. Therefore, in order to assure full voter participation in the referendum, the Department has extended the voting period through September 28, 1992, and has made a second mailing of ballot materials to all know mushroom producers and importers. The second ballots may be distinguished by their different color (yellow). In cases where a valid first ballot has already been received, the second ballot will not be counted since only one ballot will be counted for each voting entity.

The referendum order is hereby amended to read as follows:

It is hereby directed that a referendum be conducted among mushroom producers and importers to determine whether producers and importers favor the establishment of a national mushroom promotion, research, consumer information, and industry information program. Such a program would be implemented through a Mushroom Promotion, Research, and Consumer Information Order (order). The representative period for establishing voter eligibility for the referendum shall be the period from July 1, 1990, through June 30, 1992. A referendum shall be conducted from August 24, 1992, through September 28, 1992.

The Mushroom Promotion, Research, and Consumer Information Act of 1990 (Act) specifies that the Secretary of Agriculture (Secretary) will conduct a referendum among mushroom producers and importers to determine whether the order shall become effective. The Act further specifies that the order shall become effective, if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

Richard Schultz and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 96456, U.S. Department of Agriculture, Washington, DC 20090–6456, are designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The Procedure for the Conduct of Referenda in Connection with the Mushroom Promotion, Research, and Consumer Information Order, 7 CFR 1209.300–1209.307 shall be used to conduct the referendum.

Ballots to be cast in the referendum, and any related material relevant to the referendum, will be mailed by the referendum agents to all known mushroom producers and importers. Persons who have produced or imported, on average, over 500,000 pounds of mushrooms that were marketed or imported annually for fresh use during the representative period are eligible to vote. Such persons shall establish their eligibility by providing information on the ballot concerning their volume of production or importation. Such information may be subject to verification. Should any eligible producer or importer not receive a ballot and related material, such producer or importer should immediately contact the referendum agents.

Dated: September 17, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-23016 Filed 9-22-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-117-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes Equipped With Bendix Brakes Fitted With NASCO Rotors Installed in Accordance With Supplemental Type Certificate (STC) SA3946NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes. This proposal would require that certain landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The actions specified by the proposed AD are intended to prevent the loss of brake effectiveness during a high energy RTO and further incidents/accidents.

DATES: Comments must be received by September 8, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-117-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Gfrerer, Aerospace Engineer, Mechanical/Environmental and Crashworthiness Section, ANM-131L, FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California 90806; telephone (310) 988-5338; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-117-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-117-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

In 1988, a McDonnell Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of allowable wear limits for all brakes installed on transport category airplanes. The FAA and the Aerospace Industries Association (AIA) jointly developed a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. It should be noted that this worn brake accountability determination validates brake wear limits with respect to brake energy capacity only and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers: (1) determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

Worn brake rejected takeoff (RTO) dynamometer testing and analyses have been conducted with regard to various brakes installed on Boeing Model 727 series airplanes. The FAA previously has issued AD 91-18-07 [amendment 39-8010, (56 FR 51162, October 10, 1991)] and AD 92-12-08 [amendment 39-8269, (57 FR 29194, July 1, 1992)], which require the establishment of maximum brake wear limits for various main landing gear brakes installed on certain Boeing Model 727 series airplanes. The brake wear limits established by those AD's are based on dynamometer test data and analyses that were submitted by Boeing Commercial Airplane Group, Allied Signal Aerospace Company (Bendix Wheels and Brakes Division), and BFGoodrich Aerospace; these data were evaluated by the FAA.

Recently, NASCO Aircraft Brake, Inc., submitted, and the FAA evaluated, a series of dynamometer test data and analyses concerning Model 727 series airplanes equipped with Bendix brakes that are fitted with NASCO rotors installed in accordance with Supplemental Type Certificate (STC) SA3948NM. The FAA also witnessed some of the dynamometer tests, which were conducted in April 1992. Based on these data, the FAA has determined that the maximum brake wear limits currently recommended in the Component Maintenance Manuals for Model 727 series airplanes equipped with these specific brakes are not acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Further, these limits are only recommended values.

The FAA has determined that, in order to prevent loss of brake effectiveness during a high energy RTO, the following new maximum brake wear limits are necessary for Model 727 series airplanes equipped with Bendix brakes that are fitted with NASCO rotors installed in accordance with STC SA3948NM:

Bendix part No.	Boeing part No.	Maximum wear limit (inches)
2601182-5	10-61287-22	1.8
2601182-6	10-61287-23	1.7

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the inspection of landing gear brakes currently installed on these specific Model 727 series airplanes to determine the amount of wear, and replacement if the new wear limits are not met; and the incorporation of the specified new maximum wear limits for the specified brakes into the FAA-approved maintenance inspection program.

There are approximately 690 Boeing Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 375 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour.

The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) would be approximately $3,160 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,432,500. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 92-NM-117-AD.

Applicability: Model 727 series airplanes equipped with Bendix brakes fitted with NASCO rotors installed in accordance with Supplemental Type Certificate (STC) SA3948NM; and equipped with the brake part numbers identified in paragraph (a) of this AD; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, inspect brakes having the brake part numbers specified below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within this limit.

BENDIX BRAKES FITTED WITH NASCO ROTORS INSTALLED IN ACCORDANCE WITH STC SA3948NM

Bendix P/N	Boeing P/N	Maximum wear limit (inches)
2601182-5	10-61287-22	1.8
2601182-6	10-61287-23	1.7

(b) Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph (a) of this AD, into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 10, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-23078 Filed 9-22-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-309-88]

RIN 1545-AL84

Determination of Interest Expense Deduction of Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Rescheduling of time and location of public hearing on proposed regulations.

SUMMARY: This document reschedules the time and location of the public hearing on proposed regulations relating to the determination of the interest expense deduction of foreign corporations engaged in a trade or business within the United States.

DATES: The public hearing has been rescheduled for Friday, October 30, 1992, beginning at 1:30 p.m. Requests to speak, and outlines of oral comments to be presented at the public hearing must be received by Friday, October 9, 1992.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send all submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [INTL–309–88], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karl T. Walli of the Office of Associate Chief Counsel (International) at (202) 622–3870. Concerning the hearing, Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190, (not toll-free calls).

SUPPLEMENTARY INFORMATION: A rescheduling notice of public hearing appearing in the **Federal Register** on Thursday, July 9, 1992 (57 FR 30451), announced among other things, that the date of the public hearing was rescheduled to Friday, October 30, 1992, beginning at 10:00 a.m. in the Internal Revenue Service Auditorium. There has been a change in the time and location of the public hearing to be held on Friday, October 30, 1992. The hearing will be held on Friday, October 30, 1992. The hearing will be held on Friday, October 30, 1992, beginning at 1:30 p.m. in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments to be presented at the public hearing must be received by Friday, October 9, 1992.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 1 p.m.

In all other aspects, the details regarding the notice of proposed rulemaking and the public hearing will remain the same.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–23096 Filed 9–22–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Fish and Wildlife Resources

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously prepared amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter of July 21, 1992, (Administrative Record No. KY–1167) Kentucky resubmitted a proposed program amendment that completed the Kentucky promulgation process under Kentucky Revised Statutes (KRS) Chapter 13A. The amendment consists of proposed modifications to Kentucky Administrative Regulations (KAR) at 405 KAR 8:030, 8:040, 16:180 and 18:180 that relate to fish and wildlife resources. This proposed amendment replaces two earlier proposed program amendments Administrative Record No. KY–1119 submitted March 13, 1992, and Administrative Record No. KY–1059 originally submitted June 28, 1991. This proposed amendment also addresses comments by OSM sent to Kentucky in a letter dated April 8, 1992, (Administrative Record No. KY–1126).

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 8, 1992. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on October 5, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 28, 1992.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–2896

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940. If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter of July 21, 1992, (Administrative Record No. KY–1167) Kentucky resubmitted a proposed program amendment that completed the Kentucky promulgation process under

Kentucky Revised Statutes (KRS) Chapter 13A. This proposed amendment replaces two earlier proposed program amendments Administrative Record No. KY-1119 submitted March 13, 1992, and Administrative Record No. KY-1059 originally submitted June 28, 1991. This proposed amendment also addresses comments by OSM sent to Kentucky in a letter dated April 8, 1992, (Administrative Record No. KY-1126).

This resubmission is the same as the March 13, 1992, submittal except for the following changes made during the State regulation promulgation process. Three changes were made in response to OSM's April 8, 1992, issue letter. The changes are as follows:

1. Proposed 405 KAR 16:180 section 1(3) and 18:180 section 1(3), pertaining to the applicability of the performance standards for protection of fish and wildlife, were deleted. With these changes, the applicability of section 1 of these regulations will not be deferred to apply only to applications submitted on and after November 17, 1992.

2. In proposed 405 KAR 16:180 section 2(1)(a), (b) and 18:180 section 2(1)(a), (b) pertaining to the reporting of sightings of bald or golden eagle nests or threatened or endangered species, the word "permittee" was changed to "operator." With these changes, the operator will be responsible for reporting such sightings and the permittee will be responsible only if he is also the operator.

3. Our June 28, 1991, submittal contained the language "construct stream crossings so as not to adversely affect fish migration and aquatic habitat" at 405 KAR 16:180 section 1(2)(a)3 and 18:180 section 1(2)(a)3. The March 13, 1992, submittal did not contain the language because those subparagraphs were deleted prior to filing with the Legislative Research Commission on March 6, 1992; however, the succeeding subparagraph have now been renumbered (a)3 and (a)4.

Likewise, other changes were made during the State promulgation process. These changes are as follows:

1. 405 KAR section 8:030 2(12) and 8:040 section 2(12) were revised to make clear that a permit cannot be suspended for failure to submit certain updated information unless the Natural Resources and Environmental Protection Cabinet has requested the information and the permittee has failed or refused to timely submit it and has had an opportunity for a hearing.

2. 405 KAR 8:030 and 8:040, sections 20 and 36, were restructured for clarity by creating new subsections regarding the applicability date of these sections, in order to separate the applicability provisions from the decision criteria for certain types of amendments and revisions.

3. 405 KAR 8:040 section 20 was revised regarding the area for which fish and wildlife resource information is required. "Permit area and adjacent area" was changed to "area of surface operations and facilities and adjacent area, and areas subject to probable impacts from underground workings, including areas of probable subsidence." Since the "permit area" of underground mines encompasses a larger area in Kentucky regulations than in Federal regulations, this change was needed to make the area subject to fish and wildlife resource information requirements in Kentucky consistent with the area subject to fish and wildlife resource information requirements in Kentucky consistent with the area subject to such requirements in Federal regulations.

4. A cross-reference was corrected in 405 KAR 8:040 section 20(5)(a)3 and section 36(4)(a)3.

III. Public Comment Procedures

In accordance with the provisions of 30 CRF 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on October 5, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1293(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 13, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-23020 Filed 9-22-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 917

Kentucky Permanent Regulatory Program; Termination and Reassertion of Jurisdiction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter of July 21, 1992, (Administrative Record No. KY-1165) Kentucky submitted a proposed program amendment containing modifications to 405 Kentucky Administrative Regulations (KAR) 1:007, 3:007 and 7:030. The proposed program amendment pertains to the termination and reassertion of jurisdiction by Kentucky to regulate interim and permanent program minesites. These proposed regulation changes also respond to in part to OSM's 30 CFR part 732 letter dated February 8, 1990, (Administrative Record No. KY-967).

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 23, 1992. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on October 13, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on October 8, 1992.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-2896.

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828.

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

If a public hearing is held, its location will be: the Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233-2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter of July 21, 1992, (Administrative Record No. KY-1165) Kentucky submitted a proposed program amendment containing modifications to 405 Kentucky Administrative Regulations (KAR) 1:007, 3:007 and 7:030 regarding termination of jurisdiction. These proposed regulation changes also respond in part to OSM's 30 CFR part 732 letter dated February 8, 1990, (Administrative Record No. KY-967).

This proposed amendment modifies the termination and subsequent reassertion of the Natural Resources and Environmental Protection Cabinet's (the Cabinet) jurisdiction under the interim surface and underground coal mining regulations, 405 KAR Chapter 1 and 3. Beginning November 1, 1992, the jurisdiction of the Cabinet over the reclaimed site of a completed surface and underground coal mining and reclamation operation, or increment thereof, will automatically terminate upon the final decision of the Cabinet in accordance with 405 KAR 1:050 section 11 and 405 KAR 3:050 section 11 to release the performance bond fully. The Cabinet's decision to release the bond is not "final" for the purpose of termination of jurisdiction until the time to file administrative and judicial appeals of the bond release has expired and any appeals have been resolved. The Cabinet must later reassert its jurisdiction if the decision to release the bond is demonstrated to have been based upon fraud, collusion, or misrepresentation of a material fact.

This proposed amendment also modifies the termination and subsequent

reassertion of the Cabinet's jurisdiction under the permanent program surface coal mining regulations, 405 KAR Chapter 7–24. Beginning November 1, 1992, the jurisdiction of the Cabinet over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, will automatically terminate upon the final decision of the Cabinet in accordance with 405 KAR 10:040 to release the performance bond fully. The Cabinet's decision to release the bond is not "final" for the purpose of termination of jurisdiction until the time to file administrative and judicial appeals of the bond release has expired and any appeals have been resolved. The Cabinet must later reassert its jurisdiction if the decision to release the bond is demonstrated to have been based upon fraud, collusion, or misrepresentation of a material fact. The same criteria apply to termination and reassertion of jurisdiction over the reclaimed site of a completed coal exploration operation, except that the Cabinet's written determination that the site meets the requirements of 405 KAR chapter 7–24 and KRS chapter 350, rather than a bond release decision (bond is not required for coal exploration operations), is the basis for the termination of jurisdiction.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on October 8, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 13, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–23022 Filed 9–22–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 917

Kentucky Permanent Regulatory Program; Hearings

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter of July 28, 1992 (Administrative Record No. KY–1170), Kentucky submitted a proposed program amendment containing additions and modifications to 405 Kentucky Administrative Regulations (KAR) 7:001, 7:091, 7:092, 8:001, 10:001, 12:001, 12:020, 16:001, 18:001, 20:001 and 24:001. The proposed program amendment establishes new procedures for administrative hearings conducted under Kentucky Revised Statutes (KRS) chapter 350. The regulations are in response to the Kentucky Supreme Court's decision in *Franklin* v. *Natural Resources and Environmental Protection Cabinet*, Ky., 799 S.W.2nd 1 (1990). These proposed regulation changes also respond to OSM's 30 CFR part 732 letter dated November 14, 1991 (Administrative Record No. KY–1080).

The proposed amendment also amends various regulation sections by modifying and adding new definition terms.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 23, 1992. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on October 13, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on October 8, 1992.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–2896.

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828.

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter of July 28, 1992, (Administrative Record No. KY–1170) Kentucky submitted a proposed program amendment containing additions and modifications to 405 Kentucky Administrative Regulations (KAR) 7:001, 7:091, 7:092, 8:001, 10:001, 12:001, 12:020, 16:001, 18:001, 20:001 and 24:001. The proposed program amendment establishes new procedures for administrative hearings conducted under Kentucky Revised Statutes (KRS) Chapter 350. The regulations are in response to the Kentucky Supreme Court's decision in *Franklin* v. *Natural Resources and Environmental Protection Cabinet*, Ky., 799 S.W.2nd 1 (1990). These proposed regulation changes also respond to OSM's 30 CFR Part 732 letter dated November 14, 1991, (Administrative Record No. KY-1080).

The new hearing procedures are as follows: The proposed administrative regulation at 405 KAR 7:091 sets forth a comprehensive procedure for the conduct of all administrative hearings and conferences arising under KRS Chapter 350 and sets forth in detail the duties and responsibilities of the administrative hearing officer as well as time limitations for the submission of reports and recommended orders to the Secretary Natural Resources and Environmental Protection Cabinet (hereinafter Cabinet). In addition this administrative regulation sets forth the requirements for service of any document served in any administrative proceeding; prescribes standards of conduct for all parties participating in an administrative hearing and establishes basic procedures for the filing and retention of documents by the Office of Administrative Hearings. As noted in Section 1, with certain exceptions, this administrative regulation will apply to all administrative hearings and conferences arising under KRS chapter 350, including those cases pending at the time this administrative regulation is filed.

The proposed administrative regulation at 405 KAR 7:092 sets forth a comprehensive procedure for the conduct of all administrative hearings and conferences arising under KRS chapter 350. In particular this regulation establishes specific procedures by which a person adversely affected by a Cabinet's determination or enforcement action can petition for an administrative hearing or conference. In order to cover the full spectrum of possible challenges, this regulation sets forth specific procedures for *inter alia:* (1) Enforcement determinations, (2) penalty assessments, (3) bond release decisions, (4) any type permit issuance or denial determinations, (5) proceedings by which the Cabinet may initiate an administrative complaint for revocation, suspension and bond forfeiture of a surface mining and reclamation permit, (6) proceedings for temporary relief, and (7) pursuant to 1992 Acts, c. 304, and omnibus provision allowing petitions to be filed for determinations made under KRS chapter 350 not otherwise specifically covered.

In addition to these provisions at 405 KAR 7:092, the Cabinet, in conformity with 1992 Acts, c. 304, has proposed a provision establishing a conference process for informal review of a proposed civil penalty assessment at the Cabinet's Regional Offices. Upon issuance of the conference officer's report, further administrative challenges of the assessment is possible, provided the recommended amount is paid into the Cabinet's escrow account. Prepayment is required only for the contesting of the civil penalty. Other provisions of the regulation, however, make it emphatically clear that the fact of the violation can be contested at both the administrative and judicial levels without having to pre-pay the proposed

penalty assessment. Finally, there is a provision in this regulation which allows an individual to obtain a waiver of the pre-payment requirements on the grounds of inability to pay.

The proposed amendment modifies 405 KAR 12:020 and sets forth procedures for informal hearings where an immediate cessation of coal mining operations is directed by the Cabinet. This amended regulation also pertains to the suspension or revocation of surface mining and reclamation operations and provides for criteria under which a determination can be made that a surface mining and reclamation operation should be suspended or revoked for a pattern of violations subject to an administrative hearing as provided under 405 KAR 7:092. The remaining changes appearing in this amended regulation are technical in nature and do not have any substantive impact. This administrative regulation will be applicable in conjunction with other regulations to any determination that a surface mining operation should cease coal removal activities or that such an operation should be suspended or revoked pursuant to a determination that a pattern of violations exists or has existed.

This proposed amendment also amends 405 KAR chapter 7, 8, 10, 12, 16, 18, 20, and 24 to define additional terms used in the appropriate Chapters. The terms that are proposed additions or modifications include administrative hearings, final order, hearing officer, individual; industrial/commercial lands, initiating document, interim report office, person, and record.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on October 8, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 13, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-23023 Filed 9-22-92; 8:45 am]

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30 CFR Part 917

Kentucky Permanent Regulatory Program; Kentucky Revised Statutes Passed by the 1992 Kentucky General Assembly

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter of July 30, 1992, (Administrative Record No. KY-1171) Kentucky submitted a proposed program amendment containing seven bills affecting Kentucky Revised Statutes (KRS) chapter 350 and a resolution that were enacted by the 1992 Regular Session of the Kentucky General Assembly and signed into law by the Governor. This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 23, 1992. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on October 13, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on October 8, 1992.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-2896.

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828.

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233-2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter of July 30, 1992, (Administrative Record No. KY-1171) Kentucky submitted a proposed program amendment containing seven bills affecting Kentucky Revised Statutes (KRS) chapter 350 and a resolution that were enacted by the 1992 Regular Session of the Kentucky General Assembly and signed into law by the Governor. The contents of the seven bills and a Senate Joint Resolution are as follows:

House Bill (H.B.) 844

Section 1 of H.B. 844 creates a new section in KRS Chapter 350 (to be codified as KRS 350.063) which requires that prior to the issuance of a permit, if the operation will disturb any roads used as access to an oil or gas well or other oil and gas facility, the permit applicant shall certify that he has met and conferred with, or offered to meet and confer with, the well operator as to the disturbance.

Senate Bill (S.B.) 189

S.B. 189 raises the annual production limit for being a "small coal operator" from 200,000 tons per year to 300,000 tons per year.

This limit is revised at KRS 350.260 where it determines eligibility for several members of the Small Coal Operators Advisory Council; at KRS 350.450(4)(c) where it sets aside 20 percent of abandoned mine land reclamation work for small operators; and at KRS 350.705(1) (b), (c) where it determines eligibility for several members of the Kentucky Bond Pool Commission.

This limit is applicable only for these specific purposes under Kentucky law. The foregoing statutory revisions are not related to Kentucky's implementation under KRS 350.465(f) and 405 Kentucky Administrative Regulations (KAR) 7:080 of the Federal Small Operator Assistance Program at section 507(c) of SMCRA.

Senate Bill 190

S.B. 190 makes four unrelated revisions to existing statutes.

At KRS 350.010 it revises the definition of "surface coal mining operations" to exempt the extractions of 25 to 250 tons of coal as an incidental part of privately financed construction where the coal is donated to a charitable or educational organization for noncommercial use or noncommercial distribution.

Also at KRS 350.010 it deletes the definition of "fill bench," a term that dates back to 1966 and is not now used elsewhere in KRS Chapter 350 or in regulations pursuant thereto.

At KRS 350.130(1) it deletes a cross reference to subsection (2) that is held over from 1986 and before, when KRS 350.130(2) required payment of forfeited bond monies to the surface owner on severed estates if the surface owner performed the required reclamation. This payment provision was deleted in 1988, so that cross reference is now meaningless.

It repeals KRS 350.0281, a moratorium on promulgation of regulations, that by its own terms expired in July 1988.

Senate Bill 191

S.B. 191 makes several amendments to KRS chapter 350 for consistency with SMCRA as amended by Public Law 101-58, the "Abandoned Mine Reclamation Act of 1990."

Section 1 amends KRS 350.550(3) to include in Kentucky's abandoned mine reclamation fund interest credited to the fund pursuant to section 401(e) of SMCRA and allocated to Kentucky, and

amends KRS 350.550(4) to authorize expenditures for the purposes of section 507(c) of SMCRA (assistance to small operators).

Section 2 amends KRS 350.560 to extend abandoned mine lands (AML) eligibility to: (a) Sites affected from August 4, 1977, to May 18, 1982, where the bond was insufficient to reclaim the site, and (b) sites affected from August 4, 1977, to November 5, 1990, where the surety became insolvent and funds were insufficient to reclaim the site; authorizes use of up to 30 percent of Kentucky's annual AML grant allocation for restoration of water supply facilities affected by coal mining; and establishes certain priorities for the reclamation of such sites.

Section 3 creates a new section (to be codified as KRS 350.553) which, under certain conditions and priorities, expands the universe of purposes and sites on which AML annual grant funds can be spent after initial reclamation priorities are completed.

Section 4 creates a new section (to be codified as KRS 350.597) which establishes a special trust fund that may receive up to 10 percent of the annual AML funds granted to Kentucky, and the deposited sums and accrued interest may be used for the priorities in KRS 350.555 after September 30, 1995, or for acid mine drainage abatement and treatment in accordance with Section 402(g)(7) of SMCRA.

Senate Bill 298

S.B. 298 relates primarily to definitions.

It amends the definition of "operator" at KRS 350.010 to parallel the definition at section 701 of SMCRA, narrowing the definition from a person engaged in surface coal mining and reclamation operations, to a person who removes or intends to remove more than 25 tons of coal from the earth by coal mining within 12 consecutive calendar months in any one location.

It defines "permit applicant" or "applicant," and "permittee," like their SMCRA definitions.

The bill revises the usage of "applicant," "operator," "permittee," and "person" in several sections throughout KRS Chapter 350 for consistency of use and to more clearly identify the entities that are intended to be subject to the particular statutory requirements.

Further, the bill amends KRS 350.130(1) to provide that an institution providing a bond may, at any stage of the reclamation process, pay the remaining encumbered balance of the bond and thereby discharge its obligation under the bond.

Senate Bill 318

S.B. 318 relates to conferences, hearings, civil penalties, and appeals.

Section 1 of the bill (to be codified as KRS 350.0301) establishes requirements for hearings held under KRS Chapter 350; directs the Natural Resources and Environmental Protection Cabinet (the Cabinet) to promulgate administrative regulations for procedures for formal and informal hearings; requires administrative regulations to provide for the assessment and payment of civil penalties, including payment of a proposed penalty assessment into escrow prior to a formal hearing on the amount of the assessment, and providing for a waiver of the payment into escrow for an individual who demonstrates inability to pay the penalty into escrow; and authorizes the Cabinet to promulgate regulations for procedures for holding administrative conferences.

Section 2 of the bill (to be codified as KRS 350.0305) provides that any person aggrieved by a determination of the Cabinet under KRS (Chapter 350 may demand a hearing, and establishes times for requesting and holding a hearing; and authorizes an appeal to Franklin Circuit Court by a person aggrieved by a final order resulting from a hearing, and establishes procedures for the filing and review of such appeals.

Section 3 clarifies KRS 350.028(4), directing the Cabinet to issue an order to a permittee to show cause why the permit should not be suspended or revoked, and to provide an opportunity for a hearing, when the Cabinet determines that a pattern of violations exists or has existed and the violations are willfully caused by the permittee or are caused by the unwarranted failure of the permittee to comply.

Section 4 revises cross references and makes other technical corrections to KRS 350.090.

Section 5 deletes KRS 350.255(2) for consistency with other sections of the bill.

Senate Bill 381

S.B. 381 relates to demonstration of restoration of soil productivity on mined prime farmlands.

Section 1 (to be codified as KRS 350.480) requires the Cabinet to allow the use of a soil test to determine if soil productivity on mined prime farmlands has been restored to levels that would allow average crop yields to equal or exceed the average yield of the reference crops, provided the methods are approved by OSM.

Section 2 (to be codified as KRS 350.485) requires the Cabinet to encourage research and data collection to determine the validity of using a soil test or other simplified procedure to determine if mined prime farmland soils will meet yield requirements.

Senate Joint Resolution (S.J.R.) 108

S.J.R. 108 takes several actions related to the same subject matter as S.B. 381.

Section 1 provides that the Department for Surface Mining Reclamation and Enforcement (DSMRE) be directed to promulgate administrative regulations, procedures, experimental practices, or other methods to encourage a simplified procedure for determining soil restoration after mining.

Section 2 provides that University of Kentucky researchers and any others involved be commended for research that has been carried out which could support the substitution of a soil test for the present complicated procedure used to show soil restoration.

Section 3 provides that the University of Kentucky and other entities be encouraged to continue research to determine alternatives to present soil restoration tests to include a simple soil test.

Section 4 provides the OSM and other Federal, State, and private organizations be encouraged to fund such research and that OSM be encouraged to accept research data on the subject and to approve alternative procedures for determining soil restoration on mined prime farmlands.

Section 5 provides that this resolution be sent to DSMRE, the Federal OSM, the University of Kentucky, and Interstate Mining Compact Commission.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written Comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on October 8, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 13, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–23021 Filed 9–22–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 57 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to revise one rule in the Ohio Administrative Code to change the locations at which applicants must file copies of permit applications, revisions, and renewals in order to allow public inspection of those documents.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 8, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on October 5, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 30, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation Enforcement, Columbus Field Office, South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.
Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated May 12, 1992 (Administrative Record No. OH-1698), Ohio submitted proposed Program Amendment Number 57. In this amendment, Ohio proposed to change the locations at which applicants must file copies of permit applications, revisions, and renewals in order to allow public inspection of those documents. Ohio proposed to revise Ohio Administrative Code (OAC) 1501:13-5-01 paragraph (A)(4)(a) to allow filing of permit documents at the appropriate district office of the Ohio Department of Natural Resources, Division of Reclamation (Ohio) or the county office of the Soil Conservation Service of the United States Department of Agriculture (SCS). If neither Ohio nor SCS maintains an office in the county where the mining is proposed to occur, the amendment would have provided that the applicant shall file a copy of the application with the county recorder of that county.

OSM announced receipt of proposed Program Amendment Number 57 in the July 14, 1992, **Federal Register** (57 FR 31163), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on August 13, 1992. The public hearing scheduled for August 10, 1992, was not held because no one requested an opportunity to testify.

By letter dated June 9, 1992 (Ohio Administrative Record No. OH-1711), the SCS provided comments on proposed Program Amendment Number 57. SCS recommended that permit applications be filed at offices of the Soil and Water Conservation Districts (SWCD) rather than at the offices of the SCS. SCS noted that SCS programs and activities are carried out through the local SWCD offices.

In response to the SCS comment, Ohio revised Program Amendment Number 57 and resubmitted the amendment by letter dated July 22, 1992 (Administrative Record No. OH-1760). In this revised amendment, Ohio is proposing to change the priority order in which the three filing locations are listed at OAC 1501:13-5-01 paragraph (A)(4)(a). The revised paragraph would now read:

(a) The applicant shall make a full copy of the complete application for a permit, a significant permit revision, or a permit renewal available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the Chief at the Division of Reclamation district office responsible for inspection of the proposed operation, or if no such office is maintained in the county where the mining is proposed to occur, the applicant shall file a copy of the application with the county recorder of that county or at the office of the Soil Conservation Service of the United States Department of Agriculture located in the county where the mining is proposed to occur.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on September 30, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons schedule to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made a part of the Administrative Record.

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments

since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 20, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–23024 Filed 9–22–92; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 Rate and ZIP+4 Barcoded Rate Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This provides notice that the Postal Service plans to extend the tentative effective date on proposed changes to preparation requirements for automation rate mailings. This tentative effective date extension will provide mailers with more time to comply with DMM Chapter 5 preparation requirements.

ADDRESSES: Written questions should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–5903.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn M. Martin, (202) 268–5176.

SUPPLEMENTARY INFORMATION: On May 7, 1992, (57 FR 19698–19701) the Postal Service published a proposal to amend the Domestic Mail Manual (DMM) to eliminate the provisions on the preparation of ZIP+4 and ZIP+4 Barcoded rate letter-size mailings in DMM chapters 3, 4, and 6; and require the preparation of First-, second-, and third-class letter-size ZIP+4 and ZIP+4 Barcoded rate mailings under one of the options in DMM chapter 5 (57 FR 19698).

The proposed rule primarily dealt with presortation and documentation requirements. It did not affect current mailpiece preparation rules already contained in DMM Chapter 5. The proposed effective date for these changes was December 20, 1992.

In the near future, a final rule will be published. In order to give mailers time to comply with DMM chapter 5 preparation requirements, the proposed December 20, 1992, effective date is being changed tentatively to March 21, 1993, except for the prohibition on 1-foot trays in tray-based mailings.

In addition, the proposed effective date for the requirement that 100% of the pieces in the 5-digit portion of a tray-based mailing prepared under DMM chapter 5 must be ZIP+4 barcoded or delivery point barcoded will also be moved to March 21, 1993. (Package-based mailings prepared under DMM Chapter 5 must currently meet this requirement.) The proposed effective date for the prohibition on 1-foot trays in tray-based mailings will remain December 20, 1992, as previously announced. (The requirement for 2-foot trays is already in effect for package-based preparation.)

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92–23069 Filed 9–22–92; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–4508–9]

Public Meeting on the Rulemaking for the Pulp, Paper, and Paperboard Industry

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA is announcing a public meeting prior to developing regulations that will apply to the pulp, paper, and paperboard industry. The regulations are scheduled to be proposed in October 1993, and EPA plans to sponsor several public meetings prior to proposal. The public meetings prior to proposal are intended to be a forum in which EPA can report on the status of regulatory development and in which interested parties can provide information and ideas on key technical, scientific, and other issues.

DATES: The public meeting will be held on September 30, 1992, from 1:30 pm to 5:30 pm.

ADDRESSES: The meeting will be held at the J.W. Marriott Hotel, 1313 Pennsylvania Avenue NW., Washington, DC in Salon F. Seating will be available for approximately 100 attendees. For further information by mail, contact Wendy Smith at, WH–552, Office of Science and Technology, US EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wendy Smith at (202) 260–7184.

SUPPLEMENTARY INFORMATION:

EPA is developing effluent limitations guidelines and standards under authority of the Clean Water Act and maximum achievable control technology standards under authority of the Clean Air Act. The Agency plans to proceed with these rulemakings on a joint basis and to propose water and air standards simultaneously.

The first public meeting will include a discussion of the public meeting process and a schedule for subsequent public meetings. Other agenda topics for the

first public meeting include a summary of data collection activities, plans for data analysis, and preliminary plans for technology-based regulatory options.

INSPECTION OF DOCUMENTS: Documents relating to the topics mentioned above and more detailed agenda will be available at the meeting.

Dated: September 16, 1992.

James Hanlon,

Acting Director, Office of Science and Technology.

[FR Doc. 92-22941 Filed 9-22-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[CA-13-1-5381; FRL-4509-9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the South Coast Air Quality Management District (South Coast AQMD) on January 4, 1991. The California Air Resources Board (CARB) submitted these revisions to EPA on May 13, 1991. The revisions concern Rule 1153—Commercial Bakery Ovens, which control organic compounds from ovens in commercial bakeries. EPA has evaluated Rule 1153 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k)(3) and 301(a) of the CAA because the rule does meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before October 23, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Chief, Southern California and Arizona Rulemaking Section (A-5-3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765-4182

FOR FURTHER INFORMATION CONTACT: Christine D. Vineyard, Southern California and Arizona Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1195, FTS: 744-1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the Los Angeles-South Coast Air Basin Area (LA-SC Area). 43 FR 8964; 40 CFR 81.305. Because the LA-SC Area was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. The LA-SC Area did not attain the ozone standard by the approved attainment date. On May 26, 1988 EPA notified the Governor of California that the South Coast AQMD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in EPA's pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. South Coast is classified as extreme;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on May 13, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for South Coast AQMD's Rule 1153, Commercial Bakery Ovens. This submitted rule was found to be complete on July 10, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51, appendix V,[3] and is being proposed for limited approval and limited disapproval.

Rule 1153 controls the emission of volatile organic compounds (VOCs) from commercial bakery ovens. VOCs contribute to the production of ground level ozone and smog. Rule 1153 is a new rule which has been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for South Coast AQMD's Rule 1153.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among the provisions of the CAA is the requirement that a VOC rule must, at a minimum, provide for the implementation of the RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying

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[1] Among other things, the pre-amended guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The LA-SC Area retained its nonattainment designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the Amendments. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act to be codified at 40 CFR part 41, appendix V. See 56 FR 42216 (August 26, 1991).

requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). For some source categories, such as commercial bakery ovens, EPA did not publish a CTG. In such cases, the District will make a determination of what controls are required to satisfy the RACT requirement, by reviewing the operations of facilities with the affected source category. In that review, the District considers the technological and economic feasibility of the proposed controls. Additionally, for both CTG and non-CTG rules, the District may rely on EPA policy documents, such as the Blue Book, to ensure that the adopted VOC rules are fully enforceable and strengthen or maintain the SIP.

South Coast AQMD's Rule 1153 is a new rule which was adopted to control emissions of VOCs from commercial bakery ovens. The new rule provides provisions for:

- Definitions to clarify the rule.
- 70 percent emissions reduction for bakery ovens with a base year average daily VOC emissions of 50 pounds or more, but less than 100 pounds, by July 1, 1993.
- 95 percent emissions reduction for bakery ovens with a base year average daily VOC emissions of 100 pounds or more by July 1, 1994.
- Daily recordkeeping for day-to-day operations.

EPA has evaluation South Coast's submitted Rule 1153 for consistency with the CAA, EPA regulations, and EPA policy and has found that, to a large extent, it meets these requirements. This has resulted in a clear, enforceable rule.

Although the approval of South Coast's Rule 1153 will strengthen the SIP, this rule still contains a deficiency which was required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. The rule allows APCO discretion in selection an appropriate test method for determination of VOC emissions. Because of this deficiency, the rule is not approvable pursuant to section 182(a)(2)(A) of the CAA because it is not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiency, EPA cannot grant full approval of this rule under section 110(k)(3) and Part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of South Coast's submitted Rule 1153 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains a deficiency that has not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available for the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301, and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparations of a regulatory flexibility analysis and would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301, and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administration under the procedures published in **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements for Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a requested for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, intergovernmental Relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 15, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23073 Filed 9–22–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[CA 12-9-5574; FRL-4509-8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of rules submitted to revise the California State Implementation Plan (SIP); the rules were adopted by the Bay Area Air Quality Management District (BAAQMD) on July 11, 1990 and the South Coast Air Quality Management District (SCAQMD) on December 7, 1990. The California Air Resources Board (ARB) submitted these revisions to EPA on April 5, 1991 and May 13, 1991, respectively. These revisions concern BAAQMD Rule 8–24, Pharmaceutical and Cosmetic Manufacturing Operations and SCAQMD Rule 1103, Pharmaceuticals and Cosmetics Manufacturing Operations, both of which control the emissions of volatile organic compounds (VOCs) from solvents used in the manufacturing of pharmaceuticals and cosmetics. EPA has evaluated the revisions to BAAQMD Rule 8–24 and SCAQMD Rule 1103 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990, (CAA) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k)(3) and 301(a) of the CAA because the rules do not meet the part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before October 23, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Rulemaking I Section (A–5–4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking I Section, Air and Toxics Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184, FAX: (415) 744–1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962), EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended CAA) that included the San Francisco Bay Area (SFBA) and the South Coast Air Basin Area (SCABA). 43 FR 8964; 40 CFR 81.305. Because the SFBA and the SCABA were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested and EPA approved under section 172(a)(2) of the 1977 Act, and extension of the attainment date to December 31, 1987. 40 CFR 52.238. SFBA and SCABA did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the SFBA and the SCABA portions of the California State Implementation Plan (SIP) were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. Sections 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991, for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Bay Area is classified as moderate and South Coast is classified as extreme;[2] therefore, these two areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on April 5, 1991 and May 13, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for BAAQMD Rule 8–24 and SCAQMD Rule 1103. These submitted rules were found to be complete on May 21, 1991 and July 10, 1991, respectively, pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51, appendix V,[3] and are being proposed for limited approval and limited disapproval.

BAAQMD Rule 8–24 and SCAQMD Rule 1103 control the emissions of volatile organic compounds (VOCs) from the solvents used in the manufacture of pharmaceuticals and cosmetics. VOCs contribute to the production of ground level ozone and smog. BAAQMD Rule 8–24 and SCAQMD Rule 1103 were originally adopted as part of BAAQMD's and SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for BAAQMD's Rule 8–24 and SCAQMD's Rule 1103.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1.

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] BAAQMD and SCAQMD retained their designation and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since amended the completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

Among the provisions of the CAA, is the requirement that a VOC rule must, at a minimum, provide for the implementation of reasonably available control technology (RACT) for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Techniques Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to BAAQMD Rule 8-24, Pharmaceutical and Cosmetic Manufacturing and SCAQMD Rule 1103, Pharmaceuticals and Cosmetics Manufacturing Operations, is entitled, "Control of Volatile Organic Emissions from the Manufacture of Synthesized Pharmaceutical Products", No. EPA-450/2-78-029. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD's submitted Rule 8-24, Pharmaceutical and Cosmetic Manufacturing Operations, includes the following revisions from the current SIP rule:

—An exemption for ethylene oxide sterilizers has been added. Ethylene oxide emissions are subject to more stringent standards in a separate rule.
—Standards have been added to the rule which require closed containers for cleanup solvent, solvent-soaked rags, and paper.
—Several past compliance dates have been deleted. A compliance schedule has been added for facilities affected by the "small user" exemption.
—Recordkeeping requirements have been added which require records to be kept on a daily basis and retained for 25 months for those sources seeking the "small user" exemption.
—Recordkeeping requirements have also been added for sources not requiring air pollution abatement equipment.
—Test methods have been specified for measuring Reid Vapor Pressure and measuring emissions from incineration.

SCAQMD's submitted Rule 1103, Pharmaceuticals and Cosmetics Manufacturing Operations, includes the following revisions from the current SIP rule:

—A definition for exempt compounds has been added.
—The definition for volatile organic compounds has been revised.
—Recordkeeping requirements have been added which require sources to maintain records of the type and volume of volatile organic compound containing materials used in maintenance and cleanup.
—Test methods for control device efficiency have now been specified.
—The effective dates section has been removed since the compliance date has passed.

EPA Proposed Action

EPA has evaluated BAAQMD's Rule 8-24 and SCAQMD's Rule 1103 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules.

Although the approval of BAAQMD Rule 8-24 and SCAQMD Rule 1103 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. The remaining deficiencies for BAAQMD Rule 8-24 are:

—Air pollution control officer (APCO) discretion in the approval of an alternate emission control device with reduces emissions by at least as much as a surface condenser.
—Lack of recordkeeping for key parameters for monitoring abatement device performance.
—Deficient test method for incineration.

The remaining deficiencies for SCAQMD Rule 1103 are:

—APCO discretion in the approval of an equivalent control device which reduces emissions by at least as much as a surface condenser.
—APCO discretion in the approval of an equivalent control method for collecting VOC emissions which exhaust to a carbon adsorber.
—APCO discretion in the approval of a more effective control system for storage tanks.
—Lack of recordkeeping for key parameters for monitoring abatement device performance.
—Records are not required to be kept on an emissions per day basis to coincide with the exemption.
—A test method for measuring vapor pressure is not specified.

A detailed discussion of each rule's deficiencies can be found in the Technical Support Documents for BAAQMD Rule 8-24 (June 19, 1992) and SCAQMD Rule 1103 (June 19, 1992), which are available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD's submitted Rule 8-24 and SCAQMD's submitted Rule 1103 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and off-sets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and

environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impost any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administration under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 15, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23074 Filed 9–22–92; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 57, No. 185
Wednesday, September 23, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Steen Creek Salvage Timber Sale, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: A notice of intent to prepare an Environmental Impact Statement for the proposed Steen Creek, Landore, and Deep/Copper Timber Sales was published in the **Federal Register** August 3, 1990, (Vol. 55, Issue No. 150, Page 31617).

That notice is hereby revised to show that the Environmental Impact statement will not include the analysis for the Steen Creek Salvage Timber Sale. In August 1992, the 17,500 acre Windy Ridge fire burned and killed the timber on approximately 6,000 acres of the Payette National Forest. Because of rapidly deteriorating timber, Payette National Forest Acting Supervisor Gary E. Sayer has decided to address the Steen Creek Salvage Timber Sale in a separate Environmental Impact Statement.

Rapid drying of the fire-killed trees will result in cracking or "checking," especially in smaller diameter trees. This checking will quickly reduce their utilization as sawlogs. If salvage activities are not initiated in the next year, currently dead trees will no longer be sound for harvest. If salvage activities are concluded next year, dead timber stands would be planted in 1994 before brush and grass species dominate the sites. Potential exists to lose significant value in terms of salvage volume and long term growth and yield by delaying reforestation.

No other revisions are made.

The Forest Service will prepare an environmental impact statement (EIS) for the proposed Steen Creek Salvage Timber Sale, Council Ranger District, Payette National Forest, Idaho. The proposed salvage sale would construct roads and harvest dead timber within a portion of the Indian Creek roadless area that the Forest Plan allocated to timber management.

A range of alternatives will be considered for the proposal—from taking no action to harvesting about 15 million board feet of timber.

The agency has done some initial scoping for the analysis, but they invite additional comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (draft EIS).

DATES: Comments on the scope of the analysis must be received by October 23, 1992.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Tracy Beck, Steen Creek Salvage Team Leader, Council Ranger District, P.O. Box 567, Council, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Tracy Beck, (208) 253–4215.

SUPPLEMENTARY INFORMATION: The Payette National Forest Plan (1988) provides Forestwide direction for management of the resources of the Payette National Forest, including roadless areas. The environmental impact statement for the Forest Plan (1988) analyzed a range of development and non-development alternatives for the Indian Creek roadless area. The Forest Plan allocates the entire area to timber management and assigns it to Management Area 3.

As well as Forestwide direction, the Forest Plan gives specific direction for Management Area 3. It requires integrated management to meet the desired future condition of the Forest for multiple resources including recreation, range, soil and water, fish, wildlife, timber, and fire/fuels.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and review of the draft EIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and responsibilities.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat.

The Forest Service has conducted some preliminary scoping on the proposed salvage timber sale and has identified preliminary issues and concerns. They include the following:

—How will recreation use be affected?
—How will visual quality be affected?
—How will the Indian Creek roadless area be affected?
—How will wildlife be affected?
—How will soil productivity be affected?
—How will water quality and fish habitat in Indian Creek be affected?

The second major opportunity for public input is the draft EIS. The draft EIS will analyze a range of alternatives to the proposed action, including the no action alternative and alternative amounts of road building and salvage timber harvesting. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in December 1992. EPA will then publish a notice of availability of the draft EIS in the **Federal Register**. Public comments are invited.

The public comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is important that those interested in the management of the affected areas participate at that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond in the final EIS.

Comments on the draft EIS will be analyzed and considered by the Forest Service in preparing the final EIS, which is scheduled to be completed in March 1993. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental

consequences discussed in the final EIS, and applicable laws, regulations, and policies in making the decision and stating the reasons for it in the Record of Decision.

The Forest Service intends to exclude this decision from appeal pursuant to 36 CFR 217.4(a)(11), for the salvage harvest and restoration of the Steen Creek analysis area.

Gary E. Sayer, Acting Forest Supervisor of the Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Dated: September 16, 1992.

Jerry D. Greer,

Acting Forest Supervisor.

[FR Doc. 92-23037 Filed 9-22-92; 8:45 am]

BILLING CODE 3410-11-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in China

September 18, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted variously for shift added, carryforward, and shift subtracted.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 18, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 18, 1992, you are directed to amend further the directive dated November 22, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and China:

Category	Adjusted twelve-month limit [1]
200	624,031 kilograms.
219	539,806 square meters.
237	1,668,975 dozen.
239	2,784,388 kilograms.
300/301	2,288,582 kilograms.
335	379,909 dozen.
342	262,200 dozen.
351	472,866 dozen.
359-V [2]	821,533 kilograms.
360	7,026,997 numbers, of which not more than 4,703,501 numbers shall be in category 360-P [3].
435	25,055 dozen.
615	23,274,512 square meters.
635	593,382 dozen.
642	301,342 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 359-V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[3] Category 360-P: only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-23106 Filed 9-22-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

September 17, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6719. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for special shift and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58557, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 17, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 24, 1992, you are directed to amend further the directive dated November 15, 1991, to adjust the limits for the following categories, as provided under the terms of the bilateral agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990:

Category	Adjusted twelve-month limit [1]
Group II 237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [2], 359–H/659–H [3], 359–O [4], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [5], 659–O [6], 831–844 and 846–859, as a group.	782,550,000 square meters equivalent.
Sublevels in Group II	
239	5,202,636 kilograms.
340	1,228,458 dozen.
352/652	2,626,281 dozen.
443	42,186 numbers.
445/446	139,314 dozen.
447/448	20,589 dozen.
636	343,041 dozen.
640	958,276 dozen of which not more than 284,527 dozen shall be in Category 640–Y [7].
641	773,921 dozen of which not more than 256,635 dozen shall be in Category 641–Y [8].
659–S [9]	1,729,838 kilograms.
835	17,712 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[5] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[6] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[7] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[8] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–23105 Filed 9–22–92; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Request for Approval of Collection of Information: Compliance Survey of Manufacturers, Labelers, and Repackagers of Drugs Containing Diphenhydramine

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval through September 30, 1993, of a collection of information in the form of a survey of firms which manufacture, label, or repackage oral dosage drugs containing diphenhydramine. The purpose of this survey is to assess the over-all level of compliance with requirements for child-resistant packaging of oral dosage forms of drugs which are intended for human use and which contain more than 66 milligrams of diphenhydramine base in a single package. The regulation requiring child-resistant packaging for drugs containing diphenhydramine is codified at 16 CFR 1700.14(a)(17). The standard for child-resistant packaging is codified at 16 CFR 1700.15. These regulations were issued under provisions of the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*) to protect young children from serious personal injury or illness from ingesting or handling toxic drugs and other hazardous household substances.

The survey of manufacturers, labelers, and repackagers of drugs containing diphenhydramine is part of a comprehensive plan to assess compliance by regulated industries with 70 rules enforced by the Commission. The Commission will use the information obtained from the survey of manufacturers, labelers, and repackagers of drugs containing diphenhydramine to establish priorities for enforcement of mandatory standards and regulations which the Commission administers. Information obtained from this survey will also be used to support appropriate legal action against any firm which has distributed prepackaged drugs containing diphenhydramine not in compliance with applicable requirements for child-resistant packaging.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207

Title of information collection: Diphenhydramine Compliance Survey.

Type of request: New request.

Frequency of collection: One time.

General description of respondents: Manufacturers, labelers, and repackagers of oral dosage drugs containing diphenhydramine.

Estimated number of respondents: 50.

Estimated average number of hours per respondent: 8.

Estimated number of hours for all respondents: 400.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Donald Arbuckle, Desk

Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 18, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–23102 Filed 9–22–92; 8:45 am]

BILLING CODE 6355–01–M

Announcement of Seminars on New Reporting Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of seminars.

SUMMARY: The Consumer Product Safety Commission, in cooperation with the American Bar Association's Section of Tort and Insurance Practice, is sponsoring two seminars on "Consumer Safety and Industry Compliance with the New Reporting Requirements of the Consumer Product Safety Commission: A Blueprint for Cooperation in the '90s." The seminars will be held on October 1–2 in the Ritz Carlton Tyson's Corner Hotel in McLean, Virginia, and on November 12–13 in the Hotel del Coronado in San Diego, California.

FOR FURTHER INFORMATION CONTACT: Eric C. Peterson, Executive Director, Telephone 301–504–0550 or Lawrence Herman, Special Assistant to the Chairman, Telephone 301–504–0500, Consumer Product Safety Commission, Washington, DC 20207–0001.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Improvement Act of 1990 Public Law 101–608, 15 U.S.C. 2064, 2084, imposed new requirements on manufacturers, distributors, importers, and retailers of consumer products to report to the Commission products which fail to comply with Commission regulations, which fail to comply with certain voluntary standards, which create an unreasonable risk of serious injury or death, which contain a defect which could create a substantial product hazard, or which give rise to repeated product liability judgments or settlements in favor of plaintiffs. The Commission has issued implementing regulations for these requirements in the **Federal Register** at 57 FR 34222 and 57 FR 34230, both on August 4, 1992, and issued a correction to the regulations at 57 FR 39597, September 1, 1992. The seminars will address the new requirements and related issues and are intended to assist manufacturers, distributors, importers, and retailers of consumer products, and their counsel, in complying with the new requirements. Registration information is available by calling 1–800–964–4253.

Dated: September 16, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–22992 Filed 9–22–92; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare a Draft Programmatic Environmental Impact Statement (DEIS) for the South Florida Limestone Mining, Fresh Water Lake Belt Plan, Dade County, FL

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, along with certain cooperating agencies, intends to prepare a Draft Programmatic Environmental Impact Statement on the feasibility of implementing the South Florida Limestone Mining, Fresh Water Lake Belt Plan, Dade County, Florida.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft EIS can be answered by: William Porter, U.S. Army Engineer District, P.O. Box 4970, Jacksonville, Florida 32232–0019, Telephone (904) 232–2259.

SUPPLEMENTARY INFORMATION:

a. A coalition of south Florida limestone rock mining companies has developed a concept of mining and mitigation which could impact approximately 54,000 acres of wetlands by the year 2050 in northwest Dade County. The magnitude and duration of the plan is such that the U.S. Army Corps of Engineers determined that a programmatic EIS should be prepared for the entire plan pursuant to Section 404 of the Clean Water Act.

b. Scoping: The scoping process as outlined by the Council on Environmental Quality will be utilized to involve Federal, State, and local agencies; and other interested persons and organizations. A scoping letter will be sent to interested Federal, State, and local agencies requesting their comments and concerns regarding issues they feel should be addressed in the EIS. Interested persons and organizations wishing to participate in the scoping process should contact the Corps of Engineers at the address above. Significant issues anticipated include concern for: local groundwater recharge, water quality, recreation, wetlands, fish and wildlife, and land use. Public scoping meetings will be held in the near future, the exact location, dates, and times will be announced in public notices and local newspapers.

c. It is estimated that the DEIS will be available to the public in November 1993.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–23003 Filed 9–22–92; 8:45 am]

BILLING CODE 3710–AJ–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 8 and 9 October 1992.

Time: 0800–1700 Hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's ad hoc study group "The Space Systems and Future Army Operations" will meet for discussions focussed on current operational concept and the Army Long Range Plan for Space. Additionally, operational commands and TRADOC schools will present lessons learned in Operations Desert Shield/Storm. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. ASB Administrative Office, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–23004 Filed 9–22–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Subject Area Committee #1 of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: Wednesday, September 30, 1992.

TIME: 3 P.M. (ET).

LOCATION: National Assessment Governing Board, 800 North Capitol Street, Washington, DC, Suite 825.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, 20002–4233, Telephone: (202) 457–6936.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Subject Area #1 Committee of the National Assessment Governing Board will meet September 30, 1992 from 3 p.m. until 4:30 p.m. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The purpose of this meeting is to take final action on the 1993 U.S. history and geography field test items for NAEP.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: September 17, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92–23010 Filed 9–22–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Environmental Compliance Training Courses

September 17, 1992.

The Office of Pipeline and Producer Regulation (OPPR) will present environmental compliance training courses. These courses are being held so that the regulated pipeline industry and interested individuals and/or organizations can gain a better understanding of the requirements and objectives of the Commission in ensuring compliance with all environmental certificate conditions and meeting its responsibilities under the National Environmental Policy Act and other laws and regulations. Interested organizations are urged to take advantage of these courses.

Course discussion will include the following topics:

- Objectives and requirements of FERC construction orders;
- Preconstruction clearance filings and obtaining Notices to Proceed;
- Compliance with § 2.69 and § 157.206(d); and
- Environmental Inspection as it relates to:
- Right-of-way preparation;
- General erosion control;
- Right-of-way restoration;
- Topsoil segregation;
- Stream and river crossings;
- Wetland construction;
- Residential area construction;
- Construction and restoration in arid climates;
- Cultural resources/Paleontology; and
- Right-of-way maintenance.

The training courses will be given in four regional locations identified below to ensure broad participation. Details on location and time may be obtained from Mr. John Leiss at the number listed below.

Minneapolis, MN.....	November 4 and 5, 1992.
Houston, TX.....	January 12 and 13, 1993.
Pittsburh, PA.....	March 16 and 17, 1993.
Denver, CO.....	April 20 and 21, 1993.

The course is designed for individuals directly involved in environmental performance such as environmental and right-of-way inspectors, and construction contractor personnel. Training will be conducted by Ebasco Environmental (Ebasco), the Commission's environmental support contractor, under the direction of the staff of OPPR. There will be no registration fee.

Any organization interested in participating in this course should contact Mr. John Leiss at (202) 208–1106 or Mr. George Willant of Ebasco at (617) 451–1201. Contact should be made within 15 days of publication of this notice for the first session and within 30 days of the three remaining course dates. Respondents will subsequently be contacted by Ebasco staff to determine specific areas of interest and anticipated level of workshop attendance.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23015 Filed 9–22–92; 8:45 am]

BILLING CODE 6717–01–M

Financial Assistance Award Intent To Award Grant to Northwest Missouri State University

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to NMSU under Grant No. DE–FG01–92CE50350. The proposed grant would provide Government funding in the estimate amount of $105,244 to Northwest Missouri State University (NMSU) to investigate the effects of the commerically available ethanol and ethanol/gasoline and to identify problems of the blend in small spark-ignition engines. NMSU will provide $8,420 in funding and various motorcycle manufacturers will provide $21,000 in funds. The total of this grant is estimated to be $134,664. The information learned through this grant can be used to identify the use of Gasohol in the small engine sector and reduce the need of fossil.

In accordance with 10 CFR 600.14(e)(1), it has been determined that the application submitted by NMSU is meritorious based on the general evaluation required by 10 CFR 600.14(d)

and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The application proposes a unique energy saving technology which has been recommended by the National Institute of Standards and Technology (NIST). Dr. John C. Phoades, the principal investigator, has focused on small engine research with a variety of fuels and has many years of experience at NMSU developing and testing alternative fuels. His unique knowledge and experience is critical to the project. The Energy-Related Inventions Program (ERIP) has been structured, since its beginning in 1975, to operate without competitive solicitations, because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The proposed technology has a strong possibility of allowing for future reductions in the United States dependence on foreign oil. The program has never issued and has no plans to issue competitive solicitation.

The anticipated term of the proposed grant shall be 24 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: Department of Energy, Office of Placement and Administration, ATTN: John Windish, PR–322.3, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B" Office of Placement and Administration.

[FR Doc. 92–23100 Filed 9–22–92; 8:45 am]

BILLING CODE 6450–01–M

DOE Response to Recommendation 92–4 of the Defense Nuclear Facilities Safety Board Concerning Conceptual Design of the Multi-Function Waste Tank Facility at the Hanford Site

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 92–4 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on July 14, 1992 (57 FR 31177), concerning conceptual design of the Multi-Function Waste Tank Facility to be constructed at the Hanford Site in the State of Washington.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before October 23, 1992.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Leo P. Duffy, Assistant Secretary for Environmental Restoration and Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20004.

Issued in Washington, DC, on September 17, 1992.

Mario Fiori,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Secretary of Energy

Washington, DC 20585

August 28, 1992.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

Dear Mr. Conway: Your letter of July 6, 1992, forwarded the Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 92–4 regarding the Multi-Function Waste Tank Facility (MWTF) at Hanford. The DNFSB recommended that the Department of Energy (DOE) establish a plan and methodology that result in a project management organization for the NWTF project team that assures both DOE and the contractor organizations have personnel with the technical and managerial competence to ensure effective project execution, including achieving the quantitative safety goals described in the Department's Nuclear Safety Policy (SEN–35–91).

The Department accepts the Board's Recommendation 92–4. Enclosed are comments that describe actions to be taken in response to the recommendations and DOE views on the recommendations. In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, this response will be published in the **Federal Register** for public comment. Also, in accordance with section 315(e) of the Act, an implementation plan will be prepared which will describe in greater detail the actions to be taken by DOE to implement the Board's Recommendation.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

Comments on DNFSB Recommendation 92–4 Regarding the Multi-Function Waste Tank Facility (MWTF) at Hanford

On July 6, 1992, Chairman John T. Conway of the Defense Nuclear Facilities Safety Board (DNFSB) wrote to Secretary Watkins enclosing Recommendation 92–4, which was unanimously approved by the DNFSB on July 1, 1992. The DNFSB recommendations and the Department of Energy (DOE) response are as follows:

Recommendation 1

Establish a plan and methodology that results in a project management organization for the MWTF project team that assures that both DOE and the contractor organization have personnel of the technical and managerial competence to ensure effective project execution. This should emphasize management aspects of the project necessary to ensure adequate protection of public health and safety and should include the integration of professional engineering and quality assurance as necessary into the project, the application of appropriate standards and approved DOE requirements, and the establishment of clear lines of responsibility and accountability.

The Department accepts this recommendation. The project management structure and the technical knowledge and abilities of DOE and its contractor personnel obviously are extremely important elements in the successful performance of a major project activity such as the design and construction of the MWTF. With this in mind, the Secretary directed in the Nuclear Safety Policy (SEN–35–91) that DOE and its contractors establish and maintain management involvement and accountability to ensure that nuclear safety requirements are met and individual responsibility is articulated and understood by all parties. Furthermore, the Secretary directed DOE and its contractors to develop and foster technically competent personnel and the technical standards necessary to achieve nuclear safety. Some of the activities specifically applicable to the MWTF project that will implement this policy are discussed below.

The Project Plan (PP) and the Project Management Plan (PMP) for the MWTF project will delineate the functions and clear lines of responsibility and accountability of DOE and contractor organizations. The Department is establishing a dedicated project office within DOE and also within each of its contractor organizations to provide focused managerial and technical guidance on all aspects of the Tank Waste Remediation System, including the MWTF. Assignment and recruitment of staff for these dedicated project offices will focus on providing dedicated, competent project management, safety, quality assurance, regulatory, operations, and startup personnel responsible for implementing functions consistent with the PP and PMP. The requirements for technical expertise, professional engineering experience, and training necessary for project execution will be established in position descriptions. Candidate qualifications will be evaluated and verified as each position is filled. Emphasis will be placed on obtaining well qualified DOE and contractor staff. Growth and evolution of DOE and contractors project offices will retain continuity of functions and responsibilities. The onsite Engineer/Constructor (E/C), for example, has performed the Conceptual Design and will be performing Title I, II, and III Design, as well as Construction Management.

The application of appropriate standards and approved DOE requirements began with

the development of Functional Design Criteria (FDC). The FDC was reviewed by Westinghouse Hanford Corporation (WHC) and the appropriate DOE safety, quality assurance, security, startup, operations and programs, and contractors from other DOE Field Offices, to name a few of the active participants, to ensure adequate protection of the public health and safety. As a result of these reviews, it was recognized that some of the criteria require additional consideration. This will be done during the next phase of the project; namely, Advanced Conceptual Design. Future project phases and design documentation will undergo similar reviews consistent with the responsibilities delineated in the PP and PMP.

Clear lines of responsibility and accountability and achieved with direction originating from the DOE Project Manager to WHC. WHC provides day-to-day technical direction, oversight, letters of instruction, and work authorization and funding to the E/C.

In addition, outside technical expertise is utilized from a variety of sources in support of the dedicated project office (e.g., other DOE Field Offices and their contractors, independent consultants from the commercial sector, General Support Services Contract with the DOE Richland Field Office, etc.).

Recommendation 2

Identify the design bases and engineering principles and approaches for the MWTF project that provide the date and rationale to show that the design for the MWTF conservatively meets the quantitative safety goals described in the Department's Nuclear Safety Policy (SEN–35–91). The Board believes that this would include items related to standards, identification of safety-related items, design bases, functional design criteria, and safety analyses.

The Department accepts this recommendation. It is DOE policy that the general public be protected such that no individual bears significant additional risk to health and safety from the operation of a DOE nuclear facility above the risks to which members of the general population are normally exposed. This policy was established in September 1991 in SEN–35–91. Implementation of this policy must begin with the design and construction phases for new facilities, and the data and rationale that demonstrate implementation of the policy must be clearly defined and adequately documented. Some of the activities specifically applicable to the MWTF project that will implement this policy are discussed below.

The *Radiological Risk Acceptance Guidelines*, developed by the DOE High-Level Waste Safety Envelope Working Group and the Westinghouse Management and Operating (M&O) Nuclear Facility Safety Committee, will be used in determinations involving the acceptability of design for all high-level waste tank facilities. These guidelines were developed from existing DOE Orders, guidelines, recommended peer group assessments, and industrial standards. The guidelines are to be used for individual accident risk assessments of accidents that could result in unplanned releases of radioactive materials. These guidelines were developed to be conservative with respect to the quantitative safety goals described in DOE Nuclear Safety Policy. Individual safety analyses, to be documented in safety analysis Reports, will be required to demonstrate that the safety policy has been met.

In addition, the MWTF will be designed, constructed, and operated with appropriate measures to prevent or minimize potential radioactive releases, including engineered safety features to minimize potential releases and the use of procedural controls to mitigate the effects of potential releases.

A Supplemental Design Requirements (SDR) document will be prepared which will address the design basis and technical rationale to be utilized during project design/construction. The SDR will identify in greater detail the functional requirements of the major systems and components already established in the approved Functional Design Criteria (FDC). The supplemental design requirements will address specific implementation of the draft DOE *Seismic Design and Evaluation Guidelines for the DOE HLW Tanks*, the conservatisms being incorporated into the design documents, the considerations of safety risk assessment, and the selection basis for specific codes and standards applied to the project. This document will serve as the lower-level technical baseline to the FDC.

By utilizing the SDR, the risk assessment guidelines, DOE Order 6430.1A Compliance Analysis, lessons learned, and applicable features of the DNFSB Recommendation 90–2 implementation requirements, we believe that the intent of SEN–35–91 will be implemented. Through the preparation and independent review of all required safety documentation (e.g., Preliminary Safety Evaluation, Preliminary Safety Analysis Report, Final Safety Analysis Report, Operational Safety Requirements, and Emergency Response Procedures), the final successful documentation of all safety-related aspects will be assured. The preparation of the safety documentation is scheduled throughout the life of the project.

[FR Doc. 92–23089 Filed 9–22–92; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. CI92–77–000]

Natural Gas Services, Inc.; Application for Blanket Certificate with Pregranted Abandonment

September 17, 1992.

Take notice that on September 15, 1992, Natural Gas Services, Inc. (Natural) filed an application under Section 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all Natural Gas Policy Act categories of natural gas subject to Commission jurisdiction, gas purchased from interstate pipelines, including gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply gas, gas released under permanent or limited term abandonment authorizations, gas released pursuant to Order Nos. 451 or 490, gas purchased from intrastate pipelines and local distribution companies, any imported natural gas, liquified natural gas, and other natural gas subject to the Commission's NGA jurisdiction, without rate restrictions. Natural's application is on file with the Commission and open to public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before October 9, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, Natural will not have to appear or be represented at any hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23014 Filed 9–22–92; 8:45am]

BILLING CODE 6717–01–M

[Docket No. RS92–84–000]

Texas Sea Rim Pipeline, Inc.; Conference

September 17, 1992

Take notice that October 2, 1992, a conference will be convened in the above-captioned docket to discuss Texas Sea Rim Pipeline, Inc. summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 9:30 a.m. All interested persons are invited to attend. Attendance at the conference,

however, will not confer party status. For additional information, interested persons can call Betsy Carr at (202) 208–1240 or Leonard Burton at (202) 208–2085.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23013 Filed 9–22–92; 8:45 am]

BILLING CODE 6717–01–M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the transfer of 140 kilograms of plutonium from France to either Belgonucleaire, Dessel, Belgium, or to British Nuclear Fuels, plc, in the United Kingdom, for fabrication of mixed uranium-plutonium oxide fuel and subsequent retransfer of the fuel to Switzerland for use at the Beznau power reactors. Retransfer documents RTD/SD(EU)–60, 61 and 62 have been assigned to this subsequent arrangement.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

Issued on Washington, DC, on September 18, 1992.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 92–23090 Filed 9–22–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. GP92–13–000]

Colorado Oil and Gas Conservation Commission, Recompletion Tight Formation, Gas Determinations for Echeverria #1, Scheidt-State #1, Dier #1, Devore #1, Gumeson #1, and Boulder Bank #1 Wells; Preliminary Finding

September 17, 1992.

The Colorado Oil and Gas Conservation Commission (Colorado) determined that natural gas produced from pre-July 16, 1979 completion locations in six wells qualifies as recompletion tight formation gas under Section 107(c)(5) of the Natural Gas Policy Act of 1978 (NGPA).

For the reasons discussed below, the Commission issues this notice preliminarily finding that the determinations are not supported by substantial evidence.

Colorado's Determinations

On August 4, 1992, the Commission received Colorado's notices of determination that gas produced from six wells qualifies as recompletion tight formation gas. The six wells, which are owned by North American Resources Company (NAR), are the Echeverria #1 well (FERC No. JD92–08234), Scheidt-State #1 (FERC No. JD92–08235), Dier #1 well (FERC No. JD92–08236), Devore #1 well (FERC No. JD92–08237), Gumeson #1 well (FERC No. JD92–08238), and Boulder Bank #1 well (FERC No. JD92–08239).

The records show that each well was completed for production in the "J" Sand, in the Wattenberg Field, in Weld County, Colorado, before July 16, 1979, and that NAR re-fractured the "J" Sand in each well during 1991 or 1992 through the pre-July 16, 1979 completion location in each well. The "J" Sand is a designated tight formation.

Colorado's affirmative determinations appear to be based on NAR's claims that the re-fracturing operations created new completion locations because each well is producing natural gas from a portion of the "J" Sand that could not have been reached before the re-fracturing operations.

Background

The Commission's initial definition of "recompletion tight formation gas" in § 271.703(b)(3), adopted in 1979, was initially limited to natural gas produced from a tight formation through a well that was spudded before July 16, 1979, provided the well was not completed for production from the tight formation before that date.[1] Therefore, if a jurisdictional agency designated two producing zones in a geological interval as a single tight formation, gas produced from a recompletion into a different zone could not qualify as "recompletion tight formation gas." However, if a jurisdictional agency designated two producing zones in a geological interval as separate tight formations, gas from a recompletion into a different zone could qualify as "recompletion tight formation gas" because the recompletion is not located in the same designated tight formation.

On January 24, 1983, the Commission proposed to revise its regulations to eliminate inequities caused by the way jurisdictional agencies designated tight formations.[2] The Commission proposed to amend the regulations so that gas produced from recompletions in zones other than the original zone (i.e., in different producing intervals) could qualify as recompletion tight formation gas. The Commission subsequently issued Order No. 345 which amended the definition of recompletion tight formation gas.[3] The amended definition of "recompletion tight formation gas" includes gas produced from a tight formation through a well that was completed for production in the tight formation before July 16, 1979, provided such gas could not have been produced from a completion location that existed in the wellbore on or before December 27, 1983 (the effective date of Order No. 345).[4]

Discussion

Section 2(7) of the NGPA defines a "completion location" as "any subsurface location from which natural gas is being produced or has been produced in commercial quantities." The Commission has, in turn, clarified that "each producing interval in [a well] is a separate and distinguishable completion location as defined in the NGPA." [5]

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[1] 18 CFR 271.703(b)(3)(ii) (1992).

[2] Notice of Proposed Rulemaking, Docket No. RM82–34–000, 48 FR 4483.

[3] 25 FERC ¶ 61,113 (1983).

[4] 18 CFR 271.703(b)(3)(ii) (1992).

[5] See 10 FERC ¶ 61,174 at p. 61,332 (1980) (Callon).

The record for each well shows that the gas being produced after the re-fracturing operations in 1991 or 1992 is coming from the same completion location (i.e., "producing interval") that existed in each well before July 16, 1979. Therefore, gas from the wells cannot qualify as recompletion tight formation gas.

NAR believes that gas from the wells may qualify as recompletion tight formation gas because the re-fracturing operations extended previously induced fractures and, as a result, each well is producing additional volumes of natural gas from subsurface locations in the "J" Sand that could not have been reached before the re-fracturing operations. Thus, NAR apparently interprets "completion location" to refer to the portions of the "J" Sand distant from the wellbore where gas is located that has been "reached" and is capable of being produced because of the re-fracturing operations. However, as shown in Callon, *supra*, , the Commission has consistently held that a "completion location" is *the portion of the wellbore* through which gas was or is being produced in commercial quantities.

We agree that as a result of the re-fracturing operations, the wells are producing additional volumes of natural gas from subsurface locations in the "J" Sand that could not have been reached before the re-fracturing operations. However, we believe the re-fracturing operations constituted production enhancement of the existing producing interval in each well. We note that in the Notice of Proposed Rulemaking leading to the promulgation of the revised definition of recompletion tight formation gas, the Commission rejected a similar proposal to allow additional production from a workover (including enhanced production techniques) in the same producing interval to qualify as recompletion tight formation gas.[6]

Under § 275.202(a) of the regulations, the Commission may make a preliminary finding, before any determination becomes final, that the determination is not supported by substantial evidence in the record. Based on the foregoing facts, the Commission finds that the records do not contain substantial evidence showing that the wells are producing recompletion tight formation gas. Accordingly, the Commission hereby makes a preliminary finding that Colorado's determinations are not supported by substantial evidence in the records upon which they were made.

[6] IV FERC Stats. & Regs. ¶ 32,288 at p. 32,476 (1983).

Colorado or the applicant may, within 30 days from the date of this preliminary finding, submit written comments and request an informal conference with the Commission pursuant to § 275.202(f) of the regulations. A final Commission order will be issued within 120 days after the issuance of this preliminary finding.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23067 Filed 9-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-17-000]

Iroquois Gas Transmission System, L.P.; Conference

September 17, 1992.

Take notice that on October 2, 1992, a conference will be convened in the above-captioned docket to discuss Mid-Louisiana Gas Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Any Heyman at (202) 208-0115.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23065 Filed 9-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-20-000]

Mid-Louisiana Gas Co.; Conference

September 17, 1992.

Take notice that on October 1, 1992, a conference will be convened in the above-captioned docket to discuss Mid-Louisiana Gas Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Amy Heyman at (202) 208-0115.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23064 Filed 9-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-165-000]

Truckline Gas Co.; Rescheduling Informal Settlement Conference

September 17, 1992.

Take notice that the informal settlement conference previously scheduled for September 24-25 has been rescheduled. The settlement conference will be convened on Wednesday, October 14, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-reference dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Betsy R. Carr at (202) 208-1240 or Marc G. Denkinger at (202) 208-2215.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23066 Filed 9-22-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4509-6]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is given that E.H. Pechan and Associates, 5537 Hempstead Way, Springfield, Virginia (under contract 68D10144) and their subcontractor, Mathtech, Inc., suite 200, 210 Carnegie Center, Princeton, New Jersey will be given access to information that has been, or will be, submitted to EPA under Section 114 of the Clean Air Act (CAA) as amended. Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Gene W. Smith, Document Control Officer, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5439.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under Section 114 of the CAA that EPA may provide the above-mentioned contractor and subcontractor access to these materials on a need-to-know basis. The contractor, with the assistance of the subcontractor, will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in economic, cost, and regulatory impact analyses of air pollution control regulations.

In accordance with 40 CFR 2.301(h), EPA has determined that each subcontractor requires access to CBI submitted to EPA under sections 112 and 114 of the CAA in order to perform work satisfactorily under the previously noted contract. The personnel of the contractor and subcontractor will be given access to information submitted under section 114 of the CAA. Some of the information may be claimed or determined to be CBI. The personnel of the contractor and subcontractor will be instructed on appropriate security procedures and will be required to sign nondisclosure agreements before they are permitted access to CBI. Clearance for access to CAA CBI under this contract is scheduled to expire on September 30, 1994.

Dated: September 16, 1992.

Jerry Kurtzweg,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–23072 Filed 9–22–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00324; FRL–4072–3]

Allium Sativum; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredient allium sativum, and the start of a 60–day public comment period. The RED for allium sativum is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of allium sativum are eligible for reregistration.

DATES: Written comments on the RED must be submitted by November 23, 1992.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00324" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in rm. 1132, CM #2, at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Margarita Collantes, at (703) 308–8583.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredient: allium sativum. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical allium sativum is substantially complete. EPA has determined that all currently registered products containing allium sativum as an active ingredient are eligible for reregistration.

All registrants of products containing allium sativum have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: June 30, 1992.

David Barals,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92–23075 Filed 9–22–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00331; FRL–4073–1]

Citric acid; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredient citric acid, and the start of a 60–day public comment period. The RED for citric acid is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of citric acid are eligible for reregistration.

DATES: Written comments on the RED must be submitted by November 23, 1992.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00331" should be submitted to: By mail: Public Response and Program

Resources Branch, Field Operations Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in Rm. 1132, CM #2, at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Napoleon Kotey, at (703) 308–8523.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredient: citric acid. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical citric acid is substantially complete. EPA has determined that all currently registered products containing citric acid as an active ingredient are eligible for reregistration.

All registrants of products containing citric acid have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a Federal Register Notice announcing its availability.

Dated: June 30, 1992.

David Baralo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92–23070 Filed 9–22–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–60043; FRL–4185–1]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This notice, pursuant to section 6 (f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notice(s) of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The notice(s) were issued following issuance of Data Call-In Notice(s) by the Agency and the failure of registrant(s) subject to the Data Call-In Notice(s) to take appropriate steps to secure the data required to be submitted to the Agency. This notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this notice further identifies the registrant(s) to whom the Notice(s) of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration number(s) and name(s) of the registered product(s) which are affected by the Notice(s) of Intent to Suspend. Moreover, Table B of this notice identifies the basis upon which the Notice(s) of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notice(s) of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notice(s) of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the 3(c)(2)(B) Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registration(s) listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registration(s) of your product(s) is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call-In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product(s).

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registration(s) for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call-In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirement(s) that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registration(s) of your product(s) listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call-In Notice or Section 4 Data Requirement Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered product(s) and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject 3(c)(2)(B) Data Call-In Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

TABLE A.—PRODUCT LIST

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Dettelbach Chemical Company	00142100067	2,4-D	Comet Weed Killer	9/1/92
Hysan Corporation	00033400081	2,4-D	GCC-620 2,4-D Selective Weed Killer	9/1/92
Pax Company	00323400017	2,4-D	Pax Action Weed'n Feed	9/1/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following registrant(s) failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Original Due-Date
2,4-D	Dettelbach Chemical Company	30-Day Response	7/5/92
	Hysan Corporation	30-Day Response	7/5/92
	Pax Company	30-Day Response	7/5/92

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

2,4-D

In September 1988, EPA issued a Registration Standard which included a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing 2,4-D acid and its salts, amines, and esters used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the requirements of a Registration Standard is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The 2,4-D Registration Standard required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements. The 2,4-D Registration Standard was initially issued to all registrants of products containing 2,4-D acid and its salts, amines, and esters. Subsequently, several registrants have formed a Task Force to support some of the 2,4-D formulations, others have committed to support single formulations. Under the terms of the September 1988 2,4-D Registration Standard, your company is no longer eligible for a generic data exemption from the data requirements for alkanol amine 2,4-dichlorophenoxyacetate because no other registrant has committed to satisfy these data requirements. As a result, the responsibility for generating the necessary data to maintain the product registrations containing the active ingredient, alkanol amine 2,4-dichlorophenoxyacetate rests with your company.

Accordingly, in a letter dated June 1, 1992, the Agency informed you of the above status of the 2,4-D Registration Standard data requirements, and required that you inform the Agency within 30 days of your receipt of the letter of the steps you were electing to take regarding the data requirements necessary to support your registration. Attachment II indicates the deadline for your response based on the date you received the Agency's June 1, 1992 letter. The Agency received no response from you to its June 1, 1992 letter. Because the Agency has not received an adequate or appropriate response from you as a 2,4-D registrant electing either to undertake the required testing or any other appropriate response (e.g., voluntary cancellation), the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notice(s) of Intent to Suspend on the dates indicated. Any further information regarding the Notice(s) may be obtained from the contact person noted above.

II. Registrant(s) Receiving and Affected by Notice(s) of Intent to Suspend; Date of Issuance; Active Ingredient and Product(s) Affected

A letter of notification has been sent for the following product(s):

Dated: September 10, 1992.

Connie A. Musgrove,

Acting Director, Office of Compliance Monitoring.

[FR Doc. 92-22781 Filed 9-22-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-60042; FRL-4164-9]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the

deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, U.S.

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

A letter of notification has been sent for the following product:

TABLE A.—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Diversey Corporation	00087500042	Potassium Bromide	Saf-Sol Brand	9/1/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following company failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due-Date
Potassium Bromide	Diversey Corporation	Storage Stability	63-17	7/5/92
		Corrosion Characteristics	63-20	7/5/92
		Acute Inhalation Toxicity - Rat	81-3	7/5/92
		Dermal Sensitization	81-6	7/5/92

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

Potassium Bromide

On April 21, 1991, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing potassium bromide to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice is a basis for suspension under sections 3(c)(2)(B) and 4(g)(2)(B) of FIFRA.

The Potassium Bromide Phase 5 Reregistration Data Requirements Notice dated April 21, 1991, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency

within 90 days of the registrant's receipt of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: September 10, 1992.

Connie A. Musgrove,

Acting Director, Office of Compliance Monitoring.

[FR Doc. 92-22780 Filed 9-22-92; 8:45 am]

BILLING CODE 8560-50-F

[OPP-00335; FRL-4071-9]

Indole-3-butyric Acid, Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredient indole-3-butyric acid, and the start of a 60-day public comment period. The RED for indole-3-butyric acid is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of indole-3-butyric acid are eligible for reregistration.

DATES: Written comments on the RED must be submitted by November 23, 1992.

ADDRESSES: Three copies of comments identified with the docket number "OPP-00335" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in rm. 1132, CM #2, at the address given above or call (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Ruby Whiters, at (703) 308-8079.

SUPPLEMENTARY INFORMATION: The Agency has issued a Reregistration Eligibility Document for the pesticidal active ingredient: indole-3-butyric acid. Under the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical indole-3-butyric acid is sufficient to allow EPA to conduct a reasonable risk assessment for all uses. Therefore, EPA has determined that all currently registered products containing indole-3-butyric acid as an active ingredient are eligible for reregistration.

All registrants of products containing indole-3-butyric acid have been sent the appropriate RED and must respond to the labeling requirements, confirmatory acute ecotoxity data requirements (if applicable) on the active ingredient and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate acute ecotoxicity and product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: August 28, 1992.

David Baralo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92-23076 Filed 9-22-92; 8:45 am]

BILLING CODE 8560-50-F

[OPPT-59310A; FRL-4165-2]

Certain Chemical; Premanufacture Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-92-15. The test marketing conditions are described below.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 260-2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the

test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–92–15. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–92–15. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–92–15

Date of Receipt: July 13, 1992.
Notice of Receipt: July 28, 1992 (57 FR 33349).
Applicant: Confidential.
Chemical: (G) Tertiary ammonium chloride.
Use: (G) Fabric softener ingredient.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: Confidential.
Risk Assessment: Based on limited aquatic test data on the test market substance and data on analogous chemical substances, EPA established an aquatic concentration of concern for the test market substance of 1 part per billion in surface waters. However, based on the test market activities as described in the notice application (including the production volume and specific use), EPA has determined that these activities will not present an unreasonable risk of injury to the aquatic environment. EPA identified no significant health concerns for the test market substance.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

Dated: September 16, 1992.

John W. Melone,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–23077 Filed 9–22–92; 8:45 am]
BILLING CODE 6560–50–F

[OPP–00323; FRL–4072–2]

Putrescent Whole Egg Solids; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredient putrescent whole egg solids, and the start of a 60–day public comment period. The RED for putrescent whole egg solids is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of putrescent whole egg solids are eligible for reregistration.

DATES: Written comments on the RED must be submitted by November 23, 1992.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00323" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in Rm. 1132, CM #2, at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, George T. Myers, at (703) 308–8074.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredient: putrescent whole egg solids. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical putrescent whole egg solids is substantially complete. EPA has determined that all currently registered products containing putrescent whole egg solids as an active ingredient are eligible for reregistration.

All registrants of products containing putrescent whole egg solids have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: June 30, 1992.

David Barak,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92-23071 Filed 9-22-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-960-DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-960-DR), dated September 9, 1992, and related determinations.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, dated September 9, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 9, 1992:

The counties of Borden, Cottle, Dawson, Deaf Smith, Dickens, Gaines, Garza, Howard, Lynn, Martin, Midland, Motley, Terry, and Yoakum for Disaster Unemployment Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-23094 Filed 9-22-92; 8:45 am]

BILLING CODE 6718-02-M

Meeting; FEMA Security Practices Board of Review

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, FEMA announces the following committee meeting, portions of which may be closed:

NAME: FEMA Security Practices Board of Review.

DATES OF MEETING: Wednesday, September 23, 1992.

PLACE: Federal Emergency Management Agency, John W. Macy, Jr. Conference Room, room 829, 500 C Street, SW., Washington, DC 20472.

TIMES: 9 a.m. to 12 p.m.

PROPOSED AGENDA: Discussion of Board recommendations as submitted to the Director on September 11, 1992, and review of and recommendations concerning the draft of the Board's final report.

FOR FURTHER INFORMATION CONTACT: Dirk J. Vande Beek, Office of the Director, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3923.

SUPPLEMENTARY INFORMATION: The Review Board completed its review and draft report on September 4, 1992, necessitating that less than 15 days' notice of the meeting be given, under 41 CFR 101-6.1015(b)(2).

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Director, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3923) on or before Wednesday, September 16, 1992.

The Director has determined that portions of the Board meeting may have to be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app: 2, and 5 U.S.C. 552b(c), because discussions may (1) disclose matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense, (2) relate solely to the internal personnel rules and practices of an agency, and (3) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy.

Minutes of the meeting (minus those portions of the meeting which may be closed to the public) will be prepared and will be available for public viewing in the Office of the Director, Federal Emergency Management Agency, room 828, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 18, 1992.

Wallace E. Stickney,

Director.

[FR Doc. 92-23093 Filed 9-22-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Home Mortgage Disclosure Act; Categorization of Income for Disclosure Statements and Aggregate MSA Reports

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) has adopted a change in the way it categorizes income for purposes of preparing Home Mortgage Disclosure Act disclosure statements and aggregate reports distributed to central data depositories. The change, which does not affect how applicant income is reported by covered institutions, is reflected in the disclosure statements prepared for 1991 data (to be made available to the public in September 1992).

FOR FURTHER INFORMATION CONTACT: Glenn G. Canner, Senior Economist, (202) 452-2910, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On March 12, 1992, the FFIEC published (57 FR 8762) for public comment a proposed change to the methodology used to estimate the current level of median family incomes for MSAs. Specifically, the FFIEC proposed to apply the annual median family income figures as published by the Department of Housing and Urban Development (HUD) rather than the inflation-adjusted estimates used for the 1990 data. The annual MSA median family income estimates derived by HUD reflect the latest available data on wage changes from the County Business Patterns and from median family income data from the Bureau of the Census Current Population Reports, P-60 Series. (A description of the precise methodology used by HUD to calculate their estimates of current MSA median family incomes can be obtained from the FFIEC.) The estimation technique employed by HUD takes advantage of the most up-to-date information available for estimating current levels of MSA median family incomes.

Comments were received from six organizations, including three banks, two secondary mortgage market entities, and a banking trade association. All of the commenters supported the proposed change, although one bank suggested postponing implementation until 1993. Among benefits that commenters noted would result from the change were the fact that the income estimates published

by HUD are readily available from local housing authorities; that knowing the income estimates at the time lenders file their HMDA data will facilitate internal reviews; and that the HUD income estimates are widely used by lenders as a basis for defining eligibility for special mortgage and home improvement products.

In addition to improving on the income estimation method previously used, and achieving the benefits mentioned by commenters, the use by the FFIEC of the median family income figures published by HUD will establish uniformity across government agencies, since these figures are widely used in government housing programs. Based on the comments and recommendations of agency staffs, the FFIEC has adopted the change in income estimation method as proposed. The change takes effect beginning with the HMDA disclosure reports reflecting 1991 lending and loan application data. The MSA median income figures used are the HUD estimates for Fiscal Year 1991. The change affects tables 3, 4–1 through 4–6, 5–1 through 5–6, 6–1 through 6–6, and 8–1 through 8–6 of the HMDA disclosure statements.

Dated: September 17, 1992.

Joe M. Cleaver,

Executive Secretary.

[FR Doc. 92–23028 Filed 9–22–92; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Meeting of the Advisory Committee on Scientific Integrity, Public Health Service

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee on Scientific Integrity, Public Health Service, on Thursday, October 15, and Friday, October 16, 1992, at the National Institutes of Health, Bethesda, Maryland. The meeting will take place October 15 from 8 a.m. to 5 p.m., and on October 16 from 8 a.m. to 12 p.m., Building 31, C Wing, Conference Room 9 and Conference Room 4 respectively. The meeting will be open to the public.

The charge of the Committee is to review and evaluate, on an ongoing basis, the efficacy of policies and procedures of the Department of Health and Human Services in detecting, deterring, investigating, and resolving allegations of scientific misconduct and to make recommendations to the Secretary and the Assistant Secretary for Health on improving these policies and procedures.

The purpose of the meeting will be to deliberate a number of proposed PHS policy changes that are designed to strengthen the PHS scientific integrity program. Discussion items will include but will not be limited to a draft notice of proposed rule making for a revised final rule; PHS interim policies regarding the availability of a hearing to persons accused of scientific misconduct; Privacy Act exemptions to protect records of alleged misconduct cases during an investigation; and outreach and education efforts to encourage the responsible conduct of research.

Henrietta D. Hyatt-Knorr, Executive Secretary, Advisory Committee on Scientific Integrity, Office of Research Integrity, Division of Policy, Rockwall II, Suite 1113, 5515 Security Lane, Rockville, MD 20852, (301) 443–5300, will furnish the meeting agenda, the Committee charter, and a roster of the Committee members upon request. Members of the public wishing to make presentations should contact the Executive Secretary. Depending on the number of presentations and other considerations, the Executive Secretary will allocate a time frame for each speaker.

Date: September 15, 1992.

Lyle W. Bivens,

Director, Division of Policy, Office of Research Integrity.

[FR Doc. 92–23098 Filed 9–22–92; 8:45 am]

BILLING CODE 4160–17–M

Office of the Secretary

Public Law 102–154, The Department of the Interior and Related Agencies Appropriations Act, Fiscal Year 1992; Delegation of Authority

Notice is hereby given that the Secretary of Health and Human Services delegated to the Assistant for Health, with authority to redelegate, all the authority vested in the Secretary of Health and Human Services under Public Law 102–154, "The Department of the Interior and Related Agencies Appropriations Act, Fiscal Year 1992," as amended hereafter, to accept ownership of the buildings offered at no cost by the Standing Rock Sioux Tribe for use solely as the Aberdeen Area Youth Regional Treatment Center.

This delegation excluded the authority to promulgate regulations, to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

This delegation was effective on September 10, 1992.

Dated: September 10, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–23040 Filed 9–22–92; 8:45am]

BILLING CODE 4160–16

Alcohol, Drug Abuse, and Mental Health Administration

National Institute of Mental Health; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the advisory committee of the National Institute of Mental Health for October 1992.

The initial review group will be performing review of applications for Federal assistance; therefore, portions of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and roster of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (telephone: 301–443–4333).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee name: Clinical Subcommittee, Mental Health Special Projects Review Committee.
Meeting date: October 13–15, 1992.
Place: Hyatt Regency Hotel, One South Capital Avenue, Indianapolis, IN 46204.
Open: October 13, 7–8 p.m.
Closed: Otherwise.
Contact: Gwen Artis, room 9C–08, Parklawn Building, telephone (301) 443–1367.

Dated: September 17, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–22997 Filed 9–22–92; 8:45 am]

BILLING CODE 4160–20–M

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National

Institute on Drug Abuse for October 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, IDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (telephone: 301/443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee name: Biochemistry Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting date: October 13–15, 1992.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 13, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: Rita Liu, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Committee name: Pharmacology I Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting date: October 13–15, 1992.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 13, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: Syed Husain, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Committee name: Pharmacology II Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting date: October 13–15, 1992.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 13, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: Gamil Debbas, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Committee name: Drug Abuse Clinical and Behavioral Research Review Committee.
Meeting date: October 13–16, 1992.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 13, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: Daniel L. Mintz, room 10–22, Parklawn Building, telephone (301) 443–9042.

Committee name: Drug Abuse Epidemiology and Prevention Research Review Committee.
Meeting date: October 13–16, 1992.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 13, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: Raquel Crider, Ph.D., room 10–22, Parklawn Building, telephone (301) 443–9042.

Dated: September 17, 1992.

Peggy W. Cockrill,

Committee Management Officer Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–22999 Filed 9–22–92; 8:45 am]

BILLING CODE 4160–20–M

National Institute on Alcohol Abuse and Alcoholism; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute on Alcohol Abuse and Alcoholism for October and November 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 16C–20, 5600 Fishers Lane, Rockville, MD 20857 (telephone: 301–443–4375).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee.
Meeting dates: October 14–16, 1992.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: October 14, 9 a.m.–10 a.m.
Closed: Otherwise.
Contact: Thomas D. Sevy, M.S.W., rm. 16C–26, Parklawn Bldg., phone (301) 443–6106.

Committee name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.
Meeting dates: October 19–20, 1992.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: October 19, 9 a.m.–10:15 a.m.
Closed: Otherwise.
Contact: Ronald F. Suddendorf, Ph.D., rm. 16C–26, Parklawn Bldg., phone (301) 443–6106.

Committee name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee.
Meeting dates: October 19–21, 1992.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: October 19, 9 a.m.–11:00 a.m.
Closed: Otherwise.
Contact: Antonio Noronha, Ph.D., rm. 16C–20, Parklawn Bldg., phone (301) 443–4375.

Committee name: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.
Meeting dates: October 21–23, 1992.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Open: October 21, 9 a.m.–10 a.m.
Closed: Otherwise.
Contact: Lenore S. Radloff, rm. 16C–26, Parklawn Bldg., phone (301) 443–6106.

Committee name: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee.
Meeting dates: November 5–6, 1992.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Open: November 5, 8:30 a.m.–9:30 a.m.
Closed: Otherwise.
Contact: Barbara Smothers, Ph.D., rm. 16C–26, Parklawn Bldg., phone (301) 443–6106.

Dated: September 17, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–22998 Filed 9–22–92; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on State and Community Health Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting:

Name: NCVHS Subcommittee on State and Community Health Statistics.

Times and dates: 9 a.m.–5 p.m., October 21, 1992, 9 a.m.–5 p.m., October 22, 1992.

Place: Room 703A–729A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to continue to explore issues and concerns about the availability of statistics to monitor the health of communities.

Contact person for more information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: September 14, 1992.

Elvin Hilyer,

Associated Director for Policy Coordination, Center for Disease Control.

[FR Doc. 92–22751 Filed 9–22–92; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

Privacy Act of 1974; Computer Matching Programs

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of a Computer Matching Program - Beneficiary State File (BEST) and Medicaid master files maintained by State Medicaid agencies.

SUMMARY: The Department of Health and Human Services is providing providing public notice that HCFA agrees to disclose information on Medicare eligible individuals to State agencies responsible for administering the Medicaid program.

The matching report set forth below is in compliance with the Computer Matching and Privacy Protection Act of 1988 (Public Law 100–503).

DATE: The match will begin on October 23, 1992, and shall remain in effect for a period not to exceed 18 months.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Health Care Financing Administration, Office of Budget and Administration, Room 2–H–4, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. Comments will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: William A. Grant, Division of Entitlement Requirements, Office of Program Operation Procedures, Bureau of Program Operations, Health Care Financing Administration, G–E–7 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. His telephone number is (410) 966–6464.

SUPPLEMENTARY INFORMATION: The Health Insurance Master Record (HIMR) contains a record of each individual who is, or has been, entitled to health insurance benefits under title XVIII of the Social Security Act (the Act). The BEST file in an extract of the HIMR. The BEST file is an alphabetic listing, on magnetic tape, of all Medicare beneficiaries in the State by name, sex, date of birth, address, zip code, buy-in indicator and health insurance claim number (HICN). This extract is the most economical and efficient method of obtaining the claim number of a Medicare beneficiary when other identifying information is available. The BEST file has been provided to the following States for the express purpose of identifying Medicaid recipients to the State buy-in rolls: Alaska, Arizona, California, Denver, Connecticut, Georgia, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Ohio, Oregon, Pennsylvania, Puerto Rico, West Virginia. In most States, the activity is conducted by the State agency responsible for administering the Medicaid program.

The BEST file will enable the State agency to identify individuals eligible for inclusion in a State buy-in account. The BEST file will also enable the State agency to identify those Medicare/Medicaid dually eligible individuals for whom Medicaid has deductible and co-insurance liability. States under a buy-in agreement may enroll individuals for Medicare Part B coverage who are eligible for title XVI (Supplemental Security Income) benefits or eligible under State grants for medical assistance. The State pays the Medicare Part B premiums for these individuals eligible under title XVI.

To query the BEST file, it is necessary for the State to have the individual's name, date of birth, sex, and address. With this information, the HICN can be determined. The State is then able to add the individual to its buy-in account, request the carrier or intermediary to provide a report of any medical expenses paid by Medicare for Medicaid eligibles, or request payment by Medicare for expenses already paid by Medicaid.

Furnishing the BEST tape to State agencies is essential in enabling the States to determine the correct HICN of individuals eligible for buy-in. The Medicaid master file maintained by the State agency is sequenced according to the individual's social security number or according to the State agency's numbering system. Generally, the State knows who its dually eligible individuals are or should be and needs to obtain the HICN to properly include eligible individuals in its buy-in account.

Use of the BEST file was resulted in the prevention of payments of duplicate claims and fewer referrals by Medicare contractors to Social Security Offices. As a consequence, its use has also been instrumental in the realization of improved service to the public.

Before the BEST file is released to the State, the State must sign an agreement to protect the confidentiality of the information received.

The individual records are retrieved from the BEST file when a Medicaid claim is submitted for payment without an HICN or the HICN is determined to be incorrect. Also, individual records are retrieved for the purpose of screening pre-payment and post-payment Medicaid claims.

Only information that is relevant to the identification of beneficiaries is contained in the BEST record system.

Set forth below is the information required by the Computer Matching and Privacy Act of 1988 (Public Law 100–503).

A report of the Computer Matching Program has been filed with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate and the Acting Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget.

Dated: September 16, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Report of Computer Matching Program—Beneficiary State File (BEST)

a. *Authority:* Sections 1814 and 1833 of title XVIII of the Social Security Act (42 U.S.C. Section 1295f and 12951).

b. *Purpose and Description:* The purpose of this disclosure is to enable the State agency to identify individuals eligible for inclusion in a State buy-in

account and to identify Medicare/Medicaid dually eligible individuals for whom Medicaid has deductible and co-insurance liability. Most State agencies require access to the BEST file for improved administration of the Medicaid program. Routine uses of the BEST file are: (a) Obtaining a beneficiary's correct HICN and (b) screening of pre-payment and post-payment Medicaid claims.

The BEST file is an extract of the HIMR listing, in alphabetic order, which lists all Medicare beneficiaries in the State by name, sex, date of birth, address, zip code, buy-in indicator and HICN.

c. *Personal Records to Be Matched:* The State Agency will match the beneficiary's name, date of birth, sex and address to the BEST file in order to determine the HICN, and to screen pre-payment and post-payment Medicaid claims. The number of beneficiaries may vary from State to State.

d. *Period of Match:* The tape will be furnished by HCFA to the States, semi-annually (spring and fall), for continuous use by the States for a period not to exceed 18 months.

e. *Safeguards:* Before the BEST file is released to a State, the State must sign an agreement to protect the confidentiality of the information received.

Access to the records matched and to any records created by the match will be restricted to only those authorized employees and officials who need them to perform their official duties in connection with the match.

The records matched and any records created by the match will be stored in areas that are physically safe from access by unauthorized persons during duty hours as well as non-duty hours or when not in use.

The records matched and any records created by the match will be processed under the immediate supervision and control of the authorized personnel in a manner which will protect the confidentiality of the records and in such a way that unauthorized persons cannot retrieve any such records by computer, remote terminal or other means.

All personnel who will have acess to the records matched and to any records created by the match will be advised of the confidential nature of the information, the safeguards required to protect the information and the civil and criminal sanctions for noncompliance contained in applicable Federal laws.

f. *Retention and Disposition of Records:* The State Agency will retain all identifiable records received from HCFA only for the period of time required for any processing related to matching under this agreement. The previous BEST and all copies must be erased upon receipt of an updated version or in the event the agreement is terminated for any reason. The blank magnetic tapes may be returned to the State's blank tape inventory.

[FR Doc. 92-23029 Filed 9-22-92; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau of Indian Affairs' (BIA) clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the BIA clearance officer and to the Office of Management and Budget, Washington, DC 20503, telephone (202) 395-7340.

Title: Indian Child Welfare Act—Reports and availability of information to Indians

Abstract: Child and family services to American Indian families are provided through grants awarded to Indian tribes and Indian organizations. Grantees submit quarterly narrative and statistical reports and State courts entering final adoption decrees involving American Indian children give notice to the Security of Interior.

BIA form number: To be assigned

Frequency: Grant application every three years; quarterly reports; one-time notification from State Courts

Description of respondents: Grantees operating an Indian Child Welfare Act Grant Program and State Courts

Estimated completion time: 4.6

Annual responses: 2,399

Annual burden hours: 11,000

BIA clearance officer: Gail Sheridan, (202) 208-2685.

David L. Hickman,

Chief, Division of Social Services.

[FR Doc. 92-23006 Filed 9-22-92; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Pacificorp—UTU-70069]

Utah—Invitation To Participate In Coal Exploration Program

Pacificorp is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Emery County, Utah:

T. 17 S., R. 6 E., SLM, Utah
Sec. 2, SW¼;
Sec. 11, W½;
Sec. 14, all.
Containing 1,119.88 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, and to Pacificorp, P.O. Box 1005, Huntington, Utah 84528. Such written notice must be received within 30 days after the publication of this notice in the **Federal Register**.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provision of 43 CFR 3472.1 and must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by Pacificorp, is available for public review during normal business hours in the BLM hours in the BLM office, (Public Room, Fourth Floor), 324 South State Street, Salt Lake City, Utah under Serial Number UTU-70069.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-23043 Filed 9-22-92; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-030-02-4320-02; G2-441]

Vale District Grazing Advisory Board; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given in accordance with Public Law 92-463 that a meeting of the Vale District Grazing Advisory Board will be held on October 21, 1992.

The agenda of the meeting will include: Implications of the range project maintenance policy, Range protection measures associated with drought, Owyhee River Plan update, and Review of 1992 range improvement expenditures.

The meeting is open to the public.

Interested persons may make oral statements to the Board or may file written statements for the Board's consideration. Anyone wishing to make oral statements may do so at 1 p.m. MST on October 21, 1992.

Summary minutes of the Board's meeting will be maintained in the district office and will be available for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days of the meeting.

DATES: The meeting will begin at 10 a.m. MST Wednesday, October 21, 1992.

ADDRESSES: The meeting will be held in the meeting room of the Vale District Office, 100 Oregon Street, Vale, OR 97918.

FOR FURTHER INFORMATION CONTACT: Susie Manezes, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 503 473–3144).

James E. May,
District Manager.

[FR Doc. 92–22590 Filed 9–22–92; 8:45 am]
BILLING CODE 4310–33–M

[OR–030–02–4333–02; G2–439]

Vale District Multiple-Use Advisory Council; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given in accordance with Public Law 92–463 that a meeting of the Vale District Multiple-Use Advisory Council will be held October 20, 1992.

The agenda of the meeting will include: Review of the River Management Plan for both Grande Ronde and Owyhee Rivers plans, Range management issue during the drought, Operation of the BLM's National Historic Oregon Trail Interpretive Center, and an Overview of the withdrawal review program for Reclamation withdrawn lands.

The meeting is open to the public. Interested persons may make oral statements to the Council or may file written statements for the Council's consideration. Anyone wishing to make oral statements may do so at 1 p.m. on the day of the meeting.

Summary minutes of the Council's meeting will be maintained in the district office and will be available for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days of the meeting.

DATES: The meeting will begin at 10 a.m. MST, Tuesday, October 20, 1992.

ADDRESSES: The meeting will be held at the Bureau of Land Management's National Historic Oregon Trail Interpretive Center at Flagstaff Hill in Baker City, Oregon.

FOR FURTHER INFORMATION CONTACT: Susie Manezes, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 503 473–3144).

James E. May,
District Manager.

[FR Doc. 92–23128 Filed 9–22–92; 8:45 am]
BILLING CODE 4310–33–M

[UT–020–02–4212–13; U–47295]

Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of Public Lands in Box Elder County, Utah.

SUMMARY: The BLM proposes to exchange public lands which are isolated and uneconomical to manage by the BLM of any other federal agency, for private lands located in Box Elder County. The public lands are described as follows:.

Salt Lake Meridian

T. 11 N. R. 18 W.,
Section 20, NE¼, E½SE¼/
containing 240 acres.

In exchange for these lands, the Federal Government will obtain non-federal lands from Mr. Harley Sanders, P.O. Box 37, Oakley, Idaho. the lands are described as follows:

Salt Lake Meridian

T. 11 N. R. 18 W.,
Section 7, W½NE¼, NE¼NW¼, NE¼SW¼, also the North 28 Rods of the NW¼SE¼.

DATES: Comments must be received within November 9, 1992.

ADDRESSES: Comments should be sent to the District Manager, Salt Lake District BLM, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Janice MaChipiness, BLM Salt Lake District Office, (801) 977–4300.

SUPPLEMENTARY INFORMATION: The public lands have been found suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2756, 43 U.S.C. 1716). The exchange is consistent with the Box Elder Resource Management Plan and is in the best interest of the public. The values of the lands to be exchanged are approximately equal and will not include the exchange of the mineral estate. The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 2 years from the date of publication of this notice in the federal register, whichever occurs first. Lands transferred from the United States will contain the following reservations:

(1) The patent will contain a reservation for ditches and canals and be subject to all valid existing rights.

(2) All minerals will be reserved to the United States including the right of ingress and egress for mineral development.

Notice is hereby given that an opportunity for the public to comment is given within the comment period identified above. Any adverse comments will be evaluated by the State Director who may modify or vacate this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Deane H. Zeller,
District Manager.

[FR Doc. 92–23038 Filed 9–22–92; 8:45 am]
BILLING CODE 4310–DQ–M

[ES–020–02–4410–10]

Intent To Prepare Florida Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Jackson District Office, Eastern States, will prepare a Resource Management Plan (RMP) with an Environmental Impact Statement (EIS) for the public lands within the state of Florida which are administered by the Bureau of Land Management (BLM).

This notice is issued pursuant to Title 40 Code of Federal Regulations (CFR), § 1501.7 and title 43 CFR 1610.2(c). The planning effort will follow the procedures set forth in 43 CFR subpart 1600.

The public is invited to participate in the planning process, beginning with the identification of planning issues and criteria.

DATES: Comments relating to the identification of planning issues and

criteria will be accepted through November 30, 1992.

ADDRESSES: Send comments to Bureau of Land Management, Jackson District, 411 Briarwood Drive, suite 404, Jackson, Mississippi 39206.

FOR FURTHER INFORMATION CONTACT: Duane Winters, RMP Team Leader, Jackson District, (601) 977–5400.

SUPPLEMENTARY INFORMATION: The RMP will guide future use of several hundred acres, comprised of small parcels of land located in counties throughout the State. The RMP will also guide the Bureau's mineral leasing and permitting responsibilities on approximately 270,000 acres of split estate land where federal ownership is limited to mineral interests.

The BLM also has certain mineral leasing and permitting responsibilities on other areas of federal ownership including military reservations and National Forests. These responsibilities will be carried out in accordance with federal laws and regulations as well as applicable land use plans of other federal agencies. The RMP/EIS will address the impacts of foreseeable mineral development of these lands.

The anticipated issues for the RMP include the following (1) land ownership adjustments, (2) special management areas, and (3) mineral leasing and development. These issues are preliminary and subject to change as a result of public input.

The RMP will be developed by an interdisciplinary team composed of specialists in realty, minerals, wildlife, forestry, cultural resources, visual resources, recreation, fire management, socio-economics, solid, water and air. Additional technical support will be provided by other specialists as needed.

Public participation will be an important part of the planning process. It is intended that all interested or affected parties be involved. The planning team will seek public input by direct mailings, media coverage, person to person contacts, and coordination with local, state, and other federal agencies. Agency coordination meetings and public meetings will be held to obtain input on issues and planning criteria. Public meetings are scheduled for the following locations:

Bartow

October 15, 1992, 7 p.m., Polk County Administrative Building, Room 413, 330 West Church Street, Bartow, Florida.

Tallahassee

November 3, 1992, 7 p.m. at the Department of Natural Resources, Conference Room A, 3900 Commonwealth Blvd., Tallahassee, Florida.

Santa Rosa Beach

November 4, 1992, 7 p.m., So. Walton Tourist Development Council, Emerald Coast Plaza, Unit 37, Highway 98, Santa Rosa Beach, Florida.

Complete records of all phases of the planning process will be available for public review at the Jackson District Office. Draft and final documents of the RMP/EIS will be available upon request.

Dated: September 10, 1992.

Denise P. Meridith,

State Director.

[FR Doc. 92-23008 Filed 9-22-92; 8:45 am]

BILLING CODE 4310-GJ-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-771235

Applicant: Zoo Atlanta, Atlanta, GA.

The applicant requests a permit to import blood samples from captive-held drill (*Papio leucophaeus*) from Lisa Gadsby, Nigeria, for scientific research.

PRT-769843

Applicant: Woodland Park, Zoological Garden, Seattle, WA.

The applicant requests a permit to export one captive-bred male lion-tailed macaque (*Macaca silenus*) to the Royal Melbourne Zoological Gardens, Australia, for captive breeding purposes.

PRT-760213

Applicant: John Siegel, Baltimore, MD.

The applicant requests a permit to purchase in interstate commerce one male and one female Eastern Indigo snake (*Drymarchon corais couperi*) that were captive-hatched by Shay P. Hamper, Columbus, OH, for breeding purposes.

PRT-771803

Applicant: New York Zoological Society, Bronx, NY.

The applicant requests a permit to export blood samples of blood collected from captive-born and captive-held gorilla (*Gorilla gorilla*) in U.S. zoos. Blood will be analyzed at the University of Uppsala, Sweden, for genetic research.

PRT-724290

Applicant: Montrose Nursery, Hillsborough, NC.

The applicant requests a permit to sell in interstate commerce nursery cultivated plants of Tennessee purple coneflower (*Echinacea tennessensis*) in order to enhance the survival of the species in the wild.

PRT-770947

Applicant: Hossein Golabchi, Grovetown, GA.

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by M.J. D'Alton, "Kosierskraal", Bredasdorp, Cape Province, South Africa, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 17, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-22996 Filed 9-22-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-335]

Dry Peas and Lentils: Conditions of Competition Between the United States and Canada in Third-Country Markets

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation and public hearing.

EFFECTIVE DATE: SEPTEMBER 14, 1992.

SUMMARY: Following receipt on August 10, 1992, of a request from the Committee on Ways and Means, U.S. House of Representatives, the Commission instituted investigation No. 332–335, under section 332(g) of the

Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of reporting on the conditions of competition between the U.S. and Canadian dry pea and lentil industries in third-country markets.

As requested by the Committee, the Commission in its investigation and report thereon will seek to:

(1) Describe and analyze the U.S. and Canadian dry pea and lentil industries, including patterns of production, consumption, exports, and imports since 1986;

(2) describe and analyze the current conditions of trade in dry peas and lentils between the United States, Canada, and the rest of the world;

(3) describe and analyze the purpose, nature, and use of Canadian programs and policies to assist dry pea and lentil producers and exporters along with their impact on competitive conditions, especially programs affecting transportation costs, including the Western Grain Transportation Act, and income support programs, such as the Gross Revenue Insurance Program; and

(4) provide an analysis of other relevant factors having a significant bearing on competitive conditions and trade in dry peas and lentils, including prices, production and marketing costs, and exchange rates.

The Committee requested that the Commission submit its report not late than April 20, 1993.

FOR FURTHER INFORMATION CONTACT: Timothy McCarty ((202)–205–3324) or Cathy Jabara ((202)–205–3309), Agriculture Division, Office of Industries, or William Gearhard ((202)–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on this study by contacting the Commission's TDD terminal on (202)–205–1810.

PUBLIC HEARING: A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on December 8, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a request to testify with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on November 20, 1992. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on November 23, 1992. The deadline for filing post hearing briefs is the close of business on January 5, 1993.

WRITTEN SUBMISSIONS: In addition to or in lieu of filing prehearing and/or post hearing briefs, interested persons may submit written statements concerning the investigation. To be assured of consideration, written statements (original plus 14 copies) must be received by the close of business (5:15 p.m.) January 5, 1993. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

By order of the Commission.

Issued: September 16, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–23049 Filed 9–22–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343–11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers under 49 U.S.C. 11343–11344. The applications are governed by 49 CFR part 1182, as revised in Pur., Merger & Cont.—Motor Passenger & Water Carriers, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR part 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC–F–20152, filed September 7, 1992. ROBERT L. QUICK, JR., AND DEBORAH Q. FULTZ—CONTINUANCE IN CONTROL—QUICK LIVICK, INC., AND D&B BUS, INC. Applicant's representative: Robert B. Walker, 1275 K Street, NW., Suite 775, Washington, DC 20005–4006. Applicants Robert L. Quick, Jr., and Deborah Q. Fultz, both noncarrier individuals, are in control: (1) Of Quick-Livick, Inc. (Q–L) (MC–134542), of Staunton, VA, a motor carrier of passengers, and (2) of D&B Bus, Inc. (D&B Bus), of Falmouth, VA, a noncarrier [1] seeking its initial grant of motor carrier passenger authority in No. MC–237570 (Sub-No. 1). Robert L. Quick, Jr., owns 4 percent of the stock of Q–L and is its treasurer. He also owns 50 percent of the stock of D&B Bus and is its president and treasurer. Deborah Q. Fultz owns 4 percent of the stock of Q–L and is its vice president. She also owns 50 percent of the stock of D&B Bus and is its vice president and secretary. The business address of the applicants is 41 RV Parkway, Falmouth, VA. They will be in control of two regulated carriers when the pending passenger application is approved and authority is issued to D&B Bus.

Decided: September 16, 1992.

By the Commission, the Motor Carrier Board.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–23083 Filed 9–22–92; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 290 Sub-No. 2); Ex Parte No. 290 (Sub-No. 5) (92–4)]

Railroad Cost Recovery Procedures; Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor, request for comments and decision.

SUMMARY: The Commission has approved a fourth quarter 1992 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter RCAF (Unadjusted) is 1.187. The fourth quarter RCAF (Adjusted) is 1.024, an increase of 1.4 percent from the third quarter 1992 RCAF (Adjusted) of 1.010. Maximum fourth quarter 1992 RCAF rate levels may not exceed 101.4 percent of maximum third quarter 1992 RCAF rate levels. Weights for individual index components have been restated to a 1991 level beginning with this quarter. Annual restatement of component weights insures the proper proportional representation of each component in the total index. The approved RCAF and index were calculated using the

[1] D&B Bus was granted motor property authority under No. MC–237570, but it has not complied with the requirements for issuance of that authority.

weighting methodology in force since 1985. Because of an unusually high amount of 1991 special charges, comments have been invited on the role of special charges in weighting the index in the Sub-No. 2 proceeding.

DATES: This notice is effective October 1, 1992. Notices of intent to participate are due November 9, 1992.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 927–5720; Robert C. Hasek (202) 927–6239; John C. Pertino (202) 927–6219 [TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: September 16, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–23085 Filed 9–22–92; 8:45 am]

BILLING CODE 7035–01–M

MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

Meetings

The Martin Luther King, Jr. Federal Holiday Commission will hold its quarterly business meeting on Friday, September 25, 1992, 1–2 p.m., in room 10233 (10th Floor), Department of Housing and Urban Development (HUD), 451 Seventh Street SW., Washington, DC 20410. For additional information, please call (202) 708–1005.

Dated: September 17, 1992.

Leonard Burchman,

Treasurer.

[FR Doc. 92–23036 Filed 9–22–92; 8:45 am]

BILLING CODE 4210–01–M

NATIONAL SPACE COUNCIL

Meeting of the Space Launch Strategy Implementation Review Task Group

AGENCY: National Space Council.

ACTION: Notice of meeting.

SUMMARY: The Vice President's Space Policy Advisory Board Space Launch Strategy Implementation Review Task Group will meet October 8, 1992 at the Kennedy Space Center, Florida.

DATE: October 8, 1992.

ADDRESS: Kennedy Space Center, Spaceport USA, Florida.

FOR FURTHER INFORMATION CONTACT: Stephen Hopkins, (703) 685–3307 or James Beale, National Space Council, Executive Office of the President, Washington, DC., (202) 395–6175.

SUPPLEMENTARY INFORMATION: The Space Launch Strategy Implementation Review Task Group of the Vice President's Space Policy Advisory Board will meet between 9 a.m. and 2:30 p.m. on Thursday, October 8, 1992, at the Kennedy Space Center, Florida. The meeting will be held in the Spaceport Theater, Spaceport USA, Kennedy Space Center.The agenda includes briefings on Space Shuttle launch processing activities, launch-related manpower requirements, and Air Force support of commercial space launches. This meeting will be held in open session. Persons interested in attending should contact Stephen Hopkins, (703) 685–3307.

James R. Beale,

Designated Federal Officer.

[FR Doc. 92–23086 Filed 9–22–92; 8:45 am]

BILLING CODE 3128–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or canceled since the last list of proposed meetings was published August 20, 1992 (57 FR 37845). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, canceled, or rescheduled, or whether changes have been made in the agenda for the October 1992 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn. Barbara Jo White) between 7:30 a.m. and 4:15 p.m. Eastern Time.

ACRS Subcommittee Meetings

Maintenance Practices and Procedures, October 6, 1992, Bethesda, MD. The Subcommittee will review the draft Regulatory Analysis and draft Regulatory Guide, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," for implementation of the Maintenance Rule (10 CFR 50.65). Also, it will review the NUMARC document 93–01, Revision 2A, "Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," which is endorsed by the NRC staff in the draft Regulatory Guide.

Ad Hoc Subcommittee on Design Acceptance Criteria, October 7, 1992, Bethesda, MD. The Subcommittee will review SECY–92–299, "Development of Design Acceptance Criteria (DAC) for the Advanced Boiling Water Reactor (ABWR) in the Area of Instrumentation and Control (I&C) and Control Room Design."

Planning and Procedures, October 7, 1992, Bethesda, MD (3 p.m.–5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Advanced Boiling Water Reactors, October 21–22, 1992, Bethesda, MD. The Subcommittee will begin its review of the Final Safety Evaluation Report (FSER) for the GE ABWR design and the remainder of the Standard Safety Analysis Report (SSAR) submittals.

Safety Philosophy, Technology and Criteria, November 3, 1992, Bethesda, MD. The Subcommittee will review Revision 2 to NUREG/BR–0058,

Regulatory Analysis Guidelines, and guidelines for prioritization of Generic Safety Issues.

Advanced Pressurized Water Reactors, November 4, 1992, Bethesda, MD. The Subcommittee will review the NRC staff's Draft Safety Evaluation Report (DSER) for certification of the ABB CE System 80+ Design.

Planning and Procedures, November 4, 1992, Bethesda, MD (3 p.m.–5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Advanced Boiling Water Reactors, November 18–19, 1992, Bethesda, MD. The Subcommittee will continue its review of the Final Safety Evaluation Report (FSER) for the ABWR design.

Control and Electrical Power Systems, December 8, 1992, Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 120, "Online Testability of Protection Systems."

Joint Control and Electrical Power Systems/Probabilistic Risk Assessment, December 9, 1992, Bethesda, MD. The Subcommittees will review the proposed final amendment to the Station Blackout Rule (10 CFR 50.63) and the associated Regulatory Guide 1.9, Revision 3, regarding the reliability of diesel generators.

Planning and Procedures, December 9, 1992, Bethesda, MD (3 p.m.–5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

ACRS Full Committee Meetings

390th ACRS Meeting, October 8–10, 1992, Bethesda, MD. Items are tentatively scheduled.

A. *Insights from Common-Mode Failures*—Briefing by and discussion with representatives of the NRC staff on insights gained from an analysis of selected operating events involving common-mode failures. Representatives of the nuclear industry will participate, as appropriate.

B. *Environmental Qualification of Safety-Grade Digital Computer Protection and Control Systems*—Review and comment on the NRC research effort on environmental qualification of safety-grade digital computer protection and control systems. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

C. *Use of Probabilistic Risk Assessment in the Regulatory Process*—Briefing by and discussion with representatives of the NRC staff regarding the use of PRA by the NRC staff in the regulatory process.

D. *Yankee Rowe Nuclear Station-Reactor Pressure Vessel Embrittlement*—Briefing by and discussion with representatives of the NRC staff regarding lessons learned from the NRC staff's review of the reactor pressure vessel embrittlement issue at the Yankee Rowe Nuclear Power Station. Representatives of the licensee will participate, as appropriate.

E. *Format and Content of Design Certification Applications*—Review and comment on SECY–92–287, "Form and Content for a Design Certification Rule," for standardized nuclear power plant designs. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

F. *Branch Technical Position on Equipment Qualification for License Renewal*—Review and comment on Branch Technical Position regarding qualification of electrical equipment for nuclear power plant license renewal. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

G. *Human Factors Aspects of Operating Events*—Briefing by and discussion with representatives of the NRC staff regarding the status of the NRC staff work on the use of onsite evaluation teams to analyze the human factors aspects of selected operating events.

H. *Operator Training and Requalification*—Briefing and discussion regarding the results of the pilot simulator examination program, and proposed changes to 10 CFR part 55 requirements for requalification examinations. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

I. *Maintenance of Nuclear Power Plants*—Review and comment on the proposed NRC Regulatory Guide, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," for implementation of the Maintenance Rule and an associated NUMARC document. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

*J. *Stability of Boiling Water Reactors*—Review and comment on proposed resolution of core power stability issues in GE boiling water reactors. Representatives of the NRC staff and the nuclear industry will participate, as appropriate. Portions of this session will be closed as necessary to discuss Proprietary Information.

K. *Design Acceptance Criteria*—Review and report on Design Acceptance Criteria in the areas of man-machine interface and control and protection systems. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

L. *NRC Staff Review of ITAAC for the GE ABWR*—Discuss proposed ACRS report on the process for the NRC staff's review of the Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) for the ABWR design. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

M. *ACRS Activities*—Discuss recommendations of the ACRS Planning and Procedures Subcommitee on matters proposed for consideration by the full Committee.

*N. *ACRS Subcommittee Activities*—Discuss assigned activities of designated subcommittees including, the ACRS Planning and Procedures Subcommittee. Portions of this session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal property.

*O. *Activities of ACRS Members*—Discuss related activities of individual members of the Committee including, participation in meetings not sponsored by the ACRS. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

*P. *Appointment of Members*—Discuss qualifications of candidates proposed for appointment as members of the Committee. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Q. *Resolution of ACRS Comments and Recommendations*—Discuss response from NRC Executive Director for Operations regarding NRC staff reaction to ACRS comments and recommendations.

*R. *Conduct of ACRS Business*—Discuss qualifications of nominees and elect Member-at-Large to the ACRS Planning and Procedures Subcommittee. This session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

S. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed at previous sessions as time and availability of information permit.

391st ACRS Meeting, November 5–7, 1992, Bethesda, MD. Agenda to be announced.

392nd ACRS Meeting, December 10–12, 1992, Bethesda, MD. Agenda to be announced.

ACNW Full Committee and Working Group Meetings

ACNW Working Group on Potential for Presence of Natural Resources at a High-Level Waste Repository Site, October 20, 1992, St. Tropez Hotel, Las Vegas, NV. The Working Group will discuss potential for the presence of natural resources at the proposed Yucca Mountain high-level waste repository.

47th ACNW Meeting, October 21, 1992, St. Tropez Hotel, Las Vegas, NV. Items are tentatively scheduled.

A. Invite comments from State and Local Governments, for example, compatibility of NRC, EPA, and DOE requirements.

B. Invite DOE to discuss schedules for work in progress at Yucca Mountain.

C. Hear a briefing on information available on the June 29, 1992 earthquake that occurred near the proposed Yucca Mountain High-Level Waste Repository site and on evolving plans for seismic hazard studies.

D. Continue discussions of a supplemental request from Chairman Selin made on April 24, 1992, on a systems-analysis approach to reviewing the overall high-level waste program.

E. Review a DOE Study Plan, possibly the magmatic disruption study plan.

F. Consider potential impacts that different waste forms (spent fuel, vitrified wastes from different sources) could have on repository performance.

G. Discuss administrative matters related to Committee activities and items that were not completed at previous meetings as time and availability of information permit.

48th ACNW Meeting, November 16–17, 1992, Bethesda, MD. Agenda to be announced.

ACNW Working Group on the Impact of Long-Range Climate Change in the Area of the Southern Basin and Range, November 18, 1992, Bethesda, MD. The Working Group will discuss the historical evidence and the potential for climate changes in the Southern Basin and Range and the impact of climate change on natural processes affecting the performance of the proposed high-level waste repository at Yucca Mountain.

ACNW Working Group on Performance Assessment, December 16, 1992, Bethesda, MD. The Working Group will hear a briefing by DOE representatives regarding the status of the DOE's Total System Performance Assessment. Also, this Group will discuss the progress of Phase 2 of the HLW Iterative Performance Assessment effort by NRC.

49th ACNW Meeting, December 17–18, 1992, Bethesda, MD. Agenda to be announced.

Dated: September 17, 1992.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 92–23033 Filed 9–22–92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–332]

Allied-General Nuclear Services, Inc.; Barnwell Nuclear Fuel Plant; Notice of Denial of Request to Amend Construction Permit No. CPCSF–4 to Change the Latest Completion Date and Opportunity for Hearing

I

Allied-General Nuclear Services, Inc. (AGNS) holds Construction Permit No. CPCSF–4 which authorizes the construction of the Barnwell Nuclear Fuel Plant in Barnwell County, South Carolina. The construction permit was issued on December 29, 1970.

II

On November 11, 1976, AGNS submitted a request for an amendment to Construction Permit No. CPCSF–4 to extend the latest construction completion date from December 31, 1976, to December 31, 1979. In subsequent action on December 30, 1977, the U.S. Nuclear Regulatory Commission ordered the termination of all activities associated with the *G*eneric *E*nvironmental *S*tatement on the Use of *R*ecycle Plutonium in *M*ixed *O*xide Fuel in Light Water Cooled Reactors (GESMO). The activities proposed to be undertaken in the Barnwell Nuclear Fuel Plant were among those affected by that order. On May 8, 1978, the Commission issued its Memorandum of Decision terminating all plutonium recycle related proceedings, including those under Docket No. 50–332.

Since the original request for extension of the latest completion date of November 11, 1976, AGNS has submitted several additional requests on anniversary dates corresponding to the expiration dates which would have been in effect had the Commission acted upon and granted the requested extension. Until the present time the Commission has not acted upon these requests.

Although AGNS has been persistently requesting extensions of the latest completion dates, its actions have not been consistent with the purpose of the construction permit, nor the Commission's Rules in 10 CFR parts 2 and 50 in that the applications do not state an intent to complete construction in order to seek an operating license for the facility. In fact, AGNS has removed buildings and equipment which would be necessary for the purpose of reprocessing nuclear fuel, thereby demonstrating the lack of an intent consistent with their original purpose. Therefore, AGNS has not shown good cause for extension of the completion date of the construction permit, as required by 10 CFR 50.55(b).

III

Based on the foregoing the NRC staff finds that AGNS has not shown good cause for failure to complete the Barnwell facility in its request for extension of the latest completion date for Construction Permit No. CPCSF–4. Therefore, the request of AGNS for extension of the latest completion date for Construction Permit No. CPCSF–4 is denied and Construction Permit No. CPCSF–4 is terminated, effective sixty days from the date of this order. By letter, dated May 12, 1992, AGNS stated that it would not oppose such termination. The staff has toured the site and the facility and determined that no environmental remediation of the site is necessary.

IV

By October 23, 1992, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this denial, and who desires to participate as a party may request a hearing on this action on extension of the construction permit.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, within 30 days of the publication of this notice. Where petitions are filed during the last ten (10) days of the notice period it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western

Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard E. Cunningham, Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards: Petitioner's name and telephone number; date petition was mailed; plant name, and publication date and page number of this **Federal Register** notice.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bennett Boskey, Volpe, Boskey and Lyons, World Center Building, 918 16th Street, NW., Washington, DC 20006, attorney for the applicant, and must comply with the requirements for requesting a hearing set forth in NRC regulation, 10 CFR Part 2, Subpart G, "Rules of General Applicability," Section 2.714.

The petition shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding; (3) The possible effect of any order that may be entered in the proceeding on the petitioner's interest, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

If Allied-General Nuclear Services, Inc., or any other person whose interest may be affected requests a hearing, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing is whether this denial action should be sustained.

For further details with respect to this action, see (1) the licensee's applications for amendment to extend the latest completion date, dated November 11, 1976, November 9, 1978, November 23, 1981, August 16, 1982, August 24, 1983, August 15, 1984, August 20, 1987, and July 11, 1990, and (2) the Commission's letter to the licensee, dated September 16, 1982.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

V.

In the absence of any request for a hearing, the action to deny shall be final sixty days from the date of this notice without further proceedings.

Dated at Rockville, Maryland, this 16th day of September 1992.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 92–23032 Filed 9–22–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31182; File No. SR–Amex–92–34]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Partial Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Procedures for Handling and Executing Market-On-Close Orders

September 15, 1992.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 10, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. At the same time, the Commission is granting accelerated partial approval to the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to (1) extend, until December 15, 1992, the pilot program amending Rule 109 [1] to provide that the procedures currently used to execute market-on-close ("MOC") orders in certain stocks on expiration Fridays [2] be made applicable to all MOC orders in all Amex-listed stocks on every trading day; and (2) obtain permanent approval for the pilot program prior to its expiration on December 15, 1992.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In June, 1991, the Commission approved, for a one-year pilot period,[3] an Exchange proposal which provides that the procedures used to execute all MOC orders on every trading day be the same as those procedures currently used to execute MOC orders on expiration Fridays in stocks that are components of a stock index on which an option and/or stock contract is traded (*e.g.*, the Standard and Poor's 500 Composite Stock Price Index). The procedures, in place since June 1991, provide that all buy and sell MOC orders be paired-off against each other, and if there is an imbalance, that the imbalance be executed against the closing bid if it is on the sell side and against the closing offer if it is on the buy side. The paired-off orders are executed at the same price as the imbalance. If there is no imbalance, the paired-off orders are executed at the price of the last sale on the Exchange prior to the close of trading in that stock. Thus, this procedure assures that all MOC orders in a particular stock will be executed at the same price. In addition, those orders that are paired-off in implementing the procedure are reported as "stopped

[1] This pilot program was approved by the Commission for a one-year period beginning on June 14, 1991 and expiring on June 14, 1992. See Securities Exchange Act Release No. 29312 (June 14, 1991), 56 FR 28583 (June 21, 1991). The Commission approved a three-month extension to the pilot program, expiring September 15, 1992, on June 15, 1992. See Securities Exchange Act Release No. 30812 (June 15, 1992), 57 FR 27991 (June 23, 1992).

[2] Expiration Friday is the one trading day each month when stock index futures, stock index options and options on stock index futures expire or settle concurrently.

[3] See note 1, *supra*.

stock", so that customers with unexecuted limit orders on the specialist's book will know that the MOC transaction was executed outside the regular auction market, and that for this reason their orders may have not participated.

In June, 1992, the Exchange filed a report with the Commission detailing its experience with these procedures for the execution of MOC orders during the one year pilot program.[4] As the report indicates, on the days studied [5] the MOC procedures did not, in the Amex's view, result in an increase in volatility and only on three occasions was there an increase in order flow during the final hour of trading on the Exchange. An analysis of the trading in those stocks which experienced an increase in order flow did not, Amex believes, reveal an effort to manipulate the closing price.

On June 15, 1992, the Commission approved a three-month extension of the pilot program which expires September 15, 1992. The Exchange now seeks to (1) extend the pilot program for an additional three months in order for the Commission to study further data to be provided by the Exchange on its experience with these market-on-close procedures; and (20) obtain permanent approval for the pilot program prior to its expiration on December 15, 1992.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-34 and should be submitted by October 14, 1992.

IV. Discussion and Order Granting Accelerated Partial Approval of the Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the portion of the proposed rule change to extend the pilot for an additional three months is consistent with Section 6 of the Act [6] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In the order extending the pilot program until September 15, 1992, the Commission stated that the Amex should continue to monitor the closing MOC procedures and report to the Commission any increased volatility or order flow during the last hour of trading. The Commission now extends the pilot program until December 15, 1992, so that the Commission will have the opportunity to obtain and review additional data from the Amex concerning its experiences with the pilot program.

Specifically, before requesting a further extension, the Amex must submit by October 30, 1992, a pilot program report that addresses: (1) Whether there have been any complaints regarding the operation of the pilot; (2) whether the Amex has taken any disciplinary or performance action against any member due to the operations of the pilot; (3) the extent to which the pilot has been used on the Amex; and (4) the impact of the pilot on volatility and order flow. The data the Amex supplies should specifically analyze the effects of the pilot. Accordingly, the report should examine the use of the MOC procedures in Amex stocks other than on expiration Fridays, in addition to analyzing the use of MOC procedures on expiration Fridays in stocks that are not components of an Index.

The Commission believes that a three-month extension of the proposal, until December 15, 1992, is appropriate in order to provide the Commission with additional time to obtain and review data from the Exchange regarding its experience with the pilot MOC procedures. After reviewing such data, the Commission should be able to make a decision with regard to the Amex's proposal requesting permanent approval of the MOC procedures. The Commission also believes that during the next three months of the pilot, the Amex should continue to monitor the closing MOC procedures and report to the Commission any increased volatility or order flow during the last hour of trading.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the proposed rule change in the **Federal Register**. Accelerated approval enables the Exchange to continue, on an uninterrupted basis, the procedures currently used for handling and executing MOC orders.[7] The

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[4] See letter from Claire P. McGrath, Special Counsel, Legal & Regulatory Policty, Amex, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated June 10, 1992.

[5] The Amex's report concentrates on MOC orders entered on expiration Fridays from June 1991 through March 1992.

[6] 15 U.S.C. 78f (1988).

[7] The Commission notes that it also recently granted permanent partial approval to a substantially similar proposal submitted by the New York Stock Exchange, Inc. ("NYSE") [see Securities Exchange Act Release No. 30004 (November 27, 1991), 56 FR 63533 (order granting partial approval to File No. SR—NYSE–91–35)]. The portion of the NYSE's proposal which was permanently approved by the Commission makes the NYSE's procedures used for the execution of MOC order on expiration Fridays applicable to every trading day.

additional three-month continuation of the pilot program should allow the Commission sufficient time to obtain and review the Exchange's report and determine whether approval of the procedures on a permanent basis is consistent with the Act. Furthermore, the Commission solicited comments on the Amex's original MOC proposal and on the most recent three-month extension, and no comments were received.

V. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [8] that the proposed rule change be, and hereby is, approved for a pilot period ending on December 15, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23018 Filed 9-22-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18961; 812-7903]

G.T. Global Growth Series, et al.; Notice of Application

September 17, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application of Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: G.T. Global Growth Series, G.T. Investment Funds, Inc., G.T. Investment Portfolios, Inc., each portfolio thereof, and any future portfolios thereof that will issue multiple classes of shares which are identical in all material respects to the classes described herein, and any other open-end management investment companies established or acquired in the future that are in the same "group of investment companies" as that term is defined in rule 11a-3 under the Act and which issue multiple classes of shares that are identical in all material respects to the classes described in this application (all such portfolios and companies are collectively referred to as the "Funds"), G.T. Capital Management, Inc. ("G.T. Capital") and G.T. Global Financial Services, Inc. ("G.T. Global").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), 22(d) and from rule 22c-1.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds (i) to issue and sell two classes of securities representing interests in the same investment portfolio (the "Dual Distribution System") and (ii) to assess, and under certain circumstances waive, a contingent deferred sales charge ("CDSC") on certain redemptions of their shares.

FILING DATE: The application was filed on April 14, 1992 and amended on July 23, 1992 and August 25, 1992. Applicants' counsel has stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on October 13, 1992 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 50 California Street, San Francisco, California 94111.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504-2406, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are organized as series of three registered open end management investment companies: G.T. Global Growth Series, G.T. Investment Funds, Inc., and G.T. Investment Portfolios, Inc. G.T. Global Growth Series is a Massachusetts business trust. G.T. Investment Funds, Inc. and G.T. Investment Portfolios, Inc. are Maryland corporations. G.T. Global serves as the distributor of the shares of each Fund. Shares of the common stock or beneficial interest of the Funds, as applicable, are available through brokers which have entered into agreements to sell shares with G.T. Global. Shares may also be acquired directly through the Funds' transfer agent, G.T. Global Investor Services, Inc. G.T. Capital is the investment manager and administrator for each of the Funds.

2. Applicants propose the establishment of the Dual Distribution System which will allow each Fund to offer investors the option of purchasing shares either subject to a front-end sales charge and a distribution plan adopted in accordance with rule 12b-1 under the Act ("Rule 12b-1 Plan") (the "Class A Shares"), or subject to a CDSC and a Rule 12b-1 Plan (the "Class B Shares"). The Class A Shares would be offered to the public in accordance with the Funds' existing sales charge structure.[1] The Class B Shares will be subject to a CDSC ranging from 6% to 0% of the aggregate purchase payments made by an investor for Class B Shares depending on the length of time such shares are held. No CDSC will be imposed on the appreciation of the value of an investor's shares or on amounts distributed and reinvested. The Class A Shares of each Fund will pay a distribution fee to G.T. Global under the Rule 12b-1 Plan applicable to that class (the "Class A Plan") at a rate of up to .50% per annum of the daily net assets of the Class A Shares. Class B Shares will pay a distribution fee to G.T. Global under the Rule 12b-1 Plan applicable to that class (the "Class B Plan") at a rate of up to 1.00% per annum of the average daily net assets of the Class B Shares. Each Fund will accrue and pay the distribution fee at a rate fixed by the Funds' Boards of Directors [2] (but no in excess of the applicable maximum percentage rate). In addition, Class B Shares may be subject to higher transfer agency charges per account and any other incremental expenses subsequently identified that should be properly allocated to that class which shall be approved by the Commission pursuant to an amended order.[3]

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[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1991).

[1] In addition, it is proposed that certain Class A Shares that are sold at net asset value may be subject to a CDSC as described herein if they are redeemed within one year of purchase.

[2] The term "Directors" is used herein to refer both to the members of the boards of directors of the Funds that are organized as corporations, and to the members of the boards of trustees of the Funds that are organized as business trusts.

[3] The Funds will request a private letter ruling that the assessment of the additional distribution

Continued

3. The two classes of shares would represent interests in the same portfolio of securities and would have identical voting, dividend, liquidation and other rights and the same terms and conditions, except as specified in condition 1, below. The net asset value of shares of each class of the Funds that are money market funds will be calculated in accordance with the amortized cost method that seeks to maintain a constant $1.00 per share net asset value. The gross income of the outstanding shares of a Fund that is a money market fund will be computed on a *pro rata* basis for each outstanding share regardless of class, and all expenses incurred by such Fund will be borne on a *pro rata* basis by such outstanding shares, except for the expenses specifically payable by each class. The gross income and all expenses, except for the specifically allocated expenses, of each of the other Funds will be allocated between the classes on the basis of their relative net assets. Because of the additional expenses paid by holders of Class B Shares, the net income attributable to the Class B Shares will be lower than the net income attributable to the Class A Shares.

4. Some portion of those fees payable under the Class A Plan and the Class B Plan would be used to pay ongoing commissions to account executives and sales personnel whose clients hold Class A or Class B Shares to compensate those account executives and sales personnel for the ongoing services they provide to their clients.

Account executives or sales personnel selling shares of a Fund may be compensated differently for selling Class A or Class B Shares. Because the amount of compensation an account executive or sales person receives will vary from case to case depending on breakpoints, the length of time that client accounts are maintained, and other factors, applicants believe that it is not possible to generalize as to which class will provide the account executive or sales person with the highest level of compensation.

5. The Funds' prospectuses will describe the services rendered and compensation paid under the Rule 12b–1 Plans and the fees payable by each Fund thereunder. Each prospectus will disclose all material information concerning the Class A Shares and Class B Shares in a manner that would enable an investor to make an informed and comparative analysis of the two classes of shares, and facilitate the making of an investment decision that would be the most advantageous to a given investor.

6. Currently, G.T. Global furnishes the Directors of the Funds with quarterly and annual statements of distribution revenues and expenditures ("Statements") (in accordance with the requirements of paragraph (b)(3)(ii) of rule 12b–1) to enable the Directors to make the findings required by paragraphs (d) and (e) of rule 12b–1. After implementation of the Dual Distribution System, the Directors will receive Statements which set forth distribution revenues and expenditures with respect to each class. In the Statements, only expenditures properly attributable to the sale of Class A or Class B Shares, as applicable, will be used to support the distribution fee charged to shareholders of such class of shares. Expenditures not related to the sale of a particular class will not be presented to the Directors to support the distribution fee charged to shareholders of such class of shares. Distribution expenses attributable to the sale of both classes of shares will be allocated annually to each class of shares based upon the ratio in which the sales of each class of shares bears to the sales of all the shares of each Fund. For this purpose, shares issued upon reinvestment of dividends or distributions will not be considered sales.

7. Class A Shares of a Fund will be exchangeable only for Class A Shares of the other Funds, and Class B Shares will be exchangeable only for Class B Shares of the other Funds. The applicable exchange privileges will comply with rule 11a–3 under the Act.

8. It is expected that the percentage amounts in the CDSC schedule of the Funds will vary depending in part on the front-end sales charge applicable to the Class A Shares of a particular Fund and the compensation paid to sales personnel and account executives for selling shares of the Fund. The CDSC will not be imposed on redemptions of Class B Shares which were purchased more than six years prior to the redemptions (the "CDSC Period") or on those Class B shares derived from reinvestment of dividends/distributions. Likewise, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for Class B Shares purchased in the CDSC Period. The proposed CDSC will not be imposed on any shares issued by the Funds prior to the date of any order granting the exemptive relief requested hereby.

9. Applicants also request the ability to impose a CDSC on the proceeds of certain redemptions of Class A Shares initially sold without a sales charge. Such Class A Shares would be limited to those sold at net asset value pursuant to the sales charge waiver for large purchases. Currently, this waiver applies to sales where the amount of the purchase exceeds $1,000,000, although this amount may be changed in the future. The CDSC payable on such Class A Shares will be paid to G.T. Global to defray the cost of paying sales commissions to sales personnel and account executives on the sale of such Class A Shares. The CDSC would be imposed only on such Class A Shares issued on or after the date the order requested hereby is granted and only in the event of a redemption transaction within twelve months following the share purchase. The CDSC applicable to those Class A Shares would be calculated in the same manner as the CDSC with respect to the Class B Shares described herein. However, the amount of the CDSC will be limited to 1% of the investor's aggregate purchase payments. In addition, each of the CDSC waivers or reductions described below may be applied to redemptions of Class A Shares that would otherwise be subject to the CDSC.

10. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the Class B Shares at the time of purchase and the amount that represents such percentage of the net asset value of the Class B Shares at the time of redemption. As a result, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for Class B Shares purchased in the CDSC Period. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of Class B Shares representing reinvestment of the dividends and capital gain distributions, second of Class B Shares held by the shareholder for a period equal to or greater than the CDSC Period, and finally of other Class B Shares held by the shareholder for the longest period of time. This will result a charge, if any, imposed at the lowest possible rate.

11. The Funds are requesting the ability to waive or reduce the CDSC (a) on redemptions following death or disability, as defined in section 72(m)(7)

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fee and transfer agency costs and any other special allocations described above with respect to Class B Shares does not result in any dividends or distributions constituting "preferential dividends" under the Internal Revenue Code of 1986, as amended.

of the Internal Revenue Code of 1986, as amended, of a shareholder if redemption is made within one year after death or disability of a shareholder, as relevant; (b) in connection with certain distributions from an IRA, or other qualified retirement plan; (c) in connection with redemptions of Class B Shares purchased by current or retired officers, directors or trustees, and current or retired employees of the Funds, G.T. Capital, or G.T. Global, or affiliated companies, and by the members of the immediate families of such persons; (d) in connection with redemptions made by registered representatives or full time employees of brokers and dealers which have entered into dealer agreements with G.T. Global, and their children, siblings and parents; (e) in connection with redemptions of Class B Shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (f) in connection with redemptions by certain large accountholders of a Fund's shares; [4] (g) in connection with redemptions the proceeds of which are reinvested in Class B Shares of any of the Funds within 365 days, or a shorter period, after such redemption; (h) in connection with redemptions effected by advisory accounts managed by G.T. Capital or any affiliated company or by any such affiliated company itself; (i) in connection with certain redemptions by tax exempt employee benefit plans; (j) on redemptions effected pursuant to each Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the effective minimum account size; and (k) in connection with certain redemptions by banks, trust companies, registered investment advisers, and other financial institutions with trust powers which use trust funds to purchase shares of a Fund. If the Funds waive or reduce the CDSC, such waiver or reduction will be uniformly applied to all offerees of the Funds' Class B Shares. Also, in waiving or reducing a CDSC, the Funds will comply with the requirements of rule 22d–1 under the Act. The CDSC will be waived or reduced by a Fund as provided in such Funds's prospectus at the time the investor purchased the shares.

[4] Specifically, if immediately prior to a redemption the value of a shareholder's account, either in the Fund being redeemed on an individual basis or in such Fund and all other Funds on an aggregate basis, equals $1 million or more but does not exceed $2 million, that shareholder would be entitled to make a redemption at either a lower CDSC than would otherwise be applicable or no CDSC, as discussed in the relevant Fund's prospectus. Likewise, if the value of a shareholder's account in the Fund being redeemed exceeds $2 million, the shareholder would be entitled to make a redemption at either a further reduced CDSC or no CDSC, as disclosed in the relevant Fund's prospectus.

Legal Analysis

1. The proposed Dual Distribution System does not create the potential abuses relating to complex capital structures and mutuality of risk which section 18 was designed to correct. Since all shares of money market funds would participate *pro rata*, and the shares of each other Fund would participate based on the relative net assets of each class, in each Fund's income and each Fund's expenses, except for the specially allocated expenses, the proposed arrangement would not increase the speculative character of the shares of the Funds or disturb the mutuality of risk among all shareholders.

2. Both classes of shares would be redeemable at all times and neither class of shares would have any preference or priority over the other class in the usual sense, *i.e.*, no class would have distribution or liquidation preferences with respect to particular assets and no class would be protected by any reserve or other account.

3. Applicants believe that the interest of the two classes of shares as to the investment management and administration fee of each Fund are the same and not in conflict. The fee is used solely to compensate G.T. Capital for providing investment management and administrative services that are common to all investors, regardless of the class of shares held.

4. Rather than maintaining each Fund's existing shares in one fund and organizing separate funds or portfolios of each Fund utilizing the CDSC arrangement, G.T. Capital and G.T. Global believe that shareholders would benefit if both distribution options were available in a single fund. To the extent that the Funds are able to maintain and expand their respective shareholder base through the Dual Distribution System, their shareholders will benefit to the extent such Funds' *pro rata* operating expenses per share be lowered. Moreover, if the exemptive order requested herein is not granted, the Funds' shareholders will be disadvantaged by not having the same options which are currently available to shareholders of other mutual fund complexes which have obtained comparable exemptive relief. The Dual Distribution System has been developed to provide investors with the option within the same Fund of choosing to purchase shares with either the front-end sales load or the CDSC, as is currently featured in other mutual fund complexes.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. Class A and Class B Shares will represent interests in the same portfolio of investments of each Fund, and be identical in all respects, except as set forth below. The only differences between Class A and Class B Shares of the same Fund will relate solely to: (a) the impact of the respective rule 12b–1 fees imposed on the respective Class A and Class B Shares of a Fund, the higher transfer agency costs paid by the Class B Shares of a Fund and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to the Rule 12b–1 Plan applicable to each class of a Fund's shares, (c) the different exchange privileges of the Class A and Class B Shares as described in the prospectus (and as more fully described in the statement of additional information) of each Fund, and (d) the designation of each class of shares of each Fund.

2. The Directors of the Funds, including a majority of the independent Directors, will approve the Dual Distribution System. The minutes of the meetings of the Directors regarding the deliberations of the Directors with respect to the approvals necessary to implement the Dual Distribution System will reflect in detail the reasons for determining that the proposed Dual Distribution System is in the best interests of both the Funds and their shareholders.

3. On an ongoing basis, the Directors, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The Directors, including a majority of the independent Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. G.T. Capital and G.T. Global will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, G.T. Capital and G.T. Global at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. Any Rule 12b–1 Plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its Rule 12b–1 Plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. If still required by the Commission, such meeting will be held within sixteen months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

5. The Directors of the Funds will receive periodic (not less than quarterly) and annual statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as amended from time to time. In the Statements, only expenditures properly attributable to the sale of Class A or Class B Shares, respectively, or to the provision of services to holders of such shares, will not be presented to the Directors to justify any fee attributable to such class. The Statements, including the allocations upon which they are based, will be subject to the review and approval or of the Independent Directors in the exercise of their fiduciary duties.

6. Dividends/distributions paid by each Fund with respect to its Class A or Class B Shares, to the extent any dividends/distributions are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that distribution and/or service fee payments made by a Fund under its Class A or Class B Plan, and any incremental transfer agency costs relating to Class A or Class B Shares, will be borne exclusively by the respective class.

7. The methodology and procedures for calculating the net asset value and dividends/distributions of the Class A or Class B Shares, and the proper allocation of expenses between those classes, has been reviewed by an expert (the "Expert") who has tendered a report to applicants, which has been provided to the staff of the Commission, which states that the methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made under the Dual Distribution System and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to Sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Fund (which the Fund agrees to provide), will be available for inspection by the Commission staff upon the written request to the Fund for such work papers by a senior member of the Division of the Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests," as defined and described in the Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses between the classes of shares. This representation has been concurred with by the Expert in the initial report referred to in condition (7) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants will take immediate corrective measures if this representation is not concurred with by the Expert or appropriate substitute Expert.

9. The prospectus of each Fund will include a statement that a salesperson and any other person entitled to receive compensation for selling shares of the Fund may receive different compensation for selling Class A or Class B Shares.

10. G.T. Global will adopt compliance standards regarding when Class A and Class B Shares may be appropriately sold to particular investors. Applicants will require all persons selling Class A or Class B Shares to agree to conform to such standards.

11. The conditions pursuant to which the exemptive relief is granted and the duties and responsibilities of the Funds with respect to the Dual Distribution System will be set forth in guidelines that will be furnished to the Directors.

12. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, contingent deferred sales loads, and exchange privileges applicable to each class of shares offered through the prospectus. Class A and Class B Shares will be offered and sold through a single prospectus. The shareholder reports of each Fund will disclose the respective expenses and will disclose performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. The footnotes to the shareholder reports will explain the reasons for the differences between the classes of shares. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class A or Class B Shares, it will disclose the expenses and/or performance data applicable to both classes. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering prices will separately present Class A and Class B Shares.

13. Applicants acknowledge that the grant of the exemptive relief requested by this Amendment to the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to their Rule 12b–1 Plans in reliance on the exemptive order.

14. A money market fund will have more than one class of shares outstanding only when and for so long as it declares its dividends on a daily basis, accrues its payments for the Rule 12b–1 Plans and transfer agency expenses daily, and has received undertakings from the persons that are entitled to receive payments under the Rule 12b–1 Plans and for distribution fees, transfer agency expenses, and other incremental expenses subsequently identified and allocated to one class or another if such allocation is approved by the Commission pursuant to an amended order, waiving such portion of any such payments to the

extent necessary to assure that payments (if any) required to be accrued by any class of shares on any day do not exceed the income to be accrued to such class on that day. In this manner, the net asset value per share for all shares in such Fund will remain the same.

15. Applicants will comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be re-proposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23079 Filed 9-22-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18859; 812-7545]

SPDR Trust, Series 1, et al.; Notice of Application

September 17, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order under the Investment Company Act of 1940 ("Act").

APPLICANTS: SPDR Trust, Series 1 ("Trust") and PDR Services Corporation ("Sponsor").

RELEVANT ACT SECTIONS: Order requested pursuant to sections 6(c) and 17(b) granting exemptions from sections 4(2), 14(a), 17(a), 22(d), 22(e), 24(d), 26(a)(2)(C) and rule 22c-1, and pursuant to section 17(d) and rule 17d-1 to permit applicants to engage in certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants seek an order (1) permitting a unit investment trust to issue non-redeemable securities ("SPDRs"); (2) permitting secondary market transactions to SPDRs at negotiated prices, rather than at a current public offering price described in the prospectus; (3) permitting dealers to sell SPDRs to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933; (4) permitting certain expenses associated with the creation and maintenance of the Trust to be borne by the Trust, rather than the Sponsor; (5) exempting the Sponsor from the Act's requirement that it purchase, or place with others, $100,000 worth of SPDRs; (6) permitting affiliated persons of the Trust to deposit securities into, and receive securities from, the Trust in connection with the purchase and redemption of SPDRs; (7) permitting the Trust to reimburse the Sponsor for payment of an annual licensing fee to Standard & Poor's; and (8) permitting the Trust to satisfy redemption requests within five business days rather than seven calendar days.

FILING DATE: The application was filed on June 25, 1990; amended and restated applications were filed on February 8, 1991, February 28, 1992, June 5, 1992 and August 7, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 19, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a unit investment trust that will be organized under the laws of the State of New York. The Trust is designed to provide investors with a low-cost instrument that closely tracks the Standard & Poor's 500 Composite Stock Price Index ("S&P 500 Index"), that trades like a share of common stock, and that pays quarterly dividends proportionate to those paid by the portfolio of stocks that constitutes the S&P Index. The Sponsor is a wholly-owned subsidiary of the American Stock Exchange ("AMEX"). State Street Bank and Trust Company ("Trustee") will act as trustee of the Trust. PDR Distributors, Inc. ("Distributor"), a registered broker-dealer and wholly-owned subsidiary of Signature Financial Group, Inc., will serve as the distributor of the Trust's securities, known as SPDRs (for Standard & Poor's Depositary Receipts).

2. SPDRs were developed in response to the suspension of trading in "index participations" ("IPs"), which were contracts of indefinite duration based on the value of a basket of securities. IPs could be based on any basket of securities, including the S&P 500 index. The SEC approved IPs for trading on the AMEX, Philadelphia Stock Exchange, and Chicago Board Options Exchange. Trading in IPs was suspended in response to the decision of the Seventh Circuit in *Chicago Mercantile Exchange* v. *SEC*, 883 F.2d 537 (7th Cir. 1989), *cert. denied*, 110 S. Ct. 3214 (1990), in which the court held that IPs were within the exclusive jurisdiction of the Commodity Futures Trading Commission. Applicants characterize the response to IPs during the four months in which IPs were traded on the AMEX as quite favorable, given that trading was inhibited by the specter of litigation. Applicants believe that SPDRs, like IPs, will have broad retail appeal and will make available to small investors an exchange-traded index-based investment. Unlike IPs, however, SPDRs represent an interest in an actual portfolio of securities, and therefore, in applicants' opinion, do not present the elements of futurity that the Seventh Circuit attributed to IPs.

3. SPDRs will be issued in aggregations of 50,000 known as "Creation Units." Each SPDR will be worth one-tenth the value of the S&P 500 Index, or approximately $40 at the current level of the index. Each Creation Unit, therefore, will cost about $2 million.

4. All orders to purchase Creation Units from the Trust must be placed with the Distributor, who shall be responsible for transmitting such orders to the Trustee. The Distributor will furnish to purchasers confirmation that the orders have been accepted, but shall reject any order that is not in proper form. Upon acceptance of an order, the Distributor will instruct the Trustee to initiate the appropriate procedures, as set forth below. The Distributor will maintain records of the orders placed with it, the confirmations and rejections it issues to those placing orders, and the instructions it issues to the Trustee. It also will maintain a record of the instruction files transmitted by the Trustee to the NSCC, as described below. The Distributor will be responsible for distributing prospectuses and may provide certain other administrative services, such as those

related to state securities compliance. The Sponsor will pay the Distributor a flat annual fee. The Sponsor will not seek reimbursement from the Trust for the payment of such fee without obtaining relief from the SEC.

5. Investors wishing to purchase a Creation Unit must transfer to the Trust a "Portfolio Deposit," which consists of: (a) a portfolio of securities that is substantially similar, in composition and weighting, to the component securities ("Index Securities") of the S&P 500 Index; (b) a cash payment equal to a *pro rata* portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, net of expenses and liabilities, and (c) a cash payment or credit ("Balancing Amount") designed to equalize the net asset value of the S&P 500 Index and the net asset value of a Portfolio Deposit. The Balancing Amount is required because, among other things, a Portfolio Deposit, unlike the S&P 500 Index, can not contain fractional shares. An investor making a Portfolio Deposit also will be charged a nominal service fee ("Transaction Fee") to defray securities settlement costs, as discussed below.

6. The Sponsor will recalculate daily the securities component and the cash component of a Portfolio Deposit. The Sponsor will make available to investors a list of the names and the required number of shares of each Index Security, and the amount of cash, comprising a Portfolio Deposit on any given day. The cash equivalent value of an Index Security may be included in the cash component of a Portfolio Deposit in lieu of the security if: (a) The Trustee were to determine that the Index Security is likely to be unavailable or available in insufficient quantity for inclusion in a Portfolio Deposit (for example, where the security is subject to a trading halt or stop order, or is the subject of a tender offer), or (b) a particular investor is restricted from investing or engaging in transactions in such Index Security (for example, where the investor is a broker-dealer restricted by regulation or internal policy from investing in securities issued by a company on whose board one of its directors serves, or a company whose securities the broker-dealer is underwriting). In the latter situation, the Trustee generally will use the cash equivalent payment to purchase the appropriate number of shares of the Index Security that the investor was unable to purchase.

7. SPDRs will not be individually redeemable, except upon termination of the Trust. To redeem, an investor must accumulate enough SPDRs to reconstitute a Creation Unit. An investor redeeming a creation Unit will receive Index Securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that day.

8. Because a redeeming shareholder will receive a Portfolio Deposit in exchange for its Unit, and only a minute portion of a Portfolio Deposit consists of cash, the Trustee will not be forced to maintain large cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P 500 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a much greater portion of their assets for cash redemptions.

9. Persons obtaining SPDRs from the Trust in Creation Unit size aggregations may hold those SPDRs or sell some or all of them into the secondary market. SPDRs will be listed on the AMEX and traded in the secondary market in the same manner as other equity securities. The price of SPDRs on the AMEX will be based on a current bid/offer market. Transactions involving the sale of SPDRs will be subject to customary brokerage commissions and charges.

10. Applicants expect that the price at which SPDRs trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Unit-size aggregations at net asset value, which should ensure that SPDRs will not trade at a material discount or premium in relation to net asset value.

11. Applicants expect that purchasers of Creation Units will include institutional investors who wish to keep a portion of their portfolios tracking the S&P 500 Index and who find SPDRs a cost-efficient means to do so, with the added benefit of exchange-traded liquidity should they wish to sell some or all of their holdings. In addition, arbitrageurs (which could include institutional investors) may purchase Creation Units to take advantage of potential arbitrage opportunities if SPDRs are selling on the AMEX at a premium to net asset value. Finally, the AMEX specialist, exercising its responsibility to provide a fair and orderly secondary market for SPDRs, may from time to time find it appropriate to purchase SPDRs in Creation Unit-size aggregations from the Trust for use in its market-making activities on the AMEX floor. Applicants expect that secondary market purchasers of SPDRs will include both institutional investors and retail investors.

12. To be eligible to purchase a Creation Unit, an organization must be a participant in the continuous net settlement system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant, but is not required to be an AMEX member. The procedures employed to process a purchase order will depend upon whether the transaction is settled through NSCC or DTC, as described in the next two paragraphs. Procedures for redeeming a Creation Unit are analogous to those for purchasing one, although redemption requests are placed with the Trustee, rather than the Distributor.

13. An organization that is a participant in the continuous net settlement system of NSCC and that desires to use the NSCC "package" that automates movement of the five hundred Index Securities will place its purchase order by telephone with the Distributor, who will transmit the order to the Trustee. Once the Trustee has accepted the order, the Distributor will transmit a confirmation of acceptance to the organization that placed the order. Each night at approximately 7:30 p.m. New York time, the Trustee will transmit to NSCC an instruction file indicating the number of SPDRs to be credited to the account of each organization that placed an accepted order. Each of those organizations previously will have authorized the Trustee to instruct NSCC on its behalf to move Index Securities and cash from its account to the Trustee's account as payment for purchases of Creation Units. Accordingly, upon receipt of the instruction file, NSCC will incorporate instructions for the required position movements of the five hundred Index securities, and the appropriate number of SPDRs, into its continuous net settlement system. Each transaction will settle on the fifth business day after the trade date.

14. Placement of purchase orders to be executed via DTC terminals for DTC transfer is identical to that for orders to be processed through NSCC up to the point at which the Distributor sends a confirmation, except that the orders must state exactly when the transfer of securities and cash is to be effected. "In-kind" payment for Creation Units via DTC involves line by line position movements of the required shares in each of the five hundred Index Securities from the purchaser to the Trustee—and the return movement of SPDRs from the Trustee to the purchaser—through use of the DTC Participant Terminal System. Both the

Trustee and the purchaser will be required to reconcile delivery and receipt of the correct number of shares of each Index Security and the correct number of SPDRs. In addition, transmission of the appropriate cash component of the Portfolio Deposit, plus the Transaction Fee, must be accomplished in a manner acceptable to the Trustee, normally through a DTC cash transfer system.

15. SPDRs will be registered in book-entry form only; certificates will not be issued. The DTC or its nominee will be the registered owner of all outstanding SPDRs. Records reflecting the beneficial owners of SPDRs will be maintained by the DTC or its participants.

16. Persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters. For example, a broker-dealer firm may be deemed a statutory underwriter if it purchases Creation Units from the Trust, breaks them down into the constituent SPDRs, and sells the SPDRs directly to its customers; or if it chooses to couple the creation of a supply of new SPDRs with an active selling effort involving solicitation of a secondary market demand for SPDRs. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus will explain that (a) a statutory underwriter will be subject to certain liability provisions of the Securities Act, and (b) dealers who are statutory underwriters, and dealers effecting transactions in SPDRs that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, will be unable to take advantage of the prospectus delivery exemption provided to dealers by section 4(3) of the Securities Act.

17. Under a proposed new AMEX rule, each investor purchasing SPDRs in the secondary market (except as set forth below) will receive a "Product Description" designed to provide a brief and readily understandable description of the salient aspects of SPDRs. The Product Description will advise investors that a prospectus is available without charge upon request. Although the AMEX rule can not ensure delivery of a Product Description to investors purchasing SPDRs through a non-member broker-dealer in a transaction away from the AMEX floor, applicants expect that such transactions should be extremely rare. In addition, applicants note that transactions effected on regional exchanges pursuant to unlisted trading privileges can be covered by conditioning the grant of such privileges upon imposition of an exchange requirement that Product Descriptions be delivered. Purchases effected over the counter may be somewhat more difficult to address, although applicants note that the NASD may wish to promulgate an advice to members regarding the need to distribute a Product Description to every SPDR purchaser on the same terms as required by the AMEX rule.

18. The Trustee will be paid a "Trustee's Fee" not to exceed .15% of the Trust's net asset value on an annualized basis. The Trustee also will receive a Transaction Fee directly from investors in connection with each purchase and redemption of a Creation Unit, to defray securities settlement costs. The Transaction Fee will be about $1,500 (subject to discounts for quantity purchases), although an additional amount not to exceed three times the Transaction Fee will be charged to investors who purchase and redeem via the DTC rather than the continuous net settlement system of NSCC, to cover the increased expense associated with settlement outside the NSCC clearing process. To the extent the Transaction Fee exceeds the Trustee's actual settlement costs, and subject to certain limitations, such excess will be subtracted from the Trustee's Fee. The Trustee's Fee also will be reduced by the amounts earned by the Trustee in respect of cash held for the benefit of the Trust and not otherwise expended on behalf of the Trust.

19. The Trust will make quarterly distributions of an amount representing the dividends accumulated on portfolio securities during such quarter, net of fees and expenses. Additional distributions will be made to the minimum extent necessary to comply with certain provisions of the Internal Revenue Code and to avoid the imposition of excise taxes imposed by section 4982 of the Code.

20. The composition of the Trust's portfolio will be adjusted from time to time to conform to changes in the S&P 500 Index. The Trustee will aggregate certain of these adjustments and make conforming changes to the Trust's portfolio at least monthly. Adjustments will be made more frequently in the case of changes to the S&P 500 Index that are significant, such as the substitution of one security for another. All adjustments to the Trust's portfolio will be made by the Trustee pursuant to specifications set forth in the Trust Agreement and will be non-discretionary.

21. Beneficial owners of SPDRs will have no voting rights with respect to the securities held by the Trust. On any particular item for which an Index Security confers voting rights, the Trustee will vote the Trust's shares in the same proportion as all other shares of the security are voted. If this arrangement is not permitted, the Trustee shall abstain from voting.

22. The Sponsor and the AMEX are paying the Trust's organizational expenses. The Trust will reimburse the Sponsor for these expenses ratably over a five-year period. Should the Trust terminate prior to its fifth anniversary, the remaining unamortized organizational expenses will continue to be borne by the Sponsor and the AMEX, and will not be charged against the Trust.

23. The term of the Trust will be 25 years, but the Trust will terminate earlier in the following circumstances: if SPDRs are de-listed from the AMEX; by agreement of the holders of two-thirds of the outstanding SPDRs; if DTC or NSCC no longer provide necessary services; if the Trustee is no longer a participant in NSCC; if Standard & Poor's stops publishing the S&P 500 Index; or if the license agreement with Standard & Poor's for use of the "S&P 500" trademark is terminated. In addition, the Sponsor will have the discretionary right to terminate the Trust (i) within the first 90 days of operation, if the net asset value of the Trust is less than $100,000; (ii) at any time after six months of operation, if net asset value is less than $150 million; and (iii) at any time after three years of operation if net asset value is less than $350 million (adjusted annually for inflation after the Trust's fourth year of operation).

24. Within a reasonable period after termination, the Trustee shall use its best efforts to sell all portfolio securities not previously distributed to investors redeeming Creation Units. SPDRs not redeemed prior to termination will be redeemed in cash at net asset value based on the proceeds of the sale of portfolio securities.

25. Applicants assert that SPDRs afford significant benefits in the public interest. As explained above, the Trust should be able to track the S&P 500 Index more closely than other basket products that must allocate a portion of their assets for cash redemptions. In addition, SPDRs will provide a low-cost market-basket security that, unlike open-end index funds, can be traded at negotiated prices throughout the business day. Finally, SPDRs will compete with a comparable product available on a foreign stock exchange

and help attract capital to the U.S. equity market.

Applicants' Legal Analysis

1. Applicants seek an order granting exemptions from sections 4(2), 14(a), 17(a), 22(d), 22(e), 24(d), and 26(a)(2)(C) and rule 22c-1 and permitting them to engage in affiliated transactions otherwise prohibited by section 17(d) and rule 17d-1.

2. Section 4(2) of the Act defines a unit investment trust ("UIT") as an investment company that, among other things, issues only redeemable securities. Because SPDRs are not individually redeemable, applicants request an order that would permit the Trust to register and operate as a UIT. Applicants note that beneficial owners of SPDRs wishing to redeem may purchase additional SPDRs and tender the resulting Creation Unit for redemption. Moreover, to the extent a security's redeemability affords its holder a degree of liquidity, exchange-listing of SPDRs provides a similar benefit. Because the market price of SPDRs will be disciplined by arbitrage opportunities, beneficial owners should be able to sell SPDRs at approximately net asset value. Finally, applicants note that the Commission in 1990 granted relief substantially similar to that requested here. *See* The SuperTrust Trust For Capital Market Fund, Inc. Shares, Investment Company Act Release Nos. 17613 (July 25, 1990) (notice) and 17809 (Oct. 19, 1990) (order).

3. Section 22(d), among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its net asset value. Secondary market transactions in SPDRs will take place at negotiated prices (generally the current bid/offer price quoted on the AMEX), not at a current offering price described in the prospectus, and not at a price based on net asset value. Thus, purchases and sales of SPDRs by dealers in the secondary market will not comply with section 22(d) and rule 22c-1. Although SPDRs are not individually redeemable, the applicability of section 22(d) and rule 22c-1 is not free from doubt because SPDRs can be redeemed in Creation Unit-size lots. Accordingly, applicants have requested an exemption from these two provisions.

4. The concerns sought to be addressed by section 22(d) and rule 22c-1 with respect to pricing are equally satisfied by the proposed method of pricing SPDRs. While there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been enacted (a) to prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) to assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. According to applicants, none of these purposes will be thwarted by permitting SPDRs to trade in the secondary market at negotiated prices. First, secondary market trading in SPDRs, because it does not involve the Trust as a party, can not result in dilution of a beneficial owner's investment. Second, to the extent different prices exist during a given trading day, or from day to day, such variances occur as result of third-party market forces, such as supply and demand and interest rates, not as a result of unjust or discriminatory manipulation. Therefore, secondary market trading in SPDRs will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of SPDRs and their net asset value remains narrow. In any event, to the extent section 22(d) was designed to avoid disruption in the distribution system, this provision was designed to protect investment companies and their selling group dealers, not members of the investing public. Applicants contend that they have the right to waive such protection.

5. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by a UIT. Applicants contend that section 24(d) is inapplicable to SPDRs because SPDRs are not redeemable securities. Although SPDRs can be redeemed in Creation Unit-size lots, applicants argue that the substantial dollar amount required to aggregate 50,000 SPDRs represents a formidable barrier for most investors, providing another reason for not viewing SPDRs as redeemable securities for the purposes of section 24(d). Because the applicability of section 24(d) is not free from doubt, however, applicants have requested an exemption from that section to permit dealers trading in SPDRs to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act. Assuming section 24(d) applies, the exemption is necessary because, according to applicants, the imposition of prospectus delivery requirements on transactions by dealers in the secondary market will materially and adversely impede the success of the SPDRs product.

6. In 1954, when the relevant provisions of section 24(d) were enacted, securities issued by UITs were not typically, if ever, listed on an exchange. Applicants are unable to locate anything in the legislative history that envisions the application of section 24(d) to securities issued by a UIT that are listed on a national securities exchange for trading in the secondary market.

7. Applicants note that the secondary market for SPDRs is significantly different from the typical secondary market for UIT securities, which usually is maintained by the sponsor. SPDRs will be listed on a national securities exchange and will be traded in a manner similar to the shares of common stock issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end funds in the secondary market generally are not required to deliver a prospectus to the purchaser. Applicants contend that the SPDRs should be subject to the same regulatory scheme as securities issued by operating companies and closed-end funds.

8. Applicants point out that the Commission has previously determined that exchange listing affects the prospectus delivery requirements applicable to a particular security. As amended in 1988, rule 174 under the Securities Act shortens, from 90 days to 25 days after the offering date, the period during which dealers must deliver a prospectus to secondary market purchasers if the security (like SPDRs) is listed on a national securities exchange as of the offering date. According to the release amending rule 174, Securities Act Release No. 6763 (April 4, 1988): "The existence of regulatory requirements applicable to exchange-listed * * * securities and market processes provide adequate investor protection to permit relaxation of the prospectus delivery requirements. Listing standards, filing and disclosure requirements, and market information requirements assure the availability and timely dissemination of material

information." Applicants contend that SPDRs, as a listed security, meet these criteria and likewise merit a reduction in the unnecessary compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because SPDRs will be exchange-listed, prospective investors will have access to several types of information about the product. Information regarding sales price and volume will be continually available on a real time basis throughout the day on brokers' computer screens and other electronic services, such as Quotron. The previous day's price and volume information will be published daily in the financial section of newspapers. The Sponsor also will publish daily, a per SPDR basis, the amount of accumulated dividends, net or accrued expenses. In addition, SPDRs, as a novel, cost-effective, index security, should generate significant interest in the financial community. Applicants expect that broker-dealers and market analysts will familiarize themselves with the product, follow its performance, and share their opinions of the product with clients and other investors, resulting in even greater amounts of available information for investors.

9. In addition to all the information set forth above, investors will receive the Product Description. While not intended to substitute for a full prospectus, the Product Description will contain useful information about SPDRs. Applicants also note that SPDRs will be readily understandable to retail investors as a product that tracks the S&P 500 Index, which is well known to most investors and widely recognized as a performance indicator of the overall securities market.

10. Section 26(a)(2)(C) requires, among other things, that the trust indenture prohibit payments to the trust's depositor (*i.e.*, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services not relevant hereto. Applicants seek an exemption from section 26(a)(2)(C) of the Act to permit the Trust to reimburse the Sponsor or AMEX, up to a maximum of 20 basis points of the Trust's net asset value on an annualized basis, for the following expenses: (a) annual licensing fees for use of the "S&P 500" trademark; (b) federal and state annual registration fees for the issuance of SPDRs; (c) expenses of the Sponsor relating to the printing and distribution of marketing materials describing SPDRs and the Trust (including, but not limited to, associated legal, consulting, advertising, and marketing expenses); and (d) the initial fees and expenses incurred in connection with the organization of the Trust, which will be capitalized and amortized over five years on a straight-line basis.

11. Ordinarily, the sponsor of a UIT has several sources of income, and expenses normally incurred by the sponsor in connection with the creation and maintenance of a UIT can be offset against the income from such sources. As the proposed Trust is structured, however, the usual sources of income are not available because the Sponsor will not impose a sales load, maintain a secondary market, or deposit Index Securities, into the Trust. Although the Sponsor's parent company, the AMEX, will earn some income on the trading fees imposed on transactions occurring on the exchange, applicants expect that such fees will generate substantially less revenue than what would have been generated by a normal sales load or sales charges on secondary market trades of SPDRs. In light of the above, applicants contend that the abuse sought to be remedied by section 26(a)(2)(C)— "double dipping" by UIT sponsors collecting money from their captive trusts on top of the profits already generated by sales charges and other sources of income—will not be present if the requested exemption is granted.

12. Applicants contend that allowing the Trust to reimburse the Sponsor for the foregoing expenses would be no more disadvantageous to beneficial owners of SPDRs than allowing such expenses to be imposed indirectly as offsets to sales loads an other charges, as is done in typical UITs. Moreover, the Trust will pay the Sponsor only its actual out-of-pocket expenses; no component of profit will be included, as is the case where a sales load is imposed. Finally, the payment is capped at 20 basis points of the Trusts net asset value on an annualized basis. Expenses in excess of that figure will be absorbed by the Sponsor.

13. Section 14(a) provides, in part, that no registered investment company may make an initial public offering of its securities unless it has a net worth of $100,000, or provision is made in connection with the registration of such securities that (i) firm agreements to purchase $100,000 worth of such securities will have been made by not more than 25 persons, and (ii) all proceeds, including sales loads, will be refunded to investors if the investment company has a net worth of less than $100,000 within 90 days after the effective date of the registration statement.

14. Rule 14a–3 under the Act provides an exemption from section 14(a) for UITs that invest only in "eligible trust securities" and agree to certain investor safeguards, including the refund of any sales loads collected from investors. Applicants will comply in all respects with rule 14a–3, except that it will not restrict its investments to eligible trust securities, which do not include equity securities, and it will not refund the Transaction Fee discussed above. The fact that the Trust's portfolio is invested in equity rather than debt securities, applicants contend, does not negate the effectiveness of the safeguards nor subject investors to greater risk of loss due to investment in an undercapitalized investment company Applicants cite several prior orders granting relief from section 14(a) for UITs investing in equity securities. With respect to the Transaction Fee, applicants assert that it is not a sales load, and therefore is not covered by the refund provision. In any event, the Transaction Fee will be paid not by small retail investors but by institutional and other sophisticated, well-capitalized investors who can afford the $2 million purchase price of a Creation Unit. Such investors are able to assume the risk, which will be disclosed in the prospectus, of forfeiting the relatively small additional amount represented by the Transaction Fee.

15. Section 17(a) generally prohibits an affiliated person of a registered investment company from purchasing from or selling to such company any security or other property. Because purchases and redemptions will be "in-kind" rather than cash transactions, section 17(a) may prohibit affiliated persons of the Trust from purchasing or redeeming Creation Units. Moreover, because the definition of affiliated person includes anyone owning five percent or more of an issuer's outstanding voting stock, every purchaser of a Creation Unit will be affiliated with the Trust so long as fewer than twenty Creation Units are extant. Applicants seek an exemption from section 17(a) of the Act pursuant to sections 6(c) and 17(b), to permit affiliated persons of the Trust to purchase and redeem Creation Units.

16. Applicants contend that no usefull purpose would be served by prohibiting affiliated persons from a making "in kind" purchases or "in kind" redemptions of Creation Units. The composition of the Portfolio Deposit deposited by a purchaser or given to a redeemer will be the same regardless of

the investor's identity, and will be valued pursuant to the same objective standards applied to valuing the Trust's portfolio securities. Thus, "in kind" purchases and redemptions will afford no opportunity for affiliated person to effect a transaction detrimental to the other holders of SPDRs. Applicants believe that "in kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Trust.

17. Applicants request an order pursuant to rule 17d–1 that would permit the Trust to reimburse the Sponsor or the AMEX for the payment by either such party to Standard & Poor's of the annual fee required under a license agreement. The license agreement allows applicants to use the S&P 500 Index as a basis for SPDRs and to use certain of Standard & Poor's trademark rights. Applicants believe that relief is necessary because the Trust's undertaking to reimburse the Sponsor (an affiliated person of the Trust) and/or the AMEX (an affiliated person of the Sponsor) arguably constitutes a joint enterprise or joint arrangement in which the Trust is a participant, in contravention of section 17(d) and rule 17d–1.

18. Applicants contend that the terms and provisions of the license agreement were negotiated at arms length and that the annual license fee is for fair value, bargained for in good faith and, to the best of their knowledge, is an amount comparable to that charged for similar arrangements. Applicants submit that the proposed transaction will result in an arrangement wherein the participants deal with each other in a manner similar to, and no less advantageous than, others who might be similarly situated.

19. Applicants request an exemption from the requirement imposed by section 22(e) of the Act to provide payment or satisfaction of redemptions within seven days following tender of a Creation Unit for redemption. This request is necessary because the Trust's clearing agent, NSCC, clears all trades through its system in five business days and short settlement of trades will not be available in connection with the SPDR clearing process. NSCC is closed for business on certain holidays. If a Beneficial Owner were to tender a Creation Unit for redemption during a seven day period preceding such a holiday, NSCC's five business day settlement system would result in a redemption on the eighth calendar day following tender, resulting in a violation of section 22(e).

20. NSCC is the appropriate institution to provide securities clearing services for the Trust. It is the nation's largest clearing agency, clearing 95% of all domestic equity trades, and has a well-established reputation in the financial community. In addition, the clearance and settlement of five hundred separate securities essentially as a single transaction requires sophisticated clearing services. Applicants have found that NSCC is able to provide these services and has enhanced its existing clearing processes to handle purchases and redemptions of Creation Units. The use of NSCC will provide beneficial owners of SPDRs with state-of-the-art securities handling, clearance, and transfer systems services, which, given the complexity of mirroring the component shares of the S&P 500 Index, is of extreme importance to all such owners.

21. In contrast to other investment companies that provide for "in kind" redemptions on occasion, the Sponsor has determined to incorporate the "in kind" purchase and redemption mechanism for SPDRs into the standard processing cycle for stock clearance and settlement through the continuous net settlement system of NSCC. Because there are no significant additional system or operational procedures needed to redeem SPDRs beyond those already in place for NSCC participants, applicants believe that this approach will make redemptions less costly to administer, enhance the appeal of the product, and thereby promote the liquidity of SPDRs in the secondary market, which will benefit all beneficial owners.

22. The prospectus and all relevant sales literature will disclose that redemption will be effected in five business days following the date on which a request for redemption is made. Given the rationale for what amounts to a delay of one additional day in the redemption process on some occasions, applicants contend that the redemption mechanism described above will not lead to unreasonable, undisclosed, or unforeseen delays in the redemption process.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a new series of the Trust, whether identical or similar to Series 1, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless Applicants have requested and received with respect to such new series, either exemptive relief from the SEC or a no-action position from the Division of Investment Management of the Commission.

2. Applicants will not seek to have the Trust's registration statement declared effective until after the SEC has approved a new rule change of the AMEX pursuant to rule 19b–4 under the Securities Exchange Act of 1934 to enable the AMEX to list SPDRs and to require AMEX-member broker-dealers effecting transactions in SPDRs to deliver to purchasers the Product Description describing the terms and characteristics of the SPDRs product.

3. The Trust's prospectus and the Product Description will clearly disclose that, for purposes of the Act, SPDRs are issued by the Trust and that the acquisition of SPDRs by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC-18956; Int'l Series Release No. 458; 812-7888]

WestLB Finance USA Inc., et al.; Notice of Application

September 16, 1992

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: WestLB Finance USA Inc. ("Finance") and Westdeutsche Landesbank Girozentrale ("Landesbank").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of subparagraphs (a)(1) and (a)(3) of rule 3a–5 under the Act.

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) from the provisions of subparagraphs (a)(1) and (a)(3) of rule 3a–5 in connection with the offer and sale of applicant's securities to raise funds for the business operations of its parent company without registering as an investment company.

FILING DATE: The application was filed on March 18, 1992 and amended on June 18, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on October 13, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DG 20549. Applicants, 1211 Avenue of the Americas, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representatives

1. Finance is a company established under Delaware law as a wholly-owned subsidiary of Landesbank, a bank organized under the laws of the Federal Republic of Germany. Landesbank, a commercial bank, is the largest of nine German state banks and the fifth largest bank in Germany. Landesbank was incorporated in 1969 in the State of North Rhine-Westphalia, Germany ("Rhine-Westphalia"). Landesbank is owned by the regional authorities of the Rhineland and of Westphalia-Lippe, public authorities with responsibility for certain counties, together with the associations of regional savings banks in the same area. These contributors of Landesbank's capital are, in effect, its stockholders, and also by virtue of a statute guarantors of its obligations; they are jointly and severally liable for the obligations of Landesbank, if Landesbank's assets are insufficient to satisfy those obligations. Rhine-Westphalia also is obligated to maintain Landesbank's financial position so that Landesbank always is able to carry out its functions.

2. Applicants state that Landesbank provides, directly or through its subsidiaries, a wide range of banking and investment services in Germany as well as internationally. Landesbank's principal business is the receipt of demand and other deposits, the issuance of bonds and notes, the extension of credit, and the underwriting and dealing in debt and equity securities. Landesbank also is a state and municipal bank for Rhine-Westphalia and its municipalities and is a clearing bank for all savings banks located in North Rhine-Westphalia. In the United States, Landesbank commercial banking services are provided through its New York branch and its Los Angeles and Chicago representative offices, and its investment banking services are provided by two wholly-owned subsidiaries grandfathered under the International Banking Act of 1978: RWS Securities, Inc. and RWS Securities Services Gesellschaft für Wertpapiervermittlung m.b.H. On December 31, 1991, total assets for Landesbank totaled DM 190.1 billion and, for the Landesbank group, DM 205.2 billion.

3. Landesbank is subject to extensive supervision by the Federal Banking Supervisory Authority of Germany, an independent federal authority, and by the Deutsche Bundesbank, or German Federal Central Bank. Applicants state that the regulatory supervision, which relates principally to equity capital ratios, liquidity, foreign exchange limitations, credit diversification, and reserve requirements, is comparable in many respects to the supervision of United States commercial banks. Landesbank files with regulatory authorities financial and compliance statements on a monthly and quarterly basis, and also is required to file annual audited financial statements. Landesbank's United States branch, Westdeutsche Landesbank Girozentrale, New York Branch (the "New York Branch") is licensed by the State of New York and is subject to supervision and regulation by the Superintendent of Banks of the State of New York. The New York Branch is examined by the New York State Banking Department and is subject to banking laws and regulations applicable to a foreign bank that operates a New York branch. As a foreign bank with a United States branch, Landesbank also is subject to federal regulation and supervision under the International Banking Act of 1978, the Foreign Bank Supervision Enhancement Act of 1991, and the Bank Holding Company Act of 1956.

4. Finance is organized under the laws of Delaware. All of its outstanding capital stock is owned by Landesbank. Initially, Finance's sole business will consist of issuing and selling Finance's commercial paper notes (the "Notes") and depositing the net proceeds from the sale thereof (the "Deposits") at the Cayman Islands branch of Landesbank (the "Cayman Branch") pursuant to a deposit agreement (the "Deposit Agreement") to be entered into by Finance, the Cayman Branch, and Landesbank. Finance may in the future issue and sell other debt securities and deposit the net proceeds from the sale thereof at the Cayman Branch in a manner similar to the Deposits or obtain Landesbank's guarantee on such debt securities.

5. Finance proposes to issue and sell in the United States short-term negotiable promissory notes of the type exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), by virtue of section 3(a)(3) thereof and generally referred to as commercial paper. The Notes will be sold in minimum denominations of $100,000, will have a maturity not exceeding nine months, and neither will be payable on demand prior to maturity nor eligible for any extension, renewal, or automatic "rollover" at the option of either the holders or Finance. Landesbank and Finance currently do not intend to sell commercial paper notes in the United States in excess of an aggregate amount for Landesbank and Finance of US $2.5 billion at any time outstanding.

6. Substantially all of Finance's assets will consist of a single evidence of indebtedness of the Cayman Branch issued to Finance evidencing Finance's deposits. Under certain provisions of the Deposit Agreement, the Cayman Branch unconditionally agrees to repay to Finance each Deposit made by Finance at the Cayman Branch, including accrued interest thereon, on the maturity date of the Deposit. In the Deposit Agreement, the Cayman Branch waives any right of set-off it may have in respect of the Deposits. In addition, each holder of the Notes ("Noteholders") is assigned as security and granted a security interest in the Deposit and accrued interest corresponding to the Note. If Finance fails to pay a Note in accordance with its terms, the Deposit Agreement entitles the Noteholder to receive payment of the Cayman Branch, together with accrued interest.

7. Each Deposit shall (a) mature and be payable on the maturity date of the corresponding Note issued by Finance, and (b) bear interest at a rate per annum equal to or greater than the effective interest rate of the discount at which such Note is issued. Each Deposit shall be evidenced by an appropriate notation or reference on a master evidence of indebtedness to be issued by the Cayman Branch to Finance, and be held by the issuing and paying agent for the account of Finance.

8. Landesbank confirms expressly in the Deposit Agreement that the aforementioned obligations of the Cayman Branch to Finance and to the Noteholders are its own obligations.

Landesbank in the Deposit Agreement expressly waives any defense available to it against performance of its obligations to the extent that such defenses exist under Cayman Islands law and are based on insolvency, moratorium, liquidation, or similar laws of the Cayman Islands affecting the Cayman Branch, or based on currency or foreign exchange laws of the Cayman Islands or acts of state of the Cayman Islands government relating to expropriation, seizure, or moratorium of payment affecting the Cayman Branch as such or affecting the obligations of the Cayman Branch to repay its deposits in general.

9. To assure that proceeds from the sale of the Notes will be deposited with the Cayman Branch, Finance and the Cayman Branch will enter into an agreement with a commercial bank (the "Commercial Bank") pursuant to which the Cayman Branch will have an operating account with the Commercial Bank (the "Issuing and Paying Agency Agreement"). To this account the payments of the proceeds of the sale of the Notes to the Cayman Branch will be made, and from this account the payments by Finance or the Cayman Branch to the Noteholders will be made by appropriate debits or credits, respectively.[1]

10. The Notes will be offered publicly, through one or more major dealers and by Landesbank directly, only to the types of sophisticated and largely institutional investors that ordinarily participate in the United States commercial paper market. Finance undertakes to insure that each dealer and Landesbank will furnish to each offeree a memorandum describing the business of Landesbank and Finance, and providing the most recent annual audited financial statements for Landesbank, together with a description of the material differences between the German accounting principles utilized in the preparation of the financial statements of Landesbank and generally accepted accounting principles as applied in the United States. The memorandum prepared by each dealer and Landesbank will be updated as promptly as practicable to reflect adverse changes in the financial status of Finance of Landesbank which are material to investors, and will be at least as comprehensive as memoranda customarily used in offering commercial paper in the United States. Finance will appoint a major commercial bank to act as issuing and paying agent for the Notes.

11. Under German law and pursuant to the Deposit Agreement, the repayment obligation of the Cayman Branch with respect to the Deposits is an obligation of Landesbank. Landesbank's obligations regarding its liabilities to Finance will rank at least *pari passu* among themselves and with all other unsecured and unsubordinated indebtedness (including deposit liabilities) of Landesbank and superior to the rights of shareholders; the Noteholders will have a direct cause of action against Landesbank in the event of any default in payment on the Notes.

12. Landesbank, in connection with the offering of the Notes, will submit to the jurisdiction of any state or federal court in the Borough of Manhattan in the City of New York, and will appoint Finance as agent to accept any process which may be served, in any suit, action, or proceedings brought against Landesbank based upon its obligations to Finance as described herein. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to outstanding Deposits and all other outstanding obligations of Landesbank to Finance as described herein have been paid. The authorized agent will not be, or be obligated to act as, a trustee for the Noteholders.

13. Finance may, from time to time, offer other of its debt securities (other than the Notes) or non-voting preferred stock for sale in the United States. The obligations of Finance in respect of any such debt securities and non-voting preferred stock issued by Finance will be supported by Landesbank's guarantee, unless an application is filed seeking to amend any order issued on this application to substitute Landesbank's guarantee with a functional equivalent of a guarantee.

Applicants' Legal Analysis

1. Finance will meet the requirements of rule 3a–5 except that, as set forth herein, the debt securities and any non-voting preferred stock of Finance which may in the future be issued will not be guaranteed in a technical sense by the parent company, as required by subparagraphs (a)(3) and (a)(5), respectively, but rather Landesbank will provide the functional equivalent of a guarantee. The proceeds from the sale of Notes by Finance will be lent to or deposited with the Cayman Branch. The entitlement of the Noteholder to receive payment by the Cayman Branch of the Deposit corresponding to such Note in case of failure of Finance to pay the Note upon maturity, is a sufficient guarantee for the Noteholder. If Landesbank were to issue the Notes directly, it would not be subject to the provisions of the Act pursuant to rule 3a–6. If, in the alternative, Landesbank chooses to use Finance as a financing vehicle, the same policy considerations should apply and Finance should be granted an exemption. The business and fiscal considerations behind Landesbank's desire to use Finance as a financing vehicle to sell the Notes in the United States in no way impinge upon the public policy concerns, such as investor protection, that underlie the Act. Those concerns are satisfied by the parent-subsidiary relationship between Landesbank and Finance and the security interest granted by Landesbank in the Deposits. As a consequence, the Noteholders ultimately will look to Landesbank and payment of the Notes will not depend upon the operations of investment policy of Finance.

2. For reasons discussed below, Landesbank requires the structure of the transaction described in this notice, where the debt obligations of Finance are in a technical sense not unconditionally guaranteed by the parent bank, but the parent bank is directly obligated to pay the Notes of Finance. If Landesbank or one of its branches were to unconditionally guarantee the obligations of Finance to pay the Notes, or to issue a letter of credit supporting the Notes, the funding by the issuance of such Notes would be more costly for Landesbank. Pursuant to the German Federal Banking Law and the regulations of the German Federal Banking Supervisory Authority, Landesbank, in case of a guarantee in a technical sense or a letter of credit, possibly would have to maintain additional liable funds at prescribed

[1] In a letter dated June 22, 1992, applicants' counsel states that the Issuing and Paying Agreement provides that payment by the Noteholders will be effected by wire transfer of funds to the Commercial Bank's account at the Federal Reserve Bank of New York or by delivery to the Commercial Bank of a check drawn to the Commercial Bank's order by another member bank on such Federal Reserve Bank. Finance is required to instruct the Commercial Bank to transfer the proceeds of the sale of commercial paper to the Cayman Branch's account with the Commercial Bank. The Issuing and Paying Agreement states that the Cayman Branch will have exclusive control over the account, and the sole right of withdrawal of funds therefrom. Thus, according to applicants' counsel, Finance will have no opportunity to channel the investor's funds away from the investor, the Commercial Bank, and Landesbank. Once the investor pays for the paper, the funds are in the Commercial Bank's account with the Federal Reserve, and must flow from there into the Cayman Branch's account with the Commercial Bank as a Deposit. At that moment the investor has a right of action against Landesbank under his or her security interest in the Deposit.

levels corresponding to the amount of the outstanding Notes of Finance guaranteed by Landesbank. Such additional funds would not have to be maintained if Landesbank itself would issue such notes, and need not be maintained under the proposed structure. In addition, the structure further reflects the agent-principal relationship between Landesbank and Finance for purposes of Federal tax law, whereby Finance will not be taxed on the imputed margin on the deposits, but rather on the fee-based compensation. Absent an exemption, Landesbank would be denied efficient access to this dollar-dominated commercial paper market

Applicants' Undertakings

Applicants have agreed to the following undertakings which would be imposed as conditions to any order granted on the application:

1. Landesbank will confirm expressly in the Deposit Agreement that the aforementioned obligations of the Cayman Branch to Finance and the Noteholders are Landesbank's own obligations.

2. Finance and the Cayman Branch will enter into an Issuing and Paying Agency Agreement with a commercial bank pursuant to which the Cayman Branch will have an operating account with such commercial bank. To this account the payments of the proceeds of the sale of the Notes to the Cayman Branch will be made, and from this account the payments by Finance or the Cayman Branch to the Noteholders will be made by appropriate debits or credits, respectively.

3. In the event of a default in payment of principal or interest (or any other payments provided for in the Notes) on any debt securities issued by Finance, the Noteholders will not only be entitled to receive payments by the Cayman Branch or Landesbank of the Deposit corresponding to such Note but may also enforce such rights in the competent courts against the Cayman Branch or Landesbank without first proceeding against Finance.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-23082 Filed 9-22-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1702]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: In order to extend the benefits of diplomatic immunity under the Vienna Convention on Diplomatic Relations, 1961 and the Vienna Convention on Consular Relations, 1963 and to issue official identification cards, the Department of State must obtain information from foreign government representatives concerning the appointment and termination of diplomatic and consular officers, foreign government employees and their dependents in the United States. The following summarizes the information collection proposals submitted to OMB:

1. Type of request—Reinstatement.
   Originating office—Office of Protocol.
   Title of information collection—Notification of Appointment of Foreign Diplomatic and Career Consular Officer.
   Frequency—On occasion.
   Form Number—DSP-110.
   Respondents—Foreign government representatives.
   Estimated number of respondents—2,000.
   Average hours per response—30 minutes.
   Total estimated burden hours—1,000.
2. Type of request—Reinstatement.
   Originating office—Office of Protocol.
   Title of information collection—Notification of Appointment of Foreign Government Employee.
   Frequency—On occasion.
   Form Number—DSP-111.
   Respondents—Foreign government representatives.
   Estimated number of respondents—5,000.
   Average hours per response—30 minutes.
   Total estimated burden hours—2,500.
3. Type of request—Reinstatement.
   Originating office—Office of Protocol.
   Title of information collection—Notification of Appointment of Honorary Consular Officer.
   Frequency—On occasion.
   Form Number—DSP-112.
   Respondents—Foreign government representatives.
   Estimated number of respondents—200.
   Average hours per response—30 minutes.
   Total estimated burden hours—100.
4. Type of request—Reinstatement.
   Originating office—Office of Protocol.
   Title of information collection—Notification of Dependents of Diplomatic, Consular and Foreign Government Employees (Continuation Sheet).
   Frequency—On occasion.
   Form Number—DSP-114.
   Respondents—Foreign government representatives.
   Estimated number of respondents—7,000.
   Average hours per response—10 minutes.
   Total estimated burden hours—840
5. Type of request—Existing without OMB Control No.
   Originating office—Office of Protocol.
   Title of information collection—Notification of Change, Identification Card Request.
   Frequency—On occasion.
   Form Number—DSP-113.
   Respondents—Foreign government representatives.
   Estimated number of respondents—5,000.
   Average hours per response—10 minutes.
   Total estimated burden hours—600.
6. Type of request—Reinstatement.
   Originating office—Office of Protocol.
   Title of information collection—Notification of Termination of Diplomatic, Consular or Foreign Government Employment.
   Frequency—On occasion.
   Form Number—DSP-115.
   Respondents—Foreign government representatives.
   Estimated number of respondents—6,000.
   Average hours per response—10 minutes.
   Total estimated burden hours—720.

44 U.S.C. 3504(h) does not apply, as no rulemaking is being conducted in connection with this information collection.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Lin Liu (202) 395-7340.

Dated: September 11, 1992

Philip Tinney,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 92-23005 Filed 9-22-92; 8:45 am]

BILLING CODE 4710-43-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 4:30 p.m., October 19, 1992, in Milwaukee, Wisconsin at the Pfister Hotel, 424 East Wisconsin Avenue, Milwaukee, Wisconsin 53202. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than October 12, 1992, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202-366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on September 16, 1992.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 92-23007 Filed 9-22-92; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC-54; OTS No. 1313]

Ogden First Federal Savings and Loan Association, Ogden, UT; Final Action; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Ogden First Federal Savings and Loan Association, Ogden, Utah, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC, 20552, and the Office of Thrift Supervision, Seattle Area Office, 2201 Sixth Avenue, suite 1500, Seattle, Washington 98121.

Dated: September 18, 1992.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-23091A Filed 9-22-92; 8:45 am]

BILLING CODE 6720-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Falcon Crest Ranch II, San Diego County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Falcon Crest Ranch II, located near the City of El Cajon, San Diego County, California, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until December 22, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. E. Ted Hine, Resolution Trust Corporation, 4000 Mac Arthur Boulevard, East Tower, Suite 315, Newport Beach, CA 92660-2516, (714) 263-4648, Fax (714) 852-7766.

SUPPLEMENTARY INFORMATION: The Falcon Crest Ranch II property is located in an unincorporated area east of the City of El Cajon in eastern San Diego County, California. The site is situated at Broad Oaks, Creek Hills and El Capitan Real Roads which are linked to Interstate Highway 8 by Blossom Valley Road. The property has recreational value and is adjacent to the Cleveland National Forest and El Capitan Reservoir which are located immediately to the northeast. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property consists of approximately 605 acres of undeveloped land and is dominated by a ridge-line running along the northwestern side of the property which drops off to the San Diego River Valley. The southern portion of the site is characterized by a shallow bowl shaped valley cut by two primary drainages from the ridge to the north. The vegetation on the property consists of mixed chaparral (approximately 315 acres), Diegan coastal sage scrub (approximately 260 acres), and southern oak woodland (approximately 30 acres).

Property size: Approximately 605 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before December 22, 1992 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by December 22, 1992 to Mr. E. Ted Hine at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Falcon Crest Ranch II

Federal Register Publication Date: September 23, 1992.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: September 17, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92-22993 Filed 9-22-92; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; Harmony Road, Larimer County, CO

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Harmony Road, located in the City of Fort Collins Larimer County, Colorado, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until December 22, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps can be obtained from or are available for inspection by contacting the following person: The Harmony Road Corporation, c/o The Beverly Group, Inc., Daniel D. Ryan, 910 Fifteenth Street, suite 940, Denver, CO 80202, (303) 595–9226, Fax (303) 595–8121.

SUPPLEMENTARY INFORMATION: The Harmony Road property consists of two parcels known as the Seven Springs Ranch and the Hahn Farm which are located in the City of Fort Collins, Larimer County, Colorado. The Harmony Road property is situated at the Southwest corner of Taft Hill Road and Harmony Road and extends between South Shields Street and Taft Hill Road. The property contains wetlands, the federally endangered bald eagle, and has recreational value. The site is adjacent to a bike and foot path which is managed by the City of Fort Collins for recreational purposes. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property consists of approximately 580 acres of undeveloped land between the Horsetooth Reservoir Recreation Area and Fossil Creek Reservoir. The vegetation on the site is characterized as native grassland and the Fossil Creek drainage is contiguous with the property. The native grasslands on the property are considered critical to the support of a healthy prairie dog population which in turn supports the bald eagles and other rare raptors along the Fossil Creek wetlands corridor.

Property size: Approximately 580 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before December 22, 1992, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by December 22, 1992, to the Harmony Road Corporation at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: Harmony Road

Federal Register Publication Date: September 23, 1992.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: September 17, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92–22994 Filed 9–22–92; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before October 23, 1992.

Dated: September 11, 1992.

By direction of the Secretary.

Donald R. Howell,

Chief, Information Management Division.

Revision

1. Offer to Purchase and Contract of Sale, VA Form 26–6705, Credit Statement of Prospective Purchaser, VA Form 26–6705b, and Addendum to VA Form 26–6705 Offer to Purchase and Contract of Sale, VA Form 26–6705C.

2. VA Form 26–6705 serves as an offer to purchase and contract of sale for submitted purchase offers to VA on properties acquired through operation of the guaranteed and direct loan programs. VA Form 26–6705b is used to collect credit and income information necessary to determine whether an applicant qualifies to purchase a VA-owned property. VA Form 26–6705C is an addendum used to simplify the selection process among competing offers and ensure that the offer selected provides the greatest value to VA.

3. Individuals or households; Small businesses or organizations.

4. 64,166 hours.

5. 14 minutes.

6. On occasion.

7. 267,500 respondents.

[FR Doc. 92–23046 Filed 9–22–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 535–7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before October 23, 1992.

Dated: September 11, 1992.
By direction of the Secretary.

Donald R. Howell,

Chief, Information Management Division.

Reinstatement

1. Funeral Arrangements, VA Form 10–2065; Application for Medical Benefits, VA Form 10–10; Insurance Information, VA Form 10–10I; and Financial Worksheet, VA Form 10–10F.

2. The forms are used to record funeral arrangements, determine eligibility for medical, complete claims to health insurance carriers to recover the cost of medical care furnished to veterans for treatment for nonservice-connected conditions, and determine the eligibility of other veterans who must certify their inability to defray the cost of needed medical care.

3. Individuals or households.

4. 3,212,738 hours.

5. 27 minutes.

6. On occasion; Annually; One time.

7. 7,200,850 respondents.

[FR Doc. 92–23047 Filed 9–22–92; 8:45 am]

BILLING CODE 8320-01-M

Prosthetics Services Advisory Committee; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Department of Veterans Affairs Prosthetics Services Advisory Committee has been renewed for a 2-year period beginning September 1, 1992, through September 1, 1994.

Additionally, the name of this Committee has been changed from Prosthetics Services Advisory Committee to Advisory Committee on Prosthetics and Special-Disabilities Programs.

Dated: September 15, 1992.
By direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–23051 Filed 9–22–92; 8:45 am]

BILLING CODE 8320-01-M

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Department of Veterans Affairs Scientific Review and Evaluation Board for Rehabilitation Research and Development has been renewed for a 2-year period beginning September 9, 1992, through September 9, 1994.

Dated: September 15, 1992.
By direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–23050 Filed 9–22–92; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Addition of Routine Use Statement

AGENCY: Department of Veterans Affairs.

ACTION: Notice is hereby given that the Department of Veterans Affairs (VA) is considering adding a routine use statement for the system of records entitled Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) as set forth in **Federal Register** publication, "Privacy Act Issuances," 1989 Compilation, Volume II, pages 918–922 as amended at 55 FR 28508, July 11, 1990; 55 FR 42540, October 19, 1990; 56 FR 15667, April 17, 1991; 56 FR 16354, April 22, 1991; and 57 FR 12374, April 9, 1992.

The purpose of this additional routine use is to allow VA to disclosure to the Department of the Navy information from the files of veterans whose claims were referred to VA Central Office for an advisory opinion concerning their claims that their disabilities were incurred secondary to occupational radiation exposure. The information furnished to the Navy would include relevant claims data, medical opinions, dose estimates, advisory opinions, and rating decisions.

The Department of the Navy requested this information for use as a feedback system to review and assess their occupational radiation exposure controls and training. They intend to publish summary data pertaining to the number of claims filed, types of diseases listed, and final disposition of these claims on an annual basis, but will not redisclose personal identifying information protected by the Privacy Act.

VA is proposing to allow disclosure to the Department of the Navy of data including names, addresses, VA claim number, Social Security number, disability data and any other information contained in medical opinions, dose estimates, advisory opinions, and rating decisions from claims submitted to VA Central Office for advisory opinions re claims that their disabilities were incurred secondary to occupational radiation exposure. The information may be released to the Department of the Navy only upon receipt of their official written request.

To provide the information requested by the Department of the Navy, VA is proposing to add a routine use statement. A proposed new routine use number of 56 is added to this system of records. This release of information will facilitate the ability of the Department of the Navy to review and assess their occupational radiation exposure controls and training.

VA has determined that release of information under the circumstances described above is a necessary and proper use of information in this system of records and that a specific routine use for transfer of this information is appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amended routine use statements to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before October 23, 1992, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30

p.m., Monday through Friday (except holidays) until November 2, 1992. Any person visiting the Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 170. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Department of Veterans Affairs, the new routine use statement to 58 VA 21/22 included herein is effective October 23, 1992.

Approved: September 14, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Notice of Addition to Routine Use Statements

In the system identified as 58 VA 21/22, "Compensation, Pension, Education and Rehabilitation records—VA" as set forth in **Federal Register** publication, Privacy Act Issuances," 1989 Compilation, Volume II, pages 918–922 the following changes are made:

58 VA 21/22

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

56. Any information contained in the files of veterans whose claims were referred to VA Central Office for an advisory opinion concerning their claims that their disabilities were incurred secondary to occupational radiation exposure may be disclosed to the Department of the Navy. The information to be furnished to the Navy would include the medical opinions, dose estimates, advisory opinions, and rating decisions including veterans' names, addresses, VA claim numbers, Social Security numbers and medical information. The requested information may be disclosed to the Department of the Navy upon receipt of their official written request for such information for their use in the review and assessment of their occupational radiation exposure controls and training.

* * * * *

[FR Doc. 92–23045 Filed 9–22–92; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
September 23, 1992

Part II

Department of Transportation

Coast Guard

Lists of Ports and Terminals Holding Certificates of Adequacy; Notice

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92-047]

Lists of Ports and Terminals Holding Certificates of Adequacy

AGENCY: Coast Guard, DOT.

ACTION: Notice of holders of Certificates of Adequacy.

SUMMARY: This document publishes lists of all U.S. ports and terminals holding valid Certificates of Adequacy (COAs) issued as evidence that their facilities meet the requirements of Annexes I, II, and V of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78). These lists themselves meet the requirements of the Act to Prevent Pollution from Ships (the Act) and of regulations issued under it, to aid owners, operators, and agents of ships in locating ports and terminals with facilities capable of accepting residues and mixtures containing oil or noxious liquid substances (NLSs), or of accepting garbage from seagoing ships. The Coast Guard expects that readier access to these facilities by ships will reduce discharge of oil, NLSs, and garbage into the marine environment.

EFFECTIVE DATE: This notice is effective on September 23, 1992. The lists in this notice include all COAs issued and effective as of August 15, 1992.

FOR FURTHER INFORMATION CONTACT: Ensign Claudia C. Gelzer, Marine Environmental Protection Division (G-MEP), (202) 267-0518.

SUPPLEMENTARY INFORMATION: Table I, published below, consists of a list of ports and terminals holding valid COAs issued under 33 CFR part 158, Subpart B (Criteria for Reception Facilities: Residues and Mixtures Containing Oil). The list provides the names, locations, telephone numbers, and quantities of oily wastes that they can accept. The ports and terminals that have "0" entered in the column under "Daily Capacity of Reception Facility" are small facilities in remote, rugged areas that receive only a few ships operating in a dedicated trade. To comply with the intent of MARPOL 73/78 and of the regulations, ships visiting these ports and terminals have agreed to discharge their oily waste at other ports, where adequate facilities are available.

Table II, published below after Table I, consists of a list of ports and terminals holding valid COAs issued under 33 CFR part 158, Subpart C (Criteria for Certifying That a Port's or Terminal's Facilities Are Adequate for Receiving NLS Residue). The list provides the names, locations, telephone numbers, and quantities of various categories of NLS waste that they can accept. (A list relating names of cargoes to, among other things, their Pollution Categories under Annex II appears in 46 CFR part 153, Table I.) The ports and terminals that have no amounts entered under the column "Daily Capacity," receive only ships that do not require any prewashing of their cargo tanks.

Table III, published below after Table II, consists of a list of ports and terminals holding valid COAs issued under 33 CFR part 158, Subpart D (Criteria for Adequacy of Reception Facilities: Garbage). The list provides the names, locations, and telephone numbers of the facilities.

Definitions of the terms used in these lists appear in 33 CFR 158.120.

Dated: September 15, 1992.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
	Isla Grande	Isla Grande Pier	809	724-2340	30000	100	100
	Guayanilla	Texaco Guayanilla	809	836-3060	4545	80	80
AK	Angoon	Angoon Ferry Terminal	907	465-3946	0	0	0
AK	Angoon	Port of Angoon Alaska	907	788-3653	0	0	
AK	Clark Bay	Clark Bay Ferry Terminal	907	465-3946	0	0	
AK	Craig	Port of Craig Alaska	907	826-3275	0	0	
AK	Excursion Inlet	Excursion Inlet Packing Co	907	586-4244	0	0	
AK	Haines	Haines	907	766-2448	0	0	
AK	Haines	Haines Army Terminal	907	766-2357	0	0	
AK	Haines	Haines Ferry Terminal	907	465-3946	0	0	
AK	Hobart Bay	Hobart Bay Logging Camp	907	225-2675	0	0	
AK	Hollis	Hollis Ferry Terminal	907	465-3946	0	0	
AK	Homer	Port of Homer	907	235-8597	447	100	
AK	Hoonah	Hoonah Ferry Terminal	907	465-3946	0	0	
AK	Hoonah	Port of Hoonah Alaska	907	945-3670	0	0	
AK	Hydaburg	Hydaburg	907	285-3761	0	0	
AK	Juneau	Alaska Mariner Highway System	907	465-3955	1607	250	250
AK	Juneau	Auke Bay Ferry Terminal	907	465-3946	0	0	
AK	Juneau	City and Borough of Juneau	907	586-5255	20	30	
AK	Juneau	Union Oil Juneau, Alaska	907	586-1276	0	0	
AK	Kake	Kake Ferry Terminal	907	465-3946	0	0	
AK	Kake	Port of Kake Alaska	907	785-3804	0	0	
AK	Kasaan	Port of Kasaan Alaska	907	542-2212	0	0	
AK	Kenai	Kenao Pipeline Co. Mikiski Term	907	776-8161	642	500	5950
AK	Kenai	Tesoro Alaska Petroleum Co	907	776-8191	354	500	6000
AK	Kenai	Unocal Chem Division	907	776-8121	590	30	
AK	Ketchikan	Chevron USA Ketchikan	907	225-2106	20	400	400
AK	Ketchikan	City Docks	907	225-3111	20	400	400
AK	Ketchikan	Ketchikan Ferry Terminal	907	465-3946	0	0	
AK	Ketchikan	Unocal	907	225-4176	20	600	600
AK	Klawock	Port of Klawock Alaska	907	755-2261	0	0	
AK	Metlakatla	Annette Island Packing	907	866-4661	0	0	
AK	Metlakatla	Metlakatla Ferry Terminal	907	465-3946	0	0	
AK	Metlakatla	Port of Metlakatla Alaska	907	886-4646	0	0	

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
AK	Pelican	Port of Pelican Alaska	907	735-2202	0	0	
AK	Petersburg	Chevron USA Petersburg	907	772-4251	0	0	
AK	Petersburg	Icicle Seafoods Co	907	772-4294	0	0	
AK	Petersburg	Nelbro Packing Co	907	772-4486	0	0	
AK	Petersburg	Petersburg Ferry Terminal	907	465-3946	[illegible]	0	
AK	Petersburg	Port of Petersburg Alaska	907	772-4688	0	0	
AK	Port of	Municipality of Anchorage	907	272-1531	1400	100	
AK	Rig Tender	Puget Sound Tug and Barge Co	907	776-8880	45	50	
AK	Sitka	Port of Sitka	907	465-3439	20	18	
AK	Sitka	Sitka Ferry Terminal	907	465-3946	0	0	
AK	Skagway	Port of Skagway Alaska	907	983-2297	0	0	
AK	Skagway	Skagway Ferry Terminal	907	465-3946	0	0	
AK	Tenakee	Port of Tenakee Springs	907	736-2221	0	0	
AK	Tenakee	Tenakee Springs Ferry Terminal	907	465-3946	0	0	
AK	Wrangell	Wrangell Ferry Terminal	907	465-3946	0	0	
AK	Yakutat	Chevron USA Yukutat	907	784-3411	0	0	
AK	Yakutat	Port of Yakutat Alaska	907	784-3323	0	0	
AK	Valdez	Chevron USA, Inc	907	835-4337	30	N/A	A
AK	Valdez	Port of Valdez	907	835-4313	105		N/A
AK	Valdez	Alaska Marine Highway	907	465-3946	34.2	0	30 GPM
AK	Cordova	City of Cordova Municipal Dock	907	424-3351	95	0	
AK	Valdez	Alaska Pipeline Service Co	907	835-6422	100,000	0	63,000 GAM
AK	Wrangell	Port of Wrangell AK	907	874-3736			
AK	Hawk Inlet	Greens Creek Mining Co	907	789-4171	N/A	N/A	N/A
AK	Dutch Harbor	Petro Marine Services	907	581-1350	161	60	N/A
AK	Unalaska	Ballyhoo Dock	907	581-1254	87.5	60	N/A
AK	Unalaska	Alyeska Seafoods	907	581-1270	161	60	N/A
AK	Akutan	Trident Seafoods, Co	907	698-2211	23.81	30	N/A
AK	Dutch Harbor	American President Lines	907	581-1200	27.32	150	N/A
AK	Dutch Harbor	Delta Western	907	581-1284	35	27	27
AK	Dutch Harbor	East Point Seafoods, Inc	907	581-1225	2	11	N/A
AL	Chickasaw	Mobile-Chickasaw Port Facility	205	456-7648	1587	1050	1050
AL	Jackson Co	Port of Pascagoula	601	762-4041	206	60	100
AL	Mobile	Alabama Dry Dock & Shipbuilding	205	690-7011	2908	200	
AL	Mobile	Alabama State Docks	205	690-6113	4408	1050	1050
AL	Mobile	Amerada Hess Corp	205	456-4688	12000	5000	
AL	Mobile	Mobile Bulk Terminal	205	438-9891	178	300	
AL	Mobile	Mobile River Terminal Co	205	432-3233	4408	1050	
AL	Mobile	Pacific Molasses Co	205	432-8771	4408	1050	
AL	Theodore	Ideal Basic Industries	205	653-5800	4408	1050	
AL	Theodore	Resource Consultants, Inc	205	653-6324	20	1200	1200
AL	Mobile	Louisiana Land & Exploration Co	205	675-7040	206	200	
AS	Pago Pago	South West Marine of Samoa, Inc	684	633-4123	75	50	50
AS	Pago Pago	Port of Pago Pago	684	633-4211			
CA	Alameda	Pennzoil	415	522-4224	450	100	
CA	Benicia	Benicia Port Terminal	707	745-2394	358	100	
CA	Carpinteria	Chevron USA	213	782-1939	0	0	0
CA	Crockett	C&H Sugar	415	772-3918	460	100	
CA	Hunnington	Golden West Refining Co	714	536-8130	2110	0	3500
CA	Long Beach	Copper/T. Smith Stevedoring Co	213	437-3524	459	1200	1200
CA	Long Beach	Domtar Gypsum America Inc	213	436-4611	131	90	
CA	Long Beach	Dow Chemicals USA	213	533-5375	288	80	100
CA	Long Beach	Forest Terminals Corp.	213	432-5401	228	1400	1400
CA	Long Beach	Four Corners Pipeline	213	428-9022	7646	280	6720
CA	Long Beach	Gold Bond Building Products	213	435-4465	1309	90	140
CA	Long Beach	International Transportation	213	435-7781	229	200	200
CA	Long Beach	Long Beach Container Terminal	213	435-8585	228	0	61
CA	Long Beach	Maersk Lines Long Beach Pier G	213	435-7706	131	90	
CA	Long Beach	Metropolitan Stevedoring Co	213	830-5340	360	200	200
CA	Long Beach	Ocean Salt Co	213	437-0071	20	70	200
CA	Long Beach	Pacific Coast Cement	213	435-0195	210	70	140
CA	Long Beach	Pacific Container Terminal	213	435-0842	245	0	
CA	Long Beach	Petro-Diamond Terminal Co	213	435-8364	346	253	252
CA	Long Beach	Procter & Gamble Mfg. Co	213	432-6981	346	70	200
CA	Long Beach	Salen Shipping Agencies, Inc	213	436-9961	364	50	250
CA	Long Beach	Standard Fruit & Steamship CP	213	437-3521	2153	50	250
CA	Long Beach	Star Terminal Co Inc	213	436-2273	130	100	100
CA	Long Beach	Stevedoring Services of America	213	432-6477	245	100	
CA	Long Beach	Texaco Refiners & Marketing	213	513-2463	15000	3500	3500
CA	Long Beach	Toyota Motor Sales, USA Inc	213	437-6767	549	300	10
CA	Long Beach	United States Lines, Inc	213	435-3761	228	01400	1400
CA	Los Angeles	Defense Fuel Support Point	213	832-3144	5135	4200	4200
CA	Los Angeles	Indies Terminal Co	213	547-3351	245	0	
CA	Los Angeles	Los Angeles Cruiseship Terminals	213	519-4049	228	200	200
CA	Los Angeles	Matson Terminals Inc.	213	519-6438	346	100	100
CA	Los Angeles	Mobil Oil Corporation SW Terminal	213	832-2702	174	350	350
CA	Los Angeles	Overseas Terminal Co	213	832-3341	0	0	

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
CA	Los Angeles	Pasha	213	437-0911	244	90	90
CA	Los Angeles	Penzoil Petroleum Terminal	213	385-0311	346	110	110
CA	Los Angeles	Petrolane, Inc	213	833-5275	2178	200	
CA	Los Angeles	Southern California Outport	213	514-4970	636	90	
CA	Los Angeles	Todd Pacific Shipyards Corp	213	832-3361	346	250	
CA	Los Angeles	Union Oil Co-Supertanker Term	213	832-4519	20	5000	
CA	Los Angeles	UNOCAL Corp	213	513-7600	1200	4200	4200
CA	Los Angeles	Western Oil Fuel Co	213	549-7711	837	70	70
CA	Oakland	Matson Container Terminal	415	271-8819	460	100	
CA	Oakland	Pacific Dry Dock and Repair	415	893-7020	67	400	400
CA	Oakland	Schnitzer Steel Products	415	444-3919	460	100	
CA	Oakland	Sealand Services	415	271-1000	460	100	
CA	Oakland	Stevedoring Services of America	415	271-1800	460	100	
CA	Richmond	Burmah-Castrol Terminal	415	236-6312	30	700	
CA	San Diego	Bay City Marine Inc	619	224-6655	2975	300	500
CA	San Diego	Campbell Industries	619	233-7115	1489	150	150
CA	San Diego	Continental Maritime	619	234-8851	2975	300	300
CA	San Diego	Embarcadero Marine Inc	619	233-6884	1052	250	250
CA	San Diego	National Steel and Ship Building	619	696-7938	3346	300	300
CA	San Diego	Naval Supply Ctr. Pt. Loma Annex	619	225-2355	4736	5600	5600
CA	San Diego	Port of San Diego	619	291-3900	3346	300	300
CA	San Diego	Southwest Marine, Inc	619	238-1000	2975	300	300
CA	San Diego	Tuna Clipper Marine	619	232-1838	1654	300	500
CA	San Francisco	Continental Maritime Inc	415	957-1500	3360	200	200
CA	San Francisco	Baker Commodities Inc	415	282-4188	460	100	
CA	San Francisco	California Stevedore & Ballast	415	826-7100	460	100	
CA	San Francisco	Continental Grain Co	415	824-7177	460	100	
CA	San Francisco	Forest Terminals Inc	415	951-5113	1346	100	
CA	Oakland	Oakland Center Terminal	415	834-5822	460	100	
CA	San Francisco	Pier 70	415	548-9111	460	100	
CA	San Francisco	San Francisco Port Commission	415	391-8000	460	100	
CA	San Pedro	American President Lines	213	432-5991	228	200	200
CA	San Pedro	Chevron USA Inc	213	832-3324	150	1400	1400
CA	San Pedro	Evergreen Terminal	213	519-6942	20	22	
CA	San Pedro	Getx Terminals Corp	213	547-0881	547	400	
CA	San Pedro	Getx Tank Storage Terminal	213	547-9855	257	50	
CA	San Pedro	Kaiser International Corp	213	514-2880	346	70	
CA	Terminal	Hugo Neu Proler T1 210	213	775-8626	346	200	200
CA	Wilmington	Berth 200-A	213	830-8181	131	90	90
CA	Wilmington	Berths 180-181, LA Harbor	213	834-3444	0	0	
CA	Wilmington	Cargill Inc	213	830-8231	228	200	20
CA	Wilmington	Getx LA Marine Terminal	213	835-0187	0	800	
CA	Wilmington	LA Terminals	213	549-5822	228	200	200
CA	Wilmington	Marine Terminal	213	834-7254	7463	1500	
CA	Wilmington	Marine Terminals Corp	213	432-5904	288	1400	1400
CA	Wilmington	Shell Oil Co	213	834-2638	3000	4900	
CA	Wilmington	United Fruit Co	213	834-2631	346	22	22
CA	Wilmington	Wilmington Liquid Bulk Terminals	213	549-0961	500	2100	2100
CA	Wilmington	Champlin Petroleum Co	213	834-7254	7463	1500	
CA	Wilmington	Pacific Molasses Company	213	549-1810	530	200	200
CA	Oakland	Maersk Line	415	398-1515	460	100	
CA	San Francisco	Marine Terminals	415	986-6576	460	100	
CA	Port Hueneme	Port of Hueneme	805	488-3677	1348	417	500
CA	Los Angeles	Texaco Venture Marine Terminal	213	327-0110	2250		3000
CA	Richmond	Pasha Services	415	234-8550	248	150250	
CA	Los Angeles	Southwest Marina, Inc	213	519-0600 Ext.	2,000	100 GPM	130
CA	Wilmington	United States Borax & Chemical Corp	213	835-0121	446	40	40
CA	Los Angeles	Refiners Marketing Co	213	519-7679	1527	62.5	62.5
CA	El Segundo	El Segundo Marine Terminal	213	615-5489	300	1400	1400
CA	Wilmington	Golden Eagle Refining Co. Inc	213	834-4495	15683.40	140	8750
CA	Long Beach	C. Brewer Terminals	213	435-5623	437.5		
CA	San Francisco	Service Engineering Co	415	957-1777	3166	200	200
CT	East Hartford	Andrew Wilgoos Turbine Lab	203	565-3975	90	50	50
CT	East Hartford	Texaco Sales Terminal	203	568-9600	0	0	
CT	East Hartford	The Atlas Oil Company	203	568-7220	0	0	
CT	Groton	Pfizer Inc	203	441-3206	102	150	150
CT	Groton	United Fuel Corp	203	445-4095	1488	250	250
CT	Middletown	Peterson Oil	203	346-7775	0	0	
CT	Middletown	United Technologies Corporation	203	344-4317	273	125	125
CT	New London	New London Terminals Div	203	442-3939	240	115	115
CT	Norwich	Dahl Oil Company	203	889-3525	0	0	
CT	Norwich	Lehigh Oil Company	203	889-1311	0	0	
CT	Norwich	State of CT Norwich Hospital	203	889-7361	0	0	
CT	Portland	Chevron Asphalt	203	342-1440	408	115	115
CT	Portland	Rocky Hill Oil Co., Inc	203	563-8123	30	133	133
CT	Rocky Hill	F.L. Roberts & Co., Inc	203	529-6821	0	0	
CT	Wethersfield	Amerada Hess Wethersfield	203	529-7781	0	0	

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
CT	Wethersfield	Northeast Petroleum	203	529-3299	0	0	
DE	Delaware City	Texaco R&M Inc De City Plant		302-834-6205	27,000	21,000 GP	5,000 GPM
DE	Wilmington	Sico Company		302-654-3177	264 MT	100 GPM	N/A
FL	Dania	Port Denison	305	920-2581	189.6	100	100
FL	Ft. Lauderdale	Port Everglades	305	523-3404	5390	150	100
FL	Ft. Lauderdale	Tracor Marine, Inc	305	463-1211	77	200	200
FL	Ft. Pierce	Ft. Pierce	305	464-5600	120	50	50
FL	Ft. Pierce	Indian River Terminal Company	305	465-7700	113.51	200	200
FL	Jacksonville	Amerada Hess Corporation	904	757-4498	281	50	500
FL	Jacksonville	Amoco Oil Co	904	757-5706	61	125	207
FL	Jacksonville	Bellinger Shipyard	904	221-0981	1336	90	100
FL	Jacksonville	Celotex Corporation	904	751-4400	1458	207.5	312.5
FL	Jacksonville	Chevron U.S.A. Inc	904	353-1094	368	207.5	312.5
FL	Jacksonville	Commodores Ponts Terminal Corp	904	353-0828	2934	90	150
FL	Jacksonville	Jacksonville Port Authority	904	633-5140	1458	207	312
FL	Jacksonville	Naval Supply Center Jacksonville	904	757-5354	2367	150	
FL	Jacksonville	North Florida Shipyard, Inc	904	354-3278	256	50	50
FL	Jacksonville	Phillips Pipeline Co	904	353-6740	122	100	
FL	Jacksonville	Shell Oil Co	904	355-5521	3020	300	
FL	Jacksonville	Trailer Marine Transport Corp	904	354-0352	2720	90	150
FL	Jacksonville	U.S. Gypsum Company	904	768-2501	850	150	150
FL	Key West	Port of Key West	305	294-3721	53.45	67	20
FL	Miami	Port of Miami	305	371-7678	431	150	100
FL	Panama City	Port of Panama City	904	763-8471	4388	1050	
FL	Pensacola	Port of Pensacola	904	436-4270	72	75	100
FL	West Palm	Port of Palm Beach	305	842-4201	3321	150	100
FL	Port St. Joe	Amerada Hess Corp	205	229-6763	1250	2000	3000
FL	Tampa	Hendry Corporation	813	831-1211	1619	100	220
FL	Tampa	Gulf-Tampa Drydock	813	247-3153	179	41.7	41.7
FL	Tampa	International Ship Repair & Marine Ser., Inc	813	247-1118	3113	900	1050
FL	Tampa	West Coast Oil Inc	813	247-1118	3113	900	1050
FL	Tampa	Tampa Electric	813	248-3191	1365	75	150
FL	Tampa	Amoco Oil Company	813	248-3191	1365	75	150
FL	Tampa	American Petrofina of Texas	813	248-3191	1365	75	150
FL	Tampa	Chevron USA, Inc	813	248-3191	1365	75	150
FL	Tampa	Citgo Petroleum Corp	813	248-3191	1365	75	150
FL	Tampa	Florida Power Corp	813	248-3191	1365	75	150
FL	Tampa	Gardinier, Inc	813	248-3191	1365	75	150
FL	Tampa	General Portland Inc	813	248-3191	1365	75	150
FL	Tampa	Gulf Oil Company	813	248-3191	1365	75	150
FL	Tampa	Murphy Oil Company	813	248-3191	1365	75	150
FL	Tampa	Petroleum Packers, Inc	813	248-3191	1365	75	150
FL	Tampa	South States Term. (Gatx)	813	248-3191	1365	75	150
FL	Tampa	Tenco Services, Inc	813	248-3191	1365	75	150
FL	Tampa	Texaco, Inc	813	248-3191	1365	75	150
FL	Tampa	Union Oil Co. of California	813	248-3191	1365	75	150
FL	Tampa	Western Fuels Company	813	248-3191	1365	75	150
FL	Tampa	Tampa Electric Hookers Pt	813	248-3191	1365	75	150
FL	Tampa	Tampa Shipyards	813	247-1183	1050	100	100
FL	Tampa	National Portland Cement Company	813	746-1177	100	10	10
FL	Tampa	Gulf Portland Cement Inc	813	248-2000	1365	75	150
FL	Tampa	Ideal Basic Industries	813	248-3129	1365	150	150
FL	Tampa	CF Industries	813	247-5531	1050	100	100
FL	Tampa	Banana	813	729-5602	1365	75	150
FL	Tampa	Texas Gulf Chemicals Co	813	247-5674	1365	75	150
FL	Tampa	Manatee Terminals, Inc	813	722-7719	1365	75	150
FL	Tampa	Paktank Florida Inc	813	247-5417	1365	75	150
FL	Tampa	Manatee Scrap Processing	813	702-5388	1365	75	150
FL	Tampa	Sulpher Terminals Co., Inc	813	248-4949	1050	100	100
FL	Tampa	W.R. Grace—Port Sutton	813	248-2185	1575	100	100
FL	Tampa	Garrison Terminals, Inc	813	229-1958	1575	100	100
FL	Tampa	Cargill, Inc	813	247-3602	1575	100	100
FL	Tampa	Eller and Co., Inc	813	247-5511	1575	100	100
FL	Tampa	Southern Stevedoring Co	813	223-5461	1365	75	150
FL	Tampa	Southport Stevedores Inc	813	248-6168	1365	75	150
FL	Tampa	International Minerals & Chemcals Corp	813	248-1971	1365	75	150
FL	Tampa	Shell Oil Corp	813	831-1121	1050	100	100
FL	Tampa	Commercial Metals Co	813	248-1918	1050	100	100
FL	Tampa	Eastern Cement Corp	813	729-7311	1365	75	150
FL	Tampa	Eastern Associated Terminals	813	248-5038	1050	100	100
FL	Tampa	Tampa Cement, Inc	813	248-2110	1050	100	100
FL	Tampa	Louisville Scrap Material Co	813	248-2110	1050	100	100
FL	Tampa	Tampa Bulk Services, Inc	813	837-0192	1050	100	100
FL	Tampa	Standard Gypsum	813	837-0192	1365	75	150
FL	Tampa	Sel Maduro Inc	813	223-4721	1050	100	100
FL	Tampa	Gold Bond Building Products	813	839-2111	1050	100	100
FL	Tampa	Tampa Barge Service, Inc	813	247-5408	1085	75	150

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
FL	Tampa	Marathon Petroleum Company	813	248-2878	1365	75	150
FL	Tampa	Tampa Export Company, Inc	813	248-2876	1365	75	150
FL	Tampa	Dravo Basic Materials Co., Inc	813	248-1070	1050	100	100
FL	Tampa	Harborside Refrigerated Services	813	248-6996	1575	100	100
FL	Tampa	Apollo Stevedoring Company, Inc	813	722-0558	1365	75	150
FL	Tampa	Royster Company	813	248-6778	1575	100	100
FL	Tampa	Atlantic Land and Improvement Co	813	248-8111	1050	100	100
FL	Tampa	Sol Walker and Company	813	248-5796	1050	100	100
FL	Tampa	Trans Florida Terminal	813	248-5796	1050	100	100
FL	Tampa	Morton Salt Company	813	248-2715	1050	100	100
FL	Tampa	Florida Power-Boca Grande	813	964-2481	1050	100	100
FL	St. Petersburg	City of St. Petersburg Cruise Terminal	813	893-7654	1365	75	150
FL	St. Petersburg	City of St. Petersburg Cargo Terminal	813	893-7654	1365	75	150
FL	Tampa	Pennzoil Sulpher Co	813	248-3411	1365	75	150
FL	Tampa	Pasco Terminals, Inc	813	248-3411	1365	75	150
FL	Palmetto	Florida Power and Light	813	722-7727	147.6	350	350
FL	Gibsonton	Mitsui and Co USA (International	813	677-8483	1575	100	100
FL	Gibsonton	Agrico Chemical Co	813	677-8404	1575	100	100
FL	Tampa	Bay Terminals and Stevedoring	813	225-2610	1622	150	150
FL	Tampa	G & C Stevedoring	813	223-3139	1622	150	150
FL	Tampa	Seagull Terminal and Stevedoring	813	223-3216	1622	150	150
FL	Jacksonville	U.S. Gypsum Co	904	768-2501	1529	75	100
FL	Jacksonville	Occidental Chemical Corp	904	632-3813	404	150	150
FL	Jacksonville	B.P. Oil Inc	904	757-4650	318	207.5	312.5
FL	Fernandina	Nassau Terminal (Fernandina)	904	261-0753	1550	90	150
FL	Jacksonville	Jacksonville Shipyards, Inc	904	798-3700	4485	400	500
FL	Jacksonville	Witco Chemical Corporation	904	353-0941	6875	150	N/A
FL	Jacksonville	Atlantic Drydock	904	251-3164	97	50	500
FL	Jacksonville	Itapco	904	791-8822	368	240	240
FL	Jacksonville	Coastal Fuels	904	358-6725	850	350	350
FL	Jacksonville	Steuart Petroleum	904	355-9675	122	100	
GA	Brunswick	Brunswick Port Authority	912	265-3700	601	350	440
GA	Brunswick	Georgia Authority	912	264-7295	342	300	350
GA	Brunswick	LCP Chemicals-Georgia	912	265-8560	6563	440	440
GA	Garden City	Gold Bond Building Products	912	964-1561	274	100	100
GA	Garden City	Koch Asphalt Co	912	964-1913	196	300	350
GA	Port Wentworth	Savannah Sugar Refinery	912	964-1361	601	350	440
GA	Port Wentworth	Stone Container Corp	912	964-1271	1312	100	N/A
GA	Savannah	Amoco Oil Company	912	964-6282	601	350	440
GA	Savannah	Belcher Oil Company	912	964-1811	196	300	350
GA	Savannah	Blue Circle Atlantic Inc	912	236-6318	1500	100	N/A
GA	Savannah	Bulk Terminal Management	912	964-2785	1500	100	100
GA	Savannah	Chevron USA	912	232-0184	3111	123	123
GA	Savannah	Colonial Oil Industries, Inc	912	236-1331	347	175	N/A
GA	Savannah	Damond Manufacturing Co	803	233-3003	134	50	50
GA	Savannah	East Coast Terminal Company	912	236-1531	1500	100	N/A
GA	Savannah	Genstar	912	233-4951	1005	123	N/A
GA	Savannah	Georgia Port Authority	912	964-3811	196	300	350
GA	Garden City	Georgia Steamship Company	912	964-0719	7875	120	120
GA	Savannah	Marcona Ocean Industries, Ltd	912	234-5005	340	350	440
GA	Savannah	Occidental Chemical Agricultural	912	964-1214	-196	300	350
GA	Savannah	Panocean Southland Inc	912	964-1811	196	300	350
GA	Savannah	Powell Duffryn Terminals	912	236-1579	3925	100	100
GA	Savannah	Sayler Marine Corp	912	234-2266	123	100	100
GA	Savannah	Union Oil Company	912	233-9266	601	350	440
GA	Wentworth	Atlantic Wood Industries, Inc	912	964-1234	10	350	440
GA	Goleta	Gaviota Marine Terminal	303	866-0419			
GA	Garden City	Koch Asphalt Company	912	964-1913	196	300	350
GA	Savannah	Southern States Phosphate and	912	232-1101			
GA	Savannah	Domtar Gypsum Products Co	912	233-4951	1005	135	N/A
GA	Savannah	Powell Duffryn Terminal, Inc	912	236-1579	3295	100	100
Guam	Piti	Drydock 'AFDL-21'	671	477-7345	185	400	250
Guam	Piti	Port Authority of Guam	671	477-9931-35	10.1	80	100
Guam	Cabras Island	Kaiser Cement Corp	671	477-1530	59.52		13.2
Guam		Guam Oil & Refining Co., Inc	671	565-2921	6,000	3,500	3,500
HI	Honolulu	Honolulu Shipyard			273.4	150	150
HI	Hilo	Hilo Harbor	808	935-4877	105	75	75
HI	Kawaii	Kawaii Harbor	808	935-4877	105	75	75
HI	Honolulu	Honolulu Shipyard	808	848-6262	273	150	150
HI	Ewa Beach	Barbers Pt. Offshore Tanker Terminal	808	682-5711	425	15500	150
HI	Ewa Beach	Hawaii Independent Refinery, Inc	808	682-4505	563	10000	10000
HI	Honolulu	Chevron U.S.A., Inc., Pier 30	808	527-2747	154	500	500
HI	Honolulu	Honolulu Commercial Harbors	808	548-4134	840	100	100
HI	Eleele	Port Allen Harbor	808	245-6996	176	84	84
HI	Kahalui	Port of Kahalui	808	877-6051	105	100	100
HI	Peal Harbor	Navy Supply Center	808	471-0725	333	100	100
HI	Honolulu	Barbers Point Offshore Tanker Terminal	808	682-5711	425		N/A

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
HI	Ewa Beach	Hawaiian Independent Refinery, Inc	808	682-4505	563	10,000	10,000
HI	Pearl Harbor	Fuel Department	808	471-0725	2,000 BBls	250	250
HI	Kahului	Kahului Harbor	808	877-6051	105.3	100	100
HI	Hilo	Hilo Harbor	808	935-4877	105.3	75	75
HI	Kawaihae	Kawaihae Harbor	808	882-7585	105.3	75	75
HI	Lihue	Nawiliwili	808	245-6996	175.5	84	84
IL	Chicago	International Port District	312	646-4400	294	35	.....
IN	Portage	Burns International Port	219	787-8636	103	30	.....
LA	Arabi	Amstar Corporation	504	271-5331	1100	200	N/A
LA	Arabi	Kaiser Aluminum & Chemical	504	271-7046	20	150	150
LA	Baton Rouge	Exxon Company USA	504	359-7518	15000	7700	7,700
LA	Baton Rouge	Formosa Plastics Corp	504	358-3341	6048	50	.....
LA	Baton Rouge	Port of Greater Baton Rouge	504	387-4207	104,909	88	88
LA	Belle Chasse	Miss. River Grain Elevator	504	656-2213	199	75	75
LA	Belle Chasse	B.P. Oil Inc	504	656-7711	6530	0	10,000
LA	Belle Chasse	Chevron Chemical Co	504	394-4320	50	150	150
LA	Belle Chasse	Dockside Elevators, Inc	504	524-0611	4200	650	650
LA	Burnside	Burnside Terminal	504	473-4245	1175	2500	2,500
LA	Carville	Cos-Mar Company	504	642-5454	180	100	100
LA	Chalmette	Exxon Co, USA	504	359-7605	6000	1400	.....
LA	Chalmette	Tenneco Oil Company P&M	504	279-9481	100	40	40
LA	Convent	Delta Bulk Terminals	504	524-7105	640	133	133
LA	Convent	Diamond Shamrock	504	562-7402	20	30	30
LA	Convent	Zen-Noh Grain Elevator	504	562-3571	2940	700	700
LA	Darrow	Cooper/T. Smith Stevedoring	504	473-4288	24	60	60
LA	Darrow	River Cement Company	504	473-6748	1581	150	N/A
LA	Davant	Electro-Cal Transfer Corp	504	524-4181	2300	45	500
LA	Destrehan	Bunge Corporation	504	466-5300	595	22	22
LA	Destrehan	St. Charles Grain Elevator Co	504	466-2753	3000	350	350
LA	Destrehan	Tulane Anchorage	504	464-1466	980	1150	1150
LA	Donaldsonville	Agrico Chemical	504	473-4271	150	50	0
LA	Donaldsonville	C & F Industries, Inc	504	473-8291	1200	2450	2450
LA	Donaldsonville	Triad Chemical	504	473-9231	2976	1050	1050
LA	Geismar	Allied Corporation	504	642-8311	180	100	100
LA	Goodhope	GATX Terminal Corp	504	443-2511	802	300	300
LA	Gramercy	Kaiser Aluminum & Chemical Corp	504	525-0460	20	650	N/A
LA	Grameron	Colonial Sugar, Inc	504	529-1102	61	2000	2000
LA	Hackberry	OXY Cities Services N.G.L. Inc	318	762-4201	1699	182	.....
LA	Hahnville	Becker Industries Corp	504	783-6872	1100	1000	1000
LA	Hahnville	Occidental Chemical Corp	504	783-6611	389	10	350
LA	Hahnville	Union Carbide Corp	504	468-4300	645	100	100
LA	Harvey	BP North America Petroleum, Inc	504	368-2560	4200	1000	1000
LA	Harvey	Delta Commodity, Inc	504	340-4911	199	75	75
LA	Houma	Texas Pipe Line Company	504	876-5645	1250	133	133
LA	Lake Charles	CITGO Pipeline	318	491-6237	11000	2000	5000
LA	Lake Charles	CONOCO	318	491-5855	1670	400	.....
LA	Lake Charles	Lake Charles Carbon	318	437-3200	31	15	.....
LA	Lake Charles	Lake Charles Harbor & Terminal	318	439-3661	812	180	700
LA	Lake Charles	Olin Corporation	318	491-3320	1670	400	400
LA	Lake Charles	PPG Industries	318	491-4266	1670	400	400
LA	Lake Charles	Truckline LNG	318	478-9936	1000	100	.....
LA	Avondale	International Matex	504	436-4466	40	420	N/A
LA	Meraux	Murphy Oil, Inc	504	271-4141	47	35	.....
LA	New Orleans	Avondale Industries Shipyard	504	436-5165	2350	2000	2000
LA	New Orleans	Buck Kreiks Co	504	524-7681	1400	1000	.....
LA	New Orleans	Chevron Pipeline Co	504	364-2496	1000	100	N/A
LA	New Orleans	Dixie Machine & Welding Inc	504	581-3086	100	20	20
LA	New Orleans	I.T.O. Corporation	504	899-9544	1200	50	50
LA	New Orleans	Port of New Orleans	504	528-3209	9413	617	6833
LA	New Orleans	Southern Scrap Material Co., Ltd	504	944-3371	3000	350	350
LA	Paulina	Peavey Grain Elevator	504	482-4405	47	100	.....
LA	Plaquemines	Dow Chemical Corp	504	389-8646	58	21	21
LA	Plaquemines	Georgia Gulf Corp	504	685-2500	159	50	50
LA	Port Sulphur	Freeport Sulphur	504	564-3981	5400	105	105
LA	Port Sulphur	International Marine Terminals	504	656-7341	3000	350	350
LA	Reserve	Godchaux Henderson Sugar, Co	504	536-1161	1200	100	100
LA	St. James	Koch Gathering Systems	504	265-2112	500	1000	1000
LA	St. James	Shell Pipeline Corporation	504	588-4831	1250	100	100
LA	Sulphur	Fredemans Shipyard	318	583-7363	1670	500	500
LA	Uncle Sam	Freeport Chemical Co	504	562-3501	27	100	100
LA	Union	Missouri Portland Cement	504	562-7471	1400	1000	.....
LA	Westlake	CONOCO	318	491-5222	1050	3500	3500
LA	Westlake	Dravo Basic Materials	318	436-5642	1670	400	.....
LA	Westlake	Ideal Basic Industries	318	436-7561	20	100	.....
LA	Westwego	Continental Grain Elevator	504	436-9200	1000	166	1400
LA	Westwego	Gold Bond Building Products	504	341-8596	381	100	.....
LA	Westwego	Pacific Molasses	504	347-8454	389	60	.....

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
LA	Westwego	Park Tank	504	623-0000	191	46	
LA	Sunshine	Petrounited Terminals, Inc	504	642-8335	2,205	350	350
LA	AMA	Adm-Growmark System	504	431-8245	10,000	185	
LA	Marrero	Texaco Refining & Marketing, Inc	504	595-6611	150	700	700
LA	Geismar	Shell Chemical Plant	504	473-4261	1,470	75	100
LA	New Orleans	U.S. Gypsum Company	504	241-2020	196	180	180
LA	Reserve	Reserve Elevator Corp	504	568-1036	2,500	1,000	1,000
LA	Garyville	Clark Oil & Refining Corporation	504	535-6256	770	2,100	2,800
LA	Marrero	Amerada Hess Corporation	504	341-9561	12,000	3,000	5,000
LA	Luling	Compass Fleet 122, Inc Anchorage		368-0312	20	1,150	1,150
LA	New Orleans	Algiers Iron Works & Dry Dock Co	504	362-7960	20	100	100
LA	New Orleans	Boland Marine Mfg. Co Inc		944-0223	1,518	100	1,000
LA	Violet	Violet Dock Port Inc	504	682-8528	1,250	50	50
LA	Garyville	Marathon Petroleum Co	504	535-2241	12,000	140,000	140,000
LA	Reserve	Cargill-Terre Haute	504	467-4126	3,163.13	750	750
LA	Convent	Cargill K-2	504	562-7313	3,163.13	750	750
LA	Port Allen	Anchorage Chemical Terminal	504	389-0170	1,470	350	N/A
LA	Westwego	Koch-Ellis Barge & Ship Service	504	436-3766	200	300	300
LA	Harvey	Imtt-Gretna	504	368-2560	4,200	1,000	1,000
LA	Garyville	Petroleum Fuel & Terminal Co	504	535-6256	770	2,100	2,800
MA	Boston	Boston Edison Company	617	424-3547	2,284	200	
MA	Boston	Economic Development & Ind. Co	617	725-3300	1,003	300	
MA	Boston	Mass Port Authority	617	973-5354	730	500	
MA	Boston	Amstar Corp Bunker Hill Refin.	617	242-5335	1,003	300	
MA	Boston	Blue Circle Atlantic Cement	617	241-9040	983	200	
MA	Boston (East)	Boston Fuel Transportation, Inc	617	567-9100	983	200	
MA	Boston (East)	Mobil Oil Corporation	617	381-4039	298	300	
MA	Boston (South)	Belcher of South Boston, Inc	617	269-8400	1,391	200	
MA	Chelsea	Cumberland Farms Inc	617	884-5980	983	200	
MA	Chelsea	Eastern Minerals	617	884-0029	3,126	300	300
MA	Chelsea	Gulf Oil Products Company	617	884-5980	983	200	
MA	Chelsea	Northeast Petroleum	617	884-7570	125	200	
MA	Chelsea	U.S. Gypsum Co	617	241-9100	1,003	300	
MA	Chelsea	Ultramar Petroleum Inc	617	288-1100	983	200	
MA	Dorchester	Boston Gas Co	617	288-3820	983	200	
MA	E. Braintree	Citgo Petroleum Corporation	617	848-2595	298	300	
MA	East Boston	Amerada Hess Corp	203	529-7781	76	200	
MA	East Boston	General Ship	617	569-4200	2,530	300	300
MA	Everett	Coldwater Seafood Corporation	617	387-2050	1,151	300	
MA	Everett	Everett Marine Lng Terminal	617	423-5959	730	500	
MA	Everett	Exxon Co, USA-Everett Terminal	617	381-2800	983	200	
MA	Everett	Independent Cement Corporation	617	387-3829	1,155	300	
MA	Everett	Prolerized New England Company	617	389-8300	298	300	
MA	Fall River	Borden & Remington Corp	617	675-0181	1003	300	
MA	Fall River	Northeast Products Co., Inc	617	678-8367	1004	300	
MA	Gloucester	Americold/Quincy Market Cold	617	283-6100	1003	300	
MA	Lynn	General Electric Company	617	594-3834	1155	300	
MA	New Bedford	Frionor Kitchens, Inc	617	997-0031	122	200	
MA	New Bedford	Glen Petroleum Corp	617	996-8271	327	200	
MA	New Bedford	Global Petroleum Corp	617	997-4534	327	200	
MA	North	C.H. Sprague & Son Co	603	431-1000	983	200	
MA	Quincy	General Dynamics Corp	617	471-4200	214	50	
MA	Quincy	Quincy Oil, Inc	617	773-2500	1391	200	
MA	Quincy	The Procter & Gamble MFG Co	617	471-9100	298	300	
MA	Revere	Belcher New England, Inc	617	284-4490	1391	200	
MA	Revere	Gibbs Oil, Div. of BP Oil, Inc	617	289-4201	1391	200	
MA	Revere	Northeast Petroleum	617	884-7570	1391	200	N/A
MA	Revere	Revere Terminal Corporation	617	289-2102	1391	200	
MA	Salem	New England Power Co	617	744-5540	1281	200	
MA	Salem	Northeast Petroleum	617	884-7570	1391	200	N/A
MA	Sandwich	ESCO Terminals, Inc	617	888-2001	327	200	
MA	Somerset	Montaup Electric Co	617	678-5283	327	200	
MA	Somerest	New England Power Company	617	678-8321	327	200	
MA	Woods Hole	Woods Hole Oceanographic	617	548-1400	1003	300	
MD	Baltimore	Agrico Chemical Corporation	301	276-8100	546	60	
MD	Baltimore	Amerada Hess Corporation	301	355-0705	124	50	
MD	Baltimore	Amstar Corporation	301	752-6150	115	20	
MD	Baltimore	B.P. Oil Inc	301	355-7200	619	20	
MD	Baltimore	Blue Circle Atlantic	301	355-4440	3872	150	150
MD	Baltimore	Cargill	301	539-5950	390	200	200
MD	Baltimore	Central Soya, Canto Grain Eleva	301	522-5100	2251	350	350
MD	Baltimore	Chesapeake terminal	301	625-1370	1866	133	133
MD	Baltimore	Conoco Docking Facility	301	355-5296	3062	150	
MD	Baltimore	Consolidation Coal Sales Company	301	342-1020	454	75	75
MD	Baltimore	Curtis Bay Coal & Ore Pier	301	347-5201	583	42	42
MD	Baltimore	Essex Industrial Chemical, Inc	301	355-1770	828	60	60
MD	Baltimore	G & M Terminal Incorporated	301	355-8833	575	450	450

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
MD	Baltimore	Gold Bond Building Products	301	563-5315	615	150	150
MD	Baltimore	Indiana Grain-Locust Pt. Elev	301	685-6410	108	50	40
MD	Baltimore	Joseph E. Seagrams & Sons, Inc	301	247-1000	2579	150	150
MD	Baltimore	Lebanon Chemical Corp	301	327-4700	11067	60	
MD	Baltimore	Louis Dreyfus Canada	301	752-6997	119	42	42
MD	Baltimore	Maryland Port Administration	301	955-1160	1820	31	
MD	Baltimore	Petroleum Fuel & Terminal	301	342-7800	1075	450	450
MD	Baltimore	Port Covington Piers 4,5,6	301	347-5201	583	42	41.67
MD	Baltimore	Rukert Terminal Corp	301	276-1013	154	100	100
MD	Baltimore	Shell Oil Co	301	354-0404	327	600	
MD	Baltimore	Support Terminal Services, Inc	301	355-6262	49	60	
MD	Baltimore	Texaco Refining & Marketing Inc	301	355-6500	58	50	
MD	Baltimore	The Proctor & Gamble Mfg. Co	301	576-1291	113	50	50
MD	Baltimore	United States Gypsum Company	301	355-6800	660	50	50
MD	Piney Point	Stuart Petroleum	301	994-1200	686	100	100
MD	Sparrows Point	Bethlehem Steel	301	388-7707	950	100	200
MD	Baltimore	Eastalco Aluminum Co	301	354-1113	1516.6	150	150
MD	Baltimore	Amoco Oil Co	301	636-0522	491	450	450
MD	Baltimore	Atlantic Terminal	301	355-9434	1120	133	N/A
MD	Baltimore	Star Enterprise	301	355-6500	58 MT	50 GPM	N/A
MD	Baltimore	Transpacific Communications	301	385-0426	636.6 MT	200	N/A
ME	Bangor	Barrett Paving	207	942-4681	305	50	100
ME	Bangor	Irving Oil Co	207	942-6323	305	50	100
ME	Bangor	Mobil Oil Co	207	942-6248	305	50	100
ME	Bangor	Webber Oil Co	207	942-5501	305	50	100
ME	Bar Harbor	CN Marine Terminal	207	288-3395	0	0	
ME	Brewer	Mainway Terminal Inc	207	989-2410	305	50	305
ME	Brewer	Webber Tanks Inc	207	989-7770	305	50	100
ME	Bucksport	C. H. Sprague & Son Co	207	469-7946	305	50	100
ME	Bucksport	Elden Corp	207	469-7450	305	50	100
ME	Bucksport	Webber Tanks Inc	207	469-3166	305	50	100
ME	Cousins Island	Central Maine Power-Wyman	207	846-9055	197	50	50
ME	Eastport	Federal Marine Terminals, Inc	207	853-6096	120	50	50
ME	Hampden	Texaco Inc	207	945-9495	305	50	100
ME	Portland	Portland International Lyon's	207	775-5611	197	50	
ME	Searsport	C. H. Sprague & Son Co	207	548-2531	305	50	100
ME	Searsport	Irving Oil Co	207	942-6323	305	50	100
ME	Searsport	Tenco Services	207	548-2201	305	50	100
ME	So. Harpswell	Defense Fuel Supply Point	207	833-6232	306	50	50
ME	So. Portland	Exxon Co. Inc	207	767-2141	306	50	100
ME	So. Portland	Getty Petroleum Corp	207	799-8518	305	50	100
ME	So. Portland	Koch Fuels Inc	207	767-2161	305	50	
ME	So. Portland	Mobil Oil Corp	207	767-3251	259	50	50
ME	So. Portland	Portland Pipeline Corp	207	767-3231	20	28	
ME	So. Portland	Texaco Inc	207	799-3394	200	50	50
ME	So. Portland	Northeast Petroleum	207	799-2294	328	50	
ME	Winterport	Maine Terminal Inc	207	223-5011	305	50	100
ME	Wiscasset	Central Maine Power-Mason	207	882-6212	259	50	50
ME	Yarmouth	Central Maine Power-Wyman	207	846-9055	197	50	50
ME	So. Portland	BP Oil Inc	207	799-8586	305.8	50	100
MI	Bay City	Dow Chemical Seaway Terminal	517	667-0308	120	50	100
MI	Bay City	Saginaw Valley Marine	517	895-6571	120	50	100
MI	Detroit	Harridon Terminal	313	841-7880	444	250	250
MI	Ludington	Dow Chemical USA	616	845-4444	10	50	100
MI	Port Huron	Port Huron Terminal Company	313	982-8596	444	250	250
MI	Saginaw	Berger and Company	517	754-1460	120	50	100
MI	River Rouge	Nicholson Terminal & Dock Co	313	842-4300	6643	330	330
MN	Duluth	Port of Duluth/Superior	218	727-8525	150	60	60
MS	Bay St. Louis	Port Bienville	601	467-9231	389	60	
MS	Gulfport	MS State Port Authority	601	865-4317	354	150	
MS	Pascagoula	Chevron, USA, Inc	601	938-4214	6432	9999	1000
MS	Pascagoula	Ingalls Shipbuilding Division	601	935-4676	370	112	112
NJ	Pennsauken	Texaco R&M	609	662-5600	70	300	300
NJ	Pennsauken	Trailer Marine Transport	609	541-1737	57	100	100
NJ	Camden	South Jersey Port Corp	609	757-4960	172	100	100
NJ	Pennsauken	Amerada Hess Pennsauken	609	663-5111	29	50	N/A
NJ	Burlington	Nat. Gypsum, Gold Bond Building	609	499-3300	370.62	100	100
NJ	Gloucester City	Holt Cargo Systems, Inc	609	456-8400	242	500	500
NJ	Paulsboro	Mobil Oil Paulsboro Refinery	609	423-1040	840	250	1000
NJ	Camden	CITGO Petroleum Corp	609	963-8470	57	100	100
NC	Morehead City	Port of Morehead City	919	762-3158	6394	1000	1000
NC	Wilmington	Amerada Hess Wilmington	919	763-5123	6394	1000	N/A
NC	Wilmington	Cape Fear Terminal Port	919	726-8615	6339	1000	1000
NC	Wilmington	Exxon Terminal	919	799-0144	650	1400	N/A
NC	Wilmington	Gold Bond Building Products	919	799-3954	6394	1000	
NC	Wilmington	Paktank Corp-Wilmington	919	762-6104	1314	95	
NC	Wilmington	Port of Wilmington	919	371-2325	1743	820	N/A

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
NC	Wilmington	Transcarolina Terminal	919	763-4444	6394	1000	
NC	Wilmington	W.R. Grace-Nitrex Plant	919	763-0171	20	28	N/A
NC	Wilmington	Wilmington Shipyard, Inc	919	763-6274	380	480	N/A
NH	Newington	C.H. Sprague & Son	603	431-1000	331	50	50
NH	Newington	Fuel Storage Corp	603	431-6000	327	50	100
NH	Newington	Sea-3 Inc	603	431-5990	327	50	100
NH	Portsmouth	C.H. Sprague	603	431-1000	331	50	50
NH	Portsmouth	Gold Bond Building Products	603	436-4848	305	50	50
NH	Portsmouth	Granite State Minerals Inc	603	436-8505	1003	300	300
NH	Portsmouth	New Hampshire State Port Authority	603	436-8500	1008	300	300
NJ	Bayonne	Constable Terminal Corporation	201	437-2993	278	200	
NJ	Bayonne	Exxon Company USA	201	858-5503	14460	2800	
NJ	Bayonne	Gordon Terminal Service	201	437-8300	279	200	N/A
NJ	Bayonne	Hoboken Shipyards, Inc	800	845-4506	412	20	300
NJ	Bayonne	Imtt-Bayonne	201	437-2200	3325	1000	1000
NJ	Bayonne	Port Belcher of New York	201	437-2104	11760	2800	N/A
NJ	Bayonne	Powell Duffern Terminals	201	437-2600	540	200	N/A
NJ	Bayonne	Rollins Terminals, Inc	201	436-5000	279	200	N/A
NJ	Bayonne	Standard Tank Cleaning Corp	201	339-5222	15360	2800	2800
NJ	Bayonne	Texaco Refining & Marketing Inc	201	436-2200	15008	100	100
NJ	Carteret	Amoco Oil Company	201	541-5131	187	100	
NJ	Carteret	GATX Terminal Corporation	201	541-5161	15008	2800	
NJ	Elizabeth	Atlantic Container Lines	201	289-3000	262	250	
NJ	Elizabeth	Chevron-Bayway Lube Plant	201	354-1700	443	115	
NJ	Elizabeth	Croda Storage Inc	201	353-8933	621	132	
NJ	Elizabeth	Crown Central Petroleum Corp	201	352-0542	0	0	
NJ	Elizabeth	Puerto Rico Marine Management	201	225-2121		0	
NJ	Elizabeth	Sea-Land Service, Inc	201	558-6001	11760	2800	N/A
NJ	Hoboken	Union Drydock & Repair	201	792-9090	14895	2800	2800
NJ	Jersey City	Global Terminal Cont Serv, Inc	201	451-5290	15008	2800	
NJ	Jersey City	Port Maher Terminal	201	963-2100	15008	2800	
NJ	Kearny	Columbia Terminals Inc	201	344-3604	5040	400	
NJ	Linden	BP Tremley Point	201	862-2990	15008	2800	2800
NJ	Linden	Citgo Petroleum Corp	201	862-3300	20843	2800	1200/2800
NJ	Linden	E.I. Du Pont De Nemours & Co	201	474-1726	313	110	N/A
NJ	Linden	Exxon Bayway	201	474-7361	14460	2800	2800
NJ	Newark	Celanese Chemical Co, Inc	201	589-2705	137	150	
NJ	Newark	Port Tenneco Oil Company	201	589-8582	2559	132	
NJ	Newark	Sun Refining & Marketing Co	201	465-3200	25	100	
NJ	Newark	Texaco Refining & Marketing Inc	201	344-6815	15008	2800	
NJ	Newark	Trumbull Asphalt	201	998-2534	390	180	N/A
NJ	Newark	Van Iderstine Co	201	465-1900	11760	2800	
NJ	Perth Amboy	Chevron U.S.A. Inc	201	738-2000	75	1400	
NJ	Perth Amboy	Stolt Terminals Inc	201	826-1144	192	73	
NJ	Port Newark	B.P. North American	201	465-2424	15008	2800	N/A
NJ	Port Newark	Ecuadorian Line Inc	201	589-8894	127	28	
NJ	Port Newark	Hudson Tank Storage Company	201	465-1115	440	100	100
NJ	Port Newark	Interamerican Juice Company, Inc	201	589-4044	0	0	
NJ	Port Newark	Maersk Container Service Co Inc	201	465-1000	15008	2800	N/A
NJ	Port Newark	Turbana Corp Shed 138 Berth 4	201	690-5390	198	100	
NJ	Sewaren	Port Shell Oil Co	201	634-1000	15202	2800	N/A
NJ	Sewaren	Royal Petroleum, Inc	201	634-3344	3500	100	
NJ	Woodbridge	Amerada Hess Port Hudson	201	750-6555	124	50	50
NJ	Woodbridge	Amerada Hess Port New York	201	750-6555	15008	2800	
NJ	Paulsboro	BP Oil Inc Paulsboro Terminal		609-423-4000	57 M Tons	100 GPM	100 GPM
NJ	Gloucester	Holt Cargo Systems	215	456-6400	212		500
NY	Albany	Cibro Petroleum Products, Inc	518	462-4237	282	200	
NY	Albany	Port Mobil	518	436-6575	76	200	
NY	Athens	Peckham Materials Corp	518	945-1120	34	100	
NY	Beacon	Garret-Storm Inc	914	831-1100	0	0	
NY	Bronx	Fred M. Schildwachter & Sons	212	828-2500	0	0	
NY	Bronx	Getty Terminals Corporation	212	324-5134	0	0	
NY	Bronx	Port Castle Coal & Oil Co., Inc	212	823-8800	11760	2800	N/A
NY	Bronx	Port Cibro Petroleum	212	585-0600	576	220/100	
NY	Bronx	Ultramar Petroleum Inc	201	573-0300	512	100	N/A
NY	Brooklyn	Amoco Oil Company	718	389-5961	238	100	
NY	Brooklyn	Amstar Corporation	718	387-6800	11760	2800	
NY	Brooklyn	Coastal Drydock & Ship Repair	718	403-6291	15008	2800	2800
NY	Brooklyn	Lumber Exchange Terminal, Inc	718	383-5000	512	100	
NY	Brooklyn	Newton Creek Water Pollution	212	860-9314	0	0	
NY	Brooklyn	Port Continental Terminal, Inc	718	875-4935	15008	2800	
NY	Brooklyn	South Brooklyn Marine Terminal	718	499-3900	11760	2800	
NY	Brooklyn	Terminelle Corp	718	388-7011	0	0	
NY	Buffalo	Gateway Trade Center Inc	716	826-2890	20	150	
NY	Cementon	Port Lehigh Portland Cement Co	718	943-5300	421	200	
NY	East Elmhurst	Dept. of Corrections	718	726-7659	15008	2800	
NY	East Greenbush	Gold Bond Products Terminal	518	449-7354	419	200	

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TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
NY	Glenmont	Sears Petroleum & Transport Co	518	436-7942	323	200	
NY	Glenwood	Glenwood Terminal Corrections	516	676-2500	0	0	
NY	Glenwood	Port Long Island Lighting Co	516	671-3100	103	50	
NY	Great Neck	A.H.J. Associates	516	922-7000	337	100	
NY	Great Neck	Universal Utilities, Inc	516	922-7000	337	100	
NY	Highland	Star Terminal Corp	914	691-8171	0	0	
NY	Inwood	Amoco Oil Company	516	239-4913	0	0	N/A
NY	Inwood	Port Wetcher Petroleum	516	239-8800	0	0	
NY	Lackawanna	Bethlehem Steel Corp	716	821-2587	20	300	
NY	Mt. Vernon	Amoco Oil Company	914	667-8339	N/A	N/A	N/A
NY	New Rochelle	Port Westchester Hudson Fuel	914	738-6110	0	0	
NY	New Windsor	Big "S" Oil Co	914	561-4300	135	200	
NY	New York	Con-Edison of New York	718	390-2705	514	100	
NY	New York	Netumar Lines of NY	212	669-1709	512	100	N/A
NY	New York	Pier 42 East River	212	349-5075	307	100	
NY	New York	Port Authority of NY & NJ	212	466-7968	99999	500	
NY	New York	Port Universal Maritime Services	212	269-5121	15008	2800	
NY	New York	Witte Chase	201	344-7600	180	40	
NY	Newburgh	Mid-Valley Petroleum Corporation	914	561-4000	135	200	
NY	North	General Motors	914	631-6000	0	0	N/A
NY	Oceanside	Chevron-Oceanside	516	764-3488	88	50	
NY	Ogdensburg	Port of Ogdensburg	315	393-7580	100	200	
NY	Oswego	Nia. Mohawk Steam Station	315	349-2220	20	50	
NY	Oswego	Port of Oswego authority	315	343-4503	22	400	
NY	Oswego	C.H. Sprague and Son Co	315	343-6070	123.5	50	
NY	Port	Lewis Oil Company	516	883-1000	148	50	N/A
NY	Poughkeepsie	Effron Fuel Oil Company	914	452-2600	744	500	N/A
NY	Poughkeepsie	J.R. Sousa & Sons, Inc	914	452-4330	135	200	
NY	Ravena	Blue Circle Atlantic	518	756-6141	422	200	
NY	Rensselaer	Atlantic Refining & Market Corp	518	449-7138	323	200	
NY	Rensselaer	Petroleum Fuel Terminal	518	465-1557	333	50	50
NY	Rensselaer	Port Bray Terminals	518	462-5052	400	200	
NY	Rensselaer	Ultramar Petroleum Inc	518	463-6609	124	50	N/A
NY	Staten Island	Chester A. Poling, Inc	718	727-1000	147	2800	N/A
NY	Staten Island	Chevron-Gulfport Terminal	718	981-1000	479	115	
NY	Staten Island	First Marine Shipyard Inc	212	448-1882	14894	2800	N/A
NY	Staten Island	Morania Oil Tankers/Shipyard	718	442-0700	14895	2800	2800
NY	Staten Island	Port Mobil	718	948-2200	21588	5600	5600
NY	Staten Island	Taverna Fuel Co., Inc	718	448-9840	19260	2800	
NY	Staten Island	U.S. Lines	201	272-9600	97	100	
NY	Stony Point	United States Gypsum	914	786-2712	443	100	
NY	Syracuse	Agway Petroleum Corp	315	477-6128	0	0	
NY	Tomphins Cove	Port Orange & Rockland Utilities	914	577-2150	95	50	
NY	Tonawanda	Asland Petroleum Company	716	879-8610	20	200	
NY	Troy	Chevron-Asphalt Troy	518	272-2040	237	50	
NY	Wards Island	Wards Is. Sewage Treatment Plant	212	860-9341	318	50	
NY	Yonkers	A. Tarracone Inc	914	964-9866	0	0	
NY	Yonkers	Refined Sugars, Inc	914	963-2400	30	150	
OH	Ashtabula	Pinney Dock & Transportation	216	964-7186	400	100	100
OH	Cleveland	Cuyahoga Country Port Authority	216	241-8004	238	40	40
OH	Huron	The Pillsbury Company	419	433-4900	80	85	85
OH	Toledo	Toledo-Lucas County Port Auth.	419	243-8251	80	85	85
OH	Cleveland	Reilly Industries, Inc	216	883-2222			
OH	Lorain	Jonick Dock & Terminal Co	216	277-0592			
OR	Astoria	Port of Astoria	503	325-4521	332	150	150
OR	Coos Bay	Union Oil Co of California	503	269-9600	452	350	350
OR	Newport	New Port International	503	265-7758	268	115	115
OR	Portland	Chevron	503	221-7700	300	2400	2400
OR	Portland	Gasco Portland	503	286-9621	330	90	90
OR	Portland	Gatx Corp	503	286-1691	1345	150	
OR	Portland	Georgia-Pacific Corp	503	248-7370	332	150	
OR	Portland	Palmco	503	286-8341	298	150	150
OR	Portland	Texaco Refining & Marketing	503	226-3571	332	150	
OR	Portland	Time Oil Co	503	286-1611	1701	84	167
OR	Portland	Trumbull Asphalt	503	227-2666	1061	400	
OR	Portland	Union Oil Co. Chemical Division	213	977-7146	247	150	150
OR	Portland	Union Oil Co	503	248-1530	355	350	350
OR	Portland	McCall Oil and Chemical	503	221-5755	1764	1050	1050
OR	Astoria	McCall Oil and Chemical	503	221-5755	441	1050	1050
OR	Portland	Shell Oil	503	220-1240	1764	1050	1050
OR	Portland	Kaiser	503	288-5175	1764	1050	1050
OR	Portland	Pacific Molasses	503	286-1601	164	300	300
OR	Astoria	Carmichael-Columbia Oil Inc	503	325-3122			
P.R.	Guayama	Phillips P.R. Core	809	864	1515-25,000	110	110
PA	Erie	Erie International	814	453-6651	20	140	
PA	Erie	Erie Marine Terminal	814	453-6651	20	140	
PA	Philadelphia	Atlantic Pipeline Corp./Fort Mifflin		215-365-6688	20	33,600	33,600

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
PA	Marcus Hook	BP Oil Inc. Marcus Hook		215-499-7071	1,929	30	N/A
PA	Marcus Hook	Sun R&M Co		215-447-1243	3000	700	700
PA	Philadelphia	Northern Shipping Co. Terminal		215-331-7000	459	50	50
PA	Philadelphia	Chevron USA Inc. Girard PT Wharf		215-339-7233	17000	5300	5300
PA	Philadelphia	Conrail Greenwich Piers		215-977-5281	1,945	500	500
PA	Philadelphia	United States Gypsum Co		215-724-3200	57 MT	100	100
PA	Philadelphia	Tioga Marine Terminal		215-427-4706	184	500	500
PA	Tinicum Twsp	Chevron USA Inc. Hog Island		215-339-7233	20	12,000GP	N/A
PA	Philadelphia	J.H. Stevedoring Company	215	389-3124	1000+	500	500
PR	San Juan	Clear Ambient Service Co. Inc	809	792-1844/	40	200	200
PR	San Juan	Catano Navy Oil Dock	809	792-2920	125	2100	2100
PR	Playa de Ponce	Muelles Municipales de Ponce	809	836-1290 /843-7	20	43.20	43.20
PR	Yabucoa	Yabucoa Terminal	809	893-2424	16750	3500	3500
PR	Mayaguez	Star Kist Caribe, Inc	809	834-2424	2640	283	283
PR	San Juan	Caribbean Gulf Refining Corp	809	785-0520	40		
PR	San Juan	Pier 10 San Juan	809	722-1111	20	100	100
PR	San Juan	Puerto Rico Drydock & Marine Terminals, Inc	809	721-6060	20		
PR	San Juan	1-3-6-8-9-11-12-13-14-Frontier Base San Juan.	809	724-3262	27		
PR	San Juan	Army Terminal, A,B,C,D,E,F,G,H,J,K,L,M	809	724-3262	27		
PR	San Juan	Port of Mayaques	809	724-3262	27		
PR	San Juan	Pan American Dock—Isla Grande Terminals	809	724-3262	27		
PR	Penuelas	Puntilla Dock	809	840-2626	3,000	500	500
PR	Tallaboa Ponce	Puerto Rican Oil Term. Co	809	836-2055	7100	30	90
PR	San Juan	Puerto Rican Ports Authority	809	724-3262	90	100	100
PR	Isla Grande	Trailer Marine Transport	809	721-1456	30	100 GPM	100
PR	Yabucoa	Ports Authority Yabucoa	809	893-2408	1030	3499	3499
PR	Guanica	Ports Authority Guanica	809	821-2860	491	70	70
PR	Catano	Caribbean Gulf Refinery	809	785-0520	20,000	120	120
PR	Ponce	Caribe Tuna Open Shed Dock	809	843-6688	533	70	70
PR	Mayaguez	Neptune Pier	809	834-4170	2640	283	283
PR	Guatanilla	Penoncho Ward/Texaco	809	836-3060	3182	900	900
PR	Yabucoa	Pr Sun Oil Co	809	893-2424	1030	3499	3499
PR	Ponce	Ponce Municipal Ports	809	848-4992	491	70	70
PR	Catano	Molinos Catano	809	781-8383	30	100	100
PR	Catano	Ochoa Pier	809	783-5147	3,787	80	80
PR	Guayama	Philips Guayama	809	864-1515	2932	4200	4200
PR	Mayaguez	Malecon Pier	809	834-9191	2640	283	283
PR	Mayaguez	Bumble Bee Pier	809	834-3450	2640	283	283
PR	Ponce	Corco Ponce	809	843-3030	7100	90	90
PR	Tayaboe	Olecina Pier	809	835-2647	3763	500	500
PR	Penuelas	Unioncarbide	809	840-2626	536	70	70
PR	Guanica	Ochoa Fertilizer Pier	809	821-2200	491	70	70
PR	Salinas	Prepa Aguirri	809	853-4300	491	70	70
PR	Catano	Agro Ochoa	809	783-5147	3,787	80	80
PR	Catano	Army Terminal	809	723-4030	30,000	100	100
PR	Mayaguez	Bumble Bee Tuna	809	843-3450	3,787	80	80
PR	Ponce	Caribe Tuna Pier	809	843-6688	3,787	80	80
PR	Catano	Catano Ferry Catano	809	724-9177	30,000	100	100
PR	Catano	Catano Ferry San Juan	809	724-9177	30,000	100	100
PR	Catano	Catano Oil Dock	809	724-9177	30,000	100	100
PR	Yabucoa	Construction Dock	809	893-2408	60,000	120	120
PR	Tayaboe	Corco	809	843-3030	45,000	150	150
PR	Mayaguez	Federacion Pequarias	809	843-9191	3,787	80	80
PR	San Juan	Frontier Pier	809	724-9177	30,000	100	100
PR	Catano	Molinos Catano	809	781-8383	30,000	100	100
PR	Guanica	Muelle Molinos	809	821-2860	3,787	80	80
PR	Ponce	National Packing Company	809	844-1180	3,787	80	80
PR	San Juan	Navieras Sheds G-L	809	724-9177	30,000	100	100
PR	Mayaguez	Neptune Packing	809	843-4170	3,787	80	80
PR	Tayaboe	Olecina Pier	809	835-2647	3,787	80	80
PR	Miramar	P.R. Dry Dock 15	809	721-6010	30,000	100	100
PR	Miramar	P.R. Dry Dock 16	809	721-6010	30,000	100	100
PR	Yabucoa	P.R. Sun Oil Co	809	893-2424	60,000	120	120
PR	San Juan	Pan Am Dock	809	724-9177	30,000	100	100
PR	San Juan	Pier 1	809	724-9177	30,000	100	100
PR	San Juan	Pier 11	809	724-9177	30,000	100	100
PR	San Juan	Pier 12	809	724-9177	30,000	100	100
PR	San Juan	Pier 13	809	724-9177	30,000	100	100
PR	San Juan	Pier 14	809	724-9177	30,000	100	100
PR	San Juan	Pier 3	809	724-9177	30,000	100	100
PR	San Juan	Pier 4	809	724-9177	30,000	100	100
PR	San Juan	Pier 5	809	724-9177	30,000	100	100
PR	San Juan	Pier 7	809	724-9177	30,000	100	100
PR	San Juan	Pier 8	809	724-9177	30,000	100	100

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
PR	San Juan	Pier 9	809	724-9177	30,000	100	100
PR	Ponce	Ponce PIER 8	809	848-4992	3,787	80	80
PR	Ponce	Ponce Shed 2	809	848-4992	3,787	80	80
PR	Ponce	Ponce Shed 3	809	848-4992	3,787	80	80
PR	Ponce	Ponce Shed 4	809	848-4992	3,787	80	80
PR	Ponce	Ponce Shed 5	809	848-4992	3,787	80	80
PR	Ponce	Ponce Shed 6	809	848-4992	3,787	80	80
PR	Ponce	Ponce Shed 7	809	848-4992	3,787	80	80
PR	Salinas	Prepa Aguirre	809	853-4300	25,000	80	80
PR	Ponce	Puntilla Dock	809	840-2626	3,787	80	80
PR	San Juan	Sea Lands Sheds E and F	809	724-9177	30,000	100	100
PR	San Juan	Shed A	809	724-9177	30,000	100	100
PR	San Juan	Shed B	809	724-9177	30,000	100	100
PR	San Juan	Shed C	809	724-9177	30,000	100	100
PR	San Juan	Shed D	809	724-9177	30,000	100	100
PR	San Juan	Shed M	809	724-9177	30,000	100	100
PR	Mayaguez	Starkist	809	843-2424	56	80	80
PR	San Juan	Trailer Marine Transport	809	721-1456	30,000	100	100
PR	Tayaboa	Tallaboa Pier	809	843-3030	3,787	80	80
PR	San Juan	Union Carbide	809	843-5689	3,787	80	80
RI	East	astroline Corp	401	438-1666	1004	300	
RI	East	Getty Petroleum Corp	401	434-1322	1004	300	
RI	East	Union Chemicals Div., Union Oil	401	438-7250	118	100	
RI	Providence	C.H. Sprague & Son Co	401	421-4690	327	200	
RI	Providence	George Mann and Co., Inc	401	781-5600	1004	300	
RI	Providence	Independent Cement Corp	401	467-8411	268	300	
RI	Providence	Petrolane Transport	401	781-6640	1003	300	
RI	Providence	Port of Providence	401	781-4717	1004	300	
RI	Providence	Providence Terminal Associates	401	941-4640	1004	300	
RI	Providence	Texaco	401	461-6600	125	200	
SC	Charleston	Braswell Shipyard	803	577-4692	1018	75	228
SC	Charleston	Defense Fuel Support Point	803	723-7442	1103	250	250
SC	Charleston	Delmonte Fresh Fruit	803	723-7442	1103	250	250
SC	Charleston	Exxon Charleston Term	803	723-7442	1103	250	250
SC	Charleston	Gulf Oil Products	803	722-3858	1103	250	250
SC	Charleston	Macalloy Corp	803	723-7442	1103.06	250	250
SC	Charleston	SCSPA Union Pier	803	723-7442	1103	250	250
SC	Charleston	Shipyard River Coal Terminal	803	723-7442	1103	250	250
SC	Georgetown	International Paper Co	803	723-7442	1103	250	250
SC	Georgetown	SCSPA Georgetown	803	723-7442	1103	250	250
SC	Mt. Pleasant	Detyens Shipyard	803	884-2811	2571	600	1791
SC	Mt. Pleasant	SCSPA Wando	803	723-7442	1103	250	250
SC	North	Amerada Hess Charleston	803	554-1581	601	350	440
SC	North	Chem-Marine Corp	803	724-4332	1103	250	250
SC	North	Marathon Petroleum Company	803	554-5440	601	350	440
SC	North	SCSPA North Charleston	803	723-7442	1103	250	250
SC	North	Texaco Refining & Marketing Inc	803	747-5262	601	350	440
SC	North	Westvaco Dock	803	723-7442	1103	250	250
SC	Port Royal	Port of Port Royal, Inc	803	525-6001/524-9	601	350	N/A
SC	Charleston	SCSPA Columbus St. Terminal	803	723-7442	1103	250	250
SC	Georgetown	Georgetown Steel Corp	803	723-7442	1103	250	250
TX	Aransas Pass	American Petrofina	512	758-3571	1299	245	
TX	Aransas Pass	Exxon Pipeline Company	512	289-4147	1299	245	
TX	Baytown	Exxon Baytown Refinery	713	452-3300	17400	7000	7000
TX	Beaumont	Amoco Pipeline Co	409	835-5381	7000	2000	3000
TX	Beaumont	Brooks Terminal	409	838-3663	155	130	
TX	Beaumont	E.I. Dupont De Nemours & Co. Inc	409	727-9565	118	91	
TX	Beaumont	Mobil Chemical	409	839-1200	20	130	
TX	Beaumont	Port of Beaumont	409	722-3242	2500	3500	
TX	Beaumont	Texas Gulf Chemicals	409	835-5311	1907	0	
TX	Brownsville	Port of Brownsville	512	831-4592	2999	7067	7067
TX	Channelview	Cargill Inc	713	452-4741	1172	125	N/A
TX	Corpus Christi	Amerada Hess Corporation	512	884-4831	12000	3000	5000
TX	Corpus Christi	American Chrome and Chemical Inc	512	883-6421	1299	245	
TX	Corpus Christi	Bay Incorporated	512	289-2100	1500	500	
TX	Corpus Christi	Center Cement Corporation	512	883-6381	1299	245	
TX	Corpus Christi	Champlin Petroleum Company	512	880-5475	20250	4200	4200
TX	Corpus Christi	Coastal Refining and Marketing	512	887-4258	14875	7000	7000
TX	Corpus Christi	Coastal States Grude Gathering	512	887-3820	1299	245	
TX	Corpus Christi	Diamond Shamrock	512	884-6393	1299	245	
TX	Corpus Christi	Interstate Grain Port Terminal	512	289-5651	1299	245	
TX	Corpus Christi	Koch Refining Company	512	241-4811	16500	2800	2800
TX	Corpus Christi	Mobil Pipeline Co.	512	884-8081	1299	245	
TX	Corpus Christi	Port of Corpus Christi Authority	512	882-5633	1299	245	
TX	Corpus Christi	Southwestern Refining Co. Inc	512	884-8863	37250	8750	8750
TX	Corpus Christi	The Permian Corporation	512	884-0491	1299	245	

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State		City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
TX		Corpus Christi	Valero Refining Company	512	286-6000	25255	5250	5250
TX		Deer Park	Patank Corp Deer Park Terminal	713	479-6051	2775	1750	
TX		Deer Park	Shell Oil	713	476-6332	12600	100	7000
TX		Deer Park	Union Equity Coop. Exchange	713	479-2801	1172	125	
TX		Freeport	BASF Harbor Terminal	409	238-6357	1333	60	
TX		Freeport	Dow Chemical	409	238-4003	96	100	
TX		Freeport	Phillip 66 Port of Freeport	409	647-4431	3162	150	
TX		Freeport	Port of Freeport (Brazos River)	409	233-2667	192	75	
TX		Galena Park	International Terminals Corp	713	672-2536	2685	175	
TX		Galena Park	US Gypsum	713	672-8261	20	35	
TX		Galena Park	Warren Gas Terminal	713	453-7173	40	112	
TX		Galveston	Galveston Oil Terminal	409	744-6351	805	125	125
TX		Galveston	Pennzoil Sulphur	409	763-5374	4255	100	
TX		Galveston	Port of Galveston	409	766-6172	4255	100	
TX		Galveston	Texas A&M University	409	740-4562	2502	130	
TX		Galveston	Texas International Terminals	409	740-1271	3753	100	
TX		Gregory	Reynolds Metals Company	512	643-6531	1299	245	
TX		Houston	Bludworth Bond Shipyard	713	923-2001	110	125	
TX		Houston	Care Shipping	713	457-6083	172	70	70
TX		Houston	Crown Central Petroleum	713	920-3920	4285	1200	1200
TX		Houston	Hill Petroleum Co	713	923-3421	60	200	500
TX		Houston	Houston Fuel Oil Terminal Co	713	452-3300	4286	300	5600
TX		Houston	Joe D. Hughes Inc	713	422-7577	123	35	
TX		Houston	Lyondell Petrochemical	713	475-4506	20600	350	7000
TX		Houston	Newpark Shipyard	713	928-5051	1728	330	330
TX		Houston	Oiltanking of Texas	713	452-5901	25	50	
TX		Houston	Port of Houston Authority	713	226-2100	0413.38	300	
TX		Houston	Texas Petrochemical	713	474-7458	21	140	
TX		Ingleside	E.I. Dupont De Nemours Co., Inc	512	643-7511	1299	245	
TX		Ingleside	Sun Marine Terminals, Inc	512	776-7535	23	70	
TX		Nederland	Palmer Barge Line	409	982-3937	1260	2100	2100
TX		Nederland	Union Oil Co. of California	409	724-3223	8571	1000	10,000
TX		Nederland	Unocal	409	724-3223	8571	1000	10,000
TX		Orange	Orange County Navigation	409	883-4363	155	130	0
TX		Orange	Port of Orange	409	883-4363	155	130	
TX		Pasadena	Kerley Agriculture	713	477-4400	46	50	
TX		Pasadena	Georgia Gulf Corp	713	473-4453	313	35	70
TX		Pasadena	Occidental Chemical Corp	713	884-4020	60	75	N/A
TX		Pasadena	Occidental Chemical Agricultural	713	479-6008	20	117	
TX		Pasadena	Phillips Petroleum	713	475-3612	233	56	
TX		Point Comfort	Alcoa	512	987-2604	754	35	70
TX		Point Comfort	Point Lavaca-Point Comfort	512	987-2813	869	35	70
TX		Port Arthur	Atlantic Shippers of Texas	409	962-2457	3990	130	
TX		Port Arthur	Bethlehem Steel	409	838-6821	2115	65	175
TX		Port Arthur	Carotex	409	962-0251	155	130	0
TX		Port Arthur	Chevron	409	985-1306	9330	3500	3500
TX		Port Arthur	Costal Marine Service of Texas	409	983-1616	8829	98	98
TX		Port Arthur	Fina Oil & Chemical	409	962-4421	4791	3500	3500
TX		Port Arthur	Great Lake Carbon	409	985-2578	155	130	
TX		Port Arthur	Hall-Buck Marine Services	409	983-6271	30	130	
TX		Port Arthur	Pabtex Terminal	409	962-8343	155	130	
TX		Port Arthur	Port of Port Arthur	409	983-2011	155	2155	
TX		Port Arthur	Sabine Towing & Transportation	409	962-0201	4914	50	100
TX		Port Arthur	Texaco Refining & Marketing	409	982-5711	7200	8400	8400
TX		Port Arthur	Vessel Repair	409	962-1302	1349	200	200
TX		Port Arthur	Comnotex	409	962-0251	20	130	
TX		Port Neches	Erickson Refining	409	722-9366	128	35	35
TX		Port Neches	Texas Chemical	409	722-8381	7200	8400	8400
TX		Seabrook	Baytank (Houston)	713	474-4181	20	182	
TX		Seabrook	Celenese Chemical	713	474-2841	20	150	
TX		Seabrook	Petro United Terminals	713	474-4433	20	350	
TX		Texas City	Aimcor Marine Terminal	409	945-7210	3278	250	250
TX		Texas City	Amoco Chemicals	409	948-1601	184	75	
TX		Texas City	Amoco Oil Docks	409	945-1345	6192	75	7000
TX		Texas City	Arco Pipe Line	713	450-2081	23197	150	
TX		Texas City	Coastal States Crude Gathering	409	945-6622	4255	100	
TX		Texas City	IMC Marine Terminal	409	945-7210	4255	100	100
TX		Texas City	Lowry-Unitank	409	948-6310	7056	600	600
TX		Texas City	Marathon Petroleum Co	409	945-2331	4570	200	
TX		Texas City	Stan Trans, Inc	409	948-3561	294	250	
TX		Texas City	Sterling Chemicals, Inc	409	942-3720	2535	400	
TX		Texas City	Texas City Refining	409	945-4451	2672	650	
TX		Texas City	Union Carbide Corp	409	948-5171	2340	400	
TX		Vidor	Texas Eastern Products Pipeline	409	768-1033	20	130	
TX		Houston	Jacob Stern & Son	713	926-8386	77.9	200	
TX		Galena Park	Amerada Hess Corp	713	453-6301	23,541	7000	8000
TX		Pasadena	Occidental Chemical Corp	713	884-4020	60	75	

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
TX	Beaumont	Mobil Oil Corp	409	833-9411	1419.26	560	3500
TX	Nederland	Sun Marine Terminals, Inc	409	721-4834	793	7000	7000
TX	Houston	Todd Shipyard Corp	713	453-7261	249.3	300	300
TX	Channel View	Lone Star-Falcon	713	452-4740	413	300	
TX	Deer Park	Intercontinental Terminals Co	713	479-6024	721	300	3500
TX	Pasadena	John Bludworth Marine, Inc	713	473-5561	156		80
TX	Texas City	Arch Pipe Mason	713	450-2081	2918	75	1820
TX	Galena Park	Gatx Terminals, Corp	713	455-1231	276	120	
TX	Houston	Pacific Molasses Co	713	923-2736	3220	100	100
TX	Pasadena	Mobil Mining and Minerals	713	472-3641	241	125	
TX	Houston	Greens Port Terminal	713	453-0864	20	182	
TX	Galena Park	Paktank	713	479-6051	127.4	46	
TX	Pasadena	Gatx Terminals Corp	713	475-9235	388	125	
TX	Pasadena	Mobil Mining and Minerals Co	713	920-5311		125	
TX	Houston	Manchester Terminal Corp	713	926-9631	525	150	
TX	Channelville	Lonestar-Falcon	713	452-4740	413.38	300	
TX	Pasadena	John Bludworth Marine, Inc	713	473-5561	156.38		80
TX	Houston	Inbessa America, Inc	713	452-0063	897	600	2100
TX	Pasadena	Gatz Terminals Corp	713	475-9235	206	125	
TX	Houston	Buckingham Gate Ltd. Inc	713	452-4752	784.4	60-60	60-60
TX	Houston	Marine Maintenance Industries	713	928-5911	2167	26	500
TX	Brownsville	Itapco-Border Terminal, Inc	512	831-9641	2999	7067	7067
TX	Brownsville	Brownsville Navigational Dis	512	831-4592			
TX	Brownsville	Amfels, Inc	512	831-8220			
TX	Brownsville	Border Shipyards, Inc	512	831-4300			
TX	Brownsville	Brownsville Refinery Corp	512	831-4521			
TX	Brownsville	Gulmar Inc	512	831-4547			
TX	Brownsville	Itapco-Border Terminal Inc	512	831-4592	2999	7067	7067
USVI	St. Croix	Hess Oil	809	778-4100	4,545	150	150
USVI	St. Thomas	V.I. Ports Authority	809	774-5629	75	110	110
USVI	St. Thomas	V.I. Wapa	809	774-1528	75	110	110
USVI	St. Croix	Vialco	809	778-2323	75	110	110
USVI	St. Thomas	Wico Pier	809	774-1780	75	110	110
V.I.	St. Croix	Hess Oil Virgin Islands Corp	809	778-4100	57,000	10,500	10,500
V.I.		Virgin Islands Port Authority	809	774-1629	30,954	100	100
V.I.	St. Croix	Lialco	809	778-2323	30,000	100	100
VA	Alexandria	Robinson Terminal Warehouse	703	836-8300	229	100	100
VA	Chesapeake	Amerada Hess Chesapeake	201	750-6000	6394	1000	1000
VA	Chesapeake	American Hoechst Corp	801	494-2500	6394	1000	1000
VA	Chesapeake	Amoco Oil Co	804	545-4641	6394	1000	1000
VA	Chesapeake	Atlantic Energy Inc	804	485-1018	6394	1000	1000
VA	Chesapeake	Bernuth Lembcke Co. Inc	804	543-6220	6394	1000	1000
VA	Chesapeake	BP North America Inc	804	543-4444	6394	1000	1000
VA	Chesapeake	Cargill Elevator	804	545-8461	9751	1733	2600
VA	Chesapeake	Elizabeth River Terminals	804	543-0335	6394	1000	1000
VA	Chesapeake	Hitch Terminal	804	545-0735	6394	1000	1000
VA	Chesapeake	Mobil Oil Corp	804	545-4681	6394	1000	1000
VA	Chesapeake	Royster Agricultural Products	804	545-3024	6394	1000	1000
VA	Chesapeake	Swann Oil	804	485-3000	7236	2600	2600
VA	Chesapeake	Tenneco Oil Co	804	543-3514	6394	1000	1000
VA	Chesapeake	Texaco Refining & Marketing	804	543-6811	6394	1000	1000
VA	Chesapeake	Unocal	804	545-8456	6394	1000	1000
VA	Hopewell	Allied Fibers	804	541-5000	6394	1000	1000
VA	Newport News	Chesapeake & Ohio Railway Co	804	380-5000	6394	1000	1000
VA	Newport News	Dominion Terminal Assoc	804	245-2275	6394	1000	1000
VA	Newport News	Koch Fuels, Inc	804	244-6545	6394	1000	1000
VA	Newport News	Massey Coal Term., Inc	804	244-0554	6394	1000	1000
VA	Norfolk	Chemphalt of Carolina	804	545-7371	602	205	250
VA	Norfolk	Colonna's Shipyard, Inc	804	545-2414	2074	500	500
VA	Norfolk	Exxon Company USA	804	440-2540	6394	1000	1000
VA	Norfolk	Lamberts Point Docks	804	446-1200	6394	1000	1000
VA	Norfolk	Lone Star Industries	804	853-6704	224	100	0
VA	Norfolk	Lyon Shipyard, Inc	804	622-4661	78	150	150
VA	Norfolk	Metro Machine Corp	804	543-6801	6451	1000	1000
VA	Norfolk	Norfolk & Western Railway Coal	804	446-5343	9751	1730	2600
VA	Norfolk	Norfolk Oil Transit, Inc	804	622-2667	6394	1000	1000
VA	Norfolk	Norfolk Shipbuilding & Drydock	804	545-3551	3772	371	566.6
VA	Norfolk	Seahorse Marine	804	625-5386	9751	1733	2600
VA	Norfolk	The Jonathan Corp	804	622-0440	6394	1000	1000
VA	Norfolk	U.S. Gypsum Company	804	545-2461	6394	1000	1000
VA	Portsmouth	Aluminum Co. of America	804	485-3301	6394	1000	1000
VA	Portsmouth	Sea-Land Services, Inc	804	393-4071	6394	1000	1000
VA	Yorktown	Amoco Oil Company	804	898-5120	429	800	800
VA	Richmond	California Oils Corp	415	233-7660	600	250	250
VA	Richmond	Meehan Overseas, Ltd	804	275-9248	6394	1000	1000
VA	Newport News	Newport News Shipbuilding &	804	380-2959	3482	900	900
VA	Norfolk	Virginia International Terminals, Inc	804	440-7162	6394	1000	1000

TABLE I.—TERMINALS/PORTS ISSUED ANNEX I CERTIFICATES OF ADEQUACY—Continued

State	City	Terminal name	Area	Phone	Daily capacity of reception facility (metric tons)	Oily residue transfer rate (GPM)	Oily ballast transfer rate (GPM)
VA	Chesapeake	IMTT-Chesapeake	804	485-3000	6394		1000
VA	Norfolk	Allied Terminals	804	545-7301	275	50	50
VA	Chesapeake	Jacobson Metal Co	804	543-2066	2000	135	135
VA	Chesapeake	Louis Dreyfus Energy	804	518-3509	6394	1000	1000
VA	Norfolk	Virginia Drydock Corp	804	494-7387	1295	100	100
WA	Aberdeen	Port of Grays Harbor	206	533-9519	1050	250	250
WA	Anacortes	Port of Anacortes	206	293-3134	1667	250	
WA	Anacortes	Shell Oil Company	206	293-9122	275	2800	2800
WA	Anacortes	Texaco Refining & Marketing, Inc	206	293-0800	1102	4700	4700
WA	Bellingham	Bellingham Cold Storage	206	733-1640	131	83	166.67
WA	Bellingham	Georgia Pacific Corp	206	733-4410	134	83	166
WA	Bellingham	Port of Bellingham	206	676-2500	920	83	166.67
WA	Edmonds	Unocal Edmonds Terminal	206	774-9584	824	350	3506
WA	Everett	Port of Everett	206	259-3764	2657	250	250
WA	Ferndale	Arco Petroleum Products Co	206	384-2200	3750	4000	4000
WA	Ferndale	Intalco Aluminum Corp	206	384-7292	78	40	40
WA	Hoquiam	ITT Rayonier	206	532-2500	1030	1400	
WA	Kalama	Kalama Chemical Inc	206	673-2550	332	150	150
WA	Kalama	North Pacific Grain Growers	206	673-2011	332	150	150
WA	Long View	Reynolds Aluminum Co	206	425-2800	387	150	
WA	Manchester	Naval Supply Center	206	476-2145	1950	666	666
WA	Mukilteo	Defense Fuel Support Point	206	355-2051	1607	250	
WA	Olympia	Port of Olympia	206	754-1660	1607	250	250
WA	Port Angeles	BP North America Petroleum, Inc	206	452-1433	206	85	
WA	Port Angeles	ITT Rayonier	206	457-3391	1607	250	250
WA	Port Angeles	Merrill & Ring	206	452-2367	1607	250	250
WA	Port Angeles	Port of Port Angeles	206	457-8527	1604	250	250
WA	Port Townsend	Port Townsend Paper Corp	206	385-3170	560	7000	7000
WA	Richmond Beach	Chevron U.S.A., Inc	206	542-2131	364	1400	1400
WA	Seattle	American President Lines	206	292-4650	1607	250	
WA	Seattle	Atlantic Richfield	206	623-4635	1350	90	90
WA	Seattle	Cargill, Inc	206	284-4851	1350	90	90
WA	Seattle	Gatx Tst Corporation	206	622-0920	1350	90	
WA	Seattle	Hanjin Container Lines (T-18)	206	447-9422	20	90	90
WA	Seattle	International Terminal Company	206	763-3460	1350	90	90
WA	Seattle	Jacob Sterns & Sons, Inc	206	622-3260	1350	90	90
WA	Seattle	Lake Union Drydock Co	206	323-6400	3190	250	90-250
WA	Seattle	Lockheed Shipbuilding Co	206	292-4745	30	90	90
WA	Seattle	Maritime Contractors, Inc	206	647-0080	59	135	85-135 GPM
WA	Seattle	Matson Terminals, Inc	206	223-2494	1167	89	167
WA	Seattle	Port of Seattle	206	728-3258	1350	90	90
WA	Seattle	Shell Oil Company	206	453-3051	1167	84	167
WA	Seattle	Stevedoring Services of America	206	623-0304	20	90	90
WA	Seattle	Terminal 37	206	622-4520	20	90	90
WA	Seattle	Terminal 91	206	284-2450	1470	1400	1400
WA	Seattle	Texaco Refining & Marketing, Inc	206	623-6101	2800	250	
WA	Seattle	Time Oil Co	206	285-2400	1167	84	167
WA	Seattle	Todd Pacific Shipyards Corp	206	623-1635	1470	1400	1400
WA	Seattle	Wyckoff Co	206	624-3535	1350	90	90
WA	Tacoma	Continental Grain Co	206	572-3511	504	85	
WA	Tacoma	Domtar Gypsum America	206	627-2108	72	85	85
WA	Tacoma	Occidental Chemical Corp	206	593-1362	875	85	85
WA	Tacoma	Pennwalt Corp	206	627-9101	875	85	85
WA	Tacoma	Port of Tacoma	206	383-5841	3217	85	85
WA	Tacoma	Sound Refining, Inc	206	835-6505	5554	1400	1400
WA	Tacoma	U.S. Oil & Refining Co	206	383-1651	1224	856	
WA	Tacoma	Unocal Tacoma Terminal	206	272-3215	1080	350	350
WA	Tacoma	Weyerhaeuser Co	206	593-7921	875	85	
WA	Vancouver	Aluminum Co. of America	206	696-8657	232	150	150
WA	Vancouver	Ideal Cement	206	695-9206	1729	1000	1000
WA	Vancouver	Port of Vancouver	206	693-3611	332	150	150
WI	Green Bay	Anamax Terminal	414	494-5233	148	300	
WI	Green Bay	F. Hurlbut Dock	414	432-7731	148	200	
WI	Green Bay	North Dock, Green Bay	414	432-8632	148	200	
WI	Green Bay	U.S. Oil Company, Inc	414	432-4422	148	300	
WI	Kenosha	Westlake Harbor Terminals	414	652-3125	65	300	
WI	Manitowoc	The Manitowoc Company, Inc	414	684-6621	577	117	113
WI	Milwaukee	Port of Milwaukee	414	278-3511	65	300	
WI	Sturgeon Bay	Bay Shipbuilding Co	414	684-6621	577	117	133
WI	Superior	Fraser S/Y, Inc	715	394-7787	168	40	60

TABLE II.—ANNEX II RECEPTION FACILITIES

State	City	Terminal name	Area code	Phone No.	Type of wastewater facility can receive (category)
CA	Long Beach	Dow Chemical	213	533-5375	B, D
CA	Long Beach	Petro-Diamond Terminals Company	213	435-8364	C
CA	Long Beach	C. Brewer Terminals, Inc	213	435-5623	C
CA	Pittsburg	Pittsburg Terminal	415	432-5496	B, C
CA	Richmond	Unitank Terminal Service	415	236-2020	C
CA	Richmond	Petromark, Inc	415	232-3275	B
CA	Richmond	Chevron USA, Richmond Refinery	415	620-2314	C
CA	San Pedro	GATX Terminals Corporation	213	547-0881	C
CA	Wilmington	Wilmington Liquid Bulk Terminals	213	549-0961	C, D
CT	Groton	Pfizer Inc	203	441-3206	C
CT	New Haven	E.I. Dupont De Nemours & Co	203	562-5151	C
DE	Wilmington	Delaware Terminal Co	302	654-3717	B, C, D
GA	Savannah	Colonial Oil Industries, Inc	912	236-1331	B, C
GA	Savannah	Powell Duffryn Terminals	912	437-2600	B, C, D
GA	Savannah	Powell Duffryn Terminals, Inc	912	236-1579	B, C, D
HI	Honolulu	Chevron U.S.A. Inc	808	527-2747	C
IL	Chicago	Stolt Terminals (Chicago) Inc	312	646-4448	B, C, D
LA	Baton Rouge	Exxon Company, USA	504	359-7516	B, C, D
LA	Bridge City	Paktank Corp. (Westwego)	504	436-2242	C, D
LA	Bridge City	Paktank Corporation-Westwego	504	436-2242	C, NON-S/HV, D
LA	Carville	Cos-Mar Company	504	642-5454	C
LA	Geismer	Shell Chemical Co	504	379-6368	B, C
LA	Hahnville	Union Carbide Corp	504	468-4300	C
LA	Hahnville	Union Carbide Corporation	504	468-4300	C NON-S/HV
LA	Harvey	Delta Commodities	504	340-4911	A, B
LA	Harvey	Delta Commodities, Inc	504	340-4911	A, B-S/HV
LA	Jennings	SBA Shipyards, Inc	201	824-1519A	
LA	Lake Charles	PPG Industries	318	491-4260	B, D
LA	New Orleans	Avondale Industries, Inc	504	436-5165	C NON-S/HV, D
LA	Norco	GATX Terminals Corp	504	443-2511	A, B, D
LA	Norco	GATX Terminals Corporation	504	443-2511	A, B-NON S//HV, D
LA	Plaquemine	Georgia Gulf Corp	504	685-2500	B
LA	Plaquemine	Dow Chemical Company	504	389-6157	C
LA	St. Rose	International Matex Tank	504	468-3997	B NON-S/HV
LA	Sulphur	Fredman Shipyard, Inc	318	583-7383	B, C, D
LA	Sunshine	Petrounited Terminals Inc	504	642-8395	C
LA	Uncle Sam	Agrico Chemical Co	504	562-3501	C
LA	Uncle Sam	Freeport Chemical Company	504	562-3501	C, D
LA	Westwego	Pacific Molasses Co	504	340-3000	A
LA	Westwego	Pacific Molasses Co	504	340-3000	A
MD	Baltimore	Essex Industrial Chemical Inc	301	355-900	C
MD	Sparrows Point	Bethlehem Steele Co	301	388-7708	C, D
NC	Leland	Port of Wilmington	919	371-2325	C
NC	Leland	Koch	919	371-2325	C
NC	Leland	Chemserv Terminals Inc	919	371-2325	C
NC	Leland	Pfizer Inc	919	371-2325	C
NC	Wilmington	Patank Corporation	919	763-0104	C, D
NC	Wilmington	Exxon Company USA	919	799-0144	C
NJ	Bayonne	Constable Terminal Corp	201	437-2993	C
NJ	Bayonne	Exxon Co. USA	201	858-5508	C
NJ	Bayonne	Powell Duffryn Terminals	201	437-2600	A, B, C, D
NJ	Bayonne	Rollins Terminals Inc	201	436-5433	B, C
NJ	Bayonne	Gordon Terminal Service Co	201	437-8300	C, D
NJ	Bayonne	Imtt-Bayonne	201	437-2200	A, B
NJ	Bridgeport	Monstano Chemical, Co	609	467-3000	B, C
NJ	Carteret	GATX Terminals Corporation	201	541-5161	B NON-S/HV, C
NJ	Deepwater	Dupont Marine Terminal	609	540-2706	B
NJ	Elizabeth	Allied-Signal, Inc	201	354-3215	C
NJ	Gibbstown	I. E. Dupont Company	609	423-0105	
NJ	Linden	Exxon Co., USA Bayway Refinery	201	474-7073	C
NJ	Newark	Celanese Chemical Company, Inc	201	589-2705	C, D
NJ	Paulsboro	BP Oil Co	609	423-4000	C
NJ	Pennsauken	Citgo Petroleum Company	609	963-8470	
NJ	Perth Amboy	Stolt Terminals, Inc	201	826-1144	B, C, D
NJ	Port Newark	Hudson Tank Storage Co	201	465-1115	B
NJ	Seawaren	Shell Oil Co	201	855-3310	B, C, D
NJ	Westville	Coastal Eagle Point Oil Co	609	853-3100	C
NY	Staten Island	Proctor & Gamble, Port Ivory	718	816-2199	C
PA	Marcus Hook	Sun Refining and Marketing Co	215	447-5996	C, D
PA	Philadelphia	Chevron USA, Inc—Girad Point	215	339-7233	B, C
PA	Philadelphia	Unitank Terminal Service	215	634-3031	A, B, C, D
PR	Guanica	Ochoa Pier	809	821-2200	B2 C2
PR	Guayama	Philips Guayama	809	864-1515	
PR	Guayama	Phillips P.R. Core	809	864-1515	C1 B2
PR	Tayaboa	Corco	809	843-3030	B2, C2 A
PR	Tayaboa	Tallaboa Pier	809	843-3030	B1 C1
TN	Milwaukee	Milsolv River Terminal	414	252-3550	C
TX	Corpus Christi	American Chrome & Chemicals	512	883-6421	B

TABLE II.—ANNEX II RECEPTION FACILITIES—Continued

State	City	Terminal name	Area code	Phone No.	Type of wastewater facility can receive (category)
TX	Corpus Christi	Koch Refining Co	512	242-8357	B, C
TX	Deer Park	Shell Oil Company	713	476-6615	C
TX	Deer Park	Intercontinental Terminals Co	713	479-6024	B, C
TX	Freeport	Dow Chemical Co	409	238-4283	B, C
TX	Galena Park	Warren Petroleum Terminal	713	453-7173	C
TX	Galena Park	Paktank Corporation	713	675-9171	A, B, C
TX	Galena Park	Amerada Hess Corporation	713	453-6301	A
TX	Houston	Stolt and Oil Tanking Chemcial	713	452-2212	A, B, C
TX	Houston	Lyondell Petrochemical	713	475-4506	C
TX	Houston	South Coast Terminals, Inc	713	926-7451	C
TX	Houston	Oil Tanking Inc	713	452-2212	A, B, C
TX	Pasadena	Georgia Gulf Corp	713	920-4301	C, D
TX	Seabrook	Baytank Inc	713	474-4181	A, B, C
TX	Seabrook	Hoechst Celaneese Corporation	713	474-2841	C
TX	Seabrook	Petrounited	713	474-4433	C, D
TX	Texas City	Amoco Chemicals Company	409	948-1601	B, C
TX	Texas City	Coastal States Crude Gathering	409	945-6622	C
TX	Texas City	Stan Trans, Inc	409	948-3561	B, C
TX	Texas City	Sterling Chemicals Dock 1	409	942-3448	C
TX	Texas City	Union Carbide Corp	409	948-5171	B, D
TX	Texas City	Unitank-Texas, Inc	409	948-6310	B, C, D
TX	Texas City	Coastal States Crude Gathering	409	945-6622	C S/HV
TX	Texas City	Stantrans, Inc	409	948-3561	B S/HV, C
USVI	St. Croix	Hess Oil	809	778-4100	A C1 B2
USVI	St. Thomas	Vialco	809	774-1780	A B2 C1
VA	Chesapeake	Huntsman Chemical Corp	804	494-2602	B
VA	Chesapeake	Jacobson Metal Co		804-543-20	A AND LOWER
VA	Chesapeake	Tri-Port Terminals		804-545-45	D
VA	Norfolk	Allied Terminals		804-545-73	A AND LOWER
VA	Norfolk	Virginia Drydock Corp		804-494-73	NON-SOLIDIFYING
VA	Yorktown	Amoco Oil Co		804-898-93	C
WI	Milwaukee	Misolv River Terminal	424	252-3550	C

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY

State	Number city	Name of terminal	Area code	Phone number
	Pago Pago, American Samoa.	Ronald Reagan Railway Southwest Marine	684	644-4123
	Pago Pago, American Samoa.	Star-Kist	684	644-1291
	Pago Pago, American Samoa.	Starkist (out at MSO as waiver req)		
	Tutuila, American Samoa	Pago Pago Harbor American Samoa	684	633-4251
AK	Akutan	Trident Seafoods	907	698-2311
AK	Alitak	Wards Cove Packing-CWF Alitak	907	836-2226
AK	Anchorage	John Cabot Co	907	349-2783
AK	Anchorage	P.O.L. Terminal	907	272-1531
AK	Anchorage	Terminals No. 1-2 & 3	907	272-1531
AK	Anchorage	ARRC Whittier Dock	907	265-2611
AK	Angoon	Angoon Oil & Gas	907	788-3436
AK	Bethel	Kemp & Palucci Seafoods	907	543-2404
AK	Bethel	City of Bethel	907	543-2310
AK	Chignik Lagoon	Wards Cove Packing Co. (CWF Chignik)	907	840-2227 or (206)
AK	Cordova	Ocean Dock	907	424-6400
AK	Cordova	Chugach Fisheries, Inc	907	424-3504
AK	Cordova	Chugach Fisheries, Inc	907	434-3504
AK	Cordova	St. Elias Ocean Products	2206	265-6800
AK	Cordova	North Pacific Processors	907	424-7111
AK	Craig	Wards Cove Packing Co	907	826-3327
AK	Craig	Silver Lining Seafoods	907	826-3334
AK	Craig	E. C. Phillips & Son, Inc	907	826-3241
AK	Dutch Harbor	East Point Seafood Co		
AK	Dutch Harbor	American President Lines, Ltd	907	581-1200
AK	Dutch Harbor	Royal Aleutian Barge	907	581-1671
AK	Dutch Harbor	Delta Western	907	561-1284
AK	Dutch Harbor	Royal Aleutian Seafoods, Inc	907	581-1771
AK	Dutch Harbor	Unisea, Inc	907	581-1258
AK	Dutch Harbor	Offshore Systems, Inc	907	581-1827
AK	Ekuk	Wards Cove Packing Company	907	236-3585
AK	Haines	Wards Cove Packing Co	907	766-2828
AK	Haines	Highland Resources, Inc	907	766-2576
AK	Haines	Totem Oil Products Supply, Inc	907	766-3190
AK	Haines	White Pass Alaska-Haines	907	766-2338

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
AK	Homer	Seward Fisheries/Icicle Seafoods	907	235-8107
AK	Homer	Icile Seafoods, Inc. Homer Plant	907	235-8107
AK	Homer	Port of Homer	907	235-3160
AK	Hoonah	Hoonah Seafoods	907	945-3211
AK	Hoonah	Hoonah Cold Storage	907	945-3264
AK	Juneau	Point Sherman	907	789-0634
AK	Juneau	Silver Bay Logging (Cube Cove)	907	799-2230
AK	Juneau	Hawk Inlet	907	789-4171
AK	Juneau	Delta Western Bulk Fuel Terminal	907	586-2800
AK	Kenai	Inlet Salmon, Inc	907	283-9275
AK	Kenai	Rig Tenders Dock	907	563-1114
AK	Kenai	Kenai Packers	907	283-7787
AK	Kenai	Salamatof Seafoods, Inc	907	283-7000
AK	Ketchican	Anderes Oil Co	907	225-2163
AK	ketchican	Unocal Corporation	907	225-4176
AK	Ketchikan	Silver Lining Seafoods	907	225-6664
AK	Ketchikan	White Pass Alaska-Ketchikan	907	235-2106
AK	Ketchikan	City of Ketchikan Port & Harbors Dept	907	225-3610
AK	Ketchikan	E. C. Phillips & Son, Inc	907	225-3121
AK	Ketchikan	Wards Cove Packing Company	907	225-5030
AK	Klawock	Klawock Timber Alaska, Inc	907	755-2244
AK	Kodiak	Ursin Seafoods, Inc.	907	486-5724
AK	Kodiak	Alaska Fresh Seafoods,Inc	907	486-5749
AK	Kodiak	International Seafoods of Alaska, Inc	907	486-4768
AK	Kodiak	King Crab Inc	206	285-6800
AK	Kodiak	Port of Kodiak, Municipal Harbor	907	486-5438
AK	Kodiak	Petro Marine Services	907	486-3421
AK	Kodiak	Western Alaska Fisheries	907	486-4112
AK	Kodiak	Kodiak Oil Sales	907	486-3245
AK	Kodiak	Alaska Pacific Processors	907	486-3234
AK	Kodiak	Alaska Fresh Seafoods, Inc	907	486-5749
AK	Kodiak	Eagle Fisheries	907	486-5607
AK	Kodiak	Cook Inlet Processing	907	486-6385
AK	Larsen Bay	Kodiak Salmon Packers	907	847-2250
AK	Marshall	Nakamura & Assoc. Inc	907	679-6703
AK	Metlakatla	Port of Metlakatla	907	886-4646
AK	Metlakatla	Old Ferry Terminal	907	886-4451
AK	Naknek	Wards Cove Packing Co., Red Salmon	907	246-4295
AK	Naknek	Pederson Point	907	246-4461
AK	Naknek	King Crab Inc., Naknek	206	285-6800
AK	Naknek	Leader Creek Marina	907	246-4468
AK	Naknek	Nelbro Packing Company	907	246-4285
AK	Nikiski	Nikiski USA—KPL Dock	907	776-8161
AK	Nikiski	Nikiski Union Chemical Dock	907	776-8121
AK	Nikiski	Nikiski Philips Petroleum Co. Lng Dock	907	776-8166
AK	Nikiski	Nikiski Phillips Petroleum Co./Lng Dock	907	776-8166
AK	Nome	City of Nome	907	443-5242
AK	Old Harbor	Old Harbor	907	286-2204
AK	Pelican	Pelican Cold Storage	907	735-2204
AK	Pelican	Pelican Seafoods, Inc	907	735-2204
AK	Petersburg	Nelbro Packing Co	907	772-4486
AK	Petersburg	Unocal	907	772-4219
AK	Petersburg	Petersburg Fisheries, Div. of Icicle Seafoods	907	772-4294
AK	Petersburg	Chatham Straits Seafoods	206	285-6800
AK	Petersburg	Alaskan Glacier Seafood	907	772-3333
AK	Port Bailey	Wards Cove Packing Company	907	454-2454
AK	River	Wards Cove Packing Egegik	206	233-2238
AK	Saint Paul Island	Port of Saint Paul	907	546-2331
AK	Sand Point	City of Sand Point Boat Harbor	907	383-2331
AK	Sandpoint	Trident Seafoods	907	383-4848
AK	Seward	Seward Fisheries	907	224-3381
AK	Seward	Suneel Alaska Coal Terminal	907	224-3120
AK	Seward	Seward Small Boat Harbor	907	224-3138
AK	Seward	Seward Marine Industrial Center	907	224-3138
AK	Seward	Forth Ave Dock	907	224-3138
AK	Sitka	Sitka Sound Seafoods, Inc	907	747-6662
AK	Sitka	Sitka Sound Oil—Unocal	907	747-3224
AK	Sitka	Old Sitka Terminal Samson Tug & Barge	907	747-8559
AK	Sitka	North Pacific Cold Storage	907	747-5811
AK	Skagway	White Pass & Yukon Route/Skagway Terminal	907	963-2449 or 983-2297
AK	Skagway	Skagway Barge Facility	907	983-2449 or 983-2297
AK	Skagway	White Pass Alaska—Skagway	907	983-2214
AK	South Naknek	South Naknek Seafoods, Inc	907	246-6506
AK	South Naknek	Trident—South Naknek	907	246-6510
AK	South Naknek	South Naknek	907	246-6514
AK	Tenakee Springs	Tenakee Springs Harbor	907	736-2221
AK	Tenakee Springs	Tenakee Springs City Dock	907	736-2221

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
AK	Tenakee Springs	Snyder Mercantile Company	907	736-2221
AK	Togiak	T.E.A.M. Seafoods, Inc	907	493-5731
AK	Togiak	Togiak Fisheries, Inc	907	493-5331
AK	Unalaska	Alyeska Seafoods, Inc	907	581-1270
AK	Unalaska	City Ballyhoo Dock	907	581-1254
AK	Unalaska	Pacific Alaska Fuel Services/Captains Bay	907	581-1265
AK	Valdez	Sea Hawk Seafoods, Inc	907	835-4837
AK	Valdez	Valdez City Dock	907	835-4313
AK	Valdez	Valdez Container Terminal	907	835-4313
AK	Wrangell	Unocal	907	874-3276
AK	Wrangell	Wrangell City Port Dock	907	874-3736
AK	Wrangell	Wrangell Boat Harbor	907	874-3736
AK	Wrangell	White Pass Alaska-Wrangell	907	874-3977
AK	Wrangell	Wrangell Fisheries, Inc	907	874-3346
AK	Yakutat	Sitka Sound-Yakutat	907	784-3392 or 784-3393
AL	Anchorage	Chevron USA, Anchorage Terminal	907	258-2301
AL	Bayou La Batre	Gulf Star Seafood, Inc	205	824-2448 or 824-2063
AL	Bayou La Batre	Bama Sea Products, Inc	205	824-2050
AL	Bayou La Batre	Graham Fisheries, Inc	205	824-2890
AL	Bayou La Batre	Master Marine, Inc	205	824-4146
AL	Bon Secour	Bon Secour Fisheries, Inc	205	949-7411
AL	Gulf Shores	Plash Seafood	205	986-7801
AL	Kasilof	Carlson Dock	907	262-1746
AL	King Cove	Peter Pan Seafoods, Inc	907	497-2234
AL	Kodiak	East Point Seafood Company	907	486-5799
AL	Mobile	Mobile Bulk Terminal	205	438-9891
AL	Mobile	Mobile River Terminal Company, Inc	205	432-3233
AL	Mobile	Chevron USA, Inc	205	434-8300
AL	Mobile	Pacific Molasses Co	504	340-3000
AL	Mobile	Atlantic Marine, Inc	205	690-7100
AL	Mobile	Belcher Alabama, Inc	205	433-5418
AL	Mobile	Timbraz, Inc	205	456-3836
AL	Mobile	Seaport Shipping, Co	205	433-5401
AL	Mobile	Bender Shipbuilding & Repair Co., Inc	205	430-8000
AL	Mobile	Blakeley Island Terminal/LL&E Petroleum	205	675-7040 Ext. 19
AL	Theodore	Ideal Basic Industries	205	653-6200
CA	Alameda	Harbor Tug & Barge	415	546-2600
CA	Alameda	Encinal Terminal Berths 1-5	415	523-2054
CA	Anchorage	ARRC Seward Dock	907	265-2611
CA	Avila Beach	Union Oil Co. of California-Avila Wharf Terminal	805	595-2666
CA	Benicia	Huntway Refining Co	707	746-1330
CA	Benicia	Distribution & Auto Service	707	746-5510
CA	Benicia	Benicia Refinery Marine Terminal	707	745-7566
CA	Crescent City	Sea Products Co	707	464-4169
CA	Crescent City	Pt. St. George Fish	707	464-5583
CA	Crescent City	Eureka Fisheries, Inc	707	464-3149
CA	Crescent City	Caito Fisheries, Inc	707	464-9483
CA	Crockett	Wickland Oil Terminals	415	787-1076
CA	El Segundo	Chevron USA El Segundo Marine Terminal	213	615-5489
CA	Eureka	Simpson Paper-Humboldt Pulp Mill	707	443-9771
CA	Eureka	Unocal Eureka Terminal	707	443-7600
CA	Eureka	Eureka Forest Products	707	443-7039
CA	Eureka	Eureka Ice & Cold Storage Co	707	443-5663
CA	Eureka	Eureka Fisheries, Inc	707	442-8218
CA	Eureka	Caito Fisheries, Inc	707	443-0550
CA	Fairhaven	North Coast Export	707	443-9348
CA	Fields Landing	Humbolt Bay Forest Products	707	443-5631
CA	Fields Landing	Eureka Fisheries, Inc	707	443-1673
CA	Fort Bragg	Natural Sales Network	707	964-1261
CA	Fort Bragg	Mendocino Fisheries, Inc	707	961-5426
CA	Fort Bragg	Eureka Fisheries, Inc	707	964-0257
CA	Fort Bragg	Caito Fisheries, Inc	707	964-6368
CA	Long Beach	Pacific Northern Oil	213	432-7555
CA	Long Beach	Forest Terminal Corporation	213	432-5401
CA	Long Beach	C. Brewer Terminal	213	435-5623
CA	Long Beach	Sea-Land Service, Inc	213	432-7411
CA	Long Beach	Domtar Gypsum	213	436-4611
CA	Long Beach	Baker Commodities, Inc	213	436-2355
CA	Long Beach	Weyerhaeuser Company	213	432-3373
CA	Long Beach	Petro-Diamond Terminal Company	714	553-0112
CA	Long Beach	Texaco Refining & Marketing, Inc	213	522-6000
CA	Long Beach	California United Terminals	213	435-8235
CA	Long Beach	Terminal 1—Berths 116 and 121	213	499-2222
CA	Long Beach	Terminal 2—Berths 76, 77 and 78	213	499-2222
CA	Long Beach	Pacific Container Terminal (PCT)	213	435-0842
CA	Long Beach	Crescent Terminals	213	432-6477

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
CA	Long Beach	Long Beach Berth 83	213	835-5042
CA	Long Beach	Salen Agencies	213	432-3939
CA	Long Beach	Metropolitan Stevedore Company	213	432-8721
CA	Long Beach	Salen Shipping Agencies	213	436-9961
CA	Long Beach	Pacific Coast Cement Company	213	435-0195
CA	Long Beach	Sea-Land Service, Inc	213	432-7411
CA	Long Beach	Koch Carbon	213	436-4680
CA	Long Beach	Powerine Long Beach Marine Terminal	213	432-7327
CA	Long Beach	Morton Salt/Ocean Salt Company	213	437-0071
CA	Long Beach	Gold Bond Building Products	213	435-4465
CA	Long Beach	Cooper T. Smith	213	436-2259
CA	Long Beach	International Transportation Service	213	435-7781
CA	Long Beach	Long Beach Container Terminal, Inc	213	435-8585
CA	Long Beach	Maersk Pacific, Ltd	213	435-7706
CA	Martinez	Martinez Terminals, Ltd	415	228-3227
CA	Monterey	Sea Products Co	408	633-3365
CA	Morro Bay	City of Morro Bay	805	772-1214
CA	Morro Bay	Central Coast Seafood, Inc	805	772-1274
CA	National City	24th Street Marine Terminal	619	291-3900
CA	Oakland	Berth 22/23	415	271-1800
CA	Oakland	Charles P. Howard Terminal	415	271-1815
CA	Oakland	Schnitzer Steel Products Co	415	444-3919
CA	Oakland	Port of Oakland Berth 40	415	889-6555
CA	Oakland	Transbay Container Terminal, Inc	415	839-8228
CA	Oakland	Public Container Terminal	415	271-0404
CA	Oakland	Nineth Avenue Terminal	415	271-0484
CA	Oakland	Producers Seafood, Inc	415	533-5314
CA	Oakland	Bay Bridge Terminal	415	465-5668
CA	Oakland	Sealand Service Inc	415	271-1019
CA	Oakland	Matson Terminals, Inc	415	271-9710
CA	Pittsburg	Pacific Gas & Elec. Co. Pittsburg Power Plant	415	427-3518
CA	Pittsburg	The Dow Chemical Company	415	432-5557
CA	Point Arena	Arena Cove Fishing Pier	707	882-2583
CA	Port Hueneme	SSA—Port Hueneme Office	805	488-6298
CA	Richmond	Texaco Refining & Marketing Inc	415	232-7671
CA	Richmond	Paktank Corp.—Richmond	415	233-0418
CA	Richmond	Castrol Terminal	415	236-6312
CA	Richmond	Arco Products Company	415	236-0313
CA	Richmond	Richmond Terminal ;3	415	232-1371
CA	Richmond	Richmond Terminal Time Oil Company	415	232-7447
CA	Richmond	Pacific Molasses Company	415	232-7321
CA	Richmond	Unocal Richmond Terminal	415	235-7600
CA	Richmond	Richmond Long Wharf	415	620-2314
CA	Rodeo	Unocal Wharf, Union Oil Co. of California	415	799-4411
CA	Samoa	Louisiana-Pacific Corporation	707	443-7511
CA	San Diego	Embarcadero Marine	619	233-6884
CA	San Diego	Continental Maritime San Diego	619	234-8851
CA	San Diego	Naval Supply Center Point Loma Annex	619	553-1314
CA	San Diego	National Steel & Shipbuilding Co	619	544-7727
CA	San Diego	Tuna Clipper Marine	619	692-9701
CA	San Diego	Tenth Avenue Marine Terminal	619	291-3900
CA	San Diego	B Street Pier Cruise Ship Terminal	619	291-3900
CA	San Francisco	Fred F. Noonan Company, Inc., Pier 70	415	546-9111 (W) 236-9670 (H)
CA	San Francisco	Fisherman's Wharf; J3,4,5,7,9,10	415	391-8000
CA	San Francisco	Port of San Francisco Piers 26, 28, 30/32, 45, 50 A & B	415	391-8000
CA	San Francisco	Pier 94/96	415	641-8980
CA	San Francisco	Forest Terminal Corp	415	984-1448
CA	San Francisco	Fred F. Noonan Co., Inc., Pier 70	415	546-9111 or 236-9670 (H)
CA	San Francisco	Baker Commodities Inc	415	282-4188
CA	San Francisco	Pier 70	415	695-2200
CA	San Francisco	M.T.C. Pier 27/29 S.F.	415	966-3157
CA	San Francisco	Port of San Francisco North Container Terminal	415	826-7100
CA	San Francisco	San Francisco Passenger Terminal-Pier 35	415	391-3696
CA	San Francisco	Pier 92	415	826-7100
CA	San Francisco	Stevedoring Services of America, Inc	415	550-3061
CA	San Francisco	H & H Ship Service Company	415	543-4835
CA	San Francisco	Meatball Bait Distributor, Inc	415	441-0113
CA	San Francisco	Continental Grain Company	209	466-5443
CA	San Francisco	Southwest Marine of San Francisco Inc	415	861-7447
CA	San Pedro	Unocal Berths 45, 46, 47	213	326-7561
CA	San Pedro	Jankovich & Son. Inc	213	547-3305
CA	San Pedro	Petrolane, Inc	218	833-5275
CA	San Pedro	Chevron U.S.A. Inc.	213	832-6474
CA	San Pedro	Chevron U.S.A., Inc (Dupe of 754)	213	832-6474
CA	San Pedro	Western Fuel Oil Company	213	549-7711
CA	San Pedro	Hanjin Shipping Company Ltd	213	499-4500
CA	San Pedro	Los Angeles Cruise Ship Terminal	213	514-4049

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
CA	San Pedro	Gatx Terminals Corp—San Pedro Terminal	213	547-0881
CA	San Pedro	Gatx Tank Storage Terminals—LA. Harbor	213	830-5666
CA	San Pedro	American President Lines, Inc	213	548-8872
CA	San Pedro	Kaiser International Corporation	213	514-2880
CA	San Pedro	Todd Shipyard Corp	213	832-3361
CA	San Pedro	The Dow Chemical Company	310	533-5700
CA	San Pedro	B.P. North America Petroleum Inc	213	548-6496
CA	San Pedro	Penzoil Products Company Berths 71/72	213	831-2011
CA	Santa Barbara	Santa Barbara Harbor	805	965-6886
CA	Sausalito	Sea K Fish Company	415	331-3477
CA	Stockton	Stockton Port District	209	946-0246
CA	Suisun	Sheldon Oil Company	707	425-2951
CA	Terminal Island	Matson Terminals, Inc	213	519-6537
CA	Terminal Island	Indies Terminal	213	547-3351
CA	Terminal Island	Evergreen	213	514-4004
CA	Terminal Island	Refiners Marketing Company	213	519-7696
CA	Terminal Island	Pan Pacific Fisheries, Inc	213	833-3564
CA	Terminal Island	Mobil Oil Corp., West Coast Pipe Lines	213	832-2702
CA	Terminal Island	Hugo Neu-Proler	213	775-6626
CA	Terminal Island	Southwest Marine, Inc	213	519-0600
CA	Ventura	Seafood Specialties	805	653-0625
CA	Ventura Harbor	Pafco Manne Products	818	650-1799 or (213)
CA	West Sacramento	Port of Sacramento	916	371-8000
CA	Wilmington	Shell Oil Company	213	816-2475
CA	Wilmington	Wilmington Berth 153-155	213	431-8195
CA	Wilmington	United States Borax & Chemical Corp	213	522-5300
CA	Wilmington	Unocal Lar Marine Terminal	213	513-7614
CA	Wilmington	Distribution & Auto Service	213	835-8806
CA	Wilmington	Wilmington Liquid Bulk Terminals, Inc	213	549-0961
CA	Wilmington	L.A. Terminals	213	549-5821
CA	Wilmington	Ultramar Marine Terminal, Inc	213	834-7254
CA	Wilmington	Fred F. Noonan Company, Inc	213	830-8181
CA	Wilmington	Wickland Oil Terminals	213	834-4495
				835-3292
CA	Wilmington	Chiquita Brands, Banana Discharge Terminal	213	834-2631
CA	Wilmington	Pacific Lumber Terminal	213	834-5261
CA	Wilmington	Pacific Molasses Company	213	549-1810
CA	Wilmington	Los Angeles Pier 178	213	835-5042
CA	Wilmington	Metropolitan Stevedore Co	213	514-4044
CA	Wilmington	Gatx Terminals Corp—San Pedro Terminal	213	830-5666
CA	Wilmington	Trans Pacific Container Service Corp	213	513-7441
CA	Wilmington	Los Angeles City, Dept. Water/Power, Berth	213	834-3444
CT	New Haven	Gulf Oil	203	467-2581
CT	New Haven	Wyatt Inc	203	787-2175
CT	New London	Admiralty Group, Ltd	203	443-5010
DE	Delaware City	Star Enterprise	302	834-6205
DE	Wilmington	Delaware Terminal Company	302	654-3717
DE	Wilmington	Port of Wilmington	302	571-4600
DE	Wilmington	Sico Oil Company	302	653-1411
FL	Bokeelia	St James Fish Co	813	283-0601
FL	Cape Canaveral	Cape Seafoods, Inc. (DBA Fischer's Seafoods)	407	783-7605
FL	Cape Canaveral	Canaveral Port Authority	407	783-7831
FL	Cape Canaveral	The Fish House of Cape Canaveral	407	783-7605
FL	Cape Canaveral	Protem, Inc	407	452-8060
FL	Carrabelle	Protem, Inc	904	697-3387
FL	Cortez	A.P. Bell Fish Co. Inc	813	794-1249
FL	Cortez	Sigma International, Inc	813	792-3083
FL	Everglades City	Everglades Fish Corp	818	695-3241
FL	Fernandina Beach	Nassau Terminals Forest Products Terminal	904	261-0753
FL	Fort Lauderdale	Amerada Hess Corporation	201	750-6000
FL	Fort Pierce	Indian River Terminal Company	407	465-7700
FL	Ft. Lauderdale	Coastal Fuels Marketing, Inc	305	825-4261
FL	Ft. Myers Beach	Beach Shrimp Packers, Inc	813	463-5758
FL	Ft. Pierce	Inlet Fisheries, Inc	407	464-8722
FL	Ft. Pierce	Hudgins Fish Company, Inc	407	461-5787
FL	Grant	Hudgins Fish Company, Inc	407	723-8199
FL	Homosassa	Cedar Key Fish & Oyster, Co	904	628-2452 or 628-9101
FL	Jacksonville	Atlantic Dry Dock Corp	904	251-3111
FL	Jacksonville	BP Oil	904	757-4650
FL	Jacksonville	Talleyrand Docks & Terminal	904	630-3044
FL	Jacksonville	Blount Island Marine Terminal	904	757-7806
FL	Jacksonville	Joyserve Company, Ltd	904	354-5000
FL	Jacksonville	Triangle Refineries, Inc	904	355-8396
FL	Jacksonville	J.E.A. Northside Generating Station	904	633-4480
FL	Jacksonville	J.E.A. Southside Generating Station	904	633-4440
FL	Jacksonville	J.E.A. Kennedy Generating Station	904	633-5280
FL	Jacksonville	J.E.A. St. Johns River Coal Terminal	904	757-0894

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
FL	Jacksonville	Bernuth Lembcke Co, Inc	904	355-6567
FL	Jacksonville	U.S. Gypsum Co	904	768-2501
FL	Jacksonville	North Florida Shipyards, Inc	904	354-3278
FL	Jacksonville	Amoco Oil Co	904	757-5706
FL	Jacksonville	Steuart Petroleum Co	904	355-9675
FL	Jacksonville	Phillips Pipeline Co	904	353-6740
FL	Jacksonville	Bellinger Shipyard	904	798-3700
FL	Jacksonville	Jacksonville Shipyards, Inc	904	798-3700
FL	Jacksonville	Petroleum Fuel & Terminal Co	904	358-2375
FL	Jacksonville	U.S. Navy Fuel Department	904	757-5354
FL	Jacksonville	Distribution & Auto Service	904	751-5720
FL	Jacksonville	Chevron USA, Inc	904	353-1094
FL	Jacksonville	The Celotex Corporation	904	751-4400
FL	Jacksonville	Occidental Chemical Corp	904	632-3800
FL	Jacksonville	U.S. Gypsum Company	904	768-2501
FL	Madeira Beach	Triangle Fisheries	813	391-3684
FL	Marathon	City Fish, Inc	305	743-5545
FL	Marathon	Didi Seafood Corporation	305	289-1452
FL	Marathon	Keys Fisheries, Inc	305	743-6727
FL	Matlacha	Lee County Fishermans Coop	813	283-1173
FL	Matlacha	Quality Seafood, Inc	813	283-3200
FL	Mayport	Atlantic Seafood Co	904	249-4031
FL	Mayport	Miss Becky-Seafood, Inc	904	241-4331
FL	Miami	East River Terminal	305	633-3581
FL	Miami	Bernuth Marine, Inc, withdraw this since	305	633-7711
FL	Miami	Antillean Marine Shipping	305	633-6361
FL	Miami	Hyde Shipping Corp	305	638-4262
FL	Miami	Pioneer Shipping, Inc	306	633-3224
FL	Miami	Thompson Shipping, Co	305	633-8226
FL	Miami	Coastal Fuels Marketing, Inc	305	672-1065
FL	Miami	North River Terminal	305	633-3581
FL	Miami	Hyde Shipping Company	305	638-4262
FL	Milton	Gulf Bait and Seafood	904	623-5442 or 623-1946
FL	Milton	Avalon Seafood Co	904	994-5648
FL	Naples	Turners Seafood, Inc	813	261-7329
FL	Palmetto	Nu-Gulf Industries, Inc	813	722-8992
FL	Palmetto	Manatee Terminal Inc	813	722-7719
FL	Palmetto	Manatee Stevedoring Co., Inc	813	729-5602
FL	Palmetto	National Portland Cement Company	813	746-1177
FL	Palmetto	Florida Power & Light Manatee Terminal	813	722-1163
FL	Palmetto	Eastern Portland Cement Corp	813	729-7311
FL	Palmetto	Belcher Oil Company	813	722-7727
FL	Palmetto	Apollo Stevedoring Company, Inc	813	722-0558
FL	Panama City	Sander's Seafood	904	769-3675
FL	Panama City	Brannon's Seafood, Inc	904	769-0366
FL	Panama City	Tarpon Properties	904	769-0366
FL	Panama City	Panama City Port Authority	904	763-8471
FL	Panama City	Bay Harbor Terminals	904	769-6714
FL	Pensacola	Unocal Pensacola Terminal	904	432-5133
FL	Pensacola	Coastal Fuel Marketing Inc	904	432-2471
FL	Pensacola	Sulphur Terminal Co., Inc	904	432-8383
FL	Pompano Beach	Merritt Seafood Inc	305	941-6174
FL	Pompano Beach	Triple M Seafood, Inc	305	781-8980
FL	Ponce Inlet	Inlet Harbor Marina	904	767-3266
FL	Port Canaveral	C&W Fish Company	407	266-0106
FL	Port Everglades	Port Everglades Authority	305	523-3404
FL	Port Everglades	Exxon Company U.S.A.	305	524-0267
FL	Port Salerno	C&W Fish Company	407	266-0106
FL	Riviera Beach	Port of Palm Beach District	407	842-4201
FL	Riviera Beach	Florida Sugar Marketing & Terminal	407	842-2458
FL	Riviera Beach	Tropical Shipping Co. Ltd	407	881-3968
FL	Riviera Beach	Heavy Lift Services, Inc	407	848-2319
FL	Riviera Beach	Florida Molasses Exchange, Inc	407	848-3301
FL	Riviera Beach	Eastern Cement Corp	407	848-4824
FL	Riviera Beach	LaFarge Corp	407	842-1563
FL	Riviera Beach	Crown Cruise Line	407	845-2101
FL	Riviera Beach	Williams Shipping	407	848-4389
FL	Riviera Beach	Hudgins Fish Company, Inc	407	845-2681
FL	Sebastian	Mays Marina	407	589-2552
FL	Sebastian	Sembler & Sembler, Inc	407	589-4643
FL	St. Petersburg	Pinellas Seafood	813	823-4601
FL	Tampa	Sulfuric Acid Trading Co.	813	248-4940
FL	Tampa	Sulphur Terminals, Inc	813	248-4940
FL	Tampa	Citgo Petroleum Corp	813	247-2161
FL	Tampa	Harborside Refrigerated Services, Inc	813	248-6996
FL	Tampa	Eller & Company, Inc	813	247-5511
FL	Tampa	Phillips Petroleum Co.	813	248-3994
FL	Tampa	Gold Bond Building Products Terminal	813	839-2111

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
FL	Tampa	Murphy Oil USA, Inc	813	248-3158
FL	Tampa	Paktank Florida, Inc	813	247-5417
FL	Tampa	Unocal Chemicals	813	837-6482
FL	Tampa	Amoco Oil Co	813	248-3191
FL	Tampa	Gulf Products/Div. BP Oil	813	831-1161
FL	Tampa	Warren Petroleum/Chevron USA	813	831-1711
FL	Tampa	Marathon Petroleum Company	813	247-1459
FL	Tampa	GATX Terminals Corporation	813	248-2148
FL	Tampa	Chevron USA, Inc	813	248-2189
FL	Tampa	Shell Oil Company	813	839-2327
FL	Tampa	Marathon Petroleum Company	816	247-1459
FL	Tampa	Fina Oil and Chemical Company	813	247-3429
FL	Tampa	Lafarge Corporation	813	247-4631
FL	Tarpon Springs	Leonard & Sons Shrimp Co	823	934-4657
FL	West Palm Beach	General Electric Government Services	407	832-8566 X7238
FL	West Palm Beach	General Electric Government Services	407	832-8566 X7238
GA	Brunswick	East River Terminal [Berths 2 and 3]	912	264-4044
GA	Fort Wentworth	Stone Savannah Pulp and Paper Co	912	966-4342
GA	Fort Wentworth	Kock Materials Company	912	964-1913
GA	Fort Wentworth	Savannah Sugar Refinery	912	964-1361
GA	Fort Wentworth	Atlantic Wood Industries, Inc	912	964-1234
GA	Fort Wentworth	Georgia Steamship c./Georgia Pacific	912	964-8624
GA	Savannah	Colonial Oil Industries, Inc	912	236-1331
GA	Savannah	Chevron USA, Inc	904	353-1094
GA	Savannah	Amoco Oil Company	912	966-4200
GA	Savannah	Marcona Ocean Ind. & Kemira Company	912	234-5005
GA	Savannah	Unocal Savannah Terminal	912	233-9266
GA	Savannah	Blue Circel Atlantic, Inc	912	236-6318
GA	Savannah	Southern Bulk Industries	912	964-2785
GA	Savannah	Georgia Ports Authority	912	964-3811
GA	Savannah	Powell Duffryn Terminals, Inc	912	236-1579
GA	Savannah	East Coast Terminal Company	912	236-1531
GA	Savannah	Domtar Gypsum	912	233-4951
GA	Savannah	Southern States Phosphate & Fertilizer Co	912	232-1101
HI	Ewa Beach	Hawaiian Independent Refinery, Inc	808	547-3900
HI	Ewa Beach	Chevron Hawaiian Refinery	808	682-2215
HI	Honolulu	Honolulu Marine Terminal	808	527-2747
HI	Honolulu	Piers 1 & 2	808	548-4134
HI	Honolulu	Pier 5	808	548-4134
HI	Honolulu	Piers 8, 9, 10, 11	808	548-4134
HI	Honolulu	Piers 13 & 14	808	548-4134
HI	Honolulu	Piers 15, 16, 17, 18	808	548-4134
HI	Honolulu	Piers 19 & 20	808	548-4134
HI	Honolulu	Piers 21, 22, 23, 24, 25, 26, 27, 28	808	548-4134
HI	Honolulu	Piers 29 & 30	808	548-4134
HI	Honolulu	Piers 31, 32, 33	808	548-4134
HI	Honolulu	Pier 34	808	548-4134
HI	Honolulu	Pier 35	808	548-4134
HI	Honolulu	Pier 36	808	548-4134
HI	Honolulu	Pier 37	808	548-4134
HI	Honolulu	Pier 38	808	548-4134
HI	Honolulu	Piers 39, 40, 41	808	548-4134
HI	Honolulu	Pier 51	808	548-4134
HI	Honolulu	Piers 52 & 53	808	548-4134
HI	Honolulu	Pier 60	808	548-4134
HI	Honolulu	Kewalo Basin	808	548-4134
HI	Honolulu	Barbers Point	808	548-4134
IL	Chicago	Iroquois Landing	312	374-3600
IL	Chicago	Ceres Terminal North	312	646-4545
IL	Chicago	Continental Grain Co	312	646-2387
IL	Chicago	Continental Grain Co	312	646-2387
IL	Chicago	Cargill Elevator Chicago	312	768-8432
IL	Chicago	Shed 2 Lake	312	646-4400
IL	Chicago	Federal Marine terminals	312	734-5100
IL	Chicago	Shed 3 Lake Calumet	312	646-4400
IL	Chicago	Emeslo Marine Terminal	312	646-3200
IL	Chicago	Indiana Grain Cooperative [Gateway Elev]	312	646-2288
IL	Chicago	Rail to Water Transfer Corporation	312	375-3700
IL	Chicago	Tri River Docks, Inc	312	646-4110
IN	E. Chicago	Citgo Petroleum Corporation	219	398-0734
LA		Mermentau Terminal of Unocal Pipeline	318	536-6098
LA	Abbeville	Zapata Hayne Corp	318	893-2933
LA	Abbeville	Forked Island Terminal (No COA Needed)	318	642-5260
LA	Ama	ADM/Growmark	504	431-8241
LA	Arabi	Amstar Sugar Corporation	504	271-5331
LA	Arabi	Kaiser Aluminum & Chemical Corp. Chalmette	504	271-7046
LA	Arabi	Kaiser Aluminum & Chemical Corp	504	271-7048

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
LA	Avondale	International Matex Tank Terminals	504	436-4466
LA	Avondale	Avondale Industries, Inc	504	436-5274
LA	Baton Rouge	Exxon Co., USA	504	359-7518
LA	Belle Chase	B.P. America	504	656-3253
LA	Belle Chasse	Maritime Oil Recovery, Inc	504	393-1330
LA	Belle Chasse	Chevron Chemical Company	504	394-4320
LA	Belle Chasse	B.P. America	504	656-3253
LA	Buras	Chevron Pipe Line Co. Empire/Ostrica Terminal	504	592-7513
LA	Burnside	Burnside Terminal	504	343-8420
LA	Cameron	Louisiana Menhaden Company	318	477-6578
LA	Cameron	Troeclair Canning Company	318	775-5275
LA	Cameron	Zapata Hayne Corporation	318	569-2314
LA	Carlyss	Conoco Clifton Ridge Marine Terminal	318	491-5094
LA	Carville	Cosmar Company	504	642-5454
LA	Chalette	Mobil Oil—Chalmette Refinery	504	279-9481
LA	Chalmette	Exxon Chalmette Refinery	504	561-3537
LA	Chauvin	Indian Ridge Shrimp Co.	504	594-3361
LA	Convent	Cargill, Inc. (K-2)	504	562-7313
LA	Convent	Occidential Chemical Corporation	504	562-9200
LA	Convent	Zen-Noh Grain Corporation	504	562-3571
LA	Convent	Zen-Noh Grain Corporation	504	562-3571
LA	Davant	Texaco Pipeline Inc Davant Terminal	504	878-5645
LA	Davant	Electro-Coal Transfer Corporation	504	524-4181
LA	Destrehan	St. Charles Grain Elevator	504	466-2753
LA	Destrehan	Bunge Corporation	504	466-5300
LA	Donaldsonville	Triad Chemical	504	473-9231
LA	Dulac	Dulac Seafood Co./Terre Mar Corp	504	563-2533
LA	Dulac	Tidelands Seafood Co., Inc	504	583-4516
LA	Dulac	Zapata Hayne Corp	504	563-4424
LA	Dulac	Samanie Shrimp Dock	504	563-4397
LA	Empire	Empire Menhaden Company, Inc.	504	657-7281
LA	Empire	Petrou Fisheries, Inc	504	657-9711
LA	Garyville	Marathon Petroleum Company	504	535-2241
LA	Garyville	Clark Oil & Refining Corporation	504	535-6256
LA	Gibbstown	Chalkey Terminal of Unocal Pipeline	318	536-9098
LA	Golden Meadow	Fourchon Int'l Shipping Terminal	504	396-2835
LA	Golden Meadow	Gulf Shrimp Processors, Inc	504	475-5738
LA	Gramercy	Colonial Sugars, Inc	504	869-5521
LA	Gramercy	Kaiser Aluminum & Chemical Corporation	504	869-2270
LA	Gramercy	Laroche Chemicals, Inc	504	869-2106
LA	Gretna	Nola Terminal, BP Oil Company	504	368-2560
LA	Hackberry	Oxy NGL Inc Hackberry LPG Terminal	318	762-4205
LA	Hahnville	Union Carbide Corp	504	468-4411
LA	Hahnville	Agrico Chemical Company—Taft Plant	504	783-6672
LA	Harvey	Delta Commodities, Inc	504	340-4911
LA	Harvey	International-Matex Tank Terminals	504	368-2560
LA	Houma	Texaco Pipeline Inc Houma Terminal	504	876-5645
LA	Houma	D'Luke Seafood, Inc	504	563-7102 or 563-2228
LA	Lake Charles	Lake Charles Harbor & Terminal District	318	439-3661
LA	Lake Charles	Trunkline Lng Co.	318	478-6936
LA	Lake Charles	Olin Corporation Ammonia Docks	318	491-3205
LA	Lake Charles	Olin Corporation Urea Docks	318	491-3205
LA	Lake Charles	Lake Charles Carbon Co.	318	437-3265
LA	Lake Charles	Citgo Petroleum—Clifton Ridge	318	491-6121
LA	Lake Charles	Citgo Petroleum Corporation Refinery	318	491-6165
LA	Lake Charles	Citgo Petroleum Corporation A Dock	318	491-7429
LA	Lake Charles	Citgo Petroleum Corporation B Dock	318	491-7429
LA	Lake Charles	Citgo Petroleum Corporation C Dock	318	491-7429
LA	Lake Charles	Citgo Petroleum Corporation D Dock	318	491-7429
LA	Lake Charles	PPG Industries	318	491-4730
LA	Lake Charles	BP Oil Co. Carbon Products Division	318	583-7930
LA	Lake Charles	Crowley Maritime Corp.	318	474-9600
LA	Marrero	Amerada Hess Corporation	504	341-4225
LA	Metairie	Transocean Terminal Operators	504	832-8219
LA	Metairie	Transocean Terminal Operators	504	832-8219
LA	Morgan City	ABC Bait Co.	504	384-1817
LA	Myrtle Grove	Myrtle Grove Elevator	504	656-2212
LA	New Orleans	Loop Inc	504	368-5667
LA	New Orleans	Dixie Machine Welding & Metal Works, Inc. Andry St	504	581-3088
LA	New Orleans	Buck Kreihs Co., Inc	504	524-7681 or 271-2112
LA	New Orleans	Algiers Ironwork & Dry Dock, Inc	504	362-7960
LA	New Orleans	U.S. Gypsum Co.	504	241-2020
LA	New Orleans	International Petroleum Co of LA	504	254-9030
LA	New Orleans	Pacific Molasses Company	504	340-3000
LA	New Orleans	Ryan-Walsh Stevedoring Co., Inc	504	895-5800
LA	New Orleans	Ryan-Walsh Stevedoring Co., Inc	504	895-5800
LA	New Orleans	Fritz Maritime Agencies	504	524-8713

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
LA	New Orleans	Fritz Maritime Agencies	504	524-8713
LA	New Orleans	Gulf & Southern Terminal	504	897-1320
LA	New Orleans	Ryan-Walsh Stevedoring Co. Inc	504	895-5800
LA	New Orleans	I.T.O. Corporation	504	899-9544
LA	New Orleans	International Cruise Terminal, Inc	504	529-4567
LA	New Orleans	Anchor Stevedoring, Co	504	945-6513
LA	New Orleans	Coastal Cargo, Co. Inc	504	942-4227
LA	New Orleans	New Orleans Stevedoring Company	504	942-5557
LA	New Orleans	Ceres Gulf Stevedoring	504	244-9882
LA	New Orleans	Sea-Land Service, Inc	504	948-7992
LA	New Orleans	Puerto Rico Marine Management, Inc	504	942-1100
LA	New Orleans	New Orleans Marine Contractors	504	949-9801
LA	New Orleans	New Orleans Marine Contractors	504	949-9801
LA	New Orleans	Turner Marine Bulk, Inc	504	245-1089
LA	Norco	Shell Oil Co. Norco Mfg. Complex	504	465-7301
LA	Norco	Gatx Terminals Corporation	504	443-2511
LA	Norco	Gatx Terminals Corporation	504	443-2511
LA	Paulina	Peavey Company-St. Elmo Terminal	504	869-4405
LA	Paulina	I.T.O. Corporation	504	522-5246/ 469-5662
LA	Pilottown	Texaco Pipeline Terminal Pilottown	504	876-5645
LA	Plaquemine	Georgia Gulf Corporation	504	389-2500
LA	Port Allen	Petroleum & Fuel Terminal Company	504	383-9211
LA	Port Allen	Anchorage Chemical Terminal	504	389-0170
LA	Port Sulphur	Freeport Sulphur Company	504	564-3981
LA	Port Sulphur	International Marine Terminals	504	656-7341
LA	Reserve	Cargill Inc	504	536-4111
LA	Reserve	Louis Dreyfus Reserve Grain Elevator	504	536-1151
LA	Reserve	Cargill Inc. Molasses Liquid Products	504	536-4121
LA	Reserve	Riverplex International	504	536-8900
LA	St. Bernard	Vic Molero Seafood Inc	504	676-1309
LA	St James	Capline Terminal	504	588-7834
LA	St. James	U.S. Dept. of Energy, St. James Terminal	504	265-3073
LA	St. James	U.S. Dept. of Energy, St. James Terminal	504	265-3073
LA	St. James	U.S. Dept. of Energy, St. James Terminal	504	265-3073
LA	St. Rose	International Matex Tank Terminals	504	468-3997
LA	St. Rose	International Matex Tank Terminals	504	468-3997
LA	Sunshine	Petro United Terminals, Inc	504	642-8335
LA	Taft	Occidental Chemical Corp	504	783-7382
LA	Uncle Sam	Agrico Chemical Co	504	562-3501
LA	Union	Star Enterprise	504	562-7681
LA	Westlake	Conoco Inc-Refinery Dock	318	491-5024
LA	Westwego	Pacific Molasses Company	504	340-3000
LA	Westwego	Gold Bond Building Products Terminal	504	341-8596
LA	Westwego	Paktank Corporation Westwego Terminal	504	436-2242
LA	Westwego	Paktank Corporation (Westwego Terminal)	504	436-2242
LA	Westwego	Koch-Ellis Barge & Ship	504	436-3766
MA	Boston	General Ship Corp. South Boston	617	569-4200
MA	Boston	General Ship Corp. (East Boston)	617	569-4200
MA	Boston	Blue Circle Atlantic Inc	617	241-9040
MA	Boston	Boston Fish Pier	617	973-5500
MA	Charleston	United States Gypsum	617	241-9100
MA	Charleston	Massports Revere Sugar Wharf	617	973-5500
MA	Charlestown	John E. Moran Docks	617	973-5500
MA	Charleston	Mystic Piers No. 48, 49, & 50	617	973-5500
MA	Charleston	Mystic Pier No. 1	617	973-5500
MA	Charleston	Boston Edison Company Mystic Station	617	381-7277
MA	Chatham	Chatham Municipal Fish Pier	508	432-7161
MA	Chelsea	Gulf Oil Co	617	884-5980
MA	Chelsea	Belcher Chelsea	617	889-1391
MA	Chelsea	Atlantic Fuels Marketing Corp	617	288-1100
MA	Chelsea	Eastern Minerals Inc	617	884-0027
MA	East Boston	Mobil Oil East Boston Terminal	617	381-4035
MA	East Boston	East Boston Piers Nos. 1, 3, 4, 5	617	973-5500
MA	East Braintree	Citgo Petroleum Corporation	617	848-2595
MA	Everett	Exxon Company U.S.A	617	381-2802
MA	Everett	Distrigas of Massachusetts Corp	617	381-8540
MA	Everett	Independent Cement Corporation	617	387-3829
MA	Everett	Coldwater Seafood Corporation	617	387-2050
MA	Everett	Prolerized N.E. Co	617	389-8300
MA	Fall River	Fall River/Shell Oil	508	675-6200
MA	Fall River	Borden & Remington, Corp	508	675-0181
MA	Fall River	Fall River Line Pier, Inc	508	674-5707
MA	Fall River	Northeast Products Company, Inc	508	678-8367
MA	Gloucester	John B. Wright Fish Co., Inc	508	283-4205
MA	Gloucester	Star Fisheries	508	283-0890
MA	Gloucester	Frontiero Brothers, Inc	508	283-1282
MA	Gloucester	Ocean Crest Seafoods, Inc	508	281-0232
MA	Gloucester	Americold Corporation	508	283-6100

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
MA	Gloucester	Americold Corporation	508	283-6100
MA	Gloucester	Americold Corporation	508	283-6100
MA	Gloucester	Americold Corporation	508	283-6100
MA	Gloucester	Fisherman's Wharf	508	283-6190
MA	Lynn	General Electric River Works	617	594-4826
MA	New Bedford	Blue Gold Sea Farms	508	993-2635
MA	New Bedford	Fish Island Seafood, Inc	508	992-2969
MA	New Bedford	Ocean Obsession Ltd	508	997-0720
MA	New Bedford	Atlantic Coast Fisheries Corp	508	999-2993
MA	New Bedford	Trio-Algarvio Seafood, Inc	508	993-5868
MA	New Bedford	Global Petroleum Corp	508	997-4534
MA	New Bedford	State Pier-New Bedford, MA	508	993-1646
MA	New Bedford	Maritime Terminal, Inc	508	996-8507
MA	New Bedford	Frionor USA, Inc	508	997-0031
MA	Quincy	Proctor & Gamble Mfg. Company	617	847-3684
MA	Quincy	Quincy Oil, Inc	617	773-2500
MA	Revere	Belcher New England	617	284-4490
MA	Revere	BP Oil Company	617	289-4201
MA	Revere	Global Petroleum Corp	617	289-2102
MA	Salem	Salem Harbor Station Terminal	508	744-5540
MA	Salem	Northeast Petroleum Division of Cargill, Inc	508	744-3434
MA	Sandwich	Canal Marine, Inc	508	888-0096
MA	Sandwich	ESCO Terminals, Inc	508	888-2001
MA	Sandwich	Sandwich Marina	508	833-0808
MA	Somerset	New England Power	508	676-8321
MA	Somerset	Montaup Electric Company	508	676-5283
MA	South Boston	Belcher South Boston	617	269-8400
MA	South Boston	Massport Marine Terminal Wharf	617	973-5500
MA	South Boston	Boston Army Base Terminal, Berths 1-10	617	973-5500
MA	South Boston	Paul W. Conley Marine Terminal, Berths 11-17	617	973-5500
MA	South Boston	Boston Edison Company-New Boston Station	617	464-6000
MA	Vineyard Haven	M.V. Fuel & Ice	508	693-6422
MA	Vineyard Haven	R.M. Packer Co	508	693-0900
MA	Vineyard Haven	Tisbury Wharf Co	508	693-0900
MA	Vineyard Haven	Campbell Oil Co	508	693-0900
MA	Woods Hole	Woods Hole, Martha's Vineyard & Nantucket	508	548-5011
MA	Woods Hole	Woods Hole, Martha's Vineyard & Nantucket	508	771-4000
MA	Woods Hole	Woods Hole, Martha's Vineyard & Nantucket	508	548-1400
MA	Woods Hole	Woods Hole Oceanographic Institution	301	631-7000
MD	Baltimore	Consolidation Coal Sales Co	301	354-0404
MD	Baltimore	Shell Oil Co	301	355-7200
MD	Baltimore	BP Oil Company	301	276-1013
MD	Baltimore	Rukert Terminals Corp	301	342-7800
MD	Baltimore	Petroleum Fuel & Terminal	301	762-6150
MD	Baltimore	Amstar Sugar Corp	301	354-1113
MD	Baltimore	Eastalco Pier	301	327-4700
MD	Baltimore	Lebanon Chemical Corp	301	354-5306
MD	Baltimore	Essex Industrial Chemicals, Inc	301	276-8100
MD	Baltimore	Agrico Chemical Co	310	355-5296
MD	Baltimore	Conoco Inc	301	355-6262
MD	Baltimore	Support Terminal Services, Inc	301	576-5650
MD	Baltimore	Proctor & Gamble	301	355-6600
MD	Baltimore	U.S. Gypsum Company	301	631-5315
MD	Baltimore	Gold Bond Building Products Terminal	301	355-9430
MD	Baltimore	Chesapeake Terminal	301	355-9430
MD	Baltimore	Atlantic Terminal	301	347-5201
MD	Baltimore	CSX Transportation Curtis Bay Coal & Ore Piers	301	563-5118
MD	Baltimore	Exxon Co. USA	301	354-1170
MD	Baltimore	Independent Cement Corp	301	355-4650
MD	Baltimore	Transmaryland Terminal Corp	301	354-1113
MD	Baltimore	Eastalco Alum Co. Hawkins Point	301	631-5100
MD	Baltimore	Canton Elevator-Ferruzzi U.S.A., Inc	301	355-6500
MD	Baltimore	Star Enterprise	301	633-1160
MD	Baltimore	Fairfield Marine Terminal	301	633-1160
MD	Baltimore	Seagirt Marine Terminal	301	633-1160
MD	Baltimore	Dundalk Marine Terminal	301	633-1160
MD	Baltimore	Locust Point Marine Terminal, North	301	332-8320
MD	Baltimore	Locust Point Marine Terminal, South	301	633-1160
MD	Baltimore	Clinton Street Marine Terminal	301	385-0425
MD	Baltimore	Transpacific Communications, Inc	301	685-6410
MD	Baltimore	Pier 7 North Locust Point	301	750-8000
MD	Baltimore	Amerada Hess Corporation	301	355-4440
MD	Baltimore	Blue Circle Atlantic	301	228-6500
MD	Cambridge	Cambridge Marine Terminal	301	968-2600
MD	Crisfield	Steuart Shipyard	301	867-3421
MD	Galesville	Woodfield Fish & Oyster Co., Inc	301	994-1200
MD	Piney Point	Steuart Petroleum Company		ext. 216
MD	Sparrows Point	Bethlehem Steel Balto Marine Div	301	388-7907
MD	Sparrows Point	Pennwood Wharf	301	388-7497

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
MD	Sparrows Point	High Pier	301	388-4969
MD	Sparrows Point	ORE Pier	301	388-6407
MD	Sparrows Point	Chesapeake Bulk Stevedores, Inc	301	388-1440
ME	Bangor	Webber Oil Company	207	942-5501
ME	Bangor	Barrett Paving Materials Inc	207	942-4681
ME	Bucksport	C.H. Sprague & Son Co.	207	469-7946
ME	Bucksport	C.H. Sprague & Son Co. (North Terminal)	207	469-7946
ME	Hampden	Cold Brook Energy Inc	207	945-9465
ME	Lubec	R.J. Peacock	207	733-5556
ME	Lubec	Lubec Packing	207	733-5572
ME	Portland	Portland Marine Terminal	207	775-5611 or 773-1613
ME	Portland	Seatrade International Inc	207	772-8220
ME	So. Portland	Star Enterprise	207	799-3394
ME	So. Portland	B.P. Oil Co	207	799-8586
ME	So. Portland	Koch Materials Co	207	767-2161
ME	So. Portland	Getty Petroleum Corp.	207	799-8518
ME	So. Portland	Gulf Oil	207	799-5561
ME	So. Portland	Portland Pipe Line Corporation	207	767-0440
ME	So. Portland	Northeast Petroleum, Fore River	207	799-2294
ME	South Portland	Mobil Oil Corporation	207	767-3251
ME	St George	Great Eastern Mussel Farms	207	372-6317
ME	Stonington	Lobster Transport Inc.	207	367-2215
ME	Wiscasset	Mason Station	207	623-3521 ext. 2443
ME	Yarmouth	William F. Wyman	207	623-3521 ext.
MI	Ferrysburg	Koch Refining Company	616	842-2450
MI	Muskegon	Amoco Oil	616	759-0907
MN	Duluth	Azcon Corporation	218	722-7703
MN	Duluth	C. Reiss Coal Co.	218	628-2371
MN	Duluth	Cargill Inc	218	727-7219
MN	Duluth	Cutler Magner Co	218	722-3981
MN	Duluth	General Mills Elev	218	722-7759
MN	Duluth	Hallett Dock ;5	218	624-2281
MN	Duluth	Hallett Dock ;6	218	624-2281
MN	Duluth	Hallett Dock ;7	218	624-2281
MN	Duluth	International Multifoods	218	722-0538 or 722-6506
MN	Duluth	Lafarge Corporation, Great Lakes Region	218	727-2493
MN	Duluth	Meehan Seaway Service, LTD	218	727-6646
MN	Duluth	St Lawrence Cement Co	218	726-1371
MS	Biloxi	Gollott Brothers Seafood Co., Inc.	601	432-7865
MS	Gulfport	MS. State Port Authority at Gulfport	601	865-4315
MS	Moss Point	Zapata Haynie Corporation	601	475-1252
MS	Moss Point	Ampro Fisheries, Inc.	601	475-2003
MS	Moss Point	Ampro Fisheries, Inc.	601	475-2003
MS	Pascagoula	Heinz Pet Products	601	762-7896
MS	Pascagoula	Clark Seafood Co., Inc	601	762-4511
MS	Pascagoula	Chevron U.S.A. Inc	601	938-4214
MS	Pascagoula	Ingalls Shipbuilding, Inc	601	935-4676
MS	Pascagoula	Port of Pascagoula	601	762-4041
MS	Pearlington	Star Export Services	601	533-5541
NC	Beaufort	Aviation Fuel Terminals, Inc	919	726-3145
NC	Engelhard	Engelhard Shrimp Fish & Oyster Co., Inc.	919	925-3471
NC	Lowland	Lowland Seafood Co	919	745-3751
NC	Morehead City	J.M. Davis Industries	919	247-6902
NC	Morehead City	Gillikin Seafood, Inc	919	726-7284
NC	Morehead City	North Carolina State Ports Authority	919	726-3158
NC	Morehead City	Trumbull Asphalt Company	919	726-4101
NC	Morehead City	Morehead City Export Terminals	919	247-3403
NC	Morehead City	Morehead City Ship & Cargo Agency, Inc	919	726-2500
NC	Morehead City	Colonial Oil Industries, Inc	919	726-0558
NC	Newport	R.W. Jones Fish Co., Inc	919	726-8158
NC	Oriental	C.M. Muse Seafood Co., Inc	919	249-0676
NC	Southport	Military Ocean Terminal, Sunny Point	919	341-8286
NC	Southport	Pfizer Marine Terminal	919	457-5001
NC	Wanchese	Fisherman's Seafood, Inc	919	473-5026
NC	Wilmington	Chevron USA, Inc	919	763-8423
NC	Wilmington	Nitrex	919	763-0171
NC	Wilmington	Eagle Island Marine, Inc.	919	762-2630
NC	Wilmington	North Carolina State Port Authority	919	763-1621
NC	Wilmington	Almont Shipping Co	919	791-9031
NC	Wilmington	Amoco Oil Company	919	799-0483
NC	Wilmington	Chemserve Terminal, Inc	919	762-8588
NC	Wilmington	Chevron USA, Inc	919	763-8423
NC	Wilmington	Exxon Company USA	919	799-0144
NC	Wilmington	Koch Refining Company	919	799-0180
NC	Wilmington	Paktank Corporation	919	763-0140

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
NC	Wilmington	Petroleum & Fuel Terminal, Co	919	799–0030
NC	Wilmington	Unocal Chemicals Division Cape Fear Terminal	919	762–6615
NH	Newington	Fuel Storage Corporation	603	431–6000
NH	Newington	Sea-3, Inc	603	431–5990
NH	Newington	C.H. Sprague & Son Co	603	431–5131
NH	Portsmouth	Mobil Portsmouth	603	436–7887
NH	Portsmouth	State Fish Pier—Portsmouth Fish Co-Op	603	431–7078
NH	Portsmouth	Northeast Petroleum Div. of Cargill	603	436–5147
NH	Portsmouth	C. H. Sprague & Son Co	603	436–4120
NJ	Atlantic City	Barney's Dock	609	344–2628
NJ	Barnegat Light	Viking Village	609	494–0113
NJ	Barnegat Light	Lighthouse Marina	609	494–2305
NJ	Bayonne	Belcher Co. of New York—Bayonne	201	437–2104
NJ	Bayonne	Texaco Refining & Marketing Inc	201	436–2200
NJ	Bayonne	Exxon Company, USA	201	858–5503
NJ	Bayonne	Constable Terminal Corporation		
NJ	Bayonne	Gordon Terminal		
NJ	Bridgeport	Monsanto Chemical Company	609	467–8226
NJ	Burlington	Gold Bond Building Products	609	499–3300
NJ	Camden	Del Monte Tropical Fruit	609	365–0577
NJ	Camden	Beckett Street Terminal	609	757–4969
NJ	Camden	Broadway Terminal	609	757–4969
NJ	Camden	Domtar Gypsum, Inc	609	966–7605
NJ	Camden	MacAndrews & Forbes Group		
NJ	Cape May	Lund's Fisheries, Inc	609	729–9050
NJ	Cape May	Axelsson & Johnson Fish Co	609	884–8426
NJ	Cape May	Atlantic Capes Fisheries, Inc	609	884–3000
NJ	Cape May	Cold Spring Fish & Supply Co	609	884–3405
NJ	Carteret	Gatx Terminals Group		
NJ	Carteret	Amoco Oil Company—Carteret Terminal	201	541–5131
NJ	Elizabeth	Atlantic Container Line	201	289–3000
NJ	Elizabeth	Sea-Land Service, Inc	201	558–6001
NJ	Elizabeth	Croda Storage, Inc	201	353–8933
NJ	Elizabeth	Sea-Land Service, Inc		
NJ	Gibbstown	E.I. DuPont Co. Repauno Plant	609	423–0105 ext 428
NJ	Gloucester City	Koch Fuels, Inc	609	456–6673
NJ	Jersey City	Atlantic Liner Agencies (ACL) for Northeast Auto	201	289–3000
NJ	Jersey City	Global Terminal & Container Services, Inc	201	451–5200
NJ	Linden	Northville Linden Terminal Division of	201	862–5740
NJ	Linden	E.I. DuPont de Nemours & Co	201	474–1801
NJ	Linden	E.I. DuPont de Nemours & Co		
NJ	Lower Township	Eirik's Two Mile Dock	609	729–5548
NJ	Newark	Star Enterprise	201	344–6815
NJ	Newark	Elizabeth Port Authority Marine Terminal (Berths)	201	578–2128
NJ	Newark	Port Newark	201	578–2128
NJ	Newark	Stratus Petroleum Corp		
NJ	Newark	National Fuel Oil, Inc	201	621–8866
NJ	Newark	Sun Refining and Marketing Company		
NJ	Newark	Amerada Hess Corporation	201	750–6000
NJ	Paulsboro	Mantua Oil Company L.P	609	423–5400
NJ	Paulsboro	Mobil Oil Corporation	609	224–0100
NJ	Paulsboro	British Petroleum Oil Co	609	423–4003
NJ	Paulsboro	Gatx Terminal	609	423–3432
NJ	Pennsauken	Star Enterprise Pennsauken Sales	609	662–5600
NJ	Pennsauken	Citgo Petroleum Corp (Petty's Island)	609	963–8470
NJ	Pennsauken	Petty Island Terminal	609	486–4626
NJ	Pennsauken	Amerada Hess Corporation	609	750–6000
NJ	Perth Amboy	Chevron U.S.A., Inc	201	738–2000
NJ	Perth Amboy	Stolt Terminal (Perth Amboy)	201	826–1144
NJ	Perth Amboy	Stolt Terminal (Perth Amboy)		
NJ	Port Elizabeth	Maher Terminals, Inc	201	527–8200
NJ	Port Elizabeth	Maher Terminals, Inc	201	527–8400
NJ	Port Newark	Maersk Container Service	201	465–1000
NJ	Port Newark	Educadorian Line, Inc	201	589–8894 or 589–9022
NJ	Port Newark	Distribution & Auto Service	201	465–0424
NJ	Port Newark	Maher Terminals, Inc	201	589–4902
NJ	Port Newark	Hudson Tank Terminals Corp	201	465–1115
NJ	Port Newark	BP Marine	201	643–2426
NJ	Pt. Pleasant	Phillips Seafood Inc./Bradford Fisheries	201	295–9606
NJ	Pt. Pleasant Beach	Atlantic Capes Fisheries, Inc	201	892–3522
NJ	Pt. Pleasant Beach	Fishermen's Dock Cooperative, Inc	201	899–1872
NJ	Sayreville	Jersey Central Power & Light Company Sayreville		
NJ	Sewaren	Shell Oil Company	201	855–3314
NJ	South Amboy	Jersey Central Power & Light Company		
NJ	Westville	Coastal Eagle Point Oil Company	609	853–3100
NJ	Wildwood	Sig's Dock	609	522–0685
NY	Albany	Albany Port District Commission		Albany

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
NY	Albany	Mobil Oil/Albany Terminal		
NY	Astoria	Con Ed-Astoria Generation Station		
NY	Atoria	Castle Astoria Terminals, Inc		
NY	Athens	Peckham Materials Corp		
NY	Bronx	Fred M. Schildwachter & Sons, Inc	212	628-2500
NY	Bronx	Castle Port Morris Terminals, Inc		
NY	Bronx	Castle Bronx Terminals, Inc		
NY	Brooklyn	Shell Oil Co	718	383-4066
NY	Brooklyn	A.R. Fuels, Inc	718	444-3400
NY	Brooklyn	Terminal Corp	718	388-7011 or 388-6963
NY	Brooklyn	Exxon Brooklyn Terminal	718	706-4164 or 4171
NY	Brooklyn	Columbia Street Marine Terminal	718	330-2972
NY	Brooklyn	Brooklyn Port Authority Marine Terminal (Piers 1-3,	718	330-2972
NY	Brooklyn	Erie Basin-Port Authority Marine Terminal	718	330-2972
NY	Brooklyn	Bayside Fuel Oil Depot Corp	718	372-9800
NY	Brooklyn	Bayside Fuel Oil Depot Corp	718	625-5932
NY	Brooklyn	Con Ed Hudson Avenue Generating Station		
NY	Brooklyn	Con Ed North Street Terminal		
NY	Brooklyn	Metro Terminal Corp		
NY	Buffalo	Gateway Trade Center, Inc	716	826-2890
NY	College Point	Skaggs-Walsh, Inc	718	353-7000
NY	East Setauket	Consolidated Petroleum Terminal, Inc	516	941-4040
NY	Glen Cove	Glenwood Terminal Corporation	516	676-2500
NY	Glenmont	Niagara Mohawk Power Corporation		
NY	Highland	Star Terminal	914	691-8171
NY	Highland Falls	C.D. Parry Co., Inc	914	446-4539
NY	Hudson	Hudson Petroleum	518	828-9406
NY	Inwood	Amoco Oil Co	516	239-8412
NY	Inwood	Shell Oil Company	516	239-4437
NY	Kingston	Kosco Exxon Terminals		
NY	Kingston	Kosco Phelan Cahill		
NY	Kingston	Kosco Ballard Terminal		
NY	Lackawanna	Bethenergy—Lackawanna Coke Div	716	821-3960
NY	Long Island City	Getty Terminals Corp	718	729-6500 Ext. 27
NY	Montauk	Deep Water Seafoods, Inc	516	668-2111
NY	Montauk	Montauk Fish Dock, Inc	516	668-2201
NY	Mt. Vernon	Amoco Oil Co	914	667-8385
NY	Mt. Vernon	West Vernon Pet. Corp	914	668-8787
NY	New Windsor	Big S Oil Co., Inc	914	561-4300
NY	New York	New York Consolidated Passenger Ship Terminal	212	246-5450
NY	New York	Continental Grain, Co	504	436-5800
NY	Newburgh	Mobil Oil Corporation-Newburgh		
NY	North Tarrytown	General Motors Corporation	914	524-1460
NY	Oswego	Niagara Mohawk Power Corporation	315	349-2220
NY	Oswego	C. H. Sprague and Son Co	315	343-6070
NY	Oswego	Port of Oswego Authority	315	343-4503
NY	Peekskill	Meenan Oil		
NY	Point Lookout	Doxsee Sea Clam Co., Inc	516	432-0529
NY	Port Ewen	Kings Oil Supply Corporation		
NY	Port Washington	Lewis Oil Co. Inc	518	883-1000
NY	Rensselaer	Bray Terminals Inc	518	462-5052
NY	Rensselaer	Getty Petroleum Corp	518	465-4520
NY	Rensselaer	Petroleum Fuel & Terminal	518	465-1557
NY	Rensselaer	Atlantic Refining Company		
NY	Riverhead	Northville Industries Corp	516	727-5600
NY	Staten Island	Howland Hook Marine Terminal (Public Berth)	718	330-2972
NY	Staten Island	Eklof Marine Corp	718	720-7207
NY	Staten Island	Petroport Terminal Corporation		
NY	Staten Island	Consolidated Edison Company, Staten Island		
NY	Staten Island	Port Mobil Terminal		
NY	Stony Point	Panco Petroleum Co	914	429-9120
NY	Tonawanda	Ashland Petroleum Co—Buffalo Terminal	716	879-8600
OH	Ashtabula	Pinney Dock & Transport Company	216	964-7186
OH	Cleveland	Fleet Supplies, Inc	216	621-5250
OH	Cleveland	Akzo Salt Inc	216	651-7200
OH	Cleveland	Marsulex Inc	216	566-8070
OH	Cleveland	Marathon Petroleum Company	216	861-6100
OH	Cleveland	G & W Industries	216	621-7246
OH	Cleveland	The Cleveland Builders Supply Co	216	621-4300
OH	Cleveland	Cleveland-Cuyahoga County Port Authority	216	241-8004
OH	Cleveland	Reilly Industries, Inc	216	883-2222
OH	Conneaut	The Pittsburgh & Conneaut Dock Co	216	593-1102
OH	Lorain	Jonick Dock & Terminal Co	216	277-6735
OH	Maumee	The Andersons Marine Elevator	419	241-8943
OH	Oregon	CSX Toledo Dock	419	697-2352
OH	Toledo	Mid States Terminal	419	691-7480

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
OH	Toledo	Toledo World Terminal Consolidated Dock Div	419	729-9711
OH	Toledo	Cargill, Inc.	419	241-2141
OH	Toledo	Clark Oil & Refining Corp	419	726-9741
OH	Toledo	Kuhlman Bulk Material Facility	419	243-2121
OH	Toledo	Toledo World Terminal	419	698-8171
OR	Astoria	Astoria Seafood Company	503	325-2831
OR	Astoria	Carmichael-Columbia Oil, Inc	503	325-3122
OR	Astoria	McCall Oil Co	503	325-2294
OR	Astoria	Youngs Bay Fish Co	503	325-5803
OR	Astoria	Ocean Foods of Astoria, Inc	503	325-2421
OR	Astoria	Port of Astoria	503	325-4521
OR	Astoria	Port of Astoria Mooring Basins	503	325-4521
OR	Astoria	Bornstein Seafoods, Inc	503	325-6164
OR	Bandon	Bandon Fisheries	503	347-4454
OR	Boardman	Terminal #3	503	481-3625
OR	Brookings	California Shellfish Co. Inc. DBA Hallmark	503	469-4616
OR	Brookings	Eureka Fisheries	503	469-5315
OR	Brookings	Meredith Fish Company	503	469-2486
OR	Brookings	Port of Brookings Harbor	503	469-2218
OR	Charleston	South Coast Seafoods, Inc	503	888-3288
OR	Charleston	Ft. Adams Packing Co	503	888-9404
OR	Charleston	Hallmark Fisheries	503	888-3253
OR	Coos Bay	Union Oil Company of California	503	269-7600
OR	Coos Bay	Eureka Fisheries, Inc	503	888-3248
OR	Garibaldi	Smith's Pacific Shrimp Co	503	322-2217
OR	Garibaldi	Smith's Pacific Shrimp Co	503	322-3316
OR	Garibaldi	Hoy Bros. Fish & Crab Co., Inc	503	322-3500
OR	Garibaldi	Jakes Famous Crawfish & Seafood	503	322-3422
OR	Gold Beach	Rogue River Seafood Co	503	247-6269
OR	Gold Beach	Port of Gold Beach	503	247-6269
OR	Hammond	Point Adams Packing Co	503	861-2226
OR	Harbor	Hallmark Fisheries	503	469-4616
OR	Harbor	Eureka Fisheries Inc	503	469-5315
OR	Newport	Depoe Bay Fish Co., Inc	503	265-8833
OR	Newport	Point Adams Packing Co	503	265-5365
OR	Newport	Point Adams Packing Co	503	265-5365
OR	Newport	Yaquina Bay Fish Co	503	265-2228
OR	Newport	Newport Shrimp Co	503	265-4215
OR	Newport	Oregon Coast Seafood Inc	503	265-7072
OR	North Bend	Western Fuel Oil Co	503	756-0481
OR	Port Orford	Port of Orford	503	332-7121
OR	Portland	Unocal Corp	503	248-1530
OR	Portland	Shell Oil Company	503	220-1232
OR	Portland	Chevron U.S.A. Inc	503	221-7714
OR	Portland	GATX Tank Storage Terminals Corporation	503	286-1691
OR	Portland	Scunitzer International Terminals	503	286-5771
OR	Portland	Terminal 4	503	231-5000
OR	Portland	Terminal 6	503	231-5000
OR	Portland	T-2	503	243-3201
OR	Portland	Portland Ship Repair Yard	503	231-5572
OR	Portland	Linnton Terminal	503	286-1611
OR	Portland	St. Johns Terminal	503	286-1611
OR	Winchester Bay	Eureka Fisheries, Inc	503	271-3628
OR	Winchester Bay	Winchester Bay	503	271-5733
PA	Eddystone	Penn Terminals	213	499-3000
PA	Erie	Codan Corp. Erie Intl. Marine Term	814	453-6651
PA	Marcus Hook	Sun Refining & Marketing Co	215	447-5998
PA	Marcus Hook	BP Oil-Marcus Hook Refinery	215	499-7071
PA	Philadelphia	C. Brewer Terminal, Inc	215	425-3707
PA	Philadelphia	Independent Pier Co	215	271-3221
PA	Philadelphia	Independent Pier Co	215	427-6895
PA	Philadelphia	Pasha Auto Warehousing	215	339-1400
PA	Philadelphia	Swann Oil, Inc	215	492-8000
PA	Philadelphia	Unitank Terminal Service	215	634-3031
PA	Philadelphia	Atlantic Pipeline Corp., Fort Mifflin	215	365-9110
PA	Philadelphia	Conrail Ore Pier	215	755-3056
PA	Philadelphia	Conrail Coal Pier	215	755-3056
PA	Philadelphia	Girard Point Wharf	215	399-7351
PA	Philadelphia	Norval Cement, Inc	215	463-5400
PA	Philadelphia	Cimco Terminal, Pier 14—Richmond	215	627-7050
PA	Philadelphia	Tioga Container Terminal	215	739-2009
PA	Philadelphia	Northern Shipping Company	215	331-7000
PA	Tinicum	Hog Island Wharf	215	339-7351
PR	Catano	Army Terminal	809	723-4030
PR	Catano	Carribean Gulf Refinery	809	785-0520
PR	Catano	Catano Ferry Catano	809	724-9177
PR	Catano	Catano Ferry San Juan	809	724-9177
PR	Catano	Catano Oil Dock	809	724-9177
PR	Fajardo	Marina Puerto Del Rey	809	763-7980

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
PR	Fajardo	Marina Puerto Chico	809	863-0834/ 1915
PR	Fajardo	Marina Puerto Real	809	863-2188
PR	Guanica	Ochoa Pier	809	821-2200
PR	Guayanilla	Corco (Piers 1-3)	809	835-2647
PR	Guayanilla	Tallaboa	809	835-2647
PR	Mayaguez	Port of Mayaguez	809	832-3590
PR	Mayaguez	Mayaguez	809	892-3308
PR	Miramar	P.R. Dry Dock	809	721-6010
PR	Ponce	Ponce Shed 2	809	848-4992
PR	Ponce	Ponce Shed 3	809	848-4992
PR	Ponce	Ponce Shed 4	809	848-4992
PR	Ponce	Ponce Shed 5	809	848-4992
PR	Ponce	Ponce Shed 6	809	848-4922
PR	Ponce	Ponce Shed 7	809	848-4922
PR	San Juan	Crowley Towing	809	729-1200
PR	San Juan	Frontier Pier	809	724-9177
PR	San Juan	Navieras Sheds G-L	809	724-9177
PR	San Juan	Pan Amm Dock	809	724-9177
PR	San Juan	Pier 1	809	724-9177
PR	San Juan	Pier 12	809	724-9177
PR	San Juan	Pier 13	809	724-9177
PR	San Juan	Pier 14	809	724-9177
PR	San Juan	Pier 3	809	724-9177
PR	San Juan	Pier 5	809	724-9177
PR	San Juan	Pier 6	809	724-9177
PR	San Juan	Pier 7	809	724-9177
PR	San Juan	Pier 8	809	724-9177
PR	San Juan	Pier 9	809	724-9177
PR	San Juan	Sea Land Sheds E and F	809	724-9177
PR	San Juan	Shed A	809	724-9177
PR	San Juan	Shed B	809	724-9177
PR	San Juan	Shed C	809	724-9177
PR	San Juan	Shed D	809	724-9177
PR	San Juan	Shed M	809	721-1456
PR	San Juan	Trailer Marine Transport	809	745-8696
PR	San Juan	Inversiones Isleta Marina	809	893-2424
PR	Yabucoa	P.R. Sun Oil Co	401	785-2850
RI	Cranston	Distribution & Auto Service	401	789-2200
RI	Narragansett	The Town Dock, Inc	401	783-9200
RI	Narragansett	Point Judith Lobster	401	625-1183
RI	Tiverton	Boremco Bulk Storage	401	245-8800
RI	Warren	Blount Seafood Corp	803	723-4220
SC	Charleston	Exxon Company USA	803	577-8673
SC	Charleston	Columbus St. Terminal	803	577-8771
SC	Charleston	Union Pier Terminal	803	722-3858
SC	Charleston	BP Oil Co	803	527-4476
SC	Georgetown	Port of Georgetown	803	577-8731
SC	Mt Pleasant	Wando Terminal	803	745-6529
SC	North Charleston	North Charleston Terminal	803	747-3711
SC	North Charleston	Koch Refining Co	803	554-5275
SC	North Charleston	Chem-Marine of South Carolina	803	524-4733
SC	Port Royal	Battery Creek-Seafood	803	525-6001
SC	Port Royal	Port of Port Royal, Inc	512	758-3571
TX	Aransas Pass	Harbor Island Terminal	512	289-4172
TX	Aransas Pass	Exxon Pipeline Co.'s Harbor Island Terminal	512	758-3232
TX	Aransas Pass	Padre Island Shrimp, Inc		
TX	Aransas Pass	King Ice & Fuel Co	713	425-3996
TX	Baytown	Exxon Company USA	409	835-5367
TX	Beaumont	Port of Beaumont	409	727-9165
TX	Beaumont	E.I. Du Pont De Nemours Beaumont Works	512	831-4059
TX	Brownsville	Gulf Shrimp Processors, Inc	512	831-9641
TX	Brownsville	Itapco-Border Terminal, Inc	512	831-4592
TX	Brownsville	Brownville Navigational District	512	831-8220
TX	Brownsville	Amfels, Inc	512	831-4300
TX	Brownsville	Border Shipyards, Inc	512	831-4521
TX	Brownsville	Brownsville Refinery Corporation	713	457-5530
TX	Channelview	Koch Refining, Inc	512	289-6600
TX	Corpus Christi	Bay, Inc, Dock	512	887-3227
TX	Corpus Christi	Champlin Refining & Chemicals, Inc	512	887-3227
TX	Corpus Christi	Champlin Refining & Chemicals, Inc	512	882-8239
TX	Corpus Christi	Mobil Corpus Christi Terminal	512	882-5633
TX	Corpus Christi	Port of Corpus Christi Authority	512	884-8863
TX	Corpus Christi	Southwestern Refining Company, Inc	512	863-6381
TX	Corpus Christi	Texas Sunbelt Cement Company	512	289-6000
TX	Corpus Christi	Valero Refining Company	713	479-6024
TX	Deer Park	Incontinental Terminals Co	713	476-6332 or 476-6251
TX	Deer Park	Shell Oil Company		

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
TX	Deer Park	Paktank Corporation—Deer Park	713	479-6051
TX	Engleside	Occidental Chemical Corporation	512	776-6015
TX	Freeport	Western Seafood Co	409	233-2624
TX	Freeport	Singleton Seafood Co	409	239-1103
TX	Freeport	Singleton Seafood Co	409	239-1103
TX	Freeport	S & H Shrimp Co	409	233-5285
TX	Freeport	Dow Chemical Company, Texas Ops	409	238-4111
TX	Fulton	Casterline Fish, Co. Inc	512	729-6124
TX	Galena Park	Amerada Hess Corp	713	453-6301
TX	Galena Park	Warrengas Terminal	713	453-7173
TX	Galena Park	Gatx Terminals	713	455-1231
TX	Galena Park	Paktank Corp—Galena Park	713	675-9171
TX	Galveston	Liberty Marine Products	409	762-8661
TX	Galveston	Galveston Wharves Piers 10/12, 14, 15, 16/18, 19/21	409	766-6172
TX	Galveston	Imperial Sugar Company Pier 35	409	763-6513
TX	Galveston	Elders Grain, Inc Elevator Pier 28/29	409	763-1281
TX	Galveston	Union Equity Elevator Pier 30/32	409	763-6443
TX	Gregory	Reynolds Metals Company, Sherwin Plt	512	777-2389
TX	Houston	Houston Fuel Oil Terminal Co	713	452-3390
TX	Houston	Turning Basin Terminal (Inclu. Pha Wharves 1-48 &	713	670-2674
TX	Houston	Bulk Materials Handling Plant	713	670-2563
TX	Houston	Bulk Materials Handling Plant (Inclu. Sea-Land)	713	470-1800
TX	Houston	Manchester Terminal	713	926-8631
TX	Houston	Pacific Molasses Company	713	923-2736
TX	Houston	Crown Central Petroleum Corporation	713	920-3920
TX	Houston	Distribution & Auto Service	713	675-3147
TX	Houston	Oiltanking Houston, Inc	713	457-7900
TX	Houston	Cargill Molasses	713	928-3348
TX	Houston	Merichem Company, Inc	713	455-1311
TX	Houston	Interstate Grain Corporation	512	289-5651
TX	Ingleside	Sun Marine Terminals	512	776-7535
TX	Ingleside	Naval Station Ingleside	512	776-4200
TX	Nederland	Sun Marine Terminal	409	727-2301
TX	Nederland	Unocal Beaumont Refinery	409	724-3204
TX	Orange	Port of Orange—This Record Now No. 649-650	409	883-4363
TX	Orange	Alabama St Terminal	409	883-5459
TX	Orange	Pier Road Terminal	409	883-5459
TX	Palacios	W&W Dock	512	972-5012
TX	Palacios	M&M Seafood	512	972-3477
TX	Palacios	Goldcoast Seafood	512	972-3713
TX	Pasadena	Georgia Gulf Corporation	713	920-4301
TX	Pasadena	Kerley Ag. Products	713	477-4400
TX	Pasadena	Gatx Terminals Corporation	713	475-9235
TX	Point Comfort	Port of Lavaca	512	987-2813
TX	Port Arthur	Chevron USA Inc. Refinery Dock	409	985-1306
TX	Port Arthur	Sabine Towing & Transportation Co., Inc	409	962-0201
TX	Port Arthur	Gulf Copper Docks	409	983-1691
TX	Port Arthur	Fina Oil and Chemical Company	409	962-4421
TX	Port Arthur	Port of Port Arthur	409	983-2029
TX	Port Bolivar	Port Bolivar Fisheries, Inc	409	684-1241
TX	Port Bolivar	Milts Seafood Plant, Inc	409	684-8581
TX	Port Bolivar	Blume's Seafood, Inc	409	684-1060
TX	Port Isabel	Zimmerman Brothers, Inc	512	943-5481
TX	Port Isabel	Texas Gulf Trawling Co., Inc	512	943-2672
TX	Port Isabel	Marine Service	512	943-2648
TX	Port Isabel	Port Isabel/San Benito Navigation District	512	943-7826
TX	Port O'Connor	Clarks' Seafood	512	983-2233
TX	Rockport	Jackson Seafood Co., Inc	512	729-2201
TX	Sabine Pass	Marine Gold Seafood, Inc	409	971-2736
TX	Sabine Pass	Paul Piazza & Son of Texas	409	971-2797
TX	Seabrook	Petrounited Terminals, Inc	713	474-4433
TX	Seabrook	Baytank (Houston), Inc	713	474-4181
VA	Alexandria	Robinson Terminal Warehouse Corp.	703	836-8300
VA	Cape Charles	Myers Clam Dock	804	331-1644
VA	Chesapeake	Mobil Oil Norfolk Terminal	804	545-4681
VA	Chesapeake	Star Enterprise	804	543-4542
VA	Chesapeake	BP North America Petroleum	804	543-4444
VA	Chesapeake	Bernuth Lembcke Co., Inc	804	543-6220
VA	Chesapeake	Cargill, Inc	804	545-8461
VA	Chesapeake	Huntsman Chemical Corp	804	494-2602
VA	Chesapeake	Amoco Oil	804	4545-4641
VA	Chesapeake	Atlantic Energy	804	485-1018
VA	Chesapeake	Texaco	804	542-6811
VA	Chesapeake	IMTT—Chesapeake	804	485-3000
VA	Chesapeake	Elizabeth River Terminals	804	543-0335
VA	Chesapeake	Jacobson Metal Co	804	543-2066
VA	Chesapeake	Louis Dreyfus Entergy	804	516-3509
VA	Chesapeake	Tri-Port Terminals	804	545-4548
VA	Chesapeake	Unocal Norfolk Terminal	804	545-8455

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
VA	Grafton	Amoco Oil Yorktown Refinery	804	898-9740
VA	Hampton	Wanchese Fish Co	804	722-1443
VA	Hampton	L.D. Amory & Co., Inc	804	722-1915
VA	Hayes	York River Seafood Co., Inc	804	642-2151
VA	Hopewell	Allied Signal-Hopewell Plant	804	541-5000
VA	Lancaster	Barrack & Wilmer Seafood	804	462-5246
VA	Newport News	Koch Fuels, Inc	804	244-6545
VA	Newport News	Newport News Shipbuilding	804	380-2581
VA	Newport News	Dominion Terminal Associates	804	245-2275
VA	Norfolk	Norfolk Shipbuilding & Drydacking Corp	804	494-4551
VA	Norfolk	Marine Hydraulics International, Inc	804	545-6400
VA	Norfolk	Distribution & Auto Service	804	440-2828
VA	Norfolk	Colonna's Shipyard	804	545-2414
VA	Norfolk	Lamberts Point Docks	804	446-1222
VA	Norfolk	Virginia International Terminals	804	440-7162
VA	Norfolk	Norfolk Oil Transit	804	622-2687
VA	Norfolk	Allied Terminals	804	545-7301
VA	Norfolk	Virginia Drydock Corp	804	494-7387
VA	Portsmouth	Sea-Land Service, Inc	804	393-4071
VA	Reedville	Zapata Haynie Corporation	804	453-4211
VA	Richmond	Woodfin Oil Company	804	355-8099
VA	Richmond	Port of Richmond, Virginia	804	275-9248
VA	Richmond	Koch Fuels Inc	804	230-9366
VA	Seaford	Seaford Scallop Co	804	8988-8512
VA	Virginia Beach	Standard Transpipe (Virginia) Inc	804	427-1066
VI	St Croix	Hess Oil Virgin Islands Terminal	809	778-4000
VI	St Croix	F Sted Pier	809	772-3131
VI	St Croix	Gallows Bay Dock	809	773-3832
VI	St Croix	Kings Wharf	809	773-3832
VI	St Croix	St Croix Container Port	809	778-3131
VI	St Croix	Krause Lagoon Dock	809	778-3131
VI	St Croix	Hess Oil	809	778-4100
VI	St Croix	Vialco	809	778-2323
VI	St. Thomas	V.I. Ports Authority	809	774-5629
VI	St. Thomas	Wico Pier	809	774-1780
VT	Burlington	Astroline Corporation	802	862-3338
WA	Aberdeen	Port of Grays Harbor	206	533-9519
WA	Aberdeen	Westport Marina—Port of Grays Harbor	206	533-9519
WA	Anacortes	Shell Oil Company	206	293-9122
WA	Anacortes	Port of Anacortes—Pier I	206	293-3134
WA	Anacortes	Port of Anacortes—Pier II	206	293-3134
WA	Bellingham	Maritime Contractors, Inc	206	647-0080
WA	Bellingham	Bornstein Seafoods, Inc	206	734-7990
WA	Bellingham	Whatcom International Shipping Terminal	206	676-2500
WA	Blaine	Dakota Fisheries, Inc	206	332-4131
WA	Chinook	Chinook Packing Co	206	777-8272
WA	Edmonds	Unocal Corporation	206	774-2240
WA	Ferndale	Intalco Aluminum Corporation	206	384-7251
WA	Ferndale	Arco Products Company Cherry Point Refinery	206	371-1200
WA	Ferndale	BP Oil Company	206	384-1011
WA	Gig Harbor	Puget Sound Herring Sales, Inc	206	858-2201
WA	Ilwaco	Point Adams Packing Co	206	642-8300
WA	Ilwaco	Ilwaco Fish Co	206	642-3773
WA	Kalama	Kalama Chemical, Inc	206	673-2550
WA	Kalama	Harvest States Cooperatives	206	673-2011
WA	Kalama	Peavey Company	206	573-9171
WA	Longview	Port of Longview	206	425-3305
WA	Longview	Weyerhaeuser Export Log Dock	206	425-2150
WA	Nahcotta	Nahcotta Mooring Basin	206	665-4547
WA	Olympia	Port of Olympia	206	586-6160
WA	Pasco	Chevron USA, Pasco Terminal	509	547-1752
WA	Port Angeles	Port of Port Angeles Marine Terminal	206	457-1909
WA	Port Angeles	Port of Port Angeles	206	457-1909
WA	Port Angeles	BP North America Petroleum, Inc	206	452-1433 or 452-1501
WA	Port Townsend	Port Townsend Paper Mill Dock	206	385-3170
WA	Seattle	Gatx Tank Storage Terminals Corp	206	622-0920
WA	Seattle	Alaska Outport Transportation Assn	206	632-7744 or 1-800-682-26
WA	Seattle	Wards Cove Packing 88	206	323-3200
WA	Seattle	303 Wards Cove Packing	206	323-3200
WA	Seattle	Chevron U.S.A. Inc	206	542-9722
WA	Seattle	Terminal 18	206	382-3810
WA	Seattle	Terminal 37	206	382-8488
WA	Seattle	Terminal 42	206	382-4556
WA	Seattle	Western Pioneer, Inc	206	789-1930
WA	Seattle	Shilshole Bay Marina	206	728-3385
WA	Seattle	Fisherman's Terminal	206	728-3395
WA	Seattle	Terminal 28	206	728-3380

TABLE III.—TERMINALS/PORTS ISSUED ANNEX V CERTIFICATES OF ADEQUACY—Continued

State	Number city	Name of terminal	Area code	Phone number
WA	Seattle	Pier 66	206	728-3380
WA	Seattle	Terminal 91	206	728-3380
WA	Seattle	Atlantic Richfield Co	206	623-4637
WA	Seattle	Covich-Williams Co., Inc	206	784-0171
WA	Seattle	Matson Terminals, Inc	206	461-9205
WA	Seattle	Ash Grove Cement West Terminal	206	764-3075
WA	Seattle	Terminal 30	206	340-0100
WA	Seattle	Lake Union Drydock C	206	323-6400
WA	Seattle	Distribution & Auto Service	206	283-6300
WA	Seattle	Shell Oil Company	206	682-4706
WA	Seattle	Time Oil Company	206	285-2400
WA	Seattle	Pacific Molasses Co	206	622-4064
WA	Tacoma	Unocal Corporation	206	272-3215
WA	Tacoma	Pennwalt Corporation	206	627-9101
WA	Tacoma	Pennwalt Corporation	206	627-9101
WA	Tacoma	Superior Oil Company	206	383-3204
WA	Tacoma	Weyerhaeuser Company—Tacoma Export Facility	206	924-7921
WA	Tacoma	Domtar Gypsum	206	627-2100
WA	Tacoma	Terminal Seven	206	383-5841
WA	Tacoma	Pierce County Terminal	206	383-5841
WA	Tacoma	Terminal Four	206	383-5841
WA	Tacoma	Blair Waterway Terminal	206	383-5841
WA	Tacoma	Totem Ocean Trailer Express	206	756-9208
WA	Tacoma	Tacoma Terminals, Inc	206	593-1402
WA	Tacoma	Husky Terminal	206	627-6963
WA	Tacoma	Weyerhaeuser Company	206	924-7199
WA	Tacoma	Continental Grain Company	206	572-3511
WA	Tacoma	Terminal Four-B	206	563-8750
WA	Tacoma	Pier 25 Industrial Yard	206	383-5841
WA	Tacoma	Pacific Northwest Terminals	206	272-1187
WA	Vancouver	Cenex Petroleum Terminal	206	696-0001
WA	Vancouver	Port of Vancouver, USA	206	693-3611
WA	Vancouver	Gatx Corporation	206	694-8591
WA	Vancouver	Tesoro Refining & Marketing & Supply Co	206	696-2390
WA	Vancouver	Marine Terminals Corporation	206	694-9544
WA	Vancouver	United Grain Corporation	206	693-1521
WA	Westport	Point Adams Packing Company	206	268-9191
WA	Westport	Washington Crab Producers, Inc	206	268-9161
WI	Milwaukee	Bulk Terminal No. 1	414	278-3511
WI	Milwaukee	South Pier No. 1—Meehaw Seaway	414	481-7000
WI	Milwaukee	South Pier No. 1 P.T.W. Inc	414	744-2320
WI	Milwaukee	Gen. Cargo Terminal 2—Meehan Seaway	414	481-7000
WI	Milwaukee	General Cargo Terminal No. 3 & Reefer Bldg	414	481-7000
WI	Milwaukee	General Cargo Terminal No. 4 & Annex Bldg	414	481-7000
WI	Milwaukee	Liquid Cargo Pier (S. Side)	219	937-4300
WI	Milwaukee	Liquid Cargo Pier (North & South Sides)	414	744-4976
WI	Milwaukee	City Heavy Lift Dock—Meehan Seaway Service	414	481-7000
WI	Milwaukee	City Bulk Cargo Dock	414	278-3511
WI	Milwaukee	Continental Grain Co.—Grain Elevator	414	482-1900
WI	Milwaukee	Grand Trunk Site	414	278-3511
WI	Milwaukee	Municipal Mooring Basin (Lay-Up Berths)	414	278-3511
WI	Milwaukee	Miller Compressing Co.—Mooring Basin Dock	414	671-5980
WI	Milwaukee	Milwaukee Bulk Terminal, Inc.—greenfield Ave. Dock	414	769-1901
WI	Milwaukee	Construction Resources Mgmt. Inc	414	548-3246
WI	Milwaukee	Miller Compressing—Water St. Dock	414	671-5980
WI	Milwaukee	Hansen Water St. Terminal	414	271-2913
WI	Milwaukee	Hansen Erie St. Terminal	414	476-9221
WI	Milwaukee	Erie Street Dock	414	476-9221
WI	Milwaukee	Milwaukee Solvents & Chemical Co	414	252-3550
WI	Superior	Amoco Oil Co	715	392-5294
WI	Superior	Burlington Northern Dock ;5	715	398-6677
WI	Superior	Burlington Northern Dock ;1	715	398-6677
WI	Superior	C. Reiss Coal Co	218	628-2371
WI	Superior	Clm Corp.	218	722-3961
WI	Superior	Fraser Shipyards, Inc	715	394-7787
WI	Superior	Lafarge Corporation, Great Lakes Region	715	392-6284
WI	Superior	Meehan Seaway Service, LTD.	715	394-4468
WI	Superior	Incan Superior Terminal	218	722-5853 or (715)
WI	Superior	Marine Fueling c/o Koch Fuels, Inc	715	392-6175
WI	Superior	Peavey Grain Co.—Connors Point	715	392-4853
WI	Superior	Peavey Grain Co.—Globe Elevator	715	392-4853
WI	Superior	Superior Midwest Energy Terminal	715	392-9807

[FR Doc. 92-22774 Filed 9-22-92; 8:45 am]

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Federal Register

Wednesday
September 23. 1992

Part III

Department of Education

34 CFR Parts 231 and 238

Drug-Free Schools and Communities General Provisions; Drug-Free Schools and Communities Counselor Training Grants Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 231 and 238

RIN 1810-AA66

Drug-Free Schools and Communities General Provisions; Drug-Free Schools and Communities Counselor Training Grants Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Counselor Training Grants Program, which is authorized by the Drug-Free Schools and Communities Act of 1986 (Act) as amended by the Crime Control Act of 1990 (1990 Amendments) (Pub. L. 101-647).

DATES: Comments must be received on or before November 23, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Bill Mattocks, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue S.W., room 2123, Washington, D.C. 20202-6439.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Bill Mattocks, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202-6439. Telephone (202) 401-1258. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, D.C. 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Background

The 1990 Amendments to Part C of the Drug-Free Schools and Communities Act—Training of Teachers, Counselors, and School Personnel—established the Counselor Training Grants Program (Section 5129 of the Act) and amended the School Personnel Training Grants Program (Section 5128) that has been authorized since 1989. Regulations for the School Personnel Training Grants Program (published on December 19, 1990) are in 34 CFR Part 233. Since 1990, the Department has administered the Counselor Training Grants program under the Education Department General Administrative Regulations and the authorizing statute. The Secretary proposes regulations for the Counselor Training Grants program to adopt the selection criteria in 34 CFR Part 231 for the award of grants and to provide more specific guidance in the administration of the program.

Grants under the Counselor Training Grants Program are awarded to provide additional financial assistance to State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), and consortia of these institutions to establish, expand, and enhance programs and activities for the training of counselors, social workers, psychologists, or nurses who are providing, or will provide, drug abuse prevention, counseling, or referral services in elementary and secondary schools. Grants also may be awarded to private nonprofit agencies that have an agreement with an LEA to provide training in drug abuse counseling for individuals who will provide the counseling in the schools of that LEA.

The Counselor Training Grants Program supports AMERICA 2000 by providing resources directly applicable to the accomplishment of National Education Goal six: safe and drug-free schools.

Summary of Proposed Regulations

The proposed regulations would describe the personnel eligible to receive training under the program in terms of professional training and certification, as well as employment status. In addition to counselors, social workers, nurses, and psychologists, who are currently serving students in elementary and secondary schools, eligible personnel would also include those with evidence that they will be employed to serve students in elementary and secondary schools. The key factor in designating personnel eligible to receive training is the assurance that the results of the training will be of immediate benefit to students in elementary and secondary schools.

The proposed regulations would also identify the organizations eligible as grantees; clarify application requirements and allowable activities; authorize funding priorities; and establish the selection criteria to be used in the review of grant applications by adopting the criteria currently used in 34 CFR 231.22.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The proposed regulations do not impose burdensome requirements on applicants or grantees. They establish requirements for participation in the program and would not have a significant economic impact on entities participating in the program.

Paperwork Reduction Act of 1980

Section 238.4 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

SEAs, LEAs, IHEs, and private nonprofit agencies having an agreement with an LEA to provide training in drug abuse counseling are eligible for grants under these regulations. The Department needs and uses the information to make grants. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 30 hours per response for 300 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, D.C. 20503. Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be

available for public inspection during and after the comment period in room 2123, FOB-6, 400 Maryland Avenue, SW, Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirements of reducing the regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 231 and 238

Drug abuse, Drug-Free Schools and Communities, Education, Elementary and secondary education, Grant programs-Education, Local educational agencies, Reporting and recordkeeping, State educational agencies.

Dated: September 16, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance number has not been assigned.)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by amending part 231 and adding a new part 238 as follows:

PART 231—DRUG-FREE SCHOOLS AND COMMUNITIES—GENERAL PROVISIONS

1. The authority citation for part 231 is revised to read as follows:

(Authority: 20 U.S.C. 3216, 3201, 3211, 3212, 3202, and 3203, unless otherwise noted.)

2. Section 231.1 is revised to read as follows:

§ 231.1 What are the Drug-Free Schools and Communities Programs?

The programs described in 34 CFR parts 232, 233, 234, 235, and 238 provide assistance for drug and alcohol abuse education and prevention projects.

(Authority: 20 U.S.C. 3216, 3201, 3202, 3203, 3211, 3212)

3. Section 231.3 is amended by revising paragraph (d) to read as follows:

§ 231.3 What regulations apply to these programs?

* * * * *

(d) The regulations in 34 CFR parts 231, 232, 233, 234, 235, and 238.

4. In § 231.4, paragraphs (a), (b), and (c) are amended by removing "235" and adding, in its place, "238".

5. A new part 238 is added to read as follows:

PART 238—DRUG-FREE SCHOOLS AND COMMUNITIES COUNSELOR TRAINING GRANTS PROGRAM

Sec.

238.1 What is the Drug-Free Schools and Communities Counselor Training Grants Program?
238.2 What parties are eligible for a grant under this program?
238.3 What parties may grantees train under this program?
238.4 What must an application include?
238.5 What types of projects may the Secretary assist under this program?
238.6 How does the Secretary establish priorities for this program?
238.7 What regulations apply to this program?

(Authority: 20 U.S.C. 3202, 3203, unless otherwise noted.

§ 238.1 What is the Drug-Free Schools and Communities Counselor Training Grants Program?

The Drug-Free Schools and Communities Counselor Training Grants Program provides assistance to establish, expand, or enhance programs and activities for the training of counselors, social workers, psychologists, or nurses, who are providing, or will provide, drug abuse prevention, counseling, or referral services in elementary and secondary schools.

(Authority: 20 U.S.C. 3202)

§ 238.2 What parties are eligible for a grant under this program?

The Secretary may award grants under this program to SEAs, LEAs, IHEs, consortia of these organizations, and any private nonprofit agency that has entered into a written agreement with an LEA to provide training in drug abuse counseling to individuals who will provide counseling in the schools of that LEA.

(Authority: 20 U.S.C. 3202, 3203)

§ 238.3 What parties may grantees train under this program?

Under this program, grantees may train counselors, social workers, psychologists, or nurses who—

(a) Possess a currently valid State license, credential, or certificate entitling them to practice as a counselor, social worker, psychologist, or nurse; and

(b) Are currently employed by, or under contract with, or can provide evidence that they will be employed by, one of the eligible parties listed in § 238.2 to provide drug abuse prevention, counseling, or referral services in an elementary or secondary school.

(Authority: 20 U.S.C. 3202)

§ 238.4 What must an application include?

Each application must—

(a) Describe the activities and programs to be carried out with the funds made available;

(b) Contain an estimate of the cost for the establishment and operation of the activities and programs;

(c) Provide assurances that the Federal funds made available will be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of those Federal funds, be made available by the applicant for the purpose described in this part, and in no case to supplant these funds;

(d) Provide assurances of compliance with the provisions of this part, including—

(1) Assurances that all persons trained under this grant possess a currently valid State license, credential, or certificate entitling them to practice as a counselor, social worker, psychologist, or nurse; and

(2) Assurances that all persons trained under the grant are currently employed, or under contract, or can provide evidence that they will be employed to provide drug abuse prevention, counseling, or referral services in an elementary or secondary school;

(e) Discuss how the training to be provided under the grant will assist the applicant to—

(1) Increase the number of school personnel who are trained to provide drug abuse counseling services; and

(2) Improve the quality of drug abuse counseling services offered by the applicant or the LEA concerned; and

(f) Provide, in the case of an application from a private nonprofit agency, a copy of the written agreement between the agency and an LEA, under which the agency will provide training in drug abuse counseling to individuals who will provide counseling in the schools of the LEA.

(Authority: 20 U.S.C. 3202, 3203)

§ 238.5 What types of projects may the Secretary assist under this program?

The Secretary may fund projects that—

(a) Establish, expand, or enhance programs and activities for the training of school counselors, social workers, psychologists, or nurses in the recognition of signs and symptoms of the use of alcohol, steroids, and other illegal drugs, and in the pharmacology of drugs;

(b) Train school counselors, social workers, psychologists, or nurses, who work with high-risk youth, in the area of drug and alcohol abuse education and prevention;

(c) Train school counselors, social workers, psychologists, or nurses in the implementation of drug prevention and education programs, including programs that involve family members and focus on children of alcoholics, children from families that are dysfunctional because of problems related to alcohol and drugs, and children with social problems that stem from addiction; or

(d) Train school counselors, social workers, psychologists, or nurses on how to prevent and eliminate the use of alcohol and other drugs among our Nation's youth by expanding and improving drug abuse education and prevention through intervention, counseling, and referral services, and on methods of providing positive alternative activities to alcohol and other drug use.

(Authority: 20 U.S.C. 3202, 3203)

§ 238.6 How does the Secretary establish priorities for this program?

(a) The Secretary selects priorities by taking into consideration unmet national needs for drug and alcohol abuse education and prevention.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in § 238.5. The Secretary may limit any priority to a particular educational level, type of substance abuse, or type of personnel to be trained, including counselors, social workers, psychologists, or nurses.

(Authority: 20 U.S.C. 3202, 3203)

§ 238.7 What regulations apply to this program?

The following regulations apply to the Drug-Free Schools and Communities Counselor Training Grants Program:

(a) The regulations in 34 CFR part 231.

(b) The regulations in this part 238.

(Authority: 20 U.S.C. 3202, 3203)

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Federal Register

Wednesday
September 23, 1992

Part IV

Environmental Protection Agency

40 CFR Part 721
Significant New Uses of Certain Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50601; FRL-4001-2]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 63 chemical substances which were the subject of premanufacture notices (PMNs) and were subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process any of these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by the SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating these SNURs using direct final procedures.

EFFECTIVE DATES: This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on October 7, 1992. The effective date of this rule is November 23, 1992.

If EPA receives notice before October 23, 1992 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPPTS-50601 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate (with additional sanitized copies if confidential business information is involved) to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics Environmental Protection Agency, rm. E-201, 401 M St., SW., Washington, DC 20460. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit X. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics Environmental Protection Agency, rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: These SNURs will require persons to notify EPA at least 90 days before commencing manufacturing or processing of a substance for any activity designated by these SNURs as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.25.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such substances contains the same production limit as in the section 5(e) order, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice at least 90 days in advance. Data

on potential exposures or releases of the substances, testing other than that specified in the section 5(e) order for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

Some of the earlier section 5(e) orders contain provisions that required wording changes to be converted into a SNUR to be issued under the expedited process. In some instances, the SNUR text is merely more detailed (e.g., the provision for a written hazard communication program in § 721.72(a) is more detailed than the hazard communication provisions in some earlier orders) or the SNUR text is worded slightly differently (e.g., the provision for dermal protection in § 721.63(a)(1) and (a)(3) is worded differently from dermal protection provisions in some earlier orders). In such cases, EPA considers the SNUR and section 5(e) provisions to be generally equivalent. Moreover, the companies which entered into the more limited hazard communication provisions of the earlier section 5(e) orders, as well as those companies covered by the SNUR, are generally subject to the requirements of the Occupational Safety and Health Administration's hazard communication standard at 29 CFR 1910.2100. Therefore, EPA believes it equitable and minimally burdensome to include in the SNUR those requirements of the hazard communication standard that are generally considered to be acceptable in informing workers of potential chemical hazards.

In some instances, however, a particular requirement may be so differently worded from the corresponding SNUR provision that the basis of the SNUR provision is not evident. Where this occurs, the preamble below explains why the SNUR provision was chosen.

Some of the SNURs that contain worker protection or hazard communication provisions—the substances designated P–85–543, P–85–648, P–86–1648, P–87–1273, P–87–1471, and P–88–1682, which are the subject of earlier section 5(e) orders—provide an exemption from such provisions if the substances are present at low levels and are not expected to reconcentrate in mixtures. The exemptions are provided in § 732.63(b) and § 721.72(e) and their application will make the requirements for the substances consistent with SNURs based on more recent section 5(e) consent orders. If a substance was determined to pose a cancer concern by structural-activity analysis or actual data (as described in this unit), it is exempt only if the level is 0.1 percent or less. All other substances must not exceed a 1.0 percent level in a mixture to qualify for the exemption. EPA's decision to allow exemptions at these levels was based on the Occupational Safety and Health Administration's hazard communication standard exemption of MSDS requirements in § 1910.1200(g)(2)(i)(C)(1) and (2) when substances are present at such low levels in mixtures.

The SNURs for the PMN substances P–88–1783, P–88–2210, P–88–2231, P–88–2237, P–88–2530, P–90–1839, P–91–75, P–91–809, P–91–1086, P–91–1231, P–91–1232, P–91–1233, P–91–1234, P–91–1235, P–91–1250, P–91–1269, P–91–1392, P–91–1418, and P–92–63 regulate chemical substances subject to section 5(e) orders where the finding under TSCA is based solely on substantial production volume and significant or substantial human exposure or release to the environment in substantial quantities under section 5(e)(1)(A)(ii)(II). In each of these cases there was limited or no toxicity data available for the PMN substance. In these cases EPA has regulated these new chemical substances under section 5(e) by issuing an order that prohibits the submitter from exceeding a specified production limit without performing certain toxicity or environmental fate tests and establishes a risk notification procedure. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects.

PMN Number P–85–543

Chemical name: 2-Butenedioic acid (*Z*), mono(2-((1-oxo-propenyloxy)ethyl) ester.
CAS number: Not available
Effective date of section 5(e) consent order: May 28, 1987.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2–year two-species rodent bioassay (40 CFR 798.3300) would help characterize potential cancer effects.
CFR citation: 40 CFR 721.1950.

PMN Number P–85–648

Chemical name: Isopropylidene, bis(1,1-dimethylpropyl) derivative.
CAS number: Not available.
Effective date of section 5(e) consent order: December 24, 1985.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer laboratory animals.
Recommended testing: EPA has determined that a 2–year two-species bioassay in rodents (CFR 798.3300) would help characterize potential cancer effects.
CFR citation: 40 CFR 721.5475.

PMN Number P–86–1648

Chemical name: 1-Oxa-4-azaspiro[4.5]decane, 4-dichloroacetyl-.
CAS number: 71526–07–3.
Effective date of section 5(e) consent order: February 24, 1988.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health, will be produced in substantial quantities and that there may be significant human exposure to the substance.
Toxicity concern: Based on test data submitted with the PMN, EPA has determined that the substance may be developmentally toxic to humans. EPA has also determined that similar substances have been shown to cause toxicity to aquatic organisms.
Recommended testing: EPA has determined that a developmental toxicity study (CFR 798.4900) and a workplace airborne concentration monitoring study, as described in the PMN, would help characterize potential developmental effects. The results of an algal study (40 CFR 797.1050), a daphnid acute toxicity study (40 CFR 797.1300), and a fish acute toxicity study (40 CFR 797.1400) would help characterize possible aquatic toxicity effects of the substance.
CFR citation: 40 CFR 721.5475.

PMN Number P–87–252

Chemical name: (generic) Alkanaminium, polyalkyl-[(2-methyl-1-oxo-2-propenyl)oxy]salt, polymer with acrylamide and substituted alkyl methacrylate.
CAS number: Not available.
Effective date of section 5(e) consent order: August 14, 1987.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment. Toxicity concern: Test data on chemicals similar in structure indicate that the PMN substance may cause toxicity to aquatic organisms at concentrations as low as 40 ppb.
Recommended testing: EPA has determined that the results of an algal study (40 CFR 797.1050), a daphnid acute toxicity study (40 CFR 797.1300), and a fish acute toxicity study (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production limit without performing these studies.
CFR citation: 40 CFR 721.6620.

PMN Number P–87–1273

Chemical name: 1-Propanol, 3,3'-oxybis[2,2-bis(bromomethyl)]-.
CAS number: Not available.
Effective date of section 5(e) consent order: September 13, 1988.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause acute and chronic toxicity, developmental and reproductive effects, and mutagenicity and carcinogenicity.
Recommended testing: EPA has determined that a 90–day subchronic study in rats with emphasis on the liver, kidneys, and eyes (40 CFR 798.2650) would help characterize acute and chronic toxicity and a two-generation reproductive study in rodents (40 CFR 798.4700) would help characterize developmental and reproductive effects. The consent order contains two production limits. The PMN submitter has agreed not to exceed the first production limit without performing the 90–day subchronic study. The submitter has also agreed not to exceed the second higher production limit without performing the reproductive study. In addition, EPA is interested in receiving a 2–year two-species bioassay in rodents (CFR 798.3300) help characterize potential mutagenicity and carcinogenicity effects.
CFR citation: 40 CFR 721.8200.

PMN Number P–87–1471

Chemical name: Benzene, (2-chloroethoxy)-.
CAS number: 622–86–6.
Effective date of section 5(e) consent order: September 13, 1988.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Similar substances have been shown to cause toxicity in aquatic organisms and cancer in test animals.
Recommended testing: EPA has determined that a 2–year two-species bioassay (CFR 798.3300) would help characterize potential cancer effects and that aquatic toxicity testing in algae (40 CFR 797.1050), daphnia (40 CFR 797.1300), and fish (40 CFR 797.1400) would help characterize potential effects on aquatic organisms.
CFR citation: 40 CFR 721.1210.

PMN Number P–87–1555

Chemical name: (generic) Perfluoroalkyl aromatic carbamate modified alkyl methacrylate copolymer.
CAS number: Not available.
Effective date of section 5(e) consent order: September 20, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Analogous substances and the PMN substance have been shown to cause lung toxicity in test animals.
Recommended testing: A 90–day subchronic multiple dose inhalation study in rats on the PMN substance in 1,1,1-trichloroethane (TCE) or isopropanol (IPA) to help further characterize chronic lung effects. The PMN submitter has agreed not to exceed the production volume limit without performing this test.
CFR citation: 40 CFR 721.7200.

PMN Numbers P–87–1881 and P–87–1882

Chemical name: cis- and *trans-*1,4-Cyclohexanediamine.
CAS number: (*cis-*) 15827–56–2, (*trans-*) 2615–25–0.
Effective date of section 5(e) consent order: May 23, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to the environment.
Toxicity concern: Similar substances have been shown to cause toxicity in aquatic organisms.
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), an acute fish assay (40 CFR 797.1400), and an acute fish assay modified with humic acid (40 CFR 795.115) will characterize environmental effects.
CFR citation: 40 CFR 721.2250.

PMN Number P–88–1682

Chemical name: (generic) Carbopolycyclicol azoalkylaminoalkylcarbomonocyclic ester, halogen acid salt.
CAS number: Not available.
Effective date of section 5(e) consent order: September 23, 1989.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Similar substances have been shown to cause cancer in test animals and toxicity in aquatic organisms.
Recommended testing: EPA has determined that a 2–year two-species bioassay in rodents (CFR 798.3300) would help characterize potential cancer effects. The results of an algal study (40 CFR 797.1050), a daphnid acute toxicity study (40 CFR 797.1300), and a fish acute toxicity study (40 CFR 797.1400) would help characterize possible effects of the substance.
CFR citation: 40 CFR 721.2140.

PMN Numbers P–88–1783, P–88–2231, P–88–2237, and P–88–2530

Chemical name: (generic) Alkylbenzenesulfonic acids and sodium salts.
CAS number: Not available.
Effective date of section 5(e) consent orders: P–88–1783 and P–88–2530—June 26, 1991, P–88–2231 and P–88–2237—July 2, 1991.
Basis for section 5(e) consent orders: The orders were issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that these substances are expected to be produced in substantial quantities and there may be significant or substantial human exposure. For P–88–1783 the substance may be anticipated to enter the environment in substantial quantities.

Recommended testing: EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28–day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible health effects of each substance. EPA has also determined that the results of an acute algal study (40 CFR 797.1050), an acute daphnid study (40 CFR 797.1300), and an acute fish study (40 CFR 797.1400) would help characterize possible environmental effects of P–88–1783. The consent order for P–88–1783 contains two production limits. The PMN submitter has agreed not to exceed the first production limit without performing the ecotoxicity studies. The PMN submitter has also agreed not to exceed the second higher production limit without performing the health studies. The PMN submitter of P–88–2231 and P–88–2237 has agreed not to exceed the production limit without performing the health studies on P–88–2237. The PMN submitter of P–88–2530 has agreed not to exceed the production limit without performing the health studies.
CFR citation: 40 CFR 721.1650.

PMN Number P–88–2210

Chemical name: (generic) α-Olefin sulfonate, sodium salts.
CAS number: Not available.
Effective date of section 5(e) consent order: June 26, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28–day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production limit without performing these tests.
CFR citation: 40 CFR 721.5450.

PMN Number P–89–589

Chemical name: Piperazinone, 1,1′,1″-[1,3,5-triazine-2,4,6-triyltris[(cyclohexylimino)-2,1-ethanediyl]]tris-[3,3,4,5,5-pentamethyl]-.
CAS number: 130277–45–1.
Effective date of section 5(e) consent order: September 26, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Immunotoxicity; toxicity to the liver, gastrointestinal tract, and blood; and reproductive system toxicity, based upon test data on the PMN substance, and on hindered amine compounds structurally analogous to the PMN substance.
Recommended testing: Combined one-generation reproduction study and in utero derived 13–week toxicity study in rats with 4–week recovery period to help characterize toxicity to the immune system, liver, gastrointestinal tract, blood, and reproductive system. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.6160.

PMN Number P–89–764

Chemical name: Neodecaneperoxoic acid, 1,1,3,3-tetramethylbutyl ester.
CAS number: 51240–95–0.
Effective date of section 5(e) consent order: June 19, 1991.
Basis for section 5(e) order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to be carcinogenic in test animals.
Recommended testing: A 2–year, two-species, rodent bioassay for carcinogenicity (40 CFR 798.3300).
CFR citation: 40 CFR 721.5300.

PMN Number P–90–360

Chemical name: (generic) Formaldehyde, condensated polyoxyethylene fatty acid, ester with styrenated phenol, ethylene oxide adduct.
CAS number: Not available.
Effective date of section 5(e) consent order: March 27, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i), (ii)(I) and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment and is expected to be produced in substantial quantities and there may be substantial human exposures.
Toxicity concern: Test data on chemicals similar in structure to the PMN substance indicate that the PMN substance have been shown to cause toxicity in aquatic organisms. Specifically, based on submitted test data on P–90–364, EPA predicts toxicity to aquatic organisms in surface waters to occur at a concentration of 400 ppb.
Recommended testing: EPA has determined that a water solubility study (40 CFR 796.1860), an aerobic aquatic biodegradation study (40 CFR 796.3100), and a modified semicontinuous activated sludge test for water insoluble chemicals (40 CFR 796.3341) will help characterize the environmental fate of the PMN substance.
CFR citation: 40 CFR 721.3600.

PMN Number P–90–364

Chemical name: (generic) Fatty acid, ester with styrenated phenol, ethylene oxide adduct.
CAS number: Not available.
Effective date of section 5(e) consent order: March 27, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i), (ii)(I) and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment and is expected to be produced in substantial quantities and there may be substantial human exposures.
Toxicity concern: Test data on the PMN substance indicate that the substance may cause toxicity to aquatic organisms in surface waters at a concentration 400 ppb.
Recommended testing: EPA has determined that a water solubility study (40 CFR 796.1860), an aerobic aquatic biodegradation study (40 CFR 796.3100), and a modified semicontinuous activated sludge test for water insoluble chemicals (40 CFR 796.3341) will help characterize the environmental fate of the PMN substance.
CFR citation: 40 CFR 721.3700.

PMN Number P–90–558

Chemical name: Hydrazine, [4-(1-methylbutoxy)phenyl], monohydrochloride.
CAS number: 124993–63–1.
Effective date of section 5(e) consent order: April 18, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: The PMN substance has been shown to cause chronic effects to the liver, kidney, blood, and spleen. Substances similar to the PMN substance have been shown to cause cancer in test animals and analogous substances have been shown to cause toxicity to aquatic organisms.
Recommended testing: A 90–day subchronic (oral) in rats with special

attention given to the liver and blood (40 CFR 798.2650) is required to help characterize the chronic health effects. The PMN submitter has agreed not to exceed the production limit without performing the test. In addition, a 2–year, two-species oral bioassay (40 CFR 798.3300), an acute algal study (40 CFR 797.1050; static/nominal conditions), an acute daphnia study (40 CFR 797.1300; flow-through/measured conditions), and an acute fish study (40 CFR 797.1400; flow-through/measured conditions) would allow EPA to better characterize the health and environmental effects of the test substance. However, the PMN submitter is not required to submit the above cancer and aquatic toxicity information at any specified time or production volume as long as the terms of the order are followed.
CFR citation: 40 CFR 721.4280.

PMN Number P–90–559

Chemical name: Benzenamine, 4-(1-methylbutoxy)-, hydrochloride.
CAS number: Not available.
Effective date of section 5(e) consent order: April 18, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Substances similar to the PMN substance have been shown to cause cancer and skin irritation in test animals. In addition, analogous substances have been shown to cause toxicity to aquatic organisms.
Recommended testing: A 2–year, two-species oral bioassay (40 CFR 798.3300), an acute algal study (40 CFR 797.1050; static/nominal conditions), an acute daphnia study (40 CFR 797.1300; flow-through/measured conditions), and an acute fish study (40 CFR 797.1400; flow-through/measured conditions) would allow EPA to better characterize the health and environmental effects of the test substance. However, the PMN submitter is not required to submit the above cancer and aquatic toxicity information at any specified time or production volume as long as the terms of the order are followed.
CFR citation: 40 CFR 721.1075.

PMN Number P–90–560

Chemical name: Benzene, 1-(1-methylbutoxy)-4-nitro-.
CAS number: Not available.
Effective date of section 5(e) consent order: April 18, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Substances similar to the PMN substance have been shown to cause reproductive and developmental effects in test animals.
Recommended testing: A two-generation reproductive effects study (oral) in rats 40 CFR 798.4700 is required to help characterize the health effects of the PMN substance. The PMN submitter has agreed not to exceed a production limit without performing the test.
CFR citation: 40 CFR 721.1325

PMN Number P–90–1308

Chemical name: Dimetridazole.
CAS number: Not available.
Effective date of section 5(e) consent order: April 19, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Test data on the PMN substance and on similar substances indicate that the PMN substance may cause neurotox-icity, developmental toxicity, reproductive toxicity, and carcinogenic and mutagenic effects.
Recommended testing: EPA has determined that a developmental toxicity study (40 CFR 798.4900) and a 90–day oral subchronic study with emphasis placed on the reproductive system, including a detailed histopathology of the reproductive system, sperm staging and sperm count (40 CFR 798.2650) will help characterize the potential developmental and reproductive effects of the PMN substance. The consent order contains two production limits. The PMN submitter has agreed not to exceed the first production volume limit without performing the developmental toxicity test. The PMN submitter has also agreed not to exceed the second higher production volume limit without performing the 90–day oral subchronic study. EPA has determined that a 2–year, two-species bioassay will help characterize possible carcinogenic effects of the substance. However, the PMN submitter is not required to submit the above cancer toxicity study at any specified time or production volume as long as the terms of the order are followed.
CFR citation: 40 CFR 721.2475

PMN Number P–90–1338

Chemical name: (generic) Polymethylcarbomonocycle, reaction product with 2-hydroxyethyl acrylate.
CAS number: Not available.
Effective date of section 5(e) consent order: March 27, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2–year two-species rodent bioassay (40 CFR 798.3300) could be performed to help characterize cancer effects of the PMN substance. Toxicity data on representative members of the acrylate/methacrylate class of chemical substances being developed by certain acrylate and methacrylate manufacturers may also be useful in evaluating the risk posed by the PMN substance.
CFR citation: 40 CFR 721.9420.

PMN Number P–90–1358

Chemical name: Cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo-.
CAS number: 7027–11–4.
Effective date of section 5(e) consent order: July 12, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA, based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Test data on similar substances and the PMN substance itself raise concerns for carcinogenicity, neurotoxicity, systemic toxicity, and eye irritation in test animals.
Recommended testing: The consent order contains two production limits. The PMN submitter has agreed not to exceed the first production limit without performing a 90–day subchronic (gavage) in rats which will include a functional observational battery (FOB), an evaluation of motor activity, and specific histological examination of the central and autonomic nervous systems (CNS and PNS tissues) as described in 40 CFR 798.6050 in order to help characterize the possible health effects induced by this substance. If the Agency determines that the results of the 90–day subchronic study indicate the PMN substance is functionally similar to the chemical analogue isophorone, the PMN submitter will then be prohibited from exceeding a second higher production limit without performing a 2–year, two-species rodent bioassay (oral route) as described in 40 CFR 798.3300.
CFR citation: 40 CFR 721.2225.

PMN Number P-90-1384

Chemical name: (generic) Ethoxybenzothiazole disulfide.
CAS number: Not available.
Effective date of section 5(e) consent order: December 17, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Similar substances have been shown to cause carcinogenicity in test animals.
Recommended testing: EPA has determined that a 2-year two-species bioassay in rodents (40 CFR 798.3300) would help characterize carcinogenicity.
CFR citation: 40 CFR 721.1745.

PMN Numbers P-90-1472 and P-90-1473

Chemical names: Ethanediimidic acid.
CAS number: Not available.
Effective date of section 5(e) consent order: August 1, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer and liver and blood effects in test animals.
Recommended testing: A 90-day subchronic study, with special attention to the liver and blood, and a 2-year, two-species bioassay would help characterize health concerns. The PMN submitter has agreed not to exceed the production limit without performing the 90-day subchronic study.
CFR citation: 40 CFR 721.3260.

PMN Number P-90-1731

Chemical name: (generic) Substituted triazole.
CAS number: Not available.
Effective date of section 5(e) consent order: September 5, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Similar chemical substances have been shown to cause oncogenicity, mutagenicity, developmental toxicity, retinopathy and kidney toxicity, and eye irritation in test animals. Test data on chemicals similar in structure to the PMN substance indicate that the PMN substance may cause toxicity in aquatic organisms at concentrations as low as 12 ppb.
Recommended testing: EPA recommends a 90-day subchronic oral study, with emphasis on the ocular structure, an acute algal study (40 CFR 797.1050), an acute daphnid study (40 CFR 797.1300), and an acute fish study (40 CFR 797.1400), and a 2-year, two-species bioassay to help characterize the human health and environmental effects. The PMN submitter has agreed not to exceed the production limit without performing the 90-day subchronic test.
CFR citation: 40 CFR 721.9820.

PMN Number P-90-1732

Chemical name: (generic)Sulfonamide.
CAS number: Not available.
Effective date of section 5(e) consent order: September 5, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health or the environment.
Toxicity concern: Similar chemical substances have been shown to cause retinopathy, kidney toxicity, and eye irritation in test animals. Test data on chemicals similar in structure to the PMN substance indicate that the PMN substance may cause toxicity in aquatic organisms at concentrations as low as 10 ppb.
Recommended testing: EPA recommends a 90-day subchronic oral study, with emphasis on the ocular structure, and the base set aquatic toxicity studies to help characterize the human health and environmental effects. The PMN submitter has agreed not to exceed the production volume without performing the 90-day subchronic test.
CFR citation: 40 CFR 721.9550.

PMN Number P-90-1809

Chemical name: Benzenamine, 2,5-dibutoxy-4-(4-morpholinyl)-, sulfate.
CAS number: 130169-66-3.
Effective date of section 5(e) consent order: July 25, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concern: Test data on chemicals similar in structure to the PMN substance indicate that the PMN substance may cause toxicity in aquatic organisms. Specifically, based on structurally similar anilines (benzenamines) and neutral organic compounds, EPA predicts that toxicity to aquatic organisms will occur at 2 ppb PMN substance in surface waters. EPA expected releases of the PMN substance to water to result in surface water concentrations significantly exceeding that concern level. However, the Company amended the PMN submission to state that water releases from manufacturing would be to the publicly owned treatment works located at the Passaic Valley Sewerage Commission, which discharges to the New York Bay. The concentration of the PMN substance in the plant flow is predicted to be 0.33 ppb. Therefore, EPA does not expect releases during manufacturing to result in surface water concentrations exceeding the 2 ppb concern level. However, if other release sites are used, releases to water may result in surface water concentrations significantly exceeding the concern level.
Recommended testing: EPA has determined that an acute algal study (40 CFR 797.1050), an acute daphnid study (40 CFR 797.1300), and an acute fish study (40 CFR 797.1400) will help characterize the acute aquatic toxicity effects of the PMN substance. The PMN submitter has agreed not to exceed the production limit without performing these tests.
CFR citation: 40 CFR 721.1050.

PMN Number P-90-1825

Chemical name: 2-Propenoic acid, 2-[[[[[1,3,3-trimethyl-5- [[[2-[(1-oxo-2-propenyl)oxy] ethoxy]carbonyl]amino] cyclohexyl] methyl]amino]carbonyl] oxy]ethyl ester.
CAS number: 12404-50-2.
Effective date of section 5(e) consent order: March 11, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2-year two-species rodent bioassay (40 CFR 798.3300) could be performed to help characterize cancer effects of the PMN substance. Toxicity data on representative members of the acrylate/methacrylate class of chemical substances being developed by certain acrylate and methacrylate manufacturers may also be useful in evaluating the risk posed by the PMN substance.
CFR citation: 40 CFR 721.8425.

PMN Number P-90-1839

Chemical name: (generic) Dialkyldithiophosphoric acid, aliphatic amine salt.

CAS number: Not available.
Effective date of section 5(e) consent order: March 1, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
Recommended testing: EPA has determined that the results of an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28–day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.6140.

PMN Numbers P–90–1844, P–90–1845, and P–90–1846

Chemical name: (generic) Halogenated biphenyl glycidyl ethers.
CAS number: Not available.
Effective date of section 5(e) consent order: July 2, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health.
Toxicity concern: Based on analogue data, the PMN substances may cause carcinogenicity, mutagenicity, reproductive toxicity, developmental, kidney, liver toxicity and neurotoxicity.
Recommended testing: The Agency has determined that the results of a 2–year two-species rodent bioassay (40 CFR 798.3300) and a 90–day subchronic (40 CFR 798.2650) would help characterize the carcinogenicity and chronic toxicity of the PMN substances.
CFR citation: 40 CFR 721.3480.

PMN Number P–91–43

Chemical name: (generic) Fluorene substituted aromatic amine.
CAS number: Not available.
Effective date of section 5(e) consent order: September 21, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Similar substances have been shown to cause cancer, reproductive toxicity, hepatotoxicity, retinopathy, and aquatic toxicity in test animals and aquatic organisms, respectively.
Recommended testing: EPA has determined that an acute oral toxicity study modified with retinopathy screen in cats (40 CFR 798.1175), a 90–day subchronic toxicity study (40 CFR 798.2650), and a 2–year, two-species rodent bioassay (40 CFR 798.3300) would help characterize the human health effects of the PMN substance. The consent order contains two production limits. The PMN submitter has agreed not to exceed the first production limit without performing the acute oral toxicity study modified with retinopathy screen in cats. The PMN submitter has also agreed not to exceed the second, higher production limit without performing the 90–day subchronic oral toxicity study. In addition, a fish acute toxicity test (40 CFR 797.1400), a daphnid toxicity test (40 CFR 797.1300), and an algal toxicity test (40 CFR 797.1050) would address the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.3764.

PMN Number P–91–55

Chemical name: (generic) Alkylcarbamic acid, alkynyl ester.
CAS number: Not available.
Effective date of section 5(e) consent order: June 7, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Similar substances have been shown to cause acute toxicity in fish and aquatic organisms. Specifically, based on test data on similar substances, EPA predicts acute LC50 values of 0.17 ppm for fish; daphnids, and algae. Based on this test data, EPA predicts chronic toxicity to fish and aquatic organisms to occur at a concentration of 2 ppb PMN substance in surface waters.
Recommended testing: EPA has determined that the results of a fish acute toxicity test (40 CFR 797.1400), a daphnid acute toxicity test (40 CFR 797.1300), and an algal acute toxicity test (40 CFR 797.1050) would help characterize the acute toxicity effects of the PMN substance to fish and aquatic organisms.
CFR citation: 40 CFR 721.2840.

PMN Number P–91–65

Chemical name: 2,4,8,10-Tetraoxa-3,9-diphosphaspiro[5.5] undecane, 3,9-bis[2,4,6-tris(1,1-dimethylethyl)phenoxy]-.
CAS number: 126505–35–9.
Effective date of section 5(e) consent order: September 4, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause reproductive and developmental toxicity and neurotoxicity in test animals.
Recommended testing: EPA recommends a developmental oral toxicity study (rats) and a dietary subchronic (3–month) toxicity study with a neuropathology component (rats), following an in utero treatment phase to include a teratological component of the parental animals, to help characterize the human health effects. The PMN submitter has agreed not to exceed the production limit without performing these tests.
CFR citation: 40 CFR 721.9850.

PMN Number P–91–75

Chemical name: (generic) Reaction products of substituted hydroxyalkanes and polyalkylpolyisocyanatocarbomonocycle.
CAS number: Not available.
Effective date of section 5(e) consent order: March 21, 1991.
Basis for section 5(e) consent order: The order was issued under § 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposures.
Recommended testing: EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28–day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.4300.

PMN Number P–91–222

Chemical name: Pentanenitrile, 3-amino-

CAS number: 75405–06–0.
Effective date of section 5(e) consent order: March 11, 1992.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar chemical substances have been shown to cause

developmental toxicity/osteolathyrism in test animals. Osteolathyrism is an inhibition of the enzyme lysyl oxidase which catalyzes the cross-linking of collagen and elastin. Though not reported in humans, osteolathyrism is similar to human hereditary connective tissue disorders.
Recommended testing: A one-species developmental toxicity study in rats via gavage (40 CFR 798.4900) is recommended to help characterize human health effects. The PMN submitter has agreed not to exceed the production limit without performing this test.
CFR citation: 40 CFR 721.5700.

PMN Number P-91-225

Chemical name: (generic) Tall oil fatty acids, reaction products with polyamines, alkyl substituted.
CAS number: Not available.
Effective date of section 5(e) consent order: June 13, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concern: Similar substances have been shown to cause toxicity in fish and aquatic organisms at concentrations as low as 2 ppb.
Recommended testing: EPA has determined that an acute algal toxicity study (40 CFR 797.1050), an acute daphnid toxicity study (40 CFR 797.1300), an acute fish toxicity study (40 CFR 797.1400), and a humic acid test (40 CFR 795.115) would help characterize the potential toxic effects to fish and aquatic organisms. Based on test data on structurally similar compounds, EPA has learned that the presence of dissolved total organic carbon (TOC) may significantly reduce toxicity to water column species. Therefore, for this PMN substance, if the TOC significantly reduces toxicity to water column species, then testing for toxicity to benthic organisms may be required; however, if TOC does not significantly reduce the toxicity of the PMN substance to water column species, then chronic toxicity testing with fish and aquatic organisms may be required. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.9460.

PMN Number P-91-272

Chemical name: Butyl acrylate, polymer with substituted methyl styrene, methyl methacrylate, and substituted silane.
CAS number: Not available.
Effective date of section 5(e) consent order: June 17, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Test data on substances similar in structure to the PMN substance indicate that the PMN substance may cause skin and eye irritation, dermal and pulmonary sensitization, cross-sensitization responses, lung and other respiratory effects, and systemic effects in laboratory animals.
Recommended testing: The consent order contains three production volume limits. The PMN submitter has agreed to the following: Not to exceed the first production volume limit without performing a dermal sensitization study (40 CFR 798.4100); not to exceed the second, higher production volume limit without performing a pulmonary sensitization study (Karol method or equivalent); and not to exceed the third and highest production volume limit without conducting a 90-day oral subchronic study (40 CFR 798.2450). These tests will help characterize the sensitization potential and possible lung effects and systemic toxicity of the PMN substance.
CFR citation: 40 CFR 721.6920.

PMN Number P-91-389

Chemical name: Zirconium(IV), [2,2-bis[(2-propenyloxy)methyl]-1-butanolato-01,02]tris(2-propenoato-*O*-)-.
CAS number: Not available.
Effective date of section 5(e) consent order: June 22, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2-year rodent bioassay (40 CFR 798.3300) would help characterize carcinogenicity.
CFR citation: 40 CFR 721.9975.

PMN Number P-91-391

Chemical name: 2-Propenoic acid, 2-(2-oxo-3-oxazolidinyl) ethyl ester.
CAS number: 115965-75-8.
Effective date of section 5(e) consent order: March 5, 1992.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer in test animals.
Recommended testing: EPA has determined that the results of a 2-year rodent bioassay (40 CFR 798.3300) would help characterize the potential carcinogenic effects of the PMN substance. Toxicity data on representative members of the acrylate/methacrylate class of chemical substances being developed by certain acrylate and methacrylate manufacturers may also be useful in evaluating the risk posed by the PMN substance.
CFR citation: 40 CFR 721.8375.

PMN Number P-91-403

Chemical name: Brominated triazine derivative.
CAS number: Not available.
Effective date of section 5(e) consent order: July 10, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause liver toxicity, male reproductive effects, and cancer in test animals.
Recommended testing: EPA has determined that a two-generation oral reproductive study (40 CFR 798.4700) on the substance is needed to help characterize the possible reproductive effects of the substance. The PMN submitter has agreed not to exceed the production limit without performing this test. In addition, a 2-year, two-species bioassay (40 CFR 798.3300) would help characterize the possible carcinogenic effect of the substance.
CFR citation: 40 CFR 721.9740.

PMN Number P-91-411

Chemical name: Oxiranemethanamine, *N,N'*-[methylenebis(2-ethyl-4,1-phenylene)]bis[*N*-(oxiranylmethyl)]-.
CAS number: 130728-76-6.
Effective date of section 5(e) consent order: May 31, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer, mutagenicity, and male reproductive toxicity in test animals. The PMN

substance is expected to act as an alkylating agent.
Recommended testing: A 90–day dermal toxicity study (40 CFR 798.2250) to help characterize toxic effects to the reproductive organs. The PMN submitter has agreed not to exceed the production limit without performing this test. In addition, the Agency has determined that the results of a 2–year, two-species oral bioassay (40 CFR 798.3300) would help characterize possible cancer effects of the substance. The PMN submitter is not required to submit this testing at any specified time or production volume.
CFR citation: 40 CFR 721.6625.

PMN Number P–91–505

Chemical name: (generic) Polymer of alkanedioic acid, methylene-biscarbomonocyclic diisocyanate, and alkylene glycols, hydroxyalkyl acrylate ester.
CAS number: Not available.
Effective date of section 5(e) consent order: June 26, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2–year rodent bioassay (40 CFR 798.3300) to help characterize the carcinogenic effects.
CFR citation: 40 CFR 721.6640.

PMN Number P–91–598

Chemical name: (generic) Epoxidized copolymer of phenol and substituted phenol.
CAS number: Not available.
Effective date of section 5(e) consent order: August 21, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: For the human health concerns, similar substances have been shown to cause male reproductive effects, mutagenicity and cancer in test animals. For the environmental concerns, similar substances have been shown to cause toxicity to aquatic organisms.
Recommended testing: EPA has determined that a 90–day subchronic oral toxicity study with special attention to the reproductive organs (40 CFR 798.2650) on the PMN substance is needed to help characterize the possible reproductive effects of the substance. The PMN submitter has agreed not to exceed the production limit without performing this test. In addition, a 2–year, two-species bioassay (40 CFR 798.3300) would help characterize the possible carcinogenic effect of the substance. An algae acute toxicity test (40 CFR 797.1050), a 48-h EC50 test in daphnids, and a 96-h LC50 in fish would help characterize the aquatic toxicity of the substance.
CFR citation: 40 CFR 721.7210.

PMN Number P–91–809

Chemical name: (generic) Recovered metal hydroxide.
CAS number: Not available.
Effective date of section 5(e) consent order: December 24, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial releases to the environment.
Recommended testing: EPA has determined that the results of an acute algae study (40 CFR 797.1050), a chronic daphnid study (40 CFR 797.1330) and a fish early life stage toxicity study (40 CFR 797.1600) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.4600.

PMN Number P–91–831

Chemical name: Propane, 1,1,1,2,3,3,3 heptafluoro-.
CAS number: 431–89–0.
Effective date of section 5(e) consent order: March 21, 1992. Basis for action: The order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health, will be produced in substantial quantities, and there may be significant or substantial human exposure to the substance.
Toxicity concern: Similar substances have been shown to cause developmental toxicity and cardiac sensitization in laboratory animals.
Recommended testing: The Agency believes that the results of the following testing would help characterize possible health effects of the substance cardiac sensitization (dogs), developmental inhalation toxicity (two species) (40 CFR 798.4350), and a 90–day inhalation toxicity (rats) (40 CFR 798.2450). The PMN submitter is required to submit the results of each before exceeding a specified production limit.
CFR citation: 40 CFR 721.8125.

PMN Number P–91–1086

Chemical name: (generic) Polymer of disodium maleate, allyl ether, and ethylene oxide.
CAS number: Not available.
Effective date of section 5(e) consent order: December 19, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
Recommended testing: EPA has determined that the results of a 28–day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing this test.
CFR citation: 40 CFR 721.7000.

PMN Number P–91–1153

Chemical name: (generic) Acrylate substituted siloxanes and silicones.
CAS number: Not available.
Effective date of section 5(e) consent order: December 19, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2–year rodent bioassay (40 CFR 798.3300) to help characterize carcinogenic effects.
CFR citation: 40 CFR 721.9525.

PMN Numbers P–91–1231, 1232, 1233, 1234, and 1235

Chemical name: (generic) Reaction products of phenolic pentaerythritol tetraester with fatty acid oils and esters, and glyceride triesters.
CAS number: Not available.
Effective date of section 5(e) consent order: January 17, 1992
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposures.
Recommended testing: A fish bioconcentration test (40 CFR 798.5395) would help characterize the environmental fate of the substance. A one-species developmental toxicity test (40 CFR 798.4900) would help characterize possible toxic effects of the

substance. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing a fish bioconcentration study on P–91–1232 or P–91–1234. The PMN submitter has also agreed not to exceed the second higher production volume limit without performing the developmental toxicity study on the substance tested in the fish bioconcentration study described above.
CFR citation: 40 CFR 721.9400.

PMN Number P–91–1250

Chemical name: (generic)Pentaerythritol, mixed esters with carboxylic acids.
CAS number: Not available.
Effective date of section 5(e) consent order: December 24, 1991.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposure.
Recommended testing: EPA has determined that the results of a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28–day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.5660.

PMN Number P–91–1269

Chemical name: (generic) Polyalkylene glycol substituted acetate.
CAS number: Not available.
Effective date of section 5(e) consent order: January 27, 1992.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial releases to the environment.
Recommended testing: EPA has determined that the results of an acute fish toxicity test (40 CFR 797.1400), an acute daphnid toxicity test (40 CFR 797.1300), a green algal toxicity test (40 CFR 797.1050), an anaerobic biodegradation study (40 CFR 796.3140), and an aquatic aerobic biodegradation study performed according to any of the following guidelines: 40 CFR 796.3100, 40 CFR 796.3180, 40 CFR 796.3200, 40 CFR 796.3220, 40 CFR 796.3240, or 40 CFR 796.3260, would help characterize possible aquatic and environmental fate effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.3880.

PMN Number P–91–1392

Chemical name: Ethane, 1,1,1,2,2 pentafluoro-.
CAS number: 354-33-6.
Effective date of section 5(e) consent order: March 19, 1992.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposures.
Recommended testing: EPA has determined that the results of a cardiac sensitization study in dogs, a two-species developmental inhalation toxicity study (40 CFR 798.4350), and a 90–day inhalation toxicity study in rats (40 CFR 798.2450) would help characterize possible effects of the substance. The consent order contains three production limits. The PMN submitter has agreed not to exceed the first production limit without performing the cardiac sensitization study, the second higher production limit without performing the developmental toxicity studies, and the highest production limit without performing the 90–day study.
CFR citation: 40 CFR 721.3240.

PMN Number P–91–1418

Chemical name: (generic) Modified hydrocarbon resin.
CAS number: Not available.
Effective date of section 5(e) consent order: March 14, 1992.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
Recommended testing: EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28–day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible human health effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.4380.

PMN Number P–92–63

Chemical name: (generic) Reaction product of ethoxylated fatty acid oils and a phenolic pentaerythritol tetraester.
CAS number: Not available.
Effective date of section 5(e) consent order: March 20, 1992.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and may enter the environment in substantial quantities.
Recommended testing: EPA has determined that the results of a water solubility study (40 CFR 796.1840 or 796.1860), a soil/sediment adsorption study (40 CFR 796.2750), an aerobic biodegradation study (40 CFR 796.3100) and an anaerobic biodegradation study (40 CFR 796.3140) would help characterize possible effects of the substance. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing the water solubility study, the soil/sediment adsorption study, and the aerobic biodegradation study. The PMN submitter has also agreed not to exceed the second higher production volume limit without performing the anaerobic biodegradation study.
CFR citation: 40 CFR 721.9280.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for these substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The bases for such findings are outlined in Unit III. of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters. The SNUR provisions for these substances designated herein are consistent with the provisions of the section 5(e) orders.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when

necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements. Issuance of a final effective SNUR for a chemical substance does not signify that the substance is contained on the TSCA Inventory. Manufacturers, importers, and processors are responsible for insuring that a new chemical substance subject to a final SNUR is contained on the TSCA Inventory.

V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in § 721.160(c)(3) and 721.170(d)(4). In accordance with § 721.160(c)(3)(ii), this rule will be effective November 23, 1992, unless EPA receives a written notice by October 23, 1992 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30–day comment period.

This action establishes SNURs for 65 chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require the development of any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests.

However, EPA has established production limits in the section 5(e) orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the section 5(e) orders are included in Unit III. of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests before exceeding the production limit.

SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in § 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request that EPA determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.575(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued for each substance and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. EPA recognizes in cases when chemical substances identified in this SNUR are added to the

Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 44 of the 65 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed at 55 FR 17376 (April 24, 1990), EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS–50601).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50601). The record includes information considered by EPA in developing this rule.

A public version of the record without any confidential business information is available in the TSCA Public Docket Office from 8 a.m. to 12 p.m. and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located at rm. NE-G004, 401 M St., SW., Washington, DC. Any person who submits comments claimed as CBI must mark the comments as "confidential", "trade secret", or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2.

Any person submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,552 to $12,166, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act.

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, D.C. 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated:_____

_____

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, and 2607, and 2625(c).

2. By adding new § 721.1050 subpart E to read as follows:

§ 721.1050 Benzenamine, 2,5-dibutoxy-4-(4-morpholinyl)-, sulfate

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as benzenamine, 2,5-dibutoxy-4-(4-morpholinyl), sulfate (PMN P–90–1809; CAS number 130169–66–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(ii), (g)(4)(i) and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), unless the substance is released to the Passaic Valley Sewerage Commission publicly-owned treatment works (NPDES Number NJ0021016) which discharges to the New York Bay.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), (f) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

3. By adding new § 721.1075 to subpart E read as follows:

§ 721.1075 Benzenamine, 4-(1-methylbutoxy)-, hydrochloride.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzenamine, 4-(1-methylbutoxy)-, hydrochloride (PMN P–90–559) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Modifications or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

4. By adding new § 721.1210 to subpart E to read as follows:

§ 721.1210 Benzene, (2-chloroethoxy)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, (2-chloroethoxy)- (PMN P–87–1471) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3) (applies to gloves only), (a)(4), (a)(5)(iii), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1) and (c)(1). Disposal other than as described in the premanufacture notice referenced in paragraph (a)(1) of this section.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

5. By adding new § 721.1325 to subpart E to read as follows:

§ 721.1325 Benzene, 1-(1-methylbutoxy)-4-nitro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, 1-(1-methylbutoxy)-4-nitro- (PMN P–90–560) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(ix), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (p) (production limit set at 43,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Modifications or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

6. By adding new § 721.1650 to subpart E to read as follows:

§ 721.1650 Alkylbenzenesulfonic acid and sodium salts.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkyl benzenesulfonic acid and sodium salts (PMNs P–88–1783, P–88–2231, P–88–2237, and P–88–2530) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer

becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

7. By adding new § 721.1745 to read as follows:

§ 721.1745 Ethoxybenzothiazole disulfide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as ethoxybenzothiazole disulfide (PMN P–90–1384) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(i) through (vii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(5).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

8. By adding new § 721.1950 to subpart E to read as follows:

§ 721.1950 2-Butenedioic acid (Z), mono(2-((1-oxopropenyloxy)ethyl) ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as 2-butenedioic acid (*Z*), mono(2-((1-oxopropenyloxy)ethyl) ester (PMN P–85–543) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f) (g)(1)(iii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

9. By adding new § 721.2140 to subpart E to read as follows:

§ 721.2140 Carbopolycyclicol azoalkylaminoalkylcarbomonocyclic ester, halogen acid salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as carbopolycyclicol azoalkylaminoalkylcarbomonocyclic ester, halogen acid salt (PMN P–88–1682) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (f), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) (where N = 1 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

10. By adding new § 721.2225 to subpart E to read as follows:

§ 721.2225 Cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo- (PMN P–90–1358; CAS number 7027–11–4) is subject to reporting under this section for the

significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(6)(v), (b) (concentration set at 0.1 percent) and (c). For the manufacturing workers only, additional requirements as specified in § 721.63(a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), and (a)(6)(v). The respirators described at § 721.63(a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), and (a)(5)(xv) may be used by the manufacturing workers exposed via inhalation only after cartridge service life data on cartridge performance is submitted to and approved in writing by EPA.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(v), and (g)(5). The statement required under (g)(2)(iv) applies only to manufacturers of the substance. In addition, the following human health hazard statement shall appear on each label and MSDS required by this section: This substance may cause neurotoxicity, systemic toxicity, and eye irritation.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (q).

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

11. By adding new § 721.2250 to subpart E to read as follows:

§ 721.2250 1,4-Cyclohexanediamine, cis- and trans-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified as 1,4-cyclohexanediamine, *cis-* and *trans-* (PMNs P–87–1881 and P–87–1882; CAS numbers 15827–56–2 and 2615–25–0) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(ii), (g)(4)(iii), (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

12. By adding new § 721.2475 to subpart E to read as follows:

§ 721.2475 Dimetridazole.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as dimetridazole (P–90–1308) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5) (iii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

13. By adding new § 721.2840 to subpart E to read as follows:

§ 721.2840 Alkylcarbamic acid, alkynyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylcarbamic acid, alkynyl ester (PMN P–91–55) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), (g)(4)(iii), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (b)(1), and (c)(1).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (f) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

14. By adding new § 721.3240 to read as follows:

§ 721.3240 Ethane, 1,1,1,2,2-pentafluoro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethane, 1,1,1,2,2-pentafluoro- (PMN P–91–1392) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer

becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

15. By adding new § 721.3260 to subpart E to read as follows:

§ 721.3260 Ethanediimidic acids.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified as ethanediimidic acids (PMNs P-90-1472 and P-90-1473), are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(i), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e), (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(4)(ii), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1) and (b)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

16. By adding new § 721.3480 to subpart E to read as follows:

§ 721.3480 Halogenated biphenyl glycidyl ethers.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as halogenated biphenyl glycidyl ethers (PMNs P-90-1844, P-90-1845, and P-90-1846) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(6)(i), (b) (concentration set at 0.1 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), (g)(1)(vi), (g)(i)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(ii) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

17. By adding new § 721.3700 to subpart E to read as follows:

§ 721.3700 Fatty acid, ester with styrenated phenol, ethylene oxide adduct.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acid, ester with styrenated phenol, ethylene oxide adduct (P-90-364) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(ii), and (g)(5).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 400 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070-0012)

18. By adding new § 721.3764 to subpart E to read as follows:

§ 721.3764 Fluorene substituted aromatic amine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as fluorene containing diaromatic amine (PMN P-91-43) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c). However, these requirements do not apply after the PMN substance is adhered onto film or incorporated into prepreg form (resin impregnated substrate).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5). In addition, the human health hazard statement shall include a statement that this substance may cause blindness and the human health precautionary statement shall include the statement: When using this substance, use eye protection.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

19. By adding new § 721.3800 to subpart E to read as follows:

§ 721.3800 Formaldehyde, condensated polyoxyethylene fatty acid, ester with styrenated phenol, ethylene oxide adduct.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as formaldehyde, condensated polyoxyethylene fatty acid, ester with styrenated phenol, ethylene oxide adduct (PMN P–90–360) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(ii), and (g)(5).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) (where N = 400 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

20. By adding new § 721.3880 to read as follows:

§ 721.3880 Polyalkylene glycol substituted acetate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyalkylene glycol substituted acetate (PMN P–91–1269) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer, or who have received this substance from the employer within 5 years from the date the employer becomes aware of this new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

21. By adding new § 721.4260 to subpart E to read as follows:

§ 721.4260 Hydrazine, [4-(1-methylbutoxy)phenyl]-, monohydrochloride.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as hydrazine, [4-(1-methylbutoxy)phenyl]-, monohydrochloride (PMN P–90–558; CAS number 124993–63–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), (g)(4)(iii), and (g)(5). In addition, the following human health hazard statement shall appear on each label and MSDS required by this section: This substance may cause eye irritation.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (p) (production limit set at 15,500 kg).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Modification or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

22. By adding new § 721.4380 to read as follows:

§ 721.4380 Modified hydrocarbon resin.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a modified hydrocarbon resin (P–91–1418) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer, or who have received the substance from the employer within 5 years from the date the employer becomes aware of the information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

23. By adding new § 721.4520 to subpart E to read as follows:

§ 721.4520 Isopropylidene, bis(1,1-dimethylpropyl) derivative.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as isopropylidene, bis(1,1-dimethylpropyl) derivative (PMN P–85–648) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3)(applies to gloves only), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

24. By adding new § 721.4600 to read as follows:

§ 721.4600 Recovered metal hydroxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a recovered metal hydroxide (PMN P–91–809) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer, or who have received this substance from the employer within 5 years from the date the employer becomes aware of the new information described under paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

25. By adding new § 721.5300 to subpart E to read as follows:

§ 721.5300 Neodecaneperoxoic acid, 1,1,3,3-tetramethylbutyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as neodecaneperoxoic acid, 1,1,3,3-tetramethylbutyl ester (PMN P–89–764; CAS number 51240–95–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), and (b) (concentration set at 0.1 percent).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(b), (c), and (l).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) Recordkeeping requirements . Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

26. By adding new § 721.5450 to subpart E to read as follows:

§ 721.5450 α-Olefin sulfonate, sodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as α-olefin sulfonate, sodium salt (PMN P–88–2210) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(1)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

27. By adding new § 721.5475 to subpart E to read as follows:

§ 721.5475 1-Oxa-4-azaspiro[4.5]decane, 4-dichloroacetyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-oxa-4-azaspiro[4.5]decane, 4-dichloroacetyl- (PMN P–86–1648, CAS number 71526-07-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3) (applies to gloves only), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k). (iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (j) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

28. By adding new § 721.5660 to read as follows:

§ 721.5660 Pentaerythritol, mixed esters with carboxylic acids.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as pentaerythritol, mixed esters with carboxylic acids (PMN P–91–1250) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the

substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

29. By adding new § 721.5700 to read as follows:

§ 721.5700 Pentanenitrile, 3-amino-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as pentanenitrile, 3-amino- (PMN P–91–222; CAS number 75405–06–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), during both drumming and transfer of the substance requirements as specified in § 721.63(a)(5)(i), (a)(5)(ii), and (a)(5)(iii) apply, and during transfer (but not drumming) of the substance, requirements as specified in § 721.63(a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), and (a)(5)(xv) apply following submittal by the company, and written approval by the EPA, of the results of cartridge service life testing performance in accordance with *Interim Recommendations for Determining Organic Vapor Cartridge Service Life for Category 23C Respirators* (available through the TSCA Assistance Office), or equivalent, which demonstrates the effectiveness of the organic vapor cartridge, (a)(6)(v), (b) (concentration set at 1.0 percent), and (c). The requirements specified in § 721.63(a)(4) and (5) apply only during drumming activities and during transfer of liquid PMN substance from a process vessel into a tank, truck, or rail car.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

30. By adding new § 721.6140 to subpart E to read as follows:

§ 721.6140 Dialkyldithiophosphoric acid, aliphatic amine salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a dialkyldithiophosphoric acid, aliphatic amine salt (P–90–1839) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons will receive this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

31. By adding new § 721.6160 to subpart E to read as follows:

§ 721.6160 Piperazinone, 1,1',1"-[1,3,5-triazine-2,4,6-triyltris[(cyclohexylimino)-2,1-ethanediyl]]tris-[3,3,4,5,5-pentamethyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as piperazinone, 1,1',1"-[1,3,5-triazine-2,4,6-triyltris [(cyclohexylimino)-2,1-ethanediyl]]tris-[3,3,4,5,5-pentamethyl]- (PMN P–89–589; CAS number 130277–45–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(iv) through (vii), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d) (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(viii), (g)(2)(ii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (d), and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

32. By adding new § 721.6620 to subpart E to read as follows:

§ 721.6620 Alkanaminium, polyalkyl-[(2-methyl-1-oxo-2-propenyl)oxy] salt, polymer with acrylamide and substituted alkyl methacrylate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkanaminium, polyalkyl-[(2-methyl-1-oxo-2-propenyl)oxy] salt, polymer with acrylamide and substituted alkyl methacrylate (PMN P–87–252) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (production limit set at 680,000 kg).

(ii) *Release to water.* Requirements as specified in § 721.85(a)(4), (b)(4) and (c)(4) (concentration set at 40 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), (i), and (j) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

33. By adding new § 721.6625 to subpart E to read as follows:

§ 721.6625 Oxiranemethanamine, N,N'-[methylenebis(2-ethyl-4,1-phenylene)]bis[N-(oxiranylmethyl)]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as oxiranemethanamine, *N,N'*-[methylenebis(2-ethyl-4,1-phenylene)]bis[*N*-(oxiranylmethyl)]- (PMN P–91–411; CAS number 130728–76–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (o), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

34. By adding new § 721.6640 to subpart E to read as follows:

§ 721.6640 Polymer of alkanedioic acid, methylenebiscarbomonocyclic diisocyanate, and alkylene glycols, hydroxyalkyl acrylate ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polymer of alkanedioic acid, methylenebiscarbomonocyclic diisocyanate, and alkylene glycols, hydroxyalkyl acrylate ester (PMN P–91–505) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D), and (h)(2)(iii)(A).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

35. By adding new § 721.6920 to subpart E to read as follows:

§ 721.6920 Butyl acrylate, polymer with substituted methyl styrene, methyl methacrylate, and substituted silane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as butyl acrylate, polymer with substituted methyl styrene, methyl methacrylate, and substituted silane (PMN P–91–272) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(viii), (a)(5)(ix), (a)(6)(ii), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 per cent), (f), (g)(1)(i), (g)(1)(ii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (volume set at 90,000 kg), (volume set at 512,000 kg), (volume set at 1,235,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

36. By adding new § 721.7000 to read as follows:

§ 721.7000 Polymer of disodium maleate, allyl ether, and ethylene oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polymer of disodium maleate, allyl ether, and ethylene oxide (P–91–1086) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

37. By adding new § 721.7200 to subpart E to read as follows:

§ 721.7200 Perfluoroalkyl aromatic carbamate modified alkyl methacrylate copolymer.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluoroalkyl aromatic carbamate modified alkyl methacrylate copolymer (PMN P–87–1555) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements asspecified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent for cancer; 1,0 percent for other effects), (f), (g)(1)(ii), (g)(2)(ii), and (g)(5). In addition, the following human health hazard statement shall appear on each label and MSDS required by this section: This substance may cause lung effects.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

38. By adding new § 721.7210 to subpart E to read as follows:

§ 721.7210 Epoxidized copolymer of phenol and substituted phenol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as epoxidized copolymer of phenol and substituted phenol (P–91–598) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a) through (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

39. By adding new § 721.8125 to read as follows:

§ 721.8125 Propane, 1,1,1,2,3,3,3-heptafluoro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as propane, 1,1,1,2,3,3,3-heptafluoro- (PMN P–91–831; CAS number 431–89–0) is subject to reporting under this section for the significant new

uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q), use in aerosol products intended for consumer use. This restriction does not apply to use of the PMN substance in fire extinguishing apparatus or systems.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) (b), (c), (f), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

40. By adding new § 721.8250 to subpart E to read as follows:

§ 721.8250 1-Propanol, 3,3'-oxybis[2,2-bis(bromomethyl)]

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-propanol, 3,3'-oxybis[2,2-bis(bromomethyl)]- (PMN P–87–1273) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3)(applies to gloves only), (a)(4), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements asspecified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(v), and (g)(5). In addition, the human health hazard statement shall include a statement that this substance may cause acute and chronic toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (p). In addition, use other than as a flame retardant additive is a significant new use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i), and (j) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

41. By adding new § 721.8375 to subpart E to read as follows:

§ 721.8375 2-Propenoic acid, 2-(2-oxo-3-oxazolidinyl)ethyl ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 2-(2-oxo-3-oxazolidinyl)ethyl ester (PMN P–91–391) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent), and (c). Based on organic vapor cartridge service life data available on the PMN substance, respirator cartridges shall be changed at least every 8 h.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(D), and (h)(2)(iii)(A). In addition to the preceding statements, the label and MSDS shall contain the following statement: Use respiratory protection when there is a reasonable likelihood of exposure in the work area from dust, mist, smoke, fumes, vapor, or gas.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

42. By adding new § 721.8425 to subpart E to read as follows:

§ 721.8425 2-Propenoic acid, 2-[[[[[1,3,3-trimethyl-5- [[[2-[(1-oxo-2-propenyl)oxy] ethoxy]carbonyl]amino]cyclohexyl]methyl] amino]carbonyl]oxy]ethyl ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 2-[[[[[1,3,3-trimethyl-5- [[[2-[(1-oxo-2-propenyl)oxy]ethoxy] carbonyl]amino] cyclohexyl]methyl] amino]carbonyl]oxy]ethyl ester (PMN P–90–1825; CAS number 42404–50–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

43. By adding new § 721.9280 to read as follows:

§ 721.9280 Reaction product of ethoxylated fatty acid oils and a phenolic pentaerythritol tetraester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance

identified generically as a reaction product of ethoxylated fatty acid oils and a phenolic pentaerythritol tetraester (PMN P–92–63) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

44. By adding new § 721.9300 to subpart E to read as follows:

§ 721.9300 Reaction products of substituted hydroxyalkanes and polyalkylpolyisocyanatocarbomonocycle.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as reaction products of substituted hydroxyalkanes and polyalkylpolyisocyanatocarbomonocycle (PMN P–91–75) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p)(volume set at 433,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

45. By adding new § 721.9400 to read as follows:

§ 721.9400 Reaction product of phenolic pentaerythritol tetraesters with fatty acid esters and oils, and glyceride triesters.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as Reaction product of phenolic pentaerythritol tetraesters with fatty acid esters and oils, and glyceride triesters (PMNs P–91–1231, –1232, –1233, –1234, and –1235) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive this substance, or who have received this substance from the employer within 5 years from the date the employer becomes aware of the new information described in section (a)(2)(i)(A) of this subparagraph, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

46. By adding new § 721.9420 to subpart E to read as follows:

§ 721.9420 Polymethylcarbomonocycle, reaction product with 2-hydroxyethyl acrylate.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymethylcarbomonocycle, reaction product with 2-hydroxyethyl acrylate (PMN P–90–1338) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(iii)(A), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (j) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

47. By adding new § 721.9460 to subpart E to read as follows:

§ 721.9460 Tall oil fatty acids, reaction products with polyamines, alkyl substituted.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as tall oil fatty acids, reaction products with polyamines, alkyl substituted (PMN P–91–225) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q) and any use in a manner that will result in overspray over or into waters of the United States.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), (c)(1), or use in any manner that will result in overspray over or into waters of the United States.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (f) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

48. By adding new § 721.9525 to subpart E to read as follows:

§ 721.9525 Acrylate substituted siloxanes and silicones.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as acrylate substituted siloxanes and silicones (PMN P–91–1153) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D), and (h)(2)(iii)(A).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

49. By adding new § 721.9550 to subpart E to read as follows:

§ 721.9550 Sulfonamide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as a sulfonamide (PMN P–90–1732) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 1.0 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), (g)(4)(ii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 10 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

50. By adding new § 721.9740 to subpart E to read as follows:

§ 721.9740 Brominated triazine derivative.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a brominated triazine derivative (PMN P–91–403) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(iv), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(iv), and (g)(5). The hazard communication requirements do not apply when the chemical substance is present in a plastic, elastomer, rubber matrix, or in solution.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in section 721.80(q). Any amount of the PMN substance imported in a plastic, elastomer, rubber matrix, or in a solution, such that inhalation is precluded, shall not be included in the production limit calculations.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

51. By adding new § 721.9820 to subpart E to read as follows:

§ 721.9820 Substituted triazole.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as a substituted triazole (PMN P–90–1731) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(iv), (g)(1)(v), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), (g)(4)(ii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 12).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

52. By adding new § 721.9850 to subpart E to read as follows:

§ 721.9850 2,4,8,10-Tetraoxa-3,9-diphosphaspiro[5.5]undecane, 3,9-bis[2,4,6-tris(1,1-dimethylethyl)phenoxy]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2,4,8,10-tetraoxa-3,9-diphosphaspiro[5.5]undecane, 3,9-bis[2,4,6-tris(1,1-dimethylethyl)phenoxy]- (PMN P–91–65; CAS number 126505–35–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(vi), (g)(1)(ix), (g)(2)(i) through (v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (h) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

53. By adding new § 721.9975 to subpart E to read as follows:

§ 721.9975 Zirconium(IV), [2,2-bis[(2-propenyloxy)methyl]-1-butanolato-01,02]tris(2-propenoato-O-)-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance zirconium(IV) 2,2-(bis-2-propenyloxy)methyl)-1-butanolato-01,02]trjs 2-propenoato-*O*)- (PMN P–91–389) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D), and (h)(2)(iii)(A).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

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Index,
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FEDER
39597-
40071-
40301-
40591-
40827-
41053-
41375-
41641-
41853-
42485-
42681-
42881-
43125-
43335-
43605-
43885-

Reader Aids

Federal Register

Vol. 57, No. 185

Wednesday, September 23, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

39597-40070.....1
40071-40300.....2
40301-40590.....3
40591-40826.....4
40827-41052.....8
41053-41374.....9
41375-41640.....10
41641-41852.....11
41853-42484.....14
42485-42680.....15
42681-42880.....16
42881-43124.....17
43125-43334.....18
43335-43604.....21
43605-43884.....22
43885-44076.....23

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

2.....40024
3.....40024
11.....40024

3 CFR

Executive Orders:
12154 (See EO 12814).....42483
12543 (See DOT final rule of August 26, 1992).....41696
12722 (See DOT rule of August 21).....39603
12724 (See DOT rule of August 21).....39603
12735 (See State Dept. final rule of Aug. 24).....41077
12775 (See DOT rule of August 17).....39603
12779 (See DOT rule of August 17).....39603
12814.....42483

Administrative Orders:
Presidential Determinations:
No. 91-52 of September 13, 1991 (See Presidential Determination No. 92-45 of August 28, 1992).....43125
No. 92-39 of August 17, 1992.....40071
No. 92-40 of August 17, 1992.....40073
No. 92-42 of August 25, 1992.....40075
No. 92-43 of August 25, 1992.....40077
No. 92-44 of August 25, 1992.....40079
No. 92-45 of August 28, 1992).....43125
No. 92-46 of September 4, 1992.....42881

Notices:
September 18, 1992.....43603

Proclamations:
6467.....40591
6468.....40827
6469.....41051
6470.....41373
6471.....42679
6472.....43127
6473.....43129
6474.....43333

4 CFR

Proposed Rules:
Ch. III.....43776

5 CFR

531.....43131
536.....43131
550.....40070, 43131
870.....43131
890.....43131, 43132

Proposed Rules:
532.....42513

7 CFR

2.....40829
210.....40729
301.....42485
319.....43134
723.....43580
800.....40301
916.....42681
917.....42681, 42683
920.....41853, 42684
944.....42685, 42687
966.....42688
967.....42689
980.....42688
987.....43335
1207.....40081
1427.....40593
1464.....43580
1956.....42691

Proposed Rules:
13.....43628
319.....40872, 43628
780.....43937
910.....42515, 43943
1033.....42899
1036.....42899
1049.....42899
1209.....43943
1413.....42899
1744.....39628
1902.....39631
1930.....39631
1944.....39635

8 CFR

204.....41053
209.....42883
214.....40830, 42884
251.....40830
258.....40830
274a.....42884

9 CFR

75.....43605
94.....43606, 43885
381.....43588

Proposed Rules:
75.....40139
92.....41549
124.....40493
201.....42515
203.....42515
307.....40623

310.....40623
318.....42885
319.....42885

10 CFR

11.....41375
25.....41376
35.....41376
50.....41378, 43886
600.....40083
605.....40582

Proposed Rules:

26.....42901
70.....42901
73.....42901
1023.....40345

11 CFR

200.....39743

12 CFR

3.....40302
204.....40597
208.....43889
217.....43336
225.....41381, 41641, 43889
230.....43337
250.....40597, 41643
262.....41641
265.....40597
545.....40085
562.....40085
563.....40085
563c.....40085
571.....40085
603.....42888
611.....43393
612.....43394
614.....43290
619.....43290
701.....42486
935.....42888
940.....42888
1616.....43607

Proposed Rules:

3.....42623, 42901
208.....39641, 42623
225.....39641, 42623
325.....42623
363.....42516
509.....40350
516.....40350
517.....42906
528.....40350
541.....40350
543.....40350
545.....40350
552.....40350
556.....40350
558.....40350
559.....40350
561.....40350
563.....40140, 40350, 40524
563b.....40350
563e.....40350
567.....40143, 40147, 40350, 40524
571.....40350, 40524
579.....40350
580.....40350
791.....42532
1625.....39743

13 CFR

121.....41068

Proposed Rules:

108.....43155, 43157

14 CFR

13.....40094
21.....41069, 41072, 41360, 42846, 43776
23.....41069, 41072
36.....41360, 42846
39.....40307–40313, 40601, 40835–40838, 42692, 42693, 43291, 43890
43.....41360
71.....40095, 40096, 42488
91.....41360, 42662
97.....41074, 41075
121.....42662
125.....42662
135.....42662, 43776
147.....41360
200.....40097
203.....40097
205.....40097
206.....40097
231.....40097
232.....40097
255.....43780
263.....40097
288.....40097
294.....40097
296.....40097
297.....40097
298.....40097
302.....40097
372.....40097
399.....40097
1214.....41077, 41854

Proposed Rules:

Ch. I.....41894
39.....40359, 40623, 40624, 41114, 41115, 41439, 43944
61.....41974
71.....40148–40156, 41441–41445, 42810
93.....42810
101.....41628
107.....43294
108.....43294
207.....42864
208.....42864
212.....42864
294.....42864
298.....42864
380.....42864
389.....42864

15 CFR

29b.....43892
60.....40840
770.....41854
771.....41854
773.....41854
776.....41854
779.....41854
786.....41854
799.....41854
Ch. IX.....43310
944.....43310

Proposed Rules:

799.....41894
806.....43158
946.....40877

16 CFR

305.....41388, 43611
1115.....39597

Proposed Rules:

229.....41706
230.....41707
232.....41706

17 CFR

4.....41173
16.....40601
19.....41389
30.....40603

Proposed Rules:

Ch. II.....43631
33.....40626

18 CFR

10.....40314, 40604, 43059
24.....42697
122.....43395
141.....40605
145.....40255
171.....40605
172.....40605

Proposed Rules:

4.....40627
101.....42712
141.....40361
142.....40361
143.....40361
146.....41896
151.....40361
191.....41446

20 CFR

655.....40966, 43118, 43495

Proposed Rules:

626.....41447
627.....41447
628.....41447
629.....41447
630.....41447
631.....41447
637.....41447

21 CFR

5.....40315–40318, 43397
177.....43398
178.....43631
310.....41857
520.....42490, 42623
522.....41861, 42623
526.....42623
529.....42489
556.....41861
573.....40318
1308.....43399
1310.....43614
1313.....43614

Proposed Rules:

131.....40255, 43059
166.....43634
310.....40944
864.....43161
872.....43165
884.....42908

22 CFR

121.....41077

24 CFR

25.....40111
91.....40038
135.....40111
570.....40038
905.....40113

25 CFR

Proposed Rules:

211.....40298
212.....40298

26 CFR

1.....40118, 40319, 40841, 41079, 41644, 42490, 43893, 43897
5c.....43893
5f.....43893
5h.....43893
6.....43893
7.....43893
7a.....43893
10.....43893
13.....43893
14.....43893
14a.....43893
18.....43893
19.....43893
301.....43893
602.....40118, 40319, 41079, 41644, 43893, 43897

Proposed Rules:

1.....39743, 40378, 41707, 41897, 42712, 42720, 43776, 43945
49.....41549
301.....43777

27 CFR

5.....40323
20.....40847, 42623
53.....40324
70.....40327
194.....39597

Proposed Rules:

4.....40380, 40884
5.....40884
250.....40885
251.....40886
252.....40887
290.....40889

28 CFR

2.....41391–41394
50.....39598
80.....39598

Proposed Rules:

2.....41450

29 CFR

506.....40966, 43495
1910.....42102
1915.....42102
1926.....42102
2200.....41676
2676.....42490

Proposed Rules:

103.....43635
403.....41634
2610.....42910

30 CFR

206.....41862
207.....41862
208.....41862
210.....41862
216.....41862
218.....41862
219.....41862
220.....41862
228.....41862
914.....41869
935.....41690
944.....41692

Proposed Rules:

75.....40395, 42808

400.....43411
609.....43411
651.....43412
917.....41897, 43946–43952
920.....41712
935.....43954
950.....41714, 41715

31 CFR

10.....41093
204.....40239
315.....39601
353.....39601
358.....40607
550.....41696
575.....39603
580.....39603

Proposed Rules:

270.....41117

32 CFR

60.....40849
220.....41096
323.....40608
701.....40609
706.....41698
806.....41396
1906.....39604

Proposed Rules:

202.....43645
317.....40397

33 CFR

3.....39613, 42699
64.....43401
100.....40125, 40609, 40610, 41419, 41420
117.....39614, 41873
135.....41104
136.....41104
137.....41104
157.....40494
165.....40125, 40330, 40612, 41421, 43615
334.....40612

Proposed Rules:

89.....43169
117.....43647
162.....41899

34 CFR

Proposed Rules:

231.....44046
238.....44046
305.....43572

36 CFR

51.....42808

Proposed Rules:

51.....40496
242.....43074
1191.....41006

37 CFR

1.....40493
2.....40493
202.....39615

Proposed Rules:

1.....41899, 42721, 43412
5.....43412
10.....43412

38 CFR

3.....40944, 43904
17.....41700
21.....40613, 43616
36.....40615, 43616

Proposed Rules:

3.....40424
21.....41451

39 CFR

111.....43403

Proposed Rules:

111.....39646, 40890, 41716, 43956

40 CFR

52.....40126, 40331–40336, 42889–42695, 43905
55.....40792
62.....43405
136.....41830
148.....41173
156.....42472
170.....42472
180.....40128, 42699, 42700
185.....42700
186.....42700
260.....41173, 41566
261.....41173, 41566
262.....41173
264.....41173, 42832
265.....41173, 42832
266.....41566
268.....41173
270.....41173
271.....41173, 41566, 41699
279.....41566
281.....41874
414.....41836
721.....44050

Proposed Rules:

Ch. I.....42533, 43956
52.....40157, 40159, 41716, 42536, 42911, 42913, 43420–43425, 43648–43657, 43957, 43959
60.....43171
61.....43173
62.....40628
81.....43846
122.....41344
180.....40161–40163, 42727–42730
228.....43427
260.....43171
264.....43171
265.....43171
270.....43171
271.....43171
300.....39659, 41452
372.....10820
721.....10820

42 CFR

60.....41875
405.....42491
410.....39743
412.....39746
413.....39746, 42491, 43906
414.....42491
415.....42491
431.....43922
442.....43922
447.....43906, 43922
483.....43922
488.....43922
489.....43922
498.....43922

Proposed Rules:

100.....41809
413.....43659

43 CFR

Public Land Orders:

6942.....42808
6943.....39616
2460 (Revoked in part by PLO 6945).....43405
6945.....43405
6947.....43618

Proposed Rules:

3710.....41846
3800.....42732

44 CFR

64.....39617, 41104, 41875, 43618
65.....41877, 41878
67.....39619, 41880

Proposed Rules:

67.....41905

45 CFR

400.....42896
641.....40337
1301.....41881
1302.....41886

46 CFR

30.....41812
32.....41812
35.....41812
70.....41812
78.....41812
90.....41812
97.....41812
107.....41812
108.....41812
109.....41812
167.....41812
169.....41812
170.....41812
171.....41812
184.....41812
185.....41812
188.....41812
196.....41812
272.....39621
298.....39621
510.....39622, 40129
514.....39622
540.....41887
560.....40616
572.....40616
580.....39622
582.....39622

Proposed Rules:

67.....43432

47 CFR

1.....43406
2.....43290
63.....41106, 41109
73.....39624, 39625, 40342, 40849, 41698, 41700, 42510, 42511, 42701, 43290
74.....41110
80.....43406
90.....40850, 42706, 43408
95.....40343
97.....40343

Proposed Rules:

Ch. I.....39661
2.....40630, 42916, 43434
13.....41718
15.....40630
21.....42916
22.....40630, 42916
25.....40425, 40426, 40891
61.....40426
63.....41118
69.....40426
73.....39663, 41719, 41911, 41912, 42536–42538, 42732
94.....42916
99.....40630

48 CFR

30.....43409, 43495
31.....40344
52.....43409, 43495
202.....42626
204.....42626
208.....42626
214.....42626
215.....41422, 42626
216.....42626
219.....42626
223.....42626
225.....42626
226.....42626
227.....42626
228.....42626, 42707
231.....42626
232.....42626, 42707
236.....42626
237.....42626
239.....42626
242.....42626
245.....42626
252.....41422, 42626, 42707
253.....42626
270.....41422
525.....42708
552.....42708
923.....41974
1801.....40851
1803.....40851
1804.....40851
1805.....40851
1806.....40851
1807.....40851
1808.....40851
1809.....40851
1813.....40851
1815.....40851
1816.....40851
1819.....40851
1822.....40851
1823.....40851
1825.....40851
1827.....40851
1831.....40851
1832.....40851
1833.....40851
1836.....40851
1837.....40851
1842.....40851
1845.....40851
1849.....40851
1851.....40851
1852.....40851
1853.....40851
1870.....40851
9903.....43620

Proposed Rules:

45.....49891
9903.....43776
9904.....43776

49 CFR

1.....40620

110.....43062
350.....40946
355.....40946
396.....40946
571.....40131, 41423, 41428
588.....41428
1003.....41111
1023.....43151
1039.....40620
1109.....39743
1313.....40620
1321.....40857, 43059, 43925
1313.....43291

Proposed Rules:

174.....42466
177.....42466
192.....41119
218.....41454
571.....40165, 41912
1002.....39743, 41459
1018.....41459
1039.....39663, 41122
1105.....42733
1145.....41122
1150.....42733
1312.....41459
1313.....41459
1314.....41459

50 CFR

20.....40032, 43856
204.....40858
216.....41701
217.....40859, 40861, 41703
227.....40859, 40861, 41703
285.....42710, 43409
299.....40858
641.....41892
642.....43153
646.....41892
653.....40134
661.....39628, 40135, 40136, 40622, 41705, 42511, 43621
663.....40136, 41112, 42898
672.....40137, 40255, 43621, 43926
675.....42710, 43154, 43621, 43627, 43926
681.....41112
683.....40255

Proposed Rules:

17.....39664, 40429, 43673–43686
100.....43074
216.....40166
217.....41123
227.....41123
228.....42538
611.....40493
685.....40493, 43290

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 11, 1992

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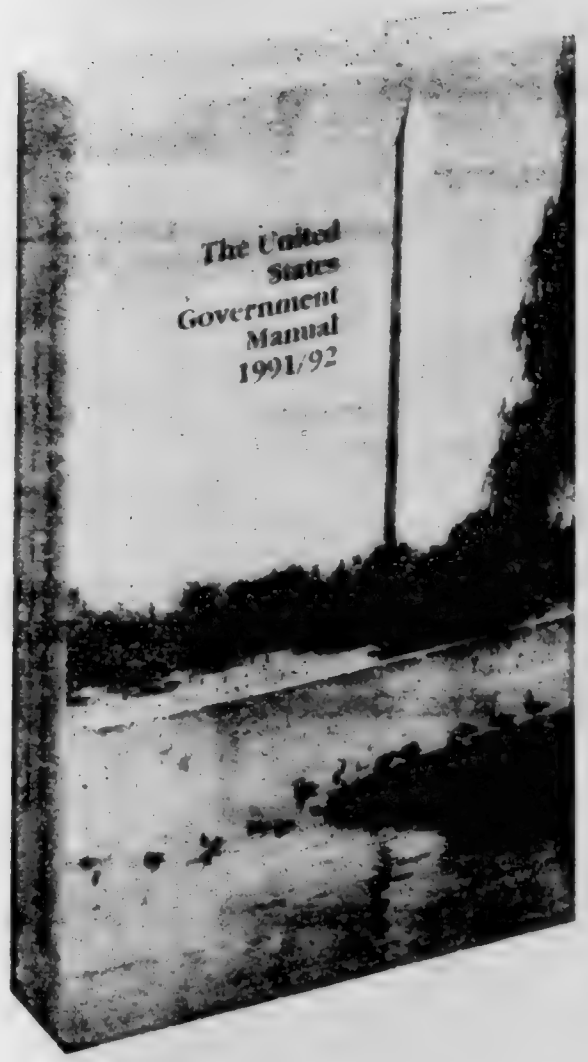

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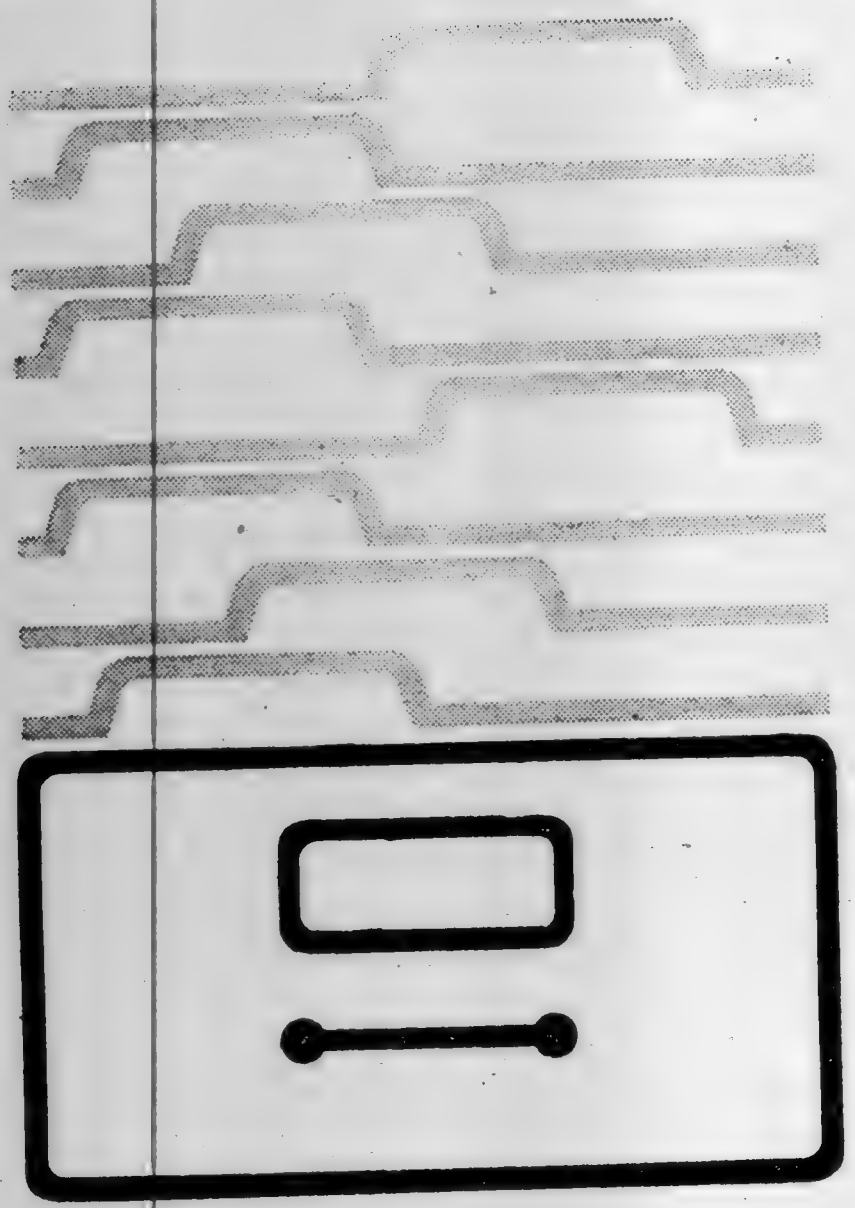

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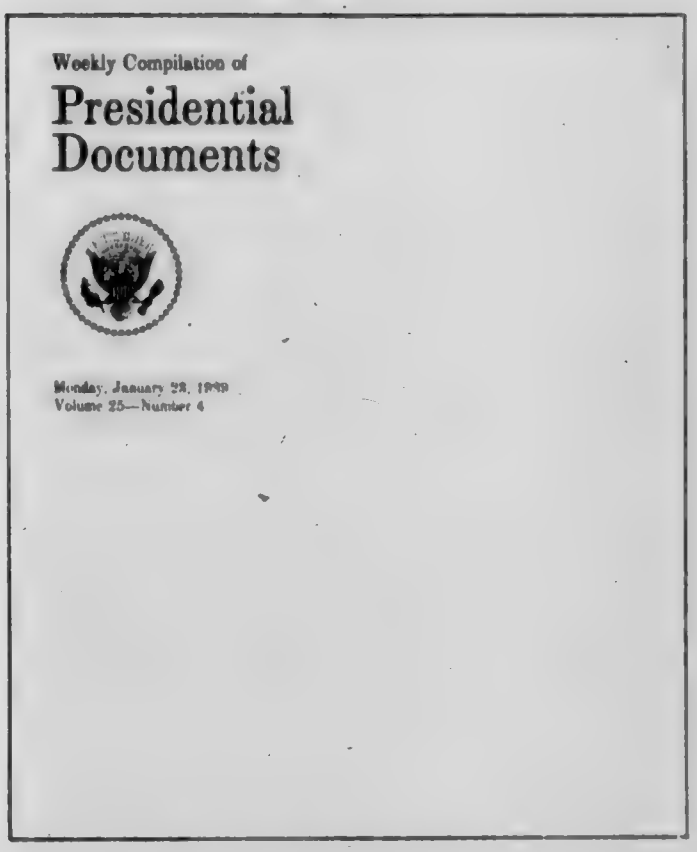

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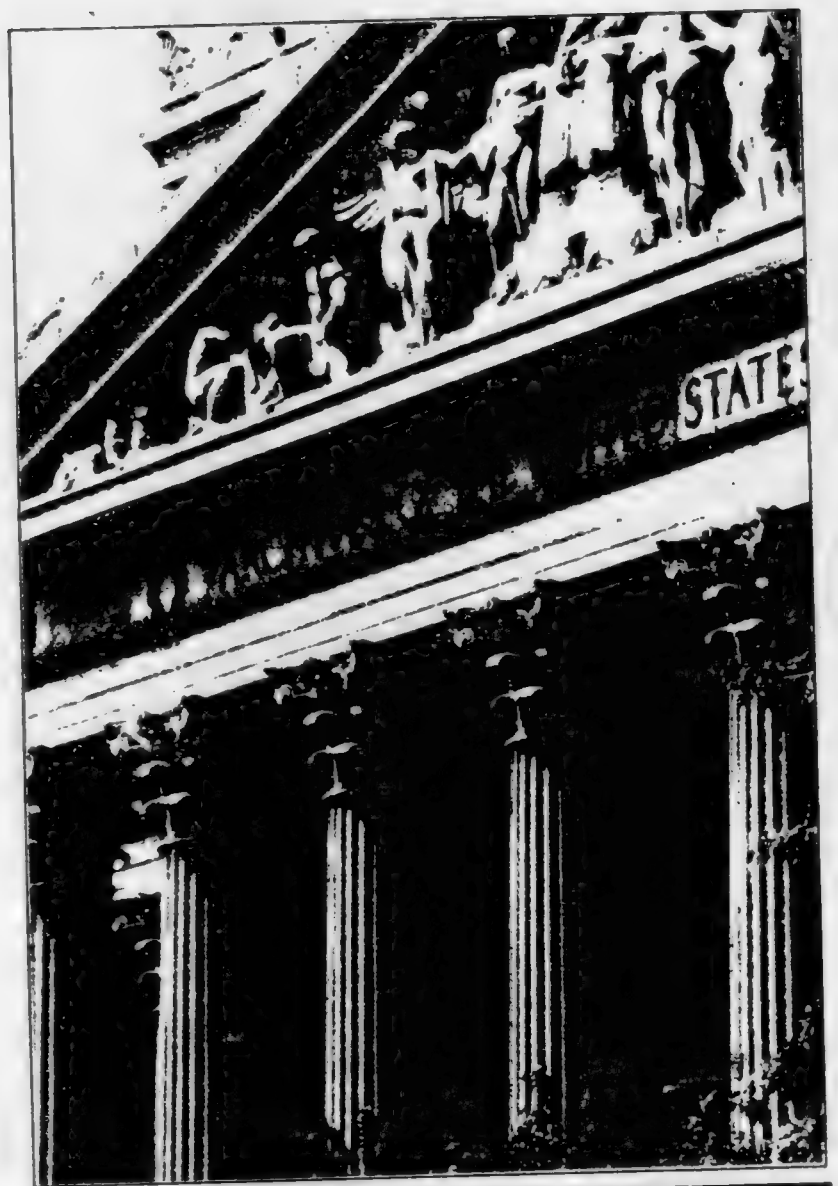

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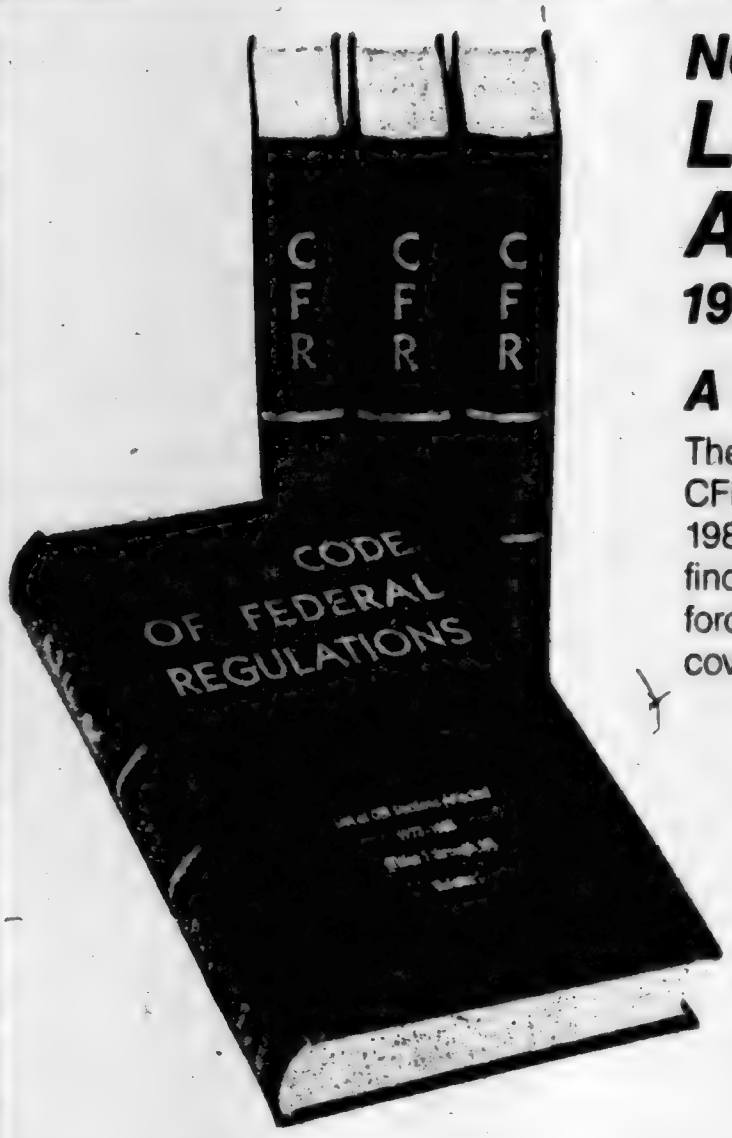

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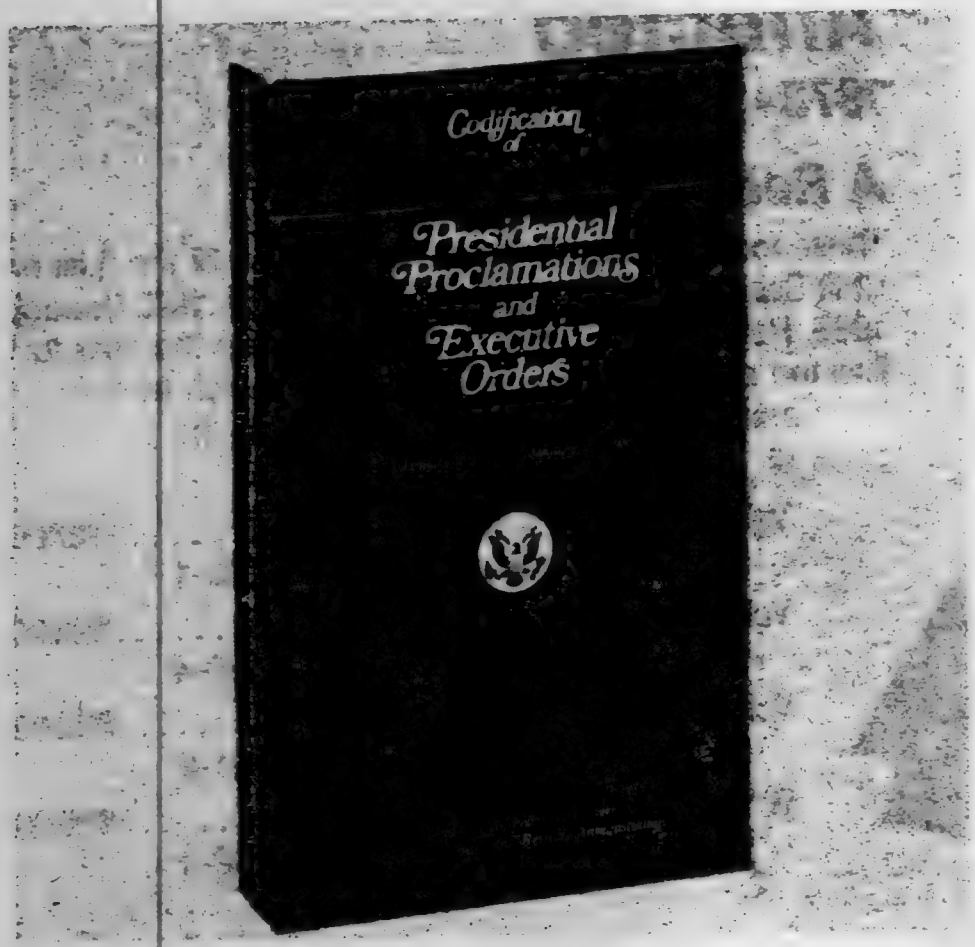

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Contents

Federal Register

Vol. 57, No. 186

Thursday, September 24, 1992

Agriculture Department
See Forest Service
See Soil Conservation Service
RULES
Meat import limitations:
Australia and New Zealand, 44077
NOTICES
Agency information collection activities under OMB review, 44160

Appalachian States Low-Level Radioactive Waste Commission
NOTICES
Meetings, 44162

Army Department
RULES
Military traffic management:
Freight motor carrier, exempt surface freight forwarders, and shipper agents qualification program, 44238
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
Fort Lewis, WA, 44176
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Hepatitis C treatment composition and method etc., 44177

Coast Guard
RULES
Ports and waterways safety:
Lower East River, NY; safety zone, 44121
Upper Bay, NJ and NY; safety zone, 44122
Vessel documentation and measurement:
Vessel documentation and instruments recording practices; citizenship declarations, 44126
NOTICES
Meetings:
Lower Mississippi River Waterway Safety Advisory Committee, 44222
New York Harbor Traffic Management Advisory Committee, 44223

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Comptroller of the Currency
RULES
Risk-based capital:
National banks, 44078

Council on Environmental Quality
NOTICES
Federal Interagency Committee on Noise; report and recommendations; availability, 44170

Customs Service
RULES
Automated Manifest System; manifest data availability on magnetic tape; dissemination to public, 44089
Entry process:
Line release, 44090
PROPOSED RULES
Automated Broker Interface entry filers; Customs Forms 28 and 29 electronic transmission, 44143
Drawback claimant, denial of exporter's summary procedure; appeal to headquarters, 44145
Entry process:
Exportation following special permit for immediate delivery, 44142
NOTICES
Trade name recordation applications:
Ashley Furniture Industries, Inc., 44228

Defense Department
See Army Department
See Defense Logistics Agency
RULES
Federal Acquisition Regulation (FAR):
Award without discussions, 44261
Commercial pricing certificate, 44262
Construction contracts subject to Davis-Bacon Act, etc., 44262
Independent research and development and bid and proposal costs, 44264
Miscellaneous amendments, 44258
Prompt payment for fresh or frozen fish, 44267
Small purchase limitation, 44260
Subcontractors; disclosure requirements, 44269
Supplies or services from Iraq; prohibition, 44263
Taxpayer Identification Number; information collection and reporting, 44259
NOTICES
Agency information collection activities under OMB review, 44172
Environmental statements; availability, etc.:
Midcourse space experiment (MSX), 44173
Selected airport noise analysis issue; Federal agency review; report and recommendations, 44174

Defense Logistics Agency
NOTICES
Privacy Act:
Systems of records, 44177

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Barton Drug, Inc., 44211
Caso, William D., M.D., 44212
Gresham, Walter S., M.D., 44213

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Handicapped individuals, severely—
Supported employment services, special project and demonstration program, 44179

Meetings:
National Assessment Governing Board, 44179

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Kamine/Besicorp Syracuse L.P., 44183
Louis Dreyfus Natural Gas Corp., 44185

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Texas, 44124
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Promulgation schedule, 44147
Hazardous waste:
Hazardous Waste Manifest Rulemaking Committee; meetings, 44147
Pesticide programs:
Risk/benefit information; reporting requirements, 44290
NOTICES
Agency information collection activities under OMB review, 44185
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region II, 44186
Federal Interagency Committee on Noise; report and recommendations; availability, 44187

Environmental Quality Council
See Council on Environmental Quality

Executive Office of the President
See Council on Environmental Quality
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Frederick Components International Ltd., 44163

Federal Aviation Administration
RULES
Standard instrument approach procedures, 44085, 44087
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 44138
Airbus Industrie, 44139
British Aerospace, 44141
NOTICES
Federal Interagency Committee on Noise; report and recommendations; availability, 44223

Federal Election Commission
PROPOSED RULES
Political committees recordkeeping and reporting and best efforts, 44137
NOTICES
Meetings; Sunshine Act, 44236

Federal Energy Regulatory Commission
NOTICES
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Louisiana Natural Resources Department, 44179
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 44180
Carnegie Natural Gas Co., 44180
CNG Transmission Corp., 44180
Gasdel Pipeline Systems, Inc., 44181
Northern Natural Gas Co., 44181, 44182
Pacific Gas Transmission Co., 44182
Phillip Gas Pipeline Co., 44182
Tarpon Transmission Co., 44183
Texas Eastern Transmission Corp., 44181, 44183
Transcontinental Gas Pipe Line Corp., 44183
Trunkline Gas Co., 44183

Federal Highway Administration
RULES
Motor carrier safety standards:
Hazardous materials transportation (including radioactive); highway routing, 44129
PROPOSED RULES
Motor carrier safety standards:
Hours of service of drivers; on-duty time, 44158
NOTICES
Environmental statements; notice of intent:
King County, WA, 44225

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Kiamichi Railroad Co., Inc., 44226

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Candlewood Associates et al., 44189
Chisholm Bancshares, Inc., et al., 44189

Federal Transit Administration
NOTICES
Environmental statements; availability, etc.:
South Sacramento Corridor, CA; light rail transit, 44226

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Federal funds transfers; Cash Management Improvement Act of 1990 implementation, 44272

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery plans—
Waccamaw silverside, 44206
Meetings:
Aquatic Nuisance Species Task Force, 44207
Nonindigenous aquatic species; research proposals evaluation; protocol availability, 44207

Forest Service
NOTICES
Appeal exemptions; timber sales:
Idaho Panhandle National Forest, ID, 44160, 44161

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Award without discussions, 44261

Commercial pricing certificate, 44262
Construction contracts subject to Davis-Bacon Act, etc., 44262
Independent research and development and bid and proposal costs, 44264
Miscellaneous amendments, 44258
Prompt payment for fresh or frozen fish, 44267
Small purchase limitation, 44260
Subcontractors; disclosure requirements, 44269
Supplies or services from Iraq; prohibition, 44263
Taxpayer identification number; information collection and reporting, 44259

Health and Human Services Department
See Health Resources and Services Administration
See National Institutes of Health
See Social Security Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Allied health project, 44190
Rural areas health care; interdisciplinary training, 44191
Meetings; advisory committees:
October, 44194

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Maximum loan and mortgage limits for high-cost areas, 44098
NOTICES
Privacy Act:
Computer matching programs, 44195

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Employment taxes and collection of income taxes at source:
Deposits of employment taxes, 44099
NOTICES
Meetings:
Art Advisory Panel, 44228

International Trade Administration
NOTICES
Antidumping:
Sulfur dyes, including sulfur vat dyes, from—
China, 44165
United Kingdom, 44163

Interstate Commerce Commission
RULES
Meetings of the Commission; technical amendment, 44135
NOTICES
Agreements under sections 5a and 5b; applications for approval, etc.:
Middle Atlantic Conference, 44209
Railroad operation, acquisition, construction, etc.:
Allegheny & Eastern Railroad, Inc., 44209

Justice Department
See Drug Enforcement Administration
RULES
Federal claims collection; salary and administrative offset, 44106
NOTICES
Pollution control; consent judgments:
American Seating Co. et al., 44210
Mid-State Disposal, Inc., et al., 44210
Wheeling-Pittsburgh Steel Corp., 44210
Privacy Act:
Computer matching programs, 44209

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Gila Box Riparian National Conservation Area Advisory Committee, 44196
Las Cruces District Advisory Council, 44197
Prineville District Advisory Council, 44197
Shoshone District Grazing Advisory Board, 44197
Opening of public lands:
Montana, 44197
Realty actions; sales, leases, etc.:
California, 44198
Idaho, 44199
New Mexico, 44199
Wyoming, 44200
Recreational management restrictions, etc.:
Yuma District, AZ, et al.; long-term visitor area program, 44201
Resource management plans, etc.:
Sutton Mountain, OR, 44204
Yuma District, AZ, 44204
Survey plat filings:
Utah, 44205
Withdrawal and reservation of lands:
Washington, 44206

Maritime Administration
RULES
Vessel financing assistance:
Obligation guarantees
Correction, 44129

Minerals Management Service
NOTICES
Royalty management:
Federal and Indian mineral leases; payor, reporter, and other instructional handbooks; availability, 44208

Mine Safety and Health Administration
RULES
Metal and nonmetal mine safety and health:
Explosives; safety standards, 44256

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Award without discussions, 44261
Commercial pricing certificate, 44262
Construction contracts subject to Davis-Bacon Act, etc., 44262
Independent research and development and bid and proposal costs, 44264

Miscellaneous amendments, 44258
Prompt payment for fresh or frozen fish, 44267
Small purchase limitation, 44260
Subcontractors; disclosure requirements, 44269
Supplies or services from Iraq; prohibition, 44263
Taxpayer identification number; information collection and reporting, 44259

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 44236

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 44195
National Institute on Deafness and Other Communication Disorders, 44194

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Ocean salmon off coasts of Washington, Oregon, and California, 44135

National Park Service
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission, 44208
Vancouver Historical Study Commission; correction, 44208

National Science Foundation
NOTICES
Meetings:
Cell Biology Advisory Panel, 44215
Chemical and Thermal Systems Advisory Committee, 44215
Chemistry Special Emphasis Panel, 44215
DOE/NSF Nuclear Science Advisory Committee, 44215
Information, Robotics, and Intelligent Systems Special Emphasis Panel, 44215
Materials Research Special Emphasis Panel, 44216
Physics Special Emphasis Panel, 44216
Special and Economic Sciences Special Emphasis Panel, 44216
VLSI CAD field research; workshop, 44216

National Telecommunications and Information Administration
NOTICES
Radio frequencies use in United States; current and future requirements, 44170

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 44216, 44217

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 44218
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 44218
Meetings:
Federal Prevailing Rate Advisory Committee, 44220

Public Health Service
See Health Resources and Services Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Calamos Investment Trust, 44220

Small Business Administration
NOTICES
Meetings; regional advisory councils:
California, 44221
Connecticut, 44221
Indiana, 44221
New York, 44221
Ohio, 44221
Vermont, 44222

Social Security Administration
RULES
Social security benefits:
Appendices, tables, and lists update, 44095
PROPOSED RULES
Supplemental security income:
Commercial transportation tickets, gifts; exclusion from income, 44146

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Second Broad River Watershed, NC, 44162

State Department
NOTICES
Iraq; submission of claims to United Nations Compensation Commission; criteria, 44222
Meetings:
Shipping Coordinating Committee, 44222

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 44112
Missouri, 44114
Ohio, 44118

Thrift Supervision Office
NOTICES
Savings associations; branch closings, 44228

Trade Representative, Office of United States
NOTICES
Government procurement agreement and discriminatory purchasing requirements; waiver; determination, 44234

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration

Treasury Department
See Comptroller of the Currency
See Customs Service
See Fiscal Service
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 44227

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Parliamentary exchange program with Armenia et al., 44231

Veterans Affairs Department
RULES
Acquisition regulations:
Contracting methods and types; special contracting methods; multiyear contracting restriction elimination, 44129
Adjudication; pensions, compensation, dependency, etc.:
Group memorial monuments, 44123

Separate Parts in This Issue

Part II
Department of Defense, Army Department, 44238

Part III
Department of Labor, Mine Safety and Health Administration, 44256

Part IV
Department of Defense, General Services Administration, and National Aeronautics and Space Administration, 44258

Part V
Department of the Treasury, Fiscal Service, 44272

Part VI
Environmental Protection Agency, 44290

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
16 44077

11 CFR
Proposed Rules:
104 44137

12 CFR
3 44078

14 CFR
97 (2 documents) 44085, 44087

Proposed Rules:
39 (3 documents) 44138, 44141

19 CFR
103 44089
142 44090
178 44090
Proposed Rules:
142 44142
151 44143
152 44143
191 44145

20 CFR
404 44095
Proposed Rules:
416 44146

24 CFR
203 44098
234 44098

26 CFR
31 44099

28 CFR
11 44106

30 CFR
56 44256
57 44256
920 44112
925 44114
935 44118

31 CFR
205 44272

32 CFR
619 44238

33 CFR
165 (2 documents) 44121, 44122

38 CFR
1 44123

40 CFR
52 44124
Proposed Rules:
Ch. I 44147
63 44147
153 44290
159 44290

46 CFR
67 44126
298 44129

48 CFR
Ch. I 44258
4 44259
5 44260
13 44260
14 44261
15 (2 documents) 44261, 44262
19 44260
22 44262
25 44263
31 44264
32 44267
42 44264
52 (6 documents) 44259, 44261, 44262, 44267, 44268
817 44129

49 CFR
397 44129
1012 44135
Proposed Rules:
392 44158
395 44158

50 CFR
661 44135

Rules and Regulations

Federal Register
Vol. 57, No. 186
Thursday, September 24, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 16

Restriction on Importation of Meat From Australia and New Zealand

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This rule amends the regulations in 7 CFR part 16, subpart A entitled "Section 204 Import Regulations" to carry out the voluntary restraint agreements concerning the level of 1992 meat imports from Australia and New Zealand entered into by those countries with the United States pursuant to section 204 of the Agricultural Act of 1956, as amended.

EFFECTIVE DATE: September 24, 1992. See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Andrew Duymovic, (202) 447–8031, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, USDA, room 6616 South Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Pursuant to the authority of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and Executive Order 11539, as amended, the Office of the United States Trade Representative has negotiated agreements with the Governments of Australia and New Zealand whereby those countries have voluntarily agreed to limit the quantity of certain meats exported to the United States during calendar year 1992. The Secretary of Agriculture, with the concurrence of the Secretary of State and the United States Trade Representative, is authorized to carry out such agreements and to implement such action.

Presently, title 7, part 16, subpart A entitled "Section 204 Import Regulations" contains provisions governing the entry or withdrawal from warehouse of certain meats imported from Australia and New Zealand during calendar year 1991. This rule amends subpart A to delete the provisions relating to Australia and New Zealand for calendar year 1991 which no longer are in effect and inserts new provisions to carry out the voluntary agreements entered into by Australia and New Zealand with the United States for calendar year 1992.

The definition of meat in the regulations encompasses the Harmonized Tariff Schedules of the United States (HTS) items which are the subject of the voluntary agreements with Australia and New Zealand. In order to prevent circumvention of the import limitations, the definition also includes meat that would fall within such definition but for processing in Foreign-Trade Zones, territories, or possessions of the United States. In addition, the regulations impose transshipment restrictions which prevent the entry or withdrawal from warehouse for consumption of meat from Australia and New Zealand unless exported from those countries as direct shipments or on through bills of lading or, if processed in Foreign-Trade Zones, territories or possessions of the United States, shipped as direct shipments or on through bills of lading from such areas.

EFFECTIVE DATE: Meat released under the provisions of sections 448(b) and 484(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1448(b)(immediate delivery), and 19 U.S.C. 1484(a)(1)(A)(entry)), prior to September 24, 1992, shall not be denied entry.

The action taken herewith has been determined to involve foreign affairs functions of the United States. Therefore, this regulation falls within the foreign affairs exception to Executive Order 12291 and the provisions of 5 U.S.C. 553 with respect to proposed rulemaking. Further, the provisions of the Regulatory Flexibility Act do not apply to this rule since the proposed rulemaking provisions of 5 U.S.C. 553 do not apply.

List of Subjects in 7 CFR Part 16

Meat and meat products, Imports.

Accordingly, the Regulations at 7 CFR part 16, subpart A entitled "Section 204 Import Regulations" are amended as follows:

PART 16—LIMITATION ON IMPORTS OF MEAT

1. The authority citation for part 16 is revised to read as follows:

Authority: 19 U.S.C. 2253 note, 7 U.S.C. 1854, and E.O. 11539, 35 FR 10733, 3 CFR 1966–1970 Comp. p. 937, as amended by E.O. 12188, 45 FR 989, 3 CFR 1980 Comp. p. 131.

2. Section 16.4 is revised to read as follows:

§ 16.4 Transshipment restrictions.

During calendar year 1992, no meat of Australia or New Zealand origin may be entered or withdrawn from warehouse for consumption in the United States unless

(a) It is exported into the Customs Territory of the United States as a direct shipment or on a through bill of lading from the country of origin or,

(b) If processed in Foreign-Trade Zones, territories, or possessions of the United States, it is exported into the Customs Territory of the United States as a direct shipment on a through bill of lading from the Foreign-Trade Zone, territory or possession of the United States in which it was processed.

3. Section 16.5 is revised to read as follows:

§ 16.5 Quantitative restrictions.

(a) Imports From Australia

During calendar year 1992, no more than 736.8 million pounds of meat exported from Australia in the form in which it would fall within the definition of meat in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, or 0204.50.00 may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from Australia to the United States.

(b) Imports From New Zealand

During calendar year 1992, no more than 446.8 million pounds of meat exported from New Zealand in the form in which it would fall within the definition of meat in Harmonized Tariff Schedule of the United States

subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, or 0204.50.00 may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from New Zealand to the United States.

Issued at Washington, DC, this 18th day of September, 1992.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 92-23162 Filed 9-23-92; 8:45 am]

BILLING CODE 3510-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 92-8]

Risk-Based Capital Guidelines

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending the risk-based capital guidelines applicable to national banks. These amendments make a variety of clarifying and technical changes in the provisions relating to the definition of central government, the unused portion of commitments, the calculation of the amount of the allowance for loan and lease losses included in Tier 2 capital, the calculation of the limitation on subordinated debt and intermediate term preferred stock in Tier 2 capital, the redemption of capital instruments, the authority of the OCC to permit supervisory goodwill as capital, local currency claims guaranteed by non-OECD central governments, claims on non-OECD central banks, assets sold with recourse, and the definition of credit card lines.

The purpose of these amendments is to clarify certain questions of interpretation and implementation that have been raised since the risk-based capital guidelines were adopted. Further, the amendments include a limited number of technical changes needed to ensure consistency with the risk-based capital guidelines of the other Federal bank regulatory agencies, the Agreement on International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (the Basle Agreement), the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and other OCC regulations. While the amendments are technical in nature and intended to clarify the risk-based capital guidelines, the changes may have some impact on national banks.

EFFECTIVE DATE: October 26, 1992.

FOR FURTHER INFORMATION CONTACT: Donna Duncan, National Bank Examiner, Office of the Chief National Bank Examiner (202) 874-5070; Eugene W. Green, Deputy Chief Accountant, Office of the Chief National Bank Examiner (202) 874-5180; Elizabeth Milor, Financial Economist, Economic and Regulatory Policy Analysis (202) 874-5220; C. Stewart Goddin, Senior International Economic Advisor, International Banking and Finance (202) 874-4730; or Ronald Shimabukuro, Senior Attorney, Legal Advisory Services Division (202) 874-5330.

SUPPLEMENTARY INFORMATION:

Background

The OCC's final risk-based capital guidelines were published in the **Federal Register** on January 27, 1989. See 54 FR 4168 (January 27, 1989) (codified at 12 CFR part 3, appendix A). The risk-based capital guidelines impose capital requirements that are based on the credit risk profiles of financial institutions. The guidelines implement the Basle Agreement and were developed in cooperation with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (FRB).

On October 17, 1990, the OCC published in the **Federal Register** a notice of proposed rulemaking to amend the risk-based capital guidelines (NPRM). See 55 FR 42017 (October 17, 1990). The purpose of the NPRM was to propose clarifying and technical amendments to the risk-based capital guidelines. The OCC acknowledged that while the proposed amendments were clarifying or technical in nature, some aspects of the proposed amendments could have some impact on national banks. The OCC received and reviewed 27 comments on the NPRM. The commenters represent a diverse group of organizations that included national banks, thrifts, industry associations, and federal agencies.

After careful consideration of each of the comments, the OCC adopts the changes as proposed in the NPRM. The OCC believes that risk-based capital is an important supervisory tool for use in monitoring the capital adequacy of national banks. For this reason, and pursuant to the OCC's general rulemaking authority under 12 U.S.C. 93a, the OCC adopts this final rule to clarify certain questions regarding the implementation of the risk-based capital guidelines and to make technical changes to achieve greater consistency with the risk-based capital guidelines of the other banking agencies, the Basle Agreement, FIRREA, Public Law 101-73, 103 Stat. 183 (August 9, 1989), and other OCC regulations.

All commenters indicated general support for the purpose of clarifying the risk-based capital guidelines. The majority of the commenters focused on three of the 11 proposed amendments: (1) The treatment of the unused portion of commitments, (2) the 25% limitation on qualifying intangible assets includable in Tier 1 capital, and (3) the treatment of assets sold with recourse. Each amendment is discussed in greater detail in the following section.

Discussion of Amendments

(1) Definition of Central Government—Section 1(c)(5)

This final rule adopts the amendment to the definition of "central government" as proposed in the NPRM. This final rule amends the definition of central government in section 1(c) (5) to clarify that the term central government includes the central bank of the central government. To eliminate redundancy, the provision in section 3(a)(1)(v) relating to local currency claims on or guaranteed by the central government or the central bank in non-OECD countries is also amended by deleting the term "central bank". As a further clarification, the definition of central government specifies that the United States central bank includes the 12 Federal Reserve Banks.

Three comments were received on this issue. None of the commenters objected to the proposed amendment.

(2) Unused Portion of Commitments—Sections 1(c)(16), 1(c)(26), and 3(b)(4)(ii)

This final rule adopts the amendment relating to the unused portion of commitments as proposed in the NPRM. This final rule amends section 3(b)(4)(ii), relating to the unused portion of commitments, to permit commitments with an original maturity of one year or more to qualify for the zero percent conversion factor if unconditionally cancelable,[1] and subject to an annual credit review.

[1] Pursuant to section 1(c)(28), the term "unconditionally cancelable" is defined to mean

Continued

As originally provided under the risk-based capital guidelines, the unused portion of a commitment with an original maturity of one year or less qualifies for the zero percent conversion factor. The unused portion of a commitment with an original maturity beyond one year also qualifies for the zero percent conversion factor if the commitment is both unconditionally cancelable at any time and subject to a separate credit review before each drawing under the commitment.

The OCC recognizes that, in certain instances, there are commitments with an expiration date longer than one year for which the requirement of a separate credit review before each drawing is not practical. This is the case with home equity lines of credit accessed by the borrower through the writing of a check. In these arrangements, the OCC believes that a separate credit review, conducted at least annually, would serve the same purpose of monitoring and reassessing the credit exposure of the bank. If the bank fully reevaluates the credit at least annually, and then determines to continue the commitment rather than to exercise its unconditional right to cancel to the fullest extent permitted under federal law, then the commitment would be similar, in terms of the credit exposure of the bank to the borrower, to a commitment that expired in one year.

As in the NPRM, the OCC emphasizes that while this amendment would permit home equity lines of credit and other commitments that are subject to at least an annual review to qualify for the zero percent conversion factor, the review must be a normal practice of the bank, and must actually be performed and documented. The review must provide a sufficiently detailed analysis of the current financial capacity of the borrower to support the continuation of the line of credit.

The OCC received 11 comments on this issue. All of the commenters supported the proposed amendment. However, four commenters expressed concern that more guidance should be provided as to what constitutes a sufficient annual review of the commitment. Specifically, two commenters suggested that statistical methods such as credit scoring or other account monitoring systems offered by credit report agencies should be sufficient to satisfy the annual credit review requirement. The OCC agrees that additional guidance would be helpful and for that reason the following general discussion of the credit review requirements is provided in the preamble. However, the OCC has decided not to amend the risk-based capital guidelines to provide specific credit review requirements. The OCC believes that the determination of what constitutes adequate credit review is best made on an individual basis by each bank with respect to the specific circumstances of each commitment.

The OCC agrees with the view of one commenter that the annual credit review requirement should be consistent with the nature, size, and general risk profile of the portfolio involved. For large portfolios of relatively small unused line of transaction account loans, such as home equity loans, a review of individual loan files may not be cost-efficient relative to the benefits. The OCC believes that in such circumstances national banks may use account monitoring systems or other systemic reviews to satisfy this requirement, providing that the system alerts bank management to existing or potential adverse trends in the individual credits. The information necessary to satisfy this requirement may be available through credit bureau reports and internal bank account delinquency reports.

At a minimum, national banks should be able to ascertain that the paying capacity of the borrower remains satisfactory and that market conditions indicate that the value of the underlying collateral continues to provide adequate support for the line of credit. If a portfolio-wide system is utilized, banks should designate indicators that trigger a more thorough analysis of the account. Any decision by a bank to implement a portfolio-wide system of review should be documented. The bank's documentation should be sufficiently detailed to permit determination by OCC examiners that the system utilized satisfies the annual review requirement. Information such as the attributes of the system and the indicators requiring the bank to perform more detailed analysis would be useful in this regard. Unused lines of credit which, due to their size or complexity, expose the bank to material credit risk, should be thoroughly reviewed on an individual basis. This review would generally include all commercial lines of credit and loan commitments, as well as individual commitments within a home equity line of credit portfolio which either singularly or because of some other credit relationship subject the bank to significant credit exposure.

Additionally, this final rule amends the definition of "original maturity" in section 1(c)(26). First, the definition of original maturity is limited to a discussion of the scheduled expiration date of a commitment. The portion of the original definition relating to the criteria for unconditionally cancelable commitments has been superseded by the amendment to section 3(b)(4)(ii) as discussed above. Second, the definition clarifies the treatment of renewals or extensions of commitments. Commitments often contain provisions for their renewal or extension beyond the original stated expiration date. Automatic renewal of a commitment with a short-term stated expiration date can result in a commitment that is in effect a long-term commitment.

This final rule clarifies that a short-term commitment that is renewed or extended can continue to qualify for the zero percent conversion factor, as a commitment with an original maturity of one year or less, only if the bank conducts a thorough reconsideration of the commitment, including the terms and conditions of the commitment, and performs a thorough review of the creditworthiness of the customer, at the time of the renewal or extension. This reconsideration of the commitment and review of the creditworthiness of the customer must be sufficiently documented by the bank to permit determination by the OCC that an adequate review of the extension or renewal was actually performed.

This final rule also amends the definition of "unconditionally cancelable" in section 1(c)(26) by removing the text of footnote 18 from section 3(b)(4)(ii) and inserting it as part of the definition at section 1(c)(26). This change consolidates the explanation of the term "unconditionally cancelable" in one section and is intended to be purely technical in nature. Further, this final rule replaces the term "unused commitments" with the term "unused portion of commitments". This amendment also is intended to be purely technical in nature to provide consistency in terminology.

(3) Amount of Allowance for Loan and Lease Losses in Tier 2 Capital—Section 2(b)(1) (footnote 3)

This final rule adopts the amendment to clarify the method of calculating the allowable portion of the allowance for loan and lease losses (ALLL) as proposed in the NPRM. This final rule amends footnote 3 in section 2(b)(1) to

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"with respect to a commitment-type lending arrangement, that the bank may, at any time, with or without cause, refuse to advance funds or extend credit under the facility." Footnote 18 further specifies that "[i]n the case of home equity lines of credit, the bank is deemed able to unconditionally cancel the commitment if it can, at its option, prohibit additional extensions of credit, reduce the credit line and terminate the commitment to the full extent permitted by relevant Federal law."

clarify that in calculating the 1.25% limitation of the ALLL which is includable in Tier 2 capital, the "gross sum" of the risk-weighted assets means the initial risk-weighted assets *less* the required capital deductions under section 2(c) *but before* deductions for reserves which are allowed in the calculation of the final risk-weighted assets.

Subject to the transition rules and to the overall limitations on Tier 2 capital in section 4, section 2(b)(1) provides that the ALLL may be included in Tier 2 capital only up to a maximum of 1.25% of risk-weighted assets. Footnote 3 further states:

> The amount of the allowance for loan and lease losses that may be included in capital is based on a percentage of risk-weighted assets. A banking organization may deduct reserves for loan and lease losses in excess of the amount permitted to be included as capital, as well as allocated transfer risk reserves and reserves held against other real estate owned, from the gross sum of risk-weighted assets in computing the denominator of the risk-based capital ratio.

Generally, when calculating the risk-based capital ratio, any asset deducted from capital, as indicated by the numerator of the risk-based capital ratio, should also be deducted from the risk-weighted assets of the bank, the denominator of the risk-based capital ratio. See 12 CFR part 3, appendix A, section 3. Consequently, under the current risk-based capital guidelines, goodwill, other non-qualifying intangibles, and qualifying intangibles in excess of the 25% limit would be deducted from both the numerator (capital) and the denominator (risk-weighted assets) in determining the risk-based capital ratio. Therefore, these items are deducted in establishing the "gross sum" of risk-weighted assets used for the base in computing the 1.25% amount of ALLL that can be included as Tier 2 capital.

However, in addition to these capital deductions, footnote 3 provides that certain other items (*e.g.*, excess ALLL, allocated transfer risk reserves, reserves against other real estate owned, and other special reserves) may also be deducted from risk-weighted assets in computing the denominator of the capital ratio, even though they continue to be included in the "gross sum" of risk-weighted assets used as the base in calculating the 1.25% amount of ALLL includable in Tier 2 capital. This final rule clarifies that the "gross sum" of risk-weighted assets means the initial risk-weighted assets *less* the required capital deductions *but prior* to the deductions for reserves which are allowed for final risk-weighted assets (used as the denominator of the capital ratio).

To illustrate, assume a bank has risk-weighted assets of $70,500,000, before any adjustments. Under the risk-based capital guidelines, to derive the "gross sum" of risk-weighted assets the bank must deduct any asset which has been deducted from total capital. Assuming the bank has unqualifying intangible assets equal $500,000 which must be deducted from Tier 1 capital and has no other required deductions, the "gross sum" of risk-weighted assets for the bank would be $70,000,000. This amount would be the base used to compute the 1.25% limit for the ALLL that may be included in Tier 2 capital. This calculation is set out below.

Risk-weighted assets	$70,500,000
Unqualifying intangible assets (*e.g.* goodwill) which have been deducted from Tier 1 capital	−$500,000
Gross sum	70,000,000
Gross sum	70,000,000
Limitation on ALLL (1.25%)	×1.25%
Maximum amount of ALLL the bank may include in Tier 2 capital	$875,000

Other adjustments to total capital such as excess ALLL may then be made to risk-weighted assets before computing the risk-based capital ratio.

Three comments were received on this issue. One commenter indicated general support for the amendment. Another commenter, however, while registering no objection to the method of calculating the ALLL, believed that the total amount of the ALLL not allocated to a specific loss should be included in Tier 1 capital. Finally, another commenter proposed that the risk-based capital guidelines be amended to state explicitly which items can be included in the "gross sum" of risk-weighted assets used as the base in calculating the amount of ALLL includable in Tier 2 capital.

As explained in the preamble to the final risk-based capital guidelines, only the portion of the ALLL that is freely available to absorb future losses may be included as Tier 2 capital. Therefore, a standard percentage limitation of 1.25% of total risk-weighted assets was adopted. The 1.25% limitation was based on historical data and was designed as a means to eliminate the bulk of the non-qualifying portion of the ALLL from the capital calculation. See 54 FR 4175 (January 27, 1989). In accord with the Basle Agreement, the OCC continues to believe that this approach is proper. See Banking Bulletin 91–8 (March 8, 1991).

As for the suggestion that the risk-based capital guidelines specifically state which items can be included in the "gross sum" of risk-weighted assets, the OCC believes that section 2(b)(1), as clarified by this final rule, provides sufficient guidance with respect to the calculation of the ALLL.

(4) Calculation of the Limitation on Subordinated Debt and Intermediate Term Preferred Stock—Section 2(b)(4)

This final rule adopts the amendment concerning the calculation of the limitation on subordinated debt and intermediate term preferred stock as proposed in the NPRM. This final rule amends section 2(b)(4) to clarify that, in calculating capital, the 50% limitation on term subordinated debt and intermediate-term preferred stock and any related surplus must be based on Tier 1 capital after the required deductions have been made under section 2(c). This amendment is simply a clarification and does not represent any change in the method of calculating the qualifying amount of term subordinated debt and intermediate-term preferred stock.

Three comments were received on this issue. Two commenters indicated general support for the amendment while one commenter indicated no objection.

(5) Redemption of Capital Instruments—Section 2(b)(4)

This final rule adopts the amendments concerning the redemption of capital instruments as proposed in the NPRM. This final rule amends footnote 5 in section 2(b)(4) to clarify that prior OCC approval is required for the redemption of capital instruments. Footnote 5 permitted the redemption of certain capital instruments prior to maturity under the risk-based capital guidelines, as long as the instruments are redeemed with the proceeds of, or replaced by, a like amount of similar or higher quality capital instruments. As worded, the footnote stated that such redemptions may occur without the prior approval of the OCC. This is inconsistent with other OCC treatment of similar capital transactions in 12 CFR 3.100(f)(1)(vii), 5.46(c), and 5.47(f)(3)(i).

This final rule also amends footnote 5 to clarify that, although replacement by similar capital instruments may be the typical reason for allowing redemption, the OCC retains the authority to allow redemption in other circumstances in which the bank would continue to have adequate capital after redemption. The amendment also clarifies that the OCC may disallow redemption even in cases

of proposed replacement by other capital instruments. Determinations by the OCC of requests for redemption of capital instruments will be made case-by-case, taking into account all the circumstances and an overall assessment of the capital of the bank. This is similar to the scope of OCC discretion under §§ 3.100(f)(1)(vii), 5.46(c), and 5.47(f)(3)(i).

Six comments were received on this issue. Two commenters indicated no objection to the amendment. However, four commenters suggested that prior OCC approval was unnecessary for the early redemption of capital instruments. The OCC agrees that in most cases the redemption of capital instruments prior to maturity would not raise supervisory concerns where the capital instruments are redeemed by the proceeds of, or replaced by, a like amount of similar or higher quality capital instruments. However, the OCC believes that prior OCC approval of redemption of capital instruments is necessary for supervisory oversight. Moreover, this conforming amendment is necessary to make the authority for the redemption of capital instruments under section 2(b)(4) consistent with other OCC provisions dealing with the redemption of capital instruments. See 12 CFR 3.100(f)(1)(vii), 5.46(c), and 5.47(f)(3)(i).

(6) Authority of OCC to Permit Supervisory Goodwill as Capital—Section 2(c)(1)(i) (Footnote 6)

This final rule adopts the amendment concerning the authority of the OCC to permit supervisory goodwill as capital as proposed in the NPRM. This final rule deletes footnote 6 in section 2(c)(1)(i) to remove OCC authority to permit goodwill as capital when acquired in connection with a supervisory merger with a problem or failed depository institution.

The risk-based capital guidelines require all goodwill to be deducted from Tier 1 capital. In footnote 6 the OCC retained the discretionary authority not to require the deduction of goodwill acquired in connection with a supervisory merger with a problem or failed depository institution in the calculation of capital. This final rule deletes footnote 6 and implements section 18(n) of the Federal Deposit Insurance Act (12 U.S.C. 1828(n)), as added by section 221 of FIRREA. In relevant part, section 221 provides that no appropriate Federal banking agency shall allow any insured depository institutions to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intangible asset was acquired after April 12, 1989, except to the extent permitted under section 5(t) of the Home Owners' Loan Act.

The exceptions referred to in section 5(t) of the Home Owners' Loan Act, as amended by section 301 of FIRREA, relate to thrift institutions. Moreover, since 1985, the OCC has required national banks to deduct unidentified intangibles from capital. Therefore, this final rule will not have a significant immediate effect on national banks.

Four comments were received on this issue. Three commenters generally concurred with the amendment, while one commenter objected on the basis that the proposed amendment provides an unfair incentive to acquire troubled thrifts as opposed to other troubled institutions. Notwithstanding the appeal of the point raised, the risk-based capital guidelines must be made to conform with section 221 of FIRREA.

(7) 25% Limitation on Qualifying Intangible Assets Includable in Tier 1 Capital—Section 2(c)(2)(ii)

At present the 25% limitation on qualifying intangible assets in section 2(c)(2)(ii) is unchanged.

As explained in the NPRM, under the risk-based capital guidelines, intangible assets are generally deducted from Tier 1 capital in calculating a bank's risk-based capital ratio. However, certain "qualifying" intangible assets which meet specified criteria need not be deducted. Purchased mortgage servicing rights (PMSRs) are the prime example of qualifying intangible assets under the current risk-based capital guidelines. In the OCC risk-based capital guidelines, the amount of such qualifying intangibles that may be included in Tier 1 capital is strictly limited to a maximum of 25% of total Tier 1 capital.

In comparison, the FRB's risk-based capital guidelines currently provide that all intangible assets will be monitored and amounts in excess of 25% of Tier 1 capital (which is defined as net of goodwill) will be subject to particularly close scrutiny. See 12 CFR part 208, appendix A 2(B)(1)(b). The FRB also reserves the right to deduct all intangible assets on a case-by-case basis, in making an overall assessment of capital adequacy. Under the Federal Deposit Insurance Corporation's (FDIC) revised risk-based capital guidelines, the amount of PMSRs held by state nonmember banks is limited to 50% of core or Tier 1 capital, unless held in a separately capitalized mortgage banking subsidiary. See 55 FR 53139 (December, 27, 1990).

As explained in the NPRM, concern has been raised regarding the treatment of PMSRs and other intangible assets for risk-based capital and other bank supervisory purposes. Separately, but in response to these concerns, the OCC also issued an advance notice of proposed rulemaking (ANPR) requesting comments and more extensive information with respect to the overall regulatory treatment of PMSRs and other intangible assets. See 55 FR 40843 (October 5, 1990).

In the NPRM, the OCC further explained that while the current provisions in the risk-based capital guidelines would be retained until the completion of the review of intangible assets initiated by the ANPR, two immediate changes to the risk-based capital guidelines were under consideration. Specifically, the OCC requested comment on (1) whether to include a provision for some degree of case-by-case discretion to the current strict 25% limitation and (2) whether to continue using total Tier 1 capital as the base for the 25% limit or to use Tier 1 net of goodwill and other disallowed intangibles.

The OCC received 17 comments on this issue. Fourteen commenters supported a case-by-case exception to the 25% limitation on qualifying intangible assets. However, many of these commenters also requested that the OCC adopt either a higher percentage limitation or no limitation on qualifying intangible assets.

In addition to the comments discussing the issues specifically requested in the NPRM, the OCC received numerous other comments generally relating to either PMSRs or other intangible assets. In view of the comments received, the OCC realizes that the capital treatment of intangible assets is too complex to address the 25% limitation without consideration of other issues relating to intangible assets generally. Consequently, the OCC believes that it is inappropriate to change the capital treatment of intangible assets piecemeal as part of this technical amendments package. Instead, the OCC believes that the 25% limitation should be addressed as part of the comprehensive proposed rule on intangible assets. The OCC is actively considering this issue and has published a notice of proposed rulemaking on the capital treatment on intangible assets in the **Federal Register** on April 9, 1992. See 57 FR 12214 (April 9, 1992). The drafting of a final rule will be coordinated with the FRB, FDIC, and the Office of Thrift Supervision. Until the rules are amended the current 25% limitation is still in effect. In the meantime, the OCC does intend to exercise discretion in monitoring the level of qualifying

intangible assets held by national banks.

The OCC received three comments on the method of calculating the 25% limitation on intangible assets. The commenters indicated that any limitation on intangibles should be calculated based on total Tier 1 capital and not Tier 1 capital net of goodwill and other disallowed intangible assets. in view of the comments received, the OCC will retain the current method of calculating the 25% limitation on intangible assets based on total Tier 1 capital and not Tier 1 capital net of goodwill or other disallowed intangible assets.

(8) Local Currency Claims Guaranteed by Non-OECD Central Governments—Section 3(a)(1)(v) and Section 3(a)(2)

This final rule adopts the amendment concerning local currency claims guaranteed by non-OECD central governments as proposed in the NPRM. This final rule amends sections 3(a)(1)(v) and 3(a)(2) to clarify that only those local currency claims that are unconditionally guaranteed by the central governments of non-OECD countries would qualify for the zero risk weight category to the extent that the bank has local currency liabilities in that country. Local currency claims that are conditionally guaranteed by the central governments of non-OECD countries are assigned to the 20% risk weight category to the extent that the bank has local currency liabilities in that country. This amendment makes the treatment of conditional and unconditional guarantees by non-OECD central governments consistent with that afforded guarantees by OECD central governments.

Three comments were received on this issue. Two commenters generally concurred with the amendment, while one commenter indicated no objection.

(9) Claims on Non-OECD Central Banks—Section 3(a)(1)(v) and Section 3(a)(2)(ii)

This final rule adopts the amendment concerning claims on non-OECD central banks as proposed in the NPRM. This final rule amends sections (3)(a)(1)(v) and 3(a)(2)(ii) to provide that claims on non-OECD central banks, other than local currency claims offset by local currency liabilities, are assigned to the 100% risk weight category.

This amendment is necessary in order to provide comparable treatment for all central government entities within a non-OECD country and is accomplished by removing claims on non-OECD central banks with a residual maturity of one year or less from the 20% risk weight.

Three comments were received on this issue. Two commenters generally concurred with the amendment, while one commenter indicated no objection.

(10) Scope of Provision on Assets Sold with Recourse—Section 3(b)(1)(iii) (footnote 14)

This final rule adopts the amendment concerning the scope of the provisions on assets sold with recourse as proposed in the NPRM. This final rule amends footnote 14 in section 3(b)(1)(iii) to clarify that assets sold with recourse fall within the provisions for off-balance sheet activities even though the transaction would qualify for sales treatment under the Instructions for Reports of Consolidation and Income (Call Report). In addition to this clarification, this final rule also provides an exception for mortgage sales in which the bank retains insignificant recourse and meets certain other conditions.

The risk-based capital guidelines contain provisions for risk weighting off-balance sheet activities. Among the off-balance sheet activities listed in the guidelines are assets sold under an agreement to repurchase and "assets sold with recourse" to the extent that these assets are not reported in the Call Report of a national bank. These items carry a 100% credit conversion factor. Under the current risk-based capital guidelines, the entire outstanding amount of the asset sold with recourse (not only the amount of recourse) is converted at the 100% conversion factor in determining the on-balance sheet credit equivalent.

The meaning of "assets sold with recourse" was explained by a reference to the Call Report instructions in footnote 14:

> For risk-based capital purposes, the definition of the sale of assets with recourse, including one-to-four family residential mortgage loans, is the same as the definition contained in the Instructions for the preparation of the Consolidated Reports of Condition and Income (the Call Report).

As explained in the NPRM, the reference to the Call Report in footnote 14 has resulted in some misunderstanding of the treatment of assets sold with recourse under these provisions in the risk-based capital guidelines. The Call Report instructions with respect to asset sales with recourse (for both residential mortgages and other assets) contain lengthy explanations of the required reporting treatment for the sale of assets, including:

(1) A general rule that assets sold with recourse remain on the balance sheet of the selling bank;

(2) A general implicit definition of what constitutes recourse (essentially, the retention of any risk of loss);

(3) Various exceptions whereby certain types of risk retention do not constitute recourse;

(4) Exceptions for reporting purposes whereby certain residential mortgage loan sales may be treated as sales for reporting purposes, even though recourse is technically retained, because the amount of recourse is not significant and certain other conditions are met; and

(5) Exceptions for reporting purposes whereby residential or agricultural mortgage loan sales in certain government-sponsored programs may be treated as sales for reporting purposes, even though significant or even full recourse was retained.

Consequently, under the Call Report instructions residential mortgage loan sales with recourse under programs of the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) are afforded sales treatment. Similarly, the Call Report permits sales treatment for agricultural mortgage loan sales with recourse under programs of the Federal Agricultural Mortgage Corporation (Farmer Mac) because the Call Report permits sales treatment to the same extent that a transaction is reported as a sale under generally accepted accounting principles (GAAP).

This reference to the Call Report instructions in footnote 14 was intended to refer only to the discussion of what constitutes recourse. See Items 2 and 3 above. Footnote 14 was not intended to exempt from the risk-based capital requirements assets reported as sales even through recourse was retained. See items 4 and 5 above. The Call Report exceptions pertain only to how certain transactions are to be reported on the Call Report (as either on or off the balance sheet) and have no applicability for purposes of the risk-based capital guidelines. Further, the Basle Agreement specifically provides that asset sales with recourse, where the credit risk remains with the bank, are off-balance sheet items with a 100% credit conversion factor.*

This final rule makes clear that (except as discussed below) the risk-based capital provision for off-balance sheet activities covers assets sold with recourse, even if the assets sold with recourse are treated as sales for reporting purposes in the Call Report. As explained, under current Call Report

instructions mortgages sold with recourse under FNMA, FHLMC, and Farmer Mac programs are treated as sales. Nonetheless, such assets are covered by risk-based capital guidelines. However, the OCC has determined that sales of mortgage loan pools with less than significant risk of loss that meet certain criteria do not have to be included in "assets sold with recourse" for risk-based capital purposes. Therefore, this final rule provides an exception under the risk-based capital guidelines for sales of mortgage loan pools where the bank has retained only minimal risk and has already provided for all potential loss, if the following three conditions are met:

(1) The bank has not retained any significant risk of loss, either directly or indirectly;

(2) The bank's maximum contractual exposure under the recourse provision (or through the retention of a subordinated interest in the mortgages) at the time of the transfer is equal to or less than the amount of probable loss [2] that the bank has reasonably estimated that it will incur on the transferred mortgages; and

(3) the bank has created a liability account or other special reserve in an amount equal to the maximum exposure of the bank.

The amount of this reserve may not be included in capital for the purpose of determining compliance with either the risk-based capital requirement or the leverage ratio; nor may the reserve be included in the allowance for loan and lease losses.

This exception for residential mortgages under the risk-based capital guidelines generally corresponds to the current Call Report treatment for certain private residential mortgage sales. However, this exception also includes sales under the government programs (FNMA, FHLMC, Farmer Mac), if the sales satisfy the specified criteria. The OCC believes this treatment is warranted for risk-based capital purposes because in the circumstances of these transactions, while there is retention of some minimal risk, the risk has already been provided for in the special reserve. As a result, there is no longer "recourse" such that capital must be required for the whole asset sold.

The OCC received 22 comments on this issue. Of these comments, four commenters concurred with the proposed clarification. Thirteen other commenters indicated varying degrees of opposition to the clarification. Five commenters specifically indicated that the amendment represented a substantive change rather than a clarification of the current risk-based capital guidelines. In that respect, many of the commenters urged that action on this amendment be deferred pending completion of the FFIEC study on recourse, or alternatively, if adopted, the amendment should be implemented on a prospective basis to allow grandfathering of prior recourse arrangements.

As indicated in the NPRM, the changes to footnote 14 merely represent a clarification, and not a change, of the current treatment of recourse arrangements under the risk-based capital guidelines. This final rule reiterates the original intention of the risk-based capital guidelines that banks should hold capital against these recourse agreements. The confusion which may have resulted from the reference to the Call Report in footnote 14 is unfortunate, but is precisely the reason why the OCC believes that this clarification is necessary. Since this final rule simply reflects the original intent of the risk-based capital guidelines, the OCC does not believe that grandfathering of prior recourse arrangements is appropriate. Moreover, even under the current language, most banks already properly account for mortgages sold with recourse for the purposes of the risk-based capital guidelines.

In addition to issues specifically raised by the NPRM, many of the comments included discussion of other issues related to the general subject matter of recourse. Some of these comments included: (1) The GAAP definition of recourse should be adopted, (2) standard warranties and representations should not be treated as recourse arrangements, (3) implicit recourse should not be included in the definition of recourse, (4) asset sales with credit enhancements, such as spread accounts or insurance or guarantee facilities, should not be subject to capital requirements, and (5) a distinction should be made between limited and unlimited recourse.

While the OCC carefully reviewed and considered each comment, many of these comments raised issues which go beyond the limited scope of the NPRM. The OCC notes that the overall treatment of asset sales with recourse is currently being reviewed by the Federal Financial Institutions Examination Council (FFIEC) of which the OCC is a member. A request for comment by the FFIEC was published in the **Federal Register** on June 29, 1990. See 55 FR 26766 (June 29, 1990). In the context of the FFIEC study, all issues relevant to the general issue of recourse will be considered. Pending completion of the FFIEC review of this issue, other amendments may be forthcoming.

(11) Credit Card Lines and Other Related Plans—Section 3(b)(4)(iii)

This final rule adopts the amendment concerning credit card lines and other related plans as proposed in the NPRM. This final rule amends section 3(b)(4)(iii) to expand the definition of credit card lines to include other related plans. As explained in the preamble to the original risk-based capital guidelines, 54 FR 4174, the OCC intended to expand the definition of credit card lines to include other related plans, as defined in the Call Report. This would include overdraft checking plans and credit advances under a credit card plan accessed by check.

Three comments were received on this issue. Two commenters generally concurred with the amendment, while one commenter indicated no objection.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. These changes are technical and conforming in nature and should have a minimal effect on national banks regardless of size.

Executive Order 12291

The Comptroller of the Currency certifies that this final rule does not constitute a "major rule" within the meaning of Executive Order 12291 and, therefore, does not require the preparation of a regulatory impact analysis on the grounds that this regulation (1) will not have an annual effect on the economy of $100 million or more, (2) will not result in a major increase in the cost of bank operations or governmental supervision, and (3) will not have a significant adverse effect on competition (foreign and domestic), employment, investment, productivity or innovation. These changes are technical and conforming in nature and should have a minimal effect on national banks.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, National banks, Reporting

[2] The probable loss includes credit losses and other costs of collection and repossession accounted for in accordance with Statement of Financial Accounting Standard Number 5. Probable loss also includes costs of defects in the eligibility of the transferred loans, for example, defects in the legal title of the transferred mortgages.

and recordkeeping requirements, Capitol risk.

Authority and Issuance

For the reasons set forth in the preamble, appendix A of title 12, chapter I, part 3 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—[AMENDED]

1. The authority citation for part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1831n note, 3907, and 3909.

Appendix A—[Amended]

2. Section 1 of Appendix A to part 3 is amended by revising paragraphs (c)(5), (16) and (26) to read as follows:

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(5) *Central government* means the national governing authority of a country; it includes the departments, ministries and agencies of the central government and the central bank. The U.S. Central Bank includes the 12 Federal Reserve Banks. The definition of central government does not include the following: State, provincial, or local governments; commercial enterprises owned by the central government, which are entities engaged in activities involving trade, commerce, or profit that are generally conducted or performed in the private sector of the United States economy; and non-central government entities whose obligations are guaranteed by the central government.

* * * * *

(16) *Original maturity* means, with respect to a commitment, the earliest possible date after a commitment is made on which the commitment is scheduled to expire (*i.e.*, it will reach its stated maturity and cease to be binding on either party), *provided that* either:

(i) The commitment is not subject to extension or renewal and will actually expire on its stated expiration date; or

(ii) If the commitment is subject to extension or renewal beyond its stated expiration date, the stated expiration date will be deemed the original maturity only if the extension or renewal must be based upon terms and conditions independently negotiated in good faith with the customer at the time of the extension or renewal and upon a new, *bona fide* credit analysis utilizing current information on financial condition and trends.

* * * * *

(26) *Unconditionally cancelable* means, with respect to a commitment-type lending arrangement, that the bank may, at any time, with or without cause, refuse to advance funds or extend credit under the facility. In the case of home equity lines of credit, the bank is deemed able to unconditionally cancel the commitment if it can, at its option, prohibit additional extensions of credit, reduce the line, and terminate the commitment to the full extent permitted by relevant Federal law.

* * * * *

3. Footnote 3, referred to in paragraph (b)(1) of section 2 of Appendix A, is amended by adding the following sentence after the first sentence in the footnote:

[3] * * * The gross sum of risk-weighted assets used in this calculation includes all risk-weighted assets, with the exception of the assets required to be deducted under section 3 in establishing risk-weighted assets (*i.e.*, the assets required to be deducted from capital under section 2(c)) of this appendix. * * *

4. Paragraph (b)(4) of section 2 of Appendix A is amended by adding, before the period in the first sentence the phrase "as calculated after deductions pursuant to section 2(c) of this appendix".

5. Footnote 5, referred to in paragraph (b)(4) of section 2 of Appendix A, is revised to read as follows:

[5] Capital instruments may be redeemed prior to maturity with the prior approval of the OCC. The OCC typically will consider requests for the redemption of capital instruments when the instruments are to be redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument. However, the OCC may deny redemption in such circumstances or allow redemption in other circumstances, based upon its evaluation of the circumstances of each case. The OCC must be notified in writing of any request for redemption at least 30 days in advance of such redemption pursuant to the procedures in § 5.46 of this chapter.

6. The footnote reference [6] in the text of paragraph (c)(1)(i) of section 2 of appendix A, is removed and footnote 6 is removed and reserved.

7. Section 3 of Appendix A is amended by revising paragraphs (a)(1)(v) and (a)(2)(ii), by adding a new paragraph (a)(2)(xiii), and by revising paragraphs (b)(4)(i) through (iii) to read as follows:

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items.

* * * * *

(a) * * *

(1) * * *

(v) That portion of local currency claims on or unconditionally guaranteed by central governments of non-OECD countries, to the extent the bank has local currency liabilities in that country. Any amount of such claims that exceeds the amount of the bank's local currency liabilities is assigned to the 100% risk category of section 3(a)(4) of this appendix.

* * * * *

(2) * * *

(ii) Claims on, or guaranteed by depository institutions, other than the central bank, incorporated in a non-OECD country, with a residual maturity of one year or less.

* * * * *

(xiii) That portion of local currency claims conditionally guaranteed by central governments of non-OECD countries, to the extent the bank has local currency liabilities in that country. Any amount of such claims that exceeds the amount of the bank's local currency liabilities is assigned to the 100% risk category of section 3(a)(4) of this appendix.

* * * * *

(b) * * *

(4) * * *

(i) Unused portion of commitments with an original maturing of one year or less;

(ii) Unused portion of commitments with an original maturity of greater than one year, if they are unconditionally cancelable [18] at any time at the option of the bank and the bank has the contractual right to make, and in fact does make, either—

(A) A separate credit decision based upon the borrower's current financial condition, before each drawing under the lending facility; or

(B) An annual (or more frequent) credit review based upon the borrower's current financial condition to determine whether or not the lending facility should be continued; and

(iii) The unused portion of retail credit card lines or other related plans that are unconditionally cancelable by the bank in accordance with applicable law.

* * * * *

8. Footnote 14, referred to in paragraph (b)(1)(iii) of section 3 of appendix A, is revised to read as follows:

[14] For risk-based capital purposes, the definition of the sale of assets with recourse, including one-to-four family residential mortgages, is generally the same as the definition contained in the Instructions for the Preparation of the Consolidated Reports of Condition and Income (the Call Report). Assets sold in transactions in which the bank retains risk in a manner constituting recourse under the Call Report instructions, but which are not reported on the bank's statement of condition, are included in section 3(b)(1)(iii), even though the Call Report allows such transfers to be reported as sales. However, mortgage loans sold in transactions in which the bank retains only an insignificant amount of risk and makes concurrent provision for that risk are not considered assets sold with recourse under section 3. In order to qualify for sales treatment, such transactions must meet three conditions: (1) The bank has not retained any significant risk of loss, either directly or indirectly; (2) The bank's maximum contractual exposure under the recourse provision (or through the retention of a subordinated interest in the mortgages)

[18] See section 1(c)(26) of appendix A to this part.

at the time of the transfer is equal to or less than the amount of probable loss that the bank has reasonably estimated that it will incur on the transferred mortgages; and (3) The bank must have created a liability account or other special reserve in an amount equal to its maximum exposure. The amount of this liability account or other special reserve may not be included in capital for the purpose of determining compliance with either the risk-based capital requirement or the leverage ratio; nor may it be included in the allowance for loan and lease losses.

9. In appendix A, table 1 is amended by revising item 4 in category 1 and item 5 in category 2, and by adding item 12 in category 2 to read as follows:

Table 1—Summary of Risk Weights and Risk Categories

Category 1: Zero percent

* * * * *

4. That portion of local currency claims on or unconditionally guaranteed by non-OECD central governments to the extent the bank has local currency liabilities in that country.

* * * * *

Category 2: 20 Percent

* * * * *

5. Claims on, or guaranteed by, non-OECD depository institutions with a residual maturity of one year or less.

* * * * *

12. That portion of local currency claims conditionally guaranteed by central governments of non-OECD countries, to the extent the bank has local currency liabilities in that country.

* * * * *

10. In appendix A, table 2 is amended by revising item 2 under "50 Percent Conversion Factor" and items 1 and 2 under "Zero Percent Conversion Factor" to read as follow:

Table 2—Credit Conversion Factors for Off-Balance Sheet Items

* * * * *

50 Percent Conversion Factor

* * * * *

2. Unused portion of commitments with an original maturity exceeding one year.

* * * * *

Zero Percent Conversion Factor

1. Unused portion of commitments with an original maturity of one year or less.

2. Unused portion of commitments which are unconditionally cancelable at any time, regardless of maturity.

Dated: April 23, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92-23019 Filed 9-23-92; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 26974; Amdt. No. 1510]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria

were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on September 11, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
08/27/92	MN	Roseau	Roseau Muni	FDC 2/5140	VOR Rwy 16, Amdt 6.
08/27/92	MN	Roseau	Roseau Muni	FDC 2/5141	VOR-A Amdt 7.
08/28/92	TX	McAllen	Miller Intl	FDC 2/5178	LOC BC Rwy 31 Amdt 7.
09/01/92	MA	Worchester	Worchester Muni	FDC 2/5240	NDB Rwy 29 Amdt 9.
09/04/92	PA	Seven Springs Borough	Seven Springs	FDC 2/5329	VOR-A Amdt 2.
09/08/92	AR	Walnut Ridge	Walnut Ridge Regional	FDC 2/5384	LOC Rwy 17 Amdt 2.
09/08/92	AR	Walnut Ridge	Walnut Ridge Regional	FDC 2/5388	VOR/DME Rwy 22 Amdt 12.
09/08/92	AR	Walnut Ridge	Walnut Ridge Regional	FDC 2/5392	NDB Rwy 17 Amdt 3.
09/08/92	AR	Walnut Ridge	Walnut Ridge Regional	FDC 2/5393	VOR-A Amdt 15.
09/09/92	IN	Indianapolis	Indianapolis Intl	FDC 2/5419	RADAR-1 Amdt 29.
09/09/92	MA	Stow	Minute Man Airfield	FDC 2/5409	NDB-A Amdt 7.
09/09/92	MA	Stow	Minute Man Airfield	FDC 2/5411	VOR/DME Rwy 21 Amdt 3.
09/09/92	MA	Worcester	Worcester Muni	FDC 2/5407	NDB Rwy 11 Amdt 17 Notam Replaces 2/4799.
09/09/92	RI	Block Island	Block Island State	FDC 2/5420	VOR/DME Rwy 10 Amdt 3.
09/09/92	TN	Waverly	Humphreys County	FDC 2/5421	NDB Rwy 21 Amdt 2A.
09/09/92	TN	Waverly	Humphreys County	FDC 2/5422	VOR/DME-A Amdt 2A.
09/09/92	VA	Chase City	Chase City Muni	FDC 2/5403	NDB Rwy 36 Amdt 2.

NFDC Transmittal Letter Attachment

Walnut Ridge

Walnut Ridge Regional
Arkansas
LOC RWY 17 AMDT 2...
Effective: 09/08/92
FDC 2/5384/ARG/ FI/P Walnut Ridge Regional, Walnut Ridge, AR. LOC Rwy 17 Amdt 2...DLT note "If LCL..thru..220 feet". This becomes LOC Rwy 17 Amdt 2A.

Walnut Ridge

Walnut Ridge Regional
Arkansas
VOR/DME RWY 22 AMDT 12...
Effective: 09/08/92
FDC 2/5388/ARG/ FI/P Walnut Ridge Regional, Walnut Ridge, AR. VOR/DME Rwy 22 Amdt 12...DLT note "If LCL..thru..220 feet". This becomes VOR/DME Rwy 22 Amdt 12A.

Walnut Ridge

Walnut Ridge Regional
Arkansas
NDB RWY 17 AMDT 3...
Effective: 09/08/92
FDC 2/5392/ARG/ FI/P Walnut Ridge Regional, Walnut Ridge, AR. NDB Rwy 17

Amdt 3...DLT note "If LCL..thru..220 feet". This becomes NDB Rwy 17 Amdt 3A.

Walnut Ridge

Walnut Ridge Regional
Arkansas
VOR-A AMDT 15...
Effective: 09/08/92
FDC 2/5393/ARG/ FI/P Walnut Ridge Regional, Walnut Ridge, AR. VOR-A Amdt 15...DLT note "If LCL..thru..220 feet". This becomes VOR-A Amdt 15A.

Indianapolis

Indianapolis Intl
Indiana
RADAR-1 AMDT 29...
Effective: 09/09/92
FDC 2/5419/IND/ FI/P Indianapolis Intl, Indianapolis, IN. RADAR-1 Amdt 29...CHG INOP ALS note to read "For INOP ALSF-2 increase CAT D S-5L and S-5R VIS to RVR 6000. For INOP MALSR increase CAT D S-23R and S-32 VIS to RVR 6000. This is RADAR-1 Amdt 30.

Worchester

Worchester Muni
Massachusetts
NDB RWY 29 AMDT 9...
Effective: 09/01/92
FDC 2/5240/ORH/ FI/P Worchester Muni, Worchester, MA. NDB Rwy 29 Amdt 9...Circling CAT D MDA 2100/HAA 1092, VIS 3. This is NDB Rwy 29 Amdt 9A.

Worcester

Worcester Muni
Massachusetts
NDB RWY 11 AMDT 17...
Effective: 09/09/92
NOTAM Replaces 2/4799
FDC 2/5407/ORH/ FI/P Worcester Muni, Worcester, MA. NDB Rwy 11 Amdt 17...S-NDB-11 CAT A/B MDA 1780/HAT 799 RVR 4000, CAT C MDA 1780/HAT 799 VIS 1-¾, CAT D MDA 1780/HAT 799 VIS 2-¼. For inoperative MALSR increase CAT B S-11 to RVR 6000. Circling CAT A MDA 1780/HAA 722 VIS 1, CAT B MDA 1780/HAA 772 VIS 1-¼, CAT C MDA 1780/HAA 722 VIS 2-¼, CAT D MDA 2100/HAA 1092 VIS 3. This is NDB Rwy 11 Amdt 17B.

Stow

Minute Man Airfield
Massachusetts
NDB-A AMDT 7...
Effective: 09/09/92
FDC 2/5409/6B6/ FI/P Minute Man Airfield, Stow, MA. NDB-A Amdt 7...Delete note... Procedure not authorized at night after 0300Z except by prior arrangement for runway lights. This is NDB-A Amdt 7A.

Stow

MINUTE MAN AIRFIELD
Massachusetts
VOR/DME RWY 21 AMDT 3...
Effective: 09/09/92
FDC 2/5411/6B6/ FI/P Minute Man Airfield, Stow, MA. VOR/DME rwy 21 amdt 3...delete note...procedure not authorized at night after 0300Z except by prior arrangement for runway lights. This is VOR/DME rwy 21 amdt 3A.

Roseau

ROSEAU MUNI
Minnesota
VOR RWY 16, AMDT 6...
Effective: 08/27/92
FDC 2/5140/ROX/ FI/P Roseau Muni, Roseau, MN. VOR rwy 16, amdt 6...missed apch...climb to 3000 then left turn direct rox VOR/DME and hold. This is VOR rwy 16, amdt 6A.

Roseau

ROSEAU MUNI
Minnesota
VOR-A AMDT 7...
Effective: 08/27/92/
FDC 2/5141/ROX/ FI/P Roseau Muni, Roseau, MN. VOR-AMDT 7...missed apch...climb to 3000 then right turn direct ROX VOR/DME and hold. This is VOR-A, amdt 7A.

Seven Springs Borough

SEVEN SPRINGS
Pennsylvania
VOR-A AMDT 2...
Effective: 09/04/92
FDC 2/5329/7SP/ FI/P Seven Springs, Seven Springs Borough, PA. VOR-A amdt 2...DLT CAT D circ min (all areas); DLT note activate mirls rwy 9/27—CTAF. This becomes VOR-A amdt 2A.

Block Island

BLOCK ISLAND STATE
Rhode Island
VOR/DMERWY 10 AMDT 3...
Effective: 09/09/92
FDC 2/5420/BID/ FI/P Block Island State, Block Island, RI. VOR/DME rwy 10 amdt 3...DLT DSTC FAF TO MAP. CHG map from "5NM after rhine INT/SEY 5.3 DME OR AT SEY 0.3 DME" to "SYE 0.3 DME". This is VOR/DME rwy 10 AMDT 3A.

Waverly

HUMPHREYS COUNTY
Tennessee
NDB RWY 21 AMDT 2A...
Effective: 09/09/92
FDC 2/5421/OM5/ FI/P Humphreys County, Waverly, TN. NDB rwy 21 amdt 2A...S-21 HAT 565 all CATS, circling HAA 564 all CATS. Nashville ALSTG mins... S-21 HAT 805 all CATS, VIS 2-¼ CAT C, 2-½ CAT D, circling HAA 804 ALL CATS, VIS 2-¼ CAT C, 2-½ CAT D. This becomes NDB RWY 21 amdt 2B.

Waverly

HUMPHREYS COUNTY
Tennessee
VOR/DME-A AMDT 2A...
Effective: 09/09/92
FDC 2/5422/OM5/ FI/P Humphreys County, Waverly, TN. VOR/DME-A amdt 2A...Circling HAA 464 CAT A/B/C, MDA 1320/HAA 564 CAT D. Nashville ALSTG mins... Circling HAA 704 ALL CATS. This becomes VOR/DME-A amdt 2B.

Mc Allen

MILLER INTL
Texas
LOC BC RWY 31 AMDT 7...
Effective: 08/28/92
FDC 2/5178/MFE/ FI/P Miller Intl, Mc Allen, TX. LOC BC rwy 31 amdt 7... add note, "disregard GS indications". This is LOC BC rwy 31 amdt 7A.

Chase City

CHASE CITY MUNI
Virginia
NDB RWY 36 AMDT 2...
Effective: 09/09/92
FDC 2/5403/CXE/ FI/P Chase City Muni, Chase City, VA. NDB rwy 36 amdt 2...S-36/ circ cat min...NA. This becomes NDB rwy 3 amdt 2A.

[FR Doc. 92-23176 Filed 9-23-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26973; Amdt. No. 1509]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on September 11, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identifed as follows:

. . . Effective December 10, 1992

Roswell, NM—Roswell Industrial Air Center, VOR–A, Amdt. 7
Roswell, NM—Roswell Industrial Air Center, NDB RWY 21, Amdt. 15
Roswell, NM—Roswell Industrial Air Center, ILS RWY 21, Amdt. 16
Austin, TX—Robert Mueller Muni, VOR/DME or TACAN RWY 13R, Amdt. 9
Austin, TX—Robert Mueller Muni, VOR/DME or TACAN RWY 17, Amdt. 8
Austin, TX—Robert Mueller Muni, NDB RWY 31L, Amdt. 33
Austin, TX—Robert Mueller Muni, ILS RWY 31L, Amdt. 32

. . . Effective October 15, 1992

Selma, AL—Craig Field, ILS RWY 32, Orig.
Orlando, FL—Orlando Executive, VOR RWY 13, Amdt. 14, CANCELLED
Orlando, FL—Orlando Executive, VOR/DME RWY 7, Orig.
Douglas, GA—Douglas Muni, VOR–A, Amdt. 6
Douglas, GA—Douglas Muni, LOC RWY 4, Amdt. 2
Douglas, GA—Douglas Muni, NDB RWY 4, Amdt. 2
Dowagiac, MI—Cass County Meml, VOR–A, Amdt. 8
Dowagiac, MI—Cass County Meml, RNAV RWY 9, Amdt. 5, CANCELLED
Dowagiac, MI—Cass County Meml, VOR/DME RNAV, RWY 27, Amdt. 5
Eveleth, MN—Eveleth-Virginia Muni, VOR/DME–A, Orig.
Portsmouth, NH—Pease International Tradeport, ILS RWY 34, Orig.
Portsmouth, NH—Pease International Tradeport, ILS/DME RWY 34, Orig.
Erie, PA—Erie Intl, NDB Rwy 6, Orig.
Dallas, TX—Dallas Love Field, ILS RWY 13L, Amdt. 28
Dallas, TX—Dallas Love Field, ILS RWY 31R, Amdt. 2

. . . Effective September 17, 1992

Batavia, OH—Clermont County NDB–A, Amdt. 5, CANCELLED

[FR Doc. 92–23177 Filed 9–23–92; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 103

[T.D. 92-92]

RIN 1515-AA94

Dissemination of Manifest Data

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to include specific information regarding the availability of manifest data on magnetic tapes for dissemination to the public. The amendment also informs importers or consignees of procedures they may follow to request confidential treatment of such data. This amendment is being made so that information regarding the availability of both this product and confidentiality request procedures will be more readily available to the public.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Phyllis Dye, Revenue Branch, National Finance Center (317) 298–1330.

SUPPLEMENTARY INFORMATION:

Background

Treasury Decision 88–38, published in the **Federal Register** on July 1, 1988, (53 FR 25041) as a Notice of a New Information Product Pursuant to OMB Circular A–130, announced that Customs would be making available to the public manifest information. T.D. 88–38 explained how the electronic exchange of data between Customs, carriers and Port Authorities regarding cargo arriving in and moving through ports was an integral element of the ACS, and how this exchange would improve cargo accountability and facilitate terminal operations for all parties involved. Because the automated system which was developed to transmit this manifest data to port authorities could also create a magnetic tape of all manifest activity nationwide, Customs determined that the data could be made available to the public. T.D. 88–38 was issued with a discussion of the analysis of comments which had been received in response to Customs request for comments on the proposal that this manifest information would be made available. The T.D. also described in detail the procedures whereby Customs would see to it that importers or consignees who requested confidential treatment of their names and addresses and that of their shippers would receive confidentiality. The procedures for requesting confidentiality are presently set forth in the Customs Regulations in § 103.14(d).

As the system is presently conducted, Customs is able to prepare a daily tape which contains all manifest transactions which have been transmitted to Customs through the AMS during the course of the day. The tape will be mailed from the U.S. Customs Data Center the following business day by first class U.S. mail to the party requesting it. If the requester desires another form of delivery, it will be necessary for the requester to make his own arrangements and notify Customs in advance. As stated above, information which Customs had been requested to keep confidential will not appear on the tape which will be offered to the public. The amendment includes a list of the data elements which will be made available to the public and identifies those elements which will be deleted where confidentiality has been requested.

The current production cost of the tapes is $100.00 per day, which is what Customs charges the public for any copies requested. Requests for tapes must be in writing and submitted to the National Finance Center in Indianapolis, along with a check for the amount covering the number of tapes desired. Tapes are available for specific days or on a subscription basis. Bills for subscriptions will be issued monthly with the first month's fee due in advance. Subscriptions may be cancelled provided the U.S. Customs Service receives written notice at least 10 days prior to the end of the month. Interested persons may contact Mrs. Phyllis Dye at the National Finance Center on (317) 298–1330 for further details.

If there is a technical problem with the tapes, or for non-receipt of tapes, the subscriber must notify the U.S. Customs Data Center in writing within seven days in order to receive a replacement or credit towards future tape purchases. Refunds will not be provided. Information regarding the technical specifications of the tapes, problem tapes or the non-receipt of tapes may be directed to Mr. Ray Fouch, U.S. Customs Data Center, on (703) 644–5200.

Because Customs believes that the availability of this information should receive the widest possible dissemination, Customs has decided to amend its regulations to include the information concerning the availability of manifest information on tape and the procedures for obtaining the tapes.

Inapplicability of Notice and Delayed Effective Date

Because this amendment involves a non-substantive change to the Customs Regulations relating to agency management, and only serves to provide the public with greater access to information about an existing Customs program under which information is released to the public, which was itself developed after following notice and comment procedure, pursuant to section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553), no notice of proposed rulemaking or public procedure is necessary. For the same reasons, a delayed effective date is inappropriate.

Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other statute.

Executive Order 12291

Because this document does not result in a "major rule" as defined by E.O. 12291, the regulatory impact analysis and review prescribed by the Executive Order is not required.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 103

Customs duties and inspection; Imports; Freedom of Information.

Amendment to the Regulations

Part 103 Customs Regulations (19 CFR part 103) is amended as set forth below:

PART 103—AVAILABILITY OF INFORMATION

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

2. In § 103.14, a new paragraph (e) is added to read as follows:

§ 103.14 Information on vessel manifests and summary statistical reports.

* * * * *

(e) *Availability of manifest data on magnetic tapes.*

(1) *Availability.* Manifest data acquired from the Automated Manifest System (AMS) is available to interested members of the public on magnetic tape. This data, compiled daily, will contain all manifest transactions made on the nationwide system within the last 24 hour period. Data for which parties have requested confidential treatment in accordance with § 103.14(d) will not be included on the tapes. These tapes may be purchased at the government's production cost. Tapes are available for specific days or on a subscription basis.

(2) *Requests and subscriptions.* Requests for tapes must be in writing and submitted to: U.S. Customs Service, National Finance Center, Revenue Branch, P.O. Box 68907, Indianapolis, Indiana 46278. Requests must include a check to cover the cost of the tapes requested. Actual costs and other specific information should be ascertained by contacting the National Finance Center, Revenue Branch at (317) 298–1330. Bills for subscriptions will be issued monthly, with the first month's fee due in advance. Requested tapes will be mailed from the Customs Data Center, first class, on the next business day after compilation. Parties desiring another form of delivery will have to make their own arrangements and notify Customs in advance. Subscriptions may be canceled provided Customs receives written notice at least 10 days prior to the end of the month. The U.S. Customs Data Center must be notified in writing within seven days of technical problems with tapes or non-receipt of tapes in order to receive a replacement or credit towards future tape purchases. Refunds will not be provided. Information regarding the technical specifications of the tapes, problem tapes or the non-receipt of tapes should be directed to U.S. Customs Data Center, on (703) 644–5200.

(3) *Data elements.* The following are the data elements from the AMS manifest which will be provided to the public via magnetic tape:

1. Carrier code.
2. Vessel country code.
3. Vessel name.
4. Voyage number.
5. District/port of unlading.
6. Estimated arrival date.
7. Bill of lading number.
8. Foreign port of lading.
9. Manifest quantity.
10. Manifest units.
11. Weight.
12. Weight unit.
13. Shipper name.[1]
14. Shipper address.[1]
15. Consignee name.[1]
16. Consignee address.[1]
17. Notify party name.[1]
18. Notify party address.[1]
19. Piece count.
20. Description of goods.
21. Container number.
22. Seal number.

[1] Designates data element which will be deleted where confidentiality has been requested.

Michael H. Lane,
Commissioner of Customs.

Approved: August 26, 1992.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 92–23237 Filed 9–23–92; 8:45 am]
BILLING CODE 4820–02–M

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19 CFR Parts 142 and 178

[T.D. 92–93]

RIN 1515–AB08

Line Release

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by providing a new method of processing entries of merchandise entering the U.S. This new method, Line Release, is designed to release and track repetitive shipments through bar code technology. It may be used as a form of entry or immediate delivery at certain locations approved by Customs and will result in expedited release of repetitive shipments.

EFFECTIVE DATE: October 26, 1992.

FOR FURTHER INFORMATION CONTACT: William Nolle, Office of Automated Commercial Systems (202) 927–0541 or Bruce Nunziata, Office of Cargo Enforcement and Facilitation (202) 927–0485.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1991, a document was published in the **Federal Register** (56 FR 42568), proposing to amend the Customs Regulations by providing an automated method to expedite the release of certain shipments. The method, known as Line Release, is designed for the release and tracking of highly repetitive, high volume shipments through the use of personal computers and bar code technology. Line Release will be both faster and require less paperwork than other entry methods.

The proposal generated many comments. An analysis of the comments is set forth below.

Discussion of Comments

Comment: The use of Line Release should not be limited to land border ports. The benefits of Line Release should be available wherever Customs and the importing community chooses.

Response: While at this time, Customs is not planning the expansion of Line Release beyond the land border environment, Customs agrees that the language restricting Line Release to land border ports is unduly restrictive. Accordingly, the language restricting Line Release to land border ports is removed. Customs current policy of restricting Line Release to land border ports, however, will remain in effect until such time as both Customs and the trade community mutually agree to any change in this policy.

Comment: In proposed § 142.42 (b) and (g), relating to application for Line Release, Customs is requesting information related to the initiator and the entry filer, respectively. As the entry filer and the initiator are the same parties, this is redundant.

Response: Customs disagrees. There may be situations when the initiator and the filer may not be the same party. In addition, other than the name of the company, the information requested is not duplicative in paragraphs (b) and (g) and the information is for two different purposes. The information requested in (b)—the name of the company, contact name and telephone number—is used in case there are any questions on the application. The information requested in (g)—the company name, entry filer code, and importer number—is keyed into the Line Release data base and transmitted to the mainframe. In addition, this arrangement of information facilitates data base maintenance.

Comment: In § 142.42(h), regarding the application for Line Release, Customs requests product information to be submitted. One of the requested elements of product information is "HTSUS number for particular product or range of HTSUS numbers for multiple products for which Line Release is sought." This language is vague. What does Customs mean by "range of HTSUS numbers"?

Response: We do not wish to define this term or state specific ranges for Line Release products. Customs believes that it would severely limit system flexibility to define specific ranges and that the needs of the trade community are better served by allowing more flexibility.

Comment: Proposed § 142.42(h), regarding the information required on an application for Line Release, states that

HTSUS number is required. However, in the background portion of the proposal, it was stated that tariff numbers be reported at the sub-heading level. At what level of specificity must the tariff number be set forth on the Line Release application?

Response: While the Line Release system is capable of accepting numbers at the four, six or eight digit level, Customs has determined that for greatest flexibility, HTSUS numbers shall be reported at the sub-heading level. Accordingly, the language in § 142.42(h) is changed to reflect this. If District Directors need more detail than the sub-heading level, they may request information at the eight digit level.

Comment: If an application is denied, Customs should advise the applicant of the criteria used to make the determination and why the application was denied.

Response: Line Release applications are subjected to risk analysis through the use of selectivity. Information contained in selectivity files is of a sensitive nature. Providing applicants the reasons they were denied the use of Line Release would be tantamount to releasing selectivity criteria to the public. Accordingly, Customs will not advise the applicant of the criteria used or why an application for Line Release is denied.

Comment: Proposed § 142.47 regarding examinations is unclear about why in some instances a Line Release assigned entry number is voided and in other instances the assigned entry number is retained pending the result of the investigation.

Response: There are two different kinds of examinations of Line Release merchandise. The procedures that are followed are different for the two examination types. Customs believes that it may be detrimental to Customs enforcement efforts to specify the kinds of examinations or to link certain procedures to a particular type of examination.

Comment: Customs should advise participants if it is removing a C–4 Code from Line Release.

Response: Section 142.49(a) provides that a District Director may delete an entry filer's C–4 Code without prior notification in cases of willfulness or when public health, interest, or safety so requires. This is not to say that prior notification will not be made under any circumstances. Under circumstances when Customs determines it will remove a C–4 Code because of administrative or disciplinary reasons, advance notification will be given. For example, Customs anticipates giving advance notification if a bar code label is of inadequate quality and Customs decides to remove the C–4 Code until better labels can be printed. Customs also anticipates giving advance notification when there are recurring discrepancies in documentation. However, when Customs determines it will remove a C–4 Code because of information it has received of a sensitive or enforcement nature, advance notification will not be provided. Notification in such circumstances would alert participants of Customs intent to examine merchandise or drivers and could compromise ongoing investigations.

Comment: In proposed § 142.49(a), what does Customs mean by "willfulness"?

Response: Customs means a knowing and intentional act or omission.

Comment: In proposed § 142.49(b), why must entry filers indicate the reason for deleting a particular category of shipments from the Line Release system?

Response: There may be reasons of which Customs should be aware so that it can ensure compliance and uniformity in other districts that may process Line Release shipments with the same commodity, shipper and/or consignee.

Comment: Section 142.48 should be amended to provide that release data be printed on the face of the invoice wherever possible and that release data be printed on other agency documentation required to be presented at the time of release.

Response: Section 142.48, as proposed, provides that release data will be printed on the invoice. It is silent as to where on the invoice. Frequently, there is no space on the front of the invoice to print release data. Customs believes that the location on the invoice where the data is printed need not be addressed in the regulations and that it should be left to the discretion of the releasing officer to determine the easiest, fastest and most legible place to print the data. If at a later time Customs determines that the release data should appear at a more specified location on the invoice, Customs will amend the regulations.

Regarding printing release data on other agency documentation, Customs agrees that when the required documentation is presented at the time of release, Customs may print the release data on the other agency documentation. Section 142.48 is amended accordingly.

Comment: There is a potential lack of uniformity if a District Director is allowed the authority to deny a Line Release application even when it has been approved in another district.

Response: While Customs will make every attempt to maintain the District Director's authority to approve or deny Line Release applications, administrative procedures have been developed in an effort to bring uniformity to the process. As part of the review process, the district is required to determine if the application has been approved in another district. Approval in another district is a factor which should be taken into consideration before rejecting an application. Applicants whose request for Line Release has been denied in one district, but previously approved in another district, may submit the denied application to the District Director to be forwarded to the Assistant Commissioner, Office of Information Management. The Office of Information Management will coordinate review and will notify the District Director of the final determination. The language in § 142.43 has been changed to reflect these administrative procedures.

Comment: Specific language regarding other government agencies should be included in the Line Release regulations, especially in the approval process.

Response: Customs believes that the Line Release regulations need not detail or refer to other agency regulations. As set forth in part 12 of the Customs Regulations, Customs enforces the laws of many agencies regarding importations. In administering Line Release, Customs will continue to enforce the laws of other agencies by routing applications to other agencies for review and, at times, referring merchandise to other agencies for examination. Other agencies can rest assured that Customs will adjust examination factors to meet other agency examination or sampling requirements. Customs believes, however, that setting forth in the regulations how it will administer Line Release merchandise with each and every agency is unnecessary. It should be noted that proposed § 142.46(c) does provide that if a Line Release shipment requires other agency documentation, the Customs officer at the Line Release site will be alerted to that requirement electronically when he verifies the data on the bar code with the information on the invoice so that other agency requirements can be checked.

Comment: Will immigration clearance of drivers of Line Release vehicles delay the processing of cars at Line Release ports?

Response: While Customs cannot dispense with immigration formalities for drivers of Line Release vehicles, the cross-designation of land border Customs inspectors as Immigration and Naturalization Service inspectors allows

the inspectors to inspect and clear drivers for immigration purposes on the primary lanes in most cases. There will be instances, however, in which a driver will have to be referred for an immigration secondary inspection.

Comment: The requirement for a manifest on Line Release shipments is unnecessary because the bar code and invoice contain the elements required on a manifest.

Response: Section 123.3(a), Customs Regulations, requires that all baggage or merchandise carried on a vehicle arriving from Canada or Mexico be listed on a manifest. Manifests are currently required because there is information on the manifest, such as the name of the carrier and the vehicle number, which is not on the bar code and invoice. Customs is currently looking into combing both the invoice and manifest information in one document. If Customs succeeds at this, a manifest would no longer be necessary, and the regulations would then be amended accordingly.

Comment: A Line Release filer should be given the ability to cancel a Line Release transaction or to change a Line Release entry to a different entry type.

Response: Once a line Release transaction is started, only Customs can make changes. This is necessary so the Line Release system can be run smoothly. Accordingly, if a filer wishes to change the election as to whether the release should be considered an entry or an immediate delivery, the filer must submit a letter requesting such change to Customs. This is set forth in § 142.51. In addition, if an entry is inadvertently released under Line Release or if two entry numbers are inadvertently assigned to one transaction, a filer can request Customs to cancel the erroneously assigned entry number. The request to change to different entry types, however, creates difficulties. Aside from the ability to change an entry to an immediate delivery, Customs cannot change a Line Release entry to other types of entries. Other types of entries, such as in-bond or TIBs, have different transaction control numbers and different data requirements. Accordingly, Customs cannot entertain a request to change one entry type to another.

Comment: Current Line Release system administration and use of tariff ranges result in too many bar codes. Examples of products that would have too many bar codes are gaskets made of paper, plastic, metal and cork, which due to their composition, cannot fit into a reasonable range and require separate product codes.

Response: Customs Office of Automated Commercial Systems is administering Line Release to provide the greatest flexibility possible. While system modifications are being considered to accommodate these situations, Customs and trade participants must work within this limitation until these modifications are approved and implemented.

Comment: Please clarify why it is necessary to distinguish between an entry and an immediate delivery when applying for Line Release.

Response: In addition to immediate delivery for perishables, § 142.21, Customs Regulations, allows district directors to grant blanket authority for immediate delivery on importations arriving from contiguous countries. This has resulted in a difference in processing between the northern and southern borders. In general, all northern border district directors have granted blanket authority for immediate delivery for all transactions; on the southern border, district directors have granted authority for immediate delivery only for perishable products. Consequently, in the north, most transactions are filed as immediate deliveries with an occasional entry being filed, and in the south, most transactions are filed as entries with an occasional immediate delivery being filed. Because entry establishes rate of duty, and immediate delivery does not, it is critical that Customs establish, at the time of release, the entry or immediate delivery status of the release. The release document, CR 3461 ALT, allows filers to elect whether they are filing an entry or an immediate delivery at the time of release.

The Line Release system does not have a systemic capability to distinguish between an entry and an immediate delivery. Accordingly, § 142.42 provides that applicants state on the data loading sheet whether the transactions are to be considered an entry or an immediate delivery. This parallels the election of immediate delivery or entry that is made on the CF 3461 ALT. Filers wishing to change the designation of their form of release may do so pursuant to § 142.51 if they submit to the district director a written notice noting the C–4 Code, the change of designation, and the effective date the change.

Customs is currently considering modifications to Line Release that will enable the system to differentiate between an entry and an immediate delivery. Until that time and the regulations are amended accordingly, participants must adhere to the procedures set forth in the regulations published today.

Comment: Proposed § 142.45(b) should not be finalized because there are problems with multiple commodities being processed through the Line Release system.

Response: Multiple commodity processing is working very well at most Line Release sites. While in some locations, system users are unfamiliar with the correct handling procedures for processing multiple commodities and the errors in handling cause inconvenience, Customs believes that the correct solution to these problems is not to eliminate multiple commodity processing, but to work with field users and trade participants to correct these errors through on-site training.

Comment: The use of Line Release for Master Monthly Manifest procedures should be included in the regulations.

Response: Customs disagrees. While the Customs Omnibus Budget Reform Act of 1989 provided for a test to convert manual monthly entries to Line Release, Customs believes that these procedures should not be included in the regulations at this time.

Comment: The method for assigning entry numbers to Line Release transactions should be changed to allow a participant to provide an entry number for the release transaction, rather than having the system assign an entry number from the range provided by the filer.

Response: Currently, the system does not have this capability. Customs agrees that if this capability existed, this would be beneficial to some users. Accordingly, Customs is considering modifications to the Line Release system which would allow Customs to release transactions with filer supplied numbers. If such modifications are made, Customs will amend the regulations accordingly.

Conclusion

After careful consideration of the comments received and further review of the matter, it has been determined that the amendments with the modifications discussed above should be adopted.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial

number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this regulation is in § 142.42. The collection of information has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515–0181. The estimated average burden associated with this collection of information is 25 hours per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Customs Service, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 142

Customs duties and inspection, Imports.

Amendments to the Regulations

Parts 142 and 178, Customs Regulations (19 CFR parts 142 and 178), are amended as set forth below.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Part 142 is amended by adding a new subpart D to read as follows:

Subpart D—Line Release

Sec.

142.41 Line Release.
142.42 Application for Line Release processing.
142.43 Line Release application approval process.
142.44 Entry number range.
142.45 Use of bar code by entry filer.
142.46 Presentation of invoice and assignment of entry number.
142.47 Examinations of Line Release transactions.
142.48 Release procedure.
142.49 Deletion of C–4 Code.
142.50 Line Release data base corrections or changes.
142.51 Changing election of entry or immediate delivery.
142.52 District-wide and multiple district acceptance of Line Release.

§ 142.41 Line Release.

Line Release is an automated system designed to release and tract repetitive shipments. It is a method of entry or immediate delivery extended to importers of merchandise which Customs deems to be repetitive and high volume. Line Release may be used only at locations approved by Customs for handling Line Release.

§ 142.42 Application for Line Release processing.

In order to obtain approval for processing import transactions through Line Release, a broker or importer filing its own entries (entry filer) must submit an application to the District Director, signed by the entry filer, in a format described as a Line Release Data Loading Sheet. The application must be accompanied by a representative sample of an actual commercial invoice for the products sought to be processed under Line Release. The Line Release Data Loading Sheet must contain the following information with each information element appearing on a separate line.

(a) District or port where application is being made.

(b) Initiating Company Information: name, address, city, state, contact person, phone number of contact person, and signature.

(c) Listing of all districts in which the initiating company has filed a similar application for Line Release.

(d) Country of origin codes (ISO codes from Annex B of HTSUS) for the merchandise.

(e) Shipper or manufacturer information: Name, address, city, province/state, country, postal code, indication by noting "M" or "S" whether this information relates to a manufacturer (M) or a shipper (S), and manufacturer identification number of the shipper or manufacturer.

(f) Importer information (if importer is different than filer): Name, address, city, state and country, zip code, importer number, bond number, and surety code.

(g) Entry filer information: Name, importer number, filer code, bond number, and surety code.

(h) Product information: Product description, manifest unit of measure, HTSUS number described to sub-heading level for particular product or range of HTSUS numbers at sub-heading levels for multiple products for which Line Release is sought.

(i) Election of whether the Line Release transaction is to be considered an entry or an immediate delivery.

§ 142.43 Line Release application approval process.

(a) *District review.* The District Director shall review each Line Release application is determined whether the shipments qualify for Line Release processing. The District Director may contact the applicant for further information, if necessary. An application that fails to elect whether the Line Release transaction is to be considered an entry or an immediate delivery will be returned to the applicant. If all required information is submitted, the application will be forwarded to Headquarters for final processing.

(b) *Assignment of C–4 Codes.* A C–4 Code (Common Commodity Classification Code), which is a unique code identifying the shipper or manufacturer, importer, entry filer, and the product for each Line Release shipment, shall be assigned by Headquarters to each application approved for Line Release. Headquarters shall annotate each approved application with a C–4 Code an return the application to the District Director who shall return the approved application to the entry filer.

(c) *Denial of Line Release application.* If the District Director is considering the denial of a Line Release application, consideration shall be given to whether an application by the same filer for the same transaction has been approved in another district. If there is not a approved application in another district the District Director determines that the application shall be denied, the application shall be noted denied and returned to the entry filer without a C–4 Code annotation by the District Director. If an application has been approved in another district, but the District Director still questions whether the application should be approved in his district, the District Director shall forward the application to the Assistant Commissioner, Office of Information Management. The Office of Information Management will review the application and will notify the District Director of the final determination.

§ 142.44 Entry number range.

After an application for Line Release has received final approval, filers must provide the District Director, in writing, with a range of entry numbers for use in the system so that an entry number can

be assigned automatically to each Line Release transaction. For the purposes of this subpart, "entry number", when the release is an immediate delivery, merely refers to the Line Release transaction number; this number does not become the actual entry number until an entry for the merchandise released under the immediate delivery procedure is filed. A separate range must be provided for each Line Release site in the district. These entry numbers shall be used for assignment within the Line Release system. Entry filers shall not assign these numbers to other entry transactions.

§ 142.45 Use of bar code by entry filer.

(a) *Printing of C–4 Code.* Upon receipt of an approved Line Release application, the entry filer, in accordance with instructions from the District Director, shall preprint invoices with the C–4 Code in bar code and alpha-numeric format or print labels with the necessary information. Bar codes shall be printed in accordance with the specifications states in Customs Publication 561 (*Line Release Overview*). Labels or preprinted invoices also shall state the name of the shipper or manufacturer of the product and the name of the importer of record, if other than the entry filer, above the bar code and the name of the entry filer and a product description below the bar code.

(b) *Multiple commodity processing.* Multiple commodity processing allows more than one product to be released under one entry number. The shipper/manufacturer, importer of record and the entry filer must be the same. The product description is the only variable allowed. The commodities should be listed on one invoice with C–4 Code labels for each commodity attached to the invoice.

(c) *Distribution of labels.* If labels are used, the labels shall be affixed to the invoices in accordance with instructions from the District Director. The entry filer may either affix the labels or distribute the labels to the shippers/manufacturers and instruct them in the use and placement of the labels.

§ 142.46 Presentation of invoice and assignment of entry number.

(a) *Presentation of invoice.* When merchandise that has been approved for Line Release is imported at a Line Release site, the carrier, importer or filer shall present Customs with an invoice with the bar code or codes printed or affixed and, according to the method of transportation, the appropriate manifest document.

(b) *Verification of data.* If after scanning the bar code at the Line Release site, the Customs officer verifies the data on the bar code with the information on the invoice, he will key the quantity on the invoice and an entry number will be automatically assigned to the transaction. If there are any differences between the system data and the invoice and bar code, including any differences in entry filer, the Customs officer shall order an examination.

(c) *Other agency documentation.* If the Line Release shipment requires other agency documentation, the Customs officer at the Line Release site will be alerted to that requirement electronically when he verifies the data on the bar code with the information on the invoice. If the required form is presented to the officer with the documentation package, the shipment may be released.

§ 142.47 Examinations of Line Release transactions.

(a) *General.* Merchandise imported under Line Release generally may be released without further Customs processing. Customs, however, may choose to inspect any Line Release shipment. Examinations may be either specifically ordered by the Customs officer or random.

(b) *Voiding of Line Release Transaction.* Customs may void a Line Release transaction because of an examination. If this occurs, Customs will return the invoice to the carrier, and the entry filer, in order to enter merchandise, shall prepare and submit either a CF 3461 or 3461 Alternate.

§ 142.48 Release procedure.

(a) *General.* When the Customs officer at the Line Release site determines that a shipment is ready for release, release data, consisting of the entry number, the date and time of release, the inspector's badge number, the quantity and unit of measure, and the C–4 Code will be printed on the invoice and the manifest document and, when other agency documentation is presented, may be printed on that documentation. The invoice shall be returned to the entry filer and the manifest document shall be retained by Customs.

(b) *Notification to non-ABI participants.* The returned invoice with the release data shall be the release notification to non-ABI participants.

(c) *Notification to ABI participants.* If the Line Release entry filer is an operational ABI participant, the filer shall receive an electronic notification of the release consisting of the importer of record number, the district/port of entry, the filer code, the entry number, the date and time of release, the manufacturer code, the quantity and unit of measure, the release site, the HTSUS number(s), the C–4 Code and the country or countries of origin.

§ 142.49 Deletion of C–4 Code.

(a) *By Customs.* A District Director may temporarily or permanently delete an entry filer's C–4 Code without providing the participant with any justification and without prior notification in cases of willfulness or when public health, interest, or safety so requires, thereby revoking the filer's use of Line Release.

(b) *By entry filer.* Entry filers may delete C–4 Codes from Line Release by notifying the District Director in writing on a Deletion Data Loading Sheet. Such notification shall state the C–4 Code which is to be deleted, the district or port where the C–4 Code is to be deleted and the reason for the requested deletion. A copy of the originally approved Data Loading Sheet must be submitted with the Deletion Data Loading Sheet. If only a temporary deletion is desired, the filer shall state the requested effective date for the deletion and the date the C–4 Code is requested to be returned to Line Release processing.

§ 142.50 Line Release data base corrections or changes.

The applicant shall notify the District Director of any changes in names, importer or filer numbers or bond information on a Line Release Data Loading Sheet as soon as possible. Notification shall be accomplished by the submission of a copy of the original loading sheet with a Correction Data Loading Sheet.

§ 142.51 Changing election of entry or immediate delivery.

An applicant who has already received a C–4 Code and wishes to change the election chosen on his Line Release application as to whether the release should be considered an entry or an immediate delivery must submit a letter requesting such change to the district director where the C–4 Code is used. This letter must include the C–4 Code to be changed and the date the change is to be effective. If the requested change is for a temporary time period, the letter shall include the date the releases are to return to the release type originally requested. Applications that fail to state the effective dates of the changes requested will be returned to the applicant.

§ 142.52 District-wide and multiple district acceptance of Line Release.

(a) *District-wide processing.* If a C–4 Code has been approved by a District Director, the C–4 Code may be used at any Line Release site in the district.

(B) *Multiple district processing.* In order for a C–4 Code approved in one district to be used in another district, the entry filer must submit an application to the District Director of the other district. While uniform criteria shall be applied to approving similar shipments for Line Release in all districts, a District Director may exercise his discretion to deny Line Release in a district even though a similar shipment may be approved in another district.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178, Customs Regulations (19 CFR part 178) continues to read as follows:

Authority: 5. U.S.C. 301; 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the column indicated:

§ 178.2 Listing of OMB Control Numbers.

19 CFR section	Description	OMB control No.
§ 142.42	Line release application.	1515–0183

Approved: September 18, 1992.

Carol Hallett,

Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of Treasury.

[FR Doc. 92–23238 Filed 9–23–92; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AD15

Federal Old-Age, Survivors and Disability Insurance Benefits; Revision of Appendices, Tables, and Lists

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: In these final regulations, we update various appendices, tables, and lists in regulations on Federal old-age, survivors, and disability insurance. All update information is based on determinations by the Secretary of Health and Human Services previously published in the **Federal Register** pursuant to statutory authority.

EFFECTIVE DATES: September 24, 1992. The determinations on which these regulations are based were effective on the dates they were published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Phyllis E. Green, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966–9822.

SUPPLEMENTARY INFORMATION: Part 404 of 20 CFR contains various appendices, tables, and lists that show quarter of coverage amounts, average of total wages, benefit formulas, minimum Social Security earnings to qualify for a year of coverage after 1950 for purposes of the special minimum primary insurance amount, special minimum primary insurance amount and related maximum family benefits, percentage of increases in the primary insurance amount, and the contribution and benefit base amounts. The appendices, tables, and lists in the CFR have not been updated for several years and, therefore, do not contain current information.

Revision of Information

In these final regulations, we revise various appendices, tables, and lists in 20 CFR part 404 by using information that we previously published in the **Federal Register.**

1. The appendix to subpart B is updated by adding quarter of coverage amounts for the years 1988 through 1992.

2. The appendices to subpart C are updated by revising appendices I, II, IV, V, VI, and VII by adding information for additional years. Appendices II and VI are reformatted for conciseness and to improve readability. The heading of Appendix IV is revised and the chart reformatted to reflect more accurately minimum Social Security earnings needed to qualify for a year of coverage after 1950.

Due to the amendment of section 215(i)(4) of the Act by section 12105 of Public Law 99–272, updated benefit amounts shown in appendix III are no longer required to be published in the **Federal Register.** Therefore, appendix III is not updated with current benefit amounts. However, the introductory paragraphs to appendix III explain how to compute the current benefit amount using the table shown and the percentage of increase in appendix VI.

3. The contribution and benefit base amounts shown in subpart E at § 404.429(c)(1) and in subpart K at § 404.1047 and § 404.1096(b) are updated.

Federal Register References

The dollar amounts, benefit formulas, benefit tables, and percentage amounts for the periods shown in this update of appendices, tables, and lists are contained in various notices published in the **Federal Register** as follows:

FR Reference: 53 FR 43932 (10/31/88), 54 FR 45801 (10/31/89), 54 FR 53751 (12/29/89), 55 FR 45856 (10/31/90), 56 FR 55325 (10/25/91).

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures in these regulations because we are only reflecting information published in the **Federal Register** which is not discretionary and which does not involve the setting of policy. Therefore, opportunity for prior public comment is unnecessary and these amendments are being issued as final rules.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. These final regulations do not result in additional costs or savings or otherwise meet the threshold criteria of Executive Order 12291 because they merely update the appendices, tables, and lists with information previously published in the **Federal Register** in accordance with various provisions of the Act. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance: Program Nos. 93.802, Social Security Disability Insurance; 93.803, Social Security Retirement Insurance; 93.804 Social Security Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Reporting and recordkeeping requirements, Old-Age, Survivors and disability insurance.

Dated: June 11, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: July 22, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

For the reasons set out in the preamble, subparts B, C, E, and K of part 404 in chapter III of title 20 of the Code of Federal Regulations are amended as follows:

1. The authority citation for part 404, subpart B continues to read as follows:

Authority: Secs. 205(a), 212, 213, 214, 216, 217, 223, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 412, 413, 414, 416, 417, 423, and 1302.

2. The appendix to subpart B is amended by adding the amounts for 1988 through 1992 to the table to read as follows:

Appendix to Subpart B of Part 404—Quarter of Coverage Amounts for Calendar Years After 1978

* * * * *

Calendar year	Amount needed
* * * * *	*
1988	$470
1989	500
1990	520
1991	540
1992	570

3. The authority citation for part 404, subpart C continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 1102 of the Social Security Act; 42 U.S.C. 402(a), 405(a), 415, and 1302.

4. The appendices to subpart C are amended as follows:

A. Appendix I is amended by adding amounts for 1986 through 1990 to the table to read as follows:

Appendix I to Subpart C of Part 404—Average of the Total Wages for Years After 1950

* * * * *

Calendar year	Average of the total wages
* * * * *	*
1986	17,321.82
1987	18,426.51
1988	19,334.04
1989	20,099.55
1990	21,027.98

B. Appendix II is revised to read as follows:

Appendix II of Subpart C of Part 404—Benefit Formulas Used With Average Indexed Monthly Earnings

As explained in § 404.212, we use one of the formulas below to compute your primary insurance amount from your average indexed monthly earnings (AIME). To select the appropriate formula, we find in the left-hand column the year after 1978 in which you reach age 62, or become disabled, or die before age 62. The benefit formula to be used in computing your primary insurance amount is on the same line in the right-hand columns. For example, if you reach age 62 or become disabled or die before age 62 in 1979, then we compute 90 percent of the first $180 of AIME, 32 percent of the next $905 of AIME, and 15 percent of AIME over $1,085. After we figure your amount for each step in the formula, we add the amounts. If the total is not already a multiple of $0.10, we round the total as follows:

(1) For computations using the benefit formulas in effect for 1979 through 1982, we round the total upward to the nearest $0.10, and

(2) For computations using the benefit formulas in effect for 1983 and later, we round the total downward to the nearest $0.10.

BENEFIT FORMULAS

Year you reach age 62 [1]	90 percent of the first—	plus 32 percent of the next—	plus 15 percent of AIME over—
1979	$180	$905	$1,085
1980	194	977	1,171
1981	211	1,063	1,274
1982	230	1,158	1,388
1983	254	1,274	1,528
1984	267	1,345	1,612
1985	280	1,411	1,691
1986	297	1,493	1,790
1987	310	1,556	1,866
1988	319	1,601	1,922
1989	339	1,705	2,044
1990	356	1,789	2,145
1991	370	1,860	2,230
1992	387	1,946	2,333

[1] Or become disabled or die before age 62.

C. Appendix IV is revised to read as follows:

Appendix IV of Subpart C of Part 404—Earnings Needed for a Year of Coverage After 1950

MINIMUM SOCIAL SECURITY EARNINGS TO QUALIFY FOR A YEAR OF COVERAGE AFTER 1950 FOR PURPOSES OF THE—

Year	Special minimum primary insurance amount	Benefit computations described in section 404.213(d) [2]
1951–1954	$900	$900
1955–1958	1,050	1,050
1959–1965	1,200	1,200
1966–1967	1,650	1,650
1968–1971	1,950	1,950
1972	2,250	2,250
1973	2,700	2,700
1974	3,300	3,300
1975	3,525	3,525
1976	3,825	3,825
1977	4,125	4,125
1978	4,425	4,425
1979	4,725	4,725
1980	5,100	5,100
1981	5,550	5,550
1982	6,075	6,075
1983	6,675	6,675
1984	7,050	7,050
1985	7,425	7,425
1986	7,875	7,875
1987	8,175	8,175
1988	8,400	8,400
1989	8,925	8,925
1990	9,525	9,525
1991	5,940	9,900
1992	6,210	10,350

[2] Applies only to certain individuals with pensions from noncovered employment.

Note: For 1951–78, the amounts shown are 25 percent of the contribution and benefit base (the contribution and benefit base is the same as the annual wage limitation as shown in § 404.1047) in effect. For years after 1978, however, the amounts are 25 percent of what the contribution and benefit base would have been if the 1977 Social Security Amendments had not been enacted, except, for special minimum benefit purposes, the applicable percentage is 15 percent for years after 1990.

D. Appendix V is amended by adding tables for December 1987, December 1988, December 1989, December 1990, and December 1991 to read as follows:

Appendix V of Subpart C of Part 404—Computing the Special Minimum Primary Insurance Amount and Related Maximum Family benefits

* * * * *

DECEMBER 1987

I. Years of coverage	II. Primary insurance amount	III. Maximum family benefit
11	$20.20	$30.40
12	40.10	60.40
13	60.30	90.70
14	80.30	120.70
15	100.40	150.70
16	120.60	181.20
17	140.70	211.20
18	160.80	241.40
19	180.90	271.50
20	200.80	301.50
21	221.20	331.90
22	241.20	362.00
23	261.50	392.50
24	281.50	422.50
25	301.50	452.40
26	321.80	483.00
27	341.90	513.10
28	361.90	543.00
29	381.90	573.00
30	402.00	603.30

DECEMBER 1988

I. Years of coverage	II. Primary insurance amount	III. Maximum family benefit
11	$21.00	$31.60
12	41.70	62.80
13	62.70	94.30
14	83.50	125.50
15	104.40	156.70
16	125.40	188.40
17	146.30	219.60
18	167.20	251.00
19	188.10	282.30
20	208.80	313.50
21	230.00	345.10
22	250.80	376.40
23	271.90	408.20
24	292.70	439.40
25	313.50	470.40
26	334.60	502.30
27	355.50	533.60
28	376.30	564.70
29	397.10	596.20
30	418.00	627.40

DECEMBER 1989

I. Years of coverage	II. Primary insurance amount	III. Maximum family benefit
11	$21.90	$33.00
12	43.60	65.70
13	65.60	98.70
14	87.40	131.30

DECEMBER 1989—Continued

I. Years of coverage	II. Primary insurance amount	III. Maximum family benefit
15	109.30	164.00
16	131.20	197.20
17	153.10	229.90
18	175.00	262.70
19	196.90	295.50
20	218.60	328.20
21	240.80	361.30
22	262.50	394.00
23	284.60	427.30
24	306.40	460.00
25	328.20	492.50
26	350.30	525.90
27	372.20	558.60
28	393.90	591.20
29	415.70	624.20
30	437.60	656.80

DECEMBER 1990

I. Years of coverage	II. Primary insurance amount	III. Maximum family benefit
11	$23.00	$34.70
12	45.90	69.20
13	69.10	104.00
14	92.10	138.30
15	115.20	172.80
16	138.20	207.80
17	161.30	242.30
18	184.40	276.80
19	207.50	311.40
20	230.40	345.90
21	253.80	380.80
22	276.60	415.20
23	299.90	450.30
24	322.90	484.80
25	345.90	519.00
26	369.20	554.20
27	392.20	588.70
28	415.10	623.10
29	438.10	657.90
30	461.20	692.20

DECEMBER 1991

I. Years of coverage	II. Primary insurance amount	III. Maximum family benefit
11	$23.80	$35.90
12	47.50	71.70
13	71.600	107.80
14	95.50	143.40
15	119.40	179.10
16	143.30	215.40
17	167.20	251.20
18	191.20	287.00
19	215.10	322.90
20	238.90	358.60
21	263.10	394.80
22	286.80	430.50
23	310 90	466.90
24	334.80	502 70
25	358.60	538.20
26	382.80	574.70
27	406.70	610.40
28	430.40	646.10
29	454.30	682.20
30	478.20	717.80

* * * * *

E. Appendix VI is revised to read as follows:

Appendix VI of Subpart C of Part 404—Percentage of Automatic Increases in Primary Insurance Amounts Since 1978

Effective date	Percentage increase
06/79	9.9
06/80	14.3
06/81	11.2
06/82	7.4
12/83	3.5
12/84	3.5
12/85	3.1
12/86	1.3
12/87	4.2
12/88	4.0
12/89	4.7
12/90	5.4
12/91	3.7

F. Appendix VII is amended by adding yearly amounts for 1988 through 1992 to read as follows:

Appendix VII of Subpart C of Part 404—"Old-Law" Contribution and Benefit Base

* * * * *

Year	Amount
1988	33,600
1989	35,700
1990	38,100
1991	39,600
1992	41,400

5. The authority citation for part 404, subpart E continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404(a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

6. Section 404.429(c)(1) is amended by adding yearly amounts for 1988 through 1992 to the table to read as follows:

§ 404.429 Earnings; defined.

* * * * *

(c) * * *

(1) Remuneration that exceeds the calendar year amount as follows:

Calendar year	Amount
1988	45,000
1989	48,000
1990	51,300
1991	53,400
1992	55,500

* * * * *

7. The authority citation for part 404, subpart K is revised to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 429(a), 430, 431, and 1302; sec. 1704 of Pub. L. 99-514; 100 Stat. 2779; sec. 8013 of Pub. L. 100-647; 102 Stat. 3789.

8. Section 404.1047 is amended by adding amounts for 1988 through 1992 to read as follows:

§ 404.1047 Annual wage limitation.

* * * * *

Calendar year	Wage limitation
* * * * *	
1988	45,000
1989	48,000
1990	51,300
1991	53,400
1992	55,500

9. Section 404.1096 is amended by adding amounts for 1988 through 1992 to the table to read as follows:

§ 404.1096 Self-employment income.

* * * * *

(b) * * *

(1) * * *

Taxable year	Amount
* * * * *	
Beginning in 1988	45,000
Beginning in 1989	48,000
Beginning in 1990	51,300
Beginning in 1991	53,400
Beginning in 1992	55,500

* * * * *

[FR Doc. 92-23101 Filed 9-23-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203 and 234

[Docket No. N-92-3479; FR-3307-N-01]

Loan and Mortgage Insurance; Changes to the Maximum Loan and Mortgage Limits for Single Family Residences and Condominiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum loan and mortgage limits for high-cost areas.

SUMMARY: This Notice amends the list of areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act (NHA) by increasing the mortgage limits for Mathews and Middlesex Counties, VA; Charlotte County, FL; Bartholomew County, IN; Bonneville County, ID; Cowlitz, Jefferson, and Skagit Counties, WA and the Olympia, WA MSA; and by adding to the list of high cost areas: Garrett County, MD; Iredell County, NC; and Wasatch County, UT. Loan and mortgage limits are adjusted in an area when the Secretary determines that middle-and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, room 9272; telephone (202) 708-2700. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, room 9158; telephone (202) 708-2880; 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act, 12 U.S.C. 1703 and 1709 *et. seq.*, authorizes HUD to insure loans and mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and manufactured homes and lots in combination. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum loan and mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, section 214 of the NHA provides for special high-cost limits for insured mortgages in Alaska, Guam, Hawaii, and the Virgin Islands.

The last comprehensive list of high-cost areas was published on August 1, 1991 (56 FR 36980), listing all areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the applicable limits for each area. Amendments to the annual listing were published on December 27, 1991 (56 FR 66975) and April 13, 1992 (57 FR 12715).

This Document

Today's document increases high-cost loan and mortgage limits for Mathews and Middlesex Counties, VA; Charlotte County, FL; Bartholomew County, IN; Bonneville County, ID; Cowlitz, Jefferson, and Skagit Counties, WA and the Olympia, WA MSA; and adds high-cost loan and mortgage limits for Garrett County, MD; Iredell County, NC; and Wasatch County, UT.

This document lists each high-cost area, with applicable limits for single family residences (including condominiums) insured under sections 203(b), 234(d) and 214 of the National Housing Act. For guidance concerning the effect of these revised limits on insurance maximums applicable to manufactured homes and lots, please consult the annual list of high cost areas published on August 1, 1991 (56 FR 36980).

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home Improvement, Loan Programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department is publishing the revised dollar limitations as follows:

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Region III—HUD Field Office—Richmond				
Mathews County, VA	$88,300	$99,450	$120,800	$139,400

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Middlesex County, VA	96,400	108,600	131,950	152,250
HUD Field Office—Baltimore				
Garrett County, MD	85,500	96,300	117,000	135,000
Region IV—HUD Field Office—Greensboro				
Iredell County, NC	78,700	88,600	107,700	124,250
Region IV—HUD Field Office—Coral Gables				
Charlotte County, FL	75,050	84,500	102,700	118,500
Region V—HUD Field Office—Indianapolis				
Bartholomew County, IN	85,000	95,750	116,350	134,250
Region VIII—HUD Field Office—Salt Lake City				
Wasatch County, UT	74,000	83,450	101,400	117,000
Region X—HUD Field Office—Boise				
Bonneville County, ID	76,000	85,600	104,000	120,000
HUD Field Office—Seattle				
Cowlitz County, WA	75,250	84,750	103,000	118,850
Jefferson County, WA	124,875	140,600	170,200	197,950
Skagit County, WA	103,550	116,600	141,700	163,500
Olympia, WA MSA Thurston County	95,900	108,000	131,200	151,400

Dated: September 21, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92-23228 Filed 9-23-92; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 8436]

RIN 1545-AP91

Deposits of Employment Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations relating to the deposit of Federal employment taxes (including railroad retirement taxes). These final regulations replace the current employment tax deposit system with a new system that is significantly simpler and easier to understand and apply. The new system will reduce burden and compliance costs for employers, particularly small businesses.

DATES: The final regulations are effective January 1, 1993, and apply to the deposit of employment taxes attributable to payments made after December 31, 1992. A special transitional rule for one year is provided for all employers.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, telephone (202) 622-6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On Monday, May 18, 1992, the Internal Revenue Service published in the **Federal Register** (57 FR 21045) proposed amendments to the Employment Tax Regulations (26 CFR part 31) under section 6302 of the Internal Revenue Code. Written comments responding to the notice were received and a public hearing was held on August 3, 1992. After consideration of all written and oral comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury Decision.

Explanation of Provisions

In General

A. Current Tax Deposit System

The current rules relating to the deposit of Federal employment taxes (including railroad retirement taxes) are complicated and confusing to many taxpayers. The existing rules require employers to monitor and accumulate employment taxes from payday to payday until one of four separate deposit rules (quarterly, monthly, eighth-monthly, or daily) is triggered. The eighth-monthly deposit rule is particularly complicated. In addition, employers may have difficulty determining when deposits are due and can inadvertently switch from one rule to another within the same calendar quarter. The problems associated with the current system frequently result in the imposition of penalties for inadvertent failures to make timely desposits.

B. New Tax Deposit System

The new regulations simplify the employment tax deposit system, replacing the current system with a new system that is easier to understand and that provides employers with up-front certainty in determining their deposit obligations. The new system will reduce burden and compliance costs for employers, particularly small businesses.

The new tax deposit regulations treat an employer in one of two ways. An

employer is either a "monthly depositor" or a "semi-weekly depositor."

An employer's status as a monthly depositor or a semi-weekly depositor will be known before the beginning of each calendar year and will be determined annually, based on the employer's employment tax reporting history. The determination is based on the amount of employment taxes the employer reported for the one-year lookback period ended the preceding June 30.

If the employer reported employment taxes of $50,000 or less during the lookback period, the employer is a monthly depositor and generally must deposit employment taxes on a monthly basis during the calendar year. Under the Monthly rule, each month's taxes are required to be deposited on or before the 15th day of the following month. This rule is similar to the manner in which employers pay other monthly bills and reflects general commercial practices.

An employer that reported employment taxes of more than $50,000 during the lookback period is a semi-weekly depositor. Semi-weekly depositors generally are required to deposit their taxes on or before two specified days of the week—Wednesdays or Fridays—depending on the timing of their payrolls.

The final regulations contain special rules to address some practical concerns of employers and to provide relief in certain cases. One rule provides relief in the form of a safe harbor for employers that deposit less than their full amount of employment taxes (shortfall). For this purpose, an employer meets the safe harbor if the shortfall does not exceed the greater of $100 or 2% of the employer's deposit obligation. Even if this safe harbor is not met, employers that deposit less than the full amount of their deposit obligation can have penalties abated under section 6656 if they show that their failure was due to reasonable cause. A second rule provides that employers who have less than $500 in employment taxes during a return period can remit their taxes with their returns, rather than separately depositing the taxes.

The final regulations incorporate the present statutory requirement that an employer that accumulates employment taxes of $100,000 or more during a deposit period (either a monthly or semi-weekly period) must deposit those taxes by the next banking day.

The final regulations will be effective for the deposit of employment taxes attributable to payments made after December 31, 1992. A special transitional rule is provided for an additional year to December 31, 1993 for all employers.

Comments on Specific Issues

A. Monthly vs. Semi-Weekly Threshold

A number of commentators suggested increasing the dollar threshold for determining whether an employer is a monthly depositor or a semi-weekly depositor. The proposed regulations specified a threshold of $12,000 per quarter. The final regulations adopt an annual threshold and increase the threshold to $50,000 per year.

B. Annual Determination and Lookback Period

Under the proposed regulations, employers were required to determine their deposit history each quarter by reference to a rolling lookback period. Some commentators, including the Small Business Administration (the SBA), indicated a rolling lookback period causes difficulties for employers that deposit disproportionately large amounts of taxes during one or more quarters due to the seasonal nature of their businesses or year-end bonuses. A number of commentators suggested that the deposit rules would be simpler if the employer's status as a monthly or semi-weekly depositor were determined annually (rather than quarterly) and the lookback period were a fixed twelve-month period.

Commentators also indicated that employers should have up-front certainty about their depositor status. In particular, the commentators suggested that depositor status be determined several months prior to the beginning of the calendar year so that employers would have adequate time to adjust, if need be, their deposit obligations. Further, the commentators recommended that the same depositor status generally apply or the entire calendar year. The final regulations adopt these suggestions.

Under the final regulations, an employer's status as either a monthly depositor or semi-weekly depositor will be determined annually, prior to the beginning of each calendar year. The lookback period for each calendar year will be the twelve-month period ended the preceding June 30. Thus, employers will be able to determine their status several months prior to the beginning of each year and once determined the status will generally continue for the entire calendar year.

For example, an employer that reported $50,000 or less in employment taxes for the period July 1, 1991 through June 30, 1992 generally would be a monthly depositor during calendar year 1993. An employer who reported more than $50,000 in employment taxes for that lookback period would be a semi-weekly depositor during 1993.

Under the final regulations, a new employer will be a monthly depositor until it reports more than $50,000 of employment taxes for the prior July 1 through June 30 lookback period, or until it accumulates $100,000 or more of employment taxes on any day during the month.

C. IRS Notification of Status

The IRS will notify employers prior to the beginning of each calendar year whether they are a monthy depositor or a semi-weekly depositor. This notification will provide employers with additional up-front certainty in determining their deposit obligations.

D. Semi-Weekly Rule

A number of commentators suggested that th Semi-Weekly Rule in the proposed regulations (Tuesday–Friday rule) was too burdensome. The SBA commented that employers with Friday payrolls would not have three banking days to deposit their employment taxes. These commentators suggested a rule that would require taxpayers to deposit employment taxes within three banking days after payroll. Other commentators suggested a Tuesday–Thursday rule or other rules to allow semi-weekly depositors more time to make deposits after payroll.

1. *In General.* The final regulations take these suggestions into account and provide additional relief for semi-weekly depositors. The final regulations change the Semi-Weekly Rule so that deposits are due on or before Wednesday or Friday of each week, depending on the timing of the employer's payroll. This modifies the proposed rule and allows additional time for semi-weekly depositors to make deposits.

2. *Three Banking Days After Payroll Issue.* The Semi-Weekly rule will automatically be satisfied if an employer deposits employment taxes within three banking days after payroll. The final regulations, however, do not adopt an explicit three banking days after payroll rule because that could result in an employer having deposit obligations on more than two days in single week. An important simplification objective of the final regulations was to limit deposit obligations for semi-weekly depositors to at most two days a week.

E. Special Relief for Non-Banking Days

The Final regulations retain the rule that extends the deposit timetable when

the deposit obligation falls on a non-banking day. To provide additional relief for semi-weekly depositors, the final regulations provide that semi-weekly depositors will have a minimum of three banking days after the end of the semi-weekly period to deposit their taxes. Therefore, a semi-weekly depositor with a Friday payroll will have until the following Thursday to deposit taxes if the Monday, Tuesday or Wednesday following payday is a holiday and not a banking day.

F. One-Day ($100,000) Rule

The final regulations incorporate the statutory requirement that employers that accumulate employment taxes of $100,000 or more during any deposit period (either monthly or semi-weekly) must deposit those taxes on the first banking day after the $100,000 threshold is reached. This rule applies to both monthly depositors and semi-weekly depositors.

G. Safe Harbor

To address inadvertent shortfalls in the amount of taxes required to be deposited, the proposed regulations set forth a safe harbor rule for employers that fail to deposit the full amount of taxes. Under the proposed regulations, an employer is considered to have satisfied its deposit obligation if it had a shortfall that does not exceed the greater of $100 or 2% of the amount of employment taxes required to be deposited, and the employer deposits the shortfall on or before a specified make-up date.

Some commentators suggested that this safe harbor added complexity to the rules and should be eliminated. Other commentators, including the SBA, suggested that the proposed safe harbor should be increased to 5% or more.

The final regulations retain the safe harbor exception as proposed. In addition to the safe harbor, penalties will be abated if an employer shows that a failure to deposit the full amount of employment taxes was due to reasonable cause, as provided in section 6656. An employer may have reasonable cause if it is unable to obtain information on a timely basis and cannot reasonably estimate the items for which the information is unavailable.

The final regulations also retain a rule that allows an employer with less than $500 of employment taxes during a calendar quarter to remit that taxes with its quarterly return, rather than separately depositing the taxes.

H. Special Rules for RRTA and Agricultural Employers

Pursuant to the Congressional mandate in section 226 of the Railroad Retirement Solvency Act of 1983, the final regulations conform the rules for depositing railroad retirement taxes to those for depositing Social Security/Medicare taxes and income taxes withheld. However, since RRTA employers file returns on an annual basis rather than quarterly, such employers are subject to a different lookback rule. This different lookback rule also applies to agricultural employers with respect to taxes on wages paid to their farmworkers. Depositor status will be based on a lookback to the railroad's or farmer's total employment tax liability during the calendar year preceding the calendar year just ended. Agricultural employers should note that, under the new regulations, taxes with respect to wages paid to farmworkers (reportable on Form 943) and taxes with respect to wages paid to non-farmworkers (reportable on Form 941) are subject to separate deposit requirements.

I. Special Rules for Backup Withholding Amounts

Some commentators have suggested that the deposit rules should not apply to backup withholding amounts on interest and dividends. Under the final regulations, amounts withheld under the backup withholding requirements of section 3406 are treated as employment taxes subject to these deposit rules. However, the final regulations continue to allow an employer to treat the backup withholding amounts separate from other other employment taxes for purposes of these deposit rules.

J. Additional Comments

A number of commentators, including the SBA, proposed alternative systems based on various combinations of thresholds, separate rules and accumulations of taxes. The final regulations do not adopt these suggestions because in many cases the alternatives do not allow employers to determine their depositor status in advance and do not address other problems associated with the current tax deposit system.

A number of commentators were concerned that the proposed regulations might apply to domestic household employers. The final regulations clarify that the rules do not apply to domestic household employers (unless such employer is otherwise required to file Form 941).

K. Effective Date

The proposed regulations issued in May 1992 indicated that the regulations would be effective for the deposit of employment taxes attributable to payments made after December 31, 1992. Some commentators requested that the final regulations retain the proposed effective date or make the effective date as early as possible. Other commentators, including the SBA, suggested that the changes in the regulations may be difficult to implement by the proposed effective date. These commentators suggested a delay in the effective date or some reasonable transitional rule or election to permit employers sufficient time to adjust to the new rules. The final regulations accommodate the interests of all these parties by retaining the proposed effective date, but providing a special transitional rule for all employers for one year to December 31, 1993.

The final regulations are effective for the deposit of employment taxes attributable to payments made after December 31, 1992. This effective date will allow employers who are able to adapt to the new rules to take advantage of the simpler rules as soon as possible. In addition, the one-year special transitional rule contained in the final regulations will allow other employers sufficient time to make necessary changes to their payroll tax deposit systems.

Under the transitional rule, employers will have until December 31, 1993 to change to the new tax deposit system. During this period, any employer that complies with the old rules will be considered in compliance with the new rules and will not be subject to penalties under section 6656. The Internal Revenue Service will institute procedures to prevent penalty notices from issuing to employers that correctly deposit under the old system during the transitional period. If penalties inadvertently are assessed, they will be abated.

Since the new rules are simpler and in most cases less restrictive than the current rules, employers that deposit under the old rules during 1993 generally will satisfy the new rules. For example, employers who currently deposit within three banking days after payroll will automatically meet the semi-weekly rule. Also, certain employers who currently deposit under the "eighth-monthly" system may now only have to deposit once a month. If these depositors continue to deposit under the

old system, they will automatically comply with the new rules.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vincent Surabian, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department have participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—[AMENDED]

Paragraph 1. The authority citation for part 31 is amended by adding the following entry:

Authority: 26 U.S.C. 7805 * * * sections 31.6302–1 through 31.6302–3 also issued under 26 U.S.C. 6302 (a) and (c).

Par. 2. New §§ 31.6302–0 through 31.6302–3 are added to read as follows:

§ 31.6302–0 Table of Contents.

This section lists the captions that appear in §§ 31.6302–1 through 31.6302–3.

Section 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

(a) Introduction.
(b) Determination of status.
(1) In general.
(2) Monthly depositor.
(i) In General.
(ii) Special rule.
(3) Semi-weekly depositor.
(4) Lookback period.
(5) Adjustments.
(c) Deposit rules.
(1) Monthly rule.
(2) Semi-Weekly rule.
(i) In general.
(ii) Semi-weekly period spanning two return periods.
(iii) Special rule for non-banking days.
(3) Exception—One Day rule.
(4) Deposits required only on banking days.
(d) Examples.
(e) Employment taxes defined.
(f) Safe harbor/De Minimis rules.
(1) Single deposit safe harbor.
(2) Shortfall defined.
(3) Shortfall make-up date.
(i) Monthly rule.
(ii) Semi-Weekly and One-Day rule.
(4) De Minimis rule.
(5) Examples.
(g) Agricultural employers—Special rules.
(1) In general.
(2) Monthly depositor.
(3) Semi-weekly depositor.
(4) Lookback period.
(5) Example.
(h) Time and manner of deposit.
(1) General rules.
(2) Payment of balance due.
(3) Federal Tax Deposit (FTD) coupon.
(4) Procurement of FTD coupons.
(5) Time deemed deposited.
(6) Time deemed paid.
(i) [Reserved].
(j) Special rules.
(1) District Director notice exception.
(2) Wages paid in nonconvertible foreign currency.
(k) Cross references.
(1) Failure to deposit penalty.
(2) Saturday, Sunday, or legal holiday.
(l) [Reserved].
(m) Effective date.

Section 31.6302–2 Federal tax deposit rules for amounts withheld under the Railroad Retirement Tax Act (R.R.T.A.) attributable to payments made after December 31, 1992.

(a) General rule.
(b) Separate application of deposit rules.
(c) Modification of Monthly rule determination.
(1) General rule.
(2) Exception.
(d) Wire-transfer exception.

Section 31.6302–3 Federal tax deposit rules for amounts withheld under the backup withholding requirements of Section 3406 for payments made after December 31, 1992.

(a) General Rule.
(b) Treatment of backup withholding amounts separately.
(c) Example.

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

(a) *Introduction.* With respect to employment taxes attributable to payments made after December 31, 1992, an employer is either a monthly depositor or a semi-weekly depositor based on an annual determination. An employer must generally deposit employment taxes under one of two rules: the Monthly rule in paragraph (c)(1) of this section, or the Semi-Weekly rule in paragraph (c)(2) of this section. Various exceptions and safe harbors are provided. Paragraph (f) of this section provides certain safe harbors for employers who inadvertently fail to deposit the full amount of taxes. Paragraph (c)(3) of this section provides an overriding exception to the Monthly and Semi-Weekly rules where an employer has accumulated $100,000 or more of employment taxes. Paragraph (e) of this section provides the definition of employment taxes.

(b) *Determination of status*—(1) *In general.* The determination of whether an employer is a monthly or semi-weekly depositor for a calendar year is based on an annual determination and generally depends upon the aggregate amount of employment taxes reported by the employer for the lookback period as defined in paragraph (b)(4) of this section.

(2) *Monthly depositor*—(i) *In general.* An employer is a monthly depositor for the entire calendar year if the aggregate amount of employment taxes reported for the lookback period is $50,000 or less.

(ii) *Special rule.* An employer ceases to be a monthly depositor on the first day after the employer is subject to the One-Day ($100,000) rule in paragraph (c)(3) of this section. At that time, the employer immediately becomes a semi-weekly depositor for the remainder of the calendar year and for the following calendar year.

(3) *Semi-weekly depositor.* An employer is a semi-weekly depositor for the entire calendar year if the aggregate amount of employment taxes reported for the lookback period exceeds $50,000.

(4) *Lookback period.* The lookback period for each calendar year is the twelve month period ended the preceding June 30. For example, the lookback period for calendar year 1993 is the period July 1, 1991 to June 30, 1992. In determining status as either a monthly or semi-weekly depositor, an employer should determine the aggregate amount of employment tax

liabilities reported on its quarterly returns (Form 941) for the four quarters constituting this period. New employers shall be treated as having employment tax liabilities of zero for any calendar quarter during which the employer did not exist.

(5) *Adjustments.* The tax liability shown on an original return for the return period shall be the amount taken into account in determining whether more than $50,000 has been reported during the lookback period. In determining the aggregate employment taxes for each quarter in a lookback period, an employer does not take into account any adjustments for the quarter made on a supplemental return filed after the due date of the return. However, adjustments made on a Form 941c, Statement to Correct Information, attached to a Form 941 filed for a subsequent quarter are taken into account in determining the employment tax liability for the subsequent quarter.

(c) *Deposit rules*—(1) *Monthly rule.* An employer that is a monthly depositor must deposit employment taxes accumulated with respect to payments made during a calendar month in a Federal Reserve bank or authorized financial institution on or before the 15th day of the following month. If the 15th day of the following month is not a banking day, taxes will be treated as timely deposited if deposited on the first banking day thereafter in accordance with paragraph (c)(4) of this section.

(2) *Semi-Weekly rule*—(i) *In general.* An employer that is a semi-weekly depositor for a calendar year must deposit its employment taxes in a Federal Reserve bank or authorized financial institution on or before the dates set forth below:

Payment dates/semi-weekly periods	Deposit date
Wednesday, Thursday and/or Friday.	On or before the following Wednesday.
Saturday, Sunday, Monday and/or Tuesday.	On or before the following Friday.

(ii) *Semi-weekly period spanning two return periods.* A special rule is provided in the case of a return period (quarterly or annual) that ends during a semi-weekly period. In this case, an employer must complete the Federal Tax Deposit (FTD) coupon in a manner which designates the proper return period for which the deposit relates (the return period in which the payment is made). In addition, if the return period ends during a semi-weekly period in which an employer has two or more payment dates, two deposit obligations may exist. For example, if one quarterly return period ends on Thursday and a new quarterly return period begins on Friday, employment taxes from payments on Wednesday and Thursday are subject to one deposit obligation, and taxes from payments on Friday are subject to a separate obligation. Two separate Federal Tax Deposit coupons are required.

(iii) *Special rule for non-banking days.* Semi-weekly depositors shall have at least three banking days following the close of the semi-weekly period by which to deposit employment taxes accumulated during the semi-weekly period. Thus, if any of the three weekdays following the close of a semi-weekly period is a holiday on which banks are closed, the employer shall have an additional banking day by which to make the required deposit. For example, if the Monday following the close of a Wednesday to Friday semi-weekly period is a holiday on which banks are closed, the required deposit for the semi-weekly period may be made by the following Thursday rather than the following Wednesday.

(3) *Exception—One-Day rule.* Notwithstanding paragraphs (c)(1) and (c)(2) of this section, if on any day within a deposit period (monthly or semi-weekly) an employer has accumulated $100,000 or more of employment taxes, those taxes must be deposited in a Federal Reserve bank or authorized financial institution by the close of the next banking day. For purposes of determining whether the $100,000 threshold is met—

(i) A monthly depositor takes into account only those employment taxes accumulated in the calendar month in which the day occurs; and

(ii) A semi-weekly depositor takes into account only those employment taxes accumulated in the Wednesday-Friday or Saturday-Tuesday semi-weekly period in which the day occurs.

(4) *Deposits required only on banking days.* If taxes are required to be deposited under this section on any day that is not a banking day, the taxes will be treated as timely deposited if deposited on the first banking day thereafter.

(d) *Examples.* The provisions of paragraphs (a), (b) and (c) of this section are illustrated by the following examples:

Example 1. Monthly depositor. (i) *Determination of status.* For the calendar year 1993, Employer *A* determines its depositor status using the lookback period July 1, 1991 to June 30, 1992. For the four calendar quarters within this period, *A* reported aggregate employment tax liabilities of $42,000 on its quarterly Forms 941. Because the aggregate amount did not exceed $50,000, *A* is a monthly depositor for the entire calendar year 1993.

(ii) *Monthly rule.* During January 1993, *A* (a monthly depositor) accumulates $3,500 in employment taxes. *A* has a $3,500 deposit obligation that must be satisfied by the 15th day of the following month. Since February 15, 1993, President's Day, is a holiday which is not a banking day, *A*'s deposit obligation will be satisfied if the deposit is made by the next banking day after February 15.

Example 2. Semi-weekly depositor. (i) *Determination of status.* For the four calendar quarters spanning July 1991 to June 1992, Employer *B* reported $88,000 in aggregate employment tax liabilities on its Forms 941. Because that amount exceeds $50,000, *B* is a semi-weekly depositor for the entire calendar year 1993.

(ii) *Semi-weekly rule.* On Friday, January 1, 1993, *B* (semi-weekly depositor) has a pay day on which it accumulates $4,000 in employment taxes. *B* has a $4,000 deposit obligation that must be satisfied on or before the following Wednesday, January 6, 1993.

(iii) *Deposit made within three banking days after payroll.* The example is the same as *Example 2 (ii)*, except that *B* deposits its accumulated employment taxes within three banking days after payroll. *B* deposits its $4,000 in employment taxes on Wednesday, January 6, three banking days after its Friday payroll. Because *B* deposited its employment taxes on or before the following Wednesday, *B* has satisfied its semi-weekly deposit obligation. An employer who deposits within three banking days after payroll will always meet the Semi-Weekly rule.

Example 3. One-Day rule. On Monday, January 4, 1993, Employer *C* accumulates $110,000 in employment taxes with respect to wages paid on that date. *C* has a deposit obligation of $110,000 that must be satisfied by the next banking day. If *C* was not subject to the semi-weekly rule on January 4, 1993, *C* becomes subject to that rule as of January 5, 1993. See paragraph (b)(2)(ii) of this section.

Example 4. One-Day Rule in combination with subsequent deposit obligation. Employer *D* is subject to the semi-weekly rule for calendar year 1993. On Monday, January 4, 1993, *D* accumulates $110,000 in employment taxes. *D* has a $110,000 deposit obligation that must be satisfied by the next banking day. On Tuesday, January 5, *D* accumulates an additional $30,000 in employment taxes. Although *D* has a previous $110,000 deposit obligation incurred earlier in the semi-weekly period, *D* has an additional and separate deposit obligation of $30,000 on Tuesday that must be satisfied by the following Friday.

Example 5. Special non-banking day rule for semi-weekly depositors. Employer *E*, a semi-weekly depositor, accumulates $8,000 in employment taxes on Friday, February 12, 1993, a payment date. Under the general rule, *E* would be required to deposit the employment taxes on or before the following Wednesday, February 17. However, because Monday, February 15, is President's Day (a holiday on which banks are closed), *E* will have an additional day by which to satisfy its $8,000 deposit obligation. *E*'s deposit

obligation is due on or before Thursday, February 18, 1993.

(e) *Employment taxes defined.* (1) For purposes of this section, the term "employment taxes" means—

(i) The employee portion of the tax withheld under section 3102;

(ii) The employer tax under section 3111;

(iii) The income tax withheld under sections 3402 and 3405; and

(iv) The income tax withheld under section 3406, relating to backup withholding with respect to reportable payments.

(2) The term "employment taxes" does not include taxes with respect to wages for domestic service in a private home of the employer, unless the employer is otherwise required to file a Form 941 under § 31.6011(a)(4) or (5). In the case of employers paying advance earned income credit amounts, the amount of taxes required to be deposited shall be reduced by advance amounts paid to employees. Also, see § 31.6302–3 concerning a payor's option to treat backup withholding amounts under section 3406 separately.

(f) *Safe harbor/De minimis rules*—(1) *Single deposit safe harbor.* An employer will be considered to have satisfied its deposit obligation imposed by this section if—

(i) The amount of any shortfall does not exceed the greater of $100 or 2 percent of the amount of employment taxes required to be deposited; and

(ii) The employer deposits the shortfall on or before the shortfall make-up date.

(2) *Shortfall defined.* For purposes of this paragraph (f), the term "shortfall" means the excess of the amount of employment taxes required to be deposited for the period over the amount deposited for the period. For this purpose, a period is either a monthly, semi-weekly or daily period.

(3) *Shortfall make-up date*—(i) *Monthly rule.* A shortfall with respect to a deposit required under the Monthly rule must be deposited or remitted no later than the due date for the quarterly return, in accordance with the applicable form and instructions.

(ii) *Semi-Weekly rule and One-Day rule.* A shortfall with respect to a deposit required under the Semi-Weekly rule or the One-Day rule must be deposited on or before the first Wednesday or Friday (whichever is earlier), falling on or after the 15th day of the month following the month in which the deposit was required to be made.

(4) *De Minimis rule.* If the total amount of accumulated employment taxes for the quarter is less than $500 and the amount is fully deposited or remitted with a timely filed return for the quarter, the amount deposited or remitted will be deemed to have been timely deposited.

(5) *Examples.* The provisions of this paragraph (f) may be illustrated by the following examples:

Example 1. Safe-harbor rule satisfied. On Monday, January 4, 1993, *J* (a semi-weekly depositor), pays wages and accumulates employment taxes. As required under this section, *J* makes a deposit on or before the following Friday, January 8, 1993, in the amount of $4,000. Subsequently, *J* determines that it was actually required to deposit $4,090 by Friday. *J* has a shortfall of $90. The $90 shortfall does not exceed the greater of $100 or 2% of the amount required to be deposited (2% of $4,090=$81.80). Therefore, *J* satisfies the safe harbor of paragraph (f)(1) of this section as long as the $90 shortfall is deposited by the first deposit date (Wednesday or Friday) on or after the 15th day of the next month (in this case Wednesday, February 17, 1993).

Example 2. Safe-harbor rule not satisfied. The facts are the same as in *Example 1* except that on Friday, January 8, 1993, *J* makes a deposit of $25,000, and later determines that it was actually required to deposit $26,000. Since the $1,000 shortfall ($26,000 less $25,000) exceeds $520 (the greater of $100 or 2% of the amount required to be deposited (2% of $26,000=$520)), the safe harbor of paragraph (f)(1) of this section is not satisfied, and absent reasonable cause, *J* will be subject to a failure-to-deposit penalty under section 6656.

(g) *Agricultural employers—special rules*—(1) *In general.* An agricultural employer reports wages paid to farm workers annually on Form 943 (Employer's Annual Tax Return for Agricultural Employees) and reports wages paid to nonfarm workers quarterly on Form 941 (Employer's Quarterly Federal Tax Return). Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 ("Form 943 taxes") separately from employment taxes reportable on Form 941 ("Form 941 taxes"). Form 943 taxes and Form 941 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of paragraph (c)(3) of this section applies, or whether any safe harbor is applicable. In addition, separate Federal tax deposit coupons must be used to deposit Form 943 taxes and Form 941 taxes. (See paragraph (b) of this section for rules for determining an agricultural employer's deposit status for Form 941 taxes.) The determination of whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is made according to the rules of this paragraph (g).

(2) *Monthly depositor.* An agricultural employer is a monthly depositor of Form 943 taxes for a calendar year if the amount of Form 943 taxes accumulated in the lookback period (as defined in paragraph (g)(4) of this section) is $50,000 or less. An agricultural employer ceases to be a monthly depositor of Form 943 taxes on the first day after the employer is subject to the One-Day rule in paragraph (c)(3) of this section. At that time, the agricultural employer immediately becomes a semi-weekly depositor of Form 943 taxes for the remainder of the calendar year and the succeeding calendar year.

(3) *Semi-weekly depositor.* An agricultural employer is a semi-weekly depositor of Form 943 taxes for a calendar year if the amount of Form 943 taxes accumulated in the lookback period (as defined in paragraph (g)(4) of this section) exceeds $50,000.

(4) *Lookback period.* For purposes of this paragraph (g), the lookback period for Form 943 taxes is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 1993 is calendar year 1991.

(5) The following example illustrates the provisions of this section.

Example. A, an agricultural employer, employs both farm workers and nonfarm workers (employees in its administrative offices). *A*'s depositor status for calendar year 1993 for Form 941 taxes will be based upon its employment tax liabilities reported on Forms 941 for the third and fourth quarters of 1991 and the first and second quarters of 1992 (the period July 1 to June 30). *A*'s depositor status for Form 943 taxes will be based upon its employment tax liability reported on its annual Form 943 for calendar year 1991.

(h) *Time and manner of deposit*—(1) *General rules.* A deposit required to be made by this § 31.6302–1 must be made separately from a deposit required by any other section. See § 31.6302–3 for an exception in the case of backup withholding amounts. Further, a deposit for a period in one calendar quarter must be made separately from a deposit for a period in another calendar quarter.

(2) *Payment of balance due.* If the aggregate amount of taxes reportable on the return for the return period exceeds the total amount deposited by the employer with regard to the return period pursuant to this section, the balance due must be remitted in accordance with the applicable form and instructions.

(3) *Federal Tax Deposit (FTD) coupon.* Each deposit required to be made under this section must be accompanied by an FTD coupon (Form 8109). The FTD

coupon shall be prepared in accordance with the instructions applicable thereto. The deposit, together with the FTD coupon, shall be forwarded to a financial institution authorized as a depository for Federal taxes in accordance with 31 CFR part 214 or, at the election of the employer, to a Federal Reserve bank. For procedures governing the deposit of Federal taxes at a Federal Reserve bank, see 31 CFR part 214.7.

(4) *Procurement of FTD coupons.* A new employer should receive its initial supply of FTD coupon books after receiving its employer identification number. In the event that a deposit is required to be made before receipt of the FTD coupon books, the employer should contact the local IRS office and furnish the following information: the business name as it appears on IRS records, the employer identification number, address where the coupon books are to be sent, and the number of coupon books being requested. Filers of Form 1120, Form 990–C, Form 990PF (with net investment income), Form 990–T or Form 2438 must also provide the month the employer's tax year ends. If an employer has applied for an employer identification number but has not received it, and a deposit is required to be made, the employer should send a check or money order for the deposit amount to its Internal Revenue Service center. There should be included on the payment, the name and address of the entity as shown on Form SS–4, Application for Employer Identification Number, the kind of tax, the period covered, and the date on which the employer applied for the employer identification number.

(5) *Time deemed deposited.* The timeliness of a deposit will be determined by the date stamped on the FTD coupon by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e).

(6) *Time deemed paid.* In general, amounts deposited under this section will be considered as paid at the time deemed deposited under paragraph (h)(5) of this section, or on the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), whichever is later. For purposes of section 6511 and the regulations hereunder (relating to the period of limitation on credit or refund), if an amount is deposited prior to April 15th of the calendar year immediately succeeding the calendar year that contains the period for which the amount was deposited, the amount will be considered paid on April 15th.

(i) [Reserved].

(j) *Special rules*—(1) *District Director notice exception.* The provisions of this section are not applicable with respect to employment taxes for any month in which the employer receives notice from the district director that a return is required under § 31.6011(a)–5 (or for any subsequent month for which such a return is required), if those taxes are also required to be deposited under the separate accounting procedures provided in § 301.7512–1 of the Regulations on Procedure and Administration (which procedures are applicable if notification is given by the district director of failure to comply with certain employment tax requirements). In cases in which a monthly return is required under § 31.6011(a)–5 but the taxes are not required to be deposited under the separate accounting procedures provided in § 301.7512–1, the provisions of this section shall apply except those provisions shall not authorize the deferral of any deposit to a date after the date on which the return is required to be filed.

(2) *Wages paid in nonconvertible foreign currency.* The provisions of this section are not applicable with respect to wages paid in nonconvertible foreign currency pursuant to § 301.6316–7.

(k) *Cross references*—(1) *Failure to deposit penalty.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656 and the provisions of § 301.6656–1.

(2) *Saturday, Sunday, or legal holiday.* For provisions relating to the time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503–1.

(l) [Reserved].

(m) *Effective date.* Sections 31.6302–1 through 31.6302–3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§ 31.6302–1 through 31.6302–3 are inconsistent with the provisions of §§ 31.6302(c)–1 and 31.6302(c)–2, a taxpayer will be considered to be in compliance with §§ 31.6301–1 through 31.6302–3 if the taxpayer makes timely deposits during 1993 in accordance with §§ 31.6302(c)–1 and 31.6302(c)–2.

§ 31.6302–2 Federal Tax Deposit Rules for amounts withheld under the Railroad Retirement Tax Act (R.R.T.A.) attributable to payments made after December 31, 1992.

(a) *General rule.* Except as otherwise provided in this section, the rules of § 31.6302–1 determine the time and manner of making deposits of employee tax withheld under section 3202 and employer tax imposed under sections 3221 (a) and (b) attributable to payments made after December 31, 1992. Railroad retirement taxes described in section 3221(c) arising during the month must be deposited on or before the first date after the 15th day of the following month on which taxes are otherwise required to be deposited under § 31.6302–1.

(b) *Separate application of deposit rules.* A person who accumulates tax under sections 3202 or 3221 shall not take that tax into account for purposes of determining when taxes described in paragraph (e) of § 31.6302–1 must otherwise be deposited.

(c) *Modification of Monthly rule determination*—(1) *General rule.* Except as otherwise provided in this section, any person is allowed to use the Monthly rule of § 31.6302–1(c)(1) for an entire calendar year unless the amount of R.R.T.A. taxes required to be deposited under this section during the lookback period was more than $50,000. The lookback period is defined as the calendar year preceding the calendar year just ended. Thus, for purposes of determining if an R.R.T.A. employer qualifies to use the Monthly rule for calendar year 1993, a lookback must be made to calendar year 1991. New employers shall be treated as having employment tax liabilities of zero for any calendar year during which the employer did not exist.

(2) *Exception.* An employer shall immediately cease to be allowed to use the Monthly rule after any day on which that employer is subject to the One-Day rule set forth in § 31.6302–1(c)(3). Such employer immediately becomes subject to the Semi-Weekly rule of § 31.6302–1(c)(2) for the remainder of the calendar year and the following calendar year.

(d) *Wire-transfer exception.* If, for the calendar year prior to the calendar year preceding the current calendar year, the aggregate amount of taxes imposed under sections 3202 and 3221 with respect to an employer equalled or exceeded $1 million, the employer must deposit the aggregate amount of railroad retirement taxes required to be

deposited for the current calendar year in accordance with § 31.6302(c)–2(a)(1).

§ 31.6302–3 Federal tax deposit rules for amounts withheld under the backup withholding requirements of section 3406 for payments made after December 31, 1992.

(a) *General rule.* The rules of § 31.6302–1 shall apply to determine the time and manner of making deposits of amounts withheld under the backup withholding requirements of section 3406.

(b) *Treatment of backup withholding amounts separately.* A payor who withholds income tax with respect to reportable payments under section 3406 may, in accordance with the instructions provided with Form 941, deposit such taxes under the rules of § 31.6302–1 without taking into account the other taxes described in paragraph (e) of § 31.6302–1 for purposes of determining when taxes withheld under section 3406 must be deposited. A person who treats backup withholding amounts separately shall not take tax withheld under section 3406 into account for purposes of determining when the other taxes described in paragraph (e) of § 31.6302–1 must otherwise be deposited under that section.

(c) *Example.* The following example illustrates the provisions of this section.

Example. For the last two calendar quarters of 1991 and the first two calendar quarters of 1992, Bank *A* reports employment taxes with respect to wages paid totalling in excess of $50,000. For the same four quarters, pursuant to section 3406, *A* withholds income tax with respect to dividend payments in an amount aggregating less than $50,000. For deposit and reporting purposes, *A* treated the backup withholding amounts separately from the employment taxes with respect to wages paid. Accordingly, for calendar year 1993, if *A* chooses to treat the items separately, *A* must use the Semi-Weekly rule of § 31.6302–1(c)(2) to deposit taxes with respect to wages paid but may use the Monthly rule of § 31.6302–1(c)(1) for the deposit of backup withholding amounts. If *A* chooses not to treat the items separately, the Semi-Weekly rule would apply to the combined amount of both the taxes with respect to wages paid and the backup withholding amounts.

Par. 3. Section 31.6302(c)–1 is amended as follows:

1. The section heading is revised.
2. The heading for paragraph (a) is revised.
3. In paragraph (a)(1)(ii), the introductory language is revised.
4. The revisions read as set forth below.

§ 31.6302(c)–1 Use of Government depositories in connection with taxes under Federal Insurance Contributions Act and income tax withheld for amounts attributable to payments made before January 1, 1993.

(a) *Requirement for calendar months beginning after December 31, 1980, but before January 1, 1993*—(1) *In general.*

* * *

* * * * *

(ii) In the case of a calendar month which begins after March 31, 1991, but before January 1, 1993—

* * * * *

Par. 4. Section 31.6302(c)–2 is amended as follows:

1. The section heading is revised.
2. The heading for paragraph (a)(2) is revised.
3. The revisions read as set forth below.

§ 31.6302(c)–2 Use of Government depositories in connection with employee and employer taxes under Railroad Retirement Tax Act for amounts attributable to payments made before January 1, 1993.

(a) * * *

(2) *In general: After March 31, 1991 and before January 1, 1993.*

* * * * *

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: September 14, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–23233 Filed 9–22–92; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 11

[AG Order No. 1625–92]

Debt Collection; Salary and Administrative Offset

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is issuing regulations that govern the collection of debts owed to the United States. This rule implements the debt collection procedures provided under 5 U.S.C. 5514 and 31 U.S.C. 3716, which authorize agencies of the federal government to collect debts by means of salary and administrative offset provided that the agencies have accorded debtors certain procedural protections.

EFFECTIVE DATE: October 26, 1992.

FOR FURTHER INFORMATION CONTACT: James E. Williams, Director, Finance Staff, Justice Management Division, Department of Justice, Patrick Henry Building, room 7430, 601 D Street, NW., Washington, DC 20530; telephone (202) 501–6984.

SUPPLEMENTARY INFORMATION:

Salary Offset

Under 5 U.S.C. 5514, when the head of an agency determines that an employee of the agency is indebted to the United States, or when he is notified by the head of another agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her pay. The amount deducted in each pay period may not exceed 15 percent of the employee's disposable pay unless the employee gives written consent to a greater deduction.

The employee must be afforded certain procedural protections before salary offset deductions can begin. Under section 5514(a)(2), an employee-debtor must be provided with notice of the debt, an opportunity to review the record, an opportunity to enter into a written repayment agreement, and an opportunity for a hearing before the government may collect the debt by salary offset. The employee must notify the agency of his or her intent to exercise these rights within the time period prescribed in the regulations.

The Office of Personnel Management (OPM) has issued regulations, codified at 5 CFR part 550, subpart K, prescribing guidelines for the preparation by agencies of salary offset regulations. The salary offset provisions of this rule comply with the prescribed guidelines and have been approved by OPM.

Administrative Offset

Under 31 U.S.C. 3716, an agency may collect a debt owed it by an employee, organization, or entity by withholding payment or offsetting monies owed by the agency to the debtor, pending resolution of the government's claim. The procedural protections afforded the debtor with respect to administrative offset are largely the same as those afforded under the salary offset provisions.

The Department published a Notice of Proposed Rulemaking on October 1, 1991 (56 FR 49729). No substantive comments were received. No substantive changes have been made to the proposed rule.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does it

have Federalism implications warranting the preparation of a Federalism Assessment pursuant to section 6 of E.O. 12612.

List of Subjects in 28 CFR Part 11

Administrative practice and procedure, Claims, Debt collection, Government contracts, Government employees, Income taxes, Lawyers, Wages.

Accordingly, part 11 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 11—DEBT COLLECTION

1. The authority citation for part 11 is revised to read as follows:

Authority: 5 U.S.C. 301, 5514; 28 U.S.C. 509, 510; 31 U.S.C. 3716, 3718, 3720A; 4 CFR part 102; 5 CFR part 550, subpart K.

2. A new subpart B, consisting of §§ 11.4 through 11.9 is added to read as follows:

Subpart B—Administration of Debt Collection

Sec.
11.4 Purpose and scope.
11.5 Delegation of authority.
11.6 Definitions.
11.7 Salary adjustments.
11.8 Salary offset.
11.9 Administrative offset.

Subpart B—Administration of Debt Collection

§ 11.4 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to implement 5 U.S.C. 5514 and 31 U.S.C. 3716, which authorize the collection by salary or administrative offset of debts owed by persons, organizations, or entities to the federal government. Generally, however, a debt may not be collected by such means if it has been outstanding for more than ten years after the agency's right to collect the debt first accrued. This subpart is consistent with the Office of Personnel Management (OPM) regulations on salary offset, codified at 5 CFR part 550, subpart K, and with regulations on administrative offset published jointly by the General Accounting Office (GAO) and the Department of Justice (Department), codified at 4 CFR part 102.

(b) *Scope.* (1) This subpart establishes Departmental procedures for the collection of certain debts owed the government.

(2) This subpart applies to collections by the Department from:

(i) Federal employees who are indebted to the Department;

(ii) Employees of the Department who are indebted to other agencies; and

(iii) Other persons, organizations, or entities that are indebted to the Department.

(3) This subpart does not apply:

(i) To debts or claims arising under the Internal Revenue Code of 1986 (26 U.S.C. *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States;

(ii) To a situation to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies; or

(iii) In any case where collection of a debt is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(4) Nothing in this subpart precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*), namely, 4 CFR chapter II and 38 CFR 1.900–1.954).

(5) This subpart does not govern debt collection procedures implemented by other agencies.

§ 11.5 Delegation of authority.

Authority to conduct the following activities is hereby delegated to heads of Department organizations with respect to debts arising in their respective organizations:

(a) Initiate and effectuate the administrative collection process.

(b) Accept or reject compromise offers and suspend or terminate collection actions where the claim does not exceed $100,000 or such higher amount as the Attorney General may from time to time prescribe, exclusive of interest, administrative costs, and penalties as provided herein, as set forth in 311 U.S.C. 3711(a)(2).

(c) Report to consumer reporting agencies certain data pertaining to delinquent debts.

(d) Use offset procedures to effectuate collection.

(e) Take any other action necessary to facilitate and augment collection in accordance with the policies contained herein and as otherwise provided by law.

§ 11.6 Definitions.

Except where the context clearly indicates otherwise or where the term is otherwise defined elsewhere in this subpart, the following definitions shall apply to this subpart.

(a) *Agency* means:

(1) An executive agency as defined by 5 U.S.C. 105;

(2) A military department as defined by 5 U.S.C. 102;

(3) The United States Postal Service and the Postal Rate Commission;

(4) An agency of the judicial branch, including a court as defined by 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(5) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(6) Other entities that are establishments of the federal government.

(b) *Bureau* means the Bureau of Prisons, the Drug Enforcement Administration, the Federal Bureau of Investigation (FBI), Federal Prison Industries, the Immigration and Naturalization Service, the Office of Justice Programs, and the United States Marshals Service (USMS).

(c) *Certification* means a written statement received by a paying agency from a creditor agency that requests the paying agency to offset the salary of an employee and specifies that appropriate procedural protections have been afforded the employee.

(d) *Components* means the bureaus, offices, boards, and divisions of the Department.

(e) *Compromise* means the forgiveness of a debt in accordance with 31 U.S.C. 3711(a)(2) and DOJ Order No. 2120.4E. (Copies of this order are available in accordance with 28 CFR part 16, subpart A.)

(f) *Creditor agency* means an agency of the federal government to which the debt is owed.

(g) *Department* or *Justice Department* means the Department of Justice and its components.

(h) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, and, in the case of an employee not entitled to basic pay, other authorized pay, remaining after the deduction of any amount required by law to be withheld. The Department shall allow the following deductions in determining the amount of disposable pay that is subject to salary offset:

(1) Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required the law;

(2) Federal employment taxes;

(3) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;

(4) Fines and forfeiture ordered by a court-martial or by a commanding officer;

(5) Amounts deducted for Medicare;

(6) Federal, state, or local income taxes to the extent authorized or

required by law, but no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(7) Health insurance premiums;

(8) Normal retirement contributions (e.g., Civil Service Retirement deductions, Survivor Benefit Plan payments, or Retired Servicemen's Family Protection Plan payments), not including amounts deducted for supplementary coverage; and

(9) Normal life insurance premiums (*e.g.*, Serviceman's Group Life Insurance and "Basic Life" Federal Employee's Group Life Insurance premiums), not including amounts deducted for supplementary coverage.

(i) *Employee* means a current employee of the Justice Department or other agency, including a current member of the Armed Forces or a Reserve of the Armed Forces of the United States.

(j) *Federal Claims Collection Standards (FCCS)* means standards jointly published by the Department and the General Accounting Office in 4 CFR chapter II.

(k) *Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed and for rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Attorney General when the Department is the creditor agency but may be an administrative law judge.

(l) *Notice of Intent to Offset* or *Notice of Intent* means a written notice from a creditor agency to an employee, organization, or entity stating that the debtor is indebted to the creditor agency and apprising the debtor of certain procedural rights.

(m) *Notice of Salary Offset* means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

(n) *Organization* means the bureaus individually and the offices, boards, and divisions collectively.

(o) *Organization head* means any Director, Administrator, or Commissioner of the respective Department bureaus, the Director of the United States Trustee System, the Director of the Executive Office for United States Attorneys, and the Assistant Attorney General for Administration, who shall serve as the organization head for the offices, boards, and divisions.

(p) *Paying agency* means the agency of the federal government that employs the individual who owes a debt to an agency of the federal government. In some cases, the Department may be both the creditor agency and the paying agency.

(q)(1) *Payroll office* means the payroll office in the paying agency that is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee.

(2) *Applicable payroll office* means the Federal Bureau of Investigation voucher and Payroll Section with respect to FBI employees and the Justice Employee Data Service for all other employees of the Department.

(r) *Salary offset coordination officer* means an official designated by an organization head who is responsible for coordinating the debt collection activities of that organization.

§ 11.7 Salary adjustments.

Any negative adjustment to pay arising out of an employee's election of coverage, or a change in coverage, under a Federal benefits program requiring periodic deductions from pay shall not be considered collection of a "debt" for the purposes of this subpart if the amount to be recovered was accumulated over four pay periods or less. In such cases, the Department need not comply with § 11.8, but it will endeavor to provide a clear and concise statement in the employee's earnings statement advising the employee of the previous overpayment at the time the adjustment is made.

§ 11.8 Salary offset.

(a) *Notice requirements before offset.* Deductions under the authority of 5 U.S.C. 5514 will not be made unless the creditor agency provides the employee with a written Notice of Intent to Offset a minimum of 30 calendar days before salary offset is initiated. When the Department is the creditor agency, this Notice of Intent shall be hand-delivered or sent by certified mail to the Assistant Director, Justice Employee Data Service, or to the Section Chief, Voucher and Payroll Section, Administrative Services Division, FBI, who shall then transmit the Notice of Intent to the debtor-employee. The Notice of Intent shall state:

(1) That the organization head has reviewed the records relating to the claim and has determined that a debt is owed, including the amount of the debt and the facts giving rise to the debt;

(2) The organization head's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full;

(3) A repayment schedule that includes the amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) The opportunity for the employee to propose an alternative written schedule for the voluntary repayment of the debt, in lieu of offset, on terms acceptable to the Department. The employee shall include a justification in the request for the alternative schedule. The schedule shall be agreed to and signed by both the employee and the organization head;

(5) An explanation of the Department's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards;

(6) The employee's right to inspect and copy all records of the Department pertaining to the debt claimed or to receive copies of such records if the debtor is unable personally to inspect the records, due to geographical or other constraints;

(7) The name, address, and telephone number of an officer or employee of the Department to whom requests for access to Department records relating to the debt must be sent;

(8) The employee's right to a hearing conducted by an impartial hearing official (an administrative law judge or other hearing official not under the supervision or control of the Attorney General) with respect to the existence and amount of the debt claimed or the repayment schedule (*i.e.*, the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed in paragraph (c)(1) of this section.

(9) The name, address, and telephone number of the officer or employee of the Department to whom a proposal for voluntary repayment must be sent; and the name, address, and telephone number of an officer or employee of the Department who may be contacted concerning procedures for requesting a hearing;

(10) The method and deadline for requesting a hearing;

(11) That the timely filing of a petition for a hearing on or before the 15th calendar day following receipt of the Notice of Intent will stay the commencement of collection proceedings;

(12) The name and address of the office to which the petition should be sent;

(13) That the Department will initiate certification procedures to implement a salary offset not less than 30 days from the date of receipt of the Notice of Intent to Offset, unless the employee files a timely petition for a hearing;

(14) That a final decision on whether a hearing will be held (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing;

(15) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or under any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or under any other applicable statutory authority;

(16) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(17) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted from debts that are later waived or found not to be owed to the United States will be promptly refunded to the employee, and

(i) Interest shall be paid on any amount paid on or deducted from a debt that is found not to be owed to the United States; and

(ii) Interest shall not be paid on any amount paid on or deducted from a debt that is later waived; and

(18) That proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) *Review of Departmental records related to the debt.*

(1) An employee who desires to inspect or copy Department records related to the debt must send a letter to the official designated in the Notice of Intent requesting access to the relevant records. The letter must be received in the office of the salary offset coordination official within 15 days after the employee's receipt of the Notice of Intent.

(2) In response to a timely request submitted by the debtor, the designated salary offset coordination official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If the employee is unable personally to inspect the records, due to geographical or other constraints, the salary offset coordination official shall arrange to send copies of such records to the employee.

(c) *Opportunity for a hearing where the Department is the creditor agency.*

(1) *Request for a hearing.*

(i) An employee who requests a hearing on the existence or amount of the debt held by the Department or on the offset schedule proposed by the Department must send such request to the office designated in the Notice of Intent. The request or petition for a hearing must be received by the designated office on or before the 15th calendar day following receipt by the employer of the notice.

(ii) The employee must specify whether an oral hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone. The request must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position.

(2) *Failure to timely submit.* If the employee files a request or petition for hearing after the expiration of the 15-calendar-day period provided for in paragraph (c)(1) of this section, the organization head may accept the request if the employee can show that the delay was the result of circumstances beyond his or her confrol or that he or she failed to receive actual notice of the filing deadline.

(3) *Obtaining the services of hearing official.*

(i) When the debtor is not a Department employee and the Department cannot provide a prompt and appropriate hearing before an administrative law judge or other hearing official, the Department may request a hearing official from an agent of the paying agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the paying agency.

(ii) When the debtor is a Department employee, the Department may contact any agent of another agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the agency, to request a hearing official.

(4) *Procedure.*

(i) *Notice.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must occur no more than 30 days after the request is received. If the hearing will be conducted by examination of documents, the employee shall be notified within 30 days that he or she should submit evidence and arguments in writing to the hearing official.

(ii) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g., when an issue of credibility or veracity is involved). The hearing need not be an adversarial adjudication, and rules of evidence need not apply. Oral hearings may take the form of, but are not limited to:

(A) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(B) Informal meetings in which the hearing examiner interviews the employee; or

(C) Formal written submissions followed by an opportunity for oral presentation.

Witnesses who testify in oral hearings shall do so under oath or affirmation.

(iii) *Documentary hearing.* If the hearing official determines that an oral hearing is not necessary, he or she shall make the determination based upon a review of the written record.

(iv) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(5) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon all evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the petition was received by the Department, unless the hearing was delayed at the request of the employee, in which case the 60 day decision period shall be extended by the number of days by which the hearing was postponed. Decisions not timely rendered shall result in the waiver of penalty and interest costs. The decision of the hearing official shall be final.

(6) *Content of decision.* The written decision shall include:

(i) A summary of the facts concerning the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(7) *Failure to appear.* If, in the absence of good cause shown (*e.g.*, illness), the employee or the representative of the Department fails to

appear, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentation submitted by both parties. At the request of both parties, the hearing official may schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of this new hearing.

(d) *Certification where the Department is the creditor agency.*

(1) The salary offset coordination officer shall provide a certification to the appropriate payroll office in all cases where:

(i) The hearing official determines that a debt exists; or

(ii) The employee admits the existence and amount of the debt by failing to request a hearing.

(2) The certification must be in writing and must state:

(i) That the employee owes the debt;

(ii) The amount and basis of the debt;

(iii) The date the government's right to collect the debt first accrued;

(iv) That the Department's regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(v) If the collection is to be made by lump-sum payment, the amount and data such payment will be collected;

(vi) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period; and

(vii) The date the employee was notified of the debt, the action(s) taken under 5 U.S.C. 5514(a), and the dates such actions were taken.

(e) *Voluntary repayment agreements as alternative to salary offset where the Department is the creditor agency.*

(1) In response to a Notice of Intent, an employee may propose to repay the debt in accordance with scheduled installment payments. Any employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall set forth a proposed repayment schedule. Any proposal under this subsection must be received by the office of the official designated in the notice within 15 calendar days after receipt of the Notice of Intent.

(2) In response to a timely proposal by the debtor, the organization head shall notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the organization head's discretion to accept or reject a repayment agreement.

(3) If the organization head decides that the proposed repayment agreement is unacceptable, the employee shall have 15 days from the date he or she received notice of the decision in which to file a petition for a hearing.

(4) If the organization head decides that the proposed repayment agreement is acceptable, the arrangement shall be put in writing and signed by both the employee and the organization head.

(f) *Special review where the Department is the creditor agency.*

(1) An employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Department of the amount of the salary offset or voluntary payment, based on materially changed circumstances, including but not limited to catastrophic illness, divorce, death, or disability.

(2) In determining whether, as a result of materially changed circumstances, an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(i) Income for all sources;

(ii) Assets;

(iii) Liabilities;

(iv) Number of dependents;

(v) Expenses for food, housing, clothing, and transportation;

(vi) Medical expenses; and

(vii) Exceptional expenses, if any.

(3) If the employee requests a special review under this paragraph, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(4) The organization head shall evaluate the statement and supporting documents and determine whether the original offset or repayment schedule imposes an extreme financial hardship on the employee. The organization head shall notify the employee in writing within 30 days of such determination, including, if appropriate, his or her acceptance of a revised offset or payment schedule.

(5) If the special review results in a revised offset or repayment schedule, the salary offset coordination officer shall provide a new certification to the paying agency.

(g) *Notice of salary offset where the Department is the paying agency.*

(1) Upon receipt of proper certification from the creditor agency, the applicable payroll office shall send the employee a written notice of salary offset. Such notice shall advise the employee that:

(i) The certification has been received from the creditor agency; and

(ii) Salary offset will be initiated at the next officially established pay interval.

(2) The applicable payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

(h) *Procedures for salary offset where the Department is the paying agency.*

(1) *Generally.*

(i) The salary offset coordination officer shall coordinate salary deductions under this section.

(ii) The applicable payroll office shall determine the amount of an employee's disposable pay and offset salary.

(iii) Deductions shall begin the pay period following receipt by the applicable payroll office of the certification or as soon thereafter as possible.

(2) *Types of collection.*

(i) *Lump-sum payment.* If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay, such debt ordinarily will be collected in one lump-sum payment.

(ii) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount. The installment payment should normally be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $50 should be accepted only in the most unusual circumstances.

(iii) *Lump-sum deductions from final check.* A lump-sum deduction exceeding 15 percent of disposable pay may be made pursuant to 31 U.S.C. 3716 from any final salary payment due a former employee in order to liquidate a debt, whether the former employee was separated voluntarily or involuntarily.

(iv) *Lump-sum deductions from other sources.* Whenever an employee subject to salary offset is separated from the Department, and the balance of the debt cannot be liquidated by offset of the final salary check, the Department, pursuant to 31 U.S.C. 3716, may offset

any later payments of any kind against the balance of the debt.

(3) *Multiple debts.* Where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, the applicable payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation. The best interests of the government shall be the primary consideration in the determination by the payroll office of the order of the debt collection.

(4) *Precedence of salary deductions by the Department.*

(i) For Department employees, debts owed shall be paid out of disposable pay in the following order of precedence:

(A) Indebtedness due the Department.

(B) Indebtedness due other agencies.

(C) Garnishments for alimony and child support payments.

(D) Court-ordered bankruptcy payments under the Bankruptcy Code.

(E) Optional life insurance premiums.

(F) Other voluntary deductions including allotments and assignments, in the order determined by the paying agency.

(ii) In the event that a debt to the Department is certified while an employee is subject to salary offset to repay another agency, the applicable payroll office may decide whether the debt to the other agency should be repaid in full before collecting the Department's claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed to the Department can be collected in one pay period, the payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the Department's debt.

(i) *Coordinating salary offset with other agencies.*

(1) *Responsibility of the Department as the creditor agency.*

(i) The salary offset coordination officer shall be responsible for:

(A) Arranging for hearing upon proper petition by a federal employee;

(B) Preparing the Notice of Intent to Offset consistent with the requirements of paragraph (a) of this section;

(C) Obtaining hearing officials from other agencies pursuant to paragraph (c)(3) of this section; and

(D) Ensuring that each certification of debt is sent to a paying agency pursuant to paragraph (d)(2) of this section.

(ii) Upon completion of the procedures established in paragraphs (a) through (f) of this section, the salary offset coordination officer shall submit a debt claim and an installment agreement or other instruction on the payment schedule, if applicable, to the employee's paying agency.

(iii) If the employee is in the process of separating from government employment, the Department shall submit its debt claim to the employee's paying agency for collection by lump-sum deductions from the employee's final check. The paying agency shall certify the total amount of its collection and furnish a copy of the certification to the Department and to the employee.

(iv) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Department may, unless otherwise prohibited, request that money due and payable to the employee from the federal government be administratively offset to collect the debt.

(v) When an employee transfers to another paying agency, the Department shall not repeat the procedures described in paragraphs (a) through (f) of this section in order to resume collecting the debt. Instead, the Department shall review the debt upon receiving the former paying agency's notice of the employee's transfer and shall ensure the collection is resumed by the new paying agency.

(2) *Responsibility of the Department as the paying agency.*

(i) *Complete claim.* When the Department receives a certified claim from a creditor agency, the employee shall be given written notice of the certification, the date salary offset will begin, and the amount of the periodic deductions. Deductions shall be scheduled to begin at the next officially established pay interval or as soon thereafter as possible.

(ii) *Incomplete claim.* When the Department receives an incomplete certification of debt from a creditor agency, the Department shall return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed and that a properly certified debt claim must be received before action will be taken to collect from the employee's current pay account.

(iii) *Review.* The Department is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(iv) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Department, the employee transfers to an agency outside the Department before the debt is collected in full, the Department must certify the total amount collected on the debt. One copy of the certification shall be furnished to the employee and one copy shall be sent to the creditor agency along with notice of the employee's transfer.

(j) *Interest, Penalties, and Administrative Costs.* Where the Department is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and 4 CFR 102.13.

(k) *Refunds.*

(1) Where the Department is the creditor agency, it shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when:

(i) The debt is compromised or otherwise found not to be owing to the United States; or

(ii) An administrative or judicial order directs the Department to make a refund.

(2) Unless required by law or contract, refunds under this paragraph (k) shall not bear interest.

(l) *Request from a creditor agency for the services of a hearing official.*

(1) The Department may provide a hearing official upon request of the creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(2) The Department may provide a hearing offical upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(3) The salary offset coordination officer shall arrange for qualified personnel to serve as hearing officials.

(4) Services rendered under this paragraph (l) shall be provided on a fully reimbursable basis pursuant to 31 U.S.C. 1535.

(m) *Non-Waiver of rights by payments.* A debtor's payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this section shall not be construed as a waiver of any rights that the debtor may have under any statute, regulation or contract except as otherwise provided by law or contract.

§ 11.9 Administrative offset.

(a) *Collection.* The organization head may collect a claim pursuant to 31 U.S.C. 3716 from a person, organization, or entity other than an agency of the United States Government by administrative offset of monies other than salaries payable by the government. Collection by administrative offset shall be undertaken where the claim is certain in

amount, where offset is feasible and desirable and not otherwise prohibited, where the applicable statute of limitations has not expired, and where the offset is in the best interest of the United States.

(b) *Withholding of payment.* Prior to the completion of the procedures described in paragraph (c) of this section, the Department may withhold a payment to be made to a debtor, if:

(1) Failure to withhold payment would substantially prejudice the Department's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit completion of the procedures described in paragraph (c) of this section. Such prior withholding shall be followed promptly by the completion of the procedures described in paragraph (c) of this section.

(c) *Debtor's rights.* Unless the procedures described in paragraph (b) of this section are used, prior to collecting any claim by administrative offset, the organization head shall provide the debtor with the following:

(1) Written notification of the nature and amount of the claim, the intention of the organization head to collect the claim through administrative offset, and a statement of the rights of the debtor under this paragraph;

(2) An opportunity to inspect and copy the records of the Department with respect to the claim;

(3) An opportunity to have the Department's determination of indebtedness reviewed by the organization head. Any request for review by the debtor shall be in writing and be submitted to the Department within 30 days of the date of the notice of the offset. The organization head may waive the time limit for requesting review for good cause shown by the debtor; and

(4) An opportunity to enter into a written agreement for the repayment of the amount of the claim at the discretion of the Department.

If the procedures described in paragraph (b) of this section are employed, the procedures described in this paragraph shall be effected after offset.

(d) *Interest.* The Department is authorized to assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

Dated: September 14, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92-23009 Filed 9-23-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Prime Farmlands, Water Control Measures for Coal Mine Waste Disposal Facilities; Designation of Areas as Unsuitable for Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerns changes to the Code of Maryland Regulations (COMAR) required by OSM in Federal rulemaking on January 11, 1991 (56 FR 1097) and a revision concerning petition for designation of an area as unsuitable for mining.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Harrisburg Transportation Center, 4th and Market Streets, Suite 3C, Harrisburg, PA 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15, and 30 CFR 920.16.

II. Submission of Amendments

By letter dated January 23, 1992, the Maryland Bureau of Mines (Maryland) submitted a program amendment to OSM (Administrative Record No. MD-550.00). The amendment was submitted in response to the Director's Decision identified in the **Federal Register** notice dated January 11, 1991 (56 FR 1097) requiring Maryland to make certain changes to COMAR 08.13.09.03D—Prime Farmlands, and COMAR 08.13.09.33C(1)—Water Control Measures for Coal Mine Waste Disposal Facilities. Maryland is also proposing a change to COMAR 08.13.09.11G(7)—Designation of Areas as Unsuitable for Mining. This Federal rule is OSM's final action on a program amendment Maryland submitted in response to OSM's July 8, 1986, 30 CFR 732.17 letter (Administrative Record No. MD-351). The letter required Maryland to revise certain rules determined to be less effective than their Federal counterparts.

OSM announced receipt of the proposed amendment in the April 23, 1992 **Federal Register** (57 FR 14820) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 26, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal Regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted on January 23, 1992. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions that are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Revisions to Maryland's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
COMAR 08.13.09.03D(7)	Permit Applications	30 CFR 785.17(c)(1).
COMAR 08.13.09.33C(1)	Waste Handling	30 CFR 816.83(a). 30 CFR 817.83(a). 30 CFR 816.71(f). 30 CFR 817.71(f).
COMAR 08.13.09.11G(7)	Designation of Areas as Unsuitable for Mining	30 CFR 764.15(a)(b).

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Maryland's proposed rule is no less effective than the Federal rule.

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the April 23, 1992, **Federal Register** (57 FR 14820) ended on May 26, 1992. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Maryland Historical Trust and the U.S. Department of Agriculture, Soil Conservation Service concurred with the provisions of the proposed amendment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Maryland on January 23, 1992.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. The final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 731.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 20, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 920.15 a new paragraph (q) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory program.

* * * * *

(q) The following amendment submitted to OSM on January 23, 1992, is approved effective September 24, 1992. The amendment consists of the following modifications to the Maryland program:

(1) Revision of the following rules of the Code of Maryland Administrative Regulations:

08.13.09.03D(7)—Permit Applications
08.13.09.33C(1)—Waste Handling
08.13.09.11G(7)—Designation of Areas as Unsuitable for Mining

[FR Doc. 92-23188 Filed 9-23-92; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of a proposed amendment, with certain exceptions, submitted by the State of Missouri as a modification to its permanent regulatory program (hereinafter, the "Missouri program") approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was submitted to OSM on November 8, 1991, and addresses State statutes concerning penalties. The amendment was initiated by the State to make the Program consistent with other programs within the Missouri Department of Natural Resources.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Submission of Proposed Amendment

By letter dated November 8, 1991 (Administrative Record No. MO-541), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment on its own initiative to improve its program. Missouri proposes to amend the Revised Statutes of Missouri (RSMo) at sections: 444.870.1 through 444.870.8, Penalties.

The Director announced receipt of the proposed amendment in the November 27, 1991, **Federal Register** (56 FR 60077) and in the same notice opened the public comment period and provided opportunity for a public hearing on its substantive adequacy (Administrative Record No. MO-547). The public comment period closed on December 27, 1991. No public hearing was held since none was requested. Following a review of the Missouri amendment, OSM notified the State, by phone conversation, on January 21, 1992, of several deficiencies in the proposed amendment (Administrative Record No. MO-544). During that same phone conversation, Missouri responded by requesting that OSM not send an issue letter to the State and to proceed with a final rulemaking.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Missouri on November 8, 1991.

1. Provisions Not Discussed

Missouri proposes revisions to its statute at RSMo 444.870.3, 444.873.1, .2, .3, and .4 that involve minor editorial changes and recodification. The Director finds that these proposed revisions are no less stringent than SMCRA and is approving them. The Director is requesting that Missouri review its rules and other applicable areas of its program (for example, inspection-related forms) to ensure that any references to the recodified statute are correct.

2. RSMo 444.870.1, .2, and .4, Administrative Penalty Amounts and Procedures

At RSMo 444.870.1, .2, and .4 Missouri provides the requirements for civil penalties, and procedures for determining the amount, how they are to be assessed, and hearings and civil actions. Missouri proposes to replace the term "civil penalty" with the term "administrative penalty" throughout these three sections. Since Missouri proposes at RSMo 444.870.8 to allow courts to assess civil penalties as well as the regulatory authority, OSM assumes that the purposes of this change is to distinguish between administratively assessed penalties and those assessed by the courts. Therefore, under this assumption, the Director finds that the statutory changes at RSMo 444.870.1, .2, and .4 are no less stringent than sections 518, 526, and 503 of SMCRA and is approving them. However, Missouri's rules at 10 Code of State Regulations (CSR) 40 chapter 8, that address civil penalty amounts and processes, continue to use the term "civil penalty" and not "administrative penalty." In order to provide consistency between its Statutes and rules, OSM recommends that Missouri revise the terminology in its regulatory provisions at 10 CSR 40 chapter 8 and throughout its program to be the same as used in its statutory language.

3. RSMo 444.870.6, Assessment of Administrative Penalty

Missouri proposes to add new section RSMo 444.870.6 that would require:

> An administrative penalty shall not be increased in those instances where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty. Any administrative penalty must be assessed within 2 years following the department's initial discovery of such alleged violation, or from the date the department in the exercise of ordinary diligence should have discovered such alleged violation.

a. Adjustment of Penalty Amount

The Missouri proposal would not allow an administrative penalty to be increased "where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty."

Section 518(a) of SMCRA states that the amount of penalty is based on the permittee's history of previous violations; the seriousness of the violation; whether the permittee was negligent; and demonstration of good faith of the permittee is attempting to achieve compliance. When establishing the seriousness of the violation, SMCRA does not grant an allowance to the permittee for situations where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty.

Therefore, the Director finds Missouri's proposal to not allow an administrative penalty to be increased where department action, or failure to act, has caused continuation of the violation that was the basis for the penalty to be less stringent than section 518(a) of SMCRA and is not approving it.

b. Penalty Assessment

The Missouri proposal continues with the requirement that any administrative penalty must be assessed within 2 years following the Departments initial discovery of such alleged violation or from the date the department in the

exercise of ordinary diligence should have discovered such alleged violation.

The State proposes, in effect, a statute of limitations on the time in which the State regulatory authority may assess a civil penalty. Given Missouri's proposal, any assessments or re-assessed penalties resulting from an administrative review would have to be dismissed without a showing of prejudice if they exceeded the 2 year limit. In neither of these cases would the penalties be dismissed under the Federal regulations. In this respect, the proposal is less effective than the Federal regulation in achieving the enforcement goals of SMCRA.

Missouri's proposal further provides that penalties must be assessed not only within 2 years of the violation notice, but more restrictively within 2 years "from the date the department in the exercise of ordinary diligence should have discovered such alleged violation." The time limitation requirements of SMCRA section 518 and 30 CFR part 845 are all based on the date of issuance of the violation notice. If an alleged violation were not cited in a violation notice until 3 years later, it would still have to be assessed for potential penalty under the Federal requirements. Under the Missouri proposal, no penalty could be assessed. Further, Missouri has not informed OSM how the phrase "in the exercise of ordinary diligence" is to be interpreted.

The Director therefore finds that Missouri's proposed statutory change at RSMo 444.870.6 is less stringent than section 518 of SMCRA and is not approving it.

4. RSMo 444.870.7, Final Orders

a. Persons Empowered To Request Judicial Review

Missouri's proposed new RSMo 444.870.7 would subject final orders to judicial review upon petition "by any person subject to the administrative penalty."

Section 526(a)(2) of SMCRA states that any order or decision in a civil penalty proceeding shall be subject to judicial review; it does not explicitly limit the right of review to the person charged with the penalty. Furthermore, section 102(i) of SMCRA states that one purpose of the Act is to assure provision for public participation in the enforcement of programs under the Act.

The Federal regulations at 30 CFR 845.20(b) specify that "any party" may request judicial review of the final order. This Federal term, "any party," is more inclusive than the proposed State term, "any person subject to the administrative penalty." Therefore, the Director finds the proposed provision at RSMo 444.870.7, by allowing fewer persons to file for judicial review, less stringent than SMCRA and less effective than the Federal regulation and is not approving the provision.

b. Judicial Review de novo

Missouri proposes to add new section RSMo 444.870.7 that would allow either party to request that judicial review of a final order be *de novo*. *Black's* law dictionary defines *de novo* trials as "trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered." Section 526(b) of SMCRA requires that judicial review of Federally assessed penalties be based on the record, that is, it prohibits trials *de novo* for those penalties.

The preamble to OSM's 1979 rules strongly discourages states from providing for trials *de novo* (44 FR 14902, 15296; March 13, 1979). The concern expressed by OSM at that time was that trials *de novo* might be advantageous to violators since trials *de novo* would usually occur long after the violation and loss of evidence, loss of witnesses and/or witness memory might lead to a reduced ability of regulatory authorities to prove the fact of violations and/or to defend penalty amounts assessed.

This position was challenged in *In re: Permanent Surface Mining Regulation Litigation*, 14 ERC 1083, 1109 (D.D.C. February 26, 1980). In briefs filed for that case, the Secretary said that trials *de novo* can be allowed in State programs *if* the State can demonstrate that such allowance would not lead to subversion of the enforcement program. Missouri has not provided such demonstration. As OSM noted in the preamble to the October 28, 1981, (46 FR 53376, 53377) rulemaking which relaxed the provisions for State submission of alternative approaches to the Federal regulations, it remains the responsibility of the State seeking approval of an alternative to establish the necessary record to support the conclusion that the State's proposal is as effective in meeting the requirements of the Act as are the Federal regulations.

Therefore, the Director finds that since Missouri failed to demonstrate how trials *de novo* would not lead to subversion of the enforcement program, its proposed provision at RSMO 444.870.7 is less stringent than the section 526(b) of SMCRA and is not approving the proposed change.

c. Judicial Review of Final Orders—Requirement for Escrow Payment

Missouri proposes at RSMo 444.870.7 that "[a]ny final order imposing an administrative penalty is subject to judicial review upon the filing of a petition pursuant to section 536.100, RSMo * * *"

Existing and proposed RSMo 444.870.3 require an escrow payment in order to obtain administrative review; while the procedures are not specified, it is implied that the payment remains in escrow through the completion of judicial review. Existing RSMo 444.900 states that final orders are subject to judicial review only if all administrative remedies are exhausted; thus, there must always have been an escrow payment to remain in escrow during any judicial review. The proposed new provision at RSMo 444.870.7 does not specify that an escrow payment is required. It is unclear whether the proposed provision would create a different avenue for obtaining judicial review than that specified in RSMo 444.870.3.

SMCRA section 518(c) requires the person charged with the penalty to place the penalty amount in escrow in order to contest the amount of the penalty; this is implied for both administrative or judicial review. The Federal regulations at 30 CFR 845.19(a) requires that a request for an administrative hearing be accompanied by an escrow payment of the amount assessed and 30 CFR 845.20(b) requires that the amount paid into escrow for the administrative hearing remain in escrow for the judicial hearing.

The Director finds that the proposed provision at RSMo 444.870.7, by not clarifying its interpretation regarding whether an escrow payment is required in order to obtain judicial review, is less stringent than section 518(c) of SMCRA and is not approving it.

5. RSMo 444.870.8, Assessment of Penalty

a. Provision for Judicially Assessed Penalties

Missouri proposes new section RSMo 444.870.8 that would provide three alternatives for the assessment of penalties. First, the State may assess an administrative penalty. Second, the Attorney General may file legal action seeking a civil penalty in a circuit court. Third, the State may request a judicially assessed civil penalty.

Section 518(i) of SMCRA requires State programs to have similar procedural requirements as section 518. Section 518 (a) and (b) require penalties to be assessed at the administrative level (i.e., by the Secretary), not at the judicial level. Therefore, section 518(i) can be interpreted to require that State

programs assess penalties administratively, rather than allowing the proposed option for judicial assessment. OSM's implementing regulations at 30 CFR 732.15(b)(7) also require State programs to include the same or similar procedural requirements as 30 CFR part 845, which requires penalties to be assessed by OSM (i.e., the regulatory authority). Further, 30 CFR 840.13(c) requires State programs to include procedural requirements for civil penalty assessment consistent with those in 30 CFR part 845.

The possibility of judicially assessed penalties was addressed in the preamble to OSM's 1979 regulations (44 FR 14902, 15296; March 13, 1979). OSM's conclusion was that judicially-assessed penalties would not satisfy the requirements of SMCRA and OSM's rules. The reasons were: (1) Courts are not as knowledgeable about the subject matter of coal mining as is the administrative agency; (2) court dockets may mean long delays in assessing penalties [30 CFR 845.17(b) generally requires an assessment within 30 days of the violation notice]; (3) State court systems/procedures may not provide for citizen participation in penalty assessment; (4) an administrative system is more efficient; and (5) administratively-assessed penalties are more likely to be uniform and reflect the criteria of the Act.

As stated in finding 4b, it is the State's responsibility, when seeking approval of an alternative approach to the Federal regulations, to establish the necessary record to support the conclusion that the State's proposal is as effective in meeting the requirements of the Act as are the Federal regulations. Missouri does not provide evidence substantiating the position that none of the five problems noted in the preamble discussion, or any other potential subversions of or weakening of "enforcement values," would occur under the alternative for judicial assessment. In addition, SMCRA and the Federal regulations cited above require that civil penalties be assessed based on four criteria (history, seriousness, negligence, good faith in abating). Missouri currently does not have in place statutory provisions that would require circuit courts to utilize these criteria in assessing civil penalties.

Therefore, the Director finds Missouri's proposal at RSMo 444.870.8 to be less stringent than SMCRA and less effective than the Federal regulations and is not approving it.

b. Assessment Criteria

Missouri's proposed statute states that "[t]he assessment of an administrative penalty shall preclude the assessment of a monetary penalty for the same violation by the attorney general and the judicial assessment of a civil penalty for the same violation *except* (emphasis added) that this limitation shall not apply to persons whom the department has determined to have habitually violated the requirements of the Missouri surface coal mining law, * * *" There is no similar counterpart provision in the Federal program.

There are two problems with this language. First, it is unclear what Missouri intends to achieve with this proposed revision. On one hand, it appears that Missouri proposes to put in effect a statute that could allow two separately assessed penalties for habitual offenders. This would seem to be unnecessary since Missouri already has an avenue for "penalizing" "habitual offense" under the program provisions for permit suspension/revocation for patterns of violations (30 CFR 843.13; RSMo 444.885.3 & 444.895.4).

On the other hand, this proposed statute could be interpreted to mean that, if the State is dealing with a "habitual offender," the assessment of the attorney general and the judicial assessment would preclude the administrative assessment.

Second, OSM has a concern regarding Missouri's use of the terms "administrative penalty" and "monetary penalty." As discussed in finding 2, Missouri's substitution of the term "administrative penalty" for the term "civil penalty" was thought to be proposed as a way to distinguish between administratively-assessed penalties and those assessed by the courts and therefore, no less stringent than SMCRA. However, the phrase "[t]he assessment of an administrative penalty shall preclude the assessment of a monetary penalty for the same violation * * *" implies that an administrative penalty does not include a "monetary" component, which is inconsistent with SMCRA.

Given the uncertainty of the intent of this proposed statutory revision, the Director cannot determine if Missouri's proposed changes are in accordance with SMCRA and therefore is not approving it.

c. Attorney General Assessment of Monetary Penalty

The second proposed option discussed in finding 5a is: "the assessment of a monetary penalty * * * by the attorney general." There is no Federal counterpart provision in the Federal program.

As stated in finding 5a, Missouri currently does not have in place statutory provisions that would require the attorney general to use the four required assessment criteria (history, seriousness, negligence, good faith in abating) when assessing penalties.

The Director therefore finds that Missouri's proposed provision is inconsistent with the requirements of SMCRA at section 518 and is not approving the proposed change.

6. RSMo 444.873.2 (Previously RSMo 444.870.6), Corporate Permittee Violation

a. Individual Civil Penalties

The existing provision, at RSMo 444.870.6, applies when a corporate permittee "fails or refuses to comply with any order issued under section RSMo 444.885, or any order incorporated in a final decision issued by the commission *except* an order [under subsection 2]" (emphasis added). That is, individual civil penalties (ICP's) are authorized for failing to obey orders under RSMo 444.885 or any final order *except* those under subsection 2 that require payment of civil penalties. Orders issued under RSMo 444.885 are cessation orders and show cause orders.

The proposed revision has omitted the "except" clause, so that it reads: "* * * fails or refuses to comply with an order issued under section RSMo 444.885, or any order incorporated in a decision issued under subsection 2 * * *" Thus, in the proposed revision, only orders under RSMo 444.885 and final decision orders which do require payment of administrative penalties would be included.

Section 518(f) of SMCRA authorizes ICP's for failure to obey orders under section 521 (counterpart to RSMo 444.885) of SMCRA or any order incorporated in a final decision except an order requiring payment of civil penalties (or an order under section 703 of SMCRA to abate violations of employee protection).

In summary, while Missouri's existing provision closely parallels the requirements of SMCRA, the proposed revision would be less stringent because it would include fewer orders incorporated in final decisions: The proposed revision would include only those final decision orders requiring payment of civil penalties, which are precisely the ones SMCRA excludes. The proposed revision would also conflict with and be less inclusive than Missouri's approved regulatory

definition of "violation, failure, or refusal" at 10 CSR 40-8.045(2)(B)(2) and the regulatory provision allowing assessment of ICP's at subsection (3)(a) of that rule. Therefore, the Director finds the proposed change at RSMo 444.873.2 to be less stringent than the Federal requirements at section 518(f) of SMCRA and is not approving it.

b. Editorial Errors

It appears as though the legislature intended to add a provision allowing access to a hearing for any director, officer, or agent who is assessed proposed ICP's (i.e., to add a provision equivalent to section 518(c) of SMCRA). However, this new provision was inserted into the middle of the sentence that authorizes ICP's rendering both provisions meaningless.

This revision initially says that "any director, officer, or agent * * * shall be subject to hearings * * *" This is an editorial error. Persons are not subject to hearings, rather, decisions, penalties, judgements, etc., are subject to hearings. The revision then states that "* * * any hearing * * * shall be of record *and shall be the same civil penalties* [sic] * * * that may be imposed * * *" (emphasis added). This says that hearings shall be penalties, which is erroneous. This revised provision has eliminated the requirement that directors, officers, and agents of corporate permittees are subject to civil penalties, fines, and imprisonment.

This provision as revised would no longer be comparable to SMCRA 518(f), and the Missouri program would no longer contain any authorization for the imposition of civil penalties on directors, etc., of corporate permittees. While the Missouri program would still contain regulatory provisions for the imposition of ICP's, at 10 CSR 40-8.045, these provisions would have no statutory basis. Therefore, the Director finds this proposed revision to be less stringent than section 518(f) of SMCRA and is not approving it.

c. Editorial Errors, cont.

Also, the last sentence of this proposed revision refers to "civil penalties, fines, and imprisonment * * * under *this section*" (emphasis added). Under the proposal, "this section" means RSMo 444.873. "Administrative" (civil) penalties are authorized in section 444.870. Therefore, there are neither civil nor administrative penalties authorized under "this section." In order to be no less stringent than section 518(f) of SMCRA, this phrase would have to be revised to specifically state or incorporate fines and imprisonment under this section and administrative penalties under section 444.870.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSM solicited comments from various Federal agencies with an actual or potential interest in the Missouri program.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and the ACHP for comment. The SHPO responded that it had no objection to the implementation of the proposed amendment. No response was received from ACHP.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Missouri did not propose in this amendment any revisions to its program that relate to air or water quality standards. However, EPA's Regional and Headquarters offices were afforded opportunity to comment on this amendment. EPA's Region VII office responded that it had no comments. The Headquarters office concurred without comment.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Missouri on November 8, 1991, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations, and identified in the codified portion of this notice under 30 CFR 925.15.

The Director is not approving Missouri's proposed revisions to its statute as discussed at finding: 3, RSMo 444.870.6, concerning assessment of administrative penalty; 4, RSMo 444.870.7, concerning judicial review of administrative penalty; 5, RSMo 444.870.8, concerning assessments of penalty; and 6, RSMo 444.873.2, concerning corporate permittee violation because they are less stringent than SMCRA and less effective than the implementing Federal regulations.

The Federal regulations at 30 CFR part 925 codifying decisions concerning the Missouri program are amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. The Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to the Director as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs.

In the oversight of the Missouri program, the Director will recognize only statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Missouri of only such provisions.

VII. Procedural Determinations

Compliance With Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Accordingly, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 30, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended by adding paragraph (o) to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(o) With the exception of RSMo 444.870.6, concerning assessment of administrative penalty, RSMo 444.870.7 concerning judicial review of administrative penalty, RSMo 444.870.8 concerning assessments of penalty, and RSMo 444.873.2 concerning corporate permittee violation, the following provisions of the Missouri statute as submitted to OSM on November 8, 1991, are approved effective September 24, 1992: RSMo 444.870.1 through .5 concerning civil penalty amount and procedure; RSMo 444.873.1 concerning willful and knowing violations; RSMo 444.873.3 concerning knowing false representation; and RSMo 444.873.4 concerning failure to correct a violation.

3. Section 925.16 is amended by adding paragraph (i), to read as follows:

§ 925.16 Required program amendments.

* * * * *

(i) By November 23, 1992, Missouri shall amend its program at RSMo 444.870.6, RSMo 444.870.7, RSMo 444.870.8, and RSMo 444.873.2 by removing these sections.

* * * * *

[FR Doc. 92-23169 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 935

Ohio Abandoned Mine Land Reclamation Plan Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of proposed amendments to the Ohio Abandoned Mine Land Reclamation Plan (hereinafter referred to as the Ohio Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern the proposed policies and procedures with which Ohio would conduct the Abandoned Mine Land Reclamation (AMLR) emergency program on behalf of OSM. The amendments would also make eligible for Federal AMLR funding, certain sites in Ohio affected by mining activities after the passage of SMCRA and would revise the definition of what constitutes a small operator under the small operator assistance program to be consistent with the approved Ohio program.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

The Secretary of the Interior approved the Ohio Plan on August 10, 1982. Information on the background of the Ohio Plan, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio plan, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments are identified at 30 CFR 935.20 and 935.25.

II. Submission of the Amendment

By letter dated July 14, 1988 (Ohio Administrative Record No. OH-1071), Ohio submitted Program Amendment Number AML-3. This amendment proposed changes to the Ohio Plan to authorize Ohio to conduct the AMLR emergency program on behalf of OSM. OSM announced receipt of proposed Program Amendment Number AML-3 in the October 20, 1988, **Federal Register** (53 FR 41208), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on November 21, 1988. The public

hearing scheduled for November 14, 1988, was not held because no one requested an opportunity to testify.

Because of concerns over the allocation of funds to support the AMLR emergency program, Ohio withdrew its July 14, 1988, submission of proposed Program Amendment Number AML–3 on February 15, 1989 (Ohio Administrative Record No. OH–1159). Between 1989 and 1992, OSM and Ohio continued discussions about Ohio's possible assumption of the AMLR emergency program on behalf of OSM. OSM was able to resolve Ohio's concerns about the AMLR emergency program funding, and, in early 1992, Ohio again initiated the process to assume the AMLR emergency program.

By letter dated February 19, 1992 (Administrative Record No. OH–1650), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Program Amendment Number AML–5 to the Ohio Plan. This amendment is intended to demonstrate Ohio's capability to effectively perform the AMLR emergency program on behalf of OSM. In support of the proposed amendment, Ohio also submitted responses to OSM's September 29, 1982, guidelines for State proposals to assume the emergency program (47 FR 42729).

By letter dated March 2, 1992 (Ohio Administrative Record No. OH–1657), Ohio modified AML–5 to include new statutory provisions at Ohio Revised Code (ORC) 1513.37(L)(1) and (L)(2). These provisions were originally included in Program Amendment Number 54, submitted to OSM on February 7, 1992 (Administrative Record No. OH–1645). Because these provisions provide clarification of the statutory authority in emergency situations, OSM requested that ORC 1537.37(L)(1) and (L)(2) to be moved to this amendment package.

In response to the May 29, 1992, issue letter prepared by OSM (Administrative Record No. OH–1705), Ohio submitted on July 29, 1992, additional minor revisions to the program amendment (Administrative Record No. OH–1759). The revisions further modify and clarify the policy and procedures of the Ohio AML Emergency Program.

OSM announced receipt of the proposed amendment in the April 13, 1992 **Federal Register** (57 FR 12782), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on May 13, 1992. The public hearing scheduled for May 8, 1992, was not held because no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR part 884, are the Director's findings concerning the proposed amendment to the Ohio Program. Any minor revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notation to reflect organizational changes resulting from this amendment.

1. State Emergency Reclamation Policies and Procedures

Ohio proposes to revise the Ohio Plan to assume the authority to conduct the emergency program on behalf of OSM as set forth in section 410 of SMCRA. The guidelines for State Reclamation Plan provisions pertaining to the assumption of emergency response authority were published in the **Federal Register** on September 29, 1982, (47 FR 42729). Under this rule, for a State to undertake an emergency reclamation program as part of its AMLR Program, the State must amend its Reclamation Plan to demonstrate that is has the statutory authority to undertake emergency reclamation projects, the technical capability to design and supervise the emergency work, and the administrative machinery to quickly respond to emergencies either directly or through contractors.

OSM noted in its May 29, 1992, issue letter to Ohio that the Reclamation Plan must clarify that the action taken to abate an emergency be limited to that necessary to stabilize the life-threatening situation and should allow remaining reclamation work to be undertaken as a lower priority project. Ohio responded that they would defer to the OSM Field Office Director's specific authority to declare each emergency and to approve the scope of work. The Director agrees with Ohio that sufficient procedures, consistent with OSM guidelines, are in place to ensure that the scope of work for emergency projects is limited to that necessary to eliminate the life threatening situation.

On March 2, 1992, in response to a request by OSM, Ohio agreed to move to this amendment package new statutory provisions at ORC 1513.37(L)(1) and (L)(2) which clarify Ohio's statutory authority to expeditiously contract and enter upon any land where an emergency exists to abate the emergency conditions. OSM requested that these provisions be included with this amendment for consistency and clarity. Although the revisions to the ORC have not yet been enacted into law by Ohio, Appendix U of Ohio's original submittal, containing a letter from the Ohio Attorney General, dated June 28, 1988, stipulated that Ohio does have the authority to conduct an emergency reclamation program.

The program amendment package submitted by Ohio on February 19, 1992, including the revisions made in response to the OSM issue letter, constitutes a comprehensive package that demonstrates that Ohio has the necessary statutory authority, technical capabilities, and procurement procedures to satisfy the conditions stated in the September 29, 1982, **Federal Register** notice (47 FR 42729). Therefore, based upon the Agency's substantive review and in consideration of the declaration of the Ohio Attorney General, the Director finds that Ohio has complied with the emergency program guidelines and qualifies for assumption of the emergency response program.

2. Eligibility

Ohio proposes to revise its Reclamation Plan at Subsection 2.3, paragraph (c), pages 2–5 to include post-1977 abandoned mine lands and waters made eligible for reclamation by the AML Reclamation Act of 1990. Section 402(g)(4) of SMCRA, as revised, extends the original eligibility criteria for emergency and priority 1 and 2 sites to surface coal mining operations that had been mined and abandoned between August 4, 1977, and either:

(i) The date on which the Secretary of the Interior's approval of the State program under section 503 of SMCRA became effective, or

(ii) November 5, 1990 (the date of enactment of the AML Reclamation Act of 1990), where the surety of the mining operator became insolvent,

and for which funds available are insufficient to provide for adequate reclamation or abatement at the site.

The Director finds Ohio's proposed revision to the eligibility criteria for emergency sites in its Reclamation Plan to be substantively identical and not inconsistent with the requirements of section 402(g)(4).

Concurrent with the revisions to their Reclamation Plan, Ohio has proposed to amend the ORC paragraph 1513.37(C)(1) to provide the authority for the increased eligibility criteria. Therefore, upon the approval of the proposed revisions to ORC 1513.37(C)(1) by the

Director, Ohio will have the authority to and may, therefore, apply the expanded eligibility criteria to AML emergency and priority (1) and (2) sites.

3. Small Operator Assistance Program

In response to a comment made by OSM in its issue letter dated May 29, 1992 (Administrative Record No. OH–1705), Ohio is proposing to amend Section 3 of its Reclamation Plan to substitute a 300,000 ton, 12 month coal production limit, under which a mine operator is eligible for participation in the Small Operator Assistance Program (SOAP), for the existing 100,000 ton limit. On June 6, 1991, OSM approved Ohio's revision to the Ohio Revised Code at 1513.07 paragraph (B)(4) and the Ohio Administrative Code at 1501:13–6–03 paragraphs (C)(1)(b),(I)(1)(d) and (I)(1)(e) which increased the SOAP eligibility limit to 300,000 tons (56 FR 26032). Therefore, the Director is approving the revision to the Reclamation Plan as it merely reflects the existing approved State program.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the April 13, 1992, **Federal Register** (57 FR 12782) ended on May 13, 1992. By letter dated March 19, 1992, the Ohio Historical Society provided comments on ORC Sections 1513.37 (C–L) contained in Ohio Program Amendment Number 54. On March 2, 1992, Ohio moved the proposed provisions at 1513.37(L) from Program Amendment Number 54 to this amendment package, and the comment pertaining to ORC 1513.37(L) will be discussed here.

The Ohio Historical Society expressed a desire that the Ohio Historical Preservation Officer be notified as soon as possible in emergency reclamation situation. The Director agrees with the commenter that sections 106 and 110 of the National Historic Preservation Act (NHPA) require Federal agencies with jurisdiction over federally assisted undertakings, to take into account, to the maximum extent possible, the effects of the agency's projects on properties included in or eligible for the National Register of Historic Places and, prior to approval of such undertakings, to afford the State Historic Preservation Officer a reasonable opportunity to comment on the undertaking. On July 23, 1992, the Ohio Division of Reclamation (OHDR), the State Historic Preservation Officer (SHPO) and OSM met to begin drafting a Memorandum of Agreement between the OHDR and the SHPO concerning compliance with the NHPA. The Director finds that the concerns of the Ohio Historic Society are being resolved through this process.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Environmental Protection Agency; the U.S. Department of Agriculture, Soil Conservation Service; the U.S. Army Corps of Engineers; the U.S. Department of Labor, Mine Safety and Health Administration; and the U.S. Department of the Interior, Fish and Wildlife Service, responded without comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment to the Ohio Abandoned Mine Land Reclamation Plan submitted by Ohio on February 19, 1992.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio Program are being amended to implement this decision.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a state program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary.

VI. Procedural Determinations

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR part 884.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State (or Tribal) submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State [or Tribe]. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Abandoned mine land reclamation plans, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 1, 1992.

W. Hord Tipton,

Deputy Director, Operations and Technical Services.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.25 a new paragraph (e) is added to read as follows:

§ 935.25 Approval of Abandoned Mine Land Reclamation (AMLR) plan amendments.

* * * * *

(e) The AMLR amendment as originally submitted on February 19, 1992, is approved.

[FR Doc. 92-23187 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 92-117]

Safety Zone; South Street Seaport Columbus Day Fireworks, Lower East River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard plans to establish a temporary safety zone for a fireworks display within all waters of the Lower East River south of the Brooklyn Bridge and north of a line drawn between slip 7 Manhattan and pier 5 Brooklyn. The fireworks display will take place on Monday, October 12, 1992 from 8 p.m. to 10 p.m. with a rain date of October 13. Temporary closure of the waters surrounding the launching barges is needed to protect the boating public from the safety hazards associated with a pyrotechnic fireworks display in these waters.

EFFECTIVE DATES: This regulation will be effective from 8 p.m. through 10 p.m. on October 12, 1992. (Rain date of October 13, 1992).

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) J.E. Peschel, Waterways Management Officer, Coast Guard Group, New York (212) 668-7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG J.E. Peschel, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since the event takes place on a public holiday where immediate action is needed to respond to any potential hazards and sufficiently protect the boating public. Due to the date that this application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The circumstances requiring this regulation result from the desire to protect the maritime public from possible dangers and hazards from falling debris or unexploded pyrotechnics associated with a pyrotechnic fireworks display in the waters of the Lower East River. The safety zone will surround a barge based program directed over the waters of the Lower East River. This two hour zone allows time for Coast Guard personnel to clear vessels from the area both before and during the display, and ensure all pyrotechnics have been extinguished prior to reopening the area to maritime traffic. No vessel will be permitted to enter or move within the safety zone unless permitted to do so by Captain of the Port, New York.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Due to the limited duration of the display within this two hour window, the extensive advisories made to the affected maritime community, and the fact that the event is taking place at night on a holiday weekend which typically experiences minimal commercial marine traffic, the impact of this regulation is expected to be minimal. The Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01-117 is added to read as follows:

§ 165.T01-117 South Street Seaport Columbus Day fireworks, Lower East River, New York.

(a) *Location.* The safety zone will include all waters bank to bank of the Lower East River south of the Brooklyn Bridge and north of a line drawn from Slip 7, Manhattan to Pier 5, Brooklyn.

(b) *Effective period.* This regulation will be effective from 8 p.m. through 10 p.m. on October 12, 1992. (Rain date of October 13, 1992).

(c) *Regulations.*

(1) No person or vessel may enter, transit, or remain in the safety zone during the effective period of regulation unless participating in the event as authorized by the U.S. Coast Guard Captain of the Port (COTP), New York. The COTP will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF-FM.

(2) All persons and vessels shall comply with the instructions of the COTP NY or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed.

Dated: September 11, 1992.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 92-23217 Filed 9-23-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 92-102]

Safety Zone; AAPRCO Convention Fireworks, Upper Bay, New York, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard plans to establish a temporary safety zone for a fireworks display sponsored by AAPRCO. The event, will take place on Saturday, October 10, 1992. Temporary closure of a portion of Federal Anchorage 20C in the vicinity of Liberty Island is needed to protect the boating public from the hazards associated with a pyrotechnic fireworks display in confined waters.

EFFECTIVE DATES: This regulation will be effective from 9 p.m. through 10:30 p.m. on October 10, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) J.E. Peschel, Waterways Management Officer, Coast Guard Group New York (212) 668-7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG J.E. Peschel, Captain of the Port, New York and LCDR J. Steib, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards. Due to the date that this application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The circumstances requiring this safety zone result from the desire to protect the maritime public from possible dangers and hazards from falling debris or unexploded pyrotechnics associated with a fireworks display in the waters of Upper Bay NY/NJ. The safety zone will surround a tug and barge anchored in Federal Anchorage 20C in the vicinity of Liberty Island. The zone will be in effect for 1½ hours, allowing time for Coast Guard personnel to clear vessels from the area both before and during the display, and ensure all pyrotechnics have been extinguished prior to reopening the area to maritime traffic. No vessel will be permitted to enter or move within this safety zone unless permitted to do so by the Captain of the Port, New York (COTP NY).

Regulatory Evaluation

This safety zone is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The entire safety zone lies within federal anchorage 20C, and thus should not affect any shipping channel nor hinder commercial traffic transiting that area. Due to the limited duration of the display, the extensive advisories that will be made to the affected maritime community, and the fact that the event is taking place on a Saturday night, which normally experiences only a light volume of commercial marine traffic, the impact of this regulation is expected to be minimal. The Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5, 49 CFR 1.46.

2. A temporary section, 165.T01-114 is added to read as follows:

§ 165.T01-114 APPRCO convention fireworks, Upper Bay, New York, New Jersey.

(a) *Location.* The safety zone will include all waters within a 300 yard radius of the fireworks barge anchored in position at 40°41'17" N latitude 074°02'26" W longitude of Federal Anchorage 20C in the vicinity of Liberty Island in NY Harbor.

(b) *Regulations.*

(1) No person or vessel may enter, transit, or remain in the safety zone during the effective period of regulation unless participating in the event as authorized by the U.S. Coast Guard Captain of the Port NY (COTP NY). The COTP NY will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF-FM.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed.

(c) *Effective period.* This regulation will be effective from 9 p.m. through 10:30 p.m. on October 10, 1992.

Dated: September 11, 1992.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 92-23219 Filed 9-23-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AE13

Group Memorial Monuments

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations to provide group memorial monuments. VA currently provides memorial headstones and markers for individual deceased veterans and eligible dependents, but not for groups of two or more individuals whose remains have not been recovered or identified. The effect of this amendment is to provide memorial monuments for such groups when members of the group have perished in a common military event, if requested by next of kin. Documentary evidence must be forwarded from the respective branch of service (Departments of Air Force, Army, and Navy, the Coast Guard, and the Marine Corps) historical center to support the request for group memorial monuments.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. George Vogel, Director, Program Analysis and Planning Service (403C), Office of Memorial Programs, National Cemetery System, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 275-1206.

SUPPLEMENTARY INFORMATION: On pages 1440 through 1442 of the **Federal Register** of January 14, 1992, there was published a notice of intent to amend 38 CFR part 1 to provide for group memorial monuments in national cemeteries.

Interested people were given 30 days in which to submit comments. The Department of Veterans Affairs received one comment. The writer suggested that the proposal be changed so VA would honor a request for a group memorial monument made by the respective military service historical center rather than by the next of kin. The writer is concerned that for events occurring in the early years of our Nation's history next of kin may not exist.

We believe that the definition of next of kin for group memorial monuments to include lineal descendants is sufficient (see § 1.633(a)(3)). While the request must come from a next of kin, only one next of kin need make the request. By their nature, group events include two or more people and we believe that a next of kin under our definition will, in all likelihood, exist.

The writer also suggests that by use of the term "non-recoverable and non-identified" the concept of a next of kin is precluded. The group memorial monument is to memorialize specific persons. While the remains of those who lost their lives in a common event may not be recovered or identified, the military services historical centers will have the names of those who took part in the common event.

VA appreciates the comments offered, and is publishing the regulations as final. Between the date of publication of the proposed rule and this final rule, VA has begun to use the term "headstone or marker" when referring to individual memorials and the term "monuments" when referring to group memorials.

Executive Order 12291

This final rule is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions; will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The final rule will concern only a small group of veterans who will be honored by the placement of group memorial monuments in selected national cemeteries. This regulation imposes no regulatory, administrative, or paperwork burdens on any type of small entity.

Catalog of Federal Domestic Assistance Number for programs affected by this regulation are 64.200, 64.201 and 64.202.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, Cemeteries, Claims, Privacy, Security measures.

Approved: August 21, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1, General, is amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for chapter 1, §§ 1.600 to 1.632 continues to read as follows:

Authority: 38 U.S.C. 501, unless otherwise noted.

2. In § 1.630, paragraph (c) is revised and an authority citation is added to read as follows:

§ 1.630 Headstones and markers.

* * * * *

"(c) A memorial headstone or marker furnished for a deceased veteran by the Government may be erected in a private cemetery or in a national cemetery section established for this purpose. The headstones or markers for national cemeteries will be of the standard design authorized for the cemetery in which they are to be erected. In addition to the authorized inscription, the words "In Memory Of" are mandatory.

(Authority: 38 U.S.C. 501)

3. In § 1.631, an authority citation is added at the end of the section to read as follows:

§ 1.631 Eligibility for headstone or marker.

* * * * *

(Authority: 38 U.S.C. 2306)

4. Section 1.633 and its authority citation are added to read as follows:

§ 1.633 Group memorial monuments.

(a) *Definitions of terms.* For the purpose of this section, the following definitions apply:

(1) Group—all the known and unknown dead who perished in a common military event.

(2) Memorial Monument—a monument commemorating veterans, whose remains have not been recovered or identified. Monuments will be selected in accordance with policies established under 38 CFR 1.630.

(3) Next of kin—recognized in order: Surviving spouse; children, according to age; parents, including adoptive, stepparents, and foster parents; brothers or sisters, including half or stepbrothers and stepsisters; grandparents; grandchildren; uncles or aunts; nephews or nieces; cousins; and/or other lineal descendent.

(4) Documentary evidence—Official documents, records, or correspondence signed by an Armed Services branch historical center representative attesting to the accuracy of the evidence.

(b) The Secretary may furnish at government expense a group memorial monument upon request of next of kin. The group memorial monument will commemorate two or more identified members of the Armed Forces, including their reserve components, who died in a sanctioned common military event, (e.g., battle or other hostile action, bombing or other explosion, disappearance of aircraft, vessel or other vehicle) while in active military, naval or air service, and whose remains were not recovered or identified, were buried at sea, or are otherwise unavailable for interment.

(c) A group memorial monument furnished by VA may be placed only in a national cemetery in an area reserved for such purpose. If a group memorial monument has already been provided under this regulation or by any governmental body, e.g., the American Battle Monuments Commission, to commemorate the dead from a common military event, an additional group memorial monument will not be provided by VA for the same purpose.

(d) Application for a group memorial monument shall be submitted in a manner specified by the Secretary. Evidence used to establish and determine eligibility for a group memorial monument will conform to paragraph (a)(4) of this section.

(Authority: 38 U.S.C. 501, 2403)

[FR Doc. 92-23115 Filed 9-23-92; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX-11-1-5532; FRL-4506-9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Volatile Organic Compound Reasonably Available Control Technology Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Today's notice approves revisions to the Texas State Implementation Plan (SIP) as submitted by the Governor on the following days: March 5, 1990; July 16, 1990; May 10, 1991; and September 30, 1991. These revisions consist of changes to the Texas Air Control Board (TACB), Regulation V (31 TAC Chapter 115), "Control of Air Pollutants from Volatile Organic Compounds". This rulemaking is necessary because EPA found that the Texas SIP was substantially inadequate to achieve compliance with the National Ambient Air Quality Standard (NAAQS) for ozone in the following eight counties: Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant. On May 26, 1988, EPA advised the State of Texas that its ozone SIP was inadequate and that certain regulations identifying reasonably available control technology (RACT) for volatile organic compounds (VOC) were deficient (SIP call). EPA notified the State that it must correct those deficiencies as part of its effort to develop an adequate SIP. On November 15, 1990, the Clean Air Act was amended to require correction of the deficiencies as identified by EPA (section 182(a)(2)(A)). The intended effect of this action is to approve the revised VOC RACT rules for the Texas SIP as it applies to the above counties because these rules are consistent with the requirements of the SIP call and section 182(a)(2)(A) of the amended Act. This action is being taken under section 110 and Part D of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on October 26, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6 (6T-AP), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Texas Air Control Board, 12124 Park 35 Circle, Austin, Texas 78753.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robin M. Moran, EPA Region 6, Air Programs Branch, telephone (214) 655-7254.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** on November 24, 1987, EPA's Proposed Post-1987 Policy for Ozone and Carbon Monoxide stated that air quality monitors revealed continued exceedances of the ozone standard in certain Texas areas and that a "SIP call" would be issued (See 52 FR 45044). A SIP call is a finding by EPA that the SIP does not provide for attainment by the required date.[1] On May 26, 1988, EPA sent a letter to William P. Clements, Jr., Governor of Texas, pursuant to section 110(a)(2)(H) of the pre-amended Clean Air Act, notifying the State that the Texas SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in certain areas of the State. EPA requested the State to respond to the SIP call in two phases. Pursuant to the first phase, the State was to: (1) Correct identified deficiencies in the existing SIP's VOC regulations; (2) adopt VOC regulations previously required or committed to but never adopted; and (3) update the areas' base year emissions inventory. These requirements were clarified in a June 9, 1988, letter from William B. Hathaway, Director of the EPA Region 6 Air, Pesticides and Toxics Division, to Allen Eli Bell, Executive Director of the Texas Air Control Board (TACB).

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. Under the amended Act, those areas that were designated nonattainment before enactment of the Amendments, and which retained that designation and were classified as marginal or above as

[1] Under the pre-amended Act, section 110(a)(2)(H) provided for a finding by the Administrator that a "plan is substantially inadequate to achieve the [NAAQS]." This provision was carried forth under the amended Act. In addition, section 110(k)(5) of the amended Act reinforces the Agency's authority to make such a finding.

of enactment, were required to meet the section 182(a)(2)(A) RACT fix-up requirement by May 15, 1991.[2] Under section 182(a)(2)(A), those areas were required to correct RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[3] As part of the SIP call, EPA identified deficiencies in the existing VOC RACT regulations and indicated corrections necessary for specific nonattainment areas. In response to the Post-1987 SIP call requirement to correct VOC RACT rule deficiencies, the Governor submitted revisions to TACB Regulation V on the following dates: March 5, 1990; July 16, 1990; May 10, 1991; and September 30, 1991.

The TACB adopted revisions to the VOC RACT rules in a series of actions. On March 29, 1988, the Governor of Texas submitted revisions to TACB Regulation V intending to satisfy a commitment in the 1982 Harris County SIP to adopt Set III CTGs, as published by EPA.[4] However, EPA is not taking action on the March 29, 1988, submittal because the revisions contained therein have been substantially revised and recodified in subsequent submittals that revised Regulation V for the following eight counties: Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant.

In a letter dated March 5, 1990, the Governor of Texas noted the repeal of TACB Regulation V (31 TAC Chapter 115) as it existed and submitted for incorporation into the SIP the new Regulation V, adopted by TACB on December 8, 1989.[5] The second submittal, dated July 16, 1990, contained subsequent revisions to Regulation V as adopted June 22, 1990. All but one portion of the July 16, 1990, submittal was already approved by EPA on October 12, 1990 (55 FR 41523).[6] The third submittal, dated May 10, 1991, contained corrections to Regulation V as adopted on that day. The fourth submittal, dated September 30, 1991, contained revisions to TACB Regulation V, which the State adopted on September 20, 1991, including capture efficiency test methods.

On April 14, 1992 (57 FR 12903), EPA published a notice of proposed rulemaking in the **Federal Register** to approve the above rules into the Texas State Implementation Plan because they corrected the specified deficiencies identified under the SIP call and satisfied the requirements of section 182(a)(2)(A) of the Clean Air Act. For a complete discussion of EPA's evaluation of the submitted rules, the reader is directed to the **Federal Register** notice referenced above. It should be noted that the notice of proposed rulemaking incorrectly listed the fourth Governor's submittal date as September 10, 1991; the correct submittal date is September 30, 1991. EPA provided a 30-day comment period on the notice of proposed rulemaking. No adverse public comments were received.

ACTION: EPA approves revisions to the Texas State Implementation Plan as submitted by the Governor on March 5, 1990, July 16, 1990, May 10, 1991 and September 30, 1991. These revisions to the VOC RACT rules satisfy the requirements of the May 26, 1988, SIP call and the RACT fix-up requirements of section 182(a)(2)(A) of the amended Act. The recodification meets the requirements of section 110 and part D of the Clean Air Act, as amended.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of the state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. § 7410(a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Today's action makes final the action proposed on April 14, 1992, at 57 FR 12903. As noted elsewhere in this notice, EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures established in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years (54 FR 2222). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 23, 1992. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

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[2] The classification of areas in Texas is as follows: Dallas-Fort Worth area—moderate; Beaumont-Port Arthur area—serious; El Paso area—serious; Houston-Galveston-Brazoria area—severe.

[3] Among other things, the pre-amendment guidance consists of those portions of the Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (for which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[4] See August 3, 1984, **Federal Register** notice (49 FR 31066).

[5] EPA has already taken action on a portion of the March 5, 1990, submittal. That portion, Subchapter C: Volatile Organic Compound Marketing Operations, Control of Reid Vapor Pressure of Gasoline, was approved on August 3, 1990 (55 FR 31584).

[6] The July 16, 1990, submittal included revisions to Regulation V, Subchapter E: Solvent Using Processes, Surface Coating Processes, section 115.421, 115.425, and 115.429. For additional information see the October 12, 1990, **Federal Register** (55 FR 41523).

enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 9, 1992.

Joe D. Winkle,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

PART 52—[AMENDED]

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(77) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(77) Revisions to Texas Air Control Board Regulation V (31 TAC Chapter 115), Control of Air Pollution from Volatile Organic Compounds, were submitted by the Governor on March 5, 1990, July 16, 1990, May 10, 1991, and September 30, 1991.

(i) Incorporation by reference.

(A) Revisions to Texas Air Control Board Regulation V (31 TAC Chapter 115), Control of Air Pollution from Volatile Organic Compounds, as adopted by the Texas Air Control Board on December 8, 1989.

(B) Revisions to Texas Air Control Board Regulation V (31 TAC Chapter 115), Control of Air Pollution from Volatile Organic Compounds, as adopted by the Texas Air Control Board on June 22, 1990: 115.425(1)(D) and 115.425(1)(E).

(C) Revisions to Texas Air Control Board Regulation V (31 TAC Chapter 115), Control of Air Pollution from Volatile Organic Compounds, as adopted by the Texas Air Control Board on May 10, 1991: 115.010—Definitions for coating, coating line, leak, pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents), pounds of volatile organic compounds (VOC) per gallon of solids, printing line, volatile organic compound (VOC), 115.112(c), 115.114 introductory paragraph, 115.114(3), 115.116(1), 115.116(3)(B) through 115.116(3)(D), 115.119(a)(1), 115.119(a)(2), 115.122(a)(3), 115.126(1)(B) through 115.126(1)(E), 115.129(a)(1), 115.129(a)(2), 115.132(a)(4), 115.136, 115.139(a)(1), 115.139(a)(2), 115.212(a)(4), 115.212(a)(5), 115.212(a)(6), 115.215(5), 115.216(2)(B) through 115.216(2)(D), 115.219(a)(1) through 115.219(a)(3), 115.222(7) through 115.222(9), 115.229(1), 115.229(2), 115.239, 115.315(2), 115.316(1)(A) through 115.316(1)(D), the repeal of 115.317, 115.319(1), 115.319(2), 115.322(4), 115.324(1)(A), 115.324(1)(B), 115.324(2)(A) through 115.324(2)(E), 115.325(2), 115.327(1) through 115.327(5), 115.329 introductory paragraph, 115.329(1), 115.329(2) 115.332 introductory paragraph, 115.332(4), 115.334(1)(D), 115.334(1)(E), 115.334(2), 115.335 introductory paragraph, 115.335(2), 115.336 introductory paragraph, 115.337(1) through 115.337(5), 115.339, 115.342(4), 115.344(1)(D), 115.344(1)(E), 115.344(2), 115.345(2), 115.347(1) through 115.347(6), 115.349, 115.417(3) through 115.417(6), 115.419(1) through 115.419(3), 115.421 introductory paragraph, 115.421(1) through 115.421(8)(B) introductory paragraph, 115.421(8)(C) through 115.421(9)(A)(v), 115.421(9)(C), 115.422 introductory paragraph, 115.422(1), 115.422(1)(A) through 115.422(1)(C), 115.422(2), 115.423(2) through 115.423(4), 115.424 introductory paragraph, 115.424(1) through 115.424(3), 115.425(2), 115.425(3)(B)(i), 115.425(3)(B)(iii), 115.426 introductory paragraph, 115.426(2), 115.426(2)(A)(ii) through 115.426(2)(A)(iv), 115.426(3), 115.427(6), 115.427(6)(A), 115.427(6)(B), 115.427(7), 115.429(1), 115.429(2)(A), 115.429(2)(B), 115.432 introductory paragraph, 115.432(1), 115.432(1)(A) through 115.432(1)(C)(iii), 115.432(2), 115.432(3), 115.435(5) through 115.435(7), 115.436(3)(B) through 115.436(3)(D), 115.437(1), 115.437(2), 115.439(1), 115.439(2), 115.512(3), 115.519, 115.532(5), 115.536(2)(A)(ii) through 115.536(2)(A)(iv), 115.537(5), 115.537(6), 115.539(1), 115.539(2).

(D) Revisions to Texas Air Control Board Regulation V (31 TAC Chapter 115), Control of Air Pollution from Volatile Organic Compounds, as adopted by the Texas Air Control Board on September 20, 1991: 115.010—Definitions for capture efficiency, capture system, carbon adsorber, carbon adsorption system, control device and control system, 115.126(1), 115.129(a)(3), 115.136, 115.139(a)(2), 115.224(2), 115.229(2), 115.422(2), 115.423(3), 115.425(4) through 115.425(4)(C)(iii), 115.426(3), 115.426(4), 115.429(2)(C), 115.435 introductory paragraph, 115.435(7) through 115.435(7)(C)(iii), 115.435(8), 115.436(6), 115.439(2).

[FR Doc. 92–23257 Filed 9–23–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 89–007b]

RIN 2115–AD60

Documentation of Vessels; Recording of Instruments; Citizenship Declarations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing this final rule to amend its regulations requiring the filing of a Declaration of Citizenship (MA–899) in connection with the filing and recording of certain instruments affecting the title to documented vessels. The purpose of this change is to conform Coast Guard regulations to those of the Maritime Administration, to reduce uncertainty as to the validity of those instruments, and to reduce the paperwork burden upon the public.

DATES: This final rule is effective September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Willis, Chief, Vessel Documentation and Tonnage Survey Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, (202) 267–1492.

Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A notice of proposed rulemaking was published March 26, 1992 [57 FR 15044], with a 90 day comment period that closed June 24, 1992. That notice included, among other things, a proposal to amend the specific regulation which is the subject of this final rule. This rulemaking conforms the Coast Guard's rules concerning the submission of Declarations of Citizenship (MA–899) to the final rule published by the Maritime Administration on June 3, 1992 (57 FR 23470). Because this final rule conforms otherwise conflicting procedure between two federal agencies, and relieves the public of a significant paperwork burden, the Coast Guard has determined that good cause exists under 5 U.S.C. 553(d), for making this rulemaking effective in less than 30 days after publication.

Drafting Information

The principal authors of this regulation are Thomas L. Willis, Project Manager, and Lieutenant Commander

Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

On November 28, 1988, Congress enacted Public Law 100–710 (the "Codification Act") which, among other things, amended and codified the Ship Mortgage Act, 1920 into 46 U.S.C. chapter 313 and amended the Shipping Act, 1916 (46 app. U.S.C. 808). The Codification Act was the subject of technical corrections ("Corrections") when Congress enacted Public Law 101–225. Both the Codification Act and the Corrections introduced significant changes which are at variance with the former law and with existing Coast Guard regulations.

Most of the provisions of the Codification Act which require changes to the Coast Guard's regulations became effective on January 1, 1989. Certain of the changes were unequivocal and were implemented by an interim final rule published October 12, 1989 (54 FR 41835). The interim final rule was adopted as final in a rulemaking published January 10, 1991 (56 FR 960).

Other statutory revisions, some of which became effective on January 1, 1989, and others which became effective on January 1, 1990, require a more considered approach, including the opportunity for public comment. These latter changes were the subject of a notice of proposed rulemaking published March 26, 1992 (57 FR 10544).

In addition to requiring changes in the Coast Guard's regulations, the Codification Act also required changes in rules administered by the Maritime Administration affecting the transfer of documented vessels. Those rule, which are set forth in 46 CFR part 221 were the subject of an interim final rule published on February 2, 1989 (54 FR 5382, amended at 54 FR 8195). In addition, the Maritime Administration published a notice of proposed rulemaking on April 13, 1990 (55 FR 14040), and a second interim final rule on July 3, 1991 (56 FR 30656). Following a comment period, the Maritime Administration published a final rule on June 3, 1992 (57 FR 23470). That rule is at variance with current Coast Guard requirements with regard to the requirement to file Declarations of Citizenship with certain instruments affecting the title of documented vessels.

The purposes of this final rule are to conform the Coast Guard's regulations to those of the Maritime Administration, to reduce uncertainty regarding the validity of certain instruments, and to allow the Coast Guard to immediately eliminate a needless paperwork burden on the public estimated at 19,600 hours per year.

The changes implemented by this rulemaking parallel changes proposed by the Coast Guard in its notice of proposed rulemaking published March 26, 1992 (57 FR 10544). Many of the changes proposed in that notice were the subject of comments which must be considered before a final rule may be issued.

Discussion of Comments

Four comments were received concerning the proposal to significantly reduce the requirement for filing of citizenship declarations. All were from commercial services which file applications for documentation related services on behalf of vessel owners. Three absolutely opposed the lessened requirement for submitting declarations of citizenship. One stated that when evidence of citizenship cannot be presented the vessel should be registered under a state system which is "better equipped to handle such vessels." Another noted that while the Coast Guard might "prefer not having to keep declarations of citizenship on file * * * [that] most services will continue to obtain them * * * in the event [that] a [c]oastwise or Great Lakes endorsement was (sic) to be obtained." The third objection stated that the lack of the requirement for a form "proving citizenship might open up opportunities for fraudulent applications to be made by [non-citizens]."

The only other comment on this section supported elimination of the requirement for a formal declaration of citizenship, but noted that as long as the Jones Act is in effect, evidence of citizenship for all persons in the chain of title should be collected.

The Coast Guard disagrees with all four comments. The sole statutory basis for requiring the filing of a declaration of citizenship is to demonstrate that there has been no violation of section 9 of the Shipping Act, 1916 (46 U.S.C. app. 808), which requires approval of the Maritime Administrator for certain vessel transfers. Where approval is not required by statute, or has been granted by regulation, there is no statutory basis to require such filings.

The only other purpose which might be remotely served by the filing of a declaration of citizenship would be to demonstrate coastwise eligibility of the vessel in those cases where some person who has not applied for documentation has owned the vessel. Although some evidence that such persons were U.S. citizens at the time of vessel ownership would be required in the event that application was made for a coastwise endorsement, declarations of citizenship are not the sole means for making that determination. Moreover, there is simply no justification for routinely requiring such filings on the premise that there is a possibility that some future vessel owner might decide to apply for a coastwise endorsement, especially where failure to make such filings has the potential to invalidate a bill of sale, mortgage, or other instrument of conveyance of a documented vessel.

The suggestion that filing a declaration of citizenship *proves* that an applicant for documentation is a citizen is fallacious. All applicants for documentation must provide citizenship data on form CG–1258. There is no reason to believe that anyone who falsifies one form would not also file a false declaration of citizenship.

In the interest of avoiding needless delay, this final rule amends 47 CFR 67.29–11 of the Coast Guard's current regulations. When the Coast Guard has completed its analysis of comments and promulgated a complete final rule implementing the revision of 46 CFR part 67, it is anticipated that the section will be renumbered in accordance with the numbering scheme proposed in the notice of proposed rulemaking.

Discussion of the Regulation

Section 67.29–11 is amended to provide that it is not necessary to file a citizenship declaration for transactions involving a vessel operated solely as a fishing, fish processing, or fish tender vessel, or as a recreational vessel, or both. The filing requirement is waived for all transactions for which the Maritime Administration has given general approval in 46 CFR part 221. A new paragraph (e) in § 67.29–11 requires that when an instrument which effects a transfer of interest in a documented vessel requiring written approval of the Maritime Administrator is presented for filing; evidence of that written approval must also be presented. The requirement to present such evidence is not new and merely codifies existing practice.

In addition to eliminating needless paperwork, this amendment to 46 CFR 67.29–11 is required to eliminate an uncertainty which may arise with regard to the validity of an instrument transferring title to a documented vessel. Paragraph (c) of 46 U.S.C. 31306 states that, "*Except as provided by the Secretary,* an instrument transferring an interest in a vessel is not valid against any person until the declaration [of citizenship] required by this section has been filed." (emphasis added) Both the Coast Guard and the Maritime Administration are agencies of the Department of Transportation to which the Secretary has delegated certain

responsibilities having to do with documented vessels. The effect of the words "Except as provided by the Secretary" is ambiguous at best if each agency has a different requirement for filing of citizenship declarations. An instrument for which no citizenship declaration is filed might be deemed valid under the new Maritime Administration rule, but deemed not to be valid under the Coast Guard's current regulations. If, for example two mortgages were filed on successive days, and only the second was accompanied by a citizenship declaration, it might be argued that under the Coast Guard's regulation, only the second mortgage was actually valid; on the other hand, if the rules of the Maritime Administration are followed, both mortgages are valid, and the second mortgage would normally be subsidiary to the first. Such uncertainty obviously poses potential problems for persons seeking to finance vessels and invites litigation.

Regulatory Evaluation

This rulemaking has been determined not to be a major rule under Executive Order 12291, but it is significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The Coast Guard expects the costs of this rulemaking to be minimal since it is procedural and administrative in nature and eliminates a paperwork burden on the public.

Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard has considered whether this rulemaking will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Although the rulemaking will apply to a substantial number of small entities, the rule is procedural and administrative in nature. By eliminating certain recordkeeping and reporting requirements this rulemaking reduces the requirements imposed on the affected small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rulemaking will not have a substantial economic impact on a number of small entities.

Collection of Information

This rulemaking contains information collection requirements that were approved by the Office of Management and Budget (OMB) (Approval NO. 2133–0006), in the course of the Maritime Administration's rulemaking to revise 46 CFR part 221. In addition, the information collection requirements contained in this rulemaking were approved by OMB (Approval NO. 2115–0110) on April 14, 1992, in connection with the Coast Guard's proposed revision of 46 CFR part 67 (57 FR 10544).

This rulemaking significantly reduces the paperwork burden on the public. In 1991, more than 60,000 submissions of form MA–899 were required; under this final rule, the Coast Guard estimates that fewer than 1,000 submissions will be required each year. Since the average time to complete an MA–899 is estimated at 15 minutes, this will result in a savings of at least 19,600 burden hours each year.

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Since this final rule affects only a federal paperwork requirement, it has no preemptive effect.

Environment

The Coast Guard has considered the environmental impact of this rulemaking and has concluded that under § 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal deals with procedural regulations including reporting and recordkeeping requirements to record title and encumbrance instruments on vessels. This regulation is administrative in nature and clearly has no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection of copying where indicated under "**ADDRESSES.**"

List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

In consideration of the foregoing, 46 CFR part 67 is amended to read as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 is revised to read as follows:

Authority: 14 U.S.C. 664; 42 U.S.C. 9118; 31 U.S.C. 9701, 46 U.S.C. 2103, 2107, 2710; 46 U.S.C. App. 802, 808, 876, 841a, 883; 49 U.S.C. 322, 49 CFR 1.46.

2. Section 67.29–11 is revised to read as follows:

§ 67.29–11 Requirement for citizenship declaration.

(a) Instruments in the nature of a bill of sale or deed of gift, mortgages, and assignments of mortgages conveying an interest in a documented vessel are ineligible for filing and recording unless accompanied by a declaration of citizenship, except as provided in paragraphs (c) and (d) of this section.

(b) Citizenship declarations must be executed on the form prescribed by the Maritime Administration in 46 CFR part 221. These forms are available from all Coast Guard documentation offices and from the Vessel Transfer and Disposal Officer (MAR–745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590.

(c) The requirement for presentation of a citizenship declaration does not apply to a transaction conveying an interest in a vessel:

(1) Described in 46 CFR 221.11(b)(1) (i) through (iv);

(2) To a person making application for documentation; or

(3) To a government of the United States or a political subdivision thereof or a corporate entity which is an agency of any such government or political subdivision.

(d) The requirement for presentation of a citizenship declaration is waived when the instrument(s) presented for filing effects a transfer for which:

(1) The Maritime Administration has given general approval in 46 CFR part 221; or

(2) Written approval of the Maritime Administrator is required in accordance with 46 CFR part 221.

(e) If the transfer of interest is one which requires written approval of the Maritime Administrator in accordance with rules in 46 CFR part 221, evidence of that approval must be presented for filing with the instrument effecting the transfer of interest.

Note: If the grantee(s) of an ownership interest in a vessel described in paragraph (c)(1) or (d) of this section do(es) not make application for documentation, a declaration of citizenship may be required in order to ensure that the vessel so conveyed retains any coastwise or Great Lakes privileges to which it may be entitled.

Dated: September 16, 1992.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 92–23215 Filed 9–23–92; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

46 CFR Part 298

[Docket No. R-145]

RIN 2133-AA97

Obligation Guarantees

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Correction of final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this notice of correction of a final rule which appeared in the **Federal Register** on August 6, 1992 (57 FR 34690) concerning the calculation of Internal Rate of Return now required with all applications for obligation guarantees.

EFFECTIVE DATE: August 6, 1992.

SUPPLEMENTARY INFORMATION: The August 6, 1992 final rule removed paragraph (b)(4) of 46 CFR 298.14 without regard to the existence of paragraph (b)(5). This correction redesignates paragraph (b)(5) as new paragraph (b)(4).

§ 298.14—[CORRECTED]

Accordingly, on page 34691 in the **Federal Register** of August 6, 1992, Column 3, the final rulemaking notice for 46 CFR § 298.14 is corrected by adding at the end paragraph (c), to read as follows:

(c) Paragraph (b)(5) is redesignated as new paragraph (b)(4).

Dated: September 18, 1992.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 92-23111 Filed 9-23-92; 8:45 am]

BILLING CODE 4910-31-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 817

RIN 2900-AG06

VA Acquisition Regulation: Special Contracting Methods

AGENCY: Department of Veterans Affairs.

ACTION: Final Rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the VA Acquisition Regulation (VAAR) to eliminate a restriction on multiyear contracting. This amendment will permit multiyear contracting for other than supplies and services for use in VA health care facilities.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Sherry Patton, Acquisition Policy Division (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-5001.

SUPPLEMENTARY INFORMATION:

I. Background

Multiyear contracting authority was granted to the Department of Veterans Affairs by Public Law 100-322. The authority was limited to the acquisition of supplies and services for use in VA medical facilities.

Public Law 101-237 has further amended Title 38 to eliminate this restriction. These changes are internal VA management policies, therefore, public comment is unnecessary (5 U.S.C. 553(d)(3)). Technical changes are also being made to reflect the correct titles of VA officials.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2) and are, therefore, not subject to the requirements of the Act. Nevertheless, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to these final regulations.

List of Subjects in 48 CFR Part 817

Government procurement.

Approved: September 15, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR chapter 8, part 817 is amended as set forth below:

PART 817—[AMENDED]

1. The authority citation for part 817 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 817—SPECIAL CONTRACTING METHODS

Subpart 817.1—[Amended]

2. In subpart 817.1, section 817.102-1(a), remove the notation "Pub. L. 100-322" and add in its place "Pub. L. 101-237," remove the words "for use in Department of Veterans Affairs health care facilities."

Subpart 817.2—[Amended]

3. In subpart 817.2, section 817.202, remove the words "Director, Office of Acquisition and Materiel Management" and add in their place the words, "Deputy Assistant Secretary for Acquisition and Materiel Management."

[FR Doc. 92-23261 Filed 9-23-92; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 397

RIN 2125-AD00

Transportation of Hazardous Materials; Routing of Class 7 (Radioactive) Materials; Preemption Determinations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule.

SUMMARY: The FHWA is publishing an interim final rule to incorporate, without substantive change, the preemption determination and waiver of preemption procedures, currently contained in the Research and Special Programs Administration's (RSPA) regulations at 49 CFR 107.201 to 107.227, into the FHWA's regulations at subpart E of 49 CFR part 397. This final rule will also incorporate, without substantive change, the routing requirements for Class 7 (radioactive) materials, currently contained in the RSPA regulations at 49 CFR 177.825, into the FHWA's regulations at subpart D of 49 CFR part 397. This final rule is necessary because the responsibility for highway routing of hazardous materials, including Class 7 (radioactive) materials and the related preemption determination and waiver of preemption procedures, has been delegated by the Secretary of Transportation to the FHWA. Since these regulations, which currently apply to highway routing issues, are being replicated without substantive change under the FHWA chapter of the CFR, there is no need for notice and comment.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Eric A. Kuwana or Mr. Raymond W. Cuprill, Office of Chief Counsel (HCC–20), (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC. 20590. Office hours are 8:30 a.m. to 5:30 p.m., Monday through Friday, except for legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Standards for the Highway Routing of Hazardous Materials

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101–615, 104 Stat. 3244) amended the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. app. 1801 *et seq.*), *inter alia*, to require the Secretary of Transportation to "establish by regulation standards for State and Indian tribes to use in establishing, maintaining, and enforcing: (A) Specific highway routes over which hazardous materials may and may not be transported by motor vehicles, and (B) limitations and requirements with respect to highway routing."

The FHWA was delegated the authority and responsibility for highway routing of hazardous materials at 49 CFR 1.48 on July 10, 1991 (56 FR 31343). In accordance with the HMTUSA, the FHWA is directed to promulgate Federal standards which States or Indian tribes must follow if they establish, maintain, or enforce any highway routing designations, limitations, or requirements. The FHWA will accomplish the requirement in two stages: (1) This interim final rule will replicate and reorganize (a) the current RSPA standards for the routing of radioactive hazardous materials (RAM), now designated as Class 7 (radioactive) materials, contained in 49 CFR 177.825 (originally published on January 19, 1981, at 46 FR 5316) and (b) the RSPA preemption procedures contained in 49 CFR 107.201 to 107.227; and (2) a notice of proposed rulemaking (NPRM) sets forth new standards applicable to the routing of nonradioactive hazardous materials (NRHM) to be incorporated in subpart C of this section. The FHWA is using this two-step method because section 105(b)(8) of the HMTA, as amended by the HMTUSA, does not require the Secretary to "amend, modify, or reissue" the current standards for the highway routing of radioactive hazardous materials. The NPRM referenced in (2) was published in the Federal Register on August 31, 1992 (57 FR 39522).

Preemption Determinations and Waivers of Preemption

Section 13 of the HMTUSA, amending section 112 of the HMTA, established preemption determinations and waivers of preemption because Congress recognized the need for a strong mechanism to deal with the many preemption issues which would arise from the HMTUSA framework. The new preemption determinations were a much needed substitute for the old inconsistency rulings, which did not provide an adequate mechanism to resolve preemption issues.

The standards for preemption are now found in section 112(a) of the HMTA, 49 App. U.S.C. 1811(a). Generally, any requirement of a State, political subdivision thereof, or Indian tribe is preempted if: (1) Compliance with it and the HMTA or any regulation issued under the HMTA is not possible; (2) as applied or enforced, it creates an obstacle to the accomplishment and execution of the HMTA or the regulations issued under the HMTA; or (3) it is preempted under section 105(a)(4) or section 105(b). Section 112 of the HMTA requires the Secretary of Transportation to issue regulations which set forth procedures for carrying out preemption determinations and waivers of preemption. This statutory requirement was met by RSPA when it replaced its former inconsistency rulings with preemption determination and waiver of preemption procedures in the Federal Register on February 28, 1991 (56 FR 8616), with correction on April 17, 1991 (56 FR 15510). However, subsequent to those regulatory changes by RSPA, the FHWA was delegated the authority and responsibility to administer preemption determinations and waivers of preemption for all highway routing of hazardous materials, including Class 7 (radioactive) materials. Although some changes may be necessary after comments are received on the NPRM for the routing of nonradioactive hazardous materials, the preemption determination and waiver of preemption procedures in this interim final rule is intended to be applied to the routing of both Class 7 (radioactive) and nonradioactive hazardous materials.

Rulemaking Analyses and Notices

Administrative Procedure Act

Since this interim final rule merely replicates current hazardous material regulations contained in RSPA's chapter of the CFR, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Public comment is unnecessary because in replicating these sections to meet a statutory mandate, the FHWA is not exercising discretion in a way that could be affected by public comment. As a consequence, the FHWA is proceeding directly to an interim final rule. The FHWA is acting through an interim final rule because the preemption determination and waiver of preemption procedures might be changed slightly in the future as a result of the NPRM on nonradioactive hazardous materials. For the reasons listed above, and to immediately implement congressional mandates, there is good cause for publishing this rule less than 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d).

Executive Order 12291 and DOT Regulatory Policies and Procedures

The FHWA has determined that this interim final rule is not major under Executive Order 12291 and is not significant under DOT's regulatory policies and procedures. (44 FR 11034; Feb. 26, 1979.) This rule will have little, if any, direct or indirect economic impact because it does not alter any existing substantive regulations in such a way as to impose additional burdens. The minimal cost of complying with existing substantive regulations is not being increased. Therefore, preparation of a regulatory evaluation is not warranted. Under DOT's regulatory policies and procedures, notice is not necessary because the FHWA does not believe it would receive any meaningful comment.

Executive Order 12612

This interim final rule implements specific statutory mandates that affect the relationship between the Federal government and the States, and the FHWA has no discretion in implementing these changes. Therefore, preparation of a Federalism assessment pursuant to Executive Order 12612 is not warranted.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 605(b)), the FWHA has evaluated the

effects of this rule on Small entities. Based upon this evaluation, the FHWA certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no new information collection requirements contained in this interim final rule.

National Environmental Policy Act

The FHWA has concluded that this final rule will not have any significant impact on the quality of the environment, and therefore, an environmental impact statement under the National Environmental Policy Act is not required.

Regulatory Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR part 397

Hazardous materials transportation, Highways and roads.

In consideration of the foregoing, the Federal Highway Administration amend part 397 of title 49, Code of Federal Regulations, as set forth below.

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS [AMENDED]

1. The authority citation for part 397 is revised to read as follows:

Authority: 49 App. U.S.C. 1801 *et seq.*; 49 CFR 1.48.

2. Part 397 is amended by adding new subparts D and E to read as follows:

Subpart D—Routing of Class 7 (Radioactive) Materials

Sec.

397.101 Requirements for motor carriers and drivers.
397.103 Requirements for State routing designations.

Subpart E—Preemption Procedures

Sec.

397.201 Purpose and scope of the procedures.
397.203 Standards for determining preemption.
397.205 Preemption application.
397.207 Preemption notice.
397.209 Preemption processing.
397.211 Preemption determination.
397.213 Waiver of preemption application.
397.215 Waiver notice.
397.217 Waiver processing.
397.219 Waiver determination and order.
397.221 Timeliness.
397.223 Petition for reconsideration.
397.225 Judicial review.

Subpart D—Routing of Class 7 (Radioactive) Materials

§ 397.101 Requirements for motor carriers and drivers.

(a) Except as provided in paragraph (b) of this section or in circumstances when there is only one practicable highway route available, considering operating necessity and safety, a carrier or any person operating a motor vehicle that contains a Class 7 (radioactive) material, as defined in 49 CFR 172.403, for which placarding is required under 49 CFR part 172 shall:

(1) Ensure that the motor vehicle is operated on routes that minimize radiological risk;

(2) Consider available information on accident rates, transit time, population density and activities, and the time of day and the day of week during which transportation will occur to determine the level of radiological risk; and

(3) Tell the driver which route to take and that the motor vehicle contains Class 7 (radioactive) materials.

(b) Except as otherwise permitted in this paragraph and in paragraph (f) of this section, a carrier or any person operating a motor vehicle containing a highway route controlled quantity of Class 7 (radioactive) materials, as defined in 49 CFR 173.403(l), shall operate the motor vehicle only over preferred routes.

(1) For purposes of this subpart, a preferred route is an Interstate System highway for which an alternative route is not designated by a State routing agency; a State-designated route selected by a State routing agency pursuant to § 397.103; or both of the above.

(2) The motor carrier or the person operating a motor vehicle containing a highway route controlled quantity of Class 7 (radioactive) materials, as defined in 49 CFR 173.403(l) and (y), shall select routes to reduce time in transit over the preferred route segment of the trip. An Interstate System bypass or Interstate System beltway around a city, when available, shall be used in place of a preferred route through a city, unless a State routing agency has designated an alternative route.

(c) A motor vehicle may be operated over a route, other than a preferred route, only under the following conditions:

(1) The deviation from the preferred route is necessary to pick up or deliver a highway route controlled quantity of Class 7 (radioactive) materials, to make necessary rest, fuel or motor vehicle repair stops, or because emergency conditions make continued use of the preferred route unsafe or impossible;

(2) For pickup and delivery not over preferred routes, the route selected must be the shortest-distance route from the pickup location to the nearest preferred route entry location, and the shortest-distance route to the delivery location from the nearest preferred route exit location. Deviation from the shortest-distance pickup or delivery route is authorized if such deviation:

(i) Is based upon the criteria in paragraph (a) of this section to minimize the radiological risk; and

(ii) Does not exceed the shortest-distance pickup or delivery route by more than 25 miles and does not exceed 5 times the length of the shortest-distance pickup or delivery route.

(iii) Deviations from preferred routes, or pickup or delivery routes other than preferred routes, which are necessary for rest, fuel, or motor vehicle repair stops or because of emergency conditions, shall be made in accordance with the criteria in paragraph (a) of this section to minimize radiological risk, unless due to emergency conditions, time does not permit use of those criteria.

(d) A carrier (or a designated agent) who operates a motor vehicle which contains a package of highway route controlled quantity of Class 7 (radioactive) materials, as defined in 49 CFR 173.403(l), shall prepared a written route plan and supply a copy before departure to the motor vehicle driver and a copy to the shipper (before departure for exclusive use shipments, as defined in 49 CFR 173.403(i), or within fifteen working days following departure for all other shipments). Any variation between the route plan and routes actually used, and the reason for it, shall be reported in an amendment to the route plan delivered to the shipper as soon as practicable but within 30 days following the deviation. The route plan shall contain:

(1) A statement of the origin and destination points, a route selected in compliance with this section, all planned stops, and estimated departure and arrival times; and

(2) Telephone numbers which will access emergency assistance in each State to be entered.

(e) No person may transport a package of highway route controlled

quantity of Class 7 (radioactive) materials on a public highway unless:

(1) The driver has received within the two preceding years, written training on:

(i) Requirements in 49 CFR parts 172, 173, and 177 pertaining to the Class 7 (radioactive) materials transported;

(ii) The properties and hazards of the Class 7 (radioactive) materials being transported; and

(iii) Procedures to be followed in case of an accident or other emergency.

(2) The driver has in his or her immediate possession a certificate of training as evidence of training required by this section, and a copy is placed in his or her qualification file (see § 391.51 of this subchapter), showing:

(i) The driver's name and operator's license number;

(ii) The dates training was provided;

(iii) The name and address of the person providing the training;

(iv) That the driver has been trained in the hazards and characteristics of highway route controlled quantity of Class 7 (radioactive) materials; and

(v) A statement by the person providing the training that information on the certificate is accurate.

(3) The driver has in his or her immediate possession the route plan required by paragraph (d) of this section and operates the motor vehicle in accordance with the route plan.

(f) A person may transport irradiated reactor fuel only in compliance with a plan if required under 49 CFR 173.22(c) that will ensure the physical security of the material. Variation for security purposes from the requirements of this section is permitted so far as necessary to meet the requirements imposed under such a plan, or otherwise imposed by the U.S. Nuclear Regulatory Commission in 10 CFR part 73.

(g) Except for packages shipped in compliance with the physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR part 73, each carrier who accepts for transportation a highway route controlled quantity of Class 7 (radioactive) material (see 49 CFR 173.401(l)), shall, within 90 days following the acceptance of the package, file the following information concerning the transportation of each such package with the Associate Administrator for Safety and System Applications, Federal Highway Administration, Attn: Traffic Control Division, HHS–32, room 3419, 400 Seventh Street, SW., Washington, DC 20590–0001:

(1) The route plan required under paragraph (d) of this section, including all required amendments reflecting the routes actually used;

(2) A statement identifying the names and addresses of the shipper, carrier and consignee; and

(3) A copy of the shipping paper or the description of the Class 7 (radioactive) material in the shipment required by 49 CFR 172.202 and 172.203.

§ 397.103 Requirements for State routing designations.

(a) The State routing agency, as defined in § 397.201(c), shall select routes to minimize radiological risk using "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials," or an equivalent routing analysis which adequately considers overall risk to the public. Designations must be preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes.

(b) State routing agencies may designate preferred routes as an alternative to, or in addition to, one or more Interstate System highways, including interstate system bypasses, or Interstate System beltways.

(c) A State-designated route is effective when—

(1) The State gives written notice by certified mail, return receipt requested, to the Associate Administrator for Safety and System Applications, Federal Highway Administration, Attn: Traffic Control Division, HHS–32, Room 3419, Registry of State-designated routes, at the address above; and

(2) Receipt thereof is acknowledged in writing by the Associate Administrator.

(d) Upon request, the Office of Highway Safety, Traffic Control Division, HHS–32, room 3419, at the address above, will provide a list of State-designated preferred routes and a copy of the "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials."

Subpart E—Preemption Procedures

§ 397.201 Purpose and scope of the procedures.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision thereof, or Indian Tribe, directly affected by any highway routing designation for hazardous materials may apply to the Federal Highway Administration (FHWA) for a determination as to whether that highway routing designation is preempted under section 105(b) or section 112(a)(1) or (a)(2) of the Act (49 App. U.S.C. 1804 and 1811) or regulations issued thereunder; and

(2) A State, political subdivision thereof, or Indian tribe may apply for a waiver of preemption with respect to any highway routing designation that the State, political subdivision thereof, or Indian Tribe acknowledges to be preempted by section 105(b) or section 112 (a)(1) or (a)(2) of the Act or regulations issued thereunder, or that has been determined by a court of competent jurisdiction to be so preempted.

(b) Unless otherwise ordered by the Administrator, an application for a preemption determination which includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

(c) For purposes of this part:

Act means the Hazardous Materials Transportation Act, 49 U.S.C. App. 1801 *et seq.*, as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990, Pub. L. 101–615.

Administrator means the Administrator of the Federal Highway Administration, a modal agency of the United States Department of Transportation.

Person means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include the United States Postal Service.

Political subdivision includes a municipality; a public agency or other instrumentality of one or more States, or a public corporation, board, or commission established under the laws of one or more States.

Routing agency means the State highway agency or other State agency designated by an Indian tribe, to supervise, coordinate, and approve the highway routing designations for that State or Indian tribe. Any highway routing designation made by a political subdivision of a State shall be considered a designation made by that State.

Routing designation includes any regulation, limitation, or restriction which would have the effect of restricting or prohibiting the transportation of hazardous materials over a highway route, a specific portion

of a route, or during a specific time period.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

§ 397.203 Standards for determining preemption.

(a) Any highway routing designation established, maintained, or enforced by a State, political subdivision thereof, or Indian tribe is preempted if—

(1) Compliance with both the highway routing designation and any requirement under the Act or of a regulation issued under the Act is not possible;

(2) The highway routing designation as applied or enforced creates an obstacle to the accomplishment and execution of the Act or the regulations issued under the Act; or

(3) It is preempted under the Act.

(b) [Reserved]

§ 397.205 Preemption application.

(a) Any person, including a State, political subdivision thereof, or Indian tribe directly affected by any highway routing designation of another State, political subdivision, or Indian tribe, may apply to the Administrator for a determination of whether that highway routing designation is preempted by the Act or § 397.203 of this subpart. The Administrator shall publish notice of the application in the **Federal Register**.

(b) Each application filed under this section for a determination must:

(1) Be submitted to the Administrator, Federal Highway Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Attention: HCC–10 Docket Room, Hazardous Materials Preemption;

(2) Set forth a detailed description of the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is sought;

(3) If applicable, specify the provisions of the Act or the regulations issued under the Act under which the applicant seeks preemption of the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(4) Explain why the applicant believes the highway routing designation of the State, political subdivision thereof, or Indian tribe should or should not be preempted under the standards of § 397.203; and

(5) State how the applicant is affected by the highway routing designation of the State, political subdivision thereof, or Indian tribe.

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Act or any regulation issued under the Act.

(d) Once the Administrator has published notice in the **Federal Register** of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in this section shall be construed as prohibiting any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any highway routing designation from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Administrator under paragraph (a) of this section.

§ 397.207 Preemption notice.

(a) If the applicant is other than a State, political subdivision thereof, or Indian tribe, the applicant shall mail a copy of the application to the State, political subdivision thereof, or Indian tribe concerned, accompanied by a statement that comments may be submitted regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification that the applicant has complied with this paragraph and must include the names and addresses of each official to whom a copy of the application was sent.

(b) The Administrator may afford interested persons an opportunity to file written comments on the application by serving notice on any persons readily identifiable by the Administrator as persons who will be affected by the ruling sought or by publication in the **Federal Register**.

(c) Each person submitting written comments to the Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant and certify to the Administrator that he or she has complied with this requirement. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

§ 397.209 Preemption processing.

(a) The Administrator may initiate an investigation of any statement in an application and utilize in his or her evaluation any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Administrator may consider any other source of information. The Administrator may convene a hearing or conference, if a hearing or conference will advance the evaluation of the application.

(b) The Administrator may dismiss the application without prejudice if:

(1) He or she determines that there is insufficient information upon which to base a determination; or

(2) He or she requests additional information from the applicant and it is not submitted.

§ 397.211 Preemption determination.

(a) Upon consideration of the application and other relevant information received, the Administrator issues a determination.

(b) Notwithstanding that an application for a determination has not been filed under § 397.205, the Administrator, on his or her own initiative, may issue a determination as to whether a particular highway routing designation of a State, political subdivision thereof, or Indian tribe is preempted under the Act or the regulations issued under the Act.

(c) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved thereby may file a petition for reconsideration within 20 days in accordance with § 397.223.

(d) Unless the determination is issued pursuant to paragraph (b) of this section, the Administrator serves a copy of the determination upon the applicant. In all preemption determinations, the Administrator serves a copy of the determination upon any other person who participated in the proceeding or who is readily identifiable by the Administrator as affected by the determination. A copy of each determination is placed on file in the public docket. The Administrator may publish the determination or notice of the determination in the **Federal Register**.

(e) If no petition for reconsideration is filed within 20 days in accordance with § 397.223, a determination issued under this section constitutes the final agency decision as to whether a particular highway routing designation of a State, political subdivision thereof, or Indian tribe is preempted under the Act or

regulations issued thereunder. The fact that a determination has not been issued under this section with respect to a particular highway routing designation of a State, political subdivision thereof, or Indian tribe carries no implication as to whether the requirement is preempted under the Act or regulations issued thereunder.

§ 397.213 Waiver of preemption application.

(a) Any State, political subdivision thereof, or Indian tribe may apply to the Administrator for a waiver of preemption with respect to any highway routing designation that the State, political subdivision thereof, or Indian tribe acknowledges to be preempted by the Act, § 397.203 of this subpart, or a court of competent jurisdiction. The Administrator may waive preemption with respect to such requirement upon a determination that such requirement—

(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or regulations issued under the Act, and

(2) Does not unreasonably burden commerce.

(b) Each application filed under this section for a waiver of preemption determination must:

(1) Be submitted to the Administrator, Federal Highway Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Attention: HCC–10 Docket Room, Hazardous Materials Preemption Docket;

(2) Set forth a detailed description of the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is being sought;

(3) Include a copy of any relevant court order or determination issued pursuant to § 397.211;

(4) Contain an express acknowledgment by the applicant that the highway routing designation of the State, political subdivision thereof, our Indian tribe is preempted under the Act or the regulations issued under the Act, unless it has been so determined by a court of competent jurisdiction or in a determination issued under this subpart;

(5) Specify each provision of the Act or the regulations issued under the Act that preempts the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(6) State why the applicant believes that the highway routing designation of the State, political subdivision thereof, or Indian tribe affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or the regulations issued under the Act;

(7) State why the applicant believes that the highway routing designation of the State, political subdivision thereof, or Indian tribe does not unreasonably burden commerce; and

(8) Specify what steps the State, political subdivision thereof, or Indian tribe is taking to administer and enforce effectively the preempted requirement.

§ 397.215 Waiver notice.

(a) The applicant State, political subdivision thereof, or Indian tribe shall mail a copy of the application and any subsequent amendments or other documents relating to the application to each person whom the applicant reasonably ascertains will be affected by the determination sought. The copy of the application must be accompanied by a statement that the person may submit comments regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification with the application has complied with this paragraph and must include the names and addresses of each person to whom the application was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the State, political subdivision thereof, or Indian tribe determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application filed with the Administrator a description of the persons or class or classes of persons to whom notice was not sent.

(c) The Administrator may require the applicant to provide notice in addition to that required by paragraphs (a) and (b) of this section, or may determine that the notice required by paragraph (a) of this section is not impracticable, or that notice should be published in the **Federal Register.**

(d) The Administrator may serve notice on any other persons readily identifiable by the Administrator as persons who will be affected by the determination sought and may afford those persons an opportunity to file written comments on the application.

(e) Any person submitting written comments to the Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant. The person shall certify to the Administrator that he or she has complied with the requirements of this paragraph. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

§ 397.217 Waiver processing.

(a) The Administrator may initiate an investigation of any statement in an application and utilize any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Administrator may convene a hearing or conference, if a hearing or conference will advance the evaluation of the application.

(b) The Administrator may dismiss the application without prejudice if:

(1) he or she determines that there is insufficient information upon which to base a determination;

(2) upon his or her request, additional information is not submitted by the applicant; or

(3) the applicant fails to provide the notice required by this subpart.

(c) Except as provided in this subpart, the Administrator will only consider an application for a waiver of preemption determination if:

(1) the applicant expressly acknowledges in its application that the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is sought is preempted by the Act or the regulations thereunder; or

(2) the highway routing designation of the State, political subdivision thereof, or Indian tribe has been determined by a court of competent jurisdiction or in a determination issued pursuant to § 397.211 to be preempted by the Act or the regulations issued thereunder.

(d) When the Administrator has received all substantive information necessary to process an application for a waiver of preemption determination, notice of that fact will be served upon the applicant. Additional notice to all other persons who received notice of the proceeding may be served by publishing a notice in the **Federal Register.**

§ 397.219 Waiver determination and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the Administrator issues an order setting forth his or her determination.

(b) The Administrator may issue a waiver of preemption order only if he or she finds that the requirement of the State, political subdivision thereof, or Indian tribe affords the public a level of

safety at least equal to that afforded by the requirements of the Act and the regulations issued under the Act and does not unreasonably burden commerce. In determining whether the requirement of the State, political subdivision thereof, or Indian tribe unreasonably burdens commerce, the Administrator may consider the following factors:

(1) The extent to which increased costs and impairment of efficiency result from the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(2) Whether the highway routing designation of the State, political subdivision thereof, or Indian tribe has a rational basis;

(3) Whether the highway routing designation of the State, political subdivision thereof, or Indian tribe achieves its stated purpose; and

(4) Whether there is need for uniformity with regard to the subject concerned and if so, whether the highway routing designation of the State, political subdivision thereof, or Indian tribe competes or conflicts with those of other States, political subdivisions thereof, or Indian tribes.

(c) The order includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved by the order may file a petition for reconsideration in accordance with § 397.223.

(d) The Administrator serves a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the Administrator as one who may be affected by the order. A copy of each order is placed on file in the public docket. The Administrator may publish the order or notice of the order in the **Federal Register**.

(e) If no petition for reconsideration is filed within 20 days in accordance with § 397.223, an order issued under this section constitutes the final agency decision regarding whether a particular requirement of a State, political subdivision thereof, or Indian tribe is preempted under the Act or any regulations issued thereunder, or whether preemption is waived.

§ 397.221 Timeliness.

If the Administrator fails to take action on the application within 90 days of serving the notice required by § 397.217(d), the applicant may treat the application as having been denied in all respects.

§ 397.223 Petition for reconsideration.

(a) Any person aggrieved by an order issued under § 397.211 or § 397.219 may file a petition for reconsideration with the Administrator. The petition must be filed within 20 days of service of the determination or order issued under the above sections.

(b) The petition must contain a concise statement of the basis for seeking reconsideration, including any specific factual or legal errors, or material information not previously available.

(c) The petitioner shall mail a copy of the petition to each person who participated, either as an applicant or routing, in the waiver of preemption proceeding, accompanied by a statement that the person may submit comments concerning the petition to the Administrator within 20 days. The petition filed with the Administrator must contain a certification that the petitioner has complied with this paragraph and include the names and addresses of all persons to whom a copy of the petition was sent.

(d) The Administrator's decision under this section constitutes the final agency decision. If no petition for reconsideration is filed under this section, then the determination issued under § 397.211 or § 397.219 becomes the final agency decision at the end of the 20 day period.

§ 397.225 Judicial review.

A party to a proceeding under § 397.205(a), § 397.213(a), or § 397.223(a) may seek review by the appropriate district court of the United States of the decision of the Administrator under such proceeding only by filing a petition with such court within 60 days after the final agency decision.

Issued on: September 11, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-22868 Filed 9-23-92; 8:45am]

BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1012

Meetings of the Commission; Technical Amendment

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; technical amendment.

SUMMARY: In order to correctly state the Interstate Commerce Commission's regulations, as set forth in title 49, chapter X, of the Code of Federal Regulations, a technical amendment is necessary to correct an error in a citation in the Commission's regulations on public participation in oral arguments. This technical amendment is set forth below.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Gass (202) 927-5654.

List of Subjects in 49 CFR Part 1012

Sunshine Act.

For the reasons set forth in the preamble, title 49, chapter X, part 1012 is amended as set forth below.

PART 1012—MEETINGS OF THE COMMISSION

1. The authority citation for part 1012 continues to read as follows:

Authority: 5 U.S.C. 552b(g), as amended by Pub. L. 94-409, 90 Stat. 1241; 49 U.S.C. 17(3), 24 Stat. 385, as amended.

§ 1012.4 [Amended]

2. In § 1012.4, paragraph (b) is amended by removing the words "the 49 CFR part 1115" and adding in their place the words "49 CFR part 1116".

By the Commission.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23245 Filed 9-23-92; 8.45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustment and closure.

SUMMARY: NMFS announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, at midnight, September 17, 1992, under a modified subarea quota of 5,700 coho salmon. The Director, Northwest Region, NMFS (Regional Director), determined that the subarea coho salmon quota for this fishery, as adjusted to account for the 2,700 fish not harvested by the earlier recreational fishery in this subarea, has been

reached. This action is necessary to conform to the preseason announcement of the 1992 management measures. This action is intended to maximize the harvest of coho salmon without exceeding the ocean share allocated to the recreational fishery in this subarea, and ensure conservation of coho salmon.

DATES: Effective at 2400 hours local time, September 17, 1992. Comments will be accepted through October 8, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992) NMFS announced that the recreational fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, would have 2 seasons: (1) June 29 through the earliest of September 13 or attainment of either the overall chinook salmon quota north of Cape Falcon or the subarea coho salmon quota of 67,500 fish; and (2) no earlier than September 14 through the earliest of October 1 or attainment of either the overall chinook salmon quota or the subarea coho salmon quota of 3,000 fish. The first season closed at midnight, August 6, upon the projected attainment of the subarea coho salmon quota (57 FR 36607, August 14, 1992). Based on the best available information, the catch during the first season totaled about 64,800 coho salmon, leaving 2,700 fish of the subarea quota of 67,500 coho salmon unharvested. Therefore, these fish were transferred to the second season which opened September 14 as described above, resulting in a modified subarea quota of 5,700 coho salmon. This modification does not affect the overall recreational coho salmon quota north of Cape Falcon of 141,000 fish. Inseason modification of quotas is authorized by regulations governing the ocean salmon fisheries at 50 CFR 661.21(b)(1)(i).

The ocean salmon regulations at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Based on the best available information on September 16, 1992, the recreational fishery catch in the subarea from Leadbetter Point to Cape Falcon was projected to reach the revised subarea quota of 5,700 coho salmon by midnight, September 17, 1992.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this closure. The States of Washington and Oregon will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. Actual notice to affected fishermen was given prior to 2400 hours local time, September 17, 1992, through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 662.23. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 18, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–23258 Filed 9–23–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 186
Thursday, September 24, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice No. 1992-15]

Recordkeeping and Reporting by Political Committees: Best Efforts

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is considering revising its regulations, which implement the requirement of the Federal Election Campaign Act ("FECA") that treasurers of political committees to exercise best efforts to obtain, maintain and report the complete identification of each contributor whose contributions aggregate more than $200 per calendar year. The proposed revisions would indicate that requests for the contributor information must state that federal law requires the committee to report the information. The proposed changes would also specify that committees must report contributor identifications received either before or after the end of the applicable reporting period. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before December 18, 1992.

ADDRESSES: Comments must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971, as amended, specifies that reports filed by political committees disclose "the identification of each * * * person (other than a political committee) who makes a contribution to the reporting committee * * * whose contribution or contributions (aggregate over $200 per calendar year) * * * together with the date and amount of any such contribution." 2 U.S.C. 434(b)(3)(A). For an individual, identification means his or her full name, mailing address, occupation and employer. 2 U.S.C. 431(13) and 11 CFR 100.12. The FECA and the Commission's regulations require treasurers of political committees to exercise best efforts to obtain and report the identification of such contributors. 2 U.S.C. 432(i) and 11 CFR 104.7(b). To satisfy the best efforts requirement, the treasurer must make at least one written or oral request per solicitation.

Under the present regulations, if the solicitation corresponding to a contribution requests the information and notifies the solicitee that the committee is required by law to report such information, no further action need be taken. But experience shows that the request for the information and the notice about reporting requirements often appear in small type and in a way that does not adequately convey their importance. Moreover, current regulations do not clarify what responsibilities a committee has if the contribution does not correspond to a particular solicitation and it is impossible to know if the proper request and notice were provided. These weaknesses in the current "best efforts" regulations appear to have led to a significant percentage of incomplete itemizeable contributions for some committees.

Accordingly, the Commission is seeking comment on a proposal requiring that a committee request the information and provide proper notice that reporting is required regarding any contribution received for which the information is lacking. This would ensure that a committee send out a written request with a proper notice, or make a telephone contact documented in writing with such request and notice, even if the solicitation associated with the contribution asked for the information. Requiring a separate and distinct request, with an accompanying notice of the reporting requirement, will emphasize the importance of providing the information and will be more in line with the true meaning of "best efforts." It also will clarify a committee's responsibilities regarding unsolicited contributions lacking the proper itemization information.

The Commission is also considering adding new language to 11 CFR 104.7(b) to address the reporting of contributor identifications. The new language would clarify that when political committees do not have complete contributor identifications at the time they file reports, they must include whatever information is available. Political committees have an obligation to file amended reports if additional contributor information is obtained after the applicable reporting period. The FECA and the Commission's regulations require that committee treasurers use best efforts not only to obtain and maintain, but also to submit the information required. Accordingly, the proposed new language would indicate that an amended Schedule A should be filed listing the full name of each contributor, his or her mailing address, occupation, and employer, together with the amount and date of the contribution. These changes are intended to promote more timely and complete reporting of contributor information.

The Commission also is considering adding new language that would make it clear that a committee treasurer is required to report all contributor information which is not provided by the contributor but which is, in fact, known by the committee treasurer or the treasurer's agents. For example, if a contributor fails to disclose his or her employer and address to the committee but the treasurer knows the contributor's employer and address, the treasurer would be obligated to report the information in the committee's reports. The treasurer is responsible for exercising "*best* efforts . . . to obtain, maintain and submit the information required by the Act." 2 U.S.C. 432(i) (emphasis added).

The Commission welcomes comments on the foregoing proposed amendment to 11 CFR 104.7 and the issues raised in this notice.

List of Subjects In 11 CFR Part 104

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

Certification of No Effect Pursuant To 5 U.S.C. 605(B) (Regulatory Flexibility Act)

These proposed rules will not, if promulgated, have a significant economic impact on a substantial

number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Act in these areas.

For the reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES

1. The authority citation for Part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b).

2. Section 104.7 would be amended by revising paragraph (b) to read as follows:

§ 104.7 Best efforts (2 U.S.C. 432(i)).

* * * * *

(b) With regard to reporting the identification as defined at 11 CFR 100.12 of each person whose contribution(s) to the committee and its affiliated committees aggregate in excess of $200 in a calendar year (pursuant to 11 CFR 104.3(a)(4)), the treasurer will not be deemed to have exercised best efforts to obtain the required information unless each solicitation requests the information, and for each contribution received that lacks the required information, the treasurer has made at least one effort after the receipt of the contribution to obtain the missing information. Such effort shall be made by a written request sent to the contributor or by oral contract with the contributor documented in writing. The request must clearly ask for the missing information and inform the contributor that the committee is required by law to report the name, mailing address, occupation, and name of employer of each individual whose contributions aggregate over $200 in a calendar year. Notwithstanding the foregoing, a treasurer will not be deemed to have exercised best efforts unless he or she has reported all contributor information not provided by the contributor but, in fact, known by the treasurer or the treasurer's agents. All information in the committee's possession regarding contributor identifications must be reported in accordance with 11 CFR 104.3. If any of this information is received after the contribution has been disclosed on a regularly scheduled report, the identification shall be reported on an amended Schedule A together with the date and amount of the contribution.

Dated: September 18, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-23086 Filed 9-23-92; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-147-AD]

Airworthiness Directives; Aerospatiale Model ATR-42 and ATR-72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR-42 and ATR-72 series airplanes. This proposal would require a one-time general visual inspection of certain door linings and door posts to determine the date of manufacture, and replacement, if necessary. This proposal is prompted by results of inspections, which have revealed that the fire resistance of certain painted door linings may be inadequate. The actions specified by the proposed AD are intended to prevent increased risk of injury to the passengers and crew members in the event of a fire within the airplane cabin.

DATES: Comments must be received by October 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-147-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-147-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-147-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Aerospatiale Model ATR-42 and ATR-72 series airplanes. The DGAC advises that results of inspections performed by the manufacturer have revealed that the fire resistance of certain painted door linings may be inadequate. In addition, subsequent applications of additional finish paint could aggravate this situation. This condition, if not corrected, could result in increased risk of injury to the passengers and crew members in the event of a fire within the airplane cabin.

Aerospatiale has issued Service Bulletins ATR42-25-0084, dated April 10, 1992, and ATR72-25-1025, Revision 1, dated May 18, 1992, which describe procedures to perform a one-time general visual inspection of certain door linings and door posts to determine the date of manufacture. Aerospatiale has also issued Service Bulletin ATR42-25-0075 and ATR72-25-1020, both dated September 4, 1991, which describe procedures for replacement of certain door lining elements with new upgraded elements. The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directives 92-045-011(B) and 92-043-045(B) in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time general visual inspection of certain door linings and door posts to determine the date of manufacture, and replacement of certain door lining elements with new upgraded elements. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 99 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,445. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 92-NM-147-AD.

Applicability: All Model ATR-42 and ATR-72 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent increased risk of injury to the passengers and crew members in the event of a fire within the airplane cabin, accomplish the following:

(a) Within 2 years after the effective date of this AD, remove the door linings and door posts, and perform a general visual inspection to determine the date of manufacture, in accordance with Aerospatiale Service Bulletin ATR42-25-0084, dated April 10, 1992, or ATR72-25-1025, Revision 1, dated May 18, 1992, as applicable.

(1) If the door linings or door posts were manufactured prior to January 15, 1990, prior to further flight, replace with linings or posts manufactured after January 15, 1990, in accordance with Aerospatiale Service Bulletin ATR42-25-0075, dated September 4, 1991, or ATR72-25-1020, dated September 4, 1991, as applicable.

(2) If the door linings or door posts were manufactured on or after January 15, 1990, reinstall the linings and posts. No further action is required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 24, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-23180 Filed 9-23-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-150-AD]

Airworthiness Directives; Airbus Industrie Model A300 B2, A300 B4, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300 B2, A300 B4, A310, and A300-600 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to change the data concerning maximum V_1 speed and accelerate stop distance to be used to determine takeoff performance. This proposal is prompted by results of certification test flights. The actions specified by the proposed AD are intended to prevent the airplane from overrunning the available runway length in the event of a rejected takeoff (RTO).

DATES: Comments must be received by October 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103,

Attention: Rules Docket No. 92–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700, Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–150–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A300 B2, A300 B4, A310, and A300–600 series airplanes. The DGAC advises that certification test flights of the affected airplanes determined that the braking distance necessary for maximum energy rejected takeoffs (RTO's) was found to be about 20% longer than the distance initially certificated. The increased braking distance is attributed to changes in the manufacturing process of the brakes installed on these airplanes. This condition, if not corrected, could cause the airplane to overrun the available runway length and any stopway available in the event of an RTO.

Airbus Industrie has issued Model A300 Airplane Flight Manual (AFM) Temporary Revision 5.02.00/1, dated December 4, 1991; Model A310 AFM Temporary Revision 5.04.00/3, dated February 13, 1992; Model A310 AFM Temporary Revision 5.04.00/1, dated October 22, 1991; Model A310 AFM Temporary Revision 5.04.00/4, dated March 6, 1992; Model A300–600 AFM Temporary Revision 5.04.00/1, dated November 4, 1991; and Model A300–600 AFM Temporary Revision 5.04.00/2, dated December 4, 1991. These documents describe procedures for revising the AFM to change the data concerning the maximum V_1 accelerate stop distance to be used during a high energy RTO. The DGAC classified these AFM temporary revisions as mandatory and has issued French Airworthiness Directive 92–156–133(B), dated July 22, 1992, in order to assure the continued airworthiness of these airplanes in France.

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would revise the FAA-approved AFM to change the data concerning the maximum braking to be used distance during a high energy RTO. The actions would be required to be accomplished in accordance with the AFM temporary revisions described previously.

The FAA estimates that 127 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,492. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 92–NM–150–AD.

Applicability: **Model A300 B2, A300 B4, A310, and A300–600 series airplanes;** equipped with **Messier Bugatti carbon brakes;** certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent overrunning the available runway length during a rejected takeoff (RTO), accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to change the data concerning the accelerate stop distance to be used during a RTO, in accordance with either Model A300 AFM Temporary Revision 5.02.00/1, dated December 4, 1991; Model A310 AFM Temporary Revision 5.04.00/3, dated February 13, 1992; Model A310 AFM Temporary Revision 5.04.00/1, dated October 22, 1991; Model A310 AFM Temporary Revision 5.04.00/4, dated March 6, 1992; Model A300–600 AFM Temporary Revision 5.04.00/1, dated November 4, 1991; and Model A300–600 AFM Temporary Revision 5.04.00/2, dated December 4, 1991; as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–23179 Filed 9–23–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–90–AD]

Airworthiness Directives; British Aerospace Model DH/HS/BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model DH/HS/BAe 125 series airplanes. This proposal would require modification of the Generator Control Unit (GCU) circuitry. This proposal is prompted by a report of damaged, loose, or disconnected GCU ground (earth) wires, resulting in excessive voltage output, and subsequent overheating of the battery and/or damage to voltage-sensitive avionics equipment. The actions specified by the proposed AD are intended to prevent uncontrolled excessive voltage, which could result in overheating of the battery and/or damage to voltage-sensitive avionics equipment.

DATES: Comments must be received by November 23, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–90–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Hank Jenkins, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–90–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–90–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model DH/HS/BAe 125 series airplanes. The CAA advises that a case has been reported of damaged, loose, or disconnected GCU ground (earth) wires that resulted in excessive voltage output, subsequent overheating of the battery, and damage to voltage-sensitive avionics equipment. The following damaged avionics equipment was repaired or replaced following the incident: three autopilot units, No. 1 distance measuring equipment (DME), the angle of attack system, one pitot heater, the left-hand attitude director indicator, the left-hand audio panel, and the left-hand taxi lights. Loss of the function of such equipment could comprise the safe operation of the airplane.

British Aerospace has issued Service Bulletin SB.24–289–3267A,B,C,D,E,F, & G, Revision 1, dated April 10, 1992, which describes procedures for modification of the GCU circuitry. The modification improves the generator ground (earth) circuitry, reducing the probability of loose and/or damaged wiring. It also involves the addition of latching relays to prevent uncontrolled overvoltage damage in the future if the ground circuitry should inadvertently become damaged again. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type

certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the GCU circuitry. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 360 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 20 work hours per airplane to accomplish the modification on 351 airplanes, and 30 work hours per airplane to accomplish the modification on the other 9 airplanes. The average labor rate is $55 per work hour. Required parts would costs approximately $1,250 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $850,950. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–90–AD.

Applicability: Model DH/HS/BAe 125 series airplanes equipped with Garrett engines; as listed in British Aerospace Service Bulletin SB.24–289–3267A,B,C,D,E,F &G, Revision 1, dated April 10, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent battery overheating and/or damage of voltage sensitive avionics equipment, accomplish the following:

(a) Within 180 days after the effective date of this AD, modify the Generator Control Circuit (GCU) circuitry in accordance with British Aerospace Service Bulletin SB.24–289–3267A,B,C,D,E,F & G, Revision 1, dated April 10, 1992.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 10, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–23178 Filed 9–23–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 142

Exportation Following Special Permit for Immediate Delivery

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by allowing a direct exportation entry to be filed, instead of an entry summary for consumption, on merchandise released under a special permit for immediate delivery which is exported prior to the expiration of the time-period for filing entry documentation. Presently, only fresh fruits and vegetables for human consumption, absolute quota, and prohibited merchandise may be exported upon the filing of a transportation and exportation entry or direct exportation entry. However, all other eligible merchandise released under an immediate delivery permit, when exported prior to the expiration of the prescribed time-period for filing entry documentation, still requires the filing of an entry summary followed by a same condition drawback entry for the duty refund. It is proposed that when the released goods are exported before the expiration of the time-period for filing entry documentation, an importer will no longer be required to file an entry summary, pay the duties and then file a same condition drawback claim for the duty refund. By implementing this proposed change, there would be a savings in time and money for both the trade and the Customs Service.

DATES: Comments must be received on or before November 23, 1992.

ADDRESSES: Comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Kevin Weeks, Entry Operations Branch,

Office of Trade Operations (202–927–1083).

SUPPLEMENTARY INFORMATION:

Background

Section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), provides that the Secretary of the Treasury is authorized to provide by regulations for the issuing of special permits for delivery, prior to formal entry thereof, of perishable articles and other articles, the immediate delivery of which is necessary. Such a permit may be issued for such articles for which delivery can be permitted with safety to the revenue in order to avoid unusual loss or inconvenience to an importer or to the carrier bringing the merchandise to the port.

Customs has interpreted the term "formal entry" in 19 U.S.C. 1448(b) to mean the process of making entry and does not specify a kind of entry. Presently, only fresh fruits and vegetables for human consumption, absolute quota, and prohibited merchandise may be exported upon the filing of a transportation and exportation entry or direct exportation entry. However, all other eligible merchandise released under an immediate delivery permit (19 CFR 142.21) when exported prior to the expiration of the prescribed time-period for filing entry documentation (19 CFR 142.23) still requires the filing of an entry summary followed by a same condition drawback entry under 19 U.S.C. 1313(j)(1) for the refund of duties.

After reviewing the present regulatory language of section 142.22(b)(3) of the Customs Regulations, Customs believes that it may be appropriate to expand paragraph (b)(3)'s coverage regarding direct exportation to all goods eligible for special permit for immediate delivery when these goods, which are conditionally released, are exported before entry is required to be made pursuant to 19 CFR 141.68(c). See 19 CFR 142.23. Customs believes that this action is not inconsistent with 19 U.S.C. 1448(b). It is proposed that when the released goods are exported before the expiration of the time-period for filing entry documentation, an importer will no longer be required to file an entry summary and pay the duties. Filing a direct exportation entry, in lieu of an entry summary, eliminates the need for the importer to also file a same condition drawback claim under 19 U.S.C. 1313(j)(1) and receive a refund of only 99% of the duties paid. Please note, however, that since estimated duties are not required to be filed until 10-working days after the merchandise was released (19 CFR 142.23) under an application for special permit for immediate delivery, when a direct export entry is utilized instead of an entry summary, no refund of duties is necessary since no duties were paid. See 19 U.S.C. 1557; 19 CFR part 191, subpart M. By implementing this proposed change, there would be a savings in time and money for both the trade and the Customs Service. This change is being made to facilitate trade by reducing the paperwork burden and associated costs in human and financial resources for both importers and the Customs field offices.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Based on the discussion above, and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Joanne Stump, Entry Rulings Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in Part 142

Customs duties and inspection, Imports.

Proposed Amendment

It is proposed to amend part 142, Customs Regulations (19 CFR part 142), as set forth below.

PART 142—ENTRY PROCESS

1. The general authority citation for part 142 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to revise paragraph (b)(3) of section 142.22 to read as follows:

§ 142.22 Application for special permit for immediate delivery.

* * * * *

(b) * * *

(3) An entry for transportation and exportation, immediate transportation without appraisement, or direct exportation, which shall be filed in those circumstances under § 142.21(b) and (e)(2) of this part; or entry for transportation and exportation, or direct exportation, which shall be filed in the circumstances under § 142.28 of this part; or an entry for direct exportation for those released articles which are exported before the expiration of the prescribed time-period of § 142.23 or

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 17, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92–23171 Filed 9–23–92; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Parts 151 and 152

Electronic Transmission of Customs Forms 28 and 29

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide that entry filers who have access to the Automated Broker Interface (ABI) may elect to receive Customs Form 28, Request for Information, and Customs Form 29, Notice of Action, electronically through ABI. This proposal, if adopted, will eliminate the expense of preparing and handling certain paper documents.

DATES: Comments must be received on or before November 23, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the

Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Richard J. Bonner, Office of Automated Commercial Systems, (202) 927-1081.

SUPPLEMENTARY INFORMATION:

Background

The Automated Commercial System (ACS) of Customs is a public-private computerized data processing telecommunications system, linking customhouses, members of the import trade community, and other government agencies with the Customs computer. Trade users file import data required by Customs and other agencies electronically, receive needed information on cargo status electronically, and may query Customs electronic files in preparing their submissions. Duties, taxes, and fees may be paid by electronic statement, through a Treasury-approved clearinghouse bank.

The Automated Broker Interface (ABI), a module of ACS, is used by entry filers to transmit electronic entry declarations and associated transactions to Customs, and to receive entry processing results from Customs. The system currently can be used by customs brokers and importers and software vendors having ABI capabilities. All of the trade users participate voluntarily.

Customs uses the data received from the trade in many ways: to control and release cargo, develop and verify foreign trade statistics, value and classify merchandise, verify visas and administrative quotas, collect $18 billion in duty, taxes, fees and other revenue, and enforce trade laws and regulations (some 400 laws for 40 agencies). Information about the disposition of cargo for Customs and other agencies is communicated to both trade and other agency users through ACS electronically.

Automation of Customs Forms 28 and 29 would be another step in the elimination of paperwork, resulting in the further streamlining of Customs and trade community procedures.

Current Procedures

To determine the correct classification and valuation of imported merchandise, it is sometimes necessary for the district director to obtain samples of merchandise or other information necessary for the classification or appraisement of the merchandise. Section 151.11, Customs Regulations (19 CFR 151.11), requires that the district director send Customs Form 28, Request for Information, to the importer in order to request samples or additional examination packages of merchandise which have been released from Customs custody. Current procedures provide that a copy of the Customs Form 28 be provided to the importer's customs broker. The appropriate Customs officer prepares the form manually.

After Customs determines the classification of merchandise and appraises it, if the district director believes the entered rate or value of any merchandise is too low, or if he finds that the quantity imported exceeds the entered quantity, § 152.2, Customs Regulations (19 CFR 152.2) provides that the district director shall send Customs Form 29, Notice of Action, to the importer if the estimated aggregate of the increase in duties on that entry exceeds a certain amount of money. A copy of Customs Form 29 is also provided to the importer's customs broker. The form is prepared by the appropriate Customs officer manually.

Proposed Procedures

This document proposes that in lieu of preparing Customs Forms 28 and 29 manually, the Customs officer will prepare the forms on an ACS computer system terminal. If the referenced entry was filed electronically via ABI, and the entry filer elects to receive Customs Forms 28 and 29 electronically, the information will be transmitted to the entry filer electronically via ABI and no documents will be mailed by Customs. If the ABI entry filer is a Customs broker, as agent for the importer, it will be the responsibility of the customs broker ABI entry filer to provide this information to the importer.

If the entry filer does not elect to receive Customs Forms 28 and 29 electronically, the ACS system will automatically generate the printed forms and Customs will mail the forms to the importer and/or customs broker according to current procedures.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Executive Order 12291

Because this document merely provides for an alternative means of communicating information to trade users, the document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

For the same reason stated in the above paragraph, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service, however, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 151

Cigars and cigarettes, Cotton, Customs duties and inspection, Fruit juices, Laboratories, Metals, Oil Imports, Reporting and recordkeeping requirements, Sugar, Wool.

19 CFR Part 152

Customs duties and inspection.

Proposed Amendments

It is proposed to amend parts 151 and 152 of the Customs Regulations (19 CFR parts 151,152) as set forth below:

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The general authority citation for part 151, Customs Regulations, and specific authority citation for Subpart A would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 8 and 9, Harmonized Tariff Schedule of the United States), 1624. Subpart A also issued under 19 U.S.C. 1499. * * *

2. it is proposed to revise § 151.11 to read as follows:

§ 151.11 Request for samples or additional examination packages after release of merchandise.

If the district director requires samples or additional examination packages of merchandise which have been released from Customs custody or needs other information for the classification or appraisement of the merchandise, he shall send the importer a written request, on Customs Form 28, Request for Information, or other appropriate form, to submit the necessary information, samples or packages. Alternatively, if the entry filer elects to receive the Customs Form 28 electronically through ABI, the district director will transmit the form electronically to the ABI entry filer. If the entry filer is a Customs broker, he is responsible for providing this information to the importer. If the request is not promptly complied with, the district director may make a demand under the bond for return of the necessary merchandise to Customs custody in accordance with § 141.113 of this chapter.

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. The general authority citation for part 152 would continue to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624; * * *

2. It is proposed to amend § 152.2 by adding a new second and third sentence to read as follows:

§ 152.2 Notification to importer of increased duties.

* * * Alternatively, if the entry filer elects to receive Customs Form 29 electronically through ABI, the district director will transmit the form electronically to the ABI entry filer. If the entry filer is a Customs broker, he is responsible for providing this information to the importer. * * *

Approved: September 17, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 92–23170 Filed 9–23–92; 8:45 am]

BILLING CODE 4820–02–17

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19 CFR Part 191

Appeal to Headquarters of Denial of Exporter's Summary Procedure to a Drawback Claimant

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide an appeal to Customs Headquarters for drawback claimants that are denied the use of the Exporter's Summary Procedure (ESP), or whose ESP privileges are revoked. Currently, appeals are reviewed by the same regional office that made the original decision to deny or revoke the privilege. This amendment will provide a regulatory right for having an impartial review.

DATES: Comments must be received on or before November 23, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Office of Trade Operations, Entry Division, 202–927–0916.

SUPPLEMENTARY INFORMATION:

Background

Drawback is defined in § 191.2(a) of the Customs Regulations (19 CFR 191.2(a)), as a refund or remission, in whole or part, of a customs duty, internal revenue tax, or fee lawfully assessed or collected, because of a particular use made of the merchandise on which the duty, tax, or fee was assessed or collected. To obtain drawback, a claimant must show that the eligible merchandise was exported. In order to improve administrative efficiency in providing proof of exportation, under procedures set forth in § 191.53, Customs Regulations (19 CFR 191.53), an exporter-claimant may use a procedure called the Exporter Summary Procedure (ESP). This procedure allows claimants to provide Customs with a chronological summary of exports in lieu of actual documentary evidence of exportation. To use ESP a drawback claimant must receive approval from the regional commissioner where the drawback claim will be filed. Permission to use this procedure will be granted if the regional commissioner concludes that its use would contribute to administrative efficiency, and the exporter claimant is not delinquent or otherwise remiss in his transactions with Customs.

If it is decided to deny a request for ESP or to revoke ESP privileges, a letter to that effect will be sent to the claimant explaining what corrective action must be taken. This letter will also include a time frame in which the applicant/claimant may reapply for the privilege.

Currently, if a drawback claimant is denied the use of ESP, the only recourse available is to appeal to the same Customs regional office that made the original decision to deny or revoke the ESP privileges. This proposal will provide claimants with a regulatory right to have decisions to revoke or deny ESP impartially reviewed by the Office of Trade Operations of the Office of Commercial Operations at Customs Headquarters.

Comments

Before making a determination in this matter, Customs will consider any written comments timely submitted. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified, for the reasons stated in this preamble, that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in 1(b) E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Sheryl Rosenow, Entry Rulings Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 191

Claims, Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

Proposed Amendments

It is proposed to amend part 191 of the Customs Regulations (19 CFR part 191), as set forth below:

PART 191—DRAWBACK

1. The general authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

2. It is proposed to amend § 191.53, by adding a paragraph (f) to read as follows:

§ 191.53 Exporter's summary.

* * * * *

(f) *Appeals.*

Permission to use this procedure may be denied or revoked by the regional commissioner based on the claimant's prior and continuing record of transactions with Customs. Reasons for denial or revocation may include evidence of inadequate or misrepresented export documentation, export violations, unpaid bills, or lack of adequate documentation to support fungibility or possession requirements (if request for ESP is linked to a specific claim). Upon receipt of a written notice of denial or revocation, the claimant may appeal within 60 days from the date of the notice. Appeals alleging discrepancies in the documentary or evidentiary bases of the revocation or denial shall be made within 60 days to the regional commissioner. All other appeals, including that of denial of an appeal by the regional commissioner, shall be made in writing to the Director, Office of Trade Operations, at Customs Headquarters, within 60 days of the date of notice of the denial or revocation, or denial of an appeal to the regional commissioner. Claimants must include all appropriate documentation with their appeal. Claimants will be notified by Customs of decisions on appeals within 60 days of receipt of the appeal.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: August 28, 1992.

Peter K. Nunez

Assistant Secretary of the Treasury.

[FR Doc. 92-23239 Filed 9-23-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960-AC97

Exclusion From Income of Gifts of Commercial Transportation Tickets Under the Supplemental Security Income Program

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 8011 of Public Law (Pub. L.) 101-239 which amended title XVI of the Social Security Act to provide that effective March 1, 1990, for purposes of determining eligibility or benefit amount under the supplemental security income (SSI) program, the countable income of an individual shall not include the value of any commercial transportation ticket for travel by such individual (or spouse) among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift by such individual (or such spouse) and is not converted to cash. Under this rule the income exclusion will apply to tickets received by eligible individuals or their eligible spouses as well as the ineligible parents and ineligible spouses from whom income may be deemed to the eligible individuals.

DATES: To be sure that your comments are considered, we must receive them no later than November 23, 1992.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O.Box 1585, Baltimore, Maryland 21235, or delivered to the Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966-0512.

SUPPLEMENTARY INFORMATION: For purposes of the SSI program, income is defined at § 416.1102 to mean anything that is received in cash or in kind which can be used to meet an individual's needs for food, clothing, or shelter. Prior to the enactment of section 8011 of Public Law 101-239, if an eligible individual received a transportation ticket for domestic travel as a gift and could convert that ticket to cash to be used to meet food, clothing, or shelter needs, we would consider the surrender value as unearned income to the individual and reduce his or her SSI benefit accordingly.

Section 8011 of Public Law 101-239, effective March 1, 1990, amended section 1612(b) of the Social Security Act by adding paragraph (15). This paragraph provides for the exclusion from income of the value of any commercial transportation ticket for travel by an eligible individual (or spouse) among the 50 States the District of Colombia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The exclusion applies if the ticket is received as a gift by the individual (or spouse) and is not converted to cash. The rule being proposed to implement section 8011 of Public Law 101-239 will apply the income exclusion when the gift of transportation tickets is received by the eligible individual or his or her eligible spouse (§ 416.1124(c)(15)). It will also apply when such tickets are received by the ineligible spouse of an eligible individual or the ineligible parent of an eligible individual who is a child, in order that the deeming rules not reduce the SSI payment of, or render ineligible, the individual or child (§ 416.1161(a)(19)). Not to apply the income exclusion in such cases could negate the beneficial effect of section 8011 for certain individuals living with their ineligible spouses and children living with their ineligible parents.

The rule being proposed to implement section 8011 will also provide that when a commercial transportation ticket excluded under section 8011 of Public Law 101-239 is cashed, the cash received is income in the month of receipt. This policy is consistent with the express terms of section 8011 that the value of such a ticket be excluded from income if "not converted to cash." Thus, when a commercial transportation ticket is converted to cash, the exclusion ceases to apply and the cash is counted as income in the month of conversion.

We are also amending § 416.1140(a)(1) to correct a regulatory reference contained therein.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291, since the costs are expected to be less than $100 million and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, is not required.

Paperwork Reduction Act

This regulation does not impose reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: March 9, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: April 10, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart K of part 416 is revised to read as follows:

Authority: Secs. 1102 and 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. In § 416.1124, the word "and" at the end of paragraph (c)(13) is removed, the period at the end of paragraph (c)(14) is removed and replaced by "; and", and a new paragraph (c)(15) is added to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) *Other unearned income we do not count.* We do not count as unearned income—

* * * * *

(15) The value of any commercial transportation ticket, for travel by you or your spouse among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, The Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift by you or your spouse and is not converted to cash. If such a ticket is converted to cash, the cash you receive is income in the month you receive the cash.

§ 416.1140 [Amended]

3. In § 416.1140(a)(1), the reference to "§ 416.1124(c)(10)" is revised to read "§ 416.1124(c)(12)".

4. In § 416.1161, the word "or" at the end of paragraph (a)(14) is removed, the periods at the end of paragraphs (a)(17) and (a)(18) are replaced by semicolons, and a new paragraph (a)(19) is added to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(a) *For an ineligible spouse or parent.*

* * *

* * * * *

(19) The value of a commercial transportation ticket as described in § 416.1124(c)(15). However, if such a ticket is converted to cash, the cash is income in the month your spouse or parent receives the cash.

* * * * *

[FR Doc. 92–23099 Filed 9–23–92; 8:45 am]

BILLING CODE 4190–29–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–4509–9]

Hazardous Waste Manifest Rulemaking Committee

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: We are giving notice of a public meeting of the Hazardous Waste Manifest Rulemaking Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss organizational matters with regard to the negotiation of a uniform national hazardous waste manifest rule.

DATES: The meeting will be held on October 8 from 2:30 p.m. to 5 p.m. and October 9, 1992 from 9 a.m. to 5 p.m.

ADDRESSES: Location of the meeting will be Hall of States, room 283, 444 North Capitol street, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Rick Westlund, Regulatory Management Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–2745. Persons needing further information on procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, SW., Washingotn, DC 20460, (202) 260–5495, or Committee's facilitator, Suzanne Orenstein, Resolve, 1250 24th Street, NW., suite 500, Washington, DC 20037, (202) 778–9533.

Dated: September 17, 1992.

Deborah Dalton,

Deputy Director, EPA Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation.

[FR Doc. 92–23253 Filed 9–23–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 63

[AD–FRL–4510–6]

National Emission Standards for Hazardous Air Pollutants; Availability: Draft Schedule for the Promulgation of Emission Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment on a draft schedule for the promulgation of emission standards as required under section 112(e) of the Clean Air Act (CAA), as amended in 1990. Section 112(e) requires that EPA publish a schedule for promulgating emission standards for those categories of sources emitting hazardous air pollutants (HAP's) listed under section 112(c). The CAA directs the EPA to publish the final schedule by November 15, 1992, after opportunity for public comment. This notice provides the public with an opportunity to comment on the draft schedule prior to publication of the final schedule. Sources within the listed categories of sources will be subject to emission standards developed in accordance with the final schedule. In the event an applicable standard is not promulgated on schedule for a listed category of sources, the owner or operator of a source in such category may be subject

to emission limitations determined on a case-by-case basis, pursuant to section 112(j). Emission limitations established pursuant to Section 112(j) are required to be equivalent to the limitations that would apply if emission standards had been promulgated according to the schedule.

DATES: *Comments:* Written comments must be received on or before October 26, 1992.

ADDRESSES: Two copies of comments should be sent, one to EPA's Air Docket Section, Room M1500, U.S. EPA, 401 M Street SW., Washington, D.C. 20460, and the other copy should be sent to Mr. Charles French, Pollutant Assessment Branch (MD-13), Emission Standards Division, U.S. EPA, Research Triangle Park, North Carolina 27711.

Relevant information: Relevant information can be found in the **Federal Register** (57 FR 31576; July 16, 1992) notice entitled "Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990" and from the document entitled Methodology for the Source Category Ranking System (Docket No. A-91-14, Item II-B-1, located in the Air Docket Section listed below).

Docket: A docket, No. A-91-14, containing information considered by the EPA in development of the preliminary schedule for standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Room M1500, U.S. EPA, 401 M Street, S.W. Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general information and information concerning categories of sources involving the production, handling, refining or use of chemicals or petroleum, or products thereof, contact Mr. David Svendsgaard, Chemicals and Petroleum Branch (MD-13), Emission Standards Division, U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541-2380. For information concerning categories of sources involving fuel combustion, incineration, metals and minerals processing, contact Mr. William Maxwell, Industrial Studies Branch (MD-13), (919) 541-5430, at the above address. For information concerning pollutant health effects and the Source Category Ranking System, contact Mr. Charles French, Pollutant Assessment Branch (MD-13), (919) 541-0467 at the above address.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading today's notice.

I. Background
A. Initial List of Categories of Sources
B. Clean Air Act Requirements for Development of the Schedule for Standards
C. Schedule for Coke Oven Batteries
II. The Draft Schedule for Standards
A. Criteria for Establishing the Schedule
B. Framework of the Source Category Ranking System
1. Introduction
2. Exposure Score
3. Health Effects Score
4. Source Category Score
5. Limitations of SCRS Ranking Results
C. Application of Efficiency of Grouping
D. Other Considerations for Scheduling
E. Schedule for Promulgation of Emission Standards
III. Request for Comments
IV. Administrative Requirements
A. Docket
B. Regulatory Requirements
C. Organization of the Schedule for Standards

I. Background

A. Initial List of Categories of Sources

A preliminary draft list of over 700 categories and subcategories of sources emitting any of the HAP's listed in section 112(b)(1) of the CAA was developed and published for public comment on June 21, 1991 (56 FR 28548). After consideration of public comment and further EPA review, the preliminary draft list has been revised and now contains 174 categories of sources. This initial list was published in the **Federal Register** (57 FR 31576; July 16, 1992). The reader is referred to that notice for an explanation of the basis for the list of categories of sources.

B. Clean Air Act Requirements for Development of the Schedule for Standards

Section 112(e) of the CAA requires the publication of a schedule for the promulgation of emission standards for listed source categories and subcategories (hereafter referred to as categories), that will result in the promulgation of regulations for all listed categories within 10 years of the date of enactment of the CAA amendments (i.e., by November 15, 2000). The CAA, as amended, requires EPA to promulgate regulations for 40 source categories within 2 years (i.e., by November, 15, 2000); for coke oven batteries by December 31, 1992; for 25 percent of all initially listed categories within 4 years (i.e., by November 15, 1994); for 50 percent of all initially listed categories within 7 years (i.e., by November 15, 1997); and to complete the promulgation of regulations for all initially listed categories within 10 years (i.e., by November 15, 2000).

In determining priorities for promulgating emission standards, section 112(e)(2) specifies three criteria that shall be considered by the EPA. These three criteria are: (1) The known or anticipated adverse effects of HAP's on public health and the environment; (2) the quantity and location of emissions or reasonably anticipated emissions of HAP's that a listed category would emit; and (3) the efficiency of grouping categories according to the pollutants emitted, or the processes or technologies used.

The emission standards promulgation schedule is required to be published by November 15, 1992, after consideration of public comments pursuant to section 112(e)(3) of the CAA. The schedule will establish the time frames for the promulgation of emission standards for each listed category of sources.

Section 112(e)(3) explicitly states that "the determination of priorities for the promulgation of standards * * * is not a rulemaking and shall not be subject to judicial review, except that, failure to promulgate any standard pursuant to the schedule * * * shall be subject to review under section 304 of this Act". Therefore, based on this language, the EPA has determined that the schedule for standards is not considered an EPA rulemaking and is not subject to judicial review, except that action under section 304 is authorized when a deadline is missed.

Section 112(j) provides for additional actions in the event the Administrator fails to meet the schedule for establishing regulations for any listed category of sources. The owner or operator of any major source, in a category for which emissions standards are delayed by more than 18 months from the scheduled date for promulgation of standards, must submit a permit application to the applicable permit authority in compliance with title V of the CAA. This permitting requirement is not applicable until after the effective date of a permit system in a State and not sooner than 42 months after enactment of the CAA amendments (i.e., May 15, 1994). The permit must specify emissions limitations that, on a case-by-case basis, are determined by the Administrator (or the State) to be equivalent to the level of control that would have been required by emission standards established under section 112(d). These permits will be reviewed and approved by the permitting authority on a case-by-case basis.

Section 112(e)(1) requires EPA to develop today's schedule for emission standards based on categories of sources "* * * initially listed for regulation pursuant to Subsection (c)(1) * * *" The EPA has interpreted this to mean that the categories of sources grouped in today's draft schedule for emissions standards must be the same categories as listed in the FEDERAL REGISTER notice entitled "Initial List of Categories of Sources Under section 112(c)(1) of the Clean Air Act Amendments of 1990" Federal Register (57 FR 31576; July 16, 1992). In addition, section 112(d)(1) does not allow the EPA to distinguish between classes, types, and sizes of sources within a category if such action would result in a delay of the compliance date for any source within a category. Hence, once a category is initially defined under the section 112(c)(1) list, the EPA is obligated to establish standards for the entire category according to the schedule published under Section 112(e). Today's draft schedule for emissions standards recognizes this requirement and is consistent with the Section 112(c)(1) list.

While section 112(e)(3) requires EPA, within 24 months after enactment, to set a schedule for promulgating standards for categories listed under section 112(c)(1), it is silent concerning the permissibility of amending that schedule. The EPA has no desire to defer regulation in any way that would compromise reaching the numerical goals established in section 112(e)(1). However, because data on many categories of sources are still very limited, the Agency anticipates that there may be circumstances where revision of the schedule would serve the risk reduction purposes of the Act. For example, the Agency might obtain new information, after publication of the initial schedule, that emissions from some categories scheduled for early regulation pose much less public health and/or environmental concerns then those emissions from categories scheduled to be regulated in a later time frame. Because of resource constraints, it is unlikely that the more hazardous categories could be regulated earlier than planned unless regulation of the less hazardous categories could be deferred. In such case, EPA would wish to comply with the directive in the Conference Report that "[t]he conferees wish to emphasize that in promulgating standards, the EPA should devote its resources first to those pollutants which present the greatest risk to the public health and the environment." (Conference Rept. on S. 1630, H.R. Rept. 101-952, 101st Cong., 2d Sess. at 338, 1990.)

If EPA could (for example) shift five categories from the 10-year time frame to the 4-year time frame, and shift five others from the 4-year-time frame to the 10-year time frame, it might be able to reduce more HAP emissions earlier than it could through a literal adherence to its initial schedule. Accordingly, EPA solicits comment on whether and how the statute might permit EPA the flexibility to adjust the regulatory schedule after publication of the initial schedule.

In addition, the EPA may, at its discretion, establish standards for listed categories or subsequently defined subcategories sooner than scheduled under section 112(e). This option gives the EPA scheduling flexibility in a manner consistent with section 112(d)(1) and enables the EPA to consider broader categories for establishing standards and determining compliance. In this regard, the EPA may aggregate, into a single category on any revised list, categories or subcategories which have been disaggregated on the initial list. This may be done for the purpose of setting a single emission standard for the aggregated category. This would not result in the delay of the compliance date of any listed category.

C. Schedule for Coke Oven Batteries

The CAA establishes a specific time frame for the regulation of coke oven batteries (charging, topside, and door leaks) independent of the draft schedule published today. As specified in section 112(d)(8), EPA is required to promulgate emission standards for this category of sources by December 31, 1992. The CAA requires that the compliance date for emission standards for existing coke oven batteries be December 31, 1995, unless the specific coke oven battery elects to apply, and qualifies for, an extension as provided for in section 112(d)(8).

II. The Draft Schedule for Standards

A. Criteria for Establishing the Schedule

Section 112(e)(2) of the CAA specifies three criteria to be considered in establishing the regulatory schedule for emission standards. These criteria are: the quantity and location of emissions for each category, adverse effects to public health and the environment, and the efficiency of grouping categories. The first two criteria are addressed by the Source Category Ranking System (SCRS) which is discussed later in this notice. The efficiency of grouping criterion considers the potential for maximizing regulatory efficiency by considering the current status of regulatory efforts; and similarities among categories of sources, including emission mechanisms, and emission control technologies. In addition to these criteria, other factors such as the availability of data for standard development and the ability to meet the CAA mandated regulatory deadlines were considered in establishing today's schedule.

The EPA interprets the regulatory schedule mandated by the CAA amendments as the placement of categories into groups to be regulated within the required deadlines for each group. For this reason, the draft schedule published for comment in this notice only shows whether the regulatory effort for a given category of sources is scheduled for completion by November 15, 1992, November 15, 1994, November 15, 1997, or November 15, 2000. This schedule does not establish a strict order in which all the rules for the listed categories of sources will be proposed or promulgated. Rather, it requires that regulations covering a given category of sources be completed by the end of the specified time period. Meeting these deadlines will require the staggering of regulatory development activities. For this reason, and other considerations such as being associated with higher risk to public health, EPA may complete rulemaking procedures for some categories of sources well before the deadlines.

B. Framework of the Source Category Ranking System

1. Introduction

To assist in its effort to meet the statutory requirements for schedule prioritization, EPA developed the Source Category Ranking System (SCRS). The SCRS combines emission estimates, health effects data, and limited population data to rank categories of sources. The result is a scoring system by which a category of sources is ranked in relation to all other listed categories, based on the associated emission estimates, pollutant health effects, and limited population data.

By using information on emissions, toxicity (i.e., health effects) and population the SCRS addresses some of the statutory criteria in section 112(e)(2) for establishing priorities for the development of today's draft schedule for promulgation of emission standards. The SCRS addresses the "* * * quantity and location * * *" criteria under section 112(e)(2)(B). The SCRS also considers a broad range of toxicological effects which address "* * * the known

or anticipated adverse effects * * * on public health * * *" criterion under section 112(e)(2)(A).

The SCRS generates a score for each listed source category based on emissions estimates, estimates of the toxicity of the HAP's, and to a lesser degree, the location of the emitting facilities within a listed source category. Details of the scoring methodology and data input are discussed in subsequent chapters of this notice and in Methodology for the Source Category Ranking System (Docket No. A–91–14, Item No. II–B–1).

The SCRS does not generate absolute or relative risk, or population exposure estimates. The data incorporated into the SCRS are of greatly varying quality and significance, and the algorithms contain many default assumptions. Therefore, the results of the SCRS should not be misinterpreted. The SCRS was designed as a tool to aid in prioritizing the source categories listed under section 112(c) only, and the results from this system have no other known applications. If a source category has a higher SCRS source than another source category, this does not necessarily mean it presents a greater risk than the lower scoring source category.

The SCRS does not specifically consider adverse environmental effects criterion mentioned under section 112(e)(2)(A). However, the EPA believes that, for the intended purpose of ranking categories of sources, the SCRS results provide an indication of potential adverse environmental effects. Later in today's notice, the EPA solicits comments on this position and on potential methods for the consideration of adverse environmental effects for the ranking of source categories.

A diagram showing the general methodology used in the SCRS is shown in Figure 1. For each HAP within a category of sources, the SCRS developed an exposure score and a health effects score. Together these scores produced a combined score for each HAP; the combined scores were then summed to produce an overall source category score. The categories of sources were then ranked according to their source category scores. The development of these scores will be discussed in the following sections.

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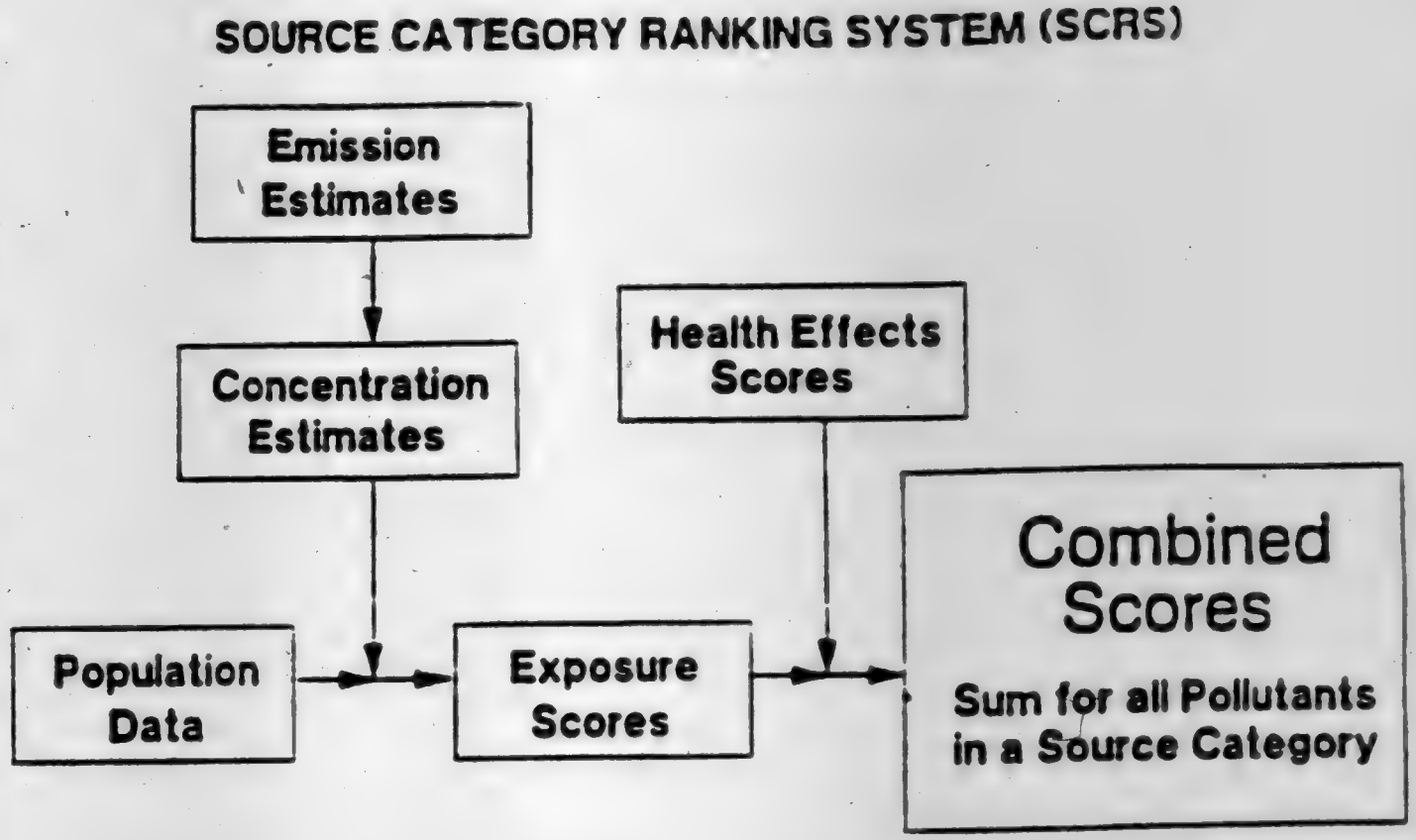
Figure 1. Schematic Diagram of the Source Category Ranking System Methodology



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2. Exposure Score

The exposure score is derived by processing emissions estimates through simplified dispersion algorithms. However, because of greatly varying quality of data and many assumptions, this exposure score does not represent actual population exposure and is not considered an exposure assessment. The exposure score for each category of sources in the SCRS is a function of the estimated HAP emissions from the category, simplified dispersion algorithms, and limited population information which is either national average population density, county average population density, or an assumed maximally exposed individual. Emission estimates were an integral part, and by far the most significant variable, of the exposure score calculations. Emissions data were processed through simplified atmospheric dispersion algorithms to estimate ambient pollutant concentrations. Dispersion parameters were assumed to be constant for all pollutants and sources in the SCRS scoring. The resultant ambient concentrations were then multiplied by population data to obtain exposure scores.

For each category of sources, the emissions estimation technique depended on whether or not emissions data for the category of sources was composed of individual point source data. If individual point source data were available, the SCRS modeled emissions from each point source in a category. For these categories, emissions were estimated by gathering data from individual point source. For categories for which individual point source data were not available, emissions were estimated in aggregate for the entire category of sources and modeled as area sources. For this reason, the term "area source," as used in the SCRS, does not have the same meaning as defined in section 112(a) of the CAA. Rather, "area sources" is the SCRS means a source whose emissions are not considered to be released from specific points. In order to improve clarity, these sources will be called "model area sources" within this notice. In the SCRS, model area sources are categories for which individual facilities data were not available, and, therefore, emissions had to be modeled in aggregate. Emissions from the model area sources were modeled on a nationwide basis. Exposure scores were obtained by entering nationally aggregated emissions into model area source processing algorithms as described below.

Three general approaches were used to develop emission estimates: the Emission Standards Division (ESD) approach, the National Emission Data System (NEDS) approach, and the use of data from existing EPA studies obtained through literature searches. A hierarchy was established in order to apply the most appropriate technique for each category of sources. The ESD approach was used for certain categories of sources of organic chemical manufacturing processes. For other categories, the NEDS approach was applied. For categories for which neither the NEDS nor ESD approach could be applied, a review was conducted of existing EPA studies, including, but not limited to: source assessments of pollutants, documents on locating and estimating emission sources, and data developed in support of previous section 111 and section 112 regulatory decisions. The ESD and NEDS approaches are explained briefly in the following paragraphs.

The ESD emissions estimate approach was used for categories of sources in the organic chemical manufacturing and consumption industries for which published organic chemical production and consumption data was available. Categories of sources were identified according to their production and use of organic chemicals. The collected data included all emission points (i.e., raw material storage, process vents, leaks, wastewater missions, and product storage or loading). Categories of sources with available facility lists were treated as categories of point sources. If a list of facilities was not available, emissions could not be assigned to a specific geographic location, and, therefore, the category was treated as a category of model area sources. For point sources, emission estimates were priced by multiplying a series of emission factors by the chemical production/consumption rate at individual facilities. Release parameters were then assigned to each emission estimate for modeling as discussed below.

Emission factors were based on pollutant-specific data collected from organic chemical manufacturing and consumption facilities during the development of a number of environmental regulations (i.e., new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP). The emission factors cover all emission from process vents, equipment leaks, storage tanks, liquid transfer operations, and wastewater treatment operations.

The primary sources of production and consumption data for the ESD approach were Stanford Research Institute's Directory of Chemical Producers, Mannsville's Chemical Production Synopsis, and the Chemical Marketing Reporter. The NEDS approach was used to develop emission estimates for additional categories of sources. The NEDS is an EPA database of reported emissions from each State for sources emitting more than 90 megagrams per year (Mg/yr) (100 tons per year (typ)) of any criteria pollutant (U.S. EPA, 1988). Pollutant speciation profiles developed by EPA within the National Acid Precipitation Assessment Program (NAPAP) are available for each category of sources in NEDS. These speciation profiles apportion specific volatile organic compound (VOC) or particulate matter (PM) emission streams into individual pollutant components.

Point emission sources are classified within NEDS by source classification codes (SCC's). An SCC is an 8-digit identifier that signifies the production processes, major industry, major product, and different operations at the point source. A list of the approximately 4,000 defined SCC's, along with descriptions, can be found in *Criteria Pollutant Emission Factors for the 1985 NAPAP Emissions Inventory (U.S. EPA, 1987b).*

The first step in estimating emissions using the NEDS approach was to identify all SCC's associated with emitting one or more of the listed HAP's. Next, categories of sources were defined based on SCC descriptions. The NAPAP pollutant speciation profiles were then applied to PM and VOC emissions data available in NEDS. In the NEDS approach, the selected speciation profiles were applied to total VOC and PM emissions in order to estimate emissions of CAA listed HAP's for each NEDS-identified category of sources.

The EDS and NEDS approaches were also used to estimate emissions from model area sources. In the EDS approach, each pollutant for each model area source was classified as a solvent or non-solvent. Solvents were assumed to be 100 percent emitted (i.e., solvent emissions assumed equal to solvent use of consumption), while non-solvent emissions were estimated using a model area source emission factor based on the ratio of total point source emissions to total chemical consumption for the source categories for which data were available.

After establishing the emission data base, simplified dispersion algorithms were developed to estimate the potential

ground-level HAP concentration from fugitive and point sources for individual plants. Categories of sources for which plant lists could not be generated were handled as model area sources with a separate simplified dispersion algorithm. These dispersion algorithms provided a concentration factor that when multiplied by the pollutant emission rate yields an approximate pollutant concentration. A detailed discussion of the dispersion algorithms used can be found in Methodology for the Source Category Ranking System (Docket No. A–91–14, Item No. II–B–1).

The SCRS calculates four exposure scores for each category of sources: Short-term maximum, short-term aggregate, long-term maximum, and long-term aggregate. Both short-term and long-term exposure scores are calculated in order to match emissions data to acute and chronic health effects, which are discussed in the next section.

The four exposure scores are calculated for each pollutant in a source category and then summed to give the four exposure scores for the source category. The short-term maximum exposure score is generated using a simplified algorithm that calculates a modeled highest concentration for a particular chemical being emitted by a category of sources to which an individual might be exposed. The long-term maximum exposure score is generated using a simplified algorithm that calculates a modeled highest annual concentration for each pollutant emitted by a category of sources to which an individual might be exposed. The short-term aggregate exposure score is derived by summing the short-term maximum exposure scores for each source in the category. The long-term aggregate exposure score is generated using a simplified algorithm that incorporates annual emissions, and either national average or county average population density. If the location of the facilities are known then county average population density is used and the scores for each facility are summed to get the score for the category of sources. If facility locations are not known then national aggregate emissions and national average population density is used in a simplified algorithm to generate an exposure score.

Population data from the 1980 U.S. Census Bureau were used in calculating long-term and short-term aggregate exposure scores for both point and model area sources. For example, in determining the aggregate exposure score for a point source, the county population density where a facility is located was multiplied by the area within a 50-km radius around the facility. The resulting population number was multiplied by the estimates of short-term and long-term pollutant concentrations to develop the aggregate exposure scores for each pollutant associated with a category of sources.

Although similar algorithms and methods of calculating population exposure have been commonly used in public health risk assessment for air toxics, comments are solicited later in today's notice regarding the appropriateness of the simplified exposure score algorithms, assumptions, methodology, and data input used in the SCRS. One possible alternative approach would be to use population density information alone to calculate exposure scores rather than attempting to assign average county population density to a 50 kilometer radius around a facility. The estimation of the total population within a 50-km radius may or may not be supportable given the other uncertainties in the system.

3. Health Effects Score

To rank categories of sources, the SCRS contains a health effects data base with health effects information for each of the HAP's listed in section 112(b)(1) of the CAA. Four general types of health effects, or health endpoints, were evaluated for each HAP: carcinogenicity, reproductive toxicity, acute lethality, and other toxicity, each of which is explained below. These four endpoints of toxicity were considered separately in the SCRS, with health scores based on the estimated potency of a chemical to produce the particular effect.

The carcinogenic potential of hazardous air pollutants was evaluated using unit risk estimates (URE's). The URE for an air pollutant is defined as the estimated increased lifetime cancer risk occurring in a hypothetical population in which all individuals are exposed continuously from birth throughout their lifetimes (defined as 70 years) to a concentration of one microgram per cubic meter ($\mu g/m_3$) of the agent in the air they breathe. Inhalation URE's were generally obtained using the EPA "Guidelines for Carcinogen Risk Assessment," **Federal Register** (51 FR 33992; September 24, 1986) for chemicals classified as possible, probable, or known human carcinogens. Additional URE's were developed using the International Agency for Research on Cancer Guidelines for HAP's which are classified in the Gene-Tox program (Mutation Research 185(1,2); 1987) as having limited or sufficient positive evidence of carcinogenicity.

Reproductive toxicity (including paternal and maternal effects, effects on fertility, embryo and fetal effects, certain developmental abnormalities, tumorigenic effects related to the reproductive system, and effects on newborns) was estimated for each chemical using the lowest observed effect level (LOEL) reported to produce these effects in humans or animals. The primary source of information for noncancer health effects was the Registry of Toxic Effects of Chemical Substances (RTECS), developed and maintained by the National Institute of Occupational Safety and Health. The RTECS data base is widely used by both industry and regulatory agencies as a source of toxicity data. Although RTECS is not formally peer-reviewed, the data are from the scientific literature. The EPA recognizes the limitations associated with the lack of peer review, but believes that, for the initial step of compiling health effects information, RTECS represents one of the most readily available and comprehensive sources of information on noncancer toxicological endpoints. Data extracted for the SCRS consisted of oral, dermal, and inhalation doses, which are the routes of exposure responsible for human exposure to toxic air pollutants. The Hazardous Substance Data Base (HSDB), an on-line data base produced by the Specialized Information Services of the National Library of Medicine in Bethesda, Maryland, was used for chemicals where RTECS data were missing or inadequate.

The acute lethality score was based on oral, dermal, and inhalation exposure data in which chemicals produced lethal effects in 24 hours or less. Data for acute lethality were assembled from a search of the RTECS. Acute lethality was selected as a health endpoint because data were readily available for evaluation. The values for lethal dose or lethal concentration for 50 percent of the exposed population (LD_{50} or LC_{50}) were assigned to each chemical.

The endpoint identified as "other toxicity" was included to address health effects other than carcinogenicity that result from long-term exposure to toxic air pollutants. Many health effects, including neurological, gastrointestinal, and respiratory, were considered in the "other" toxicity score. The RTECS and HSDB were again the sources of data for this type of health effect. The lowest LOEL reported to produce nonlethal effects other than cancer or reproductive effects in human or animals was used to determine the "other" toxicity score.

Health effects scores were developed for each of the four general health endpoints for each pollutant. Potency estimations for each endpoint (i.e., URE's, LOEL's and LC_{50}'s) were normalized to obtain a score between 0.0 and 1.0 for each endpoint. A chemical that causes an adverse effect at the lowest concentration would be considered the most potent and would get the highest score of 1.0. These four health effects scores were then aggregated into a long-term and short-term health effects score. The long-term health effects score represents those effects associated with carcinogenicity and nonlethal health effects. The short-term health effects score represents those effects associated with acute lethality and reproductive toxicity.

4. Source Category Score

Health effects and exposure scores were combined in the SCRS to produce the combined scores used to rank the categories of sources. A long-term combined score was developed for each pollutant as a product of its long-term exposure score and its long-term health effects score. A short-term combined score was developed for each pollutant as a product of its short-term exposure score and its short-term health effects score. The short- and long-term combined scores were added together to create a single combined score for each pollutant. Exposure scores appeared to have the most influence on the source category score due to the wide range of estimated HAP emission quantities released from the various categories of sources. The scores for each pollutant emitted by a category of sources were then summed to produce a source category score. Once the source category scores were determined, the categories of sources then were ranked by a simple sorting of the scores.

The final source category scores in the SCRS do not represent a quantitative risk assessment and are not intended to estimate risks to a population. The source category scores provide a reasonable method for ranking the categories of sources.

5. Limitations of SCRS Ranking Results

In determining priorities for promulgating standards under Section 112(d), EPA used the SCRS ranking results in conjunction with the consideration of the efficiency of grouping categories of sources according to the pollutants emitted, or the processes or technologies used. Other considerations for developing the schedule included status of present regulatory efforts, time and resources required to develop emission standards, and the percent of listed categories required to be regulated in each time frame.

The SCRS is designed to rank categories of sources based on the quantity and location of emissions of HAP's, and estimates of toxicity of those HAP's. Consistent with this purpose, EPA used readily available sources of information to develop the SCRS. Like most ranking systems, there are many sources of uncertainty associated with the ranking results from the SCRS. The techniques described above to estimate the HAP emissions, population, and health effects, when combined in the SCRS, provide some indication of the potential health concerns. The exposure scores for many of the categories (i.e., model area sources) were based on nationwide estimated aggregate emissions and national average population density. Clearly, this method does not accurately reflect the location of individual facilities and their proximity to population centers, which would have a large influence on resultant exposure scores. The SCRS uses nationwide and county average population data (i.e., assuming equal exposure to the modelled concentrations). Also, there can be a great deal of variability in the HAP emissions from different facilities which is not reflected by these estimates. Although these methods obviously incorporate a large degree of uncertainty, they may provide a relative measure of quantity and location of emissions, and toxicity, as required under section 112(e), for comparison of different categories.

The emissions estimation techniques also contain uncertainties. The emission factors used for both the NEDS and ESD approaches are only approximations of the amount of HAP's generally associated with various emission streams. Additionally, the emissions data available for some sources is more current than others. Changes in processes, reactants, or level of control that may affect the type, quantity, or location of pollutant emissions may have occurred, but current data reflecting these changes may not be available. The likelihood of such a change occurring may vary considerably from category to category. Additionally, the use of simplified dispersion algorithms assumes constants for source specific and chemical specific dispersion characteristics.

The health effects score also contains some uncertainty since the quality and quantity of available toxicological data for each chemical varies. Another limitation of the SCRS ranking results is that they do not adequately address severity of health effects or weight of evidence. Also, adverse environmental effects were not explicitly considered.

Finally, the population data inputs are based on the 1980 U.S. census and the assumption of uniform population density within each county, or in the case of model area sources, the assumption of uniform emissions and population density nationwide. Obviously, uncertainty is added to the ranking because population growth rates may have varied among counties, and population density and emission rates are not uniform.

In developing the Schedule for Standards, EPA gathered as much information as was reasonably practical to prioritize the listed categories of sources. The EPA recognizes that the SCRS could not duplicate the level of analysis performed in a regulatory source assessment effort or site specific risk assessment. Given that the SCRS was designed to aid in prioritizing nationwide categories of sources for developing the schedule based on varying levels of information available for the subject categories of sources, the SCRS provides a useful ranking tool that assists in the grouping of source categories into the four time frames specified as regulatory deadlines in the CAA. As such, the SCRS was not the sole determining factor in establishing the schedule for promulgating standards, but was the basis of EPA's consideration of the quantity and location of emissions, and health effects criteria in setting the schedule. The third criterion for establishing priorities, efficiency of grouping, is discussed in the following section.

C. Application of Efficiency of Grouping

As set forth in section 112(e)(2) of the CAA, three criteria were considered for prioritizing the emission standards promulgation schedule. The first two criteria, quantity and location of emissions and health effects, were incorporated into the SCRS. The third criterion, "efficiency of grouping," considers similarities in the physical or chemical properties of the pollutant emitted, or the industrial processes or technologies used by the various categories of sources.

In developing the schedule for standards, the EPA sought to group separate categories of sources into single regulatory development efforts due to similar processes, emission characteristics, and applicable control technologies. There are categories of sources that have similarities to higher priority categories of sources or active

projects. Through application of the efficiency of grouping criterion, a standard may be completed for several similar categories of sources at one time. By using the SCRS scores in combination with the efficiency of grouping criterion, EPA has sought to avoid duplication of effort and optimize the regulatory development process. As a result, some categories of sources that might have been scheduled for regulatory development at a later date based solely on the SCRS ranking are scheduled earlier due to the efficiency of grouping. An example of this type of efficiency is the polymers and resins group. In this industrial group, regulatory efforts initiated for a few relatively higher-risk categories of sources are also applicable to additional categories of sources that ranked lower in the SCRS.

The efficiency of grouping criterion was also applied to combine lower ranked categories with other similar categories where regulatory development activities have been initiated or are planned. Section 183 of the CAA requires development of 13 control technology guidelines (CTG's) for VOC emissions by November of 1993. Many of the categories of sources for which CTG's are being developed emit HAP's. Grouping efficiency may be achieved by evaluating HAP's concurrently with VOC's. This allows EPA to consider the requirements of both the nonattainment and HAP's programs of the CAA at the same time, and to make them consistent and compatible. Also, this strategy provides the affected industries with greater certainty about both sets of requirements at about the same time, so that they can be considered in developing an overall control strategy.

D. Other Considerations for Scheduling

In addition to the three priority setting criteria specified in Section 112(e)(2), the CAA also requires that EPA regulate certain percentages of the list of categories by certain dates. For example, EPA is required to regulate 25 percent of the listed categories within 4 years after enactment. When establishing the schedule for promulgation of emission standards, in order to meet these deadlines, the EPA also considered the level of technical knowledge along with the time and resources required for development of emissions standards. Several categories of sources, such as the Synthetic Organic Chemical Manufacturing Industry (SOCMI), have been studied previously by EPA and a good understanding of the technical basis for a technology-based standard is available. All the 2-year, and a substantial portion of the 4-year, projects were under development at the time the CAA amendments were passed.

For other categories of sources, however, where little information is currently available, considerable time and effort will be necessary to adequately study the category, analyze the processes, identify emission points, establish the baseline, evaluate potential control strategies, and determine the appropriate regulatory strategy. Therefore, the amount of available information was another factor in the prioritization of categories for development of emissions standards.

E. Schedule for the Promulgation of Emission Standards

The draft schedule in Table 1 establishes the deadlines for the promulgation of emission standards for the categories of sources initially listed pursuant to section 112(c)(1) and 112(c)(3). Each of the listed categories of sources was prioritized considering the three criteria identified in section 112(e) as well as the amount of available data and the need to meet the percentages provided in the statute. The draft schedule for the promulgation of emission standards has been designed such that each of the listed source categories will be regulated within 2, 4, 7, or 10 years of the enactment of the CAA amendments of 1990 as required by section 112(e).

The schedule for the first two years (i.e., requiring promulgation of standards by November 15, 1992) includes: five categories of dry cleaners and the SOCMI category. The SOCMI category, along with equipment leaks from 20 other non-SOCMI categories or subsets of categories, will be subject to a standard that is commonly known as the Hazardous Organic NESHAP (HON). The HON includes a negotiated standard for equipment leaks in SOCMI and 20 non-SOCMI categories or subsets of categories (see Table 1 with footnotes). These other non-SOCMI categories, or subsets of categories, are consistent with the seven manufacturing processes listed in the notice of agreement on negotiated regulation for equipment leaks, **Federal Register** (56 FR 9318; March 6, 1991). The negotiated standard will be proposed as part of the HON. Only the equipment leak emissions in these non-SOCMI categories or subsets of categories, will be regulated within 2 years of enactment (i.e., November 15, 1992). Regulations covering other emission sources in these non-SOCMI categories are scheduled for later years because the other emission sources have not yet been fully assessed for regulatory purposes. As such, these non-SOCMI categories cannot be fully regulated within 2 years because of insufficient time and information. Until these categories are fully regulated they will not be credited toward the numerical requirements of the CAA.

The CAA amendments of 1990 require that EPA promulgate emissions standards for 40 categories of sources emitting HAP's with 2 years of its enactment and regulate coke ovens by December 31, 1992. In the Conference Report accompanying the final bill (Conference Report, 101–952, 101st Cong. 2d Sess. at 338, 1990), as enacted, Congress indicated that EPA should fulfill the 2 year deadline of section 112(e) by regulating the priority elements of the SOCMI category. At the time the amendments were drafted, the SOCMI category was disaggregated into many (several hundred) individual categories. At the present time, the SOCMI category is considered to be one category. Therefore, since the SOCMI category is listed today for regulation within 2 years of enactment of the CAA amendments of 1990, the Administrator believes that the draft schedule for the promulgation of emission standards published today complies with Congressional intent.

To fulfill the requirement to regulate 25 percent of the listed categories, another 39 categories of sources are scheduled for regulation within 4 years of enactment of the CAA amendments. This 4-year group includes several active projects previously identified as high priority through earlier prioritization efforts; categories of sources already under investigation as part of active CTG projects; and other categories of sources selected because of efficiency of grouping, level of knowledge, potential for project completion within the 4 year time frame, and the need to meet the CAA required 25 percent of listed categories.

The remaining categories of sources are scheduled for regulation within either 7 or 10 years after enactment. The SCRS ranking, along with efficiency of grouping and the other considerations discussed in Section C above, were the primary criteria used for assigning remaining categories to either the 7- or 10-year schedules.

In addition, as stated in section 112(c), categories of sources that are added to the source category list after publication of the Initial List shall be regulated within 10 years after the date of enactment of the 1990 CAA or within 2 years after the date on which such category is listed, which ever is later.

III. Request for Comments

The EPA requests comment on today's notice. Comments are requested on the prioritization criteria used to develop the schedule for standards. Specifically, EPA is soliciting comment on the

consideration of the exposure score assumptions, simplified dispersion algorithms, health effects data, environmental effects data, and other aspects of the source category prioritization process. Comments solicited through today's notice pertain only to the scheduling of categories of sources for the promulgation of emission standards, and not to the definition of categories.

The EPA also solicits comments on whether the statute affords EPA the flexibility to adjust the regulatory schedule after publication of the initial schedule.

IV. Administrative Requirements

A. Docket

The docket for this regulatory action is No. A–91–14. The docket is an organized and complete file for all the information submitted to or otherwise considered by EPA in the development of this draft schedule. The principal purpose of the docket is to allow interested parties a means to identify and locate documents so that they can effectively comment on the draft schedule for standards. The docket is available for public inspection at the EPA's Air Docket Section, which is listed under the **ADDRESSES** section of this notice.

B. Regulatory Requirements

Because today's notice is not a rule, the EPA has not prepared a regulatory impact analysis (RIA) pursuant to Executive Order 12291, nor an economic impact analysis pursuant to Section 317, nor a regulatory flexibility analysis pursuant to Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980). Also, this notice is not subject to the Paperwork Reduction Act of 1990, 44 U.S.C. 3501 et seq.

C. Organization of the Schedule for Standards

The following pages present the Schedule for Standards in tabular form. Table 1 presents the schedule organized by industry group. Within each industry group are several related categories of sources and the scheduled deadline for promulgation of emissions standards. In Table 1, categories of area sources have been listed separately because they are subject to a health effects finding under section 112(c)(3) of the CAA. Table 2 presents the schedule organized by groups of categories to be regulated in each of the time frames established by the CAA.

Dated: September 16, 1992.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP

	Schedule date
Industry Group: Source Category [a]	
Fuel Combustion:	
Engine Test Facilities	11/15/00
Industrial Boilers [b]	11/15/00
Institutional/Commercial Boilers [b]	11/15/00
Process Heaters	11/15/00
Stationary Internal Combustion Engines [b]	11/15/97
Stationary Turbines [b]	11/15/97
Non-Ferrous Metals Processing:	
Primary Aluminum Production	11/15/97
Secondary Aluminum Production	11/15/97
Primary Copper Smelting	11/15/97
Primary Lead Smelting	11/15/97
Secondary Lead Smelting	11/15/94
Lead Acid Battery Manufacturing	11/15/00
Primary Magnesium Refining	11/15/00
Ferrous Metals Processing:	
Coke By-Product Plants	11/15/00
Coke Ovens: Charging, Top Side, and Door Leaks	12/31/92
Coke Ovens: Pushing, Quenching, and Battery Stacks	11/15/00
Ferroalloys Production	11/15/97
Integrated Iron and Steel Manufacturing	11/15/97
Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	11/15/97
Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	11/15/97
Iron Foundries	11/15/97
Steel Foundries	11/15/97
Steel Pickling—HCl Process	11/15/97
Mineral Products Processing:	
Alumina Processing	11/15/00
Asphalt/Coal Tar Application—Metal Pipes	11/15/00
Asphalt Concrete Manufacturing	11/15/00
Asphalt Processing	11/15/00
Asphalt Roofing Manufacturing	11/15/00
Chromium Refractories Production	11/15/97
Clay Products Manufacturing	11/15/00
Lime Manufacturing	11/15/00
Mineral Wool Production	11/15/97
Portland Cement Manufacturing	11/15/97
Taconite Iron Ore Processing	11/15/00
Wool Fiberglass Manufacturing	11/15/97
Petroleum and Natural Gas Production and Refining:	
Oil and Natural Gas Production	11/15/97
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units	11/15/97
Petroleum Refineries—Other Sources Not Distinctly Listed	11/15/94
Liquids Distribution:	
Gasoline Distribution (Stage 1)	11/15/94
Organic Liquids Distribution (Non-Gasoline)	11/15/00
Surface Coating Processes:	
Aerospace Industries	11/15/94
Auto and Light Duty Truck (Surface Coating)	11/15/97
Flat Wood Paneling (Surface Coating)	11/15/00
Large Appliance (Surface Coating)	11/15/00
Magnetic Tapes (Surface Coating)	11/15/94
Manufacture of Paints, Coatings, and Adhesives	11/15/00
Metal Can (Surface Coating)	11/15/00
Metal Coil (Surface Coating)	11/15/00
Metal Furniture (Surface Coating)	11/15/00
Miscellaneous Metal Parts and Products (Surface Coating)	11/15/00

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

	Schedule date
Paper and Other Webs (Surface Coating)	11/15/97
Plastic Parts and Products (Surface Coating)	11/15/00
Printing, Coating, and Dyeing of Fabrics	11/15/00
Printing/Publishing (Surface Coating)	11/15/94
Shipbuilding and Ship Repair (Surface Coating)	11/15/94
Wood Furniture (Surface Coating)	11/15/94
Waste Treatment and Disposal:	
Hazardous Waste Incineration	11/15/00
Municipal Landfills	11/15/97
Publicly Owned Treatment Works (POTW) Emissions	11/15/95
Sewage Sludge Incineration	11/15/97
Site Remediation	11/15/00
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)	11/15/94
Agricultural Chemicals Production:	
2,4-D Salts and Esters Production	11/15/00
4-Chloro-2-Methylphenoxyacetic Acid Production	11/15/00
4,6-Dinitro-o-Cresol Production	11/15/00
Captafol Production [d]	11/15/00
Captan Production [d]	11/15/00
Chloroneb Production	11/15/97
Chlorothalonil Production [d]	11/15/00
Dacthal (tm) Production [d]	11/15/00
Sodium Pentachlorophenate Production	11/15/00
Tordon (tm) Acid Production [d]	11/15/00
Fibers Production Processes:	
Acrylic Fibers/Modacrylic Fibers Production	11/15/97
Rayon Production	11/15/97
Spandex Production	11/15/00
Food and Agriculture Processes:	
Baker's Yeast Manufacturing	11/15/00
Cellulose Food Casing Manufacturing	11/15/00
Vegetable Oil Production	11/15/00
Pharmaceutical Production Processes:	
Pharmaceuticals Production [d]	11/15/97
Polymers and Resins Production:	
Acetal Resins Production	11/15/97
Acrylonitrile-Butadiene-Styrene Production	11/15/94
Alkyd Resins Production	11/15/00
Amino Resins Production	11/15/97
Boat Manufacturing	11/15/00
Butadiene-Furfural Cotrimer (R-11) [d]	11/15/00
Butyl Rubber Production	11/15/94
Carboxymethylcellulose Production	11/15/97
Cellophane Production	11/15/97
Cellulose Ethers Production	11/15/00
Epichlorohydrin Elastomers Production	11/15/94
Epoxy Resins Production	11/15/94
Ethylene-Propylene Rubber Production	11/15/94
Flexible Polyurethane Foam Production	11/15/97
Hypalon (tm) Production [d]	11/15/94
Maleic Anhydride Copolymers Production	11/15/00
Methylcellulose Production	11/15/00
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production [d]	11/15/94
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production [d]	11/15/94
Neoprene Production	11/15/94
Nitrile Butadiene Rubber Production	11/15/94
Non-Nylon Polyamides Production	11/15/94
Nylon 6 Production	11/15/97
Phenolic Resins Production	11/15/97

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

	Schedule date
Polybutadiene Rubber Production [d]	11/15/94
Polycarbonates Production [d]	11/15/97
Polyester Resins Production	11/15/97
Polyethylene Terephthalate Production	11/15/94
Polymerized Vinylidene Chloride Production	11/15/00
Polymethyl Methacrylate Resins Production	11/15/97
Polystyrene Production	11/15/94
Polysulfide Rubber Production [d]	11/15/94
Polyvinyl Acetate Emulsions Production	11/15/97
Polyvinyl Alcohol Production	11/15/97
Polyvinyl Butyral Production	11/15/97
Polyvinyl Chloride and Copolymers Production	11/15/00
Reinforced Plastic Composites Production	11/15/97
Styrene-Acrylonitrile Production	11/15/94
Styrene-Butadiene Rubber and Latex Production [d]	11/15/94
Production of Inorganic Chemicals:	
Ammonium Sulfate Production—Caprolactam By-Product Plants	11/15/00
Antimony Oxides Manufacturing	11/15/00
Chlorine Production [d]	11/15/97
Chromium Chemicals Manufacturing	11/15/97
Cyanuric Chloride Production	11/15/97
Fume Silica Production	11/15/00
Hydrochloric Acid Production	11/15/97
Hydrogen Cyanide Production	11/15/97
Hydrogen Fluoride Production	11/15/97
Phosphate Fertilizers Production	11/15/97
Phosphoric Acid Manufacturing	11/15/97
Quaternary Ammonium Compounds Production	11/15/00
Sodium Cyanide Production	11/15/97
Uranium Hexafluoride Production	11/15/00
Production of Organic Chemicals:	
Synthetic Organic Chemical Manufacturing	11/15/92
Miscellaneous Processes:	
Aerosol Can-Filling Facilities	11/15/97
Benzyltrimethylammonium Chloride Production	11/15/97
Butadiene Dimers Production	11/15/97
Carbonyl Sulfide Production	11/15/00
Chelating Agents Production	11/15/97
Chlorinated Paraffins Production [d]	11/15/00
Chromic Acid Anodizing	11/15/94
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/92
Commercial Sterilization Facilities	11/15/94
Decorative Chromium Electroplating	11/15/94
Dodecanedioic Acid Production [d]	11/15/00
Dry Cleaners (Petroleum Solvent)	11/15/00
Ethylidene Norbornene Production [d]	11/15/00
Explosives Production	11/15/00
Halogenated Solvent Cleaners	11/15/94
Hard Chromium Electroplating	11/15/94
Hydrazine Production	11/15/97
Industrial Cleaning (Perchloroethylene)—Dry-to-dry machines	11/15/92
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/92
Industrial Process Cooling Towers	11/15/94
OBPA/1,3-Diisocyanate Production [d]	11/15/00
Paint Stripper Users	11/15/00
Photographic Chemicals Production	11/15/97
Phthalate Plasticizers Production	11/15/00
Plywood/Particle Board Manufacturing	11/15/00
Polyether Polyols Production	11/15/97
Pulp and Paper Production	11/15/97
Rocket Engine Test Firing	11/15/00

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

	Schedule date
Rubber Chemicals Manufacturing	11/15/97
Semiconductor Manufacturing	11/15/97
Symmetrical Tetrachloropyridine Production [d]	11/15/00
Tire Production	11/15/00
Wood Treatment	11/15/97
Categories of Area Sources: [c]	
Asbestos Processing	11/15/94
Chromic Acid Anodizing	11/15/94
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/92
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines	11/15/92
Commercial Sterilization Facilities	11/15/94
Decorative Chromium Electroplating	11/15/94
Halogenated Solvent Cleaners	11/15/94
Hard Chromium Electroplating	11/15/94

[a] Only major sources within any category shall be subject to emission standards under Section 112 unless a finding is made of a threat of adverse effects to human health or the environment for the area sources in a category. All listed categories are exclusive of any specific operations or processes included under other categories that are listed separately.

[b] Sources defined as electric utility steam generating units under Section 112(a)(8) shall not be subject to emission standards pending the findings of the study required under Section 112(n)(1).

[c] A finding of threat of adverse effects to human health or the environment was made for each category of area sources listed above.

[d] The HON, which is scheduled for promulgation by November 15, 1992, includes a negotiated standard for equipment leaks from the SOCMI category and 20 non-SOCMI categories (or subsets of these categories). The notice of agreement on negotiated regulation for equipment leaks (56 FR 9315; March 6, 1991) would apply to equipment handling specific chemicals for these categories or subsets of these categories. The specific processes affected within the categories are listed in section XX.X0(c) of the March 6, 1991 notice.

Table 2. Categories of Sources of Hazardous Air Pollutants and Regulation Promulgation Schedule By Regulatory Deadlines

Source Categories with Emission Standards Due by November 15, 1992

Synthetic Organic Chemical Manufacturing
Commercial Drycleaning (Perchloroethylene)—Transfer Machines*
Commercial Drycleaning (Perchloroethylene)—Dry-To-Dry Machines*
Commercial Drycleaning (Perchloroethylene)—Transfer Machines
Industrial Drycleaning (Perchloroethylene)—Transfer Machines
Industrial Drycleaning (Perchloroethylene)—Dry-to-Dry Machines

Source Categories With Emission Standards Due by November 15, 1994

Acrylonitrile-Butadiene-Styrene Production
Aerospace Industries
Asbestos Processing*
Butyl Rubber Production
Chromic Acid Anodizing
Chromic Acid Anodizing*
Coke Ovens: Charging, Topside and Door Leaks (CAA Mandated Promulgation by December 31, 1992)
Commercial Sterilization Facilities
Commercial Sterilization Facilities*
Decorative Chromium Electroplating
Decorative Chromium Electroplating*
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Rubber Production
Gasoline Distribution—Stage 1
Halogenated Solvent Cleaners
Halogenated Solvent Cleaners*
Hard Chromium Electroplating
Hard Chromium Electroplating*
Hypalon (TM) Production
Industrial Process Cooling Towers
Magnetic Tapes (Surface Coating)
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Non-Nylon Polyamides Production
Petroleum Refineries—Other Sources Not Distinctly Listed
Polyethylene Terephthalate Production
Polybutadiene Rubber Production
Polysulfide Rubber Production
Polystyrene Production
Printing/Publishing (Surface Coating)
Secondary Lead Smelting
Shipbuilding and Ship Repair (Surface Coatings)
Solid Waste Treatment, Storage, and Disposal Facilities (TSDF)
Styrene-Acrylonitrile Production
Styrene-Butadiene Rubber and Latex Production
Wood Furniture (Surface Coating)

Source Categories With Emission Standards Due by November 15, 1997

Acetal Resins Production
Acrylic Fibers/Modacrylic Fibers Production
Aerosol Can-Filling Facilities
Amino Resins Production
Auto and Light Duty Truck (Surface Coating)
Benzyltrimethylammonium Chloride Production
Butadiene Dimers Production
Carboxymethylcellulose Production
Cellophane Production
Chelating Agents Production
Chloroneb Production
Chlorine Production
Chromium Chemicals Manufacturing
Chromium Refractories Production
Cyanuric Chloride Production
Ferroalloys Production
Flexible Polyurethane Foam Production
Hydrazine Production
Hydrochloric Acid Production
Hydrogen Cyanide Production
Hydrogen Fluoride Production
Integrated Iron and Steel Manufacturing
Iron Foundries
Mineral Wool Production
Municipal Landfills
Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation
Nylon 6 Production
Oil and Natural Gas Production
Paper and Other Webs (Surface Coating)

*Denotes area source category.

Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, and Sulfur Plants Units
Pharmaceuticals Production
Phenolic Resins Production
Phosphate Fertilizers Production
Phosphoric Acid Manufacturing
Photographic Chemicals Production
Polycarbonates Production
Polyester Resins Production
Polyether Polyols Production
Polymethyl Methacrylate Resins Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Portland Cement Manufacturing
Primary Aluminum Production
Primary Copper Smelting
Primary Lead Smelting
Publicly Owned Treatment Works (POTW) Emissions (CAA Mandated Promulgation by November 15, 1995)
Pulp and Paper Production
Rayon Production
Reinforced Plastic Composites Production
Rubber Chemicals Manufacturing
Secondary Aluminum Production
Semiconductor Manufacturing
Sewage Sludge Incineration
Sodium Cyanide Production
Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation
Stationary Internal Combustion Engines
Stationary Turbines
Steel Foundries
Steel Pickling—HCl Process
Wood Treatment
Wool Fiberglass Manufacturing

Source Categories With Emission Standards Due by November 15, 2000

2, 4-D Salts and Esters Production
4, 6-Dinitro-O-Cresol Production
4-Chloro-2-Methylphenoxyacetic Acid Production
Alkyd Resins Production
Alumina Processing
Ammonium Sulfate Production—Caprolactam By-Product Plants
Antimony Oxides Manufacturing
Asphalt Concrete Manufacturing
Asphalt Processing
Asphalt Roofing Manufacturing
Asphalt/Coal Tar Application—Metal Pipes
Bakers Yeast Manufacturing
Boat Manufacturing
Butadiene-Furfural Cotrimer (R-11)
Captafol Production
Captan Production
Carbonyl Sulfide Production
Cellulose Ethers Production
Cellulose Food Casing Manufacturing
Chlorinated Paraffins Production
Chlorothalonil Production
Clay Products Manufacturing
Coke By-Product Plants
Coke Ovens: Pushing, Quenching and Battery Stacks
Dacthal (TM) Production
Dodecanedioic Acid Production
Dry Cleaning (Petroleum Solvent)
Engine Test Facilities
Ethylidene Norbornene Production
Explosives Production
Flat Wood Paneling (Surface Coating)
Fume Silica Production
Hazardous Waste Incineration
Industrial Boilers
Institutional/Commercial Boilers
Large Appliance (Surface Coating)
Lead Acid Battery Manufacturing
Lime Manufacturing
Maleic Anhydride Copolymers Production
Manufacture of Paints, Coatings and Adhesives
Metal Can (Surface Coating)
Metal Coil (Surface Coating)
Metal Furniture (Surface Coating)
Methylcellulose Production
Miscellaneous Metal Parts and Products (Surface Coating)
OBPA/1,3-Diisocyanate Production
Organic Liquids Distribution (Non-Gasoline)
Paint Stripper Users
Phthalate Plasticizers Production
Plastic Parts and Products (Surface Coating)
Plywood/Particle Board Manufacturing
Polymerized Vinylidene Chloride Production
Polyvinyl Chloride and Copolymers Production
Primary Magnesium Refining
Printing, Coating and Dyeing of Fabrics
Process Heaters
Quaternary Ammonium Compounds Production
Rocket Engine Test Firing
Site Remediation
Sodium Pentachlorophenate Production
Spandex Production
Symmetrical Tetrachlorophyridine Production
Taconite Iron Ore Processing
Tire Production
Tordon (TM) Acid Production
Uranium Hexafluoride Production
Vegetable Oil Production

[FR Doc. 92-23254 Filed 9-23-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 392 and 395

[FHWA Docket No. MC-92-30]

RIN 2125-AD04

Hours of Service of Drivers; On-Duty Time

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extention of comment period.

SUMMARY: The FHWA announces its decision to extend the time it will accept comments to the docket from October 5, 1992, to November 4, 1992. This action will allow additional time for organizations and individuals to prepare comments concerning the notice of proposed rulemaking.

DATES: Comments must be received on or before November 4, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-92-30, Room 4232, HCC-10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington DC 20590. All answers to questions should refer to the appropriate question number and all comments addressing specific provisions should refer to the appropriate section and paragraph number. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped, postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Scapellato, Office of Motor Carrier Standards, (202) 366-2981, or Mrs. Allison M. Smith, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On August 19, 1992, the FHWA published a notice of proposed rulemaking (NPRM) which, if promulgated, would amend a portion of the Federal Motor Carrier Safety Regulations (FMCSRs) concerning hours of service of commercial motor vehicle drivers. See 57 FR 37504. The public was notified that the FHWA would accept comments until October 5, 1992.

Counsel for the Commercial Vehicle Safety Alliance (CVSA), an organization of State and local law enforcement officials, has requested that the FHWA extend the comment period until January 21, 1993. The CVSA stated that it cannot express a policy position until an issue is considered and the position approved by a majority of its members. The CVSA planned to submit the proposal for review at its annual meeting in mid-November. Following that meeting, written comments would be prepared and submitted to the organization's Executive Committee for approval.

The FHWA is mindful of the need for organizations like the CVSA to obtain a consensus from its membership so that the organization may respond as a whole. However, in this age of reliable electronic communications and overnight mail services, and the CVSA's excellent history of membership response, the FHWA believes that it would be reasonable to achieve a group consensus in a shorter period of time than the CVSA has requested. Individual members always have the option of providing comments to the docket representing their own organizations' viewpoints. The FHWA believes that extending the deadline for comments an additional 30 days will provide ample opportunity for the CVSA and other organizations or individuals to submit comments.

In addition, the FHWA referenced two ongoing studies in the NPRM. The FHWA has placed in the docket a collection of abstracts of research papers reviewed as part of one of the studies, "Literature Review and Critique of Past Research on Rest and Recovery Cycles of Commercial Motor Vehicle Drivers," conducted by Work Systems Research, Inc. By extending the comment period, interested parties will be given an opportunity to review these abstracts.

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102 and 3102; and 49 CFR 1.48.

Issued on: September 18, 1992.

T. D. Larson,

Administrator.

[FR Doc. 92-23236 Filed 9-23-92; 8:45 am]

BILLING CODE 4190-22-M

Notices

Federal Register
Vol. 57, No. 186
Thursday, September 24, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 18, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance officer USDA, OIRM, room 404–W Admin. Bldg. Washington, DC 20250 (202) 690–2118.

Extension

- Foreign Agricultural Service

FAS/Cooperator Market Development Program
Monthly; Annually
State or local governments; Non-profit institutions; 3,562 responses; 77,422 hours
Sharon L. McClure (202) 720–4327

- Agricultural Marketing Service

7 CFR Part 55—Regulations Governing the Voluntary Inspection of Egg Products and Grading
On occasion; Weekly; Daily
Business or other for-profit; Small businesses or organizations; 5,104 responses; 840 hours
C. Shields Jones, Jr. (202) 720–2153

Reinstatement

- Rural Electrification Administration

Prospective Large Power Service
REA Form 170
On occasion
Small businesses or organizations; 75 responses; 319 hours
Daphne L. Brown (202) 720–0736

Larry Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 92–23134 Filed 9–23–92; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Exemption of Queen Firaday Timber Salvage Project From Appeal

AGENCY: Forest Service, Northern Region USDA.

ACTION: Notification that a timber salvage project designed to recover windstorm damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In October 1991, 250 acres of timber in the Queen Mountain area were blown down during a severe windstorm. In 1992, the Bonners Ferry District Ranger proposed a salvage timber sale project to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Queen Firaday Timber Salvage Environmental Assessment (EA), that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid further deterioration of sawtimber and to reduce the risk of catastrophic wild fire and spruce bark beetle infestation that could damage adjacent timbers stands.

EFFECTIVE DATE: Effective on September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Debbie Henderson-Norton, District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forest, Route 4, Box 4860, Bonners Ferry, ID 83805.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 250 acres of timber in the Queen Mountain area. In July 1992, the Bonners Ferry District Ranger, Idaho Panhandle National Forest, proposed the salvage harvest of the trees blown down by the windstorms. The windthrown timber is located within lands designated as suitable for timber management and assigned to Management Area 1 (Idaho Panhandle Forest Plan, August 1987). This proposal was designed to meet the following needs, (a) reduce potential for spruce bark beetle infestations in adjacent healthy timber stands by implementing integrated pest management prescriptions, (b) reduce wildfire hazard by reducing fuel loading, (c) rehabilitate timber stands that are understocked through site preparation and planting, and (d) salvage merchantable timber products and contribute to a continuous supply of timber by recovering sawtimber before they deteriorate in value.

An interdisciplinary team was convened, and scoping began in 1992. Three environmental issues were identified and were the basis for the environmental analysis disclosed in the EA. The interdisciplinary team utilized information and analysis disclosed in the West Moyie Final Environmental Impact Statement and Record of Decision (June 14, 1991) as the basis for conducting their review. This information is incorporated by reference. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage 250 MBF of dead and damaged timber from approximately 250 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to minimize the risk of a spruce bark beetle epidemic, reduce the potential for catastrophic wild fire and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR part 217 are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest Systems lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good causes exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Queen Firaday Salvage Timber Sale EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: September 17, 1992.

John M. Hughes,

Deputy Regional Forester Northern Region.

[FR Doc. 92-23041 Filed 9-23-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Uproaring Timber Salvage Project From Appeal

AGENCY: Forest Service, Northern Region, USDA.

ACTION: Notification that a timber salvage project designed to recover windstorm damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In October 1991, isolated pockets of timber within a 600-acre area in the Hellroaring and Little Hellroaring drainages were blown down during a severe windstorm. In 1992, the Bonners Ferry District Ranger proposed a salvage timber sale project to recover sawtimber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Uproaring Timber Salvage Environmental Assessment (EA), that there is good cause to expedite these actions to rehabilitate National Forest System lands and to recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid further deterioration of sawtimber and reduce the risk of catastrophic wild fire and spruce bark beetle infestation that could damage adjacent timber stands.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Debbie Henderson-Norton, District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forest, Route 4, Box 4860, Bonners Ferry, ID 83805.

SUPPLEMENTARY INFORMATION: Severe windstorms in October of 1991 damaged approximately 600 acres of timber within the Hellroaring and Little Hellroaring drainages. In July 1992, the Bonners Ferry District Ranger, Idaho Panhandle National Forest, proposed the salvage harvest of trees blown down by the windstorm. The windthrown timber is within lands designated as suitable for timber production and assigned to Management Area 1 (Idaho Panhandle Forest Plan, August 1987). This proposal was designed to meet the following needs: (a) Reduce potential spruce bark beetle infestations in adjacent healthy timber stands by implementing integrated pest management prescriptions, (b) reduce wild fire hazard by reducing fuel loading, (c) rehabilitate timber stands that are understocked through site preparation and planting, and (d) salvage merchantable timber products and contribute to a continuous supply of timber by recovering sawtimber before they deteriorate in value.

An interdisciplinary team was convened, and scoping began in 1992. Three environmental issues were identified and were the basis for the environmental analysis disclosed in the EA. The interdisciplinary team utilized information and analysis disclosed in the West Moyie Final Environmental Impact Statement and Record of Decision (June 14, 1991) as the basis for conducting their review. This information is incorporated by reference. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage 500 MBF of dead and damaged timber from approximately 600 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The salvage project is designed to accomplish the objectives as quickly as possible to minimize the risk of a spruce bark beetle epidemic, to reduce potential for catastrophic wild fire and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR part 217 are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good causes exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Uproaring Timber Salvage EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: September 17, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-23052 Filed 9-23-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Blew Spruce Blowdown Timber Salvage Project From Appeal

AGENCY: Forest Service, Northern Region, USDA.

ACTION: Notification that a timber salvage project designed to recover windstorm damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: during 1991, severe windstorms blew down or damaged timber in a 700-acre area of the Spruce Creek drainage. In 1992, the Bonners Ferry District Ranger proposed a timber salvage project to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Blew Spruce Salvage Environmental Assessment (EA), that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid further deterioration of sawtimber and reduce the risk of catastrophic wild fire and spruce bark beetle infestation that could damage adjacent timber stands.

EFFECTIVE DATE: Effective on September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Debbie Henderson-Norton, District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forest, Route 4, Box 4860, Bonners Ferry, ID 83805

SUPPLEMENTARY INFORMATION: Severe windstorms in the spring and fall of 1991 damaged approximately 700 acres of timber within the Spruce Creek drainage. In July 1992, the Bonners Ferry District Ranger, Idaho Panhandle National Forest, proposed the salvage harvest of the trees blown down by the windstorms. The windthrown timber is located within lands designated as suitable for timber production as

assigned to Management Area 1 (Idaho Panhandle Forest Plan, August 1987). This proposal was designed to meet the following needs, (a) reduce potential spruce bark beetle infestations in adjacent healthy timber stands by implementing integrated pest management prescriptions, (b) reduce wild fire hazard by reducing fuel loading, (c) rehabilitate timber stands that are understocked through site preparation and planting, and (d) salvage merchantable timber products and contribute to a continuous supply of timber by recovering saw timber before they deteriorate in value.

An interdisciplinary team was convened, and scoping began in 1992. Three environmental issues were identified and were the basis for the environmental analysis disclosed in the EA. The interdisciplinary team utilized information and analysis disclosed in the East Moyie EA and Decision Notice (February 29, 1992) as the basis for conducting their review. This information is incorporated by reference. Two alternatives were analyzed; not treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage 700 MBF of dead and damaged timber from approximately 700 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The salvage project is designed to accomplish the objectives as quickly as possible to minimize the risk of a spruce bark beetle epidemic, to reduce potential for catastrophic wildfire, and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR part 217 are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good causes exist to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Blew Spruce Salvage Timber Sale EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: September 17, 1992.

John M. Hughes,

Deputy Regional Forester Northern Region.

[FR Doc. 92-23053 Filed 9-23-92; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Second Broad River Watershed North Carolina

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Second Broad River Watershed, McDowell, Rutherford, and Cleveland Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Coy A. Garrett, State Conservationist, Soil Conservation Service, 4405 Bland Road, suite 205, Raleigh, North Carolina 27609, telephone 919/790-2888.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control. The planned works of improvement include a single-purpose flood control structure, originally planned as a multiple-purpose (recreation and flood control) structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Coy A. Garrett, State Conservationist, 4405 Bland Road, Raleigh, North Carolina 27609.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication of the **Federal Register**.

Dated: September 14, 1992.

Coy A. Garrett,

State Conservationist.

[FR Doc. 92-23208 Filed 9-23-92; 8:45 am]

BILLING CODE 3410-16-M

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Appalachian States Low-Level Radioactive Waste Commission; Meeting

AGENCY: Appalachian States Low-Level Radioactive Waste Commission.

ACTION: Open meeting.

SUMMARY: The Appalachian States Low-Level Radioactive Waste Commission will hold a meeting on November 6, 1992. The meeting is open to the public.

DATES: November 6, 1992, 9 a.m.-1 p.m.

ADDRESSES: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Marc S. Tenan, Executive Director, 207 State Street, Harrisburg, PA 17101, 717-234-6295.

SUPPLEMENTARY INFORMATION: The Appalachian States Low-Level Radioactive Waste Commission (Commission) was established by the Appalachian States Low-Level Radioactive Waste Compact Consent Act (Pub. L. 100-319, May 19, 1988). The Commission represents the states of Delaware, Maryland and West Virginia, and the Commonwealth of Pennsylvania to assist in the establishment of a regional low-level radioactive waste disposal facility as required by the Low-Level Radioactive Waste Policy Amendments Act (Pub. L. 99-240, January 15, 1986).

The primary purpose of this meeting is to consider a contract with the Southeast Compact Commission to continue access for low-level radioactive waste (LLRW) generators in Delaware, Maryland, Pennsylvania and West Virginia to the LLRW disposal facility in Barnwell, South Carolina. Other issues to be discussed include whether to assist in the development of an inter-regional agreement to ensure access to LLRW processors outside the Appalachian States region, and to decide whether the Commission should

hire a financial consultant to advise on the investment of Commission funds.

Marc S. Tenan,

Executive Director.

[FR Doc. 92-23202 Filed 9-23-92; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Frederick Components International Ltd.; Modification of Order Denying Permission To Apply For or Use Export Licenses

In the Matter of: Frederic Components International Ltd. 22020 Clarendon Street Woodland Hills, California 91367.

By an Order entered against Frederick Components International, Ltd. (hereinafter referred to as Frederick Components) on May 20, 1992 and published on May 29, 1992 in the **Federal Register** (57 FR 22709),[1] Frederick Components was denied all U.S. export privileges until July 23, 2001, as more particularly described therein. In that Order, the address for Frederick Components was given as: 20806 Plummer Street, Chatsworth, California 91311.

The purpose of this modification is to note that Frederick Components has relocated, and its current address is:

22020 Clarendon Street
Woodland Hills, California 91367

In all other respects, the Order of May 20, 1992 remains in full force and effect until July 23, 2001.

A copy of this Order shall be delivered to Frederick Components. This Order shall be published in the **Federal Register**

Dated: September 15, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92-23121 Filed 9-23-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-412-809]

Preliminary Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

[1] The caption of the Order was corrected by an Order dated July 9, 1992 and published on July 22, 1992 in the **Federal Register**, (57 FR 32520).

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1776.

PRELIMINARY DETERMINATION: We preliminarily determine that sulfur dyes, including sulfur vat dyes, from the United Kingdom are being, or likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act): The estimated margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist.

Case History

Since the notice of initiation on April 30, 1992 (57 FR 19600, May 7, 1992); the following events have occurred.

On May 26, 1992, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On June 1, 1992 the Department presented its questionnaire to James Robinson Limited (JR), which accounted for at least 60 percent of sales to the United States during the period of investigation (POI), in accordance with 19 CFR 353.42(b).

JR submitted a response to section A of the questionnaire on June 15, 1992, and a response to sections B and C of the questionnaire on July 20, 1992. On August 5 and 28, we issued supplemental questionnaires to JR. We received the responses to these questionnaires on August 19 and September 3, 1992.

On August 31, 1992, JR requested that the Department determine that there are two classes or kinds of merchandise under investigation, solubilized sulfur dyes and conventional sulfur dyes. JR further requested that the Department rescind the investigation with respect to solubilized sulfur dyes, because petitioner has not made a less-than-fair-value allegation regarding this category of merchandise, or, at a minimum, calculate a separate deposit rate for each category. Due to the late date on which these requests were received, however, we were unable to adequately consider them for our preliminary determination. However, we will make a determination on these matters by the time of the final determination.

Scope of Investigation

The merchandise subject to this investigation is sulfur dyes, including sulfur vat dyes. Sulfur dyes are synthetic, organic, coloring matter containing sulfur. Sulfur dyes are obtained by high temperature sulfurization of organic material containing hydroxy, nitro or amino groups, or by reaction of sulfur and/or alkaline sulfide with aromatic hydrocarbons. For purposes of this investigation, sulfur dyes include, but are not limited to, sulfur vat dyes with the following color index numbers: Vat Blue 42, 43, 44, 45, 46, 47, 49, and 50 and Reduced Vat Blue 42 and 43. Sulfur vat dyes also have the properties described above. All forms of sulfur dyes are covered, including the reduced (leuco) or oxidized state, presscake, paste, powder, concentrate, or so-called "pre-reduced, liquid ready-to-dye" forms. The sulfur dyes subject to this investigation of classifiable under subheadings 3204.15.10, 3204,15,20, 3204.15.30, 3204.15.35, 3204.15.40, 3204.15.50, 3204.19.30, 3204.19.40 and 3204.19.50 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS subheadings are provided for convenience and customs purposes our written description of the scope of this proceeding is dispositive.

Period of Investigation

The POI is November 1, 1991, through April 30, 1992.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) Category (*i.e.*, conventional or vat); (2) color; (3) color index number; (4) type; (5) form; and (6) strength. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of sulfur dyes, including sulfur vat dyes, from the United Kingdom to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the

Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

We reclassified certain sales to a UK-based trading company, reported in the home market sales listing, as U.S. sales because JR had knowledge that the ultimate destination of the merchandise was the United States.

We calculated purchase price based on packed prices to unrelated customers. We made deductions, where appropriate, for foreign inland freight and air freight to the customer's destination. We also made deductions, where appropriate, for rebates.

In accordance with section 772(d)(1)(C) of the Act, we added to the USP the amount of value-added tax (VAT) that would have been collected if the merchandise had not been exported. Regarding the reclassified sales, JR claimed that it did not receive a rebate of the VAT amounts actually collected on those sales. Accordingly, we made no adjustment for VAT in those instances because we determined that no adjustment was called for under section 772(d)(1)(C) of the Act.

Finally, in accordance with section 772(d)(1)(B) of the Act, JR claimed an adjustment to USP for the amount of U.K. customs duty not collected on imports of dinitrochlorobenzene (DNCB), a material used to make sulfur dyes, by reason of exportation of the finished product. However, we find that no duty on imports of DNCB was actually paid, whether used for merchandise sold in the home market or for export. Accordingly, there was no actual liability for the duty. Thus, this was not a duty which was rebated or not collected by reason of exportation, and, accordingly, it does not qualify as an adjustment under section 772(d)(1)(B) of the Act.

Foreign Market Value

In order to determine whether there were sufficient sales of sulfur dyes, including sulfur vat dyes, in the home market to serve as viable basis for calculating FMV, we compared the volume of home market sales of sulfur dyes, including sulfur vat dyes, to the volume of third country sales of the same products, in accordance with section 773(a)(1)(B) of the Act. JR had a viable home market with respect to sales of sulfur dyes, including sulfur vat dyes, during the POI.

In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible.

We calculated FMV based on packed prices charged to unrelated customers in the home market. We made deductions, where appropriate, for inland freight. We deducted home market packaging costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and credit insurance expenses. We recalculated home market credit expense for those sales for which payment had not been received as of the filing of the August 19 deficiency response using the short-term interest rate reported by JR.

In addition to imputed credit expense on the sale, JR reported an imputed credit expense related to the prepayment of VAT in the United Kingdom. We disallowed an adjustment for this expense because it is not the Department's practice to analyze each opportunity cost involved in maintaining receivables and payables in the ordinary course of a company's business. We also made a circumstance-of-sale adjustment for differences in the amount of VAT, where appropriate. Further, we made an adjustment for physical differences in the merchandise, where appropriate, in accordance with 19 CFR 353.57.

Finally, before submitting its questionnaire response, JR requested that it be allowed to provide abbreviated sales data for home market products which it claimed were too dissimilar to be matched to U.S. sales. Based on this claim, we instructed JR to report only the total quantity and average price of each home market product which would not be matched, as well as the product characteristics coding for each of these products. We requested the product characteristics coding in order to ensure that JR and correctly reported its matches as well as its home market sales of similar merchandise.

After receiving this information, we found that JR had incompletely reported both its product matches and its home market sales. Specifically, we found that for five of the products sold in the U.S. market, there were several home market products which were equally similar with respect to the criteria set forth in Appendix V of the questionnaire; JR had matched in its concordance only one of these home market products to each of the U.S. products in question and had reported only the sales of the products in its concordance in its home market sales listing.

JR submitted a revised product concordance and home market sales listing in September 3, 1992. However, we determined that this information was received too late to use in this preliminary determination. Accordingly, we have used best information available (BIA) to determine the FMV for these home market sales. As BIA, we used the average price reported for each of these products in question, reduced by the lowest amount of each charge or adjustment reported in the home market sales listing. We determined that this amount would represent the minimum amount of selling expenses that JR would have incurred on these sales. Also as BIA, we added to FMV the highest difference in merchandise adjustment for any of the sales reported.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of sulfur dyes, including sulfur vat dyes, from the United Kingdom. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

We normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise, or margins of 25 percent or more sufficient to impute knowledge of dumping under section 733(e)(1)(A) of the Act. Since there are no outstanding antidumping orders on sulfur dyes, including sulfur vat dyes, from the United Kingdom, and the preliminarily-determined dumping margin for JR and all other exporters is less than 25 percent, we cannot impute knowledge under section 733(e)(1)(A) of the Act. Since the criteria necessary to

find the existence of critical circumstances under section 733(e)(1)(A) are not present, we do not need to determine whether imports of subject merchandise have been massive over a relatively short period.

Therefore, in accordance with section 733(e)(1)(A) of the Act, we preliminarily determine that critical circumstances do not exist with respect to imports of sulfur dyes, including sulfur vat dyes, from the United Kingdom.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of sulfur dyes, including sulfur vat dyes, from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
James Robinson Limited	19.93
All others	19.93

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than October 26, 1992, and rebuttal briefs no later than November 2, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 6, 1992, at 9:30 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: September 17, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-23249 Filed 9-23-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-818]

Preliminary Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Stefanie Amadeo, Office of Antidumping Investigations, Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1174.

SUPPLEMENTARY INFORMATION: We preliminarily determine that sulfur dyes, including sulfur vat dyes, from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff ACt of 1930, as amended (the Act). The estimated martins are shown in the "Suspension of Liquidation" section of this notice. We have also determined that critical circumstances exist.

Case History

Since the notice of initiation on April 30, 1992 (57 FR 19600, May 7, 1992), the following events have occurred.

On May 22, 1992, we sent letters to the PRC government requesting a list of all known exporters of the subject merchandise.

On May 22, 1992, we sent a letter to the PRC embassy and petitioner requesting that they address the issues of: (1) Whether we should continue to treat the PRC as a non-market economy country (NME), or (2) whether available information would permit the Department to determine foreign market value (FMV) under section 773(a) of the Act.

On May 26, 1992, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On June 23, 1992, the Department presented its questionnaire to the Ministry of Foreign Economic Relations & Trade, in the PRC who, as a responsible representative of the PRC government, was deemed the proper recipient of the questionnaire. The Government of the PRC has not responded to this questionnaire.

On July 2, 1992, Kwong Fat Hong Chemicals, Ltd., (KFC), a Hong Kong company, requested a questionnaire in the above-referenced investigation. On July 7, 1992, Sinochem Shandong Import and Export Corp. (Shandong) and Sinochem International Chemicals Company, Ltd. (SICC), also requested copies of the Department's June 23, 1992, questionnaire and requested an extension for the submission of questionnaire responses. All three companies stated that they qualified for separate antidumping duty margins. Based on these requests, we specified that each company would be considered as an independent respondent only if it could demonstrate that it qualified for separate rates in the test enunciated in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"). Moreover, we stated that we would consider these three companies as voluntary respondents because the Government of the PRC was the primary respondent to our June 23, 1992, questionnaire. We further stated that as voluntary respondents, we would only consider the responses of the three companies to the extent possible.

On July 8, 1992, the Department extended the due date for KFC's response to August 10, 1992, and for Shandong and SICC to August 17, 1992.

KFC submitted a response to Sections A, B, C, and D, and Attachments I and II of the Department's questionnaire on August 11, 1992. KFC resubmitted a revised Section D and Attachment II of the Department's questionnaire on August 12, 1992. On August 13, 1992, KFC submitted a revised narrative portion to Section A of its August 11, 1992, response. Shandong and SICC

of respondents' assertions, specifically, suppliers' business licenses, pricing information on the factor inputs, documentation on the government's role regarding labor, documentation on the newly-instated export licenses, and information from the PRC government.

As noted above, we continue to find that the PRC is an NME. Therefore, the presumption remains that the inputs used by the sulfur dye producers which are sources in the PRC are not purchased at market prices. A respondent asserting that it purchase inputs at market-oriented prices must provide significant documentary evidence and also show that market prices are at work to overcome this presumption. An absence of government control alone is not sufficient to warrant a conclusion that prices for inputs are market-driven. We must also conclude by application of the criteria outlined above that market forces are at work in determining the prices of these inputs within the PRC. Therefore, respondents' assertions, without sufficient documentary support, are not enough to establish market behavior with respect to input prices.

We do not have any information from the PRC government which would assist us in determining whether or not there is a lack of state control or a presence of market forces with respect to the factories' input costs and their respective supplier prices. We have requested information from the PRC government to determine whether there is any government control in the chemical sector, sulfur dyes industry, or in inputs used to produce sulfur dyes. The information submitted by the PRC government and respondents will be subject to verification, all of which will be taken into account in making our final decision on the PRC input prices issue.

Therefore, in accordance with section 773(c) of the Act, the Department is required to determine FMV on the basis of factors of production utilized in producing the merchandise, as valued in a surrogate country for all companies in the PRC.

Section 773(c) of the act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the NME and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the most comparable to the PRC in terms of overall economic development, based on per capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP. (See memorandum from the Office of Policy to David L. Binder, dated August 6, 1992.) Because India fulfills both requirements outlined in the statute, India is the preferred surrogate country for purposes of calculating the factors of production used in producing the subject merchandise. We have resorted to Pakistan for surrogate values only if Indian values were not obtainable.

We have used the values for the factors of production, as appropriate, from both countries. We valued the factors of production in accordance with the a hierarchy for preferred input values set forth in the notice of *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China*, 57 FR 21058 (May 18, 1992). We first used Indian published material before resorting to unclassified information contained in U.S. government cables or to petitioner's cost information.

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for respondents. The factors used to produce sulfur dyes include materials, labor, and energy.

To value dinitrocholrobenzene, sodium sulphide, and sulfur, we used published, publicly available information from the Monthly Statistics of the Foreign Trade of India (March 1988). To value sodium hydroxide, we used the average undelivered price obtained from the U.S. consulate in Pakistan, because there were no published material prices for sodium hydroxide and the U.S. embassy in India could not obtain values for this input. We adjusted the factor values to the POI using wholesale price indices published by the International Monetary Fund.

To value labor rates, we used unskilled and skilled labor rates, including benefits, obtained from the U.S. embassy in India. Since we have no indication of the size of the factories in the PRC, we used the unskilled labor rate provided by the U.S. embassy in India that was applicable for a medium size plant operation. We adjusted the unskilled wage rate to account for the number of hours in an Indian work week based on information contained in the published source, Country Reports on Human Rights Practices for 1990, which was submitted to the U.S. Senate Committee on Foreign Relations in February 1991.

To value coal, we used the published source, Monthly Statistics of the Foreign Trade of India (September 1990), and a 1990 Indian coal price as published in the Organization of Economic Cooperations and Development International Energy Agency Statistics (OECD IEA Statistics). We calculated an average undelivered f.o.b. coal price based on the values derived from these two sources. We adjusted the value for the POI by using wholesale price indices published by the International Monetary Fund.

To value electricity, we used the publicly available Indian electricity rate for 1985, published in the OECD IEA Statistics, and adjusted the value for the POI by using wholesale price indices published by the International Monetary Fund.

To value water, we used the water rates obtained from the public December 1989 cable from the U.S. embassy in India, for a producer of comparable merchandise, because there were not published material prices for this material. We adjusted the factor values to the POI using wholesale price indices published by the International Monetary Fund.

We used an average percentage for factory overhead, based on Indian producers' experience, which we obtained from the U.S. embassy in India. Pursuant to section 773(e)(1)(B), we then added an amount higher than the statutory ten percent minimum for selling, general and administrative expenses, and an amount higher than the statutory eight percent minimum for profit, based on Indian chemical producers' experience, which was obtained from the U.S. embassy in India. We also added, where appropriate, an amount for packing labor based on the appropriate Indian skilled and unskilled wage rates, and an amount for packing materials based on Indian prices obtained from the public record of the concurrent investigation of sulfur dyes, including sulfur vat dyes, from India, in order to arrive at a constructed FMV for one metric ton of sulfur dye. We made no adjustments for selling expenses. (For a complete analysis of surrogate values, *see* our *Concurrence Memorandum* dated September 17, 1992.)

For KFC, in accordance with 19 CFR 353.47, concerning exports from an intermediate country, we calculated FMV based on sales in the intermediate country rather than sales in the PRC. We have preliminarily determined that KFC meets the provisions of 19 CFR 353.47 since (1) KFC is a Hong Kong reseller of the subject merchandise; (2) the producer in the PRC who supplied KFC was unaware of the countries to which KFC intended to resell the merchandise; (3) the merchandise entered the commerce of the

intermediate country but was not substantially transformed in that country; and (4) the subject merchandise was subsequently exported to the United States.

In order to determine whether there were sufficient sales of the sulfur dyes, including sulfur vat dyes, in Hong Kong to serve as a basis for calculating FMV, we compared the volume of home market sales of the such or similar category to the aggregate volume of third country sales, in accordance with section 773(a)(1)(B) of the Act. Since the volume of home market sales was greater than five percent of the aggregate volume of third country sales, we determined that home market sales constitute a viable basis for calculating FMV in accordance with 19 CFR 353.48.

In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible.

We calculated FMW based on packed f.o.b. prices charged to unrelated customers in Hong Kong. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. Because KFC did not report any packing cost information, as BIA we used the packing materials cost calculated for Shandong and SICC. For packing labor cost, we used an average of SICC's and Shandong's skilled and unskilled packing labor hours from the August 18, 1992, public versions of SICC's and Shandong's questionnaire responses. Since no credit expenses were reported, we imputed credit for both home market and U.S. sales, using an average POI short term borrowings rate obtained from the New York office of the Hong Kong & Shanghai Bank. Because all comparisons involved purchase price sales, we made a circumstance of sale adjustment, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.56.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of sulfur dyes, including sulfur vat dyes, from the United Kingdom. Section 773(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have know that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In determining history or importer knowledge of dumping, we normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise, or margins of 25 percent or more as sufficient to impute knowledge of dumping under section 773(e)(1)(A) of the Act. See, *e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China*, 56 FR 241 (January 3, 1991.)

Pursuant to 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. If imports during the period immediately following the petition increase by at least 15 percent over imports during a comparable period immediately preceding the filing of a petition, we consider them massive.

All three of the respondents failed to provide company-specific information on their exports, as requested in the Department's questionnaire. Consequently, as BIA, we determine that imports have been massive over a relatively short period of time.

For SICC and Shandong, because the dumping margins exceed 25 percent, we determine that importer knowledge of dumping exists for sulfur dyes, including sulfur vat dyes, from the PRC. Because imports have been massive, in accordance with section 773(e) of the Act, we find that critical circumstances exist with respect to exports of sulfur dyes, including sulfur vat dyes, by SICC and Shandong.

However, as regards KFC, since there are no outstanding dumping orders on sulfur dyes, including sulfur vat dyes, from the PRC, and the preliminary-determined dumping margin for KFC is less than 25 percent, we cannot impute knowledge under section 773(e)(1)(A) of the Act for KFC. Therefore, in accordance with section 773(e)(1)(A) of the Act, we preliminarily determine that, for KFC, critical circumstances do not exist with respect to import of the subject merchandise from the PRC.

With respect to firms covered by the "All Other" rate, because the dumping margin is sufficient to impute knowledge of dumping, and because we have determined that imports of sulfur dyes, including sulfur vat dyes, have been massive over a relatively short time, we determine that critical circumstances also exist for those firms.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of sulfur dyes, including sulfur vat dyes, exported from the PRC by SICC, Shandong, and all other producers/manufacturers/exporters, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**.

In accordance with section 733(d)(1) of the Act, for KFC, we are directing the Customs Service to suspend liquidation of entries of sulfur dyes, including sulfur vat dyes, exported from the PRC by KFC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Sinochem Shandong Import and Export Corp./Tianjin Bohai Chemical Dyes Factory	100.91
Sinochem International Chemicals Company, Ltd./Handan Chemical Dyes Factory	210.35
Kwong Fat Hong Chemicals, Ltd./ Wuhan Dyes Factory	4.92
All Others	210.35

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120

days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 16, 1992, and rebuttal briefs no later than November 23, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 25, 1992, at 1 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the Federal Register. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: September 17, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-23250 Filed 9-23-92; 8:45 am]

BILLING CODE 3510-DS-M

National Telecommunications and Information Administration

Radio Frequencies in the United States, Requirements; Comments

AGENCY: National Telecommunications and Information Administration, DOC.

ACTION: Notice of extension of deadline for comments and reply comments.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issued a Notice of Inquiry (NTIA Docket No. 920532-2132, Current and Future Requirements for the Use of Radio Frequencies in the United States, Federal Register, June 12, 1992, page 25010-25022) requesting comments regarding current and future national radio spectrum requirements. The Department of Defense and the Department of Energy had requested an extension of time in which to reply to the Notice. The NTIA Office of Spectrum Management has therefore granted an extension of the time for comments and reply comments. The deadline for comments has been extended to November 6, 1992, and the deadline for reply comments has been extended to January 8, 1993.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to W. Russell Slye, Program Manager, Strategic Spectrum Planning, National Telecommunications and Information Administration, room 4099A, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone 202-377-1850 (202-482-1850 after September 25).

Dated: September 21, 1992.

Richard D. Parlow,

Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration.

[FR Doc. 92-23246 Filed 9-23-92; 8:45 am]

BILLING CODE 3510-60-M

COUNCIL ON ENVIRONMENTAL QUALITY

Federal Interagency Committee on Noise (FICON); Report and Recommendations

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Notice of availability of FICON report and recommendations.

SUMMARY: At the direction of the Environmental Protection Agency and the Federal Aviation Administration, the FICON was formed in December 1990 with a basic charter to review specific elements of the assessment of airport noise impacts contained in documents prepared pursuant to the National Environmental Policy Act (NEPA); to review the relationship of Federal Aviation Regulation Part 150 to NEPA; and to make recommendations regarding potential improvements. The FICON is composed of representatives of Departments of Transportation (Office of the Secretary and the Federal Aviation Administration), Defense, Justice, Veterans Affairs, Housing and Urban Development; the Environmental Protection Agency; and the Council on Environmental Quality. The FICON has completed its charter and has issued its report, which contains technical findings and conclusions, and policy recommendations. This notice of the availability of the FICON Report is being published separately by all FICON member agencies.

FOR FURTHER INFORMATION CONTACT: Lucinda Low Swartz, Deputy General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Telephone (202) 395-5754.

SUPPLEMENTARY INFORMATION:

Availability of FICON Report

Any person may obtain a copy of the FICON Report by submitting a written request to: Spectrum Sciences and Software, Inc., Attn: Mr. Larry McGlothlin (Code DoD), 242 Vicki Leigh Road, Fort Walton Beach, Florida 32548-1314. Telephone: (904) 862-3330/3232.

Background

The FICON was formed to review federal policies which are used in the assessment of airport noise impacts. The FICON review focused primarily on:

- the manner in which noise impacts are determined, including whether aircraft noise impacts are fundamentally different from other transportation noise impacts;
- The manner in which noise impacts are described;
- The extent of impacts outside of Day-Night Average A-Weighted Sound Level (DNL) 65 decibels (dB) that should be reviewed in a National Environmental Policy Act (NEPA) document;
- The range of FAA-controlled mitigation options (e.g., noise abatement and flight track procedures) analyzed; and
- The relationship of the Federal Aviation Regulation (FAR) part 150 process to the NEPA process, including ramifications to the NEPA process if they are separate, and exploration of the means by which the two processes can be handled to maximize benefits.

The FICON was organized into three subgroups to appropriately focus on the technical, legal and policy issues associated with the assessment of airport noise impacts. The Technical Subgroup was tasked to review the body of science associated with methodologies and metrics for assessing airport noise impacts which have evolved since the 1980 meetings of the Federal Interagency Committee on Urban Noise (FICUN). The Policy Subgroup was tasked to review federal policies which are used in the assessment of airport noise impacts. The Legal Subgroup reviewed the legal aspects of current and proposed federal policies for assessing airport noise impacts. The Technical Subgroup's products were used as a basis for the

policy findings, conclusions and recommendations in the Report.

FICON Report Conclusions

General

- There are no new descriptors or metrics of sufficient scientific standing to substitute for the present DNL cumulative noise exposure metric.
- The methodology employing DNL as the noise exposure metric and appropriate dose-relationships (primarily the Schultz curve for Percent Highly Annoyed) to determine noise impact on populations is considered the proper one for civil and military aviation scenarios in the general vicinity of airports.
- Federal agencies generally conduct noise assessments at DNL levels of 65 dB. For a variety of reasons, noise predictions and interpretations are frequently less reliable below DNL 65 dB. DNL prediction models tend to degrade in accuracy at large distances from the airport. Therefore, predictions of noise exposure and impact below DNL 65 dB should take the possibility of such inaccuracy into account.
- DNL is sometimes supplemented by other metrics on a case-by-case basis.
- Noise analysis should address impacts in the following areas: (1) Health and welfare, (2) environmental degradation/impact, and (3) land use planning.
- Complaints are an inadequate indicator of the full extent of noise effects on a population.

Health and Welfare

- The dose-effect relationship, as represented by DNL and "Percent Highly Annoyed" (%HA), remains the best available approach for analyzing overall health and welfare impacts for the vast majority of transportation noise analysis situations.
- the 10 dB nighttime penalty levied against noise during 10 p.m. to 7 a.m. period is specifically designed to account for the intrusiveness of noise during this period, and its potential impact on sleep. There are no new hard data which would justify a change in this penalty.
- If supplemental analysis for sleep disturbance is desired, use may be made of an interim dose-response model developed by the AF Armstrong Laboratories. Although this relationship is described in terms of Sound Exposure Level (SEL), single event metrics are of limited use in predicting and interpreting cumulative noise exposure impacts.
- Annoyance is a summary measure of the general adverse reaction of people to living in noisy environments that cause speech interference and disturbance, and interfere with the desire for a tranquil environment and the ability to use the telephone, radio or television satisfactorily.
- No definitive evidence of nonauditory health effects from aircraft noise exists, particularly below DNL 70 dB.
- For supplemental Analysis Long-Term Equivalent Sound Level or Time Above may be used for analysis of school and communications requirements indoors during specific hours.
- Public health and welfare effects below DNL 60 dB have not been established, but are assumed to decrease according to the decrease in percent of people highly annoyed.

Environmental Degradation/Impact

- Under NEPA, environmental degradation might have to be assessed around airports even if there is no clear effect on public health and welfare. Other criteria might be appropriate.
- A 3 dB increase in the DNL environment represents a doubling of sound energy, and clearly is an indicator of the need for further analysis, although smaller increases may indicate similar need. In other words, the impact of a given incremental amount of change in noise levels depends, in part, upon the existing level of the noise environment.
- Recent technology and software advances in geographic information systems, noise methodology and Census data present an enhanced potential for detailed analysis of sound impacts on population and noise-sensitive areas. These technologies should be considered for use to determine noise impacts of present and proposed actions.

Land Use Planning

- DNL represents the accepted noise metric for input to compatible land use planning.
- For cumulative speech interference, Table 3–2 "Effects of Noise on People" contained in FICON Volume II: Technical Report, provides a rough approximation of both outdoor and indoor predicted speech interference parameters for various levels of noise exposure as measure in DNL for residential land use only.
- There is a need for selective updating (including Standard Land Use Coding Manual (SLUCM) updating) and enhanced public understanding of the land-use compatibility guidelines, its application and interpretation through incentives and other programs.

Education of the Public

Education of the public should concentrate on the following frequently misunderstood issues:

- Environmental noise exposure is measured and described most generally by Day-Night Average A-Weighed Sound Level (DNL). DNL should be defined clearly and its significance and use explained clearly.
- Relation of DNL to Percent Highly Annoyed describes long-term community response to the overall sound environment (indices of health and welfare effects).
- Although the A-Weighed Maximum Sound Level for a single fly-over is easily understood, it is useful only for analyzing short-term responses.
- Every change in the noise environment does not necessarily impact public health and welfare.
- Aircraft noise predictions below DNL 65 dB can be less accurate and should be interpreted with caution.

FICON Report Recommendations

- Continue use of the DNL metric as the principal means for describing long-term noise exposure to civil and military aircraft operations.
- Continue agency discretion in the use of supplemental noise analysis.
- Improve public understanding of the DNL, supplemental methodologies and aircraft noise impacts.
- If screening analysis shows that noise sensitive areas that will be at or above DNL 65 dB would have an increase of DNL 1.5 dB or more, further analysis should be conducted of noise sensitive areas between DNL 60–65 dB having an increase of DNL 3 dB or more due to the proposed airport noise exposure.
- If the DNL 65 dB screening test calls for further analysis between DNL 60-65 dB, agency mitigation options should include noise sensitive areas between DNL 60–65 dB that are projected to have an increase of 3 dB or more as a result of the proposed airport noise exposure.
- If an FAA Far part 150 program is included by the FAA as a NEPA mitigation measure, the FAA and the airport operator are responsible for ensuring that the commitment is carried out and the Part 150 study scope conforms to the NEPA scope of analysis.
- Increase research on methodology development and on the impact of aircraft noise. To foster this, a standing federal interagency committee should be established to assist agencies in providing adequate forums for discussions of public and private sector proposals identifying needed research

and in encouraging the conduct of research in these areas. The following initial research issues are recommended:

- Evaluate potential modifications to the 1980 FICUN land use compatibility table to improve its usefulness for both routine land use planning and planning for noise-sensitive land uses.
- Continue research into community reaction to aircraft noise, including sleep disturbance, speech interference, and non-auditory health effects of noise.
- Investigate differences in perceptions of aircraft noise, ground transportation noise (highways and railroads), and general background noise.
- Continue and expand research on the airport noise impacts of rotary-wing operations.

It is the FICON's belief that these recommendations will provide both immediate and long-term improvements in airport noise analysis. Federal interagency encouragement of a continuing review of airport noise analysis will provide a forum to address related public concerns.

While the FICON is seeking to achieve improved uniformity among federal agencies in airport noise analysis, it must also recognize that agencies have differing legislative mandates and operating environments. These recommendations should be viewed as general guidance. Each federal agency must determine how it can best use this guidance, supplementing it as appropriate to meet agency needs, within the framework of the NEPA requirements. The FICON Report neither addresses the adequacy of compliance with NEPA to date by the participating agencies, attempts to redefine thresholds of significance of impact under NEPA, nor modifies the NEPA regulations or procedures of those agencies.

Public Review and Comment

Any person may express his or her views on the FICON Report by submitting written comments to the Federal Aviation Administration, Office of Environment and Energy, AEE-300, 800 Independence Avenue, Washington, DC 20591. Since the primary impact of the report's recommendations will be on the assessment of civil airport noise impacts for which the FAA is responsible, the FAA is serving as the focal point for the receipt of public comments. Copies of such written responses will be provided to all agencies participating in FICON.

CEQ believes that the recommendation in the FICON report are sound and should be carefully considered by the agencies with substantive jurisdiction over noise issues. CEQ will work with those agencies to ensure that these recommendations are adopted and that noise issues are appropriately analyzed in compliance with NEPA.

Dated: September 17, 1992.

David B. Struhs,

Chief of Staff.

[FR Doc. 92-23095 Filed 9-23-92; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement (DFARS), Part 245, Government Property; DD Forms 1149, 1149C, 1342, 1419, 1637, 1639, 1640, and 1662; OMB Control Number 0704-0246.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 1.11 hours.

Responses Per Respondent: 4.68.

Number of Respondents: 17,396.

Annual Responses: 81,432.

Annual Burden Hours: 90,685.

Needs and Uses: DFARS Part 245 prescribes policies and procedures for providing government property to contractors, contractors' use and management of government property and reporting, and redistributing and disposing of contractor inventory. The information generated by the requirements of DFARS part 245 is used by contractors, property administrators, and contracting officers to maintain government furnished property records.

Affected Public: Business or other for-profit, Non-profit institutions, and Small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: September 17, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-23173 Filed 9-23-92; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act 944 U.S.C. chapter 35).

Title and Contract Clause: Defense FAR Supplement (DFEARS), part 215, Contracting by negotiation, and the clause at 252.215-7004

Type of Request: Existing collection in use without an OMB control number.

Average Burden Hours/Minutes per Response: 6 hours.

Responses per Respondent: 1.7.

Number of Respondents: 80.

Annual Responses: 136.

Annual Burden Hours: 816.

Needs and uses: DFARS part 215 and the clause at 252.215-7004 prescribe DoD policy and procedures for the recoupment of a fair share of the Government's investment in the nonrecurring costs of major defense equipment when the contractors or subcontractors sells the equipment to a customer other than the U.S. Government.

Affected Public: Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss of the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway,

suite 1204, Arlington, Virginia 22202-4302.

Dated: September 21, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-23193 Filed 9-23-92; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Environmental Assessment: Midcourse Space Experiment (MSX)

AGENCY: Strategic Defense Initiative Organization (SDIO), DOD.

ACTION: Notice of availability of environmental assessment for Midcourse Space Experiment.

SUMMARY: The Department of Defense has prepared a Finding of No Significant Impact based on an assessment of the potential environmental consequences of conducting the Midcourse Space Experiment (MSX). The proposed operation of the MSX spacecraft is designed to gather information related to the following objectives: demonstration of infrared and visible midcourse sensor functions; collection of multi-spectral midcourse target and background data; integration of critical sensor technologies; and demonstration of space surveillance capabilities.

Background

Pursuant to Council on Environmental Quality Regulations (40 CFR Parts 1500-1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*), and the U.S. Department of Defense (DOD) Directive 6050.1, the Strategic Defense Initiative Organization (SDIO) has conducted an assessment of the potential environmental consequences of the development and subsequent operation of the MSX spacecraft. The proposed action will be accomplished through the use of the Space Infrared Imaging Telescope (SPIRIT III) and other instrumentation that will be launched on the MSX spacecraft on a Delta II booster from Vandenberg Air Force Base (AFB) into a polar orbit. MSX will observe a variety of targets, both dedicated and nondedicated. In addition to the dedicated targets, the MSX program will involve targets not driven by, or attributable to, MSX.

Fabrication, assembly, and testing activities for the experiments to be contained on the MSX spacecraft will be conducted at Utah State University/Space Dynamics Laboratory (USU/SDL), Johns Hopkins University/Applied Physics Laboratory (JHU/APL), and Massachusetts Institute of Technology/Lincoln Laboratory (MIT/LL). The proposed activities will be conducted in existing facilities and will be within the scope of activities routinely conducted at those facilities.

Integration and testing activities for the spacecraft will occur at JHU/APL and the National Aeronautics and Space Administration (NASA/Goddard Space Flight Center (GSFC). Following these activities the spacecraft will be shipped via C-5A military cargo aircraft to Vandenberg AFB, where it will be launched into a polar orbit on a Delta II rocket. The preflight and flight activities required for the launch will be conducted at Vandenberg AFB in existing facilities developed specifically for such activities.

Alternatives considered include no action, the use of other launch locations, and the use of other launch vehicles. The no action alternative was rejected because the actual flight test data anticipated would be unavailable for the continued development of space-based sensors. The mission requirements for midcourse sensors development would not be met. Vandenberg AFB was selected as the launch location because it is the only United States location with the capability to support medium launch vehicles and deliver payloads directly into polar orbit. MSX mission parameters call for a polar orbit in order to observe atmospheric phenomena at various earth latitudes. The other site considered, Cape Canaveral Air Force Station (CCAFS), is limited to launching vehicles into an easterly azimuth. An inflight change to a polar orbit is possible, but would increase the fuel expenditure, thereby reducing the maximum orbital altitude to below MSX mission requirements. The Delta II booster vehicle was chosen over other launch vehicles in its class (Atlas and Titan II) based on mission performance, reliability, and schedule requirements. The Space Shuttle was also eliminated because it does not launch into a polar orbit from the Eastern Test Range.

Findings

The potential for significant impacts was determined through an analysis of the activities that would be conducted at the proposed locations. The potential impacts of the proposed action were assessed against the following environmental media: physical setting and land use; geology and water resources; air quality; noise; biological resources; threatened and endangered species; cultural resources; infrastructure; hazardous materials and waste; and public health and safety. The methodological approach consisted of identifying potential environmental issues and determining their significance. For issues identified as potentially significant after application of standard engineering practices, planned mitigation measures were incorporated into the program.

The spacecraft prelaunch and launch activities will be conducted at existing Vandenberg AFB facilities developed specifically for such activities. No significant impacts will occur as a result of these activities.

Prelaunch and launch activities of the Delta II booster will be conducted at Vanderberg AFB at existing facilities developed specifically for such activities. These activities were assessed in the Environmental Assessment for the Modification and Operation of SLC-2W, Medium Expendable Launch Vehicle Services (NASA, 1991), which is incorporated by reference into the MSX EA. The analysis concluded that there would be no significant impacts from the construction at the SLC-2W pad and subsequent launches of the Delta II, provided that launches do not occur during the 4½-month nesting season of the California Least Tern, which nests from mid-April to the end of August. The Delta II launch schedule for MSX is consistent with the allowable launch window identified in the SLC-2W EA.

Dedicated targets will be launched on boosters such as Strategic Target System (STARS) and Minuteman I (MMI). Only boosters with completed environmental documentation would be used. Specific targets may include: aeroshells, lightweight replicas, emissive and reflective reference spheres, instrumented balloons, chaff, debris fragments, and hydrazine fuel. Two of the dedicated target payloads will be Operational and Deployment Experiments Simulator (ODES) configuration payloads; one will be a fuel vent experiment payload, and one will be a simulated reentry vehicle. These dedicated targets are covered by existing environmental documentation. No significant impacts are expected to result from use of STARS, MMIs, and ODES for MSX, or from other MSX dedicated target sets.

Cumulative impacts were evaluated at MSX fabrication, assembly, and integration testing locations, the spacecraft launch and range location, and locations and ranges for dedicated targets. Cumulative impacts will be avoided through selection of MSX activities that have been assessed programmatically and through

compliance with applicable regulations at MSX location.

Overall, no significant impact will result from conducting the MSX program. Therefore, no environmental impact statement will be prepared for the proposed action.

FOR FURTHER INFORMATION CONTACT: Mr. Crate J. Spears, SDIO Environmental Coordinator, SDIO/TNE, The Pentagon, room 1E180, Washington, DC. 20301–87100, (703) 693–1575.

Dated: September 18, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–23172 Filed 9–23–92; 8:45 am]

BILLING CODE 3810–01–M

Federal Agency Review of Selected Airport Noise Analysis Issues; Report and Recommendations

AGENCY: Federal Interagency Committee on Noise (FICON), DoD.

ACTION: Notice of availability of FICON report and recommendations.

SUMMARY: At the direction of the Environmental Protection Agency and the Federal Aviation Administration (FAA), the FICON was formed in December 1990 with a basic charter to review specific elements of the assessment of airport noise impacts contained in documents prepared pursuant to the National Environmental Policy Act (NEPA); to review the relationship of Federal Aviation Regulation (FAR) part 150 to NEPA; and to make recommendations regarding potential improvements. The FICON is composed of representatives from the Departments of Transportation (Office of the Secretary and the FAA), Defense, Justice, Veterans Affairs, Housing and Urban Development; the Environmental Protection Agency; and the Council on Environmental Quality. The FICON has completed its charter and has issued its report, which contains technical findings and conclusions, and policy recommendations. This notice of the availability of the FICON report is being published separately by all FICON member agencies.

ADDRESSES: Availability of FICON Report. Any person may obtain a copy of the FICON report by submitting a written request to the point of contact: Spectrum Sciences and Software Inc., Attn. Mr. Larry McGlothlin (Code DoD), 242 Vicki Leigh Road, Fort Walton Beach, Florida 32548–1314; telephone (904) 862–3330/3232.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel James R. Hegland, Chief, Operations Analysis Team, Environmental Planning Division, Directorate of Environmental Quality, Headquarters U.S. Air Force, Washington, DC 20330; telephone (703) 697–2550.

SUPPLEMENTARY INFORMATION:

Background

The FICON was formed to review Federal policies which are used in the assessment of airport noise impacts. The FICON review focused primarily on:

- The manner in which noise impacts are determined, including whether aircraft noise impacts are fundamentally different from other transportation noise impacts;
- The manner in which noise impacts are described;
- The extent of impacts outside of the A-Weighted Day-Night Average Sound level (DNL) 65 decibels (dB) that should be reviewed in a National Environmental Policy Act (NEPA) document;
- The range of FAA-controlled mitigation options (e.g., noise abatement and flight track procedures) analyzed; and,
- The relationship of the FAR Part 150 process to the NEPA process, including ramifications to the NEPA process if they are separate, and exploration of the means by which the two processes can be handled to maximize benefits.

The FICON was organized into three subgroups to appropriately focus on the technical, legal, and policy issues associated with the assessment of airport noise impacts. The Technical Subgroup was tasked to review the body of science associated with methodologies and metrics for assessing airport noise impacts which have evolved since the 1980 meetings of the Federal Interagency Committee on Urban Noise (FICUN). The Policy Subgroup was tasked to review Federal policies which are used in the assessment of airport noise impacts. The Legal subgroup reviewed the legal aspects of current and proposed Federal policies for assessing airport noise impacts. The Technical Subgroup's products were used as a basis for the policy findings, conclusions, and recommendations in the report.

FICON Report Conclusions

General

- There are no new descriptions or metrics of sufficient scientific standing to substitute for the present DNL cumulative noise exposure metric.
- The methodology employing DNL as the noise exposure metric and appropriate dose-relationships (primarily the Schultz Curve for Percent Highly Annoyed, expressed as %HA) to determine noise impact is considered the proper one for civil and military aviation scenarios in the general vicinity of airports.
- Federal agencies generally conduct noise assessments at DNL levels of 65 dB or more. For a variety of reasons, noise predictions and interpretations are frequently less reliable below DNL 65 dB. DNL prediction models tend to degrade in accuracy at large distances from the airport. Therefore, predictions of noise exposure and impacts below DNL 65 dB should take the possibility of such inaccuracy into account.
- DNL is sometimes supplemented by other metrics on a case-by-case basis.
- Noise analysis should address impacts in the following areas: (1) Health and welfare, (2) environmental degradation/impact and (3) land use planning.
- Complaints are an inadequate indicator of the full extent of noise effects on a population.

Health and Welfare

- The dose-effect relationship, as represented by DNL and %HA, remains the best available approach for analyzing overall health and welfare impacts for the vast majority of transportation noise analysis situations.
- The 10 dB nighttime penalty levied against noise during the 10 PM to 7 AM period is specifically designed to account for the intrusiveness of noise during this period and its potential impact on sleep. There are no new hard data which would justify a change in this penalty.
- If supplemental analysis for sleep disturbance is desired, use may be made of an interim dose-response model developed by the Air Force (AF) Armstrong Laboratories (AL) (see Volume II, section 3.2.2.3). Although this relationship is described in terms of Sound Exposure Level (SEL), single event metrics are of limited use in predicting and interpreting cumulative noise exposure impacts.
- Annoyance is a summary measure of the general adverse reaction of people to noise that causes speech interference; sleep disturbance; desire for a tranquil environment; and the inability to use the telephone, radio or television satisfactorily.
- No definitive evidence of non-auditory health effects from aircraft noise exist, particularly below DNL 70 dB.
- For supplemental analysis, Long-Term Equivalent Sound Level (Leq(x)) (where X represents the time period of

concern) or Time Above (TA) may be used for analysis of school and communications requirements indoors during specific hours.

• Public health and welfare effects below DNL 60 dB have not been established, but are assumed to decrease according to the decrease in percent of people highly annoyed.

Environmental Degradation/Impact

• Under NEPA, environmental degradation might have to be assessed around airports even if there is no clear effect on public health and welfare. Other criteria might be appropriate.

• A 3 dB increase in the DNL environment represents a doubling of sound energy and clearly is an indicator of the need for further analysis, although smaller increases may indicate similar need. In other words, the impact of a given incremental amount of change in noise levels depends, in part, upon the existing level of the noise environment.

• Recent technology and software advances in geographic information systems, noise methodology and census data present an enhanced potential for detailed analysis of sound impacts on population and noise-sensitive areas. These technologies should be considered for use to determine noise impacts of present and proposed actions.

Land Use Planning

• DNL represents the accepted noise methodology for input to compatible land use planning.

• For cumulative speech interference, Table 3–2 "Effects of Noise on People" contained in FICON Volume II: Technical Report, provides a rough approximation of both outdoor and indoor predicated speech interference parameters for various levels of noise exposure as measured in DNL for residential land use only.

• There is a need for selective updating (including Standard Land Use Coding Manual (SLUCM) updating) and enhanced public understanding of the land-use compatibility guidelines, its application and interpretation through incentives and other programs.

Education of the Public

Education of the public should concentrate on the following frequently misunderstood issues:

• Environmental noise exposure is measured and described most generally by Day-Night Average A-Weighted Sound Level (DNL). DNL should be defined clearly and its significance and use explained clearly.

• Relation of DNL to Percent Highly Annoyed describes long-term community response to the overall sound environment (indices of health and welfare effects).

• Although the A-Weighted Maximum Sound Level (Lmax) for a single flyover is easily understood, it is useful only for analyzing short-term responses.

• Every change in the noise environment does not necessarily impact public health and welfare.

• Aircraft noise predictions below DNL 65 dB can be less accurate and should be interpreted with caution.

FICON Report Recommendations

• Continue use of the DNL metric as the principal means for describing long-term noise exposure of civil and military aircraft operations.

• Continue agency discretion in the use of supplemental noise analysis.

• Improve public understanding of the DNL, supplemental methodologies and aircraft noise impacts.

• If screening analysis shows that noise-sensitive areas will be at or above DNL 65 dB and will have an increase of DNL 1.5 dB or more, further analysis should be conducted of noise sensitive areas between DNL 60–65 dB having an increase of DNL 3 dB or more due to the proposed airport noise exposure.

• If the DNL 65 dB screening test calls for further analysis between DNL 60–65 dB, agency mitigation options will include noise sensitive areas between DNL 60–65 dB that are projected to have an increase of 3 dB or more as a result of the proposed airport noise exposure.

• If an FAA Part 150 program is included by the FAA as a NEPA mitigation measure, the FAA and the airport operator are responsible for ensuring the commitment is carried out and the Part 150 study scope conforms to the NEPA scope of noise analysis.

• Increase research (R&D) on methodology development and on the impact of aircraft noise. To foster this, a standing Federal interagency committee should be established to assist agencies in providing adequate forums for discussions of public and private sector proposals identifying needed research and in encouraging R&D in these areas. The following initial R&D issues are recommended:

• Evaluate potential modifications to the 1980 FICUN land use compatibility table to improve its usefulness for both routine land use planning and planning for noise-sensitive land uses.

• Continue research into community reaction to aircraft noise, including sleep disturbance, speech interference, and non-auditory health effects of noise.

• Investigative differences in perceptions of aircraft noise, ground transportation noise (highways and railroads), and general background noise.

• Continue and expand research on the airport noise impacts of rotary-wing operations.

It is the FICON's belief that these recommendations will provide both immediate and long-term improvements in airport noise analysis. Federal interagency encouragement of a continuing review of airport noise analysis will provide a forum to address related public concerns.

While the FICON is seeking to achieve improved uniformity among Federal agencies in airport noise analysis, it must also recognize that agencies have differing legislative mandates and operating environments. These recommendations should be viewed as general guidance. Each Federal agency must determine how it can best use this guidance, supplementing it as appropriate to meet agency needs, within the framework of the NEPA requirements.

The FICON report neither addressees the adequacy of compliance with NEPA to date by the participating agencies, attempts to redefine thresholds of significance of impact under NEPA, nor modifies the NEPA regulations or procedures of these agencies.

Public Review and Comment

Any person may express his or her views on the FICON report by submitting written comments to the Federal Aviation Administration, Office of Environment and Energy, AEE–300, 800 Independence Avenue, SW., Washington, DC 20591. Since the primary impact of the report's recommendations will be on the assessment of civil airport noise impacts for which the FAA is responsible, the FAA is serving as the focal point for the receipt of public comments. Copies of such written responses will be provided to all agencies participating in FICON.

Each member agency has advised the FICON that they are reviewing their procedures for evaluating airport noise impacts based on the FICON Report findings, conclusions and recommendations. Any resulting changes in their procedures will follow individual agency rules for public comment.

Dated: September 18, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–23175 Filed 9–23–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Environmental Assessment for Base Realignment at Fort Lewis, Washington

AGENCY: Department of Defense, United States Army.

ACTION: Finding of No Significant Impact.

SUMMARY: In accordance with the legislative requirements of Public Law 101–510 (Title XXIX), the 7th Infantry Division (Light) [71D(L)] and the Communications Systems Test Activity will realign to Fort Lewis, Washington. An environmental assessment (EA) describing impacts to the biological, historical, cultural, and socioeconomic environment of Fort Lewis and its subinstallations, the Yakim Firing Center (YFC) and Vancouver Barracks/ Camp Bonneville, has been prepared in accordance with the National Environmental Policy Act (NEPA), the provisions of Army Regulation 200–2, and the Council on Environmental Quality Regulations 200–2, and the Council on Environmental Quality Regulations of 40 CFR part 1500. The EA is incorporated herein by reference. All environmental requirements, including the Endangered Species Act and the National Historic Preservation Act, have been addressed.

The proposed action will involve the realignment of the 7ID(L), non-divisional support units, and the Communications Systems Test Activity to Fort Lewis between 1993 and 1995. The Army's preferred alternative is to phase the move by Division Ready Brigade. The administrative requirements of the 7ID(L) will be met by a combination of new construction, existing facilities, and diverted barracks space. New construction will involve four new projects on the installation. Four alternatives for providing administrative facilities were considered including: No action, leasing existing off-site commercial facilities, using facilities at nearby military installations, and a combination of using new construction and existing facilities. New construction and use of existing facilities were selected as the most cost effective alternative, as well as the alternative that contributes the most to higher morale and military readiness. Alternative construction sites were evaluated based on cost, land use, logistics, access, troop morale, environmental impact, energy efficiency, and utilities. Sites selected result in minimization of impacts and costs.

New construction sites are located within existing cantonment areas and will not adversely impact air or water quality, ambient noise levels, sensitive biological resources, historical resources, or other resources. Site assessments were conducted to determine whether the properties within the construction project areas are eligible for the National Register of Historic Places. None were identified. Any facility scheduled for demolition will be treated in accordance with the Requirements of the Department of Defense Programmatic Agreement (PA) for World War II Temporary Wooden Buildings.

The amended Base Closure and Realignment PA for Historic Properties outlines required actions to be completed by Fort Lewis for compliance of the proposed action with sections 106 and 110 of the National Historic Preservation Act. Specific remaining actions to be completed include the following:

1. A schedule for completion of inventory survey will be established in consultation with the State Historic Preservation Office and the Advisory Council on Historic Preservation as part of the Historic Preservation Plan (HPP).

a. Priority inventory survey and site evaluation for Fort Lewis historic sites.

b. Priority inventory survey and site evaluation for Selah Creek at the YFC.

2. Completion of 60 cultural site determinations of eligibility for the National Register of Historic Places at Fort Lewis and 71 cultural site determinations at the YFC.

3. Completion of a cultural resources predictive model of the YFC to be developed on the installations's Geographic Information System based on current and past inventory surveys and field experience.

4. Preparation of an installation HPP by September 30, 1994.

5. Completion of Historic American Building Survey assessment for affected WWII historic buildings.

6. Consultation with local Indian tribes concerning use, inventory, and preservation of traditional cultural properties.

The Army will not undertake any new Base Closure and Realignment construction, renovation, land disposal, training exercises, or other activities which could affect historic properties until the actions necessary to inventory, assess and take into account the effects on historic properties have been completed consistent with the terms set forth in the amended PA for Historic Properties.

Relocating the 7ID(L), non-divisional support units, and the Communications systems Test Activity will involve approximately 12,400 military and 330 civilian positions. Installation personnel strength will exceed present levels, but not levels which have been attained in the past at Fort Lewis. No new housing will be constructed. Twenty-seven existing barracks buildings will be renovated. Existing facilities at Fort Lewis can adequately support the increase in population associated with the realignment of the 7ID(L) to Fort Lewis. The construction activities will not significantly alter the availability of energy resources on the installation.

Training impacts on the natural environment will not be significant when compared to past use of training lands by the 9th Infantry Division (Motorized) because of the nature of the 7ID(L) training which involves a reduction in wheeled and tracked vehicles and a chance to a light division. Although training will increase at Fort Lewis, the realignment action will not significantly affect the training land nor will it require the expansion of training facilities. Training will decrease at the YFC and no significant impacts will occur to any federally or state listed threatened or endangered species on Fort Lewis or YFC. No adverse modification will occur to designated critical habitat on Fort Lewis for the northern spotted owl. All training will be conducted in accordance with the installation sensitive area management plans and regulations.

The realignment action will have a positive impact on Pierce and Thurston Counties in terms of employment, population, business volume, and personal income. However, these increases will not alter the socioeconomic characteristics of the Fort Lewis region and are not significant. No socioeconomic impacts will result at the YFC.

Based on the evaluation of the direct, indirect, and cumulative environmental impacts, as presented in the EA, the realignment of the 7ID(L) and the Communications Systems Test Activity to Fort Lewis will not significantly affect the quality of the human environment; therefore, an Environmental Impact Statement need not be prepared.

SUPPLEMENTARY INFORMATION: There is a 30-day waiting period for the public prior to implementation.

ADDRESSES: A request for a copy of the EA and comments may be forwarded to: Dr. David Rice, Seattle District, U.S. Army Corps of Engineers, P.O. Box C–3755, Seattle, Washington 98124–2255.

FOR FURTHER INFORMATION CONTACT: Questions concerning this FNSI may be

directed to Dr. David Rice, (206) 764–3630.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I,L&E).

[FR Doc. 92–23129 Filed 9–23–92; 8:45 am]

BILLING CODE 3710–08–M

Patent Applications Available for Licensing

AGENCY: Office of the Army Judge Advocate General, Intellectual Property Law Division, DOD.

ACTION: Notice.

SUMMARY: U.S. Patent Applications SN 07/878,372 filed 4 May 1992 entitled "Composition and Method of Treating Hepatitis C," SN 07/914,673 filed 13 July 1992 entitled "Composition and Method of Treating Hepatitis B," and SN 07/779,744 filed 21 October 1991 entitled "Composition and Methods for Therapy and Prevention of Cancer, AIDS, and Anemia" are all available for licensing.

FOR FURTHER INFORMATION CONTACT: Earl T. Reichert, Office of the Judge Advocate General, Intellectual Property Law Division, 901 North Stuart Street, Arlington, VA 22203–1837, telephone: (703) 696–8113.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–23124 Filed 9–23–92; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; Amend a Record System

AGENCY: Defense Logistics Agency, DOD.

ACTION: Amend a record system.

SUMMARY: The Defense Logistics Agency (DLA) proposes to amend one existing record system in the DLA inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective without further notice on October 26, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, Virginia 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of DLA system of records notices subject to the Privacy Act of 1974 (5 U.S.C 552a), as amended, have been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51898, December 20, 1985
51 FR 27443, July 31, 1986
51 FR 30104, August 22, 1986
52 FR 35304, September 18, 1987
52 FR 37495, October 7, 1987
53 FR 04442, February 16, 1988
53 FR 09965, March 28, 1988
53 FR 21511, June 8, 1988
53 FR 26105, July 11, 1988
53 FR 32091, August 23, 1988
53 FR 39129, October 5, 1988
53 FR 44937, November 7, 1988
53 FR 48708, December 2, 1988
54 FR 11997, March 23, 1989
55 FR 21918, May 30, 1990 (DLA Address Directory)
55 FR 32284, August 8, 1990
55 FR 32947, August 13, 1990
55 FR 34050, August 21, 1990
55 FR 42755, October 23, 1990
55 FR 53178, December 27, 1990
56 FR 5806, February 13, 1991
56 FR 8967, March 4, 1991
56 FR 11207, March 15, 1991
56 FR 19838, April 30, 1991
56 FR 31392, July 10, 1991 (Updated Indexing System)
56 FR 35852, July 29, 1991
56 FR 52017, October 17, 1991
56 FR 55910, October 30, 1991
56 FR 56065, October 31, 1991
56 FR 65245, December 16, 1991
57 FR 2715, January 23, 1992
57 FR 13718, April 17, 1992
57 FR 20471, May 13, 1992
57 FR 28490, June 25, 1992
57 FR 29294, July 1, 1992
57 FR 33323, July 28, 1992
57 FR 35570, August 10, 1992

The amendment is not within the purview of subsection (r) of the Privacy Act which requires the submission of an altered system report. The specific changes to the record system being amended are set forth below followed by the system notice, as amended, in its entirety.

Dated: September 18, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S835.50 DLA-H

SYSTEM NAME:

Hazardous Materials Exposure History System, (53 FR 26105, July 11, 1988).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "S600.10 DLA-W."

SYSTEM NAME:

Delete entry and replace with "Hazardous Materials Occupational Exposure History Files"

SYSTEM LOCATION:

Delete entry and replace with "Records are maintained at the Defense Personnel Support Center; the Defense Distribution Region Central; the Defense Distribution Region West; the Defense Distribution Region East; the Defense Distribution Depot, Ogden; and the Defense National Stockpile Center. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

In addition, records are maintained at the following Defense National Stockpile Center field locations:

Zone Offices: Zone 1 Management Office, 26 Federal Plaza, New York, NY 10278–5000;

Zone 2 Management Office, 3200 Sheffield, Hammond, IN 46327–5000;

Zone 3 Management Office, 819 Taylor Street, Fort Worth, TX 76102–5000.

Stockpile Depots: Binghamton Depot, Hoyt Avenue, Binghamton, NY 13901–1699;

Sommerville Depot, 152 U.S. Highway 206 South, Sommerville, NJ 08876–4135;

Curtis Bay Depot, 710 Ordance Road, Baltimore, MD 21226–1786;

Scotia Depot, Scotia, NY 12302–7463;

Point Pleasant Depot, 2801 Madison Avenue, Point Pleasant, WV 25550–1603;

Hammond Depot, 3200 Sheffield Avenue, Hammond, IN 46327–5000;

Casad Depot, New Haven, IN 46774–9644;

Sharonville Depot, 11935 Enterprise Drive, Cincinnati, OH 45241–1513;

Warren Depot, Pine Street Extension, Warren, OH 44482–9999;

Fort Worth Depot, Fort Worth, TX 76102–5000;

Gadsden Depot, 400 Raines Avenue, Gadsden, AL 35902–5000;

Baton Rouge Depot, 2895 N. Sherwood Forest Drive, Baton Rouge, LA 70814–5397;

Clearfield Federal Depot, Clearfield, UT 84016–5000; and

Stockton Depot, Rough and Ready Island, Building 718, Stockton, CA 95203–5000."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Records consist of the daily dosage of radiation received and hourly exposure to dangerous levels of asbestos along

with medical status data resulting from annual medical examinations."

* * * * *

PURPOSE(S):

Delete entry and replace with "To record and maintain data on hazardous materials exposure levels and medical status data following annual medical examination."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "Information from the records is disclosed to the U. S. Public Health Service under contract to provide medical examinations of DLA employees.

Information on exposure readings is also provided to the regulatory agencies which regulate the handling of hazardous materials.

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

* * * * *

STORAGE:

Delete entry and replace with "Records are stored in paper and computerized form."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computer files are password protected with access restricted to authorized users."

RETENTION AND DISPOSAL:

Delete entry and replace with: "Records are destroyed 75 years after birth date of employee, 60 years after date of the earliest document in the file if the date of birth cannot be ascertained, or 30 years after latest separation, whichever is later."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Staff Director, Office of Installation Services and Environmental Protection, DLA-W, Cameron Station, Alexandria, VA 22304–6100, and offices of environmental protection at the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of record system notices or listed under *System location* above."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of record system notices or listed under *System location* above."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 323; or may be obtained from the system manager."

* * * * *

S600.10 DLA-W

SYSTEM NAME:

Hazardous Materials Occupational Exposure History Files.

SYSTEM LOCATION:

Records are maintained at the Defense Personnel Support Center; the Defense Distribution Region Central; the Defense Distribution Region West; the Defense Distribution Region East; the Defense Distribution Depot, Ogden; and the Defense National Stockpile Center. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

In addition, records are maintained at the following Defense National Stockpile Center field locations:

Zone Offices: Zone 1 Management Office, 26 Federal Plaza, New York, NY 10278–5000;

Zone 2 Management Office, 3200 Sheffield, Hammond, IN 46327–5000;

Zone 3 Management Office, 819 Taylor Street, Fort Worth, TX 76102–5000.

Stockpile Depots: Binghamton Depot, Hoyt Avenue, Binghamton, NY 13901–1699;

Sommerville Depot, 152 U.S. Highway 206 South, Sommerville, NJ 08876–4135;

Curtis Bay Depot, 710 Ordance Road, Baltimore, MD 21226–1786;

Scotia Depot, Scotia, NY 12302–7463;

Point Pleasant Depot, 2801 Madison Avenue, Point Pleasant, WV 25550–1603;

Hammond Depot, 3200 Sheffield Avenue, Hammond, IN 46327–5000;

Casad Depot, New Haven, IN 46774–9644;

Sharonville Depot, 11935 Enterprise Drive, Cincinnati, OH 45241–1513;

Warren Depot, Pine Street Extension, Warren, OH 44482–9999;

Fort Worth Depot, Fort Worth, TX 76102–5000;

Gadsden Depot, 400 Raines Avenue, Gadsden, AL 35902–5000;

Baton Rouge Depot, 2695 N. Sherwood Forest Drive, Baton Rouge, LA 70814–5397;

Clearfield Federal Depot, Clearfield, UT 84016–5000; and

Stockton Depot, Rough and Ready Island, Building 718, Stockton, CA 95203–5000."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel working in or visiting storage areas containing hazardous materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of the daily dosage of radiation received and hourly exposure to dangerous levels of asbestos along with medical status data resulting from annual medical examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act of 1970, as amended; 5 U.S.C. 5108, 5314, 5315, 7902; 15 U.S.C. 633, 636; 18 U.S.C. 1114; 29 U.S.C. 553, 651–678; 42 U.S.C. 3142–1; 49 U.S.C. App. 1421; and Executive Order 9397.

PURPOSE(S):

To record and maintain data on hazardous materials exposure levels and medical status data following annual medical examination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from the records is disclosed to the U. S. Public Health Service under contract to provide medical examinations of DLA employees.

Information on exposure readings is also provided to the regulatory agencies which regulate the handling of hazardous materials.

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Filed alphabetically by individual's name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computer files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Records are destroyed 75 years after birth date of employee, 60 years after date of the earliest document in the file if the date of birth cannot be ascertained, or 30 years after latest separation, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Installation Services and Environmental Protection, DLA-W, Cameron Station, Alexandria, VA 22304–6100, and offices of environmental protection at the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of record system notices or listed in the *System location* entry above.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of record system notices or listed in the *System location* entry above.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from film badges, dosimeters, other instrumentation, work logs, and medical examinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–23174 Filed 9–23–92; 8:45 am]

BILLING CODE 3810–01–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.128A]

Special Projects and Demonstrations for Providing Supported Employment Services to Individuals With Severe Handicaps—Community-Based Projects; Closing Date Extension

Notice extending the closing date for transmittal of applications for new awards for fiscal year (FY) 1993.

Deadline for Transmittal of Applications: The closing date for applications is extended from September 1, 1992 to October 9, 1992.

On June 12, 1992, the Department of Education published in the **Federal Register** (57 FR 25025) a notice inviting applications under Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps—Community-Based Projects for fiscal year (FY) 1993. Detailed information concerning this competition was included in that notice. The purpose of this notice is to extend the deadline date for transmittal of applications because potential applicants may not have had sufficient time to complete their proposals due to the disruption caused by the recent hurricane in Florida and Louisiana.

Deadline for Intergovernmental Review: December 8, 1992.

For Applications or Information Contact: Judith Miller Tynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3222, Switzer Building, Washington, DC 20202–2742. Telephone: (202) 205–9346. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 29 U.S.C. 777a(d).

Dated: September 18, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–23140 Filed 9–23–92; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Amendment to notice.

SUMMARY: Notice is hereby given of an amendment to the notice of the teleconference meeting of the Executive Committee of the National Assessment Governing Board scheduled for September 23, 1992, at 800 North Capitol Street, NW., suite 825, Washington, DC, as published at 57 FR 38301, August 24, 1992. The teleconference meeting will include the Achievement Levels Committee at 11 a.m.

Dated: September 21, 1992.

Roy Truby,

Executive Director.

[FR Doc. 92–23181 Filed 9–23–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. JD92–09498T, Louisiana–15]

State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 18, 1992.

Take notice that on September 17, 1992, the Office of Conservation of the Department of Natural Resources for the State of Louisiana (Louisiana) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Smackover C Formation, Reservoir B, underlying parts of the Haynesville Field in Claiborne Parish, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers portions of sections 17–20 of Township 23 North, Range 8 West.

The notice of determination also contains Louisiana's findings that the referenced part of the Smackover C Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and

275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 92-23166 Filed 9-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-3-20-000 TM92-20-20-000]

Proposed Changes in FERC Gas Tariff; Algonquin Gas Transmission Co.

September 16, 1992

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 16, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the following revised tariff sheets:

Proposed to be effective July 1, 1992
Sub 11 Rev Sheet No. 41
2 Sub 11 Rev Sheet No. 42
Proposed to be effective August 1, 1992
Sub 12 Rev Sheet No. 41
4 Sub 12 Rev Sheet No. 42
Proposed to be effective September 1, 1992
13 Rev Sheet No. 41
13 Rev Sheet No. 42
Proposed to be effective October 1, 1992
14 Rev Sheet No. 41
14 Rev Sheet No. 42

Algonquin states that the revised tariff sheets are being filed to flow through changes in rates in Texas Eastern Transmission Corporation's ("Texas Eastern") Rate Schedules SS-2 and SS-3, which underlie Algonquin's Rate Schedules STB and SS-III, respectively. Pursuant to Section 10 of Rate Schedule STB and Section 9 of Rate Schedule SS-III in Algonquin's FERC Gas Tariff, Third Revised Volume No. 1, Algonquin is hereby filing the above sheets to track the latest changes filed by Texas Eastern on August 28, 1992.

Algonquin also states that in its filing, Texas Eastern states that it is making its filing to flow through changes in CNG Transmission Corporation's ("CNG") Rate Schedule GSS Injection Charge Rate. These changes were reflected in a tariff filing made by CNG on July 1, 1992 in Docket No. TM92-8-22-000, which was subsequently accepted by Commission Order dated July 31, 1992.

Algonquin further states that pursuant to sections 10.3 and 9.3 of Rate Schedules STB and SS-III, respectively, the proposed effective date for the listed revised tariff sheets corresponds with the effective date of Texas Eastern's tariff sheets.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 25, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Liwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-23151 Filed 9-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-63-002, TM92-5-63-001 and TQ92-7-63-001]

Compliance Filing; Carnegie Natural Gas Co.

September 18, 1992.

Take notice that on September 15, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of September 1, 1992:

2 Sub Thirty-Fourth Revised Sheet No. 8
2 Sub Thirty-Fourth Revised Sheet No. 9

Carnegie states that it is filing the above tariff sheets to comply with the Commission's Order issued in the captioned dockets on August 31, 1992. Carnegie states that, as directed by the Commission, the above tariff sheets reflect Carnegie's PGA commodity surcharge computed in accordance with § 154.305(d) of the Commission's regulations and the TCA commodity surcharge computed in accordance with Section 26 of the General Terms and Conditions of Carnegie's tariff. Carnegie states that because each of these calculations are based on a zero projection for firm sales, the resulting PGA commodity surcharge and TCA surcharge rates are zero, as reflected on the above tariff sheets.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 25, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-23159 Filed 9-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-425-001]

Amendment; CNG Transmission Corp.

September 18, 1992.

Take notice that on September 11, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP92-425-001 an amendment to its application filed in Docket No. CP92-425-000 pursuant to section 7(b) of the Natural Gas Act so as to limit the term of the proposed abandonment to Rochester Gas and Electric Corporation (RG&E), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that the application should be treated as a request for authorization for a limited term abandonment of 31,731 dt/day to RG&E from July 1, 1991 to October 31, 1992. It is stated that originally, on March 20, 1992, CNG filed an application for permanent abandonment authorization of this amount to RG&E. CNG states further that RG&E and CNG have mutually agreed to temporarily reduce RG&E's level of service to 297,269 dth per day.

CNG therefore requests the temporary abandonment of service to RG&E, effective July 1, 1991 to effectuate RG&E's reduction from 329,000 dth per day to 297,269 dth per day.

Any person desiring to be heard or any person desiring to make any protest with reference to said amendment should on or before October 9, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be

considered by it in determining the appropriate action to be taken but w not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons who have heretofore filed need not file again.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-23164 Filed 9-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-22-001]

Proposed Changes in FERC Gas Tariff; CNG Transmission Corp.

September 18, 1992.

Take notice that CNG Transmission Corporation ("CNG") on September 15, 1992, filed the following revised tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

(A) Substitute Alternate Twenty-Five Revised Sheet No. 31
Substitute Alternate Seventeenth Revised Sheet No. 34
(B) Substitute Alternate Twenty-Second Revised Sheet No. 31
Substitute Alternate Eighteenth Revised Sheet No. 34

The purpose of the filing is to comply with the Commission's August 31, 1992 filing in this docket.

CNG tenders the paragraph (A) and (B) tariff revisions to become effective on September 1, 1992, and October 1, 1992, respectively. The paragraph (B) tariff sheets, in addition to reflecting compliance with the August 31 order, also incorporate the effect of the Annual Charge Adjustment filing that CNG made on August 31, 1992, in Docket No. TM93-1-22-000.

The rate revisions reflect the transfer of Texas Eastern Transmission Corporation's Gas Inventory Charge amounts from the demand surcharge to the commodity surcharge and the implementation of the Tennessee Gas Pipeline Company "Cosmic" Settlement which was implemented in a June 29, 1992, compliance filing in Docket Nos. RP86-119, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 25, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-23152 Filed 9-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-62-000]

Conference; Gasdel Pipeline System, Inc.

September 18, 1992.

Take notice that on Thursday, September 24, 1992, beginning at 11 a.m., a prefiling conference will be convened in the above-captioned docket to discuss Gasdel Pipeline System, Inc.'s summary of its proposed plan for implementation of Order No. 636.

The conference will be convened by the Commission Staff as a telephone conference call from room 8308 at the offices of the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

All parties are invited to attend. Attendance at the conference, however, will not confer party status. If a party desires to attend the conference by telephone or requires additional information, such party may contact James A. Pederson at (202) 208-2158 or Edith A. Gilmore at (202) 208-1093.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-23155 Filed 9-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-708-000]

Request Under Blanket Authorization; Northern Natural Gas Co.

September 18, 1992.

Take notice that on September 16, 1992, Northern Natural Gas Company (Northern) P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-708-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate and maintain ten existing delivery points and appurtenant facilities for jurisdictional service and add one delivery point under Northern's CD-1 service agreement to Peoples Natural Gas Company, Division of Utilicorp United, Inc. (Peoples) under its blanket certificate issued in Docket No. CP82-401-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the construction and operation of the ten existing delivery points were authorized pursuant to Section 311 of the Natural Gas Policy Act of 1978 and § 284.3(c) of the Commission's Regulations. It is indicated that, with respect to the new delivery point, the Commission's order issued on July 10, 1991, in Docket No. CP91-2085-000, approved, among other things, Northern's request for authorization to operate and maintain the Enron Gas Liquids/Plattsmouth delivery point for jurisdictional service to another shipper. A schedule listing the location of the delivery points and the volumes to be delivered at these points is attached as an appendix.

It is stated that the end use of the gas would be for residential, commercial and industrial uses. Northern states that no increase in capacity at the existing facilities is proposed. Northern states that the volumes to be delivered to People's at the various delivery points would be within the currently authorized level of firm entitlement's for Peoples as set forth in Northern's currently effective Rate Schedule CD-1 service agreement. It is also indicated that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment to Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr,
Acting Secretary.

APPENDIX

	Peak day volumes (Mcf)	Annual volumes (Mcf)
1. Brewster, MN	8	86,800
2. Byllesby Lake, MN	115	11,100
3. Elmerado Estates, IA	16	2,900
4. Fountain, MN	209	27,995
5. Freeborn, MN	172	23,634
6. Hawaiian Village, NE	288	20,764
7. Pin Oaks Estates, IA	35	1,624
8. Royal Estates, IA	29	5,250
9. Spring Lake, MN	468	35,595
10. Enron Liquids/Plattsmouth	26	9,345
11. Marshall, MN	8,000	2,688,000

[FR Doc. 92-23153 Filed 9-23-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP92-14-000]

Petition of Compliant; Northern Natural Gas Company v. Woods Petroleum Corporation

September 18, 1992.

Take notice that on September 9, 1992, Northern Natural Gas Company (Northern) tendered for filing a petition of complaint against Woods Petroleum Corporation (Woods). Northern asserts that actions taken by Woods with respect to certain gas purchased by Northern resulted in a violation of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301, *et seq.* (NGPA).

Northern states that it entered into Gas Purchase Contracts with Woods on October 13, 1982, and January 26, 1982. Northern asserts that the contracts provided for payment to Woods for amounts due under the contracts. Northern states that in addition to the contracts of January 26, Northern entered into a contract with ENI Exploration Program 1979 II and on September 3, 1992, entered into a contract with Petco Energy Company, a Limited Partnership. Woods executed both of these contracts as seller's representative. Pursuant to Article VII, Section 1 of both contracts, seller authorized Northern to make payments to Woods as seller's representative of all monies due under the contracts.

Northern states that between October of 1983 and March 1, 1987, because of an error in the division of interest Northern overpaid Woods under the contracts $514,445.27. Northern argues that the price of the gas sold pursuant to these contracts was regulated until December 31, 1984.

Northern states that it has notified Woods that an overpayment has been made. Northern asserts that it has made repeated attempts to collect the overpayment with interest as provided in the regulations. Northern states that in not repaying such amounts, Woods has also violated § 270.101(e) which establishes the general refund obligation.

Northern states it has made demand upon Woods for the refund of $514,445.27 with interest at the FERC rate. Woods has denied any liability for repayment of these amounts.

Northern requests that the Commission find Woods in violation of the NGPA and order Woods to make repayment to Northern of all amounts which exceeded the applicable maximum lawful price of the gas under the contracts in question plus the applicable interest.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before October 19, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before October 19, 1992.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-23165 Filed 9-23-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TA92-1-86-002, and RP92-180-001]

Compliance Filing; Pacific Gas Transmission Co

September 18, 1992.

Take notice that on August 31, 1992, Pacific Gas Transmission Company (PGT) tendered for filing, pursuant to Part 152 of the Commission's regulations, a compliance filing in response to the Commission's order of July 31, 1992, in Docket Nos. TA92-1-86-000 and RP92-180-000. PGT tenders the following revised tariff sheets in compliance with the July 31 order:

Second revised volume No. 1	Effective date
Substitute Fourteenth Revised Sheet No. 4.	Aug. 1, 1992.
Substitute Fifteenth Revised Sheet No. 4.	Aug. 9, 1992.
Substitute Sixteenth Revised Sheet No. 4.	Oct. 1, 1992.

PGT states that the compliance filing resulted in small changes to PGT's surcharge rates under its Purchased Gas Adjustment (PGA) clause, by eliminating certain out-of-period costs and making other minor adjustments.

PGT states copies of the filing were served upon PGT's jurisdictional sales customers, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rule of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 25, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-23160 Filed 9-23-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RS92-47-000]

Conference; Phillip Gas Pipeline Co.

September 18, 1992.

Take notice that on Thursday, October 1, 1992, at 10 a.m., a conference will be convened in the above-captioned docket to discuss Phillip Gas Pipeline Company's (Phillip Gas) summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Ingrid Olson, at (202) 208-0691 or William C. Lansinger, Jr., at (202) 208-2082.

Linwood A. Watson, Jr.,
Actin Secretary.

[FR Doc. 92-23156 Filed 9-23-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RS92-83-000]

Conference; Tarpon Transmission Co.

September 18, 1992.

Take notice that on Tuesday, September 29, 1992, beginning at 10 a.m., a prefiling conference will be convened in the above-captioned docket to discuss Tarpon Transmission Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call James A. Pederson at (202) 208-2158 or Edith A. Gilmore at (202) 208-1093.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-23157 Filed 9-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-67-058]

Proposed Changes in FERC Gas Tariff; Texas Eastern Transmission Corp.

September 18, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern), on September 15, 1992, tendered for filing as part of its FERC Gas Tariffs, Fifth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed in appendix A to the filing.

Texas Eastern states that the tariff sheets are being filed to reflect the base tariff rates applicable for the period December 1, 1990 through November 30, 1991 (Year 1) and December 1, 1991 through November 30, 1992 (Year 2) pursuant to the terms of the Stipulation and Agreement (Settlement) in Texas Eastern, Docket Nos. RP88-67, *et al.* (Phase II/PCBs).

Texas Eastern states that on December 17, 1991, it filed the Settlement regarding rate recovery of costs associated with environmental assessment and remediation costs related to polychlorinated biphenyl (PCB) contamination of its system and sites adjacent to its system. The Commission approved the Settlement, and it became final and non-appealable on April 17, 1992. Pursuant to the terms of the Settlement and Section 35 of its FERC Gas Tariff Texas Eastern is required to submit on or before September 15, 1992, tariff sheets that set forth the Settlement rates for the period December 1, 1990 through November 30, 1991 (Year 1) and the period December 1, 1991 through November 30, 1992 (Year 2). Texas Eastern states that the proposed tariff sheets have been filed to comply with this requirement. Texas Eastern requests the Commission to waive all necessary rules and regulations to permit the tariff sheets listed in Appendix A to the filing to become effective on the respective proposed effective dates.

Texas Eastern states that copies of the filing were served upon Texas Eastern's jurisdictional customers, interested state commissions, and all parties on the service list in Docket Nos. RP88-67, *et al.* (Phase II/PCBs).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 25, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-23150 Filed 9-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-86-000, et al.]

Conference; Transcontinental Gas Pipe Line Corp.

September 18, 1992.

Take notice that on Thursday, October 1, 1992, a conference will be convened in the above-captioned dockets to discuss the summary of Transcontinental Gas Pipe Line Corporation's proposed plan for implementation of Order No. 636.

The conference will be held in the Commission's meeting room at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All parties are invited to attend. Other interested persons' attendance at the conference will not confer party status.

For additional information, call Jack Kendall at (202) 208-0847.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-23158 Filed 9-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-25-000]

Prefiling Conference; Trunkline Gas Co.

September 18, 1992.

Take notice that a prefiling conference will be convened in this proceeding on Tuesday, September 29, 1992, at 10 a.m. at the Stouffer Mayflower Hotel, 1127 Connecticut Avenue, NW, Washington, DC. The purpose of the meeting is to address Trunkline Gas Company's summary and revised summary of its proposed plan for implementation of Order Nos. 636 and 636-A.

All interested parties are invited to attend. Attendance at the conference, however will not confer party status. For additional information, interested parties may call Chris Young at 208-0088 or Keith Pierce at 208-0372.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-23163 Filed 9-23-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-90-NG]

Kamine/Besicorp Syracuse L.P.; Application for Long Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on July 8, 1992, by Kamine/Besicorp Syracuse L.P. (K/B Syracuse) to import up to 16,300 Mcf per day, and up to a total of 89.2 Bcf, of natural gas from Canada over a period of 15 years. The imported gas will be used to fuel the applicant's proposed 79.9-megawatt combined-cycle cogeneration facility in the Town of Geddes, New York. This facility is scheduled to begin commercial operation by November 1993. K/B Syracuse states that it will purchase the gas from North Canadian Marketing Inc. (NCM) under a gas purchase agreement dated July 30, 1991, the term of which will begin on the date of commercial operation of the cogeneration facility and continue through November 1, 2008.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable.

requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, October 26, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC. 20585.

FOR FURTHER INFORMATION:

Susan K. Gregersen, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–070, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586–0063.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION:

1. Background

K/B Syracuse is a Delaware limited partnership whose general partners are Beta Syracuse Inc. (Beta) and Kamine Syracuse Cogen Co., Inc. (Kamine). Beta is a subsidiary of Besicorp Group Inc., a New York corporation with its principal place of business in Kingston, New York. Kamine, a New Jersey corporation with its principal place of business in Union, New Jersey, is an affiliate of Kamine Development Corp. (KDC), also a New Jersey corporation. KDC and Besicorp and their affiliates are energy project developers which own and operate several natural gas cogeneration facilities.

K/B Syracuse has an application pending with the Federal Energy Regulatory Commission (FERC), filed on July 2, 1992, for recertification of the cogeneration facility as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978, as amended (16 U.S.C. 796 *et seq.*). additionally, on November 6, 1991, K/B Syracuse filed a certification with DOE pursuant to the Powerplant and industrial Fuel Use Act of 1978, as amended (42 U.S.C. 8301, *et seq.*), stating that the cogeneration facility will be capable of using coal or another alternate fuel as a primary energy source. K/B Syracuse has contracted to sell the net electrical output of the cogeneration facility to Niagara Mohawk Power Corporation (Niagara Mohawk). Steam and/or hot water energy will be sold to The New York State Fair, which operates permanent facilities adjacent to the cogeneration facility site.

2. Transportation Arrangements

NCM has arranged firm transportation on the pipeline systems of NOVA Corporation of Alberta (NOVA) and TransGas Limited to transport the gas within Alberta and Saskatchewan to various receipt points on the TransCanada PipeLines Limited (TCPL) system. K/B Syracuse has signed a precedent agreement for firm transportation capacity on TCPL. TCPL plans to transport the gas to its interconnection with Empire State Pipeline (Empire) at Chippawa, Ontario. Empire will then transport the gas to the distribution system of Niagara Mohawk at Syracuse, New York, for delivery to the cogeneration plant. Niagara Mohawk plans to construct a 1000-foot pipeline connecting its system to the K/B Syracuse cogeneration facility.

3. Contract Pricing Provisions

The initial term of the July 30, 1991, gas purchase agreement between K/B Syracuse and NCM is 15 years, with a provision to extend the agreement by mutual consent of the parties. The agreement provides that NCM will be the sole supplier of the cogeneration facility's total gas requirements up to the maximum daily quantity (MDQ) of 16,300 Mcf per day. The agreement contains a provision which seeks to ensure continued firm delivery of gas to K/B Syracuse by requiring NCM to compensate K/B Syracuse for additional costs incurred if it becomes necessary for K/B Syracuse to obtain alternative gas supplies.

The agreement includes a pricing schedule, which specifies a fixed commodity price starting at $1.86 (U.S.) per MMBtu (1992–1995), escalating to $5.54 (U.S.) per MMBtu in 2008, which includes taxes, royalties, fees, and other charges incurred by NCM. The assumed delivery point to K/B Syracuse is Empress, Alberta. The total price for gas delivered to the U.S./Canada border will be the fixed commodity price plus the TCPL transportation charges, currently estimated at $.84 per Mcf. K/B Syracuse asserts that the initial price paid for gas volumes delivered to the United States/Canada border in 1993 will be $2.70 (U.S.) per MMBtu, consisting of the fixed commodity price of $1.86 (U.S.) and the estimated TCPL transportation charge of $.84 (U.S.). In addition to the fixed commodity price and the TCPL transportation charge, K/B Syracuse will be required to pay any pipeline demand charges incurred, but not actually used by NCM in performance of the gas purchase agreement, unless NCM fails to deliver gas to the contractually specified receipt points. The agreement provides terms under which NCM and K/B Syracuse can mitigate these excess demand charges. The agreement also requires K/B Syracuse to pay a gas inventory charge of $.40 per Mcf for deficiency volumes if it takes less than 80 percent of the MDQ.

The decision on this application for import authority will be made consistent with DOE's import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the gas, security of the long-term supply, and any relevant issues that may be unique to cogeneration powerplants. Parties, especially those that may oppose this application, should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines and as they relate to the requested import authorization. The applicant asserts that imports made under the proposed arrangement will be competitive and otherwise consistent with DOE import policy. Parties opposing this arrangement bear the burden of overcoming these assertions. All parties should be aware that if the requested import arrangement is approved, the authorization will be conditioned on the filing of quarterly reports indicating volume imported and the purchase price, in order for DOE to monitor its natural gas import program.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C § 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. FERC issued an environmental assessment (EA) of the Empire pipeline project on May 24, 1991. DOE intends to review the FERC EA and to evaluate the environmental impact of the cogeneration plant and pipeline lateral proposed by K/B Syracuse and Niagara Mohawk. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to this proceeding and to have their written

comments considered as the basis for the decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of K/B Syracuse's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 17, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–23240 Filed 9–23–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–77–NG]

Louis Dreyfus Natural Gas Corps., Order Granting Blanket Authorization to Import and Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Louis Dreyfus Natural Gas Corp. a blanket authorization to import up to 182.5 Bcf of imported Canadian gas, and to export up to 182.5 Bcf of domestically produced natural gas to Mexico and Canada, over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 17, 1992

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–23247 Filed 7–23–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4510–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 26, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Notification of Episodic Releases of Oil and Hazardous Substances, EPA ICR No. 1049.05. This ICR requests renewal of a currently approved collection (OMB No. 2050–0046).

Abstract: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) establishes broad Federal authority to respond to releases of hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA by reference to other environmental statutes, including Clean Water Act (CWA) sections 311 and 307; Clean Air Act (CAA) section 112; the Resource Conservation and Recovery Act (RCRA) section 3001; the Toxic Substances Control Act (TSCA) section 7; and CERCLA section 102(a). There are currently 780 CERCLA hazardous substances, approximately 1,500 radionuclides, and an unspecified number of unlisted RCRA hazardous wastes that are also considered CERCLA hazardous substances. The most recent addition to the CERCLA list of hazardous substances is the 51 hazardous air pollutants listed pursuant to CAA section 112.

Each CERCLA hazardous substance is assigned an 'RQ' which is the quantity of hazardous substance that, when released into the environment, triggers CERCLA section 103 reporting requirements. Section 103(a) requires the person in charge of a facility to immediately notify the National Response Center (NRC) of any hazardous substance release that equals or exceeds its RQ. The information that must be provided to the NRC in the notification includes general background information, such as the location of the incident and the name and address of the discharger, as well as more detailed information about the circumstances surrounding the release, including the type of material(s) released, environmental medium(a) affected, and cause(s) and source(s) of the release. Notification under CERCLA section 103(a) is intended to ensure that Federal authorities receive prompt notification of hazardous substance releases for

which a timely response may be necessary to protect public health or welfare or the environment.

Burden Statement: The estimated annual public reporting burden for this collection of information is estimated to average 4.1 hours per release, including time for reviewing regulatory requirements, gathering the required release information, contacting the NRC about the release, and keeping a log.

Respondents: Anyone in charge of a facility or vessel from which a hazardous substance was spilled or released into the environment in quantities greater than its RQ.

Estimated Number of Respondents: 52,100 release reports.

Estimated Total Annual Burden on Respondents: 213,700 hours.

Frequency of Collection: On occasion - when a release above the RQ occurs.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency,Information Policy Branch (PM-223Y), 401 M Street, SW.,Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20530.

Dated: September 18, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-23255 Filed 9-23-92; 8:45 am]

Billing Code 6560-50-F

[FRL-4510-4]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between January 8, 1992 and July 31, 1992, the United States Environmental Protection Agency (EPA) Region II Office, issued four final determinations, the New York State Department of Environmental Conservation (NYSDEC) issued eight final determinations, and the New Jersey Department of Environmental Protection and Energy (NJDEPE) issued one final determination pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Donna M. Giannotti of the Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency Region II Office, 26 Federal Plaza, Room 505, New York, New York 10278, (212) 264-4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II, the NYSDEC, and the NJDEPE have made final determinations relative to the sources listed below:

Name	Location	Project	Agency	Final action	Date
Roche Products	Manati, Puerto Rico	Modification to reflect actual construction of only 1 gas turbine, 1 electrical generator, and 1 waste heat recovery boiler as opposed to the two originally planned. Simultaneous operation of the two existing boilers with the one gas turbine is allowed.	EPA	PSD Permit Modification	Jan. 17, 1992.
Cogen Technologies Linden Limited.	Linden, New Jersey	Six GE 90 MW combustion gas turbines, five duct fired heat recovery steam boilers, three 190 ft. stacks, and three steam turbine generators.	NJDEPE	Permit Modification	Jan. 21, 1992.
Hadson Power Partners	Rensselaer, New Jersey	79 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	Non-applicability	Jan. 27, 1992.
Virgin Islands Water & Power Authority.	St. Thomas, Virgin Islands	23 MW oil fired gas turbine, Unit 18, (Model PG5371). Relaxed restrictions limiting the fuel consumption of Unit 15, a 23 MW GE Frame 5 oil fired gas turbine (Model PG5341).	EPA	PSD Permit	Feb. 11, 1992.
Hanes Menswear, Inc.	Ponce, Puerto Rico	Addition of a 900 HP Cleaver Brooks boiler.	EPA	Non-applicability	Feb. 28, 1992.
San Juan Resource Recovery.	San Juan, Puerto Rico	Three independent refuse combustion trains. Facility designed to process 1040 tons/day of solid waste.	EPA	PSD Permit Modification	Mar. 18, 1992.
Indeck Olean	Olean, New York	79 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	Non-applicability	Apr. 30, 1992.
Indeck Yerkes	Tonowanda, New York	53 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel. Addition of a 20 MMBtu/hr gas only duct burnerf.	NYSDEC	Revised PSD Permit	May 20, 1992.
Indeck Corinth	Corinth, New York	79 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	Non-applicability	May 25, 1992.
JMC Selkirk Phase I & Phase II.	Selkirk, New York	252 MW combined cycle gas turbine cogeneration project firing natural gas with propane, butane, and #2 oil as backup fuel. Permit two new GE Frame 7 turbines and modified the existing Frame 7.	NYSDEC	PSD Permit	June 3, 1992.
Srthe Ogdensberg / AG Energy	Ogdensburg, New York	79 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	Non-applicability	June 15, 1992.

Name	Location	Project	Agency	Final action	Date
Indeck Kirkwood	Kirkwood, New York	55 MW combined cycle gas turbine co-generation project firing natural gas with #2 oil as backup fuel.	NYSDEC	Non-applicability	June 17, 1992.
Saranac Cogeneration	Saranac, New York	239.7 MW combined cycle gas turbine cogeneration project firing natural gas with liquid petroleum fuel.	NYSDEC	PSD Permit	July 22, 1992.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office, Permits Administration Branch—room 505, 26 Federal Plaza, New York, New York 10278.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233–0001.

NJDEPE Actions

New Jersey Department of Environmental Protection and Energy, Division of Environmental Quality, Bureau of Engineering and Technology, 401 East State Street, Trenton, New Jersey 08625.

If available pursuant to the Consolidated Permit Regulations (40 CFR 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: September 2, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 92–23256 Filed 9–23–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4506–8]

Federal Interagency Committee on Noise (FICON): Report and Recommendations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of FICON report and recommendations.

SUMMARY: At the direction of the Environmental Protection Agency and the Federal Aviation Administration, the FICON was formed in December 1990 with a basic charter to review specific elements of the assessment of airport noise impacts contained in documents prepared pursuant to the National Environmental Policy Act (NEPA); to review the relationship of Federal Aviation Regulation (FAR) Part 150 to NEPA; and to make recommendations regarding potential improvements. The FICON is composed of representatives of Departments of Transportation (Office of the Secretary and the Federal Aviation Administration), Defense, Justice, Veterans Affairs, Housing and Urban Development; the Environmental Protection Agency; and the Council on Environmental Quality. The FICON has completed its charter and has issued its report, which contains technical findings and conclusions, and policy recommendations. This notice of the availability of the FICON Report is being published separately by all FICON member agencies.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Mittelholtz, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone, 202–260–8788.

SUPPLEMENTARY INFORMATION:

Availability of FICON Report

Any person may obtain a copy of the FICON Report by submitting a written request to the point of contact: Spectrum Sciences and Software, Inc., Attn: Mr. Larry McGlothlin (Code EPA), 242 Vicki Leigh Road, Fort Walton Beach, Florida 32548–1314, telephone (909) 862–3330/3332.

Background

The FICON was formed to review federal policies which are used in the assessment of airport noise impacts. The FICON review focused primarily on:

- The manner in which noise impacts are determined, including whether aircraft noise impacts are fundamentally different from other transportation noise impacts;
- The manner in which noise impacts are described;
- The extent or impacts outside of Day-Night Average A-Weighted Sound Level (DNL) 65 decibels (db) that should be reviewed in a National Environmental Policy Act (NEPA) document;
- The range of FAA-controlled mitigation options (e.g., noise abatement and flight track procedures) analyzed; and
- The relationship of the Federal Aviation Regulation (FAR) Part 150 process to the NEPA process, including ramifications to the NEPA process if they are separate, and exploration of the means by which the two processes can be handled to maximize benefits.

The FICON was organized into three subgroups to appropriately focus on the technical, legal and policy issues associated with the assessment of airport noise impacts. The Technical Subgroup was tasked to review the body of science associated with methodologies and metrics for assessing airport noise impacts which have evolved since the 1980 meetings of the Federal Interagency Committee on Urban Noise (FICUN). The Policy Subgroup was tasked to review federal policies which are used in the assessment of airport noise impacts. The Legal Subgroup reviewed the legal aspects of current and proposed federal policies for assessing airport noise impacts. The Technical Subgroup's products were used as a basis for the policy findings, conclusions and recommendations in the Report.

FICON Report Conclusions

General

- There are no new descriptors or metrics of sufficient scientific standing to substitute for the present DNL cumulative noise exposure metric.
- The methodology employing DNL as the noise exposure metric and appropriate dose-relationships (primarily the Schultz curve for Percent Highly Annoyed) to determine noise impact on populations is considered the proper one for civil and military aviation scenarios in the general vicinity of airports.
- Federal agencies generally conduct noise assessments at DNL levels of 65 dB and higher. For a variety of reasons,

noise predictions and interpretations are frequently less reliable below DNL 65 dB. DNL prediction models tend to degrade in accuracy at large distances from the airport. Therefore, predictions of noise exposure and impact below DNL 65 dB should take the possibility of such inaccuracy into account.

• DNL is sometimes supplemented by other metrics on a case-by-case basis.

• Noise analyses should address impacts in the following areas: (1) health and welfare, (2) environmental degradation/impact, and (3) land use planning.

• Complaints are an inadequate indicator of the full extent of noise effects on a population.

Health and Welfare

• The dose-effect relationship, as represented by DNL and "Percent Highly Annoyed" (%HA), remains the best available approach for analyzing overall health and welfare impacts for the vast majority of transportation noise analysis situations.

• The 10 dB nighttime penalty levied against noise during the 10 PM to 7 AM period is specifically designed to account for the intrusiveness of noise during this period, and its potential impact on sleep. There are no new hard data which would justify a change in this penalty.

• If supplemental analysis for sleep disturbance is desired, use may be made of an interim dose-response model developed by the AF Armstrong Laboratories. Although this relationship is described in terms of Sound Exposure Level (SEL), single event metrics are of limited use in predicting and interpreting cumulative noise exposure impacts.

• Annoyance is a summary measure of the general adverse reaction of people to living in noisy environments that cause speech interference, sleep disturbance, desire for a tranquil environment; and the inability to use the telephone, radio or television satisfactorily.

• No definitive evidence of nonauditory health effects from aircraft noise exists, particularly below DNL 70 Db.

• For supplemental analysis Long-Term Equivalent Sound Level $L_{eq(x)}$ (where X represents the time period of concern) or Time Above (TA) may be used for analysis of school and communications requirements indoors during specific hours.

• Public health and welfare effects below DNL 60 dB have not been established, but are assumed to decrease according to the decrease in percent of people highly annoyed.

Environmental Degradation/Impact

• Under NEPA, environmental degradation might have to be assessed around airports even if there is no clear effect on public health and welfare. Other criteria might be appropriate.

• A 3 dB increase in the DNL environment represents a doubling of sound energy, and clearly is an indicator of the need for further analysis, although smaller increases may indicate similar need. In other words, the impact of a given incremental amount of change in noise levels depends, in part, upon the existing level of the noise environment.

• Recent technology and software advances in geographic information systems (GIS), noise methodology and Census data present an enhanced potential for detailed analysis of sound impacts on population and noise-sensitive areas. These technologies should be considered for use to determine noise impacts of present and proposed actions.

Land Use Planning

• DNL represents the accepted noise metric for input to compatible land use planning.

• For cumulative speech interference, Table 3–2 "Effects of Noise on People" contained in FICON Volume II: Technical Report, provides a rough approximation of both outdoor and indoor predicted speech interference parameters for various levels of noise exposure as measured in DNL for residential land use only.

• There is a need for selective updating [including Standard Land Use Coding Manual (SLUCM) updating] and enhanced public understanding of the land-use compatibility guidelines, its application and interpretation through incentives and other programs.

Education of the Public

Education of the public should concentrate on the following frequently misunderstood issues:

• Environmental noise exposure is measured and described most generally by Day-Night Average A-Weighted Sound Level (DNL). DNL should be defined clearly and its significance and use explained clearly.

• Relation of DNL to Percent Highly Annoyed describes long-term community response to the overall sound environment (indices of health and welfare effects).

• Although the A-Weighted Maximum Sound Level for a single flyover is easily understood, it is useful only for analyzing short-term responses.

• Every change in the noise environment does not necessarily impact public health and welfare.

• Aircraft noise predictions below DNL 65 dB can be less accurate and should be interpreted with caution.

FICON Report Recommendations

• Continue use of the DNL metric as the principal means for describing long-term noise exposure to civil and military aircraft operations.

• Continue agency discretion in the use of supplemental noise analysis.

• Improve public understanding of the DNL, supplemental methodologies and aircraft noise impacts.

• If screening analysis shows that noise sensitive areas will be at or above DNL 65 dB and will have an increase of DNL 1.5 dB or more, further analysis should be conducted of noise sensitive areas between DNL 60–65 dB having an increase of DNL 3 dB or more due to the proposed airport noise exposure.

• If the DNL 65 dB screening test calls for further analysis between DNL 60–65 dB, agency mitigation options should include noise sensitive areas between DNL 60–65 dB that are projected to have an increase of 3 dB or more as a result of the proposed airport noise exposure.

• If an FAA FAR Part 150 program is included by the FAA as a NEPA mitigation measure, the FAA and the airport operator are responsible for ensuring that the commitment is carried out and the Part 150 study scope conforms to the NEPA scope of analysis.

• Increase research (R&D) on methodology development and on the impact of aircraft noise. To foster this, a standing federal interagency committee should be established to assist agencies in providing adequate forums for discussions of public and private sector proposals identifying needed research and in encouraging the conduct of research in these areas.

The following initial R&D issues are recommended:

• Evaluate potential modifications to the 1980 FICUN land use compatibility table to improve its usefulness for both routine land use planning and planning for noise-sensitive land uses.

• Continue research into community reaction to aircraft noise, including sleep disturbance, speech interference, and non-auditory health effects of noise.

• Investigate differences in perceptions of aircraft noise, ground transportation noise (highways and railroads), and general background noise.

• Continue and expand research on the airport noise impacts of rotary-wing operations.

It is the FICON's belief that these recommendations will provide both immediate and long-term improvements in airport noise analysis. Federal interagency encouragement of a continuing review of airport noise analysis will provide a forum to address related public concerns.

While the FICON is seeking to achieve improved uniformity among Federal agencies in airport noise analysis, it must also recognize that agencies have differing legislative mandates and operating environments. These recommendations should be viewed as general guidance. Each Federal agency must determine how it can best use this guidance, supplementing it as appropriate to meet agency needs, within the framework of the NEPA requirements. The FICON Report neither addresses the adequacy of compliance with NEPA to date by the participating agencies, attempts to redefine thresholds of significance of impact under NEPA, nor modifies the NEPA regulations or procedures of the agencies.

Public Review and Comment

Any person may express his or her views on the FICON Report by submitting written comments to the Federal Aviation Administration, Office of Environment and Energy, AEE–300, 800 Independence Avenue, Washington, DC 20591. Since the primary impact of the report's recommendations will be on the assessment of civil airport noise impacts for which the FAA is responsible, the FAA is serving the focal point for the receipt of public comments. Copies of such written responses will be provided to all agencies participating in FICON.

The Environmental Protection Agency is reviewing its procedures for evaluating airport noise impacts based on the report findings, conclusions, and recommendations, and any resulting change in regulations and/or procedures will follow the agency's rules for public review and comment prior to adoption.

Issued in Washington, DC on September 18, 1992.

Ricahrd E. Sanderson,
Director, Office of Federal Activities.

[FR Doc. 92–23186 Filed 9–23–92; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Neil St. John Raymond, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 8, 1992.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Neil St. John Raymond, d/b/a Candlewood Associates, Boston, Massachusetts, and/or Elizabeth W. Raymond, Ipswich, Massachusetts, to acquire 66.0 percent of the voting shares of First Ipswich Bancorp, Ipswich, Massachusetts, for a total of 68.2 percent, and thereby indirectly acquire The First National Bank of Ipswich, Ipswich, Massachusetts.

Board of Governors of the Federal Reserve System, September 18, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92–23184 Filed 9–23–92; 8:45 am]
BILLING CODE 6210–01–F

Chisholm Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 16, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Chisholm Bancshares, Inc., Chisholm, Minnesota; to acquire 100 percent of the voting shares of Farmers & Merchants State Bank, Cook, Minnesota.

2. Frandsen Financial Corporation, Forest Lake, Minnesota; to acquire 100 percent of the voting shares of Citizens State Bank of East Grand Forks, East Grand Forks, Minnesota; First State Bank of Ada, Ada, Minnesota; Nimrod Enterprises, Inc., Foley, Minnesota, and thereby indirectly acquire State Bank of Foley, Foley, Minnesota; and The Gilmanton Co., Foley, Minnesota, and thereby indirectly acquire First State Bank of Gilman, Inc., Gilman, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. F.S.B. Properties, Inc. Employee Stock Ownership Plan, Quinton, Oklahoma; to acquire 37.6 percent of the voting shares of F.S.B. Properties, Inc., Quinton, Oklahoma, and thereby indirectly acquire Farmers State Bank, Quinton, Oklahoma.

Board of Governors of the Federal Reserve System, September 18, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92–23183 Filed 9–23–92; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Announcement for Allied Health Project Grants for Fiscal Year 1993

The Health Resources and Services Administration (HRSA), announces that applications for fiscal year (FY) 1993 Allied Health Project Grants are being accepted under the authority of section 796, title VII, of the Public Health Service Act (the Act), as amended by the Health Professions Reauthorization Act of 1988, Public Law 100–607.

This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. The period of Federal support will not exceed three years.

The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application of this program. In FY 1992, HRSA reviewed 113 applications for Allied Health Project Grants. Of those applications, 46 percent were approved and 54 percent were not recommended for further consideration. Eleven projects, or 10 percent of the applications received, were funded. In FY 1991, HRSA reviewed 125 applications for Allied Health Project Grants. Of those applications, 20 percent were approved and 80 percent were not recommended for further consideration. Ten projects, or 8 percent of the applications received, were funded.

Purposes

Section 796 authorizes the award of grants for the costs of planning, developing, establishing, operating, and evaluating projects for:

(1) Improving and strengthening the effectiveness of allied health administration, program directors, faculty, and clinical faculty;

(2) Improving and expanding program enrollments in those professions in greatest demand and whose services are most needed by the elderly;

(3) Promoting the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly through interdisciplinary training programs;

(4) Emphasizing innovative models to link allied health clinical practice, education and research;

(5) Adding and strengthening curriculum units in allied health programs to include knowledge and practice concerning prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics; and

(6) The recruitment of individuals into allied health professions including projects for:

(A) The identification and recruitment of highly qualified individuals, including the provision of educational and work experiences for recruits at the secondary and collegiate levels;

(B) The identification and recruitment of minority and disadvantaged students, including the provision of remedial and tutorial services prior and subsequent to admission, the provision of work-study programs for secondary students, and recruitment activities directed toward primary school students; and

(C) The coordination and improvement of recruitment efforts among official and voluntary agencies and institutions, including official departments of education, at the city, county, and State, or regional level.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This program, Allied Health Project Grants, is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Eligible Applicants

To be eligible for a grant, an applicant must be a school, university or other public or nonprofit private educational entity which provides for allied health personnel education and training.

Review Criteria

- The review criteria, stated below, which were established in FY 1990 after public comment, will remain unchanged in FY 1993.
- The extent to which the proposed project meets the legislative purpose;
- The background and rationale for the proposed project;
- The extent to which the project contains clearly stated realistic and achievable objectives;
- The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
- The evaluation plans and procedures for program and trainees, if involved;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable; and
- Whether there is an institutional plan and commitment for self-sufficiency when Federal support ends.

Other considerations

In addition, the following funding factor may be applied in determining the funding of approved applications.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Established Special Consideration

The following special consideration was established in FY 1991 after public comment and the Administration is extending it in FY 1993.

Applicants demonstrating affiliation agreements for interdisciplinary training experiences in one or more of the following: a nursing home; hospital or

ambulatory care center providing substantial geriatric health care; Migrant Health Center (section 329 of the Act); Community Health Center (section 330 of the Act); Health Professional Shortage Area (section 332 of the Act); Area Health Education Center (section 781(a) of the Act); or a State or local public health or designated clinic or center serving an underserved population, or a rural health clinic or other facility with training opportunities in a rural area.

Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers;

Section 330 authorizes support for community health care services to medically underserved populations;

Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas; and

Section 781(a) authorizes support for Area Health Education Centers to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system.

Application Requests

Application forms will be sent to FY 1992 applicants and to those who request kits.

Requests for grant application materials and questions regarding grants policy and business management issues should be directed to: Ms. Diane Murray (D37), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be returned to the above address.

Questions regarding programmatic information should be directed to: Dr. Norman Clark, Program Officer, Associated Health Professions Branch, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–02, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6763.

The deadline date for receipt of applications is January 25, 1993. Applications will be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and Supplement for this program has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The Catalog of Federal Domestic Assistance number for this program is 93.191. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 27, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–23191 Filed 9–23–92; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement and Proposed Funding Priority and Special Consideration for Grants for Interdisciplinary Training for Health Care for Rural Areas for FY 1993

The Health Resources and Services Administration (HRSA) announces that applications are being accepted for fiscal year (FY) 1993, Grants for Interdisciplinary Training for Health Care for Rural Areas, under the authority of section 799A, title VII, of the Public Health Service (PHS) Act, as amended by Public Law 100–607. Comments are invited on the proposed funding priority and special consideration.

This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Funding for this program is designed to test innovative training approaches that may be replicated in similar settings.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. There was no competitive cycle for FY 1992. In FY 1991, HRSA reviewed 36 applications for Grants for Interdisciplinary Training for Health Care for Rural Areas. Of those applications, 44 percent were approved and 56 percent were disapproved. Seven projects, or 19 percent of the applications received, were funded in FY 1991. Four of the other approved projects were funded in FY 1992.

Purposes

Section 799A of the Public Health Act, as amended by Public Law 100–607, authorizes the Secretary to award grants for interdisciplinary training projects designed to provide or improve access to health care in rural areas. Specifically, projects funded under this authority shall be designed to:

(a) Use new and innovative methods to train health care practitioners to provide services in rural areas;

(b) Demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care;

(c) Deliver health care services to individuals residing in rural areas;

(d) Enhance the amount of relevant research conducted concerning health care issues in rural areas; and

(e) Increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

A recipient of funds may use various methods in carrying out the projects described above. The legislation cites the following methods as examples:

(a) The distribution of stipends to students of eligible applicants;

(b) The establishment of a postdoctoral fellowship program;

(c) The training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

(d) The purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

Eligibility

To be eligible for a Grant for Interdisciplinary Training for Health Care for Rural Areas, each applicant must be located in a State and be:

1. A local health department, or
2. A nonprofit organization, or
3. A public or nonprofit college, university or school of, or program that specializes in nursing, psychology, social work, optometry, public health, dentistry, osteopathic medicine, physician assistants, pharmacy, podiatric medicine, allopathic medicine, chiropractic, or allied health professions.

For-profit entities are not eligible to obtain funds under section 799A either directly or through subgrants or subcontracts.

Each application must be jointly submitted by at least two eligible applicants. One of the applicants must be an academic institution. Each application must demonstrate the need and demand for health care services, knowledge of available resources and the most significant service and educational gaps within its targeted geographic area. One applicant must be designated the principal organization responsible and accountable for the conduct of the proposed project.

Definitions

"*Clinical Treatment or Training*" means direct, supervised participation in patient care by observation, examination and performance of procedures as are appropriate for the assigned role of the trainee on the rural health care team.

"*Community Health Center*" means an entity as defined in section 330(a) and (b) of the Act and in regulations at 42 CFR 51c.102(c).

"*Community Mental Health Center*" means for purposes of this grant program a multiservice mental health facility which provides essential elements of comprehensive mental health services:

(1) Inpatient services;
(2) Outpatient services;
(3) Partial hospitalization services—must include at least day care services;
(4) Emergency services provided 24 hours per day—must be available within at least one of the first three services listed above; and/or
(5) Consultation and education services available to community agencies and professions personnel.

"*Indian Tribe*" *or* "*Tribal Organization*" means an organization or entity as defined in section 4(e) and 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"*Interdisciplinary Training*" means a planned and coordinated program of education or training aimed at preparation of functioning teams of two or more health care practitioners from different health disciplines who will coordinate their activities to provide services to a client or group of clients.

"*Long-Term Care Facility*" is a facility which offers services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive and maintenance services for individuals who have chronic physical or mental impairments. This facility may have a variety of institutional and non-institutional health settings, including the home, and the goal of the service provided is to promote the optimum level of physical, social and psychological functioning.

"*Migrant Health Center*" means an entity as defined in section 329(a) of the Act and in regulations at 42 CFR 56.102(g)(1).

"*Native Hawaiian Health Center*" means an entity as defined in the Native Hawaiian Health Care Act of 1988 (Pub L. 100–579) (42 U.S.C. 11707(4)).

"*Nonprofit*" as applied to any entity means one, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"*Postdoctoral Fellowship Program*" means a program of advanced academic or professional work, after the attainment of a doctoral degree, that is sponsored by a school of/or program that specializes in medicine, osteopathic medicine, nursing, dentistry, psychology, social work, optometry, public health, pharmacy, podiatric medicine, or allied health.

"*Rural Area*" means a Non-Metropolitan Statistical Area or an area located outside a Metropolitan Statistical Area as defined by standards followed by the Office of Management and Budget. "Rural Area," as defined in section 799A, includes a "frontier area" in which the population density is less than 7 individuals per square mile.

"*Rural Health Care Agency*" means a hospital, community health center, migrant health center, rural health clinic, community mental health center, long-term care facility, facility operated by the Indian Health Service or an Indian tribe or tribal organization under a contract with the Indian Health Service under the Indian Self-Determination and Education Assistance Acts, or Native Hawaiian health centers.

"*Rural Health Clinic*" means an entity as defined under section 1861(aa)(2) of the Social Security Act and in regulations at 42 CFR 491.2.

"*State*" means, in addition to the 50 States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republican of the Marshall Islands, and the Federated States of Micronesia.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. This program, Grants for Interdisciplinary Training for Health Care for Rural Areas, is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the undeserved.

Statutory Project Requirements

Interdisciplinary training projects funded under section 799A must:

1. Assist individuals in academic institutions in establishing long-term collaborative relationships with health care facilities and providers in rural areas; and;

2. Designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination and Education Assistance Acts, or Native Hawaiian health centers.

Not more than 10 percent of the individuals receiving training with section 799A funds shall be trained as doctors of medicine or osteopathic medicine. A grantee may not use more

than 10 percent of the grant funds for administrative costs.

Established Nonstatutory Project Requirements

The following project requirements were established in fiscal year 1990 (55 FR 24321, dated June 15, 1990) and 1991 (56 FR 37713, dated August 8, 1991), after public comment, and are being extended in FY 1993.

A project supported under this grant program must meet the following requirements:

(1) Carry out the following two project purposes, at a minimum, among those authorized by section 799A:

(a) Interdisciplinary training to prepare health care practitioners to provide services in rural areas; and

(b) increase the recruitment and retention of health care practitioners in rural areas.

(2) Collaborate with the resources of an Area Health Education Center (AHEC) or Geriatric Education Center (GEC) if these centers are present in a State or part of a State where the rural interdisciplinary training project is conducted.

(3) Evaluate in a systematic manner, as prescribed by the Secretary, its project activity, including determination of a baseline at the outset of the project and measurement of progress by trainees and faculty.

(4) Provide and clearly define for each level of training (undergraduate, graduate, postgraduate, continuing education and faculty training) the disciplines and numbers of students to receive training as well as the duration of the training. This is to include an outline of basic criteria for the selection of students to participate in the training. These project elements are to be tracked and linked to project outcomes.

(5) Provide specific indicators of the extent and means by which it plans to become self-sufficient.

(6) Implement integrated recruitment and retention strategies.

(7) Establish curriculum elements that address the uniqueness of health conditions and ethnic or cultural characteristics of the populations in the rural areas to be served.

(8) Enroll a significant proportion of individuals from rural areas, particularly rural health professions shortage areas or medically underserved areas.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 799A of the Act;

(2) The extent to which the project explains and documents the need for the project in the rural area to be served;

(3) The degree to which the proposed project adequately provides for the interdisciplinary training of health professionals to practice in the rural area to be addressed by the project;

(4) The degree to which the applicant offers appropriate clinical training experiences in rural health care settings;

(5) The degree to which the applicant demonstrates a commitment to establishing and maintaining long-term collaborative relationships between academic institutions and health care facilities and providers in rural areas;

(6) The effectiveness of the organizational arrangements necessary to carry out the project;

(7) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(8) The capability of the proposed staff and faculty to provide the proposed instruction;

(9) The extent to which the trainee recruitment and selection process assures that qualified trainees with significant interest or background in rural health care are involved in the project;

(10) The extent to which the budget justification is reasonable and indicates that institutional and community support to the project are provided to the maximum extent possible; and

(11) The extent to which the financial information provided indicates an effective utilization of grant funds and indicates that the project will continue on a self-sustaining basis.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Established Funding Preference

The following funding preference was established in FY 1990, after public comment (55 FR 24321, dated June 15, 1990), and the Administration is extending it in FY 1993.

A funding preference will be given to interdisciplinary training involving three or more disciplines. This funding preference will be given to applicants that propose and implement training for health care practitioners, faculty or students representing three or more disciplines.

Proposed Funding Priority

In addition, for FY 1993, it is proposed that a funding priority be given to applicant institutions (academic) which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes. This priority is consistent with a HRSA strategy to increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

Proposed Special Consideration

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas. This special consideration is intended to recognize applicants that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

Additional Information

Interested persons are invited to comment on the proposed funding priority and special consideration. The comment period is 30 days. All comments received on or before October 26, 1992, will be considered before the final funding priority and special consideration are established. No funds will be allocated or final selections made until a final notice is published stating when the final funding priority and special consideration will be applied. Written comments should be addressed to: Director, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 and 5 p.m.

Application forms will be sent only upon request. Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Mary Allen, Grants Management Specialist (D–36), Bureau of Health Professions, HRSA, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6002, FAX: 301–443–4131.

Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Dr. Marcia Brand, Program Officer, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, Parklawn Building, room 8C–15, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6837, FAX: 301–443–1164.

The standard application for State and local governments is form PHS 5161. For other applicants, the standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is December 4, 1992. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Grants for Interdisciplinary Training for Health Care for Rural Areas, is listed at 93.192 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 20, 1992.

John H. Kelso,

Acting Administrator.

[FR Doc. 92–23192 Filed 9–23–92; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of October 1992:

Name: Advisory Committee on Infant Mortality.

Date & Time: October 5–6, 1992, 8:30 a.m.

Place: West End Ballroom; Salons D & E, Washington Marriott, 1221 22d Street, NW., Washington, DC 20037.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; how best to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start Initiative and other recommendations of the Domestic Policy Council, and infant mortality objectives from Healthy People: 2000: National Health Promotion and Disease Prevention Objectives.

Agenda: Topics that will be discussed include: Healthy Start Initiative Program, Evaluation and Public Information/Education Campaign; and Health Professions Education/Manpower Initiatives. Subcommittees will also convene.

Anyone requiring information regarding the Committee should contact Mr. Ronald Carlson, Executive Secretary, Advisory Committee on Infant Morality, Health Resources and Services Administration, room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2460.

Persons interested in attending any portion of the meeting should contact Ms. Kyungeun Carol Han, Public Health Analyst, Office of the Planning, Evaluation and Legislation, Health Resources and Services Administration, telephone (301) 443–1900.

Agenda Items are subject to change as priorities dictate.

Dated: September 15, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–23112 Filed 9–23–92; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of October 1992:

Name: Council on Graduate Medical Education.

Time: October 27–29, 1992, 8:30 a.m.

Place: Conference Room G & H, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: There will be a period of public comment on the Third Report of the Council on Graduate Medical Education.

Anyone requiring information regarding the subject Council should contact Marc L. Rivo, M.D., M.P.H., Executive Secretary, telephone (301) 443–6190; or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6328, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda Items are subject to change as priorities dictate.

Dated: September 15, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–23113 Filed 9–23–92; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Board on October 5, 1992. The meeting will take place from 8:30 a.m. to 4:30 p.m. in Conference Room 6, Building

31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 3:50 p.m. to discuss the Board's activities and to present special reports. Attendance by the public will be limited to the space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 3:50 p.m. until recess. The closed portion of the meeting will be for the discussion and approval of individuals to serve on scientific panels to update the smell, taste and touch and chemosensory disorders section and the speech and speech disorders section of the Research Plan. These discussions could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the Board's meeting and a roster of members may be obtained from Ms. Monica Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Other Communication Disorders)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–23295 Filed 9–23–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting (President's Cancer Panel)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, October 5, 1992, at the National Institutes of Health, Building 1, Wilson Hall, Bethesda, Maryland 20892.

This meeting will be open to the public on October 5, 1992, 8:30 a.m. to 12:30 p.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel, the Director, NCI, and invited participants discussing the topic "The Role of Voluntary Organizations in the National Cancer Program."

Ms. Iris Schneider, Acting Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A48, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5534) will provide a roster of the Panel members and substantive program information upon request.

Dated: September 21, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–23296 Filed 9–23–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–92–3510]

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice of a Computer Matching Program—HUD and Department of Education (ED).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Public Law 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Department of Education (ED) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with ED's debtor files. This match will allow prescreening of applicants for loans made or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the ED and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating Federal programs of either agency. Authorized users place a telephone call to the system. The system provides a recorded message followed by a series of instructions, one of which is a requirement for the SSN of the loan applicant. The system then reports audibly whether the SSN is related to delinquent or defaulted Federal obligations for HUD or ED direct or guaranteed loans. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: Effective Date: Computer matching is expected to begin October 26, 1992, and unless comments are received which will result in a contrary determination, will be accomplished 18 months from the beginning date.

COMMENTS DUE DATE: October 26, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR PRIVACY ACT INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, telephone number (202) 708–2374. [This is not a toll-free telephone number.]

FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Joseph McCloskey, Director, Control and Analysis Division, Department of Housing and Urban Development, 451 Seventh St., SW, Washington, DC 20410, telephone number (202) 708–4256.

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Rosemary Beavers, Chief, Administrative and Institutional Management Section, Division of Credit Management and Debt Collection, Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202, telephone number (202) 708–4766. [These are not toll-free numbers.]

REPORTING:

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and a report, in duplicate, are being provided to the Committee on

Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

AUTHORITY:

The matching program may be conducted pursuant to Public Law 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purpose of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

OBJECTIVES TO BE MET BY THE MATCHING PROGRAM:

By identifying those individuals who have defaulted on a student loan, the Federal Government can expand their prescreening search of their loan applicants to further avoid lending to applicants who are credit risks. This matching program will also encourage ED defaulters to contact ED to establish repayment arrangements.

RECORDS TO BE MATCHED:

HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records*. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on title II insured or guaranteed home mortgage loans; or individuals who have defaulted on section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans Delinquent/Default.

The ED will provide HUD with debtor files contained in its system of records identified as 18–40–0025, entitled "NDSL Student Loan Files—ED/OPE/OSFA," and its system of records identified as 18–40–0026, entitled "Guaranteed Loan Program-Paid Claims File ED/OPE/OSFA." HUD is maintaining ED's records only as a ministerial action on behalf of ED, not as a part of HUD's HUD/DEPT–2 system of records. ED's data contain information on individuals who have defaulted on their guaranteed loans. The ED will retain ownership and responsibility for their systems of records that they place with HUD. HUD serves only as a record location and routine use recipient for ED's data.

NOTICE PROCEDURES:

HUD and the ED will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed for direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the ED will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

CATEGORIES OF RECORDS/INDIVIDUALS INVOLVED:

The debtor records include these data elements: SSN, claim number, program code, ED Regional Office code, collection agency code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures.

Categories of individuals include: Former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, rehabilitation loan debtors who are delinquent or in default on their loans, and student loan defaulters.

PERIOD OF THE MATCH:

Matching will begin at least 30 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination.

Issued at Washington, DC, September 18, 1992.

Jim E. Tarro,

Assistant Secretary for Administration.

[FR Doc. 92–23135 Filed 9–23–92; 8:45 am]

BILLING CODE 4210–01–M

DEPARMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–02–4333–10]

Change of Meeting Date for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Change of Meeting date.

SUMMARY: Notice is hereby given in accordance with 43 CFR part 1780 that the meeting of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee on October 29, 1992, published in the August 24, 1992, Federal Register has been changed to November 5, 1992.

DATES: November 5, 1992 10 a.m.–4 p.m.

ADDRESSES: BLM Safford District Office, 425 E. 4th., Safford, Arizona.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by the Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Committee is continuing work on the Gila Box Interdisciplinary Activity Plan, which must be completed by November 28, 1992. The plan is being written using the Limits of Acceptable Change (LAC) planning process.

The draft document will be reviewed at the November 5, 1992 meeting. All meetings are open to the public. Interested persons may make oral statements to the Committee between 10:30 and 11 a.m., or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Resource Area Manager at least two working days prior to the meeting. Written statements are also accepted at any time during preparation of the draft plan, and will be reviewed by the Committee.

Statements should be mailed to Jonathan Collins, Team Leader, Gila Resource Area, 425 E. 4th St., Safford, Arizona 85546.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business

hours) within 30 days after each meeting.

FOR FURTHER INFORMATION CONTACT: Meg Jensen, Gila Resource Area Manager, or Jonathan Collins, Team Leader, 425 E. 4th St., Safford, Arizona 85546, Telephone (602) 428–4040.

Dated: September 18, 1992.

William T. Civish,

District Manager.

[FR Doc. 92–23203 Filed 9–23–92; 8:45 am]

BILLING CODE 4310–33–M

[NM–030–4320–02]

Las Cruces BLM District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The meeting will be held at the Las Cruces District Office, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005. The agenda for the meeting is:

1. Introduction of Council members.
2. Review of Charter and Responsibilities.
3. Election of Officers.
4. Discussion of Current Events in the Las Cruces District Office.
   - Lake Valley Interpretation and Restoration Plan Update
   - Status of Dripping Springs Natural Area Development
   - Overview of Mimbres Resource Area Resource Management Plan
   - Border Development Issues Dealing with Public Lands
   - Boots and Saddles Legislation
   - Wildlife 2000 in a "Fully Funded" District
   - Fiscal Year 1993 Department of Interior Appropriations Bill
   - McGregor Pipeline Reconstruction Update
   - Wast Management/Landfills/ HazMat Issues
5. Public Comment Period (this item to be held immediately after lunch to accommodate the public and avoid lengthy waits to address the Council).
6. Advice and input from District Advisory Council Members.

MEETING DATE: October 7, 1992, beginning at 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: Linda S. C. Rundell, District Manager, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico or at (505) 525–8228.

Dated: September 15, 1992.

Linda S. C. Rundell,

District Manager.

[FR Doc. 92–23198 Filed 9–23–92; 8:45 am]

BILLING CODE 4310–FB–M

[OR–050–4410–10:GP2–455]

Oregon; Prineville District Advisory Council Meeting

September 15, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that a meeting of the Prineville District Advisory Council will be held on October 15, 1992. The meeting will be in the form of a tour beginning at 9 a.m. at the Bureau of Land Management Office located at 185 E. Fourth Street, Prineville, Oregon 97754. The agenda will include discussions of district issues related to wild and scenic rivers and urban/rural interface management around Bend and Redmond.

The tour is open to the public, however, transportation and food will not be provided. Anyone desiring to address the Council or attend the tour must notify the District Manager, Bureau of Land Management, 185 E. Fourth Street, PO Box 550, Prineville, OR 97754 (Phone 447–4115) by the end of the business day on Tuesday, October 13, 1992.

James L. Hancock,

District Manager, Prineville District Office.

[FR Doc. 92–23206 Filed 9–23–92; 8:45 am]

BILLING CODE 4310–33–M

[ID–050–4320–14]

Shoshone District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management (BLM); Interior.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATES: Wednesday, October 21, 1992, at 9 a.m.

ADDRESSES: BLM Shoshone District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Mary C. Gaylord, District Manager, Shoshone District Office, P.O. Box 2–B, Shoshone, ID 83352. Telephone (208) 886–2206.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes (1) new member orientation, (2) Bennett Hills RMP update, (3) drought conditions update, (4) Fire Rehabilitation Plans, (5) fiscal year 1993 range improvement projects and proposed projects for 1994.

Operation and administration of the Board will be in accordance with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. Appendix 1) and Department of the Interior regulations, including 43 CFR part 1784.

The meeting will be open to the public. Anyone may present an oral statement between 11 a.m. and 12 noon, or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the District Manager by October 19, 1992. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Dated: September 9, 1992.

Dennis D. Schulze,

Acting District Manager.

[FR Doc. 92–23197 Filed 9–23–92; 8:45 am]

BILLING CODE 4310–GG–M

[MT–930–4212–13; MTM 80160]

Conveyance and Order Providing for Opening of Public Land in Chouteau County; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open land reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

The land acquired in the exchange provides habitat for upland game and deer and is part of a wildlife recreation management area. No minerals were exchanged by either party. The public was well served through completion of this land exchange.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to sec. 206 of FLPMA, the following described land was transferred to James and Norma C. Wood:

Principal Meridian, Montana

T. 25 N., R. 9 E.,

Sec. 11, SE¼NW¼.
containing 40.00 acres.

2. In exchange for the above-selected land, the United States acquired the following-described land from James and Norma C. Wood:

Principal Meridian, Montana

T. 25 N., R. 9 E.,
Sec. 13, SW¼SW¼.
containing 40.00 acres.

3. The values of the Federal public land and private land were appraised at $2,000.

4. At 9 a.m. on November 9, 1992, the lands described in paragraph 2 above that were conveyed to the United States will be opened to the operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on November 9, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: September 16, 1992.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 92-23199 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-DN-M

[CA-010-02-7122-10-5740; # CA 27994]

Realty Action; Exchange of Public and Private Lands in Kern and San Luis Obispo Counties, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian

T.32S., R.23E.
Tract #1: Sec. 28 All
containing 640 acres.
T.32S., R.24E.
Tract #2: Sec. 28 N½N½SE¼NW¼
containing 10 acres.
Tract #3: Sec. 28 W½SE¼NE¼, W½NE¼SE¼, S½NW¼SE¼
containing 60 acres.
Total: 710 acres of public land in Kern County, CA.

The surface estate and all mineral rights, except for the oil and gas rights, on the above public land will be exchanged. In exchange for this public land, the Bureau of Land Management (BLM) will acquire an equal value of lands from The Nature Conservancy (TNC) in the Carrizo Plain Natural Area or the Kelso Valley—Onyx area. The legal descriptions of the Carrizo Plain lands were published in the **Federal Register** on June 25, 1992, Vol. 57, No. 123, pg. 28534. The Kelso Valley—Onyx lands are as follows:

Mt. Diablo Meridian, California

T.25S., R.36E.
Sec. 20 E½SE¼SE¼
Sec. 21 W½2SW¼SW¼
T.27S., R.35E.
Sec. 8 SW¼SW¼
Sec. 17 W½NW¼NW¼
Sec. 18 SW¼, W½SE¼

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire some of the private inholdings within the BLM lands in the Carrizo Plain Natural Area (in Kern and S.L.O. Counties) and the Kelso Valley—Onyx area (in Kern County). The public interest will be well served by completing the exchange. Publication of this notice in the **Federal Register** segregates the above public lands from settlement, location, and entry under the public land laws, right-of-way laws, permit laws, and mining laws, but not exchange under section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first. The exchange will be on an equal value basis, not an acre-for-acre basis. An independent appraisal will establish the fair market value of the public and private lands. On public land transferred to TNC, the Bureau will reserve to the United States a right-of-way reservation for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Public land transferred to TNC will also be subject to the following:

S 060146; powerline right-of-way; affects Tract #1.
CA 6839; powerline right-of-way; affects Tract #1.
LA 0154858; road right-of-way; affects Tract #1.
CA 27971; road right-of-way reservation to BLM; affects Tract #1.
S 5505; oil & gas lease; affects Tract #1.
CA 20580; oil & gas lease; affects Tract #1.
SAC 019364a; oil & gas lease; affects Tract #1.
LA 01340; railroad right-of-way; affects Tract #2.
SAC 019395; oil & gas lease; affects Tracts #2 and #3.
S 4558; gas pipeline right-of-way; affects Tract #3.
S 033318; oil pipeline and telephone line right-of-way; affects Tract #3.
CA 26807; gas pipeline right-of-way; affects Tract #3.
CA 18066; powerline right-of-way; affects Tract #3.

Interested parties may submit comments to the BLM Area Manager at the following address until November 9, 1992. For further information contact: Bureau of Land Management, Caliente Resource Area Office, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861-4236.

Dated: September 1, 1992.

James Wesley Abbott,

Area Manager.

[FR Doc. 92-21926 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-7122-08-1016; CACA 28227]

Issuance of Land Exchange Conveyance Document; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this exchange was to achieve more efficient management of the public lands through consolidation of ownership. The public interest was well served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 916-978-4820.

1. The United States issued an exchange conveyance document to Bryon L. Rafnson on September 15, 1992, under sec. 206 of the Act of October 21, 1976, 43 U.S.C. 1716 (1988), for the following described land:

San Bernardino Meridian

T. 7 N., R. 5 W.,
Sec. 19, SE¼;
Sec. 20, S½NW¼SW¼NW¼, SW¼SW¼NW¼, SW¼SE¼SW¼NW¼, and W½SW¼.

The area described contains 257.50 acres of Federal land in San Bernardino County.

2. In exchange for these lands, the United States acquired the following described lands from Byron L. Rafnson:

Mount Diablo Meridian

T. 32 S., R. 44 E.
Sec. 7, all;
Sec. 9, all;
Sec. 16, all;
Sec. 17, all.

The areas described above aggregate 2,579.24 acres of non-Federal land in San Bernardino County.

The values of the Federal land and the non-Federal land in the exchange were appraised at $1,287,500 and $1,290,000, respectively. The equalization payment required of the United States in the amount of $2,500 was waived by Mr. Rafnson.

Dated: September 17, 1992.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 92-23204 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-40-M

[ID-010-02-4212-13; IDI-27372]

Realty Action; Exchange of Public and Private Lands in Elmore County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, IDI-27372, Exchange of public and private lands in Elmore County, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under sec. 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Boise Meridian, Idaho

T. 4 S., R. 7 E.,
Sec. 11: Lot 2;
Sec. 12: Lots 2, 4, and 6;
Sec. 13: Lot 2, NW¼NE¼, N½NW¼, SE¼NW¼, S½NE¼;
Sec. 14: NE¼NE¼;
T. 4 S., R. 8 E.,
Sec. 18: Lots 2 and 6;

containing 433.30 acres, more or less, in Elmore County.

In exchange for the above described public lands, the BLM proposes to acquire the following described private lands from Elmore County:

Boise Meridian, Idaho

T. 4 S., R. 7 E.,
Sec. 13: Lot S½SW¼;
Sec. 14: Lot SE¼SE¼;
Sec. 23: Portion of E½ lying northeast of I-84;

containing 412.51 acres, more or less, in Elmore County.

The purpose of this exchange is to block up public and private ownership in the area of the new Elmore County landfill. The resulting land pattern makes the management of both the public and private lands more efficient and cost effective, while reducing the potential for indiscriminate dumping of trash on public land. The public interest will be well served by the completion of this exchange. The values of the lands to be exchanged are approximately equal. Full equalization of values will be accomplished prior to closing through either acreage adjustment or cash payment in an amount not to exceed 25 percent of the value of the lands to be transferred out of Federal ownership.

DATES: On or before November 9, 1992, interested parties may submit comments to the District Manager, at the address shown below.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83750. Objections to this proposal will be reviewed by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this reality action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Bruneau Resource Area Realty Specialist at (208) 384-3338. The Environmental Assessment is available for review at the above address.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two (2) years from the date of this publication, whichever occurs first.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions.

Excepting and Reserving to the United States

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

Subject To

1. Those rights for electric transmission line purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI-27349, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

2. Those rights for buried telephone line purposes granted to American Telephone and Telegraph Company, its successors or assigns, by Right-of-Way No. IDI-26291, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for road purposes held by Mountain Home Highway District, its successors or assigns, pursuant to the Act of July 26, 1866, Revised Statute 2477 (43 U.S.C. 932). Serial No. IDI-21406.

4. Those rights for road purposes held by Glenns Ferry Highway District, its successors or assigns, pursuant to the Act of July 26, 1866, Revised Statute 2477 (43 U.S.C. 932). Serial No. IDI-20029.

5. Those rights for road purposes granted to Elmore County, its successors or assigns, by Right-of-Way No. IDI-25751, pursuant to the Act of October 21, 1976, (43 U.S.C. 1761),

Dated: September 11, 1992.

J. David Brunner,

District Manager.

[FR Doc. 92-23213 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-GG-M

[G-010-G2-0091-3110-10-G202; NMNM 87010]

Realty Action; Exchange, Federal Surface in Santa Fe County, NM for private Surface Within El Malpais National Conservation Area and National Monument, Albuquerque District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land exchange.

SUMMARY: The following described Federal surface estate in Santa Fe County has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

New Mexico Principal Meridian

T. 12 N., R. 9 E.,
Sec. 3, W½ lot 2 within N½NW¼;
Sec. 4, lot 2 within N½NE¼, SE¼NE¼, SW¼NW¼, and SE¼SW¼;
Sec. 10, W½SW¼;
Sec. 11, lots 1 to 4;
Sec. 13, lots 1, 2, and SE¼SE¼;
Sec. 14, lots 1 to 4, inclusive, and W½E½;
Sec. 24, NE¼;
T. 12 N., R. 10 E.,
Sec. 18, lots 1, 2;
Sec. 19, lots 1, 6;
Sec. 20, lots 1, 2;
Sec. 29, lots 1, 3.

Containing 1,180.44 acres.

In exchange for this Federal surface estate, the United States has selected approximately 3,407.53 acres of private surface within Cibola County adjacent to the El Malpais National Conservation Area near Grants, New Mexico as listed below:

New Mexico Principal Meridian

T. 4 N., R. 11 W.,
Sec. 4, lots 3-6, inclusive, lots 11, 12, and SW¼;
Sec. 5, lots 1 to 12, inclusive, and S½;
Sec. 6, lots 2 to 14, inclusive, E½SW¼ and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½ and E½W½;
Sec. 8, N½ and SE¼;
Sec. 9, all.

Upon completion of the final appraisal, the actual acreage exchanged will be adjusted to reflect equal values as much as possible. The purpose of the exchange is to consolidate Federal surface ownership for the Federal government adjacent to El Malpais National Conservation Area (NCA). This action is consistent with land ownership adjustments as set forth in the Record of Decision for the Rio Puerco Resource Management Plan (RMP) approved November 1986 and the Toas RMP approved October 1988. The purpose of this Notice of Realty Action is twofold. First, this notice will provide a response period of forty-five (45) days during which public comments will be accepted regarding this exchange proposal. Secondly, this action as provided in 43 CFR 2201.1 (b), shall segregate the public lands from all appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, subject to any prior valid rights. The segregative effect shall terminate either upon publication in the **Federal Register** of a termination of the segregation or two years from the date of this publication, whichever occurs first.

DATES: On or before November 9, 1992, interested parties may submit comments to the District Manager at the address below.

ADDRESSES: Detailed information concerning the exchange is available at the Albuquerque District, 435 Montano NE, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Debby Lucero at the Rio Puerco Resource Area Office, Albuquerque District, 435 Montano NE., Albuquerque, New Mexico 87107.

SUPPLEMENTARY INFORMATION: The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (43 U.S.C. 945).

2. All valid existing rights and reservations of records.

3. All mineral deposits shall be reserved to the United States along with the right to prospect for, mine and remove such deposits under applicable law.

Dated: September 10, 1992.

Robert T. Dale,

District Manager.

[FR Doc. 92-23122 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-FB-M

[WY-010-5700-11; WYW 123107]

Realty Action; Exchange; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of Public Lands in Park County, Wyoming.

SUMMARY: The surface estate of the following described lands has been determined, through the Bureau of Land Management's planning process, to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Sixth Principal Meridian

T. 50 N., R. 99 W.,
Sec. 33, tract 41.
T. 50 N., R. 101 W.,
Sec. 6, lots 3–7;
Sec. 10, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 16, lot 1.
T. 51 N., R. 101 W.,
Sec. 18, lot 12;
Sec. 19, lot 5, NW¼NE¼, S½NE¼, SE¼;
Sec. 20, lots 7–9;
Sec. 30, lot 1, lot 2;
Sec. 31, lots 1–5, W½NE¼, SE¼NE¼, E½NW¼, E½SW¼, NW¼SE¼;
Sec. 32, lots 2–4;
Sec. 34, lot 1, lot 2;
Tracts 38 A, B and C.
T. 50 N., R. 102 W.,
Sec. 1, lot 1, SE¼NE¼;
Sec. 12, lot 1, lot 2, lot 5.
T. 51 N., R. 102 W.,
Sec. 36, lots 1 and 6, SE¼NE¼, E½SE¼.
T. 51 N., R. 103 W.,
Sec. 14, lot 6, SW¼SW¼;
Sec. 15, lot 5, SE¼SW¼, SE¼;
Sec. 21, lots 1–4;
Sec. 22, N½, N½SW¼, SE¼;
Sec. 23, SW¼;
Sec. 27, N½NE¼.

The above aggregates 3583.07 acres of public lands, more or less. Some of the lands described above may be deleted from consideration to achieve equal values between the offered and selected lands in the exchange.

In exchange for these lands, the HooDoo Ranch has offered the surface estate of the following described lands:

Sixth Principal Meridian

T. 53 N., R. 98 W.,
Sec. 18, lot 1, lot 2, E½NW¼;
T. 53 N., R. 99 W.,
Sec. 17, lots 1–3, NW¼, N½SW¼;
Sec. 18, NE¼NE¼, SE¼NE¼;
Sec. 21, NE¼SE¼NE¼;
Sec. 22, SW¼NW¼, E½NW¼SW¼;
Sec. 27, N½NE¼, SE¼NE¼.
T. 53 N., R. 100 W.,
Sec. 12, NE¼SE¼;
Sec. 22, SE¼SE¼;
Sec. 33, SE¼NE¼;
T. 49 N., R. 103 W.,
Sec. 4, lots 1–5, SW¼NE¼, SE¼NW¼, SW¼, ½SE¼, SE¼SE¼.
Secs. 4 and 5, Lot 44A;
Sec. 6, SE¼NE¼, SE¼SW¼;
Sec. 7, NE¼, NE¼NW¼;
Sec. 8, W½NE¼, SE¼NE¼, NW¼;
Sec. 9, N½;
Secs. 9 and 16, Lot 43.

The above aggregate approximately 3251.18 acres of land.

FOR FURTHER INFORMATION CONTACT: Duane Whitmer, Area Manager, Cody Resource Area, (307) 587–2216. Information relating to the exchange is available for review at the Cody Resource Area Office, 1002 Blackburn Avenue, P.O. box 518, Cody, Wyoming 82414.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire non-federal lands which have high public values for wildlife habitat (specifically elk crucial winter range and bighorn sheep), rare plants, fragile soils and watershed. The exchange would also provide legal access to the McCullough Peak designated communication site, and to the southern boundary of the McCullough Peaks Wilderness Study Area. The public interest would be served by the completion of this exchange.

The exchange will be for equal appraised values. Any differences in value between the offered and selected lands will be equalized through adjustments in public land acreage or through a cash payment from the proponent. Any monetary payment shall not exceed 25 percent of the value of the public lands and interests being conveyed. Lands to be transferred from the United States will be subject to the following:

1. Reservation of a right-of-way for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals along with the right of ingress and egress for exploration and development.

3. The Memorandum of Agreement between The Bureau of Land Management, Cody Resource Area, the Wyoming State Historic Preservation Officer, and the Advisory Council on Historic Preservation, dated August 13, 1992, for the purpose of protecting of archeological sites.

4. Oil and Gas leases, BLM serial numbers WYW 125623, WYW# 104122, WYW 125624, WYW 114805, WYW 113953, WYW 97228, WYW 125658, WYW 123575, WYW 105450, WYW 123504, WYW 82209, WYW 91704, WYW 125715, WYW 123469, and WYW 111509.

5. Any other valid existing rights that are identified during the evaluation process.

The following grazing privileges will be canceled due to this exchange: 266 Animal Unit Months (AUMs) in the HooDoo Base Allotment #03043, 7 AUMs in the Sleeper Allotment #03080, 113 AUMs in the Marlow Basin Allotment #03095. Signed waivers of the two-year notice required by 43 CFR 4110.4–2(b) are on file.

Publication of the notice of proposed exchange in the July 28, 1992, issue of the **Federal Register** segregated the selected public lands from the operation of all other public land laws, including the general mining laws, for a period of two (2) years from the date of first publication.

For a period of forty-five (45) days from the date of this publication, interested parties may submit comments to the Cody Resource Area Office, P.O. Box 518, Cody, Wyoming, 82414. Any abverse comments will be evaluated by the Wyoming State Director who may sustain, vacate, or modify this proposed realty action. In the absence of any objections, this proposed realty action will become final.

Dated: September 18, 1992.

Duane Whitmer,

Area Manager.

[FR Doc. 92–23201 Filed 9–23–92; 8:45 am]

BILLING CODE 4310–22–M

[AZ–050–02–4380–11]

Arizona: Long-Term Visitor Area Program for 1992–1993 and Subsequent Use Seasons; Revision to Existing Supplementary Rules, Yuma District, AZ, and California Desert District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) Yuma District and California Desert District announce revisions to the Long-Term Visitor Area Program. The program, which was instituted in 1983, established designated long-term visitor areas and identified an annual long-term use season from September 15 to April 15. During the long-term use season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated long-term visitor areas and purchase a long-term visitor area permit.

In past years the long-term visitor area supplemental rules have been modified on an annual basis. For clarification purposes, they are listed in their entirety under the "Supplementary Information" heading of this notice. The listing includes all 1992–1993 supplementary rule changes from those established on September 12, 1991.

EFFECTIVE DATE: September 15, 1992.

FOR FURTHER INFORMATION CONTACT: Don Applegate, Outdoor Recreation Planner, Yuma District, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726–6300; or Chris Roholt, Outdoor Recreation Planner, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507, telephone (714) 697–5200.

SUPPLEMENTARY INFORMATION: The purpose of the Long-Term Visitor Area Program is to provide areas for long-term winter camping use. The sites designated as long-term visitor areas are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and environmental assessments were completed for each site location.

The program was established to safely and properly accommodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of long-term visitor areas assures that specific locations are available for long-term use year after year and that inappropriate areas are not used for extended periods.

Visitors may camp without a long-term visitor area permit outside of long-term visitor areas, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period. The Mule Mountain Long-Term Visitor Area is also open to short-term camping without a long-term visitor area permit for a period not to exceed 14 days.

Authority for the designation of long-term visitor areas is contained in title 43, Code of Federal Regulations, subpart 8372, sections 0–3 and 0–5(g). Authority for the establishment of a Long-Term Visitor Area Program is contained in title 43, Code of Federal Regulations, subpart 8372, section 1, and for the payment of fees in title 36, Code of Federal Regulations, subpart 71.

The authority for establishing supplementary rules is contained in title 43, subpart 8365, section 1–6. The long-term visitor area supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

In past years the supplementary rules have been modified on an annual basis. For clarification purposes, they are listed in their entirety in this Notice. The listing includes all 1992–1993 supplementary rule changes from those established on September 12, 1991.

The following supplementary rules apply to designated long-term visitor areas and are in addition to rules of conduct set forth in title 43, Code of Federal Regulations, subpart 8365, section 1–6.

A. Long-Term Permit

The special stipulations and supplemental rules for the Long-Term Permit are as follows:

1. *The Long-Term Permit.* A permit is required to occupy a campsite in a designated long-term visitor area between September 15 to April 15. The Long-Term Permit authorizes the permittee to occupy a campsite within any designated long-term visitor area, using those camping or dwelling unit(s) indicated on the permit between the period September 15 to April 15. The permit fee is $50 regardless of the length of the stay. No refund is made on permit fees. Length of stay in a long-term visitor area between April 16 and September 14 is limited to 14 days within any 28-day period.

2. *Permit Revocation.* The authorized officer may revoke without reimbursement any long-term visitor area permit issued to any person when the permittee violates any BLM rule or regulation, or when the permittee's, permittee's family's, or guests' conduct is inconsistent with the goals of BLM's Long-Term Visitor Area Program. Failure to return any long-term visitor area permit or decal to any authorized officer upon demand is a violation of this supplemental rule. Any permittee whose permit is revoked must remove all property and leave the long-term visitor area system within 12 hours of notice. The revoked permittee will not be allowed back into any long-term visitor area in Arizona or California for the remainder of the long-term visitor area season.

3. *The Permit Decal.* The permit decal must be affixed at the time of purchase with the adhesive backing to the camping unit; i.e., trailer, camper, or motorhome, in a clearly visible location. The decal must be affixed as designated

to be valid. A maximum of two (2) secondary vehicles is permitted.

4. *Permit Transfers.* If you sell, trade, or otherwise change camping vehicles during the use season, remove the decal from your old vehicle before turning it over to the new owner. Present your permit and decal to any uniformed BLM employee or at the nearest BLM office. The permit will be revised to cover the new camping unit, and you will receive a replacement decal for your new vehicle at no cost. The permit and decal may not be reassigned or transferred by permittee.

5. *Other Laws.* Long-term visitor area permit holders are required to observe all Federal, State, and local laws and regulations applicable to the long-term visitor area and shall keep the long-term visitor area and, specifically, their campsites in a neat, orderly, and sanitary condition.

6. *Unoccupied Camping Units.* Camping sites or dwelling unit(s) must not be left unoccupied within any long-term visitor area for periods of greater than 5 days unless approved in advance by the authorized officer.

7. *Access.* Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

8. *Cultural resources.* Do not disturb any archaeological or historical values including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

9. *Trash.* Pack out your own trash. Public trash dump sites are shown in the long-term visitor area brochure. Depositing trash or holding tank sewage in vault toilets is prohibited. Permits are required for trash disposal within the La Posa Long-Term Visitor Area.

10. *Dumping.* Absolutely no dumping of sewage or garbage on the ground. This includes motor oil and any other substances. State sanitation laws and county ordinances specifically forbid these practices. sanitary dump station locations are shown in the long-term visitor area brochure. Dumping of gray water is prohibited unless otherwise posted. Permits are required for dumping within the La Posa Long-Term Visitor Area.

11. *Self-Contained Vehicles.* In Pilot Knob, Dunes Vista, Midland, Tamarisk, and Hot Spring Long-Term Visitor Area, camping is restricted to self-contained camping units only. Self-contained units must have a permanently affixed wasterwater holding tank of 10-gallon minimum capacity. Port-a-pottie systems, or systems which utilize portable holding tanks, or permanent holding tanks of less than 10-gallon capacity are not considered to be self-contained. The La Posa and Imperial Dam Long-Term Visitor Areas are restricted to self-contained camping units, except within 500 feet of a vault toilet or restrooms at South Mesa.

12. *Speed Limit.* The speed limit in long-term visitor areas is 15 miles per hour or as otherwise posted.

13. *Off-Highway Vehicle Use.* The speed limit in long-term visitor areas is 15 miles per hour. Motorized vehicle play is prohibited. Motorized vehicles should be used in long-term visitor areas only for access to and from campsites.

14. *Pets.* Pets must be kept on a leash at all times. Keep an eye on your pets. Unwatched pets may fall pery to coyotes or other desert predators. Pet owners are responsible for cleanup and sanitary disposal of pet waste.

15. *Parking.* For your safety and privacy, a minimum of 15 feet of space between dwelling units, vehicles, and campfires is required.

16. *Removal of Wheels and Campers.* Campers, trailers, and other dwellings must remain mobile. Wheels must remain on all wheeled vehicles. Pickup campers may be set on jacks manufactured for that purpose.

17. *Quiet Hours.* Quiet hours are from 10 p.m. to 6 a.m. in accordance with applicable State time zone standards.

18. *Noise.* Operation of audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise that disturbs other visitors is prohibited. Within the La Posa and Imperial Dam Long-Term Visitor Areas, amplified music is allowed only in locations designated by BLM or when approved in advance by the authorized officer.

19. *Firearms.* The discharge or use of firearms or weapons is prohibited inside or within 1/2 mile of the long-term visitor areas.

20. *Vending Permits.* The long-term visitor area permit is not a vending permit. Please contact the nearest BLM office for information on vending or concession permits.

21. *Campfires.* Campfires are permitted in long-term visitor areas, subject to local laws and State and Federal regulations. Comply with posted rules.

22. *Wood Collection.* No wood collection is permitted within the boundaries of the Mule Mountain, Imperial Dam, and La Posa Long-Term Visitor Areas. Outside these long-term visitor areas and in all other long-term visitor areas, only dead and down wood may be collected for firewood or hobby purposes. Collection of ironwood is regulated. Please contact the BLM for current regulations concerning collection.

23. *Livestock.* Boarding of livestock (horses, cattle, sheep, goats, etc.) within long-term visitor areas is permitted only when approved in advance by the authorized officer.

24. *Aircraft Use.* Landing or taking off of aircraft, including ultralights, is prohibited in long-term visitor areas.

25. *Hot Spring Long-Term Visitor Area.* Overnight occupancy is prohibited between old Highway 80 and Interstate 8.

26. *Hot Spring Long-Term Visitor area.* Food, beverages, and glass containers are prohibited within 50 feet of the hot spring facility in the Hot Spring Long-Term Visitor Area.

27. *Mule Mountain Long-Term Visitor Area.* All camping within Wiley's Well and Coon Hollow campgrounds is restricted to designated sites only.

28. *Imperial Dam and La Posa Long-Term Visitor Areas.* Overnight occupancy is prohibited in desert washes in the Imperial Dam and La Posa Long-Term Visitor Areas.

29. *La Posa Long-Term Visitor Area.* Access to the La Posa Long-Term Visitor Area is restricted to legal access roads along U.S. Highway 95. Construction and use of other access points are prohibited. This includes removal and modification of barricades such as fences, ditches, and berms.

30. *Vehicle Use.* It is prohibited to operate any vehicle in violation of State or local laws and regulations relating to use, standards, registration, operation, and inspection.

31. *Structures and Landscaping.* Fixed structures of any type are restricted and must conform to posted policies. This includes, but is not limited to, fences, dog runs, storage units, and windbreaks. Alterations to the natural landscape are not allowed. Painting rocks or defacing or damaging any natural or archaeological feature is prohibited.

32. *Posted Rules.* Observe all posted rules in addition to these permit stipulations. If posted rules differ from these stipulations, the posted rules take precedence.

Violation of these supplementary rules/permit stipulations may result in revocation of the long-term visitor area permit, issuance of a citation, and/or arrest which may require appearance before a U.S. Magistrate or penalties up $1,000 and/or 1-year imprisonment.

You are responsible for knowing and obeying all rules and regulations.

Authority: Title 43, United States Code, section 1201; title 43, United States Code, section 1701; and title 43, Code of Federal Regulations, group 8300.

The Privacy Act of 1974 and the regulations in title 43, Code of Federal Regulations, part 2, section 48(d), provide that you be furnished the following information in connection with information required by this application for a Special Recreation Permit.

Authority: Title 43, United States Code, section 1201; title 43, Code of Federal Regulations, group 8300.

Principal Purpose: The information is to be used to process your application.

Routine Uses: (1) The adjudication of the applicant's request for a Special Recreation Permit, (2) Documentation for public information, (3) (4) Information from the record and/or the record will be transferred to appropriate Federal, State, local, or foreign agencies, when relevant to civil, criminal, or regulatory investigations or prosecutions.

Effect of Not Providing Information: Disclosure of the information is voluntary. If all the information is not provided, the application may be rejected.

B. Short-Visit Permit

The special stipulations and supplemental rules for the Short-Visit Permit are as follows:

1. *The Short-Visit Permit.* A permit is required to occupy a campsite in a designated long-term visitor area between September 15 and April 15. The Short-Visit Permit authorizes the permittee to occupy a campsite within any designated long-term visitor area for 7 days, using those camping or dwelling unit(s) indicated on the permit between the period September 15 to April 15. The permit fee is $10 for 7 days. A one-time, 7-day Short-Visit Permit extension is allowed for the full cost of a second Short-Visit Permit. No refund is made on permit fees. Length of stay in a long-term visitor area between April 16 and September 14 is limited to 14 days within any 28-day period.

2. *Permit Revocation.* The authorized officer may revoke without reimbursement any long-term visitor area permit issued to any person when the permittee violates any BLM rule or regulation, or when the permittee's, permittee's family's, or guests' conduct is inconsistent with the goals of the BLM's Long-Term Visitor Area Program. Failure to return any long-term visitor area permit to any authorized officer upon demand is a violation of this supplemental rule. Any permittee whose permit is revoked must remove all property and leave the long-term visitor area system within 12 hours of notice. The revoked permittee will not be allowed back into any long-term visitor area in Arizona or California for the remainder of the long-term visitor area season.

3. *The Permit.* The permit must be affixed at the time of purchase with the adhesive backing to the camping unit; i.e., trailer, camper, or motorhome, in a clearly visible location. The permit must be affixed as designated to be valid. A maximum of two (2) secondary vehicles is permitted.

4. *Permit Transfers.* If you sell, trade, or otherwise change camping vehicles during the use season, remove the permit from your old vehicle before turning it over to the new owner. Present your permit to any uniformed BLM employee or at the nearest BLM office. The permit will be revised to cover the new camping unit, and you will receive a replacement permit for your new vehicle at no cost. The permit may not be reassigned or transferred by permittee.

5. *Other Laws.* Long-term visitor area permit holders are required to observe all Federal, State, and local laws and regulations applicable to the long-term visitor area and shall keep the long-term visitor area and, specifically, their campsites in a neat, orderly, and sanitary condition.

6. *Unoccupied Camping Units.* Camping sites or dwelling unit(s) must not be left unoccupied within any long-term visitor area for periods of greater than 5 days unless approved in advance by the authorized officer.

7. *Access.* Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

8. *Cultural Resources.* Do not disturb any archaeological or historical values including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

9. *Trash.* Pack out your own trash. Public trash dump sites are shown in the long-term visitor area brochure. Depositing trash or holding tank sewage in vault toilets is prohibited. Permits are required for trash disposal within the La Posa Long-Term Visitor Area.

10. *Dumping.* Absolutely no dumping of sewage or garbage on the ground. This includes motor oil and any other substances. State sanitation laws and county ordinances specifically forbid these practices. Sanitary dump station locations are shown in the long-term visitor area brochure. Dumping of gray water is prohibited unless otherwise posted. Permits are required for dumping within the La Posa Long-Term Visitor Area.

11. *Self-Contained Vehicles.* In Pilot Knob, Dunes Vista, Midland, Tamarisk, and Hot Spring Long-Term Visitor Areas, camping is restricted to self-contained camping units only. Self-contained units must have a permanently affixed wastewater holding tank of 10-gallon minimum capacity. Port-a-pottie systems, or systems which utilize portable holding tanks, or permanent holding tanks of less than 10-gallon capacity are not considered to be self-contained. The La Posa and Imperial Dam Long-Term Visitor Areas are restricted to self-contained camping units, except within 500 feet of a vault toilet or restrooms at South Mesa.

12. *Speed Limit.* The speed limit in long-term visitor areas is 15 miles per hour or as otherwise posted.

13. *Off-Highway Vehicle Use.* The speed limit in long-term visitor areas is 15 miles per hour. Motorized vehicle play is prohibited. Motorized vehicles should be used in long-term visitor areas only for access to and from campsites.

14. *Pets.* Pets must be kept on a leash at all times. Keep an eye on your pets. Unwatched pets may fall prey to coyotes or other desert predators. Pet owners are responsible for cleanup and sanitary disposal of pet waste.

15. *Parking.* For your safety and privacy, a minimum of 15 feet of space between dwelling units, vehicles, and campfires is required.

16. *Removal of Wheels and Campers.* Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. Pickup campers may be set on jacks manufactured for that purpose.

17. *Quiet Hours.* Quiet hours are from 10 p.m. to 6 a.m. in accordance with applicable State time zone standards.

18. *Noise.* Operation of audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise that disturbs other visitors is prohibited. Within the La Posa and Imperial Dam Long-Term Visitor Areas, amplified music is allowed only in locations designated by BLM or when approved in advance by the authorized officer.

19. *Firearms.* The discharge or use of firearms or weapons is prohibited inside or within ½ mile of the long-term visitor areas.

20. *Vending Permits.* The long-term visitor area permit is not a vending permit. Please contact the nearest BLM office for information on vending or concession permits.

21. *Campfires.* Campfires are permitted in long-term visitor areas, subject to local laws and State and

Federal regulations. Comply with posted rules.

22. *Wood Collection.* No wood collection is permitted within the boundaries of the Mule Mountain, Imperial Dam, and La Posa Long-Term Visitor Areas. Outside these long-term visitor areas and in all other long-term visitor areas, only dead and down wood may be collected for firewood or hobby purposes. Collection of ironwood is regulated. Please contact the BLM for current regulations concerning collection.

23. *Livestock.* Boarding of livestock (horses, cattle, sheep, goats, etc.) within long-term visitor areas is permitted only when approved in advance by the authorized officer.

24. *Aircraft Use.* Landing or taking off of aircraft, including ultralights, is prohibited in long-term visitor areas.

25. *Hot Spring Long-Term Visitor Area.* Overnight occupancy is prohibited between old Highway 80 and Interstate 8.

26. *Hot Spring Long-Term Visitor Area.* Food, beverages, and glass containers are prohibited within 50 feet of the hot spring facility in the Hot Spring Long-Term Visitor Area.

27. *Mule Mountain Long-Term Visitor Area.* All camping within Wiley's Well and Coon Hollow campgrounds is restricted to designated sites only.

28. *Imperial Dam and La Posa Long-Term Visitor Area.* Overnight occupancy is prohibited in desert washes in the Imperial Dam and La Posa Long-Term Visitor Area.

29. *La Posa Long-Term Visitor Area.* Access to the La Posa Long-Term Visitor Area is restricted to legal access roads along U.S. Highway 95. Construction and use of other access points are prohibited. This includes removal and modification of barricades such as fences, ditches, and berms.

30. *Vehicle Use.* It is prohibited to operate any vehicle in violation of State and local laws and regulations relating to use, standards, registration, operation, and inspection.

31. *Structures and Landscaping.* Fixed structures of any type are restricted and must conform to posted policies. This includes, but is not limited to, fences, do runs, storage units, and windbreaks. Alterations to the natural landscape are not allowed. Painting rocks or defacing or damaging any natural or archaeological feature is prohibited.

32. *Posted Rules.* Observe all posted rules in addition to these permit stipulations. If posted rules differ from these stipulations, the posted rules take precedence.

Violation of these supplementary rules/permit stipulations may result in revocation of the long-term visitor area permit, issuance of a citation, and/or arrest which may require appearance before a U.S. Magistrate or penalties up to $1,000 and/or 1-year imprisonment.

You are responsible for knowing and obeying all rules and regulations.

Authority: Title 43, United States Code, section 1201; title 43, United States Code, section 1701; and title 43, Code of Federal Regulations, group 8300.

The Privacy Act of 1974 and the regulations in title 43, Code of Federal Regulation, part 2, section 48(d), provide that you be furnished the following information in connection with information required by this application for a Special Recreation Permit.

Authority: Title 43, United States Code, section 1201; title 43, Code of Federal Regulations, group 8300.

Principal Purpose: The information is to be used to process your application.

Routine Uses: (1) The adjudication of the applicant's request for a Special Recreation Permit, (2) Documentation for public information, (3)(4) Information from the record and/or the record will be transferred to appropriate Federal, State, local, or foreign agencies, when relevant to civil, criminal, or regulatory investigations or prosecutions.

Effect of Not Providing Information: Disclosure of the information is voluntary. If all the information is not provided, the application may be rejected.

All other stipulations as established on September 12, 1991, shall remain the same.

This notice is published under the authority of title 43, Code of Federal Regulations, subpart 8365, section 1–6.

Dated: August 14, 1992.

Ed Hastey,

State Director, California.

Lester K. Rosenkrance,

State Director, Arizona.

[FR Doc. 92–23123 Filed 9–24–92; 8:45 am]

BILLING CODE 4310–33–M

[OR–050–4320–10M:GP2–447]

Coordinated Resource Management Plan Development and Wilderness Inventory

September 11, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Coordinated Resource Management Plan and an inventory of newly acquired public land for wilderness characteristics.

SUMMARY: Coordinated Resource Management Plan (CRMP) A planning process to develop the Sutton Mountain CRMP for 62,000 acres of public land in the Prineville, Oregon, BLM District, will begin September 18, 1992. The land is located between Mitchell, Oregon and the John Day River to the north. The land encompasses a variety of valuable resources such as 12 miles of critical steelhead spawning and rearing habitat on Bridge Creek, three miles of proposed John Day River Wild and Scenic Corridor, and Sutton Mountain which has populations of threatened and endangered plants. The area has eight grazing allotments.

The planning area originally contained approximately 14,000 acres of scattered public land. As a result of the Sutton Mountain Land Exchange, 48,000 additional acres of private land are now public land. This has formed 62,000 acres of well blocked public land.

A scoping document will be mailed September 18 which contains a list of issues and various alternatives for the issues. At the end of the 45-day review period, a preferred management alternative will be determined. The preferred alternative will determine how the management objectives are written for the CRMP. A draft CRMP will be distributed for review in the first half of 1993 and a final completed in the second half.

Wilderness Inventory. Two roadless areas, one consisting of 12,800 acres and the other 26,550 acres, have been identified since the Sutton Mountain Land Exchange was completed. The Prineville District is initiating an intensive inventory of the roadless areas for wilderness potential and is seeking public comment along with the CRMP.

FOR FURTHER INFORMATION CONTACT: Harry Cosgriffe, Area Manager, Central Oregon Resource Area, 2321 E. Third Street, Prineville, Oregon 97754 (telephone 503–447–8731).

James L. Hancock,

District Manager, Prineville District Office.

[FR Doc. 92–23207 Filed 9–23–92; 8:45 am]

BILLING CODE 4310–33–M

[AZ–050–02–4410–02; 1617]

Arizona; Availability of the Record of Decision for the Yuma District Resource Management Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Arizona Bureau of Land Management announces the availability of the Record of Decision for the Yuma District Resource Management Plan Amendment. The Record of Decision announces the Bureau of Land Management's decision to approve the Proposed Action Alternative, which resolves a variety of issues in the Yuma District's Wildlife, Lands, and Recreation Programs.

FOR FURTHER INFORMATION CONTACT: Dave Curtis, Environmental Protection Specialist, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726–6300.

SUPPLEMENTARY INFORMATION: A limited number of copies of the Record of Decision are available upon request to the Yuma District Manager, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365. There are also copies available for review at the above location.

This notice is published in the **Federal Register** in accordance with title 43, Code of Federal Regulations, subpart 1610, section 5–5.

Dated: September 15, 1992.

Herman L. Kast,

District Manager.

[FR Doc. 92–23210 Filed 9–23–92; 8:45 am]

BILLING CODE 4310–32–M

[UT–943–4730–04–269Z]

Filing of Plat of Survey

AGENCY: Bureau of Land Management, Utah.

ACTION: Notice.

SUMMARY: These plats of survey of the following described land will be filed in the Utah State Office, Salt Lake City, Utah, immediately:

Group	Tp.	Rge.	Meridian	Approved	Type
Supplemental	2 S.	4 E.	SLM	04/06/90	Supplemental.
Supplemental	2 S.	5 E.	SLM	07/02/90	Supplemental.
714	20 S.	1½ W.	SLM	07/02/90	Dep. Resurvey
731	41 S.	8 W.	SLM	07/02/90	Do.
744	41 S.	7 W.	SLM	0702//90	Do.
726	15 S.	10 E.	SLM	08/07/90	Do.
735	14 N.	16 W.	SLM	10/05/90	Do.
735	15 N.	16 W.	SLM	10/05/90	Do.
730	13 N.	11 W.	SLM	10/22/90	Do.
742	42 S.	3 W.	SLM	01/07/91	Do.
742	43 S.	4 W.	SLM	01/07/91	Do.
742	44 S.	4 W.	SLM	01/07/91	Do.
743	35 S.	8 W.	SLM	02/04/91	Do.
734	27 S.	3 W.	SLM	02/13/91	Do.
734	28 S.	3 W.	SLM	02/13/91	Do.
739	18 S.	20 E.	SLM	02/14/91	Do.
739	19 S.	20 E.	SLM	02/14/91	Do.
740	42 S.	17 W.	SLM	02/28/91	Do.
752	3 S.	21 E.	SLM	02/28/91	Do.
767	5 S.	2 W.	SLM	06/17/91	Do.
713	11 S.	2 W.	SLM	06/17/91	Do.
650	33 S.	4 E.	SLM	07/26/91	Do.
772	1 N.	9 W.	USM	08/14/91	Do.
724	7 S.	20 E.	SLM	08/15/91	Do.
738	32 S.	4½ W.	SLM	09/03/91	Do.
769	2 S.	1 E.	SLM	09/20/91	Do.
747	23 S.	2 E.	SLM	01/21/92	Do.
747	23 S.	1 E.	SLM	01/21/92	Do.
745	3 S.	19 E.	SLM	01/24/92	Do.
745	1 N.	2 E.	USM	01/24/92	Do.
745	2 N.	1 E.	USM	01/24/92	Do.
745	2 N.	2 E.	USM	01/24/92	Do.
Supplemental	14 S.	3 W.	SLM	03/24/92	Supplemental.
Supplemental	4 S.	7 W.	SLM	03/24/92	Supplemental.
754	1 S.	25 E.	SLM	04/01/92	Dep. Resurvey.
764	22 S.	6 E.	SLM	05/04/92	Do.
741	41 S.	13 W.	SLM	05/19/92	Do.
746	36 S.	13 W.	SLM	05/19/92	Original and Dep. Resurvey.
756	11 N.	18 W.	SLM	05/19/92	Dep. Resurvey
753	29 S.	7 W.	SLM	05/29/92	Do.
755	14 S.	10 E.	SLM	05/29/92	Do.
Supplemental	39 S.	16 W.	SLM	07/20/92	Supplemental.
783	15 N.	8 E.	SLM	08/28/92	Dep. Resurvey.
770	30 S.	9 W.	SLM	08/31/92	Do.
787	1 S.	12 W.	SLM	09/09/92	Original and Dep Resurvey.

Donald Buhler,
Chief of Branch of Cadastral Survey.
[FR Doc. 92-23039 Filed 9-23-92; 8:45 am]
BILLING CODE 4310-DQ-M

[OR-943-4214-10; GP2-438; OR-48184(WASH)]

Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 593.06 acres of public lands to protect the natural and recreational values on seven tracts of land located in the San Juan Archipelago. This notice closes the lands for up to two years from surface entry and mining. The lands will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by December 23, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208-2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, 503-280-7162.

SUPPLEMENTARY INFORMATION: On August 28, 1992, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described lands from settlement, sale, location, or entry under the general lands laws, including the United States mining laws (30 U.S.C. ch. 2), subject to valid existing rights:

Willamette Meridian

Tract A, Patos and Little Patos Islands

T. 38 N., R. 2 W., unsurveyed,
Secs. 15, 16, and 17, Little Patos Island and that portion of Patos Island lying outside the Patos Island Light Station as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

Tract B, Turn Point on Stuart Island

T. 37 N., R. 4 W.,
Sec. 20, lots 5 and 6, and that portion of lot 7 lying outside the Turn Point Light Station as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

Tract C, Kellet Bluff on Henry Island

T. 36 N., R. 3 W.,
Sec. 28, lot 4 and that portion of lot 3 lying outside the Kellet Bluff Light Station as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

Tract D, Iceberg Point on Lopez Island

T. 34 N., R. 2 W.,
Sec. 23, lot 4;
Sec. 24, lots 6 and 7.

Tract E, Point Colville on Lopez Island

T. 34 N., R. 1 W.,
Sec. 21, lot 6.

Tract F, Iceberg South on Lopez Island

T. 34 N., R. 2 W.,
Sec. 25, lots 1 and 2.

Tract G, Chadwick Hill on Lopez Island

T. 34 N., R. 1 W.,
Sec. 16, NE¼SW¼ and S½SW¼.

The areas described aggregate approximately 593.06 acres in San Juan County, Washington.

The purpose of the proposed withdrawal is to protect the unique natural and recreational values and improvements as to seven tracts of public lands located in the San Juan Islands.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: September 8, 1992.

Catherine H. Crawford,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-23209 Filed 9-23-92; 8:45 am]
BILLING CODE 4310-33-M

Fish and Wildlife Service

Availability of a Technical/Agency Draft Recovery Plan for the Waccamaw Silverside for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that availability for public review of a technical/agency recovery plan for the Waccamaw silverside. This freshwater fish is endemic to, and occurs only in, Lake Waccamaw and the Waccamaw River, immediately below the lake, in Columbus County, North Carolina. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the technical/agency draft recovery plan must be received on or before November 23, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806, telephone 704/665-1195. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Fridell at the address and telephone number shown above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of

recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Based upon available information concerning the range, biology, and threats to its continued survival, full recovery of the Wacamaw silverside does not appear feasible. Accordingly, this draft recovery plan outlines a mechanism that provides for the protection and maintenance of a self-sustaining population of the species in Lake Waccamaw. The Waccamaw silverside was officially listed as a threatened species on April 8, 1987, primarily because of the potential for habitat and water quality degradation of Lake Waccamaw resulting from water pollution and sedimentation. The major objectives of the plan are protection of Lake Waccamaw's water/habitat quality and development of a source (captive population(s) and preservation of genetic material) for reestablishment or augmentation of the existing population of the Waccamaw silverside, if needed. Comments and information provided during this review will be used in preparing the final recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 15, 1992.

Robert R. Currie,

Acting Field Supervisor.

[FR Doc. 92-23196 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-55-M

Aquatic Nuisance Species Task Force Ruffe Control Committee Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force. The Committee will meet to develop and initiate procedures for proposing, authorizing and conducting control of aquatic nuisance species as described in the draft proposed Aquatic Nuisance Species Program.

TIME AND DATE: The Ruffe Control Committee will meet from 1 p.m. on Wednesday, September 30, 1992, to 12 p.m. on Friday, October 2, 1992. The meeting will be held at the Barkers Island Inn, 300 Marina Drive, Superior, Wisconsin 54880.

STATUS: The meeting is open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration.

CONTACT PERSON FOR MORE INFORMATION: Tom Busiahn, Ruffe Control Committee Chairperson, U.S. Fish and Wildlife Service, Fishery Resources Office, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806 at (715) 682-6185.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101-646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of this meeting will be maintained by Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Chairperson, Ruffe Control Committee, U.S. Fish and Wildlife Service, Fishery Resources Office, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: September 18, 1992.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 92-23131 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-55-M

Fish and Wildlife Services

Availability of Proposed Protocol for Evaluating Research Proposals Concerning Nonindigenous Aquatic Species

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Document Availability; request for comments.

SUMMARY: This notice announces the availability of a proposed Protocol for Evaluating Research Proposals Concerning Nonindigenous Aquatic Species (Research Protocol) developed by the Research Protocol Committee, a committee of the Aquatic Nuisance Species (ANS) Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Nonindigenous Act) (16 U.S.C. 4701 *et seq.*). Comment period on the proposed Research Protocol extends 45 days from the date of publication of this announcement in the **Federal Register**. Comments received will be considered before a decision is made and will become part of an Environmental Assessment as required for compliance with the National Environmental Protection Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*).

ADDRESSES: Requests for copies of the proposed Research Protocol and written responses should be mailed to Sharon Gross, U.S. Fish and Wildlife Service (820 ARLSQ), U.S. Department of Interior, 1849 C Street, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sharon Gross at (703) 358-1718 or Dr. James McCann at (904) 378-8181.

SUPPLEMENTARY INFORMATION: The ANS Task Force was established to coordinate implementation of the Nonindigenous Act. Task Force membership includes seven Federal agencies and eight *ex officio* members. The ANS Task Force is co-chaired by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration: The Research Protocol Committee is composed of representatives of these agencies and other ANS Task Force members. The proposed Research Protocol was developed in response to section 1202(f)(2) of the Nonindigenous Act which requires the ANS Task Force to develop and follow a protocol to ensure that research carried out under Subtitle C of the Nonindigenous Act does not result in the introduction or dispersal of aquatic nuisance species to the waters of the United States. At its April 1992 meeting, the ANS Task Force approved the proposed Research Protocol. The proposed Research Protocol consists of two parts: a risk assessment and a set of guidelines outlining required preventative containment and confinement procedures.

Dated: September 11, 1992.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force Assistant Director—Fisheries.

[FR Doc. 92-23132 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Payor, Reporter, and Other Instructional Handbooks

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: The Royalty Management Program (RMP) of Minerals Management Service (MMS) provides instructional handbooks for royalty payors and reporters to report and pay royalties on Federal and Indian mineral leases. The handbooks are also provided to other interested parties such as lawyers, accountants, reporting services, state agencies, Indian representatives, and special interest groups. The RMP hereby gives notice pursuant to 43 U.S.C. 1460 that it will begin charging a fee to recover the cost of publication and distribution of the handbooks. One copy of the appropriate handbook will be provided to each payor, reporter, Government and Indian representative, at no cost; however, copies to interested parties and multiple copies will be provided for a fee to cover the cost of printing and mailing.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, MS 3910, Minerals Management Service, P.O. Box 25165, Denver, Colorado 80225-0165, at (303) 231-3432.

SUPPLEMENTARY INFORMATION: The RMP has numerous instructional handbooks, such as Oil and Gas Payor Handbook, AFS Payor Handbook—Solid Minerals, and Production Accounting and Auditing System Reporter Handbook, that are used to report and pay royalties and report production on Federal and Indian mineral leases. A copy of the handbooks have been provided to payors, reporters, and interested parties upon request at no cost. Even when multiple copies were requested, RMP provided copies free of charge. The handbook distribution involves several thousand copies that must be printed, assembled, and mailed at substantial cost to the agency. In view of increasing concerns over unnecessary spending and more prudent financial management, RMP plans to charge a fee for instructional handbooks requested by interested parties. The fee would cover the cost of printing, assembly, and mailing. Pursuant to 43 U.S.C. 1460, the Department of the Interior has statutory authority for recoupment of printing costs. The money received for printing will be deposited in the Treasury.

This new procedure will authorize one copy for each active payor code, reporter code, Government office, and Indian representative at no charge. Companies with multiple payor/reporter codes that have the same name and address will receive only one copy free of charge. However, copies requested by interest parties or multiple copies requested by payors and reporters will be provided for a fee to cover the cost of printing and mailing. The copies provided for a fee will be furnished with a bill for payment to the MMS finance office.

The effective date for the new procedures is October 1, 1992, in order to coincide with the start of the agency's fiscal year (FY 1993).

Dated: September 17, 1992.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 92-23194 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Cape Cod National Seashore; South Wellfleet, MA, Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App 1 sec. 10), that meetings of the Cape Cod National Seashore Advisory Commission will be held on Tuesday, October 20, 1992.

The Commission was reestablished pursuant to Public Law 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The commission members will meet at 1 p.m. on Tuesday, October 20, 1992, for a regular business meeting which will convene at Park Headquarters for the following reasons:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting
3. Reports of Officers
4. Superintendent's Report
5. Human Dimensions Subcommittee Report
6. Highland Light Update
7. Hatches Harbor Project
8. New Business
9. Agenda for Next Meeting
10. Date for Next Meeting
11. Communications/public comment
12. Adjournment

The business meetings are open to the public. It is expected that 15 persons will be able to attend each meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meetings or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning these meetings may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: September 17, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92-23260 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-70-M

Vancouver Historical Study Commission; Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice of correction of meetings of Vancouver Historical Study Commission.

This notice corrects the dates published in the **Federal Register** August 26, 1992, (Volume 57, No. 166, Page 38695) for public meetings of the Vancouver Historical Study Commission to be held in the Vancouver, Washington City Council Chambers, 210 East 13th Street, Vancouver, Washington. The scheduled meeting for October 13, 1992 has been cancelled. The Commission public hearing is scheduled for Tuesday, November 17, 1992, from 7 to 10 p.m. The public hearing will be held at the Wy' East Junior High School Auditorium, 1112 SE 136 Avenue, Vancouver, Washington. The Commission meeting for Tuesday, December 8, 1992 will remain as scheduled, from 1 to 5 p.m. The meeting will be held in the Vancouver City Council Chambers, 210 East 13th Street, Vancouver, Washington.

Dated: September 18, 1992.

Charles H. Odegaard

Regional Director.

[FR Doc. 92-23259 Filed 9-23-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 23]

Middle Atlantic Conference—Agreement (Amendment No. 12)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and opportunity for comment.

SUMMARY: The Middle Atlantic Conference (MAC or applicant), has filed a petition seeking approval of a minor amendment to its ratemaking agreement approved under 49 U.S.C. 10706(b). The amendment would modify Articles I, II, and III of MCA's bylaws and sections 1 and 2 of its Code of Rate Procedures to: (a) Reduce the number of members on its Board of Directors from 60 to 24 (Article I) and the number of board members annually elected from 14 to 6 (Article II); (b) remove any requirement that directors must represent specific states (Articles II and III); and (c) reduce from three to one the number of rate committees (Section I) and reduce the size of the general rate committee and the threshold number for triggering the general rate committee selection process from 100 to 50 members (Section 2). As a consequence of these changes, the quorum requirement for the transaction of official business by the Board of Directors is reduced from 18 to 7 members, and the general rate committee is reduced from 30 to 15 members. The Commission has issued a decision approving the amendment, subject to the filing of adverse comments.

Copies of MAC's approved agreement and the amendment are available for public inspection and copying at the Public Docket Room (room 1227) of the Commission in Washington, DC, and from MAC's representative: J. A. Royal, 6410 Kenilworth Avenue, Riverdale, MD 20737.

DATES: Comments from interested persons are due by October 26, 1992. Replies are due November 9, 1992. If no timely filed adverse comments are received, this amendment may become effective immediately. If timely adverse comments are filed, the Commission will issue a final decision.

ADDRESSES: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 23 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any comments filed with the Commission must also be served on applicant's representative.

FOR FURTHER INFORMATION CONTACT: Richard Felder (202) 927–5610. (TDD for hearing impaired: (202) 927–5721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: September 15, 1992.

By the Commission, Chairman, Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.

Secretary

[FR Doc. 92–23244 Filed 9–23–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32148]

Allegheny & Eastern Railroad, Inc.—Acquisition and Operation Exemption—Line of Allegheny Railroad Company

Allegheny & Eastern Railroad, Inc. (AER), a noncarrier, has filed a notice of exemption to acquire and operate 147.1 miles of rail line owned by Allegheny Railroad Company (ALY). AER will conduct the rail operations on the line, which runs between milepost 2.8 located at Mill Creek Township, Erie County, PA and milepost 149.9 located at Emporium, Cameron County, PA. The proposed transaction is expected to be consummated on or before December 31, 1992.

AER's corporate parent, Genesee & Wyoming Industries, Inc. (GWI), an entity that currently controls a number of rail carriers, has concurrently filed a related petition for exemption in Finance Docket No. 32149, *Genesee & Wyoming Industries, Inc.—Continuance in Control Exemption—Allegheny & Eastern Railroad, Inc.* In that proceeding GWI seeks an exemption under 49 U.S.C. 10505 from the prior review and approval requirements under 49 U.S.C. 11343 for its continuance in control of AER upon the latter becoming a rail carrier.

Any comments must be filed with the Commission and served on: Charles D. Cramton, 700 Midtown Tower, Rochester, NY 14604.

This notice is filed under 49 CFR 1150.31 If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 18, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–23243 Filed 9–23–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 71–92]

Privacy Act of 1974 as Amended by Computer Matching and Privacy Protection Act of 1988

This notice is published in the **Federal Register** in accordance with the requirements of 5 U.S.C. 552a(e)(12). The Immigration and Naturalization Service (INS), Department of Justice (the source agency), is participating with the Department of Education (DED) (the recipient agency) in a computer matching program. The matching program entitled "Systematic Alien Verification for Entitlements (SAVE) INS/DED" will permit DED to confirm the immigration status of alien applicants for, or recipients of, assistance as authorized by Title IV, Section 484(a)(5), of the Higher Education Act of 1965, as amended. The Title IV program includes: the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grant, Stafford Loan, PLUS (Parent Loan Program), Supplemental Loans for Students, College Work-Study, Income Contingent Loan Program, and the Perkins Loan Program.

Notice of the matching program was originally published in the **Federal Register** on February 20, 1990 (55 FR 5904); the program became effective on April 18, 1990. Duration was 18 months plus a one-year extension permitted by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, (5 U.S.C. 552a(o)(2)(O) and (D)). The one-year extension will expire October 18, 1992. Thus, the following notice represents the approval of a new agreement by the Department of Justice and Department of Education Data Integrity Boards to continue the matching program (on the effective date as indicated below).

INS will assist DED in its efforts to confirm immigration status under the authority of Section 103 of the

Immigration and Nationality Act. The records to be used in the match and the roles of the matching participants are described as follows:

Through the use of user identification codes and passwords, authorized persons from DED will transmit electronically to INS data from its Privacy Act system of records entitled, "Federal Student Aid Application File (18–40–0014)." The data will include the alien registration number, the first name (initial letter only) and date of birth of the alien applicant for, or recipient of, Title IV assistance. This action will initiate a search for corresponding data elements in an INS Privacy Act system of records entitled "Alien Status Verification Index (JUSTICE/INS–009)." Where there is a match of records, the system will provide to DED the immigration status code and employment eligibility code of the alien applicant or recipient. In accordance with 5 U.S.C. 552a(p), DED will verify any adverse finding (independently or through the alien applicant or recipient) and provide the alien applicant or recipient with 30 days notice and opportunity to contest such finding.

Matching activity will be effective October 26, 1992, and will continue for a period of 18 months from the effective date unless, within 3 months prior to the expiration of the agreement, the Data Integrity Boards approve a one-year extension pursuant to 5 U.S.C. 552a(o)(2)(O) and (D).

The matching agreement and the required report have been provided to the Office of Management and Budget and the Congress in accordance with 5 U.S.C. 552a(o)(2)(A) and (r). Inquiries may be submitted to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 5031, CAB Building).

Dated: September 18, 1992.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 92–23252 Filed 9–23–92; 8:45 am]

BILLING CODE 4410–10–M

Lodging of Agreed Order Modifying Consent Decree

A proposed Consent Decree in *United States* v. *American Seating Co., et al.*, No. 91–C–0835–S, was lodged with the United States District Court for the Western District of Wisconsin on September 15, 1992. The Consent Decree is a cost recovery decree under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), and resolves claims of the United States under section 107 of CERCLA, 42 U.S.C. 9607, against four potentially responsible parties that arranged for treatment or disposal of hazardous substances at the Mid-State Disposal Landfill Site in Marathon County, Wisconsin. Under the terms of this Consent Decree, the defendants will pay the United States $1,578,958 of its unreimbursed response costs incurred at the Site.

The Department of Justice will receive comments relating to the proposed Agreed Order Modifying Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Seating Co., et al.*, D.J. Ref. No. 90–11–3–392A.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin, Office of the United States Environmental Protection Agency, 111 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072). A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $20.00 (25 cents per page) for reproduction costs, payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–23118 Filed 9–23–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Agreed Order Modifying Consent Decree

An agreed order modifying the RD/RA Consent Decree entered by the Court on March 28, 1990, in *United States* v. *Mid-State Disposal, Inc., et al.*, No. 89–C–1017S, 89–C–1023S, was lodged with the United States District Court for the Western District of Wisconsin on September 11, 1992. The Consent Decree resolved claims under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607, against four potentially responsible parties that arranged for treatment or disposal of hazardous substances at the Mid-State Disposal Landfill Site in Marathon County, Wisconsin. Under the terms of this Agreed Order Modifying Consent Decree, sixteen municipal generators of municipal solid waste would be added to the Consent Decree and be bound by the same terms as the original settlers.

The Department of Justice will receive comments relating to the proposed Agreed Order Modifying Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Mid-State Disposal, Inc., et al.*, D.J. Ref. No. 90–11–3–392.

The proposed Agreed Order Modifying Consent Decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin; Office of the United States Environmental Protection Agency, 111 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072). A copy of the Agreed Order Modifying Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $1.50 (25 cents per page) for reproduction costs, payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 92–23119 Filed 9–23–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Final Judgment by Consent Pursuant to the Clean Water Act

Pursuant to 28 CFR 50.7, notice is hereby given that on September 10, 1992, a proposed consent decree in *Natural Resources Defense Council, Inc.* versus *Wheeling-Pittsburgh Steel Corporation* and *United States* versus *Wheeling-Pittsburgh Steel Corporation*, Civil Action No. 89–2375, was lodged with the United States District Court for the Western District of Pennsylvania. The decree pertains to the Wheeling-Pittsburgh Steel Corporation Allenport facility in Allenport, Pennsylvania.

The proposed consent decree requires the payment of civil penalties in the amount of $2,000,000.00 and injunctive

relief to prevent future violations of the Clean Water Act.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Natural Resources Defense Council, Inc. versus *Wheeling-Pittsburgh Steel Corporation* and *United States* versus *Wheeling-Pittsburgh Steel Corporation* (W.D. Pa.) and DOJ Ref. No. 90-5-1-1-3552. The proposed consent decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219, or at the office of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. A copy of the proposed consent decree may also be examined at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW. Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please enclose a check in the amount of $17.25 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-23120 Filed 9-23-92; 845 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 91-28]

Barton Drug, Inc.; Revocation of Registration

On July 26, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Barton Drug, Inc. (Respondent), 18910 West Seven Mile Road, Detroit, Michigan 48219, proposing to revoke its DEA Certificate of Registration, AB5087449, and deny any pending applications for renewal of such registration. The statutory basis for the proposed action was that the continued registration of Barton Drug, Inc. would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4).

By letter dated August 7, 1991, Respondent requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Ann Arbor, Michigan On January 7, 1992.

On June 10, 1992, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions to the administrative law judge's ruling were filed. On July 10, 1992, Judge Bittner transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter, adopting the opinion and recommended ruling of the administrative law judge in its entirety.

Respondent is located in Detroit, Michigan, and, during 1990, Respondent was found by DEA to have made excessive purchases of Schedule V cough syrups, purchasing 12,071 four-ounce bottles of Schedule V cough syrups between October 3, 1988 and October 2, 1990, and 3,407 four-ounce bottles of Schedule V cough syrups from January 1, 1990 through October 2, 1990. The evidence demonstrated that data produced to DEA by the Michigan Board of Pharmacy placed average pharmacy purchases of Schedule V cough syrups at less than six gallons, or 768 ounces, per year.

The evidence before the administrative law judge showed that a DEA inspection of Respondent and the collating of information obtained during that inspection, combined with interviews of patients/customers who were receiving Schedule V cough syrups from Respondent, clearly demonstrated that Respondent and its owner/managing pharmacist, Alvin I. Tendler, R. Ph., dispensed Schedule V cough syrups on a regular basis with the knowledge that customers were maintaining addictions to the cough syrups or were using the cough syrups for no legitimate medical purpose. This action on the part of Respondent and Mr. Tendler is an unequivocal violation of both State and Federal laws and regulations regarding the dispensing of controlled substances.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 824(a)(4), the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See David E. Trawick, D.D.S., Docket No. 88-69, 53 FR 5326 (1988).

The administrative law judge found that the Government made a prima facie showing of the factors found in 21 U.S.C. 823(f) (2), (4) and (5), as referenced by 21 U.S.C. 824(a)(4). In so finding, the administrative law judge found that Respondent's experience in dispensing with respect to controlled substances, and the pharmacy's compliance with applicable State, Federal, or local laws relating to controlled substances posed a danger to which the public should not be exposed.

Specific reference is made to the pharmacy's failure to comply with 21 CFR 1306.32 regarding the dispensing of nonprescription Schedule V substances, such as the cough syrups in question herein. A clear finding was made that Respondent dispensed customers Schedule V cough syrups without a legitimate medical need for the substances, with such legitimate medical need for the controlled substance required by 21 CFR 1306.04(a). See Liberty Discount Drugs, Inc., Docket No. 88-73, 54 FR 30116 (1989). The administrative law judge also accurately notes that the State of Michigan requires that codeine cough syrups be dispensed only for a medical purpose, such regulation found in Rule 338.3167(a)(1) of the General Rules of the Michigan board of Pharmacy.

With regard to behavior by Respondent and/or Mr. Tendler which might threaten the public health and safety, the record reflects that Mr. Tendler had little or no regard for the established fact that codeine cough syrups have addictive potential and that their dispensing should be carefully monitored due to that potential. Mr. Tendler's cavalier attitude toward the

plight of his customers who admitted that they were addicted to codeine cough syrups is unpardonable. A pharmacist has an indisputable responsibility to monitor the dispensing of all controlled substances and that responsibility rests squarely on the dispensing party's shoulders in the case of Schedule V cough syrups.

The Administrator finds that Mr. Tendler's behavior was clearly violative of the Controlled Substance Act, and that the substantial weight of the evidence justifies revocation of Respondent's Certificate of Registration. Mr. Tendler not only has refused to discharge his statutory duties, but has shown no regret for his behavior, never seemingly believing that he acted illegally or even irresponsibly. Mr. Tendler was, in practical effect, maintaining the addiction of customers by refusing to monitor their receipt of codeine cough syrups from his pharmacy. Clearly, the Respondent was either unaware of or unconcerned with the laws and regulations under which he is governed. That lack of awareness or lack of concern is not tolerable.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AB5087449, issued to Barton Drug, Inc., be, and it hereby is, revoked, and any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective October 26, 1992.

Dated: September 17, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-23168 Filed 9-23-92; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 91-33]

William D. Caso, M.D.; Revocation of Registration

On July 23, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to William D. Caso, M.D., (Respondent), proposing to revoke his DEA Certificate of Registration, AC3019052, as a practitioner under 21 U.S.C. 824(a)(4), and deny any pending applications for renewal of registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause was issued alleging that Respondent's continued registration would be inconsistent with the public interest.

By letter dated August 8, 1991, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held before Judge Tenney in Louisville, Kentucky, on January 15 and 16, 1992, and continued on February 19, 1992, in Washington, DC. On May 26, 1992, the administrative law judge issued his opinion and recommended decision. No exceptions to the recommendation of the administrative law judge were filed. On July 13, 1992, the administrative law judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby adopts the findings, conclusions and recommendations of the administrative law judge and issues his final order in this matter.

The administrative law judge found, first, that the Respondent was without State authority to handle controlled substances in the Commonwealth of Kentucky. Therefore, the administrative law judge correctly applied the mandate of 21 U.S.C. 824(a), which provides that registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the Registrant (3) has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances. Such mandate acts as an independent ground for revocation of a DEA registration.

The administrative law judge further found that the Respondent prescribed and dispensed controlled substances to patients for no legitimate medical purpose, specifically noting the case of one individual, whose patient profile and corresponding patient chart demonstrates a clear abuse by the Respondent of the privilege of handling controlled substances. The administrative law judge paid particular attention to undercover visits paid to Respondent by a DEA Special Agent and a confidential informant. The tape recordings made of these visits showed quite clearly that the Respondent issued prescriptions to the Special Agent and the confidential informant without performing physical examinations, without providing the service of psychiatric counselling, and without knowledge of any other substances which the two individuals might be taking.

The administrative law judge adequately addressed the expert opinions presented by both sides, finding the hearsay statements of the Government's experts more persuasive than the live testimony of Respondent's expert. The administrative law judge noted that the reports of the Government's experts are highly detailed and that the Kentucky Board of Medical Licensure relied almost exclusively upon those reports in suspending the Respondent's privilege to handle controlled substances.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 824(a)(4), the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See David E. Trawick, D.D.S., Docket No. 88-69, 53 FR 5326 (1988).

The administrative law judge found that the Government made a prima facie showing of the factors found in 21 U.S.C. 823(f) (1), (2), and (4) and (5), as referenced by 21 U.S.C. 824(a)(4). In so finding, the administrative law judge found that the Commonwealth of Kentucky had suspended the Respondent's privilege to handle controlled substances. The administrative law judge further found that the Respondent's experience in dispensing with respect to controlled substances was clearly outside the scope of legitimate medical practice and posed a danger to which the public should not be exposed.

The Respondent has ignored State and Federal laws and regulations regarding

the prescribing of controlled substances for a legitimate medical need. The Respondent did not attempt to determine the medical need of the undercover Special Agent and the confidential informant, yet prescribed almost all of the controlled substances to them which they, themselves, requested by name. The Respondent placed the life of the previously mentioned individual in danger by prescribing multiple controlled substances to him, some of which interacted in an extremely dangerous manner. Indeed, the testimony of both the individual and his wife indicated that the individual was required to be resuscitated on at least two occasions due to his intake of the controlled substances prescribed to him by the Respondent.

Quite obviously, the Respondent's behavior poses a threat to the public health and safety. Despite the Respondent's testimony regarding his attempts to merge physical, mental and spiritual therapy, the fact remains that he mishandled and overprescribed controlled substances on numerous occasions. Good intentions do not negate the dangerous effects of the controlled substances which were regularly and indiscriminately prescribed and dispensed to patients of the Respondent. Therefore, clear grounds exist to revoke the Respondent's DEA Certificate of Registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vest in him under the provisions of 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AC3019052, previously issued to William D. Caso, M.D., be and it is hereby, revoked. It is further ordered that any pending applications for renewal of that registration be, and they are hereby, denied. This order is effective on October 26, 1992.

Dated: September 17, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-23139 Filed 9-23-92; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 91-39]

Walter S. Gresham, M.D., Modification of Registration

On August 27, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Walter S. Gresham, M.D., (Respondent) of 425 West College Street, Bowdon, Georgia 30108, proposing to revoke his DEA Certificate of Registration, AG1179111, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held commencing on January 28, 1992, in Atlanta, Georgia.

On May 4, 1992, Judge Tenney issued his opinion and recommended decision, recommending that Respondent's DEA Certificate of Registration not be revoked nor suspended but that Respondent's current DEA Certificate of Registration be modified to comply with the probation requirements imposed upon Respondent by the Composite State Board of Medical Examiners of the State of Georgia (Georgia Medical Board) on June 5, 1991, pursuant to a consent decree. The probation terms were to last three years beginning on June 5, 1991, but the administrative law judge further recommended that if the Georgia Medical Board lifted all terms of probation before the three-year period expired, then at that point the Administrator should allow Respondent's DEA Certificate of Registration to continue unrestricted. The administrative law judge also recommended that if the Georgia Medical Board alters or adds probation terms, the Administrator should conform his order to such alterations or additions. Subsequently, pursuant to 21 CFR 1316.66, Government counsel filed exceptions to the administrative law judge's opinion and recommended decision. Respondent's counsel filed a response to the Government's exceptions.

On June 4, 1992, Judge Tenney transmitted the record of the proceedings, including the Government's exceptions and Respondent's response thereto, to the Administrator. The Administrator has considered the record in its entirety and adopts the findings of fact and the conclusions of law, in part, recommended by the administrative law judge, and makes independent conclusions of his own. In so doing, the Administrator modifies the recommended ruling of the administrative law judge. Pursuant to 21 CFR 1316.67, the Administrator issues his final order in the matter based upon findings of fact and conclusions of law as set forth below.

The Administrator finds that Respondent overprescribed and overadministered several Schedule II controlled substance analgesics to a patient. This treatment commenced in 1979 and continued until October of 1989. Although Respondent's initial diagnosis of renal colic may have been justified, numerous tests performed by various hospitals as well as by Respondent consistently indicated that such a diagnosis was incorrect. Moreover, Respondent was informed as early as 1982 that the individual was abusing these medications. Therefore, the Administrator finds that the prescribing of these Schedule II controlled substances was not justified in light of the long duration and frequency that they were prescribed.

Based upon a series of six undercover visits conducted by an agent of the Georgia Medical Board who posed as a patient and based upon Respondent's admission, the Administrator finds that it was Respondent's practice to sign blank prescriptions. Respondent then gave these prescriptions with his signature to his wife, who was not a practitioner and who issued such prescriptions without having the patient examined by Respondent.

The Administrator also finds that the Georgia Medical Board, based upon a consent decree reached with Respondent, found that Respondent had engaged in the practice of presigning prescriptions from 1985 until August of 1989 when a search warrant was issued based upon the aforementioned undercover visits. The Georgia Medical Board did not revoke or suspend Respondent's medical license but placed Respondent on probation for a period of three years. The principal terms included that Respondent perform community service; pay a $2,000 fine; complete a pharmacology course; not prescribe, administer, or dispense Schedule II controlled substances except in a hospital setting or in a bona fide, life-threatening situation and notify the Georgia Medical Board within ten days of such hospitalization or emergency action; and keep all controlled substances that he issues in triplicate and send copies of such prescriptions to the Georgia Medical Board on a quarterly basis.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 824(a)(4), the Administrator considers the factors enumerated in 21 U.S.C. 823(f):

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See *David E. Trowick, D.D.S.*, Docket No. 88–69, 53 FR 5326 (1988).

The administrative law judge concluded that Respondent's continued registration would not be inconsistent with the public interest as that term is used pursuant to 21 U.S.C. 823(f). The administrative law judge based this conclusion particularly upon the findings and recommendation of the Georgia Medical Board which placed Respondent's medical license on probation for three years as noted above. The Georgia Medical Board's Consent Order included a finding of fact that Respondent presigned prescriptions. These findings of fact also expressed "concerns" about Respondent's office policies "with respect to controlled substances and non-controlled prescription analgesics" without giving any more detail.

The administrative law judge made findings that Respondent was not in compliance with applicable Federal and State law based upon Respondent's overprescribing controlled substances to the individual and his practice of allowing his wife to issue his presigned prescriptions for controlled substances. The administrative law judge concluded, however, that both findings had mitigating circumstances: Respondent's overprescribing of controlled substances to the individual was based upon a legitimate diagnosis of renal colic and the individual's apparent intractable pain and Respondent issued presigned prescriptions under the belief that such a practice was lawful.

The Administrator has carefully reviewed the entire record and finds that three of the five public-interest factors apply. Respondent's experience in dispensing controlled substances is poor based upon his excessive prescribing of Schedule II controlled substances to the individual over a ten-year period under the second factor.

Pursuant to the fourth factor, the Administrator concludes that Respondent violated applicable State and Federal law by his practice of giving presigned prescriptions to a non-practitioner who in turn issued such prescriptions for controlled substances to patients who were not examined by Respondent. Although the administrative law judge found the Government did not prove that Respondent actually knew that such a practice was illegal when he issued such prescriptions, the Administrator concludes that Respondent's subjective knowledge is irrelevant. The danger in such a practice is allowing unauthorized persons to dispense controlled substances. In addition, the practice of having presigned prescriptions in and around the office invites diversion. Even if Respondent did not know that such a practice was unlawful he should have known. Respondent, as a registered physician has a duty to be informed of the laws governing controlled substances. *Yvon DeSamos, M.D.*, 49 FR 28779 (1984).

The Administrator disagrees with the administrative law judge's conclusion that the recommendation and probation terms imposed by the Georgia Medical Board should, in effect, govern the remedy imposed by the Administrator under the first public-interest factor. Although the recommendation of the appropriate state licensing board is a significant factor, it should not necessarily be given any greater weight than the other four factors under 21 U.S.C. 823(f). Indeed, the Administrator may revoke or suspend a registration based upon one or a combination of the other four factors, despite a recommendation of leniency or no recommendation at all by the appropriate state licensing authority. The Administrator concludes that the administrative law judge put too much emphasis on the Consent Order of the Georgia Medical Board.

The Administrator adopts the administrative law judge's recommendation but with modifications based upon the above findings of fact and conclusions. In light of the findings that Respondent overprescribed Schedule II controlled substances to an individual for a ten year-period and that he had an unauthorized person issue prescriptions presigned by Respondent, the Administrator concludes that the restrictions imposed upon Respondent by the Georgia Medical Board must also be imposed on Respondent's DEA Certificate of Registration. These restrictions include, but are not limited to: (1) Respondent is prohibited from prescribing, administering, or dispensing any Schedule II or IIN controlled substances except in a hospital setting or except in a bona fide, life-threatening emergency, in which case such emergency prescription shall be reported within ten days to the Medical Coordinator of the Georgia Medical Board; and (2) Respondent must keep all prescriptions, administrations, or dispensations of Schedule III, IIIN, and IV controlled substances in triplicate and give one copy to the patient, place one copy in the patient file, and send one copy to the Georgia Medical Board every quarter. These restrictions on Respondent's DEA Certificate of Registration, however, will not be terminated earlier than June 4, 1994, which is the date that the probation term was to expire under the Consent Order of the Georgia Medical Board, notwithstanding that the Georgia Medical Board sees fit to terminate Respondent's probation at an earlier date. Should the Georgia Medical Board order that Respondent's probation be extended beyond June 4, 1994, then such extension shall be imposed on Respondent's DEA Certificate of Registration. In the event that the Georgia Medical Board does terminate any or all of the restrictions prior to June 4, 1994, any reports or records that Respondent was required to send to the Georgia Medical Board in the above enumerated conditions shall be sent to the Drug Enforcement Administration, Atlanta Field Division, Office of Diversion.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AG1179111, previously issued to Walter S. Gresham, M.D., be, and it hereby is, continued provided that Walter S. Gresham, M.D., complies with the conditions imposed in the Consent Order of June 5, 1991, by the Composite State Board of Medical Examiners, State of Georgia. The Administrator further orders that such conditions shall continue until June 4, 1994, or until such time as the Composite State Board of Medical Examiners, State of Georgia, relieves Respondent from such conditions, whichever is later. The Administrator further orders that if the Composite State Board of Medical Examiners terminates Respondent's conditions before June 4, 1994, Respondent shall commence at that time

to send any reports of emergency Schedule II and IIN prescriptions, administrations, or dispensations within ten days of such prescribing, administering, or dispensing and copies of any Schedule III, IIIN, and IV prescriptions to the Drug Enforcement Administration. The Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, granted subject to the limitations expressed herein. This order is effective on September 24, 1992.

Dated: September 18, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-23214 Filed 9-23-92; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cell Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Oct. 19, 20, and 21, 1992; 8:30 a.m. to 6 p.m.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Eve Ida Barak, Program Director for Cell Biology Program (Cellular Organization), Room 325, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7474.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the Cell Biology Program of the Division of Molecular & Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals in the area of Call Biology (Cellular Organization) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-23241 Filed 9-23-92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Chemical and Thermal Systems; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 20, 1992; 12 p.m. to 5 p.m. October 21, 1992; 8:30 a.m. to 5 p.m.

Place: Frank Lloyd Wright Room, The American Institute of Architects, 1735 New York Avenue, NW., Washington, DC 20006.

Type of Meeting: Open.

Contact Person: Dr. Henry A. McGee, Jr., Division Director, Chemical and Thermal System, Room 1110, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357-9606.

Minutes: May by obtained from the contact person listed above.

Purpose of meeting: To provide advice and recommendations concerning the chemical and thermal fluid sciences components of the engineering community.

Agenda: The meeting will be focusing on the implications of the work of the new Commission on the Future of the NSF and on the management of the several initiatives that are underway in the Chemical and Thermal Systems Division.

Dated: September 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-23231 Filed 9-23-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: October 22, 1992; 8 am to 5 pm and October 23, 1992; 8 am to 12 pm.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Richard L. Hilderbrandt, Program Director, 1800 G Street, NW., room 340, Washington, DC 20550. Telephone: (202) 357-9826.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Graduate Research Traineeship proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-23230 Filed 9-23-92; 8:45 am]

BILLING CODE 7555-01-M

DOE/NSF Nuclear Science Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting.

Date And Time: October 13, 1992, 8 p.m. to 10 p.m.

Place: Eldorado Hotel, Zia Room, 309 West San Francisco St., Santa Fe, NM 87501.

Type of Meeting: Open.

Contact Person: John W. Lightbody, Program Director for Nuclear Physics, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-7993.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda: Introduction of New Members—Status of DOE and NSF Nuclear Physics Programs—Discussion of Future Directions—Public Comments (Persons wishing to speak should make arrangements through the Contact Person identified above.)

Dated: September 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-23227 Filed 9-23-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 19-21, 1992; 9 a.m. to 5:30 p.m.

Place: State Plaza Hotel, 2117 E. Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Laurence Rosenberg, Deputy Division Director, Division of information, Robotics and Intelligent Systems, room 310, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-9592.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Data Base Expert Systems and Knowledge Models and

Cognitive Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–23229 Filed 9–23–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Dates and Time: October 20, 1992: 8:30 am to 5 pm; October 21, 1992: 8:30 am to 5 pm.

Place: The Conference and Training Center at 1110 Vermont Avenue, NW., rooms 500B, C, D and E, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Robert J. Reynik, Head, Office of Special Programs in Materials, Division of Materials Research, Room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9791.

Purpose of Meeting: To provide advice and recommendations concerning support for Graduate Research Traineeship proposals.

Agenda: Examine proposals, reviewers' evaluations, and make award recommendations.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 21, 1992.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 92–23232 Filed 9–23–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: Friday, October 16, 1992; 8:30 a.m. to 5 p.m.

Place: Room 536, National Science Foundation, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Rolf M. Sinclair, Program Director for Cross Directorate Programs, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–7996.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Graduate Research Traineeship proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–23228 Filed 9–23–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Social and Economic Sciences; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 28, 1992; 8:30 a.m. to 6:00 p.m.

Place: Room 500A, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. N. John Castellan, Small Business Innovation Research Coordinator (SBIR), Social and Economic Science, Rm. 336, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7569.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate SBIR proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty arranging an appropriate time when all members could attend.

Dated: September 18, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–23117 Filed 9–23–92; 8:45 am]

BILLING CODE 7555–01–M

Notice of Workshop

The National Science Foundation (NSF) will hold a two day meeting on research in the VLSI CAD field on October 15 and 16, 1992 at the NSF in room 500C, 1110 Vermont Ave., NW., Washington, DC.

The objective is to derive from this workshop information that will aid the MIPS Division in assessing the state of research in the field, and to obtain clear notions about promising new directions in the field for the next five years. Issues to be considered include: new design styles, new technologies, and productive research areas. Sub-fields to be discussed include: theory & algorithms, synthesis tools, CAD frameworks, simulation & verification of designs, manufacturing test of digital and mixed signal products.

Although the workshop will not operate as an advisory committee, the public is invited to attend. Participants will include individuals from the VLSI CAD research community who are innovative leaders in various sub-fields, and other leaders who have had wide experience in VLSI CAD research.

For additional information, contact Dr. Robert B. Grafton, Program Director, MIPS Division, room 414, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7853.

Dated: September 15, 1992.

Bernard Chern,

Division Director, Microelectronic Information Processing Systems Division.

[FR Doc. 92–23240 Filed 9–23–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; An Hoc Subcommittee on Design Acceptance Criteria; Meeting

The ACRS Ad Hoc Subcommittee on Design Acceptance Criteria will hold a meeting on October 7, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 7, 1992—8:30 a.m. until the conclusion of business.

The Ad Hoc Subcommittee will review SECY–92–299, "Development of Design Acceptance Criteria (DAC) for the Advanced Boiling Water Reactor (ABWR) in the areas of Instrumentation and Controls (I&C) and Control Room

Design." The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, nuclear industry, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (e.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 17, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–23107 Filed 9–23–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 7, 1992, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that will be closed to discuss the qualifications of candidates nominated for appointment to the ACRS. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6). The purpose of this meeting will be to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

The agenda for the subject meeting shall be as follows:

Wednesday, October 7, 1992—3:00 p.m. until 5:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conduct of Committee business, and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Raymond F. Fraley (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 17, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–23108 Filed 9–23–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Maintenance Practices and Procedures; Meeting

The ACRS Subcommittee on Maintenance Practices and Procedures will hold a meeting on October 6, 1992, in Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 6, 1992—8:30 a.m. until 1:00 p.m.

The Subcommittee will review the draft Regulatory Analysis and draft Regulatory Guide, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," for implementation of the Maintenance Rule (10 CFR 50.65). Also, it will review the NUMARC document 93–01, Revision 2A, "Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," which is endorsed by the NRC staff in the draft Regulatory Guide. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, nuclear industry, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid

telephone call to the cognizant ACRS staff engineer, Mr. Herman Alderman (telephone 301/492–7750) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 17, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–23109 Filed 9–23–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of a Revised Information Collection, Form RI 34–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for a revised clearance of an information collection. Form RI 34–1, Financial Resources Questionnaire, collects detailed financial information for use by OPM in determining whether to agree to waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund.

Approximately 8,200 forms are completed annually. The form requires approximately 60 minutes to complete. The annual burden is 8,200 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before October 26, 1992.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch (202) 606–0623.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–23130 Filed 9–23–92; 8:45 am]

BILLING CODE 6325–01–M

Request for Reclearance of Form RI 20–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 20–1, Application for Minimum Annuity, is used to determine if an annuitant qualifies for the minimum annuity, repealed under section 305 of Public Law 99–251 (Federal Employees Benefits Improvement Act of 1986). Annuitants who were entitled to the minimum annuity prior to the repeal date of February 27, 1986 continue to receive the minimum annuity in accordance with section 305.

Approximately 200 RI 20–1 forms are completed annually. The form requires approximately 15 minutes to complete. The annual burden is 50 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received by October 26, 1992.

ADDRESS: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002 Washington, DC 20503

FOR FURTHER INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief Administrative Management Branch (202) 606–0623.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–23133 Filed 9–23–92; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and positions placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turnpenoff, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on August 14, 1992, (57 FR 36681). Individual authorities established or revoked under Schedules A and B and established under Schedule C between August 1 and August 31, 1992, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1992, will also be published.

Schedule A

The following exception was revoked:

Department of Defense

Not exceed 30 positions at grades 6/15 in the Office of emergency Operations (OEO). No new appointments may be made under this authority after March 31, 1993. Effective August 13, 1992.

Schedule B

The following exception was established:

Federal Deposit Insurance Corporation

Temporary positions in the Washington, DC, headquarters, offices in the Resolution Trust Corporation when filled by individuals whose specialized experience in field and regional offices performing the work of the Resolution Trust Corporation under Schedule A authorities 5 CFR § 231.3133(a) or (b) immediately prior to their appointment under this authority is needed by the Resolution Trust Corporation for more efficient administration of its programs. Effective July 10, 1992.

Schedule C

Arms Control and Disarmament Agency

One policy Analyst to the Senior Policy Advisor. Effective July 9, 1992.

One congressional Affairs Specialist to the Director of Congressional Affairs. Effective July 17, 1992.

Department of Agriculture

One Director, Intergovernmental Affairs, to the Director, Office of Public Affairs/Press Secretary. Effective July 9, 1992.

One Regional Director (Klamath Falls, Oregon) to the Administrator, Rural Development Administration. Effective July 9, 1992.

One Regional Director (Aiken, South Carolina) to the Administrator, Rural Development Administration. Effective July 9, 1992.

One Regional Director (St. Joseph, Missouri) to the Administrator, Rural Development Administration. Effective July 9, 1992.

One Confidential Assistant to the Administrator, Human Nutrition Information Service. Effective July 28, 1992.

Agency for International Development

One Confidential Assistant to the Chief of Staff. Effective July 22, 1992.

Department of Commerce

One Special Assistant to the counselor to the Secretary and Director of Public Affairs. Effective July 6, 1992.

One Special Assistant to the Director of Legislation, Education, Outreach and Intergovernmental Affairs, National Oceanic and Atmospheric Administration. Effective July 17, 1992.

One Executive Assistant to the secretary of Commerce. Effective July 29, 1992.

One confidential Assistant to the Press Secretary, Office of Public Affairs, Office of the Secretary. Effective July 29, 1992.

One Confidential Assistant to the Deputy Under Secretary, U.S. Travel and Tourism Administration. Effective July 29, 1992.

One Special Assistant to the Secretary of Commerce. Effective July 29, 1992.

One Confidential Assistant to the Director of the Executive Secretariat, Office of the Secretary. Effective July 29, 1992.

One Special Assistant to the Under Secretary for Economic Affairs, Economics and Statistics Administration. Effective July 29, 1992.

Department of Defense

One Government Affairs Officer to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy). Effective July 10, 1992.

One Law Clerk to the Chief Judge, U.S. Court of Military Appeals. Effective July 22, 1992.

One Law Clerk to the Judge, U.S. Court of Military Appeals. Effective July 22, 1992.

One Special Assistant to the Deputy Assistant Secretary of Defense (Global Affairs), Office of the Assistant Secretary of Defense for International Security Affairs. Effective July 27, 1992.

Department of Energy

One Legislative Affairs Liaison Officer to the Deputy Assistant Secretary for House Liaison, Office of Congressional and Intergovernmental Affairs. Effective July 10, 1992.

One Staff Assistant to the Principal Deputy Assistant Secretary, Office of Conservation and Renewable Energy. Effective July 27, 1992.

One Public Affairs Specialist to the Director, Office of Consumer and Public Liaison, Office of Congressional and Intergovernmental Affairs. Effective July 28, 1992.

Department of Transportation

One Staff Assistant to the Secretary of Transportation. Effective July 6, 1992.

One Deputy Press Secretary to the Assistant Secretary for Public Affairs. Effective July 27, 1992.

One Special Assistant for Scheduling and Advance, to the Secretary of Transportation. Effective July 28, 1992.

One White House Liaison to the Chief of Staff. Effective July 29, 1992.

Department of Education

One Special Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective July 8, 1992.

One Secretary's Regional Representative, Region IX (San Francisco, CA), to the Director, Regional Liaison Staff, Office of the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective July 8, 1992.

One Secretary's Regional Representative, Region II (New York, NY), to the Director, Regional Liaison Staff, Office of Intergovernmental and Interagency Affairs. Effective July 16, 1992.

One Deputy to the Secretary's Regional Representative, Region III (Philadelphia, PA). Effective July 16, 1992.

One Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective July 17, 1992.

One Secretary's Regional Representative, Region IV (Atlanta, GA), to the Director, Regional Liaison Staff, Office of Intergovernmental and Interagency Affairs. Effective July 21, 1992.

One Confidential Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective July 27, 1992.

Federal Housing and Finance Boord

One Special Assistant to the Director of Public Affairs. Effective July 17, 1992.

Department of Health and Human Services

One Special Assistant to the Principal Deputy Assistant Secretary for Children and Families. Effective July 9, 1992.

Department of Housing and Urban Development

One Deputy to the Assistant Secretary for Policy Development and Research. Effective July 6, 1992.

One Special Assistant to the Secretary of Housing and Urban Development. Effective July 10, 1992.

One Special Assistant to the Deputy Assistant Secretary for Policy Development and Research. Effective July 10, 1992.

One Deputy Assistant Secretary for Intergovernmental Relations to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective July 22, 1992.

One Senior Adviser for Legislative and Community Outreach to the Assistant Secretary, Office of Congressional and Intergovernmental Relations. Effective July 23, 1992.

On Staff Assistant (Typing) to the Chief of Staff, Office of the Secretary. Effective July 27, 1992.

Inter-American Foundation

One Counselor to the President. Effective July 27, 1992.

Department of the Interior

One Supervisory Public Affairs specialist (Chief, Division of Public Affairs), to the Director, Bureau of Land Management. Effective July 22, 1992.

One Special Assistant to the Director, Minerals Management Service. Effective July 22, 1992.

Department of Justice

One Public Affairs Specialist to the Deputy Director for Communications, Office of Public Affairs, Office of Policy and Communications. Effective July 6, 1992.

One Staff Assistant to the Deputy Director for Communications, Office of Policy and Communications. Effective July 6, 1992.

One Confidential Assistant to the Deputy Attorney General. Effective July 23, 1992.

One Public Affairs Specialist to the Deputy Director for Communications, Office of Public Affairs, Office of Policy and Communications. Effective July 23, 1992.

Department of Labor

One Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration. Effective July 22, 1992.

One Special Assistant to the Deputy Assistant Secretary, Employment Standards Administration. Effective July 29, 1992.

Office of Management and Budget

One Special Assistant to the Associate Director for Legislative Affairs. Effective July 9, 1992.

Office of National Drug Control Policy

One Confidential Assistant to the Special Assistant to the Director. Effective July 22, 1992.

Office of Personnel Management

One Confidential Assistant to the Director. Effective July 30, 1992.

One Special Assistant to the Chief of Staff, Office of the Director. Effective July 30, 1992

Small Business Administration

One Special Assistant to the Regional Administrator. Effective July 27, 1992.

Department of State

One Secretary (Typing) to the Principal Deputy Assistant Secretary, Office of Legislative Affairs. Effective July 27, 1992.

United States Tax Court

One Trial Clerk to the Judge. Effective July 22, 1992.

Department of the Treasury

One Special Assistant to the Under Secretary of the Treasury for Finance. Effective July 2, 1922.

One Confidential Assistant to the Assistant Secretary (Legislative Affairs). Effective July 20, 1992.

One Special Assistant (Public Affairs) to the Executive Director, U.S. Savings Bonds Division. Effective July 28, 1992.

United States Information Agency

One Special Assistant to the Director, Office of Research. Effective July 6, 1992.

One Director, Office of Program Coordination and Development, to the Associate Director, Bureau of Policy and Programs. Effective July 16, 1992.

One Special Assistant to the Director, Office of Congressional Liaison. Effective July 17, 1992.

United States Trade Representative

One Confidential Secretary to the Chief of Staff. Effective July 6, 1992.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-23138 Filed 9-23-92; 8:45 am]

BILLING CODE 6325-01-M

Federal Prevailing Rate Advisory Committee Cancellation of Open Committee; Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, September 24, 1992, has been cancelled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415, (202) 606-1500.

Dated: September 16, 1992.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 92-23137 Filed 9-23-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18962; 811-5223]

Calamos Investment Trust; Application

September 18, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Calamos Investment Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 12, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1992 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 2001 Spring Road, suite 750, Oak Brook, Illinois 60521.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504-2406, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Massachusetts business trust and an open-end diversified management investment company registered under the Act. On June 30, 1987, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement on Form N-1A under the Securities Act of 1933. The registration statement became effective on September 1, 1987. Applicant's initial public offering commenced shortly thereafter.

2. On January 13, 1992, applicant's board of trustees unanimously approved the Agreement and Plan of Reorganization (the "Plan") providing for the transfer on April 30, 1992 for all the assets and liabilities of Calamos Convertible Income Fund, the sole series of applicant (the "Fund"), to the Calamos Convertible Fund (the "Successor Fund"), a newly formed series of CFS Investment Trust, a registered open-end management investment company ("CFS Trust"), in exchange for shares of the Successor Fund (the "Reorganization").[1] Applicant's shareholders approved the Plan at a special meeting of shareholders held on April 21, 1992.

3. Pursuant to the Plan, on April 30, 1992, CFS Trust issued directly to each shareholder of the Fund shares of the Successor Fund in a number equal to the number of shares (including any fractional share) of the Fund then owned

[1] According to the Minutes of Meetings of Boards of Trustees dated January 13, 1992, the trustees unanimously determined in accordance with rule 17a-8 of the Act that the Reorganization would be in the best interests of the investment companies, and the interests of the shareholders would not be diluted by the Reorganization.

by such shareholder, in exchange for and in cancellation of the shareholder's shares of the Fund (the "Exchange"). Each shareholder of the Fund acquired the same proportionate interest in the Successor Fund as of the effective time of the Exchange as the shareholder had in the Fund immediately prior to the Exchange. The Fund's statement of assets and liabilities immediately before the Exchange is identical to that of the Successor Fund immediately after the Exchange.

4. The expenses applicable to the Exchange, consisting of accounting, printing, administrative, and certain legal expenses, equaled $21,866. These expenses were borne by applicant, Calamos Asset Management, Inc., applicant's investment advisor, and CFS Trust, acting for the Successor Fund in the amounts of $5,368, $10,250, and $6,248, respectively.

5. As of the time of filing the application, applicant had no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23235 Filed 9-23-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 3 p.m. on Wednesday, October 14, 1992, at the Hyatt Airport Hotel (Los Angeles), 6225 W. Century Boulevard, Los Angeles, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Michael A. Lee, District Director, U.S. Small Business Administration, 330 N. Brand Boulevard, suite 1200 Glendale, California 91203, (213) 894-2977.

Dated: September 15, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Council.

[FR Doc. 92-23147 Filed 9-23-92; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Diego, will hold a public meeting at 8 a.m. Friday, October 2, 1992, in the Federal Building, 880 Front Street, room 2-S-14, San Diego, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. George P. Chandler, Jr., District Director, U.S. Small Business Administration, 880 Front Street, suite 4-S-29, San Diego, California 92188, (619) 557-7252.

Dated: September 17, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-23148 Filed 9-23-92; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting; CT

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:30 a.m. on Monday, October 26, 1992, at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Sandro Goretti, Acting District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, (203) 240-4670.

Dated: September 16, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-23144 Filed 9-23-92; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Indianapolis, will hold a public meeting at 9:30 a.m. on Wednesday, October 14, 1992 at the North Meridian Inn, 1530 North Meridian Street, Indianapolis, Indiana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Robert D. General, District Director, U.S. Small Business Administration, 429 North Pennsylvania Street, Suite 100, Indianapolis, Indiana 46204-1873, (317) 226-7275.

Dated: September 16, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-23145 Filed 9-23-92; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Buffalo, will hold a public meeting at 2 p.m. on Wednesday, October 21, 1992 at the 9th floor board room of the Fleet Bank, 10 Fountain Plaza, Buffalo, New York, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Franklin J. Sciortino, District Director, U.S. Small Business Administration, room 1311, 111 West Huron Street, Buffalo, New York 14202, (716) 846-4301.

Dated: September 16, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-23149 Filed 9-23-92; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Cleveland, will hold a public meeting from 9 a.m.-12 noon, Friday, October 9, 1992, at the AJC Federal Office Building, 1240 East Ninth Street, room 769, Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Norma M. Nelson, District Director, U.S. Small Business Administration, 1240

East Ninth Street, room 317, Cleveland Ohio 44199–2095, (216) 522–4180.

Dated: September 16, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–23146 Filed 9–23–92; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting; VT

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, will hold a public meeting at 10:30 a.m. on Tuesday, September 29, 1992 at the Vermont Chamber of Commerce, Granger Road, Berlin, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call Mr. Kenneth A. Silvia, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05601, (802) 828–4422.

Dated: September 15, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–23143 Filed 9–23–92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1704]

Office of the Legal Adviser; Submission of Claims to the United Nations Compensation Commission

This notice concerns the procedures for filing a claim against Iraq with the United Nations Compensation Commission for losses, damage or inquiry suffered as a result of Iraq's illegal invasion and occupation of Kuwait. It supplements Public Notice 148 (56 FR 47979, September 23, 1991), Public Notice 1545 (57 FR 421, January 6, 1992), Public Notice 1642 (57 FR 28897, June 29, 1992), and Public Notice 1655 (57 FR 31396, July 15, 1992). For further information, and to obtain claim forms, contact the Office of the Assistant Legal Adviser for International Claims and Investment Disputes, 2100 K Street, NW., suite 402, Washington, DC 20037–7180. Telephone (202) 653–2412.

The United Nations Compensation Commission has circulated "Form F" to be used in filing claims of governments and international organizations for losses sustained as a result of Iraq's illegal invasion and occupation of Kuwait. "Governments" include any federal or state political subdivision, agency, ministry, instrumentality or controlled entity.

The Office of the Assistant Legal Adviser for International Claims and Investment Disputes will work with each government agency wishing to file a claim to prepare its claims for submission to the Compensation Commission. Each agency must provide a detailed memorandum outlining the facts and legal basis for each claim. The Office of the Assistant Legal Adviser will then fill out the claim form and prepare a statement of the claim.

Government and international organization claims will be accepted by the Commission after February 1, 1993. Processing priority will be given to those claims received by August 1, 1993. The final deadline for the submission of these claims by Governments is February 1, 1994. In order to allow enough time for preparation of each claim, the Assistant Legal Adviser's Office is requesting detailed memoranda and supporting documentation by March 1, 1993 if possible, and requiring its submission no later than September 1, 1993.

Dated: September 16, 1992.

Ronald J. Bettauer,

Assistant Legal Adviser for International Claims and Investment Disputes.

[FR Doc. 92–23212 Filed 9–23–92; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice No. 1700]

Shipping Coordinating Committee; Subcommittee on Ocean Dumping; Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on October 19, 1992 from 10 a.m. to 12 noon to obtain public comment on the issues to be addressed at the Fifteenth Consultative Meeting of Contracting Parties to the London Dumping Convention (LDC), which regulates ocean dumping.

The meeting will be held at the Environmental Protection Agency, Waterside Mall, 401 M Street, SW., Washington, DC 20460 in Conference Room #3 North, EPA Conference Area. Interested members of the public are invited to attend, up to the capacity of the room.

For further information, please contact Mr. John Lishman or Mrs. Ellen Delaney, Office of Wetlands, Oceans, and Watersheds, Telephone 202/260–8448.

Dated: September 2, 1992.

Bruce Carter,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 92–23211 Filed 9–23–92; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice No. 1701]

Shipping Coordinating Committee, Council/Technical Co-operation and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 12:30 p.m. on Friday, November 6, 1992, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593 to finalize preparations for the Council, 69th Session and Technical Co-Operation Committee, 37th Session of the International Maritime Organization (IMO) which is scheduled for November 16–20, 1992, at the IMO Headquarters in London. At the meeting the papers received and the draft US positions will be discussed.

Among other things, the items of particular interest are:

—Reports of the IMO Committees and the Ad Hoc Working Group on Elections to the Council
—Review of the technical co-operation activities of the Organization
—Relations with United Nations and other organizations
—Administrative and financial matters

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, United States Coast Guard (G–CI), room 2114, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–2548.

Dated: September 9, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–23195 Filed 9–23–92; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–92–25]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will

be held on Tuesday, October 20, 1992, in the 29th floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, Louisiana at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to order.
2. Minutes of the July 14, 1992 meeting.
3. Old Business.
4. New Business.
5. Report from the VTS Subcommittee.
6. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting this waterway.

All meetings are open to the public. Members of the public may present written or oral statements at the meetings.

Additional information may be obtained from Mr. M.M. Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: September 15, 1992.

T.D. Fisher,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 92-23218 Filed 9-23-92; 8:45 am]

BILLING CODE 4910-14-M

[GD 92-048]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on October 14, 1992, in South Conference Room "B", 34th floor, One World Trade Center, New York, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update of Marine Events.
3. Update of dredging operations in New York harbor.
4. Update on Vessel Traffic Service.
5. Update on Coast Guard regulatory initiatives: Bridge-to-Bridge Act.
6. Bayonne Bridge lighting/clearances.
7. 40 foot channel through the Kill Van Kull and Newark Bay.
8. "P.O.R.T.S." update.
9. Topics from the floor.
10. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than one day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J.P. Benvenuto, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Vessel Traffic Service, Building 108, Governors Island, New York, NY 10004-5070; or by calling (212) 668-7429.

Dated: September 9, 1992.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port New York, NYHTMAC Executive Director.

[FR Doc. 92-23216 Filed 9-23-92; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Federal Interagency Committee on Noise (FICON): Report and Recommendations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of FICON report and recommendations.

SUMMARY: At the direction of the Environmental Protection Agency and the Federal Aviation Administration, the FICON was formed in December 1990 with a basic charter to review specific elements of the assessment of airport noise impacts contained in documents prepared pursuant to the National Environmental Policy Act (NEPA); to review the relationship of Federal Aviation Regulation (FAR) part 150 to NEPA; and to make recommendations regarding potential improvements. The FICON is composed of representatives from the Departments of Transportation (Office of the Secretary and the Federal Aviation Administration), Defense, Justice, Veterans Affairs, Housing and Urban Development; the Environmental Protection Agency; and the Council on Environmental Quality. The FICON has completed its charter and has issued its report, which contains technical findings and conclusions, and policy recommendations. This notice of the availability of the FICON report is being published separately by all FICON member agencies.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Office of Environment and Energy, Policy and Regulatory Division (AEE-300), 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-7203.

SUPPLEMENTARY INFORMATION:

Availability of FICON Report

Any person may obtain a copy of the FICON report by submitting a written request to Spectrum Sciences and Software, Inc., Code FAA, 242 Vicki Leigh Road, Fort Walton Beach, FL 32547.

Background

The FICON was formed to review Federal policies which are used in the assessment of airport noise impacts. The FICON review focused primarily on:

- The manner in which noise impacts are determined, including whether aircraft noise impacts are fundamentally different from other transportation noise impacts;
- The manner in which noise impacts are described;
- The extent of impacts outside of Day-Night Average A-Weighted Sound Level (DNL) 65 decibels (dB) that should be reviewed in a National Environmental Policy Act (NEPA) document;
- The range of the Federal Aviation Administration (FAA)-controlled mitigation options (e.g., noise abatement and flight track procedures) analyzed; and,
- The relationship of the Federal Aviation Regulation (FAR) part 150 process to the NEPA process; including ramifications to the NEPA process if they are separate, and exploration of the means by which the two processes can be handled to maximize benefits.

The FICON was organized into three subgroups to appropriately focus on the technical, legal, and policy issues associated with the assessment of airport noise impacts. The Technical Subgroup was tasked to review the body of science associated with methodologies and metrics for assessing airport noise impacts which have

evolved since the 1980 meetings of the Federal Interagency Committee on Urban Noise (FICUN). The Policy Subgroup was tasked to review Federal policies which are used in the assessment of airport noise impacts. The Legal Subgroup reviewed the legal aspects of current and proposed Federal policies for assessing airport noise impacts. The Technical Subgroup's products were used as a basis for the policy findings, conclusions, and recommendations in the report.

FICON Report Conclusions

General

- There are no new descriptors or metrics of sufficient scientific standing to substitute for the present DNL cumulative noise exposure metric.
- The methodology employing DNL as the noise exposure metric and appropriate dose-relationships (primarily the Schultz curve for Percent Highly Annoyed, expressed as %HA) to determine noise impact is considered the proper one for civil and military aviation scenarios in the general vicinity of airports.
- Federal agencies generally conduct noise assessments at DNL levels of 65 dB. For a variety of reasons, noise predictions and interpretations are frequently less reliable below DNL 65 dB. DNL prediction models tend to degrade in accuracy at large distances from the airport. Therefore, predictions of noise exposure and impact below DNL 65 dB should take the possibility of such inaccuracy into account.
- On a case-by-case basis, DNL is supplemented with other metrics.
- Noise analysis is used to address impacts in the following areas: (1) Health and welfare, (2) environmental degradation/impact and (3) land use planning.
- Complaints are an inadequate indicator of the full extent of noise effects on a population.

Health and Welfare

- The dose-effect relationship, as represented by DNL and %HA, remains the best available approach for analyzing overall health and welfare impacts for the vast majority of transportation noise analysis situations.
- The 10 dB nighttime penalty levied against noise during the 10 p.m. to 7 a.m. period is specifically designed to account for the intrusiveness of noise during this period and its potential impact on sleep. There are no new hard data which would justify a change in this penalty.
- If supplemental analysis for sleep disturbance is desired, use may be made of an interim dose-response model developed by the AF Armstrong Laboratories. Although this relationship is described in terms of Sound Exposure Level (SEL), single event metrics are of limited use in predicting and interpreting cumulative noise exposure impacts.
- Annoyance is a summary measure of the general adverse reaction of people to noise that causes speech interference; sleep disturbance; desire for a tranquil environment; and the inability to use the telephone, radio or television satisfactorily.
- No definitive evidence of non-auditory health effects from aircraft noise exist, particularly below DNL 70 dB.
- For supplemental analysis, Long-Term Equivalent Sound Level or Time Above may be used for analysis of school and communications requirements indoors during specific hours.
- Public health and welfare effects below DNL 60 dB have not been established, but are assumed to decrease according to the decrease in percent of people highly annoyed.

Environmental Degradation/Impact

- Under NEPA, environmental degradation might have to be assessed around airports even if there is no clear effect on public health and welfare. Other criteria might be appropriate.
- A 3 dB increase in the DNL environment represents a doubling of sound energy and clearly is an indicator of the need for further analysis, although smaller increases may indicate similar need. In other words, the impact of a given incremental amount of change in noise levels depends, in part, upon the existing level of the noise environment.
- Recent technology and software advances in geographic information systems, noise methodology and Census data present an enhanced potential for detailed analysis of sound impacts on population and noise-sensitive areas. These technologies should be considered for use to determine noise impacts of present and proposed actions.

Land Use Planning

- DNL represents the accepted noise methodology for input to compatible land use planning.
- For cumulative speech interference, Table 3–2 "Effects of Noise on People" contained in the FICON report, Volume II (Technical Report), provides a rough approximation of both outdoor and indoor predicted speech interference parameters for various levels of noise exposure as measured in DNL for residential land use only.
- There is a need for selective updating of land-use compatibility guidelines and for enhancing public understanding of them through incentives and other programs.

Education of the Public

- Education of the public should concentrate on the following frequently misunderstood issues:
- Environmental noise exposure is measured and described most generally by Day-Night Average A-Weighted Sound Level (DNL). DNL should be defined clearly and its significance and use explained clearly.
- Relation of DNL to Percent Highly Annoyed describes long-term community response to the overall sound environment (indices of health and welfare effects).
- Although the A-weighted Maximum Sound Level for a single flyover is easily understood, it is useful only for analyzing short-term responses.
- Every change in the noise environment does not necessarily impact public health and welfare.
- Aircraft noise predictions below DNL 65dB can be less accurate and should be interpreted with caution.

FICON Report Recommendations

- Continue use of the DNL metric as the principal means for describing long term noise exposure of civil and military aircraft operations.
- Continue agency discretion in the use of supplemental noise analysis.
- Improve public understanding of the DNL, supplemental methodologies and aircraft noise impacts.
- If screening analysis shows that noise-sensitive areas that will be at or above DNL 65 dB would have an increase of DN: 1.5 dB or more, further analysis should be conducted of noise sensitive areas between DNL 60–65 dB having an increase of DNL 3 dB or more due to the proposed airport noise exposure.
- If the DNL 65 dB screening test calls for further analysis between DNL 60–65 dB, agency mitigation options should include noise sensitive areas between DNL 60–65 dB that are projected to have an increase of 3 db or more as a result of the proposed airport noise exposure.
- If an FAA Part 150 program is included by the FAA as a NEPA mitigation measure, the FAA and the airport operator are responsible for ensuring the commitment is carried out and the part 150 study scope conforms to the NEPA scope of noise analysis.
- Increase research (R&D) on methodology development and on the impact of aircraft noise. To foster this, a

standing Federal interagency committee should be established to assist agencies in providing adequate forums for discussions of public and private sector proposals identifying needed research and in encouraging R&D in these areas. The following initial R&D issues are recommended:

- Evaluate potential modifications to the 1980 FICON land use compatibility table to improve its usefulness for both routine land use planning and planning for noise-sensitive land uses.
- Continue research into community reaction to aircraft noise, including sleep disturbance, speech interference, and non-auditory health effects of noise.
- Investigate differences in perceptions of aircraft noise, ground transportation noise (highways and railroads), and general background noise.
- Continue and expand research on the airport noise impacts of rotary-wing operations.

It is the FICON's belief that these recommendations will provide both immediate and long-term improvements in airport noise analysis. Federal interagency encouragement of a continuing review of airport noise analysis will provide a forum to address related public concerns.

While the FICON is seeking to achieve improved uniformity among Federal agencies in airport noise analysis, it must also recognize that agencies have differing legislative mandates and operating environments. These recommendations should be viewed as general guidance. Each Federal agency must determine how it can best use this guidance, supplementing it as appropriate to meet agency needs, within the framework of the NEPA requirements. The FICON report neither addresses the adequacy of compliance with NEPA to date by the participating agencies, attempts to redefine thresholds of significance of impact under NEPA, nor modifies the NEPA regulations or procedures of those agencies.

Public Review and Comment

Any person may express his or her views on the FICON report by submitting written comments to the Federal Aviation Administration, Office of Environment and Energy, AEE–300, 800 Independence Avenue, SW., Washington, DC 20591. Since the primary impact of the report's recommendations will be on the assessment of civil airport noise impacts for which the FAA is responsible, the FAA is serving as the focal point for the receipt of public comments. Copies of such written responses will be provided to all agencies participating in FICON. All public comments will be fully considered and used to facilitate the future interagency activities recommended in this report.

The Federal Aviation Administration is reviewing its procedures for evaluating airport noise impacts based on the report findings, conclusions, and recommendations; and will also consider the comments to this report in conducting this review. Any resulting change in procedures will be published for public comment prior to adoption.

Issued in Washington, DC, on September 18, 1992.

Louise E. Maillett,

Director, Office of Environment and Energy.

[FR Doc. 92–23251 Filed 9–23–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: King County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in King County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington, 98501, Telephone: (202) 753–2120; E.R. Burch, State Design Engineer, Washington State Department of Transportation, Transportation Building, Olympia, Washington, 98504, Telephone: (206) 753–6141; or Ronald Q. Anderson, District Administrator, Washington State Department of Transportation, District 1, 15700 Dayton Avenue North, Seattle, Washington, 98133–9710, Telephone (206) 440–4691.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), King County, Port of Seattle, Municipality of Metropolitan Seattle (METRO), City of SeaTac, and City of Des Moines, will prepare an EIS on a proposal to extend State Route 509 (SR 509) to the south, and to improve southerly access to Seattle-Tacoma International Airport (South Access Road). The proposed improvement would include construction of a new highway from SR 509 at South 188th Street, southerly to a connection with Interstate 5(I–5), and a new South Access Road. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include: (1) Taking no action; (2) Alternative D–2, which would extend SR 509 southward from South 188th Street, on existing WSDOT right-of-way, to approximately South 210th Street, and then eastward connecting to I–5 with a new interchange at South 210th Street. An expressway connecting SR 509 with the airport would provide direct access to and from the south on I–5; (3) Alternative F–2, which would extend SR 509 southward from South 188th Street, on existing WSDOT right-of-way, to approximately South 216th Street, and then southeasterly, connecting to I–5 at a reconstructed SR 516 interchange. An expressway connecting SR 509 with the airport would provide direct access to and from the south on I–5; and (4) Alternative I–2, which would extend SR 509 southward from South 188th Street, on existing WSDOT right-of-way to SR 516, then southerly on new right-of-way, connecting to I–5 at a reconstructed South 272nd Street interchange. Also included in this alternative is a roadway connecting SR 509 with I–5 at a new interchange at approximately South 210th Street, together with an expressway connecting with the airport, providing direct access to and from the south on I–5. Letters describing the proposed action and soliciting comments will be sent to the appropriate federal, state, and local agencies as well as citizens and organizations that have previously expressed or are known to have an interest in this proposal. A public scoping meeting will be held between September and October 1992. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program.)

Issued on: September 11, 1992.

Richard C. Kay,

Area Engineer, Olympia, Washington.

[FR Doc. 92-23205 Filed 9-23-92; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

The individual waiver petition is as follows:

Kiamichi Railroad Company, Incorporated (Waiver Petition Docket No. RST-91-2)

The Kiamichi Railroad Company, Inc. (KRR), of Hugo, Oklahoma, requests a waiver of compliance with § 213.237(a) of FRA's Track Safety Standards (49 CFR part 213). Section 213.237(a) requires that an annual continuous search for internal rail defects be made on Class 3 track over which passenger trains operate. The maximum operating speed for passenger trains on Class 3 track is 60 mph. KRR operates its occasional excursion trains at a maximum 25 mph over certain Class 3 tracks. KRR is therefore requesting a waiver from the requirements of § 213.237(a). KRR claims that the cost to meet this requirement would be prohibitive for what is essentially a public service operation.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket No. RST-91-2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before November 2, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC, 20590.

Issued in Washington, DC, on September 18, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-23114 Filed 9-23-92; 8:45 am]

BILLING CODE 4910-06-M

Federal Transit Administration

Environmental Impact Statement on the Extension of Light Rail Transit in the South Sacramento Corridor, Sacramento County, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), and the Sacramento Regional Transit District (RT) hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), on the proposed extension of light rail transit service from the existing light rail transit system in the central business district of the City of Sacramento to the vicinity of Elk Grove and Laguna in the South Sacramento Corridor (South Corridor). The local lead agency (RT) will ensure that the EIS also satisfies the requirements of the California Environmental Quality Act (CEQA) and serves as the Environmental Impact Report (EIR) required by CEQA. In addition to the Light Rail Transit extension, the EIS/EIR will evaluate the No-Action and Transportation System Management (TSM) alternatives and any new alternatives generated through the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies, and through four public meetings.

DATES: Written comments on the scope of alternatives and impacts to be considered must be received by the Sacramento Regional Transit District by October 9, 1992. Public scoping meetings will be held on Wednesday, September 30, 1992 at 7 p.m. at Valley High School; Thursday, October 1, 1992 at 7 p.m. at J.F. Kennedy High School; Monday, October 5, 1992 at 7:30 p.m. at Sierra 2 Community Center; Thursday, October 8, 1992 at 7 p.m. at Kerr Junior High School.

ADDRESSES: Written comments on the project scope should be sent to Ms. Debra Jones, Senior Planner, Sacramento Regional Transit District, 1400 29th Street, P.O. Box 2110, Sacramento, California 95812-2110. Scoping meetings will be held at the following locations:

1. September 30, 1992.
Valley High School, 6300 Ehrhardt Avenue, Sacramento, CA 95823.
2. October 1, 1992.
J.F. Kennedy High School, 6715 Gloria Drive, Sacramento, CA 95831.
3. October 5, 1992.
Sierra 2 Community Center, 2791 24th Street, Sacramento, CA 95818.
4. October 8, 1992.
Kerr Junior High School, Elk Grove at Elk Grove-Florin Rds., Elk Grove, CA 95624.

FOR FURTHER INFORMATION CONTACT: Robert Hom, Office of Program Management, FTA Region IX, 211 Main Street, Suite 1160, San Francisco, CA 94105. Phone: (415) 744-3116.

SUPPLEMENTARY INFORMATION:

Scoping

FTA and the local lead agency invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS/SIR and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule is being mailed to affected federal, state and local agencies and to interested parties on record. Others may request the scoping materials by contracting Debra Jones at the address above or by calling her at (916) 321-2870. Scoping comments may be made verbally at either of the public scoping meetings or in writing. See the DATES and ADDRESSES sections above for locations and times. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transit objectives. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS/EIR

has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Debra Jones as previously described.

Description of Study Area and Project Need

The South Sacramento Corridor has been defined as extending from downtown Sacramento south to the vicinity of Elk Grove Boulevard and including the area between the Sacramento River on the west and Stockton Boulevard and the Southern Pacific Railroad on the east. The South corridor is approximately 13 miles in length. The proposed South corridor LRT extension is proposed to provide transit service and improve accessibility between downtown Sacramento and the southern portion of the City of Sacramento and unincorporated areas of Sacramento County. The project should also improve transit accessibility between the study area and areas of northern and eastern Sacramento County served by the existing light rail transit system. The project may assist in alleviating regional air quality problems by providing an alternative to the automobile for many trips.

Alternatives

The alternatives proposed for evaluation include: No Action—defined to include all those transit service and highway and transit facilities that now exist or that are committed and will be operational by 2010; TSM-Low Alternative—defined to include only a modest expansion of transit services in the corridor, planned Caltrans freeway HOV lanes on I–5, and express bus services; TSM-High Alternative—in which the region's bus fleet would be more than doubled over the current fleet of 200 buses, the planned freeway HOV lanes on both I–5 and Highway 99 would be completed, express bus services would be expanded, and other bus service improvements would be implemented and supported by park-and-ride lots, direct access to freeway HOV lanes, transfer stations, and transit centers; Light Rail Transit alternative—involving the development of new LRT service in the South Corridor by extending a line from downtown Sacramento south to a terminal(s) located in the communities of Laguna and/or Elk Grove via one of eight potential alternatives utilizing either the Meadowview/Southern Pacific Railroad alignment or the Union Pacific Railroad alignment. The South Corridor under the Light Rail Transit alternative would also be served by a connecting bus system providing access to the stations along the LRT line and a comprehensive system of local bus routes providing radial and cross-town service for multi-destinational trips.

Probable Effects

FTA and the local lead agency plan to evaluate in the EIS/EIR all significant social, economic, and environmental impacts of the alternatives. Among the primary issues are the expected increase in transit ridership, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and financial impacts on the funding agencies. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, impacts on cultural resources, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and geologic forms will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be considered.

FTA Procedures

In accordance with the Federal Transit Act and FTA policy, the Draft EIS/EIR will be prepared in conjunction with an Alternatives Analysis, and the Final EIS/EIR in conjunction with Preliminary Engineering. After its publication, the Draft EIS/EIR will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS/EIR and the comments received, RT will select a locally preferred alternative and seek approval from FTA to continue with Preliminary Engineering and preparation of the Final EIR/EIS.

Issued on: September 21, 1992.

Louis F. Mraz, Jr.,

Western Area Director.

[FR Doc. 92–23224 Filed 9–23–92; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 18, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0153
Form Number: None
Type of Review: Reinstatement
Title: Appraisal of Property Upon Transfer to Other Real Estate Owned/ Instructions to Appraiser (12 CFR 7.3025)
Description: This recordkeeping requirement affects any national bank which acquires title to or possession of Other Real Estate Owned. The required records substantiate the carrying value of OREO in conformity with generally accepted accounting principles. This provides for more meaningful bank financial statement depictions and comparisons
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 2,846
Estimated Burden Hours Per Recordkeeper: 28 hours, 54 minutes
Frequency of Response: Other
Estimated Total Recordkeeping Burden: 82,206 hours
Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219
OMB Reviewer: Gary Waxman (202) 395–7430, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 92–23222 Filed 9–23–92; 8:45 am]

BILLING CODE 4810–33–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 17, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be

addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0155
Form Number: None
Type of Review: Reinstatement
Title: Payment of Dividends (12 CFR 5.61(c), 5.61(d) and 5.62(e))
Description: These regulations prescribe capital and earnings limitations on the payment of dividends by national banks. The regulations require the maintenance of records and the submission of requests for approval to pay dividends in excess of certain limitations. The regulations are necessary to bank safety and soundness
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 192
Estimated Burden Hours Per Respondent/Recordkeeper: 3 hours, 12 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 616 hours
Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 92–23141 Filed 9–23–92; 8:45 am]
BILLING CODE 4810–33–M

Customs Service

Application for Recordation of Trade Name: "Ashley Furniture Industries, Inc."

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Ashley Furniture Industries, Inc." used by Ashley Furniture Industries, Inc., a corporation organized under the laws of the State of California, located at 350 Madison Street, Arcadia, Wisconsin 54612.

The application states that the trade name is used in connection with furniture.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATES: Comments must be received on or before November 23, 1992.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Gina D'Onofrio, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–6956).

Dated: September 15, 1992.

John F. Atwood,
Chief, Intellectual Property Rights Branch.
[FR Doc. 92–23169 Filed 9–23–92; 8:45 am]
BILLING CODE 4820–02–M

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held October 22 and 23, 1992.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4 901 D Street, SW., Washington, DC 20024. Telephone No. (202) 401–4128, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988), that a closed meeting of the Art Advisory Panel will be held on October 22 and 23, 1992, in room 118 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Shirley D. Peterson,
Commissioner.
[FR Doc. 92–23242 Filed 9–23–92; 8:45 am]
BILLING CODE 4830–01–M

Office of Thrift Supervision

[No. 92–388]

Branch Closings

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed policy and request for comment.

SUMMARY: The Office of Thrift Supervision (OTS) is today publishing for comment a proposed policy that provides information and guidance with regard to statutory requirements for branch closings. Those requirements are contained in section 39 of the Federal Deposit Insurance Act, as amended by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991. The proposed policy also discusses the need for savings associations to develop and implement effective policies to minimize any adverse effect that a branch closing may have on a savings association's community, and remedies the OTS may consider if an association fails to comply with the statutory requirements. The full text of the proposed policy is provided in this notice.

The OTS will consider the comments received from the public in evaluating whether changes to the policies as drafted in the proposed policy are required.

DATES: Comments requested must be received on or before November 23, 1992.

ADDRESSES: Send comments to: Director, Information Services, Office of Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC. 20552, Attention: Docket No. 92–388. These submissions may be hand delivered to 1700 G Street,

NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7753 or (202) 906–5755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Larry A. Clark, Program Manager, Specialized Programs, (202) 906–5628; Kevin A. Corcoran, Assistant Chief Counsel, Corporate and Securities Division, (202) 906–6962; or Jackie Durham, Project Manager, Corporate Analysis, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 added section 39 (codified at 12 U.S.C. 1831p) to the Federal Deposit Insurance Act (FDI Act), effective December 19, 1991. The law requires an insured depository institution to:

- Submit notice of any proposed branch closing to its appropriate Federal banking agency no later than 90 days prior to the date of the proposed closing. The notice must include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of those reasons.
- Notify its customers of the proposed closing. This notice must be mailed to the customers of the branch proposed to be closed at least 90 days in advance of the proposed closing. A notice to customers must also be posted in a conspicuous manner on the premises of the branch proposed to be closed at least 30 days prior to the proposed closing.
- Adopt policies for branch closings.

An insured depository institution means any bank or savings association, as defined in section 3 of the FDI Act, the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC). The term includes state and federal savings associations.

Because the requirements of section 39 apply to all insured depository institutions, and in order to provide a uniform and consistent approach, the Federal banking agencies (Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, FDIC, and the OTS) have developed positions substantially similar to those discussed in this proposed policy statement. At the same time, however, each agency also has existing rules, regulations and policies that are affected by section 39; consequently, there may be some procedural differences between the agencies' policies.

The proposed policies provide guidance to address the questions raised in connection with the implementation of section 39, discuss the effect of that section on existing OTS regulations, and remind savings associations of the need to develop and implement effective written policies and procedures for branch closings.

Request for Comment

The OTS invites comments on all aspects of its proposed policies. The implementation of the statutory provisions raises a number of issues that generally involve questions of what constitutes a "branch" and a "closing". Therefore, commenters are specifically requested to address the following issues:

1. What is the appropriate definition of "branch" to apply in connection with a branch closing under section 39?

The law applies to all "branch" closings. OTS regulations (12 CFR 545.92(a)) define a "branch" as any office of a Federal savings association, *other than* its home office, agency office, data processing or administrative office, or a remote service unit. In addition to a traditional brick and mortar branch, OTS believes the law applies to any other type of domestic facility that constitutes a branch, including a drive-in facility and mobile branch. Other definitions could be utilized, *e.g.*, the definition of "domestic branch" contained in section 3(o) of the FDI Act. If this definition were applied, one effect would be to include remote service units (ATMs).

2. Should the proposed policy apply to a branch relocation?

OTS regulations (12 CFR 545.95) require a Federal savings association to file either an application or a notice with the OTS prior to relocating a branch office, depending upon whether it qualifies for expedited or standard treatment based on its financial and managerial strengths, and statutory and regulatory compliance records. An association may, however, relocate a branch without applying for approval if the site is within the market and short-distance relocation area (as defined in 12 CFR 545.95(c)) of the existing branch.

Thus, prior approval is required if the effect of the relocation of a branch from one location to another is to establish a new branch, but no prior approval is required if a branch is relocated in the immediate market area. The primary distinction between the two requirements is the extent to which financial services in the community are, or are not, affected by the relocation.

The OTS believes the notice requirements in section 39 are designed to protect against the adverse effects of sudden or unexpected branch closings, particularly in underserved or lower-income communities. Additionally, if the branch is moved a significant distance from its present location, the effect of the relocation may be considered to be the functional equivalent of a closing. For these reasons and to be consistent with the intent of existing regulations, the OTS therefore proposes to apply section 39 to a branch relocation, unless the relocation satisfies the regulatory criteria for a short-distance relocation in 12 CFR 545.95(c). The OTS does not propose to apply section 39 to closings or consolidations of existing branches that are within the regulatory criteria for a short-distance relocation.

3. Should the proposed policy apply to government-assisted transactions?

The OTS believes that section 39 applies to a branch closing initiated by an institution, not to situations where the institution is failing and the closing is part of the government's resolution process. Interpreting section 39 as applying to branches operated on a temporary basis by an acquiror in a transaction assisted by the FDIC or Resolution Trust Corporation (RTC) would appear to have results that are contrary to the statute's purpose.

In a typical situation, when an acquiror assumes some or all of the assets and liabilities of an institution placed into conservatorship or receivership, it operates one or more branches temporarily until it decides, during an option period (generally 80–180 days), whether to purchase or lease the branch, or transfer it back to the FDIC or RTC. If an acquiror is initially uncertain as to whether the branch will remain open, and if the acquiror is required to operate the branch for 90 days from the time it decides to close the branch, then the acquiror may decide to close the branch immediately, rather than operate it on an interim basis as an accommodation to the branch's customers.

Accordingly, the OTS believes that section 39 does not apply to closings of branches of an institution that has been placed in conservatorship or receivership by the OTS, so long as the branches are closed prior to expiration of an acquiror's branch acquisition option period. Section 39 would apply, however, if the acquiror purchases or

leases a branch, but later decides to close the branch. Section 39 would also apply when an acquiror closes a branch from its pre-acquisition branch network in a consolidation of offices acquired in connection with an RTC acquisition, unless the distance between the two branches is so close that it would satisfy the applicable distance standard for a short-distance relocation pursuant to 12 CFR 545.95(c).

Regardless of the applicability of section 39, a savings association that operates branches transferred from the RTC or the FDIC on an interim basis should, upon deciding not to permanently acquire a branch, use its best efforts to provide advance notice to both its customers and the OTS of the proposed branch closing.

4. How can an association best identify the customers of a branch?

The proposed policy permits each savings association to determine which of its patrons will be identified as customers of a particular branch. The proposed policy requires a good faith determination based on a reasonable method developed by the association to allocate a customer to a branch. One example of a reasonable method that an association could use is to allocate a customer to a branch based on where the customer opened his or her deposit or loan account.

Proposed Policy Statement

Purpose

This policy statement provides guidance to all savings associations with respect to the statutory requirements that each association provide prior notice of branch closings and establish internal policies for branch closings.

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 was enacted on December 19, 1991. Section 228 adds a new section 39 (codified at 12 U.S.C. 1831p) to the Federal Deposit Insurance Act (FDI Act) and imposes notice requirements on insured depository institutions that propose branch closings. An "insured depository institution" means any bank or savings association, as defined in Section 3 of the FDI Act, the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC). The term includes state and federal savings associations. Section 39 became effective on December 19, 1991.

The law requires an insured depository institution to submit a notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons.

The law also requires an insured depository institution to notify its customers of the proposed closing. The institution must mail the notice to the customers of the branch proposed to be closed at least 90 days prior to the proposed closing. The institution must also post a notice to customers in a conspicuous manner on the premises of the branch proposed to be closed at least 30 days prior to the proposed closing.

Additionally, the law requires each insured depository institution to adopt policies regarding closings of branches of the institution.

As the Federal banking agency that supervises savings associations, the OTS is charged with administering section 39 for those institutions.

Applicability

Under OTS regulations, a "branch" is defined as any office of a Federal savings association, other than its home office, agency office, data processing or administrative office, or a remote service unit (12 CFR 545.92(a)). Thus, in addition to a traditional brick and mortar branch, other types of domestic facilities that constitute a branch, including a drive-in facility or mobile branch, are covered.

A savings association must file a branch closing notice for a branch closing that occurs in the context of a merger, consolidation or other form of acquisition, whether or not such transaction is subject to expedited approval under the Bank Merger Act (12 U.S.C. 1828). The parties to such a transaction should determine which party will give the notice. Thus, for example, the purchaser may give the notice prior to consummation of the transaction where the purchaser intends to close a branch following consummation, or the seller may give the notice because it intends to close a branch at or prior to consummation. In the latter example, if the transaction were to close ahead of schedule, the purchaser, if authorized by the OTS, could operate the branch to complete compliance with the 90-day requirement without the need for an additional notice.

The law does not apply to a temporary interruption of service caused by an "Act of God" (*e.g.*, fire, earthquake) if the savings association plans to restore branching services at the site in a timely manner, as the association would not have closed the branch. The law does apply, however, if the association decided to close or not reopen the branch following the incident. Although prior notice would not be possible in such a case, the association should mail and, if practicable, post the required notices to customers and the OTS as soon as possible after the decision to close the branch has been made.

The law does not apply where a branch undergoes a change in name, location, or services but continues to meet the definition of branch and serve the same customers. Thus, the law does not apply to:

- Mergers, consolidations, or other acquisitions, including branch sales, that will not result in any branch closings;
- A change of services at a branch so long as the remaining facility constitutes a branch, such as where loan services are removed from a branch that will continue to offer deposit services;
- Branches that are closed at one location in connection with a branch relocation that qualifies as a "short-distance" relocation pursuant to 12 CFR 545.95(c), or closings or consolidations of existing branches that satisfy the short-distance criteria; and
- Branch offices temporarily operated in connection with government-assisted transactions that are closed prior to the expiration of a buyer's branch acquisition option period.

Notice of Branch Closing to the OTS

The law requires insured depository institutions to submit notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The law requires that the notice to the OTS include the following:

- Identification of the branch to be closed;
- the proposed date of closing;
- a detailed statement of the reasons for the decision to close the branch; and
- statistical or other information in support of such reasons consistent with the association's written policy for branch closings.

If an association believes certain information included in the required notice is confidential in nature, the association should prepare such information separately and request confidential treatment. The OTS will decide whether to treat such information confidentially under the Freedom of Information Act (5 U.S.C. 552).

Notice of Branch Closing to Customers

The law requires an insured depository institution that proposes to close a branch to provide notice of the proposed closing to the customers of the branch. A customer of a branch is a patron of a savings association who has been identified with a particular branch by such institution through use, in good faith, of a reasonable method for allocating customers to specific branches. An association that allocates customers to its branches based on where a customer opened his or her deposit or loan account will be presumed to have reasonably identified each customer of a branch. An association need not change its recordkeeping system in order to make a reasonable determination of who is a customer of a branch. If an association cannot reasonably identify the customers of a particular branch using its current recordkeeping system, it may satisfy the requirements of section 39 by notifying all of its deposit and loan customers.

Under section 39, an association that proposes to close a branch must include a customer notice at least 90 days in advance of the proposed closing in at least one of the regular account statements mailed to customers, or in a separate mailing. If the branch closing occurs after the proposed date of closing, no additional notice is required to be mailed to customers if the association acted in good faith in projecting the date for closing and in subsequently delaying the closing.

To satisfy the mailed customer notice requirements of the law, the mailed notice should include the location of the branch to be closed, the proposed date of closing, and either identify where customers may obtain service following the closing date or provide a telephone number for customers to call to determine such alternative sites.

Under the law, an association also must post notice to branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing. This notice should state the proposed date of closing, and either identify where customers may obtain service following the closing date or provide a telephone number for customers to call to determine such alternative sites. An association may revise the notice to extend the projected date of closing without triggering a new 30-day notice period.

In some situations, an association, in its discretion and to expedite transactions, may mail and post notices to customers of proposed branch closings that are contingent upon an event. For example, in the case of a proposed merger or acquisition, an association may notify customers of its intent to close a branch upon approval by the appropriate Federal banking agency of the proposed merger or acquisition.

For purposes of examinations, an association must be able to demonstrate compliance with the law.

Policies for Branch closings

The law requires all insured depository institutions to adopt policies for branch closings. Each savings association with one or more branches must adopt such a policy. If an association currently has no branches, it must adopt a policy for branch closings before it establishes its first branch. The policy should be in writing and should meet the size and needs of the association.

Closing a branch may have adverse effects on the community and its residents, particularly low- and moderate-income neighborhoods. A branch closing may also affect local economic development and inconvenience businesses and residents, particularly those residents with limited mobility.

Each branch closing policy adopted pursuant to section 39 should include procedures for determining objectively which branch to close and which customers to notify, and methods for providing the notices required by the statute.

As association may also wish to consider including in its written policy factors such as:

- Profits generated by the association's branch system and the profitability of the targeted branch;
- Actions taken to make the targeted branch viable; for example, adjusting hours, changing services, upgrading facilities, and increasing automation;
- The presence in the neighborhood of other financial institutions, and their accessibility and services;
- Actions to advise the community of the planned branch closing; for example, advance meetings with key neighborhood and political leaders;
- Actions to minimize the impact of a branch closing on the neighborhood; for example, providing special services, check cashing, and night deposits, and providing additional services at other sites;
- A review and approval procedure to arrive at a closing decision, including the standards (*e.g.*, profit and loss, number of customers, amount of deposit or loan accounts) used to make the decision, and appropriate follow-up actions to be taken; and
- Any other considerations the association may wish to include.

Compliance

The OTS will examine for compliance with section 39 to determine whether an association has adopted a branch closing policy and whether the association provided the required notices when it closed a branch. If an association fails to comply with section 39, the OTS may make adverse findings in the CRA portion of an examination or take appropriate enforcement action, including the imposition of civil money penalties where statutory requirements are not satisfied.

During the CRA portion of an examination, the OTS assesses an association's record of helping to meet the credit needs of its community. Factors the OTS considers in making its assessment include the association's record of opening and closing offices and providing services at such offices. The reasons for closing a branch and the statistical or other information included in a branch closing notice submitted to the OTS will be reviewed under these assessment factors in the CRA portion of an examination.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-23221 Filed 9-23-92; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Parliamentary Exchange Program With Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a request for proposals from not-for-profit organizations to develop two-week exchange programs for parliamentarians from Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgystan, Moldova, Russia, Tadjikistan, Turkemenistan, Ukrainse and Uzbekistan. Delegations of up to ten members of the parliaments of these countries will participate in this program. Interested applicants are urged to read the complete **Federal Register** announcement before addressing

inquiries to the Office or submitting their proposals.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, November 20, 1992. Faxed documents will not be accepted, nor will documents postmarked November 20, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin after April 1, 1993.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: Citizen Exchange: Parliamentary Exchange, Office of Grants Management (E/XE), Room 357, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Molly Raymond, Coordinator for Russia/Eurasia Programs, Office of Citizen Exchanges (E/P), room 224, USIA, Washington, DC 20547 Telephone: (202) 619–5326, to request detailed application packets which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation.

Overview

The program is designed to give delegations of parliamentarians of the countries of the former Soviet Union an in-depth exposure to the workings of the United States Congress and to the functioning of state and local governments in the United States. Half the time will be spent in Washington, DC, the other half in other sites around the United States.

Objectives of the Program

(1) To introduce parliamentarians to the U.S. legislative system, by providing them an opportunity to observe the day-to-day work of US Members of Congress in Washington, DC and in their home districts.

(2) To provide an opportunity for Members of Congress and visiting parliamentarians to establish professional and personal relationships.

(3) To demonstrate to visiting parliamentarians how American legislators interact with their constituents, with lobbyists, with the other branches of the government, and with their political party.

(4) To stress the role of government in protecting the rights of individual citizens.

(6) To address such concepts as conflict of interest and political accountability; and to examine American approaches to reaching compromise through bargaining, negotiation and other conflict resolution techniques.

Participants

Projects will be designed for one-country delegations of ten or fewer members of parliament. Parliamentary staff are not eligible for the program. Programs may be organized around a specific theme or may be designed for leadership groups who would use the visit to study the parliamentary process, legislative procedure and leadership issues on Capitol Hill. Program design may include dividing a delegation into subgroups to examine specific thematic issues during part of the US program.

Selection of Participants. US organizations are expected to nominate candidates for delegations, with the understanding that American Embassies retain the final say on the composition of the travelling group. Guidance will also be sought on selection from the joint leadership of Congress and the US Department of State.

Preference will be given to parliamentarians who have not visited the United States before.

English language is not required of participants. The Language Services Division of the Department of State will provide escort/interpreters as necessary.

Program Development Considerations

Institutions are encouraged to develop proposals for more than one delegation.

The US Information Agency will give favorable consideration to proposals that demonstrate two things: (1) In-depth, substantive knowledge of the issues of concern to the parliaments of these countries and first-hand connections with these institutions; and, (2) the capacity to organize and manage the exchange, both the pre-departure requirements in the former Soviet Union and all arrangements in the United States.

U.S. organizers should assume that many parliamentarians have little or no familiarity with American traditions and institutions. The first several days of a program should consist of an introductory overview of the American political process before participants begin substantive meetings with American political figures. Cultural and historical differences must be taken into account in all aspects of program design.

Programs must be balanced and non-partisan and representative of American political, geographic, and economic diversity. A program will generally consist of a week of Washington-based programming and a week of programming outside the capital. This second week offers an opportunity to visit district offices of Members of Congress and to study state legislative systems.

Institutions should present a detailed work plan for each project. work plans should provide a time line and describe the design phase (contact with parliaments and selection of participants, planning of orientation programs and itineraries, materials development, selection of American speakers) and implementation (day-to-day handling of logistics and management of the delegation once they are here).

Project Content

In designing projects, prospective grantee organizations may wish to consider the following ideas:

a. Briefings on the history of the American Constitutional system, the Federalist papers (available in Russian) and the issues that were addressed during the Articles of the Confederation and Constitutional development periods.

b. Separation of powers of the legislative, judicial and executive branches of the U.S. Government and the US system of checks and balances.

c. The relationship, roles and responsibilities of different levels of government (local, state and national) and their interaction with one another.

d. Examination of how the US Congress is organized and operates, with an emphasis on legislative procedure, and methods of drafting and moving legislation through the system.

e. Examination of the Committee and Subcommittee process and their various roles including oversight, legislative development, and budget.

f. Examination of various congressional support services including the Congressional Research Service, the Office of Technology Assessment and the Congressional Budget Office.

g. Briefings and site visits to study the American political party system, election processes, campaigns, opinion polling, campaign financing and fund raising, and the role of the media in the American political process.

h. Observing Members of Congress in their home districts to understand constituent relations and the role of citizen action groups and lobbies.

i. Study of U.S. State legislative systems, committees, legislative

development, civil and political service systems, and information systems.

Additionally, parliaments of Russia/Eurasia have indicated a general interest in the following issues:

(1) economic privatization and the development of market infrastructure and distribution systems, (2) economic development and entrepreneurship, (3) conversion of the military-industrial complex, (4) financial infrastructure development and banking, (5) environmental protection and legislation, (6) public and private provision of social services and health care, (7) agricultural development and food processing, (8) parliamentary oversight of intelligence and internal security organs, (9) the creation of new educational institutions, (10) implementation of legislation once passed. Additional specific subjects have been identified for certain countries of the former Soviet Union:

—Belarus: (1) privatization, (2) economic competition, (3) regulation of business in the context of free market economies, (4) environmental clean up and control, and (5) defense conversion.

—Ukraine: (1) Legislative procedure—an intensive program on how a bill becomes a law, from the initial drafting stage through modification and amendment, approval and passage, (2) the process of policy formulation and coordination between executive and legislative branch positions, (3) accountability in government: an examination of various oversight functions, such as supreme court nominee hearings and oversight of executive branch; likewise, the ways in which the Congress itself is held accountable by agencies of the executive branch; the role of the press (both traditional investigative journalism and C-span) in assisting the voting public in holding government accountable for its actions.

—Russia: (1) relationship of government legislative and regulatory functions to a free press; (2) relationship of legislative initiatives to the work of international financial institutions (World Bank, International Monetary Fund, etc.)

—Tadjikistan: (1) Drafting of anti-narcotics trafficking legislation and laws regarding domestic production/abuse and money laundering, (2) drafting of legislation protecting civil and human rights, (3) creation of an effective election law, to include election monitoring.

Funding

Competition for USIA funding is keen. The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, the applicant's familiarity with the legislative process, both US and foreign, attention to protocol considerations, and ability to carry out the program successfully. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

A proposal's cost-effectiveness—including in-kind contributions and ability to keep administrative costs low—is a major consideration in the review process.

The Office of Citizen Exchanges will consider geographic distribution in selecting grantee institutions to ensure that the overall program reaches most if not all of the countries of Russia/Eurasia.

Although no set funding limit exists, proposals for less than $225,000 will receive preference. (The $225,000 range is for proposals with multiple projects.) Organizations with less than four years of successful experience in managing international exchange programs are limited to grants of $60,000. Grantee institutions should be aware that many delegations have protocol requirements, including photo-opportunities with Congressional leaders and receptions. USIA funding cannot cover the costs of receptions beyond the per diem expenditures for the foreign participants. Consequently, grantee institutions should make efforts to cost-share these events through other funding sources.

The following program and administrative items are eligible for consideration for funding:

1. International and domestic air fares; transit costs; ground transportation costs;

2. Per diem. Organizations should use the published federal per diem rates for individual American cities for foreign participants and accompanying staff.

3. Escort-Interpreters. Interpretation for delegations is provided by the State Department's Language Services Division. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposals budgets should contain a flat $140/day per diem for each State Department interpreter, as well as home-program-home air transportation of $400 per interpreter and any US travel expenses during the program itself. Salary expenses are covered centrally and are not part of a grantee's budget proposal.

4. Book and Cultural allowances. Participants and the escort interpreters are entitled to a one-time book allowance payment of approximately $200 and a cultural allowance of $150 per person. Accompanying staff do not get these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250/day. Subcontracting organizations may also be used. The written agreement between the prospective grantee and subcontractor must be included in the proposal.

6. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants.

7. Room rental, generally not to exceed $250/day.

8. One working meal per project. Per capita costs may not exceed $15–20 for a lunch and $20–30 for a dinner. Number of invited guests may not exceed number of participants by more than a factor of two. This includes room rental if applicable.

9. Administrative costs. USIA-funded administrative costs are limited to twenty-two (22%) percent of the total funds requested from USIA. Administrative costs are defined as salaries, benefits, other direct and indirect costs incurred in the United States. Overseas administrative costs—such as compensation of an employee in an overseas office—are not counted in this 22% limit. Important note for universities: The U.S. Information Agency's Bureau of Educational and Cultural Affairs defines American faculty salaries as an administrative expenses, regardless of how the faculty time is to used.

Application Requirements

Proposals must be structured in the following way:

1. An executive summary, not to exceed one page single-spaced, describing the goals of the program, the institutions and major personalities involved, an outline of what will take place, and the timing of the program.

2. A narrative section (20 double-spaced pages or less) showing the intellectual rationale of the program, how the program will accomplish its goals and how it relates to USIA's mission to increase mutual understanding between the people of the United States and of other societies. This section should include a concise description of the project's work plan, spelling out program schedules, thematic agenda, and proposed itineraries. Participant selection should be discussed in detail. This section should conclude with a discussion of any follow-up activities planned; how the

organization intends to evaluate the project; and what groups, beyond the direct participants, will benefit from the project.

3. A detailed three-column budget. See application package.

4. Resumes (not to exceed two pages each) for key personnel.

5. Confirmation letters from American and foreign co-sponsors noting their intention to participate in the program will enhance an institution's submission.

6. USIA compliance forms, furnished with the application package, bust be submitted with the proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of European Affairs and the contracts office. Proposals may also be reviewed by the Agency's Office of the General Counsel.

Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to the availability of funds.

The Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense.

USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. *Institution Reputation/Ability Evaluations:* Institutional grant recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal and no longer than two pages each.

4. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substance and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate expertise in the subject area.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposal should maximize cost-sharing through other private sector support as well as institution direct funding contributions.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA supported programs are not isolated events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

Notice

The terms and conditions published in this RFP are binding and may not be modified by an USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about February 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: September 17, 1992.

James Hogan,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-23048 Filed 9-23-92; 8:45 am]

BILLING CODE 8230-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Application of the Agreement on Government Procurement and Waiver of Discriminatory Purchasing Requirements

AGENCY: Office of the United States Trade Representative.

ACTION: Determination of application of the agreement on Government procurement and waiver of discriminatory purchasing requirements.

In conformity with the provisions of Sections 301 and 302 of the Trade Agreements Act of 1979, as amended ("the ACT"), and pursuant to Executive Order 12260, as amended, I hereby determine that Spain, Greece, and Liechtenstein have become Parties to the Agreement on Government Procurement (the "Agreement"), and will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products.

Spain and Greece have fully implemented obligations of the Agreement through submission of satisfactory entity lists to the Agreement Committee in Geneva and through their adoption of relevant European Community procurement directives. Liechtenstein had already assumed obligations of the Agreement because it is part of the customs territory of Switzerland, which is already a Party to the Agreement, and Switzerland recently amended its entity list to the Agreement to include the Government of the Principality of Liechtenstein.

In accordance with section 301(b)(1) of the Act, I designate Spain, Greece, and Liechtenstein for purposes of section 301(a) of the Act. With respect to eligible products (as defined in section 308(4) of the Act) of Spain, Greece and Liechtenstein, and suppliers of such products, the application of any law, regulation, procedure, or practice

regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded:

(A) To United States products and suppliers of such products; or

(B) To eligible products of another foreign country or instrumentality which is a Party to the Agreement and suppliers of such products, shall be waived.

This waiver shall be applied by all Executive agencies listed in the Annex to Executive Order 12260, as amended, in consultation with, and, when deemed necessary, at the direction of, the Trade Representative.

I have informed the relevant U.S. procurement authorities of this decision and requested that they make the necessary changes to U.S. procurement regulations as expeditiously as possible in order to implement this decision. This decision shall become effective on the date of amendment of the applicable regulations.

The designations and waiver noted above are subject to modification or withdrawal by the Trade Representative.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-23185 Filed 9-23-92; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 186
Thursday, September 24, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 29, 1992, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

"FEDERAL REGISTER" NUMBER: 92-22001.

PREVIOUSLY ANNOUNCED DATE AND TIME: Wednesday, September 30, 1992, 10:00 a.m., Meeting Open to the Public.

The Jackson for President '88 Committee—Oral Presentation is being postponed.

DATE AND TIME: Thursday, October 1, 1992, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992-33: Carol Darr of the Democratic National Committee and Benjamin Ginsberg of the Republican National Committee
Draft Notice of Proposed Rulemaking on Definition of a "Member" of a Membership Association
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris-Hardy,
Administrative Assistant.

[FR Doc. 92-23388 Filed 9-22-92; 3:20 pm]
BILLING CODE 6715-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 11:00 a.m., Wednesday, September 30, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,
Secretary of the Board.

[FR Doc. 92-23367 Filed 9-22-92; 1:37 pm]
BILLING CODE 7535-01-M

Federal Register

Thursday
September 24, 1992

Part II

Department of Defense

Department of the Army

32 CFR Part 619

Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, and Shipper Agents; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 619

Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, and Shipper Agents

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Final rule.

SUMMARY: This rule establishes changes to 32 CFR part 619 and is necessary to protect the interest of DoD while reducing the financial burden for small established carriers to do business with DoD. Bond requirement will be based on a sliding scale. The submission of financial statements is discontinued. This rule allows for MTMC to approve insurance underwriters on a case-by-case basis and acceptance of self-insurance; adds qualification standards for Surface Freight Forwarders, and shipper agents; adds additional requirements and standards for carriers wishing to handle shipments of hazardous or secret materials, sensitive weapons and munitions; and shipments which require a Transportation Protective Service (TPS); modifies the cargo insurance requirements for carriers of perishable substance and bulk fuel; and establishes a basic agreement between MTMC and motor carriers who handle shipments requiring a TPS, shipments of hazardous materials (other than Classes A and B explosives), and handle shipments of classes A and B explosives.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT:

Ms. Rose Sharpe, Mr. Rick Wirtz, or Ms. Robbie Randolph, at (703) 756–1356; Headquarters, Military Traffic Management Command, ATTN: MTIN, 5611 Columbia Pike, Fall Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: Basic information on the Carrier Qualification Program was previously published in the **Federal Register**, 53 FR 17970, 54 FR 27687, 55 FR 7361, 55 FR 52976, 56 FR 45895 and 57 FR 11376.

1. Performance Bond. The performance bond is established to protect the interest of the DOD. It provides a source of funds that can be used to pay for reprocurement costs associated with those instances where a carrier frustrates or abandons DOD freight. The amount of the bond a carrier needs to obtain is dependent on the risk associated to the DOD. However, the bond amount will never exceed $100,000. Two different systems are used for risk evaluation. Which system is used will be determined when carrier is asked to qualify for the bond.

a. All carriers. (1) Carriers having done business in their own name with DOD for 3 years or more will be required to submit a performance bond in the amount of 2.5% of their total DOD revenue, taken from the freight Information Systems Report (FINS), for the previous 12 months, not to exceed $100,000 and not less than $25,000.

(2) New carriers and those carriers having done business in their own name with the DOD for less than 3 years will be required to submit a performance bond based on their proposed area of service. Areas of service will be computed as both origins and destinations served, that is, 1 state (including intrastate)—$25,000, to 2 to 3 states—$50,000, and 4 or more states—$100,000.

(3) Once a carrier has been doing business with the DOD for 3 years, their bond requirement will change form area of service to percent of revenue.

The rationale for this risk evaluation is to protect the interest of DOD while reducing the financial burden for small established carriers to do business with DOD.

b. Local drayage and commercial zone carriers are exempt from the bond requirement.

c. Surface Freight Forwarders and Shipper Agents. Due to the volume of traffic handled by these two modes and the area normally serviced the bond amount is set at $100,000.

2. Insurance. Insurance underwriters must be rated in the Best's Insurance Guide, or listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies. Additionally, MTMC will accept self-insured for those carriers who were self-insurance with the Interstate Commerce Commission (ICC) as of January 1, 1991. Self-insurance will be accepted only upon receipt of a Service Order from the ICC granting the self insurance.

3. Requirements and standards are already in place for carriers who wish to handle hazardous or secret materials, and sensitive weapons and munitions; therefore, they were originally exempted from the initial program. However, in order to streamline and standardize procedures, these carriers will now be brought under the basic Carrier Qualification Program, to include additional requirements for consideration to participate in freight shipments which have higher requirements than those for general commodities.

The following amendments and/or additions to appropriate sections of title 32, part 619 establish the applicable unique requirements for all motor programs. Any sections not changed apply to all persons, carriers or companies wishing to participate in the movement of DOD freight.

The Directorate of Personal Property maintains its own separate and unique requirement for carriers wishing to participate in household shipments; therefore, this program is excluded from the freight carrier Qualification Program, further, a carrier who is qualified under one program will not automatically qualify to participate in both programs. Additionally, the requirements of one program may not be used to qualify for another program, e.g., any criteria used to qualify under the freight program cannot be used to qualify under the Personal Property Program.

A carrier who wants to participate in more than one freight program i.e., motor carrier, shipper agent, exempt surface freight forwarder, will be required to meet criteria established for that program. For example, a company who offers service as a motor common carrier and also wants to participate as an exempt surface freight forwarder, will be required to meet criteria established for that program. For example, a company who offers service as a motor common carrier and also wants to participate as an exempt surface freight forwarder will have to meet both programs requirements and execute all applicable agreements. There is one exemption to this policy. Motor carriers wishing to handle various types of commodities which require qualification, i.e., general commodities, hazardous materials, and class A and B explosives need only qualify once. However, they will be required to meet the requirements of the most stringent programs. They will also be required to execute agreements for each program.

Criteria for handling shipments which require a Transportation Protective Service (TPS) and hazardous materials: Carriers must have one year of general experience which demonstrates satisfactory service in the movement of freight shipments. Carrier must submit to MTMC for review, a copy of its security and/or safety procedures and/or guidance which it provides to employees handling a TPS or hazardous shipment. Carriers may also be subject to covert surveillances by a government employee or government contractor employee. Carrier may be required to submit to a corporate and/or terminal inspection.

Executive Order 12291

This rule has been reviewed under Executive Order 12291. This action is classified as nonmajor. The effect of the rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). This action does not have a significant impact on a substantial number of small entities. The objective of the program is to ensure that DOD obtains safe, dependable, and reliable transportation services. The requirements are not designed to preclude participation by small businesses. Rather, they are part of a mechanism designed to ensure that traffic offered to small businesses does not exceed their capabilities. The program's reporting and record keeping requirements are essentially administrative in nature and do not demand significant expenditures of resources such as personnel, computer equipment, or software. No professional or technical training is necessary to comply with these requirements. Alternatives to facilitate entry of small businesses have been identified and implemented.

Paperwork Reduction Act

This rule has been approved by the Office of Management and Budget as required under the requirements of the Paperwork Reduction Act of 1980 (4 U.S.C. 3507).

List of Subjects in 32 CFR Part 619

Shipping, Motor vehicle, Safety, Trucks, Common carriers, Freight.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

PART 32—[AMENDED]

Accordingly, title 32 of the Code of Federal Regulations is amended by the following changes:

1. The authority citation for part 619 continues to read as follows:

Authority: 49 U.S.C. 1801–1813, 2503, 2505, 2505 and 2509.

2. In § 619.1, revise the first sentence to read as follows:

§ 619.1 Introduction.

Carriers, surface freight forwarders, and shipper agents interested in qualifying or remaining qualified will submit data described in §§ 619.2 through 619.6 to the appropriate area command (Bayonne, NJ or Oakland, CA) based on the location of the carrier's headquarters. * * *

3. Add paragraph (c) to § 619.2 to read as follows:

§ 619.2 Safety ratings.

* * * * *

(c) Carriers transporting hazardous, secret materials or sensitive weapons and munitions, or any shipment, regardless of commodity, which requires a Transportation Protective Service (TPS) will not be used if the safety rating is less than satisfactory.

4. Section 619.4 is revised to read as follows:

§ 619.4 Insurance-public liability and cargo.

(a) *Public Liability.* Motor carriers, surface freight forwarders, and shipper agents will submit proof of public liability shown on the certificate. The insurance underwriters must be rated in the Best's Insurance Guide, or listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies. MTMC will grant exceptions to carriers with non-rated insurance underwriters on a case-by-case basis but only if insurance is acceptable to the Interstate Commerce Commission. The certificate holder will be notified, in writing, 30 days in advance of any change or cancellation.

(1) The public liability requirements for motor carriers are specified by 49 CFR 387.9.

(2) Surface freight forwarders and shipper agents will submit proof of $1 million public liability (death and bodily injury, property damage, and environmental restoration).

(b) *Cargo.* Motor common carriers, surface freight forwarders, and shipper agents will be required to have their insurance company provide proof of cargo insurance to MTMC on a certificate of insurance form. The deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies or specifically approved by HQMTMC. DOD's minimum cargo insurance requirements are listed below.

(1) Motor common carriers, including classes A and B explosives, but excluding perishables and bulk fuel—$150,000 per shipment.

(2) Automobile transporters or carriers which move vehicles in haul-away/drive-away service—$20,000 per vehicle transported.

(3) Perishable carriers—$80,000 per shipment.

(4) Bulk fuel—$25,000 per shipment.

(5) Surface freight forwarders and shipper agents—$250,000 per shipment.

5. Section 619.5 is amended by adding paragraph (a)(4) to read as follows:

§ 619.5 Financial Records.

(a) * * *

(4) Financial statements must reflect a 1 to 1 ratio (liquid assets—current liabilities).

* * * * *

6. In § 619.6, the introductory text is revised and paragraph (k) is added to read as follows:

§ 619.6 Information.

Motor carriers, surface freight forwarders and shipper agents will provide HQMTMC the following information.

* * * * *

(k) In addition to information contained in paragraphs (a) through (h) and (j) of this part, exempt surface freight forwarders and shipper agents must furnish a listing of carriers which they have a contract with and intend to use in the movement of government shipments. Information must include the complete company names, company officials to include their position and title, home office addresses, telephone numbers, 24 hour emergency point of contact for shipment status, and ICC operating authority number of each carrier.

7. Section 619.7 is revised to read as follows:

§ 619.7 Performance Bond.

(a) Motor carriers. (1) Carriers having done business in their own name with DOD for 3 years or more will be required to submit a Performance Bond in the amount of 2.5% of their total DOD revenue, taken from the Freight Information System Report (FINS), for the previous 12 months, not to exceed $100,000 and not less than $25,000.

(2) New carriers and those carriers having done business in their own name with the DOD for less than 3 years will be required to submit a Performance Bond based on areas of service they offer (computed as both origins and destinations served), that is, 1 state (including intrastate)—$25,000, 2 to 3 states—$50,000, and 4 or more states—$100,000.

(3) Once a carrier has been doing business with the DOD for 3 years, their bond requirement will change from area of service to percent revenue.

(b) Bulk fuel carriers and perishable carriers will be required to submit a $25,000 Performance Bond.

(c) Local drayage and commercial zone carriers are exempt from the bond requirement.

(d) Surface Freight Forwarders and Shipper Agents. Due to the volume of traffic handled by these two modes and the area normally serviced the bond amount is set at $100,000.

(e) All carriers must submit a letter of intent to file a bond from a surety company with initial application. Upon HQMTMC approval, carriers will provide HQMTMC with a Performance Bond. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular No. 570. The sum of the bond shall be as determined by § 619.7 (a) through (c). Bond must be continuous until cancelled. HQMTMC will be notified, in writing, 30 days in advance of any change or cancellation. The Performance Bond secures performance and fulfillment of carrier obligations to deliver DOD freight. It will cover any instance where a carrier cannot or will not deliver DOD freight tendered to them to final destination. This includes default, abandoned shipments, and bankruptcy by the carrier. The bond will not be utilized for operational problems such as late pick-up or delivery, excessive transmit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo.

8. Section 619.8 is revised to read as follows:

§ 619.8 Basic Agreement.

Motor carriers, surface freight forwarders and shipper agents meeting the qualification requirements of § 619.1 through § 619.7 will be required to sign the appropriate Basic Agreement in the appendices to this part.

9. Appendix to part 619 is designated as appendix A and revised to read as follows:

Appendix A to Part 619—Basic Agreement Between the Military Traffic Management Command and Motor Common Carriers for Approval to Transport General Commodities for the Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of _____ (Name of Company, Typed or Legibly Printed), hereinafter called the carrier, as a prerequisite for approval to transport general commodities for the account of the Department of Defense (DOD) and the Military Traffic Management Command (MTMC), (hereinafter called the Government), agree to comply with all additional requirements, terms and conditions as set forth in this Agreement. This Agreement governs the transportation of all DOD general commodity freight administered by the Directorate of Inland Traffic, MTMC (except used household goods). Noncompliance by the carrier with any provision of this Agreement may result in MTMC taking action against the carrier under the Carrier Performance Program, governed by MTMC Regulation 15–1, and revoking approval to participate in this traffic. If the carrier's approval is revoked, the carrier may be disqualified from further participation in any DOD freight traffic.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include equipment, personnel, facilities, and finances to handle traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The carrier further understands that it is not authorized to submit tenders for shipments requiring a Transportation Protective Service (TPS) until it has served DOD in an approved status for 12 continuous months. Prior to being allowed to handle shipments which require a TPS or classes A & B explosives, the carrier must first meet any additional requirements in effect at the time.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. The carrier certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a MTMC General Freight Board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. Carrier agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations governing the safe, proper, and lawful operation of motor vehicles, to include title 49 Code of Federal Regulations (CFR) parts 386–397. Intrastate carriers are required to comply with all applicable state or federal regulations, whichever are more stringent.

b. No fines, charges, or assessments for overload vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

4. Operating Authority. Carrier agrees to maintain valid motor common carrier operating certificates for its scope of operations. Any carrier found to be involved in brokerage, as defined by the Interstate Commerce Commission (ICC), of DOD freight traffic will have its approval revoked.

5. Insurance.

a. Minimum public liability insurance requirements are prescribed in Title 49 of the Code of Federal Regulations (CFR) § 387.9. Carrier agrees to ensure that the ICC is provided proof of their public liability insurance, in the form of a BMC 91 or 91–X, or MCS 90, in accordance with Sections 29 and 30 of the Motor Carrier Act of 1980. Further, the motor carrier agrees to provide MTMC with a certificate of insurance form. The certificate holder block of the form will indicate that MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF, will be notified in writing, 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies.

b. The carrier agrees to also file with MTMC proof of:

(1) Public liability insurance Intrastate Carriers—$750,000 per vehicle for property (excluding hazardous) and $1,000,000 per vehicle for oil, hazardous wastes, hazardous materials and hazardous substances defined in 49 Code of Federal Regulations (CFR) § 171.8 and listed in 49 CFR 172.101.

(2) Public liability insurance Interstate Carriers—Public Liability Insurance shall be that as required by the state, except that for deregulated states, public liability shall be the same as that required of interstate carriers.

(3) Cargo insurance. Cargo insurance in the minimum of $150,000 for loss and damage of government freight per vehicle and/or $20,000 per vehicle transported (e.g., automobile transporters or vehicles in haulaway service) must be maintained. Perishable carriers will maintain, as a minimum, cargo insurance in the amount of $80,000 and bulk petroleum carriers will maintain $25,000.

c. The insurance, carried in the name of the carrier, will be in force at all times while this Agreement is in effect or until such time as the carrier cancels all tenders. The carrier agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service for the carrier. Changes, renewals, and cancellation notices must also be sent to MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF. This requirement applies to both interstate and intrastate carriers. Carrier's insurance policy(s) must cover all equipment used to transport DOD freight.

6. Performance Bond.

a. Carrier agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the carrier obligation to deliver DOD freight to destination. It will cover DOD re-procurement costs as a result of carrier default, abandoned shipments, or bankruptcy. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular No. 570. The bond must be completed on the form provided by MTMC. The bond will be continuous until cancelled. MTMC will be notified in writing, 30 days in advance of any change or cancellation. A letter of intent by the surety company is required with the initial application package. Upon MTMC approval, the carrier agrees to

submit the Performance Bond before the Tender of Service will be accepted.

b. The sum of the bond will be determined as follows.

(1) Carriers having done business in their own name with DOD for 3 years or more will be required to submit a Performance Bond in the amount of 2.5% of their total DOD revenue, taken from the Freight Information Systems Report (FINS), for the previous 12 months, not to exceed $100,000 and not less than $25,000.

(2) New carriers and those carriers having done business in their own name with the DOD for less than 3 years will be required to submit a Performance Bond based on areas of service they offer. Areas of service will be computed as both origins and destinations served.

1 state (including intrastate)—$25,000;
2 to 3 states—$50,000; and
4 or more states—$100,000.

(3) Once a carrier has been doing business with the DOD for 3 years, their bond requirement will change from area of service to percent revenue.

c. Bulk fuel carriers and Perishable carriers will be required to submit a $25,000 Performance Bond.

d. Local drayage and commercial zone carriers are exempt from the bond requirement.

e. If carrier has secured the Performance Bond as a result of qualifying under Ammunition and Explosive, Classes A and B program or hazardous materials (other than ammunition and explosives, classes A and B) program no additional Performance Bond is required.

7. Safety.

a. Carrier will not have an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and, if it is an intrastate motor carrier, with the appropriate state agency. The carrier further agrees to permit unannounced safety inspections of its facilities, terminals, equipment, employees, and procedures by DOD civilian, military personnel, or DOD contract employees. The inspection may include in-transit surveillance of vehicles and drivers. The carrier agrees to provide evidence that fulfills the requirement set forth in 49 Code of Federal Regulation parts 390 thru 396. Inspection of carrier equipment, drivers' records, route plans and inspection reports will be permitted during both the pickup and delivery of shipments and in coordination with local police or other authorities while in transit. Carrier also agrees to allow inspection of carrier records and individual driver qualification files. When requested, carrier agrees to provide adequate evidence of an active driver safety, security training and evaluation program. Upon request, the carrier agrees to furnish sufficient information to permit MTMC to verify or inspect carrier and driver records.

b. The carrier agrees to have in place a company-wide safety management program. Carrier safety program will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company-wide or terminal level may be subject to evaluation by DOD representatives.

c. The carrier agrees to notify, within 24 hours, the consignor and consignee named by the Government Bill of Lading (GBL) or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence, and other pertinent accident details. When requested, carrier agrees to furnish MTMC a copy of accident reports submitted to the Department of Transportation on Form MCS 50–T (Property).

8. Drivers Requirement.

a. The carrier agrees to ensure that any driver used by the carrier to transport DOD freight possesses a valid commercial driver's license (in compliance with Federal Commercial Motor Vehicle Safety Act of 1986) issued by his or her state of domicile. Drivers must have, at a minimum, 1 year of driving experience driving equipment similar to that used to transport DOD freight, or have proof of graduation from an accredited trade truck motor driving school, operating the aforementioned equipment.

b. The carrier agrees to further ensure that drivers carry a company picture identification card to verify affiliation with the carrier named on the Government Bill of Lading.

9. Equipment. The carrier is prohibited from using trip-leased equipment or drivers, except upon prior approval from MTMC. Leases of less than 30 days are considered trip-leases. In order to trip-lease, a carrier must apply for approval under MTMC's trip-lease program.

10. Shipment. The carrier agrees to provide, at no additional cost to the government, the status of any shipment within 24 hours after an inquiry is made. Further, the carrier agrees to not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation.

a. The carrier agrees to accept GBLs and CBLs on which freight charges will be paid by the Government, and be bound by all terms stated on the SF1103, Government Bill of Lading, regardless of the type of bill of lading tendered.

b. The carrier agrees to comply with the documentation prelodge procedures in effect at Military Ocean Terminals or the installation, when cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24 hours in advance of cargo delivery to the terminal.

12. Loss or Damage. The carrier agrees to be liable for loss or damage to cargo in accordance with the provisions of 49 U.S.C. 11707 (the Carmack Amendment to the Interstate Commerce Act). Carrier agrees to promptly settle uncontested claims for loss or damage.

13. Standard Tender of Service.

a. The carrier agrees to comply with the preparation and filing instructions in applicable freight traffic rules publications issued by MTMC. Carrier understands that MTMC will reject tenders not in compliance with these instructions.

b. Carrier agrees to provide a street address where the company office is located in lieu of a post office box number. Carrier agrees to provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The carrier agrees to also advise MTMC of any change in address prior to the effective date of the change. Failure to do so is grounds to discontinue use of the carriers.

c. Carrier understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or non-use until corrections are made. The issuing carrier will be advised when tenders are removed under these circumstances.

14. Rates.

a. Carrier agrees to transport Government shipments at the lowest tender rate specifically applicable to the department or agency involved.

b. Carrier agrees to publish guaranteed through rates for at least 30 days. These rates must be filed with MTMC, HQ, Eastern Area, ATTN: MTE–IN, Bayonne, New Jersey 07002–5302. The carrier must publish all rates, charges, and accessorial services on a MTMC approved form, and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

15. Carrier Performance. Carrier agrees that carrier's equipment, performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the carrier for unsatisfactory service for any operating deficiency, noncompliance with terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR. If a carrier is removed or disqualified for 6 months or more, it will have to be re-qualified.

16. General Provisions. The carrier agrees to possess a valid Standard Carrier Alpha Code (SCAC). When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This agreement shall be effective from the date of approval by MTMC, until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name. Carrier understands that failure to notify MTMC shall be grounds for immediate revocation of the carrier's approval and their participation in the movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to: Commander, Military Traffic Management Command, ATTN: MTIN–FF, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

20. Carrier Acknowledgment and Acceptance. The certifying carrier official agrees to ensure that the appropriate company officials and employees are familiar with the requirements, terms and conditions of this Agreement and are in full compliance with the applicable provisions herein. Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the carrier, the affiliated companies, division and entities.

I, _____
(Typed Name and Title of Carrier Official)
verify under penalty of perjury under the laws of the United States of America, that the information contained in the carrier qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of _____
(Typed Name of Carrier and MC Number)
agree to comply with the terms and conditions contained herein.

_____
Signature of Carrier Official and Title

_____
Date

Carrier Address _____

_____

_____

Telephone Number (___) _____

24 Hr Emergency Number (___) _____

Interstate Operating authority Certificate Number—MC _____

Intrastate Operating Authority Certificate Number(s) (Include Issuing State—for example PA—#12345)

_____

_____

_____

_____

Military Traffic Management Command Acknowledgement/Acceptance

Signature _____

Title _____

Date Approved: _____

9. Appendices B through F are added to read as follows:

Appendix B to part 619—Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Ammunition and Explosives, Class A and B for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of _____
(Name of Company, typed or legibly printed)
(herein called the carrier), as a prerequisite for approval to transport ammunition and explosives, class A and B, for the account of the Department of Defense (DOD) and the Military Traffic Management Command (MTMC), (hereinafter called the Government), agree to comply with all additional requirements, terms and conditions as set forth in this Agreement. This Agreement governs the transportation of all DOD class A and B ammunition and explosives shipments administered by the Directorate of Inland Traffic, MTMC. Further, the carrier must also be a party to and in full compliance with requirements contained in the Agreement governing shipments which require a Transportation Protective Service (TPS). Noncompliance by the carrier with any provision of this or any other Agreement it is a party to will be sufficient grounds for immediate revocation of the carrier's approval to participate in the movement of class A and B ammunition and explosives. The carrier may also be subject to further action under the Carrier Performance program, governed by MTMC Regulation 15–1, which could result in nationwide disqualification on all DOD freight shipments.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction sufficient resources to support its proposed scope of operations and services. Sufficient resources include the equipment, personnel, facilities, and finances to handle the traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. The carrier certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, or disqualified by a MTMC General Freight Board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. Carrier agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations governing the safe transportation and storage of ammunition and explosives to include title 49 Code of Federal Regulations (CFR) parts 177 and 386 thru 397. Provisions for exempt intra-city operations as defined in 49 CFR will not apply to the transportation of explosives for the DOD. Intrastate carriers are required to comply with all applicable state or federal regulations, whichever are more stringent.

b. No fines, charges, or assessments for overload vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

4. Operating Authority. Carrier agrees to maintain valid motor common carrier operating certificates for its scope of operations which is not restricted against the handling and transport of hazardous materials or ammunition and explosives, class A and B. Any carrier found to be, in fact, involved in the brokerage, as defined by the Interstate Commerce Commission (ICC), of DOD freight traffic will have its approval revoked.

5. Insurance.

a. Minimum public liability insurance requirements are prescribed in title 49 of the Federal Code of Federal Regulations (CFR) § 387.9 Carrier agrees to ensure that the ICC is provided proof of their public liability insurance, in the form of a BMC 91 or 91–X, or MCS 90, in accordance with sections 29 and 30 of the Motor Carrier Act of 1980. Further, the motor carrier will provide MTMC with a certificate of insurance form. The certificate holder block of the form will indicate that MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF, will be notified in writing, 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies.

b. The carrier agrees to also file with MTMC proof of:

(1) Public liability insurance. Interstate and Intrastate carriers $5,000,000 per vehicle.

(2) Cargo insurance. Cargo insurance in the minimum of $150,000 for loss and damage of government freight per vehicle.

c. The insurance, carried in the name of the carrier, will be in force at all times while this

Agreement is in effect or until such time as the carrier cancels all tenders. The carrier agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service by the carrier. Changes, renewals, and cancellations notices must also be sent to MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF. This requirement applies to both interstate and intrastate carriers. Carrier's insurance policy(s) must cover all equipment used to transport DOD freight.

6. Performance Bond.

a. Carrier agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the carrier obligation to deliver DOD freight to destination. It will cover DOD re-procurement costs as a result of carrier default, abandoned shipments, or bankruptcy. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular No. 570. The bond must be completed on the form provided by MTMC. The bond will be continuous until cancelled. MTMC will be notified in writing, 30 days in advance of any change or cancellation. A letter of intent by the surety company is required with the initial application package. Upon MTMC approval, the carrier agrees to submit the Performance Bond before the Tender of Service will be accepted.

b. The sum of the bond will be determined as follows.

(1) Carriers having done business in their own name with DOD for 3 years or more will be required to submit a Performance Bond in the amount of 2.5% of their total DOD revenue taken from the Freight Information Systems Report (FINS), for the previous 12 months, not to exceed $100,000 and not less than $25,000.

(2) New carriers and those carriers having done business in their own name with the DOD for less than 3 years will be required to submit a Performance Bond based on areas of service they offer. Areas of service will be computed as both origins and destinations.

1 state (including intrastate)—$25,000;
2 to 3 states—$50,000; and
4 or more states—$100,000.

(3) Once a carrier has been doing business with the DOD for 3 years, their bond requirement will change from area of service to percent of revenue.

c. If carrier has secured the Performance Bond as a result of qualifying under the general commodity program or hazardous materials (other than ammunition and explosives, classes A and B) program, no additional Performance Bond is required.

7. Safety and Security.

a. A "satisfactory" safety rating will be maintained with the Federal Highway Administration, Department of Transportation and/or with the appropriate state agency or commission in the case of intrastate. Safety ratings which are "unsatisfactory," "conditional", "insufficient information", or "not rated" will not be accepted. The carrier further agrees to permit unannounced safety and security inspections of its facilities, terminals, equipment and operational procedures by DOD civilian or military personnel, or DOD contract employees. Inspection of carrier equipment, drivers' records, route plans and inspection reports will be permitted during both the pickup and delivery of shipments and in coordination with local police or other authorities while in transit. Carrier also agrees to allow inspection of carrier records and individual driver qualification files. When requested, carrier agrees to provide adequate evidence of an active driver safety, security training and evaluation program. Carrier agrees to furnish, on request, driver's Social Security Numbers to verify their security clearances and allow for inspection of carrier/driver records.

b. Carrier agrees to have in place a company-wide safety and security management program which includes specific on-going safety and security programs for each terminal location. Individual terminal programs will encompass planning and execution of safety and security in routine operations, to include emergency responders and planners, and with the local police and fire authority. Carrier programs will incorporate compliance with all applicable Federal, State, and local statutes or requirements. Conformance with other safety standards, such as NFPA Code 498, will be accomplished as much as possible, with compensating measures for deviations. Safety and security programs at the company wide or terminal level may be subject to evaluation by a DOD representative.

c. The carrier agrees to notify, within a reasonable period of time, the consignor and consignee named by the Government Bill of Lading (GBL) of cargo loss, damage, or unusual delay. Carrier also agrees to notify the consignor and the consignee named on the GBL immediately by telephone of an accident, incident or significant delay. The information to be reported will include origin/destination, GBL number, shipping paper information, time and place of occurrence and other pertinent accident details. Carrier agrees to notify the MTMC area command annotated on the GBL and the Army Operations Center (AOC), within one half (½) hour after notification of the consignor and consignee, and provide status updates as required. The MTMC HOTLINE and AOC telephone numbers are as follows:

—Eastern Area: 800–524–0331; New Jersey only: 800–348–4639
—Western Area: 800–331–1822; California only: 800–624–1361
—AOC: 703–687–0213

When requested, Carrier agrees to furnish MTMC a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property) or MCS 50–B (Passengers) when DOD classes A and B explosives movements are involved.

d. Carrier agrees to provide the driver(s) transporting protected commodities an emergency telephone number (indicated on the last page of this Agreement) which, when used at any time (24 hours a day, 7 days a week), will reach a qualified carrier representative who will be able to provide information and assistance. MTMC will be immediately notified if this telephone number should be changed. Carrier also agrees to equip the vehicle transporting the material with communications equipment (CB radio, mobile phone, etc.) capable of being used to obtain assistance in an emergency.

e. Carrier agrees to provide the appropriate Transportation Protective Service (TPS) when requested by a DOD shipper. Carrier further agrees to comply with, and meet, all criteria for TPS as set forth in the Agreement governing the transportation of shipments requiring a TPS and also defined in the MTMC Freight Rules Publication No. 1A (MFTRP No. 1A) and reissues thereto.

f. Carrier agrees to execute a DD Form 441S (Certificate Pertaining to Foreign Interests) as a precondition to providing any TPS for the DOD. Only one DD Form 441S must be executed by a carrier regardless of the number or type of TPS provided.

g. All copies of the Signature and Tally Record (DD Form 1907), Special Instructions for Motor Vehicle Drivers (DD Form 836), and the Motor Vehicle Inspection (DD Form 626), will be transferred from driver to driver throughout the entire movement of classes A and B explosives shipments. All drivers transporting such shipments must sign the DD Form 1907 and follow the instructions shown on the DD Form 836. Furnishing of the Signature and Tally Record is an integral part of a TPS to be provided by the carrier. Carrier must ensure that each person responsible for the proper handling of the shipment signs the Signature and Tally Record at the time he/she assumes responsibility. All drivers transporting such shipment must sign the Signature and Tally Record. When used with Dual Driver (DD), both drivers are required to sign the Signature and Tally Record upon original receipt.

8. Driver Requirements.

a. Carrier agrees to comply with all driver requirements contained in paragraph 7 of the Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense.

b. Carrier agrees that newly employed drivers will not be allowed to transport class A and B explosives until after background checks required by 49 CFR 391.23 have been successfully completed.

c. Carrier agrees that no driver disqualified under 49 CFR 391.15 will be permitted to operate any vehicle transporting class A and B explosives.

d. The driver of a motor vehicle transporting class A and B explosives must undergo a physical examination and must be certified physically qualified to drive a commercial motor vehicle in accordance with 49 CFR 391.43. Carrier agrees to have driver screening programs in place to ensure that the provisions of this paragraph are met.

9. Equipment. Carrier agrees to comply with all equipment requirements contained in paragraph 8 of the Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the

Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense.

10. Shipment.

a. Carrier agrees to ensure that the shipper-provided placards are displayed in accordance with the general requirements found in 49 CFR 172.504

b. Carrier is responsible for shipments from origin to ultimate destination. The carrier also remains responsible for shipments placed in a safe haven or refuge location. Carrier agrees not to disclose any information to unauthorized persons concerning the nature, kind, quantity, destination, consignee or routing of any protected commodities shipment tendered to it. The carrier further agrees to provide, at no additional cost to the Government, the status of any shipment within 24 hours after an inquiry is made.

c. Carrier agrees to comply with all shipment requirements contained in paragraph 9 of the Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense.

d. When requested by the shipper for reasons of security, carrier agrees to cover the shipment with a carrier-provided tarpaulin. Protective tarping is an accessorial service.

11. Documentation.

a. The carrier agrees to accept GBLs on which freight charges will be paid by the Government, and bound by all terms stated on the SF1103, Government Bill of Lading.

b. The carrier will comply with the documentation prelodge procedures in effect at Military Ocean Terminals when cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24 hours in advance of cargo delivery to the terminal.

12. Loss or Damage. The carrier agrees to be liable for loss or damage to cargo in accordance with the provisions of 49 U.S.C. 11707 (the Carmack Amendment to the Interstate Commerce Act). Carrier agrees to promptly settle uncontested claims for loss or damage.

13. Standard Tender of Service.

a. The carrier agrees to comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. Carrier understands that MTMC will reject tenders not in compliance with these instructions.

b. Carrier agrees to provide a street address where the company office is located in lieu of a post office box number. Carrier agrees to provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The carrier agrees to also advise MTMC of any change in address prior to the effective date of the change. Failure to do so is grounds to discontinue use of the carriers.

c. Carrier understands that tenders inadvertently accepted and distributed for use and not in compliance with this Agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or non-use until corrections are made. The issuing carrier will be advised when tenders are removed under these circumstances.

14. Rates.

a. Carrier agrees to transport Government shipments at the lowest tender rate specifically applicable to the department or agency involved.

b. The carrier's rates must be on file with MTMC, HQ, Eastern Area, ATTN: MTE–IN, Bayonne, New Jersey 07002–5302. The carrier must publish all rates, charges, and accessorial services on a "Department of Defense Standard Tender of Freight Services", MT Form 364–R and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

15. Carrier Performance. Carrier agrees that carrier's equipment, performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the carrier for unsatisfactory service for any operating deficiency, noncompliance with terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariff/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR. If a carrier is removed or disqualified for 6 months or more, it will have to be re-qualified.

16. General Provisions. The carrier must possess a valid Standard Carrier Alpha Code (SCAC). When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with the MTMC governing the transportation of protected commodities.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of approval by MTMC, until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name. Carrier understands that failure to notify MTMC shall be grounds for immediate revocation of the carrier's approval and their participation in the movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to: Commander, Military Traffic Management Command, ATTN: MTIN–FF, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

20. Carrier Acknowledgment and Acceptance. The certifying carrier official agrees to ensure that the appropriate company officials and employees are familiar with the requirements, terms and conditions of this Agreement and are in full compliance with the applicable provisions herein. Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the carrier, the affiliated companies, division and entities.

I, _____,
(Typed Name and Title of Carrier Official)
verify under penalty of perjury under the laws of the United States of America, that the information contained in the carrier qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of

_____,
(Typed Name of Carrier and MC Number)
agree to comply with the terms and conditions contained herein.

_____
Signature of Carrier Official and Title

_____
Date

Carrier Address _____

_____

_____

Telephone Number (____) _____

24 Hr Emergency Number (____) _____

Interstate Operating Authority Certificate Number–MC _____

Intrastate Operating Authority Certificate Number(s) (Include Issuing State—for example PA—#12345)

_____

_____

Military Traffic Management Command Acknowledgement/Acceptance

Signature _____

Title _____

Date Approved: _____

Appendix C to Part 619—Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Hazardous Material Other Than Class A and B Explosives for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of _____

(Name of Company, Typed or Legibly Printed)

(hereinafter called the carrier), as a prerequisite for approval to transport hazardous materials, (other than Class A & B Explosives), as defined in 49 Code of Federal Regulations (CFR) 172/3. Hazardous commodities in bulk include, but not limited to, such items as gasoline, kerosene, lubricating oil, turbine fuel, diesel fuel and fuel oil, for the account of the DOD and the Military Traffic Management Command (MTMC) (herein called the Government), agrees to comply with all requirements, terms and conditions as set forth in this Agreement. If the carrier wishes to participate in DOD traffic which requires a protective service, the carrier must also be a party to and in full compliance with requirements contained in the Agreement governing shipments which require a Transportation Protective Service (TPS). Noncompliance by the carrier with any provision of this or any other Agreement it is a party to will be sufficient grounds for immediate revocation of the carrier's approval to participate in the movement of hazardous materials. The carrier may also be subject to further action under the Carrier Performance Program, governed by MTMC Regulation 15–1, which could result in nationwide disqualification on all DOD freight shipments.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction sufficient resources to support its proposed scope of operations and services. Sufficient resources include the equipment, personnel, facilities, and finances to handle the traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at anytime upon discovery of grounds for ineligibility or disqualification. The carrier further understands that it is not authorized to submit tenders for shipments requiring a TPS until it has served DOD in an approved status for 12 continuous months. Prior to being allowed to handle shipments which require a TPS or class A & B explosives, the carrier must first meet any additional requirements in effect at the time.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. The carrier certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a MTMC General Freight Board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. Carrier agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations governing the safe, proper, and lawful operation of motor vehicles to include Title 49 Code of Federal Regulations (CFR) 386–397. Intrastate carriers are required to comply with all applicable state or federal regulations, whichever are more stringent.

b. No fines, charges, or assessments for overload vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

4. Operating Authority. Carrier agrees to maintain valid motor common carrier operating certificates for its scope of operations which is not restricted against the handling and transport of hazardous materials as defined in 49 CFR 172/3. Any carrier found to be, involved in brokerage, as defined by the Interstate Commerce Commission (ICC), of DOD freight traffic will have its approval revoked.

5. Insurance.

a. Minimum public liability insurance requirements are prescribed in Title 49 of the Federal Code of Federal Regulations (CFR) § 387.9. Carrier agrees to ensure that the ICC is provided proof of their public liability insurance, in the form of a BMC 91 or 91–X, or MCS 90, in accordance with sections 29 and 30 of the Motor Carrier Act of 1980. Further, the motor carrier will provide MTMC with a certificate of insurance form. The certificate holder block of the form will indicate that MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF, will be notified in writing, 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies.

b. The Carrier agrees to also file with MTMC proof of:

(1) Interstate Public Liability. Carrier will ensure that its insurance company(s) file with MTMC proof of public liability and property damage insurance for the transportation of hazardous commodities in the minimum amounts prescribed in 49 CFR 387.9.

(2) Intrastate Public Liability. Carrier will ensure that its insurance company(s) file with MTMC proof of insurance which meets the state requirements for public liability and property damage for the transportation of hazardous materials.

(3) Cargo Insurance. Carrier will also file with MTMC proof of $150,000 per incident minimum cargo insurance for loss and damage of Government freight other than bulk fuel which is set at $25,000.

c. The insurance, carried in the name of the carrier, will be in force at all times while this Agreement is in effect or until such time as the carrier cancels all tenders. The carrier agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service by the carrier. Changes, renewals, and cancellation notices must also be sent to MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF. This requirement applies to both interstate and intrastate carriers. Carrier's insurance policy(s) must cover all equipment used to transport DOD freight.

6. Performance Bond.

a. Carrier agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the carrier obligation to deliver DOD freight to destination. It will cover DOD re-procurement costs as a result of carrier default, abandoned shipments, or bankruptcy by the carrier. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular No. 570. The bond must be completed on the form provided by MTMC. The bond will be continuous until canceled. MTMC will be notified in writing, 30 days in advance of any change or cancellation. A letter of intent by the surety company is required with the initial application package. Upon MTMC approval, the carrier agrees to submit the Performance Bond before the Tender of Service will be accepted.

b. The sum of the bond shall be determined as follows:

(1) Carriers having done business in their own name with DOD for 3 years or more will be required to submit a performance bond in the amount of 2.5% of their total DOD revenue, taken from the Freight Information Systems Report (FINS), for the previous 12 months, not to exceed $100,000 and not less than $25,000.

(2) New carriers and those carriers having done business in their own name with the DOD for less than 3 years will be required to submit a Performance Bond based on areas of service they offer. Areas of service will be computed at both origins and destinations served.

1 state (including intrastate)—$25,000;
2 to 3 states—$50,000; and
4 or more states—$100,000.

(3) Once a carrier has been doing business with the DOD for 3 years, their bond requirement will change from area of service to percent of revenue.

c. Bulk fuel carriers will be required to submit a $25,000 Performance Bond.

d. Local drayage and commercial zone carriers are exempt from the bond requirement.

e. If carrier has secured the Performance Bond as a result of qualifying under the general commodity program or class A and B

program, no additional Performance Bond is required.

7. Safety and Security.

a. A "satisfactory" safety rating will be maintained with the Federal Highway Administration, Department of Transportation and/or with the appropriate state agency or commission in the case of intrastate. Safety ratings which are "unsatisfactory," "conditional", "insufficient information", or "not rated" will not be accepted. The carrier further agrees to permit unannounced safety and security inspections of its facilities, terminals, equipment and operational procedures by DOD civilian or military personnel, or DOD contract employees. These inspections may include transit surveillances of vehicles and drivers. The carrier agrees to provide evidence that fulfills the requirement set forth in 49 Code of Federal Regulation Parts 390 thru 396. Inspection of carrier equipment, drivers' records, route plans and inspection reports will be permitted during both the pickup and delivery of shipments and in coordination with local police or other authorities while in transit. Carrier also agrees to allow inspection of carrier records and individual driver qualification files. When requested, carrier agrees to provide adequate evidence of an active driver safety, security training and evaluation program. Carrier agrees to furnish, on request, driver's social Social Security Numbers to verify their security clearances and allow for inspection of carrier/driver records.

b. Carrier agrees to have in place a company-wide safety and security management program which includes specific on-going safety and security programs for each terminal location. Individual terminal programs will encompass planning and execution for safety and security in routine operations, to include emergency responders and planners, and with the local police and fire authority. Carrier programs will incorporate compliance with all applicable Federal, State, and local statutes or requirements. Conformance with other safety standards, such as NFPA Code 498, will be accomplished as much as possible, with compensating measures for deviations. Safety and security programs at the company wide or terminal level may be subject to evaluation by a DOD representative.

c. The carrier agrees to notify, within a reasonable period of time, the consignor and consignee named by the Government Bill of Lading (GBL) or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Carrier also agrees to notify the consignor and the consignee named on the GBL immediately by telephone of an accident, incident or significant delay. The information to be reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence and other pertinent accident details. Carrier agrees to notify the MTMC area command annotated on the GBL and the Defense Logistics Agency (DLA), within one half (½) hour after notification of the consignor and consignee, and provide status updates as required. The MTMC HOTLINE telephone numbers are as follows:

—Eastern Area: 800–524–0331; New Jersey only: 800–624–1361
—Western Area: 800–331–1822; California only: 800–348–4639
—DLA: 800–851–8061.

When requested, carrier agrees to furnish MTMC a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

d. Carrier agrees to provide the driver(s) transporting hazardous commodities an emergency telephone number (indicated on the last page of this Agreement) which, when used at any time (24 hours a day, 7 days a week), will reach a qualified carrier representative who will be able to provide information and assistance. MTMC will be immediately notified if this telephone number should be changed.

e. Carriers approved to transport DOD hazardous materials requiring TPS agree that no driver disqualified under 49 CFR 391.15 will be permitted to operate any vehicle transporting such commodities.

f. Carriers approved to transport DOD hazardous materials agree to ensure that drivers of a motor vehicle transporting such commodities must undergo a physical examination and must be certified physically qualified to drive a commercial motor vehicle in accordance with 49 CFR 391.43. Carrier also agrees to have driver screening programs in place to ensure that the provisions of this paragraph are met.

8. Drivers Requirements.

a. Carriers agrees to ensure that the driver(s) employed to transport hazardous materials have a minimum of one year of general commodities driving experience (using similar equipment) prior to transporting hazardous commodities, and that its drivers are trained and competent in the movement of these commodities to include an understanding of the following: 49 CFR part 397; instructions on procedures to be followed in the event of a delay; nature of the materials being transported; precautions to be taken in an emergency; written route plans; and shipping paper entries. The carrier will certify that the driver is trained and competent in the movement of hazardous commodities, and proof of certification must be carried in the vehicle of the unit transporting these commodities.

b. The carrier agrees to further ensure that driver(s) carry a valid commercial motor vehicle operator's license issued by his/her state of domicile, a certificate of physical examination issued during the preceding 24 months, and an employee record card, or similar document, one of which must contain the driver's photograph. The driver(s) must be 21 years of age. The driver(s) must carry a company picture identification card to verify affiliation with the carrier named on the Government Bill of Lading (GBL).

9. Equipment.

a. Trip-leased equipment, with or without drivers, will *not* be used to transport hazardous materials for the account of the DOD. Exceptions for the use of intermittent or occasional drivers in 49 CFR 391.63 will not apply to any DOD movement. Any equipment, with or without drivers, leased to augment carrier-owned equipment will be on a not less than 90-day noncancellable basis.

b. A copy of the equipment lease agreement must be carried in the vehicle of the unit transporting these commodities. (Facsimile, Xerox, or otherwise reproduced copies, are not acceptable.) Interchange agreements which originate at origin will be considered trip leases and will not be accepted. The lease must be complete at time of pick up and should require no further information to be completed by the driver. Failure to comply with this requirement or attempted abuse of this requirement could result in the carrier's participation in this type traffic to be immediately revoked and up to a nationwide disqualification on all DOD freight shipments should further action under the Carrier Performance Program be deemed appropriate.

c. Carriers approved to transport DOD hazardous materials requiring TPS agree to comply with all equipment requirements contained in paragraph 8 of the Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense.

10. Shipment.

a. Carrier is responsible for shipments from origin to ultimate destination. The carrier also remains responsible for shipments placed in a safe haven or refuge location. Carrier agrees not to disclose any information to unauthorized persons concerning the nature, kind, quantity, destination, consignee or routing of any hazardous material shipment tendered to it. The carrier further agrees to provide, at no additional cost to the Government, the status of any shipment within 24 hours after an inquiry is made.

b. Carrier agrees to ensure that shipper-provided placards are displayed in accordance with the general requirements found in 49 CFR 172.504 for the transportation of hazardous materials. The carrier further agrees to conform to the requirements found in 49 CFR 177.825 pertaining to the transportation of radioactive materials on designated routes of radioactive materials for which placarding is required. Carrier also agrees to route all other shipments of hazardous commodities in accordance with the provisions of 49 CFR 397.9.

c. When requested by the shipper for reasons of security, carrier agrees to cover the shipment with a carrier-provided tarpaulin. Protective tarping is an accessorial service.

d. Carriers approved to transport DOD hazardous materials requiring TPS agree to comply with all shipment requirements contained in paragraph 9 of the Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense.

11. Documentation.

a. The carrier agrees to accept GBLs and CBLs on which freight charges will be paid by the Government, and bound by all terms stated on the SF1103, Government Bill of Lading, regardless of the type of bill of lading tendered.

b. The carrier agrees to comply with the documentation pelodged procedures in effect at Military Ocean Terminals when cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal or the installation prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24 hours in advance of cargo delivery to the terminal.

12. Loss or Damage. The carrier agrees to be liable for loss or damage to cargo in accordance with the provisions of 49 U.S.C. 11707 (the Carmack Amendment to the Interstate Commerce Act). Carrier agrees to promptly settle uncontested claims for loss or damage.

13. Standard Tender of Service.

a. The carrier agrees to comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. Carrier understands that MTMC will reject tenders not in compliance with these instructions.

b. Carrier agrees to provide a street address where the company office is located in lieu of a post office box number. Carrier will provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The carrier agrees to also advise MTMC of any change in address prior to the effective date of the change. Failure to do so is grounds to discontinue use of the carriers.

c. Carrier understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or nonuse until corrections are made. The issuing carrier will be advised when tenders are removed under these circumstances.

14. Rates.

a. Carrier agrees to transport Government shipments at the lowest tender rate specifically applicable to the department or agency involved.

b. The carrier's rates must be on file with MTMC, HQ, Eastern Area, ATTN: MTE–IN, Bayonne, New Jersey 07002–5302. The agent must publish all rates, charges, and accessorial services on a "Department of Defense Standard Tender of Freight Services", MT Form 364–R and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

15. Carrier Performance. Carrier agrees that carrier's equipment, performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, nonuse, or disqualify the carrier for unsatisfactory service subsequent to approval or for any other operating deficiency, or for noncompliance with terms of the Agreement or terms of negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR. If a carrier is removed or disqualified for 6 months or more, it will have to be requalified.

16. General Provisions. The carrier agrees to possess a valid Standard Carrier Alpha Code (SCAC). When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of approval by MTMC, until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name. Carrier understands that failure to notify MTMC shall be grounds for immediate revocations of carriers approval and their participation in movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to: Commander, Military Traffic Management Command, ATTN: MTIN–FF, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

20. Carrier Acknowledgment and Acceptance. The certifying carrier official agrees to ensure that the appropriate company officials and employees are familiar with the requirements, terms and conditions of this Agreement and are in full compliance with the applicable provisions herein. Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the carrier, the affiliated companies, division and entities.

I, _____

(typed name and title of carrier official) verify under penalty of perjury under the laws of the United States of America, that the information contained in the carrier qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of

_____

(typed name of carrier and MC number) agree to comply with the terms and conditions contained herein.

_____

signature of carrier official and title

_____

date

Carrier address _____

_____

_____

Telephone number (_____)_____

24 Hr emergency number (_____)

_____

Interstate operating authority certificate number-MC _____

Intrastate operating authority _____

Certificate number(s) (Include Issuing State—for example PA—#12345) _____

Military Traffic Management Command Acknowledgement/Acceptance

Signature _____

Title _____

Date approved: _____

Appendix D to Part 619—Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of

_____

(name of company, typed or legibly printed) (hereinafter called the carrier), as a prerequisite for approval to transport classified materials, protected and sensitive material, weapons and ammunition, munitions or other hazardous material as defined in 49 Code of Federal Regulations (CFR) part 172/3 which are designated sensitive by the U.S. Department of Defense (DOD), (hereinafter referred to as "protected commodities"), which require a Transportation Protective Service (TPS) for the account of the DOD and the Military Traffic Management Command (MTMC) (hereinafter called the Government), agree to comply with all additional requirements, terms and conditions as set forth in this Agreement. Carrier further acknowledges that it is in full compliance with the basic qualification standards either for general commodities, hazardous materials (other than class A and B explosives), or class A and B ammunition and explosives, has executed the

appropriate MTMC agreement, and is required to maintain and will maintain in a current status, all basic requirements, in addition to requirements established by this Agreement. Noncompliance by the carrier with any provision of this Agreement will be sufficient grounds for immediate revocation of the carrier's approval to participate in the movement of protected commodities which require a TPS. The carrier may also be subject to further action under the Carrier Performance Program as set forth in MTMC Regulation 15–1, Transportation and Travel, Procedure for Disqualifying and Placing Carriers in Non-Use, which could result in nationwide disqualification on all DOD freight shipments.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction sufficient resources to support its proposed scope of operations and services. Sufficient resources include the equipment, personnel, facilities, and finances to handle the traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. Carrier agrees to execute a DD Form 441S (Certificate Pertaining to Foreign Interests) as a precondition to providing any TPS for the DOD. Only one DD Form 441S must be executed by a carrier regardless of the number or type of TPS provided.

e. Carrier agrees to allow a National Agency Check (NAC) on all management and operational personnel involved in the performance of Dual Driver Protective Service with National Agency Checks (DN). The results of the NAC must be favorable as determined by MTMC under DOD criteria as a precondition to the carrier providing Satellite Monitoring (SM) with DN. Management personnel include: owners (including partnership where applicable), principal deputies, board members (where applicable), and company managers responsible for liaison with DOD operations. Operational personnel include: drivers, handlers and terminal and security personnel hired permanently or temporarily by the company to protect the DOD cargo under SM with DN.

f. Carrier providing Protective Security Service (PS) and/or Security Escort Vehicle Service (SE) accompanying a PS shipment must have been cleared by the Defense Investigative Service (DIS) under the DOD Industrial Security Program.

3. Lawful Performance. Carrier agrees it will comply with all rules, regulations and requirements set forth in any and all agreements which may be applicable to the shipment/commodity transported requiring a TPS.

4. Agreements. When applicable, carrier agrees to execute a separate agreement with MTMC governing the transportation of hazardous materials, ammunition and explosives, or Class A and B explosives, as defined in 49 CFR part 173.

5. Security.

a. Carrier agrees to designate a "qualified carrier representative" when handling shipments requiring a TPS. This representative will be employed by the carrier, or the terminal involved, aware of the sensitivity of the shipment, knowledgeable of the safety, security and emergency procedures to be followed, authorized and capable of moving a transportation conveyance and, when providing PS, cleared by DIS.

b. Carrier agrees to ensure that trailers containing protected commodities are always connected to tractors during shipment except when stopped at a DOD activity for loading or unloading, a carrier's terminal for servicing, a carrier-designated point where driver(s) or qualified carrier representative maintains continuous surveillance over the shipment, or a qualified safe haven or refuge location.

c. When requested by the shipper for reasons of security, carrier agrees to cover the shipment with a carrier-provided tarpaulin. Protective tarping for security reasons is an accessorial service.

6. Safety.

a. A "satisfactory" safety rating will be maintained with the Federal Highway Administration, Department of Transportation and/or with the appropriate state agency or commission in the case of intrastate transport. Safety ratings which are "unsatisfactory," "conditional," "insufficient information," or a "not rated" will not be accepted.

b. Carrier agrees to notify the consignor and the consignee named on the GBL immediately by telephone of an accident, incident or significant delay. The information to be reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence and other pertinent accident details. Carrier will notify the MTMC area command annotated on the GBL within one half (½) hour after notification of the consignor and consignee, and provide status updates as required. The MTMC HOTLINE telephone numbers are as follows:

—Eastern Area: 800–524–0331; New Jersey only: 800–624–1361
—Western Area: 800–331–1822; California only: 800–348–4639

When requested, carrier will furnish MTMC a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

c. Carrier agrees to provide the driver(s) transporting protected commodities an emergency telephone number (indicated on the last page of this Agreement) which, when used at any time (24 hours a day, 7 days a week), will reach a qualified carrier representative who will be able to provide information and assistance. MTMC will be immediately notified if this telephone number should be changed. Carrier also agrees to equip the vehicle transporting the material with communications equipment (CB radio, mobile phone, etc.) capable of being used to obtain assistance in an emergency.

7. Driver Requirements.

a. Carrier agrees to ensure that the driver(s) employed to transport protected commodities requiring a TPS be 21 years of age and have a minimum of one year of experience driving tractor/trailer equipment under various driving conditions.

b. Carrier agrees to ensure that the driver(s) employed to transport protected commodities requiring a TPS carry a valid motor vehicle operator's license issued by his/her state of domicile, a certificate of physical examination issued during the preceding 24 months, and an employee record card, or similar document, one of which must contain the driver's photograph.

c. Carrier agrees to ensure driver(s) will carry a company picture identification card to verify affiliation with the carrier named on the Government Bill of Lading (GBL). The driver identification requirements for those carriers cleared to handle SECRET shipments will be in accordance with Paragraph 5–410 of the DOD Industrial Security Manual (DOD 5220.22–M) and Paragraph 11a(10) of the Carrier Supplement to the DOD Industrial Security Manual (DOD 5220.22–C).

8. Equipment.

a. Trip-leased equipment, with or without drivers, will not be used to transport protected commodities for the account of the DOD. Exceptions for the use of intermittent or occasional drivers in 49 CFR 391.63 will not apply to any DOD movement. Any equipment, with or without drivers, leased to augment carrier-owned equipment will be on a not less than 90-day noncancellable basis.

b. A copy of the equipment lease agreement must be carried in the vehicle of the unit transporting these commodities. (Facsimile, Xerox, or otherwise reproduced copies, are not acceptable.) Interchange agreements which originate at origin will not be accepted. The lease must be complete at time of pick up and should require no further information to be completed by the driver. Failure to comply with this requirement or attempted abuse of this requirement could result in the carrier's participation in this type traffic to be immediately revoked and up to nationwide disqualification on all DOD freight shipments should further action under the Carrier Performance Program be deemed appropriate.

9. Shipment.

a. Carrier agrees to provide the appropriate TPS when requested by a DOD shipper. Carrier further agrees to perform the TPS as defined in the applicable Military Traffic Management Command Freight Traffic Rules Publication (MFTRP No. 1A) or reissues thereto. A TPS is any one of the following services or any combination thereof:

—DOD Constant Surveillance Service (CS)
—Dual Driver Protective Service (DD)
—Dual Driver w/National Agency Check Protective Service (DN)
—Motor Surveillance Service (MS)
—Protective Security Service (PS)
—DTTS Satellite Motor Surveillance Service (SM)
—Security Escort Vehicle Service (SE)

b. Carrier agrees that all shipments of protected commodities DN and/or PS will only be moved in direct single line-haul

service. Transportation involving an interchange service may be used, however, if the shipment is under DD or CS.

c. Carrier agrees to provide exclusive use of vehicle or dromedary service for all shipments requiring SM with DN and/or PS. The motor vehicle or dromedary furnished will be devoted exclusively to the transportation of the tendered shipment without seal or lock breakage, and without transfer of lading for the convenience of the carrier.

d. Carrier agrees to maintain a Signature and Tally Record (ST) (DD Form 1907) for all shipments of protected commodities requiring a TPS. Furnishing of the ST is an integral part of a TPS to be provided by the carrier. Carrier agrees to ensure that each person responsible for the proper handling of the shipment signs the ST at the time he/she assumes responsibility. All drivers transporting such shipment must sign the ST. When used with DD, both drivers are required to sign the ST upon original receipt.

e. Carrier agrees to be responsible for shipments from original to ultimate destination. The Carrier also remains responsible for shipments placed in a safe haven or refuge location. Carrier agrees not to disclose any information to unauthorized persons concerning the nature, kind, quantity, destination, consignee or routing of any protected commodities shipment tendered to it. The carrier further agrees to provide, at no additional cost to the Government, the status of any shipment within 24 hours after an inquiry is made.

10. Carrier Performance. Carrier agrees that carrier's equipment, performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, nonuse, or disqualify the carrier for unsatisfactory service subsequent to approval or for any other operating deficiency, or for noncompliance with terms of the Agreement or terms of negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR. If a carrier is removed or disqualified for 6 months or more, it will have to be requalified.

11. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This agreement shall be effective from the date of approval by MTMC, until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name. Carrier understands that failure to notify MTMC shall be grounds for immediate revocation of the carrier's approval and their participation in the movement of DOD freight.

12. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities#.

13. Inquiries. Inquiries may be referred to: Commander, Military Traffic Management Command, ATTN: MTIN–FF, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

14. Carrier Acknowledgment and Acceptance. The certifying carrier official agrees to ensure the appropriate company officials and employees are familiar with the requirements, terms and conditions of this Agreement and are in full compliance with the applicable provisions herein. Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the carrier, the affiliated companies, division and entities.

I, _____
(typed name and title of carrier official)
verify under penalty of perjury under the laws of the United States of America, that the information contained in the carrier qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of

_____
(typed name of carrier and MC number)
agree to comply with the terms and conditions contained herein.

_____
signature of carrier official and title

_____
Date
Carrier address _____

_____

_____

Telephone number (_____
24 Hr emergency number (_____
_____)
Interstate operating authority certificate number-MC _____
Intrastate operating authority _____
Certificate number(s) (include Issuing State—for example PA—#12345) _____

Military Traffic Management Command Acknowledgment/Acceptance

Signature _____
Title _____
Date approved: _____

Appendix E to Part 619—Agreement Between the Military Traffic Management Command Surface Freight Forwarders Governing the Transportation of General Commodities for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of

_____
(name of forwarder, typed or legibly printed)
Thereinafter referred to as the forwarder, as a prerequisite for consideration for participation in the transport of general commodities as an exempt surface freight forwarder, for the U.S. Department of Defense (DOD), agree to comply with all requirements, terms and conditions as set forth in this Agreement. Noncompliance with any provision of this Agreement will be sufficient grounds for immediate revocation of the forwarder's privilege to participate in the movement of DOD freight. For the purpose of this Agreement, a surface freight forwarder is defined as a person or company who acts as a common carrier, that is, a carrier which holds itself out to the general public to provide transportation of property for compensation, assembles and consolidates less-than-truckload freight, as defined in the Instruction for preparation of Department of Defense Standard Tender of Freight Services, MT Form 364–4 (and revisions thereto), Part II, and uses for the whole or any part of the line-haul transportation the services of regulated motor or rail carriers, breaks bulk, and delivers the less-than-truckload freight holding out in its own name and under its own responsibility a through transportation service from point of receipt to destination. Forwarders may participate in truckload movements under extraordinary circumstances, but not on a regular basis nor as their main business.

2. Approval and Revocation.

a. Forwarder understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include personnel, facilities, carriers with adequate equipment, and finances to handle the traffic anticipated by DOD/MTMC under the forwarder's proposed scope of operations in accordance with the service requirements of the shipper.

b. The forwarder understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The forwarder further understands that it will not be authorized to participate in any traffic which requires a Transportation Protective Service.

c. In addition to the initial evaluation, the forwarder agrees that it will cooperate with MTMC follow-up evaluations at any time

subsequent to signing this Agreement to confirm continued eligibility.

d. The forwarder agrees and certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a MTMC General Freight Board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. Forwarder agrees to comply with all applicable federal, state, municipal and other local laws and regulations. No fines, charges, or assessments for overloaded vehicles or other violations of applicable laws and regulations will be passed to, or be paid by any agency of the Federal Government.

b. The forwarder agrees to keep current and on file a list of all carriers to be used in the transport of DOD freight shipments. This list will contain, as a minimum, the company's name, president/vice president's name, operating authority number, corporate office address, telephone number and a designated 24-hour on-call point of contact in the event of an accident or emergency situation. MTMC can direct forwarder not to use specific carriers in the movement of DOD freight shipments.

c. The forwarder further agrees and certifies that it will not use any carrier which has been debarred, suspended by the Government or which has been placed in non-use or disqualified by MTMC from doing business with the DOD for the movement of any DOD freight shipments.

4. Operations. The forwarder agrees and certifies that it is operating as a forwarder as defined herein. If incorporated, evidence of incorporation, bearing the official seal of the state in which filed, Articles of Incorporation, listing all the officers of the corporation are attached and certified to be true, correct and current.

5. Insurance.

a. The forwarder agrees to maintain a minimum of $1,000,000 public liability insurance and $250,000 cargo insurance for loss and damage of Government freight. A copy of the certificate of insurance must be on file with MTMC, ATTN: MTIN-FF, prior to any performance of service by the forwarder.

b. The insurance, carried in the name of the forwarder, will be in force at all times while this Agreement is in effect or until such time as the forwarder cancels all tenders. The forwarder agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service by the carrier. The certificate holder block of the form will indicate that MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF, will be notified in writing, 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate.

c. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service, Treasury Department Circular 570, Listing of Surety Companies. Self-Insurance will not be accepted.

6. Performance Bond. Forwarder agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the forwarder's obligation. It will cover default, abandoned shipments, bankruptcy and reprocurement costs. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service, Treasury Department Circular No. 570. The sum of the bond shall be no less than $100,000. The bond must be completed on the form provided by MTMC and will be continuous until cancelled. MTMC will be notified, in writing, 30 days in advance of any change or cancellation. A letter of intent by the surety company is required with the initial application. Upon MTMC approval forwarder agrees to submit the performance bond before the Tender of Service will be accepted.

7. Safety.

a. The forwarder agrees not to use any carrier that has an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and if it is an intrastate motor carrier, with the appropriate state agency.

b. Shipments will be delivered in direct service without delay to the destination shown on the Government Bills of Lading unless consignee or consignor directs diversion of the shipment to a new or different destination. Deliveries will be made during the shipper's normal business hours.

c. The forwarder agrees to not divulge any information to unauthorized persons concerning the nature and movements of any shipment tendered to it.

d. The forwarder agrees to notify within 24 hours, the consignor and consignee named by the Government Bill of Lading (GBL) or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence, and other pertinent details. Upon request, the forwarder agrees to ensure MTMC is furnished a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

e. The forwarder agrees to have in place a company-wide safety management program. Forwarder safety program will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company-wide or terminal level may be subject to evaluation by DOD representatives. The forwarder further agrees to permit unannounced safety inspections of its facilities, terminals, equipment, employees, and procedures by DOD civilian, military personnel, or DOD contract employees.

8. Reserved.

9. Equipment. The forwarder agrees to ensure equipment is spotted for loading at the time and place requested. The Government reserves the right to reject the utilization of any equipment placed for loading by the forwarder if it does not, upon inspection, meet specifications and requirements for the particular shipment involved (size, cube, cleanliness, mechanical condition, etc.).

10. Shipment. The Forwarder agrees to provide, at no additional cost to the government, the status of any shipment within 24 hours after an inquiry is made. Further, the forwarder agrees to not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation.

a. Forwarder agrees to accept Government Bills of Lading on which freight charges will be paid by the Government, and will be bound by all terms and conditions stated thereon.

b. The forwarder agrees to comply with the provisions of documentation prelodging in effect at Military Ocean Terminals which cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to arrival of the cargo at the terminal to permit preparation of the terminal documentation.) Instructions will be provided by the consignees to furnish certain data at least 24-hours in advance of cargo arrival at the terminal.

12. Loss & Damage. The forwarder agrees to be fully liable for delivery of all cargo in the same condition as received at origin, except loss or damage caused by act of God, public enemy act, omission of shipper, inherent vice or detrimental changes due to nature of commodity, or natural shrinkage. Forwarder agrees to settle promptly, claims for loss or damage. The forwarder also agrees to provide the status of any shipment tendered to them within 24-hours after an inquiry is made.

13. Standard Tender of Service.

a. The forwarder agrees to comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. Forwarder understands that MTMC will reject tenders not in compliance with these instructions.

b. Forwarder agrees to publish a street address where the company office is located in lieu of a post office box number. The Military Traffic Management Command must be advised of any change in address. Failure to do so is grounds to discontinue the use of the forwarder.

c. Forwarder understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or non-use until corrections are made. The issuing forwarder will be advised when tenders are removed under these circumstances.

14. Rates.

a. Forwarder agrees to transport Government shipments at its lowest effective charge named in the tender applicable on the commodity transported, whether or not the rate tender is referenced on the Government bill of lading.

b. The forwarder agrees to publish through rates guaranteed for at least 30 days. These rates must be filed with MTMC HQ, Eastern Area, ATTN: MTE–IN, Bayonne, New Jersey 07002–5302. The forwarder must publish all

rates, charges, and accessorial services on a "Department of Defense Standard Tender of Freight Services", MT Form 364–R and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

c. The forwarder agrees to promptly refund all uncontested overcharges to the Government and authorizes the Government to deduct the amount of overcharges from any amount subsequently found to be due the forwarder.

d. The Government reserves the right to pursue administrative claims directly with forwarders under the Interstate Commerce Act or other authorities.

15. Carrier Performance.

a. Forwarder agrees that its performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The forwarder fully understands its obligation to remain current in its knowledge of service standards. The forwarder accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the carrier for unsatisfactory service for any operating deficiency, noncompliance with terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR. If a forwarder is removed or disqualified for 6 months or more, it will have to be re-qualified.

b. Failure or nonperformance by the forwarder with any of the terms or conditions of service will constitute a breach of this Agreement. The Government reserves the right to disqualify the forwarder for unsatisfactory service until such time as the forwarder establishes to the satisfaction of DOD that the operating or other deficiency(s) has been corrected.

16. General Provisions. That the forwarder must have a valid Standard Carrier Alpha Code (SCAC) and use it on all DOD billing documents to identify the forwarder. When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of acknowledgment by the Military Traffic Management Command, until terminated upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The forwarder agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and forwarder name. Forwarder understands that failure to notify MTMC shall be grounds for immediate revocation of the forwarder's approval and their participation in the movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to Commander, Military Traffic Management Command, Attention: MTIN–FF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

20. Forwarder Acknowledgment and Acceptance.

a. The undersigned forwarder official, by affixing signature hereto, states that he has read and understands the general and specific terms and conditions of service outlined and agrees to provide service in accordance with such terms or conditions. Any information found to be falsely represented in the Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the forwarder, the affiliated companies, division and entities.

Forwarder's Acknowledgement/Acceptance

I, _____

(typed name and title of forwarder official)

verify under penalty of perjury under the laws of the United States of America, that the information contained in the forwarder qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of

_____

(typed name of forwarder)

agree to comply with the terms and conditions contained herein.

_____

signature of forwarder official and title

_____

date

forwarder address _____

_____

_____

Telephone number (_____) _____

24 Hr emergency number (_____)

_____

Military Traffic Management Command Acknowledgment/Acceptance

Signature _____

Title _____

Date approved:_____

Appendix F to Part 619—Agreement Between the Military Traffic Management Command and Shipper Agents Governing the Transportation of General Commodities for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of

_____

(name of shipper agent, typed or legibly printed)

a shipper agent, hereinafter referred to as the agent, as a prerequisite for consideration for participation in the transport of general commodities as an exempt shipper agent, for the U.S. Department of Defense (DOD), agree to comply with all requirements, terms and conditions as set forth in this Agreement. Noncompliance with any provision of this Agreement will be sufficient grounds for immediate revocation of the agent's privilege to participate in the movement of DOD freight. For the purpose of this Agreement, an exempt shipper agent is defined as a person or company who for compensation provides a service by acting as an intermodal intermediary handling truck or container load shipments. The agent also handles drayage on both ends of the movement and other services performed in a terminal area. The agent may not act in its capacity as a broker when charged with the responsibility of moving DOD freight shipments.

2. Approval and Revocation.

a. Agent understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include personnel, facilities, carriers with adequate equipment, and finances to handle the traffic anticipated by DOD/MTMC under the agent's proposed scope of operations in accordance with the service requirements of the shipper.

b. The agent understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The agent further understands that it will not be authorized to participate in any traffic which requires a Transportation Protective Service.

c. In addition to the initial evaluation, the agent agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. The agent agrees and certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a MTMC General Freight Board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. The agent agrees to comply with all applicable federal, state, municipal and other local laws and regulations. No fines, charges, or assessments for overloaded vehicles or

other violations of applicable laws and regulations will be passed to, or be paid by any agency of the Federal Government.

b. The agent agrees to keep current and on file a list of all carriers to be used in the transport of DOD freight shipments. This list will contain, as a minimum, the company's name, president/vice president's name, operating authority number, corporate office address, telephone number and a designated 24-hour on-call point of contact in the event of an accident or emergency situation. MTMC can direct agent not to use specific carriers in the movement of DOD freight shipments.

c. The agent further agrees and certifies that it will not use any carrier which has been debarred, suspended by the Government or which has been placed in non-use or disqualified by MTMC from doing business with the DOD for the movement of any DOD freight shipments.

4. Operations. The agent agrees and certifies that it is operating as a shipper agent as defined herein. If incorporated, evidence of incorporation, bearing the official seal of the state in which filed, Articles of Incorporation, listing all the officers of the corporation are attached and certified to be true, correct and current.

5. Insurance.

a. The agent agrees to maintain a minimum of $1,000,000 public liability insurance and $250,000 cargo insurance for loss and damage of Government freight. A copy of the certificate of insurance must be on file with MTMC, ATTN: MTIN-FF, prior to any performance of service by the agent.

b. The insurance must be carried in the name of the agent and will be in force at all times while this Agreement is in effect or until such time as the agent cancels all tenders. The agent agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service by the carrier. Changes, renewal and cancellation notices must also be sent to MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT-INFF. The Government will be given 30 days notice prior to any cancellation or material changes in insurance coverages.

c. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies. Self-insurance will not be accepted. 6. Performance Bond. Agent agrees to provide to MTMC with a Performance Bond. The bond secures performance and fulfillment of the agent's obligation. It will cover default, abandoned shipments, bankruptcy and re-procurement costs. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service, Treasury Department Circular No. 570. The sum of the bond shall be no less than $100,000. The bond must be completed on the form provided by MTMC and will be continuous until cancelled. MTMC will be notified, in writing, 30 days in advance of any change or cancellation. A letter of intent by the surety company is required with the initial application. Upon MTMC approval agent will submit the Performance Bond before the Tender of Service will be accepted.

7. Safety.

a. The agent agrees not to use any carrier that has an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and if it is an intrastate motor carrier, with the appropriate state agency.

b. Shipments will be delivered in direct service without delay to the destination shown on the Government Bills of Lading unless consignee or consignor directs diversion of the shipment to a new or different destination. Deliveries will be made during the shipper's normal business hours.

c. The agent agrees not to divulge any information to unauthorized persons concerning the nature and movements of any shipment tendered to it.

d. The agent agrees to notify the consignor and consignee named by the Government bill of Lading (GBL) or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence, and other pertinent details. Upon request, the agent agrees to ensure MTMC is furnished a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

e. The agent agrees to have in place a company-wide safety management program. Agent safety program will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company-wide or terminal level may be subject to evaluation by DOD representatives. The agent further agrees to permit unannounced safety inspections of its facilities, terminals, equipment, employees, and procedures by DOD civilian, military personnel, or DOD contract employees.

8. Reserved.

9. Equipment. The agent agrees to ensure equipment is spotted for loading at the time and place requested. The Government reserves the right to reject the utilization of any equipment placed for loading by the agent if it does not, upon inspection, meet specifications and requirements for the particular shipment involved (size, cube, cleanliness, mechanical condition, etc.).

10. Shipment. The agent agrees to provide, at no additional cost to the government, the status of any shipment within 24 hours after an inquiry is made. Further, the agent agrees to not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation.

a. Agent agrees to accept Government bills of lading on which freight charges will be paid by the Government, and will be bound by all terms and conditions stated thereon.

b. The agent agrees to comply with the provisions of documentation prelodging in effect at Military Ocean Terminals which cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to arrival of the cargo at the terminal to permit preparation of the terminal documentation.) Instructions will be provided by the consignees to furnish certain data at least 24-hours in advance of cargo arrival at the terminal.

12. Loss & Damage. The agent agrees to be fully liable for delivery of all cargo in the same condition as received at origin, except loss or damage caused by act of God, public enemy act, omission of shipper, inherent vice or detrimental changes due to nature of commodity, or natural shrinkage. Agent agrees to settle promptly, claims for loss or damage. The agent also agrees to provide the status of any shipment tendered to them within 24-hours after an inquiry is made.

13. Standard Tender.

a. The agent agrees to comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. The agent understands that MTMC will reject tenders not in compliance with these instructions.

b. Agent agrees to publish a street address where the company office is located in lieu of a post office box number. The Military Traffic Management Command must be advised of any change in address. Failure to do so is grounds to discontinue the use of the agent.

c. Agent understands that tenders inadvertently accepted and distributed for use and not in compliance with is agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC freight Traffic Rules Publication MFTRP No. 1A, and supplements thereof, will be subject to immediate removal or non-use until corrections are made. The issuing agent will be advised when tenders are removed under these circumstances.

14. Rates.

a. Agent agrees to transport Government shipments at its lowest effective charge named in the tender applicable on the commodity transported, whether or not the rate tender is referenced on the Government bill of lading.

b. The agent agrees to publish through rates guaranteed for at least 30 days. These rates must be filed with MTMC, HQ, Eastern Area, ATTN: MTE–IN, Bayonne, New Jersey 07002–5302. The agent must publish all rates, charges, and accessorial services on a "Department of Defense Standard Tender of Freight Services", MT Form 364–R and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

c. The agent agrees to promptly refund all uncontested overcharges to the Government and authorizes the Government to deduct the amount of overcharges from any amount subsequently found to be due the agent.

d. The Government reserves the right to pursue administrative claims directly with agents under the Interstate Commerce Act or other authorities.

15. Carrier Performance.

a. Agent agrees that its performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this

Agreement. The agent fully understands its obligation to remain current in its knowledge of service standards. The agent accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the agent for unsatisfactory service for any operating deficiency, noncompliance with terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR. If a agent is removed or disqualified for 6 months or more, it will have to be re-qualified.

b. Failure or nonperformance by the agent with any of the terms or conditions of service will constitute a breach of this Agreement. The Government reserves the right to disqualify the agent for unsatisfactory service until such time as the agent establishes to the satisfaction of DOD that the operating or other deficiency(s) has been corrected.

16. General Provisions. That the agent must agree to have a valid Standard Carrier Alpha Code (SCAC) and use it on all DOD billing documents to identify the agent. When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of acknowledgment by the Military Traffic Management Command, until terminated upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquires may be referred to Commander, Military Traffic Management Command, Attention: MTIN–FF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

20. Agent Acknowledgment and Acceptance.

a. The undersigned official, by affixing signature hereto, states that he has read and understands the general and specific terms and conditions of service outlined and agrees to provide service in accordance with such terms or conditions. Any information found to be falsely represented in the Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the agent, the affiliated companies, divisions and entities.

Agent's Acknowledge/Acceptance

I, _____

(typed name and title of agent official)

verify under penalty of perjury under the laws of the United States of America, that the information contained in the agent qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of

_____

(typed name of agent)

agree to comply with the terms and conditions contained herein.

_____

signature of agent official and title

_____

date

Agent address _____

_____

_____

Telephone number (_____) _____

24 Hr emergency number (_____)

_____

Military Traffic Management Command Acknowledgement/Acceptance

Signature _____

Title _____

Date Approved; _____

[FR Doc. 92–22872 Filed 9–23–92; 8:45 am]

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federal register

Thursday
September 24, 1992

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Explosives at Metal and Nonmetal Mines; Extension of Partial Administrative Stay of Certain Provisions of Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219-AA17

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of partial administrative stay of certain provisions of final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the partial administrative stay of several provisions of the January 18, 1991 (56 FR 2070), final rule on safety standards for explosives at metal and nonmetal mines until July 1, 1993.

EFFECTIVE DATE: The following provisions found in 30 CFR parts 56 and 57 are stayed until July 1, 1993: §§ 56.6000 and 57.6000, the first sentence in §§ 56.6130(b) and 57.6130(b), §§ 56.6131(a)(1) and 57.6131(a)(1), Appendix I to Subpart E, §§ 56.6202(a)(1) and 57.6202(a)(1), §§ 56.6304(b) and 57.6304(b), §§ 56.6306 and 57.6306, §§ 56.6501(a) and 57.6501(a), §§ 56.6902(b) and 57.6902(b), and §§ 56.6903 and 57.6903.

The following provisions found in 30 CFR parts 56 and 57 continue in effect until July 1, 1993: §§ 56.6140 and 57.6140, §§ 56.6220 and 57.6220, §§ 56.6320 and 57.6320, §§ 56.6330 and 57.6330, §§ 56.6331 and 57.6331, § 57.6375 and § 57.6382.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On January 18, 1991, MSHA published a final rule in the **Federal Register**, (56 FR 2070), revising its safety standards for explosives at metal and nonmetal mines. After issuing several administrative stays of the effective date of the final rule, MSHA, on September 12, 1991 (56 FR 46500), issued a one-year, partial administrative stay of certain provisions of the final rule in order to conduct supplemental rulemaking restricted to those issues raised by the stayed provisions. The administrative stay was scheduled to expire on October 1, 1992. The remaining standards of the January 18, 1991, final rule became effective on November 1, 1991.

The Agency needs additional time in order to complete the rulemaking process. MSHA will issue a proposed rule addressing these provisions in the near future.

This document is issued under 30 U.S.C. 811.

Dated: September 16, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 92–23026 Filed 9–23–92; 8:45 am]

BILLING CODE 4510–43–M

federal register

Thursday,
September 24, 1992

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. I et al.
Federal Acquisition Regulations; Miscellaneous Amendments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–13]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules with request for comment, and technical amendments.

SUMMARY: This document introduces the documents set forth below which comprise Federal Acquisition Circular (FAC) 90–13. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing FAC 90–13 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item and subject	FAR case	DAR case	Analyst
I. Section 6050M of the Tax Reform Act of 1986.	91–52	91–007	Klein.
II. Small Purchase Limitation.	91–19	90–306	Scott.
III. Award Without Discussions.	91–29	90–302	Scott.
IV. Commercial Pricing Certificate.	91–25	90–304	Olson.
V. Davis-Bacon Act Revisions.	91–14	91–1	O'Neill.
VI. Prohibition on Acquisition of Supplies or Services from Iraq.	91–7	91–002	Loeb.
VII. Independent Research & Development and Bid and Proposal Costs.	91–37/ 91–77	90–313/ 91–307F	Olson.
VIII. Prompt Payment for Fresh or Frozen Fish.	91–79	91–323	Olson.
IX. Disclosure Requirement Relating to Subcontractors.	91–16	90–311	Loeb.

DATES: For effective dates and comment dates, see separate documents which follow. Please cite FAC 90–13 and the appropriate FAR case number(s) in all correspondence related to this and the following documents.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–13 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–13 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Section 6050M of the Tax Reform Act of 1986 (FAR Case 91–52)

This is an interim rule revising FAR Subpart 4.9, Information Reporting to the Internal Revenue Service, to ensure the collection and reporting of the Taxpayer Identification Number (TIN) for modifications of contracts entered into before January 1, 1989. In addition, the subpart has been rearranged for clarification and the provision at 52.204–3, Taxpayer Identification, has been revised to update a reference.

Item II—Small Purchase Limitation (FAR Case 91–19)

This finalizes, without further change, the interim rule published as Item II of FAC 90–7. The rule implemented section 806 of the FY 1991 National Defense Authorization Act by revising: (1) FAR 5.101(a)(1) and 5.205(d)(1) to eliminate the requirement to synopsize contract actions between $10,000 and $25,000; (2) FAR 13.104(g) to refer to 5.101(a)(2) for public display requirements; (3) FAR 19.702 and 19.708 to refer to the small purchase limitation instead of $10,000; and the prescription for use of the clause at FAR 52.219–8 so that the clause is no longer used in small purchases.

Item III—Award Without Discussions (FAR Case 91–29)

The interim rule published as Item IV of FAC 90–7 is converted to a final rule with one amendment adding a sentence to paragraph (c) of Alternate II of the clause at 52.215–16 to inform offerors that they should submit their best offers initially.

Item IV—Commercial Pricing Certificate (FAR Case 91–25)

This finalizes without further change the interim rule published as Item V of FAC 90–7. The rule revised FAR 15.813 and the clause at 52.215–32 to remove the requirement for contractors under Department of Defense, National Aeronautics and Space Administration, and Coast Guard contracts to certify that the price offered to the Government for parts or components does not exceed the lowest commercial price at which the contractor sold those parts to the public.

Item V—Davis-Bacon Act Revisions (FAR Case 91–14)

This final rule revises FAR Subpart 22.4 and the associated clauses in subpart 52.2 because of changes in the Department of Labor regulations at 29 CFR parts 1 and 5 governing the use of semi-skilled "helpers" on federally financed and assisted construction contracts subject to Davis-Bacon and related acts.

Item VI—Prohibition on Acquisition of Supplies or Services From Iraq (FAR Case 91–7)

This amends and finalizes the interim rule published as Item II of FAC 90–4. The rule implements prohibitions imposed by Executive Orders 12722 and 12724.

Item VII—Independent Research and Development and Bid and Proposal Costs (FAR Cases 91–37 and 91–77)

This final rule makes substantive changes in the treatment of independent research and development and bid and proposal costs. It implements both section 824 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510) and section 802 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102–190).

Item VIII—Prompt Payment for Fresh or Frozen Fish (FAR Case 91–79)

This final rule revises FAR 32.905 and 52.232–25 to provide for prompt payment of contracts for fresh or frozen fish, *i.e.*, as close as possible to, but not later than, the seventh day after delivery.

Item IX—Disclosure Requirements Relating to Subcontractors (FAR Case 91–16)

This amends and finalizes the interim rule published as Item VI of FAC 90–5. The rule requires that first-tier subcontractors disclose to the prime contractor whether they are debarred, suspended, or proposed for debarment.

Dated: September 17, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 90–13 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–13 is effective November 23,

1992, except Items I, VII, and VIII which are effective September 23, 1992. In Item VII, section 31.205–18(c)(1)(i) was effective November 5, 1990.

Dated: September 12, 1992.

Eleanor R. Spector,

Director of Defense Procurement, Department of Defense.

Dated: September 17, 1992.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy, General Services Administration.

Dated: September 11, 1992.

Don G. Bush,

Assistant Administrator for Procurement, NASA.

[FR Doc. 92–23044 Filed 9–23–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 52

[FAC 90–13; FAR Case 91–52; Item I]

Federal Acquisition Regulation; Section 6050M of the Tax Reform Act of 1986

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed on an interim rule revising subpart 4.9, Information Reporting to the Internal Revenue Service, to ensure the collection and reporting of the Taxpayer Identification Number (TIN) for certain contract modifications occurring on or after April 1, 1990, when the initial contract was entered into before January 1, 1989. In addition, the subpart has been rearranged for clarification and the provision at 52.204–3, Taxpayer Identification, has been revised to update a reference. When the IRS issued its final regulations implementing section 6050M of the Tax Reform Act of 1986 (Pub. L. 99–514), the reporting requirements included the requirement to report certain modifications to contracts that were awarded before January 1, 1989. The Office of Federal Procurement Policy requested that the CAAC and the DARC consider revising the FAR accordingly.

DATES: *Effective Date*: September 24, 1992.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 23, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4041, Attn: Ms. Deloris Baker, Washington, DC 20405.

Please cite FAC 90–13, FAR case 91–52 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–13, FAR Case 91–52.

SUPPLEMENTARY INFORMATION:

A. Background

Section 6050M of title 26, United States Code, requires heads of Federal executive agencies to report certain contract information to the IRS. The information returns filed under section 6050M are used as a source of information to collect delinquent Federal tax liabilities of persons who enter into contracts with Federal executive agencies.

On December 6, 1989, the IRS published regulations that implement section 6050M of the Tax Reform Act of 1986 (Public Law 99–514). The regulations apply to Federal executive agencies' contracts entered into on or after January 1, 1989, except that, with respect to a basic or initial contract entered into before January 1, 1989, the regulations do not apply to an increase contract action treated as a new contract if the increase occurs before April 1, 1990, or if the increase is not in excess of $50,000. The information required to be reported for contract actions over $25,000 includes name, address, and TIN of the contractor; name and TIN of the common parent (if any); date of the contract action; amount obligated on the contract; and duration of the contract.

The Office of Federal Procurement Policy has requested that the FAR be revised to ensure that agency reporting requirements include the requirement to report certain modifications to contracts that were awarded before January 1, 1989.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because all taxpayers are required to have a TIN, and this rule merely requests that contractors provide that number for certain modifications. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAC 90–13 (FAR Case 91–52) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the interim rule increases the existing paperwork burden. Accordingly, a request for approval of a revised information collection requirement concerning 9000–0097, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number), is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because publication of IRS regulations, effective January 1, 1989, implementing section 6050M of the Tax Reform Act of 1986 (Pub. L. 99–514) (see 54 FR 50367, December 6, 1989), necessitates a revision to the FAR to ensure the reporting of certain contract modifications occurring on or after April 1, 1990, when the initial contract was entered into before January 1, 1989. Pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: September 17, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 4 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Subpart 4.9, consisting of sections 4.900 through 4.904, is revised to read as follows:

Subpart 4.9—Information Reporting to the Internal Revenue Service

Sec.
4.900 Scope of subpart.
4.901 Definitions.
4.902 Contract information.
4.903 Payment information.
4.904 Solicitation provision.

4.900 Scope of subpart.

This subpart provides policies and procedures applicable to reporting contract and payment information to the Internal Revenue Service (IRS).

4.901 Definitions.

Common parent, as used in this subpart, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Corporate status, as used in this subpart, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (*e.g.*, sole proprietorship or partnership), or a corporation providing medical and health care services.

Taxpayer Identification Number (TIN), as used in this subpart, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

4.902 Contract information.

(a) 26 U.S.C. 6050M, as implemented in 26 CFR, requires heads of Federal executive agencies to report certain information to the IRS.

(b) (1) The required information applies to contract modifications—

(i) Increasing the amount of a contract awarded before January 1, 1989, by $50,000 or more; and

(ii) Entered into on or after April 1, 1990.

(2) The reporting requirement also applies to certain contracts and modifications thereto in excess of $25,000 entered into on or after January 1, 1989.

(c) The information to report is—

(1) Name, address, and the Taxpayer Identification Number (TIN) of contractor;

(2) Name and TIN of common parent (if any);

(3) Date of the contract action;

(4) Amount obligated on the contract action; and

(5) Estimated contract completion date.

(d) Transmit the information to the IRS through the Federal Procurement Data System (see subpart 4.6 and implementing instructions).

4.903 Payment information.

(a) 26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, require payors, including Federal Government agencies, to report to the IRS payments made to certain contractors.

(b) The following payments are exempt from this reporting requirement:

(1) Payments to corporations. However, payments to corporations providing medical and health care services or engaged in the billing and collecting of payments for such services are not exempted.

(2) Payments for bills for merchandise, telegrams, telephone, freight, storage, and similar charges.

(3) Payments of income required to be reported on an IRS Form W–2 (*e.g.*, contracts for personal services).

(4) Payments to a hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(5) Payments to a hospital or extended care facility owned and operated by the United States, a state, the District of Columbia, a possession of the United States, or a political subdivision, agency, or instrumentality of any of the foregoing.

(6) Payments for any contract with a state, the District of Columbia, a possession of the United States, or a political subdivision, agency, or instrumentality of any of the foregoing.

(c) The following information is required to provide reports to the IRS:

(1) Name, address, and TIN of contractor.

(2) Corporate status (see 4.901).

(d) Transmit to paying offices the information specified in 4.203.

4.904 Solicitation provision.

The contracting officer shall insert the provision at 52.204–3, Taxpayer Identification, in solicitations, unless the TIN of each offeror has previously been obtained and is known.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–3 [Amended]

3. Section 52.204–3 is amended in the provision heading by removing the date "(SEP 1989)" and inserting in its place "(SEP 1992)"; in paragraph (b) by removing in the first sentence the words "The offeror is" and inserting in their place "All offerors are"; and removing in the second sentence the reference "4.902(a)" and inserting in its place "FAR 4.903".

[FR Doc. 92–23054 Filed 9–23–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 13, and 19

[FAC 90–13; FAR Case 91–19; Item II]

RIN 9000–AE53

Federal Acquisition Regulation; Small Purchase Limitation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This finalizes without further change the interim rule published as Item II of FAC 90–7. That rule changed FAR parts 5, 13, and 19. In FAR 5.101(a), the requirement to synopsize contract actions between $10,000 and $25,000, if there is not a reasonable expectation that at least two offers will be received, is eliminated. In FAR 5.205(d)(1), the requirement to synopsize proposed architect-engineer contract actions for which the total fee is expected to be between $10,000 and $25,000, when there is not a reasonable expectation that at least two offers will be received, is eliminated. FAR 13.104(g) is changed to refer to FAR 5.101(a)(2) for public display requirements. FAR 19.702 is changed to refer to the "small purchase limitation in 13.000" rather than "$10,000." The dollar threshold in the prescription at FAR 19.708 for use of the clause at 52.219–8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, is changed from "$10,000" to "the small purchase limitation in 13.000."

EFFECTIVE DATE: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–13, FAR Case 91–19.

SUPPLEMENTARY INFORMATION:

A. Background

These changes resulted from the enactment of the Fiscal Year 1991 Defense Authorization Act (Public Law 101–510) on November 5, 1990. Section 806 of that Act amended the Office of Federal Procurement Policy Act, the Small Business Act, the Federal Property and Administrative Services Act of 1949, and 10 U.S.C. 2304(g) to provide a uniform small purchase threshold for Federal-wide use.

The interim rule was published in the **Federal Register** on August 22, 1991, at 56 FR 41730. Three public comments were received; one a no comment, the other two concurred in the changes. As a result, the interim rule is adopted as a final rule without change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule provides a uniform small purchase threshold for Government-wide use. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 5, 13, and 19

Government procurement.

Dated: September 17, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 5, 13 and 19, which was published at 56 FR 41730 on August 22, 1991, is adopted as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 92–23057 Filed 9–23–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, and 52

[FAC 90–13; FAR Case 91–29; Item III]

RIN 9000–AE51

Federal Acquisition Regulation; Award Without Discussions

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the interim rule that was published in the **Federal Register** on August 22, 1991 (56 FR 41732). The final rule amends FAR parts 14, 15, and 52 to require that solicitations include a statement of the significant evaluation factors and subfactors (including non-cost and non-price factors) and to require that DOD, NASA, and Coast Guard solicitations for competitive proposals indicate whether award will be made without discussions with offerors.

EFFECTIVE DATE: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–13, FAR case 91–29.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements section 802 of the Fiscal Year 1991 Defense Authorization Act (Pub. L. 101–510). The Act amended 10 U.S.C. 2305 to require solicitations for competitive proposals to state whether the Government intends to make award without discussion with offerors. The Act also requires that solicitations include the significant evaluation factors and subfactors (including non-cost and non-price-related factors).

This rule was published as an interim rule on August 22, 1991, at 56 FR 41732. Two responses were received; one a no comment, the other requested a word change. The suggested change was not made because it was believed the change would be confusing to industry and Government procurement activities. However, the interim rule was amended to add a sentence to Alternate II of the clause at 52.215–16 to inform offerors that they should offer their best terms initially, notwithstanding the Government's intent to hold discussions.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis has been performed. A copy of the analysis may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 14, 15, and 52

Government procurement.

Dated: September 17, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Interim Rule Adopted as Final with One Change

Accordingly, the interim rule amending 48 CFR parts 14, 15, and 52, which was published on August 22, 1991, at 56 FR 41732, is adopted as final with one change.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.215–16 is amended in Alternate II by revising the date, and adding a second sentence to paragraph (c) to read as follows:

52.215–16 Contract Award.

* * * * *

Contract Award (July 1990)

* * * * *

Alternate II (Nov. 1992). * * *

(c) * * * However, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

* * * * *

[FR Doc. 92-23055 Filed 9-23-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAC 90-13; FAR Case 91-25; Item IV]

RIN 9000-AE11

Federal Acquisition Regulation; Commercial Pricing Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published in the **Federal Register** on August 22, 1991, at 56 FR 41734 to a final rule without further change. The rule revised FAR 15.813 and the clause at 52.215-32 to remove the requirement for contractors under Department of Defense, National Aeronautics and Space Administration, and Coast Guard contracts to certify that the price offered to the Government for parts or components does not exceed the lowest commercial price at which the contractor sold those parts to the public.

EFFECTIVE DATE: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-13, FAR Case 91-25.

SUPPLEMENTARY INFORMATION:

A. Background

These revisions were based on section 804 of the Fiscal Year 1991 DOD Authorization Act (Pub. L. 101-510), which repealed 10 U.S.C. 2323, which required a certification from contractors that the price offered to the Government for parts of components does not exceed the lowest commercial price at which the offeror sold those parts to the public. The similar provision at 41 U.S.C. 253e (for civilian agencies) has not been repealed.

FAC 90-7, Item V, published August 22, 1991, included these revisions as an interim rule with respect for comment. Two comment letters were received and analyzed; however, they did not result in any changes to the interim rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a full and open competitive, fixed-price basis and the commercial pricing certificate policies do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies because the final rule contains information collection requirements. Accordingly, a request for a revision to an information collection requirements concerning OMB Control Number 9000-0105, Commercial Pricing Certificate, was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Approval was granted on July 8, 1991. Public comments concerning this request were invited through a subsequent **Federal Register** notice published on May 31, 1991.

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: September 17, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final Rule Without Change

Accordingly, the interim rule amending 48 CFR parts 15 and 52, which was published at 56 FR 41734 on August 22, 1991, is adopted as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 92-23056 Filed 9-23-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 90-13; FAR Case 91-14; Item V]

Federal Acquisition Regulation; Davis-Bacon Act Revisions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to implement changes necessitated by the revised Department of Labor (DOL) regulations at 29 CFR parts 1 and 5 that allow the expanded use of semi-skilled "helpers" on federally financed and assisted construction contracts subject to the Davis-Bacon and related acts.

EFFECTIVE DATE: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-13, FAR case 91-14.

SUPPLEMENTARY INFORMATION:

A. Background

On December 4, 1990, the Department of Labor (DOL) published in the **Federal Register** (55 FR 50148) a notice establishing an effective date of February 4, 1991, for revised final Davis-Bacon regulations, 29 CFR parts 1 and 5. On June 26, 1992, the DOL published in the **Federal Register** (55 FR 28776) a revision to delete a provision invalidated by the U.S. Court of Appeals for the District of Columbia in *Building & Construction Trades Department, AFL CIO* v. *Martin*, Civ. No. 90-5345 (D.C. Cir. April 21, 1992). The revised DOL regulations allow the expanded use of helpers on Federal and federally assisted construction contracts subject to the Davis-Bacon and related acts. FAR Subparts 22.4 and 52.2 are amended to conform to the revised DOL regulations.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the

meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. This rule merely conforms the FAR to regulations published by the DOL. Therefore, the Regulatory Flexibility Act does not apply to this rulemaking. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–13, FAR case 91–14), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Information collection requirements contained in the DOL's rule were approved under OMB Control Number 1215–0140.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: September 17, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 22 and 52 are amended as set forth below:

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1. The authority citation for 48 CFR parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 22.401 is amended by revising paragraph (b) of the definition "Laborers or mechanics" to read as follows:

§ 22.401 Definitions.

* * * * *

Laborers or mechanics. * * *

(b) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards. The terms "apprentice," "trainee," and "helper" are defined as follows:

(1) *Apprentice* means (i) a person employed and individually registered in a *bona fide* apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) *Trainee* means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by the Administration.

(3) A *helper* is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying, and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

* * * * *

3. Section 22.406–3 is amended by revising paragraph (b)(1) and adding paragraph (b)(4) to read as follows:

§ 22.406–3 Additional classifications.

* * * * *

(b) * * *

(1) The classification is appropriate and, except with respect to helpers as defined in section 22.401, the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

* * * * *

(4) With respect to helpers, as defined in section 22.401, such a classification prevails in the area in which the work is performed.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.222–6 is amended by—

(a) Revising the date in the clause heading to read "(NOV 1992)";

(b) Inserting in the first sentence of paragraph (b)(1) after the word "mechanics" the phrase, "including helpers.";

(c) Removing in the beginning of paragraph (b)(1)(i) the word "The" and inserting "Except with respect to helpers, as defined in section 22.401 of the Federal Acquisition Regulation, the" in its place; and

(d) Adding paragraph (b)(2)(iv) to read as follows:

52.222–6 Davis-Bacon Act.

* * * * *

Davis-Bacon Act (Nov 1992)

* * * * *

(b) (1) * * *

(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

* * * * *

[FR Doc. 92–23058 Filed 9–23–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 90–13; FAR Case 91–7; Item VI]

RIN 9000–AE37

Federal Acquisition Regulation; Prohibition on Acquisition of Supplies or Services From Iraq

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The interim rule published in the **Federal Register** (56 FR 15142, April 15, 1991) as Item II of FAC 90–4 is converted to a final rule with the addition of one cross reference in FAR 25.702(b) to 31 CFR part 575. Appendices at 31 CFR part 575 list individuals and organizations determined to be specially designated nationals of the Government of Iraq and merchant vessels registered, owned, or controlled by the Government of Iraq or by persons acting directly on behalf of the Government of Iraq.

EFFECTIVE DATE: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR

Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–13, FAR case 91–7.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** (56 FR 15142) on April 15, 1991, as Item II in FAC 90–4. As a result of comments received on the interim rule, the rule is amended to include a cross reference in FAR 25.702(b) to 31 CFR part 575, Iraqi Sanctions Regulations, which are issued by the Treasury Department to implement Executive Orders No. 12722 and 12724. The regulations, at 31 CFR part 575, include appendices listing individuals and organizations determined to be specially designated nationals of the Government of Iraq and merchant vessels registered, owned, or controlled by the Government of Iraq or by persons acting directly on behalf of the Government of Iraq. These appendices were published in the **Federal Register** on April 3, 1991.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it applies primarily to acquisitions from the Government of Iraq, whose supplies or services cannot be lawfully imported into the United States.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: September 17, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final with One Change

At 57 FR 20372, May 12, 1992, in FAC 90–11, a final rule was issued which amended FAR 25.702 by removing paragraph (b) and redesignating (c) as (b), and FAR 52.225–11 was amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c). Consequently, 25.702(c), which was added by the interim rule in FAC 90–4, is now made final as paragraph (b) and amended, and 52.225–11(c) is made final as paragraph (b). Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published at 56 FR 15142 on April 15, 1991, is adopted as final with one change.

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.702 [Amended]

2. In section 25.702, paragraph (b) is amended by inserting the parenthetical reference "(31 CFR 575)" at the end of the first sentence.

[FR Doc. 92–23059 Filed 9–23–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 42

[FAC 90–13; FAR Cases 91–37 and 91–77; Item VII]

RIN 9000–AE67

Federal Acquisition Regulation; Independent Research and Development and Bid and Proposal Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on revisions of the cost principle at FAR 31.205–18, Independent research and development and bid and proposal costs, to implement section 824 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510) and section 802 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102–190).

EFFECTIVE DATE: September 24, 1992, except 31.205–18(c)(1)(i), which was effective November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–13, FAR cases 91–37 and 91–77.

SUPPLEMENTARY INFORMATION:

A. Background

On August 15, 1991, a proposed rule to implement statutory thresholds set forth in section 824 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510) was published in the **Federal Register** (56 FR 40714). As a result of public comments on the proposed rule and subsequent legislation affecting the treatment of IR&D/B&P costs, the rule's unallowability provision at FAR 31.205–18(c)(1)(iv) and the minor changes to subpart 42.10 are withdrawn. The rule is being finalized by amending the thresholds in FAR 31.205–18(c)(1), which addresses the negotiation of mandatory advance agreements on allowable independent research and development/bid and proposal (IR&D/B&P) costs. The thresholds in FAR 31.205–18(c)(1)(i)(A) and in 31.205–18(c)(1)(i)(E) are increased from $5,400,000 to $7,000,000. In addition, the thresholds in FAR 31.205–18(c)(1)(i)(B) are increased from $675,000 to $700,000. These threshold changes are effective November 5, 1990, until contractor's fiscal years beginning on or after October 1, 1992, after which time the requirement for negotiation of advance agreements will no longer exist. Elimination of the requirement for negotiation of advance agreements is a result of section 802 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102–190). The rule is also being finalized by amending FAR 31.205–18(c) to eliminate the formula method for establishing IR&D/B&P ceilings for companies not required to negotiate advance agreements. Added language provides that IR&D/B&P costs for such companies are allowable to the extent that they are allocable and reasonable.

On April 3, 1992, a proposed rule to implement section 802 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102–190) was published in the **Federal Register** (57 FR 11550). This Act made significant changes in the treatment of IR&D/B&P costs and eliminated most of the detailed administrative procedures that are currently in place to control the amount of IR&D/B&P reimbursements to contractors. As a result of public comments received in response to this proposed rule, several changes have been made in the final rule. Several

changes were made in the definitions in FAR 31.205–18(a), including revising the definition of "covered segment" to exclude non-covered segments from the requirements to provide financial and technical information to support IR&D/B&P costs as set forth in FAR 31.205–18(c)(2)(ii); deleting the word "covered" in referring to contractor segments in the definition of "major contractor"; and clarifying the definitions of "bid and proposal (B&P) costs" and "independent research and development (IR&D)." The introductory sentence in FAR 31.205–18(c)(2) has been revised to provide civilian agencies the latitude to establish IR&D/B&P reimbursement procedures more suited to the contracting environment of civilian agencies without the burden of obtaining a FAR deviation to do so. Absent a legislative basis for the 75 percent limitation of payment for contractor failure to submit financial and technical information to support their IR&D/B&P costs, as published in the proposed rule, the last two sentences of FAR 31.205–18(c)(2)(ii) have been deleted. In FAR 31.205–18(e), the term "arrangement" has been substituted for the term "agreement" wherever it appeared in the proposed rule to avoid confusion with the meaning of "cooperative agreement" as it is used in the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224). The specific statutory authority for the Defense Advanced Research Projects Agency has been added.

For purposes of implementing FAR 31.205–18(c)(2)(i)(C)(2), the following rates of inflation (price escalation indices for Research, Development, Test & Evaluation (RDT&E) account, Total Obligation Authority (TOA)), issued by the Department of Defense Comptroller on January 8, 1992, shall be used for forward pricing agreements and final indirect cost determinations effective October 1, 1992. These rates of inflation shall remain in effect until superseded by the next publication, which is anticipated in January 1993. For fiscal years beyond 1997, use 3.2 percent.

Fiscal year	Annual percentage rate
1992	3.2
1993	3.3
1994	3.3
1995	3.2
1996	3.2
1997	3.2

B. Regulatory Flexibility Act

The final rule will have a significant favorable economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes eliminate the formula method currently prescribed by the FAR which limits the total amount of allowable IR&D/B&P costs for smaller companies. Under the final rule, IR&D/B&P costs incurred by non-major contractors will be fully allowable on contracts to the extent that they are allocable and reasonable. A Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the analysis may be obtained from Mr. Jeremy Olson (202) 501–3221. No public comments addressing the Regulatory Flexibility statement, published with the proposed rules in the **Federal Register** on August 15, 1991 (56 FR 40714), and on April 3, 1992 (57 FR 11550), were received.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31 and 42

Government procurement.

Dated September 17, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 31 and 42 are amended as set forth below:

1. The authority citation for 48 CFR parts 31 and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.205–18 is revised to read as follows:

31.205–18 Independent research and development and bid and proposal costs.

(a) *Definitions. Applied research,* as used in this subsection, means that effort which (1) normally follows basic research, but may not be severable from the related basic research, (2) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques, and (3) attempts to advance the state of the art. Applied research does not include efforts whose principal aim is design, development, or test of specific items or services to be considered for sale; these efforts are within the definition of the term *development,* defined in this subsection.

Basic research, as used in this subsection, means that research which is directed toward increase of knowledge in science. The primary aim of basic research is a fuiler knowledge or understanding of the subject under study, rather than any practical application thereof.

Bid and proposal (B&P) costs, as used in this subsection, means the costs incurred in preparing, submitting, and supporting bids and proposals (whether or not solicited) on potential Government or non-Government contracts. The term does not include the costs of effort sponsored by a grant or cooperative agreement, or required in the performance of a contract.

Company, as used in this subsection, means all divisions, subsidiaries, and affiliates of the contractor under common control.

Contractor, as used in paragraph (c)(2) of this subsection, includes all divisions, subsidiaries, and affiliates under common control.

Covered contract, as used in paragraph (c)(2) of this subsection, means a prime contract entered into by a Government agency for an amount more than $100,000, except for a fixed-price contract without cost incentives. It also includes a subcontract for an amount more than $100,000, except for a fixed-price subcontract without cost incentives under such a prime contract.

Covered segment, as used in paragraph (c)(2) of this subsection, means a product division of the contractor that allocated more than $1,000,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, such term means that contractor as a whole. A product division of the contractor that allocated less than $1,000,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year shall not be subject to the limitation for major contractors set forth in 31.205–18(c)(2)(i) and (c)(ii).

Development, as used in this subsection, means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of a potential new product or service (or of an improvement in an existing product or service) for the purpose of meeting specific performance requirements or

objectives. Development includes the functions of design engineering, prototyping, and engineering testing. Development excludes: (1) Subcontracted technical effort which is for the sole purpose of developing an additional source for an existing product, or (2) development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.

Independent research and development (IR&D), as used in this subsection, means a contractor's IR&D cost that consists of projects falling within the four following areas: (1) Basis research, (2) applied research, (3) development, and (4) systems and other concept formulation studies. The term does not include the costs of effort sponsored by a grant or required in the performance of a contract. IR&D effort shall not include technical effort expended in developing and preparing technical data specifically to support submitting a bid or proposal.

Major contractor, as used in paragraph (c)(2) of this subsection, means any contractor whose covered segments allocated to covered contracts a total of more than $10,000,000 in IR&D/B&P costs in the preceding fiscal year. For purposes of calculating the dollar threshold amounts to determine whether a contractor meets the definition of "major contractor," contractor segments allocating less than $1,000,000 of IR&D/B&P costs to covered contracts in the preceding year shall not be included.

Systems and other concept formulation studies, as used in this subsection, means analyses and study efforts either related to specific IR&D efforts or directed toward identifying desirable new systems, equipment or components, or modifications and improvements to existing systems, equipment, or components.

(b) *Composition and allocation of costs.* The requirements of 48 CFR 9904.420, Accounting for independent research and development costs and bid and proposal costs, are incorporated in their entirety and shall apply as follows—

(1) *Fully-CAS-covered contracts.* Contracts that are fully-CAS-covered shall be subject to all requirements of 48 CFR 9904.420.

(2) *Modified CAS-covered and non-CAS-covered contracts.* Contracts that are not CAS-covered or that contain terms or conditions requiring modified CAS coverage shall be subject to all requirements of 48 CFR 9904.420 *except* 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2), which are not then applicable. However, non-CAS-covered or modified CAS-covered contracts awarded at a time the contractor has CAS-covered contracts requiring compliance with 48 CFR 9904.420, shall be subject to all the requirements of 48 CFR 9904.420. When the requirements of 48 CFR 9904.420–50(e)(2) and 48 CFR 9904.420–50(f)(2) are not applicable, the following apply:

(i) IR&D and B&P costs shall be allocated to final cost objectives on the same basis of allocation used for the G&A expense grouping of the profit center (see 31.001) in which the costs are incurred. However, when IR&D and B&P costs clearly benefit other profit centers or benefit the entire company, those costs shall be allocated through the G&A of the other profit centers or through the corporate G&A, as appropriate.

(ii) If allocations of IR&D or B&P through the G&A base do not provide equitable cost allocation, the contracting officer may approve use of a different base.

(c) *Allowability.* (1) This subparagraph (c)(1) implements section 824 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510). Except as provided in paragraphs (c)(2), (d), and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable only in accordance with the following:

(i) *Companies required to negotiate advance agreements.* (A) Any company that received payments for IR&D and B&P costs in a fiscal year, either as a prime contractor or subcontractor, exceeding $7,000,000 from Government agencies, is required to negotiate with the Government an advance agreement which establishes a ceiling for allowability of IR&D and B&P costs for the following fiscal year. This agreement is binding on all Government agencies, unless prohibited by statute. The requirements of section 203 of Public Law 91–441 necessitate that the Department of Defense (DOD) be the lead negotiating agency when the contractor has received more than $7,000,000 in payments for IR&D and B&P from DOD. Computation of IR&D and B&P costs to determine whether the threshold criterion was reached shall include only recoverable IR&D and B&P costs allocated during the company's previous fiscal year to prime contracts and subcontracts for which the submission and certification of cost or pricing data were required. (See also paragraph (b) of this subsection and 15.804.) The computation shall include full burdening pursuant to 48 CFR 9904.420.

(B) When a company meets the criterion in (c)(1)(i)(A) of this subsection, required advance agreements may be negotiated at the corporate level and/or with those profit centers that contract directly with the Government and that in the preceding year allocated recoverable IR&D and B&P costs exceeding $700,000, including burdening, to contracts and subcontracts for which the submission and certification of cost or pricing data were required (see also paragraph (b) of this subsection and 15.804). When ceilings are negotiated for separate profit centers of the company, the allowability of IR&D and B&P costs for any center that in its previous fiscal year did not reach the $700,000 threshold may be determined in accordance with paragraph (c)(1)(ii) of this subsection.

(C) Ceilings are the maximum dollar amounts of total IR&D and B&P costs that will be allowable for allocation over the appropriate base for that part of the company's operation covered by an advance agreement.

(D) No IR&D and B&P cost shall be allowable if a company fails to initiate negotiation of a required advance agreement before the end of the fiscal year for which the agreement is required.

(E) When negotiations are held with a company meeting the $7,000,000 criterion or with separate profit centers (when negotiations are held at that level under (c)(1)(i)(B) of this subsection), and if no advance agreement is reached, payment for IR&D and B&P costs shall be reduced below that which the company or profit center would have otherwise received. The amount of such reduced payment shall not exceed 75 percent of the amount which, in the opinion of the contracting officer, the company or profit center would be entitled to receive under an advance agreement. Written notification of the contracting officer's determination of a reduced amount shall be provided the contractor. In the event that an advance agreement is not reached before the end of the contractor's fiscal year for which the agreement is to apply, negotiations shall immediately be terminated, and the contracting officer shall furnish a determination of the reduced amount.

(F) Contractors may appeal decisions of the contracting officer to reduce payment. The appeal shall be filed with the contracting officer within 30 days of receipt of the contracting officer's determination. (See also subpart 42.10.)

(ii) *Companies not required to negotiate advance agreements.* Costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that

those costs are allocable and reasonable.

(2) This subparagraph (c)(2) implements section 802 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102–190) and is effective for IR&D and B&P costs incurred by a contractor during fiscal years of that contractor that begin on or after October 1, 1992. Except as provided in paragraph (d) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable. The following limitations apply to major contractors—

(i) For the first three contractor fiscal years beginning on or after October 1, 1992, the total maximum allowable amount of IR&D/B&P costs shall not exceed the sum of:

(A) The total amount of allowable IR&D/B&P costs in the preceding fiscal year (*i.e.*, the lower of the previous year's ceiling or actual costs incurred); plus

(B) Five percent of the amount in (c)(2)(i)(A) of this subsection; plus

(C) If the total amount of IR&D/B&P costs for a fiscal year is greater than the total amount of IR&D/B&P costs for the preceding fiscal year, the amount that is determined by multiplying the amount in (c)(2)(i)(A) of this subsection by the lesser of—

(*1*) The percentage by which the total amount of IR&D/B&P costs for a fiscal year exceeds the total amount of such costs for the preceding fiscal year; or

(*2*) The percentage rate of inflation from the end of the preceding fiscal year to the end of the fiscal year for which the amount of the limitation is being computed. The rate of inflation shall be the price escalation index for the Research, Development, Test & Evaluation (RDT&E) account, Total Obligation Authority (TOA) which is published annually (normally in January) by the Department of Defense Comptroller and used in preparation of the annual submission of the Defense budget. This rate will be published in the **Federal Register** on an annual basis.

(ii) Major contractors shall submit, in accordance with agency guidance, financial and technical information to support their IR&D/B&P costs.

(iii) A waiver may be granted, in accordance with agency procedures, to increase the amount prescribed in (c)(2)(i) of this subsection for the following special circumstances:

(A) To ensure that the contractor's allowable IR&D/B&P costs are at least the same amount that would have been allowed under this subpart which was in effect prior to enactment of Public Law 102–190; or

(B) When it is in the best interest of the Government.

(d) *Deferred IR&D and B&P costs.* (1) IR&D costs that were incurred in previous accounting periods are unallowable, except when a contractor has developed a specific product at its own risk in anticipation of recovering the development costs in the sale price of the product provided that—

(i) The total amount of IR&D costs applicable to the product can be identified;

(ii) The proration of such costs to sales of the product is reasonable;

(iii) The contractor had no Government business during the time that the costs were incurred or did not allocate IR&D costs to Government contracts except to prorate the cost of developing a specific product to the sales of that product; and

(iv) No costs of current IR&D programs are allocated to Government work except to prorate the costs of developing a specific product to the sales of that product.

(2) When deferred costs are recognized, the contract (except firm-fixed-price and fixed-price with economic price adjustment) will include a specific provision setting forth the amount of deferred IR&D costs that are allocable to the contract. The negotiation memorandum will state the circumstances pertaining to the case and the reason for accepting the deferred costs.

(e) *Cooperative arrangements.* IR&D effort may be performed by contractors working jointly with one or more non-Federal entities pursuant to a cooperative arrangement (for example, joint ventures, limited partnerships, teaming arrangements, and collaboration and consortium arrangements). IR&D effort may also be performed by contractors pursuant to cooperative research and development agreements, or similar arrangements, entered into under (1) section 12 of the Stevenson-Wydler Technology Transfer Act of 1980 (15 U.S.C. 3710(a)); (2) sections 203(c) (5) and (6)) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c) (5) and (6)), when there is no transfer of Federal appropriated funds; (3) 10 U.S.C. 2371 for the Defense Advanced Research Projects Agency; or (4) other equivalent authority. IR&D costs incurred by a contractor pursuant to these types of cooperative arrangements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

PART 42—CONTRACT ADMINISTRATION

3. Section 42.1002 is revised to read as follows:

§ 42.1002 Applicability.

The procedures in this subpart shall be used for negotiating advance agreements containing dollar ceilings for allowability of independent research and development and bid and proposal (IR&D/B&P) costs when these agreements are required by 31.205–18(c)(1) until contractors' fiscal years beginning on or after October 1, 1992, after which there is no requirement for advance agreement negotiations and formal IR&D technical reviews and evaluations.

[FR Doc. 92–23060 Filed 9–23–92; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 90–13; FAR Case 91–79; Item VIII]

Federal Acquisition Regulation; Prompt Payment for Fresh or Frozen Fish

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending FAR 32.905 and 52.232–25 to implement section 842 of the Fiscal Year 1992 National Defense Authorization Act (Pub. L. 102–190) by requiring that payment for fresh or frozen fish be made within 7 days after delivery.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–13, FAR Case 91–79.

SUPPLEMENTARY INFORMATION:

A. Background

Section 842 of the Fiscal Year 1992 National Defense Authorization Act (Public Law 102–190) amended section 3903(a)(2) of title 31, United States Code, to provide that the due date for payment of contracts for fresh or frozen fish (as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)) be as close as possible to, but not later than, the seventh day after delivery. This change provides for the prompt payment of fresh and frozen fish on the same terms applicable to meat or meat food products.

FAR 32.905(d) is amended to incorporate this provision in a new subparagraph (d)(2) and to renumber the existing subparagraphs (d)(2) and (d)(3) as (d)(3) and (d)(4), respectively. In addition, in determination of any interest penalty for late payment of contracts for fish, the period taken to notify the contractor of defects in invoices submitted to the Government, as addressed in 32.905(e), may not exceed three days. Similar changes have been made in the clause at 52.232–25, Prompt Payment.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. The case provides for the prompt payment of fresh and frozen fish to be on the same terms applicable to meat or meat food products (*i.e.*, as close as possible to, but not later than, the seventh day after delivery). Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–13, FAR case 91–79), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: September 17, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 32 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Section 32.905 is amended by revising the introductory text of paragraph (d), redesignating paragraphs (d)(2) and (d)(3) as (d)(3) and (d)(4) and adding a new paragraph (d)(2), and revising the second sentence in the introductory text of paragraph (e) to read as follows:

32.905 Invoice payments.

* * * * *

(d) The payment terms on contracts for meat, meat food products, or fish; contracts for perishable agricultural commodities, and contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils are as follows:

* * * * *

(2) The due date on contractor invoices for fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Protection Act of 1986 (16 U.S.C. 4003(3)), will be as close as possible to, but not later than, the seventh day after product delivery.

* * * * *

(e) * * * If the invoice does not comply with these requirements, then the contractor must be notified of the defect within 7 days (3 days on contracts for meat, meat food products, or fish, and 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils) after receipt of the invoice at the designated billing office. * * *

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.232–25 is amended by removing in the clause heading the date "(APR 1989)" and inserting "(SEP 1992)" in its place; revising the introductory text of paragraph (a)(3); redesignating paragraphs (a)(3)(ii), (a)(3)(iii), and (a)(3)(iv) as (a)(3)(iii), (a)(3)(iv), (a)(3)(v) and adding a new paragraph (a)(3)(ii), and revising the fourth sentence in the introductory text of paragraph (a)(4) and paragraph (a)(6)(ii)(A) to read as follows:

52.232–25 Prompt payment

* * * * *

(a) * * *

(3) The due date on contracts for meat, meat food products, or fish; contracts for perishable agricultural commodities, contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils, and contracts not requiring the submission of an invoice shall be as follows:

* * * * *

(ii) The due date for fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), will be as close as possible to, but not later than, the seventh day after product delivery.

(iii) * * *

(iv) * * *

(v) * * *

(4) * * * If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils). * * *

* * * * *

(6) * * *

(ii) * * *

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

* * * * *

[FR Doc. 92–23061 Filed 9–23–92; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

RIN 9000-AE76

[FAC 90-13; FAR Case 91-16; Item IX]

Federal Acquisition Regulation; Disclosure Requirement Relating to Subcontractors

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to finalize an interim rule which added paragraph (b) to the clause at 52.209-6, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. The change required prime contractors to require each first-tier subcontractor to disclose to the prime contractor, prior to award of a subcontract in an amount in excess of the small purchase limitation in FAR 13.000, whether, as of the time of award of the subcontract, the subcontractor has been debarred, suspended, or proposed for debarment by the Federal Government. This interim rule is hereby adopted as a final rule with one minor change to paragraph (a) of FAR 52.209-6. The interim rule was issued in FAC 90-5 and published in the **Federal Register** on June 25, 1991 (56 FR 29124).

EFFECTIVE DATE: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501-4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-13, FAR case 91-16.

SUPPLEMENTARY INFORMATION:

A. Background

Section 813 of the Fiscal Year 1991 Defense Authorization Act (Pub. L. 101-510) required the Department of Defense to prescribe rules to require each prime contractor to require each subcontractor to whom it awards a contract to disclose to the contractor whether the subcontractor is, as of the date of subcontract award, debarred or suspended by the Federal Government from Government contracting or subcontracting. The change was issued as an interim rule because the statutory requirement was effective upon signing of the Defense Authorization Act on November 5, 1990. The change is being applied Governmentwide in an attempt to keep debarment and suspension rules and procedures uniform to the extent practicable.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely requires prime contractors to obtain from subcontractors a disclosure as to whether or not they are, or are proposed for, suspension or debarment.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: September 17, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final Rule With One Change

Accordingly, the interim rule amending 48 CFR part 52, which was published on June 25, 1991, at 56 FR 29124, is adopted as final with one change.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

52.209-6 [Amended]

2. Section 52.209-6 is amended in the clause title by removing the date "(JUN 1991)" and inserting in its place "(NOV 1992)"; and in the second sentence of paragraph (a) by removing the words "has been" and inserting in their place "is".

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[FR Doc. 92-23062 Filed 9-23-92; 8:45 am]

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Thursday
September 24, 1992

Part V

Department of the Treasury

Fiscal Service

31 CFR Part 205
Rules and Procedures for Fund Transfers; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN Number—1510-AA19

Rules and Procedures for Funds Transfers

AGENCY: Treasury, Fiscal, Financial Management Service.

ACTION: Final rule.

SUMMARY: The Financial Management Service issues this final rule for a regulation to implement the Cash Management Improvement Act of 1990 (CMIA). CMIA and this regulation impose requirements for the timely transfer of funds between a Federal agency and a State, and for the exchange of interest where transfers are not made in a timely fashion. The rulemaking is designed to encourage the development of efficient cash management systems and to ensure efficiency, effectiveness, and equity in the transfer of funds between the Federal Government and the States and Territories.

EFFECTIVE DATE: October 24, 1992.

ADDRESSES: Financial Management Service, CMIA Program Manager, Room 521C, 401 14th Street SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT:

John Galligan, (Program Manager), (202) 874–6935
Gary Grippo, (Program Specialist), (202) 874–6955
Christopher Kubeluis, (Program Specialist), (202) 874–6873
Steven D. Laughton, (Principal Attorney), (202) 874–6680
Randall S. Lewis, (Principal Attorney), (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

This regulation is authorized by the Cash Management Improvement Act of 1990, Public Law 101–453, October 24, 1990, (CMIA), the substantive provisions of which are codified at 31 U.S.C. 3335 and 6503; and by 5 U.S.C. 301 and 31 U.S.C. 321. CMIA centralizes authority for management of funds disbursement with the Secretary of the Treasury (Secretary). The Secretary has delegated to the Financial Management Service (FMS), an agency within the Department of the Treasury, the Secretary's responsibilities under CMIA unless otherwise specified. The purpose of CMIA and this regulation is to ensure greater efficiency, effectiveness, and equity in the exchange of funds between the Federal Government and the States. CMIA requires the Secretary to regulate and enforce timely disbursement by Federal agencies, to negotiate and monitor agreements with the States to achieve the efficient transfer of funds, and to prescribe regulations governing the transfer of funds for program purposes.

Prior to passage of CMIA, the primary law that addressed the timing of Federal funds transfers to States was the Intergovernmental Cooperation Act, 31 U.S.C. 6503. This law allowed a State to retain for its own purposes any interest earned on Federal funds transferred to a State "pending its disbursement for program purposes."

Since passage of that law in 1968, Federal agencies had expressed concerns that States were drawing down Federal funds well in advance of the time those funds were needed by States to redeem checks. Premature drawdowns cause the Federal Government to lose interest earnings.

Conversely, States had expressed concerns about having to pay out their own funds in advance of receiving funds from the Federal Government. This practice causes States to lose interest earnings on their own funds until they are reimbursed by the Federal Government. Congress enacted CMIA to resolve these issues.

Following passage of CMIA, the FMS met individually with each State and the largest Federal agencies, and disseminated a pre-clearance draft regulation on July 22, 1991. Over half of the States responded with comments, as did the National Association of State Auditors, Comptrollers, and Treasurers, Federal agencies, and the Federal Reserve. Following changes made in response to the comments on the July 22, 1991, draft, and further discussion with States, Federal agencies, and other interested parties, the FMS issued a Notice of Proposed Rulemaking (NPRM) in the March 23, 1992, **Federal Register** (57 FR 10101–10118).

Comments on the Proposed Rule

The FMS received comments on the March 23, 1992, Proposed Rule from more than 100 organizations, including State budget and treasurers' offices, State agencies, Federal agencies, interest groups, universities, and non-profit organizations. Individual comments numbered over 1,000. Following is a discussion of the significant and most heavily commented upon issues:

Effective date extension: Twenty-nine commenters requested a delay of the effective date on which interest would start to accrue. CMIA speaks plainly when interest starts accruing, October 24, 1992. The FMS has no authority to delay administratively the onset date of interest accrual. Accordingly, interest will begin accruing on October 24, 1992.

Onset Period: NPRM § 205.6(h) Interim Agreements [Final Rule § 205.5 Onset Period]. Thirty-three comments were submitted addressing the interim agreement. Several commenters indicated that the full scope of the interim agreement is unclear, and that the ramifications of entering into an interim agreement are unclear. About half of the commenters stated that the interim agreement does not appear to be substantively different from a standard agreement and/or that entering into an interim and standard agreement in less than a year would create an unnecessary duplication of effort and burden for the States, as well as the Federal Government. Five commenters stated that entering into an interim agreement is not feasible. More specifically, the commenters said that if a State does not have the ability to implement the necessary procedures to enter into a standard agreement (such as developing clearance patterns, calculating interest and training employees) by October 24, 1992, then it would not have the ability to enter into an interim agreement by such date.

The FMS agrees with these comments. The Final Rule contains a new section, § 205.5 Onset Period, that applies to any State that chooses not to enter into a Treasury-State Agreement covering the Onset Period, which is from October 24, 1992, until the later of June 30, 1993, or the end of a State's 1993 fiscal year. Under the provisions of this section, States are not required to enter into a Treasury-State Agreement by October 24, 1992. For all States that do not enter into a Treasury-State Agreement, the following applies: Interest liabilities will be imputed to the Onset Period based on fiscal year 1994 interest calculations, as well as any available data from the Onset Period; a State will have until June 30, 1993, or the end of its 1993 fiscal year, whichever is later, to prepare for and finalize a Treasury-State Agreement; State and Federal agencies will be allowed to continue with their existing accounting and cash management procedures during the Onset Period; and, the first Annual Report and corresponding exchange of interest will consist of interest liabilities incurred during each State's 1994 fiscal year and interest liabilities imputed to the Onset Period.

Definition of State: NPRM § 205.2 Definitions [Final Rule § 205.3 Definitions]. Sixty-seven comments

were received addressing the basis upon which the word "State" was defined. The NPRM proposed using the lists of Dependent State Agencies published by the United States Bureau of the Census as an initial baseline. Ten commenters filed explicit disfavor with using the Census lists, while several other commenters stated that the FMS should be flexible in interpreting or excluding entities on the Census lists if the policy of using the lists is to be retained. The FMS has removed the policy of using the lists in the Final Rule because of the opposition expressed in the comments and because the lists are outdated or incomplete in many instances.

Suggestions to allow each State to define its agencies and instrumentalities in the Treasury-State Agreements were received from 12 commenters. An additional 10 commenters recommended making the definition of State dependent on whether the State has direct fiscal control over a particular entity, with different criteria for what constitutes fiscal control being offered. These comments were not incorporated because the concept of equity contained in CMIA requires that all States be treated equally. If each State were allowed to define its agencies and instrumentalities, or base inclusion on the degree of direct fiscal control, there would be a significant variance as to what type of programs would be covered on a State-by-State basis.

The NPRM noted that other options for defining State were under consideration, such as basing the definition on Generally Accepted Accounting Principles (GAAP) or deriving it from Office of Management and Budget (OMB) Circulars on grant administration (i.e., A–102 and A–110). Twenty-three commenters did support the option of excluding from the provisions of CMIA all State entities subject to OMB Circular A–110, or suggested that universities specifically should be exempted. Because State chartered institutions of higher education are clearly instrumentalities of States, it would be inconsistent with CMIA to exempt them or to rely on a definition which would exclude them. Accordingly, suggestions to exempt universities or to exempt entities covered by OMB Circular A–110 were not incorporated.

Six commenters suggested using the GAAP definition of the State reporting entity, or the State's most recent Consolidated Annual Financial Report (which is generally based on GAAP). The Final Rule replaces reliance on the Census lists with GAAP principles. This change has been incorporated because GAAP represents a standard which is recognized by States and the Federal Government. It is noted that as many commenters as were in favor of GAAP were opposed to it because of its extensive scope and because it would result in inclusion of State chartered universities and colleges. Although it would be inconsistent with CMIA to exempt institutions of higher education, or to otherwise substantially limit the inclusive definition of State in CMIA, the Final Rule does provide for a phase-in of institutions of higher education. Unless otherwise specified in a Treasury-State Agreement, the provisions of Subpart A do not apply to institutions of higher education until the start of a State's 1995 fiscal year. This deferral was included to provide States and institutions of higher education an extended opportunity to resolve the difficulties created by the autonomous nature of many State chartered colleges and universities.

Scope—Programs for which the payment of interest is inconsistent with program purposes: NPRM § 205.10(e) Exception [Final Rule § 205.12(d) Exception]. CMIA requires States to pay interest on Federal funds received in advance of need "when not inconsistent with program purposes." This exception recognizes that under certain programs interest on Federal funds is to be applied to program purposes or is legally required to be retained by the State. This exception applies solely to the payment of interest from States to the Federal Government. Therefore, a State may be excepted from paying interest to the Federal Government under a certain program, but the program is still subject to all other requirements of CMIA and this Final Rule, including the requirements for coverage in the Treasury-State Agreements, application of a funding technique, and the accrual and payment of interest from the Federal Government to a State. Although States may be excepted from paying interest to the Federal Government under these types of programs, the general principle that a State and a Federal agency must minimize the time between the transfer of funds from the Treasury and the time that the State needs the funds for program purposes is still applicable. If a State is found to be drawing funds in advance of need, then the State will be considered in non-compliance with this regulation and/or a Treasury-State Agreement, and the provisions of § 205.17(k) may be initiated.

Scope—Catalog of Federal Domestic Assistance: NPRM § 205.3 *Scope* [Final Rule § 205.2 *Scope of Part*]. Several commenters requested clarification of whether certain types of programs would be covered by the regulation, such as research and development programs. To clarify any ambiguity regarding applicability to specific or types of programs, an explicit statement was added to the Final Rule at § 205.2, which specifies that Subparts A and B apply to Federal programs in the Catalog of Federal Domestic Assistance (CFDA), pursuant to chapter 61 of title 31, United States Code. Subpart B, § 205.19, specifies that Subpart B applies to Federal programs in the CFDA that are not subject to Subpart A. Chapter 61 of title 31 defines what is and is not considered Federal domestic assistance, and requires the Director of OMB to catalog information on all Federal domestic assistance programs (i.e., it establishes the Catalog of Federal Domestic Assistance). Generally, college and university research and development programs are not considered assistance and are not contained in the CFDA, and therefore are not covered under Subpart A or Subpart B of the Final Rule.

Responses from several States indicated that Federal agencies periodically issue grant awards which do not include a CFDA number. Respondents emphasized the problems created in such situations given the fact that this rule relies on program CFDA numbers for tracking withdrawals and payments, and for calculating interest accruals.

The FMS agrees that CFDA numbers are key to the provisions of this rule. The FMS will seek to ensure that CFDA numbers and other necessary program information are provided to the States. The FMS also will seek to ensure that States are not penalized as a consequence of a Federal agency's failure to provide this information.

Scope—programs below the threshold/non-State recipients (NPRM Subpart C): NPRM §§ 205.3 *Scope* and 205.31 *Purpose and Scope* [Final Rule Subpart B]. The NPRM provided that all programs that were below a State's dollar threshold for classification as a major Federal assistance program or were otherwise not covered in a Treasury-State Agreement would be subject to NPRM Subpart C. In the Final Rule, the provisions applying to State programs covered by NPRM Subpart C are contained at (new) 31 CFR Part 205 Subpart B.

NPRM Subpart C also applied to programs administered by non-State recipients and non-State subrecipients. In the Final Rule, Subpart C has been

reserved for such programs pending further consideration.

In addition to being reformatted in a new section, the provisions applying to States in Subpart B of the Final Rule have been substantively altered in only one aspect—accountability for interest. Under the NPRM, § 205.33(e), interest earned on Federal funds transferred to States covered by Subpart C would be treated in accordance with the administrative requirements specified under the appropriate OMB Circulars. In general this meant that actual interest earned less an allowance for administrative expenses would have to be remitted to the Federal Government.

The Final Rule revises this policy as it applies to States. A State is not to be held accountable for interest earned on programs that are under the threshold, or that are not otherwise covered by a Treasury-State Agreement. However, if it is found that the State is in repeated or egregious non-compliance with the requirement to minimize the time elapsing between the transfer of funds from the Treasury and disbursement of such funds for program purposes, then the program may become subject to the provisions of Subpart A and be brought into the Treasury-State Agreement. Likewise, if the Federal Government is egregious or repeatedly late in transferring funds to States, then the program may become subject to the provisions of Subpart A and be brought into the Treasury-State Agreement. This ensures that a State can earn interest on all programs where the Federal Government is late in transferring funds to the State. NPRM § 205.3(c), which allowed for the coverage of additional programs under Subpart A upon the mutual agreement of a State and the FMS, is retained in the Final Rule at § 205.4(d).

Payment schedule technique: NPRM § 205.4. Several States suggested that NPRM § 205.4 should be modified to include an additional funding technique—payment schedules, in which specific times or intervals (i.e., bi-monthly, monthly, etc.) for the transfer of funds would be negotiated in the Treasury-State Agreements. Adherence to the schedule would preclude an interest liability for the State or the Federal Government. The comments suggested that such a technique would provide a less administratively burdensome means for funding block and formula grants which often cover many separate programs.

The FMS recognizes the potential problems arising from certain block and formula grants, but believes that including such a payment schedule technique in a list of funding techniques would be inappropriate. A payment schedule technique as described in the comments would be designed to lessen administrative burden, but also may undermine CMIA provisions directing all parties to minimize the time between the transfer of Federal funds to a State and the pay out of funds for program purposes. The FMS policy is that such arrangements may be appropriate under some circumstances. The payment schedule technique may be agreed to in the Treasury-State Agreement, if specific conditions warrant its application. Generally, the payment schedule technique will be acceptable under block grant programs which have fixed annual awards and no matching requirement.

Funding of indirect costs and administrative cost grants: NPRM § 205.4(f) Funding of indirect costs/administrative expenses [Final Rule § 205.10 Funding of indirect costs and administrative cost grants]. Twenty-eight comments were received addressing the indirect costs/administrative expenses provisions of the NPRM. A number of commenters expressed support for the funding conventions described for indirect costs and administrative expenses. Essentially all of the conventions contained within the NPRM have been retained in the Final Rule, although a new section (§ 205.10) is devoted solely to transfers of funds for such costs. Several commenters questioned what the provisions of this section applied to and what was meant by the term "indirect costs/administrative expenses." The section has been modified to make clear that it applies to all indirect costs and to administrative cost grants. "Administrative cost grant" is defined in the Final Rule at § 205.3.

The majority of comments submitted on NPRM § 205.4(f) requested clarification on the applicability of the several conventions listed. Essentially, a State may apply one of the approved funding techniques and exchange interest (if relevant under the funding technique), or apply one of several specified conventions to ease the administrative burden that would otherwise be associated with tracking and calculating interest for such costs. Specific needs relating to the funding conventions may be detailed in the individual Treasury-State Agreements.

3-Day rule under pre-issuance funding: NPRM § 205.5(b)(4) Pre-issuance funding [Final Rule § 205.6(c) Pre-issuance funding and § 205.7(c)(4) Pre-issuance funding]. Eighteen commenters recommended revising the provision limiting a State's ability to request funds under the pre-issuance funding technique to 3 business days prior to the date on which it issues checks, warrants, or payments by other means. It was suggested that the 3 day request period should be incorporated as a goal rather than a requirement, and that States should not have to justify to, or obtain approval from, the FMS in order to request funds earlier than 3 business days prior to issuing checks, warrants, or payments by other means. The FMS believes that establishing 3 business days as the standard for requesting funds under the pre-issuance funding technique is a sound cash management policy for the following reasons: (1) CMIA requires that the time elapsing between the transfer of funds from the Treasury and the issuance or redemption of checks, warrants, or payments by other means must be minimized; (2) The practice ensures that funds will be provided to States at least 2 business days prior to the date needed for satisfying constitutional or statutory requirements that funds be in State accounts prior to the issuance of a check, warrant, or payment by other means. (If it is not practicable for a State to meet its legal requirements by requesting Federal funds 3 business days prior to issuance, and receiving them at least 2 business days prior to issuance, then the State may provide justification as to why it requires funds on hand for a longer period, which the FMS will consider when negotiating the Treasury-State Agreement); and (3) Providing justification for holding Federal cash balances in excess of 3 days is an existing standard used by Federal agencies in interpreting the Treasury Department's requirements under current 31 CFR Part 205 to advance only enough cash to meet actual, immediate cash needs.

Default provisions for a State without an Agreement: NPRM § 205.6(i) Default procedures for States without Agreements [Final Rule § 205.9(f) Default procedures for a State without a Treasury-State Agreement after the Onset Period]. A number of comments were received which indicated that the funding procedures required under the default provisions would not be feasible. The Final Rule provides that, consistent with Federal and State law, the FMS will prescribe the funds transfer procedures for a State that does not enter into a Treasury-State Agreement. In order to provide more flexibility in considering factors unique to a particular State, the FMS will only prescribe techniques which are administratively feasible for a State.

Federal agency responsibilities—reverse flow programs: NPRM § 205.7(j)

[Final Rule § 205.15(e) Reverse flow programs]. Several States commented that § 205.7(j) of the NPRM, which required Federal agencies to submit interest calculations to States no later than December 31, was inconsistent with NPRM § 205.13, which required States to submit Annual Reports including Federal agency information on that same date. The States commented that the inconsistency would necessarily cause the States to miss the December 31 deadline.

The FMS recognizes the inconsistency in the NPRM provisions, and the Final Rule requires Federal agencies to provide States with interest calculations at least one month prior to the deadline for States to submit their Annual Reports.

State responsibilities—documenting reimbursable costs: NPRM § 205.8(l) [Final Rule § 205.14(b)(3) Documentation]. Several States commented about NPRM § 205.8(l), which required States to maintain "separate, formal accounting records for direct costs." Commenters requested that the language be changed to define more clearly the FMS's position. All comments reflected a concern that a literal interpretation of the NPRM language would result in an onerous and unnecessary burden on the States.

The FMS has changed the language to clarify that a State is not required to develop new systems for tracking direct costs. States are required to maintain documentation to substantiate claims for direct costs. This means that States must retain records which support direct cost claims in a manner which facilitates the audit and review of such figures pursuant to § 205.17.

State responsibilities—record retention: NPRM § 205.8(n) [Final Rule § 205.17(d) Record retention]. Several comments suggested that the 5-year record retention requirement of NPRM § 205.8(n) was too long and would impose an unnecessary cost and burden upon the States. It was suggested that the retention period should be 3 years to be consistent with existing Federal standards. This recommendation has been incorporated into the Final Rule.

State responsibilities—transfers to non-State subrecipients: NPRM § 205.8(r) [Final Rule Subpart C (reserved)]. Several States commented on this section, interpreting it as requiring States to enter into Treasury-State type agreements with each non-State subrecipient to which they transfer Federal funds. The FMS does not expect States to enter into separate agreements with each subrecipient, but does expect States and subrecipients to work together to develop procedures which will ensure the efficient and effective transfer of Federal funds. The Final Rule does not contain specific provisions addressing non-State subrecipients at this time. In this Final Rule, Subpart C has been reserved for regulations governing the transfer of Federal funds to non-State recipients and non-State subrecipients (see discussion under "Scope—programs below the threshold/non-State recipients"). Nevertheless, as envisioned by the State/Federal Cash Management Reform Task Force (Task Force), States are expected to administer subgrants along the same principles as grants from the Federal Government to the States and to time the transfer of funds to subrecipients, to the maximum extent practicable, with the subrecipients' actual, immediate funds requirements in carrying out the program or project.

Federal interest liabilities—general provision: NPRM § 205.9(a) General [Final Rule § 205.11(a) General]. Thirteen comments related to NPRM § 205.09(a) were received. The primary concern was the NPRM language providing that "a State shall be entitled to interest from the Federal Government if it pays out its own funds for program purposes with valid authorization, appropriation, and obligational authority * * *." States are concerned that such language will limit the amount of interest States can earn.

The language of the Final Rule specifies that the Federal Government will incur an interest liability to a State if the State pays out its own funds for program purposes with valid obligational authority under Federal law, Federal regulation, or Federal-State agreement. This language is based directly on language contained in the House of Representatives Committee Report on CMIA (House Report), which specifies that a State could claim interest costs only if it advanced its funds to pay an obligation which is recognized as valid under Federal law, Federal regulation, or Federal-State agreement. Thus, a State is generally entitled to interest if it advances its own funds in accordance with agreed upon funding techniques for an expenditure which the Federal Government is obligated to pay, or if the obligation of Federal funds comes subsequent to the State's expenditure but permits payment for the expenditure.

NPRM paragraph (e) Exhausted appropriations under appropriated entitlements has been deleted in this Final Rule because of concerns expressed by Federal agencies that it may be misconstrued as changing capped entitlements into open-ended entitlements. This ramification was not intended, and this paragraph has been deleted in deference to the concerns expressed.

Because the Federal Government will incur an interest liability even in cases where a State pays out its own funds prior to the obligation of Federal funds, Federal agencies are expected to work to ensure the availability of funds and to rectify the systemic breakdowns in the funding process. Federal agencies must submit apportionment requests to OMB on a timely basis and must review grant applications and project plans promptly. Federal agencies are also responsible for executing grant awards to States on a timely basis to preclude Federal interest liabilities.

The Final Rule also clarifies that if a State pays out its own funds for program purposes without obligational authority, the Federal Government will incur an interest liability if the lack of obligational authority is not the result of limitation, reduction, or termination of the program and where obligational authority is subsequently established to permit payment for the State's expenditures. States are expected to be cautious in advancing their funds in situations where appropriations for ongoing programs may be exhausted and should avoid such advances when it is the intent of Congress to limit, reduce, or terminate funding, in contrast to delays in providing appropriations.

Failure to request funds: NPRM § 205.9(a)(1) Failure to request funds [Final Rule § 205.17(1) Failure to request funds]. Seventeen comments were received addressing NPRM § 205.9(a)(1). This subsection specified that if a State fails to request funds in accordance with the procedures established for its funding techniques, it would not be entitled to interest for any period prior to the date that a Federal agency received the request for funds. The majority of comments suggested that a State should be entitled to interest from the day it advances its own funds unless it egregiously or repeatedly fails to request funds in accordance with agreed upon or default techniques. Although States and Federal agencies are expected to comply with procedures specified for each funding technique to the fullest extent practicable, a State will be entitled to interest except in cases of deliberate or repeated failure to request funds in accordance with agreed upon or default procedures. This policy acknowledges that States unintentionally may make minor errors in amounts requested or unknowingly fail to request funds in accordance with agreed upon or default funding techniques. A single instance of a

decision to circumvent agreed upon or default techniques for requesting funds may constitute deliberate failure if it involves a large dollar amount of Federal funds. This provision is located in § 205.17(a) of the Final Rule.

Reimbursable programs: [Final Rule § 205.6(e) *Reimbursable funding,* § 205.7(f) *Prohibition of reimbursable funding,* § 205.9(b)(2)(iii)]. Thirty-six comments were received addressing the provisions that apply to reimbursable funding programs. The majority of comments stated that there should be no distinction between mandated reimbursable programs and others, and that a State should be entitled to interest whenever it advances its own funds. Several commenters suggested that States should be allowed to select reimbursable funding, where conditions warrant, and be subject to the same interest provisions as under mandatory reimbursable programs. Under this Final Rule, reimbursable funding is not generally available for selection by a State, but may be allowed in specific circumstances.

A major provision of CMIA is that the head of each Federal executive agency and each State "shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means for program purposes." This provision applies whether the disbursement of funds from the Treasury occurs prior to or after the issuance or redemption of State payments. If States were, as a matter of administrative practice, to advance funds and subsequently request reimbursement while earning interest over the entire period, the major incentive to comply with the aforementioned provision of CMIA is removed. Thus, reimbursable funding is not generally available for selection by a State.

Additionally, the Task Force did not envision reimbursable funding as a valid technique, except where required by statute. This is documented in the general principles developed by the Task Force and contained in the 1983 Memorandum of Understanding (MOU) entered into by the Federal and State members of the Task Force. Principle 6 from the MOU presents three funding techniques "that shall be available for selection by a State," none of which is reimbursable funding. This Final Rule incorporates the three techniques developed by the Task Force, and allows a fourth, average clearance, which is merely a modification of one of the three funding techniques. Also, MOU principle 14 states: "Where Federal statutes require reimbursement, the Federal Government will revise regulations or administrative procedures to ensure that cash is transferred as closely as possible to the time that States make disbursements." So not only did the Task Force intend to limit reimbursable funding solely to instances where required by statute, but also it anticipated that the Federal Government should revise regulations and administrative procedures to protect States from having Federal agencies require reimbursable funding except where expressly required by Federal law.

Nevertheless, the FMS recognizes that some States have long used reimbursable funding as a matter of administrative practice for reasons of internal control and administrative ease. Accordingly, the Final Rule allows States to continue using reimbursable funding on an interim basis with those programs for which it was used prior to October 24, 1992, excepting the 19 programs listed in § 204.4(a).

In short, this regulation: (1) Allows a State to continue using reimbursable funding for an interim period with those programs for which it was used prior to October 24, 1992, excepting the programs listed in § 205.4(a); (2) prohibits Federal agencies from requiring a State to use reimbursable funding; (3) provides that the Federal Government will incur an interest liability to a State if a Federal agency requires a State to use reimbursable funding contrary to these regulations, or if a State continues to use reimbursable funding for a program for which reimbursable funding was used prior to October 24, 1992; and (4) specifies that reimbursable funding will be prohibited after June 30, 1994. During this period, the FMS will evaluate the use of reimbursable funding by States. If it is determined that reimbursable funding is an appropriate and equitable technique, the FMS will authorize its continued use through rulemaking.

Several commenters have requested that a list of all programs for which Federal law requires reimbursable funding to States be included in the Final Rule. At this time no programs have been identified where Federal law requires a State to pay out its own funds before it may request and receive Federal funds.

Federal Highway Trust Fund programs: NPRM § 205.9(a)(4) *Federal-aid highway programs* [Final Rule § 205.11(d) *Federal Highway Trust Fund*]. Forty-nine commenters addressed the supplemental language and regulation policy regarding Federal-aid highway programs. The Department of Transportation suggested that the phrase "Federal-aid highway programs" be replaced with "Federal Highway Trust Fund programs." This suggestion was offered, and incorporated, because the Intermodal Transportation Efficiency Act of 1991 allows the States more flexibility in using such funds, i.e., they may be used for highway, transit or other transportation related purposes.

The large majority of the commenters perceived the policy of limiting a State's ability to accrue interest until the date that the Federal Highway Administration (FHWA) receives a request for funds to be inequitable to the States and/or contrary to the intent or language of CMIA and its legislative history. The Final Rule amends this policy and specifies, at § 205.11(d), that a State will be entitled to interest from the time it advances its own funds provided that it requests funds for current project costs at least weekly. This amended policy allows the 35 States that are currently billing on a weekly or more frequent cycle to earn interest if they expend funds prior to submitting a request. Commensurate with the purpose of CMIA, the policy also promotes efficiency and effectiveness in the transfer of Federal funds by providing an incentive for all States to bill the FHWA at least weekly. Fifteen commenters suggested that interest be allowed to accrue prior to the submittal of a bill, at least for a limited time period (such as 7 days). Several commenters noted language from the Senate Report to the 1988 version of CMIA (which was not enacted into law) as support for a State's entitlement to earn interest prior to submitting a bill. The weekly billing policy of CMIA is consistent with the language of the Senate Report which specifies that a State will be entitled to calculate interest due to it from the Federal Government, including interest for that period after State funds have been used but prior to submission of a formal request, provided that amounts requested are related to projects that have been approved, authorized, and placed under agreement, and that "the State is submitting reimbursement billings on a timely basis."

Although States are allowed to earn interest if they advance funds prior to submitting a request under Federal Highway Trust Fund programs, the FMS will strongly encourage selection of one of the funding techniques indicated in § 205.6 in order to minimize the time between the transfer of funds from the Treasury and payment for program purposes. As noted in the NPRM,

because States are authorized to bill on an accrual basis, they are not required to advance funds under FHWA programs, and more importantly can apply any of the approved funding techniques. Using one of the funding techniques as described in Final Rule § 205.6 maintains the intent of Task Force principle 6, which specifies that 3 techniques will be made available for selection by a State: Checks paid (zero balance accounting), estimated checks cleared (estimated clearance and its variation average clearance), and checks issued (pre-issuance funding).

Eleven commenters suggested that interest should accrue from the time a State advances its own funds prior to submitting a bill, but that such amounts of interest be available for offset only against either: (1) Interest foregone on accrued unbilled costs, or (2) interest owed to the Federal Government under Federal-aid highway programs. The Final Rule does not incorporate such suggestions because timely billing and reimbursement are paramount to achieving efficiency, effectiveness, and equity in Federal funds transfers. CMIA requires the head of an executive agency and the State to "minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means for program purposes," which applies whether such issuance or redemption occurs prior to, or subsequent to, the transfer of funds from the Treasury. The weekly billing cycle provision minimizes such time while taking into account the unique nature of the Federal Highway Trust Fund programs and allowing interest to accrue prior to the submission of a bill.

The suggestion to allow States to offset interest owed the Federal Government with interest foregone on accrued unbilled cost was not accepted because it would entitle a State to earn interest on accrued unbilled costs. Accrued unbilled costs are costs in excess or otherwise outside of approved cost estimates and/or project agreements between a State and the FHWA. The House Report clearly indicates that States are not entitled to earn interest on such accrued unbilled costs, as they are not obligations of the Federal Government:

[A] State could claim interest costs only if it advanced its funds to pay an obligation which is recognized as valid under Federal law, Federal regulation or Federal/State agreement. * * * or, with respect to programs such as those funded by the Federal Highway Administration, a State could collect interest if it advanced funds to meet programs obligations, which were incurred with valid obligational or contractual authority.

To clarify this point a specific provision addressing the issue was inserted into the Final Rule at § 205.11(d)(2).

Eleven commenters suggested that the Federal Highway Trust Fund be exempted from the interest provisions of CMIA. It is clearly the intent of CMIA to cover the Federal Highway Trust Fund, as evidenced by specific references in the legislative history.

Refunds: NPRM § 205.10(b) *Refunds* [Final Rule § 205.12(b) *Refunds*]. Twenty-two comments were received addressing the treatment of refunds. Ten of these comments requested that some threshold of materiality, as existed in the July 22, 1991, pre-clearance draft, be reinstated. Suggested dollar amounts for a threshold ranged from $1,000 to $100,000. In order to lessen the administrative burden that would otherwise ensue if States were required to track and calculate interest on every refund, a threshold of materiality in the amount of $10,000 has been included in the Final Rule, below which neither States nor Federal agencies are required to track and calculate interest on an individual refund transaction. A State may choose a lower threshold or no threshold if it determines that doing so is less burdensome. The term "refund transaction" means when the State's bank account is credited with all repayments that have accumulated under a given program. If, under a given program, the total dollar amount of the refund transaction is less than $10,000, then no interest liability accrues; if the amount credited to the State's bank account is greater than, or equal to, $10,000 then interest accrues from the date that the State's bank account is credited with the deposit until the date that the funds are offset against other payments or are credited to an account of the Federal Government. If a State is found to be holding back or grouping the deposit of repayments so as to avoid reaching the threshold of $10,000, then the State will be considered to be in non-compliance, and the remedial actions listed under § 205.17(k) will be initiated.

Disallowances: NPRM § 205.10(c) *Disallowances*. Fifty-nine comments addressing disallowances were received. The FMS has reassessed the provision covering disallowances (referring to incurred costs which are questioned by an audit organization and agreed to by the appropriate Federal agency as costs which should not be charged to the Federal Government) and has determined that disallowances are not covered by CMIA, but are covered by existing program, audit, and debt collection requirements. Accordingly, the provisions relating to disallowances have been removed from the Final Rule. Disallowances will continue to be handled by Federal agencies as a compliance issue relating to program administration.

Direct cost of implementation: NPRM § 205.12(a) Definition [Final Rule § 205.14 Direct costs of implementation]. Thirteen suggestions to revise the provisions defining what would be considered a direct cost of implementing CMIA were received. As stated in the NPRM, the regulation followed the guidance contained in the House Report which notes that the statute is a compromise between the views of Federal and State officials. A number of the comments suggested that types of costs that were explicitly refuted in the compromise should be eligible in the Final Rule. For example, it was recommended that such costs as developing and negotiating the Treasury-State Agreements and training employees should be eligible for reimbursement by the FMS. The House Report states that costs attributable to CMIA fall into two broad categories: "The first, are costs which should be reimbursed under current OMB guidelines for obtaining reimbursement for indirect program costs (OMB Circular A–87). The second are costs associated with computing the interest payments which should be considered by the Secretary in determining amounts of interest due to/from the State." Moreover, the Report specifically states that "most of the costs associated with H.R. 4279 are already eligible for reimbursement under the OMB Circular A–87; for example, developing and implementing the cash management policies and procedures, negotiating the agreement, and training State employees on how to implement the new procedures." Congress was clear in its intent, as documented in the House Report, that only those costs directly related to the interest calculations required by CMIA would be eligible for reimbursement through an offset of interest. The Final Rule, therefore, reflects that such costs consist of those associated with developing and maintaining clearance patterns and for performing the actual calculation of interest. Costs incurred in compiling and analyzing data related to interest calculation and in preparing and transmitting the Annual Report to the

FMS would be eligible for reimbursement.

Addressing NPRM § 205.12(a)(1), several commenters stated that it will be nearly impossible to budget accurately or to forecast implementation costs for the first several years of implementation. The Final Rule acknowledges this and removes such requirement. In addition several commenters suggested that the costs should not have to be clearly described in the Treasury-State Agreement. However, this comment is directly contradicted by the legislative intent as documented in the House Report which states that the Treasury-State Agreement would clearly describe what costs would be considered.

Several commenters disagreed with § 205.12(a)(2) of the NPRM, which states that direct costs do not include expenses for upgrading or modernizing of accounting systems. This provision is intended to ensure that a State does not claim an accounting system overhaul under the cost reimbursement provisions of CMIA. This provision does not preclude a State from receiving cost reimbursement for systems programming or computer time. In accordance with the legislative intent as documented in the House Report, such costs should be relatively minor and clearly described in the Treasury-State Agreement.

NPRM 205.12(b) Reimbursement of direct costs [Final Rule § 205.14(b)(4) Eligibility of costs]. The NPRM provided that direct costs in excess of $30,000 in any year will not be eligible for reimbursement unless a State can justify that without such costs it would be unable to develop clearance patterns or calculate interest. Approximately 35 comments were received addressing the $30,000 figure with the majority calling for its elimination, indicating that it is neither reasonable nor in accord with CMIA and its legislative history. The FMS is raising this figure to $50,000 in light of the comments received. This $50,000 figure does not cap the amount of reasonable direct costs for which a State may be compensated. CMIA requires the FMS to consider all direct costs incurred by a State for interest calculations, and the Final Rule is consistent with CMIA. The $50,000 figure merely constitutes the point at which the burden of justifying and establishing the reasonableness of those eligible direct costs shifts. For those eligible direct costs under $50,000, the FMS will review those costs under the presumption that such costs are reasonable. For those eligible direct costs claims of $50,000 or more, a State will have the burden of establishing and justifying to the FMS the reasonableness of such costs.

Direct cost offset: NPRM 205.12(b)(7) [Final Rule § 205.14(b)(8) Payment by the FMS]. Several commenters requested clarification of how, and why, the FMS will score each State's direct costs against the total interest owed by all the States. The reason for scoring and offsetting interest and direct costs at the aggregate level is to ensure that each State will receive its total reimbursable direct costs. There is a permanent indefinite appropriation embodied within CMIA for the payment of interest; however, there is no appropriation for the direct payment of costs incurred by the State. The legislative history makes it clear that States are to receive reimbursement for the allowable direct costs of implementation through an offset against interest owed to the Federal Government. However, if this were done on a State-by-State basis, any State whose reimbursable costs are greater than its interest liability to the Federal Government would not be able to receive full reimbursement. In brief, to alleviate the problem, each State's total interest liability will be aggregated to create a pool against which all direct cost claims will be offset. By pooling each State's interest liability and offsetting costs at an aggregate level, the FMS enables a State that otherwise would have a total interest liability insufficient to cover all of its costs to recoup such costs from the pool of total liabilities. It is anticipated that the total of all States' interest liabilities will be greater than the total of all States' reimbursable direct costs.

Annual Reports: NPRM § 205.13 Annual Reports [Final Rule § 205.15 *Annual Reports*]. Twenty comments addressing the Annual Reports section were received. Six commenters felt that the numerous breakdowns required in the NPRM were unnecessary and/or burdensome. The reporting requirements were carried over from the July 22, 1991, pre-clearance draft which provided for direct costs being offset on a State-by-State basis. If direct costs were offset on an individual State basis, all of the reporting breakdowns would be necessary to determine whether a State would receive full reimbursement for its direct costs. Since the Final Rule provides for direct cost offset on an aggregate level, ensuring that each State will receive full reimbursement, as long as the total of all States' interest liabilities exceed the total of all States reimbursable direct costs, there is no need for many of the breakdowns. The Final Rule eliminates any distinction between trust fund programs and non-trust fund programs (except with regard to the State's account in the Unemployment Trust Fund (UTF)) in the Annual Report, and substantially reduces the minimum reporting requirements.

Several commenters requested that a list of all trust funds be published in the Final Rule. Because the Final Rule removes the requirement to identify separately interest for trust fund programs (except for the State's account in the UTF), a list of trust funds is not relevant, and has not been included. The FMS will match the individual programs to the appropriate trust fund to remove this burden from the States.

Three commenters questioned the requirement that interest be reported on a program specific basis. It is necessary for interest to be calculated on a program specific basis in order to monitor and ensure the successful implementation of CMIA. If interest is not specified on a program basis it will be impossible for both the States and Federal agencies to determine, and work toward eliminating, the specific factors causing the accrual of interest. It will also make it impossible for the FMS to carry out its duties and collect a charge for noncompliance from a Federal agency that egregiously or repeatedly fails to comply with the requirements of this Final Rule.

Several commenters stated that the annual reporting and exchange of interest should be tied to the end of a State's fiscal year, rather than a fixed date. However, in order for interest liabilities to be aggregated among all States for offset against direct costs, all interest must be exchanged on the same day (see discussion under direct cost offset).

The Unemployment Trust Fund and programs: NPRM Subpart B [Final Rule § 205.13(i) *Funds withdrawn from a State account in the Unemployment Trust Fund (UTF)*]. In the NPRM, an entire subpart (Subpart B, The Unemployment Trust Fund) was devoted to the UTF. Numerous comments were received on the various provisions of this Subpart. Because the large majority of its content in the NPRM was either repetitive of the provisions of Subpart A, or applied to general UTF cash management issues rather than direct CMIA issues, the NPRM Subpart B has been deleted from the Final Rule.

The Department of Labor (DOL) will issue regulations and/or other directives covering all unemployment fund cash management issues and operations.

Those regulations will specifically include issues formerly contained in Subpart B of the NPRM, and will include standards and policy for immediate deposit requirements contained in the Social Security Act (SSA) § 303(a)(4) and the Federal Unemployment Tax Act (FUTA) § 3304(a)(3) and the limited withdrawal requirements in SSA § 303(a)(5) and FUTA § 3304(a)(4). Those regulations and/or other directives will be compatible with CMIA and these regulations. The Secretary of Labor will retain full authority to administer the provisions of §§ 303(a)(4) and 303(a)(5) of the SAA and §§ 3304(a)(3) and 3304(a)(4) of the FUTA and to monitor State conformity and compliance with the requirements therein. However, the withdrawal requirements of the SSA and the FUTA are affected by CMIA. Section 5(b) of CMIA, 31 U.S.C. 6503(c)(3)(B), addresses the special treatment of interest computation and exchange for funds drawn from State accounts in the UTF. States are permitted to use earnings generated to pay "related banking costs" for maintaining those accounts, and return interest earnings in excess of "related banking costs" to the UTF annually.

The specific provisions implementing § 6503(c)(3)(B) of CMIA (amounts of interest paid by a State, on funds withdrawn from its account in the UTF, will consist of actual interest earnings less related banking costs) are contained in § 205.13(i) of the Final Rule. Many commenters recommended that the provision that actual interest earned less related bank costs should be applied to the clearing account as well as funds withdrawn from the Federal Employees Compensation Account (FECA) and the Extended Unemployment Compensation Account (EUCA). CMIA is explicit that such provision applies only to funds withdrawn from the State's account in the UTF. The FMS does not have the authority to change administratively such provision, so the Final Rule retains its limited applicability only to funds withdrawn from the State's account in the UTF. The interest provisions applicable to any other State program covered by CMIA (including calculation of interest at the 13-week T-Bill rate) apply to funds withdrawn from the FECA and EUCA accounts. The clearing account is not covered by CMIA because CMIA generally applies to payments for program purposes, whereas the clearing account serves as a depository and holding account for unemployment funds prior to transfer to the UTF. Applicable regulations regarding the timing of transfers from the clearing account to the UTF are encompassed in DOL regulations and program directives.

A number of commenters interpreted the language requiring separate tracking, reporting, and recordkeeping by source of funds in the UTF as being overly burdensome. For purposes of CMIA, the Final Rule requires that the funds withdrawn from the State's account in the UTF must be allocated a pro rata share of interest earnings and related bank costs of the benefit payment account or relevant investment pools. Specifications relating to separate tracking, accounting, recordkeeping, etc., are deferred to DOL requirements.

Several commenters suggested that the provisions requiring an annual exchange of interest are inapplicable to interest on funds drawn down from the UTF, because such interest is to be immediately remitted to the Federal Government under the immediate deposit requirements of both the SSA and the FUTA. The annual remittance of interest on funds drawn down from the UTF is specifically required by CMIA but does not otherwise impact the immediate deposit requirements of SSA/FUTA.

OMB Circulars

The OMB Circulars referenced in this regulation may be obtained from the Office of Management and Budget, New Executive Office Building, 725–17th Street, NW., Washington, DC 20503.

Regulatory Analysis

It has been determined that this document is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required. Although some States may have to make interest payments to the Federal Government for the use of Federal funds, such costs will be a direct result of implementation of CMIA.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. States do not fit within the Regulatory Flexibility Act definition of "small entity," 5 U.S.C. 601.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1510–0061. The estimated annual burden per respondent/recordkeeper varies from 250 to 750 hours, depending on individual circumstances, with an estimated average of 500 hours.

Five comments were received addressing the estimated annual burden of 250 hours to 750 hours per respondent/recordkeeper contained in the NPRM. One commenter stated that it is unreasonable to use the Paperwork Reduction Act estimate as a guideline in calculating a State's direct costs of implementing CMIA. The FMS agrees that the Paperwork Reduction Act estimate may not be the only basis for calculating a State's direct costs. The estimated recordkeeping and reporting burden may represent only a portion of the costs that will be recovered by the States. In addition, some of the reporting/recordkeeping costs presumably will be recoverable under OMB Circular A–87 rather than as a direct cost recovery under CMIA.

Several of the comments also indicated that the reporting and/or recordkeeping estimate appears to be low. The FMS emphasizes that the estimate applies solely to hours involved in recordkeeping and reporting. In addition, none of the comments received provided a basis for adjusting the estimate, nor offered a reasonable alternative. The FMS has not amended the estimate, and maintains that 250 to 750 hours per respondent is the most reasonable estimate available given the recordkeeping and annual reporting requirements under CMIA and this Final Rule. However, in response to State comments some of the recordkeeping and reporting requirements have been simplified in the Final Rule. Such changes which simplify the reporting and recordkeeping burden are as follows: (1) There is a de minimis rule applicable to refunds; (2) The requirement to calculate interest for disallowed payments has been removed; (3) The requirement to report separately interest by trust fund has been removed; and (4) The requirement to retain records for 5 years has been reduced to 3 years.

Additional comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service, Facilities Management Division, Property and Supply Section, 3361–L 75th Avenue, Landover, MD 20785; and to the Office of Management and Budget, Paperwork Reduction Project (1510–0061), Washington, DC. 20503. THIS ADDRESS SHOULD BE USED ONLY FOR COMMENTS AND/OR SUGGESTIONS CONCERNING THE AMOUNT OF

TIME SPENT TO COLLECT THIS DATA.

List of Subjects in 31 CFR Part 205

Grant programs, Grant administration, Intergovernmental relations, Electronic funds transfers.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR Part 205 is revised to read as follows. Subpart C is reserved.

PART 205—RULES AND PROCEDURES FOR FUNDS TRANSFERS

Sec.

205.1 Purpose.
205.2 Scope of Part.
205.3 Definitions.

Subpart A—Negotiation of Intergovernmental Agreements for Financing Federal Assistance Programs—Interest Liabilities on Intergovernmental Funds Transfers

205.4 Scope of Subpart.
205.5 Onset Period.
205.6 Funding techniques.
205.7 Requesting and transferring funds.
205.8 Clearance patterns.
205.9 Treasury-State Agreements.
205.10 Funding of indirect costs and administrative cost grants.
205.11 Federal interest liabilities.
205.12 State interest liabilities.
205.13 Interest calculation.
205.14 Direct costs of implementation.
205.15 Annual Reports.
205.16 Interest payment.
205.17 Compliance and oversight.
205.18 Appeals and dispute resolution.

Appendix A to Subpart A of Part 205—Definition of Major Federal Assistance Program

Subpart B—Potential Liabilities on Intergovernmental Funds Transfers Included in the Catalog of Federal Domestic Assistance but Otherwise Generally Excluded from Subpart A

205.19 Scope of Subpart.
205.20 Cash advances.
205.21 Federal agency oversight responsibilities.
205.22 State noncompliance.
205.23 Failure to make funds available.

Subpart C—[Reserved]

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3335, 6501, 6503.

§ 205.1 Purpose.

Subparts A and B of this part implement the Cash Management Improvement Act and prescribe rules and procedures for the transfer of funds between the Federal Government and the States for Federal grant and other programs. Subpart C of this part is reserved and, if issued, may implement other authorities and govern transactions outside the scope of Subparts A and B.

§ 205.2 Scope of part.

(a) Subparts A and B apply to programs listed in the Catalog of Federal Domestic Assistance, pursuant to chapter 61 of title 31, United States Code.

(b) This part does not generally apply to direct loan programs.

(c) This part does not apply to payments made to States acting as vendors on Federal contracts, which are subject to the Prompt Payment Act of 1982, as amended, 31 U.S.C. 3901 *et seq.*, Office of Management and Budget (OMB) Circular A–125 "Prompt Payment," and 48 CFR Part 32.

(d) This part does not apply to the Tennessee Valley Authority (TVA) or programs administered by the TVA.

§ 205.3 Definitions.

For the purpose of this part:

Administrative cost grant means a grant exclusively for administrative expenses under a program with separate grant awards for benefit payments and administrative expenses.

Auditable means the sources of data and information for a calculation are readily available, fully documented, and verifiable, such that the calculation can be replicated and proven to comply with all pertinent standards.

Authorized State official means a person with the authority under the laws of a State to make commitments on behalf of the State for the purposes of this regulation, or that person's official designee as certified in writing.

Check means a negotiable demand draft or warrant.

Clearance pattern means a frequency distribution showing the proportion of a total amount disbursed that is debited against the payer's bank account each day after the disbursement.

Current project cost means a cost for which the liability has been recorded on or after the day on which a State last requested funds for the project.

Day means a calendar day unless otherwise specified.

Disburse means to issue a check or initiate an electronic funds transfer payment.

Discretionary grant project means a project for which a Federal agency is statutorily authorized to exercise judgment in awarding a grant and in selecting a grantee, generally through a competitive process.

Drawdown means a process whereby a State requests and receives Federal funds.

Electronic funds transfer (EFT) means, in the context of Federal payments to States, the delivery of funds through wire transfer or the Automated Clearing House.

Equivalent rate means auction average equivalent yield, also known as the auction average investment rate of 13-week Treasury bills.

Federal agency means an executive agency as defined by section 102 of title 31, United States Code, exclusive of the TVA.

Federal-State agreement means an agreement between a State and a Federal program agency specifying terms and conditions for carrying out a program or group of programs, but does not mean a Treasury-State Agreement described in § 205.9.

Fiscal year means, unless otherwise indicated, a State's budget year ending in the specified calendar year.

Issue checks means to release or distribute checks to the payees.

Major Federal assistance program is defined in appendix A to subpart A of this part.

Obligational authority means the existence of a definite commitment on the part of the Federal Government to provide appropriated funds to a State to carry out specified programs, whether the commitment is executed before or after a State pays out funds for program purposes. This term means that an obligation to a State has been executed and does not refer to the amount of budgetary resources available.

Pay out means to debit the payor's bank account.

Pay out funds for program purposes means, in the context of State payments, to debit a State account for the purpose of making a payment to 1) a person or entity that is not considered part of the State pursuant to the definition of "State" in this section, or 2) a State entity for the procurement of goods or services for the direct benefit or use of the payor State entity or the Federal Government.

Program means the range of activities encompassed under, and classified by, a Catalog of Federal Domestic Assistance number (CFDA #).

Refund means a recovery of funds previously paid out for program purposes.

Related banking costs means stand-alone, non-credit services which are considered necessary and/or customary for sustaining an account in a financial institution, whether in commercial financial institutions or State Treasurer accounts. Investment service fees are not related to banking costs.

Request for funds means a solicitation for funds that is completed and submitted in accordance with Federal agency guidelines.

Secretary means the Secretary of the United States Department of the

Treasury. The Financial Management Service (FMS) is the Secretary's representative in all matters concerning this Part, unless otherwise specified.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and an agency, instrumentality, or fiscal agent of a State so defined, but does not mean a local government or an Indian tribal government.

A State agency or instrumentality is any organization or component unit of the State reporting entity as defined by Generally Accepted Accounting Principles.

A fiscal agent of a State is an entity that pays, collects, or holds Federal funds on behalf of the State in furtherance of a Federal program, exclusive of a private nonprofit community organization.

Trust fund for which the Secretary is the trustee means a trust fund administered by the Secretary.

Subpart A—Negotiation of Intergovernmental Agreements for Financing Federal Assistance Programs—Interest Liabilities on Intergovernmental Funds Transfers

§ 205.4 Scope of subpart.

(a) *Initial programs.* From October 24, 1992, to the end of a State's 1994 fiscal year, this subpart applies, at a minimum, to the following programs, provided they meet the threshold for major Federal assistance programs in the State:

Alcohol and Drug Abuse and Mental Health Services Block Grant (CFDA 93.992);
Chapter 1 Programs—Local Educational Agencies (CFDA 84.010);
Child Support Enforcement (CFDA 93.023);
Family Support Payments to States (CFDA 93.020);
Foster Care—Title IV–E (CFDA 93.658);
Highway Planning and Construction (CFDA 20.205);
Job Opportunities and Basic Skills Training (CFDA 93.021);
Job Training Partnership Act (CFDA 17.250);
Low-Income Home Energy Assistance (CFDA 93.028);
Medical Assistance Program (CFDA 93.778);
National School Lunch Program (CFDA 10.555);
Nutrition Assistance for Puerto Rico (CFDA 10.566).
Pell Grant Program (CFDA 84.063);
Rehabilitation Services—Basic Support (CFDA 84.126);
Social Services Block Grant (CFDA 93.667);
Special Education—State Grants (CFDA 84.027);
Special Supplemental Food Program for Women, Infants, and Children (CFDA 10.557);
State Administration Matching Grants—Food Stamp Program (CFDA 10.561);
Supplemental Security Income (CFDA 93.807);
Unemployment Insurance (CFDA 17.225);

(b) *Threshold of materiality.* From the beginning of a State's 1995 fiscal year and thereafter, this subpart applies, at a minimum, to all programs that meet the threshold for major Federal assistance programs in a State.

(c) *Determining major Federal assistance programs.* Unless otherwise specified in a Treasury-State Agreement, major Federal assistance programs will be determined from the most recent Single Audit data available from the U.S. Bureau of the Census and, if necessary, other data from the most recent fiscal year for which funding can be documented.

(d) *Covering additional programs.* A State and the FMS may agree, in a Treasury-State Agreement, to cover additional programs under this subpart. However, the FMS has unilateral authority to require a State and Federal agency to cover additional programs under this subpart if a State or a Federal agency fails to comply with Subpart B of this part, as set forth in §§ 205.22 and 205.23.

(e) *Programs not covered by this subpart.* Programs in the Catalog of Federal Domestic Assistance that are not covered by this subpart are subject to Subpart B of this part.

(f) *Grace period for colleges and universities.* Unless otherwise specified in a Treasury-State Agreement, this subpart does not apply to a State institution of higher education prior to a State's 1995 fiscal year, notwithstanding any other provision of this section.

§ 205.5 Onset Period.

(a) *Definition.* The Onset Period is from October 24, 1992, to the later of June 30, 1993, or the last day of a State's 1993 fiscal year.

(b) *Continuing existing practices.* Notwithstanding any other provision of this subpart and unless otherwise specified in a Treasury-State Agreement, during the Onset Period a State and a Federal agency shall be allowed to continue with the accounting and cash management practices used prior to the Onset Period. A State and a Federal agency shall not be required to implement new funding techniques, monitor funds for the purpose of calculating interest, or otherwise change the manner in which Federal program funds are requested, transferred, managed, or accounted for prior to the Onset Period.

(c) *Imputing interest liabilities to the Onset Period.* Notwithstanding any other provision of this subpart and unless otherwise specified in a Treasury-State Agreement, a State shall use the interest calculation for its 1994 fiscal year, as well as available data from the Onset Period, to impute retrospectively Federal and State interest liabilities, pro rata, to the Onset Period.

(d) *Initial reports and interest payments.* Notwithstanding any other provision of this subpart and unless otherwise specified in a Treasury-State Agreement, the first Annual Reports and the first payments of interest pursuant to this subpart will consist of interest liabilities incurred during a State's 1994 fiscal year and interest liabilities imputed to the Onset Period.

§ 205.6 Funding techniques.

(a) *Zero balance accounting.* Zero balance accounting is a method of transferring Federal funds to a State based on the actual amount of funds that are paid out by the State each day after a disbursement. Neither the Federal Government nor a State will incur an interest liability when this funding technique is properly applied.

(b) *Estimated clearance.* Estimated clearance is a method of transferring Federal funds to a State based on the estimated amount of funds that are paid out by the State each day after a disbursement. Neither the Federal Government nor a State will incur an interest liability when this funding technique is properly applied.

Example: A State mails $1 million in checks to benefit recipients under a Federally funded program. The State has developed the following clearance pattern for the program, based on when checks historically have been presented for payment:

Day	Percentage of $'s paid out
0 (checks mailed)	0
1	0
2	0
3	0
4	40
5	30
6	15
7	10
8	5

On Day 3, the State requests 40 percent of the funds disbursed, or $400,000, and the Federal agency deposits funds in the State account on Day 4 to coincide with the expected presentment of 40 percent of the total disbursement. On Day 4, the State requests 30 percent of the funds to pay for checks presented on Day 5, and so on. Furthermore, if the State draws down $400,000 to pay for checks presented on Day 4, neither the State nor the Federal Government will incur an interest liability if the amount of checks actually presented is more or less than $400,000. Over the long term, the amounts drawn down and the amounts of checks presented for payment will converge to the historical clearance pattern.

(c) *Pre-issuance funding.* Pre-issuance funding is a method of transferring Federal funds to a State prior to the day the State issues checks or initiates EFT payments. When this funding technique is applied, a State will incur an interest liability to the Federal Government from the day Federal funds are credited to a State account to the day the State pays out the funds for programs purposes.

Example: Three business days before a State issues $1 million in checks, it requests $1 million from a Federal agency, which deposits the funds in a State account the next day. The State has developed the following clearance pattern, based on when the State's checks historically have been presented for payment:

Day	Percent of $'s paid out
0 (funds deposited)	0
1	0
2 (checks issued)	0
3	0
4	0
5	40
6	30
7	15
8	10
9	5

The State will owe the Federal Government 5 days of interest on 40 percent of the funds, or $400,000, since that amount will be paid out for checks presented 5 days after Federal funds are deposited in a State account. The State will owe 6 days of interest on 30 percent of the funds, or $300,000, 7 days of interest on 15 percent of the funds, and so on.

(d) *Average clearance.* Average clearance is a method of transferring funds to a State based on the dollar-weighted average number of days required for funds to be paid out by the State after a disbursement. Neither the Federal Government nor a State will incur an interest liability when this funding technique is properly applied.

Example: A State mails $1 million in checks to contractors for a Federally funded program. The State has developed the following clearance pattern, based on when checks historically have been presented for payment, and has determined the average day of clearance, weighted by dollar amount, to be 5 days after checks are issued:

Day	Percent of $'s paid out	Factor (day × percentage)
0 (checks issued)	0	
1	0	
2	0	
3	0	
4	40	1.60
5	30	1.50
6	15	0.90
7	10	0.70
8	5	0.40
Average day of clearance		5.10

The State requests $1 million on day 4 and receives that amount on day 5, which is the dollar-weighted average number of days required for checks to be presented at the State's bank, and neither the State nor the Federal Government incurs an interest liability.

(1) In determining a dollar-weighted average day of clearance, fractions of days are rounded to the nearest whole number.

(2) The standards and maintenance requirements for clearance patterns, as set forth in § 205.8, apply for average day of clearance calculations.

(e) *Reimbursable funding.* Reimbursable funding is a method of transferring Federal funds to a State after the State has paid out its own funds for program purposes. After June 30, 1994, reimbursable funding is prohibited, except where mandated by Federal law.

§ 205.7 Requesting and transferring funds.

(a) *Electronic funds transfer.* To the maximum extent practicable, a Federal agency shall use EFT for transfers of funds to a State.

(b) *Minimizing the time between transfer and payment.* A State and a Federal agency shall minimize the time elapsing between the transfer of funds from the United States Treasury and the pay out of funds for program purposes by a State, whether the transfer occurs before or after the pay out.

(c) *Procedures for funding techniques.* Unless otherwise specified in a Treasury-State Agreement, a State and a Federal agency shall adhere to the following procedures for each funding technique:

(1) *Zero balance accounting.* A State shall request funds the same day it pays out funds for program purposes, and a Federal agency shall deposit funds in a State account the same day it receives a request for funds.

(2) *Estimated clearance.* A State shall request funds 1 business day prior to the day it expects to pay out funds, in accordance with a clearance pattern, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(3) *Average clearance.* A State shall request funds 1 business day prior to the dollar-weighted average number of days required for funds to be paid out after a disbursement, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(4) *Pre-issuance funding.* A State shall request funds not more than 3 business days prior to the day on which it makes a disbursement, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(5) *Reimbursable funding.* A State shall request funds only after it has paid out its own funds for programs purposes, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(d) *Limiting the amount transferred.* Consistent with a funding technique and with funds transfer procedures in a Treasury-State Agreement, a State and a Federal agency shall limit the amount of funds transferred to a State to the minimum required to meet a State's actual, immediate cash needs.

(e) *Frequency of requests for funds.* A Federal agency shall allow a State to submit requests for funds, or bills, as often as daily. However, this requirement shall not be construed to change Federal agency guidelines defining a properly completed request for funds.

(f) *Prohibition of reimbursable funding requirements.* A Federal agency may not require a State to use reimbursable funding, unless mandated by Federal law.

§ 205.8 Clearance patterns.

(a) *Use and basis of development.* When required by a funding technique, a clearance pattern will be used to schedule the transfer of funds to a State and to support the calculation of interest. A State may:

(1) Develop a separate clearance pattern for an individual program; or

(2) Develop a composite clearance pattern for a logical group of programs that have the same disbursement method and that reasonably can be expected to have comparable clearance activity. A composite clearance pattern for a group of programs must be applied separately to each program in the group when scheduling funds transfers or calculating interest; or

(3) Develop a clearance pattern on another basis that is agreed upon by the FMS.

(b) *Standards for clearance patterns.* A State shall ensure that a clearance pattern accurately represents the flow of Federal funds and that a clearance pattern reflects seasonal or other periodic variations in clearance activity. A State shall ensure that a clearance pattern is auditable.

(c) *Maintaining clearance patterns.* (1) If a State has actual or constructive knowledge, at any time, that a clearance pattern does not correspond to a program's clearance activity, or if a program undergoes operational changes that may affect clearance activity, the State shall:

(i) Immediately notify the FMS in writing of the program requiring a new clearance pattern, and

(ii) Develop a new clearance pattern and certify that it corresponds to a program's clearance activity.

(2) If a Federal agency has actual or constructive knowledge, at any time, that a State's clearance pattern does not correspond to a program's clearance activity, the agency shall notify the FMS in writing of the State and the program. the FMS shall immediately notify the State of the programs, and the State shall either:

(i) Develop a new clearance pattern and certify that it corresponds to a program's clearance activity, or

(ii) Re-certify the accuracy of the existing clearance pattern.

(d) *Certification for accuracy.* An authorized State official shall certify that a clearance pattern corresponds to a program's clearance activity. If a State develops a clearance pattern for a program or a group of programs, as set forth in paragraphs (a)(1) and (a)(2) of this section, an authorized State official shall re-certify the accuracy of the clearance pattern at least every 5 years. If a State develops a clearance pattern on another basis, as set forth in paragraph (a)(3) of this section, the FMS may prescribe requirements for re-certifying the accuracy of the clearance pattern.

§ 205.9 Treasury-State Agreements.

(a) *Purpose.* A State may enter into a Treasury-State Agreement with the FMS to set forth terms and conditions for implementing this subpart.

(b) *Components.* A Treasury-State Agreement pursuant to this subpart must include, but will not be limited to, the following:

(1) *Programs.* Consistent with § 205.4, a Treasury-State Agreement must indicate the programs subject to this subpart.

(2) *Funding techniques.* A Treasury-State Agreement must indicate the funding techniques to be applied to the programs subject to this subpart, in accordance with the following:

(i) Zero Balance Accounting, Estimated Clearance, and Pre-Issuance Funding are techniques available for selection by a State, subject to the approval of the FMS.

(ii) A State may request approval to use the Average Clearance funding technique, but must provide the FMS with adequate justification for its use in lieu of Estimated Clearance.

(iii) Reimbursable funding is available for selection by a State, subject to the approval of the FMS, only for a program for which the State used reimbursable funding prior to October 24, 1992. However, reimbursable funding is not available for selection by a State for the programs listed in § 205.4(a).

(iv) A State and the FMS may negotiate the use of other mutually agreed upon funds transfer procedures.

(v) A State may apply more than one funding technique or funds transfer procedure to a program with multiple cash flows.

(3) *Interest calculation method.* Consistent with § 205.13, a Treasury-State Agreement must indicate the method a State will use to calculate and document interest liabilities pursuant to this Subpart.

(4) *Clearance pattern method.* Consistent with § 205.8, a Treasury-State Agreement must indicate the method and standards a State will use to develop and maintain clearance patterns pursuant to this subpart.

(5) *Direct costs.* Consistent with § 205.14, a Treasury-State Agreement must specify the types of direct costs a State expects to incur.

(6) *Reverse flow programs.* Consistent with §§ 205.8 and 205.13, with respect to programs for which the Federal Government makes payments on behalf of a State, a Treasury-State Agreement must indicate the methods a Federal agency will use to calculate and document interest liabilities and to develop and maintain clearance patterns pursuant to this subpart.

(c) *Consultation with Federal agencies.* The FMS will consult with Federal program agencies as necessary and appropriate when negotiating a Treasury-State Agreement.

(d) *Amendment.* A Treasury-State Agreement may be amended by the mutual written consent of the State and the FMS.

(e) *Five-year expiration.* A Treasury-State Agreement expires if it is not amended for 5 years.

(f) *Default provisions for a State without a Treasury-State Agreement after the Onset Period.* With respect to a State that does not have a Treasury-State Agreement in effect after the later of June 30, 1993, or the last day of the State's 1993 fiscal year, the following apply:

(1) The FMS shall prescribe funds transfer procedures to be used by the State and a Federal agency in implementing this Subpart, consistent with Federal and State law.

(2) The FMS shall prescribe the method for calculating interest liabilities pursuant to this subpart.

§ 205.10 Funding of indirect costs and administrative cost grants.

(a) A State and the FMS may agree, in a Treasury-State Agreement, to the following funding conventions for indirect costs and administrative cost grants:

(1) The State will draw down a prorated amount of an administrative cost grant on the date of the State payday. For example, the State would draw one-third of a quarterly administrative cost grant if payroll is monthly, or one-sixth of a quarterly administrative cost grant if payroll is semi-monthly.

(2) If an indirect cost rate is applied to a program, the State will include a proportionate share of the indirect cost allowance in each drawdown by applying the indirect cost rate to the appropriate direct costs of each drawdown.

(3) If costs must be allocated to various programs pursuant to a labor distribution or other system under an approved cost allocation plan, the State will draw down funds to meet cash outlay requirements based on the most recent, certified cost allocations, with subsequent adjustments pursuant to the actual allocation of costs.

(b) A State and the FMS may agree, in a Treasury-State Agreement, that no interest liabilities will be incurred or calculated for indirect costs and administrative cost grants, notwithstanding any other provision of this subpart.

§ 205.11 Federal interest liabilities.

(a) *General.* The Federal Government will incur an interest liability to a State if the State pays out its own funds for program purposes with valid obligational authority under Federal law, Federal regulation, or Federal-State agreement. A Federal interest liability will accrue from the day a State pays out its own funds for program purposes to the day Federal funds are credited to a State account.

(b) *Late appropriations.* If a State pays out its own funds for program purposes due to delay in passage of a Federal appropriations act, the Federal Government will incur an interest liability if an appropriations act, as enacted, covers the period of the State's expenditure and permits payment for expenses already incurred by the State.

(c) *Lack of obligational authority other than occurring through late appropriations.* If a State pays out its own funds for program purposes without obligational authority, the Federal Government will incur an interest liability if the lack of obligational authority is not the result of limitation, reduction, or termination of the program and where obligational authority is subsequently established to permit payment for the State's expenditure.

(d) *Federal Highway Trust Fund.* The following applies to programs and projects funded out of the Federal Highway Trust Fund, notwithstanding any other provision of this section:

(1) If a State does not request funds at least weekly for current project costs, a Federal interest liability will not accrue prior to the day a State submits a request for funds.

(2) If a State pays out its own funds in the absence of a project agreement or in excess of the Federal obligation in a project agreement, the Federal Government will not incur an interest liability.

(e) *Discretionary grant project approval.* If a State pays out its own funds prior to the earlier of (1) The day a Federal agency officially notifies the State in writing that a discretionary grant project has been approved, or (2) The date that a Federal agency is otherwise obligated in law to pay the discretionary grant project to the State, the Federal Government will not incur an interest liability, notwithstanding any other provision of this section.

(f) *Authorizations and appropriations for future years.* If a State pays out its own funds prior to the availability of Federal funds that have been authorized or appropriated for a future Federal fiscal year, the Federal Government will not incur an interest liability, notwithstanding any other provision of this section.

(g) *Reverse flow programs.* With respect to programs for which the Federal Government makes payments on behalf of a State, such as Supplemental Security Income, the Federal Government will incur an interest liability if State funds are in a Federal Government account prior to the day a Federal agency pays out funds for program purposes. A Federal interest liability will accrue from the day State funds are credited to the Federal Government's account to the day the Federal agency pays out the State funds for program purposes.

§ 205.12 State interest liabilities.

(a) *General.* A State will incur an interest liability to the Federal Government if Federal funds are in a State account prior to the day the State pays out funds for program purposes. A State interest liability will accrue from the day Federal funds are credited to a State account to the day the State pays out the Federal funds for program purposes.

(b) *Refunds.* A State will incur an interest liability to the Federal Government on a refund transaction of Federal funds. A State interest liability will accrue from the day the refund is credited to a State account to the day the refund is either paid out for program purposes or credited to a Federal Government account. However, a State may adopt a transaction threshold not exceeding $10,000, below which the State will not incur an interest liability on a refund transaction.

(c) *Reverse flow programs.* With respect to programs for which the Federal Government makes payments on behalf of a State, such as Supplemental Security Income, a State will incur an interest liability to the Federal Government if a Federal agency pays out Federal funds for program purposes on behalf of the State. A State interest liability will accrue from the day the Federal agency pays out Federal funds for program purposes to the day State funds are credited to the Federal Government's account.

(d) *Exception.* Notwithstanding any other provision in this section, a State will not incur an interest liability to the Federal Government if Federal law requires that the interest a State earns on Federal funds must be retained by the State or used for program purposes. This exception shall not be construed to exempt a program from any other provision of this subpart.

§ 205.13 Interest calculation.

(a) *State responsibilities.* A State shall calculate Federal interest liabilities and State interest liabilities for each program subject to this subpart, except as provided for in paragraph (b) of this section.

(b) *Reverse flow programs.* A Federal agency shall calculate Federal interest liabilities and State interest liabilities for a program subject to this subpart for which the Federal agency makes payments on behalf of a State, such as Supplemental Security Income.

(c) *Start date.* Interest liabilities begin accruing October 24, 1992.

(d) *Interest rate.* The interest rate for all interest liabilities pursuant to this subpart is the annualized rate equal to the average equivalent yields of 13-week Treasury Bills auctioned during a State's fiscal year, except as provided for in paragraph (i) of this section. The FMS will provide this rate to each State.

(e) *Interest calculation method and standards.* A State shall calculate and report interest liabilities on the basis of its fiscal year. A State shall ensure that its interest calculations are auditable. As set forth in § 205.9, a Treasury-State Agreement must include the method a State will use to calculate and document interest liabilities pursuant to this subpart.

(f) *Statistical sampling.* If a State uses statistical sampling to calculate interest, the State must randomly sample transactions for each program subject to this subpart to ensure, at a minimum, a 95 percent confidence interval subject to a .3 dollar-weighted day bound of error estimate.

(g) *Onset Period.* A State shall determine interest liabilities for the Onset Period, which is from October 24, 1992, to the later of June 30, 1993, or the last day of the State's 1993 fiscal year, in accordance with § 205.5.

(h) *Transactions prior to a State's 1994 fiscal year.* Consistent with the provisions of § 205.5, a State shall not include in an interest calculation a transaction in which either the transfer of funds to the State or the pay out of funds for program purposes by the State occurs prior to the later of July 1, 1993, or the first day of the State's 1994 fiscal year.

(i) *Funds withdrawn from a State account in the Unemployment Trust Fund (UTF).* A State shall account for the actual interest earnings and the related banking costs attributable to funds withdrawn from the State's account in the UTF.

(1) If funds withdrawn from the several accounts in the UTF are commingled in the State's

Unemployment Insurance benefit payment account, the funds withdrawn from the State's account must be allocated a pro rata share of the actual interest earnings and related banking costs of the benefit payment account. Funds withdrawn from the State's account in the UTF that are included in investment pools must be allocated a pro rata share of interest earnings of the investment pool.

(2) Notwithstanding any other provision of this subpart, a State's interest liability on funds withdrawn from its account in the UTF consists of the actual interest earnings less the related banking costs of such funds, and shall be deposited in the State's account in the UTF.

(3) This paragraph (i) does not apply to funds withdrawn from the Federal Employees Compensation Account and the Extended Unemployment Compensation Account in the UTF.

§ 205.14 Direct costs of implementation.

(a) *Definition.* Direct costs of implementing this subpart are those costs necessary for the development and maintenance of clearance patterns and those costs necessary to perform the actual calculation of interest liabilities. Direct costs do not include expenses incurred for upgrading or modernizing of accounting systems.

(b) *Reimbursement of direct costs.* A State will be compensated annually for the direct costs of implementing this subpart, subject to the following conditions and limitations.

(1) *Treasury-State Agreement.* A State must have a Treasury-State Agreement with the FMS, as set forth in § 205.9.

(2) *Direct cost claim.* A State must submit a claim for direct costs with its Annual Report, as set forth in § 205.15(c).

(3) *Documentation.* A State must maintain documentation to substantiate its claim for direct costs.

(4) *Eligibility of costs.* Direct costs in excess of $50,000 in any year are not eligible for reimbursement, unless a State can justify to the FMS that it would be unable to develop clearance patterns or perform the actual calculation of interest without incurring such costs.

(5) *Costs incurred in prior years.* Direct costs incurred prior to a State's most recently completed fiscal year are not eligible for reimbursement, excepting costs incurred prior to the first day of a State's 1994 fiscal year and claimed for reimbursement with the State's first Annual Report submitted pursuant to this subpart.

(6) *Costs incurred prior to July 22, 1991.* Direct costs incurred prior to July 22, 1991, are not eligible for reimbursement, unless a State makes separate application for such costs, with adequate justification and documentation.

(7) *Review by the FMS.* The FMS will review all direct cost claims for reasonableness. Unreasonable cost claims, as determined by the FMS, will not be reimbursed, notwithstanding any other provision of this section.

(8) *Method of reimbursement.* The FMS will affect direct cost reimbursement by reducing the State interest liability and adjusting the Federal interest liability for each State, to the extent allowed by the following limitations:

(i) Interest liabilities for programs funded out of trust funds for which the Secretary is trustee may not be reduced or adjusted; and

(ii) The aggregate Federal interest liability for all States may not increase.

(c) *Application of cost principles.* A State shall not include direct costs of implementing this subpart, as defined in paragraph (a) of this section, in the development of its Statewide cost allocation plan, as provided for in OMB Circular A–87. All other costs incurred by a State to implement this subpart are subject to the procedures and principles of OMB Circular A–87.

(d) *Sunset review.* By July 1, 1996, the FMS will review the policies in this section to determine their effectiveness.

§ 205.15 Annual Reports.

(a) A State shall submit an Annual Report to the FMS by December 31 accounting for the interest liabilities of the State's most recently completed fiscal year. The format of the Annual Report will be prescribed by the FMS and will include, at a minimum, the following:

(1) The Federal interest liability for each program subject to this subpart;

(2) The State interest liability for each program subject to this subpart, with the State interest liability on refunds for each program reported separately;

(3) The total Federal interest liability for all programs subject to this subpart;

(4) The total State interest liability for all programs subject to this subpart;

(5) The net total interest owed by the State or the Federal Government;

(6) For information purposes, not for the calculation of interest, the actual interest earnings on and the related banking costs for funds drawn from the State's account in the UTF.

(b) A State shall submit its Annual Report both in hard copy and either on computer diskette or by other electronic means prescribed by the FMS.

(c) A State may submit as part of its Annual Report a claim for reimbursement of the direct costs of implementing this subpart, in accordance with § 205.14. An authorized State official shall certify the accuracy of a State's direct cost claim.

(d) An authorized State official shall certify the accuracy of a State's Annual Report.

(e) *Reverse flow programs.* With respect to a program for which the Federal Government makes payments on behalf of a State, a Federal agency shall provide an interest report to a State by December 1 for the State's most recently completed fiscal year. The interest report will include the State interest liability and the Federal interest liability for the program, including the Federal interest liability on refund transactions of $10,000 or more. The Federal agency shall certify the accuracy of the interest report. A State shall incorporate the interest report in its Annual Report.

(f) The FMS will distribute Annual Reports to Federal agencies.

§ 205.16 Interest payment.

(a) *Adjusted interest liabilities.* The FMS will adjust a State's total interest liability and the Federal Government's total interest liability to a State to effect direct cost reimbursement, as set forth in § 205.14(b)(8).

(b) *Net interest payment.* The adjusted total State interest liability and the adjusted total Federal interest liability for each State will be offset to determine the net interest payable to or from a State. The payment of net interest to or from a State for its most recently completed fiscal year will occur no later than March 1.

(c) *Disputed amounts.* If the amount of interest payable is disputed according to the provisions of § 205.18, payment must occur for any undisputed portions. The interest in dispute must be paid within 14 days of receipt of the decision by the Assistant Commissioner, Federal Finance, as set forth in § 205.18.

§ 205.17 Compliance and oversight.

(a) State coordinator. A State shall designate an official representative with the statutory or administrative authority to coordinate all interaction with the Federal Government concerning this subpart, and shall notify the FMS of the representative's name and title in writing.

(b) *Federal agency coordinator.* A Federal Agency shall designate an official representative to coordinate all interaction with the FMS and the States concerning this subpart, and shall notify

the FMS of the representative's name and title in writing.

(c) *Recordkeeping.* A State shall maintain records supporting interest calculations, clearance patterns, direct costs, and other functions directly pertinent to the implementation and administration of this subpart.

(d) *Record retention.* A State shall retain the records related to implementation of this subpart of each fiscal year for 3 years from the date the State submits its Annual Report, or until any dispute or action involving the records and documents is completed, whichever is later.

(e) *Availability of records.* The FMS, the Comptroller General, and a Federal agency shall have the right of access to all records for the purpose of verifying interest calculations, clearance patterns, direct cost claims, and the State's accounting for Federal funds.

(f) *Records for reverse flow programs.* With respect to programs for which the Federal Government makes payment on behalf of a State, a Federal agency shall maintain records supporting interest calculations and clearance patterns. A Federal agency shall retain such records for 3 years from the date the Federal agency submits its interest calculations to a State, as set forth in § 205.15(e), or until any dispute or action involving the records is completed, whichever is later. The FMS, the Comptroller General, and a State shall have the right of access to all records for the purpose of verifying interest calculations, clearance patterns, and the Federal agency's accounting for State funds.

(g) *State audits.* A State's implementation of this subpart is subject to audit in accordance with chapter 75 of title 31, United States Code, "Requirements for Single Audits."

(h) *Federal agency compliance reviews.* A Federal agency's implementation of this subpart is subject to review pursuant to procedural instructions issued by the FMS.

(i) *Reviewing Annual Reports.* The FMS will distribute Annual Reports to Federal agencies, as set forth in § 205.15(f). Upon request by the FMS, a Federal agency shall review a State's Annual Report for accuracy and reasonableness and shall report its findings to the FMS.

(j) *Federal agency noncompliance.* If a Federal agency egregiously or repeatedly causes Federal interest liabilities or fails to comply with this subpart, the FMS may collect a charge from the Federal agency in an amount the FMS determines to be the cost to the general fund of the Treasury caused by such noncompliance, in accordance with the following:

(1) The FMS will issue a Notice of Assessment to the Federal agency, indicating the nature of the noncompliance, the amount of the charge, the manner in which it was calculated, and the right to file an appeal.

(2) A charge for noncompliance, to the maximum extent practicable, will be paid out of appropriations available for the Federal agency's operations and will not be paid from amounts available for funding the programs of the Federal agency.

(3) If a Federal agency does not pay a charge for noncompliance within 45 days after receiving a Notice of Assessment, the FMS will debit the appropriate Federal agency account.

(4) A Federal interest liability resulting from circumstances beyond the control of a Federal agency does not constitute noncompliance.

(k) *State noncompliance.* If a State materially fails to comply with this subpart, the FMS may take one or more of the following actions, as appropriate in the circumstances:

(1) Request a Federal agency or the General Accounting Office to conduct an audit of the State to determine interest owed to the Federal Government, and implement procedures to recover such interest; or

(2) Deny the reimbursement of all or a part of the State's direct cost claim; or

(3) Take other remedies legally available.

(l) *Failure to request funds.* If a State repeatedly or deliberately fails to request funds in accordance with the procedures established for its funding techniques, as set forth in § 205.7 or in a Treasury-State Agreement, the FMS may deny the State payment or credit for any resultant Federal interest liability, notwithstanding any other provision of this part.

§ 205.18 Appeals and dispute resolution.

(a) *Appeal by a Federal agency.* A Federal agency may appeal any charge assessed by the FMS for noncompliance by submitting an appeal in writing to the Assistant Commissioner, Federal Finance (hereinafter Assistant Commissioner), of the FMS, within 45 days of the date of the Notice of Assessment. The appeal shall include a concise factual statement of the conditions leading to the Notice of Assessment, the basis of the appeal, and the action requested by the agency. In the event of an appeal, the charge imposed under the Notice of Assessment will be deferred pending the results of the appeal.

(1) *Appeal review process.* The Assistant Commissioner will review the Notice of Assessment, any documentation supporting the Notice, and the written appeal from the agency. If based on this review, the Assistant Commissioner finds that additional information is required, the Assistant Commissioner may request to meet with the agency, as well as other parties selected by the Assistant Commissioner, as part of the review process.

(2) *Decision.* The Assistant Commissioner will issue a written decision within 30 days of receipt of the appeal. The Assistant Commissioner may unilaterally extend this period for an additional 30 days if required. The decision of the Assistant Commissioner whether to uphold the Notice of Assessment, to overturn the Notice, or to mandate some other action will be stated in the written decision. Other actions mandated may include a reduced charge, a deferral of the charge, an alternate solution to cash management improvement, or any combination thereof. The basis of the decision, the amount of the charge and the effective date of the charge will be stated in the written decision. The effective date of the charge may be retroactive to the date indicated in the Notice of Assessment.

(b) *Resolution of disputes.* If a dispute arises from the implementation or administration of this Subpart, the following resolution mechanism is available:

(1) The aggrieved party may submit a written appeal to the Assistant Commissioner. The aggrieved party shall concurrently serve a copy of the written appeal to the other concerned parties.

(2) Within 30 days of the submission of the written appeal, the aggrieved party shall submit to the Assistant Commissioner a written statement not exceeding 15 pages, with supporting documentation in appendices, that articulates the dispute, the aggrieved party's position, and the relief sought. The aggrieved party shall concurrently serve its statement upon the other concerned parties.

(3) Within 30 days of receipt of the aggrieved party's statement, the responding party may submit a response statement not exceeding 15 pages, with supporting documentation in appendices, to the Assistant Commissioner. The responding party shall concurrently serve its response statement to the other concerned parties.

(4) The Assistant Commissioner will issue a written decision within 30 days after the period for the submission of the response statement. The Assistant

Commissioner may unilaterally extend the deadline for issuing a decision by 30 days if required. The Assistant Commissioner's decision shall be the final agency action on the part of the FMS for the purposes of judicial review procedures under the Administrative Procedures Act, 5 U.S.C. 701–706, unless either party invokes the provisions of the Administrative Dispute Resolution Act of 1990, 5 U.S.C. 581–593 (ADRA), in accordance with the following.

(i) Either party may seek to invoke the assistance of a neutral party appointed under the provisions of the ADRA within 30 days of receipt of the Assistant Commissioner written decision. The party invoking the ADRA shall notify both the Assistant Commissioner and the responding party in writing. With the written mutual consent of the parties and the Assistant Commissioner, a neutral party appointed under the provisions of the ADRA may assist in resolving the dispute through the use of alternate means of dispute resolution as defined in the ADRA.

(ii) If the party invoking the ADRA is unable to reach a satisfactory resolution of the problem using the ADRA, the Assistant Commissioner's decision shall be the final agency action on the part of the FMS for purposes of the judicial review procedures under the Administrative Procedure Act, 5 U.S.C. 701–706.

Appendix A to Subpart A of Part 205—Definition of Major Federal Assistance Program

Major Federal Assistance Program, for State governments having Federal assistance expenditures between $100,000 and $100,000,000 means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures. Where total expenditures during the applicable year exceed $100,000,000, the following criteria apply:

Total expenditure of federal financial assistance for all programs		Major federal assistance program means any program that exceeds (million)
More than	But less than (billion)	
$100 million	$1	$3
1 billion	2	4
2 billion	3	7
3 billion	4	10
4 billion	5	13
5 billion	6	16
6 billion	7	19
Over 7 billion		20

Subpart B—Potential Liabilities on Intergovernmental Funds Transfers Included in the Catalog of Federal Domestic Assistance but Otherwise Generally Excluded From Subpart A

§ 205.19 Scope of Subpart.

This subpart applies to programs in the Catalog of Federal Domestic Assistance that are not subject to subpart A.

§ 205.20 Cash advances.

(a) Cash advances to a State shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the State in carrying out a program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual cash outlay by the State for direct program costs and the proportionate share of any allowable indirect costs.

(b) Neither a State nor the Federal Government will incur an interest liability on the transfer of funds for a program subject to this subpart.

§ 205.21 Federal agency oversight responsibilities.

(a) A Federal agency shall review the practices of States as necessary to ensure compliance with this subpart. A Federal agency shall notify the FMS if a State demonstrates an unwillingness or inability to comply with this subpart.

(b) A Federal agency shall formulate procedural instructions specifying the methods for carrying out the responsibilities of this section.

§ 205.22 State noncompliance.

If a State demonstrates an unwillingness or inability to comply with this subpart, the FMS may require the State and a Federal agency to cover additional programs under Subpart A of this part, notwithstanding any other provision of this part.

§ 205.23 Failure to make funds available.

Consistent with program purposes and regulations, if a Federal agency demonstrates an unwillingness or inability to make Federal funds available to a State as needed to carry out a program, the FMS may require the State and the Federal agency to cover additional programs under Subpart A of this part, notwithstanding any other provision of this part.

Subpart C—[Reserved]

Dated: September 21, 1992.

Russell D. Morris,

Commissioner.

[FR Doc. 92–23262 Filed 9–23–92; 8:45 am]

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Part VI

Environmental Protection Agency

40 CFR Parts 153 and 159
Reporting Requirements for Risk/Benefit Information; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 153 and 159

[OPP-60010C; FRL 4047-5]

Reporting Requirements for Risk/Benefit Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to codify its interpretation regarding which failures to report information, or delays in reporting, will be regarded by EPA as violations of FIFRA section 6(a)(2), actionable under FIFRA sections 12(a)(2)(B)(ii) and 12(a)(2)(N). EPA's first enforcement policy regarding FIFRA section 6(a)(2) appeared in the **Federal Register** of July 12, 1979 (44 FR 40716). EPA took steps to amend and codify that policy by issuing a final rule and statement of policy which was published in the **Federal Register** of September 20, 1985 (50 FR 38115). That rule was not made effective by EPA because of comments received after it was published. Based on the comments, the Agency has revised the rule, and is now issuing a proposed rule which incorporates those revisions. The proposal revises the requirements for submission of information regarding pesticide ingredients, impurities, metabolites and degradates; it also contains changes intended to clarify the Agency's intent regarding whether and when to submit information pursuant to FIFRA section 6(a)(2). This rule is proposed under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq.

DATES: Comments on this proposed rule will be accepted until November 23, 1992.

ADDRESSES: Submit written comments, bearing the identification number OPP-60010C, by mail to: Public Docket, Field Operations Division (H7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington DC 20460. In person deliver comments to: Public Docket Rm. 1132, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning the proposal may be claimed to be confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Comments will be available for public inspection in Room 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James V. Roelofs, and/or David Alexander, Office of Pesticide Programs (H7501C), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1115, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7102.

SUPPLEMENTARY INFORMATION:

ELECTRONIC AVAILABILITY: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

The 1985 rule was issued as a final interpretive rule as subpart D of 40 CFR part 153. This proposed rule is being issued for notice and comment as 40 CFR part 159, subpart D. This Supplementary Information is organized into five units. Unit I provides a brief history of the Agency's regulatory efforts regarding FIFRA section 6(a)(2). Unit II sets forth EPA's interpretation of section 6(a)(2) to provide a context for the proposed rule. Unit III provides a discussion of the basis for the proposed rule, and examples of how the rule is applied. Unit IV notes that this rule complies with section 25 of FIFRA, and that the FIFRA Scientific Advisory Panel waived review of the rule and the U.S. Department of Agriculture had no comments on the rule. Unit V demonstrates that promulgation of this rule complies with various regulatory review requirements, including Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act. The last Unit is the text of the proposed rule.

The proposed rule is organized as follows. General information appears in the earlier sections of the rule, and includes: the text of the relevant statutory requirements (§ 159.152); definitions (§ 159.153); provisions concerning when and how information must be submitted (§ § 159.155-159.156), and what information must be submitted (§ 159.158). Sections 159.165 through 159.195 provide details on the specific types of information that give rise to reporting requirements.

This rule is proposed pursuant to FIFRA section 25, 7 U.S.C. 136w. This proposal sets forth which "reports" must be submitted to satisfy the requirements of FIFRA section 12(a)(2)(B)(ii) and 12(a)(2)(N) insofar as they pertain to FIFRA section 6(a)(2). This rule does not require submission of all "additional factual information" which is within the scope of section 6(a)(2); it does describe that information for which EPA will hold registrants responsible under FIFRA section 12. The July 12, 1979 **Federal Register** Notice contemplated later issuance of supplementary notices concerning types of information not specifically considered in the July 1979 Notice (See 44 FR 40717). This proposed rule should be considered such a supplementary notice.

On January 2, 1992, the Agency issued a Notice to Manufacturers, Formulators, Producers and Registrants of Pesticide Products (PR Notice 92-1) to remind them of their statutory responsibilities under section 6(a)(2) and to provide general guidance. The PR Notice suggests that this proposed rule could be used as a guide to the Agency's 6(a)(2) policies. However, since this rule is not final, registrants are not obligated to meet reporting requirements which are being proposed for comment at this time. The requirements of the final rule may differ from the proposals due to information gained during the comment period.

I. History

Section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136d(a)(2), states: "If at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit such information to the Administrator."

Section 6(a)(2) requires each registrant to submit any item of information in its possession which pertains to a pesticide product for which it holds or held a registration and which, if true, would be relevant to an evaluation of the risks and benefits of the pesticide product. Information consisting solely of certain unsolicited lay opinion or which has been previously submitted is an exception to this requirement. See the discussion in Unit II of this document and § 159.158(b) and (d).

On September 20, 1985, EPA issued a comprehensive codification of EPA's enforcement policy. In it, EPA codified its policy regarding the types of information EPA actually wants to have submitted under FIFRA section 6(a)(2).

That codification amended the previous policy (44 FR 40716) by specifying that certain failures to submit information concerning pesticide residues in food, feed, ground water or elsewhere in the environment would be regarded as actionable violations of FIFRA section 6(a)(2). That codification also specified that most information had to be received by EPA within 15 working days of the time any officer, employee or other person acting for or employed by the registrant and capable of appreciating the significance of such information first comes into possession of, or knows, the information.

The Agency invited comments on the September 20, 1985 rule and indicated that appropriate modifications to the rule would be considered on the basis of those comments. Comments and questions were received on many aspects of the rule from trade associations, public interest groups and individual registrants. Based on the Agency's review of the comments and questions it became apparent that clarification of the rule was appropriate. Accordingly, the rule proposed today, when effective, will supersede that rule and all previous policy statements pertaining to section 6(a)(2).

II. General Interpretation Regarding the Type of Information That Must Be Submitted Under FIFRA Section 6(a)(2)

Section 6(a)(2) requires registrants to provide additional factual information to the Agency regarding unreasonable adverse effects on the environment of their pesticide products. The language of the statute limits the type of information to be submitted in three ways discussed here. First, it must be "additional" information. Second, it must be "factual" information. Third, it must be information "regarding" unreasonable adverse effects of the pesticide. Each of these three elements operates to reduce the required information from the total universe of "all information."

The first limiting factor is that the information be "additional." The word "additional" must be read in the context of a statute that permits the Agency to require extensive information from an applicant before and after a registration is granted. Thus, "additional" information refers to information not already submitted by the registrant to the Agency.

The second limiting factor, "factual information," is not explained in the statute. In *CSMA v. EPA*, et. al., 484 F. Supp. 513 (D.D.C. 1980), the U. S. District Court for the District of Columbia offered its view that "factual information," in the context of section 6(a)(2), did not include any opinion information, even expert opinion. This issue was not before the Court and because the Agency believes the Court's view is contrary to the weight of legal authority, the Agency has elected not to follow what it believes to be an incorrect reading of the statute. The Agency notes that, because it was not aggrieved by the District Court decision, it could not challenge the District Court's view of the scope of section 6(a)(2) in the Court of Appeals.

In general, American courts have recognized that "[t]he difference between so-called 'fact' and 'opinion' is not a difference between opposites or contrasting absolutes, but a mere difference in degree with no recognizable line to mark the boundary." (*U.S. v. Pierson*, 503 F. 2d 173, 176 (1974)). Formerly, the admissibility of evidence turned on the question of whether it was fact or opinion, but the courts now look to the value or utility of the evidence rather than to its classification. (McCormick on Evidence, sec. 11 (1972); *U.S. v. Pierson*, cited above). Under sections 701 through 703 of the Federal Rules of Evidence, an expert's opinion and theories are admissible apart from the information underlying the opinion (*Rodriquez v. Olin Corp.*, 780 F.2d 491 (5th Cir. 1980), *U.S. v. Williams*, 447 F.2d 1285 (5th Cir. 1971)).

Consideration of this question was first set out in a 1978 opinion issued by EPA and published in the **Federal Register** at 43 FR 3761, August 23, 1978. Key to that opinion was the meaning of "factual information," which was discussed in terms of the likely function Congress intended this provision to serve. The opinion stated that under FIFRA section 6(a)(2) registrants must provide the Agency with information of the type it normally relies upon in making decisions under FIFRA. Thus, "factual information" was determined to include data from scientific studies, expert opinions and information about toxic or adverse incidents caused by the use of a pesticide.

Additional guidance as to the meaning of "factual information" is provided by the commonly understood meaning of "factual." Thus, the dictionary definition of factual includes "something known with certainty," "something asserted as certain," and "something that has been objectively verified" [American Heritage Dictionary of the American Language, Morris, Editor, Boston, 1976]. The common understanding of "factual" is that type of information which is more reliable than information which, for example, has not been verified, or is not known to be, or believed to be, certain. This definition would include more than just scientific data. It also contemplates any observed or verifiable information as well as information asserted to be correct, such as expert opinion.

This reliability factor has been incorporated into these regulations. Only information which has a special degree of reliability is required to be submitted under these regulations. Thus, data developed in the course of a scientific study and reports of toxic or adverse effects can meet this standard of reliability because they are based on observations of tangible events. Expert opinion is also considered to be factual because the reliability of the opinions of experts is enhanced by their special training, knowledge and skill.

In several instances where the boundary between factual and other types of information may be less clear, the Agency's proposed rule limits the scope of information which must be submitted by employing a test which takes into account the degree of reliability of information and EPA's need for it. Thus, an unsolicited report of a single toxic and adverse incident which is received by a registrant need not be submitted unless it concerns: (1) A toxic or adverse effect in a given species after exposure to a pesticide when that effect was not previously reported to the Agency, (2) a toxic or adverse effect in a given species after exposure to a pesticide when that effect is more severe than previously reported to the Agency, or (3) any toxic or adverse effects to humans or non-target organisms in which an expert or a person associated with the registrant concludes that there may be a causal connection between the use of the pesticide and the observed effect. Although reporting of other incidents could be required under the statute, the Agency has limited reporting of single incidents to meet the practical need of sorting out information which, if reported, would be of little value to the Agency in its decision making.

The third limiting factor is the requirement that only information "regarding" unreasonable adverse effects of the pesticide need be submitted. "Regarding" in this context operates to require a causal connection between the use of the pesticide and the adverse effect. Here again, the statute and legislative history do not provide evidence regarding the strength or the proximity of the cause and effect. The strongest and closest link would result from a scientific study or risk assessment specifically designed to establish a causal link between the use of a pesticide and an adverse effect. A weaker and more distant link might

result from an unsolicited report by a lay person of a single toxic and adverse incident in which the use of the pesticide and the toxic and adverse effect are separated in time or space and where observable connections between the two events are not reported. Although the causal connection in the latter case is adequate to meet the statutory standard, this situation is closer to the boundary between factual and other information. To avoid an extremely broad reporting requirement, the Agency's proposed rule does not require a single incident report to be submitted without an additional measure of either reliability or need. This measure is provided by the requirement found in the regulations, that the effect occur after exposure and be new, more severe or that an expert or person associated with the registrant conclude that a causal connection between the use of the pesticide and the observed toxic and adverse effect may exist. This is the same requirement discussed above. It serves both to strengthen the factual reliability of information and is used here to establish both the need for the information and the causal link. (However, Unit III.D. discusses the requirement that records of such reports be retained for a specific period.)

In a similar fashion, registrants are required to report a series of similar toxic and adverse incidents. As is the case with single incident reports, the causal link for some or all of the incidents which comprise a series may be weak. Although some of the reported incidents might meet neither the statutory standard nor the more rigorous standard regarding need or causality established by the proposed rule, every incident in the series must be reported. The series must be reported because a series of incidents contains an inherent factor which enhances the strength of the causal connection. The cumulative weight of several toxic and adverse incidents associated with use of the same pesticide provides both greater assurance of the existence of a causal link between use and the toxic and adverse effect than would result from a single incident report and a greater indication of need for the information on the part of the Agency. Thus, the requirement that there be expert opinion, intended to strengthen the causal link, or the requirement that there be known exposure followed by new or more severe effects, intended to demonstrate the Agency's need, are not needed for a report of a series of toxic and adverse incidents. When three or more organisms show toxic and adverse effects following exposure to a pesticide, it is more likely that a causal relationship exists than when only one organism is injured. Thus, when evidence indicates that many organisms can be injured, either at the same time or at different times, the Agency's concern is heightened.

III. Basis of Policy and Examples

In this unit, EPA provides additional information and guidance concerning sections of the proposed rule. Examples of how the rule applies, and discussion of major changes from the 1985 rule are provided.

A. Who Must Submit Information Under FIFRA Section 6(a)(2)

EPA believes all registrants are subject to FIFRA section 6(a)(2). Section 6(a)(2) imposes a requirement that a registrant submit certain information "at any time after the registration of a pesticide." Although section 6(a)(2) does not directly address applicants, 40 CFR 152.50(f)(3) requires applicants for registration to submit with their applications any factual information regarding unreasonable adverse effects of the pesticide that would be required to be submitted by registrants under section 6(a)(2) if the product were registered. FIFRA section 2(y) defines registrant as any person ". . . who has registered any pesticide pursuant to the provisions of [FIFRA]." This statutory language suggests the term "registrant" should be viewed as including former holders of a registration. EPA also believes that the context of other statutory provisions where the term is used, as well as policy considerations, suggest that some obligations under FIFRA continue after a person has transferred a registration, or it has been canceled.

First, FIFRA section 3(c)(2)(B), in giving the Administrator the authority to require the submission of data to support registration, speaks of "existing registrants," thus suggesting that the term "registrants" may, in other contexts, apply to persons other than those who currently hold a registration.

Second, although many obligations in FIFRA apply only to existing registrants, there are important policy reasons to subject former holders of registrations to the requirements of section 6(a)(2). These persons may obtain information that would be relevant to EPA's regulation of registrations currently held by other persons. A prior registrant may, for example, receive consumer complaints after it has sold a registration or it has been canceled. The registrant may also become involved in lawsuits regarding a product which has been transferred or canceled, or may obtain information as a result of distribution of a canceled pesticide outside of the United States, distribution by another registrant, or during the life of an existing stocks provision. Therefore, to remind registrants of their continuing duty to comply with FIFRA section 6(a)(2), EPA defines "registrant" in § 159.153(b) to include any person who has ever held a registration for a pesticide product under FIFRA sections 3 or 24. The policy that voluntary cancellation of a pesticide registration does not relieve the registrant of its duties under FIFRA section 6(a)(2) was announced in EPA's existing stocks policy at 56 FR 29367, June 26, 1991.

B. When to Submit Information Under FIFRA Section 6(a)(2)

Section 6(a)(2) does not require investigation or other information-gathering efforts by registrants. Although time is provided to allow a basic investigation to be done by the registrant if he so chooses, nothing in this rule requires the conduct of an investigation.

The time period for submission of incident reports begins when a registrant knows of the information. However, in order to assure that registrants have enough time to elevate information through their organizations, in § 159.155(a) EPA is now proposing that information be submitted within 30 calendar days after any officer, employee, or agent of a registrant possesses or knows of the information.

EPA solicits comment on whether a shorter, or longer, time period may be appropriate given EPA's need to analyze and act on information promptly, and a registrant's need to have adequate time to transmit data from a field office to headquarters, analyze it, and transmit it to EPA. If, in response to comment, EPA provides time in excess of 30 calendar days for registrants to submit information, EPA is hereby providing notice that it may establish dual time frames in which the most critical information would have to be submitted more promptly than other information. Therefore commenters who advocate establishment of a longer time frame are requested to specify which information can and should be submitted earlier, and why.

C. What Information to Submit Under Section 6(a)(2)

Section 6(a)(2) does not require a registrant to gather information from outside its organization or to conduct investigations. FIFRA section 3(c)(2)(B) allows the Agency to impose such

requirements. However, FIFRA section 14(b)(4) provides that an omission (such as a failure to report information) of any officer, agent, or other person acting for or employed by a registrant is to be regarded as the omission of the registrant. Therefore, although registrants have no duty to gather information from persons who have no obligation to them, registrants must develop a system for becoming aware of, and submitting, information known to their employees or agents.

Section 159.158(a) makes clear that information may be reportable when the registrant possesses or knows of the information which pertains to a pesticide registered by the registrant. The requirement that information a registrant "knows of" is meant to require submission of relevant aurally or visually received information as well as written information. The provision that submittable information "pertains to a pesticide registered to the registrant" is meant to require submission of pertinent information regarding a registrant's pesticide, whether or not the information was actually generated with a pesticide produced by the registrant. Such submittable information may include generic studies and incidents involving competitors' products if they contain one or more "pesticides" in common, unless the information has previously been submitted. The term "Pesticide" is defined in § 159.153(a)(3).

Information possessed by, or known to, the registrant, such as relevant abstracts, must be submitted as well as information gained through voluntary investigations. In addition, § 159.195 requires reporting of information other than the kinds specified in § § 159.165 through 159.188 if the registrant knows, or should know, that the information raises questions about the continued registrability or the terms and conditions of registration of a pesticide product. EPA wishes to clarify that, after EPA has informed a registrant, or a registrant's agent, that EPA considers such additional information to be pertinent to the question of whether the product's registrations should be canceled, suspended, or modified in some respect, the registrant or agent will undoubtedly be charged with actual knowledge that such questions have been raised.

In § 159.158(d), EPA has deleted the exceptions, formerly at § § 153.66(b)(2)(i)(B) and (D), from submitting information contained in certain Federal or scholarly publications. This change does not require that registrants conduct literature searches or gather information from outside their organizations but if they are aware of it, they must submit appropriate information under section 6(a)(2).

Submission of information which is wholly opinion information is limited. The limitation is contained in § 159.158(b) and is discussed in Unit II. of this document.

-D. How to Submit FIFRA Section 6(a)(2) Information

In order to bring important information to EPA's attention, § 159.156(c) requires that information which is submitted under this rule include a prominent statement to that effect. In order to allow EPA to properly evaluate information submitted under this rule, § 159.156(e) requires that all available information about a submittable event be provided, rather than only the information which makes the event submittable. This requirement includes all information that a registrant has or knows of as a result of an investigation.

If a registrant knows of any additional information about an event or effect of concern that has been submitted, the additional information must also be submitted under § 159.156(e) and the other provisions of this rule. For instance, if a series of incidents are reported under § § 159.184(c) or 159.188(b), a registrant must report any similar incident in accordance with the provisions of this rule. If a preliminary report of a toxicology study is submittable, the final report must also be submitted in accordance with the provisions of this rule. If a registrant knows of a follow-up, tiered, or other study regarding an effect which was the subject of a submission under this rule, information regarding that later study must be submitted in accordance with the provisions of this rule. In all of the above situations, a prominent reference in the later submission to the earlier submission and the fact that the earlier submission was submitted under FIFRA section 6(a)(2) will be sufficient to meet the requirements of § 159.156(c)

In order to permit EPA to enforce the requirements, under authority of FIFRA section 8(a), § 159.157(a) requires registrants to retain a copy of each submission and proof of the time of the delivery to EPA for 5 years after delivery.

Section 159.157(b) requires that information derived from any incident involving toxic effects to one or two individual humans, or involving one or two failures of efficacy of uses which were subject to a "Formal Review" (a Special Review proceeding—formerly called a Rebuttable Presumption Against Registration—under Part 154 of this chapter, or a cancellation or suspension proceeding under FIFRA section 6(b) or (c), respectively), or any information about organisms which may pose a risk to human health unless controlled be retained by the registrant and kept available for inspection for a period of 10 years from the date the registrant receives the information. Such information may become submittable under § § 159.184 or 159.188 during the 10-year time period.

Section 159.157(c) requires that information derived from any incident involving toxic effects to one or two individual non-target organisms be maintained and kept available for inspection for a period of 5 years from the date of the incident, unless the information need not be reported due to the exception in § 159.184(c)(4). Such information may become submittable under § 159.184(c) during the 5-year time period.

Section 159.157(d) reiterates the requirement in 40 CFR 169.2(k) requiring retention of research data for the life of the product. EPA may request access to any of these records during an inspection of a facility in which they are located.

E. Submission of Toxicology Studies

1. *Basis of policy.* The result of any study in which exposure to a pesticidal substance is associated with a toxic effect is clearly pertinent to evaluation of risk and is thus legally reportable under section 6(a)(2). However, unless an item of toxicological information provides new results as indicated in § 159.165(a), or unless it suggests that reliance on material previously submitted to EPA may have resulted in underestimation of the level or degree of risk, or was otherwise inaccurate or incomplete, submission of such new information is not likely to affect the registration status of products containing the substance tested. EPA ordinarily will not treat failure to submit toxicological information which is identical to previously submitted information as an actionable violation of section 6(a)(2); however in § 159.165(a), the Agency insists on submission of any toxicological data which indicate that a pesticide may present different or greater risks than previously reported to EPA.

When a particular pesticide is or was involved "Formal Review," EPA's need for information is considerably greater. In such circumstances, the ultimate status of the pesticide depends on a comprehensive Agency reevaluation of the pesticide's risks and benefits,

including an assessment of the reliability of previously submitted material and the extent to which it has been corroborated. Thus, if a particular substance is or was the subject of a Formal Review, EPA will treat failure to submit any toxicological information linking that substance with any toxic or adverse effect which was, or is, the subject of that proceeding as an actionable violation of section 6(a)(2), even if such informatien merely confirms or corroborates prior data.

EPA does not now distinguish between reporting of results from complete, or incomplete toxicology studies. Information from either which shows a risk of a kind or degree not previously associated with the substance tested must be submitted within 30 calendar days after the information is known to the registrant, regardless of whether the study is complete.

EPA has eliminated the requirement that toxicology studies be submitted solely because a product is in reregistration review.

2. *Examples of how the rule will be applied.* (a) A registrant conducts the first study of the acute effects of ingestion of a certain pesticide on rabbits. A prior acute study of the same pesticide using mice found that exposed mice experienced increased mortality due to liver damage. The registrant notes increased mortality of unknown origin in the exposed rabbits compared to control animals. The registrant may take a reasonable period, not exceeding 30 calendar days, for investigation of the significance and cause of the increased mortality. After that period has elapsed, failure to submit information concerning the study to EPA will be treated as an actionable violation of section 6(a)(2), regardless of whether or not the analysis is yet complete, because the information concerns a study in which toxic effects have been observed in a different species than previously reported. Of course, the registrant will always be entitled to supplement any initial submission with the results of subsequent analysis.

(b) A foreign competitor of the registrant conducts a 2-year study of the effects of chronic exposure to a certain pesticide on rats. The pesticide is also in the registrant's pesticide product. Nine months after the study commences, the registrant learns at a meeting that study personnel observed that a large percentage of the exposed rats have developed ocular opacity of the type associated with formation of cataracts. None of the control rats exhibits a comparable abnormality. Though the test is incomplete and the evidence that the pesticide is inducing cataracts is not yet definitive, the ocular abnormalities seen in the rats may be attributable to exposure to the pesticide, and the observed effects must be reported to EPA within 30 calendar days of the date the registrant learned of the observation. Despite the fact that the registrant did not manufacture the actual pesticide tested, because the pesticide is also in the registrant's product, the information pertains to the registrant's pesticide and must be reported.

F. Discontinued Studies

Section 159.167 requires reporting of the reason(s) for cessation of a study whose results are reportable under this subpart within 30 days after work on the study stops, if testing is ceased before the time specified in the test protocol, or if work on analysis of results is ceased before completion. The requirement of § 159.167 is designed to ensure that stopping work on a study will not serve to avoid submission requirements under this rule.

G. Human Epidemiological and Exposure Studies

Epidemiological studies can be indispensable sources of information on the critical issue of the risks associated with human exposure to pesticide products. Thus, it is important that EPA be able to examine independently the relevance of any epidemiological information concerning pesticide exposure. The Agency will consider any failure to provide such information within 30 calendar days of receipt by the registrant to be an actionable violation of section 6(a)(2). Registrants may supplement any submission of epidemiological information with a statement describing any reservations they might have concerning the information's validity or significance but such information must be submitted under § 159.170.

H. Submission of Information Concerning Pesticide Residues

1. *Food or feed.* Information on exposure is as important to assessment of the potential risk associated with use of a pesticide as data which indicate the toxicological effects of a pesticide. If monitoring or other information is available which is likely to allow EPA to better protect public health or assess environmental fate by refining exposure calculations, it is imperative that EPA receive that information. Data on ingredients, impurities, metabolites, or degradates are important to the Agency's efforts to verify or modify calculations of levels of exposure to these chemicals.

The requirement to report information on active ingredients and their derivatives which are found in an amount above an established level on/in food or feed has been retained and expanded to require reporting of information on active and inert ingredients, impurities, metabolites and degradates which are found on/in food above established levels. EPA has announced in its Inert Ingredients in Pesticide Products Policy Statement, 52 FR 13305, April 22, 1987, pages 13307–13308, its policy of gathering exposure information for inert ingredients which may be of toxicological concern and issuing tolerances or exemptions from tolerance for inerts used on food. EPA is also gathering data on impurities which may be of concern. Accordingly, EPA sees no reason to distinguish in this rule between any components of pesticides with regard to reporting of residues on food or feed. Section 159.178(a) now requires reporting of information on any pesticide ingredient, impurity, metabolite or degradate found on or in food or feed above an established level.

EPA establishes permissible levels of pesticides in food and feed by setting tolerances and promulgating food additive regulations under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA has added "action levels" set by the Food and Drug Administration (FDA) to the list in § 159.153(b)(1) of levels of residues established for food and feed. If no levels have been established, information concerning any amounts of residue found on food or feed are required to be reported.

If a pesticide has been exempted from the requirement of a tolerance, or is not subject to a tolerance, action level, or other established level and is known to be an innocuous part of the human diet, EPA has no interest in learning of any amounts of that substance in or on food or feed, unless that information would be relevant to a promulgated or issued requirement intended to allow conduct of a material-balance analysis to determine levels of exposure to amounts of substances which may be of concern.

On the other hand registrants must provide EPA with any information which may show that residues resulting from pesticide use may exceed established levels, even if such excess levels may not reach the consumer. Therefore registrants must report information from studies showing that a single tested sample exceeds a tolerance, even if some tested composites in the same or a different study do not exceed the tolerance, and must report information from studies which show that the average tested

sample of a composite exceeds a tolerance level.

Recent information submitted to EPA demonstrated that residues of the pesticide aldicarb on individual samples of bananas exceeded tolerances, sometimes by large amounts, even though composite samples previously tested had never exceeded tolerance levels. EPA believes that it is critical that information on both individual samples and composite samples which may exceed tolerances or other established levels be submitted promptly so that EPA can assess the significance of the excess and the risk presented to public health and take any regulatory measures which may be needed. EPA will enforce this provision. This requirement is identical to the one included in 40 CFR 153.73 and 153.77, published on September 20, 1985, and EPA does not believe responsible parties could view this provision as excessively stringent. However, EPA solicits comment on this aspect of today's proposal and will give careful consideration to any comments.

Section 159.178(a) clarifies that legal performance studies will not normally result in reportable information under this section. Specifically, information from legally conducted performance studies using application rates in excess of label rates will not normally constitute information reportable under this section.

EPA strongly feels that the reporting requirements stated above will provide the Agency with meaningful information on potential adverse health or environmental effects that may result from there being unacceptable levels of pesticide active and inert ingredients, impurities, metabolites, and degradates in food or feed—even in cases where the tolerance exceedence is detected on only one sample. However, the Agency is interested in receiving substantive comment on whether the requirements as proposed will provide the best possible information on the magnitude of the potential risk and whether there may be other reporting requirements that would better accomplish this end.

2. *Surface water.* Sections 159.178(b)(1) and (4) require that studies or incident reports be submitted if they concern a pesticide found in "waters of the United States" (i.e., virtually all surface waters) in amounts in excess of the "Water Reference Level." The "Water Reference Level" is defined in § 159.153 to be the limit of detection of a pesticide; or, alternatively, equal to 10 percent of the Maximum Contaminant Level (MCL), if one has been established by EPA, or if one has not, 10 percent of the most recent draft or final long-term Health Advisory Level (HAL). If EPA has not published or proposed an MCL or an HAL, the Water Reference Level would be the lowest detectable amount of the pesticide. EPA is proposing both of these definitions in the regulatory text because the Agency is aware of arguments in favor of each of these approaches. The Agency is soliciting comment on the best approach to defining a "Water Reference Level" for reporting adverse effects to the Agency. In the final rule there will be only one definition of Water Reference Level. In addition to comment on the approach, EPA solicits comment on whether reporting should be based on a single incident or a series of incidents.

If EPA takes the position that any detection should be reported, the Agency does not mean to suggest that any level of these chemicals poses a significant risk to human health or the environment. However, such findings may lead the Agency to conclude that there is a need for further monitoring or for regulatory activity designed to lessen the likelihood that levels of concern will result in the future. In addition, any information concerning the levels of pesticide ingredients in surface water can enhance EPA's understanding of chemical characteristics and environmental conditions which may lead to unacceptable environmental contamination. Inclusion of the term "waters of the United States," which is defined in 40 CFR 122.2, allows EPA to specify better where it anticipates a pesticide active ingredient, metabolite or degradate, which may cause unexpected avoidable harm, may be found. However, as used here, "waters of the United States" excludes 40 CFR 122.2(d) because that paragraph encompasses impoundments into which waste water with known industrial contaminants is released.

If the Agency selects 10 percent of the MCL as the "Water Reference Level," the regulatory text in § 159.153 (Definitions) would be changed by substituting "10 percent of the MCL" for "the limit of detection."

3. *Ground water.* Section 159.178(b)(2) requires that information from studies or incident reports be submitted if they concern a pesticide found in ground water at a level above the "Water Reference Level."

Under proposed 40 CFR 152.170(b)(3), 56 FR 22076, May 13, 1991, EPA proposed in pertinent part, to consider restricting the use of pesticides whose ingredients reach ground water three or more times in distinct locations. However, the Agency is proposing in § 159.178 of this rule to require reporting single incidents of ground water contamination so that it receives information about individual incidents of ground water contamination known to different registrants. Submission of three or more such incidents from any source would be sufficient to allow EPA to consider a restricted use classification under proposed § 152.170(b)(3).

The "Water Reference Level" is defined in § 159.153 to be the limit of detection of a pesticide; or, alternatively, equal to 10 percent of the Maximum Contaminant Level (MCL), if one has been established by EPA, or if one has not, 10 percent of the most recent draft or final long-term Health Advisory (HA) Level. If EPA has not published or proposed either an MCL or HA, the Water Reference Level would be the lowest detectable amount of the pesticide. EPA is proposing both of these definitions in the regulatory text because the Agency is aware of arguments in favor of each of these approaches. The Agency is soliciting comment on the best approach to defining a "Water Reference Level" for reporting adverse effects to the Agency. In the final rule there will be only one definition of Water Reference Level.

In addition to comment on the approach, EPA solicits comment on whether reporting should be based on a single incident or a series of incidents.

4. *Drinking water.* Section 159.178(b)(3) requires submission of information on studies or individual incidents regarding amounts of a pesticide found in finished drinking water above the "Water Reference Level." Finished drinking water includes water which has gone through a community water supply and is ready for drinking, as well as ground water being used directly as a source of drinking water.

The "Water Reference Level" is defined in § 159.153 to be the limit of detection of a pesticide or 10 percent of MCL; or, alternatively, equal to 10 percent of the MCL, if one has been established by EPA, or if one has not, 10 percent of the most recent draft or final long-term Health Advisory (HA) Level. If EPA has not published or proposed either an MCL or HA, the Water Reference Level would be the lowest detectable amount of the pesticide. EPA is proposing both of these definitions in the regulatory text because the Agency is aware of arguments in favor of each of these approaches. The Agency is soliciting comment on the best approach to defining a "Water Reference Level" for reporting adverse effects to the Agency. In the final rule there will be

only one definition of Water Reference Level.

In addition to comment on the approach, EPA solicits comment on whether reporting should be based on a single incident or a series of incidents.

5. *Pesticides applied to water.* Re-reporting of an additional detection of a pesticide at levels which a registrant, in his application for registration, reported can result from legal use in drinking water or waters of the United States is not required because these amounts are expected when the pesticide is used.

I. New Metabolites

EPA has an interest in learning of the existence of new chemicals resulting from pesticide use so that EPA can determine the need for definitive data to assess whether those chemicals are of toxicological concern. Accordingly, EPA has added a new § 159.179 to require submission of information regarding the existence of metabolites, degradates, or impurities which may result from use of pesticides, if the existence of those metabolites or degradates has never been reported to EPA and they may be persistent or of possible toxicological concern. The standards of persistence are those EPA proposes to use in proposed 40 CFR 152.170(b)(3), and are discussed at 56 FR 22076, May 12, 1991.

J. Submission of Information Regarding Toxic Incidents

1. Section 159.158(a) interprets FIFRA section 6(a)(2) to require submission of information the registrant "has" when the information, if true, would be relevant, by itself or in conjunction with other information, to an Agency decision regarding the risks and benefits of the registrant's pesticide. All information concerning an incident which meets the requirements set forth in those sections is likely to be useful during EPA's evaluation of a pesticide. Accordingly, registrants are reminded that they must submit all information which they have concerning an incident reportable under § § 159.184 or 159.195 rather than only the information which triggers the requirement to report.

At a minimum, EPA expects to receive copies of written reports of incidents which are provided to the registrant, and/or descriptions written by the registrant from information the registrant receives aurally or visually, which describe all known details of the incident, the effects alleged to have occurred, the results of investigations, how the registrant became aware of the incident, and the author of reports.

Information concerning incidents in which toxic effects are attributed to pesticide exposure varies considerably in specificity and accuracy. Some reports received by registrants are so vague or implausible that they would be unlikely to provide a basis for administrative action. On the other hand, some incident reports may contain unique and valuable information on the risks and environmental impacts associated with actual use and practice which cannot be readily derived from laboratory data alone. Thus, the Agency has endeavored to select sets of criteria which will give practical assistance to each registrant in identifying those types of incident information which are currently needed by EPA in order to discharge properly its statutory responsibilities. Each set of criteria contains the following elements: A report of a toxic effect; a report of pesticide exposure; an opportunity for investigation of the accuracy of the reports; and some inference that the toxic effect and the pesticide exposure were related, balanced with EPA's need to consider the information.

Incident information concerning a single incident of toxic effects generally has little current utility for regulatory purposes and need not be submitted to EPA under section 6(a)(2) unless the information is predicated on a conclusion, opinion, or reasonable inference that the reported effects were related to pesticide exposure. Under § 159.184(a), failure to submit information regarding any single incident of a toxic effect to a single non-target organism will not be treated as a violation of section 6(a)(2) unless the registrant has concluded that the reported effect may have been caused by the reported pesticide exposure, or has been advised by any person described by § 159.158(b) that a causal relationship may exist, or the information indicates that the effect *succeeded exposure* and is new or more severe than that previously reported to EPA. The Agency believes that an effect which is more severe than one previously reported is a matter of significant concern. However, this criterion requires a judgment as to whether the effect is truly greater than any previously reported. EPA solicits comment on whether this is an appropriate reporting criterion as stated, or whether there is a better way to identify data showing a greater magnitude of risk than previously known.

Information concerning a single incident in which humans exposed to a pesticide have experienced toxic effects is extremely useful in evaluating the risks associated with pesticide use, and in deciding whether a method of applying the pesticide should be prohibited or the labeling should be changed. Receipt of incident information regarding toxic and adverse effects in humans is particularly important because of the difficulties associated with predicting human toxicity on the basis of animal data. Thus, under § 159.184(a) and (b) EPA considers any failure to submit incident information concerning any single toxic effect in humans which includes the basic elements previously identified and which is otherwise reportable under section 6(a)(2) to be an actionable violation of FIFRA, regardless of the circumstances which resulted in the pesticide exposure. The exception that does not require registrants to submit data for an effect noted on the product label is based on the fact that sufficient data were available to EPA on that effect for the Agency to determine it necessary to require a warning statement on the product label.

In contrast, under § 159.184(b)(3) EPA will not treat failure to submit information on any single incident involving toxic effects on non-target organisms as an actionable violation of section 6(a)(2) if the registrant can demonstrate that the pesticide was used improperly and that the label provides reasonable notice of the risk of the specific toxic effects reported.

Considering that phytotoxicity is known to occur even when a pesticide is used properly, an expansion of the misuse exception has been added so that a non-lethal incident (§ 159.184(b)(2), or series of incidents (§ 159.184(c)(4)), of phytotoxicity at the application site adequately warned against on the label need not be reported, even if the effect occurred as a result of legal use.

In contrast to the requirements applicable to an incident involving a single organism, if a registrant has been informed of a series of incidents (i.e., incidents involving three or more organisms) in which the same kind of toxic effect has followed exposure to the same pesticide, a reasonable inference of a causal relationship may arise from the existence of the series or pattern itself, even in the absence of a specific conclusion or expert opinion to that effect. In such circumstances it would be superfluous to require that the registrant conclude or be advised that a causal relationship exists or that the effect is new or more severe. Therefore, registrants must report, under § 159.184(c) any series or pattern of three or more incidents involving the same kind of toxic effect from the same pesticide. Moreover, even if a series or pattern consists of incidents which

would otherwise not be reportable under this rule because each incident involves predictable effects on non-target organisms (other than humans) resulting from improper use, EPA will treat failure to report such information in an aggregate form as an actionable violation of section 6(a)(2). EPA needs this type of incident information because the existence of widespread or routine misuse of pesticide products may be a basis for changes in labeling, additional restrictions on use, or other regulatory action.

EPA's position is that three or more discrete incidents comprise a series and thus establish a reasonable presumption of a causal, non-aberrational relationship between the use of a pesticide and the observed effect. In basing reporting requirements on a fixed number of incident occurrences, EPA is attempting to ensure that it receives vital and informative data, that registrants have decisive guidance on what to submit, and that registrants do not bear the legal responsibility of having to determine whether the relationship between the use of the pesticide and the observed effect is causal. EPA believes that a reporting trigger of three incidents is appropriate. However, the Agency is interested in receiving substantive comment on whether a different number of incidents, or an alternative approach that does not establish an investigation requirement, may be more appropriate to trigger reporting of multiple incidents.

For ease of interpretation, EPA has now specified in § 159.184(c) that incidents involving similar toxic effects to any three or more individual non-target animals or endangered or threatened plants, within a 5 year period, must be reported. For humans § 159.184(c) specifies that information derived from any number of occurrences involving similar toxic effects affecting a total of three or more individual persons within a 10 year period must be reported. For non-endangered, non-threatened plants similar incidents involving any three or more plants on different days or in different locations within a 5–year period must be reported. When any such incident is reportable, all additional occurrences of similar toxic and adverse effects known at the time must be reported, even if the additional effects would not have to be reported alone.

Studies or incidents which arguably indicate failures of public health antimicrobials, products meant to control possible disease vectors, and products which have been subject to Special Review, are reportable under § 159.188. Unit III. K. of this preamble discusses the reporting requirement and indicates the urgency with which EPA views the need to receive information about products designed to prevent public health problems.

2. *Examples of how the rule will be applied.* (a) A registrant receives a report from an unidentified source indicating that an agricultural employee experienced respiratory difficulties after working in a field where a pesticide manufactured by the registrant had recently been applied. A few days later, the registrant discusses the alleged incident with a toxicologist, who states that, in his opinion, the reported respiratory symptoms could have been caused by exposure to the registrant's pesticide. This is the basis of a reportable toxic incident and the registrant then has 30 calendar days to investigate the incident (if the registrant chooses) and submit information to EPA. If the registrant discovers within that time frame facts which establish that the reported toxic and adverse effect or reported exposure did not occur, or which conclusively establish that the respiratory difficulties experienced by the exposed individual were unrelated to pesticide exposure, the incident need not be reported. Otherwise, information concerning the incident must be submitted to EPA and proof of submission must be retained for 5 years because the toxicologist is a qualified expert whose opinion is reportable under FIFRA section 6(a)(2).

(b) A registrant receives a report from an agricultural extension agent indicating that two fish were killed in a creek adjacent to a field where a registrant's pesticide had recently been applied. After investigation, not exceeding 30 calendar days, the registrant concludes that the reported fish kill probably resulted from exposure to the registrant's pesticide. However, the registrant also discovers facts which establish that the pesticide was improperly applied by an individual who disregarded a statement on the label expressly warning that use resulting in contamination of surface waters could kill fish. This incident need not be reported under this section because fewer than three fish were affected. However the information must be retained for 5 years after the incident in compliance with § 159.157(c).

(c) The registrant has received reports of mortality in non-target birds feeding in or near fields where the registrant's pesticide has been applied. Though some of these reports were not specific enough to enable investigation of their accuracy, the registrant has identified specific investigable incidents affecting three or more birds in which it appears that birds died following use of the registrant's pesticide. However, the registrant has not determined whether or not the pesticide was responsible for the observed bird mortality, and no employee, consultant, or qualified expert has indicated that a causal relationship may exist. Nevertheless, the existence of the unexplained incidents in the organisms is sufficient to support a reasonable inference of a causal relationship between the toxic and adverse effects and excess residues, and failure to submit all information concerning any of the incidents will be considered an actionable violation of section 6(a)(2) if more than three birds were affected.

(d)(i) A registrant receives a complaint from a user who says he experienced gastric disturbances after using a registrant's product. The user is no longer ill and did not visit a doctor or hospital and EPA has received reports of a similar character and severity previously. Absent additional information the incident need not be reported because neither the registrant, nor a qualified expert, has concluded that the incident may have resulted from exposure to the pesticide. However, the registrant must retain a record of this incident for 10 years, under § 159.157(b).

(ii) If the user visited a doctor, Poison Control Center, or hospital, expert opinion will often be part of the file. If the registrant concludes, or a qualified expert advises the registrant, that the effect may indeed have resulted from exposure, the incident must then be reported.

(iii) If the user experiences other effects not previously reported to EPA in connection with the pesticide, or similar effects that are more severe than previously reported, the incident must then be reported unless the registrant can demonstrate that the pesticide was used improperly and that the label provides reasonable notice of the risk of the specific toxic effects reported.

(iv) In the above examples, if the information is reported, a copy of the report and proof of delivery must be retained by the registrant for 5 years after delivery under § 159.157(a). If it is not reported, the information must be retained for 10 years after the incident in compliance with § 159.157(c).

(e)(i) A registrant receives a report of a flagger who suffered eye irritation. A doctor's notes about which the registrant is aware indicate that the irritation may be due to exposure to the registrant's pesticide. However the product's label contains a warning

statement about eye irritation and the registrant discovers within 30 calendar days of receipt of the report that the flagger failed to wear goggles as required by the label. The incident need not be reported because it involves a minor risk which is warned against on the label and is of a type excepted by § 159.184(b)(1) but the information must be retained by the registrant for 10 years under § 159.157(b).

(ii) A registrant receives a report of a worker who reentered the field contrary to label directions who later suffered eye irritation. The information indicated that a doctor concluded that the irritation may have been due to exposure to residues of the registrant's product. The label warns against eye irritation and the registrant has information showing the worker failed to wear goggles required by the label. The incident need not be reported under § 159.184(b)(1) but the information must be retained by the registrant for 10 years.

(iii) Subsequent to the incident in Unit III.J.2.(d)(ii) above, the registrant receives one detailed report regarding two more reentry workers who suffered the same kind of effect in the same field at the same time as each other. The registrant has no new information regarding a doctor's diagnosis. The information from the new report regarding toxic and adverse effects suffered by two humans and the information regarding the previous one must be submitted to EPA within 30 calendar days of receipt of the latter report because, in total, the information now constitutes three incidents involving toxic and adverse effects to humans under § 159.184(c). That section contains no exception regarding minor risks warned against on the label and the fact that two persons were injured at one time does not change the fact that, in total, three humans were affected.

(iv) Another registrant receives a report of a reentry worker who suffered eye irritation. The information indicated that a doctor concluded that the irritation may be due to exposure to residues of the registrant's product. The label warns against eye irritation and also requires workers to wear goggles if they enter the field within 24 hours after application of the pesticide. The registrant has information indicating that the worker did not wear goggles. However the registrant investigates and finds that the worker entered the field 48 hours after application of the pesticide. Even though minor, the incident must be reported under § 159.184(a). The effect does not qualify as an exception under § 159.184(b)(1), because the risk of the effect suffered by the worker was not adequately warned against on the label.

In each of the above examples, if the registrant had become aware of an incident involving a product manufactured by someone else, the reporting requirement would not change if the toxic and adverse effect may have been due to an ingredient, metabolite or degradate in, or derived from, the registrant's product.

K. Submission of Efficacy Studies and Incidents

In most instances, EPA will not treat the failure to submit information from studies concerning the efficacy of a pesticide as an actionable violation of section 6(a)(2) unless such information indicates that the pesticide may not perform as claimed when used to control organisms which pose a potential risk to human health. This standard is incorporated in § 159.188(b)(2).

The Agency will not treat any failure to submit incident information concerning failure of performance against organisms which may pose any risk to human health but do not pose an immediate risk to human health, (i.e., failure to control possible disease vectors) as an actionable violation of section 6(a)(2) unless such information concerns a series or pattern of three or more comparable failures of performance. In an instance where a reported failure of performance involved use against organisms which may pose an immediate risk to human life, EPA would consider any single reported incident of failure of performance to be relevant to regulatory action. Single incidents of failures of products which may pose an immediate risk to human health are reportable under § 159.188(a), and a series of incidents of three or more similar failures in which a product failed to perform as claimed against organisms which may pose a risk to human health is reportable under § 159.188(b)(1).

Examples of organisms which could pose a risk, but perhaps not an immediate risk, to human health include disease vectors such as ticks. Organisms which could pose an immediate risk to human health include microorganisms, like hepatitis B virus, which themselves infect humans. Such organisms are controlled by "public health antimicrobials." Public health antimicrobials are often registered for use in hospital settings to prevent the spread of life threatening diseases. It is imperative to the mission of the Agency that each incident concerning possible failure of a public health antimicrobial be reported to EPA without delay. EPA has noted that compliance with this requirement, which already appears in current policy statements, has been spotty in the recent past. If this critical requirement is violated, the Agency intends to pursue enforcement action and sanctions with vigor appropriate for regulatory requirements that, if violated, may have a direct and immediate impact on public health.

In instances where use of a particular pesticide appears to involve substantial risks, EPA must evaluate the efficacy of the pesticide, in addition to the magnitude and value of its use and the feasibility of substitutes, before determining whether or not the risks associated with use of the pesticide are acceptable. Accordingly, whenever any use of a registered pesticide is or was the subject of a Formal Review as defined in § 159.153(b)(2), EPA is interested in information which concerns any deficiency in or reduction below the claimed efficacy of the product for the use being reviewed. When users of pesticides conduct methodical investigations, such as comparative field trials, and provide registrants with the information concerning studies, or a series of incidents listed in § 159.158(c)(1), the information regarding deficiencies in claimed efficacy is reliable enough to be considered by EPA and therefore must be reported. Information regarding such studies of products which are, or have been, the subject of Formal Review must be submitted to EPA.

L. Submission of Information Not Listed

1. *Discussion of basis for rule.* Sections 159.165 through 159.188 establish policies concerning the types of information which have been the subject of most of the inquiries made and concerns expressed with regard to FIFRA section 6(a)(2). There are, however, other categories of information which may be reportable under FIFRA section 6(a)(2) and § 159.158. Such reportable information includes, for example, information concerning soil, plant, and animal metabolism; bioaccumulation by various life forms, levels of exposure to applicators, farm workers, and other persons, drift of pesticides to non-target areas; and a variety of other information which might affect EPA decisions concerning the continued registrability of a product or the appropriate terms and conditions of registration.

EPA has not attempted to establish with specificity, for each category of such additional information, which failures to report information EPA will or will not treat as actionable violations

of FIFRA section 6(a)(2). However, in order to provide some guidance to registrants, § 159.195 sets forth a general rule covering all information not described by § § 159.165 through 159.188. In cases when the registrant should know that the information, alone or in conjunction with other information, raises questions about a greater than negligible risk or toxic or adverse effects in a species not previously reported to EPA, or more severe than previously reported to EPA, § 159.156(a) allows registrants a reasonable period, never exceeding 30 calendar days, to verify or investigate apparently reportable information. If, during this period, the registrant learns of facts showing that the information is incorrect, the information need not be submitted and failure to report will not be considered an actionable violation of section 6(a)(2). Otherwise the information must be submitted and proof of delivery must be retained for 5 years. Information not submitted to EPA, solely because the registrant is aware of less than three similar adverse effects, must be retained for 10 years if the effects are to humans, and for 5 years if the effects are to non-target organisms.

It should be noted again that whenever a registrant, including any employee or agent of a registrant or any person acting for a registrant, is notified by EPA that the Agency considers such additional information to be pertinent to the question of whether the product's registrations should be modified in any respect, the Agency considers such notification to constitute actual knowledge on the part of the registrant that the information is covered by § 159.195.

2. *Examples.* (a) The registrant receives verifiable reports that five cans of the registrant's product leaked 3 years after the registrant sold them. The registrant has no information regarding incidents of toxic and adverse effects caused by the leaks. Nonetheless, the registrant should know that such information about container failures may raise serious questions about the proper terms and conditions of registration of the product, due to the possibility of uncontrolled, unpredictable exposure to the product or its residues, as demonstrated by the series of incidents. Therefore the information would have to be submitted within 30 calendar days of the time the registrant possesses or knows of the information. However, if the registrant investigates, and, within the time permitted, discovers that three cans leaked because they were stored under conditions which were neither in accordance with the labelling or commonly recognized practice (such as the cans were damaged in a warehouse fire), the series of incidents need not be reported unless the registrant has knowledge that EPA is considering terms and conditions of registration to which such information would be relevant.

(b)(i) A registrant has previously submitted a toxicological study and an exposure study concerning its product to the Agency. Based on those studies, a consultant to a test lab engaged by the registrant calculates the risk presented to applicators by the use of the registrant's product. Unless the registrant knows that a calculation suggesting greater risk has been reported to EPA previously, the consultant's conclusion and the basis for it must be submitted to EPA within 30 calendar days because the registrant should know EPA would regard this type of information as having the potential for raising questions about the terms and conditions of registration of the product.

(ii) Within 30 calendar days an employee of the registrant concludes that the risk presented to applicators is much lower than the risk calculated by the consultant. The difference is due to use of a different assumption by the employee. However, the information consisting of the consultant's conclusion and its basis must be submitted because the registrant does not have facts establishing that use of the consultant's assumption is incorrect.

(iii) Within 30 calendar days an employee of the registrant concludes that the risk presented to applicators is much lower than the risk calculated by the consultant. The difference is due to an arithmetic error in the consultant's calculation which the consultant corrects in writing. The consultant's original conclusion and calculation need not be submitted because the registrant is aware of facts establishing that the information is incorrect.

IV. Statutory Review Requirements

In accordance with section 25 of FIFRA, this rule was provided to the U.S. Department of Agriculture (USDA), the Committee on Agriculture, Nutrition and Forestry of the Senate, the Committee on Agriculture of the House of Representatives, and the FIFRA Scientific Advisory Panel (SAP) for comment prior to publication. USDA had no comment and SAP waived review.

V. Regulatory Review Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement that a regulatory analysis be performed. A "major" rule is one which has an annual effect of $100 million or more, or results in a major increase in costs or prices, or has significant adverse effects on economic activities. The Agency concludes that this proposed rule does not meet the criteria for "major" because it imposes no requirements for data generation and will result in submission of certain existing information an estimated total of 120 times per year. This will result in an estimated total burden to all registrants of 5,380 person hours, excluding voluntary investigations performed by registrants, but including time spent analyzing those reports which would not be analyzed absent this rule. This proposed rule has been submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), I hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. EPA has estimated that the regulation will impose a total cost of $564,000 on 2,500 pesticide registrants. Since only a fraction of these are small entities, the number of small entities affected and the cost imposed on them is substantially less than the total.

C. Paperwork Reduction Act

The information collection requirements of this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1204) and a copy may be obtained from Sandy Farmer, Information Policy Branch, (PM-223) EPA, 401 M St., SW., Washington DC 20460, or by calling (202) 260-2740.

Public reporting burden for this collection of information is estimated to average 25 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this

collection of information, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM-223, Environmental Protection Agency, 401 M St., SW., Washington DC 20460, and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: EPA Desk Officer, Washington DC 20503.

The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 153 and 159

Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: September 10, 1992.

F. Henry Habicht,

Acting Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 153—[AMENDED]

1. In part 153:

a. The authority citation for part 153 continues to read as follows:

Authority: 7 U.S.C. 136—136y.

Subpart D—[Removed and Reserved]

b. By removing subpart D, consisting of §§ 153.61 through 153.79, and designating subpart D as "[Reserved]."

2. By adding new part 159 consisting of subparts A, B, and C, which are reserved, and subpart D to read as follows:

PART 159—STATEMENTS OF POLICIES AND INTERPRETATIONS

Subparts A—C [Reserved]

Subpart D—Reporting Requirements for Risk/Benefit Information

Sec.

159.152 What the law requires of registrants.
159.153 Definitions.
159.155 When information must be submitted.
159.156 How information must be submitted.
159.157 Recordkeeping.
159.158 What information must be submitted.
159.165 Toxicological and ecological studies.
159.167 Discontinued studies.
159.170 Human epidemiological and exposure studies.
159.178 Information about pesticides in or on food or feed, or in water.
159.179 New metabolites, degradates, and contaminants.
159.184 Toxic or adverse effect incident reports.
159.188 Failure of performance information.
159.195 Reporting of other information.

Authority: 7 U.S.C. 136-136y.

Subparts A—C [Reserved]

Subpart D—Reporting Requirements for Risk/Benefit Information

§ 159.152 What the law requires of registrants.

(a) Section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) states that if at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

(b) Compliance with this part will satisfy a registrant's obligations to submit additional information pursuant to section 6(a)(2).

§ 159.153 Definitions.

(a) The definitions set forth in FIFRA section 2 and in part 152 of this chapter apply to this part unless superseded by a definition in paragraph (b) of this section.

(b) The following definitions apply to this part:

Established level means a tolerance, food additive regulation, action level, or other limitation on residues imposed by law, regulation, or other authority.

Formal review means Special Review, Rebuttable Presumption Against Registration (RPAR), FIFRA section 6(c) suspension proceeding, or FIFRA section 6(b) cancellation proceeding, whether completed or not.

Pesticide means each active ingredient, inert ingredient, impurity, metabolite, or degradate contained in, or derived from, a pesticide product which is or was registered.

Registrant includes any person who holds, or ever held, a registration for a pesticide product issued under FIFRA section 3 or 24(c).

Water reference level means the limit of detection of a pesticide in water; or, alternatively, 10 percent of the Maximum Contaminant Level (MCL) if one has been established by EPA, or if one has not, 10 percent of the most recent draft or final long-term Health Advisory Level (HAL), or if EPA has not published or proposed an MCL or an HAL, the lowest detechable amount of the pesticide.

§ 159.155 When information must be submitted.

(a) EPA will consider information to be submitted on time if it is received by EPA not later than the 30th calendar day after the registrant first possesses or knows of the reportable information.

(b) For purposes of this part a registrant possesses or knows of information at the time any officer, employee, agent, or other person acting for or employed by the registrant first comes into possession of, or knows of, such information.

§ 159.156 How information must be submitted.

A submission under FIFRA section 6(a)(2) must:

(a) Be identical to, but be in addition to, copies sent in compliance with any other requirements.

(b) Be addressed to: FIFRA 6(a)(2) Document Processing Desk, Program Management and Support Division (H-7504C), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(c) Contain the name of the submitter, the company name and number, the date of transmittal to EPA, and a prominent statement that the information is being submitted in accordance with FIFRA section 6(a)(2).

(d) Identify the substance tested or otherwise covered by the information (including the EPA registration number(s) to which the information pertains, and if known, the CAS Registry Number).

(e) Summarize all known information concerning the study or incident or other event being reported.

(f) Assert any claims of confidentiality for information contained in the submission.

(g) If submitted under another provision of FIFRA (e.g., sections 3(c)(2)(B), 4(e)(1)(E)), also comply with all applicable requirements and any additional guidelines for the submission of data under such provision.

§ 159.157 Recordkeeping.

Registrants shall maintain records of all the following for the time periods specified:

(a) A copy of each submission under FIFRA section 6(a)(2) with proof of delivery to the address in § 159.156(b) must be maintained and kept available

for inspection for 5 years after the date of the submission.

(b) The following information must be maintained and kept available for inspection for a period of 10 years from the date of the incident:

(1) Information derived from any incident involving toxic effects to one or two humans (see § 159.184(c)).

(2) Information derived from any incident involving one or two failures of a pesticide to perform as claimed in use against organisms which, unless controlled, may pose a risk to human health (see § 159.188(b)).

(3) Information derived from any incident involving one or two failures of a pesticide to perform as claimed if such use is, or in the past has been, the subject of a Formal Review (see § 159.188(c)).

(c) Information derived from any incident involving toxic effects to one or two individual non-target organisms must be maintained and kept available for inspection for a period of 5 years from the date of the incident, unless the information need not be reported due to the exception in § 159.184(c)(4) (see § 159.184(c)).

(d) Research data must be retained for the life of the pesticide product(s) to which it pertains, as per 40 CFR 169.2(k).

§ 159.158 What information must be submitted.

(a) *General.* Information which is reportable under one or more of the sections from § 159.165 to § 159.195 must be submitted if the registrant, including any officer, employee, agent, or other person acting for the registrant possesses or knows of the information, and the information pertains to the registrant's pesticide, regardless of whether the information was generated from use or testing of the registrant's pesticide.

(b) *Opinion information.* Information reportable under one or more of the sections from § 159.165 to § 159.195 must be submitted if the opinion which makes it reportable was expressed by a person:

(1) Who was employed or retained (directly or indirectly) by the registrant.

(2) From whom the registrant requested the opinion(s) or conclusion(s) in question.

(3) Who, by virtue of his or her knowledge, skill, experience, training, or education could be considered to be an expert with regard to the matter on which he or she rendered the opinion.

(c) *Clearly erroneous information.* Information need not be submitted if before the date on which the registrant must submit such information:

(1) The registrant discovers that any analysis, conclusion, or opinion was predicated on data that were erroneously generated, recorded, or transmitted, or on computational errors.

(2) Every author(s) of each such analysis, conclusion, or opinion has acknowledged in writing that the analysis, conclusion, or opinion was improper because of the use of the erroneous data, and has corrected the original analysis, conclusion, or opinion accordingly.

(3) As a result of the correction, the information is no longer required to be reported under FIFRA section 6(a)(2).

(d) *Previously submitted information.* Information regarding an incident, study, or other occurrence need not be submitted if before the date on which the registrant must submit such information, the registrant is aware that all information concerning that incident, study, or other occurrence is contained completely in:

(1) Documents officially logged in by EPA.

(2) EPA publications, EPA hearing records, or publications cited in EPA **Federal Register** notices.

(3) Any other documents which are contained in the official files and records of the EPA Office of Pesticide Programs.

§ 159.165 Toxicological and ecological studies.

(a) The results of an incomplete or complete study of the toxicity to any human or other non-target organism of a pesticide must be submitted if:

(1) It shows a toxic effect in a different organ or tissue of the test organism than a previously submitted valid study.

(2) It shows a toxic effect at a lower dosage, or after a shorter exposure period, or after a shorter latency period than a previously submitted valid study.

(3) It shows a toxic effect at a higher incidence or frequency than a previously submitted valid study.

(4) It shows a toxic effect in a different species, strain, sex, or generation of test organism than a previously submitted valid study.

(5) It shows a toxic effect by a different route or medium of exposure than a previously submitted valid study.

(6) It shows a toxic effect through a different pharmacokinetic, metabolic, or biological mechanism than a previously submitted valid study.

(b) Results from a study that demonstrates any toxic effect (even if corroborative of information already known to the Agency) must be submitted if the pesticide is or has been the subject of a formal review based on that effect. Within 30 calendar days of the publication of a Notice of Commencement of a Formal Review in the **Federal Register**, all information which has become reportable due to the commencement of the Formal Review must be submitted.

§ 159.167 Discontinued studies.

The fact that a study has been discontinued before the planned termination must be reported to EPA, with the reason for termination if known, if submission of information concerning the study is, or was, required under this subpart.

§ 159.170 Human epidemiological and exposure studies.

Information which concerns any study (or portion thereof) upon which a person described in § 159.158(b) has concluded, or a person described in § 159.158(b)(3) would conclude, that a positive correlation or association may exist between exposure to a pesticide and either a toxic effect in humans, or residues of the pesticide in human tissue or body fluid, must be submitted regardless of whether or not the registrant considers any observed correlation or association to be significant.

§ 159.178 Information about pesticides in or on food or feed, or in water.

(a) *Food and feed.* Information must be submitted if it arguably shows that the pesticide is present on food or feed at a level in excess of established levels, except that information on excess residues resulting solely from studies conducted under authority of FIFRA section 5 need not be submitted.

(b) *Water.* Information must be submitted if it may show that a pesticide:

(1) Is present in waters of the United States, (as defined at 40 CFR 122.2, except paragraph (d) of § 122.2) above the "Water Reference Level," as defined in § 159.153.

(2) Is present is groundwater above the "Water Reference Level."

(3) Is present in finished drinking water above the "Water Reference Level."

(4) But information need not be submitted regarding the detection of a pesticide in waters of the United States or finished drinking water if it is registered for use in finished drinking water or surface water and the amount detected does not exceed those amounts reported by a registrant, in its application for registration, as resulting in those waters from legal applications of pesticides.

§ 159.179 New metabolites, degradates, and contaminants.

Information which shows the existence of any substance which appears to be a pesticide, as defined in this part, must be submitted if:

(a) The substance may occur under conditions of use of the pesticide product; and

(b) The existence of the substance or the association of the substance with the pesticide product has not previously been reported to EPA; and

(c) Any of the following is true:

(1) Any person described in § 159.158(b) has determined that the substance may be of toxicological or ecological concern.

(2) The registrant has concluded, or has been advised by any person described in § 159.158(b), that the substance, or analogous chemicals, may have any experimentally determined halflife greater than 3 weeks as shown from laboratory aerobic soil metabolism studies or field dissipation studies, or may have any experimentally determined resistance to hydrolytic degradation, or photolytic degradation on soil or in water, under any conditions, resulting in degradation of less than 10 percent in a 30-day period.

(3) The registrant has concluded, or a reasonable person described in § 159.158(b) person would conclude, that the substance may be of toxicological or ecological concern based on:

(i) The physical or chemical properties of the new substance; and/or

(ii) Data regarding analogous chemicals; and/or

(iii) Data regarding chemical reactivity of the substance and analogous substances; and/or

(iv) Data on the substance.

§ 159.184 Toxic or adverse effect incident reports.

(a) *Information from incidents affecting one or two humans or non-target organisms.* Information regarding a single toxic or adverse effect incident must be submitted if:

(1) The registrant has been informed that a person or nontarget organism suffered a toxic effect.

(2) The registrant has been informed that the affected person or non-target organism may have been exposed to a pesticide.

(3) The registrant is not aware of facts which establish that the reported toxic effect, or reported exposure, did not occur.

(4)(i) The registrant, or any person described in § 159.158(b), has concluded that there may be a causal relationship between the toxic effect and exposure to its pesticide.

(ii) The toxic or adverse effect occurred in a species in which that effect was not previously reported to the Agency.

(iii) The toxic or adverse effect was more severe than that previously reported in that species.

(b) *Exceptions.* Information regarding a single toxic effect need not be submitted if:

(1) It concerns an effect for which the label provides adequate notice of the risk of that effect in the affected type of organism.

(2) It concerns a non-lethal toxic effect to non-target plants which were at the use site at the time the pesticide was applied, if the label provides adequate notice of such a risk.

(3) It concerns a toxic effect to organisms other than humans which was due to misuse of the pesticide.

(c) *Information on incidents affecting three or more humans or non-target organisms.* This paragraph covers information derived from any number of occurrences involving similar toxic effects to any three or more individual non-target animals or endangered or threatened plants, or involving any three or more other plants on different days or in different locations, at any time within a 5-year period. For humans, this paragraph covers information derived from any number of occurrences involving similar toxic effects affecting a total of three or more individual persons at any time within a 10-year period. Covered information must be reported if the information meets the standards in paragraphs (c)(1) through (3) of this section and is not subject to the exclusion in paragraph (c)(4) of this section:

(1) The registrant has been informed that the persons or non-target organisms suffered similar toxic effects.

(2) The registrant has been informed that the affected persons or non-target organisms may have been exposed to a specific pesticide.

(3) The registrant is not aware of facts which establish that the reported toxic effects, or reported exposures, did not occur, or establish that the reported exposures and reported similar effects were unrelated.

(4) Notwithstanding paragraphs (c)(1), (2), and (3) of this section information pertaining solely to non-lethal toxic effects to non-target plants at the use-site at the time the pesticide was applied need not be submitted if warnings of the specific effect appear on the label of the registrant's product.

§ 159.188 Failure of performance information.

(a) *Immediate risk to human health.* Information must be submitted which concerns an incident in which:

(1) The registrant has been informed that a pesticide product did not perform as claimed against target organisms.

(2) The failure of the pesticide to perform as claimed involved a use, such as a public health antimicrobial use, against organisms of any character which, unless controlled, may pose an immediate risk to human health.

(3) The registrant has received sufficient information to conduct an investigation of the incident and has not established that the reported failure of performance did not occur.

(b) *Risk to human health.* Information must be submitted which concerns either incidents described in paragraph (b)(1) of this section or a study described in paragraph (b)(2) of this section:

(1) A series or pattern of three or more similar incidents in which:

(i) The registrant has been informed that a pesticide product did not perform as claimed against target organisms.

(ii) The registrant has received sufficient information to conduct an investigation of three or more incidents and has not established that the failures of performance occurred less than three times.

(iii) The failures of the pesticide to perform as claimed involved the use against organisms such as possible disease vectors which, unless controlled, may pose a risk to human health.

(iv) The three or more incidents occurred within 10 years of each other.

(2) A study which demonstrates that the pesticide may not perform in accordance with any claim by the registrant regarding uses intended for control of organisms that may pose a risk to human health, including any of the public health antimicrobial or other uses identified in § 158.640 of this chapter.

(c) *Products subject to formal review.* Information must be submitted if it shows any deficiency or reduction in the claimed efficacy of a registered pesticide, if such use is, or in the past has been, the subject of a formal review and it concerns any study or an incident described in paragraph (c)(1) of this section.

(1)(i) The registrant has been informed of three or more similar failures to perform as claimed against target organisms.

(ii) For at least three individual incidents the registrant has received

sufficient information to conduct an investigation and has failed within 30 days of the third incident to establish that the reported failures of performance occurred less than three times.

(iii) The three or more incidents occurred within a 10 year period.

(2) Within 30 calendar days of the publication of a Notice of Commencement of a Formal Review in the **Federal Register**, all information under this section which has become reportable due to the commencement of the formal review must be submitted.

§ 159.195 Reporting of other information.

(a) If the registrant knows of information other than that discussed in other sections of subpart D of this part, the registrant shall submit such information to the Administrator if:

(1) The registrant is not aware of facts which establish that the information is incorrect.

(2) The registrant knows, or reasonably should know, that if the information should prove to be correct, EPA would regard the information alone or in conjunction with other information about the pesticide, as having the potential to raise questions about the continued registrability of a product or about the appropriate terms and conditions of registration of a product.

(3) Examples of reportable information include but are not limited to: bioaccumulation by various life forms, levels of exposure to applicators, farm workers, and other persons, drift of pesticides to non-target areas, calculations showing possible unreasonable risk, and a variety of other information which might affect EPA decisions concerning the continued registrability of a product or the appropriate terms and conditions of registration.

(b) [Reserved]

[FR Doc. 92-22782 Filed 9-23-92; 8:45 am]

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Index, fi
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Index, fi
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General

Other Se

Data ba
Guide to
Legal st
Privacy
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TDD for

FEDERA

39597–40
40071–40
40301–40
40591–40
40827–41
41053–41
41375–41
41641–41
41853–42
42485–42
42681–42
42881–43
43125–43
43335–43
43605–43
43885–44
44077–44

Reader Aids

Federal Register

Vol. 57, No. 188

Thursday, September 24, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

39597-40070.....1
40071-40300.....2
40301-40590.....3
40591-40826.....4
40827-41052.....8
41053-41374.....9
41375-41640.....10
41641-41852.....11
41853-42484.....14
42485-42680.....15
42681-42880.....16
42881-43124.....17
43125-43334.....18
43335-43604.....21
43605-43884.....22
43885-44076.....23
44077-44304.....24

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

2.....40024
3.....40024
11.....40024

3 CFR

Executive Orders:
12154 (See EO 12814).....42483
12543 (See DOT final rule of August 26, 1992).....41696
12722 (See DOT rule of August 21).....39603
12724 (See DOT rule of August 21).....39603
12735 (See State Dept. final rule of Aug. 24).....41077
12775 (See DOT rule of August 17).....39603
12779 (See DOT rule of August 17).....39603
12814.....42483

Administrative Orders:
Presidential Determinations:
No. 91-52 of September 13, 1991 (See Presidential Determination No. 92-45 of August 28, 1992).....43125
No. 92-39 of August 17, 1992.....40071
No. 92-40 of August 17, 1992.....40073
No. 92-42 of August 25, 1992.....40075
No. 92-43 of August 25, 1992.....40077
No. 92-44 of August 25, 1992.....40079
No. 92-45 of August 28, 1992).....43125
No. 92-46 of September 4, 1992.....42881
Notices:
September 18, 1992.....43603

Proclamations:
6467.....40591
6468.....40827
6469.....41051
6470.....41373
6471.....42679
6472.....43127
6473.....43129
6474.....43333

4 CFR

Proposed Rules:
Ch. III.....43776

5 CFR

531.....43131
536.....43131
550.....40070, 43131
870.....43131
890.....43131, 43132

Proposed Rules:
532.....42513

7 CFR

2.....40829
16.....44077
210.....40729
301.....42485
319.....43134
723.....43580
800.....40301
916.....42681
917.....42681, 42683
920.....41853, 42684
944.....42685, 42687
966.....42688
967.....42689
980.....42688
987.....43335
1207.....40081
1427.....40593
1464.....43580
1956.....42691

Proposed Rules:
13.....43628
319.....40872, 43628
780.....43937
910.....42515, 43943
1033.....42899
1036.....42899
1049.....42899
1209.....43943
1413.....42899
1744.....39628
1902.....39631
1930.....39631
1944.....39635

8 CFR

204.....41053
209.....42883
214.....40830, 42884
251.....40830
258.....40830
274a.....42884

9 CFR

75.....43605
94.....43606, 43885
381.....43588

Proposed Rules:
75.....40139
92.....41549
124.....40493
201.....42515
203.....42515

307 40623
310 40623
318 42885
319 42885

10 CFR

11 41375
25 41376
35 41376
50 ..... 41378, 43886
600 40083
605 40582

Proposed Rules:

26 42901
70 42901
73 42901
1023 40345

11 CFR

200 39743

Proposed Rules:

104 44137

12 CFR

3 ..... 40302, 44078
204 40597
208 43889
217 43336
225 ..... 41381, 41641, 43889
230 43337
250 ..... 40597, 41643
262 41641
265 40597
545 40085
562 40085
563 40085
563c 40085
571 40085
603 42888
611 43393
612 43394
614 43290
619 43290
701 42486
935 42888
940 42888
1616 43607

Proposed Rules:

3 ..... 42623, 42901
208 ..... 39641, 42623
225 ..... 39641, 42623
325 42623
363 42516
509 40350
516 40350
517 42906
528 40350
541 40350
543 40350
545 40350
552 40350
556 40350
558 40350
559 40350
561 40350
563 ..... 40140, 40350, 40524
563b 40350
563e 40350
567 ..... 40143, 40147, 40350, 40524
571 ..... 40350, 40524
579 40350
580 40350
791 42532
1625 39743

13 CFR

121 41068

Proposed Rules:

108 ..... 43155, 43157

14 CFR

13 40094
21 ..... 41069, 41072, 41360, 42846, 43776
23 ..... 41069, 41072
36 ..... 41360, 42846
39 ..... 40307–40313, 40601, 40835–40838, 42692, 42693, 43291, 43890
43 41360
71 ..... 40095, 40096, 42488
91 ..... 41360, 42662
97 ..... 41074, 41075, 44085, 44087
121 42662
125 42662
135 ..... 42662, 43776
147 41360
200 40097
203 40097
205 40097
206 40097
231 40097
232 40097
255 43780
263 40097
288 40097
294 40097
296 40097
297 40097
298 40097
302 40097
372 40097
399 40097
1214 ..... 41077, 41854

Proposed Rules:

Ch. I 41894
39 ..... 40359, 40623, 40624, 41114, 41115, 41439, 43944, 44136, 44141
61 41974
71 ..... 40148–40156, 41441–41445, 42810
93 42810
101 41628
107 43294
108 43294
207 42864
208 42864
212 42864
294 42864
298 42864
380 42864
389 42864

15 CFR

29b 43892
60 40840
770 41854
771 41854
773 41854
776 41854
779 41854
786 41854
799 41854
Ch. IX 43310
944 43310

Proposed Rules:

799 41894
806 43158
946 40877

16 CFR

305 ..... 41388, 43611
1115 39597

Proposed Rules:

229 41706
230 41707
232 41706

17 CFR

4 41173
16 40601
19 41389
30 40603

Proposed Rules:

Ch. II 43631
33 40626

19 CFR

10 ..... 40314, 40604, 43059
24 42697
103 44089
122 43395
141 40605
142 44090
145 40255
171 40605
172 40605
178 44090

Proposed Rules:

4 40627
101 42712
141 40361
142 ..... 40361, 44142
143 40361
146 41896
151 ..... 40361, 44143
152 44143
191 ..... 41446, 44145

20 CFR

404 44095
655 ..... 40966, 43118, 43495

Proposed Rules:

416 44146
626 41447
627 41447
628 41447
629 41447
630 41447
631 41447
637 41447

21 CFR

5 ..... 40315–40318, 43397
177 43398
178 43631
310 41857
520 ..... 42490, 42623
522 ..... 41861, 42623
526 42623
529 42489
556 41861
573 40318
1308 43399
1310 43614
1313 43614

Proposed Rules:

131 ..... 40255, 43059
166 43634
310 40944
864 43161
872 43165
884 42908

22 CFR

121 41077

24 CFR

25 40111
91 40038
135 40111
203 44098
234 44098
570 40038
905 40113

25 CFR

Proposed Rules:

211 40298
212 40298

26 CFR

1 ..... 40118, 40319, 40841, 41079, 41644, 42490, 43893, 43897
5c 43893
5f 43893
5h 43893
6 43893
7 43893
7a 43893
10 43893
13 43893
14 43893
14a 43893
18 43893
19 43893
31 44099
301 43893
602 ..... 40118, 40319, 41079, 41644, 43893, 43897

Proposed Rules:

1 ..... 39743, 40378, 41707, 41897, 42712, 42720, 43776, 43945
49 41549
301 43777

27 CFR

5 40323
20 ..... 40847, 42623
53 40324
70 40327
194 39597

Proposed Rules:

4 ..... 40380, 40884
5 40884
250 40885
251 40886
252 40887
290 40889

28 CFR

2 41391–41394
11 44106
50 39598
80 39598

Proposed Rules:

2 41450

29 CFR

506 ..... 40966, 43495
1910 42102
1915 42102
1926 42102
2200 41676
2676 42490

Proposed Rules:

103 43635
403 41634
2610 42910

30 CFR

56 .....
57 .....
206 .....
207 .....
208 .....
210 .....
216 .....
218 .....
219 .....
220 .....
228 .....
914 .....
920 .....
925 .....
935 .....
944 .....

Proposed

75 .....
400 .....
609 .....
651 .....
917 .....
920 .....
935 .....
950 .....

31 CFR

10 .....
204 .....
205 .....
315 .....
353 .....
358 .....
550 .....
575 .....
580 .....

Proposed

270 .....

32 CFR

60 .....
220 .....
323 .....
619 .....
701 .....
706 .....
806 .....
1906 .....

Proposed

202 .....
317 .....

33 CFR

3 .....
64 .....
100 .....

117 .....
135 .....
136 .....
137 .....
157 .....
165 .....
4142
334 .....

Proposed

89 .....
117 .....
162 .....

34 CFR

Proposed

231 .....
238 .....

30 CFR

56.....44256
57.....44256
206.....41862
207.....41862
208.....41862
210.....41862
216.....41862
218.....41862
219.....41862
220.....41862
228.....41862
914.....41869
920.....44112
925.....44114
935.....41690, 44118
944.....41692

Proposed Rules:

75.....40395, 42808
400.....43411
609.....43411
651.....43412
917.....41897, 43946–43952
920.....41712
935.....43954
950.....41714, 41715

31 CFR

10.....41093
204.....40239
205.....44272
315.....39601
353.....39601
358.....40607
550.....41696
575.....39603
580.....39603

Proposed Rules:

270.....41117

32 CFR

60.....40849
220.....41096
323.....40608
619.....44238
701.....40609
706.....41698
806.....41396
1906.....39604

Proposed Rules:

202.....43645
317.....40397

33 CFR

3.....39613, 42699
64.....43401
100.....40125, 40609, 40610, 41419, 41420
117.....39614, 41873
135.....41104
136.....41104
137.....41104
157.....40494
165.....40125, 40330, 40612, 41421, 43615, 44121, 44122
334.....40612

Proposed Rules:

89.....43169
117.....43647
162.....41899

34 CFR

Proposed Rules:

231.....44046
238.....44046
305.....43572

36 CFR

51.....42808

Proposed Rules:

51.....40496
242.....43074
1191.....41006

37 CFR

1.....40493
2.....40493
202.....39615

Proposed Rules:

1.....41899, 42721, 43412
5.....43412
10.....43412

38 CFR

1.....44123
3.....40944, 43904
17.....41700
21.....40613, 43616
36.....40615, 43616

Proposed Rules:

3.....40424
21.....41451

39 CFR

111.....43403

Proposed Rules:

111.....39646, 40890, 41716, 43956

40 CFR

52.....40126, 40331–40336, 42889–42895, 43905, 44124
55.....40792
62.....43405
136.....41830
148.....41173
156.....42472
170.....42472
180.....40128, 42699, 42700
185.....42700
186.....42700
260.....41173, 41566
261.....41173, 41566
262.....41173
264.....41173, 42832
265.....41173, 42832
266.....41566
268.....41173
270.....41173
271.....41173, 41566, 41699
279.....41566
281.....41874
414.....41836
721.....44050

Proposed Rules:

Ch. I.....42533, 43956, 44147
52.....40157, 40159, 41716, 42536, 42911, 42913, 43420–43425, 43648–43657, 43957, 43959
60.....43171
61.....43173
62.....40628
63.....44147
81.....43846
122.....41344
153.....44290
159.....44290
180.....40161–40163, 42727–42730
228.....43427
260.....43171
264.....43171
265.....43171
270.....43171
271.....43171
300.....39659, 41452
372.....10820
721.....10820

42 CFR

60.....41875
405.....42491
410.....39743
412.....39746
413.....39746, 42491, 43906
414.....42491
415.....42491
431.....43922
442.....43922
447.....43906, 43922
483.....43922
488.....43922
489.....43922
498.....43922

Proposed Rules:

100.....41809
413.....43659

43 CFR

Public Land Orders:

6942.....42808
6943.....39616
2460 (Revoked in part by PLO 6945).....43405
6945.....43405
6947.....43618

Proposed Rules:

3710.....41846
3800.....42732

44 CFR

64.....39617, 41104, 41875, 43618
65.....41877, 41878
67.....39619, 41880

Proposed Rules:

67.....41905

45 CFR

400.....42896
641.....40337
1301.....41881
1302.....41886

46 CFR

30.....41812
32.....41812
35.....41812
67.....44126
70.....41812
78.....41812
90.....41812
97.....41812
107.....41812
108.....41812
109.....41812
167.....41812
169.....41812
170.....41812
171.....41812
184.....41812
185.....41812
188.....41812
196.....41812
272.....39621
298.....39621, 44129
510.....39622, 40129
514.....39622
540.....41887
560.....40616
572.....40616
580.....39622
582.....39622

Proposed Rules:

67.....43432

47 CFR

1.....43406
2.....43290
63.....41106, 41109
73.....39624, 39625, 40342, 40849, 41698, 41700, 42510, 42511, 42701, 43290
74.....41110
80.....43406
90.....40850, 42706, 43408
95.....40343
97.....40343

Proposed Rules:

Ch. I.....39661
2.....40630, 42916, 43434
13.....41718
15.....40630
21.....42916
22.....40630, 42916
25.....40425, 40426, 40891
61.....40426
63.....41118
69.....40426
73.....39663, 41719, 41911, 41912, 42536–42538, 42732
94.....42916
99.....40630

48 CFR

Ch. I.....44258
4.....44259
5.....44260
13.....44260
14.....44261
15.....44261, 44262
19.....44260
22.....44262
25.....44263
30.....43409, 43495
31.....40344, 44264
32.....44267
42.....44264
52.....43409, 43495, 44259, 44261, 44262, 44267, 44268
202.....42626
204.....42626
208.....42626
214.....42626
215.....41422, 42626
216.....42626
219.....42626
223.....42626
225.....42626
226.....42626
227.....42626
228.....42626, 42707
231.....42626
232.....42626, 42707
236.....42626
237.....42626
239.....42626
242.....42626
245.....42626
252.....41422, 42626, 42707
253.....42626
270.....41422

525.....42708
552.....42708
817.....44129
923.....41974
1801.....40851
1803.....40851
1804.....40851
1805.....40851
1806.....40851
1807.....40851
1808.....40851
1809.....40851
1813.....40851
1815.....40851
1816.....40851
1819.....40851
1822.....40851
1823.....40851
1825.....40851
1827.....40851
1831.....40851
1832.....40851
1833.....40851
1836.....40851
1837.....40851
1842.....40851
1845.....40851
1849.....40851
1851.....40851
1852.....40851
1853.....40851
1870.....40851
9903.....43620

Proposed Rules:

45.....40891
9903.....43776
9904.....43776

49 CFR

1.....40620
110.....43062
350.....40946
355.....40946
396.....40946
397.....44129
571.....40131, 41423, 41428
588.....41428
1003.....41111
1012.....44135
1023.....43151
1039.....40620
1109.....39743
1313.....40620
1321.....40857, 43059, 43925
1313.....43291

Proposed Rules:

174.....42466
177.....42466
192.....41119
218.....41454
392.....44158
395.....44158
571.....40165, 41912
1002.....39743, 41459
1018.....41459
1039.....39663, 41122
1105.....42733
1145.....41122
1150.....42733
1312.....41459
1313.....41459
1314.....41459

50 CFR

20.....40032, 43856
204.....40858
216.....41701
217.....40859, 40861, 41703
227.....40859, 40861, 41703
285.....42710, 43409
299.....40858
641.....41892
642.....43153
646.....41892
653.....40134
661.....39626, 40135, 40136, 40622, 41705, 42511, 43621, 44135
663.....40136, 41112, 42898
672.....40137, 40255, 43621, 43926
675.....42710, 43154, 43621, 43627, 43926
681.....41112
683.....40255

Proposed Rules:

17.....39664, 40429, 43673–43686
100.....43074
216.....40166
217.....41123
227.....41123
228.....42538
611.....40493
685.....40493, 43290

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List September 11, 1992

OL
5 7
S S
1
8
6
S E
2 4
9 92
UMI

VOL
57
SS
1
8
7
SE
25
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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 57, No. 187

Friday, September 25, 1992

Agricultural Marketing Service
See Packers and Stockyards Administration
RULES
Onions grown in South Texas, 44312
Papayas grown in Hawaii, 44311
PROPOSED RULES
Milk marketing orders:
New England et al., 44344

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Cooperative State Research Service
See Forest Service
See Packers and Stockyards Administration
See Rural Electrification Administration

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Swine vesicular disease and velogenic viscerotropic Newcastle disease; disease status change for Chile, 44330

Army Department
NOTICES
Meetings:
Science Board, 44367, 44368
U.S. Army Reserve Command Independent Commission, 44367

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commission on National and Community Service
NOTICES
Meetings; Sunshine Act, 44404

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 44364–44367

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Brazil, 44364

Cooperative State Research Service
NOTICES
Meetings:
Agricultural Science and Technology Review Board, 44357

Customs Service
NOTICES
Trade name recordation applications:
Yamaha, 44403

Defense Department
See Army Department

Education Department
PROPOSED RULES
Educational research and improvement:
National diffusion network; program effectiveness panel, 44408
Postsecondary education:
Drug prevention programs in higher education; amendment, 44350
NOTICES
Meetings:
Educational Excellence for Hispanic Americans, President's Advisory Commission, 44480
Student Financial Assistance Advisory Committee, 44368

Employment and Training Administration
NOTICES
Adjustment assistance:
Anschutz Corp., 44391
Bates Fabrics, Inc., 44392
Tobin-Hamilton Co., Inc., 44392
Grant and cooperative agreement awards:
Job Training Partnership Act—
Southern Governors' Association, 44392

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 44390

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Louis Dreyfus Energy Corp., 44374

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 44351
NOTICES
Clean Air Act:
Lead redesignation to nonattainment—
Hillsborough County, FL, 44374
Sulfur oxides; ambient air quality standards; proposed consent decree, 44375
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 44375
Weekly receipts, 44376
Hazardous waste:
State program adequacy determinations—
Wisconsin, 44377

Meetings:
Local governments and small communities; environmental requirements, 44379
Water pollution control:
Clean Water Act—
Class I and II administrative penalty assessments, 44380
Marine sanitation device standard; petitions—
Massachusetts, 44379
National pollutant discharge elimination system—
Storm water; construction sites, 44412
Storm water; industrial activity, 44438

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
NOTICES
Exemption petitions; summary and disposition; correction, 44406

Federal Communications Commission
RULES
Radio services, special:
FM allotments; various locations, 44338
Private land mobile services—
220-222 MHz frequency band use, 44339
Radio stations; table of assignments:
Illinois et al., 44339
Michigan, 44337
Minnesota, 44337
PROPOSED RULES
Radio stations; table of assignments:
Alabama, 44354
Louisiana, 44354
NOTICES
Agency information collection activities under OMB review, 44380
Applications, hearings, determinations, etc.:
United Educational Broadcasting, Inc., et al., 44381

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 44404

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
New England Co. et al.; correction, 44406
PacifiCorp et al., 44368
Hydroelectric applications, 44371
Natural gas certificate filings:
Panhandle Eastern Pipe Line Co. et al., 44371
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 44373
Columbia Gas Transmission Corp. et al., 44374
Sabine Pipe Line Co.; correction, 44406
Southern Company Services, Inc., 44374

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Missoula and Ravalli Counties, MT, 44400

Federal Railroad Administration
PROPOSED RULES
Railroad operating rules:
Grade crossing signal system malfunctions; timely response, 44355

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 44404
Applications, hearings, determinations, etc.:
ABC Bancorp; correction, 44381

Federal Trade Commission
RULES
Appliances, consumer; energy costs and consumption information in labeling and advertising:
Comparability ranges—
Central air conditioners and heat pumps, 44331
NOTICES
Premerger notification waiting periods; early terminations, 44381

Fish and Wildlife Service
RULES
Endangered and threatened species:
Kanab ambersnail
Correction, 44340
Migratory bird hunting:
Federal Indian reservations and ceded lands, 44472
NOTICES
Endangered and threatened species:
Recovery plans—
White-haired goldenrod, 44387

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Michigan
Chrysler Corp.; auto components plant, 44358

Forest Service
NOTICES
National Forest System lands:
Electronic communication sites; rental fee schedule—
Northern Region, 44357

Health and Human Services Department
See National Institutes of Health
See Social Security Administration
NOTICES
Agency information collection activities under OMB review, 44382
Federal claims; interest rates on overdue debts, 44382

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 44385

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
PROPOSED RULES
Hearings and appeals procedures, 44353

Internal Revenue Service
RULES
Income taxes:
Consolidated return regulations—
Health insurance organizations (some); tax-exempt status removal, 44332

International Trade Administration
NOTICES
Export trade certificates of review, 44358
Applications, hearings, determinations, etc.:
Graduate Hospital et al., 44360
University of—
Arizona, 44362
California et al., 44361
Virginia Polytechnic and State University, 44363

International Trade Commission
NOTICES
Import investigations:
Dynamic sequential gradient compression devices and component parts, 44388

Interstate Commerce Commission
NOTICES
Motor carriers:
Agricultural cooperative transportation filing notices, 44388

Judicial Conference of the United States
NOTICES
Meetings:
Judicial Conference Advisory Committee on—
Appellate rules, 44389

Justice Department
NOTICES
Agency information collection activities under OMB review, 44389

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 44389

Land Management Bureau
RULES
Minerals management:
Oil and gas leasing—
Onshore oil and gas geophysical exploration and onshore oil and gas operations; decisions and approvals, 44333
NOTICES
Meetings:
Ukiah District Advisory Council, 44385
Motor vehicles; off-road vehicle designations:
Montana, 44385
Recreation management restrictions, etc.:
Shoshone District, ID; vehicle use restrictions, 44386
Resource management plans, etc.:
Taos Resource Area, NM, 44387

National Aeronautics and Space Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Minority Business Resource Advisory Committee, 44393
Meetings:
Aeronautics Advisory Committee, 44393
Space Science and Applications Advisory Committee, 44394
Space Systems and Technology Advisory Committee, 44394

National Highway Traffic Safety Administration
NOTICES
Motor vehicle theft prevention standard; exemption petitions, etc.:
Toyota Motor Corporate Services of North America, Inc., 44401

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 44383, 44384
National Institute of Child Health and Human Development, 44384
National Institute of Diabetes and Digestive and Kidney Diseases, 44384
National Institute on Aging, 44384
National Institute on Deafness and Other Communication Disorders, 44383
Research Grants Division Advisory Committee, 44385

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 44341
Tuna, Atlantic bluefin fisheries, 44340
PROPOSED RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 44355
Oil Pollution Act:
Natural resource damage assessments; status report, 44347
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Niantic Dockominium Association, 44363

Occupational Safety and Health Administration
NOTICES
State plans; standards approval, etc.:
Maryland, 44392

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
I-40 Livestock Auction, Inc., AR, et al., 44357
Magnolia Livestock Auction, AR, et al., 44357
New Interstate Livestock Auction, FL, et al., 44358

Personnel Management Office
PROPOSED RULES
Prevailing rate systems, 44343

Postal Rate Commission
NOTICES
Second-class mail; format requirement modification, 44395

Postal Service
NOTICES
Meetings; Sunshine Act, 44404

Presidential Documents
PROCLAMATIONS
Special observances:
Disability Employment Awareness Month, National (Proc. 6476), 44307
Farm-City Week, National (Proc. 6477), 44309
Gold Star Mother's Day (Proc. 6475), 44305

Public Health Service
See National Institutes of Health

Research and Special Programs Administration
NOTICES
Applications, hearings, determinations, etc.:
Chemical Waste Transportation Institute, 44402

Rural Electrification Administration
RULES
Rural development:
Rural economic development loan and grant program, 44313

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 44395

Small Business Administration
PROPOSED RULES
Business loan policy:
Loan purposes limitations, 44346

Social Security Administration
PROPOSED RULES
Supplemental security income:
Aged, blind, and disabled—
Earned income tax credits from income and resources; exclusion, 44348

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 44396

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Depositor Protection Oversight Board
NOTICES
Meetings; regional advisory boards:
Regions I through VI, 44397

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Air Alpha, Inc., 44398
Meetings:
Commission to Promote Investment in America's Infrastructure, 44402
Senior Executive Service:
Performance Review Boards; membership, 44396

Treasury Department
See Customs Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Education, 44408

Part III
Environmental Protection Agency, 44412

Part IV
Environmental Protection Agency, 44438

Part V
Department of the Interior, Fish and Wildlife Service, 44472

Part VI
Department of Education, 44480

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PA

A cumul
the Rea

3 CFR
Proclama
6475.....
6476.....
6477.....
5 CFR
Proposed
532.....
7 CFR
928.....
959.....
1703.....
Proposed
1001.....
1002.....
1004.....
1005.....
1007.....
1011.....
1030.....
1033.....
1036.....
1040.....
1044.....
1046.....
1049.....
1065.....
1068.....
1079.....
1093.....
1094.....
1096.....
1097.....
1098.....
1099.....
1106.....
1108.....
1124.....
1126.....
1131.....
1135.....
1138.....
9 CFR
94.....
13 CFR
Proposed
120.....
15 CFR
Proposed
Ch. IX....
16 CFR
305.....
20 CFR
Proposed
416.....
26 CFR
1.....
34 CFR
Proposed
612.....
785.....
786.....
787.....
40 CFR
Proposed
52.....
43 CFR
3150.....
3160.....
Proposed
4.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6475.....44305
6476.....44307
6477.....44309

5 CFR
Proposed Rules:
532.....44343

7 CFR
928.....44311
959.....44312
1703.....44313
Proposed Rules:
1001.....44344
1002.....44344
1004.....44344
1005.....44344
1007.....44344
1011.....44344
1030.....44344
1033.....44344
1036.....44344
1040.....44344
1044.....44344
1046.....44344
1049.....44344
1065.....44344
1068.....44344
1079.....44344
1093.....44344
1094.....44344
1096.....44344
1097.....44344
1098.....44344
1099.....44344
1106.....44344
1108.....44344
1124.....44344
1126.....44344
1131.....44344
1135.....44344
1138.....44344

9 CFR
94.....44330

13 CFR
Proposed Rules:
120.....44346

15 CFR
Proposed Rules:
Ch. IX.....44347

16 CFR
305.....44331

20 CFR
Proposed Rules:
416.....44348

26 CFR
1.....44332

34 CFR
Proposed Rules:
612.....44350
785.....44408
786.....44408
787.....44408

40 CFR
Proposed Rules:
52.....44351

43 CFR
3150.....44333
3160.....44333
Proposed Rules:
4.....44353

47 CFR
73 (4 documents).....44337–44339
90.....44339
Proposed Rules:
73 (2 documents).....44354

49 CFR
Proposed Rules:
234.....44355

50 CFR
17.....44340
20.....44472
285.....44340
675.....44341
Proposed Rules:
672.....44355

OL
57
SS
1
8
7
SE
25
992
UMI

Title 3—

The Pre

Federal Register
Vol. 57, No. 187
Friday, September 25, 1992

Presidential Documents

Title 3—

The President

Proclamation 6475 of September 23, 1992

Gold Star Mother's Day, 1992

By the President of the United States of America
A Proclamation

Now that Marxist-Leninist regimes around the world have crumbled, now that dictators from Baghdad to Havana have found themselves isolated in a world that is growing freer by the day, one of the greatest risks we face as a Nation is that of forgetfulness. While we rightly celebrate improved prospects for international cooperation and peace, we must not forget that the preservation of freedom requires eternal vigilance and resolve. Only by remembering the lessons of the past can we ensure our liberty and security in the future; only by honoring the memory of those who fought and died for our country can we fully appreciate our way of life. One group of Americans who will never forget the price that has been paid for our freedom is the Gold Star Mothers, women whose sons and daughters have died in service to our country.

There is little that we can offer in consolation to America's Gold Star Mothers. Yet, while it is beyond our earthly power to alleviate their great loss, we can show these women that their children's sacrifices are remembered and appreciated, not only on occasions such as Memorial Day, but also throughout the year.

Every time we cast our ballot at the voting booth, every time we join in prayer at our place of worship, we Americans enjoy the liberty and self-government that have been preserved for us by the courage and sacrifices of others. Every time we say good night to our children and grandchildren, knowing that they need no longer fear the nightmare of global nuclear conflict, we enjoy the peace and security that have been attained by the blood of American patriots. So much that we cherish in our daily lives has been made possible by our fallen service members—truly, we cannot express our respect and gratitude often enough.

It is fitting that, in addition to honoring the memory of our fallen military personnel, we also salute the women who nurtured them. Through their children, our Nation's Gold Star Mothers have made a profound contribution to the United States and, yes, to the freedom of millions of people around the world. Today many Gold Star Mothers continue to serve our Nation through generous volunteer work in behalf of veterans, through efforts to promote civic education and patriotism among youth, and through countless other means of community service. On this occasion, we proudly acknowledge their courage and example and reaffirm America's commitment to promoting democracy and respect for human rights, which are the only sure foundation for lasting freedom, justice, and peace among nations.

The Congress, by Senate Joint Resolution 115 (June 23, 1936), designated the last Sunday in September as "Gold Star Mother's Day" and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 27, 1992, as Gold Star Mother's Day. I call on all government officials to display the United States flag on government buildings on this day. I also urge the American people to display the flag and to hold appropriate meetings in their homes, places of worship, or other suitable places, as a public expression of the sympathy and the respect that our Nation has for its Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-23533
Filed 9-23-92 4:26 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6476 of September 23, 1992

National Disability Employment Awareness Month, 1992

By the President of the United States of America

A Proclamation

The United States has long been the world's leading champion of the rights of individuals, and it is only natural that we now serve in the forefront of efforts to promote equal opportunity for persons with disabilities. Since I signed the Americans with Disabilities Act (ADA) on July 26, 1990, scores of other nations have been motivated to reexamine the challenges faced by their citizens with disabilities. The ADA, which prohibits discrimination in employment, public accommodations, transportation, and communications, provides a model for people everywhere as it affirms our commitment to ensuring that Americans with disabilities are not excluded from our Nation's cultural and economic mainstream.

Ensuring equal opportunities for persons with disabilities is not only a serious moral and legal obligation, it is also good business sense. As we work to expand markets for U.S. goods and services and to strengthen America's competitiveness in an increasingly technological world, we must fully utilize our Nation's wealth of human capital. One-third of all Americans with disabilities who are of working age are currently employed. The other two-thirds constitute a vast, untapped source of knowledge, skills, and talent. In addition to being costly—today Americans spend more than $200 billion annually to support potentially productive people—such a waste of human ability stands in stark contrast to the American traditions of individual dignity and self-reliance and empowerment through opportunity and hard work. There are some 43 million Americans with disabilities in the United States, and the vast number of these individuals want very much to lead full, independent, and productive lives. To employ these determined candidates is to make a wise investment in our Nation's future.

As we work to achieve harmonious implementation of the Americans with Disabilities Act, we will open doors of opportunity for millions of people—thereby expanding the ranks of workers and consumers, which, in turn, generates productivity and profits for business while enabling individuals and families to pursue the American Dream. I congratulate the business and industry leaders and community leaders from all walks of life who are working together to implement the ADA, and I pledge the total cooperation of the Federal Government. Our continuing progress is testimony both to the fundamental vitality and fairness of our free enterprise system and to our abiding commitment to liberty and justice for all.

The Congress, by joint resolution approved August 11, 1945, as amended (36 U.S.C. 155), has called for the designation of October of each year as "National Disability Employment Awareness Month." This month is a special time for all Americans to recognize the tremendous potential of persons with disabilities and to renew our commitment to equal opportunity for them, as for every citizen.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 1992 as National Disability Employment Awareness Month. I call on all Americans to observe this month with appropriate programs and activities that affirm our determination to fulfill both the letter and the spirit of the 1990 Americans with Disabilities Act.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-23534
Filed 9-23-92; 4:27 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6477 of September 23, 1992

National Farm-City Week, 1992

By the President of the United States of America

A Proclamation

The tremendous productivity of America's farms has been a great blessing to this Nation and to millions of people around the world. As our leading industry, agriculture has fueled America's strength and progress while, at the same time, making the United States the world's largest exporter of food products and its most generous provider of food aid. The week that ends on Thanksgiving is, therefore, a fitting time to salute our farmers and all those Americans who work in partnership with them to bring the Lord's bounty from the fields to our families' tables.

While the United States enjoys a wealth of God-given resources, from hospitable climates to rich, fertile soils, the key to our agricultural productivity is the ingenuity and skill of our farmers and the fundamental efficiency and fairness of our free enterprise system. On average, one American farmer currently produces food and fiber for 129 people—a number that continues to increase. One of every three acres planted in this country produces crops for export. As a result of such efficiency and productivity, we in the United States can purchase our food with a smaller percentage of our disposable income than citizens of any other country. This enables us to use the remainder of our income to purchase other goods and services and to save and invest for the future. Together, these factors help the United States to maintain the highest standard of living in the world.

America's farmers are joined in their efforts by millions of other men and women who have, in a sense, put their hands to the plow in a competitive, market-based system that provides farmers with production supplies and related services, then processes, packages, and transports agricultural goods to retail markets across the United States and around the world. This system includes researchers in our Land Grant universities and private companies, who are developing ever-safer and more effective fertilizers, technologies, and pest control methods. It also includes specialists who ensure crop quality and manufacturers who transform raw materials into usable products, from breakfast cereals to grain-based alternative fuels. From wholesalers and distributors to local retailers, a vast network of men and women completes the partnership that begins in our rural communities and extends to our largest urban areas. For nearly 40 years now, we Americans have observed National Farm-City Week in celebration of this partnership and in grateful recognition of the more than 20 million Americans who make it work so well for all of us.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 20 through November 26, 1992, as National Farm-City Week. I encourage all Americans, in rural and urban communities alike, to join in recognizing the accomplishments of our farmers and all those hardworking individuals who cooperate in producing the abundance of agricultural goods that strengthen and enrich the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-23537
Filed 9-23-92; 4:38 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 187
Friday, September 25, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV-92-070FR]

Approval of 1992-93 Fiscal Year Expenses and Assessment Rate for the Marketing Order Covering Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenses and establishes an assessment rate for the 1992-93 fiscal year (July 1-June 30) under Marketing Order No. 928. The expenses and assessment rate are needed by the Papaya Administrative Committee (committee) established under this marketing order to pay its expenses and collect assessments from handlers to pay those expenses. The action will enable the committee to perform its duties and the marketing order to operate.

EFFECTIVE DATE: July 1, 1992, through June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-5331.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 928 (7 CFR part 928) regulating the handling of papayas grown in Hawaii, hereinafter referred to as the marketing order. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate herein will be applicable to all assessable papayas during the 1992-93 fiscal year, beginning July 1, 1992, through June 30, 1993. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this final rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 120 handlers of Hawaiian papayas subject to regulations under the marketing order covering papayas grown in Hawaii and about 345 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable papayas handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The committee members are handlers and producers of Hawaiian papayas. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected pounds of assessable papayas shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

A proposed rule concerning the 1992-93 budget was published in the **Federal Register** (57 FR 429271, July 14, 1992). Comments on the proposed rule were invited from interested persons until July 24, 1992. No comments were received.

The Papaya Administrative Committee (committee) met on April 30, 1992, and recommended a 1992-93 budget with expenses of $823,450 and an assessment rate of $0.0085 per pound of assessable papayas shipped. Eight members voted in favor of the 1992-93

expenses and assessment rate, while one member voted "no" and one member abstained, because they favored lower assessment rate. The 1992-93 budget is similar in scope to the one approved for 1991–92. Budgeted expenses for 1991–92 totaled $746,650, while the assessment rate was $0.0085.

The 1992-93 budget contains $368,450 for program administration, $410,000 for advertising and promotion, and $45,000 for research and development. In comparison, budgeted expenses for 1991–92 were $336,650 for program administration, $400,000 for advertising and promotion, and $10,000 for research and development.

Program income for 1992–93 is expected to total $831,660, with assessment income estimated at $552,500, based on projected shipments of 65,000,000 pounds of assessable papayas. Other income includes $200,000 in promotional grants from the Hawaii Department of Agriculture, $63,360 from the USDA's Foreign Agricultural Service, $7,800 from the Japan Inspection Program, and $8,000 from miscellaneous sources including interest. Projected 1992–93 income over expenses ($8,210) will be placed in the committee's operational reserve. This reserve is projected at $72,301 on June 30, 1993, an amount well within the maximum authorized under the marketing order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) 1992–93 season Hawaiian papayas are currently being shipped to market; (2) this action must be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) the 1992–93 fiscal year for this marketing order began on July 1, 1992, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Hawaiian papayas handled during the fiscal year; (4) handlers are aware of this action which was recommended by the committee at a public meeting, and they will need no additional time to comply with these requirements; (5) the committee's financial reserves are expected to be depleted early in the 1992-93 season; and (6) the proposed rule provided a 10-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. New § 928.222 is added to read as follows:

Note. This section will not appear in the annual Code of Federal Regulations.

§ 928.222 Expenses and assessment rate.

Expenses of $823,450 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.0085 per pound of assessable papayas is established for the fiscal year ending June 30, 1993. Any unexpended funds from the 1992–93 fiscal year may be carried over as a reserve.

Dated: September 18, 1992.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-23275 Filed 9-24-92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 959

[Docket No. FV-92-096IFR]

Onions Grown in South Texas; Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures under Marketing Order No. 959 for the 1992–93 fiscal period (August 1, 1992, through July 31, 1993). Authorization of this budget enables the South Texas Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1992, through July 31, 1993. Comments received by October 26, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone 512–682–2833, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR Part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action authorizes expenditures for the 1992–93 fiscal period (August 1, 1992, through July 31, 1993). This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the

order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 47 producers of South Texas onions under this marketing order, and approximately 34 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget.

The committee, in a mail vote which was completed on July 3, 1992, unanimously recommended a 1992–93 budget of $100,000 for personnel, office, and travel expenses, the same as last year. The assessment rate and funding for the research and promotion projects will be recommended at the Committee's organizational meeting this fall. Funds in the reserve as of June 30, 1992, estimated at $349,822, were within the maximum permitted by the order of two fiscal periods' expenses. These funds will be adequate to cover any expenses incurred by the Committee prior to the approval of the assessment rate.

Since no assessment rate is being recommended at this time, no additional costs will be imposed on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The fiscal period began on August 1, 1992, and the Committee needs to have approval to pay its expenses which are incurred on a continuous basis; (2) this action is similar to that taken at the beginning of the 1991–92 fiscal period; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 959.233 is added to read as follows:

§ 959.233 Expenses.

Expenses of $100,000 by the South Texas Onion Committee are authorized for the fiscal period ending July 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: September 18, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–23274 Filed 9–24–92; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1703

Rural Economic Development Loan and Grant Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends its regulation on the Rural Economic Development Loan and Grant Program. Policies, requirements, and procedures contained in this regulation implement a rural economic development zero-interest loan and grant program established by section 313 of the Rural Electrification Act of 1936, as amended. The program provides funds to REA borrowers for the purpose of promoting rural economic development and job creation projects.

DATES: *Effective date:* This regulation is effective October 26, 1992.

Applicability dates: This regulation is applicable as to loans on October 26, 1992. This regulation will be applicable as to grants at a later date.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, Rural Electrification Administration, telephone number (202) 720–9552.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act

This action does not fall within the scope of the Regulatory Flexibility Act.

National Environmental Policy Act Certification

The Administrator has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Intergovernmental Review

This program is subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials with the exception of applications for project feasibility studies. A notice informing the public of the intergovernmental review coverage was published in the **Federal Register** on March 20, 1989, at 54 FR 11426.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.854, Rural Economic Development Loan and Grant Program.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this final rule have been approved by OMB under control number 0572–0090. Comments concerning these requirements should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, USDA Desk Officer, room 3201, New Executive Office Building, Washington, DC 20503.

Background

On February 15, 1989, REA published the final rule, 7 CFR 1709, subpart B, in the **Federal Register** (54 FR 6867) that implemented the Rural Economic Development Loan and Grant Program, also known as the Cushion of Credit Payments Program, established by section 313 of the Rural Electrification Act of 1936, as amended (Act). This program provides funds to Act borrowers for the promotion of rural economic development and job creation projects. On September 27, 1990, REA changed the designation of this rule from 7 CFR part 1709 to part 1703 (55 FR 39393). On July 30, 1991, REA published a proposed rule at 56 FR 36014 to revise the Rural Economic Development Loan and Grant Program.

Comments

All of the comments REA received on the proposed rule were taken into consideration in preparing the final rule. REA received comments from the following organizations:

(1) Basin Electric Power Cooperative, Bismark, North Dakota.

(2) Central Electric Power Cooperative, Inc., Columbia, Georgia.

(3) Central and South West Corporation.

(4) Consumers Power, Jackson, Michigan.

(5) East River Electric Power Cooperative, Madison, South Dakota.

(6) Edison Electric Institute, Washington, DC.

(7) Electric Power Associations of Mississippi, Jackson, Mississippi.

(8) The Empire District Electric Company, Joplin, Missouri.

(9) National Rural Electric Cooperative Association, Washington, DC.

(10) National Telephone Cooperative Association, Washington, DC.

(11) North Dakota Association of Rural Electric Cooperatives, Mandan, North Dakota.

(12) Otter Tail Power Company, Fergus Falls, Minnesota.

(13) SCANA Corporation, Columbia, South Carolina.

(14) Sequachee Valley Electric Cooperative, South Pittsburg, Tennessee.

(15) Slope Electric Cooperative, Inc., New England, North Dakota.

(16) United States Department of Agriculture, Office of the Inspector General, Washington, DC.

(17) United States Department of the Treasury, Financial Management Service, Washington, DC.

(18) United States Environmental Protection Agency, Washington, DC.

(19) United States Telephone Association, Washington, DC.

(20) UtiliCorp United, Kansas City, Missouri.

(21) West River Electric Association, Inc., Rapid City, South Dakota.

The comments will be addressed in the following paragraphs by first discussing REA's modifications to the proposed rule and then discussing the remaining suggested modifications. The modifications will be discussed in the order in which they appear in the final rule.

Many sections of the proposed rule have been rearranged and renumbered to improve the structure of the rule. For example, the section on documenting the evaluation and selection of applications has been moved to immediately following the application review section.

REA has added three policy statements that further clarify current policy for this program (§ 1703.11). First, it is REA's policy to use the Rural Economic Development Loan and Grant Program to promote projects that will result in long-term economic development in rural areas and thereby lead to higher levels of income for rural citizens. Second, it is REA's policy to direct funds to projects which will primarily benefit those rural areas that are experiencing the greatest economic hardship as determined by the selection criteria in this rule. Third, it is REA's policy to encourage economic development in rural areas and job creation projects without regard to service area.

In response to public comments, the definition of "electric or telephone purpose" has been modified. The revised definition provides an exclusion for any funding under this subsection for any facilities which the Administrator of REA or Governor of the Rural Telephone Bank is authorized to finance under sections 2, 4, 5, 201, 305 and 408 of the Act. It also includes any purpose characterized as furnishing, generating, or transmitting electric energy or other activities involved in providing electricity or is characterized as providing telephone service. In the proposed rule, community antenna television systems or facilities intended exclusively for educational purposes were excluded from the definition for REA electric borrowers. An organization suggested that REA modify the rule to avoid dissimilar treatment of electric and telephone borrowers. To avoid dissimilar treatment, REA has deleted the exclusion for REA electric borrowers from this definition and explicitly prohibits funding for any community antenna television system or facility in section 1703.20(a)(7).

The defined term "technical assistance" has been replaced with "project feasibility studies." The change was made to be consistent with the term used in a notice REA published on intergovernmental review in the **Federal Register** on March 20, 1989, at 54 FR 11426. The use of "technical assistance" in this program will refer to advice and guidance such as business planning.

There were several comments on the section pertaining to limitations on an owner of an REA borrower being the owner of the rural development project and on situations resulting in conflicts of interest. REA considered these comments and has made a few changes

in the language. The Administrator must balance the worthiness of the project against any conflicts of interest in the project. Full disclosure will permit the Administrator to make an informed decision.

To clarify the conflict of interest provisions and the limitations on the use of funds in the proposed rule, a provision has been added under section 1703.20, Ineligible uses of zero-interest loans and grants, regarding the prohibited use of funds to pay the salaries of any employee or owner of the REA borrower, its subsidiaries, or its affiliates. The provision in the proposed rule covering the use of REA funds to purchase equipment and real property from the REA borrower has been modified. Control over these transactions will be exercised through the conflict of interest provision in this section which requires full disclosure to the Administrator.

The section establishing a preference for providing borrowers zero-interest loans rather than grants has been deleted because the appropriation bill provides for a certain amount of funds for zero-interest loans and the associated subsidy for these loans under the "Federal credit reform" provisions.

Under section 1703.28, Maximum and minimum sizes of a zero-interest loan or grant application, the language has been modified to establish the maximum size of an application for assistance that will be considered for funding during a fiscal year as three percent of the projected total amount that will be available for the program during that fiscal year, rounded to the nearest $10,000. This modification to the proposed rule was made to avoid the necessity of going through the lengthy rulemaking process to change the maximum size of an application. It is also consistent with the public's suggestion that the maximum size should be increased to a level considerably higher than the $100,000 level in the current rule given the current amount of funding available to this program. REA has placed upper and lower limits on the size regardless of the percentage calculation. The maximum size of an application may not be lower than $200,000 nor greater than $400,000. Currently, it is anticipated that the maximum amount per application for the remainder of Fiscal Year 1992 after the effective date of this rule would be $400,000. The three percent level means that a minimum of 34 applications would be selected in any given fiscal year. In selecting this percentage, REA balanced the desire to finance a significant number of projects given the limited amount of funds available for the program with the agency's desire to increase the maximum amount above current limit of $100,000. The amount of funds available to this program has increased since the $100,000 level was established in 1989. The Administrator's determination based on this calculation will be published by notice in the **Federal Register**. The minimum amount of an application remains unchanged at $10,000.

The section on the description of the application has been divided into four sections, §§ 1703.34 through 1703.37.

Several comments suggested that REA rearrange and regroup the selection factors. In response, REA has rearranged and clarified the provisions in section 1703.46 covering the process of analyzing and evaluating applications under consideration. This clarification is based on REA's basic review process in which the Administrator makes an initial determination whether a project meets feasibility standards and program goals. A project that has a low probability of being a viable operation or a project that does not promote economic development in rural areas and/or job creation as described in this rule should not receive points and should not be considered for selection. Under REA's current process, which is not based on a specific number of points for each factor, a project that has a low probability of being successful or did not fulfill the purpose of this program would not be selected by the Administrator. Similarly, under a point system, the Administrator must consider whether a project will be a viable operation or promote economic development in rural areas and/or job creation before points are awarded for the selection factors and the application is ranked.

The selection factors have been regrouped into two sections, 1703.46(g) and (h). First, the Administrator considers the nature of the project and three other factors related to the promotion of economic development in rural areas and job creation. Applications receiving a minimum number of points, or falling within the top 75 percent of all applications, on the basis of these four factors, are then evaluated on the basis of the selection factors in the second group. The second group contains factors such as supplemental funds, income levels, and cushion of credit payments. Under this modified system, an application could not be selected on the basis of factors such as supplemental funds or income levels without regard to the nature of the project.

This two-stage process includes a method to compensate for the variety of applications that will be on file and under consideration at any particular time. First, all applications being considered could score high under the first group of selection factors and be evaluated under the second group of selection factors. There is no cutoff point at any particular percentage level if all applications score relatively high. Second, regardless of the number of points received by applications on file and under consideration, at least 75 percent of the applications will be evaluated under the second group of selection factors.

The public discussed the types of projects that should be financed under this program given the limited amount of funds. REA has added language that specifically addresses these matters. The rule requires an application for a project that will provide recreational facilities to present a convincing case that the project would be an integral part of a tourism industry in the community or region. The application must include support, such as regional studies, that shows the impact of the recreational facilities on the economy of the rural area. Projects that either do not meet this requirement or are developed to provide recreational facilities for the residents of an area would not receive points. These provisions reflect a lower priority given to funding recreational facilities versus other projects given the limited funds in this program. Similar priorities for this program explain the provisions dealing with residential dwellings, entertainment television, land transfers or land speculation, and personal vehicles. In the proposed rule, these were not considered projects that would promote rural economic development and/or job creation. In the final rule as in the proposed rule, if a project does not promote rural economic development and/or job creation, it will not be selected. In this same section, a provision was added which provides that points will not be given to projects that are primarily to finance the purchase of an established business or operation. This was added to the final rule to clarify that such a project would primarily transfer ownership rather than promote economic development or job creation.

In response to public comments on the proposed rule, the change in population in the county where the project will be located over a two-year period has been added as a selection factor. REA considered many different economic measurements before deciding that this factor is the best additional measure of

economic conditions at the county level. The change in population was analyzed over many different periods and the two-year period appeared to be the most appropriate.

A selection factor that REA retained in the final rule is support for the program provided by cushion of credit payments. The use of both absolute dollar amounts and percentage levels for awarding points under this factor was designed to accommodate both large and small REA borrowers. As REA has discussed in the preamble to the final rule published on February, 15, 1989, at 54 FR 6867, points are provided for cushion of credit payments to encourage support for the program. The REA borrower's cushion of credit payments result in funds being allocated to this program. A significant number of points are awarded for even a modest level of cushion of credit payments.

A provision limiting the number of applications selected for a particular project has been added in section 1703.46. Since numerous applications on file for the same project would score the same number of points, this provision is necessary for the benefit of all REA borrowers. The limitation of one selected application during a selection period has been added because some of the selection factors are based on the a borrower's situation and there could be a tendency for all of a particular REA borrower's applications to score high on these factors. In addition, this limitation tends to spread scarce funds to many different areas of the country.

A clarification has been made regarding the Administrator's ability to select an application receiving fewer points than another application if there were insufficient funds during a period to select the higher ranked application. As suggested in one of the comments, the Administrator may ask the REA borrower that submitted the higher-ranked application if it desires to reduce the amount of its application to the amount of funds available. The reduction in the amount of the application may require additional supplemental funds to ensure a successful project. The Administrator would need to re-analyze the project based on information the REA borrower provided to ensure that the project is still feasible.

The public discussed the ranking of feasibility studies. The final rule allows the Administrator to select the highest ranking applications to finance project feasibility studies. This simply recognizes that applications for project feasibility studies will not score as many points under the factors as other projects. This method is tantamount to ranking applications for project feasibility studies separately. Another approach, which REA did not choose to adopt, is to create separate selection factors for applications for project feasibility studies. Many of the same factors would be repeated and it would appear to serve no additional purpose.

A provision has been added that provides for the highest ranking application during each selection period requesting less than 5 percent of the total project costs to be considered with the applications requesting 5 percent or more of total project costs. This is consistent with the overall preference for projects that have a meaningful level of REA funds yet provides an opportunity for the highest ranked application requesting less than 5 percent of total project costs to be considered.

Two organizations suggested that REA delete the language in section 1703.58, "Post selection period" that says the selection is not binding on the Administrator. They say the discretion for the Administrator to "change his mind" should not be in the rule even though it is not likely to occur. Another says the Administrator has the right to place conditions on the advance of REA loan funds but that it could result in serious credibility problems if a selected project were simply "deselected." The language in the proposed rule was based on a distinction between the selection and the approval that was designed to expedite the process of advancing REA funds. Under the procedures in the proposed rule, the approval of an application occurs when the letter of agreement is executed. Prior to that time, the REA borrower might have had to submit additional information, such as environmental information, that must be considered prior to approval. As the two organizations correctly assumed, it was not intended to permit the Administrator merely to "change his mind." REA has clarified the manner in which these matters are handled in the final rule. The rule has been amended to say that the advance of funds is contingent on the borrower and the project complying with certain conditions and requirements.

Under section 1703.61, "Disbursement of zero-interest loan and grant funds", REA has modified the language requiring disbursement of funds within a certain time period. Similarly, under section 1703.66, "Review and other requirements", REA has added language covering the use of funds by the ultimate recipient within a certain time period and the requirement for adequate documentation of the uses of pass-through loan funds. These changes reflect current REA procedures.

REA received numerous comments on the matter of tying the receipt of rural development assistance from REA borrowers to the acceptance of electric or telephone service. All comments and suggestions were considered. One REA electric borrower believes it is appropriate to restrict funds under this program to projects that will enhance the future sale of electricity to the REA borrower which received the REA zero-interest loan or grant. Another REA electric borrower believes that if an REA borrower is working to promote economic development, then it needs the additional electric load and diversity a business brings to its system.

The investor-owned utilities, their trade organization, and their representatives oppose tying the receipt of rural development assistance from REA borrowers to the acceptance of electric or telephone service. In summary, they believe: (1) Tying creates conflicts of interest; (2) Congress did not intend that access to rural development assistance be tied to electric sales; (3) Tying is likely to interfere with the Congressional goals of building community infrastructure and creating new jobs; (4) Tying improperly restrains competition, and (5) Tying threatens REA security interest in its loans and loan guarantees because of potential damage awards. The investor-owned utilities, their trade organization, and their representatives proposed numerous provisions in the regulation that would prohibit tying.

Rather than commenting on the each of these points or adopting any of the proposed language, REA has decided to stay with its original policy on this matter. REA said in the preamble to the final rule published on February 15, 1989 (54 FR 6867), that the rule implementing the Rural Economic Development Loan and Grant Program was written to encourage economic development in rural areas without regard to service territory. At that time, REA did not put specific language in the rule but rather said the Administrator would use his discretion to select projects that meet this objective. Since that time, REA's policy has remained consistent and is unchanged.

REA believes that the operation of the program for the past several years and the projects that have been selected demonstrate REA's commitment to this policy. On several occasions, REA has required an REA borrower to delete a requirement in its agreement with the ultimate recipient to take service for the term of the zero-interest loan. It is true

that the REA borrower that relends the REA zero-interest loan proceeds bears the risk that the loan might not be repaid. Some might argue that this risk is justification for a tying arrangement. REA has developed a program where the REA borrower assesses the risks of the project and the likelihood of the full repayment in determining whether to make the loan. The REA borrower may also transfer the repayment risk. The receipt of electric or telephone business from the ultimate recipient of the loan is separate from this risk assessment and is not a compensation for the risk. In this manner, the REA borrower is both a local promoter of economic development and a conduit of low cost government funds to rural development projects. With respect to risk assessment and financing local projects, it has, in essence, taken on attributes of a local bank. REA has explicitly stated its current position on this matter by adding a provision under section 1703.21, "Limitations on the use of zero-interest loan and grant funds" that prohibits an REA borrower from conditioning the receipt of the proceeds of a zero-interest loan or grant with the requirement to take electric or telephone service from the REA borrower.

There were other suggestions made that were carefully considered but not adopted in the final rule. Two telephone trade organizations believe that Section 302(c) of the Act (7 U.S.C. 932) requires the Administrator to separate the rural economic development subaccount into electric and telephone subaccounts and that funds appropriated for this program should be allocated to separate electric and telephone subaccounts on the basis of their size. REA does not interpret Section 302(c) of the Act as requiring the separation, and believes that based upon its experience in administering the program to date, such a separation would not be desirable. Therefore, REA has decided not to separate the subaccount into electric and telephone subaccounts.

The rule retains the language permitting the Administrator to allocate funds between applications from REA electric and telephone borrowers which will ensure that funding is spread between borrowers from both programs.

One organization believes the prohibition on the use of REA zero-interest loan and grant funds for electric and telephone operations would retard the opportunities for economic development in rural areas and job creation. This provision is intended to protect the integrity and reputation of the program. For example, a building financed with a zero-interest loan or grant that was to be used for a particular rural economic development project should not be used instead for the REA borrower's normal service operations. The use of funds in this manner would result in no benefit for the intended rural development purpose. The REA borrower has the option of using its own funds or electric or telephone financing programs under the Act for purposes that are considered part of its electric or telephone operations.

Two telephone trade organizations believe the provision in Section 1703.46, Documenting the evaluation and selection of applications for zero-interest loans and grants, which permits the Administrator to decline to select an application based on the management and financial situation of the REA borrower, goes beyond the need of REA to be assured of loan repayment and one organization believes this is "... tantamount to the back-door implementation of a general funds policy...." It was in no manner REA's intention to implement a general funds policy prohibited by the Act. The purpose of the language was to specifically mention items the Administrator would consider in determining both the management and financial situation of the REA borrower rather than merely refer broadly to the borrower's current condition and its ability to repay the loan.

The telephone trade organizations also do not believe the language permitting the Administrator to decline to select an application based on a determination that limitations under state laws will lessen the likelihood of repayment of the REA loan should be in the final rule. REA has considered their comments and decided this discretion would be appropriate in the situation described in the rule and is in the best interests of the program.

One organization recommended limiting the number of outstanding rural development loans for each REA borrower to an amount equal to a certain percentage of its net plant. REA believes that there are many different measures of the financial well-being of a borrower in addition to the ratio of outstanding rural development loans to total utility plant. For this reason, REA believes it is more appropriate to consider the financial situation of the REA borrower on a case-by-case basis rather than selecting one ratio.

One organization did not want any restriction on the number of loans or grants to a particular state during a fiscal year. The limitation on the number of selections in a particular state is designed to ensure a broad distribution of the limited amount of funds available each year across the rural areas of the country. This limitation, if used, would simply prevent a high percentage of the total amount of funds from being used in a few states.

There were several comments on the requirement for a minimum amount of supplemental funds. Some believe it should be deleted and others believe it should be retained. REA has decided to retain the requirement for a modest amount of supplemental funds. As stated in the preamble to the proposed rule, it is important to have other funds supplement REA's financing to spread the benefit of limited funds, increase the probability of success, and select projects that others are willing to finance. There were a few comments with regard to the owner's equity section. REA has decided to retain the proposed language because owner's equity increases the probability of a successful project.

REA will publish for public consideration a separate proposed rule containing grant approval procedures to be used in circumstances when Congress allocates a certain amount of the total funds made available for this program during a fiscal year for grants.

In a separate notice, the Administrator is publishing a determination that the maximum amount of an application for a zero-interest loan will be $400,000 upon the effective date of this rule.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs-housing and community development, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas.

For reasons set forth in the preamble, REA hereby amends 7 CFR chapter XVII, part 1703, as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for 7 CFR part 1703 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*

2. Subpart B of part 1703 is revised to read as follows:

Subpart B—Rural Economic Development Loan and Grant Program

Sec.

1703.10 Purpose.
1703.11 Policy.
1703.12 Definitions.
1703.13 Source of funds.
1703.14 Disposition of funds in the subaccount.

borrower's completed application by REA or for refinancing or repaying a loan made under the Act or a program administered by the Administrator;

(6) For any electric or telephone purpose, as determined by the Administrator;

(7) For any community antenna television systems or facilities;

(8) For the borrower's electric or telephone operations or for any operations affiliated with the borrower unless the Administrator has specifically informed the borrower in writing that the operations are part of the approved purposes;

(9) To pay the salaries of any employee or owner of the borrower, its subsidiaries, or affiliates. This restriction does not prohibit the use of loan or grant funds for printing and similar costs for project feasibility studies it has prepared, commissioned or purchased if specifically approved by the Administrator;

(10) For proposed projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*); or

(11) For anything other than an approved purpose.

(b) [Reserved]

§ 1703.21 Limitations on the use of zero-interest loan and grant funds.

(a) A borrower may not charge interest for the use of the proceeds of the zero-interest loan provided under this program; however, it may charge reasonable loan servicing charges, reasonable legal fees involved in providing the REA funds to the recipient, and the amount paid for an irrevocable letter of credit made payable to REA and issued on behalf of the borrower that guarantees repayment of an REA zero-interest loan, all as determined by the Administrator. A borrower may require the recipient of a pass-through-loan to provide and/or obtain adequate security for the zero-interest loan funds.

(b) A borrower must calculate any costs to charge in connection with the use of grant funds under this program for the project and must temporarily deposit the grant funds in accordance with 7 CFR parts 3015, Uniform Federal Assistance Regulations, and 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as appropriate.

(c) A borrower may not make a profit from any zero-interest loan or grant provided from the subaccount, with the exception of the $500 interest income exclusion in paragraph (d) of this section.

(d) The borrower must temporarily deposit the zero-interest loan funds into a separate federally insured account called the Rural Economic Development Account unless the funds will be disbursed within two months. However, all interest earned on temporarily deposited funds in excess of $500 per 12-month period must be used for approved purposes or returned to REA. The $500 exemption is to avoid placing additional administrative burdens on the borrower for funds that were only briefly deposited in an interest-bearing account prior to disbursing them.

(e) The borrower may not condition the receipt of the proceeds of a zero-interest loan or grant under this subpart with the requirement that the recipient take electric or telephone service from the borrower.

§ 1703.22 [Reserved]

§ 1703.23 Supplemental funds requirements for zero-interest loans and grants.

The Administrator will not select an application unless the project will receive supplemental funds in an amount at least equal to 20 percent of the REA zero-interest loan and grant to be provided to the project, as determined by the Administrator. Supplemental funds as used in this section may come from the project owner in the form of equity funds, private sources, state and local government sources, other Federal Government sources, the borrower or other sources. Only supplemental funds that will be provided to the project after the date REA receives the borrower's completed application may be used to satisfy this requirement. Supplemental financing must be verified and committed to the project in form and substance satisfactory to the Administrator before REA will advance any funds.

§ 1703.24 [Reserved]

§ 1703.25 Significance of REA financing to the total project cost.

Selection of applications will be based on a preference for applications requesting REA financing which will be at least equal to 5 percent of the total project costs, as determined by the Administrator. Projects costs will be based on the amount that would be spent over the first 2 years after the first advance of REA funds for the component or phase of the undertaking for which the borrower is requesting REA funds, as determined by the Administrator. The Administrator may determine that a component or phase, especially actions necessary to initiate a larger project, constitute a distinct project for the purposes of this section.

§ 1703.26 [Reserved]

§ 1703.27 Owner's equity in the project.

The Administrator may require, as a condition to REA financing, that the owner(s) of the project invest equity capital if determined to be financially necessary, based on an REA financial analysis and sound lending practices.

§ 1703.28 Maximum and minimum sizes of a zero-interest loan or grant application.

(a) The maximum size of an application that will be considered for funding under this subpart during a fiscal year will be 3 percent of the projected total amount available for the zero-interest loans or grants under section 313 of the Act during that fiscal year, rounded to the nearest $10,000. This determination will be made by the Administrator for each fiscal year.

(b) Regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000 nor greater than $400,000.

(c) The projected total amount available during a particular fiscal year is calculated as the sum of the projected amount that will be credited to the subaccount during a particular fiscal year from the interest differential calculation based on the REA borrowers' cushion of credit levels at the time the Administrator makes the determination and any amounts appropriated for that fiscal year for zero-interest loans or grants made under section 313 of the Act.

(d) After the Administrator has determined the maximum size for a fiscal year, a notice of the calculation and amount will be published promptly in the **Federal Register**. Thereafter, the maximum size will remain in effect until the Administrator has published the maximum size for the next fiscal year.

(e) All unselected applications on file at REA, including both loan and grant applications, from the same borrower for the same project will be considered to be one application in determining that the maximum size of the application is in accordance with this section.

(f) The minimum size of an application for assistance under this subpart that will be considered for funding is $10,000.

§ 1703.29 Terms of zero-interest loan repayment.

(a) The Administrator will determine the terms and repayment schedule of the zero-interest loan to the borrower based on the nature of the project and approved purposes. Ordinarily, the total term of the zero-interest loan, including any principal deferment period, will not exceed 10 years. The repayment terms the borrower sets on a pass-through-

loan must equal the terms of the loan provided to the borrower unless a written request from the borrower to provide a longer deferment period, shorter total term of the loan, or other benefits is approved by the Administrator.

(b) The Administrator has the discretion to defer the repayment of principal up to two years, based on an analysis of the feasibility of the project. Ordinarily, if the Administrator considers the project to be a business expansion or going concern, the first repayment of principal will not begin until one year after the date of the REA note. Ordinarily, if the Administrator considers the project to be a start-up project, the first repayment of principal will not begin until 2 years after the date of the REA note. Loans must be repaid under terms set forth in REA's legal documents.

(c) Unless the Administrator has specifically approved otherwise, the borrower will be required to repay the REA zero-interest loan in full at such time as a pass-through-loan has been fully repaid to the borrower. If the borrower uses the proceeds of the REA zero-interest loan to provide pass-through-loans to more than one entity, this requirement will only apply to that portion of the zero-interest loan associated with the loan that has been fully repaid to the borrower.

(d) If the Administrator determines that, as a result of state law, court rulings, or regulatory commission decisions, it is necessary to ensure that the borrower will repay the REA zero-interest loan, the borrower may be required to provide an irrevocable letter of credit, or another form of guarantee satisfactory to the Administrator. The letter of credit or other guarantee is to be made payable to REA. The letter of credit or other guarantee may not be secured by any assets under a REA and/or Rural Telephone Bank mortgage and must be in form and substance satisfactory to the Administrator. REA must receive the letter of credit or other guarantee prior to the advance of any zero-interest loan funds.

§ 1703.30 Approval of agreements.

(a) The Administrator must approve any agreements between the borrower and the owner(s) of the project, those undertaking the project, or any intermediary that will re-lend or transfer the proceeds of the REA funds, that the Administrator deems necessary.

(b) Borrowers must obtain the Administrator's approval of any loan, grant or security agreement, mortgage or note between the borrower and the owner(s) of the project, those undertaking the project or any intermediary that will re-lend or transfer the proceeds of the REA funds, prior to the advance of REA zero-interest loan or grant funds to the borrower. The borrower must receive the Administrator's approval of the final draft version of the documents prior to their execution.

(c) Borrowers must obtain the Administrator's written approval prior to revising or amending any loan, grant or security agreement, mortgage or note that has been reviewed and approved by the Administrator pursuant to paragraph (b) of this section. Additionally, the borrower must obtain the Administrator's written approval prior to executing, revising or amending any other agreement, in connection with the project, between the borrower and the owner(s) of the project, those undertaking the project or any intermediary that will re-lend or transfer the proceeds of the REA funds.

(d) The borrower and the owner(s) of the project, or those undertaking the project, should make agreements and prepare documents in accordance with all applicable laws.

(Approved by the Office of Management and Budget under control number 0572-0086)

§ 1703.31 Transfer of employment or business.

The project must not result primarily in the transfer of any existing employment or business activity from one area to another.

§ 1703.32 Environmental requirements.

(a) Prospective recipients of zero-interest loans or grants should consider the potential environmental impact of their proposed projects at the earliest planning stage and plan development in a manner that reduces, to the extent practicable, the potential to affect the quality of the human environment adversely.

(b) *Application for zero-interest loans or grants for project feasibility studies.* For a proposal to fund a project feasibility study, the only environmental information normally required is whether or not the proposed project being studied or analyzed will be located within an area protected under the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*) Generally, the use of Federal funds to promote development on coastal barriers is strictly limited by the Coastal Barriers Resources Act.

(c) *Application for zero-interest loans or grants for a project that is not considered project feasibility studies.* (1) The Administrator will review support materials in the application and initiate an environmental review process pursuant to 7 CFR part 1794. This process will focus on any environmental concerns or problems that are associated with the project.

(2) The level and scope of the environmental review will be determined in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 *et seq.*), the Council on Environmental Policy for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500—1508), REA's environmental policies and procedures (7 CFR part 1794) and other relevant Federal environmental laws, regulations and Executive Orders.

(3) Activity related to the project that will adversely affect the environment or limit the choice of reasonable alternatives must not be undertaken prior to completion of REA's environmental review process.

§ 1703.33 Other considerations.

(a) *Equal opportunity and nondiscrimination requirements.* All zero-interest loans and grants made under this subpart are subject to the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. 1971 *et seq.*, 1975a *et seq.*, 2000a *et seq.*; 7 CFR part 15); section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 701 *et seq.*; 7 CFR part 15b); the Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 *et seq.*; 45 CFR part 90); and Executive Order 11246, Equal Employment Opportunity, (3 CFR, 1964—1965 Comp., p. 339) as amended by Executive Order 11375, Amending Executive Order 11246, Relating to Equal Employment Opportunity (3 CFR, 1966—1970 Comp., p. 684).

(b) *Architectural barriers.* All facilities financed with REA zero-interest loans or grants that are open to the public or in which physically handicapped persons may be employed or reside must be designed, constructed, and/or altered to be readily accessible to, and usable by handicapped persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968, as amended, (42 U.S.C. 4151 *et seq.*) and with the Uniform Federal Accessibility Standards (UFAS), (Appendix A to 41 CFR part 101.19, subpart 101-19.6).

(c) *Flood hazard area precautions.* In accordance with 7 CFR part 1788, if the project is in an area subject to flooding, flood insurance must be provided to the extent available and required under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001 *et seq.*). The insurance must cover, in addition to the

buildings, any machinery, equipment, fixtures and furnishings contained in the buildings. REA will comply with Executive Order 11988, Floodplain Management (3 CFR, 1977 Comp., p. 117), and § 1794.41 of this chapter, in considering the application for the project. As set forth in § 1794.41 of this chapter, public notice is required if a project will be located in a floodplain.

(d) *Uniform relocation assistance.* Relocations in connection with this program are subject to 49 CFR part 24 as referenced by 7 CFR Part 21, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs except that the provisions in Title III, Uniform Real Property Acquisition Policy, of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, (42 U.S.C. 4601–4655) (the "Uniform Act") do not apply to this program.

(e) *Drug-free workplace.* Grants made under this program are subject to the requirements set forth in 7 CFR part 3017, Subpart F, Drug-Free Workplace Requirements, which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*). A borrower requesting a grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(f) *Debarment and suspension.* The requirements of Executive Order 12549, Debarment and Suspension (3 CFR, 1986 Comp., p. 189), and 7 CFR part 3017, Subparts A through E, Governmentwide Debarment and Suspension (Nonprocurement), regarding debarment and suspension are applicable to this program.

(g) *Intergovernmental review of Federal programs.* (1) This program is subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs (3 CFR, 1982 Comp., p. 197) and 7 CFR part 3015, Subpart V, Intergovernmental Review of Department of Agriculture Programs and Activities, which implements Executive Order 12372.

(2) With the exception of zero-interest loans and grants for project feasibility studies, proposed projects are subject to the state and local government review process set forth in 7 CFR part 3015. Under the review process, state and local governments have 60 days to comment on the proposed project.

(3) The Administrator will not give final approval to an application until the requirements of 7 CFR part 3015, subpart V, regarding state and local government review have been satisfied.

(h) *Restrictions on lobbying.* (1) The restrictions and requirements imposed by 31 U.S.C. 1352, entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions" and the implementing regulation, 7 CFR Part 3018, New Restrictions on Lobbying, are applicable to this program.

(2) The regulation that implements this statute requires applicants for a zero-interest loan in excess of $150,000 and applicants for a grant in excess of $100,000 to file a certification statement regarding the use of Federal appropriated funds to lobby the Executive and Legislative branches of the Federal Government, and to file a disclosure form if engaged in these activities using unappropriated funds.

(3) In addition, persons that receive contracts or subcontracts in excess of $150,000 under a zero-interest loan and persons that receive subgrants, contracts or subcontracts in excess of $100,000 under a grant are required to file certification statements regarding lobbying the Executive and Legislative branches and, if engaged in these activities, to file disclosure forms.

§ 1703.34 Applications.

(a) Borrowers may file an application on any official workday during the first 14 days of every month. A borrower must send a copy of the application, except for an application that requests a zero-interest loan or grant for project feasibility studies, to the state single point of contact for state and local governments at the same time it submits the application to REA. As discussed in § 1703.33(g), state and local governments have 60 days to review a borrower's proposal before the Administrator gives final approval to an application, except a proposal for project feasibility studies. The Administrator may establish a special application period if determined necessary.

(b) A completed application will consist of an original and two copies of:

(1) *An application form.* The application must include a completed application form, "Application for Federal Assistance," Standard Form 424;

(2) *A board resolution.* The application must include a board resolution that:

(i) Requests a zero-interest loan and/or grant, including the amount of the zero-interest loan and/or the amount of the grant rounded to the nearest 1,000 dollars;

(ii) Includes the total combined deferment and repayment period requested for a zero-interest loan if less than 10 years;

(iii) Includes the board's endorsement of the proposed rural economic development project as described in the application;

(iv) States the proposed project does not violate § 1703.20 and § 1703.21; and discloses any information regarding a conflict of interest, potential conflict of interest, or appearance of a conflict of interest that would allow the Administrator to make an informed decision;

(v) Authorizes an official of the borrower to requisition zero-interest loan or grant funds under this program;

(vi) For an application for a grant only, authorizes the chief executive officer of the borrower to execute and deliver on behalf of the borrower the certification Form AD-1049 regarding a drug-free workplace program as required in part 3017, subpart F of this title; and

(vii) Any other matters deemed necessary by the Administrator;

(3) *Miscellaneous Federal forms.* The application must include the following completed forms:

(i) Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions," as required in part 3015, subparts A through E of this title; and

(ii) Assurance statement or certification statement required under the Uniform Act as set forth in § 1703.33(d). For pass-through-loans and pass-through-grants, the ultimate recipient of the proceeds of the REA zero-interest loan or grant must sign the assurance statement that it will comply with the applicable provisions of the Uniform Act or sign a certification that the provisions of the Uniform Act will not apply to the rural development project which will be partially financed with the proceeds of REA funds. If the borrower will not provide a pass-through-loan or pass-through-grant to another entity, the borrower must submit a completed assurance statement or certification regarding the applicable provisions of the Uniform Act, or have such an assurance statement on file at REA;

(4) *Contingent certifications and disclosures.* As determined by the type and amount of requested funds, the application must include the following completed forms:

(i) For an application for a zero-interest loan in excess of $150,000 or for an application for a grant in excess of $100,000, a certification statement, "Certification Regarding Lobbying," and, if the borrower is engaged in lobbying activities described under § 1703.33(h), a completed disclosure form, "Disclosure of Lobbying Activities"; and

(ii) For an application for a grant only, a completed certification form, "Certification Regarding Drug-Free Workplace Requirements (Grants)," Form AD-1049 as required in part 3017, subpart F of this title;

(5) *Other requirements.* The following:

(i) A section entitled "Selection Factors" as set forth in § 1703.35;

(ii) A section entitled "Project Description" as set forth in § 1703.36; and

(iii) Except for applications for project feasibility studies, a section entitled "Environmental Impact of the Project" as set forth in § 1703.37.

(c) The Administrator may request additional information it considers relevant from the borrower.

(d) During the application review process, the borrower may change the amount of the zero-interest loan or grant funds requested or other portions of its application, only if approved by the Administrator. A borrower that changes its request from a grant to a zero-interest loan must submit information necessary for the Administrator to evaluate a loan proposal as set forth in this subsection, and submit a new board resolution requesting the loan.

(The information collection requirements contained in paragraph (b) of this section were approved by the Office of Management and Budget under control number 0572-0080)

§ 1703.35 Section of the application covering the selection factors.

The application must contain a section addressing the "selection factors" consisting of the following:

(a) "Nature of the project" (§ 1703.46(g)(1)), which includes any information considered appropriate including aspects of the project that may not be obvious to an outside observer;

(b) "Job creation project" (§ 1703.46(g)(2)), which includes any information that is not readily apparent concerning whether the project would directly create jobs in rural areas. The number of the jobs and the basis for the job projection should be included under "Number of long-term jobs";

(c) "Long-term improvements in economic development" (§ 1703.46(g)(3)), which addresses the extent to which the project will improve the productive potential of the labor force, industrial plant, infrastructure, natural resources and institutions by employing advanced technology, creating higher-skilled occupations, adding higher value to natural resources, creating jobs with higher-career potential, or is considered part of a knowledge intensive industry;

(d) "Diversifying the rural economy or alleviating underemployment" (§ 1703.46(g)(4)), which includes any information the borrower desires the Administrator to consider;

(e) "Supplemental funds" (§ 1703.46(h)(1)), which includes the name of each source and the respective amount of supplemental funds that was provided to the project within 6 months of submitting the application to REA, and the amount that will be provided within two years of receiving REA funds. Also indicate the nature and strength of the commitments to make these supplemental funds available, when these funds are expected to be disbursed, any special terms and conditions associated with the commitments, copies of the commitments, and, if established, the interest rate, term and deferment period on any loan for the project;

(f) "Economic conditions and job creation" (§ 1703.46(h)(2)), which includes:

(1) "Unemployment rates" (§ 1703.46(h)(2)(i)). List the county or counties in which the project will be located. It is not necessary to include the county, state or national unemployment rates. REA obtains these rates from other Federal agencies;

(2) "Per capita personal income" (§ 1703.46(h)(2)(ii)). As with "Unemployment rates," it is not necessary to include the county, state or national per capita personal income levels;

(3) "Change in population" (§ 1703.46(h)(2)(iii)). It is not necessary to include the county population levels;

(4) "Number of long-term jobs" (§ 1703.46(h)(2)(iv)). Include the number of long-term jobs that the project will directly create in rural areas and the total project cost;

(5) "Community-based economic development program" (§ 1703.46(h)(2)(v)). Explain if the project is part of a community-based economic development program; and

(6) "Plan for improving the marketable skills of people in rural areas" (§ 1703.46(h)(2)(vi)). Include information on any written plan for the project to provide opportunities or incentives to improve the marketable skills of rural residents through training and/or education. For projects that consist of providing training or education, indicate how it will benefit rural residents;

(g) "Location" (§ 1703.46(h)(3)), which indicates whether or not the project will be located in a town and, if so, the name of the town;

(h) "Support for the program—cushion of credit payments" (§ 1703.46(h)(4)), which mentions any cushion of credits payments made recently in accounts at REA;

(i) "Demonstration project" (§ 1703.46(h)(5)), which includes a discussion of any commitments from the owner(s) of the project to be a demonstration project and a copy of the written commitment;

(j) "Probability of success" (§ 1703.46(h)(6)), which includes:

(1) "Owners and management of the project" (§ 1703.46(h)(6)(i)) that discusses how the knowledge, experience, education and training of the proposed owners and management of the project increases the likelihood of long-term success; and

(2) "Ultimate recipient's business plan" (§ 1703.46(h)(6)(ii)), that references an attached copy of the business plan.

(i) The plan should include:

(A) A description of the project;

(B) A description of the business, if applicable, its products and the prospects of the industry;

(C) What will be produced or accomplished;

(D) The area to be served;

(E) Any market research or marketing plan;

(F) Any operating plan;

(G) Total project costs and projected use of funds by purpose or category;

(H) A financial plan, including a feasibility study with projected balance sheets, income statements and cash flow statements;

(I) The source of supplemental funds, the nature and strength of commitments from other sources of financing, and the equity contribution;

(J) The proposed ownership and management of the project;

(K) A description of any coordination with a local, regional or state development organization; and

(L) Other relevant information.

(ii) The scope of the plan should reflect the amount requested in the application, the risks involved with developing and operating the project, and the overall cost of the project. The plan should describe any coordination with a local, regional or state development organization.

§ 1703.36 Section of the application covering the project description.

In general, this section should be more detailed the larger the project for which the borrower is requesting funding. The section of the application on the "project description" must include:

(a) A description of the proposed project including the nature of the project, the location of the project, organizations that will be involved in the project and the primary beneficiaries of the project. Also include in this subsection a statement describing

whether the borrower has or will have a direct or indirect (through a subsidiary or affiliated organization) ownership or similar beneficial interest in the facilities to be constructed or in the entity that will occupy or utilize these facilities. In addition, explain whether it seems likely that the proposed project will be undertaken or completed in the absence of an REA zero-interest loan or grant;

(b) A separate paragraph entitled "Uses of REA Funds and Total Project Costs", that includes a breakdown of the specific uses of REA funds and a breakdown of the specific uses of all funds necessary to ensure completion of the project. Project costs should be limited to the amount to be spent over the 2-year period after receiving REA funds;

(c) For a project that involves the establishment of a new venture, such as a rural business incubator or a similar start-up venture, a discussion of how the costs of establishing, organizing and arranging financing for the venture will be paid, how start-up costs incurred after the venture has been established will be paid, the expected sources of revenue necessary to sustain the project and revenue and expense projections for the first 3 years of the project;

(d) If the borrower will provide a pass-through-loan or pass-through-grant to another entity, outline the terms and conditions that the borrower intends to place on the recipient of the REA funds including the security arrangements and collateral on a zero-interest loan. The discussion of proposed security arrangements and collateral should reflect the amount requested in the application, the risks involved with developing and operating the project, and the overall cost of the project;

(e) For pass-through-loans and pass-through-grants, a description of the ultimate recipient, including the form of organization and ownership (i.e., corporation, nonprofit corporation, cooperative, partnership, sole proprietor), the owner(s) and the chief officers;

(f) If the project involves construction, a brief description of the construction necessary to make the project operational and the organization involved with the project that will be responsible for building the project facilities or having them built;

(g) A discussion of the manner in which the borrower intends to monitor the zero-interest loan and/or grant proceeds to ensure that they are used only for approved purposes; and

(h) If applicable, a discussion on any potential conflict of interest or the appearance of a conflict of interest, a clarification of any aspect of the project with respect to the restriction that it must not result primarily in the transfer of any existing employment or business activity from one area to another or a clarification of any aspect of the project with respect to limitations in § 1703.20 and § 1703.21.

§ 1703.37 Section of the application covering the environmental impact of the project.

(a) For a proposed project that only involves internal modifications or equipment additions to buildings or other structures (for example; relocating interior walls or adding computer facilities) and/or external changes or additions to existing buildings, structures or facilities requiring physical disturbance of less than 0.4 hectare (0.99 acre), the environmental information normally required is:

(1) A copy of a flood hazard zone map from the Federal Emergency Management Agency with the location of the project site marked;

(2) A statement of whether or not the proposed project will be located within an area protected under the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(3) A description of the internal modifications or equipment additions, and the external changes or additions to existing buildings, structures or facilities being proposed, the size of the site in hectares, and the general nature of the proposed use of the facilities once the project is completed, including any hazardous materials to be used, created or discharged, any substantial amount of air emissions, wastewater discharge, or solid waste that will be generated; and

(4) A statement of whether the project site contains or is near a property listed or eligible for listing in the National Register of Historic Places (16 U.S.C. 470).

(b) For all other proposed projects include:

(1) A copy of a flood hazard zone map from the Federal Emergency Management Agency with the location of the project site marked (42 U.S.C. 4001 *et seq.*);

(2) A diagram showing the general layout of the proposed facilities on the project site;

(3) The size of the project site in hectares;

(4) A map (preferably a U.S. Geological Survey map) of the project area indicating the boundaries of the project;

(5) A statement of whether or not the project will be located within an area protected under the Coastal Barrier Resources Act;

(6) The amount of property to be cleared, excavated, fenced or otherwise disturbed by the project;

(7) The current land use and zoning of the project site and any vegetation on the project site;

(8) A description of buildings or other major structures, including dimensions, to be constructed or modified;

(9) A statement of whether the presence of wetlands or existing agricultural operations are present at the project site (7 CFR part 1794); whether properties listed or eligible for listing in the National Register of Historic Places are on or near the project site; whether threatened or endangered species or critical habitat are on or near the project site (16 U.S.C. 1531 *et seq.*);

(10) The general nature of the proposed use of the facilities once the project is completed, including any hazardous materials to be used, created or discharged, any substantial amount of air emissions, wastewater discharge, or solid waste that will be generated (7 CFR part 1794); and

(11) A copy of any environmental review, study, assessment, report or other document that has been prepared in connection with obtaining permits, approvals or other financing for the proposed project from state, local or other Federal agencies. Such material, to the extent relevant, may be used to fulfill the requirements of this section.

(c) The Administrator may request additional environmental information in specific cases to satisfy § 1703.32.

§§ 1703.38—1703.44 [Reserved]

§ 1703.45 Review and analysis of applications.

Completed applications received at REA by the 14th day of the month will be considered at the first selection date which occurs at least 40 days after the application was received. Completed applications received at REA after the 14th day of a month will be either be held for the next application period or returned to the borrower, at the borrower's option. The review period of at least 40 days should allow sufficient time for state and local governments to review the proposed projects under the intergovernmental review process, as set forth in 7 CFR part 3015, and to provide sufficient time for the Administrator to fully review and analyze these applications. In the event state and local government review has not been completed, the Administrator's approval may be contingent upon the review being satisfactorily documented. The Administrator reserves the

discretion to consider applications outside the normal selection period.

§ 1703.46 Documenting the evaluation and selection of applications for zero-interest loans and grants.

(a) The Administrator will only consider for selection applications that request funds for uses set forth in § 1703.17 and are not ineligible under § 1703.20, as determined by the Administrator. The Administrator will not consider applications that do not conform with all of the provisions of this subpart, as determined by the Administrator. The Administrator will make the determination of all numbers, dollars, levels and rates, as well as the nature, costs, location and other characteristics of the proposed project, to calculate the number of points assigned to an application for each selection factor. Applications for zero-interest loans and grants will be ranked separately. In addition, applications requesting less than 5 percent of the total project costs as provided in § 1703.25 will be ranked separately, subject to § 1703.46(k). The Administrator will select applications that receive the greatest number of total points under paragraphs (g) and (h) of this section, subject to available funds and the provisions of § § 1703.25, 1703.46(j), and 1703.46(k).

(b) After reviewing an application, the Administrator may decline to select an application:

(1) That would result in a conflict of interest or the appearance of a conflict of interest;

(2) Based on the management and financial situation of the borrower applying for the zero-interest loan or grant. In determining the borrower's financial situation, the Administrator will consider, among other things, the borrower's existing and projected cash flows, equity to asset ratios, times interest earned ratios, debt service coverage ratios, the level of its investments, the level of its cash and other liquid assets, its working capital and repayment of its debts;

(3) Based on a determination that limitations under state laws will lessen the likelihood of repayment of the REA zero-interest loan in the event that the borrower does not receive funds from the project necessary to cover the REA zero-interest loan payments;

(4) Based on the unwillingness of the borrower applying for the zero-interest loan or grant to exercise diligence in repaying REA loans or loan guarantees, and comply with REA's legal documents and regulations;

(5) For an otherwise eligible project when any of the revenues of the project are derived from a legalized gambling activity; or

(6) For any illegal activity.

(c) (1) The Administrator will first evaluate the application and the project with respect to the three factors in this paragraph. The Administrator will not select applications requesting funds for projects that in the Administrator's best judgment have a low probability of:

(i) Being a viable business or operation;

(ii) Being successful as measured by long-term job creation or retention; and

(iii) Producing long-term economic development in rural areas.

(2) The Administrator's determination in paragraph (c) of this section will be based on the ultimate recipient's feasibility studies, income statements, cash flow statements, existing and projected balance sheets, market research, job creation potential, industry trends, and current economic conditions given the nature of the project. Long-term job creation and economic development in rural areas as used for this factor will mean jobs or economic development that would generally be expected to last at least five years.

(d) The Administrator will not award points under the selection factors in paragraphs (g) and (h) of this section for applications that:

(1) Involve the purchase land that will not be developed or used as a site for a project structure during the current phase of the project, as determined by the Administrator;

(2) Will be used for residential purposes or entertainment purposes at the residential level, such as residential dwellings and land sites, facilities to provide entertainment television, or personal, non-business related vehicle(s); however, nursing homes providing medical care, as determined by the Administrator, will not be considered to be residential dwellings;

(3) Will be used primarily to finance the purchase of an established business or operation rather than for economic development in rural areas or job creation purposes; or

(4) Will be used primarily to transfer property or real estate between owners without making any improvements or additions that will promote economic development in rural areas or job creation.

(e) Projects to provide recreational facilities must convincingly demonstrate that the project would be an integral part of a tourism industry in the community or region to receive points. The application must include support, such as regional studies, that shows the impact of the recreational facilities on the economy of the rural area. Projects that are intended to provide recreational facilities for the residents of an area would not receive points.

(f) After the above determinations, the Administrator will evaluate the applications and assign points with respect to the factors in paragraph (g) of this section. Applications evaluated under paragraph (g) of this section that do not receive at least 35 points or are not within the top 75 percent when all applications being assigned points are ranked from high to low by total number of points will not be evaluated with respect to the factors in paragraph (h) of this section. The only exception to this evaluation process would be the Administrator's determination that additional applications must be selected in accordance with § 1703.14. After such a determination, the remaining applications evaluated in paragraph (g) of this section will be also evaluated under the factors in paragraph (h) of this section.

(g) *Selection factors pertaining to the type of project.* The number of points assigned for each selection factor will be determined as follows:

(1) *Nature of the project.* The extent to which the nature of the project will promote economic development in rural areas and/or job creation—up to 50 points. The determination for this factor will be based on whether the project:

(i) Is considered a start-up, expansion, or enhancement of a business, a business incubator, an industrial building or park, infrastructure necessary to connect these types of projects to existing infrastructure, necessary for the development and operation of these types of projects, or, in the Administrator's determination, basic infrastructure necessary for successful businesses in the rural economy;

(ii) Will provide technical assistance to rural businesses or rural residents, train or educate rural residents, promote economic development in rural areas on a non-profit basis, or provide medical care to rural residents; and

(iii) Will succeed as envisioned in the application, and the possibility that the owners or operators may become delinquent on their loan payments.

(2) *Job creation project.* The extent to which the project will directly lead to job creation given the size of the project and the amount of REA funds requested or the project is necessary for job creation—up to 25 points. As part of the determination, the Administrator will consider whether the project will provide long-term employment for rural residents. For industrial parks, industrial buildings, and similar projects, the

Administrator will consider whether the application includes information on businesses or tenants that will occupy the building(s) and the nature and extent of the commitments to use the buildings in determining the number of points to award. The Administrator will also consider the probability that the project will not result in job creation as envisioned in the application in terms of both the number of jobs and the duration of the jobs.

(3) *Long-term improvements in economic development.* Projects that lead directly to an increase in long-term productivity and per capita income in rural areas—up to 25 points. The Administrator's determination will be based on the extent to which the project will improve the productive potential of the labor force, industrial plant, natural resources, institutions, and infrastructure necessary for economic development and job creation by utilizing advanced technology, creating higher skilled occupations, creating jobs with higher career potential or jobs that are considered part to be of a knowledge intensive industry, or adding higher value to natural resources. In considering infrastructure projects, the Administrator will award points only for the facilities, such as water and sewer facilities, that will serve and are necessary for commercial activities described under this factor.

(4) *Diversifying the rural economy or alleviating underemployment.* Projects that in the judgement of the Administrator will diversify the rural economic base or assist in alleviating chronic underemployment for rural residents—10 points. The Administrator will assign points only to the extent the application contains convincing evidence pertaining to this factor.

(h) *Other selection factors.* The number of points assigned for each selection factor will be determined as follows:

(1) *Supplemental funds.* (i) A determination of the amount of supplemental funds provided or to be provided to the project from the project owner in the form of equity funds, private sources, state and local government sources, other Federal Government sources, the borrower or other sources of funds. The supplemental funds used in this calculation must be disbursed to the project during the period covering six months prior to the receipt of the application by REA and two years after the first advance of REA funds for the project. Supplemental funds must be committed to the project before REA will advance its funds. REA loan or grant funds from the borrower or REA loan or grant funds from any other organization will not be included in the calculations. The Administrator will determine what constitutes expenditures on the project. If supplemental funds as a percentage of the REA zero-interest loan and/or grant to be provided to the project is:

(A) Equal to 20%—10 points, the minimum number of points;

(B) Equal to 100%—20 points;

(C) Equal to 500%—30 points, the maximum number of points.

(ii) Ratios of supplemental funds to REA funds falling between these levels will be assigned points based on a straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1.

(2) *Economic conditions and job creation.* (i) A comparison will be made of the unemployment rate in the county where the project will be located to the state and national unemployment rates.

(A) If the unemployment rate in the county where the project will be located exceeds the National unemployment rate by 30 percent or more—10 points, the maximum number of points awarded.

(B) If the unemployment rate in the county where the project will be located is equal to the National unemployment rate—5 points.

(C) If the unemployment rate in the county where the project will be located is equal to or less than 75 percent of the National unemployment rate—0 points.

(D) If the unemployment rate in the county where the project will be located exceeds the state unemployment rate by 30 percent or more—8 points, the maximum number of points awarded.

(E) If the unemployment rate in the county where the project will be located is equal to the state unemployment rate—4 points.

(F) If the unemployment rate in the county where the project will be located is equal to or less than 75 percent of the state unemployment rate—0 points.

(G) For both the state and national unemployment rate calculations, rates falling between the levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1. If the project will be located in several counties, the Administrator will use a simple average (mean) of the counties for the comparison. The Administrator will use the average of the most recent twelve months of unemployment rates it has obtained from the Bureau of Labor Statistics, U.S. Department of Labor or other government sources and processed into a suitable format.

(ii) A comparison will be made of the per capita personal income in the county where the project will be located to the state and national per capita personal income levels.

(A) If the per capita personal income level in the county where the project will be located is less than or equal to 90 percent of the National per capita personal income level—10 points, the maximum number of points awarded.

(B) If the per capita personal income level in the county where the project will be located is equal to the National per capita personal income level—5 points.

(C) If the per capita personal income level in the county where the project will be located exceeds the National per capita personal income level by 15 percent or more—0 points.

(D) If the per capita personal income level in the county where the project will be located is less than or equal to 90 percent of the state per capita personal income level—8 points, the maximum number of points awarded.

(E) If the per capita personal income level in the county where the project will be located is equal to the state per capita personal income level—4 points.

(F) If the per capita personal income level in the county where the project will be located exceeds the state per capita personal income level by 15 percent or more—0 points.

(G) For both the state and national per capita personal income calculations, incomes falling between the levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1. If the project will be located in several counties, the Administrator will use a simple average (mean) of the counties for the comparison. The Administrator will use the most recent annual per capita personal income levels it has obtained from the Bureau of Economic Analysis, U.S. Department of Commerce or other government sources and processed into a suitable format.

(iii) A calculation will be made of the change in total population over the most recent two-year period in the county where the project will be located. The population change will be the based on the total percentage change over the two-year period calculated as follows: the population for the most recent year less the population as of two years prior to that year with the difference being divided by the population as of two years prior to the most recent year.

(A) If the percentage growth over the two-year period is negative 2.00 percent or higher negative amount (a population decline)—8 points, the maximum number of points.

(B) If the percentage growth over the two-year period is equal to zero or is positive (population increase)—0 points.

(C) Population growth percentages falling between these levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1. If the project will be located in several counties, the Administrator will use a simple average (mean) of the counties for the comparison. The Administrator will use the most recent population data for all counties it has obtained from the Bureau of Economic Analysis, U.S. Department of Commerce or other government sources and processed into a suitable format. The data provide one population figure for the year.

(iv) The number of long-term jobs that the project will directly create in rural areas.

(A) For five or more direct long-term jobs per $100,000 of total project costs—15 points, the maximum number of points awarded.

(B) For two direct long-term jobs per $100,000 of total project costs—8 points.

(C) For no direct long-term jobs—0 points.

(D) Direct, long-term jobs under this factor are jobs that would generally be expected to last at least five years. Long-term jobs that would provide 6 months per year of equivalent full-time employment will be counted under this factor. Long-term jobs that would provide fewer months of employment would be given points based on the ratio of the number of months per year of employment to 12 months. Jobs of at least 20 hours per week will be counted under this factor. For construction of an industrial building, extension of water and/or sewer lines to a building, or a similar project, the Administrator will require a reasonable analysis of the number of jobs that will be created before awarding points for this factor. The Administrator reserves the right to adjust the number based on its analysis of the project, the explanation in the application of the businesses that will locate in the building(s), and any commitments from businesses to locate in the building(s). This factor will not count indirect job creation that results from an overall increase in the local economy once the project is completed. If total project costs per job falls between these levels, points will be assigned based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1.

(v) Projects that are part of a local, community-based rural economic development program that would improve the local economy and enhance the well-being of rural residents—10 points. The determination will be based on information submitted by the borrower in its application and other information the Administrator considers appropriate.

(vi) Projects that have a written plan to provide opportunities or incentives to improve marketable skills for rural residents through training and/or education, or projects which consist of providing this training and/or education—5 points.

(3) *Location.* Projects that will be physically in a rural area—20 points.

(4) *Support for program—cushion of credit payments.* (i) Applications submitted by borrowers that have made cushion of credit payments as set forth in section 313 of the Act based on the following:

(A) If the borrower has $300,000 or three percent of total assets, whichever is less, in cushion of credit payments—15 points;

(B) If the borrower has $100,000 or one percent of total assets, whichever is less, in cushion of credit payments—10 points;

(C) If the borrower has at least $5,000 or 0.5 percent of total assets, whichever is less, in cushion of credit payments—5 points.

(ii) The amount of cushion of credit payments will be based on the amount at the time the Administrator evaluates the project. The calculation of a borrower's total assets will be based on REA's most recently published Statistical Report, Rural Electric Borrowers (REA Informational Publication 201–1) or Statistical Report, Rural Telephone Borrowers (REA Informational Publication 300–4). These publications are available from the Rural Electrification Administration, Administrative Services Division, Washington, DC, 20250. If the amount of cushion of credits payments falls between these levels, points will be based on a straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1.

(5) *Demonstration project.* If the application contains a written commitment from the owner(s) of the project that the project will be a demonstration project—5 points.

(6) *Probability of Success.* (i) The knowledge, experience, education and training of the proposed owners and management of the project—up to 10 points.

(ii) The ultimate recipient's business plan and indications that the project will successfully result in economic development in rural areas and/or job creation—up to 40 points. The Administrator's evaluation of the success of the project will be based on indications in the application and REA's analysis that the project will be a viable business or operation, be successful in creating or retaining long-term jobs, and be successful in producing economic development that will result in long-term benefits to rural areas. The plan should include:

(A) A description of the project;

(B) A description of the business, if applicable, its products and the prospects of the industry;

(C) What will be produced or accomplished;

(D) The area to be served;

(E) Any market research or marketing plan;

(F) Any operating plan;

(G) Total project costs and projected use of funds by purpose or category;

(H) A financial plan, including a feasibility study with projected balance sheets, income statements and cash flow statements;

(I) The source of supplemental funds, the nature and strength of commitments from other sources of financing, and the equity contribution;

(J) The proposed ownership and management of the project;

(K) A description of any coordination with a local, regional or state development organization; and

(L) Other relevant information.

(iii) The Administrator expects the ultimate recipient's business plan referenced in paragraph (h)(6)(ii) of this section to be comparable to a plan normally submitted to a bank for long-term financing. In evaluating an application for this selection factor, the Administrator will consider the probability that the project will result in long-term economic development in rural areas and/or job creation as envisioned in the application.

(iv) Quality and completeness of borrower's initial application submitted to REA—up to 10 points. The Administrator's determination will be based on the completeness and quality of the application as measured by the additional information required from the borrower to complete the analysis.

(i) *Outline of selection factors.* The selection factors contained in

§ 1703.46(g) and § 1703.46(h) and the maximum number of points that may be assigned to each is listed below:

(1) *Nature of the project*—50 points;

(2) *Job creation project*—25 points;

(3) *Long-term improvements in economic development*—25 points;

(4) *Diversifying the rural economy or alleviating underemployment*—10 points;

(5) *Supplemental funds*—30 points;

(6) *Economic conditions and job creation:*

(i) *Unemployment rates*—18 points;

(ii) *Per capita personal income*—18 points;

(iii) *Change in population*—8 points;

(iv) *Number of long-term jobs*—15 points;

(v) *Community-based economic development program*—10 points;

(vi) *Plan for improving the marketable skills of people in rural areas*—5 points;

(7) *Location*—20 points;

(8) *Support for program*—cushion of credit payments—15 points;

(9) *Demonstration project*—5 points;

(10) *Probability of success:*

(i) *Owners and management of the project*—10 points;

(ii) *Ultimate recipient's business plan*—40 points; and

(iii) *Completeness of borrower's initial application*—10 points.

(j) Regardless of the number of points assigned to a borrower's application, the Administrator may:

(1) Limit the number of applications selected in any one state during any fiscal year to the ratio of borrowers in that state to the total number of borrowers multiplied by three, or ten percent of the total number selections that have been made during the current fiscal year, or ten, whichever is greatest. The number of borrowers will be determined as of the latest published REA statistical reports (Statistical Report, Rural Electric Borrowers, REA Informational Publication 201–1 and Statistical Report, Rural Telephone Borrowers, REA Informational Publication 300–4. These publications are available from the Rural Electrification Administration, Administrative Services Division, Washington, DC, 20250);

(2) Limit a borrower to one selected application during any selection period;

(3) Limit the number of applications selected for a particular project;

(4) Allocate available funds between applications from electric and telephone borrowers;

(5) Select an application receiving fewer points than another application if there are insufficient funds during a particular budget period to select the higher ranked application; except that the Administrator may ask the borrower that submitted the higher ranked application if it desires to reduce the amount of its application to the amount of funds available. The reduction may require additional supplemental funds to ensure a successful project. Based on information the borrower provides, the Administrator will re-analyze the project to ensure that the project will still be feasible with reduced funding; or

(6) Select the highest ranking applications for funds to finance projects that the Administrator classifies as project feasibility studies.

(k) During each selection period, the highest ranking application from among the applications requesting less than 5 percent of the total project costs as provided in § 1703.25 will be considered with the applications requesting 5 percent or more of total project costs.

(l) The Administrator reserves the right to use the region or data it considers most appropriate if "county" data are unavailable for a particular area.

§§ 1703.47—1703.57 [Reserved]

§ 1703.58 Post selection period.

(a) REA will inform a borrower whether the Administrator has selected its application. The advance of REA funds after the selection has occurred is contingent upon the borrower meeting any terms and conditions the Administrator determines are necessary. A borrower that submitted an application which was not selected will be asked to inform REA whether it desires to be reconsidered at a later date. The borrower may modify the application after it has been considered without resubmitting all the required material in an application, except if it changes the request from a grant to a zero-interest loan it must submit information necessary for the Administrator to evaluate a loan proposal as set forth in § 1703.35 and § 1703.36 and submit a new board resolution requesting a loan. If the borrower so desires, the Administrator will consider an application for up to one year after the date REA originally received the application. A borrower may submit new applications as often as it desires.

(b) During the period between the selection of the application and the execution of REA's legal documents, the borrower must inform the Administrator if the project is no longer viable or the borrower no longer desires a zero-interest loan or grant for the project. Upon a determination by the Administrator to that effect, the selected application will be considered cancelled.

(c) If an application has been selected and the nature of the project changes, as determined by the Administrator, the borrower may be required to submit a new application to REA for consideration. The selection may not be transferred to another project, as determined by the Administrator. At any time after the selection of an application, the Administrator may, upon a request from the borrower and receipt of any documentation the Administrator considers necessary, approve changes in the method of carrying out the purpose of the project as long as the overall purpose of the project remains the same, revise the amount of the zero-interest loan and/or grant, revise the loan maturity date and principal deferment period and make other adjustments. The Administrator may reduce the amount of the REA loan or grant to reflect reductions in the amount of supplemental funds to be provided to the project. For substantial reductions in amount of supplemental funds to be provided to the project, the Administrator may require the borrower to re-apply for the REA loan or grant funds.

(d) If state or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within three months of the Administrator's selection of the application, the Administrator may consider the selection of the application cancelled.

§ 1703.59 Final application processing and legal documents.

(a) After a borrower has submitted all information the Administrator determines is necessary for the selected application, REA will send the necessary legal documents to the borrower to execute and return to REA. The legal documents will include a letter of agreement and any legal documents the Administrator deems appropriate, including any loan agreements, notes, security instruments, certifications or legal opinions. The letter of agreement will, among other things, constitute the Administrator's approval of funds for the project subject to certain terms and conditions as determined by the Administrator, and include a project description, approved purposes of the zero-interest loan and/or grant, the maximum amount of zero-interest loan and/or grant, supplemental funds to be provided to the project and certain agreements or commitments the borrower proposed in its application.

(b) The Administrator has the discretion to include as an approved purpose the reimbursement of short-

term financing and expenditures that were used for costs incurred on the project in accordance with § 1703.20(a)(2).

(c) If the borrower fails to submit within one month from the date of the Administrator's selection of an application all of the information that the Administrator determines to be necessary for REA to prepare legal documents, the Administrator may consider the selection of the application cancelled.

§ 1703.60 [Reserved]

§ 1703.61 Disbursement of zero-interest loan and grant funds.

(a) REA will disburse zero-interest loan funds to the borrower which must disburse zero-interest loan proceeds to the project for approved purposes in accordance with the legal documents executed by the Administrator and the borrower and applicable REA regulations. The borrower must make payments on a zero-interest loan as set forth in the legal documents executed by the Administrator and the borrower.

(b) REA will disburse grant funds to the borrower which must disburse grant proceeds to the project for approved purposes in accordance with the provisions of 7 CFR part 3015 and 7 CFR part 3016, as appropriate, the legal documents executed by the Administrator and the borrower, and applicable REA regulations.

(c) If the borrower fails to satisfy all conditions, requirements, and terms prerequisite to the advance of zero-interest loan and/or grant funds as set forth in the letter of agreement or other REA legal documents within 120 days from the date the borrower signs the letter of agreement agreeing and accepting the conditions, requirements, and terms of the REA zero-interest loan and/or grant, or such later date as the Administrator may approve, the Administrator may rescind the zero-interest loan and/or grant commitment.

(d) During the period between the execution of REA's legal documents and the disbursement of funds, the borrower must provide the Administrator written notification if the project is no longer viable or the borrower no longer desires a zero-interest loan or grant for the project. After REA has received the borrower's notification, the Administrator will rescind the commitment.

(e) The borrower must return to REA all proceeds of the zero-interest loan and/or grant, including any interest earned on the funds being returned, which have not been lent or disbursed by the borrower for approved purposes during the six months following the advance of the loan or grant funds from REA to the borrower, or such later date as the Administrator may approve. If the project is under the control of the borrower, all proceeds of the zero-interest loan and/or grant must be returned to REA, including any interest earned on the funds being returned, which have not been expended by the borrower for approved purposes before the first anniversary of the date of the advance of the loan or grant funds from REA to the borrower, or such later date as the Administrator may approve. Authorization of any extension rests solely within the discretion of the Administrator.

§§ 1703.62—1703.65 [Reserved]

§ 1703.66 Review and other requirements.

(a) REA will review borrowers receiving zero-interest loans or grants, as necessary, to ensure that funds are expended for approved purposes. Borrowers receiving zero-interest loans or grants must monitor the project to the extent necessary to ensure that the project is in compliance with all applicable regulations, including ensuring that funds are expended for approved purposes. The borrower is responsible for ensuring that disbursements and expenditures of funds are properly supported with certifications, invoices, contracts, bills of sale, or any other forms of evidence determined appropriate by the Administrator and that such supporting material is available, at the borrower's premises, for review by the REA field accountant, borrower's certified public accountant, the Office of Inspector General, the General Accounting Office and any other accountant conducting an audit of the borrower's financial statements or this rural economic development program. Borrowers will be required to permit REA to inspect and copy its records and documents that pertain to the project.

(b) The borrower must require the recipient of a pass-through loan to provide an itemized list to the borrower that shows the expenditures made on the project for approved purposes, including a certification to that effect. The borrower will also require the recipient to attach invoices, receipts, bills of sale, and other evidence representing the items on the list of expenditures that at least total the amount of the REA zero-interest loan. REA's legal agreements will include the terms and conditions that the borrower must require in its agreement with the recipient of a pass-through loan covering the use and intended schedule of expenditures of the loan funds.

(c) REA's legal documents may require the borrower to include in its legal documents with the recipient of a pass-through loan or a pass-through-grant the requirement to expend the funds for approved purposes by a certain date specified in REA's legal documents or return to the borrower all funds that have not been expended by such date. The borrower must promptly return to REA all unexpended funds that the recipient returns to the borrower under the terms set forth in the legal documents executed between the Administrator and the borrower. The borrower may request an extension due to delays in the project. Authorization of any extension rests solely within the discretion of the Administrator.

(d) The legal documents executed between the borrower and the Administrator in connection with a zero-interest loan must contain provisions giving the Administrator discretionary rights and remedies in the event a borrower fails to comply with this subpart, other Federal regulations and statutes, or the terms, conditions and requirements of the executed legal documents. Regardless of any right or remedy that the Administrator chooses to assert, if the borrower uses any zero-interest loan funds other than for approved purposes, the borrower will be required to return to REA the amount used for unapproved purposes and it will be considered a prepayment on the REA note.

(e) Borrowers receiving zero-interest loans must have a financial report and general accounting of all zero-interest loan funds prepared in accordance with the provisions of 7 CFR Part 1773, REA Policy on Audits of electric and telephone borrowers.

(f) The borrower must promptly notify the Administrator in writing if another entity is in default on a pass-through-loan between the borrower and the entity.

(g) Grants provided under this program will be administered under and are subject to 7 CFR part 3015 and 7 CFR part 3016, as appropriate. The borrower that receives a grant will be subject to requirements under these regulations which cover, among other things, financial reporting, accounting records, budget controls, record retention and audits.

§§ 1703.67—1703.99 [Reserved]

Dated: September 16, 1992.

James B. Huff, Sr.,

Administrator.

[FR Doc 92-22776 Filed 9-24-92; 8:45 am]

BILLING CODE 3410-15-F

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 91-197-2]

Change in Disease Status of Chile Because of Swine Vesicular Disease and Velogenic Viscerotropic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to add Chile to the lists of countries considered to be free of swine vesicular disease (SVD) and velogenic viscerotropic Newcastle disease (VVND). There has never been an outbreak of SVD in Chile, and there have been no cases of VVND in Chile since 1975. The change in the VVND status of Chile relieves certain prohibitions and restrictions on the importation into the United States, from Chile, of certain poultry and poultry products.

However, Chile is not free of hog cholera. Therefore, the importation from Chile of swine and fresh, chilled, and frozen meat from swine will continue to be prohibited because of this disease.

EFFECTIVE DATE: October 26, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Chief Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756–A, Federal Building, 6505 Bélcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) regulate, among other things, the importation into the United States of certain animals, meat, and animal products. These regulations are designed to prevent the introduction into the United States of certain animal diseases, including swine vesicular disease (SVD) and velogenic viscerotropic Newcastle disease (VVND).

SVD is an acute, highly infectious viral disease of swine. It is characterized by vesicular lesions and subsequently by erosions of the epithelium of the mouth, nares, snout, and feet.

VVND (also called exotic Newcastle disease) is an infectious and contagious virus disease affecting all species of poultry and birds. In poultry, the clinical evidence of the disease is severe respiratory distress, depression, and death in up to 100 percent of the poultry in infected flocks. Many birds, particularly of the psittacine families, may survive the acute infection. However, they still may shed the virus.

There have been no outbreaks of VVND in Chile since 1975, and there has never been an outbreak of SVD in Chile. This has been confirmed by the Office of International Epizootics (OIE), in which Chile maintains membership. The OIE reports any outbreaks of these and other diseases in member countries. We have determined that Chile has adequate controls to prevent the introduction and spread of VVND and SVD.

Chile has applied to the U.S. Department of Agriculture (USDA) to be recognized as free of VVND and SVD. The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the Government of Chile in support of its request. A team of APHIS officials recently conducted an on-site evaluation of the animal health program in Chile in regard to the VVND and SVD situation in that country. The evaluation consisted of a review of the capability of the Chilean veterinary services, laboratory and diagnostic procedures, disease reporting and surveillance procedures, vaccination practices, and the administration of laws and regulations to insure against the introduction into Chile of VVND and SVD through the importation of animals, meat, and animal products.

On May 29, 1992, we published a proposal in the **Federal Register** (Docket No. 91-197, 57 FR 22669-22670) to declare Chile free of SVD and VVND. Comments on the proposed rule were required to be received on or before July 28, 1992. We did not receive any comments. Therefore, based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule without change.

Section 94.12(a) of the regulations provides that SVD is considered to exist in all countries of the world except those listed in § 94.12(a). By adopting this final rule, we are adding Chile to this list.

Section 94.6(a)(1) of the regulations provides that VVND is considered to exist in all countries of the world except those listed in § 94.6(a)(2), which are considered to be free of VVND. By adopting this final rule, we are adding Chile to this list.

By adopting this final rule, we also add Chile to the list of countries in § 94.13 and restrict importation of pork and pork products from Chile in accordance with § 94.13. Pork and pork products from countries listed in § 94.13 are subject to special restrictions because they either (1) supplement their national pork supply by importing fresh, chilled, or frozen pork from countries in which SVD is considered to exist; or (2) have a common border with countries in which SVD exists; or (3) have certain trade practices regarding imports from countries in which SVD is considered to exist that could result in commingling of fresh, chilled, and frozen meat from countries in which SVD is considered to exist and pork or pork products from the SVD-free country, presenting a possibility that products from a country with SVD could contaminate products exported to the United States from the SVD-free country.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule eliminates the requirements of § 94.6 concerning VVND for carcasses and parts and products of carcasses of poultry, game birds, and other birds to be imported into the United States from Chile. Live poultry imported into the United States from Chile will continue to be subject to the restrictions of 9 CFR part 92, including the 30-day quarantine period required by § 92.209.

This final rule also eliminates the requirements of § 94.12 concerning SVD for pork and pork products to be imported from Chile. However, the pork and pork products from Chile will instead have to comply with the requirements of § 94.13. The importation of live swine and fresh, chilled, or frozen pork from Chile will continue to be prohibited in accordance with § § 94.9 and 94.10, due to the existence of hog cholera in Chile.

Based on available information, the Department does not anticipate a major increase in exports of live poultry or poultry products from Chile to the United States as a result of this final rule. Since Chile is already trading in international markets, it is unlikely to disrupt established trade relationships with traditional European trading partners by diverting a significant amount of its exports of live poultry or poultry products to the United States. Increases in imports of live poultry from Chile are also highly unlikely because of high transportation costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. By adopting this rule:

(1) All State and local laws, regulations, and policies that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) It will not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a; 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. The heading for part 94 is revised to read as set forth above.

§ 94.6 [Amended]

3. In § 94.6, paragraph (a)(2) is amended by adding "Chile," immediately after "Canada,".

§ 94.12 [Amended]

4. In § 94.12, paragraph (a) is amended by adding "Chile," immediately after "Central American countries,".

§ 94.13 [Amended]

5. In § 94.13, the first sentence of the introductory text is amended by adding "Chile," immediately after "Bulgaria,".

Done in Washington, DC, this 22 day of September, 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–23370 Filed 9–24–92; 8:45 am]

BILLING CODE 3410-34-F

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Central Air Conditioners and Heat Pumps

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by publishing the ranges of comparability to be used on required labels for central air conditioners and heat pumps and by updating the annual national average cost figure for electricity to be used in the cost calculation formula required on fact sheets and in directories. These cost figures are for consumers to use to calculate their own heating and cooling costs.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Central air conditioners (including heat pumps) are included as one of the categories. The statute also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final Rule covering seven of the thirteen appliance categories that were then covered by DOE test procedures: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.[2]

On December 10, 1987 (52 FR 46888), the Commission amended the Appliance Labeling Rule by extending its coverage to central air conditioners and heat pumps. For these products, the Commission adopted a disclosure scheme that consists of labels showing simple energy efficiency and range information, together with a requirement to disclose further efficiency and cost information by means of either fact sheets or a listing in a general directory containing such information.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] These

[1] Public Law 94–163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR part 305 (Nov. 19, 1979). The Statement of Basis and Purpose for the Final Rule describes the reasons the Commission declined to cover the other categories of covered products. *Id* at 66467–69.

[3] Reports for central air conditioners (including heat pumps) are due by July 1.

reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual cost or energy efficiency rating for the appliances derived from tests performed pursuant to the DOE test procedures. The reports also contain the model number, the number of tests performed on each model, and the capacity of each. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for central air conditioners (including heat pumps) have been received and analyzed by the Commission. New ranges based upon them are herewith published.

In addition, this Notice provides an updated figure for the annual national average cost of electricity. This figure, along with national average cost figures for natural gas, propane, heating oil and kerosene, is published annually by the Department of Energy for the industry's use in calculating the cost figures required by the Commission's Rule. The cost figure for electricity must be used in the cost calculation formulas that appear in appendices H and I. These formulas must be provided on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing. The updated figure, which DOE published on January 14, 1992 (57 FR 1461), and which the Commission published on February 20, 1992 (57 FR 6071), is 8.25 cents per kilowatt-hour. The formulas (and calculations) in both Appendices have been changed to reflect this.

In consideration of the foregoing, the Commission revises Appendices H (1) and (2) and I (1) and (2) of its Appliance Labeling Rule by publishing the following ranges of comparability and cost figures for use in the labeling and advertising of central air conditioners and heat pumps beginning December 24, 1992.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR part 305 is amended as follows:

1. The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. Appendix H of part 305 is amended by revising the chart on Range Information to read as follows:

* * * * *

APPENDIX H.—COOLING PERFORMANCE AND COST FOR CENTRAL AIR CONDITIONERS

[Range information]

Single package units	Range of EER's	
Manufacturer's rated cooling capacity (Btu's hr.)	Low	High
Central air conditioners (Cooling only): All capacities	5.60	12.50
Heat pumps (Cooling function): All capacities	8.00	12.10
Split system units	**Range of EER's**	
Manufacturer's rated cooling capacity (Btu's/hr.)	Low	High
Central air conditioners (Cooling only): All capacities	10.00	16.90
Heat pumps (Cooling function): All capacities	10.00	16.40

* * * * *

3. In section 2 "Yearly Cost Information" of appendix H of part 305, the text and formulas are amended by removing the figure "8.24¢" wherever it appears and by adding, in its place, the figure "8.25¢. In addition, the text and formulas are amended by removing the figure "12.36¢" wherever it appears and by adding, in its place, the figure "12.38¢".

4. Appendix I of part 305 is amended by revising the chart on Range Information to read as follows:

APPENDIX I.—HEATING PERFORMANCE AND COST FOR CENTRAL AIR CONDITIONERS

[Range information]

Single package units	Range of EER's	
Manufacturer's rated heating capacity (Btu's hr.)	Low	High
Heat pumps (Heating function): All capacities	5.65	7.35
Split system units	**Range of EER's**	
Manufacturer's rated heating capacity (Btu's/hr.)	Low	High
Heat pumps (Heating function): All capacities	6.80	10.20

The EER shall be the Region IV value based on the appropriate average design heat loss from the table below.

* * * * *

5. In section 2 "Yearly Heating Cost Information" of appendix I of part 305, the text and formulas are amended by removing the figure "8.24¢" wherever it appears and by adding, in its place, the figure "8.25". In addition, the text and formulas are amended by removing the figure "12.36¢" wherever it appears and by adding, in its place, the figure "12.38¢".

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92–23310 Filed 2–24–92; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8438]

RIN 1545–AM49

Consolidated Return Regulations; Coordination With Section 833

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing rules relating to the removal of the tax-exempt status of organizations described in section 833 of the Internal Revenue Code (relating to certain Blue Cross or Blue Shield organizations and certain other health insurers). The rules were needed because, as a result of the removal of tax-exempt status, such organizations are, for taxable years beginning after 1986, includible corporations under section 1504(b) of the Code.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David B. Friedel, 202–622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1012 of the Tax Reform Act of 1986 denied, for taxable years beginning after December 31, 1986, tax-exempt status to certain organizations described in section 833(c) of the Internal Revenue Code ("section 833 organizations"), relating to certain Blue Cross or Blue Shield organizations and certain other health insurers. As a result, such organizations became includible corporations under section 1504(b) of the Code. Under § 1.1502–75(d)(1), as a result of a section 833 organization becoming the new common parent of an existing consolidated group ("old consolidated group"), the old consolidated group terminated and a new affiliated group with the section 833 organization as the new common parent was created.

There is no indication that Congress intended the termination of the old consolidated group and the creation of a new affiliated group as a consequence of the denial of tax-exempt status to section 833 organizations.Therefore, on September 14, 1988, the Service announced in Notice 88–107, 1988–2 C.B. 445, that it would promulgate regulations ameliorating the harsh results that would follow from the termination of the old groups.

On September 5, 1990, a notice of proposed rulemaking by cross-reference to temporary regulations adding section 1.1502–75T(d)(5) to part 1 of title 26 of the Code of Federal Regulations was published in the **Federal Register** (55 FR 36290). These regulations adopted a neutrality principle which was intended to preclude treating members of an old group better or worse by reason of the enactment of section 833.

One written comment responding to the proposed rules was received. No public hearing was requested or held. For the reasons set forth below, the proposed rules are adopted without modification.

The written comment objected to the application of the separate return limitation year rules to an old group which elected to be treated as remaining in existence with the section 833 organization as its new common parent. As explained in the explanation of provisions in the temporary regulations, T.D. 8310, 55 FR 36274 (September 5, 1990), the proposed regulations provided a modified rule under which a taxable year beginning before 1987 of a member of an old group that elected to remain in existence is not treated as a separate return limitation year with respect to the post-1986 taxable years of any corporation that was a member of the old group for each day of that taxable year.

Under this modified rule, pre-1987 losses may generally be carried forward to offset the post-1986 income of other members of the same old group, but those losses may not offset the post-1986 income of any other corporation, including the section 833 organization which became the group's new common parent. Thus, the loss carryover treatment of each corporation affiliated with the section 833 organization is generally unaffected by the enactment of section 833. The Service continues to believe that this rule is the proper rule under the neutrality principle.

Special Analyses

These final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

It is hereby certified that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. The rules will primarily affect consolidated groups, which tend to be larger businesses. The rules will not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the rules on small businesses.

Drafting Information

The principal author of these regulations is David B. Friedel, of the Office of Assistant Chief Counsel (Corporate) within the Office of Chief Counsel, Internal Revenue Service. Other personnel of the Internal Revenue Service and the Treasury Department participated in developing the regulations.

List of Subjects

26 CFR §§ 1.1502–75 through 1.1502–100

Income taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.1502–75T also issued under 26 U.S.C. 1502. * * *

§ 1.1502–75 [Amended]

Par. 2. Section 1.1502–75 is amended by adding and reserving paragraph (d)(4) and by redesignating section 1.1502–75T(d)(5) as section 1.1502–75(d)(5).

§ 1.1502–75T [Amended]

Par. 3. Section 1.1502–75T is amended by revising the section heading to read as set forth below and by removing paragraphs (c) and (d).

§ 1.1502–75T Temporary regulations for filing consolidated returns; coordination with section 338(h)(10) (Temporary).

* * * * *

George O'Hanlon,

Acting Commissioner of Internol Revenue.

Approved: July 31, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–23373 Filed 9–24–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3150 and 3160

[WO–610–4111–24–1A; Circular No. 2646]

RIN: 1004–AC02

Onshore Oil and Gas Geophysical Exploration; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule adds to the regulations on onshore oil and gas geophysical exploration a section governing appeals of decisions and approvals to allow decisions and approvals by an authorized officer to remain in full force and effect when an appeal is filed with the Interior Board of Land Appeal (IBLA), unless sufficient justification for a stay is provided. It

similarly amends the section in the regulations governing appeals of decisions and approvals relating to onshore oil and gas operations to allow the decision of a State Director or Administrative Law Judge to remain in full force and effect during the pendency of an appeal to IBLA. Such provisions are needed to allow the IBLA to determine whether the issues involved in an appeal warrant a stay of onshore oil and gas activities and the accompanying delays and economic consequences. Both full-force-and-effect rules apply to appeals to IBLA only. The rules do not affect the authority of the State Director to grant or deny a request for a stay while a decision is under State Director Review.

EFFECTIVE DATE: October 26, 1992.

ADDRESSES: Inquiries or suggestions should be sent to: Director (610) Bureau of Land Management, Room 501 L Street Building, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 653–2127.

SUPPLEMENTARY INFORMATION: An interim final rule and a proposed rule with a 30-day comment period were published simultaneously in the **Federal Register** on March 13, 1992 (50 FR 9010 and 9014). The purpose of the proposed rule was to request public review and comment to aid the agency in determining whether or not to publish a subsequent and permanent final rule for the provisions, which would be effective prior to or concurrently with the December 31, 1992, expiration date of the interim final rule. This final rule will supersede the interim final rule upon the date that this rule becomes effective.

Part 3150 establishes procedures for conducting oil and gas geophysical exploration operations when authorization for such operations is required from the Bureau of Land Management (BLM). Part 3160 governs operations associated with the exploration, development, and production of oil and gas deposits from leases issued or approved by the United States. During the comment period, comments were received from 106 sources: 86 from business interests, primarily related to the oil industry; 14 from associations; and 6 from private attorneys. Most of the comments fully supported the proposal to allow decisions and approvals of the BLM authorized officer, State Director, or Administrative Law judge to remain in full force and effect during the pendency of an appeal to IBLA. Some comments, in addition to supporting the proposed rule, suggested specific revisions or recommendations. The comments and BLM's responses to them are discussed below.

Two comments suggested that *ad hoc* advocacy organizations be required by the IBLA to post a bond when requesting a stay in any case under an appeal, as is required by most State and Federal Courts for purposes of protecting the lessee's or permittee's interest during appeal. One other comment suggested that, in order to cover the cost of any economic hardship to the lessee or permittee, any third parties making an appeal should be required to provide a bond. The standards for obtaining a stay require third parties making an appeal to show justification for the stay. Therefore, bonding is not deemed to be necessary.

One comment suggested that the word "subpart" should be changed to "part" in the proposed rule at § 3150.2(b), sentence 2, to assure that the exemption from 43 CFR 4.21(a) includes all subparts of part 3150. Section 4.21(a) of title 43 is an automatic stay provision for decisions that do not fall into any excepting laws or regulations such as are created by this final rule. This comment has been adopted in the final rule for part 3150 and part 3160 in order to remove an unintended inconsistency between the first and second sentences in paragraph (b) and in paragraph (c) of § 3165.4.

One comment suggested that, in order to maintain consistency in the regulations governing IBLA appeals, similar provisions regarding the request for stay should be added to the regulations governing the State Director Review Process at § 3165.3 or that § 3165.3(b) and (d) be amended in the final rule to list specifically "approvals" of the authorized officer. For purposes of § 3165.3(b), "approvals" are encompassed within the meaning of the phrase "decision of the authorized officer." In § 3165.3(d), a State Director's affirmation or denial of an approval of the authorized officer is properly termed a decision. The stay request language is not necessary in § 3165.3 because the ability to grant a stay is inherent in a State Director's authority to conduct an administrative review and the reserved authority over subordinate authorized officers. The delegation of authority to an authorized officer under the jurisdiction of a State Office does not deprive the State Director of any reviewing authority. In addition, specific changes to sections in parts 3150 and 3160 that were not amended in the proposed rule would arguably require separate proposed rulemaking. Therefore, this suggestion was not incorporated in the final rule.

One comment suggested that the current rule at paragraphs 3165.3(e) (1) and (2) be rewritten to incorporate appeals of decisions and approvals of authorized officers that do not address compliance requirements, notices of violations, or penalties. The writer felt that this would maintain consistency with the proposed rule by allowing all decisions to remain in force pending appeal. Current paragraphs 3165.3(e) (1) and (2) specifically address the continuing full force and effect, during a period of State Director review, of notices of noncompliance, notices of violation, or proposed penalties and daily accumulations of penalties that were included in the regulations as a result of the enactment of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701). The suggestion that other types of decisions be added to these two provisions was not adopted in the final rule because a decision or approval normally goes into effect on the effective date of the decision or approval absent a postponement of its effectiveness by the authorized officer or a subsequent stay by the State Director.

Two comments suggested that proposed § 3165.4(c) should refer to decisions and approvals of "State Directors and Administrative Law Judges," rather than decisions and approvals of the "authorized officer." The comments pointed out that, unlike the parallel rule in part 3150 concerning geophysical decisions under which appeals on the merits of decisions and approvals are made directly to the IBLA under 43 CFR 4.21, decisions and approvals of authorized officers affecting the merits of oil and gas operations are appealable under § 3165.3(b) first to the State Director, rather than directly to the IBLA. Because the decisions and approvals of the authorized officer under part 3160 must first be reviewed by the State Director, this recommendation was adopted in the final rule for part 3160. The term "State Director or Administrative Law Judge" replaces the term "authorized officer" in the final rule.

One comment recommended that the rule be amended to include an exception for proposed oil or gas wells located in a Federal potash area or within close proximity to an underground mine to ensure that all safety issues are fully considered before a well is drilled. It is the policy of the BLM to include a provision in oil and gas leases which notifies oil and gas operators that wells may not be allowed in locations that may be hazardous to potash mining operations. Further, by Order of the

Secretary of the Interior, approval is denied for most applications for permits to drill oil and gas wells when wells would be located within potash enclaves. Therefore, provisions are already in place to protect Federal potash areas from oil and gas drilling operations and vice versa. The final rule does not adopt this recommendation.

Some comments reasoned that the proposed rule did not consider long-term impacts of oil and gas operations; that leasing decisions in some areas are made without benefit of environmental review or public input; that current procedures covering the BLM environmental analyses do not provide for meaningful public involvement, nor do those procedures provide an adequate forum for analysis of the true impacts of leasing decisions and that the Resource Management Plan (RMP) sets leasing boundaries without thoroughly examining the impacts of field development. The RMP consists of 9 action steps, including identifying the issues, developing planning criteria, inventorying and data collection, analyzing the management situation, formulating alternatives, analyzing effects of alternatives, selecting the preferred management plan, and monitoring and evaluation. National Environmental Policy Act (NEPA) analyses are made prior to BLM decisions or approvals authorizing oil and gas exploration, leasing, or operational activities. Public participation is encouraged throughout the process. Comments are routinely requested from all interested and affected parties during public scoping meetings, which are held before BLM planning and NEPA documents are initiated. Under usual circumstances, the public is then again requested to review and provide comments on the draft planning document. After the proposed planning document is published, a 30-day protest period is provided. If any protests are filed, administrative review is completed before the plan is approved.

One comment stated that the placement of decisions into immediate full force and effect would negate the purpose and efficacy of appeal procedures. On the contrary, however, the proposed rule in no way reduces public opportunity to file an appeal. In part 3160, two opportunities for appeal remain. A request for a formal review by the State Director is the first opportunity that an adversely affected party must exhaust before seeking further review by the IBLA. By virtue of the State Director's supervisory authority, the State Director has the inherent discretionary authority to review and overturn or modify, if necessary, the decision of subordinates. This inherent discretionary authority to exercise supervisory prerogatives allows the State Director to entertain requests for a stay or to stay the decision's effectiveness on his own initiative. Second, the State Director's decision may be appealed to the IBLA. Under part 3150, an authorized officer's decision may be appealed to the IBLA. Once again, in each case a stay may be requested with a sufficient showing of justification as is required by all Federal judicial bodies. The rule places a reasonable burden on the appellants to show clearly why a stay of approved exploratory or operational activity is warranted without taking away any substantive right of appeal. The rule serves to preserve the right to appeal while at the same time contemplating potential harm to permittees, licensees, lessees, or operators caused by an unwarranted stay.

If a State Director splits his decision into two parts by denying a stay requested by an adversely affected party before reaching a conclusion on the merits of the decision being reviewed under § 3165.3(b), the denial of the stay request constitutes a decision within the meaning of section 3165.4(a) and can be appealed to the IBLA pursuant to § 3165.4(a). The effect of an appeal of a denial of a stay request will be governed, like appeals of other decisions, by the revised § 3165.4(c). The lodging of an appeal of a stay denial will not automatically stay, under 43 CFR 4.21(a), the decision for which the adversely affected party sought a stay. Instead, the revised § 3165.4(c) gives the adversely affected party the opportunity to petition the IBLA for a stay in accordance with the four standards set out in § 3165.4(c). Because, in explaining the effect of appeals, the first sentence of § 3165.4(c) states that all decisions shall remain in effect pending appeal to IBLA, additional language has been added to § 3165.4(c) making it clear that a State Director retains his discretionary authority to grant a request for a stay or to stay on his own initiative the decision that he affirmed, overturned, or denied upon his review while the matter is being appealed to IBLA. If a request for a stay is denied at this stage of the appeals process, the clarifying language gives the adversely affected party the right to petition the IBLA for a stay by addressing the standards for obtaining a stay described in § 3165.4(c). In that instance, as well as with other instances under the rule, the IBLA will, as is provided in the first sentence of § 3165.4(c), base its decision to grant or deny a stay upon consideration of the standards set out in § 3165.4(c).

One comment expressed the concern that, in these situations where BLM has denied a stay, IBLA could not act on a petition for a stay absent having BLM's administrative record. To the contrary, these situations are comparable to a judicial proceeding involving a challenge to agency action in which the court is called upon to act on a motion for a temporary restraining order or a preliminary injunction without having the benefit of the agency's administrative record on the challenged action. Furthermore, 43 CFR 4.411(a) requires an adversely affected party filing an appeal with IBLA to notify the State Director of its appeal, and 43 CFR 4.413(a) requires the appellant to serve the statement of reasons for appeal filed with IBLA on the appropriate official in the Office of the Solicitor of the Department of the Interior representing the affected State Director. By virtue of these provisions, BLM will be notified of the appeal and the reasons that the appellant asserts as warranting a stay of the State Director's decision. If the State Director is concerned that the existence of the appeal or the reasons given by the appellant may lead the IBLA to grant a stay, he can, acting through the Office of the Solicitor, file an expedited response to rebut the appellant's assertions.

Because the revised § 3165.4(c) also concerns effects of an appeal from a decision subject to an appeal under § 3165.4(b), the additional language added in the final rule to § 3165.4(c) clarifies the right of an Administrative Law Judge or a State Director to stay decisions subject to appeal under § 3165.4(b) pending their appeal to IBLA. In addition, the final rule contains parallel language in § 3150.2(b) for decisions subject to appeal under § 3150.2(a).

Some comments stated that the BLM's responsibilities as a land managing agency charged with protection of public resources would be severely undermined by the rule, which the comment stated would elevate the interest of private enterprise over public values. This final rule does not negate BLM responsibility to protect the environment and/or public resources. The intent of the final rule is to attempt to balance the interests of potential appellants with the interests of other affected parties. Before making final decisions, BLM will continue to rely on and comply with requirements for coordination, public input, and environmental documentation in order

94-18-55. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 5, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92-102, adopted August 10, 1992, and released September 21, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 261A and adding Channel 274C2 at Pequot Lakes.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23349 Filed 9-24-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, amends the Table of FM Allotments to specify the correct classes of channels allotted to various communities. These amendments are necessary to reflect changes that have been authorized in response to applications filed by licensees and permittees operating on these channels. This action constitutes an editorial change in the Table of FM Allotments. Therefore, a public notice and comment proceeding is unnecessary. See 5 U.S.C. 553(b) (A) and (B). With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, adopted August 10, 1992, and released September 21, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 242C and adding Channel 242C1 at Blytheville, by removing Channel 275C and adding Channel 275C1 at Harrison, and by removing Channel 274C2 and adding Channel 274C3 at Van Buren.

3. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 271C and adding Channel 271C1 at Clifton, by removing Channel 296C1 and adding Channel 296C3 at Colorado City, by removing Channels 260C1 and 290C and adding Channels 260C2 and 290C1 at Kingman, by removing Channel 266C and adding Channel 266C1 at Payson, by removing Channel 294C and adding Channel 294C1 at Pinetop, and by removing Channel 241C and adding Channel 241C1 at Window Rock.

4. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 222C and adding Channel 222C1 at Eureka, and by removing Channel 242C2 and adding Channel 242C3 at Susanville.

5. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 289C2 and adding Channel 289C3 at Ouray.

6. Section 73.202(b), the FM Table of Allotments under Florida, is amended by removing Channels 254C and 258C and adding Channels 254C1 and 258C1 at Key West, and by removing Channel 223C and adding channel 223C1 at Panama City.

7. Section 73.202(b), the FM Table of Allotments under Hawaii, is amended by removing Channel 224C1 and adding Channel 224C3 at Hilo, and by removing Channel 268C and adding Channel 268C3 at Kealakekua.

8. Section 73.202(b), the FM Table of Allotments under Iowa, is amended by removing Channel 239C2 and adding Channel 239C3 at Webster City.

9. Section 73.202(b), the FM Table of Allotments under Idaho, is amended by removing Channel 223C and adding Channel 223A at Rupert.

10. Section 73.202(b), the FM Table of Allotments under Kansas, is amended by removing Channel 250C and adding Channel 250C1 at Colby, by removing Channel 273C and adding Channel 273C1 at Goodland, and by removing Channel 279C and adding Channel 279C1 at Wichita.

11. Section 73.202(b), the FM Table of Allotments under Kentucky, is amended by removing Channel 270C and adding Channel 270C1 at Central City, and by removing Channel 289B1 and adding Channel 289C3 at Greenup.

12. Section 73.202(b), the FM Table of Allotments under Louisiana, is amended by removing Channel 232C2 and adding Channel 232C3 at Galliano.

13. Section 73.202(b), the FM Table of Allotments under Maine, is amended by removing Channel 297B and adding Channel 297C2 at Old Town.

14. Section 73.202(b), the FM Table of Allotments under Michigan, is amended by removing Channel 242C and adding Channel 242C1 at Houghton, and by removing Channel 255C and adding Channel 255C1 at Petoskey.

15. Section 73.202(b), the FM Table of Allotments under Montana, is amended by removing Channel 269C and adding Channel 269C1 at Laurel.

16. Section 73.202(b), the FM Table of Allotments under North Dakota, is amended by removing Channel 300C and adding Channel 300C1 at Fargo.

17. Section 73.202(b), the FM Table of Allotments under New Mexico, is amended by removing Channel 281C and adding Channel 281C1 at Carlsbad, by removing Channel 265C2 and adding Channel 265A at Grants, and by removing Channel 263C and adding Channel 263C1 at Roswell.

18. Section 73.202(b), the FM Table of Allotments under New York, is amended by removing Channel 248C and adding Channel 248C1 at Watertown.

19. Section 73.202(b), the FM Table of Allotments under Oklahoma, is amended by removing Channel 291C2 and adding Channel 291C3 at Broken Bow, and by removing Channel 258C2 and adding Channel 258A at Lawton.

20. Section 73.202(b), the FM Table of Allotments under Oregon, is amended

by removing Channel 267C and adding Channel 267C1 at Altamont, by removing Channel 278C and adding Channel 278C1 at Medford, and by removing Channel 275C and adding Channel 275C1 at Redmond.

21. Section 73.202(b), the FM Table of Allotments under South Carolina, is amended by removing Channel 241C and adding Channel 241C1 at Hanahan.

22. Section 73.202(b), the FM Table of Allotments under Tennessee, is amended by removing Channel 283C and adding Channel 283C1 at Memphis.

23. Section 73.202(b), the FM Table of Allotments under Texas, is amended by removing Channel 286C and adding Channel 286C1 at Abilene, by removing Channels 245C and 270C and adding Channels 245C1 and 270C1 at Amarillo, by removing Channel 253C3 and adding Channel 253A at Clarksville, by removing Channel 240C3 and adding Channel 240A at Dalhart, by removing Channel 284C2 and adding Channel 284C3 at Llano, by removing Channel 291C2 and adding Channel 291C3 at Refugio, and by removing Channel 226C and adding Channel 226C1 at Tyler.

24. Section 73.202(b), the FM Table of Allotments under Washington, is amended by removing Channel 287C and adding Channel 287C1 at Edmonds, and by removing Channel 264C2 and adding Channel 264C3 at Walla.

25. Section 73.202(b), the FM Table of Allotments under Wisconsin, is amended by removing Channel 296C2 and adding Channel 296C3 at New Richmond.

26. Section 73.202(b), the FM Table of Allotments under Wyoming, is amended by removing Channel 225C and adding Channel 225C1 at Buffalo.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23284 Filed 9-24-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-416; RM-6700, RM-6858, RM-7207, RM-7208, RM-7209]

Radio Broadcasting Services; Metropolis, IL, Clinton and Wickliffe, KY; Camden, Dyer and Henderson, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C2 for Channel 252A at Metropolis, Illinois, and modifies the license for Station WRIK(FM) accordingly; substitutes Channel 240A for Channel 252A at Camden, Tennessee, and modifies the license for Station WRJB(FM) to specify Channel 240A; and substitutes Channel 239A for Channel 240A at Henderson, Tennessee, modifies the license for Station WFKX(FM) to specify Channel 239A, at the request of Samuel K. Stratemeyer/Sun Media, Inc. In addition, this action also allots Channel 232A to Dyer, Tennessee, as a first local FM service. *See* 54 FR 40893, October 4, 1989, and Supplemental Information, *infra*.

DATES: Effective November 5, 1992. The window period for filing applications for Dyer, Tennessee, will open on November 6, 1992, and close on December 7, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order MM Docket No. 89-416, adopted August 11, 1992, and released September 21, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Channel 252C2 can be allotted to Metropolis, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.6 kilometers (10.3 miles) southeast. The coordinates are North Latitude 37-02-30 and West Longitude 88-36-00. Channel 240A can be allotted to Camden, Tennessee, in compliance with the Commission's minimum distance separation requirements and can be used at Station WRJB(FM)'s present transmitter site. The coordinates are North Latitude 36-03-25 and West Longitude 88-06-10. Channel 239A can be allotted to Henderson, Tennessee, in compliance with the Commission's minimum distance separation requirements and can be used at Station WFKX(FM)'s present transmitter site. The coordinates are North Latitude 35-29-52 and West Longitude 88-42-29. Channel 232A can be allotted to Dyer, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.5 kilometers (5.3 miles) northwest, at coordinates North Latitude 36-05-53 and West Longitude 89-04-41. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [AMENDED]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 252A and adding Channel 252C2 at Metropolis.

3. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 252A and by adding Channel 240A at Camden, by removing Channel 240A and by adding Channel 239A at Henderson, and by adding Dyer, Channel 232A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23346 Filed 9-24-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 89-552; DA 92-1234]

Use of the 220-222 MHz Band by the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Technical amendment to final rule.

SUMMARY: The Commission has released a Second Erratum in PR Docket No. 89-552 (DA 92-1234). The purpose of the Second Erratum is to correct and clarify rule changes adopted in the Memorandum Opinion and Order in this proceeding. Certain of these rule changes were not consistent with the clear intention of the Commission expressed in the text of the Memorandum Opinion and Order. The rules relate to various procedures associated with the licensing of channels in the 220-222 MHz band.

EFFECTIVE DATE: October 20, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: On April 17, 1991, the Commission released a Report and Order (FCC 91-74) in PR Docket No. 89-552. On July 16, 1992, the Commission released a Memorandum Opinion and Order (FCC 92-261), 57 FR

32448, July 22, 1992, addressing several issues raised on reconsideration of the Report and Order, as well as the issues presented in a Further Notice of Proposed Rule Making in this proceeding. On September 11, 1992, the Commission released a Second Erratum (DA 92-1234) correcting and clarifying rule changes adopted in the Memorandum Opinion and Order. The full text of this Second Erratum is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M St. NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M St., NW., suite 640, Washington, DC 20036, telephone (202) 452-1422.

Amendatory Text

47 CFR part 90 is amended as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 332, 48 Stat. 1066, 1082, as amended: 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

2. 47 CFR 90.713 is amended by revising paragraphs (a)(4), (a)(5), (b), and (c)(3), and by adding a new paragraph (c)(4) to read as follows:

§ 90.713 Entry criteria.

(a) * * *

(4) Applicants for commercial nationwide channels must include an itemized estimate of the cost of constructing 40 percent of the system and operating the system during the first four years of the license term. Applicants for non-commercial nationwide channels must include an itemized estimate of the cost of constructing the entire system within five years and operating the system during the first five years of the license term.

(5) Applicants for commercial nationwide channels must include proof that the applicant has sufficient financial resources to construct 40 percent of the system and operate the proposed system for the first four years of the license term; i.e., that the applicant has net current assets sufficient to cover estimated costs or a firm financial commitment sufficient to cover estimated costs. Applicants for non-commercial nationwide channels must include proof that the applicant has sufficient financial resources to construct the entire system within five years of the license grant and operate the proposed system for the first five years of the license term; i.e., that the applicant has net current assets to cover estimated costs or a firm financial commitment sufficient to cover estimated costs.

* * * * *

(b) Applicants for commercial and non-commercial nationwide licensing relying on personal or internal resources for the showing required in paragraph (a) of this section must submit independently audited financial statements certified within one year of the date of the application showing net current assets sufficient to meet estimated construction and operating costs. Applicants for both commercial and non-commercial nationwide licensing must also submit an unaudited balance sheet, current within 60 days of the date of submission, that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed system, and a certification by the applicant or an officer of the applicant organization attesting to the validity of the balance sheet.

(c) * * *

(3) Is willing, if the applicant is seeking a commercial nationwide license, to provide a sum to the applicant sufficient to cover the realistic and prudent estimated costs of construction of 40 percent of the system and operation of the system for the first four years of the license term; and

(4) Is willing, if the applicant is seeking a non-commercial nationwide license, to provide a sum to the applicant sufficient to cover the realistic and prudent estimated costs of construction of a minimum of at least one base station in at least 70 different geographic areas designated in the application within five years of receiving a license, and operation of the system for the first five years of the license term.

* * * * *

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 92-23008 Filed 9-24-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB67

Endangered and Threatened Wildlife and Plants; Correction to Final Rule Listing the Kanab Ambersnail as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction to final regulation.

SUMMARY: The Fish and Wildlife Service corrects the final regulation published Friday, April 17, 1992 (57 FR 13657) that listed the Kanab ambersnail as an endangered species. An incomplete scientific name was given in the table entry at 57 FR 13661. A correction is provided.

EFFECTIVE DATE: September 25, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Larry R. Shannon, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (452-ARLSQ), Washington, DC 20240 (703-358-2171).

SUPPLEMENTARY INFORMATION:

Background

As published, the final regulation contains the scientific name of the full species, *Oxyloma haydeni*, although the preamble continuously refers to just the Kanab subspecies, *Oxyloma haydeni kanabensis*. This error could cause confusion and might prove misleading; a correction is provided below. Accordingly, the publication of April 17, 1992, of the final regulation amending 50 CFR 17.11(h), which was the subject of FR Doc. 92-8955, is corrected as follows:

§ 17.11 [Corrected]

At 57 FR 13661, in § 1711(h) the table entry under the "Scientific name" is corrected by adding the word "*kanabensis*" to read "*Oxyloma haydeni kanabensis*"; further, the numbers under "When listed" are revised to read "431E, 459, 477".

Dated: September 14, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-23368 Filed 9-24-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 920407-2159]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Partial closure of general category set-aside fishing for large medium and giant Atlantic bluefin tuna.

SUMMARY: NMFS closes the fishery for Atlantic bluefin tuna conducted by vessels permitted in the General category and fishing for large medium and giant Atlantic bluefin tuna for the

waters between Cape Cod, Massachusetts and Long Island, New York. Closure of this segment of the fishery is necessary because it has been determined that the first half of the 40-metric ton (mt) set-aside amount, will be attained by September 23, 1992. Vessels permitted in the General category may continue to fish for and retain bluefin tuna for the remaining 20-mt of the 40-mt set-aside in the area that includes the waters west of a straight line originating at a point on the southern shore of Long Island, New York, at 72°50′ W. longitude and running SSE 150° true. The intent of this action is to prevent overharvest of the quota established for this fishery while providing a fishing opportunity in areas of the New York Bight and south.

EFFECTIVE DATES: The closure is effective from 0001 hours local time on September 24, 1992, through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971th regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction appear at 50 CFR part 285.

Section 285.22(a) of the regulations provides for an annual quota of 531 mt of large medium and giant Atlantic bluefin tuna to be harvested from the Regulatory Area by vessels permitted in the General category. The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) is required under § 285.20(b)(1) to monitor the catch and landing statistics, and on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further required under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of gear subject to the quotas. In the case of the General category, under § 285.22(a) the Assistant Administrator may set aside an allocation for an identified area, not to exceed the greater of 40 mt or the maximum reported landings from the identified area in any of the preceding 3 years. This set-aside is made when the Assistant Administrator has determined, based on landings reports, that fishermen in an identified area will be precluded from harvesting their share of the quota due to variations is seasonable distribution, abundance, or migration patterns and the catch rate. In addition, the governing regulations require the daily catch limit for the identified area to be set at one large medium or giant Atlantic bluefin tuna per day per vessel.

Based on landings reports, the Assistant Administrator determined in a separate closure notice in the **Federal Register** (September 16, 1992) that the quota of Atlantic bluefin tuna allocated for the General category, minus a 40-mt set-aside amount, had been attained. Vessels permitted in the General category were allowed to continue to fish in the area that included the waters of Narragansett Bay, Buzzards Bay, Pleasant Bay, and all waters south of a straight line originating at a point on the southeastern shore of Cape Cod at 41°45′ N. latitude (near the north end of Pleasant Bay) and running East 90° true, until 20-mt of the 40-mt set aside were harvested and NMFS published a notice of closure for that 20-mt allocation. When the first 20-mt of the 40-mt set-aside was reached, it was stated that vessels permitted in the General category would be allowed to continue to fish for and retain the remaining 20-mt of the set-aside in the area west of a straight line originating at a point on the southern shore of Long Island at 72°50′ W. longitude (near the town of Moriches) and running SSE 150° true. The intent of this action was to prevent overharvest of the quota established for this fishery while providing a fishing opportunity in areas south of Cape Cod.

Based on landing reports, the Assistant Administrator has determined that the first half of the 40-mt set-aside has been attained. Vessels permitted in the General category are allowed to continue to fish in the area that includes the waters west of a straight line originating at a point on the southern shore of Long Island at 72°50′ W. longitude (near the town of Moriches) and running SSE 150° true. The intent of this action is to prevent overharvest of the quota established for this fishery while providing a fishing opportunity in areas south of Long Island.

Classification

Notice of this action will be faxed to Atlantic bluefin tuna dealers and fisherman, several industry publications, associations, and state agencies. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 18, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–23286 Filed 9–24–92; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure of directed fishing.

SUMMARY: NMFS is closing the directed fishery for pollock by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the total allowable catch (TAC) for pollock assigned to the inshore component in the BS.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), September 22, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS 907/586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The current allowance of pollock TAC to the inshore component in the BS is 247,390 metric tons (57 FR 32925, July 24, 1992).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the pollock allowance available for harvest by the inshore component in the BS will soon be reached. Therefore, NMFS is establishing a directed fishing allowance of 244,000 mt, and is setting aside the remaining 3,390 mt as bycatch to support other anticipated fisheries.

The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in the BS by the inshore component effective from 12 noon, A.l.t., September 22, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: September 21, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-23369 Filed 9-22-92; 2:23 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 187
Friday, September 25, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend the current regulations to emphasize the requirement for local Federal activities to cooperate with local wage survey committees and appoint and release employees to participate in Federal Wage System (FWS) surveys unless exceptional circumstances prohibit their appointment or release. Because of occasional difficulties encountered in releasing local employees from their normal work assignments to participate in the FWS wage survey process, members of the Federal Prevailing Rate Advisory Committee (FPRAC) expressed concern that local Federal activities do not understand the importance of FWS surveys. This OPM action clarifies the intent of the current regulations and documents some practices previously contained in Federal Personnel Manual (FPM) guidance.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts, (202) 606–2848.

SUPPLEMENTARY INFORMATION: Sections 5343(b) and (c)(2) of title 5, United States Code, require that local wage surveys for determining prevailing rates be conducted each year and that recognized employee organizations be allowed to participate at all levels of the process. Section 532.231 of title 5, Code of Federal Regulations, requires the heads of local activities in an FWS wage area to provide "wage survey committee members, data collectors, and any other assistance requested by the local wage survey committee." This includes the provision of both labor and agency representatives to serve as committee members and data collectors.

Recent difficulties have demonstrated that the heads of local activities were not always aware of their wage survey responsibilities and occasionally did not cooperate fully with local wage survey committees in selecting, appointing, and releasing employees to participate in the wage survey process. The labor members of FPRAC presented this problem to FPRAC and requested that the current regulations be revised to emphasize that data collectors should be excused from their normal work assignments to participate in the FWS wage survey process. OPM also has issued an Interagency Advisory Group memorandum to all personnel directors to address the problem and stress the importance of releasing employees to participate in the FWS wage survey process. After extended discussions, FPRAC, by consensus, recommended that OPM amend the existing regulations in §§ 532.229, 532.231, and 532.233 of title 5, Code of Federal Regulations, as indicated in these proposed regulations. The proposed regulations are not intended to change existing policy, but to clarify the intent of the regulations and document some practices previously contained in FPM guidance.

The primary purpose of this regulatory amendment is to emphasize that local activities must cooperate with local wage survey committees and appoint and release those employees nominated by the labor organizations and by Federal agencies to participate in wage surveys unless exceptional circumstances are encountered. Items considered in the selection and appointment process include the requirement in the prevailing rate law for labor and agency representatives to participate in the wage survey process, the qualifications of the nominated employees, the need of the employee' work units for their presence on the job, and the prudent management of available financial and human resources. Refusal to release appointees is to be based upon a demonstrated requirement, directly related to their work units' missions, for their presence on their regular jobs.

The regulations also clarify that when employees cannot be appointed to serve as data collectors or committee members because of exceptional circumstances, additional nominations must be provided expeditiously to avoid any delay in the survey process. FWS wage surveys occur within a restricted statutory timeframe that does not provide additional time for the resolution of internal disputes on releasing employees.

In addition, the proposed regulations describe the requirement for nominating and appointing alternate data collectors to supplement regular data collectors. This practice was previously documented only in the FPM.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for 5 CFR part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. In § 532.229, new paragraphs (b)(5) and (6) are added to read as follows:

§ 532.229 Local wage survey committee.

* * * * *

(b) * * *

* * * * *

(5) In selecting and appointing employees recommended by labor organizations and by Federal agencies to serve as committee members, consideration shall be given to the requirement in the prevailing rate law for labor and agency representatives to participate in the wage survey process, the qualifications of the recommended employees, the need of the employees' work units for their presence on the job, and the prudent management of available financial and human resources. Employing agencies and activities shall cooperate and appoint the recommended employees unless exceptional circumstances prohibit their consideration. When the recommended employees cannot be appointed to serve as local wage survey committee members, the responsible lead agency or labor organization shall provide additional recommendations expeditiously to avoid any delay in the survey process.

(6) Employers shall cooperate and release appointed employees for committee proceedings unless the employers can demonstrate that exceptional circumstances directly related to the accomplishment of the work units' missions require their presence on their regular jobs. Employees serving as committee members are considered to be on official assignment to an interagency function, rather than on leave.

* * * * *

3. In § 532.231, paragraph (c)(2) is revised to read as follows:

§ 532.231 Responsibilities of participating organizations.

* * * * *

(c) * * *

(2) Heads of local activities. The head of each activity in a wage area is responsible for providing employment information, wage survey committee members, the prescribed number of data collectors, and any other assistance needed to conduct local wage survey committee functions.

* * * * *

4. In § 532.233, paragraph (e) is revised to read as follows:

§ 532.233 Preparation for full-scale wage surveys.

* * * * *

(e) Selection and appointment of data collectors.

(1) The local wage survey committee, after consultation with the lead agency, shall determine the number of regular and alternate data collectors needed for the survey based upon the estimated number and location of establishments to be surveyed.

(2) Wage data for appropriated fund surveys shall be collected by teams consisting of one local Federal Wage System employee recommended by the committee member representing the qualifying labor organization and one Federal employee recommended by Federal agencies. The data collectors shall be selected and appointed by their employing agency.

(3) Wage data for nonappropriated fund surveys shall be collected by teams, each consisting of one local nonappropriated fund employee recommended by the committee member representing the qualifying labor organization and one nonappropriated fund employee recommended by nonappropriated fund activities. The data collectors shall be selected and appointed by their employing agency.

(4) The local wage survey committee shall provide employers with the names of employees recommended by labor organizations and by Federal agencies to serve as data collectors and shall indicate the number of regular and alternate data collectors to be selected and appointed by the employers.

(5) In selecting and appointing employees recommended by labor organizations and by Federal agencies to serve as data collectors, consideration shall be given to the requirement in the prevailing rate law for labor and agency representatives to participate in the wage survey process, the qualifications of the recommended employees, the need of the employees' work units for their presence on the job, and the prudent management of available financial and human resources. Employing agencies and activities shall cooperate and appoint the recommended employees unless exceptional circumstances prohibit their consideration. When the required number of employees cannot be appointed to serve as data collectors from among those recommended, the local wage survey committee shall obtain additional recommendations expeditiously to avoid any delay in the survey process.

(6) Employers shall cooperate and release appointed employees to serve as data collectors throughout the duration of the data collection period unless the employers can demonstrate that exceptional circumstances directly related to the accomplishment of the work units' missions require their presence on their regular jobs. Employees serving as data collectors are considered to be on official assignment to an interagency function, rather than on leave.

* * * * *

[FR Doc. 92-23304 Filed 9-24-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135, 1138

[Docket No. AO-14-A65-R02, etc; DA-91-013]

Milk in the New England and Certain Other Marketing Areas; Notice of Reopened Hearing on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	AO Nos
1001	New England	AO-14-A65-R02
1002	New York-New Jersey.	AO-71-A80-R02
1004	Middle Atlantic	AO-160-A68-R02
1005	Carolina	AO-388-A5-R02
1007	Georgia	AO-366-A34-R02
1011	Tennessee Valley	AO-251-A36-R02
1030	Chicago Regional	AO-361-A29-R02
1033	Ohio Valley	AO-166-A62-R02
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A57-R02
1040	Southern Michigan	AO-225-A43-R02
1044	Michigan Upper Peninsula.	AO-299-A27-R02
1046	Louisville-Lexington-Evansville.	AO-123-A63-R02
1049	Indiana	AO-319-A40-R02
1065	Nebraska-Western Iowa.	AO-86-A48-R02
1068	Upper Midwest	AO-178-A46-R02
1079	Iowa	AO-295-A42-R02
1093	Alabama-West Florida.	AO-386-A12-R02
1094	New Orleans-Mississippi.	AO-103-A54-R02
1096	Greater Louisiana	AO-257-A41-R02
1097	Memphis, Tennessee.	AO-219-A47-R02
1098	Nashville, Tennessee.	AO-184-A56-R02
1099	Paducah, Kentucky	AO-183-A46-R02
1106	Southwest Plains	AO-210-A53-R02
1108	Central Arkansas	AO-243-A44-R02
1124	Pacific Northwest	AO-368-A20-R02
1126	Texas	AO-231-A61-R02
1131	Central Arizona	AO-271-A30-R02
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A10-R02
1138	New Mexico-West Texas.	AO-335-A37-R02

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reopened public hearing on proposed rulemaking.

SUMMARY: A hearing involving 29 markets that was held in the summer of 1991 is being reopened to consider the establishment of Class III–A pricing on an emergency basis in such markets. The hearing also will consider the appropriate nonfat dry milk price to be used in computing any Class III–A prices. The reopening was requested by a number of interested parties.

DATES: The hearing will reconvene at 9 a.m. local time on October 5, 1992.

ADDRESSES: The hearing will be held at the Ramada Hotel—Old Town, 901 N. Fairfax Street, Alexandria, Virginia 22314 (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business; if it has an annual gross revenue of less than $500,000, and a daily products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing issues on small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

It is noted that the original hearing notice for this proceeding listed 31 milk orders. The initial number of markets involved has been reduced to 29 as a result of the consolidation of three southwest markets (Lubbock-Plainview, Rio Grande Valley and Texas Panhandle) into a new single order designated as the New Mexico-West Texas marketing area.

Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33396).

Tentative Decision: Issued December 10, 1991; published December 191, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482).

Revised Tentative Decision: Issued December 24, 1991; published January 2, 1992 (57 FR 15).

Interim Amendment of Orders: Issued December 27, 1991; published January 3, 1992 (57 FR 173).

Notice of Reopened Hearing: Issued August 11, 1992; published August 14, 1992 (57 FR 36609).

Notice is hereby given of a reopened public hearing to be held in response to petitions from a number of interested parties. The reopened hearing will begin at 9 a.m. local time on October 5, 1992. The hearing will consider the establishment of Class III–A pricing for all of the markets involved in this processing. The hearing also will consider what nonfat dry milk price should be used to compute any Class III–A prices. As a result of recent difficulties in reporting separate Extra Grade and Grade A nonfat dry milk prices, Dairy Market News plans to combine the two separate prices. Evidence also will be taken to determine whether emergency marketing conditions exist to such an extent that expedited action is warranted.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the issues identified above and any appropriate modification to the tentative marketing agreements and the orders. There is no proposed amendment that has received the final approval of the Secretary of Agriculture.

This is the second reopening of a hearing that was initiated last summer to consider the establishment of a separate class and price (III–A) for milk used to make butter and nonfat dry milk under 31 orders. The intent of the original proposals by operating cooperatives was to price such milk on the basis of market prices for butter and nonfat dry milk rather than the currently used Minnesota-Wisconsin price.

The Department issued a tentative decision on this issue last December, adopting the new pricing for nonfat dry milk only and for just three orders—New England, Middle Atlantic, and Pacific Northwest. Because of the emergency nature of the issue, a tentative decision was issued so that the pricing changes could be implemented on an interim basis while public comments were being received on the decision.

The price changes were blocked, however, when a major cooperative in the Southeast obtained a temporary restraining order. On August 4, 1992, the U.S. District Court for the Western District of Kentucky at Louisville issued an opinion and order regarding the merits of the case and the continuation of the restraining order. The Court rules that the Department's adoption of the new Class III–A price for three orders was substantially valid, but that the Department erred in the manner in which it arrived at the yield factor that was incorporated in the Class III–A price formula.

On this basis, the Court enjoined the Department from implementing the price changes until all interested parties had been given a further opportunity to address the question of what the yield factor in the Class III–A price formula should be. The most practical way to accomplish the Court's instruction was to reopen the hearing. Since the proper yield factor was the only matter that the Court believed needed to be addressed, the reopened hearing that was held on August 20, 1992, was limited to this single issue of the three markets where pricing changes were tentatively adopted. A tentative decision on that matter is pending on the basis of the evidence presented at the reopened

hearing and may not be delayed pending this reopening.

A number of handlers and operating cooperatives from various sections of the country have requested the hearing be reopened to take additional evidence on all issues. Even in the three orders where an interim final rule was promulgated, the evidentiary basis has had an additional 14 months experience that could be considered. This reopening of the hearing will, thus, encompass all 29 orders and all issues.

Interested parties who wish to introduce exhibits at the reopened hearing should provide the Presiding Officer at the hearing with six copies of such exhibits for the Official Record.

Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135, 1138

Milk marketing orders.

The authority citation for the aforesaid 7 CFR parts continues to read as follows:

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Copies of this reopened hearing notice may be obtained from any market administrator or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected here.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Offices of the Market Administrators for the aforementioned Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: September 22, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–23437 Filed 9–24–92; 8:45 am]

BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy—Limitations on Loan Purposes

AGENCY: Small Business Administration (SBA)

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would formalize a longstanding SBA practice against making or guaranteeing a loan to an applicant under section 7(a) of the Small Business Act (the "Act") if the Agency had previously incurred a loss (which remains outstanding) in connection with an earlier section 7(a) loan or guaranty with respect to the applicant (or its predecessor) or to any business controlled by the same person(s) who controlled an applicant on which a loss was incurred.

DATES: Comments must be submitted on or before October 26, 1992.

ADDRESSES: Comments may be mailed to Charles R. Hertzberg, Assistant Administrator for Financial Assistance, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, 202/205–6490.

SUPPLEMENTARY INFORMATION: Presently, SBA will not make or guarantee a loan to an applicant under Section 7(a) of the Act if the Agency had incurred a loss (which remains outstanding) in connection with an earlier section 7(a) loan or guaranty with respect to the applicant or a business controlled by the same person(s) who controlled an applicant on which a loss was incurred. While this position represents longstanding Agency practice, SBA is concerned that it is not being implemented uniformly. The proposed regulation, if finalized, would ensure consistent application of this practice.

Under this proposed rule, SBA would not provide section 7(a) direct or guaranteed loan assistance to an applicant small business concern if the Agency had incurred a loss under section 7(a) of the Act on a prior loan to the applicant (or its predecessor) or to any business controlled by the same person(s) who controls the applicant. This prohibition would apply so long as the earlier loss remained outstanding on the books of SBA.

Under the regulation as proposed, "control" would mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a small business concern, whether through the ownership of voting shares, by contract, position, or otherwise. Control may be affirmative or negative and it would be immaterial whether it was exercised so long as the power to control existed. In addition to stock ownership, control could arise through the occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. The Agency has had experience in interpretng this terminology because similar language appears in part 121 of SBA regulations (13 CFR part 121).

Under the proposed regulation a "loss" would mean the discrepancy between an amount owed to the Agency and the amount collected by the Agency and recognized by SBA when the Agency has not been fully reimbursed (1) from the sale or other disposition of collateral after a debtor's default on a direct SBA loan or after SBA has honored its guaranty with respect to a guaranteed 7(a) loan, (2) as a result of the execution of a compromise agreement, or (3) as a result of the bankruptcy of the debtor. When SBA makes payment under its guaranty with respect to a guaranteed 7(a) loan because of the debtor's default, it reflects such payment on its records and it then seeks to be reimbursed from the sale or other disposition of the underlying collateral. Similarly, when SBA makes a direct loan to a business and the debtor defaults on the loan SBA forecloses on the collateral and attempts to be reimbursed for its loss by the sale or other disposition of the property. To the extent that the proceeds from such sale or disposition do not reimburse the Agency in full for the direct loan or for the funds paid to honor its guaranty, it has incurred a loss. If SBA has entered into a compromise with a borrower, the Agency has agreed to accept an amount from the borrower less than that which would have fully reimbursed the Agency. (A compromise may excuse the business concern from making full payment on its existent financial obligation, but the Agency loss remains outstanding on its books). That the loss in such a situation has been the result of a contract makes it no less a loss which SBA must recognize. Similarly, in the case of a bankruptcy, the Agency sometimes is compelled by law to

accept less recompense then owed when business's debts are being discharged in bankruptcy, but the loss to the Agency would still be considered to exist on its books under this proposed regulation.

As a housekeeping function, by this rulemaking SBA is also proposing to eliminate the asterisk at the end of § 120.102, together with the editorial note to which it refers, since SBA plans no correction document as mentioned in the note.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. cu. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities.

SBA certifies that this proposed rule, if promulgated in final, will not constitute a major rule for the purposes of Executive Order 12291, since the proposed changes are not likely to result in an annual effect on the economy of $100 million or more.

The proposed rule, if promulgated in final, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This proposed rule, if promulgated as final, would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Further, for purposes of Executive Order 12778, SBA certifies that this proposed rule, if promulgated in final, is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend Part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.102 would be amended by adding a new subsection 120.102–12 to read as follows:

§ 120.102 Limitations on loan purposes.

Small manufacturers, wholesalers, retailers, service concerns and other firms may borrow to finance construction, conversion or expansion; to purchase equipment, facilities, machinery, supplies or materials; to obtain working capital; or, at the discretion of SBA, to refinance outstanding notes payable. For additional special rules applicable to refinancing loans, see § 122.7–3(c). Financial Assistance shall not be granted if the direct or indirect purpose or result of granting the loan would be to:

* * * * *

§ 120.102–12 Loss previously incurred by SBA.

(a) *Loss on prior loan or guaranty.* Assist an applicant where SBA had incurred a loss on a prior direct or guaranteed loan (and that loss remains outstanding) to (1) The same applicant (whether a proprietorship, partnership or corporation) of its predecessor; (2) Any business entity in which a principal was a principal in an entity on which a previous loss was incurred; or (3) Any business entity controlled by the same person(s) who controlled a borrower on which SBA sustained a previous loss. This rule is applicable regardless of whether the loss incurred by SBA was attributable to a compromise agreement with SBA or to a voluntary or involuntary bankruptcy.

(b)(1) *Control.* For the purposes of this section, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a small business concern, whether through the ownership of voting shares, by contract, position, or otherwise. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists. Control can also arise through the occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. For purposes of this section, any partner in a partnership shall be deemed to have a controlling interest.

(2) *Principal.* For purposes of this section, "principal" means any person who has at least a 20% ownership interest, whether direct or indirect, in a business concern.

(c) *Loss.* For the purposes of this section, "loss" means an amount incurred and recognized by SBA as a loss when SBA has not been reimbursed in full from the sale or other disposition of collateral which it has acquired after the debtor's default of a direct loan or after SBA has honored its guaranty with respect to a 7(a) loan, as a result of the execution of a compromise agreement, or as a result of the bankruptcy of the business.

(d) *Predecessor.* For the purposes of this section, "predecessor" means a business entity controlled by the same person(s) who controls the applicant.

Catalog of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans.

Date: July 30, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–23142 Filed 9–24–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Ch. IX

Natural Resource Damage Assessments Under the Oil Pollution Act of 1990

AGENCY: National Oceanic and Atmospheric Administration (NOAA), of the Department of Commerce.

ACTION: Extension of comment period.

SUMMARY: On June 1, 1992 (57 FR 23067), NOAA published an announcement of a public meeting and an extension of the comment period concerning the calculation of nonuse values as part of its promulgation of the natural resource damage assessment and restoration regulations required by the Oil Pollution Act of 1990 (OPA). Comments were to be received no later than October 1, 1992. Through this notice, NOAA extends the comment period to December 1, 1992.

DATES: Comments will be accepted through December 1, 1992.

ADDRESSES: Written comments are to be submitted to Randall Luthi, Project Manager, or Linda Burlington, Assistant Project Manager, Damage Assessment Regulations Team (DART), 6001 Executive Boulevard, room 422, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Randall Luthi, Office of General Counsel, NOAA, telephone (202) 377–1400, or Linda Burlington, Office of General Counsel, DART, 6001 Executive Boulevard, room 422, Rockville, Maryland 20852, telephone (301) 227–6332.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the prevention of, liability for, removal of and compensation for the discharge, or substantial threat of discharge, of oil into or upon the navigable waters of the United States, adjoining shorelines, or the Exclusive Economic Zone. Section 1006(e) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, develop regulations establishing procedures for natural resource trustees in the assessment of damages for injury to, destruction of, loss of, or loss of use of natural resources covered by OPA. Section 1006(b) provides for the designation of Federal, State, Indian tribal and foreign natural resource trustees to determine resource injuries, assess natural resource damages (including the reasonable costs of assessing damages), present a claim, recover damages and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship.

NOAA has published five **Federal Register** Notices, 55 FR 53478 (December 28, 1990), 56 FR 8307 (February 28, 1991), 57 FR 8964 (March 13, 1992), 57 FR 14524 (April 21, 1992), and 57 FR 23067 (June 1, 1992) requesting information and comments on approaches to developing damage assessment procedures. Throughout these various comment periods, NOAA has received numerous and often conflicting comments concerning the use of the contingent valuation methodology (CVM) in determining nonuse values of natural resources affected by a discharge of oil. To assure a thorough analysis of this issue, NOAA established a Contingent Valuation Panel to review the use of CVM to determine nonuse values. This panel conducted a public meeting in Washington, DC., on August 12, 1992, to assist in its review. In order to allow consideration of responses to that meeting, as well as other information that may be submitted, the comment period on the issue of CVM in measuring nonuse values is extended to December 1, 1992.

Dated: September 21, 1992.

Thomas A. Campbell,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 92-23297 Filed 9-24-92; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960-AD41

Supplemental Security Income for the Aged, Blind, and Disabled; Exclusion of Earned Income Tax Credits From Income and Resources

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing rules to implement those provisions of section 11115 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, which exclude from income under the supplemental security income (SSI) program any refund of Federal income taxes due to the earned income tax credit (EITC) and any advance EITC payments from an employer. Such payments also are excluded by section 11115 of Public Law 101-508 from resources in the month following the month of receipt. In addition to implementing these statutory changes, the proposed rules also provide that SSI applicants and recipients are no longer required to file for EITC payments as a condition of SSI eligibility since such payments are excluded from income. The SSI provisions of section 11115 of Public Law 101-508 were effective January 1, 1991.

DATES: To be sure that your comments are considered, we must receive them no later than November 24, 1992.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1762.

SUPPLEMENTARY INFORMATION: These proposed regulations implement those provisions of section 11115 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, which amended sections 1612(b) and 1613(a) of the Social Security Act (the Act). As amended, section 1612(b) excludes from income, under title XVI, any refund of Federal income taxes due to an EITC and any advance EITC payments from an employer. Such payments also are excluded from resources, by section 1613(a) of the Act, in the month following the month of receipt. In addition, under the proposed regulations, SSI applicants and recipients are no longer required to file for EITC payments as a condition of SSI eligibility since such payments are excluded from income. The SSI provisions of section 11115 of Public Law 101-508 were effective January 1, 1991.

Prior to January 1, 1991, we counted EITC payments, received either as an advance or a refund, as earned income for purposes of assessing SSI eligibility and benefit amount. Any EITC payments retained into the month following the month of receipt were considered countable resources in that month. As a condition of SSI eligibility, an individual was required to file for any EITC payments for which he or she was eligible. These policies were based on section 1612(a)(1)(C) of the Act and regulations at §§ 416.210, 416.1110, 416.1111, and 416.1201.

Section 1612(a) of the Act defines income for purposes of the SSI program and section 1612(a)(1)(C) of the Act states that earned income includes any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1954 (relating to earned income tax credit) and any payment made by an employer under section 3607 of such Code (relating to advance payment of earned income tax credit). However, income under section 1612(a) of the Act is subject to various exclusions set out in section 1612(b) of the Act, which, as noted above, was amended by section 11115 of Public Law 101-508 to exclude from income an EITC payment recieved through a refund of Federal income tax or as an advance payment from an employer.

Provisions of the Proposed Regulations

Effective January 1, 1991, we exclude from income under the proposed regulations any refund of Federal income taxes due to an EITC and any advance EITC payments from an employer, which an individual receives after December 31, 1990, regardless of the tax year involved.

The proposed regulations also provide that any unspent portion of an EITC advance or refund is excluded from resources in the month following the

month of receipt. This includes any unspent portion of an EITC advance or refund received in (but not earlier than) December 1990. Any unspent funds retained into the second month following the month of receipt are subject to resource counting rules at that time.

Under the proposed regulations, individuals are no longer required to file for EITC benefits as a condition of SSI eligibility since such payments are excluded from income.

Section 11115(e) of Public Law 101–508 states that the provision applies "* * * to determinations of income or resources made for any period after December 31, 1990." We interpret this to mean that only EITC payments received after December 31, 1990 are excluded from income. EITC payments received in November or December 1990 which are used in computing payments for January or February 1991 are not excluded from income. We believe that this interpretation correctly reflects the statute since section 11115(e) of Public Law 101–508 applies with respect to "determinations of income" rather than with respect to "benefits." If section 11115(e) had been effective with respect to benefit determinations made after December 31, 1990, retrospective monthly accounting (RMA) would require the consideration of EITCs received in November and December 1990 for the benefit calculations of January and February of 1991. But determinations of income for a particular month are simply the calculations of countable income for that month which will be used in benefit calculations 2 months later. Thus, "determinations of income" after December 31, 1990, would only cover income received after that date. An EITC payment received in December 1990 may be excluded from resources in January 1991 since resources by definition include any income that is retained in the month following the month of receipt.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that these are not major rules under Executive Order 12291 since the costs are expected to be less than $100 million, and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: March 27, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: May 21, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat. 268; and sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

2. Section 416.210 is amended by revising paragraph (b) to read as follows:

§ 416.210 You do not apply for other benefits.

* * * * *

(b) *What "other benefits" includes:* "Other benefits" includes any payments for which you can apply that are available to you on an ongoing or one-time basis of a type that includes annuities, pensions, retirement benefits, or disability benefits. For example, "other benefits" includes veterans' compensation and pensions, workers' compensation payments, Social Security insurance benefits and unemployment insurance benefits.

* * * * *

3. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154; sec. 2639 of Pub. L. 98–369, 98 Stat. 1144.

§ 416.1111 [Amended]

4. Section 416.1111 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

5. The introductory text of paragraph (c) of § 416.1112 is republished, and paragraph (c) is amended by redesignating existing paragraphs (c)(1) through (c)(8) as paragraphs (c)(2) through (c)(9), removing the parenthesis at the end of redesignated paragraph (c)(6) and adding a new paragraph (c)(1) to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) *Other earned income we do not count.* We do not count as earned income—

(1) Any refund of Federal income taxes you receive under section 32 of the Internal Revenue Code (relating to earned income tax credit) and any payment you receive from an employer under section 3507 of the Internal Revenue Code (relating to advance payment of earned income tax credit);

* * * * *

6. Paragraph (a) of § 416.1161 is amended by adding paragraph (a)(20) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(20) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, as provided in § 416.1112(c).

7. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

8. Section 416. 1210 is amended by removing the word "and" at the end of paragraph (h), replacing the periods at the end of paragraphs (l), (m), and (n) with semicolons, adding "and" at the end of paragraph (n) and by adding a new paragraph (o) to read as follows:

§ 416.1210 Exclusions from resources; general.

* * * * *

(o) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, as provided in § 416.1235.

9. Section 416.1235 is added to read as follows:

§ 416.1235 Exclusion of earned income tax credit.

In determining the resources of an individual (and spouse, if any), we exclude in the month following the month of receipt the unspent portion of any refund of Federal income taxes under section 32 of the Internal Revenue Code (relating to earned income tax credit) and the unspent portion of any payment from an employer under section 3507 of the Internal Revenue Code (relating to advance payment of earned income tax credit). Any unspent funds retained until the first moment of the second month following their receipt are subject to resource counting rules at that time.

[FR Doc. 92-23288 Filed 9-24-92; 8:45 am]
BILLING CODE 4190-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 612

RIN 1840-AB11

Drug Prevention Programs in Higher Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations governing the Drug Prevention Programs in Higher Education. The proposed regulations would permit an eligible applicant to receive more than one current grant for an Analysis project. This would be accomplished by removing a reporting requirement. The Secretary proposes this change to increase the number of applications for Analysis projects.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Donald Fischer, Drug Prevention Programs in Higher Education, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (ROB-3, room 3100), Washington, DC 20202-5175.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, Drug Prevention Programs in Higher Education, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (ROB-3, room 3100), Washington, DC 20202-5175. Telephone: (202) 708-5771. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (for calls from metropolitan Washington, DC Telephone (202) 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Background

Under Analysis and Dissemination competitions, the Secretary funds projects to analyze and disseminate successful project designs, policies, and results of projects funded under Institution-Wide Program competitions and Special Focus Program competitions. More specifically, Analysis projects have been funded to analyze overall results of Institution-Wide projects and cross-cutting features of Institution-Wide projects. Institution-Wide projects are comprehensive in scope. They are designed to prevent or eliminate the use of illegal drugs and alcohol by students in institutions of higher education. To that end, they provide training in drug abuse education and prevention to students, faculty, and staff. Special Focus projects address one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in institutions of higher education.

The Secretary proposes revisions to existing regulations because of the low number of applications received under three previous competitions for Analysis awards and the desirability of increasing the number of applications submitted by knowledgeable applicants with previous experience in conducting Institution-Wide or Special Focus projects.

Under the existing § 612.2(c), an applicant that has received an award in a competition for Analysis projects is not eligible to receive a subsequent award in that competition until the applicant has submitted every report required under the prior project. The proposed regulations would remove the reporting requirement as an element of eligibility for subsequent Analysis projects.

Note, however, that under 34 CFR 75.217(d)(3) the Secretary determines the order in which applications are selected for grants by considering, among other factors, information concerning the applicant's use of funds under a previous award under this program. In applying this provision, the Secretary intends to ensure that an applicant that has an award for an existing Analysis project does not receive a new award for an identical Analysis project. However, in the case of an applicant conducting an Analysis project in which, for example, the final reports of a cohort of Institution-Wide projects are being analyzed, the Secretary's application of this provision would not prohibit the applicant from receiving a new award to analyze the final reports of a different cohort of Institution-Wide projects. The difference in cohorts would render these projects different and, therefore, allowable.

Summary of Significant Proposed Changes

Proposed Changes to Drug Prevention Programs in Higher Education

Section 612.2

The Secretary proposes to remove a requirement that prohibits an applicant from receiving another new grant for an Analysis project until all required reports for the prior project are submitted. This change would enable an applicant to receive a new grant for another Analysis project before completing the prior Analysis project. The Secretary proposes this change to encourage the submission of a greater number of applications. An applicant would still be limited to no more than one award in any competition in any fiscal year. No changes are being proposed that would affect competitions for Dissemination projects.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations would be institutions of higher education or consortia thereof. Based on analysis conducted by the Department, the Secretary has determined that these provisions would affect a minimal number of institutions.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room

3100, ROB–3 (GSA Building), 7th and D Streets, SW., Washington, DC, between the hours of 8:30 and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 612

Colleges and universities, Drug abuse, Grant programs—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number: Drug Prevention Programs in Higher Education, 84.183)

Dated: September 18, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend part 612 of chapter VI of title 34 of the Code of Federal Regulations as follows:

PART 612—DRUG PREVENTION PROGRAMS IN HIGHER EDUCATION

1. The authority citation for part 612 continues to read as follows:

Authority: 20 U.S.C. 3211.

2. Section 612.2 is amended by revising paragraph (c) to read as follows:

§ 612.2 Who is eligible to receive an award?

* * * * *

(c) If an applicant has received an award in a competition, the applicant may not receive a new award in that competition in a subsequent year until—

(1) The Secretary determines that the applicant will satisfactorily complete the project previously supported; and

(2) Except for analysis projects as described in § 612.21(d), the applicant has submitted every report that it must submit in connection with the prior project.

* * * * *

[FR Doc. 92–23272 Filed 9–24–92; 8:45 am]
BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH19–1–5387; FRL–4510–5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a revision request to the ozone portion of the Ohio State Implementation Plan (SIP) for Ludlow Flexible Packaging, Inc. (Ludlow) in Mt. Vernon, Ohio. The revision was submitted by the Ohio Environmental Protection Agency (OEPA) as an emissions trade (bubble) with monthly averaging between a total of 22 printing and paper coating lines, which are subject to the control requirements contained in the Ohio Administrative Rules (OAC) 3745–21–09(Y) and 3745–21–09(F), and a compliance date extension to June 30, 1987.

USEPA is proposing to approve this revision because the source is located in Knox County. Knox County is currently designated as an attainment area for ozone and, thus, the existing control requirements are not required by the Clean Air Act. However, approval of this SIP revision will cancel the accommodative SIP for Knox County.

DATES: Comments on this proposed revision and on the proposed USEPA approval must be received by October 26, 1992.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Richard Schleyer at (312) 353–5089, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Air Enforcement Branch, Regulation Development Section (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–5089.

SUPPLEMENTARY INFORMATION:

I. Background

On September 30, 1983, the OEPA submitted a revision request to the ozone portion of the Ohio SIP for Ludlow. The revision consists of a bubble with monthly averaging between 10 printing lines (sources K001–K010) and 12 paper coating lines (sources K011–K022), and a compliance date extension to June 30, 1987, for all 22 lines.

The printing lines are subject to the control requirements contained in the Ohio Administration Rule (OAC) 3745–21–09(Y), and to the compliance schedule contained in OAC Rule 3745–21–04(C)(32). The paper coating lines are subject to the requirements contained in OAC Rule 3745–21–09(F), and to the compliance schedule contained in OAC Rule 3745–21–04(C)(5).

The terms and conditions for the variances and permits for these lines limit the VOC emissions to 0.27 pounds per pound of solids, as applied, as a monthly average. In addition, there is a limit of 4.8 pounds of VOC per pound of solids, as applied (based on 2.9 pounds of VOC per gallon of coating, excluding water) on a daily average for seven of the paper coating lines (K016–K022).

On January 13, 1987, the OEPA submitted additional information concerning this revision. In this submittal, the OEPA stated that several of the printing lines have been or will be permanently shut down and the remaining lines will be controlled by thermal incineration in accordance with OAC Rule 3745–21–09(Y), thereby removing the ten printing lines from the bubble. In addition, 4 of the 12 paper coating lines (K017–K019, K022) have been removed from the plant. Therefore, only 8 paper coating lines (K011–K016, K020–K021) remain under the bubble. The compliance date extension still applies to all 22 lines.

II. Current SIP

Under the existing federally approved SIP, Ludlow's printing lines are subject to the control requirements contained in the Ohio Administrative Code (OAC) Rule 3745–21–09(Y). This rule limits the volatile organic compound (VOC) content in the coatings and inks to 40 percent by volume, excluding water, or 25 percent by volume of the volatile content. Ludlow's paper coating lines are subject to the control requirements contained in OAC Rule 3745–21–09(F), which limits the VOC content to 4.8 pounds per pound of solids, as applied

(based on 2.9 pounds per gallon of coating, excluding water).[1]

III. Knox County Attainment Status

These lines are located in Knox County, Ohio. Knox County was originally designated as a nonattainment area of the NAAQS for ozone.[2] This designation was based on the assumption that nonattainment of the 0.08 ppm ozone standard (the level of the standard prior to 1979) was widespread around major urban areas. As requested by OEPA, USEPA designated Knox County as a nonattainment area although no in-county monitoring data was available. After the ozone standard was changed to 0.12 ppm, OEPA recognized that the assumption of widespread ozone nonattainment was no longer valid and initiated the redesignation of Knox County to attainment of the ozone standards. USEPA approved this request, and in 1984 redesignated Knox County as an attainment area for ozone.[3]

IV. USEPA's Evaluation of the SIP Revision Request

In order to have a revision to the ozone SIP approved as a plan that is equivalent to RACT, the revision must meet the criteria in USEPA's policies on bubbles and long-term averaging. The Ludlow revision does not meet these criteria. However, as discussed below, this revision request can be approved as a relaxation from the RACT requirements.

A compliance date extension for this facility can be approved because: (1) Ludlow is located in an area that is designated attainment for ozone; (2) a revision will not increase historical VOC emissions from the source; and (3) RACT is not required by USEPA in an area designated as attainment.

V. Compliance With the Clean Air Act Amendments of 1990

This request for a revision to the Ohio SIP for ozone has been reviewed for conformance with the provisions of the 1990 Clean Air Act Amendments (CAAA) enacted on November 15, 1990. It has been determined that this action does conform with the General Savings Clause stated in subpart 6, section 193 of the CAAA of 1990 which prohibits, in nonattainment areas, any relaxation of SIP requirements, without at least offsetting emission reductions. Ludlow is located in Knox County which is designated as an attainment area for ozone.

VI. Conclusion

Although the requested revision does not satisfy USEPA's bubble policy and monthly averaging requirements within the context of the RACT requirements, as stated above, the revision can still be approved as a relaxation from RACT requirements because Knox County is a rural attainment area for ozone. The revision will not cause an increase in actual historical VOC emissions from this source. Additionally, the Act does not require RACT level control in attainment areas.

However, approval of this revision will eliminate the accommodative ozone SIP in Knox County. This means that all new major VOC sources and major modifications in this county must comply with all the PSD monitoring requirements. This relaxation of RACT requirements is very limited in scope and will have no effect on nonattainment areas.

Note: the nearest nonattainment area, Columbus, Ohio, is 35 miles to the southwest.

Proposed Action

USEPA is proposing to approve this revision to the ozone portion of the Ohio SIP for Ludlow Flexible Packaging, Inc. This revision consists of a bubble for 8 paper coating lines with monthly averaging, and a compliance date extension for 22 paper and printing lines until June 30, 1987. This revision can be approved as a relaxation from the RACT requirements for Section 172 of the Act because the Act does not require RACT level control in areas designated as attainment of the NAAQS for ozone. Ludlow is located in Knox County, which is designated an attainment area for ozone. Also, approving this revision request will not cause an increase in actual emissions or interfere with the maintenance of the NAAQS.

However, approval of this SIP revision will cancel the accommodative SIP for Knox County.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Three action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 22144–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 revisions. The Office of Management and Budget (OMB) has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less then 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. This Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Public comments are solicited on the requested SIP revision and on USEPA's proposal to approve. Public comments received by (30 days from date of publication) will be considered in the development of USEPA's final rulemaking action.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671(q).

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[1] In the October 31, 1980 **Federal Register** (45 FR 72122), and in the June 29, 1982 **Federal Register** (47 FR 28097). USEPA approved OAC Rule(s) 3745–21–09 (Y) and (F) as part of the SIP as meeting the RACT requirements of Part D of the Act.

[2] This designation was published in the March 13, 1978 **Federal Register** (43 FR 8962), and in the October 5, 1978 **Federal Register** (43 FR 45993).

[3] This designation was published in the June 12, 1984 **Federal Register** (49 FR 24124), and in the November 6, 1991 **Federal Register** (56 FR 56694).

Dated: September 15, 1992.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 92-2332 Filed 9-24-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN: 1092-AA10

Department Hearings and Appeals Procedures

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 43 CFR 4.21(a) to change the requirement that an appeal to one of the Department's Appeals Boards from a decision will suspend the effect of the decision appealed from pending the decision on appeal, unless the Director of the Office of Hearings and Appeals or an Appeals Board exercises discretion to provide that the decision appealed from shall be in full force and effect immediately. Under the proposed rule the decision appealed from will remain effective during the pendency of an appeal unless the director or an Appeals Board determines otherwise in accordance with specified standards. There will be a revision to § 4.21(b) to ensure conformity with the revision of § 4.21(a)..

DATES: Comments must be submitted by October 26, 1992.

ADDRESSES: Comments should be sent to Nadine Markham-Iteilag, Branch of Administrative Law and General Legal Services (DGL), room 6531, Main Interior Building, 1849 C Street NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (8:30 a.m. to 5 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nadine Markham-Iteilag, (202) 208-5216.

SUPPLEMENTARY INFORMATION: The Department recently issued an Interim Final Rule and a Proposed Rule to amend 43 CFR 3150.2 and 43 CFR 3165.4 to allow an authorized officer's decision relating to onshore oil and gas geophysical exploration operations to remain in effect during the pendency of an appeal before the Interior Board of Land Appeals, unless the appellant demonstrates to the Board that a stay is necessary in accordance with standards generally used by courts in ruling on motions for a Temporary Restraining Order. The rule proposed here would extend this principle to all appeals before the Department's Appeals Boards, thus promoting consistency in the handling of appeals. The proposed rule promotes efficiency in that stays would no longer be automatic upon the filing of an appeal, but would be granted only after the Appeals Board is given the opportunity to make a determination whether the stay is warranted. This revision would not take away any substantive right of appeal that currently exists. It would require the appellant to be responsible for filing a petition for a stay pending appeal if the appellant desires a stay.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined under Executive Order 12291 that this revision is not a major rule. A major rule is any rule that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, innovation, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In this instance there are no expected increases in costs or prices for consumers. Costs may actually decline because of a possible decrease in the number of appeals. There would be no need for increase in Federal, State, or local agency budgets or personnel requirements to implement this rule. The gross annual effect on the United States economy would not approach $100 million. For the above reasons, and because one of the effects of the proposed rule is to restore to small entities during the pendency of the appeal the authority to act that was granted by the Department, the Department has also determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12630, Taking Implications Assessment

This proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. As it does not limit existing appeal rights, it would not infringe any private property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Effects

It has been determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2(C)) is required because the proposed revision itself would have no impact on any physical attributes of the public lands or any environmental resource values. In the event public lands issues or environmental resource values are involved in the appeal, applicable NEPA procedures already will have been followed.

Civil Justice Reform

The Department has certified to the Office of Management and Budget that these proposed rules meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Drafting Information

The author of this rule is Nadine Markham-Itteilag, Attorney-Advisor, Branch of Administrative Law and General Legal Services, Division of General Law, Office of the Solicitor, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240.

List of Subjects in 43 CFR Part 4

Administrative Practice and Procedures, Civil Rights, Claims, Equal Access to Justice, Government contracts, Grazing lands, Indians, Lawyers, Mines, Penalties, Public lands, Surface mining.

The proposed rule is issued under authority of 43 U.S.C. 1201.

For the reasons stated in the preamble, part 4, subtitle A, of title 43 of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The authority citation for part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

2. Section 4.21 is amended by revising paragraphs (a) and (b) to read as follows:

§ 4.21 General provisions.

(a) *Effect of decision pending appeal.* Except as otherwise provided by law or other pertinent regulation:

(1) A decision will not be effective during the time in which a person adversely affected may file a notice of appeal; when the public interest requires, however, the Director or an Appeals Board may provide that a decision, or any part of a decision, shall be in full force and effect immediately;

(2) A decision will become effective on the day after the expiration of the time during which a person adversely affected may file a notice of appeal unless a petition for a stay pending appeal is filed together with a timely notice of appeal;

(3) A petition for a stay of a decision pending appeal shall show the reasons for the relief requested, addressing:

(i) The relative harm to the parties if the stay is granted or denied,

(ii) The likelihood of the appellant's success on the merits,

(iii) The likelihood of immediate and irreparable harm if the stay is not granted, and

(iv) Whether the public interest favors granting the stay;

(4) The Director or an Appeals Board shall grant or deny a petition for a stay pending appeal, either in whole or in part, on the basis of the factors listed in paragraph (a)(3) of this section, within 45 calendar days of the expiration of the time for filing a notice of appeal;

(5) A decision, or that portion of a decision, for which a stay is not granted will become effective immediately after the Director or an Appeals Board denies or partially denies the petition for a stay, or fails to act on the petition within the time specified in paragraph (a)(4) of this section.

(b) *Exhaustion of administrative remedies.* No decision which at the time of its rendition is subject to appeal to the Director or an Appeals Board shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless a petition for a stay of decision has been timely filed and the decision being appealed has been made effective pending a decision by the Director or an Appeals Board in the manner provided in paragraph (a) of this section.

* * * * *

John E. Schrote,

Assistant Secretary, Policy, Management and Budget.

[FR Doc. 92-23225 Filed 9-24-92; 8:45 am]

BILLING CODE 4310-RX-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-198, RM-8056]

Radio Broadcasting Services; Larose, Louisiana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by Electronics Unlimited, Inc., seeking the substitution of Channel 262C1 for Channel 262A at Larose, Louisiana, and the modification of Station KMZM–FM's construction permit to specify operation on the higher powered channel. Channel 262C1 can be allotted to Larose in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.6 kilometers (14.7 miles) south to accommodate Electronics' desired site. The coordinates for Channel 262C1 are North Latitude 29–22–00 and West Longitude 90–26–50. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 262C1 at Larose or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 11, 1992, and reply comments on or before November 27, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy K. Brady, Esq., P.O. Box 986, Brentwood, Tennessee 37027–0986 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–198, adopted August 11, 1992, and released September 21, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., Suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23271 Filed 9-24-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-196, RM-8041]

Radio Broadcasting Services; Tallassee and Tuskegee, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition for rule making filed on behalf of Tiger Broadcasting Company, Inc., permittee of Station WACQ-FM, Channel 260A, Tuskegee, Alabama, seeking the reallotment of Channel 260A to Tallassee, Alabama, and modification of its permit accordingly. Coordinates for this proposal are 32–26–30 and 85–47–45.

Petitioner's modification proposal complies with the provisions of § 1.420(i) of the Commission's rules. Therefore, we will not accept competing expressions of interest in the use of Channel 260A at Tallassee, Alabama, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before November 12, 1992, and reply comments on or before November 27, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: M. Scott Johnson and Catherine M. Withers, Esqs.,

Gardner, Carton & Douglas, 1301 K Street, NW., suite 900, East Tower, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–196, adopted August 10, 1992, and released September 21, 1992. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–23348 Filed 9–24–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

FRA Docket No. RSGC–5; Notice No. 3

[RIN 2130–AA70]

Timely Response to Grade Crossing Signal System Malfunctions Notice of Extension of Comment Period

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking; extension of comment period.

SUMMARY: FRA is issuing notice that the period for public comment in this proceeding is being extended to December 1, 1992, due to significant questions raised at the hearing and to permit further opportunity to submit data and comments regarding this issue. FRA is extending the comment.

DATES: Written comments must be received no later than December 1, 1992. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Bruce F. George, Chief, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–0533), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION: On June 29, 1992, FRA published a notice of proposed rulemaking regarding timely response to grade crossing signal system malfunctions. 57 FR 28819. A public hearing was held on September 15, 1992. Due to significant questions raised at the hearing and to permit further opportunity to submit data and comments regarding this issue, FRA is extending the comment period until December 1, 1992.

Issued in Washington, DC on September 22, 1992.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 92–23317 Filed 9–24–92; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 672

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 26 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the FMP amendment should be submitted on or before November 20, 1992.

ADDRESSES: Comments on the FMP amendment should be submitted to Steven Pennoyer, Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 or delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall Road, Juneau, AK.

Copies of the amendment and the environmental assessment/regulatory impact review prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Susan Salveson, Fishery Management Biologist, Alaska Region, NMFS at 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the plan or amendment.

Amendment 26 would provide the authority to continue to implement time/area closures around Kodiak Island to vessels using trawl gear other than pelagic trawl gear. Current regulations implementing these closures are scheduled to expire at the end of 1992. The continued imposition of these closures beyond 1992 under Amendment 26 is necessary to protect the habitat of depressed stocks of red king crab and Tanner crab.

Proposed regulations for continued closures based on this amendment are scheduled to be published within 15 days of this notice.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 21, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-23270 Filed 9-21-92; 4:11 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 187
Friday, September 25, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Agricultural Science And Technology Review Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: Agricultural Science and Technology Review Board (hereafter referred to as the Review Board).

Date: September 24-25, 1992.

Time: 8:30 a.m.-4:30 p.m. Sept. 24; 8:30 a.m.-12 Noon, Sept. 25.

Place: Quality Hotel on Capitol Hill, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: The purposes of the meeting are to: Review the missions and responsibilities of the Review Board; Determine activity priorities; Agree on approaches to address responsibilities; Establish agenda for next meeting; Elect Chair and other officers.

Contact Person for Agenda and More Information: Dr. Mark R. Bailey, Executive Secretary, Joint Council on Food and Agricultural Sciences, room 3M12, Annex Building, U.S. Department of Agriculture, Washington, DC 20250-2200; Telephone (202) 401-4662.

Done in Washington, D.C., this 21 day of September 1992.

John Patrick Jordan,

Administrator.

[FR Doc. 92-23276 Filed 9-24-92; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

Northern Region; Fee Schedule for Communication Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Regional Forester, Northern Region, has modified the fee schedule for communication uses authorized on National Forest System lands located in the Montana, North Dakota, and parts of Idaho and South Dakota.

ADDRESSES: Copies of the schedule may be obtained by writing to the Regional Forester, Northern Region, USDA—Forest Service, Federal Building, P.O. Box 7669, Missoula, MT 59807.

FOR FURTHER INFORMATION CONTACT: Dave O'Brien (406) 329-3601 or Jim Hathaway (406) 329-3110, Lands and Minerals Staff.

SUPPLEMENTARY INFORMATION: On August 23, 1989, the Regional Forester for the Northern Region published a notice adopting a fee schedule for communications uses (54 FR 35023—35027). Congress delayed implementation of the fee schedule and directed the Forest Service to review and report to the Appropriations Committees on the ability of fee schedules to reflect values associated with local market conditions. The report was completed and sent to the Appropriations Committee on March 21, 1991. The restriction on fee schedule implementation was removed in 1992.

The fee schedule modifications are based on the findings of the report to Congress and additional Forest Service administrative review. Most of the modifications either reduce the fees adopted in 1989, or require appraisals or other sound business management principles be used to establish fees. The modified fee schedule reflects the fair market value of the authorized use as required by the Federal Land Policy and Management Act of 1976.

Dated: September 16, 1992.

John M. Hughes,

Deputy Regional Forester.

[FR Doc. 92-23337 Filed 9-24-92; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below were stockyards as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards were subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
AR-168—I-40 Livestock Auction, Inc., Ozark, Arkansas.	Apr. 8, 1992.
MS-165—T. Smith Livestock, Hattiesburg, Mississippi.	June 22, 1992.
NC-163—Mount Olive Livestock Mkt., Inc. Snow Hill, North Carolina.	July 15, 1992.
UT-117—Dean H. Parker, Logan, Utah.	June 18, 1992.

Done at Washington, DC this 18th day of September, 1992

Harold W. Davis, Director,

Livestock Marketing Division, Packers and Stockyards Administration.

[FR Doc. 92-23331 Filed 9-24-92; 8:45 am]

BILLING CODE 3410-KD-M

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
AR-126—Magnolia Livestock Auction, Magnolia, Arkansas.	Sept. 11, 1959.
MS-118—Mississippi Livestock Producers.	Jan. 7, 1959.

This notice is in the nature of a change relieving a restriction and, thus, may be effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**

Done at Washington, DC this 16th day of September, 1992

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 92-23329 Filed 9-24-92; 8:45 am]

BILLING CODE 3410-KD-M

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

FL-134—The New Interstate Livestock Auction, Seffner, Florida

PA-156—Mel's Stable, New Holland, Pennsylvania

Pursuant to the authority under section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, room 3408-South Building, U.S. Department of Agriculture, Washington, DC 20250 by October 3, 1992.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 18th day of September, 1992.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 92-23330 Filed 9-24-92; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 600]

Termination of Foreign-Trade Subzone 70-O; Trenton, MI

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on December 22, 1989, the Foreign-Trade Zones Board issued a grant of authority to the Greater Detroit Foreign-Trade Zone, Inc. (GDFTZ), authorizing the establishment of Foreign-Trade Subzone 70-O at Chrysler Corporation's auto components plant in Trenton, Michigan (Board Order 456, 54 FR 53667, 12/29/89);

Whereas, GDFTZ advised the Board on April 15, 1991 (FTZ Docket 18-91), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 70-O;

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, Therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone No. 70-O effective this date.

Signed at Washington, DC, this 18th day of September 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-23375 Filed 9-24-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review, application No. 92-00003.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to The United States Apple and Pear Marketing Board, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

U.S. origin fresh, frozen and processed apples, pears, sweet cherries, and broccoli.

2. Services

Inspection, quality control, marketing and promotional services.

3. Technology Rights

Proprietary rights of all kinds of technology associated with Products or Services, including, but not limited to: patents, trademarks, service marks, trade names, copyrights (including neighboring rights), trade secrets, know-how, semiconductor mask works, utility models (including petty patents), plant breeders rights, industrial designs, and *sui generis* forms of biotechnology protection and computer software protection.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

All export trade-related facilitation services, including, but not limited to: Consulting and trade strategy; sales and marketing; export brokerage; foreign marketing research; foreign market development; overseas advertising and promotion; product research and design based on foreign buyer and consumer preferences; communication and processing of export orders; inspection and quality control; transportation; freight forwarding and trade documentation; insurance; billing of foreign buyers; collection (letters of credit and other financial instruments); provision of overseas sales and distribution facilities and overseas sales staff; legal, accounting and tax assistance; management information systems development and application; assistance and administration of government export assistance programs, such as the Export Enhancement and Market Promotion programs.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the

Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the Trust Territory of the Pacific Islands) and Canada.

Export Trade Activities and Methods of Operation

In connection with the promotion and sale of Members' Products into the Export Markets, the USAPMB may, on behalf of and with the advice and assistance of its Members:

(1) Design and execute foreign marketing strategies for its Export Markets;

(2) Prepare joint bids, establish export prices for Members' Products and Services and establish terms of sale in the Export Markets;

(3) Allocate export sales, international buyers and/or export markets among Members on the basis of each Member's independent commitment of Products, and/or its individual export marketing plan in relation to USAPMB's corporate plan;

(4) Grant sales and distribution rights for the Products, whether or not exclusive, into designated Export Markets to foreign agents or importers ("exclusive" meaning that the USAPMB and Members may agree not to sell the Products into the designated Export Markets through any other foreign distributor, and that the foreign distributor may agree to represent only USAPMB in the Export Markets and none of its competitors);

(5) Design, develop and market generic corporate labels;

(6) Engage in joint promotional activities directly targeted at developing the Export Markets, such as: Arranging trade shows and marketing trips; providing advertising services; providing brochures, industry newsletters and other forms of product, service and industry information; conducting international market and product research; procuring international marketing, advertising and promotional services; and sharing the cost of these joint promotional activities among the Members;

(7) Conduct product and packaging research and development exclusively for the export of the Products, such as meeting foreign regulatory requirements and foreign buyer specifications and identifying and designing for foreign buyer and consumer preferences;

(8) Negotiate and enter into agreements with governments and other foreign persons regarding non-tariff trade barriers in the Export Markets, such as packaging requirements, establishing and operating fumigation facilities and providing specialized packing operations and other quality control procedures to be followed by its Members in the export of Products into the Export Markets;

(9) Advise and cooperate with agencies of the U.S. Government in establishing procedures regulating the export of Members' Products, Services and/or Technology Rights into the Export Markets;

(10) Negotiate and enter into purchase agreements with buyers in the Export Markets regarding the export prices, quantities, type and quality of Products, time periods, and the terms and conditions of sale;

(11) Broker or take title to the products;

(12) Purchase Products from non-Member producers whenever necessary to fulfill specific sales obligations;

(13) Solicit non-Member producers to become Members;

(14) Communicate and process export orders;

(15) Assist each Member in maintaining the quality standards necessary to be successful in the Export Markets;

(16) Provide Export Trade Facilitation Services with respect to Products, Services and Technology Rights;

(17) Provide, procure, negotiate, contract and administer transportation services for Products in the course of export, including overseas freight transportation, inland freight transportation from the packing house to the U.S. port of embarkment, leasing of transportation equipment and facilities, storage and warehousing, stevedoring, wharfage and handling, insurance, forwarder services, trade documentation and services, customs clearance, financial instruments and foreign exchange;

(18) Negotiate freight rate contracts with individual carriers and carrier conferences either directly or indirectly through shippers associations and/or freight forwarders;

(19) Arrange financing through bank holding companies, governmental financial assistance programs and other arrangements;

(20) Bill and collect from foreign buyers and provide accounting, tax, legal and consulting assistance and services;

(21) Enter into exclusive agreements with Non-Members to provide Export Trade Services and Trade Facilitation Services;

(22) Design, implement and administer Foreign Sales Corporations in accordance with the Internal Revenue Code;

(23) Open and operate overseas sales and distribution offices and companies to facilitate the sales and distribution of the Products in the Export Markets;

(24) Apply for and utilize applicable export assistance and incentive programs which are available within the governmental and private sectors, such as the USDA Export Enhancement and Market Promotion programs;

(25) Negotiate and enter into agreements with governments and foreign persons to develop countertrade arrangements;

(26) Refuse to deal with or provide quotations to other Export Intermediaries for sales of the Members' Products into the Export Markets; and

(27) Exchange information with and among the Members as necessary to carry out the Export Trade Facilitation Services and Export Trade Activities and Methods of Operation, including:

(a) Information about sales and marketing efforts and strategies in the Export Markets, including pricing; projected demand in the Export Markets for Products; customary terms of sale, prices and availability of Products independently committed by Members for sales in the Export Markets; prices and sales of Products in the Export Markets; and specifications by buyers and consumers in the Export Markets;

(b) Information about the price, quality, quantity, source and delivery dates of Products available from the Members for export;

(c) Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by the USAPMB;

(d) Information about joint bidding, selling arrangements for the Export Markets and the allocations of export sales resulting from such arrangements among the Members, including information regarding the allocation methods used and each member's percentage of the total committed volume of all Members;

(e) Information about expenses specific to exporting to and within the Export Markets, including transportation, transshipments, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing and customs duties or taxes;

(f) Information about U.S. and foreign legislation and regulations, including Federal marketing order programs that may affect sales to the Export Markets; and

(g) Information about the USAPMB's or its Members' export operations, including sales and distribution networks established by the USAPMB or its Members in the Export Markets.

and prior export sales by Members, including export price information.

Each Member will independently determine the quantity of the Products that it will make available for direct sale into the Export Markets. Members will be responsible for advising the USAPMB in a timely manner regarding the Products to be made available for export, and the quantities and time periods in which they will be made available.

Members will grant the USAPMB the right of first refusal for all Products they plan to sell directly into the Export Markets. Members can obtain permission from the USAPMB to sell their Products through other Export Intermediaries if: (a) the Product does not meet the quality or packaging standards and requirements of the USAPMB; (b) the terms of sale are not acceptable to the Member; (c) the export price is not acceptable to the Member; (d) due to the perishability of the product, the Member must sell the Product immediately and USAPMB does not have a viable sales opportunity during the time necessary to ship; or (e) the proposed export sales are the outgrowth of business relationships existing before the date of this Certificate.

Members (Within the Meaning of Section 325.2(1) of the Regulations)

Appalachian Apple, Inc. (and the following member firms of this consortium: Fred L. Glaize Partnership; Moore and Dorsey, Co. Inc.; Ridgetop Orchards; Hearty Virginia, Inc.; Ikenberry Orchard; Buck Hill Orchard; Frederickson Orchard; Mount Clifton Orchard); Borton & Sons, Inc.; Douglas Fruit Company, Inc.; Eakin Fruit Company, Inc; Gold Digger Apples, Inc.; Green Valley Farms; Inland Fruit & Produce Company, Inc.; Jack Frost Company, Inc./Marley Orchard Corp.; Northwestern Fruit & Produce Company, Inc.; Price Cold Storage & Packing Company, Inc.; Rice Fruit Company, Inc.; Roche Fruit Company, Inc.; and Washington Apple and Pear Marketing Board.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: September 21, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-23380 Filed 9-24-92; 8:45 am]

BILLING CODE 3510-DR-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651); 80 Stat. 897; 15 CFR part 301, we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-123. *Applicant:* The Graduate Hospital, 415 S. 19th Street, Philadelphia, PA 19146. *Instrument:* Muscle Research System, Model OPT1S. *Manufacturer:* Guth Scientific Instruments, Germany. *Intended Use:* The instrument will be used in experiments which are performed to determine the mechanism by which agonist activation increases myofilament calcium sensitivity in a G-protein dependent manner of vascular smooth muscle, small mesenteric arteries taken from rabbits. *Application Received by Commissioner of Customs:* September 1, 1992.

Docket Number: 92-129. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695. *Instrument:* 2 Biological Nitrifying Filters for Aquaculture Use, Model 800. *Manufacturer:* Waterline, Canada. *Intended Use:* The instrument will be used to control ammonia nitrogen concentration in fish tanks. *Application Received by Commissioner of Customs:* August 26, 1992.

Docket Number: 92-130. *Applicant:* University of Oklahoma Health Sciences Center, Department of Medicine, BSEB 306, 941 S.L. Young Boulevard, Oklahoma City, OK 73104. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* Sciex, Canada. *Intended Use:* The instrument will be used in conjunction with a high pressure liquid chromatograph to perform liquid chromatography/mass spectrometry at extremely low limits during the following research:

(1) Determination of the molecular weights of proteins and glycoproteins,

(2) Determination of the sites of glycosylation in glycoproteins,

(3) Structure determination of the carbohydrate portion of glycoproteins,

(4) Determination of the sites of phosphorylation in phosphoproteins,

(5) Molecular weight determination for oligonucleotides,

(6) Molecular weight determination for peptides, and

(7) Peptide sequencing.

Application Received by Commissioner of Customs: August 26, 1992.

Docket Number: 92-131. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* Mass Spectrometer, Model 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for the study of calcium carbonate samples which will be analyzed for isotopic variations in order to determine past changes in the earth's climate. The objectives pursued in the research are to investigate and determine:

(1) The range of variability in the ocean-atmosphere-cryosphere systems;

(2) The causes of climate change on decadal to millennial time scales;

(3) The relationship between climate change and the carbon cycle system;

(4) The relationship between surface climate and deep water circulation.

In addition, the instrument will be used for educational purposes in the courses 12.721 (Special Problems in Marine Geology and Geophysics) and 12.WTH (Thesis Research) which are both related to pre-generals or pre-defense thesis research. *Application Received by Commissioner of Customs:* August 27, 1992.

Docket Number: 92-132. *Applicant:* Rutgers University, Department of Physics, P.O. Box 849, Piscataway, NJ 08855-0849. *Instrument:* Ion Source, Model ICS-3. *Manufacturer:* High Voltage Engineering, The Netherlands. *Intended Use:* The instrument will be used in conjunction with an existing ion accelerator which will be used for studies of the geometric structure of the following materials: Copper, nickel, gold, platinum and silicon materials. An experiment will be conducted to measure the energy and angle of the backscattered ions. *Application Received by Commissioner of Customs:* August 27, 1992.

Docket Number: 92-133. *Applicant:* Federal Highway Administration, Payments Division, 6300 Georgetown Pike, McLean, VA 22101-2296. *Instrument:* Asphalt Concrete Slab Wheel Track Tester. *Manufacturer:* Helmut Wind, Germany. *Intended Use:* The instrument will be used to test asphalt paving mixtures which are primarily composed of asphalt, aggregate, and possible certain modifiers such as polymers. If it is found

that the device can model in-service rutting and moisture damage, then the machine will be used in various research projects related to the study of the combined effects of rutting and stripping. *Application Received by Commissioner of Customs:* August 27, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-23378 Filed 9-24-92; 8:45 am]

BILLING CODE 3510-DS-M

Notice of Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-110. *Applicant:* University of California, Los Angeles, Department of Psychiatry & Behavioral Sciences, 760 Westwood Plaza, Los Angeles, CA 90024-1759. *Instrument:* Mass Spectrometer, Model API III-R. *Manufacturer:* Perkin-Elmer Sciex Instruments, Canada. *Intended Use:* The instrument will be used for peptide sequencing and molecular mass determination of peptides, glycopeptides, proteins, glycoproteins, oligonucleotides, oligosaccharides and related metabolites, drugs, and drug metabolites in tissues and biological fluids. *Application Received by Commissioner of Customs:* July 17, 1992.

Docket Number: 92-111. *Applicant:* Colorado State University, Department of Physics, Fort Collins, CO 80523. *Instrument:* Upgrade Package for Mass Spectrometer. *Manufacturer:* John Sandercock Ltd., Switzerland. *Intended Use:* This is an upgrade package for a mass spectrometer which is being used to investigate linear and nonlinear magnetic excitations in thin film materials. Specific work will focus on the fundamental properties and behavior of high frequency magnetic solitons in thin film structures, new device possibilities that may utilize such excitations, and the physics of chaos as it relates to nonlinear spin wave excitations. *Application Received by Commissioner of Customs:* July 17, 1992.

Docket Number: 92-112. *Applicant:* Pennsylvania State University, Materials Research Laboratory, University Park, PA 16802. *Instrument:* Grating Tuned CO_2 Laser, Model PL6. *Manufacturer:* Edinburgh Instruments, United Kingdom. *Intended Use:* The instrument will be used as a powerful heat source for a Laser Heated Pedestal Growth Station for the growth of single crystal fibers of various compositions. The single growth technique is used to study materials properties (phase transition characteristics, melting behavior, crystal growth phenomena, effects of chemical modifications, etc.). *Application Received by Commissioner of Customs:* July 22, 1992.

Docket Number: 92-113. *Applicant:* New York University, 1158 Brown Building, Washington Square, NY 10003. *Instrument:* (3) Glass Bead Sterilizers, Model STERI 350. *Manufacturer:* Simon Keller AG, Switzerland. *Intended Use:* The instrument will be used in the investigation of developmental root morphogenesis in *Arabadopsis thalia* as well as nitrogen metabolism in Arabadopsis and Tobacco. *Application Received by Commissioner of Customs:* July 22, 1992.

Docket Number: 92-114. *Applicant:* Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Medical Center, Cannon Research Center, 1000 Blythe Boulevard, Charlotte, NC 28232-2861. *Instrument:* Electron Microscope, Model CM-10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used by faculty to study several areas of biomedical interest, including:

(1) Cellular and tumor immunology;

(2) Cartilage, connective tissue, and bone formation in tissue culture models;

(3) Bone formation and degradation in mice with x-linked hypophosphatemia;

(4) Cardiac muscle morphology;

(5) Vascular intimal changes following various types of angioplasties, and

(6) Vascular morphology related to atherosclerosis.

Application Received by Commissioner of Customs: July 22, 1992.

Docket Number: 92-115. *Applicant:* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 28 Tarzwell Drive, Narragansett, RI 02992.

Instrument: Data Acquisition and Logging System for Underwater Towed Body and Continuous Plankton Recorder System.

Manufacturer: Chelsea Instruments Ltd., United Kingdom.

Intended Use: The instrument will be used for studies of physical, chemical and biological states of the marine environment off the northeast coast of the United States. The experiments are standardized monitoring over broad ocean areas using research and opportunistic vessels. The objectives of the investigations are to develop indices of the state of health of the ocean ecosystem for predictive and management purposes. *Application Received by Commissioner of Customs:* July 22, 1992.

Docket Number: 92-116. *Applicant:* Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, NY 10461. *Instrument:* High Intensity Xenon Flashlamp System, Model XF-10.

Manufacturer: Dr. Gert Rapp, Germany. *Intended Use:* The instrument will be used for studies of Paramecium ciliary movements as well as its ciliary dynein activities, which is used as a model system for studying human trachael ciliary activity and sperm motility. The objectives of the studies are to (1) quantify dynein mediated microtubule movements with transiently applied minimum amount of ATP and (ii) measure changes in speed or direction of microtubule movements in response to changes in ATP, cAMP and calcium concentrations. *Application Received by Commissioner of Customs:* July 22, 1992.

Docket Number: 92-117. *Applicant:* University of California, Davis, Davis, CA 95616. *Instrument:* Electrophoresis for Solid Particles in Suspension, Model MKII. *Manufacturer:* Rank Brothers, United Kingdom. *Intended Use:* The instrument will be used to examine the oxidation reduction behavior of aqueous chromium in the presence of manganese dioxide and low molecular weight organic acids such as oxalate. Experiments will be conducted to seek to examine the charge characteristics of the manganese dioxide in the presence of chromium and to investigate the mechanisms of Cr oxidation and reduction by manganese dioxide at various pH and organic acid levels. *Application Received by Commissioner of Customs:* July 23, 1992.

Docket Number: 92-118. *Applicant:* North Dakota State University, Biochemistry Department, Box 5456, Administration Building, Old Main, room 17, Fargo, ND 58105. *Instrument:* Spectrofluorimeter, Model DX.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used to investigate the molecular basis of enzyme catalyzed

reactions. The enzymes involved in these studies are fatty acyl CoA dehydrogenase, soybean lipoxygenase, glycogen phosphorylase, phosphorylase kinase, aldolase, phosphofructokinase and fructose biophosphatase. The instrument will be used to employ steady state and transient kinetic techniques to delineate the microscopic pathways of these enzymes. *Application Received by Commissioner of Customs:* July 28, 1992.

Docket Number: 92–119. *Applicant:* Howard Hughes Medical Institute, Box 9812, New Haven, CT 06536–0812. *Instrument:* Electron Microscope, Model CM10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for analysis of biological specimens ranging from unicellular organisms to human tissues. The goal of the research will be to elucidate biological mechanisms at the cellular and subcellular levels. In addition, the instrument will be used to train pre and postdoctoral scientists in electron microscopy, in special courses in immunocytochemistry and electron microscopy in the Department of Cell Biology and in the course "Research Strategies in Molecular Genetics and Cell Biology." *Application Received by Commission of Customs:* July 28, 1992.

Docket Number: 92–120. *Applicant:* University of Virginia, Department of Pediatrics, Old Med School Hospital Drive, Charlottesville, VA 22908. *Instrument:* Automatic Karyotyping System, Model Cytoscan 3. *Manufacturer:* Applied Imaging International, United Kingdom. *Intended Use:* The instrument will be used for studies of chromosomes from cancer cells in order to identify recurring genetic changes characterizing human cancer cells. *Application Received by Commissioner of Customs:* July 28, 1992.

Docket Number: 92–121. *Applicant:* The Alexandria Hospital, 4300 Seminary Road, Alexandria, VA 22304. *Instrument:* Automatic Rapid Karyotyping System with Table, Model Cytoscan RK1. *Manufacturer:* Image Recognition Systems, United Kingdom. *Intended Use:* The instrument will be used to carry out automated computerized karyotyping of genetic specimens (amniocentesis, peripheral bloods, bone marrows and products of conception). It also will serve as a means by which documentation and storage of final result is achieved. *Application Received by Commissioner of Customs:* August 3, 1992.

Docket Number: 92–122. *Applicant:* County of Sacramento, 8521 Laguna Station Road, Elk Grove, CA 95758. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* PE Sciex, Canada. *Intended Use:* The instrument will be used to identify and quantitate the organic and bio-organic chemicals present in wastewater and riverwater; the exact identities are not all known. A thorough study of the various wastewaters and riverwaters will be made with the intent to fully define the matrices involved as a means of establishing background data representing "normal" conditions; the current levels of industrial pollution should also result from this work. *Application Received by Commissioner of Customs:* August 5, 1992.

Docket Number: 92–124. *Applicant:* Louisiana State University Medical Center, Department of Anatomy, 1901 Perdido Street, New Orleans, LA 70112–1393. *Instrument:* Electron Microscope, Model JEM–1210EX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for biomedical research to study the ultrastructure of tissue in the following proposed experiments:

(1) Localization of antibody labeling of various neurotransmitters and other neurochemicals within brain tissue,

(2) Localization of pathologies in cardiovascular tissue,

(3) Identification of pathology in retinal tissue after various retinal diseases, particularly retinitis pigmentosa and

(4) Characterization of defects in ultrastructure of tissue after various experimental manipulations.

In addition, the instrument will be used for training of graduate and medical students, postdoctoral fellows, medical residents and medical fellows. *Application Received by Commissioner of Customs:* August 5, 1992.

Docket Number: 92–125. *Applicant:* Lamont Doherty Geological, Observatory of Columbia University, Rt. 9W, Palisades, NY 10964. *Instrument:* ICP Mass Spectrometer, Model PQ2. *Manufacturer:* Vacuum General, United Kingdom. *Intended Use:* The instrument will be used in studies of geological rocks and minerals, solutions of sea water, riverwater, groundwater, atmospheric precipitation, sediments and their pore fluids, oceanic particulate materials, and other materials occurring on the surface and within the interior of the Earth. *Application Received by Commissioner of Customs:* August 5, 1992.

Docket Number: 92–126. *Applicant:* Texas A&M Research Foundation, Box 3758, University Drive and Wellborn Road, College Station, TX 77843. *Instrument:* Water Current Meter, Model SD–12. *Manufacturer:* Sensordata, Norway. *Intended Use:* The instrument will be used to measure three dimensional water velocity vectors in long-crested seas, short-crested seas and currents in the OTRC multi-directional wave/current model basin. *Application Received by Commissioner of Customs:* August 6, 1992.

Docket Number: 92–127. *Applicant:* Naval Hospital Oakland, Histopathology Laboratory, 8750 Mountain Boulevard, Building 500, Oakland, CA 94627–5000. *Instrument:* Electron Microscope, Model JEM–100CX. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used to carry out high resolution investigations of kidney diseases (study of changes in glomerulous membranes) and various tumors especially the differential diagnosis of the various poorly differentiated anaplastic cancers. The instrument will also be used in the training of residents in the training program. *Application Received by Commissioner of Customs:* August 6, 1992.

Docket Number: 92–128. *Applicant:* University of California, Santa Barbara, Department of Geological Sciences, Santa Barbara, CA 93106. *Instrument:* Noble Mass Spectrometer, Model MAP 216. *Manufacturer:* Mass Analyzer Products, Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the isotopic composition of Ar in a variety of minerals and rocks in order to determine their geologic ages. *Application Received by Commissioner of Customs:* August 6, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–23379 Filed 9–24–92; 8:45 am]

BILLING CODE 3510–DS–M

University of Arizona; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington DC.

Docket Number: 92–082. *Applicant:* University of Arizona, Tucson, AZ 85721. *Instrument:* Mass Spectrometer, Model Sector 54. *Manufacturer:* VG Isotech, Ltd., United Kingdom. *Intended Use:* See notice at 57 FR 30471, July 9, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent

scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.
Reasons: The foreign instrument provides: (1) internal precisions to 0.001% for neodymium and strontium; 0.002% for lead; and 0.05% for osmium, (2) seven Faraday collectors and (3) a Daly detector. These capabilities are pertinent to the applicant's intended purpose and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-23377 Filed 9-24-92; 8:45 am]

BILLING CODE 3510-DS-M

Virginia Polytechnic Institute and State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-007R. *Applicant:* Virginia Polytechnic Institute and State University, Blacksburg, VA 24061. *Instrument:* Plasma Etcher, Model CSE-2120L. *Manufacturer:* ULVAC, Japan. *Intended Use:* See notice at 57 FR 6000, February 19, 1992.

Comments: None received. *Decision:* Denied. *Reasons:* The application was provisionally denied (DWOP) in accord with 15 CFR 301.5(e). The applicant requested duty-free entry on grounds that the foreign article was a gift and that no domestic manufacturer of similar equipment was likely to offer such a donation. The DWOP informed the applicant that neither cost nor insufficient funds to purchase can justify duty wavier, which must be based on the technical inadequacy of domestic instruments for specific research needs pursuant to 15 CFR 301.5(d)(1)(i). Consultants at the National Institute of Standards and Technology provided us a list of twelve domestic suppliers of comparable equipment potentially capable of fulfilling the applicant's requirements. The DWOP asked the applicant to describe why products of these manufacturers would be unacceptable for the intended uses.

The applicant's resubmission stated that:

> You are correct in that we could have purchased the equipment from a U.S. company. The cost for new equipment would be approximately $250,000; if the equipment were used it would have cost approximately $150,000. As it is we were able to obtain the equipment for the cost of shipping only, approximately $5,200.

Pursuant to 15 CFR 301.5(e)(7):

> The resubmission should address the specific deficiencies cited in the DWOP. The Director may draw appropriate inferences from the failure of an applicant to provide the information requested in the DWOP.

The resubmission merely amplified the applicant's original rationale and failed to provide any evidence, as requested, of deficiencies of products from the list of domestic vendors supplied by our consultants. The statement that "* * * we could have purchased the equipment from a U.S. company" without elaboration implies that such equipment would be satisfactory, albeit costly. We deny the application because the applicant failed to address the specific deficiencies cited in the DWOP in accordance with 15 CFR 301.5(e)(7).

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-23376 Filed 9-24-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Niantic Dockominium Association from an Objection by the State of Connecticut

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of dismissal.

On July 9, 1992, the Under Secretary for Oceans and Atmosphere, United States Department of Commerce, dismissed the consistency appeal of Niantic Dockominium Association (Appellant) filed on January 10, 1991, with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of Coastal Zone Management Act of 1972 (CZMA), as amended 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations at 15 CFR part 930, subpart H. The Appellant applied to the U.S. Army Corps of Engineers (Corps) for a permit to conduct a dredge and fill operation, involving 2,000 cubic yards of fill material, to relocate a section of the presently-authorized Federal channel in the Niantic River, in the Town of East Lyme, County of New London, Connecticut. The Appellant proposed to relocate the channel in order to maintain existing marine structures, parts of which purportedly encroach upon the Federal channel. In conjunction with the Federal permit application, the Appellant submitted to the Corps for review by the State of Connecticut Department of Environmental Protection (State), the State's coastal management agency, under section 307(c)(3)(A) of the CZMA, a certification that the proposed activity is consistent with the State's Federally-approved Coastal Management Program (CMP).

On August 21, 1990, the State objected to the Appellant's consistency certification for the proposed project on the ground that the proposed dredge and fill operation and channel realignment were not in accordance with the State's CMP policy that requires that structures in coastal water be designed, constructed and maintained so as to minimize adverse impacts on coastal resources.

The Federal regulations implementing the CZMA provide, in relevant part, that the Secretary may dismiss consistency appeals for "good cause," including "Secretarial receipt of a detailed comment from the Federal agency stating that the agency has disapproved the Federal license, permit or assistance applications." 15 CFR 930.138(c).

On May 6, 1992, the Corps issued a letter to the Appellant denying the Appellant's permit application. In that denial, the Corps District Engineer provided a detailed description of the location and extent of the proposed dredge and fill operation, and a summary of the basis for the permit denial, including a determination, in accordance with 33 CFR 320-330, that the project is contrary to the public interest.

In light of the Federal permitting agency's decision to deny the Appellant's permit application, the Under Secretary dismissed the appeal for good cause pursuant to 15 CFR 930.128(c). The Appellant may not file another appeal from the State's objection to this permit application.

FOR ADDITIONAL INFORMATION CONTACT: Brett R. Joseph, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, N.W., suite 603, Washington, DC 20235, (202) 606-4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: September 18, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92-23278 Filed 9-24-92; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

September 21, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 225 is being increased by application of swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 21971, published on May 26, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 21, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 19, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1992 and extends through March 31, 1993.

Effective on September 22, 1992, you are directed to amend further the May 19, 1992 directive to increase the limit for Category 225 to 8,892,488 square meters [1], as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Federative Republic of Brazil.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-23290 Filed 9-24-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 26, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities to the Procurement List:

Charcoal, Activated, Technical
6810-00-728-7944
Nonprofit Agency: Pittsburgh Blind Association, Pittsburgh, Pennsylvania

Flag, Signal
8345-00-935-3203
Nonprofit Agency: Northeastern Association of the Blind, Albany, New York

Deletion

It is proposed to delete the following service from the Procurement List:

Janitorial/Custodial
Charles E. Boston USARC

[1] The limit has not been adjusted to account for any imports exported after March 31, 1992.

Houma, Louisiana

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-23355 Filed 9-24-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 26, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from a nonprofit agency employing individuals who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing a small entity to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities to the Procurement List:

Tube, Mailing and Filing
8110-00-244-7435
8110-00-271-1508
8110-00-271-1509
8110-00-291-0344
8110-00-291-0345
8110-00-291-0346
8110-00-291-0347
8110-00-291-0348
8110-00-725-1471
8110-00-298-2046
8110-00-969-5406
Nonprofit agency: Pinellas Association for Retarded Children, St. Petersburg, Florida.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-23356 Filed 9-24-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List an arm and leg splint to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 26, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 24, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 32976) of the proposed addition of these splints to the Procurement List. During the development phase of this proposed addition to the Procurement List, the current contractor noted that it is a minority firm and indicated that the addition would cause it to lose sales and jobs, with negative effects on profitability and employee morale. The contractor did not provide details.

In light of the current contractor's total sales volume, the Committee does not consider the loss of sales caused by adding these splints to the Procurement List to constitute severe adverse impact. Moreover, the Committee took into account the impact of previous additions on the current contractor and noted that despite such additions, the annual sales volume had grown significantly. The Committee believes that the possible loss of jobs for minority employees, which has not been substantiated, is outweighed by the creation of employment for blind persons among whom unemployment is extremely high.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Splint, Arm, Pneumatic
6515-00-935-6592
Splint, Leg, Pneumatic
6515-00-935-6593

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-23357 Filed 9-24-92; 8:45 am]

BILLING CODE 6820-01-M

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a barracks trunk locker

to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 26, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 17, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 13715) of the proposed addition of this locker to the Procurement List. After the close of the comment period, comments were received from the current contractor and the Economic Development Department of the city in which the contractor is located. Both comments indicated that the Government sales of the trunk locker proposed for addition to the Procurement List constitute a large part of the contractor's total sales and that loss of these sales could cause the contractor to close, resulting in unemployment for 100 economically disadvantaged people.

In response to these comments and information about declining government demand for the trunk locker, the Committee has decided to reduce the portion of the Government requirement for the trunk to be added to the Procurement List to 10%. This action will enable the Committee to fulfill its mission of creating employment for people with severe disabilities without the potential of causing a severe adverse impact on the current contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Trunk Locker, Barracks
8460-00-243-3234
(10% of the Government requirement)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 92-23358 Filed 9-24-92; 8:45 am]
BILLING CODE 6820-33-M

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a loop clamp to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 26, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 31, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 33943) of the proposed addition of this clamp to the Procurement List. While no comments were received during the public comment period, comments were received from the current contractor for this item in response to a Committee request for sales information related to another item under development for addition to the Procurement List. The President of the firm stated that in recent years sales had declined dramatically and that several employees had been laid off. He indicated that every order was needed and that laid off employees could not be rehired, or new employees hired, if the item were added as proposed. He pointed out that the firm was a small business and the vast majority of its sales were to the Federal Government.

The loop clamp being added to the Procurement List represents a small percentage of the contractor's total sales. Consequently, the Committee has concluded that the loss of this item will not have a severe adverse impact on the contractor, even considering the current state of the economy. The Committee believes that any potential loss of employment by the contractor's workers or its inability to rehire workers previously laid off is outweighed by the employment that this action will generate for persons with severe disabilities.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:
Clamp, Loop, 5340-01-277-6184.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 92-23359 Filed 9-24-92; 8:45 am]
BILLING CODE 6820-33-M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 26, 1992.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 12, 26, July 31, August 7 and 14, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 25023, 28658, 33943, 34912 and 36640) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities or services.

3. The action will result in authorizing small entities to furnish the commodities or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities or services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Parts Kit, Spare

1375–01–217–8725

Tool Box, Portable

5140–00–226–9018

Clamp, Loop

5340–01–260–8990
5340–01–252–4644
5340–01–278–4043
5340–01–276–8539
5340–01–276–8179
5340–01–118–6697
5340–01–118–6696
5340–01–118–6677
5340–01–998–3164

Specimen Kit, Urine

6530–00–075–6636

Services

Commissary Shelf Stocking, Naval Air Station, Corpus Christi, Texas

Commissary Shelf Stocking and Custodial, Selfridge Air National Guard Base, Mt. Clemens, Michigan

Janitorial/Custodial, Naval Station, Mobile, Alabama

Janitorial/Custodial, Paul G. Rogers Federal Building and Courthouse, 701 Clematis Street, West Palm Beach, Florida

Janitorial/Custodial, Naval Support Activity Commissary, New Orleans, Louisiana

Janitorial/Custodial, Air National Guard Base, Buildings 175 & 197, Dormitories 5236, 5238 & 817, Otis, Massachusetts

Janitorial/Custodial, Federal Building, 1709 Jackson Street, Omaha, Nebraska

Janitorial/Custodial, U.S. Army Buffalo Reservation, Buffalo, New York

Janitorial/Custodial, Ysleta U.S. Border Station, El Paso, Texas

Microfilming of EEG Records, Veterans Administration Medical Center, Buffalo, New York.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–23360 Filed 9–24–92; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: 5–6 November 1992.

Time: 0900–1600 Hours.

Place: Pentagon.

Agenda: The Army Science Board's Command, Control, Communications and Intelligence (C3I) Issue Group will meet to do a draft report on Artificial Intelligence (AI) and Information Mission Area (IMA). This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–23335 Filed 9–24–92; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: 26–27 October 1992.

Time: 0900–1600 Hours.

Place: Pentagon.

Agenda: The Army Science Board's Command, Control, Communications and Intelligence (C3I) Issue Group will meet to review the state of Artificial Intelligence (AI) technology. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–23336 Filed 9–24–92; 8:45 am]

BILLING CODE 3710–08–M

U.S. Army Reserve Command Independent Commission; BC 3710–01; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the CANCELLATION of the following Committee meeting:

Name of Committee: U.S. Army Reserve Command Independent Commission.

Date of Meeting: September 28 & 29, 1992.

Place: 1225 Jefferson Davis Highway, suite 1410, Arlington, Virginia 22202.

Time: 8 a.m.–5 p.m.

Purpose: The Commission was established to assess the progress and effectiveness of

the United States Army Reserve Command since its establishment.

Previous Notice: The announcement of this meeting was published in the **Federal Register** on July 30, 1992, page 33720.

Ellis L. Pennington,

LTC, GS, U.S. Army Reserve Command, Independent Commission.

[FR Doc. 92-23339 Filed 9-24-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: 13-14 October 1992.

Time: 0830-1700 Hours.

Place: Vicksburg, MS and vicinity.

Agenda: The Army Science Board's Infrastructure and Environment Panel will hold its fourth meeting on "Groundwater Modeling in the Army's Environmental Restoration Programs." This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-23334 Filed 9-24-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: 5-6 October 1992.

Time: 0900-1600 Hours.

Place: Pentagon.

Agenda: The Army Science Board's Command, Control, Communications and Intelligence (C3I) Issue Group will meet to review Artificial Intelligence (AI) and Information Mission Area (IMA). This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-23333 Filed 9-23-92; 8:47 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing sponsored by the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: Friday, October 16, 1992, beginning at 9 a.m. and ending at 5 p.m.

ADDRESSES: Rayburn House Office Building, room 2175, Independence Avenue between South Capitol and First Street, SW., Washington DC 20515.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB-3, 7th & D Streets, SW., Washington, DC 20202-7582 (202) 708-7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100-50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, and conducting a study of institutional lending in the Stafford Student Loan Program. The Congress has also directed the Advisory Committee to assist with a series of special assessments and produce an in-depth student loan simplification.

The Advisory Committee will meet in Washington, DC on October 16, 1992, from 9 a.m. to 5 p.m.

The proposed agenda includes discussion sessions on (a) the paperwork burden experienced by financial aid officers within the current structure of the loan program; (b) simplification and standardization of forms, procedures and other aspects of guaranty operations; (c) simplification of the bank repayment process; and (4) efficient utilization of loan programs. Those who cannot attend the hearing are invited to submit written testimony which will be presented to the Advisory Committee members and will become a part of the Committee's official records.

The intent of the Washington hearing is to involve as witnesses many of the education, financial aid and student loan associations. In addition, members of congressional staffs are being invited to share their views on the study and the loan program.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Streets, SW., Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: September 21, 1992.

Brian K. Fitzgerald,

Staff Director Advisory Committee on Student Financial Assistance.

[FR Doc. 92-23277 Filed 9-24-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-836-000, et al.]

PacifiCorp, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER92-836-000]

September 17, 1992.

Take notice that PacifiCorp on September 11, 1992, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Letter Agreement between PacifiCorp and Western Area Power Administration (Western) dated September 10, 1992 (Agreement).

The Agreement provides for establishing the interconnection between PacifiCorp's and Western's electrical systems at Flaming Gorge as an interim Point of Interconnection under PacifiCorp Rate Schedule FERC No. 262.

PacifiCorp requests an effective date of September 14, 1992, the date Western schedules at the Flaming Gorge Point of Interconnection are to commence.

Copies of this filing were supplied to Western, the Public Utility Commission

of Oregon and the Utah Public Service Commission.

Comment date: September 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa Electric Light and Power Co.

[Docket No. ES92-57-000]

September 16, 1992.

Take notice that on September 10, 1992, Iowa Electric Light and Power Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $125 million of short-term notes with a final maturity date no later than December 31, 1996.

Comment date: October 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Inter-Power/AhlCon Partners, L.P.

[Docket No. QF87-632-002]

September 16, 1992.

On September 10, 1992, Inter-Power of Pennsylvania, Inc., on behalf of Inter-Power/AhlCon Partners, L.P. (Inter-Power/AhlCon) of Three Penn Center West, suite 401, Pittsburgh, Pennsylvania 15276, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near the village of Clover, in Cambria County, Pennsylvania. The Commission previously certified the facility as a qualifying small power production facility, Inter-Power of Pennsylvania, Inc., 41 FERC ¶ 62,175 (1987), and recertified the facility as a qualifying small power production facility, Inter-Power/AhlCon Partners, L.P., 59 FERC ¶ 62,059 (1992), to reflect a change in the ownership, increase in the maximum net capacity of the facility, and inclusion of a transmission line that was to connect the facility with Pennsylvania Electric Company. The instant request for recertification is due to a sale-lease-back arrangement of the facility, a change in ownership structure of the lessee, Inter-Power/AhlCon, and in increase in the maximum net capacity of the facility to 102 MW.

Comment date: October 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Indianapolis Power & Light Co.

[Docket No. ES92-58-000]

September 16, 1992.

Take notice that on September 10, 1992, Indianapolis Power & Light Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $150 million of unsecured short-term promissory notes on or before December 31, 1994, with a final maturity date no later than December 31, 1994.

Comment date: October 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Old Dominion Electric Cooperative

[Docket No. ES92-58-000]

September 16, 1992.

Take notice that on September 11, 1992, Old Dominion Electric Cooperative filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $60.5 million of Tax-Exempt Debt Securities. Also, Old Dominion Electric Cooperative Requests exemption from the Commission's competitive bidding regulations.

Comment date: October 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Co.

[Docket No. ER88-525-002]

September 16, 1992.

Take notice that on August 14, 1992, Commonwealth Edison Company tendered for filing its compliance filing in the above referenced docket.

Comment date: September 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corp.

[Docket No. ER92-413-000]

September 16, 1992.

Take notice that on August 28, 1992, Niagara Mohawk Power Corporation (Niagara) tendered for filing a supplemental filing in the above-referenced docket.

Comment date: September 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. The Detroit Edison Co.

[Docket No. ER92-728-000]

September 17, 1992.

Take notice that The Detroit Edison Company (Detroit Edison) on September 1, 1992, tendered for filing (1) First Revised Sheet No. 10b to Detroit Edison's FERC Electric Tariff, Volume No. 1 which provides for the sale of experimental seasonal peaking capacity and energy, and (2) an executed service agreement between Detroit Edison and Wolverine Power Supply Cooperative, Inc. for the sale of such capacity and energy.

Detroit Edison requests an effective date of October 1, 1992 for both the service proposed under the rate schedule and the service agreement executed by Wolverine Power Supply Cooperative.

Comment date: September 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Power Co.

[Docket No. ER92-816-000]

September 17, 1992.

Take notice that on September 1, 1992, Consumers Power Company (Consumers) tendered for filing a Service Agreement between Consumers and Wolverine Power Supply Cooperative, Inc. (Wolverine). Under the Service Agreement, Wolverine would receive transmission service under Consumers' FERC Electric Tariff, Original Volume No. 4. Copies of the filing were served on Wolverine and on the Michigan Public Service Commission.

Comment date: September 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Co.

[Docket Nos. EL89-34-005, EL89-34-003, ER88-107-001, ER88-120-001, E-7777-013 (Phase I), Project Nos. 137, No. 233-033, No. 1988-015, and No. 2735-027]

September 17, 1992.

Take notice that on August 26, 1992, pursuant to the Commission's May 12, 1992 letter, Pacific Gas and Electric Company (PG&E) advised the Commission of the Northern California Power Agency's (NCPA) election to discontinue the applicability of the Annual Non-Diablo Partial Requirements Demand Rate Adjustment Factor as defined in section IV.3(b) of appendix A of the Interconnection Agreement between PG&E and NCPA.

Copies of this filing have been served upon NCPA, the California Public Utilities Commission and the parties to the service list in the above referenced dockets.

Comment date: September 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Philadelphia Electric Co.

[Docket No. ER92-833-000]

September 17, 1992.

Take notice that on September 10, 1992, Philadelphia Electric Company (PE) tendered for filing under Section 205 of the Federal Power Act and part 35 of the Regulations issued thereunder, an Agreement between PE and Delmarva Power & Light Company (Delmarva) dated September 3, 1992.

PE states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to Delmarva. The Agreement supersedes an agreement between PE and Delmarva dated March 12, 1991, which is on file with the Commission as PE's Rate Schedule FERC No. 56. In order to optimize the economic advantage to both PE and Delmarva, PE requests that the Commission waive its customary notice period and permit the agreement to become effective on September 14, 1992.

PE states that a copy of this filing has been sent to Delmarva and will be furnished to the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: September 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Power and Light Co.

[Docket No. ER92-837-000]

September 17, 1992.

Take notice that on September 11, 1992, Wisconsin Power and Light Company tendered for filing with the Federal Energy Regulatory Commission two Letter Agreements between Wisconsin Power and Light Company (WP&L) and Interstate Power. Under the General Purpose Energy Agreement WP&L will make non-firm energy available to Interstate Power Company with terms and quantity to be arranged upon mutual agreement. Under the Negotiated Capacity Agreement WP&L will make capacity and energy available to Interstate Power Company with negotiated degrees of firmness, variable capacity charges, and variable time duration.

Comment date: September 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. United States Department of Energy—Boulder Canyon Project

[Docket No. EF91-5091-000]

September 17, 1992.

Take notice that on September 15, 1992, the Western Area Power Administration of the United States Department of Energy (Western) filed a document entitled "Settlement Agreement." Western describes the document as a fully executed settlement agreement and states that it has been served on all parties on the service list in this proceeding.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Co. (Minnesota Co.)

[Docket No. ER92-79-000]

September 17, 1992.

Take notice that on September 9, 1992, Northern States Power Company (Minnesota) [NSP-MN or NSP] tendered for filing an amendment supporting acceptance for filing of certain Joint Transmission Network Agreements dated January 31, 1991, between NSP-MN, Cooperative Power Association [CPA], and United Power Association [UPA].

The Joint Transmission Network [JTN] Agreements essentially provide that the Parties utilize, and share the costs of, a designed 345 kV Joint Transmission Network (JTN) to deliver electric power and energy to their respective transmission systems. The Parties intend to either own facilities, or compensate other Parties providing facilities so that each Party's investment contribution in the JTN is commensurate with its use of the JTN in accordance with the JTN Agreements. The Parties desire to specify compensatory obligations among them in order to achieve parity between each Party's investment contribution and use of the JTN as of the effective date of the JTN Agreement. The amendment contains certain explanatory materials describing the purpose, intent and implementation of the JTN Agreements.

NSP requests that the JTN Agreements be accepted for filing effective January 1, 1985, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule FERC No. 439, the original rate schedule for service to CPA and UPA.

Comment date: September 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Montaup Electric Co.

[Docket No. ER92-818-000]

September 17, 1992.

Take notice that on September 1, 1992, Montaup Electric Company (Montaup) filed a Notice of Cancellation of an agreement between itself and Massachusetts Wholesale Electric Company (MMWEC).

Under this Agreement Montaup agreed to sell to MMWEC capacity and energy from its Canal Electric Unit No. 2 for the period May 1, 1992 through October 31, 1992. On May 8, 1992, Montaup tendered for filing this unit sale agreement for the sales to commence May 1, 1992. By order of August 3, 1992, the Commission accepted the MMWEC filing and ordered refunds of amounts in excess of variable costs collected for service prior to July 7, 1992. On August 21, 1992, Montaup filed an Application for Rehearing requesting the Commission to revise its order to eliminate the refunds. No action has been taken on the Application for Rehearing.

The Agreement between Montaup and MMWEC expires by its own terms on October 31, 1992. Montaup hereby requests that the Amendment with MMWEC be terminated on that date.

Comment date: September 30,1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23282 Filed 9-24-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

September 21, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 11050–001.

c. *Date Filed:* September 7, 1992.

d. *Applicant:* North Side Canal Company.

e. *Name of Project:* U–3.

f. *Location:* On the U Canal in Jerome County, Idaho, T. 7 S., R. 16 E., Sections 23, 24, and 25 (about 10 miles downstream from the head of the canal). The canal system originates from the Snake River near Milner Dam in the vicinity of Hazelton, Idaho.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kip Runyan, Ida-West Energy Company, P.O. Box 7867, Boise, Idaho 83703, (208) 336–4254.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. *Comment Date:* November 6, 1992.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure within the canal embankment; (2) a 150-foot-long, 10-foot-high by 10-foot-wide reinforced concrete box-shaped penstock; (3) an 8-foot-high by 8-foot-wide box-shaped bypass line; (4) a powerhouse with a 3.2-megawatt generating unit; and (5) other appurtenances. The project would have an estimated average annual generation of 11,000 megawatthours.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23343 Filed 9–24–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–699–000, et al.]

Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commissions:

1. Panhandle Eastern Pipe Line Co.

[Docket No. CP92–699–000]

September 15, 1992.

Take notice that on September 11, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642 Houston, Texas 77251–1642, filed in Docket No. CP92–699–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for service to United Cities Gas Company (United Cities), an existing jurisdictional sales customer, under Panhandle's blanket certificate issued in Docket No. CP83–83–000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Panhandle requests authorization to install the proposed delivery point, to be known as Hannibal #2 and consisting of two 4-inch hot taps and appurtenant facilities on Panhandle's 10 and 12-inch Quincy laterals in Marion County, Missouri. It is stated that the delivery point is required to accommodate the delivery of gas to be sold by Panhandle to United Cities under Panhandle's Rate Schedule G–2 and pursuant to a sales agreement between Panhandle and United Cities dated September 9, 1992.

It is asserted that the delivery point would be used for the delivery of up to 11,500 Mcf on a peak day and that this volume would be added to the sales agreement between Panhandle and United Cities. It is further asserted that the volumes proposed for delivery at Hannibal #2 would not exceed United Cities' existing entitlement from Panhandle and that the proposal would have no impact on Panhandle's peak day or annual deliveries. The construction cost of the facilities is estimated at $209,000, for which Panhandle would be reimbursed by United Cities.

Comment date: October 30, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Alabama-Tennessee Natural Gas Co.

[Docket No. CP92–694–000]

September 15, 1992.

Take notice that on September 8, 1992, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP92–694–000 a request pursuant to sections 7(b), 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon firm sales service of natural gas by Alabama-Tennessee to Amoco Chemical Corporation (Amoco) in Decatur, Alabama under its blanket certificate issued in Docket No. CP85–359–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Alabama-Tennessee states that it is seeking authorization to abandon direct sales service in the amount of 4,600 Mcf of natural gas per day presently dedicated on a firm basis to Amoco. Alabama-Tennessee states that the Commission authorized this service to Amoco under a certificate of public convenience and necessity which it issued on April 10, 1970 in Docket No. CP70–191. Alabama-Tennessee does not propose the abandonment of any facilities in connection with this request.

Alabama-Tennessee states that it has not made firm natural gas deliveries to Amoco under the subject certificate since October 31, 1988, when the underlying contract for the provision of direct sales service by Alabama-Tennessee to Amoco terminated. Alabama-Tennessee states that Amoco does not wish to continue, extend or renew this direct sales service, and that Amoco consents to this request for abandonment.

Comment date: October 30, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Co.

[Docket No. CP92–700–000]

September 15, 1992.

Take notice that on September 11, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP92–700–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade and operate its existing delivery meter and appurtenant facilities at the Cabot Corporation (Cabot) Plant M&R Station No. 9176 located in Douglas County, Illinois to increase the delivery pressure to Cabot under its blanket certificate issued in Docket No. CP83–83–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it requests authority to increase the delivery pressure at Station 9176 from 25 psig to 350 psig. Panhandle further states that the total volumes to be delivered to Cabot will not exceed Cabot's existing contract demand. Panhandle estimates that the cost of construction would be approximately $30,000 which would be reimbursed to Panhandle by Cabot.

Comment date: October 30, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Co.

[Docket No. CP92–701–000]

September 15, 1992.

Take notice that on September 11, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–701–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 175.212) for authorization to establish two new alternate interim delivery points to its existing firm transportation contract with Boston Gas Company (Boston Gas) under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that, pursuant to Boston Gas' request, it has agreed to utilize two existing delivery points on an alternate interim basis only, near Reading and Beverly-Salem, Massachusetts, under the provisions of the NET service agreement between Tennessee and Boston Gas. Tennessee further states that the two new points are needed for use on an alternate interim basis because the previously authorized firm delivery point (authorized at 53 FERC 61,194) that was to be constructed at Danvers, Massachusetts, has not yet been constructed. Tennessee explains that such delivery point is the subject of expressed adamant opposition by local residents and that Tennessee and Boston Gas are currently discussing other possible locations for the Danvers delivery point.

Comment date: October 30, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Co.

[Docket No. CP92–707–000]

September 17, 1992.

Take notice that on September 15, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP92–707–000 a request pursuant to § § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to increase deliveries of natural gas to Peoples Natural Gas Company, A Division of UtiliCorp United Inc. (Peoples), at an existing delivery point and to construct and operate related facilities under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to deliver volumes amounting to 212 Mcf per day on a peak day basis, and 3,780 Mcf annually, at the East Big Marine Lake, Minnesota, delivery point. Northern states that the proposed volumes are within the currently authorized level of firm entitlements for Peoples. Northern explains that the deliveries of gas would be served from the total firm entitlements currently assigned to the community of Pine City. Northern states that Peoples has not requested that any firm entitlements be assigned to this delivery point. Northern advises that in addition to jurisdictional gas sales to Peoples under Northern's Rate Schedule CD–1, gas would be transported under Rate Schedule FT–1 for delivery to Peoples at the proposed delivery point. It is stated that the end use of the gas would be for residential, commercial, and industrial purposes. Northern estimates that the cost of upgrading the facilities would be $24,678, which would be reimbursed by Peoples.

Comment date: November 2, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP92–696–000]

September 17, 1992.

Take notice that on September 11, 1992, Arkla Energy Resources, (AER), a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP92–696–000 a request pursuant to § § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate facilities in Oklahoma under its blanket certificate issued in Docket Nos. CP82–384–000 and CP92–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER states that it proposes to construct and operate one new delivery tap to EnMark Gas Corporation in Kay County, Oklahoma.

Comment date: November 2, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Co.

[Docket No. CP92–702–000]

September 17, 1992.

Take notice that on September 14, 1992, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP92–702–000, a request pursuant to § 157.205 of the Commission's Regulations Under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Peoples Natural Gas Company (Peoples), under the authorization issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it requests authority to upgrade the Schuyler TBS #2 delivery point located in Section 28, T17N, R3E, Colfax County, Nebraska to accommodate increased deliveries to Peoples under Northern's Rate Schedule IT–1. It is stated that Peoples has requested service at this delivery point starting with the 1992–93 heating season, due to the increased requirements within Peoples existing service area, primarily for Excel Packing Corporation, a beef processing operation.

Northern states that the estimated volume of natural gas to be delivered to Peoples at the Schuyler TBS #2 is expected to result in an increase in Northern's peak day deliveries of 960 Mcf per day and 132,000 Mcf per year on an annual basis. Further, it is estimated that the cost to upgrade the delivery point is $70,000.

Northern advises that the total volumes to be delivered to Peoples after the request do not exceed the total volumes authorized prior to the request. Northern further states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Comment date: November 2, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. K N Energy, Inc.

[Docket No. CP92–706–000]

September 17, 1992.

Take notice that on September 15, 1992, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP92–706–000, a request pursuant to § 157.205 of the Commission's Regulations Under the

Natural Gas Act (18 CFR 157.205) for authorization to add three new wholesale delivery points to The City of Colorado Springs, Colorado (The City) and to add two new wholesale delivery points to Public Service Company of Colorado (PSCo), both existing customers, under KN's blanket certificate, issued in Docket Nos. CP83–140–000 and CP84–140–001, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N states that The City and PSCo have requested new delivery points from K N at an existing point of interconnection between the facilities of Natural Gas Pipe Line Company and CIG in Beaver County, Oklahoma (Forgan Delivery Point) and at a point of interconnection to be established between the facilities of Northern Gas Company and CIG in Carbon County, Wyoming (Sinclair Delivery Point). In addition, K N states that The City has requested a new delivery point from K N at an existing point of interconnection between the facilities of Panhandle Eastern Pipeline Company and CIG in Adams County, Colorado (Wattenberg Delivery Point). CIG would transport the gas from the delivery points to the City and PSCo, it is stated.

K N states that there will be no change in the total volumes presently authorized for delivery to The City and to PSCo as a result of the addition of these delivery points. K N further states that there will be no adverse impact on K N's peak day and annual deliveries and that K N has sufficient capacity to accomplish the deliveries without detriment or disadvantage to K N's other customers.

Comment date: November 2, 1992, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23281 Filed 9–24–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–1–20–000, TM93–2–20–000, TQ92–5–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 21, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 16, 1992, tendered for filing proposed changed in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

I. Proposed to be effective September 17, 1992

Primary Tariff Sheets
- 2 Sub 13 Rev Sheet No. 21
- 2 Sub 13 Rev Sheet No. 22
- 2 Sub 9 Rev Sheet No. 25
- 2 Sub 13 Rev Sheet No. 26
- 2 Sub 13 Rev Sheet No. 27
- 2 Sub 13 Rev Sheet No. 28
- 2 Sub 13 Rev Sheet No. 29

Alternate Tariff Sheets
- Alt 2 Sub 13 Rev Sheet No. 21
- Alt 2 Sub 13 Rev Sheet No. 22
- Alt 2 Sub 9 Rev Sheet No. 25
- Alt 2 Sub 13 Rev Sheet No. 26
- Alt 2 Sub 13 Rev Sheet No. 27
- Alt 2 Sub 13 Rev Sheet No. 28
- Alt 2 Sub 13 Rev Sheet No. 29

Algonquin states that the revised tariff sheets are being filed as part of Algonquin's Out of Cycle Quarterly Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment pursuant to sections 17 and 39 of the General Terms and Conditions of Algonquin's FERC Gas Tariff. The sales demand rate reflects an increase of $0.089 per MMBtu from the demand rate contained in Algonquin's last Quarterly PGA filing, which was made in Docket No. TQ92–4–20 on July 31, 1992 and approved by FERC in a Letter Order dated August 28, 1992.

Algonquin further states that the primary tariff sheets listed above are based on FERC approval of both National's compliance rates filed in Docket No. RP86–136 and Transco's motion rates filed in Docket No. RP92–137. The alternate sheets are based solely upon Transco's motion rates.

Algonquin is also filing as part of its FERC Gas Tariff the following sheets:

II. Proposed to be effective October 1, 1992

Primary Tariff Sheets
- 2 Sub 14 Rev Sheet No. 21
- 2 Sub 14 Rev Sheet No. 22
- 2 Sub 10 Rev Sheet No. 25
- 2 Sub 14 Rev Sheet No. 26
- 2 Sub 14 Rev Sheet No. 27
- 2 Sub 14 Rev Sheet No. 28
- 14 Rev Sheet No. 29

Secondary Tariff Sheets
- Alt 2 Sub 14 Rev Sheet No. 21
- Alt 2 Sub 14 Rev Sheet No. 22
- Alt 2 Sub 10 Rev Sheet No. 25
- Alt 2 Sub 14 Rev Sheet No. 26
- Alt 2 Sub 14 Rev Sheet No. 27
- Alt 2 Sub 14 Rev Sheet No. 28
- Alt 14 Rev Sheet No. 29

Algonquin states that National, on August 31, 1992, filed its quarterly PGA in Docket No. TQ92–8–16 to be effective October 1, 1992. In this filing National filed both primary and alternate sheets. Algonquin herein also files primary and alternate tariff sheets to track both Algonquin's primary and alternate sheets proposed to be effective September 17, 1992 and National's primary and alternate tariff sheets proposed to be effective October 1, 1992. Algonquin also states that the effect of the tariff sheets is to increase the demand rate by $0.014 per MMBtu.

III. Proposed to be effective October 1, 1992

Algonquin also stated that it is filing the above tariff sheet to reflect the reduction in Texas Eastern's ACA rate. Pursuant to section 4 of Rate Schedule ATAP, Algonquin is filing this tariff sheet to track the changes made by Texas Eastern to track the changes in the underlying rate. The effect is to reduce the commodity rates for ATAP transportation by $0.0001.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest should be filed on or before September 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23342 Filed 9–24–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91-161-000, RP91-160-000, et al.]

Columbia Gas Transmission Corp., Columbia Gulf Transmission Co, Informal Settlement Conference

September 21, 1992.

Take notice that an informal conference will be convened in this proceeding on Tuesday, September 29, 1992 and Wednesday, September 30, 1992, at 10 a.m. for the purpose of exploring the possible settlement of the above-referenced dockets. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE. Washington DC, 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Lorna J. Hadlock at (202) 208-0737 or David R. Cain at (202) 208-0917.

Lois D. Cashell,

Secretary

[FR Doc. 92-23344 Filed 9-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-570-003]

Southern Company Services, Inc; Filing

September 21, 1992.

Take notice that on November 6, 1991, August 5, 1992, and August 13, 1992 Southern Company Services, Inc. tendered for filing supplemental information in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 1, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23341 Filed 9-24-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-78-NG]

Louis Dreyfus Energy Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas to Canada and Mexico and Vacating Existing Authorization

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Louis Dreyfus Energy Corp. a blanket authorization to import up to 182.5 Bcf of natural gas from Canada, to export back to Canada up to 182.5 Bcf of imported Canadian gas, and to export up to 182.5 Bcf of domestically produced natural gas to Mexico and Canada, over a two-year term beginning on the date of first delivery. The order also vacates the authorization granted to L.D. Energy Corp. by DOE/FE Opinion and Order No. 409.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 21, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-23372 Filed 9-24-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4511-7]

Lead Redesignation to Nonattainment; Hillsborough County, FL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: Sections 107 (d)(3) and (d)(5) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (Pub. L. 101-549, Nov. 15, 1990) (the Act), authorizes EPA to require States to designate areas (or portions of areas) in the state as nonattainment, attainment, or unclassifiable for the National Ambient Air Quality Standard (NAAQS) for lead. On June 24, 1992, EPA notified the Governor of Florida that the lead designation for a portion of Hillsborough County, Florida, should be revised from unclassifiable to nonattainment, based upon a monitored violation of the NAAQS for lead.

EPA is giving notice to the public of this action as required by section 107(d)(3)(A) of the Act.

ADDRESSES: Copies of EPA's letter to the Governor are available for public inspection and copying during normal business hours at the following agencies:

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

FOR FURTHER INFORMATION CONTACT: Richard Schutt of the EPA Region IV Air Programs Branch at 404-347-2864 and at the above address.

SUPPLEMENTARY INFORMATION: On April 22, 1991, (56 FR 16274) EPA announced that it had notified the governors of affected states that they should proceed to designate as nonattainment areas those areas that had recorded violations of the National Ambient Air Quality Standard (NAAQS) for lead. EPA published a list of areas that the governors had been requested to designate as unclassifiable if they contained stationary lead sources which EPA believed to be capable of violating the lead NAAQS, but for which existing air quality data was insufficient to designate as attainment or nonattainment. Included in that list was Hillsborough County, Florida. However, a lead value of 2.27 micrograms per cubic meter was reported for the fourth quarter of 1991 by a monitor located in Hillsborough County. This value violates the current lead NAAQS of 1.5 micrograms per cubic meter as a quarterly average.

Lead nonattainment areas are generally defined by the county perimeter for the county in which the

ambient lead monitors recorded the violation of the lead NAAQS and/or in which a lead source is located. As an alternative, EPA has indicated that states may seek to define boundaries using certain techniques to justify the chosen boundary (56 FR 56694 and 56707, November 6, 1991).

EPA had approved, prior to the identification of the lead NAAQS violation, the following unclassifiable lead area (56 FR 56829, November 6, 1991), consisting of a portion of Hillsborough County:

An area encompassed within a radius of (5) kilometers centered at UTM coordinates: 364.0 East 3093.5 North, Zone 17 (in city of Tampa).

This area surrounds the secondary lead smelting operation of Gulf Coast Recycling, a battery recycling facility. EPA believes it is reasonable to rely on the current Hillsborough County unclassifiable boundary as the nonattainment area boundary since the State had previously demonstrated that this is the area impacted by Gulf Coast Recycling. However, any ultimate determination will be made after considering any comments from the State of Florida, and any comments submitted by the public. Under section 107(d)(3)(B) of the Act, the Governor must submit the lead designation for this area that he deems appropriate no later than 120 days after receipt of EPA's notification.

The EPA must then promulgate the redesignation proposal submitted by the Governor, making such modifications as it deems necessary, no later than 60 days after the aforementioned 120 day time period has expired. Whenever EPA intends to make a modification, the agency will notify the state and provide such state with an opportunity to demonstrate why any proposed modification is inappropriate. EPA shall give such notification no later than 60 days before the date the redesignation is promulgated, including any modification thereto. If the Governor fails to submit the list in whole or in part, EPA shall promulgate the redesignation that is deemed appropriate for the area (or portion thereof) not redesignated by the state.

Any State containing an area designated as nonattainment for lead must submit a State Implementation Plan (SIP) to EPA within 18 months of the nonattainment designation meeting the applicable requirements of Part D, Title I of the Act (Section 191(a), 42 U.S.C. 7514(a)). The SIP must provide for attainment of the lead standard as expeditiously as practicable, but no later than five (5) years from the date of the nonattainment designation (Section 192(a), 42 U.S.C. § 7514a(a)).

Authority: 42 U.S.C. 7401–7671(q).

Dated: September 10, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92–23324 Filed 9–24–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4511–6]

Review of National Secondary Ambient Air Quality Standards for Sulfur Oxides; Proposed Consent Decree

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; opportunity for public comment.

SUMMARY: Notice is hereby given of a proposed consent decree in litigation concerning review of the national secondary ambient air quality standards for sulfur oxides under the Clean Air Act ("Act"). As discussed more fully below, the Environmental Protection Agency ("EPA") is providing an opportunity for public comment on the proposed decree under section 113(g) of the Act.

DATES: Written comments on the proposed decree must be received by October 26, 1992.

ADDRESSES: Written comments should be sent, preferably in triplicate, to Gerald K. Gleason, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Copies of the proposed decree are available from Betty S. Mobley at the same address (telephone 202–260–7606).

FOR FURTHER INFORMATION CONTACT: John H. Haines (Program Officer), telephone 919–541–5533 or Gerald K. Gleason (Senior Attorney), telephone 202–260–7623.

SUPPLEMENTARY INFORMATION: In *Environmental Defense Fund* v. *Reilly*, No. 85 Civ. 9507 (S.D.N.Y.), the Environmental Defense Fund and other plaintiffs sued EPA under section 304 of the Act to compel review and revision of the national ambient air quality standards ("NAAQS") for sulfur oxides, codified at 40 CFR 50.4 and 50.5, under section 109(d) of the Act. EPA and the plaintiffs have moved to lodge with the U.S. District Court for the Southern District of New York a proposed consent decree intended as an alternative to further litigation in response to a decision of the U.S. Court of Appeals for the Second Circuit. *Environmental Defense Fund* v. *Thomas*, 870 F.2d 892 (2d Cir. 1989). The proposed decree would require EPA to take final action by April 15, 1993, on the secondary standards portion of a pending rulemaking (53 FR 14926, April 26, 1988) for review of the NAAQS for sulfur oxides.

Final approval and entry of the proposed decree are subject to section 113(g) of the Act, which requires notice and opportunity for comment on certain consent orders and settlement agreements to which the United States is a party. Accordingly, for a period of thirty (30) days following the date of publication of this notice, EPA will receive any written comments on the proposed decree. Under section 113(g), EPA or the Department of Justice may withhold or withdraw consent to the proposed decree if the comments disclose facts or circumstances indicating that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Dated: September 16, 1992.

Raymond B. Ludwiszewski,

Acting General Counsel.

[FR Doc. 92–23322 Filed 9–24–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4510–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 07, 1992 Through September 11, 1992 pursuant to the Environmental Review Process (ERP), under Section 309 of the clean air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–AFS–J02022–WY Rating EC2

Shoshone National Forest Oil and Gas Exploration and Development, Leasing, Fremont, Hot Springs Park, Sublette and Teton Counties, WY.

SUMMARY: EPA had environmental concerns with potential environmental impacts, particularly concerning the preservation of water quality, which should be avoided in order to fully protect the environment. EPA had significant concerns regarding the large

proportion of the forest classified as "High Soil and Water Hazard". Additionally, the DEIS does not contain sufficient information to fully assess environmental impacts that should be avoided and specific mitigation methods to minimize those impacts.

ERP No. D–AFS–J02025–CO Rating EC2

Routt National Forest Oil and Gas Exploration and Development, Approval and Leasing, Routt, Moffat, Jackson, Grand, Garfield and Rio Blanco Counties, CO.

SUMMARY: EPA had environmental concerns with potential environmental impacts, particularly concerning the preservation of air and water quality and the protection of wetland resources, which should be avoided in order to fully protect the environment.

ERP No. D–AFS–J65193–WY Rating LO

Strawberry Gulch Timber Sale, Timber Harvest and Road Construction, Implementation, Medicine Bow National Forest, Hayden Ranger District, Carbon County, WY.

SUMMARY: EPA had no environmental objections to the proposed project.

ERP No. D–AFS–K28017–CA Rating EC2

Running Springs Water District Wastewater Treatment Facilities Upgrading and Reclamation for Irrigation and Snow-Making at the Snow Valley Ski Resort, Approval, San Bernardino National Forest, San Bernardino County, CA.

SUMMARY: EPA expressed environmental concerns with the proposed project, including water quality, beneficial uses and air quality. EPA requested that the FEIS demonstrate that wastewater can be reclaimed without damaging existing water quality and beneficial uses. EPA requested further documentation of the projects's potential air quality impacts and consistency with efforts to maintain and improve regional air quality.

ERP No. D–FHW–E40745–NC Rating EC2

US 23/I–26 Corridor Transportation Improvements, NC–197/Barnardville Road to North Carolina-Tennessee State Line, Funding, COE Section 404 Permit and EPA National Pollutant Discharge Elimination System Permit, Buncombe and Madison Counties, NC.

SUMMARY: EPA's review found a potential for adverse water quality impacts related to construction activities in the mountainous region. Non-point source contributions and loss of upland habitats was also a concern. Additional information for controlling construction related impacts was requested.

ERP No. D–FHW–F40144–WI Rating EC2

WI–131 and WI–33 Transportation Improvement, Relocation and/or Reconstruction, between Village of Ontario and Community of Rockton, Funding and Possible COE 404 Permit, Vernon County, WI.

SUMMARY: EPA recommended that the Final EIS include an adequate wetland compensation plan. EPA also requested that additional information be provided on avoidance, minimization and compensation for the project's likely woodlands, park and natural areas impacts.

Final EISs

ERP No. F–AFS–J65180–UT

Deep Creek and Snow Bench Timber Sales, Approval and Implementation, Thousand Lake Mountain, Fishlake National Forest, Loa Ranger District, Wayne County, UT.

SUMMARY: EPA had no objections to the proposed action.

ERP No. F–AFS–J65186–MT

Bent Flat Timber Sale, Timber Harvest, Road Construction/ Reconstruction, Implementation, Flathead National Forest, Spotted Bear Ranger District, Flathead County, MT.

SUMMARY: EPA had no objections to the new preferred alternative.

ERP No. F–BLM–K60022–CA

Eagle Mountain Class III Nonhazardous Solid Waste Landfill Project and Specific Plan, Federal Land Exchange, Right-of-Way Approval and Section 404 Permit, Riverside County, CA.

SUMMARY: EPA expressed environmental concerns with potential impacts to groundwater, water quality, air quality and sensitive natural resources. EPA had special concern with the great difficulty in monitoring groundwater for possible releases of contaminants due to the faulted, fractured bedrock underlying the project site. EPA also expressed concerns whether hazardous waste would be illegally disposed with recyclable materials and whether a monitoring program could detect whether hazardous waste was being illegally disposed.

ERP No. F–FHW–F40292–IN

US 231/Wabash River Crossing Relocation and Construction, County Road 350S to West Lafayette, Funding and COE Section 404 Permit, Wabash River, Tippecanoe County, IN.

SUMMARY: EPA's concerns for avoidance/minimization of wetlands impacts, for prevention of undue water quality impacts and for noise impact mitigation have been satisfactorily addressed.

ERP No. F–FHW–K40180–AS

Territorial Route 50 in Pago Pago Park, Construction, Funding, U.S. Coast Guard Bridge Permit, and COE Section 10 and 404 Permits, Island of Tutuila, AS.

SUMMARY: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: September 21, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–23289 Filed 9–24–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4510–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Availability of Environmental Impact Statements Filed September 14, 1992 Through September 18, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920373, DRAFT EIS, FHW, WI, US 10 Highway Transportation Improvement, US 45 to US 41 in the City of Appleton, Funding and Section 404 Permit, Winnebago County, WI, Due: November 09, 1992, Contact: Robert W. Cooper (608) 264–5940.

EIS No. 920374, FINAL EIS, BIA, WA, I–5/88th Street Northeast Interchange Construction Project, Traffic Circulation Improvements and Tulalip Tribes Reservation Direct Freeway Access, Approval, Coast Guard Bridge Permit and COE Section 404 Permit, Snohomish County, WA, Due: October 26, 1992, Contact: William Black (206) 258–2651.

EIS No. 920375, DRAFT EIS, AFS, OR, West Indigo Timber Sales and Other Projects Land and Resource Management Plan, Implementation, Siskiyou National Forest, Galice Ranger District, Curry County, OR, Due: November 09, 1992, Contact: William J. Gasow (503) 479–5301.

EIS No. 920376, DRAFT EIS, AFS, WY, Grand Targhee Ski Area Expansion Master Development Plan, Implementation, Targhee National Forest, Teton County, WY, Due: November 20, 1992, Contact: Lynn Ballard (206) 624–3151.

EIS No. 920377, DRAFT EIS, AFS, UT, Coyote Hollow Timber Sale, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT, Due: November 09, 1992, Contact: Kevin R. Schulkoski (801) 826–5400.

EIS NO. 920378, FINAL EIS, GSA, MA, New United States Courthouse in Boston, Construction and Operation, Site Selection and COE Section 10 Permit, Fan Pier in the Fort Point Channel, Boston, MA, Due: October 26, 1992, Contact: Peter Sneed (212) 264–3581.

Dated: September 21, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–23288 Filed 9–24–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4511–8]

Wisconsin: Partial Program Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Region 5; Environmental Protection Agency.

ACTION: Notice of tentative determination on partial program application of Wisconsin for partial program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal Criteria (40 CFR Part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate permit programs for MSWLFs, but does not mandate issuance of a rule for such determinations. The EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will allow both States and Tribes to apply for and receive approval of a partial permit program. The Agency intends to approve adequate State/Tribal MSWLF permit programs as final applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator on site specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR Part 258 to the extent the State/Tribal permit program allows such flexibility.

Wisconsin applied for a partial determination of adequacy under section 4005 of RCRA. The EPA reviewed Wisconsin's application and made a tentative determination of adequacy for those portions of the State's MSWLF permit program that are adequate to assure compliance with the revised Federal Criteria. These portions are described later in this notice. The State plans to revise the remainder of its permit program to assure complete compliance with the revised Federal Criteria, and gain full program approval. Wisconsin's application for partial program adequacy determination is available for public review and comment.

If sufficient public interest is expressed during the comment period, a public hearing will be held to solicit comment and public opinion on Wisconsin's partial program application for a determination of adequacy.

DATES: All comments on Wisconsin's application for a partial determination of adequacy must be received by U.S. EPA Region 5 by the close of business on November 17, 1992. If a public hearing is held, it will be scheduled for November 17, 1992. Wisconsin will participate in the public hearing held by EPA on this subject.

ADDRESSES: Copies of Wisconsin's application for partial adequacy determination are available during 9 a.m. to 4 p.m. during normal working days at the following addresses for inspection and copying: Wisconsin Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin, 53707, Attn: Ms. Lakshmi Sridharan; and U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J. All written comments should be sent to the EPA Region 5 Office.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J, telephone (312) 886–0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Federal Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the revised Federal Criteria. Subtitle D also requires that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure compliance with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with 40 CFR part 258; (2) changes to a limited, narrow part(s) of the State/Tribal program are needed to meet these requirements; and (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of 40 CFR Part 258. These requirements, if promulgated, will address the potential problems posed by the dual State and Federal programs that will come into effect in October 1993 in those States that still have only partial approvals of their MSWLF programs. On that date, Federal rules covering any portion of a State's program that has not received EPA approval will become enforceable. Owners and operators of MSWLFs subject to such dual programs must be able to understand which requirements apply and comply with them. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of any flexibility allowed in those portions of the program that have been approved.

As provided in the revised Federal Criteria, EPA's national Subtitle D standards will take effect on October 9, 1993, in any State/Tribe that lacks an approved program. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by that

date would apply directly to the owner/operator.

EPA intends to propose to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA will ask State/Tribes that seek partial approvals to submit a narrative discussion of the structure of the State/Tribal program, as well as a summary of State/Tribal technical requirements that demonstrate technical comparability with the revised Federal Criteria. EPA is also requesting State/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submission of a schedule mandatory in STIR.

B. State of Wisconsin

On July 27, 1992, Wisconsin submitted an application for partial program adequacy determination. EPA has reviewed Wisconsin's application and has tentatively determined that the following portions of the State's subtitle D program will ensure compliance with the revised Federal Criteria.

1. Location restrictions for airport safety, floodplains, and wetlands (40 CFR 258.10, 258.11, and 258.12);

2. Operating criteria for cover materials, disease vector control, access, surface water, and liquids restrictions (40 CFR 258.21, 258.22, 258.25, 258.27, and 258.28);

3. Groundwater monitoring and corrective action criteria for groundwater monitoring systems, groundwater sampling and analysis requirements, assessment of corrective measures, selection of remedy, and implementation of the corrective action program (40 CFR 258.51, 258.53, 258.56, 258.57, and 258.58);

4. Closure and post-closure care requirements (40 CFR 258.60 and 258.61); and

5. Financial assurance requirements and allowable mechanisms for closure, post-closure care, and corrective action (40 CFR 258.71, 258.72, 258.73, and 258.74).

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit program for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

To ensure compliance with all of the revised Federal Criteria, Wisconsin needs to revise the following aspects of its permit program.

1. Wisconsin will revise its regulations to incorporate the Federal location restrictions for fault areas, seismic impact zones, and unstable areas in 40 CFR 258.13, 258.14, and 258.15.

2. Wisconsin will revise its regulations to incorporate the Federal operating requirements for the exclusion of hazardous waste, explosive gases control, run-on/run-off control systems, and recordkeeping in 40 CFR 258.20, 258.23. 258.26, and 258.29. Wisconsin will also seek to amend a State statute to meet the Federal operating requirements for air criteria in 40 CFR 258.24.

3. Wisconsin will revise its regulations to include a minimum composite liner design which consists of a 60-mil high density polyethylene geomembrane over 4 feet of compacted clay, which is more stringent than the Federal design requirements in 40 CFR 258.40(a).

4. The Federal Criteria require unfiltered groundwater samples to be used in laboratory analysis. Currently, Wisconsin requires samples to be filtered and preserved in the field in accordance with standard published procedures. The Agency intends to revisit this issue during a proposed rulemaking. If the proposed rulemaking upholds the ban on field filtering, the State will be required to come into compliance with the provisions in 40 CFR 258.53(b). In the meantime, the State will not be given approval of this requirement.

5. Wisconsin will revise its regulations to incorporate detection and assessment groundwater monitoring parameters that are consistent with the revised Federal Criteria, but take advantage of the flexibility provided in 40 CFR 258.54 and 258.55.

6. Wisconsin will seek to amend a State statute to fully meet the financial assurance requirements in 40 CFR 258.70(a).

Wisconsin submitted a schedule indicating that it will be able to complete these revisions and amendments by October 9, 1995. To allow the State to begin exercising some of the flexibility allowed in States/Tribes with adequate permit programs, EPA is proposing to approve those portions of the State's program that are ready for action today.

EPA reviewed the State's schedule and believes it is reasonable because of the complexity of Wisconsin's rulemaking process. The rulemaking process typically takes 18 months to complete. Wisconsin expects to begin revising the appropriate rules in January 1993. Additionally, Wisconsin must seek amendment of two State statutes. Requests to seek amendment of both the statutes have been placed in the preliminary draft of the Wisconsin Fiscal Year 1993–1995 Budget.

EPA cautions Wisconsin that it currently plans to propose in the STIR that all partial approvals will expire in October 1995 for States/Tribes that have not received final approval for all provisions of 40 CFR Part 258. Expiration of a partial approval would mean that the Federal Criteria would apply and the flexibility provided for approved States/Tribes by the Federal Criteria would no longer be available in the State/Tribe. EPA urges Wisconsin to work diligently to make all of the necessary revisions to those portions of its permit program that are not being proposed for approval today.

If there is sufficient public interest, the Agency will hold a public hearing on its tentative decision on November 17, 1992, from 9 a.m. to 12 p.m. at the Wisconsin Department of Natural Resources in Madison, Wisconsin. Comments can be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing. The public also may submit written comments on EPA's tentative determination until November 17, 1992. Copies of Wisconsin's application are available for inspection and copying at the location indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination that are received during the public comment period and the public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for Wisconsin's program. EPA will make a final decision on whether or not to approve Wisconsin's program by December 31, 1992, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the revised Federal Criteria independent of any State enforcement program. As EPA explained in the preamble to the revised Federal Criteria, EPA expects that any owner or operator

complying with provisions in a State program approved by the EPA should be considered in compliance with the revised Federal Criteria.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended 42 U.S.C. 6907, 6927, 6928, 6945, 6947, 6974(b).

Dated: September 18, 1992.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 92-23327 Filed 9-24-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4511-5]

Public Meeting to Discuss Environmental Requirements on Local Governments and Small Communities

On October 8-9, 1992, EPA will meet with local and state officials, public interest groups and environmental groups to discuss environmental requirements for local governments and small communities. The purpose of the meetings is to gather additional facts and exchange information regarding problems discussed at a public meeting with these participants on September 10, 1992.

Participants will meet in workgroups on October 8 to discuss issues of financing local government environmental services and infrastructure; regulatory flexibility, intergovernmental coordination and priority-setting at the local level; and data and information on the costs and benefits of environmental regulation. Workgroup leaders are preparing discussion papers for distribution at the meetings. An agenda for the October 9 plenary will be developed based on workgroup proceedings.

All meetings will be held at the National Rural Electric Cooperative Association, 1800 Massachusetts Ave. NW., Washington, DC 20036. Workgroups will meet October 8 from 10-4:30. The Finance Workgroup will meet in the third floor conference room; the Data and Information Workgroup will meet in the fifth floor conference room; and the Flexibility/Priorities Workgroup will meet in Conference Center Three. The plenary will meet October 9 from 9-4 in the Board Room.

All interested persons and organizations are invited to attend. Meeting minutes will be available and can be obtained upon written request to the Agency in care of Mr. Kerestesy at the Office of Regional Operations and State/Local Relations, H-1501, U.S. EPA, 401 M Street SW., Washington, DC 20460.

Gerald Fill,

Acting Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 92-23318 Filed 9-24-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4510-9]

Massachusetts Marine Sanitation Device Standard; Determination

On June 19, 1992, notice was published that the State of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all the coastal waters of the Town of Nantucket, County of Nantucket, within the State of Massachusetts (57 FR 27465). The petition was filed pursuant to section 312(f)(3) of Public Law 92-500, as amended by Public Laws 95-217 and 100-4, for the purpose of declaring these waters a "no discharge area."

Section 312(f)(3) states:

After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, expect that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Massachusetts certified that there are six pump-out facilities available to service vessels in Nantucket coastal waters. Five are located within Nantucket Harbor, and a sixth is located in Madaket Harbor, at the western end of the island.

There are four pump-out facilities at the Nantucket Boat Basin, which is located on the western shore of Nantucket Harbor adjacent to the downtown area of the Town of Nantucket. There are two stationary pump-out units and two portable units available for use by both Nantucket Boat Basin patrons and transient vessels. In addition, the Boat Basin dock is equipped with deck fittings plumbed directly into the town sewer system that are used in conjunction with the portable units. With the deck fittings, the Boat Basin can service 95 percent of its vessels in their slips. The remaining five percent have access to the two stationary pump-out units. These pump-out facilities will accommodate vessels with a draft of twelve feet, and are open from 7 a.m., to 7 p.m., seven days a week. Pump-out services are free to patrons and $10 for all others.

A fifth pump-out facility is located on the Nantucket Town Pier, which is located just to the south of the Nantucket Boat Basin on Nantucket Harbor, and is operated by the Town of Nantucket. This pump-out facility will accommodate vessels with a draft of twelve feet, and is open from 8 a.m. to 8 p.m., seven days a week. Pump-out services are free of charge to all vessels.

The sixth pump-out facility is operated by Madaket Marine, which is located on Hither Creek, in Madaket Harbor. This portable pump-out facility will accommodate vessels with a five foot draft, and is open from 8 a.m. to 4:30 p.m., seven days a week. There is a $10 fee per pump-out.

The State of Massachusetts certified that the five pump-out facilities in Nantucket Harbor discharge directly to the town sewer system. The State of Massachusetts further certified that sewage collected at Madaket Marine is discharged into an above-ground holding tank and periodically collected by a septage hauler for disposal at the town wastewater treatment plant. The Nantucket Waste Water Treatment Facility is located on South Shore Road. This facility provides primary treatment before discharging to groundwater and has consistently met or exceeded EPA and Massachusetts Department of Environmental Protection standards.

The maximum daily vessel population for the coastal waters of Nantucket is approximately 1725. This includes 1250 vessels on private seasonal moorings registered with the Town of Nantucket.

and an average of 475 transient vessels per day. None of these vessels will be excluded from using one or more of the existing pump-out facilities.

A single set of comments was received by the Agency on the merits of the petition prior to the deadline for receipt of comments; it was from a Mr. Alan Spackman of Houston, Texas. Mr. Spackman's comments neither supported nor opposed the petition, but questioned several of the statements made in the June 19 **Federal Register** "Notice of Receipt." His main concern is consistent with that of EPA. If has been determined that vessels in transit to and from other points outside the proposed no discharge area (all the coastal waters of Nantucket, three miles seaward of its coastline) may include vessels incapable of reaching the pump-out stations due to draft limitations and/or vessels which may only be in the proposed no discharge area for a limited period of time while in transit, and that prohibiting discharges from such vessels may be both impracticable and unenforceable.

Therefore, based on an examination of the petition and its supporting information, which included a site visit by EPA Region I staff, and in consideration of the single comment received pursuant to the June 19 **Federal Register** notice, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for that portion of Nantucket coastal waters that lie within a straight line between Great Point on Nantucket Island and the western tip of Muskeget Island (delineated on NOAA chart #13237 by LORAN-C line 9960-Y-43850) to the limits of the Territorial Sea, and within a straight line between the southeast point of Muskeget Island and the southwest point of Tuckernuck Island, and between the southwest point of Tuckernuck Island and Smith Point of Nantucket Island. The exclusion of those waters outside the Territorial Sea boundary from the no discharge area is intended to prevent any jurisdictional conflicts. This determination is made pursuant to Section 312(f)(3) of Public Law 92-500, as amended by Pubic Laws 95-217 and 100-4.

Dated: August 17, 1992.

Julie De Belga,

Regional Administrctor,

[FR Doc. 92-23319 Filed 9-24-92; 8:45am]

BILLING CODE 6560-50-M

[FRL-4511-4]

Proposed Assessment of Clean Water Act Class II Administrative Penalty to Cargill Incorporated and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of a Clean Water Act Class II administrative penalty and notice of public comment period.

SUMMARY: Pursuant to 33 U.S.C. Section 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. section 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Cargill Incorporated (Cargill Resin Products Division), 2801 Lynwood Road, Lynwood, CA 90262; Docket No. IX-FY92-33; filed on 18 September 1992 with Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1389; proposed penalty of $125,000, for violations of pretreatment categorical standards.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty days after the date of publication of this notice.

Dated: September 18, 1992.

Catherine Kuhlman,

Acting Director, Water Management Division.

[FR Doc. 92-23323 Filed 9-24-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 17, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0298

Title: Part 61—Tariffs (Other Than Review Plan)

Action: Revision of a currently approved collection

Respondents: Businesses or other for-profit

Frequency of Response: On occasion reporting

Estimated Annual Burden: 2,700 response, 258.11 hours average burden per response; 696,890 hours total annual burden

Needs and Uses: The attached Memorandum of Opinion and Order on Second Further Reconsideration, in CC Docket No. 89-79/CC Docket No. 87-313, addresses petitions seeking reconsideration of those portions of the Part 69/ONA Order concerning the new services test of the local exchange carrier (LEC) price cap rules. The Commission clarifies and modifies the cost support required to

tariff new services offered by price cap LECs. First, in cases where a LEC develops a lower-cost version of an existing service, the Commission clarifies that the LEC may price that new service at any level below the price of the existing service. Second, the Commission modifies its rules so that they no longer require LECs to satisfy the net revenue test as part of the cost showing for new services. The Commission also denies, in all other respects, the petitions for reconsideration of the Part 69/ONA Order to the extent that they address the price cap new services test generally. The information collected through a carrier's tariff is used by the Commission to determine whether the services offered are just and reasonable as the Act requires. The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable and nondiscriminatory manner. If tariffs were not filed, the Commission could not carry out its responsibilities as required by the Act.

OMB Number: 3060–0475

Title: Section 90.713, Non-commercial nationwide entry criteria (Memorandum of Opinion and Order, PR Docket No. 89–552)

Action: Revision of a currently approved collection

Respondents: Individuals or households, state or local governments, and businesses or other for-profit (including small businesses)

Frequency of Response: Other: One time requirement at initial application or assignment

Estimated Annual Burden: 34 responses; 25 hours average burden per response; 850 hours total annual burden

Needs and Uses: Section 90.713 requires applicants for non-commercial nationwide systems in the 220–222 MHz band to submit additional information demonstrating that they satisfy the entry criteria specified in § 90.713. Specifically, the rule changes require non-commercial nationwide applicants to submit (1) certification that they have the necessary financing to construct at least one base station in a minimum of 70 markets which five rather than ten years of licensing; (2) a five-year schedule detailing plans for construction of the proposed system; (3) an itemized estimate of the cost of constructing the entire system within five years; and (4) a certification demonstrating an actual presence or long-term business plan that necessitates internal communications capacity in the 70 or more markets identified in the license application. Under the prior rules, non-commercial nationwide applicants were required to include a certification that they have the necessary financing to construct at least one base station in a minimum of 70 markets within ten years of licensing, and were not required to submit a certification of an actual presence or long-term business plan necessitating internal communications capacity in the markets identified in the application. Licensing Division personnel will use the data to determine the eligibility of the applicant to hold a radio station authorization. Land Mobile and Microwave Division personnel will use the data for rulemaking proceedings. Compliance personnel in conjunction with field engineers will use the data for enforcement purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–23345 Filed 9–24–92; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for renewal of license of Noncommercial Educational Station WBMR–FM, Telford, Pennsylvania and for a New Noncommercial Educational FM station at Doylestown, Pennsylvania:

Applicant, and city and State	File No.	MM docket No.
A. United Educational Broadcasting, Inc.; Telford, PA.	BRED–910401BB	92–208
B. Bux-Mont Educational Radio Association; Doylestown, PA.	BPED–910701MA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each issue has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, published May 29, 1986. The letter shown before each applicant's name is used below to signify whether the issue applies to that particular applicant.

Issue Heading and Applicant

1. Environmental Impact, B

2. 307(b)—Noncommercial Educational, A, B

3. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are forth in the Appendix to this Notice. A copy of the complete HDO is this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st St. NW., Washington, DC 20036 (Telephone (202) 452–1422).

W. Jan Gay,

Assistnat Chief, Audio Services Division, Mass Medic Bureau.

[FR Doc. 92–23347 Filed 9–24–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

ABC Bancorp; Amended

This notice amends a previous **Federal Register** document (FR Doc. 92–22204), published at page 42586 of the issue for Tuesday, September 15, 1992.

Under the Federal Reserve Bank of Atlanta, the entry for ABC Bancorp is amended to read as follows:

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *ABC Bancrop,* Moultrie, Georgia; to acquire 100 percent of the voting shares of Cairo Banking Company, Cairo, Georgia. Comments on this application must be received not later than September 25, 1992.

* * * * *

Board of Governors of the Federal Reserve System, September 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–23448 Filed 9–23–92; 12:15 pm]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 5 U.S.C. 18a, as added by title II of the Hart-Scott-Rodina Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney

General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 083192 AND 091192

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
MAPCO Inc., Simon R. and Elaine Navickas, husband and wife, Eden Gas Co., M-V Gas Co., Gas Supply Inc., Rapids	92-1359	08/31/92
Ralph J. Roberts, Eastern TeleLogic Corp., Eastern TeleLogic Corp	92-1395	08/31/92
Banner Aerospace, Inc., Pan Am Corp., Pan Am World Airways, Inc	92-1424	08/31/92
Solectron Corp., International Business Machines, International Business Machines	92-1404	09/02/92
KN Energy,Inc., Phillips Petroleum Co., GPM Gas Corp	92-1407	09/03/92
T.H. Etheridge, CMF Investors Inc., Choctaw Maid Farms, Inc	92-1418	09/03/92
Motorola, Inc., Phillip N. and Mary A. Lyons, Airwave Communications Corp. (San Francisco)	92-0763	09/04/92
Mohawk Industries, Inc., Horizon Industries, Inc., Horizon Industries, Inc	92-1365	09/04/92
Bass plc, W.B. Johnson, Shipyard Hotel Venture	92-1383	09/04/92
Jack W. Baker, Fleming Companies, Inc., Fleming Companies, Inc	92-1391	09/04/92
Fleming Companies, Inc., Robert L. Baker, Baker's Supermarkets, Inc	92-1398	09/04/92
Mobil Corp., Exxon Corp., Exxon Corp	92-1419	09/04/92
Exxon Corp., Mobil Corp., Mobil Oil Corp	92-1420	09/04/92
Methanex Corp., Metallgesellschaft AG, MG Fortier, Inc	92-1429	09/04/92
Ono Pharmaceutical Co., Ltd., Telios Pharmaceuticals, Inc., Telios Pharmaceuticals, Inc	92-1433	09/04/92
Swiss Bank Corp., O'Connor Partners, O'Connors Partners	92-1448	09/04/92
Alco Standard Corp., Olympia & York Developments Ltd., Abitibi-Price Inc	92-1449	09/04/92
Columbus II Limited Partnership, The Dyson-Kissner-Moran Corp., Arrow Group Industries, Inc	92-1442	09/09/92
Kimberly-Clark Corp., Richard T. Santulli, Executive Jet International, Inc., A.F.M. Corp	92-1413	09/10/92
Paramount Communications Inc., American Financial Corp., Kings Island Co	92-1425	09/10/92
Don Tyson, Philip Morris Companies Inc., Louis Kemp Seafood Co	92-1445	09/10/92
Jan Tonnby, ASEA AB, ABB Trading (US) Inc	92-1436	09/11/92
Jan Tonnby, BBC Brown Boveri Ltd., ABB Trading (US) Inc	92-1437	09/11/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives.

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-23311 Filed 9-24-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Medicare Beneficiary Surveys—0990-0981—Reinstatement—The Office of Inspector General plans to conduct both national and State specific surveys of Medicare beneficiaries to determine experience and satisfaction with Medicare services. The information is needed to identity program inefficiencies and monitor the effectiveness of corrective actions taken by the Department. Findings will be compared to those of previous surveys. *Respondents:* individuals; *Annual Number of Respondents:* 2090; *Frequency of Response:* once; *Average Burden per Response:* 20 minutes; Estimated Annual Burden: 697 hours. *OMB Desk Officer:* Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 11, 1992

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 92-22772 Filed 9-24-92; 8:45 am]

BILLING CODE 4150-04-M

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 14% for the quarter ended September 30, 1992. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: September 15, 1992.

William Topolewski,

Acting Deputy Assistant Secretary, Finance.

[FR Doc. 92-23265 Filed 9-24-92; 8:45 am]

BILLING CODE 4150-04-M

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Board on October 14, 1992. The meeting will take place from 9 a.m. to 11:30 a.m. in Conference Room 7, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of speaker phones.

The meeting, which will be open to the public from 9 a.m. to 11:10 a.m., is being held to discuss scientific advances in the field of balance and the vestibular system since the National Strategic Research Plan for that area was developed. Attendance by the public will be limited to the space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 11:10 a.m. to adjournment for the discussion and recommendation of individuals to serve as consultants to the Research Priorities Subcommittee. This discussion could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the Subcommittee's meeting and a roster of members may be obtained from Ms. Monica Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

(Catalog of Federal Domestic assistance Program No. 93.173, Biological Research Related to Deafness and Other Communication Disorders.)

Dated: September 2, 1992.

Susan K. Fledman,

Committee Management Officer, NIH.

[FR Doc. 92–23308 Filed 9–24–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting (President's Cancer Panel Special Commission on Breast Cancer)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, November 12, 1992, at the National Institutes of Health, 9000 Rockville Pike, Building 1, Wilson Hall, Bethesda, Maryland 20892.

This meeting will be open to the public on November 12 from 9 a.m. to 5 p.m. Attendance will be limited to space available. Agenda items will include presentations by invited speakers on the topic of "Hormonal Factors in Breast Cancer Development and Therapy."

Iris J. Schneider, Acting Executive Secretary, President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, Building 31, room 4A34, National Inststitutes of Health, Bethesda, Maryland 20892, 301/496–1148, will provide a roster of the Commission members and substantive program information upon request.

Dated: September 21, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–23299 Filed 9–24–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting (President's Cancer Panel Special Commission on Breast Cancer)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, October 23, 1992, at the Holiday Inn Crowne Plaza, Metro Center, 775 12th Street, NW., Washington, DC 20005.

This meeting will be open to the public on October 23 from 8:30 a.m. to 5 p.m. Attendance will be limited to space available. Agenda items will include presentations by invited speakers on the topic of "Patient Advocacy and Voluntary Organizations."

Iris J. Schneider, Acting Executive Secretary, President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, Building 31, Room 4A34, National Institutes of Health, Bethesda, Maryland 20892, 301/496–1148, will provide a roster of the Commission members and substantive program information upon request.

Dated: September 21, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–23300 Filed 9–24–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on October 22–23, 1992. The meeting will be held in Building 31, C Wing, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on October 22 and from 9 a.m. to adjournment on October 23 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available..

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9 a.m. to approximately 1 p.m. on October 22 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. Carole A. Frank, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 4, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–23306 Filed 9–24–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Division of Cancer Treatment Board of Scientific Counselors; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, October 9–20, 1992, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on October 19 from 8:30 a.m. to approximately 6:15 p.m., and again on October 20 from approximately 10:45 a.m., until adjournment, to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 20 from 8 a.m., to approximately 10:30 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and roster of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A44, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–23307 Filed 9–24–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting (President's Cancer Panel)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, November 13, 1992, at the National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20892.

This meeting will be open to the public on November 13, 1992, 8:30 a.m. to 12:30 p.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel, the Director, NCI, and invited participants discussing the topic "Prostate Cancer."

Ms. Iris Schneider, Acting Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A48, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5534) will provide a roster of the Panel members and substantive program information upon request.

Dated: September 21, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–23298 Filed 9–24–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, October 22–23, 1992, Gaithersburg Marriott Hotel, 620 Perry Parkway, Gaithersburg, Maryland 20877.

The two-day meeting will be open to the public from 8:30 a.m. to 5 p.m. on October 22 and 8 a.m. to adjournment on October 23. Attendance by the public will be limited to space available. The Board will review and assess ongoing and future Federal priorities, activities, and initiatives regarding medical rehabilitation research, future direction and activities of the National Center for Medical Rehabilitation Research (NCMRR), and a report on the previous year funding within the NCMRR.

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301–496–1485, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. If you have specific disability-related requirements please call.

Dated: September 21, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–23303 Filed 9–24–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting, End-Stage Renal Disease Data Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the End-Stage Renal Disease Data Advisory Committee on November 2, 1992. The meeting will begin at 9 a.m. and end at approximately 3:30 p.m. in Conference Room 732, East High Rise Building, Health Care Financing Administration, 6325 Security Blvd., Baltimore, Maryland. The meeting, which will be open to the public, is being held to discuss the status regarding implementation of the 1991 Annual Report recommendations, reports from other federal agencies and discussion of the 1992 Annual Report. Attendance by the public will be limited to space available.

Dr. Ralph Bain, Executive Director, End-Stage Renal Disease Data Advisory Committee, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: September 21, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–23301 Filed 9–24–92; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

National Institute on Aging; Notice of Meeting of the Task Force on Aging Research

Pursuant to Public Law 92–463, notice is hereby given that the Task Force on Aging Research will meet on October 9, 1992, 9 to 11 a.m. in Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The entire meeting will be open to the public. The Task Force will meet to review the report of the Task

Force Technical Working Group and adopt an operational plan for the coming year. Attendance by the public will be limited to space available.

Interested persons should contact Ronald P. Abeles, Ph.D., Executive Secretary, Task Force on Aging Research, the Gateway Building, 7201 Wisconsin Avenue, suite 2C–234, Bethesda, Maryland 20892, at (301) 496–3136 for further details, confirmation of location, and substantive information on the meetings.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: September 21, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–23305 Filed 9–24–92; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Meeting of the Division of Research Grants Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Division of Research Grants Advisory Committee, November 16–17, 1992, Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public, from 8:30 a.m. to 4:30 p.m. on November 16, and from 8:30 a.m. to 1 p.m. on November 17. The topics for the two-day meeting will include the NIH strategic plan, the NIH peer review process, the orientation of new study section members, amended applications, and resignations and declinations from study section service. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Westwood Building, room 453, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496–7534, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Westwood Building, room 449, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–7441, will provide substantive program information upon request.

Dated: September 21, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–23302 Filed 9–24–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–2934–N–97]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: September 25, 1992.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-imparied (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 18, 1992.

Randall H. Erben,

Acting Assistant Secretary.

[FR Doc. 92–23136 Filed 9–24–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Ukiah District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Public Law 94–579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Redding, California, October 21–22, 1992. The agenda will include field tours of the Grass Valley Creek Watershed and the Trinity River Recreation Area the first day, followed by BLM briefings and Council action, as appropriate, the second day. Agenda topics, besides Grass Valley Creek Watershed and Trinity River, will include the Spotted Owl Recovery Plan and management of scattered tracts. A complete agenda is available from the Ukiah BLM Office

DATES: October 21, 8 a.m. to 5 p.m., and October 22, 8 a.m. to 2 p.m.

ADDRESSES: October 21, Field Tours, departing from the BLM Office, 355 Hemsted Drive, Redding at 8:00 a.m. Public participation needs to be arranged ahead of time. October 22, Bureau of Land Management conference room, 355 Hemsted Drive, Redding.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462–3873.

SUPPLEMENTARY INFORMATION: All meetings of the Ukiah District Advisory Council are open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 10 a.m. Thursday, October 22. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: September 14, 1992.

David E. Howell,

District Manager.

[FR Doc. 92–23264 Filed 9–24–92; 8:45 am]

BILLING CODE 4310–40–M

[MT–064–4333–11]

Montana Off-Road Vehicle Designation

AGENCY: Bureau of Land Management—Valley Resource Area.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: The Bureau of Land Management has entered into a Block Management Agreement with Page-Whitham Ranches of south Valley County, Montana, and the Montana Department of Fish, Wildlife and Parks. In accordance with this agreement, the following rules will be in effect within the designated area from October 1, 1992 to November 30, 1992.

—Vehicles must stay on existing roads/trails designated as open. Maps of the area boundary and of roads/trails designated open are available from the BLM and Montana Department of Fish, Wildlife & Parks offices in Glasgow, Montana and three field locations on the perimeter of the area boundary.
—Off-road vehicle use is allowed on public lands for game retrieval only.
—All gates should be left as signed.
—Open fires and littering is prohibited.

The block management area is described as all lands within the Square Creek, Desert Coulee, Taylor Coulee, Sheep Shed and Stone House pastures of the Carpenter Creek allotment. Legal description of the public lands within the block management area are as follows:

All or portions of the following sections in Valley County, Montana:

T. 25 N., R. 34 E., Sections 34 and 35
T. 25 N., R. 35 E., Sections 25 through 35
T. 25 N., R. 36 E., Sections 28 through 33
T. 24 N., R. 34 E., Sections 1, 2, 11, 12–14, 23
T. 24 N., R. 35 E., 1–5, 7–15, 17–20, 23–28, 33–35
T. 24 N., R. 36 E., 3–9, 17–18, 30–31
T. 23 N., R. 35 E., Sections 2, 3.

DATES: This designation will be in effect from October 1, 1992 through November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Michael R. Holbert, Valley Resource Area, Area Manager, Route 1–4775, Glasgow, MT 59230–9798.

SUPPLEMENTARY INFORMATION: These regulations apply as found in 43 CFR 8364.1.

Dated: September 18, 1992.

David L. Mari,

District Manager.

[FR Doc. 92–23263 Filed 9–24–92; 8:45 am]

BILLING CODE 4310–DN–M

[ID–050–02–1540–11–G348]

Vehicle Use Restrictions; Idaho

AGENCY: Bureau of Land Management (BLM), Interior, Shoshone District Office.

ACTION: Restricted vehicle use, closure order.

SUMMARY: Notice is hereby given in accordance with 43 CFR 8341.2, that some land located in the Monument Resource Area is restricted to all vehicle use unless authorized. This will include 3- and 4-wheeled ATVs, dual purpose and off-road motorcycles, dune buggies or dune rails, cars, trucks, and mountain bicycles.

This emergency closure is necessary to protect watershed, vegetation, wildlife, and wilderness resources following four wild fires which burned approximately 205,000 acres in August, 1992. Interdisciplinary teams have prepared fire rehabilitation plans for the Ro, Black Ridge, Potter Butte, and Great Rift Fires. The Shoshone District Manager approved these plans on August 27, 1992.

Each of the four plans address the need for and locations of vehicle closures within the fire perimeters as part of fire rehabilitation efforts. BLM anticipates that the closures will gradually be lifted as vegetation recovers over a period of two to five years. At present, severe damage to the resources could result from vehicle use. Vehicle use would also conflict with, and reduce the effectiveness of, planned rehabilitation activities including seeding, road and trail repair, watershed protection structures, and interim management of wilderness study areas.

Restricted Areas

Ro Fire: The 25,000-acre Ro Fire is generally located immediately to the west of Bellevue and Hailey, Idaho, and is further described as follows:

T. 2 N., R. 17 E., Boise Meridian,
Portions of Sections: 33, 34, 35.
T. 1 N., R. 17 E., B.M.,
All of Section: 10;
Portions of Sections: 1, 2, 3, 4, 9, 11, 13, 15, 24.
T. 2 N., R. 18 E., B.M.,
Portions of Sections: 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35.
T. 1 N., R. 18 E., B.M.,
All of Sections: 4, 5;
Portions of Sections: 2, 3, 6, 7, 8, 9, 10, 11, 12, 17, 18, 19, 20, 21, 29, 30.

All BLM-administered land within the Ro Fire perimeter, including all roads and trails, are hereby closed to all types of vehicles, year-around.

Black Ridge Fire: The 150,000-acre Black Ridge Fire is generally located seven miles east of Richfield, Idaho. The fire burned in four wilderness study areas (WSAs). The following burned areas within those WSAs are closed to all vehicles year-around: Raven's Eye WSA (ID–57–10)—24,267 acres, Sand Butte WSA (ID–57–8)—22,928 acres, Little Deer WSA (ID–57–11)—8,811 acres, and the Great Rift WSA (ID–33–1)—2,387 acres. These closure areas are further described as follows:

T. 2 S., R. 22 E., Boise Meridian,
Portions of Sections: 14, 15, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35.
T. 2 S., R. 23 E., B.M.,
Portions of Sections: 19, 30, 31.
T. 3 S., R. 21 E., B.M.,
All of Sections: 25, 35, 36;
Portions of Sections: 13, 14, 22, 23, 24, 26, 27, 34.
T. 3 S., R. 22 E., B.M.,
All of Sections: 2, 3, 4, 5, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 23, 26, 27, 31, 35;
Portions of Sections: 1, 6, 7, 8, 12, 13, 18, 19, 24, 25, 28, 29, 30, 32, 33, 34.
T. 3 S., R. 23 E., B.M.,
All of Sections: 7, 18;
Portions of Sections: 5, 6, 8, 9, 16, 17, 19, 20, 21, 22, 23, 26, 27.
T. 3 S., R. 24 E., B.M.,
Portions of Section: 31.
T. 4 S., R. 21 E., B.M.,
All of Sections: 1, 2, 3, 11, 12;
Portions of Sections: 4, 10, 13, 14, 15, 24.
T. 4 S., R. 22 E., B.M.,
All of Sections: 2, 4, 5, 6, 7, 8, 9, 11, 16, 17, 18, 20, 21;
Portions of Sections: 1, 3, 10, 12, 13, 14, 15, 19, 22, 27, 28, 29, 33.
T. 4 S., R. 23 E., B.M.,
Portions of Sections: 1, 6, 7, 13, 24, 25, 36.
T. 4 S., R. 24 E., B.M.,
Portions of Sections: 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33.
T. 5 S., R. 23 E., B.M.,
Portions of Sections: 1, 2, 10, 11, 12, 13, 14.
T. 5 S., R. 24 E., B.M.,
Portions of Sections: 4, 5, 6, 7, 8, 9, 16, 17, 18.

Great Rift Fire: The 10,000-acre Great Rift Fire is generally located 18 miles southeast of Carey, Idaho. The fire burned 2,357 acres in the Great Rift WSA. This area is closed to all vehicles, year-around and is further described as follows:

T. 3 S., R. 25 E., Boise Meridian,
Portions of Sections: 21, 22, 27, 28, 31, 32, 33.
T. 4 S., R. 24 E., B.M.,
Portions of Sections: 1, 2, 11, 12.
T. 4 S., R. 25 E., B.M.,
Portions of Sections: 5, 6, 7.

Potter Butte Fire: The 20,000-acre Potter Butte Fire is generally located 16 miles east of Carey, Idaho. The fire burned in two wilderness study areas (WSA). The following burned areas within those WSAs are closed to all vehicles year-around: Bear Den Butte WSA (ID–57–14)— 711 acres, and the Great Rift WSA—2,114 acres. These closure areas are further described as follows:

T. 2 S., R. 24 E., Boise Meridian,
Portion of Section: 34.
T. 3 S., R. 24 E., B.M.,
Portions of Sections: 1, 2, 11, 12.
T. 1 S., R. 25 E., B.M.,
Portions of Sections: 18, 19, 20, 29, 32.
T. 2 S., R. 25 E., B.M.,
Portions of Sections: 5, 8, 17, 19, 20, 30, 31.

Any BLM employee, agent, contractor and cooperator, while in the performance of official duty, is exempt from these closures. The BLM may authorize volunteers or other parties to enter the area for administrative, maintenance or other purposes.

An information handout has been developed for the public with a map

showing all of the vehicle closures. Signs have been placed to identify the boundaries of the closures. Official maps of the described areas are on file and available to the public at the Shoshone District Office.

EFFECTIVE DATE: This restricted vehicle use and closure order is effective immediately and shall remain in effect until revised, revoked or amended by the authorized officer pursuant to 43 CFR 8341.

FOR FURTHER INFORMATION CONTACT: Rick Vander Voet, Outdoor Recreation Planner, Monument Resource Area, Shoshone District Bureau of Land Management, 400 West "P" Street, PO Box 2–B, Shoshone, ID 83352, telephone (208) 886–2206.

Dated: September 18, 1992.

Janis L. VanWyhe,

Acting District Manager.

[FR Doc. 92–23312 Filed 9–24–92; 8:45 am]

BILLING CODE 4310–GG–M

[G–910–G62–0101; 4320–08]

Intent To Prepare a Resource Management Plan Amendment/ Environmental Assessment (RMPA/ EA); New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Amendment to the Taos Resource Management Plan (RMP) allowing cattle to graze in the Loop Road area. The plan amendment will be called the "Loop Pasture Amendment to the Taos RMP," and is specifically limited to this issue.

SUMMARY: The Taos Resource Area (TRA), Bureau of Land Management (BLM), proposes an amendment to the Taos RMP which was completed in 1988. The amendment would allow livestock use in the Loop pasture during the fall grazing season thereby minimizing conflict with recreational users.

The Taos RMP called for the elimination of livestock grazing in the Loop pasture. An agreement was negotiated with the grazing permittee to complete a brush treatment in an adjacent pasture to mitigate the loss of Animal Unit Months (AUM's). An Environmental Assessment (EA) was drafted and went out to the public for review and comment assessing impacts of controlling brush on an adjacent pasture. Due to the controversial nature of the proposed action, a herbicide treatment, many concerned citizens were heard from during the comment period.

The proposed amendment is a result of public comments. Many people felt that there is very little conflict between recreationists and fall cattle grazing.

Livestock grazing, with seasonal restrictions, is also compatible with other objectives of the Wild Rivers Recreation Area which include developed and undeveloped recreation, wildlife viewing, environmental education, and visual resource management.

The Loop pasture has been grazed primarily during the fall for many years and is in good condition. It would provide an excellent opportunity for environmental education, showing how a variety of grazing management prescriptions impact ecological conditions.

A team of interdisciplinary specialists with backgrounds in Wildlife Biology, Range Management, and Outdoor Recreation Planning will be involved in the preparation of the Plan Amendment/ EA.

DATES: Interested parties may submit comments regarding concerns or issues to be addressed in the plan amendment through October 15, 1992.

ADDRESSES: Comments should be sent to Area Manager, Bureau of Land Management, Taos Resource Area Office, 224 Cruz Alta Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Richard Maggio, BLM, Taos Resource Area Office, 224 Cruz Alta Road, Taos, New Mexico 87571, 505–758–8851.

SUPPLEMENTARY INFORMATION: After the comment period in this Notice of Intent, the BLM will prepare and RMPA/EA. Following the preparation of the RMPA/ EA, a Record of Decision will be prepared. A Notice of Availability will announce the availability of the Plan Amendment/EA and Record of Decision in a subsequent **Federal Register**.

Dated: September 18, 1992.

Monte G. Jordan,

Associate State Director.

[FR Doc. 92–23374 Filed 9–24–92; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Availability of an Agency Draft Recovery Plan for White-Haired Goldenrod for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of an agency draft recovery plan for white-haired goldenrod. This species is found primarily on publicly owned lands in Menifee, Powell, and Wolfe Counties, Kentucky. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 24, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806, telephone 704/665–1195. Written comments and materials regarding the plan should be addressed to the Field Supervisor at this address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the address and telephone number shown above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The agency draft recovery plan for white-haired goldenrod outlines a

mechanism that provides for the recovery and eventual delisting of this federally endangered species. White-haired goldenrod was listed as a threatened species primarily because of trampling of its habitat by hikers, campers, and archaeological looters. The plan requires that the Service and other cooperators in the recovery of this species determine the biological requirements of the species, determine the number of individuals that constitutes a viable population, and determine and implement the management actions needed to ensure the continued existence of at least 40 occurrences. This draft of the recovery plan was preceded by a technical review draft that was reviewed by species experts and by experts in the protection of rare plants. Comments and information provided during this review will be used in preparing the final recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 16, 1992.

Richard G. Biggins,

Acting Field Supervisor.

[FR Doc. 92-23313 Filed 9-24-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-335]

Decision Not To Review an Initial Determination Terminating Investigation With Prejudice

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the matter of Certain Dynamic Sequential Gradient Compression Devices and Component Parts Thereof.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 12) issued on August 31, 1992, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the motion of complainant The Kendall Company ("Kendall") to withdraw its complaint and terminate the investigation with prejudice.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-3087.

SUPPLEMENTARY INFORMATION: On January 10, 1992, Kendall filed a complaint under section 337 alleging unfair acts in the importation and sale of certain dynamic sequential gradient compression devices and component parts thereof. The complaint alleged, *inter alia*, importation and sale of articles infringing U.S. Letters Patent 4,029,087 ("the '087 patent"), owned by Kendall. Kendall concurrently moved for temporary relief. The Commission instituted an investigation of Kendall's complaint and provisionally accepted Kendall's motion for temporary relief on February 20, 1992. The notice of investigation named two respondents: Huntleigh Technology PLC, a British corporation, and Huntleigh Technology, Inc., a Delaware corporation. 57 FR 6126 (February 20, 1992). The notice of investigation was subsequently amended to add Huntleigh Medical Limited, a British corporation, as a respondent. 57 FR 32561 (July 22, 1992).

On May 15, 1992, the ALJ issued an ID denying Kendall's motion for temporary relief on the grounds that: (1) The pertinent claims of the '087 patent were likely invalid for obviousness under 35 U.S.C. 103, (2) these claims were likely not infringed by respondents, (3) Kendall was unlikely to establish the existence of a domestic industry with respect to the '087 patent, and (4) the balance of equities did not favor issuance of temporary relief. On June 15, 1992, the Commission vacated the ID's discussion of obviousness but did not modify or vacate the ID in any other respect. The Commission's action had the effect of denying Kendall's motion for temporary relief. 57 FR 27475 (June 19, 1992).

On July 17, 1992, Kendall filed an unopposed motion seeking leave to withdraw its complaint and to terminate the investigation with prejudice. The ALJ issued an ID granting the motion on August 31, 1992. No petitions for review of the ID were filed. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rules 210.51 and 210.53(h), 19 CFR 210.51, 210.53(h).

Copies of the ID and all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Dated: September 21, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-23285 Filed 9-24-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

Date: September 22, 1992.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Land O' Lakes, Inc., 4001 Lexington Avenue North
(2) Arden Hills, MN 55126
(3) 4001 Lexington Avenue North, Arden Hills, MN 55126
(4) Herb Sorvik, P.O. Box 116, Minneapolis, MN 55440.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23321 Filed 9-24-92; 8:45 am]

BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Judicial Conference Advisory Committee on Appellate Rules; Meeting

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Advisory Committee on Appellate Rules. The meeting will be open to public observation but not participation. The meeting will commerce each day at 8:30 a.m.

DATES: October 20–21, 1992.

ADDRESSES: University of Notre Dame, Law School, Notre Dame, Indiana 46556.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633–6021.

Dated: September 14, 1992.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 92–22989 Filed 9–24–92; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Aircraft/Vessel Report.
(2) I–92. Immigration and Naturalization Service.
(3) On occasion.
(4) Businesses or other for-profit. Federal agencies or employees. The I–92 information is used to fulfill manifest requirements and is used by other agencies for data collection and statistical analysis.
(5) 600,000 annual responses at .18 hours per response
(6) 108,000 annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for Transfer of Petition for Naturalization.
(2) N–455. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The N–455 is used by the petitioner for naturalization to request a transfer of their petition to another court and is used by INS to make a recommendation to the court.
(5) 100 annual responses at .166 hours per response.
(6) 17 annual burden hours.
(7) Not applicable under 3504(h).

(1) Petition for Temporary Resident Status as a Replenishment Agricultural Worker (RAW).
(2) I–805. Immigration and Naturalization Service.
(3) Annually.
(4) Individuals or households. The I–805 is used by INS to determine whether a person is admissible to the United States as an immigrant and eligible for RAW status according to the eligibility requirements of the regulations.
(5) 300,000 annual responses at .5 hours per response.
(6) 150,000 annual burden hours.
(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: September 22, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92–23314 Filed 9–24–92; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling

the Departmental Clearance Officer, Kenneth A. Mills ((202) 523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Bureau of Labor Statistics
Survey of Employer-Provided Training
BLS 9200

Form	Affected public	Respondents	Frequency	Average time per response
Mail quantity	Business or other for-profit	3,800	One time	20 minutes.
Follow-up quantity	Business or other for-profit	5,100	One time	30 minutes.

3,817 total hours.

The lack of nationally representative information on the provision of training in establishments is a serious handicap to the implementation of effective public policy. This survey will collect such information and report on the provision of training by industry and size of establishment.

Revision

Bureau of Labor Statistics
1220–0067

Application for BLS Occupational Safety and Health Statistics Cooperative Agreements; BLS–OSHS Quarterly Financial Reporting Form

Form	Affected public	Respondents	Frequency	Average time per response
BLS–OSHS1	States	57	Annually	2 hours.
BLS–OSHS2	States	57	Quarterly	1 hour.

342 total hours.

The BLS enters into cooperative agreements with States and political subdivisions thereof, to assist them in developing and administering programs dealing with occupational safety and health statistics and to arrange through these agreements for research to further the objectives of the Occupational Safety and Health Act.

Signed at Washington, DC, this 21st day of September, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92–23365 Filed 9–24–92; 8:45 am]

BILLING CODE 4510–24–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and

fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Florida:
FL91-53 (Sept. 25, 1992)..... p. All.

Volume III

Wyoming:
WY91-9 (Sept. 25, 1992)..... p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page numbers(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Delaware:
DE91-4 (Feb. 22, 1991)..... p. All.
Florida:
FL91-7 (Feb. 22, 1991)..... p. All.
Kentucky:
KY91-3 (Feb. 22, 1991)..... p. All.
KY91-29 (Feb. 22, 1991)..... p. 403, 406.
New Jersey:
NJ91-2 (Feb. 22, 1991)..... p. 701, pp. 702, 709.
NJ91-3 (Feb. 22, 1991)..... p. 721, pp. 722, 726, p. 727.
New York:
NY91-2 (Feb. 22, 1991)..... p. 777, p. 778.
NY91-3 (Feb. 22, 1991)..... p. 797, pp. 799-801.
NY91-5 (Feb. 22, 1991)..... p. 817, p. 819.
NY91-21 (Feb. 22, 1991)..... p. 952a, pp. 952b-952c.

Volume II

Illinois:
IL91-1 (Feb. 22, 1991)..... p. 69, p.79.
IL91-2 (Feb. 22, 1991)..... p. 97, pp. 103, 114a.
IL91-6 (Feb. 22, 1991)..... p. 133, p. 135.
IL91-8 (Feb. 22, 1991)..... p. 145, p. 148
IL91-11 (Feb. 22, 1991)..... p. 163, p. 166.
IL91-12 (Feb. 22, 1991)..... p. 171, pp. 173, 174.
IL91-13 (Feb. 22, 1991)..... p. 183, p. 186.
IL91-14 (Feb. 22, 1991)..... p. 195, p. 198.
IL91-15 (Feb. 22, 1991)..... p. 205, p. 208.
Il91-17 (Feb. 22, 1991)..... p. 225, pp. 231-236b.
Indiana:
IN91-1 (Feb. 22, 1991)..... p. 243, p. 244.
IN91-2 (Feb. 22, 1991)..... p. 259, pp. 260, 263, p. 265.
IN91-3 (Feb. 22, 1991)..... p. 279, p. 284.
IN91-4 (Feb. 22, 1991)..... p. 291, pp. 292-296.
IN91-5 (Feb. 22, 1991)..... p. 305, pp. 306-309.
IN91-6 (Feb. 22, 1991)..... p. 315, pp. 316, 320, p. 321.
Iowa:
IA91-18 (Feb. 22, 1991)..... See notice.
Michigan:
MI91-1 (Feb. 22, 1991)..... p. 441, p. 444.
MI91-2 (Feb. 22, 1991)..... p. 461, pp. 463-476.
MI91-3 (Feb. 22, 1991)..... p. 477, p. 479.
MI91-5 (Feb. 22, 1991)..... p. 499, pp. 500-501.

Volume III

Hawaii:
HI91-1 (Feb. 22, 1991)..... p. All.
Nevada:
NV91-7 (Feb. 22, 1991)..... p. All.
NV91-9 (Feb. 22, 1991)..... p. All.
Washington:
WA91-1 (Feb. 22, 1991)..... p. All.
WA91-2 (Feb. 22, 1991)..... p. All.
Wyoming:
WY91-5 (Feb. 22, 1991)..... p. All.
WY91-6 (Feb. 22, 1991)..... p. All.
WY91-7 (Feb. 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Goverment Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of September 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-23116 Filed 9-24-92; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-26, 958, et. al.]

Anschutz Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the Matter of TA-W-26,958 Denver, Colorado, TA-W-26,958A, Houston, Texas, TA-W-26,958B Midland, Texas, and TA-W-26,958C Oklahoma City, Oklahoma.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor initially issued a Notice of Negative Determination on April 16, 1992. The denial notice was published in the **Federal Register** on May 22, 1992 (57 FR 21829). Subsequently, the Department reopened the investigation and issued a Revised Certification for Worker Adjustment Assistance on May 6, 1992 applicable to all workers of the subject firm in Denver, Colorado. The notice was published in the **Federal Register** on May 22, 1992 (57 FR 21829).

New information received from the company shows that several workers were separated in March 1991 from three other locations of the Anschutz Corporation. Accordingly, the Department is amending the revised certification to include workers at the Houston and Midland, Texas and the Oklahoma City, Oklahoma locations. A termination date of May 28, 1991 is established for the additional three locations since workers at these locations are covered under TA-W-27,360; TA-W-27,361 and TA-W-27,362 beginning on May 28, 1991.

The intent of the Department's certification is to include all workers of the Anschutz Corporation who were adversely affected by increased imports.

The amended notice applicable to TA-W-26,958 is hereby issued as follows:

"All workers of Anschutz Corporation, Denver, Colorado who became totally or partially separated from employment on or after February 1, 1991 and all workers of Anschutz Corporation, Houston, Texas:

Midland, Texas and Oklahoma City, Oklahoma who became totally or partially separated from employment on or after February 1, 1991 and before May 28, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 14th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-23361 Filed 9-24-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,236]

Bates Fabrics, Inc., Lewiston, ME; Notice of Revised Determination on Reconsideration

On August 31, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on July 28, 1992 (57 FR 33367).

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met.

On reconsideration, the Department noted a late customer survey response from a major customer with increasing import purchases of bedspread while decreasing its purchases from Bates. Other findings on reconsideration show several customers of Bates increasing their indirect imports of bedspreads and reducing purchases from Bates in 1991 compared to 1990.

U.S. imports of bedspreads increased absolutely in 1991 compared to 1990 an in the twelve months ending in February 1992 compared to the same 12 month period ending in February 1991.

Sales and production of bedspreads at Bates decreased in 1991 compared to 1990 and in the first quarter of 1992 compared to the first quarter in 1991. Substantial worker separations occurred in 1991 and in 1992.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers at Bates Fabrics, Inc., in Lewiston, Maine were adversely affected by increased imports of articles that are like or directly competitive with the bedspreads produced at Bates Fabrics, Inc., in Lewiston, Maine. In accordance with the provisions of the Act, I make the following revised determination for workers of Bates Fabrics, Incorporated in Lewiston, Maine.

"All workers of Bates Fabrics, Incorporated in Lewiston, Maine who became totally or partially separated from employment on or after April 28, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 15th day of September 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 92-23363 Filed 9-24-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,418]

Tobin-Hamilton Company, Inc., Mansfield, MO; Notice of Affirmative Determination Regarding Application for Reconsideration

On September 2, 1992, one of the workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 7, 1992 and published in the **Federal Register** on August 28, 1992, (57 FR 39241).

Its claimed that the Department only investigated the transfer of production operations from Mansfield to overseas locations and never investigated whether the production and sales declines were the result of increased imports of children's shoes.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 11th day of September 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-23362 Filed 9-24-92; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Announcement of Proposed Noncompetitive Grant Awards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the Southern Governors' Association, of Washington, DC, for the provision of specialized services under the authority of the Job Training Partnership Act (JTPA). The Southern Governors' Association has unique qualifications to perform this type of activity and their unsolicitated proposal is unique and has outstanding merit.

DATES: It is anticipated that this grant award will be executed by October 15, 1992, and will be funded for twelve months. Submit comments by 4:45 p.m. (Eastern Time), on October 13, 1992.

ADDRESSES: Submit comments regarding this proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Charlotte Adams: Reference FR-DAA-006.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the Southern Governors' Association to implement school-to-work demonstration projects in five (5) member states of the Association's jurisdiction, and to produce a workforce case studies video. Funds for this activity are authorized by the Job Training Partnership Act, as amended, title IV—Federally administered Programs. The proposed funding is approximately $135,000 for twelve months.

Signed at Washington, DC on September 18, 1992.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 92-23366 Filed 9-24-92; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Maryland State Standards; Notice of Approval

1. *Background*—Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review

and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the Federal Register (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated May 26, June 29, and July 20, 1992, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) 29 CFR 1910.1030, pertaining to the Occupational Exposure to Bloodborne Pathogens Standard for General Industry as published in the Federal Register of December 6, 1991 (56 FR 64174); (2) 29 CFR 1910.1025, pertaining to amendments to the Occupational Exposure to Lead Standard for General Industry as published in the Federal Register of January 30, 1990 (55 FR 3166); and (3) 29 CFR 1910.119, pertaining to the Process Safety Management of Highly Hazardous Chemicals, Explosives, and Blasting Agents as published in the Federal Register of February 24, 1992 (57 FR 6403). These standards are contained in COMAR 09.12.31. Maryland occupational safety and health standards were promulgated after a public hearing March 31, February 5, and May 5, 1992, respectively. These standards became effective on May 31, June 8, and July 20, 1992, respectively.

2. *Decision*—Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. *Location of the Supplements for Inspection and Copying*—A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, U.S. Department of Labor, room N3700, 3rd Street and Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation*—Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective September 25, 1992.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania, this 27th day of August 1992.

Richard Soltan,

Deputy Regional Administrator.

[FR Doc. 92-23364 Filed 9-24-92; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-51]

NASA Advisory Council; Minority Business Resource Advisory Committee; Establishment.

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of establishment.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Public Law 92-463, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration has determined that establishment of the NASA Advisory Council Minority Business Resource Advisory Committee is in the public interest in connection with the performance of duties imposed upon NASA by law.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia K. Kraemer, National Aeronautics and Space Administration, Code ADA-2, Washington, DC 20546 (202/453-8766).

SUPPLEMENTARY INFORMATION: The function of the Minority Business Resource Advisory Committee is (1) to advise the NASA Administrator on the special needs and opportunities presented by the Nation's minority businesses, and (2) to assist NASA in identifying eligible minority businesses to participate in NASA procurement in support of the Nation's civil aeronautics and space research and development programs.

Dated: September 21, 1992.

John W. Gaff,

Advisory Committee Management Officer.

[FR Doc. 92-23293 Filed 9-24-92; 8:45 am]

BILLING CODE 7501-01-M

[Notice 92-52]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting on Human Factors

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on human factors.

DATES: October 28, 1992, 9 a.m. to 5 p.m.; and October 29, 1992, 8:30 a.m. to 4:30 p.m.; and October 30, 1992, 8 a.m. to 11:30 a.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, room 100, Building 262, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. C. Thomas Snyder, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604-5066.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows.

—NASA Aeronautics Program Overview
—NASA Human Factors Program Review

Dated: September 21, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-23351 Filed 9-24-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice 92-53]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting on Propulsion

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on propulsion.

DATES: October 22, 1992, 9 a.m. to 5 p.m.; and October 23, 1992, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lewis Research Center, room 100, Building 86, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Neal Saunders, National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–2965.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA Aeronautics Program Overview
—Aeropropulsion Program Review

Dated: September 21, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92–23352 Filed 9–24–92; 8:45 am]

BILLING CODE 7510–01–M

[Notice 92–49]

NASA Advisory Council; Space Science and Applications Advisory Committee; Space Station Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Space Station Science and Applications Advisory Subcommittee.

DATES: October 13, 1992, 8 a.m. to 10 p.m.; October 14, 1992, 7:30 a.m. to 9:30 p.m.; October 15, 1992, 8 a.m. to 10 p.m.; and October 16, 1992, 8 a.m. to 12:30 p.m.

ADDRESSES: Boeing Trade Zone Center, 922 James Record Road, Huntsville, AL 35824; and Holiday Inn, 9035 Highway 20 West, Madison, AL 35758.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code SM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1570).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Program Update
—Data Systems and Communications
—Operations and Utilization
—International Aspects
—Attached Payloads
—User Interactions

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 18, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92–23291 Filed 9–24–92; 8:45 am]

BILLING CODE 7510–01–M

[Notice 92–50]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting on Power and Propulsion

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Space Systems and Technology Advisory Committee meeting on power and propulsion.

DATES: October 20, 1992, 8 a.m. to 5 p.m.; October 21, 1992, 8:30 a.m. to 5:30 p.m.; and October 22, 1992, 8:30 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lewis Research Center, Development Engineering Building Auditorium, Building 500, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Sal Grisaffe, National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–3193.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA Overview & Lewis Research Center Overview
—Power Program Review
—Propulsion Program Review

Dated: September 21, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92–23292 Filed 9–24–92; 8:45 am]

BILLING CODE 7510–01–M

[Notice 92–54]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting on Human and Machine Operations

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Space Systems and Technology Advisory Committee meeting on human and machine operations.

DATES: October 21, 1992, 8 a.m. to 5 p.m.; October 22, 1992, 8 a.m. to 5 p.m.; and October 23, 1992, 8 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Committee Room, Building N–200, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Gross, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–6547.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA Mission and Technology Needs
—Integrated Technology Plan
—Human and Machine Operations Program Element Review.

Dated: September 21, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92–23353 Filed 9–24–92; 8:45 am]

BILLING CODE 7510–01–M

POSTAL RATE COMMISSION

[Docket No. MC92-1; Order No. 934]

Second-Class Eligibility; Notice and Order Provisionally Establishing Proceeding for Consideration of Modifying Format Requirement for Second Class and Requesting Comments

September 21, 1992.

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc, III; H. Edward Quick, Jr.

Currently one of the requirements for use of second class, the mail class for newspapers and other periodical publications, is that the mail pieces be made of printed sheets. Domestic Mail Classification Schedule (DMCS) section 200.0102. With the new methods of disseminating information, such as diskettes used in computers, the Commission believes it might be useful to review the requirement of printed sheets to determine whether modification is appropriate, and what form any change should take.

Recently a joint study by the Postal Service and mailers recommended that second-class eligibility be extended to other publication formats, while maintaining the integrity of the class.[1] The purpose of second class can be found in section 200.0104 of the DMCS: "Second-class matter must be originated and published for the purpose of disseminating information of a public character, or devoted to literature, the sciences, art, or some special industry." With the changes in technology which have taken place, and are expected to continue, it is possible that formats other than printed paper could be useful additions to second class and further the goals for which that class exists.

There are many questions which must be answered before the Commission could recommend a classification change to include new publication formats.[2] Therefore, the Commission is establishing Docket No. MC92-1 provisionally and requesting that interested parties comment on the appropriateness of modifying the "printed sheets" requirement. In addition to comments on the desirability of considering such a change, interested parties are encouraged to provide as much information as possible about existing nonpaper publications as well as projections for the future.

Many questions will have to be answered if the Commission decides to go forward with the consideration of modifying the requirement of printed sheets. The possible effect on costs, and subsequently, rates, is a major question. Whether these types of publications are compatible with the existing class, and how any incompatibility should be handled, is another major concern. Existing second-class rate and classification schedules are based on mail pieces which have characteristics varying greatly from formats which do not meet the printed sheets requirement. It would be most helpful if commenters review the current second-class rate and classification schedules. Following that review, the inquiry would be aided by parties' comments on whether any of the rate elements in the rate schedule and the other existing DMCS provisions should be inapplicable to nonpaper publications, or whether further modifications (in addition to eliminating the printed sheets requirement) would be more appropriate.

The Commission will review all comments received and make a decision on whether to move forward with a classification case concerning this issue. However, any evidence the Commission ultimately relies on in issuing a recommendation must meet the evidentiary standards found in the Commission's rules of practice and procedure.

Stephen A. Gold, Director of the Commission's Office of the Consumer Advocate, is appointed to represent the interests of the general public in this inquiry, and any section 3624 proceedings therein. In this capacity, he will direct the activities of Commission personnel assigned to assist him and, at an appropriate time, supply their names for the record. Mr. Gold and the assigned personnel will participate in, or offer advice on, any Commission decision in this inquiry, only as described in 39 CFR 3001.8.

We are setting October 21, 1992, as the date for their submission. The Secretary of the Commission will maintain a service list for this inquiry. Parties may have their names included on the list by writing to the Secretary.

The Commission Orders

(A) Comments on consideration of modifying the requirement that second-class matter be formed of printed sheets are due on October 21, 1992. They should be sent to the Secretary, Postal Rate Commission, 1333 H Street, NW., suite 300, Washington, DC 20268-0001.

(B) Stephen A. Gold is appointed Officer of the Commission to represent the interests of the general public in this inquiry and any further section 3624 proceeding on this matter.

(C) The Secretary of the Commission will maintain a service list of those parties who request their names be included.

(D) The Secretary of the Commission will have this Notice and Order published in the Federal Register.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 92-23287 Filed 9-24-92; 8:45 am]

BILLING CODE 7710-FW-M

[1] In August 1992, the Competitive Services Task Force, made up of industry and postal representatives, issued a report with its recommendations of improvements for postal offerings. This recommendation is found on page 32.

[2] Under the statute the Commission can only recommend classification changes in cases which it initiates. Any rate associated with a new classification must be proposed by the Postal Service. 39 U.S.C. 3623.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31204; File No. SR-NASD-92-34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Assessments and Fees on Members

September 18, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1992,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to amend Schedule A to the NASD's By-Laws to modify the NASD's branch office fees. Below is the text of the proposed rule change. Proposed new

[1] The NASD originally submitted this filing on August 20, 1992. On September 4, 1992, the NASD filed Amendment No. 1 to SR-NASD-92-34. The amendment replaced the text of the proposed rule change originally filed, and modified the discussion of the proposed rule change to conform to the changes in the text.

language is italicized; proposed deletions are in brackets.

Schedule A

Section 2—Fees

(a) Each member shall be assessed a fee of $50 for *the registration of* each [registered] branch office, as defined in the By-Laws[.]. *Each member shall be assessed an annual fee for each branch office* [which is open during any part of the Association's fiscal year.] *in an amount equal to the lesser of (1) $50 per registered branch, or (2) the product of $50 and the number of registered representatives and registered principals associated with the member at the end of Association's fiscal year.*

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the SEC, the Association included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD currently requires its members to pay an annual fee for each registered branch office pursuant to Schedule A, Section 2 to the By-Laws. The fee is imposed for each location of a member that meets the definition of "branch office," as defined in the By Laws,[2] and which is registered with the Association. The NASD is proposing to modify the language of the provision to clarify that (1) a fee is imposed upon the registration of each branch office; (2) each branch office is also subject to an annual fee; and (3) the annual fee is calculated at the end of each year based on the registered branch offices and registered principals at that time.

Because of inequities that could result from the imposition of branch office fees on a member that has a disproportionately large number of branch office locations relative to its size and number of registered persons, the NASD has determined that the branch office fee structure should be revised to eliminate this inequity. The NASD is therefore proposing to amend section 2 of Schedule A to impose an initial fee of $50 on the registration of a branch office and an annual charge equal to the lesser of $50 per branch or the product of $50 and the total number of the member's registered representatives and registered principals. Thus, where the number of registered branch offices of a member exceeds the combined number of that member's registered representatives and registered principals, the member would not be assessed branch office and renewal fees for the excess of branch offices over the amount of representative and principal registrations. Regardless of whether the annual fee is based on the number of the member's registered representatives and principals, members are still obligated to register each location that meets the definition of a branch office.

The NASD believes that the proposed rule change is consistent with section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members, in that it eliminates inequities in the imposition of branch office fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act, and subparagraph (e) of Rule 19b–4 thereunder, in that it constitutes a due, fee, or other charge. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 16, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–23283 Filed 9–24–92; 8:45 am]

BILLING CODE 8010–01–M

[2] *See NASD Securities Dealers Manual*, Rules of Fair Practice, Art. III, Sec. 27, CCH ¶ 2177.

DEPARTMENT OF STATE

[Public Notice 1705]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Ship Design and Equipment and Working Group on Fire Protection; Meetings

Fire Protection Meeting

The U.S. Safety of Life at Sea Working Group on Fire Protection will conduct an open meeting on October 14, 1992 at 9:30 a.m. in room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The purpose of the meeting will be to debrief on the discussions that took place at the 37th Session of the International Maritime Organization (IMO) Subcommittee on Fire Protection (FP), held on May 18–22, 1992.

The meeting will focus on the fire safety of commercial vessels. Specific discussion areas include: code of safety for dynamically supported craft, fire casualty records, fire-fighting systems, fire test procedures, guidelines for performance and testing criteria and surveys of foam concentrates, provisions for helicopter facilities on ships, phasing out of halons, automatic sprinkler systems, passenger vessel safety, preventing and mitigating marine

pollution incidents, role of the human element in maritime casualties, open top container ships, and smoke control research.

Members of the public may attend up to the seating capacity of the room. For further information regarding the meeting of the SOLAS Working Group on Fire Protection contact Mr. Jack Booth at (202) 267–2997.

Design and Equipment Meeting

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on October 14, 1992 at 1 p.m. in room 2415 at United States Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting will be to prepare for the 36th Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE) scheduled for February 22 to 26, 1993. Items of discussion will include the following: Use on board ships of ozone-depleting substances other than halons; guidelines on standard calculations for anchor positioning systems for mobile offshore drilling units (MODUs); guidelines for dynamic positioning systems for MODUs and ships engaged in similar operations; maneuverability of ships and maneuvering standards; helicopter facilities offshore and on ships; extension of the code on alarms and indicators; ventilation of vehicle decks during loading and unloading; consideration of the introduction of the Harmonized System of Surveys and certification into the MODU Code; revision of the Code of Safety for Dynamically Supported Craft; fuel line failures; reduction of secondary sources of pollution by minimizing the source of general flooding and by improving control of equipment vital to safe operation of the vessel; development of safety standards for combined pusher tug-barges; structural integrity of tankers and bulk carriers; review of existing ships' safety standards; requirements for ships intended for operation in polar waters; guidelines for standardization of the layout of essential instrumentation on the bridge and in the engine room; feasibility study on voyage data recorders; coating requirements for ballast tanks; revision of towing requirements—resolution A.535(XIII); safety of passenger submersibles; introduction of a standard for ship construction into SOLAS 1974; and, the role of the human element in maritime casualties.

The IMO DE Subcommittee works to develop international agreements, guidelines, and standards for machinery, equipment, and systems as these relate to the marine industry. In most cases, these international agreements, guidelines, and standards form the basis for national standards/regulations and class society rules. The U.S. SOLAS Working Group supports the U.S. Representative to the IMO DE Subcommittee in developing the U.S. position on those issues raised at the IMO DE Subcommittee meetings. Because of the impact on domestic regulations through development of these international guidelines, standards, and regulations, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas. All shipping companies, shipyards, design firms, naval architects, marine engineers, and consultants are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within IMO DE. Since these meetings are open to the public, anyone may attend up to the seating capacity of the room.

For further information on the DE meeting contact Lieutenant Commander Roger Dent at (202) 267–2206, U.S. Coast Guard Headquarters (G–MTH–2), 2100 Second Street SW., Washington, DC 20593–0001.

Dated: September 22, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–23328 Filed 9–24–92; 8:45 am]

BILLING CODE 4710–07–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings, Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 10 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. October 14, 9 a.m. to 12:30 p.m., Newark, New Jersey, Region 1 Advisory Board.

2. October 27, 9 a.m. to 12:30 p.m., Fort Worth, Texas, Region 4 Advisory Board.

3. October 29, 9 a.m. to 12:30 p.m., Kansas City, Missouri, Region 2 Advisory Board.

4. November 6, 9 a.m. to 12:30 p.m., Albuquerque, New Mexico, Region 5 Advisory Board.

5. November 10, 9 a.m. to 12:30 p.m., Los Angeles, California, Region 6 Advisory Board.

6. November 18, 9 a.m. to 12:30 p.m., St. Paul, Minnesota, Region 3 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Newark, New Jersey—Hilton Gateway, Ballroom, Lobby Level, Raymond Boulevard & Gateway Center.

2. Fort Worth, Texas—The Worthington Hotel, Great Lakes Room, Mezzanine Level, 200 Main Street.

3. Kansas City, Missouri—Allis Plaza Hotel, Basie Ballroom, Second Floor, 200 West Twelfth.

4. Albuquerque, New Mexico—Albuquerque Technical Vocational Institute, Smith Brasher Hall, Room 100, 717 University Boulevard, S.E.

5. Los Angeles, California—The Westin Bonaventure, Santa Barbara Room, Lobby Level, 404 South Figueroa Street.

6. St. Paul, Minnesota—Minnesota World Trade Center, Studio Theater, Third Level, 400 World Trade Center.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

PURPOSE: The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

AGENDA: Topics to be addressed at the six regional meetings include: net recoveries by asset type and sales method, appraisal policies, SAMDA program incentives, bulk sales, RTC computer systems, environmentally significant property disposition, use of multiple investor funds for land disposition and affordable housing disposition performance reports. A detailed agenda will be available at the meeting.

STATEMENTS: Interested persons may submit to an advisory board written statements, data, information, or views

on the issues pending before the board prior to or at the meeting. The meeting will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: September 22, 1992.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 92-23354 Filed 9-24-92; 8:45 am]

BILLING CODE 2222-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Redetermination of Fitness of Air Alpha, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Redetermination—Order 92-9-39, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Air Alpha, Inc., is fit, willing, and able to resume operations as a commuter air carrier.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2343.

Dated: September 18, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-23280 Filed 9-24-92; 8:45 am]

BILLING CODE 4910-62-M

[Notice No. 92-16]

Senior Executive Service Performance Review Boards (PRB) Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Glenda M. Tate, Director of Personnel, and Executive Secretary, DOT Executive Resources Board, (202) 366-4088.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on September 18, 1992.

Jon H. Seymour,

Assistant Secretary for Administration.

Department of Transportation

Senior Executive Service Performance Review Boards

Office of the Secretary

Paul L. Gretch, Director, Office of International Aviation, Office of the Secretary

James H. New II, Director, Office of Safety Program Review, Office of the Secretary

Robert P. Thurber, Deputy Director, Office of Transportation, Regulatory Affairs, Office of the Secretary

Roberta D. Gabel, Assistant General Counsel for Environmental Civil Rights and General Law, Office of the Secretary

Donald H. Horn, Assistant General Counsel for International Law, Office of the Secretary

Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, Office of the Secretary

Penny Eastman, Deputy Administrator (Inland Waterways and Great Lakes), Maritime Administration

Earnest Hawkins, Associate Administrator for Administration, Maritime Administration

Steven Diaz, Chief Counsel, Federal Transit Administration

Eileen Powell, Deputy Director, Office of Financial Management, Office of the Secretary.

United States Coast Guard

RADM James M. Loy, Chief, Office of Personnel & Training, United States Coast Guard

RADM David E. Ciancaglini, Chief, Office of Command Control and Communications, United States Coast Guard

RADM John W. Lockwood, Chief, Office of Readiness and Reserve, United States Coast Guard

RADM Kent H. Williams, Chief, Office of Acquisition, United States Coast Guard

Diana L. Zeidel, Deputy Associate Administrator for Administration, Federal Highway Administration

William T. Hudson, Director, Office of Civil Rights, Office of the Secretary

John P. Eicher, Director, Office of Program Management Support, Federal Highway Administration

Linda M. Higgins, Director, Office of Acquisition and Grant Management, Office of the Secretary

Ann C. Agnew, Deputy Assistant Secretary for Policy and International Affairs, Office of the Secretary

Federal Aviation Administration

Arnold Aquilano, Associate Administrator for Airway Facilities, Federal Aviation Administration

Joan W. Bauerlein, Director, Office of International Aviation, Federal Aviation Administration

Theodore R. Beckloff, Regional Administrator, Southern Region, Federal Aviation Administration

Dorothy H. Berry, Deputy Assistant Administrator for Human Resource Management, Federal Aviation Administration

Carolyn C. Blum, Associate Administrator for Contracting and Quality Assurance, Federal Aviation Administration

Anthony J. Broderick, Jr., Associate Administrator for Regulation and Certification, Federal Aviation Administration

Garland P. Castleberry, Associate Administrator for Aviation Standards, Federal Aviation Administration

Clyde M. DeHart, Jr., Regional Administrator, Southwest Region, Federal Aviation Administration

Kay Frances Dolan, Director, Office of Personnel, Federal Aviation Administration

Arlene I. Feldman, Regional Administrator, New England Region, Federal Aviation Administration

Darlene Freeman, Associate Administrator for Aviation Safety, Federal Aviation Administration

Margaret M. Gilligan, Chief of Staff, Federal Aviation Administration

Theron A. Gray, Deputy Assistant Administrator for Information Technology, Federal Aviation Administration

Leonard L. Griggs, Assistant Administrator for Airports, Federal Aviation Administration

James E. Haight, Regional Administrator, Central Region, Federal Aviation Administration

Charles H. Huettner, Deputy Associate Administrator for Aviation Safety, Federal Aviation Administration

Frederick M. Isaac, Regional Administrator, Northwest Mountain Region, Federal Aviation Administration

Ruth A. Leverenz, Director, Office of Budget, Federal Aviation Administration

Homer C. McClure, Associate Administrator, Aeronautical Center, Federal Aviation Administration

Herbert R. McLure, Assistant Administrator for Human Resource Management, Federal Aviation Administration

Michael C. Moffet, Assistant Administrator for Policy, Planning, and International Aviation, Federal Aviation Administration

Hugh L. O'Neill, Assistant Administrator for Public Affairs, Federal Aviation Administration

Daniel J. Peterson, Regional Administrator, Eastern Region, Federal Aviation Administration

Edward J. Phillips, Regional Administrator, Great Lakes Region, Federal Aviation Administration

William H. Pollard, Associate Administrator for Air Traffic, Federal Aviation Administration

Martin T. Pozesky, Associate Administrator for System Engineering and Development, Federal Aviation Administration

Kenneth P. Quinn, Chief Counsel, Federal Aviation Administration

Stanley Rivers, Director, Systems Maintenance Service, Federal Aviation Administration

Ann H. Rosenwald, Director, Office of Human Resource Development, Federal Aviation Administration

Raymond A. Salazar, Manager, FAA Center for Management, Federal Aviation Administration

Carl B. Schellenburg, Regional Administrator, Western-Pacific Region, Federal Aviation Administration

Jacqueline L. Smith, Regional Administrator, Alaskan Region, Federal Aviation Administration

Orlo K. Steele, Assistant Administrator for Civil Aviation Security, Federal Aviation Administration

Quentin S. Taylor, Deputy Associate Administrator for Airports, Federal Aviation Administration

John E. Turner, Associate Administrator for National Airspace System Development, Federal Aviation Administration

Leon C. Watkins, Assistant Administrator for Civil Rights, Federal Aviation Administration

Winifred Woodward, Deputy Regional Administrator, Southern Region, Federal Aviation Administration

Brenda L. Yager, Assistant Administrator for Governmental and Industry Affairs, Federal Aviation Administration

Jane H. Bachner, Director, Office of Economic Analysis, Federal Railroad Administration

Nancy M. Butler, Director of Communications and External Affairs, Office of the Administrator, Federal Transit Administration

Nan K. Harlee, Associate Administrator for Marketing, Maritime Administration

Earnest Hawkins, Associate Administrator for Administration, Maritime Administration

William T. Hudson, Director, Office of Civil Rights, Office of the Secretary

Federal Highway Administration

George S. Moore, Jr., Associate Administrator for Administration, Federal Highway Administration

Anthony R. Kane, Associate Administrator for Program Development, Federal Highway Administration

Wesley S. Mendenhall, Jr., Regional Administrator, Fort Worth, Texas, Federal Highway Administration

Steven E. Wermcrantz, Chief Counsel, Federal Highway Administration

Cynthia C. Rand, Director, Office of Information Resource Management, Office of the Secretary

Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Program Administration

William T. Hudson, Director, Office of Civil Rights, Office of the Secretary

Federal Railroad Administration

S. Mark Lindsey, Chief Counsel, Federal Railroad Administration

Raymond J. Rogers, Associate Administrator for Administration, Federal Railroad Administration

Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration

James T. McQueen, Associate Administrator for Railroad Development, Federal Railroad Administration

William J. Watt, Associate Administrator for Policy, Federal Railroad Administration

Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary

William T. Hudson, Director, Office of Civil Rights, Office of the Secretary

National Highway Traffic Safety Administration

Barry I. Felrice, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration

Adele L. Derby, Associate Administrator for Regional Operations, National Highway Traffic Safety Administration

William A. Boehly, Associate Administrator for Enforcement, National Highway Traffic Safety Administration

P. Jackson Rice, Chief Counsel, National Highway Traffic Safety Administration

Alicia Casanova, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Federal Transit Administration

Nancy M. Butler, Director of Communications and External Affairs, Federal Transit Administration

Earnest Hawkins, Associate Administrator for Administration, Maritime Administration

Kevin E. Heanue, Director, Office of Environment and Planning, Federal Highway Administration

Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary

Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Programs Administration

Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration

Thomas Hunt, Associate Administrator for Administration, Federal Transit Administration

Maritime Administration

Reginald A. Bourdon, Associate Administrator for Policy and International Affairs, Maritime Administration

Richard E. Bowman, Associate Administrator for Maritime Aids, Maritime Administration

Harlan T. Haller, Associate Administrator for Shipbuilding and Ship Operations, Maritime Administration

Earnest Hawkins, Associate Administrator for Administration, Maritime Administration

Nan K. Harlee, Associate Administrator for Marketing, Maritime Administration

W. Patrick Morris, Chief Counsel, Maritime Administration

William T. Hudson, Director, Office of Civil Rights, Office of the Secretary

Research and Special Programs Administration

Ann C. Agnew, Deputy Assistant Secretary for Policy, and International Affairs, Office of the Secretary

Katherine E. Collins, Director, Office of Budget, Office of the Secretary

Philip S. Coonley, Director, Office of Administration, Volpe National Transportation Systems Center, Research and Special Programs Administration

Penny Eastman, Deputy Administrator for Inland Waterways and Great Lakes, Maritime Administration

Franz K. Gimmler, Deputy Associate Administrator for Safety, Federal Transit Administration

Robert A. Knisely, Special Assistant and Director for Drug, Enforcement and Program Compliance, Office of the Secretary

Arnold L. Levine, Director, Office of International Transportation and Trade, Office of the Secretary

Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Programs Administration

Patricia D. Parrish, Director, Office of Management Planning, Office of the Secretary

P. Jackson Rice, Chief Counsel, National Highway Traffic Safety Administration

Alan I. Roberts, Associate Administrator for Hazardous Materials Transportation, Research and Special Programs Administration

George W. Tenley, Jr., Associate Administrator for Pipeline Safety, Research and Special Programs Administration

Frank F.C. Tung, Deputy Director, Volpe National, Transportation System Center, Research and Special Programs Administration

Office of the Inspector General

Melissa J. Allen, Deputy Assistant Secretary for Administration, Office of the Secretary

Chris Greer, Assistant Inspector General for Audits, Department of Housing and Urban Development

Edward Hefferon, Deputy Inspector General, General Services Administration

Jacquelyn K. Howard, Assistant Inspector General for Management and Policy, Department of Housing and Urban Development

Steve McNamara, Acting Assistant Inspector General for Auditing, Department of Education

Everett Mosely, Deputy Assistant Inspector General for Auditing, Department of Agriculture

Thomas Roslewicz, Deputy Inspector General for Audit Services, Department of Health and Human Services

Walter R. Somerville, Director, Office of Civil Rights, United States Coast Guard

Michael Zimmerman, Deputy Inspector General, Department of Commerce

Thomas R. Hunt, Associate Administrator for Administration, Federal Transit Administration

Earnes Hawkins, Associate Administration for Administrator, Maritime Administration.

[FR Doc. 92-23279 Filed 9-24-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: Missoula & Ravalli Counties, MT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Missoula and Ravalli Counties, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Environmental Coordinator, Federal Highway Administration, 301 South Park, Drawer 10056, Helena, MT 59626-0056; Telephone: (406) 449-5310; or Mr. Doug Morgan, Consultant Design Engineer, Montana Department of Transportation, 2701 Prospect Street, Helena, MT 59620; Telephone: (406) 444-6251.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Montana Department of Transportation will prepare an Environmental Impact Statement (EIS) on a proposal to develop a project or projects to improve travel between Hamilton and Lolo, Montana. The environmental studies will focus on US 93 from just north of Hamilton to its intersection with US 12 in Lolo, a distance of about 35 miles.

In addition to studying ways to improve the highway in response to traffic congestion and safety issues, alternatives to the single occupant vehicle such as commuter rail lines, bus service and van pools will be studied. Strategies to manage demand by encouraging and facilitating use of the corridor at times other than when use and congestion is the highest will be considered. The no action alternative will also be considered.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of formal scoping meetings will be held in the project area beginning in late 1992. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and/or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on: September 17, 1992.

Hank D. Honeywell,

Division Administrator, Montana Division, Helena.

[FR Doc. 92-23338 Filed 9-24-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Toyota

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants the petition by Toyota Motor Corporate Services of North America, Inc. (Toyota) for exemption from the parts marking requirements of the vehicle theft prevention standard for a high theft car line (whose nameplate is confidential), pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the 1993 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: On April 29, 1992, the agency received a letter from Toyota Motor Corporate Services of North America, Inc. (Toyota) requesting an exemption from the theft prevention standard for a new car line to be introduced in Model year 1993. The letter was submitted pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard.* Toyota requested an exemption from parts marking based on the installation of a theft deterrent system as standard equipment for the car line that is the subject of this notice. In a letter dated May 11, 1992, the agency granted Toyota's requests for confidential treatment of information, including the nameplate of the new car line, in its submission.

Upon review of Toyota's submission, the agency determined that the submission did not include certain information concerning reliability and durability testing of the antitheft system. (See 49 CFR 543.6(a)(3)(v).) The agency informed Toyota of the omission, and received the required information on June 15, 1992. The agency determined that, as of June 15, 1992, the information submitted by Toyota fulfilled the specific content requirements of § 543.6.

In its petition, Toyota provided a description of the identity, design, and location of the components of the antitheft device proposed for the car line that is the subject of this notice, inlcuding diagrams of the components and their location in the vehicle. Toyota stated that the proposed antitheft system incorporates an alarm function that monitors the vehicle's doors, hood, and trunk key cylinder, and prevents unauthorized operation of the engine.

Toyota stated that the proposed antitheft system is automatically activated by the normal locking of the vehicle door. In order to arm the system, the key must be removed from the ignition switch; all of the doors, trunk lid, and hood lid, must be closed; and the driver's or front passenger's door must be locked with or without the ignition key. Locking any door ensures that all doors, the hood, and trunk are locked.

If the system is armed and unauthorized entry is attempted, the antitheft system will be triggered, setting off audible and visual signals to attract attention. Additionally, the antitheft system will activate the starter-interrupt relay, preventing the starting of the engine from the ignition switch. Toyota stated that to prevent defeat of the antitheft system, all system components are in inaccessible locations. Toyota described further measures, including mechanical and body designs to deter forcible entrance into and movement of the vehicle, to prevent unauthorized operation of its new car line.

Toyota addressed the reliability and durability of its proposed antitheft system by describing redundant features in the system and by explaining the various quality assurance tests that were conducted on the system.

In discussing why it believes the antitheft system will be effective in reducing and deterring motor vehicle theft, Toyota stated that existing Toyota car lines have an antitheft system similar to that proposed for the car line that is the subject of this notice. Toyota stated that the theft rate for the existing Toyota car lines decreased for the first year that the antitheft system was included as standard equipment, and that its theft rates have remained lower than Toyota models that do not include the antitheft system. Toyota asserted that these theft data indicate the effectiveness of the antitheft system, and therefore, the system that is the subject of the petition is likely to be as effective as parts marking.

NHTSA believes that there is substantial evidence indicating that the antitheft system to be installed as standard equipment in the Toyota car line that is the subject of this notice, will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information Toyota submitted with its petition and on other available information. The agency believes that the device will provide all of the types of performance listed in § 543.6(a)(3): Promoting activation, preventing defeat or circumventing of the device by unauthorized persons, preventing operation of the vehicle by unauthorized entrants, and ensuring the reliability and durability of the device.

As required by section 605(b) of the statute and 49 CFR § 543.6(a)(4), the agency also finds that Toyota has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Toyota provided on its device. This information included a description of reliability and functional tests conducted by Toyota for the antitheft system and its components.

For the foregoing reasons, the agency hereby exempts the Toyota car line that is the subject to this notice, in whole from the requirements of 49 CFR part 541.

If Toyota decides not to use the exemption for the car line that is the subject of this notice, it should formally notify the agency. If such a decision is made, that car line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Toyota wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore,

NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis* then it should consult the agency before preparing and submitting a petition to modify.

Authority: 15 U.S.C. 2025; delegation of authority at 49 CFR 1.50.

Issued on: September 22, 1992.

Marion C. Blakey,

Acting Administrator.

[FR Doc. 92-23316 Filed 9-24-92; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

[Docket No. PDA-5(R)]

Application by Chemical Waste Transportation Institute for a Preemption Determination as to the Uniform Hazardous Waste Manifest Promulgated by the Illinois Environmental Protection Agency

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice extending rebuttal comment period.

SUMMARY: The Chemical Waste Transportation Institute (CWTI) has applied for an administrative determination whether the Uniform Hazardous Waste Manifest promulgated by the Illinois Environmental Protection Agency (IEPA) is preempted by the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations issued under the HMTA. This notice clarifies that, to the extent that they remain relevant and appropriate, all comments previously submitted in RSPA's Docket No. IRA-51 will be considered with respect to CWTI's application. The period for rebuttal comments is being extended to assure all interested parties the opportunity to respond to comments previously submitted in Docket No. IRA-51.

DATES: Rebuttal comments received on or before October 30, 1992, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments already received (including any comments submitted in Docket No. IRA-51) and may not discuss new issues.

ADDRESSES: The application, CWTI's petition for an inconsistency ruling, comments on the petition in Docket No. IRA-51, and any comments submitted on the present application may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590-0001 (Tel. No. 202-366-4453). Rebuttal comments on the application may be submitted to the Docket Unit at the above address, and should include the Docket Number (PDA-5(R)). Three copies should be submitted. In addition, a copy of each rebuttal comment must also be sent to (a) Mr. Kevin Connors, Chairman, Chemical Waste Transportation Institute, 1730 Rhode Island Avenue, NW., suite 1000, Washington, DC 20036, and (b) Mr. William C. Child, Chief, Bureau of Land, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, Illinois 62796-9276. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Connors and Child at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001 (Tel. No. 202-366-4400).

SUPPLEMENTARY INFORMATION: CWTI's application for a preemption determination is reproduced (without its attachments) as Appendix A to the July 21, 1992 Public Notice and Invitation to Comment, 57 FR 32360. In that document, CWTI briefly summarized the background of its present application including: (a) Its April 12, 1990 petition for an inconsistency ruling, assigned Docket No. IRA-51, (b) the subsequent change in the HMTA's preemption provisions by the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101-615), and (c) the fact that, within the past year, "IEPA has voluntarily addressed one of the concerns raised in the April 12th [1990] petition." 57 FR at 32361.

In response to a telephone inquiry, RSPA has advised IEPA that the comments previously submitted in Docket No. IRA-51 are a part of, and will be considered in connection with, the present proceeding. On that basis, IEPA has stated that it "reaffirms its previous comments."

To assure interested parties the opportunity to respond to all comments which are relevant and appropriate to the issues raised in CWTI's application, including those comments submitted by IEPA and others in Docket No. IRA-51, RSPA is providing public notice of its inclusion of those previously submitted comments in the docket of this proceeding (PDA-5(R)), and it is extending the period for rebuttal comments.

Rebuttal comments may discuss only those issues raised in comments already received (including any comments submitted in Docket No. IRA-51) and may not discuss new issues. As stated in the July 21, 1992 Notice, rebuttal comments on whether the IEPA Uniform Hazardous Waste Manifest is preempted by the HMTA should address (1) the "substantively the same," "dual compliance," and "obstacle" tests described in that Notice, and (2) whether the IEPA Uniform Hazardous Waste Manifest is "otherwise authorized by Federal law."

Persons intending to submit rebuttal comments should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth in 49 CFR 107.201-107.211.

Issued in Washington, DC on September 18, 1992.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 92-23294 Filed 9-24-92; 8:45 am]

BILLING CODE 4910-60-M

[Notice No: 92-17]

Investment in the Infrastructure Commission Meeting

AGENCY: Department of Transportation.

ACTION: Notice of meeting of the Commission to Promote Investment in the Infrastructure.

SUMMARY: As required by the Federal Advisory Committee Act (FACA), the DOT is giving notice of an open meeting of the Commission to Promote Investment in America's Infrastructure.

DATES: The meetings will begin on Thursday, September 24, 1992 from 2 p.m. to 5 p.m. and continue on Friday, September 25, 1992 beginning at 10 a.m. and continuing until completed.

ADDRESSES: The meetings will be held in room 406 of the Dirksen Senate Office Building (2nd and C Streets, Washington, DC, 20510).

FOR FURTHER INFORMATION CONTACT: Honorable Daniel V. Flanagan, Chairman (703-522-4334) or Honorable Ralph L. Stanley, Secretary (703-771-9510) between 9 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 1081 of Public Law 102–240, the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) established the Commission to Promote Investment in America's Infrastructure. Recently, the final member of that Commission has been appointed and its charter has been filled. The notice for the meetings described above could not previously be published in the Federal Register due to the lack of a charter and the lack of a full compliment of members. On September 24 and 25, the Commission will be hearing from representatives of the financial and banking industries regarding issues relating to the structure and characteristics of investment securities necessary to attract pension fund investment and infrastructure projects.

DOT has agreed to sponsor the Commission subject to enactment of DOTs 1993 appropriation including the appropriation for the Commission.

All Commission meetings will be open to the public subject to space availability. In accordance to the requirement of FACA, the Commission will keep minutes of these meetings and these minutes will be available for public inspection at DOT (400 7th Street, SW).

Dated: September 22, 1992.

Daniel V. Flanagan, Jr.,

Chairman, Infrastructure Investment Commission.

[FR Doc. 92–23456 Filed 9–23–92; 12:34 pm]

BILLING CODE 6910–62–M

DEPARTMENT OF THE TREASURY

Customs Service

Application to Restrict Parallel Imports Bearing Genuine Trademarks

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application to Restrict Parallel Imports Bearing Genuine Trademarks.

SUMMARY: This document seeks comments on an application submitted to prevent the importation of certain goods bearing genuine "Yamaha" trademarks under the terms of a district court injunction requiring the U.S. Customs Service to provide protection to trademarks meeting certain criteria.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., room 2104, Washington, DC 20229. All documents submitted will be available for viewing by the public at the same address on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Chief, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., room 2104, Washington, DC 20229 (202–927–0850).

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1992, The United States District Court for the District of Columbia issued an amended order in *Lever Brothers Co.* v. *United States*, No. 86–3151 (HHG), which enjoined the U.S. Customs Service from allowing the importation of foreign-made goods otherwise admissible under 19 CFR 133.21(c)(2) that bear a trademark identical to a valid United States trademark but which are materially physically different. As a result of this court action and pending further action by a court of final resolution of *Lever Bros. Co.* v. *United States*, Appeal No. 92–5185, owners of recorded trademarks that are under common ownership or control with foreign companies that use the trademark on foreign-made goods with material physical differences can apply to Customs to stop the importation of those foreign-made goods.

In order to receive the protection as outlined by the court, applicants must first show that the trademark owner requesting the protection falls within the scope of § 133.21(c)(2) of the Customs Regulations, as opposed to § 133.21(c)(1). The District Court for the District of Columbia ordered Customs to provide protection only when goods would otherwise be admissible under § 133.21(c)(2), which applies to goods of a foreign trademark owner under common ownership or control with the U.S. trademark owner. Section (c)(1) applies to goods of a foreign trademark owner that also owns the U.S. trademark.

Applicants for protection under the terms of the court order must also show Customs that the foreign affiliate of the U.S. trademark owner uses the mark on goods with material physical differences. For this, applicants must show Customs that the goods are different, and also that the difference is "material". On June 26, 1992, by publication in the Federal Register (57 FR 28605), Customs invited trademark owners to notify Customs if they believe that the trademark owner and the goods bearing the trademark meet these criteria.

An application has been submitted pursuant to the June 26, 1992, Federal Register notice, for a restriction against the importation of goods bearing genuine "Yamaha" trademarks. Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person opposing the application. Notice of the action taken in response to the application will also be published in the Federal Register.

Dated: September 21, 1992.

Barry P. Miller,

Acting Chief, Intellectual Property Rights Branch.

[FR Doc. 92–23332 Filed 9–24–92; 8:45 am]

BILLING CODE 4820–02–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 187
Friday, September 25, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

TIME AND DATE: Friday, October 2, 1992, from 8:00 a.m. to 4:00 p.m.

PLACE: San Antonio, TX.

STATUS: The meeting will be open to the public with the exception of the 12:00–1:30 p.m. session, which will be closed pursuant to the Privacy Act, in order for the Board of Directors to discuss personnel matters.

MATTERS TO BE CONSIDERED: The Board of Directors of the Commission on National and Community Service will meet on October 2, 1992 to discuss the Commission's progress and goals for next year, committee reports, the Commission's report to Congress, the fiscal year 1993 grant process, the reconsideration of proposals, and new proposal(s).

CONTACT PERSON FOR MORE INFORMATION: Terry Russell, General Counsel, Commission on National and Community Service, 529 14th Street, NW., Suite 452, Washington, DC 20045, (202) 724–0600.

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 92-23424 Filed 9-23-92; 9:14 am]

BILLING CODE 6829-BA-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 10:32 a.m. on Tuesday, September 22, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Matters relating to certain financial institutions.

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and concurred in by Ms. Judith A. Walter, acting in the place and stead of Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: September 22, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-23425 Filed 9-23-92; 9:13 am]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Wednesday, September 30, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed modifications to the Federal Reserve's payments system risk reduction program regarding pricing and measurement of daylight overdrafts, and proposed amendment to Regulation J (Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks). (Proposed earlier for public comment; Docket Nos. R–0668, 0721, and 0722.)

2. Publication for comment of proposed change in the Fedwire funds transfer service operating hours.

3. Proposed amendments to Regulation CC (Availability of Funds and Collection and Checks) to provide for same-day settlement for checks. (Proposed earlier for public comment; Docket No. R–0723.)

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23497 Filed 9-23-92; 2:35 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 12:00 noon, Wednesday, September 30, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23513 Filed 9-23-92; 2:34 pm]

BILLING CODE 6210-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on August 31, 1992, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for October 5, 1992, in

Washington, DC. The members will consider 1) the July 17, 1992, Postal Rate Commission Opinion and Recommended Decision in Docket No. MC91–3, Second-Class Pallet Discount, 1991, and 2) a filing with the Postal Rate Commission to Establish a Bulk Small Parcel Service.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Mackie, Nevin, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39, United States Code; and section 7.3 (c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 92–23489 Filed 9–23–92; 2:59 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 57, No. 187
Friday, September 25, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-90-000, et al.]

New England Co., et al.; Electric Rate, Small Power Production and Interlocking Directorate Filings

Correction

In notice document 92-21688 beginning on page 41484 in the issue of Thursday, September 10, 1992, on page 41486, in the third column, under **6. TAMPA ELECTRIC CO.**, "[Docket No. ER92-782-000]" should read "[Docket No. ER92-792-000]".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM93-1-79-000]

Sabine Pipe Line Co. Proposed Changes in FERC Gas Tariff

Correction

In notice document 92-21768 appearing on page 41492 in the issue of Thursday, September 10, 1992, in the third column, under the subagency heading, the Docket No. should be inserted as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-92-25]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

Correction

In notice document 92-21096 beginning on page 40239 in the issue of Wednesday, September 2, 1992, on page 40240, in the second column, in the second grant, "*Docket No.:* 078." should read "*Docket No.:* 15078.".

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Federal Register

Friday
September 25, 1992

Part II

Department of Education

34 CFR Parts 785, 786 and 787
National Diffusion Network; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 785, 786 and 787

RIN 1850-AA42

National Diffusion Network

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the National Diffusion Network. These amendments would establish Program Effectiveness Panel (PEP) review procedures for reapproval of exemplary programs, products, practices, and dissemination processes that have been previously approved by either the Joint Dissemination Review Panel (JDRP) or the PEP.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Helen O'Leary, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510, Washington, DC 20208-5645.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Helen O'Leary, (202) 219-2134. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The National Diffusion Network (NDN) supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by promoting the nationwide dissemination of exemplary education programs, products, and practices. These programs, products, and practices have been developed at the local level by classroom teachers and other practitioners with funds provided by a variety of sources including school districts, private businesses, foundations, colleges, universities, State educational agencies, and Federal programs. The Program Effectiveness Panel of the Department of Education conducts a rigorous review of the results of local field testing and evaluation for each program, product, and practice submitted for review to determine the effectiveness and capacity of each for implementation. (The predecessor of the PEP was the Joint Dissemination Review Panel, which conducted these reviews until August 1987). The PEP approves a program, product, or practice for a period of six years. Once approved, the program, product, or practice is considered part of the NDN. The developer of a program, product, or practice that has current PEP or JDRP approval may compete for funding by the NDN to operate as: (1) A Developer Demonstrator (DD) project to disseminate the approved exemplary program, product, or practice nationwide; or (2) a Dissemination Process (DP) project to disseminate information, instructional materials, and services about content areas, areas of research, or fields of professional development.

Summary of Proposed Changes

The Secretary proposes to amend part 786 of the program regulations to establish separate criteria for the PEP review of a previously approved DD program, product, or practice. Under the existing regulations, a program, product, or practice submitted for reapproval is reviewed under the same criteria as those used for a new program, product, or practice submitted to the PEP for approval. Under the proposed criteria, the developer of a program, product, or practice must submit evidence of successful dissemination, implementation, and retention as well as evidence of continued effectiveness. These criteria were developed as the result of the recommendations of a committee composed of members of the PEP, representatives of the DD projects, and Department of Education staff.

The Secretary also proposes to amend part 787 to establish separate criteria for the PEP review of a previously approved DP project that will require the project developer to submit evidence of successful dissemination and evidence of the effectiveness of the information, instructional materials, and services that have been disseminated.

The Secretary also proposes to amend § 785.4 to update the list of applicable regulations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs, private nonprofit organizations, and institutions of higher education that would receive Federal funds under this program. However, the regulations would not have a significant economic impact on the small entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 786.11, 786.17, 787.11, and 787.17 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

State and local governments and nonprofit institutions are eligible to apply for grants under these regulations. The Department needs and uses this information to make grants.

Annual public reporting burden for this collection of information is estimated to average 24 hours per response for 50 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirement of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 510, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 785, 786 and 787

Dissemination, Education, Educational research, Grant programs—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.073—National Diffusion Network)

Dated: April 16, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend parts 785, 786, and 787 of Title 34 of the Code of Federal Regulations as follows:

PART 785—NATIONAL DIFFUSION NETWORK: GENERAL PROVISIONS

1. The authority citation for part 785 continues to read as follows:

Authority: 20 U.S.C. 2982, unless otherwise noted.

2. Section 785.4 is amended by revising paragraph (a)(1) to read as follows:

§ 785.4 What regulations apply?

(a) * * *

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs)—except § 75.650 (Participation of students enrolled in private schools), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

* * * * *

PART 786—NATIONAL DIFFUSION NETWORK: DEVELOPER DEMONSTRATOR PROJECTS

3. The authority citation for part 786 continues to read as follows:

Authority: 20 U.S.C. 2962, unless otherwise noted.

4. Section 786.11 is revised to read as follows:

§ 786.11 What must an applicant submit for review by the PEP?

(a) For PEP review of a program, product, or practice that has not been previously approved by the PEP or JDRP, an eligible applicant shall submit to the Secretary qualitative or quantitative evidence, or both, of the effectiveness of the program, product, or practice.

(b) For PEP review of a program, product, or practice that has been previously approved by the PEP or JDRP, an eligible applicant shall submit to the Secretary qualitative and quantitative evidence of dissemination, implementation, and continued effective results of the program, product, or practice.

(Authority: 20 U.S.C. 2982)

5. Section 786.12 is amended by revising the heading and paragraph (a) to read as follows:

§ 786.12 How does the PEP review a program, product, or practice that has not been previously approved by the PEP or the JDRP?

(a) The PEP reviews each program, product, or practice that has not been previously approved by the PEP or the JDRP for educational effectiveness on the basis of the criteria in paragraph (d) of this section.

* * * * *

6. A new § 786.17 is added to subpart B to read as follows:

§ 786.17 How does the PEP review an exemplary program, product, or practice that has been previously approved by the PEP or the JDRP?

(a) The PEP reviews each program, product, or practice that has been previously approved by the PEP or the JDRP for evidence of its successful dissemination, for evidence of its successful implementation, and for evidence of its educational effectiveness, on the basis of the criteria in paragraph (d) of this section.

(b) The PEP awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses following the criterion.

(d) In reviewing each program, product, or practice the PEP determines the following:

(1) *Dissemination.* (25 points) The PEP determines the extent to which the program, product, or practice demonstrates successful performance in serving educational needs in the field, on the basis of evidence of—

(i) The amount and types of information provided about the program, product, or practice;

(ii) The extent to which the program, product, or practice has been adopted; and

(iii) The number of participants trained to adopt the program, product, or practice.

(2) *Implementation and retention.* (25 points) The PEP determines the extent to which the program, product, or practice has been successfully implemented and retained by adoption sites on the basis of evidence of—

(i) The extent to which the program, product, or practice has been implemented in adoption sites with reasonable fidelity to the original elements of the program, product, or practice;

(ii) The extent to which the program, product, or practice has been continued, over time, in adoption sites with reasonable fidelity to the original elements;

(iii) The extent of the demonstrated understanding of and commitment to the program, product, or practice by personnel in adoption sites; and

(iv) The institutional commitment to continue the program, product, or practice as evidenced by such actions as the extension of training to additional sites or staff or the commitment of funding for continued implementation.

(3) *Effectiveness.* (50 points) The PEP determines the extent to which the program, product, or practice shows evidence from several adoption sites of continued effective results relative to

the original claims of effectiveness made for the program, product, or practice. The PEP considers qualitative or quantitative evidence of the effectiveness of the program, product, or practice, if the evidence is logically linked to the substance of the claims and evaluation design originally submitted to the PEP or the JDRP.

(Authority: 20 U.S.C. 2962)

7. A new § 786.18 is added to Subpart B to read as follows:

§ 786.18 How is PEP reapproval granted?

PEP reapproval is granted if the PEP has given the program, product, or practice a total score of at least 70 points for the criteria in § 786.17.

(Authority: 20 U.S.C. 2962)

8. A new § 786.19 is added to Subpart B to read as follows:

§ 786.19 How long does PEP reapproval last?

PEP reapproval remains in effect for six years from the date of reapproval.

(Authority: 20 U.S.C. 2962)

PART 787—NATIONAL DIFFUSION NETWORK; DISSEMINATION PROCESS PROJECTS

9. The authority citation for part 787 continues to read as follows:

Authority: 20 U.S.C. 2962, unless otherwise noted.

10. Section 787.2 is revised to read as follows:

§ 787.2 Who is eligible for an award?

(a) *New awards.* Any public or nonprofit private agency, organization, or institution that has in operation a dissemination process that has current Program Effectiveness Panel (PEP) approval may apply for a new Dissemination Process grant.

(b) *Continuation awards.* Any Dissemination Process grantee, otherwise eligible to apply for a continuation award, may apply for the continuation award even if either the PEP approval period or the JDRP approval period has expired.

(Authority: 20 U.S.C. 2962)

11. Section 787.11 is revised to read as follows:

§ 787.11 What must an applicant submit for review by the PEP?

(a) For PEP review of a dissemination process that has not been previously approved by the PEP or the JDRP, an eligible applicant shall submit to the Secretary—

(1) A description of its dissemination process;

(2) A description of the procedures and criteria for selecting information, materials, and services to be disseminated and for judging that they are educationally significant; and

(3) A description of the procedures and criteria for evaluating qualitative and quantitative evidence of the effectiveness of information, instructional materials, and services to be disseminated.

(b) For PEP review of a dissemination process that has been previously approved by the PEP or the JDRP, an eligible applicant shall submit to the Secretary—

(1) A description of its dissemination process;

(2) A description of the procedures and criteria for selecting information, materials, and services to be disseminated and for judging that they are educationally significant;

(3) A description of the procedures and criteria for evaluating qualitative and quantitative evidence of the effectiveness of information, instructional materials, and services to be disseminated;

(4) Information about the extent to which information, materials, and services have been disseminated; and

(5) Qualitative and quantitative evidence of the effectiveness of the information, instructional materials, and services that have been disseminated, based on the evaluation procedures and criteria described by the applicant in the previously approved PEP or JDRP submittal.

(Authority: 20 U.S.C. 2962)

12. Section 787.12 is amended by revising the heading and paragraph (a) to read as follows:

§ 787.12 How does the PEP review a Dissemination Process that has not been previously approved by the PEP or the JDRP?

(a) The PEP reviews each dissemination process that has not been previously approved by the PEP or the JDRP for educational effectiveness by examining the procedures and criteria for selecting information and instructional materials to be disseminated and for providing services according to the criteria in paragraph (d) of this section.

* * * * *

13. A new § 787.17 is added to Subpart B to read as follows:

§ 787.17 How does the PEP review a Dissemination Process that has been previously approved by the PEP or the JDRP?

(a) The PEP reviews each dissemination process that has been previously approved by the PEP or the JDRP for educational effectiveness by examining the information submitted according to the requirements described in § 787.11(b), on the basis of criteria in paragraph (d) of this section.

(b) The PEP awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses following the criterion.

(d) In reviewing each dissemination process the PEP determines the following:

(1) *Evaluation design.* (25 points) The PEP determines the extent to which the evaluation design continues to—

(i) Be appropriate for the program;

(ii) Be based on correct interpretation of relevant research and literature;

(iii) Demonstrate that a clear and attributable connection exists between the evidence of an educational effect and the program treatment; and

(iv) Address rival hypotheses.

(2) *Results.* (25 points) The PEP determines the extent to which the results indicate that the process has been and will continue to be particularly effective relative to similar processes.

(3) *Replication.* (50 points) The PEP determines the extent to which—

(i) The information, instructional materials, and services have been used at other sites;

(ii) The information, instructional materials, and services are used at other sites with reasonable fidelity to the original model; and

(iii) The information, instructional materials, and services will continue to be used at other sites with the likelihood of continuing to achieve similar results.

(Authority: 20 U.S.C. 2962)

14. A new § 787.18 is added to Subpart B to read as follows:

§ 787.18 How is PEP reapproval granted?

PEP reapproval is granted if the PEP has given the procedures and criteria a score of at least 20 points for the criterion in § 787.17(d)(2) (Results) and a total score of at least 70 points for all the procedures and the criteria in § 787.17.

(Authority: 20 U.S.C. 2962)

15. A new § 787.19 is added to Subpart B to read as follows:

§ 787.19 How long does PEP reapproval last?

PEP reapproval remains in effect for six years from the date of reapproval.

(Authority: 20 U.S.C. 2962)

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federal register

Friday
September 25, 1992

Part III

Environmental Protection Agency

Final NPDES General Permits for Storm Water Discharges from Construction Sites; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4511-2]

Final NPDES General Permits for Storm Water Discharges From Construction Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES General Permits.

SUMMARY: The Regional Administrators of Regions I, II, III, IV, and IX (the "Regions" or the "Directors") are today issuing final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with industrial activity from construction sites in Florida (except from Indian lands), Massachusetts, the District of Columbia, Guam and American Samoa; on Indian lands in New York; and from Federal facilities in Delaware.

These general permits establish Notice of Intent (NOI) requirements, special conditions, requirements to develop and implement storm water pollution prevention plans, and requirements to conduct site inspections for facilities with discharges authorized by the permit.

DATES: These general permits shall be effective on November 25, 1992. This effective date is necessary to provide appropriate dischargers with the opportunity to comply with the October 1, 1992 deadline for submitting an NPDES application for storm water discharges associated with industrial by submitting a Notice of Intent (NOI) to be covered by the permits.

Deadlines for submittal of Notices of Intent (NOIs) are provided in Part II.A of the general permits. Today's general permits also provide additional dates for compliance with the terms of the permit.

ADDRESSES: Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notices of Intent, PO Box 1215, Newington, VA 22122.

Other submittals of information required under these permits or individual permit applications should be sent to the appropriate EPA Regional Office. The addresses of the Regional Offices and the name and phone number of the Storm Water Regional Coordinator is provided in Section II of the Fact Sheet.

The index to the administrative records for these permits is available at the appropriate Regional Office. The complete administrative record is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying. Specific record information will be made available at the appropriate Regional Office as requested.

FOR FURTHER INFORMATION CONTACT: For further information on the final NPDES general permits and for copies of the Notice of Intent form (the Notice of Intent form in appendix C of this notice can be copied and submitted) contact the NPDES Storm Water Hotline at (703) 821–4823, or the appropriate EPA Regional Office. The name, address and phone number of the Regional Storm Water Coordinators are provided in Section II of the Fact Sheet.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Regional Contacts
III. Section 401 Certification
IV. Economic Impact (Executive Order 12291)
V. Paperwork Reduction Act
VI. Regulatory Flexibility Act

Other submittals of information required under these permits or individual permit applications should be sent to the appropriate EPA Regional Office. The addresses of the Regional Offices and the name and phone number of the Storm Water Regional Coordinator is provided in Section II of the Fact Sheet.

The index to the administrative records for these permits is available at the appropriate Regional Office. The complete administrative record is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street SW, Washington DC 20460. A reasonable fee may be charged for copying. Specific record information will be made available at the appropriate Regional Office as requested.

I. Introduction

The Regional Administrators of the United States Environmental Protection Agency (EPA) are issuing final general permits for the majority of storm water discharges associated with industrial activity from construction activities as follows:

Region I—for the State of Massachusetts.

Region II—for Indian lands located in New York.

Region III—for the District of Columbia and for Federal facilities in Delaware.

Region IV—for the State of Florida.

Region IX—for Guam and American Samoa.

On August 16, 1991 (56 FR 40948), EPA requested public comment on draft National Pollutant Discharge Elimination System (NPDES) general permits that were the basis for today's final general permits. In addition to addressing storm water discharges from construction activities, the August 16, 1991, draft general permits addressed storm water discharges from other industrial activities. The permits in this notice only address storm water associated with construction activity.

EPA received over 125 comments on construction issues associated with the draft general permits. In addition, public hearings to discuss the draft general permits were held in Dallas, TX; Oklahoma City, OK; Baton Rouge, LA; Albuquerque, NM; Seattle, WA; Boise, ID; Juneau, AK; Pierre, SD; Phoenix, AZ; Orlando, FL; Tallahassee, FL; Augusta, ME; Boston, MA; and Manchester, NH.

On September 9, 1992 (57 FR 41176), EPA published final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with industrial activity from construction sites in 10 States (Alaska, Arizona, Idaho, Louisiana, Maine, New Hampshire, New Mexico, Oklahoma, South Dakota, and Texas); the Territories of Puerto Rico, Johnston Atoll, and Midway and Wake Islands; on Indian lands in Alaska, Arizona, California, Colorado, Florida, Idaho, Maine, Massachusetts, Mississippi, Montana, New Hampshire, Nevada, North Carolina, North Dakota, Nevada, Utah, Washington, and Wyoming; from Federal facilities in Colorado, and Washington; and from Federal facilities and Indian lands in Louisiana, New Mexico, Oklahoma, and Texas.

EPA is incorporating portions of the detailed fact sheet for the general permit for storm water discharges from construction activity published on September 9, 1992, as part of the final fact sheet and statement of basis for today's final permit. The sections of the fact sheet published on September 9, 1992 [1] being incorporated are Section I, Introduction; Section II, Coverage of General Permits; Section III, Summary of Options for Controlling Pollutants; Section IV, Summary of Permit Conditions; and Section V, Cost Estimates; and Appendix A—Summary

[1] The September 9, 1992, fact sheets incorporate portions of the draft general permits published on August 16, 1991 (56 FR 40948). These portions of the August 16, 1991, fact sheets are also incorporated into today's permits. Sections of the August 16, 1991, fact sheet being incorporated are section 1, Background; section 4, Summary of Options for Controlling Pollutants; and section 5, The Federal/Municipal Partnership: The Role of Municipal Operators of Large and Medium Municipal Separate Storm Sewers.

of Responses to Public Comments on the August 16, 1991, Draft General Permits.

Today's notice addresses final NPDES general permits for storm water discharges associated with industrial activity from construction sites in Florida (except from Indian lands), Massachusetts, District of Columbia, Guam and American Samoa; on Indian lands in New York; and from Federal facilities in Delaware. Today's notice contains four sets of appendices. Appendix A incorporates Appendix A—Summary of Responses to Public Comments on the August 16, 1991, Draft General Permits, of the September 9, 1992 permits. Appendix B provides the language of the final general permits. The permits in Appendix B are similar, and are similar to the final permits published on September 9, 1992. Except as provided in Part X of the permits. Parts I through IX apply to all permits. Part X of the permit contains conditions which only apply to dischargers in the State indicated. Appendix C is a copy of the Notice of Intent (NOI) form (and associated instructions) to be used by dischargers wanting to obtain coverage under the general permits. Appendix D is a copy of the Notice of Termination (NOT) form (and associated instructions) that can be used by dischargers wanting to notify EPA that their storm water dischargers have been terminated or that the permittee has transferred operation of the facility.

II. Regional Contacts

Notices of Intent to be authorized to discharge under these permits must be sent to: Storm Water Notices of Intent, PO Box 1215, Newington, VA 22122.

Other submittal of information required under these permits or individual permit applications or other written correspondence concerning discharges in any State, Indian land, or from any Federal Facility covered, should be sent to the appropriate EPA Regional Office listed below:

Massachusetts

United States EPA, Region I, Water Management Division (WCP–2109), Storm Water Staff, John F. Kennedy Federal Building, Room 2209, Boston, MA 02203, Contact: Veronica Harrington, (617) 565–3525

New York (Indian Lands)

United States EPA, Region II, Water Management Division (2WM–WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278, Contact: Jose Rivera, (212) 264–2911

District of Columbia, Delaware (Federal Facilities)

United States EPA, Region III, Water Management Division (3WM55), 841 Chestnut Building, Philadelphia, PA 19107, Contact: Kevin Magerr, (215) 597–1651

Florida

United States EPA, Region IV, Water Management Division (FPB–3), Storm Water Staff, 345 Courtland Street, NE Atlanta, GA 30365, Contact: Chris Thomas, (404) 347–3012

Guam and American Samoa

United States EPA, Region IX, Water Management Division (W–5–1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105, Contact: Eugene Bromley, (415) 744–1906

III. Section 401—Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA. The Section 401 certification process has been completed for all States, Indian lands and Federal facilities covered by today's general permits. The following summary indicates where additional permit requirements have been added as a result of the certification process.

Massachusetts

See the following and Part X.A of the general permit for 401 conditions. As a condition for certification under section 401 of the CWA, the Commonwealth of Massachusetts required inclusion of the following conditions necessary to ensure compliance with State water quality concerns.

Storm water discharges not eligible for coverage under this permit include new or increased storm water discharges to coastal water segments within Massachusetts designated as "Areas of Critical Environmental Concern (ACEC)" (for information on ACEC, please contact the Executive Office of Environmental Affairs, Coastal Zone Management at (617) 727–9530). In addition, new or increased discharges, as defined at 314 CMR 4.02(19), which meet the definition of "storm water discharge," as defined at 314 CMR 3.04(2)(a)(1) or (2)(b), to Outstanding Resource Waters which have not met the provisions of 314 CMR 4.04(3) and Part III C.1 of this permit (as amended by the special requirements for discharges in Massachusetts), are not eligible for coverage under this permit.

Permittees in Massachusetts are to submit NOIs to the following address: Storm Water Staff, Storm Water Notice of Intent, US EPA Region 1, MA, PO Box 1215, Newington, VA 22122. A copy of the NOI for all discharges to Outstanding Resource Waters shall be submitted to the Commonwealth of Massachusetts at the following address: Massachusetts Department of Environmental Protection, Storm Water Notice of Intent, BRP–WP 43, PO Box 4062, Boston, Massachusetts, 02211.

For details on filing for permits with MA DEP see 310 CMR 4.00, *Timely Action Schedule and Fee Provisions*. For other information call the MA DEP Information Services at (617) 338–2255 or the Technical Services Section of the DEP Division of Water Pollution Control at (508) 792–7470.

Massachusetts 401 certification requires the following best management practices. Storm water discharge outfall pipes to Outstanding Resource Waters shall be removed and the discharge set back from the receiving water when dischargers are seeking to increase the discharge or change the site drainage system; all new discharge outfalls must be set back from the receiving water. Receiving swales for outfall pipes shall be prepared to minimize erosion and maximize infiltration prior to discharge. The goal is to infiltrate as much as feasible; infiltration trenches and basins, filter media dikes and/or other BMPs shall be used to meet the goal. *Protecting Water Quality in Urban Areas* by the Minnesota Pollution Control Agency, Division of Water Quality is a reference for BMPs.

Storm water discharges to waters that are not classified as Outstanding Resource Waters shall be subject to the requirements of this permit. New discharge outfall pipes shall be designed to be set back from the receiving water when site conditions allow. For existing discharge outfall pipes, when the storm water drainage system is undergoing changes, outfall pipes shall be set back from the receiving water. A receiving swale, infiltration trench or basin, filter media dike or other BMP should be prepared with the goal to minimize erosion yet maximize infiltration or otherwise improve water quality prior to discharge.

All discharges to Outstanding Resource Waters authorized under this permit must be provided the best practical method of treatment to protect

and maintain the designated use of the outstanding resource.

Delaware

See the following discussion and Part X.C of the general permit for additional 401 conditions. As a condition for certification under section 401 of the CWA, the State of Delaware required inclusion of the following conditions necessary to insure compliance with State water quality concerns.

In addition to submitting all NOIs to the central NOI receiving office in Newington, VA, permittees in Delaware also must submit a copy of all NOIs to the State of Delaware at the following address: Water Pollution Control Branch, NPDES Storm Water Program, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 140, Dover, DE 19903. All Discharge Monitoring Reports (DMRs), pollution prevention plans, as well as subsequent revisions, must be submitted to the State of Delaware at this same address. DMRs also must be submitted to the NPDES Programs Director, U.S. EPA Region III, Water Management Division (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107.

Delaware's general permit stipulates that all permittees comply with the requirements of 7 Delaware Code Chapter 40 and the Delaware Sediment and Storm Water Regulations (January, 1991).

Applicants are required to obtain a certification of consistency with the Delaware Coastal Management Program (CZMA 1972, 16 U.S.C. 1451).

District of Columbia

See the following discussion and Part X.D of the general permit for additional 401 conditions. As a condition for certification under section 401 of the CWA, the District of Columbia required inclusion of the following special conditions.

Any unpermitted discharges that are subject to the NPDES program, excluding discharges associated with construction activity, are not authorized by this permit.

Florida

See the following discussion and Part X.E of the general permit for additional 401 conditions.

As a condition for certification under section 401 of the CWA, the State of Florida required inclusion of the following conditions necessary to insure compliance with State water quality concerns.

In addition to the NOI requirements set forth in Part II of this permit, the State of Florida requires that prior to submitting an NOI, the owner of a storm water management system must receive a State of Florida storm water permit from either the Florida Department of Environmental Regulation (FDER) or a Florida Water Management District (FWMD).

The permittee shall submit a narrative statement certifying that the storm water pollution prevention plan for the facility provides compliance with approved State of Florida issued permits, erosion and sediment control plans and storm water management plans. In addition, the permittee also shall submit a copy of the cover page of the State permit issued by FDER or a FWMD to the facility for the storm water associated with construction activities.

Please note that facilities that discharge storm water associated with construction activities to a municipal separate storm sewer system within Broward, Dade, Duval, Escambia, Hillsborough, Orange, Palm Beach, Pinellas, Polk or Sarosota Counties shall submit a copy of the NOI to the operator of the municipal separate storm sewer system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities and Chapter 298 Special Districts shall also be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

Florida's general permit stipulates that any non-storm water component (as defined at Part III (A)(2)(b)) of a facility's discharge must be in compliance with paragraph IV.D.5 and the storm water management system must be designed to accept these discharges and provide treatment of the non-storm water component sufficient to meet Florida water quality standards. Discharges resulting from ground water dewatering activities at construction sites are not covered by this permit. The applicant may seek coverage for these discharges under NPDES General Permit No. FLG830000, published on July 17, 1989 (54 FR 29988) and modified on August 29, 1991 (56 FR 42736).

Permittees must submit a copy of all pollution prevention plans to the State agency which issued the storm water permit, and shall make plans available upon request to the Director.

The permittee must amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States, including the addition of or change in location of storm water discharge points. Amendments to the plan must be submitted to the State agency which issued the State storm water permit.

In providing an estimate of the runoff coefficient of the site before, during and after construction, permittees must utilize the "C" from the Rational Method; also, permittees must provide an estimate of the size of the drainage area for each outfall.

All storm water management controls, required pursuant to Part IV of this permit, shall be consistent with the requirements set forth in State Water Policy of Florida (Chapter 17–40, Florida Administrative Code), the applicable storm water permitting requirements of the FDER or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDER, 1988) and any subsequent amendments.

Florida's general permit requires that site stabilization measures be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased. Please note that paragraphs (a), (b) and (c), which provide exceptions to these required stabilization practices, have been deleted to meet Florida water quality concerns.

As part of the pollution prevention plan, permittees must provide a description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge or pollutants from exposed areas of the site in accordance with the requirements set forth in Section 17–40, 420, F.A.C., and the applicable storm water regulations of the FDER or appropriate FWMD. Structural practices shall be placed on upland soils unless a State of Florida wetland resource management permit issued pursuant to Chapters 373 or 403, F.S., and the applicable regulations of the FDER or FWMD authorize otherwise.

The description of controls in Part IV of the permit shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 17–40, F.A.C.), the applicable storm water permitting regulations of the FDER or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDER, 1988), and any subsequent amendments. Structural measures shall be placed on upland soils unless a State of Florida wetland resource management permit issued pursuant to Chapters 373 or 403, F.S., and the applicable regulations of the FDER or FWMD authorize otherwise.

The installation of these devices may be subject to section 404 of the CWA. This NPDES permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site. However, all storm water management systems shall be operated and maintained in perpetuity after final site stabilization in accordance with the requirements set forth in the State of Florida storm water permit issued for the site.

Pursuant to the requirements of Section 17–40, 420, F.A.C., the storm water management system shall be designed to remove at least 80 percent of the average annual load of pollutants which cause or contribute to violations of water quality standards (95 percent if the system discharges to an Outstanding Florida Water).

Regarding velocity dissipation devices, equalization of the pre-development and post-development storm water peak discharge rate and volume shall be a goal in the design of the post-development storm water management system.

No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a Section 404 permit and by a State of Florida wetland resource management permit issued pursuant to Chapters 373 or 403, F.S., and the applicable regulations of the FDER or FWMD.

The plan shall address the proper application rates and methods for the use of fertilizers and pesticides at the construction site and set forth how these procedures will be implemented and enforced.

Florida's general permit requires that qualified personnel (provided by the discharger) inspect all points of discharge into waters of the United States or to a municipal separate storm sewer system. In addition to those items required to be inspected under Part IV of this permit, designated personnel must also inspect storm water management systems.

Permittees must inspect disturbed areas and areas used for storage of materials that are exposed to precipitation for evidence of, or the potential for, pollutants entering the storm water management system. In addition, the storm water management system and erosion and sediment control measures identified in the plan must be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they must be inspected to ascertain whether erosion control and storm water management measures are effective in meeting the performance standards set forth in State Water Policy (Chapter 17–40, F.A.C.) and the applicable storm water permitting regulations of the FDER or appropriate FWMD.

Permittees must allow the Director or an authorized representative of EPA, the State, or a municipal separate storm sewer system, to sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameter at any location on the site.

A copy of the Notice of Termination shall be sent to the State agency which issued the State storm water permit for the site and, if the storm water management system discharges to a municipal separate storm sewer system within Broward, Dade, Duval, Escambia, Hillsborough, Orange, Palm Beach, Pinellas, Polk or Sarasota Counties, to the owner of that system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and Chapter 298 Special Districts also shall be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

American Samoa

See the following discussion and Part X.F of the general permit for additional 401 conditions. As a condition for certification under section 401 of the CWA, the territory of American Samoa required inclusion of the following special conditions.

Permittees must submit a copy of all NOIs and pollution prevention plans to the American Samoa Environmental Protection Agency.

Guam

See the following and Part X.G for 401 conditions. As a condition for certification under section 401 of the CWA, the territory of Guam required inclusion of the following special conditions.

Permittees must submit a copy of all NOIs to the Guam Environmental Protection Agency at the following address: D–107 Harmon Plaza, 130 Rojas St., Harmon, Guam 95911, and to other appropriate Government of Guam agencies. All pollution prevention plans and discharge monitoring reports (DMRs) also must be submitted to Guam EPA.

IV. Economic Impact (Executive Order 12291)

EPA has submitted this notice to the Office of Management and Budget for review under Executive Order 12291.

V. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these final general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. EPA did not prepare an Information Collection Request (ICR) document for today's permits because the information collection requirements in these permits have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 et seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's permits provide small entities with an application option that is less burdensome than individual applications or participating in a group application. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permits reduce significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that these permits will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: September 17, 1992.

Paul Keough,

Acting Regional Administrator, Region I.

Dated: September 3, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator, Region II.

Dated: September 11, 1992.

A.R. Morris,

Acting Regional Administrator, Region III.

Dated: September 17, 1992.

Donald J. Guinyard,

Acting Regional Administrator, Region IV.

Dated: September 16, 1992.

John Wise,

Regional Administrator, Region IX.

Appendix A—Summary of Response to Public Comments on the August 16, 1991, Draft General Permits

The Summary of responses to Public Comment on the August 16, 1991, draft general permits presented in Appendix A of the September 9, 1992, final general permits at 57 FR 41189, is hereby incorporated in Appendix A of today's notice.

Appendix B—NPDES General Permits for Storm Water Discharges From Construction Activities That are Classified as "Associated With Industrial Activity"

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. *MA*R100000]

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. . . 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State of Massachusetts, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 17th day of September 1992.

Larry Brill,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in part X which apply to facilities located in the State of Massachusetts.

[NPDES Permit Number NYR10000F]

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. . . 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on Indian Lands in New York State are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 3rd day of September 1992.

Richard L. Caspe, P.E.,

Director, Water Management Division, U.S. Environmental Protection Agency, Region II.

[Permit No. — — R100000 or *DE* R100000F (for only Indian lands and/or Fed. fac)]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. . . 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in Federal Facilities in the state of Delaware, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 18th day of September 1992

A.R. Morris,

(signature of Water Management Director or Regional Administrator).

[Permit No. *D/C* R100000 or — — R100000F (for only Indian lands and/or Fed. fac)]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. . . 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the District of Columbia, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 16th day of September 1992

A.R. Morris,

(signature of Water Management Director or Regional Administrator).

[General Permit Number FLR100000]

Region IV: Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*, the "Act"), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial

activity", located in the State of Florida are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and Issued: September 17, 1992.

Allan E. Antley,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Florida.

[Storm Water General Permit for Construction Activities]

[Permit No. GUR100000]

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (U.S.C. . . . 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on the Island of Guam are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 16th day of September, 1992.

Catherine Kuhlman,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located onthe Island of Guam.

[Storm Water General Permit for Construction Activities]

[Permit No. ASR100000]

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (U.S.C. . . . 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on America Samoa are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 16th day of September, 1992.

Catherine Kuhlman,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located on American Samoa.

NPDES General Permits for Storm Water Discharges From Construction Activities That Are Classified as "Associated With Industrial Activity"

Table of Contents

Part I. Coverage Under this Permit

A. Permit Area.
B. Eligibility.
C. Authorization.

Part II. Notice of Intent Requirements

A. Deadlines for Notification.
B. Contents of Notice of Intent.
C. Where to Submit.
D. Additional Notification.
E. Renotification.

Part III. Special Conditions

A. Prohibition on non-storm water discharges.
B. Releases in excess of Reportable Quantities.

Part IV. Storm Water Pollution Prevention Plans

A. Deadlines for Plan Preparation and Compliance
B. Signature and Plan Review
C. Keeping Plans Current
D. Contents of Plan
E. Contractors

Part V. Retention of Records

Part VI. Standard Permit Conditions

A. Duty to Comply.
B. Continuation of the Expired General Permit.
C. Need to halt or reduce activity not a defense.
D. Duty to Mitigate.
E. Duty to Provide Information.
F. Other Information.
G. Signatory Requirements.
H. Penalties for Falsification of Reports.
I. Oil and Hazardous Substance Liability.
J. Property Rights.
K. Severability.
L. Requiring an individual permit or an alternative general permit.
M. State Laws.
N. Proper Operation and Maintenance.
O. Inspection and Entry.
P. Permit Actions.

Part VII. Reopener Clause

Part VIII. Notice of Termination

A. Notice of Termination
B. Addresses

Part IX. Definitions

Part X. State Specific Conditions

A. Massachusetts
B. Delaware (Federal facilities)
C. District of Columbia
D. Florida
E. American Samoa
F. Guam

Preface

The Clean Water Act (CWA) provides that storm water discharges associated with industrial activity from a point source (including discharges through a municipal separate storm sewer system) to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The terms "storm water discharge associated with industrial activity", "point source" and "waters of the United States" are critical to determining whether a facility is subject to this requirement. Complete definitions of these terms are found in the definition section (Part IX) of this permit.

The United States Environmental Protection Agency (EPA) has established the Storm Water Hotline at (703) 821-4823 to assist the Regional Offices in distributing notice of intent forms and storm water pollution prevention plan guidance, and to provide information pertaining to the storm water regulations.

Part I. Coverage Under this Permit

A. *Permit Area.* The permit covers all areas of:

Region I—the State of Massachusetts.
Region II—Indian lands in New York.
Region III—the District of Columbia and Federal Facilities in the State of Delaware.
Region IV—the State of Florida.
Region IX—American Samoa and Guam.

B. Eligibility

1. This permit may authorize all discharges of storm water associated with industrial activity from construction sites, (those sites or common plans of development or sale that will result in the disturbance of five or more acres total land areas),[2] (henceforth referred to as storm water discharges from construction activities) occurring after the effective date of this permit (including discharges occurring after the effective date of this permit where the construction activity was initiated before the effective date of this permit), except for discharges identified under paragraph I.B.3.

2. This permit may only authorize a storm water discharge associated with industrial activity from a construction site that is mixed with a storm water discharge from an industrial source other than construction, where:

a. the industrial source other than construction is located on the same site as the construction activity;

b. storm water discharges associated with industrial activity from the areas of the site where construction activities are occurring are in compliance with the terms of this permit; and

c. storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) are covered by a different NPDES general permit or individual permit authorizing such discharges.

[2] On June 4, 1992, the United State Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking. (Nos. 90-70671) and 91-70200).

3. *Limitations on Coverage.* The following storm water discharges from construction sites are not authorized by this permit:

a. storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization.

b. discharges that are mixed with sources of non-storm water other than discharges which are identified in Part III.A of this permit and which are in compliance with Part IV.D.5 (non-storm water discharges) of this permit.

c. storm water discharges associated with industrial activity that are subject to an existing NPDES individual or general permit or which are issued a permit in accordance with paragraph VI.L (requiring an individual permit or an alternative general permit) of this permit. Such discharges may be authorized under this permit after an existing permit expires provided the existing permit did not establish numeric limitations for such discharges;

d. storm water discharges from construction sites that the Director (EPA) has determined to be or may reasonable be expected to be contributing to a violation of a water quality standard; and

e. storm water discharges from construction sites if the discharges may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat.

C. Authorization

1. A discharger must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or a photocopy thereof), in order for storm water discharges from construction sites to be authorized to discharge under this general permit.[3]

2. Where a new operator is selected after the submittal of an NOI under Part II, a new Notice of Intent (NOI) must be submitted by the operator in accordance with Part II, using a NOI form provided by the Director (or a photocopy thereof).

3. Unless notified by the Director to the contrary, dischargers who submit an NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VI.L of this permit).

[3] A copy of the approved NOI form is provided in Appendix C of this notice.

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in paragraphs II.A.2, II.A.3, and II.A.4, individuals who intend to obtain coverage for storm water discharges from a construction site (where disturbances associated with the construction project commence before October 1, 1992), under this general permit shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part on or before October 1, 1992;

2. Individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site where disturbances associated with the construction project commence after October 1, 1992, shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part at least 2 days prior to the commencement of construction activities (e.g. the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities);

3. For storm water discharges from construction sites where the operator changes (including projects where an operator is selected after a NOI has been submitted under Parts II.A.1 or U.A.2) a NOI in accordance with the requirements of this Part shall be submitted at least 2 days prior to when the operator commences work at the site; and

4. EPA will accept an NOI in accordance with the requirements of this part after the dates provided in Parts II.A.1, 2 or 3 of this permit. In such instances, EPA may bring appropriate enforcement actions.

B. *Contents of Notice of Intent.* The Notice(s) of Intent shall be signed in accordance with Part VI.G of this permit by all of the entities identified in Part II.B.2 and shall include the following information:

1. The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator(s) with day to day operational control that have been identified at the time of the NOI submittal, and operator status as a

Federal, State, private, public or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a preexisting NPDES permit, the NOI for the additional operator must indicate the number for the preexisting NPDES permit;

3. The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s);

4. The permit number of any NPDES permit(s) for any discharge(s) (including any storm water discharges or any non-storm water discharges) from the site;

5. An indication of whether the operator has existing quantitative data which describes the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI); and

6. An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with Part IV of this permit, and such plan provides compliance with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits in accordance with Part IV.D.2.d of this permit. (A copy of the plans or permits should not be included with the NOI submission).

C. *Where to Submit*

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the **Federal Register** notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VI.G of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, P.O. Box 1215, Newington, VA 22122.

2. A copy of the NOI or other indication that storm water discharges from the site are covered under a NPDES permit, and a brief description of the project shall be posted at the construction site in a prominent place for public viewing (such as alongside a building permit).

D. *Additional Notification.* Facilities which are operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans shall submit signed copies of the Notice of Intent to the State or local agency approving such plans in accordance with the datelines in Part II.A of this permit (or sooner where required by State or local rules), in addition to submitting the Notice of Intent to EPA in accordance with paragraph II.C.

E. *Renotification.* Upon issuance of a new general permit, the permittee is required to notify the Director of his intent to be covered by the new general permit.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. *Prohibition on non-storm water discharges.*

1. Except as provided in paragraph I.B.2 and III.A.2, all discharges covered by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.(b), discharges of material other than storm water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph IV.D.5: discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. *Releases in excess of Reportable Quantities.*

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period:

a. The permittee is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area 202–426–2675) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with Part III.B.3 of this permit to the appropriate EPA Regional Office at the address provided in Part V.C (addresses) of this permit; and

c. The storm water pollution prevention plan required under Part IV of this permit must be modified within 14 calendar days of knowledge of the releases to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. *Spills.* This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

Part IV. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with industrial activity at the construction site and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

The plan shall:

1. Be completed (including certifications required under Part IV.E) prior to the submittal of an NOI to be covered under this permit and updated as appropriate;

2. For construction activities that have begun on or before October 1, 1992, except for sediment basins required under Part IV.D.2.a.(2) (structural practices) of this permit, the plan shall provide for compliance with the terms and schedule of the plan beginning on October 1, 1992. The plan shall provide for compliance with sediment basins required under Part IV.D.2.a.(a) of this permit by no later than December 1, 1992;

3. For construction activities that have begun after October 1, 1992, the plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

B. Signature and Plan Review

1. The plan shall be signed in accordance with Part VI.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (retention of records) of this permit.

2. The permittee shall make plans available upon request to the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

3. The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this Part. Within 7 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

C. *Keeping Plans Current.* The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.2 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan (see Part IV.E). Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B above.

D. *Contents of Plan.* The storm water pollution prevention plan shall include the following items:

1. *Site Description.* Each plan shall provide a description of pollutant sources and other information as indicated:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading);

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;

d. An estimate of the runoff coefficient of the site after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;

e. A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which may not be disturbed, the location of major structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water; and

f. The name of the receiving water(s), and areal extent of wetland acreage at the site.

2. *Controls.* Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in Part IV.D.1.b appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). The description and implementation of controls shall address the following minimum components:

a. *Erosion and Sediment Controls.*

(1). *Stabilization Practices.* A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be included in the plan. Except as provided in paragraphs IV.D.2.(a).(1).(a), (b), and (c) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a). Where the initiation of stabilization measures by the 14th day after construction activity temporarily or permanently cease is precluded by snow cover, stabilization measures shall be initiated as soon as practicable.

(b). Where construction activity will resume on a portion of the site within 21 days from when activities ceased, (e.g., the total time period that construction activity is temporarily ceased is less than 21 days) then stabilization measures do not have to be initiated on that portion of site by the 14th day after construction activity temporarily ceased.

(c). In arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonal arid conditions, stabilization measures shall be initiated as soon as practicable.

(2). *Structural Practices.* A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Such

practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with 10 or more disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. For drainage locations which serve 10 or more disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(b) For drainage locations serving less than 10 acres, sediment basins and/or sediment traps should be used. At a minimum, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. *Storm Water Management.* A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA. This permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site.

(1). Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2). Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g. no significant changes in the hydrological regime of the receiving water).

c. *Other Controls.*

(1). *Waste Disposal.* No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a section 404 permit.

(2). Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3). The plan shall ensure and demonstrate compliance with applicable State and/or local waste disposal, sanitary sewer or septic system regulations.

d. *Approved State or Local Plans.*

(1) Permittees which discharge storm water associated with industrial activity from construction activities must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. Permittees shall provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. Permittees shall comply with any such requirements during the term of the permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

(2) Storm water pollution prevention plans must be amended to reflect any change applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee shall provide a recertification in the storm water pollution plan that the storm water pollution prevention plan has been modified to address such changes.

(3) Dischargers seeking alternative permit requirements shall submit an individual permit application in accordance with Part VI.L of the permit at the address indicated in Part V.C of this permit for the appropriate Regional Office, along with a description of why requirements in approved State or local plans or permits, or changes to such plans or permits, should not be applicable as a condition of an NPDES permit.

3. *Maintenance.* A description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures identified in the site plan in good and effective operating condition.

4. *Inspections.* Qualified personnel (provided by the discharger) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Where sites have been finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspection shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in

preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description identified in the plan in accordance with paragraph IV.D.1 of this permit and pollution prevention measures identified in the plan in accordance with paragraph IV.D.2 of this permit shall be revised as appropriate, but in no case later than 7 calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph IV.D.4.b of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VI.G of this permit.

5. *Non-Storm Water Discharges*—Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

E. Contractors

1. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part IV.E.2 of this permit in accordance with Part VI.G of this permit. All certifications must be included in the storm water pollution prevention plan.

2. *Certification Statement.* All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part IV.E.1 of this permit shall sign a copy of the following certification statement before conducting any professional service identified in the storm water pollution prevention plan:

"I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

The certification must include the name and title of the person providing the signature in accordance with Part VI.G of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

Part V. Retention of Records

A. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. The permittee shall retain a copy of the storm water pollution prevention required by this permit at the construction site from the date of project initiation to the date of final stabilization.

C. *Addresses.* Except for the submittal of NOIs (see Part II.C of this permit), all written correspondence concerning discharges in any State, Indian land or from any Federal Facility covered under this permit and directed to the U.S. Environmental Protection Agency, including the submittal of individual permit applications, shall be sent to the address of the appropriate Regional Office listed below:

1. Massachusetts

United States EPA, Region I, Water Management Division, (WCP–2109), Storm Water Staff, John F. Kennedy Federal Building, room 2209, Boston, MA 02203

2. Indian Lands in New York

United States EPA, Region II, Water Management Division, (2WM–WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278

3. District of Columbia, and Federal facilities in Delaware

United States EPA, Region III, Water Management Division, (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107

4. Florida

United States EPA, Region IV, Water Management Division, (FPB–3), Storm Water Staff, 345 Courtland Street, NE, Atlanta, GA 30365

5. American Samoa and Guam

United States EPA, Region IX, Water Management Division, (W–5–1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105

Part VI. Standard Permit Conditions

A. Duty to Comply

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. *Penalties for Violations of Permit Conditions.*

a. *Criminal*

(1). *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2). *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3). *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4). *False Statement.* The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintain under the Act, shall upon

conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

b. *Civil Panalties*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

c. *Administrative Panalties*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1). *Class I penalty.* Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(2). *Class II penalty.* Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

B. Continuation of the Expired General Permit

This permit expires on [insert date five years after publication date]. However, an expired general permit continues in force and effect until a new general permit is issued. Permittees must submit a new NOI in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or photocopy thereof) between August 1, 1997 and [insert date five years after publication date] to remain covered under the continued permit after [insert date five years after publication date]. Facilities that had not obtained coverage under the permit by [insert date five years after publication date] cannot become authorized to discharge under the continued permit.

C. *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. *Duty to Mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. *Duty to Provide Information.* The permittee shall furnish to the Director; an authorized representative of the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system, any information which is requested to determine compliance with this permit or other information. .

F. *Other Information.* When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. *Signatory Requirements.* All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. *Changes to authorization.* If an authorization under paragraph II.B.3. is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new notice of intent satisfying the requirements of paragraph II.B must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. *Certification.* Any person signing documents under paragraph VI.G shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

H. *Penalties for Falsification of Reports.* Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine or not more than $10,000, or by imprisonment for not more than 2 years, or by both.

I. *Oil and Hazardous Substance Liability.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or

may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

J. *Property Rights.* The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. *Severability.* The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

L. *Requiring an individual permit or an alternative general permit.*

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a discharger authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the discharger in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the discharger to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a discharger fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in Part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

M. *State/Environmental Laws.*

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

N. *Proper Operation and Maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

O. *Inspection and Entry.* The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

P. *Permit Actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part VII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the discharger may be required to obtain individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

Part VIII. Termination of Coverage

A. *Notice of Termination.* Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VI.G of this permit. The Notice of Termination shall include the following information:

1. The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator addressed by the Notice of Termination;

3. The NPDES permit number for the storm water discharge identified by the Notice of Termination;

4. An indication of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

5. The following certification signed in accordance with Part VI.G (signatory requirements) of this permit:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

For the purposes of this certification, elimination of storm water discharges associated with industrial activity means that all disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by a NPDES general permit have otherwise been eliminated.

B. *Addresses.* All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof),[4] to the following address: Storm Water Notice of Termination, PO Box 1185, Newington, VA 22122.

Part IX. Definitions

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Commencement of Construction—The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

CWA means the Clean Water Act or the Federal Water Pollution Control Act.

Dedicated portable asphalt plant—A portable asphalt plant that is located on or contiguous to a construction site and that provides asphalt only to the construction site that the plant is located on or adjacent to. The term dedicated portable asphalt plant does not include facilities that are subject to the asphalt emulsion effluent limitation guideline at 40 CFR 443.

Dedicated portable concrete plant—A portable concrete plant that is located on or contiguous to a construction site and that provides concrete only to the construction site that the plant is located on or adjacent to.

Director means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

Final Stabilization means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Large and Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOI means notice of intent to be covered by this permit (see Part II of this permit.)

NOT means notice of termination (see Part VIII of this permit).

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Runoff coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Industrial Activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant years; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial

[4] A copy of the approved NOT form is provided in Appendix D of this notice.

machinery *are exposed to storm water.* For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)–(xi) of this definition) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection: (i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition); (ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)–(vii) or (ix)–(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)).[5]

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

Part X. State Specific Conditions

The provisions of this Part provide modifications or additions to the applicable conditions of Parts I through IX of this permit to reflect specific additional conditions identified as part of the State section 401 certification process. The additional revisions and requirements listed below are set forth in connection with particular State, Indian lands and Federal facilities and only apply to the States and Federal facilities specifically referenced.

A. *Massachusetts.* Massachusetts 401 certification special permit conditions revise the permit as follows:

1. Part I of the permit is revised to read as follows:

[5] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90-70671 and 91-70200).

Part I. Coverage Under This Permit

A. *Permit Area.* This permit covers all areas of the Commonwealth of Massachusetts.

B. *Eligibility.*

* * * * *

3. *Limitations on Coverage.*

* * * * *

h. new or increased storm water discharges to coastal water segments within Massachusetts designated as "Areas of Critical Environmental Concern (ACEC)" (for information on ACEC, please contact the Executive Office of Environmental Affairs, Coastal Zone Management at (617) 727–9530);

i. new or increased discharges, as defined at 314 CMR 4.02(19), which meet the definition of "storm water discharge," as defined at 314 CMR 3.04(2)(a)(1) or (2)(b), to Outstanding Resource Waters which have not met the provisions of 314 CMR 4.04(3) and Part III C.1 of this permit.

* * * * *

2. Part II of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

C. *Where to Submit.*

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the **Federal Register** notice in which this permit was published may be photocopied and used. Forms are also available by calling the Storm Water Hotline at (703) 821–4823, or the NPDES Programs Operations Section at US EPA Region 1 at (617) 565–3525. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, US EPA Region 1, MA, PO Box 1215, Newington, VA 22122.

2. A copy of the NOI for all discharges to Outstanding Resource Waters shall be submitted to the Commonwealth of Massachusetts at the following address: Massachusetts Department of Environmental Protection, Storm Water Notice of Intent, BRP—WP 43, PO Box 4062, Boston, Massachusetts 02211.

For details on filing for permits with MA DEP see 310 CMR 4.00, *Timely Action Schedule and Fee Provisions.* For other information call the MA DEP Information Services Section at (617) 338–2255 or the Technical Services Section of the DEP Division of Water Pollution Control at (508) 792–7470.

* * * * *

3. Part III of the permit is revised to read as follows:

Part III. Special Conditions

* * * * *

C. *Set Backs and Best Management Practices*

1. Storm water discharge outfall pipes to public water supplies and other Outstanding Resource Waters shall be removed and set back when dischargers are seeking to increase the discharge or change the site storm water drainage system; all new discharge outfalls must be set back from the receiving water. Receiving swales for outfall pipes shall be prepared to minimize erosion and maximize infiltration prior to discharge. The goal is to infiltrate as much as feasible; infiltration trenches and basins, filter media dikes and/or other BMPs shall be used to meet the goal. Discharges shall employ Best Management Practices (BMPs) for controlling storm water. See *Protecting Water Quality in Urban Areas* by the Minnesota Pollution Control Agency, Division of Water Quality as a reference for BMPs.

2. Storm water discharges to waters that are not classified as Outstanding Resource Waters shall be subject to the requirements of this permit. New discharge outfall pipes shall be designed to be set back from the receiving water when site conditions allow. For existing discharge outfall pipes, when the storm water drainage system is undergoing changes, outfall pipes shall be set back from the receiving water. A receiving swale, infiltration trench or basin, filter media dikes or other BMPs should be prepared with the goal to minimize erosion yet maximize infiltration or otherwise improve water quality prior to discharge.

3. All discharges to Outstanding Resource Waters authorized under this permit must be provided the best practical method of treatment to protect and maintain the designated use of the outstanding resource.

B. *Delaware.* Delaware 401 certification special permit conditions revise the permit as follows:

1. Part I of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* This permit covers all Federal facilities administered by Region 3 in the State of Delaware.

2. Part II of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

C. *Where to Submit.*

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the **Federal Register** notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, PO Box 1215, Newington, VA 22122.

2. A copy of all Notices of Intent (NOIs) shall be submitted to the State of Delaware at the following address: Water Pollution Control Branch, NPDES Storm Water Program, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, DE 19903.

3. The following section is added to Part III of the permit:

Part III. Special Conditions, Management Practices and Other Non-Numeric Limitations

* * * * *

C. *Special Conditions.* The permittee must comply with the requirements of 7 Delaware Code Chapter 40 and the Delaware Sediment and Storm Water Regulations (January, 1991).

4. Part IV of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plan

* * * * *

B. *Signature and Plan Review*

* * * * *

1. The plan shall be signed in accordance with Part VII.G (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (retention of records) of this permit. A copy of the plan, as well as subsequent revisions, shall also be submitted to the State of Delaware at the following address: Water Pollution Control Branch, NPDES Storm Water Program, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, DE 19903.

C. *District of Columbia.* District of Columbia 401 certification special permit conditions revise the permit as follows:

1. Part I of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by Region 3 in the District of Columbia.

B. *Eligibility.*

* * * * *

3. Limitations on Coverage. The following storm water discharges from construction sites are not authorized by this permit:

* * * * *

f. unpermitted discharges that are subject to the NPDES program, excluding discharges associated with construction activity.

D. *Florida.* Florida 401 certification-special permit conditions revise the permit as follows:

1. Part I of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by Region 4 in the State of Florida.

2. Part II of the permit is modified to read as follows:

Part II. Notice of Intent Requirements

A. *Deadlines for Notification.*

* * * * *

2. Individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site where disturbances associated with the construction project commence after October 1, 1992, shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part at least 2 days prior to the commencement of construction activities (e.g. the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities). Prior to submitting this NOI, the owner of a storm water management system must receive a State of Florida storm water permit from either the Florida Department of Environmental Regulation (FDER) or a Florida Water Management District (FWMD).

* * * * *

B. *Contents of Notice of Intent.*

* * * * *

6. An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with Part IV of this permit. (A copy of the plans or permits should not be included with the NOI submission). The applicant shall submit a narrative statement certifying that the storm water pollution prevention plan for the facility provides compliance with approved State of Florida issued permits, erosion and sediment control plans and storm water management plans. The applicant shall also submit a copy of the cover page of the State permit issued by FDER or a FWMD to the facility for the storm water associated with construction activities.

* * * * *

D. *Additional Notification.* Facilities which are operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans shall submit signed copies of the Notice of Intent to the State or local agency approving such plans in accordance with the deadlines in Part II.A of this permit (or sooner where required by State or local rules), in addition to submitting the Notice of Intent to EPA in accordance with paragraph II.C. Facilities which discharge storm water associated with construction activities to a municipal separate storm water system within Broward, Dade, Duval, Escambia, Hillsborough, Orange, Palm Beach, Pinellas, Polk or Sarasota Counties shall submit a copy of the NOI to the operator of the municipal separate storm sewer system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities and Chapter 298 Special Districts shall also be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

* * * * *

3. Part III of the permit is revised to read as follows:

Part III. Special Conditions, Management Practices and Other Non-Numeric Limitations

A. *Prohibition on Non-Storm Water Discharges*

* * * * *

2.

* * * * * * *

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph IV.D.5 and the storm water management system is designed to accept these discharges and provide treatment of the non-storm water component sufficient to meet Florida water quality standards: discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushing; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents. Discharges resulting from ground water dewatering activities at construction sites are not covered by this permit. The applicant may seek coverage for these discharges under NPDES General Permit No. FLG830000, published on July 17, 1989 (54 FR 29986) and modified on August 29, 1991 (56 FR 42736).

* * * * *

4. Part IV of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

B. Signature and Plan Review

* * * * *

2. The permittee shall submit plans to the State agency which issued the storm water permit and shall make plans available upon request to the Director; a state or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

* * * * *

C. Keeping Plans Current

The permittee shall amend the plan whenever there is change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States, including the addition of or change in location of storm water discharge points, and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.2 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan (see Part IV.E). Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B above. Amendments to the

plan must be submitted to the State agency which issued the State storm water permit.

D. Contents of Plan

1. Site Description

* * * * *

d. An estimate of the runoff coefficient of the site before, during and after construction using "C" from the Rational Method, existing data describing the soil or the quality of any discharge from the site and an estimate of the size of the drainage area for each outfall;

* * * * *

2. Controls

Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in Part IV.D.1.b appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). All controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 17–40, Florida Administrative Code), the applicable storm water permitting requirements of the FDER or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDER, 1988) and any subsequent amendments. The description and implementation of controls shall address the following minimum components:

a. Erosion and sediment controls

(1) *stabilization practices.* A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be included in the plan. Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased.

(a) paragraph deleted
(b) paragraph deleted
(c) paragraph deleted

(2) *Structural Practices.* A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site in accordance with the requirements set forth in Section 17–40, 420, F.A.C., and the applicable storm water regulations of the FDER or appropriate FWMD. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices shall be placed on upland soils unless a State of Florida wetland resource management permit issued pursuant to Chapters 373 or 403, F.S., and the applicable regulations of the FDER or FWMD authorize otherwise. The installation of these devices may be subject to Section 404 of the CWA.

* * * * *

b. *Storm water management.* A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. The description of controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 17–40, F.A.C.), the applicable storm water permitting regulations of the FDER or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDER, 1988), and any subsequent amendments. Structural measures shall be placed on upland soils unless a State of Florida wetland resource management permit issued pursuant to Chapters 373 or 403, F.S., and the applicable regulations of the FDER or FWMD authorize otherwise. The installation of these devices may be subject to Section 404 of the CWA. This NPDES permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site. However, all storm water management systems shall be operated and maintained in perpetuity after final site stabilization in accordance with the requirements set forth in the State of Florida storm water permit issued for the site.

(1) Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). Pursuant to the requirements of section 17–40, 420, F.A.C., the storm water management system shall be designed to remove at least 80 percent of the average annual load of pollutants which cause or contribute to violations of water quality standards (95 percent if the system discharges to an Outstanding Florida Water). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected. Equalization of the predevelopment and post-development storm water peak discharge rate and volume shall be a goal in the design of the post-development storm water management system.

c. Other controls

(1) *waste disposal.* No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a section 404 permit and by a State of Florida wetland resource management permit issued pursuant to chapters 373 or 403, F.S., and the applicable regulations of the FDER or FWMD.

* * * * *

(4) The plan shall address the proper application rates and methods for the use of fertilizers and pesticides at the

construction site and set forth how these procedures will be implemented and enforced.

* * * * *

4. *Inspections.* Qualified personnel (provided by the discharger) shall inspect all points of discharge into waters of the United States or to a municipal separate storm sewer system and all disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, storm water management systems, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.25 inches or greater. Where sites have been finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspection shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the storm water management system. The storm water management system and erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control and storm water management measures are effective in meeting the performance standards set forth in State Water Policy (chapter 17–40, F.A.C.) and the applicable storm water permitting regulations of the FDER or appropriate FWMD. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

* * * * *

5. Part VI of the permit is revised to read as follows:

Part VI. Standard Permit Conditions

* * * * *

O. Inspection and Entry

* * * * *

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameter at any location on the site.

* * * * *

6. Part VIII of the permit is revised to read as follows:

Part VIII. Termination of Coverage

* * * * *

C. *Additional Notification.* A copy of the Notice of Termination shall be sent to the State agency which issued the State storm water permit for the site and, if the storm water management system discharges to a municipal separate storm sewer system within Broward, Dade, Duval, Escambia, Hillsborough, Orange, Palm Beach, Pinellas, Polk or Sarasota Counties, to the owner of that system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and chapter 298 Special Districts also shall be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

E. *American Samoa.* American Somoa 401 certification special permit conditions revise the permit as follows:

1. Part I of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region IX in American Samoa.

2. Part II of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

C. Where to Submit

* * * * *

1. A copy of the NOI shall be submitted to American Samoa Environmental Protection Agency at the same time as submittal to the U.S. EPA.

3. The following paragraph is added to Part IV of the permit:

Part IV. Storm Water Pollution Prevention Plan

* * * * *

B. Signature and Plan Review

* * * * *

4. All pollution prevention plans for storm water discharges in American Samoa shall be submitted to the American Samoa Environmental Protection Agency for review and approval.

F. *Guam.* Guam 401 certification special permit conditions revise the permit as follows:

1. Part I of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region IX in Guam.

2. Part II of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

C. Where to Submit

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the **Federal Register** notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, PO Box 1215, Newington, VA 22122.

2. A copy of the NOI also shall be submitted to appropriate Government of Guam agencies and the Guam Environmental Protection Agency at the following address: D–107 Harmon Plaza, 130 Rojas St., Harmon, Guam 96911.

* * * * *

3. Part IV of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plan

* * * * *

B. Signature and Plan Review

1. The plan shall be signed in accordance with Part VII.G (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (retention of records) of this permit. A copy of the plan shall also be submitted to the Guam Environmental Protection Agency at the following address: D–107 Harmon Plaza, 130 Rojas St., Harmon, Guam 95911.

* * * * *

4. Part VI of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

D. Reporting: Where to Submit

1.

* * * * *

d. Signed copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office: United States EPA, Region IX, Water

Management Division, (W–5–1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105, and to the Guam Environmental Protection Agency at the following address: D–107 Harmon Plaza, 130 Rojas St., Harmon, Guam 959911.

* * * * *

BILLING CODE 6560–50–M

Appendix C—NOI Form/Instructions

See Reverse for Instructions

Form Approved. OMB No. 2040-0086
Approval expires: 8-31-95

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity Under the NPDES General Permit

Submission of this Notice of Intent constitutes notice that the party identified in Section I of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with industrial activity in the State identified in Section II of this form. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Facility Operator Information

Name: Phone: Status of Owner/Operator:

Address:

City: State: ZIP Code:

II. Facility/Site Location Information

Name: Is the Facility Located on Indian Lands? (Y or N)

Address:

City: State: ZIP Code:

Latitude: Longitude: Quarter: Section: Township: Range:

III. Site Activity Information

MS4 Operator Name:

Receiving Water Body:

If You are Filing as a Co-permittee, Enter Storm Water General Permit Number: Are There Existing Quantitative Data? (Y or N) Is the Facility Required to Submit Monitoring Data? (1, 2, or 3)

SIC or Designated Activity Code: Primary: 2nd: 3rd: 4th:

If This Facility is a Member of a Group Application, Enter Group Application Number:

If You Have Other Existing NPDES Permits, Enter Permit Numbers:

IV. Additional Information Required for Construction Activities Only

Project Start Date: Completion Date: Estimated Area to be Disturbed (in Acres): Is the Storm Water Pollution Prevention Plan in Compliance with State and/or Local Sediment and Erosion Plans? (Y or N)

V. Certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: Date:

Signature:

EPA Form 3510-6 (8-92)

Instructions - EPA Form 3510-6
Notice Of Intent (NOI) For Storm Water Discharges Associated With Industrial Activity
To Be Covered Under The NPDES General Permit

Who Must File A Notice Of Intent (NOI) Form

Federal law at 40 CFR Part 122 prohibits point source discharges of storm water associated with industrial activity to a water body(ies) of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. The operator of an industrial activity that has such a storm water discharge must submit a NOI to obtain coverage under the NPDES Storm Water General Permit. If you have questions about whether you need a permit under the NPDES Storm Water program, or if you need information as to whether a particular program is administered by EPA or a state agency, contact the Storm Water Hotline at (703) 821-4823.

Where To File NOI Form

NOIs must be sent to the following address:

Storm Water Notice of Intent
PO Box 1215
Newington, VA 22122

Completing The Form

You must type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on this form, call the Storm Water Hotline at (703) 821-4823.

Section I Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same as the name of the facility. The responsible party is the legal entity that controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Enter the appropriate letter to indicate the legal status of the operator of the facility.

F = Federal
S = State
M = Public (other than federal or state)
P = Private

Section II Facility/Site Location Information

Enter the facility's or site's official or legal name and complete street address, including city, state, and ZIP code. If the facility or site lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

Indicate whether the facility is located on Indian lands.

Section III Site Activity Information

If the storm water discharges to a municipal separate storm sewer system (MS4), enter the name of the operator of the MS4 (e.g., municipality name, county name) and the receiving water of the discharge from the MS4. (A MS4 is defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by a state, city, town, borough, county, parish, district, association, or other public body which is designed or used for collecting or conveying storm water.)

If the facility discharges storm water directly to receiving water(s), enter the name of the receiving water.

If you are filing as a co-permittee and a storm water general permit number has been issued, enter that number in the space provided.

Indicate whether or not the owner or operator of the facility has existing quantitative data that represent the characteristics and concentration of pollutants in storm water discharges.

Indicate whether the facility is required to submit monitoring data by entering one of the following:

1 = Not required to submit monitoring data;
2 = Required to submit monitoring data;
3 = Not required to submit monitoring data; submitting certification for monitoring exclusion

Those facilities that must submit monitoring data (e.g., choice 2) are: Section 313 EPCRA facilities; primary metal industries; land disposal units/incinerators/BIFs; wood treatment facilities; facilities with coal pile runoff; and, battery reclaimers.

List, in descending order of significance, up to four 4-digit standard industrial classification (SIC) codes that best describe the principal products or services provided at the facility or site identified in Section II of this application.

For industrial activities defined in 40 CFR 122.26(b)(14)(i)-(xi) that do not have SIC codes that accurately describe the principal products produced or services provided, the following 2-character codes are to be used:

HZ = Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA [40 CFR 122.26 (b)(14)(iv)];
LF = Landfills, land application sites, and open dumps that receive or have received any industrial wastes, including those that are subject to regulation under subtitle D of RCRA [40 CFR 122.26 (b)(14)(v)];
SE = Steam electric power generating facilities, including coal handling sites [40 CFR 122.26 (b)(14)(vii)];
TW = Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage [40 CFR 122.26 (b)(14)(ix)]; or,
CO = Construction activities [40 CFR 122.26 (b)(14)(x)].

If the facility listed in Section II has participated in Part 1 of an approved storm water group application and a group number has been assigned, enter the group application number in the space provided.

If there are other NPDES permits presently issued for the facility or site listed in Section II, list the permit numbers. If an application for the facility has been submitted but no permit number has been assigned, enter the application number.

Section IV Additional Information Required for Construction Activities Only

Construction activities must complete Section IV in addition to Sections I through III. Only construction activities need to complete Section IV.

Enter the project start date and the estimated completion date for the entire development plan.

Provide an estimate of the total number of acres of the site on which soil will be disturbed (round to the nearest acre).

Indicate whether the storm water pollution prevention plan for the site is in compliance with approved state and/or local sediment and erosion plans, permits, or storm water management plans.

Section V Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, state, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Appendix D—NOT Form/Instructions

Please See Instructions Before Completing This Form

Form Approved. OMB No. 2040-0086
Approval expires: 8-31-95

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Termination (NOT) of Coverage Under the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with industrial activity under the NPDES program. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Permit Information

NPDES Storm Water General Permit Number:

Check Here if You are No Longer the Operator of the Facility: ☐

Check Here if the Storm Water Discharge is Being Terminated: ☐

II. Facility Operator Information

Name: Phone:

Address:

City: State: ZIP Code:

III. Facility/Site Location Information

Name:

Address:

City: State: ZIP Code:

Latitude: Longitude: Quarter: Section: Township: Range:

IV. Certification: I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

Print Name: Date:

Signature:

Instructions for Completing Notice of Termination (NOT) Form

Who May File a Notice of Termination (NOT) Form

Permittees who are presently covered under the EPA issued National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with industrial activity as defined in the storm water regulations at 40 CFR 122.26 (b)(14), or when they are no longer the operator of the facilities.

For construction activities, elimination of all storm water discharges associated with industrial activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the construction site that are authorized by a NPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Where to File NOT Form

Send this form to the the following address:

Storm Water Notice of Termination
P.O. Box 1185
Newington, VA 22122

Completing the Form

Type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions about this form, call the Storm Water Hotline at (703) 821-4823.

PLEASE SEE REVERSE OF THIS FORM FOR FURTHER INSTRUCTIONS

EPA Form 3510-7 (8-92)

Instructions - EPA Form 3510-7
Notice of Termination (NOT) of Coverage Under The NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

Section I Permit Information

Enter the existing NPDES Storm Water General Permit number assigned to the facility or site identified in Section III. If you do not know the permit number, contact the Storm Water Hotline at (703) 821-4823.

Indicate your reason for submitting this Notice of Termination by checking the appropriate box:

If there has been a change of operator and you are no longer the operator of the facility or site identified in Section III, check the corresponding box.

If all storm water discharges at the facility or site identified in Section III have been terminated, check the corresponding box.

Section II Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Section III Facility/Site Location Information

Enter the facility's or site's official or legal name and complete address, including city, state and ZIP code. If the facility lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

Section IV Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing , production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, State, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 92-23326 Filed 9-24-92; 8:45 am]
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federal register

Friday
September 25, 1992

Part IV

Environmental Protection Agency

Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4511-1]

Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES General Permits.

SUMMARY: The Regional Administrator of Regions I, II, III, and IX (the "Regions" or the "Directors") are today issuing final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with industrial activity (except discharges from construction activity) in Massachusetts, Puerto Rico, District of Columbia, Guam and American Samoa; on Indian lands in New York; and from Federal facilities in Delaware.

These general permits establish Notice of Intent (NOI) requirements, prohibitions, requirements to develop and implement storm water pollution prevention plans, and requirements to conduct site inspections for facilities with discharges authorized by the permit. In addition, these general permits establish monitoring requirements for certain classes of facilities and a numeric effluent limitation for discharges of coal pile runoff subject to the general permits.

DATES: These general permits shall be effective on September 25, 1992. This effective date is necessary to provide appropriate dischargers with the opportunity to comply with the October 1, 1992 deadline for submitting an NPDES application for storm water discharges associated with industrial by submitting a Notice of Intent (NOI) to be covered by the permits.

Deadlines for submittal of Notices of Intent (NOIs) are provided in part II.A of the general permits. Today's general permits also provide additional dates for compliance with the terms of the permit and for submitting monitoring data where required.

ADDRESSES: Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notices of Intent, PO Box 1215, Newington, VA 22122.

Other submittals of information required under these permits or individual permit applications should be sent to the appropriate EPA Regional Office. The addresses of the Regional Offices and the name and phone number of the Storm Water Regional Coordinator is provided in section II of the Fact Sheet.

The index to the administrative records for these permits is available at the appropriate Regional Office. The complete administrative record is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying. Specific record information will be made available at the appropriate Regional Office as requested.

FOR FURTHER INFORMATION CONTACT: For further information on the final NPDES general permits, contact the NPDES Storm Water Hotline at (703) 821–4823 or the appropriate EPA Regional Office. The name, address and phone number of the Regional Storm Water Coordinators are provided in Section II of the Fact Sheet.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Regional Contacts
III. Section 401 Certifications
IV. Economic Impact (Executive Order 12291)
V. Paperwork Reduction Act
VI. Regulatory Flexibility Act

I. Introduction

The Regional Administrators of the United States Environmental Protection Agency (EPA) are issuing final general permits for the majority of storm water discharges associated with industrial activity as follows:

Region I—For the State of Massachusetts.

Region II—For the Commonwealth of Puerto Rico and for Indian lands located in New York.

Region III—For the District of Columbia and for Federal Facilities in Delaware.

Region IX—For Guam and American Samoa.

On August 16, 1991, (56 FR 40948) EPA requested public comment on draft general permits forming the basis for today's final general permits. In addition to addressing those storm water discharges from industrial activity addressed in today's permits, the August 16, 1991, draft general permits addressed storm water discharges from construction activities. The permits in this notice only address storm water associated with industrial activity other than construction activities.

EPA received more than 330 comments on the August 16, 1991, draft general permits. In addition, public hearings to discuss the draft general permits were held in Dallas, TX; Oklahoma City, OK; Baton Rouge, LA; Albuquerque, NM; Seattle, WA; Boise, ID; Juneau, AK; Pierre, SD; Phoenix, AZ; Orlando, FL; Tallahassee, FL; Augusta, ME; Boston, MA; and Manchester, NH.

On September 9, 1992, (57 FR 41236), EPA published final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with industrial activity from construction sites in 11 States (Alaska, Arizona, Florida, Idaho, Louisiana, Maine, New Hampshire, New Mexico, Oklahoma, South Dakota, and Texas); the Territories of Johnston Atoll, and Midway and Wake Islands; on Indian lands in Alaska, Arizona, California, Colorado, Florida, Idaho, Maine, Massachusetts, Mississippi, Montana, New Hampshire, Nevada, North Carolina, North Dakota, Nevada, Utah, Washington, and Wyoming; from Federal facilities in Colorado, and Washington; and from Federal facilities and Indian lands in Louisiana, New Mexico, Oklahoma, and Texas.

EPA is incorporating portions of the detailed fact sheet for the general permit for storm water discharges associated with industrial activity (other than construction activity) published on September 9, 1992, as part of the final fact sheet and statement of basis for today's final permit. The sections of the fact sheet published on September 9, 1992 [1] being incorporated are section I, Introduction; Section II, Coverage of General Permits; Section III, Summary of Options for Controlling Pollutants; Section IV, Summary of Permit Conditions; and Section V, Cost Estimates; and Appendix A—Summary of Responses to Public Comments on the August 16, 1991, Draft General Permits.

Today's notice addresses final general permits for storm water discharges associated with industrial activity (except discharges from construction activity) in Massachusetts, Puerto Rico, District of Columbia, Guam and American Samoa; on Indian lands in New York; and from Federal facilities in Delaware. These permits may authorize the majority of storm water discharges associated with industrial activity to waters of the United States, including discharges through large and medium municipal separate storm sewer systems and through other municipal separate storm sewer systems. As discussed below, these permits do not authorize

[1] The September 9, 1992, fact sheets incorporate portions of the draft general permits published on August 16, 1991 (56 FR 40948). These portions of the August 16, 1991, fact sheets are also incorporated into today's permits. Sections of the August 16, 1991, fact sheet being incorporated are section 1, Background; section 4, Summary of Options for Controlling Pollutants; and section 5, The Federal/Municipal Partnership: The Role of Municipal Operators of Large and Medium Municipal Separate Storm Sewers.

storm water discharges associated with industrial activity from construction activities and several additional classes of storm water discharges.

Today's notice contains four appendices. Appendix A incorporates Appendix A—Summary of Responses to Public Comments on the August 16, 1991, Draft General Permits, of the September 9, 1992 permits. Appendix B provides the language of the final general permits. Except as provided in Part XI of the permits, Parts I through X apply to all permits. Part XI of the permit contains conditions which only apply to dischargers in the State indicated. Appendix C is a copy of the Notice of Intent (NOI) form (and associated instructions) for dischargers to obtain coverage under the general permits. Appendix D is a copy of the Notice of Termination (NOT) form (and associated instructions) that can be used by dischargers wanting to notify EPA that their storm water discharges associated with industrial activity have been terminated or that the permittee has transferred operation of the facility.

II. Regional Contacts

Notices of Intent to be authorized to discharge under these permits must be sent to: Storm Water Notices of Intent, PO Box 1215, Newington, VA 22122.

Other submittals of information required under these permits or individual permit applications or other written correspondence concerning discharges in any State, Indian land, or from any Federal facility covered, should be sent to the appropriate EPA Regional Office listed below:

Massachusetts

United States EPA, Region I—Water Management Division, (WCP–2109), Storm Water Staff, John F. Kennedy Federal Building, Room 2209, Boston, MA 02203, Contact: Veronica Harrington, (617) 565–3525.

New York (Indian lands), Puerto Rico

United States EPA, Region II—Water Management Division, (2WM–WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278, Contact: Jose Rivera, (212) 264–2911.

District of Columbia, Delaware (Federal facilities)

United States EPA, Region III—Water Management Division, (3WM55), 841 Chestnut Building, Philadelphia, PA 19107, Contact: Kevin Magerr, (215) 597–1651.

Guam and American Samoa

United States EPA, Region IX—Water Management Division, (W–5–1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105, Contact: Eugene Bromley, (415) 744–1906.

III. 401 Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process has been completed for all States, Indian lands and Federal facilities covered by today's general permits. The following summary indicates where additional permit requirements have been added as a result of the certification process and also provides a more detailed discussion of additional requirements for Massachusetts, Florida, and Puerto Rico.

Massachusetts

See the following and part X.A of the general permit for 401 conditions. As a condition for certification under section 401 of the CWA, the Commonwealth of Massachusetts required inclusion of the following conditions necessary to ensure compliance with State water quality concerns.

Storm water discharges not eligible for coverage under this permit include new or increased storm water discharges to coastal water segments within Massachusetts designated as "Areas of Critical Environmental Concern (ACEC)" (for information on ACEC, please contact the Executive Office of Environmental Affairs, Coastal Zone Management at (617) 727–9350). In addition, new or increased discharges, as defined at 314 CMR 4.02(19), which meet the definition of "storm water discharge," as defined at 314 CMR 3.04(2)(a)(1) or (2)(b), to Outstanding Resource Waters which have not met the provisions of 314 CMR 4.04(3) and part III C.1 of this permit (as amended by the special requirements for discharges in Massachusetts), are not eligible for coverage under this permit.

Permittees in Massachusetts are to submit NOIs to the following address: Storm Water Staff, Storm Water Notice of Intent, US EPA Region 1, MA, PO Box 1215, Newington, VA 22122. A copy of the NOI for all discharges to Outstanding Resource Waters shall be submitted to the Commonwealth of Massachusetts at the following address: Massachusetts Department of Environmental Protection, Storm Water Notice of Intent, BRP—WP 43, PO Box 4062, Boston, Massachusetts, 02211.

For details on filing for permits with MA DEP see 310 CMR 4.00, Timely Action Schedule and Fee Provisions. For other information call the MA DEP Information Services at (617) 338–2255 or the Technical Services Section of the DEP Division of Water Pollution Control at (508) 792–7470.

Massachusetts 401 certification requires the following best management practices. Storm water discharge outfall pipes to Outstanding Resource Waters shall be removed and the discharge set back from the receiving water when dischargers are seeking to increase the discharge or change the site drainage system; all new discharge outfalls must be set back from the receiving water. Receiving swales for outfall pipes shall be prepared to minimize erosion and maximize infiltration prior to discharge. The goal is to infiltrate as much as feasible; infiltration trenches and basins, filter media dikes and/or other BMPs shall be used to meet the goal. Protecting Water Quality in Urban Areas by the Minnesota Pollution Control Agency, Division of Water Quality is a reference for BMPs.

Storm water discharges to waters that are not classified as Outstanding Resource Waters shall be subject to the requirements of this permit. New discharge outfall pipes shall be designed to be set back from the receiving water when site conditions allow. For existing discharge outfall pipes, when the storm water drainage system is undergoing changes, outfall pipes shall be set back from the receiving water. A receiving swale, infiltration trench or basin, filter media dike or other BMP should be prepared with the goal to minimize erosion yet maximize infiltration or otherwise improve water quality prior to discharge.

All discharges to Outstanding Resource Waters authorized under this permit must be provided the best practical method of treatment to protect and maintain the designated use of the outstanding resource.

Delaware

See the following discussion and part X.C of the general permit for additional 401 conditions. As a condition for certification under section 401 of the CWA, the State of Delaware required inclusion of the following conditions necessary to insure compliance with State water quality concerns.

In addition to submitting all NOIs to the central NOI receiving office in Newington, VA, permittees in Delaware also must submit a copy of all NOIs to the State of Delaware at the following address: Water Pollution Control Branch, NPDES Storm Water Program, Delaware Department of Natural Resources and Environmental Control,

89 Kings Highway, P.O. Box 140, Dover, DE 19903. All Discharge Monitoring Reports (DMRs), pollution prevention plans, as well as subsequent revisions, must be submitted to the State of Delaware at this same address. DMRs also must be submitted to the NPDES Programs Director, U.S. EPA Region III, Water Management Division (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107.

Commonwealth of Puerto Rico

See the following discussion and part X.B of the general permit for additional 401 conditions.

The Environmental Quality Board (EQB) of Puerto Rico issued on September 14, 1992 the General Water Quality Certificate (GWQC) in accordance with section 401 of the Clean Water Act for storm water discharges associated with industrial activity. This action was taken in response to the Region II Environmental Protection Agency's certification request of November 1, 1991.

The EQB's draft GWQC incorporated special conditions that must be met by all storm water discharges associated with industrial activity. A public notice was prepared including a notification to interested parties about the intention to issue a GWQC. The public notice provided a thirty (30) day public comment period. In addition, a public hearing was held on July 21, 1992.

The special conditions included in the GWQC are intended to assure that the general permit applicant will comply with the applicable requirements of the Commonwealth of Puerto Rico Law and sections 301(b)(1)(c) and 401(d) of the Clean Water Act. The GWQC contains, among others, the following special conditions:

- Quarterly Monitoring shall be performed. Parameters to be sampled are the following: a) For the industries identified in the final general permit applicable to Puerto Rico, the parameters established for each specific industry; and b) For all other industries, the parameters are: oil and grease, pH, biochemical oxygen demand, chemical oxygen demand, total suspended solids, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite as nitrogen, and any pollutant limited in an effluent guideline to which the process wastewater stream at the facility is subject.
- Monitoring results must be submitted quarterly.
- If the construction of any treatment system for waters composed entirely of storm water is necessary, the permittee shall obtain the approval of the engineering report, plans and specifications from the EQB.
- The permittee shall operate all air pollution control equipment in compliance with the applicable provisions of the Regulation for the Control of Atmospheric Pollution, as amended, to avoid water pollution as a result of air pollution fallout.
- The permittee should install a rain gauge and keep daily records of the rain.
- Within 180 days of submitting the Notice of Intent (NOI), existing dischargers shall submit a Certification stating that the Storm Water Pollution Prevention Plan was developed.
- One year after submitting the NOI, existing dischargers shall submit a certification pertaining to the implementation of the Storm Water Pollution Prevention Plan.
- Within thirty (30) days of submission of the NOI, new dischargers shall submit a certification stating that the Storm Water Pollution Prevention Plan has been developed and implemented.
- The Storm Water Pollution Prevention Plan should be reviewed at least once every three (3) years to determine the need to update the Plan.
- Within forty-five (45) days after the effective date of the permit, the permittee shall submit to EQB with a copy to the EPA, the number of storm water discharges covered by this permit and a drawing indicating the drainage area of each storm water discharge and its respective sampling point.
- The discharges shall not cause the presence of an oil sheen in the receiving body of water.
- The storm water discharges associated with industrial activity will not cause a violation of the applicable water quality standards.

EPA has incorporated the terms of the EQB GWQC into the final general permit for Puerto Rico (PR) as described in Part XI of the general permit. A number of the EQB Conditions have simply been added to EPA's general permit (e.g., the condition that the discharge not cause presence of an oil sheen; the requirement for rain gauge; the requirement for EQB approval of plans and specifications, etc.)

A number of changes and additions are specified for part IV, Storm Water pollution Prevention Plans, in order to incorporate the EQB requirements regarding certification of the development and implementation of the Plans, and to ensure that the specific time periods specified by EQB were included.

In certain instances, conditions in EPA's general permit were expanded slightly in order to incorporate more detailed and specific EQB requirements (e.g. Part VII.O., Proper Operation and Maintenance, expansion of EPA's condition to include adequate funding, effective management, qualified operator staffing, etc.)

Review and appeals of special conditions attributable to the GWQC shall be made through the applicable procedures of the Commonwealth of Puerto Rico and may not be through EPA procedures. Copies of the GWQC may be obtained by writing to the EQB, P.O. Box 11488, Santurce, Puerto Rico, 00910, or by calling at (809) 767–8181.

Delaware (Federal facilities)

See the following and part XI.C of the general permit for 401 conditions. As a condition for certification under section 401 of the CWA, the State of Delaware required inclusion of the following conditions necessary to ensure compliance with State water quality concerns.

In addition to submitting all NOIs to the central NOI receiving office in Newington, VA, permittees in Delaware also must submit a copy of all NOIs to the State of Delaware at the following address: Water Pollution Control Branch, NPDES Storm Water Program, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 140, Dover, DE 19903. All Discharge Monitoring Reports (DMRs), pollution prevention plans, as well as subsequent revisions, also must be submitted to the State of Delaware at this same address.

In addition to the site inspection requirements discussed at part IV(D)(3)(d) of this permit, Delaware federal facilities shall conduct monthly inspections in areas where significant materials are stored to determine the exposure of such materials to storm water runoff. Where the permittee determines that exposure of significant materials to storm water has occurred, the storm water pollution prevention plan shall be amended appropriately to eliminate or reduce the exposure. Also, permittees must inspect all structural controls after every rainfall event to confirm that these controls are operating properly. If any structural control is not operating properly, the permittee must correct this situation or develop a time frame for its correction. Records of all inspections, amendments to the storm water pollution prevention plan and corrective actions must be maintained.

In addition to meeting the annual monitoring requirements for airports presented in EPA's baseline general permit, the special conditions for federal facilities in Delaware require that all

Federal airport facilities in the State of Delaware, not just airports with over 50,000 flight operations per year, sample for Total Petroleum Hydrocarbons (mg/L).

Applicants are required to obtain a certification of consistency with the Delaware Coastal Management Program (CZMA 1972, 16 U.S.C. 1451).

District of Columbia

See the following and part XI.D of the general permit for 401 conditions. As a condition for certification under section 401 of the CWA, the District of Columbia required inclusion of the following conditions necessary to ensure compliance with water quality concerns.

All Federal facility permittees covered under this permit must meet all applicable District of Columbia laws. The Director may notify any permittee that additional control measures are required in order to achieve the 40 percent reduction in nitrogen and phosphorus entering the main stem of the Chesapeake Bay by the year 2000, as mandated by the 1987 Chesapeake Bay Agreement.

Any discharge composed of coal pile runoff shall not exceed a maximum concentration for any time of 50 mg/l total suspended solids. Coal pile runoff shall not be diluted with storm water from other portions of the site or other flows in order to meet this limitation. The pH of such discharges shall be within the range of 6.0–8.5. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 10 year, 24 hour rainfall event shall not be subject to the 50 mg/l limitation for total suspended solids. Failure to demonstrate compliance with these limitations as expeditiously as practicable, but in no case later than October 1, 1995, will constitute a violation of this permit.

In addition to submitting the following to United States EPA Region III Office (as provided in parts I through X), signed copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, shall be submitted to the District of Columbia at the following address: Government of the District of Columbia, Department of Consumer and Regulatory Affairs, Environmental Regulation Administration, 2100 Martin Luther King, Jr. Avenue SE., Washington, DC 20020.

American Samoa

See the following and part XI.E of the general permit for 401 conditions. As a condition for certification under section 401 of the CWA, the territory of American Samoa required inclusion of the following special conditions.

Permittees must submit a copy of all NOIs and pollution prevention plans to the American Samoa Environmental Protection Agency.

Guam

See the following and part XI.F of the general permit for 401 conditions. As a condition for certification under section 401 of the CWA, the territory of Guam required inclusion of the following special conditions.

Permittees must submit a copy of all NOIs to the Guam Environmental Protection Agency at the following address: D–107 Harmon Plaza, 130 Rojas St., Harmon, Guam 95911, and to other appropriate Government of Guam agencies. All pollution prevention plans and discharge monitoring reports (DMRs) also must be submitted to Guam EPA.

IV. Economic Impact (Executive Order 12291)

EPA has submitted this notice to the Office of Management and Budget for review under Executive Order 12291.

V. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these final general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et. seq. EPA did not prepare an Information Collection Request (ICR) document for today's permits because the information collection requirements in these permits have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 et. seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's permits provide small entities with an application option that is less burdensome than individual applications or participating in a group application. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permits reduce significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that these permits will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Dated: September 17, 1992.

Paul Keough,

Acting Regional Administrator, Region I.

Dated: September 16, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator, Region II.

Dated: September 11, 1992.

A.R. Morris,

Acting Regional Administrator, Region III.

Dated: September 16, 1992.

John Wise,

Regional Administrator, Region IX.

Appendix A—Summary of Responses to Public Comments on the August 16, 1991, Draft General Permits

The summary of responses to Public Comment on the August 16, 1991, draft general permits presented in appendix A of the September 9, 1992 final general permits at 57 FR 41257, is hereby incorporated in appendix A of today's notice.

Appendix B—NPDES General Permits for Storm Water Discharges Associated with Industrial Activity

[Permit No. MAR000000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of Massachusetts, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 17th day of September 1992.

Larry Brill,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located in the State of Massachusetts.

[NPDES Permit No. NYR00000F]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges "associated with industrial activity", located on Indian Lands in New York State are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 3rd day of September 1992.

Richard L. Caspe, P.E.,

Director, Water Management Division, U.S. Environmental Protection Agency, Region II.

[NPDES Permit No. PRR000000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq.; the Act), except as provided in part I.B.3 of this permit, operators of storm water discharges "associated with industrial activity", located in the Commonwealth of Puerto Rico are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 16th day of September 1992.

Richard L. Caspe, P.E.,

Director, Water Management Division, U.S. Environmental Protection Agency, Region II.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located in the Commonwealth of Puerto Rico.

[Permit No. DC R000000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. . . . 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the District of Columbia, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 16th day of September, 1992.

A. R. Morris,

Water Management Director or Regional Administrator.

[Permit No. DE R000000F (for permits that are only for Indian lands and/or Fed. fac)]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. . . . 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in Federal Facilities in the state of Delaware, are authorized to discharge in accordance with the conditions and requirements set fourth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 16th day of September, 1992

A.R. Morris,

Water Management Director or Regional Administrator.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

[Permit No. GUR000000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. . . . 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on the Island of Guam are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and issued this 16th day of September, 1992.

Catherine Kuhlman,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located on the Island of Guam.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

[Permit No. ASR000000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. * * * 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on American Samoa are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 25, 1992.

This permit and the authorization to discharge shall expire at midnight, September 27, 1992.

Signed and issued this 16th day of September, 1992.

Catherine Kuhlman,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located on American Samoa.

NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

Table of Contents

Preface

Part I. Coverage Under This Permit

A. Permit Area.
B. Eligibility.
C. Authorization.

Part II. Notice of Intent Requirements

A. Deadlines for Notification.
B. Contents of Notice of Intent.
C. Where to Submit.
D. Additional Notification.
E. Renotification.

Part III. Special Conditions

A. Prohibition on non-storm water discharges.
B. Releases in excess of Reportable Quantities.

Part IV. Storm Water Pollution Prevention Plans

A. Deadlines for Plan Preparation and Compliance.
B. Signature and Plan Review.
C. Keeping Plans Current.
D. Contents of Plans.

Part V. Numeric Effluent Limitations

A. Coal Pile Runoff.

Part VI. Monitoring and Reporting Requirements

A. Failure to Certify.
B. Monitoring Requirements.
C. Toxicity testing.
D. Reporting: Where to Submit.
E. Retention of Records.

Part VII. Standard Permit Conditions

A. Duty to Comply.
B. Continuation of the Expired General Permit.
C. Need to halt or reduce activity not a defense.
D. Duty to Mitigate.
E. Duty to Provide Information.
F. Other Information.
G. Signatory Requirements.
H. Penalties for Falsification of Reports.
I. Penalties for Falsification of Monitoring Systems.
J. Oil and Hazardous Substance Liability.
K. Property Rights.
L. Severability.
M. Requiring an individual permit or an alternative general permit.
N. State/Environmental Laws.
O. Proper Operation and Maintenance.
P. Monitoring and records.
Q. Inspection and Entry.
R. Permit Actions.
S. Bypass of Treatment Facility.
T. Upset Conditions.

Part VIII. Reopener Clause

Part IX. Notice of Termination

A. Notice of Termination.
B. Addresses.

Part X. Definitions

Part XI. State Specific Conditions

A. Massachusetts
B. Puerto Rico
C. Delaware (Federal facilities)
D. District of Columbia
E. American Samoa
F. Guam

Addendum A—Pollutants Listed in Tables II and III of Appendix D of 40 CFR 122

Addendum B—Section 313 Water Priority Chemicals

Addendum C—Large and Medium Municipal Separate Storm Sewer Systems

Preface

The CWA provides that storm water discharges associated with industrial activity from a point source (including discharges through a municipal separate storm sewer system) to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The terms "storm water discharge associated with industrial activity", "point source" and "waters of the United States" are critical to determining whether a facility is subject to this requirement. Complete definitions of these terms are found in the definition section (Part X) of this permit. In order to determine the applicability of the requirement to a particular facility, the facility operator must examine its activities in relationship to the eleven categories of industrial facilities described in the definition of "storm water discharge associated with industrial activity".

Category (xi) of the definition, which addresses facilities with activities classified under Standard Industrial Classifications (SIC) codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 31 (except 311), 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)), differs from other categories listed in that it only addresses storm water discharges where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery *are exposed to storm water.*[2]

The United States Environmental Protection Agency (EPA) has established the Storm Water Hotline at (703) 821–4823 to assist the Regional Offices in distributing notice of intent forms and storm water pollution prevention plan guidance, and to provide information pertaining to the NPDES storm water regulations.

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas of:

[2] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion of manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (*Natural Resources Defense Council* v. *EPA*, Nos. 90–70671 and 91–70200).

Region I—the State of Massachusetts.
Region II—Puerto Rico and Indian lands in New York.
Region III—the District of Columbia and Federal facilities in the State of Delaware.
Region IX—American Samoa and Guam.

B. *Eligibility.*

1. This permit may cover all new and existing point source discharges of storm water associated with industrial activity to waters of the United States, except for storm water discharges identified under paragraph I.B.3.

2. This permit may authorize storm water discharges associated with industrial activity that are mixed with storm water discharges associated with industrial activity from construction activities provided that the storm water discharge from the construction activity is in compliance with the terms, including applicable notice of intent (NOI) or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

3. *Limitations on Coverage.* The following storm water discharges associated with industrial activity are not authorized by this permit:

a. Storm water discharges associated with industrial activity that are mixed with sources of non-storm water other than non-storm water discharges that are:

(i) In compliance with a different NPDES permit; or

(ii) Identified by and in compliance with Part III.A.2 (authorized non-storm water discharges) of this permit.

b. Storm water discharges associated with industrial activity which are subject to an existing effluent limitation guideline addressing storm water (or a combination of storm water and process water) [3];

c. Storm water discharges associated with industrial activity that are subject to an existing NPDES individual or general permit; are located at a facility where an NPDES permit has been terminated or denied; or which are issued in a permit in accordance with paragraph VII.M (requirements for individual or alternative general permits) of this permit. Such discharges may be authorized under this permit after an existing permit expires provided the existing permit did not establish numeric limitations for such discharges;

d. Storm water discharges associated with industrial activity from construction sites, except storm water discharges from portions of a construction site that can be classified as an industrial activity under 40 CFR 122.26(b)(14) (i) through (ix) or (xi) (including storm water discharges from mobile asphalt plant, and mobile concrete plants);

e. Storm water discharges associated with industrial activity that the Director (EPA) has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard;

f. Storm water discharges associated with industrial activity that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat; and

g. Storm water discharges associated with industrial activity from inactive mining, inactive landfills, or inactive oil and gas operations occurring on Federal lands where an operator cannot be identified.

4. Storm water discharges associated with industrial activity which are authorized by this permit may be combined with other sources of storm water which are not classified as associated with industrial activity pursuant to 40 CFR 122.26(b)(14), so long as the discharger is in compliance with this permit.

C. *Authorization.*

1. Dischargers of storm water associated with industrial activity must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or photocopy thereof), to be authorized to discharge under this general permit.[4]

2. Unless notified by the Director to the contrary, owners or operators who submit such notification are authorized to discharge storm water associated with industrial activity under the terms and conditions of this permit 2 days after the date that the NOI is postmarked.

3. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information.

Part II. Notice of Intent Requirements

A. *Deadlines for Notification.*

1. Except as provided in paragraphs II.A.4 (rejected or denied municipal group applicants), II.A.5 (new operator) and II.A.6 (late NOIs), individuals who intend to obtain coverage for an existing storm water discharge associated with industrial activity under this general permit shall submit a Notice of Intent (NOI) in accordance with the requirements of this part on or before October 1, 1992;

2. Except as provided in paragraphs II.A.3 (oil and gas operations), II.A.4 (rejected or denied municipal group applicants), II.A.5 (new operator), and II.A.6 (late NOI) operators of facilities which begin industrial activity after October 1, 1992 shall submit a NOI in accordance with the requirements of this part at least 2 days prior to the commencement of the industrial activity at the facility;

3. Operators of oil and gas exploration, production, processing, or treatment operations or transmission facilities, that are not required to submit a permit application as of October 1, 1992 in accordance with 40 CFR 122.26(c)(1)(iii), but that after October 1, 1992 have a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, must submit a NOI in accordance with the requirements of Part II.C of this permit within 14 calendar days of the first knowledge of such release.

4. Storm water discharges associated with industrial activity from a facility that is owned or operated by a municipality that has participated in a timely Part 1 group application and where either the group application is rejected or the facility is denied participation in the group application by EPA, and that are seeking coverage under this general permit shall submit a NOI in accordance with the requirements of this part on or before the 180th day following the date on which the group is rejected or the denial is made, or October 1, 1992, whichever is later.

5. Where the operator of a facility with a storm water discharge associated with industrial activity which is covered by this permit changes, the new operator of the facility must submit an NOI in accordance with the requirements of this part at least 2 days prior to the change.

6. An operator of a storm water discharge associated with industrial activity is not precluded from submitting

[3] For the purpose of this permit, the following effluent limitation guidelines address storm water (or a combination of storm water and process water): cement manufacturing (40 CFR 411); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric (40 CFR 423); coal mining (40 CFR 434); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and asphalt emulsion (40 CFR 443 Subpart A). This permit may authorize storm water discharges associated with industrial activity which are not subject to an effluent limitation guideline even where a different storm water discharge at the facility is subject to an effluent limitation guideline.

[4] A copy of the approved NOI form is provided in Appendix C of this notice.

an NOI in accordance with the requirements of this part after the dates provided in Parts II.A.1, 2, 3, or 4 (above) of this permit. In such instances, EPA may bring appropriate enforcement actions.

B. *Contents of Notice of Intent.* The Notice of Intent shall be signed in accordance with Part VII.G (signatory requirements) of this permit and shall include the following information:

1. The street address of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the facility must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. Up to four 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products or for hazardous waste treatment, storage or disposal facilities, land disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage, a narrative identification of those activities;

3. The operator's name, address, telephone number, and status as Federal, State, private, public or other entity;

4. The permit number(s) of additional NPDES permit(s) for any discharge(s) (including non-storm water discharges) from the site that are currently authorized by an NPDES permit;

5. The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s) for the discharge through the municipal separate storm sewer;

6. An indication of whether the owner or operator has existing quantitative data describing the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI);

7. Where a facility has participated in Part 1 of an approved storm water group application, the number EPA assigned to the group application shall be supplied; and

8. For any facility that begins to discharge storm water associated with industrial activity after October 1, 1992, a certification that a storm water pollution prevention plan has been prepared for the facility in accordance with Part IV of this permit. (A copy of the plan should not be included with the NOI submission).

C. *Where to Submit.* Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the **Federal Register** notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, PO Box 1215, Newington, VA 22122.

D. *Additional Notification.* Facilities which discharge storm water associated with industrial activity through large or medium municipal separate storm sewer systems (systems located in an incorporated city with a population of 100,000 or more, or in a county identified as having a large or medium system (see definition in Part X of this permit and Appendix E of this notice)) shall, in addition to filing copies of the Notice of Intent in accordance with paragraph II.D, also submit signed copies of the Notice of Intent to the operator of the municipal separate storm sewer through which they discharge in accordance with the deadlines in Part II.A (deadlines for notification) of this permit.

E. *Renotification.* Upon issuance of a new general permit, the permittee is required to notify the Director of their intent to be covered by the new general permit.

Part III. Special Conditions

A. *Prohibition on non-storm water discharges.*

1. Except as provided in paragraph III.A.2 (below), all discharges covered by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.b (below), discharges of material other than storm water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph IV.D.3.g.(2) (measures and controls for non-storm water discharges): discharges from fire fighting activities; fire hydrant flushings; potable water sources including waterline flushings; irrigation drainage; lawn watering; routine external building washdown which does not use detergents or other compounds; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. *Releases in excess of Reportable Quantities.*

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Except as provided in paragraph III.B.2 (multiple anticipated discharges) of this permit, where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period:

a. The discharger is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area 202–426–2675) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The storm water pollution prevention plan required under part IV (storm water pollution prevention plans) of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed by the permittee to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate; and

c. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.1.b (above) of this permit to the appropriate EPA Regional Office at the address provided in part VI.D.1.d (reporting: where to submit) of this permit.

2. *Multiple Anticipated Discharges*—Facilities which have more than one anticipated discharge per year containing the same hazardous substance in an amount equal to or in excess of a reportable quantity established under either 40 CFR 117 or 40 CFR 302, which occurs during a 24 hour period, where the discharge is caused by events occurring within the

scope of the relevant operating system shall:

a. Submit notifications in accordance with part III.B.1.b (above) of this permit for the first such release that occurs during a calendar year (or for the first year of this permit, after submittal of an NOI); and

b. Shall provide in the storm water pollution prevention plan required under part IV (storm water pollution prevention plan) a written description of the dates on which all such releases occurred, the type and estimate of the amount of material released, and the circumstances leading to the release. In addition, the plan must be reviewed to identify measures to prevent or minimize such releases and the plan must be modified where appropriate.

3. *Spills.* This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

Part IV. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices and in accordance with the factors outlined in 40 CFR 125.3(d) (2) or (3) as appropriate. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. *Deadlines for Plan Preparation and Compliance.*

1. Except as provided in paragraphs IV.A.3 (oil and gas operations), 4 (facilities denied or rejected from participation in a group application), 5 (special requirements), and 6 (later dates) the plan for a storm water discharge associated with industrial activity that is existing on or before October 1, 1992:

a. Shall be prepared on or before April 1, 1993 (and updated as appropriate);

b. Shall provide for implementation and compliance with the terms of the plan on or before October 1, 1993;

2. a. The plan for any facility where industrial activity commences after October 1, 1992, but on or before December 31, 1992 shall be prepared, and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the date 60 calendar days after the commencement of industrial activity (and updated as appropriate);

b. The plan for any facility where industrial activity commences on or after January 1, 1993 shall be prepared, and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit, on or before the date of submission of a NOI to be covered under this permit (and updated as appropriate);

3. The plan for storm water discharges associated with industrial activity from an oil and gas exploration, production, processing, or treatment operation or transmission facility that is not required to submit a permit application on or before October 1, 1992 in accordance with 40 CFR 122.26(c)(1)(iii), but after October 1, 1992 has a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, shall be prepared and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the date 60 calendar days after the first knowledge of such release (and updated as appropriate);

4. The plan for storm water discharges associated with industrial activity from a facility that is owned or operated by a municipality that has participated in a timely group application where either the group application is rejected or the facility is denied participation in the group application by EPA,

a. Shall be prepared on or before the 365th day following the date on which the group is rejected or the denial is made, (and updated as appropriate);

b. Except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the 545th day following the date on which the group is rejected or the denial is made; and

5. Portions of the plan addressing additional requirements for storm water discharges from facilities subject to Parts IV.D.7 (EPCRA Section 313 and IV.D.8 (salt storage) shall provide for compliance with the terms of the requirements identified in Parts IV.D.7 and IV.D.8 as expeditiously as practicable, but except as provided below, not later than either October 1, 1995. Facilities which are not required to report under EPCRA Section 313 prior to July 1, 1992, shall provide for compliance with the terms of the requirements identified in Parts IV.D.7 and IV.D.8 as expeditiously as practicable, but not later than three years after the date on which the facility is first required to report under EPCRA Section 313. However, plans for facilities subject to the additional requirements of Part IV.D.7 and IV.D.8, shall provide for compliance with the other terms and conditions of this permit in accordance with the appropriate dates provided in Part IV.1, 2, 3, or 5 of this permit.

6. Upon a showing of good cause, the Director may establish a later date in writing for preparing and compliance with a plan for a storm water discharge associated with industrial activity that submits a NOI in accordance with Part II.A.2 (deadlines for notification—new dischargers) of this permit (and updated as appropriate).

B. *Signature and Plan Review*

1. The plan shall be signed in accordance with Part VII.G (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (retention of records) of this permit.

2. The permittee shall make plans available upon request to the Director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, other permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

C. *Keeping Plans Current.* The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under

Part IV.D.2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B (above).

D. *Contents of Plan.* The plan shall include, at a minimum, the following items:

1. *Pollution Prevention Team*—Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. *Drainage.*

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part IV.D.2.c (spills and leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. *Inventory of Exposed Materials.* An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. *Spills and Leaks.* A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

d. *Sampling Data.* A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. *Risk Identification and Summary of Potential Pollutant Sources.* A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g. biochemical oxygen demand, etc.) of concern shall be identified.

3. *Measures and Controls.* Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. *Good Housekeeping*—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. *Preventive Maintenance*—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g. cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. *Spill Prevention and Response Procedures*—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. *Inspections*—In addition to or as part of the comprehensive site evaluation required under Part IV.4 of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. *Employee Training*—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material

management practices. A pollution prevention plan shall identify periodic dates for such training.

f. *Recordkeeping and Internal Reporting Procedures*—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. *Non-Storm Water Discharges*—

(1) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with Part VI.A (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 (authorized non-storm water discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

h. *Sediment and Erosion Control*—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

i. *Management of Runoff*—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see Parts IV.D.2. (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. *Comprehensive Site Compliance Evaluation.* Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, except as provided in paragraph IV.D.4.d (below), in no case less than once a year. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part IV.D.2 (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with paragraph IV.D.3 (measures and controls) of this permit shall be revised as appropriate within two weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than twelve weeks after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph IV.D.4.b (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least one year after coverage under this permit terminates. The report shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G (signatory requirements) of this permit.

d. Where annual site inspections are shown in the plan to be impractical for inactive mining sites due to the remote location and inaccessibility of the site, site inspections required under this part shall be conducted at appropriate intervals specified in the plan, but, in no case less than once in three years.

5. *Additional requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more.*

a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions.

b. Permitters which discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more shall make plans available to the municipal operator of the system upon request.

6. *Consistency with other plans.* Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under section 311 of the CWA or Best Management Practices (BMP) Programs otherwise required by an NPDES permit for the facility as long as such

requirement is incorporated into the storm water pollution prevention plan.

7. *Additional requirements for storm water discharges associated with industrial activity from facilities subject to EPCRA Section 313 requirements.* In addition to the requirements of Parts IV.D. 1 through 4 of this permit and other applicable conditions of this permit, storm water pollution prevention plans for facilities subject to reporting requirements under EPCRA Section 313 for chemicals which are classified as 'section 313 water priority chemicals' in accordance with the definition in Part X of this permit, shall describe and ensure the implementation of practices which are necessary to provide for conformance with the following guidelines:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water, and wind.

b. In addition to the minimum standards listed under Part IV.D.7.a (above) of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures and applicable State rules, regulations and guidelines:

(1) *Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.*

(a) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

(2) *Material storage areas for Section 313 water priority chemicals other than liquids.* Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

(3) *Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals.* Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: The placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; and/or other equivalent measures.

(4) *Areas where Section 313 water priority chemicals are transferred, processed or otherwise handled.* Processing equipment and materials handling equipment shall be operated so as to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

(5) *Discharges from areas covered by paragraphs (1), (2), (3) or (4).*

(a) Drainage from areas covered by paragraphs (1), (2), (3) or (4) of this part should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

(b) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design.

(c) If facility drainage is not engineered as above, the final discharge of all in-facility storm sewers shall be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material to the facility.

(d) Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas.

(6) *Facility site runoff other than from areas covered by (1), (2), (3) or (4).* Other areas of the facility (those not addressed in paragraphs (1), (2), (3) or (4)), from which runoff which may contain Section 313 water priority chemicals or spills of Section 313 water priority chemicals could cause a discharge shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(7) *Preventive maintenance and housekeeping.* All areas of the facility shall be inspected at specific intervals identified in the plan for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to waters of the United States, action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to waters of the United States shall be immediately taken or the unit or process shut down until such action can be taken. When a

leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with Federal, State, and local requirements and as described in the plan.

(8) *Facility security.* Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) *Training.* Facility employees and contractor personnel that work in areas where Section 313 water priority chemicals are used or stored shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) *Engineering Certification.*—The storm water pollution prevention plan for a facility subject to EPRCA Section 313 requirements for chemicals which are classified as "Section 313 water priority chemicals" shall be reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. A Registered Professional Engineer shall recertify the plan every three years thereafter or as soon as practicable after significant modification are made to the facility. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

8. *Additional Requirements for Salt Storage.*

Storage piles of salt used for deicing or other commercial or industrial purposes and which generate a storm water discharge associated with industrial activity which is discharged to waters of the United States shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than October 1, 1995. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to waters of the United States.

Part V. Numeric Effluent Limitations

A. *Coal Pile Runoff.* Any discharge composed of coal pile runoff shall not exceed a maximum concentration for any time of 50 mg/1 total suspended solids. Coal pile runoff shall not be diluted with storm water or other flows in order to meet this limitation. The pH of such discharges shall be within the range of 6.0–9.0. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 10 year, 24 hour rainfall event shall not be subject to the 50 mg/1 limitation for total suspended solids. Failure to demonstrate compliance with these limitations as expeditiously as practicable, but in no case later than October 1, 1995, will constitute a violation of this permit.

Part VI. Monitoring and Reporting Requirements

A. *Failure to Certify.*—Any facility that is unable to provide the certification required under paragraph IV.D.3.g.(1) (testing for non-storm water discharges), must notify the Director by October 1, 1993 or, for facilities which begin to discharge storm water associated with industrial activity after October 1, 1992, 180 days after submitting a NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated or dischargers must submit appropriate NPDES permit application forms.

B. *Monitoring Requirements.*

1. *Limitations on Monitoring Requirements.*

a. Except as required by paragraph b., only those facilities with activities specifically identified in Parts VI.B.2 (semi-annual monitoring requirements) and VI.B.3 (annual monitoring requirements) of this permit are required to conduct sampling of their storm water discharges associated with industrial activity.

b. The Director can provide written notice to any facility otherwise exempt from the sampling requirements of Parts VI.B.2 (semi-annual monitoring requirements) or VI.B.3 (annual monitoring requirements), that it shall conduct the annual discharge sampling required by Part VI.B.3.d (additional facilities), or specify an alternative monitoring frequency or specify additional parameters to be analyzed.

2. *Semi-Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.B.2.a through f must monitor those storm water discharges identified below at least semi-annually (2 times per year) except as provided in VI.B.5 (sampling waiver), VI.B.6 (representative discharge), and VI.C.1 (toxicity testing). Permittees with facilities identified in Parts VI.B.2.a through f (below) must report in accordance with Part VI.D (reporting: where to submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

a. *Section 313 of EPCRA Facilities.* In addition to any monitoring required by Parts VI.B.2.b through f or Parts VI.B.3.a through d, facilities with storm water discharges associated with industrial activity that are subject to Section 313 of EPCRA for chemicals which are classified as 'Section 313 water priority chemicals' are required to monitor storm water that is discharged from the facility that comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or

unloading area where a Section 313 water priority chemical is handled for: Oil and Grease (mg/L); Five Day Biochemical Oxygen Demand (B0D5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (mg/L); total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); pH; acute whole effluent toxicity; and any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right to Know Act of 1986.

b. *Primary Metal Industries.* Facilities with storm water discharges associated with industrial activity classified as Standard Industrial Classification (SIC) 33 (Primary Metal Industry) are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L); chemical oxygen demand (COD) (mg/L); total suspended solids (mg/L); pH; acute whole effluent toxicity; total recoverable lead (mg/L); total recoverable cadmium (mg/L); total recoverable copper (mg/L); total recoverable arsenic (mg/L); total recoverable chromium (mg/L); and any pollutant limited in an effluent guideline to which the facility is subject. Facilities that are classified as SIC 33 only because they manufacture pure silicon and/or semiconductor grade silicon are not required to monitor for total recoverable cadmium, total recoverable copper, total recoverable arsenic, total recoverable chromium or acute whole effluent toxicity, but must monitor for other parameters listed above.

c. *Land Disposal Units/Incinerators/BIFs.* Facilities with storm water discharges associated with industrial activity from any active or inactive landfill, land application sites or open dump without a stabilized final cover that has received any industrial wastes (other than wastes from a construction site); and incinerators (including Boilers and Industrial Furnaces (BIFs)) that burn hazardous waste and operate under interim status or a permit under Subtitle C of RCRA, are required to monitor such storm water that is discharged from the facility for: Magnesium (total recoverable) (mg/L), Magnesium (dissolved) (mg/L), Total Kjeldahl Nitrogen (TKN) (mg/L), Chemical Oxygen Demand (COD) (mg/L), Total Dissolved Solids (TDS) (mg/L), Total Organic Carbon (TOC) (mg/L), oil and grease (mg/L), pH, total recoverable arsenic (mg/L), Total recoverable Barium (mg/L), Total recoverable Cadmium (mg/L), Total recoverable Chromium (mg/L), Total Cyanide (mg/L), Total recoverable Lead (mg/L), Total Mercury (mg/L), Total recoverable Selenium (mg/L), Total recoverable Silver (mg/L), and acute whole effluent toxicity.

d. *Wood Treatment.* Facilities with storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L), pH, COD (mg/L), and TSS (mg/L). In addition, facilities that use chlorophenolic formulations shall measure pentachlorophenol (mg/L) and acute whole effluent toxicity; facilities which use creosote formulations shall measure acute whole effluent toxicity; and facilities that use chromium-arsenic formulations shall measure total recoverable arsenic (mg/L), total recoverable chromium (mg/L), and total recoverable copper (mg/L).

e. *Coal Pile Runoff.* Facilities with storm water discharges associated with industrial activity from coal pile runoff are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L), pH, TSS (mg/L), total recoverable copper (mg/l), total recoverable nickel (mg/l) and total recoverable zinc (mg/l).

f. *Battery Reclaimers.* Facilities with storm water discharges associated with industrial activity from areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) at facilities that reclaim lead acid batteries are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; total recoverable copper (mg/l); and total recoverable lead (mg/l).

3. *Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.B.3. a through d. (below) must monitor those storm water discharges identified below at least annually (1 time per year) except as provided in VI.B.5 (sampling waiver), and VI.B.6 (representative discharge). Permittees with facilities identified in Parts VI.B.3. a through d. (below) are not required to submit monitoring results, unless required in writing by the Director. However, such permittees must retain monitoring results in accordance with Part VI.E (retention of records). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

a. *Airports.* At airports with over 50,000 flight operations per year, facilities with storm water discharges associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) are required to monitor such storm water that is discharged from the facility when deicing activities are occurring for: Oil and Grease (mg/L); Five Day Biochemical Oxygen Demand (BOD5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and the primary ingredient used in the deicing materials used at the site (e.g. ethylene glycol, urea, etc.).

b. *Coal-fired Steam Electric Facilities.* Facilities with storm water discharges associated with industrial activity from coal handling sites at coal fired steam electric power generating facilities (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 CFR 423—which are not eligible for coverage under this permit) are required to monitor such storm water that is discharged from the facility for: Oil and grease (mg/L), pH, TSS (mg/L), total recoverable copper (mg/l), total recoverable nickel (mg/l) and total recoverable zinc (mg/l).

c. *Animal Handling/Meat Packing.* Facilities with storm water discharges associated with industrial activity from animal handling areas, manure management (or storage) areas, and production waste management (or storage) areas that are exposed to precipitation at meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils, are required to monitor such storm water that is discharged from the facility for: Five Day Biochemical Oxygen Demand (B0D5) (mg/L); oil and grease (mg/L); Total Suspended Solids (TSS) (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); ph; and fecal coliform (counts per 100 mL).

d. *Additional Facilities.* Facilities with storm water discharges associated with industrial activity that:

(i) Come in contact with storage piles for solid chemicals used as raw materials that are exposed to precipitation at facilities classified as SIC 30 (Rubber and Miscellaneous Plastics Products) or SIC 28 (Chemicals and Allied Products);

(ii) Are from those areas at automobile junkyards with any of the following: (A) over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) are exposed to storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) are stored exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water;

(iii) Come into contact with lime storage piles that are exposed to storm water at lime manufacturing facilities;

(iv) Are from oil handling sites at oil fired steam electric power generating facilities;

(v) Are from cement manufacturing facilities and cement kilns (other than discharges in whole or in part from material storage piles subject to storm water effluent guidelines at 40 CFR 411—which are not eligible for coverage under this permit);

(vi) Are from ready-mixed concrete facilities; or

(vii) Are from ship building and repairing facilities;

are required to monitor such storm water discharged from the facility for: Oil and Grease (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and any pollutant limited in an effluent guideline to which the facility is subject.

4. *Sample Type.* For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Grab samples only must be collected and analyzed for the determination of pH, cyanide, whole effluent toxicity, fecal coliform, and oil and grease.

5. *Sampling Waiver.* When a discharger is unable to collect samples due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during a two year period.

6. *Representative Discharge.* When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonable believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. Permittees required to submit monitoring information under Parts VI.D.1.a, b or c of this permit shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

7. *Alternative Certification.* A discharger is not subject to the monitoring requirements of parts VI.B. 2 or 3 of this permit provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with part VII.G (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with part VI.D of this permit.

8. *Alternative to WET Parameter.* A discharger that is subject to the monitoring requirements of parts VI.B.2. a through d may, in lieu of monitoring for acute whole effluent toxicity, monitor for pollutants identified in Tables II and III of Appendix D of 40 CFR 122 (see Addendum A of this permit) that the discharger knows or has reason to believe are present at the facility site. Such determinations are to be based on reasonable best efforts to identify significant quantities of materials or chemicals present at the facility. Dischargers must also monitor for any additional parameter identified in parts VI.B.2. a through d.

C. *Toxicity Testing.* Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. *Test Procedures.*

a. The permittee shall conduct acute 24 hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4–90–027 Rev. 9/91, Section 6.1.) [2]. Freshwater species must be used for discharges to freshwater water bodies. Due to the non-saline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

b. All test organisms, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, EPA/600/4–90–027 (Rev. September 1991). EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 *FR* 50216).

c. Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge. Tests shall be conducted using 100 effluent (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4–90–027 (Rev. September 1991), Section 12, Report Preparation, and the report submitted to EPA with the Discharge Monitoring Reports (DMR's). On the DMR, the permittee shall report "0" if there is no statistical difference between the control mortality and the effluent mortality for each dilution. If there is statistical difference (exhibits toxicity), the permittee shall report "1" on the DMR.

2. If acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected on or after October 1, 1995, in storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

D. *Reporting: Where to Submit.*

1. a. Permittees which are required to conduct sampling pursuant to Parts VI.B.2.(a) (EPCRA Section 313), and (d) (Wood Treatment facilities), shall monitor samples collected during the sampling periods running from January to June and during the sampling period from July to December. Such permittees shall submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following January. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may include less than twelve months of information.

b. Permittees which are required to conduct sampling pursuant to Parts VI.B.2.(b) (Primary Metal facilities), (e) (Coal Pile Runoff), and (f) (Battery Reclaimers) shall monitor samples collected during the sampling period running from March to August and during the sampling period running from September to February. Such permittees shall submit monitoring results obtained during the reporting period running from April to March on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following April. A separate Discharge Monitoring Report Form is required for each event sampling period. The first report may include less than twelve months of information.

c. Permittees which are required to conduct sampling pursuant to Parts VI.B.2.(c) (Land Disposal facilities), shall monitor samples collected during the sampling period running from October to March and during the sampling period running from April to September. Such permittees shall submit monitoring results obtained during the reporting period running from October to September on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of October. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may include less than twelve months of information.

d. Signed copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office:

1. *Massachusetts*

United States EPA, Region I—Water Management Division (WCP–2109), Storm Water Staff, John F. Kennedy Federal Building, Room 2209, Boston, MA 02203

2. *Indian lands in New York, Puerto Rico*

United States EPA, Region II—Water Management Division (2WM–WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278

3. *District of Columbia, Federal facilities in Delaware*

United States EPA, Region III—Water Management Division (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107

4. *Florida*

United States EPA, Region IV—Water Management Division (FPB–3), Storm Water Staff, 345 Courtland Street, NE, Atlanta, GA 30365

5. *Guam, American Samoa*

United States EPA, Region IX—Water Management Division (W–5–1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105

e. Permittees with facilities identified in Parts VI.B.3 (annual monitoring) are not required to submit monitoring results, unless required in writing by the Director.

2. *Additional Notification.* In addition to filing copies of discharge monitoring reports in accordance with Part VI.D.1 (reporting: where to submit), facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph VI.D.1 (reporting: where to submit). Facilities not required to report monitoring data under Part VI.B.3 (annual monitoring requirements), and facilities that are not otherwise required to monitor their discharges, need not comply with this provision.

E. *Retention of Records.* 1. The permittee shall retain the pollution prevention plan developed in accordance with Part IV (storm water pollution prevention plans) of this permit until at least one year after coverage under this permit terminates. The permittee shall retain all records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, until at least one year after coverage under this permit terminates. This period may be explicitly modified by alternative provisions of this permit (see paragraph VI.E.2 (below) of this permit) or extended by request of the Director at any time.

2. For discharges subject to sampling requirements pursuant to Part VI.B (monitoring requirements), in addition to the requirements of paragraph VI.E.1 (above), permittees are required to retain for a six year period from the data of sample collection or for the term of this permit, which ever is greater, records of all monitoring information collected during the term of this permit. Permittees must submit such monitoring results to the Director upon the requests of the Director, and submit a summary of such results as part of renotification requirements in accordance with Part II.F (renotification).

Part VIII.—Standard Permit Conditions

A. *Duty to Comply.*

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. *Penalties for Violations of Permit Conditions.*

a. *Criminal. (1). Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2). *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3). *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4). *False Statement.* The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309(c)(4) of the Clean Water Act).

b. *Civil Penalties*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

c. *Administrative Penalties*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1). *Class I penalty.* Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(2). *Class II penalty.* Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

B. *Continuation of the Expired General Permit.* This permit expires on October 1, 1997. However, an expired general permit continues in force and effect until a new general permit is issued. Permittees must submit a new NOI in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or photocopy thereof) between August 1, 1997 and September 29, 1997 to remain covered under the continued permit after October 1, 1997. Facilities that had not obtained coverage under the permit by October 1, 1997 cannot become authorized to discharge under the continued permit.

C. *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. *Duty to Mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. *Duty to Provide Information.* The permittee shall furnish to the Director, within a time specified by the Director, any information which the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director upon request copies of records required to be kept by this permit.

F. *Other Information.* When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. *Signatory Requirements.* All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director (and/or the operator of a large or medium municipal separate storm sewer system), or that this permit requires be maintained by the permittee, shall be signed.

1. All Notices of Intent shall be signed as follows: a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

c. *Changes to authorization.* If an authorization under paragraph VII.G.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new notice of intent satisfying the requirements of paragraph II.C must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. *Certification.* Any person signing documents under this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the

system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations."

H. *Penalties for Falsification of Reports.* Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

I. *Penalties for Falsification of Monitoring Systems.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in section 309 of the CWA.

J. *Oil and Hazardous Substance Liability.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

K. *Property Rights.* The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

L. *Severability.* The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

M. *Requiring an Individual Permit or an Alternative General Permit.*-1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized to discharge under this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in part VI.D.1.d (reporting: where to submit) of this permit. The Director may grant additional time to submit the application upon request of the applicant. If an owner or operator fails to submit in a timely manner an individual NPDES permit application as required by the Director, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2F) with reasons supporting the request to the Director. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in Part VI.D.1.c. of this permit. The request may be granted by the issuance of any individual permit or an alternative general permit if the reasons cited by the owner or operator are adequate to support the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit, or the owner or operator is authorized for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

N. *State/Environmental Laws.* 1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

O. *Proper Operation and Maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

P. *Monitoring and records.* 1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of the reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 6 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

3. *Records Contents.* Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The initials or name(s) of the individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The time(s) analyses were initiated;

e. The initials or name(s) of the individual(s) who performed the analyses;

f. References and written procedures, when available, for the analytical techniques or methods used; and

8. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

4. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

Q. *Inspection and Entry.* The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a facility which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

R. *Permit Actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

S. *Bypass of Treatment Facility.* 1. Notice:

a. Anticipated bypass. If a permittee subject to the numeric effluent limitation of Part V.A of this permit knows in advance of the need for a bypass, he or she shall submit prior notice, if possible, at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the pass.

b. Unanticipated bypass. The permittee subject to the numeric effluent limitation of Part V.A of this permit shall submit notice of an unanticipated bypass. Any information regarding the unanticipated bypass shall be provided orally within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee became aware of the circumstances. The written submission shall contain a description of the bypass and its cause; the period of the bypass; including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

2. Prohibition of bypass: a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass. Unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee should, in the exercise of reasonable engineering judgment, have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices of the bypass.

b. The Director may approve an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Part VII.S.2.a.

T. *Upset Conditions.* 1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based numeric effluent limitations in Part V.A of this permit if the requirements of paragraph 2 below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of an upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

a. An upset occurred and that the permittee can identify the specific cause(s) of the upset:

b. The permitted facility was at the time being properly operated; and

c. The permittee provided oral notice of the upset to EPA within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee became aware of the circumstances. The written submission shall contain a description of the upset and its cause; the period of the upset; including exact dates and times, and if the upset has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the upset.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Part VIII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the owner or operator of such discharge may be required to obtain individual permit or an alternative general permit in accordance with Part VII.M (requiring an individual permit or alternative general permit) of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

Part IX. Termination of Coverage

A. *Notice of Termination.* Where all storm water discharges associated with industrial activity that are authorized by this permit are eliminated, or where the operator of storm water discharges associated with industrial activity at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G (signatory requirements) of this permit. The Notice of Termination shall include the following information:

1. Name, mailing address, and location of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator addressed by the Notice of Termination;

3. The NPDES permit number for the storm water discharge associated with industrial activity identified by the Notice of Termination;

4. An indication of whether the storm water discharges associated with industrial activity has been eliminated or the operator of the discharges has changed; and

5. The following certification signed in accordance with Part VII.G (signatory requirements) of this permit: "I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the industrial activity. I understand that by submitting this notice of termination,

that I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

B. *Address.* All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof) [a], to the Director of the NPDES program in care of the following address: Storm Water Notice of Termination, PO Box 1185, Newington, VA 22122.

Part X. Definitions

Best Management Practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

Coal pile runoff means the rainfall runoff from or through any coal storage pile.

CWA means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972).

Director means the Regional Administrator or an authorized representative.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

Large and Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOI means notice of intent to be covered by this permit (see Part II of this permit.)

NOT means notice of termination (see Part II of this permit.)

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Section 313 water priority chemical means a chemical or chemical-categories which are: (1) are listed at 40 CFR 372.65 pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986); (2) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and (3) that meet at least one of the following criteria: (i) are listed in Appendix D of 40 CFR 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (ii) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or (iii) are pollutants for which EPA has published acute or chronic water quality criteria. See Addendum B of this permit.

Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Industrial Activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of the definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery *are exposed to storm water.* For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any

[a] A copy of the approved NOT form is provided in Appendix D of this notice.

raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)–(xi) of this definition) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)–(vii) or (ix)–(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan or development of sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)) [6].

Time-weighted composite means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with the numeric effluent limitations of Part V of this permit because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Waste pile means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

Part XI. State Specific Conditions

The provisions of this part provide modifications or additions to the applicable conditions of Parts I through IX of this permit. The additional revisions and requirements listed below are set forth in connection with particular State, Indian lands and

[6] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200).

Federal facilities and only apply to the States and Federal facilities specifically referenced.

A. *Massachusetts.* Massachusetts 401 certification special permit conditions revise the permit as follows:

1. Part I of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* This permit covers all areas of the Commonwealth of Massachusetts.

B. *Eligibility.*

* * * * *

3. *Limitations on Coverage.*

* * * * *

h. new or increased storm water discharges to coastal water segments within Massachusetts designated as "Areas of Critical Environmental Concern (ACEC)" (for information on ACEC, please contact the Executive Office of Environmental Affairs, Coastal Zone Management at (617) 727–9530);

i. new or increased discharges, as defined at 314 CMR 4.02(19), which meet the definition of "storm water discharge," as defined at 314 CMR 3.04(2)(a)(1) or (2)(b), to Outstanding Resource Waters which have not met the provisions of 314 CMR 4.04(3) and Part III C.1 of this permit.

* * * * *

2. Part II of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

C. *Where to Submit.*

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the Federal Register notice in which this permit was published may be photocopied and used. Forms are also available by calling the Storm Water Hotline at (703) 821–4823, or the NPDES Programs Operations Section at US EPA Region 1 at (617) 565–3525. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, US EPA Region 1, MA, PO Box 1215, Newington, VA 22122.

2. A copy of the NOI for all discharges to Outstanding Resource Waters shall be submitted to the Commonwealth of Massachusetts at the following address: Massachusetts Department of Environmental Protection, Storm Water Notice of Intent, BRP–WP 43, PO Box 4062, Boston, Massachusetts 02211.

For details on filing for permits with MA DEP see 310 CMR 4.00, *Timely Action Schedule and Fee Provisions.* For other information call the MA DEP Information Services Section at (617) 338–2255 or the Technical Services Section of the DEP Division of Water Pollution Control at (508) 792–7470.

* * * * *

3. Part III of the permit is revised to read as follows:

Part III. Special Conditions

* * * * *

C. *Set Backs and Best Management Practices*

1. Storm water discharge outfall pipes to public water supplies and other Outstanding Resource Waters shall be removed and set back when dischargers are seeking to increase the discharge or change the site storm water drainage system; all new discharge outfalls must be set back from the receiving water. Receiving swales for outfall pipes shall be prepared to minimize erosion and maximize infiltration prior to discharge. The goal is to infiltrate as much as feasible; infiltration trenches and basins, filter media dikes and/or other BMPs shall be used to meet the goal. Discharges shall employ Best Management Practices (BMPs) for controlling storm water. See *Protecting Water Quality in Urban Areas* by the Minnesota Pollution Control Agency, Division of Water Quality as a reference for BMPs.

2. Storm water discharges to waters that are not classified as Outstanding Resource Waters shall be subject to the requirements of this permit. New discharge outfall pipes shall be designed to be set back from the receiving water when site conditions allow. For existing discharge outfall pipes, when the storm water drainage system is undergoing changes, outfall pipes should be set back from the receiving water. A receiving swale, infiltration trench or basin, filter media dikes or other BMPs should be prepared with the goal to minimize erosion yet maximize infiltration or otherwise improve water quality prior to discharge.

3. All discharges to Outstanding Resource Waters authorized under this permit must be provided the best practical method of treatment to protect and maintain the designated use of the outstanding resource.

B. *Puerto Rico.* Puerto Rico 401 certification special permit conditions revise the permit as follows:

1. Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region II in the Commonwealth of Puerto Rico.

* * * * *

2. Part III. Special Conditions

* * * * *

B. *Releases in Excess of Reportable Quantities.*

1.

* * * * *

c. The permittee shall submit within 14 calendar days of knowledge of the release a written description of the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.1.b (above) of this permit to the appropriate EPA Regional Office at the address provided in Part VI.D.1.c (reporting: where to submit) of this permit.

* * * * *

C. *Commonwealth Special Conditions.*

1. If the construction of any treatment system of waters composed entirely of storm water is necessary, the permittee shall obtain the approval from the Environmental Quality Board (EQB) of the engineering report, plans and specifications.

2. The permittee shall operate all air pollution control equipment in compliance with the applicable provisions of the Regulation for the Control of Atmospheric Pollution, as amended, to avoid water pollution as a result of air pollution fallout.

3. The permittee shall submit to EQB with a copy to the Regional Office, the following information regarding its storm water discharge associated with industrial activity: The number of storm water discharges associated with industrial activity covered by this permit, and a drawing indicating the drainage area of each storm water discharge associated with industrial activity outfall and its respective sampling point:

a. For industrial activities that have begun on or before October 1, 1992, the permittee is required to submit the information listed above no later than November 16, 1992.

b. For industrial activities that have begun after October 1, 1992, the permittee is required to submit the information listed above within forty five (45) days of submission of the NOI.

4. The sampling point(s) for the storm water discharges associated with industrial activity shall be labeled with a 18 in. x 12 in. (minimum dimensions) sign that reads as follows: *Punto de Muestreo de Agua de Lluvia.*

3. Part IV. Storm Water Pollution Prevention Plans

* * * * *

A. *Deadlines for Plan Preparation and Compliance.*

1. Except as provided in paragraphs IV.A.3 (oil and gas operations), 4 (facilities denied or rejected from participation in a group application), 5 (special requirements) and 6 (later dates) the plan for a storm water discharge associated with industrial activity that is existing on or before October 1, 1992:

a. shall be prepared on or before April 1, 1993 (and updated as appropriate);

i. No later than April 1, 1993, the permittee shall submit to the EQB with a copy to the Regional Office, a certification stating that the Plan was *developed* in accordance with the requirements established in this permit. All certification, except those prepared by professional engineer licensed in Puerto Rico, shall be submitted with a sworn statement attesting to the professional qualifications of the individual who developed the Plan.

b. shall provide for implementation and compliance with the terms of the plan on or before October 1, 1993;

i. No later than October 1, 1993, the permittee shall submit to EQB with a copy to the Regional Office, a certification stating that the Plan was *implemented* in accordance with the conditions and requirements established in this permit. The certification should be signed by the person who fulfills the signatory requirements in accordance with Part VII.G of this permit.

2. a. The plan for any facility where industrial activity commences after October 1, 1992 shall be prepared, and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the date 30 calendar days after the commencement of industrial activity (and updated as appropriate);

i. Within thirty (30) days of the commencement of industrial activity, the permittee shall submit to EQB with a copy to the Regional Office, a certification stating that the Plan has been *developed and implemented* in accordance with the conditions and requirements established in this permit. The certification should be signed by the person who fulfills the signatory requirements in accordance with Part VII.G of this permit.

3. The plan for storm water discharges associated with industrial activity from an oil and gas exploration, production, processing, or treatment operation or transmission facility that is not required to submit a permit application on or before October 1, 1992, in accordance with 40 CFR 122.26(c)(1)(iii), but after October 1, 1992, has a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, shall be prepared and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the date 30 calendar days after the first knowledge of such release (and updated as appropriate);

a. Within thirty (30) days of the first knowledge of such release, the permittee shall submit to EQB with a copy to the Regional Office, a certification stating that the Plan has been *developed and implemented* in accordance with the conditions and requirements established in this permit. The certification should be signed by the person who fulfills the signatory requirements in accordance with Part VII.G of this permit.

* * * * *

C. *Keeping Plans Current.*

1. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B (above).

2. In addition to Part IV.C.1 (above), the Plan should be reviewed at least once every three (3) years to determine the need to update the Plan:

a. If no event occurs which requires the modification of the Plan, the engineer or qualified professional who performs the corresponding review must submit to EQB with a copy to the Regional Office, a certification stating the Plan has been reviewed and based upon such review no modification of the Plan has been necessary, or;

b. If events have occurred which require the modification of the Plan, the engineer or qualified professional who performs the corresponding revision must submit to EQB with a copy to the Regional Office, a certification stating the modifications performed to the Plan. As soon as the modifications performed to the Plan are implemented, the person who fulfills the signatory requirements in accordance with Part VII.G of this permit, shall submit to EQB with a copy to the Regional Office, a certification stating that the modifications of the Plan have been implemented.

c. All certification, except those prepared by a professional engineer licensed in Puerto Rico, shall be submitted with a sworn statement attesting to the professional qualifications of the individual who developed the Plan.

* * * * *

4. Part V. Numeric and Narrative Effluent Limitations

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B. *All Permittees.* The discharge(s) composed entirely of storm water shall not cause the presence of oil sheen in the receiving body of water.

C. *All Permittees.* The storm water discharges associated with industrial activity covered by this permit, will not cause violation to the applicable water quality standard in the receiving body of water.

5. Part VI. Monitoring and Reporting Requirements

* * * * *

B. *Monitoring Requirements.*

1. *Rain Gauge.*

a. All permittees with storm water discharges associated with industrial activity that have begun on or before October 1, 1992, should install a rain gauge by November 1, 1992.

b. For permittees where industrial activity has begun after October 1, 1992, the rain gauge must be installed on or before the date of submission of the NOI.

c. The permittee must keep daily records of the rain, indicating the date and amount of rainfall (inches in 24 hours). A copy of these records shall be submitted to EQB with a copy to the Regional Office, in accordance with Part VI.D (reporting: where to submit) of this permit. The reports are due the 28th day of January, April, July and October. The first report may cover less than three months and shall be attached to the Discharge Monitoring Reports (DMRs).

2. *Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.B.2. a through j. must monitor those storm water discharges identified below at least *quarterly* (4 times per year) except as provided in VI.B.5 (sampling waiver), VI.B.6 (representative discharge), and VI.C.1 (toxicity testing). Permittees with facilities identified in Parts VI.B.2. a through j. (below) must report in accordance with Part VI.D (reporting: where to submit). In addition to the parameters listed below, the permittee

shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; an estimate of the size of the drainage area (in square feet); an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)); and the total volume (in gallons) of the discharge sampled.

a. *Section 313 of EPCRA Facilities.* In addition to any monitoring required by Parts VI.B.2.b through j., facilities with storm water discharges associated with industrial activity that are subject to Section 313 of EPCRA for chemicals which are classified as "Section 313 water priority chemicals" are required to monitor storm water that is discharged from the facility that comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled for: Oil and Grease (mg/L); Five Day Biochemical Oxygen Demand (B0D5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); pH; acute whole effluent toxicity; and any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right to Know Act of 1986. These facilities are not required to submit the estimate of the size of the drainage area and the estimate of the runoff coefficient of the drainage area.

* * * * *

g. *Airports.* At airports with over 50,000 flight operations per year, facilities with storm water discharges associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) are required to monitor such storm water that is discharged from the facility when deicing activities are occurring for: Oil and Grease (mg/L); Five Day Biochemical Oxygen Demand (B0D5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and the primary ingredient used in the deicing materials used at the site (e.g. ethylene glycol, urea, etc.).

h. *Coal-fired Steam Electric Facilities.* Facilities with storm water discharges associated with industrial activity from coal handling sites at coal fired steam electric power generating facilities (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 CFR 423—which are not eligible for coverage under this permit) are required to monitor such storm water that is discharged from the facility for: Oil and grease (mg/L), pH, TSS (mg/L), total recoverable copper (mg/l), total recoverable nickel (mg/l) and total recoverable zinc (mg/l).

i. *Animal Handling/Meat Packing.* Facilities with storm water discharges associated with industrial activity from animal handling areas, manure management (or storage) areas, and production waste management (or storage) areas that are exposed to precipitation at meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils, are required to monitor such storm water that is discharged from the facility for: Five Day Biochemical Oxygen Demand (B0D5) (mg/L); oil and grease (mg/L); Total Suspended Solids (TSS) (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); ph; and fecal coliform (counts per 100 Ml).

j. *Additional Facilities.* Facilities with storm water discharges associated with industrial activity described below are subject to storm water monitoring requirements for the following parameters: Oil and Grease (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and any pollutant limited in an effluent guideline to which the facility is subject. Facilities include those that:

(i) come in contact with storage piles for solid chemicals used as raw materials that are exposed to precipitation at facilities classified as SIC 30 (Rubber and Miscellaneous Plastics Products) or SIC 28 (Chemicals and Allied Products);

(ii) Are from those areas at automobile junkyards with any of the following: (A) over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) are exposed to storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) are stored exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water;

(iii) Come into contact with lime storage piles that are exposed to storm water at lime manufacturing facilities;

(iv) Are from oil handling sites at oil fired steam electric power generating facilities;

(v) Are from cement manufacturing facilities and cement kilns (other than discharges in whole or in part from material storage piles subject to storm water effluent guidelines at 40 CFR 411—which are not eligible for coverage under this permit);

(vi) Are from ready-mixed concrete facilities; or

(vii) Are from ship building and repairing facilities.

3. *Monitoring Requirements for All Other Industries.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities that are not identified in Parts VI.B.2. a through j. (above) must monitor those storm water discharges at least *quarterly* (4 times per year) except as provided in VI.B.5 (sampling waiver), and VI.B.6 (representative discharge). Permittees identified in this paragraph are required to monitor such storm water discharges from the facility for: Oil and Grease (mg/L); pH; Five Day Biochemical Oxygen Demand; Biological Oxygen Demand (mg/l); Chemical Oxygen Demand (mg/l) (mg/L); Total Suspended Solids (mg/L); Total Phosphorous (mg/l); Total Kjeldahl Nitrogen (mg/l), Nitrate plus Nitrite as Nitrogen (mg/l); and any pollutant limited in an effluent limitation guideline to which the process wastewater stream at the facility is subject to. Permittees identified in this paragraph must report in accordance with Part VI.D (reporting: where to submit). In addition to the parameters listed in this paragraph, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; an estimate of the size of the drainage area (in square feet); and an estimate of the runoff coefficient of the drainage area {e.g. low (under 40%), medium (40% to 65%) or high (above 65%)}.

4. *Sample Type.* Facilities should sample the discharge during normal business hours. In the event that the discharge commences during normal business hours, the permittee shall attempt to meet the sampling requirements specified in this permit even if this requires sampling after

normal business hours. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Grab samples only must be collected and analyzed for the determination of pH, cyanide, whole effluent toxicity, fecal coliform, and oil and grease. The permittee must document the conditions under which the storm water samples were taken, how many manual grab samples were taken for the composite sample, and the date of sampling, and must attach this documentation to the sampling results. The permittee should attempt to meet the above protocol and collect samples beginning on the first day of the reporting period in order to ensure compliance with the specified sampling protocol and requirements.

* * * * *

7. *Alternative to WET Parameter.* A discharger that is subject to the monitoring requirements of Parts VI.B.2. a through d. may, in lieu of monitoring for acute whole effluent toxicity, monitor for pollutants identified in Tables II and III of Appendix D of 40 CFR 122 (see Addendum A of this permit) that the discharger knows or has reason to believe are present at the facility site. Such determinations are to be based on reasonable best efforts to identify significant quantities of materials or chemicals present at the facility. Dischargers must also monitor for any additional parameter identified in Parts VI.B.2. a through d.

C.

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D. *Reporting: Where to Submit.*

1.

a. Permittees which are required to conduct sampling pursuant to Parts VI.B.2. a through j., or Part VI.B.3, shall monitor samples collected during the sampling periods on a quarterly basis:

i. The first sampling period runs from October 1 through December 31;

ii. The second sampling period runs from January 1 through March 31;

iii. The third sampling period runs from April 1 through June 30; and

iv. The fourth sampling period runs from July 1 through September 30.

b. Such permittees shall submit monitoring results obtained during the reporting period on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the month following the sampling period. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may cover less than three (3) months.

c. Signed copies of Discharge Monitoring Reports required, individual permit applications and all other reports required herein, shall be submitted to the Director of the NPDES program at the following address: United States EPA, Region II, Water Management Division, (2WM–WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278.

2. *Additional Notification.* Signed copies of discharge monitoring reports required, individual permit applications and all other reports required herein, shall be submitted to the following Commonwealth Agency: Water Quality Area, P.R. Environmental Quality Board, P.O. Box 11488, Santurce, Puerto Rico 00910.

* * * * *

6. Part VII. Standard Permit Conditions

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G. *Signatory Requirements.* All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or EQB (and/or the operator of a large or medium municipal separate storm sewer system), or that this permit requires be maintained by the permittee, shall be signed.

* * * * *

2. All reports required by the permit and other information requested by the Director or EQB shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

* * * * *

O. *Proper Operation and Maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit. Also, proper operation and maintenance includes, but is not limited, to effective performance based on designed facility removals, adequate funding, effective management, qualified operator staffing, adequate training, adequate laboratory and process controls.

* * * * *

C. *Delaware.* Delaware 401 certification special permit conditions revise the permit as follows:

1. Part I of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all Federal facilities administered by EPA Region 3 in the State of Delaware.

2. Part II of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

C. *Where to Submit.*

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the Federal Register notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, PO Box 1215, Newington, VA 22122.

2. A copy of all Notices of Intent (NOIs) shall be submitted to the State of

Delaware at the following address: Water Pollution Control Branch, NPDES Storm Water Program, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, DE 19903.

* * * * *

3. Part IV of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plan

* * * * *

B. *Signature and Plan Review.*

1. The plan shall be signed in accordance with Part VII.G (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (retention of records) of this permit. A copy of the plan, as well as subsequent revisions, shall also be submitted to the State of Delaware at the following address: Water Pollution Control Branch, NPDES Storm Water Program, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, DE 19903.

* * * * *

D. *Contents of the Plan.*

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3. Measures and Controls.

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d. *Inspections.* In addition to or as part of the comprehensive site evaluation required under Part IV.4 of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility. The areas where significant materials are stored shall be inspected once per month to determine the availability of significant materials to be contributed to storm water runoff. If it is determined that storm water or storm water runoff is coming in contact with significant materials, the storm water pollution prevention plan shall be amended appropriately to eliminate or reduce the exposure. Also, all structural controls shall be inspected after every rainfall event that results in runoff to confirm that these controls are operating properly. If any structural control is not operating properly, this situation shall be corrected immediately or a time frame developed for this situation. Records of all inspections, amendments to the storm water pollution prevention plan and corrective actions shall be maintained.

4. Part VI of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

B. *Monitoring Requirements.*

* * * * *

3. *Annual Monitoring Requirements.*

* * * * *

a. *Airports.* At airports with over 50,000 flight operations per year and at all Federal airport facilities in the State of Delaware, storm water discharges associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) are required to monitor such storm water that is discharged from the facility when deicing activities are occurring for: Oil and Grease (mg/L; Five Day Biochemical Oxygen Demand (BOD5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); Ph; Total Petroleum Hydrocarbons (mg/L); and the primary ingredient used in the deicing materials used at the site (e.g. ethylene glycol, urea, etc.).

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D. *Reporting: Where to Submit.*

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d. Signed copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office:

Region 3. *DE, DC, MD, PA, VA, WV,* United States EPA, Region III, Water Management Division, (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107.

and to the State of Delaware at the following address:

Water Pollution Control Branch, NPDES Storm Water Program, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, DE 19903.

D. *District of Columbia.* District of Columbia 401 certification special permit conditions revise the permit as follows:

1. Part I of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 3 in the District of Columbia.

2. The following sections are added to Part III of the permit:

Part III. Special Conditions

* * * * *

C. *Applicability of District of Columbia Laws.* All Federal facility permittees covered under this permit must meet all applicable District of Columbia laws.

D. *Nitrogen and Phosphorus Removal.* The Director may notify any permittee that additional control measures are required in order to achieve the 40 percent reduction in nitrogen and phosphorus entering the main stem of the Chesapeake Bay by the year 2000, as mandated by the 1987 Chesapeake Bay Agreement.

3. Part V of the permit is revised to read:

Part V. Numeric Effluent Limitations

A. *Coal Pile Runoff.* Any discharge composed of coal pile runoff shall not exceed a maximum concentration for any time of 50 mg/l total suspended solids. Coal pile runoff shall not be diluted with storm water or other flows in order to meet this limitation. The Ph of such discharges shall be within the range of 6.0–8.5. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 10 year, 24 hour rainfall event shall not be subject to the 50 mg/l limitation for total suspended solids. Failure to demonstrate compliance with these limitations as expeditiously as practicable, but in no case later than October 1, 1995, will constitute a violation of this permit.

4. Part VI of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

D. *Reporting: Where to Submit.*

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d. Signed copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office:

3. *DE, DC, MD, PA, VA, WV:*

United States EPA, Region III, Water Management Division, (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107.

and to the District of Columbia at the address below:

Government of the District of Columbia, Department of Consumer and Regulatory Affairs, Environmental Regulation Administration, 2100 Martin Luther King, Jr. Avenue S.E., Washington, DC 20020.

E. *American Samoa.* American Samoa 401 certification special permit conditions revise the permit as follows:

1. Part I of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region IX in American Samoa.

2. Part II of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

C. *Where to Submit.*

1. Facilities which discharge storm water associated with industrial activity must use an NOI form provided by the Director (or photocopy thereof). The form in the **Federal Register** notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, PO Box 1215, Newington, VA 22122.

2. A copy of the NOI shall be submitted to American Samoa Environmental Protection Agency at the same time as submittal to the U.S. EPA.

3. Part IV of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plan

* * * * *

B. *Signature and Plan Review.*

1. The plan shall be signed in accordance with Part VII.G (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (retention of records) of this permit. A copy of the plan shall also be submitted to the American Samoa Environmental Protection Agency for review and approval.

F. *Guam.* Guam 401 certification special permit conditions revise the permit as follows:

1. Part I of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region IX in Guam.

2. Part II of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

C. *Where to Submit.*

1. Facilities which discharge storm water associated with industrial activity must use an NOI form provided by the Director (or photocopy thereof). The form in the **Federal Register** notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, PO Box 1215, Newington, VA 22122.

2. A copy of the NOI also shall be submitted to appropriate Government of Guam agencies and the Guam Environmental Protection Agency at the following address: D–107 Harmon Plaza, 130 Rojas St., Harmon, Guam 95911

* * * * *

3. Part IV of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plan

* * * * *

B. *Signature and Plan Review.*

1. The plan shall be signed in accordance with Part VII.G (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (retention of records) of this permit. A copy of the plan shall also be submitted to the Guam Environmental Protection Agency at the following address: D–107 Harmon Plaza, 130 Rojas St., Harmon, Guam 95911.

* * * * *

4. Part VI of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

D. *Reporting: Where to Submit.*

1.

* * * * *

d. Signed copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office: United States EPA, Region IX, Water Management Division, (W–5–1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105, and to the Guam Environmental Protection Agency at the following address: D–107 Harmon Plaza, 130 Rojas St., Harmon, Guam 95911.

* * * * *

Addendum A

Table II—Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)

Volatiles

acrolein
acrylonitrile
benzene
bromoform
carbon tetrachloride
chlorobenzene
chlorodibromomethane
chloroethane
2-chloroethylvinyl ether
chloroform
dichlorobromomethane
1,1-dichloroethane
1,2-dichloroethane
1,1-dichloroethylene
1,2-dichloropropane
1,3-dichloropropylene
ethylbenzene
methyl bromide
methyl chloride
methylene chloride
1,1,2,2-tetrachloroethane
tetrachloroethylene
toluene
1,2-trans-dichloroethylene
1,1,1-trichloroethane
1,1,2-trichloroethane
trichloroethylene
vinyl chloride

Acid Compounds

2-chlorophenol
2,4-dichlorophenol
2,4-dimethylphenol
4,6-dinitro-o-cresol
2,4-dinitrophenol
2-nitrophenol
4-nitrophenol
p-chloro-m-cresol
pentachlorophenol
phenol
2,4,6-trichlorophenol

Base/Neutral

acenaphthene
acenaphthylene
anthracene
benzidine
benzo(a)anthracene
benzo((a))pyrene
3,4-benzofluoranthene
benzo(ghi)perylene
benzo(k)fluoranthene
bis(2-chloroethoxy)methane
bis(2-chloroethyl)ether
bis(2-chloroisopropyl)ether
bis(2-ethylhexyl)phthalate
4-bromophenyl phenyl ether
butylbenzyl phthalate
2-chloronaphthalene
4-chlorophenyl phenyl ether
chrysene
dibezo(a,h)anthracene
1,2-dichlorobenzene

1,3-dichlorobenzene
1,4-dichlorobenzene
3,3-dichlorobenzidine
diethyl phthalate
dimethyl phthalate
di-n-butyl phthalate
2,4-dinitrotoluene
2,6-dinitrotoluene
di-n-octyl phthalate
1,2-diphenylhydrazine (as azobenzene)
fluroranthene
fluorene
hexachlorobenzene
hexachlorobutadiene
hexachlorocyclopentadiene
hexachloroethane
indeno(1,2,3-cd)pyrene
isophorone
napthalene
nitrobenzene
N-nitrosodimethylamine
N-nitrosodi-n-propylamine
N-nitrosodiphenylamine
phenanthrene
pyrene
1,2,4-trichlorobenzene

Pesticides

aldrin
alpha-BHC
beta-BHC
gamma-BHC
delta-BHC
chlordane
4,4'-DDT
4,4'-DDE
4,4'-DDD
dieldrin
alpha-endosulfan
beta-endosulfan
endosulfan sulfate
endrin
endrin aldehyde
heptachlor
heptachlor epoxide
PCB-1242
PCB-1254
PCB-1221
PCB-1232
PCB-1248
PCB-1260
PCB-1016
toxaphene

Table III—Other Toxic Pollutants (Metals and Cyanide) and Total Phenols

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

Addendum C

Large and Medium Municipalities in the Non-Delegated State of Florida: Broward, Dade, Duval, Escambia, Hillsborough, Orange, Palm Beach, Pinellas, Polk, and Sarasota Counties, and all incorporated municipalities, the Florida Department of Transportation, and Chapter 298 Special Districts within these counties where such entities own or operate, in whole or in part, a municipal separate storm sewer system.

Addendum B

Section 313 Water Priority Chemicals

CAS No.	Common name
75-07-0	Acetaldehyde.
75865	Acetone cynohydrin.
107-02-8	Acrolein.
107-13-1	Acrylonitrile.
309-00-2	Aldrin [1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1.alpha.,4.alpha.,4a.beta.,5.alpha., 8.alpha.,8a.beta.)-]
107-05-1	Allyl Chloride.
7429-90-5	Aluminum (fume or dust).
7664-41-7	Ammonia.
62-53-3	Aniline.
120-12-7	Anthracene.
7440-36-0	Antimony.
7647189	Antimony pentachloride.
28300745	Antimony potassium tartrate.
7789619	Antimony tribromide.
10025919	Antimony trichloride.
7783564	Antimony trifluoride.
1309644	Antimony trioxide.
7440-38-2	Arsenic.
1303328	Arsenic disulfide.
1303282	Arsenic pentoxide.
7784341	Arsenic trichloride.
1327533	Arsenic trioxide.
1303339	Arsenic trisulfide.
1332-21-4	Asbestos (friable).
542621	Barium cyanide.
71-43-2	Benzene.
92-87-5	Benzidine.
100470	Benzonitrile.
98-88-4	Benzoyl chloride.
100-44-7	Benzyl chloride.
7440-41-7	Beryllium.
7787475	Beryllium chloride.
7787497	Beryllium fluoride.
7787555	Beryllium nitrate.
111-44-4	Bis(2-chloroethyl) ether.
75-25-2	Bromoform.
74-83-9	Bromomethane (Methyl bromide).
85-68-7	Butyl benzyl phthalate.
7440-43-9	Cadmium.
543908	Cadmium acetate.
7789426	Cadmium bromide.
10108642	Cadmium chloride.
7778441	Calcium arsenate.
52740166	Calcium arsenite.
13765190	Calcium chromate.
592018	Calcium cyanide.
133-06-2	Captan [1H-Isoindole-1,3(2H)-dione,3a,4,7,7a-tetrahydro-2-[(trichloromethyl)thio]-].
63-25-2	Carbaryl [1-Naphthalenol, methylcarbamate].
75-15-0	Carbon disulfide.
56-23-5	Carbon tetrachloride.
57-74-9	Chlordane [4,7-Methanoindan,1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-].
7782-50-5	Chlorine.
59-50-7	Chloro-4-methyl-3-phenol p-Chloro-m-cresol.
108-90-7	Chlorobenzene.
75-00-3	Chloroethane (Ethyl chloride).
67-66-3	Chloroform.
74-87-3	Chloromethane (Methyl chloride).
95-57-8	2-Chlorophenol.
106-48-9	4-Chlorophenol.
1066304	Chromic acetate.
11115745	Chromic acid.
10101538	Chromic sulfate.
7440-47-3	Chromium.
1308-14-1	Chromium (Tri).
10049055	Chromous chloride.
7789437	Cobaltous bromide.
544183	Cobaltous formate.
14017415	Cobaltous sulfamate.
7440-50-8	Copper.
108-39-4	m-Cresol.
9548-7	o-Cresol.
106-44-5	p-Cresol.
1319-77-3	Cresol (mixed isomers).
142712	Cupric acetate.
12002038	Cupric acetoarsenite.
7447394	Cupric chloride.
3251238	Cupric nitrate.
5893663	Cupric oxalate.
7758987	Cupric sulfate.
10380297	Cupric sulfate, ammoniated.
815827	Cupric tartrate.
57-12-5	Cyanide.
506774	Cyanogen chloride.
110-82-7	Cyclohexane.
94-75-7	2,4-D [Acetic acid, (2,4-dichlorophenoxy)-].
106-93-4	1,2-Dibromoethane (Ethylene dibromide).
84-74-2	Dibutyl phthalate.
25321-22-6	Dichlorobenzene (mixed isomers).
95-50-1	1,2-Dichlorobenzene.
541-73-1	1,3-Dichlorobenzene.
106-46-7	1,4-Dichlorobenzene.
91-94-1	3,3'-Dichlorobenzidine.
75-27-4	Dichlorobromomethane.
107-06-2	1,2-Dichloroethane (Ethylene dichloride).
540-59-0	1,2-Dichloroethylene.
120-83-2	2,4-Dichlorophenol.
78-87-5	1,2-Dichloropropane.
542-75-6	1,3-Dichloropropylene.
62-73-7	Dichlorvos [Phosphoric acid, 2,2-dichloroethenyl dimethyl ester].
115-32-2	Dicofol [Benzenemethanol, 4[chloro-.alpha.-(4-chlorophenyl)-.alpha.-(trichloromethyl)-].
177-81-7	Di-(2-ethylhexyl phthalate (DEHP).
84-66-2	Diethyl phthalate.
105-67-9	2,4-Dimethylphenol.
131-11-3	Dimethyl phthalate.
534-52-1	4,6-Dinitro-o-cresol.
51-28-5	2,4-Dinitrophenol.
121-14-2	2,4-Dinitrotoluene.
606-20-2	2,6-Dinitrotoluene.
117-84-0	n-Dioctyl phthalate.
122-66-7	1,2-Diphenylhydrazine (Hydrazobenzene).
106-89-8	Epichlorohydrin.
100-41-4	Ethylbenzene.
106934	Ethylene dibromide.
50-00-0	Formaldehyde.
76-44-8	Heptachlor [1,4,5,6,7,8,8-Heptachloro-3a,4,7,7a-tetrahydro-4,7-methano-1H-indene].
118-74-1	Hexachlorobenzene.
87-68-3	Hexachloro-1,3-butadiene.
77-47-4	Hexachlorocyclopentadiene.
67-72-1	Hexachloroethane.
7647-01-0	Hydrochloric acid.
74-90-8	Hydrogen cyanide.
7664-39-3	Hydrogen fluoride.
7439-92-1	Lead.
301042	Lead acetate.
7784409	Lead arsenate.
7645252	Do.
10102484	Do.
7758954	Lead chloride.
13814965	Lead fluoborate.
7783462	Lead fluoride.
10101630	Lead iodide.
10099748	Lead nitrate.
7428480	Lead stearate.
1072351	Do.

CAS No.	Common name
52652592	Do.
7446142	Lead sulfate.
1314870	Lead sulfide.
592870	Lead thiocyanate.
58-89-9	Lindane [Cyclohexane, 1,2,3,4,5,6-hexachloro-(1.alpha.,3.beta.,4.alpha.,5.alpha.,-6.beta.)-].
14307358	Lithium chromate.
108-31-6	Maleic anhydride.
592041	Mercuric cyanide.
10045940	Mercuric nitrate.
7783359	Mercuric sulfate.
592858	Mercuric thiocyanate.
7782867	Mercurous nitrate.
7439-97-6	Mercury.
72-43-5	Methoxychlor [Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-].
80-62-6	Methyl methacrylate.
91-20-3	Naphthalene.
7440-02-0	Nickel.
15699180	Nickel ammonium sulfate.
37211055	Nickel chloride.
7718549	Do.
12054487	Nickel hydroxide.
14216752	Nickel nitrate.
7786814	Nickel sulfate.
7697-37-2	Nitric acid.
98-95-3	Nitrobenzene.
88-75-5	2-Nitrophenol.
100-02-7	4-Nitrophenol.
62-75-9	N-Nitrosodimethylamine.
86-30-6	N-Nitrosodiphenylamine.
621-64-7	N-Nitrosodi-n-propylamine.
56-38-2	Parathion [Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester].
87-86-5	Pentachlorophenol (PCP).
108-95-2	Phenol.
75-44-5	Phosgene.
7664-38-2	Phosphoric acid.
7723-14-0	Phosphorus (yellow or white).
1336-36-3	Polychlorinated biphenyls (PCBs).
7784410	Potassium arsenate.
10124502	Potassium arsenite.
7778509	Potassium bichromate.
7789006	Potassium chromate.
151508	Potassium cyanide.
75-56-9	Propylene oxide.
91-22-5	Quinoline.
7782-49-2	Selenium.
7446084	Selenium oxide.
7440-22-4	Silver.
7761888	Silver nitrate.
7631892	Sodium arsenate.
7784465	Sodium arsenite.
10588019	Sodium bichromate.
7775113	Sodium chromate.
143339	Sodium cyanide.
10102188	Sodium selenite.
7782823	Do.
7789062	Strontium chromate.
100-42-5	Styrene.
7664-93-9	Sulfuric acid.
79-34-5	1,1,2,2-Tetrachloroethane.
127-18-4	Tetrachloroethylene (Perchloroethylene).
935-95-5	2,3,5,6-Tetrachlorophenol.
78002	Tetraethyl lead.
7440-28-0	Thallium.
10031591	Thallium sulfate.
108-88-3	Toluene.
8001-35-2	Toxaphene.
52-68-6	Trichlorfon [Phosphonic acid, (2,2,2-trichloro-1-hydroxyethyl)-dimethylester].
120-82-1	1,2,4-Trichlorobenzene.
71-55-6	1,1,1-Trichloroethane (Methyl chloroform).
79-00-5	1,1,2-Trichloroethane.
79-01-6	Trichloroethylene.
95-95-4	2,4,5-Trichlorophenol.
88-06-2	2,4,6-Trichlorophenol.
7440-62-2	Vanadium (fume or dust).
108-05-4	Vinyl acetate.
75-01-4	Vinyl chloride.
75-35-4	Vinylidene chloride.
108-38-3	m-Xylene.
95-47-6	o-Xylene.
106-42-3	p-Xylene.
1330-20-7	Xylene (mixed isomers).
7440-66-6	Zinc (fume or dust).
557346	Zinc acetate.
14639975	Zinc ammonium chloride
14639986	Do.
52628258	Do.
1332076	Zinc borate.
7699458	Zinc bromide.
3486359	Zinc carbonate.
7646857	Zinc chloride.
557211	Zinc cyanide.
7783495	Zinc fluoride.
557415	Zinc formate.
7779864	Zinc hydrosulfite.
7779886	Zinc nitrate.
127822	Zinc phenolsulfonate.
1314847	Zinc phosphide.
16871719	Zinc silicofluoride.
7733020	Zinc sulfate.

Addendum C

Municipalities With Large and Medium Municipal Separate Storm Sewer Systems

Delaware

New Castle County

District of Columbia

District of Columbia

Florida

Broward, Dade, Duval, Escambia, Hillsborough, Orange, Palm Beach, Pinellas, Polk, and Sarasota Counties, and all incorporated municipalities, the Florida Department of Transportation, and Chapter 298 Special Districts within these counties where such entities own or operate, in whole or in part, a municipal separate storm sewer system.

New York

Buffalo, Bronx Borough, Brooklyn Borough Manhattan Borough, Queens Borough, Staten Island Borough

BILLING CODE 6560-50-M

Appendix C—Notice of Intent and Instructions

See Reverse for Instructions

Form Approved. OMB No. 2040-0086
Approval expires: 8-31-95

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity Under the NPDES General Permit

Submission of this Notice of Intent constitutes notice that the party identified in Section I of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with industrial activity in the State identified in Section II of this form. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Facility Operator Information

Name: Phone:

Address: Status of Owner/Operator:

City: State: ZIP Code:

II. Facility/Site Location Information

Name: Is the Facility Located on Indian Lands? (Y or N)

Address:

City: State: ZIP Code:

Latitude: Longitude: Quarter: Section: Township: Range:

III. Site Activity Information

MS4 Operator Name:

Receiving Water Body:

If You are Filing as a Co-permittee, Enter Storm Water General Permit Number: Are There Existing Quantitative Data? (Y or N) Is the Facility Required to Submit Monitoring Data? (1, 2, or 3)

SIC or Designated Activity Code: Primary: 2nd: 3rd: 4th:

If This Facility is a Member of a Group Application, Enter Group Application Number:

If You Have Other Existing NPDES Permits, Enter Permit Numbers:

IV. Additional Information Required for Construction Activities Only

Project Start Date: Completion Date: Estimated Area to be Disturbed (in Acres): Is the Storm Water Pollution Prevention Plan in Compliance with State and/or Local Sediment and Erosion Plans? (Y or N)

V. Certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: Date:

Signature: _____

EPA Form 3510-6 (8-92)

Instructions - EPA Form 3510-6
Notice Of Intent (NOI) For Storm Water Discharges Associated With Industrial Activity
To Be Covered Under The NPDES General Permit

Who Must File A Notice Of Intent (NOI) Form

Federal law at 40 CFR Part 122 prohibits point source discharges of storm water associated with industrial activity to a water body(ies) of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. The operator of an industrial activity that has such a storm water discharge must submit a NOI to obtain coverage under the NPDES Storm Water General Permit. If you have questions about whether you need a permit under the NPDES Storm Water program, or if you need information as to whether a particular program is administered by EPA or a state agency, contact the Storm Water Hotline at (703) 821-4823.

Where To File NOI Form

NOIs must be sent to the following address:

Storm Water Notice of Intent
PO Box 1215
Newington, VA 22122

Completing The Form

You must type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on this form, call the Storm Water Hotline at (703) 821-4823.

Section I Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same as the name of the facility. The responsible party is the legal entity that controls the facility's operation, rather than the plant or site manager. Do not use a colloqual name. Enter the complete address and telephone number of the operator.

Enter the appropriate letter to indicate the legal status of the operator of the facility.

F = Federal
S = State
M = Public (other than federal or state)
P = Private

Section II Facility/Site Location Information

Enter the facility's or site's official or legal name and complete street address, including city, state, and ZIP code. If the facility or site lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

Indicate whether the facility is located on Indian lands.

Section III Site Activity Information

If the storm water discharges to a municipal separate storm sewer system (MS4), enter the name of the operator of the MS4 (e.g., municipality name, county name) and the receiving water of the discharge from the MS4. (A MS4 is defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by a state, city, town, borough, county, parish, district, association, or other public body which is designed or used for collecting or conveying storm water.)

If the facility discharges storm water directly to receiving water(s), enter the name of the receiving water.

If you are filing as a co-permittee and a storm water general permit number has been issued, enter that number in the space provided.

Indicate whether or not the owner or operator of the facility has existing quantitative data that represent the characteristics and concentration of pollutants in storm water discharges.

Indicate whether the facility is required to submit monitoring data by entering one of the following:

1 = Not required to submit monitoring data;
2 = Required to submit monitoring data;
3 = Not required to submit monitoring data; submitting certification for monitoring exclusion

Those facilities that must submit monitoring data (e.g., choice 2) are: Section 313 EPCRA facilities; primary metal industries; land disposal units/incinerators/BIFs; wood treatment facilities; facilities with coal pile runoff; and, battery reclaimers.

List, in descending order of significance, up to four 4-digit standard industrial classification (SIC) codes that best describe the principal products or services provided at the facility or site identified in Section II of this application.

For industrial activities defined in 40 CFR 122.26(b)(14)(i)-(xi) that do not have SIC codes that accurately describe the principal products produced or services provided, the following 2-character codes are to be used:

HZ = Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA [40 CFR 122.26 (b)(14)(iv)];
LF = Landfills, land application sites, and open dumps that receive or have received any industrial wastes, including those that are subject to regulation under subtitle D of RCRA [40 CFR 122.26 (b)(14)(v)];
SE = Steam electric power generating facilities, including coal handling sites [40 CFR 122.26 (b)(14)(vii)];
TW = Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage [40 CFR 122.26 (b)(14)(ix)]; or,
CO = Construction activities [40 CFR 122.26 (b)(14)(x)].

If the facility listed in Section II has participated in Part 1 of an approved storm water group application and a group number has been assigned, enter the group application number in the space provided.

If there are other NPDES permits presently issued for the facility or site listed in Section II, list the permit numbers. If an application for the facility has been submitted but no permit number has been assigned, enter the application number.

Section IV Additional Information Required for Construction Activities Only

Construction activities must complete Section IV in addition to Sections I through III. Only construction activities need to complete Section IV.

Enter the project start date and the estimated completion date for the entire development plan.

Provide an estimate of the total number of acres of the site on which soil will be disturbed (round to the nearest acre).

Indicate whether the storm water pollution prevention plan for the site is in compliance with approved state and/or local sediment and erosion plans, permits, or storm water management plans.

Section V Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, state, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Appendix D—Notice of Termination and Instructions

Please See Instructions Before Completing This Form

Form Approved. OMB No. 2040-0086 Approval expires: 8-31-95

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Termination (NOT) of Coverage Under the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with industrial activity under the NPDES program. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Permit Information

NPDES Storm Water General Permit Number: _____

Check Here if You are No Longer the Operator of the Facility: ☐

Check Here if the Storm Water Discharge is Being Terminated: ☐

II. Facility Operator Information

Name: _____ Phone: _____

Address: _____

City: _____ State: _____ ZIP Code: _____

III. Facility/Site Location Information

Name: _____

Address: _____

City: _____ State: _____ ZIP Code: _____

Latitude: _____ Longitude: _____ Quarter: _____ Section: _____ Township: _____ Range: _____

IV. Certification: I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

Print Name: _____ Date: _____

Signature: _____

Instructions for Completing Notice of Termination (NOT) Form

Who May File a Notice of Termination (NOT) Form

Permittees who are presently covered under the EPA issued National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Dicharges Associated with Industrial Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with industrial activity as defined in the storm water regulations at 40 CFR 122.26 (b)(14), or when they are no longer the operator of the facilities.

For construction activities, elimination of all storm water discharges associated with industrial activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the construction site that are authorized by a NPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Where to File NOT Form

Send this form to the the following address:

Storm Water Notice of Termination
P.O. Box 1185
Newington, VA 22122

Completing the Form

Type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions about this form, call the Storm Water Hotline at (703) 821-4823.

PLEASE SEE REVERSE OF THIS FORM FOR FURTHER INSTRUCTIONS

EPA Form 3510-7 (8-92)

Instructions - EPA Form 3510-7
Notice of Termination (NOT) of Coverage Under The NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

Section I Permit Information

Enter the existing NPDES Storm Water General Permit number assigned to the facility or site identified in Section III. If you do not know the permit number, contact the Storm Water Hotline at (703) 821-4823.

Indicate your reason for submitting this Notice of Termination by checking the appropriate box:

If there has been a change of operator and you are no longer the operator of the facility or site identified in Section III, check the corresponding box.

If all storm water discharges at the facility or site identified in Section III have been terminated, check the corresponding box.

Section II Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Section III Facility/Site Location Information

Enter the facility's or site's official or legal name and complete address, including city, state and ZIP code. If the facility lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

[FR Doc. 92-23320 Filed 9-24-92; 8:45 am]
BILLING CODE 6560-50-C

Section IV Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing , production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, State, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

federal register

Friday
September 25, 1992

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1992-93 Late Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1992-93 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This is in response to tribal requests for Service recognition of their authority to regulate hunting under established guidelines. This rule is necessary to allow establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

EFFECTIVE DATE: This rule takes effect on September 26, 1992.

ADDRESSES: Comments received on the tribal proposals and special hunting regulations are available for public inspection during normal business hours in Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. Communications regarding the documents should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, room 634-Arlington Square, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240 (703/358-1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 7, 1992, **Federal Register** (57 FR 35446), the U.S. Fish and Wildlife Service (Service) proposed special migratory bird hunting regulations for the 1992-93 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10-September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. Tribes that desired special hunting regulations in the 1992-93 hunting season were requested in the May 8, 1992, **Federal Register** (57 FR 19863) to submit a proposal that included details on: (1) Requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985-86 hunting season, and they were made final beginning with the 1988-89 hunting season (August 18, 1988; 53 FR 31612).

Although the August 7, 1992, proposed rule included generalized regulations for both early and late season hunting, this rulemaking addresses only the late season proposals. Early season hunting was addressed in the rulemaking published in the **Federal Register** on September 1, 1992 (57 FR 40032). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons are those that begin October 1 or later each year and have a primary emphasis on waterfowl.

Also, in the August 7, 1992, proposed rule, the Service pointed out that duck hunting regulations likely would continue to be restrictive because of little overall improvement in duck population status from last year. Hunting regulations were restrictive last year for the same reason. Recently completed production surveys on the breeding ground and the projected fall flight forecast indicate that the continental fall flight of ducks in 1992, statistically, is unchanged from the low level of last year (62 million vs. 61 million in 1992 and 1991, respectively). Thus, the established frameworks are conservative and late season duck hunting regulations are restrictive again during the 1992-93 hunting season.

Comments and Issues Concerning Tribal Proposals

For the 1992-93 migratory bird hunting season, the Service received requests from 11 tribes and/or Indian groups that followed the June 4, 1985, guidelines and are appropriate for rulemaking. Some of the proposals submitted by the tribes have both early and late season elements. However, as noted earlier, only those with late season proposals are included in this final rulemaking; all 11 tribes have proposals with late seasons.

Comments and revised proposals received since publication of the early season final rule are addressed in the following section.

Great Lakes Indian Fish and Wildlife Commission

In a letter dated August 17, 1992, the Wisconsin Department of Natural Resources (WIDNR) generally concurred "* * * with the proposals of the Great Lakes Indian Fish and Wildlife Commission except for those items noted in our letter to you of 9 July 1992. Further, we do not support the 'no daily bag' limit proposed by the Commission for the Wisconsin/Minnesota Zone. We recognize that the harvest by member tribes of the Voight Intertribal Task Force is small. However, the proposed bag limit would be inconsistent with the season recommendations of your Office of Migratory Bird Management.

"Finally, we again note that the season framework for white-fronted geese exceeds the 70 days authorized in the Mississippi Flyway. In 1991, Wisconsin was denied a season length in excess of 70 days despite the fact that our state harvest is minimal."

In the July 9, 1992, letter referenced above, the WIDNR made "no objections" to the proposed opening dates of duck and goose season but reserved the right to modify their position pending breeding ground survey results. The State also made "no objections" to the earlier woodcock opening and requested that tribal members honor the State's noon opening of the shooting hours on the first day of the State's duck season and comply with open-water hunting restrictions.

The Service's response to the concerns in the August 17 letter is as follows: The bag limit issue was resolved in the early season final rule when the Service denied the Great Lakes Indian Fish and Wildlife Commission their request, and they were held to the same bag limit as last year. With regard to the slightly longer white-fronted goose season (79 days) than the 70 days accorded Mississippi Flyway States, the Commission request was approved because it falls within the limits of the guidelines established by the Service for approving tribal migratory bird hunting regulations. Also, the Service believes that the anticipated level of harvest by tribal members will have little biological significance as concerns white-fronted goose numbers. Indeed, the State advised the Service in 1991 that nontribal hunters had harvested only 65 white-fronted geese in Wisconsin in the previous 5 years.

White Mountain Apache Tribe

In the September 1, 1992, early season final rule, the Service noted that the White Mountain Apache Tribe had revised their proposed dove season dates to be in compliance with the early season framework for Arizona. The Service has since received a letter from the Arizona Game and Fish Department (AGFD), dated August 24, 1992, that calls the Service's attention to the earlier proposed mourning dove season/framework situation. However, as indicted above, this matter has been resolved by the tribe. In the August 24, 1992, letter, the AGFD also raised the issue that the Arizona band-tailed pigeon population appears to be showing a significant decline as indicated by harvest and hunter success rate data. The AGFD expressed a concern about the apparent population trend and stated that it had reduced its season from 30 to 10 days. The AGFD noted that both the Navajo and White Mountain Tribes have 30-day band-tailed pigeon seasons but did not know if the same populations trends are occurring in these areas. The Service response is that the number of hunters reportedly hunting band-tailed pigeons and the number of birds harvested on the reservations is not very great. For example, the Navajo Nation estimates less than 100 band-tailed pigeons harvested over a season. However, the Service will initiate dialogue with both the White Mountain Apache Tribe and the Navajo Nation to attempt to determine the health of the band-tailed pigeon populations and specific harvest in their respective areas.

Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota, and the Yankton Sioux Tribe, Marty, South Dakota

In an August 24, 1992, letter to the Service, the State of South Dakota, Office of Attorney General, responded to the proposals for the Crow Creek and Yanton Sioux Tribes. In this letter, the State of South Dakota requests clarification for the tribal lands affected by the rulemaking as follows:

"Both the Crow Creek and Yankton proposals appear to apply only to lands held in trust. Assuming that this is the case, the State of South Dakota has no objection to adoption of the rule.

"Assuming, however, that any of the land affected by the rule is *not* trust land, the State objects to that part of the regulation which does affect non-trust land."

The Service's response is that the codified regulations for these two tribes contain language within the General Conditions sections that specifies the application is only to "tribal and trust lands within the external boundaries of the reservation."

It bears repeating, in the context of an overall fish and wildlife assistance and trust responsibility, that the Service deals with the tribes on a government-to-government basis. The tribes are not represented on the State-constituted Flyway Councils, which make framework and other regulatory recommendations to the Service. Migratory bird harvest by tribal members is generally insignificant, in terms of numbers. However, the tribes can and often do cooperate fully with the States in regulations established on reservation and other lands. The Service encourages the States and the tribes to cooperate with each other, and with the Service, to establish harvest regulations that are in the best interests of the migratory bird resource. The Service utilizes established guidelines for determining the reasonableness of tribal regulations requests given waterfowl population conditions in any given hunting year.

In summary, this rule amends § 20.110 of 50 CFR to make current for the late 1992–93 migratory bird hunting season the regulations that will apply on Federal Indian reservations, off-reservation trust lands and ceded lands. These regulations take into account the need to continue the reduced harvest of ducks.

Administrative Actions NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and a notice of availability was published in the Federal Register on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the service.

Nontoxic Shot Regulations

On May 13, 1991 (56 FR 22100), the Service published the final rulemaking on nontoxic shot zoning for the 1991–92 hunting season and future years. This rule, titled "Nationwide Requirement To Use Nontoxic Shot for the Taking of Waterfowl, Coots and Certain Other Species Beginning in the 1991–92 Season," provides that all of the waterfowl harvest beginning in that year will occur in nontoxic shot zones. This final rule also reminded hunters that nontoxic shot use is required in all U.S. offshore territorial waters and for the taking of captive-reared mallards on shooting preserves, in field trials and for bona fide dog training activities. All of the final hunting regulations covered by this rulemaking are in compliance with the Service's nontoxic shot requirements.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action

authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the 1992–93 migratory bird hunting season regulations, which includes those that apply on Federal Indian reservations and ceded lands.

In a July 2, 1992, biological opinion, the Division of Endangered Species advised the Office of Migratory Bird Management of its conclusions that the proposed action is not likely to jeopardize either listed species or critical habitat. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act may be inspected by the public in either the Division of Endangered Species or the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA, or write Director/MBMO, U.S. Fish and Wildlife Service, 634 ARLSQ, Main Interior Building, Washington, DC 20240.

Regulatory Flexibility Act, Executive Orders 12291, 12612, and 12630, the Civil Justice Reform Executive Order (Executive Order 12778) and the Paperwork Reduction Act

In the May 8, 1992 **Federal Register** (57 FR 19865), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 12291, "Federal Regulation," of February 17, 1981. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that this rule will not involve the taking of any property rights, as defined in Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. These determinations are detailed in the aforementioned documents which, with other documentation, are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634—Arlington Square, Washington, DC 20240. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These regulations contain no collection of information subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Memorandum of Law

The Service's Memorandum of Law, required by section 4 of Executive Order 12291, was published in the **Federal Register** on August 21, 1992 (57 FR 38202).

Authorship

The primary author of this final rule is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its very nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed hunting regulations for certain tribes were published on August 7, 1992, the Service established the longest possible period for public comments. In doing this, the Service recognized that time would be of the essence. However, the comment period provided the maximum amount of time possible while ensuring that this final rule would be published before the late hunting season beginning on September 26, 1992.

Under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), the Service prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl.

Therefore, for the reasons set out above, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule will take effect on September 26, 1992.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*).

Editorial Note: The following annual hunting regulations provided for by § 20.110 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nonmembers)

Ducks

Season Dates: Begin October 17, end November 29, 1992.

Daily Bag and Possession Limits: The daily bag limit is 3, of which: no more than 2 may be mallards (of which only 1 may be a female mallard); only 1 may be a redhead; only 1 may be a pintail; only 2 may be wood ducks; and only 1 may be a hooded merganser. The possession limit is 6, the makeup of which may be no more than twice each of the above.

Dark Geese

Canada, Brant and White-fronted Geese:

Season Dates: Begin October 10, 1992, end January 3, 1993.

Daily Bag and Possession Limits: The daily bag limit is 1 Canada goose and 1 white-fronted goose (or brant), except in Canada Goose Unit 2 the daily bag beginning November 7 may include 2 Canada geese or 1 Canada goose and 1 white-fronted goose (or brant). The possession limit is twice what is provided for in the daily bag limit.

Light Geese

Season Dates: Begin October 10, 1992, end January 3, 1993.

Daily Bag and Possession Limits: The daily bag limit is 7, and the possession limit is 14.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and nontribal hunters will comply with basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours

and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(b) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Ducks

Michigan, 1842 Treaty Zone

Season Dates: Begin October 3, end November 1, 1992.

Daily Bag Limit: The daily bag limit is 3.

Michigan, 1836 Treaty Zone

Season Dates: North Zone, begin October 3 and end November 1, 1992; Middle Zone, begin October 10 and end November 8; South Zone, begin October 17 and end November 12, 1992, then begin November 27 and end November 29, 1992.

Daily Bag Limit: The daily bag limit is 3.

Mergansers

Michigan, 1842 Treaty Zone

Season Dates: Begin October 3, end November 1, 1992.

Daily Bag Limit: The daily bag limit is 5, including no more than 1 hooded merganser.

Michigan, 1836 Treaty Zone

Season Dates: North Zone, begin October 3 and end November 1, 1992; Middle Zone, begin October 10 and end November 8, 1992; South Zone, begin October 17 and end November 12, and then begin November 27 and end November 29, 1992.

Daily Bag Limit: The daily bag limit is 5, including no more than 1 hooded merganser.

Canada Geese

Michigan, 1842 Treaty Zone

Season Dates: Begin September 26, end November 14, 1992.

Daily Bag Limit: The daily bag limit is 5.

Michigan, 1836 Treaty Zone

Season Dates: Same season dates and length selected by the State of Michigan for each zone in this area.

Daily Bag Limit: The daily bag limit is 1 or 2, depending upon the State hunting zone in which the Treaty Zone is located; see State/tribal regulations.

Other Geese (Blue, Snow, and White-fronted)

Michigan, 1842 Treaty Zone

Season Dates: Same season dates and length selected by the State of Michigan for each zone in this area.

Daily Bag Limit: The daily bag limit is 7 minus the number of Canada geese taken, including no more than 2 white-fronted.

Michigan, 1836 Treaty Zone

Season Dates: Same season dates and length selected by the State of Michigan for each zone in this area.

Daily Bag Limit: The daily bag limit is 7 minus the number of Canada geese taken, including no more than 2 white-fronted.

Coots and Common Moorhens (Gallinule)

Michigan, 1842 Treaty Zone

Season Dates: North Zone, begin October 3 and end November 1, 1992; Middle Zone, begin October 10 and end November 8, 1992; South Zone, begin October 17 and end November 12, then begin November 27 and end November 29, 1992.

Daily Bag Limit: The daily bag limit is 20, singly or in the aggregate.

Michigan, 1836 Treaty Zone

Season Dates: North Zone, begin October 3 and end November 1, 1992; Middle Zone, begin October 10 and end November 8, 1992; South Zone, begin October 17 and end November 12, then begin November 27 and end November 29, 1992.

Daily Bag Limit: The daily bag limit is 15.

General Conditions: (1) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

(2) Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in *Lac Courte Oreilles* v. *State of Wisconsin* regarding migratory bird hunting. Except as modified herein, these migratory bird hunting. Except as modified herein, these amended regulations parallel Federal requirements, 50 CFR Part 20, and shooting hour regulations in 50 CFR Part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

(3) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(4) Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to M.S. 100.29, Subd. 18 (duck blinds and decoys). Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(5) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, *unless otherwise specified.*

(6) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with Sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(c) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nonmembers)

Ducks, (Including Mergansers)

Season Dates: Begin October 3, end November 30, 1992.

Daily Bag and Possession Limits: The daily bag limit is 4, and the possession limit is 8. No canvasbacks are allowed in the bag.

Geese. The 1992–93 goose season is closed.

General Conditions. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(d) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Ducks

Season Dates: Begin October 1, end November 28, 1992.

Daily Bag and Possession Limits: The bag limit is 4. Of this number: no more than 1 may be a pintail; no more than 2 may be canvasbacks or 2 may be redheads, or one of each of these species; and may include up to 3 mallards, only one of which may be a female or Mexican duck. The possession limit is twice the daily bag limit for each species.

Canada Geese

Season Dates: Begin October 3, 1992, end January 3, 1993.

Daily Bag and Possession Limits: The bag limit is 2, and the possession limit is restricted to the daily bag (2).

Coots and Common Moorhens

Season Dates: Begin October 1, end November 28, 1992.

Daily Bag and Possession Limits: The daily bag limit is 25 singly or in the aggregate, and the possession limit is restricted to the daily bag limit (25).

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink cross the face. Special regulations established by the Navajo Nation also apply on the reservation.

(e) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin, Oneida, Wisconsin (Tribal Members)

Ducks

Season Dates: Begin October 3, end October 11, 1992; begin October 17, end November 6, 1992.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

General Conditions: Tribal members are required to have their tribal Identification Card and Sportsman License on their person while hunting on the reservation. Other regulations are enforced by the Oneida Conservation Department within the original reservation boundaries.

(f) Penobscot Indian Nation, Old Town, Maine (Tribal Members and Non-Tribal Hunters)

Ducks

Season Dates: (North Zone) Begin October 5, end October 23, 1992; begin November 11, end November 21, 1992.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

Geese

Canada

Season Dates: Begin October 1, end November 21, 1992; begin November 25, end December 12, 1992.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

White

Season Dates: Begin October 1, 1992, end January 15, 1993.

Daily Bag and Possession Limits: The daily bag limit is 5, and the possession limit is 10.

General Conditions: (1) When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members is the smaller of the two daily bag limits.

(2) Tribal members shall comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, except that when sustenance hunting tribal members shall be permitted to hunt one-half hour before sunrise to one-half hour after sunset.

(3) Each tribal waterfowl hunter 16 years of age or over must possess and carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp), signed in ink across the face.

(4) Special regulations established by the Penobscot Indian Nation also apply in Penobscot Indian Territory.

(g) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Nontribal Members)

Ducks (Including Mergansers)

Season Dates: Begin October 3, end October 18; begin November 3, end November 29, 1992; and begin December 19, end January 3, 1993.

Daily Bag and Possession Limits: The daily bag limit is 4, and the possession limit is 8.

Coots

Season Dates: Begin October 3, end October 18; begin November 3, end November 29, 1992; and begin December 19, end January 3, 1993.

Daily Bag and Possession Limits: The daily bag limit is 25, and the possession limit is limited to the daily bag (25).

Geese

Dark

Season Dates: Begin September 28, end December 29, 1992.

Daily Bag and Possession Limits: The daily bag limit is 2, and the possession limit is 4.

White

Season dates: Begin September 28, end December 29, 1992.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

Special Exception For Geese: A special early closure for goose hunting may begin at sunset, November 29, 1992, within the following area or some portion therein: Beginning at Polson, thence north along U.S. Highway 93 to Irvine Flats Road, thence west along Irvine Flats Road to Irvine Divide, thence south along the crest of the Salish Mountains Divide to its intersection with the Ronan-Hot Springs Road, thence east to Sloan's Bridge, thence east along Sloan Road to its intersection with Round Butte Road, thence east along Round Butte Road to Valley View Road, thence north along Valley View Road to its intersection with Kerr Dam Road, thence north and east to Polson, the point of beginning. Lands outside those boundaries will close to Canada goose hunting at sunset on January 3, 1993.

General Conditions: Nontribal hunters will comply with all basic Federal migratory bird hunting regulations contained in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(h) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Members)

Ducks

Season Dates: Begin October 24, end December 21, 1992.

Daily Bag and Possession Limits: The daily bag limit is 4, and the possession limit is 8.

Mergansers

Season Dates: Begin October 24, end December 21, 1992.

Daily Bag and Possession Limits: The daily bag limit is 5, and the possession limit is 10.

Coots

Season Dates: Begin October 24, end December 21, 1992.

Daily Bag and Possession Limits: The daily bag limit is 25, and the possession limit is limited to the daily bag (25).

Geese

Season Dates: Begin October 10, 1992, end January 10, 1993.

Daily Bag and Possession Limits: The bag limit is 3 in the aggregate of all species, and the possession limit is 6.

Common Snipe

Season Dates: Begin October 24, end December 21, 1992.

Daily Bag and Possession Limits: The daily bag limit is 8, and the possession limit is 16.

General Conditions: Nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her possession a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(i) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Non-Tribal Hunters)

Ducks

Season Dates: Begin November 23, 1992, end January 20, 1993.

Daily Bag and Possession Limits: The daily bag limit is 4, and the possession limit is 8.

Coots

Season Dates: Begin November 23, 1992, end January 20, 1993.

Daily Bag and Possession Limits: The daily bag limit is 25, and the possession limit is restricted to the daily bag limit (25).

Geese

Season Dates: Begin October 17, 1992, end January 17, 1993.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

Brant

Season Dates: Begin December 2, 1992, end January 17, 1993.

Daily Bag and Possession Limits: The daily bag limit is 2, and the possession limit is 4.

Snipe

Season Dates: Begin November 14, 1992, end February 28, 1993.

Daily Bag and Possession Limits: The daily bag limit is 8, and the possession limit is 16.

General Conditions: All hunters are required to adhere to shooting hour regulations of one-half hour before sunrise to sunset, and a number of other special regulations enforced by the tribes.

(j) Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nonmembers)

Ducks, (Including Mergansers)

Season Dates: Begin November 14, 1992, end January 3, 1993.

Daily Bag and Possession Limits: The daily bag limit is 4, of which: no more than 2 may be redheads or 2 may be canvasbacks (or 1 of each); no more than 1 of which may be pintail; and no more than 3 of which may be mallards, including no more than 1 hen mallard. The possession limit is twice the daily bag limit, but may not include more than 1 daily bag limit that has been taken in any 1 day.

Coots, Moorhens and Gallinules

Season Dates: Begin November 14, 1992, end January 3, 1993.

Daily Bag and Possession limits: The daily bag limit is 25, singly or in the aggregate. The possession limit is twice the daily bag limit, but may not include more than 1 daily bag limit that has been taken in any 1 day.

Canada Geese

Season Dates: Begin November 14, 1992, end January 3, 1993.

Bag and Possession Limits: The daily bag limit is 2, and the possession limit is 4 after the first day.

General Conditions: (1) The area open to hunting in the above seasons consists of: The entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the Whiteriver, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. The remaining reservation waters will be closed to waterfowl hunting during the 1992–93 hunting.

(2) Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

(3) See other special regulations established by the White Mountain Apache Tribe that apply on the reservation, available from the reservation Game and Fish Department.

(k) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nonmembers)

Ducks, Including Mergansers

Season Dates: Low Plains South Zone, begin October 24, end December 1, 1992; Low Plains Middle Zone, begin October 10, end November 17, 1992.

Daily Bag and Possession Limits: The daily bag limit is 3, of which: No more than 2 may be mallards (only 1 of which may be a female mallard); only 1 may be a redhead; only 1 may be a pintail; only 2 may be wood ducks; and only 1 may be hooded merganser. The possession limit is 6, the makeup of which may be no more than double each of the above restrictions.

Coots

Season Dates: Low Plains South Zone, begin October 24, end December 1, 1992; Low Plains Middle Zone, begin October 10, end November 17, 1992.

Daily Bag and Possession Limits: The daily bag limit is 15, and the possession limit is 30.

Swans: The swan season and bag limits are in accordance with those set by the State of South Dakota, for both tribal and nontribal hunters.

Dark Geese (Tribal and Nontribal)

Season Dates: Begin October 3, end December 20, 1992.

Daily Bag and Possession Limits: The daily bag limit is 1 Canada goose and 1 white-fronted goose (or brant), except in Canada Goose Unit 2 the daily bag beginning November 7 may include 2 Canada geese or 1 Canada goose and 1 white-fronted goose (or brant). The possession limit is twice the daily bag limit.

White Geese (Tribal and Nontribal)

Season Dates: Begin October 3, end December 20, 1992.

Daily Bag and Possession Limits: The daily bag limit is 7, and the possession limit is 14.

Special Season: For tribal and nontribal hunters, a special extended goose season will be held in the Chalk Rock Colony area of the Yankton Sioux Reservation. This season begins at the close of the regular goose season, December 21, 1992, in Goose Hunting Unit 2 and extends through January 10, 1993. Information on this special season, including bag limits and other regulations, may be obtained from the Bureau of Indian Affairs Office in Wagner, South Dakota.

General Conditions: (1) The waterfowl hunting regulations established by this final rule apply to tribal and trust lands within the external boundaries of the reservation.

(2) Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl

hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

Dated: September 17, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

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federal register

Friday
September 25, 1992

Part VI

Department of Education

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

1099.....44344
1106.....44344
1108.....44344
1124.....44344
1126.....44344
1131.....44344
1135.....44344
1138.....44344
1209.....43943
1413.....42899
1744.....39628
1902.....39631
1930.....39631
1944.....39635

8 CFR

204.....41053
209.....42883
214.....40830, 42884
251.....40830
258.....40830
274a.....42884

9 CFR

75.....43605
94.....43606, 43885, 44330
381.....43588

Proposed Rules:

75.....40139
92.....41549
124.....40493
201.....42515
203.....42515
307.....40623
310.....40623
318.....42885
319.....42885

10 CFR

11.....41375
25.....41376
35.....41376
50.....41378, 43886
600.....40083
605.....40582

Proposed Rules:

26.....42901
70.....42901
73.....42901
1023.....40345

11 CFR

200.....39743

Proposed Rules:

104.....44137

12 CFR

3.....40302, 44078
204.....40597
208.....43889
217.....43336
225.....41381, 41641, 43889
230.....43337
250.....40597, 41643
262.....41641
265.....40597
545.....40085
562.....40085
563.....40085
563c.....40085
571.....40085
603.....42886
611.....43393
612.....43394
614.....43290
619.....43290
701.....42486
935.....42888
940.....42888
1616.....43607

Proposed Rules:

3.....42623, 42901
208.....39641, 42623
225.....39641, 42623
325.....42623
363.....42516
509.....40350
516.....40350
517.....42906
528.....40350
541.....40350
543.....40350
545.....40350
552.....40350
556.....40350
558.....40350
559.....40350
561.....40350
563.....40140, 40350, 40524
563b.....40350
563e.....40350
567.....40143, 40147, 40350, 40524
571.....40350, 40524
579.....40350
580.....40350
791.....42532
1625.....39743

13 CFR

121.....41068

Proposed Rules:

108.....43155, 43157
120.....44346

14 CFR

13.....40094
21.....41069, 41072, 41360, 42846, 43776
23.....41069, 41072
36.....41360, 42846
39.....40307–40313, 40601, 40835–40838, 42692, 42693, 43291, 43890
43.....41360
71.....40095, 40096, 42488
91.....41360, 42662
97.....41074, 41075, 44085, 44087
121.....42662
125.....42662
135.....42662, 43776
147.....41360
200.....40097
203.....40097
205.....40097
206.....40097
231.....40097
232.....40097
255.....43780
263.....40097
288.....40097
294.....40097
296.....40097
297.....40097
298.....40097
302.....40097
372.....40097
399.....40097
1214.....41077, 41854

Proposed Rules:

Ch. I.....41894
39.....40359, 40623, 40624, 41114, 41115, 41439, 43944, 44138–44141
61.....41974
71.....40148–40156, 41441–41445, 42810
93.....42810
101.....41628
107.....43294
108.....43294
207.....42864
208.....42864
212.....42864
294.....42864
298.....42864
380.....42864
389.....42864

15 CFR

29b.....43892
60.....40840
770.....41854
771.....41854
773.....41854
776.....41854
779.....41854
786.....41854
799.....41854
Ch. IX.....43310
944.....43310

Proposed Rules:

799.....41894
806.....43158
Ch. IX.....44347
946.....40877

16 CFR

305.....41388, 43611, 44331
1115.....39597

Proposed Rules:

229.....41706
230.....41707
232.....41706

17 CFR

4.....41173
16.....40601
19.....41389
30.....40603

Proposed Rules:

Ch. II.....43631
33.....40626

19 CFR

10.....40314, 40604, 43059
24.....42697
103.....44089
122.....43395
141.....40605
142.....44090
145.....40255
171.....40605
172.....40605
178.....44090

Proposed Rules:

4.....40627
101.....42712
141.....40361
142.....40361, 44142
143.....40361
146.....41896
151.....40361, 44143
152.....44143
191.....41446, 44145

20 CFR

404.....44095
655.....40966, 43118, 43495

Proposed Rules:

416.....44146, 44348
626.....41447
627.....41447
628.....41447
629.....41447
630.....41447
631.....41447
637.....41447

21 CFR

5.....40315–40318, 43397
177.....43398
178.....43631
310.....41857
520.....42490, 42623
522.....41861, 42623
526.....42623
529.....42489
556.....41861
573.....40318
1308.....43399
1310.....43614
1313.....43614

Proposed Rules:

131.....40255, 43059
166.....43634
310.....40944
864.....43161
872.....43165
884.....42908

22 CFR

121.....41077

24 CFR

25.....40111
91.....40038
135.....40111
203.....44098
234.....44098
570.....40038
905.....40113

25 CFR

Proposed Rules:

211.....40298
212.....40298

26 CFR

1.....40118, 40319, 40841, 41079, 41644, 42490, 43893, 43897, 44332
5c.....43893
5f.....43893
5h.....43893
6.....43893
7.....43893
7a.....43893
10.....43893
13.....43893
14.....43893
14a.....43893
18.....43893
19.....43893
31.....44099
301.....43893
602.....40118, 40319, 41079, 41644, 43893, 43897

Proposed Rules:

1.....39743, 40378, 41707, 41897, 42712, 42720, 43776, 43945
49.....41549
301.....43777

27 CFR

5.....
20.....
53.....
70.....
194.....

Proposed

4.....
5.....
250.....
251.....
252.....
290.....

28 CFR

2.....
11.....
50.....
80.....

Proposed

2.....

29 CFR

506.....
1910.....
1915.....
1926.....
2200.....
2676.....

Proposed

103.....
403.....
2610.....

30 CFR

56.....
57.....
206.....
207.....
208.....
210.....
216.....
218.....
219.....
220.....
228.....
914.....
920.....
925.....
935.....
944.....

Proposed

75.....
400.....
609.....
651.....
917.....
920.....
935.....
950.....

31 CFR

10.....
204.....
205.....
315.....
353.....
358.....
550.....
575.....
580.....

Proposed

270.....

32 CFR

60.....

27 CFR

5.... 40323
20.... 40847, 42623
53.... 40324
70.... 40327
194.... 39597

Proposed Rules:

4.... 40380, 40884
5.... 40884
250.... 40885
251.... 40886
252.... 40887
290.... 40889

28 CFR

2.... 41391-41394
11.... 44106
50.... 39598
80.... 39598

Proposed Rules:

2.... 41450

29 CFR

506.... 40966, 43495
1910.... 42102
1915.... 42102
1926.... 42102
2200.... 41676
2676.... 42490

Proposed Rules:

103.... 43635
403.... 41634
2610.... 42910

30 CFR

56.... 44256
57.... 44256
206.... 41862
207.... 41862
208.... 41862
210.... 41862
216.... 41862
218.... 41862
219.... 41862
220.... 41862
228.... 41862
914.... 41869
920.... 44112
925.... 44114
935.... 41690, 44118
944.... 41692

Proposed Rules:

75.... 40395, 42808
400.... 43411
609.... 43411
651.... 43412
917.... 41897, 43946–43952
920.... 41712
935.... 43954
950.... 41714, 41715

31 CFR

10.... 41093
204.... 40239
205.... 44272
315.... 39601
353.... 39601
358.... 40607
550.... 41696
575.... 39603
580.... 39603

Proposed Rules:

270.... 41117

32 CFR

60.... 40849
220.... 41096
323.... 40608
619.... 44286
701.... 40609
706.... 41698
806.... 41396
1906.... 39604

Proposed Rules:

202.... 43645
317.... 40397

33 CFR

3.... 39613, 42699
64.... 43401
100.... 40125, 40609, 40610, 41419, 41420
117.... 39614, 41873
135.... 41104
136.... 41104
137.... 41104
157.... 40494
165.... 40125, 40330, 40612, 41421, 43615, 44121, 44122
334.... 40612

Proposed Rules:

89.... 43169
117.... 43647
162.... 41899

34 CFR

Proposed Rules:

231.... 44046
238.... 44046
305.... 43572
612.... 44350
785.... 44408
786.... 44408
787.... 44408

36 CFR

51.... 42808

Proposed Rules:

51.... 40496
242.... 43074
1191.... 41006

37 CFR

1.... 40493
2.... 40493
202.... 39615

Proposed Rules:

1.... 41899, 42721, 43412
5.... 43412
10.... 43412

38 CFR

1.... 44123
3.... 40944, 43904
17.... 41700
21.... 40613, 43616
36.... 40615, 43616

Proposed Rules:

3.... 40424
21.... 41451

39 CFR

111.... 43403

Proposed Rules:

111.... 39646, 40890, 41716, 43956

40 CFR

52.... 40126, 40331–40336, 42889–42895, 43905, 44124
55.... 40792
62.... 43405
136.... 41830
148.... 41173
156.... 42472
170.... 42472
180.... 40128, 42699, 42700
185.... 42700
186.... 42700
260.... 41173, 41566
261.... 41173, 41566
262.... 41173
264.... 41173, 42832
265.... 41173, 42832
266.... 41566
268.... 41173
270.... 41173
271.... 41173, 41566, 41699
279.... 41566
281.... 41874
414.... 41836
721.... 44050

Proposed Rules:

Ch. I.... 42533, 43956, 44147
52.... 40157, 40159, 41716, 42536, 42911, 42913, 43420–43425, 43648–43657, 43957, 43959, 44351
60.... 43171
61.... 43173
62.... 40628
63.... 44147
81.... 43846
122.... 41344
153.... 44290
159.... 44290
180.... 40161–40163, 42727–42730
228.... 43427
260.... 43171
264.... 43171
265.... 43171
270.... 43171
271.... 43171
300.... 39659, 41452
372.... 10820
721.... 10820

42 CFR

60.... 41875
405.... 42491
410.... 39743
412.... 39746
413.... 39746, 42491, 43906
414.... 42491
415.... 42491
431.... 43922
442.... 43922
447.... 43906, 43922
483.... 43922
488.... 43922
489.... 43922
498.... 43922

Proposed Rules:

100.... 41809
413.... 43659

43 CFR

3150.... 44333
3160.... 44333

Public Land Orders:

6942.... 42808
6943.... 39618
2460 (Revoked in part by PLO 6945).... 42405
6945.... 42405
6947.... 43618

Proposed Rules:

4.... 44353
3710.... 41846
3800.... 42732

44 CFR

64.... 39617, 41104, 41875, 43618
65.... 41877, 41878
67.... 39619, 41880

Proposed Rules:

67.... 41905

45 CFR

400.... 42896
641.... 40337
1301.... 41881
1302.... 41886

46 CFR

30.... 41812
32.... 41812
35.... 41812
67.... 44126
70.... 41812
78.... 41812
90.... 41812
97.... 41812
107.... 41812
108.... 41812
109.... 41812
167.... 41812
169.... 41812
170.... 41812
171.... 41812
184.... 41812
185.... 41812
188.... 41812
196.... 41812
272.... 39621
298.... 39621, 44129
510.... 39622, 40129
514.... 39622
540.... 41887
560.... 40616
572.... 40616
580.... 39622
582.... 39622

Proposed Rules:

67.... 43432

47 CFR

1.... 43406
2.... 43290
63.... 41106, 41109
73.... 39624, 39625, 40342, 40849, 41698, 41700, 42510, 42511, 42701, 43290, 44337–44339
74.... 41110
80.... 43496
90.... 40850, 42706, 43406, 44339
95.... 40843
97.... 40843

Proposed Rules:

Ch. I.... 39661
2.... 40630, 42916, 43494
13.... 41718
15.... 40630
21.... 42916
22.... 40630, 42916
25.... 40425, 40426, 40691
61.... 40426
63.... 41118
69.... 40426

73.....39663, 41719, 41911, 41912, 42536–42538, 42732, 44354
94.....42916
99.....40630

48 CFR

Ch. I.....44258
4.....44259
5.....44260
13.....44260
14.....44261
15.....44261, 44262
19.....44260
22.....44262
25.....44263
30.....43409, 43495
31.....40344, 44264
32.....44267
42.....44264
52.....43409, 43495, 44259, 44261, 44262, 44267, 44268
202.....42626
204.....42626
208.....42626
214.....42626
215.....41422, 42626
216.....42626
219.....42626
223.....42626
225.....42626
226.....42626
227.....42626
228.....42626, 42707
231.....42626
232.....42626, 42707
236.....42626
237.....42626
239.....42626
242.....42626
245.....42626
252.....41422, 42626, 42707
253.....42626
270.....41422
525.....42708
552.....42708
817.....44129
923.....41974
1801.....40851
1803.....40851
1804.....40851
1805.....40851
1806.....40851
1807.....40851
1808.....40851
1809.....40851
1813.....40851
1815.....40851
1816.....40851
1819.....40851
1822.....40851
1823.....40851
1825.....40851
1827.....40851
1831.....40851
1832.....40851
1833.....40851
1836.....40851
1837.....40851
1842.....40851
1845.....40851
1849.....40851
1851.....40851
1852.....40851
1853.....40851
1870.....40851
9903.....43620

Proposed Rules:

45.....40891
9903.....43776
9904.....43776

49 CFR

1.....40620
110.....43062
350.....40946
355.....40946
396.....40946
397.....44129
571.....40131, 41423, 41428
588.....41428
1003.....41111
1012.....44135
1023.....43151
1039.....40620
1109.....39743
1313.....40620
1321.....40857, 43059, 43925
1313.....43291

Proposed Rules:

174.....42466
177.....42466
192.....41119
218.....41454
234.....44355
392.....44158
395.....44158
571.....40165, 41912
1002.....39743, 41459
1018.....41459
1039.....39663, 41122
1105.....42733
1145.....41122
1150.....42733
1312.....41459
1313.....41459
1314.....41459

50 CFR

17.....44340
20.....40032, 43856, 44472
204.....40858
216.....41701
217.....40859, 40861, 41703
227.....40859, 40861, 41703
285.....42710, 43409, 44340
299.....40858
641.....41892
642.....43153
646.....41892
653.....40134
661.....39626, 40135, 40136, 40622, 41705, 42511, 43621, 44135
663.....40136, 41112, 42898
672.....40137, 40255, 43621, 43926
675.....42710, 43154, 43621, 43627, 43926, 44341
681.....41112
683.....40255

Proposed Rules:

17.....39664, 40429, 43673–43686
100.....43074
216.....40166
217.....41123
227.....41123
228.....42538
611.....40493
672.....44355
685.....40493, 43290

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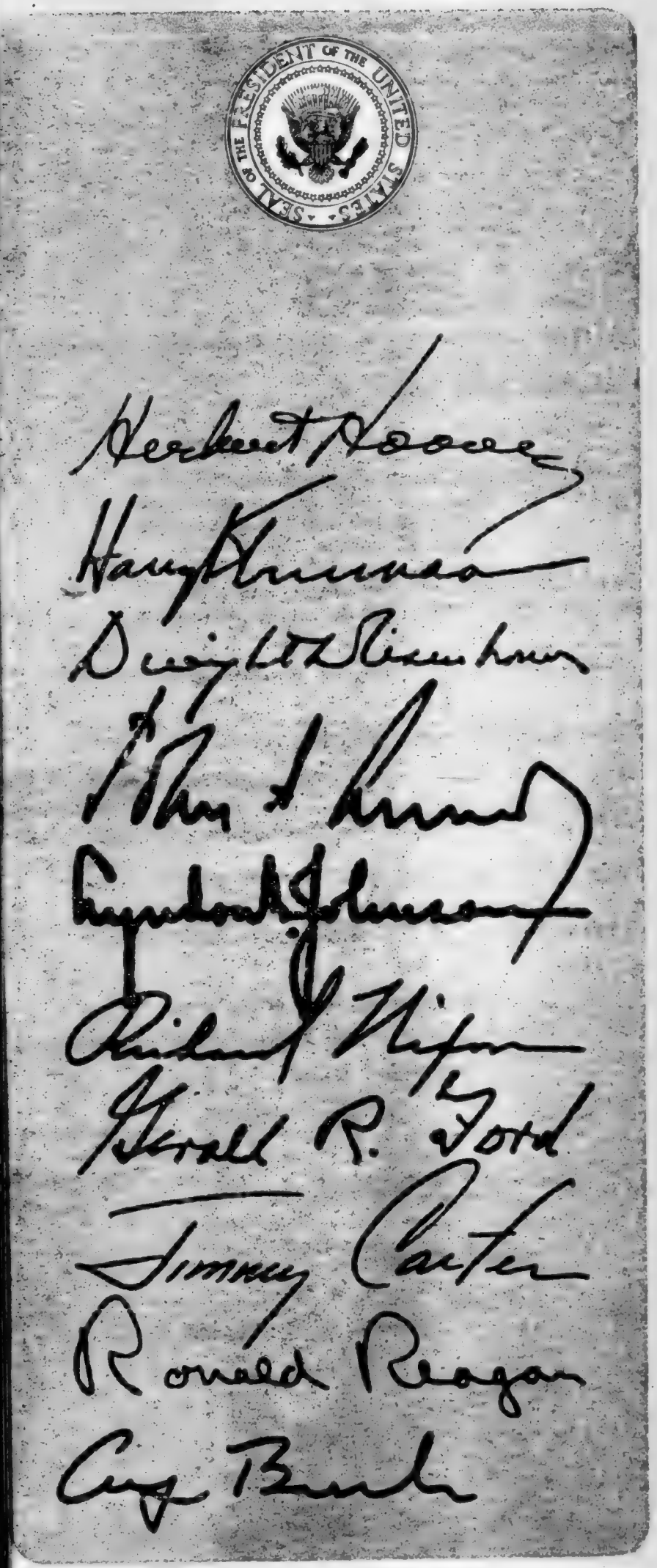
Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 11, 1992



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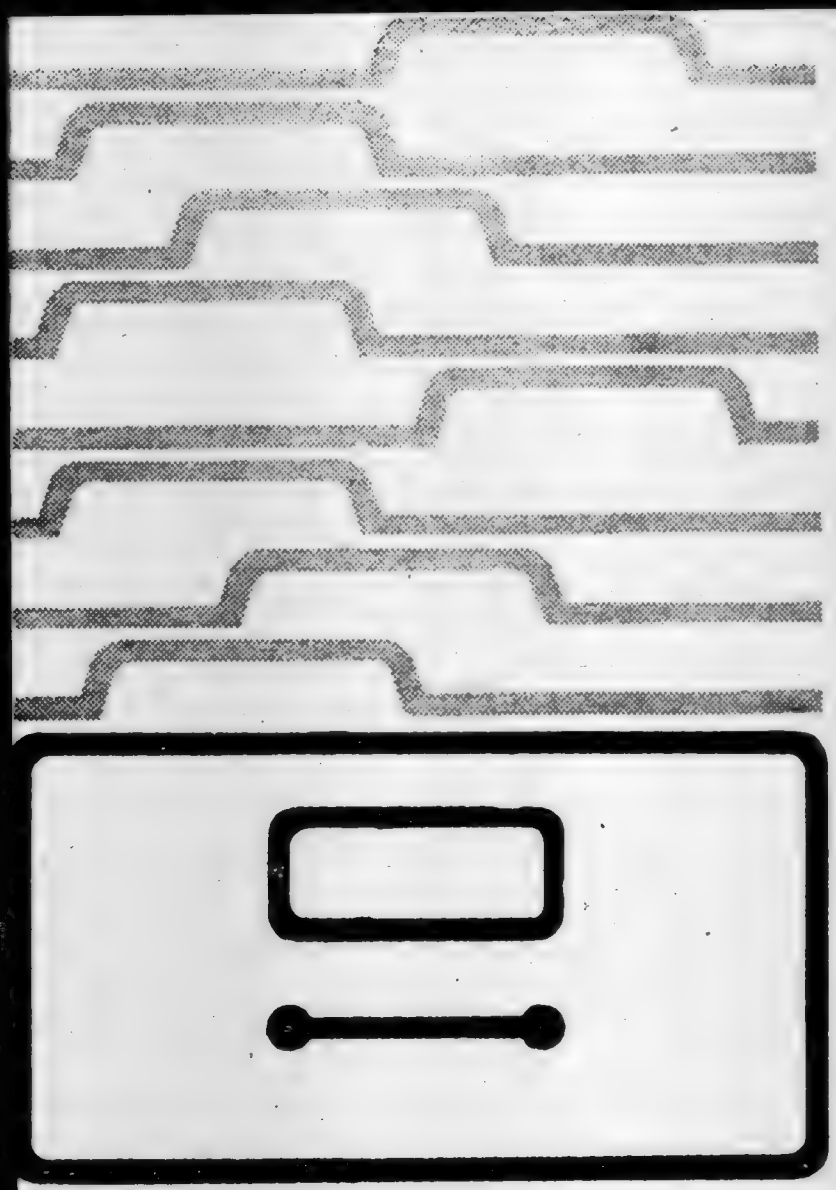

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Contents

Federal Register

Vol. 57, No. 188

Monday, September 28, 1992

Administrative Conference of the United States
NOTICES
Meetings:
Adjudication Committee, 44550

Agriculture Department
See Commodity Credit Corporation
See Food and Nutrition Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
November, 44572

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
Brewer's operation reports; filing frequency; change, 44525

Army Department
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
Fort Carson, CO, 44560

Centers for Disease Control
NOTICES
Meetings:
Injury Prevention and Control Advisory Committee, 44572

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
North Carolina, 44550

Commerce Department
See International Trade Administration
NOTICES
Agency information collection activities under OMB review, 44550
Senior Executive Service:
Performance Review Board; membership, 44551

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Price support levels—
Rice, 44512

Commodity Futures Trading Commission
RULES
Speculative position limits exemption for positions with common owner but independently controlled, 44490
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
S&P 500 Stock Price Index, etc., 44558

Defense Department
See Army Department
NOTICES
Agency information collection activities under OMB review, 44560
Meetings:
Streamlining and Codifying Acquisition Laws Advisory Panel, 44560

Defense Nuclear Facilities Safety Board
NOTICES
Recommendations:
Energy Department defense nuclear facilities; upgrade training programs for personnel and supervisors, 44561

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Calciners and dryers in mineral industries, 44496
Air programs:
Ozone monitoring season; State designations—
Michigan, 44495
PROPOSED RULES
Air quality implementation plans:
Clean Air Act; discretionary actions, criteria, 44534
Air quality implementation plans; approval and promulgation; various States:
Arizona, 44538
California, 44528, 44540, 44542
Washington, 44530
Hazardous waste:
Land disposal restrictions—
No migration variances; interpretation, 44545
Solid wastes:
Paper and paper products containing recovered materials; Federal procurement guideline, 44543
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 44545
NOTICES
Air programs:
Ambient air monitoring reference and equivalent methods—
Advanced Pollution Instrumentation, Inc.; Model 400 Ozone Analyzer, 44565
Meetings:
Environmental Policy and Technology National Advisory Council, 44566
National Enforcement Training Institute Advisory Council, 44566
Superfund program:
Confidential business information and data transfer to contractors, 44566

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Credit Administration
RULES
Farm credit system:
Loan policies and operations—
Lending authorities and purchase and sale of interests in loans; correction, 44489

Federal Aviation Administration
RULES
Airworthiness directives:
Fairchild; correction, 44489
IFR altitudes, 44489
PROPOSED RULES
Restricted areas; correction, 44614
VOR Federal airways; correction, 44614
NOTICES
Exemption petitions; summary and disposition, 44605

Federal Communications Commission
RULES
Radio stations; table of assignments:
Georgia, 44511
PROPOSED RULES
Radio stations; table of assignments:
Minnesota, 44548
Mississippi, 44549
Missouri, 44547, 44549
Wisconsin, 44548

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Guam, 44567
Indiana, 44567
Rhode Island, 44568
Wisconsin, 44568

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 44562
Meetings; Sunshine Act, 44613
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 44563
Northeast Utilities Service Co., 44563

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Howard County, MD, 44606

Federal Maritime Commission
RULES
Maritime carriers in domestic offshore commerce:
Shipping Act of 1916; Section 35 application exemptions, etc.—
Tariff filing notice requirements for protests and replies, 44504
NOTICES
Agreements filed, etc., 44568

Federal Reserve System
NOTICES
Federal Open Market Committee:
Domestic policy directives, 44569
Applications, hearings, determinations, etc.:
First Union Corp. et al., 44569
J.F. Justiss, III, Trust, et al., 44570
Omnibank Corp. et al., 44570
U.S. Trust Corp. et al., 44571

Federal Trade Commission
NOTICES
Prohibited trade practices:
Automatic Data Processing, Inc., et al., 44571
BelAge Plastic Surgery Center, P.C., et al, 44571
Wexler, Patricia, M.D., 44572

Fish and Wildlife Service
RULES
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 44616
NOTICES
Agency information collection activities under OMB review, 44581

Food and Drug Administration
RULES
Human drugs:
Corn and callus remover products (OTC); final monograph, 44493
Wart remover products (OTC); final monograph, 44494
NOTICES
Animal drugs, feeds, and related products:
Merck & Co., Inc.; approval withdrawn, 44573
Food additive petitions:
Metrex Research Corp., 44573
Meetings:
Advisory committees, panels, etc., 44573

Food and Nutrition Service
RULES
Food stamp program:
Quality control error rate liabilities; good cause relief provisions, 44481

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration
See Centers for Disease Control
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Social Security Administration

Health Care Financing Administration
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Tennessee, 44575

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Area health education centers special initiatives program, 44576

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 44563, 44564

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 44577
Federal Interagency Committee on Noise (FICON); report, 44578

Mortgage and loan insurance programs:
Debenture recall, 44577

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Acrylic sheet from Japan, 44551
Hot-rolled lead and bismuth carbon steel products from—
France, 44556
Germany, 44551
United Kingdom, 44554
Antidumping and countervailing duties:
Administrative review requests, 44551

International Trade Commission
NOTICES
Import investigations:
Pads for woodwind instrument keys from Italy, 44582
United States-Canada Free-Trade Agreement; tariff rate quota extension, probable economic effect, 44583

Interstate Commerce Commission
PROPOSED RULES
Practice and procedure:
Recyclable commodities, railroad rates; exemptions Correction, 44614
NOTICES
Railroad operation, acquisition, construction, etc.:
C&S Railroad Corp., 44583

Justice Department
NOTICES
Pollution control; consent judgments:
American Steel Foundries, 44583
Hepworth et al., 44584
Rohm & Haas Co. et al., 44584
Sharon Steel Corp. et al., 44585
Upjohn Co. et al., 44585
USS/KOBE Steel Co., 44586

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
PROPOSED RULES
Minerals management:
Onshore oil and gas operations; Federal and Indian oil and gas leases—
Order No. 1; operations approval, 44547
NOTICES
Classification of public lands:
Nevada, 44580
Meetings:
Montrose District Grazing Advisory Board, 44580
Oil and gas leases:
Colorado, 44581
Realty actions; sales, leases, etc.:
Nevada, 44581

National Highway Traffic Safety Administration
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Morris, Alan, Dr., 44607

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities; domestic licensing:
Light water reactors; plant performance acceptability for severe accidents; safety regulations scope of consideration, 44513
NOTICES
Analog safety systems replacement with digital safety systems; procedures and policies; generic letter, 44593
Applications, hearings, determinations, etc.:
Aircraft Components, Inc., 44593
Texas Utilities Electric Co., 44595

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
PYCO ACE Operations et al., 44586

Presidential Documents
ADMINISTRATIVE ORDERS
Export control regulations, continuation of emergency (Notice of September 25, 1992), 44649
Foreign motor carriers; moratorium on permits and certificates extended (Memorandum of September 25, 1992, 44647

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration
See Centers for Disease Control
See Food and Drug Administration
See Health Resources and Services Administration

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 44596
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 44596
Self-regulatory organizations; unlisted trading privileges:
Cincinnati Stock Exchange, Inc., 44597
Applications, hearings, determinations, etc.:
Advance America Funds, Inc., 44598
Broad Street Trust et al., 44599
Fortius II Fund, Inc., 44600
Public Funding Portfolios, Inc., 44603
Public utility holding company filings, 44601

Social Security Administration
PROPOSED RULES
Supplemental security income:
Aged, blind, and disabled—
Temporarily institutionalized persons; continuation of full benefits, standard, 44519
NOTICES
Agency information collection activities under OMB review, 44576

State Department
NOTICES
Meetings:
International Commission for Conservation of Atlantic Tunas, United States Section Advisory Committee, 44604

Trade Representative, Office of United States
NOTICES
Unfair trade practices, petitions, etc.:
Canada; softwood lumber exports, 44609

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 44604
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 44604

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
NOTICES
Agency information collection activities under OMB review, 44608

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 44611
Meetings:
Cemeteries and Memorials Advisory Committee, 44611
Rehabilitation Advisory Committee, 44611
Women Veterans Advisory Committee, 44611

Separate Parts in This Issue

Part II
Department of the Interior, Fish and Wildlife Service, 44616

Part III
The President, 44647

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandums:
September 25, 1992..... 44647
Notices:
September 25, 1992..... 44649

7 CFR
272..... 44481
275..... 44481
Proposed Rules:
1413..... 44512

10 CFR
Proposed Rules:
50..... 44513

12 CFR
614..... 44489

14 CFR
39..... 44489
95..... 44489
Proposed Rules:
71..... 44614
73..... 44614

17 CFR
150..... 44490

20 CFR
Proposed Rules:
416..... 44519

21 CFR
358 (2 documents)..... 44493, 44494

27 CFR
Proposed Rules:
25..... 44525

40 CFR
58..... 44495
60..... 44496
Proposed Rules:
52 (6 documents)..... 44528–44542
250..... 44543
268..... 44545
271..... 44545
300..... 44545

43 CFR
Proposed Rules:
3160..... 44547

46 CFR
502..... 44504
514..... 44504
550..... 44504

47 CFR
73..... 44511
Proposed Rules:
73 (5 documents)..... 44547–44549

49 CFR
Proposed Rules:
1145..... 44614

50 CFR
20..... 44616

Rules and Regulations

Federal Register
Vol. 57, No. 188
Monday, September 28, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt No. 327]

Food Stamp Program: Good Cause Relief From Quality Control Error Rate Liabilities

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the current provisions for good cause relief from potential quality control liabilities against State agencies. These changes were required by section 604 of title VI of the Hunger Prevention Act of 1988, enacted September 19, 1988.

Proposed regulations were published in the **Federal Register** of January 16, 1991 at 56 FR 1578. Comments on the proposal were accepted through March 18, 1991. This final action takes the comments received into account. Readers are referred to the proposed regulation for a more complete understanding of the proposed rule and this final action.

DATES: The provision in § 275.23(e)(6)(v) regarding the finality of good cause determinations of the Secretary was effective October 1, 1985. The remaining provisions of the rule are effective October 28, 1992.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 905, Alexandria, Virginia 22302, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291/Secretary's Memorandum 1512–1

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has classified this rule as non-major. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29,115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "**EFFECTIVE DATE**" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq*). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

This final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Waiver Requests for Relief From Quality Control Error Rate Liabilities

Description: The burden associated with a State agency's food cause request, contained in 7 CFR 275.23(e)(6), is in the submission of information and documentation of the uncontrollable events and their effect on a State's payment error rate which provides the Secretary with the basis for determining whether to grant relief. Over the past three years an average of 10 letters annually were sent to State agencies notifying them of potential quality control liabilities. It is expected that all of those State agencies will submit waivers requesting that they be excused from the liabilities. The Department estimates that it would take 160 hours to collect, assemble and submit one good cause waiver request.

Description of Respondents: State welfare agencies which administer the Food Stamp Program.

Estimated Annual Reporting Burden

	No. of respondents	No. of annual responses	No. of man-hours per response	Estimated total man-hours
10		1	160	1600

Estimated Recordkeeping Burden

There is no separate recordkeeping associated with this submission. Information is collected, assembled and submitted to the Department from existing Federal or normal State operation records. Recordkeeping burden associated with maintaining the Federal records involved is approved by OMB Nos. 0584–0081 and 0584–0299.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

On January 16, 1991, the Department issued a proposed rule at 56 FR 1578 to implement Section 604 of the Hunger Prevention Act of 1988 (Pub. L. 100–435 enacted September 19, 1988), regarding good cause determinations. A total of 29 comment letters were received on the proposed rule—the majority from State agencies. The major concerns raised by the commenters are discussed below. For a full understanding of this discussion and the provisions of this final rule, the reader should also refer to the proposed rule.

The Authority To Grant Good Cause Relief

The preamble to the proposed rule explained that the Secretary could not find good cause to waive liability for excessive quality control (QC) error rates unless a State agency specifically requested relief and provided justification. If a State agency failed to request and justify such relief under the provisions of this rule, the Secretary would have to conclude that the State agency did not have good cause.

One commenter questioned the Department's authority to arbitrarily make a decision that there was not good cause for an excessive error rate, if a State for whatever reason does not include a criterion in its request for good cause relief. In response to the comment, the Department wishes to clarify that it is the responsibility of the State to ensure that its good cause request is submitted in a timely fashion and that any and all good cause arguments are completely addressed and supported in that request. If a State fails to request good cause relative to a particular criterion or event within the required time frames, the Department must determine that there is no basis for good cause relief in relation to that criterion or event.

In addition, the Department wishes to establish that if a State agency fails to submit its request for a good cause waiver for a particular fiscal year within the required time period, the Department will make a determination that there was no basis for such relief. The Department will communicate this determination to the State. If the State then submits a fully documented good cause request within 30 days of receipt of the Department's determination, and provides reasonable justification for failure to submit its good cause request within the required time frame, the Department will review the State's good cause request. Any State that fails, for any reason, to submit a good cause request or provide reasonable justification for that failure within the above time frames will be determined not to have a basis for good cause relief for its excessive error rate.

Good cause relief may only be granted by the Secretary of Agriculture or his designee. The Secretary's determination with respect to a request for good cause relief or a determination that no basis for good cause exists because the State failed to request a good cause waiver within the required period, as well as whether there exist circumstances which would justify the failure to submit a timely request are final and not subject to administrative or judicial review.

Events and Conditions FNS Does Not Intend to Consider as Basis for Good Cause Relief

The preamble to the proposed rule listed the following four situations as inappropriate bases for good cause relief: (1) Lack of resources; (2) normal administrative difficulties; (3) technical features of the error rate measurement and the liability system that have been properly implemented by regulation; and (4) successful or unsuccessful efforts to lower the error rate after the review period. The preamble to the proposed rule also stated that the good cause process was not a proper vehicle for challenging features of the Quality Control System which Congress has explicitly adopted in the Hunger Prevention Act of 1988. Twenty-two commenters disagreed and felt that the above factors were appropriate circumstances for good cause relief from quality control liabilities and presented arguments to support their beliefs. States were particularly concerned about resource issues; for example, one commenter stated that it is unrealistic to expect States to be able to rapidly adjust resources targeted specifically at the Food Stamp Program given the complexity and inter-dependence of State revenue processes. The Department has carefully considered this and other comments as well as the legislative history of Public Law 100–435. Key guidance also comes from the 1980 legislative history of good cause: "Good cause would not encompass any State failure to act upon necessary legislative changes or to obtain budget authorization for needed staff or other resources, since those failures are clearly within State control" (Food Stamp Act Amendments of 1980, House Report 96–788, page 74.) Although the Department understands that many States face severe budget restraints from time to time, the Department concludes that Congress intended overall relief to come from higher tolerance levels but did not intend to make changes in the basic structure of good cause.

Seven commenters argued for retention of "Incorrect Federal Policy" as a basis for good cause relief. They felt that while Congress properly acted to exclude errors attributable to incorrect Federal guidance from error rates, there may be instances where FNS and State agencies disagree as to whether this occurred and that when differences regarding the Federal instructions cannot be satisfactorily resolved at the regional level, there must be some recourse through the good cause process. The commenters also expressed concern that it may not be discovered that incorrect Federal

guidance had been given until a later date or during preparation of a good cause waiver request. The Department agrees that there may be differences of opinion as to whether or not incorrect Federal policy was given and that it is possible that this may not be discovered until later in the quality control liability process. Therefore, based upon State agency documentation, the Department will adjust its Federal findings, error rates, and liabilities whenever it determines that a State agency was provided with incorrect Federal guidelines and that the resulting errors remain as part of the State agency's payment error rate. The process of adjusting the State agency's error rates will be separate from the good cause process.

Content of State Requests for Good Cause Relief

The proposed rule stated that State agencies should explain what portion of the observed error rates are due to the uncontrollable negative effects of unusual events when such events may mask the effects of successful efforts to decrease error rates.

Two commenters suggested that it should be sufficient to demonstrate that an increase in the error rate occurred and that the error rate increased during the period subsequent to the event in order to qualify for a food cause waiver. Another commenter stated that the factors that determine error rates are numerous and changing and that no method has ever been developed (either by FNS or anyone else) to determine whether one particular factor (uncontrollable or otherwise) produced a given increase in the error rate. The Department wishes to clarify that it was not the intent of the proposed rule that State agencies provide an individual error analysis on a case-by-case basis. While the Department understands that it may sometimes be difficult for States to document the uncontrollable impact of an unusual event on the error rate when the impact is minimal, States that experience a large impact should have less difficulty. If a State agency is unable to successfully demonstrate the relationship between an unusual event and an uncontrollable impact upon its error rate, the Secretary will apply the alternate method of evaluation discussed below to determine if good cause relief is appropriate. States may also seek to demonstrate the uncontrollable impact of an unusual event upon the error rate where the error rate remains unchanged or decreases but was expected to decrease substantially due to a State program designed to reduce errors.

FNS Review of Good Cause Waiver Requests

The preamble to the proposed rule stated that FNS would evaluate each State agency's good cause waiver request based on the information provided by the State agency and any other sources FNS finds useful to the review process. Seven comments were received which expressed strong oppositions to FNS' use of information which the State agency did not submit because the State agency should be given an opportunity to examine and refute the information. One commenter also pointed out that the inconsistency of not wanting the States to submit voluminous documentation and then penalizing them if they do not provide enough documentation denigrates the entire good cause process and provides USDA with the opportunity for reducing the amount of relief if a request is poorly documented. Based on the comments received, the Department has reconsidered its position regarding the evaluation of a State agency's request based on information not submitted by the State agency. In those instances in which FNS uses information other than that submitted by the State agency or corrects information submitted by the State agency, FNS will issue a preliminary determination on the good cause waiver request. The preliminary determination will identify information used in the evaluation process which was not submitted by the State or information FNS has corrected, and allow the State agency 30 days to comment on the supplemental and/or corrected information before a final decision is rendered. FNS will limit its examination of States' responses to comments regarding the additional or corrected information used by FNS. Since the State agency has been provided an opportunity to raise any and all issues relevant to good cause in its initial request, no new issues for good cause relief will be accepted following expiration of the time period for filing the State agency's request for good cause relief.

Comparison to Past Methods of Evaluating Good Cause Requests

The proposed rule stated that if State agencies did not provide the type or amount of information required for a complete factual analysis and such information was not otherwise available in the Department, the Secretary would have to exercise some judgment in reaching a determination on good cause relief from QC liabilities. The Department proposed the same formula it used in the past to determine waiver amounts. That methodology consisted of evaluating the uncontrollable effects of a natural disaster, strikes or unusual caseload growth that occurred during an eighteen-month period. That period covered the twelve months of the review period and the six months prior to the beginning of the review period. The State agency received a one-eighteenth waiver for each month during that period that the unusual event took place. State agencies commenting on the methodology noted that since the liability is based on a twelve-month period, the methodology for determining the waiver amount should be one-twelfth to make the methodology comparable to the length of the review period subject to the liability. The Department accepts the commenters' rationale and has modified the proposed methodology. Under the modifications, States which experience an unusual event during the subject fiscal year may qualify for a one-twelfth waiver for each month that the State experienced the unusual event. States which experience an unusual event both prior to and during the fiscal year may qualify for a one-eighteenth waiver for each month for that portion of the unusual event which occurred during the prior fiscal year and a one-twelfth waiver for each month for that portion of the unusual event which occurred during the fiscal year which is the subject of the potential liability. The modified methodology enables the Department to fulfill its objective stated in the proposed rule that relief based upon good cause be more closely related to the uncontrollable effects of the unusual event on error rates. Under the formula, the Secretary shall determine a preliminary waiver amount by: (1) Determining, from the State agency's request, the number of months during the eighteen month period that begins six months before the subject review period that an unusual event uncontrollably impaired Food Stamp Program certification operations; (2) calculating an amount equal to one-eighteenth of the liability for each month that such an event uncontrollably impaired operations during the period six months prior to the fiscal year; (3) calculating an amount equal to one-twelfth of the liability for each month that such an event uncontrollably impaired operations during the fiscal year; and (4) adjusting the preliminary amount, as necessary, to take into account the State agency's otherwise effective administration of the program based upon recent error rate history. For example, a reduction in the formula derived amount would be made when a

State agency's recent error rate history indicates that even absent the unusual event the State agency would have exceeded the payment error tolerance in the review period.

One commenter suggested that FNS consider the State's error rate history for at least five years prior to the subject review period and any available information on a State's error rate experienced after the penalty period. Another commenter suggested that FNS examine the factors that affected the error rates of more recent years before making a blanket determination that unusual events had no effect just because the error rate did not decrease. As pointed out in the preamble to the proposed rule, the legislative history states that "[T]he purpose of good cause under the new system is to allow the Secretary the discretion to provide relief when a State with otherwise effective administration has faced an unusual event with a large uncontrollable impact on errors." A good point for measuring a State agency's administration of the program is a State's error rate immediately prior to the unusual event. Therefore, each State agency requesting good cause is asked to provide information on what its reported combined payment error rate was in the twelve-month period immediately prior to the event and its reported payment error rate during the remainder of the subject Fiscal Year. FNS will examine the State's error rate before and after the unusual event together with any other available error rate data to determine whether the State was administering the program effectively prior to the event and examine the impact of the unusual event on that administration. While the Department recognizes that the formula could now mathematically result in a waiver of more than 100 percent liability, clearly no more than 100 percent of a State's liability can be waived for any one fiscal year.

Relationship to Warning Process and Disallowance of Funds

One commenter noted that the good cause regulations should provide for QC error rate adjustments due to recovery of improperly issued coupons. In response to this comment, the Department wishes to clarify that if a State agency is billed for negligence as a result of improperly issued coupons and is held liable for exceeding the QC error rate tolerance for the same time period, FNS shall adjust either the negligence billing or the QC liability billing to ensure that two claims are not made against the State for the same dollar loss. The final rule has been revised to reflect this change.

Events that May Serve as the Basis of Good Cause Relief

1. Natural Disasters or Civil Disorders

One commenter suggested that the regulations be modified to clarify that a Presidential declaration is not a prerequisite for good cause relief. Another commenter stated that although natural disasters are defined as those under the authority of the Stafford Act of 1988 (Pub. L. 1020–707), the proposed regulations cited a "fire in a certification office" as a type of natural disaster. The commenter suggested that this situation may not warrant a Presidential disaster declaration request but may be serious enough to have an uncontrollable effect on error rates.

While good cause relief will be evaluated under the disaster criterion based only on Federally-declared disasters, the final regulations provide for consideration of non-Federally-declared disasters, such as a fire in a certification office, under the "Other Unusual Circumstances" criterion. A fire in a certification office is being addressed in this fashion because the Disaster Relief Act implies that an event would have a greater geographic impact than on just one office. A fire in a certification office would only affect the cases and error rates of that particular office.

One commenter remarked that assigning an eighteen month period for granting approval of a waiver is not the best or fairest method of calculation and that to apply the standard across the board could work to a State agency's disadvantage depending on the timeframe of a disaster. It is the Department's position that States are responsible for reacting to events and dealing with them within a reasonable period of time. Generally, an unusual event which occurred and ended during the first six months of the prior fiscal year should not have an uncontrollable impact on the State's error rate during the subsequent fiscal year because the State should have had time to control the situation. Therefore, when State agencies do not provide a sufficient explanation on the uncontrollable effect of an unusual event on the error rate, the Department will maintain eighteen months as the appropriate length of time for determining whether the State agency had good cause for an excessive error rate. However, in those unusual cases where the Secretary determines that a State agency has provided information sufficient to document the continuing uncontrollable impact of the event beyond eighteen months, good cause relief will be granted from the point in time when the unusual event occurred.

2. Strikes by State Agency Staff Necessary to Determine Food Stamp Program Eligibility and Process Case Changes

The Department wishes to clarify that under this provision, the Department would consider good cause requests from those States whose employees are prohibited by law from striking but which might experience various kinds of work stoppages including work slowdowns. This clarification will insure that all States may benefit from this good cause basis.

As described above, the Department has modified the proposed methodology that will be used when the Secretary determines that insufficient information has been provided or that needed information is otherwise not available from existing Department records to determine a request for waiver using factual analysis. Therefore, if the Secretary determines that a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a strike or similar work stoppage using factual analysis, the Secretary shall determine a waiver amount based on the revised formula.

3. Caseload Growth

One commenter suggested that the regulations should specify that caseload growth in a single project area may be sufficient to warrant good cause relief since one project area can drive up the Statewide error rate. State agencies which submit documentation that clearly demonstrates an uncontrollable impact due to increases in applications and caseload growth on error rates could qualify for good cause relief regardless of the size of the State or the geographic area experiencing the growth. The Department will consider State agencies' arguments concerning increases in applications as well as participation or other workload increases. State agencies which submit documentation that clearly demonstrates the uncontrollable impact of workload increases and caseload growth on their error rates could qualify for good cause relief. However, in those instances in which the State agency submits insufficient information, the formula described earlier will be used.

One commenter suggested that the Secretary look at the circumstances in each individual State as presented in the good cause waiver to determine whether

or not events such as seasonal changes in caseload growth had a large, uncontrollable impact on the State's error rate. The proposed rule addressed unusual events and the Department maintains its position that seasonal increases/changes will not be considered unusual events since State agencies should anticipate these fluctuations and develop a plan to deal with such situations.

Another commenter stated that when events such as substantial layoffs at a major employer or the closing of a military base occur, there is a single one-time increase in participation which persists. The State felt that if events like these occur with little advance notice, State agencies may not be staffed to handle the increase in workload. Based on this comment, the Department has reconsidered the proposed provision dealing with caseload sizes that fluctuate widely and a single increase in participation that persists. These situations of unusual caseload growth will be given consideration on a case-by-case basis.

Ten commenters expressed concern over the Department's use of a threshold of 15 percent growth in caseload as a basis for good cause relief. The Department wishes to clarify that if a State agency can document that unusual caseload growth had an uncontrollable impact on its cumulative payment error rate, it does not necessarily have to experience a 15 percent growth in its caseload before a waiver can be granted. However, when the Department finds that a State agency has submitted documentation insufficient to support a finding of uncontrollable impact on payment error, the State agency shall be restricted to the definition of 15 percent growth used in the formula described. State agencies are being held to this definition because absent sufficient information, there is no better way to prove that unusual caseload growth of less than 15 percent had an uncontrollable impact on error rates.

As described above, the Department modified the proposed methodology that will be used to determine a waiver amount when the Secretary determines that insufficient information has been provided or that needed information is otherwise not available from existing Department records.

4. Changes in the Food Stamp Program or other Federal or State Programs

The proposed rule stated that the Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of unusual changes in the Food Stamp Program or other Federal and State programs. One commenter felt that the word "substantial" should be removed from this provision because size or extent has no bearing in an appeal based on good cause. The Department wishes to clarify that, as a general matter, in accordance with the legislative history good cause relief will be provided when a State agency with otherwise effective administration has faced an unusual event with a "large" uncontrollable impact on errors. (House Report 100–828, part 1, page 34.) Due to the fact that the word "substantial" may be unclear, it has been removed from the final rule; however, the legislative history will be given weight as to the intent of Congress when reviewing arguments provided by State agencies in support of requests for good cause waivers. Accordingly, the word "large" has been inserted in § 275.23(e)(6)(i) and is applicable to all bases for good cause relief. The Department also wishes to clarify that it will look at the demonstrated impact on the food stamp error rate on a case-by-case basis taking into account any uncontrollable impact for which the State agency is able to provide documentation. The Secretary will make a case-by-case determination as to what constitutes a "large" uncontrollable impact on errors.

5. Other Circumstances Beyond the Control of the Sate Agency

One commenter suggested that the regulations should include examples of other circumstances beyond the control of the State agency that would warrant good cause. The Department will take into consideration any unusual events submitted by State agencies as part of their good cause request which have a demonstrated uncontrollable impact on the food stamp error rate. In recognition of comments received on the disaster criterion and as mentioned above, the Department has changed the provision from the proposed regulations in the final regulations to provide for consideration of non-Federally declared disasters, such as a fire in a certification office, under this criterion.

Timeframes

State agencies have 60 days from the date of notification by FNS (certified mail, return receipt requested) of its final error rate and potential liability to submit requests for good cause waivers. Therefore, requests for good cause or requests for extension shall be post-marked no later than 60 days from the date of receipt of FNS' letter of notification. The date of receipt shall be the date indicated on the certified mail return receipt. In the event the Department does not receive the return receipt, the date of receipt will be the date seven calendar days from the date on the letter of notification. Requests for extension will be evaluated on a case-by-case basis and only in the most unusual situations shall such requests be granted. For example, an occurrence that precludes a State agency from conducting normal business during the 60-day period shall be considered an unusual situation.

Implementation

The Department is requiring implementation of this rulemaking effective 30 days after publication in the **Federal Register**. For Fiscal Years 1986 through 1990, State Agencies must submit good cause waiver requests no later than 120 days (60 days as allowed in the regulations plus an automatic 60-day extension) from the date of receipt of notification of the official payment error rate and liability. For Fiscal Year 1991 and thereafter, State agencies shall submit good cause waiver requests no later than 60 days from the date of receipt of notification of the official payment error rate and liability. Therefore, requests shall be post-marked no later than 120 days or 60 days from the date of receipt of notification based on the year for which good cause is being requested.

Interim rules regarding the variance exclusion provisions were published November 2, 1988 (53 FR 44171) and were effective with Fiscal Year 1989. These rules contain a provision which excludes from the quality control payment error rate any variance resulting from incorrect written policy that a State agency acts on that is provided by a Departmental employee authorized to issue Food Stamp Program policy and that the State agency correctly applies.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administative practice and procedure, Food stamps, Reporting, and Recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR parts 272 and 275 are amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation for part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

2. In § 272.1, a new paragraph (g)(126) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(126) *Amendment No. 327.* (i) The statutory provision reflected in § 275.23(e)(6)(v) of Amendment No. 327 was effective October 1, 1985 pursuant to Pub. L. 100–435.

(ii) The remaining provisions are effective October 28, 1992.

PART 275—PERFORMANCE REPORTING SYSTEM

3. The authority citation for part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

4. In § 275.23

a. Paragraph (e)(5) is revised in its entirety.

b. Paragraph (e)(6) is revised in its entirety.

The revision and additions read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) *State agencies' liabilities for payment error rates.* * * *

(5) *Relationship to warning process and negligence.*

(i) States' liability for payment error rates as determined above are not subject to the warning process of § 276.4(d). However, State agencies shall be notified by certified mail, return receipt requested, at least sixty days before any billing and shall have sixty days following such notice to request a good cause waiver of part or all of their potential liability. The billing will not occur until after the expiration of the sixty days and the Secretary's determination of good cause when it is timely requested. If a determination is made that good cause did not exist, FNS shall promptly issue the billing. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c), FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability.

(ii) FNS shall not determine negligence (as described in § 276.3) based on the overall payment error rate for issuances to ineligible households and overissuances to eligible households in a State or political subdivision thereof. FNS may only establish a claim under § 276.3 for dollar losses from failure to comply, due to negligence on the part of the State agency (as defined under § 276.3), with specific certification requirements. Thus, FNS will not use the results of States' QC reviews to determine negligence.

(iii) While FNS may determine a State to be liable for dollar loss under the provisions of this section and the negligence provisions of § 276.3 for the same period of time, FNS shall not bill a State for the same dollar loss under both provisions. If FNS finds a State liable under both the QC liability system and the negligence provisions, FNS shall adjust the billings to ensure that two claims are not made against the State for the same dollar loss.

(6) *Good cause*—(i) *Events.* When a State agency with otherwise effective administration exceeds the allowable level for payment errors as described in this section, FNS may determine that the State agency had good cause for not achieving the payment error rate tolerance if the State agency documents that an unusual event or events had a large uncontrollable effect upon error rates, and grant relief from quality control liabilities that would otherwise be levied under this section of the regulations. States desiring such relief must submit a request in writing within 60 days from the date of receipt of notification of the official payment error rate and potential liability. If no request for a good cause waiver is received by the Secretary within the required time, the Secretary shall make a determination that there was no basis for good cause relief. Within 30 days from the date of receipt of this determination, the State may submit a fully documented good cause request and provide reasonable justification for failure to submit the good cause request within the required time frame. If the State can demonstrate good reason why the request for a good cause waiver was not timely made, the Secretary will review the State's good cause request. If a State fails to demonstrate good reason for failure to timely request a good cause waiver, the initial determination will stand. The following are unusual events which State agencies may use as a basis for requesting good cause relief and specific information that FNS expects State agencies to submit to justify such requests for relief:

(A) Natural disasters such as those under the authority of the Stafford Act of 1988 (Pub. L. 1020–707), which amended the Disaster Relief Act of 1974 (Pub. L. 93–288) or civil disorders that adversely affect program operations. For disasters prior to November 23, 1988 see the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288). When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*1*) The nature of the disaster(s) (e.g. a tornado, hurricane, earthquake, flood, etc.) or civil disorder(s)) and evidence that the President has declared a disaster;

(*2*) The date(s) of the occurrence;

(*3*) The date(s) after the occurrence when program operations were affected;

(*4*) The geographic extent of the occurrence (i.e. the county or counties where the disaster occurred);

(*5*) The proportion of the food stamp caseload whose management was affected;

(*6*) The reason(s) why the State agency was unable to control the effects of the disaster on program administration and errors;

(*7*) The Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*8*) The percentage of the reported payment error rate that resulted from the occurrence and how this figure was derived; and

(*9*) The reported payment error rate in the twelve-month period immediately prior to the event and reported payment error rate during the remainder of the subject fiscal year.

The Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of a disaster or civil disorder. In this evaluation, the Secretary will consider the following factors: Geographical impact of the disaster; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the disaster and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. If the Secretary determines that a State agency has provided insufficient information or that sufficient information is not otherwise available from existing Department records to determine a waiver amount for the uncontrollable effects of a natural disaster or civil disorder using factual analysis, the Secretary shall determine a

formula derived waiver amount by: Determining the number of months during the eighteen months that begins six months before the subject review period during which a civil disorder of Federally-declared disaster impaired Food Stamp Program operations; determining an amount equal to one-eighteenth of the liability for each month for the portion of the unusual event which occurred during the period six months prior to the fiscal year; determining an amount equal to one-twelfth of the liability for each month for the portion of the unusual event which occurred during the fiscal year; and as appropriate, adjust the waiver amount to reflect States' otherwise effective administration of the program based upon recent error rate history. For example, a reduction in the amount may be made when a State agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded error rate tolerances in the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, FNS will not grant relief for the effects of disasters or civil disorders that ended prior to the second half of the prior fiscal year.

(B) Strikes by state agency staff necessary to determine Food Stamp Program eligibility and process case changes. When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*1*) Which workers (i.e. eligibility workers, clerks data input staff, etc.) and how many (number and percentage of total staff) were on strike or refused to cross picket lines;

(*2*) The date(s) and nature of the strike (i.e. the issues surrounding the strike);

(*3*) The date(s) after the occurrence when program operations were affected;

(*4*) The geographic extent of the strike (i.e. the county or counties where the strike occurred);

(*5*) The proportion of the food stamp caseload whose management was affected;

(*6*) The reason(s) why the State agency was unable to control the effects of the strike on program administration and errors;

(*7*) Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*8*) The percentage of the reported payment error rate that resulted from the strike and how this figure was derived; and

(*9*) The reported payment error rate in the twelve-month period immediately prior to the event and the payment error rate during the remainder of the subject fiscal year.

The Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of the strike. In this evaluation, the Secretary will consider the following factors: Geographical impact of the strike; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the strike and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. If the Secretary determines that a State agency has provided insufficient information or that sufficient information is not otherwise available from existing Department records to determine a waiver amount for the uncontrollable effects of a strike using factual analysis, the Secretary shall determine a waiver amount by using the formula described in paragraph (e)(6)(i)(A) of this section. The amount of the waiver might be reduced for a strike that was limited to a small area of the State.

(C) Unusual Food Stamp Program caseload growth (for example 15 percent increase may constitute unusual caseload growth). Caseload growth which historically increases during certain periods of the year will not be considered unusual or beyond the State agency's control. When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*1*) The amount of growth (both actual and percentage);

(*2*) The time the growth occurred (what month(s)/year);

(*3*) The date(s) after the occurrence when program operations were affected;

(*4*) The geographic extent of the caseload growth (i.e. Statewide or in which particular counties);

(*5*) The impact of caseload growth;

(*6*) The reason(s) why the State agency was unable to control the effects of caseload growth on program administration and errors;

(*7*) The percentage of the reported payment error rate that resulted from the caseload growth and how this figure was derived; and

(*8*) The reported payment error rate in the twelve-month period immediately prior to the event and the payment error rate during the remainder of the subject fiscal year.

The Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of unusual caseload growth. In this evaluation, the Secretary will consider the following factors: Geographical impact of the caseload growth; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the caseload growth and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. If the Secretary determines that the State agency has provided insufficient information or that needed information is otherwise not available from existing Department records to determine a waiver amount for the uncontrollable effects of caseload growth using factual analysis, the Secretary shall determine a formula derived waiver amount by: Counting the number of months out of the six months beginning in April immediately prior to the subject review period in which the State agency's Food Stamp Program caseloads were 15 percent or more above caseloads in March immediately prior to the review period; counting the number of months during the twelve months of the review period in which the State agency's Food Stamp Program caseloads were 15 percent or more above caseloads in September prior to the review period; determining a waiver amount equal to one eighteenth of the liability for each month for the portion of the caseload growth which occurred during the six months prior to the fiscal year and one twelfth of the liability for each month for the portion of the caseload growth which occurred during the fiscal year; and as appropriate, adjust the preliminary waiver amount to reflect States' otherwise effective administration of the program based upon recent error rate history. For example, a reduction in the amount may be made when a State agency's recent error rate history indicates that even absent the uncontrollable events described, the State agency would have exceeded the error rate tolerance for the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, FNS will not grant relief for the effects of caseload growth that ended prior to the second half of the prior fiscal year.

(D) Unusual changes in the Food Stamp or other Federal or State programs that have an uncontrollable effect on the QC payment error rate.

Requests for relief from errors caused by the uncontrollable effects of unusual program changes other than those variances already excluded by § 275.12(d)(2)(vii) will be considered. When submitting a request for good cause relief based on unusual changes in the Food Stamp or other Federal or State programs, the State agency shall provide the following information:

(*1*) The type of change(s) that occurred;

(*2*) When the change(s) occurred;

(*3*) The nature of the adverse effect of the changes on program operations and the State agency's efforts to mitigate these effects;

(*4*) Reason(s) the State agency was unable to adequately handle the change(s);

(*5*) Identification and explanation of the uncontrollable errors caused by the changes (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*6*) The percentage of the reported payment error rate that resulted from the adverse impact of the change(s) and how this figure was derived; and

(*7*) The reported payment error rate in the twelve-month period immediately prior to the event and reported payment error rate during the remainder of the subject fiscal year.

The Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of unusual changes in the Food Stamp Program or other Federal and State programs. In this evaluation, the Secretary will consider the following factors: Geographical impact of the unusual changes in the Food Stamp Program or other Federal and State programs; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the unusual changes in the Food Stamp Program or other Federal and State programs and the impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period.

(E) Other unusual circumstances. When submitting a request for good cause relief based on unusual circumstances other than those specifically set forth in this paragraph (e)(6)(i)(E), such as a fire in a certification office, the State agency shall provide the following information:

(*1*) The unusual circumstances that the State agency believes uncontrollably and adversely affected the payment error rate for the fiscal year in question;

(*2*) Why the State agency had no control over the unusual circumstances;

(*3*) How the unusual circumstances had an uncontrollable and adverse impact on the State agency's error rate;

(*4*) Where the unusual circumstances existed (i.e. Statewide or in particular counties);

(*5*) When the unusual circumstances existed (give as nearly exact dates as possible);

(*6*) The proportion of the food stamp caseload whose management was affected;

(*7*) Identification and explanation of the uncontrollable errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*8*) The percentage of the reported payment error rate that was caused by the unusual circumstances and how this figure was derived; and

(*9*) The reported payment error rate in the twelve-month period immediately prior to the event and reported payment error rate during the remainder of the subject fiscal year.

The Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of unusual circumstances other than those set forth earlier in this paragraph (e)(6)(i)(E). In this evaluation, the Secretary will consider the following factors: Geographical impact of the unusual circumstances; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the unusual circumstances and the impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period.

(ii) *Adjustments.* When good cause is found under the criteria in paragraphs (e)(6)(i)(A) through (E) of this section, the Secretary may adjust the waiver amount to reflect States' otherwise effective administration of the program based upon recent error rate history.

(iii) *Timeframes.* State agencies have 60 days from the date of receipt of notification by FNS (certified mail, return receipt requested) of its final error rate and potential liability to submit requests for good cause. In those instances in which FNS uses information not submitted by the State agency to make a waiver determination or corrects information submitted by the State agency, the State agency shall be provided a copy of such information or corrected information as set forth in paragraph (e)(6)(iv) of this section and shall have 30 days to comment on the supplemental information and/or the corrected information before a final decision is rendered. Requests for extensions shall be evaluated on a case-by-case basis and only in the most unusual situations shall such requests be granted. In computing any period of time prescribed or allowed under these procedures, the day of delivery of any notice of action, acknowledgment, or reply shall not be included unless it is a Saturday, Sunday or Federal or State holiday. In that case, the period runs until the end of the next day which is not a Saturday, Sunday or Federal or State holiday. Requests for good cause or an extension of time shall be post-marked prior to the expiration of the original due date.

(iv) *Evidence.* When submitting a request for good cause relief, the State agency shall include such data and documentation as is necessary to support and verify the information submitted in accordance with the requirements of paragraph (e)(6) of this section so as to fully explain how a particular unusual circumstance(s) uncontrollably affected its payment error rate.

(v) *Determination.* When the Secretary determines that good cause exists for a State agency's failure to meet the payment error rate tolerance for the fiscal year, the Secretary shall reduce or eliminate the State agency's liability as the Secretary deems is appropriate under the circumstances. When a determination is based on information not submitted by a State agency, FNS shall issue a preliminary determination (certified mail, return receipt requested) on the good cause waiver request. The preliminary determination shall identify information used in the evaluation process which was not submitted by the State agency or information corrected by FNS. State agencies are allowed 30 days from the date of receipt of the preliminary determination in which to comment on the supplemental information and/or the corrected information. The State agency's response shall be limited to the additional information or the corrected information used by FNS.

(vi) *Finality.* The determinations of the Secretary concerning good cause are

final and not subject to further administrative or judicial review.

* * * * *

Dated: September 22, 1992.

Betty Jo Nelsen,

Administrator.

[FR Doc. 92-23315 Filed 9-25-92; 8:45 am]

BILLING CODE 3410-30-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052-AB13

Loan Policies and Operations; Definitions; Lending Authorities and Purchase and Sale of Interests in Loans; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) published a final rule (57 FR 38237, August 24, 1992) that amended the regulations governing the lending, loan sale and purchase, and loan participation authorities of Farm Credit System institutions. This document corrects a typographical error in the final rule.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: In preparing the final rule for publication in the **Federal Register,** a typographical error was inadvertently made in the second sentence of § 614.4336(a)(2)(ii). Accordingly, FR Doc. 92-20153, published August 24, 1992, is amended as follows.

§ 614.4336 [Corrected]

1. On page 38249, third column, thirteenth line from the bottom, paragraph (a)(2)(ii) of § 614.4336 is corrected by removing the words "in effect" and adding in their place, the word "ineffective."

Dated: September 22, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-23465 Filed 9-25-92; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-09-AD; Amendment 39-8366; AD 92-19-08]

Airworthiness Directives; Fairchild Aircraft (Formerly Swearingen Aviation Corporation) SA226 and SA227 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 92-19-08 concerning certain Fairchild Aircraft (Fairchild) SA226 and SA227 series airplanes, which was published in the **Federal Register** on Thursday, August 27, 1992 (57 FR 38760). That document incorrectly references Fairchild Service Bulletin (SB) 227-27-029 as Fairchild SB 27-09. This action incorporates the correct reference to the applicable service information into the AD.

EFFECTIVE DATE: October 16, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Bob D. May, Aerospace Engineer, Airplane Certification Office, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193-0150; Telephone (817) 624-5156.

SUPPLEMENTARY INFORMATION: On August 20, 1992, the Federal Aviation Administration (FAA) issued AD 92-19-08, Amendment 39-8366 (57 FR 38760, August 27, 1992), which was applicable to certain Fairchild SA226 and SA227 airplanes. The AD supersedes AD 81-02-01, Amendment 39-4009 (46 FR 867, January 5, 1981), with a new AD that (1) retains the inspection and modification of the rudder cable to rudder pedal link attachments, which was required by AD 81-02-01 on Fairchild SA226 series airplanes; and (2) extends the effectivity of to include certain Fairchild SA227 series airplanes. The required actions are accomplished in accordance with the instructions in either Swearingen Aviation Corporation Service Bulletin (SB) 27-027, issued: July 17, 1980; or Fairchild SB 227-27-029, issued: June 6, 1991, whichever is applicable.

That document incorrectly references Fairchild SB 227-27-029 as Fairchild SB 27-09.

Need for Correction

As published, the final regulations contain an incorrect service bulletin reference for the Fairchild SA227 series airplanes, which could prevent operators from complying with the actions of AD 92-19-08.

Correction of Publication

Accordingly, the publication of Friday, August 27, 1992 (57 FR 38760) of Amendment 39-8366; AD 92-19-08, which was the subject of FR Doc. 92-20525, is corrected as follows:

§ 39.13 [Corrected]

On page 38761, in the second column, in section 39.13, in line 8 of paragraph (a) of AD 92-19-08, replace "27-09," with "227-27-029,".

On page 38761, in the second column, in section 39.13, in lines 5 and 6 of paragraph (d) of AD 92-19-08, replace "27-09," with "227-27-029,".

Issued in Kansas City, Missouri, on September 21, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-23466 Filed 9-25-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 26979; Amdt. No. 372]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as

prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on September 18, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 g.m.t.:

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM EN ROUTE IFR ALTITUDES and CHANGEOVER POINTS

[Amendment 372 Effective Date, October 15, 1992]

From	To	MEA
§ 95.6017 VOR Federal Airway 17 is Amended to Read in Part		
Acton, TX VORTAC	Bridgeport, TX VORTAC.	3000
§ 95.6036 VOR Federal Airway 36 is Amended to Read in Part		
Hawly, PA Fix	Betty, NJ Fix	15500
Betty, NJ Fix	Neion, NJ Fix	13500
§ 95.6056 VOR Federal Airway 56 is Amended to Read in Part		
Colliers, SC VORTAC	Columbia, SC VORTAC.	3000
§ 95.6059 VOR Federal Airway 59 is Amended to Read in Part		
Parkersburg, WV VORTAC (2500—MOCA).	Newcomerstown, OH VORTAC.	3000
§ 95.6115 VOR Federal Airway 115 is Amended to Read in Part		
Parkersburg, WV VORTAC (2500—MOCA).	Newcomerstown, OH VORTAC.	3000
§ 95.6159 VOR Federal Airway 159 is Amended to Read in Part		
Mitchell, SD VOR/DME.	Huron, SD VORTAC.	3300
§ 95.6235 VOR Federal Airway 235 is Amended to Read in Part		
Rock Springs, WY VORTAC.	Borgg, WY Fix	9500
Borgg, WY Fix	Oilly, WY Fix	11200
§ 95.6349 VOR Federal Airway 349 is Deleted		
Seattle, WA VORTAC (6000—MRA, 1800—MOCA).	Lofal, WA Fix	4000
Lofal, WA Fix (4300—MOCA).	Jawbn, WA Fix	5400
Jawbn, VA Fix (4300—MOCA).	Islnd, WA Fix	5400
Islnd, WA Fix	Bellingham, WA VORTAC	5000
Bellingham, WA VORTAC (2600—MOCA).	U.S.-Canadian Border.	3000
§ 95.6358 VOR Federal Airway 358 is Amended to Read in Part		
Guada, TX Fix (3200—MOCA).	Stonewall, TX VORTAC.	4000
§ 95.6439 VOR Federal Airway 439 is Amended to Read in Part		
Dickinson, ND VORTAC.	Williston, ND VORTAC.	4500
§ 95.6506 VOR Federal Airway 506 is Amended to Read in Part		
Baily, AK Fix (7000—MCA Bremi Fix, E Bnd, 9700—MOCA).	Bremi, AK Fix	12000
King Salmon, AK VORTAC (2400—MOCA).	Kowok, AK Fix	3000
Kowok, AK Fix (7000—MOCA).	Cayon, AK Fix	8000
§ 95.6524 VOR Federal Airway 524 is amended by adding		
Hayden, Co VOR/DME.	Laramie, WY VORTAC.	14200

[FR Doc. 92–23432 Filed 9–25–92; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Exemption From Speculative Position Limits for Positions Which Have a Common Owner, But Which Are Independently Controlled

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is adopting rule amendments to eliminate the application requirement for the exemption from speculative position limits for positions which have a common owner but which are independently controlled. This change will significantly reduce paperwork associated with filing for these exemptions. Under the amended rule, the standards for eligibility remain the same, but the exemption will now be self-executing. As proposed and adopted, the amendments include a provision requiring entities exempt from speculative position limits under Commission Rule 150.3 to provide specified information related to that exemption upon a call by the Commission.

EFFECTIVE DATE: October 28, 1992.

FOR FURTHER INFORMATION CONTACT: John F. Fenton, Industry Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–3310.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Framework

Speculative position limits have been a tool for the regulation of futures markets for over half a century. *See,* Section 4a(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6a(1) (1988). Generally, there are three elements to the Commission's regulatory framework of speculative position limits. They are the levels of the limits, the exemptions from them (in particular, for hedgers), and the policy on aggregating accounts. Since its creation, the Commission periodically has reviewed each of these policies pertaining to speculative position limits. The **Federal Register** notice announcing the proposal of these amendments to § 150.3 details the statutory and regulatory background of this rulemaking (57 FR 31674 (July 17, 1992)).

II. The Proposed Rule

After observing the application process for exemptive relief from speculative position limits for eligible entities for more than three years, and the operation of the revised filing requirements for approximately one year, the Commission concluded that it was appropriate to amend Commission Rule 150.3(a)(4) to make this exemption self-executing by placing the responsibility for assuring that an entity meets the standards to be eligible for this exemption on the entity itself. Under the proposed rule, the treatment of entities eligible for exemption from speculative position limits is closely analogous to that afforded to commodity trading advisors of futures commission merchants under the 1979 Aggregation Policy.[1]

Specifically, the Commission proposed to amend § 150.3(a)(4) to eliminate the requirements that entities eligible for the exemption file an application with the Commission and receive prior Commission approval before being permitted to exceed speculative position limits. Under this proposal, the entities eligible for, and the standards for, relief would remain the same, but the eligible entities would themselves be responsible for ascertaining whether or not they qualify for the exemption and for monitoring continued compliance. No filing, other than a standard CFTC Form 40 which accurately reflected the control relationship, would be required with the Commission.

The effect of the proposed rule would be to apply the speculative limit only to each independent account controller trading for the eligible entity and to permit the eligible entity to exceed the speculative position limit in an amount proportional to the number of independent account controllers trading on its behalf. Currently, the Commission, in granting the exemption on a case-by-case basis, has determined maximum exemption levels for eligible entities, as a whole, which were sometimes less than the multiple of the speculative position limit based on the total number of independent account controllers. These overall levels were determined based on market conditions in each particular futures contract market. It appears, however, that the positions of eligible entities have been well below their overall maximum levels. The overall maximum limits, therefore, in practice have not been a constraining factor. In addition, as the Commission pointed out in the **Federal Register** notice of its proposed rulemaking eligible entities must be registrants and the exemption applies only to positions outside the spot month. Therefore, the Commission believed that the proposed change with regard to the maximum permissible position levels would not be detrimental to the market.

In addition, the Commission also proposed to add Section 150.3(b) which provides that, upon call by the Commission, the Director of the Division of Economic Analysis, or the Director's delegee, any entity exempt from speculative position limits under Commission Rule 150.3(a) must provide to the Commission such information as specified in the call, relating to the positions owned or controlled by that person, trading done pursuant to the claimed exemption, the futures, options, or cash market position which support the claim of exemption, and the relevant business relationships, supporting a claim of exemption.

B. Comments Received

The Commission received four comments in response to its proposed rulemaking to eliminate the application and approval requirements for the exemption. The four commenters included a futures exchange, an industry association, a commodity trading advisor, and an introducing broker on behalf of a commodity trading advisor.

The commenters uniformly supported the proposal to eliminate the application and approval procedure and agreed that this would reduce the costs of qualifying for the exemption. Several commenters suggested, however, that for the exemption to be truly self-executing, and to significantly reduce the costs associated with the exemption, exchanges need to conform their requirements for the exemption with that of the Commission.

One commenter noted that the costs savings of not having to monitor an overall exemption level for the eligible entity as a whole would, in fact, be greater than the savings for the elimination of the application procedure. Another commenter noted, however, that by retaining the spot month aggregation requirement, the daily compliance burden for the eligible entity would be virtually unchanged, since the eligible entity would still be required to monitor the positions of independent account controllers on a daily basis.

III. The Final Rules

In light of the generally favorable comments, the Commission has decided to adopt as final the proposed rule eliminating the application and approval requirements for the exemption. The Commission believes that this will significantly reduce the costs on those qualifying for this exemption.

The Commission has carefully considered the views expressed by the commenters with regard to additional ways to lower the burden on those qualifying for this exemption. Several commenters noted that the potential cost savings cannot be fully realized unless the exchanges harmonize their rules with regard to this exemption with that of the Commission. The Commission understands the potential benefits of harmonized rules in this regard, and Commission staff are currently involved in discussions with the staffs of the various exchanges in an effort to have the most feasible coordinated approach, within the regulatory framework each exchange believes necessary to administer trading.

One commenter expressed concern that unless the exemption applied to positions in the spot month of futures contracts the daily compliance burden on eligible entities would be virtually unchanged. The Commission has historically been concerned about position concentration in futures contracts during the spot month, and has, therefore, been cautious in allowing exemptions to position limits in the spot month. For example, exemptions for spread or arbitrage positions between futures and option contracts and between single months of a futures contract, permitted under Commission Rules 150.3(a)(2) and 150.3(a)(3), respectively, apply only outside of the spot month. The Commission continues to believe a cautious approach is warranted with regard to positions in the spot month. In any event, the Commission has observed that entities eligible for this exemption rarely hold significant positions in the spot month, and therefore the exclusion of the spot month from the exemption should place no undue burden on these entities.

The Commission stresses that under the amended rule entities must assume responsibility for assuring themselves that the appropriate documentary and other factual evidence supports their

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[1] The 1979 Aggregation Policy, in effect, disaggregated, for reporting and speculative limit purposes, positions of independent account controllers of futures commission merchants in any futures contract month. The current rule provides an exemption to speculative position limits, for independent account controllers of eligible entities, but not in the spot futures month if there is a position limit which applies to individual trading months during their expiration. Therefore, while generally in harmony, the 1979 Aggregation policy and proposed § 150.3(a)(4) would result in differing treatment with regard to positions in the spot month if there is a position limit which applies to individual trading months during their expiration.

eligibility for this exemption. These standards are not being changed by these rule amendments.[2] In particular, both the eligible entities and affiliated account controllers must continue to have in place procedures to assure the independence of the account controllers in order to meet the requirements of the exemption.

Although, under the amended rule, the exemption will be self-executing, the Commission cautions that, to the extent market surveillance uncovers trading patterns between such independent account controllers which suggest actual trading together or otherwise lack of independence on the part of various account controllers, the Commission will take those regulatory or enforcement actions which are appropriate and warranted.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq. requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "large traders" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These rules contain exemptions from limits on the size of speculative positions which typically may be held by the largest traders in these markets. Accordingly, these rules will have no significant impact on a substantial number of small entities. Moreover, the Commission invited comments from any firms or other persons which believed that the promulgation of these rules might have significant impact upon their activities. No such comments were received. For the above reason, and pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted these rules in proposed firm and their associated information collection requirements to the Office of Management and Budget ("OMB"). OMB approved the collection of information associated with the rule on July 9, 1992 and assigned OMB control No. 3038–0013 to the rule. The burden associated with this entire collection including this proposed rule is as follows:

Average Burden Hours Per Response.	3.00
Number of Respondents	12
Frequency of Response	Annually

The burden associated with this specific final rule is as follows:

Average Burden Hours Per Response.	3.00
Number of Respondents	2
Frequency of Response	Annually

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 150

Agricultural commodities, Commodity futures, Cotton, Grains.

In consideration of the foregoing and pursuant to the authority contained in the Act and, in particular, sections 2(a)(11), 4a, and 8a(5) of the Act, 7 U.S.C. 4a(j), 6a, and 12a(5), the Commodity Futures Trading Commission hereby amends part 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 150—LIMITS ON POSITIONS

1. The authority citation for part 150 is revised to read as follows:

Authority: 7 U.S.C. 6a and 12a(5).

2. Section 150.1 is amended by revising paragraph (e)(3), by redesignating current paragraph (e)(4) as paragraph (e)(5), and by adding a new paragraph (e)(4) to read as follows:

§ 150.1 Definitions.

* * * * *

(e) *Independent account controller* means a person—

* * * * *

(3) Who trades independently of the eligible entity and of any other independent account controller trading for the eligible entity;

(4) Who has no knowledge of trading decisions by any other independent account controller; and

* * * * *

3. Section 150.3 is amended by revising paragraphs (a)(4) introductory text, (a)(4)(i) and (b) to read as follows:

§ 150.3 Exemptions.

(a) * * *

(4) Carried for an eligible entity as defined in § 150.1(d), in the separate account or accounts of an independent account controller, as defined in § 150.1(e), and not in the spot month if there is a position limit which applies to individual trading months during their expiration; *Provided, however,* That the overall positions held or controlled by each such independent account controller may not exceed the limits specified in § 150.2.

(i) Additional Requirements for Exemption of Affiliated Entities. If the independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must:

(A) Have, and enforce, written procedures to preclude the affiliated entities from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities; *provided, however,* That such procedures may provide for the disclosure of information which is reasonably necessary for an eligible entity to maintain the level of control consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(B) Trade such accounts pursuant to separately-developed and independent trading systems;

(C) Market such trading systems separately; and

(D) Solicit funds for such trading by separate Disclosure Documents that meet the standards of § 4.21 or § 4.31 of this chapter, as applicable, where such Disclosure Documents are required under part 4 of this chapter.

* * * * *

[2] It should be noted, however, that § 150.3(a)(4)(i), as adopted, contains a technical amendment not included as part of the proposed rulemaking, in order to conform to Commission Rule 4.7. Commission Rule 4.7 provides, under certain conditions, exemptive relief to CPOs and CTAs from the requirement to provide disclosure documents to their clients. 57 FR 34853 (August 7, 1992). The intent of the technical amendment to § 150.3(a)(4)(i) is to make clear that disclosure documents are not required under this section from those who are exempt from this requirement under § 4.7.

(b) *Call for information.* Upon call by the Commission, the Director of the Division of Economic Analysis or the Director's delegee, any person claiming an exemption from speculative position limits under this section must provide to the Commission such information as specified in the call relating to the positions owned or controlled by that person; trading done pursuant to the claimed exemption; the futures, options or cash market positions which support the claim of exemption; and the relevant business relationships supporting a claim of exemption.

Issued in Washington, DC, this 18th day of September 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-23223 Filed 9-25-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 81N-0122]

RIN 0905-AA06

Corn and Callus Remover Drug Products for Over-the-Counter Human Use; Final Monograph; Updating and Technical Changes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the regulations that establish conditions under which over-the-counter (OTC) corn and callus remover drug products are generally recognized as safe and effective and not misbranded. These amendments will update the regulations, by making noncontroversial technical changes in the labeling of those products, to clarify that products contained in a collodion-like vehicle may be applied to the corn and callus with an applicator or a brush. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Effective on October 28, 1992; written comments by November 27, 1992; written comments on the agency's economic impact determination by November 27, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 14, 1990 (55 FR 33258), FDA issued a final rule for OTC corn and callus remover drug products (21 CFR part 358) that specified the following directions statement for these drug products in a collodion-like vehicle under § 358.550(d)(2) (21 CFR 358.550 (d)(2)):

For products containing salicylic acid identified in § 358.510(b). "Wash affected area and dry thoroughly. Apply one drop at a time to sufficiently cover each corn/callus. Let dry. Repeat this procedure once or twice daily as needed for up to 14 days (until corn/callus is removed)." (Optional: "May soak corn/callus in warm water for 5 minutes to assist in removal.")

This final rule revises the wording in these directions to provide for the use of an applicator or a brush, if appropriate, in applying the product. Gelled or highly viscous collodion-like formulations may be more appropriately applied by a brush than an applicator such as a dropper or glass rod. This provision allows for appropriate labeling of OTC corn and callus remover drug products based on the physical characteristics of the product. Also, clinical studies have been conducted in which a brush applicator was used to apply the salicylic acid in a collodion-like vehicle to the affected area (Refs. 1 and 2). The revised directions for using OTC corn and callus remover drug products in a collodion-like vehicle in § 358.550(d)(2) now read:

For products containing salicylic acid identified in § 358.510(b). "Wash affected area and dry thoroughly. Apply" (select one of the following, as appropriate: "one drop" or "small amount") "at a time with" (select one of the following, as appropriate: "applicator" or "brush") "to sufficiently cover each corn/callus. Let dry. Repeat this procedure once or twice daily as needed for up to 14 days (until corn/callus is removed)." (Optional: "May soak corn/callus in warm water for 5 minutes to assist in removal.")

This labeling revision represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. Therefore, the agency has determined that this labeling revision does not need to be implemented on the effective date of this final rule. Manufacturers may implement the revision at the next printing of labels for affected products.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule amending the final monograph for OTC corn and callus remover drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC corn and callus remover drug products is not expected to pose such an impact on small business. The only requirement is a minor optional labeling revision if desired, and the agency is allowing this revision to be made at the manufacturer's next printing of labels for affected products. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

As noted previously, this final rule institutes a change that is nonsubstantive in nature. Because the revision is not controversial and because, when effective, it provides clarification of a final OTC drug monograph, FDA finds that the usual notice and comment procedures are unnecessary and not in the public interest. The final rule, therefore, shall become effective on October 28, 1992. However, interested persons may, on or before November 27, 1992, submit written comments on this final rule, including the agency's economic impact determination, to the Dockets

Management Branch (address above). Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

References

(1) Comment No. RPT, Docket No. 80N–0238, Dockets Management Branch.

(2) "Supplemental Efficacy Data for Study 83–07" identified as Exhibit #21, dated February 26, 1985, included in OTC Volume 16CFM, Docket No. 80N–0238, Dockets Management Branch.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 358 is amended as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 358 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 358.550 is amended by revising paragraph (d)(2) to read as follows:

§ 358.550 Labeling of corn and callus remover drug products.

* * * * *

(d) * * *

(2) *For products containing salicylic acid identified in § 358.510(b).* "Wash affected area and dry thoroughly. Apply" (select one of the following, as appropriate: "one drop" or "small amount") "at a time with" (select one of the following, as appropriate: "applicator" or "brush") "to sufficiently cover each corn/callus. Let dry. Repeat this procedure once or twice daily as needed for up to 14 days (until corn/callus is removed)." (Optional: "May soak corn/callus in warm water for 5 minutes to assist in removal.")

* * * * *

Dated: September 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–23446 Filed 9–25–92; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 358

[Docket No. 80N–0238]

RIN 0905–AA06

Wart Remover Drug Products for Over-the-Counter Human Use; Final Monograph; Updating and Technical Changes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the regulations that establish conditions under which over-the-counter (OTC) wart remover drug products are generally recognized as safe and effective and not misbranded. These amendments will update the regulations, by making noncontroversial technical changes in the labeling of those products, to clarify that products contained in a collodion-like vehicle may be applied to the wart with an applicator or a brush. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Effective on October 28, 1992; written comments by November 27, 1992; written comments on the agency's economic impact determination by November 27, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 14, 1990 (55 FR 33246), FDA issued a final rule for OTC wart remover drug products (21 CFR part 358) that specified the following directions statement for these drug products marketed in a collodion-type vehicle under § 358.150(d)(2) (21 CFR 358.150 (d)(2)):

For products containing salicylic acid identified in § 358.110(b). "Wash affected area." (Optional: "May soak wart in warm water for 5 minutes.") "Dry area thoroughly." Apply one drop at a time to sufficiently cover each wart. Let dry. Repeat this procedure once or twice daily as needed (until wart is removed) for up to 12 weeks."

This final rule revises the wording in these directions to provide for the use of an applicator or a brush, as appropriate, in applying the product. Gelled or highly viscous collodion-like formulations may be more appropriately applied by a brush than an applicator such as a dropper or glass rod. This provision allows for appropriate labeling of OTC wart remover drug products based on the physical characteristics of the product. Also, clinical studies have been conducted in which a brush applicator was used to apply the salicylic acid in a collodion-like vehicle to the affected area (Refs. 1 and 2). The revised directions for use for OTC wart remover drug products in a collodion-like vehicle in § 358.150(d)(2) now read:

For products containing salicylic acid identified in § 358.110(b). "Wash affected area." (Optional: "May soak wart in warm water for 5 minutes.") "Dry area thoroughly Apply" (select one of the following, as appropriate: "one drop" or "small amount") "at a time with" (select one of the following, as appropriate: "applicator" or "brush") "to sufficiently cover each wart. Let dry Repeat this procedure once or twice daily as needed (until wart is removed) for up to 12 weeks."

This labeling revision represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. Therefore, the agency has determined that this labeling revision does not need to be implemented on the effective date of this final rule. Manufacturers may implement the revision at the next printing of labels for affected products.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule amending the final monograph for OTC wart remover drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC wart remover drug products is not expected to pose such an impact on small business. The only requirement is a minor optimal labeling

revision, if desired, and the agency is allowing this revision to be made at the manufacturer's next printing of labels for affected products. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

As noted previously, this final rule institutes a change that is nonsubstantive in nature. Because the revision is not controversial and because, when effective, it provides clarification of a final OTC drug monograph, FDA finds that the usual notice and comment procedures are unnecessary and not in the public interest. The final rule, therefore, shall become effective on October 28, 1992. However, interested persons may, on or before November 27, 1992, submit written comments on this final rule, including the agency's economic impact determination, to the Dockets Management Branch (address above). Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

References

(1) Comment No. RPT, Docket No. 80N-0238, Dockets Management Branch.

(2) "Supplemental Efficacy Data for Study 83-07" identified as Exhibit #21, dated February 28, 1985, included in OTC Volume 16CFM, Docket No. 80N-0238, Dockets Management Branch.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 358 is amended as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 358 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 358.150 is amended by revising paragraph (d)(2) to read as follows:

§ 358.150 Labeling of wart remover drug products.

* * * * *

(d) * * *

(2) *For products containing salicylic acid identified in § 358.110(b).* "Wash affected area." (Optional: "May soak wart in warm water for 5 minutes.") "Dry area thoroughly. Apply" (select one of the following, as appropriate: "one drop" or "small amount") "at a time with" (select one of the following, as appropriate: "applicator" or "brush") "to sufficiently cover each wart. Let dry Repeat this procedure once or twice daily as needed (until wart is removed) for up to 12 weeks."

* * * * *

Dated: September 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-23447 Filed 9-25-92; 8:45 am]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[MI12-5586; FRL-4513-3]

Modification of the Ozone Monitoring Season; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Ozone (O_3) is required to be monitored at National Air Monitoring Stations (NAMS) and State and Local Air Monitoring Stations (SLAMS) only during the "ozone season" as designated in the Aerometric Information Retrieval System (AIRS) files on a state by state basis. Previously, the ozone season for Michigan had been designated as April 1 through October 31. A review of monitoring data for the past 5 years revealed that high ozone concentrations do not occur during the month of October in Michigan. Therefore, pursuant to 40 CFR 58.13(a)(3), USEPA agreed with the State's request to modify its ozone season and has determined that Michigan is now subject to an April-September monitoring timeframe. The modified ozone season will apply to 1992 ozone monitoring data and future monitoring efforts unless otherwise revised.

EFFECTIVE DATE: This action will be effective November 27, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Camille Szematowicz, Air Toxics and Radiation Branch, Regulation Development Section, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6081.

SUPPLEMENTARY INFORMATION: The State of Michigan monitors for ozone and submits data to AIRS as required to determine the air quality and attainment status of metropolitan areas, and to recognize trends in air quality. 40 CFR 58.13(a)(3) provides that the Regional Administrator may exempt periods or seasons from consecutive hourly averages for continuous State and Local Air Monitoring Station (SLAMS) analyzers. Part 58 appendix D, lists the current ozone season on a state by state basis. The Michigan season is listed as April through October.

On February 28, 1992, the Michigan Department of Natural Resources (MDNR) requested that USEPA modify the State's current ozone season to the period April 1 through September 30. In order to support its position the State submitted 5 years of air monitoring data for the month of October. USEPA has reviewed the State's submittal in accordance with the Office of Air Quality Planning and Standards (OAQPS) document "Guideline on Modification to Monitoring Seasons for Ozone" (March 1990). Consistent with the guidelines, Michigan's air monitoring data indicates that for the five most recent years (1987-1991), there have been no recorded ozone concentrations above the 0.100 ppm guideline during the month of October. USEPA approved Michigan's request to eliminate the month of October from its official monitoring season, and as required by the above mentioned guidance document, OAQPS concurred on this approval on May 29, 1992. Valdas V. Adamkus, Regional Administrator.

Region 5, notified Robert P. Miller, Chief, Air Quality Division, MDNR, of USEPA's approval of Michigan's request on August 18, 1992.

The USEPA has determined that this change to the ozone monitoring season in Michigan complies with all applicable requirements of the Clean Air Act and USEPA policy and regulations concerning such revisions. Due to the minor nature of this revision, USEPA concluded that conducting notice and comment rulemaking prior to approving the revision would have been "unnecessary and contrary to the public interest," and hence was not required by the Administrative Procedure Act, 5 U.S.C. 553(b). This action became final and effective on August 18, 1992, the date of USEPA approval of the States's request.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 State Implementation Plan (SIP) revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1992. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 58

Air pollution control, Intergovernmental relations.

Dated: July 28, 1992.

Robert Springer,

Acting Regional Administrator.

Title 40, part 58 of the Code of Federal Regulations is being amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613, 7619.

Appendix D—[Amended]

2. In Appendix D; in the table in section 2.5, the entry for Michigan is revised to read as follows:

OZONE MONITORING SEASON BY STATE

State	Begin month	End month
Michigan	April	September.

[FR Doc. 92–23461 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 60

[AD–FRL–3482–1]

RIN 2060–AC67

Standards of Performance for New Stationary Sources; Calciners and Dryers in Mineral Industries

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Standards of performance for calciners and dryers in mineral industries were proposed in the **Federal Register** on April 23, 1986. This action promulgates standards of performance for calciners and dryers in the mineral industries. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that calciners and dryers in the mineral industries cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, or reconstructed calciners and dryers to achieve emission levels that reflect the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

DATES: *Effective Date.* September 28, 1992.

Judicial Review. Under section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard (NSPS) is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Calciners and Dryers in Mineral Industries—Background Information for the Promulgated Standards," EPA 450/3–85–025b. The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to comments; (2) a summary of the changes made to the regulation since proposal; and (3) the final Environmental Impact Statement which summarizes the impacts of the standards.

Docket. A docket, number A–82–39, containing information considered by EPA in development of the promulgated standards is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section (LE–131), Waterside Mall, room M1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Herring, telephone (919) 541–5358, concerning regulatory decisions; Mr. Bill Neuffer, telephone (919) 541–5435, concerning technical aspects of the industry and control technologies. The address for the above contacts is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The promulgated standards apply to new, modified, and reconstructed calciners and dryers at plants that process or produce any of the following minerals or their concentrates: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite.

The affected facility for mineral processing plants in each of the industries listed above would be each

new, modified or reconstructed calciner or dryer. The types of dryers to which the standards apply include: rotary (direct), rotary (indirect), fluid bed, vibrating grate, flash, and spray dryers. The types of calciners to which the standards apply include: Rotary, flash, and kettle calciners; multiple hearth furnaces; and expansion furnaces.

The following processes and process units used at mineral processing plants would not be regulated under this NSPS: Vertical shaft kilns in the magnesium compounds industry; the chlorination-oxidation process in the titanium dioxide industry; coating kilns, mixers, and aerators in the roofing granules industry; and tunnel kilns, tunnel dryers, apron dryers, and grinding equipment that also dries the process material used in any of the 17 mineral industries. In addition, for the brick and related clay products industry, only the calcining and drying of raw materials prior to firing of the brick are covered because these are the only major sources of air pollution in that industry that fall under this generic source category.

The standards are based on emission levels achievable using well-designed and operated fabric filters, wet scrubbers or electrostatic precipitators (ESP's). All of these systems are considered BDT for controlling emissions from calciners and dryers in this source category, depending on the type of calciner and dryer and mineral industry. The promulgated standards limit stack emissions of particulate matter from affected facilities. The standards for stack emissions limit the concentration of particulate matter to 0.092 gram per dry standard cubic meter (g/dscm) [0.040 grain per dry standard cubic foot (gr/dscf)] for calciners and for calciners and dryers installed in series. For dryers, the concentration of particulate matter is limited to 0.057 g/dscm (0.025 gr/dscf).

Stack emissions would also be limited to 10 percent opacity for process units controlled with dry control devices. The visible emissions standard would not apply to affected facilities that use wet scrubbers to control emissions. Instead, monitoring and reporting of the operating parameters of wet scrubbers (pressure drop and liquid flow rate) would be required to indicate that the control device is properly operated and maintained on a routine basis.

When a dry control device (e.g., baghouse or ESP) is used to comply with the calciner or dryer mass emission standard, the owners or operators of the units are required to install a Continuous Opacity Monitoring System (COMS), except as noted below.

Owners or operators of ball clay vibrating grate dryers, bentonite rotary dryers, diatomite flash dryers, diatomite rotary calciners, feldspar rotary dryers, fire clay rotary dryers, industrial sand fluid bed dryers, kaolin rotary calciners, perlite rotary dryers, roofing granules fluid bed dryers, roofing granules rotary dryers, talc rotary calciners, titanium dioxide fluid bed dryers, titanium dioxide spray dryers, vermiculite fluid bed dryers, or vermiculite rotary dryers who use a dry control device may have a certified visible emissions observer measure and record the opacity of the visible emissions daily in lieu of using a COMS. Owners or operators of ball clay rotary dryers, diatomite rotary dryers, feldspar fluid bed dryers, fuller's earth rotary dryers, gypsum rotary dryers, gypsum flash calciners, gypsum kettle calciners, industrial sand rotary dryers, kaolin rotary dryers, kaolin multiple hearth furnaces, perlite expansion furnaces, talc flash dryers, talc rotary dryers, titanium dioxide direct or indirect rotary dryers or vermiculite expansion furnaces who use a dry control device are exempt from the monitoring requirements.

When a wet scrubber is used to comply with the calciner or dryer mass emission standard, the owner or operator would be required to install, calibrate, maintain, and operate monitoring devices that continuously measure and record the pressure loss of the gas stream through the scrubber and the scrubbing liquid flow rate to the scrubber. The pressure loss monitoring device must be certified by the manufacturer to be accurate within 1 inch of water column (in. W.C.) gauge pressure. The liquid flow rate monitoring device must be certified by the manufacturer to be accurate within 5 percent of design scrubbing liquid flow rate.

Method 5 of appendix A, 40 CFR part 60, will be used to determine compliance with the stack concentration standard. Method 9 of Appendix A and the procedures in 40 CFR 60.11 will be used to measure the opacity of stack emissions from dry control devices.

II. Environmental Impacts

The standards will reduce projected nationwide particulate emissions from new, modified, and reconstructed calciners and dryers in the mineral industries in the fifth year following promulgation of the standards by 7,900 megagrams (Mg) (8,800 tons) compared to emissions allowed under typical State process weight regulations. This represents a 78 percent reduction in particulate matter emissions from these sources.

The nationwide increase in solid waste (as a sludge containing 70 percent moisture) in the fifth year would be 7,500 Mg (8,300 tons) compared to the State Implementation Plan (SIP) level. The only solid waste impacts would be from the solids in the sludge produced by wet scrubbers. Typically, a particulate-contaminated water stream is pumped to a settling pond on the site. The solids settle in the pond, and the water is recirculated to the scrubber. When solids fill the pond, the pond could be dredged and the solids could be landfilled, or a new pond could be constructed. Solid wastes from wet scrubbers used to control emissions from dryers and calciners are not classified as hazardous wastes under the regulations adopted to implement the Resource Conservation and Recovery Act. The standards would result in negligible adverse water, noise, and radiation impacts.

III. Energy Impacts

In the fifth year after the NSPS would become applicable, the maximum increase in energy consumption for mineral calciner and dryer control devices would be 17,000 megawatt-hours (MWh) compared to the SIP level of control for typical facilities. This incremental energy requirement of the NSPS to operate control equipment would be less than 1 percent of the energy demands to operate the calciner and dryer process units.

IV. Economic Impacts

Based on industry growth projections, it is estimated that 62 new claciners and 32 new dryers will be installed in the first 5 years that the NSPS is in effect. In addition, during this same time period it is expected that 60 calciners and 44 dryers will be replaced at existing facilities at the end of their useful lives.

The total nationwide incremental capital cost of pollution control equipment in the fifth year would range from $2.2 to $3.0 million under the standards compared to the SIP level. The variation in costs is due to those process units for which either a fabric filter or a wet scrubber could be installed. If only wet scrubbers were installed, the capital cost of installation would be lower than if only fabric filters were installed. For the 104 new process units that are projected in the first 5 years of the NSPS to replace existing units at the end of their useful lives, capital control device costs would increase over baseline levels in 23 percent of the cases as a result of upgrading the design of the control devices (e.g., increased pressure drop for

a wet scrubber). In 11 percent of the cases, the existing wet scrubber control devices are operated at pressure drops that achieve both the SIP and NSPS emission limits and, therefore, no incremental capital costs would be incurred as a result of the NSPS. In 66 percent of the cases, fabric filters installed to meet SIP emission limits would achieve the NSPS emission limit with improved operation and maintenance. Therefore, there is no capital cost increase for fabric filter control devices.

The total nationwide incremental annualized cost of pollution control equipment in the fifth year would range from $0.7 to $1.0 million. If only wet scrubbers were installed where an option exists, the annualized costs would be higher than if only fabric filters were installed because of the additional energy costs associated with operating a scrubber and the product recovery credits associated with operating a fabric filter.

The annualized control device costs for the 104 projected process units would increase as a result of improved operation and maintenance of fabric filters (66 percent of the cases) or as a result of upgrading the design of a wet scrubber or ESP (23 percent of the cases). As with the capital costs, annualized control costs would not change in 11 percent of the cases where wet scrubbers achieve both the SIP and NSPS emission limits.

The projected growth and profitability of the 17 mineral industries are not expected to be affected adversely by implementation of the NSPS. For 15 of the 17 industries included in the analysis, the product price increases that would be required as a result of the NSPS would typically be less than 0.5 percent. Typical size facilities in the fire clay and lightweight aggregate industries would experience product price increases of 1.00 and 1.75 percent, respectively, as a result of implementation of the NSPS.

A detailed discussion of the costs and economic impacts associated with the NSPS is contained in the preamble (51 FR 15438; April 23, 1986) and BID (EPA 450/3–85–025a) for the proposed standards.

V. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (50 FR 31025; July 31, 1985) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards for calciners and dryers in mineral industries recommended for proposal. The meeting was held on September 17, 1985. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The proposed standards were published in the **Federal Register** on April 23, 1986 (51 FR 15438).

The preamble to the proposed standards discussed the availability of the BID, "Calciners and Dryers in Mineral Industries—Background Information for Proposed Standards" (EPA–450/3–85–025a), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on June 9, 1986, at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed standards. The public comment period was from April 23, 1986, to July 7, 1986.

Fourteen comment letters were received and 12 interested parties testified at the public hearing concerning issues relative to the proposed standards. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

VI. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, trade associations, and State air pollution control agencies. A detailed discussion of these comments and responses can be found in the BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions which have been made to the standards between proposal and promulgation.

In response to the public comments and as a result of EPA's reevaluation, several changes have been made to the standards since proposal. The definition of "mineral processing plant" in the standards was revised to provide that a new, modified, or reconstructed dryer or calciner which processes a mixture of minerals is covered by the standards if the majority of the material being processed (greater than 50 percent) is any of the following minerals or a combination of these minerals: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite.

Also, changes have been made with regard to the opacity monitoring requirements. The owners or operators of certain units that use a dry control device to comply with the calciner or dryer mass emissions standard are required to install a COMS, except as discussed previously under Section I of this preamble. In addition, certain calciners and dryers as listed in Section I and in the regulation are exempt from the monitoring requirement.

A technical correction was made to the final standards to clarify the monitoring and recordkeeping requirements for facilities which are controlled by wet scrubbers. In addition, the semiannual recalibration requirements for monitoring devices in § 60.734, Monitoring of emissions and operations, have been deleted. The only requirement for COM's intended for operation and maintenance are daily zero and span checks.

In § 60.735, paragraph (b) was added to clarify that each owner or operator who uses a wet scrubber to comply with the standards must record daily the arithmetic average over a 2-hour period of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flowrate.

The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: Need for Regulation of Source Category, Control Technology, Economic Impact, Selection of Emission Limits, and Monitoring Requirements.

A. Need for Regulation of Source Category

Several commenters questioned EPA's determination that calciners and dryers in mineral industries are sources of emissions that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health and welfare.

There are six source categories currently listed on the NSPS priority list (August 21, 1979; 44 FR 49225; revised January 8, 1982; 47 FR 950) that include all 17 mineral industries being covered by this NSPS. Number 13 on the priority list is Nonmetallic Mineral Processing, which includes sand and gravel, clay (ball clay, bentonite, fuller's earth, kaolin), talc, feldspar, diatomite, roofing granules, and vermiculite. Number 14 on the priority list, Metallic Mineral

Processing, includes aluminum, magnesium compounds, and titanium dioxide. The lightweight aggregate (LWA) industry (clay, shale, slate) is Number 32 on the NSPS priority list. Numbers 34, 46, and 54 on the list are gypsum, brick and related clay products (fire clay), and perlite, respectively. The priority list was promulgated under Section 111(f) of the Clean Air Act. Source categories were included on the list if, in the Administrator's judgment, they cause or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Source categories were ranked in order of priority according to (1) quantity of emissions; (2) potential impact on health and welfare; and (3) mobility and competitive nature of the source category.

These industries were included on the NSPS priority list because of their emissions of particulate matter. Particulate matter is a criteria pollutant which has been determined to be an air pollutant that may endanger public health and welfare and for which a national ambient air quality standard (NAAQS) has been promulgated (40 CFR 50.6 and 50.7). Fuller's earth, alumina, ball clay, bentonite, fire clay, kaolin, magnesite, and other dusts emitted by the industries covered by the NSPS are types of particulate matter. The basis for the Administrator's determination that particulate emissions may endanger public health and welfare is presented in the rulemaking for setting and revising the NAAQS for particulate matter (52 FR 24634; July 1, 1987).

The main purpose of standards of performance is to require new sources, wherever located, to reduce emissions to the level achievable by the best technological system of continuous emission reduction considering the cost of achieving such emission reduction, any nonair quality health and environmental impact, and energy requirements (BDT) [Section 111(a)(1)]. Congress recognized that establishing such standards would minimize increases in air pollution from new sources, thereby improving air quality as the nation's industrial base is replaced over the long term. An NSPS thereby serves as a distinct means of achieving the Act's goals, supplementing the role played by the requirements, including Reasonably Available Control Technology requirements for existing and new sources within State implementation plans developed for the purpose of attaining the NAAQS.

The existence of other environmental regulations was considered during selection of BDT, but their existence does not lead the EPA to conclude that standards reflecting better control technology cannot be applied at reasonable costs.

The EPA has considered the emission reductions, costs, and other impacts due to emission controls and has concluded that the controls underlying the standards are BDT. Under Section 111 of the Clean Air Act, EPA is therefore required to promulgate standards of performance that reflect BDT for this category of sources.

B. Control Technology

Several commenters perceived that the proposed standards did not allow for the use of low-energy wet scrubbers because control devices with greater energy consumption are required to achieve the NSPS limits. They felt that energy consumption is an important consideration in the selection of a control device and it is inappropriate to regulate against the use of energy-efficient devices.

The EPA does not necessarily recommend the use of a high pressure drop scrubber or any other emission control technology to attain and maintain compliance with the performance requirements of this standard. Compliance with the pollutant concentration limits of this standard can generally be achieved by application of one of many alternative emission control strategies and, for a specific case, EPA does not require that a particular control device be used.

In several industries, EPA has determined that low energy wet scrubbers (pressure drops less than 6 inches of water gauge) can achieve the standard based on emission test data presented in chapter 4 of the proposal BID. The pressure drops required for scrubbers to meet the standards were based on the most-difficult-to-control case for that particular process unit in each industry. Other process units in that industry that are less difficult to control should be able to comply with this NSPS using lower pressure drops. In all cases, the cost, energy, and economic impacts associated with any increased pressure drop were evaluated and determined to be reasonable by EPA.

C. Economic Impact

Seven commenters stated that the LWA industry is declining due to rising energy costs, environmental control costs, and impacts of product substitutes, in particular, pumice. Two of these commenters felt that the LWA industry would be destroyed by the proposed standards. One commenter stated that, due to the additional environmental control costs, many companies would continue to operate old, existing sources and eventually the industry would die of old age and lack of reinvestment. The commenters suggested that the LWA industry either be dropped because of economic reasons or that an alternative control level equal to current State regulations be selected.

One of the commenters stated that the incremental capital cost for a lightweight aggregate calciner would be 10 to 20 times higher than the cost for other industries based on data in the proposal BID. Also, the commenter calculated the annual incremental cost for this industry to be 4–9 times that estimated by EPA for other industries. He also stated that the costs and product price increases were underestimated by EPA and that these costs and price increases would be overly burdensome on the LWA industry considering that this industry accounted for only 5.8 percent of the emission reduction from this NSPS.

Another commenter believed that this NSPS would have a doubling effect in terms of costs on the LWA industry as the standards also apply to the refractory industry whose products are used by the LWA industry. This commenter also stated that this NSPS would have a similar cumulative economic impact on the fire clay industry as that industry uses both dryers and calciners. He also stated that other regulated minerals are used in the refractory products and, therefore, price increases could approach 3–4 percent and create a major burden on the refractory industry.

The EPA believes the costs and economic impacts associated with this NSPS are reasonable and would not have the disruptive impact on the LWA and refractory industries described by the commenters. Many factors such as obsolete machinery; newer, more efficient and competitive plants; changing market demands; and better substitute products influence a corporate decision as to whether it is prudent to invest in new equipment or to continue to operate old, existing equipment until operation is no longer possible. The product price increases attributable to the NSPS are quite small—less than 2 percent for all industries. It is possible that various forces external to the costs of NSPS would preclude investment in newer plants and equipment. The actual cost, however, resulting from this NSPS is very small, and it is unlikely that investment plans would be made based on a cost so small.

With regard to pumice, there is no doubt that pumice is a substitute for LWA, although in many cases pumice is an inferior substitute. The LWA industry has a far larger share of the total market (LWA plus pumice) than pumice. Pumice's share of the market has ranged from 9 to 19 percent of the total market, an average of 13 percent. The current levels of production of LWA are down from past levels. However, the losses in LWA production are due to other factors and not due to gains by pumice as pumice's recent share of the total market is similar to its historical position. Additionally, pumice production from domestic mines has declined, as well as pumice imports, signalling a downturn in the total market for both products. The EPA does not believe that the cost of this NSPS will lead to a competitive disadvantage for the LWA industry.

In regard to the incremental cost of an NSPS, it is important to establish a common basis. One basis used by EPA is the ratio of the incremental cost of the NSPS to the megagrams (Mg) of reduction in particulate emissions. The range of incremental cost using this approach for the LWA industry, depending on the type and size of the affected facility, is $240 to $1,100/Mg. This is within the range of incremental cost per megagram ratios determined for the other industries affected by the NSPS.

Another measure of the effect of incremental cost relates incremental cost to the selling price of the product. Based on a product price of $22/Mg for the LWA industry and allowing for the increased costs that the commenter felt EPA missed, the percent product price increase including electrical costs would be 0.4 to 2.4 percent depending on the type of control device. These impacts were considered reasonable and not burdensome by EPA.

Additive effects of the NSPS are possible where an industry utilizes both calciners and dryers. In the case of fire clay production, cumulative effects could be as high as 2 percent; although effects would typically be 1.6 percent using the least costly control device for a rotary dryer. The 2 percent estimate is based on the smallest plant size and resultant worst case.

In estimating the additive effects for refractory products manufacturing, the commenter simply added the price increase for LWA and the price increase for fire clay. This is an overstatement because refractories are only a portion of the cost components for LWA. In order to calculate the actual effect, one needs to know the percent of the LWA plant's total expenses that is attributable to refractory products. This can then be used to calculate how much the plant's total expenses will increase as a result of any increase in the price for refractory products. In any case, the increase will be less than the 3 to 4 percent estimated by the commenter. Therefore, EPA does not believe the NSPS will have a doubling effect in terms of cost on the LWA industry.

D. Selection of Emission Limits

One commenter recommended limiting emissions from both calciners and dryers to 0.092 g/dscm (0.040 gr/dscf). The commenter felt the proposed limit for dryers of 0.057 g/dscm would preclude the use of low energy scrubbers. Two commenters questioned the fairness and rationale of having a more stringent standard (0.057 g/dscm) for dryers alone compared with the standard (0.092 g/dscm) for dryers and calciners in series. One of the commenters stated that it did not seem equitable because producers without calciners but with dryers would be bound by a more stringent standard.

The NSPS emission limit for calciners and for dryers and calciners in series (0.092 g/dscm) is different than for dryers alone (0.057 g/dscm) because EPA's emission test data support these limits. As shown in chapter 4 of the proposal BID, all emission test data for dryers were less than 0.057 g/dscm except for four dryers controlled by wet scrubbers and one controlled by a baghouse which was not operating properly as there was leakage through a closed bypass damper. By using EPA's wet scrubber model, increases in pressure drop were calculated to ascertain what is required to achieve 0.057 g/dscm. All emission test data for calciners were less than 0.092 g/dscm except for three calciners controlled by wet scrubbers. Again, EPA's wet scrubber model was used to determine the pressure drop required to achieve 0.092 g/dscm. Also, emission test results for a flash dryer/rotary calciner installed in series were 0.092 g/dscm.

These limits are based on EPA's judgment of the technology which represents BDT considering the cost, any nonair quality health, environmental impact, and energy requirements. In this case, BDT is a baghouse or high energy scrubber, although in some instances low energy scrubbers may achieve comparable performance. A standard based on low energy scrubbers for all sources covered by this NSPS would not reflect BDT or reduce emissions to a level achievable by BDT.

E. Monitoring Requirements

Several commenters felt that the reasons used by EPA to justify continuous opacity monitoring and the associated recordkeeping and reporting are inadequate. Two of the commenters stated that broken bags in a collector are apparent without the need for a COMS and the increased capital and operating costs associated with it are not commensurate with the benefits. They felt that this requirement should apply only to major sources of pollution. Another commenter stated that his company's experience with these monitors has shown them to be expensive, difficult to install, very difficult to maintain, and inaccurate. He recommended dropping the requirements.

One commenter stated that the measured moisture content with the flue gases from their dryers vary from 7 to 22 percent by volume and during cold weather, plume moisture occurs with little or no plume stack separation. In addition, he stated that condensed water has appeared on the stack exterior in the vicinity of the sample ports at his plant. He felt these conditions were not conducive to in-stack opacity monitoring devices and, therefore, it would be more reasonable to require a certified observer to record opacities on a periodic basis. Another commenter felt that a COMS for an ESP controlling a dryer processing bentonite would continuously yield erroneous readings due to dripping water, falling clay-laden films, and clay film bridging. He cited problems his company has experienced with a bentonite dryer controlled by a dry ESP.

In regard to the commenters' concerns about the opacity monitoring requirements and the use of COMS's, section 114 of the CAA authorizes EPA to require such monitoring as is appropriate for enforcing NSPS. Also, Section 302(1) of the CAA defines "standards of performance" to include "any requirement relating to the operation and maintenance of a source to assure continuous emission reduction." The EPA's experience with control devices shows that regular maintenance, both remedial and preventive, greatly enhances control equipment efficiency. As stated in the preamble to the proposed standards (51 FR 15438; April 23, 1986), opacity monitoring can indicate when fabric filter bags are torn loose and when ESP electrodes are damaged or malfunctioning. The EPA's long-time experience with COMS's is that the devices operate accurately and with

minimum downtime with regular and reasonable maintenance.

The EPA agrees with the commenters that a sudden increase in emissions resulting from either broken bags in a baghouse or a sudden failure of a baghouse or ESP would be immediately apparent and require attention by the source operator. However, the purpose of a COMS or other monitoring alternatives such as daily visible emissions observations is to alert industry and enforcement personnel of potential violations of the mass emission standard and to ensure the proper operation and maintenance of particulate control equipment on a continuous basis; i.e., to alert the operator to more subtle and gradual deterioration of the control device efficiency that occurs over time and results in increased emissions unless corrected. The emission reduction performance of air pollution control equipment is dependent upon the proper operation of many components of the control systems. While certain parameters can provide information on the status of certain key components, it is generally not possible to determine overall control device performance by monitoring parameters other than emissions. Without COMS's, operators have essentially no tools that they can use to monitor the continued performance of ESP's or fabric filter systems or to ensure that necessary maintenance is performed. The broken rapper welds and bag deterioration are examples of items that affect emissions and that cannot be evaluated or detected except with COMS's. The reporting of excursions as recorded by COMS's also helps State and local enforcement programs identify sources which are having repeated maintenance problems with their control devices. Since plant inspections and testing are infrequent, gradual deterioration will not be detected until a major failure occurs unless opacity monitoring is required.

The benefits of using a COMS are documented in a recent study conducted at Portland cement plants (Docket A–82–39, Item II–A–130). The study concludes that COMS's installed on control equipment at these plants contributed significantly to lower emissions. The emission reduction benefits are derived from: (1) Indicating when repair and maintenance of control equipment are needed, (2) signalling the need for a change in operating and maintenance practices for the process and the air pollution control device, and (3) quantifying emission reductions after the installation of a COMS. Factors which contributed to the lower emissions from the facilities were: (1) An increased sensitivity of the plant operating personnel that changes in process operating conditions and flue gas characteristics affect stack emissions, and (2) the awareness by plant operators that increased stack opacities below the opacity limit can be indications of excess particulate emissions.

Nevertheless, as the amount of emissions from an individual source decreases, the benefits of monitoring also decrease and at some point it is no longer reasonable to require a COMS or other monitoring alternative. Therefore, as a result of the comments received, EPA evaluated four alternative monitoring requirements: The use of a COMS; the reading of visible emissions daily or weekly by a certified visible emissions observer; and no monitoring requirements (Docket No. A–82–39; Item IV–B–1).

As a result of the analysis, the Administrator has determined that it is reasonable to require the installation of COMS's on all dryers and calciners of a certain type within an industry where the typical size unit of that type has potential emissions after NSPS control equal to or greater than 22.7 Mg/yr (25 tons/yr). For typical size units with emissions less than 22.7 Mg/yr (25 tons/yr) but greater than or equal to 10.0 Mg/yr (11 tons/yr), the Administrator has determined that owners or operators may perform daily visible emission observations in lieu of installing a COMS. The Administrator has also determined that typical units with emissions less than 10.0 Mg/yr (11 tons/yr) should be exempt from any monitoring requirements. Because of the variation in emissions after NSPS control for each size and type of calciner or dryer and for each industry, the monitoring requirements are based on the typical size of a particular type of calciner or dryer in each industry. The specific monitoring requirements for each type of dryer or calciner in each industry are presented in Section 60.734 of the final standards.

The following discussion summarizes the basis for the specific monitoring requirements for each type of dryer or calciner. The EPA used 22.7 Mg/yr (25 tons/yr) as the cutoff level for particulate matter (PM) emissions in determining which facilities would be required to install COMS's if they use dry control devices. In the prevention of significant deterioration (PSD) rules, EPA set *de minimis* levels of emissions for various pollutants. For PM emissions, the level was selected by evaluating the potential effect of different emissions levels on an area's air quality and how that related to the National Ambient Air Quality Standard (NAAQS) for PM. The analysis was based on a source's potential to emit after application of all appropriate Federal regulations such as NSPS. The significance level for PM emissions was set at 22.7 Mg/yr (25 tons/yr). Therefore, the Administrator has determined that it is beneficial and reasonable to require the installation of COMS's on all calciners and dryers of a certain type within an industry where the typical size unit of that type has emissions after NSPS control equal to or greater than 22.7 Mg/yr (25 tons/yr).

As stated previously, however, as the amount of emissions from an individual source decreases, the expected benefits of monitoring decrease and at some point it is no longer reasonable to require a COMS or other monitoring alternative. As a result, for calciners and dryers with emissions of less than 22.7 Mg/yr (25 tons/yr) after NSPS controls, the EPA assessed alternatives other than the installation of a COMS. These alternatives included daily or weekly visible emissions observations and no monitoring requirements. In assessing the reasonableness of performing daily versus weekly visible emission observations, it was determined that the cost of either one would be similar but would not deliver the same benefits. In both cases, employees of the affected plant would need to be formally certified as opacity readers twice per year. The costs associated with the certification would be incurred regardless of whether a daily or weekly monitoring requirement was imposed. The other costs associated with these alternatives are the annual cost of performing the observations and recording the results. The annual cost of weekly readings of visible emissions would be reduced somewhat, but because of the fixed cost of certification, would cost approximately 40 percent of the cost of doing daily observations. Moreover, a daily observation program would be more effective at identifying gradual deterioration of the control device efficiency and allowing a plant operator time to correct the problem prior to a complete failure of the device. A weekly observation program would not identify the gradual deterioration of the control device as quickly and, in some cases, a failure of the control device could occur between two weekly observations. Because requiring daily observations would yield substantially greater benefits than weekly observations and the cost difference

was considered reasonable, the alternative of weekly observations was considered inferior for the sources with less than 22.7 Mg/yr (25 tons/yr) of emissions after NSPS control. Therefore, for typical size units with emissions less than 22.7 Mg/yr (25 tons/yr), but greater than or equal to 10.0 Mg/yr (11 tons/yr), the regulation has been revised to allow the owner or operator to perform daily visible emission observations in lieu of installing a COMS.

On the other hand, the Administrator has determined that typical size units with emissions less than 10.0 Mg/yr (11 tons/yr) should be exempt from any monitoring requirements. In making this determination, consideration was given to the size of the source in terms of the emissions after NSPS control is applied. In addition, the benefits associated with monitoring, such as identifying sources that are having control equipment problems for the appropriate enforcement agency so corrective action can be taken, were considered. For very small sources with small control devices, the benefits associated with a COMS or daily visible emission observations, in terms of reducing excess emissions, are smaller in comparison to larger sources. The cost of daily visible emission observations as a percent of the annualized cost of operating the control equipment was also considered. For these reasons, typical size units with emission less than 10.0 Mg/yr (11 tons/yr) are exempt from any monitoring requirements.

In regard to concerns raised about moisture on the exterior of a stack interfering with the operation or accuracy of a COMS, EPA does not believe this condition will have any effect on the measurement of opacity in the stack and the commenter had no data to support this claim. However, if high moisture content in the stack or other situations such as falling clay-laden films or clay-film bridging are interfering with the performance of a COMS, the owner or operator may petition the Administrator to approve an alternative monitoring procedure, requirement, or location according to 40 CFR 60.13(i).

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2063-_____.

The public reporting burden for this collection of information is estimated to average 492 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2063-_____) Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to certain requirements of the Order. The EPA has determined that the regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be major. The total nationwide incremental annualized costs in the fifth year after the standards would go into effect would range from $0.7 to $1.0 million, less than the $100 million established as the first criterion for a major regulation in the Order. The maximum estimated price increase of 1.75 percent associated with the standards would not be considered a "major increase in costs or prices" specified as the second criterion in the Order. The economic analysis of the standard's effect on the industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms which is the third criterion in the Order.

This regulation was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection in Docket No. A-82-39, at EPA's Air Docket Section listed under the **ADDRESSES** section.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires EPA to consider potentially adverse impacts of regulations on small business "entities." If a preliminary analysis indicates that a regulation would have a significant economic impact on 20 percent or more of small entities, then an RFA must be prepared. The EPA definition of significant effect involves four tests: (1) Prices for small entities rise 5 percent or more, assuming costs are passed on to consumers; or (2) annualized investment costs for pollution control are greater than control costs as a percentage of sales for large entities; or (3) control costs as a percentage of sales for small entities are 10 percent greater than control costs as a percentage of sales for large entities; or (4) the requirements of the regulation are likely to result in closures of small entities.

The Act's definition of "small business" is based on definitions developed by the Small Business Administration (SBA). The SBA's definitions are listed in 13 CFR part 121 by Standard Industrial Classification (SIC) categories. For most of the mineral dryer and calciner industries, the SBA defines a small business as one with 500 or fewer employees (the two exceptions are gypsum and titanium dioxide, each of which is 1,000 employees). Most of the mineral dryer and calciner industries do include small businesses according to the SBA definiton. The regulation would apply to all businesses (small and large) in the 17 industries, and as a result the test of a substantial number of small businesses is met.

Although there are a substantial number of small businesses, the measure of significant effects is not likely to be met. The absolute level of the percent product price increases is quite small for most of the industries, typically about 0.5 percent or less. Thus, the first test is never triggered. Neither are the second or fourth tests triggered. The third test is occasionally triggered, but the absolute sizes of the numbers are so small as to make this test inapplicable. For example, in the diatomite industry, a small flash dryer (4 Mg/h) has control costs as a percentage of sales that are 23 percent higher than

the corresponding percentage for a larger flash dryer (11 Mg/h). But the absolute levels of these two percentages are 0.16 percent and 0.13 percent, and the 23 percent difference between them is virtually meaningless. Thus, because the absolute levels of the percent product price increases are quite small for most of the industries, and because the tests are presented as guidelines, as interpretation of he spirit and purpose of the Act indicates that the industries do not exceed the Act's states. Because these standards impose no adverse economic impacts, Regulatory Flexibility Analysis has not be conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities because the impact of the final rule is not significant.

E. Miscellaneous

The effective date of this regulation is September 28, 1992. Section 111 of the Clean Air Act provides that NSPS or revisions thereof become effective upon promulgation and apply to affected facilities, the construction or modification of which was commenced after the date of proposal, April 23, 1986.

As described in section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that calciners and dryers in use in the mineral processing industries contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any NSPS promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Metallic minerals, Nonmetallic minerals, Reporting and recordkeeping requirements.

Dated: September 19, 1992.

William K. Reilly,

Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By adding a new subpart UUU consisting of §§ 60.730 through 60.737 to read as follows:

Subpart UUU—Standards of Performance for Calciners and Dryers in Mineral Industries

Sec.

60.730 Applicability and designation of affected facility.
60.731 Definitions.
60.732 Standards for particulate matter.
60.733 Reconstruction.
60.734 Monitoring of emissions and operations.
60.735 Recordkeeping and reporting requirements.
60.736 Test methods and procedures.
60.737 Delegation of authority.

Subpart UUU—Standards of Performance for Calciners and Dryers in Mineral Industries

§ 60.730 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each calciner and dryer at a mineral processing plant. Feed and product conveyors are not considered part of the affected facility. For the brick and related clay products industry, only the calcining and drying of raw materials prior to firing of the brick are covered.

(b) An affected facility that is subject to the provisions of subpart LL, Metallic Mineral Processing Plants, is not subject to the provisions of this subpart. Also, the following processes and process units used at mineral processing plants are not subject to the provisions of this subpart: vertical shaft kilns in the magnesium compounds industry; the chlorination-oxidation process in the titanium dioxide industry; coating kilns, mixers, and aerators in the roofing granules industry; and tunnel kilns, tunnel dryers, apron dryers, and grinding equipment that also dries the process material used in any of the 17 mineral industries (as defined in § 60.731, "Mineral processing plant").

(c) The owner or operator of any facility under paragraph (a) of this section that commences construction, modification, or reconstruction after April 23, 1986, is subject to the requirements of this subpart.

§ 60.731 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act and in subpart A of this part.

Calciner means the equipment used to remove combined (chemically bound) water and/or gases from mineral material through direct or indirect heating. This definition includes expansion furnaces and multiple hearth furnaces.

Control device means the air pollution control equipment used to reduce particulate matter emissions released to the atmosphere from one or more affected facilities.

Dryer means the equipment used to remove uncombined (free) water from mineral material through direct or indirect heating.

Installed in series means a calciner and dryer installed such that the exhaust gases from one flow through the other and then the combined exhaust gases are discharged to the atmosphere.

Mineral processing plant means any facility that processes or produces any of the following minerals, their concentrates or any mixture of which the majority (>50 percent) is any of the following minerals or a combination of these minerals: alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite.

§ 60.732 Standards for particulate matter.

Each owner or operator of any affected facility that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test required by § 60.8 is completed, but not later than 180 days after the initial startup, whichever date comes first. No emissions shall be discharged into the atmosphere from any affected facility that:

(a) Contains particulate matter in excess of 0.092 gram per dry standard cubic meter (g/dscm) [0.040 grain per dry standard cubic foot (gr/dscf)] for

calciners and for calciners and dryers installed in series and in excess of 0.057 g/dscm for dryers; and

(b) Exhibits greater than 10 percent opacity, unless the emissions are discharged from an affected facility using a wet scrubbing control device.

§ 60.733 Reconstruction.

The cost of replacement of equipment subject to high temperatures and abrasion on processing equipment shall not be considered in calculating either the "fixed capital cost of the new components" or the "fixed capital cost that would be required to construct a comparable new facility" under § 60.15. Calciner and dryer equipment subject to high temperatures and abrasion are: end seals, flights, and refractory lining.

§ 60.734 Monitoring of emissions and operations.

(a) With the exception of the process units described in paragraphs (b), (c), and (d) of this section, the owner or operator of an affected facility subject to the provisions of this subpart who uses a dry control device to comply with the mass emission standard shall install, calibrate, maintain, and operate a continuous monitoring system to measure and record the opacity of emissions discharged into the atmosphere from the control device.

(b) In lieu of a continuous opacity monitoring system, the owner or operator of a ball clay vibrating grate dryer, a bentonite rotary dryer, a diatomite flash dryer, a diatomite rotary calciner, a feldspar rotary dryer, a fire clay rotary dryer, an industrial sand fluid bed dryer, a kaolin rotary calciner, a perlite rotary dryer, a roofing granules fluid bed dryer, a roofing granules rotary dryer, a talc rotary calciner, a titanium dioxide spray dryer, a titanium dioxide fluid bed dryer, a vermiculite fluid bed dryer, or a vermiculite rotary dryer who uses a dry control device may have a certified visible emissions observer measure and record three 6-minute averages of the opacity of visible emissions to the atmosphere each day of operation in accordance with Method 9 of appendix A of part 60.

(c) The owner or operator of a ball clay rotary dryer, a diatomite rotary dryer, a feldspar fluid bed dryer, a fuller's earth rotary dryer, a gypsum rotary dryer, a gypsum flash calciner, gypsum kettle calciner, an industrial sand rotary dryer, a kaolin rotary dryer, a kaolin multiple hearth furnace, a perlite expansion furnace, a talc flash dryer, a talc rotary dryer, a titanium dioxide direct or indirect rotary dryer or a vermiculite expansion furnace who uses a dry control device is exempt from the monitoring requirements of this section.

(d) The owner or operator of an affected facility subject to the provisions of this subpart who uses a wet scrubber to comply with the mass emission standard for any affected facility shall install, calibrate, maintain, and operate monitoring devices that continuously measure and record the pressure loss of the gas stream through the scrubber and the scrubbing liquid flow rate to the scrubber. The pressure loss monitoring device must be certified by the manufacturer to be accurate within 5 percent of water column gauge pressure at the level of operation. The liquid flow rate monitoring device must be certified by the manufacturer to be accurate within 5 percent of design scrubbing liquid flow rate.

(Approved by the Office of Management and Budget under control number 2060–A999)

§ 60.735 Recordkeeping and reporting requirements.

(a) Records of the measurements required in § 60.734 of this subpart shall be retained for at least 2 years.

(b) Each owner or operator who uses a wet scrubber to comply with § 60.732 shall determine and record once each day, from the recordings of the monitoring devices in § 60.734(d), and arithmetic average over a 2-hour period of both the change in pressure of the gas stream across the scrubber and the flowrate of the scrubbing liquid.

(c) Each owner or operator shall submit written reports semiannually of exceedances of control device operating parameters required to be monitored by § 60.734 of this subpart. For the purpose of these reports, exceedances are defined as follows:

(1) All 6-minute periods during which the average opacity from dry control devices is greater than 10 percent; or

(2) Any daily 2-hour average of the wet scrubber pressure drop determined as described in § 60.735(b) that is within 10 percent of the average value recorded according to § 60.736(c) during the most recent performance test that demonstrated compliance with the particulate matter standard; or

(3) Each daily wet scrubber liquid flow rate recorded as described in § 60.735(b) that is within 20 percent of the average value recorded according to § 60.736(c) during the most recent performance test that demonstrated compliance with the particulate matter standard.

(d) The requirements of this section remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Clean Air Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected facilities within the State will be relieved of the obligation to comply with this section provided that they comply with the requirements established by the State.

(Approved by the Office of Management and Budget under control number 2060–A999)

§ 60.736 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.732 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and volume for each test run shall be at least 2 hours and 1.70 dscm.

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity from stack emissions.

(c) During the initial performance test of a wet scrubber, the owner or operator shall use the monitoring devices of § 60.734(d) to determine the average change in pressure of the gas stream across the scrubber and the average flowrate of the scrubber liquid during each of the particulate matter runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 60.735(c).

§ 60.737 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: No restrictions.

[FR Doc. 92–23450 Filed 9–25–92; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 514, and 550

[Docket No. 92–38]

Reduction of Notice Requirement for Tariff Increases in the Domestic Offshore Trades; Exemption Under Section 35 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") amends its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce and its rules governing protests and replies thereto. These amendments would reduce notice requirements for tariff increases by carriers providing port-to-port service in the domestic offshore trades and would amend the time for protesting such increases. The exemption would permit such carriers to publish, on not less than seven workdays' notice, any new or changed tariff matter which results in an increased cost to the shipper, but which does not meet the statutory definition of general rate increase, or the new definition of across-the-board increase incorporated in this rule. Protests to increases or changes filed on less than thirty days' notice could be filed not later than 9 a.m. of the last workday prior to the effective date of the increase or rule change.

EFFECTIVE DATE: October 28, 1992.

FOR FURTHER INFORMATION CONTACT: Seymour Glanzer, Director, Bureau of Hearing Counsel, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001; (202) 523–5783 (Phone), (202) 523–5785 (Fax).

SUPPLEMENTARY INFORMATION: Section 2 of the Intercoastal Shipping Act, 1933 ("1933 Act"), 46 U.S.C. app. 844, requires ocean carriers providing port-to-port service in the domestic offshore trades to file, on thirty days' notice, any new or changed tariff matter, except for general rate increases or decreases, which must be filed on sixty days' notice. On December 16, 1991, the Commission issued a final rule in Docket No. 91–42, *Tariff Filing Notice Requirements; Domestic Offshore Trades*, 26 S.R.R. 70 (1991), which creates an exemption under section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 833a, for such carriers to file on one day's notice any new or changed tariff matter which does not increase the shipper's cost of transportation.[1] This action followed and superseded several earlier exemptions to the thirty days' notice requirement which were granted to particular carriers or trades pursuant to individual applications for such relief.[2] In granting these exemptions from statutory notice requirements, the Commission cited regulations of the Interstate Commerce Commission ("ICC"), at 49 CFR 1312.39(h), which permit new and reduced joint, single-factor, motor-water rates to be filed on one day's notice with that agency.

For more than a decade, regulatory jurisdiction in the domestic offshore trades has been split between this Commission and the ICC, depending on whether the form of transportation is port-to-port, or joint intermodal transportation with a segment taking place within a state or the District of Columbia. In the latter case, the entire transportation, including the ocean portion, is subject to ICC jurisdiction.[3]

Independent motor-water rates and charges in the domestic offshore trades filed at the ICC may be increased on not less than seven workdays' notice pursuant to ICC regulations at 49 CFR 1312.39(h) (2) and (4). Those same regulations permit changes on seven workdays' notice to rules or other provisions which effect reductions in the value of service or increases in rates or charges. Rates, rules and charges of ICC-regulated freight forwarders of household goods are governed by the same provisions.

Ocean carriers providing port-to-port services subject to FMC jurisdiction compete with carriers providing motor-water services subject to ICC jurisdiction.[4] Thus, to foster greater consistency in regulation and to permit carriers to compete more equally in the domestic offshore trades, the Commission proposed to reduce notice requirements for tariff increases in these trades from thirty days to seven workdays. The proposed change applied to both vessel-operating carriers and non-vessel operating common carrier ("NVOCCs") and governed commodity rate increases as well as other new or changed tariff filings which would result in an increase in the shippers' cost of transportation, but which would not meet the statutory definition of "general rate increase" ("GRI").[5]

In deciding to reduce the notice period for tariff increases, the Commission also noted that the shorter time period would give shipping lines the flexibility to respond more quickly to market changes and would remove a disincentive to establishing lower rates. As noted by Professor David A. Butz in an Addendum Report to the Advisory Commission on Conferences in Ocean Shipping, p. E–39 (1992), requiring a long notice period to increase individual rates introduces price rigidity and creates an incentive for a carrier not to cut rates.

Currently, the Commission's rules permit protests to proposed tariff changes made pursuant to the 1933 Act to be filed and served no later than twenty days prior to the proposed effective date of the change. 46 CFR 502.67(b)(2). The ICC permits protests of a tariff filed on less than ten days' notice (including motor-water tariffs filed pursuant to 49 CFR 1312.39(h) (2) and (4)) to be submitted not later than 9 a.m. on the last workday before the tariffs scheduled effective date. 49 CFR 1132.1(b). To be consistent with the ICC, and to give protestants the maximum amount of time for preparing protests and requests for investigation and suspension, we proposed a similar rule for challenging tariff increases before the FMC. In addition, the rule proposed to reduce the required contents of such protests to accommodate the shorter time for preparation.

In recognition of the vital interests of offshore states, territories and possessions in ocean transportation, the Commission also proposed that increases filed by carriers on less than 30 days' notice be transmitted by facsimile transmission, or by hand delivery, on the date of filing, to officials or offices designated by states, territories or possessions served by the carrier in order to provide several extra days for review now consumed by the process of mailing such tariff changes. Notice of the proposed rule was published in the **Federal Register** on June 16, 1992, 57 FR 26809.

Comments in support of the proposal were filed by American President Lines, Ltd. ("APL"), Coastal Transportation,

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[1] This exemption does not extend to any "general decrease in rates" as that term is defined by section 1 of the 1933 Act, 46 U.S.C. app. 843. Such general decreases still require sixty days' notice.

[2] *Matson Navigation Co., Inc.—Application for Section 35 Exemption*, 24 S.R.R. 1518 (1989); *Tariff Filing Periods—Exemption*, 24 S.R.R. 1604 (1989); *Application of Sea-Land Service, Inc. For Exemption Under section 35 of the Shipping Act, 1916*, 25 S.R.R. 660 (1990); *Tropical Shipping & Construction Co., Ltd.—Application for Section 35 Exemption*, 25 S.R.R. 1471 (1991); *Application of Trailer Marine Transport Corporation Under Section 35 of the Shipping Act, 1916*, 25 S.R.R. 1660 (1991); *Puget Sound Tug & Barge Co.—Application for Section 35 Exemption: Hawaii and Alaska Trades*, 26 S.R.R. 61 (1991).

[3] *Puerto Rico Maritime Shipping Authority* v. *ICC*, 645 F. 2d 1102 (D.C. Cir. 1981); *Trailer Marine Transport Corp.* v. *FMC*, 602 F. 2d. 370 (D.C. Cir. 1979).

[4] There also may be competition in some of the domestic offshore trades from carriers offering rail-water services subject to ICC jurisdiction. In general, rates, rules and charges for rail services may be increased on 20 days' notice. 49 CFR 1312.39(h)(2) and 1312.4(e)(1)(i)(A). However, rail carriers also may provide intermodal service which is exempt from regulation under 49 CFR part 1090.

[5] General rate increases, as defined by section 1 of the 1933 Act, would continue to be filed on sixty days' notice, to permit the thorough analysis of these increases directed by Congress in the 1978 amendments to that statute. See H.R. Rep. No. 474, 95th Cong. 1st Sess. 9 (1977); S. Rep. No. 1240, 95th Cong. 2d Sess. 12 (1978).

Inc. ("Coastal"), Crowley Maritime Corporation ("Crowley"), Matson Navigation Company, Inc. ("Matson"), Puerto Rico Maritime Shipping Authority ("PRMSA"), Sea-Land Service, Inc. ("Sea-Land"), and Tropical Shipping and Construction Co., Ltd. ("Tropical"). Opposing comments were filed by the State of Hawaii ("Hawaii"), and Tobias E. Seaman/NASCCMA aka National Association of Shippers, Consignees and Consumers for Maritime Affairs ("Seaman").

Generally, the seven commenting carriers support the proposed rule, and agree the that FMC-regulated carriers will be able to compete more equally with ICC-regulated carriers should this proposal be implemented. Several of these comments, however, indicate a preference for other forms of regulation or relief. For example, APL states a belief that a requirement of thirty days' notice of increases is desirable because of the stability and opportunity for competitive equality such a notice provides to shippers. Nevertheless, APL supports this rule because of the availability of seven workdays' notice of increases for motor-water rates in these trades. Coastal would prefer seven calendars days', rather than seven workdays' notice of increases. Tropical would prefer that the Commission adopt a zone of reasonableness for rate increases up to ten percent and further zone of reasonableness for the U.S. Virgin Islands Trade, as suggested by its comments in Docket No. 91-51, Financial Reports of Common Carriers by Water in the Domestic Offshore Trades, advance notice of proposed rulemaking, 56 FR 57298 (Nov. 8, 1991).

In addition, clarification is sought by PRMSA as to whether the term "tariff matter" as used in § 550.2(b) 1) and (2) is intended to include all "rules, rates, charges and notes." PRMSA states that its experience in filing tariff matter that does not result in an increased cost to the shipper on one day's notice, as currently permitted by § 550.1(b)(1), has been that notes and footnotes have not been included within this definition.

Both APL and PRMSA suggest modifications to the provision requiring carriers to deliver short notice tariff increases by hand or facsimile transmission ("fax") to officials or offices of states, commonwealths or territories. APL urges that such a requirement be implemented without directing carriers to place a rule in their tariffs to that effect. PRMSA seeks clarification whether this requirement applies to all states served by the carrier, or just to offshore jurisdictions. PRMSA also urges clarification that the obligation rests upon individual states, commonwealths and territories to provide the name, address and fax number of each official or office designated to receive such tariff changes. Tropical suggests that the Commission solicit the views of the various offshore governments and allow them to decide if and when they want notice of rate increases, rather than assume that an offshore government desires to receive each and every change filed by a carrier.

Two of the carriers suggest modifications or clarifications to that part of the proposed rule which would permit protests to increases to be filed as late as 9 a.m. of the day prior to the effective date of the increases. APL and Sea-Land urge retention of the current rules for protests against increases that are filed (voluntarily) on at least thirty days' notice. Currently, protests are required to be filed and served no later than twenty days prior to the proposed effective date of the change. Sea-Land also argues that the proposed rule should not remove the current requirement that protests include a subscription and verification.

Hawaii opposes that portion of the proposed rule which would affect across-the-board rate increases of less than three percent. It argues that GRIs have become the exception, rather than the rule, and that the instant proposal would effectively remove non-GRIs, which can have significant impact, from regulatory oversight. While recognizing the problems which arise because the ICC and FMC apply different regulatory models to competitors, and sometimes to the same carrier, Hawaii argues that it is the FMC's model that should be preserved (with certain other modifications) and the ICC's which should be revisited. Hawaii also questions the Commission's authority to promulgate this rule and argues that neither the market, which is said to be distorted by cabotage laws and other government aids, nor the right to file a complaint seeking reparation, are satisfactory substitutes for effective regulation.

Seaman on behalf of himself and NASCCMA and its members,[6] describes the proposed rule as an attempt to deregulate the domestic offshore trades and lists nine reasons for opposing the Commission's proposed action.

Among the nine reasons, Seaman argues that the Commission is proposing to exceed its authority by amending section 2 of the 1933 Act, that the proposal is contrary to the language and legislative history of section 35 of the 1916 Act, and that the proposal would place an unfair burden on shippers and violate their due process rights as well as the 1916 Act and the Administrative Procedure Act 5 U.S.C. 551 et seq. Seaman also points to differences in statutes administered by the FMC and ICC as reasons for not adopting ICC regulations governing rate increases, and asserts that there is no need to conform to ICC regulations because any carrier may file tariffs with the ICC at any time. Seaman argues that the domestic offshore trades are not contestable markets, citing the recent decision of the U.S. Court of Appeals for the D.C. Circuit upholding the Commission's conclusion to that effect in FMC Docket No. 90-09,[7] and asserts that there is no basis in fact that carriers in these trades would be more likely to reduce their rates if they were permitted a shorter notice period for rate increases. In addition, Seaman suggests that the Commission has misread President Bush's memorandum of January 28, 1992 (Reducing the Burden of Government Regulation), and that it was not the President's intent to remove regulations where the result would be substantial cost increases to the consumer.

The Commission is persuaded by the comments of Hawaii and Seaman that the proposed exemption should not apply to across-the-board increases of less than 3 percent. Recent experience with such increases in the Hawaii trade and the similarity of such increases to GRIs warrants a distinction between these and other types of non-GRI increases.

As noted in Hawaii's comments, across-the-board increases of less than 3 percent have been a significant feature of recent domestic offshore ratemaking. In fact, a table introduced by Hawaii in Docket No. 90-09,[8] *supra*, listed twenty across-the-board rate increases in the Hawaii trade between 1983 and 1990, thirteen of which did not meet the GRI threshold of 3 percent. The Commission instituted two separate investigations into across-the-board rate increases of less than 3 percent in 1985, found one increase to be unreasonable [9] and

[6] Mr. Seaman has appeared and filed documents on behalf of NASCCMA in several FMC proceedings, but has never identified the membership of that organization.

[7] *Matson Navigation Company, Inc. Proposed General Rate Increase of 3.6 Percent Between U.S. Pacific Coast Ports and Hawaii Ports*, 25 S.R.R. 1102 (1990), *aff'd sub nom. Matson Navigation Company, Inc. v. FMC*, 959 F.2d 1039, 26 S.R.R. 283 (D.C. Cir. 1992).

[8] Exhibit SOH-DT-606.

[9] Docket No. 85-24, *Matson Navigation Company, Inc. Proposed Overall Rate Increase of 2.5 Percent*

Continued

discontinued the investigation of the other because of a deadlocked 2–2 vote.[10]

Therefore, the Commission is retaining the statutory notice period of 30 days for such across-the-board increases and retaining the current rules at 46 CFR 502.67(b)(2) which apply to protests of such increases. Other changes to these rules governing protests are being considered in response to Hawaii's Petition P1–92, Amendments to Rules Governing Rate Proceedings in the Domestic Offshore Trades, 57 FR 2702 (Jan. 23, 1992).

In order to distinguish across-the-board increases from other non-GRI increases, the Commission is adding the following definition to 46 CFR 550.2:

Across-the-board increase means any change in rates, fares, or charges which will: (1) result in an increase in not less than 50 percent of the total rate, fare or charge items in the tariffs per trade of any carrier, and (2) directly result in an increase in gross revenues of said carrier for the particular trade of less than 3 percent.[11]

Having excluded across-the-board increases from the scope of this rule, the new, seven workdays' notice period and accompanying adjustments to the Commissions rules governing protests will apply to all individual commodity rate increases and other non-GRI increases filed by domestic offshore carriers. These filings constitute the majority of tariff increases in the domestic offshore trades. Thus, the stated objectives for the proposed rule—greater consistency with ICC tariff regulations, and the removal of a possible disincentive for carriers to reduce rates—are essentially satisfied.

We are confident that this rule, as amended, will not substantially impair effective regulation, be unjustly discriminatory or be detrimental to commerce. Since at least 1981, the Commission has not investigated any of the types of increases that could be filed on seven workdays' notice pursuant to the final rule.[12] Moreover, the rule will not prevent the Commission from investigating any such increases under either section 3 of the 1933 Act, 46 U.S.C. app. 845, or under section 18(a) of the 1916 Act, 46 U.S.C. app. 817(a). Thus, effective regulation will not be impaired.

Because the reduced notice period will be available to all vessel operating common carriers as well as NVOCCS, it will not be unjustly discriminatory among carriers. To the contrary, it will remove a significant difference in notice periods available to ICC-regulated and FMC-regulated carriers.

Nor can the Commission perceive any unjust discriminatory among shippers or other entities which might result from this reduction in tariff filing notice. Shippers which utilize FMC-regulated services will receive the same notice of most tariff increases as shippers which utilize ICC-regulated services.

By bringing FMC regulations closer to ICC regulations, and by removing a possible disincentive to establishing and maintaining lower rates, this rule will have a positive, rather than detrimental, effect upon commerce in the domestic offshore trades. This regulatory consistency is achieved without significant impact on the Commission's ability to control the level of rates in these trades.

The Commission has considered each of the clarifications and technical modifications suggested in the carriers' comments and has accommodated most of those suggestions as follows.

In response to PRMSA's comments, the term "tariff matter" as used in § 550.1(b) (1) and (2) is intended to include all rules, rates, charges and notes as well as any other matter properly filed in domestic offshore tariffs. The experience that PRMSA refers to in connection with notes and footnotes effecting short notice decreases was apparently the result of unrelated technical problems, which has since been corrected.

We concur with APL's suggestion that the requirement to deliver short notice tariff increases by hand or by fax to officials or offices of states, commonwealth or territories should be implemented without directing carriers to place a rule in their tariffs to that effect. Placing this provision in the Commission's rules will be sufficient to accomplish the purpose, without encumbering the carriers' tariffs with another required rule. Failure to serve copies of such increases on designated offices or officials could still result in rejection of the increases by the Commission. The final rule reflects this change in § 550.3(h)(2).

PRMSA's suggestions is also well taken that we clarify whether the requirement to serve copies of short notice increases applies to all states served by the carrier or just to offshore jurisdictions. The rule itself is clear, as is the existing language of § 550.3(h)(2), in that the governor of any state, commonwealth or territory served by a carrier may request that carrier to furnish copies of any filed tariff matter which affects that jurisdiction. The confusion to which PRMSA refers was generated by the Supplementary Information of the proposed rule, which stressed the vital interests of offshore jurisdictions in ocean transportation. The Commission intends that this requirement continue to be applicable with respect to any state, commonwealth, or territory served by a domestic offshore carrier.

We have also accommodated PRMSA's related suggestion for clarification of the carrier's obligations under § 550.3(h)(2). The language of that section in the proposed rule, as well as in the existing regulations, is clear that the carrier's obligation to provide copies of tariffs and tariff changes to officials or offices of states, commonwealths or territories arises only upon the written request of the governor of that jurisdiction and the designation by that governor of the official or office to receive such tariff matter. The carrier has no obligation to provide such tariff matter or to serve copies of short notice increases by fax or hand delivery until the governor has made such a request and the related designation. However, because the Commission is adopting APL's suggestion to delete the requirement for carriers to place a rule in their tariffs to implement the new service requirements for short notice increases, we are specifying in § 550.3(h)(2) that the name, address and fax number of the designated official or

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between United States Pacific Coast Ports and Hawaii Ports, Order Partially adopting Initial Decision, 23 S.R.R. 1216 (1986), Report on Remand, 25 S.R.R. 83 (1989); *Aff'd per curiam sub nom. Tobias E. Seaman v. Federal Maritime Commission*, Docket No. 89–1407 (D.C. Cir. March 23, 1990).

[10] Docket No. 85–3, *Matson Navigation Company, Inc. Proposed Overall Rate Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii Ports*, Order Discontinuing Proceeding, 23 S.R.R. 662 (December 27, 1985). The rate level that resulted from the across-the-board increase that was investigated in Docket No. 85–3 was later investigated as part of Docket No. 85–24 and was found unreasonable. The Commission ordered a roll-back of 1.5 percent.

[11] This definition, like the current definition of general increase contained at 46 CFR 550.2(k), would include surcharges, as well as other types of across-the-board increases. In its comments, Coastal noted a particular interest in how the proposed rule would affect filing of fuel surcharges and asserted that the proposed rule would have allowed surcharges to be increased on seven workdays' notice. This only would have been true under the proposed rule if the surcharge were less than 3 percent. Otherwise, it would likely meet the definition of GRI and require 60 days' notice, unless special permission were obtained to file on shorter notice. Carriers in these trades frequently seek and obtain special permission to file cost pass-through surcharges on short notice and accompanied by abbreviated, alternative data under 46 CFR part 552.

[12] In 1981, the Commission investigated tariff amendments filed by PRMSA which increased approximately 300 commodity items by 2.9 percent. Docket No. 81–70, *Puerto Rico Maritime Shipping Authority-Proposed 2.9% Rate Increase Affecting Major Commodities in the U.S. Atlantic and Gulf/Puerto Rico and Virgin Islands Trades*, Order of Investigation and Suspension, November 19, 1981, Order of Discontinuance, December 30, 1981 (unreported).

office must also be furnished by the governor before this new service requirement must be implemented by a carrier.

We find it unnecessary to act upon Tropical's suggestion that the Commission solicit the views of these governments rather than assume that they desire to receive each and every short notice rate increase. No such assumption is contained in the proposal or in the existing rule. The governor of each such state, commonwealth or territory must make a written request, designate an official or office, and provide the address and fax number to which such increases must be sent.

The Commission is adopting the suggestion made by both APL and Sea-Land to require that protests of increases filed on at least thirty days' notice continue to be submitted no later than twenty days prior to the effective date of the pertinent increase. This is particularly appropriate in view of the Commission's retention of thirty days' notice for across-the-board increases, as discussed above. The requirement to file protests no later than twenty days prior to the effective date of a tariff change will also be applicable to other, non-GRI tariff increases filed voluntarily on at least thirty days' notice.[13] Thus, the ability to file streamlined protests as late as 9 a.m. on the day prior to the effective date of a tariff increase will be limited to new or amendatory tariff matter filed on less than thirty days' notice.

Finally, we believe that Sea-Land's suggestion to retain the requirement that protests include a subscription and verification is unnecessary. New § 502.67(b)(3) requires that protests shall be filed and served in accordance with subpart H of 46 CFR part 502. That subpart, at § 502.112, contains the Commission's requirements for subscription and verification of documents.

In addition to these clarifications and modifications in response to carrier comments, the Commission has made other technical changes in the final rule which are necessitated by the distinction, discussed above, between across-the-board increases and other, non-GRI increases. Further, for clarification, we have added a new definition of "workday" to § 550.2, which is identical to that set forth in ICC regulations at 49 CFR 1314.5(c).

As mentioned in the Supplementary Information of the proposed rule, the actions taken here also will impact the interim rule in Docket No. 90–23, Tariffs and Service Contracts, published on August 12, 1992 (57 FR 36248). Accordingly, appropriate amendments are herein made to that interim rule, published at 46 CFR part 514.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. The rule only will adjust the notice period and the protest period for a class of rate increases which the Commission has found no reason to investigate since at least 1981. Moreover, the ability to raise such rates on shorter notice may encourage carriers to establish and maintain lower rates.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072–0005. Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20573.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Reporting and recordkeeping requirements.

46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and recordkeeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, section 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, parts 502, 514, and 550 of title 46, Code of Federal Regulations are amended as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6569); and 21 U.S.C. 853a.

2. In § 502.67, paragraph (b)(2) is revised and a new paragraph (b)(3) is added to read as follows:

§ 502.67 Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933.

* * * * *

(b) (1) * * *

(2) Protests against across-the-board increases, as defined in § 550.2 of this chapter, and against other proposed changes in tariffs filed on at least thirty (30) days' notice, shall be filed and served no later than twenty (20) days prior to the proposed effective date of the change. The provisions of paragraph (b)(1) of this section relating to the form and manner of filing protests against a proposed general rate increase or decrease shall be applicable to protests against across-the-board increases and

[13] The content of protests against non-GRI increases filed on at least thirty days' notice is being considered in connection with Hawaii's Petition P1–92, *supra*.

other proposed changes in tariffs filed on at least thirty (30) days' notice. A protest is deemed filed on the date it is received by the Commission.

(3) Protests against other proposed changes in tariffs filed on less than thirty (30) days' notice shall be filed and served not later than 9 a.m. on the last workday before the scheduled effective date of the change. any protest may be made by letter and shall be filed with the Director, Bureau of Tariffs, Certification and Licensing, and served upon the tariff publishing officer of the carrier in accordance with subpart H of this part. Such protest shall identify the tariff in question and the grounds for opposition to the change as well as the relief sought by the protestant. A protest is deemed filed on the date it is received by the Commission.

* * * * *

PART 514—TARIFFS AND SERVICE CONTRACTS

3. The authority citation for part 514d continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1705, 1707–1709, 1712, 1714–1716, 1718 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

4. In § 514.2, add the following definitions in alphabetical order:

§ 514.2 Definitions.

* * * * *

Across-the-board increase (domestic offshore commerce) means any change in rates, fares, or charges in domestic offshore commerce which will: (1) Result in an increase in not less than 50 percent of the total rate, fare or charge items in the tariffs per trade of any carrier, and (2) directly result in an increase in gross revenues of said carrier for the particular trade of less than 3 percent. See § 514.9(b)(1).

Workdays (domestic offshore commerce) means all days except Saturdays, Sundays, and all federal holidays observed in the District of Columbia. See § 514.9(b)(24)(ii).

* * * * *

5. In § 514.3, paragraph (d)(1) is revised to read as follows:

§ 514.3 Exemptions and exclusions.

* * * * *

(d) *Domestic offshore commerce—(1) Notice requirements; general.* Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish:

(i) On one day's notice, any new or amendatory tariff matter that does not result in an increased cost to the shipper. This exemption may not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the 1933 Act. See § 514.2; and

(ii) On seven workdays' notice, any new or amendatory tariff matter that results in an increased cost to the shipper. This exemption may not apply to any increase which is part of a "general increase in rates" as defined by section 1 of the 1933 Act (see § 514.2), or any increase which is part of an "across-the-board" increase in rates as defined in § 514.2.

(2) * * *

* * * * *

6. In § 514.4, paragraph (a) is revised to read as follows:

§ 514.4 Content, filing and cancellation of tariff material; general.

(a) *Effectiveness of new or initial and conference tariffs in the domestic offshore and foreign trades.* Unless otherwise provided by the Commission or this part, all conference and carrier tariff material tendered for filing (including the tariffs of carriers entering a trade for the first time), shall bear an effective date which complies with the appropriate notice period(s) prescribed in § 514.9 or in other sections of this part. The notice period between filing and effective date shall commence at 12:01 a.m. of the day of filing, as evidenced by the Commission's receipt notation. The tariff may take effect at 12:01 a.m. of the day after the notice period expires.

* * * * *

7. In § 514.8, paragraphs (k)(1)(i) and (k)(1)(ii) are revised to read as follows:

§ 514.8 Electronic filing.

* * * * *

(k) *Publication; paper copies of tariff materials—(1) Publication—(i) Availability for public inspection.* (A) During normal business hours, every carrier, conference and terminal operator shall promptly make available to the public in paper or electronic form and at a reasonable charge (such as for a regular subscription under § 514.15(b)(30)) all tariff material required by this part to be filed by the carrier, conference or marine terminal operator, as well as all Commission actions affecting such tariff material, such as rejections, suspensions, etc.

(B) In addition to the requirements of paragraph (k)(1)(i)(A) of this section, every domestic offshore carrier shall make available to the public at each facility at which it receives freight or passengers for transportation, or at which it employs a general or sales agent, all tariff material governing transportation to and from the facility in question.

(ii) *Availability of domestic offshore tariff materials to government officials.* The governor of any state, commonwealth or territory served by a domestic offshore carrier may request a carrier in writing to furnish to a designated government official or office tariff matter filed by the carrier which pertains to trades affecting the state, commonwealth or territory in question. Such request may be for the tariff matter either to be made available in electronic format, or to be furnished in no more than two (2) paper copies. Upon receipt of such a request, which shall include the name, address and facsimile transmission number(s) of the designated official or office, the carrier shall promptly provide to the designated official or office the requested tariff material and add the official or office to its list of tariff subscribers. No charge shall be made for the service, but such officials and offices shall be treated in the same fashion as paid subscribers in all other respects. See § 514.15(b)(30). In addition, a copy of any new or amendatory tariff matter that results in an increased cost to the shipper and that is filed on less than 30 days' notice pursuant to § 514.9(b)(24)(ii), shall be provided to the designated Government officials or offices, on the same day that such tariff matter is filed with the Federal Maritime Commission, by hand delivery or facsimile transmission of one paper copy, or by electronic transmission, if available.

* * * * *

8. In § 514.9, paragraphs (b)(1) and (b)(24)(ii) are revised to read as follows:

§ 514.9 Filing/Amendment codes and required notice periods.

(a) * * *

(b) * * *

(1) *"A" Increase (Foreign commerce and across-the-board increase which is not a general rate increase in domestic offshore commerce under paragraph (b)(7) of this section ["G"]: 30 days' notice.* (i)(A) Except for a general rate increase in domestic offshore commerce, amendments which provide for changes in rates, charges, rules, or other tariff provisions (including fares in domestic offshore commerce), which constitute a cost increase in foreign commerce or an

across-the-board increase in domestic offshore commerce, shall use the symbol "A" and be filed to become effective not earlier than 30 days' after the date of filing, unless an exemption or special permission to become effective on less than said 30 days' notice has been granted by the Commission. See paragraph (b)(24)(ii) of this section for domestic offshore increases which may be filed on seven workdays' notice.

(B) With the filing of tariff material under this paragraph (b)(1)(i), domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(ii) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher "cargo n.o.s." or similar general cargo rate, is a rate increase requiring the appropriate notice period and corresponding symbol under this section.

* * * * *

(24) * * *

(i) * * *

(ii) *Domestic offshore tariff increases not general or across-the-board increases (7 workdays' notice).* (A) Except for an across-the-board increase ("A") or a general rate increase ("G") in domestic offshore commerce, an amendment which provides for changes in rates, fares, charges, rules, or other tariff provisions, which constitutes a cost increase in domestic offshore commerce, shall use the symbol "X" and be filed to become effective not earlier than 7 workdays' after the date of filing, unless an exemption or special permission to become effective on less than said 7 workdays' notice has been granted by the Commission. See paragraphs (b)(1) and (b)(7) of this section.

(B) With the filing of tariff material under this paragraph (b)(24)(ii), domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(C) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher "cargo n.o.s." or similar general cargo rate, is a rate increase requiring the appropriate notice period and corresponding symbol under this section.

* * * * *

PART 550—PUBLISHING, FILING AND POSTING OF TARIFFS IN DOMESTIC OFFSHORE COMMERCE

9. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

10. In § 550.1, paragraph (b) is revised to read as follows:

§ 550.1 Exemptions.

* * * * *

(b) Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish:

(1) On one day's notice, any new or amendatory tariff matter that does not result in an increased cost to the shipper. This exemption shall not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843; and

(2) On seven workdays' notice, any new or amendatory tariff matter that results in an increased cost to the shipper. This exemption shall not apply to any increase which is part of a "general increase in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843, or any increase which is part of an "across-the-board" increase in rates as defined in § 550.2.

11. In § 550.2, paragraphs (a) through (z) are redesignated paragraphs (b) through (aa), and new paragraphs (a) and (bb) are added to read as follows:

§ 550.2 Definitions.

* * * * *

(a) *Across-the-board increase* means any change in rates, fares, or charges which will:

(1) Result in an increase in not less than 50 percent of the total rate, fare or charge items in the tariffs per trade of any carrier; and

(2) Directly result in an increase in gross revenues of said carrier for the particular trade of less than 3 percent.

* * * * *

(bb) *Workdays* means all days except Saturdays, Sundays, and all federal holidays observed in the District of Columbia.

12. In § 550.3, paragraphs (f) and (h)(2) are revised to read as follows:

§ 550.3 Filing of tariffs; general.

* * * * *

(f) All tariff matter tendered for filing shall bear an effective date which complies with the notice periods prescribed in § 550.10 or in other sections of this part. The notice period between filing and effective date shall commence at 12:01 a.m. of the day of filing, as evidenced by the Commission's receipt notation. The tariff may take effect at 12:01 a.m. of the day after the notice period expires.

* * * * *

(h) * * *

(2) The governor of any state, commonwealth or territory served by a domestic offshore carrier may request a carrier in writing to furnish a designated government official or office no more than two (2) copies of any tariff matter filed by the carrier which pertains to trades affecting the state, commonwealth or territory in question. Upon receipt of such a request, which shall include the name, address and facsimile transmission number of the designated official or office, the carrier shall provide promptly to the designated officer or office the requested copies of its tariff(s) and add the official or office to its list of tariff subscribers. No charge shall be made for the service, but such officials and officers shall be treated in the same fashion as paid subscribers in all other respects. In addition, a copy of any new or amendatory tariff matter that results in an increased cost to the shipper and that is filed on less than 30 days' notice pursuant to 46 CFR 550.1(b)(2), shall be provided to the designated government officials or offices by facsimile transmission, or hand delivery, on the same day that such tariff matter is filed with the Federal Maritime Commission.

* * * * *

13. In § 550.10, paragraph (b) is revised to read as follows:

§ 550.10 Amendments to tariffs.

* * * * *

(b) Amendments establishing new or initial rates, or changing rates, fares, charges, rules, or other tariff provisions, which do not constitute a general increase or decrease in rates, shall be posted and filed, together with any supporting material required by 46 CFR part 552 of this chapter, as follows:

(1) Amendments extending actual service to additional ports at rates or fares already in effect for similar service at the ports being added may take effect on the same day they are filed and posted;

(2) Amendments adopting a tariff pursuant to § 550.17 may take effect on the same day they are filed and posted;

(3) Amendments completely canceling a tariff pursuant to § 550.12(a)(2) due to a cessation of all service by the publishing carrier between the ports or points listed in the canceled tariff, may

take effect on the same day they are filed and posted;

(4) Amendments which do not result in an increased cost to the shipper, except for general rate decreases, may be posted and filed on not less than one day's notice;

(5) Amendments which result in an increased cost to the shipper, except for general rate increases and across-the-board increases, may be posted and filed on not less than seven workdays' notice;

(6) Amendments changing rates, fares, charges, rules, or other tariff provisions, which constitute an across-the-board increase, shall be posted and filed at least 30 days prior to their effective date.

* * * * *

14. In § 550.3(o)(3) remove the words "30 days" and add, in their place, the words "7 workdays".

§ 550.17 [Amended]

15. In 46 CFR Part 550, remove the words "30 days' notice" and add, in their place, the words "7 workdays' notice" in the following places:

(a) Section 550.17(b)(2).

(b) Section 550.17(c).

(c) Section 550.17(e).

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-23499 Filed 9-25-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-112; RM-7982]

Radio Broadcasting Services; Hawkinsville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 280C3 for Channel 280A at Hawkinsville, Georgia, and modifies the license for Station WCEH (FM) to specify the higher powered channel at the request of Tri-County Broadcasting Co. See 57 FR 21919, May 26, 1992. Channel 280C3 can be allotted to Hawkinsville in compliance with the Commission's minimum distance separation requirements with a site restriction 20.9 kilometers (13 miles) southwest to accommodate the petitioner's desired transmitter site. The coordinates are North Latitude 32-10-32 and West Longitude 83-39-11. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-112, adopted August 21, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 280A and adding Channel 280C3 at Hawkinsville.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23407 Filed 9-25-92; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 57, No. 188
Monday, September 28, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

1993 Rice Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage, if any, for the 1993 crop of rice. This action is required by section 101B of the Agricultural Act of 1949, as amended (the 1949 Act). This proposed rule outlines a range of acreage reduction percentage options proposed for the 1993 crop of rice.

DATES: Comments must be received on or before October 20, 1992, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to: Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3090–S, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Cene S. Rosera, Agricultural Economist, Fibers and Rice Analysis Division, USDA, ASCS, room 3758–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation (CCC) is required by section 105b(o) of the 1949 Act to request comments with respect to the subject matter of this rule.

A Preliminary Regulatory Impact Analysis was prepared, which determined that this regulation will have no significant impact on a substantial number of small entities because the particular acreage reduction percentages considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. Accordingly, CCC certifies that the rule will have no significant impact on a substantial number of small entities. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal assistance program, as found in the catalog of Federal Domestic Assistance, to which this proposed rule applies, are: Rice Production Stabilization—10.065.

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 101B of the 1949 Act, an acreage reduction program (ARP) may be implemented for the 1993 rice crop if it is determined that the total supply of rice, in the absence of such a program, would be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency.

Land diversion payments also may be made to producers if needed to adjust the total national acreage of rice to desirable goals. A paid land diversion program is not considered because, given the considered program options, it is not needed to achieve the statutory stocks-to-use levels of rice.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (from 0 to 35 percent) to the rice crop acreage base for the crop for each rice producing farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce rice in excess of the permitted acreage for the farm plus any rice acreage planted in accordance with the flexibility provisions are ineligible for loans and purchases and all payments with respect to that crop on the farm.

The Secretary is required to carry out an acreage limitation program in a manner that will result in carry-over stocks equal to 16.5 to 20.0 percent of the simple average of the total disappearance (including domestic, export, and residual disappearance) of rice for each of the 3 marketing years preceding the year for which the announcement is made. The 1993-crop options considered are:

Option 1. 0-percent ARP.

Option 2. 2.5-percent ARP.

Option 3. 5.0-percent ARP.

Option 4. 7.5-percent ARP.

Option 5. 10.0-percent ARP.

The estimated impacts of these options are shown in Table 1.

TABLE 1.—ESTIMATED IMPACTS OF 1993 ARP OPTIONS

	Options				
	1	2	3	4	5
ARP (%)	0.0	2.5	5.0	7.5	10.0
Participation (%)	94	94	94	94	94
Planted Acres (1000 Ac.)	3003	2920	2835	2751	2667
Production (Mil cwt)	165.6	161.2	156.8	152.4	147.9
Domestic/Residual Use (Mil cwt)	97.6	97.2	89.8	89.4	89.0
Exports (Mil cwt)	76.0	74.0	72.0	70.0	68.0
Ending Stocks (mil cwt)	32.9	31.0	28.9	26.9	24.9
Stocks/Use Ratio (%) Prior 3 Years	20.5	19.3	18.0	16.8	15.5
Season Avg. Price ($/cwt)	6.70	6.85	7.00	7.20	7.35
Net Outlays (Mil $)	736	707	665	611	572

Accordingly, comments are requested whether to establish an ARP for the 1993 rice crop, and if so, at what reduction percentage.

The final determination of this percentage will be set forth at 7 CFR part 1413.54(a)(4).

List of Subjects in 7 CFR Part 1413

Cotton, Feed grain, Related programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. In § 1413.54, paragraphs (a)(4) (ii) and (iii) and (d)(3) are revised to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(4)(i) * * *

(ii) * * * 1992 rice, 0 percent.

(iii) 1993 rice, within the range of 0 to 35 percent, if supplies are excessive, as determined and announced by CCC with no paid land diversion.

* * * * *

(d) * * *

(3) Shall not be made available to producers of the 1993 crops of wheat, feed grains and rice, as determined and announced by CCC.

* * * * *

Signed on September 22, 1992, at Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–23385 Filed 9–22–92; 4:19 pm]

BILLING CODE 3410–05–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE38

Acceptability of Plant Performance for Severe Accidents; Scope of Consideration in Safety Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering an amendment to its regulations for future light water reactors (LWRs). The amendment would add provisions for the design of the plant structures to withstand certain challenges from phenomena associated with severe core damage accidents beyond the current "design basis accidents." The NRC is issuing this notice to invite advice and recommendations from interested parties on the proper scope and method to incorporate these provisions into safety regulations.

DATES: Comment period expires December 28, 1992. The NRC will consider comments received after this date only if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send written comments to: The Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:45 am and 4:15 pm on Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas King, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3980.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) is considering developing regulations under 10 CFR part 50 for future LWRs to address the ability of the plant to withstand challenges from phenomena associated with severe core damage accidents. Severe core damage accidents are low probability events beyond the design basis established in 10 CFR part 50 that can lead to significant core damage and radioactive material release from the reactor fuel pins. The NRC believes that research and engineering on the significant severe accident phenomena, event sequences, and cost effective methods to mitigate them, coupled with its understanding of the details of future plant designs, have sufficiently matured to allow the development of plant performance criteria for future LWRs. This advance notice of proposed rulemaking (ANPRM) requests from interested parties advice and recommendations on the proper scope and method to incorporate these considerations into the NRC's regulations.

This ANPRM reflects consideration of the extensive work accomplished in the severe accident area. Specifically, the NRC has already taken various actions in response to severe accident concerns. On October 2, 1980, the Commission issued (45 FR 65474) an ANPRM that invited advice and recommendations on the consideration of degraded or molten cores in safety regulation. Based on recommendations received from that ANPRM, the Commission developed a policy statement that addressed severe accident considerations and withdrew the ANPRM (August 8, 1985; 50 FR 32151). In its "Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants" published August 8, 1985 (50 FR 32133),

the Commission stated its intentions for rulemakings and other regulatory actions for resolving severe accident safety issues. For existing plants, the Commission concluded that these plants posed no undue risk to public health and safety. Therefore, it did not see a need for immediate action on generic rulemaking for these plants because of the low severe accident risk. The Commission has continued to take all reasonable steps to further reduce the risk from severe accidents at existing plants through its regulatory programs. For example, the Commission completed rulemakings on several key issues related to severe accidents (i.e., station blackout, anticipated transients without scram, hydrogen generation and control), has implemented a containment performance improvement program based upon insights regarding containment performance under severe accident conditions, and has initiated a program for individual plant examination (IPE) for severe accident vulnerabilities.

For future plants, the Severe Accident Policy Statement established the criteria and procedural steps under which a new design for a nuclear power plant could be acceptable for meeting severe accident concerns. The NRC recognized the need to strike a balance between accident prevention and consequence mitigation in exploring the need for additional design features in the next generation of plants. Also, the NRC expected that these new plants would achieve a higher standard of severe accident safety performance than prior designs. The Commission stated that a "clarification of containment performance will be made including a decision on whether to establish new performance criteria for containment systems and, if so, what these should be."

The NRC staff has been reviewing proposed criteria for future LWRs submitted by Electric Power Research Institute (EPRI) and several new LWR designs with respect to the Commission's severe accident policy and the design certification aspects of 10 CFR part 52. In performing these reviews, the NRC staff has proposed criteria to address severe accident and containment issues that depart from the existing regulations. For the evolutionary LWR designs, many of these proposed criteria are contained in a paper provided to the NRC Commissioners on January 12, 1990, SECY–90–016, "Evolutionary LWR Certification Issues and Their Relationship to Current Regulatory Requirements." The NRC staff has sought and received Commission guidance on the application of these proposed severe accident and containment criteria to the evolutionary LWR designs now under review. Guidance from the Commission was provided in a Staff Requirements Memorandum, S. Chilk to J. Taylor, dated June 26, 1990. The criteria discussed in this ANPRM would codify much of the Commission's guidance for general application to all future LWRs.

Additionally, the NRC plans to improve its regulations for future plants by separating (decoupling) the acceptance criteria for a reactor site from the acceptance criteria for the design of various engineered safety features (ESF) via rulemaking changes to 10 CFR Parts 50 and 100. The first phase of this decoupling of siting criteria from design criteria focuses on updating and revising siting criteria. The second phase of this process would focus on updating 10 CFR part 50 for future LWRs to:

(1) Implement new LWR source term information,

(2) specify performance criteria for plant design features based on improved knowledge of the release of radioactive material into containment (i.e., new source term), and

(3) specify criteria for plant performance under severe accident conditions. The criteria discussed in this ANPRM are associated with a portion of this second phase, namely item (3) above.

Purpose of the Rule

The NRC believes that adopting a rule to specify acceptable plant performance in response to severe accidents would accomplish the following:

1. Codify the Commission's guidance on severe accident and containment issues that resulted from the review of advanced light water reactors.

2. Provide assurance that the performance of future LWRs under severe accident conditions is consistent with assumptions about severe accident performance used in developing new source term information.

3. Provide guidance to future LWR designers and potential applicants.

4. Add consistency and standardization to the resolution of severe accident issues based on the current technical information.

5. Facilitate design certification rulemakings.

This rule would then help assure that the risk to the public from severe accidents in future LWRs is maintained at very low levels in accordance with experience from existing plants, current insights from risk studies and research results, and the Commission's Safety Goal Policy (August 4, 1986; 51 FR 28044). In addition, this rule could complement and support the review of Severe Accident Design Mitigation Alternatives (SAMDAs) on future LWRs as part of the environmental review carried out under 10 CFR Part 51.

Basis for the Rule

This rule would reflect the NRC's current understanding of severe accident issues from its research, experience with light water reactors now in operation, and review of future designs. Accordingly, this rule would apply to light water reactor designs only, but could possibly provide guidance for establishing criteria for other reactor types. The development of this rule relies on the major factors discussed below.

Since the accident at Three Mile Island in 1979, considerable research on severe accidents has been performed. This research has explored the phenomena associated with in-vessel and ex-vessel severe accident processes; hydrogen generation and control; the form, quantity, and timing of radioactive material release into the containment; challenges to containment integrity; and the consequences to the public. This research has led to the development of data and analytical tools to analyze severe accidents for current and future designs, assess severe accident risk, and evaluate potential risk-reduction improvements in design and operation.

Application of these research results has occurred in many areas. One comprehensive application has been the development of NUREG–1150 [1], "Severe Accident Risk: An Assessment for Five U.S. Nuclear Power Plants." NUREG–1150 used probabilistic techniques to analyze five operating plants from a severe accident risk perspective. This analysis provided the NRC staff with basic insights into the important event sequences that can lead to severe accidents and the mechanisms that can lead to a loss of containment function during severe accidents. These basic insights identified challenges to containment integrity that can be divided into two groups: energetic or rapid energy releases, and slower,

[1] Copies of NUREGS may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

gradually evolving releases to the closed containment system. Examples of containment loadings in the first group include high pressure core melt ejection with direct containment heating, hydrogen combustion, and the initial release of stored energy from the reactor coolant system. Decay heat and noncondensible gas generation from core-concrete interactions typify the group of slow energy releases to the containment. Further insights from this analysis identified major contributors to risk to the public and potential design solutions.

Also, the NRC has frequently interacted over the past several years with EPRI and various reactor designers concerning regulatory criteria for the future evolutionary and passive LWRs. Some of these interactions have addressed both probabilistic and deterministic criteria associated with plant performance under severe accident conditions. These potential criteria have been discussed in various correspondence with EPRI and the reactor designers, and are documented in draft safety evaluation reports on the EPRI Advanced Light Water Reactor Requirements Document.

Finally, in preparing this ANPRM, the NRC has benefitted from the insights provided by an independent study of containment design criteria made by the Advisory Committee on Reactor Safeguards (ACRS). In a letter to the Commission on May 17, 1991, the ACRS proposed a set of criteria addressing the specific challenges posed by severe accidents to the containment design for future light water reactor nuclear power plants. In SECY–92–070, dated February 28, 1992, the NRC staff analyzed these ACRS criteria with respect to EPRI design requirements for evolutionary and passive LWRs, evolutionary vendor designs, passive vendor designs, and the existing Commission guidance for the NRC staff's review of severe accident issues for evolutionary LWRs. This ANPRM reflects consideration of the results of this analysis and the ACRS proposed criteria.

Applicability of the Rule

The NRC has accumulated an understanding of the evolutionary light water reactor designs to complement its understanding of severe accident issues from operating reactors. Based on this understanding, it is expected that the criteria developed in this rule would be consistent and compatible with the criteria being developed and applied in evolutionary LWR reviews. However, due to the advanced stage of the reviews of the current evolutionary designs (GE ABWR and ABB/CE System 80+), it is likely that the resolution of severe accident issues for these designs will occur via the individual design certifications before completion of this rulemaking. The NRC expects the resolution of severe accident issues for the evolutionary LWRs and the results of this rule to be essentially the same.

The NRC staff is also reviewing future LWR designs that use a passive design concept. In contrast to the evolutionary designs, the NRC staff has reviewed only conceptual design information from the passive plant vendors. This preliminary review has not identified any unique features that would prevent the evaluation of these designs under the rule discussed in this ANPRM. Therefore, this rule would be generally applicable to passive LWR designs. However, as detailed design information becomes available and review of the passive systems is completed, further rulemaking may be necessary.

Proposed Changes to Part 50

Discussed below are three potential alternatives for incorporating plant performance criteria for severe accidents into the regulations.

Alternative 1: Hardware Oriented Rule

This alternative (as are the other alternatives discussed in this ANPRM) is based upon ensuring that the risk significant severe accident phenomena, which may cause a loss of containment function in an LWR, are considered in future LWR designs. Based upon currently available information, including the results of risk studies and severe accident research programs, these risk significant severe accident phenomena are:

1. Hydrogen generation and transport, including burning and/or detonation, resulting from metal-water and core concrete reactions;
2. High pressure ejection of molten core material from the reactor vessel;
3. Interactions between molten core debris and reactor basemat material, containment wall and structural material;
4. Containment overpressure and overtemperature from decay heat, non-condensible gas generation, metal-water reactions;
5. Steam explosions from fuel-coolant interactions; and
6. Containment bypass.

Alternative 1 would specify reasonable design features or attributes of design features directed toward prevention or mitigation of the above phenomena. Where design features cannot be precisely specified to prevent or mitigate a severe accident phenomenon, this alternative would require that the applicant provide an evaluation of the phenomenon with respect to the overall containment performance objective specified in the rule. This alternative is derived from the containment performance criteria developed as part of the Commission's advanced reactor reviews and essentially codifies those criteria.

In this approach, those features of the design needed for severe accident prevention and mitigation would be specified directly in the rule. These requirements would be an "overlay" on the existing design basis requirements in 10 CFR part 50 for nuclear power plants. The requirements would be considered and justified on an enhanced safety basis (i.e. using safety goal, cost-benefit analysis and other appropriate considerations such as defense-in-depth and uncertainties) and would complement the existing design basis to enhance the level of safety. However, because of the low likelihood of severe accidents, these new requirements would not be considered to be traditional design basis requirements. For example, design features provided only for severe accident mitigation would not be subject to the same conservative analysis and design requirements that are necessary for systems developed to cope with design basis accidents. A regulatory guide would provide additional guidance on such design details as redundancy, diversity, system capacity, power supply, equipment survivability and analytical assumptions.

An example of this alternative follows:

50.XX Prevention and mitigation of severe accidents

(a) *Applicability.* The criteria of this section apply to the design of light water nuclear power reactors being considered for a construction permit or operating license under 10 CFR part 50 or applications under 10 CFR part 52 on or after the effective date of this rule. The criteria of this section also may provide guidance in establishing the requirements for other types of reactor designs.

(b) *Containment Performance Objective.* The design shall include a containment system that provides a barrier against the release of radioactive material for a period of approximately 24 hours following the onset of core damage under the more likely severe accident challenges. Following this 24 hour period, the containment should continue to maintain a barrier against the uncontrolled release of large

quantities of fission products. This shall be accomplished by:

(1) Including plant design features that:

(i) Provide the reactor coolant system (RCS) with the capability to rapidly and reliably reduce RCS pressure.

(ii) Provide a reactor cavity design that restricts as much as practical the amount of ejected core debris that reaches the upper containment or impinges directly on the containment wall. The cavity design, as a mitigating feature, should not unduly interfere with operations including refueling, maintenance, or surveillance activities.

(iii) Provide a reactor vessel support structure sufficient to retain the reactor vessel in place under the loads generated by a high pressure core-melt ejection.

(iv) Provide for containment-wide hydrogen control (e.g., igniters, large volume), that accommodates the hydrogen resulting from a 100-percent metal-water reaction of the active fuel cladding, and limits containment hydrogen concentration to no greater than 10 percent; or provides that the post-accident atmosphere will not support hydrogen combustion.

(v) Reduce the potential for and effect of interactions with molten core debris by:

(A) Providing reactor cavity floor space to promote core debris spreading and coolability;

(B) Providing a means to flood the reactor cavity to assist in the cooling process and scrubbing of fission products;

(C) Protecting the containment liner and other structural members from direct contact by molten core debris;

(D) Employing basemat materials which reduce the production of non-condensible gases when in contact with molten core debris: and

(E) Ensuring that containment temperature and pressure increases or the generation of missiles resulting from decay heat, fuel-coolant interactions, combustible gas generation and control, and core-basemat material interactions involving a range of event sequences which release core debris into the containment do not cause containment stresses to exceed ASME service level C limits for steel containments, or equivalent for concrete containments, or significant degradation of the containment design leak rate.

(vi) Reduce the possibility of containment bypass and a loss of coolant accident outside containment by designing, to the extent practical, all elements of systems and subsystems (e.g. piping, instrument lines, pump seals, heat exchanger tubes, and valves) located outside containment and connected to the RCS to an ultimate rupture strength at least equal to the full RCS pressure.

(2) Not crediting use of containment venting during the 24 hour period following the onset of core damage in evaluating the design for compliance with the containment performance objective in paragraph (b) above.

(c) *Equipment Survivability.* Features provided for severe accident prevention or mitigation shall be designed to operate for the time period needed in the environment (e.g., pressure, temperature, radiation) in which the equipment is relied upon to function, including consideration of the circumstances of applicable initiating events (e.g., transients, loss of AC power, loss of coolant accidents).

Maintaining containment integrity for a period of approximately 24 hours following the onset of core damage provides time for the remaining airborne activity in the containment (principally noble gases and iodine) to decay to a level that, when analyzed realistically, would be unlikely to cause prompt health effects if containment failure or controlled venting were to occur after that time. In addition, it represents a level of safety significantly below the quantitative health objective for prompt fatalities defined in the Commission's Safety Goal Policy. However, considering the uncertainties involved in analyzing the severe accident phenomena and progression and emphasis on defense-in-depth, it is not unreasonable to include some conservatism in the criteria. This time period would also enhance the time available for offsite protective actions.

To the extent practical during this period, the passive capability of the containment and any related design features (e.g., suppression pool) should provide for containment integrity. Following this period, the containment should continue to provide a barrier against the uncontrolled release of fission products. However, in keeping with the concept of allowing for intervention in coping with long-term or gradual energy release, controlled, elevated venting (if provided in the design) may be given credit in the design analysis after the initial 24 hour period to reduce the chance of containment failure. The intent of specifying in the design analysis no reliance on containment venting during the initial 24 hour period is to achieve the design objective of high containment integrity but not to constrain use of venting during operation if for some reason venting were the desired course of action. Alternatively, a design may use diverse containment heat removal systems or rely on the restoration of normal containment heat removal capability if enough time is available for major recovery actions.

The advantages of this approach include prescribing those design features to reduce the risk from severe accidents, thus promoting a more standardized resolution to severe accident issues. In effect, this alternative is also prescriptive regarding the severe accident phenomena that a future LWR design must address, since the design features specified are a direct result of the phenomena considered. The prescriptive nature of this alternative will also tend to facilitate the NRC review and design certification process by focusing the review on the severe accident phenomena which must be considered and the basic features which the design must incorporate to address those phenomena, thus enhancing regulatory efficiency. In addition, this approach essentially codifies Commission guidance on severe accident and containment issues from the advanced LWR reviews. This approach does not require the applicant to perform extensive severe accident analysis to show compliance with the rule. The applicant could primarily rely upon design features which, through previous analyses and research, have been shown to be effective in reducing the risk from the more likely severe accident scenarios, coupled with deterministic analysis to confirm that the containment performance objective is met.

The disadvantage to this option is that it could discourage designers of future LWRs from developing other design approaches that might be more cost-effective, innovative, or safer.

Alternative 2: Phenomena Oriented Rule

This alternative is a modified version of the first alternative. It, like the first alternative, states an overall containment performance goal and is based upon preventing or mitigating the same severe accident phenomena as described in Alternative 1. However, instead of specifying hardware requirements in the rule to meet the goal, this alternative specifies the severe accident phenomena that need to be addressed in the design. Based upon analysis of these severe accident phenomena, the designer would develop and propose the actual design features necessary to meet the goal. Regulatory guides would address items such as analytical methods, assumptions, acceptance criteria and guidance on design criteria for severe accident

hardware. An example of this alternative follows:

50.XX Prevention and mitigation of severe accidents

(a) *Applicability.* The criteria of this section apply to the design of light water nuclear power reactors being considered for a construction permit or operating license under 10 CFR part 50 or applications under 10 CFR part 52 on or after the effective date of this rule. The criteria of this section also may provide guidance in establishing the requirements for other types of reactor designs.

(b) *Containment Performance Objective.* The design shall include a containment system that provides a barrier against the release of radioactive material for a period of approximately 24 hours following the onset of core damage under the more likely severe accident challenges. Following this 24 hour period, the containment should continue to maintain a barrier against the uncontrolled release of large quantities of fission products. This shall be accomplished by:

(1) Minimizing the likelihood or effects on containment integrity of the following severe accident phenomena:

(i) Uncontrolled hydrogen burning and detonation;

(ii) Interactions between molten core debris and the reactor basemat material, reactor vessel support structure, containment wall, and other structural materials;

(iii) High pressure melt ejection;

(iv) Containment bypass and loss of interfacing system integrity;

(v) Steam explosions due to fuel-coolant interaction; and

(2) Not crediting use of containment venting during the 24 hour period following the onset of core damage in evaluating the design for compliance with the containment performance objective in paragraph (b) above.

(c) *Equipment Survivability.* Features provided for severe accident prevention and mitigation shall be designed to operate for the time period needed in the environment (e.g., pressure, temperature, radiation) in which the equipment is relied upon to function, including consideration of the circumstances of applicable initiating events (e.g., transients, loss of AC power, loss of coolant accidents).

The approach in this phenomena-oriented alternative would be similar to the hardware-oriented alternative in that it is prescriptive regarding the severe accident phenomena which must be addressed in the design; however, it does provide flexibility for the designer to propose solutions specific for the design. This alternative could be made more prescriptive by specifying, for example, the amount of hydrogen or molten core debris which must be considered but, nevertheless, would provide designers with considerably more design flexibility to address severe accident issues than Alternative 1. Applicants would be required to provide analyses showing that their proposed design meets the containment performance objective. However, this alternative would place a heavy reliance on analytical codes to predict the likelihood of severe accidents and their behavior accurately. Limitations of these analytical codes and gaps in knowledge of the phenomenological progression of severe accidents may make such a heavy reliance unacceptable, unless bounding parameters are used. Like Alternative 1, this alternative would facilitate the NRC review and design certification process by focusing the review and limiting litigation on the severe accident phenomena which must be considered; however, it would leave open to review and litigation whether the designer has adequately addressed the severe accident phenomena. Accordingly, this alternative could potentially require considerable NRC review effort prior to accepting an applicant's analytical results. Similar to Alternative 1, this alternative would be in the form of an overlay on the existing design basis specified in 10 CFR part 50 and justified on an enhanced safety basis.

Alternative 3: General Design Criteria (GDC) Oriented Rule

In this alternative, the NRC would develop a set of new design requirements that would include definition of specific challenges posed by severe accidents and issue them as changes or additions to appendix A, "General Design Criteria" (GDC), to 10 CFR part 50. Each new GDC would describe the nature of the severe accident challenge or containment load as well as a success criterion. Usually, success would be defined simply as maintenance of the containment function for an appropriate period following the particular challenge. Regulatory Guides would be developed to provide additional guidance on items such as analysis methods and assumptions. The ACRS outlined this approach in more detail in a letter to NRC Chairman K. Carr, dated May 17, 1991.[8]

This alternative would differ from the other alternatives in that the existing 10 CFR part 50 design basis would be modified to include severe accidents. Accordingly, the design requirements for the severe accident equipment (e.g., quality assurance, equipment survivability, redundancy/diversity) would need to be determined in relation to those for traditional design basis equipment. Different design requirements may be appropriate for severe accident equipment because of the low probability associated with severe accident scenarios. This alternative would give the designer flexibility in devising proposed solutions to severe accident phenomena. Like alternative 2, this alternative would require applicants to submit analyses showing that the criteria are met. Like alternative 2, this would place a heavy reliance on analytical codes to predict severe accident behavior accurately and would leave open to review and litigation in a licensing hearing or design certification rulemaking whether the designer has adequately addressed the severe accident phenomena.

Plans and Schedules

The plant performance requirements described in this ANPRM are part of the second phase of a program to decouple siting and design criteria. In this phase, plant performance requirements for severe accidents, in combination with other necessary changes to 10 CFR part 50, will result in a rule that would complete the decoupling of siting and design. Currently, the Commission plans to publish the proposed rule for comment in mid-1993 and to publish the final rule in mid-1994.

Specific Considerations

The NRC invites comments and recommendations from interested persons on the three alternatives for the proposed rulemaking or additional alternatives, if desired. Furthermore, the NRC requests comments and supporting legal and technical information on the following questions:

1. Is a rulemaking addressing severe accident plant performance criteria desirable? If so, why? If not, why not? Would a rule provide better coherence and predictability to the design review and certification processes for future reactor designs or is rulemaking on these issues via individual design certification sufficient?

[8] The ACRS letter is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are available from Mr. Thomas King, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)492-3980.

2. Would a new rule in 10 CFR part 50 concerning plant performance for severe accidents, as discussed in the three alternatives, provide a basis for revising the requirements on Emergency Planning Zones for future LWRs? If so, why? If not, why not?

3. One option for an overall containment performance criterion that has been considered is that the conditional failure probability of the containment should be less than approximately one in ten. Two of the alternatives use a deterministic surrogate that states that the containment should remain leak tight for a period of approximately 24 hours following the onset of core damage and, after that time, remain a barrier against the uncontrolled release of radioactivity when faced with challenges from the more likely severe accident phenomena. Is this criterion a suitable substitute for the conditional containment failure probability of one in ten? If so, explain why. If not, explain why not. Is a period of approximately 24 hours an appropriate time frame? Is its degree of conservatism appropriate considering uncertainties and defense-in-depth? If not, what alternative would be appropriate? What other criteria (probabilistic or deterministic) might be considered?

4. Alternative 2 would require extensive reliance on analytical tools that calculate the effects of severe accident phenomena. Are there analytical tools that are sufficiently developed and adequate to allow effective implementation of such a phenomena-based rule? If so, what are they, and for what phenomena could they be used? How would alternative 2 be implemented? For example, should the codes and input parameters be approved by NRC? Should acceptance criteria be codified or put in a regulatory guide?

5. Should future LWR containment designs include features beyond those described in alternative 1 to prevent/mitigate severe accidents? If so, what are they?

6. Alternatives 2 and 3 specify phenomenological severe accident challenges that should be considered in the design. Alternative 1 is based upon the same phenomena/challenges. Are there other severe accident phenomena/challenges that should be considered? What should be the criteria for deciding whether a severe accident phenomena or challenge is likely and should be considered? Should the challenges be specified in more detail (for example, specifying the amount of hydrogen generation) or is a general statement of the challenge more desirable?

7. For what reason (e.g., not a risk significant phenomena, not a cost effective solution) would any of the criteria proposed in the three alternatives not be fully applicable to passive designed LWRs?

8. What features could an advanced LWR design include that would prevent or mitigate fuel-coolant interactions?

9. If a design includes the capability to rapidly depressurize the primary system, should it also be required to have a reactor cavity design and/or a reactor vessel support structure capable of mitigating and accommodating a high pressure melt ejection?

10. Should future LWR designs include an on-line instrumentation system that monitors containment atmosphere for gross leakage to reduce the risk from an inadvertent bypass of containment function? Would application of this system be sufficient basis to modify leak rate testing requirements under 10 CFR part 50, appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

11. What design criteria should be developed that provide assurance that the containment's integrity could easily be established during certain shutdown conditions?

12. Should equipment provided only for severe accident prevention or mitigation be subject to (a) the same requirements as design basis equipment (e.g., redundancy/diversity, power supply, environmental qualification, inclusion in plant Technical Specifications, maintenance priority, quality assurance); or (b) lesser standards (e.g., reduced design margins or the regulatory guidance found in appendices A and B of Regulatory Guide 1.155, "Station Blackout?"). If lesser standards, what standards would be appropriate?

13. Alternative 1 discusses not exceeding ASME service level C stress limits for steel containments under certain severe accident conditions. Are these limits appropriate for severe accident conditions? If not, what limits would be appropriate? Could these same stress limits also be used for loads generated by missiles? If not, what limits would be appropriate? What equivalent limits would be appropriate for concrete containments?

14. What information is available regarding the costs (capital and operational/maintenance) of design features that would be required under these alternatives?

15. The containment performance objective discussed in Alternatives 1 and 2 (i.e., containment shall provide a barrier against the release of radioactive material for a period of approximately 24 hours following the onset of core damage) represents a level of safety for a 3800 Mwt plant sited in accordance with 10 CFR part 100 approximately three orders of magnitude below the Commission's quantitative health objective for prompt fatalities, as defined in the Commission's Safety Goal Policy Statement. It could be argued that a future LWR design meeting this objective through analyses and the incorporation of design features need not consider the addition of other features, since these other features would be directed at even more highly unlikely severe accident phenomena and sequences which could be considered "remote and speculative" under the National Environmental Policy Act (NEPA) and 10 CFR part 51. Therefore, would the codification and compliance with such a containment performance objective be sufficient to also define a point of truncation and serve as the basis for an amendment to 10 CFR part 51 eliminating the need for further review of SAMDAs for future LWRs under 10 CFR part 51?

The preliminary views expressed in this ANPRM may change after considering the comments received. In any case, the NRC will provide an opportunity for additional public comment on any proposed rule developed as a result of this notice.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

The authority citation for this document is: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, Pub. L. 93–438 88 Stat. 1242, as amended (42 U.S.C. 5841).

Dated at Rockville, Maryland, this 22d day of September, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–23436 Filed 9–25–92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960-AC55

Supplemental Security Income for the Aged, Blind, and Disabled; Continuation of Full Benefit Standard for Persons Temporarily Institutionalized

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would implement section 3 of the Employment Opportunities for Disabled Americans Act and section 9115 of the Omnibus Budget and Reconciliation Act of 1987. These statutory provisions amend the Social Security Act (the Act) to permit certain recipients to receive payments based on the full supplemental security income (SSI) benefit rate for a limited period after becoming residents of medical or psychiatric institutions.

DATES: To be sure your comments are considered, we must receive them no later than November 27, 1992.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: L.V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1795.

SUPPLEMENTARY INFORMATION: The present regulations generally require the suspension of SSI benefits when a recipient is a resident of a public institution throughout a month, except that the recipient may receive a reduced benefit if he or she is a resident throughout a month in a public or private institution where over 50 percent of the cost of care is paid for by Medicaid. The following legislative provisions, however, now allow for benefits based on the full SSI Federal benefit rate to continue during months of residency in an institution under certain circumstances.

Benefits Payable Based on Section 1611(e)(1)(E) of the Act

Section 3 of Public Law 99-643 (the Employment Opportunities For Disabled Americans Act) added subparagraph (E) to section 1611(e)(1) of the Act. Based on this added provision, a recipient, whose SSI eligibility is based on section 1619 (a) or (b) of the Act for the month preceding the first full month of residence in (1) a public medical or psychiatric institution or (2) a public or private institution where Medicaid is paying more than 50 percent of the cost of care, can remain eligible for an SSI benefit based on the full Federal benefit rate for up to 2 months after entering the institution. This statutory provision also provides that payment is conditioned on an agreement by the institution that these benefits are to be retained by the recipient and cannot be used to defray the cost of institutional care.

Section 1902(o) of the Act requires that all State Medicaid plans provide for disregarding any SSI payments in computing the post-eligibility contribution of the individual to the cost of care. Therefore, if the institution is receiving Medicaid payments for the recipients, we will rely on the agreement the institution signed with the State Medicaid agency to ensure that this condition is met.

Benefits Payable Based on Section 1611(e)(1)(G) of the Act

Section 9115 of Public Law 100-203 (the Omnibus Budget Reconciliation Act of 1987) added subparagraph (G) to section 1611(e)(1) of the Act. Based on this added provision, a recipient is eligible for continued benefits for up to 3 full months after entering the institution if the following conditions are met:

1. A physician certifies that the recipient's stay in the institution or facility is likely not to exceed 3 months;
2. The recipient demonstrates a need to continue to maintain and provide for the expenses of a home or other living arrangement to which he or she may return after leaving the facility; and
3. The recipient was eligible for Federal SSI cash benefits or Federally-administered State supplementation in the month before the month benefits would otherwise be reduced or suspended because of residence in an institution.

The following policies implement the provisions of section 1611(e)(1)(G) of the Act.

We state in the proposed regulations at § 416.212(b) that, in order for a recipient to be eligible for these benefits, the physician's certification and the evidence of the need to pay home or living arrangement expenses must be submitted to SSA no later than the day of discharge or the 90th full day of confinement, whichever is earlier. We will determine the date of submission to be the date we receive it or, if mailed, the date of the postmark. This time frame for submission of the needed evidence to establish eligibility for continued payments represents what we believe is the best balance between the statutory language and congressional intent that:

- The benefits are payable "without interruption;"
- The physician's statement must be "anticipatory" (i.e., based on an expectation rather than accomplished fact); and,
- The Secretary will assist recipients in establishing eligibility for the payments.

We will encourage recipients to submit the necessary evidence as early as possible to facilitate our administration of the provision.

Section 1611(e)(1)(H) allows, but does not require, the Secretary to enter into agreements with outside agencies and organizations for making the determinations required under section 1611(e)(1)(G). We are not exercising the option at this time. The determinations are of a kind that the Social Security Administration makes in the normal course of administering the SSI program.

Proposed Regulations Applicable to Both Categories of Benefits

The proposed regulatory amendments include the following policy provisions that are applicable to both categories of benefits:

1. We will compute a recipient's benefits under sections 1611(e)(1)(E) and 1611(e)(1)(G) of the Act on the basis of the permanent living arrangement used to compute benefits for the month immediately prior to the first month the recipient is otherwise subject to suspension under § 416.1325 or subject to a reduced benefit amount under § 416.414 because of residence in an institution. All the Federal income provisions (including living arrangements, in-kind support and maintenance, and deeming) applicable to the recipient's permanent living arrangement will continue to apply for the period in which benefits are payable while in the institution. This also means that we will compute the benefits as an eligible couple (instead of as two eligible individuals) for months in which

either benefit is being paid to one member of the couple.

We are also proposing to amend the rules on temporary absence from a living arrangement at § 416.1149 to show that these recipients are "temporarily absent" from their permanent living arrangement. This living arrangement as a computation basis will not extend past the last month that section 1611(e)(1)(E) or section 1611(e)(1)(G) benefits are payable or, if the recipient is discharged in the month following the last month of eligibility for section 1611(e)(1)(E) or section 1611(e)(1)(G) benefits, past the date of discharge. In the event the recipient remains institutionalized and becomes eligible for a reduced benefit, the temporary absence ends, and we will consider the institution as the permanent living arrangement. The computation basis will no longer include factors (e.g., deemed income) which were applicable in the recipient's last permanent living arrangement.

We are amending §§ 416.1147, 416.1149, and 416.1167 to reflect the temporary absence rules applicable to the treatment of in-kind support and maintenance and deeming of income and resources for these two types of benefits. We are also amending §§ 416.410, 416.412, 416.413, and 416.414 both to reference the extension of full benefit eligibility to institutionalized recipients under sections 1611(e)(1)(E) and 1611(e)(1)(G) and to update and include the full Federal yearly benefit rate applicable in recent years to an eligible individual, qualified individual, and an eligible couple.

2. The proposed new §§ 416.212(a)(2) and 416.212(c) and proposed amendments to § 416.540 (b) and (c) state the policy barring reimbursement to an institution for a recipient's current maintenance (excepting, of course, reimbursement of expenditures for personal needs) from the benefits authorized under section 1611(e)(1)(E) and section 1611(e)(1)(G) of the Act.

Section 1611(e)(1)(E) prohibits payment of benefits unless the institution agrees to permit the recipient to retain any benefits paid under this section. If the institution is receiving Medicaid payments for the recipient, we rely on the agreement the institution signed with the State Medicaid agency to ensure this condition is enforced. However, section 1611(e)(1)(G) does not specifically require that the recipient be permitted to retain the benefits payable under that section, as does section 1611(e)(1)(E). The legislative history is clear, however, that Congress intended that the benefits payable under section 1611(e)(1)(G) be available for maintenance of the recipient's home or living arrangement and not for paying the institutions for the cost of the recipient's current maintenance except reimbursement of expenditures of personal needs. Moreover, as noted above, section 1902(o) of the Act requires that all State Medicaid plans provide for disregarding any SSI payments in computing the post-eligibility contribution of the individual to the cost of care. Consequently, to permit institutions to secure these benefits would appear to negate the purpose of the legislation and in the case of Medicaid institutions, be in conflict with section 1902(o) of the Act. Based on this intent and section 1902(o), we are extending the prohibition on the payment of benefits to, or the use of benefits by, an institution to defray current maintenance costs, except personal needs items, to benefits payable under section 1611(e)(1)(G). This prohibition concerning benefits payable under the two sections will be implemented as follows.

The current § 416.640(c) prohibits a representative payee from reimbursing an institution from SSI benefits for the current maintenance costs of an institutionalized recipient when Medicaid pays to the institution more than 50 percent of the cost of the individual's care. We amended § 416.640(c) to provide that the prohibition on reimbursement for current maintenance costs (with the exception of personal needs) would apply to recipients who are receiving benefits payable under section 1611(e)(1)(E) as well as section 1611(e)(1)(G) of the Act. Additionally, in view of Congressional intent that benefits payable under these two sections be used for meeting expenses outside the institution, the amended § 416.640(b) and new §§ 416.212(a)(2) and 416.212(c) provide that an institution must allow the recipient to retain benefits paid under sections 1611(e)(1)(E) and 1611(e)(1)(G). The institution can only be reimbursed for nominal costs it may have incurred for the recipient's personal needs such as personal hygiene items, snacks, and candy. We believe that payments to the institution for these costs is not inconsistent with sections 1611(e)(1)(E) and 1611(e)(1)(G). However, reimbursement is not permitted beyond personal needs.

3. We are proposing to amend § 416.2040 to reflect that for States whose supplementation programs are federally administered under the authority of section 1616(a) of the Act and/or section 212 of Public Law 93–66, institutionalized recipients receiving benefits under either section 1611(e)(1)(E) or section 1611(e)(1)(G) can continue to be eligible to receive the optional/mandatory State supplementary payments. In addition, a recipient who would be eligible for benefits authorized under § 416.212 but for countable income which reduces his or her Federal SSI benefit to zero may still be eligible to receive a Federally-administered States supplementary payment. Non-Federally-administered States will elect whether institutionalized beneficiaries receiving Federal benefits under either section 1611(e)(1)(E) or section 1611(e)(1)(G) will receive the same State supplementary payment they received in the first full month of institutionalization or the payment (if any) normally made in such circumstances.

We are extending eligibility for federally administered State supplementation to recipients receiving benefits payable under the two sections. With respect to federally administered optional State supplementation, section 1616(b)(2) of the Act provides the Secretary with broad authority to adopt such " * * * procedural or other general administrative provisions, as the Secretary finds necessary * * * to achieve efficient and effective administration of both the program which he conducts under this title and the optional State supplementation." The regulation at § 416.2005(d) provides similar authority for federally administered mandatory State supplements. These authorities enable SSA to administer statutory provisions that affect State supplementation in a fashion fully in accord with their underlying congressional intent. Congress, when enacting section 1611(e)(1)(E) and section 1611(e)(1)(G), intended that recipients not be disadvantaged financially when entering an institution for a stay of short duration. To implement this intention, we consider the recipient's living arrangement as not having changed when computing the amount of the Federal benefit payable under sections 1611(e)(1)(E) and 1611(e)(1)(G). The same policies used for determining the Federal benefit will be used to determine the State supplementary payment. Thus, a recipient's living arrangement would not be considered to have changed for purposes of determining the recipient's State supplementary payment. This will ensure that the State supplementary payments payable in the month prior to the first full month of institutionalization will, subject to the income counting provisions, continue through the months of institutionalization. Thus, we believe

that the policy will assist the Secretary in achieving efficient and effective administration of both the title XVI and State supplementary payment programs, because continuing the State supplementary payments will negate the need for field office intervention, with attendant error potential.

In light of the programmatic and administrative concerns set forth above, it is reasonable to conclude that the Secretary may exercise discretion and require, under the authority of section 1616(b)(2) of the Act, States, whose State supplementary payments are federally administered, to continue to supplement the full benefit rate payable for months of hospitalization under both section 1611(e)(1)(E) and section 1611(e)(1)(G).

4. We are also amending § 416.1325 of subpart M in part 416 to show that benefits will not be suspended for months of residency in a public institution is the recipient is eligible for benefits payable under section 1611(e)(1)(E) or section 1611(e)(1)(G) of the Act for those months. However, this amended rule is not being included in these regulations and, instead, will be separately published as an interim final rule in final regulations which recodify subpart M entitled: "Suspensions, Terminations, and Advance Notice of Unfavorable Determination."

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and the Secretary has determined that this is not a major rule because program costs for implementing the legislation upon which these rules are based are not anticipated to exceed $16.9 million a year for the next 2 fiscal years. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This proposed rule contains information collection requirements in §§ 416.212(b)(3) and 416.212(b)(4). As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), we will submit a copy to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on these information collection requirements should direct them to the agency official whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC 20503, Attention: Desk Officer for HHS.

Public reporting burden for each of these collections of information is estimated to average 5 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and provide the information requested. The respondents to the collection in subsection (3) will be physicians. The respondents to the requirement in subsection (4) will be recipients of SSI payments. We estimate that 60,000 people will provide this information yearly. The total annual burden for both information collections is therefore estimated to be 5,000 hours. If you have any comments or suggestions on this estimate, write to the Social Security Administration, Attn: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–NEW), Washington, DC 20503.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354 the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 93.807, Supplemental Security Income Program.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits; Public Assistance programs; Supplemental Security Income.

Dated: December 13, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: March 11, 1992.

Louis W. Sullivan.

Secretary of Health and Human Services.

For the reasons set forth in the preamble, subparts B, D, F, K, and T of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended to read as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—Eligibility

1. The authority citation for part 416, subpart B is revised to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c.

2. Section 416.211 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 416.211 You are a resident of a public institution.

(1) *General rule.* (1) Subject to the exceptions described in paragraphs (b), (c), and (d) of this section and § 416.212 of this subpart, you are not eligible for SSI benefits for any month throughout which you are a resident of a public institution as defined in § 416.201. In addition, if you are a resident of a public institution when you apply for SSI benefits and meet all other eligibility requirements, you cannot be eligible for benefits until the day of your release from the institution. The amount of your SSI benefits for the month of your release will be prorated (see subpart D) beginning with the date of your release.

* * * * *

(b) *Exception—SSI benefits payable at a reduced rate.* (1) You may be eligible for SSI benefits at a reduced rate described in § 416.414, if—

(i) The public institution in which you reside throughout a month is a medical care facility for which Medicaid (title XIX of the Act) pays a substantial part (more than 50 percent) of the cost of your care; or

(ii) You reside for part of a month in a public institution and the rest of the month in a public institution or private medical facility where Medicaid pays more than 50 percent of the cost of your care; and,

(iii) You are ineligible in that month for a benefit described in § 416.212 of this subpart that is payable to a person temporarily confined in a medical facility.

§§ 416.212 through 416.214 [Redesignated as §§ 416.213 through 416.215]

3. Sections 416.212 through 416.214 are redesignated as §§ 416.213 through 416.215 respectively and a new § 416.212 is added to read as follows:

§ 416.212 Continution of full benefits in certain cases of medical confinement.

(a) *Benefits payable under section 1611(e)(1)(E) of the Social Security Act.* Subject to eligibility and regular computation rules (see Subparts B and D of this Part), you are eligible for the benefits payable under section 1611(e)(1)(E) of the Social Security Act for up to 2 full months of medical confinement during which your benefits would otherwise be suspended because of residence in a public institution or reduced because of residence in a public or private institution where Medicaid

pays over 50 percent of the cost of your care if—

(1) You were eligible for benefits based on either section 1619(a) or section 1619(b) of the Social Security Act in the month before the first full month of residence in an institution;

(2) The institution agrees that no portion of these benefits will be paid to or retained by the institution excepting nominal sums for reimbursement of the institution for any outlay for a recipient's personal needs (e.g., personal hygiene items, snacks, candy); and,

(3) The month of your institutionalization is one of the first 2 full months of a continuous period of confinement.

(b) *Benefits payable under section 1611(e)(1)(G) of the Social Security Act.* Subject to eligibility and regular computation rules (see subparts B and D of this part), you are eligible for the benefits payable under section 1611(e)(1)(G) of the Social Security Act for up to 3 full months of medical confinement during which your benefits would otherwise be suspended because of residence in a public institution or reduced because of residence in a public or private institution where Medicaid pays over 50 percent of the cost if—

(1) You were eligible for SSI cash benefits and/or Federally-administered State supplementary payments for the month immediately prior to the first full month you were a resident in such institution;

(2) The month of your institutionalization is one of the first 3 full months of a continuous period of confinement;

(3) A physician certifies, in writing, that you are not likely to be confined for longer than 90 full consecutive days following the day you entered the institution, and the certification is submitted to SSA no later than the day of discharge or the 90th full day of confinement, whichever is earlier; and,

(4) You need to pay expenses to maintain the home or living arrangement to which you intend to return after institutionalization and evidence regarding your need to pay these expenses is submitted to SSA no later than the day of discharge or the 90th full day of confinement, whichever is earlier. We will determine the date of submission of the evidence required in paragraphs (b) (3) and (4) of this section to be the date we receive it or, if mailed, the date of the postmark.

(c) *Prohibition against using benefits for current maintenance.* If the recipient is a resident in an institution, the recipient or his or her representative payee will not be permitted to pay the institution any portion of benefits payable under section 1611(e)(1)(G) excepting nominal sums for reimbursement of the institution for any outlay for the recipient's personal needs (e.g., personal hygiene items, snacks, candy). If the institution is the representative payee, it will not be permitted to retain any portion of these benefits for the cost of the recipient's current maintenance excepting nominal sums for reimbursement for outlays for the recipient's personal needs.

Subpart D—Amount of Benefits

4. The authority citation for part 416, subpart D continues to read as follows:

Authority: Secs. 1102, 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383.

5. Section 416.410 is revised to read as follows:

§ 416.410 Amount of benefits; eligible individual.

The benefit under this part for an eligible individual (including the eligible individual receiving benefits payable under the § 416.212 provisions) who does not have an eligible spouse, who is not subject to either benefit suspension under § 416.1325 or benefit reduction under § 416.414, and who is not a qualified individual (as defined in § 416.221) shall be payable at the rate of $4,884 per year ($407 per month) effective for the period beginning January 1, 1991. This rate is the result of a 5.4 percent cost-of-living adjustment (see § 416.405) to the December 1990 rate. For the period January 1, through December 31, 1990, the rate payable, as increased by the 4.7 percent cost-of-living adjustment, was $4,632 per year ($386 per month). For the period January 1, through December 31, 1989, the rate payable, as increased by the 4 percent cost-of-living adjustment, was $4,416 per year ($368 per month). For the period January 1, through December 31, 1988, the rate payable, as increased by the 4.2 percent cost-of-living adjustment, was $4,248 per year ($354 per month). For the period January 1, through December 31, 1987, the rate payable, as increased by the 1.3 percent cost-of-living adjustment, was $4,080 per year ($340 per month). For the period of January 1, through December 31, 1986, the rate payable, as increased by the 3.1 percent cost-of-living adjustment, was $4,032 per year ($336 per month). For the period January 1, through December 31, 1985, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $3,900 ($325 per month). For the period January 1, through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $3,768 per year ($314 per month). For the period of July 1, through December 31, 1983, the rate payable was $3,561.60 per year ($304.30 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, section 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $3,411.60 yearly ($284.30 monthly). The monthly rate is reduced by the amount of the individual's income which is not excluded pursuant to subpart K of this part.

6. Section 416.412 is revised to read as follows:

§ 416.412 Amount of benefits; eligible couple.

The benefit under this part for an eligible couple (including couples where one or both members of the couple are receiving benefits payable under the § 416.212 provisions), neither of whom is subject to suspension of benefits based on § 416.1325 or reduction or benefits based on § 416.414 nor is a qualified individual (as defined in § 416.221) shall be payable at the rate of $7,320 per year ($610 per month), effective for the period beginning January 1, 1991. This rate is the result of a 5.4 percent cost-of-living adjustment (see § 416.405) to the December 1990 rate. For the period January 1, through December 31, 1990, the rate payable, as increased by the 4.7 percent cost-of-living adjustment, was $6,948 per year ($579 per month). For the period January 1, through December 31, 1989, the rate payable, as increased by the 4 percent cost-of-living adjustment, was $6,636 per year ($553 per month). For the period January 1, through December 31, 1988, the rate payable, as increased by the 4.2 percent cost-of-living adjustment, was $6,384 ($532 per month). For the period January 1, through December 31, 1987, the rate payable, as increased by the 1.3 percent cost-of-living adjustment, was $6,120 ($510 per month). For the period January 1, through December 31, 1986, the rate payable, as increased by the 3.1 percent cost-of-living adjustment, was $6,048 ($504 per month). For the period January 1, through December 31, 1985, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $5,856 ($488 per month). For the period January 1, through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $5,664 per year ($472 per month). For the period July 1, through December 31, 1983, the rate payable was $5,476.80 per year ($456.40 per month), as provided by the

Social Security Amendments of 1983 (Pub. L. 98–21, section 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $5,116.80 yearly ($426.40 monthly). The monthly rate is reduced by the amount of the couple's income which is not excluded pursuant to subpart K of this part.

7. Section 416.413 is revised to read as follows:

§ 416.413 Amount of benefits; qualified individual.

The benefit under this part for a qualified individual (defined in § 416.221) is payable at the rate for an eligible individual or eligible couple plus an increment for each essential person (defined in § 416.222) in the household, reduced by the amount of countable income of the eligible individual or eligible couple as explained in § 416.420. A qualified individual will receive an increment of $2,448 per year ($204 per month), effective for the period beginning January 1, 1991. This rate is the result of the 5.4 percent cost-of-living adjustment (see § 416.405) to the December 1990 rate, and is for each essential person (as defined in § 416.222) living in the household of a qualified individual. (See § 416.532.) For the period January 1, through December 31, 1990, the rate payable, as increased by the 4.7 percent cost-of-living adjustment, was $2,316 per year ($193 per month). For the period January 1, through December 31, 1989, the rate payable, as increased by the 4 percent cost-of-living adjustment, was $2,208 per year ($184 per month). For the period January 1, through December 31, 1988, the rate payable, as increased by the 4.2 percent cost-of-living adjustment, was $2,124 ($177 per month). For the period January 1, through December 31, 1987, the rate payable, as increased by the 1.3 percent cost-of-living adjustment, was $2,040 ($170 per month). For the period January 1, through December 31, 1986, the rate payable, as increased by the 3.1 percent cost-of-living adjustment, was $2,016 ($168 per month). For the period January 1, through December 31, 1985, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $1,956 ($163 per month). For the period January 1, through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $1,884 per year ($157 per month). For the period July 1, through December 31, 1983, the rate was $1,830 per year ($152.50 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, section 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $1,710 yearly ($142.50 monthly). The total benefit rate, including the increment, is reduced by the amount of the individual's or couple's income that is not excluded pursuant to subpart K of this part.

8. Section 416.414 is amended by revising the introductory statement of paragraph (a) to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

(a) *General rule.* Except where the § 416.212 provisions provide for payment of benefits at the rates specified under §§ 416.410 and 416.412, reduced SSI benefits are payable to persons and couples who are in medical care facilities where more than 50 percent of the cost of their care is paid by a State plan under title XIX of the Social Security Act (Medicaid). Persons and couples to whom these reduced benefits apply are—

* * * * *

Subpart F—Representative Payment

9. The authority citation for part 416, subpart F continues to read as follows:

Authority: Secs. 1102 and 1631(a)(2) and (d)(1) of the Social Security Act; 42 U.S.C. 1302 and 1383(a)(2) and (d)(1).

10. Section 416.640 is amended by revising paragraph (B) to read as follows:

§ 416.640 Use of benefit payments.

* * * * *

(b) *Institution not receiving Medicaid funds on beneficiary's behalf.* If a beneficiary is receiving care in a Federal, State, or private institution because of mental or physical incapacity, current maintenance will include the customary charges for the care and services provided by an institution, expenditures for those items which will aid in the beneficiary's recovery or release from the institution, and nominal expenses for personal needs (e.g., personal hygiene items, snacks, candy) which will improve the beneficiary's condition. Except for the benefits payable under the § 416.212 provisions which are intended to be used for maintaining a home or living arrangement outside the institution to which the individual intends to go after confinement and which the institution cannot use for a beneficiary's current maintenance, excepting nominal sums for the recipient's personal needs, there is no restriction in using SSI benefits for a beneficiary's current maintenance in an institution. Any payments remaining from SSI benefits may be used for a temporary period to maintain the beneficiary's residence outside of the institution unless a physician has certified that the beneficiary is not likely to return home.

Example: A hospitalized disabled beneficiary is entitled to a monthly benefit of $264. The beneficiary, who resides in a boarding home, has resided there for over 6 years. It is doubtful the beneficiary will leave the boarding home in the near future. The boarding home charges $215 per month for the beneficiary's room and board.

The beneficiary's representative payee pays the boarding home $215 (assuming an unsuccessful effort was made to negotiate a lower rate during the beneficiary's absence) and uses the balance to purchase miscellaneous personal items for the beneficiary. There are no benefits remaining which can be conserved on behalf of the beneficiary. The payee's use of the benefits is consistent with our guidelines.

(c) *Institution receiving Medicaid funds on beneficiary's behalf.* Except in the case of a beneficiary receiving benefits payable under § 416.212, if a beneficiary resides throughout a month in an institution that receives more than 50 percent of the cost of care on behalf of the beneficiary from Medicaid, any payments due shall be used only for the personal needs of the beneficiary and not for other items of current maintenance.

Example: A disabled beneficiary resides in a hospital. The superintendent of the hospital receives $30 per month as the beneficiary's payee. The benefit payment is disbursed in the following manner, which would be consistent with our guidelines:

Miscellaneous canteen items	$10
Clothing	12
Conserved for future needs of the beneficiary	8

For a beneficiary receiving benefits payable under § 416.212, benefits must be available for expenses of maintaining a home or living arrangement to which the beneficiary intends to go after medical confinement.

Subpart K—Income

11. The authority citation for part 416, subpart K is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383.

12. Section 416.1147 is amended by revising paragraphs (c) and (f) to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

* * * * *

(c) *One member of a couple lives in another person's household and*

receives food and shelter from that person and the other member of the couple is in a medical institution. (1) If one of you is living in the household of another person who provides you with both food and shelter and the other is in a medical institution that receives substantial Medicaid payments for his or her care (§ 416.211(b)) and is ineligible in the month for either benefit payable under § 416.212, we compute your benefits as if you were separately eligible individuals. This begins with the first full calendar month that one of you is in the medical institution. The one living in another person's household is eligible at an eligible individual's Federal benefit rate and one-third of that rate is counted as income not subject to any income exclusions. The one in the medical institution cannot receive more than the reduced benefit described in § 416.414(b)(1).

(2) If the one member of the couple in the institution is eligible for one of the benefits payable under the § 416.212 provisions, we compute benefits as a couple at the rate specified under § 416.412. However, if that one member remains in the institution for a full month after expiration of the period benefits based on § 416.212 can be paid, benefits will be computed as if each person were separately eligible as described under paragraph (c)(1) of this section. This begins with the first calendar month after expiration of the period benefits based on § 416.212 can be paid.

* * * * *

(f) *One member of a couple is subject to the presumed value rule and the other member is in a medical institution.* (1) If one of you is subject to the presumed value rule and the other is in a medical institution that receives substantial Medicaid payments for his or her care (see § 416.211(b)) and is ineligible in that month for either benefit payable under § 416.212, we compute your benefits as if both members of the couple are separately eligible individuals. This begins with the first full calendar month that one of you is in the medical institution. We value any food, clothing, or shelter received by the one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that their value is less as described in § 416.1140(a)(2). The member of the couple in the medical institution cannot receive more than the reduced benefit described in § 416.414(b)(1).

(2) If one of you is subject to the presumed value rule and the other in the institution is eligible for one of the benefits payable under § 416.212, we compute the benefits as a couple at the rate specified under § 416.412. However, if the one in the institution remains in the institution after the period benefits based on § 416.212 can be paid, we will compute benefits as if each member of the couple were separately eligible as described in paragraph (f)(1) of this section.

13. Section 416.1149 is amended by revising paragraphs (a) and (c)(1) to read as follows:

§ 416.1149 What is a temporary absence from your living arrangement.

(a) *General.* A temporary absence may be due to employment, hospitalization, vacations, or visits. The length of time an absence can be temporary varies depending on the reason for your absence. For purposes of valuing in-kind support and maintenance under §§ 416.1130 through 416.1148, we apply the rules in this section. In general we will find a temporary absence from your permanent living arrangement if you (or you and your eligible spouse)—

(1) Become a resident of a public institution, or a public or private medical care facility where over 50 percent of the cost of care is paid by Medicaid, and are eligible for the benefits payable under § 416.212; or,

(2) Were in your permanent living arrangement for at least 1 full calendar month prior to the absence and intend to, and do, return to your permanent living arrangement in the same calendar month in which you (or you and your spouse) leave, or in the next month.

* * * * *

(c) *Rules for temporary absence in certain circumstances.*

(1)(i) If you enter a medical care facility that receives substantial Medicaid payments for your care (as described in § 416.211(b)) and you are not eligible for either benefit payable under § 416.212 (and you have not received such benefits during your current period of confinement) and you intend to return to your prior living arrangement (and you are eligible for the reduced benefits payable under § 416.414 for full months in the facility), we consider this a temporary absence regardless of the length of your stay in the facility. We use the rules that apply to your permanent living arrangement to value any food, clothing, or shelter you receive during the month (for which reduced benefits under § 416.414 are not payable) you enter or leave the facility. During any full calendar month you are in the medical care facility, you cannot receive more than the Federal benefit rate described in § 416.414(b)(1). We do not consider food or shelter provided during a medical confinement to be income.

(ii) If you enter a medical care facility and you are eligible for either benefit payable under § 416.212, we also consider this a temporary absence from your permanent living arrangement. We use the rules that apply to your permanent living arrangement to value any food, clothing, or shelter you receive during the month you enter the facility and throughout the period you are eligible for these benefits. We consider your absence to be temporary through the last month benefits under § 416.212 are paid unless you are discharged from the facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

* * * * *

14. Section 416.1167 is amended by revising paragraph (a) to read as follows:

§ 416.1167 Temporary absences and deeming rules.

(a) *General.* During a temporary absence, we continue to consider the absent person a member of the household. A temporary absence occurs when—

(1) You, your ineligible spouse, parent, or an ineligible child leaves the household but intends to and does return in the same month or the month immediately following; or

(2) You enter a medical care facility and are eligible for either benefit payable under § 416.212. We consider your absence to be temporary though the last month benefits under § 416.212 were paid unless you were discharged from the facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

* * * * *

Subpart T—State Supplementation Provisions; Agreements; Payments

15. The authority citation for part 416, subpart T is revised to read as follows:

Authority: Secs. 1102, 1616, 1618, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382e, 1382g, and 1383.

16. Section 416.2040 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 416.2040 Limitations on eligibility.

* * * * *

(a) *Inmate of public institution.* A person who is a resident in a public institution for a month, is ineligible for a

Federal benefit for that month under the provision of § 416.211(a), and does not meet the requirements for any of the exceptions in § 416.211 (b), (c), or (d), or § 416.212, also shall be ineligible for a Federally-administered State supplementary payment for that month.

* * * * *

(d) *Recipient eligible for benefits under § 416.212.* A recipient who is institutionalized and is eligible for either benefit payable under § 416.212 for a month or months may also receive Federally-administered State supplementation for that month. Additionally, a recipient who would be eligible for benefits under § 416.212 but for countable income which reduces his or her Federal SSI benefit to zero, may still be eligible to receive Federally-administered State supplementation.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 25

[Notice No. 755; 92F-047P]

Change in the Frequency of Filing Brewer's Reports of Operations and Additional Listing of Case and Keg Sizes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to reduce administrative burdens on the brewing industry by allowing certain small brewers to submit reports of operations quarterly instead of monthly. Also, ATF is proposing to revise the conversion table used to calculate the tax liability on removals in containers to include more sizes commonly used in the brewing industry. The table will also be reorganized for ease of use.

These proposed changes should result in fewer forms being filed by brewers and fewer documents being processed by the government, and ease the tax computation process. ATF expects that this will result in cost savings both for the brewing industry and for the government. This proposal will reduce the regulatory burden on small brewers.

DATES: Written comments must be received by October 28, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221; Notice No. 755.

Copies of written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Public Affairs and Disclosure, room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon or Marjorie Ruhf, Wine and Beer Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1992, President Bush announced a regulatory initiative. This initiative called for a review of all existing regulations and programs to identify and which impose substantial costs on the economy. As part of this review, ATF is proposing regulations which will reduce the regulatory burden on small brewers.

Brewer's Report of Operations, Form 5130.9

ATF proposes to allow small brewers to file the Brewer's Report of Operations, Form 5130.9, quarterly instead of monthly. The criterion proposed in § 25.297(b) for a brewer to file a quarterly report is based on the size of the brewing operations the previous year. A brewer may file a quarterly report if, during the previous calendar year, the brewer produced less than 10,000 barrels of beer. Production is defined in § 25.297(b) as the total of beer brewed, liquids added to beer, and beer received from other breweries of the same ownerhip in the previous year.

To begin the quarterly filing of a Brewer's Report of Operations, a brewer would state such intent in the "Remarks" section when filing the last monthly Form 5130.9 before commencing the quarterly filing of these reports. Reports will be filed within 15 days after the close of the calendar quarter; i.e., by January 15th, for October through December reports, and by April 15th, July 15th, and October 15th for other calendar quarter reports. A definition of "calendar quarter" would be added to § 25.5.

If a brewer determines that the 10,000 barrel quantity will be exceeded in any year, a Form 5130.9 will be filed for the month in which that limitation is exceeded and for all subsequent months of that calendar year.

Brewers should note that the criterion for filing quarterly reports is different than the criteria for a small brewer to be eligible to pay the reduced rate of beer tax under 26 U.S.C. 5051. Furthermore, the criterion for filing the operational report quarterly applies to production at individual brewing locations and not to the overall size of the brewer. Thus, even a very large brewer may file quarterly reports for small brewing locations where the brewer's production does not exceed 10,000 barrels annually.

Under § 25.297(b), the regional director (compliance) may require any brewer filing reports of brewery operations quarterly to file such reports monthly if there is a jeopardy to the revenue.

The major reason for requiring a report of operations is for ATF to determine compliance with Internal Revenue Code brewery regulations and specifically, beer excise tax payments. Nearly 99 percent of beer excise tax is paid by breweries producing more than 10,000 barrels of beer per year.

A secondary reason for the report of operations is to provide monthly statistical data to the brewing industry and ATF. If small brewers file their reports of operations quarterly instead of monthly, the monthly reports received from large breweries would still provide most of the data furnished to ATF (nearly 99 percent). Under the proposed criterion in § 25.297(b), more than 280 of the approximately 345 qualified brewers would be eligible to file a quarterly report of operations instead of a monthly report. This would reduce the number of reports filed by over 54%, and reduce the number of burden hours in preparing and sending monthly reports of operations. Brewers operating near the maximum operational level for quarterly reporting may need to spend time each month to ensure they have not exceeded the 10,000 barrel level.

If this proposal becomes a final rule, Form 5130.9 will be revised. Further, if Form 5130.9 is revised, ATF plans to remove the shading from column (a), line 15, indicating direct cellar operation removals for consumption or sale. This change would allow brewpubs to show removals of tanks or from tanks in the brewery cellar, to a tavern operated on the brewery premises. When the form was originally designed, no provision was made for this activity, and brewpubs have reported such removals on a line which does not accurately describe the disposition. Therefore, this proposal does not require any new information, but simply changes the location on the form where the information will be reported. ATF welcomes suggestions for other revisions to the form.

This notice also proposes conforming changes to all sections of regulations which refer to the existing form title, Brewer's Monthly Report of Operations, or to the monthly reporting requirement.

Authorized Keg Sizes

Prescribed sizes for kegs are listed in § 25.156. All of these sizes are fractional parts of the beer barrel, which is defined by law as not more than 31 gallons. These sizes are used in making tax liability computations.

With the growth of the microbrewing industry, other keg sizes have come into common use; many of these are European in origin and reflect net contents in metric measure. As a result, individual brewers have requested permission to use keg sizes not prescribed by this section.

ATF proposes to add 5 gallon, 30 liter and 50 liter kegs as authorized fractional keg sizes in § 25.156. Additionally, this section will prescribe the barrelage equivalent for these kegs for the purpose of taxpayment and recordkeeping. Comments are solicited from brewers regarding other keg sizes which are in widespread use. If this proposal is adopted, the existing individual brewery authorizations to use these size kegs under the alternate method regulations will become obsolete.

Bottle and Case Sizes

Section 25.158 lists case sizes by number of bottles per case and the bottle size, and provides a barrelage equivalent for these various case sizes. This table is used for calculating the tax liability.

With the growth of the microbrewing industry, and the introduction of innovative packaging by many brewers, ATF finds that additional bottle and cases sizes have come into common use. Therefore, ATF proposes to add a number of bottles and cases to the table in § 25.158. Additionally, a separate table is proposed for bottles which are produced in metric sizes, including 500 and 750 milliliter bottles, and 1 liter, 2 liter, and 5 liter bottles. Barrelage equivalents are prescribed for all case sizes.

These tables are also reorganized, with the bottle size being listed first, followed by the number of bottles per case and the barrelage equivalent. ATF believes this organization will make the tables easier to use.

ATF solicits comment from brewers regarding other bottle sizes or case sizes which may be in common usage.

Executive Order 12291

In compliance with Executive Order 12291 issued February 17, 1981, ATF has determined that any regulation resulting from this notice of proposed rulemaking would not constitute a "major rule" since it would not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this notice of proposed rulemaking because a final rule would not have a significant economic impact on a substantial number of small entities. Any final rule would not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

The final rule, if adopted, is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law No. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this proposed rule because it does not impose any new reporting requirements. This proposal, if implemented, will eliminate some of the reporting requirements applicable to small brewers.

Public Participation

ATF requests comments from all interested persons. Comments received no later than the closing date of the comment period will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action. ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is public information. During the comment period, any person may submit a request to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine whether a public hearing would be necessary.

Other Regulations for Small Brewers

In addition to the specific proposals contained in this notice, ATF seeks comments on other changes in regulations which would benefit small brewers. ATF is seeking proposals or suggestions which would relieve the regulatory burden on microbrewers and pubbrewers in the area of qualification of the brewery, recordkeeping and reporting requirements, and in brewery operational requirements. Respondents should submit comments or suggestions of this nature to the address indicated above. ATF will consider these comments and suggestions in formulating future regulatory changes to brewery regulations.

Disclosure

Copies of this notice and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The principal authors of this document are Charles N. Bacon and Marjorie Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 25

Administrative practice and procedure, Authority delegations (Government agencies), Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

Authority and Issuance

Accordingly, it is proposed to amend 27 CFR part 25, Beer, as follows:

Paragraph 1. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c, 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Par. 2. The table of contents for part 25 is amended by revising the heading of § 25.297 to read as follows:

Sec.

* * * * *

§ 25.297 Brewer's Report of Operations, Form 5130.9.

* * * * *

Par. 3. Section 25.11 is amended by revising the definition of the term *barrel* and by adding a definition of the term *calendar quarter* in alphabetical order to read as follows:

§ 25.11 Meaning of terms.

* * * * *

Barrel. When used as a unit of measure, the quantity equal to 31 U.S. gallons. When used as a container, a consumer package or keg containing a quantity of beer listed in § 25.156, or other size authorized by the regional director (compliance).

* * * * *

Calendar quarter. A three-month period during the year as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

* * * * *

§ 25.152 [Amended]

Par. 4. Section 25.152(b)(2) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

Par. 5. Section 25.156 is revised to read as follows:

§ 25.156 Determination of tax on keg beer.

(a) In determining the tax on beer removed in kegs, a barrel is regarded as a quantity of not more than 31 gallons. The authorized fractional parts of a barrel are whole barrels, halves, thirds, quarters, sixths, and eights, and beer may be removed in kegs rated at those capacities. The following keg sizes are also authorized at the stated barrel equivalents:

Size of keg	Barrel equivalent
5 gallons	0.16129
30 liter	0.25565
50 liter	0.42608

(b) If any barrel or authorized size keg contains a quantity of beer more than two percent in excess of its rated capacity, tax will be determined and paid on the actual quantity of beer (without benefit of any tolerance) contained in the keg.

(c) The quantities of keg beer removed subject to tax will be computed to 5 decimal places. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(26 U.S.C. 5051)

Par. 6. Section 25.158 is revised to read as follows:

§ 25.158 Tax computation for bottled beer.

Barrel equivalents for various case sizes are as follows:

(a) *For U.S. measure bottles.*

Bottle size (net contents in fluid ounces)	Number of bottles per case	Barrel equivalent
6	12	0.01815
6	24	0.03629
7	12	0.02117
7	24	0.04234
7	32	0.05645
7	35	0.06174
7	36	0.06351
7	40	0.07056
7	48	0.08468
8	12	0.02419
8	24	0.04839
8	36	0.07258
10	12	0.03024
10	24	0.06048
10	48	0.12097
11	12	0.03327
11	24	0.06653
11.5	24	0.06956
12	12	0.03629
12	15	0.04536
12	20	0.06048
12	24	0.07258
12	30	0.09073
12	48	0.14516
12	50	0.15121
14	12	0.04234
14	24	0.08468
16 (1 pint)	12	0.04839
16 (1 pint)	24	0.09677
22	12	0.06653
22	24	0.13306
24	12	0.07258
30	12	0.09073
32 (1 quart)	12	0.09677
40	12	0.12097
64	1	0.01613
64	4	0.06452
64	6	0.09677
128 (1 gallon)	1	0.03226
288	1	0.07258

(b) *For metric measure bottles.*

Bottle size (metric net contents)	Number of bottles per case	Barrel equivalent
500 milliliters	24	0.10226
750 milliliters	12	0.07670
1 liter	12	0.10226
2 liters	6	0.10226
5 liters	1	0.04261

(c) *For other case sizes.* If beer is to be removed in cases or bottles of sizes other than those listed in the above tables, the brewer shall notify the regional director (compliance) in advance and request to be advised of the fractional barrel equivalent applicable to the proposed case size.

(26 U.S.C. 5412)

§ 25.186 [Amended]

Par. 7. Section 25.186(d) is amended by removing the words "monthly report" wherever they appear, and replacing them with the words "Brewer's Report of Operations."

§ 25.192 [Amended]

Par. 8. Section 25.192(c) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

§ 25.195 [Amended]

Par. 9. Section 25.195 is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

§ 25.196 [Amended]

Par. 10. Section 25.196(c) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

§ 25.276 [Amended]

Par. 11. Section 25.276(b) is amended by removing the words "monthly reports" and replacing them with the words "the Brewer's Report of Operations, Form 5130.9."

Par. 12. Section 25.286 is amended by revising paragraph (a) and the informational cite at the end of the section to read as follows:

§ 25.286 Claims for remission of tax on beer lost in transit between breweries.

(a) *Filing of claim.* Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 (ATF F 5620.8) by the brewer or the brewer's authorized agent and submitted with Form 5130.9 of the receiving brewery for the reporting period in which the shipment is received. When the loss is by casualty, the claim will be submitted with the Form 5130.9 for the reporting period in which the loss is discovered. When, for valid reasons, the required claim cannot be submitted with Form 5130.9, the brewer shall attach a statement to Form 5130.9 stating the reason why the claim cannot be filed at the time and stating when it will be filed. A claim will not be allowed unless filed with the regional director (compliance) within 6 months of the date of the loss.

* * * * *

(26 U.S.C. 5056, 5414)

Par. 13. Section 25.296 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(2) and the informational cite at the end of the section to read as follows:

§ 25.296 Record of beer concentrate.

* * * * *

(b) *Summary report of operations.* A brewer who produces concentrate or reconstitutes beer shall report by specific entries on Form 5130.9, the quantity of beer entered into the concentration process, and the quantity of beer reconstituted from concentrate. In addition, the brewer shall prepare on Form 5130.9, a summary accounting of all concentrate operations at the brewery for the reporting period. This summary accounting will show, in barrels of 31 gallons with fractions rounded to 2 decimal places:

(1) Concentrate on hand beginning of the reporting period;

(2) Concentrate on hand end of the reporting period;

* * * * *

(26 U.S.C. 5415)

Par. 14. Section 25.297 is revised to read as follows:

§ 25.297 Brewer's Report of Operations, Form 5130.9.

(a) *Monthly report of operations.* Except as provided in paragraph (b) of this section, each brewer shall prepare and submit a monthly report of brewery operations on Form 5130.9 to the regional director (compliance) not later than the 15th day of the month following the close of the month for which prepared.

(b) *Quarterly report of operations.* (1) A brewer who produces less than 10,000 barrels of beer per calendar year may file the report of brewery operations quarterly. The report will be filed on Form 5130.9 with the regional director (compliance) not later than the 15th day of the month following the close of the calendar quarter for which prepared. For the purpose of establishing whether a quarterly report may be filed, the brewer will determine annual production of beer by totalling lines 2, 3, and 5, column (f), of Forms 5130.9 for all months of the previous calendar year.

(2) To begin the quarterly filing of a Brewer's Report of Operations, a brewer will state such intent in the "Remarks" section when filing the last monthly Form 5130.9 before the calendar quarter during which the brewer will commence the quarterly filings. A brewer beginning business may file Form 5130.9 quarterly if the brewer states in the "Remarks" section of the form that the annual production of beer is not likely to exceed 10,000 barrels.

(3) If a brewer determines that the 10,000 barrel quantity for a calendar year will be exceeded in any month, the brewer shall file a Form 5130.9 for that month and for all subsequent months of the calendar year.

(4) The regional director (compliance) may at any time require a brewer who is filing a Brewer's Report of Operations quarterly to file such report monthly if there is a jeopardy to the revenue.

(c) *Retention.* The brewer shall retain a copy of the Form 5130.9 as part of the brewery records.

(26 U.S.C. 5415, 5555)

Signed: August 20, 1992.

Stephen E. Higgins,

Director.

Approved: August 26, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-23269 Filed 9-25-92; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 11-12-5592, FRL-4512-4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (BAAQMD) on August 2, 1989, and September 20, 1989. The California Air Resources Board submitted these revisions to EPA on December 31, 1990. The revisions concern the BAAQMD's Regulation 8, Rule 11 (Rule 8-11), Metal Container, Closure and Coil Coating, which controls the emission of volatile organic compounds (VOCs) from can and coil coating operations, and Regulation 8, Rule 16 (Rule 8-16), Solvent Cleaning Operations, which controls the emissions of VOCs from degreasing operations. EPA has evaluated the revisions to Rules 8-11 and 8-16 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990, (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under sections 110(k)(3) and 301(a) of the CAA because the rules do not meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before October 28, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada, and Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94102

FOR FURTHER INFORMATION CONTACT: Denise Odenwalder, Southern California and Arizona Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1200.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the San Francisco Bay Area Air Basin. 43 FR 8964; 40 CFR 81.305. Because the Bay Area was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. The Bay Area did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the BAAQMD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established

a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to preamended section 172(b) as interpreted in EPA's pre-amendment guidance.[1] EPA's SIP–Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Bay Area is classified as moderate [2]; therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on December 31, 1990, including the rules being acted on in this notice. This notice addresses EPA's proposed action for BAAQMD Rule 8–11, Metal Container, Closure and Coil Coating, and Rule 8–16, Solvent Cleaning Operations. These submitted rules were found to be complete on February 28, 1991, pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51, appendix V [3] and are being proposed for limited approval and limited disapproval.

Rule 8–11 controls the emission of volatile organic compounds (VOCs) from can and coil coating operations and Rule 8–16 controls the emission of VOCs from degreasing operations. VOCs contribute to the production of ground level ozone and smog. The BAAQMD's Rules 8–11 and 8–16 were originally adopted as part of BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for BAAQMD's Rules 8–11 and 8–16.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The BAAQMD retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the Amendments. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among the provisions of the CAA is the requirement that a VOC rule must, at a minimum, provide for the implementation of PACT for stationary sources of VOC emissions. This requirement was carried forth from the preamended Act.

For the purpose of assisting state and local agencies in developing PACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 8–11, Metal Container, Closure and Coil Coating, is entitled Control of Volatile Organic Emissions from Existing Stationary Sources Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, EPA document # EPA–450/2–77–008. The CTG applicable to Rule 8–16, Solvent Cleaning Operations, is entitled Control of Volatile Organic Emissions from Solvent Metal Cleaning, EPA document # EPA–450/2–77–022. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD's submitted Rule 8–11, Metal Container, Closure and Coil Coating, includes the following revisions from the current SIP rule:

- Deletes an exemption for used containers
- Includes additional definitions
- Deletes references to effective dates that have passed
- Limits the VOC content of exterior body spray, reconditioned drums, pails, and lids coatings, and inks
- Requires that surface preparation or cleanup solvent and cloth or paper used with the solvent be stored in closed containers
- Clarifies the requirements for use of abatement devices
- Updates the compliance schedule
- Adds requirements for operation and maintenance plans, recordkeeping, and test methods

BAAQMD's submitted Rule 8–16, Solvent Cleaning Operations, includes the following revisions from the current SIP rule:

- Changes the word "degreasing" to "solvent cleaning"
- Includes additional exemptions
- Includes additional definitions
- Distinguishes between the requirements for vapor solvent cleaners, conveyorized solvent cleaners, and cold cleaners
- Deletes a reference to carbon adsorption as one of several possible control systems for large degreasers
- Prohibits the solvent cleaning of porous or absorbent materials
- Adds sections on recordkeeping and test methods

EPA has evaluated BAAQMD's submitted Rules 8–11 and 8–16 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. Furthermore, the addition of more stringent limits for exterior body spray and reconditioned drums, pails, and lids coatings in submitted Rule 8–11 should lead to more emission reductions.

Although the approval of BAAQMD's Rules 8–11 and 8–16 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a) (2) (A) requirement of Part D of the CAA. The main deficiency of Rule 8–11 is that it allows the use of a test method, BAAQMD Method 30, that EPA has determined unacceptable. In addition, Rule 8–11 includes BAAQMD Methods 21 and 22, which EPA has not approved, and BAAQMD Method ST–7, which has not been approved for incinerators or other combustion devices. The main deficiency of Rule 8–16 is that it includes BAAQMD Methods 21, 22, and 31, which EPA has not approved. BAAQMD Methods 21, 22, 31, and ST–7 have been submitted to EPA for review. Since the sources regulated by Rule 8–16 do not use incinerators or other combustion devices, Method ST–7 is acceptable for use in the context of this rule. If Methods 21, 22, and 31 are all approved, then Rule 8–16 will not be deficient and EPA will take action to fully approve the rule. However, if any of Methods 21, 22, or 31 are disapproved, then Rule 8–16

will need to be revised. A detailed discussion of rule deficiencies can be found in the Technical Support Documents for Rules 8–11 (September 8, 1992) and 8–16 (September 8, 1992), which are available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to section 182 (a) (2) (A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems. If Methods 21, 22, and 31 are approved, EPA would grant approval to Rule 8–16 in the final rulemaking process.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rules do not meet the section 182(a)(2)(A) requirement of part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD's submitted Rules 8–11 and 8–16 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under §§ 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: U.S.C. 7401–7671q

Dated: September 16, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23451 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[WA2–2–5568; FRL–4512–8]

Approval and Promulgation of Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA invites public comment on its proposal to approve in part, disapprove in part, and take no action in part, on numerous revisions to the State of Washington Implementation Plan which were submitted by the Washington Department of Ecology (WDOE) on January 23, 1989 and May 14, 1991. These revisions are essentially administrative in nature and were made to improve the clarity, effectiveness, and enforceability of the state's regulations. The revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act (hereinafter the Act). EPA is also proposing to take no action on a number of provisions which are unrelated to the purposes of the implementation plan.

DATES: Comments must be postmarked on or before October 28, 1992.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Environmental Protection Agency, Air & Radiation Branch, Docket # WA2–2–5568, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at:

Air & Radiation Branch, Docket # WA2–2–5568, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101,

or
State of Washington, Department of Ecology, 4550 Third Ave. SE, Lacey, Washington 985047.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, Telephone: (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

In response to EPA's promulgation of revised ambient air quality standards for particulate matter (PM–10) on July 1, 1987, the State of Washington Department of Ecology (WDOE) revised many of its regulations. On January 23, 1989 WDOE submitted new regulations for Solid Fuel Burning Device Standards (WAC 173–433), Solid Waste Incinerator Facilities (WAC 173–434) and Ambient Air Quality Standards for Particulate Matter (WAC 173–470), as well as revisions to existing regulations for General Regulations for Air Pollution Sources (WAC 173–400), Implementation of Regulations for Air Contaminant Sources (WAC 173–403), Kraft Pulping Mills (WAC 173–405), Sulfite Pulping Mills (WAC 173–410), Primary Aluminum Plants (WAC 173–415), Open Burning (WAC 173–425), and Emergency Episode Plan (WAC 173–435).

In the spring of 1989, WDOE undertook a project to improve the overall quality, consistency, and enforceability of its regulations. On May 14, 1991 WDOE submitted revised regulations for General Regulations for Air Pollution Sources (WAC 173–400), Kraft Pulping Mills (WAC 173–405), Sulfite Pulping Mills (WAC 173–410), Primary Aluminum Plants (WAC 173–415), Open Burning (WAC 173–425), Burning of Field and Forage and Turf Grasses Grown for Seed (WAC 173–430), Solid Fuel Burning Device Standards (WAC 173–433), Solid Waste Incinerator Facilities (WAC 173–434), Sensitive Areas (WAC 173–440), Emission Standards and Controls for Sources Emitting Volatile Compounds (WAC 173–490) and Weather Modification (WAC 173–495). In addition, the regulation for Implementation of Regulations for Air Contaminant Sources (WAC 173–403) was repealed. Many of the regulations and revisions in the January 23, 1989 submittal were superseded by completely revised and updated regulations in the May 14, 1991 submittal.

II. Plan Revisions

EPA is today proposing to approve in part, disapprove in part, and take no action in part, 12 of the 14 revised regulations submitted on January 23, 1989 and May 14, 1991. Action on the revised Emission Standards and Controls for Sources Emitting Volatile Compounds (WAC 173–490) is being proposed under separate rulemaking. The regulation for Weather Modification (WAC 173–495) is not related to the purposes of the Act and, therefore, EPA is taking no action on the submittal of this regulation. The following is a discussion of the revisions to each of the 12 regulations and EPA's proposed actions thereon:

General Regulations for Air Pollution Sources (WAC 173–400)

These regulations were extensively revised by incorporating all of the provisions of WAC 173–403, Implementation of Regulations for Air Contaminant Sources, into the existing WAC 173–400. The regulations were further revised by deleting duplicative and out-dated provisions, and clarifying emission limits and other requirements. EPA is proposing to approve the revisions to WAC 173–400 with the exceptions noted below. EPA is also proposing to approve the updated WDOE "Source Test Manual—Procedures for Compliance Testing," dated July 12, 1990, which is referenced in WAC 173–400–050, WAC 173–400–060, and WAC 173–400–105.

Note that EPA is proposing to approve WAC 173–400–110, New Source Review (NSR), even though it has not been revised to conform to the new requirements of the Clean Air Act Amendments of 1990. Under the provisions of the Act, revisions to Title I, Part D (nonattainment area) NSR rules are required to be submitted by June 30, 1992 for PM–10 nonattainment areas and by November 15, 1992 for most ozone and carbon monoxide nonattainment areas. The February 19, 1991 revisions to WAC 173–400–110 were made to comply with the requirements of EPA regulations (40 CFR part 51, subpart I) in effect at that time. EPA is, therefore, proposing to approve these revised regulations under the provision of its "grandfathering policy", since they meet the requirements of the regulations in effect at the time they were adopted and submitted by the state.

Director's Discretion Provisions

EPA is proposing to disapprove WAC 173–400–040(1) (c) and (d) which allow for the establishment of alternative opacity limits. While it is entirely appropriate for state regulations to contain procedures for establishing alternative opacity limits (i.e., a director's discretion provision), the state cannot unilaterally change the provisions of the EPA-approved SIP (see section 110(i) of the Act). In general, EPA does not approve "director's discretion" provisions for incorporation into the SIP, because the existence of such provisions in the SIP would create the misimpression that the state can change SIP requirements without EPA approval. Furthermore, WAC 173–400–040(1) (c) and (d) do not ensure that all of the requirements of the Act will be met prior to the approval of an alternative opacity limit.

EPA is proposing to disapprove the second paragraph of WAC 173–400–040(6). The second paragraph provides an exception to the sulfur dioxide emission limitation but does not ensure that all of the requirements of the Act will be met. Nor does it ensure that a replacement emission limit will be established for a source which is granted an exception under WAC 173–400–040(6).

EPA is proposing to disapprove the exception provision in WAC 173–400–050(3) which allows for the establishment of an alternative oxygen correction factor for combustion and incineration sources. Changes to the oxygen correction factor effectively change the emission limits. However, this provision does not ensure that all of the requirements of the Act will be met for emissions under an alternative oxygen correction factor.

EPA is proposing to disapprove WAC 173–400–180 Variance which allows the WDOE to grant a variance to the requirements governing the quality, nature, duration, or extent, of discharges of air contaminants. Again, this "director's discretion" provision does not ensure that all of the requirements of the Act will be met prior to the granting of a variance. Although WAC 173–400–180 recognizes that a variance granted by the WDOE does not set aside or delay any requirements of the Federal Clean Air Act, it does not indicate that provisions of the SIP remain in effect until the variance is approved by EPA as a SIP revision.

Emissions Trading Provisions

EPA is proposing to disapprove WAC 173–400–120 Bubble Rules, WAC 173–400–131 Issuance of Emission Reduction Credits, and WAC 173–400–136 Use of Emission Reduction Credits as these regulations do not comply with the requirements of EPA's Final Emissions Trading Policy Statement (51 FR 43814, December 4, 1986). These provisions were originally adopted by WDOE on August 28, 1983 as WAC 173–403–060, –070, and –075, respectively, and were

relocated unchanged to WAC 173–400. However, the provisions were not revised to meet the requirements of EPA's Emissions Trading Policy Statement and are, therefore, not approvable as revisions to the Washington SIP. Note that there is no requirement for the SIP to contain such emissions trading provisions. As with director's discretion provisions, WDOE is still free to approve bubbles and grant emission reduction credits. However, such actions do not change the requirements of the federally-approved SIP until such time as they are submitted to, and approved by, EPA as revisions to the SIP. Sources may still create and use emission reduction credits in "offsetting" and "netting" transactions so long as they comply with the provisions of the EPA-approved and/or promulgated new source review and prevention of significant deterioration regulations.

Prevention of Significant Deterioration

EPA is proposing to disapprove WAC 173–400–141 Prevention of Significant Deterioration (PSD) as it does not meet the requirements of 40 CFR 51.166. WDOE has adopted by reference, EPA's PSD regulations (40 CFR 52.21) as in effect on July 1, 1989. However, significant changes to EPA's regulations became effective on November 19, 1990. Note that the PSD provisions of the Washington SIP are currently disapproved and EPA's PSD regulations have been promulgated into the Washington SIP (see 40 CFR 52.2497). Until WAC 173–400–141 is revised to meet current EPA requirements and is approved by EPA, WDOE will continue to issue PSD permits under a partial delegation of the EPA PSD permit program.

Provisions Unrelated to the SIP

EPA is proposing to take no action on WAC 173–400–040(2) Fallout; WAC 173–400–040(4) Odors; WAC 173–400–070(7) Sulfuric Acid Plants; WAC 173–400–075 Emission Standards for Sources Emitting Hazardous Air Pollutants; and WAC 173–400–115 Standards of Performance for New Sources, as these provisions are not related to the criteria pollutants regulated under the SIP.

Implementation of Regulations for Air Contaminant Sources (WAC 173–403)—These regulations were repealed and their provisions incorporated into the General Regulations for Air Pollution Sources (WAC 173–400) as discussed above. EPA is proposing to approve the repeal of these regulations, thereby removing them from the Washington SIP.

Kraft Pulping Mills (WAC 173–405)—In general, these regulations were revised by cross-referencing WAC 173–400 for generally applicable provisions, deleting duplicative and out-dated provisions, and clarifying emission limits (e.g., averaging times, test methods). EPA is proposing to approve these regulations with the following exceptions: WAC 173–405–033 "Standards of Performance;" WAC 173–405–035 "Emission Standards for Sources Emitting Hazardous Air Pollutants;" WAC 173–405–040(1)(b), (1)(c), (3)(b), (3)(c), and (4) which are emission standards for total reduced sulfur (TRS); WAC 173–405–040(7), (8) and (9) which are provisions for alternative opacity limits; and WAC 173–405–072(2) which contains monitoring requirements for TRS emissions. EPA is proposing to take no action on WAC 173–405–033; –035; –040(1)(b), (1)(c), (3)(b), (3)(c), and (4); and –072(2) since these are not related to the criteria pollutants regulated under the SIP. However, EPA is proposing to disapprove WAC 173–405–040(7), (8), and (9) as these "director discretion" provisions do not ensure that all of the requirements of the Act will be met prior to the approval of an alternative opacity limit.

Sulfite Pulping Mills (WAC 173–410)—In general, these regulations were revised by cross-referencing WAC 173–400 for generally applicable provisions, deleting duplicative and out-dated provisions, and clarifying emission limits (e.g., averaging times, test methods). EPA is proposing to approve these regulations with the following exceptions; WAC 173–410–0-35 "Emission Standards for Sources Emitting Hazardous Air Pollutants;" the exception provision in WAC 173–410–040(3), and WAC 173–410–040(5) which is an emission standard for total reduced sulfur (TRS). EPA is proposing to take no action on WAC 173–410–035 and –040(5) since these are not related to the criteria pollutants regulated under the SIP. EPA is proposing to disapprove the exception provision in WAC 173–410–040(3) as this "director discretion" provision does not ensure that all of the requirements of the Act will be met prior to the approval of an alternative opacity limit.

Primary Aluminum Plants (WAC 173–415)—In general, these regulations were revised by cross-referencing WAC 173–400 for generally applicable provisions, deleting duplicative and out-dated provisions, and clarifying emission limits (e.g., averaging times, test methods). EPA is proposing to approve these regulations with the following exceptions: WAC 173–415–020(1) and (2) relating to emissions of fluorides; WAC 173–415–030(1) which contains emission standards for fluorides; WAC 173–415–030(3)(b) which is a provision for alternative opacity limits; WAC 173–415–040 "Standards of Performance;" and WAC 173–415–060(1)(a), (b), and (d) which are monitoring provisions for fluorides. EPA is proposing to take no action on WAC 173–415–020(1) and (2); –030(1); –040; and –060(1)(a), (b), and (d) since these are not related to the criteria pollutants regulated under the SIP. However, EPA is proposing to disapprove WAC 173–415–030(3)(b) as this "director discretion" provision does not ensure that all of the requirements of the Act will be met prior to the approval of an alternative opacity limit.

Open Burning (WAC 173–425)—In general, these regulations were revised by cross-referencing WAC 173–400 for generally applicable provisions, deleting duplicative and out-dated provisions, and clarifying requirements. EPA is proposing to approve these regulations in their entirety.

Burning of Field and Forage and Turf Grasses Grown for Seed (WAC 173–430)—In general, these regulations were revised by cross-referencing WAC 173–400 for generally applicable provisions, deleting duplicative and out-dated provisions, and clarifying requirements. EPA is proposing to approve these regulations in their entirety.

Solid Fuel Burning Device Standards (WAC 173–433)—These new regulations establish emission standards, certification standards and procedures, curtailment rules, and fuel restrictions for solid fuel burning devices. The regulations apply to any device that burns wood, coal, or any other nongaseous or nonliquid fuels and includes devices which are used for aesthetic or space-heating purposes in private residences or commercial establishments. The regulations establish performance standards for new woodstoves are well as appropriate certification procedures (WAC 173–433–100); establish a uniform statewide opacity standard (WAC 173–433–110); prohibit the burning of certain types of fuels (WAC 173–433–120); establish general emission standards (WAC 173–433–130); prohibit the use of solid fuel burning devices during air pollution episodes or periods of impaired air quality (WAC 173–433–150); and set a retail sales fee on the sale of all new and used solid fuel burning devices (WAC 173–433–170). EPA is proposing to approve WAC 173–433 in its entirety.

Solid Waste Incinerator Facilities (WAC 173–434)—These new regulations

establish emission standards, design standards, and performance standards for solid waste incinerator facilities. The regulations apply to all solid waste or solid waste derived fuel incinerator facilities that burn 12 or more tons per day. The regulations require the owner or operator of an incinerator to have an approved operation and maintenance plan (WAC 173–434–090); require new incinerators to use the best available control technology (WAC 173–434–100); establish emission standards (WAC 173–434–130); establish design and operation requirements (WAC 173–434–160); set monitoring and reporting requirements (WAC 173–434–170); and establish requirements for startup, shutdown, breakdown, or upset conditions (WAC 173–434–190). EPA is proposing to approve WAC 173–434 except for WAC 173–434–110 Standards of Performance, WAC 173–434–120 Emission Standards for Hazardous Air Pollutants, and WAC 173–434–130(2) which contains emission standards for hydrogen chloride. EPA is proposing to take no action on these sections since they are not related to the criteria pollutants regulated under the SIP.

Emergency Episode Plan (WAC 173–435)—In general, these regulations were revised to replace the episode levels for total suspended particulates with levels for PM–10 and to delete the combined levels for sulfur dioxide and particulate matter. Other revisions were made to improve the clarity and effectiveness of the regulations. EPA is proposing to approve WAC 173–435 with the exception of WAC 173–435–070(1). EPA is proposing to disapprove WAC 173–435–070(1) because it fails to meet the requirement of 40 CFR 51.151 to ensure that ambient concentrations at any location (including any validly sited monitoring station) do not reach significant harm levels.

Sensitive Areas (WAC 173–440)—These new regulations designate certain geographical areas of the state as sensitive areas and provide for the imposition of more stringent standards and compliance requirements for certain stationary source categories. The regulations designate the sensitive areas (WAC 173–440–040) and establish more stringent emission standards for wigwam burners located within any sensitive area (WAC 173–440–100). EPA is proposing to approve WAC 173–440, in its entirety.

Ambient Air Quality Standards for Particulate Matter (WAC 173–470)—These new regulations establish ambient air quality standards for total suspended particulates and PM–10, as well as particle fallout standards. EPA is proposing to approve WAC 173–470 with the exception of WAC 173–470–110 Particle Fallout, and WAC 173–470–150 Method of Measurement. EPA is proposing to take no action on WAC 173–470–110 since it is not related to the criteria pollutants regulated under the SIP. EPA is proposing to disapprove WAC 173–470–150 since this "director discretion" provision is inconsistent with the requirements for use of reference or equivalent methods in 40 CFR parts 50 and 53.

III. Summary of Action

EPA is today soliciting public comment on its proposal to approve in part and disapprove in part numerous revisions to the State of Washington Implementation Plan. Specifically, EPA is proposing to approve the following as revisions to the Washington SIP:

(1) WAC 173–400 (except for –040(1) (c) and (d); –040(2); –040(4); the second paragraph of –040(6); the exception provision in –050(3); –070(7); –075; –115; –120; –131; –136; –141; and –181), as in effect on March 22, 1991.
(2) WAC 173–405 (except for –033; –035; –040(1)(b), (1)(c), (3)(b), (3)(c), and (4); –040(7), (8), and (9); and –072(2)), as in effect on March 22, 1991.
(3) WAC 173–410 (except for 035; the exception provision in –040(3); and –040(5)), as in effect on March 22, 1991.
(4) WAC 173–415 (except for –020 (1) and (2); –030(1); –030(3)(b); –040; and –060(1) (a), (b), and (d)), as in effect on March 22, 1991.
(5) WAC 173–425, as in effect on October 18, 1990.
(6) WAC 173–430, as in effect on October 18, 1990.
(7) WAC 173–433, as in effect on October 18, 1990.
(8) WAC 173–434 (except for –110, –120, and –130(2)), as in effect on October 18, 1990.
(9) WAC 173–435 (except for –070(1)), as in effect on January 3, 1989.
(10) WAC 173–440, as in effect on October 18, 1990.
(11) WAC 173–470 (except for –110 and –150), as in effect on January 3, 1989.

EPA is also proposing to approve the repeal of WAC 173–403.

EPA is proposing to disapprove the following:

(1) WAC 173–400–040(1) (c) and (d), the second paragraph of –040(6), the exception provision in –050(3), –120, –131, –136, –141, and –180.
(2) WAC 173–405–040 (7), (8), and (9).
(3) the exception provision in WAC 173–410–040(3).
(4) WAC 173–415–030(3)(b).
(5) WAC 173–435–070(1).
(6) WAC 173–470–150.

EPA is proposing to take no action on the following:

(1) WAC 173–400–040(2), –040(4), –070(7), –075, and –115.
(2) WAC 173–405–033; –035, –040(1)(b), (1)(c), (3)(b), (3)(c), and (4); and –072(2).
(3) WAC 173–410–035 and –040(5).
(4) WAC 173–415–020 (1) and (2); –030(1); –040; and –060(1) (a), (b), and (d).
(5) WAC 173–434–110, –120, and –130(2).
(6) WAC 173–470–110.
(7) WAC 173–495.

Interested parties are invited to comment on all aspects of this proposed action. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by October 28, 1992 will be considered in the final rulemaking action taken by EPA.

IV. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the state request under section 110 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor

does it impose any new federal requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671(q).

Dated: September 10, 1992.

Dana A. Ramussen,

Regional Administrator.

[FR Doc. 92–23452 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–4512–1]

Criteria for Exercising Discretionary Sanctions Under Title I of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal sets forth criteria that the EPA Administrator must consider when exercising his discretionary authority to apply sanctions on a statewide basis pursuant to section 110(m) of the Clean Air Act as amended in 1990 (amended Act). If EPA makes one of the findings of State implementation plan (SIP) deficiencies described in section 179(a), EPA may apply any of the sanctions listed in section 179(b) to any portion of the State that the Administrator determines is reasonable and appropriate for the purpose of ensuring that the requirements of the amended Act relating to plans are met. This proposal establishes the criteria EPA shall use in exercising its discretionary authority during the 24–month period following a finding of a plan deficiency to ensure that the sanctions listed in section 179(b) are not applied on a statewide basis when one or more political subdivisions are principally responsible for such deficiency. In addition, EPA describes the section 110(m) sanctions provision and EPA's anticipated application of these sanctions "at any time" after the Agency makes a finding.

The EPA anticipates that it will use its authority to apply sanctions earlier than 18 months after a finding only in limited cases and only after notice and an opportunity for comment.

DATES: Written comments on the proposed EPA action must be received by EPA at the address below on or before November 27, 1992.

ADDRESSES: Written comments may be submitted to the public docket. The public docket for this action, A–91–66, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, room 4, 401 M Street SW., Washington, DC. A reasonable fee for copying may be charged.

FOR FURTHER INFORMATION CONTACT: A. Ted Creekmore, U.S. EPA, MD–15, Research Triangle Park, North Carolina 27711, telephone (919) 541–5699.

SUPPLEMENTARY INFORMATION:

I. Overview

Section 110(m) of the Clean Air Act specifically requires the promulgation of criteria to ensure that, during the 24–month period following a finding, disapproval, or determination (hereinafter "finding") referred to in section 179(a), sanctions pursuant to section 110(m) are not applied on a statewide basis where one or more political subdivisions are principally responsible for such deficiency. Thus, these criteria apply only in the limited circumstance in which EPA is considering the imposition of statewide sanctions within 24 months after the Agency makes a section 179(a) finding.

Today's proposal provides five criteria that EPA will use to determine if sanctions imposed pursuant to section 110(m) may be applied statewide [see § 52.30(c) of the proposed regulatory text]. If at least one political subdivision meets all five of the criteria, then that political subdivision will be considered principally responsible, and EPA will not impose sanctions on a statewide basis. Rather, EPA will impose sanctions only on the areas of the States for which EPA determines it is reasonable and appropriate to impose sanctions. If all of the criteria are not met by at least one political subdivision, then no political subdivision is principally responsible, and EPA will use its discretion to determine whether to apply statewide sanctions. However, if EPA, using its discretion, initially determines that less-than-statewide sanctions should be applied, EPA will not be bound by the criteria and will impose sanctions on those political subdivisions found to be principally responsible, and possibly on others as reasonable and appropriate. Again, sanctions will only be applied on the geographic area of the State that the Administrator determines to be "reasonable and appropriate," and decisions will be made on a case-by-case basis.

II. Background

On November 15, 1990, the President signed into law the Clean Air Act Amendments (Amendments) of 1990.[1] These Amendments retained several of the types of sanctions provided for in the pre-amended Act, but substantially altered the mechanism for imposition of sanctions. The Amendments include two new sanctions provisions. First, section 110(m),[2] provides the Administrator with discretion to impose sanctions on any portion of the State that he determines is reasonable and appropriate. Second, section 179(a),[3] requires the Administrator to impose sanctions after specific timeframes if the deficiencies on which the sanctions are based are not corrected.[4] Although section 110(m) does not provide a specific timeframe for application of section 110(m) sanctions, EPA anticipates that it will impose sanctions earlier than 18 months only in limited circumstances, after notice-and-comment rulemaking. The specific types of sanctions which may be applied under section 110(m), or must be applied under section 179(a), are listed in section 179(b).

This rulemaking considers the application of sanctions under section 110(m). However, because section 110(m) and section 179 are interrelated, this preamble also will discuss sanctions under section 179(a) and (b) in order to clarify what is required by section 110(m).

III. Section 110(m)

Section 110(m) provides that:

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[1] Pub Law No. 101–549, 104 Stat. 2399, codified at 42 U.S.C. sections 7401–7671q (1991).

[2] 42 U.S.C. 7410(m).

[3] 42 U.S.C. 7509(a).

[4] It is necessary, for clarity's sake, to understand that section 179(a) performs two very distinct functions: it defines several types of findings, and it requires EPA to impose sanctions if one of these findings has been made. Section 179(a)(1) through (4) sets forth the four types of findings which may lead to the imposition of a sanction. The introduction and latter part of section 179(a) mandate the EPA impose at least one sanction 18 months after a finding has been made with respect to certain types of plans if the deficiency is not corrected.

The Administrator may apply any of the sanctions listed in section 179(b) any time (or at any time after) the Administrator makes a finding, disapproval, or determination [under section 179(a)(1) through (4)] in relation to any plan or plan item * * * required under this Act, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this Act * * * are met. The Administrator shall, by rule, establish criteria for exercising his authority * * * to ensure that, during the 24-month period following a finding, disapproval, or determination referred to in section 179(a), such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

In order to fully understand this section, it is necessary to recognize that section 110(m) may be divided into two distinct parts. The first part sets forth the following:

1. The timing of the application of section 110(m) sanctions.

2. The availability under section 110(m) of the sanctions listed in section 179(b).

3. The reference to a finding, disapproval, or determination under section 179(a).

4. The geographical scope of application of sanctions under section 110(m).

The second part requires the Administrator to propose criteria to be used when he is considering applying section 179(b) sanctions on a statewide basis under section 110(m) within 24 months of a section 179(a) finding.

Although the main purpose of this proposal is to set forth the criteria which EPA is required to establish under this second part, it is first necessary to address the three elements referred to above to ensure that the criteria can be fully understood.

IV. Available Sanctions, Findings Under Section 179(a), and the Scope of Sanctions

A. Timing of Section 110(m) Sanctions

Under section 110(m), EPA may apply either of the sanctions provided in section 179(b) at any time or at any time after the Agency makes a finding under section 179(a) (1) through (4). Section 110(m) provides EPA with discretion to apply these sanctions earlier than the 18-month mandatory period for application of sanctions under section 179(a). However, EPA anticipates that it will exercise this discretion to impose section 110(m) sanctions earlier than 18 months following a finding only in unusual circumstances where the State has indicated an explicit resistance to working to resolve a plan deficiency. As a matter or policy, EPA will provide notice and opportunity for comment prior to imposing sanctions earlier than 18 months after the finding pursuant to section 110(m).

B. Sanctions Available Under Section 110(m)

Section 179(b) establishes the two types of sanctions that the Administrator may impose pursuant to section 110(m): A highway funding sanction and a 2-to-1 offset sanction.[5]

1. Highway funding sanction. Under the highway funding sanction provision [section 179(b)(1)], the Administrator may impose a prohibition on the approval by the Secretary of Transportation of certain projects, or the awarding of certain grants under title 23 of the United States Code.

2. Emission offset sanction. Under the emissions offset sanction provision [section 179(b)(2)], a ratio of at least 2-to-1 will be required for emissions reductions from existing sources within the nonattainment area to offset emissions from major new or modified facilities. The offset requirement, established in section 173,[6] refers to reductions in emissions that major new and modified sources must get from existing sources before they may begin construction. [For comparison, for ozone, the pre-sanction ratio for volatile organic compounds (VOC) emissions ranges from greater than 1.0 to 1.5, depending upon the classification of the area.]

C. Finding Pursuant to Section 179(a)

Section 179(b) sanctions may be applied pursuant to section 110(m) when the Administrator makes a finding under section 179(a) (1) through (4), provided that the Agency has followed all procedural requirements (i.e., rulemaking requirements, such as notice and comment) for imposing a sanction. The Administrator has no authority under section 110(m), nor any mandatory duty under section 179(a), to impose sanctions until a finding has been made.

Section 179(a) sets forth the four types of findings which may lead to the imposition of a sanction:

1. That a State has failed to submit a SIP for a nonattainment area or an element of a SIP, or the SIP or SIP element fails to meet the completeness criteria issued pursuant to section 110(k).

2. That EPA disapproves a SIP submission for a nonattainment area based on its failure to meet one or more plan elements required by the amended Act.

3. That the State has not made any other submission, or has not made a complete submission, as required by the amended Act, or that EPA disapproves such a submission.

4. That a requirement of an approved plan is not being implemented.

D. Scope of Application of Section 110(m) Sanctions

When a finding under section 179(a) has been made, the Administrator may, under section 110(m), apply section 179(b) highway sanctions and offset sanctions to any area of the State which is determined to be reasonable and appropriate. The determination of where it would be reasonable and appropriate to apply sanctions, although important to the understanding of section 110(m) sanctions, is secondary to the discussion of the required criteria—the focus of this rulemaking. A further discussion of this issue is found in section V of this notice.

V. Development of Criteria

The second sentence of section 110(m) requires the Agency to establish criteria that EPA must apply if the Agency considers applying sanctions under section 110(m) on a statewide basis within 24 months of a section 179(a) finding. These criteria should enable EPA to determine when a political subdivision,[7] rather than the entire State, is principally responsible for a section 179(a) deficiency.

A. Principal Responsibility

The EPA recognized that an understanding of the term "principal responsibility" was integral to the development of the criteria. In this regard, the Agency faced a dilemma in trying to determine when a political subdivision would be principally responsible for a section 179(a) failure. The EPA recognizes that the States have primary responsibility for meeting the requirements of the amended Act. However, EPA also recognizes that the States may delegate principal responsibility for developing a plan or

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[5] Other sanctions are also provided for under the amended Act; however, they will not be discussed in this rulemaking since they are not applicable under section 110(m).

[6] 42 U.S.C. 7503.

[7] EPA interprets the term "political subdivision" to refer to the representative body that is responsible for adopting and implementing air pollution controls for one, or any combination of one or more of the following: city, town, borough, county, parish, district, or any other geographical subdivision created by or pursuant to Federal or State law. This will include any agency designated under section 174, 42 U.S.C., section 7504, by the State to carry out the air planning responsibilities under part D.

plan element to one or more political subdivisions.

The EPA has attempted to draft criteria that would clearly indicate when the political subdivision carries the principal burden of carrying out an activity. The EPA recognizes that, in many instances, a State may retain the authority to perform an activity that it has delegated to a political subdivision upon the failure of the political subdivision to perform that activity.[8] However, the State's decision to retain authority should not preclude the conclusion that the political subdivision is principally responsible for the activity. Even if the State retains some authority to perform an activity, the political subdivision may still be principally responsible.

In addition, EPA believes that it is particularly necessary to focus on the interrelationship between a State and a political subdivision because of the wording of section 179(a) (1) and (3). The first and third findings under section 179(a), the finding of failure to submit a SIP or SIP element, and the finding of failure to make any submittal under the amended Act, specifically reference the State's failure to take an action. The EPA believes that this reference to a finding regarding a State does not preclude EPA from finding that the State's failure is primarily a result of a political subdivision's failure to carry out an activity. Although the Act references the State, the political subdivision may have had principal responsibility to carry out that activity. For example, under section 110 and part D of title I, the State is generally responsible for submitting SIP revisions to EPA. However, States frequently delegate the task of preparing new and revised rules to political subdivisions. If the political subdivision fails to submit the rules to the State, the State may then fail to submit the rules to EPA. If EPA finds, according to the criteria in today's rulemaking, that the political subdivision had principal responsibility to develop the new or revised rules and failed to do so, EPA will not impose sanctions on the entire State. Although the Agency makes the finding as to the State, EPA is obligated to examine the sources of the failure and determine what party is principally responsible.

[8] In fact, at least one provision of the Act specifically requires the State to retain some type of final responsibility to take action. Section 110(a)(2)(E)(iii) requires the State to make assurances that in instances where the State relies on a political subdivision to implement a plan provision, the State holds responsibility for ensuring adequate implementation of the plan provision.

B. Criteria

The EPA has developed five proposed criteria (summarized below) that it believes will enable a determination of when a State has relinquished its primary control over an activity, when it has delegated that control to a political subdivision, and whether the political subdivision has failed to perform that required activity. The EPA believes that this delegation is established when a political subdivision:

1. Has the legal authority to perform the required activity.

2. Has traditionally performed, or has been delegated the responsibility to perform, the required activity.

3. Has received, where appropriate, adequate funding, or authority to obtain funding, from the State to perform the required activity.

4. Has agreed to perform (and has not revoked that agreement) or is required to accept responsibility for performing the required activity.

5. Has failed to perform the required activity. If one or more political subdivisions each meet all five of the criteria, EPA will consider those subdivisions principally responsible, and hence, EPA may impose sanctions only on those political subdivisions and on other areas (short of the entire State) for which the Agency determines it is reasonable and appropriate.[9] The EPA would not impose sanctions statewide. However, if all of the criteria have not been met by at least one political subdivision,[10] EPA will use its discretion to determine whether to apply sanctions on a statewide basis.

These five criteria are intended to be applicable to SIP failures relating to stationary, area, and mobile sources. The EPA believes that the criteria developed here will enable it to successfully determine when a political subdivision is principally responsible.

VI. Scope of Application of Section 110(m) Sanctions

As stated earlier, once a finding under section 179(a) has been made, the Administrator may, pursuant to section 110(m), apply the section 179(b) sanctions to any portion of the State (consistent with the criteria established through this rulemaking). The language of section 110(m) indicates that sanctions may be applied on a broader basis than sanctions imposed pursuant to section 179(a). While section 110(m) indicates that sanctions may be applied to any area of the State, section 179(b) appears to limit, for the most part, the application of sanctions to nonattainment areas. Section 179(b)(1) contains a specific geographic limitation: "[t]he Administrator may impose a prohibition, applicable to a nonattainment area" on the approval by the Secretary of Transportation of certain projects or the awarding of certain grants under Title 23 of the U.S. Code.

The offset sanction, section 179(b)(2), is limited by the terms of the sanction itself. Under section 179(b)(2), the emissions offset requirement under section 173 (the nonattainment area new source review provisions) must be applied at a ratio of at least 2-to-1 for sources "for which a permit is required under Part D." While Part D generally applies to nonattainment areas, some requirements extend to other areas. Moreover, sources in those areas may be subject to the offset requirements of section 173. [11]

Section 110(m) establishes its own geographic scope for application of sanctions. Although section 110(m) refers to the sanctions established in section 179(b), there is no language stating that the same geographical limitations must apply. Section 110(m) refers only to the sanctions themselves, not the accompanying limitations. The language of section 110(m) sets forth its own, broader limitations by expressly providing that sanctions may be imposed on an entire State or any portion of a State. A portion of the section 110(m) language states, "The Administrator may apply any of the sanctions listed in section 179(b) * * * with respect to any portion of the State the Administrator determines reasonable and appropriate * * *." Moreover, this issue is addressed in the legislative history. In the House Conference Report on the amended Act, 136 Cong. Rec. H12854 (daily ed. October 26, 1990), Congressman Glenn Anderson stated, "The past failure of State legislatures to improve inspection and maintenance programs required by

[9] If EPA does not impose sanctions statewide, then it is not required to consider the criteria listed in this rulemaking. Consequently, EPA could impose sanctions on any area or political subdivision for which EPA deems reasonable and appropriate, provided that the requirements of section 110(m) are satisfied.

[10] It is important to note that all five criteria must be met through the action or inaction of the same political subdivision.

[11] For example, under section 184(b)(2), any stationary source that is located within an ozone transport region, and that emits, or has the potential to emit, 50 tons per year of VOC's is considered a major source and is subject to the requirements applicable to major sources located in a moderate nonattainment area. Therefore, at least within transport regions, some sources located in areas not designated nonattainment may be subject to section 173 offset requirements and, hence, may become subject to the offset sanction of section 179(b)(2).

a SIP can be cited as an appropriate circumstance where sanctions may be appropriate beyond the nonattainment area." Therefore, although the Administrator may impose section 110(m) sanctions on any area of the State, the offset sanction may only affect nonattainment areas or attainment areas that are otherwise subject to section 173. The highway sanction is not limited in such a manner and could be effective in all areas of a State.

VII. Request for Public Comments

The EPA would particularly like to solicit comments on three major portions of today's proposal. They are:

1. The selection and design of the five criteria.

2. The EPA's interpretation of the statutory requirements of section 110(m).

3. The use of EPA discretion [§ 52.30(d)(2)] to determine the appropriate area to apply sanctions if not all of the five criteria are met by a political subdivision of the State.

VIII. Limits of This Rulemaking

Nothing in the Act precludes EPA from applying sanctions pursuant to section 110(m), without examining the criteria, if the Agency elects to impose a sanction on a less-than-statewide basis or where EPA imposes statewide sanctions more than 24 months after a finding. Furthermore, this rulemaking does not affect the situation where a group of political subdivisions, whose combined area comprises the entire State, each suffers a deficiency. The EPA could impose a sanction on each of those political subdivisions as an independent area without applying the criteria, even though this may appear to be a statewide sanction. All decisions to impose sanctions will be made on a case-by-case basis.

This rule is not intended to identify which sanction EPA will apply in a particular circumstance, nor the type of deficiency for which EPA might use its discretion to apply sanctions. It is not intended to describe the notice and comment procedures EPA will ultimately use to impose a sanction pursuant to section 110(m).

IX. Miscellaneous

A. Relationship To Permit Program

The amended Act includes specific sanctions provisions for permitting requirements in section 502 (d) and (i), 42 U.S.C., and section 7661a (d) and (i). The finding regarding the permit program is not a finding under section 179(a); thus section 110(m) does not apply to the use of sanctions for addressing permit-related failures.

B. Executive Order 12291

Under Executive Order 12291, EPA must decide whether a rule is "major" and, therefore, subject to the requirement of a regulatory impact analysis (RIA). The proposed rule is intended to limit the circumstances under which EPA may impose sanctions on an entire State when one or more political subdivisions of that State are principally responsible for the action or lack of action that prompted the Administrator to make a section 179(a) finding. Moreover, this rule does not, of itself, apply any sanctions; thus any impacts would only be felt if and when sanctions were actually applied. The Administrator finds that this proposed rule will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation will result in no significant environmental or energy impacts.

Although impacts may result in the future when EPA applies sanctions, the impacts are impossible to gauge since it is not known which States will, in fact, fail to meet requirements of the Act. However, this action potentially should reduce the number of statewide sanctions applied under section 110(m) of the Act, and thereby reduce the geographical area subject to sanctions. Thus, this proposed rule does not qualify as a major rule and is, therefore, not subject to the requirement of an RIA.

The EPA has submitted this regulation to the Office of Management and Budget (OMB) for review under Executive Order 12291, and their written comments and any EPA responses have been placed in the docket for this proceeding.

C. Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. section 605(b), I hereby certify that the attached proposed rule will not have a significant impact on a substantial number of small entities. Since the rule requires EPA to consider criteria before applying sanctions on a statewide basis, it could potentially result in a reduced burden on small entities.

D. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. section 3501, et seq.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 19, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble part 52, title 40 of the Code of Federal Regulations is proposed to be amended as follows.

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart A—[Amended]

2. Part 52 is proposed to be amended by adding a new § 52.30 to subpart A to read as follows:

§ 52.30 Criteria for limiting application of sanctions under section 110(m) of the Clean Air Act on a statewide basis.

(a) *Definitions.* For the purpose of this section:

(1) The term *political subdivision* refers to the representative body that is responsible for adopting and implementing air pollution controls for one, or any combination of one or more of the following: City, town, borough, county, parish, district, or any other geographical subdivision created by, or pursuant to, Federal or State law. This will include any agency designated under section 174, 42 U.S.C. section 7504, by the State to carry out the air planning responsibilities under part D.

(2) The term *required activity* may include, but is not limited to, the submission of an adequate SIP or SIP element, or the implementation of a SIP or SIP element.

(3) The term *deficiency* means the failure to perform a required activity as defined above.

(b) *Sanctions.* During the 24 months after a finding, determination, or disapproval under section 179(a) of the Clean Air Act is made, EPA will not impose sanctions under section 110(m) of the Clean Air Act on a statewide basis if the Administrator finds that one or more political subdivisions of the State are principally responsible for the deficiency on which the finding, disapproval, or determination, as

provided under section 179(a) (1) through (4), is based.

(c) *Criteria.* The EPA will use the following criteria to determine whether a political subdivision is principally responsible for the deficiency.

(1) The State has provided adequate legal authority to a political subdivision to perform the required activity.

(2) The required activity is one which has traditionally been performed by the local political subdivision, or the responsibility for performing the required activity has been delegated to the political subdivision.

(3) The State has provided adequate funding or authority to obtain funding (when funding is necessary to carry out the required activity) to the political subdivision to perform the required activity.

(4) The political subdivision has agreed to perform (and has not revoked that agreement), or is required by State law to accept responsibility for performing, the required activity.

(5) The political subdivision has failed to perform the required activity.

(d) *Imposition of Sanctions.*

(1) If all of the criteria in paragraph (c) of this section have been met, through the action or inaction of the same political subdivision, EPA will not impose sanctions on a statewide basis.

(2) If not all of the criteria in paragraph (c) of this section have been met, through the action or inaction of the same political subdivision, EPA will determine the area for which it is reasonable and appropriate to apply sanctions.

[FR Doc. 92–23449 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[AZ4–1–5262; FRL–4512–5]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Maricopa County Bureau of Air Pollution Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to disapprove two revised rules controlling volatile organic compounds (VOCs) adopted on July 13, 1988 by the Maricopa County Bureau of Air Pollution Control (the Bureau) for inclusion in the Arizona State Implementation Plan (SIP). The Arizona Department of Environmental Quality (DEQ) submitted these revisions to EPA on January 4, 1990. The revisions concern Rule 330, Volatile Organic Compounds, and Rule 336, Surface Coating Operations. EPA has evaluated the revisions to these rules and is proposing a disapproval under sections 110(k)(3) and 110(l) of the Clean Air Act, as amended in 1990 (CAA or the Act), because the rules do not meet the requirements of section 110 and Part D of the CAA.

DATES: Comments must be received on or before October 28, 1992.

ADDRESSES: Comments may be mailed to: Esther J. Hill, Rulemaking Section I (A–5–4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, Air Quality Planning Office, 2005 N. Central Avenue, Phoenix, AZ 85004

Maricopa County Air Pollution Control, 2406 S. 24th Street, Suite E214, Phoenix, AZ 85034.

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Rulemaking Section I (A–5–4), Air and Toxics Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included Maricopa County. 43 FR 8964. On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area of Maricopa County to the Maricopa Association of Governments (MAG) Urban Planning Area. 44 FR 16391, 40 CFR 81.303. On February 24, 1984, EPA notified the Governor of Arizona that the Bureau's portion of the Arizona SIP was inadequate to attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone and requested that the State submit curative SIP revisions to EPA for approval (EPA's SIP-Call, 49 FR 18827, May 3, 1984). On May 26, 1988, EPA again notified the Governor of Arizona that the Bureau's portion of the Arizona SIP was inadequate to meet the ozone NAAQS and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, 53 FR 34500, September 7, 1988). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–594, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas correct their deficient RACT rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in EPA's pre-amendment guidance.[1] EPA's SIP–Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The MAG Urban Planning Area is classified as a moderate nonattainment area;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline. The Bureau adopted the two VOC-controlling rules being proposed for disapproval in this notice in July of 1988, and the Arizona DEQ, acting as the Governor's designee, submitted them to EPA on January 4, 1990, in response to the SIP–Calls. Although this submittal predates the amendments to the CAA, it also serves as a submittal under section 182(a)(2)(A).[3]

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation, Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice (Appendix D or the Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control techniques guidelines (CTGs).

[2] Upon enactment of the CAA, the MAG Urban Planning Area continued as nonattainment for ozone pursuant to section 107(d) and was classified as moderate by operation of law pursuant to section 181(a). See 56 FR 56694 (November 6, 1991).

[3] The Agency has examined the issue of whether this action should be reviewed under the provisions of the pre-amended Act or whether EPA should review the submittal under amended Part D. As a general rule, where a newly enacted statute directly speaks to an issue, the new Act must apply to pending actions. *Kaiser Aluminum & Chem. Corp.* v. *Bonjorno*, 494 U.S. 827, 110 S.Ct. 1570, 1576–77. EPA believes that in the present case, the amended Act directly speaks to the issue by providing that States must correct their RACT rules as required under pre-amended section 172 as interpreted by EPA's pre-amendment guidance. Therefore, EPA has reviewed this submittal for conformance with the amended Act.

The State of Arizona submitted several revised rules to EPA for incorporation into its SIP on January 4, 1990, including the rules proposed for action in this notice. This notice addresses EPA's proposed action for Rule 330, Volatile Organic Compounds, and Rule 336, Surface Coating Operations. The submitted rules were found to be complete on May 25, 1990 pursuant to EPA's completeness criteria adopted on February 16, 1990 and set forth in 40 CFR part 51 appendix V,[4] and are being proposed for disapproval.

Both Rules 330 and 336 are rules that control volatile organic compounds (VOCs) from the generalized cleaning (degreasing) of parts and from the coating of metal parts, aerospace equipment, paper, films, plastic and flexible parts, respectively. VOCs contribute to the production of ground level ozone and smog. Rules 330 and 336 were originally adopted as part of the Bureau's effort to achieve the NAAQS for ozone in the MAG Urban Planning Area and have been revised in response to EPA's SIP–Calls and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for the Bureau's Rule 330 and Rule 336.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Techniques Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). There is no CTG applicable to Rule 330 which controls VOC emissions from operations not covered by other Bureau rules. The CTGs that apply to the Rule 336 are: (1) Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, EPA–450/2–77–008, Vol. II; (2) Summary of Group I Control Technique Guideline Documents for Control of Volatile Organic Emissions from Existing Stationary Sources, EPA–450/3–78–120; (3) Surface Coating of Large Appliances, EPA–450/3–78–120; (3) Surface Coating of Large Appliances, EPA–450/2–77–034; and (4) Surface Coating of Miscellaneous Metal Parts and Products, EPA–450/2–77–015. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The rules discussed below are being proposed for disapproval because they do not meet the requirements of section 110 and Part D of the CAA.

Rule 330, Volatile Organic Compounds

This rule applies to VOC emitting sources, such as wood furniture coating facilities, not regulated by other Bureau rules. While there are some strengthening provisions, there are several appendix D deficiencies that cannot be approved under section 110 and Part D of the Act. These deficiencies include lack of test methods with which to determine compliance and a lack of adequate recordkeeping, which can lead to enforceability problems.

Rule 336, Surface Coating Operations

This rule applies to a variety of coating operations including the coating of cans, coils, metal furniture, large appliances, aerospace assemblies and components, and paper, film, fabric, vinyl, plastics, and flexible parts. VOC emission control is accomplished by setting limits on the amount of VOC that can be contained in the coating materials or by the use of emission control equipment. Despite certain strengthening provisions, this rule contains a number of appendix D deficiencies that cannot be approved under section 110 and Part D of the Act. For example, the rule does not specify adequate recordkeeping which can lead to enforceability problems. The rule also allows exemptions which are not provided in the CTG and have not been justified by the Bureau. In addition, a two-year compliance date extension for metal parts and products and a four-year compliance date for aerospace component coating have been set. Under sections 193 and 110(1) of the amended Act, SIP revisions may not provide for increased emissions over those required in the pre-amendment SIP nor may they interfere with applicable attainment and reasonable further progress (RFP) requirements. EPA believes that an extension of the compliance date would cause emissions in excess of what would occur under the presently approved SIP and, as a result, could interfere with attainment of the standard and RFP, as defined in section 171 of the Act. The State has not made any demonstration that there would be no excess emissions or no interference with RFP and attainment.

EPA has evaluated the Bureau's Rules 330 and 336 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. A detailed discussion of the rule deficiencies can be found in the Technical Support Document for each rule which is available from the U.S. EPA's Region 9 office. Because of the deficiencies, the rules are not approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book.

Section 193 of the amended Act provides that a State may not relax a control requirement in effect prior to amendment of the CAA in 1990 unless the State provides for equivalent or greater emission reduction elsewhere. Under Rule 336, Arizona has extended the compliance date for certain surface coating operations without providing how equivalent or greater reductions will be achieved during the time of extended compliance. In addition, section 110(1) of the CAA stipulates that EPA cannot approve rule revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the Act) or any other applicable requirements of the Act. The state has not demonstrated that the changes to Rule 336 will not interfere with reasonable further progress. Rule 336 allows for an unjustified and lengthy compliance period for regulation of aerospace product coatings and metal parts and product coatings. Thus, Rule 336 is proposed for disapproval under sections 110(1) and 193 of the CAA.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more

[4] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991) to be codified at 40 CFR part 51, appendix V.

of the elements required by the CAA, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to issues a finding of disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision of the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any preexisting federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirement.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 18, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23455 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR PART 52

[CA 14–11–5591; FRL–4512–9]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and the Kern County Air Pollution Control District (KCAPCD) on April 11, 1991 and May 6, 1991, respectively. The California Air Resources Board submitted these revisions to EPA on May 30, 1991. The revisions concern SJVUAPCD's Rule 463.4, Wastewater Separators, and KCAPCD's Rule 414, Wastewater Separators. These rules control the emission of volatile organic compounds (VOCs) from wastewater separators. EPA has evaluated these rules and is proposing to approve them under Section 110(k)(3) as meeting the requirements of Section 110(a) and Part D of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Comments must be received on or before October 28, 1992.

ADDRESSES: Comments may be mailed to: John Ungvarsky, Acting Chief, Northern California, Nevada, and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rules revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

San Joaquin Valley Unified, Air Pollution Control District, 1745 West Shaw, suite 104, Fresno, CA 93711.

Kern Country Air Pollution Control District, 2700 M Street, suite 275, Bakersfield, CA 93301.

FOR FURTHER INFORMATION CONTACT: Denise Odenwalder, Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA), that included the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under Section 172(a)(2), and EPA approved, and extension of the attainment date to December 31, 1987.[2] On May 26, 1988, EPA notified the Governor of California that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control

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[1] At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] This extension was not requested for Kern County. Thus, Kern County's attainment date remained December 31, 1982

District (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, Kern County Air Pollution Control District (KCAPCD) still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amendment section 172(b) as interpreted in pre-amendment guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. APCDs found in the San Joaquin Valley Air Basin (now collectively known as the SJVUAPCD) were subject to the RACT fix-up requirement and the May 15, 1991 deadline.[4] KCAPCD was subject to EPA's SIP-Call, but was not subject to the RACT fix-up requirement and the May 15, 1991 deadline.[5] Kern County is subject to the RACT requirement of section 182(b)(2) of the amended Act.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 30, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for SJVUAPCD's Rule 463.4, Wastewater Separators, and KCAPCD's Rule 414, Wastewater Separators. These submitted rules were found to be complete on July 10, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51 Appendix V [6] and are being proposed for approval into the SIP.

Both rules control the emission of VOCs from wastewater separators. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182 RACT requirements. The Following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule of consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among the provisions of the CAA is the requirement that a VOC rule must, in a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, of requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to these rules is entitled, "Control of Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds," EPA document # EPA–450/2–77–025. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 3. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD'S submitted Rule 463.4 is a revision of existing SIP approved rules from the eight districts that combined to form SJVUAPCD.[7] KCAPCD's submitted Rule 414 is a revision of the current SIP Rule 414, Wastewater Separators.

SJVUAPCD'S submitted Rule 463.4 and KCAPCD's submitted Rule 414 are essentially identical rules. The rules reduced the emission of VOCs by setting equipment specifications and operating procedures for wastewater separators. The rules include the following significant changes from the SIP approved rules:

- Clarifies the applicability of the rules;
- Includes additional definitions and revises existing definitions;
- Revises the rules' exemptions;
- Deletes sections giving discretion to the Control Officer to approve control equipment other than that required by the rules;
- Adds requirements for handling the oil or tar removed from wastewater separating devices;
- Adds sections on test methods; and
- Adds and updates compliance schedules.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD's Rule 463.4 and KCAPCD's Rule 414 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small

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[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issue Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The San Joaquin Valley Air Basin was redesignated nonattainment and classified as serious by operation of law pursuant to section 107(d) and section 181(a) upon the date of enactment of the Clean Air Act Amendments of 1990. See 56 FR 56694 (November 6, 1991).

[5] KCAPCD was not subject to the RACT fix-up requirement and the May 15, 1991 deadline because the Southeast Desert Air Basin portion of Kern County was not a pre-enactment nonattainment area, and thus, was not automatically designated nonattainment on the date of enactment of the Clean Air Act Amendments of 1990. (See section 107(d) and section 182(a)(2)(A) of the Clean Air Act Amendments of 1990.) However, the KCAPCD is still subject to the requirements of EPA's SIP-Call because the SIP-Call included all of Kern County. The substantive requirements of the SIP—Call are the same as those of the statutory RACT fix-up requirement.

[6] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991).

[7] The SIP approved rules are San Joaquin County APCD's Rule 413, Refinery Oil-Water Separators; Fresno County APCD's Rule 413, Effluent Oil-Water Separators; Madera County APCD's Rule 420, Effluent Oil-Water Separators; Merced County APCD's Rule 413, Effluent Oil-Water Separators; Stanislaus County APCD's Rule 413, Effluent Oil-Water Separators; Tulare County APCD's Rule 414, Effluent Oil-Water Separators; KCAPCD's Rule 414, Wastewater Separators; and Kings County APCD's Rule 414, Wastewater Separators.

businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. § 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozones, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 18, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92-23454 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[CA-12-8-5267; FRL-4512-7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (BAAQMD) on September 5, 1990. The California Air Resources Board (CARB) submitted these revisions to EPA on April 5, 1991. The revisions concern the adoption of BAAQMD Regulation 8, Rule 17, Petroleum Dry Cleaning Operations and Regulation 8, Rule 27, Synthetic Solvent Dry Cleaning Operations. Both of these rules control the emissions of volatile organic compounds (VOCs) from their respective operations. EPA has evaluated each of these rules and is proposing to approve them under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Comments must be received on or before October 28, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1190.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Bay Area. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under preamended Section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238, 52.222. On May 26, 1988, EPA notified the Governor of California that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. section 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The BAAQMD was subject to the RACT fix-up requirement and the May 15, 1991 deadline.[2]

The State of California submitted many revised RACT rules for incorporation into its SIP on May 30, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for two BAAQMD Rules: Regulation 8, Rule 17, Petroleum Dry Cleaning Operations and Regulation 8, Rule 27, Synthetic Solvent Dry Cleaning Operations. These submitted rules were found to be complete on May 21, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51 Appendix V [3] and are being proposed for approval into the SIP.

Both rules control the emission of VOCs, which contribute to the production of ground level ozone and smog. The rules were adopted as part of the district's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Bay Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the amendments.

[3] EPA has since adopted completeness criteria pursuant to § 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991).

182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among the CAA provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (GTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norm for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 8–17 is entitled, Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners, EPA Document No. EPA 450/3–82–009. The CTG applicable to Rule 8–27 is entitled, Control of Volatile Organic Emissions from Perchloroethylene Dry Cleaning Systems, EPA Document No. EPA 450/2–78–050. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD Regulation 8, Rule 17, Petroleum Dry Cleaning Operations includes the following significant changes from the current SIP:

- Adds definitions;
- Changes the medium user exemption to a small user exemption;
- Adds operating requirements;
- Adds emission control requirements for solvent recovery dryers;
- Adds solvent filtration requirements; and
- Adds recordkeeping and test method requirements.

BAAQMD Regulation 8, Rule 27, Synthetic Solvent Dry Cleaning Operations includes the following significant changes from the current SIP:

- Adds a provision for future elimination of the small-user exemption;
- Expands the scope of the rule to include cleaning with all synthetic (halogenated) solvents;
- Adds definitions;
- Expands the operating requirements;
- Expands the emission control requirements;
- Expands the space limitation exemption requirements; and
- Adds recordkeeping and test method requirements.

EPA Region IX's technical support documents provide a more detailed discussion of the revisions to each rule.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD's Regulation 8, Rule 17, Petroleum Dry Cleaning Operations and Regulation 8, Rule 27, Synthetic Solvent Dry Cleaning Operations are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities, 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the office of management and budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations , Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 18, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23457 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 250

[FRL–4513–5]

Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials

AGENCY: U.S. Environmental Protection Agency.

ACTION: Advance notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) plans to conduct a public meeting to provide an opportunity for interested parties to express their views on issues pertaining to its "Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials" (40 CFR part 250). The Agency anticipates inviting principals from industry, environmental organizations, state and Federal procuring agencies, and state and local solid waste and recycling agencies. The meeting will be open to all interested parties.

EPA plans to hold this meeting to ensure that the positions of all interested parties are known as the Agency considers possible revisions to

the existing paper procurement guideline. The issues to be discussed at the meeting will be determined by meeting participants. A tentative list of discussion topics will be prepared by EPA and announced in a future **Federal Register** notice to assist meeting participants as they develop the meeting agenda.

DATES: It is anticipated that the meeting will be held in early December of this year. The exact date and time of the meeting will be announced in a future **Federal Register** notice.

ADDRESSES: The meeting location will be announced in a future **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Terry Grist of the Municipal and Industrial Solid Waste Division, U.S. Environmental Protection Agency (Mail Stop OS-301), 401 M Street, SW., Washington, DC 20460, 202-260-9718.

SUPPLEMENTARY INFORMATION: Section 6002 of the Resource Conservation and Recovery Act requires "procuring agencies" to procure paper products composed of the highest percentage of post-consumer recovered materials practicable. The statute also requires EPA to prepare guidelines to assist procuring agencies in fulfilling their obligations under the statute. Procuring agencies are Federal, State and local agencies (and their contractors), and those receiving grants, loans, and cooperative agreements that use appropriated Federal funds when purchasing designated items, including many paper products.

EPA issued its "Guideline for the Federal Procurement of Paper and Paper Products Containing Recovered Materials" on June 22, 1988 (see 40 CFR part 250). These guidelines became effective in June of 1989. The statute also establishes a $10,000 threshold to determine whether a procuring agency must comply with the guidelines and requires EPA to periodically revise its guidelines.

In general, EPA issued minimum content purchasing specifications (with a recommended percentage of post-consumer recovered material) for Newsprint, Tissue Products, Unbleached Packaging and Recycled Paperboard. In addition, we issued minimum content purchasing specifications for Printing & Writing papers. However, at the time the guidelines were issued, insufficient quantities of Printing & Writing papers were being produced with post-consumer content to satisfy the Federal government's demand for these products. Thus, EPA issued "waste paper" specifications for Printing & Writing papers, which include some pre-consumer wastes, such as converting scrap and printers' waste, as well as post-consumer fiber. Many individuals and representatives of public interest groups have complained that principally pre-consumer wastes, not post-consumer wastes, are being used to produce Printing & Writing papers purchased by the Federal government.

EPA has been monitoring developments in the marketplace since our guidelines were issued. There has been increasing evidence that Printing & Writing papers are being made with post-consumer recovered paper. On October 3, 1990, we published a **Federal Register** notice requesting information on the extent to which post-consumer materials were being used in making Printing & Writing papers and whether or not it was possible to issue post-consumer content specifications for these grades (see 55 FR 40384). We also suggest that, if a post-consumer standard was not practical, perhaps an alternative, "deinked fiber" specification could be established. "Deinked fiber" is a broader category than post-consumer that would include all printed material, whether pre- or post-consumer. We received some 65 sets of comments on this notice from paper mills, wholesalers, trade associations, government agencies, and public interest groups. We intend to make use of the information obtained from those comments as we consider revisions to the guidelines for Printing & Writing papers.

Over the last couple of years, a number of organizations have been evaluating the EPA paper procurement guidelines and their effectiveness in stimulating recycling. These groups have been evaluating the definitions and recycled content levels contained in our guidelines, and have made numerous suggestions on possible revisions. Among others, we have received recommendations from the Recycling Advisory Council, the Paper Definitions Working Group, and the Paper Recycling Coalition. There is a growing misconception by many, maybe even a fear, that EPA is going to adopt one of these recommended approaches without first notifying the public of any proposed revisions and taking comment on them. This is not the case. We intend to follow our standard process of first proposing revisions, taking comments, and subsequently finalizing any changes to the existing guidelines.

Over the last six months, we have received numerous inquiries concerning revisions to our guidelines. We have encouraged those who have contacted us to provide whatever information they believe is relevant to the EPA's deliberations on if and how the existing paper procurement guidelines should be revised. We are concerned that we have not necessarily heard from all interested parties. As a consequence, we have decided that it would be prudent to conduct a public meeting to provide all interested parties an opportunity to make their views known to EPA. We expect to hold this meeting in early December; it will most likely be a two day meeting. The exact dates, times and location of this meeting will be announced in a future **Federal Register** notice.

It is our intention that the issues to be discussed at the public meeting will be determined by the meeting participants. We will prepare a tentative list of discussion topics for consideration by the participants, to assist them as they develop the meeting agenda. This list will include, but not be limited to, the following topics:

- Should EPA focus only on the Printing & Writing papers as outlined in the October 1990 notice, or should we reconsider all of the paper grades included in our guideline?
- What approach should EPA take if it decides to revise its minimum recovered material content specifications—post-consumer only, deinked wastepaper, a combination of total recycled content and post-consumer or deinked wastepaper?
- How should recycled content be measured—fiber only? total weight of the product?
- Should measurements be based on specific production runs or should they be averaged over time?
- Should EPA also develop guidance for use by private sector purchasers of recycled paper?

The complete tentative list of topics will be included in the future **Federal Register** notice announcing the dates, times, and location of the meeting. EPA intends to use the information gained from the public meeting to supplement our own research and contribute to our efforts in considering possible revisions to the existing paper procurement guidelines.

Dated: September 17, 1992.

Don R. Clay,

Assistant Administrator.

[FR Doc. 92-23460 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 268 and 271

[FRL-4514-3]

Land Disposal Restrictions "No Migration" Variances

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and notice of availability; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is extending the comment period on the proposed land disposal restrictions "no migration" variances rule, which appeared in the **Federal Register** on August 11, 1992 (see 57 FR 35940). This extension of the comment period is provided to allow commenters an opportunity to complete their review and responses to the Agency's proposed rule.

DATES: EPA will accept public comments on the proposed rule and notice of availability until October 23, 1992. Comments postmarked after the close of the extended comment period will be stamped "late."

ADDRESSES: Comments should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (Room 2427) (OS-305), 401 M Street, SW., Washington, DC 20460. One original and two copies should be sent and identified at the top by regulatory docket reference number F-92-NMVP-FFFFF. The Docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials, and should call the docket clerk at (202) 260-9327 for appointments. The public may copy, at no cost, a maximum of hundred pages of material from any one regulatory docket. Additional copies are $0.15 per page.

Copies of the guidance manual for no migration petitioners can be obtained from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: No Migration Guidance (NTIS PB92-207 695).

FOR FURTHER INFORMATION CONTACT: For general information about this proposed rulemaking, contact the RCRA Hotline, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (tollfree) or (703) 920-9810 in the Washington, DC, metropolitan area.

For information on aspects of this proposed rule pertaining to No Migration, contact Dave Reeves, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-4692.

For information on aspects of this proposed rule pertaining to control of organic air emissions from no migration units under RCRA Section 3004(n), contact Kent C. Hustvedt, Office of Air Quality Planning and Standards (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, (919) 541-5395.

SUPPLEMENTARY INFORMATION: On August 11, 1992, EPA proposed its interpretation of the "no migration" variance to the Congressional mandated restrictions on land disposal of hazardous waste. In addition, EPA proposed procedural and substantive requirements for petitioning the Agency and demonstrating that there will be "no migration" from a land disposal unit. Also, the Agency proposed standards that would limit organic air emissions from land treatment, landfill, and waste pile units for those petitioners that have successfully demonstrated "no migration" and have received a variance from restrictions on land disposal of hazardous waste. Finally, in this proposed notice, the Agency announced the availability of a draft guidance manual for petitioners seeking to make no migration demonstration, entitled No Migration Variances to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners (U.S. EPA, Draft, July 1992). These actions are in response to amendments to the Resource Conservation and Recovery Act (RCRA), enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA). See 57 FR 35940 for a more detailed explanation of the Agency's proposal.

Since publication, the Agency has received a request from several commenters to extend the comment period because additional time is needed to review the proposed rule and the guidance document. The Agency considered the request and has decided to extend the comment period for 30 days to allow the commenters additional time to review the proposed rule. The public comment period for the proposed rule was originally scheduled to end on September 25, 1992. Today's notice extends the public comment period for the proposed rule to allow commenters an opportunity to finalize their review and responses to the Agency's proposed rulemaking.

Dated: September 23, 1992.

Richard J. Guimond,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER).

[FR Doc. 92-23600 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 300

[FRL-4512-3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Suffern Village Well Field Site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Suffern Village Well Field site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning this Site may be submitted on or before October 30, 1992.

ADDRESSES: Comments may be mailed to: Ms. Kathleen C. Callahan, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 737, New York, New York 10278.

Comprehensive information on this Site is contained in the EPA Region II public docket, which is located at EPA's Region II office, and is available for viewing, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday, excluding holidays. To request an appointment to review the public docket, please contact: Mr. Richard Kaplan, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 2930, New York, New York 10278, (212) 264-3819.

Background information from the Regional public docket is also available for viewing at the Site's Administrative Record repositories located at: Suffern Free Library, Maple and Washington, Suffern, New York 10901 and Suffern Village Town Hall, 61 Washington Avenue, Suffern, New York 10901.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Kaplan at (212) 264–3819.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region II announces its intent to delete the Site from the NPL and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (FUND). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at the Site warrant such action.

EPA will accept comments concerning this Site for thirty (30) days (or until October 30, 1992) after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. EPA Region II has recommended deletion and has prepared the relevant documents. EPA has also made all relevant documents available in the Regional office and local site information repositories.
2. The State of New York has concurred with the deletion decision.
3. Concurrent with this national Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate Federal, State and local officials, and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on September 30, 1992 and concluding on October 30, 1992.

The comments received during the comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary which will address the comments received during the public comment period.

If after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The Suffern Village Well Field Site is located in the Town of Ramapo, approximately 0.25 miles north of the New York-New Jersey border in Rockland County, New York. The Site includes a municipal water supply well field operated by the Village of Suffern, and a facility (Tempcon Corp.), approximately 2500 feet from the Well Field, from which hazardous substances were released or threatened to be released.

The Village operates four production wells that supply water at an average of approximately 1.8 million gallons per day. Recharge to the wells is derived principally from induced infiltration of water from the Ramapo River. Volatile organic contamination of the Well Field was first detected in tap water collected from the municipal distribution system in September 1978. Subsequent monitoring activities by the village, the Rockland County Department of Health (RCDOH) and the New York State Department of Environmental Conservation (NYSDEC), confirmed that ground water had become contaminated with 1,1,1-trichloroethane (TCEA), a volatile organic compound (VOC). Three of the Village's wells, with TCEA levels ranging from 90 to 114 parts per billion (ppb), were shut down in December 1978. Water supply requirements were provided by the remaining well which had TCEA levels significantly below the New York State Department of Health (NYSDOH) guideline of 50 ppb. (This guideline was revised to a standard of 5 ppb in January 1989).

In December 1978, RCDOH tentatively identified Tempcon Corp., a small oil burner reconditioning business, as a user of TCEA and a potential source of the TCEA contamination. In January 1979, Tempcon Corp. ceased disposing of TCEA into a seepage disposal pit located on its property and stopped using TCEA-based cleaning products. In March 1979, at the direction of RCDOH, Tempcon Corp. performed remedial measures including the removal of waste materials from its disposal pit and the excavation and devolatilization of contaminated soils. The Village constructed a spray aeration treatment system later that year to remove TCEA from the municipal water supply.

The system was operated until early 1985, when monitoring results indicated that TCEA levels were within the NYSDOH guideline of 50 ppb;

subsequently, TCEA concentrations remained below the guideline with only occasional excursions.

The Site was proposed for the NPL on October 10, 1984, and placed on the NPL on June 1, 1986. In March 1985, EPA entered into a cooperative agreement with New York State, which provided for the performance of an RI/FS by NYSDEC at the Site. In April 1986, DEC retained ERM-Northeast to perform this work.

The scope of the RI field work included extensive sampling of ground water, surface water, sediment, surface soil and ambient air. Analyses for metals, other inorganic, semivolatiles, and VOCs other than TCEA indicated that these substances were not a threat to human health or the environment. The only pathway of concern was ground water, bearing TCEA and degradation products, migrating southward from the Tempcon Facility and the E-well location (a monitoring well approximately 700 ft. southeast of Tempcon.)

A Feasibility Study was conducted during which a solute transport model (the "Suffern Aquifer Model") was developed to predict contaminant concentration profiles as a function of time.

The EPA community relations activities at the Site included a public meeting on August 19, 1987 to present the results of the RI/FS, and the preferred alternative. Public comments were received and addressed.

The Record of Decision (ROD) dated September 25, 1987 selected a "No Action" alternative based on the conclusion that contaminant levels had been naturally attenuating and the Suffern Aquifer Model predicted continued decreases in contaminant level down to approximately 1 ppb within 10 years and below 5 ppb within 4 years. A two-year monitoring program was planned to confirm the validity of the No Action alternative and to verify the predicted results of the Suffern Aquifer Model, as well as to ensure that the remedy was protective of human health and the environment.

Suffern Village installed a granular activated carbon adsorption unit and a maganese filtration unit to its existing water system, which as been in operation since the spring of 1990. This was necessitated by the revised January 1989 NYSDOH standard for TCEA concentrations in public water supplies of 5 ppb.

The first-year monitoring program was concluded in October 1990, and a report was issued in May 1991. After thorough review of the results, NYSDEC and EPA determined that the magnitude of the ROD monitoring program was not warranted, and decided to modify the program. This determination was based on the fact that the contaminant plume is attenuating, and the GAC system installed by Suffern Village has virtually eliminated the population's exposure to the low concentrations of TCEA present in the groundwater. NYSDEC prepared a Long-Term Monitoring Plan, dated October 9, 1991 with which EPA concurs.

The first-year ground water monitoring program has met the objectives set forth in the ROD. Water analyses indicate that the contaminant plume is attenuating, and support the conclusions of the Suffern Aquifer Model predictions. Further, the low levels of contamination in the production wells are below State drinking-water standards due to the recently installed GAC treatment system.

Having met the deletion criteria, EPA proposes to delete this site from the NPL. EPA and the State have determined that the response actions are protective of human health and the environment.

Dated: September 11, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 92-23453 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO-610-4111-02-24 1A]

RIN 1004-AB72

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 1, Approval of Operations; Reopening of Public Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; Reopening of public comment period.

SUMMARY: A proposed rule that would revise Onshore Oil and Gas Order No. 1 was published on July 23, 1992 (57 FR 32756). The public comment period expired on September 21, 1992. The Order provides the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except the Osage Tribe) onshore oil and gas leases. It also covers most approvals necessary for subsequent well operations, including abandonment. These approvals are granted by the Bureau of Land Management (BLM). The comment period is being reopened to provide the public additional time to comment on this important Order, which is fundamental to all oil and gas exploration and development.

DATES: Comments should be submitted by October 28, 1992. Comments received or postmarked after this date may not be considered in the decision process of the final rulemaking.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday (excepting Federal holidays).

FOR FURTHER INFORMATION CONTACT: Lynn E. Rust, (307) 772-2293, or Erick Kaarlela, (202) 653-2127.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92-23487 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-214, RM-8062]

Radio Broadcasting Services; Columbia and Bourbon, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by The Greenfield Group proposing the substitution of Channel 244C1 for Channel 244C3 at Columbia, Missouri, and modification of the construction permit for Station KCMQ(FM) to specify operation on Channel 244C1. The coordinates for Channel 244C1 are 38-37-40 and 92-07-00. To accommodate Channel 244C1 at Columbia, we shall propose to substitute Channel 297A for vacant Channel 244A at Bourbon, Missouri, or in the alternative, delete the channel at Bourbon if no applications are filed for Channel 244A and no interest is expressed in Channel 297A during the comment cycle in this proceeding. The coordinates for Channel 297A at Bourbon are 38-08-30 and 91-16-00. There is a site restriction 2.6

kilometers (1.6 miles) southwest of the community.

DATES: Comments must be filed on or before November 13, 1992, and reply comments on or before November 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036-0847.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-214, adopted August 24, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23406 Filed 9-25-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-215, RM-8063]

Radio Broadcasting Services; Preston, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KFIL Inc. proposing the substitution of Channel 276C3 for Channel 276A and modification of the license for Station KFIL-FM to specify operation on the higher class channel at Preston, Minnesota. The coordinates for Channel 276C3, Preston, are 43-44-38 and 91-54-04.

DATES: Comments must be filed on or before November 13, 1992, and reply comments on or before November 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Michael Borgen, President, KFIL, Inc., Box 377, Preston, Minnesota 55965.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-215, adopted August 24, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should not that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Lists of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23405 Filed 9-25-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-212, RM-8064]

Radio Broadcasting Services; Rudolph, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Wizard Communications, Inc., proposing the substitution of Channel 260C3 for Channel 260A at Rudolph, Wisconsin, and modification of the license for Station WIZD, Channel 260A, to specify operation on Channel 260C3. The coordinates for Channel 260C3 are 44-21-31 and 89-39-23.

DATES: Comments must be filed on or before November 13, 1992, and reply comments on or before November 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jerrold Miller, Miller & Miller, P.C., PO Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-212, adopted August 24, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23403 Filed 9-25-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-213, RM-8060]

Radio Broadcasting Services; Canton and Louisiana, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Foxfire Communications, Inc., proposing the substitution of Channel 271C3 for Channel 271A at Louisiana, Missouri, and modification of the license for Station KJFM(FM) to specify operation on Channel 271C3. The coordinates for Channel 271C3 are 39-21-57 and 91-16-30. To accommodate the upgrade at Louisiana, we shall also propose to substitute Channel 265C3 for Channel 272C3 at Canton, Missouri, and modify the construction permit for Station KBXB to specify operation on Channel 265C3. The coordinates for Channel 265C3 are 40-07-33 and 91-31-42. We shall propose to modify the license for Station KJFM(FM) for Channel 271A in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 13, 1992, and reply comments on or before November 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Thom T. Sanders, President, Foxfire Communications, Inc., P.O. Box 438, Louisiana, Missouri 63353.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-213, adopted August 24, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23404 Filed 9-25-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-211, RM-8061]

Radio Broadcasting Services; Lumberton, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Stone-Lamar Broadcast Services Corporation proposing the substitution of Channel 237C1 for Channel 237C2 and modification of the license for Station WLUN to specify operation on Channel 237C1 at Lumberton, Mississippi. The coordinates for Channel 237C1 are 30-39-34 and 89-09-59.

DATES: Comments must be filed on or before November 13, 1992, and reply comments on or before November 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John S. Neely, Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-211, adopted August 24, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23401 Filed 9-25-92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 188
Monday, September 28, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Meeting

AGENCY: Administrative Conference of the United States.

ACTION: Committee on Adjudication; Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States.

The Committee will continue its discussion on the project on the federal administrative judiciary. The project was returned to the Committee for further consideration at the Conference's September 9, 1992 Plenary Session.

Copies of the draft report are available from the Conference.

DATES: Thursday, October 29, 1992 at 1 p.m.

LOCATION: Library of the Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

PUBLIC PARTICIPATION: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meetings. 35 copies of the statement should be submitted. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Dated: September 21, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92–23439 Filed 9–25–92; 8:45 am]

BILLING CODE 6110–01–M

COMMISSION ON CIVIL RIGHTS

Public Meeting Cancellation of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission which was to have convened at 1 p.m. and adjourned at 5 p.m. on Thursday, October 8, 1992 and to have reconvened at 9 a.m. and adjourned at 2 p.m. on Friday, October 9, 1992, at the Federal Building Courthouse, 2d Floor, room 209, 310 Bern Avenue, Raleigh, North Carolina 27601, has been canceled.

The original notice for the October 8–9, 1992 meeting was announced in the **Federal Register** on September 22, 1992 (57 FR 43691), FR Doc. 92–22852.

Persons desiring additional information should contact Bobby D. Doctor, Director of the Southern Regional Office, at (404) 730–2476.

Dated at Washington, DC, September 22, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–23427 Filed 9–25–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1993 Annual Demographic Survey–Supplement to the Current Population Survey.

Form Number(s): CPS–1, CPS–665, CPS–575, CPS–580, CPS–580(SP), CPS–676, CPS–676(SP), CPS–676(A).

Agency Approval Number: 0607–0354.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 29,100 hours.

Number of Respondents: 72,000.

Avg Hours Per Response: 24.25 minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Demographic Survey (ADS) every year in March as a supplement to the Current Population Survey (CPS). The Bureau of the Census, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement. In the ADS, we collect information in the areas of work experience, migration, personal and household income and noncash benefits, and race. The Bureau of Labor Statistics and the Department of Health and Human Services use data gathered in the ADS to determine the official Government poverty statistics. We are also requesting clearance for these supplemental questions to be asked of the sample of CPS respondents participating in the CATI/CAPI Overlap (CCO) Test, sponsored by the Bureau of Labor Statistics, during the March 1993 CCO Test collection. We have included the additional reporting hours associated with the supplemental questions for the CCO Test in this clearance.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 22, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–23502 Filed 9–25–92; 8:45 am]

BILLING CODE 3510–07–F

Economic Development Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

Edward G. Jeep
John E. Corrigan
Charles E. Oxley
George Muller
Kathleen W. Lawrence
Richard S. Seline

James M. Moses,

Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 92-23438 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-BS-M

International Trade Administration

[A-588-055]

Acrylic Sheet From Japan; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on acrylic sheet from Japan.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-8120/3814.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 34115) its intent to revoke the antidumping finding on acrylic sheet from Japan (41 FR 36497, August 30, 1976). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties. We did not receive a request for administrative review of the finding for the last five consecutive annual anniversary months, and therefore published a notice of intent to revoke the finding pursuant to 19 CFR 353.25(d)(4).

On August 19 and 20, 1992, Cyro Industries and E.I. DuPont de Nemours & Co., Inc., respectively, both domestic manufacturers of acrylic sheet, objected to our intent to revoke the finding. Therefore, we no longer intend to revoke the finding.

Dated: September 17, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance

[FR Doc. 92-23494 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with August anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Roland L MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and contervailing duty orders, findings, and suspension agreements, with August anniversary dates.

Initiation of Reviews

In accordance with § 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings and suspension agreements. We intend to issue the final results of these reviews not later than August 31, 1993.

Antidumping duty proceedings and firms	Periods to be reviewed
Israel:	
Industrial Phosphoric Acid—A-508-604	
Rotem Fertilizers Ltd.	8/1/91-7/31/92
Haifa Chemicals Ltd.	
Italy:	
Granular Polytetrafluoroethylene (PTFE) Resin—A-475-703	
Ausimont Spa	8/1/91-7/31/92
Japan:	
Granular Ploytetrafluoroethylene (PTFE) Resin—A-588-707	
Diakin Industries, Ltd.	8/1/91-7/31/92
Mexico:	
Gray Portland Cement and Clinker—A-201-802	
Cemex, S.A.	8/1/91-7/31/92
Turkey:	
Acetylsalicylic Acid (Aspirin)—A-489-602	
Atabay Pharmaceutical Fine Chemicals Inc.	8/1/91-7/31/92
Countervailing Duty Proceedings	
Canada:	
Live Swine—C-122-404	4/1/91-3/31/92
Israel:	
Industrial Phosphoric Acid—C-508-605	1/1/91-12/31/91
Thailand:	
Certain Circular Welded Steel Pipes and Tubes— C-549-501	1/1/91-12/31/91

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c) (1989).

Dated: September 18, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-23493 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-811]

Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-8498.

PRELIMINARY DETERMINATION: We preliminarily determine that certain hot-

rolled lead and bismuth carbon steel products from Germany are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated dumping margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 4, 1992 (57 FR 19881, May 8, 1992), the following events have occurred.

On May 18, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On June 16, 1992, the Department of Commerce (the Department) presented its questionnaire to Saarstahl AG (SAG), the sole respondent in this investigation. At the request of SAG, the Department extended the deadline for submission of responses until July 1, 1992, for Section A; July 20, 1992, for Sections B and C; July 24, 1992, for the computer tapes; and July 28, 1992, for Section D. With the exception of Section A, which was filed on July 2, 1992, SAG's responses were received on the above dates. SAG resubmitted its public version of Section A on July 12, 1992. Petitioners' comments on SAG's response to Section A were received on July 17, 1992, and those on sections B, C, and D on August 7, 1992. We issued a deficiency letter on August 12, 1992, for Sections A, B and C, and on August 13, 1992, for Section D. We received SAG's deficiency responses on August 26, 1992, for Sections A, B and C, and on August 27, 1992, for Section D. Petitioner's remarks on the deficiency responses were received September 9, 1992.

Scope of Investigation

The products covered by this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTS. Small quantities of the products may also enter the United States under the following HTS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is November 1, 1991, through April 30, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. There were no sales of identical merchandise in the home market to compare to U.S. sales; therefore, we made similar comparisons on the basis of: (1) Chemical composition; (2) shape; (3) cut (coil or cut length); (4) size; and (5) grade. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of the subject merchandise from Germany to the Untied States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sale price (ESP) methodology was not otherwise indicated. We calculated purchase price based on either packed, delivered or packed, landed CIF prices to customers in the United States. We made deductions, where appropriate, for foreign inland freight expenses incurred in both Germany and Belgium, ocean freight, marine insurance, U.S. duty, U.S. brokerage, U.S. inland freight, and U.S. trucking expenses.

In accordance with section 772(d)(1)(C) of the Act, we included in USP the amount of the German value-added tax (VAT) that would have been collected on the export sale had it been subject to the tax. Because SAG did not identify the tax base on which the VAT is calculated, we computed the hypothetical amount of the VAT based on the lowest possible tax base (*i.e.*, the ex-factory U.S. price) as the best information available (BIA) in accordance with 19 CFR 353.37.

Since SAG reported that its parent company, Usinor Sacilor, has access to U.S. dollar-denominated financing at the reported U.S. interest rate, we used SAG's reported U.S. interest rate in the calculation of U.S. credit expenses. See, Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Mexico, 57 FR 42953 (September 17, 1992).

SAG reported that it paid commissions on its U.S. sales to related selling agents. We found the existence of a profit/loss transfer agreement between SAG and its related selling agents to be sufficient evidence that the commissions were not paid at arm's length; therefore, we did not adjust for related-party commissions incurred on U.S. sales.

SAG did not sufficiently describe and report its warranty/technical service expenses incurred in either the home or U.S. markets. Without sufficient information regarding the nature of these expenses, we assumed that they were directly related to U.S. sales, but not to home market sales. We used the per-unit amount of total selling expenses reported in the cost of production (COP) response for each product as BIA for the warranty/technical service expenses on U.S. sales. For those products sold in the U.S. for which there was no COP information, we used the highest per-unit amount of total expenses reported for all products in the COP response.

Foreign Market Value

In order to determine whether there were sufficient sales of similar merchandise in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales in accordance with section 773(a)(1)(B) of the Act. We found that SAG's home market was viable.

In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales at the same level of trade.

Cost of Production

Based on petitioners' allegation, and in accordance with section 773(b) of the Act, we investigated whether SAG had home market sales that were made at less than its COP.

If over 90 percent of a respondent's sales of a given model were at prices above the COP, we do not disregard any below-cost sales because we determine that the below-cost sales were not made

in substantial quantities over an extended period of time. If between 10 and 90 percent of a respondent's sales of a given model are at prices above the COP, we disregard only the below-cost sales if made over an extended period of time. Where we find that more than 90 percent of a respondent's sales of a given model were at prices below the COP over an extended period of time, we disregard all sales of that model and calculate FMV based on constructed value (CV). In such cases, we determine that the respondent's below-cost sales were made in substantial quantities over an extended period of time.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of the cost of materials, fabrication, general expenses, and home market packing. We recalculated SAG's reported COP with regard to material costs, general and administrative expenses (G&A), and interest expenses. We increased material costs because SAG's related supplier of pig iron had understated its actual production costs by not including an accrual for future blast furnace relining as recorded in the 1991 consolidated financial statement of Usinor Sacilor, the consolidated parent company. We recalculated SAG's G&A by including a portion of Usinor Sacilor's corporate G&A for such expenses as research and development, restructuring costs, and employee profit sharing. Since SAG did not report the interest expense of Usinor Sacilor, we recomputed interest expense based on the consolidated company's reported interest expenses.

We compared home market selling prices—plus surcharges, and inland freight reimbursed to SAG by the customer, less discounts, rebates, and movement charges—to each product's COP. We found that over 90 percent of home market sales were above cost for some products; all sales of these products were used for comparison to U.S. products. For other products, between 10 and 90 percent of SAG's home market sales were below cost; therefore, we disregarded those below-cost sales and used the remaining sales of that product for comparison purposes. For some products, more than 90 percent of the sales were below cost. We disregarded all sales of those products and based FMV on CV, as described in the "Constructed Value" section of this notice.

Price-to-Price Comparisons

For those products for which we have an adequate number of sales at prices above the COP, we based FMV on home market prices. We calculated foreign market value based on ex-factory, ex-basis point, or delivered prices, inclusive of packing, to unrelated customers.

SAG requested that the Department include its sales to related parties in the home market in the FMV calculation. In our deficiency letter of August 12, 1992, we requested SAG to demonstrate that its sales to related parties were at prices comparable to those to unrelated parties. Since SAG made no such showing, we have no basis on which to conclude that its sales to related parties in the home market were at arm's length. Accordingly, for purposes of the preliminary determination, we have disregarded SAG's home market sales to related parties in our calculation of FMV.

We added quantity and other surcharges, and amounts for inland freight charges reimbursed to SAG by its customers and deducted rebates, discounts, and foreign inland freight and rail expenses paid by SAG.

Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for differences in credit, warranty/technical services, post-sale warehousing, and unrelated-party commission expenses. Because SAG did not report U.S. indirect selling expenses to offset unrelated party commissions, we used the amount of the unrelated party commissions, themselves, to offset the commissions as BIA. As discussed in the "United States Price" section of this notice, we assumed that SAG did not directly incur warranty/technical services expenses in the home market. We also deducted an amount for home market packing expenses and added an amount for export packing to the United States in accordance with 19 CFR 353.46(a)(1). Because home market prices were reported net of VAT, we added the hypothetical tax calculated for the U.S. sale to both USP and FMV as discussed in the "United States Price" section of this notice.

SAG paid commissions to both a related selling agent and an unrelated trading house on sales in the home market. We determined that the profit/loss transfer agreement between SAG and its related selling agent, according to which the sales agent made a year-end adjustment to its books to transfer its profits/losses to SAG, and the absence of any evidence of arm's length dealing was sufficient evidence to find that related-party commissions were not paid on an arm's length basis. Accordingly, we did not adjust for them.

Because SAG reported that it had DM-denominated financing in the home market, we used its reported home market interest rate to compute credit expenses. We recalculated SAG's reported home market credit expenses according to Department methodology. We based the calculation on a 365-day year since SAG has used a 365-day year to compute U.S. credit expenses and has not stated that it utilized a 360-day year in the normal course of business.

Constructed Value

For those products without an adequate number of sales at prices above the COP, we based FMV on CV. SAG supplied the Department with CV information for only two of the products sold in the United States. As BIA for the remaining U.S. products for which we were required to use FMV on CV, we used the highest margin calculated in the CV comparisons to USP for the two products with reported CV information, or the highest CV margin in the petition, whichever was found to be greater, as the applicable dumping margin for these sales.

We calculated CV for the two products for which SAG supplied CV information based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing. We recalculated SAG's reported CV as described above in the "Cost of Production" section of this notice. In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of the company's reported general expenses or the statutory minimum of ten percent of the cost of manufacture. For profit, we used the statutory minimum of eight percent since SAG did not report profit. (See, section 773(e)(1)(B)(ii) of the Act.)

For CV comparisons to USP, we made circumstance of sale adjustments for unrelated-party commissions, credit, post-sale warehousing, and warranty/technical service expenses (see, section on "Price-to-Price Comparisons" for discussion of commissions; *see*, section on "United States Price" for the calculation of warranty/technical service expenses).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of lead and bismuth carbon steel products subject to this investigation from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage
Saarstahl AG	49.30
All Others	49.30

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 3, 1992. Rebuttal briefs must be submitted no later than November 10, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 12, 1992, at 1 p.m. at the U.S. Department of Commerce, room 1617 M4, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 21, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–23492 Filed 9–25–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–412–810]

Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2613.

PRELIMINARY DETERMINATION: We preliminarily determine that certain hot-rolled lead and bismuth carbon steel products from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 4, 1992, (57 FR 19881, May 8, 1992), the following events have occurred.

On May 18, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On June 16, 1992, the Department presented a questionnaire to United Engineering Steels Limited (UES), the company accounting for the overwhelming majority of exports of the subject merchandise from the United Kingdom during the period of investigation (POI). Responses to the questionnaire were originally due on June 30 and July 14, 1992. At the request of UES, the Department granted extensions of time until July 7, 1992, for Section A and July 28, 1992, for the Section B, C, and D. UES submitted its questionnaire responses on the specified dates. We issued supplemental questionnaires on August 12 and 14, 1992, and received responses to the supplemental questionnaires on August 31, 1992.

In a submission dated September 11, 1992, petitioner raised a number of serious questions concerning, among other things, UES's model matching, difference in merchandise adjustments, and cost of production calculations. Given the late date of petitioner's submission and the complexity of the matters raised, we have not addressed petitioner's concerns in this preliminary determination. We will, however, carefully examine these and other issues at verification, and will address these concerns in our final determination.

Scope of Investigation

The products covered by this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products.

Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTS. Small quantities of the following products may also enter the United States under the following HTS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The POI is November 1, 1991, through April 30, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales.

we made comparisons on the basis of the following criteria listed in order of importance: (1) Chemical composition; (2) shape; (3) cut (coil or cut length); (4) size; and (5) grade. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

UES requested that we make comparisons between U.S. sales with a total order quantity of 25 metric tons or more with home market sales of 25 metric tons or more, and between U.S. sales with a total order quantity of less than 25 metric tons with home market sales of less than 25 metric tons. However, given that (1) UES presented no analysis showing that there was any correlation between order quantity and price, and (2) petitioner raised credible objections to this claim, we have denied UES's request.

Related Party Issue

UES disclosed in a footnote to its response to Section A of the questionnaire that it "understands that a company called Allied Steel and Wire (ASW), which is a 20 percent subsidiary of British Steel, plc, may have made sales of the subject merchandise in the POI." British Steel and GKN, plc, each own 50 percent of the common stock in UES. ASW was not served a questionnaire at the outset of the investigation because (1) we were able to capture more than 60 percent of the exports of the subject merchandise, (see 19 CFR 353.42(b)) by serving UES only, and (2) we were unaware of the possible relationship between UES and ASW.

On August 12, 1992, the Department requested that UES supplement its responses to the questionnaire to include the sales of all related entities, including sales made by other units or subsidiaries of British Steel, plc, or GKN, plc, such as sales by ASW.

On August 17, 1992, UES requested that the Department amend its August 12, 1992, letter to exclude ASW sales because UES has no relationship with or control over ASW and cannot obtain ASW sales information. On August 19, 1992, petitioner submitted a letter arguing that evidence of coordination of the production, supply and sale of hot-rolled leaded steel products between British Steel, UES, and ASW exists and requested that the UES request be denied.

The Department has preliminarily determined, based on the information currently available, to accept UES's contention that a sufficient relationship between UES and ASW does not exist to warrant the reporting of ASW sales information by the respondent. However, we will examine this issue further at verification and consider it again at the final determination.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sale price (ESP) methodology was not indicated by other circumstances.

We calculated purchase price based on packed, delivered prices to customers in the United States. We made deductions, where appropriate, for invoice corrections, cash discounts, rebates, foreign inland freight, FOB charges in the United Kingdom, ocean freight, marine insurance, U.S. customs duty and merchandise processing fee, harbor maintenance fee, and handling, brokerage, and inland freight charges in the United States. While UES's shipments to the United States are transported by a related carrier, British Steel Shipping Service, UES failed to establish that the related carrier charges UES arm's length rates or to provide actual cost of such services, as requested in the Department's August 12, 1992, deficiency letter. Therefore, as best information available (BIA), we have deducted for ocean freight an amount equal to the ocean freight rate alleged in the petition, except in those instances where UES's reported rate exceeded the petition rate. In accordance with section 772(d)(1)(C) of the Act, U.S. price was increased to include the amount of the British value-added tax (VAT) that would have been collected on the export sale had it been subject to the tax. We computed the hypothetical amount of the tax by applying the home market tax rate to the delivered price to the United States customer, because in the home market, the tax is applied to the delivered price.

Foreign Market Value

In order to determine whether there were sufficient sales of the subject merchandise in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales by UES.

In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible.

Cost of Production

Based on petitioner's allegation, and in accordance with section 773(b) of the Act, we investigated whether UES had home market sales that were made at less than their cost of production (COP).

If over 90 percent of a respondent's sales of a given model are at prices above the COP, we do not disregard any below-cost sales because we determine that the below-cost sales were not made in substantial quantities over an extended period of time. If between ten and 90 percent of a respondent's sales of a given model are at prices above the COP, we disregard only the below-cost sales, if we find that these have been made over an extended period of time. Where we find that more than 90 percent of a respondent's sales are at prices below the COP over an extended period of time, we disregard all sales for that model and calculate FMV based on constructed value (CV). In such cases, we determine that the respondent's below-cost sales were made in substantial quantities over an extended period of time and at prices that would not permit recovery of all costs within a reasonable period of time in the normal course of trade.

In order to determine whether home market prices were above the COP, we calculated the COP as described below. Given that UES did not provide sufficient reasons supporting a departure from its normal cost accounting system in providing COP data in its response, we adjusted the submitted COM data to reflect UES's costs as recorded in its normal accounting system as of December 31, 1991. We then added general expenses and foreign market packing cost.

We compared home market selling prices, net of movement charges, rebates, and invoice corrections, to each product's COP. We found that for some products, more than 90 percent of the sales were at prices above the COP. For other products, there were fewer than 10 percent of sales at prices above the COP. For the remainder of the products, between 10 and 90 percent of the sales were at prices above the COP.

Price-To-Price Comparisons

For those products for which we have an adequate number of sales at prices

above the COP, we based FMV on home market prices. We calculated foreign market value based on packed, delivered prices to unrelated purchasers. UES requested that we include sales to related parties in calculating foreign market value. However, UES presented no analysis showing that sales to related parties were at arm's length prices. Therefore, we calculated foreign market value based on sales to unrelated parties only. We made deductions, where appropriate, for rebates, inland freight, and for invoice corrections. Pursuant to section 773(a)(4)(B) of the Act, and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, warehousing expenses, and commissions. Credit expenses for both markets were calculated using the interest rates used by UES in each of the two respective markets. *See*, Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Mexico, 57 FR 42953 (September 17, 1992).

We recalculated credit expense for the U.S. market to account for the number of days between the time the goods left the factory and the time of shipment from the port, and to correct a minor error made by UES in calculating its weighted average U.S. interest rate. UES reported the date that the goods left the port as shipment date instead of the date that the goods left the factory, and that goods were shipped from the port on a monthly basis. As BIA, we assumed that there was a 30 day lag between date of shipment from the factory and shipment from the port. Because the home market prices were reported net of VAT, we adjusted for the VAT by adding the hypothetical tax on the U.S. sale to the foreign market value.

Constructed Value

For those products without an adequate number of sales at prices above the COP, we based FMV on CV. We calculated the CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. We adjusted UES's CV data in the same manner as we adjusted its COP data as discussed above. In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of the company's reported general expenses or the statutory minimum of ten percent of cost of manufacture (COM). For profit, we used the actual profit earned by UES because the actual figure was higher than the statutory minimum of eight percent of the sum of COM and general expenses, in accordance with section 773(e)(1)(B)(ii) of the Act. We made circumstance of sale adjustments, where appropriate, for differences in direct selling expenses including credit expenses, warranty expenses, and pre-sale warehousing expenses.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacture/exporter	Weighted-average margin percentage
United Engineering Steels, Limited	32.02
All Others	32.02

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after out final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 3, 1992. Rebuttal briefs must be submitted no later than November 10, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 12, 1992, at 10 a.m. at the U.S. Department of Commerce, room 1617 M4, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 21, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-23495 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-804]

Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Stephen Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1777, or (202) 377-5288, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain hot-rolled lead and bismuth carbon steel products from France are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). Because Usinor Sacilor (Usinor), the sole respondent in this case, failed to provide adequate information in a timely manner, we have based our preliminary determination on the best information otherwise available (BIA). In this instance, because Usinor has been cooperative, we have determined BIA to

be an average of the margins that resulted from the fair value comparisons using constructed values for each of the transactions provided in the petition, as it was amended on April 27, 1992. The BIA margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 4, 1992, (57 FR 19881, May 8, 1992), the following events have occurred.

On May 28, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On June 16, 1992, the Department presented a questionnaire requesting sales and cost information to Usinor Sacilor (Usinor), the manufacturer accounting for at least 60 percent of the exports of the subject merchandise to the United States.

Usinor submitted questionnaire responses in July 1992. On August 12 and 14, 1992, we issued letters citing significant deficiencies in Usinor's sales and cost responses, respectively. On August 26 and 28, 1992, we received responses to our deficiency letters from Usinor. These responses also contained serious deficiencies and errors. Specifically, Usinor failed to provide, among other information, appropriate cost of production information and information concerning differences in the merchandise sold to the United States. Without reliable information concerning the differences in the merchandise, we are unable to insure that we are making appropriate product comparisons. (See, also, September 18, 1992, Memorandum from Richard W. Moreland, Director, Office of Antidumping Investigations, and Marie E. Parker, Director, Office of Accounting, to Francis J. Sailer, Deputy Assistant Secretary for Investigations.)

On September 9, 1992, we informed counsel for Usinor that major problems with Usinor's deficiency responses had to be addressed or we would not be able to use its information in this investigation. We gave Usinor until September 21, 1992, to file an additional supplemental response, with new computer tapes, to correct the numerous deficiencies and errors in its earlier responses. If the deficiencies and errors are corrected, we will consider this supplemental response for our final determination.

Scope of Investigation

The products subject to this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is November 1, 1991, through April 30, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of the subject merchandise from France to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. As mentioned above, we used BIA as required by section 776(c) of the Act because Usinor did not provide adequate information in a timely manner for purposes of the preliminary determination. We determined that BIA was information submitted in the petition, as it was amended.

United States Price

We based USP on information provided in the petition. Petitioners provided U.S. prices based on quoted transaction prices for coil and cut-to-length products sold to U.S. customers on an F.O.B. port of entry basis and, for some customers, on a delivered basis. Petitioners adjusted the F.O.B. prices by deducting estimated costs for inland freight, foreign port and loading fees, ocean freight and insurance, customs duties, and U.S. terminal and unloading fees. In the case of the transaction prices quoted on a delivered basis, petitioners also deducted estimated costs for U.S. inland freight.

Foreign Market Value

We based FMV on constructed value information provided in the petition and the April 27, 1992, amendment to the petition. Petitioners alleged that the home-market prices as well as the third-country sales or offers of sales are at prices below the cost of production and, therefore, should be discarded in favor of constructed value. Accordingly, petitioners calculated an FMV on the basis of constructed value for each transaction listed in the amended petition.

Verification

As provided in section 776(b) of the Act, we will verify the information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of the subject merchandise from France that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Percentage [1]
Usinor Sacilor	64.55
All others	64.55

[1] Weighted-average margin percentage.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in

at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 6, 1992, and for rebuttal briefs no later than November 13, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 17, 1992, at 9:30 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 21, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-23640 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments Relating to Certain CME Stock Index Futures Contracts

AGENCY: Commdity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange (CME) has submitted proposed rule amendments for its S&P 500 Stock Price Index and S&P Midcap 400 Stock Price Index futures contracts and its proposed Russell 2000 Stock Price Index futures contract relating to modifications to the existing circuit breakers, which include price limit and trading halt provisions. One proposal would increase, for each affected stock index contract, the overall daily price limit and would establish new, larger price limits on the day after the relevant CME futures market is limit bid or offered. This proposal also would establish a new intermediate price decline limit for these contracts. Another proposal would provide that price limits for these stock index contracts would be based on the "implied settlement price" of the previous day, which is based on the closing value for the underlying index, if such implied settlement price is above or below the settlement price on the relevant CME stock index futures contract by a specified amount. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis (Division) on behalf of the Commission has determined that publication of the proposals is in the public interest and will assist the Commission in considering the views of interested persons. On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comment must be received on or before October 28, 1992.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to circuit breaker provisions of the CME U.S. stock index futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Contact Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: The Interim Report of the Working Group of Financial Markets dated May 1988 recommended that coordinated trading halts and reopenings be adopted by all domestic markets for U.S. equity and equity-related products as a means of dealing with large, rapid market declines that threaten to create panic conditions.[1] In broad outline, the Working Group recommended: (1) That stock index futures markets set downward price limits [2] at levels comparable to a 250-point Dow Jones Industrial Average (DJIA) decline below its previous day's closing value, (2) that broad-based stock index option markets establish either comparable price limits or procedures under which all trading in the index options will cease at levels comparable to a 250-point DJIA decline, and (3) that all U.S. markets for equity-related products halt trading for a one-hour period if the DJIA declines 250 points from its previous day's closing level. Under the Working Group's recommendations, after reopening from such a trading halt, similar price limit, halt, and reopening procedures would be used for DJIA declines of 400 points below its previous day's closing level, except that the halt would last two hours instead of one.

As noted, Working Group recommendations were for triggers based on 250 and 400 point DJIA declines. The Working Group stated that "the 250 and 400 point triggers and the comparable triggers for the stock index futures and options markets will be reviewed at least quarterly to determine if changes in index levels necessitate changes to these triggers in order to maintain percentages approximately equivalent to 12% and 20% [of the DJIA]."

In October 1988, the Commission approved price limit and trading halt proposals (i.e., circuit breakers) submitted by the futures exchanges in direct response to the recommendation of the Working Group. Coordinated provisions also in direct response to the recommendations of the working Group were approved by the Securities and Exchange Commission (SEC) for equity and equity-related markets under the SEC's jurisdiction. In June and December 1990, the Commission approved amendments to the CME's circuit breaker provisions for the S&P 500 futures contract.

In addition to the circuit breaker provisions noted above, the Commission also has approved for the CME an "initial price decline" limit of 12 points.[3] The initial price decline limit is effective for 30 minutes after the primary futures contract is first limit offered.[4] If trading

[1] On March 18, 1988, the Working Group on Financial Markets was established by Executive Order to provide a coordinating framework for consideration, resolution, recommendation; and action on the complex issues raised by the stock market break in October of 1987. The Working Group was charged with developing effective mechanisms to enhance investor confidence, to protect the quality and fairness of markets for all participants, and to preserve the continued orderliness, integrity, competitiveness, and efficiency of our nation's financial markets.

[2] A downward price limit (or price decline limit) is a price level below which trades cannot be executed while the limit is in effect.

[3] The Exchange also has opening price limits, applicable to both price increases and decreases, which would not be affected by the subject proposals.

[4] However, the initial price decline limit does not apply after 2:30 p.m. Chicago time.

is limit offered 30 minutes after the price decline limit is hit, trading is halted for two minutes and then reopened subject to the overall limit.

The existing limits for the S&P 500 and the other affected stock index futures—the S&P 400 index and the proposed Russell 2000 index —are stated in index points for the index underlying each respective futures market. The circuit breaker levels currently in effect for these contracts along with the proposed changes, in index points, are summarized below.

Futures market	Opening limit	Initial limit	Intermediate limit	Overall limit
Existing Limits				
S&P 500	5	12	NA	20
MidCap 400	2	4	NA	7
Russell 2000	3	6	NA	10
Proposed Limits				
S&P 500:				
Regular	5	12	20	30
Expanded	5	20	30	50
MidCap 400:				
Regular	2	4	8	12
Expanded	2	8	12	20
Russell 2000:				
Regular	3	6	10	15
Expanded	3	10	15	25

Under the CME's proposed amendments to the price limit levels,[5] the "regular" limits shown above would apply on most days; specifically, the initial, intermediate, and overall regular limits would be in effect on each day where the subject futures market was not limit bid or offered at the close on the previous day. The proposed initial, intermediate and overall "expanded" limits would apply only when the subject futures market was limit bid or offered at the close on the previous day. At current index levels, the proposed regular (expanded) price limits generally are comparable to DJIA movements of 40 (40) points for the opening limits, 95 (160) points for the initial limits, 160 (240) points for the intermediate limits, and 240 (400) points for the overall limits.

As with the existing initial limits, the newly proposed, intermediate limits represent price decline limits which would be in effect for a 30-minute period after the limit is hit.[6] If trading is limit offered at the end of the 30-minute period, trading in the affected futures contract will be halted for two minutes, and then trading will reopen subject to the applicable overall limit.

The CME also proposes to change the procedures for determining the base price used for setting the price limits noted above for the subject stock index futures contracts in certain instances. Under current rules, price limits are based on the settlement price on the subject futures for the previous day. Under the proposal, in those cases where on the previous day the subject future was limit bid or offered and the "implied market price" [7] for that prior day, based on the closing cash values of the relevant stock index, was above the limit bid, or below the limit offer, by a specified number of index points,[8] then the base price used for setting price limits on the next day will be such implied market price.

The CME has proposed to make the amendments effective for newly listed and existing contracts at the time of Commission approval. The current proposals do not change the specific procedures for the trading halt provisions of these contracts.[9]

In support of the proposals, the CME noted that:

> With the S&P Stock Price Index standing around 415 points, a daily limit of 20 points is less than a 5% move. While other have been few instances of limits being approached in the last two years, it is widely perceived that today's limit has a considerably greater chance of being hit than it did a few years ago * * *.
>
> The most significant risk comes from a cash move well beyond the CME limit. In those instances, firms would have to collect significant variation payments from customers, who may choose to have their positions liquidated instead. In a lock limit situation, such liquidations would not be possible. If the cash market changes by even 10%, it would be necessary to have multiple limit move days before these positions could be liquidated, posing significant financial risks to the clearing firms. By expanding the initial Daily Limit to 30 points and by expanding it further to 50 points after a limit day, the probability of multiple days without trading opportunities is greatly reduced.
>
> Another related feature of the rule changes is to change the Final [Daily] Settlement Price to the Implied [Market] Price whenever the cash index has moved by an extreme amount beyond the limit price * * *. By changing the settlement price from the limit to the Implied Market Price, the next day's limits will be based on the cash movement and not the limit price. This is another safeguard to minimize the potential for multiple limit move days without the opportunity to trade.
>
> The changes proposed by the CME are entirely consistent with the Brady Commission guidelines on circuit-breakers. In no instance would open trading be allowed beyond 30 S&P 500 points (approximately equal to 240 Dow Jones Industrial Average points) on the first day, or more than 50 S&P points (400 DJIA points) on subsequent days.

The Commission is requesting comment on the proposed changes to the circuit breaker provisions of the CME. In particular, the Commission requests comment on the following questions:

1. Are the proposed regular and expanded futures price limits appropriate as circuit breakers? It is noted that, at current index levels, the proposed regular (expanded) limits represent movements of about 3 (5) percent for the initial limits, 5(7) percent for the intermediate limits, and 7 (12) percent for the overall limits.

2. Under the proposal on the day after a CME overall limit price movement, once the expanded overall limits are in effect after the initial and intermediate price decline limits have lapsed, the subject CME futures contracts could decline more than a 250-point DJIA equivalent and continue to trade even though (a) the primary securities market has not yet declined by 250 points in the DJIA or (b) the primary securities market has been halted for one hour by a 250–point DJIA decline in that market or (c) the primary securities market has been halted for one hour and has been reopened. In this situation, the CME futures contracts would not halt until the primary securities market is halted (at either a 250 or 400 point DJIA decline) *and* CME futures are limit offered at a decline equivalent to 400 points in the DJIA.[10] The Commission requests comment on whether this expansion provision is acceptable.

3. Is it appropriate to use the implied market price, based on the closing values of the relevant cash index for the previous trading day, as the basis for setting futures price limits on the next day under the proposed conditions?

Copies of each of the proposed amendments will be available for inspection at the Office of the

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[5] As shown in the table, for the Midcap 400 futures contact, the CME has proposed to adopt an expanded initial and regular intermediate price decline limit of 8 points, which is at variance with the existing overall limit of 7 points.

[6] As with the existing initial price decline limits, the proposed intermediate price decline limits would not apply after 2:30 p.m. Chicago time.

[7] The implied market price is the closing value of the underlying cash stock index, plus the difference of the futures settlement price less the cash index (not less than zero) on the last day for which the future was not limit bid or offered at the close.

[8] The number of index points specified in the CME's amended rules are 10 for the S&P 500, 3 for the S&P Midcap 400, and 5 for the Russell 2000.

[9] The CME trading halt provisions require the futures contracts to be limit offered before futures trading is halted.

[10] The original circuit breakers approved for the CME's stock index contracts in 1988 included maximum price limits equivalent to 400 points in the DJIA. However, such limits became effective only at the reopening of trading on the CME, which occurred after a one-hour trading halt on the primary securities market.

Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of these proposed price limit and trading halt rules can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The materials submitted by the CME in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR 145 (1987)). Requests for copies should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interest in submitted written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on September 22, 1992.

Gerald D. Gay,

Director.

[FR Doc. 92–23428 Filed 9–25–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and Contract Clause: Child Annuitant's School Certification, DFAS-DE Form 2089.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 12 minutes.

Responses Per Respondent: 1.

Number of Respondents: 1,800.

Annual Responses: 1,800.

Annual Burden Hours: 360.

Needs and Uses: This information is used to determine initial or continued eligibility for a Survivor Benefit Plan (SBP) or Retired Serviceman's Family Protection Plan (RSFPP) annuitant. Once the child annuitant has reached age 18, he/she must attend school full time in order to continue receiving the annuity.

Affected Public: Individuals or households, Non-profit institutions.

Frequency: Submitted after each school semester or other period in which school year is divided.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: September 23, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–23434 Filed 9–25–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws; Meeting

AGENCY: Defense Systems Management College.

ACTION: Notice of meeting.

SUMMARY: Open to the public on October 22 and 23, 1992, starting at 8:30 a.m. at the Defense Systems Management College in Building 184 on Fort Belvoir, VA. The panel will hear presentations and recommendations by the various panel working groups on the statutes they have reviewed to date.

FOR FURTHER INFORMATION CONTACT: Linda Snellings at (703) 355–2665.

Dated: September 23, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–23433 Filed 9–25–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Office of the Secretary of the Army; Environmental Assessment for Base Realignment at Fort Carson, CO

AGENCY: United States Army, Department of Defense.

ACTION: Finding of no significant impact.

SUMMARY: The Secretary of Defense's Commission on Base Closure and Realignment recommended the realignment of the 10th Special Forces Group (Airborne) (10SFG(A)) from Fort Devens, Massachusetts, to Fort Carson, Colorado. The Defense Base Closure and Realignment (BRAC) Act of 1990, Public Law 101–510, endorsed the recommendations of the Commission and required implementation of the Commission's recommendations. An Environmental Assessment (EA) discussing possible impacts to the biological, historical, and socioeconomic environment of Fort Carson and the surrounding community has been prepared in accordance with the National Environmental Policy Act (NEPA) and the provisions of Army Regulation 200–2, which implements the Council on Environmental Quality Regulations at 40 CFR 1500. The EA is incorporated herein by reference. The requirements of the Endangered Species Act and the National Historic Preservation Act have been addressed.

The proposed action will involve the relocation of two special forces battalions from Fort Devens in 1995 into permanent facilities constructed at Fort Carson prior to the relocation. In addition to the proposed action, four other alternatives were considered including the temporary use of renovated facilities until permanent facilities can be constructed, permanent use of existing facilities without renovation, renovation of facilities for permanent occupancy, and renovation of facilities supplemented with limited construction. Three sites on Fort Carson were evaluated for construction of permanent facilities.

The construction of permanent facilities will not adversely impact air or water quality, ambient noise levels, sensitive biological resources, or other resources. Surveys were conducted to determine whether there are any archeological resources within the construction project area eligible for the National Register of Historic Places. No such resources were discovered. A report of these findings has been coordinated with the Colorado State Historic Preservation Office. Concurrence of no effect for the construction area was received from that office. In accordance with the BRAC Cultural Resources Programmatic Agreement and current Fort Carson and Pinon Canyon Maneuver Site land management practices, the 10SFG(A) will not conduct ground disturbing

exercises in training areas that have not been surveyed for archeological resources until such surveys have been carried out and the report findings and recommendations have been approved by the Colorado State Historic Preservation Officer.

Impacts on the natural environment will not be significant because of the nature of the 10SFG(A) training. The realignment action will not significantly increase the current amount or intensity of training at Fort Carson or the Pinon Canyon Maneuver Site, nor will it require the expansion of training facilities.

Existing utilities at Fort Carson can adequately support the increase in population associated with the realignment of the 10SFG(A) to Fort Carson. The construction activities will not significantly alter the availability of energy resources on the installation.

The realignment action will have a positive impact on El Paso County with respect to employment, population, business volume, and personal income. However, these increases will not alter the socioeconomic characteristics of the Fort Carson region and are not significant.

Based on an evaluation of the EA, it is determined that the anticipated environmental and socioeconomic impacts of the realignment of the 10SFG(A) to Fort Carson are not significant. An analysis of direct, indirect, and cumulative impacts indicates that the realignment action will not significantly affect the quality of the human environment. Therefore, an environmental impact statement will not be required.

SUPPLEMENTARY INFORMATION: There is a 30-day waiting period for the public prior to implementation.

ADDRESSES: A request for a copy of the EA and comments may be forwarded to Mr. Robert S. Nebel or Mrs. Patsy Freeman, Omaha District, U.S. Army Corps of Engineers, Planning Division, Omaha, Nebraska 68102.

FOR FURTHER INFORMATION CONTACT: Questions concerning this FNSI may be directed to Mr. Robert Nebel, (402) 221–4621 or Mrs. Patsy Freeman, (402) 221–3803.

Dated: September 21, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 92–23383 Filed 9–25–92; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 92–7]

Training and Qualification

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning Training and Qualification. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before October 28, 1992.

ADDRESSES: Send comments, data, views or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 2004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: September 23, 1992.

John T. Conway,

Chairman.

[Recommendation 92–7]

Training and Qualification

Dated: September 22, 1992.

Since its inception, the Defense Nuclear Facilities Safety Board has emphasized that a well constructed and documented program for training and qualifying operations, maintenance, and technical support personnel and supervisors at defense nuclear facilities is an essential foundation of operations and maintenance and, hence, the safety and health of the public, including the facility workers. A substantial portion of the Board's efforts has been devoted to on-site observation and review of personnel and supervisor selection, training, qualification, certification and facility operation.

The Board recognizes and commends DOE's efforts to date to upgrade training programs at its defense facilities. While the Board applauds the effort expended in developing DOE Orders 5480.18A, *Accreditation of Performance-Based Training for Category A Reactors and Nuclear Facilities and 5480.20, Personnel Selection, Qualification, Training and Staffing Requirements at DOE Reactor and Non-Reactor Nuclear Facilities,* implementation of these Orders to date has been slow and the Board continues to find common deficiencies at most facilities it visits. DOE nuclear facility Maintenance and Operations (M&O) Contractors were required by DOE Order 5480.20 to submit implementation plans called Training Implementation Matrices (TIMs) for each nuclear facility by November 8, 1991. The Order does not contain a time requirement for DOE to approve the TIMs and, for the facilities reviewed by the Board and its staff, DOE has not approved the plans they have received to date.

Until the TIMs are approved, training at defense nuclear facilities is governed by more general requirements contained in DOE Orders on safety (DOE Order 5480.5 *Safety of Nuclear Facilities* and DQE Order 5480.6 *Safety of DOE-Owned Reactors)* that have been in effect since September 23, 1986. Despite the long standing requirements of these Orders, the contractors at the many different facilities evaluated by the Board have not yet, in our view, provided management attention and resources for training and qualification commensurate with the health and safety implications of their defense nuclear programs. Indications at each of these sites demonstrate weaknesses in contractor training programs that have potential negative safety consequences. For example:

—A primary measure of an effective training program is the level of knowledge of the personnel and supervisors. At almost all defense nuclear sites, there are numerous technical personnel and supervisors of defense nuclear activities who do not adequately understand many basic fundamentals of engineering, chemistry, nuclear physics, and radiation protection to the extent required to ensure safe operation or maintenance of the facility to which they are assigned.

—Written examinations at many sites often consist of unchallenging multiple choice and short answer questions which do not adequately assess operator knowledge. Additionally, written operator qualification exams do not effectively correlate fundamental engineering principles with job specific knowledge requirements. As a result, management may not have sufficient information to determine if technical personnel in a defense nuclear facility have achieved a level of expertise required to safely conduct their activities.

As stated in DOE Order 5480.20, Program Senior Officials are responsible for assuming "line management responsibility and accountability for reactor and non-reactor nuclear facility personnel qualification programs." The contractors' lack of effective implementation of DOE Orders concerning training is indicative of the need for more emphasis, direction and guidance on training by line management at DOE Headquarters and Field Offices. For example, the Department has been slow to extend the underlying principles of Board Recommendation 90–1 to other defense nuclear facilities. Recommendation 90–1 called for the development of an effective training program at Savannah River Site K-reactor. It is especially disturbing that despite the successful application of Recommendation 90–1 to K-reactor and the Replacement Tritium Facility, DOE has not improved training of corresponding technical personnel at some other Savannah River Site defense nuclear facilities.

Primarily as a result of assessments conducted by the Board's staff at the Hanford

Site, the Pantex Plant, the Savannah River Site non-reactor facilities, the Oak Ridge Y-12 Plant, and the Rocky Flats Plant, but also because of reviews conducted elsewhere in the defense nuclear facilities complex, the Board believes there is a need for DOE to take action to further strengthen training of technical personnel at defense nuclear facilities. While the benefits of training are felt in many ways, the recommendations below are to be seen for their positive effects on assuring public health and safety. Therefore, in keeping with the Board's statutory requirements and recognizing the priority DOE has placed on the facilities listed above, the Board recommends for these sites that:

1. The Department take timely action to expand senior management's involvement in implementing training programs at defense nuclear facilities and to enhance senior management's communication of the importance of effective training and qualification programs to all levels within relevant DOE and contractor defense nuclear facilities organizations, particularly within line organizations. With regard to operations, maintenance, and technical support personnel, the Department should determine what personnel, funding, organizational, or managerial strengthening actions are needed to (a) elevate the priority and importance of training and qualification programs to assure public health and safety; (b) communicate the importance of training and qualification from the highest level of management to all appropriate Department personnel; (c) expand personnel and supervisor training and qualification guidance and increase program resources to facilitate the rapid review, approval, and implementation of training and qualification programs; and (d) make other changes as are warranted.

2. Where it is found to be necessary, the Department strengthen organizational units responsible for training and qualification at the DOE Field Offices, DOE Area Offices, and contractor organizations responsible for defense nuclear facilities at these sites, especially to include the appropriate technical qualifications of the personnel assigned to defense nuclear activities. The infrastructure, responsibilities, and resources of the training and qualification programs of those organizations need to be strengthened to expedite implementation of existing and additional training and qualification requirements issued by DOE.

3. The Department accelerate efforts internal to DOE to improve training and qualification programs of operations, maintenance, and technical support personnel at defense nuclear facilities. An integral part of this effort should be an assessment of the roles and effectiveness of technical oversight groups to ensure that these groups' reviews, at all organizations and levels within the defense nuclear facilities complex, appropriately recognize the importance of training and qualification to public health and safety. The Department's program should also consider restructuring on-site technical oversight groups to ensure that training and qualification are afforded adequate attention and team members possess the technical expertise necessary to effectively evaluate training and qualification programs of operations, maintenance, and technical support personnel.

4. The Department and its contractors establish and implement measures to improve training and qualification programs of operations, maintenance, and technical support personnel at defense nuclear facilities that embody the principles applied at the Savannah River Site K-reactor in response to Board Recommendation 90-1. These measures, adjusted commensurate with the risk associated with operating each specific facility, should include consideration of elements such as:

a. Incorporation of appropriate applicable guidance on training and qualification comparable with trade, professional, and industry standards for reactor and non-reactor nuclear facilities. While the Board does not necessarily endorse all guidance contained in these standards, it believes they are important sources of information which can be productively used by DOE in identifying improvements for DOE's programs.

b. Identification of differences between current requirements and applicable trade, professional, and industry standards and implementation of supplemental measures necessary to compensate for the differences identified until training and qualification programs at defense nuclear facilities achieve a level at least equal to trade, professional and industry standards.

c. Extension of the performance-based training principles described in DOE Order 5480.18A to all defense nuclear facilities. Particularly the requirements to: (1) Determine the current level of knowledge of appropriate personnel, supervisors, and managers of technical activities by means of written, oral, and practical examinations covering job specific process knowledge requirements as well as fundamentals concepts required to perform a job in a manner that protects the safety of the worker and the public; (2) delineate the training necessary to ensure that these personnel achieve and maintain the qualifications of their respective positions; and (3) evaluate individuals' knowledge level and training curriculum to ensure that the training program effectively prepares these personnel to safely operate, maintain, or support the facility to which they are assigned.

d. Extension of current continuing training, retention testing, and periodic requalification programs to require these personnel to demonstrate continued improvement with increasing experience.

e. Maintenance of readily accessible, auditable records to identify required training and objectively verify training received by these personnel and supervisors including the degree of success achieved.

We believe it is essential that the Department and its contractors accomplish the above for each DOE defense nuclear facility. The facilities specifically identified in this Recommendation are those which the Board understands to be among those which have high priority within the Department and on which the Board has focused its attention.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

Defense Nuclear Facilities Safety Board

625 Indiana Avenue NW, Suite 700, Washington, DC 20004, (202) 208-6400

September 22, 1992.

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585

Dear Mr. Secretary: On September 22, 1992, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 92-7 which is enclosed for your consideration. Recommendation 92-7 deals with Training and Qualification.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161-68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the Federal Register.

Sincerely,

John T. Conway,

Chairman.

Enclosure

[FR Doc. 92-23468 Filed 9-25-92; 8:45 am]
BILLING CODE 6820-KD-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Filed With the Commission

September 22, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 11315-001.

c. *Date filed:* September 8, 1992.

d. *Applicant:* BMB Enterprises, Inc.

e. *Name of Project:* Granite Creek.

f. *Location:* Within Granite Ranch, on the ranch's irrigation system which draws water from Granite Creek, in Juab County, Utah, T. 12., R. 17 W., Sections 17.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)-825(r).

h. *Applicant Contact:* Mark. R. Hutchings, Ida-West Energy Company, P.O. Box 7867, Boise Idaho 83703, (208) 336–4254.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. *Comment Date:* November 9, 1992.

k. *Description of Project:* The proposed project would consist of a powerhouse with a 350-megawatt generating unit at the end of the existing pipeline that discharges into the storage reservoir at the ranch. The project would have an estimated average annual generation of 1,485,000 megawatthours.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23398 Filed 9–25–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER92–838–000]

Commonwealth Edison Co.; Filing

September 17, 1992.

Take notice that on September 11, 1992, Commonwealth Edison Company (Edison) tendered for filing an Interchange Agreement, dated August 13, 1992, between Edison and Wabash Valley Power Association, Inc. (Wabash Valley). The Interchange Agreement provides for Edison to make Firm Power, Short Term Power, and General Purpose Energy available to Wanash Valley whenever mutually agreed upon.

Copies of this filing were served upon the Illinois Commerce Commission and Wabash Valley.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23400 Filed 9–25–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER92–834–000]

Northeast Utilities Service Company; Filing

September 17, 1992.

Take notice that on September 10, 1992, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) tendered for filing an agreement for the sale to Braintree Electric Light Department (BELD) of unit capacity and associated energy from CL&P.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule change to become effective October 1, 1992.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the other party.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's regulation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23399 Filed 9–25–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed During the Week of August 28 Through September 4, 1992

During the Week of August 28 through September 4, 1992, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 21, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 28 through September 4, 1992]

Date	Name and location of applicant	Case no.	Type of submission
Aug. 31, 1992	Arco/Fair Oil Company, Washington, DC	RR304–47	Request for modification/rescission in the Arco refund proceeding. *If granted:* The May 9, 1989 Decision and Order (RF304–2579) issued to Fair Oil Company would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
Sept 1, 1992	Gulf/Holloway Construction, Woodbridge, Virginia	RR300–199	Request for modification/rescission in the Gulf refund proceeding. *If granted:* The May 10, 1991 Decision and Order (RF300–11405) issued to Holloway Construction would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of August 28 through September 4, 1992]

Date	Name and location of applicant	Case no.	Type of submission
Sept. 1, 1992	Gulf/Maxfield's Garage, Atlantic Beach, Florida	RR300-200	Request for modification/rescission in the Gulf refund proceeding. *If granted:* The July 1, 1992 Dismissal Letter (Case No. RF300-14765) issued to Maxfield's Garage would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Sept. 3, 1992	Shell/Kingman Truck Terminal, Las Vegas, Nevada.	RR315-3	Request for modification/rescission in the Shell refund proceeding. *If granted:* The April 23, 1992 Dismissal Letter (Case No. RF315-9988) issued to Kingman Truck Terminal would be modified regarding the firm's application for refund submitted in the Shell refund proceeding.
Sept. 4, 1992	Skadden, Arps, Slate, Meagher & Flom, Washington, DC.	LFA-0239	Appeal of an information request denial. *If granted:* The September 1, 1992 Freedom of Information Request Denial issued by the Management and Information Systems Office, Economic Regulatory Administration, would be rescinded, and Skadden, Arps, Slate, Meagher & Flom would receive access to 284 documents concerning communications between Chevron U.S.A., Inc. and the DOE, and between Cities Service Oil and Gas Corporation and the DOE.
Sept. 4, 1992	Wayne T. Long, Detroit, Michigan	LFA-0238	Appeal of an information request denial. *If granted:* The July 31, 1992 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs, Albuquerque Field Office, would be rescinded, and Wayne T. Long, President, Local 251, United Plant Guard Workers of America, would receive access to the personnel section of the contract between Allied-Signal Aerospace and the DOE.
Sept. 4, 1992	Reynolds Metals Company, Washington, DC	RR272-98	Request for modification/rescission in the Crude Oil Refund Proceeding. *If granted:* The August 1, 1991 Decision and Order (Case No. RF272-73969 & RF272-92645) issued to Reynolds Metals Company would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

Date received	Name of refund proceeding/name of refund application	Case No.
8/31/92	Walker Oil Co., Inc	RF313-333
8/31/92	Allison Oil Company.	RF304-13265
8/31/92	Ike's Super 100	RF342-307
9/1/92	Finger Lakes ARCO.	RF304-13266
9/1/92	Fauber Construction Co., Inc.	RF304-13267
9/1/92	Horacio J. Espinosa.	RF304-13268
9/1/92	Simmons ARCO	RF304-13269
9/1/92	Lamonts Auto Center.	RF304-13270
9/2/92	Osage Oil Company.	RF326-327
9/2/92	Vickers/Kansas	RQ1-582
9/4/92	Dowdle Butane Gas Co., Inc.	RF304-13271
8/28/92 thru 9/4/92.	Texaco Refund Applications Received.	RF321-19200 thru RF321-19213

Date received	Name of refund proceeding/name of refund application	Case No.
8/28/92 thru 9/4/92.	Gulf Oil Refund Applications Received.	RF300-20502 thru RF300-20523
8/28/92 thru 9/4/92.	Crude Oil Applications Received.	RF272-93834 thru RF272-93847

[FR Doc. 92-23486 Filed 9-25-92; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of September 4 Through September 11, 1992

During the Week of September 4 through September 11, 1992, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS

[Week of September 4 to September 11, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 10, 1992	Lawter International, Inc., Northbrook, IL	RR272-99	Request for modification/rescission in the crude oil refund proceeding. *If Granted:* The January 3, 1992 Decision and Order (Case No. RF272-63545) would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS—Continued

[Week of September 4 to September 11, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 11, 1992.....	Texaco/R.W. Dickman Company, Inc., Washington, DC.	RR321-116	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The June 10, 1991 Decision and Order (Case No. RF321-1221) issued to R.W. Dickman Co., Inc. would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of September 4 to September 11, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case No.
09/11/92...	Time Oil Nevada.....	RQ334-583
09/09/92...	Cloverleaf Texaco.....	RF321-19214
09/09/92...	Holiday Texaco	RF321-19215
09/09/92...	Earls Texaco Station.	RF321-19216
09/09/92...	Sergeant Bluff-Luton Comm. Sch.	C272-161
09/10/92...	Farmers Coop	RF272-93848
09/10/92...	Clark Co. Farm Bureau Coop.	RF272-93849
09/10/92...	Den's Texaco.....	RF321-19217
09/11/92...	City of North Little Rock.	RF272-93850
09/11/92...	Cleveland Cliffs Iron Co.	RF272-93851
09/11/92...	Doby Sales	RF272-93852
09/04/92...	Gulf Oil.....	RF300-20524 thru RF300-20536
09/4/92.....	Atlantic Richfield applications received.	RF304-13272 thru RF304-13279

[FR Doc. 92-23488 Filed 9-25-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4513-7]

Office of Research and Development Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method and Reference Method Designations

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the measurement of ambient concentrations of ozone and another reference method for the measurement of ambient concentrations of carbon monoxide.

The new equivalent method for ozone is an automated method (analyzer) which utilizes the measurement principle based on absorption of ultraviolet radiation by ozone at a wavelength of 254 nm. This new designated method is identified as follows:

EQOA-0992-087, "Advanced Pollution Instrumentation, Inc. Model 400 Ozone Analyzer," operated on any full scale range between 0-100 ppb and 0-1000 ppb, at any temperature in the range of 5 °C to 40 °C, with the dynamic zero and span adjustment features set to OFF, with a 5-micron TFE filter element installed in the rear-panel filter assembly, and with or without any of the following options: Zero/Span Valves, Internal Zero/Span (IZS), IZS Reference Adjustment, Rack-Mount with Slides, RS-232 with Status Outputs.

This method is available from Advanced Pollution Instrumentation Inc., 8815 Production Avenue, San Diego, California 92121-2219. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 57, Number 115, June 15, 1992, page 28660.

The new reference method for carbon monoxide is an automated method (analyzer) which utilizes the measurement principle (non-dispersive infrared photometry) and calibration procedure specified in appendix C of 40 CFR part 50. This new designated method is identified as follows:

RFCA-0992-088, "Lear Siegler Measurement Controls Model ML 9830 Carbon Monoxide Analyzer," operated on the 0-50 ppm range, at any temperature in the range of 15 °C to 35 °C, with a 5-micron Teflon filter element installed in the filter assembly behind the secondary panel, the service switch on the secondary panel set to the IN position, with the following menu choices selected: Calibration: Manual; Filter type: Kalman; Over-ranging: Disabled: Pres/temp/flow/comp: ON; Span comp: Disabled;

with the 50 PIN I/O board installed on the rear panel configured at any of the following output range settings: Voltage, 10 V, 5 V, 1 V, 0.1 V, Current, 0-20 mA, 2-20 mA and 4-20 mA;

and with or without any of the following options: Valve Assembly for External Zero/Span (EZS), Rack Mount Assembly, Internal Floppy Disk Drive.

This method is available from Lear Siegler Measurement Controls Corporation, 74 Inverness Drive East, Englewood, CO 80112-5189. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 57, Number 95, May 15, 1992, page 20824.

A test analyzer representative of each of these methods has been tested by the respective applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicants, EPA has determined, in accordance with part 53, that these methods should be designated, respectively, as an equivalent method and a reference method. The information submitted by the applicants will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, either of these methods is acceptable for use by States and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating temperature range) specified in the applicable designation (see description of the methods above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a designation applies to any analyzer which is identical to the analyzer described in the designation. In some cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should

be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR part 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department B (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these equivalent and reference methods will assist the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning either method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 92–23463 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4513–8]

Notice of Open Meeting of the National Advisory Council for Environmental Policy and Technology's Environmental Measurements and Chemical Accident Prevention Committee, Environmental Statistics Subcommittee

Under Public Law 92563 (The Federal Advisory Committee Act), EPA gives notice of a meeting of the Environmental Statistics Subcommittee of the Environmental Measurement/Chemical Accident Prevention Committee (EM/CAP). The EM/CAP Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. This meeting of the Environmental Statistics Subcommittee will be held on October 15, 1992 from 9 a.m. to 5 p.m. and October 16, 1992 from 9 a.m. to 3 p.m. at the National Governors' Association offices, 444 North Capitol Street, room 233–235, Washington, DC 20001–1572.The Environmental Statistics Subcommittee will discuss issues related to the development and use of environmental statistics and data. The governance and structure of a Center for Environmental Statistics at EPA will be a primary focus. Specific issues on the agenda include: building an analytical framework, supporting data collection and management, and outreach. EPA representatives will be present to discuss coordination with other governmental agencies, States and other organizations.

Members of the public interested in further information may contact David J. Graham, Designated Federal Official, Office of Cooperative Environmental Management, U.S. EPA (A–101 F6), 401 M Street, SW., Washington, DC 20460, (202) 260–9743.

Dated: September 21, 1992.

Abby J. Pirnie,

Director, Office of Cooperative Environmental Management.

[FR Doc. 92–23462 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL 4514–8]

National Meeting Agendas Subcommittee of the National Enforcement Training Institute (NETI) Advisory Council; Open Meeting

AGENCY: U.S. Environmental Protection Agency, Office of Enforcement.

ACTION: Meeting notice.

SUMMARY: The purpose of the meeting is to develop the Strategic Plan for the National Enforcement Training Institute.

The meeting is open to the public. Limited seating for interested members of the public is available on a first-come, first served basis.

DATES: October 13, 1992 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in room 381 of the Hall of States located at 444 North Capitol Street, NE, in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen C. Stough, Executive Director of NETI, Office of Enforcement, Mail Code LE–133, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–8776; telefax: (202) 260–7839.

Dated: September 24, 1992.

Ellen C. Stough,

Executive Director, NETI.

[FR Doc. 92–23598 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4513–2]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Labat-Anderson, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) for authorization to disclose to its contractor, Labat-Anderson, Inc.

(hereinafter "Labat-Anderson"), of Arlington, Virginia, Superfund confidential business information ("CBI") which has been submitted to EPA Region 9, Hazardous Waste Management Division, Office of Superfund Programs. Labat-Anderson's principal offices are located at 2200 Clarendon Boulevard, suite 900, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Betsy Curnow, Office of Superfund Programs, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2378.

NOTICE OF REQUIRED DETERMINATIONS, CONTRACT PROVISIONS AND OPPORTUNITY TO COMMENT: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery. EPA has entered into a contract, No. 68–W9–0052, with Labat-Anderson, for management of these records. EPA Region 9 has determined that disclosure of CBI to Labat-Anderson employees is necessary in order that Labat-Anderson may carry out the work required by that contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii). EPA Region 9 will require that each Labat-Anderson employee sign a written agreement that he or she (1) will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by Labat-Anderson for performance of the work required by the contract, or upon completion of the contract. These non-disclosure statements shall be maintained on file with the Region 9 Delivery Order Project Officer. Labat-Anderson employees will be trained on Superfund CBI requirements.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii). Comments should be sent to: Environmental Protection Agency, Region 9, Elaine Yee (H–7–4), 75 Hawthorne Street, San Francisco, CA 94105.

Dated: September 16, 1992.

Jeff Zelikson,

Director, Hazardous Waste Management Division, EPA Region 9.

[FR Doc. 92–23458 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–957–DR]

Guam; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 17, 1992.

SUMMARY: This notice amends the notice of a major disaster for the Territory of Guam (FEMA–957–DR), dated August 28, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 17, 1992, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to Wallace E. Stickney, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage from Typhoon Omar in certain areas of the Territory of Guam which resulted in my declaration of a major disaster on August 28, 1992, is of sufficient severity and magnitude that special conditions are warranted regarding the customary cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"), for the Individual and Family Grant program and Public Assistance.

Therefore, I amend my declaration to authorize Federal funds for Public Assistance at 75 percent of total eligible costs up to $10 per capita. Eligible costs for Public Assistance exceeding $10 per capita will be funded at 95 percent of total eligible costs.

I further amend my declaration to authorize Federal funds for the Individual and Family Grant program at 100 percent of total eligible costs, under the provisions of the Insular Act.

Please notify the Governor of Guam and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92–23472 Filed 9–25–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–962–DR]

Indiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 18, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–962–DR), dated September 18, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 18, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from severe storms, tornadoes, and flooding from June 16, 1992 to July 23, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Individual Assistance may be designated at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management

Agency under Executive Order 12148, I hereby appoint Mr. David Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

The counties of Adams, Dearborn, DeKalb, Delaware, Franklin, Grant, Jefferson, LaPorte, Madison, Marion, Miami, Noble, Ohio, Porter, and Switzerland for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-23474 Filed 9-25-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-3094-EM]

Rhode Island; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 16, 1992.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Rhode Island (FEMA-3094-EM), dated September 16, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 16, 1992, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Rhode Island, resulting from water contamination on August 3, 1992, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under title V, section 501(a), of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Rhode Island.

You are authorized to coordinate all emergency relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Rhode Island to have been affected adversely by this declared emergency:

The Counties of Providence and Washington for required emergency measures taken.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director.

[FR Doc. 92-23473 Filed 9-25-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-963-DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 18, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA-963-DR), dated September 18, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 18, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistant Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms and tornadoes on June 17, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. David Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Dane County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-23475 Filed 9-25-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Compania Anonima Venezolana de Navegacion et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, on or before October 8, 1992. The

requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011383–002.

Title: Venezuelan Discussion Agreement.

Parties:

Compania Anonima Venezolana de Navegacion

King Ocean Services de Venezuela, S.A.

Ocean Express Lines, Inc.

Venezuela Transport Line, Inc.

Synopsis: The proposed amendment revises the voting provisions of the Agreement to provide that any member line of a conference party to the Agreement may attend the participate in meetings of the Agreement. The parties have requested a shortened review period.

Agreement No.: 224–002810–010.

Title: Tampa Port Authority/ Harborside Refrigerated Services Terminal Agreement.

Parties:

Tampa Port Authority ("Port")

Harborside Refrigerated Services, Inc. ("Harborside").

Synopsis: The modification establishes a revised payment schedule under which Harborside will reimburse the Port for monies due under the Agreement.

Agreement No.: 224–003079–015.

Title: Tampa Port Authority/Eller & Company, Inc., Marine Terminal Agreement.

Parties:

Tampa Port Authority ("Port")

Eller & Company, Inc. ("Eller").

Synopsis: The modification reflects a revised payment schedule in which Eller will reimburse the Authority for monies due as provided for in the basic Agreement.

Agreement No.: 224–200417–003.

Title: Georgia Ports Authority/Hoegh Lines Terminal Agreement.

Parties:

Georgia Ports Authority

Hoegh Lines ("Hoegh").

Synopsis: The amendment modifies the Agreement to state that Hoegh's M-Class vessels are eligible for a dockage refund and that the Agreement's berth guarantee provisions do not apply to the Port of Brunswick.

Dated: September 23, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–23498 Filed 9–25–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 30-July 1, 1992

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 30-July 1, 1992.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting continues to suggest that economic activity is expanding at a moderate pace. Total nonfarm payroll employment increased somewhat further in May, but a surge in job seekers led to a sizable rise in the civilian unemployment rate to 7.5 percent. Industrial production rose appreciably further in May, partly reflecting continued recovery in motor vehicle assemblies. Growth in consumer spending has slackened after a sharp advance earlier this year. Although sales of new homes declined in May, single-family housing starts rebounded to a level close to the first-quarter pace. Recent data on orders and shipments of nondefense capital goods indicate appreciable increases in outlays for business equipment, and the trend of building contracts points to some slowing of the decline in nonresidential construction. The nominal U.S. merchandise trade deficit increased in April and was substantially above its average rate in the first quarter. Incoming data on retail prices and labor costs suggest that inflation is slowing.

Most interest rates have changed little since the Committee meeting on May 19. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined further over the intermeeting period.

M2 and M3 changed little in May and appear to have contracted in June; both retail and large-denomination time deposits continued to run off rapidly. Through June, expansion of the two aggregates was somewhat below the lower ends of the ranges established by the Committee for the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at this meeting the ranges it had established in February for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent respectively, measured from the fourth quarter of 1991 to the fourth quarter of 1992. The Committee anticipated that developments contributing to unusual velocity increases could persist in the second half of the year. The monitoring range for growth of total domestic nonfinancial debt also was maintained at 4-1/2 to 8-1/2 percent for the year. For 1993, the Committee on a tentative basis set the same ranges as in 1992 for growth of the monetary aggregates and debt, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from June through September at annual rates of about 2 and 1/2 percent, respectively.

By order of the Federal Open Market Committee, August 31, 1992.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 92–23512 Filed 9–25–92; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Record of policy actions of the Committee for the meeting of June 30-July 1, 1992, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

First Union Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the

question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 23, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire South Carolina Federal Corporation, Columbia, South Carolina, and thereby engage in owning and operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Story County Bancorporation, Jewell, Iowa; to acquire Viking Village Company, L.P., Jewell, Iowa, and thereby engage in providing housing for low and moderate income families pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Redwood Empire Bancorp, Santa Rosa, California; to acquire Lake Savings and Loan Association, Lakeport, California, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23508 Filed 9-25-92; 8:45 am]

BILLING CODE 6210-01-F

J.F. Justiss, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. J.F. Justiss, III, Trust, to acquire an additional 2.96 percent for a total of 14.83 percent; Amy Williams Trust, to acquire 2.96 percent for a total of 4.74 percent; Adam Williams Trust, to acquire 2.96 percent, for a total of 4.74 percent; and Jennifer J. Williams, to acquire 2.96 percent for a total of 7.12 percent of the voting shares of JBI Financial Corporation, Jena, Louisiana, and thereby indirectly acquire Bank of Jena, Jena, Louisiana. All notificants are from Jena, Louisiana.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Chang Hwi Kim, Palos Verdes, California; to retain 10.98 percent of the voting shares of California Center Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, September 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23509 Filed 9-25-92; 8:45 am]

BILLING CODE 6210-01-F

Omnibank Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 23, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Omnibank Corporation, River Rouge, Michigan; to become a bank holding company by acquiring 89.78 percent of the voting shares of Omnibank, River Rouge, Michigan.

2. Peoples Mid-Illinois Corporation, and its wholly owned subsidiary, PMI Acquisition Corporation, both of Bloomington, Illinois; to acquire 100 percent of the voting shares of Lexington Bancshares, Inc., Lexington, Illinois, and thereby indirectly acquire Lexington Bank, Lexington, Illinois. In connection with this application, PMI has applied to become a bank holding company.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. State First Financial Corporation, Texarkana, Arkansas; to acquire at least 90 percent of the voting shares of First National Bank of Nashville, Nashville, Arkansas.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Minnesota Banc Holding Company, Plymouth, Minnesota; to acquire 100 percent of the voting shares of Citizens State Bank of Montgomery, Montgomery, Minnesota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. El Paso Bancshares, Inc., Monument, Colorado; to acquire 100

percent of the voting shares of Western Bank, Taos, New Mexico.

Board of Governors of the Federal Reserve System, September 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23510 Filed 9-25-92; 8:45 am]

BILLING CODE 6210-01-F

U.S. Trust Corporation, et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. U.S. Trust Corporation, New York, New York; to engage *de novo* through its subsidiary, U.S. Trust Company of New Jersey, Princeton, New Jersey, in trust company activities, including activities of a fiduciary, investment advisory, agency and custodial nature pursuant to § 225.25(b)(3) and (b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. CoreStates Financial Corp., Philadelphia, Pennsylvania; to acquire 31.01 percent of the voting shares of Electronic Payment Services, Inc., Wilmington, Delaware, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to acquire 31.01 percent; PNC Financial Corporation, Pittsburgh, Pennsylvania, to acquire 31.01 percent; Society Corporation, Cleveland, Ohio, to acquire 6.97 percentof the voting shares of Electronic Payment Services, Inc., Philadelphia, Pennsylvania, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23511 Filed 9-25-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3399]

Automatic Data Processing, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey based company that sells computer software programs and its subsidiary from making misrepresentations concerning the advantages of financing purchases, and from selling or licensing software or printed materials the firm knows or should know are likely to be used to misrepresent comparative costs.

DATES: Complaint and Order issued August 27, 1992.[1]

FOR FURTHER INFORMATION CONTACT: John Lefevre, FTC/S-4429, Washington, DC 20580. (202) 326-3209.

SUPPLEMENTARY INFORMATION: On Tuesday, September 10, 1991, there was published in the **Federal Register**, 56 FR 46187, a proposed consent agreement with analysis In the Matter of Automatic Data Processing, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-23469 Filed 9-25-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3401]

BelAge Plastic Surgery Center, P.C., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Virginia-based plastic surgery center and its founder from misrepresenting the likelihood of risks or scarring, the length of the recovery period, the amount of pain, or the need for pain medication, following plastic or cosmetic surgery. In addition, the order requires a risk disclosure any time the respondents state that cosmetic or plastic surgery procedures are safe.

DATES: Complaint and Order issued September 8, 1992.[1]

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael McCarey, FTC/H–200, Washington, DC 20580. (202) 326–3303.

SUPPLEMENTARY INFORMATION: On Tuesday, June 30, 1992, there was published in the **Federal Register**, 57 FR 29081, a proposed consent agreement with analysis In the Matter of BelAge Plastic Surgery Center, P.C., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92–23470 Filed 9–25–92; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3400]

Patricia Wexler, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York doctor from misrepresenting the efficacy of Omexin, a hair loss treatment, or any similar treatment concerning the curtailment of hair loss or the promotion of hair growth, and from making certain representations unless she possesses competent and reliable scientific evidence to substantiate such representations. The respondent also is prohibited from disseminating or assisting with the dissemination of a program-length advertisement regarding baldness.

DATES: Complaint and Order issued August 31, 1992.[1]

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lesley Fair, FTC/S–4002, Washington, DC 20580, (202) 326–3081; or Michael Bloom, New York Regional Office, Federal Trade Commission, 150 William St., Suite 1300, New York, NY 10038, (212) 264–1207.

SUPPLEMENTARY INFORMATION: On Tuesday, June 23, 1992, there was published in the **Federal Register**, 57 FR 27978, a proposed consent agreement with analysis In the Matter of Patricia Wexler, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed from of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 92–23471 Filed 9–25–92; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute of Mental Health; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for November 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–4333).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Epidemiology Review Committee
Meeting Date: November 4–6, 1992
Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015
Open: November 4, 9—10 a.m.
Closed: Otherwise
Contact: Doris Lee-Robb, room 9C–14, Parklawn Building, Telephone (301) 443–1367

Committee Name: Services Research Review Committee
Meeting Date: November 4–6, 1992
Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015
Open: November 4, 9—10 a.m.
Closed: Otherwise
Contact: Gloria K. Yockelson, room 9C–05, Parklawn Building, Telephone (301) 443–0948

Committee Name: Treatment Assessment Review Committee
Meeting Date: November 5–6, 1992
Place: Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037
Open: November 5, 8:30—9:30 a.m.
Closed: Otherwise
Contact: Barbara W. Campbell, room 9C–02, Parklawn Building, Telephone (301) 443–4868

Committee Name: Behavioral, Clinical, and Psychosocial Subcommittee of the Mental Health AIDS and Immunology Review Committee
Meeting Date: November 5–6, 1992
Place: Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037
Open: November 5, 8:30—9 a.m.
Closed: Otherwise
Contact: Regina M. Thomas, room 9C–15, Parklawn Building, Telephone (301) 443–6470

Committee Name: Psychobiological, Biological, and Neuroscience Subcommittee of the Mental Health AIDS and Immunology Review Committee
Meeting Date: November 5–6, 1992
Place: Omni Georgetown Hotel, 2121 P Street NW., Washington, DC 20037
Open: November 5, 8:30—9 a.m.
Closed: Otherwise
Contact: Rehana A. Chowdhury, room 9C–15, Parklawn Building, Telephone (301) 443–6470

Dated: September 22, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–23430 Filed 9–25–92; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following committee meeting:

NAME: Advisory Committee for Injury Prevention and Control (ACIPC).

TIMES AND DATES:

8 a.m.–5 p.m., October 26, 1992
8 a.m.–12 noon, October 27, 1992

PLACE: Terrace Garden Inn, 3405 Lenox Road, NE., Atlanta, Georgia 30326.

STATUS: Open to the public, limited only by the space available.

PURPOSE: The committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the development of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

MATTERS TO BE DISCUSSED: The committee will discuss recent grant awards; the extramural research planning process; the reorganization of the Division of Injury Control as the National Center for Injury Prevention and Control; the injury control report to Congress; the World Conference on Injury Control; the development of injury advisories; revision of grant announcements; and guidelines for traumatic brain injury surveillance.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Richard J. Waxweiler, Ph.D., Acting Executive Secretary, ACIPC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Mailstop F–41, Atlanta, Georgia 30341–3724, telephone 404/488–4031.

Dated: September 22, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92–23431 Filed 9–25–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92N–0316]

Merck & Co., Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Merck & Co., Inc. The NADA provides for the use of a penicillin Type A article. The sponsor requested the withdrawal of approval of the NADA.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8749.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, is the sponsor of NADA 46–598, which provides for the use of Pro-Pen® Type A medicated article (penicillin G procaine). In its letter dated May 8, 1992, the sponsor requested the withdrawal of approval of the NADA.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 46–598 and all supplements and amendments thereto is hereby withdrawn, effective on October 8, 1992.

Dated: September 18, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92–23386 Filed 9–25–92; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 88F–0236]

Metrex Research Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 8B4050) proposing that the food additive regulations be amended to provide for the safe use in contact with food of an aqueous sanitizing solution containing sodium, calcium, or potassium hypochlorite; citric acid; sodium citrate; and α-[*para*-(1,1,3,3-tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene), containing 9 to 10 moles of ethylene oxide. The petition was withdrawn by Metrex Research Corp., which purchased Bionox Corp.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 29, 1988 (53 FR 28699), FDA announced that a food additive petition (FAP 8B4050) had been filed by Bionox Corp., 6890 East Loma del Bribon, Tucson, AZ 85715. This petition proposed that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use in contact with food of an aqueous sanitizing solution containing sodium, calcium, or potassium hypochlorite; citric acid; sodium citrate; and α-[*para*-(1,1,3,3-tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene), containing 9 to 10 moles of ethylene oxide. Metrex Research Corp., which purchased Bionox Corp., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: September 10, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–23445 Filed 9–25–92; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. October 28 and 29, 1992, 8:30 a.m., Holiday Inn Silver Spring, International Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, October 28, 1992, 8:30 a.m. to 5:30 p.m.; open public hearing, 5:30 p.m. to 6 p.m., unless public participation does not last that long; open public hearing, October 29, 1992, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m.; Anna J. Baldwin, Center

for Biologics Evaluation and Research (HFB–5), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8226.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 22, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 28, 1992, the committee will discuss two DTP/Haemophilus b combination vaccines (Connaught Laboratories, Lederle Laboratories) and a Haemophilus b conjugate vaccine (Pasteur-Merieux). On October 29, 1992, the committee will discuss a vaccine for the prevention of typhoid fever (Pasteur-Merieux).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 18, 1992.
David A. Kessler,
Commissioner of Food and Drugs.
[FR Doc. 92-23387 Filed 9-25-92; 8:45 am]
BILLING CODE 4160-01-F

HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Hearing; Reconsideration of Disapproval of Tennessee State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 4, 1992, in room 510, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Tennessee SPA 91-42.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, Telephone: (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Tennessee State plan amendment (SPA) number 91-42.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Tennessee SPA 91-42 proposes to change the method for providing orthodontia services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. Tennessee specifically proposes to cover orthodontia services for individuals age 21 and over who received prior approval for the orthodontia services under EPSDT before the age of 20 and ½. Tennessee does not cover orthodontia services for any other individuals age 21 or over.

The issue in this matter is whether the plan amendment meets the statutory requirements of sections 1902(a)(10)(B) and (c)(i)(II) of the Act and Federal regulations at 42 CFR 440.240.

Section 1902(a)(10)(B) of the Act requires States to provide medical assistance to any categorically needy recipient which is not less in amount, duration or scope than services available to a medically needy recipient. In addition, under sections 1902(a)(10)(B) and (C)(i)(II) of the Act and 42 CFR 440.240, a State must also provide services that are equal in amount, duration, and scope to all individuals who are categorically needy or who are members of the same covered medically needy group. HCFA believes Tennessee SPA 91-42 violates these provisions. Section (I) in the matter following section 1902(a)(10)(F) of the Act, indicates that certain services provided to individuals meeting prescribed age requirements, shall not be required to be available in the same amount, duration and scope to individuals of any other age. EPSDT services are one of these services.

There are two separate comparability issues in Tennessee's plan amendment. First, Tennessee is proposing to provide orthodontia services to only those individuals over age 21 who have previously received orthodontia services under the EPSDT program. By choosing to provide orthodontia services to only former EPSDT recipients, HCFA believes that Tennessee violates the statutory requirements. Tennessee would not be providing all individuals within an eligibility group the same amount, duration and scope of services since only a few categorically or medically needy individuals would be receiving orthodontia services, not the entire group. Additionally, Tennessee could potentially be providing services in amount, duration and scope to medically needy individuals in excess of the services available to its categorically needy individuals who never received EPSDT services. Once an individual reaches the age of 21 and becomes ineligible for EPSDT services, Tennessee cannot violate the rules of comparability because the individual was previously EPSDT eligible.

HCFA believes that this same issue arises with respect to the services or devices provided for under part 10, item (g) of the proposed plan amendment (Attachment 3.1.A.1). This section indicates that an individual nearing his or her 21st birthday who receives prior authorization for a service or device (other than orthodontia) may receive that service after the individual attains the age of 21 if prior authorization was granted within 15 days prior to the recipient's 21st birthday and if the service is completed within 10 days after the recipient attains the age of 21. It is not clear whether Tennessee is providing these services or devices as EPSDT services. However, HCFA believes that Tennessee is proposing to provide services to a few recipients who have attained the age of 21 in excess of services available to other eligible recipients who did not have the service or device prior authorized within Tennessee's timeframe. HCFA believes this also violates the rules of comparability.

Second, Tennessee is proposing in the SPA to use the arbitrary age of 20½ by which prior authorization must be acquired in order for Tennessee to provide orthodontia services under the EPSDT program beyond the age of 21. Tennessee states that the reason for this is to encourage recipients to request coverage in a reasonable time period before eligibility is expected to end. However, HCFA believes that this requirement also violates the rules of comparability. The age of 20½ is not related to any specific eligibility criteria. While the EPSDT individual who did receive prior authorization before the age of 20½ would continue to receive these services, an individual who did not receive prior authorization until after age 20½, through no fault of his or her own, would have orthodontia services terminated upon reaching the age of 21.

The proposed amendment also contains other limits under part 4.b. of the proposed plan amendment (Attachment 3.1.A.1). HCFA asked Tennessee to remove any arbitrary limits on services provided to EPSDT recipients or to include language which indicates that these are tentative limits which can be exceeded if additional services are determined to be medically necessary. The Omnibus Budget Reconciliation Act of 1989 added section 1905(r)(5) to the Act which requires States to provide all medically necessary services to EPSDT recipients under the age of 21 to correct or

ameliorate conditions discovered by screen, even if the service is not provided for in the State plan.

Tennessee indicates that these limits meet commonly accepted standards of medical practice but that the limits can be exceeded when medically necessary. However, SPA 91–42 does not contain this language. Additionally, Tennessee indicates that removal of these specific limits would make it possible and probable for recipients to "provider shop" or loan their eligibility cards to ineligible individuals since recipients could continue to receive services without having to justify excess utilization. HCFA believes this argument is not persuasive. The State makes the final determination of medical necessity, not a provider. In addition, the provider would not be entitled to reimbursement for any services determined to be unnecessary or performed on ineligible individuals. The State is allowed to require prior authorization as a utilization control to contain unnecessary expenditures, but HCFA believes that it may not set arbitrary limits on the amount of services.

The notice to Tennessee announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Manny Martins,
Assistant Commissioner, Department of Health and Environment, Bureau of Medicaid, 729 Church Street, Nashville, Tennessee 37219–5406.

Dear Mr. Martins: I am responding to your request for reconsideration of the decision to disapprove Tennessee State Plan Amendment (SPA) 91–42.

The issue in this matter is whether the plan amendment meets the statutory requirements of sections 1902(a)(10)(B) and (c)(i)(II) of the Social Security Act (the Act) and Federal regulations at 42 CFR 440.240.

Section 1902(a)(10)(B) of the Act requires States to provide medical assistance to any categorically needy recipient which is not less in amount, duration or scope than services available to a medically needy recipient. In addition, under sections 1902(a)(10)(B) and (C)(i)(II) of the Act and 42 CFR 440.240, a State must also provide services that are equal in amount, duration and scope to all individuals who are categorically needy or who are members of the same covered medically needy group.

I am scheduling a hearing on your request for reconsideration to be held on November 4, 1992, in Room 510, 101 Marietta Street, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

William Toby, Jr.,
Acting Deputy Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 18, 1992.

William Toby, Jr.,
Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92–23389 Filed 9–25–92; 8:45 am]
BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Funding Priority for Grants for Area Health Education Centers Special Initiatives

The Health Resources and Services Administration (HRSA) announces the final funding priority for fiscal year (FY) 1993 for Grants for Area Health Education Centers Special Initiatives under the authority of section 781(a)(2), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100–607.

This program announcement is subject to the reauthorization of this legislative authority and to the appropriation of funds. The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Final Funding Priority for Fiscal Year 1993

A proposed funding priority was published in the **Federal Register** dated July 10, 1992, at 57 FR 30742 for public comment. No comments were received during the 30-day comment period. Therefore, as proposed, the priority will be retained as follows:

A funding priority will be given to applications which demonstrate the development or implementation of information dissemination systems with the capability to provide state-of-the-art information on clinical modalities, protocols, and other guidelines which can address emerging health issues such as substance abuse, clinical preventive services, infant mortality and geriatrics for primary care practitioners, including National Health Service Corps personnel.

If additional programmatic information is needed, please contact: Ms. Cherry Tsutsumida, Chief, Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6817, FAX: (301) 443–8890.

This program is listed at 93.824 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: September 22, 1992.

Robert G. Harmon,
Administrator.

[FR Doc. 92–23382 Filed 9–25–92; 8:45 am]
BILLING CODE 4160–15–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, September 11, 1992.

(Call Reports Clearance Officer on (410) 965–4149 for copies of package)

1. Medical Report (Individual With Childhood Impairment)—0960–0102. The information on form SSA–3827 is used by the Social Security Administration to determine whether or not an individual with a childhood impairment medically qualifies for benefits under the Social Security Act. The affected public consists of medical sources.

Number of Respondents: 12,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 6,000 hours

2. Medical Report on Adult (Child) With Allegation of Human Immunodeficiency Virus (HIV)

Infection—0960–0503. The information on forms SSA–4814 and SSA–4815 is used by the Social Security Administration to determine if an individual claiming to have HIV infection meets the requirements for presumptive disability benefits.

	SSA–4814	SSA–4815
Numbers of respondents	25,000	7,500
Frequency of response	1	1
Average burden per response	[1] 10	[1] 10
Estimated annual burden	[2] 4,167	[2] 1,250
Total annual burden	[2] 5,417	

[1] Minutes. [2] Hours.

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503

Dated: September 22, 1992.

Judy Hasche,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92–23381 Filed 9–25–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3514]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 18, 1992.

John T. Murphy,

Director, Information Resources Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Statement of Taxes.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–434 will be used by the Department to record the necessary information pertaining to taxes to enable HUD to establish its tax records and to continue immediate payment of taxes. The form will also verify the taxes paid when the lender's claim is audited for insurance benefits.

Form Number: HUD–434.

Respondents: State or Local Government, Businesses or Other For-Profit and Federal Agencies or Employees.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–434	433		1		.5		217

Total Estimated Burden Hours: 217.

Status: Extension.

Contact: Betty Belin, HUD, (202) 401–2168, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 18, 1992.

[FR Doc. 92–23500 Filed 9–25–92; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–92–3513; FR–3340–N–01]

Debenture Recall of Certain FHA Debentures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration debentures, in

accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, room 9138, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1591. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to Section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all Federal Housing Administration debentures with coupon rates of 7½ percent or higher, except for those debentures subject to "debenture lock agreements," that have been registered on the books of the Federal Reserve Bank of Philadelphia, and are, therefore, "outstanding" as of September 30, 1992. The date of the call is January 1, 1993. To insure timely payment, debentures should be presented to the Federal Reserve Bank of Philadelphia by December 1, 1992.

The debenture will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debentures will be paid with the principal at redemption. During the period from the dates of this notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer or denominational exchanges of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1992. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on January 1, 1993, will be made to the registered holder or assignee.

Instructions for the presentation and surrender of debentures for redemption will be provided to holders by the Department.

Dated: September 21, 1992.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–23501 Filed 9–25–92; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–3511; FR–3338–N–01]

Report of the Federal Interagency Committee on Noise (FICON)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of availability of report.

SUMMARY: At the direction of the Environmental Protection Agency and the Federal Aviation Administration, the Federal Interagency Committee on Noise (FICON) was formed in December 1990, with a basic charter to review specific elements of the assessment of airports noise impacts contained in documents prepared pursuant to the National Environmental Policy Act (NEPA); to review the relationship of Federal Aviation Regulation (FAR) part 150 to NEPA; and to make recommendations regarding potential improvements. The FICON is composed of representatives of the Department of Transportation (Office of the Secretary and the Federal Aviation Administration), Defense, Justice, Veterans Affairs, and Housing and Urban Development; the Environmental Protection Agency; and the Council on Environmental Quality. The FICON has completed its charter and has issued its report, which contains policy recommendations and technical findings and conclusions. This notice of the availability of the FICON Report is being published separately by all FICON member agencies.

ADDRESSES: Any person may obtain a copy of the FICON Report by submitting a written request to: Spectrum Sciences and Software, Inc., 242 Vicki Leigh Road, Fort Walton Beach, FL 32548–1314. Any person may express his or her views on the FICON Report by submitting written comments to: Federal Aviation Administration, Office of Environment and Energy, AEE–300, 800 Independence Avenue, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Segal, Environmental Planning Division, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–4225, or (202) 708–2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The Federal Interagency Committee on Noise (FICON) was formed to review Federal policies that are used in the assessment of airport noise impacts. The FICON review focused primarily on:

- The manner in which noise impacts are determined, including whether aircraft noise impacts are fundamentally different from other transportation noise impacts;
- The manner in which noise impacts are described;
- The extent of impacts outside of Day-Night Average A-Weighted Sound Level (DNL) 65 decibels (dB) that should be reviewed in a National Environmental Policy Act (NEPA) document;
- The range of Federal Aviation Administration (FAA)-controlled mitigation options (e.g., noise abatement and flight track procedures) analyzed; and
- The relationship of the Federal Aviation Regulation (FAR) Part 150 process to the NEPA process, including ramifications to the NEPA process if they are separate, and exploration of the means by which the two processes can be handled to maximize benefits.

The FICON was organized into three subgroups to focus appropriately on the technical, legal, and policy issues associated with the assessment of airport noise impacts. The Technical Subgroup was tasked to review the body of science associated with methodologies and metrics for assessing airport noise impacts that have evolved since the 1980 meetings of the Federal Interagency Committee on Urban Noise (FICUN). The Policy Subgroup was tasked to review Federal policies that are used in the assessment of airport noise impacts. The Legal Subgroup reviewed the legal aspects of current and proposed Federal policies for assessing airport noise impacts. The Technical Subgroup's products were used as a basis for the policy findings, conclusions and recommendations in the Report.

FICON Report Conclusions

General

- There are no new descriptors or metrics of sufficient scientific standing to substitute for the present DNL cumulative noise exposure metric.
- The methodology employing DNL as the noise exposure metric and appropriate dose-relationships (primarily the Schultz curve for Percent Highly Annoyed (%HA)) to determine noise impact on populations is the proper one for civil and military aviation scenarios in the general vicinity of airports.

• Federal agencies generally conduct noise assessments at DNL levels of 65 dB and higher. For a variety of reasons, noise predictions and interpretations are frequently less reliable below DNL 65 dB. DNL prediction models tend to degrade in accuracy at large distances from the airport. Therefore, predictions of noise exposure and impact below DNL 65 dB should take the possibility of such inaccuracy into account.

• DNL is sometimes supplemented by other metrics on a case-by-case basis.

• Noise analyses should address impacts in the following areas: (1) Health and welfare; (2) environmental degradation/impact; and (3) land use planning.

• Complaints are an inadequate indicator of the full extent of noise effects on a population.

Health and Welfare

• The dose-effect relationship, as represented by DNL and %HA, remains the best available approach for analyzing overall health and welfare impacts for the vast majority of transportation noise analyses situations.

• The 10 dB nighttime penalty levied against noise during the 10 PM to 7 AM period is specifically designed to account for the intrusiveness of noise during this period and its potential impact on sleep. There are no new hard data that would justify a change in this penalty.

• If supplemental analysis for sleep disturbance is desired, an interim dose-response model developed by the AF Armstrong Laboratories may be used. Although this relationship is described in terms of Sound Exposure Level (SEL), single event metrics are of limited use in predicting and interpreting cumulative noise exposure impacts.

• Annoyance is a summary measure of the general adverse reaction of people to noise levels that cause speech interference; sleep disturbance; the desire for a tranquil environment; and the inability to use the telephone, radio, or television satisfactorily.

• No definitive evidence exists of nonauditory health effects from aircraft noise, particularly below DNL 70 dB.

• Long-Term Equivalent Sound Level $L_{eq(x)}$ (where X represents the time period of concern) or Time Above (TA) may be used for supplemental analysis of school and communications requirements indoor during specific hours.

• Public health and welfare effects below DNL 60 dB have not been established, but are assumed to decrease according to the decrease in %HA.

Environmental Degradation/Impact

• Under NEPA, environmental degradation might have to be assessed around airports even if there is no clear effect on public health and welfare. Other criteria might be appropriate.

• A 3 dB increase in the DNL environment represents a doubling of sound energy, and clearly is an indicator of the need for further analysis, although smaller increases may indicate similar need. In other words, the impact of a given incremental amount of change in noise levels depends, in part, upon the existing level of the noise environment.

• Recent technology and software advances in geographic information systems (GIS), noise methodology, and census data present an enhanced potential for detailed analysis of sound impacts on population and noise-sensitive areas. These technologies should be contained for use to determine noise impacts of present and proposed actions.

Land Use Planning

• DNL represents the accepted noise metric for input to compatible land use planning.

• For cumulative speech interference, Table 3–2, "Effects of Noise on People" (contained in the FICON Report, Volume II: Technical Report), provides a rough approximation of both outdoor and indoor predicted speech interference parameters for various levels of noise exposure as measured in DNL for residential land use only.

• There is a need for selective updating of land-use compatibility guidelines (including the Standard Land Use Coding Manual (SLUCM)), and for enhancing public understanding, through incentives and other programs, of the application and interpretation of guidelines.

Education of the Public

Education of the public should concentrate on the following frequently misunderstood issues:

•Environmental noise exposure is measured and described most generally by DNL. DNL should be defined clearly, and its significance and use should be explained clearly.

• The relation of DNL to %HA describes long-term community response to the overall sound environment (indices of health and welfare effects).

• Although the A-Weighted Maximum Sound Level for a single flyover is easily understood, it is useful only for analyzing short-term responses.

• Every change in the noise environment does not necessarily impact public health and welfare.

• Aircraft noise predictions below DNL 65 dB can be less accurate and should be interpreted with caution.

FICON Report Recommendations

• Continue use of the DNL metric as the principal means for describing long-term noise exposure to civil and military aircraft operations.

• Continue agency discretion in the use of supplemental noise analysis.

• Improve public understanding of the DNL, supplemental methodologies, and aircraft noise impacts.

• If screening analysis shows that noise sensitive areas will be at or above DNL 65 dB and will have an increase of DNL 1.5 dB or more, further analysis should be conducted of noise sensitive areas between DNL 60–65 dB having an increase of DNL 3 dB or more due to the proposed airport noise exposure.

• If the DNL 65 dB screening test calls for further analysis between DNL 60–65 dB, agency mitigation options should include noise sensitive areas between DNL 60–65 dB that are projected to have an increase of 3 dB or more as a result of the proposed airport noise exposure.

• If a FAR Part 150 program is included by the FAA as a NEPA mitigation measure, the FAA and the airport operator are responsible for ensuring that the commitment is carried out and the scope of the Part 150 study conforms to the scope of the NEPA noise analysis.

• Increase research on methodology development and on the impact of aircraft noise (R&D). To foster increased research, a standing Federal interagency committee should be established to assist agencies in providing adequate forums for discussions of public and private sector proposals identifying needed research and in encouraging the conduct of research in these areas. The following four initial R&D issues are recommended:

(i) Evaluate potential modifications to the 1980 FICUN land use compatibility table to improve its usefulness for planning for both routine land uses and noise-sensitive land uses.

(ii) Continue research into community reaction to aircraft noise, including sleep disturbance, speech interference, and nonauditory health effects of noise.

(iii) Investigative differences in perceptions of aircraft noise, ground transportation noise (highways and railroads), and general background noise.

(iv) Continue and expand research on the airport noise impacts of rotary-wing operations.

It is the FICON's belief that these recommendations will provide both immediate and long-term improvements in airport noise analysis. Federal interagency encouragement of a continuing review of airport noise analysis will provide a forum to address related public concerns.

While the FICON is seeking to achieve improved uniformity among Federal agencies in airport noise analysis, it must also recognize that agencies have differing legislative mandates and operating environments. These recommendations should be viewed as general guidance. Each Federal agency must determine how it can best use this guidance, supplementing it as appropriate to meet agency needs, within the framework of the NEPA requirements. The FICON Report does not address the adequacy of compliance with NEPA to date by the participating agencies, attempt to redefine thresholds of significance of impact under NEPA, nor modify the NEPA regulations or procedures of the agencies.

Public Review and Comment

Any person may express his or her views on the FICON Report by submitting written comments to: Federal Aviation Administration, Office of Environment and Energy, AEE-300, 800 Independence Avenue, Washington, DC 20591. Because the primary effect of the report's recommendations will be on the assessment of civil airport noise impacts for which the FAA is responsible, the FAA is serving as the focal point for the receipt of public comments. Copies of the written comments will be provided to all agencies participating in FICON.

The Department of Housing and Urban Development will review its procedures for evaluating airport noise impacts, if needed, based on the findings, conclusions, and recommendations in the report and any comments on the report. Any resulting change in regulations or procedures will be made through a separate agency procedure.

Authority: 42 U.S.C. 3535(d).

Dated: September 21, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92-23490 Filed 9-25-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-02-4212-11; N-53599]

Public Lands, Adjacent to Crescent Valley, Eureka County Nevada

ACTION: Notice.

SUMMARY: The following described public lands, adjacent to the Town of Crescent Valley, Eureka County, Nevada, have been examined and found suitable for classification for lease/purchase for recreation or public purposes under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.). The lands would not be offered for lease/purchase until at least 60 days after the date of publication of this Notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 30 N., R. 48 E.,
Sec. 32, lots 17, 18, 25 thru 28.
Containing 26.37 acres, more or less.

The Eureka County Board of Commissioners has made application for the development of a fairground for the Town of Crescent Valley, Nevada. The lease/patent when issued, will be subject to the provisions of the Recreation and Public Purposes Act, and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under application law and such regulations as the Secretary of the Interior may prescribe.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

And will be subject to:

1. A 10 ft. wide easement to Nevada Bell (N-46949) for buried telephone cable purposes.

2. A 400 ft. wide easement to Nevada Department of Transportation (NEV 044712) for state highway purposes.

Initially the lands would be leased, and after substantial development of the parcel may be purchased by the county under the special pricing program afforded to government entities.

The land is not required for any Federal purpose. The classification and subsequent lease/purchase are consistent with the Bureau's planning for the area.

Upon publication of this notice in the **Federal Register**, the above-described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws. The segregative effect shall terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, whichever comes first.

Detailed information concerning this action is available for review at the Bureau of Land Management, Elko District, 3900 E. Idaho St., Elko, Nevada. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/purchase to the District Manager, Elko District Office, 3900 E. Idaho St., Elko, Nevada 89801. Any objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of timely objections, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: September 17, 1992.

Rodney Harris,

District Manager.

[FR Doc. 92-23391 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-HC-M

[CO-030-92-4320-10-1784]

Montrose District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR Subpart 1784, that a meeting of the Montrose District Grazing Advisory Board will be held on October 6, 1992, in Montrose, Colorado.

DATE: A meeting is scheduled October 6, 1992.

FOR FURTHER INFORMATION CONTACT: Dave Kauffman, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado, 81401, telephone (303) 249-7791.

SUPPLEMENTARY INFORMATION: The Board will convene at 10 a.m. on October 6, 1992, in the conference room at the Montrose District Office, Montrose, Colorado. Agenda items will include: minutes of the previous meeting, public presentations and requests, election results, range improvement project review, new Board project proposals, updates on current issues, and arrangements for the next meeting. The meeting will adjourn at 4 p.m.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager prior to the meeting date. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: September 17, 1992.

Alan L. Kesterke,

District Manager.

[FR Doc. 92-23402 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-JB-M

[CO-920-92-4111-15; COC9884]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease COC9884, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1991, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16-2/3 percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239-3783.

Dated: September 14, 1992.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 92-23441 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-92-4212-14; N-56356]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in the City of North Las Vegas, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale are sections 203 and 209 of Public Law 94-579, the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,
- Sec. 13: N½, NE¼SW¼, SE¼;
- Sec. 14: N½;
- Sec. 15;
- Sec. 16;
- Sec. 17;
- Sec. 18: lots 5 to 29, inclusive;
- Sec. 19: lots 5 to 18, inclusive;
- Sec. 20;
- Sec. 21: N½;
- Sec. 23: N½NE¼, SW¼NE¼, E½NW¼;
- Sec. 24: N½, NE¼SW¼, N½SE¼, SW¼SE¼.

T. 19 S., R. 62 E.,
- Sec. 18: lots 1 to 4, inclusive, E½, E½W½;
- Sec. 19: lots 1 to 4, inclusive, E½, E½W½;
- Sec. 20.

Aggregating 7,534.27 acres (gross).

This parcel of land, situated in Clark County is being offered as a direct sale to the City of North Las Vegas and is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, gas, sodium, and potassium.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/ the City of North Las Vegas.

2. Those rights for railroad purposes which have been granted to the Los Angeles and Salt Lake Railroad Company by Permit No. CC-0360 under the Act of March 3, 1875, 18 Stat. 482, 43 U.S.C. 934-939.

3. Those rights for road purposes which have been granted to the Corps of Engineers by Permit No. Nev-045137 under the Act of January 13, 1916, 44 LD 513.

4. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. NEV-061985 and Nev-067348 under the Act of February 15, 1901, 31 Stat. 790, 43 U.S.C. 959.

5. Those rights for material site and road purposes which have been granted to the Nevada Department of Transportation by Permit No. N-32236 under the Act of August 27, 1958, 72 Stat. 916, 23 U.S.C. 317(A).

6. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. N-39815, N-42592 and N-49722 under the Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

Publication of this notice if the **Federal Register** shall establish September 27, 1992 as the date the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of segregation, whichever occurs first.

Dated: September 11, 1992.

Ben F. Collins,

District Manager, Las Vegas District Office.

[FR Doc. 92-23200 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (FWS 0002), Washington, DC 20503, telephone 202-395-7340.

Title: Estimate of Non-market Benefits of the Trinity River (California)

Instream Flows and Anadromous Fish Runs

OMB Approval Number: New information collection

Abstract: The decline of the Trinity River fishery resource was precipitated by the completion of the Trinity River division portion of the Central Valley Irrigation Project in 1963. Roughly 90 percent of the Trinity River stream flow was moved via conduits from the Trinity River to the Sacramento River. The consequent loss of aquatic habitat on the Trinity River led to drastic declines in salmon and steelhead production. The proposed survey will identify and quantify non-market social impacts of the decline in the fishery runs as well as the loss of regional jobs created by the sharp loss of Trinity River outdoor recreational opportunities. The estimation of the magnitude of the dollar losses and of the number of jobs lost will, in turn, facilitate comparison of the cultural and economic value of the fishery resource with the market value of the hydro-power and the crop production provided by the trans-basin water movements

Service Form Number: N/A

Frequency: One time only

Description of Respondents: Individuals and households

Estimated Completion Time: 15 minutes (0.25 hours)

Annual Responses: 2,250

Annual Burden Hours: 604

Service Clearance Officer: James E. Pinkerton, 703–358–1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240

Dated: September 3, 1992.

Suzanne Mayer,

Acting Regional Director—Region 8.

[FR Doc. 92–23408 Filed 9–25–92; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–626 (Preliminary)]

Pads for Woodwind Instrument Keys From Italy

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–626 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy of pads for woodwind instrument keys that are alleged to be sold in the United States at less than fair value.[1] The Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 5, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on September 21, 1992, by Prestini Musical Instruments Corporation, Nogales, AZ.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

[1] Pads for woodwind instrument keys are affixed to the keys of various woodwind instruments, e.g., saxophones, clarinets, oboes, and flutes. Such pads are provided for in subheading 9209.99.40 of the Harmonized Tariff Schedule of the United States (HTS).

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on October 13, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202–205–3188) not later than October 9, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 16, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: September 22, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-23464 Filed 9-25-92; 8:45 am]

BILLING CODE 7020-02-M

[332-336]

Probable Economic Effect of Extending a Tariff Rate Quota Under the United States-Canada Free-Trade Agreement

AGENCY: International Trade Commission.

ACTION: Institute of investigation.

SUMMARY: Following receipt on September 18, 1992, of a request from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332-336 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to advise the President of its judgment as to the probable economic effect of modifying rule 18 of section XI of the rules in annex 301.2 of the United States-Canada Free Trade Agreement. This Rule contains annual quantitative limits (tariff rate quota) on U.S. imports from Canada of non-wool fabric and non-wool made-up textile articles that may receive the preferential rates of duty under the agreement for the period January 1, 1989-December 31, 1992, if such articles are woven or knitted in Canada from yarn produced or obtained in a third country and that meet other applicable conditions for preferred tariff treatment. According to the USTR, in discussions with representatives of the Government of Canada, the United States has agreed provisionally to extend this period to December 31, 1993. According to the USTR, this extension would provide continuity to similar provisions contained in the North American Free Trade Agreement.

The USTR asked that the Commission provide its advice not later than October 25, 1992.

EFFECTIVE DATE: September 23, 1992.

FOR FURTHER INFORMATION CONTACT: The Project Leader, Ms. Kim Freund (202-205-3456). Textiles and Apparel Division, Office of Industries, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel (202-205-3091). The media should contact Edward Carroll, Acting Director, Office of Public Affairs (202-205-1819).

Hearing-impaired persons can obtain information on this study by contacting the Commission's TDD terminal on 202-205-1810.

Background

Section 202(d) of the United States-Canada Free-Trade Agreement Implementation Act authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules set forth in annex 301.2 of the agreement as may from time to time be agreed to by the United States and Canada. Section 103 of the Act requires, among other things, that the President obtain advice from the Commission.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 7, 1992. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Acting Secretary at the Commission's office in Washington, DC.

By order of the Commission.

Issued: September 24, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-23578 Filed 9-25-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31618]

C&S Railroad Corporation Modified Rail Certificate; Revised Notice

On August 24, 1992, C&S Railroad Corporation (C&S) filed a notice for partial termination of its modified rail certificate of public convenience and necessity issued under 49 CFR 1150.23. By decision served April 18, 1990, in this proceeding, the Commission authorized C&S to operate over three rail lines as follows: (1) Between Packerton Junction, PA (milepost 0.0) and Haucks, PA (milepost 19.5), a distance of 19.5 miles [the Nesquehoning Branch]; (2) between East Mahanoy Junction, PA (milepost 103.0) and Lofty, PA (milepost 110.4), a distance of 7.4 miles [the Catawissa Branch]; and (3) between York Junction, PA (milepost 148.3) and Delano, PA (milepost 158.2), a distance of 9.9 miles [the Shimer Running Track].

C&S states that the Commission recently authorized another entity to acquire and operate the Catawissa Branch and the Shimer Running Track.[1] C&S intends to continue operating the Nesquehoning Branch. Therefore, by agreement with Carbon County and the Carbon County Railroad Commission, C&S is authorized to continue operating the rail line between Packerton Junction, PA (milepost 0.0), and Haucks, PA (milepost 19.5), a distance of 19.5 miles.

This notice must be served on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: September 22, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23496 Filed 9-25-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree In United States v. Amsted Industries, Inc., d/b/a American Steel Foundries

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *Amsted Industries, Inc. d/b/a American Steel Foundries*, Civil Action No. C87-1284A, was lodged with the United States District Court for the Northern District of Ohio, on September 10, 1992. This action was brought pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.* The complaint alleged that Defendant Amsted violated certain requirements of RCRA and the regulations promulgated thereunder at its electric arc steel foundry in Alliance, Stark County, Ohio ("Alliance facility").

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[1] Finance Docket No. 32075, *Reading Blue Mtn. & N. R. Co.—Acq. and Oper. Exemp.—Schulkill Co. Rail Trans. Auth.* (not printed), served July 15, 1992.

and at its disposal facility in Sebring, Mahoning County, Ohio ("Sebring facility").

Under the proposed Decree, Amsted would: (1) Develop and implement closure and post-closure plans for the Sebring facility; (2) develop and implement a RCRA groundwater monitoring program at the Sebring facility; (3) develop and implement a closure plan (and if necessary, a post-closure plan) for a "baghouse" area at the Alliance facility; and (4) comply with a number of generator, storage and disposal requirements at the Alliance facility. The Decree also requires Amsted to pay a civil penalty of $250,000.

The Department of Justice will receive comments on the proposed Consent Decree for a period of 30 days from the publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Amsted Industries, Inc. d/b/a American Steel Foundries*, D.J. Ref. No. 90-7-1-397.

The proposed Consent Decree may be examined at the Office of the United States Attorney (Civil Division) for the Northern District of Ohio, 1404 E. Ninth St., suite 500, Cleveland, Ohio, 44114-1748 (216-363-3900); the Region V Office of the U.S. Environmental Protection Agency, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604 (312-886-0556); and at the U.S. Department of Justice, Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004 (202-347-7829). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center. In requesting a copy, please specify the documents required, together with a check payable to the "Consent Decree Library" for $9.75 ($0.25 per page reproduction costs).

John C. Cruden,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 92-23393 Filed 9-25-92; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Hepworth, et al.*, Civil Action No. 91-0025-S-EJL, was lodged with the United States District Court for the District of Idaho on September 11, 1992. This Consent Decree resolves a Complaint filed by the United States against John Hepworth and John Lezamiz pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, seeking to recover a civil penalty against defendants Hepworth and Lezamiz for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos HESHAP") during the 1988 demolition of the Peterson building in downtown Twin Falls, Idaho. As part of the settlement in this case, defendant Hepworth and Lezamiz will pay the United States a civil penalty of $13,500 and will take adequate steps to ensure that future demolition and renovation operations of buildings they own will be conducted in compliance with the inspection, notification, and work practice requirements of the asbestos NESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Hepworth, et al.*, DOJ number 90-5-2-1-1377.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, 550 West Fort Street, Boise Idaho 83742, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 601 Pennsylvania Avenue, Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $3.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-23394 Filed 9-25-92; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Two Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Rohm and Haas Company, et al.*, Civil Action No 1:CV-92-1295 was lodged on September 16, 1992 with the United States District Court for the Middle District of Pennsylvania. The defendants in the action, Rohm and Haas Company and SmithKline Beecham Corporation, are respectively alleged to be a former owner and a successor-in-interest to a former owner of Whitmoyer Laboratories, Inc., the past and present owner of the Whitmoyer Laboratories Superfund Site in Jackson Township, Pennsylvania. The proposed consent decree requires the defendants to conduct certain cleanup activities at the Site under the oversight of the United States Environmental Protection Agency. The proposed consent decree also requires the payment of $250,000 to the Superfund in partial reimbursement of response costs incurred by the United States at the Site and obtains certain other relief.

Notice is hereby also given that a proposed consent decree in *United States* v. *Estate of Clarence W. Whitmoyer, Sr., et al.*, Civil Action No. 1:CV-92-1294 was lodged on September 16, 1992 with the United States District Court for the Middle District of Pennsylvania. The defendants in this action are the probate estate of the late Clarence W. Whitmoyer, Sr. and the probate estate's co-personal representatives sued in that capacity. Clarence W. Whitmoyer, Sr. is alleged to have been a corporate officer and director of Whitmoyer Laboratories, Inc. The proposed consent decree requires the payment of $2.9 million to the Superfund in partial reimbursement of response costs incurred by the United States at the Site and obtains certain other relief.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should specifically refer to *United States* v. *Rohm and Haas Company, et al.*, D.J. reference #90-11-3-701, in the case of the first proposed consent decree, or

United States v. *Estate of Clarence W. Whitmoyer, Sr., et al.*, D.J. reference #90–11–2–505, in the case of the second proposed consent decree.

The proposed consent decrees may be examined at the Office of the United States Attorney for the Middle District of Pennsylvania, Suite 1162, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of the proposed consent decree in *United States* v. *Rohm and Haas Company, et al.*, please enclose a check in the amount of $73.25 (25 cents per page reproduction costs), payable to the Consent Decree Library. In requesting a copy of the proposed consent decree in *United States* v. *Estate of Clarence W. Whitmoyer, Sr., et al.*, please enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Roger Clegg,

Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–23392 Filed 9–25–92; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to Section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given that on August 5, 1992, a proposed Consent Decree in *United States* v. *Sharon Steel Corporation and Monessen, Inc.*, Civil Action No. 92–1724, was lodged with the United States District Court for the Western District of Pennsylvania. The Consent Decree concerns violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.* ("the Act"), and National Emission Standard for Hazardous Pollutants for Benzene Emissions from Coke By-Product Recovery Plants, 40 CFR Part 61, Subpart L ("benzene coke NESHAP"), promulgated under Section 112(b) of the Act, as amended, 42 U.S.C. 7412, at Monessen's coke by-product plant located in Monessen, Pennsylvania.

The complaint alleges that the defendants failed to meet the NESHAP requirement that they install equipment designed to eliminate detectable levels of benzene emissions after Monessen's two-year waiver of compliance expired on September 15, 1991, and that the defendants have continued thereafter to operate the plant without complying with the benzene coke NESHAP.

The proposed Consent Decree requires the defendant to achieve compliance with the benzene coke NESHAP by October 13, 1992. The defendants are subject to stipulated penalties in the amount of $2,000 per day for any failure to meet this deadline. The consent decree also requires defendants to pay a civil penalty of $300,000 in nine installments over a two-year period, plus interest.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sharon Steel Corporation and Monessen, Inc.*, D.J. No. 90–5–2–1–1653.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219; the Region III Office of the U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202–347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check payable to "Consent Decree Library" in the amount of $5.00 (25 cents per page reproduction costs).

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–23384 Filed 9–25–92; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(d)(2), and Departmental policy, 28 CFR 50.7, 38 FR 19029 (July 17, 1973), notice is hereby given that on September 17, 1992 a proposed Consent Decree in *United States of America* v. *The Upjohn Company, et al.*, Civil Action No. 1:92–CV–659, was lodged with the United States District Court for the Western District of Michigan.

On September 17, 1992, the Complaint in this action was filed by the United States of America against The Upjohn Company, the City of Kalamazoo, the Charter Township of Oshtemo, and Kalamazoo County, Michigan, under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, seeking injunctive relief and reimbursement of costs incurred by the United States in response to a release or threatened release of hazardous substances from the West KL Avenue Landfill in Kalamazoo, Michigan.

Under the terms of the Consent Decree, the Defendants would implement the remedy selected by the U.S. Environmental Protection Agency (EPA), pay EPA oversight costs, and pay past costs of approximately $2 million. It is expected that some additional 200 parties in a related third-party action will join this settlement.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *The Upjohn Company, et al.*, D.O.J. Ref. No. 90–11–2–561.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Michigan, 110 Michigan Street NW., Grand Rapids, Michigan 49503; the Region V Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree can be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of either $42.25 for the Consent Decree with exhibits or $17.75 for the Consent Decree without the exhibits (25 cents per page

reproduction charge) payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 92-23396 Filed 9-25-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, (38 FR 19029 March 29, 1984)), notice is hereby given that a proposed Consent Decree in *United States* v. *USS/KOBE Steel Company* was lodged with the United States District Court for the Northern District of Ohio on September 17, 1992. The proposed Consent Decree provides schedules and procedures for conducting pre-construction analyses and, if necessary, environmental reviews pursuant to the "Prevention of Significant Deterioration" and "New Source Review" provisions of the Clean Air Act and its implementing regulations. The proposed Consent Decree also provides for a civil penalty of $500,000 and a number of pollution control and pollution prevention measures.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *USS/KOBE Steel Company*, D.O.J. Ref. No. 90-5-2-1-1714.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Suite 500, 1404 East Ninth Street, Cleveland, Ohio, 44114-1704; at the Region V office of the U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois, 60604; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $12.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-23395 Filed 9-25-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-9039, et al.]

Proposed Exemptions; PYCO ACE Operations Retirement Investment Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

PYCO ACE Operations Retirement Investment Plan (the Plan) Located in Baltimore, Maryland

[Application No. D-9039]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of Group Annuity Contract, No. GA-10,205 (the GAC) issued by Mutual Benefit Life Insurance

Company, Newark, New Jersey (Mutual Benefit) to PYCO ACE Operations, the sponsoring employer (the Employer) and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expenses in the transaction; (3) the Plan receives no less than the fair market value of the GAC at the time of the Sale; and (4) the trustee of the Plan has determined that the proposed Sale is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with a cash or deferred compensation arrangement intended to meet the requirements of sections 401(a) and 401(k), respectively, of the Code. In the Plan, as of December 31, 1991, there were approximately 50 participants and total assets of approximately $197,624.57. The named fiduciary of the Plan is the Employer which performs its fiduciary duties through four individuals selected, two each, from the owners of the Employer. In addition, the Plan has a trustee (the Trustee), who is an officer of one of the corporations that owns the Employer. The Trustee's role is limited to that of custodian of assets of the Plan. The Trustee must see that the assets of the Plan are properly and legally held in trust as required by the Act. This responsibility entails overseeing the establishment and maintenance of the investment and disbursement accounts of the trust, and overseeing the procedures of those accounts. Currently, trust accounts are maintained with the Bank of Alexandria of Alexandria, Virginia to facilitate disbursements.

A third-party recordkeeper, Independent Plan Coordinators, Inc. of Alexandria, Virginia, has been delegated the responsibility for maintaining detailed individual accounts and records of investment elections for each participant in the Plan.

The Employer is a Maryland general partnership that is managed by four individuals (the Board of Control), which operates a cogeneration facility in Trona, California that produces and sells steam and electricity. The Employer is owned by two corporations that are general partners, with each partner possessing a 50 percent interest in both the capital and earnings interests of the partnership. One of the partners is COSI PYCO, Inc., a Maryland corporation, that is owned through various subsidiaries by Constellation Holdings, Inc., a Maryland corporation. Constellation Holdings, Inc. is wholly owned by the Baltimore Gas and Electric Company, a Maryland corporation, which is a state regulated utility company serving the city of Baltimore and all or a part of nine counties in Maryland. The second partner that owns the Employer is the Pyropower Operating Services Company, Inc., which is owned through various subsidiaries by A. Ahlstron Corporation, a corporation of Finland. This Finnish corporation is a multinational, diversified, privately-owned company which, through its subsidiaries, produces and delivers machinery, equipment, and systems for the pulp, paper, and power industries. A. Ahlstron Corporation and its subsidiaries also manufacture specialty papers, packing materials, cores and board, insulation materials, electrical accessories, and glassfibre.

2. The Plan authorizes the Employer to select and approve all investment vehicles that are offered to participants of the Plan. After the Employer, makes its selection of investment vehicles, the participants of the Plan make their own decisions as to which investment vehicles to invest the assets of their individual Plan accounts. From December 1, 1990, the effective date of the Plan, until June 28, 1991, all contributions made to the Plan were invested solely in 5 different investment accounts provided by the GAC issued by Mutual Benefit. At the direction of Plan participants, some of the funds invested in the GAC were placed in a Guaranteed Certificate Account that provides for yields of fixed rates of interest in a manner similar to that provided by a guaranteed investment contract.

When the Employer selected Mutual Benefit as the investment vehicle for the Plan, Mutual Benefit was rated "AA+" by Standard & Poors Rating (S&P Rating) and "A+" by A.M. Best (Best). On May 20, 1991, S&P Rating lowered its rating of Mutual Benefit to "A" and Best lowered its rating of Mutual Benefit to "A". As of July 25, 1992, S&P Rating suspended its rating of Mutual Benefit and Best downgraded its rating of Mutual Benefit to "NA–10, under state supervision."

These last changes of ratings made as of July 25, 1991, were precipitated by an order of the Superior Court of New Jersey (the Order), issued on July 16, 1991, that placed Mutual Benefit under the control of the Commissioner of Insurance of the State of New Jersey as Rehabilitator (the Rehabilitator). Under the terms of the Order, the holders of the GAC were prohibited from withdrawing their investments and are subject to future actions of the Rehabilitator.[1]

On July 17, 1991, the Employer decided to cease all future contributions to Mutual Benefit, including contributions accruing subsequent to the last contribution of June 28, 1991. Shortly thereafter, the Employer contracted with the American Funds Group to provide an investment vehicle for the Plan. All amounts withheld from Mutual Benefit, and all subsequent contributions to the Plan, have been invested in four mutual funds sponsored by the American Funds Group pursuant to the direction of the Plan participants. All fees charged by the American Funds Group in connection with establishing these new investment vehicles have been paid by the Employer.

On August 7, 1991, the Superior Court of New Jersey removed restrictions on withdrawals of pension deposits held by Mutual Benefit in "separate accounts." This court order of August 7, 1991, enabled the Employer to withdraw all investments under the GAC, except for the investments in the Guaranteed Certificate Account portion of the GAC. Those portions removed from the GAC were invested at the direction of the Plan participants, with the American Funds Group. As of December 31, 1991, the Plan investments in the Guaranteed Certificate Account of the GAC, together with credited interest, totalled $62,350.98, which constituted approximately 31.5 percent of the total assets of the Plan on that date.

3. The GAC matures on August 1, 1995, and the Employer represents that it is doubtful that the full amount of the Plan's investment in the Guaranteed Certificate Account of the GAC, and the interest credited thereto, will be released by Mutual Benefit at the date of maturity. The participants of the Plan have been informed of the situation and problems with respect to Mutual Benefit. In addition to being concerned about the current restrictions on the funds in the Guaranteed Certificate Account of the GAC (that is, restrictions for purposes of final distributions upon termination of employment, security for loans from the Plan, and changes in investment elections), the participants of the Plan are concerned that they may not recover the full investment in the GAC.

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[1] The Department notes that the decision to offer Mutual Benefit as the investment vehicle is governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 of the Act which may have arisen as a result of the acquisition and holding of the GAC issued by Mutual Benefit.

In order to eliminate the risks of continuing to hold the GAC for the participants of the Plan, and to allow assets currently invested under the GAC in the Guaranteed Certificate Account to be transferred to other investments through the American Funds Group, the Employer has proposed purchasing the GAC from the Plan for cash in the amount of the total face value of the Guaranteed Certificate Account, plus interest accrued at the contract rate of 8.75 percent through the date of the purchase. The face value of the Guaranteed Certificate Account is the total amount paid by the Plan to Mutual Benefit and invested in the Guaranteed Certificate Account, less any withdrawals previously made from the Guaranteed Certificate Account.

The Employer represents that the Plan will not incur any expenses from the Sale, and all expenses incurred from the Sale will be borne by the Employer.

The Employer also represents that there has been filed with the Internal Revenue Service a request for a closing agreement pursuant to the Internal Revenue Procedure 92–16 [2] The Employer represents that it does not intend to claim a tax deduction under section 404 of the Code for any part of the purchase price to be paid to the Plan.

4. The Trustee of the Plan is represented by the applicant to have undertaken the responsibility for determining, on behalf of the Plan participants, the adequacy of the proposed consideration for the Sale of the GAC to the Employer. It is also represented that the Trustee has reviewed and considered the Employer's proposal to purchase the GAC from the Plan and has determined that such purchase would be in the best interests of the participants and beneficiaries of the Plan. In this regard, the Trustee has determined that the proposed consideration to be given for the GAC, the face value of the Guaranteed Certificate Account, plus accrued interest, will equal or exceed the fair market value of the GAC, because of the financial instability of Mutual Benefit.

In order for the Trustee to determine the fair market value of the GAC, Krish Actuarial Consultants of Laurel, Maryland were employed to make an independent appraisal of the Guaranteed Certificate Account, remaining in the GAC. Mr. S. Krishnamurthy, FIA, ASA, and President of Krish Actuarial Consultants, represents that he is an Enrolled Actuary and is familiar with the requirements of the Department and the Internal Service for valuing pension plan assets. Mr. Krishnamurthy determined that the fair market value of the GAC, as of March 31, 1992, was not more than the face value (as defined above) plus accrued interest to date of Sale.

5. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The Plan will receive cash for the GAC in the amount of the face value of the Guaranteed Certificate Account plus accrued interest as of the date of the Sale, which a qualified, independent appraiser has determined to be not less than the fair market value of the GAC; (b) the transaction will enable the Plan and its participants and beneficiaries to avoid any risk associated with the continued holding of the GAC, and will permit the redirecting of Plan assets to safer investments; (c) the Plan will not incur any expenses with respect to the proposed transaction; and (d) the Trustee has determined that the Sale at the proposed price is in the best interests of the participants and beneficiaries of the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Carmine P. Errico, M.D., IRA Rollover Trust (the IRA), Located in Jersey City, New Jersey

[Application No. D–9047]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a certain vacant lot (Lot 28.01) by the IRA to Lyn Errico, a disqualified person with respect to the IRA; provided that the IRA receives the greater of: (1) The fair market value of Lot 28.01 as determined at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition cost of Lot 28.01 plus the aggregate holding costs incurred by the predecessor plan to the IRA and subsequently by the IRA since the initial acquisition of Lot 28.01; and further provided that the following conditions are satisfied: [3]

(a) The proposed sale will be one-time cash transaction; and

(b) The IRA will pay no expenses associated with the sale.

Summary of Facts and Representations

1. The IRA is an individual retirement account which was established October 26, 1989. Carmine P. Errico, M.D. (Dr. Errico) is the sponsor of the IRA. As of May 8, 1992, the IRA had total assets of $2,151,667. Dr. Errico's specialty is obstetrics and gynecology. He is an employee of Somerset OB/GYN Associates which is a professional association.

2. On July 12, 1985, the Carmine Errico, M.D. P.A. Defined Benefit Pension Plan (the Plan), the predecessor plan to the IRA, purchased Lot 28.01 for investment purposes from Joan A. Mehl, an unrelated third party, for a total cash consideration of $250,000. On the same date, Lyn Errico, the wife of Dr. Errico, purchased Lots 28 and 28.02 (collectively, the Lots) also from Joan A Mehl for a total of $100,000 in cash. Specifically, Lot 28 contains 5.63 acres, Lot 28.01 contains 7.5 acres and Lot 28.02 contains 3.19 acres. Lots 28 and 28.02 are contiguous and are adjacent on the east to Lot 28.01.

3. Subsequent to the purchase of Lot 28.01, the Plan was terminated and all of its assets were rolled over into the IRA between October 26, 1989 and November 20, 1989. On November 20, 1989, Lot 28.01 was rolled over into the IRA.[4] The applicant represents that Lot 28.01 has never been leased or used by a disqualified person while an asset of the Plan or the IRA. The applicant also notes that Lot 28.01 has never been encumbered by debt while held as an asset by either the Plan or the IRA. The Plan paid $10,750 in property taxes during the time it held Lot 28.01 as an asset, and the IRA paid property taxes in the aggregate amount of $18,908.91 for the period beginning January 1, 1990 to the present.

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[2] Internal Revenue Procedure 92–16 provides for a temporary closing agreement program to settle certain tax liabilities that arise out of transactions between an employer-sponsor and the trust of a qualified defined contribution plan.

[3] Pursuant to CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[4] The Department expresses no opinion as to whether the Plan's acquisition and holding of Lot 28.01 until rollover into the IRA violated any provision of Part 4 of Title I of the Act. Nor is the Department expressing an opinion as to whether the holding of Lot 28.01 by the IRA was a prohibited transaction under section 4975(c)(1) (D) and (E) of the Code, and no relief is provided herein. The Department notes that section 408(a) of the Code provides that the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries.

4. Lyn Errico is proposing to purchase Lot 28.01 from the IRA in a one-time cash transaction. It is represented that the IRA will not incur any expenses as a result of the sale. In this regard, an appraisal of Lot 28.01 was performed, as of February 1, 1992, by Robert McNeely Vance (Mr. Vance), an independent qualified appraiser. Mr. Vance represents that Lot 28.01 is located in Clinton Township, Hunterdon County, New Jersey and consists of approximately 7.5 acres of vacant land. Mr. Vance relied on the direct sales comparison or the market approach and determined that, as of February 1, 1992, the fair market value of Lot 28.01 was $250,000. In a letter of April 23, 1992, Mr. Vance addressed the issues of: (1) Why Lot 28.01 did not appreciate in value since the initial acquisition; and (2) whether the adjacency of Lot 28.01 to Lots 28 and 28.02, which are owned by Lyn Errico, merits a premium above the fair market value to Lyn Errico as purchaser in the proposed transaction. Mr. Vance states that due to environmentally related regulations controlling development and use in wetland areas which were implemented since the initial acquisition, Lot 28.01 cannot be independently developed. Furthermore, because Lot 28.01 is bounded on the north and south by highways, on the west by fully developed properties, its only value would be to the owner of the adjacent Lots to the east, who is Lyn Errico. Therefore, the value of Lot 28.01 consists only of its ability to transfer development capacity to the adjacent lots, since it cannot be developed on its own. Because of these concerns, if Lot 28.01 were to be evaluated as if standing alone, on its own merits, Mr. Vance concludes that the fair market value would be nominal. Mr. Vance further stated that the fair market value of $250,000 is the maximum value for Lot 28.01 due to the fact that it cannot accommodate development within its own boundaries. As such, the value of $250,000 takes into consideration the fact that Lot 28.01 can only be used in conjunction with Lots 28 and 28.02 and thus includes the maximum premium value to the purchaser who also owns the adjacent Lots. However, because the aggregate holding costs combined with the initial acquisition cost of Lot 28.01 ($29,658.91 + $250,000 = $279,658.91) are greater than the current fair market value of Lot 28.01, the applicant has determined that the IRA will receive the greater of: (1) The fair market value of Lot 28.01 as determined at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition costs for Lot 28.01 plus the aggregate holding costs incurred by the Plan and the IRA since the initial acquisition of Lot 28.01.

5. It is represented that the transaction is desirable for the IRA as the sale will increase the liquidity of the IRA's investment portfolio. The transaction is protective of the IRA because the fair market value of Lot 28.01 was determined by an independent qualified appraiser and the IRA in this transaction will receive the greater of: (1) the fair market value of Lot 28.01 as determined at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition cost of Lot 28.01 plus the aggregate holding costs incurred by the Plan and subsequently by the IRA since the initial acquisition of Lot 28.01. It is also represented that the IRA would not be able to recoup the fair market value in an arm's-length sale because the value of Lot 28.01 is contingent on the two adjacent Lots which are owned by Lyn Errico.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The IRA in this transaction will receive the greater of: (1) the fair market value of Lot 28.01 as determined at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition cost of Lot 28.01 plus the aggregate holding costs incurred by the Plan and subsequently by the IRA since the initial acquisition of Lot 28.01;

(c) The IRA will pay no expenses associated with the sale;

(d) The sale will allow the IRA to liquidate its assets; and

(e) Dr. Errico as the sponsor of the IRA would be the only individual affected by the transaction.

Notice to Interested Persons

Because Dr. Errico is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 523-8883. (This is not a toll-free number.)

Profit Sharing Plan and Trust for Employees of Radiology Consultants (the Plan) Located in Orlando, Florida

[Application No. D-9053]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the proposed sale by the individual accounts in the Plan of John L. Beauchamp, Jr. (the Beauchamp Account) and Rong Dad Ho (the Ho Account) of each Account's respective 50% share of a certain 91.4 acre parcel of land and the fruit crop grown thereon (Grove Property I) to John L. Beauchamp, Jr., M.D. (Dr. Beauchamp) and Rong Dad Ho, M.D. (Dr. Ho), respectively; (2) the proposed sale by the individual account in the Plan of Douglas M. Roy (the Roy Account) of a certain 39.4 acre parcel of land and the fruit crop thereon (Grove Property II) to Douglas M. Roy, M.D. (Dr. Roy); and (3) the proposed sale by the individual account in the Plan of Arnold J. Spanjers (the Spanjers Account; collectively, the Accounts) of a certain 74.3 acre parcel of land and the fruit crop thereon (Grove Property III) to Arnold J. Spanjers, M.D. (Dr. Spanjers), provided that the following conditions are met:

(a) Each sale is a one-time transaction for cash;

(b) Each Account receives an amount which is no less than the greater of either the fair market value of the land on the Grove Property owned by such Account as appraised on January 15, 1992, or the fair market value of such land on the date of sale as established by an independent appraisal;

(c) Each Account receives the fair market value of the fruit crop on the Grove Property owned by such Account as of the date of sale, as established by an independent appraisal;

(d) With respect to the Beauchamp Account and the Ho Account, such Accounts receive an amount, as described in (b) and (c) above, which reflects each Account's 50% ownership interest in Grove Property I; and

(e) The Accounts do not pay any commissions or other expenses associated with the transactions.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which, as of December 31, 1991, had 49 participants and total assets of $14,801,260. The trustee of the Plan is Sun Bank, N.A. (the Bank), located in Orlando, Florida. The Bank is not the decision-maker for the investment of the Plan's assets involved in the subject transactions. The Plan allows for participants to direct the investment of assets held in their individual accounts. All of the Accounts are individually-directed accounts in accordance with the terms of the Plan. As of December 31, 1991, the total assets of each of the Accounts was as follows: (a) $1,031,093 for the Beauchamp Account; (b) $1,157,690 for the Ho Account; (c) $869,904 for the Roy Account; and (d) $1,804,382 for the Spanjers Account.

2. The Plan is sponsored by Radiology Consultants, P.A. (the Employer). The Employer is a Florida professional corporation that provides medical services in the field of radiology. The Employer is located at 306 Avenue C, NE., Winter Haven, Florida.

Dr. Beauchamp, Dr. Ho, Dr. Roy, and Dr. Spanjers (together, the Applicants) are all shareholders, directors and employees of the Employer.

3. The Grove Properties are parcels of land located in Hendry County, Florida, which are used for growing oranges. Grove Property I, a 91.4 acre parcel of land with 85.7 acres of bearing orange grove, is owned jointly by the Beauchamp Account and the Ho Account. Grove Property II, a 39.4 acre parcel of land with 36.9 acres of bearing orange grove, is owned by the Roy Account. Grove Property III, a 74.26 acre parcel of land with 69.1 acres of bearing orange grove, is owned by the Spanjers Account. The Bank, as trustee of the Plan, charges all expenses relating to the Grove Properties to the respective Accounts and credits all earnings, gains and losses from the Grove Properties to such Accounts.

The operation and maintenance of the Grove Properties is conducted by Cooperative Producers, Inc. (CPI). CPI handles the irrigation, planting and picking of the fruit on the Grove Properties, pursuant to service contracts with the Plan. The marketing and sales of the fruit on the Grove Properties is handled by Haines City Citrus Growers Association (Haines) for Grove Properties I and III and by Winter Haven Citrus Growers Association (Winter Haven) for Grove Property II. CPI, Haines and Winter Haven are all unrelated to the Employer and its affiliates. The Applicants state that at no time during the Plan's ownership of the Grove Properties have such properties been leased to, or used by, any party in interest with respect to the Plan. The Applicants and their affiliates do not own any property which is adjacent to the Grove Properties.

4. Grove Property I was purchased by the Plan, as an investment for the Beauchamp Account and the Ho Account pursuant to the investment directions of Drs. Beauchamp and Ho, respectively, on March 15, 1984 from Hickory Branch Groves, Inc. (Hickory Groves), an unrelated party, for $158,295. The Beauchamp and Ho Accounts each paid 50% of the purchase price for the property and each Account owns a 50% interest in the property. The Beauchamp and Ho Accounts had received a total of approximately $178,123 in income, and incurred a total of approximately $565,402 in operational expenses for Grove Property I, as of December 31, 1991. All income and expenses for Grove Property I have been shared equally by the Beauchamp and Ho Accounts.

Grove Property I was appraised on January 15, 1992 by Lloyd N. Race, SRA, an independent, qualified real estate appraiser in Winter Haven, Florida (the Appraiser), as having a fair market value of $1,200,000, as of December 21, 1991. The Appraiser states that the land on Grove Property I had a fair market value of $1,050,000 and the fruit had a fair market value of $150,000, as of such date.

5. Grove Property II was purchased by the Plan, as an investment for the Roy Account pursuant to the investment direction of Dr. Roy, on March 15, 1984 from Hickory Groves for $64,436.13. The Roy Account had received a total of approximately $54,104 in income, and incurred a total of approximately $275,512 in operational expenses for Grove Property II, as of December 31, 1991.

Grove Property II was appraised on January 15, 1992 by the Appraiser as having a fair market value of $460,000, as of December 21, 1991. The Appraiser states that the land on Grove Property II had a fair market value of $390,000 and the fruit had a fair market value of $70,000 as of such date.

6. Grove Property III was purchased by the Plan, as an investment for the Spanjers Account pursuant to the investment direction of Dr. Spanjers on March 15, 1984 from Hickory Groves for $189,744.43. The Spanjers Account had received a total of approximately $133,922 in income, and incurred a total of approximately $433,027 in operational expenses for Grove Property III, as of December 31, 1991.

Grove Property III was appraised on January 15, 1992 by the Appraiser as having a fair market value of $875,000, as of December 21, 1991. The Appraiser states that the land on Grove Property III had a fair market value of $740,000 and the fruit had a fair market value of $135,000, as of such date.

7. By letter dated May 15, 1992, the Appraiser represents that all appraisals made of the fruit value on the Grove Properties were based on the fruit crop's maturity as of the date of the appraisals. The Appraiser states that to the extent the fruit on the Grove Properties was not ready to be harvested, its value was discounted by the number of months remaining before it would be fully mature. The Appraiser's determination of the maturity of the fruit was made in accordance with the fruit maturity charts customarily used in the Florida citrus industry for fruit valuation. The price of the fruit was determined by the Appraiser based on the Florida Citrus Mutual Market News Bulletin (the Bulletin), an independent, third party source which provides current market price quotations for Florida citrus. However, the Appraiser states that because fruit prices fluctuate on a daily basis, each appraisal factored into the price quoted in the Bulletin a "stabilized price" or market average for such fruit prices in determining the fair market value of the fruit on the Grove Properties.

8. The Applicants state that the Grove Properties were purchased by the Accounts primarily for potential investment appreciation. However, the Applicants represent that the Grove Properties have not been profitable investments because of the operating expenses associated with the properties and the unrelated business taxable income incurred by the Accounts in connection with the properties. The Applicants also believe that the market value of the Grove Properties will decline in the near future due to substantial increases in imported citrus products which will adversely affect the prices for domestic citrus crops. In addition, the Grove Properties represent a significant percentage of the total assets of each of the Accounts (i.e. approximately 47% of the Beauchamp Account; 42% of the Ho Account; 53% of the Roy Account, and 48% of the Spanjers Account). Thus, the Applicants state that it would be in the best interests of the Accounts to sell the Grove Properties to enable the Accounts to diversify their investment portfolio and acquire other assets yielding a higher rate of return.

9. The Applicants represent that the market for citrus groves is currently depressed and that it is unlikely that the Accounts will be able to sell the Grove Properties to an unrelated party at a good price within a reasonable time. The Applicants propose to purchase the Grove Properties for cash at a price which is at least equal to the fair market value of the properties, as established by the Appraiser. The Applicants state that a sale of the Grove Properties by the Accounts at their fair market value at the present time will provide the Accounts with an amount which will exceed in each instance the acquisition and holding costs the Accounts have incurred for the Grove Properties. The Appraiser will update all appraisals of the Grove Properties prior to the proposed transactions to provide the most current market prices for the land and the fruit. The purchase price to be paid by the Applicants for the land on the Grove Properties in each instance will be equal to the greater of either (i) the fair market value of the land as currently appraised by the Appraiser, or (ii) the fair market value of the land as of the date of sale, as established by the Appraiser's updated appraisals. However, because of the volatility and fluctuation in the value of the fruit on the Grove Properties, the Applicants will purchase the fruit crop at a price equal to the fair market value of the fruit as of the date of sale, as established by the Appraiser based on the maturity of the fruit and current market prices for the fruit at the time of the transactions. The Appraiser will determine the fruit's maturity and current market price using the same valuation methodology which was used in the prior appraisals of the Grove Properties (see discussion in Item 7 above involving "stabilized price").

Neither the Plan nor the Accounts will not pay any commissions or other expenses for the proposed transactions.

10. In summary, the Applicants represent that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because: (a) Each sale will be a one-time transaction for cash; (b) the Accounts will receive in each instance a price equal to the greater of either (i) the fair market value of the land on the Grove Properties as currently appraised by the Appraiser, or (ii) the fair market value of such land as of the date of sale, as established by the Appraiser's updated appraisal; (c) the Accounts will receive in each instance the fair market value of the fruit on the Grove Properties as of the date of sale, as established by the Appraiser based on the maturity of the fruit and the "stabilized price" methodology in determining the current market prices for the fruit; (d) no commissions or other expenses will be paid by either the Plan or the Accounts for the proposed transactions; and (e) the transactions will enable to Accounts to eliminate the expenses being incurred in connection the operation and maintenance of the Grove Properties as well as the taxes on unrelated business taxable income from the properties and will allow the Accounts to reinvest the proceeds in other investments yielding a greater return.

Notice to Interested Persons: because the Applicants are the only participants in the Plan to be affected by the proposed transactions, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

First Citizens Bank and Trust Company And Adopting Companies Pension Plan (the Plan) Located in Raleigh, North Carolina

[Application No. D–8834]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed continued holding by the Plan after December 31, 1992, of shares of common stock (the Stock) of First Citizens BancShares, Inc. (BancShares), the parent corporation of the sponsor of the Plan; and (2) the proposed acquisition, holding, and exercise by the Plan of a put option (the Put) with respect to the Stock; provided that the following conditions are satisfied:

(A) The Plan's interests for all purposes with respect to the Stock are represented by Wachovia Bank of North Carolina, N.A. (the Fiduciary) for the duration of the Plan's holding of any of the Stock;

(B) The Fiduciary will take whatever action is necessary to protect the Plan's rights, including, but not limited to the exercise of the Put, if the Fiduciary, in his sole discretion, determines that such exercise is appropriate;

(C) The Fiduciary retains the right under the Put to require Bancshares, at any time, to purchase some or all of the Stock from the Plan for the greater of (1) the Stock's fair market value as of December 31, 1992, or (2) the fair market value of the Stock as of the date of such sales;

(D) BancShares' obligations under the Put remain secured by an escrow account containing cash or U.S. government securities worth at least 25 percent of the fair market value of the Stock as of December 31, 1992, as long as the Plan continues to hold any shares of the Stock; and

(E) Additional shares of the Stock are not voluntarily acquired on behalf of the Plan unless such acquisition satisfies the requirements of sections 406(a)(1)(E), 407(a) and 408(e) of the Act.[5]

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan sponsored by First Citizens Bank and Trust Company (the Bank), a North Carolina corporation with its principal place of business in Raleigh. The Bank serves as trustee of the Plan, which is also sponsored by the American Guaranty Insurance Company and the First Citizens Mortgage Company, each of which is a subsidiary of the Bank. The Bank is a subsidiary of BancShares, a Delaware public corporation. BancShares was incorporated on August 7, 1986, as successor to First Citizens Corporation (FCC), which was a bank holding company of which the Bank was the sole subsidiary. On October 21, 1986, FCC was merged into BancShares, which became the surviving corporation and the sole shareholder of the Bank.

2. As of December 31, 1990, BancShares had authorized 20 million shares of Class A Common Stock (Class A Stock), one dollar par value per share, of which 7,422,037 shares were outstanding, and 5 million shares of Class B Common Stock (Class B Stock), one dollar par value per share, of which 1,853,068 shares were outstanding. The Class A Stock is listed on the National Association of Securities Dealers Automated Quotation System (NASDAQ) national market system. The Class B Common Stock is not listed by

[5] An acquisition of Stock shall not be deemed to have occurred if the Plan acquires shares of the Stock as a result of a stock dividend or stock split.

NASDAQ and trades are privately consummated. The Bank represents that the total volume of trading in the Class A Stock during 1990 was 245,942 shares and that the total number of shares of the Class B Common Stock traded during 1990 was 15,866 shares.

3. As of September 16, 1991, the Plan owned 126,400 shares of Class A Stock (the Class A Shares) and 31,600 shares of Class B Stock (the Class B Shares). The Bank represents that the Plan acquired the Class A and Class B Shares (together, the Stock) prior to December 17, 1987 through a series of corporate reorganizations. As of December 31, 1991, the Plan had total assets of $97,851,075 and the Bank represents that the total fair market value of the Class A Shares and the Class B Shares was $3,476,000 and $869,000, respectively, constituting less than 5 percent of the assets of the Plan. The Bank represents that at the time of the Plan's acquisition of the Stock, and at all times thereafter, the Class A Shares and the Class B Shares each represented less than twenty five percent of the issued and outstanding stock of its respective class. As of December 31, 1990, 65.96 percent of the Class A Stock, and 67.50 percent of the Class B Stock, were beneficially owned by directors and executive officers of BancShares and the Bank.

Because directors and executive officers of the Plan sponsor and its sole shareholder own in excess of 50 percent of the Class A and Class B Stock, the Bank represents that the Plan's continued holding of the Stock beyond December 31, 1992 would be prohibited by section 406(a)(1)(E) of the Act, as a result of the failure to satisfy the definition of "qualifying employer security" contained in section 407(d)(5). The Bank is proposing that the Plan continue to hold the Stock after December 31, 1992, in addition to the Put which will enable the Plan to require the Bank to buy the Stock back from the Plan, and is requesting an exemption to permit such transactions under the terms and conditions described herein.

4. The interests of the Plan with respect to the Stock will be represented by an independent fiduciary, Wachovia Bank of North Carolina (the Fiduciary), appointed by the Bank, in its capacity as Plan trustee, pursuant to an agreement (the Agreement) which designates the Fiduciary as manager of the Plan's investment in the Stock. Under the Agreement, the Fiduciary has full investment discretion with respect to the Stock, including the authority to make all decisions regarding continued holding or disposition of the Stock, the voting of proxies, and the exercise of any conversion privilege, tender offer, or similar right relating to the Stock. The Fiduciary is authorized to direct that the Stock, or any portion thereof, be sold at any time that the Fiduciary determines to be in the best interest of the Plan, including the authority to require the Stock to be purchased by Bancshares in accordance with the terms of the Put, described herein. The Fiduciary is empowered to give such other directions to the Bank in its capacity as Plan trustee as are appropriate for the execution of the Fiduciary's duties under the Agreement. The Agreement specifies that the Fiduciary is an "investment manager" and a "fiduciary" with respect to the Plan under the Act and that such status will be maintained for the duration of the Agreement. The Agreement continues in effect until the Stock is no longer held by the Plan, although the Agreement is terminable with at least 30 days notice. In the event that such termination notice is given by either party while the Stock is still owned by the Plan, the Agreement provides that the termination will not be effective until a successor Fiduciary has been secured under circumstances approved by the Department.

5. The Bank, the Fiduciary, and BancShares have executed the Put, which is a put option agreement that grants the Fiduciary the right, on behalf of the Plan, to direct BancShares at any time to purchase all or any portion of the Stock from the Plan, subject only to the approval of the Federal Reserve Board.[6] The terms of the Put provide that it becomes effective on January 1, 1993. The Put requires the purchase price of the Stock, in the event of any exercise of the Put, to be greater of (a) the fair market value of the Stock as of the date of the closing of the purchase transaction, or (b) the fair market value of the Stock on December 31, 1992. The Put provides that for purposes of the purchase price of the Stock in the event of an exercise of the Put, the Stock's fair market value shall be determined by the Fiduciary pursuant to a valuation conducted as of the closing date of the purchase in accordance with section 3(18) of the Act.

6. The Bank, the Fiduciary, the Bancshares will execute an escrow agreement (the Escrow) establishing an escrow account to secure Bancshares' obligations under the Put, and the Escrow will be maintained for the duration of the Plan's ownership of any of the Stock. Upon exercise of the Put or in any sale of the Stock to a third party, if the Plan fails to receive as the consideration in such sale the full purchase price required under the Put, the proceeds of the escrow account may be transferred to the Plan to compensate the Plan with respect to any deficiency. The Escrow requires Bancshares to transfer to an escrow account a quantity of United States government securities (the Securities) with a total value of at least 25 percent of the fair market value of the Stock as of December 31, 1992. In the event the Plan reduces its holding of the Stock, the value of Securities held under the Escrow may be reduced, if the value of the Securities in Escrow is greater than 30 percent of the fair market value of the Stock still being held by the Plan, provided that the value of the Securities held under the Escrow remains no less than twenty five percent of the greater of (1) the current fair market value of the Stock, or (2) the fair market value of the Stock as of December 31, 1992, based on the number of shares of the Stock still being held by the Plan. The current fair market value of the Stock for purposes of the Escrow is to be determined as of the last day of each calendar year by the Bank, subject to approval of the Fiduciary, and the Fiduciary's determination shall control in the event of disagreement with the Bank. The Plan will have a lien against the assets in the Escrow, so that the Plan will have priority over all creditors of Bancshares with respect to those assets.

7. As a condition of the exemption proposed herein, the Bank agrees that the Plan shall not require any additional shares of Class A or Class B Stock, unless at the time of any such acquisition the requirements of section 406(a)(1)(E), 407(a) and 408(e) of the Act are satisfied without regard to the exemption proposed herein. The foregoing restriction would not apply to the Plan's receipt of additional Stock as a dividend or in connection with a stock split, merger, recapitalization or reorganization involving the Stock. The Bank represents that all future sales, if any, of the Stock by the Plan to a party in interest with respect to the Plan will satisfy the requirements of section 408(b)(12) of the Act.

[6] Bancshares represents that the Put provides for approval of the Federal Reserve Board (the FRB) because of (1) an FRB regulation requiring the bank holding company to obtain FRB approval before purchasing or redeeming its equity securities if the consideration therefore is equal to ten percent or more of the holding company's net worth, and (2) an FRB policy of requesting bank holding companies to consult with the FRB prior to any material redemption of securities. In the event the FRB were to deny approval of any exercise of the Put, the Plan would be protected by the Escrow, described in section 6 herein, from any failure to obtain, in a resulting sale of the Stock to a third party, the full purchase price required under the Put.

8. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Stock represents less than five percent of the Plan's total assets; (2) At all times since acquisition by the Plan, the Stock has constituted less than twenty-five percent of all outstanding shares of each class of the Stock; (3) The interests of the Plan for all purposes related to the continued holding of the Stock are represented by the Fiduciary, which has full discretionary authority with respect the Plan's interests in the Stock and under the Put and Escrow; (4) The Put will enable the Fiduciary to require a sale of the Stock of BancShares at any time for no less than the greater of the Stock's fair market value (a) as of December 31, 1992, or (b) as of the date of such sale; (5) The Escrow will protect the Plan's right to receive the full fair market value of the Stock in any exercise of the Put; and (6) The Plan will not acquire additional share of the Stock if such acquisition would be in violation of the Act.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of September, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–23340 Filed 9–25–92; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication, NRC Generic Letter: Analog to Digital Replacements Under the 10 CFR 50.59 Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Generic Letter: Extension of comment period.

SUMMARY: On August 14, 1992, (57 FR 36680), the NRC published for public comment a proposed Generic Letter, "Analog to Digital Replacements Under the 10 CFR 50.59 Rule)." The comment period for this proposed Generic Letter was to have expired on September 14, 1992. In view of the importance of the proposed Generic Letter and the desirability of obtaining meaningful comments from interested parties, the NRC has decided to extend the comment period for an additional thirty days. The extended comment period now expires on October 14, 1992.

DATES: The comment period has been extended and now expires on October 14, 1992. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Buildings, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:14 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2129 L Street, NW., (Lower level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clyde Shiraki (301) 504–3101.

Dated at Rockville, Maryland, this 22nd day of September 1992.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–23444 Filed 9–25–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 040–08977 License No. STB–1526 EA 92–171]

Order Modifying License (Effective Immediately) and Demand for Information

In the Matter of Aircraft Components, Inc., Bradford, Connecticut.

I

Aircraft Components, Inc. (ACI) or (Licensee) is the holder of Source Material License No. STB–1526 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 40. The License authorizes the Licensee to possess, store, and precision-machine magnesium-thorium castings for aircraft components. The License also limits the Licensee's possession of radioactive material of natural thorium to 45 kilograms in the form of thorium oxide not exceeding 4% alloyed with magnesium. The License was originally issued on December 21, 1988, and is due to expire on January 31, 1994.

II

On August 26, 1992, an inspector from the NRC Region I office conducted an inspection at the Licensee's facility in Branford, Connecticut. The inspection was conducted to review the Licensee's activities to determine compliance with NRC requirements and to assure safe performance of those activities. At the outset of the inspection, the inspector questioned Mr. Michael V. Bruno, President and Radiation Safety Officer for the facility, concerning the amount of

thorium possessed by the Licensee on that date. Mr. Bruno estimated that the Licensee possessed approximately 71 kilograms of thorium. Since this amount was in excess of the limit authorized by the License, the inspector reviewed the Licensee's inventory records for the period between May 30, 1990, and the date of the inspection. Based upon that review, as well as information subsequently provided to the NRC by the Licensee, the NRC determined that the Licensee had, in fact, exceeded its possession limits for thorium throughout the period between June 30, 1989 and August 26, 1992. The largest amount of thorium possessed during that period was 306.5 kilograms on April 25, 1991. During that period, on at least one occasion (i.e., May 9, 1991) the Licensee possessed more than 200 kilograms of thorium in a dispersible form (i.e., a form that can be easily distributed creating widespread contamination).

The inspector questioned Mr. Bruno concerning his knowledge of whether the Licensee's possession limit was exceeded, and if so, the length of time it had been exceeded. Mr. Bruno indicated that he was aware that the limit had been exceeded for several months. The inspector then questioned Mr. Bruno as to why he did not seek and obtain a license amendment from the NRC to authorize possession of larger amounts of natural thorium. Mr. Bruno indicated that he did not seek a license amendment because he knew that to obtain such an amendment, the Licensee would first be required to provide financial assurance for decommissioning (which assures that the Licensee has adequate funds available for decommissioning of the facility). On September 11, 1992, Region I management, as well as representatives from the NRC's Office of the General Counsel, contacted Mr. Bruno by phone to verify the statements made to the inspector. Mr. Bruno confirmed his prior conversations with the inspector concerning why the violation occurred, and also indicated that he was aware, since June 1989, that the Licensee had exceeded the possession limit.

III

Condition B of License No. STB–1526 limits the Licensee's possession of thorium to 45 kilograms. Contrary to this requirement, from June 30, 1989 to August 26, 1992, the Licensee, at various times, possessed more than 45 kilograms of thorium. As set forth in Section II of this Order, the Licensee's President and Radiation Safety Officer was aware of the possession limit in License Condition 8, and was aware that the amount of thorium in the Licensee's possession exceeded that limit.

In addition, as required by 10 CFR 40.36, any licensee authorized to possess greater than 10 millicuries of source material (which equates to 45.5 kilograms of natural thorium) in a readily dispersible form shall submit, on or before July 27, 1990, a certification of financial assurance for decommissioning, or a decommissioning funding plan, in accordance with the criteria set forth therein. These requirements were developed to assure that licensees who possessed substantial quantities of readily dispersible material would have in place a financial mechanism that would assure protection of public health and safety by providing adequate funding for the ultimate decontamination and decommissioning of the facility. In its initial license application, dated October 21, 1988, ACI requested a possession limit of 500 kilograms of natural thorium. Since ACI had not provided the necessary financial assurance required by 10 CFR 40.36 in its license application, the NRC sent a letter to ACI on November 25, 1988, stating that the Licensee must submit a certification that financial assurance has been provided before the NRC could authorize possession of greater than 45 kilograms of thorium. ACI responded to the NRC, in a letter dated December 1, 1988, by changing its requested possession limit to 45 kilograms. In that December 1, 1988 letter, the requested authorization limit was changed "[d]ue to the fact that we [ACI] were not aware of the recent regulatory requirements to submit financial assurance in the amount of $150,000 * * * ."

IV

Based on the above, I conclude that Mr. Bruno, the Licensee's President and Radiation Safety Officer, intentionally violated NRC requirements in that he knew possession of natural thorium in amounts greater than 45 kilograms of natural thorium was contrary to the conditions of its License. Further, Mr. Bruno also intentionally failed to seek an amendment to the License authorizing possession of greater amounts because he wanted to avoid the cost of providing the required financial assurance for decommissioning to the NRC. Although the Licensee, subsequent to the inspection, reduced its inventory of natural thorium to an amount less than its licensed limit, the willful actions by the most senior person in the Licensee's organization raise serious questions concerning the willingness of the Licensee to comply with NRC regulatory requirements. Consequently, further action and information as described in sections V and VII is necessary in order to determine (1) whether NRC should have the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. STB–1526 in compliance with the Commission's requirements, (2) whether, because of the Licensee's possession and use of material exceeding license limits, the site has been contaminated such that remedial measures are needed, and (3) whether the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health, safety, and interest require that pending receipt and evaluation of that information the Licensee take the actions described below to determine the extent of contamination at the facility and the cost of its decommissioning. In light of the past possession of significantly more than 45 kilograms of natural thorium in dispersible form, it is necessary to provide evidence of financial assurance to complete decommissioning activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the willful conduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 40, *It is hereby ordered, effective immediately, that:*

Within 30 days of the date of this Order, the Licensee shall:

1. Conduct a radiation survey of the premises in accordance with the guidance in the "Manual for Conducting Radiological Surveys in Support of License Termination", NUREG/CR 5849 (June 1992), where licensed activities were carried out or licensed materials were stored and submit a written report of the results of that survey as set forth in 10 CFR 40.42(c)(1)(v), to the NRC Regional Administrator, Region I. The survey is to be performed by an independent qualified health physicist.

2. Prepare and submit to the NRC Regional Administrator, Region I, a plan and schedule for NRC approval for decommissioning the facility for unrestricted use, together with a detailed cost estimate for completing the plan according to the schedule for releasing the facility for unrestricted use. The plan shall meet "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of License for Byproduct Source, or Special Nuclear Material" July 1982, and Options 1 or 2 of "Disposal or Onsite Storage of Thorium or

Uranium Wastes from Past Operations", 46 FR 52061 (October 23, 1981).

3. Submit to the NRC Regional Administrator, Region I, a certification that financial assurance for completing the decommissioning activities described in the plan submitted pursuant to Paragraph 2 has been provided in the amount estimated pursuant to Paragraph 2. The certification shall use one of the methods described in 10 CFR 40.36(e). See Regulatory Guide 3.66 "Standard Format and Content of Financial Assurance Mechanisms for Decommissioning under 10 CFR parts 30, 40, 70, and 72" (July 1990). A copy of the executed financial instrument obtained to meet this certification requirement must also be sent to the NRC Regional Administrator, Region I.

The Regional Administrator, Region I, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

VI

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why this Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), 57 FR 20194 (May 12, 1992), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

VII

In addition to issuance of this Order Modifying License No. STB–1526, the Commission requires further information from the Licensee in order to determine whether the Commission can have reasonable assurance that in the future the Licensee will conduct its activities in accordance with the Commission's requirements and will not willfully violate those requirements.

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 40.31(b), in order for the Commission to determine whether the License should be further modified, suspended, or revoked or other enforcement action taken, the Licensee is required to submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 within 30 days of the date of this Demand for Information, in writing and under oath or affirmation, a statement of why, in light of the willful violation of the requirements by the President and Radiation Safety Officer described above, (1) NRC should conclude that the Licensee and its employees will in the future comply with Commission requirements, (2) the Licensee should not be required to promptly decommission the facility for unrestricted use, and (3) License No. STB–1526 should not be revoked.

Copies should also be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the NRC Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

After reviewing your response, the NRC will determine whether decommissioning and revocation will be required or other enforcement action is necessary to ensure compliance with regulatory requirements.

Dated at Rockville, Maryland this 21st day of the September, 1992.

For The Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 92–23442 Filed 9–25–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–446A]

Texas Utilities Electric Co.; No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the antitrust operating license review of Unit 1 of the Comanche Peak Steam Electric Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review and an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon the examination of the events since the issuance of the Comanche Peak Steam Electric Station, Unit 1 (Comanche Peak 1) operating license, to TU Electric Company, the staffs of the Inspection and Licensing Policy Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as "staff," have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the operating license review of Comanche Peak 1 are not of the nature to require a second antitrust review at the operating license stage of the application for Comanche Peak 2.

In reaching this conclusion, the staff considered the structure of the electric utility industry in northeastern and north central Texas, the events relevant to the Comanche Peak construction permit review, the antitrust settlement subsequent to the construction permit review and the Comanche Peak 1 operating license review.

The conclusion of the staff analysis is as follows:

In an effort to identify any changed activity on the part of the licensee, the staff requested updated Regulatory Guide 9.3 information in

December 1991. Notice of receipt of this information was published in the **Federal Register** and the staff received comments from two electric power cooperatives, Cap Rock Electric Cooperative, Inc. and Cajun Electric Power Cooperative, Inc.

The staff reviewed the comments from Cap Rock and Cajun and fully considered them in the context of the Commission's significant change review. The staff determined that the issues raised by Cap Rock addressed compliance or contractual matters, not licensing matters pertinent to the staff's § 105c(2) operating license significant change review. Moreover, the issues of concern to Cap Rock were being litigated in a manner that ultimately should resolve the concerns raised by Cap Rock. The staff determined that the concerns raised by Cajun in its comments to Regulatory Guide 9.3 were issues that should be addressed by the FERC, not the NRC, and that there was an ongoing forum at the FERC in which Cajun could seek redress from its concerns pursuant to participation in the Texas DC intertie.

TU Electric experienced changes in its business since the Comanche Peak 1 operating license review; however, the changed activity was in large part due to the changing electric bulk power industry and the role of power generators within this industry. The staff did not identify any changes in TU Electric's activities that would require a remedy by the NRC in this licensing action. None of the changes identified meet all three of the Commission's *Summer* criteria.

Section 105c(2) requires a formal antitrust review at the operating license stage only in the event of significant changes in the licensee's activities since the previous antitrust review. The NRC established criteria for identification of significant changes in its *Summer* decision and delegated the authority to make the significant change determination to the staff. The staff's analysis of the changes in the licensee's activities has not identified any changed activity that could be remedied in the Commission's licensing process as envisioned in *Summer*. Consequently, the staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 2 of the Comanche Peak Steam Electric Station.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensee's activities or proposed activities since the completion of the antitrust operating license review of Unit 1 of the Comanche Peak Steam Electric Station.

Signed on September 17, 1992 by Thomas E. Morley, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 within 30 days of the initial publication of this notice in the **Federal Register**. Requests for reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only, if they contain new information, such as information about facts or events of antitrust significance that have occurred since the date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, the 21st day of September 1992.

For the Nuclear Regulatory Commission.

Anthony T. Gody,

Chief, Inspection and Licensing Policy Branch Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 92-23443 Filed 9-25-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549

Extension

Rule 17a-2, File No. 270-189
Rule 19d-3, File No. 270-245

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following rules under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

Rule 17a-2 (17 CFR 240.17a-2), which requires the manager of an underwriting syndicate to retain certain information relating to stabilizing purchases of a security being distributed. It is estimated that approximately 500 broker-dealers incur an average annual burden of one hour to comply with this rule.

Rule 19d-3 (17 CFR 240.19d-3), which prescribes the form and content of applications to the Commission for review of final disciplinary sanctions, denials of membership, participation, or association with a member, or prohibitions or limitations of access to services imposed by self-regulatory organizations. It is estimated that approximately 13 respondents incur an average burden of 18 hours to comply with this rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 21, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23411 Filed 9-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31208; File No. SR-CBOE-92-20]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Reduced Transaction Charges for Certain Index Option Spread Transactions

September 22, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 2, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE has proposed to extend through October 15, 1992, a pilot program[1] which provides a 50% rebate on transaction and trade match fees for "box" [2] trades by public customers in

[1] The pilot program was first approved by the Commission on a three-month pilot basis, effective from July 1, 1991, through September 30, 1991. See Securities Exchange Act Release No. 29482 (July 24, 1991), 56 FR 36180. Since then, the pilot has been extended three times, first through December 31, 1991, then through March 31, 1992, and most recently through August 31, 1992. See Securities Exchange Act Release Nos. 30025 (December 3, 1991), 56 FR 64537, 30288 (January 27, 1992), 57 FR 4228, and 30857 (June 24, 1992), 57 FR 29543.

[2] The CBOE defines a "box trade" as a four-sided SPX option spread composed of (i) a long call and short put at one strike price and (ii) a short call and long put at a different strike price, where all four positions expire in the same month.

Standard & Poor's 500 Stock Index options ("SPX"), provided the "box" trade totals 500 or more contracts for the four sides of the trade. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The CBOE proposes to extend, through October 15, 1992, a pilot program which provides a 50% rebate on transaction and trade match fees for "box" [3] trades by public customers in SPX options, provided the "box" trade totals 500 or more contracts for the four sides of the trade. The rebate is available to member firms that provide the Exchange with documents evidencing transactions that meet the standards of the pilot program. At the end of each month, member firms must submit their rebate requests to the Exchange's Accounting Department.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and those persons associated with its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

[3] *See supra* note 2 for the CBOE's definition of a "box" trade.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication's relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by October 19, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–23481 Filed 9–25–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Incorporated

September 22, 1992.[a]

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Appalachian Power Co.
7.40% Cum. Pfd. $100.00 Par Value (File No. 7–9106)
Appalachian Power Co.
8.12% Cum. Pfd. $100.00 Par Value (File No. 7–9107)
Appalachian Power Co.
$2.65. Cum. Pfd. No Par Value (File No. 7–9108)
Armco, Inc.
$2.10 Cum. Conv. Pfd., No Par Value (File No. 7–9109)
Armco, Inc.
$4.50 Cum. Conv. Pfd., No Par Value (File No. 7–9110)
Arvin Industries, Inc.
$3.75 Conv. Exch. Pfd., No Par Value (File No. 7–9111)
Asia Pacific Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9112)
Asset Investors Corp.
Common Stock, $.01 Par Value (File No. 7–9113)
Associated Natural Gas Corp.
Common Stock, $.10 Par Value (File No. 7–9114)
Atlantic Richfield, Co.
$2.80 Cum. Conv. Pfd. $1.00 Par Value (File No. 7–9115)
Banc Florida Financial Corp.
Common Stock, $.01 Par Value (File No. 7–9116)
Bank of Boston Corp.
Adj. Rte. Cum. Pfd. Ser. A, No Par Value (File No. 7–9117)
Bank of Boston Corp.
Adj. Rte. Cum. Ser. B Pfd., No Par Value (File No. 7–9118)
Bank of Boston Corp.
Adj. Rte. Cum. Ser. C Pfd., No Par Value (File No. 7–9119)
Bank of New York Co., Inc.
Adj. Rte. Non Cum. Pfd., No Par Value (File No. 7–9120)
Bank of New York Co., Inc.
Cum. Adj. Rte. Pfd., No Par Value (File No. 7–9121)
Barclays Bank Plc
American Depositary Receipts, Ser. B, No Par Value (File No. 7–9122)
Barclays Bank Plc
American Depositary Receipts, Ser. C1/C2 Units, No Par Value (File No. 7–9123)
Barclays Bank Plc
American Depositary Receipts Ser. D Units, No Par Value (File No. 7–9124)

Beazer Plc
American Depositary Shares, Common Stock, No Par Value (File No. 7–9125)
Belo A.H. Corp.
Common Stock, $1.67 Par Value (File No. 7–9126)
Beneficial Corp.
5% Cum. Pfd. $.50 Par Value (File No. 7–9127)
Beneficial Corp.
$4.50 Div. Cum. Pfd. $100.00 Par Value (File No. 7–9128)
Beneficial Corp.
$4.30 Div. Cum. Conv. Pfd. No Par Value (File No. 7–9129)
Beneficial Corp.
$5.50 Div. Cum. Conv. Pfd. No Par Value (File No. 7–9130)
Berkshire Hathway, Inc.
Common Stock, $5.00 Par Value (File No. 7–9131)
Berlitz International, Inc.
Common Stock, $.10 Par Value (File No. 7–9132)
Biocraft Laboratories, Inc.
Common Stock, $.01 Par Value (File No. 7–9133)
Borden Chemical & Plastic L.P.
Depositary Receipts, No Par Value (File No. 7–9134)
Boston Celtics L.P.
Common Stock, No Par Value (File No. 7–9135)
Boston Edison Co.
8.88% Cum. Pfd. Ser. $100.00 Par Value (File No. 7–9136)
Boston Edison Co.
$1.46 Cum. Pfd. Ser. $1.00 Par Value (File No. 7–9137)
BRE Properties, Inc.
C1. A Common Stock, $1.00 Par Value (File No. 7–9138)
Bristol-Myers Squibb Co.
$2.00 Conv. Pfd. $1.00 Par Value (File No. 7–9139)
British Airways Plc (1st Interim)
Common Stock, No Par Value (File No. 7–9140)
Broken Hill Proprietary Co. Ltd.
Common Stock, No Par Value (File No. 7–9141)
Brooklyn Union Gas Co.
$2.47 Cum. Pfd., Ser. I $25.00 Par Value (File No. 7–9142)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 14, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–23413 Filed 9–25–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18963; 811–5575]

Advance America Funds, Inc.; Notice of Application

September 13, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Advance America Funds, Inc. (formerly, Constitution Funds, Inc.).

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 3410 South Galena Street, Denver, Colorado 80231.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company that was organized as a corporation under the laws of Maryland. On June 2, 1988, applicant filed a registration statement pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed on June 2, 1988. The registration statement was declared effective and the initial public offering commenced on October 19, 1988.

2. On June 25, 1991, applicant's board of directors approved a reorganization plan under which all the assets of applicant's four series, U.S. Government Fund ("US Government"), Tax-Free Income Fund ("Tax-Free"), Strategic Income Fund ("Strategic"), and Equity Income Fund ("Equity"), would be exchanged for shares of Oppenheimer U.S. Government Trust ("OUSGT"), Oppenheimer Tax-Free Bond Fund ("OTFBF"), Oppenheimer Strategic Income Fund ("OSIF"), and Oppenheimer Equity Income Fund ("OEIF"), respectively. After a prospectus and proxy statement on Form N–14 filed in connection with the reorganization was declared effective by the Commission, applicant mailed proxy materials to its shareholders. At a meeting held on October 17, 1991, applicant's shareholders approved the merger.

3. On October 18, 1991, the net assets of applicant were transferred to the assets of OUSGT, OTFBF, OSIF, and OEIF and shareholders of applicant became shareholders of OUSGT, OTFBF, OSIF, and OEIF. In essence, a shareholder of applicant who voted shares in favor of the reorganization elected to redeem his shares (at net asset value which was calculated after subtracting a cash reserve retained by each series for the payment of expenses and liabilities) and reinvest the proceeds in shares of the corresponding fund at no sales charge and without recognizing taxable gain or loss for Federal income tax purposes.

4. Expenses incurred in connection with the merger were split between applicant and the funds into which they merged. Reorganization expenses paid by US Government, Tax-Free, Strategic, and Equity totalled $17,093, $18,215, $12,384, and $15,065, respectively. Liabilities of applicant were accrued and have been paid by each series.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding.

Applicant is not a party to any litigation or administrative proceeding.

6. Articles of dissolution were filed in Maryland on August 31, 1992. Applicant will effect its dissolution in Maryland after receiving the order requested.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23410 Filed 9-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18964; 812-8044]

Broad Street Trust, et al.; Application

September 18, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Broad Street Trust; Daily Money Fund; Fidelity Franklin Street Trust; Fidelity Beacon Street Trust; Fidelity California Municipal Trust; Fidelity California Municipal Trust II; Fidelity Capital Trust; Fidelity Cash Reserves; Fidelity Charles Street Trust; Fidelity Commonwealth Trust; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Recovery Fund; Fidelity Court Street Trust; Fidelity Court Street Trust II; Daily Tax-Exempt Money Fund; Fidelity Destiny Portfolios; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Devonshire Trust; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Fund; Fidelity Government Securities Fund; Fidelity Income Fund; Fidelity Institutional Cash Portfolios; Fidelity Institutional Trust; Fidelity Investment Trust; Fidelity Limited Term Municipals; Fidelity Magellan Fund; Fidelity Massachusetts Municipal Trust; Fidelity Money Market Trust; Fidelity Mt. Vernon Street Trust; Fidelity Municipal Trust; Fidelity Municipal Trust II; Fidelity New York Municipal Trust; Fidelity New York Municipal Trust II; Fidelity Puritan Trust; Fidelity Securities Fund; Fidelity Select Portfolios; Fidelity Special Situations Fund; Fidelity Sterling Performance Portfolio, L.P.; Fidelity Summer Street Trust; Fidelity Trend Fund; Fidelity Union Street Trust; Fidelity Union Street Trust II; Fidelity U.S. Investments Bond Fund, L.P.; Fidelity U.S. Investments—Government Securities Fund, L.P.; Fidelity Yen Performance Portfolio, L.P.; Fidelity Income Trust; Institutional Investors Trust; Fidelity Diversified Trust; Fidelity Investment Series; Fidelity Securities Trust; Spartan U.S. Treasury Money Market Fund; Fidelity Oliver Street Trust; Variable Insurance Product Fund; Variable Insurance Products Fund II; Zero Coupon Bond Fund; Fidelity Institutional Tax-Exempt Cash Portfolios; and Fidelity Management & Research Company ("FMR").

RELEVANT ACT SECTION: Section 45(a).

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 45(a) of the Act declaring that public disclosure of sections II through V of a report concerning the Fidelity Group of Funds Interfund Lending Facility Design, dated May 31, 1992, is neither necessary nor appropriate in the public interest or for the protection of investors.

FILING DATE: The application was filed on August 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Pubic Reference Branch.

Applicants' Representations

1. Each applicant investment company ("Fund") is a business trust formed under the laws of Massachusetts or Delaware or a partnership under the laws of Delaware. Each Fund has entered or will enter into a management or advisory and service contract with FMR. The principal underwriter for each of the Funds is or will be Fidelity Distributors Corporation.

2. On January 11, 1990, the SEC issued an order under sections 6(c) and 17(b) of the Act granting the Funds and FMR exemptions from the provisions of sections 12(d)(1), 17(a)(1), 17(a)(3), 17(d), 18(f), and 21(b) of the Act, and rule 17d-1 thereunder, to enable the Funds and FMR to establish a facility through which Funds having uninvested cash could, under certain circumstances, loan that cash to Funds seeking to borrow cash on a temporary basis (the "Interfund Lending Facility" or "Facility"). Daily Money Fund, Investment Company Act Release Nos. 17257 (Dec. 8, 1989) (notice) and 17303 (Jan. 11, 1990) (order).

3. As a condition to the January 11, 1990, order, FMR and the Funds agreed to prepare and submit to the Funds' boards of directors or general partners an initial special report on the design of the Interfund Lending Facility, including a report by their independent public accountants. FMR and the Funds further agreed that, following review of the initial report, the next Fund required to file its Form N-SAR would file the initial report as an exhibit and the other Funds would incorporate the initial report by reference in their next Form N-SAR filings. In satisfaction of the above condition, Fidelity Select Portfolios designated the initial report as an exhibit to its Form N-SAR for the period ending April 30, 1990, and the other Funds incorporated the initial report by reference into their next Form N-SARs. FMR and the Funds requested and received confidential treatment under section 45(a) of the Act for the initial report. Investment Company Act Release Nos. 17771 (Oct. 2, 1990) (notice) and 17827 (Oct. 30, 1990) (order).

4. As a further condition to the January 11, 1990, order, the Funds and FMR agreed that on the first and second anniversary of the commencement of operations of the Interfund Lending Facility, they would submit to the SEC an annual report on the "Design of a System and Certain Compliance Tests," that would include an opinion of the Funds' independent public accountant as to the sufficiency of the operation and control procedures of the Interfund Lending Facility. In satisfaction of the first anniversary portion of this condition, Fidelity Cash Reserves designated the first annual report as an exhibit to its Form N-SAR for the period ending May 31, 1991, and the other

Funds incorporated the annual report by reference as exhibits to their next Forms N–SAR. On July 31, 1991, the Funds requested an order pursuant to section 45(a) of the Act granting confidential treatment to the first annual report. This request was granted by the SEC by order dated November 6, 1991 (Investment Company Act Release No. 18399).

5. In final satisfaction of the condition to the January 11, 1990, order, Fidelity Cash Reserves has designated the second annual report (the "Confidential Report") as an exhibit to its Form N–SAR for the period ending May 31, 1992, and the other Funds will incorporate the Confidential Report by reference as exhibits in their Forms N–SAR next filed. Applicants now request an order under section 45(a) of the Act that would grant confidential treatment to the Confidential Report.

6. Section I of the Confidential Report describes in general terms the SEC's order authorizing the Interfund Lending Facility and the contents of the Confidential Report. Much of this material previously has been made public, and applicants do not request confidential treatment of section I.

7. Section II provides a general overview of the operation of the Facility, and describes the objectives and use of the Facility. It outlines the Facility's primary activities and describes the operational responsibilities of each group within FMR or the Funds to the Facility.

8. Section III summarizes the management and operational control objectives and the procedures for the Facility. For each identified control objective, it identifies the associated procedures required at each step to accomplish such objective, as well as the managerial, legal, and operational approvals required.

9. Section IV describes in more detail the management control procedures used to assure compliance with each of the control objectives. It describes in greater detail than sections II and III the legal and managerial approvals required, the documentation necessary, and the parties responsible for carrying out each step.

10. Section V discusses the scope of the testing performed on the management and operational procedures described in section IV.

11. The Confidential Report has been and continues to be maintained by the Funds on a strictly confidential, non-public, need-to-know basis.

12. The Funds generated the Confidential Report within the last year. As a result, the Confidential Report reflects current methods and capabilities of management and control.

Applicants' Legal Analysis

1. Section 45(a) of the Act provides that the information contained in any application filed with the SEC under the Act shall be made available to the public, unless and except insofar as the SEC finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.

2. Applicants state that public disclosure of the Confidential Report is not necessary to inform shareholders and potential investors in the Funds of the material facts regarding the Funds' participation in the Interfund Lending Facility. Each Fund participating in the Interfund Lending Facility has added disclosures to its prospectus concerning the Interfund Lending Facility and the Fund's participation therein.

3. The Freedom of Information Act, 5 U.S.C. 552, provides various exceptions to the general rule that all information provided to or generated by the government should be made available to the public.[1] One such exception is for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4).

4. Applicants state that the information contained in the Confidential Report fits within the above-mentioned exception because it has been obtained from a person, is both commercial and financial in nature, and is, and has been treated as, confidential.

5. Applicants state that because they are engaged in a highly competitive business, they would likely lose an important competitive advantage as a result of the disclosure of the information contained in the Confidential Report. The Interfund Lending Facility allows both borrowing and lending Funds to obtain a higher return for shareholders than they could obtain in the absence of such a facility. The Funds and FMR believe that no other investment company group has yet undertaken to develop operational and control procedures to establish a lending program similar to the Interfund Lending Facility. The Confidential Report documents each of the steps necessary to establish such a system, and thus would enable other investment company complexes to develop such a system in a much shorter time and with far greater confidence in its soundness than they might have absent the Confidential Report.

6. Applicants believe the Confidential Report would be extraordinarily useful to their major competitors. The Confidential Report as a whole would provide competitors a blueprint for the establishment and monitoring of an interfund lending facility. Operation of the Facility is highly complex. The development of the Facility required FMR to review its entire system to identify problems that might occur in the operation of the Facility, develop controls to help insure that such problems would not occur, develop procedures to implement such controls, develop computer and manual techniques for carrying out those procedures, and instruct the relevant personnel in how to carry them out. This process required in excess of twelve months and involved numerous meeting of FMR staff, as well as input from the Fund's auditors, counsel, and custodians.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–23409 Filed 9–25–92; 8:45 am]

BILLING CODE 8010–01–M

[1] The Division of Investment Management recognizes that any order granting the confidential treatment requested by applicants will be issued under section 45(a) only, and that any such order will not be dispositive of any Freedom of Information Act request filed by a third party.

[Rel. No. IC–18965; 811–4954]

Fortius II Fund, Inc; Notice of Application

September 18, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Fortius II Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N–8F was filed on September 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1992, and should be

accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 575 Fifth Avenue, 17th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Barry D. Miller, Senior Special Counsel, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management company organized as a corporation under the laws of the State of Maryland. On March 13, 1987, applicant filed a registration statement pursuant to section 8(b) of the 1940 Act. On that date, applicant also filed a registration statement pursuant to the Securities Act of 1933. The registration statement never became effective and applicant never commenced a public offering of its shares.

2. Applicant was formed because of a beneficial tax treatment which has since expired. On August 10, 1990, applicant's sole shareholder and board of director's authorized the dissolution of applicant.

3. Pursuant to the liquidation, the securities held in applicant's portfolio were sold at competitive bid in the market to brokers who were primary government securities dealers. Because applicant's portfolio consisted solely of fixed income securities, no brokerage commissions were incurred.

4. On September 17, 1990, applicant's shareholder redeemed its shares and received a final distribution of $26,565,969 representing the net asset value of applicant.

5. As of the date of the application, the applicant had no assets, debts or liabilities, and was not a party to any litigation or administrative proceeding.

6. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

7. On October 18, 1991, applicant filed Articles of Dissolution dissolving its corporate existence in Maryland.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–23412 Filed 9–25–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25637; International Series Release No. 459]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 18, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 13, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

PSI Resources, Inc., et al. (31–890)

PSI Resources, Inc. ("PSI Resources"), an Indiana public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, 1000 East Main Street, Plainfield, Indiana 46168, and its wholly owned Indiana subsidiary companies, PSI Argentina, Inc. ("PSI Argentina") and Costanera Power Corporation ("CPC"), have filed an application in connection with the proposed acquisition of an additional interest in Central Costanera S.A. ("Costanera"), an Argentine electric power generating company.[1] The application requests an unqualified order of exemption pursuant to section 3(b) of the Act for PSI Argentina, CPC, Costanera, and Argelec, a newly organized Argentine company.

PSI Resources' wholly owned public-utility subsidiary company, PSI Energy, Inc. ("PSI Energy"), generates, transmits and sells electric power in Indiana. PSI Energy and PSI Resources reported operating revenues in 1991 of approximately $1.1198 billion and $1.1223 billion, respectively.

PSI Resources currently has a 2.994% ownership interest in Costanera through an international consortium ("Consortium") that has acquired 60% of the voting securities of the Argentine utility.[2] The Consortium members have organized Argelec to hold the 60% interest in Costanera. When the individual Consortium members transfer their shares in Costanera to Argelec, they will have the following voting interests in Argelec: Endesa (50.01%), Enersis/Chilectra (20%), PC/Sade (25%), and PSI Resources (through CPC) (4.99%). PSI Resources has an option under the Consortium Agreement to acquire additional interests in Costanera, by acquiring up to a total of 10% of the shares of Argelec.[3]

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[1] Costanera's primary asset is a generating facility consisting of seven gas and oil fired generating units and related equipment, having a total installed capacity of 1,260 megawatts.

[2] The initial acquisition by PSI Resources of less than a 5% interest did not require prior Commission approval under section 9(a)(2).

The other Consortium members, and their respective interests in Costanera are Empresa Nacional de Electricidad, S.A. ("Endesa") (30.006%), Enersis, S.A. and Distribuidora Chilectra Metropolitana, S.A. ("Enersis/Chilectra") (together 12%), Perez Companc, S.A.C.F.I.M.F.A. and Sade, S.A.C.C.I.F.I.M. ("PC/Sade") (together 15%). Entergy Corporation ("Entergy"), a registered holding company, has an option to acquire an ownership interest of up to approximately 6%. See *Entergy Corporation*, Holding Co. Act Release Nos. 25579 and 25607 (July 10, 1992 and August 14, 1992). Endesa will be the operator of the Costanera facility although, in the future, PSI Argentina or CPC may provide technical or operating services.

PSI Resources is also part of a consortium that recently submitted a successful bid to acquire 51% of the voting securities of a newly formed Argentine electric distribution company, Edesur, S.A. See *PSI Resources*, HCAR 25570 (July 2, 1992).

[3] In the event that Entergy and/or PSI Resources exercise their respective options, in whole or in part, the interests of Endesa and PC/Sade will be decreased accordingly.

Should the Consortium members determine not to use Argelec as an investment vehicle to hold the 60% Costanera interest, PSI Resources, through CPC, would acquire the additional shares of Costanera directly, thereby increasing its equity interest in Costanera from 2.994% to approximately 6%.

PSI Resources currently has invested approximately $4.5 million for the purchase of its 2.994% equity interest in Costanera. In addition, PSI Resources has made a loan of approximately $4 million to Costanera. Upon CPC's exercise of the option, this investment will increase by approximately $4.5 million. The application states that the maximum level of investment should not exceed $20 million.

PSI Resources intends to fund the acquisition of the additional interest in Costanera through a short-term revolving loan agreement ("Loan Agreement") with one or more financial institutions ("Lenders"). In connection with the Loan Agreement, the Lenders have required PSI Resources and PSI Energy to enter into an intercompany agreement which provides that in the event a restructuring of the holding company system is required whereby PSI Resources becomes a subsidiary of PSI Energy, and PSI Resources is then unable to repay borrowings under the Loan Agreement, PSI Energy will directly support PSI Resources' obligations under the Loan Agreement out of its available earned surplus or net profits. Other than this financial arrangement and the personnel commitment described below, there will be no transactions or financial commitments between PSI Argentina, CPC, Argelec and Costanera, on the one hand, and PSI Energy, on the other hand.

The application states that neither PSI Resources nor PSI Argentina will assume any of Costanera's liabilities. In addition, PSI Resources anticipates that only a small number of employees will be involved in providing technical and training services to Costanera, and that none of PSI Energy's senior management will be assigned on a full-time or long-term basis to such tasks. To the extent that employees of PSI Energy provide any services in connection with the Argentine operations, the time and cost of such employees will be allocated in accordance with accounting procedures already in place and subject to review by the Indiana Utility Regulatory Commission ("IURC").

As a result of the acquisition of Costanera, Argelec, CPC, PSI Argentina and PSI Resources will each be a "holding company" within the meaning of section 2(a)(7) with respect to Costanera, and Costanera will be a direct or indirect "subsidiary company" of each within the meaning of section 2(a)(8).

Applicants request orders of exemption under section 3(b) for Costanera, Argelec, CPC and PSI Argentina. The application states that none of Costanera, Argelec, CPC and PSI Argentina will derive a material part of its income, directly or indirectly, from sources within the United States, nor will any company operate, or have any subsidiary company that operates, as a public-utility company in the United States. The application also states that, if unqualified exemptions are granted, Argelec, CPC and PSI Argentina will rely upon rule 10(a)(1) to provide an exemption insofar as each is a holding company; and PSI Resources will rely on rule 11(b)(1) to provide an exemption from the approval requirements of sections 9(a)(2) and 10 to which it would otherwise be subject.

If unqualified orders of exemption under section 3(b) are not granted, the application requests orders under section 3(a)(5) exempting PSI Argentina, CPC and Argelec from all provisions of the Act, except section 9(a)(2).

The applicants estimate, based on a 6% interest in Costanera's revenues for 1990, that PSI Resources's pro forma share of such revenues will be approximately $9–10 million (or less than 1% of each of PSI Resources' and PSI Energy's gross revenues in 1991). PSI Resources states that it will continue to qualify as an exempt holding company under section 3(a)(1) after the acquisition.

Applicants have informed the IURC of the proposed transactions and will provide a letter from the IURC stating that the proposed activities do not require its prior approval.

Northeast Utilities, et al. (70–7966)

Northeast Utilities ("NU"), 107 Selden Street, Berlin, Connecticut, 06037–1616, registered holding company, and its wholly owned subsidiary, Charter Oak Energy, Inc. ("COE"), 107 Selden Street, Berlin, Connecticut, 06037–1616, have filed an application-declaration, under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By order dated May 17, 1989 (HCAR No. 24893) ("1989 Order"), the Commission authorized NU to establish COE in order to invest and participate in qualifying cogeneration facilities located throughout the nation and in qualifying small power production facilities located in the service territories of NU and the New England Power Pool. The 1989 Order also authorized NU to invest in COE up to $7.5 million per year through December 31, 1992 for purposes of financing preliminary development and administrative costs. By order dated January 29, 1992, (HCAR No. 25461) ("1992 Order"), the Commission expanded the authorization it had granted to NU in the 1989 Order to authorize COE to explore the potential for investment and participation in independent power production facilities ("IPP Facilities"). The 1992 Order specified, however, that COE was not to invest in, or participate in the construction of, IPP facilities without further Commission approval.

NU and COE now request authorization, through December 31, 1992, to establish a wholly owned subsidiary and for that subsidiary to engage in preliminary development of qualifying small power production facilities and qualifying cogeneration facilities ("Qualifying Facilities") and in IPP Facilities. NU and COE intend to incorporate COE Development Corp. ("COE Development") in Connecticut to pursue the preliminary development of Qualifying Facilities and IPP Facilities. NU and COE propose to establish COE Development to engage in such preliminary development in order to isolate the risks and potential liabilities that could arise in such activities.

COE proposes to acquire 100 shares of common stock ($1.00 par value) issued by COE Development for $10,000. COE also proposes to invest in COE Development up to $4.5 million in 1992, which funds COE will acquire pursuant to the 1992 Order.[4] COE proposes to provide the $4.5 million to COE Development through (1) additional acquisitions of capital stock, (2) capital contributions, (3) open account advances, and (4) subordinated loans. The advances and loans would be at an interest rate based on the cost of funds to NU itself but in no case in excess of the prime rate at a bank designated by NU. The term of such advances and loans would not be in excess of one year.

The application-declaration indicates that COE Development will engage in preliminary development activities in part with services directly provided by Northeast Utilities Service Company. In addition, the application-declaration states that no COE company, subsidiary, or affiliate will invest in, or participate in the construction of, IPP facilities without further Commission approval.

Allegheny Power System, Inc. (70–8046)

The Potomac Edison Company ("Potomac Edison"), 10435 Downsville Pike, Hagerstown Maryland 21740, and Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virgina 26554, both electric public-utility subsidiary companies of Allegheny Power System, Inc., a registered holding company, have filed an application-declaration under

[4] The combined spending of COE and COE Development in 1992 would not exceed $7.5 million.

sections 9(a), 10 and 12(c) of the Act and Rule 42(a) thereunder.

By orders dated May 5, 1970 (HCAR No. 16712), April 21, 1970 (HCAR No. 16688), April 30, 1970 (HCAR No. 16711) and June 8, 1976 (HCAR 19565), the Commission authorized Monongahela to issue and sell 50,000 shares of Series F preferred stock, par value $100 ("Series F") and Potomac Edison to issue and sell 50,000 shares of Series E preferred stock, par value $100 ("Series E") and 150,000 shares of Series H preferred stock, par value $100 ("Series H").

Monongahela is now proposing to redeem all 50,000 shares of its Series F, with a dividend rate of $9.64. The current optional redemption price of the Series F is $103.88 per share.

Potomac Edison is also proposing to redeem all 50,000 shares of its Series E, with a dividend rate of $9.40. The current optional redemption price of the Series E is $103.97 per share. Potomac Edison further proposes to redeem all 150,000 shares of its Series H, with a dividend rate of $9.64. The current optional redemption price of the Series H is $103.88 per share.

Monongahela and Potomac Edison propose to effect the redemptions without the issuance of senior securities or additional common equity, thereby partially reducing the equity portion of their respective capitalization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23414 Filed 9-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18969; 811-6507]

Public Funding Portfolios, Inc.; Proposed Deregistration

September 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Proposed Deregistration under the Investment Company Act of 1940 ("Act").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY: Pursuant to delegated authority, the SEC proposes to declare by order, on its own motion, that Public Funding Portfolios, Inc. (the "Fund") has ceased to be investment company under the Act.

HEARING OR NOTIFICATION OF HEARING: An order of deregistration will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on October 19, 1992. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

STATEMENT OF FACTS: The following is a summary of information regarding the Fund.

1. The Fund is an open-end non-diversified management company organized as a Maryland corporation. The Fund registered as an investment company under the Act and filed a registration statement under the Securities Act of 1933 on December 19, 1991. The registration statement did not become effective.

2. The SEC filed a complaint against the Fund in the United States District Court for the Central District of California on March 17, 1992.[1] The complaint alleged, among other things, that the Fund: (a) Violated section 13(a)(3) of the Act by acquiring assets in violation of the Fund's investment policies and restrictions; (b) violated section 17(f) of and rule 17f-2 under the Act by failing to keep its assets with a proper custodian; (c) violated section 17(g) of the Act by failing to obtain a fidelity bond; (d) violated rule 22c-1 under the Act by selling, redeeming, or repurchasing redeemable securities issued by a registered investment company at prices other than those based on the current net asset value of each security, and (e) violated section 31 of the Act by failing to keep proper books and records. The complaint also alleged that the Fund's investment adviser, Public Funding Group, Inc. (the "Adviser"), and its president, V. Thayne Whipple II, committed fraud in the offer or sale of securities in violation of section 17(a) of the Securities Act of 1933, and in connection with the purchase or sale of securities in violation of section 10(b) of the Securities Exchange Act of 1934, and with aiding and abetting the Fund in committing the violations set forth above.

[1] Securities and Exchange Commission v. Public Funding Group, Inc., *et al.*, Civil Action No. 92 1646 (C.D. Cal. filed March 17, 1992).

3. The complaint alleged the following facts. The Fund distributed its securities solely in exchange for portfolio assets. By mid-February 1992, the Fund claimed to have 24 shareholders and total assets of approximately $40 million. The portfolio assets consisted of common sock and "commercial paper" notes. None of the stock held by the Fund was traded on any U.S. stock exchange, nor were any bid or ask prices listed for them during the Fund's existence. None of the commercial paper was rated by any commercially available rating service. All of the "commercial paper" was in fact merely promissory notes that had been signed and presented to the Fund in exchange for Fund shares. Nevertheless, the Adviser calculated the value of the portfolio assets at their face amounts, thus grossly overstating the Fund's total asset value. The Fund accepted the stock and notes in exchange for Fund shares in order to allow the use of the Fund's shares by the shareholders as collateral for loans from brokerage firms. To facilitate the use of the Fund's shares as collateral, the Adviser arranged to have the daily net asset values of the Fund's shares reported to the National Association of Securities Dealers, Inc. for public quotation. Subsequently, the Fund shareholders attempted to use the Fund shares as collateral for approximately $18.6 million of margin loans from broker-dealers.

4. On March 31, 1992, the Fund, the Adviser, and Whipple consented to the entry of a judgment and permanent injunction against them. In addition to enjoining them from future violations of the securities laws as set forth in the complaint, the judgment required that the Fund be dissolved by returning the portfolio securities to the shareholders who originally exchanged such securities for shares of the Fund.

5. All of the portfolio securities except shares of IT BK Group of Companies, Inc. ("IT Bank") and Sonnergie, Inc. ("Sonnergie") were returned to the persons and entities that exchanged them for shares of the Fund. The Fund shareholders who had exchanged the securities of these two companies did not respond to letters or repeated telephone calls seeking instructions on where to send the IT Bank and Sonnergie stock certificates. When the Fund's president attempted to transfer the shares back to the Fund's shareholders through IT Bank's and Sonnergie's transfer agent, he was informed that the transfer agent records for IT Bank and Sonnergie had been sent to Italy and Germany, respectively.

6. On September 1, 1992, the Fund deposited the stock certificates of IT Bank and Sonnergie with the United States District Court for the Central District of California. Each of the remaining thirteen shareholders was mailed a notice stating that their shares of IT Bank and Sonnergie had been deposited with the court. The Fund has no remaining assets and is enjoined from engaging in any further business activities.

7. Section 8(f) of the Act allows the Commission to deregister an investment company on its own motion if it finds that the company has ceased to be an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23482 Filed 9-25-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1703]

Advisory Committee to the United States Section International Commission for the Conservation of Atlantic Tunas Partially Closed Meeting

The Advisory Committee to the United States Section International Commission for the Conservation of Atlantic Tunas (ICCAT) will meet on October 19, 1992, at the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), Second Floor Conference Room, Silver Spring Metro Center Building 2, 1335 East-West Highway, Silver Spring, Maryland. The session will be open to the interested public and will begin at 9:30 am. The Committee will review the decisions reached at the 1991 ICCAT meetings, highlight on-going scientific preparations, and identify outstanding issues for the 1992 annual ICCAT meeting.

The Advisory Committee will also meet in closed session from 9:30 a.m. to 5 p.m. on October 20, 1992. The session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the upcoming ICCAT annual meeting in Madrid, Spain, November 9–13, 1992. The members of the Advisory Committee will examine various options for the U.S. negotiating position at the November meeting, and these considerations must necessarily involve a review of classified materials. Accordingly, the determination has been made to close this portion of the meeting pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 and 5 U.S.C. 552(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Brian S. Hallman, Deputy Director, Office of Fisheries Affairs (OES/OFA), room 5806, U.S. Department of State, Washington, DC 20520-7818. Mr. Hallman can be reached by telephone on (202) 647-2335 or by FAX on (202) 647-1106.

Dated: September 15, 1992.

David A. Colson,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 92-23440 Filed 9-27-92; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended September 18, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48345.
Date filed: September 14, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0476 dated September 4, 1992; TC3 Expedited Reso 002n (US Territories).
Proposed Effective Date: October 15, 1992.

Docket Number: 48346.
Date filed: September 14, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0477 dated September 4, 1992; TC3 Expedited Resos (US Territories); r-1—002d r-2—070uu r-087rr r-4—072a r-5—085t.
Proposed Effective Date: November 1, 1992.

Docket Number: 48347.
Date filed: September 14, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0480 dated September 4, 1992; Expedited Reso 003B (US Territories).
Proposed Effective Date: January 1, 1993.

Docket Number: 48349.
Date filed: September 14, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0474 dated September 4, 1992; Expedited Resos, r-1 to 4-9; r-1—043i r-6—092f; r-2—053i r-7—092v; r-3—063i r-8—014a; r-4—065i r-9—085hh; r-5—085hh.
Proposed Effective Date: October 1, 1992.

Docket Number: 48350.
Date filed: September 14, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0475 dated September 4, 1992; Expedited Resos, r-1 to 4-41.
Proposed Effective Date: October 15, 1992.

Docket Number: 48351.
Date filed: September 14, 1992.
Parties: Members of the International Air Transport Association.
Subject: MV/CSC/027 dated July 31, 1992; Mail Vote S060—Reso 600a amendment to reflect impact of EC regulations.
Proposed Effective Date: January 1, 1993.

Docket Number: 48361.
Date filed: September 18, 1992.
Parties: Members of the International Air Transport Association.
Subject: Comp Telex—Reso 024F—Finland.
Proposed Effective Date: October 1, 1992.

Docket Number: 48362.
Date filed: September 18, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0482 dated September 8, 1992. Japan/Korea-Southwest Pacific (except UST, others), r-1 to r-9. TC3 Reso/P 0483 dated September 8, 1992, Japan/Korea-Australia, r-10 to 4-23. TC3 Reso/P 0484 dated September 8, 1992, Japan/Korea-New Zealand, r-24 to 4-23.
Proposed Effective Date: January 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-23485 Filed 9-25-92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 18, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of

the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48356.

Date filed: September 17, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 15, 1992.

Description: Application of Euro Pacific Air, Inc., pursuant to section 401(d) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in interstate and overseas charter air transportation of persons, property, and mail.

Docket Number: 48357.

Date filed: September 17, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 15, 1992.

Description: Application of Euro Pacific Air, Inc., pursuant to section 401(d) of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to engage in foreign charter air transportation of persons, property, and mail between a point or points in the United States, its territories and possessions (including the District of Columbia) and a point or points outside thereof.

Docket Number: 45185.

Date filed: September 15, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 13, 1992.

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal of the Newark-London authority in its Route 383 certificate for a period of five years.

Docket Number: 47708.

Date filed: September 17, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 1, 1992.

Description: Amendment No. 3 to the Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests authority to engage in foreign air transportation of persons, property, and mail between a point or points in the United States and point or points in Venezuela.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-23484 Filed 9-25-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-92-27]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 19, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 21, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 13203.
Petitioner: Boeing.
Sections of the FAR Affected: 14 CFR 25.807(c) (1) and (5); 25.809(f)(1); 25.813(b).
Description of Relief Sought: To amend Exemption No. 1870D to permit the carriage of up to six persons on the upper deck of Model 747-400F airplanes having an all-cargo main deck configuration.

Docket No.: 26152.
Petitioner: Sierra Academy of Aeronautics.
Sections of the FAR Affected: 14 CFR part 141, appendix F, paragraphs (C)(III)(a)(2) (i) and (ii).
Description of Relief Sought: To extend Exemption No. 5245 which allows Sierra Academy of Aeronautics to graduate students from its FAA approved Commercial Helicopter Pilot training course with 80 hours of flight instruction in helicopters and 70 hours of directed solo training in helicopters.

Docket No.: 26942.
Petitioner: Precision Airlines.
Sections of the FAR Affected: 14 CFR 135.180(a).
Description of Relief Sought: To allow Precision Airlines to phase in a Traffic Avoidance Collision System (TCAS) implementation program over a 3-year period starting in 1995 rather than having all required TCAS equipment installed by February 9, 1995. Precision proposes the following schedule: 30 percent compliance by February 9, 1995; another 30 percent compliance by February 9, 1996; and the remaining 40 percent compliance by February 9, 1997.

Docket No.: 26971.
Petitioner: United Airlines.
Sections of the FAR Affected: 14 CFR 121.314.
Description of Relief Sought: The petitioner requests a partial exemption from § 121.314 of the FAR, Amendment 121-202. In specific, the petitioner seeks to extend the compliance date to April 20, 1993, for completing re-repairs of contoured liners.

Dispositions of Petitions

Docket No.: 17145.
Petitioner: United Airlines.

Sections of the FAR Affected: 14 CFR 121.665 and 121.697(a) and (b).
Description of Relief Sought/ Disposition: To extend Exemption No. 2466, as amended, which permits United Airlines to use computerized load manifests which bear the printed name and position of the person responsible for loading the aircraft.

Grant, July 28, 1992, Exemption No. 2466H

Docket No.: 26482.
Petitioner: United Parcel Service.
Sections of the FAR Affected: 14 CFR 121.358.
Description of Relief Sought/ Disposition: To allow United Parcel Service until June 30, 1995, to install either an approved airborne windshear warning and flight guidance system, an approved airborne windshear warning and flight guidance system, an approved airborne detection and avoidance system, or an approved combination of the systems (windshear equipment) in 18 Douglas DC–8 aircraft.

Grant, September 9, 1992, Exemption No. 5520

Docket No.: 26582.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 61.3(a) and (c), 61.29(c), 63.3(a), 63.16(d), and 121.383(a)(2).
Description of Relief Sought/ Disposition: To permit the establishment of special procedures that would enable an operator to issue to its flight crewmembers, on a temporary basis, confirmation of any required crewmember certificate based upon information contained in the operator's approved record system. This procedure would serve in lieu of the FAA telegraphic certificate confirmation provided for in §§ 61.29(c) and 63.16(d) in those situations for which there is insufficient time for the airman to obtain certificate confirmation from the FAA prior to operating a scheduled flight.

Partial Grant, July 24, 1992, Exemption No. 5487

Docket No.: 26692.
Petitioner: America West Airlines, Inc. and BT Commercial Corporation.
Sections of the FAR Affected: 14 CFR 93.217 and 93.223.
Description of Relief Sought/ Disposition: To extend Exemption No. 5340A which allows BT Commercial Corporation (BT) to hold and America West Airlines, Inc. to continue to operate seven slots at O'Hare International Airport (O'Hare) and two slots at J.F.K. International Airport (J.F.K.). America West Airlines, Inc. transferred its seven slots at Chicago's O'Hare and two slots at New York's J.F.K. to BT as part of debtor-in-possession financing. BT leased those slots back to America West to operate. Under Exemption No. 5340A, these slots were not subject to the withdrawal provisions of the slot regulations, with the exception of the use-or-lose provisions of § 93.227 of the FAR. America West currently operates the subject slots in full compliance with this regulation.

Grant, September 9, 1992, Exemption No. 5518

Docket No.: 26734.
Petitioner: Sierra Industries, Inc.
Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).
Description of Relief Sought/ Disposition: To permit Sierra Industries, Inc., and the operators of its Cessna Citation 500 models (for Serial Nos. 0001 through 0349 only) that are equipped with STC No. SA8176SW and either STC Nos. SA 2172NM or SA645NW to be operated by one pilot without a second-in-command.

Grant, September 9, 1992, Exemption No. 5517

Docket No.: 26784.
Petitioner: Florida Aerial Advertising.
Sections of the FAR Affected: 14 CFR 45.29(b)(1).
Description of Relief Sought/ Disposition: To allow for the use of smaller aircraft nationality and registration markings in place of the 12-inch high markings required by the regulations.

Denial Grant, September 14, 1992, Exemption No. 5521

Docket No.: 26919.
Petitioner: Kalamazoo Aviation History Museum.
Sections of the FAR Affected: 14 CFR part 45.
Description of Relief Sought/ Disposition: To operate the museum's Ford Trimotor, model number 5-AT-C, serial number 58, with 3-inch high nationality and registration marks located on each side of the fuselage under leading edge of the horizontal stabilizer.

Grant, September 11, 1992, Exemption No. 5521

[FR Doc. 92–23484 Filed 9–25–92; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Supplemental Environmental Impact Statement; Howard County, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a final environmental impact statement will be prepared for the proposed highway project in Howard County, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. David Lawton, Planning, Research, Environment and Safety Engineer, Federal Highway Administration, The Rotunda—suite 220, 711 West 40th Street, Baltimore, Maryland 21211.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration and Howard County, will prepare a supplement to final environmental impact statement number FHWA-MD-EIS–87–04–F, dated July 12, 1989, for the proposed action involving the extension of Maryland Route 100, on new location, from west of Maryland Route 104 in Howard County to Interstate Route 95 in Howard County, Maryland a distance of approximately three (3) miles. This supplemental document is being developed as a result of proposed alignment shifts, to minimize and avoid wetland impacts, in corridors not previously evaluated in the 1989 FEIS.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. The purpose of Maryland Route 100 is to provide a controlled access east-west highway that will relieve congestion of the existing roadway network, and to provide a safe and efficient highway link that will move people, goods, and services more quickly and directly.

The alternatives under consideration include (1) taking no action and (2) constructing a six-lane divided, limited access highway on new location connecting U.S. 29 to I–95. Incorporated into and studied with the various build alternatives will be design variation of grade, alignment and structures.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest

in this proposal. A public hearing will be held in the fall of 1992. Public notice will be given of the time and place of the hearing.

The draft supplemental EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed actions and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program).

Issued on: September 15, 1992.

A.P. Barrows,

Division Administrator, Baltimore, Maryland.

[FR Doc. 92-23390 Filed 9-25-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Petition

This notice sets forth the reason for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Dr. Alan Morris, petitioned the agency on May 14, 1992, to "investigate the emergency release of motorized shoulder belts" in all vehicles equipped with automatic shoulder belts. The petition alleged that, during the course of an accident, the release buckle, which is made of plastic, can disintegrate as a result of an occupant's head striking the buckle, thereby releasing the shoulder belt. The petitioner implies that if such an event were to occur, the occupant would be exposed to excessive contact with the vehicle's interior components (e.g., the steering wheel, windshield, and dashboard) and increased potential for ejection, such as in a rollover accident. Dr. Morris also raised a concern about obscuration of vision and head impact caused by the location of the buckle release.

The agency has construed his request for an investigation as both a petition to conduct an investigation to determine whether a safety defect exists and a petition to commence a proceeding to determine whether rulemaking is appropriate regarding alleged problems with the emergency release of motorized shoulder belts.

As the basis of the petition, Dr. Morris reported a rollover accident involving a 1991 Ford Escort. The vehicle went off the road and rolled over one time. According to Dr. Morris the right front passenger struck her head on the emergency release buckle, causing the buckle to disintegrate and release the automatic shoulder belt. During a telephone conversion, Dr. Morris informed the agency that the occupant, who was ejected from the vehicle, sustained serious injuries. The occupant did not use the manual lap belt.

The location of the buckle release in the Escort is typical of vehicles equipped with a motorized automatic shoulder belt having an emergency release buckle. The buckle release is near the side of the front seat occupant's head when the belt is in use. The location of the safety belt buckle release anchorage is an important design consideration in ensuring performance of the belt system. The buckle in these vehicles is in a zone that could be contacted by the occupant's head during a violent crash, especially a rollover. Failure to use a lap belt may allow additional movement of the upper body (and head), thereby increasing the chance of head contact with various portions of the interior of the vehicle, including the buckle release, during such crashes.

The agency encourages full use of the vehicle's seat belt system. No matter what kind of automatic system the vehicle has, if it has a manual lap belt, it must be buckled for maximum protection. Occupants must use the complete system the manufacturer installed in the car and they must follow the instructions listed in the owner's manual.

To assess whether there have been instances of a buckle release due to occupant contact, the agency searched its real-world accident files that would contain such information. This search revealed no records indicating a buckle releasing during an accident in vehicles with automatic shoulder belts.

NHTSA estimates that there were over 5.3 million registered vehicles equipped with automatic shoulder belts which have emergency release buckles in the United States as of September 1, 1991. Out of these 5.3 million plus vehicles on the road, NHTSA's computerized consumer compliant system does not contain any instance, except for the petitioner's where occupant contact with the buckle during an accident allegedly caused the buckle to break and the shoulder belt to disengage. Further, NHTSA is not aware of any complaints of automatic shoulder belt buckle breakage, regardless of what might have caused the breakage.

A review of the agency's testing for compliance with Federal Motor Vehicle Safety Standard No. 208, "Occupant Crash Protection," revealed no buckle failure or belt release due to head contact with the emergency release buckle. Further, in the agency's consumer information program concerning vehicle crashworthiness, the New Care Assessment Program (NCAP), there were no reports of buckle release. In one NCAP test of a 1992 vehicle, the test dummy's head contacted the buckle release when the dummy rebounded back towards the seat after its initial forward motion. However, the buckle was not damaged and remained engaged.

Concerning visual obscuration, NHTSA has received two consumer complaints alleging visual obscuration to the side in vehicles with automatic shoulder belts. However, neither reported that an accident occurred as a result of the problem. Based on very few complaints reported and no accidents, the alleged visual obscuration caused by the emergency release buckle does not appear to present a significant safety risk.

Since no evidence of a safety-related defect trend was discovered on either of the issues included in Dr. Morris' petition, further commitment of resources does not appear to be warranted.

With respect to the petition concerning rulemaking, for the reasons cited above, it was also concluded that there is not a reasonable possibility that any amendments to NHTSA's safety standards would be issued at the conclusion of a regulatory proceeding. Therefore, the petition is denied in its entirety.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR and 1.50 and 501.8.

Issued on: September 22, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-23416 Filed 9-25-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: September 21, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0152.
Form Number: IRS Form 3115.
Type of Review: Revision.
Title: Application for Change in Accounting Method.
Description: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.
Respondents: Individuals or households, Farms, Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 6,400.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Form and recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
3115 19 hours, 51 minutes	3 hours, 38 minutes	5 hours, 20 minutes.
A 23 hours, 12 minutes	1 hour, 58 minutes	3 hours, 38 minutes.
B 4 hours, 16 minutes	1 hour, 4 minutes	2 hours, 23 minutes.
C 26 hours, 33 minutes	3 hours, 11 minutes	3 hours, 45 minutes.
D 14 hours, 21 minutes	2 hours, 41 minutes	3 hours, 2 minutes.

Frequency of Response: Annually.
Estimated Total Reporting Burden: 357,335 hours.
OMB Number: 1545-1277.
Form Number: IRS Form 1040-TEL.
Type of Review: Revision.
Title: Telefile Income Tax Return for Single Filers With No Dependents.
Description: State of Ohio 1040EZ filers will have the option of filing Form 1040-TEL, in which they will enter their tax information on a Touch-Tone telephone. IRS will use the information collected to figure the filer's tax, and refund or balance due.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 200,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 minutes.
Learning about the law or the form.	7 minutes.
Preparing the form	17 minutes.
TeleFile phone call, and copying, assembling and sending the form to the IRS.	27 minutes.

Frequency of Response: Annually.
Estimated Total Reporting Burden: 142,025 hours.
Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 92-23478 Filed 9-25-92; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 21, 1992.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should bed addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0130.
Form Number: IRS Form 1120S, Schedule D, and Schedule K-1.
Type of Review: Resubmission.
Title: U.S. Income Tax Return for an S Corporation (Form 1120S) Capital Gains and Losses and Built-In Gains (Schedule D) Shareholder's Share of Income, Credits, Deductions, etc. (Schedule K-1).
Description: Form 1120S, Schedule D (Form 1120S), and Schedule K-1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule K-1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S Corporation and the shareholders.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 1,389,600.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120S	83 hours, 9 minutes	18 hours, 38 minutes	34 hours, 27 minutes	4 hours, 1 minutes.
Schedule D (1120S)	9 hours, 5 minutes	4 hours, 13 minutes	9 hours, 13 minutes	1 hour, 20 minutes.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER—Continued

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Schedule. K-1 (1120S)	14 hours, 35 minutes	9 hours, 43 minutes	14 hours, 7 minutes	1 hour, 4 minutes.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 298,553,554 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 92–23477 Filed 9–25–92; 8:45 am]
BILLING CODE 4830–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–87]

Modification of Determination of Action Pursuant to Section 301 Concerning Canadian Exports of Softwood Lumber; Opportunity for Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of modification pursuant to section 307(a)(1)(C) of the Trade Act of 1974, as amended (Trade Act), of action concerning Canadian exports of softwood lumber; and opportunity for interested persons affected by the modification to submit written comments.

SUMMARY: On October 4, 1991, the United States Trade Representative (USTR) determined, pursuant to section 301 of the Trade Act, that certain Canadian government acts, policies, and practices relating to the termination of the Memorandum of Understanding on Trade in Softwood Lumber (MOU) are unreasonable and burden or restrict United States commerce (56 FR 50738, corrected by 56 FR 58944). After determining that action was appropriate, USTR directed the Customs Service to (1) withhold liquidation of entries of softwood lumber from Canada after October 4, 1991; (2) require importers to post bonds to cover potential 301 duties with respect to those entries; and (3) assess 301 duties upon entries from each province at the lower of the MOU rate or the subsidy rate found by the Department of Commerce (Commerce) in its parallel countervailing duty investigation. USTR expressly conditioned the assessment of 301 duties upon the issuance by both Commerce and the International Trade Commission (ITC) of affirmative final determinations in the countervailing duty investigation.

Commerce and the ITC have issued affirmative determinations, thus satisfying the conditions for the imposition of 301 duties upon the entries covered by the 301 determination (*i.e.*, entries after October 4, 1991 and before March 12, 1992, the date of Commerce's preliminary determination). In its final determination, Commerce found that imports of certain softwood lumber products from Canada were receiving countervailable subsidies of 6.51 percent *ad valorem*. This rate is applicable to all provinces and territories covered by the investigation. Because British Columbia was not subject to an export tax under the MOU, the Customs Service may liquidate entries of softwood lumber from that province without the assessment of any 301 duties. In addition, 15 companies were excluded from the countervailing duty order. The Customs Service may liquidate entries of softwood lumber from these companies without the assessment of any 301 duties.

Canada, several provinces, and the United States and Canadian industries have requested review of the Commerce and ITC determinations pursuant to chapter 19 of the Canada-United States Free Trade Agreement (CFTA). To allow for the completion of chapter 19 review, USTR has modified its 301 determination pursuant to section 307(a)(1)(C) of the Trade Act. Specifically, USTR has directed the Customs Service to notify importers of record of softwood lumber from the provinces and territories subject to a 301 duty (*i.e.*, Alberta, Manitoba, Ontario, Quebec, Saskatchewan, the Northwest Territories, and the Yukon Territory) during the period covered by the 301 determination that (1) they may request extension of liquidation pursuant to 19 U.S.C. 1504(b)(3) pending the conclusion of Chapter 19 review proceedings; (2) any request based upon the binational panel proceedings will be considered for good cause; and (3) any entries extended pursuant to such a request will be assessed 301 duties in accordance with the outcome of chapter 19 review proceedings (*i.e.*, at the lower of the applicable MOU rate or the Commerce rate at the conclusion of chapter 19 review proceedings).

DATES: The Customs Service will notify the affected importers of record as soon as possible and will extend the liquidation of particular entries upon receipt of any request pursuant to 19 U.S.C. 1504(b)(3) from the importer of record. The Customs Service will liquidate any affected entry for which no request has been received within one year of the date of entry at the lower of the 6.51 percent rate found by Commerce or the applicable MOU rate. Interested persons affected by the modification of action may submit written comments by October 30, 1992.

ADDRESSES: Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David Weiss, Deputy Assistant United States Trade Representative for North American Affairs, (202) 395–5663; or Timothy Reif, Associate General Counsel (202) 395–6800.

SUPPLEMENTARY INFORMATION: On June 5, 1986, in response to a petition filed on behalf of the United States industry, Commerce initiated a countervailing duty investigation regarding softwood lumber products from Canada. On October 22, 1986, following the issuance of a preliminary determination of injury by the ITC, Commerce published a preliminary determination estimating that subsidies of 15 percent *ad valorem* were being provided to Canadian producers of certain softwood lumber products.

On December 30, 1986, the United States and Canada signed the MOU, in which Canada agreed to impose a 15 percent export charge on certain softwood lumber products. The MOU provided, among other things, that the original charge could be reduced or eliminated with respect to lumber exported from provinces that instituted replacement measures increasing stumpage or other charges on the harvest of timber. In return for Canada's recommitments in the MOU (and the

Administration's use of section 301, as described below), the United States lumber industry withdrew its petition and commerce terminated the countervailing duty investigation.

On the same date, the President took action pursuant to section 301 of the Trade Act to ensure that the objectives and commitments of the MOU were fulfilled (52 FR 231, 233). In particular, the President determined that the inability of the Government of Canada to collect export charges during an interim period following the signing of the MOU constituted a burden and restriction upon United States commerce. Accordingly, the President proclaimed an increase in rates of duty on softwood lumber products from Canada until the export charge required by the MOU became effective.

On September 3, 1991, the Government of Canada announced that it would terminate the MOU in 30 days. Thus, as of October 4, 1991, Canada terminated the MOU and ceased collecting export charges on softwood lumber products. Consequently, the United States, which in December 1986 had terminated its countervailing duty investigation in reliance upon Canada's undertakings in the MOU, was denied the offset that had been provided by Canadian export charges against possible injurious Canadian subsidies.

On October 4, 1991, in response to Canada's termination of the MOU, Commerce initiated a new countervailing duty investigation. Because of the limited notice provided by Canada prior to termination of the MOU, and the length of time required to complete a preliminary subsidy investigation, Commerce was unable to impose interim protective measures during the period between the termination of the MOU and the issuance of a new preliminary determination, which, if affirmative, would require importers to post bonds or cash deposits to cover estimated countervailing duties.

Also on October 4, 1991, USTR determined that Canada's acts, policies, and practices in terminating the MOU were unreasonable and burdened or restricted United States commerce. USTR further determined that action was appropriate pursuant to section 304 (1) To restore and maintain the *status quo* pending the issuance of the preliminary countervailing duty determination; and (2) if warranted, to impose duties to offset the effects of any subsidies found in that investigation. These determinations were made at the specific direction of the President, after consultations with the Government of Canada failed to result in a mutually satisfactory solution.

In the 301 determination, USTR instructed the Customs Service to withhold liquidation of Canadian lumber entered between the termination of the MOU and the issuance of Commerce's preliminary determination. USTR also instructed the Customs Service to assess 301 duties on the entries covered by the 301 determination if Commerce and the ITC issued final affirmative determinations in the countervailing duty investigation. Any 301 duties were to be based upon the lower of the MOU rate or the rate determined in the countervailing duty investigation.

On March 12, 1992, Commerce issued its preliminary determination, and the interim measures imposed pursuant to the countervailing duty law superseded those imposed pursuant to section 301. Both Commerce and the ITC subsequently issued final affirmative determinations. Thus, the preconditions for the assessment of 301 duties have been satisfied.

In its final determination, Commerce found that imports of certain softwood lumber products from Canada were receiving countervailable subsidies of 6.51 percent *ad valorem*. This rate is applicable to all provinces and territories covered by the investigation. As noted previously, the 301 determination directed Customs to assess 301 duties at the lower of the provincial rates applicable under the MOU or those found by commerce in the countervailing duty investigation. Because British Columbia was not subject to an export charge under the MOU, entries of softwood lumber from that province may be liquidated without the assessment of any 301 duties. In addition, 15 companies were excluded from the countervailing duty order. The Customs Service may liquidate entries of softwood lumber from these companies without the assessment of any 301 duties.

Exports of softwood lumber from the remaining provinces (*i.e.*, Alberta, Manitoba, Ontario, Quebec, Saskatchewan, the Northwest Territories, and the Yukon Territory) were subject to an export charge under the MOU. Under the MOU, Quebec's export tax rate was 6.2 percent *ad valorem* through October 31, 1991, and 3.1 percent *ad valorem* thereafter. Alberta, Manitoba, Ontario, Saskatchewan, the Northwest Territories and the Yukon Territory were subject to the full 15 percent *ad valorem* export tax throughout the MOU period. Thus, in the absence of any modification to the 301 determination, entries from these provinces during the period covered by the 301 determination would be assessed 301 duties at the lower of the 6.51 percent *ad valorem* found by Commerce or the applicable rate under the MOU.

The Government of Canada, various provinces, and the Canadian lumber industry have requested review of the Commerce and ITC determinations pursuant to chapter 19 of the CFTA. Additionally, the United States industry has challenged Commerce's determination, contending that it understates the level of Canadian subsidies. The chapter 19 proceedings could result in an increase or decrease in the amount of countervailing duties imposed upon the entries covered by that investigation.

Accordingly, USTR has modified its 301 determination pursuant to section 307 of the Trade Act to allow for the completion of chapter 19 proceedings. Section 307(a)(1)(C) authorizes the USTR to modify any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken pursuant to section 301 if such action is no longer appropriate. After consulting with representatives of the domestic industry and the Government of Canada, USTR has decided that the 301 determination should be modified to allow for the extension of liquidation of entries covered by the 301 determination that could be affected by the chapter 19 proceedings.

Specifically, USTR has directed the Customs Service to notify importers of record of softwood lumber during the period covered by the 301 determination (*i.e.*, October 4, 1991 through March 12, 1992) that (1) they may request extension of liquidation pursuant to 19 U.S.C. 1504(b)(3) pending the outcome of chapter 19 proceedings; (2) any request based upon the pendency of chapter 19 proceedings will be considered for good cause; and (3) any entries extended pursuant to such a request will be assessed 301 duties in accordance with the outcome of chapter 19 proceedings (*i.e.*, at the lower of the applicable MOU rate or the Commerce rate at the conclusion of chapter 19 proceedings). Importers shall be informed that the results of the chapter 19 proceedings may be to increase, decrease, or eliminate the 301 duty to be assessed and that the proceedings may take a year or more to complete.

Opportunity for Comment

Section 307(a)(2) requires USTR to provide an opportunity for comment by interested persons affected by a

modification of action concerning the effects of the modification and whether the modification is appropriate. Accordingly, all interested persons affected by this modification may submit written comments concerning the modification. USTR will consider any comments submitted by such persons in determining whether any further modifications may be necessary.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b). Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR, 600 17th Street NW., Washington, DC 20506. All comments should be submitted by October 30, 1992.

Comments will be placed in a file (Docket No. 301–87) open to public inspection pursuant to 15 CFR 2006.13 except for confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of the 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the docket, which is open to public inspection.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

[FR Doc. 92–23467 Filed 9–25–92; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 535–7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before October 28, 1992.

Dated: September 11, 1992.

By direction of the Secretary.

Donald R. Howell,

Chief, Information Management Division.

New Collection

1. Epidemiological, Clinical, and Psychosocial Study of Post-Traumatic Stress Disorders Among Selected Ethno-Cultural Minority Vietnam Era and Theater Veterans VA Form 10–20933A, B and C.

2. The purpose of this study is to determine the prevalence for Post-Traumatic Stress Disorders (PTSD) among Native Hawaiian and Japanese Americans era and theater veterans; the patterns of PTSD expression and experience; and the perception and evaluation of the treatments received for PTSD and non-PTSD, as well as the barriers to seeking and obtaining care.

3. Individuals or households.

4. 5,180 hours.

5. 5 hours.

6. Non-recurring.

7. 1,036 respondents.

[FR Doc. 92–23415 Filed 9–25–92; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Cemeteries and Memorials; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. appendix, the Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held on October 20, 1992.

The First Session of the meeting will begin at 8 a.m. in the Shoreway Acres Inn, Shore Street, Falmouth, Massachusetts 02541. Items to be discussed include, but are not limited to, expansion plans, the state cemetery grant program, memorialization and eligibility policy. The meeting will be open to the public up to the seating capacity, which is about 20 persons. The Second Session of the meeting will begin at 2 p.m. at the Massachusetts National Cemetery, Bourne, Massachusetts 02532. This session will be open to the public. Those wishing to attend should contact Mr. Terry Glaser, Special Assistant to the Director, National Cemetery System, [phone (202) 535–7819] not later than 12 noon, EDT October 13, 1992.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should write to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Letters should indicate the subject matter they want to discuss. Oral presentations will be limited to 10 minutes in duration. Those wishing to submit written statements to the Committee must also mail or otherwise deliver them to the Director, National Cemetery System.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Director, National Cemetery System by 12 noon EDT October 13, 1992. Oral statements will be heard only between 11:30 a.m. and 12 noon, October 20, 1992.

Dated: September 21, 1992.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–23478 Filed 9–25–92; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Rehabilitation; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Department of Veterans Affairs Veterans' Advisory Committee on Rehabilitation has been renewed for a 2-year period beginning September 17, 1992, through September 17, 1994.

Dated: September 17, 1992.

By direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–23479 Filed 9–25–92; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 that a

subcommittee meeting of the Advisory Committee on Women Veterans will be held on October 9, 1992, room 322, 1825 K Street, NW., Washington, DC. The purpose of the subcommittee meeting is to review the research protocol for the Study of Reproductive Health Outcomes Among Women Vietnam Veterans. The subcommittee will address such issues as study design, questionnaire design and feasibility of the main study.

The subcommittee will convene on October 9 from 10 a.m. to 3 p.m. and all sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Barbara Brandau, Committee Coordinator, Department of Veterans Affairs (phone 202/535-7571) prior to October 2, 1992.

Dated: September 21, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-23480 Filed 9-25-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 188
Monday, September 28, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Closed Meeting

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: September 30, 1992, 9:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Northwest Pipeline Corporation, Docket Nos. IN90-1-000, CP89-304-000 and CP89-305-000.

(2) Indicated Shippers v. El Paso Natural Gas Company, Docket Nos. CP91-732-000 and CP88-332-010.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

Dated: September 23, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23540 Filed 9-24-92; 9:13am]

BILLING CODE 6717-01-M

Corrections

Federal Register
Vol. 57, No. 188
Monday, September 28, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1145

[Ex parte No. 394 (Sub-No.10)]

Railroad Rates on Recyclables; Exemptions

Correction

In proposed rule document 92–21663 beginning on page 41122, in the issue of Wednesday September 9, 1992, make the following correction:

§ 1145.9 [Corrected]

1. On page 41123, in the second column, in § 1145.9, in the section heading "[Amended]" should read "Exemptions".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–AGL–6]

Proposed Alteration to VOR Federal Airways; MI

Correction

In proposed rule document 92–19732 beginning on page 37491 in the issue of Wednesday, August 19, 1992, make the following correction:

§ 71.1 [Corrected]

1. On page 37492, in the second column, under § 71.1, in the second paragraph, under V–116, in the seventh line, "890°" should read "089°"

2. On the same page, in the same column under V–221, in the fourth line, "225°" should read "255°".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 92–AWP–13]

Proposed Establishment of Temporary Restricted Area R–2540; Capay, CA

Correction

In proposed rule document 92–19731 beginning on page 37493, in the issue of Wednesday, August 19, 1992, make the following correction:

§ 73.25 [Corrected]

1. On page 37494, in the third column, under § 73.25, in the third paragraph, in the third line, the year "1922" should read "1992".

BILLING CODE 1505–01–D

federal register

Monday
September 28, 1992

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule will permit taking of designated species during the 1992–93 season.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1992

On May 8, 1992, the Service published for public comment in the **Federal Register** (57 FR 19865) a proposal to amend 50 CFR part 20, with comment periods ending July 20, 1992, for early-season proposals and August 31, 1992, for late-season proposals. On June 19, 1992, the Service published for public comment a second document (57 FR 27672) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 25, 1992, a public hearing was held in Washington, DC, as announced in the May 8 and June 19 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 10, 1992, the Service published in the **Federal Register** (57 FR 30884) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1992–93 season. On August 6, 1992, a public hearing was held in Washington, DC, as announced in the **Federal Registers** of May 8, June 19, and July 10, 1992, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 21, 1992, the Service published a fourth document (57 FR 38202) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1992–93. The fifth document in the series, published August 21, 1992 (57 FR 38215), dealt specifically with proposed frameworks for the 1992–93 late-season migratory bird hunting regulations. On August 27, 1992, the Service published in the **Federal Register** (57 FR 39072) a sixth document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On September 22, 1992, the Service published a seventh document in the **Federal Register** (57 FR 43856), final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1992–93. The final rule described here is the eighth in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20 to set hunting seasons, hours, areas, and limits for species subject to late-season regulations and those early-seasons that were previously deferred.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options were considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1992." Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

On July 2, 1992, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the May 8 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management at the address indicated under the caption **ADDRESSES**. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 21, 1992 (57 FR 38202).

Authorship

The primary authors of this rule are David F. Caithamer and William O. Vogel, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 23, 1992.

Mike Hayden,

Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K is amended as follows.

1. The authority citation for part 20 is revised to read as follows:

Authority: Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703–711), and the Fish and Wildlife Improvement Act of November 8, 1978, as amended, (16 U.S.C. 712).

BILLING CODE 4310-55-F

Note - The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.104 is amended as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the Federal Register on August 21, 1992, (57 FR 38202) and September 22, 1992, (57 FR 43856).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

NOTE: The following seasons are in addition to the seasons published previously in the August 27, 1992, Federal Register (57 FR 39072).

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	5 (3)	8
Possession limit	25 (1)	30 (2)	10 (3)	16
MISSISSIPPI FLYWAY				
. . . . .				
Tennessee				
Reelfoot Zone	Nov. 14-Nov. 15 & Dec. 12-Jan. 8	Closed	Oct. 10-Dec. 13	Nov. 14-Feb. 28
State Zone	Dec. 5-Dec. 7 & Dec. 19-Jan. 14	Closed	Oct. 10-Dec. 13	Nov. 14-Feb. 28
Wisconsin				
North Zone	Oct. 3-Oct. 11 & Oct. 17-Nov. 6	Closed	Sept. 12-Nov 15	Oct. 3-Oct. 11 & Oct. 17-Nov. 6
South Zone	Oct. 3-Oct. 6 & Oct. 14-Nov. 8	Closed	Sept. 12-Nov. 15	Oct. 3-Oct. 6 & Oct. 14-Nov. 8
CENTRAL FLYWAY				
. . . . .				
Texas	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 28-Jan. 31	Oct. 24-Feb. 7
. . . . .				
PACIFIC FLYWAY				
Arizona (13)				
North Zone	Closed	Closed	Closed	Oct. 9-Dec. 6
South Zone	Closed	Closed	Closed	Oct. 9-Oct. 18 & Nov. 16-Jan. 3
California	Closed	Closed	Closed	Oct. 3-Jan. 17
. . . . .				
Nevada				
Clark County	Closed	Closed	Closed	Nov. 21-Jan. 17
Remainder of State	Closed	Closed	Closed	Nov. 14-Dec. 13
New Mexico (10)	Oct. 3-Oct. 18 & Nov. 29-Jan. 10	Closed	Closed	Oct. 3-Oct. 18 & Nov. 29-Jan. 10
Oregon	Closed	Closed	Closed	Oct. 10-Jan 3
Utah				
Zone 1	Closed	Closed	Closed	Oct. 3-Nov. 30
Zone 2	Closed	Closed	Closed	Nov. 6-Jan. 3
Washington				
East Zone	Closed	Closed	Closed	Oct. 17-Oct. 25 & Nov. 15-Jan. 10
West Zone	Closed	Closed	Closed	Oct. 17-Oct. 25 & Nov. 15-Jan. 3
. . . . .				

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, the limits for clapper and king rails are 10 daily and 20 in possession.
(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

* * * * *

(10) In New Mexico, the rail limits are 10 daily and 10 in possession.

* * * * *

(13) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

3. Section 20.105 paragraph (a) is amended, paragraph (b) is revised, and paragraph (e) is added to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the Federal Register on August 21, 1992, (57 FR 38202) and September 22, 1992, (57 FR 43856).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

(a) Common Moorhens and Purple Gallinules
(Atlantic, Mississippi, and Central Flyways)

NOTE: The following seasons are in addition to the seasons published previously in the August 27, 1992, Federal Register (57 FR 39072). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season Dates	Limits: Bag	Limits: Possession
ATLANTIC FLYWAY			
	* * * * *		
Georgia	Nov. 26-Nov. 29 &	15	30
	Dec. 16-Jan. 10	15	30
	* * * * *		
Virginia	Oct. 7-Oct. 10 &	15	30
	Nov. 25-Nov. 28 &	15	30
	Dec. 26-Jan. 16	15	30
West Virginia			
Zone 1	Oct. 3-Oct. 10 &	15	30
	Dec. 30-Jan. 20	15	30
Zone 2	Oct. 3-Oct. 10 &	15	30
	Oct. 24-Nov. 14	15	30
MISSISSIPPI FLYWAY			
	* * * * *		
Michigan			
North Zone	Oct. 3-Nov. 1	15	30
Middle Zone	Oct. 10-Nov. 8	15	30
South Zone	Oct. 17-Nov. 12 &	15	30
	Nov. 27-Nov. 29	15	30
Minnesota (2)	Oct. 3-Oct. 11 &	15	30
	Oct. 15-Nov. 1 &	15	30
	Nov. 6-Nov. [illegible]	15	30
	* * * * *		
Tennessee			
Reelfoot Zone	Nov. 14-Nov. 15 &	15	30
	Dec. 12-Jan. 8	15	30
State Zone	Dec. 5-Dec. 7 &	15	30
	Dec. 19-Jan. 14	15	30

	Season Dates	Limits Bag	Possession
Wisconsin			
North Zone	Oct. 3-Oct. 11 & Oct. 17-Nov. 6	5 5	10 10
South Zone	Oct. 3-Oct. 6 & Oct. 14-Nov. 8	5 5	10 10
PACIFIC FLYWAY			
All States	Seasons are in aggregate with coots and listed in paragraph (e).		

* * * * *

(2) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots, moorhens, and gallinules in the aggregate.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway)

Within the special sea duck areas, the daily bag limit is 7 and the possession limit is 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Possession
Connecticut	Oct. 2-Jan. 16	7	14
Delaware	Sept. 26-Jan. 9	7	14
Georgia	Nov. 26-Jan. 10	7	14
Maine	Oct. 5-Jan. 19	7	14
Maryland	Oct. 9-Jan. 20	5	10
Massachusetts	Oct. 6-Jan. 20	7	14
New Hampshire	Sept. 15-Dec. 30	7	14
New Jersey	Oct. 2-Jan. 16	7	14
New York	Oct. 6-Jan. 20	7	14
North Carolina	Oct. 6-Jan. 20	7	14
Rhode Island	Oct. 9-Jan. 16	7	14
South Carolina	Oct. 6-Jan. 20	7	14
Virginia	Oct. 6-Jan. 20	7	14

Note: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(c) Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens and Purple Gallinules

ATLANTIC FLYWAY

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, and brant.

Flywaywide Restrictions

Duck Limits: The daily bag limit may include no more than 1 female mallard, 1 pintail, 1 black duck, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession

	Season Dates	Limits Bag	Limits Possession
Connecticut			
Ducks (1):			
North Zone	Oct. 17-Oct. 24 &	3	6
	Nov. 28-Dec. 19	3	6
South Zone	Oct. 17 only &	3	6
	Dec. 19-Jan. 16	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 17-Oct. 24 &	1	2
	Oct. 26-Nov. 7 &	2	4
	Nov. 21-Dec 31 &	2	4
	Jan. 1-Jan. 7	3	6
South Zone	Oct. 17-Oct. 24 &	1	2
	Nov. 21-Dec. 31 &	2	4
	Jan. 1-Jan. 14	3	6
(special season)	Jan. 15-Feb. 15	State Permit Only	
Light Geese	Oct. 17-Jan. 30	5	10
Brant:			
North Zone	Oct. 17-Oct. 24 &	2	4
	Nov. 28-Jan. 8	2	4
South Zone	Oct. 17-Oct. 24 &	2	4
	Dec. 10-Jan. 20	2	4
Delaware			
Ducks	Nov. 4-Nov. 7 &	3	6
	Nov. 23-Nov. 28 &	3	6
	Dec. 14-Jan. 2	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Nov. 23-Nov. 28 &	1	2
	Dec. 12-Jan. 14	1	2
Light Geese:			
Bombay Hook NWR	Nov. 8-Nov. 22	5	10
Statewide	Oct. 14-Nov. 7 &	5	10
	Nov. 23-Jan. 14 &	5	10
	Jan. 28-Feb. 10	5	10
Brant	Nov. 23-Nov. 28 &	2	4
	Dec. 4-Jan. 16	2	4
Florida			
Ducks	Nov. 25-Nov. 29 &	3	6
	Dec. 19-Jan. 12	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese	Closed	--	--

	Season Dates	Limits Bag	Limits Possession
Georgia			
Ducks	Nov. 26-Nov. 29 &	3	6
	Dec. 16-Jan. 10	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese (special area)	Jan. 14-Jan. 17 &	State Permit Only	
	Jan. 28-Jan. 31	State Permit Only	
Brant	Closed	--	--
Maine			
Ducks:			
North Zone	Oct. 5-Oct. 23 &	3	6
	Nov. 11-Nov. 21	3	6
South Zone	Oct. 5-Oct. 17 &	3	6
	Nov. 26-Dec. 12	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 1-Oct. 15 &	1	2
	Oct. 16-Nov. 21 &	2	4
	Nov. 25-Dec. 12	2	4
Light Geese	Oct. 1-Jan. 15	5	10
Brant	Oct. 1-Nov. 19	2	4
Maryland			
Ducks (2)	Oct. 16-Oct. 17 &	3	6
	Nov. 26-Nov. 27 &	3	6
	Dec. 16-Jan. 9	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Nov. 16-Nov. 27 &	1	2
	Dec. 4-Dec. 11 &	1	2
	Dec. 12-Jan. 20	2	4
Light Geese	Oct. 24-Nov. 27 &	4	8
	Dec. 1-Feb. 10	4	8
Brant	Nov. 16-Nov. 27 &	2	4
	Dec. 15-Jan. 20	2	4

	Season Dates	Limits Bag	Limits Possession
Massachusetts			
Ducks:			
Western Zone	Oct. 9-Nov. 7	3	6
Central Zone	Oct. 13-Oct. 24 & Nov. 11-Nov. 28	3	6
Coastal Zone	Oct. 19-Oct. 28 & Dec. 14-Jan. 2	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Western Zone	Oct. 9-Oct. 23 & Oct. 24-Nov. 28 & Dec. 8-Dec. 26	1 2 2	2 4 4
Central Zone	Oct. 13-Oct. 24 & Nov. 11-Dec. 31 & Jan. 1-Jan. 7	1 2 3	2 4 6
(special season) Coastal Zone	Jan. 21-Feb. 5	5	10
	Oct. 19-Oct. 31 & Nov. 25-Dec. 31 & Jan. 1-Jan. 20	1 2 3	2 4 6
(special season)	Jan. 21-Feb. 5	5	10
Light Geese:			
Western Zone	Oct. 9-Nov. 28 & Dec. 8-Dec. 26	5 5	10 10
Central Zone	Oct. 13-Oct. 24 & Nov. 11-Jan. 7	5 5	10 10
Coastal Zone	Oct. 19-Oct. 31 & Nov. 25-Jan. 20	5 5	10 10
Brant:			
Berkshire & Central Zone	Closed		
Coastal Zone	Nov. 25-Jan. 13	2	4
New Hampshire			
Ducks:			
Inland Zone	Oct. 7-Oct. 25 & Nov. 25-Dec. 5	3 3	6 6
Coastal Zone	Oct. 8-Oct. 11 & Nov. 25-Dec. 20	3 3	6 6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Inland Zone	Oct. 7-Oct. 15 & Oct. 16-Dec. 15	1 2	2 4
Coastal Zone	Oct. 18-Oct. 25 & Oct. 26-Dec. 26	1 2	2 4
Light Geese:			
Inland Zone	Oct. 7-Dec. 15	5	10
Coastal Zone	Oct. 18-Dec. 26	5	10
Brant:			
Inland Zone	Oct. 7-Nov. 25	2	4
Coastal Zone	Oct. 18-Dec. 6	2	4

	Season Dates	Limits Bag	Limits Possession
New Jersey			
Ducks:			
North Zone	Oct. 17-Oct. 24 & Nov. 23-Dec. 14	3 3	6 6
South Zone	Oct. 24-Oct. 31 & Nov. 26-Dec. 17	3 3	6 6
Coastal Zone	Oct. 31-Nov. 7 & Dec. 12-Jan. 2	3 3	6 6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 17-Oct. 24 & Nov. 23-Dec. 31 & Jan. 1-Jan. 23	1 2 3	2 4 6
South Zone	Oct. 24-Oct. 31 & Nov. 26-Dec. 31 & Jan. 1-Jan. 26	1 2 3	2 4 6
Coastal Zone	Oct. 31-Nov. 7 & Nov. 30-Dec. 31 & Jan. 1-Jan. 30	1 2 3	2 4 6
Light Geese			
North Zone	Oct. 17-Jan. 30	5	10
South Zone	Oct. 24-Nov. 21 & Nov. 26-Feb. 10	5 5	10 10
Coastal Zone	Oct. 17-Jan. 30	5	10
Brant			
North Zone	Oct. 17-Nov. 13 & Nov. 23-Dec. 14	2 2	4 4
South Zone	Oct. 24-Nov. 20 & Nov. 26-Dec. 17	2 2	4 4
Coastal Zone	Oct. 31-Nov. 27 & Dec. 12-Jan. 2	2 2	4 4
New York			
Ducks			
Long Island Zone	Nov. 20-Nov. 29 & Dec. 22-Jan. 10	3 3	6 6
Lake Champlain Zone	Oct. 7-Oct. 11 & Nov. 7-Dec. 1	3 3	6 6
Northeastern Zone	Oct. 3-Oct. 17 & Oct. 31-Nov. 14	3 3	6 6
Southeastern Zone	Oct. 10-Oct. 18 & Nov. 21-Dec. 11	3 3	6 6
Western Zone	Oct. 8-Oct. 15 & Nov. 1-Nov. 22	3 3	6 6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30

	Season Dates	Limits Bag	Limits Possession
New York (cont.)			
Canada Geese:			
Long Island Zone	Nov. 20-Nov. 27 &	1	2
	Nov. 28-Nov. 29 &	2	4
	Dec. 3-Dec. 31 &	2	4
	Jan. 1-Jan. 31	3	6
Lake Champlain Zone	Oct. 7-Oct. 15 &	1	2
	Oct. 16-Dec. 15	2	4
Northeastern Zone	Oct. 3-Oct. 15 &	1	2
	Oct. 16-Dec. 11	2	4
Southeastern Zone	Oct. 21-Nov. 1 &	1	2
	Nov. 21-Dec. 31 &	2	4
	Jan. 1-Jan. 17	3	6
Western Zone	Nov. 1-Nov. 15 &	1	2
	Nov. 16-Nov. 30 &	2	4
	Dec. 12-Dec. 31 &	2	4
	Jan. 1-Jan. 20	3	6
Light Geese:			
Long Island Zone	Nov. 20-Nov. 29 &	5	10
	Dec. 3-Jan. 31	5	10
Lake Champlain Zone	Oct. 7-Jan. 21	5	10
Northeastern Zone	Oct. 3-Jan. 17	5	10
Southeastern Zone	Oct. 10-Jan. 17	5	10
Western Zone	Oct. 8-Jan. 20	5	10
Brant:			
Long Island Zone	Nov. 20-Nov. 29 &	2	4
	Dec. 3-Jan. 11	2	4
Lake Champlain Zone	Oct. 7-Nov. 25	2	4
Northeastern Zone	Oct. 3-Nov. 21	2	4
Southeastern Zone	Oct. 10-Nov. 28	2	4
Western Zone	Oct. 8-Nov. 26	2	4
North Carolina			
Ducks	Oct. 1-Oct. 3 &	3	6
	Nov. 26-Nov. 28 &	3	6
	Dec. 28-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
East Zone	Closed		
West Zone	Closed	--	--
Light Geese	Nov. 2-Feb. 10	5	10
Brant	Nov. 26-Nov. 28 &	2	4
	Dec. 5-Jan. 20	2	4

	Season Dates	Limits Bag	Limits Possession
Pennsylvania			
Ducks:			
North Zone	Oct. 10-Oct. 24 &	3	6
	Nov. 9-Nov. 23	3	6
South Zone	Oct. 26-Oct. 31 &	3	6
	Nov. 23-Dec. 16	3	6
Northwest Zone	Oct. 12-Oct. 17 &	3	6
	Nov. 9-Dec. 2	3	6
Lake Erie Zone	Nov. 9-Nov. 28 &	3	6
	Dec. 17-Dec. 26	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese			
North Zone	Oct. 10-Oct. 17 &	1	2
	Oct. 19-Dec. 18	2	4
South Zone (3)	Oct. 26-Nov. 2 &	1	2
	Nov. 16-Dec. 31	2	4
	Jan. 1-Jan. 16	3	6
(special season)	Jan. 20-Feb. 5	5	10
Erie, Mercer, and Butler Counties	Oct. 12-Oct. 19 &	1	2
	Oct. 20-Oct. 24 &	2	4
	Nov. 9-Jan. 4	2	4
Crawford County	Oct. 12-Dec. 19	1	2
Light Geese	Oct. 16-Jan. 30	5	10
Brant	Nov. 23-Jan. 11	2	4
Rhode Island			
Ducks	Oct. 9-Oct. 11 &	3	6
	Nov. 25-Nov. 29 &	3	6
	Dec. 14-Jan. 4	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 9-Oct. 11 &	1	2
	Nov. 25-Nov. 29 &	1	2
	Nov. 30-Dec. 31 &	2	4
	Jan. 1-Jan. 30	3	6
Light Geese	Oct. 9-Oct. 11 &	5	10
	Nov. 25-Jan. 30	5	10
Brant	Nov. 25-Jan. 13	2	4
South Carolina			
Ducks (4)	Nov. 25-Nov. 28 &	3	6
	Dec. 26-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese			
(special season)	Jan. 21-Jan. 23	State Permit Only	
Light Geese	Nov. 25-Nov. 28 &	5	10
	Dec. 26-Jan. 20	5	10
Brant	Nov. 25-Nov. 28 &	2	4
	Dec. 26-Jan. 20	2	4

	Season Dates	Limits Bag	Possession
Vermont			
Ducks:			
Lake Champlain Zone	Oct. 7-Oct. 11 &	3	6
	Nov. 7-Dec. 1	3	6
Interior Zone	Oct. 7-Nov. 1 &	3	6
	Nov. 26-Nov. 29	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese (5)	Oct. 7-Oct. 15 &	1	2
	Oct. 16-Dec. 15	2	4
Light Geese	Oct. 7-Jan. 21	5	10
Brant	Oct. 7-Nov. 25	2	4
Virginia			
Ducks	Oct. 7-Oct. 10 &	3	6
	Nov. 25-Nov. 28 &	3	6
	Dec. 26-Jan. 16	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Back Bay Area	Closed	--	--
Remainder of State	Nov. 16-Dec. 5 &	1	2
	Dec. 7-Dec. 8 &	2	4
	Dec. 14-Jan. 20	2	4
Light Geese	Oct. 26-Oct. 31 &	5	10
	Nov. 2-Feb. 10	5	10
Brant	Nov. 30-Dec. 19 &	2	4
	Dec. 21-Dec. 26 &	2	4
	Dec. 28-Jan. 20	2	4
West Virginia			
Ducks:			
Zone 1	Oct. 3-Oct. 10 &	3	6
	Dec. 30-Jan. 20	3	6
Zone 2	Oct. 3-Oct. 10 &	3	6
	Oct. 24-Nov. 14	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Zone 1	Oct. 1-Oct. 10 &	3	6
	Nov. 23-Jan. 20	3	6
Zone 2	Oct. 1-Nov. 16 &	3	6
	Dec. 29-Jan. 20	3	6
Light Geese:			
Zone 1	Oct. 1-Oct. 10 &	5	10
	Nov. 23-Jan. 20	5	10
Zone 2	Oct. 1-Nov. 16 &	5	10
	Dec. 29-Jan. 20	5	10
Brant	Dec. 2-Jan. 20	2	4

(1) In Connecticut, the season is closed for black ducks during October 17 through October 24 in the North Zone and on October 17 in the South Zone.
(2) In Maryland, the daily bag limit may include no more than 1 redhead; and the black duck season is closed October 16 through October 17.
(3) In Pennsylvania, the special season will only be held along portions of the Susquehanna and Juniata Rivers. See State regulations for details.
(4) In South Carolina, the bag limit of 3 may include no more than 1 female mallard or 1 black duck or 1 mottled duck.
(5) In Vermont, a permit is required for the Dead Creek Goose Management Area in the town of Addison.

MISSISSIPPI FLYWAY

Definitions

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, and brant.

Flywaywide Restrictions

Duck Limits: The daily bag limit may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead. The possession limit is twice the daily bag limit.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits Bag	Possession
Alabama			
Ducks:			
North Zone	Dec. 17-Jan. 3 &	3	6
	Jan. 9-Jan. 20	3	6
South Zone	Nov. 19-Nov. 22 &	3	6
	Dec. 24-Jan. 18	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		5	5
Canada or White-fronted:			
North Zone	Dec. 12-Jan. 30	2	4
South Zone	Nov. 19-Nov. 22 &	2	4
	Dec. 16-Jan. 30	2	4
Light Geese and Brant	Same as for Canada geese	5	5

	Season Dates	Limits Bag	Limits Possession
Arkansas			
Ducks	Nov. 21-Nov. 29 &	3	6
	Dec. 12-Dec. 23 &	3	6
	Dec. 26-Jan. 3	3	6
	Same as for ducks	5	10
Mergansers	Same as for ducks	15	30
Coots		7	14
Geese:			
Canada	Jan. 9-Jan. 31	2	4
East Zone	Jan. 4-Jan. 17	1	2
West Zone	Nov. 21-Jan. 29	2	4
White-fronted	Nov. 21-Jan. 29	7	14
Brant	Nov. 21-Feb. 8	7	14
Light Geese			
Illinois			
Ducks:			
North Zone	Oct. 17-Nov. 15	3	6
Central Zone	Oct. 31-Nov. 29	3	6
South Zone	Nov. 14-Dec. 13	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese (1):		7	14
Canada (2):			
North Zone			
Northeastern Zone	Oct. 3-Oct. 11 &	2	4
	Oct. 17-Jan. 3	2	4
Remainder of North Zone	Oct. 17-Jan. 3	2	4
Central Zone			
Northeastern Zone	Oct. 3-Oct. 11 &	2	4
	Oct. 31-Jan. 17	2	4
Remainder of Central Zone	Oct. 31-Jan. 17	2	4
South Zone:			
Southern Illinois Quota Zone (2)	Nov. 14-Jan. 31	2	10
Rend Lake Quota Zone (2)	Nov. 14-Jan. 31	2	10
Remainder of South Zone	Nov. 14-Jan. 31	2	4
White-fronted and Brant:			
North Zone	Oct. 17-Dec. 25	2	4
Central Zone	Oct. 31-Jan. 8	2	4
South Zone	Nov. 14-Jan. 22	2	4
Light Geese:			
North Zone	Oct. 17-Jan. 3	7	14
Central Zone	Oct. 31-Jan. 17	7	14
South Zone	Nov. 14-Jan. 31	7	14

	Season Dates	Limits Bag	Limits Possession
Indiana			
Ducks:			
North Zone	Oct. 17-Oct. 19 &	3	6
	Nov. 13-Dec. 9	3	6
South Zone	Oct. 30-Nov. 1 &	3	6
	Dec. 5-Dec. 31	3	6
Ohio River Zone	Nov. 26-Nov. 29 &	3	6
	Dec. 16-Jan. 10	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (2):			
North Zone (3)	Oct. 17-Oct. 19 &	2	4
	Nov. 13-Jan. 18	2	4
South Zone:			
Posey County (2)	Nov. 23-Jan. 31	2	4
Remainder of South Zone	Oct. 30-Nov. 8 &	2	4
	Nov. 21-Jan. 19	2	4
Ohio River Zone:			
Posey County (2)	Nov. 23-Jan. 31	2	4
Remainder of Ohio River Zone	Nov. 12-Jan. 20	2	4
White-fronted	Same as for Canada geese	2	4
Light Geese and Brant	Same as for Canada geese	7	14
Iowa			
Ducks:			
North Zone	Oct. 10-Oct. 13 &	3	6
	Oct. 24-Nov. 18	3	6
South Zone	Oct. 24-Oct. 30 &	3	6
	Nov. 7-Nov. 29	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada:			
Southwest Zone	Oct. 10-Dec. 18	2	4
Remainder of State	Oct. 3-Dec. 11	2	4
White-fronted:			
Southwest Zone	Oct. 10-Dec. 18	2	4
Remainder of State	Oct. 3-Dec. 11	2	4
Brant			
Southwest Zone	Oct. 10-Dec. 18	7	14
Remainder of State	Oct. 3-Dec. 11	7	14
Light Geese:			
Southwest Zone	Oct. 10-Dec. 28	7	14
Remainder of State	Oct. 3-Dec. 21	7	14

	Season Dates	Limits Bag	Limits Possession
Kentucky			
Ducks:			
West Zone	Nov. 26-Nov. 29 & Dec. 16-Jan. 10	3	6
East Zone	Nov. 26-Nov. 29 & Dec. 23-Jan. 17	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese (1):		7	14
Canada:			
Western Goose Zone (2):			
Fulton County	Nov. 26- Feb. 12	2	4
Remainder of Zone	Nov. 26-Jan. 31	2	4
Remainder of State	Dec. 13-Jan. 31	2	4
White-fronted			
Western Goose Zone	Nov. 26-Jan. 31	2	4
Remainder of State	Dec. 13-Jan. 31	2	4
Light Geese and Brant			
Western Goose Zone	Nov. 26-Jan. 31	7	14
Remainder of State	Dec. 13-Jan. 31	7	14
Louisiana			
Ducks:			
West Zone	Nov. 21-Dec. 5 & Dec. 26-Jan. 9	3	6
East Zone		3	6
Catahoula Lake Zone	Nov. 21-Dec. 20	3	6
Remainder of East Zone	Nov. 21-Nov. 27 & Dec. 26-Jan. 17	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada			
Southwest Zone (4)	Jan. 20-Jan. 28	1	2
Remainder of State	Closed	..	..
White-fronted (4)	Nov. 21-Dec. 12 & Dec. 19-Feb. 4	2	4
Brant	Nov. 21-Dec. 12 & Dec. 19-Feb. 4	2	4
Light Geese	Nov. 21-Dec. 12 & Dec. 19-Feb. 14	7	14
		7	14
		7	14

	Season Dates	Limits Bag	Limits Possession
Michigan			
Ducks:			
North Zone	Oct. 3-Nov. 1	3	6
Middle Zone	Oct. 10-Nov. 8	3	6
South Zone	Oct. 17-Nov. 12 & Nov. 27-Nov. 29	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (2):			
North Zone	Sept. 26-Nov. 14	2	4
Middle Zone	Oct. 10-Nov. 28	2	4
South Zone:			
Muskegon Wastewater Goose Management Unit (GMU) (2)	Oct. 17-Nov. 14 & Dec. 1-Dec. 22	2	4
		2	4
Allegan County GMU (2)	Oct. 17-Nov. 14 & Nov. 15-Dec. 5	1	2
		2	4
Saginaw County GMU (2)	Oct. 3-Nov. 8 & Nov. 27-Nov. 29	2	4
		2	4
Tuscola/Huron GMU (2)	Oct. 3-Nov. 8 & Nov. 27-Nov. 29	2	4
		2	4
Southern Michigan GMU:			
East of U.S. 27/127	Oct. 17-Nov. 12 & Nov. 27-Nov. 29	2	4
		2	4
(special season)	Jan. 9-Feb. 7	2	4
West of U.S. 27/127	Oct. 17-Nov. 12 & Nov. 27-Dec. 14	2	4
		2	4
(special season)	Jan. 9-Feb. 7	2	4
Remainder of South Zone:			
East of U.S. 27/127	Oct. 17-Nov. 12 & Nov. 27-Nov. 29	2	4
		2	4
West of U.S. 27/127	Oct. 17-Nov. 12 & Nov. 27-Dec. 14	2	4
		2	4
White-fronted	See Footnote 5	2	4
Light Geese and Brant	See Footnote 5	7	14

	Season Dates	Limits	
		Bag	Possession
Minnesota			
Ducks	Oct. 3-Oct. 11 &	3	6
	Oct. 15-Nov. 1 &	3	6
	Nov. 6-Nov. 8	3	6
Mergansers	Same as for ducks	5	10
Coots (6)	Same as for ducks	15	30
Geese:		7	14
Canada:			
West Central Zone:			
Lac qui Parle Zone (2)	Oct. 3-Nov. 11	1	2
Remainder of West Central Zone	Oct. 3-Nov. 11	1	2
Southeast Zone:			
Twin Cities Metro Zone and Olmsted County	Oct. 3-Dec. 11 &	2	4
	Dec. 15-Dec. 24	2	4
Remainder of Southeast Zone	Oct. 3-Dec. 11	2	4
Remainder of State	Oct. 3-Nov. 21	2	4
White-fronted:			
West Central Zone	Oct. 3-Nov. 11	2	4
Southeast Zone	Oct. 3-Dec. 11	2	4
Remainder of State	Oct. 3-Nov. 21	2	4
Brant			
West Central Zone	Oct. 3-Nov. 11	7	14
Southeast Zone	Oct. 3-Dec. 11	7	14
Remainder of State	Oct. 3-Nov. 21	7	14
Light Geese	Oct. 3-Dec. 21	7	14
Mississippi			
Ducks	Dec. 19-Dec. 22 &	3	6
	Dec. 26-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada	Dec. 7-Jan. 31	2	4
White-fronted	Dec. 7-Jan. 31	2	4
Brant	Dec. 7-Jan. 31	7	14
Light Geese	Dec. 7-Feb. 14	7	14
Missouri			
Ducks and Mergansers:			
North Zone	Oct. 31-Nov. 29	3	6
Middle Zone	Nov. 7-Dec. 6	3	6
South Zone	Nov. 28-Dec 27	3	6
Coots	Same as for ducks	15	30
Geese (1):		7	14
Canada:			
North Zone:			
Swan Lake Zone (2)	Oct. 31-Nov. 8 &	2	4
	Nov. 21-Dec. 31	2	4
Central Missouri Zone			
	Oct. 31-Nov. 8 &	2	4
	Nov. 21-Dec. 31	2	4
(special season)	Oct. 3-Oct. 12	3	6
Remainder of North Zone	Oct. 31-Nov. 8 &	2	4
	Nov. 21-Dec. 31	2	4
Middle Zone			
Schell-Osage Zone	Nov. 14-Jan. 2	2	4
Remainder of Middle Zone	Nov. 28-Dec. 6 &	2	4
	Dec. 19-Jan. 28	2	4
South Zone	Nov. 28-Dec. 6 &	2	4
	Dec. 19-Jan. 28	2	4
White-fronted			
North Zone	Oct. 31-Jan. 8	2	4
Middle Zone	Nov. 14-Jan. 22	2	4
South Zone	Nov. 14-Jan. 22	2	4
Brant			
North Zone	Oct. 31-Jan. 8	7	14
Middle Zone	Nov. 14-Jan. 22	7	14
South Zone	Nov. 14-Jan. 22	7	14
Light Geese			
North Zone	Oct. 31-Jan. 18	7	14
Middle Zone	Nov. 14-Feb. 1	7	14
South Zone	Nov. 14-Feb. 1	7	14

	Season Dates	Limits Bag	Limits Possession
Ohio			
Pymatuning Area:			
Ducks (7)	Oct. 12-Oct. 17 &	3	6
	Nov. 9-Dec. 2	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 12-Dec. 19	1	2
Light Geese	Oct. 16-Jan. 30	5	10
Brant	Nov. 23-Jan. 11	2	4
Remainder of State:			
Ducks:			
North Zone	Oct. 17-Oct. 31 &	3	6
	Nov. 14-Nov. 28	3	6
South Zone	Oct. 17-Oct. 24 &	3	6
	Dec. 20-Jan. 10	3	6
Ohio River Zone–	Oct. 17-Oct. 24 &	3	6
	Dec. 30-Jan. 20	5	10
Mergansers	Same as for ducks	15	30
Coots	Same as for ducks	7	14
Geese:			
Canada			
North Zone (8)	Oct. 17-Nov. 28 &	2	4
	Dec. 15-Jan. 10	2	4
South Zone	Oct. 17-Oct. 24 &	2	4
	Nov. 20-Jan. 20	2	4
Ohio River Zone	Oct. 17-Oct. 24 &	2	4
	Nov. 20-Jan. 20	2	4
White-fronted	Same as for Canada geese	2	4
Light Geese and Brant	Same as for Canada geese	7	14
Tennessee			
Ducks:			
Reelfoot Zone	Nov. 14-Nov. 15 &	3	6
	Dec. 12-Jan. 8	3	6
State Zone	Dec. 5-Dec. 7 &	3	6
	Dec. 19-Jan. 14	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada:			
Northwest Zone (2)	Dec. 5-Feb. 15	2	4
Southwest Zone	Dec. 5-Jan. 31	2	4
Kentucky/Barkley Lakes Zone	Dec. 13-Jan. 31	2	4
Remainder of State (9)	Oct. 3-Oct. 14 &	2	4
	Dec 5-Jan. 31	2	4
White-fronted	Nov. 23-Jan. 31	7	14
Light Geese	Nov. 23-Jan. 31		

	Season Dates	Limits Bag	Limits Possession
Wisconsin			
Ducks:			
North Zone	Oct. 3-Oct. 11 &	3	6
	Oct. 17-Nov. 6	3	6
South Zone	Oct. 3-Oct. 6 &	3	6
	Oct. 14-Nov. 8	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	6	10
Geese:		7	14
Canada (2):			
Horicon Zone	Sept. 26-Dec. 14	Tag System--See State Regulations	
Collins Zone	Sept. 26-Nov. 20 &	Tag System--See State Regulations	
	Nov. 30-Dec. 4	Tag System--See State Regulations	
Exterior Zone:			
Mississippi River Subzone			
North Duck Zone	Oct. 3-Oct. 11 &	1	2
	Oct. 17-Dec. 11	1	2
South Duck Zone	Oct. 3-Oct. 6 &	1	2
	Oct. 14-Dec. 14	1	2
Brown County Subzone	Sept. 26-Nov. 30	2	4
(special season)	Dec. 1-Dec. 31	1	2
Remainder of Exterior Zone	Sept. 26-Dec. 14		
White-fronted			
Horicon Zone	Sept. 26-Dec. 4	2	4
Collins Zone	Sept. 26-Nov. 20 &	2	4
	Nov. 30-Dec. 4	2	4
Exterior Zone:			
Mississippi River Subzone:			
North Duck Zone	Oct. 3-Oct. 11 &	2	4
	Oct. 17-Dec. 4	2	4
South Duck Zone	Oct. 3-Oct. 6 &	2	4
	Oct. 14-Dec. 4	2	4
Remainder of Exterior Zone	Sept. 26-Dec. 4		
Light Geese			
Horicon Zone	Sept. 26-Dec. 14	7	14
Collins Zone	Sept. 26-Nov. 20 &	7	14
	Nov. 30-Dec. 14	7	14
Exterior Zone:			
Mississippi River Subzone:			
North Duck Zone	Oct. 3-Oct. 11 &	7	14
	Oct. 17-Dec. 14	7	14
South Duck Zone	Oct. 3-Oct. 6 &	7	14
	Oct. 14-Dec. 14	7	14
Remainder of Exterior Zone	Sept. 26-Dec. 14	7	14
Brant	Same as for whitefronts	7	14

(1) Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

(2) Harvests of Canada geese will be limited as follows:

Illinois:
- Southern Illinois Quota Zone - 39,500
- Rend Lake Quota Zone - 11,850
- Remainder of State - 27,650

Indiana:
- Posey County - 6,000
- Remainder of State - 13,000

Kentucky:
- Western Zone:
  - Ballard Reporting Area - 14,560
  - Henderson/Union Reporting Area - 4,260
  - Remainder of Western Zone - 3,580

Michigan:
- Allegan County Goose Management Unit - 5,000
- Muskegon Wastewater Goose Management Unit - 1,000
- Saginaw County Goose Management Unit - 4,000
- Tuscola/Huron Goose Management Unit - 2,000
- Remainder of State - 42,600

Minnesota: Lac qui Parle Zone - 6,000

Missouri: Swan Lake Zone - 10,000

Tennessee:
- Northwest Zone:
  - Reelfoot Subzone - 6,200
  - Remainder of Northwest Zone - 2,700
- Southwest Zone - 500

Wisconsin:
- Horicon Zone - 49,500
- Collins Zone - 1,700
- Exterior Zone - 20,000

When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Lac qui Parle Zone in Minnesota, the Ballard and Henderson/Union Reporting Areas in Kentucky, the Reelfoot Subzone in Tennessee, and the Allegan County, Muskegon Wastewater, Fish Point, and Saginaw County Goose Management Units in Michigan, will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

(3) In Indiana, in Lagrange and Steuben Counties and on the Jasper-Pulaski and Kankakee Fish and Wildlife Areas, the bag and possession limits for Canada geese shall be 1 and 2, respectively.

(4) In Louisiana, in the Southwest Zone, during the experimental Canada goose season, the daily bag limit is 2 Canada and white-fronted geese in the aggregate, no more than 1 of which may be a Canada goose. The possession limit is twice the daily bag limit. A special permit is required by the State.

(5) In Michigan, the seasons for white-fronted geese, light geese, and brant are concurrent with the seasons for Canada geese, except in the Southern Michigan Goose Management Unit, where the January 9 through February 7 special season is for Canada geese only.

(6) In Minnesota, the daily bag limit is 15 and the possession limit is 30, coots, moorhens, and gallinules in the aggregate.

(7) In Ohio, in the Pymatuning Area, the restrictions of the duck bag limit for Pennsylvania apply.

(8) In Ohio, in the Lake Erie and Northeast SJBP Zones, the Canada goose limits are 1 daily and 2 in possession.

(9) In Tennessee, see State regulations for permit requirements and additional restrictions.

CENTRAL FLYWAY

Definitions

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Geese: Includes all species of geese and brant.

Dark Geese: Includes Canada geese, white-fronted geese, and brant.

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Flywaywide Restrictions

Duck Limits: The daily bag limit may include no more than 2 mallards (no more than 1 of which may be a female), 1 mottled duck, 1 pintail, 1 redhead, and 2 wood ducks. The possession limit is twice the daily bag limit. In the High Plains Mallard Management Unit, the daily bag limit may include 3 drake mallards.

Canvasbacks. All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

Point System--Ducks and Mergansers: The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days.

The point values assigned to the species and sexes are as follows:

100 points	50 points	35 points
Female mallard	Male mallard (Low Plains)	Male mallard (High Plains)
Mottled duck	Wood duck	All other permitted species of ducks and mergansers
Pintail		
Redhead		
Hooded merganser		

States selecting the point system bag limits on designated species are listed in the table below.

	Season Dates	Limits	
		Bag	Possession
Colorado			
Ducks	Oct. 3-Oct. 11 & Nov. 7-Nov. 29 & Dec. 16-Jan. 3	Point system	
Coots	Same as for ducks	15	30
Dark Geese:			
Northern Front Range Unit	Oct. 3-Oct. 16 & Oct. 31-Jan. 31	3	6
South Park Unit (1)	Oct. 3-Oct. 16 & Oct. 31-Jan. 3	3	6
San Luis Valley Unit (1)	Oct. 31-Jan. 3	2	4
North Park Unit	Oct. 3-Oct. 16	2	4
Arkansas Valley Unit	Nov. 11-Jan. 31	2	4
Remainder of State in Central Flyway	Oct. 31-Jan. 31	3	6
Light Geese:			
Northern Front Range Unit	Oct. 31-Jan. 31	3	6
South Park Unit (1)	Oct. 31-Jan. 3	5	10
San Luis Valley Unit (1)	Oct. 31-Jan. 3	2	4
North Park Unit	Closed	2	4
Arkansas Valley Unit	Nov. 11-Feb. 14	–	–
Remainder of State in Central Flyway	Oct. 31-Jan. 31	5	10
		5	10
Kansas			
Ducks (2)		Point system	
High Plains	Oct. 17-Nov. 8 & Nov. 21-Dec. 6 & Dec. 26-Jan. 6		
Low Plains	Oct. 31-Nov. 13 & Nov. 21-Dec. 6 & Dec. 26-Jan. 3		
Coots	Same as for ducks	15	30
Dark Geese (3):		2	4
Canada	Nov. 21-Dec. 18 & Dec. 19-Jan. 24	1	2
White-fronted	Nov. 21-Jan. 24	2	4
Light Geese:		1	2
Unit 1	Oct. 24-Feb. 7	10	20
Unit 2	Oct. 24-Feb. 7	10	20

	Season Dates	Limits	
		Bag	Possession
Montana			
Ducks:		Point system	
Zone 1	Oct. 3-Nov. 10 & Dec. 12-Dec. 23		
Zone 2	Oct. 3-Oct. 11 & Nov. 12-Dec. 23		
Coots	Same as for ducks	15	30
Geese			
Sheridan County:			
Dark Geese	Oct. 3-Jan. 17	2	4
Light Geese	Oct. 3-Jan. 17	5	10
Remainder of State in Central Flyway:			
Dark Geese	Oct. 3-Jan. 17	4	8
Light Geese	Oct. 3-Jan. 17	5	10
Nebraska			
Ducks		Point system	
High Plains	Oct. 17-Nov. 24 & Dec. 23-Jan. 3		
Low Plains			
Zones 1 and 2	Oct. 31-Nov. 1 & Nov. 7-Dec. 13		
Zones 3 and 4	Oct. 3-Oct. 4 & Oct. 24-Nov. 29		
Coots	Same as for ducks	15	30
Dark Geese		2	4
North Unit			
Canada	Nov. 14-Jan. 31	2	4
White-fronted	Nov. 14-Jan. 31	1	2
East Unit			
Canada	Oct. 10-Nov. 13 & Nov. 14-Dec. 13 & Dec. 14-Dec. 27	1	2
	Oct. 10-Dec. 27	2	4
White-fronted		1	2
West Unit		1	2
Canada	Oct. 17-Nov. 13 & Nov. 14-Dec. 13 & Dec. 14-Jan. 3	1	2
	Oct. 17-Jan. 3	2	4
White-fronted	Oct. 3-Jan. 17	1	2
Light Geese		1	2
		10	20

	Season Dates	Limits Bag	Limits Possession
New Mexico			
Ducks:		Point system	
Zone 1	Oct. 17-Nov. 6 & Dec. 19-Jan. 17		
Zone 2	Nov. 28-Jan. 17		
Coots	Same as for ducks	15	30
Dark Geese (4)	Oct. 17-Jan. 31	3	6
Light Geese:			
Middle Rio Grande Valley Unit	Nov. 14-Feb. 28	10	20
Remainder of State	Nov. 14-Feb. 28	5	10
North Dakota			
Ducks:			
Statewide	Oct. 3-Nov. 8 & Nov. 14-Nov. 15	3	6
		3	6
High Plains (male mallards only)	Dec. 16-Dec. 27	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Dark Geese:		2	4
Statewide:			
Canada	Oct. 3-Oct. 16 & Oct. 17-Nov. 15	1	2
		2	4
White-fronted	Oct. 3-Nov. 15	2	4
Missouri River Zone	Nov. 16-Dec. 13	1	2
Light Geese	Oct. 3-Dec. 13	10	20
Oklahoma			
Ducks:		Point System	
High Plains	Oct. 17-Nov. 24 & Dec. 12-Dec. 23		
Low Plains:			
Zone 1	Oct. 24-Nov. 15 & Dec. 12-Dec. 27		
Zone 2	Nov. 14-Nov. 29 & Dec. 12-Jan. 3		
Coots	Same as for ducks	15	30
Dark Geese:		2	4
Canada	Nov. 14-Jan. 31	2	4
White-fronted	Nov. 14-Jan. 31	1	2
Light Geese	Oct. 31-Feb. 14	10	20
South Dakota			
Ducks and Mergansers:			
High Plains	Oct. 3-Nov. 10 & Dec. 12-Dec. 23	3	6
		3	6
Low Plains:			
North Zone	Oct. 3-Nov. 10	3	6
Middle Zone	Oct. 10-Nov. 17	3	6
South Zone	Oct. 24-Dec. 1	3	6
Coots	Same as for ducks	15	30
Dark Geese:		2	4
Missouri River Unit:			
Canada	Oct. 3-Nov. 6 & Nov. 7-Dec. 20	1	2
		2	4
White-fronted	Oct. 3-Dec. 20	1	2
Remainder of State:			
Canada	Oct. 3-Dec. 20	1	2
White-fronted	Oct. 3-Dec. 20	1	2
Light Geese	Oct. 3-Dec. 20	7	14
Texas			
Ducks:			
High Plains	Nov. 21-Jan. 10	3	6
Low Plains	Nov. 14-Nov. 29 & Dec. 26-Jan. 17	3	6
		3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:			
East Tier:			
Dark Geese:			
Canada	Oct. 31-Jan. 10 & Jan. 11-Jan. 17	1	2
		2	4
White-fronted	Oct. 31-Jan. 10	1	2
Light Geese	Oct. 31-Feb. 14	10	20
West Tier:			
Dark Geese	Oct. 17-Jan. 31	3	6
Light Geese	Oct. 17-Jan. 31	5	10
Wyoming			
Ducks and Mergansers	Oct. 3-Oct. 19 & Nov. 14-Nov. 30 & Dec. 12-Dec. 18	3	6
		3	6
		3	6
Coots	Same as for ducks	15	30
Dark Geese:			
Area 1	Oct. 3-Nov. 30	2	4
Area 2	Oct. 24-Nov. 30 & Dec. 1-Jan. 3	3	6
		2	4
Area 3	Oct. 3-Dec. 31	2	4
Area 4	Nov. 14-Nov. 30 & Dec. 1-Dec. 31 & Jan. 1-Jan. 17	2	4
		3	6
		3	6
Area 5	Jan. 4-Jan. 10	3	6

	Season Dates	Limits Bag	Limits Possession
Wyoming (cont.) Light Geese	Oct. 3-Dec. 31	5	10

(1) In Colorado, in the South Park and San Luis Valley Units, the bag limit is 2 dark and light geese in the aggregate. The possession limit is twice the daily bag limit.
(2) In Kansas, in the High Plains Mallard Management Unit, the daily bag limit may include no more than 2 mallards and the possession limit may include no more than 4 mallards.
(3) In Kansas, exceptions to the dark goose season are as follows: Marais des Cygne Valley Unit, South Flint Hills Unit, Central Flint Hills Unit, and Southeast Unit - Season dates are December 19, 1992 through January 10, 1993. Dark goose permits issued by the Kansas Department of Wildlife and Parks are required. The permit must be signed, dated, and affixed to the leg of the goose immediately following the kill and before moving the carcass from the site of the kill. The permit must remain attached to the goose until prepared for consumption. A permit may not be transferred to another person nor may a permit be carried by someone in the absence of the individual to whom the permit has been issued. In the Marais des Cygne Valley Unit, unlimited permits are available, with a maximum of two permits per individual and one goose per permit. Shooting hours in this unit shall be one-half hour before sunrise to 1:00 p.m. There are 400 permits available in the South Flint Hills Unit, 250 permits available in the Central Flint Hills Unit, and 200 permits available in the Southeast Unit with a maximum of one permit per individual per Unit and one goose per permit.
(4) In New Mexico, the season for dark geese is closed in Sandoval, Sierra, Valencia, Sorocco, and Bernalillo Counties.

PACIFIC FLYWAY

Definitions

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, and brant.

Flywaywide Restrictions

Duck and Merganser Limits: Daily bag limits for ducks (including mergansers) may include no more than 3 mallards but only 1 female mallard, 1 pintail, and either 2 redheads or 2 canvasbacks, or 1 of each. The possession limit is twice the daily bag limit.

Goose Limits:

Aleutian Canada Geese: The season is closed throughout the Flyway.

Cackling Canada Geese: The season is closed in California, Oregon, and Washington.

Light Geese and Dark Geese: Unless otherwise noted, seasons and limits for light geese are either singly or in the aggregate; and seasons and limits for dark geese are either singly or in the aggregate, except in Washington, Oregon, and California where there are separate seasons and limits on brant.

Coots and Common Moorhen Limits: Daily bag and possession limits are 25 in the aggregate for the two species.

	Season Dates	Limits Bag	Limits Possession
Arizona			
Ducks (1):			
North Zone	Oct. 9-Dec. 6	4	8
South Zone	Oct. 9-Oct. 18 & Nov. 16-Jan. 3	4	8
		4	8
Coots and moorhens	Same as for ducks	25	25
Geese:		5	5
White-fronted	Closed	--	--
Canada: (2)			
GMU 22 & 23	Nov. 16-Jan. 17	2	2
Remainder of State	Oct. 17-Jan. 17	2	2
Light: (2)			
GMU 22 & 23	Nov. 16-Jan. 17	3	3
Remainder of State	Oct. 17-Jan. 17	3	3
California			
Ducks:			
Northeastern Zone	Oct. 10-Dec. 7	4	8
Colorado River Zone	Oct. 9-Oct. 18 & Nov. 16-Jan. 3	4	8
		4	8
Southern Zone	Oct. 24-Nov. 14 & Dec. 5-Jan. 10	4	8
		4	8
Southern San Joaquin Zone	Nov. 14-Jan. 10	4	8
Balance-of-State Zone	Oct. 24-Nov. 14 & Dec. 5-Jan. 10	4	8
		4	8
Coots and moorhens			
Northeastern Zone	Same as for ducks	25	25
Colorado River Zone	Same as for ducks	25	25
Southern Zone	Oct. 24-Jan. 10	25	25
Southern San Joaquin Zone	Same as for ducks	25	25
Balance-of-State Zone	Oct. 24-Jan. 10	25	25
Geese:			
Northeastern Zone:		3	6
Canada Geese	Oct. 10-Jan. 10	2	4
White-fronted Geese	Oct. 10-Nov. 1	2	4
Light Geese	Oct. 10-Jan. 10	3	6

	Season Dates	Limits Bag	Limits Possession
California (cont.)			
Colorado River Zone:		5	5
Canada Geese	Oct. 17-Jan. 17	2	2
White-fronted Geese	Closed	–	–
Light Geese	Oct. 17-Jan. 17	3	3
Southern Zone:		6	6
Dark Geese		3	3
Canada	Oct. 17-Jan. 10	2	2
White-fronted Geese	Oct. 10-Jan. 10	3	3
Light Geese	Oct. 10-Jan. 10	3	3
Balance-of-State Zone:		3	3
Dark Geese (3)		1	1
Canada:			
Del Norte & Humboldt	Closed	–	–
Sacramento Valley	Closed	–	–
San Joaquin Valley	Oct. 24-Nov. 22	1	1
Remainder of Zone	Oct. 24-Jan. 10	1	1
White-fronted:			
Sacramento Valley	Oct. 24-Nov. 30	1	1
Remainder of Zone	Oct. 24-Dec. 27	1	1
Light Geese	Oct. 24-Jan. 10	3	3
Brant	Nov. 1-Nov. 30	2	4
Colorado			
Ducks	Oct. 3-Oct. 15 &	4	8
	Nov. 7-Nov. 29 &	4	8
	Dec. 12-Jan. 3	4	8
Coots	Same as for ducks	25	25
Geese:			
LaPlata County	Closed	–	–
Delta/Montrose Area	Nov. 7-Jan. 10	2	4
Gunnison/Saguache Area (4)	Oct. 24-Jan. 10	1 per season	
Dolores/Montezuma Area (4)	Nov. 7-Jan. 10	1 per season	
Remainder of State	Oct. 3-Oct. 16 &	2	4
	Oct. 24-Jan. 10	2	4
Idaho			
Ducks:			
Zone 1	Oct. 24-Dec. 21	4	8
Zone 2	Oct. 10-Nov. 29 &	4	8
	Dec. 26-Jan. 2	4	8
Zone 3	Oct. 10-Oct. 17 &	4	8
	Nov. 14-Jan. 3	4	8
Coots	Same as for ducks	25	25
Geese:		3	6
Zones 1 and 4	Oct. 3-Jan. 3	3	6
Zone 2 (5)			
Dark	Oct. 3-Jan. 3	2	4
Light	Oct. 3-Jan. 3	3	6
Zone 3			
Dark	Oct. 3-Oct. 16 &	1	2
	Oct. 17-Jan. 3	2	4
Light	Oct. 3-Jan. 3	3	6
Zone 5	Oct. 10-Jan. 10	3	6
Montana			
Ducks	Oct. 3-Oct. 18 &	4	8
	Nov. 3-Nov. 29 &	4	8
	Dec. 19-Jan. 3	4	8
Coots	Same as for ducks	25	25
Geese (6):			
East of the Divide		6	6
Dark	Oct. 3-Jan. 3	3	6
Light	Oct. 3-Jan. 3	3	6
West of the Divide		5	6
Dark	Oct. 3-Jan. 3	2	4
Light	Oct. 3-Jan. 3	3	6
Nevada			
Ducks:			
Clark County	Nov. 21-Jan. 17	4	8
Remainder of State	Nov. 14-Dec. 13	4	8
Coots and moorhens	Same as for ducks	25	25
Dark Geese:			
Clark County	Nov. 21-Jan. 17	2	4
Remainder of State	Oct. 17-Jan. 17	3	6
Light Geese:			
Clark County	Nov. 21-Jan. 17	3	3
Remainder of State (7)	Oct. 17-Jan. 17	3	3
New Mexico			
Ducks (8)	Oct. 3-Oct. 18 &	4	8
	Nov. 28-Jan. 10	4	8
Coots	Same as for ducks	15	30
Moorhens	Same as for ducks	2	4
Geese:			
North Zone			
Dark	Jan. 2-Jan. 17	2	4
Light	Jan. 2-Jan. 17	1	2
South Zone			
Dark	Oct. 17-Jan. 10	2	4
Light	Oct. 17-Jan. 10	1	2

	Season Dates	Limits Bag	Limits Possession
Oregon			
Ducks:			
Zone 1			
Columbia Basin Unit	Oct. 17-Oct. 24 & Nov. 14-Jan. 10	4 / 4	8 / 8
Remainder of Zone 1	Oct. 17-Oct. 24 & Nov. 14-Jan. 3	4 / 4	8 / 8
Zone 2	Oct. 10-Nov. 29 & Dec. 19-Dec. 26	4 / 4	8 / 8
Coots	Same as for ducks	25	25
Geese			
Western Zone (9)	Oct. 17-Jan. 17	3	6
Eastern Zone			
Columbia Basin			
Dark Geese	Oct. 17-Jan. 17	3	6
Light Geese	Oct. 17-Jan. 17	3	6
Lake, Klamath, and Harney Counties (10)			
Dark Geese	Oct. 10-Jan. 17	4	8
Light Geese	Oct. 10-Jan. 17	3	6
Malheur County	Oct. 3-Nov. 15 & Nov. 16-Jan. 3	3 / 2	6 / 4
Remainder of Eastern Zone			
Dark Geese	Oct. 17-Jan. 17	3	6
Light Geese	Oct. 17-Jan. 17	3	6
Brant (4)	Jan. 2-Jan. 17	2	4
Utah			
Ducks			
Zone 1	Oct. 3-Nov. 30	4	8
Zone 2	Nov. 6-Jan. 3	4	8
Coots	Same as for ducks	25	25
Geese		5	6
Light	Oct. 3-Jan. 3	3	6
Dark			
Washington County (11)	Oct. 17-Jan. 17	2	4
Remainder of State	Oct. 3-Jan. 3	2	4
Washington			
Ducks:			
East Zone	Oct. 17-Oct. 25 & Nov. 15-Jan. 10	4 / 4	8 / 8
West Zone	Oct. 17-Oct. 25 & Nov. 15-Jan. 3	4 / 4	8 / 8
Coots	Same as for ducks	25	25
Geese:			
East Zone (12):			
Columbia Basin	Oct. 17-Jan. 17	3	6
Remainder of East Zone	Oct. 17-Jan. 17	3	6
West Zone:			
Lower Columbia River Area (13)	Nov. 28-Jan. 17	3	6
Skagit Area	Oct. 17-Jan. 3	3	6
Remainder of West Zone	Oct. 17-Jan. 17	3	6
Brant (14)	Dec. 5-Dec. 20	2	4
Wyoming			
Ducks	Oct. 3-Nov. 29	4	8
Coots	Same as for ducks	25	25
Dark Geese	Oct. 3-Dec. 24	3	6

(1) In Arizona, the daily limit may include no more than either 1 female mallard or 1 Mexican-like duck, but not both, and not more than 2 female mallards, 2 Mexican-like ducks, or 1 of each, may be in possession.
(2) In Arizona, in Yuma County, La Paz County, Game Management Units (Units) 13B, 15, and that portion of Unit 16 lying within Mohave County, the bag and possession limit is 2 and 4 for Canada geese and 3 and 6 for light geese, respectively.
(3) In California, the dark goose limits may be expanded to 2 per day and 4 in possession provided they are Canada geese.
(4) State permit is required.
(5) In Idaho, the season on light geese is closed in Fremont and Teton Counties.
(6) In Montana, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry, Flathead, Deer Lodge County, and Missoula County.
(7) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties, White River Valley of Nye County, and Pahranagat Valley of Lincoln County.
(8) In New Mexico, the bag limit for ducks may include no more than 1 redhead and 1 canvasback.
(9) In Oregon, the Northwest Area is closed to all goose hunting, except for the special permit goose season on designated portions of the special permit goose area from November 14 to January 17. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
(10) In Oregon, in Klamath, Lake, and Harney Counties, the white-fronted goose season does not open until October 24 and the dark goose limits may contain not more than 2 white-fronted geese per day. Possession limits are separate for dark and light geese.
(11) In Utah, the Washington County season is for Canada geese only.
(12) In Washington, in State Goose Area 1, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Area 2, hunting is only on Saturdays, Sundays, Tuesdays, Wednesdays, and certain holidays. See State regulations for details.
(13) In Washington, bag limits are 2 geese per day and 4 in possession. See State regulations for specific conditions of permit hunts and closures for Canada geese.
(14) In Washington, brant may be hunted in Skagit, Pacific, and Whatcom Counties only; and only on December 5, 6, 8, 9, 10, 12, 13, 15, 17, 19, and 20.

4. Section 20.106 is amended as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 21, 1992, Federal Register (57 FR 38202).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Note: The following seasons are in addition to the seasons published previously in the August 27, 1992, Federal Register (57 FR 39072)

	Season Dates	Limits	
		Bag	Possession
CENTRAL FLYWAY			
Oklahoma (1)	Oct. 17-Jan. 17	3	6
Texas (1)			
Zone A	Nov. 14-Feb. 14	3	6
Zone B	Dec. 5-Feb. 14	3	6
Zone C	Jan. 2-Feb. 7	3	6

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

5. Section 20.107 is revised to read as follows.

§20.107 Seasons, limits, and shooting hours for tundra (whistling) swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the September 22, 1992, Federal Register (57 FR 43856).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
North Carolina	Nov. 2-Jan. 30	State Permit Only	
Virginia	Nov. 3-Jan. 31	State Permit Only	
CENTRAL FLYWAY			
Montana	Oct. 3-Jan. 3	State Permit Only	
North Dakota	Oct. 3-Nov. 29	State Permit Only	
PACIFIC FLYWAY			
Montana	Oct. 17-Jan. 3	State Permit Only	
Nevada	Oct. 17-Jan. 17	State Permit Only	
Utah	Oct. 3-Jan. 3	State Permit Only	

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations. Area descriptions were published in the Federal Register on August 21, 1992, (57 FR 38202) and September 22, 1992, (57 FR 43856).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Daily bag limit	3 migratory game birds, singly or in the aggregate
Possession limit	6 migratory game birds, singly or in the aggregate

These limits apply to falconry during both regular hunting seasons and extended falconry seasons – unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Florida	
Mourning and white-winged doves	Oct. 26-Nov. 20 & Dec. 7-Dec. 11 & Jan. 11-Jan. 17
Rails and common moorhens	Oct. 19-Nov. 24
Woodcock	Nov. 24-Dec. 11 & Jan. 26-Mar. 10
Ducks and coots	Nov. 1-Nov. 19 & Dec. 1-Dec. 9 & Jan. 16-Feb. 28
Sea Ducks	Nov. 16-Nov 25 & Jan. 11-Feb. 28
Ducks, mergansers, gallinules and coots	Nov. 16-Nov. 25 & Nov. 30-Dec. 15 & Jan. 11-Feb. 28
Maine	
Ducks, mergansers, and coots North Zone	Oct. 24-Nov. 10 & Nov. 23-Jan. 20
South Zone	Oct. 19-Nov. 25 & Dec. 14-Jan. 21
Maryland	
Mourning doves	Oct. 25-Nov. 17 & Dec. 8-Dec. 20
Rails	Nov. 10-Dec. 16
Woodcock	Oct. 5-Oct. 13 & Nov. 22-Dec. 6 & Dec. 13-Jan. 19
Ducks	Nov. 28-Dec. 14 & Jan. 10-Mar. 10
Canada Geese	Jan. 23-Mar. 10
Brant	Jan. 21-Mar. 10
Massachusetts	
Ducks and coots: Berkshire Zone	Oct. 6-Oct. 8 & Nov. 8-Jan. 20
Central Zone	Oct. 6-Oct. 12 & Oct. 25-Nov. 10 & Nov. 29-Jan. 20
Coastal Zone	Oct. 6-Oct. 18 & Oct. 29-Dec. 13 & Jan. 3-Jan.20

	Extended Falconry Dates
New Hampshire	
Ducks, mergansers, and coots	
Inland Zone	Oct. 26-Nov. 24 & Dec. 6-Jan. 21
Coastal Zone	Oct. 12-Nov. 24 & Dec. 21-Jan. 21
New Jersey	
Woodcock	
North Zone	Oct. 1-Oct. 9 & Nov. 14-Jan. 15
South Zone	Oct. 1-Nov. 6 & Nov. 29-Dec. 11 & Dec. 25-Jan. 15
Ducks	
North Zone	Oct. 1-Oct. 16 & Oct. 25-Nov. 22 & Dec. 15-Jan. 15
South Zone	Oct. 1-Oct. 23 & Nov. 1-Nov. 25 & Dec. 18-Jan. 15
Coastal Zone	Oct. 1-Oct. 30 & Nov. 8-Dec. 11 & Jan. 3-Jan. 15
New York	
Ducks and coots	
Long Island Zone	Nov. 1-Nov. 19
Northeastern Zone	Oct. 1-Oct. 2 & Oct. 18-Oct. 30
Southeastern Zone	Oct. 1-Oct. 9 & Oct. 19-Oct. 31
Western Zone	Oct. 1-Oct. 7 & Oct. 16-Oct. 31

	Extended Falconry Dates
New York (cont.)	
Geese	
Long Island Zone	Nov. 1-Nov. 19
Northeastern Zone (1)	Oct. 1-Oct. 2
Southeastern Zone (2)	Oct. 1-Oct. 20
Western Zone (3)	Oct. 5-Oct. 31
Pennsylvania	
Mourning doves	Oct. 11-Oct. 30 & Nov. 29-Dec. 16
Ducks	
North Zone	Oct. 25-Nov. 8 & Nov. 24-Jan. 24
South Zone	Nov. 1-Nov. 22 & Dec. 17-Feb. 9
Northwest Zone	Oct. 18-Nov. 8 & Dec. 3-Jan. 26
Lake Erie Zone	Nov. 29-Dec. 16 & Dec. 27-Feb. 23
Canada Geese	
North Zone	Dec. 19-Jan. 25
South Zone	Nov. 3-Nov. 10
Erie, Mercer, and Butler	Oct. 25-Nov. 8 & Jan. 5-Jan. 16
Crawford	Dec. 20-Jan. 16
Brant	Oct. 12-Nov. 22 & Jan. 12-Jan. 26
South Carolina	
Ducks, merganseqs, and coots	Oct. 6-Nov. 24 & Nov. 29-Dec. 25

	Extended Falconry Dates
Virginia	
Doves	Dec. 23-Jan. 28
Rails	Dec. 14-Jan. 19
Woodcock	Dec. 14-Dec. 15 & Jan. 3-Mar. 3
Ducks, mergansers, coots, moorhens, and gallinules	Nov. 13-Nov. 24 & Dec. 4-Dec. 25 & Jan. 17-Feb. 28
Canada Geese	Nov. 13-Nov. 15 & Dec. 9-Dec. 13 & Jan. 21-Feb. 28
Brant	Nov. 13-Nov. 29 & Dec. 27 only & Jan. 21-Feb. 28
MISSISSIPPI FLYWAY	
Arkansas	
Mourning doves	Oct. 19-Dec. 4
Ducks, mergansers, and coots	Nov. 30-Dec. 11 & Jan. 4-Feb. 28
Illinois	
Mourning doves	Oct. 31-Dec. 16
Rails	Nov. 10-Dec. 16
Woodcock	Sept. 1-Sept. 30 & Dec. 5-Dec. 16
Ducks, mergansers, and coots	
North Zone	Oct. 15-Oct. 16 & Nov. 16-Dec. 13 & Feb. 1-Mar. 10
Central Zone	Oct. 15-Oct. 30 & Nov. 30-Dec. 13 & Feb. 1-Mar. 10
South Zone	Oct. 15-Nov. 13 & Feb. 1-Mar. 10
Geese	
North Zone	
Northeastern Zone	Oct. 12-Oct. 16 & Jan. 4-Jan. 17
Remainder of North Zone	Oct. 3-Oct. 16 & Jan. 4-Jan. 17
Central Zone	
Northeastern Zone	Oct. 12-Oct. 30
Remainder of Central Zone	Oct. 3-Oct. 30
South Zone	Oct. 17-Nov. 13
Indiana	
Mourning doves	Oct. 17-Nov. 5 & Jan. 1-Jan. 27
Woodcock	Sept. 1-Sept. 25
Ducks, mergansers, and coots	
North Zone	Sept. 26-Oct. 16 & Oct. 20-Nov. 12 & Dec. 10-Jan. 1
South Zone	Oct. 10-Oct. 29 & Nov. 2-Dec. 4 & Jan. 1-Jan. 8
Ohio River Zone	Oct. 10-Nov. 25 & Nov. 30-Dec. 15 & Jan. 11-Jan. 15

	Extended Falconry Dates
Iowa	
Rails	Sept. 1-Sept. 4 & Nov. 14-Dec. 16
Woodcock	Sept. 1-Sept. 11 & Nov. 16-Dec. 16
Ducks and mergansers	Sept. 1-Oct. 2 & Oct. 7-Oct. 23 & Nov. 30-Dec. 10
Geese	
Southwest Zone	Sept. 13-Oct. 9
Rest of State	Sept. 6-Oct. 2
Kentucky	
Ducks, mergansers, and coots	
West Zone	Nov. 3-Nov. 25 & Nov. 30-Dec. 15 & Jan. 11-Jan. 31
East Zone	Nov. 3-Nov. 25 & Nov. 30-Dec. 22 & Jan. 18-Jan. 31
Geese	
Western Goose Zone	
Fulton County	Nov. 3-Nov. 25
Remainder of Zone	Nov. 3-Nov. 25
Remainder of State	Nov. 3-Dec. 12
Michigan	
Rails, snipe, and woodcock	Sept. 7-Sept. 14 & Nov. 15-Dec. 22
Ducks, mergansers, coots, and moorhens	
North Zone	Sept. 7-Oct. 2 & Nov. 2-Dec. 22
Middle Zone	Sept. 7-Oct. 9 & Nov. 9-Dec. 22
South Zone	Sept. 7-Oct. 16 & Nov. 13-Nov. 26 & Nov. 30-Dec. 22
Minnesota	
Rails, snipe, and woodcock	Nov. 5-Dec. 16
Ducks, mergansers, coots, and moorhens	Sept. 1-Oct. 2 & Oct. 12-Oct. 14 & Nov. 2-Nov. 5 & Nov. 9-Dec. 16
Canada and White-fronted geese	
West-Central Zone	Nov. 12-Dec. 16
Southeast Zone (4)	Dec. 12-Dec. 16
Remainder of State	Nov. 22-Dec. 16
Mississippi	
Mourning doves	Nov. 11-Nov. 29 & Jan. 30-Mar. 1
Ducks, mergansers, and coots	Nov. 28-Dec. 14 & Jan. 23-Mar. 10
Missouri	
Mourning doves	Oct. 31-Dec. 16
Ducks, mergansers, and coots	
North Zone	Sept. 12-Sept. 20 & Oct. 3-Oct. 30 & Nov. 30-Jan. 8
Middle Zone	Sept. 12-Sept. 20 & Oct. 3-Nov. 6 & Dec. 7-Jan. 8

	Extended Falconry Dates
Missouri (cont.)	
South Zone	Sept. 12-Sept. 20 & Oct. 3-Nov. 27 & Dec. 28-Jan. 8
Ohio	
Ducks, mergansers, and coots	
North Zone	Nov. 29-Dec. 7 & Feb. 8-Feb. 28
South Zone	Jan. 21-Feb. 26
Ohio River Zone	Jan. 21-Feb. 26
Tennessee	
Ducks, mergansers, and coots —	
Reelfoot Zone	Nov. 6-Nov. 13 & Nov. 16-Dec. 11 & Jan. 9-Feb. 15
State Zone	Nov. 6-Dec. 4 & Dec. 8-Dec. 18 & Jan. 15-Feb. 15
Wisconsin	
Rails, snipe, moorhens, and gallinules	
North Zone	Sept. 1-Oct. 2 & Oct. 12-Oct. 16 & Nov. 7-Dec. 16
South Zone	Sept. 1-Oct. 2 & Oct. 7-Oct. 13 & Nov. 9-Dec. 16
Woodcock	Sept. 1-Sept. 11 & Nov. 16-Dec. 16
Ducks, mergansers, and coots	
North Zone	Sept. 1-Oct. 2 & Oct. 12-Oct. 16 & Jan. 30-Mar. 10
South Zone	Sept. 1-Oct. 2 & Oct. 7-Oct. 13 & Feb. 1-Mar. 10

	Extended Falconry Dates
CENTRAL FLYWAY	
Colorado	
Ducks, mergansers, and coots	Sept. 1-Sept. 4 & Sept. 14-Oct. 2 & Oct. 12-Nov. 4
Montana (5)	
Ducks, mergansers, and coots	
Zone 1	Sept. 12-Oct. 2 & Nov. 11-Dec. 11 & Dec. 24-Dec. 27
Zone 2	Sept. 12-Oct. 2 & Oct. 12-Nov. 11 & Dec. 24-Dec. 27
Nebraska	
Ducks, mergansers, and coots	
High Plains	Sept. 26-Oct. 16 & Nov. 26-Dec. 22 & Jan. 4-Jan. 12
Low Plains	
Zones 1 and 2	Sept. 26-Oct. 30 & Nov. 2-Nov. 6 & Dec. 14-Jan. 12
Zones 3 and 4	Sept. 26-Oct. 2 & Oct. 5-Oct. 23 & Nov. 30-Jan. 12

	Extended Falconry Dates
New Mexico	
Doves	Oct. 1-Nov. 4 & Nov. 29-Nov. 30
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Sandhill cranes	
Regular Season Area	Jan. 18-Jan. 31
Ducks, coots, moorhens, and snipe:	
Zone 1	Oct. 12-Oct. 16 & Nov. 7-Dec. 18
Zone 2	Oct. 26-Nov. 27 Jan. 18-Jan. 31
North Dakota	
Ducks, mergansers, coots, and snipe	Sept. 1-Oct. 2
Oklahoma	
Ducks, mergansers, and coots	
High Plains	Nov. 25-Dec. 11 & Dec. 24-Jan. 22
Low Plains	
Zone 1	Oct. 17-Oct. 23 & Nov. 16-Dec. 11 & Dec. 28-Jan. 22
Zone 2	Oct. 17-Nov. 13 & Nov. 30-Dec. 11 & Jan. 4-Jan. 22
South Dakota	
Ducks, mergansers, and coots	
High Plains	Sept. 4-Oct. 2 & Nov. 11-Dec. 7
Low Plains	
North Zone	Sept. 4-Oct. 2 & Nov. 11-Dec. 19
Middle Zone	Sept. 4-Oct. 9 & Nov. 18-Dec. 19
South Zone	Sept. 4-Oct. 23 & Dec. 2-Dec. 19
Texas	
Mourning and white-winged doves	Nov. 14-Dec. 20
Rails and gallinules	Nov. 14-Dec. 20
Ducks, mergansers, and coots	
High Plains	Jan. 11-Feb. 26
Low Plains	Nov. 30-Dec. 25 & Jan. 18-Feb. 19
Woodcock	Feb. 1-Feb. 26
Wyoming	
Rails	Sept. 1-Sept. 12
Ducks, mergansers, and coots	Sept. 1-Oct. 2 & Oct. 22-Nov. 8

	Extended Falconry Dates
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 11-Oct. 27
Ducks and mergansers	
North Zone	Sept. 1-Oct. 8
South Zone	Jan. 4-Feb. 20
Snipe	Jan. 18-Feb. 6
California	
Ducks and mergansers	
Northeastern Zone	Dec. 8-Jan. 24
Colorado River Zone	Jan. 4-Feb. 20
Southern Zone	Nov. 15-Dec. 4 & Jan. 11-Feb. 7
Balance-of-State Zone	Nov. 15-Dec. 4 & Jan. 11-Feb. 7
Southern San Joaquin Zone	Oct. 24-Nov. 13 & Jan. 11-Feb. 7
Coots	
Northeastern Zone	Dec. 8-Jan. 24
Colorado River Zone	Jan. 4-Feb. 20
Southern Zone	Jan. 11-Feb. 7
Balance-of-State Zone	Jan. 11-Feb. 7
Southern San Joaquin Zone	Jan. 11-Feb. 27
Canada Geese	
Northeastern Zone	Jan. 11-Jan. 24
Southern Zone	Jan. 11-Jan. 31
Balance-of-State Zone (6)	Jan. 11-Feb. 7
California (cont.) White-fronted Geese	
Northeastern Zone	Nov. 2-Jan. 24
Southern Zone	Jan. 11-Jan. 24
Balance-of-State Zone (6)	
Sacramento Valley	Dec. 1-Feb. 7
Remainder of Zone	Dec. 28-Feb. 7
Brant	
Northeastern Zone	Oct. 10-Oct. 31 & Dec. 1-Jan. 24
Southern Zone	Oct. 24-Oct. 31 & Dec. 1-Feb. 7
Balance-of-State Zone	Oct. 24-Oct. 31 & Dec. 1-Feb. 7
Light Geese	
Northeastern Zone	Jan. 11-Jan. 24
Southern Zone	Jan. 11-Jan. 24
Balance-of-State Zone	Jan. 11-Feb. 7
Colorado	
Ducks, mergansers, and coots	Sept. 19-Oct. 2 & Oct. 16-Nov. 6 & Nov. 30-Dec. 11
Idaho	
Mourning doves	Oct. 1-Nov. 30 & Feb. 23-Mar. 10
Ducks, mergansers, and coots	Sept. 1-Oct. 2 & Feb. 23-Mar. 10
Geese	Sept. 1-Sept. 14

	Extended Falconry Dates
Montana (5)	
Ducks and coots	Oct. 19-Nov. 2 & Nov. 30-Dec. 18 & Feb. 26-Mar. 10
Geese	Sept. 26-Oct. 2 & Jan. 4-Jan. 10
Nevada (7)	
Ducks, mergansers, coots, moorhens, and snipe	Jan. 12-Feb. 28
New Mexico	
Doves	Oct. 1-Nov. 4 & Nov. 29-Nov. 30
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Ducks, coots, moorhens, and snipe	Jan. 11-Feb. 27
Geese	
North Zone	Oct. 17-Jan. 1 & Jan. 18-Jan. 31
South Zone	Jan. 11-Jan. 31
Oregon	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons (8)	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Ducks, mergansers, and coots	
Columbia Basin	Oct. 1-Oct. 16 & Jan. 11-Feb. 4
Remainder	
Zone 1	Oct. 1-Oct. 16 & Jan. 4-Feb. 4
Zone 2	Sept. 26-Oct. 9 & Dec. 27-Jan. 15 &
Snipe	Sept. 26-Oct. 9
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Ducks, mergansers, and coots	
Zone 1	Dec. 1-Jan. 17
Zone 2	Jan. 4-Feb. 20
Light Geese	Jan. 4-Jan. 17
Dark Geese	
Washington County	Oct. 3-Oct. 16
Remainder	Jan. 4-Jan. 17
Washington	
Mourning doves	Sept. 1-Oct. 16 & Dec. 1-Dec. 31
Ducks, mergansers, coots, and snipe	
West Zone	Oct. 26-Oct. 31 & Nov. 8-Nov. 14 & Jan. 4-Feb. 7
East Zone	Jan. 29-Mar. 10
Geese	Jan. 18-Jan. 31
Wyoming	
Rails and snipe	Sept. 1-Sept. 12
Ducks, mergansers, and coots	Sept. 1-Oct. 2 &

(1) In New York, in the Northeastern Zone, there is no extended falconry season for light geese.
(2) In New York, in the Southeastern Zone, the extended falconry season for light geese and brant is October 3 through October 9, 1992.
(3) In New York, in the Western Zone, the extended falconry season for light geese and brant is October 6 through October 7, 1992.
(4) In Minnesota, in the Twin Cities Metro Zone and Olmsted County, the extended falconry season for Canada geese is December 12 through December 14, 1992.
(5) In Montana, the bag limit is 2 and the possession limit is 6.
(6) In California, the falconry season for Canada geese is closed in Del Norte and Humbolt Area, the Sacramento Valley Area, and in the San Joaquin Valley Area.
(7) In Nevada, the bag limit is 2 and the possession limit is 4.
(8) In Oregon, no more than 1 pigeon daily in bag or possession

[FR Doc. 92-23503 Filed 9-25-92; 8:45 am]
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Monday
September 28, 1992

Part III

The President

Memorandum of September 25—Memorandum for the Secretary of Transportation and the United States Trade Representative

Notice of September 25—Continuation of Emergency Regarding Export Control Regulations

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Federal Register
Vol. 57, No. 188
Monday, September 28, 1992

Presidential Documents

Title 3—

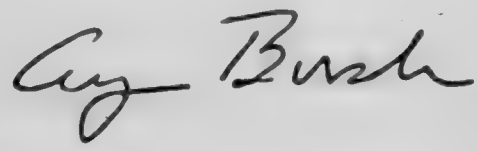
The President

Memorandum of September 25, 1992

Memorandum for the Secretary of Transportation [and] the United States Trade Representative

Pursuant to section 6 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. 10922(*l*)(1) and (2), I hereby extend for an additional 2 years both the moratorium imposed by that section and all actions taken by me or my predecessor under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. This action preserves the *status quo* and will maintain the moratorium through September 19, 1994, unless earlier revoked or modified.

This memorandum shall be published in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 25, 1992.

[FR Doc. 92-23890
Filed 9-25-92; 12:17 pm]
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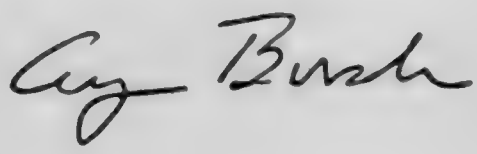
Presidential Documents

Notice of September 25, 1992

Continuation of Emergency Regarding Export Control Regulations

On September 30, 1990, consistent with the authority provided me under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*), I issued Executive Order No. 12730. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on September 30, 1990, and extended on September 26, 1991, must continue in effect beyond September 30, 1992. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency in order to deal with the threat posed by the unrestricted access of foreign parties to United States goods, technology, and technical data and by the existence of certain boycott practices of foreign nations.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
Washington, September 25, 1992.

[FR Doc. 92-23889
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Privacy
Public L
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FEDERA

39597-4
40071-4
40301-4
40591-4
40827-4
41053-4
41375-4
41641-4
41853-4
42485-4
42681-4
42881-4
43125-4
43335-4
43605-4
43985-4
44077-4
44305-4
44481-4

Reader Aids

Federal Register

Vol. 57, No. 188

Monday, September 28, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

39597-40070.....1
40071-40300.....2
40301-40590.....3
40591-40826.....4
40827-41052.....8
41053-41374.....9
41375-41640.....10
41641-41852.....11
41853-42484.....14
42485-42680.....15
42681-42880.....16
42881-43124.....17
43125-43334.....18
43335-43604.....21
43605-43884.....22
43885-44076.....23
44077-44304.....24
44305-44480.....25
44481-44650.....28

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

2.....40024
3.....40024
11.....40024

3 CFR

Executive Orders:
12154 (See EO 12814).....42483
12543 (See DOT final rule of August 26, 1992).....41696
12722 (See DOT rule of August 21).....39603
12724 (See DOT rule of August 21).....39603
12730 (Continued by Notice of September 25, 1992).....44649
12735 (See State Dept. final rule of Aug. 24).....41077
12775 (See DOT rule of August 17).....39603
12779 (See DOT rule of August 17).....39603
12814.....42483

Administrative Orders:
Presidential Determinations:
No. 91-52 of September 13, 1991 (See Presidential Determination No. 92-45 of August 28, 1992).....43125
No. 92-39 of August 17, 1992.....40071
No. 92-40 of August 17, 1992.....40073
No. 92-42 of August 25, 1992.....40075
No. 92-43 of August 25, 1992.....40077
No. 92-44 of August 25, 1992.....40079
No. 92-45 of August 28, 1992).....43125
No. 92-46 of September 4, 1992.....42881

Memorandums:
Memorandum of September 17, 1990 (Continued by Memorandum of September 25, 1992).....44647

Notices:
September 18, 1992.....43603
September 25, 1992.....44649

Proclamations:
6467.....40591
6468.....40827
6469.....41051
6470.....41373
6471.....42679
6472.....43127
6473.....43129
6474.....43333
6475.....44305
6476.....44307
6477.....44309

4 CFR

Proposed Rules:
Ch. III.....43776

5 CFR

531.....43131
536.....43131
550.....40070, 43131
870.....43131
890.....43131, 43132

Proposed Rules:
532.....42513, 44343

7 CFR

2.....40829
16.....44077
210.....40729
272.....44481
275.....44481
301.....42485
319.....43134
723.....43580
800.....40301
916.....42681
917.....42681, 42683
920.....41853, 42684
928.....44311
944.....42685, 42687
959.....44312
966.....42688
967.....42689
980.....42688
987.....43335
1207.....40081
1427.....40593
1464.....43580
1703.....44313
1956.....42691

Proposed Rules:
13.....43628
319.....40872, 43628
780.....43937
910.....42515, 43943
1001.....44344
1002.....44344
1004.....44344
1005.....44344
1007.....44344
1011.....44344
1030.....44344
1033.....42899, 44344

1036.....42899, 44344
1040.....44344
1044.....44344
1046.....44344
1049.....42899, 44344
1065.....44344
1068.....44344
1079.....44344
1093.....44344
1094.....44344
1096.....44344
1097.....44344
1098.....44344
1099.....44344
1106.....44344
1108.....44344
1124.....44344
1126.....44344
1131.....44344
1135.....44344
1138.....44344
1209.....43943
1413.....42899, 44512
1744.....39628
1902.....39631
1930.....39631
1944.....39635

8 CFR

204.....41053
209.....42883
214.....40830, 42884
251.....40830
258.....40830
274a.....42884

9 CFR

75.....43605
94.....43606, 43885, 44330
381.....43588

Proposed Rules:

75.....40139
92.....41549
124.....40493
201.....42515
203.....42515
307.....40623
310.....40623
318.....42885
319.....42885

10 CFR

11.....41375
25.....41376
35.....41376
50.....41378, 43886
600.....40083
605.....40582

Proposed Rules:

26.....42901
50.....44513
70.....42901
73.....42901
1023.....40345

11 CFR

200.....39743

Proposed Rules:

104.....44137

12 CFR

3.....40302, 44078
204.....40597
208.....43869
217.....43336
225.....41381, 41641, 43889
230.....43337
250.....40597, 41643
262.....41641
265.....40597
545.....40085
562.....40085
563.....40085
563c.....40085
571.....40085
603.....42888
611.....43393
612.....43394
614.....43290, 44489
619.....43290
701.....42486
935.....42888
940.....42888
1616.....43607

Proposed Rules:

3.....42623, 42901
208.....39641, 42623
225.....39641, 42623
325.....42623
363.....42516
509.....40350
516.....40350
517.....42906
528.....40350
541.....40350
543.....40350
545.....40350
552.....40350
556.....40350
558.....40350
559.....40350
561.....40350
563.....40140, 40350, 40524
563b.....40350
563e.....40350
567.....40143, 40147, 40350, 40524
571.....40350, 40524
579.....40350
580.....40350
791.....42532
1625.....39743

13 CFR

121.....41068

Proposed Rules:

108.....43155, 43157
120.....44346

14 CFR

13.....40094
21.....41069, 41072, 41360, 42846, 43776
23.....41069, 41072
36.....41360, 42846
39.....40307–40313, 40601, 40835–40838, 42692, 42693, 43291, 43890, 44489
43.....41360
71.....40095, 40096, 42488
91.....41360, 42662
95.....44489
97.....41074, 41075, 44085, 44087
121.....42662
125.....42662
135.....42662, 43776
147.....41360
200.....40097
203.....40097
205.....40097
206.....40097
231.....40097
232.....40097
255.....43780
263.....40097
288.....40097
294.....40097
296.....40097
297.....40097
298.....40097
302.....40097
372.....40097
399.....40097
1214.....41077, 41854

Proposed Rules:

Ch. I.....41894
39.....40359, 40623, 40624, 41114, 41115, 41439, 43944, 44138–44141
61.....41974
71.....40148–40156, 41441–41445, 42810, 44464
73.....44464
93.....42810
101.....41628
107.....43294
108.....43294
207.....42864
208.....42864
212.....42864
294.....42864
298.....42864
380.....42864
389.....42864

15 CFR

29b.....43892
60.....40840
770.....41854
771.....41854
773.....41854
776.....41854
779.....41854
786.....41854
799.....41854
Ch. IX.....43310
944.....43310

Proposed Rules:

799.....41894
806.....43158
Ch. IX.....44347
946.....40877

16 CFR

305.....41388, 43611, 44331
1115.....39597

Proposed Rules:

229.....41706
230.....41707
232.....41706

17 CFR

4.....41173
16.....40601
19.....41389
30.....40603
150.....44490

Proposed Rules:

Ch. II.....43631
33.....40626

19 CFR

10.....40314, 40604, 43059
24.....42697
103.....44089
122.....43395
141.....40605
142.....44090
145.....40255
171.....40605
172.....40605
178.....44090

Proposed Rules:

4.....40627
101.....42712
141.....40361
142.....40361, 44142
143.....40361
146.....41896
151.....40361, 44143
152.....44143
191.....41446, 44145

20 CFR

404.....44095
655.....40966, 43118, 43495

Proposed Rules:

416.....44146, 44348, 44519
626.....41447
627.....41447
628.....41447
629.....41447
630.....41447
631.....41447
637.....41447

21 CFR

5.....40315–40318, 43397
177.....43398
178.....43631
310.....41857
358.....44493, 44494
520.....42490, 42623
522.....41861, 42623
526.....42623
529.....42489
556.....41861
573.....40318
1308.....43399
1310.....43614
1313.....43614

Proposed Rules:

131.....40255, 43059
166.....43634
310.....40944
864.....43161
872.....43165
884.....42908

22 CFR

121.....41077

24 CFR

25.....40111
91.....40038
135.....40111
203.....44098
234.....44098
570.....40038
905.....40113

25 CFR

Proposed Rules:

211.....40298
212.....40298

26 CFR

1.....40118, 40319, 40841, 41079, 41644, 42490, 43893, 43897, 44332
5c.....43893

5f.....43893
5h.....43893
6.....43893
7.....43893
7a.....43893
10.....43893
13.....43893
14.....43893
14a.....43893
18.....43893
19.....43893
31.....44099
301.....43893
602.....40118, 40319, 41079, 41644, 43893, 43897

Proposed Rules:
1.....39743, 40378, 41707, 41897, 42712, 42720, 43776, 43945
49.....41549
301.....43777

27 CFR
5.....40323
20.....40847, 42623
53.....40324
70.....40327
194.....39597

Proposed Rules:
4.....40380, 40884
5.....40884
25.....44525
250.....40885
251.....40886
252.....40887
290.....40889

28 CFR
2.....41391–41394
11.....44106
50.....39598
80.....39598

Proposed Rules:
2.....41450

29 CFR
506.....40966, 43495
1910.....42102
1915.....42102
1926.....42102
2200.....41676
2676.....42490

Proposed Rules:
103.....43635
403.....41634
2610.....42910

30 CFR
56.....44256
57.....44256
206.....41862
207.....41862
208.....41862
210.....41862
216.....41862
218.....41862
219.....41862
220.....41862
228.....41862
914.....41869
920.....44112
925.....44114
935.....41690, 44118
944.....41692

Proposed Rules:
75.....40395, 42808
400.....43411
609.....43411
651.....43412
917.....41697, 43946–43952
920.....41712
935.....43954
950.....41714, 41715

31 CFR
10.....41093
204.....40239
205.....44272
315.....39601
353.....39601
358.....40607
550.....41696
575.....39603
580.....39603

Proposed Rules:
270.....41117

32 CFR
60.....40849
220.....41096
323.....40608
619.....44238
701.....40609
706.....41698
806.....41396
1906.....39604

Proposed Rules:
202.....43645
317.....40397

33 CFR
3.....39613, 42609
64.....43401
100.....40125, 40609, 40610, 41419, 41420
117.....39614, 41873
135.....41104
136.....41104
137.....41104
157.....40494
165.....40125, 40330, 40612, 41421, 43615, 44121, 44122
334.....40617

Proposed Rules:
89.....43169
117.....43647
162.....41899

34 CFR

Proposed Rules:
231.....44046
238.....44046
305.....43572
612.....44350
785.....44408
786.....44408
787.....44408

36 CFR
51.....42808

Proposed Rules:
51.....40496
242.....43074
1191.....41006

37 CFR
1.....40493
2.....40493
202.....39615

Proposed Rules:
1.....41899, 42721, 43412
5.....43412
10.....43412

38 CFR
1.....44123
3.....40944, 43904
17.....41700
21.....40613, 43616
36.....40615, 43616

Proposed Rules:
3.....40424
21.....41451

39 CFR
111.....43403

Proposed Rules:
111.....39646, 40890, 41716, 43956

40 CFR
52.....40126, 40331–40336, 42889–42895, 43905, 44124
55.....40792
58.....44495
60.....44496
62.....43405
136.....41830
146.....41173
156.....42472
170.....42472
180.....40128, 42699, 42700
185.....42700
186.....42700
260.....41173, 41566
261.....41173, 41566
262.....41173
264.....41173, 42832
265.....41173, 42832
266.....41566
268.....41173
270.....41173
271.....41173, 41566, 41699
279.....41566
281.....41874
414.....41838
721.....44050

Proposed Rules:
Ch. I.....42533, 43956, 44147
52.....40157, 40159, 41716, 42536, 42911, 42913, 43420–43425, 43648–43657, 43957, 43959, 44351, 44528–44542
60.....43171
61.....43173
62.....40628
63.....44147
81.....43846
122.....41344
153.....44290
159.....44290
180.....40161–40163, 42727–42730
228.....43427
250.....44043
260.....43171
264.....43171
265.....43171
268.....44545
270.....43171
271.....43171, 44545
300.....39659, 41452, 44545
372.....10820
721.....10820

42 CFR
60.....41875
405.....42491
410.....39743
412.....39746
413.....39746, 42491, 43906
414.....42491
415.....42491
431.....43922
442.....43922
447.....43906, 43922
483.....43922
488.....43922
489.....43922
498.....43922

Proposed Rules:
100.....41809
413.....43659

43 CFR
3150.....44333
3160.....44333

Public Land Orders:
6942.....42808
6943.....39616
2460 (Revoked in part by PLO 6945).....43405
6945.....43405
6947.....43618

Proposed Rules:
4.....44353
3160.....44547
3710.....41846
3800.....42732

44 CFR
64.....39617, 41104, 41875, 43618
65.....41877, 41878
67.....39619, 41880

Proposed Rules:
67.....41905

45 CFR
400.....42896
641.....40337
1301.....41881
1302.....41886

46 CFR
30.....41812
32.....41812
35.....41812
67.....44126
70.....41812
78.....41812
90.....41812
97.....41812
107.....41812
108.....41812
109.....41812
167.....41812
169.....41812
170.....41812
171.....41812
184.....41812
185.....41812
188.....41812
196.....41812
272.....39621
298.....39621, 44129
502.....44504
510.....39622, 40129
514.....39622, 44504
540.....41887
550.....44504
560.....40616
572.....40616

580.....39622
582.....39622

Proposed Rules:
67.....43432

47 CFR

1.....43406
2.....43290
63.....41106, 41109
73.....39624, 39625, 40342, 40849, 41698, 41700, 42510, 42511, 42701, 43290, 44337–44339, 44511
74.....41110
80.....43406
90.....40850, 42706, 43408, 44339
95.....40343
97.....40343

Proposed Rules:
Ch. I.....39661
2.....40630, 42916, 43434
13.....41718
15.....40630
21.....42916
22.....40630, 42916
25.....40425, 40426, 40891
61.....40426
63.....41118
69.....40426
73.....39663, 41719, 41911, 41912, 42536–42538, 42732, 44854, 44547–44549
94.....42916
99.....40630

48 CFR

Ch. I.....44258
4.....44259
5.....44260
13.....44260
14.....44261
15.....44261, 44262
19.....44260
22.....44262
25.....44263
30.....43409, 43495
31.....40344, 44264
32.....44267
42.....44264
52.....43409, 43495, 44259, 44261, 44262, 44267, 44268
202.....42626
204.....42626
208.....42626
214.....42626
215.....41422, 42626
216.....42626
219.....42626
223.....42626
225.....42626
226.....42626
227.....42626
228.....42626, 42707
231.....42626
232.....42626, 42707
236.....42626
237.....42626
239.....42626
242.....42626
245.....42626
252.....41422, 42626, 42707
253.....42626
270.....41422
525.....42708
552.....42708
817.....44129
923.....41974
1801.....40851
1803.....40851
1804.....40851
1805.....40851
1806.....40851
1807.....40851
1808.....40851
1809.....40851
1813.....40851
1815.....40851
1816.....40851
1819.....40851
1822.....40851
1823.....40851
1825.....40851
1827.....40851
1831.....40851
1832.....40851
1833.....40851
1836.....40851
1837.....40851
1842.....40851
1845.....40851
1849.....40851
1851.....40851
1852.....40851
1853.....40851
1870.....40851
9903.....43620

Proposed Rules:
45.....40891
9903.....43776
9904.....43776

49 CFR

1.....40620
110.....43062
350.....40946
355.....40946
396.....40946
397.....44129
571.....40131, 41423, 41428
588.....41428
1003.....41111
1012.....44135
1023.....43151
1039.....40620
1109.....39743
1313.....40620
1321.....40857, 43059, 43925
1313.....43291

Proposed Rules:
174.....42466
177.....42466
192.....41119
218.....41454
234.....44355
392.....44158
395.....44158
571.....40165, 41912
1002.....39743, 41459
1018.....41459
1039.....39663, 41122
1105.....42733
1145.....41122, 44614
1150.....42733
1312.....41459
1313.....41459
1314.....41459

50 CFR

17.....44340
20.....40032, 43856, 44472, 44616
204.....40858
216.....41701
217.....40859, 40861, 41703
227.....40859, 40861, 41703
285.....42710, 43409, 44340
299.....40858
641.....41892
642.....43153
646.....41892
653.....40134
661.....39626, 40135, 40136, 40622, 41705, 42511, 43621, 44135
663.....40136, 41112, 42898
672.....40137, 40255, 43621, 43926
675.....42710, 43154, 43621, 43627, 43926, 44341
681.....41112
683.....40255

Proposed Rules:
17.....39664, 40429, 43673–43686
100.....43074
216.....40166
217.....41123
227.....41123
228.....42538
611.....40493
672.....44355
685.....40493, 43290

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 11, 1992

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
0-26	(869-017-00007-8)	17.00	Jan. 1, 1992
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
900-999	(869-017-00016-7)	29.00	Jan. 1, 1992
1000-1059	(869-017-00017-5)	17.00	Jan. 1, 1992
1060-1119	(869-017-00018-3)	13.00	Jan. 1, 1992
1120-1199	(869-017-00019-1)	9.50	Jan. 1, 1992
1200-1499	(869-017-00020-5)	22.00	Jan. 1, 1992
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
1940-1949	(869-017-00023-0)	23.00	Jan. 1, 1992
1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-017-00026-4)	17.00	Jan. 1, 1992
9 Parts:			
1-199	(869-017-00027-2)	23.00	Jan. 1, 1992
200-End	(869-017-00028-1)	18.00	Jan. 1, 1992
10 Parts:			
0-50	(869-017-00029-9)	25.00	Jan. 1, 1992
51-199	(869-017-00030-2)	18.00	Jan. 1, 1992
200-399	(869-017-00031-1)	13.00	[4] Jan. 1, 1987
400-499	(869-017-00032-9)	20.00	Jan. 1, 1992
500-End	(869-017-00033-7)	28.00	Jan. 1, 1992
11	(869-017-00034-5)	12.00	Jan. 1, 1992
12 Parts:			
1-199	(869-017-00035-3)	13.00	Jan. 1, 1992
200-219	(869-017-00036-1)	13.00	Jan. 1, 1992
220-299	(869-017-00037-0)	22.00	Jan. 1, 1992
300-499	(869-017-00038-8)	18.00	Jan. 1, 1992
500-599	(869-017-00039-6)	17.00	Jan. 1, 1992
600-End	(869-017-00040-0)	19.00	Jan. 1, 1992
13	(869-017-00041-8)	25.00	Jan. 1, 1992
14 Parts:			
1-59	(869-017-00042-6)	25.00	Jan. 1, 1992
60-139	(869-017-00043-4)	22.00	Jan. 1, 1992
140-199	(869-017-00044-2)	11.00	Jan. 1, 1992
200-1199	(869-017-00045-1)	20.00	Jan. 1, 1992
1200-End	(869-017-00046-9)	14.00	Jan. 1, 1992
15 Parts:			
0-299	(869-017-00047-7)	13.00	Jan. 1, 1992
300-799	(869-017-00048-5)	21.00	Jan. 1, 1992
800-End	(869-017-00049-3)	17.00	Jan. 1, 1992
16 Parts:			
0-149	(869-017-00050-7)	6.00	Jan. 1, 1992
150-999	(869-017-00051-5)	14.00	Jan. 1, 1992
1000-End	(869-017-00052-3)	20.00	Jan. 1, 1992
17 Parts:			
1-199	(869-017-00054-0)	15.00	Apr. 1, 1992
200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
1-149	(869-017-00057-4)	16.00	Apr. 1, 1992
150-279	(869-017-00058-2)	19.00	Apr. 1, 1992
280-399	(869-017-00059-1)	14.00	Apr. 1, 1992
400-End	(869-017-00060-4)	9.50	Apr. 1, 1992
19 Parts:			
1-199	(869-017-00061-2)	28.00	Apr. 1, 1992
200-End	(869-017-00062-1)	9.50	Apr. 1, 1992
20 Parts:			
1-399	(869-017-00063-9)	16.00	Apr. 1, 1992
400-499	(869-017-00064-7)	31.00	Apr. 1, 1992
500-End	(869-017-00065-5)	21.00	Apr. 1, 1992
21 Parts:			
1-99	(869-017-00066-3)	13.00	Apr. 1, 1992
100-169	(869-017-00067-1)	14.00	Apr. 1, 1992
170-199	(869-017-00068-0)	18.00	Apr. 1, 1992
200-299	(869-017-00069-8)	5.50	Apr. 1, 1992
300-499	(869-017-00070-1)	29.00	Apr. 1, 1992
500-599	(869-017-00071-0)	21.00	Apr. 1, 1992
600-799	(869-017-00072-8)	7.00	Apr. 1, 1992
800-1299	(869-017-00073-6)	18.00	Apr. 1, 1992
1300-End	(869-017-00074-4)	9.00	Apr. 1, 1992
22 Parts:			
1-299	(869-017-00075-2)	26.00	Apr. 1, 1992
300-End	(869-017-00076-1)	19.00	Apr. 1, 1992
23	(869-017-00077-9)	18.00	Apr. 1, 1992
24 Parts:			
0-199	(869-017-00078-7)	34.00	Apr. 1, 1992
200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
500-699	(869-017-00080-9)	13.00	Apr. 1, 1992
700-1699	(869-017-00081-7)	34.00	Apr. 1, 1992
1700-End	(869-017-00082-5)	13.00	Apr. 1, 1992
25	(869-017-00083-3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1-1.60	(869-017-00084-1)	17.00	Apr. 1, 1992
§§ 1.61-1.169	(869-017-00085-0)	33.00	Apr. 1, 1992
§§ 1.170-1.300	(869-017-00086-8)	19.00	Apr. 1, 1992
§§ 1.301-1.400	(869-017-00087-6)	17.00	Apr. 1, 1992
§§ 1.401-1.500	(869-017-00088-4)	38.00	Apr. 1, 1992
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1, 1992
§§ 1.1401-End	(869-017-00094-9)	26.00	Apr. 1, 1992
2-29	(869-017-00095-7)	22.00	Apr. 1, 1992
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00099-0)	20.00	Apr. 1, 1992
500-599	(869-017-00100-7)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992
27 Parts:			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–017–00103–1)	11.00	[6]Apr. 1, 1991
28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–013–00107–9)	27.00	July 1, 1991
*900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
1911–1925	(869–017–00111–2)	9.00	[7] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–013–00113–3)	25.00	July 1, 1991
30 Parts:			
1–199	(869–013–00114–1)	22.00	July 1, 1991
200–699	(869–017–00115–5)	19.00	July 1, 1992
*700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–013–00117–6)	15.00	July 1, 1991
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–013–00119–2)	25.00	July 1, 1991
190–399	(869–013–00120–6)	29.00	July 1, 1991
400–629	(869–017–00121–0)	29.00	July 1, 1992
630–699	(869–017–00122–8)	14.00	[9] July 1, 1991
700–799	(869–013–00123–1)	17.00	July 1, 1991
800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–013–00125–7)	15.00	July 1, 1991
125–199	(869–013–00126–5)	18.00	July 1, 1991
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–013–00128–1)	24.00	July 1, 1991
*300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–013–00130–3)	26.00	July 1, 1991
*35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–013–00134–6)	15.00	July 1, 1991
38 Parts:			
0–17	(869–013–00135–4)	24.00	July 1, 1991
18–End	(869–013–00136–2)	22.00	July 1, 1991
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
1–51	(869–013–00138–9)	27.00	July 1, 1991
52	(869–013–00139–7)	28.00	July 1, 1991
53–60	(869–013–00140–1)	31.00	July 1, 1991
*61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–013–00142–7)	11.00	July 1, 1991
86–99	(869–013–00143–5)	29.00	July 1, 1991
100–149	(869–013–00144–3)	30.00	July 1, 1991
150–189	(869–013–00145–1)	20.00	July 1, 1991
190–259	(869–013–00146–0)	13.00	July 1, 1991
260–299	(869–013–00147–8)	31.00	July 1, 1991
*300–399	(869–017–00148–1)	15.00	July 1, 1992
400–424	(869–017–00149–0)	26.00	July 1, 1992
425–699	(869–013–00150–8)	23.00	[7] July 1, 1989
700–789	(869–013–00151–6)	20.00	July 1, 1991
790–End	(869–013–00152–4)	22.00	July 1, 1991
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–013–00153–2)	8.50	[8] July 1, 1990
101	(869–013–00154–1)	22.00	July 1, 1991
102–200	(869–017–00155–4)	11.00	[9] July 1, 1991
201–End	(869–013–00156–7)	10.00	July 1, 1991
42 Parts:			
1–60	(869–013–00157–5)	17.00	Oct. 1, 1991
61–399	(869–013–00158–3)	5.50	Oct. 1, 1991
400–429	(869–013–00159–1)	21.00	Oct. 1, 1991
430–End	(869–013–00160–5)	26.00	Oct. 1, 1991
43 Parts:			
1–999	(869–013–00161–3)	20.00	Oct. 1, 1991
1000–3999	(869–013–00162–1)	26.00	Oct. 1, 1991
4000–End	(869–013–00163–0)	12.00	Oct. 1, 1991
44	(869–013–00164–8)	22.00	Oct. 1, 1991
45 Parts:			
1–199	(869–013–00165–6)	18.00	Oct. 1, 1991
200–499	(869–013–00166–4)	12.00	Oct. 1, 1991
500–1199	(869–013–00167–2)	26.00	Oct. 1, 1991
1200–End	(869–013–00168–1)	19.00	Oct. 1, 1991
46 Parts:			
1–40	(869–013–00169–9)	15.00	Oct. 1, 1991
41–69	(869–013–00170–2)	14.00	Oct. 1, 1991
70–89	(869–013–00171–1)	7.00	Oct. 1, 1991
90–139	(869–013–00172–9)	12.00	Oct. 1, 1991
140–155	(869–013–00173–7)	10.00	Oct. 1, 1991
156–165	(869–013–00174–5)	14.00	Oct. 1, 1991
166–199	(869–013–00175–3)	14.00	Oct. 1, 1991
200–499	(869–013–00176–1)	20.00	Oct. 1, 1991
500–End	(869–013–00177–0)	11.00	Oct. 1, 1991
47 Parts:			
0–19	(869–013–00178–8)	19.00	Oct. 1, 1991
20–39	(869–013–00179–6)	19.00	Oct. 1, 1991
40–69	(869–013–00180–0)	10.00	Oct. 1, 1991
70–79	(869–013–00181–8)	18.00	Oct. 1, 1991
80–End	(869–013–00182–6)	20.00	Oct. 1, 1991
48 Chapters:			
1 (Parts 1–51)	(869–013–00183–4)	31.00	Oct. 1, 1991
1 (Parts 52–99)	(869–013–00184–2)	19.00	Oct. 1, 1991
2 (Parts 201–251)	(869–013–00185–1)	13.00	Dec. 31, 1991
2 (Parts 252–299)	(869–013–00186–9)	10.00	Dec. 31, 1991
3–6	(869–013–00187–7)	19.00	Oct. 1, 1991
7–14	(869–013–00188–5)	26.00	Oct. 1, 1991
15–End	(869–013–00189–3)	30.00	Oct. 1, 1991
49 Parts:			
1–99	(869–013–00190–7)	20.00	Oct. 1, 1991
100–177	(869–013–00191–5)	23.00	Dec. 31, 1991
178–199	(869–013–00192–3)	17.00	Dec. 31, 1991
200–399	(869–013–00193–1)	22.00	Oct. 1, 1991
400–999	(869–013–00194–0)	27.00	Oct. 1, 1991
1000–1199	(869–013–00195–8)	17.00	Oct. 1, 1991
1200–End	(869–013–00196–6)	19.00	Oct. 1, 1991
50 Parts:			
1–199	(869–013–00197–4)	21.00	Oct. 1, 1991
200–599	(869–013–00198–2)	17.00	Oct. 1, 1991
600–End	(869–013–00199–1)	17.00	Oct. 1, 1991
CFR Index and Findings Aids	(869–017–00053–1)	31.00	Jan. 1, 1992

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1 1987, should be retained.

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[8] No amendments to this volume were promulgated during the period July 1, 1990 to June 30, 1991. The CFR volume issued July 1, 1990, should be retained.

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VOL
57
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189
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Pages

9-29-92
Vol. 57 No. 189
Pages 44651-44966

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Tuesday
September 29, 1992

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Magnetic tapes	512–2235
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 57, No. 189

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Administrative Conference of the United States
RULES
Recommendations:
Administrative practice and procedure
Correction, 44791

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Food and Nutrition Service
See Forest Service
NOTICES
Meetings:
Agricultural Biotechnology Research Advisory Committee, 44731

Air Force Department
RULES
Aircraft:
Defense Department commercial air carrier quality and safety review program, 44682

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant-related quarantine, foreign:
Postentry quarantine of plants
Correction, 44791

Army Department
PROPOSED RULES
Privacy Act; implementation, 44716

Coast Guard
RULES
Regattas and marine parades:
2.4 Mile Choptank River Swim, 44687
Riverfest 1992, 44688
PROPOSED RULES
Pollution:
Discharge removal equipment for vessels carrying oil, 44912

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 44733

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Upland cotton program—
Acreage reduction percentage, 44709

Comptroller of the Currency
RULES
Prompt corrective actions and rules of practice for hearings, 44866

Council on Environmental Quality
NOTICES
Meetings:
President's Commission on Environmental Quality, 44736

Customs Service
PROPOSED RULES
Articles conditionally free, subject to a reduced rate, etc.:
Temporary importation bonds; anticipatory breach, assessment amounts, petitions for relief, 44714
Merchandise entry:
Invoice requirements
Correction, 44714

Defense Department
See Air Force Department
See Army Department
See Navy Department

Defense Nuclear Facilities Safety Board
RULES
Conflict of interests; organizational and consultant, 44851

Economic Development Administration
NOTICES
Trade adjustment assistance eligibility determination petitions:
United Magnetic Products, Inc., et al., 44734

Education Department
RULES
Special education and rehabilitative services:
Children with disabilities education program and preschool grants; assistance to States, 44794
NOTICES
Meetings:
Educational Excellence for Hispanic Americans, President's Advisory Commission, 44737

Employment and Training Administration
NOTICES
Adjustment assistance:
Honeywell, Inc., 44756
Performance Semiconductor Corp., 44757
Alien crewmembers for longshore activities in U.S. ports; attestations by employers, 44757

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
National Association of Regulatory Utility Commissioners, 44737
Grants and cooperative agreements; availability, etc.:
Nuclear waste monitored retrievable storage facility; feasibility studies for siting, 44737
Meetings:
Environment, Safety and Health Advisory Committee, 44739
Secretary of Energy Advisory Board task forces, 44738
Monitored retrievable storage (MRS) facility, license application annotated outline; transmittal to NRC, 44956

Natural gas exportation and importation:
Aluminum Co. of America, 44739

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Rhode Island and Vermont, 44691
Air quality implementation plans; approval and promulgation; various States:
Ohio, 44680
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Arizona, 44718
California; correction, 44791
Hazardous waste:
Land disposal restrictions—
Transfer of data to contractors, 44718
NOTICES
Agency information collection activities under OMB review, 44739
Meetings:
Fuels and fuel additives; workshop, 44740

Environmental Quality Council
See Council on Environmental Quality

Executive Office of the President
See Council on Environmental Quality
See Presidential Documents

Federal Aviation Administration
RULES
Air carrier certification and operations:
Aircraft ground deicing and anti-icing program, 44924
Transition areas, 44657, 44658
VOR Federal airways, 44659
PROPOSED RULES
Airworthiness directives:
de Havilland, 44710
Control zones and transition areas, 44713
Transition areas, 44712
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Ground deicing and anti-icing program, 44944
Airport noise compatibility program:
Noise exposure map—
Midland International Airport, TX, 44783
Valley International Airport, TX, 44784
Meetings:
Informal airspace meetings—
North Carolina, 44785

Federal Communications Commission
RULES
Radio services, special:
Maritime services—
Global Maritime Distress and Safety System; performance standards, 44700
NOTICES
Agency information collection activities under OMB review, 44742
Committees; establishment, renewal, termination, etc.:
Emergency Broadcast System Advisory Committee, 44742

Federal Deposit Insurance Corporation
RULES
Prompt corrective actions and rules of practice for hearings, 44866

Federal Energy Regulatory Commission
NOTICES
Meetings; Sunshine Act, 44787
Applications, hearings, determinations, etc.:
Multi-Energy Inc., 44739
Overthrust Pipeline Co., 44739

Federal Maritime Commission
RULES
Maritime carriers in domestic offshore commerce:
Shipping Act of 1916; Section 35 application exemptions, etc.—
Domestic offshore financial filing regulations, 44697
Passenger vessels:
Indemnification of passengers for nonperformance of transportation; financial responsibility requirements revision
Correction, 44700

Federal Reserve System
RULES
Prompt corrective actions and rules of practice for hearings, 44866
NOTICES
Meetings:
Consumer Advisory Council, 44742
Meetings; Sunshine Act, 44789

Federal Trade Commission
NOTICES
Meetings; Sunshine Act, 44789
Prohibited trade practices:
Jason Pharmaceutical, Inc., et al., 44743
National Center for Nutrition, Inc., 44743
Phone Programs, Inc., 44744
Sandoz Nutrition Corp., 44747
Seropian, Diran M., M.D., 44748
University Health, Inc., et al., 44748

Fish and Wildlife Service
RULES
Endangered and threatened species:
American chaffseed, 44703
PROPOSED RULES
Endangered and threatened species:
Whooping cranes, 44721

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Bambermycins and tylosin
Correction, 44791

Food and Nutrition Service
RULES
Food stamp program:
Electronic benefit transfer systems; approval and operation standards
Correction, 44791

Foreign Assets Control Office
RULES
Foreign funds control regulations:
Baltic Republics independence; recognition, 44682

Forest Service
NOTICES
Appeal exemptions; timber sales:
Wallowa-Whitman National Forest, OR, 44731
Environmental statements; availability, etc.:
Los Padres National Forest, CA, 44732

General Services Administration
RULES
Federal property management:
Public buildings and space—
Standard level user charge to rent; guidelines, 44693
NOTICES
Federal travel:
Relocation allowances and entitlements; Federal employees being relocated from or to Florida and Louisiana disaster areas; waiver/clarification, 44748
Special actual subsistence expense reimbursement ceiling for travel to Florida and Louisiana disaster areas, 44751

Health and Human Services Department
See Food and Drug Administration

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 44752
Grants and cooperative agreements; availability, etc.:
Community development technical assistance program (colonias in southwestern U.S.), 44854

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Outer Continental Shelf Advisory Board, 44752

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Annual status report, 44735
Countervailing duties:
Steel wire nails from New Zealand, 44735

International Trade Commission
NOTICES
Meetings; Sunshine Act, 44789

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern Railroad Co.; correction, 44792
Montana Rail Link, Inc., 44755, 44756

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Conservation and recreation areas:
California Desert Conservation Area Plan, 44752
Meetings:
Kingman Resource Area Grazing Advisory Board, 44753
Southwestern Arizona Grazing Advisory Board, 44753
Realty actions; sales, leases, etc.:
California, 44753

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Consolidation Coal Co. et al., 44777

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 44779

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Nonconforming vehicles and equipment importation; technical amendment, 44703
PROPOSED RULES
Motor vehicle safety standards:
Rollover prevention; planning document availability, 44721

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 44729
NOTICES
Permits:
Marine mammals, 44736

National Park Service
NOTICES
Meetings:
Civil War Sites Advisory Commission, 44754
National Register of Historic Places:
Pending nominations, 44755

Navy Department
NOTICES
Meetings:
Planning and Steering Advisory Committee, 44736

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 44789
Applications, hearings, determinations, etc.:
Sequoyah Fuels Corp., 44779

Postal Service
NOTICES
Meetings; Sunshine Act, 44790

Presidential Documents
PROCLAMATIONS
Special observances:
Child Health Day (Proc. 6478), 44959
Fire Prevention Week (Proc. 6480), 44963
Leif Erikson Day (Proc. 6479), 44961
White Cane Safety Day (Proc. 6481), 44965

Public Health Service
See Food and Drug Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Paradox Valley Unit, Colorado River Basin Salinity Control Project, CO, 44754

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 44790
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, 44780
Self-regulatory organizations; unlisted trading privileges:
Philadelphia Stock Exchange, Inc., 44780
Applications, hearings, determinations, etc.:
American Vision Funds, Inc., 44780
R.R. Fund, Inc., 44781
Strategic Gold/Minerals Fund, Inc., 44783
Strategic Treasury Positions, Inc., 44782

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Missouri, 44660

Thrift Supervision Office
RULES
Prompt corrective actions and rules of practice for hearings, 44866

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Customs Service
See Foreign Assets Control Office
See Thrift Supervision Office

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Royal City of Susa: Ancient Near Eastern Treasures from Louvre, 44786

Separate Parts In This Issue

Part II
Department of Education, 44794

Part III
Department of Housing and Urban Development, 44854

Part IV
Department of the Treasury, Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, 44866

Part V
Department of Transportation, Coast Guard, 44912

Part VI
Department of Transportation, Federal Aviation Administration, 44924

Part VII
Department of Energy, 44956

Part VIII
The President, 44959

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

1 CFR
305.....44791

3 CFR
Proclamations:
6478.....44959
6479.....44961
6480.....44963
6481.....44965

7 CFR
274.....44791
276.....44791
Proposed Rules:
319.....44791
1413.....44709

10 CFR
1706.....44651

12 CFR
6.....44866
19.....44866
208.....44866
263.....44866
308.....44866
325.....44866
565.....44866

14 CFR
71 (4 documents).....44657–44659
121.....44924
Proposed Rules:
39.....44710
71 (2 documents).....44712, 44713

19 CFR
Proposed Rules:
10.....44714
141.....44791

21 CFR
558.....44791

30 CFR
925.....44660

31 CFR
520.....44682

32 CFR
861.....44682
Proposed Rules:
505.....44716

33 CFR
100 (2 documents).....44687, 44688
Proposed Rules:
155.....44912

34 CFR
300.....44794
301.....44794

40 CFR
52.....44689
62.....44691
Proposed Rules:
2.....44718
52.....44718

41 CFR
101.....44691

46 CFR
500.....44697
514.....44697
542.....44700
550.....44697
552.....44697
553.....44697
555.....44697

47 CFR
80.....44700

49 CFR
591.....44703
Proposed Rules:
571.....44721

50 CFR
17.....44703
Proposed Rules:
17.....44721
672.....44729
675.....44729

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SS
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[Docket

Rules G
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AGENCY
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ACTION:

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Rules and Regulations

Federal Register
Vol. 57, No. 189
Tuesday, September 29, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1706

[Docket No. RM-92-1]

Rules Governing Organizational and Consultant Conflicts of Interest

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Final rule.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) is issuing final regulations establishing the guidelines, requirements and procedures that the Board will follow to identify and avoid or mitigate conflicts of interests and potential conflicts of interests by those providing assistance to the Board under contracts with the Board. Organizational and consultant conflicts of interest should be avoided and, if they cannot be avoided, should be mitigated. The rules also cover arrangements for obtaining the expert services of personnel working for the National Laboratories under the cognizance of the Department of Energy.

EFFECTIVE DATE: October 29, 1992.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, 625 Indiana Avenue NW., suite 700, Washington, DC 20004, telephone (202) 208-6387.

SUPPLEMENTARY INFORMATION:

I. Background

The Board is comprised of "* * * respected experts in the field of nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board." (42 U.S.C. 2286(b)(1).) In fulfilling its statutory responsibilities, the Board utilizes the expert judgment of its members in making determinations related to public health and safety at defense nuclear facilities. In addition to its staff, the Board finds it necessary, from time to time, to seek assistance from outside sources, particularly where expertise in specialized technical fields is involved. The independent technical capability inherent in the Board provides an important check against contractor work being improperly influenced by an organizational or consultant conflict of interest (OCI). Nevertheless, it is important for the Board to be aware of and make judgments respecting potential conflicts of interests of its offerors and contractors.

On July 14, 1992, the Board published for comment its proposed regulations for identifying, evaluating and resolving organizational and consultant conflicts of interest. A 30-day comment period was provided. The Board received one set of comments, which it has carefully considered. The Board has made some clarifying modifications to the proposed rule in response to one of the comments.

II. Board Consideration of Comments

Contractors Doing Other Business With the Department of Energy ("DOE")

The commenters objected to what they characterized as the broad exclusion of all contractors or subcontractors doing business with DOE, as not being in the best interests of the Board. The comment was based on language in Section II of the Notice of Proposed Rulemaking, "Summary of the Provisions of the Proposed Rule", that "anyone engaged in performing work or services under a DOE contract or subcontract, particularly one relating to a defense nuclear facility, will be assumed to have a potential conflict of interest in regard to potential assistance to the Board." The commenters believe that this language suggests that Board will exclude all contractors with DOE contracts, even though, in the view of the commenters, this group of contractors presumably contains the best source of experts for the Board. The commenters also assert that the proposed regulation does not appear to contain as broad an exclusion as the Summary suggests, so that they find an inconsistency between the Summary and certain sections of the proposed regulation. The commenters propose that a simple notification requirement for DOE contractors, combined with a limitation of conflicts to related contracts, should be sufficient for the Board's purpose without excluding a broad category of subject matter experts.

The Board has carefully considered this comment, but does not agree with the commenters that the regulation "excludes" from consideration any contractor who has dealings with DOE. In the Board's view, however, where a contractor performing work under contract for the Department of Energy is financially dependent on those contracts, the objectivity of the contractor performing contract work for the Board could be impaired, even if the DOE contracts do not relate to defense nuclear facilities. Whether an actual conflict of interest does or might exist is a question of fact that depends on the particular circumstances. Because of the nature of the Board's statutory duties with respect to oversight of DOE's defense nuclear facilities, it is imperative that the Board receive objective advice from the experts it engages, and that the public perceive these experts as impartial. Accordingly, the Board believes that it must have the ability to examine each situation where a contractor is doing business with DOE to establish whether in fact there is an actual or potential conflict of interest.

The fact that the Board will give close scrutiny to cases where an offeror is also a DOE contractor does not mean, however, that in each such case the offeror will be disqualified on account of an OCI. The universe of qualified experts from whom the Board can seek services is small, and because of the specialized nature of the expertise, many of the experts whom the Board might wish to use also do business with DOE. To automatically disqualify all of those experts would deprive the Board of the assistance that it needs to carry out its responsibilities. Thus, where the Board determines that there is an OCI that cannot be avoided, the Board must weigh the possible harms that the existence of an OCI could cause in the particular situation against the usefulness and importance of the expertise that the particular contractor can furnish, the prospects of finding that expertise in a contractor who has no OCI, and the possibilities of mitigating the OCI. Moreover, in some cases the Board may conclude that in fact there is no actual or potential OCI.

Furthermore, the Board does not find an inconsistency between the Summary of the proposed rule and the text of the proposed regulation. Although § 1706.5(a)(2) of the proposed rule only precludes the evaluation of products or services offered or provided to DOE by an offeror, § 1706.7(a) requires the Board to disqualify any offeror with an actual or potential OCI that cannot be avoided, unless the OCI is waived by the Board. As explained above, in the Board's view, an offeror's contractual relationships with DOE may represent an OCI with respect to services to be performed for the Board, even if those services would be in areas unrelated to the work performed for DOE. Consequently, under § 1706.7, such an offeror might be disqualified from a contract award if the Board concluded that an OCI existed and could not be avoided, and that it was not in the best interests of the Government for the Board to waive that OCI.

Nonetheless, in order to clarify what the commenters found ambiguous or inconsistent in the Notice of Proposed Rulemaking, the Board has added an additional subparagraph to § 1706.5(a), specifically stating that contracts will generally not be awarded to an offeror for any services (other than those described in subparagraphs (1) or (2) of § 1706.5(a)) covered by the regulation where the Board has determined, pursuant to § 1706.7, that an actual or potential OCI exists and cannot be avoided, but the Board does not waive that OCI. The caption of § 1706.5(a) has also been changed to reflect the additional text.

Contractor Use of Non-Public Information

The commenters also question the time limitations in § 1706.5(e), which prohibits the release of certain information that is not publicly available by contractors with access to internal Board information. Section 1706.5(e)(2) would preclude contractors with such access from using such information for unsolicited proposals for one year after it is made public, and in competing for new work for six months after such information is made public. The commenters believe that such time limitations exceed what is necessary to protect the interests of the Government, since, in view of the commenters, there is no competitive advantage to a contractor once all contractors have the same public information.

In the view of the Board, however, a contractor who has had access to non-public information may indeed continue to have a competitive advantage for some period of time after the information has become public, until enough time has elapsed for other persons to acquire and absorb that information. Clearly, a contractor who had valuable information for several months before a response to a Request for Proposals was due would have an advantage in preparing a proposal over someone who obtained access to the information only one week before the due date. Similarly, in the case of unsolicited proposals, a contractor who has had access to relevant non-public information may be able to develop a unique or innovative proposal for the Government using that information, which someone without access to the information would not likely conceive of or develop. As the Government can accept unsolicited proposals without competitive bidding, earlier access to information by one contractor than another could constitute a preemptive competitive advantage.

Thus, the Board believes that it is appropriate to prevent contractors from using non-public information to which they have had access by virtue of contracts with the Board for some specified period of time after public availability. The Board views the one-year and six-months time limitation as reasonable. The Nuclear Regulatory Commission and the Department of Energy have both utilized the one-year and six-months periods with respect to use of previously non-public information by their contractors.

List of Subjects in 10 CFR Part 1706

Government procurement.

Accordingly, chapter XVII of title 10 of the Code of Federal Regulations is amended by adding a new part 1706 to read as follows:

PART 1706—ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTERESTS

Sec.

1706.1 Scope; statement of policy.
1706.2 Definitions.
1706.3 Applicability.
1706.4 Head of the contracting activity.
1706.5 General rules.
1706.6 Solicitation provisions.
1706.7 Procedures.
1706.8 Waiver.
1706.9 Examples.
1706.10 Remedies.
1706.11 Organizational conflicts of interest certificate—Advisory or assistance services.

Authority: 42 U.S.C. 2286b(c).

§ 1706.1 Scope; statement of policy.

(a) *Scope.* This part sets forth the guidelines, requirements, and procedures the Defense Nuclear Facilities Safety Board will follow in determining whether a contractor or offeror has an organizational or consultant conflict of interest (OCI) and in avoiding, neutralizing, or mitigating OCIs.

(b) *Policy.* It is the policy of the Board to identify and then avoid or mitigate organizational and consultant conflicts of interest. Normally, the Board will not award contracts to offerors who have OCIs and will terminate contracts where OCIs are identified following contract award. In exceptional circumstances, the Board reserves the right to waive conflicts of interest if it determines that such action is in the best interests of the Government, pursuant to § 1706.8, and to take such mitigating measures as it deems appropriate pursuant to such section.

§ 1706.2 Definitions.

Advisory or assistance services means services acquired by contract to advise or assist the Board, whether with respect to its internal functions or its oversight of defense nuclear facilities, or otherwise to support or improve policy development or decisionmaking by the Board, or management or administration of the Board, or to support or improve the operation of the Board's management systems. Such services may take the form of the provision of information, advice, reports, opinions, alternatives, conclusions, recommendations, training, direct assistance, or performance of site visits, technical reviews, investigation of health and safety practices or other appropriate services.

Affiliates means associated business concerns or individuals if, directly or indirectly, either one controls or can control the other or a third party controls or can control both.

Board means, as the context requires, the Defense Nuclear Facilities Safety Board, its Chairman, or any other officer of the Defense Nuclear Facilities Safety Board to whom the appropriate delegation has been made under 42 U.S.C. 2286(c)(3).

Contract means any contract, agreement, or other arrangement with the Board, except as provided in § 1706.3.

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or other entity, or any group of one or more of the foregoing, which is a party to a contract with the Board, and the affiliates and successors in interest of such party. The term "contractor" also includes the chief executive and directors of a party to a contract with

the Board, the key personnel of such party identified in the contract, and current or proposed consultants or subcontractors to such party. The term "contractor" shall also include consultants engaged directly by the Board through the use of a contract.

Defense nuclear facility means any United States Department of Energy (DOE) defense nuclear facility, as defined in 42 U.S.C. 2286g, subject to the Board's oversight.

Evaluation activities means activities that involve evaluation of some aspect of defense nuclear facilities.

Mitigating means, with respect to an organizational or consultant conflict of interest, reducing or counteracting the effects of such a conflict of interest on the Board, but without eliminating or avoiding the conflict of interest.

National Laboratories means laboratories operated by educational institutions or business entities under management and operating contracts with DOE.

Offeror means any person, firm, unincorporated association, joint venture, partnership, corporation, or other entity, or any group of one or more of the foregoing, submitting a bid or proposal to the Board, solicited, unsolicited or otherwise invited by the Board, to obtain a contract, and the affiliates and successors in interest of such a bidder or proposer. The term "offeror" also includes the chief executive and directors of such a bidder or proposer, the key personnel of a bidder or proposer identified in the bid or proposal, and proposed consultants or subcontractors to such bidder or proposer.

Organizational or consultant conflict of interest means that, because of other past, present, or future planned activities or relationships, an offeror or contractor is unable, or potentially unable, to render impartial assistance or advice to the Board, or the objectivity of such offeror or contractor in performing contract work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. The term "organizational or consultant conflict of interest" shall include, but not be limited to, actions or situations that would preclude the award or extension of a contract under, or would be prohibited by, § 1706.5.

Potential organizational or consultant conflict of interest means a factual situation that indicates or suggests that an actual organizational or consultant conflict of interest may exist or arise from award of a proposed contract or from continuation of an existing contract. The term is used to signify those situations that merit conflicts review prior to contract award or that must be reported to the contracting officer for conflicts review if they arise during contract performance.

Research means any scientific, engineering, or other technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier which performs work under a prime contract with the Board.

Task order contract means a Board contract that contains a broad scope of work but does not authorize the contractor to perform specific tasks within that broad scope until the contracting officer issues task orders.

Unfair competitive advantage means an advantage obtained by an offeror or contractor to the Board by virtue of the relationship of the offeror or contractor with the Board or access to information not available to other offerors or contractors, and recognized in appropriate legal precedent as unfair.

In determining the meaning of any provision of this part, unless the context indicates otherwise, the singular includes the plural; the plural includes the singular; the present tense includes the future tense; and words of one gender include the other gender.

§ 1706.3 Applicability.

(a) *General applicability.* This part applies to contractors and offerors only, except as otherwise herein provided. This part shall be incorporated by reference and made a part of all Board contracts in excess of the small purchases threshold, except as provided in the last sentence of this § 1706.3(a). In addition, if determined appropriate by the contracting officer for the Board, this part may be incorporated by reference and made a part of Board contracts below the small purchases threshold, except as provided in the last sentence of this § 1706.3(a). This part does not apply to the acquisition of services, including, without limitation, consulting services, through the personnel appointment process or to Board agreements with other federal government agencies, but shall apply to Board agreements with the management and operating contractors (and subcontractors and consultants thereto) of the National Laboratories.

(b) *Subcontractors and consultants.* The requirements of this part shall also apply to subcontractors and consultants proposed for, or working on, a Board contract, in each case where the amount of the subcontract or consultant agreement under which such subcontractor or consultant is or will be working is expected to exceed $10,000, and in each other case where the contracting officer for the Board deems it appropriate to make the requirements of this part applicable to a subcontractor or consultant proposed for, or working on, a Board contract. The certificates or disclosures submitted by offerors or contractors pursuant to this part shall include certificates or disclosures from all subcontractors and consultant to contractor or offerors in those cases where this part applies by its terms to such subcontractors or consultants or has been applied to such persons by the contracting officer. Contractors and offerors shall assure that contract clauses giving effect to this § 1706.3(b), satisfactory to the contracting officer, are included in subcontracts and consultant agreements of any tier involving performance of work under a prime contract covered by this subpart.

§ 1706.4 Head of the contracting activity.

The head of the contracting activity for the Board shall be the General Manager.

§ 1706.5 General rules.

(a) *Award of Contracts.* Contracts shall generally not be awarded to an offeror.

(1) For any services where the award would result in the offeror evaluating products or services it has provided to the Board, is then providing to the Board, or is then offering to provide for the Board;

(2) For evaluation activities or research related to the Board's oversight of defense nuclear facilities, where the award would result in the offeror evaluating products or services it has provided, is then providing, or is then offering to provide to DOE or to contractors or subcontractors for defense nuclear facilities; or

(3) For any other services (the acquisition of which is otherwise covered by this part), where the Board has determined, pursuant to § 1706.7, that an actual or potential OCI exists and cannot be avoided, and the Board does not waive that OCI paragraphs (a)(1) and (2) of this section also apply when award would result in evaluation of products or services of another entity where the offeror has been, is, or would be substantially involved in the development of the product or performance of the service, or has other substantial involvement regarding the product or services.

(b) *Subsequent related contracts.* (1) A Board contractor under a Board contract shall normally be ineligible to participate in Board contracts or

subcontracts that stem directly from the contractor's performance of work under a previous Board contract, where the Board determines that an OCI would exist because:

(i) The expectation of receiving the subsequent contract is likely to diminish the contractor's capacity to give impartial assistance and advice, or otherwise result in a biased work product; or

(ii) An offeror on the subsequent contract would have an unfair competitive advantage of virtue of having performed the first contract.

(2) If a contractor under a Board contract prepares a complete or essentially complete statement of work or specifications in the performance of a contract, the contractor shall be ineligible to perform or participate in the initial contractual effort that is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications.

(c) *National Laboratory personnel.* The Board may engage personnel of the National Laboratories who have expertise needed by the Board in the performance of its oversight responsibilities, provided that prior to each such engagement, the Board determines either:

(1) That the nature of work performed by such personnel for DOE does not pose actual or potential OCIs with respect to the particular work covered by the Board contract; or

(2) That such engagement is in the Government's best interests and that a waiver should be granted pursuant to § 1706.8. In all cases involving National Laboratory personnel, notice of the circumstances of the contract, stating the rationale for use of the personnel, shall be published in the **Federal Register**.

(d) *Work for others.* During the term of any Board contract, the contractor may not enter into consulting or other contractual arrangements with other persons or entities, the result of which could give rise to an OCI with respect to the work being performed under the contract. The prime contractor shall ensure that all of its employees, subcontractors, and consultants under the contract abide by this paragraph. If the contractor has reason to believe that any proposed arrangement with other persons or entities may involve an actual or potential OCI, it shall promptly inform the Board in writing of all pertinent facts regarding such proposed arrangement. In the case of task order contracts, this paragraph applies, subject to § 1706.7(c), only to specific ongoing tasks that the contracting officer authorizes the contractor to perform.

(e) *Contractor protection of Board information that is not publicly available.* If the contractor in the performance of a Board contract obtains access to information, such as Board plans, policies, reports, studies, or financial plans, or internal data protected by the Privacy Act (5 U.S.C. 552a), proprietary information, or any other data which has not been released to the public, the contractor shall not:

(1) Use such information for any private purpose until the information has been released or is otherwise made available to the public;

(2) Compete for work for the Board based on such information for a period of six months after either the contract has been completed or such information has been released or otherwise made available to the public, whichever occurs first, or submit an unsolicited proposal to the Government based on such information until one year after such information is released or otherwise made available to the public, unless a waiver permitting such action has been granted pursuant to § 1706.8; or

(3) Release the information without prior written approval of the contracting officer, unless such information has previously been released or otherwise made available to the public by the Board.

§ 1706.6 Solicitation provisions.

(a) *Advisory or assistance services.* There shall be included in all formal Board solicitations for advisory or assistance services where the contract amount is expected to exceed $25,000 (or the then applicable small purchases threshold), a provision requiring a certificate representing whether award of the contract to the offeror would present actual or potential OCIs. Apparent successful offerors will be required to submit such certificates, but the Board may also require such a certificate to be submitted in other circumstances, such as:

(1) Where the contracting officer has identified certain offerors who have passed an initial screening and has determined that it is appropriate to request the identified offerors to file the certificate in order to expedite the award process; or

(2) In the case of modifications for additional effort under Board contracts, except those issued under the "changes" clause. If a certificate has been previously submitted with regard to the contract being modified, only an updating of such statement shall be required for a contract modification. In addition, if determined appropriate by the contracting officer for the Board, such certificates may be required in connection with any other contracts subject to this subpart or in which this part has been incorporated by reference

(b) *Marketing consultant services.* There shall further be included in all Board solicitations, except sealed bids, where the contract amount is expected to exceed $200,000, a provision requiring an organizational conflicts of interest certificate from any marketing consultants engaged by an offeror in support of the preparation or submission of an offer for a Board contract by that offeror.

§ 1706.7 Procedures.

(a) *Pre-award disclosure and resolution of OCIs.* If a certificate under § 1706.6 indicates, or the Board otherwise learns, that actual or potential OCIs could be, or would appear to be, created by contract award to a particular offeror, the Board shall afford the affected offeror an opportunity to provide in writing all relevant facts bearing on the certificate. If the Board thereafter determines that an actual or potential OCI exists, one of the following actions shall ultimately be taken:

(1) Disqualify the offeror;

(2) Include in the contract appropriate terms and conditions which avoid the conflict, in which case no waiver is required; or

(3) Make a finding that it is in the best interests of the Government to seek award of the contract under the waiver provisions of § 1706.8, and, where reasonably possible, include contract terms and conditions or take other measures which mitigate such conflicts.

(b) *Post-award disclosure and resolution of OCIs.* (1) If, after contract award, the contractor discovers actual or potential OCIs with respect to the contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement shall include a description of the action that the contractor has taken or proposes to avoid or mitigate such conflicts.

(2) If a disclosure under this section indicates, or the Board otherwise learns, that actual or potential OCIs exist, the Board may afford the contractor an opportunity to provide all relevant facts bearing upon the problem. If at any time the Board determines that an actual or potential OCI exists, one of the following actions shall ultimately be taken:

(i) Terminate the contract, or, in the case of a task order contract, terminate the particular task;

(ii) Insist on appropriate contract terms and conditions which avoid the OCIs, in which case no waiver is required; or

(iii) Make a finding that it is in the best interests of the Government to permit the contractor to continue to perform the contract (or task) under the waiver provisions of § 1706.8, and, where reasonably possible, insist on appropriate contract terms and conditions or take other measures which mitigate the OCIs.

(c) *Task order contracts.* (1) Because a task order contract generally entails a broad scope of work, apparent successful offerors shall be required to identify in their certificates filed in accordance with § 1706.6 any actual or potential OCIs that come within the full scope of the contract. The Board may decline to award a task order contract to an offerer based upon such information or it may decline to approve performance of a particular task by the contractor if an actual or potential OCI is subsequently identified with respect to that particular task. The Board may also take the other actions identified in § 1706.7(a) to avoid or mitigate such conflicts.

(2) Contractors performing task order contracts for the Board shall disclose to the contracting officer any new work for others they propose to undertake that may present an actual or potential OCI with regard to the performance of any work under the full scope of the Board contract. Such disclosure shall be made at least 15 days prior to the submission of a bid or proposal for the new work. The disclosure shall include the statement of work and any other information necessary to describe fully the proposed work and contemplated relationship.

(3) If the Board has issued a task order or a letter request for proposal under the contract with a contractor who has disclosed to the contracting officer that it proposes to undertake new work for persons other than the Board as described in § 1706.7(c)(2), for services in the same technical area and/or at the same defense nuclear facility that is the subject of the proposed new work (including overlap based upon generic work performed for others by the contractor), the Board shall inform the contractor that entering into a contract for the new work may result in termination by the Board of the task order contract, if the Board determines that such work would give rise to an OCI and the Board does not grant a waiver.

(d) *Decisions on OCIs.* The contracting officer shall make recommendations to the General manager regarding disqualification or actions to be taken by the Board to avoid or mitigate any actual or potential OCI.

(1) The General Manager shall have the authority to approve, modify, or disapprove such recommendations regarding avoidance of an actual or potential OCI. If an offeror or contractor disagrees with the actions approved by the General Manager and requests review of the action, the Chairman shall make the decision on the actions to be taken by the Board.

(2) Any recommended action respecting the best interests of the Government and mitigation measures to be taken with respect to an actual or potential OCI must be approved by the Chairman in conjunction with the decision to grant a waiver pursuant to § 1706.8, and any recommended action to terminate a contract or a particular task on account of an actual or potential OCI must be approved by the Chairman.

(3) Decisions on OCIs by the General Manager or the Chairman shall be made with the advice of the Office of the General Counsel.

§ 1706.8 Waiver.

(a) *Waiver of OCIs.* The need for a waiver of any OCI in connection with the award or continuation of specific contracts may be identified either by the contracting officer for the Board or other Board employee or by a written request filed by an offeror or contractor with the contracting officer. The request may be combined with the certificate or disclosure required under §§ 1706.6 or 1706.7, or with additional statements filed under § 1706.7 regarding matters raised in the certificate or disclosure. The contracting officer shall review all of the relevant facts brought to his attention and shall bring the matter to the General Manager, who shall make a written recommendation to the Chairman of the Board regarding whether a waiver should be granted for a contract award or for continuation of an existing contract.

(b) *Criteria for Waiver of OCIs.* (1) The Chairman is authorized to waive any OCI (and the corresponding provision of § 1706.5 where applicable) upon a determination that awarding or extending the particular contract, or not terminating the particular contract, would be in the best interests of the Government. Issuance of a waiver shall ordinarily be limited to those situations in which:

(i) The work to be performed under contract is vital to the Board program;

(ii) The work cannot be satisfactorily performed except by a contractor or offeror whose interests give rise to a question of OCI; and

(iii) Contractual and/or technical review and supervision methods can be employed by the Board to mitigate the conflict.

(2) The Chairman is also authorized to waive any OCI (and the corresponding provision of § 1706.5 where applicable), without regard to the foregoing factors, if the Chairman determines, notwithstanding the existence of the OCI, that it is in best interests of the Government to award or extend the particular contract, or not to terminate it, without compliance with § 1706.8(b)(1).

(c) *Waiver of Rules or Procedures.* The Chairman is also authorized to waive any rules or procedures contained in this part upon a determination that application of the rules or procedures in a particular situation would not be in the best interests of the Government. Any request for such a waiver must be in writing and shall describe the basis for the waiver.

(d) *Office of General Counsel.* Waivers of OCIs or of any rule or procedure contained in this part shall be made after consultation with the Office of General Counsel.

(e) *Federal Register.* Except as otherwise provided in § 1706.8(c), notice of each waiver granted under this section shall be published in the **Federal Register** with an explanation of the basis for the waiver. In the discretion of the Board, notices of instances of avoidance of OCIs may also be published in the **Federal Register**.

§ 1706.9 Examples.

The examples in this section illustrate situations in which questions concerning OCIs may arise. The examples are not all inclusive, but are intended to provide offerors and contractors with guidance on how this subpart will be applied.

(a) *Circumstances*—(1) *Facts.* A Board contractor for technical assistance in the review of a safety aspect of a particular defense nuclear facility proposes to use the services of an expert who also serves on an oversight committee for a contractor of other defense nuclear facilities.

(2) *Guidance.* Assuming the work of the oversight committee has no direct or indirect relationship with the work at the facility that is the subject of the Board's contract, there would not be an OCI associated with the use of this expert in the performance of the Board contract.

(b) *Circumstances*—(1) *Facts.* A Board contractor studying the potential for a chemical explosion in waste tanks at a

defense nuclear facility advises the Board that it has been offered a contract with DOE to study the chemical composition of the waste in the same tanks.

(2) *Guidance.* The contractor would be advised that accepting the DOE contract would result in termination of its performance under its contract with the Board.

(c) *Circumstances*—(1) *Facts.* The Board issues a task order under an existing contract for the evaluation of the adequacy of fire protection systems at a defense nuclear facility. The contractor then advises the Board that it is considering making an offer on a solicitation by DOE to evaluate the same matter.

(2) *Guidance.* The contractor would be advised that entering into a contract with DOE on the solicitation could result in the contract with the Board being terminated.

(d) *Circumstances*—(1) *Facts.* A firm responding to a formal Board solicitation for technical assistance provides information regarding a contract it currently has with DOE. The effort under the DOE contract is for technical assistance work at DOE facilities not subject to Board oversight and outside its jurisdiction.

(2) *Guidance.* The Board would analyze the work being performed for DOE to ensure no potential or actual conflict of interest would be created through award of the Board contract. Should the Board determine that no potential or actual conflict of interest exists, the contractor would be eligible for award. If the Board determines that a potential or actual conflict of interest would arise through a contract award, it may disqualify the firm or, if the Board determines that such action is in the best interests of the Government, the Board may waive the conflict or the rules and procedures and proceed with the award.

(e) *Circumstances*—(1) *Facts.* The Board discovers that a firm competing for a contract has a number of existing agreements with DOE in technical areas which are unrelated to the Board's oversight authority. While these contracts may not represent a potential or actual conflict of interest regarding the substance of the technical effort, their total value constitutes a significant portion of the firm's gross revenues.

(2) *Guidance.* A conflict of interest may exist due to the firm's substantial pecuniary dependence upon DOE. Consequently, the Board may question the likelihood that the contractor would provide unbiased opinions, conclusions, and work products because of this extensive financial relationship. The Board will review and consider the extent of the firm's financial dependence on DOE, the nature of the proposed Board contract, the need by the Board for the services and expertise to be provided by the firm and the availability of such services and expertise elsewhere, and whether the likelihood of the firm's providing objective technical evaluations and opinions to the Board could be influenced in view of its DOE relationship. Based on this analysis, the Board may either determine that there is no conflict and make the award, waive the conflict if one is identified and establish procedures to mitigate it where possible, or disqualify the offeror.

(f) *Circumstances*—(1) *Facts.* The Board discovers that a firm competing for a contract has a substantial business relationship in technical areas unrelated to the Board's oversight authority with a contractor operating a defense nuclear facility under a DOE contract. Similar to the situation described in paragraph (e) of this section, the total value of the contracts with the DOE contractor constitutes more than half of the firm's gross revenues, even though those contracts do not represent a potential or actual conflict of interest regarding any of the particular matters to be covered by the contract with the Board.

(2) *Guidance.* The firm's substantial financial and business dependence upon the DOE contractor may give rise to a conflict of interest, in that the likelihood of the firm's rendering impartial, objective assistance or advice to the Board may be impaired by its extensive financial relationship with the DOE contractor. In this situation, the Board will review and consider the nature of the proposed Board contract, the need by the Board for the services and expertise to be provided by the firm and the availability of such services and expertise elsewhere. The Board will also review and consider the extent of the firm's financial dependence on the DOE contractor and whether the firm would be impartial and objective in providing technical evaluation and opinions to the Board, especially on matters in which the DOE contractor is involved, notwithstanding the relationship with the DOE contractor. Based on this analysis, the Board may determine that there is no actual conflict of interest and make the award. Alternatively, if the Board identifies a conflict that cannot be avoided, the Board may determine to waive the conflict in the best interests of the United States, with or without the establishment of procedures to mitigate the conflict, or it may disqualify the offeror.

§ 1706.10 Remedies.

The refusal to provide the certificate, or upon request of the contracting officer the additional written statement, required by §§ 1706.6 and 1706.7 in connection with an award shall result in disqualification of the offeror for that award. The nondisclosure or misrepresentation of any relevant information may also result in the disqualification of the offeror for that award. If such nondisclosure or misrepresentation by an offeror or contractor is discovered or occurs after award, or in the event of breach of any of the restrictions contained in this subpart, the Board may terminate the contract for convenience or default, and the offeror or contractor may also be disqualified by the Board from consideration for subsequent Board contracts and be subject to such other remedial actions as provided by law or the contract.

§ 1706.11 Organizational conflicts of interest certificate—Advisory or assistance services.

As prescribed in or permitted by § 1706.6(a), insert the following provision in Board solicitations:

Organizational and Consultant Conflicts of Interest Certificate—Advisory and Assistance Services (Oct. 1990)

(a) An organizational or consultant conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) In order to comply with the Office of Federal Procurement Policy Letter 89–1, Conflict of Interest Policies Applicable to Consultants, the offeror shall provide the certificate described in paragraph (c) of this provision.

(c) The certificate must contain the following:

(1) Name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) The name, address, and telephone number of the client or clients, a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in

the 12* months preceding the date of the certification, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter as the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable.

(5) A statement that the person who signs the certificate has made inquiry and that, to the best of his or her knowledge and belief, no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory or assistance services to be provided in connection with the instant contract, or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated in writing to the contracting officer or his or her representative; and

(6) The signature, name, employer's name, address, and telephone number of the person who signed the certificate.

(d) Persons required to certify but who fail to do so may be determined to be nonresponsible. Misrepresentation of any fact may result in suspension or debarment, as well as penalties associated with false certifications or such other provisions provided for by law or regulation.

[End of provision]

* If approved by the head of the contracting activity, this period may be increased up to 36 months.

Dated: September 23, 1992.

John T. Conway,

Chairman.

[FR Doc. 92-23483 Filed 9-28-92; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ANM-16]

Amended Transition Area; Lewiston, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the transition area at Lewiston, Idaho, to provide additional controlled airspace to accommodate the holding pattern for the VOR/DME-B approach for the Lewiston-Nez Perce County Airport, Lewiston, Idaho. This action will accurately define controlled airspace for pilot reference.

EFFECTIVE DATE: 0901 UTC, December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 92-ANM-16, 1601 Lind Avenue SW., Renton, WA 98055-4056, Telephone: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

History

On July 23, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for Lewiston, Idaho, (57 FR 32749).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The coordinates in the proposal were North American Datum 27; however, the coordinates in the final rule have been updated to North American Datum 83. In addition, distances are expressed in nautical miles. Otherwise, the rule is adopted as proposed. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations provides additional controlled airspace to accommodate the holding pattern for the VOR/DME-B approach for the Lewiston-Nez Perce County Airport, Lewiston, Idaho. The transition area will be depicted on aeronautical charts for pilot reference.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991 is amended as follows:

Section 71.181 Designation

* * * * *

ANM ID TA Lewiston, ID [Revised]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 46°29'25"N., long. 117°34'09"W.; east to lat. 46°30'45"N., long. 117°00'49"W.; north to lat. 46°34'25"N., long. 117°04'44"W.; then via the arc of a 14.4 nautical mile radius centered on the Lewiston VOR/DME (lat. 46°22'54"N., long. 116°52'11"W.); to lat. 46°27'00"N., long., 116°32'09"W.; east to lat. 46°25'30"N., long., 116°26'03"W.; south to lat. 46°13'20"N., long., 116°30'04"W.; west to lat. 46°14'33"N., long., 116°35'15"W.; then via the arc of a 14.4 nautical mile radius centered on the Lewiston VOR/DME; to lat 46°09'00"N., long., 116°46'54"W.; north to lat. 46°17'00"N., long., 116°49'14"W.; west to lat. 46°18'05"N., long., 117°00'15"W.; west to lat. 46°17'42"N., long., 117°22'04"W.; south to lat. 46°10'30"N., long., 117°28'24"W.; west to lat. 46°12'00"N., long., 117°35'44"W.; north to point of beginning; that airspace extending upward from 1200 feet above the surface, within an area bounded by a line beginning at lat. 46°00'00"N., long., 116°00'04"W., to lat. 46°00'00"N., long., 116°23'04"W., to lat. 45°39'00"N., long., 116°10'03"W., to lat. 45°30'00"N., long., 116°14'03"W., to lat. 45°23'00"N., long., 116°21'03"W., to lat. 45°25'00"N., long. 116°34'04"W., to lat. 45°30'00"N., long. 116°46'04"W., to lat. 46°00'00"N., long. 116°56'04"W.; thence west along lat. 46°00'00"N., to the Walla Walla VOR/DME (lat. 46°05'13"N., long. 118°17'33"W) 16.6 nautical mile radius, thence north along the 16.6 nautical mile radius until intercepting V536, thence east along V536 to long. 116°00'00"W.; thence south along long. 116°00'00"W., to lat. 46°00'00"N. to beginning.

* * * * *

Issued in Seattle, Washington on September 11, 1992.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 92-23569 Filed 9-28-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AEA-05]

Alteration of Transition Area; Dover, DE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice revises the legal description of the Dover, DE, 700 foot Transition Area to incorporate a name change of the Kenton VORTAC to the Smyrna VORTAC. Additionally, minor technical revisions are being incorporated into the description to reflect the actual geographic locations of all airports in this area. This action establishes that amount of controlled airspace deemed necessary by the FAA to contain aircraft operating under instrument flight rules.

EFFECTIVE DATE: 0901 U.T.C. December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

On May 12, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 700 foot Transition Area established at Dover, DE, due to a name change for an air navigational aid contained in the description (57 FR 22186). The proposed action would update all names contained in the legal description and revises the geographic location of all airports contained in the description.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Transition Areas are published in § 71.161 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The Dover, DE, Transition Area listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Dover, DE, 700 foot Transition Area due to a name change for a navigational facility. This action also updates the geographical location of all airports contained in the description based on North American Datum 83.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AEA DE TA Dover, DE [Revised]

Dover AFB, DE (lat. 39°07′ 48″N., long. 75°27′59″W.)

Dover TACAN (lat. 39°07′57″N., long. 75°28′03″W.)

Smyrna VORTAC (lat. 39°13′54″N., long. 75°30′57″W.)

Delaware Airpark, DE (lat. 39°13′06″N., long. 75°35′47″W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of Dover AFB and within 3.1 miles each side of the Dover TACAN 177° radial extending from the 7.9-mile radius to 9.2 miles south of the TACAN and within 3.1 miles each side of the Dover TACAN 133° radial extending from the 7.9-mile radius to 9.2 miles southeast of the TACAN and within a 6.3-mile radius of the Delaware Airpark and within 5.7 miles north and 4 miles south of the Smyrna VORTAC 078° and 258° radials extending from the 6.3-mile radius of Delaware Airpark to 10 miles east of the VORTAC.

* * * * *

Issued in Jamaica, New York, on August 31, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-23570 Filed 9-28-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AEA-10]

Alteration of Transition Area; Dunkirk, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies the existing 700 foot Transition Area at Dunkirk, NY, by enlarging that portion to the southwest of the Chautauqua County/Dunkirk Airport, Dunkirk, NY, to accommodate a new instrument approach procedure to Runway 6 at the airport. This action revises that amount of controlled airspace deemed necessary to contain aircraft operating under instrument flight rules. Additionally, the airport name and geographic location are being updated to reflect current designations.

EFFECTIVE DATE: 0901 U.T.C. December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

On April 9, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 700 foot Transition Area established at Dunkirk, NY, by enlarging that portion to the southwest due to the establishment of a new instrument approach procedure to Runway 6 at the

Chautauqua County/Dunkirk Airport, Dunkirk, NY (57 FR 15265). Subsequent corrections to the original notice were issued on May 22, 1992 (57 FR 24412). The proposed action would revise that amount of airspace deemed necessary by the FAA to contain aircraft operating under instrument flight rules in controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Transition Areas are published in section 71.171 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The Dunkirk, NY, Transition Area listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the 700 foot Transition Area established at Dunkirk, NY, due to the development of an instrument approach procedure to Runway 6 at the Chautauqua County/ Dunkirk Airport, Dunkirk, NY. The coordinates for this airspace docket are based on North American Datum 1983.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas. Incorporated by Reference

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AEA TA NY Dunkirk, NY [Revised] Chautauqua County/Dunkirk Airport, Dunkirk, NY (lat. 42°29'36"N, long. 79°16'19"W)

That airspace extending upward from 700 fee above the surface within a 6.6-mile radius of the Chautauqua County/Dunkirk Airport and within a 11.8-mile radius of the airport extending clockwise from a 022° to a 264° bearing from the airport.

* * * * *

Issued in Jamaica, New York, on August 10, 1992.

John S. Walker,

Acting Manager, Air Traffic Division.

[FR Doc. 92–23572 Filed 9–28–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No 92–ANM–18]

Removal of VOR Federal Airway V–349; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment.

SUMMARY: This action amends the final rule that removed Federal Airway V–349 located in the vicinity of Bellingham, WA. The Bellingham VHF Omnidirectional Range (VOR) navigational signal between Seattle, WA, and Bellingham has deteriorated to the point where the minimum en route altitude (MEA) had to be raised from 5,400 feet mean sea level (MSL) to 10,000 feet MSL; therefore, the airway was removed. However, at Canada's request the 4-nautical-mile segment between Bellingham and the United States/ Canadian Border will be retained. This action reinstates that segment of V–349.

EFFECTIVE DATE: 0901 UTC, October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 92–19990, Airspace Docket No. 92–ANM–18, published on August 21, 1992 (57 FR 37878), removed Federal Airway V–349. At Canada's request, the 4-nautical-mile segment of V–349, between Bellingham and the United States/Canadian Border, will be retained. This action reinstates that segment of V–349. Domestic VOR Federal Airways are published in section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airway listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation regulations reinstates the 4-nautical-mile segment of Federal Airway V–349, which was inadvertently removed, between Bellingham and the Untied States/Canadian Border. Accordingly, since this action is merely a technical amendment in which the public is not particularly interested, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Furthermore, because the final rule that removed Federal Airway V–349 becomes effective October 15, 1992, and because there is an immediate need to incorporated the segment of V–349 between Bellingham and the United States/Canadian Border onto the next chart to avoid pilot confusion, I find that good cause exists, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways.

* * * * *

V–349 [Revised]

From Bellingham, WA, to Williams Lake, BC, Canada. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on September 21, 1992.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–23573 Filed 9–28–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing approval of a proposed amendment, with certain exceptions, submitted by the State of Missouri as a modification to its permanent regulatory program (hereinafter referred to as the Missouri program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This amendment was submitted to OSM on October 10, 1990, and pertains to: Prime farmlands, signs and markers, topsoil, hydrologic balance, air resources, explosives, excess spoil, coal waste, backfilling and grading, postmining land use, roads and other transportation facilities, revegetation, prohibitions and limitations on mining, coal exploration, requirements for legal, financial, and compliance information, requirements for information on environmental resources, requirements for operation and reclamation plans, review and approval of permit applications, bond requirements, duration and release of reclamation liability, permit revocation, bond forfeiture and authorization to expend reclamation fund monies, definitions, inspection and enforcement, penalty assessment, applicability and general requirements, and revegetation success guidelines. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

EFFECTIVE DATE: September 29, 1992.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.10, 925.12, 925.15, and 925.16.

II. Submission of Amendment

On October 10, 1990, Missouri submitted to OSM a proposed program amendment (Administrative Record No. MO–519). The proposed amendment consists of revisions to: 10 CSR 40–3.010/3.170, Signs and Markers for Surface and Underground Operations; 10 CSR 40–3.030/3.190, Requirements for Topsoil Removal, Storage, and Redistribution at Surface and Underground Operations; 10 CSR 40–3.040/3.200, Requirements for Protection of the Hydrologic Balance at Surface and Underground Operations; 10 CSR 40–3.050/3.210, Requirements for the Use of Explosives at Surface and Underground Operations; 10 CSR 40–3.060/3.220, Requirements for the Disposal of Excess Spoil at Surface and Underground Operations; 10 CSR 40–3.080/3.230, Requirements for the Disposal of Coal Processing Waste at Surface and Underground Operations; 10 CSR 40–3.250, Requirements for the Protection of Fish, Wildlife, and Related Environmental Values and Protection Against Slides and Other Damage; 10 CSR 40–3.110/3.260, Backfilling and Grading Requirements for Surface and Underground Operations; 10 CSR 40–3.120/3.270, Revegetation Requirements for Surface and Underground Operations; 10 CSR 40–3.130/3.300, Postmining Land Use Requirements at Surface and Underground Operations; 10 CSR 40–3.140/3.290, Road and Other Transportation Requirements for Surface and Underground Operations; 10 CSR 40–4.030, Operations on Prime Farmland; 10 CSR 40–5.010, Prohibitions and Limitations on Mining in Certain Areas; 10 CSR 40–6.010, General Requirements for Permits, Permit Applications, and Coal Exploration; 10 CSR 40–6.020, General Requirements for Coal Exploration Permits; 10 CSR 40–6.030/6.100, Surface and Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information; 10 CSR 40–6.040/6.110, Surface and Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 10 CSR 40–6.050/6.120, Surface and Underground Mining Permit Application—Minimum Requirements for Reclamation and Operations Plan; 10 CSR 40–6.060, Requirements for Permits for Special Categories of Surface Coal Mining and Reclamation Operations; 10 CSR 40–6.070, Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions; 10 CSR 40–7.011, Bond Requirements; 10 CSR 40–7.021, Duration and Release of Reclamation Liability; 10 CSR 40–7.031, Permit Revocation, Bond Forfeiture, and Authorization to Expend Reclamation Fund Monies; 10 CSR 40–8.010, Definitions; 10 CSR 40–8.030, Permanent Program Inspection and Enforcement; 10 CSR 40–8.040, Penalty Assessment; 10 CSR 40–8.070, Applicability and General Requirements; and Phase III Liability Release Guidelines.

The amendment currently proposed by Missouri responds to five 30 CFR 732.17(d) notifications sent by the Director of OSM: (1) A June 11, 1986, notification known as "Regulatory Reform I," (Administrative Record No. MO–295); (2) a November 3, 1988, notification known as "Regulatory Reform II," (Administrative Record No.

MO–406); (3) a November 6, 1989, notification known as "Regulatory Reform III," (Administrative Record No. MO–478); (4) a May 11, 1989, notification that addresses ownership and control, and permit rescission issues (Administrative Record No. MO–434); and (5) a February 7, 1990, notification regarding coal extraction incidental to the extraction of other minerals as set forth in section 701(28) of SMCRA (Administrative Record No. MO–495). It also addresses previous rulemaking that was not submitted to OSM for program amendment approval and various rulemaking needed to strengthen Missouri's program.

In this submittal Missouri is also addressing State program provisions that were affirmatively disapproved and as codified at 30 CFR 925.10, and certain required program amendments that the Director placed on the Missouri program and as codified in the Federal regulations at 30 CFR 925.16. The State has also submitted several rules on its own initiative to strengthen its program.

OSM published a notice in the November 1, 1990, **Federal Register** (55 FR 46076), announcing receipt of the proposed amendment and in the same notice opened the public comment period and provided opportunity for a public hearing on the substantive adequacy of the amendment (Administrative Record No. MO–526). The public comment period closed on December 3, 1990. A public hearing was not held because no one requested an opportunity to testify.

In a February 20, 1991, letter (Administrative Record No. MO–530) OSM notified Missouri of numerous concerns it had with the proposed regulations. Missouri responded to OSM in a February 28, 1991, letter (Administrative Record No. MO–531) stating, in part, that they did not intend to submit additional materials.

III. Director's Findings

The Director finds in accordance with SMCRA and 30 CFR 732.15 and 732.17, that Missouri's amendment, with certain exceptions, as submitted by Missouri on October 10, 1990, meets the requirements of SMCRA and 30 CFR chapter VII as discussed below.

1. Required Program Amendments

Missouri's October 10, 1990, proposed program amendment addresses required program amendments that were placed on the Missouri program in past rulemaking actions. The Director finds that the following proposed State regulations satisfies the required program amendments and is approving them [the codified required amendments at 30 CFR 925.16 are indicated in brackets with the corresponding Federal rulemaking action]: 10 CSR 40–3.040(6)(T) and 3.200(6)(T), concerning quarterly examination of impoundments not meeting the criteria of 30 CFR 77.216(a) [30 CFR 925.16(f)(2) January 3, 1991, (56 FR 190)]; 10 CSR 40–3.040(10)(G) and (I) and 3.200(10)(G) and (I), concerning the requirement that all dams and embankments be inspected and be certified as being constructed and maintained as designed in accordance with the approved plan and regulation requirements [30 CFR 925.16(f)(3) and (4) January 3, 1991, (56 FR 190)]; 10 CSR 40–3.050(6)(C) and 3.210(6)(C), concerning the need for blasting records to contain the certification number of each individual conducting a blast [30 CFR 925.16(l)(4) June 16, 1988, (53 FR 22475)]; 10 CSR 40–3.060(1)(H) and 3.220(1)(H), concerning the requirement that excess spoil that is acid- or toxic-forming or combustible, be adequately covered with non-acid or non-toxic noncombustible material, or treated, in accordance with 10 CSR 40–3.040 [30 CFR 925.16(f)(5) January 3, 1991, (56 FR 190)]; 10 CSR 3.250(1)(B), concerning underground mining activity that is likely to jeopardize the continued existence of endangered or threatened species [30 CFR 925.16(e)(1) January 3, 1991 (56 FR 190)]; 10 CSR 404.030(4)(A), concerning the need for all affected property owners' consent for the creation of water bodies on prime farmlands [30 CFR 925.16(n)(1) December 11, 1989, (54 FR 50744)]; 10 CSR 40–5.010(2)(C), concerning the requirements for areas where mining is prohibited or limited [30 CFR 925.16(c)(2) July 6, 1990, (55 FR 27811)]; 10 CSR 40–6.040(5)(A), concerning the requirements for a description of the areal and structural geology including cross-sections, maps, and plans, etc. [30 CFR 925.16(c)(3) July 6, 1990, (55 FR 27811)]; 10 CSR 40–6.040(11)(E) and 6.110(11)(E), concerning surface and underground mine operations site-specific fish and wildlife resource information needs [30 CFR 925.16(b)(2) June 5, 1990, (55 FR 22907) and 30 CFR 925.16(c)(7) July 6, 1990, (55 FR 27811)]; 10 CSR 40–6.040(11)(F) and 6.110(11)(F), concerning the regulatory authority's responsibility to make wildlife resources information available to the U.S. Fish and Wildlife Service [30 CFR 925.16(c)(6) July 6, 1990, (55 FR 27811)]; 10 CSR 40–6.050(7)(B)1 and 6.120(12)(B)1, concerning the fish and wildlife plan requirements to be based upon the best technology currently available [30 CFR 925.16(b)(3) June 5, 1990, (55 FR 22907)]; 10 CSR 40–6.050(9)(C)5 and 6.120(5)(C), concerning supplemental hydrology information requirements [30 CFR 925.16(c)(5) July 6, 1990, (55 FR 27811)]; 10 CSR 40–6.060(4)(A), concerning criteria for permit revision and renewal, single continuous mining pits, and single continuous surface coal mining operations, when prime farmlands are involved [30 CFR 925.16(c)(1) July 6, 1990, (55 FR 27811)]; 10 CSR 40–6.070(8)(L), concerning the need for a written finding when approving a long-term intensive agricultural postmining land use [30 CFR 925.16(n)(2) December 11, 1989, (54 FR 50744]; 10 CSR 40–6.110(5)(A) and (B), concerning underground mining general geology description and test boring requirements [30 CFR 925.16(c)(4) July 6, 1990, (55 FR 27811)]; and 10 CSR 40–7.011(5)(D)2.D., concerning the requirement that audits be based on generally acceptable accounting principles [30 CFR 925.16(g)(17) May 8, 1991, (56 FR 21281)].

Accordingly, the Director is removing the required program amendments as identified above from the Missouri program and as codified at 30 CFR 925.16.

2. Missouri Regulations That Are Substantively the Same as Federal Regulations

Missouri proposes revisions to the following regulations that are substantive in nature and contain language substantially the same as the corresponding Federal regulations [counterpart Federal regulations are in brackets]: Sediment pond storage and dewatering, 10 CSR 40–3.040(6)(B), and 3.200(6)(B) [30 CFR 816.46(c)(1)(iii)(A) and 817.46(c)(1)(iii)(A)]; Covering coal seams, acid- and toxic-forming materials and combustible materials, 10 CSR 40–3.110(3)(A)1. and 3.260(3)(A)1. [30 CFR 816.102(f) and 817.102(f)]; Quick growing cover and limited exception for cropland post-mining land use, 10 CSR 3.120(1)(D) and (E) and 3.270(1)(D) and (E), [30 CFR 816.111 (c) and (d) and 817.111 (c) and (d)]; Revegetation success liability, 10 CSR 40–3.120(6)(B)1 and 3.270(6)(B)1,[30 CFR 816.116(c)(1) and 817.116(c)(1)]; Revegetation success standards for previously disturbed areas, 10 CSR 40–3.120(6)(B)2.I. and 3.270(6)(B)2.I. [30 CFR 816.116(b)(5) and 817.116(b)(5); Ground cover to achieve the postmining land use, 10 CSR 40–3.120(7)(C)3.C. and 3.290(7)(C)3.C. [30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii)]; Revegetation success, 10 CSR 40–3.120(8)(A) 5, 6, 7, and 8 and 3.270(8)(A) 5, 6, 7, and 8 [30 CFR 816.116(c)(2) and 817.116(c)(2)]; As built certification for Class I and II roads, 10 CSR 40–3.140 (1)(D)1. and (8)(D)1. and 3.290 (1)(D)1. and (8)(D)1. [30 CFR

816.151(a) and 817.151(a); 1.3 safety factor for road embankments, 10 CSR 40–3.140 (3)(D)9. and (10)(D)9. and 3.290 (3)(D)9. and (10)(D)9. [30 CFR 816.151(b) and 817.151(b)]; Roads maintained to meet performance standards, 10 CSR 40–3.140 (6)(D), (13) (D), and (20) (D) and 3.290 (6)(D), (13)(D), and (20)(D) [30 CFR 816.150(e)(1) and 817.150(e)(1)]; Control or prevent erosion, siltation and air pollution for roads, 10 CSR 40–3.140(8)(A) and (15)(A) and 3.290 (1)(A), (8)(A), and (15)(A) [30 CFR 816.150(b)(1) and 817.150(b)(1)]; Road damaged by catastrophic event, 10 CSR 40–3.140 (13)(C) and (20)(C) and 3.290 (13)(C) and (20)(C) [30 CFR 816.150(e)(2) and 817.150(e)(2)]; Public parks and historic places, 10 CSR 40–5.010(3)(F)1. [30 CFR 761.12(f)(1)]; Definition of owned or controlled, 10 CSR 40–6.010(2)(E) [30 CFR 773.5]; Exploration map and narrative, 10 CSR 40–6.020 (2)(B)3, (3)(B)3, and (5) [30 CFR 772.11(b) (3) and 772.12 (b)(3) and (b)(5)]; Concerning commercial use or sale of coal extracted during coal exploration operations, 10 CSR 40–6.020(5) [30 CFR 772.14 (a) and (b)]; Permit application information on ownership and control, 10 CSR 40–6.030(1) (A), (C), (D), and (H) and 6.100(1) (A), (C), (D), and (H) [30 CFR 778.13 (a), (b), (c), (d), and (i)]; Update and correction of violations, 10 CSR 40–6.030(2)(D) and 6.100(2)(D) [30 CFR 778.14(d)]; Fish and Wildlife Service information request, 10 CSD 6.040(11)(F) [30 CFR 780.16(c)] ; Fish and wildlife plan requirements, 10 CSR 40–6.050(7) (A), (B)1., (B)2., (C)1., (C)3. and 6.120(12) (A), (B)1., (C)1., and (C)3. [30 CFR 780.16 (a) (2)(i), (2)(ii), (b), (b)(1), and 784.16 (a) (2) (i), (2)(ii), (b), and (b)(1)]; Impoundment design compliance, 10 CSR 40–6.050(11)(C) and 6.120(7)(C) [30 CFR 780.25(c)(1) and 784.16(c)(1)]; Stream fords and crossing design and schedules for removal and certification of Class I, II, and III roads, 10 CSR 6.050(17)(A) 1 through 9 and 6.120(15)(A) 1 through 9 [30 CFR 780.37(a) and 784.24(a)]; Support facilities, 10 CSR 40–6.050(18) and 6.120(16) [30 CFR 780.38 and 784.30]; Ownership and control requirements, 10 CSR 40–6.070 (7) (F), (G), and (8)(I) [30 CFR 773.15(b)(2), (b)(3), and (e)]; Permit approval and denial actions, 10 CSR 40–6.070 (10)(B)1.A. and (10)(E)2. [30 CFR 773.11(a) and 773.19(b)]; Improvidently issued permits and rescission, 10 CSR 40–6.070 (11)(A) 2., 3., and (11)(B) [30 CFR 773.20 (b), (c), and 773.21]; Follow up information requirements for a cessation order, 10 CSR 40–6.070(13)(E) [30 CFR 773.17(i)]; Independent bonding increments, 10 CSR 40–7.011(3)(C) [30 CFR 800.11(b) (4)]; Full cost bond amounts, 10 CSR 40–7.011(4)(E) [30 CFR 800.14(b)]; Definitions of adjacent areas, pasture, prime farmland, woodland, water, and undeveloped land, 10 CSR 40–8.010(1)(A) 4. and 51. B, D, I, and J [30 CFR 701.5]; Notify owner and controllers of cessation order, 10 CSR 40–8.030(6)(G) [30 CFR 843.11(g)]; and Informal conference review, 10 CSR 40–8.040(8)(A) [30 CFR 845.18(a)].

The Director therefore finds that these proposed revisions to Missouri's regulations are no less effective than the corresponding Federal regulations and is approving them.

3. Signs and Markers

At 10 CSR 40–3.010(5) and 40–3.170(5), Missouri proposes to add the requirement that where the permit area is bonded incrementally, the area bonded shall be clearly marked before the beginning of surface mining activities. The Federal counterpart regulations that provide for signs and markers at 30 CFR 816.11 and 817.11 do not specifically require that incrementally bonded areas be marked. However, the Director finds that Missouri's proposed requirement will assist in the administration of its program and is not inconsistent with or no less effective than the Federal program requirements. The Director is approving the proposed change.

4. Requirements for Topsoil Removal, Storage, and Redistribution

At 10 CSR 40–3.030(1)(C) and 3.190(1)(C), Missouri proposes to add the requirement that "[t]opsoil and subsoils to be saved under section (2) of this rule shall be removed twenty-five feet (25') in advance of mining, unless otherwise stated in the permit." The Federal regulations that address the timing of topsoil and subsoil removal at 30 CFR 816.22(a)(4) and 817.22(a)(4) do not specifically require removal 25 feet in advance of mining. However, the Director finds that Missouri's proposed requirement will assist in the administration of its program and is not inconsistent with or no less effective than the Federal program requirements. The Director is approving the proposed change.

5. Water Quality Standards and Effluent Limitations, General Limitations

Missouri proposes to revise its rules at 10 CSR 40–3.040(2)(A)1 and 3.200(2)(A)1 to require that all surface drainage from the disturbed area shall be passed through a sedimentation pond, to additionally allow that, "* * * areas that are in the process of topsoil placement and revegetation will not be required to meet total suspended solids effluent limitations."

In a United States Court of Appeals for the District of Columbia action, *In re: Surface Min. Regulation Litigation*, 627 F.2d 1346 (D.C. Cir 1980), the court ruled that where there was an overlap of regulation between SMCRA and the Clean Water Act (CWA), 33 U.S.C. 1251–1387, the provisions of the CWA must "control so as to afford consistent effluent standards nationwide." Missouri's proposal would provide an exemption from the requirement to comply with a particular parameter of effluent limitations in certain situations. SMCRA and the Federal regulations place a general requirement that effluent limitation be met. The specific elements required in meeting effluent limitations would come under the control of the CWA and implementing regulations at 40 CFR part 434 administered by the U.S. Environmental Protection Agency (EPA). In a letter dated July 29, 1991, (Administrative Record No. MO–540), EPA concurred that Missouri's proposed amendment can be implemented consistent with the CWA. Therefore, the Director is approving Missouri's proposed change based upon this concurrence. However, before Missouri can enforce the waiver in meeting total suspended solids of the effluent limitation requirements, the existing permits obtained under the CWA should be reviewed and revised if necessary in order to allow implementation of this new rule requirement.

6. Certification of Stream Channel Diversions

At 10 CSR 40–3.040(4)(B)3. and 3.200(4)(B)3., the Missouri regulations requires that the design and construction of stream channel diversions be certified by a professional engineer. It proposes to add that diversions also be certified as meeting the performance standards of this rule.

The Federal regulations at 30 CFR 816.43(b)(4) and 817.43(b)(4) provide for the same requirements but additionally require the certification of any design criteria set by the regulatory authority. Missouri's proposal does not require certification of regulatory authority design criteria. Missouri is therefore required to further amend its program to provide for this certification.

In a January 3, 1991, rulemaking action (56 FR 190) at 30 CFR 925.16(f)(1), a required program amendment was placed on the Missouri program to correct the above deficiencies. The Director finds that Missouri's proposed change satisfies this required program amendment to the extent that diversions

must be certified as meeting the performance standards. Therefore the required amendment will be modified to reflect this situation.

7. Maintenance of Sedimentation Ponds

At 10 CSR 40–3.040(6)(C) and 3.200(6)(C), Missouri proposes to delete language that defines theoretical detention time and the conditions when approval may be given for a detention time of less than 10 hours. It would retain the requirement that "Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten (10-year, twenty four (24)-hour precipitation event (design event)." The Federal regulations at 30 CFR 816.46(c)(1)(iii)(C) and 817.46(c)(1)(iii)(C) also require retention of a 10-year, 24-hour precipitation event but additionally would allow the ability to "treat" rather than "contain" the water and to provide a design based on a lesser event if approved by the regulatory authority. Since adoption of the additional flexibility afforded in the Federal regulations is discretionary to the regulatory authority, the Director finds that Missouri's option not to adopt the more flexible language of the Federal regulations does not render its program to be less effective and is approving the proposed deletions.

8. Dewatering Device

At 10 CSR 40–3.040(6)(D) and 3.200(6)(D), Missouri provides requirements for dewatering of sedimentation ponds. The requirement states "[T]he water storage resulting from inflow shall be removed by a nonclogging dewatering device that has been designed, constructed, and maintained in accordance with subsection (6)(C) of this rule or a conduit spillway approved in the permit and plan. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume." Missouri is proposing to add the phrase "* * * that has been designed, constructed, and maintained in accordance with subsection (6)(C) of this rule * * *." Subsection (6)(C) of the State rule requires that sedimentation ponds be designed to provide a theoretical detention time to hold the runoff entering from a 10-year, 24-hour precipitation event (design event).

The counterpart Federal regulations for nonclogging dewatering device at 30 CFR 816.46(c)(1)(iii)(D) and 817.46(c)(1)(iii)(D) require it to be adequate to maintain a detention time that will allow the effluent from ponds to meet State and Federal effluent limitations. Additionally the Federal regulations at 30 CFR 816.46(c)(1)(iii)(C) and 817.46(c)(1)(iii)(C) requires a detention time to hold a 10-year, 24-hour precipitation event as is required at (6)(C) of the Missouri regulations.

The Missouri rule requirements at 10 CSR 40–3.040(6)(D) and 3.200(6)(D) do not specifically require a detention time that would allow State and Federal effluent standards to be met. However, at 10 CSR 40–3.040(2)(B) and 3.200(2)(B), the Missouri regulations require that water discharged from disturbed areas must be in compliance with all applicable State and Federal water quality laws and regulations.

Therefore, the Director finds that Missouri's proposed changes at 10 CSR 40–3.040(6)(D) and 3.200(6)(D) along with its other rule requirements combine to provide for no less effective than requirements of the Federal regulations at 30 CFR 816.46(c)(1)(iii) (C) and (D) and 817.46(c)(1)(iii) (C) and (D), and is approving the change.

9. Sedimentation Pond Storage

At 10 CSR 40–3.040(6)(H) and 3.200(6)(H), Missouri proposes to delete the requirement to remove sediment from sediment ponds when the volume of sediment accumulates to 60 percent of the design sediment storage volume. In addition, Missouri proposes to delete language regarding the circumstances under which an operator may provide additional sediment storage for sediment and/or water above the required design standard. Missouri's rule, as modified, would simply require that sediment shall be removed from sedimentation ponds.

The Federal regulations at 30 CFR 816.46(c)(iii)(F) and 817.46(c)(iii)(F), require that sediment ponds shall "[b]e designed, constructed, and maintained to * * * provide periodic sediment removal sufficient to maintain adequate volume for the design event."

The Director is approving Missouri's proposed amendment but is requiring the State to further amend its rule to require that sediment ponds be designed, constructed, and maintained to provide periodic sediment removal sufficient to maintain adequate volume for the design event.

10. Sediment Pond Removal

At 10 CSR 40–3.040(6)(U) and 3.200(6)(U), Missouri requires that sediment ponds shall not be removed until the disturbed area has been restored and the revegetation requirements of 10 CSR 40–3.120 and 3.270 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements of the receiving stream.

These requirements are substantively the same as the March 13, 1979, Federal regulation requirements at 30 CFR 816.46(u) and 817.46(u). However, in a September 28, 1983, rulemaking, OSM modified those regulations and now require, at 30 CFR 816.46(b)(5) and 817.46(b)(5), that siltation structures shall be maintained until removal is authorized by the regulatory authority and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than 2 years after the last augmented seeding. As discussed in the preamble to the Federal regulations (48 FR 43956, 44040, September 28, 1983) and in response to a commenter who questioned the 2-year period based on one study in eastern Kentucky, OSM stated:

> While it is true that the two-year standard is based on one study, the study data represents a sufficient base on which to establish a minimum requirement for retention of a siltation structure during the reclamation period of mining. The regulatory authority will need to consider site-specific characteristics in order to decide whether, and for how long the structures must be retained past the two-year period.

Based on the above, the Director is requiring Missouri to further amend its rules at 10 CSR 40–3.040(6)(U) and 3.200(6)(U) to include the requirement that siltation structures shall be maintained until removal is authorized by the regulatory authority and that in no case shall the structures be removed sooner than 2 years after the last augmented seeding in accordance with 30 CFR 816.46(b)(5) and 817.46(b)(5).

11. Sedimentation Pond Design Standards

At 10 CSR 40–3.040(6)(Q) and 3.200(6)(Q) Missouri proposes to modify its regulation that determines design requirements for sedimentation ponds in accordance with the size of the structure by adding "open channel" to the phrase "crest of the *open channel* emergency spillway" and continue with "* * * unless the emergency spillway is a pipe, whereupon it is measured to the lowest point in the top of the embankment, * * *" The Federal counterpart regulations at 30 CFR 816.46(c) and 817.46(c) do not contain the specific language proposed by Missouri, but instead refer, in part, to the Mine Safety and Health Administration (MSHA) standards in the Federal regulations at 30 CFR 77.216(a) to determine sedimentation pond design. The standards in 30 CFR 77.216(a) do not

contain specific language that address pipes being used instead of emergency spillways. It instead provides for an acre-feet storage volume criteria determined by embankment height or crest of an emergency spillway (elevation). However, since Missouri's criteria uses spillway channel elevation or, if an emergency spillway pipe is used, then the lowest point of the top of the embankment must be considered, Missouri's criteria results in the same test for storage volume as required by the Federal regulations.

The Director finds that Missouri's proposed regulations are no less effective than the Federal requirements and is approving the proposed change.

12. Quarterly Examination of Impoundments

At 10 CSR 40–3.040(6)(T) and 3.200(6)(T), Missouri proposes to require quarterly inspection of impoundments that do not meet the criteria of 30 CFR 77.261(a). The counterpart Federal regulations at 30 CFR 816.49(a)(11) and 817.49(a)(11) require quarterly inspections for impoundments that do not meet the criteria of 30 CFR 77.216(a). Missouri's rule would appear to be no less effective than the Federal regulation, however Missouri has incorrectly cited its reference to 30 CFR 77.216(a) as "30 CFR 77.261(a)." The Director finds that the incorrect reference does not render the Missouri proposal less effective than the Federal requirements and is approving the proposed change. However, with this notice the Director is notifying Missouri of the reference error and the need to correct this citation error at 10 CSR 40–3.040(6)(T) and 40–3.200(6)(T) from 30 CFR 77.261(a) to 30 CFR 77.216(a).

13. Certification Reports for Dams and Embankments

At 10 CSR 3.040(10)(I) and 3.200(10)(I), Missouri proposes to require that certification reports for all dams and embankments shall be provided certifying that the impoundment has been constructed and maintained as designed and in accordance with the approved plan and this chapter. Five specific statement requirements are then listed which must be included in the report.

Federal regulations at 30 CFR 816.49(a)(10)(iii) and 817.49(a)(10)(iii) provide for the same requirements. However, the Federal regulations additionally require that the certification report include discussion of any appearance of instability, structural weakness, or other hazardous condition.

The Director is approving Missouri's proposed rule change with the requirement that Missouri further amend its rule to provide that certification reports include discussion of any appearance of instability, structural weakness, or other hazardous condition in a manner consistent with the Federal regulations.

14. Disposal of Excess Spoil

At 10 CSR 40–3.060(1)(A), Missouri proposes to modify its general requirements for disposal of excess spoil by adding the requirement that such spoil shall be hauled or conveyed to and placed in designated disposal areas within a permit area "within a time approved by the Director in the permit and plan." The counterpart Federal regulation at 30 CFR 816.71(a) does not contain this provision. However, the Director finds that Missouri's additional requirement will provide for more effective administration of its program and is not inconsistent with the Federal program requirements. The Director is approving the proposed change.

15. Waste Bank Subdrainage Systems

At 10 CSR 40–3.080(3)(A) and 3.230(3)(A), Missouri proposes to change its existing regulatory requirements regarding water control measures necessary in connection with the disposal of coal processing waste. Specifically, Missouri is amending its regulations to allow an operator to forego the usual requirement for a subdrainage system for a coal processing waste bank if the operator can demonstrate to the director that "* * * a subdrainage system is not required to ensure the structural integrity of the coal processing waste bank and the protection of the surface and ground water quality in the immediate vicinity of the disposal area * * *."

The counterpart Federal regulations at 30 CFR 816.81–816.83 and 817.81–817.83 do not specifically provide a mechanism whereby an operator can forego the requirements for a subdrainage system for coal processing waste bank. Instead, the Federal requirements, that apply to the disposal of coal mine waste in general (the term "coal mine waste," as used in the Federal regulations, includes underground development waste, as well as coal processing waste), simply outline the circumstances under which a subdrainage system is required. Specifically, the Federal regulations require coal mine waste refuse piles to include underdrains, as well as diversions, "* * * as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability * * *" whenever the disposal area "contains springs, natural or manmade watercourses, or wet weather seeps * * *."

Thus, in order to be no less effective than the Federal requirements, the Missouri program must require an underdrain system for coal mine waste refuse piles whenever the disposal area contains springs, natural or manmade watercourses, or wet weather seeps. The Missouri program does contain similar requirements for surface mining at 10 CSR 40–3.060(1)(M) and for underground mining at 10 CSR 40–3.220(1)(N). These provisions of the Missouri program specifically apply to the disposal of excess spoil, but are made applicable to the disposal of coal processing waste by cross-references at 10 CSR 40–3.080(4)(B) (surface mining) and at 10 CSR 40–3.230(4)(B) (underground mining). Therefore, under the Missouri program an underdrain system is always required if the disposal area contains springs, natural or manmade watercourses or wet weather seeps. In other words, under such conditions, it would be impossible for an operator to make a satisfactory demonstration that a subdrainage system was not necessary. Accordingly, the Director finds that Missouri's proposed amendments at 10 CSR 40–3.080(3)(A) and 10 CSR 3.230(3)(A) do not render the Missouri program less effective than the Federal requirements and is approving the proposed changes.

16. Noncoal Waste Disposal Requirements

At 10 CSR 40–3.080(8)(B), Missouri is proposing revisions to its rule for disposal of noncoal waste. These would require: (1) Such waste disposal to be in accordance with Revised Statutes of Missouri (RSMo) 260.200 through 260.430 and other Federal, State, and local law applicable to such disposal; (2) disposal of noncoal waste in the permit area shall be so designated in the permit; (3) these sites shall be designed and constructed with appropriate water barriers on the bottom and sides; (4) waste shall be routinely compacted and covered to prevent combustion and wind borne waste; (5) upon completion, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized and revegetated in accordance with 10 CSR 40–3.270 (Revegetation requirements for underground operations); and (5) the operations shall be conducted in accordance with all local, State, and Federal requirements.

The counterpart Federal regulations at 30 CFR 816.89(b) place the same substantive requirements but in addition require that disposal sites in the permit area be designed and constructed to

ensure that leachate and drainage from the noncoal mine waste area do not degrade surface or underground water. Missouri's proposed rule would require sites to be designed with appropriate water barriers on the bottom and sides of the designated sites. "Appropriate water barriers" would not necessarily ensure that water is not degraded. However, at 10 CSR 40–3.080(8)(A), the Missouri rule requires that placement and storage (of noncoal waste) shall ensure that leachate and surface run off do not degrade surface water or ground water. Therefore, the combined Missouri rule requirements will provide for the same protection to surface and underground water as required by the Federal regulations.

The Missouri rule also requires waste disposal to be in accordance with applicable requirements of RSMo 260.200 through 260.430. These State statutes provide requirements for solid waste management.

The Director finds that Missouri's proposed rule at 10 CSR 40–3.080(8)(B), that provides requirements for noncoal waste disposal are no less effective than the Federal regulation requirements at 30 CFR 816.89(b) and is approving the change.

With this rule notice, the Director is notifying Missouri of a citation error and the need to correct this error. The Missouri rule references 10 CSR 40–3.270 (Revegetation requirements for underground operations) as the revegetation standard to be met. The citation should read 10 CSR 40–3.120 that provides revegetation standards for surface operations.

17. Disposal of Hazardous Noncoal Waste

Missouri proposes at 10 CSR 40–3.080(8)(D) and 40–3.230(8)(D) the requirement that "[a]ny noncoal mine waste defined as 'hazardous' under Section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580, as amended) and 40 CFR part 261 shall be handled in accordance with the requirements of subtitle C of RCRA and any implementing regulations." Missouri's proposed requirement is identical to that of the corresponding Federal regulation adopted on September 26, 1983 (48 FR 43994, 44006), at 30 CFR 816.89(d) and 817.89(d). However, these Federal regulations were suspended on November 20, 1986 (51 FR 41952, 41962), to implement the decision of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Min. Regulation Litigation* 620 F. Supp. 1519, 1538 (D.D.C. 1985). The court remanded these rules because OSM failed to comply with the public notice and public comment requirements of the Administrative Procedures Act in promulgation of these Federal regulations.

OSM subsequently deleted 30 CFR 816.89(d) and 817.89(d) (56 FR 65612, 65635–65636, December 17, 1991). In deleting these rules, OSM reasoned that Congress had assigned permitting, inspection, and enforcement responsibilities under RCRA to the EPA and that SMCRA did not require OSM or the State regulatory authorities to assume such responsibilities (56 FR 65612, 65623, December 17, 1991). It was further reasoned that Congress would not appropriate funds to OSM or State regulatory authorities for this task (*Id.*). With the deletion of this requirement, OSM stated that it would continue "consistent with its jurisdiction under the Act, to coordinate its regulatory program with EPA to facilitate the implementation of RCRA regulations." (56 FR 65612, 65624, December 17, 1991). However, OSM's action does not prohibit or prevent a State regulatory authority from choosing to assume such responsibilities in coordination with EPA. Under 30 CFR 730.11(b) States are allowed to enact provisions for which no corresponding provisions are contained in the Federal regulations or SMCRA.

Because there is no Federal counterpart to the proposed 10 CSR 40–3.080(8)(D) and 40–3.230(8)(D), OSM evaluated Missouri's proposal based upon its consistency with section 515(b)(14) of SMCRA. Section 515(b)(14) of SMCRA generally requires that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are to be treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters. Because Missouri's proposed regulations provide for the handling and disposal of "hazardous" noncoal mine wastes in a manner designed to prevent contamination of ground or surface waters, i.e., pursuant to the provision of subtitle C of RCRA, the Director finds that Missouri's proposed regulations are not inconsistent with section 515(b)(14) of SMCRA and is approving the proposed regulations.

18. Protection of Air Resources

At 10 CSR 40–3.090 and 3.240 of their performance standards, Missouri proposes to delete specific requirements for the protection of air resources and add in their place "The surface coal mining and reclamation operations shall comply with all applicable State and Federal air pollution control laws."

The Federal regulations at 30 CFR 816.95 and 817.95 provide:

> (a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

The Director finds that the State's proposed rule deletion and addition is not inconsistent with the requirements of counterpart Federal regulations at 30 CFR 816.95 and 817.95 and is approving the proposed changes. However, Missouri is required to further amend its program to provide performance standards that address air quality in a manner no less effective than the Federal regulation requirements.

19. Range or Pasture Land Revegetation Requirements

At 10 CSR 40–3.120(5) and 3.270(5), Missouri proposes to amend its regulations dealing with revegetation requirements for grazing for the land uses of range land and pasture land. Those regulations presently require that, where the approved postmining land use is range or pasture land, the reclaimed land must be used for livestock grazing at a grazing capacity approved in the permit and plan approximately equal to that for similar nonmined lands, for at least 2 full years of liability required under subsection (6)(B) of this rule. As amended, the regulations would no longer require that the land always be used for livestock grazing. Instead, under the amended regulations, the reclaimed land could be "* * * used in another manner, as approved, which will determine the productive capacity approved in the permit and plan approximately equal to that for similar nonmined lands."

The Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) require "For areas developed for use as grazing land and pasture land the ground cover and production of the living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority".

Missouri's existing rule language at 10 CSR 40–3.120(5) and 3.270(5) is substantively the same as a suspended and removed Federal regulation 30 CFR 816.115 and 817.115 (August 4, 1980, 45 FR 51549), that limited an operator, who proposed range or pasture land as postmining land use, to actually use the land for grazing during the last 2 years of bond liability in order to obtain bond release with no other option available to meet revegetation success standards. The current Federal regulations were promulgated on September 2, 1983. In

that rulemaking preamble (48 FR 40140, 40148), OSM stated "Use of a reference area or other appropriate standard is also possible. OSM's adoption of this position is not meant to preclude States from either allowing or requiring grazing of reclaimed pasture and range land." Since Missouri's proposed rule would allow for actual grazing or other options for the operator to meet revegetation success standards, its rule is no less effective than the Federal regulation requirements.

Missouri's proposed rule would further allow the land uses of range and pasture to be "* * * used in another manner which will determine productive capacity approved in the permit and plan approximately equal to that for similar nonmined lands." In the September 2, 1983, preamble and in response to a comment concerning range land productivity, the point was made that productivity should consider the pounds of beef (or equivalent) that may be produced per animal unit of area. Further, equal quantities of forage are not always a true reflection of range or grazing land productivity. Measures of revegetation success should take into account the nutritional value of the forage when determining whether productivity has been restored (48 FR 40140, 40148, September 2, 1983). Therefore, Missouri's proposed requirement that would allow productive capacity to be determination in another manner, is not inconsistent with the Federal regulation requirements.

At 10 CSR 40–3.120(5) and 3.270(5) Missouri uses the term "range land" as a type of land use. However, Missouri does not define range land and is proposing to delete their definition for grazing land. The Federal regulations do not define "range land" as a land use category. The Federal definition of "grazing land" is, however, intended to encompass range land use (see 44 FR 14933, March 13, 1979). In deleting its term "grazing land," Missouri has removed a comparable relationship to the Federal regulation for "range land" land use consideration. Additionally Missouri is proposing to amend its definition for pasture land use at 10 CSR 40–8.010(1)(A)51.B to:

> land used primarily for the long term production of adapted, domesticated, forage plants to be grazed by livestock or cut and cured for livestock feed. Land used for facilities in support of pasture land or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

As proposed, the definition of pasture land will be the only land use definition in which the term grazing is incorporated in the Missouri program. Since Missouri does not define range land use, it is unclear what this use would involve as well as what revegetation success standards would apply. Missouri must either define this term or remove reference to it throughout its program.

Based on the discussion above, the Director finds Missouri's proposed language at 10 CSR 40–3.120(5) and 3.270(5) is no less effective than the Federal regulations requirements at 30 CFR 816.116(b)(1) and 817.116(b)(1) and is approving the proposed change. However, Missouri is required to amend its program to either remove or define the term "range land use."

20. Phase III Bond Liability Release Guidelines

In this proposed amendment Missouri submitted Phase III Liability Release Guidelines for the following land uses: prime farmland, cropland, pasture land, woodland, wildlife habitat, industrial/commercial, residential, and recreational. The guideline documents are intended to supplement Missouri's surface and underground revegetation requirements at 10 CSR 40–3.120 and 3.270 and meet the Federal regulation requirements at 30 CFR 816.116(a) (1) & (2) and 817.116(a) (1) & (2).

A review of the guideline documents by OSM identified numerous issues that were identified in OSM's February 20, 1991, letter to the State (Administrative Record No. MO–530). As discussed in this letter, the proposed guideline documents are less effective than the Federal program requirements. The Director is not approving the guideline documents for reasons stated in OSM's February 20, 1991, letter, and is retaining a required program amendment to provide for revegetation success guidelines that was placed on the Missouri program at 30 CFR 925.16(a) in a June 5, 1990, rulemaking action (55 FR 22907).

21. Specific Standards for Postmining Land Uses

At 10 CSR 40–3.120(6)(B)2.A through H and 3.270(6)(B)2.A through H, the State proposes for each category of land use that applicable revegetation success measurements shall be performed in accordance with the criteria contained in the Phase III Liability Release Guidelines adopted by the Land Reclamation Commission in June, 1990. As stated in Finding No. 20, the revegetation success policy documents (guideline documents) proposed are less effective than the Federal program. The Director therefore, is not approving the proposed reference to the policy documents since they are not being approved and are found to be less effective than the Federal program.

22. Vegetation Ground Cover at 70-Percent

At 10 CSR 40–3.120(6)(B)2.A, D, and G and 40–3.270(6)(B)2.A, D, and G, the State proposes for areas to be developed for woodland, wildlife habitat, or recreation land use, a ground cover success standard of 70-percent density. Additionally, Missouri's approved regulations at 10 CSR 40–3.120(6)(B)3. and 3.270(6)(D) require that vegetative ground cover shall not be less than that required to achieve the approved postmining land use. The Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii) require that "Vegetative ground cover shall not be less than that required to achieve the approved postmining land use." While Missouri's proposed vegetative ground cover standard of 70-percent density may be acceptable, it has not demonstrated that this standard will in all cases achieve the approved post mining land use as required by the referenced Federal regulations and counterpart State rules.

The Director cannot determine if Missouri's proposed standard for ground cover meeting a 70-percent density, is consistent with and no less effective than its standards at 10 CSR 40–3.120(6)(B)3 and 3.270(6)(D) and the Federal requirements and therefore is not approving the provision. Missouri is required to substantiate its basis for its 70-percent density standard or otherwise amend its program to be no less effective than the Federal regulation requirements of 30 CFR 816.116(b)(3) and 817.116(b)(3) in regards to setting standards for success.

23. Specific Standards for Industrial/Commercial and Residential Land Uses

At 10 CSR 40–3.120(6)(B)2.B and 10 CSR 40–3.270(6)(B)2.B, the State proposes to require that "In areas to be developed for industrial/commercial land use less than two (2) years after regrading is completed, the ground cover shall not be less than required to control erosion. If the area is not developed for industrial/commercial use within two (2) years of regrading, ground cover must have a density of seventy percent (70%), at a ninety (90%) statistical confidence level and not be less than that required to control erosion." Additionally the proposed rule references Phase III release guidelines for industrial/commercial land uses.

At 10 CSR 40–3.120(6)(B)2.H and 10 CSR 40–3.270(6)(B) 2.H, the State

proposes to require that "For areas to be developed for residential land use less than 2 years after regrading is completed, the vegetative ground cover shall not be less than required to control erosion. If the area is not developed for residential use within 2 years of regrading, ground cover must be equal to a density of 70-percent, at a 90-percent statistical confidence level." Additionally the above proposed rule references Phase III release guidelines for public services land use.

The Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4) require "For areas to be developed for industrial, commercial, or residential use less than 2 years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion."

Missouri's proposed rules at 10 CSR 40–3.120(6)(B)2.B and 10 CSR 40–3.270(6)(B)2.B require that at a minimum the vegetative ground cover shall not be less than that required to control erosion regardless of whether the area will be developed for industrial/commercial land use within the 2 years after regrading. Missouri's proposed rules at 10 CSR 40–3.120(6)(B)2.H and 10 CSR 40–3.270(6)(B)2.H require that at a minimum the vegetative ground cover shall not be less than that required to control erosion if the area will be developed for residential land use within 2 years after regrading. If the area will not be so developed within 2 years after regrading, however, Missouri's proposed rule would impose a 70-percent ground cover density test.

The Director finds the proposed rules, to the extent that they require ground cover to control erosion in areas to be developed in less than 2 years for industrial, commercial, and residential land uses, are no less effective than the Federal regulation requirements. Also, the requirement to control erosion for industrial/commercial land uses even if the land is not so developed upon 2 years after regrading provides additional clarification that the erosion control standard continues to apply should these uses take longer than 2 years to be developed. The Director is approving these proposed rule changes. However, the 70-percent ground cover requirement is less effective than the Federal requirements (see finding 22), also, the Phase III guideline document referred to in the proposed rules has not been approved (see Finding 20).

24. Standards of Success for Woodland, Wildlife Habitat, and Recreational Land Uses

At 10 CSR 40–3.120(6)(B)2.A, D, and G and 40–3.270(6)(B)2.A, D, and G, Missouri proposes success standards for woodland, wildlife, and recreational land uses. In general, the State would require that success in revegetation shall be determined on the basis of ground cover and tree and shrub count, or stocking, or in the case of wildlife habitat, half-shrub stocking. The success standard for ground cover would be acceptable if a ground cover density of 70-percent is achieved for wildlife and recreational land uses. The success standard for tree and shrub stocking rate shall be determined on a specific permit basis with consultation and approval of the Missouri Department of Conservation.

Missouri's proposed rules lack counterpart requirements to the Federal regulations at 30 CFR 816.116(b)(3) (i) and (iii) and 817.816(b)(3) (i) and (iii) that provide for minimum stocking and planting arrangements to be specified on the basis of local and regional conditions and that vegetative ground cover not be less than that required to achieve the approved postmining land use. However, at 10 CSR 40–3.120(7) (C)2. and (C)3.C. and at 3.270(7) (C)2. and (C)3.C., are standards for tree and shrub stocking for woodland, wildlife, and recreational land uses, where the above Federal regulation requirements are provided. Therefore, Missouri's proposed rules that provide standards for success for woodland, wildlife, and recreational land uses when viewed in combination with its tree and shrub stocking standards, provide requirements that are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3).

Missouri's proposed rules set a ground cover standard of 70-percent density and tree or shrub stocking for wildlife and recreational land uses. The 70-percent ground cover standard has previously been found to be less effective than the Federal regulation requirements.

The Director is approving Missouri's proposed changes at 10 CSR 40–3.120(6) (B)2.A, D, and G and 40–3.270(6) (B)2.A, D, and G, with the exception of the 70-percent ground cover standard for the reasons discussed at Finding 22 of this notice.

25. Specific Revegetation Standards for Pasture Land Use

At 10 CSR 40–3.120(6)(B)2.E and 40–3.270(6)(B)2.E, the State proposes that "Ground cover and production shall be considered acceptable if they are at least ninety percent (90%) of the approved success standard * * *. The success standard for ground cover shall be ninety percent (90%) density."

The Federal regulations at 30 CFR 816.116 and 817.116 require:

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of Section 816.111.

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

The State has not shown that the proposed vegetative ground cover density standard of 90-percent will in all cases achieve the postmining land use and that ground cover success will be judged on the extent of cover compared to the cover occurring in natural vegetation of the area. Therefore, the Director finds that the proposed State standard for pasture is less effective than the Federal regulations and is not approving the proposed change. Missouri is required to substantiate its basis for the 90-percent cover standard or otherwise amend its program to be no less effective than the Federal regulation requirements at 30 CFR 816.116 (a) and (b) and 817.116(a) and (b) when setting success standards.

26. Tree and Shrub Stocking for Woodland, Wildlife Habitat, and Recreation Land Uses

a. Minimum Stocking and Planting Arrangements

At 10 CSR 40–3.120(7) (C)2. and 3–270(7) (C)2., Missouri requires that minimum stocking and planting arrangements shall be based on local and regional conditions and on recommendations from the Missouri Department of Conservation (MDOC). It proposes to modify this rule by removing "and on recommendations" and in place require "after consultation and approval" by MDOC.

The Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) require that minimum stocking and planting arrangements be established after consultation with and approval by the State agencies responsible for administration of forestry and wildlife programs. Therefore, Missouri's proposed modification is no less effective than the Federal program requirements. However, Missouri's current rule also requires that in establishing the stocking density for trees, shrubs, half-shrubs, and ground cover, the revegetated area shall approximate the stocking and ground cover on the reference area and that the

stocking of live woody plants shall be equal to or greater than 90-percent of the stocking of woody plants of the same life form on the reference area. The use of reference areas with regard to tree and shrub stocking standards is not prohibited by the Federal regulations so long as the reference area reflects the stocking and planting arrangements established in consultation with and approved by appropriate State agencies. Since Missouri does require approval by the MDOC, the Director is approving the State's use of reference areas to establish stocking of trees, shrubs, half-shrubs, and woody plants for woodland, wildlife habitat, and recreational land uses.

b. Revegetation Success for Bond Release

At 10 CSR 40–3.120(7)(C)3.A. and 3.270(7)(C)3.A., Missouri currently requires that the revegetation standard for woody plants on the revegetated site be equal to or greater than 90-percent of the stocking of live woody plants of the same life form of the approved reference area with 80-percent statistical confidence. Missouri proposes to revise its rule to change from an 80-percent statistical confidence to a 90-percent statistical confidence and add the requirement that at the time of bond release, at least 80-percent of the trees and shrubs used to determine success shall have been in place for 60-percent of the applicable minimum period. The Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii), also require that 80-percent of the trees and shrubs used to determine success to be in place 60-percent of the applicable minimum period. Missouri's proposed requirements are no less effective than the Federal requirements for bond release and the Director is approving the proposed change.

27. Removal of Sedimentation Ponds and Diversions

At 10 CSR 40–3.120(8)(A)4 and 3.270(8)(A)4, Missouri proposes to modify its regulations that address reclamation of sediment ponds and diversions. As amended, the regulations require, among other things, that sediment ponds and diversions that are no longer needed for control of sediment shall be graded, topsoiled, and seeded within 18 months after approval of the phase II liability release of "all disturbed areas within the watershed they serve."

The Federal regulations at 30 CFR 816.46(b)(5) and 817.46(b)(5) require "Siltation structures shall be maintained until removal is authorized by the regulatory authority and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than 2 years after the last augmented seeding." The Federal regulation at 30 CFR 800.40(c)(2) requires at the completion of phase II "No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release is applicable are contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements set by section 515(b)(10) of the Act and by subchapter K of this chapter." Federal regulations at 30 CFR 816.43(a)(3) and 817.43(a)(3) require "Temporary diversions shall be removed when no longer needed to achieve the purpose for which they were authorized. The land shall be restored in accordance with this part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities." Federal regulations at 30 CFR 816.56 and 817.56 address rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities before abandoning a permit or seeking bond release.

The Federal regulations do not provide for the specific time frame requirement of 18 months for removal and reclamation of sediment ponds and diversions upon approval of phase II bond liability release, as proposed by Missouri. However, since Missouri's approved program contains similar requirements to the above cited Federal regulations, and since those counterpart regulations must be met for "all disturbed areas within the watershed they serve" before the removal of siltation structures could take place, the Director finds that Missouri's proposed modification adds clarity to the administration of its program and is not inconsistent with the Federal program requirements and is approving the proposed change.

28. Extension for Meeting Revegetation Success

At 10 CSR 40–3.120(8)(A)9 and 3.270(8)(A)9, Missouri proposes to add the requirement that, if ground cover and tree and shrub density revegetation success is not demonstrated by the end of the 5 year responsibility period, then the period shall be extended year by year until the revegetation success standards are met. The Federal regulations at 30 CFR 816.116(c)(2) and 817.116(c)(2) are silent on the extension of the responsibility period in order to allow an operator to prove meeting revegetation success. However, the Federal regulations do set a revegetation success responsibility period of not less than 5 full years after any augmentative procedure except for a husbandry practice that is approved by the regulatory authority and OSM. The Missouri rules at 10 CSR 40–3.120(8)(B)1 and 3.270(8)(B)1. also provide these same requirements. Thus, under the Missouri program, an operator who engages in augmentative practices must restart the full 5 year responsibility period and cannot take advantage of the year-by-year extension provision. The Director, therefore, finds that Missouri's proposed rule is not inconsistent with and no less effective than the Federal program requirements and is approving the proposed change.

29. Postmining Land Use on Previously Mined Land

At 10 CSR 40–3.130(2)(A) and 3.300(2)(A), Missouri requires that the postmining land use for land previously mined and not reclaimed be judged on the basis of the uses which it was capable of supporting prior to any mining or a higher or better use that can be achieved. The State proposes to change the phrase "a higher or better" use to "the highest and best" use. It also proposes to add the requirement that the highest and best use must be compatible with the surrounding area and "does not require the disturbance of areas previously unaffected by mining."

The Federal regulations at 30 CFR 816.133(b) and 817.133(b) requires that postmining land use for previously mined land not reclaimed be judged on the basis of the land use that existed prior to mining. If the land cannot be reclaimed to the use that existed prior to mining, then the postmining land use would be judged on the basis of the highest and best use that can be achieved which is compatible with the surrounding area and does not require the disturbance of areas previously unaffected by mining. The Missouri rule differs from the Federal requirement in that it would: (1) Base postmining land use on the uses the land was capable of supporting prior to any mining rather than a single use that existed prior to mining and (2) allow the option of providing uses it was capable of supporting or the highest and best use that can be achieved, whereas the Federal regulations do not allow highest and best use that can be achieved unless it is first established that the existing use prior to mining cannot be achieved.

Missouri's requirement to base the postmining use on the uses the land was capable of supporting prior to mining, in

effect poses the same standard as required on land that has not been previously mined. Its option "or the highest and best use that can be achieved" will assure that postmining land use on previously mined land that has not been reclaimed will be optimized to the extent possible.

The Director finds Missouri's proposed rules at 10 CSR 40–3.130(2)(A) and 3.300(2)(A) are no less effective than the Federal regulation requirements at 30 CFR 816.133(b) and 817.133(b) and is approving the changes.

30. Public Facilities Land Use

At 10 CSR 40–3.130(3)(C) and 3.300(3)(C), Missouri proposes to amend its requirements regarding the approval of alternative postmining land uses. Specifically, Missouri proposes to change the requirement regarding public facilities. As amended, the regulations at 10 CSR 40–3.130(3)(C) and 3.300(3)(C) require that "for public facilities, the operator demonstrates a reasonable likelihood of sustaining higher or better use." The Federal regulations at 30 CFR 816.133 and 817.133 do not provide for this specific requirement regarding public facilities. However, at 816.133(c)(1) and 817.133(c) (1), the Federal regulations do require that "[t]here is a reasonable likelihood for achievement of" a proposed alternative postmining land use before it can be approved. The Federal requirement applies to all alternative postmining land uses and is not limited to public facilities. The Missouri program contains a similar requirement at 10 CSR 40–3.130(3)(B) and 3.300(3)(B). Those provisions require, among other things, that specific plans must be prepared and submitted to the director of the Missouri program that show the feasibility of the proposed alternative postmining land use. Since other areas of Missouri's regulations at 10 CSR 40–3.130 and 3.300 require similar criteria to those set forth in the Federal regulations, the proposed provision does not render the Missouri program less effective than the Federal regulation requirements. The Director is approving Missouri's proposed change.

31. Commitment to Cropland Use

At 10 CSR 40–3.130(3)(I) and 40–3.300(3)(I), Missouri proposes to amend its requirements regarding approval of an alternative postmining land use where the proposal is to change a premining land use of range, fish and wildlife habitat, forest land, hayland or pasture to a postmining land use of cropland. Specifically, Missouri proposes to delete the need for a written commitment by the operator, landowner, or land manager to provide sufficient crop management after release of performance bonds to assure that the postmining cropland land use remains practical and reasonable.

The Federal regulations at 30 CFR 816.133(c) and 817.133(c) require consultation with the landowner or land management agency having jurisdiction over the lands before approval by the regulatory authority of an alternative postmining land use. Missouri's removal of the language "that the proposed postmining cropland land use remains practical and reasonable" corresponds to 30 CFR 816.133(c)(3)(i) and 817.133(c)(3)(i) "the use will not be impracticable and unreasonable." Missouri's program provides for such provision at 10 CSR 40–3.130(3) and 40–3.300(3), thus the criteria for alternative land uses at 30 CFR 816.133(c) and 817.133(c) must be met. Additionally, at Section 515(b)(2) of SMCRA, is a requirement that the regulatory authority issue a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan. The Missouri program also has this requirement at 10 CSR 40–6.070(8)(L). Thus, deletion for the need of a written commitment by the operator, landowner, or land manager to provide sufficient crop management after the release of performance bond, does not hinder Missouri's ability to make written findings for long term intensive agricultural postmining land use in accordance with 10 CSR 40–6.070(8)(L).

Since Missouri's regulations at 10 CSR 40–3.130, 40–3.300, and 40–6.070(8)(L) require additional justification similar to the Federal requirements for the alternative land use, as a cropland land use, the Director finds that Missouri's proposed deletion does not render its program any less effective than the Federal program requirements and is approving the deletion.

32. Roads—Class 1—General

At 10 CSR 40–3.140(1)(A), Missouri proposes to add requirements for its class I roads to control " * * * or prevent erosion; siltation; the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed Class I road surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed Class I road surfaces in accordance with current, prudent engineering practices; and water pollution and damage to public or private property." The Federal regulations at 30 CFR 816.150(b)(1) provide for the same requirements with one exception. The Federal regulations require control and prevention of air pollution attendant to erosion from not only road dust but from dust occurring on all exposed surfaces. The proposed State rule requires control only on exposed road surfaces for Class I roads and is therefore more limiting and may not include all other surfaces exposed in connection with construction, use, reconstruction, maintenance, or reclamation of the road.

The Director finds the proposed State regulation is no less effective than the Federal regulations with the exception that it limits "dust control" to only "exposed road surfaces." The Director is approving Missouri's proposed rule but is requiring the State to further amend its rule to require that dust control include "other exposed surfaces."

33. Covering Coal and Acid- and Toxic-Forming Materials

At 10 CSR 40–3.260(3)(A)1, the State proposes to require that "[e]xposed coal seams, acid- and toxic-forming materials and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with 10 CSR 40–3.040, to prevent sustained combustion and to minimize adverse effects on plant growth and the approved post-mining land use." The counterpart Federal regulation at 30 CFR 817.71(e)(5) provides for substantively similar requirements. It is noted however, that the State has incorrectly cited its own surface mining regulations. The citation given as 10 CSR 40–3.040 should be 10 CSR 40–3.200 in order to apply to the underground mining requirements for protection of the hydrologic balance.

The Director finds that the incorrect cross-reference does not render the proposed rule less effective than the Federal regulations and is approving it. However, with this rule notice, the Director is notifying Missouri of the reference error at 10 CSR 40–3.260(3)(A)1 and the need to correct the citation error from 10 CSR 40–3.040 to 10 CSR 40–3.200.

34. Prime Farmland Reference Crop Selection

At 10 CSR 40–4.030(7)(B)6, Missouri proposes to delete existing language that addresses prime farmland crop reference selection and replace it with:

> The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row

crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops for one of the (3) three years. If hay is the most commonly grown crop, then the second most commonly grown crop will be used. In the other two (2) years, other commonly grown crops on prime farmland within the county will be used."

The counterpart Federal regulations at 30 CFR 823.15(b) (3) and (6) provide for the same general requirements. However, the Federal regulations do not require substitution of the second most commonly grown crop for hay. Nor do the Federal regulations provide that the crop with the greatest rooting depth need only be used for 1 year of the 3 year productivity test. The May 12, 1983, preamble to the Federal regulations on prime farmland (48 FR 21446, 21459 and 21460) clarified that the use of hay crops in rotation with row crops could be used for proving soil productivity and therefore more than one reference row crop or hay crop could be used for the 3 year proof period. Based on the above, the Director finds that Missouri's proposed revision of its rule is no less effective than the Federal regulation requirements and is approving the proposed change.

35. Definition of "Valid Existing Rights"

At 10 CSR 40–5.010(1)(A), Missouri proposes to modify its definition of "valid existing rights" (VER). At subsection (1)(A)1, the definition now reads

(A) [VER] means—
1. Except for haul roads,
A. Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorizes the applicant to produce coal by a surface coal mining operation; and
B. The person proposing to conduct surface coal mining on such lands either—
(I) Had been validly issued on or before August 3, 1977, all state and federal permits necessary to conduct such operations on those lands; or * * *.

At subsection (1)(A)1.A., the State proposes to delete the phrase "which authorizes the applicant to produce coal by a surface coal mining operation" and in its place add "legally binding under Missouri statutes and Missouri case law entitling one to mine coal in this state."

Additionally, at subsection (1)(A)1.B.(I), Missouri proposes to revise the provision to read:

On or before August 3, 1977, had been validly issued or made a good faith effort to obtain all state and federal permits necessary to conduct such operations on those lands; or * * *.

OSM first defined VER in its original promulgation of permanent program regulations on March 13, 1979. See 44 FR 14991–14996, 15342. The existing Missouri definition for VER is virtually identical to OSM's original definition for the term. OSM's original definition for VER was judicially challenged and was subsequently remanded by the United States District Court for the District of Columbia. See In Re: Permanent Surface Mining Regulation Litigation, 14 ERC 1083, 1090–1092 (D.D.C. 1980). The court indicated that "a good faith attempt to obtain all permits before the August 3, 1977, cut-off date should suffice for meeting the all permits test." *Id.* at 1091. To comply with the court's 1980 opinion, OSM suspended the definition of VER only insofar as it required all permits to have been obtained prior to August 3, 1977, in order to establish VER (45 FR 51547, 51548, August 4, 1980). The 1980 suspension notice stated that, pending further rulemaking, OSM would interpret the regulation as including the court's suggestion that a good faith effort to obtain all permits would establish VER.

Thereafter, on September 14, 1983, OSM promulgated a new definition for VER, which relied upon a general "takings" standard (48 FR 41312). The 1983 VER definition, however, was also remanded by the United States District Court for the District of Columbia. See In Re: Permanent Surface Mining Regulation Litigation, 22 ERC 1557 (D.D.C. 1985). The court found that the promulgation of the 1983 VER definition violated requirements of the Administrative Procedure Act, 5 U.S.C. 553–706, and remanded the definition to the Secretary for proper notice and comment. *Id.* at 1564.

On July 18, 1991, OSM published notice of a proposed rulemaking to define VER (56 FR 33152). To date, however, OSM has not promulgated a new VER definition. Thus, in order to make a determination of whether the proposed Missouri definition of VER is legally sufficient, OSM must compare the proposed Missouri definition with SMCRA's provisions for VER. Section 522(e) of SMCRA prohibits or limits surface coal mining operations on or near certain private, Federal and other public lands, subject to VER and except for those operations which existed on August 3, 1977. SMCRA does not define "VER," but the legislative history indicates that the VER provision was included to avoid takings of property without just compensation in violation of the Fifth Amendment of the United States Constitution. As outlined above, OSM has promulgated two different definitions for VER, neither of which survived judicial challenge.

Missouri's proposed definition is very similar to OSM's 1979 definition, as modified by the United States District Court for the District of Columbia. That is, under the Missouri definition, as revised, VER is determined, not upon a general "takings" test, but upon a more mechanical test which considers whether the applicant had property rights in existence on August 3, 1977, and additionally, considers whether the applicant had obtained all permits necessary to conduct surface coal mining operations on the lands. The proposed Missouri definition, as revised, allows an applicant to meet the "all permits" test if the applicant had made a good faith effort to obtain all necessary permits prior to August 3, 1977. Thus, the proposed Missouri definition is consistent with the 1980 court opinion. Accordingly, the Director finds that the proposed Missouri definition is not inconsistent with SMCRA, as interpreted by the United States District Court for the District of Columbia. The Director is approving the proposed definition of VER. Once OSM finally promulgates a new VER definition, if necessary, it will notify Missouri of any required amendments to the Missouri program in accordance with 30 CFR part 732.

36. Definition of "Public Road" for Areas Unsuitable for Mining

At 10 CSR 40–5.010(1)(J), Missouri proposes to define a public road to mean "any thoroughfare open to the public which has been, and is being used by the public for vehicular travel; which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction and which meets road construction standards for other public roads of the same classification in the local jurisdiction."

Missouri's definition of a public road is similar to the Federal definition at 30 CFR 761.5 with one exception. The Federal definition additionally contains the provision "for which there is substantial (more than incidental) public use." Missouri's lack of this requirement will result in the potential for more roads being designated as public roads than might have been under the Federal definition.

The Federal regulation at 30 CFR 730.11(b) provides that any State law or regulation that allows for more stringent land use and environmental controls shall not be construed to be inconsistent with SMCRA. Therefore, the Director

finds that Missouri's proposed amendment is not inconsistent with the Federal program and is approving Missouri's proposed change.

37. Identification of Interests: Violation Information Format

At 10 CSR 40–6.030(1)(I) and 40–6.100(1)(I), Missouri proposes to require that ownership and control and violation information be submitted in a format prescribed by the director of the Missouri Land Reclamation Commission. The Federal regulation at 30 CFR 778.13(j) require that a permit applicant submit the information in a format prescribed by OSM. As discussed in the preamble (54 FR 8982, 8985, March 2, 1989), a format prescribed by OSM is necessary to insure data accuracy and consistency on a nationwide basis, for OSM's "Applicant Violator System." The Director finds that the proposed State rule at 10 CSR 40–6.030(1)(I) and 6.100(1)(I) would allow a State format that is less effective than the Federal requirements and is not approving the proposed regulation. Missouri is required to amend its program to be no less effective than Federal requirements.

38. Compliance Information

At 10 CSR 40–6.030(2)(C) and 6.100(2)(C), Missouri requires an operator to list violations of any law, rule of the United States or of any State law, rule enacted pursuant to Federal law, rule, or any provision of the act pertaining to air or water environmental protection.

The counterpart Federal regulation at 30 CFR 778.14(c), requires a similar listing of violations with one exception. The Federal regulations include any violation of SMCRA, regardless of whether the violation pertains to air or water environmental protection. Missouri retains the phrase "or of any provision of the act" immediately before the phrase "pertaining to air or water environmental protection" (see emphasis above). At 10 CSR 40–8.010(1)(A)3, Missouri defines "Act" to mean SMCRA. The Director notes that the term Act, as used in 30 CFR 778.14(c) and section 510(c) of SMCRA includes SMCRA, its implementing Federal regulations, and all State and Federal programs approved under SMCRA. See 48 FR 44389, September 28, 1983. Thus, the Director interprets Missouri's use of the term Act at proposed 10 CSR 40–6.030(2)(C) and 6.100(2)(C) to have the same meaning. Missouri's proposed rule appears to limit any violation of SMCRA to those pertaining to air or water quality environmental protection.

The Missouri regulation is more limiting than the Federal regulations with regard to violations that need to be listed and therefore, the Director is not approving it. Missouri is required to amend its regulation in a manner that is no less effective than the Federal regulation requirement.

39. Certification of Roads

At 10 CSR 40–6.050(17)(B) and 6.120(15)(B), Missouri proposes to require that Class I and II road plans and drawings be certified by a qualified registered professional engineer or a qualified registered professional land surveyor. The Federal regulations at 30 CFR 780.37(b) and 784.24(b) provide for the same general requirement. However, before the Director can approve certification by a land surveyor, Missouri must submit proof of the ability for a land surveyor to carry out such design activity under State law, 53 FR 45190, 45196 (November 8, 1988). The Director is approving Missouri's proposed rule as no less effective than the Federal requirements except for the provisions that allows land surveyors to also prepare and certify plans and drawings.

40. Prime Farmland

At 10 CSR 40–6.060(4)(E)5, Missouri proposes to add a requirement that "The aggregate total prime farmland acreage has not decreased from that which existed prior to mining." The Federal regulations at 30 CFR 785.17(e)(5) contains this same requirement, but additionally requires that "Water bodies, if any, to be constructed during mining and reclamation operations must be located within the postreclamation nonprime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit must be obtained."

At 10 CSR 40–4.030, the Missouri rule provides requirements for "Operations on Prime Farmland." Specifically, (4)(A) of that rule requires approval of water bodies by the Missouri Land Reclamation Commission and the consent of all affected property owners within the permit area. The rule also requires that the water bodies will not result in an aggregate loss of prime farmland. Therefore, the Missouri rules, in combination, are no less effective than requirements of the Federal regulation and the Director is approving the proposed change at 10 CSR 40–6.060(4)(E)5.

41. Definition of Irreparable Damage

At 10 CSR 40–6.070(1)(B), Missouri proposes to modify its definition of "irreparable damage to the environment." That term is now defined as "any damage to the environment that cannot be or has not been corrected by actions of the applicant." Missouri proposes to amend the definition by deleting the phrase "or has not been."

The Federal regulation definition of the same term at 30 CFR 701.5 does not contain the phrase "or has not been" and provides for essentially the same requirements with the exception that the Federal definition limits consideration of damage to the environment to damage that is in violation of the Act, the regulatory program, or this chapter. Since Missouri's definition does not limit the consideration of environmental damage to only those incidents that are in violation of their Act or regulatory program, the State is more inclusive in what it would consider needs to be addressed as a violation. The Director therefore finds that Missouri's definition is not inconsistent with and no less effective than the Federal requirement and is approving Missouri's proposed change.

42. Review of Violations in Permit Applications

At 10 CSR 40–6.070(7)(C) and (7)(C)2., Missouri proposes to add new requirements that address the counterpart Federal regulation requirements for the review of violations prior to issuing a permit at 30 CFR 773.15 (b)(1) and (b)(1)(ii). The language proposed by Missouri is substantively the same as the Federal language including its requirement at (7)(C) that states "[I]n the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation issued pursuant to 10 CSR 40–8.030(7) or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, * * *" and at (7)(C)2. that states "* * * and is presently pursuing in good faith, a direct administrative or judicial appeal to contest the validity of the current violation." The presumption that a notice of violation is being abated was an issue in *National Wildlife Federation* v. *Lujan*, Civ. Nos. 88–3117, *et seq.* (consolidated, D.D.C. filed October 27, 1988). During that proceeding, the Secretary of the Interior expressed the intention to reconsider the issue of whether, in the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of

violation has been or is being corrected, as set forth in the Federal regulation (Memorandum of Points and Authorities In Support of the Federal Defendants' Cross-Motion For Summary Judgment and In Opposition to Plaintiffs' Motions For Summary Judgment, pp. 89–90). The Director is approving Missouri' s proposed rule at 10 CSR 40–6.070(7)(C) and (7)(C)2., however, pending final resolution of the reconsideration currently being pursued by the Secretary regarding the Federal regulation at 30 CFR 773.15(b)(1), the Director defers action on that portion of Missouri's proposed regulation at 10 CSR 40–6.070(7)(C) that addresses the presumption discussed above.

43. Improvidently Issued Permits

At 10 CSR 40–6.070(11), (A) and (B), Missouri proposes to add regulations that address improvidently issued permits. The proposed requirements are substantively the same as the Federal regulation requirements at 30 CFR 773.20 and 773.21 with one exception. Missouri proposes to add a regulation at subsection (11) (A) 1 to require that "[w]here the director improvidently issued a surface coal mining and reclamation permit, he or she shall review the circumstances under which the permit was issued * * *" The Federal regulation at 30 CFR 773.20(a) requires the regulatory authority to review the circumstances under which a permit was issued whenever the regulatory authority "has reason to believe that it improvidently issued a surface coal mining and reclamation permit." The "reason to believe" standard does not require review of all permits on a regular basis but only a particular permit if there is reason to believe it was improvidently issued, as outlined in the April 28, 1989, **Federal Register** (54 FR 18437, 18439). The State must conduct the applicable review whenever it has "reason to believe," or it discovers, that a permit has been improvidently issued.

The Director finds that the proposed regulations at 10 CSR 40–6.070(11) (A) and (B), are no less effective than the Federal counterpart regulations at 30 CFR 773.20 and 773.21 and is approving the proposed changes. However, Missouri is required to further amend 10 CSR 40–6.070(11)(A) to incorporate the "reason to believe" standard as the triggering event which requires the regulatory authority to review the circumstances under which a permit was issued.

44. Fish and Wildlife Information—Underground Mining

At 10 CSR 40–6.110(11)(A) and 6.120(12)(A), Missouri proposes to add the requirements that fish and wildlife information and the enhancement plan will be consistent with the Endangered Species Act of 1973 as amended as well as the Missouri statute at RSMo section 444.855.2(17), that requires control or prevention of damage to fish and wildlife in access road locations, and the Missouri rule at 10 CSR 40–3.040(17), that addresses sedimentation pond postmining rehabilitation; and 10 CSR 40–3.100, that provides performance standards and enhancement for fish and wildlife.

The Federal regulation at 30 CFR 784.21(a) also requires that these same general considerations be afforded. However, the Federal regulation additionally requires identification of those species or habitats protected by similar State statutes. In this same rulemaking effort Missouri is proposing to add at 10 CSR 40–6.100(11)(E)1. (fish and wildlife resource information requirements), the requirement that "* * * site specific resources contain those species or habitats protected by Missouri as listed in the current publication of Rare and Endangered Species of Missouri * * *." Additionally, the fish and wildlife plan requirements at 10 CSR 40–6.120 (12)(C), references the need to consider information obtained per 10 CSR 40–6.110(11) as well as the Missouri Natural Features Inventory, therefore, appropriate consideration should be afforded to species or habitats protected by State statutes.

The Director finds that Missouri's proposed changes are no less effective than the Federal program requirements and is approving the proposed change. Also with this rule notice the Director is notifying Missouri of the apparent reference error to 10 CSR 40–3.040(17), that addresses sedimentation pond rehabilitation, while the correct reference would appear to be 10 CSR 40–3.040(18) that addresses stream buffer zone requirements.

45. Self-bond Financial Information

At 10 CSR 40–7.011(5)(D)2.C. (II) and (III) Missouri proposes to change its requirement of current assets to current liabilities ratio's for self-bond tangible net worth and fixed assets from "one to two (1:2 times)" to "1.2 times (1.2:1)" and greater. The Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii) requires the same identical ratio.

The Director is approving Missouri's proposed change as being no less effective than the Federal requirements. The change also satisfies, in part, a required program amendment placed on Missouri's program at 30 CFR 925.16(g)(16) in a May 8, 1991, rulemaking action (56 FR 21281). That required amendment will be modified to reflect the above change.

46. Self-bond Indemnity Agreements

At 10 CSR 40–7.011(5)(D)5. A., B., and C., Missouri proposes to add language to its self-bond indemnity agreement requirements. Specifically at (5)(D)5.A., the requirement that the indemnity agreement shall be executed by all persons and parties who are bound by it, including the "corporate guarantor," has been changed to read a "parent corporate guarantor." This language change makes the State rule at 10 CSR 40–7.011(5)(D)5.A. identical to the counterpart Federal regulation at 30 CFR 800.23(e)(1).

The same State rule subpart continues with the requirement that if the applicant is a partnership, joint venture, or syndicate the agreement shall bind such partner or party who has a beneficial interest directly or indirectly in the applicant. Missouri proposes to change the word such to the. Federal regulations at 30 CFR 800.23(e)(3) contains identical language except the word each partner or party is used instead of such or the.

At (5)(D)5.B. Missouri then requires that "corporations applying for a self-bond *or* corporations guaranteeing a permit's self-bond shall submit an indemnity agreement * * *" (emphasis added). Federal counterpart regulations at 800.23(e)(2) require that corporations applying for a self-bond *and* parent and nonparent corporations guaranteeing an applicants self-bond shall both submit an indemnity agreement. The combination of Missouri's proposed change at (5)(D)5.A. and existing rule at (5)(D)5.B., appear to provide a potential conflict in the State requirements as to who needs to submit an indemnity agreement. The State rules do not specifically insure corporations applying for a self-bond *and* parent and non-parent corporations guaranteeing an applicant's self-bond will both submit an indemnity agreement, as is required by the Federal regulations.

Missouri also proposes changes at (5)(D)5. B. and C. that would require an affidavit be submitted with the indemnity agreement attesting to its validity under applicable Federal and State laws; that the applicant, parent, or nonparent corporate guarantor be required to complete the approved reclamation plan or pay the regulatory

authority to complete the reclamation plan; and that the indemnity agreement shall operate as a judgment when under forfeiture.

The above added requirements to the Missouri program satisfy, in part, a required program amendment that was placed on the Missouri program at 30 CFR 925.16(g)(18) in a May 8, 1991, rulemaking action (56 FR 21299). The Director is approving the changes proposed by Missouri with the exception of, who is required to execute and submit an indemnity agreement, as discussed above. Missouri is required to amend its rule to provide for no less effective requirements than the Federal regulations at 30 CFR 800.23(e). The required program amendment at 30 CFR 925.16(g)(18) will be modified to reflect this decision.

47. Bond Requirements

At 10 CSR 40–7.011(5)(D)8, Missouri proposes to add the requirement that "immediate compliance with 10 CSR 40–3.150(4)" be taken when a cessation order is issued for failure to replace a self-bond in the event the criteria for self-bonding under the Missouri program are no longer satisfied due to a change in the financial conditions of the permittee or a third party guarantor. The State regulation at 10 CSR 40–3.150(4) requires that persons who cease operations reclaim all affected areas in accordance with the approved permit and plan.

The Federal regulations at 30 CFR 800.23(g) provide that if, at any time during the period when a self-bond is posted, the financial conditions of the applicant, parent or nonparent corporate guarantor change so that the criteria for self-bonding are no longer satisfied, the permittee must notify the regulatory authority immediately. In addition, the permittee must post an alternate form of bond in the same amount as the self-bond within 90 days. Finally, 30 CFR 800.23(g) provides that, if the permittee fails to post an alternate form of bond within 90 days, then the provisions of 30 CFR 800.16(e) shall apply. The Federal regulations at 30 CFR 800.16(e), in turn, require, among other things, that mining activities cease and that reclamation activities begin immediately, if an adequate replacement bond is not posted within 90 days.

The proposed State provision is substantively similar to the Federal provisions, with one exception. The Federal regulations at 30 CFR 800.16(e)(2) specifically provide that "[m]ining operations shall not resume until the regulatory authority has determined that an acceptable bond has been posted." The Director finds that Missouri's proposed change at 10 CSR 40–7.011(5)(D)8 is no less effective than the Federal regulation requirements since reclamation must begin immediately upon the issuance of a cessation order and is approving the proposed change. However, the Director is requiring Missouri to further amend 10 CSR 40–7.011(5)(D)8 to include the requirement that, once a cessation order has been issued under the regulations, mining operations shall not resume until the regulatory authority has determined that an acceptable bond has been posted.

48. Duration of Phase III Bond Liability

The State proposes at 10 CSR 40–7.021(1)(B)2 (previously subsection (1)(B)(3)), to require that the permittee may, on areas under Phase III liability or the 5 year responsibility period, use certain normal husbandry practices without causing the Phase III liability period or the 5 year responsibility period to be extended, if the permittee can demonstrate that: (1) Discontinuance of these measures after the liability period expires will not reduce the probability of permanent revegetation success; (2) the practices are normal husbandry practices within the region on unmined lands having land uses similar to the approved postmining land use of the area; and (3) the practices are necessary to prevent exploitation, destruction, or neglect of the resource and to maintain the prescribed level of use or productivity.

The State proposal goes on to specify certain practices that are deemed "normal husbandry practices." They include: application of pesticides; application of soil amendments equal to, or less than that recommended by the high management yield goals of the U.S. Soil Conservation Service, U.S.D.A.; subsoiling which occurs less than 2 feet below the surface and which does not remove the vegetation from the surface; burning; overseeding to maintain the approved composition of the stand; and tree planting and tree pruning. In addition, the State proposal provides that the repair of rill and gullies shall not cause the Phase III liability period to be extended when rill and gullies develop after the initiation of Phase III liability period and when the repair is restricted to the filling, grading and reseeding of the eroded portion of the area.

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) provide that the regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director in accordance with 30 CFR 732.17. The preamble for these Federal regulations (53 FR 34636, 34641 (September 7, 1988) provides that OSM will consider, on a practice-by-practice basis, the administrative record supporting each practice proposed by the regulatory authority as normal husbandry practices.

In the present amendment, Missouri has specified certain practices that it considers to be normal husbandry practices, but has not provided any supporting evidence to substantiate the use of each practice on a "practice-by-practice" basis. The regulatory authority is expected to demonstrate: (1) That the practice is the usual or expected state, form, amount, or degree of management performed habitually or customarily to prevent exploitation, destruction, or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands; and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b)(20) of SMCRA (53 FR 34636, 34641, September 7, 1988). Missouri has not made the required demonstration with regard to any of the specific practices, including the repair of rills and gullies, proposed in this amendment as normal husbandry practices.

The Director finds the proposed rules to be less effective than the Federal program and is not approving them. Missouri is required to demonstrate that each practice proposed, including rill and gully repair, is a normal husbandry practice and obtain OSM's approval before it can allow such practice to occur without restarting the liability period.

49. Phase I Bond Release Qualification

At 10 CSR 40–7.021(2)(A), Missouri proposes to add the requirement that "drainage control" must be completed, along with backfilling and grading, topsoiling, and initial seeding of the disturbed area, for an area to qualify for Phase I bond release. The Federal regulations at 30 CFR 800.40(c)(1) also requires, among other things, that drainage control be in place prior to Phase I bond release. The Director is therefore approving the proposed change. In a May 8, 1991, rulemaking action (56 FR 21281, 21294), the Director deferred a decision regarding Missouri's lack of drainage control requirement for its Phase I bond release. The Director now finds that with the addition of the requirement for drainage control, Missouri has satisfied the concern expressed in that rulemaking action.

50. Criteria and Schedule for Release of Reclamation Liability

At 10 CSR 40–7.021(2)(B)1. Missouri proposes to delete the provision that would allow an alternative erosion control practice as approved by the State director. Missouri also proposes to add a requirement that no further augmentation of the vegetation is necessary before an area qualifies for release of Phase II liability. Thus, as amended, 10 CSR 40–7.021(2)(B)1 would provide as follows:

An area shall qualify for release of Phase II liability when—

1. A permanent vegetative cover sufficient to control erosion is in place and no further augmentation of the vegetation is necessary

* * *

The Federal regulations at 30 CFR 800.40(c)(2) do not allow for an alternative erosion control practice, instead they require that no bond shall be released so long as the lands to which the release would be applicable are contributing suspended solids to stream flow or runoff outside the permit area in excess of that required by the Act. Missouri's deletion of the alternative erosion control practice removes a discretionary provision not allowable under the Federal regulation.

Additionally the Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)[1] allow the period of extended responsibility for successful revegetation to begin after the last year of augmented seeding, fertilization, irrigation, or other work. This is the equivalent of the phase II bond release requirement. Therefore, the State's proposed language as a requirement for phase II bond release that "* * * no further augmentation of the vegetation is necessary," is not inconsistent with the Federal program requirements.

The Director is therefore approving the proposed deletion and added language changes to the Missouri regulation.

51. Termination of Jurisdiction

At 10 CSR 40–7.021(2)(B) 5 and 6, Missouri proposes to add new regulations that would provide when the State could terminate jurisdiction over a reclaimed site. The proposed language is substantively the same as the counterpart Federal regulation at 30 CFR 700.11(d).

The U.S. District Court for the District of Columbia found that the Federal regulations at 30 CFR 700.11(d) were contrary to sections 521 (a)(1) and (a)(2) of SMCRA (*National Wildlife Federation* v. *Lujan*, 31 ERC 2034 D.D.C. 1990). More specifically, the court interpreted sections 521 (a)(1) and (a)(2) as imposing an ongoing duty upon the Secretary of the Interior to correct violations of SMCRA. Accordingly, the court remanded the Federal regulations at 30 CFR 700.11(d) to the Secretary to be withdrawn or revised.

In response to the court's decision, OSM suspended the above Federal regulation on June 3, 1991 (56 FR 25086). This decision was appealed and the suspended rule was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *National Wildlife Federation* v. *Lujan*, 950 F.2d. 765 (D.C. Cir. 1991). The reinstatement of this rule was published in the Federal Register on April 10, 1992, and was effective on May 11, 1992 (57 FR 12461, 12463).

Missouri's rules proposed at 10 CSR 40–7.021(2)(B) 5. and 6. are substantively the same as the reinstated Federal rule. The Director therefore finds Missouri's proposed rules to be no less effective than the Federal rule at 30 CFR 700.11(d) and is approving them. However, Missouri has located this language under the phase II bond release requirements. The location of this proposed language leads to possible misinterpretation of the requirements for a phase II bond release and when termination of jurisdiction including written determinations are relevant. Therefore, the Director is requiring Missouri to relocate this language to an appropriate location in its regulations to clarify the intent of this language.

52. Bond Forfeiture

The proposed State rule at 10 CSR 40–7.031(3)(B), concerning bond forfeiture, contains requirements similar to the counterpart Federal regulations at 30 CFR 800.50(a)(2), with the exception that 30 CFR 800.50(a)(2)(ii) requires that, "except where the regulatory authority may approve partial release authorized under 30 CFR 800.40, no surety liability shall be released until successful completion of all reclamation under the terms of the permit including the applicable liability periods of 30 CFR 800.13."

The Director finds the proposed State rule to be no less effective than the Federal regulation and is approving the proposed changes. However, Missouri is required to further amend its regulation to provide for the requirements of 30 CFR 800.50(a)(2)(ii).

53. Definition "Prime Farmland"

At 10 CSR 40–8.010(1)(A)51.C. the State proposes to include the following definition of prime farmland as a category of land use: "Prime farmland means an area which has been historically used for crop production, as defined previously, and which has prime farmland soils as defined by the United States Department of Agriculture, Soil Conservation Service in 7 CFR part 657."

The State's definition is similar to the Federal definition of prime farmland at 30 CFR 701.5. At 10 CSR 40–8.010(1)(A)13. Missouri also defines "Historically used for cropland" in a manner similar to the Federal definition. The combination of the 2 definitions are no less effective than the Federal requirements. The Director is approving Missouri's proposed definition.

54. Definition of "Mine Plan Area"

At 10 CSR 40–8.010(1)(A)53. Missouri proposes to modify its definition of "mine plan area" to mean "the same as a permit area." In In re: Permanent Surface Mining Regulation Litigation, 14 ERC 1097, 1083, (D.D.C. 1980) the definition of "mine plan area" was remanded and use of the term suspended in the Federal regulations at parts 779, 780, 783, and 784. In a subsequent rulemaking action (August 4, 1980 (45 FR 51547, 51550)), OSM suspended the definition of the term "mine plan area" at 30 CFR 701.5 and clarified that the term "mine plan area" as used in parts 779, 780, 783, and 784 will be interpreted to mean "permit area." Although, the term mine plan area is no longer defined in the Federal regulations, the Director finds that Missouri's proposed definition is not inconsistent with the Federal program requirements and is approving the change.

55. Definition of "Dry Bulk Density"

At 10 CSR 40–8.010(1)(A)54., Missouri proposes to delete its definition of dry bulk density that is identical to the Federal regulation definition of "moist bulk density." The Federal regulations do not define dry bulk density and the moist bulk density term is no longer used in the Federal regulation. This term was used originally at 30 CFR 823.14(c), as a requirement to be met in soil replacement for prime farmland soils. In a May 12, 1983, rulemaking (48 FR 21446, 21457) the issue of soil compaction and use of bulk density for measurement of the soil compaction was discussed. It was concluded that the Soil Conservation Service (SCS) within each State will determine what constitutes proper compaction and whether or not bulk density will be the measure of soil density. In doing so, the term moist bulk density was removed from the regulations and instead, soil compaction and densities were used. The Federal definition of moist bulk density however, was retained in the Federal regulations at 30 CFR 701.5.

In view of the above, the Director finds that Missouri's deletion of the definition of dry bulk density at 10 CSR 40–8.010(1)(A)54. that is defined the same as the Federal term moist bulk density, does not render its program to be any less effective than the Federal program since moist bulk density is no longer specifically required in the prime farmland replacement criteria or anywhere else in the Federal regulations.

56. Definition of "Previously Mined Area"

At 10 CSR 40–8.010(1)(A)71, Missouri proposes to modify a previously proposed definition of previously mined area by deleting the phrase "surface coal mining law" and in its place adding "Act" so it now reads "land previously mined or disturbed to facilitate mining on which there were no surface coal mining operations subject to the standards of the Act."

The Federal regulations at 30 CFR 701.5 define previously mined areas in a similar manner. However, in the case of *National Wildlife Federation* v. *Lujan*, 733 F. Supp. 419 (D.D.C. 1990) the court remanded the definition of "previously mined area" to the Secretary as being inconsistent with SMCRA to the extent that it would (1) preclude the possibility that the date used to determine "previously" could be other than August 3, 1977; and (2) preclude the possibility that sites, once mined and fully reclaimed under State laws preceding SMCRA, could be subsequently remined and reclaimed to a lower standard. As discussed at length in a previous rulemaking action of this proposed rule (55 FR 45603, 45605, October 30, 1990), OSM has not suspended the definition. OSM may not, because of the court's remand, use the existing Federal definition in evaluating the sufficiency of Missouri's definition, but instead must base its evaluation upon consistency with the court's decision. As found before, the Director finds Missouri's proposed definition to be inconsistent with SMCRA as interpreted by the court, and is not approving it to the extent that it (1) provides or could be interpreted as providing that the reference date for "previously mined" is any date other than August 3, 1977, or (2) allow or could be interpreted as allowing lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed.

The Director will pursuant to 30 CFR 732.17(d), notify Missouri of any regulatory changes needed for its rule at 10 CSR 40–8.010(1)(A)71. to make its program no less effective than the Federal program after OSM promulgates a new definition.

57. Inspection of Abandoned Sites

At 10 CSR 40–8.030(1) (F) and (G), Missouri proposes new regulations that would address inspection of abandoned mine sites. The counterpart Federal regulations are at 30 CFR 840.11 (g) and (h).

On August 30, 1990, in *National Wildlife Federation* v. *Lujan*, 31 ERC 2034, 21 ELR 20125 (D.D.C. 1990), the U.S. District Court for the District of Columbia found that the Federal regulations at 30 CFR 840.11 (g) and (h) conflict with the plain language of section 517(c) of SMCRA that provides for no exceptions to the requirement to conduct an average of one partial inspection per month and one complete inspection per calendar quarter for each surface coal mining and reclamation operation. Accordingly the court remanded the Federal regulations at 30 CFR 840.11 (g) and (h) to the Secretary to be withdrawn or revised.

In the June 3, 1991, **Federal Register** (56 FR 25036), OSM suspended the Federal regulations at 30 CFR 840.11 (g) and (h) to the extent that the definition of abandoned sites relate to inspection frequencies at those sites.

On December 10, 1991, the U.S. Court of Appeals upheld the district court's decision on frequency of inspections *National Wildlife Federation* v. *Lujan*, 950 F.2d. 765, 771 (D.C. Cir. 1991). In that action, the Secretary agreed that a minimum number of inspections was required by section 517(c) of SMCRA and expressed a desire to redefine "abandoned sites" to include only those sites where a permit has either expired or been revoked. No rulemaking action has been initiated on this desire.

Accordingly, OSM evaluated Missouri's proposed rules against the appropriate provisions of SMCRA as interpreted by the court. Based upon the court's finding that the Federal regulations at 30 CFR 840.11 (g) and (h) are inconsistent with section 517(c) of SMCRA, the Director finds that the Missouri's proposed rules at 10 CSR 40–8.030(1) (F) and (G), that are substantively identical to the Federal regulations, are less stringent than section 517(c) of SMCRA to the extent that they would limit required inspection frequency as discussed in the courts opinion above. Therefore the Director is not approving Missouri's proposed rule to the extent that they would afford an interpretation for providing less frequent inspections than required by section 517(c) of SMCRA. Missouri is required to remove its regulations at 10 CSR 40–8.030(1) (F) and (G) from its program.

58. Enforcement of Notices of Violation

Missouri proposes to revise its regulation at 10 CSR 40–8.030(7)(A), by specifically providing that the commission or the State director may modify, terminate, or vacate a notice of violation (NOV) for good cause and may extend the time for abatement of an NOV if the failure to abate within the time previously set was not caused by a lack of diligence.

The State proposal thus consists of two parts. First, the amendment specifically allows the commission or the State director to modify, terminate, or vacate an NOV "for good cause." The Federal regulations at 30 CFR 843.12 also allow for the modification, termination, or vacation of NOV's, but the Federal regulations set certain limitations upon the regulatory authority's discretion. For instance, with regard to the termination of NOV's, 30 CFR 843.12(e) requires an authorized representative of the Secretary to terminate an NOV by written notice to the permittee when the authorized representative determines that all violations listed in the NOV have been abated. Also, with regard to the vacation of NOV's, 30 CFR 843.18 provides, in part, that no cessation order or NOV may be vacated because of the inability to comply.

The Missouri program contains counterpart regulations to both 30 CFR 843.12(e) [10 CSR 40–8.030(7)(E)] and 30 CFR 843.18 [10 CSR 40–8.030(12)]. Thus, the State regulatory authority's discretion to modify, terminate, or vacate NOV's is subject to limitations similar to and no less effective than those of the Federal regulations.

The second part of the State proposal allows the commission or the State director to extend the time for abatement of an NOV if the failure to abate within the time previously set was not caused by a lack of diligence on the part of the person to whom it was issued. The Federal regulations at 30 CFR 843.12(c) allow an authorized representative of the Secretary to extend the time for abatement of an NOV under similar circumstances as those outlined in the State proposal. In addition, however, the Federal regulations, set specific limits on the availability and length of such extensions. The Missouri program provides for the same requirements and limitations at 10 CSR 40–8.030(7)(C). Therefore, to the extent the proposed regulation provides for allowing extensions of time to abate a NOV, it is duplicative of previously approved portions of the Missouri program.

However, the Director finds that the duplicative nature of this part of the proposal does not render the amendment less effective than the Federal regulations and is approving it. The Director notes that any extensions of time for abatement of an NOV granted by the commission or State director must comply with 10 CSR 40–8.030(7)(C).

The Director finds that the State's proposed rule at 10 CSR 8.030(7)(A) in combination with its other approved regulations is no less effective than the Federal requirements and is approving the proposed change.

59. Assessment of Separate Violations for Each Day

At 10 CSR 40–8.040(5)(B)3. the State proposes to limit the assessment of civil penalties by requiring that a penalty for the failure to abate a violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30 day period, the commission or the State director shall take appropriate action pursuant to RSMo 444.870.5 and .6 and 444.885.1 (4) and (5), RSMo (Supp. 1986) within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

The State's proposed revision is the same as the Federal counterpart regulation at 30 CFR 845.15(b)(2) except that the State has not correctly cited its statutes in relation to the corresponding provisions of SMCRA at section 521(a)(4) dealing with patterns of violation and unwarranted failure to comply and section 521(c) requesting the Attorney General to institute a civil action of relief. The comparable State citations should be 444.885.3 and 444.885.5, respectively.

The Director finds that the incorrect cross-references do not render the proposed State rule less effective than SMCRA and the Federal regulations and therefore, he is approving the proposed change. However, with this rule notice, the Director is notifying Missouri of the reference error at 10 CSR 40–3.260(3)(A)1, and the need to correct the citations of 444.885.1(4) to 444.885.3 and 444.885.1(5) to 444.885.5.

60. Procedures for Settlement Agreement Disapproval or Nonpayment

At 10 CSR 40–8.040(8)(K), the State proposes to require that if a settlement agreement is disapproved, or if the payment is not made within 30 days, the State director shall within 30 days refer the agreement to the Commission to enforce the agreement or rescind it and affirm, raise, lower, or vacate the penalty. The Federal regulations at 30 CFR 845.18(d)(2) provide that if full payment of the amount specified in the settlement agreement is not received by the office within 30 days after the date of signing, the Office may enforce or rescind the agreement and proceed according to paragraph (b)(3)(ii) within 30 days from the date of rescission. Pursuant to 30 CFR 845.18(b)(3)(ii), the conference officer is required to affirm, raise, lower, or vacate the penalty.

The proposed Missouri regulation differs from the Federal regulations in that the State would require the settlement agreement be sent back to the commission within 30 days if the commission did not approve the initial agreement, as well as if the settlement agreement were not paid. In addition, the State does not specify that the payment must be received within 30 days after the date the settlement agreement is signed, or that the act of the commission to affirm, raise, lower, or vacate the penalty must be within 30 days from the date of the rescission.

Missouri's process does afford that the same considerations are given regarding treatment of the settlement agreement and action if the payment is not received. The Director is, therefore, approving Missouri's proposed changes to its regulation at 10 CSR 40–8.040(8)(K) as being no less effective than the Federal regulation requirements at 30 CFR 845.18(d)(2). However, the Director is requiring Missouri to further amend their regulations to specify that the payment must be received within 30 days from the date the settlement agreement is signed and that the action of the commission to affirm, raise, lower, or vacate the penalty must be taken within 30 days from the date of rescission.

61. Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

Missouri proposes new language at 10 CSR 8.070(2) regarding applicability and exemptions for extraction of coal incidental to the extraction of other minerals.

a. Reporting of Cumulative Production

At 10 CSR 40–8.070(2)(C)1.A.II, Missouri provides dates for required initiation of and continuance of annual reporting of cumulative production as follows:

(a) For mining areas where coal or other minerals were extracted prior to November 1, 1990, and every October 31 thereafter; or

(b) For mining areas where extraction of coal or other minerals commenced on or after November 1, 1990, the last day of the calendar quarter during which coal extraction commenced and each anniversary of that day thereafter:

The counterpart Federal regulations at 30 CFR 702.5(a)(2) require the dates of coal extraction prior to or after April 1, 1990, and every March 31, 1990, respectively. OSM recognizes that the effective dates for the above reporting requirements will vary from the Federal regulation dates depending upon when individual States receive approval of their rules. The Federal preamble (54 FR 52092, 52094, December 20, 1989), clarifies that the rules are not intended retroactively to bring under the Act activities that occurred prior to the effective date of this rule or the effective date of counterpart provisions of the State regulatory programs. Such activities would not qualify for an exemption under the standards of this rule even if they did qualify under previous standards. Such operations would legitimately have relied upon standards in place to qualify for the exemption.

Even though the proposed State rules were promulgated by Missouri on September 27, 1990, the Federal regulation at 30 CFR 732.17(g) provides that any changes to a State program are not enforceable by that State until approved by the Director. Therefore, the Director is not approving the initial and subsequent annual reporting dates proposed by Missouri at 10 CSR 40–8.070(2)(C)1.A.II and is requiring Missouri to amend its program to provide appropriate dates that provide reporting no earlier than the date this amendment is published in the **Federal Register** as a final rule.

b. Direct Enforcement

At 10 CSR 40–8.070(2)(C)9.F (I), (II), and (III), the State proposes to require: (1) In subsection (I), in part, that an operator shall not be cited for "violations of the commission" which occurred prior to the revocation of the exemption; (2) in subsection (II), in part, that an operator shall be subject to direct enforcement action for violations of the commission which occur during the period of such activities; and (3) in subsection (III), in part, that an operator shall comply with the reclamation standards of the commission with regard to conditions, areas, and activities existing at the time of revocation or denial.

The State's proposed regulations are similar to the Federal regulations at 30 CFR 702.17(d) (1), (2), and (3) with the exception that the Federal regulations also require that the operator be cited for violations of; subject to direct enforcement actions for violations of;

and comply with the reclamation standards of the regulatory program. Missouri would limit the above to their commission and thus not assure that all violations or reclamation standards of the Missouri program would be considered. The Director finds that to this extent the State's proposed rule is less effective than the Federal regulations, and is requiring Missouri to further amend its program to be no less effective than the Federal program requirements.

However, the Director is approving the remainder of Missouri's proposed rule at 10 CSR 8.070(2) with the following required editorial corrections. The first paragraph of 10 CSR 40–8.070(2)(C) refers to the "exemption contained in 444.815.6(3) * * *." the correct citation should read 444.815.6(*4*). At 10 CSR 40–8.070(2) (C)9.B Missouri has proposed language "this part or counterpart provisions of the state regulatory program." This part should be "this subsection" and the counterpart provisions should be "counter subsection provisions."

62. Provisions of the State Regulatory Program Affirmatively Disapproved to Comply With the Order of the District Court

In the **Federal Register** notice announcing the Department of the Interior's approval of Missouri's original program, the Secretary, at 30 CFR 925.10(b), affirmatively disapproved provisions of Missouri's program that, incorporated, suspended, or remanded Federal regulations (45 FR 77027, November 21, 1980). The affirmative disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapprove * * * those segments of a State program that incorporate a suspended or remanded regulation" (In re: Permanent Surface Mining Regulation Litigation, 19 ERC 1477, 1500 (D.D.C. 1980).

On August 15, 1980, however, the court partly stayed its May 16, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding that occurred before the enactment of SMCRA or after the date of the District Court decision (May 16, 1980), since such State rules clearly were not based solely upon the suspended or remanded Federal regulations. In addition, the court stated that the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal regulations if a responsible State official requested the Secretary to approve them.

a. Affirmatively Disapproved Items in This Amendment

The Director finds the affirmatively disapproved items addressed in this proposed amendment, at 30 CFR 925.10(b) (1), (2), (3), (6), (8), (9), (11), (13), (14), (15), (16), (18), (19), (20), (24), (25), (28), (31), (32), and (33) are no longer necessary and he is removing them as follows:

(1) At 10 CSR 40–5.010(1)(A)1.B.(I), the definition of "valid existing rights," to the extent it does not allow recognition of such rights an operator may claim by having made a good faith effort to obtain all permits before 8/3/77 as stipulated by the courts decision (Refer to Finding number 35 of this rulemaking action).

(2) At 10 CSR 40–8.010(1)(A)47 (later recodified to (A)53.), the definition of "mine plan area," and the use of the term in Section 10 CSR 40–6.040 and 6.050 to the extent of the court's order regarding requirements of information outside the permit area (Refer to Finding number 54 of this rulemaking action).

(3) At 10 CSR 40–6.040(11) and 10 CSR 40–4.050(7), requiring a permit application to contain a study of fish and wildlife and to include a fish and wildlife reclamation plan (Refer to Finding number 2 of this rulemaking action).

(6) At 10 CSR 40–3.120(5), to the extent it requires an operator who proposes range or pasture as the postmining land use to actually use the land for grazing for the last 2 years of bond liability (Refer to Finding number 19 of this rulemaking action).

(8) At 10 CSR 40–3.120(6)(B), to the extent that it states that an operator's responsibility for successful revegetation is not commenced until the vegetation reaches 90-percent of the natural cover in the area (Refer to Findings number 19 through 31 of this rulemaking action).

(9) At 10 CSR 40–3.130 (3)(D) and (3)(I), to the extent it requires an operator to provide "letters of commitment" for proposed land use changes or for proposed cropland use (Refer to finding number 31 of this rulemaking action).

(11) At 10 CSR 40–3.040(2)(A) 1 and 7, to the extent they apply effluent standards to the reclamation phase of a surface coal mining operation (Refer to Finding number 5 of this rulemaking action).

(13) At 10 CSR 40–3.040(6)(B), concerning sediment storage volume in sediment ponds (Refer to Finding number 2 of this rulemaking action).

(14) At 10 CSR 40–3.040(6)(C), concerning detention time for water in sediment ponds (Refer to Finding number 7 of this rulemaking action).

(15) At 10 CSR 40–3.040(6)(D), to the extent it requires dewatering devices to have a discharge rate to achieve and maintain the theoretical detention time for sediment ponds (Refer to Finding number 8 of this rulemaking action).

(16) At 10 CSR 40–3.040(6)(H), concerning sediment removal from sediment ponds (Refer to Finding number 2 of this rulemaking action).

(18) At 10 CSR 40–3.080(3)(A), concerning coal processing waste banks, to the extent it precludes a possible exemption from the underdrain requirement where the operator can demonstrate that an alternative would ensure structural integrity of the waste bank and protection of water quality (Refer to Finding number 15 of this rulemaking action).

(19) At 10 CSR 40–3.090, concerning air resources protection, to the extent it applies to air pollution not caused by erosion (Refer to Finding number 18 of this rulemaking action).

(20) At 10 CSR 40–3.140(1)–(21), concerning performance standards for three classes of roads (Refer to Finding numbers 2 and 32 of this rulemaking action).

(24) At 10 CSR 40–3.130(2)(A), to the extent it does not allow restoration of lands to the conditions they were capable of supporting prior to any mining (Refer to Finding number 29 of this rulemaking action).

(25) At 10 CSR 40–5.101(2)(C) and 10 CSR 40–5.010(1)(F) [correct citation is 10 CSR 40–5.010(3)(F)1.], to the extent that they prohibit or restrict mining near places only eligible for listing on the National Register of Historic Places, and the words "or a statutory or regulatory responsibility for" in Section 10 CSR 40–5.010(1)(F) are disapproved. Both rules are disapproved to the extent that they apply to privately owned places listed on the National Register of Historic Places in addition to publicly owned places (Refer to Finding number 2 of this rulemaking action).

(28) At 10 CSR 40–3.110(3)(A)1, to the extent it does not provide operators the option of treating acid-forming and toxic-forming material in lieu of covering such materials (Refer to Finding number 2 of this rulemaking action).

(31) At 10 CSR 40–5.010(1)(J), the definition of "public road." (Refer to Finding number 36 of this rulemaking action).

(32) At 10 CSR 40–6.060(4)(A), concerning the prime farmland

grandfather clause (Refer to Finding number 2 of this rulemaking action).

(33) At 10 CSR 40–6.060(1)(B), to the extent that "or has not been" is no longer part of the definition of "irreparable damage to the environment." (Refer to Finding number 41 of this rulemaking action).

b. Affirmatively Disapproved Items in Previous Amendments

The Director also finds that Missouri has adequately addressed in previous submittals, the following affirmatively disapproved items at 30 CFR 925.10(b) (5), (7), (10), (12), (17), (22), (23), (26), (27), (29), (30), and (34) and that they are no longer necessary and he is removing them.

(5) At 10 CSR 40–7.040(4)(B), to the extent it allows the regulatory authority to forfeit and keep the entire amount of a bond where the entire amount is not needed to complete the reclamation.

Missouri addressed this issue in an Amendment submitted April 13, 1983 (Administrative Record No. 253) and approved by OSM on May 8, 1984 (49 FR 19468).

(7) At 10 CSR 40–4.030(1)(C), 10 CSR 40–4.030(5)(B), and 10 CSR 40–4.030(5)(C), to the extent they require an operator on prime farmland to actually return the land to crop production. (The requirement to grow crops was upheld, In re: Permanent Surface Mining Regulation Litigation, 21 ERC 1724, 15 ELR 20481 (D.D.C. October 1, 1984)

Missouri addressed this issue in an amendment submitted on December 14, and 18, 1987, and approved by OSM on October 31, 1988 (53 FR 43866).

(10) At 10 CSR 40–6.060(4)(B)3 and 10 CSR 40–4.030(4)(C), concerning excessive soil compaction.

Missouri addressed this issue in an amendment submitted on December 14, and 18, 1987, and approved by OSM on October 31, 1988 (53 FR 43866).

(12) At 10 CSR 40–3.040(2)(B) , relating to effluent standard exemptions during major storm periods.

Missouri addressed this issue in an amendment submitted on February 4, 1987, and approved by OSM on February 26, 1988 (53 FR 5766).

(17) At 10 CSR 40–3.050(4)(F), requiring special approval prior to blasting within 1,000 feet of certain buildings and 500 feet of other facilities and which restricts blasting at distances greater than 300 feet.

Missouri addressed this issue in an amendment submitted on June 22, 1987, and approved by OSM on June 16, 1988 (53 FR 22475).

(22) At 10 CSR 40–6.060(4)(A)8., to the extent that it requires prime farmland reclamation target yields to be based on estimated yields under a high level of management rather than a level of management equivalent to that used on prime farmlands in the surrounding area.

Missouri addressed this issue in an amendment submitted on December 14, and 18, 1987, and approved by OSM on October 31, 1988 (53 FR 43866).

(23) At 10 CSR 40–8.070(2) (E) 1A and 1B, relating to exemptions for existing structures to the extent that the exemptions are not mandatory after the appropriate findings are made.

Missouri addressed this issue in an amendment submitted on December 14, and 18, 1987, and approved by OSM on October 31, 1988 (53 FR 43866).

(26) At 10 CSR 40–7.020(2)(E)5.C., to the extent it requires cessation of operations upon the insolvency of a surety.

Missouri addressed this issue in an Amendment submitted on April 13, 1983, (Administrative Record No. 253,) and approved by OSM on May 8, 1984 (49 FR 19468).

(27) At 10 CSR 40–7.040(2)(C), to the extent that it limits bond liability to protection of the hydrologic balance.

Missouri addressed this issue in an Amendment submitted April 13, 1983, (Administrative Record No. 253,) and approved by OSM on May 8, 1984 (49 FR 19468).

(29) At 10 CSR 40–7.010(7)(D), to the extent that the exception the regulatory authority may grant might be from all of Section 216.

Missouri addressed this issue in an amendment submitted on December 14, and 18, 1987, and approved by OSM on October 31, 1988 (53 FR 43866).

(30) At 10 CSR 40–8.070(2)(B), concerning the 2-acre exemption, insofar as it applies to any operation by the person who affects or intends to affect more than 2-acres of physically unrelated sites within 1-year when the area affected at each site does not exceed 2-acres.

Missouri addressed this issue in an amendment submitted on December 14, and 18, 1987, and approved by OSM on October 31, 1988 (53 FR 43866).

(34) At 10 CSR 40–8.040, to the extent it imposes a civil penalty point system.

Missouri addressed this issue in an amendment submitted on June 22, 1987, and approved by OSM on June 16, 1988 (53 FR 22476).

c. Affirmatively Disapproved Items Remaining

The Director is removing all affirmatively disapproved items at 30 CFR 926.10(b) and as discussed above, except for item (b)(21). This item addresses the definition of "roads" that is used in Sections 10 CSR 40–3.140(1)–(21). Item 925.10(b)(21) will be recodified to item 925.10(b)(1) in this rulemaking action.

IV. Public and Agency Comments

1. Public Comments

OSM solicited public comment and provided opportunity for a public hearing on the proposed amendment. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to Section 503(b) of SMCRA and 30 CFR 732.17(h)(11), comments were also solicited from various State and Federal agencies with an actual or potential interest in the Missouri program.

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and the ACHP for comment. The Missouri Division of Parks, Recreation, and Historic Preservation responded by stating that it had no objection to the proposed amendment (Administrative Record No. MO–523). No Comments were received from the ACHP.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provision of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The EPA Region VII responded by stating that it had no comment to offer (Administrative Record No. MO–527).

The EPA office in Washington D.C. responded by separate letter dated July 29, 1991 (Administrative Record No. MO–540). In that letter EPA concurred that Missouri's proposed amendments can be implemented consistent with the Clean Water Act (CWA). However, EPA expressed its concern that Missouri's rules should not be interpreted so as to provide full authorization for instream treatment of point source discharge. EPA noted certain situations related to instream treatment that could result in conditions that would not assure compliance with applicable State water quality standards as required by the

CWA. By instream treatment, EPA referred to two activities. The first activity is one in which mine waste is discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. These impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water as well as solids settling. EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or sediment ponds in waters of the United States does not in itself remove those waters from the definition of "waters of the United States" under the CWA. The CWA requires that all discharges or pollutants from point sources into waters of the United States obtain a permit as appropriate under either section 402 or 404 of the CWA. The Director acknowledges that nothing in SMCRA supercedes the requirements of the CWA. The Director's approval of Missouri's proposed rules should not be construed to authorize any actions inconsistent with the CWA.

No other State or Federal agencies offered any comments.

V. Director's Decision

Based on the above findings, the Director is approving the proposed Amendment submitted by Missouri on October 10, 1990, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations and identified in the codified portion of this notice under 30 CFR 925.15(o).

The Director is not approving certain provisions of the Missouri amendment, as codified at 30 CFR 925.15(o), for reason set forth in findings: 20, concerning Phase III bond liability release guidelines; 21, concerning reference of the revegetation success policy/guidelines in its rules; 22, concerning the 70-percent ground cover density standard; 25, concerning pasture land use revegetation success standards; 37, concerning the required format for submitting ownership and control information; 38, concerning violations of SMCRA to be listed by an applicant; 39, concerning certification of roads by land surveyors; 46, concerning parties that are required to execute an indemnity agreement; 48, concerning normal husbandry practices; 56, concerning the definition of "previously mined area"; 57, concerning inspection of abandoned sites; and 61(a), concerning the effective dates for reporting of cumulative production reports. The Director is requiring Missouri to further amend its regulations as discussed in Findings: 6, concerning an engineer certification of design criteria set by the regulatory authority; 9, concerning sediment removal from sedimentation ponds; 10, concerning 2 year removal of sedimentation structures; 13, concerning dam and embankment certification report content; 18, concerning air quality performance standards; 19, concerning range land use; 32, concerning the control of air pollution for Class I roads; 43, concerning "reason to believe" for improvidently issued permits; 47, concerning resumption of mining operations after the issuance of a cessation order; 51, concerning termination of jurisdiction; 52, concerning the release of surety bond liability; 60, concerning settlement agreements; and 61(b), concerning direct enforcement of exempt operations. The Director is deferring action at finding 42, concerning the presumption regarding abatement of notices of violation.

The Federal regulations at 30 CFR part 925 codifying decisions concerning the Missouri program are amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

VI. Effects of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. The Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to the Director as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to an approved program are not enforceable by the State until approved by the Director. In his oversight of the Missouri program, the Director will recognize only statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Missouri of only such provisions.

VII. Procedural Determinations

Compliance With Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Accordingly, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance with Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance with the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance with the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal

which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 21, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.10 is revised to read as follows:

§ 925.10 State program approval.

(a) The Missouri State program submitted on February 1, 1980, and as amended and clarified on May 14, 1980, was conditionally approved effective November 21, 1980. Copies of the approved program as amended are available for review at:

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102.

Office of Surface Mining, Kansas City Field Office, 934 Wyandotte Street, room 500, Kansas City, Missouri 64105.

(b) In accordance with the May 16, 1980, opinion of the U.S. District Court for the District of Columbia, the Secretary affirmatively disapproves the following provision contained in the Missouri program. The provision is affirmatively disapproved to the extent indicated.

(1) Section 10 CSR 40–8.010–75 the definition of "roads" that is used in sections 10 CSR 40–3.140(1)–(21).

3. Section 925.15 is amended by adding paragraph (p) to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(p) With the exceptions of 10 CSR 40–3.120(6)(B)2. A. through H. and 3.270(6)(B)2. A. through H., concerning the ability to enforce the Guidelines for Phase III liability release; 10 CSR 40–3.120(6)(B)2. A, D, G, and 3.270(6)(B)2. A, D, G, concerning the 70-percent ground cover density criteria; 10 CSR 40–3.120(6)(B)2.E and 3.270(6)(B)2.E, concerning the 90-percent vegetative ground cover for pasture land use; 10 CSR 40–6.030(1)(I) and 6.100(1)(I), concerning the format for submitting ownership and control information; 10 CSR 40–6.030(2)(C) and 6.100(2)(C), concerning the listing of violations under SMCRA by the applicant; 10 CSR 40–6.050(17)(B) and 6.120(15)(B), concerning certification by land surveyors; 10 CSR 40–7.021(1)(B)2, concerning extension of Phase III liability for normal husbandry practices and repair of rills and gullies; 10 CSR 40–8.010(1)(A)71., concerning the definition of "previously mined area;" 10 CSR 40–8.030(1) (F) and (G), concerning inspection of abandoned sites; 10 CSR 40–8.070(2)(C)1.A.II, concerning cumulative production reporting; Permanent program Phase III liability release guidelines; and deferral on a decision for Missouri's rule at 10 CSR 40–6.070 (7)(C) and (7)(C)2., concerning the presumption regarding abatement of notices of violation; the Director is approving the following provisions of the Missouri Code of State Regulations (CSR) as submitted to OSM on October 10, 1990, effective September 29, 1992: 10 CSR 40–3.010(5) and 3.170(5), signs and markers; 10 CSR 40–3.030(1)(C) and 3.190(1)(C), requirements for topsoil removal, storage, and redistribution; 10 CSR 40–3.040(2)(A)1. and 3.200(2)(A)1., requirement to meet total suspended solids; 10 CSR 40–3.040(4)(B)3 and 3.200(4)(B)3, certification of diversion designs; 10 CSR 40–3.040(6) (B), (C), (D), (H), (Q), (T), and 3.200(6) (B), (C), (D), (H), (Q), (T), sedimentation pond design standards; 10 CSR 40–3.040(10) (G), (I) and 3.200(10) (G), (I), certification of dams and embankments; 10 CSR 40–3.050(6)(C) and 3.210(6)(C) blasters certification identification number; 10 CSR 40–3.060(1) (A) , (H), and 3.220(1) (A), (H), disposal and covering excess spoil; 10 CSR 40–3.060(3)(A) and 3.230(3)(A), waste bank drainage systems; 10 CSR 40–3.060(8)(B), disposal of noncoal waste; 10 CSR 40–3.060(8)(D) and 3.230(8)(D), disposal of hazardous noncoal mine waste; 10 CSR 40–3.090 and 3.240, air quality performance standards; 10 CSR 40–3.110(3)(A)1. and 3.260(3)(A)1., covering coal seams, acid- and toxic-forming materials and combustible materials; 10 CSR 40–3.120(1) (D) and (E) and 3.270(1) (D) and (E), quick growing temporary cover and limited exception to cropland postmining land use; 10 CSR 40–3.120(5) and 3.270(5), concerning revegetation success standard for pasture land use; 10 CSR 40–3.120(6)(B)1 and 3.270(6)(B)1, general requirements for ground cover liability; 10 CSR 40–3.120(6)(B)2.(I) and 3.270(6)(B)2.(I), revegetation success standards for previously mined areas; 10 CSR 40–3.120(6)(B)2. A., D., and G. and 3.270(6)(B)2. A., D., and G., revegetation standards for woodland, wildlife habitat, and recreational land uses; 10 CSR 40–3.120(6)(B)2. and 3.270(6)(B)2.B., erosion control for industrial/commercial and residential land uses; 10 CSR 40–3.120(7) (C)2, (C)3.C, and 3.270(7) (C)2, (C)3.C, consultation by MDOC; 10 CSR 40–3.120(7)(C)3.A. and 3.270(7)(C)3.A., tree and shrub revegetation success for bond release; 10 CSR 40–3.120(8)(A)4 and 3.270(8)(A)4, removal of sedimentation ponds; 10 CSR 40–3.120(8)(A) 5, 6, 7, 8, 10 and 3.270(8)(A) 5, 6, 7, 8, 10, revegetation success; 10 CSR 40–3.130(2)(A) and 3.300(2)(A), previously mined land; 10 CSR 40–3.130(3)(C) and 3.300(3)(C), public facilities land use; 10 CSR 40–3.130(3)(I) and 3.300(3)(I), cropland land use; 10 CSR 40–3.140(1)(A) and 3.290(1)(A), dust control provisions for class I roads; 10 CSR 40–3.140 (1)(D)1, (8)(D)1 and 3.290 (1)(D)1, (8)(D)1, certification of class I and II roads; 10 CSR 40–4.140 (3)(D)9, (10)(D)9 and 3.290 (3)(D)9, (10)(D)9, static safety factor; 10 CSR 40–3.140 (6)(D), (13)(D), (20)(D), and 3.290 (6)(D), (13)(D), (20)(D), class I, II, and III road maintenance; 10 CSR 40–3.140 (8)(A), (15)(A) and 3.290 (8)(A), (15)(A), dust control for class II and III roads; 10 CSR 40–3.140 (13)(C), (20)(C) and 3.290 (13)(C), (20)(C), repair of road after catastrophic event; 10 CSR 40–3.250(1)(B), activity likely to jeopardize continuance of endangered or threatened species; 10 CSR 40–3.260(3)(A)1, covering coal and acid-toxic-forming materials of underground mining; 10 CSR 40–4.030(4)(A), creation of water bodies on prime farmland; 10 CSR 40–4.030(7)(B)6, prime farmland crop reference selection; 10 CSR 40–5.010(1)(A), definition of valid existing rights; 10 CSR 40–5.010(1)(J), definition of public road; 10 CSR 40–5.010(2)(C), requirements for areas where mining is prohibited or limited; 10 CSR 40–5.010(3)(F)1., public parks and historic places; 10 CSR 40–6.010(2)(E), definition of owned or controlled; 10 CSR 40–6.020 (2)(B)3, (3)(B)3, (5), exploration map, narrative, and commercial use of coal; 10 CSR 40–6.030(1) (A), (C), (D), (H) and

6.100(1) (A), (C), (D), (H), ownership and control information requirements; 10 CSR 40–6.030(2)(D) and 6.100(2)(D), update and correction of violations; 10 CSR 40–6.040(5)(A) and 6.110(5)(A), description of areal and structural geology; 10 CSR 40–6.040(11) (A), (E), (F) and 6.110(11) (A), (E) and (F), site specific resource information requirements, Endangered Species Act citation and U.S. Fish and Wildlife review opportunity; 10 CSR 40–6.050(7) (A), (B)1., (B)2., (C)1., (C)3. and 6.120(12) (A), (B)1., (C)1., (C)3., threatened and endangered species information requirements; 10 CSR 40–6.050(9)(C)5 and 6.120(5)(C)4, supplemental hydrology information requirements; 10 CSR 40–6.050(11)(C) and 6.120(7)(C), impoundment design compliance; 10 CSR 40–6.050(17)(A) 1 through 9 and (B) and 6.120(17)(A) 1 through 9 and (B), stream fords/crossings and schedule for removal and certification of class I, II, and III roads; 10 CSR 40–6.050(18) and 6.120(16), support facilities; 10 CSR 40–6.060(4)(A), definition of renewal, revision, and single continuous surface coal mining operation; 10 CSR 40–6.060(4)(E)5., water bodies in prime farmland; 10 CSR 40–6.070(1)(B), definition of irreparable damage; 10 CSR 40–6.070(7) (C), (C)2, (F), (G), (8)(I), ownership and control requirements; 10 CSR 40–6.070(8)(L), approval of a long term intensive agricultural land use; 10 CSR 40–6.070 (10)(B)1.A, (10)(E)2, permit approval or denial actions; 10 CSR 40–6.070(11) (A) and (B), improvidently issued permits; 10 CSR 40–6.070(13)(E), follow up information on Cessation Orders; 10 CSR 40–6.110(5) (A) and (B), underground mining information for geology; 10 CSR 40–7.011(3)(C), incremental bonding area size; 10 CSR 40–7.011(4)(E), full-cost bond amounts; 10 CSR 40–7.011(5)(D)2.C. (II) and (III) and (D)2.(I), self-bond financial ratio values and audits; 10 CSR 40–7.011(5)(D)5. A., B., and C., execution of indemnity agreements; 10 CSR 40–7.011(5)(D)8., failure to replace self-bond; 10 CSR 40–7.021(2)(A), Phase I bond release drainage control requirements; 10 CSR 40–7.021(2)(B)1., criteria for Phase II bond release; 10 CSR 40–7.021(2)(B) 5. and 6., termination of jurisdiction; 10 CSR 40–7.031(3)(B), reclamation compliance in surety forfeiture; 10 CSR 40–8.010(1)(A)4, 53, 51.B, C, D, I, J, and 54., definitions of adjacent area, pasture land, prime farmland, woodland, water, undeveloped land, dry bulk density; 10 CSR 40–8.030(6)(G), notification of owners and controllers of cessation orders; 10 CSR 40–8.030(7)(A), modify, terminate, or vacate a notice of violation; 10 CSR 40–8.040(5)(B)3., assessment of separate violation for each day; 10 CSR 40–8.040(8)(A), informal conference time frames; 10 CSR 40–8.040(8)(K), procedures settlement agreement nonpayment; and 10 CSR 40–8.070(2)(C), direct enforcement.

4. Section 925.16 is amended by removing and reserving paragraph (b)(1)–(3), (c), (e), (f)(2)–(5), (n), and (g)(17); revising paragraphs (f)(1), (g)(16), and (g)(18); and adding paragraph (p), to read as follows:

§ 925.16 Required program amendments.

* * * * *

(f)(1) By November 30, 1992 Missouri must revise 10 CSR 40–3.040(4) and 40–3.200(4), to require the certification of any design criteria set by the regulatory authority as required at 30 CFR 816.43(b)(4) and 817.43(b)(4).

* * * * *

(g) * * *

(16) By November 30, 1992 Missouri must revise 10 CSR 40–7.011(5)(D)2.C, to express the ratio of total liabilities to net worth as 2.5 times or less to be no less effective than the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii).

* * * * *

(18) By November 30, 1992 Missouri must revise 10 CSR 40–7.011(5)(D)5.A., to add the requirement that the applicant and guarantor must each execute an indemnity agreement.

* * * * *

(p) By November 30, 1992, Missouri shall amend its program as follows:

(1) At 10 CSR 40–3.040(6)(H) and 3.200(6)(H), by requiring that sediment ponds shall be designed, constructed, and maintained to provide sediment removal in a manner no less effective than the Federal regulation requirements at 30 CFR 816.46(c)(iii)(F) and 817.46(c)(iii)(F).

(2) At 10 CSR 40–3.040(6)(U) and 3.200(6)(U) by requiring that siltation structures shall be maintained until removal is authorized by the regulatory authority and in no case shall be removed sooner than 2 years after the last augmented seeding to be no less effective than the Federal regulations at 30 CFR 816.45(b)(5) and 817.46(b)(5).

(3) At 10 CSR 40–3.040(10)(I) and 3.200(10)(I) to require a discussion of the appearance of instability, structural weakness, or other hazardous condition in the certification report for dam and embankments to be no less effective than the Federal regulations at 30 CFR 816.49(a)(10)(iii) and 817.49(a)(10)(iii).

(4) At 10 CSR 40–3.090 and 3.240 by providing performance standards that address air quality in a manner no less effective than the Federal regulations at 30 CFR 816.95(a) and 817.95(a).

(5) At 10 CSR 40–3.120(5) and 3.270(5), by removing or defining the term "range land."

(6) At 10 CSR 40–3.120(6)(B)2.A through H and 3.270(6)(B)2.A through H to remove the reference to Land Reclamation Commission's June 1990 Phase III Liability Release Guidelines.

(7) At 10 CSR 40–3.120(6)(B)2. A, D, G and 3.270(6)(B)2. A, D, G, by providing statistical proof that a vegetative ground cover of 70-percent will achieve the approved woodland, wildlife habitat, and recreational postmining land use or otherwise amend its program to be no less effective than the federal regulations at 30 CFR 16.116(b)(3)(iii) and 817.117(b)(3)(iii).

(8) At 10 CSR 40–3.120(6)(B)2.E and 3.270(6)(B)2.E, by including a requirement that ground cover on the revegetated area be equal to that of a reference area or other success standards approved by the regulatory authority and by providing statistical proof that a vegetative ground cover of 90-percent of 90-percent (81-percent) will in all cases achieve the approved postmining pasture land use, to make this regulation as effective as the Federal regulations at 816.116 (a) and (b) and 817.116 (a) and (b).

(9) At 10 CSR 40–3.140(1)(A), by requiring efforts to control and prevent air pollution attendant to erosion, to include road dust as well as dust occurring on other exposed surfaces to make this regulation no less effective than the Federal regulations at 30 CFR 816.150(b)(1).

(10) At 10 CSR 40–6.030(1)(I) and 6.100(1)(I), to require that a permit applicant submit information in a format prescribed by OSM to make this regulation no less effective than the Federal regulations at 30 CFR 778.13 and 778.14.

(11) At 10 CSR 40–6.030(2)(C) and 6.100(2)(C), to require any violation of SMCRA to be listed by the operator to make this regulation no less effective than the Federal regulation at 30 CFR 778.14(c).

(12) At 10 CSR 40–6.050(17)(B) and 6.120(15)(B), to provide proof that land surveyors are authorized in the State to prepare and certify plans and drawings for road design or delete the provision.

(13) At 10 CSR 40–6.070(11)(A), to require that when the regulatory authority, has reason to believe, that it improvidently issued a surface coal mining and reclamation permit, it shall conduct a review, to make this regulation no less effective than the Federal regulations at 30 CFR 773.20(a).

(14) At 10 CSR 40–7.011(5)D.8. to require that upon issuance of a cessation order, mining operations shall not resume until the regulatory authority has determined that an acceptable bond has been posted as required by the Federal regulations at 30 CFR 800.16(e)(2).

(15) At 10 CSR 40–7.021(1)(B)2. to establish an administrative record for each normal husbandry practice including repair of rills and gullies and submit these to the Director for approval prior to allowing such practices per the requirements of the Federal regulations as 30 CFR 816.116(c)(4) and 817.116(c)(4) or delete the provision.

(16) At 10 CSR 40–7.021(2)(B) 5 and 6 to relocate its requirement that addresses termination of jurisdiction to an appropriate location in its regulation.

(17) At 10 CSR 40–7.031(3)(B), to require that no surety liability be released until successful completion of all reclamation under the permit terms by including liability periods comparable to the Federal regulations at 30 CFR 800.13 to make its regulation no less effective than the Federal regulations at 30 CFR 800.50(a)(2)(ii).

(18) At 10 CSR 40–8.030(1) (F) and (G), to remove limitations regarding the required number of inspections of abandoned mine sites.

(19) At 10 CSR 40–8.040(8)(K) to require that payment of a settlement agreement must be received within 30 days from the date the agreement is signed and that commission action to affirm, raise, lower, or vacate the penalty must be taken within 30 days from the date of the rescission.

(20) At 10 CSR 40–8.070(2)(C)1.A.II. to provide appropriate dates for reporting of cumulative production that are no earlier than the date this amendment is published and per the Federal regulation requirements at 30 CFR 702.5(a)(2).

(21) At 10 CSR 40–8.070(2)(C)9.F. (I), (II), and (III), to require in Missouri's enforcement procedures that an operator be cited for violations of; subject to direct enforcement actions for violations of; and comply with the reclamation standards of the applicable reclamation program to make this regulation no less effective than the Federal regulations at 30 CFR 702(d) (1), (2), and (3).

[FR Doc. 92–23190 Filed 9–28–92; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 520

Foreign Funds Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments.

SUMMARY: This final rule amends the Foreign Funds Control Regulations (31 CFR part 520, the "FFCR") in recognition of the independence of the Baltic Republics of Estonia, Latvia, and Lithuania, and the diplomatic recognition of their new governments by the United States. The FFCR are amended to remove the World War II restrictions on property of private individuals, partnerships, associations, corporations, and other organizations which on December 7, 1945, were nationals of, or were located in, the Baltic Republics.

EFFECTIVE DATE: September 29, 1992.

FOR FURTHER INFORMATION CONTACT: Loren L. Dohm, Chief, Blocked Assets Division (tel.: 202/622–2440), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Treasury Annex, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The FFCR were issued by the Secretary of the Treasury on April 10, 1940, to implement sanctions imposed by the President in Executive Order 8389 to protect the property within U.S. jurisdiction of persons in Nazi-occupied territory.

The property held in the name of persons located in or considered to be nationals of Estonia, Latvia, or Lithuania on December 7, 1945, remained blocked during the period of Soviet occupation. In light of the establishment of democratically-elected governments now controlling the territory of the Baltic Republics, their recognition by the United States, and their recognition as independent states by the Soviet Union, the protective blocking of these non-governmental assets is no longer necessary. This final rule amends the FFCR to terminate that blocking, effective September 29, 1992.

Because the FFCR involves a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, also does not apply.

List of Subjects in 31 CFR Part 520

Administrative practice and procedure, Banks, Blocking of assets, Currency, Estonia, Foreign investments in United States, Latvia, Lithuania, Reporting and recordkeeping requirements, and Securities.

For the reasons set forth in the preamble, 31 CFR part 520 is amended as follows:

PART 520—FOREIGN FUNDS CONTROL REGULATIONS

1. The authority citation for part 520 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 8389, 5 FR 1400, as amended by E.O. 8785, 6 FR 2897, E.O. 8832, 6 FR 3715, E.O. 8963, 6 FR 6348, E.O. 8998, 6 FR 6785, and E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 10348, 17 FR 3769, 3 CFR, 1949–1953 Comp., p. 871; E.O. 11281, 31 FR 7215, 3 CFR, 1966–1970 Comp., p. 546.

Subpart B—General Licenses

2. Paragraph (a)(2) of § 520.101 is removed.

3. Paragraph (a)(3) of § 520.101 is redesignated as paragraph (a)(2), and revised to read as follows:

§ 520.101 General License No. 101.

(a) * * *

* * * * * * *

(2) Any other partnership, association, corporation, or other organization which was a national of any country designated in paragraph (a)(1) of this section by reason of the interest therein of any such country.

* * * * * * *

Dated: August 25, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 26, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–23555 Filed 9–24–92; 12:51 pm]
BILLING CODE 4810–25–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 361

Department of Defense Commercial Air Carrier Quality and Safety Review Program

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force revised its regulation on DOD quality and safety criteria for air carriers providing or seeking to provide airlift services to the DOD. The revision updates CARB membership by eliminating the appointment or designation of Commercial Airlift Review Board (CARB) members by position. This change permits the Commander, Air Mobility Command, and Commander, Military Traffic Management Command, to appoint three voting members from their respective commands without being limited by specific title or staff position. Reorganization in the Air Force resulted in the redesignation of the Military Airlift Command (MAC) to the Air Mobility Command (AMC) and changed CINCMAC to read Commander, AMC. The DOD Commercial Air Carrier Review Committee is changed to read DOD Commercial Airlift Review Committee to be consistent with other DOD groups in the oversight process, i.e., DOD Commercial Airlift Review Board, DOD Commercial Airlift Review Authority. The definition of temporary nonuse is clarified to be consistent with actual CARB practice.

This revision serves to notify the commercial aviation industry of Commercial Airlift Review Board changes and current practices resulting from DOD reorganization actions. The changes are necessary for the DOD Commercial Airlift Review Board to legally and effectively carry out its aviation safety responsibilities as specified in the National Defense Authorization Act for Fiscal Year 1987. This part is published in its entirety for clarity.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Colonel Robert S. Wells, Jr., Director, DOD Air Carrier Survey and Analysis Directorate, DCS/ Operations and Transportation, Headquarters Air Mobility Command (HQ AMC/XOB), Scott AFB IL 62225–5001, telephone (618) 256–4801/4806.

SUPPLEMENTARY INFORMATION: This part is published as a final rule because it implements Public Law 99–661 (FY 87 National Defense Authorization Act, § 1204, Requirements Concerning Transportation of Members of the Armed Forces by Chartered Aircraft) and DOD Directive 4500.53 (Commercial Passenger Airlift Management and Quality Control). Additionally, and as part of the final rule determination, this part is related to public contracts and to provisions for agency management.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–611), does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), and poses no negative environmental impact as defined in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*).

List of Subjects in 32 CFR Part 861

Air carriers, Aviation safety.

Therefore, 32 CFR is amended by revising part 861 to read as follows:

PART 861—DEPARTMENT OF DEFENSE COMMERCIAL AIR CARRIER QUALITY AND SAFETY REVIEW PROGRAM

Sec.

861.1 References.
861.2 Purpose.
861.3 DOD commercial air carrier quality and safety requirements.
861.4 DOD Commercial Airlift Review Board procedures.

Authority: 10 U.S.C. 8013; 10 U.S.C. 2640.

§ 861.1 References.

(a) Section 1204, Public Law 99–661; 10 U.S.C. 2640, Charter Air Transportation of Members of the Armed Forces.

(b) DOD Directive 4500.53, Commercial Passenger Airlift Management and Quality Control.

(c) AMCR 76–8, Contract Airlift Management, Civil Air Carriers.

(d) MTMCR 15–1, Procedure for Disqualifying and Placing Carriers in Nonuse.

§ 861.2 Purpose.

Department of Defense Directive 4500.53, Commercial Passenger Airlift Management and Quality Control, charges the Commander, Air Mobility Command (AMC), with establishing safety standards and criteria for commercial passenger airlift service used by the Department of Defense. It also charges the Commander, AMC, jointly with the Commander, Military Traffic Management Command (MTMC), with establishing the Commercial Airlift Review Board and providing policy guidance and direction for its operation. This part establishes Department of Defense (DOD) quality and safety criteria for commercial air carriers providing or seeking to provide airlift services to the DOD. Included are the operating procedures of the Commercial Airlift Review Board (CARB). The CARB has the authority to suspend air carriers from DOD use or take other action when issues of air safety arise.

§ 861.3 DOD commercial air carrier quality and safety requirements.

(a) DOD, as a customer of airlift services, expects an air carrier or operator soliciting for or doing business with the DOD to engage in quality programs and business practices that not only ensure good service but enhance the safety, operational, and maintenance standards established by the applicable Civil Aviation Agency Regulations (CARs). Accordingly, and as required by U.S. Public Law 99–661, the DOD has established a set of air carrier quality and safety requirements that reflect the type programs and practices the DOD seeks from air carriers or operators airlifting DOD resources.

(b) A DOD survey team will use the following requirements, the specifics of the applicable DOD contract or agreement, the CARs, and the experienced judgment of DOD personnel to evaluate an air carrier's capability to perform for the DOD. The survey will also include, with the carrier's coordination, observation of cockpit crew performance, as well as ramp inspections of selected company aircraft. A satisfactory on-site survey (audit) conducted by DOD personnel is prerequisite to participation in the DOD air transportation program. Surveys are conducted prior to an air carrier's acceptance into the program; thereafter, surveys will be completed on a biennial basis and when otherwise required to validate adherence to DOD quality and safety requirements. DOD personnel will also assess these quality and safety requirements when conducting periodic commercial air carrier table-top performance evaluations.

(c) The size of an air carrier, along with the type and scope of operations, will be considered during the on-site survey. For example, while an air taxi/ FAA Part 135 air carrier may not have a formal flight control function, such as a 24-hour dispatch organization, that same air taxi is expected to demonstrate some kind of effective flight following capability. On the other hand, a major carrier/FAA Part 121 air carrier is expected to have a formal flight control or dispatch function. Both, however, will be evaluated based on the effectiveness and quality of whatever flight following function they do maintain.

(d) The air carrier requirements stated in this part provide the criteria against which would-be DOD air carrier contractors may be subjectively evaluated by the DOD. These requirements are neither all-inclusive nor are they inflexible in nature. They are not replacements for the certification criteria and other

regulations established by civil aviation agencies; rather, these requirements are customer-developed and describe enhanced air carrier activities sought by the DOD.

Note: The term "Civil Aviation Agency (CAA)" is used throughout this part since these requirements are applicable to U.S. and international air carriers doing business with DOD. CAA includes the United States Federal Aviation Administration.

(1) Quality and safety requirements—prior experience. U.S. certified air carriers or operators applying to conduct business for the United States Department of Defense are required to possess 12 months of continuous service equivalent to the service sought by DOD. If the air carrier or operator is applying to airlift passengers on domestic U.S. routes, then the air carrier or operator must have conducted passenger service equivalent to what the DOD is seeking for the 12 continuous months immediately prior to applying for DOD business. In order to provide international passenger airlift for DOD, the same criteria applies. The air carrier must have conducted international passenger operations comparable to the service DOD is seeking for the 12 continuous months immediately prior to applying for business with the Department of Defense. Prior experience must be equivalent in difficulty and complexity in regard to distance, weather systems, international or national procedures, similar aircraft, schedule demands, aircrew experience, and management required.

(2) Quality and safety requirements—air carrier management. Management has clearly defined safety as the number one company priority, and safety is never sacrificed to satisfy passenger concern, convenience, or cost. Policies, procedures, and goals that enhance the CAA's minimum operations and maintenance standards have been established and implemented. A cooperative response to CAA inspections, critiques, or comments is demonstrated. Proper support infrastructure, including facilities, equipment, parts, and qualified personnel, is provided at the certificate holder's primary facility and en route stations. Personnel with aviation credentials and experience fill key management positions. An internal quality audit program or other method capable of identifying in-house deficiencies and measuring the company's compliance with their stated policies and standards has been implemented. Audit results are analyzed in order to determine the cause, not just the symptom, of any deficiency. The result of sound fiscal policy is evident throughout the company.

(3) Quality and safety requirements—operations:

(i) Flight safety. Establish policies that promote flight safety. These policies are infused among all aircrew and operational personnel who translate the policies into practice. New or revised safety-related data are promptly disseminated to affected personnel who understand that deviation from any established safety policy is unacceptable. An audit system that detects unsafe practices is in place and a feedback structure informs management of safety policy results including possible safety problems. Management ensures that corrective actions resolve every unsafe condition.

(ii) Flight operations. Established flight operations policies and procedures are up-to-date, reflect the current scope of operations, and are clearly defined to aviation department employees. These adhered-to procedures are further supported by a flow of current, management-generated safety and operational communications. Managers are in touch with mission requirements, supervise crew selection, and ensure the risk associated with all flight operations is reduced to the lowest acceptable level. Flight crews are free from undue management pressure and are comfortable with exercising their professional judgment during flight activities, even if such actions do not support the flight schedule. Effective lines of communication permit feedback from line crews to operations managers. Personnel records are maintained and reflect such data as experience, qualifications, and medical status.

(iii) Flight crew hiring. Established procedures ensure that applicants are carefully screened, including a review of the individual's health and suitability to perform flight crew duties. Consideration is given to the applicant's total aviation background, appropriate experience, and the individual's potential to perform safely. Freedom from alcohol abuse and illegal drugs is required. If new-hire cockpit crewmembers do not meet industry standards for experience and qualification, then increased training and management attention to properly qualify these personnel are required.

(iv) Aircrew training. Training, including recurrent training, that develops and refines skills designed to eliminate mishaps and improve safety is essential to a quality operation. Crew coordination training that facilitates full cockpit crews training and interacting together using standardized procedures and including the principles of Cockpit Resource Management (CRM) is required. Programs involving the use of simulators or other devices that can provide realistic training scenarios are desired. Captain and first officer training objectives cultivate similar levels of proficiency. Appropriate emergency procedures training (e.g., evacuation procedures) is provided to flight deck and flight attendant personnel as a total crew whenever possible; such training focuses on cockpit and cabin crews functioning as a coordinated team during emergencies Crew training—be it pilot, engineer, or flight attendant—is appropriate to the level of risk and circumstances anticipated for the trainee. Training programs have the flexibility to incorporate and resolve recurring problem areas associated with day-to-day flight operations. Trainers are highly skilled in both subject matter and training techniques. Training received is documented, and that documentation is maintained in a current status.

(v) Captain upgrade training. A selection and training process that considers proven experience, decision making, cockpit resource management, and response to unusual situations, including stress and pressure, is required. Also important is emphasis on captain responsibility and authority.

(vi) Aircrew scheduling. A closely monitored system that evaluates operational risks, experience levels of crewmembers, and ensures the proper pairing of aircrews on all flights is required. New captains are scheduled with highly experienced first officers, and new or low-time first officers are scheduled with experienced captains. Except for aircraft new to the company, captains and first officers assigned to DOD charter passenger missions possess at least 250 hours combined experience in the type aircraft being operated. The scheduling system involves an established flight duty time program for aircrews, including flight attendants, carefully managed so as to ensure proper crew rest and considers quality-of-life factors. Attention is given to the stress on aircrews during strikes, mergers, or periods of labor-management difficulties.

(vii) In-flight performance. Aircrews, including flight attendants, are fit for flight duties and trained to handle normal, abnormal, and emergency situations. They demonstrate crew discipline and a knowledge of aviation rules; use company-developed standardized procedures; adhere to checklists; and emphasize safety, including security considerations,

throughout all preflight, in-flight, and postflight operations. Qualified company personnel evaluate aircrews and analyze results; known performance deficiencies are eliminated. Evaluations ensure aircrews demonstrate aircraft proficiency in accordance with company established standards. Flight crews are able to determine an aircraft's maintenance condition prior to flight and use standardized methods to accurately report aircraft deficiencies to the maintenance activity.

(viii) Operational control/support. Effective mission control includes communications with aircrews and the capability to respond to irregularities or difficulties. Clear written procedures for mission preparation and flight following aircraft and aircrews are provided. There is access to weather, flight planning, and aircraft maintenance data. There are personnel available who are knowledgeable in aircraft performance and mission requirements and that can correctly respond to emergency situations. There is close interface between operations and maintenance, ensuring a mutual awareness of aircraft operational and maintenance status. Procedures to notify DOD in case of an accident or serious incident have been established. Flight crews involved in such accidents or incidents report the situation to company personnel who, in turn, have procedures to evaluate the flight crew's capability to continue the mission. Aircraft involved in accidents or incidents are inspected in accordance with Civil Aviation Regulations and a determination made as to whether or not the aircraft is safe from continued operations.

(ix) DOD charter procedures. Detailed procedures addressing military charter requirements are expected. The level of risk associated with DOD charter missions does not exceed the risk inherent in the carrier's non-DOD daily flight operations. Complete route planning and airport analyses are accomplished, and actual passenger and cargo weights are used in computing aircraft weight and balance.

(4) Quality and safety requirements—maintenance. Maintenance supervisors ensure all personnel understand that in spite of scheduling pressure, peer pressure, supervisory pressure, or other factors, the airplane must be airworthy prior to flight. Passenger and employee safety is a paramount management concern. Quality, completeness, and integrity of work are trademarks of the maintenance manager and maintenance department. Nonconformance to established maintenance practices is not tolerated. Management ensures that contracted maintenance, including repair and overhaul facilities, is performed by maintenance organizations acceptable to the CAA.

(i) Maintenance personnel. Air carriers are expected to hire and train the number of employees required to safely maintain the company aircraft and support the scope of the maintenance operation both at home station (the company's primary facility) and at en route locations. These personnel ensure that all maintenance tasks, including required inspections and airworthiness directives, are performed; that maintenance actions are properly documented; and that the discrepancies identified between inspections are corrected. Mechanics are fit for duty, properly certificated, the company verifies certification, and these personnel possess the knowledge and the necessary aircraft-specific experience to accomplish the maintenance tasks. Noncertified and inexperienced personnel receive proper supervision. Freedom from alcohol abuse and illegal drugs is required.

(ii) Quality assurance (continuing analysis and surveillance program). A system that continuously analyzes the performance and effectiveness of maintenance activities and maintenance inspection programs is required. This system evaluates such functions as reliability reports, audits, component tear-down reports, inspection procedures and results, tool calibration program, real-time aircraft maintenance actions, warranty programs, and other maintenance functions. The extent of this program is directly related to the air carrier's size and scope of operation. The cause of any recurring discrepancy or negative trend is researched and eliminated. Action is taken to prevent recurrence to these discrepancies and preventive actions are monitored to ensure effectiveness. The results of preventive actions are provided to appropriate maintenance technicians.

(iii) Maintenance inspection activity. A process to ensure required aircraft inspections are completed and the results properly documented is required. Also required is a system to evaluate contract vendors, suppliers, and their products. Inspection personnel are identified, trained (initial and recurrent), and provided guidance regarding inspector responsibility and authority. The inspection activity is normally a separate entity within the maintenance department.

(iv) Maintenance training. Training is conducted commensurate with the size and type of maintenance function being performed. Continuing education and progressive experience are provided for all maintenance personnel. Orientation, familiarization, on-the-job, and appropriate recurrent training for all full- and part-time personnel is expected. The use of such training aids as mockups, simulators, and computer-based training enhances maintenance training efforts and is desired. Training documentation is required; it is current, complete, well-maintained, and correctly identifies any special authorizations such as inspection and airworthiness release. Trainers are fully qualified in the subject matter.

(v) Maintenance control. A method to control maintenance activities and track aircraft status is required. Qualified personnel monitor maintenance preplanning, ensure completion of maintenance actions, and track deferred discrepancies. Deferred maintenance actions are identified to supervisory personnel and corrected in accordance with the criteria provided by the manufacturer or regulatory agency. Constant and effective communications between maintenance and flight operations ensure an exchange of critical information.

(vi) Aircraft maintenance program. Aircraft are properly certified and maintained in a manner that ensures they are airworthy and safe. The program includes the use of manufacturer's and CAA information, as well as company policies and procedures. Airworthiness directives are complied with in the prescribed time frame, and service bulletins are evaluated for applicable action. Approved reliability programs are proactive, providing management with visibility on the effectiveness of the maintenance program; attention is given to initial component and older aircraft inspection intervals and to deferred maintenance actions. Special tools and equipment are calibrated.

(vii) Maintenance records. Maintenance actions are well documented and provide a complete record of maintenance accomplished and, for repetitive actions, maintenance required. Such records as aircraft log books and maintenance documentation are legibly prepared, dated, clean, readily identifiable, and maintained in an orderly fashion. Inspection compliance, airworthiness release, and maintenance release records, etc., are complete and signed by approved personnel.

(viii) Aircraft appearance (in-service aircraft). Aircraft exteriors, including all visible surfaces and components, are clean and well maintained. Interiors are also clean and orderly. Required safety

equipment and systems are available and operable.

(ix) Fueling and servicing. Aircraft fuel is free from contamination, and company fuel facilities (farms) are inspected and results documented. Procedures and instructions pertaining to servicing, handling, and storing fuel and oil meet established safety standards. Procedures for monitoring and verifying vendor servicing practices are included in this program.

(x) Maintenance manuals. Company policy manuals and manufacturer's maintenance manuals are current, available, clear, complete, and adhered to by maintenance personnel. These manuals provide maintenance personnel with standardized procedures for maintaining company aircraft. Management policies, lines of authority, and company maintenance procedures are documented in company manuals and kept in a current status.

(xi) Maintenance facilities. Well maintained, clean maintenance facilities adequate for the level of aircraft repair authorized in the company's CAA certificate are expected. Safety equipment is available in hangars, shops, etc., and is serviceable. Shipping, receiving, and stores areas are likewise clean and orderly. Parts are correctly packaged, tagged, segregated, and shelf life properly monitored.

(5) Quality and safety requirements—security. Company personnel are schooled in security responsibilities and practice applicable procedures during ground and in-flight operations. Compliance with provisions of the appropriate standard security program, established by the CAA, is required for all DOD missions.

(6) Quality and safety requirements—specific equipment requirements. Air carriers satisfy DOD equipment and other requirements as specified in Air Mobility Command contracts or Military Traffic Management Command Military Air Transportation Agreements.

§ 861.4 DOD Commercial Airlift Review Board procedures.

(a) This part establishes the procedures to be used by the United States Air Force Air Mobility Command (AMC) and the United States Army Military Traffic Management Command (MTMC) when, in accordance with reference § 861.1 (a) through (d):

(1) A commercial air carrier is subject to review or other action by the DOD Commercial Airlift Review Board (hereinafter referred to as the CARB),

(2) A warning, suspension, temporary nonuse, or reinstatement action is taken against a carrier by the CARB, or

(3) Review or other CARB action is escalated to a higher authority.

These procedures apply to all commercial air carriers providing DOD passenger or cargo airlift through charter, individual ticket movements, contracts, or other transportation agreements. They also apply to carriers providing air transportation purchased by DOD individuals for which government reimbursement will be made in whole or in part.

(b) Safety or airworthiness issues, per reference § 861.1(b) must be referred to the CARB. AMC and MTMC may each take independent corrective action in accordance with their respective procedures on standards of service issues when safety and airworthiness issues are not involved. The DOD Air Carrier Survey and Analysis Directorate will be informed of all actions taken independently by AMC or MTMC.

(c) Except as otherwise provided herein, the rights and remedies of the government and commercial air carriers outlined in these procedures are not exclusive and are in addition to any other rights and remedies provided for by law, regulation, contract, or agreement.

(d) *Definitions.* (1) Letter of warning is a notice to a carrier of a failure to satisfy safety or airworthiness requirements which, if not remedied, may result in temporary nonuse or suspension. The issuance of a letter of warning is not a prerequisite to a suspension or other action.

(2) Temporary nonuse is the immediate exclusion of a carrier from any flight activities in the DOD airlift transportation program, pending a decision on suspension, taken under the conditions outlined in paragraph (h)(1) of this section. By mutual agreement of the CARB and the air carrier involved, a suspension hearing or decision may be delayed and the air carrier continued in a temporary nonuse status for an extended period of time.

(3) Suspension is the exclusion of an air carrier from participating in the DOD airlift transportation program. The period of suspension will normally:

(i) Remain in effect until the carrier furnishes satisfactory evidence that the conditions causing the suspension have been remedied or

(ii) Be for a fixed period of time as determined at the discretion of the CARB.

(4) The procedures for commercial airlift safety review include five possible levels with increasing authority:

(i) DOD Air Carrier Survey and Analysis Directorate.

(ii) DOD Commercial Airlift Review Committee.

(iii) DOD Commercial Airlift Review Board.

(iv) Commanders MTMC and AMC.

(v) DOD Commercial Airlift Review Authority.

These levels are described in reference § 861.1(b), with the exception of the DOD Commercial Airlift Review Committee, which is described in reference § 861.1(c). The Committee provides multifunctional review of the efforts of the DOD Air Carrier Survey and Analysis Directorate, including approval or disapproval of carriers initially seeking DOD business, and offers advice to the higher authorities when appropriate.

(e) *Causes and conditions for suspension.* (1) Carrier shall be subject to suspension for good cause, including:

(i) Failing to comply with generally accepted standards of airmanship, training, and maintenance practices and procedures.

(ii) Failing to satisfy DOD quality and safety requirements as described in § 861.3.

(iii) Failing to comply with all provisions of applicable statutes, agreements, and contract terms, as such may affect flight safety, as well as with all applicable Federal Aviation Administration regulations, airworthiness directives, orders, rules, and standards promulgated under the Federal Aviation Act of 1958 as amended.

(iv) Involvement of one of the carrier's aircraft in a serious or fatal accident, incident, or operational occurrence (regardless of whether or not such aircraft is being used in the performance of government procured transportation).

(v) Any other condition which affects the safe operation of the carrier's flights hereunder.

(vi) Compliance with published standards does not, standing alone, constitute compliance with generally accepted standards or airmanship, training, or maintenance practices.

(f) *Reinstatement considerations.* In no event shall reinstatement occur unless and until the carrier shows to the satisfaction of the CARB that deficiencies that led to suspension have been corrected and that actions have been implemented to preclude the recurrence of similar deficiencies.

(g) *CARB membership.*

(1) Six voting members will constitute the CARB; three senior knowledgeable individuals appointed by Commander, AMC, and three similarly appointed by Commander, MTMC. Two of the voting members will be of general/flag officer rank or civilian equivalent; one from HQ AMC and one from HQ MTMC, and will

act as CARB cochairs. Other nonvoting CARB members will be appointed as necessary to facilitate the CARB deliberative process. A nonvoting recorder will also be appointed.

(2) The presiding member at a meeting of the CARB shall be the senior voting member or alternate present. A voting member, who will not be present at any meeting of the CARB, may be represented by a knowledgeable alternate empowered with the voting responsibilities of the voting member. Four voting members present shall constitute a quorum. Decisions shall be by majority vote.

(3) The meeting date, time, and site of the CARB will be determined at the time of the decision to convene the CARB. Teleconferencing, if utilized, will be specified in the notice to the carrier.

(4) Minutes of CARB hearings may be recorded or summarized and will be maintained with all other records pertaining to the CARB proceeding.

(5) The CARB recorder shall ensure that the air carrier and appropriate DOD agencies are notified of the CARB's decision and reasons therefor.

(h) *CARB operating proeedures:*

(1) *Temporary nonuse:* (i) In case of a fatal aircraft accident or for other good cause, the two senior members of the CARB (see paragraph (g)(1) of this section) will jointly make an immediate determination whether to place the carrier involved in a temporary nonuse status pending suspension proceedings. Prior notice to the carrier is not required.

(ii) Such determination shall include consideration of the advice of the DOD Commercial Airlift Review Committee, if reasonably available, but will not await such advice.

(iii) The carrier shall be promptly notified of the temporary nonuse determination and the basis therefore.

(iv) Temporary nonuse status terminates automatically if suspension proceedings are not commenced, as set out in paragraph (h)(2)(ii) of this section, within 30 days of inception, unless otherwise agreed to per paragraph (d)(2) of this section.

(2) *Suspension:* (i) On a recommendation of the DOD Air Carrier Survey and Analysis Directorate, the DOD Commercial Airlift Review Committee, or any individual member of the CARB, the CARB shall consider whether or not to suspend a carrier.

(ii) If the CARB determines that suspension may be appropriate, it shall notify the carrier that suspension action is under consideration and of the basis for such consideration and offer the carrier a hearing thereon within 15 days of the date of the notice, or such other period as granted by the CARB, at which the carrier may be present and may offer evidence. The presiding member of the CARB shall establish procedures for such hearing as may be appropriate which shall be as informal as practicable, consistent with administrative due process.

(iii) Types of evidence which may be considered, if appropriate, shall include, but not be limited to, the following:

(A) Information and analysis provided by the DOD Air Carrier Survey and Analysis Directorate.

(B) Carrier's written/oral evidence.

(C) Corrective actions that may have been taken by the carrier to:

(*1*) Correct the specific deficiencies that led the CARB to consider suspension, and

(*2*) Preclude recurring similar deficiencies.

(D) Such other matters as the CARB deems relevant.

(E) The CARB's decisions on the reception or exclusion of evidence shall be final.

(iv) Carriers shall have the burden of proving their suitability to safely perform DOD airlift services by clear and convincing evidence.

(v) After the conclusion of such hearing, or if no hearing is requested and attended by the carrier within the time specified by the CARB, the CARB shall consider the matter and make a final decision whether or not to suspend the carrier or to impose such lesser sanction as is appropriate. The carrier shall be notified of the CARB's decision.

(3) *Reinstatement:* (i) The CARB may consider reinstating a suspended carrier on either CARB motion or carrier motion, unless such carrier has become ineligible in the interim.

(ii) The carrier has the burden of proving by clear and convincing evidence that the reinstatement considerations in paragraph (f) of this section have been satisfied.

(iii) Carrier evidence in support of reinstatement will be provided in a timely manner to the CARB for its review. The CARB may independently corroborate the carrier-provided evidence and may, at its option, convene a hearing and request the participation of the carrier.

(i) *Decision by others.* In the event the CARB is unable to decide an issue properly before it, or if the issue in the judgment of the CARB requires review at a DOD organizational level higher than the CARB, the issue will be referred to the Commander, AMC, and Commander, MTMC, for appropriate disposition. In such event, the decision will be made upon the written record only, no hearing will be held.

(j) *Appeal of a determination.* (1) A carrier placed in suspension may administratively appeal this action to the authorities shown in paragraph (j)(3) of this section. An appeal, if any, must be filed within 15 work days after receipt of the decision of the CARB or Commander, AMC, and Commander, MTMC. The suspension will not be stayed pending appeal unless for good cause, as determined by the CARB. The decision of the appellate authority designated herein is final and is not subject to further administrative review or appeal.

(2) An appeal will be in writing only and carriers shall not be entitled to a de novo hearing before the administrative appellate authorities.

(3) The following administrative appellate authorities will review and make decisions on appeals:

(i) When the decision being appealed was made by the CARB, the appellate authorities are Commander, AMC, and Commander, MTMC. They will jointly decide the appeal.

(ii) When Commander, AMC, and Commander, MTMC, are unable to jointly agree on an appeal, they shall refer the matter to the DOD Commercial Airlift Review Authority (CARA) for its decision.

(iii) When the decision being appealed was made by Commander, AMC, and Commander, MTMC, the appellate authority is the DOD CARA.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 92-23614 Filed 9-28-92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-92-61]

Special Local Regulations for Marine Events; 2.4 Mile Choptank River Swim, Choptank River Bridge, Choptank River, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of special local regulations.

SUMMARY: This notice implements special local regulations for the 3rd Annual 2.4 Mile Choptank River Swim, an annual event to be held on October 10, 1992. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general

navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATES: The regulations in 33 CFR 100.512 are effective from 6 a.m. to 12:15 p.m., on October 10, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Baltimore (301) 576–2520.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

Fletcher Hanks, Race Director for the 2.4 Mile Choptank River Swim submitted an application to hold this year's swim on October 10, 1992. The event will consist of approximately 400 swimmers racing on a course west of the Choptank River Bridge starting at the Gateway Marina and finishing at Great Marsh Point. Since this is the type of event contemplated by these regulations, and the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.512 are being implemented.

Dated: September 18, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 92–23560 Filed 9–28–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–92–64]

Special Local Regulations for Marine Events; Riverfest 1992; Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for Riverfest 1992. This special local regulation is necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATE: This regulation is effective from 12:15 p.m. to 4 p.m. October 3, 1992. If inclement weather causes the postponement of the event, the regulation is effective from 12:15 p.m. to 4 p.m., October 4, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Fort Macon Operations (919) 247–4545.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received in the district office until September 8, 1992, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information: The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose: Old Wilmington Riverfront Celebration, Inc. submitted an application to hold the Riverfest 1992 riverboat and raft races. As part of the application, the sponsor requested that the Coast Guard provide control of spectator and commercial traffic within the regulated area.

Discussion of Regulations: The event consists of two riverboats and approximately 35 homebuilt, manually powered rafts racing separately on the Cape Fear River, at Wilmington, North Carolina. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event. Since the main shipping channel will not be closed for an extended period of time, commercial traffic should not be severely disrupted.

Regulatory Evaluation: This final rule is not considered major under Executive Order 12291 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for four hours, and the impacts on routine navigation are expected to be minimal.

Small Entities: Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this rule on non-participating small entities will be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment: This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary Section 100.35–T0564 is added to read as follows:

§ 100.35–T0564 Cape Fear River, Wilmington, North Carolina.

(a) *Regulated area.* The waters of the Cape Fear River from shoreline to shoreline bounded to the north by a line drawn from latitude 34°14'22.5" North, longitude 77°57'23.0" West, to latitude 34°14'24" North, longitude 77°57'06.5" West, and to the south by the U.S. Route 74/76 highway bridge, center point latitude 34°13'38.0" North, longitude 77°57'08.5" West.

(b) *Definitions.* Coast Guard Patrol Commander. The Coast Guard Patrol Commander is any commissioned, warrant, or petty officer of the Coast Guard who has been designated by the

Commander, Coast Guard Group Fort Macon to act on his behalf.

(c) *Special local regulations.* (1) Except for participants in Riverfest 1992 and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Vessel operators are advised to remain clear of the advisory area during the effective periods of this regulation.

(d) *Effective dates:* This regulation is effective from 12:15 p.m. to 4:00 p.m. October 3, 1992. If inclement weather causes the postponement of the event, the regulation is effective from 12:15 p.m. to 4 p.m., October 4, 1992.

Dated: September 18, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92-23561 Filed 9-28-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH28-1-5395; FRL-4514-1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces final disapproval of a revision request to the ozone portion of the Ohio State Implementation Plan (SIP) for the Wright-Patterson Air Force Base (WPAFB) located in Greene County, Ohio. The revision consists of a variance for WPAFB to operate a jet fuel fillstand. The variance would exempt WPAFB from the emission limit requirements contained in the Ohio Administrative Code (OAC) Rule 3745-21-07(E).

Greene County was designated as a nonattainment area of the National Ambient Air Quality Standards (NAAQS) for ozone.[1] Greene County was again designated as a nonattainment area for ozone, and classified as moderate. This designation was published in the November 6, 1991 **Federal Register** (56 FR 56694).

USEPA is disapproving this SIP revision request because: The State did not demonstrate that the relaxation of emission limits contained in OAC Rule 3745-21-07(E) will not interfere with the attainment and maintenance of the ozone standard; reasonable further progress (RFP) toward attainment has not been demonstrated; and a relaxation of SIP requirements, in nonattainment areas, is prohibited by the Clean Air Act Amendments of 1990 without offsetting emission reductions.

EFFECTIVE DATE: This final rulemaking becomes effective October 29, 1992.

ADDRESSES: Copies of the SIP revision request, USEPA's analysis, and public comments are available at the following location for review: (It is recommended that you telephone Richard Schleyer, at (312) 353-5089, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air Enforcement Branch (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Air Enforcement Branch, (AE-17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-5089.

SUPPLEMENTARY INFORMATION:

I. Background

On January 27, 1987, the Ohio Environmental Protection Agency (OEPA) submitted a revision request to the ozone portion of the Ohio SIP for WPAFB. The revision consists of a variance for WPAFB to operate a jet fuel fillstand located in Greene County. The variance would exempt WPAFB from meeting the emission limit requirements contained in OAC Rule 3745-21-07(E).

On December 14, 1988, USEPA published a Notice of Proposed Rulemaking in the **Federal Register** (53 FR 50257) disapproving this SIP revision because the State did not demonstrate that it was technically or economically infeasible to meet the existing SIP limit and that the relaxation from the emission limit requirements contained in OAC Rule 3745-21-07(E) would not jeopardize attainment and maintenance of the ozone standard. Also, the State did not demonstrate that reasonable further progress toward attainment of the standard would be maintained in the area.

II. Current SIP

Under the existing federally approved SIP, the fillstand is regulated under the Ohio Administrative Code (OAC) Rule 3745-21-07(E) which contains the following requirements:

(1) No person shall load in any one day more than forty thousand gallons of any volatile photochemically reactive material into any tank truck, trailer, or railroad tank car from any loading facility unless the loading facility is equipped with a vapor collection and disposal system properly installed, in good working order, in operation, and consisting of one of the following:

(a) An adsorber system or condensation system which processes and recovers at least ninety percent by weight of all vapors and gases from the equipment being controlled; or

(b) A vapor handling system which directs all vapors to a fuel gas system; or

(c) Other equipment or means for purposes of air pollution control as may be acceptable to and approved by the DIRECTOR.

WPAFB applied for a variance to operate a jet fuel fillstand without meeting the emission limit requirements contained in OAC Rule 3745-21-07(E). On October 31, 1980 **Federal Register** (45 FR 72122) and June 29, 1982 **Federal Register** (47 FR 28097), USEPA approved OAC Rule 3745-21-07(E) as meeting the RACT requirements of Part D of the Clean Air Act. This variance would limit annual throughput to 25,000,000 gallons of JP-4 per year.

III. Greene County Attainment Status

Under Section 107(d) of the Clean Air Act, Greene County was designated as a nonattainment area of the NAAQS for ozone.[2] Greene County was again designated as a nonattainment area for ozone, and classified as moderate. This designation was published in the November 6, 1991 **Federal Register** (56 FR 56694).

IV. SIP Revision Policy

The USEPA July 29, 1983, policy memorandum entitled "Source Specific SIP Revisions," from Sheldon Meyers, requires that for a SIP revision to be approvable, the State must demonstrate that the revision will not interfere with the timely attainment and maintenance of the ozone standard and reasonable further progress (RFP) towards attainment. The State has not made such a demonstration.

[1] See 43 FR 8962 (March 13, 1978); 43 FR 45993 (October 5, 1978); and 49 FR 24124 (June 12, 1984).

[2] See 43 FR 8962 (March 13, 1978); 43 FR 45993 (October 5, 1978); and 49 FR 24124 (June 12, 1984).

V. Comments on Notice of Proposed Rulemaking

On January 12, 1989, and February 9, 1989, USEPA received public comments from the OEPA and the Department of the Air Force (DAF), respectively. USEPA's review of these comments is as follows:

OEPA Comments

1. The ozone SIP for the Dayton area was previously approved by the USEPA based on a modeled demonstration of attainment and the adoption of Reasonably Available Control Technology (RACT) rules for VOC sources in the area. The loading of jet fuel is not a RACT category. The SIP revision amounts to a site-specific RACT determination for a source that does not meet Ohio Administrative Code (OAC) Rule 3745–21–07, which regulates sources of organic materials. As such, the RACT determination exceeds the requirements of the 1972 ozone SIP.

2. Reasonable Further Progress (RFP) has been met. Ohio's April 1988 RFP report shows continued source reductions greatly in excess of the emissions associated with the proposed relaxation.

3. The USEPA has not issued an ozone SIP call for the Dayton area because of the low "design value" ozone level of 0.127 ppm for the 1985–1987 period. This level is less than the USEPA action level of 0.14 ppm.

4. The requested SIP relaxation is not significant, and is less that the 40 tons per year threshold amount required to trigger new source review under Federal regulations for new sources of photochemical oxidants.

5. In 1988, the USEPA proposed to approve a SIP revision for the LTV Steel Corporation in the Chicago area, which is non-attainment for particulate matter. The following statement of the USEPA appeared in the September 1, 1988 **Federal Register** (53 FR 33824): "Since LTV demonstrated that this SIP revision would be RACT, a modeled demonstration of attainment is not required." WPAFB has indicated its intention to provide the USEPA with additional cost documentation that will show that the SIP revision request will indeed constitute RACT for this particular loading rack. If acceptable documentation is submitted, an attainment demonstration for the Dayton area should not be required. In addition, USEPA believes that the information previously submitted demonstrates that the use of control equipment for the loading emissions is economically unreasonable.

USEPA's Response

1. OEPA is correct in stating that the loading of jet fuel is not a "RACT" or Control Techniques Guidelines (CTG) category. As a result, in order for this revision to be approved, it is not necessary for OEPA to demonstrate that it is technically or economically infeasible to meet the existing SIP limit. It is necessary, however, for OEPA to demonstrate that the relaxation will not interfere with the attainment or maintenance of the ozone standard. OEPA has not made such a demonstration.

2. The Dayton area currently has an approved 1979 ozone SIP. Although the approved attainment demonstration for the area predicts that attainment would have occurred by 1982 even with the increase in emissions due to this relaxation, recent air quality data for the Dayton area indicate that the area is still nonattainment for ozone. Therefore, the 1979 demonstration does not appear to be credible and cannot be used as a basis of approving a site-specific relaxation. Additionally, the fact that the increase in emissions is less than the level required to trigger new source review is irrelevant.

3. Finally, the discussion in comment five on the Notice of Proposed Rulemaking published in the September 1, 1988 **Federal Register** (53 FR 33824) for LTV Steel is misleading. A modeled demonstration was not required because the relaxation was for a Total Suspended Particulate (TSP) source. The requirement for an acceptable 1979 TSP SIP was the implementation of RACT, while a 1979 ozone SIP not only had to meet the requirement of implementation of RACT, but also a modeled demonstration of attainment. As a result, it is meaningless to compare the requirements for a site-specific TSP SIP to the requirements for a site-specific ozone SIP relaxation.

DAF Comments

On February 9, 1989, the following comments were submitted by the Department of the Air Force (DAF):

1. A Vapor Control Feasibility Study prepared by Oak Ridge National Laboratory in September, 1986, for the McClellan Air Force Base, California—JP–4 Fuel Storage and Transfer Facilities was submitted by the DAF. This contains cost estimates and cost documentation for carbon adsorption and incineration for JP–4 jet fuel vapor control at the McClellan Air Force Base.

2. Actual facility throughput of JP–4 and VOC emissions are presented in tabular form for a period from 1983 to 1988.

3. As presented in comment two, annual throughput of JP–4 at WPAFB has been decreasing since 1986. The DAF foresees further reductions in the annual throughput of JP–4 through the loading rack in upcoming years. This reduction in throughput is based on the following reasons. WPAFB has a pressurized hydrant refueling system on the east and west ramps. Currently, the west ramp is in operation and in 1988, pumped a total of 2,728.99 gallons of JP–4 through this system. The east ramp is currently not in operation due to a malfunction of differential pressure gauges. Once the east ramp is operational, WPAFB anticipates a total throughput from the hydrant system of 5 million gallons. This will result in a reduced annual throughput of JP–4 through the loading racks by 2 million gallons. In addition, due to a change in aircraft used by the 906 Tactical Fighter Group (to be completed in 1990), a reduction of 3 million gallons of JP–4 through the loading rack will occur annually. Total reduction in JP–4 through the loading rack will decrease by 5 million gallons in 1990, however, reductions will begin (2 million gallons) upon repair of the east ramp hydrant system in 1989.

4. Capital cost, as well as total annual operating costs, based on 1985/1986 data is presented for carbon adsorption and incineration. These costs are then projected for the years 1989 and 1992.

5. Throughout our analysis, we have questioned whether JP–4 is a Volatile Photochemically Reactive Material (VPRM). The definition of a VPRM is "any photochemically reactive material which has a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions." WPAFB has previously submitted storage temperature data denoting that JP–4 will be VPRM when the temperature reaches 85 °F. That temperature is only reached 3% of the year in the Dayton area. It appears unreasonable that 3% justifies controlling all JP–4 vapors.

6. The conversion of JP–4 to JP–8 in the future will have an impact on cost effectiveness. Should JP–8 be available in 10 years, the capital recovery factor and cost per ton of removal will increase, not to mention rendering the control equipment obsolete.

USEPA's Response

1. As previously stated in USEPA's response to an OEPA comment, the loading of jet fuel is not a category subject to the requirements for RACT. As a result, it is not necessary for OEPA (or WPAFB) to demonstrate that it is

technically or economically infeasible to meet the existing SIP limit. It is necessary, however, for OEPA to demonstrate that the relaxation will not interfere with the attainment or maintenance of the ozone standard. OEPA has not made such a demonstration.

2. JP–4 meets the definition of "Volatile Photochemically Reactive Material" (VPRM) contained in OAC Rule 3745–21–01(C)(7) and as it appears in the Ohio SIP. This definition was approved by the USEPA as published in the October 31, 1980 **Federal Register** (45 FR 72122), and in the June 29, 1982 **Federal Register** (47 FR 28098). Also, the following excerpt was taken from the OEPA "Summary of Final Variance for the Wright-Patterson Air Force Base" which was submitted to the USEPA on January 27, 1987:

> JP–4 meets the definition of "volatile photochemically reactive material" (VPRM) under OAC Rule 3745–21–01(C)(7). Technical support provided by WPAFB shows that the storage tank temperature averages 53 °F, and that the true vapor pressure of the JP–4 can equal or exceed 1.5 psia (as required to meet Ohio's definition of VPRM). According to this technical support, when the fuel storage temperature reaches 72 °F (Ohio believes a value of 65 °F from Figure 1 in the Technical Support is more appropriate), the true vapor pressure is 1.5 psia. According to the attached technical support developed by the Dayton Regional Air Pollution Control Agency, there are typically "1.4 days per year" when mean daily temperatures exceed 72 °F. Even though the JP–4 vapor pressure is variable, and conditions do not always allow the JP–4 to meet the definition of a VPRM, the OEPA must define JP–4 as a VPRM. The requirements of OAC Rule 3745–21–07(E)(1) are, therefore, applicable to this source.

3. The problem of concern here is the release of VOC from the JP–4 fuel presently being used, not the future changes to JP–8.

VI. Compliance With the Clean Air Amendments of 1990

This request for a revision to the Ohio SIP for ozone has been reviewed for conformance with the provisions of the 1990 Clean Air Act Amendments (CAAA) enacted on November 15, 1990. It has been determined that the revision does not conform with the General Savings Clause stated in subpart 6, section 193 of the CAAA which prohibits, in nonattainment areas, any relaxation of SIP requirements, without at least equivalent emission reductions. This provision reads as follows:

> No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the CAAA of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification ensures equivalent or greater emission reductions of such air pollutant.

For nonattainment areas, the State must demonstrate that the SIP revision provides for offsetting emission reductions. The revision contains no plan for emission offsets or equivalent emission reductions. Therefore, no relaxation from SIP requirements can be approved.

Final Action

USEPA is disapproving this SIP revision request because: (1) The State did not demonstrate that the relaxation from the emission limit requirements contained in OAC Rule 3745–21–07(E) will not interfere with the attainment and maintenance of the ozone standard; (2) RFP towards attainment has not been demonstrated; and (3) a relaxation of SIP requirements, in nonattainment areas, is prohibited by the CAAA of 1990 without offsetting emission reductions.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Three action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables Two and Three SIP revisions (54 FR 222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from the date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 19, 1992.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 92–23558 Filed 9–28–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 62

[A–1–FRL–4512–2]

Approval and Promulgation of State Air Quality Implementation Plans for Designated Facilities and Pollutants; Rhode Island, Vermont; Negative Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Regulations promulgated under the provisions of Section 111(d) of the Clean Air Act require states to submit plans to EPA to control emissions of designated pollutants from designated facilities. Title 40 of the Code of Federal Regulations § 62.06 provides that when no such designated facilities exist within a state's boundaries, a letter of "negative declaration" may be submitted in lieu of a control plan. The States of Rhode Island and Vermont have submitted negative declarations adequately certifying that certain types of designated facilities are not located within their States. EPA is approving negative declarations of municipal waste combustor emissions from municipal waste combustors submitted by the States of Rhode Island and Vermont.

DATES: This action will become effective on November 30, 1992, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during

normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767; and the Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Alloi, (617) 565–3252.

SUPPLEMENTARY INFORMATION: Pursuant to section 111(d) of the Clean Air Act, EPA promulgated regulations at 40 CFR part 60, subpart B, which require States to submit control plans to control emissions of designated pollutants from designated facilities. In the event that a State does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

On February 11, 1991, EPA established existing municipal waste combustors (MWC) with the capacity to combust greater than 250 tons per day of municipal solid waste (MSW) as designated facilities. EPA specified MWC organics, MWC metals, and MWC gases as designated pollutants by promulgating emission guidelines for existing MWCs as required by 40 CFR part 60, subpart B. See 56 FR 5514 for a complete discussion of the MWC guidelines. Therefore, States are required to submit to EPA either plans to control MWC organics, MWC metals and MWC gases from existing municipal waste combustors in the State, or a letter (negative declaration) certifying that no existing MWCs exist in the State.

On February 5, 1992, the Rhode Island Department of Environmental Management (DEM) submitted a letter certifying that there are no existing municipal waste combustors in the State subject to 40 CFR part 60, subpart B. EPA is codifying this negative declaration at 40 CFR 62.9975.

On September 18, 1991, the Vermont Agency of Natural Resources (ANR) submitted a letter certifying that there are no existing municipal waste combustors in the State subject to 40 CFR part 60, subpart B. EPA is codifying this negative declaration at 40 CFR 62.11450.

EPA is codifying these negative declarations without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and the other notice will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action shall be effective on November 30, 1992.

Final Action

EPA is approving negative declarations of municipal waste combustor emissions from municipal waste combustors submitted by the States of Rhode Island and Vermont.

Under 5 U.S.C. 605(b), I certify that this State implementation plan revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP Revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 30, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act.)

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal waste combustors, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides.

Dated: September 17, 1992.

Paul G. Keough,

Acting Regional Administrator, Region I

Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Subpart OO is amended by adding an undesignated center heading and § 62.9975 as follows:

Subpart OO—Rhode Island

Municipal Waste Combustor Emissions From Existing Municipal Waste Combustors With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.9975 Identification of plan—negative declaration.

On February 5, 1992, the Rhode Island Department of Environmental Management submitted a letter certifying that there are no existing municipal waste combustors in the State subject to the emission guidelines published on February 11, 1991 (56 FR 5514) pursuant to part 60, subpart B of this chapter.

3. Subpart UU is amended by adding an undesignated center heading and § 62.11450 as follows:

Subpart UU—Vermont

Municipal Waste Combustor Emissions From Existing Municipal Waste Combustors With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.11450 Identification of plan—negative declaration.

On September 18, 1992, the Vermont Agency of Natural Resources submitted a letter certifying that there are no existing municipal waste combustors in the State subject to the emission guidelines published on February 11, 1991 (56 FR 5514) pursuant to part 60, subpart B of this chapter.

[FR Doc. 92–23605 Filed 9–28–92; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-21

[FPMR Amendment D-91]

Change From Standard Level User Charge to Rent, and Change in Guidelines for Determining When an Appeal of the Rent Rate Is Appropriate

AGENCY: Public Buildings Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation updates the FPMR to reflect the change in terminology from Standard Level User Charge (SLUC) to Rent in describing the charges to federal agencies for space and related services. This regulation also changes the guidelines for determining when an appeal of the Rent rate is appropriate, based on specific differences between the GSA rate and comparable commercial rates. SIBAC (Simplified Intragovernmental Billing and Collection) references are replaced by OPAC (On-Line Payment and Collection). Other minor clarifications of existing policies have been included.

EFFECTIVE DATE: September 29, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Manfred van der Walde, Director, Financial Management Division (202-501-1954).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 101-21

Federal buildings and facilities, Government property and management.

For reasons set forth in the preamble, 41 CFR part 101-21 is amended as follows:

PART 101-21 FEDERAL BUILDINGS FUND

1. The authority citation for part 101-21 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. The table of contents for part 101-21 is revised as follows:

PART 101-21—FEDERAL BUILDINGS FUND

Sec.
101-21.000 Scope of part.
101-21.001 Authority.
101-21.002 Basic policy.
101-21.003 Definition of terms.
101-21.003-1 Federal Buildings Fund.
101-21.003-2 Rent.
101-21.003-3 Standard levels of service.
101-21.003-4 Special services.
101-21.003-5 Space and services.

Subpart 101-21.1—General

101-21.101 Background.
101-21.102 Applicability.

Subpart 101-21.2—Rent

101-21.200 General.
101-21.201 Determination of Rent.
101-21.202 Joint-use space.
101-21.203 Exceptions.
101-21.204 Exemptions.
101-21.205 Space and services provided by other executive agencies.
101-21.206 Revision of Rent rates.
101-21.207 Annual projections.

Subpart 101-21.3—Standard Levels of Service

101-21.300 General.
101-21.300-1 Flexitime.
101-21.301 Standard services for cleaning, mechanical operation, and maintenance.
101-21.302 Other standard services.
101-21.303 Space exempted from the standard levels of services.

Subpart 101-21.4—Reimbursable Services

101-21.400 Special services.
101-21.402 Services performed by other agencies.

Subpart 101-21.5—Funding Projects

101-21.501 GSA funding responsibility.
101-21.502 Funding responsibilities of other agencies.

Subpart 101-21.6—Billings, Payments, and Related Budgeting Information for Space and Services Furnished by the General Services Administration

101-21.600 Applicability.
101-21.601 Budgeting information for Rent.
101-21.602 Billing procedures for Rent charges.
101-21.602-1 Billing credits.
101-21.603 Budgeting information for reimbursable charges.
101-21.604 Billing procedures for reimbursable charges.
101-21.605 Payment procedures.
101-21.606 Reviews and appeals.

Subparts 101-21.7—101-21.48—[Reserved]

Subpart 101-21.49—Forms

101-21.4900 Scope of subpart.
101-21.4901 GSA forms.
101-21.4901-2957 GSA Form 2957, Reimbursable Work Authorization.

3. Part 101-21 is amended by revising §§ 101-21.000 thru 101-21.003-5 and subparts 101-21.1 thru 101-21.6.

§ 101-21.000 Scope of part.

This part prescribes policies and procedures to be followed for the furnishing of space and services by GSA in Government-owned and -leased buildings.

§ 101-21.001 Authority.

This part implements the applicable provisions of the Public Buildings Amendments of 1988, Public Buildings Amendments of 1972 (86 Stat. 216), the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), the Public Buildings Act of 1959 (73 Stat. 479), and the Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note).

§ 101-21.002 Basic policy.

(a) GSA will charge for space and services furnished by GSA (unless exempted by the Administrator of General Services) a Rent charge which will approximate commercial charges for comparable space and services. This is accomplished by using an appraisal procedure. The appraisal is based on a fully serviced lease and reflects the standard level of services provided by GSA. Services approximate those provided in the private sector.

(b) GSA may furnish services additional to those included in the Rent on a reimbursable basis.

(c) GSA may furnish alterations on a reimbursable basis in buildings where GSA is responsible for alterations only.

§ 101-21.003 Definition of terms.

The following definitions are established for terms used in Subchapter D of this chapter.

§ 101-21.003-1 Federal Buildings Fund.

Federal Buildings Fund means the fund into which Rent charges and other revenues are deposited, and collections cited in section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(j)), and from which monies shall be available for expenditures for real property management and related activities in such amounts as are specified in annual appropriation acts without regard to fiscal year limitations.

§ 101-21.003-2 Rent.

Rent means the rate charged for GSA-controlled space. GSA-controlled space is that space assigned to an agency by GSA by authority of the Federal Property and Administrative Services Act of 1949, as amended, or by authority of any other statute. It includes any space for which an agency pays GSA directly. The Rent charge approximates commercial charges for comparable space and services.

§ 101-21.003-3 Standard levels of service.

Standard levels of service means those services provided as part of the Rent charge, depending upon the type of space occupied, and as defined in Subpart 101-21.3 ad 101-20.1 of this part.

§ 101-21.003-4 Special services.

Special services means those services that are not included in the standard level of services but are provided by GSA on a reimbursable basis upon request.

§ 101-21.003-5 Space and services.

Space and services means the combination of space occupied and the related services provided for that space.

Subpart 101-21.1—General

§ 101-21.101 Background.

The principal intent of section 210(d) of the Federal Property and Administrative Services Act of 1949, as amended is to promote greater efficiency and effectiveness in the use and management of Government-owned and -leased space. To this end, the assessment of charges that approximate commercial rates for comparable space and services will stimulate efficient space utilization, induce performance budgeting through the more realistic reporting of program costs, provide the basis for a responsible landlord-tenant relationship between GSA and other agencies, and establish a sound financial structure for the acquisition, construction, repair, alteration, maintenance, protection, and operation of real property.

§ 101-21.102 Applicability.

Rules and regulations in this part 101-21 apply to all agencies assigned space by GSA.

Subpart 101-21.2—Rent

§ 101-21.200 General.

This subpart prescribes the policies and procedures governing the establishment of the Rent charge for space and services provided by GSA.

§ 101-21.201 Determination of rent.

(a) The Rent charge is established by GSA and approved by the Office of Management and Budget. The charge reflects approximate equivalent commercial rates for comparable space and services, and is based on the type, quality, and geographic location of the space provided. Rent charges are based on appraisals performed by professional appraisers every five years and updated in the intervening years by changes in the local Consumer Price Index (CPI). Adjustments for increases or decreases in service and utility costs in the area where the building is located are based on weighted averages of amounts expended by GSA.

(b) Rent charges for GSA-controlled space entering the inventory after budget estimates are provided to customer agencies, are developed by appraisal prior to the assignment of the space. Annual adjustments are made as previously explained in this section.

§ 101-21.202 Joint-use space.

In those buildings where GSA has assignment responsibility and there is joint-use space such as cafeterias, auditoriums, conference rooms, credit unions, visitor parking spaces not specifically assigned, and snack bars, each agency provided access to or use of the facilities occupying the joint-use space will be charged a pro rata share of the space costs based on the percentage of the space assigned.

§ 101-21.203 Exceptions.

In those buildings where GSA is responsible only for alterations, the charges for such alterations will approximate the cost incurred.

§ 101-21.204 Exemptions.

The Administrator of General Services may exempt any occupant from Rent if he determines that application of the charge would be infeasible or impractical. Requests for exemption must be made in writing to the Administrator.

§ 101-21.205 Space and services provided by other executive agencies.

Any executive agency other than GSA that provides to anyone space and services is authorized to charge the occupant for the space and services at rates approved by the Administrator of General Services.

§ 101-21.206 Revision of rent rates.

GSA will review Rent rates annually to insure that they approximate commercial rates. Rates will be revised according to the criteria described in § 101-21.201. GSA will not increase its rates without notification through the Budget Estimate process except in the case of gross errors. Even in this special case, affected agencies are entitled to an opportunity to budget for the increase, if the revised total Rent charge is higher than the amount shown initially in the budget estimate. Eighteen months notice is generally given for an agency to budget for the increased Rent charges.

§ 101-21.207 Annual projections.

Annual projections of space assignments and related services are prescribed to provide occupant agencies with accurate data necessary for budget submission. Procedures for annual projections are described in § 101-21.601.

Subpart 101-21.3—Standard Levels of Service

§ 101-21.300 General.

The levels of service included in Rent approximate those currently furnished in commercial practice. They are based on the effort required to service the occupant agency's space for a 5-day week (Monday to Friday), one-shift regular work schedule. Adequate building start-up services before the occupant agency starts the regular work schedule and shutdown services after the occupant agency ceases the regular work schedule, even though the working hours of the occupant agency may be staggered, will be provided by GSA. Space, automatic elevator systems, lights and small office and business machines may be used on an incidental basis 24 hours a day, 7 days a week without additional payment to GSA where access by the occupant is available without additional cost to GSA.

§ 101-21.300-1 Flexitime.

Occupant agencies who extend their regular work schedule by a system of flexible hours shall reimburse GSA for the actual cost of the additional services required.

§ 101-21.301 Standard services for cleaning, mechanical operation, and maintenance.

Standard services for cleaning, mechanical operation, and maintenance shall be accomplished in accordance with the established GSA standards as cited in Subpart 101-20.1 of part 101.20 of this chapter.

§ 101-21.302 Other standard services.

GSA may provide additional services at appropriate levels and times that the Administrator of General Services determines to be necessary for efficient operations and proper servicing of space

under the assignment responsibility of GSA.

§ 101-21.303 Space exempted from the standard levels of service

The Administrator of General Services may exempt from the standard levels of service space for which, because of its limited square footage or functional use, application of the standard levels of service would be infeasible or impractical.

Subpart 101-21.4 Reimbursable Services.

§ 101-21.401 Special services.

Special services not included in the standard levels of service are provided by GSA on a reimbursable basis. Funds for reimbursable services should be included in occupant agency budget submissions.

§ 101-21.402 Services performed by other agencies.

Agencies occupying space under the assignment responsibility of GSA that perform or contract for services normally provided for in the Rent levied by GSA will be reimbursed by GSA for the actual cost of services performed.The amount of reimbursement will be limited to the cost of the services to GSA if GSA had provided them. Approval to perform or contract for such services must be obtained in advance from the appropriate GSA regional office.

Subpart 101-21.5—Funding Projects.

§ 101-21.501 GSA funding responsibility.

Projects for the construction or alteration of public buildings, or for the alteration of leased buildings, for which GSA is responsible will be financed from the Federal Buildings Fund.

§ 101-21.502 Funding responsibilities of other agencies.

(a) A department or agency may request an appropriation to cover the cost of the construction or acquisition of a facility defined as a public building in § 101–19.003–6 of this chapter when the Administrator of General Services has obtained the authorization therefor and concurs with the request, and approval has been given by the Office of Management and Budget. The construction or acquisition of the facility shall be performed by GSA.

(b) GSA shall, upon the request of a department or agency, construct, alter, or acquire buildings other than public buildings which are normally financed by other agencies upon condition that funds to cover the cost of the work shall be transferred or reimbursement shall be made to GSA.

(c) Each Federal agency shall be responsible for the financing of special use facilities and equipment not contemplated in the approved project.

Subpart 101-21.6 Billings, Payments, and Related Budgeting Information For Space and Services Furnished by the GeneralServices Administration

§ 101-21.600 Applicability.

These rules and regulations apply to GSA and all agencies furnished space and related services by GSA.

§ 101-21.601 Budgeting information for rent.

(a) GSA provides to agencies summary level and detailed documentation in support of budgetary information it submits for the space and related services it furnishes. The documentation identifies organizations and organizational elements by an agency and bureau code numbering system.

(b) Federal agencies that require relocation of other agencies because of expanding space needs are responsible for funding.

(1) Moving, telecommunications, and related costs incurred by GSA in relocating displaced agencies and,

(2) above standard alterations comparable to their previously occupied space on a square foot by square foot basis and,

(3) Rent charges in excess of the amount budgeted by the displaced agency until such time (no more than 18 months) as the agency has had an opportunity to budget for the increase.

§ 101-21.602 Billing procedures for rent charges.

(a) Bills for Rent are normally rendered to the Central Office headquarters of each agency occupying space under the assignment responsibility of GSA. Under the OPAC (On-Line Payment and Collection), formerly SIBAC (Simplified Intragovernmental Billing and Collection) system, payment is to be processed at the level of organization within an agency which relates to a Treasury Department 8-digit station symbol. (Forms with references to SIBAC will continue to be used until stock is depleted.)

(b) Bills for charges applicable to current space assignments are rendered quarterly at the beginning of the quarter. The billing includes adjustments for billing errors and changes in space assignments made prior to or during the previous quarter. Documentation delineating billing errors and changes in space assignments are provided with bills.

(c) Agencies which have been assigned an 8-digit station symbol by the Treasury Department (OPAC agencies) are billed in accordance with the procedures prescribed by the Treasury Fiscal Requirements Manual, Part VI, Chapter 5000. Non-OPAC, designated as BOAC (Billed Office Address Code) agencies, are billed on GSA Form 789, Statement, Voucher, and Schedule of Withdrawals and Credits (referenced in § 101–2.4902–789 of this chapter).

§ 101-21.602-1 Billing credits.

If an error in billing occurs, an adjustment may be requested through the applicable GSA Regional Office by letter, by GSA Form 2972 for OPAC Agencies, or by GSA Form 2992 for BOAC agencies. GSA applies a one year limitation standard to adjustment requests received by letter or by GSA Form 2972 or 2992. Adjustment requests must be received within one year from the date of the Rent bill.

§ 101-21.603 Budgeting information for reimbursable charges.

Concurrently with the Rent listings for the applicable budget year, GSA provides an estimate of increases in the cost of recurring reimbursable services through the budget year based on projections provided by the Office of Management and Budget. These may be used to escalate actual costs from current year or preceding year data. The use of this information is not mandatory.

§ 101-21.604 Billing procedures for reimbursable charges.

(a) Charges for reimbursable services are billed to the level of organization within an agency which relates to a Department of the Treasury assigned 8-digit station symbol (OPAC agencies). This is accomplished under the On-Line Payment and Collection (OPAC) procedure. (See Treasury Fiscal Requirements Manual, Part VI, Chapter 5000.) BOAC (Billed Office Address Code) agencies are charged for reimbursable services by GSA billing directly to the agency paying office cited on the reimbursable work authorization request. (See § 101–21.4901–2957, GSA Form 2957, Reimbursable Work Authorization.)

(b) GSA Form 789, Statement, Voucher, and Schedule of Withdrawals and Credits is used for billing purposes for BOAC agencies. (See illustration at § 101–2.4902–789 of this chapter).

(c) Rates charged for recurring above-standard-level reimbursable services shall be fixed to recover the

approximate cost incurred by GSA in providing such services. Recurring above-standard-level reimbursable services are those recurring services, such as cleaning or utilities, which cannot readily be differentiated from the same type of services included in the standard level.

(d) The following basic types of reimbursable work are also performed by GSA but on an actual cost basis:

(1) Non-recurring services performed above standard levels of service, such as out-of-cycle painting;

(2) Recurring services not included in the standard level for which the actual cost can be readily identified;

(3) Repairs and alterations in buildings not controlled by GSA;

(4) Special space alterations and adjustments performed by GSA in GSA-operated buildings, which are requested and financed by other agencies in accordance with § 101–20.106, Reimbursable services of this chapter; and

(5) Services financed by other agencies but performed by GSA personnel on construction and alteration projects.

(e) GSA Form 2957, Reimbursable Work Authorization, must be completed and approved by GSA and the client agency before reimbursable work is begun. This authorization must describe the work or services ordered and include an estimate of the cost of the work described. Work authorizations must be signed by a responsible official capable of authorizing the obligation and committing the agency to payment of the charges, must contain a citation to the appropriation or funds to be charged, and must have a statement that funds in the amount of the stated estimate are available for immediate obligation for the requested work. GSA will make every effort to obtain approval and certification of additional funds before incurring any obligations in excess of the estimate except when:

(1) Total obligations are incurred against reimbursable work authorizations with a total authorized amount of $1,000 or less in an amount exceeding the authorized amount by up to $100 and;

(2) Total obligations are incurred against reimbursable work authorizations with an authorized amount in excess of $1,000 by up to 10 percent of the amount or $1,000, whichever is less, unless such action would result in the estimated maximum costs exceeding the prospectus limitation for the current fiscal year for which no specific congressional prospectus project approval or certification exempting the funds from section 7 of the Public Buildings Act of 1959, as amended, exists. However, failure of GSA to notify the agency that obligations will exceed the authorized amount, regardless of the dollar amount, does not relieve the agency of paying full actual costs.

(f) Bills for recurring above-standard-level services (identified by prefix "R" in the first position of the work authorization number on GSA Form 2957) are rendered in advance at a fixed-price equal to the estimated amount. This type of work authorization, with the right to cancel (subject to incurred costs and obligations) upon 60 days notice by either party must be completed and forwarded to GSA prior to the commencement of the period for which services are required. With the exception of recurring work authorizations for utilities, which GSA may limit to 3-month periods, each "R" type work authorization must authorize charges for the full period during the fiscal year that the services will be required. These work authorizations must always begin and end within the same fiscal year.

(g) Bills for all other reimbursable services are rendered quarterly in an amount equal to the obligations accumulated for the billing period. A final adjustment to actual cost will be made upon completion of the services.

(h) Agencies shall ensure that bills for special space alteration services ordered by them under provisions of § 101–20.106 shall be rendered by the contractor or lessor directly to the agencies' paying office. The agencies shall be responsible for timely payment and resolving any billing problems regarding orders they place under the contracts or agreements.

§ 101–21.605 Payment procedures.

Payment of billings for space and services to OPAC agencies shall be in accordance with the procedures prescribed by the Treasury Fiscal Requirements Manual, Part VI, Chapter 5000. Billings for space and services to BOAC agencies shall be paid promptly by check or transfer document upon receipt of the billing document, in accordance with the GAO Manual for Guidance of Federal Agencies, title 7, Fiscal Procedures, Ch. 2, Sec. 7.3(b).

§ 101–21.606 Reviews and appeals.

(a) Agencies may at any time request a regional review of the measurement, classification, service levels provided, or charges assessed that pertain to the space assignment without resorting to formal procedures. Such requests do not constitute appeals and should be directed to the appropriate GSA regional office.

(b) Agencies may file formal appeals on the Rent assessed, but only when the charge assessed is in excess of the comparable commercial square foot rates by 20 per cent or one dollar per square foot, whichever is greater, and when the quarterly Rent charge is in excess of the comparable commercial charge for that quality of space by $25,000. Formal appeals should be filed with the appropriate Regional Administrator. To determine if the Rent charge assessed is subject to appeal under this procedure, an agency is required to compare its assigned space with other space in the surrounding community that:

(1) is available in similar size blocks of space in a comparable location,

(2) is the same type of space as defined by GSA,

(3) provides similar service levels as part of the charges,

(4) contains similar contractual terms, conditions, and escalation clauses, and

(5) represents a lease transaction completed at a similar point in time.

Data from at least three comparable locations will be necessary to demonstrate a market trend sufficient to warrant revising a Rent rate. Agencies filing appeals must develop documentation supporting an appeal of the Rent charge assessed using the factors described in this paragraph.

(c) An appeal shall initially be filed by local agency officials with the appropriate GSA regional office and include all pertinent information and documentation supporting the need for the appeal. The GSA regional office will verify the data submitted and perform additional investigation as necessary. The GSA Regional Administrator will determine the validity of the appeal and will notify the appealing agency of his ruling.

(d) A further appeal may be filed by the agency's bureau level officials with the Commissioner, Public Buildings Service, GSA, if an equitable resolution has not been obtained from the initial appeal. The second stage appeal must provide supporting information justifying the continuation of the appeal.

(e) A head of an agency may further appeal to the Administrator of General Services only after the procedure to obtain prior resolution at the first two levels has been followed. Documentation of the procedure followed for prior resolution must accompany an appeal to the Administrator. Decisions made by the Administrator shall be final.

(f) Adjustments to the Rent rates which result from the reviews and appeals procedure will be effective in the quarter in which the agency submitted a properly documented appeal. Adjusted rates remain in effect for the remainder of the fiscal year.

(g) If an agency questions the rate developed for a specific building in the budget estimate, the appropriate GSA Regional Office should be contacted for information on the projected rate:

Note: If an informal resolution is not reached after discussions with the Regional Real Estate personnel, the agency may appeal the rate, provided the criteria for an appeal are met. The appeal may be filed, as outlined in paragraphs (b), (c), (d), and (e) of this section. The appeal documentation must include current-year information for comparable buildings. The Regional Office will provide the current year rate for the building in question.

Dated: August 26, 1992.

Richard G. Austin,

Administrator.

[FR Doc. 92-22847 Filed 9-28-92; 8:45 am]

BILLING CODE 6820-23-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 500, 514, 550, 552, 553, and 555

[Docket No. 92-34]

Domestic Offshore Financial Filing Regulations; Exemption Under Section 35 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("FMC" or "Commission") amends its regulations to remove certain financial filing requirements and auditing procedures for carriers in the domestic offshore trades. The rule also exempts non-vessel-operating common carriers ("NVOCCs") from the provisions of section 3 of the Intercoastal Shipping Act, 1933 ("1933 Act"). These amendments will reduce recordkeeping and other regulatory requirements.

EFFECTIVE DATE: September 29, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, (202) 523-5725.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking ("NPR") published in the **Federal Register** on June 12, 1992, 57 FR 25005, the Commission proposed to eliminate 46 CFR part 553, which prescribes the form and content of certain financial exhibits and schedules of NVOCCs in the domestic offshore trades and establishes the methodology that the Commission would follow in evaluating proposed rate changes submitted by such NVOCCs subject to the provisions of the 1933 Act, 46 U.S.C. app. 843 *et seq.* This part also provides for the retention and orderly acquisition of the data required for the methodology so established, and specifies that the Commission employ the operating ratio methodology when evaluating proposed rate changes by NVOCCs. Specifically, § 553.4 requires each NVOCC to maintain its records in such a manner as to permit the timely preparation of the exhibits and schedules filed in the event that the Commission institutes an investigation and hearing with respect to proposed rate changes.

Since the Commission has had no reason to institute an investigation and hearing with respect to an NVOCC's proposed rate change in the 14 years since the 1933 Act was amended to require such methodology guidelines, the NPR indicated that part 553 does not appear to be necessary and would seem to impose a recordkeeping burden on NVOCCs that outweighs any identifiable benefits. Accordingly, the Commission proposed to relieve NVOCCs from these recordkeeping requirements by terminating part 553.

As a corollary to removal of these recordkeeping requirements, the Commission also proposed to delete the guidelines for what constitutes a just and reasonable profit for NVOCCs, and exempt NVOCCs from the provisions of section 3 of the 1933 Act, 46 U.S.C. app. 845. Section 3 authorizes the Commission to suspend and investigate new and amended tariff matter filed by carriers, including NVOCCs, in the domestic offshore trades. Strict time limits are placed upon proceedings conducted under this section, and the carrier is required to refund any unsuspended portion of a general increase in rates found unjust and unreasonable. The Commission recognized that section 18 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 817, provides a continuing basis for investigating the reasonableness of NVOCC rates in the domestic offshore trades, without the strict time constraints (and consequent recordkeeping requirements) imposed by section 3 of the 1933 Act.

46 CFR part 555 pertains to audits and auditing procedures in the domestic offshore trades and to those carriers required to file periodic reports with the Commission pursuant to 46 CFR part 552.[1] Part 555 establishes rules governing audits by Commission auditors of the books and records of carriers engaged in the domestic offshore trades of the United States, and those required to file periodic reports with the Commission pursuant to part 552 of this chapter. Section 555.5 provides for the confidentiality of the information obtained by the Commission.

Since the Commission has not conducted any audits under part 555 in the past 15 years, it proposed its removal. The NPR noted that 46 CFR 552.4 provides the Commission with access to all financial documents, records and working papers used by a carrier in preparation of the financial reports and exhibits submitted to the Commission under 46 CFR part 552. Because 46 CFR part 552 does not provide for confidentiality as does 46 CFR part 555, the Commission also proposed to incorporate the confidentiality provisions of § 555.2 into 46 CFR 552.4.

Comments on the proposed rulemaking were filed by American President Lines, Ltd. ("APL"), Sea-Land Service, Inc. ("Sea-Land") and Tropical Shipping and Construction Co., Ltd. ("Tropical").

APL raises no objections to the proposals to eliminate parts 553 and 555, and supports the reincorporation of the confidentiality requirements into § 552.4(c). APL believes that the text of § 552.4(c) would be more accurately accommodated to the context of part 552 by deleting the words "or its duly accredited special agents or auditors as a result of an audit carried out." The carrier also points out the need for a conforming change to 46 CFR § 500.211, which contains a reference to part 555. The Commission concurs and has revised the text of § 552.4(c) accordingly. A conforming change to § 500.211 has been made in the final rule. A technical change also has been made to the authority cited for part 500.

Sea-Land supports the proposed amendments in this rulemaking to eliminate parts 553 and 555, the incorporation of the confidentiality provisions of part 555 into part 552, and the amendment of part 550 to exempt NVOCCs from the requirements of section 3 of the 1933 Act. It argues that the regulations to be eliminated or revised are overly burdensome and unwarranted. Sea-Land believes that the elimination of part 553, and the

[1] Part 552 contains the requirements for financial reports of vessel-operating common carriers ("VOCCs") in the domestic offshore trades.

PART 500—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 500 is revised to read as follows:

Authority: 18 U.S.C. 207, 208; 46 U.S.C. app. 1111; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., P. 215; E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 500.211 is revised, to read as follows:

§ 500.211 Release of confidential or nonpublic information.

An employee shall not divulge to any unauthorized person any nonpublic or confidential Commission document or information, including the results of portions of Commission meetings closed to the public pursuant to 46 CFR part 503, subpart H, and comments made, information divulged or memoranda prepared incidental to such closed meetings, except pursuant to the procedures of 5 U.S.C. 552, 552a and 552b and 46 CFR part 503 or as specifically directed by the Commission. Employees are also reminded of the provisions of § 552.4(c) of this chapter, which relate to confidentiality of information obtained in the course of official Commission audits, and which provide for penalties for disclosure of confidential information.

PART 514—TARIFFS AND SERVICE CONTRACTS

1. The authority citation for part 514 continues to read as follows:

Authority: U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–82, 103 Stat. 601.

2. Section 514.3 is amended by adding a new paragraph (a)(10) to read as follows:

(a) * * *

§ 514.3 Exemptions and exclusions.

* * * * *

(10) *NVOCCs in domestic offshore commerce.* Non-vessel-operating common carriers ("NVOCCs") providing transportation in domestic offshore commerce are exempt from the provisions of section 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 845, and thus, from the suspension provisions of § 514.19(a). The reasonableness of NVOCC rates in domestic offshore commerce may be determined under the provisions of section 18 of the 1916 Act, 46 U.S.C. app. 817.

* * * * *

PART 550—PUBLISHING, FILING AND POSTING OF TARIFFS IN DOMESTIC OFFSHORE COMMERCE

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. Section 550.1 is amended by adding a new paragraph (c) to read as follows:

§ 550.1 Exemptions.

* * * * *

(c) Non-vessel-operating common carriers ("NVOCCs") providing transportation in domestic offshore commerce are exempt from the provisions of section 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 845, and, thus, from the provisions of § 550.13 of this part. The reasonableness of NVOCC rates in domestic offshore commerce may be determined under the provisions of section 18 of the Shipping Act, 1916, 46 U.S.C. app. 817.

PART 552—FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

1. The authority citation for part 552 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a and 847.

2. Section 552.4 is amended by adding a new paragraph (c) to read as follows:

§ 552.4 Access to and audits of records.

* * * * *

(c) All information obtained by the Commission pursuant to the provisions of this part shall be withheld from public disclosure and shall be treated as confidential information in the files of the Commission; except that any confidential information derived from an audit may be utilized by the Commission as the basis for a formal proceeding instituted pursuant to section 22 of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933, and may also be utilized in such a proceeding.

PART 553—FINANCIAL EXHIBITS AND SCHEDULES OF NON-VESSEL-OPERATING COMMON CARRIERS IN THE DOMESTIC OFFSHORE TRADES

1. Part 553 is removed.

PART 555—AUDITS AND AUDITING PROCEDURES IN THE DOMESTIC OFFSHORE TRADES

1. Part 555 is removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–23234 Filed 9–28–92; 8:45 am]

BILLING CODE 6730–01–M

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46 CFR Part 542

[Docket No. 92–19]

Revision of Financial Responsibility Requirements for Non-Performance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission's final rule in this proceeding was published September 14, 1992 (57 FR 41887). The public reporting burden, which was estimated at page 41891, 1st column, line 4, to average "15.15 hours per response" is corrected to read "60.0 hours per response."

EFFECTIVE DATE: October 14, 1992.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, (202) 523–5796.

Joseph C. Polking,

Secretary.

[FR Doc. 92–23531 Filed 9–28–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[DA 92–1277]

Maritime Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order revises the performance standards for Global Maritime Distress and Safety System (GMDSS) radio equipment to reflect the latest international standards. Actual changes to the standards were minor or editorial in nature and should have minimal, if any, affect on subject equipment. It also clarifies the equipment authorization requirements under the GMDSS for existing emergency position-indicating radiobeacons operating on 406 MHz (406 MHz EPIRBs).

EFFECTIVE DATE: This regulation is effective as of September 29, 1992. The incorporation by reference of IMO

Resolution A.700(17) is approved by the Director of the Federal Register as of September 29, 1992.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632-7197.

SUPPLEMENTARY INFORMATION: The following Order, DA 92-1277, was adopted September 17, 1992, and released September 23, 1992, by delegated authority of the Chief, Private Radio Bureau.

List of Subjects in 47 CFR Part 80

Communications equipment, Incorporation by reference, Marine safety, Ship stations.

In the Matter of; Nonsubstantive and editorial amendments of Part 80, Subpart W of the Commission's Rules regarding the Global Maritime Distress and Safety System (GMDSS); Order

Adopted: September 17, 1992.

Released: September 23, 1992.

By the Chief, Private Radio Bureau.

1. On February 7, 1992, the Commission released a Report and Order that implemented the Global Maritime Distress and Safety System (GMDSS) in the Commission's Rules. Report and Order, PR Docket No. 90-480, FCC 92-19, 7 FCC Rcd 951 (1992), 57 FR 9063 (1992). At the same time, the International Maritime Organization (IMO) was updating the GMDSS performance standards in the Safety of Life at Sea (SOLAS) Convention. Additionally, the performance standards being considered by the Commission simultaneously were being reviewed by the **Federal Register** under special procedures for "incorporation by reference." Minor differences among the various documents resulted.

2. The international standards now have been updated and we have reviewed the status of all performance standards incorporated by reference in the Rules. Actual changes to the standards were minor or editorial in nature and should have minimal affect, if any, on subject equipment. Thus, 47 CFR 80.1101 is updated to be consistent with the latest international standards. For clarity § 80.1101 is revised in its entirety. The notable changes, however, are as follows: IMO Resolution A.700(17) is added to paragraph (c)(4) for MF/HF narrow-band direct-printing (NBDP) radio equipment; IMO Resolution A.698(17) replaces IMO Resolution A.608(15) in paragraph (c)(8) for INMARSAT-A ship earth stations (SESs); and the CCIR Recommendation 493-4 reference in paragraphs (c)(8) and (c)(9) is deleted for INMARSAT SESs.

3. On a related matter, we are also clarifying that emergency position-indicating radiobeacons operating on 406 MHz (406 MHz EPIRBs) that were authorized prior to April 15, 1992 (the effective date of the Report and Order) and meet the GMDSS performance standards are exempt from the GMDSS labeling requirement. They may be added to the list of GMDSS-approved equipment by simply submitting a letter. This provision for 406 MHz EPIRBs was stated in the text of the Report and Order but it was not reflected in the Rules. See Report and Order, footnote 39. Therefore, 47 CFR 80.1103 is amended to clarify this point.

4. Because the rule amendments adopted herein are nonsubstantive in nature, the notice and comment procedures and the 30 day effective date provisions of Section 553 of the Administrative Procedure Act, 5 U.S.C. section 553, need not be complied with. Authority for this action is contained in section 0.331(a)(1) of the Commission's Rules, 47 CFR section 0.331(a)(1).

5. Accordingly, part 80 is amended as set forth in the Amendatory Text effective upon publication in the **Federal Register**.

6. Regarding questions on matters covered in this document, contact Kathryn S. Hosford at 202-632-7197.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Amendatory Text

Part 80 of Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.1101 is revised to read as follows:

§ 80.1101 Performance standards.

(a) The abbreviations used in this section are as follows:

(1) International Maritime Organization (IMO).

(2) International Telegraph and Telephone Consultative Committee (CCITT).

(3) International Electrotechnical Commission (IEC).

(4) International Organization for Standardization (ISO).

(5) International Radio Consultative Committee (CCIR).

(b) All equipment specified in this subpart must meet the general requirements for shipboard equipment listed in this paragraph, which are incorporated by reference.

(1) IMO Resolution A.694(17), "General Requirements for Shipborne Radio Equipment Forming Part of the Global Maritime Distress and Safety System (GMDSS) and for Electronic Navigational Aids," adopted 6 November 1991.

(2) CCITT Recommendation E.161, "Arrangement of Figures, Letters and Symbols on Telephones and Other Devices that Can Be Used for Gaining Access to a Telephone Network," 1989.

(3) CCITT Recommendation Q.11, "Numbering Plan for the International Telephone Service," 1989.

(4) IEC Publication 92-101, "Electrical Installations in Ships," Third Edition 1980 with amendments through 1984.

(5) IEC Publication 533, "Electromagnetic Compatibility of Electrical and Electronic Installations in Ships," First Edition 1977.

(6) IEC Publication 945, "Marine Navigational Equipment," First Edition 1988.

(7) ISO Standard 3791, "Office Machines and Data Processing Equipment—Keyboard Layouts for Numeric Applications," First Edition 1976(E).

(c) The equipment specified in this subpart must also conform to the appropriate performance standards listed below which are incorporated by reference.

(1) *NAVTEX receivers*: (i) IMO Resolution A.525(13), "Performance Standards for Narrow-band Direct Printing Telegraph Equipment for the Reception of Navigational and Meteorological Warnings and Urgent Information to Ships," adopted 17 November 1983.

(ii) CCIR Recommendation 540-2, "Operational and Technical Characteristics for an Automated Direct-printing Telegraph System for Promulgation of Navigational and Meteorological Warnings and Urgent Information to Ships," 1990.

(2) *VHF radio equipment*: (i) IMO Resolution A.609(15), "Performance Standards for Shipborne VHF Radio Installations Capable of Voice Communication and Digital Selective Calling," adopted 19 November 1987.

(ii) CCIR Recommendation 493-4, "Digital Selective-calling System for use in the Maritime Mobile Service," 1990.

(3) *MF radio equipment*: (i) IMO Resolution A. 610(15), "Performance

Standards for Shipborne MF Radio Installations Capable of Voice Communication and Digital Selective Calling," adopted 19 November 1987.

(ii) CCIR Recommendation 493–4, "Digital Selective-calling System for use in the Maritime Mobile Service," 1990.

(4) *MF/HF radio equipment:* (i) IMO Resolution A.613(15), "Performance Standards for Shipborne MF/HF Radio Installations capable of Voice Communication, Narrow-band Direct Printing and digital Selective Calling," adopted 19 November 1987.

(ii) CCIR Recommendations 493–4, "Digital Selective-calling System for use in the Maritime Mobile Service," 1990.

(iii) CCIR Recommendation 625–1, "Direct-printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service," 1990. Equipment may conform to CCIR Recommendation 476–4, "Direct-Printing Telegraph Equipment in the Maritime Mobile Service," 1986, in lieu of CCIR Recommendation 625–1, where such equipment was installed on ships prior to February 1, 1993.

(iv) IMO Resolution A.700(17), "Performance Standards for Narrow-band Direct-printing Telegraph Equipment for the Reception of Navigational and Meteorological Warnings and Urgent Information to Ships (MSI) by HF," adopted 6 November 1991.

(5) *406 MHz EPIRBs:* (i) IMO Resolution A.611(15), "Performance Standards for Float-free Satellite Emergency Position-indicating Radio Beacons Operating on 406 MHz," adopted 19 November 1987.

(ii) IMO Resolution A.662(16), "Performance Standards for Float-free Release and Activation Arrangements for Emergency Radio Equipment," adopted 19 October 1989.

(iii) CCIR Recommendation 633–1, "Transmission Characteristics of a Satellite Emergency Position-indicating Radiobeacon (Satellite EPIRB) System Operating Through a Low Polar-orbiting Satellite System in the 406 MHz Band," 1990.

(iv) The 406 MHz EPIRBs must also comply with § 80.1061.

(6) *9 GHz radar transponders:* (i) IMO Resolution A.604(15), "Performance Standards for Survival Craft Radar Transponders for Use in Search and Rescue Operations," adopted 19 November 1987.

(ii) CCIR Recommendation 628–1, Technical Characteristics for Search and Rescue Radar Transponders," 1990.

(7) *Two-way VHF radiotelephone:* IMO Resolution A.605(15), "Performance Standards for Survival Craft Two-way VHF Radiotelephone Apparatus," adopted 19 November 1987.

(8) *INMARSAT–A SES:* IMO Resolution A.698(17), "Performance Standards for Ship Earth Stations Capable of Two-way Communications," adopted 6 November 1991.

(9) INMARSAT–C SES: IMO Resolution A.663(16), "Performance Standards for INMARSAT Standard–C Ship Earth Stations Capable of Transmitting and Receiving Direct-printing Communications," adopted 19 October 1989.

(10) *INMARSAT EGC:* IMO Resolution A.664(16), "Performance Standards for Enhanced Group Call Equipment," adopted 19 October 1989.

(d) The above-referenced documents have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Identification data and place to purchase for each of the above-reference documents are listed as follows:

(1) Copies of IMO Resolutions, the 1974 SOLAS Convention, and the 1983 and 1988 amendments to the 1974 SOLAS Convention can be purchased from Publications, International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

(i) IMO resolution A.525(13) is contained in the Resolutions and Other Decisions of the Assembly of the International Maritime Organization, 13th Session, 1983, (IMO, London, 1984), Sales Number 073 84.07.E.

(ii) IMO Resolutions A.604(15), A.605(15), A.610(15), A.611(15) and A.613(15) are contained in the Resolutions and Other Decisions of the Assembly of the International Maritime Organization, 15th Session, 1987, (IMO, London, 1988), Sales Number 130 88.03.E.

(iii) IMO Resolutions A.662(16), A.663(16) and A.664(16) are contained in the Resolutions and Other Decisions of the Assembly of the International Maritime Organization, 16th Session, 1989, (IMO, London, 1990), Sales Number 136 90.04.E

(iv) IMO Resolutions A.694(17), A.698(17), and A.700(17) can be ordered from IMO by requesting "A.694, A.698, or A.700(17) from the seventeenth session." IMO Resolutions A.694(17), A.698(17), and A.700(17) will be published in the Resolutions and Other Decisions of the Assembly of the International Maritime Organization, 17th Session, 1991.

(2) CCIR Recommendations, ITU Radio Regulations, and CCITT publications can be purchased from the International Telecommunications Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

(i) All CCIR Recommendations referenced in this Section are contained in Recommendations of the CCIR, 1990, Volume VIII, (ITU, Geneva, 1990), 92–61–0424104.

(ii) CCITT Recommendation E.161 is contained in CCITT Volume II—Telephone and Network ISDN—Operation, Numbering, Routing and Mobile Service, (ITU, Geneva, 1989), ISBN 92–61–03261–3.

(iii) CCITT Recommendation Q.11 is contained in CCITT Blue Book Volume VI, General Recommendation on Telephone Switching and Signalling, (ITU, Geneva, 1989), ISBN 92–61–03451–9.

(3) IEC Publications can be purchased from the International Electrotechnical Commission, 3 Rue de Varembe, CH–1211 Geneva 20, Switzerland, or from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036, telephone (212) 642–4900.

(4) ISO Standards can be purchased from the International Organization for Standardization, 1 Rue de Varembe, CH–1211 Geneva 20, Switzerland, or from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036, telephone (212) 642–4900.

(5) Copies of the publications listed in this Section that are incorporated by reference may be inspected at the Federal Communications Commission, 1919 M Street, NW., Dockets Branch (room 239), Washington, DC or at the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington DC.

3. Section 80.1103 is amended by revising paragraphs (a) and (e) to read as follows:

§ 80.1103 Equipment authorization.

(a) All equipment specified § 80.1101 must be type accepted in accordance with 47 CFR part 2 specifically for GMDSS use, except for equipment used in the INMARSAT space segment which must be type-approved by INMARSAT and notified in accordance with 47 CFR part 2 specifically for GMDSS use. The technical parameters of the equipment must conform to the performance standards as specified in § 80.1101. For emergency position-indicating radiobeacons operating on 406 MHz (406 MHz EPIRBs) that were authorized prior to April 15, 1992, and meet the requirements of § 80.1101, the manufacturer may attest by letter that the equipment (indicate FCC ID#) meets the requirements of § 80.1101 and

request that it be denoted as approved for GMDSS use.

* * * * *

(e) In addition to the requirements in part 2 of this chapter, equipment specified in § 80.1101 shall be labelled as follows: "This device complies with the GMDSS provisions of part 80 of the FCC Rules." Such a label is not required for emergency position-indicating radiobeacons operating on 406 MHz (406 MHz EPIRBs) that were authorized prior to April 15, 1992.

[FR Doc. 92-23517 Filed 9-28-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 591

[Docket 89-5; Notice 12]

RIN 2127-AD00

Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards

AGENCY: National Highway Traffic Safety Administration, (NHTSA), DOT.

ACTION: Technical amendment; final rule.

SUMMARY: This notice contains a technical amendment of the final rule published on September 29, 1989, which established requirements for the importation of motor vehicles and motor vehicle equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards. The amendment clarifies that vehicles, other than motorcycles, manufactured on and after January 1, 1968, and motorcycles manufactured on and after January 1, 1969, may be imported without the necessity of conformance to the safety standards if their date of entry is a date that is 25 years or more after their date of manufacture.

EFFECTIVE DATE: The amendment is effective January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, Washington, DC (202-366-5263).

SUPPLEMENTARY INFORMATION: This notice adopts a technical rule that conforms 49 CFR 591.5(i)(1) to the wording of 15 U.S.C. 1397(i).

Section 108(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397(i)), enacted in 1988 with other amendments pertaining to the importation of motor vehicles, exempts from the necessity of conformance to the Federal motor vehicle safety standards "any motor vehicle that is 25 or more years old." At the time the regulation implementing this exemption became effective, January 31, 1990, the safety standards for vehicles other than motorcycles had been in effect for less than 25 years, specifically, only 22 years, having become effective on January 1, 1968. Motorcycle standards became effective a year later. To avoid confusion concerning the importation of vehicles more than 22 years old, but less than 25 years old, the agency phrased the relevant regulatory language in terms of the dates that the safety standards became effective for motor vehicles. Importation without conformance was allowed upon the declaration that "The vehicle was manufactured before January 1, 1968, or if a motorcycle, before January 1, 1969." (49 CFR 591.5(i)(1), 54 FR 40069).

At that time, the agency noted that, after January 1, 1993, vehicles that were manufactured on or after January 1, 1968, will be relieved of the necessity to conform as they reach 25 years of age. The agency further noted that, during 1992, it would amended paragraph 591.5(i) to implement the 25-year old exclusion effective January 1,1993. NHTSA also noted that there were no comments from the public on this aspect of the importation regulation. Therefore, as it stated on September 29, 1989, the agency is adopting an appropriate amendment to implement this statutory provision.

Because the amendment is technical in nature and has no substantive impact beyond conforming the regulation to the Vehicle Safety Act, and because NHTSA advised the public in 1989 that it would make a conforming amendment in 1992, it is hereby found that notice and public comment thereon are unnecessary. The amendment is effective on January 1, 1993.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing part 591 of 49 CFR is amended as follows:

PART 591—[AMENDED]

1. The authority citation for part 591 continues to read as follows:

Authority: Pub. L. 100-562, 15 U.S.C. 1401, 1407; delegation of authority a 49 CFR 1.50 and 501.8.

2. Paragraph 591.5(i)(1) is revised to read as follows:

§ 591.5 Declarations required for importation.

* * * * *

(i)(1) The vehicle is 25 or more years old.

* * * * *

Issued on: September 16, 1992.

Marion C. Blakey,

Acting Administrator.

[FR Doc. 92-23518 Filed 9-28-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Endangered Status for Schwalbea Americana (American Chaffseed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the plant, *Schwalbea americana* (American chaffseed), a perennial herb of the figwort family (Scrophulariaceae), to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Twenty extant populations of *Schwalbea americana* are found in open pine flatwoods, savannas, and other open areas, in moist to dry acidic sandy loams or sandy peat loams in Florida, Georgia, Mississippi, New Jersey, North Carolina, and South Carolina. However, information received since publication of the listing proposal suggests that one of these populations in Florida may have been extirpated by residential development. The species is known historically from Alabama, Connecticut, Delaware, Kentucky, Maryland, Massachusetts, New York, Tennessee, and Virginia. The species is threatened by widespread habitat destruction due to development and from fire suppression, which allows invasion of vegetation that competes with *Schwalbea americana*. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for *Schwalbea americana*.

EFFECTIVE DATE: October 29, 1992.

ADDRESSES: The complete file for this species is available for inspection, by appointment, during normal business hours at the New Jersey Field Office, U.S. Fish and Wildlife Service, 927 N. Main Street, Bldg. D-1, Pleasantville, New Jersey 08232.

FOR FURTHER INFORMATION CONTACT: Dana M. Peters at the above address (telephone: 609/646-9310).

SUPPLEMENTARY INFORMATION:

Background

Schwalbea americana (American chaffseed), a perennial member of the figwort family (Scrophulariaceae), was described by Linnaeus in *Species Plantarum* in 1753, and named for Christian Georg Schwalbe, an eighteenth century botanical writer. Pennel (1935) recognized a southern and a northern species, *S. australis* and *S. americana* respectively. He distinguished *S. australis* by a pubescence of mostly upcurved hairs and leaves up to 1.5 cm (0.6 inches) wide, and *S. americana* by mostly recurved hairs and narrower leaves up to 1 cm (0.4 inches) wide or less. However, Fernald (1937) found characters of leaves and calyx lobes to vary over the total range so that recognition of two species was unwarranted. Following an examination of herbarium material, Musselman and Mann (1977) concurred that there was little taxonomic merit in recognizing more than a single species. Therefore, for the purposes of listing, *S. americana* and *S. australis* will be considered one species (*S. americana*) and will be referred to as the monotypic genus *Schwalbea*.

Schwalbea is an erect herb with unbranched stems or branched only at the base and grows to a height of 3 to 8 decimeters (12 to 31 inches). It is densely, but minutely hairy throughout, including the flowers. The leaves are alternate, lance-shaped to elliptic, stalkless, 2 to 5 cm (1 to 2 inches) long, and entire; the upper leaves are reduced to narrow bracts. Large, purplish-yellow, tubular flowers borne singly on short stalks in the axils of the uppermost, reduced leaves (bracts) form a many-flowered, spike-like raceme. The showy flowers have a high degree of bilateral symmetry elaborated for pollination by bees (Pennell 1935). The fruit is a long and narrow capsule, enclosed in a loose-fitting sac-like structure that provides the basis for the common name, chaffseed (Musselman and Mann 1978). Flowering occurs from April to June in the South, and from June to mid-July in the North (Johnson 1988). Fruits mature from early summer in the South to October in the North. *Schwalbea* is a hemiparasite, that is, a plant that is partially dependent on its host. Like most hemiparasitic Scrophulariaceae, it is not host specific, and its rarity, therefore, is not due to its preference for a specialized host.

Characteristically, the species occurs in sandy (sandy peat, sandy loam), acidic, seasonally moist to dry soils. It is generally found in habitats described as open, moist pine flatwoods, fire-maintained savannas, ecotonal areas between peaty wetlands and xeric sandy soils, and other open grass-sedge systems. On population, however, occurs in a heavy clay soil in a hayfield. *Schwalbea* is dependent on factors such as fire, mowing, or fluctuating water tables to maintain the crucial open to partly-open conditions that it requires. The species appears to be shade intolerant. Historically, the species existed on savannas and pinelands throughout the coastal plain and on sandstone knobs and plains inland where frequent, naturally occurring fires maintained these sub-climax communities. Under these conditions, herbaceous plants such as *Schwalbea* were favored over trees and shrubs. Most of the surviving populations, and the most vigorous, are in areas that are still subject to frequent fire. These fire-maintained habitats include plantations that are prescribed burned for management of quail and other game species, an army base impact zone that burns regularly because of live artillery shelling, forest management areas that are burned to maintain habitat for wildlife including the red-cockaded woodpecker, and various other private lands that are burned to maintain open fields. Fire may be important to the species in ways that are not yet documented or understood. Two small populations, one in New Jersey (along a roadside in Lebanon State Forests) and one in Mississippi (in a hayfield on the Noxubee National Wildlife Refuge) survive in frequently mowed areas that are not burned.

As indicated by Kral (1983), *Schwalbea* occurs in species-rich plant communities where grasses, sedges, and other colorful savanna dicots are especially numerous. One South Carolina population co-occurs with two other plant species being considered for listing under the Act, *Parnassia caroliniana* and *Eulophia ecristata* (Rawinski and Cassin 1986).

In 1986 the Fish and Wildlife Service (Service) contracted with The Nature Conservancy's Eastern Regional Office to conduct status surveys for *Schwalbea* (Rawinski and Cassin 1986). More recently The Nature Conservancy's New Jersey Field Office prepared an Element Stewardship Abstract for *Schwalbea* (Johnson 1988). Based on these reports and additional input from various sources in the respective States, it is known that the species occurred historically in 15 States including Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maryland, Massachusetts, Mississippi, New Jersey, New York, North Carolina, South Carolina, Tennessee, and Virginia at a total of approximately 78 sites. One historic record from Louisiana is considered erroneous (Annette Parker, Louisiana Heritage Program, *in litt.*, 1986). Today, 20 populations of the species are known, including: one on the Lebanon State Forest in New Jersey (Burlington County), one on Fort Bragg, North Carolina (Hoke County), one on the Noxubee National Wildlife Refuge in Mississippi (Noxubee County), four on the Francis Marion National Forest in South Carolina (Berkeley and Charleston Counties), four on private land in Georgia (Baker and Dougherty Counties), two on private land in Florida (Gadsden and Leon Counties), and seven on private land in South Carolina (Berkeley, Horry, Jasper, Sumter, and Williamsburg Counties). According to a report received since publication of the proposed rule, one of the populations in Florida may have been recently extirpated by residential development (Loran Anderson, The Florida State University, *in litt.*, 1991), thus reducing the number of extant populations to 19. The species is extirpated from Alabama, Connecticut, Delaware, Kentucky, Maryland, Massachusetts, New York, Tennessee, and Virginia, 9 of the 15 states where it was historically reported. This plant, always considered rare, appears to have suffered a drastic decline in populations and range. The one small population in New Jersey is the only population north of North Carolina. Despite intensive searches of historic stations and potentially suitable habitat, this species remains very rare, and many historic populations are confirmed extirpated due to habitat destruction, mostly by development (Rawinski and Cassin 1986).

Federal consideration of this plant for listing began with acceptance by the Service of *Endangered and Threatened Plants of the United States* (Ayensu and DeFilipps 1978) as a listing petition within the context of Section 4 of the Act. This report recommended *Schwalbea americana* for "threatened status." The Service's subsequent actions in relation to the Smithsonian petition are explained in detail in the "Relationship to Petition Requirements' section of the February 21, 1990 (55 FR 6184) comprehensive plant notice of review.

Additional petition findings involving *Schwalbea* were published on January 20, 1984 (49 FR 2485), May 10, 1985 (50

FR 19761), January 9, 1986 (51 FR 996), June 30, 1987 (52 FR 24312), July 7, 1988 (53 FR 25511), December 29, 1988 (53 FR 52746), and April 25, 1990 (55 FR 17475). The Service published the proposed rule for this species on September 11, 1991 (56 FR 46277). That proposal constituted the Service's final finding on the petition, required by the Endangered Species Act.

Summary of Comments and Recommendations

In the September 11, 1991, proposed rule (56 FR 46277) and associated notifications, all interested parties were requested to submit factual reports or information by November 12, 1991, that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in The Horry Independent, The News, Sumter Item, The Albany Herald, The Fayetteville Observer, The Beaufort Gazette, The Macon Beacon, Gadsden County Times, Burlington County Times, and The News and Courier between September 25 and September 27, 1991, which invited general public comment. A total of 15 comments were received. One letter was from a private citizen in South Carolina who requested a public hearing to discuss concerns regarding the proposed listing and its potential curtailment of activities on private land. The Service contacted this citizen and provided further information on the species and on the Endangered Species Act. This citizen considered his concerns adequately addressed by this additional information and subsequently withdrew the request for a public hearing. One letter, from the Tennessee Valley Authority, requested additional locational information on the species, which the Service is addressing. One letter, from Burlington County in New Jersey, offered information on proposed highway improvements near the one extant New Jersey population. The remaining 12 letters, from The Pinelands Commission, U.S. Forest Service, The Florida State University, Florida Office of the Governor, Florida Game and Fresh Water Fish Commission, Florida Department of Agriculture and Consumer Services, Florida Natural Areas Inventory, The New Jersey Department of Environmental Protection and Energy, The Nature Conservancy (Mississippi Office), The Nature Conservancy (Georgia Field Office), the Center for Plant Conservation, and a private botanist known for his knowledge of the species supported the proposal. Comments updating the data presented in the Background of Summary of Factors Affecting the Species are incorporated in those sections of this final rule.

Further information received after the comment period provided reports of two additional locations for the species: one in Florida, and one in Georgia (Wilson Baker, Tall Timbers Research Station, Tallahassee, Florida, pers. comm., 1992). Since other recently received information suggests that another Florida population may have been extirpated, the total number of extant sites is now 19 or 20. Based upon available information on rarity and threats, the Service retains the position that *Schwalbea* is most appropriately designated as "endangered," as it is in danger of extinction in the foreseeable future.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Schwalbea americana* L. (American chaffseed) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Schwalbea has been and continues to be endangered by destruction and adverse alteration of its habitat. Since discovery of this species, 60 (three-fourths) of the known populations have been extirpated due to conversion of the habitat to residential and commercial purposes, incompatible agriculture and forestry practices, and succession of the vegetative community due to fire suppression. Sandy pineland communities where the species exists have proven to be especially vulnerable to development because soils are level, deep, and suitable for building sites. Also, many *Schwalbea* populations were or are very near the Atlantic Coast where development pressures are severe (Rawinski and Cassin 1986). Habitat destruction presently taking place on Cape Cod, Massachusetts exemplifies the situation throughout much of the range of *Schwalbea*. None of the 10 historic Massachusetts populations of this plant have been relocated and other potentially suitable habitat is being destroyed at a rapid rate. In Florida, four of the seven historic sites are confirmed extirpated because of habitat destruction (Rawinski and Cassin 1986). In New Jersey, a population was extirpated in 1988 by the construction of a street for new housing (David Snyder, New Jersey Natural Heritage Program, *in litt.*, 1988). Development was a factor in the demise of at least 15 other populations rangewide (Johnson 1988).

Current threats to extant populations include destruction of habitat due to development, agriculture, or forestry practices, succession of vegetation, and improper management that renders the habitat unsuitable. Impending development is an immediate threat to two of the extant populations in South Carolina, and a report received since the publication of the proposed rule states that a population in Florida may have been recently extirpated by residential development. Development or succession of habitat is a potential threat to four other populations on private land. Development adjacent to extant populations may also pose a threat since urbanization generally results in fire suppression and thus possible succession of field habitats. The threats due to fire suppression will be discussed in more detail under Factor E.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

One extant population has been adversely affected due to removal of plants by an employee of a botanical garden for transplanting to the garden. This population was also adversely affected by a local photography club that dug up plants to photograph them under studio conditions, and by careless photographers and onlookers who have trampled the site. Attention due to listing could result in further threats to accessible populations due to collection and trampling from curiosity seekers and vandals.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

In Mississippi, *Schwalbea* is not on an official list and there is no protection for the species.

In Georgia, *Schwalbea* is currently being proposed as endangered on the official State list. If this listing is completed, the species will receive protection under The Georgia Wildflower Preservation Act of 1973.

This Act prohibits digging, removal, or sale of State listed plants from public lands without the approval of the Georgia Department of Natural Resources. However, the four *Schwalbea* populations in Georgia are on private land and would not benefit from the protection of this Act. Three of these populations receive limited protection through voluntary, informal landowner agreements with The Nature Conservancy.

In South Carolina, *Schwalbea* is recognized as "of national concern" by the South Carolina Advisory Committee on rare, threatened, and endangered plants; however, this State offers no legal protection to recognized species.

In Florida, *Schwalbea* is listed as endangered by the State of Florida under the Preservation of Native Flora of Florida Act, Section 581.185–187, Florida Statute. This Act prohibits removal of State-listed plants from public lands or from private lands without written permission of thelandowners.

In North Carolina, *Schwalbea* is officially recognized as endangered. North Carolina General Statute 19–B, 202.12–202.19, provides State listed plants protection from intra-state trade without a permit, provides for monitoring and management of listed populations, and prohibits taking of plants without written permission of landowners.

In New Jersey, *Schwalbea* is listed as endangered on the Endangered Plant Species List authorized by the Endangered Plant Species List Act (N.J.S.A. 7:5C). This list provides recognition to listed plants, but does not provide regulatory protection to the species from collection, habitat loss, or degradation. The population in New Jersey occurs within the Lebanon State Forest and within the Pinelands Reserve. The State Forest does not provide any specific protection to the species. Pursuant to the policy to preserve, protect, and enhance the diversity of plant communities through regulation of development, the Pinelands Protection Act (N.J.S.A. 13:18–1 et seq.) states that no development within the Pinelands Reserve shall be carried out unless it is designed to avoid irreversible adverse impacts to the survival of populations of threatened or endangered plants listed therein. Despite the location of the New Jersey population within the Pinelands Reserve, it is still subject to severe adverse impacts. It is located next to a roadway in an area maintained by the highway department. This type of maintenance is exempt from the aforementioned protection of threatened or endangered species. Current management of this population consists of yearly mowing and is conducted through an informal agreement involving several parties, including the New Jersey Department of Environmental Protection and Energy, a local concerned botanist, a farmer who leases the State land supporting the population, and the Burlington County Highway Department. Protection of the site is inadequate. Vehicles routinely pull off of the road, damaging plants and disturbing the habitat. The New Jersey Office of Natural Lands Management is currently proposing to formalize an agreement with all involved parties to protect and properly manage this population.

Only North Carolina and Florida have legislation protecting *Schwalbea* from taking, and only New Jersey has some protection for the plant's habitat. The primary threat to *Schwalbea* is habitat destruction and lack of habitat management, therefore, existing legislation is inadequate.

E. Other Natural or Manmade Factors Affecting Continued Existence

As mentioned in Factor "A," fire or another suitable form of disturbance, such as well-timed mowing, is essential to maintain the sub-climax community where this species exists. Although corroborating research is lacking, botanists familiar with the species believe that *Schwalbea* may be adapted to a regular fire regime. Historically, naturally-occurring lightning-strike fires throughout *Schwalbea*'s range and more frequent burning, as practiced by pre-European human populations, maintained these conditions. These fires were possibly frequent enough that fuel did not accumulate and, thus, they were generally of low-intensity. Herbaceous species were favored over tree and shrub species and thrived in these conditions. With the general suppression of natural fires in this century, the habitat for this species has been greatly reduced. Without fire, open grass-sedge communities proceed through seral stages and become dominated by trees, shrubs and dense herbaceous growth that overtops *Schwalbea*. The species appears to be shade intolerant. If fire is suppressed for more than three years, the *Schwalbea* population declines as other species shade and out-compete it (Douglas Rayner, Wofford College, pers. comm., 1991). Without naturally occurring fires, management in the form of prescribed burns or mowing may be necessary to maintain the sub-climax community and perpetuate *Schwalbea* populations. However, excessive mowing or disturbance could eliminate populations, and there are questions concerning the optimal timing and frequency of burning or mowing. Further research on the effects of prescribed burning and mowing, and on soil moisture variation is needed to determine the best management techniques that will maintain viable populations of the species Also, research is needed to determine the extent and viability of seed banks for the species at historic locations.

Twelve of the 20 known populations of *Schwalbea* contain fewer than 100 plants with 6 of these populations having less than 20 plants. These isolated and critically small populations are highly vulnerable to extinction. Extreme isolation, whether by geographic distance, ecological factors or reproductive strategy, prevents the influx of new genetic material and can result in a highly inbred population with low viability or fecundity (Chesser 1983). In addition, current knowledge of the species biology and population dynamics is insufficient to assess whether *Schwalbea* could persist following a natural event such as drought or high-intensity fire.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Schwalbea americana* as endangered. The species is extirpated from over half of its historic range. Only 20, or possibly 19, populations, approximately one-fourth of the recorded historic populations, are known to persist. Existing populations are threatened by the continuation of fire suppression, development, and potential mismanagement of habitat. Specific habitat requirements and optimum management regimes are unknown; lack of such critical information greatly hampers efforts to protect and perpetuate this species. These factors support listing as an endangered species. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered critical habitat at the time the species is determined to be endangered or threatened. Designation of critical habitat is not prudent if one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification

of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

The Service finds that designation of critical habitat is not prudent for *Schwalbea americana* at this time because such designation will exacerbate threats from collecting and trampling. As noted under Factor "B", above, collecting and careless trampling by photographers have already adversely affected at least one population. The Act furnishes listed plants with very limited protection from take, prohibiting collection and harm only when plants are located on Federally administered lands or in situations where take is perpetrated in knowing violation of a State law or regulation. Only six *Schwalbea* populations are located on lands under Federal jurisdiction. Most populations are small to moderate in size and, therefore, even occasional collecting and trampling could exert significant adverse impacts on them. Publication of critical habitat descriptions and maps in the **Federal Register** could increase these threats to the survival of the species, overriding any protection that such designation might provide.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such activities are initiated by the Service following listing.

Conservation and management of *Schwalbea* will likely involve a combination of site protection through acquisition or landowner agreements and habitat manipulation to maintain early successional habitats. Listing *Schwalbea americana* will encourage research on critical aspects of its life history and population ecology, and the effects of fire, mowing and soil moisture variation on population establishment and maintenance. This information is necessary to determine the optimal timing and frequency of these management techniques.

The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat. If a proposed Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal actions that could impact *Schwalbea* include, but are not limited to, incompatible forestry and wildlife management practices, and construction of access roads to accommodate changes in military bombing practice areas on lands under Federal jurisdiction. The Service will work with the involved agencies to secure protection and proper management of *Schwalbea* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Rm 432, 4401 N Fairfax Dr., Arlington VA 22203–3507 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Dana M. Peters (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Scrophulariaceae—Snapdragon family:						
*	*	*	*	*	*	*
Schwalbea americana	American chaffseed	U.S.A. (AL, CT, DE, FL, GA, KY, MA, MD, MS, NC, NJ, NY, SC, TN, VA).	E	478	NA	NA
*	*	*	*	*	*	*

Dated: August 31, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–23580 Filed 9–28–92; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 57, No. 189
Tuesday, September 29, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560-AC63

1993 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Act of 1949 (1949 Act), as amended, requires the Secretary of Agriculture to implement an acreage reduction program (ARP) for upland cotton which will result in a ratio of carry-over to total disappearance of 30 percent. This proposed rule would amend the regulations to set forth the acreage reduction percentage for the 1993 crop of upland cotton.

DATES: Comments must be received on or before October 14, 1992, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), room 3090–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Minnie Tom H. Meyer, Fibers and Rice Analysis Division, USDA, ASCS, room 3754–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

In accordance with section 103B of the 1949 Act, an acreage reduction program (ARP) is required to be implemented for the 1993 crop of upland cotton if it is determined that the total supply of upland cotton, in the absence of an ARP, will be excessive, taking into account the need for an adequate carry-over to maintain reasonable and stable supplies and prices and to meet a national emergency.

Land diversion payments also may be made to producers of upland cotton, whether or not an ARP for upland cotton is in effect, if needed to assist in adjusting the total national acreage of upland cotton to desirable goals. If, at the time of final announcement of the ARP, the projected carry-over of upland cotton for the crop year is equal to or greater than 8 million bales, a paid land diversion shall be offered to upland cotton producers. A paid land diversion has not been considered because, given the existing supply/use situation, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (from 0 to 25 percent) to the upland cotton crop acreage base for the crop for each upland cotton-producing farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce upland cotton in excess of the permitted upland cotton acreage for the farm plus any upland cotton acreage planted in accordance with the flexibility provisions are ineligible for upland cotton loans and payments with respect to that farm.

If it is determined that an ARP for the 1993 crop of upland cotton is needed, a preliminary announcement of the ARP uniform percentage requirement (from 0 to 25 percent) must be made not later than November 1 of the calendar year preceding the year in which the crop is harvested. Not later than January 1 of the calendar year in which the crop is harvested, a final announcement of the ARP uniform percentage requirement must be made. Producers in early planting areas may elect to participate in the program on the terms of the ARP first announced for the crop, or as subsequently revised, if the Secretary determines that the procedures may be unfairly disadvantaged by the revision.

The ARP for the 1993 crop of upland cotton must be set at a level that will result in a ratio of carry-over to total disappearance of 30 percent, based on the most recent projection of carry-over and total disappearance at the time of announcement of the ARP. For the purposes of this provision, the term "total disappearance" means all upland cotton utilization, including total domestic, total export, and total residual disappearance.

Based on August 1992 supply/use estimates, ending stocks for the 1993 marketing year under a 5-percent ARP, a 10-percent ARP and a 15-percent ARP are 5.05 million bales, 4.80 million thousand bales and 4.55 million bales, respectively. Such ARP levels would result in ratios of carry-over to total disappearance of 0.309, 0.296 and 0.283, respectively. For the purposes of this proposed rule, these three ARP options will be considered. However, because of changes in the supply/use situation that may develop between now and November 1, the actual announced preliminary ARP may be different from the options discussed in this notice and may include a 0-percent ARP.

The estimated impacts of the ARP options are shown in the following table.

UPLAND COTTON SUPPLY/DEMAND ESTIMATES

Item	Option 1	Option 2	Option 3
ARP (%)	5	10	15
Participation (%)	88	86	84
Planted Acres (thousand)	13,500	13,100	12,700
Production (thousand bales)	17,400	17,000	16,600
Domestic Use (thousand bales)	9,850	9,800	9,750
Exports (thousand bales)	6,500	6,400	6,300
Ending Stocks (thousand bales)	5,050	4,800	4,550
Carry-over/Disappearance	0.309	0.296	0.283
Deficiency Payments ($ million)	1,046	949	854

Accordingly, comments are requested as to the 1993 acreage reduction percentage for upland cotton. The final determination of this percentage will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR 1413

Cotton, Feed grains, Price support programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by adding paragraph (a)(3)(iii) and revising paragraph (d)(3) as proposed at 57 FR 34090 (August 3, 1992), to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(3) * * *

(iii) 1993 upland cotton shall be within the range of 0 to 25 percent, as determined and announced by CCC;

* * * * *

(d) * * *

(3) Shall not be made available to producers of the 1993 crops of wheat, feed grains, rice and upland cotton.

* * * * *

Signed at Washington, DC on September 24, 1992.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–23662 Filed 9–25–92; 10:29 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–158–AD]

Airworthiness Directives; de Havilland, Inc., Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–7 series airplanes. This proposal would require an inspection to determine whether rivets securing the upper longeron in each inner nacelle were installed during production, and modification of the upper longerons, if necessary. This proposal is prompted by reports that four rivets securing the upper longeron in each engine inner nacelle may have been omitted inadvertently during production. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the engine nacelles.

DATES: Comments must be received by November 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airport Directorate, ANM–103, Attention: Rules Docket No. 92–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K, 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 15581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–158–AD." The postcard will be stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–7 series airplanes. Transport Canada Aviation advises that the manufacturer has indicated that four rivets securing the upper longeron in each engine inner nacelle may have been omitted inadvertently during production of certain de Havilland Model DHC–7 series airplanes. This condition, if not corrected, could result in reduced structural integrity of the engine nacelles.

De Havilland has issued Service Bulletin 7–54–9, dated February 29, 1980, which describes procedures for inspecting the engine nacelles to determine whether rivets that secure the upper longeron to each engine nacelle have been installed, and modification of the upper longerons (Modification No. 7/1707), if necessary. Modification No. 7/1707 encompasses the installation of four Jo-bolts in drilled holes in each inner nacelle upper longeron. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–91–10, dated May 10, 1991, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, revised all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection to detect missing rivets of the upper longeron in each inner nacelle, and modification of the upper longerons, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 4 de Havilland Model DHC–7 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $220. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 92–NM–158–AD.

Applicability: Model DHC–7 series airplanes; serial numbers 1 through 7, inclusive, and 9, 10, and 11; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the engine nacelles, accomplish the following:

(a) Within 6 months after the effective date of this AD, conduct an inspection to determine whether rivets that secure the upper longerons in each inner engine nacelle have been installed, in accordance with de Havilland Service Bulletin 7–54–9, dated February 29, 1980.

(1) If any rivets are missing, prior to further flight, accomplish Modification No. 7/1707, in accordance with the service bulletin.

(2) If all rivets are detected, no further action is required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–23565 Filed 9–28–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92-AWP-16]

Proposed Enlargement of the Riverside, CA 700 Foot Mean Sea Level (MSL) and Above Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to enlarge the 700 foot MSL and above Riverside transition area. This addition to the transition area would provide controlled airspace for aircraft executing a missed approach for the very high frequency omnidirectional-range B (VOR-B) standard instrument approach procedure (SIAP) to Riverside Muni Airport, CA.

DATES: Comments must be received on or before November 15, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 92-AWP-16, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, room 6W14, 15000 Aviation Boulevard, Lawndale, CA.

An informal docket may be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297-0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AWP-16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to enlarge the Riverside, CA 700 foot MSL and above transition area. This enlargement of the Riverside transition area would contain the holding pattern for aircraft executing the missed approach for the VOR-B SIAP. While most of the missed approach is contained in existing 700 foot MSL and above transition area, an additional area of approximately one mile by five miles is needed at the south end of the missed approach pattern to ensure containment. Transition areas are published in § 71.181 of FAA Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AWP CA TA Riverside, CA [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 34°10'00"N, long. 117°59'00"W; to lat. 34°10'00"N, long. 117°01'00"W; to lat. 34°00'00"N, long. 117°01'00"W; to lat. 33°42'30"N, long. 116°56'30"W; to lat. 33°38'00"N, long. 117°09'00"W; to lat. 33°43'00"N, long. 117°15'00"W; to lat. 33°43'00"N, long. 117°20'00"W; to lat. 33°42'00"N, long. 117°20'00"W; to lat. 33°42'00"N, long. 117°25'00"W; to lat. 33°39'00"N, long. 117°25'00"W; to lat. 33°39'00"N, long. 117°30'00"W; to lat. 33°46'00"N, long. 117°45'00"W; to lat. 33°56'00"N, long. 117°53'00"W; to lat. 33°56'00"N, long. 117°59'00"W, thence to the point of beginning.

That airspace extending upward from 1,200

feet above the surface bounded by a line beginning at lat. 34°30'00"N, long. 117°43'00"W; thence east along lat. 34°30'00"N, to the southeast boundary of V-21, thence along the southeast boundary of V-21 to long. 116°30'00"W, thence direct to lat. 34°40'30"N, long. 116°29'40"W; to lat. 34°30'00"N, long. 116°26'30"W; to lat. 34°16'00"N, long. 116°18'00"W; to lat. 33°30'00"N, long. 116°18'00"W; to lat. 33°30'00"N, long. 117°30'00"W; to lat. 33°39'00"N, long. 117°30'00"W; to lat. 33°46'00"N, long. 117°45'00"W; to lat. 33°56'00"N, long. 117°53'00"W; to lat. 33°56'00"N, long. 117°59'00"W; to lat. 34°10'00"N, long. 117°59'00"W; to lat. 34°10'00"N, long. 117°43'00"W; thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on August 20, 1992

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 92-23568 Filed 9-28-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AEA-03]

Proposed Alteration of Control Zone and Transition Area; Du Bois, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The FAA is proposing to alter the description of the Du Bois, PA, Control Zone and 700 foot Transition Area due to a review of air traffic control procedures in the area. Subsequent to the publication of the original proposal, the Du Bois Nondirectional Radio Beacon (NDB) has failed flight checks. This has resulted in the Du Bois NDB being removed from service permanently. The removal of this equipment and the termination of the proposed instrument approach procedure development necessitates a reduction in the 700 foot Transition Area northeast extension width described in the original proposal. This proposal would modify that amount of controlled airspace deemed necessary by the FAA to contain aircraft operating under instrument flight rules. This notice supersedes the original proposal in airspace docket number 90-AEA-03 which was originally issued on January 25, 1990.

DATES: Comments must be received on or before October 30, 1992.

ADDRESSES: Send comments on the rule in triplicate to: John W. Kies, Acting Manager, System Management Branch, AEA-530, Docket No. 90-AEA-03. F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commentors wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AEA-03". The postcard will be date/time stamped and returned to the commentor. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Control Zone and Transition Area established at Du Bois, PA, due to numerous revisions to air traffic control procedures in the area. The Control Zone and Transition Area descriptions were republished in §§ 71.171 and 71.181 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The Control Zone and Transition Area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that, when promulgated, this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is proposed to be amended as follows:

Section 71.171 Designation

* * * * *

AEA PA CZ Du Bois, PA [Revised]
Du Bois-Jefferson County Airport, Du Bois, PA (lat. 41°10'42"N., long. 78°53'56"W.)
Clarion, PA, VORTAC (lat. 41°08'46"N., long. 79°27'30"W.)
Du Bois ILS northeast course OM (lat. 41°13'11"N., long. 78°48'09"W.)
That airspace extending upward from the surface within a 4-mile radius of the Du Bois-Jefferson County Airport and within 2.6 miles each side of the Du Bois-Jefferson County Airport ILS localizer northeast course, extending from the 4-mile radius to 7.4 miles northeast of the OM and within 2.2 miles each side of the Clarion, PA. VORTAC 086° (T) 092° (M) radial, extending from the 4-mile radius zone to 20 miles east of the VORTAC and within 2.2 miles each side of a 242° (T) 248° (M) bearing from a point at lat. 41°10'30"N., long. 78°54'30"W., extending from said point to 4.8 miles southwest of said point.

* * * * *

Section 71.181 Designation

* * * * *

AEA PA TA Du Bois, PA [Revised]
Du Bois-Jefferson County Airport, Du Bois, PA (lat. 41°10'42"N., long. 78°53'56"W.)
Du Bois ILS localizer northeast course (lat. 41°10'28"N., long. 78°54'32"W.)
Du Bois ILS northeast course OM (lat. 41°13'11"N., long. 78°48'09"W.)
That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of the Du Bois-Jefferson County Airport and within 3.1 miles either side of the Du Bois ILS localizer northeast course extending from the 8.5-mile radius to 10 miles northeast of the OM.

* * * * *

Issued in Jamaica, New York, on September 19, 1992.

John S. Walker,

Acting Manager, Air Traffic Division.

[FR Doc. 92-23571 Filed 9-28-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

Temporary Importation Bonds; Anticipatory Breach, Assessment Amounts, Petitions for Relief

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to permit anticipatory breach and provide for early payment of liquidated damages in Temporary Importation Bond cases. It also proposes to amend the Regulations to permit assessment of liquidated damages in excess of double the duties in those cases where the district director requires extra bonding in order to protect the revenue and that the term "duties" for TIB bonding and assessment shall also include any applicable merchandise processing fees or harbor maintenance fees that otherwise would be charged on an entry for consumption. Finally, the document proposes to amend the Regulations to eliminate forwarding of petitions for relief in TIB cases to Customs Headquarters when the bond principal or surety is dissatisfied with the decision on the petition afforded by the district director, and provide for their processing in the same manner as other liquidated damages cases.

DATES: Comments must be received on or before November 30, 1992.

ADDRESSES: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202-927-0870.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS), merchandise may be entered under the terms of a Temporary Importation Bond (TIB) without the payment of duties if the merchandise is entered for a specific purpose enumerated in Subchapter XIII, HTSUS. Per U.S. Note 1 to Subchapter XIII, the merchandise is permitted to remain in the United States for a one-year period subsequent to the date of importation with a maximum of two one-year extensions allowed. Prior to the expiration of the bond period or any properly approved extension thereof, the merchandise must be exported or destroyed under Customs supervision. Failure to export or destroy in a timely manner results in the imposition of liquidated damages against the importer.

Instances arise where, after initiation of a TIB entry, the importer decides that the merchandise will remain in the United States in violation of the terms of the bond. Rather than wait for the one-year period to end and for liquidated damages to be assessed, importers have inquired as to the possibility of early payment of liquidated damages. Customs Regulations currently do not provide for an anticipatory breach of a TIB. Through this document, it is proposed to amend § 10.39 to permit said anticipatory breach and allow the importer to pay the full measure of liquidated damages and thereby close the bond. Through payment of the liquidated damages, the importer will waive his right to receipt of notice of a claim for liquidated damages pursuant to § 172.1(a) and concomitantly waive his right to file a petition for relief.

For TIB entries, the provisions of 10.31(f) require that a bond shall be given containing the conditions set forth in § 113.62 in an amount equal to double the duties which it is estimated would accrue (or such larger amount as the district director shall state in writing to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry or in an amount equal to 110 percent of the duties in the cases of samples used solely for taking orders, motion-picture advertising films and professional equipment and tools of trade. By contrast, under the provisions of 10.39(d)(1), if any article entered under Chapter 98, Subchapter XIII, HTSUS, has not been exported or destroyed in accordance with the regulations within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension), the district director shall make a demand in writing under the bond for the payment of liquidated damages equal to double the estimated duties applicable to such entry, unless a lower amount is prescribed by § 10.31(f).

On the one hand, § 10.31(f) empowers the district director to require a bond in excess of double or 110 percent of the duties, but the provisions of § 10.39(d)(1) only permit him to assess liquidated damages at double the estimated duties, 110 percent of the duties or such lower amount as prescribed by § 10.31(f). These regulations can provide anomalous results and inefficient protection of the revenue. Accordingly, this document proposes to amend § 10.39(d)(1) to permit, in the case of breach of a TIB, assessment of liquidated damages in an amount equal to double the estimated duties, 110 percent of the estimated duties or any different amount prescribed by § 10.31(f) rather than only a lower amount.

When a TIB entry is filed, no merchandise processing fees or harbor

maintenance fees are charged to the importer of record. However, section 111 of the Customs and Trade Act of 1990 (Pub. L. 101–382) amended 19 U.S.C. 58c(g) (the statute which requires payment of the merchandise processing fee) to provide that all administrative and enforcement provisions of the Customs laws and regulations, except those relating to drawback, shall apply with respect to any fee prescribed under section 58c(a) (which requires payment of the merchandise processing fee), and with respect to persons liable therefor, as if such fee is a customs duty. Any penalty which is expressed in terms of a relationship to the amount of the duty (e.g., liquidated damages expressed in terms of an amount equal to double the estimated duties due on an entry) shall be assessed as a multiple of the unpaid fee. Accordingly, when calculating the bond amount or the measure of liquidated damages for breach of a TIB, the amount of estimated duties should include duties plus the merchandise processing fees that would have been applicable to the entry had an entry for consumption been filed.

The provisions of the Harbor Maintenance Revenue Act of 1986 (Pub. L. 99–662) impose a harbor maintenance fee on any importers, exporters, and domestic shippers of commercial cargo who use any port. The language of the statute authorizing assessment of the harbor maintenance fee also notes that all customs administrative and enforcement provisions of law and regulation shall apply to the fee as though such was a customs duty. Section 4462(f)(1) of the statute indicates that "any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the value of the cargo."

As with the merchandise processing fee, any harbor maintenance fee which would otherwise be due and owing on an entry for consumption is not paid if a TIB entry is made. As with the merchandise processing fee, the unpaid harbor maintenance fee should be considered as part of the amount equal to estimated duties that would be chargeable had the merchandise which is the subject of the TIB been entered for consumption.

Accordingly, when calculating the bond amount or the measure of liquidated damages for breach of a TIB, the amount of estimated duties due should include duties plus the merchandise processing fees plus the harbor maintenance fees that would have been applicable to the entry had an entry for consumption been filed. This document proposes to amend § 10.31(f) and § 10.39(d)(1) to provide that the bond amount and the liquidated damages for breach of a TIB will include as appropriate, an amount equal to double or 110 percent of the estimated duties, fees and taxes due if the entry had been filed as a consumption entry.

Under the provisions of § 10.39(a) of the Customs Regulations, if there has been a default with respect to all the articles covered by the bond and a written petition for relief is filed timely, the regulations state that the petition "shall be transmitted to Headquarters, U.S. Customs Service with a full report of the facts, unless it is allowed by the district director in whole or in part in accordance with this regulation. * * *." This language noting referral to Headquarters is unique to TIB cases in which all the articles covered by the bond are in default and the district director allows no mitigation. In order to avoid confusion and simplify the processing of fines, penalties and forfeiture matters, the jurisdictional amount found in § 172.21 should govern review of all petitions. Accordingly, this document proposes to amend § 10.39(a) to remove the reference regarding referral of these petitions to Customs Headquarters.

Comments

Before making a determination in this matter, Customs will consider any written comments timely submitted. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC.

Regulatory Flexibility Act and Executive Order 12291

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Permitting anticipatory breach of Temporary Importation Bond provisions allows early removal of an otherwise outstanding contingent liability of an importer, while eliminating the requirement that petitions be decided at Customs Headquarters reduces delays in processing, both to the benefit of importers. As noted above, provisions relating to inclusion of the merchandise processing fee and the harbor maintenance fee are dictated by the provisions of the statute, and are not within agency discretion. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. Because the document does not meet the criteria for a "major rule" as specified in Executive Order 12291, no regulatory impact analysis has been prepared.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Surety Bonds.

Proposed Amendments

Accordingly, for the reasons set forth below, it is proposed to amend part 10, Customs Regulations (19 CFR part 10), as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation and relevant specific authority citations for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

2. It is proposed to amend § 10.31 by revising the first two sentences of paragraph (f) to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) With the exceptions stated herein, a bond shall be given on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to double the duties, including fees, which it is estimated would accrue (or such larger amount as the district director shall state in writing to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties, including fees, determined at the time of entry. * * *

* * * * *

3. It is proposed to amend § 10.39(d)(1) by removing the word "lower" and replacing it with the word "different" in the first sentence, and by adding a new second sentence to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(d)(1) * * * For purposes of this section, the term estimated duties shall include any merchandise processing fees and harbor maintenance fees applicable to such entry. * * *

* * * * *

4. It is proposed to revise the first sentence of § 10.39(e) to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(e) If there has been a default with respect to all the articles covered by the bond and a written petition for relief has been timely filed as provided in part 172 of this chapter, it shall be reviewed by the district director if the full amount of the claim does not exceed $100,000 and by the Director, International Trade Compliance Division, Customs Headquarters, if the full amount of the claim exceeds $100,000.

* * * * *

5. It is proposed to amend § 10.39 by redesignating paragraph (g) as paragraph (h) and add a new paragraph (g) to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(g) *Anticipatory breach.* If an importer anticipates that the merchandise entered under a Temporary Importation Bond will not be exported or destroyed in accordance with the terms of the bond, the importer may advise the district director in writing before the bond period has expired of the anticipatory breach. At the time of written notification of the breach, the importer shall pay to Customs the full amount of liquidated damages that would be assessed at the time of breach of the bond, and upon such notification and payment the entry will be closed and the bond will be cancelled. By this payment, the importer waives his right to receive a notice of claim for liquidated damages as required by § 172.1(a) of this chapter or to file any petition for relief on the matter.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 22, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-23491 Filed 9-28-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

The Army Privacy Program

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), DOD.

ACTION: Proposed rule revision.

SUMMARY: The Department of the Army proposes to revise 32 CFR part 505, The Army Privacy Program. This revision will shift responsibilities for Access and Amendment Refusal Authority to conform with the reorganization of the Department of the Army as a result of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, and other organizational realignments. It also establishes policy for the delegation of Access and Amendment Refusal Authority responsibilities, and the disclosure of records for agency use in litigation. It updates responsibilities for the Army Privacy Act Program.

DATES: Comments must be received on or before November 30, 1992.

ADDRESSES: Comments are to be submitted in writing only to: Director of Information Systems for Command, Control, Communications, and Computers, Attn: SAIS-IDP/Mr. Walker, Pentagon, Washington, DC 20310-0107.

FOR FURTHER INFORMATION CONTACT: Mr. William Walker, Office, Director of Information Systems for Command, Control, Communications, and Computers, Washington, DC 20310-0107, telephone (703) 614-3729.

EXECUTIVE ORDER 12291 This proposed revision has been reviewed under Executive Order 12291. This action is nonmajor meaning that the effect on the economy will be less than $100 million.

Regulatory Flexibility Act

This proposed revision has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (USC 601-612). This action will not have any adverse act on small entities. The primary purpose of the proposed rule is to revise the Army Privacy Program. There will not be any adverse effects on small businesses by the adoption of this revision to part 505.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, 32 CFR part 505 is amended as follows:

1. The authority citation for part 505 continues to read:

Authority: 5 U.S.C. 51a: DOD Directive 5400.11, June 9, 1982; and DOD Regulation 5400.11R, August 31, 1983.

2. In § 505.1, paragraphs (d)(1) and (2), (g) and (h) are revised to read as follows:

§ 505.1 General information.

* * * * *

(d) * * *

(1) The Director of Information Systems for Command, Control, Communications, and Computers (DISC4) is responsible for issuing policy and guidance for the Army Privacy Program in Consultation with the Army General Counsel.

(2) The Commander, U.S. Army Information Systems Command is responsible for developing policy for and executing the Privacy Act Program under the policy and guidance of the DISC4.

* * * * *

(g) *Access and Amendment Refusal Authority (AARA).* Each Access and Amendment Refusal Authority (AARA) is responsible for action on requests for access to, or amendment of, records referred to them under this part. The officials listed below are the only AARA for records in their authority. Authority may be delegated to an officer or subordinate commander. All delegations must be in writing. If an AARA's delegate denies access or amendment, the delegate must clearly state that he or she is acting on behalf of the AARA and identify the AARA by name and position in the written response to the requester. Denial of access or amendment by an AARA's delegate must have appropriate legal review. Delegations will not be made below the colonel (06) or GS/GM-15 level. Such delegations must not slow Privacy actions. AARAs will send the names, offices, telephone numbers of their delegates to the Director of Information Systems for Command, Control, Communications and Computers, HQDA, ATTN: SAIS-IDP, Washington, DC 20310-0107; and the Department of the Army Privacy Review Board, Crystal Square #1, Suite 201, 1725 Jefferson Davis Highway, Arlington, VA 22202.

(1) The Administrative Assistant to the Secretary of the Army (AASA) for records of the Secretariat and its serviced activities, to include the personnel records maintained by the General Officer Management Office, personnel records pertaining to Senior Executive Service Personnel serviced by the Office of the Secretary of the Army (ASA), and Equal Employment Opportunity (EEO) records from offices serviced by the OSA. The AASA will

also serve as AARA for those records requiring the personal attention of the Secretary of the Army.

(2) The Inspector General (TIG)—for TIG investigative records.

(3) The president or executive secretary of boards, councils, and similar bodies established by DA to consider personnel matters, including the Army Board of Correction of Military Appeals, for records under their purview.

(4) The Deputy Chief of Staff for Personnel (DCSPER)—for records of active and former non-appropriated fund employees (except those in the Army and Air Force Exchange Service, alcohol and drug abuse treatment records, behavioral science records, recruiting, Armed Services vocational Attitude Battery (ASVAB), equal opportunity, Junior Reserve Officers' Training Corps (ROTC), Senior ROTC Instructor, military academy cadet), selection, promotion, and reduction boards; special review boards; professional staff informational records; and entrance processing records (when records pertain to those not entering active duty).

(5) The Deputy Chief of Staff for Operations and Plans (DCSOPS)—for military police records and reports and prisoner confinement and correctional records.

(6) Chief of Engineers (COE)—for records pertaining to civil works (including litigation), military construction, engineer procurement, other engineering matters not under the purview of another AARA, ecology, and contractor qualifications.

(7) The Surgeon General (TSG)—for medical records, except properly part of the Official Personnel Folder (OPM/GOVT–1 systems of records).

(8) Chief of Chaplains (CCH)—for ecclesiastical records.

(9) The Judge Advocate General (TJAG)—for personnel records of the Army National Guard.

(11) Chief, Army Reserve (CAR)—for personnel records of Army retired, separated and reserve military personnel members.

(12) Commander, United States Army Material Command (USAMC)—for records of Army contractor personnel of USAMC.

(13) Commander, United States Army Criminal Investigation Command (USACIDC)—for criminal investigation reports and military police reports included therein.

(14) Commander, United States Total Army Personnel Command (PERSCOM)— for personnel and personnel related records of Army members on active duty and current Federal appropriated fund civilian employees. (Requests from former civilian employees to amend a record in an Office of Personnel Management (OPM) system of records, such as the Official Personnel Folder, should be sent to the Office of Personnel Management, Assistant Director for Workforce Information, Compliance, and Investigations Group, 1900 E Street, NW, Washington, DC 20415–0001).

(15) Commander, United States Army Community and Family Support Center (USACFS)—for records relating to morale, welfare and recreation activities, community life programs, family action programs, retired activities, club management, Army emergency relief, consumer protection, retiree survival benefits, and records dealing with DA relationships and social security, veterans' affairs, United Service Organizations, U.S. Soldiers' and Airmen's Home and American Red Cross.

(16) Commander, United States Army Intelligence and Security Command (INSCOM)—for intelligence, investigative, and security records, foreign scientific and technological information, intelligence training, mapping and geodesy information, ground surveillance records, intelligence threat assessments, and missile intelligence data relating to tactical land warfare systems.

(17) Commander, Army and Air Force Exchange Service (AAFES)—for records pertaining to employees, patrons, and other matters which are the responsibility of the Exchange Service.

(18) Commander, Military traffic Management Command (MTMC)—for transportation records.

(19) Director of Army Safety—for safety records.

(20) Commander, United States Army Information Systems Command (USAISC)—for records which do not fall within the functional area of another AARA.

(h) *DA Privacy Review Board.* The DA Privacy Review Board acts on behalf of the Secretary of the Army in deciding appeals from refusal of the appropriate AARAs to amend records. Board membership is comprised of the AASA, the Commander, USAISC-Pentagon, and TJAG, or their representatives. The AARA may serve as a nonvoting member when the Board considers matters in the AARA's area of functional specialization. The Commander, USAISC-Pentagon chairs the Board and provides the recording secretary.

* * * * *

3. In § 505.3 revise paragraph (b) (10) and (11) to read as follows:

§ 505.3 Disclosure of personal information to other agencies and third parties.

* * * * *

(b) * * *

(10) *Disclosure to the Department of Justice for litigation.* Records may be disclosed as a routine use to any component of the Department of Justice when—

(i) The agency, or any component there, or

(ii) Any employee of the agency in his or her official capacity, or

(iii) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

(iv) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which it is collected.

(11) *Disclosure for agency use in litigation.* A record may be disclosed in a matter before a court or adjudicative body before which the agency is authorized to appear when—

(i) The agency, or any component there, or

(ii) Any employee of the agency in his or her official capacity, or

(iii) Any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee, or

(iv) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that their use of such records is relevant and necessary to the litigation, provided; however, that in each case, the agency determines that disclosure of the records to the court or adjudicative body is a use of the information contained in the records that is compatible with the purpose for which it is collected.

* * * * *

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–23545 Filed 9–28–92; 8:45 am]

BILLING CODE 3710–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[CFRL-4514-7]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, ICF, Inc., and its subcontractors: A.T. Kearney, Inc.; Booz-Allen & Hamilton, Inc.; DPRA, Inc.; Information Systems Solution International; SAIC, Inc.; and Westat, Inc., information which has been submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA) as amended. These firms will support the Office of Solid Waste by providing capacity analyses for the Land Disposal Restriction Phase II Final Rule. ICF, and its subcontractors, will review public comments received from the Land Disposal Restriction Phase II Proposed Rule. Some of the information that ICF will review is contained in Part B permit applications, RCRA Facility Asssessment Reports, including facility file information, photo logs, site inspection reports, RCRA Facility Investigation Reports, and applications for RCRA closure or post-closure permits under 40 CFR parts 264 and 270. ICF, and its subcontractors, will also review responses to RCRA 3007 questionnaires received from facilities that land dispose newly identified organic wastes. Some of the information may have a claim of business confidentiality.

DATE: Transfer of confidential data submitted to EPA will occur no sooner than October 6, 1992.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Comments should be identified as "Transfer of Confidential Data.".

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-3410.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The Environmental Protection Agency is in the process of analyzing data submitted by the regulated community for the Land Disposal Restriction Phase II Proposed Rule.

Under EPA Contract 68-W2-0008, ICF, and its subcontractors, will assist the Permits and State Programs Division by providing capacity analyses for the Land Disposal Restriction Phase II Final Rule. ICF, and its subcontractors, will review public comments received from the Land Disposal Restriction Phase II Proposed Rule, and will analyze the data submitted by the regulated community. Specific examples of some of the information ICF will review is contained in Part B Permit applications, RCRA Facility Assessment Reports, including facility file information, photo logs and site inspection reports, RCRA Facility Investigation Reports and applications for RCRA closure or post-closure permits under 40 CFR parts 264 and 270. ICF, and its subcontractors, will also review responses to RCRA 3007 questionnaires received from facilities that land dispose newly identified organic waste. The information being transferred to ICF, and its subcontractors, may have been or will be claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that ICF, and its subcontractors, require access to confidential business information submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials, ICF will return all such materials to EPA.

ICF, and its subcontractors, have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual". EPA will approve the security plans of the contractors to insure that their facilities comply with security procedures outlined in the security manual prior to RCRA CBI being transferred to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential business information.

Dated: September 18, 1992.

Richard J. Guimand,

Acting Assistant Administrator.

[FR Doc. 92-23603 Filed 9-28-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[AZ4-1-5263; FRL-4514-2]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Maricopa County Bureau of Air Pollution Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to grant conditional approval to four revised rules controlling volatile organic compounds (VOCs) and one revised rule concerning general provisions and definitions adopted on July 13, 1988 by the Maricopa County Bureau of Air Pollution Control (the Bureau) for inclusion in the Arizona State Implementation Plan (SIP). The Arizona Department of Environmental Quality (DEQ) submitted these revisions to EPA on January 4, 1990. The revisions concern Rule 100, General Provisions and Definitions; Rule 331, Solvent Cleaning; Rule 332, Perchloroethylene Dry Cleaning; Rule 333, Petroleum Solvent Dry Cleaning; and Rule 340, Cutback and Emulsified Asphalt. EPA has evaluated the revisions to these rules and is proposing a conditional approval under section 110(k)(4) of the Clean Air Act, as amended in 1990 (CAA or the Act), because the rules strengthen the SIP and the Bureau has committed to correct certain deficiencies in the rules which have been identified by EPA.

DATES: Comments must be received on or before October 29, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Southern California & Arizona Rulemaking Section (A-5-3), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of each rule revision and EPA's detailed Technical Support Document for each rule are available for public inspection at EPA's Region 9 office (address above) during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, Air Quality Planning Office, 2005 N. Central Avenue, Phoenix, AZ 85004.

Maricopa County Bureau of Air Pollution Control, 2406 S. 24th Street, Suite E214, Phoenix, AZ 85034.

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Southern

California & Arizona Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clear Air Act, as amended in 1977 (1977 CAA or pre-amended Act) that included Maricopa County. 43 FR 8964, 40 CFR 81.303. On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area of Maricopa County to the Maricopa Association of Government (MAG) Urban Planning Area. 44 FR 16391, 40 CFR 81.303. On February 24, 1984, EPA notified the Governor of Arizona that the Bureau's portion of the Arizona SIP was inadequate to attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone and requested that the State submit curative SIP revisions to EPA for approval (EPA's SIP-Call, 49 FR 18827, May 3, 1984). On May 26, 1988, EPA again notified the Governor of Arizona that the Bureau's portion of the Arizona SIP was inadequate to meet the ozone NAAQS and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, 53 FR 34500, September 7, 1988). On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Public Law 101–594, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas correct their deficient RACT rules and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The MAG Urban Planning Area is classified as a moderate nonattainment area [2]; therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline. The Bureau adopted the four VOC-controlling rules being proposed for conditional approval in this notice in July of 1988, and the Arizona DEQ, acting as the Governor's designee, submitted them to EPA on January 4, 1990 in response to the SIP-Calls. Although this submittal predates the amendments to the CAA, it also serves as a submittal predates the amendments to the CAA, it also serves as a submittal under section 182(a)(2)(A). At the same time as the state submitted the RACT corrections pursuant to the SIP call, the Arizona DEQ submitted a portion of its VOC rules, which it adopted in July of 1988, pertaining to general provisions and definitions. These new and amended definitions were not specifically a part of the SIP-Call and, therefore, are not part of the RACT fix-up requirement. However, because these definitions are integrally related to the other rules submitted by the State, EPA is proposing to conditionally approve this portion of the submittal in conjunction with the other rules as meeting the general RACT requirement.

The State of Arizona submitted several revised rules to EPA for incorporation into its SIP on January 4, 1990, including the rules proposed for action in this notice. This notice addresses EPA's proposed action for Rule 100, General Provisions and Definitions; Rule 331, Solvent Cleaning; Rule 332, Perchloroethylene Dry Cleaning; Rule 333, Petroleum Solvent Dry Cleaning; and Rule 340, Cutback and Emulsified Asphalt. The submitted rules were found to be complete on May 25, 1990 pursuant to EPA's completeness criteria adopted on February 16, 1990 and set forth in 40 CFR part 51, appendix V [3] and are being proposed for conditional approval.

Rule 100 is a general rule containing definitions that apply to all of the Bureau's rules. Rules 331, 332, 333, and 340 are rules that control volatile organic compounds (VOCs) from the cleaning (degreasing) of parts, from dry cleaning operations using perchloroethylene solvent, from dry cleaning operations using petroleum solvents, and from the use of asphalts, respectively. VOCs contribute to the production of ground level ozone and smog. Rules 331, 332, 333, and 340 were originally adopted as part of Maricopa's effort to achieve the NAAQS for ozone in the MAG Urban Planning Area and have been revised in response to EPA's SIP-Calls.

EPA Evaluation and Proposed Action

The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to EPA (January 4, 1990) and has determined that the Agency must apply the later amendments of the law to the revisions. Therefore, the Agency has reviewed this request for revision of the SIP for conformance with the CAA as amended November 15, 1990.

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Techniques Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs that apply to the four RACT rules follow:

Rule No.	CTG title	EPA number
331.....	Control of Volatile Organic Emissions from Solvent Metal Cleaning.	EPA–450/2–77–022

[1] 1. Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation, Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice (appendix D or the Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control techniques guidelines (CTGs).

[2] 2. Upon enactment of the CAA, the MAG Urban Planning Area continued as nonattainment for ozone pursuant to section 107(d) and classified as moderate by operation of law pursuant to section 181(a). See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

Rule No.	CTG title	EPA number
332	Control of Volatile Organic Emissions from Perchloroethylene Dry Cleaning Systems.	EPA–450/2–78–050
333	Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners.	EPA/450/3–82–009
340	Control of Volatile Organic Compounds from the Use of Cutback Asphalt.	EPA–450/2–77–037

Further interpretations are found in the Blue Book. In general these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The rules discussed below are being proposed for conditional approval under section 110(k)(4) of the CAA because they strengthen the SIP and the Bureau has committed to correct the identified appendix D and CTG deficiencies within one year after the date of publication of the Notice of Final Rulemaking.

Rule 100, General Provisions and Definitions

This rule applies to the entire SIP and provides the purpose of the regulations, legal authority and common definitions. The rules does not control VOCs directly but many definitions apply to VOC-controlling rules. The revision is a consolidation of several SIP rules, definitions and provisions. The rule has been strengthened for purposes of VOC emission control by (1) the inclusion of a prohibition against circumvention of the rules, (2) a statement that the lowest emission limit will apply when multiple limits apply, and (3) inclusion of requirements for recordkeeping and record retention. However, there are deficiencies which include unclear definitions and definitions which allow the use of non-EPA approved test methods.

Rule 331, Solvent Cleaning

This rule regulates VOC emissions from the use of solvents for cleaning or degreasing of parts or products. It has several appendix D deficiencies including lack of test methods for determining emission limits or alternate controls. However, the revised rule strengthens the existing SIP because (1) a lower limit has been placed on the cooling capacity of freeboard chillers; (2) a provision, recommended by the CTG, for a vapor level control safety switch on open top vapor degreasers has been added; and (3) regulations for small conveyorized degreasers have been added.

Rule 332, Perchloroethylene Dry Cleaning

This rule provides for the regulation of VOC emissions from dry cleaning operations using perchloroethylene. The proposed rule strengthens the existing SIP because, in contrast to the provisions in the existing SIP, the revised rule requires the control technology specified in the CTG including (1) a requirement to reduce perchloroethylene emission to 100 ppm, and (2) specified operating requirements. However, the rule also allows an alternative, potentially higher, emission level which is a deficiency. Other deficiencies are the lack of certain test methods and recordkeeping.

Rule 333, Petroleum Solvent Dry Cleaning

This rule regulates VOC emissions from dry cleaning operations using non-aqueous solvents other than perchloroethylene. The rule represents a strengthening of the SIP because it is consistent with most CTG provisions, in contrast to the existing SIP. The strengthening provisions include (1) enforceable operating requirements for controls for dryers, filters and recovery units, and (2) deletion of a solvent use cutoff which allows for exemption of certain facilities. The rule is deficient in that not all VOCs are regulated and certain test methods are missing.

Rule 340, Cutback and Emulsified Asphalt

This rule applies to the regulation of VOCs in asphalt materials by limiting the amount of petroleum solvents in the asphalt. This revision represents a strengthening of the SIP because it deletes a provision allowing for a winter season exemption for cutback asphalts. However, the rule is deficient because certain test methods are missing and the recordkeeping provisions do not apply to manufacturers of asphalts for roadways.

EPA has evaluated these five rules for consistency with EPA requirements and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules.

Although the approval of Maricopa's rules 331, 332, 333 and 340 will strengthen the SIP, these rules still contain deficiencies, identified above for each rule, which were required to be corrected pursuant to section 182(a)(2)(A) of the CAA. In addition, Rule 100 also strengthens the SIP. However, it also contains deficiencies that prevent EPA from determining that it meets RACT as it applies in conjunction with the submitted rules. Details of the evaluation and the deficiencies identified can be found in EPA's Technical Support Document for each rule.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a conditional approval under section 110(k)(4) based on a commitment by the Bureau to correct the rules within one year of the finalization of the conditional approval. The Bureau has committed to adopt final rules correcting the deficiencies within the required timeframe. The commitment letter contains a schedule of interim steps (with dates) for each rule. The State of Arizona has submitted the commitment letter to EPA. Therefore, EPA is proposing to give conditional approval to all five rules under section 110(k)(4) of the CAA.

Under section 110(k)(4), the Bureau must adopt the rules for which the State submitted a commitment within one year of EPA's final conditional approval of this action. In addition, the State must submit these rules to EPA within a reasonable time after such adoption. If the Bureau fails to adopt and the State fails to submit the rule revisions to EPA within this time frame, this approval will become a disapproval upon EPA notification of the State by letter. At that time, these rules will no longer be a part of the approved Arizona SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register.** If the Bureau adopts and the State submits these rules to EPA within the applicable time frame, the conditionally approved rules will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the submittal, the rules on which the conditional approval was based will also be disapproved at that time. If EPA approves the submittal, those newly approved rules will become a part of the SIP and will modify or replace the rules on which the conditional approval is based.

If the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. Under 179(a)(2), if the Administrator disapproves a submission

under section 110(k) for an area designated nonattainment, based on the submissions's failure to meet one or more of the elements required by the CAA, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA issues a finding of disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new improvements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register**, on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 31, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23602 Filed 9–28–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–68; Notice 02]

RIN 2127–AC64

Planning Document for Rollover Prevention Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of an agency planning document that describes NHTSA's multi-faceted rulemaking effort and planned and ongoing data analyses and physical research to address the problem of rollover crashes and their resulting injuries and fatalities. The agency seeks comments on the planning document. The comments will be evaluated and incorporated, as appropriate, into the activities planned by the agency.

DATES: Comments must be received no later than November 13, 1992.

ADDRESSES: Interested persons may obtain a copy of the planning document, free of charge, from NHTSA's Docket Section at the address below. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5219, 400 Seventh Street SW., Washington, DC 20590. Telephone: 202–366–4949. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Neill, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: 202–366–5281.

SUPPLEMENTARY INFORMATION: The Intermodal Surface and Transportation Efficiency Act of 1991 requires NHTSA to initiate rulemaking to address the problems of rollover crashes. In response to that mandate, NHTSA published an advance notice of proposed rulemaking on January 3, 1992 (57 FR 242) that summarized the statistics and research on rollover crashes, sought answers to several questions about vehicle stability and rollover crashes, and outlined possible regulatory and other approaches to reduce rollover casualties. These approaches included crash avoidance measures, crashworthiness measures, and public safety education. After reviewing the available data, research reports, and the public comments on the advance notice, the agency has concluded that the reduction of rollover casualties will necessitate a combination of regulatory and consumer information measures. NHTSA has concluded also that additional research and data analyses need to be conducted concerning these measures and has described these efforts in an agency planning document. These activities will enable the agency to assess the appropriate combination of approaches for addressing the injuries and fatalities from rollover crashes.

Issued on September 23, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–23528 Filed 9–24–92; 8:51 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB85

Endangered and Threatened Wildlife and Plants; Proposal To Establish an Experimental Nonessential Population of Whooping Cranes in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to reintroduce whooping cranes (*Grus americana*) in central Florida in the Kissimmee Prairie area. The

reintroduction is proposed to implement a primary recovery action for a federally listed endangered species, to obtain data for further assessing the suitability of Kissimmee Prairie of south central Florida as whooping crane habitat, and to evaluate the merit of releasing captive-reared whooping cranes, conditioned for wild release, as a technique for establishing a self-sustaining, nonmigratory population. The Service proposes that this reintroduced population be designated a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973 (ESA), as amended. An experimental population is treated as a threatened species for the purposes of sections 4(d) and 9 of the ESA, which prohibit certain activities involving listed species. Accordingly, a special rule for specifying circumstances under which "taking" of introduced whooping cranes will be allowed is being promulgated in conjunction with the nonessential, experimental population rule. No conflicts are envisioned between the whooping crane's reintroduction and any existing or anticipated Federal agency actions.

DATES: Comments from all interested parties must be received by October 29, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to Mr. David J. Wesley, Field Supervisor, at the address listed below. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Jacksonville Field Office, 3100 University Boulevard, South, Suite 120, Jacksonville, Florida 32216 (Phone: 904/232-2580).

FOR FURTHER INFORMATION CONTACT: (See **ADDRESSES** section above).

SUPPLEMENTARY INFORMATION:

Background

1. Legislative: The ESA amendments of 1982, Public Law No. 97-304, created a new Section 10(j), providing for the designation of specific introduced populations of listed species as "experimental populations." Under previous authorities in the ESA, the Service was permitted to reintroduce populations into unoccupied portions of the historic range of a listed species when it would foster the conservation and recovery of the species. Local opposition to reintroduction efforts, however, stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the ESA, severely handicapped the effectiveness of this as a management tool.

Under section 10(j), past and future reintroduced populations established outside the current range, but within the species' historic range, may now be designated, at the discretion of the Service, as "experimental." Such designations will increase the Service's flexibility to manage these reintroduced populations because such experimental populations may be treated as threatened species. The Service has more discretion in devising management programs for threatened species than for endangered species, especially on matters regarding incidental or regulated takings. Moreover, experimental populations found to be "nonessential" to the continued existence of the species in question are to be treated as if they were only proposed for listing for purposes of section 7 of the ESA, except as noted below.

A "nonessential" experimental population is not subject to the formal consultation requirement of section 7(a)(2) of the ESA, except that the full protection of section 7 applies to individuals of the experimental population found on a National Wildlife Refuge or National Park. Section 7(a)(1) of the ESA, requiring Federal agencies to carry out programs to conserve listed species, applies to all experimental populations. Individuals to comprise a designated experimental population can be removed from an existing source or donor population only after determining that such removal is not likely to jeopardize the continued existence of the species; a permit issued in accordance with 50 CFR 17.22 is also required.

2. Biological: The species included in this proposed rule is the whooping crane (*Grus americana*), listed as an endangered species on March 11, 1967 (32 FR 4001). The whooping crane is classified in the family Gruidae, Order Gruiformes. It is the tallest bird in North America; males approach 1.5 m. In captivity adult males average 7.3 kg and females 6.4 kg. Adult plumage is snowy white except for black primaries, black or grayish alulae, sparse black bristly feather on the carmine crown and malar region, and dark gray-black wedge-shaped patch on the nape. The bill is dark olive-gray which becomes lighter during the breeding season. The iris of the eye is yellow; legs and feet are gray-black.

Adults are potentially long-lived. Current estimates suggest a maximum longevity in the wild of 22 to 24 years (Binkley and Miller 1980). Captive individuals are known to have survived 27 to 40 years (McNulty 1966, Moody 1931). Mating is characterized by monogamous life-long pair bonds. Individuals remate following death of their mate. Fertile eggs are occasionally produced at age 3 years but more typically at age 4 (pers. comm., Ernie Kuyt 1991). Experienced pairs may not breed every year, especially when habitat conditions are poor. Whooping cranes ordinarily lay two eggs. They will renest if their first clutch is destroyed or lost before mid-incubation (Erickson and Derrickson 1981, Kuyt 1981).

Although two eggs are laid, whooping cranes infrequently fledge two chicks. Only about one of every four hatched chicks survives to reach the wintering grounds (U.S. Fish and Wildlife Service 1986).

The whooping crane first appeared in fossil records from the early Pleistocene (Allen 1952) and probably was most abundant during that two-million-year epoch. They once occurred from the Arctic Sea to the high plateau of central Mexico, and from Utah east to New Jersey, South Carolina, and Florida (Allen 1952, Nesbitt 1982). In the 19th century, the principal breeding range extended from central Illinois northwest through northern Iowa, western Minnesota, northeastern North Dakota, southern Manitoba, and Saskatchewan to the vicinity of Edmonton, Alberta. A nonmigratory breeding population still existed in southwestern Louisiana in the early 1900's (Allen 1952, Craft 1991).

Through the use of two independent techniques of population estimation, Banks (1978) derived estimates of 500 to 700 whooping cranes in 1870. By 1941, the migratory population contained only 16 individuals. The whooping crane population decline in the 19th and early 20th century was a consequence of hunting and specimen collection, human disturbance, and conversion of the primary nesting habitat to hay, pastureland, and grain production.

Allen (1952) described several historical migration routes. One of the most important led from the principal nesting grounds in Iowa, Illinois, Minnesota, North Dakota, and Manitoba to coastal Louisiana. Another went from Texas and the Rio Grande Delta region of Mexico northward to nesting grounds in North Dakota and the Canadian Provinces. A route through west Texas into Mexico probably followed the route still used by sandhill cranes. These whooping cranes wintered in the interior tablelands of western Texas and the high plateau of central Mexico.

Another migration route crossed the Appalachians to the Atlantic Coast. These birds apparently nested in the

Hudson Bay area of Canada. Coastal areas of New Jersey, South Carolina, and river deltas farther south were the wintering grounds. The latest specimen records or sighting reports for some eastern locations are Alabama, 1899; Arkansas, 1889; Florida, 1927 or 1928; Georgia, 1885; Illinois, 1891; Indiana, 1881; Kentucky, 1886; Manitoba, 1948; Michigan, 1882; Minnesota, 1917; Mississippi, 1902; Missouri, 1884; New Jersey, 1857; Ohio, 1902; Ontario, 1895; South Carolina, 1850; and Wisconsin, 1878; (Allen 1952, Burleigh 1944, Hallman 1965, Sprunt and Chamberlain 1949).

Atlantic coast locations used by whooping cranes include the Cape May area and Beesley's Point at Great Egg Bay in New Jersey; the Waccamaw River in South Carolina; the deltas of the Savannah and Altamaha rivers, and St. Simon's Island in Georgia; and the St. Augustine area of Florida. Gulf coast locations include Mobile Bay, Alabama; Bay St. Louis in Mississippi; and numerous records from southwestern Louisiana, where the last bird was captured in 1949. Coastal Louisiana contained both a nonmigratory flock and wintering migrants (Allen 1952).

"There is evidence to suggest that whooping cranes occurred in Florida, perhaps well into the 20th century" (Nesbitt 1982). Nesbitt described various sighting reports including one by O.E. Baynard, a respected field naturalist, who stated that the last flock of whooping cranes (14 birds) he saw in Florida was in 1911 near Micanopy, southern Alachua County. Two whooping cranes were reported east of the Kissimmee River on 19 January 1936 and a whooping crane was shot (and photographed) north of St. Augustine, St. Johns County, in 1927 or 1928 (Nesbitt 1982).

Records from more interior areas of the Southeast include the Montgomery, Alabama, area; Crocketts Bluff on the White River, and near Corning in Arkansas; in Missouri in Jackson County near Kansas City, near Corning, in Lawrence County southwest of Springfield, in Audrain County, and near St. Louis; and in Kentucky near Louisville and Hickman. It is unknown whether these records represent wintering locations, remnants of a nonmigratory population, or wandering birds.

Whooping cranes currently exist in two wild populations and at three captive locations. The only self-sustaining natural wild population nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of Wood Buffalo National Park. These birds winter along the central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge and adjacent areas. This population contained 132 whoopers in December 1991 and 33 pairs nested in 1991. The flock recovered from a population low of 16 birds in 1941. This population is hereafter referred to as the Aransas/Wood Buffalo National Park population (AWP).

The second wild flock consists of 12 individuals reared by wild sandhill cranes (termed cross-fostered because they are foster-reared by another species) in an effort to establish a migratory, self-sustaining population in the Rocky Mountains. The project began in 1975 with the transfer of wild whooping crane eggs from nests in Wood Buffalo National Park to the nests of greater sandhill cranes (*Grus canadensis tabida*) at Grays Lake National Wildlife Refuge in southeastern Idaho. The sandhill cranes became the foster parents to the whooping crane chicks and taught them the migration route which the parents traditionally followed. These birds spend the summer in Idaho, western Wyoming, and southwestern Montana and winter in New Mexico. From 1975 through 1988, 289 eggs were transferred (including 73 eggs from the captive flock at the Patuxent Wildlife Research Center), 210 hatched, and 85 chicks fledged. The population peaked at 33 birds in 1985 and has declined since then to 12 birds.

Dr. Edward O. Garton, biometrician at the University of Idaho, working with Dr. Rod Drewien the leader of the cross-fostering project (Garton et al. 1989), modelled the cross-fostered population to predict when it might become self-sustaining. In the model they assumed: (1) The cross-fostered females would be breeding at the same rate as the females in Canada; and (2) survival of birds in their first year would be similar to that of first year birds in Canada (Garton et al. 1989). Despite these optimistic and unrealized assumptions, with the future transfer of 30 eggs per year, the population would only reach 6 breeding pairs after 50 years. "It is obvious from all scenarios modelled that egg transplants of less than 30 eggs per year will not suffice to establish a self-sustaining population in a reasonable period of time. Natural breeding will be essential to establish a self-sustaining population" (Garton et al. 1989). The Idaho project is being phased out because these birds have never bred (perhaps due to improper sexual imprinting) and the mortality rate in this population has become too high to justify continuing egg transfer for cross-fostering. Fieldwork in the project ended in summer 1991, and during fiscal year 1992 project personnel will concentrate on finishing their final contract report.

The largest captive population of 38 birds greater than 1 year of age, including 8 productive pairs, is located at the Patuxent Wildlife Research Center (Patuxent) near Laurel, Maryland. Another 7 pairs at Patuxent should begin producing eggs in 1 to 5 years. This site is directly administered by the Service. A second captive flock containing 27 birds is maintained at Service cost at International Crane Foundation (ICF), a private foundation, near Baraboo, Wisconsin. The Wisconsin flock contains three experienced breeding pairs and another seven pairs which should enter production over the next one to five years. A subadult pair is maintained at the San Antonio Zoo in San Antonio, Texas. These birds are maintained at the expense of the zoo under supervision of the Service. An additional captive site is now under construction in Calgary, Alberta, Canada at the Calgary Zoo. The Calgary staff received training at ICF and Patuxent in 1991, will acquire avicultural experience with other crane species in 1992, and will receive the first whooping crane eggs or birds in 1993 provided from the Patuxent and ICF flocks and the wild flock in Canada.

Whooping cranes adhere to ancestral breeding areas, migratory routes, and wintering grounds, leaving little possibility of pioneering into new regions. The only self-sustaining wild breeding population can be expected to continue utilizing its current nesting location with little likelihood of expansion except on a local geographic scale. This population remains vulnerable to destruction through a natural catastrophe (hurricane), a red tide outbreak, or contaminant spill, due primarily to its limited wintering distribution along the intracoastal waterway of the Texas coast. The gulf Intracoastal Water Way (GIWW) experiences some of the heaviest barge traffic of any waterway in the world. Much of the shipping tonnage is petrochemical products. An accidental spill could destroy whooping cranes and/or their food resources. With the only breeding wild population so vulnerable, it is urgent that additional wild self-sustaining populations be established as soon as practical

3. Recovery Efforts: The first recovery plan developed by the U.S. Whooping Crane Recovery Team (Team) was approved January 23, 1980. It was revised December 23, 1986. The short-term goal is to downlist the whooping crane from the endangered category to

the threatened category. The criteria for attaining this downlisting goal is achieving a population level of 40 pairs in the AWP and establishing two additional, separate and self-sustaining, populations consisting of 25 nesting pairs each. The recovery plan recommends these goals should be attained for 10 consecutive years before the species is reclassified to threatened. These new populations may be migratory or nonmigratory.

In 1985, the Director-General of the Canadian Wildlife Service and the Director of the U.S. Fish and Wildlife Service signed a memorandum of understanding (MOU) entitled "Conservation of the Whooping Crane Related to Coordinated Management Activities". The MOU was revised and signed in 1990. It discusses disposition of birds and eggs, postmortem analysis, population restoration and objectives, new population site, international management, recovery plans, and consultation and coordination. All captive whooping cranes and their future progeny are jointly owned by the U.S. Fish and Wildlife Service and the Canadian Wildlife Service. Consequently, both nations are involved in recovery decisions.

4. Reintroduction Methodology and Site Selection Process: In early 1984, pursuant to the recovery plan goals and the recommendation of the recovery team, potential whooping crane release areas were selected in the eastern United States. At the time the prognosis was favorable for successfully establishing a western population by use of the cross-fostering technique. Consequently, key considerations in selecting areas to evaluate for the eastern release were (1) large areas of potentially suitable wetland habitat; (2) a health sandhill crane population sufficient to support recovery using the cross-fostering technique; (3) public and State agency support for such recovery effort in the release locale; (4) low-to-moderate levels of avian disease pathogens, environmental contaminants, and power lines; and (5) the potential of the habitats to simultaneously support whooping cranes and sandhill cranes.

The areas selected were the upper peninsula of Michigan and adjacent areas of Ontario, the Okefenokee Swamp in southern Georgia, and three sites in Florida. The Michigan site would potentially support a migratory population. The Georgia and three Florida sites would each support a nonmigratory population. The Michigan/Ontario wetlands are occupied by greater sandhill cranes that winter in Florida and the Okefenokee Swamp of Georgia. The wetlands in Georgia and Florida are occupied by the nonmigratory Florida sandhill crane (*G. c. pratensis*) and in winter by greater sandhill cranes which primarily nest in southern Ontario, Michigan, eastern Minnesota, and Wisconsin. Three-year studies were initiated at each site in October 1984 to evaluate their respective suitabilities.

Results of the studies were presented in written final reports to the U.S. Whooping Crane Recovery Team in fall 1987 (Bennett and Bennett 1987, Bishop 1988, McMillan 1987, Nesbitt 1988) and in verbal reports in February 1988. By 1988, the Team recognized that cross-fostering was not working to establish a migratory population in the West. The possibility of inappropriate sexual imprinting associated with cross-fostering, and the lack of a proven technique for establishing a migratory flock, influenced the team to favor establishing a nonmigratory flock. A ninmigratory population has several features which make it easier to achieve success: (1) Released birds do not face the hazards of migration (over one half of the losses of fledged, cross-fostered birds occurs during migration); and (2) released birds inhabit a more geographically limited area year-round than do migratory cranes, which increases the opportunity for birds to find a compatible mate.

Studies of whooping cranes (Drewien and Bizeau 1977) and greater sandhill cranes (Nesbitt 1988) have shown that migration in these cranes is learned rather than innate behavior. Captive-reared whooping cranes released in Florida are expected to develop a sedentary population.

In summer 1988 the Team selected Kissimmee Prairie as the area most suitable for the next experiment to establish a self-sustaining population. A suitable technique for release of whooping cranes in Kissimmee Prairie is the gentle release of captive-reared birds conditioned for wild release. Cranes are conditioned for wild release by being reared in isolation from humans, by use of nonspecific role models, puppets, and exercised by animal care personnel in bird costumes to avoid imprinting on humans. This technique has been successful in supplementing the population of endangered nonmigratory Mississippi sandhill cranes (*G. c. pulla*) (Zwank and Wilson 1987, Ellis et al. 1992). The term gentle release refers to retaining captive-reared birds in open-topped enclosures (conditioning pens) at the release site as they gradually adjust to their new surroundings. The enclosures contain some natural foods and water. Commercial foods are provided *ad libitum*. While in the conditioning pens, flight is restricted by the use of plastic brailes which preclude full wing extension. After several seeks the brailes are removed and the birds are allowed to fly from the pen. While the birds acclimate to their new freedom, commercial foods are continued in the pens for their use as needed.

The Service proposes to gentle release 9 to 12 juvenile whooping cranes on Kissimmee Prairie. If this proposed rule is made final, release may occur in November 1992. These birds will be captive-reared at Patuxent National Wildlife Research Center in Laurel, Maryland, and the International Crane Foundation in Baraboo, Wisconsin. They will be conditioned for wild release to increase post-release survival and their ability to adjust to wild foods. Birds will be double radio tagged and monitored for 2 years after release to discern movements, habitat use, other behavior, and survival. If results of this initial release are favorable, the releases will be resumed late in 1994 with the goal of releasing 20 birds annually for about 10 years.

The reintroduction is proposed for three purposes: (1) To implement a primary recovery action for a federally listed endangered species; (2) to obtain data for further assessing the suitability of Kissimmee Prairie of south central Florida as whooping crane habitat; and (3) to evaluate the suitability of releasing captive-reared whooping cranes, conditioned for wild release, as a technique for establishing a self-sustaining, nonmigratory population. Information on survival of released birds, movements, behavior, causes of losses, reproductive success, and other data will be gathered throughout the project. Project progress will be evaluated annually.

The likelihood of the releases resulting in a self-sustaining population is believed to be good (60–80%). Whooping cranes historically occurred in Florida and the release area habitat is similar to that which supported nesting whooping cranes in a nonmigratory population in Louisiana into the 1940's. The minimum goal for numbers of cranes to be released annually is based on the research of Griffith *et al.* (1989). As captive production increases, annual release numbers will be increased and, for a long-lived species like the whooping crane, continuing releases for a number of years increases the likelihood of reaching a population level which can sustain stochastic events. The rearing and release techniques have

proven successful in building the wild population of the endangered Mississippi sandhill cranes (*G. c. pulla*.)

Status of Reintroduced Population

The whooping crane population of Florida is proposed to be designated a nonessential experimental population according to the provisions of Section 10(j) of the ESA.

Being authorized for release as an "experimental population" means the reintroduced population will be treated as a threatened species rather than an endangered species. This designation enables the Service to develop special regulations for population management that are less restrictive than the mandatory prohibitions. Such special regulations can provide management flexibility when needed to make a reintroduction compatible with current or planned human activities in the release area. Per Section 4(d) of the ESA, these special regulations must be "necessary and advisable" to provide for the conservation of the whooping crane.

"Nonessential" experimental populations are not essential to the continued existence of the species. For purposes of Section 7 of ESA, they are treated as though they were only proposed for listing, except when occurring in an area of the National Wildlife Refuge System or the National Park System. This experimental population qualifies as being nonessential to the continued existence of the whooping crane because:

1. For the time being, the AWP and the captive populations will be the primary species population. This species has been protected against the threat of extinction from a single catastrophic event by gradual recovery of the AWP and by increase and management of the cranes at three captive sites. Loss of the experimental population will not jeopardize species' survival.

2. For the time being, the primary repository of genetic diversity for the species will be the approximately 200 wild and captive whooping cranes in the locations mentioned in (1) above. The birds selected for reintroduction purposes will be as genetically redundant as possible with the captive population, hence any loss of reintroduced animals in this experiment will not significantly impact the goal of preserving maximum genetic diversity in the species.

3. Any birds lost during the reintroduction attempt can be replaced through captive breeding or by transfer of eggs from the AWP. Eggs have been transferred to captivity from the AWP population for recovery purposes (building the captive flocks and the experimental wild cross-fostered population) since 1967. The AWP has continued to grow during this interval despite the egg transfers. Since 1985, biologists involved in the egg transfer have endeavored to ensure that one viable egg remains in each nest. Such egg switching within the Park provides infertile pairs the opportunity to raise a chick. These egg switches have increased flock growth and the potential for species recovery. In 1991 at least 33 wild pairs nested in Canada, another 7 experienced pairs failed to nest because of poor habitat conditions (drought), and other subadults might have initiated nesting if habitat conditions had been suitable. An increase in the breeding component of the wild flock is expected as soon as the drought ends on the nesting grounds. Within the captive population there also are a number of young pairs (16) expected to enter the breeding component of the population over the next 5 years. Such wild and captive flock increases illustrate the potential of the species to replace individual birds released in the reintroduction effort in Florida.

The hazards and uncertainties of the reintroduction experiment are substantial, but a decision not to attempt to establish a second, wild, self-sustaining population could be equally hazardous to survival of the species in the wild. The present tenuous status of the AWP, which could be annihilated by catastrophic events such as a Gulf coast hurricane or a contaminants spill on the wintering grounds, necessitate management efforts to establish an additional wild population. The Service believes three self-sustaining wild populations should be in existence before the whooping crane can be down listed to threatened status. The nonmigratory Florida population would potentially be the second such population. The site for the third population will be selected at a future date and, in part, will depend on the success of the Florida experiment. If the reintroduction effort at Kissimmee Prairie is successful, the conservation of the species will have been furthered considerably by not only establishing a second self-sustaining population, but by confirming that captive reared birds can be used to establish a nonmigratory wild population.

The area currently supports one of the largest and most consistently productive populations of Florida sandhill cranes in the State. The Florida sandhill crane is currently listed as threatened by the State (Florida Game and Fresh Water Fish Commission 1991). Additionally, the area supports populations of eastern indigo snake (*Drymarchon corais couperi*), bald eagle (*Haliaeetus leucocephalus*), snail kite (*Rostrhamus sociabilis*), red-cockaded woodpecker (*Picoides borealis*), American alligator (*Alligator mississippiensis*); Florida panther (*Felis concolor coryi*), and Florida grasshopper sparrow (*Ammodramus savannarum floridanus*), all of which are federally listed as endangered or threatened species. The whooping crane will be added to the State list of endangered species before the releases are initiated.

Location of Reintroduced Population

The Kissimmee Prairie is 1,200 square kilometers characterized by flat, open expanses of broad palmetto prairie interspersed with shallow wetlands and lakes. On private ranch lands much of the prairie has been converted to improved pasture. Land ownership includes eight large private ranches totaling 82,200 ha and seven public ownerships totaling 104,953 ha. Large private holdings range from 2,700 ha to 42,500 ha. Public lands range from 2,955 ha to 43,300 ha and include Three Lakes Wildlife Management Area (WMA) (22,400 ha), National Audubon Society Kissimmee Prairie Sanctuary (2,955 ha), Kicco WMA (3,100 ha), Bull Creek WMA (8,425 ha), Upper St. John's River WMA (24,800 ha), and Avon Park Bombing Range (43,300 ha).

Seventy percent of the primary proposed release site, Three Lakes WMA, is suitable crane habitat. Twenty-seven percent of this habitat is shallow wetlands characterized by pickerel weed (*Pontederia* spp.), nuphar (*Nuphar luteum*), and maiden cane (*Panicum hemitomon*). Fifty-five percent of the area consists of dry prairie and flatwoods with saw palmetto (*Serenoa repens*), various grasses, and scattered slash pine (*Pinus elliottii*) the characteristic vegetation. Lakes Kissimmee, Marion, and Jackson bound the Three Lakes WMA and each has an extensive wetland edge. Scattered strands of cypress (*Taxodium* spp.) are associated with these and several similar lakes in the area.

The principal private land use is livestock grazing and sod farming. Habitat is maintained in a subclimax state through controlled burning, primarily in winter and early spring. Areas are burned on a 2–3 year rotation. The public lands are managed for wildlife values, water conservation, and to maintain natural habitat conditions. Compared to other proposed release areas in Florida, the Kissimmee Prairie has experienced the least pressures associated with human population

growth over the past 30 years due to its distance from major population centers and the presence of large private and public land holdings.

Management

1. Monitoring

Whooping cranes will be intensively monitored by the Florida Game and Fresh Water Fish Commission (Commission) prior to and after release. The birds will be observed daily while they are in the conditioning pen. During the pre-release conditioning period, at least nine 30-minute time budgets will be collected on each individual (three from dawn to 1000 hours, three from 1000 to 1500 hours, and three from 1600 hours to dusk). Facilities for captive maintenance of the birds will be modeled after facilities at the Service's Patuxent Wildlife Research Center and the International Crane Foundation. They will conform to standards set forth in the Animal Welfare Act and Florida Wildlife Code (Title 39.6 F.A.C.). To further ensure the well-being of birds in captivity and their suitability for release to the wild, facilities will incorporate features of their natural environment (e.g., feeding, loafing, and roosting habitat) to the extent possible. The conditioning pens are similar to those being used successfully to release Mississippi sandhill cranes.

To ensure contact with the released birds, each crane will be equipped with two legband-mounted radio telemetry transmitters. Subsequent to gentle-release, the birds will be monitored daily to assess movements and dispersal from the area of the release pen. Whooping cranes will be checked daily for mortality or indications of disease (listlessness, social exclusion, flightlessness, or obvious weakness, etc.). Social behavior (e.g., pair formation, dominance, cohort loyalty) will also be evaluated.

A voucher blood serum sample will be taken for each bird upon its arrival in Florida. A second sample will be taken just prior to release. Any time a bird is handled after release a blood sample will be taken to monitor disease exposure, physiological condition, etc. One year after release all surviving birds will be captured and an evaluation made of their exposure to disease/parasites through blood, fecal, and other sampling regimens. Monitoring will continue for a second year and exposure to disease/parasites reevaluated at the end of the second year. Healthy birds still in the wild at the end of the second year will remain in the area. Additional releases will begin in 1994, if all conditions appear suitable. If these preliminary results are favorable, the releases will be continued annually beginning in 1994 with the goal of releasing 20 birds per year for about 10 years and then evaluating the success of the recovery effort.

2. Disease/Parasite Considerations

Both sandhill and whooping cranes are known to be vulnerable, in part or all of their natural range, to avian herpes (inclusion body disease), avian cholera, acute and chronic mycotoxicosis, Eastern equine encephalitis (EEE), and avian tuberculosis. Additionally, *Eimeria* spp., *Haemoproteus* spp., *Leucocytozoon* spp., avian pox, lead poisoning, and *Hexamita* sp. have been identified as debilitating or lethal factors in wild or pre-release, captive populations.

A group of crane veterinarians and disease specialists developed protocols for pre-release and pre-transfer health screening for birds selected for release to prevent introduction of diseases and parasites into Florida. Exposure to disease and parasites will be evaluated through blood, serum, and fecal analysis of any individual crane handled post release or at the regular monitoring interval. Remedial action will be taken to return to good health any sick individuals taken into captivity. Sick birds will be held in specially built facilities and their health and treatment monitored by University of Florida veterinarians. Special attention will be given to EEE because an outbreak at Patuxent Wildlife Research Center (Center) in 1984 killed 7 of 39 whooping cranes present at the Center. After the outbreak a vaccine was developed for use on captive cranes. In 1989, EEE was documented in sentinel bobwhite quail and sandhill cranes at the Center. No whooping cranes became ill and it appears the vaccine may provide protection. EEE is present in Florida so the released birds will be vaccinated. Other strains of encephalitis (St. Louis, Everglades) also occur in Florida. The vaccine for EEE may also provide protection against these arboviruses.

When appropriate, other avian species may be used to assess the prevalence of certain disease factors. This could mean using sentinel turkeys for ascertaining exposure probability to encephalitis or evaluating a species with similar food habits for susceptibility to chronic mycotoxicosis.

3. Genetic Considerations

The ultimate genetic goal of the reintroduction program is to establish wild reintroduced populations that embody the maximum level of genetic diversity available from the captive population. Early reintroductions will likely consist of a biased sample of the genetic diversity of the captive gene pool. This bias will be corrected at a later date by selecting and reestablishing breeding whooping cranes that theoretically compensate for any genetic biases in earlier releases.

4. Mortality

Although efforts will be made to reduce mortality, some will inevitably occur as captive-reared birds adapt to the wild. Collision with power lines and fences are known hazards to wild whooping cranes. There are no major power lines crossing the proposed release site. Three- and four-strand barbed wire fencing is used in conjunction with cattle ranching in the Kissimmee area and presents some collision hazard. If whooping cranes begin regular use of areas traversed by power lines or fences, the Service and Commission will consider placing markers on the obstacles to reduce the probability of collisions.

Bobcats are known predators of adult sandhill cranes and, along with Florida panther and alligators, would be potential predators of adult whooping cranes. Bald eagles, gray fox, bobcats, alligators, panthers, owls, and raccoons are potential predators of young cranes. Natural mortality from predators, fluctuating food availability, disease, wild feeding inexperience, etc., will be reduced through predator management, vaccination, soft release, supplemental feeding for a post-release period, and pre-release conditioning. Human-caused mortality will be reduced by information and education efforts directed at landowners and landusers, and review and management of human activities in the area.

5. Special Handling

Under the proposed special regulation, promulgated under authority of section 4(d) of the Act, that will accompany the experimental population designation, Service and Commission employees and agents would be authorized to relocate whooping cranes to avoid conflict with human activities; relocate whooping cranes that have moved outside the appropriate release area when removal is necessary or requested; relocate whooping cranes within the experimental population area to improve survival and recovery prospects; and aid animals which are sick, injured or otherwise in need of special care. If a whooping crane is determined to be unfit to remain in the wild, it would be returned to captivity. Service and Commission employees

would be authorized to salvage or dispose of dead whooping cranes.

6. Coordination With Landowners and Land Management Agencies

The proposed action is being coordinated with potentially affected State and Federal agencies, private landowners, and the general public. As previously noted, the Kissimmee Prairie includes 82,200 ha in private ownership and 104,953 ha in public lands. The primary proposed release area is 22,400 ha of public land. Private land managers were contacted and concur with or do not oppose the proposed action provided it does not interfere with existing lifestyles and current and potential income (Bishop, pers. comm.). The Commission manages wildlife management areas in the Prairie, has been actively involved as a cooperator in pre-release studies, and has actively endorsed the project. The Commission has stated whooping cranes will receive priority management decisions on Three Lakes WMA. The Director General of the Canadian Wildlife Service, a partner with the U.S. Fish and Wildlife Service as noted in the Memorandum of Understanding, has approved the proposed project. Florida Department of Natural Resources (Division of State Parks), National Audubon Society (Kissimmee Prairie Sanctuary), the Department of Defense (Avon Park Bombing Range), St. Johns Water Management District, and other entities have been informed of the proposed release and are aware of the possibility that whooping cranes may be introduced on or move to their project area.

7. Potential Conflicts

Conflicts have resulted when migratory birds have been hunted in areas utilized by whooping cranes. These have resulted from the hunting of sandhill cranes and snow geese (*Chen cerulescens*) which to novice hunters may appear similar to whooping cranes. At least two whooping cranes have been killed when they were mistaken for snow geese, and other whooping cranes have been wounded or shot at in areas where snow geese and sandhill cranes were being hunted. Sandhill cranes and snow geese are not hunted in this area of Florida. No conflicts with migratory bird hunting activities are anticipated.

Traditional hunting in the release area has been for deer (*Odocoileus virginianus*), turkey (*Meleagris gallopavo*), and small game. Conflict with traditional hunting in the release area is not anticipated. Access to some areas where whooping cranes might be particularly vulnerable to human disturbance (i.e., occupied nesting areas, conditioning pens, and critical feeding areas) will be prohibited at times, but such closures will be of short duration and they are not viewed as a source of conflict.

The principal activities on the private property adjacent to the release area are grazing and sod production. Use of these private properties by whooping cranes should not preclude such uses. Coordination with land managers may be necessary to accommodate certain land use activities (i.e., pesticide applications) and use by whooping cranes.

Requests by the public for an opportunity to view whooping cranes, a high profile endangered species, might create conflict on private land when whooping cranes are present. Commission personnel assigned to the Kissimmee Prairie area will be alert to activities of the public attempting to observe whooping cranes on private lands. If such activities begin to infringe on or become a nuisance to the rights of private property owners, the Commission and Service will take action to correct the situation. Commission plans to provide opportunity for the public to view whooping cranes on public property, away from sensitive areas, should reduce or eliminate this potential source of conflict.

Released whooping cranes might wander or migrate from the release site, moving into other states or other locations within Florida. The Service believes such movements are unlikely to occur outside Florida for the reasons mentioned below, but if they do the bird(s) will be recaptured and returned to the release site or to captivity. Likewise, any whooping cranes that wander to locations not conducive to the bird's health or safety will also be captured and moved. Studies of whooping cranes and greater sandhill cranes have shown that migration in these cranes is learned rather than innate behavior.

The cross-fostered whooping cranes in Idaho learned the migration route and wintering site preferences from their parents. An experiment in Florida tested whether captive-reared cranes, with an innate tendency to migrate, would migrate or remain sedentary when released in association with cranes that migrate. Greater sandhill cranes that nest in the Great Lakes States migrate to Florida for the winter. Eggs removed from this wild population were hatched and reared in captivity. The birds were released in Florida where they associated with wild nonmigratory Florida sandhill cranes and with wintering, migratory, greater sandhill cranes. The released birds noticeably expanded their localized movements during subsequent migration periods but remained year-round in the Florida release area. Captive-reared whooping cranes released in Florida are expected to develop a sedentary population.

8. Protection

Recently released whooping cranes will need protection from natural sources of mortality (predators, disease, inadequate foods, etc.) and from human-caused sources of mortality. Natural mortality will be reduced through pre-release conditioning, gentle release, vaccination, predator control, etc. Human-caused mortality will be minimized by placing whooping cranes in an area with low human population density and relatively low development; by working with and educating landowners, land managers, developers, and recreationists to develop means for conducting their existing and planned activities in a manner that is compatible with whooping crane recovery; and by conferring with developers on proposed actions and providing recommendations that will reduce any likely adverse impacts to the cranes.

Before releases are made within Florida, whooping cranes will be added to the list of endangered species provided protection by State law. Florida Wildlife Code, Title 39–27.002 General Prohibitions relative to endangered species states "No person shall pursue, molest, harm, harass, capture, possess, or sell any endangered species or parts thereof or their nests or eggs except as authorized by specific permit. . ."

A draft biological opinion, prepared on the proposed action to reintroduce whooping cranes into the Kissimmee Prairie, concluded that the proposed action will not jeopardize the species. A final biological opinion will be prepared on the final rulemaking.

9. Public Awareness and Cooperation

An extensive sharing of information about the program and the species, via educational efforts targeted toward the public in the region and nationally, will enhance public awareness of this species and its reintroduction. The public will be encouraged to cooperate with the Service and the Commission in attempts to maintain whooping cranes in the release area.

Public Comments Solicited

Comments or recommendations concerning any aspect of this proposed

rule are hereby invited (see "ADDRESSES" section) from State, public, and government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible. Final promulgation of a rule to implement this proposed action will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft environmental assessment as defined under the authority of the National Environmental Policy Act of 1969 has been prepared and is available to the public at the Service Office identified in the "ADDRESSES" section. This assessment will form the basis for deciding whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. The decision will be made before the final rule is published.

Required Determinations

The Service has determined that this is not a major rule as defined by Executive Order 12291 and that it would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). The rule as proposed does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The Service has also determined that this action would not involve any taking of constitutionally protected property rights that require preparation of a takings implication assessment under Executive Order 12630. The rule does not require a Federalism assessment under Executive Order 12612 since it would not have any significant federalism effects as described in the order.

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Authors

The principal authors of this rule are Dr. James Lewis, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Albuquerque, NM (Phone: 505/766–2914); Linda Finger, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Jacksonville, FL (Phone: 904/232–2580); and Steve Nesbitt, Biological Administrator I, Florida Game and Fresh Water Fish Commission, Gainesville, FL (Phone: 904/336–2230).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of Chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entry for "Crane, whooping" under BIRDS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS:							
Crane, whooping	*Grus americana*	Canada, U.S.A. (Rocky Mountains east to Carolinas) Mexico.	Entire, except where listed as an experimental population.	E	1,3	17.95(b)	NA
Do	do	do	U.S.A. Florida	XN		NA	17.84(h)

3. It is proposed to amend 50 CFR 17.84 by adding a new paragraph (h) as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(h) Whooping crane (*Grus americana*). (1) The whooping crane population identified in paragraph (h)(8) of this section is a nonessential experimental population.

(2) No person may intentionally take this species in the wild in the experimental population area, except as provided in paragraphs (h) (3) and (4) of this section.

(3) Any person with a valid permit issued by the Service under § 17.32 may take whooping cranes in the wild in the experimental population area for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, and other conservation purposes consistent with the Endangered Species Act and in accordance with applicable State fish and wildlife conservation laws and regulations.

(4) Any employee or agent of the Service or State wildlife agency who is designated for such purposes, when acting in the course of official duties, may take a whooping crane in the wild in the experimental population area if such action is necessary to:

(i) Relocate a whooping crane to avoid conflict with human activities;

(ii) Relocate a whooping crane that has moved outside the Kissimmee Prairie when removal is necessary or requested;

(iii) Relocate whooping cranes within the experimental population area to improve survival and recovery prospects;

(iv) Relocate whooping cranes from the experimental population area into captivity;

(v) Aid a sick, injured, or orphaned specimen; or

(vi) Dispose of a dead specimen, or salvage a dead specimen which may be useful for scientific study.

(5) Any taking pursuant to paragraphs (h) (3) and (4) must be immediately reported to the National Whooping Crane Coordinator, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (Phone: 505/766–2904), who, in conjunction with his counterpart in the Canadian Wildlife Service, will determine the disposition of any live or dead specimens.

(6) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species from the experimental population taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(7) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (h)(2) through (6) of this section.

(8) The geographic area that the nonessential experimental population may inhabit will include the entire State of Florida. The reintroduction site will be the Kissimmee Prairie portions of Polk, Osceola, Highlands, and Okeechobee counties. Current information indicates that the Kissimmee Prairie is within the historic range of the whooping crane in Florida. There are no other extant populations of whooping cranes that could come into contact with the experimental population. There are no other extant populations of whooping cranes that could come into contact with the experimental population. The only two extant populations occur well west of the Mississippi River. The Aransas/Wood Buffalo National Park population nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of the Wood Buffalo National Park, and winters along the Central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge. The other population, which was cross-fostered by wild sandhill cranes but has failed to reproduce, summers in Idaho, western Wyoming and southwestern Montana and winters in New Mexico. Whooping cranes adhere to ancestral breeding areas, migratory routes, and wintering grounds leaving little possibility that individuals from the two extant populations will stray into Florida. Studies of whooping cranes have shown that migration is learned rather than innate behavior. The experimental population proposed for release at Kissimmee Prairie is expected to remain within the prairie region of central Florida.

(9) The reintroduced population will be closely monitored during the duration of the projects by the use of radio telemetry. Any animal which is determined to be sick, injured, or otherwise in need of special care would be immediately recaptured by Fish and Wildlife Service and/or State wildlife personnel and given appropriate care. Such animals will be released back to the wild as soon as possible, unless physical or behavioral problems make it necessary to return them to a captive breeding facility.

(10) The status of the experimental population will be reevaluated periodically to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released on the area.

Dated: August 20, 1992.

John F. Turner,

Director, Fish and Wildlife Service.

[FR Doc. 92–23579 Filed 9–28–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 672 and 675

Groundfish of the Gulf of Alaska; and Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of amendments to fishery management plans; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 22 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 27 to the FMP for Groundfish to the Gulf of Alaska (GOA) for review by the Secretary of Commerce (Secretary). Comments are requested from the public. Copies of the amendments and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the FMP amendments should be submitted on or before November 9, 1992.

ADDRESSES: Comments on the FMP amendments should be submitted to Steven Pennoyer, Director, Alaska Region National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the amendments with the EA/RIR/IRFA are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fisheries Management Biologist, Alaska Region, NMFS at 907–586–7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires the Secretary, on receiving the plan or amendment, to immediately publish a notice that the plan or amendment is available for review and approval or disapproval. The Secretary will consider public comments received during the comment period in determining whether to approve the amendments.

If approved, the amendments would establish one trawl test area in the BSAI and two trawl test areas in the GOA for pelagic and bottom trawl fishermen to test their trawl fishing gear. These areas would be available when the BSAI or GOA is closed to trawling.

Regulations proposed by the Council to implement these amendments are scheduled to be published within 15 days of this notice.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 23, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–23530 Filed 9–23–92; 4:52 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 189
Tuesday, September 29, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee Working Group on Aquatic Biotechnology and Environmental Safety

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92-463, 86 Stat. 770-776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following meeting of a working group of the Agricultural Biotechnology Research Advisory Committee (ABRAC).

The Working Group on Aquatic Biotechnology and Environmental Safety will meet at 170 Hubert H. Humphrey Center, 301 19th Avenue South, University of Minnesota, Minneapolis, Minnesota on October 15, 1992 from 9 a.m. to approximately 4 p.m. The purpose of the meeting is to: (1) Initiate development of draft scientific criteria for performance standards for conducting research in contained facilities such as hatcheries, raceways, ponds, and cages with new lines of freshwater and marine fish, molluscs, and crustaceans, and (2) plan an interdisciplinary workshop of experts at which the draft standards will be reviewed and refined.

The meeting of the working group is open to the public. Persons may particiapte in the meeting as time and space permit.

Further information may be obtained from, and written comments may be sent to, Ms. Maryln Cordle, Senior Regulatory Specialist, Office of Agricultural Biotechnology, room 1001, Rosslyn Plaza East, 14th Street and Independence Avenue SW., Washington, DC 20250. Telephone (703) 235-1510.

Done at Washington, DC, this 9th day of September, 1992.

Duane Acker,

Assistant Secretary, Science and Education.

[FR Doc. 92-23577 Filed 9-28-92; 8:45 am]
BILLING CODE 3410-22-M

Forest Service

Exemption of Horn Salvage Timber Sale, Bug Out Salvage Timber Sale, Topple Salvage Timber Sale, Sheep Salvage Timber Sale, and Sufferin' Smith Salvage Timber Sale from Appeal, Wallowa-Whitman National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decisions to implement the Horn Salvage Timber Sale, Bug Out Salvage Timber Sale, Topple Salvage Timber Sale, (blowdown), Sheep Salvage Timber Sale, and the Sufferin' Smith Salvage Timber Sale located on the La Grande Ranger District of the Wallowa-Whitman National Forest are exempt from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342-3370.

EFFECTIVE DATE: September 29, 1992.

FOR FURTHER INFORMATION CONTACT: Bruce Kaufman, Timber Staff, Wallowa-Whitman National Forest, 1550 Dewey Avenue, Baker City, Oregon 97814.

SUPPLEMENTARY INFORMATION: A western spruce budworn epidemic began on the La Grande Ranger District in 1980. Within three years nearly all of the susceptible host type had become infested. Defoliation was especially severe from 1985 to 1987 and then again in 1989 and 1990. The many years of defoliation, combined with abnormally dry years, created conditions favorable for the increase in Douglas-fir bark beetle activity during the last three years. Much of the infestation is located on the west side of the La Grande District but has been slowly spreading onto the eastern side of the district over the last 3 years. The insect damage effects all resources, including vegetation, soils, and water.

In addition to the insect-related salvage, during the winter of 1991/92 parts of the La Grande Ranger District were hit by high intensity wind storms. Several areas suffered considerable damage to merchantable size timber. Most blowdown occurred adjacent to roads and in areas recently harvested in generally the northwest part of the district. The purpose of the Topple Salvage Timber Sale is to utilize the high value sawlog material that is not needed for resource protection before it deteriorates and loses its value.

The La Grande interdisciplinary team (IDT) and public comments received on the salvage program identified the need to salvage the dead and dying timber in as short a time as possible while the logs remain merchantable. Although the size of merchantable timber varies within the different areas, white fir averages 13 inches in diameter at breast height (DBH), Douglas-fir averages 14-16 inches DBH, and the other species average 10-12 inches DBH. Deterioration of the merchantability of insect infested or blowdown trees due to "checking" and sap rot is dependent on the tree species and the average diameter. In general, the smaller the diameter of the tree the more rapidly it will deteriorate. Bark beetle killed Douglas-fir trees of less than 14 inches DBH were generally not selected for harvest in any of these salvage sales because they would not remain merchantable long enough to harvest them.

During the summer of 1990 and continuing on into 1991, the La Grande IDT begin the process of scoping and analyzing the potential to salvage timber in all of the areas analyzed in the environmental assessments for the insect related salvage timber sales. Scoping for the Topple Blowdown Salvage was accomplished in 1992. After public meetings, press releases, and contacts with individuals and State and Federal agencies, major issues were identified for each of the environmental assessments. In many cases the major issues related to the insect epidemic and blowdown for the salvage of dead and dying timber in all of the project areas were quite similar with the few exceptions noted in the following description of each major issue:

1. Forest Tree Health—Overall forest tree health is very poor. What management practices would be utilized to modify, diversify, and rejuvenate the forested landscape in the project areas?

2. Riparian Habitat, Fish Habitat, and Water Quality—Any proposed activities

must protect riparian and fish habitat and water quality. Of particular concern are those areas that support or are like-habitat of the sensitive and threatened fish species identified on the La Grande River District.

3. Big Game/Wildlife Habitat—Due to the extensive nature of the insect infestation and past management practices on the District, wildlife habitat has been severely impacted in both the short and long term. What will be the effect or benefits of salvage and rehabilitation of these dead stands of timber on big game and wildlife habitat?

4. Economics/Cost Effectiveness—Any proposed harvest entry must be cost effective while protecting resource values. Salvage volume will be used to meet District sell targets but if not utilized this volume will be lost.

5. Timber Yield and Utilization—The extensive insect infestation has reduced timber yield below acceptable levels and the opportunity exists to utilize this material before lost and to rehabilitate stands in order to return them to their growth potential levels.

6. Access Management—(Horn Salvage, Bug Out Salvage, Sheep Salvage, and Sufferin' Smith Salvage)—The road management plans for these project areas need to protect and enhance resource values within the area, achieve the standards set in the Wallowa-Whitman National Forest Land and Resource Management Plan, and provide reasonable access to the area for public and administrative needs.

7. Fire Management—What management options could be utilized to reduce the high fuel loadings within these areas and the potential for large wildfires?

The IDT developed a range of two to eight alternatives, including the No Action Alternative, for each of the project areas. The effects of these alternatives are disclosed for each project area in the appropriate Environmental Assessment prepared for these proposals. The Proposed Action for each of the projects listed above are described in the table below.

LA GRANDE RANGER DISTRICT SALVAGE SALES

Descriptions	Horn	Bug Out	Topple	Sheep	Sufferin' Smith
Proposed Action	Alt. 2	Alt. 5	Alt. 2	Alt. 4	Alt. 4
Harvest Acres	445	952	5,000	210	766
Harvest Volume	1,340 MBF	2,294 MBF	750 MBF	581 MBF	4,279 MBF
Reforestation Acres	526	593	0	210	766
New Road Construction	.30 mi	0	0	0	2.70 mi
Road Reconstruction	0	2.50 mi	0	12.04 mi	2.10 mi
Logging Systems:					
Tractor	397 ac	773 ac	5,000 ac	11 ac	695 ac
Skyline	141 ac	179 ac	0 ac	199 ac	71 ac

Biological evaluations have been completed for all plant, wildlife, and fish Proposed, Endangered, Threatened, and Sensitive (PETS) species within each of the project areas. Informal consultation has been initiated with National Marine Fisheries Service for threatened spring-summer chinook salmon for all the projects. All biological evaluations indicated that the project could proceed as planned.

These salvage sales were designed to accomplish their objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite these sale projects and the accompanying work, and to prevent delays by appeals, the process according to 36 CFR part 217 is being followed. Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System Lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Upon publication of this notice, The Decision Notices for Horn Salvage Timber Sale, Bug Out Salvage Timber Sale, Topple Salvage Timber Sale, Sheep Salvage Timber Sale, and Sufferin' Smith Salvage Timber Sale will be signed by the La Grande District Ranger. These projects will not be subject to review under 36 CFR part 217.

Dated: September 22, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-23548 Filed 9-28-92; 8:45 am]

BILLING CODE 3410-01-M

Modernization of Existing Facilities and New Construction, Pacific Unified School District

AGENCY: Forest Service, USDA and Pacific Unified School District.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will jointly prepare an Environmental Impact Statement (EIS), as required by the National Environmental Quality Act (NEPA), and an Environmental Impact Report (EIR), as required by the California Environmental Quality Act, with the Pacific Unified School District, Big Sur, California. The proposed project is the modernization of existing school facilities and new construction to meet state department of education requirements for a high school in an isolated mountain community. The proposal would result in the revision of the existing Forest Service special use permit to include twenty buildable acres (the current permit if for five acres), with a 40-year lease for the National Forest System lands on which school buildings and outdoor education facilities would be placed.

The agency invites comments and suggestions on the scope of analysis to be included in the draft environmental statement. In addition the agency gives notice of the full environmental analysis and decision making process that is beginning on the proposal so that interested and affected people know how they may participate and contribute to the final decision.

DATE: Comments on the scope of the analysis will be accepted for 45 days from the date this notice is published in the Federal Register.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Nancy Knapp, Pacific Unified School District, Pacific Valley 41, Big Sur, CA 93920.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action

should be directed to Kathleen A. Jordan, District Ranger, Monterey Ranger District, 406 S. Mildred Avenue, King City, CA 93930–3423, telephone (408) 385–5434, FAX (408) 385–0628.

SUPPLEMENTARY INFORMATION: The project has been proposed by Pacific Unified School District, in order to meet state department of education requirements for K–12 education in an isolated mountain community. Over 20 sites were considered by a multi-agency site selection committee, with seven of these sites being visited and further evaluated. The present (proposed) high school site has been publically reviewed and recommended by the Big Sur Multi-Agency Committee as meeting state department of education requirements.

Preliminary issues which have been identified are: Visual viewshed, cultural resource impacts, disruption of school during the construction period, disruption of public recreation use of adjacent areas during the construction period, temporary storage of construction materials, location of borrow and disposal areas, native plants, site selection,soil stability, threatened and endangered species, riparian area effects, water quality and quantity, fisheries, fire protection, solid and sanitary waste disposal, energy use and fuel storage, noise, transportation, housing for school staff, cost of maintenance and operation, site security, air quality, existing and changing uses and users.

The project will require revision and extension of the existing Forest Service Special Use Permit. State Historical Preservation Office approval will be needed for cultural resource surveys and reports. The County of Monterey will require a Use Permit. The California Coastal Commission will require a Consistency Determination with the Local Coastal Plan.

The responsible official for the Forest Service and the NEPA process is David W. Dahl, Forest Supervisor, Los Padres National Forest, 6144 Calle Real, Goleta, California, 93117.

The decision to be made by the Forest Supervisor is whether or not to revise the existing Special Use Permit to authorize additional school facilities on a twenty acre portion of National Forest System land for a 40 year term. The potential impacts to adjacent public facilities, particularly the Plaskett Creek Campground and Sand Dollar Day Use Area, will also be considered.

The estimated date for completion of the DEIS is March 1, 1993. The estimated date for completion of the final EIS is August 1, 1993.

The comment period of the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, U.S. 519, 553 (1978).* Also, enviromental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Western Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: September 17, 1992.

Mark J. Madrid,

Deputy Forest Supervisor.

[FR Doc. 92–23553 Filed 9–28–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Applications and Reports for Registration as Tanner or Agent.

Agency Form Number: N/A.

OMB Approval Number: 0648–0179.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 78 hours.

Number of Respondents: 39.

Avg Hours Per Respondent: 2 hours.

Needs and Uses: Under the Marine Mammal Protection Act, Alaskan natives may take marine mammals for subsistence or for creating or selling native handicrafts. Possession of marine mammals so taken is allowed only to natives or registered agents or tanners. The requested information is needed to register tanners/agents and to monitor activities through reports.

Affected Public: Individuals or households, businesses or other for-profit institutions, small businesses or organizations.

Frequency: Annually, recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Agency: National Oceanic and Atmospheric Administration.

Title: Cooperative Charting Program.

Form Numbers: NOAA 77–4 and 77–5.

OMB Approval Number: 0648–0022.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 45,000 hours.

Number of Respondents: 3,000.

Avg Hours Per Respondent: 15 hours (average 3 hours per response — 5 responses per respondent).

Needs and Uses: Forms are used by the U.S. Power Squadrons and U.S. Coast Guard Auxiliary members for reporting observed chart corrections. Corrections are used daily by the National Ocean Service in maintaining and preparing new editions of its nautical charts and for issuing Notices to Mariners. The charts are used nationwide by recreational boaters and commercial vessels for safe navigation on our nation's waterways.

Affected Public: Individuals, non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Agency: National Oceanic and Atmospheric Administration.

Title: Management and Oversight of the National Estuarine Research Reserves System.

Agency Form Number: N/A.

OMB Approval Number: 0648–0121.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 12,532 hours.

Number of Respondents: 94.

Avg Hours Per Respondent: 133 hours (response time ranges between 1.25 and 2,012 hours depending on reporting requirement).

Needs and Uses: Grant monies are available for states to establish estuarine reserves. Grants funds are given to state governments and others to conduct research within those reserves. Applications are necessary to determine eligibility, and reports are needed to determine grant results.

Affected Public: Individuals or households, state or local governments, non–profit institutions.

Frequency: On occasion, quarterly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230..

Written comments and recommendations for the proposed information collections should be sent to Ron Minsk, OMB Desk Officer, room 3019, New Executive Office Building, Washington, DC 20503.

Dated: September 22, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–23541 Filed 9–28–92; 8:45 am]

BILLING CODE 3510–CW–F

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
United Magnetic Products, Inc	1405 Mineral Wells Highway, Weatherford, TX 76086.	08/17/92	Ferroresonant transformers.
Rack Engineering Company	299 S. 7th Street, Connellsburg, PA 15425	08/17/92	Sheet metal for modular drawer cabinets and bar stock cabinets and parts.
Modern Industries, Inc	3229 East Washington Street, Phoenix, AZ 85034–1607.	08/17/92	Precision metal parts for turbine engine parts for aircraft and solar panels on satellites.
McGuire-Nicholas Company, Inc	2331 Tubeway Avenue, Commerce, CA 90040	08/21/92	Tool accessory apparel: tool belts, holders and bags.
Conversion Equipment Corporation	330 West Taft Avenue, Orange, CA 92665	08/24/92	Power supplies to modify and regulate A/C to operate computer.
Mathey International Ltd	1221 E. Houston (81st.), Broken Arrow, OK 74102.	08/24/92	Oil field wireline equipment, pipe cutting and beveling machines and truck bodies.
Max Buchanan Company	10837 E. Marshall, Ste. L08, Tulsa, OK 74116	08/27/92	Mechano—therapy appliances (Messagers).
Rosewood Resources, Inc	100 Crescent Court, ¿ 500, Dallas, TX 75201	08/31/92	Oil and Natural Gas—Hydrocarbons-Explores for New Oil and Gas Reserves.
Powered Metal Products, Inc	9902 East 46th Place, Tulsa, OK 74146	08/31/92	Metal Products—permanent magnets made of metal also timing pulleys, bar sag gauges, etc.
Crown Yarn Dye Company, Inc	Turner Street, Box 3328, South Attleboro, MA 02703.	09/02/92	Dyed yarn of wool, cotton, nylon, polyester, acetate, rayon acrylic and others.
Winsert, Inc	Industrial Parkway South, Box 285, Marinette, WI 54143.	09/02/92	Valve seat insert rings for diesel and 2-stroke engines, cast of iron and alloy.
Bergh Brothers Company, Inc	171 Commonwealth Avenue, Attleboro Falls, MA 02763.	09/04/92	Metal edging used on picture frames.
Phillips USA, Inc	11535 W. 83rd Terrace, Lenexa, KS 66214	09/04/92	Instruments for administering animal medications.
E–S Plastic Products, Inc	809 Mohr Avenue, Waterford, WI 53185	09/08/92	Plastic parts in aesthetic packaging, cellular telephones and components for battery chargers.
Trans-Tech, Inc	5520 Adamstown Road, Adamstown, MD 21710	09/08/92	Ferrities, garnets, dielectric resonators and substrates.
Napp, Inc	2104 Kramer Lane, Austin, TX 78758	09/08/92	Environmental measurement instruments and minibead blaster.
Nova Biomedical Corporation	200 Prospect St. Waltham, MA 02254	09/08/92	Blood gas "stat profile" analyzer.
Oscar Heyman & Brothers, Inc	501 Madison Avenue, New York, NY 10022	09/08/92	Jewelry—rings, earrings, bracelets, necklaces, brooches of precious metals.
O&O Enterprises, Inc	R.D. ¿2 Box 182C, 124 Rt. 17C, ¿4, Waverly, NY 14892.	09/08/92	Apparel—Cotton women's/girls playsuits/activewear, swimwear and dresses.
Endeco/YSI Inc	13 Atlantis Dr., Marion, MA 02738	009/08/92	Mach. and Equip.—wave-track buyo system (pulsed oxygen systems, towed systems, water level recorders.
Roman Empire Furniture Parts Mfg., Inc dba Regency.	4466 Worth Street, Los Angeles, CA 90063	09/09/92	Furniture—Furniture parts, show wood handles, feet, etc. and bedroom furniture.
Datacon, Inc	60 Blanchard Road, Burlington, MA 01803	09/10/92	Electronics—wire wrapped printed circuit boards.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: September 21, 1992.

Kathleen W. Lawrence,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 92-23426 Filed 9-28-92; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

Annual Report on the Status of Antidumping and Countervailing Duty Program and Opportunity to Comment

AGENCY: Import Administration/ International Trade Administration Department of Commerce.

ACTION: Proposal for an Annual Report on the status of the Antidumping and Countervailing Duty Program and opportunity to comment.

SUMMARY: The International Trade Administration (ITA) is planning to begin issuing an annual report on the status of the antidumping (AD) and countervailing duty (CVD) program. Because this will be a new action, interested parties are invited to comment.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3814.

SUPPLEMENTARY INFORMATION:

Background

ITA is proposing to issue an annual report on the status of the AD/CVD program. The first report covering the fiscal year of 1992 (October 1, 1991 through September 30, 1992) will be issued in early 1993. Among other things, the proposed report will include the following:

- A summary of AD/CVD orders and suspension agreements currently in effect.
- A summary of the petitions filed, initiations, and new AD/CVD orders and suspension agreements implemented during the fiscal year.
- A summary of the AD/CVD administrative reviews, scope rulings and protests completed during the fiscal calendar.
- The total number of suspended entries on a case-by-case basis as of the end of the fiscal year.
- A summary of the AD/CVD cases subject to court-ordered injunctions on liquidation.
- The total entered value of merchandise subject to AD/CVD orders entered during the fiscal year.
- The total value of cash deposited and/or bonds posted on the entered merchandise for the fiscal year.

The report will include a list of the AD/CVD orders and suspension agreements currently in effect. It will also summarize some of the key issues and problems encountered in the administration and enforcement of the AD/CVD orders.

All interested parties and the general public may comment on the above and/or any other relevant issue(s) associated with the foregoing. Comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B099, U.S. Department of Commerce, Washington, DC 20230. Comments are due no later than 30 days from the publication of this notice.

Dated: September 22, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-23607 Filed 9-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-701]

Certain Steel Wire Nails from New Zealand, Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain steel wire nails from New Zealand. Interested parties who object to this revocation must submit their comments in writing not later than October 31, 1992.

EFFECTIVE DATE: September 29, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Gayle Longest, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482-0983 or 482-4149.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1987, the Department of Commerce ("the Department") published a countervailing duty order on certain steel wire nails from New Zealand (52 FR 37196). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain steel wire nails from New Zealand for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than October 31, 1992, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant I84Backgroundto the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by October 31, 1992, we shall conclude that the order is no longer of interest to

interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: September 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-23608 Filed 9-28-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of permit (P517).

On August 7, 1992, notice was published in the **Federal Register** (57 FR 34911) that an application had been filed by Dr. Kathryn A. Ono, Assistant Research Marine Biologist, Biology Board of Studies and Institute of Marine Sciences, University of California, Santa Cruz, CA 95064, to take Steller sea lions (*Eumetopias jubatus*) by harassment during capture, marking, tagging and handling operations and to incidentally harass California sea lions (*Zalophus californianus*) during periodic censuses of both species.

Notice is hereby given that on September 11, 1992, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policies of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a *bona fide* scientific purpose and does not involve unnecessary duplication of research.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that the Permit: (1) was applied for in good faith; (2) does not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) and is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review, by appointment, in the Permit Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4015).

Dated: September 11, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-23397 Filed 9-28-92; 8:45 am]

BILLING CODE 3510-22-M

COUNCIL ON ENVIRONMENTAL QUALITY

Meeting of President's Commission on Environmental Quality

AGENCY: Council on Environmental Quality, Executive Office of the President, President's Commission on Environmental Quality.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is being provided for a meeting of the President's Commission on Environmental Quality. This meeting is open to the public and there will be an opportunity for public comment.

DATES: The meeting will be held on October 16, 1992.

ADDRESSES: The meeting will be held from 9 am to 1:15 pm on Friday, October 16, 1992, at Room 474 (Indian Treaty Room), Old Executive Office Building, 17th & Pennsylvania Avenue, NW., Washington, DC.

Persons attending the meeting will need to provide their names and dates of birth to Ms. Kim Castain (telephone: (202) 395–5750) by Friday, October 9, 1992, at 5 pm for clearance into the Old Executive Office Building. Space in the Indian Treaty Room is limited and persons interested in attending will be accommodated on a first-come, first-served basis.

Agenda

Friday, October 16, 1992

Old Executive Office Building, 17th & Pennsylvania Avenue, NW., Room 474 (Indian Treaty Room), Washington, DC.

9 am–9:15 am Opening Remarks & Agenda Overview
9:15 am–10:30 am Reports/Discussions of Projects Underway
10:30 am–10:45 am Break
10:45 am–11:45 am Project Updates (Continued)
11:45 am–1:00 pm Emerging Findings Discussion
1 pm–1:15 pm Public Comment
1:15 pm Adjourn

FOR FURTHER INFORMATION CONTACT: Ms. Kim Chastain, Staff Assistant, President's Commission on Environmental Quality (telephone: (202) 395–5750).

SUPPLEMENTARY INFORMATION: The President's Commission on Environmental Quality was establish by Executive Order No. 12737 on December 12, 1990. The Commission has 25 members and is chaired by the Chairman of the Council on Environmental Quality. The function of the Commission is to advise the President on matters involving environmental quality.

David Struhs,

Chief of Staff, Council on Environmental Quality.

[FR Doc. 92-23544 Filed 9-28-92; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

On Thursday, September 1, 1992, a Notice of a closed meeting of the Planning and Steering Advisory Committee was published at 57 FR 39675. That meeting was originally scheduled to be held on September 21, 1992. That meeting has been changed.

The Planning and Steering Advisory Committee will now meet October 9, 1992, from 0900 to 1530, at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

For further information concerning this meeting, contact: LT J. E. Williams (N871E2), Pentagon, room 4D534, Washington, DC 20350, Telephone (703) 696-8887.

September 21, 1992.

Patrick W. Kelley,

CAPTAIN, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 92-23536 Filed 9-28-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the function of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: October 12, 1992 from 3 p.m. to 6 p.m.

ADDRESS: The Ritz-Carlton Hotel, 2100 Massachusetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Florez, Executive Director, White House Initiative on Educational Excellence for Hispanic Americans, U.S. Department of Education, Washington, DC 20202–7588. Telephone: (202) 205–2420.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 12729.

The Commission is established to advise the Secretary of Education on the educational status of Hispanic Americans, including the programs of Hispanic Americans toward achievement of the national educational goals, and on Federal efforts to promote quality education for Hispanic Americans.

On October 12, the Commission will meet in an open session from 3 p.m. to 6 p.m. The agenda will include: (1) A report on old business; (2) discussion on the appointment of a new executive director; (3) discussion of the letter from the Secretary extending the charter; and (4) discussion of the progress report to be presented to the Secretary of Education on October 13, 1992.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Avenue, SW., Washington, DC 20202–7588 from the hours of 8:30 a.m. to 5 p.m.

Dated: September 23, 1992.

Daniel Bonner,

Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92–23532 Filed 9–28–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award a Cooperative Agreement National Association of Regulatory Utility Commissioners

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Cooperative Agreement Number DE–FC01–93RW00277 to the National Association of Regulatory Utility Commissioners to establish a Nuclear Waste Program Office (NWPO) to support review activities and interaction with the National Association of Regulatory Commissioners (NARUC), DOE/Office of Civilian Radioactive Waste Management (OCRWM), the Nuclear Regulatory Commission (NRC) and others in the development of a repository for the permanent disposal of high-level nuclear waste and spend fuel, under the Nuclear Waste Policy Act (NWPA) of 1982, as amended, (42 U.S.C. 10131 *et seq.*). The anticipated term of the cooperative agreement will be five years, subject to the availability of funds. The agreement will have an estimated cost of $630,000 for the first year to be provided by DOE. NARUC will contribute $41,000 for the first year.

SCOPE: The cooperative agreement will provide funding for NWPO to disseminate information to the electric utility ratepayers on issues regarding disposal of high-level radioactive waste and spend nuclear fuel, monitor and review legislation and regulations that will impact NARUC's members, and conduct conferences and technical forums between public utility commissioners, staff, interest groups and DOE to exchange information and views to promote pubic confidence in the safety of the disposal of high-level radioactive waste and spent fuel.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to the National Association of Regulatory Utility Commissioners, the only nationwide organization of regulatory utility commissioners. It has been determined that this project represents a unique and innovative idea which is not eligible for any financial assistance under a recent, current, or planned solicitation. This activity will accomplish a public purpose of support which is fully compatible with the mission of OCRWM, the sponsoring office, which mission is authorized by the Nuclear Waste Policy Act, as amended.

The term of the cooperative agreement shall be five years from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Ms. Gracie Narcho, PR–322.1, 1000 Independence Ave, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 92–23597 Filed 9–28–92; 8:45 am]

BILLING CODE 6450–01–M

Amendment to Solicitation Number DE–PS01–91RW00231 entitled Assess the Feasibility of Siting a Monitored Retrievable Storage (MRS) Facility

AGENCY: U.S. Department of Energy.

ACTION: Amended notice of availability.

SUMMARY: On June 5, 1991, the Department of Energy published a notice of availability of a restricted eligibility solicitation for conduct of feasibility studies for the siting of a Monitored Retrievable Storage (MRS) facility (56 FR 25674).

Amendments to the restricted eligibility solicitation were announced in the **Federal Register** on: August 30, 1991 (56 FR 43006); December 31, 1991 (56 FR 67604); and April 8, 1992 (57 FR 11942). There have been a total of four amendments to the solicitation.

The Department of Energy hereby announces a fifth amendment to the restricted eligibility solicitation. This amendment extends the closing date to March 31, 1993, for Phase 2 grants. The solicitation is now available inviting the submission by eligible States, Indian tribes, and affected units of local government of applications for financial assistance. Executive Order 12372, Intergovernmental Review of Federal Programs, as implemented by 10 CFR Part 1005, applies to this program.

Those who have previously requested copies of the solicitation will be sent copies of the amendment to the solicitation. Requests for copies of the solicitation and amendments must be in writing to the address shown below.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Mr. Nick Graham, PR-322.1, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 92-23596 Filed 9-28-92; 8:45 am]

BILLING CODE 6450-01-M

Secretary of Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Economic Analysis and Modeling Related to Energy.

Date and Time: Friday, October 9, 1992, 9 a.m.-5:30 p.m.

Place: Bureau of Economic Geology, University of Texas, Austin, Texas 78713-7508, 512-471-1534.

Contact: Dr. Jake W. Stewart, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7092.

Purpose: The Task Force will advise the Department of Energy on how economic models and tools and analysis can better be used to address issues of energy policy by developing recommendations to clarify analytical needs, facilitate communication between DOE analysts and policy markers, and create institutions within DOE that accumulate knowledge gained through the policy making process.

Tentative Agenda

Friday, October 9, 1992, 9 a.m.-5:30 p.m.

9:00 a.m. Call to Order and Introductions—Welcoming Remarks.
9:15 a.m. Review of activities since last meeting.
10:00 a.m. Break.
10:15 a.m. Presentations by DOE staff describing full costs of Fuel Cycle Study.
10:45 a.m. Task force discussion of Externalities Study.
12:00 p.m. Lunch.
1:00 p.m. Task Force discussion on structure of recommendations and final report.
3:00 p.m. Break.
3:15 p.m. Resume discussion on structure of recommendations and final report.
5:00 p.m Public Comment (10 minute rule).
5:30 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 p.m. (E.D.T.) Tuesday, October 6, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 20 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (E.D.T.) Tuesday, October 6, 1992, to assure that it is considered by Board members during the meeting.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC on: September 24, 1992.

J. Robert Franklin,

Acting Advisory Committee Management Officer.

[FR Doc. 92-23594 Filed 9-28-92; 8:45 am]

BILLING CODE 6450-01-M

Secretary of Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Space Nuclear Systems.

Date and Time: Tuesday, October 13, 1992, 8 a.m.-4:30 p.m.

Place: Old Town Sheraton Hotel, 800 Rio Grande Blvd., NE., Albuquerque, New Mexico.

Contact: Dr. Jake W. Stewart, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7092.

Purpose: The Secretary of Energy Advisory Board Task Force on Space Nuclear Systems was established in August, 1992 to: (1.) review current DOE space nuclear policy in light of national space policy; (2.) review current DOE space nuclear-related activities with respect to their support of present civilian and national security space requirements; (3.) evaluate the role and practices of the DOE in supporting nuclear space systems required for present and future missions of NASA and the DOD; (4.) review environmental safety and health issues associated with space nuclear systems, and determine whether ample consideration is afforded possible alternative systems; (5.) assess opportunities for international cooperation and collaboration in space nuclear systems; (6.) examine aspects of space nuclear systems in the context of nuclear non-proliferation and other national security issues; (7.) provide to the Secretary of Energy recommendations and guidance for most effectively utilizing DOE and other agency resource to serve national goals in the area of space nuclear systems.

Tentative Agenda

Tuesday, October 13, 1992, 8 a.m.-4:30 p.m.

8:00 am Call to Order and Introductions—Welcoming Remarks.
8:45 am Laws concerning space nuclear applications.
9:30 am Conclusions of Defense Science Board concerning Space Thermal Nuclear Propulsion.
10:15 am Break.
10:30 am Strategic Defense needs for Space Nuclear Systems.
11:15 am Air Force requirements for space nuclear applications.
12:00 pm Work lunch—presentations concerning lab tours.
1:00 pm NASA Office of Exploration requirements and plans for space nuclear missions (NASA Code X).
1:45 pm NASA Office of Space Science needs for space nuclear technology (NASA Code S).
2:30 pm NASA Office of Aeronautics and Space Technology requirements and plans for space nuclear applications (NASA Code R).
3:15 pm Break.
3:30 pm National Space Council perspectives on space nuclear systems.
4:15 pm Time for Task Force Members to converse—Public Comment (10-minute rule).
5:00 pm Adjourn.

Public Participation: The meeting is open to the public. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Office at the address or telephone number listed above. Requests must be received before 3 p.m. (E.D.T.) Tuesday, October 6, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 20 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (e.d.t.) Tuesday, October 6, 1992, to assure that it is considered by Board members during the meeting.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 am and 4 pm, Monday through Friday except Federal holidays.

Issued: Washington, DC, on: September 24, 1992.

J. Robert Franklin,

Acting Advisory Committee Management Officer.

[FR Doc. 92-23593 Filed 9-28-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. C192-78-000]

Multi-Energy Inc.; Application for Blanket Certificate With Pregranted Abandonment

September 22, 1922.

Take notice that on September 16, 1992, Multi-Energy Inc. (MEI) filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction. MEI's application is on file with the Commission and open to public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before October 8, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, MEI will not have to appear or be represented at any hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23535 Filed 9-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-71-000]

Overthrust Pipeline Company; Prefiling Conference

September 22, 1992.

Take notice that a prefiling conference will be convened in this proceeding on Thursday, October 8, 1992, at 9 a.m. It will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will address the proposal for compliance with Order No. 636 circulated by Overthrust Pipeline Company under letter dated July 2, 1992, together with any modifications circulated before or at the October 8 conference. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons may contact Jacqueline S. Holmes at (202) 208-1265.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23536 Filed 9-28-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Environment, Safety and Health

Meeting of Environment, Safety and Health Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Environment, Safety and Health Advisory Committee.

Date and Time: Friday, October 23, 1992, 9 a.m.

Place: American Museum of Science and Energy Auditorium, 300 S. Tulane Avenue, Oak Ridge, TN 37830.

Contact: Lisa Kardell, U.S. Department of Energy, Office of Environment, Safety and Health (EH-50), room 7A-075, Washington, DC 20585, Telephone: 202/586-1088.

Purpose of the Committee: To provide advice and guidance to the Department of Energy on matters relating to environment, safety and health at DOE facilities.

Purpose of the Meeting: To gather information regarding Environment, Safety and Health activities at the Department of Energy.

Tentative Agenda:

—Call to order by Robert F. Mathias, Designated Federal Official.
—Remarks by Chairperson Gebbie.
—Update on Environment, Safety and Health Activities at DOE by Paul L. Ziemer, Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy.
—Committee Discussion.
—Local Views.
—Public comment—10-minute rule.
—Subcommittee Reports
—Adjournment

Public Participation: The meeting is open to the public. The Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Lisa Kardell at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. Persons wishing to attend the public meeting should provide their names to (202) 586-1088 by October 16, 1992.

Transcript: Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 24, 1992.

J. Robert Franklin,

Acting Advisory Committee Management Officer.

[FR Doc. 92-23595 Filed 9-28-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-101-NG]

Aluminum Company of America; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Aluminum Company of America blanket authorization to import up to 5.05 Bcf of natural gas from Canada over a two-year term beginning on the date of the first import.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 23, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-23592 Filed 9-28-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4651-1099]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget

(OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 29, 1992.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260092740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Mobile Sources Emission Factors Survey (EPA ICR No. 619.06; OMB No. 2060090078). This ICR requests renewal of the existing clearance.

Abstract: The Office of Mobile Sources conducts a survey by testing a random sample of privately owned motor vehicles, stratified by class, mileage, and geographical area. The purpose of the survey is to characterize levels of exhaust pollutants for each combination of class and mileage in the sample. EPA uses the data generated by this survey to model air pollution produced by mobile sources, and to determine the impact of regulations and the benefits of control programs.

Burden Statement: The public reporting burden for this collection of information is estimated to average .389 hour per response. This estimate includes the time needed to review instructions.

Respondents: Owners of in-use motor vehicles.

Estimated Number of Respondents: 8,604.

Estimated Total Annual Burden on Respondents: 3,347 hours.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM09223Y), 401 M St., SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC, 20530.

Dated: September 21, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-23606 Filed 9-28-92; 8:45 am]

Billing Code 6560-50-F

[FRL-4514-9]

Fuels and Fuel Additives; Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 12, 1991, the Ethyl Corporation (Ethyl) submitted an application for a waiver of the prohibition against the introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act (Act). This application sought a waiver for the gasoline additive, methylcyclopentadienyl manganese tricarbonyl (MMT), an octane enhancer, commercially labeled by Ethyl as HiTEC 3000, to be blended in unleaded gasoline resulting in a level of 0.03125 (1/32) gram per gallon manganese (gpg Mn). On January 8, 1992, the Agency denied Ethyl's request for a waiver for HiTEC 3000 based in part on new data submitted to the Agency by Ford Motor Company (Ford).

On February 13, 1992, Ethyl filed a petition for review of the January 8, 1992 waiver denial decision in the United States Court of Appeals for the District of Columbia Circuit. EPA and Ethyl subsequently entered into discussions concerning a possible settlement of the court case.

To facilitate further settlement discussions with Ethyl, EPA has decided to formulate an emission testing program intended to address in a timely manner specific unresolved issues concerning the effect of MMT on emissions. To allow interested parties to assist in preparing such a program, a workshop will be conducted on October 28, 1992 in Washington, DC.

DATES: EPA will conduct a one-day public workshop concerning a proposed testing program for vehicles utilizing fuels containing MMT beginning at 10 a.m. on October 28, 1992. Parties wishing to participate in the workshop or wishing to receive a copy of EPA's draft emissions testing proposal should contact David J. Kortum by October 14, 1992 at (202) 233-9020. Parties with prepared presentations should provide copies at the time of the workshop for distribution to other attendees. Parties who attend the workshop and other interested persons may submit written comments to the docket until November 4, 1992.

ADDRESSES: The public workshop will take place at Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202 (telephone 703-413-5500).

Copies of the information relative to the Ethyl application are available for inspection in public docket A-92-41 at the Air Docket (LE-131) of the EPA, room M-1500, 401 M Street, SW., Washington, DC 20460, (202) 260-7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. weekdays. Any comments from interested parties should be addressed to this docket with a copy forwarded to Mary T. Smith, Director, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services. Copies of the new data submitted by Ethyl may be obtained from the docket.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 233-9022.

SUPPLEMENTARY INFORMATION: Section 211(f)(1)(A) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light-duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 56 FR 5352 (February 11, 1991). Section 211(f)(1)(B) of the Act makes it unlawful, effective November 15, 1990, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model-year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of a model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Thus, section 211(f)(1)(B) expands the prohibitions of 211(f)(1)(A), which apply only to light-duty vehicles. Section 211(f)(4) of the Act provides that, upon application by any fuel or fuel additive manufacturer, the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has

been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application, the statute provides that the waiver shall be treated as granted.

On July 12, 1991, Ethyl submitted an application under section 211(f)(4) of the Act for a waiver for the fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT), commercially labeled by Ethyl as HiTEC 3000, to be blended in unleaded gasoline resulting in a level of 0.03125 (1/32) gram per gallon manganese (gpg Mn). This was Ethyl's fourth application for a waiver for MMT. Ethyl's first application was submitted on March 17, 1978 for concentrations of MMT resulting in 1/16 and 1/32 gpg Mn in unleaded gasoline. Ethyl's second application was submitted on May 26, 1981 for concentrations of MMT resulting in 1/64 gpg Mn in unleaded gasoline. The Administrator denied these requests for waivers. The decisions and justifications thereof may be found in the September 18, 1978 Federal Register, 43 FR 41424, and the December 1, 1981 Federal Register, 46 FR 58630. Ethyl's third application, was submitted on May 9, 1990, for concentrations of MMT resulting in a level of 0.3125 (1/32) gpg Mn in unleaded gasoline. Ethyl withdrew its third application on November 1, 1990, before the deadline for the Administrator to make a determination on the application.

On January 8, 1992, the Administrator of EPA denied Ethyl's July 12, 1991, application for a waiver (57 FR 2535, January 22, 1992). The application was denied based in part upon data submitted by Ford Motor Company which indicated that, for the model groups tested by Ford and, for the conditions under which Ford tested its vehicles, the increases in hydrocarbon exhaust emissions as a result of the use of MMT were substantially greater than those observed in the Ethyl test program. In its decision, the Agency stated that a likely factor which might account for the differences observed between the Ethyl and Ford test programs was the severity of the driving cycle. However, the Agency concluded that other factors might be responsible for the observed differences.

In the denial decision, the Agency stated that it had always accepted data from test programs which "model" the fleet in support of waiver applications, but that if an interested party were to present data indicating that a potentially significant subset of the fleet, not tested by the applicant, was especially susceptible to the negative effects of the additive, the Agency could reasonably require specific testing on representative models of that sub-fleet.

In its decision, the Agency also stated that it believes it is reasonable to take into account the effect of a fuel on vehicles' ability to meet future emissions standards. (The "Tier I" tailpipe standards prescribed by section 202(g) begin to take effect in model year 1994, which begins approximately in September 1993.[1] Therefore, regarding the Ford data mentioned above, the Agency stated in its decision that concerns raised by that data related to both current and future standards.

On February 13, 1992, Ethyl filed a petition for review of the January 8, 1992 waiver denial decision in the United States Court of Appeals for the District of Columbia Circuit. EPA and Ethyl subsequently entered into discussions concerning a possible settlement of the court case. In the context of those discussions, Ethyl submitted to the Agency new emissions test data developed by Ethyl since the denial decision.

In its new test program, Ethyl tested six pairs of 1991 Escorts, using both the relatively high-speed driving pattern similar to that utilized by Ford in its testing of 1991 Escorts (the Ford cycle) and, also, after changing emissions system components (catalyst and oxygen sensor), the driving cycle used by Ethyl in the original test program (EPA's durability certification cycle also known as the AMA). Half of the vehicles utilized MMT-containing fuel and half were run on clear fuel (fuel not containing MMT). Ethyl also performed some catalyst efficiency tests on these vehicles utilizing a "slave engine".[2]

Ethyl also tested six 1988 Escorts which were used in its original test program driven on the AMA cycle. In the new program, after replacing the catalyst and oxygen sensor, Ethyl continued mileage accumulation, from 75,000 to 100,000 miles, utilizing the Ford cycle. Likewise, Ethyl tested six 1988 Buicks from its original fleet accumulating mileage (100,000 to 115,000 miles) using the Ford cycle but without replacing any components.

Finally, in this latest test program, Ethyl accumulated mileage on seven pairs of 1992 vehicles (four Crown Victorias, Six Buick Regals and four Ford Mustangs) over 20,000 to 45,000 miles, with and without MMT, using the Ford cycle.

Based on its inspection and analysis of the new Ethyl data, EPA has tentatively concluded that the data indicate that driving cycle does not contribute significantly to MMT-induced increases in hydrocarbon emissions. (EPA's preliminary analysis has been placed in the docket.) However, in addition to addressing the issue of driving cycle, the Ethyl data appear to confirm the finding by Ford that 1991 Escorts experienced a much higher MMT-induced HC increase than that observed in other models tested (either in Ethyl's new program or in the original Ethyl test program). The Agency is concerned that these data could indicate that certain engine and emissions control system configurations are more vulnerable to an MMT-induced emissions increase irrespective of driving cycle.

To facilitate further settlement discussions with Ethyl, EPA has decided to formulate an emission testing program intended to address in a timely manner specific unresolved issues concerning the effect of MMT on emissions. The test program, to be conducted by Ethyl, will be designed to determine: (1) Whether other vehicles utilizing fuels containing MMT are likely to experience increases in hydrocarbon emissions similar to those observed in 1991 Ford Escorts; and (2) whether fuels containing MMT have significant adverse effects on emissions from vehicles utilizing the technologies most likely to be employed to meet future standards.

EPA has decided to hold a public workshop to assist EPA in formulating a proposed emission test program to address these issues. In particular, EPA would like to obtain information and assistance from technical experts outside of the Agency. Moreover, in view of the significance of any future waiver decision concerning MMT for the auto industry and the general public, EPA is interested in obtaining comments concerning a specific emission testing program and decisional framework designed to address and resolve these issues.

The workshop will be conducted on October 28, 1992 at 10 a.m. at the location listed in the addresses section. Prior to the workshop, EPA will prepare a draft emission testing program and decisional framework that will serve as the focus on the discussions during the workshop. (See the "Dates" section above for instructions on how to receive a copy of this draft prior to the workshop.) All interested parties will be

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[1] 56 FR 25724–25790 (June 5, 1991).

[2] A "slave engine" is a stand alone engine which is used to produce consistent emissions which can be tested in catalysts. The purpose is to reduce the inconsistencies in emissions coming out of the engine so specific catalyst effects can be isolated.

invited to comment on the draft document.

Dated: September 24, 1992.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

[FR Doc. 92-23599 Filed 9-28-92; 8:45 am]

BILLING CODE 6560-5-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 21, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503 (202) 395-4814.

OMB Number: 3060-0370

Title: Part 32—Uniform System of Accounts for Telecommunications Companies

Action: Extension of a currently approved collection

Respondents: Business or other for-profit

Frequency of Response: Recordkeeping and on occasion reporting

Estimated Annual Burden: 239 responses, 105.305 hours average burden per response, 25,168 hours total annual burden per response; 68 recordkeepers, 44,216.176 hours average burden per recordkeeper, 3,006,700 hours total annual burden per recordkeeper; 3,031,868 hours total annual burden

Needs and Uses: The Communications Act of 1934, as amended, allows the Commission, in its discretion, to prescribe the forms of any and all accounts, records, and memeranda to be kept by carriers subject to this Act, including the accounts, records and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. It also authorizes the Commission by general or special orders to require any carrier subject to this Act to file monthly reports of earnings and expenses and to file periodical and/or special reports concerning any matters with respect to which the Commission is authorized or required by law to act. The information contained in the various reports submitted to this Commission by the carriers provides necessary detail to enable this Commission to fulfill its regulatory responsibilities. Part 32 imposes essentially recordkeeping requirements. The reporting requirements contained in the rulepart are sporadic or initiated by the carriers.

OMB Number: 3060-0150

Title: Part 22—Public Mobile Service

Action: Revision of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: Recordkeeping requirement, quarterly, semi-annually, and on occasion reporting

Estimated Annual Burden: 35,828 responses, 8.8 hours average burden per response; 315,286 hours total annual burden per response; 1,200 recordkeepers, 52.27 average burden per recordkeeper, 62,724 hours total annual burden per recordkeeper; 378,010 hours total annual burden

Needs and Uses: Information collection requirements contained in part 22 have been previously submitted to OMB for review/approval. In addition, the Commission has recently proposed a major revision of part 22, and these proposed rules have been submitted to OMB. However, because the new rules may not become effective for another 12 to 18 months, and because of recent questions raised about whether OMB clearance was properly obtained for certain provisions of the current part 22, the Commission is resubmitting the entire part, to ensure that we are in full compliance with the Paperwork Reduction Act of 1980 (PRA). The Commission collects this information to ensure that stations licensed under part 22 do not cause interference to other radio facilities, and otherwise meet basic technical and legal requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-23516 Filed 9-28-92; 8:45 am]

BILLING CODE 6712-01-M

FCC Renews EBSAC Charter

September 22, 1992.

In accordance with the GSA Final Rule on Federal advisory committee management, 41 CFR part 101-6 Sec. 101-6.1015, the Federal Communications Commission is giving official notice on the renewal of the Emergency Broadcast System Advisory Committee (EBSAC). The term of this Committee runs from July 30, 1992 to July 30, 1994.

EBSAC advises the FCC on all matters concerning the Emergency Broadcast System including policies, technologies, plans, regulations and procedures for the existing system and possible new systems at the national, state and local levels.

For additional information, contact the EBS staff at (202) 632-3906.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-23515 Filed 9-28-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 29. The meeting, which will be open to public observation, will take place in the Board Room of the Eccles Building. The meeting is expected to begin at 9 a.m. and to continue until 5 p.m., with a lunch break from 1 until 2 p.m. The Eccles Building is located on C Street, Northwest, between 20th and 21th Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Survey of Mortgage Lending Practices in Boston. Status report on a study by the Federal Reserve Bank of Boston on the lending practices of 132 financial institutions operating in the Boston metropolitan area (specifically what information the lenders rely on in determining whether to grant or deny applications for mortgages).

Home Mortgage Disclosure Act Data. Status report on the 1991 national aggregates of Home Mortgage Disclosure Act data, which will summarize the mortgage activity of all lenders that report HMDA data.

Issues Related to Unlawful Mortgage Discrimination. Briefing by the

Community Affairs and Housing Committee on its activities concerning possible disparate impacts of primary and secondary mortgage market underwriting standards and other issues related to mortgage discrimination.

Burdens and Benefits of Consumer Protection Rules. Discussion of the merits of possible actions that could be taken to reduce the regulatory burden associated with the Board's consumer protection rules.

Consumer Credit Education Activities. A report from the Board's Office of Public Affairs and the International Credit Association (ICA) about the relationship that has been established between the ICA and the Board and others to support quality credit education to teachers and students.

Members Forum. Presentation of individual Council members' views on whether there are visible signs of an economic upturn present within their industries or local economies and whether it is getting easier to obtain a loan.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on recent Board initiatives and issues of concern, with an opportunity for questions from Council members.

Council Member Perspectives. Remarks by Council members identifying special areas of importance and concern to their organizations regarding the provision of financial services to consumers and communities.

Committee Reports. Reports from Council committees on their work and plans for 1993.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, October 23, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–2412. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, (202) 452–3544.

Board of Governors of the Federal Reserve System, September 23, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–23564 Filed 9–28–92; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3392]

Jason Pharmaceutical, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Maryland marketers of the Medifast diet programs from misrepresenting the efficacy of any very-low-calorie diet program, and from falsely claiming that their physicians are certified in the treatment of obesity. In addition, the order requires the respondents to possess competent and reliable scientific evidence to substantiate any claims about the success of patients on any diet program in achieving or maintaining weight loss, and requires that claims about the safety of the program be accompanied by a clear disclosure that physician monitoring is needed to minimize the potential for health risks.

DATES: Complaint and Order issued September 16, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Richard Kelly, FTC/H–200, Washington, DC 20580. (202) 326–3304.

SUPPLEMENTARY INFORMATION: On Wednesday, October 23, 1991, there was published in the **Federal Register**, 56 FR 54866, a proposed consent agreement with analysis In the Matter of Jason Pharmaceutical, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 92–23586 Filed 9–28–92; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. No. C–3393]

National Center for Nutrition, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Virginia marketer of the Ultrafast liquid diet program from misrepresenting the efficacy of any very-low-calorie diet program, and requires the respondent to possess competent and reliable scientific evidence to substantiate any claims about the success of patients on any diet program in achieving or maintaining weight loss. It also requires that claims about the safety of the program be accompanied by a clear disclosure that physician monitoring is needed to minimize the potential for health risks.

DATES: Complaint and Order issued August 10, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Richard Kelly, FTC/H–200, Washington, DC 20580. (202) 326–3304.

SUPPLEMENTARY INFORMATION: On Wednesday, October 23, 1991, there was published in the **Federal Register**, 56 FR 54866, a proposed consent agreement with analysis In the Matter of National Center for Nutrition, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease

[1] Copies of the Complaint, the Decision and Order, and statements by Commissioners Azcuenaga and Owen are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint, the Decision and Order, and statements by Commissioners Azcuenaga and Owen are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 92-23587 Filed 9-28-92; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9247]

Phone Programs, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New York corporation from misrepresenting the ease with which a premium is obtainable and the content of any telephone information service message to children aged twelve and under. In addition, the respondent would be required to include a clear statement at the beginning of each children's message giving the child a chance to hang up without charge, and would be required to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children.

DATES: Comments must be received on or before November 30, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S-4002, Washington, DC 20580. (202) 326-3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The agreement herein, by and between Phone Programs Incorporated, a corporation, by its duly authorized officer, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Phone Programs Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 919 Third Avenue, New York, New York 10022.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5(a) of the Federal Trade Commission Act, and has filed its answer denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) any further procedural steps;

(b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) any claim under the Equal Access To Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent of facts, other than jurisdiction, or of violations of law as alleged in the complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent: (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to-order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the term "children" or "child" shall mean a person of age twelve or under.

For purposes of this order, the term "information service for children" shall mean a telephone message accessed through a numbered exchange (*e.g.*, "900") for which a fee is charged, consisting of live or recorded statements promoted or sold primarily to children.

For purposes of this order, the term "premium" shall mean any item respondent offers to send to those who call its information service for children.

For purposes of this order, the term "information service message" shall mean any live or recorded story, program or other communication transmitted to callers of respondent's information service for children.

For purposes of this order, the term "video advertisement" shall mean any advertisement intended for dissemination on television broadcast, cablecast, home video, or theatrical release.

For purposes of this order, the term "affiliate" includes, but is not limited to, corporations with a majority of

shareholders or directors in common with respondent.

I.

It is ordered That respondent Phone Programs Incorporated, a corporation, its successors, assigns, and affiliates, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or transmission of any information service for children in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

A. The ease with which a premium is obtainable; and

B. The content of any information service message for children.

II.

It is further ordered That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or transmission of any information service for children in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing as specified below to disclose, clearly and prominently, whenever an offer of any premium is made, all the material terms, conditions and obligations upon which receipt and retention of the premium is contingent. Such terms, conditions, and obligations shall include, but not be limited to, the number of calls necessary to receive the premium, if more than one, and the need to have a writing implement and paper available to record the necessary information given during the information service message.

The disclosure shall be made in a manner understandable to children, and shall be made in the same medium in which the offer of the premium is made and, in addition, in any information service message.

III.

It is further ordered That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for an information service for children that does not include the following statement: "Kids, you must ask your mom or dad and get their permission before you call. This call costs money."

The above-required disclosure shall be presented in a manner designed to ensure clarity and prominence. If the disclosure is made in the manner described below, it will be considered as complying with this provision of the order.

A. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The disclosure shall appear immediately following the first video presentation of the "900" telephone number, but in any event shall begin within the first fifteen (15) seconds of the advertisement. The audio portion shall be presented in a slow and deliberate manner. Each line of the video portion shall be at least as large as one-half of the size of the largest presentation of the "900" number that appears on the screen during the advertisement, shall be of a color or shade that readily contrasts with the background, and shall appeal on the screen for the duration of the audio disclosure.

B. In any print advertisement, the disclosure shall be parallel to the base of the advertisement and shall be placed in close proximity to the 900 number. All lines of the disclosure when taken together shall be the same size or larger than the largest presentation of the 900 number, but in any event the type size of each line of the disclosure shall be no less than 12 point, bold-face type.

C. In any radio advertisement, the disclosure shall be presented in a slow and deliberate manner and shall appear immediately following the first presentation of the "900" telephone number, but in any event it shall begin within the first fifteen (15) seconds of the advertisement.

Nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertisement in any medium.

IV.

It is further ordered That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for an information service for children that does not include a disclosure of the cost of a call to the information service. This disclosure shall be presented in a manner designed to ensure clarity and prominence. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement.

V.

It is further ordered That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, shall include, at the beginning of every information service message, an introductory preamble that states in a slow, deliberate and clear manner the following: "This telephone call costs money. If you do not have your mom or dad's permission, hang up now and there will be no charge for this call."

VI.

It is further ordered That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from billing or causing to be billed, or collecting any funds or causing any funds to be collected, for any call to any information service for children terminated within no less than five (5) seconds of the end of the introductory preamble, as required by Paragraph V of this Order.

Provided, in the event that any provision of a federal law or regulation of the Federal Communications Commission is in "actual conflict" with any requirement imposed by Paragraph V or VI of this Order, compliance with such law or regulation shall not be deemed to be a violation of this Order. As used herein, "actual conflict" shall mean that it is impossible for respondent to comply with both the law or regulation and Paragraph V and VI of this Order.

VII.

It is further ordered That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from including children to call its information service for children and thereby incur charges, without providing any reasonable means for the person responsible for payment of such charges

to exercise control over the transaction. For purposes of this Paragraph, if the respondent does not provide, prior to placement of any call by a child, a reasonable means for the person responsible for payment to avoid unauthorized calls, the provision of a reasonable means to exercise control over the transaction shall be the use of the respondent's best efforts to ensure that one-time refunds or credits are provided upon request for unauthorized calls made by children, as specified below. Best efforts shall include at least the following:

A. Contracting with the appropriate interstate common carrier or local exchange carrier to:

(1) Identify in all telephone bills containing charges for calls to respondent's information service for children each telephone call to such service by the characters "CHILD CALL;"

(2) Place in all telephone bills containing charges for calls to respondent's information service for children, clearly and prominently in close proximity to the itemization of those charges, a toll-free or local telephone number specified to be used for consumer inquiries concerning charges on the telephone bill; *provided*, that a general billing inquiry telephone number for customer inquiries concerning charges on the telephone bill shall satisfy this requirement;

(3) Refer all customers who call the toll-free number inquiring about the charges for respondent's information service for children to their local exchange carrier for information regarding the availability of blocking in their jurisdiction; and

(4) Provide a one-time prompt and full credit or refund at the customer's request for all such calls, whether such request is made to the toll-free or local telephone number specified herein or in any other manner; *provided*, that respondent must contract with the carrier to provide a second prompt and full credit or refund to any customer who requests the first credit or refund during a period of the billing cycle where unauthorized calls have been made, but do not yet appear on the customer's bill, and subsequently requests a second credit or refund for any additional unauthorized calls made before the date of the first request for a credit or refund;

provided, that if the interstate common carrier utilized by respondent employs local exchange carriers to provide billing inquiry services, respondent shall be in compliance with subparagraphs A (3) and (4) of this Paragraph if its contract with the interstate common carrier provides that the interstate common carrier notify each local exchange carrier of the interstate common carrier's policies to:

(i) Provide the customer with information regarding the availability of blocking 900 number calls; and

(ii) Provide upon request one-time refunds or credits for unauthorized calls by children, as provided in subparagraph A(4) of this Paragraph.

B. In the event that respondent receives any information that the interstate common carrier has failed to fulfill its obligations under the contract required by subparagraph A of this Paragraph, immediately notifying the interstate common carrier:

(1) Of the existence of the alleged failure(s);

(2) Of the carrier's responsibility to fulfill its obligations under the contract;

(3) Of the need to investigate and correct all past failures; and

(4) That if a pattern or practice of failures continues, respondent will terminate the use of said carrier for any information service for children; and

C. Terminating the use of said interstate common carrier for any information service for children, in the event that the interstate common carrier does not correct all past failures or continues to fail to fulfill its obligations under said contract.

D. Compliance with the requirements set forth in subparagraphs A–C of this Paragraph is deemed to be satisfactory compliance with this Paragraph.

Provided, that for purposes of this Paragraph, the mere inclusion of any audio or video disclosure relating to parental authorization in advertisements or information service messages is expressly deemed not to be a reasonable means, prior to placement of any call by a child, for the person responsible for payment to avoid unauthorized calls.

VIII.

It is further ordered That for three (3) years from the date of service of this Order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying: (1) All advertisements for information services for children and all corresponding information service messages; (2) a record of all credit or refund requests made for charges billed for respondent's information services for children; (3) all documents relating to compliance with Paragraph VII of this Order, and (4) all consumer complaints and dispositions thereof relating to respondent's information services for children.

IX.

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

X.

It is further ordered That respondent shall forthwith distribute a copy of this Order to each of its operating divisions and any carrier(s) or other entities providing billing and/or collection service for its information services for children.

XI.

It is further ordered That respondent shall, within sixty (60) days after service of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Phone Programs, Inc. ("respondent" or "PPI").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns PPI's television advertisements for its pay-per-call information services for children. These are services accessed by calling a numbered telephone exchange (*e.g.*, 900), in which callers hear recorded stories, games or contests featuring animated or fictional characters.

The Commission's complaint in this matter charges respondent with engaging in unfair and deceptive practices in connection with the advertising and sale of its information services for children. According to the complaint, respondent's ads represented that children who complete a call to

respondent's information service for children would readily and easily obtain the "gift" (or "premium") specified in the advertisement simply by calling the advertised number. This representation is alleged to be false and misleading. In order to obtain the premium, callers were required to follow a number of complex steps that children could not reasonably follow. For example, callers needed to transcribe an address given rapidly and without warning after the recorded story message and were required to send a copy of the phone bill showing the charge for the call to that address.

The complaint also alleges that respondent's advertisements failed to disclose that there are material terms and conditions for obtaining the premium, including the need for a writing implement and paper to transcribe the ordering information.

The complaint also alleges that PPI misrepresented what a child would hear when he/she called PPI's Popeye story line. According to the complaint, PPI's ads and story messages claimed that callers to the story line would hear news about Popeye's birthday. The complaint alleges that these representations were false and misleading because, in fact, only the last of the twenty-nine messages in the series contained any information about Popeye's birthday.

Finally, the complaint alleges that respondent has unfairly induced children to call its information services without providing any reasonable means for the person responsible for paying the charges to exercise control over the transaction. These practices are alleged to cause substantial consumer injury and constitute unfair practices.

The consent order contains provisions designed to remedy the violations charged and to prevent respondent from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits respondent from misrepresenting in the advertising or sale of its information services for children the ease with which a premium is obtainable. Part I of the order also prohibits PPI from misrepresenting the content of any information service message for children. The order defines information services for children as fee-charged phone services accessed through a numbered exchange consisting of live or recorded statements promoted or sold primarily to children aged twelve or under.

Part II of the order requires respondent to disclose, clearly and prominently, whenever an offer of premium is made, all of the material terms, conditions and obligations upon which receipt and retention of any premium is contingent. These terms must include, at a minimum, the number of calls needed to receive the premium, if more than one, and the need for a writing implement and paper to transcribe the ordering information. The disclosure must be made in the same medium as the premium offer and also in the recorded message.

Part III of the order requires respondent to include the following disclosure, presented in a manner designed to ensure clarity and prominence, in its advertisements for its information services for children: "Kids, you must ask your mom or dad and get their permission before you call. This call costs money." The order specifies with particularity the manner in which the disclosures shall be presented in different media.

Part IV of the order requires respondent to disclose in a manner designed to ensure clarity and prominence, in all of its advertisements for information services for children, the cost of the telephone call to such services.

Part V of the order requires respondent to include, at the beginning of every recorded phone message for children, the following introductory message in a slow, deliberate and clear manner: "This telephone call costs money. If you do not have your mom or dad's permission, hang up now and there will be no charge for this call."

Part VI of the order prohibits respondent from collecting any funds for any call terminated within five seconds of the end of the introductory preamble required by Part V. Part VI also provides that in the event that the order's introductory message requirement is in actual conflict with a federal law or regulation, compliance with such law or regulation shall not be deemed to be a violation of the order. The term "actual conflict" is defined to mean that it is impossible for respondent to comply with both the law or regulation and the order.

Part VII of the order requires that respondent not induce children to call its information services for children unless it provides a reasonable means for persons responsible for payment to exercise control over the transaction. If respondent does not provide a reasonable means for such persons to avoid unauthorized calls before they are made, respondent must use its best efforts to ensure that one-time credits or refunds are provided upon request for unauthorized calls made by children. "Best efforts" is defined to include, at a minimum, contracting with the appropriate phone company to: (1) Identify in all telephone bills containing charges for calls to respondent's information service for children each telephone call to such service by the characters "Child Call"; (2) place in all bills containing charges for respondent's information service for children, a toll-free number for customer inquiries; (3) refer to all customers who call such toll-free number to their local phone company for information on blocking of 900 calls; and (4) provide a one-time prompt and full refund or credit, upon request, for unauthorized calls made by children. Best efforts also requires respondent to monitor the phone company's compliance with the order requirements and take certain action, including termination of its contract with the phone company, if the phone company does not fulfill its obligations under its contract with respondent.

Part VIII of the order requires respondent to maintain and make available to the Federal Trade Commission for inspection and copying all advertisements for information services for children and all corresponding information service messages, records of all credits or refund requests and their dispositions, all consumer complaints, and all documents relating to the implementation of Part VII, for a period of three years.

Part IX of the order requires respondent to notify the Commission prior to any change in the corporation that may affect compliance obligations arising out of this order.

Part X of the order requires respondent to distribute a copy of the order to each of its operating divisions and to any entity providing billing and/or collection services for its information services for children.

Part XI of the order requires respondent to file a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-23501 Filed 9-28-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3394]

Sandoz Nutrition Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Minnesota-based marketer of the Optifast diet program from misrepresenting the efficacy of any very-low-calorie diet program, and requires the respondent to possess competent and reliable scientific evidence to substantiate any claims about the success of patients or any diet program in achieving or maintaining weight loss. It also requires that claims about the safety of the program be accompanied by a clear disclosure that physician monitoring is needed to minimize the potential for health risks.

DATES: Complaint and Order issued August 10, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Richard Kelly, FTC/H–200. Washington, DC 20580. (202) 326–3304.

SUPPLEMENTARY INFORMATION: On Wednesday, October 23, 1991, there was published in the **Federal Register**, 56 FR 54866, a proposed consent agreement with analysis In the Matter of Sandoz Nutrition Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 92–23588 Filed 9–28–92; 8:45 am]

BILLING CODE 6750–01–M

[Docket 9248]

Diran M. Seropian, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits a Florida physician from conspiring with the medical staff of Broward General Medical Center to prevent competition from physicians of the Cleveland Clinic Florida, a non-profit provider of health care services, or any other provider of health care services.

DATES: Complaint issued June 12, 1991. Order issued September 11, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S–3115, Washington, DC 20580. (202) 326–2756.

SUPPLEMENTARY INFORMATION: On Monday, May 4, 1992, there was published in the **Federal Register**, 57 FR 19130, a proposed consent agreement with analysis In the Matter of Diran M. Seropian, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 92–23589 Filed 9–28–92; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. 9246]

University Health, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a non-profit corporation and two of its subsidiaries, for ten years, from acquiring St. Joseph Hospital or any other hospital in the Augusta, Georgia area—and from consolidating the operations of respondents' University Hospital with those of St. Joseph or any other local general hospital—without prior FTC approval.

DATES: Complaint issued April 2, 1991. Order issued September 9, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Mark Horoschak or Oscar Voss, FTC/S–3115, Washington, DC 20580. (202) 326–2756 or 326–2750.

SUPPLEMENTARY INFORMATION: On Tuesday, June 30, 1992, there was published in the **Federal Register**, 57 FR 29084, a proposed consent agreement with analysis in the Matter of University Health, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: [Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 18.

Donald S. Clark,

Secretary.

[FR Doc. 92–23590 Filed 9–28–92; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Federal Travel Regulation; Waiver/Clarification of Certain Federal Travel Regulation Provisions Applicable to Relocation Allowances and Entitlements of Federal Employees Being Relocated From or To Presidentially Declared Disaster Areas of Florida and Louisiana

AGENCY: Federal Supply Service, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) has been asked to provide exceptions to certain Federal Travel Regulation (FTR) (41 CFR 301–304) provisions to assist Federal employees relocating to or from Florida and Louisiana localities designated a Presidentially declared disaster area as a result of Hurricane Andrew. On

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[1] Copies of the Complaint, the Decision and Order, and statements by Commissioners Azcuenaga and Owen are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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September 21, 1992, by letter to the Heads of all Executive agencies, the Administrator of General Services waived certain provisions, and clarified the application of certain other provisions, of the FTR to help alleviate hardships encountered by Federal employees relocating to or from the Florida and Louisiana disaster areas. A copy of the Administrator's letter is attached for informational purposes.

FOR FURTHER INFORMATION CONTACT: Jane Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone FTR or commercial 703–305–5253.

SUPPLEMENTARY INFORMATION: To assist Federal employees relocating from or to the Presidentially declared disaster areas of Florida and Louisiana, agencies have expressed a need to extend the maximum time period allowed for temporary storage of household goods, occupancy of temporary quarters, and completion of residence transactions, as well as to pay for reappraisal and reinspection of damaged homes, after repair, in the case of employees participating in the relocation services program. The attached letter advises agencies of the following authorities available to them, either under existing regulation or by waiver of certain FTR provisions, to assist relocating employees affected by Hurricane Andrew:

(1) Under existing authority, an agency may use the household goods nontemporary storage provision for isolated locations within CONUS (41 CFR 302–9.1) to accommodate relocated employees who need an extension of the maximum time limitation on temporary storage of household goods (applicable in all the declared disaster locations);

(2) The existing 120-day time limitation on occupancy of temporary quarters provided in 41 CFR 302–5.2(a)(2) is waived, allowing agencies to authorize extensions, as needed, in 60-day increments (applicable in all the declared disaster locations);

(3) Also waived is the existing temporary quarters standard-CONUS-rate-based reimbursement ceiling provided in 41 CFR 302–5.4(c). Agencies are authorized to establish a ceiling based on a rate that is not in excess of (a) 300 percent of the applicable maximum per diem rate for disaster localities specified in GSA Bulletins FTR 6 (57 FR 40466, Sept. 3, 1992) and 7, and any supplement(s) thereto, during the period of effectiveness of GSA Bulletins FTR 6 and 7, or (b) 150 percent of the applicable maximum per diem rate for Florida and Louisiana disaster localities not specified in GSA Bulletins FTR 6 or 7 and related supplements, as well as for all disaster locations upon expiration of GSA Bulletins FTR 6 and 7;

(4) The existing 3-year time limitation on completion of residence transactions provided in 41 CFR 302–6.1(e) is waived, allowing agencies to authorize extensions as needed in 1-year increments (applicable in all the declared disaster locations). Also waived is the existing 3-year time limitation, provided in 41 CFR 302–1.6(c), which governs the beginning of travel and transportation associated with a permanent change of official station. This allows agencies to authorize, as needed, extensions in 1-year increments when the 3-year time limitation for completion of residence transactions is extended under the above waiver authority (applicable in all the declared disaster locations); and

(5) Under existing authority, agencies may pay under the terms and conditions of the relocation services contract for reappraisal and reinspection of hurricane-damaged homes, after repair, in the case of employees participating in the relocation services program.

Dated: September 22, 1992.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

Attachment

September 21, 1992

To: Heads of Executive agencies

Dear [Agency Head]:

Late last month, the most costly natural disaster in our nation's history struck south Florida and the Gulf coast of Louisiana. Hurricane Andrew has left hundreds of thousands homeless and caused billions of dollars in damage. The Federal Government is providing direct assistance and coordinating relief efforts on a massive scale, requiring significant Federal travel to the affected areas. Federal agencies have expressed a need for exceptions to certain Federal Travel Regulation (FTR) (41 CFR 301–304) provisions to accommodate unusual circumstances encountered by Federal employees performing official travel in, or being permanently relocated from or to, only the Presidentially declared disaster areas of Florida and Louisiana.

To aid agencies in carrying out their relief efforts and other necessary missions, GSA Bulletin FTR 6 issued on August 28, 1992 (Enclosure 1), and published at 57 FR 40466, authorizes agencies to approve actual subsistence expense travel reimbursement not to exceed 300 percent of the applicable maximum per diem rate for the Florida counties of Broward, Dade, and Monroe, and for the Louisiana parishes of Assumption, Iberia, Iberville, Lafourche, St. John the Baptist, St. Martin, St. Mary, and Terrebonne. This action is intended to alleviate the difficulty of obtaining suitable lodging at reasonable rates given the current shortage situation. We are issuing Supplement 1 to GSA Bulletin FTR 6 to extend the effective dates therein for an additional 30-day period, and also are issuing GSA Bulletin FTR 7 to mirror for Collier County, Florida and the Parish of East Baton Rouge, Louisiana the authority granted in GSA Bulletin FTR 6.

I also have made the decision to waive additional FTR provisions to aid employees in the process of permanently relocating to or from the areas most severely damaged by Hurricane Andrew. Many of their homes were either destroyed or rendered temporarily uninhabitable. Following are specific actions you may take, either within existing FTR (41 CFR 301–304) authority or within the special waiver authority I am hereby granting to the regulation, to help alleviate the Hurricane-related relocation hardships encountered by these employees. Except as otherwise specified, the actions may be applied as necessary in any of the Florida counties and Louisiana parishes officially designated as a Presidentially declared disaster area following Hurricane Andrew (Enclosure 2), and are retroactive to the effective date of the disaster declaration applicable to each area.

First, in the case of employees who need an extension of the household goods temporary storage time limit, you may use the provisions at 41 CFR 302–9.1 governing nontemporary storage at an isolated location in the continental United States and convert temporary storage to nontemporary storage. Under this provision heads of individual agencies are responsible for designating an isolated official station at which conditions exist for allowing nontemporary storage of household goods at Government expense. Nontemporary storage may be authorized for up to 3 years as necessary.

Second, for those employees relocating to or from a Presidentially declared disaster area who need for reasons attributable to the disaster an extension of the maximum period for occupancy of temporary quarters, I am waiving the maximum 120-day time limitation provided at 41 CFR 302–5.2(a)(2). Agencies are hereby granted authority to extend the temporary

quarters time period in 60-day increments when the head of the agency, or his/her designee, determines that there are compelling reasons for the continued occupancy of temporary quarters.

Additionally, I am waiving the provision at 41 CFR 302–5.4(c) which limits reimbursement for temporary quarters subsistence expenses to a maximum amount based on the standard CONUS rate. Instead, agencies may approve reimbursement for temporary quarters subsistence expenses not to exceed a maximum amount computed in accordance with 41 CFR 302–5.4(c) as follows:

(a) Based on a rate that is not in excess of 300 percent of the maximum per diem rate applicable for the disaster locality for those areas specified in, and during the period covered by, GSA Bulletins FTR 6 and 7 and any supplements thereto; or

(b) Based on a rate that is not in excess of 150 percent of the maximum per diem rate applicable for the disaster locality for disaster areas not specified in GSA Bulletins FTR 6 and 7 and any supplements thereto, as well as for all disaster locations upon expiration of GSA Bulletins FTR 6 and 7 and any supplements thereto.

Third, for those employees relocating to or from a Presidentially declared disaster area who need an extension of the maximum period for completion of residence transactions, I am waiving the maximum 3-year time limitation provided at 41 CFR 302–6.1(e). Agencies are hereby granted authority to extend the period for completion of residence transactions, as needed, in 1-year increments. Correspondingly, I am waiving the maximum 3-year time limitation (provided at 41 CFR 302–1.6(c)) applicable to the beginning of travel and transportation in connection with a change of official station. Agencies are hereby granted authority to extend the period for beginning travel and transportation, as needed, in 1-year increments when the 3-year time limitation for completion of residence transactions is extended under the authority of this paragraph.

Finally, for employees participating in the relocation services program whose residences had already been appraised and/or inspected prior to Hurricane Andrew and whose residences now must be repaired due to the disaster and reappraised and/or reinspected, it is important to note that the expense(s) of the second appraisal/inspection are payable by the agency. They do not constitute duplicate payments for the same service. Such reappraisals/reinspections will be considered as a discrete transaction arising from a new event bearing no relation to the first order for service. If an agency orders the new service, it may pay for the service under the contract's terms and conditions.

The impact of the Hurricane Andrew disaster upon the resources of the Federal Government is great and likely will continue for a protracted period. The authorities I have outlined in this letter are intended to assist you in carrying out your agency's mission with minimum disruption and to allow you to successfully meet the needs of both your employees and the public. It is important that you exercise these authorities judiciously and only as long as is warranted by individual circumstances.

Sincerely,

(John P. Hiler signed for)

Richard G. Austin,

Administrator of General Services.

2 Enclosures

ENCLOSURE 1

[GSA Bulletin FTR 6]

Federal Travel Regulation; Actual Subsistence Expense Reimbursement in Presidentially Declared Disaster Areas in Florida and Louisiana

August 28, 1992

To: Heads of Federal agencies

Subject: Reimbursement for actual subsistence expenses in Presidentially declared disaster areas of Florida and Louisiana.

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Florida and Louisiana localities designated as Presidentially declared disaster areas as a result of Hurricane Andrew. This special rate may be applied retroactively to claims for reimbursement covering travel during the periods of August 24 through September 22, 1992 for designated Florida areas, and August 26 through September 24, 1992 for designated Louisiana areas.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR 301–8) permits the Administrator of General Services to establish a higher actual subsistence expense reimbursement rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances, such as a natural disaster resulting in a Presidential disaster declaration, result in an extreme increase in subsistence costs for a temporary period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Florida and Louisiana localities designated as Presidentially declared disaster areas as a result of Hurricane Andrew. For travel during the 30-day period, August 24 through September 22, 1992 for Florida, and August 26 through September 24, 1992 for Louisiana, agencies may approve actual subsistence expense reimbursement not to exceed 300 percent of the applicable maximum per diem rate for the affected Florida counties and Louisiana parishes listed in paragraph 4, below.

4. *Affected localities.* The special reimbursement rate described in paragraph 3, above, applies for travel to the following areas of Florida and Louisiana:

FLORIDA: Counties of Broward, Dade, and Monroe.

LOUISIANA: Parishes of Assumption, Iberia, Iberville, Lafourche, St. John the Baptist, St. Martin, St. Mary, and Terrebonne.

5. *Expiration date.* This bulletin expires on December 31, 1992.

6. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS or commercial 703–305–5253.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

ENCLOSURE 2

Presidentially declared disaster areas in Florida and Louisiana as a result of Hurricane Andrew

Following is a complete listing (current as of September 15, 1992) of all Florida counties and Louisiana parishes declared disaster areas as a result of Hurricane Andrew:

FLORIDA: Counties of Broward, Collier, Dade, and Monroe.

LOUISIANA: Parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana.

A total of 4 counties in Florida and 36 parishes in Louisiana have been designated as disaster areas.

[FR Doc. 92-23549 Filed 9-28-92; 8:45 am]
BILLING CODE 6820-24-M

[GSA Bulletin FTR 6, Supplement 1]

Federal Travel Regulation; Actual Subsistence Expense Reimbursement in Presidentially Declared Disaster Areas in Florida and Louisiana

September 21, 1992

To: Heads of Federal agencies

Subject: Reimbursement for actual subsistence expenses in Presidentially declared disaster areas of Florida and Louisiana.

1. *Purpose.* This supplement informs agencies of the extension for an additional 30-day period of the special actual subsistence expense ceiling described in GSA Bulletin FTR 6 (57 FR 40466, Sept. 3, 1992) for official travel to certain Florida and Louisiana localities designated as Presidentially declared disaster areas as a result of Hurricane Andrew.

2. *Explanation of change.* The Administrator of General Services, pursuant to 41 CFR 301-8.3(c), has extended for an additional 30 days the period during which agencies may approve, in accordance with paragraph 3 of GSA Bulletin FTR 6, actual and necessary subsistence expense reimbursement not to exceed 300 percent of the applicable maximum locality per diem rate for official travel to the Presidentially declared disaster areas in Florida and Louisiana named in paragraph 4 of GSA Bulletin FTR 6. For Florida counties named in GSA Bulletin FTR 6 the extended period covers September 23 through October 22, 1992; for Louisiana parishes named in GSA Bulletin FTR 6 the extended period covers September 25 through October 24, 1992.

3. *Expiration date.* This supplement expires on December 31, 1992.

4. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS or commercial 703-305-5253.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 92-23551 Filed 9-28-92; 8:45 am]
BILLING CODE 6820-24-M

[GSA Bulletin FTR 7]

Federal Travel Regulation; Actual Subsistence Expense Reimbursement in Presidentially Declared Disaster Areas in Florida and Louisiana

September 21, 1992

To: Heads of Federal agencies

Subject: Reimbursement for actual subsistence expenses in Presidentially declared disaster areas of Florida and Louisiana.

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to two Florida and Louisiana localities designated as Presidentially declared disaster areas as a result of Hurricane Andrew. These two locations are in addition to the three Florida counties and eight Louisiana parishes for which a special actual subsistence expense ceiling was announced in GSA Bulletin FTR 6 issued on August 28, 1992 (57 FR 40466, Sept. 3, 1992). This special rate may be applied retroactively to claims for reimbursement covering travel during the periods of September 23 through October 22, 1992 for the new Florida area, and September 25 through October 24, 1992 for the new Louisiana area.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR 301-8) permits the Administrator of General Services to establish a higher actual subsistence expense reimbursement rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances, such as a natural disaster resulting in a Presidential disaster declaration, result in an extreme increase in subsistence costs for a temporary period.

The General Services Administration (GSA) issued GSA Bulletin FTR 6 on August 28, 1992 (57 FR 40466) authorizing a special actual subsistence expense ceiling for official travel performed to certain Presidentially declared disaster areas in Florida and Louisiana resulting from Hurricane Andrew. The effective period of the special reimbursement ceiling announced in GSA Bulletin FTR 6 has been extended by Supplement 1 to Bulletin 6. The Federal Emergency Management Agency has now requested establishment of a special actual subsistence expense ceiling for two additional Hurricane Andrew disaster locations, one in Florida and one in Louisiana.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301-8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to the specified Florida and Louisiana localities designated as Presidentially declared disaster areas as a result of Hurricane Andrew. For travel during the 30-day period, September 23 through October 22, 1992 for Florida, and September 25 through October 24, 1992 for Louisiana, agencies may approve actual subsistence expense reimbursement not to exceed 300 percent of the applicable maximum per diem rate for the affected Florida county and Louisiana parish listed in paragraph 4, below.

4. *Affected localities.* The special reimbursement rate described in paragraph 3, above, applies for travel to the following areas in Florida and Louisiana:

FLORIDA

Collier County

LOUISIANA

Parish of East Baton Rouge

5. *Expiration date.* This bulletin expires on December 31, 1992.

6. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS or commercial 703-305-5253.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 92-23550 Filed 9-28-92; 8:45 am]
BILLING CODE 6820-24-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-92-3515]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 23, 1992.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Application for Insurance Benefits.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This form will be used to provide the Department with information needed to process and pay claims on defaulted FHA insured home mortgage loans.
Form Number: HUD-27011, Parts A, B, C, D, and E.
Respondents: Businesses or Other For-Profit.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden Hours
HUD-27011, parts A, B, C, D, & E	6,000		11.87		1.33		126,350
Recordkeeping	8,000		1		.50		4,000

Total Estimated Burden Hours: 130,350.
Status: Reinstatement.
Contact: John A. Chin, HUD, (202) 708-2163, Angela Antonelli, OMB (202) 395-6880.

Dated: September 23, 1992.

[FR Doc. 92-23521 Filed 9-28-92; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Outer Continental Shelf Advisory Board; Renewal

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix). Notice is hereby given that the Secretary of the Interior is renewing the Outer Continental Shelf (OCS) Advisory Board Charter.

The purpose of the OCS Advisory Board is to provide advice to the Secretary of the Interior and other officers of the Department in the performance of discretionary functions of the OCS Lands Act, as amended, including all aspects of leasing, exploration, development, and protection of the resources of the OCS.

Further information regarding the Committee may be obtained from the Chief, Office of OCS Advisory Board Support, Minerals Management Service, Department of the Interior, 381 Elden Street, Herndon, Virginia 22070.

Certification

I hereby certify that the renewal of the Outer Continental Shelf Advisory Board Charter is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 et seq.

Dated: September 17, 1992.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 92-23547 Filed 9-28-92; 8:45 am]
BILLING CODE 4310-RM-M

Bureau of Land Management

Review of Land Use Plan, Exception to the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) is considering an exception to the California Desert Conservation Area (CDCA) Plan, in accordance with 43 CFR 1610.5-5 and the procedures outlined in Chapter 7 of the CDCA Plan. This proposed exception, if approved, would allow the issuance of a Right-of-Way Grant across public land for a water pipeline, larger than 12 inches, outside of a designated utility corridor, but within a contingent corridor. The Mojave Water Agency has applied for a Right-of-Way Grant, under 43 CFR 2800, to construct, operate and maintain a 30-inch water pipeline to deliver State Project Water from the Aqueduct in

Hesperia, California to the vicinity of the Town of Yucca Valley. A contingency corridor was identified in the CDCA Plan along the proposed pipeline alignment across public land. If approved, the BLM proposes to permit an exception to the CDCA Plan for this proposed project and not to activate this contingent corridor.

DATES: Written comments must be submitted or postmarked no later than October 30, 1992.

ADDRESSES: Written comments should be sent to: Stephen Johnson, Special Projects Manager, Bureau of Land Management, California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714.

FOR FURTHER INFORMATION CONTACT: Stephen Johnson, Special Projects Manager, California Desert District Office; (714) 697–5234.

SUPPLEMENTARY INFORMATION: The Mojave Water Agency (MWA) is an instrumentality, authorized by the State of California, with responsibility for wholesaling State Project Water to local water purveyors in the Morongo Basin portion of San Bernardino County. In 1989, several communities in the Morongo Basin (Yucca Valley, Joshua Tree and Landers) voted to approve general obligation bonds to fund the construction of a 68.4 mile pipeline to convey State Project Water from the City of Hesperia, along the north slope of the San Bernardino Mountains, to these communities. After detailed engineering and environmental studies, a pipeline alignment was selected by MWA which follows existing public roads, including State Highway 247. This proposed pipeline will be 30 inches in diameter and will cross public land, administered by the BLM, for approximately 15 percent of the total route, or 9.67 miles.

Portions of the Morongo Basin have experienced severe overdraft from historic pumping activities. Without access to State Project Water, some local aquifers could be depleted. The 30-inch size of this pipeline is dictated to ensure delivery to the Morongo Basin of up to 10,900 acre feet of water per year of State Project Water. This volume of State Project Water could be delivered during those years when sufficient water is available from the State Water Project. The water delivered to the Morongo Basin will be served to water customers by the local water purveyors that have contracted for State Project Water.

The BLM contemplates that this water pipeline, as proposed, should be considered as an exception to the CDCA Plan, rather than activating the contingency corridor that parallels State Highway 247 from Lucerne Valley to Yucca Valley. An Environmental Assessment is being prepared that will evaluate the effects of constructing and operating this proposed water pipeline from its point of origin to its point of termination, including the 9.67 miles of public land. It is anticipated that this Environmental Assessment will be issued in November 1992.

Dated: September 22, 1992.

Richard E. Fagan,

Acting Desert District Manager.

[FR Doc. 92–23554 Filed 9–28–92; 8:45 am]

BILLING CODE 4310–40–M

[AZ–020–08–4320–12]

Kingman Resource Area Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Kingman Resource Area Grazing Board.

SUMMARY: The Kingman Resource Area Grazing Advisory Board will hold a meeting on Wednesday, November 4, 1992. The meeting will start at 9 a.m. in the Kingman Resource Area Conference Room, 2475 Beverly Avenue, Kingman, Arizona 86401.

The agenda for the meeting will include:

1. Update of the Kingman Resource Management Plan.
2. Status of Wilderness/Range Improvement Maintenance Schedules.
3. Report on Range Improvements for FY 92/93.
4. Allotment Management Plan Update.
5. Request for Advisory Board Expenditures.
6. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 23, 1992.

David J. Miller,

Associate District Manager.

[FR Doc. 92–23609 Filed 9–28–92; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–08–4320–12]

Southwestern Arizona Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Southwestern Arizona Grazing Advisory Board.

SUMMARY: The Southwestern Arizona Grazing Advisory Board will hold a meeting on Thursday, November 5, 1992. The meeting will start a 9 a.m. in the Phoenix District Conference Room, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Update of the Santa Maria Ranch.
3. Status of Wilderness Program.
4. Report on Range Improvements for FY 92/93.
5. Range Program Summary Update.
6. Request for Advisory Board Expenditures.
7. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 23, 1992.

David J. Miller,

Associate District Manager.

[FR Doc. 92–23610 Filed 9–28–92; 8:45 am]

BILLING CODE 4310–32–M

[CA–010–4212–13, CACA 30807]

Realty Action; Exchange of Public Land in El Dorado County, CA

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Selected Public Land

El Dorado County, CA

T. 11 N., R. 9E., M.D.M.
Sec. 12: all public land lying north and east of State Highway 49, including the

NW¼NE¼SE¼, E½NW¼SE¼NW¼, and W½NE¼SE¼NW¼
Totaling Approximately 35-acres.

The above described public land is being considered for a possible transfer to adjacent owners ED and Virginia Bacchi. The subject tracts are difficult to manage in Federal ownership and are of minimal value to the general public.

In exchange the public would receive a conservation easement on 29-acres of private riverfront property on the South Fork of the American River. The property fronts approximately one-half mile (2400 ft.) of this extremely popular river. The easement would essentially prevent future disturbances detrimental to wildlife habitat, and preserve the scenic qualities present. The conservation easement would be located on the following described private land:

Offered Conservation Easement

El Dorado County, CA

T. 11 N., R. 9E., M.D.M.
Sec. 15: that portion of the W½NW¼ lying west of the South Fork of the American River (APN 105–120–25)
Totaling Approximately 29-acres.

SUPPLEMENTARY INFORMATION: The above described Federal land would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 943); also rights-of-way of record would be identified as prior existing rights.

All necessary clearances including clearances for archaeology, and rare plants and animals would be completed prior to any conveyances of title by the United States.

This proposal is considered to be in the public interest and is consistent with current land use plans.

The selected public land described in this notice is hereby segregated form settlement, location and entry under the public land laws and from the mining laws for a period of two years from the date that this notice is published in the **Federal Register**, or until patent is issued by the United States.

For additional Information: Contact Mike Kelley at (916) 985–4474, or at the address listed below.

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o the Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

D.K. Swickard,
Area Manager.

[FR Doc. 92–23539 Filed 9–28–92; 8:45 am]
BILLING CODE 4310–40–M

Bureau of Reclamation

Paradox Valley Unit, Colorado River Basin Salinity Control Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of cancellation of a draft supplement to the final environmental statement (FES#): INT–FES–79–14.

SUMMARY: The Bureau of Reclamation will not prepare a draft supplement to the Paradox Valley Unit Final Environmental Statement (FES–79–14) as published in the **Federal Register**, 54 FR 53193, December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Powers, Bureau of Reclamation, PO Box 640, Durango, CO 81302, telephone: (303) 385–6500.

SUPPLEMENTARY INFORMATION: The draft supplement would have covered changes to the plans for the Paradox Valley Unit resulting from investigations and tests conducted after preparation of FES 79–14. Additional testing indicated that the goal of annually preventing 180,000 tons of salt from entering the Dolores River could be achieved at a pumping rate of 1.5 cubic feet per second (ft^3/s) as opposed to the 5.0 ft^3/s pumping rate presented in the FES. As a result, the brine disposal method was reevaluated and disposal by injection appeared to be more feasible than the evaporation procedure recommended in the FES.

A draft environmental assessment addressing the construction and testing of test injection facilities was prepared and distributed to the public for review and comment. After comments were incorporated, the document was finalized and a Finding of No Significant Impact was signed. Test facilities have been constructed and testing of the injection concept is underway. Results from these tests will enable a final evaluation of brine disposal by injection rather than by evaporation. If injection is selected as the preferred alternative, the original 1979 Definite Plan Report will be amended and additional National Environmental Policy Act compliance will be done.

Interested public entities and individuals may obtain information on the proposed changes to the project plans by contacting Mr. Stan Powers at the address above.

Dated: September 15, 1992.

Joe D. Hall,
Deputy Commissioner

[FR Doc. 92–23611 Filed 9–28–92; 8:45 am]
BILLING CODE 4310–09–M

National Park Service

Civil War Sites Advisory Commission Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on Monday, November 9, 1992, at the National Park Service, 800 North Capitol Street, NW, Training Room—Lower Level, Washington, DC 20002. The meeting will begin at 9 a.m. and conclude before 3:30 p.m.

This meeting constitutes the eleventh meeting of the Commission. The primary focus of the meeting will be on preparing the Commission's draft report. The Commission will welcome input from the public on the subject of Civil War site evaluation and preservation, especially as it relates to Civil War sites in Washington, DC and surrounding states.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis. Anyone may file a written statement with the Commission concerning matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements, may contact Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–343–3936). Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in suite 250, 800 N. Capitol St., NW., Washington, DC 20002.

Dated: September 21, 1992.

Lawrence E. Aten,
Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 92–23519 Filed 9–28–92; 8:45 am]
BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 19, 1992. Pursuant to 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 14, 1992.

Patrick W. Andrus,

Acting Chief of Registration, National Register.

Arkansas

Garland County

Rix, Charles N., House, 628 Quapaw Ave., Hot Springs, 92001393

Union County

Smith—McCurry House, AR 15 N side, 3.5 mi. E of El Dorado, El Dorado vicinity, 92001394

California

Riverside County

Southern Hotel, 445 D St., Perris, 92001384

Maryland

Montgomery County

Friends Advice, 19001 Bucklodge Rd., Boyds vicinity, 92001383

Mississippi

Oktibbeha County

Overstreet School Historic District, Roughly bounded by Hogan, Montgomery, Gillespie, Jackson, Wood and Washington Sts. and the Illinois Central RR tracks, Starkville, 92001398

New Jersey

Camden County

Camden Free Public Library Main Building, 616 Broadway, Camden, 92001385

Warren County

Johnsonburg Historic District, NJ 519 and 661 adjacent parts of Mott and Allamuchy Rds., Frelinghuysen Township, Johnsonburg, 92001386

New York

Cayuga County

Church Street—Congress Street Historic District (Moravia MPS), Roughly bounded by S. Main, Church, Park and Congress Sts., Moravia, 92001364

North Main Street Historic District (Moravia MPS), N. Main St. and part of Keeler Ave., Moravia, 92001365

Ohio

Montgomery County

Fire Blocks Historic District, Roughly bounded by Jefferson, Fourth, St. Clair and Second Sts., Dayton, 92001374

Summit County

Stewart—Hanson Farm, 2832 Call Rd., Stow, 92001376

Oregon

Linn County

Harrisburg Odd Fellows Hall, 190 Smith St., Harrisburg, 92001382

Multnomah County

Crumpacker, Maurice, House, 12714 SW. Iron Mountain Blvd., Portland, 92001378

Green, Bertha M. and Marie A., House, 2610 SW. Vista Ave., Portland, 92001379

Mann, Anna Lewis, Old People's Home, 1021 NE. 33rd Ave., Portland, 92001380

Oriental Apartments, 3562 SE. Harrison St., Portland, 92001377

Umatilla County

LaDow Block, 201–239 SE. Court Ave., Pendleton, 92001381

Texas

Dallam County

Dallam County Courthouse, Jct. of Fifth and Denrock Sts., Dalhart, 92001375

Stephens County

Fort Davis Family Fort, Address Restricted, Breckenridge vicinity, 92001363

Victoria County

Presbyterian Iglesia Nicea (Victoria MRA), 401 S. DeLeon, Victoria, 92001362

Sengele, Alphonse T., House (Victoria MRA), 502 E. Juan Linn, Victoria, 92001361

Urban, Fred, House, (Victoria MRA) 501 E. River, Victoria, 92001360

Virginia

Albermarle County

Bellair, Cty. Rt. S side, 3.8 mi. E of jct. with VA 20, Charlottesville vicinity, 92001372

Bedford County

Rothsay, US 221 N side, 2000 ft. E of jct. with VA 811, Forest, 92001387

Essex County

Linden, US 17 SW side, 0.5 mi. S of Champlain, Champlain vicinity, 92001397

Northumberland County

Kirkland Grove Campground, VA 779, 1.6 mi. S of Heathsville, Heathsville vicinity, 92001391

Rice's Hotel, Jct. of Co. Rts. 1001 and 1002, Heathsville, 92001389

Pulaski County

Dublin Historic District, Roughly, Giles Ave. from Long to Main Sts., Church St. from Giles to Linkous Ave. and E. Main from Giles to Ziegler St., Dublin, 92001388

Roanoke County

Harshbarger House, 316 John Richardson Rd. (Co. Rt. 743), Roanoke (Independent City) vicinity, 92001390

Tazewell County

Wynn, James, House, 408 S. Elk St., Tazewell, 92001368

Wise County

Country Cabin, Jct. of US 23 and VA 790, Norton vicinity, 92001395

Wythe County

Crockett's Cove Presbyterian Church, VA 600 E of jct. with VA 603, Wytheville vicinity, 92001373

Charlottesville Independent City

Mount Zion Baptist Church, 105 Ridge St., Charlottesville (Independent City), 92001388

Fairfax Independent City

29 Diner, 10536 Lee Hwy., Fairfax (independent City), 92001370

Fairfax Public School, 10209 Main St., Fairfax (Independent City), 92001367

Hampton Independent City

Buckroe Beach Carousel, 602 Settlers Landing Rd., Hampton (Independent City), 92001396

Lynchburg Independent City

Virginia Episcopal School, 400 Virginia Episcopal School Rd., Lynchburg (Independent City), 92001392

Petersburg Independent City

Blandford Cemetery, 319 S. Crater Rd., Petersburg (Independent City), 92001371

Portsmouth Independent City

Cedar Grove Cemetery, 301 Fort Ln., Portsmouth (Independent City), 92001366

[FR Doc. 92–23520 Filed 9–28–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32144]

Montana Rail Link, Inc.—Lease and Operation—Burlington Northern Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343 *et seq.* the lease and operation by Montana Rail Link, Inc. of Burlington Northern Railroad Company's line from Phosphate to Helena, MT, subject to standard employee protective conditions.

DATES: The exemption is effective on September 29, 1992. Petitions to reopen must be filed by October 19, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32144 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Mark H. Sidman, Adam M. Mycyk, Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, NW., Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610.

[TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: September 22, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–23684 Filed 9–28–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32140]

Montana Rail Link, Inc.—Purchase and Operation Exemption—Line of Burlington Northern Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343 *et seq.*, the purchase by Montana Rail Link, Inc., and its operation of Burlington Northern Railroad Company's 12-mile line between Whitehall and Spire Rock, MT, subject to standard employee protective conditions.

DATES: The exemption is effective on September 29, 1992. Petitions to reopen must be filed by October 19, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32140 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Mark H. Sidman, Adam M. Mycyk, Weiner, Brodsky, Sidman & Kider, P. C., 1350 New York Avenue, NW., Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610.

[TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: September 22, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–23665 Filed 9–28–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–24,206]

Honeywell, Incorporated; Fort Washington, PA; Revised Determination on Reconsideration

By order dated June 25, 1992, The United States Court of International Trade (USCIT) in *Former Employees of Honeywell, Inc.* v. *U.S. Secretary of Labor* (USCIT 90–08–00437) remanded this case to the Department for further investigation.

On September 3, 1992, the Department met with the union and its counsel in Philadelphia in response to the Court's remand concerning worker separations resulting from the outsourcing of production to foreign companies offshore.

At that meeting the union identified several products imported by the company that replaced similar products formerly produced at Fort Washington and that were marketed to the same customer base served by the Fort Washington plant. Currently, all production at Fort Washington has ceased and all production workers have been separated. The only remaining activities are marketing and sales, administration and engineering and design.

The workers were previously certified for trade adjustment assistance under petition TA–W–16,688 which expired on June 11, 1989. Although the reconsideration findings show that sales for Fort Washington increased in 1989 compared to 1988, it has become clear in this remand investigation that significant items of production have been replaced by products from offshore firms during the relevant period.

The findings illustrate the long term strategy of the company to improve its competitiveness. As a result of this strategy, sometime around the period beginning in 1987 the company began a program of global outsourcing of production. The findings suggest that a significant portion of this outsourcing went to foreign firms offshore. This outsourced production was imported back to Honeywell to serve the same customer base.

Other findings show that the workers were used interchangeably and are not readily identifiable by product. Accordingly, since the worker separations resulting from the transfer of Fort Washington's production to foreign offshore companies and its importation back to Honeywell was significant, the Department is recommending that all the workers of the Fort Washington plant of Honeywell, Inc., be certified eligible to apply for adjustment assistance.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with those produced at Honeywell, Inc., Fort Washington, Pennsylvania contributed importantly to total or partial separation of workers at Honeywell, Inc. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Honeywell, Inc., Fort Washington, Pennsylvania who became totally or partially separated from employment on or after June 11, 1989 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of September 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92–23583 Filed 9–28–92; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-27,474]

Performance Semiconductor Corporation; Sunnyvale, CA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1992 in response to a worker petition which was filed on July 6, 1992 on behalf of workers at Performance Semiconductor Corporation, Sunnyvale, California.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of September, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-23582 Filed 9-28-92; 8:45 am]

BILLING CODE 4510-30-M

Attestations Filed by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following employers which have attestations on file with DOL for using alien crewmembers for longshore activities in U.S. ports.

ADDRESSES: Attestations and supporting documentation for each attestation are available for inspection in the Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or an employer's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202-535-0163 (this is not a toll-free number).

Regarding the Complaint Process

Chief, Farm Labor Program, Wage and Hour Division. Telephone 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under the Immigration and Nationality Act, as amended by the Immigration Act of 1990 (IA), employers are, in certain circumstances, required to submit attestations to the Department of Labor (DOL) in order to be allowed by the Immigration and Naturalization Service (INS) to use alien crewmembers to perform specified longshore activity(ies) at U.S. ports. The employer's attestation must be on file with DOL before the INS will permit such longshore work. Public Law 101-649, 104 Stat. 4978. The Employment and Training Administration, pursuant to 20 CFR 655.550, is publishing the following list of employers which have submitted attestations which have been accepted for filing. The list of employers is published so that U.S. longshore workers and other persons and organizations can be aware of employers who have requested alien crewmembers for longshore activities in U.S. ports. In addition, attestations and supporting documentation are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or an employer's activity(ies) under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 21st day of September, 1992.

Robert A. Schaerfl,

Director, United States Employment Service.

United States Department of Labor; Attestations Filed by Employers Using Alien Crewmembers for Longshore Activities at U.S. Ports; Region VI—Dallas; for the Period of 05/31/91 to 04/26/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119-4151
Telephone No.: 206-286-1700
Port Name/State: Akutan, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200021
Disposition: Accepted for Processing; Date: 02/04/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119-4151
Telephone No.: 206-286-1700
Port Name/State: Akutan, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200015
Disposition: Accepted for Processing; Date: 02/04/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119-4151
Telephone No.: 206-286-1700
Port Name/State: Akutan, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200025
Disposition: Accepted for Processing; Date: 02/04/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10-1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907-272-6145
Port Name/State: Akutan, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/05/92; ETA Case No.: 200032
Disposition: Accepted for Processing; Date: 02/06/92

Employer Name: Sunmar Shipping Inc.
U.S. Business Agent: Railsback
Street Address: 5400 Columbia Seafirst Center 701 Fifth Avenue
City, State, Zip: Seattle, WA
Telephone No.: 206-623-7580
Port Name/State: Akutan, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200028
Disposition: Returned to Employer; Date: 02/05/92

Employer Name: Sunmar Shipping Inc.
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907-272-7537
Port Name/State: Akutan, Alaska, AK

Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/11/92; ETA Case No.: 200067
Disposition: Accepted for Processing; Dated: 02/13/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Akutan, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200023
Disposition: Accepted for Processing; Date: 02/04/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Alitak Bay, Alaska Alitak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200106
Disposition: Accepted for Processing; Dated: 02/18/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Alitak Bay, Alaska Alitak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200097
Disposition: Accepted for Processing; Dated: 02/18/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Alitak Bay, Alaska Alitak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200104
Disposition: Accepted for Processing; Dated: 02/18/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Alitak Bay, Alaska Alitak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200122
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Sunmar Shipping, Inc.
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Alitak Bay, Alaska Alitak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200117
Disposition: Accepted for Processing; Dated: 02/18/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Alitak Bay, Alaska Alitak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200114
Disposition: Accepted for Processing; Dated: 02/18/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Amak Island, Alaska Amak Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200135
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Amak Island, Alaska Amak Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200131
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Amak Island, Alaska Amak Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200142
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Amak Island, Alaska Amak Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200125
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Amak Island, Alaska Amak Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200146
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Atka, Alaska Atka, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200136
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Atka, Alaska Atka, AK
Activities Requested: LOAD, OPER of EQUIP

Receipt Date: 02/14/92; ETA Case No.: 200133
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Atka, Alaska Atka, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200140
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Atka, Alaska Atka, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200126
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7527
Port Name/State: Atka, Alaska Atka, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200147
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Beaver Inlet, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200080
Disposition: Accepted for Processing; Dated: 02/14/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Beaver Inlet, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200071
Disposition: Accepted for Processing; Dated: 02/13/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Beaver Inlet, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200073
Disposition: Accepted for Processing; Dated 2/14/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Beaver Inlet, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200083
Disposition: Accepted for Processing; Dated 02/14/92
Employer Name: Sunmar Shipping, Inc.
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Beaver Inlet, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200087
Disposition: Accepted for Processing; Dated 02/14/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Beaver Inlet, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200077
Disposition: Accepted for Processing; Dated 02/14/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Chignik Chignik, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200020
Disposition: Accepted for Processing; Dated 02/04/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Chignik Chignik, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200016
Disposition: Accepted for Processing; Dated 02/04/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Chignik Chignik, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200027
Disposition: Accepted for Processing; Dated 02/04/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Chignik Chignik, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/05/92; ETA Case No.: 200031
Disposition: Accepted for Processing; Dated: 02/06/92
Employer Name: Sunmar Shipping, Inc.
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Chignik Chignik, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/11/92; ETA Case No.: 200068
Disposition: Accepted for Processing; Dated: 02/13/92
Employer Name: Sunmar Shipping, Inc.
U.S. Business Agent: Railsback
Street Address: 5400 Columbia Seafirst Center 701 Fifth Avenue

City, State, Zip: Seattle, WA
Telephone No.: 206–623–7580
Port Name/State: Chignik Chignik, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200029
Disposition: Returned to Employer; Dated: 02/05/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Chignik Chignik, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200024
Disposition: Accepted for Processing; Dated: 02/04/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Clark's Point, Alaska Clark's Point, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200192
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Clark's Point, Alaska Clark's Point, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200207
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Clark's Point, Alaska Clark's Point, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200200
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Clark's Point, Alaska Clark's Point, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200220
Disposition: Accepted for Processing; Dated: 04/10/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Clark's Point, Alaska Clark's Point, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200228
Disposition: Accepted for Processing; Dated: 04/10/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Dutch Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200079
Disposition: Accepted for Processing; Dated: 02/14/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Dutch Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200070
Disposition: Accepted for Processing; Dated: 02/13/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Dutch Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200070
Disposition: Accepted for Processing; Dated: 02/14/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Dutch Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200082
Disposition: Accepted for Processing; Dated: 02/14/92

Employer Name: Sunmar Shipping, Inc.
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Dutch Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200086
Disposition: Accepted for Processing; Dated: 02/14/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Dutch Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200076
Disposition: Accepted for Processing; Dated: 02/14/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Egegik Bay, Alaska Egigik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200189
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Egegik Bay, Alaska Egigik Bay, AK

Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200204
Disposition: Accepted for Processing; Dated: 04/09/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Egegik Bay, Alaska Egigik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200197
Disposition: Accepted for Processing; Dated: 04/09/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Egegik Bay, Alaska Egigik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200214
Disposition: Accepted for Processing; Dated: 04/10/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Egegik Bay, Alaska Egigik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200222
Disposition: Accepted for Processing; Dated 04/10/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Hagemeister Strait, Alaska Hagemeister S
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200188
Disposition: Accepted for Processing; Dated 04/10/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Hagemeister Strait, Alaska Hagemeister S
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200212
Disposition: Accepted for Processing; Dated: 04/09/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Hagemeister Strait, Alaska Hagemeister S
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200196
Disposition: Accepted for Processing; Dated 04/09/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Hagemeister Strait, Alaska Hagemeister S
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200215
Disposition: Accepted for Processing; Dated 04/10/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Hagemeister Strait, Alaska Hagemeister S
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200223
Disposition: Accepted for Processing; Dated: 4/10/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Harris Bay, Alaska Harris Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200139
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Harris Bay, Alaska Harris Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200134
Disposition: Accepted for Processing; Dated: 01/19/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Harris Bay, Alaska Harris Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200141
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Harris Bay, Alaska Harris Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200129
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Harris Bay, Alaska Harris Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200149
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Iniskin Bay, Alaska Iniskin, AK

Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/16/92; ETA Case No.: 200238
Disposition: Accepted for Processing; Dated: 04/14/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Iniskin Bay, Alaska
Iniskin Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200181
Disposition: Return to Employer; Dated: 03/27/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Iniskin Bay, Alaska
Iniskin Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200174
Disposition: Returned to Employer; Dated 03/27/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Iniskin Bay, Alaska
Iniskin Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200236
Disposition: Accepted for Processing; Dated: 04/14/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Iniskin Bay, Alaska
Iniskin Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200168
Disposition: Returned to Employer; Dated: 03/27/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Iniskin Bay, Alaska
Iniskin Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/16/92; ETA Case No.: 200234
Disposition: Accepted for Processing; Dated: 04/14/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Iniskin Bay, Alaska
Iniskin Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 03/17/92; ETA Case No.: 200177
Disposition: Returned to Employer; Dated: 03/27/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Iniskin Bay, Alaska
Iniskin Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/16/92; ETA Case No.: 200240
Disposition: Accepted for Processing; Dated: 04/14/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Iniskin Bay, Alaska
Iniskin Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/04/92; ETA Case No.: 200186
Disposition: Returned to Employer; Dated: 03/27/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Iniskin Bay, Alaska
Iniskin Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/16/92; ETA Case No.: 200242
Disposition: Accepted for Processing; Dated: 04/14/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ivanof Bay, Alaska
Ivanof Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200180
Disposition: Returned to Employer; Dated: 03/27/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ivanof Bay, Alaska
Ivanof Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/16/92; ETA Case No.: 200239
Disposition: Accepted for Processing; Dated: 04/14/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ivanof Bay, Alaska
Ivanof Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/16/92; ETA Case No.: 200239
Disposition: Accepted for Processing; Dated: 04/14/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ivanof Bay, Alaska
Ivanof Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200173
Disposition: Returned to Employer; Dated: 03/27/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ivanof Bay, Alaska
Ivanof Bay, AK
Activities Requested: LOAD, OPER of EQUIP

Receipt Date: 04/01/92; ETA Case No.: 200171
Disposition: Returned to Employer; Dated: 03/27/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ivanof Bay, Alaska Ivanof Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/16/92; ETA Case No.: 200235
Disposition: Accepted for Processing; Dated: 04/14/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300 West
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Ivanof Bay, Alaska Ivanof Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200176
Disposition: Retuned to Employer; Dated: 03/27/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300 West
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Ivanof Bay, Alaska Ivanof Bay, AK
Activities Requested: LOAD OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200241
Disposition: Accepted for Processing; Dated: 04/14/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Ivanof Bay, Alaska Ivanof Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/04/92; ETA Case No.: 200185
Disposition: Returned to Employer; Dated; 03/27/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Ivanof Bay, Alaska Ivanof Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/16/92; ETA Case No.: 200243
Disposition: Accepted for Processing; Dated: 04/14/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Kiliuda Bay, Alaska Kiliuda Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200105
Disposition: Accepted for Processing; Dated: 02/18/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Kiliuda Bay, Alaska Kiliuda Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200098
Disposition: Accepted for Processing; Dated: 02/18/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Kiliuda Bay, Alaska Kiliuda Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200099
Disposition: Accepted for Processing; Dated: 02/18/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Kiliuda Bay, Alaska Kiliuda Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200123
Disposition: Accepted for Processing, Dated: 02/19/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Kiliuda Bay, Alaska Kiliuda Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200113
Disposition: Accepted for Processing; Dated; 02/18/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: King Cove, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200041
Disposition: Accepted for Processing; Dated: 02/10/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: King Cove, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200066
Disposition: Accepted for Processing; Dated: 02/11/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: King Cove, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200060
Disposition: Accepted for Processing; Dated: 02/11/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: King Cove, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP

Receipt Date: 02/07/92; ETA Case No.: 200045
Disposition: Accepted for Processing; Dated: 02/10/92
Employer Name: Sunmar Shipping, Inc.
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: King Cove, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200047
Disposition: Accepted for Processing; Dated: 02/10/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: King Cove, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200052
Disposition: Accepted for Processing; Dated: 02/10/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Kvichack Bay, Alaska Kvichack Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200190
Disposition: Accepted for Processing; Dated: 04/09/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Kvichack Bay, Alaska Kvichack Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200205
Disposition: Accepted for Processing; Dated: 04/09/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Kvichack Bay, Alaska Kvichack Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200198
Disposition: Accepted for Processing; Dated: 04/09/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Kvichack Bay, Alaska Kvichack Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200213
Disposition: Accepted for Processing; Dated: 04/10/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Kvichack Bay, Alaska Kvichack Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200221
Disposition: Accepted for Processing; Dated: 04/10/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Larsen Bay, Alaska Larsen Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200138
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Larsen Bay, Alaska Larsen Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200132
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Larsen Bay, Alaska Larsen Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200144
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Larsen Bay, Alaska Larsen Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200128
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Larsen Bay, Alaska Larsen Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200145
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Lost Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200037
Disposition: Accepted for Processing; Dated: 02/10/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Lost Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200065

Disposition: Accepted for Processing; Dated: 02/11/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Lost Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200061
Disposition: Accepted for Processing; Dated: 02/11/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Lost Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200046
Disposition: Accepted for Processing; Dated: 02/10/92
Employer Name: Sunmar Shipping, Inc.
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Lost Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200048
Disposition: Accepted for Processing; Dated: 02/10/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Lost Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200055
Disposition: Accepted for Processing; Dated: 02/10/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Makushin Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200091
Disposition: Returned to Employer; Dated: 02/17/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Makushin Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 03/14/92; ETA Case No.: 200152
Disposition: Accepted for Processing; Dated: 02/28/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Makushin Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200091
Disposition: Returned to Employer; Dated: 02/17/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Makushin Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 03114/92; ETA Case No.: 200153
Disposition: Accepted for Processing; Dated: 02/28/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Makushin Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200088
Disposition: Returned to Employer; Dated: 02/17/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Makushin Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 03/14/92; ETA Case No.: 200151
Disposition: Accepted for Processing; Dated: 02/28/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Makushin Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200089
Disposition: Returned to Employer; Dated: 02/17/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Makushin Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 03/14/92; ETA Case No.: 200155
Disposition: Accepted for Processing; Dated: 02/28/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Makushin Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200092
Disposition: Returned to Employer; Dated: 02/17/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Makushin Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 03/14/92; ETA Case No.: 200154

Disposition: Accepted for Processing; Dated: 02/28/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Naked Island, Alaska Naked Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/04/92; ETA Case No.: 200232
Disposition: Returned to Employer; Dated: 04/15/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Naked Island, Alaska Naked Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200178
Disposition: Returned to Employer; Dated: 03/27/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Naked Island, Alaska Naked Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200172
Disposition: Returned to Employer; Dated: 03/27/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Naked Island, Alaska Naked Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/04/92; ETA Case No.: 200231
Disposition: Returned to Employer; Dated: 04/15/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Naked Island, Alaska Naked Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/1/92; ETA Case No.: 200170
Disposition: Returned to Employer; Dated: 03/27/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Naked Island, Alaska Naked Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/04/92; ETA Case No.: 200230
Disposition: Returned to Employer; Dated: 04/15/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Naked Island, Alaska Naked Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/04/92; ETA Case No.: 200233
Disposition: Returned to Employer; Dated: 04/15/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Naked Island, Alaska Naked Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200175
Disposition: Returned to Employer; Dated: 03/27/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Naked Island, Alaska Naked Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/04/92; ETA Case No.: 200187
Disposition: Returned to Employer; Dated: 03/27/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Naked Island, Alaska Naked Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/04/92; ETA Case No.: 200229
Disposition: Returned to Employer; Dated: 04/15/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Nunavechak Bay, Alaska Nunavechak Bay, A
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200194
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Nunavechak Bay, Alaska Nunavechak Bay, A
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200210
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Nunavechak Bay, Alaska Nunavechak Bay, A
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200202
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Nunavechak Bay, Alaska Nunavechak Bay, A
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200217
Disposition: Accepted for Processing; Dated: 04/10/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Nunavechak Bay, Alaska Nunavechak Bay, A
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200225
Disposition: Accepted for Processing; Dated: 04/10/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Port Bailey, Alaska Port Bailey, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200108
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Port Bailey, Alaska Port Bailey, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200095
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Port Bailey, Alaska Port Bailey, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200102
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Port Bailey, Alaska Port Bailey, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200120
Disposition: Accepted for Processing; Dated: 02/19/92

Employer Name: Sunmar Shipping, Inc.
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Port Bailey, Alaska Port Bailey, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200118
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Port Bailey, Alaska Port Bailey, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200116
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Port Moller, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200040
Disposition: Accepted for Processing; Dated: 02/10/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Port Moller, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200063
Disposition: Accepted for Processing; Dated: 02/11/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Port Moller, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200058
Disposition: Accepted for Processing; Dated: 02/11/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Port Moller, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200043
Disposition: Accepted for Processing; Dated: 02/10/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Port Moller, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200054
Disposition: Accepted for Processing; Dated 02/10/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Sand Point, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200038
Disposition: Accepted for Processing; Dated 02/10/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Sand Point, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200064
Disposition: Accepted for Processing; Dated 02/10/92

Employer Name: Nissui Shipping Corporation

U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Sand Point, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200059
Disposition: Accepted for Processing; Dated 02/11/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–6145
Port Name/State: Sand Point, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200044
Disposition: Accepted for Processing; Dated 02/10/92

Employer Name: Sunmar Shipping, Inc.
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Sand Point, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200050
Disposition: Accepted for Processing; Dated 02/10/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Sand Point, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200051
Disposition: Accepted for Processing; Dated 02/10/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Sawmill Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200036
Disposition: Accepted for Processing; Dated 02/10/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Sawmill Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200033
Disposition: Accepted for Processing; Dated: 02/10/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Sawmill Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200056
Disposition: Accepted for Processing; Dated: 02/11/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–6145
Port Name/State: Sawmill Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200034
Disposition: Accepted for Processing; Dated: 02/10/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Sawmill Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200035
Disposition: Accepted for Processing; Dated: 02/10/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Security Cove, Alaska Security Cove, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200191
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Security Cove, Alaska Security Cove, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200206
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Security Cove, Alaska Security Cove, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200199
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–6145
Port Name/State: Security Cove, Alaska Security Cove, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200216
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Security Cove, Alaska Security Cove, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200224
Disposition: Accepted for Processing; Dated: 04/10/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.

Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Sitkalidak Bay, Alaska Sitkalidak Bay, A
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No: 200109
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Sitkalidak Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200094
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Sitkalidak Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200101
Disposition: Accepted for Processing; Dated 02/18/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Sitkalidak Bay, Alaska Sitkalidak Bay, A
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200119
Disposition: Accepted for Processing; Dated 02/19/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Sitkalidak Bay, Alaska Sitkalidak Bay, A
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200112
Disposition: Accepted for Processing; Dated 02/18/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Squaw Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200039
Disposition: Accepted for Processing; Dated 02/10/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Squaw Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200062
Disposition: Accepted for Processing; Dated 02/11/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliot Avenue West
City, State, Zip: Seattle, WA 98119-4151
Telephone No.: 206–286–1700
Port Name/State: Squaw Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200057
Disposition: Accepted for Processing; Dated: 02/11/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Squaw Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200042
Disposition: Accepted for Processing; Dated: 02/10/92

Employer Name: Sunmar Shipping, Inc.
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Squaw Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200049
Disposition: Accepted for Processing; Dated: 02/10/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Squaw Harbor, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/07/92; ETA Case No.: 200053
Disposition: Accepted for Processing; Dated: 02/10/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: St. George Island, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200110
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: St. George Island, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/10/92; ETA Case No.: 200093
Disposition: Accepted for Processing; Dated: 02/18/93

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: St. George Island, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200100
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145

Port Name/State: St. George Island, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200121
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: St. George Island, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200111
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: St. Matthew Island, Alaska St. Matthew I
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200137
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: St. Matthew Island, Alaska St. Matthew I
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/19/92; ETA Case No.: 200130
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: St. Matthew Island, Alaska St. Matthew I
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200143
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–6145
Port Name/State: St. Matthew Island, Alaska St. Matthew I
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200127
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: St. Matthew Island, Alaska St. Matthew I
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200148
Disposition: Accepted for Processing; Dated: 02/19/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: St. Paul St. Paul, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200019
Disposition: Accepted for Processing; Dated: 02/04/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: St. Paul St. Paul, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200017
Disposition: Accepted for Processing; Dated: 02/04/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: St. Paul St. Paul, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200026
Disposition: Accepted for Processing; Dated: 02/04/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–6145
Port Name/State: St. Paul St. Paul, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/05/92; ETA Case No.: 200030
Disposition: Accepted for Processing; Dated: 02/06/92
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: St. Paul St. Paul, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 01/31/92; ETA Case No.: 200022
Disposition: Accepted for Processing; Dated: 02/04/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Summit Island, Alaska Simmit Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200193
Disposition: Accepted for Processing; Dated: 04/09/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Summit Island, Alaska Simmit Island, Ak
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200208
Disposition: Accepted for Processing; Dated: 04/09/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Summit Island, Alaska Simmit Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200201

Disposition: Accepted for Processing; Dated: 04/09/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Summit Island, Alaska Simmit Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200219
Disposition: Accepted for Processing; Dated: 04/10/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Summit Island, Alaska Simmit Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200227
Disposition: Accepted for Processing; Dated: 04/10/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Talitlik Narrows, Alaska Talitlik Narrow
Activities Requested:
Receipt Date: 03/17/92; ETA Case No.: 200156
Disposition: Accepted for Processing; Dated: 03/18/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Tatitlik Narrows, Alaska Tatitlik Narrow
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200164
Disposition: Accepted for Processing; Dated: 03/26/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agency: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Tatitlik Narrows, Alaska Tatitlik Narrow
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200163
Disposition: Accepted for Processing; Dated: 03/26/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Tatitlik Narrows, Alaska Tatitlik Narrow
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200166
Disposition: Accepted for Processing; Dated: 03/26/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Tatitlik Narrows, Alaska Tatitlik Narrow
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/04/92; ETA Case No.: 200182
Disposition: Accepted for Processing; Dated: 03/26/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Thumb Bay, Alaska Thumb Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200161
Disposition: Accepted for Processing; Dated: 03/26/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Thumb Bay, Alaska Thumb Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200165
Disposition: Accepted for Processing; Dated: 03/26/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Thumb Bay, Alaska Thumb Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/04/92; ETA Case No.: 200183
Disposition: Accepted for Processing; Dated: 03/26/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Togiak Bay, Alaska Togiak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200195
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Togiak Bay, Alaska Togiak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200211
Disposition: Returned to Employer; Dated: 04/09/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Togiak Bay, Alaska Togiak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200203
Disposition: Accepted for Processing; Dated: 04/09/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Togiak Bay, Alaska Togiak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200218
Disposition: Accepted for Processing; Dated: 04/10/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies

Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Togiak Bay, Alaska Togiak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/25/92; ETA Case No.: 200226
Disposition: Accepted for Processing; Dated: 04/10/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Two Moon Bay Two Moon Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200157
Disposition: Accepted for Processing; Dated: 03/18/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Two Moon Bay Two Moon Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200160
Disposition: Accepted for Processing; Dated: 03/26/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Two Moon Bay Two Moon Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200159
Disposition: Accepted for Processing; Dated: 03/18/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Two Moon Bay, Alaska Two Moon Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200158
Disposition: Accepted for Processing; Dated: 03/18/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Two Moon Bay, Alaska Two Moon Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200162
Disposition: Accepted for Processing; Dated: 03/26/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Two Moon Bay, Alaska Two Moon Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/01/92; ETA Case No.: 200167
Disposition: Accepted for Processing; Dated: 03/26/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Two Moon Bay, Alaska Two Moon Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 04/04/92; ETA Case No.: 200184
Disposition: Accepted for Processing; Dated: 03/26/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Uganik Bay, Alaska Uganik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200107
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Uganik Bay, Alaska Uganik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200096
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Uganik Bay, Alaska Uganik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200115
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Uganik Bay, Alaska Uganik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/18/92; ETA Case No.: 200124
Disposition: Accepted for Processing; Dated: 02/19/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Uganik Bay, Alaska Uganik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200103
Disposition: Accepted for Processing; Dated: 02/18/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Wide Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200078
Disposition: Accepted for Processing; Dated: 02/14/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Wide Alaska Bay AK

Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200069
Disposition: Accepted for Processing; Dated: 02/13/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Wide Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200084
Disposition: Accepted for Processing; Dated: 02/14/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Wide Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/13/92; ETA Case No.: 200081
Disposition: Accepted for Processing; Dated: 02/14/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Wide Bay, Alaska, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 02/14/92; ETA Case No.: 200074
Disposition: Accepted for Processing; Dated: 02/14/92

Division of Foreign Labor Certification; Attestations Filed by Employers Using Alien Crewmembers for Longshore Activities at U.S. Ports; Region VI—Dallas; 08/17/92 TO 08/30/92

There was no D–1 Crewmember Attestation activity from this Region for this time period.

Division of Foreign Labor Certification; Attestations Filed by Employers Using Alien Crewmembers for Longshore Activities at U.S. Ports; Region VI—Dallas; 08/31/92 TO 09/13/92

There was no D–1 Crewmember Attestation activity from this Region for this time period.

United States Department of Labor; Attestations Filed by Employers Using Alien Crewmembers for Longshore Activities at U.S. Ports; Region VI—Dallas; For the Period of 05/11/92 TO 05/24/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Alinchak Bay, Alaska Alinchak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200324
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Alinchak Bay, Alaska Alinchak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200314
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Alinchak Bay, Alaska Alinchak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200318
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Alinchak Bay, Alaska Alinchak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200321
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Alinchak Bay, Alaska Alinchak Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200317
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Bold Island, Alaska Bold Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200301
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Bold Island, Alaska Bold Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200305
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Bold Island, Alaska Bold Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200309
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Bold Island, Alaska Bold Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200293

Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Taiyo Gyogyo Kabuskiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Bold Island, Alaska Bold Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200297
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Cape Romanzof, Alaska Cape Romanzof, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/23/92; ETA Case No.: 200290
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Cape Romanzof, Alaska Cape Romanzof, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/23/92; ETA Case No.: 200290
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Cape Romanzof, Alaska Cape Romnazof, AD
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/23/92; ETA Case No.: 200288
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Cape Romanzof, Alaska Cape Romanzof, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/23/92; ETA Case No.: 200289
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Cape Romanzof, Alaska Cape Romanzof, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/23/92; ETA Case No.: 200287
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Taigo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Cape Romanzof, Alaska Cape Romanzof, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/23/92; ETA Case No.: 200291
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Kayokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ikatan bay, Alaska Ikatan Bay AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200302
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ikatan Bay, Alaska Ikatan Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200306
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ikatan Bay, Alaska Ikatan Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200310
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Ikatan Bay, Alaska Ikatan Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200294
Disposition: Accepted for Processing; Dated: 05/12/94
Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Ikatan Bay, Alaska Ikatan Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200298
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Kyokuyo Co. Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Noyes Island, Alaska Noyes Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200327
Disposition: Accepted for Processing; Dated: 05/12/92
Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Noyes Island, Alaska Noyes Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/23/92; ETA Case No.: 200330
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Noyes Island, Alaska
Noyes Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/23/92; ETA Case No.: 200331
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Noyes Island, Alaska
Noyes Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/23/92; ETA Case No.: 200329
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Noyes Island, Alaska
Noyes Island, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/23/92; ETA Case No.: 200328
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Port Estralla, Alaska
Port Estralla, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200303
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Port Estralla, Alaska
Port Estralla, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200307
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Port Estralla, Alaska
Port Estralla, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200311
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Port Estralla, Alaska
Port Estralla, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200295
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Port Estralla, Alaska
Port Estralla, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200299
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Shelter Bay, Alaska
Shelter Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200325
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Shelter Bay, Alaska
Shelter Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200312
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Shelter Bay, Alaska
Shelter Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200319
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Shelter Bay, Alaska
Shelter Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200322
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Shelter Bay, Alaska
Shelter Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200316
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ugashik Bay, Alaska
Ugashik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200326
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Nichiro Corporation

U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ugashik Bay, Alaska
Ugashik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200313
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Ugashik Bay, Alaska
Ugashik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200320
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Ugashik Bay, Alaska
Ugashik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200323
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Ugashik Bay, Alaska
Ugashik Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200315
Disposition: Accepted for Processing; Dated: 05/12/92

Employer Name: Kyokuyo Co., Ltd.
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Volcano Bay, Alaska
Volcano Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200300
Disposition: Accepted for Processing; Dated 05/12/92

Employer Name: Nichiro Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Volcano Bay, Alaska
Volcano Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200304
Disposition: Accepted for Processing; Dated 05/12/92

Employer Name: Nissui Shipping Corporation
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Volcano Bay, Alaska
Volcano Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200308
Disposition: Accepted for Processing; Dated 05/12/92

Employer Name: Rokuchu Marine Corporation
U.S. Business Agent: A.N.P. Shipping Co.
Street Address: P.O. Box 10–1300
City, State, Zip: Anchorage, AK 99610
Telephone No.: 907–272–6145
Port Name/State: Volcano Bay, Alaska
Volcano Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200292
Disposition: Accepted for Processing; Dated 05/12/92

Employer Name: Taiyo Gyogyo Kabushiki Kaisha
U.S. Business Agent: North Star Maritime Agencies
Street Address: P.O. Box 102019
City, State, Zip: Anchorage, AK 99510
Telephone No.: 907–272–7537
Port Name/State: Volcano Bay, Alaska
Volcano Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 05/22/92; ETA Case No.: 200296
Disposition: Accepted for Processing; Dated 05/12/92

Division of Foreign Labor Certification; Attestations Filed by Employers Using Alien Crewmembers for Longshore Activities at U.S. Ports; Region VI—Dallas; 05/25/92 to 06/07/92

There was no D–1 Crewmember Attestation activity from this Region for this time period.

Division of Foreign Labor Certification; Attestations filed by Employers Using Alien Crewmembers for Longshore Activities at U.S. Ports; Region VI—Dallas; 06/08/92 to 06/21/92

There was no D–1 Crewmember Attestation activity from this Region for this time period.

United Stated Department of Labor; Attestations Filed by Employers Using Alien Crewmembers for Longshore Activities at U.S. Ports; Region VI—Dallas; For the Period of 06/22/92 to 07/05/92

Employer Name: Sanwa Sempaku Kabushiki Kaisha
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Clark's Point, Alaska
Clark's Point, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 07/02/92; ETA Case No.: 200334
Disposition: Returned to Employer; Dated 06/25/92

Employer Name: Sanwa Sempaku Kabushiki Kaisha
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Kvichack Bay, Alaska
Kvichack Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 07/02/92; ETA Case No.: 200335
Disposition: Returned to Employer; Dated 06/25/92

United States Department of Labor; Attestations filed by Employers Using Alien Crewmembers for Longshore Activities at U.S. Ports; Region VI—Dallas; For the Period of 07/06/92 to 07/19/92

Employer Name: Sanwa Sempaku Kabushiki Kaisha
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Clark's Point, Alaska
Clark's Point, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 07/02/92; ETA Case No.: 200337
Disposition: Accepted for Processing; Dated: 07/10/92

Employer Name: Sanwi Sempaku Kabushiki Kaisha
U.S. Business Agent: Alaska Maritime Agencies, Inc.
Street Address: 300 Elliott Avenue West
City, State, Zip: Seattle, WA 98119–4151
Telephone No.: 206–286–1700
Port Name/State: Kvichack Bay, Alaska Kvichack Bay, AK
Activities Requested: LOAD, OPER of EQUIP
Receipt Date: 07/02/92; ETA Case No.: 200336
Disposition: Accepted for Processing; Dated: 07/10/92

Division of Foreign Labor Certification; Attestations Filed by Employers Using Alien Crewmembers for Longshore Activities at U.S. Ports; Region VI—Dallas; 08/03/92 TO 08/16/92

There was no D–1 Crewmember Attestation activity from this Region for this time period.

[FR Doc. 92–23429 filed 9–28–92; 8:45 am]
BILLING CODE 4510–30–M

Mine Safety and Health Administration

Consolidation Coal Co. et al.; Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M–92–102–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, PA 15241–1421 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Osage No. 3 Mine (I.D. No. 46–01455) located in Monongalia County, West Virginia. Due to deteriorating roof and rib conditions, the area being evaluated by check point No. 3, which is the subject of a granted petition, docket number (M–83–16–C), cannot be safely traveled and will be eliminated. The petitioner proposes to continue using evaluation check points Nos. 2 and 8 to measure the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Consolidation Coal Company

[Docket No. M–92–103–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Osage No. 3 Mine (I.D. No. 46–01455) located in Monongalia County, West Virginia. Due to deteriorating roof conditions and an accumulation of water, the petitioner proposes to eliminate the evaluation point at 7 west, a monitoring point for the bleeder system for check points 7 and 15 which is the subject of a granted petition, docket number (M–88–229–C), and establish check points for Nos. 7, 8 and 9 to evaluate the quantity and quality of air entering and leaving the affected area instead of traveling the return aircourse in its entirety. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Little Rock Coal Company

[Docket No. M–92–104–C]

Little Rock Coal Company, RR 2, Box 39, Hegins, PA 17938 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope Mine (I.D. No. 36–08320) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) without safety catches to transport persons. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Peabody Coal Company

[Docket No. M–92–105–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. The petitioner proposes to seal and mine through oil and gas wells. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Western Fuels-Utah, Inc.

[Docket No. M–92–106–C]

Western Fuels-Utah, Inc., P.O. Box 1067, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Deserado Mine (I.D. No. 05–03505) located in Rio Blanco, Colorado. The petitioner proposes to use a non-permissible submersible pump in return air, bleeder air and sealed areas. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Hobet Mining, Inc.

[Docket No. M–92–107–C]

Hobet Mining, Inc., P.O. box 305, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 77.208(e) (storage of material) to its Beth Station No. 79 Preparation Plant (Mine) (I.D. No. 46–05398), and its No. 21 Surface Mine (I.D. No. 46–04670) both located in Boone County, West Virginia, and to its Pine Creek No. 12 Preparation Plant (Mine) (I.D. No. 46–06197) and its No. 7 Surface Mine (I.D. No. 46–02249) both located in Logan County, West Virginia. The petitioner proposes to transport, store and use compressed gas cylinders on service vehicles and to store and use compressed gas cylinders in a preparation plant without removing the regulators and replacing the protective caps. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Peabody Coal Company

[Docket No. M–92–108–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.325(b) (air quantity) to its Camp No. 1 Mine (I.D. No. 15–02709) located in Union County, Kentucky. Section 75.325(b) is not scheduled to be effective until November 16, 1992. The petitioner proposes to use the stopping line constructed to separate the intake and return aircourses in rooms previously developed on the same pool. Permanent stopping lines would be constructed when rooms are driven more than 600 feet deep from the centerline of the panel from which the rooms are driven, and temporary stopping lines would be used when rooms are driven 600 feet deep or less from the centerline of the panel from which the rooms are driven. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Peabody Coal Company

[Docket No. M–92–109–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.360(c)(1) (pre-shift examinations) to its Camp No. 1 Mine (I.D. No. 15–02709) located in Union County, Kentucky. Section 75.360(c)(1) is not scheduled to be effective until November 16, 1992. The petitioner proposes to use the stopping line constructed to separate the intake

and return aircourses in rooms previously developed on the same panel. Permanent stopping lines would be constructed when rooms are driven more than 600 feet deep from the centerline of the panel from which the rooms are driven, and temporary stopping lines would be used when rooms are driven 600 feet deep or less from the centerline of the panel from which the rooms are driven. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Peabody Coal Company

[Docket No. M–92–110–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.360(c)(1) (pre-shift examinations) to its Martwick Underground Mine (I.D. NO. 15–14070) located in Muhlenberg, Kentucky. Section 75.360(c)(1) is not scheduled to be effective until November 16, 1992. The petitioner proposes to use the stopping line constructed to separate the intake and return aircourses in rooms previously developed on the same panel. Permanent stopping lines would be constructed when rooms are driven more than 600 feet deep from the centerline of the panel from which the rooms are driven, and temporary stopping lines would be used when rooms are driven 600 feet deep or less from the centerline of the panel from which the rooms are driven. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. Peabody Coal Company

[Docket No. M–92–111–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.362(c)(1) (on-shift examination) to its Martwick Underground Mine (I.D. No. 15–14070) located in Muhlenberg County, Kentucky. Section 75.362(c)(1) is not scheduled to be effective until November 16, 1992. The petitioner proposes to use the stopping line constructed to separate the intake and return aircourses in rooms previously developed on the same panel. Permanent stopping lines would be constructed when rooms are driven more than 600 feet deep from the centerline of the panel from which the rooms are driven, and temporary stopping lines would be used when rooms are driven 600 feet deep or less from the centerline of the panel from which the rooms are driven. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

11. Peabody Coal Company

[Docket No. M–92–112–C]

Peabody Coal Company, P.O. box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.362(c)(1) (on-shift examination) to its Camp No. 1 Mine (I.D. No. 15–02709) located in Union County, Kentucky. Section 75.362(c)(1) is not scheduled to be effective until November 16, 1992. The petitioner proposes to use the stopping line constructed to separate the intake and return aircourses in rooms previously developed on the same panel. Permanent stopping lines would be constructed when rooms are driven more than 600 feet deep from the centerline of the panel from which the rooms are driven, and temporary stopping lines would be used when rooms are driven 600 feet deep or less from the centerline of the panel from which the rooms are driven. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

12. Peabody Coal Company

[Docket No. M–92–113–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.362(c)(1) (on-shift examination) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. Section 75.362(c)(1) is not scheduled to be effective until November 16, 1992. The petitioner proposes to use the stopping line constructed to separate the intake and return aircourses in rooms previously developed on the same panel. Permanent stopping lines would be constructed when rooms are driven more than 600 feet deep from the centerline of the panel from which the rooms are driven, and temporary stopping lines would be used when rooms are driven 600 feet deep or less from the centerline of the panel from which the rooms are driven. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

13. Peabody Coal Company

[Docket No. M–92–114–C]

Peabody Coal company, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.325(b) (air quantity) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. Section 75.325(b) is not scheduled to be effective until November 16, 1992. The petitioner proposes to use the stopping line constructed to separate the intake and return aircourses in rooms previously developed on the same panel. Permanent stopping lines would be constructed when rooms are driven more than 600 feet deep from the centerline of the panel from which the rooms are driven, and temporary stopping lines would be used when rooms are driven 600 feet deep or less from the centerline of the panel from which the rooms are driven. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

14. Peabody Coal Company

[Docket No. M–92–115–C]

Peabody Coal Company, P.O. box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.360(c)(1) (pre-shift examinations) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. Section 75.360(c)(1) is not scheduled to be effective until November 16, 1992. The petitioner proposes to use the stopping line constructed to separate the intake and return aircourses in rooms previously developed on the same panel. Permanent stopping lines would be constructed when rooms are driven more than 600 feet deep from the centerline of the panel from which the rooms are driven, and temporary stopping lines would be used when rooms are driven 600 feet deep or less from the centerline of the panel from which the rooms are driven. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

15. Peabody Coal Company

[Docket No. M–92–116–C]

Peabody Coal Company, P.O. box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.325(b) (air quantity) to its Martwick Underground Mine (I.D. No. 15–14070) located in Muhlenberg, Kentucky. Section 75.325(b)

is not scheduled to be effective until November 16, 1992. The petitioner proposes to use the stopping line constructed to separate the intake and return aircourses in rooms previously developed on the same panel. Permanent stopping lines would be constructed when rooms are driven more than 600 feet deep from the centerline of the panel from which the rooms are driven, and temporary stopping lines would be used when rooms are driven 600 feet deep or less from the centerline of the panel from which the rooms are driven. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

16. Consolidation Coal Company

[Docket No. M–92–117–C]

The United Mine Workers of American (UMWA), 900 Fifteenth Street, NW., Washington, DC has filed a request to amend a petition filed by the Consolidation Coal Company, Robinson Run Mine, (I.D. No. 56–01318), located in Monongalia County, West Virginia for 30 CFR 75.326 (aircourses and belt haulage entries), Docket Number M–90–192–C. The UMWA requests that the petition be amended so that: (1) when the carbon monoxide system gives an audible signal at 15 ppm above the established ambient level and the miners are on the surface, no one is to be permitted to enter the mine except those persons designated to investigate the source of the alarm. When a determination is made as to the source of the alarm and that the mine is safe to enter, the miners may be permitted underground: and (2) When the carbon monoxide system gives an audible signal at 15 ppm above the established ambient level and miners are enroute into the mine, they must be held at or withdrawn to a safe location outby the sensor(s) activating the alarm. An investigation must be made as to the source of such alarm and once a determination is made that the mine is safe to enter, the miners must be permitted to proceed underground.

17. Commercial Stone Company, Inc.

[Docket No. M–92–12–C]

Commercial Stone Company, Inc., 2200 Springfield Pike, Connellsville, Pennsylvania 15425 has filed a petition to modify the application of 30 CFR 56.6220 (I.D. No. 36–00047) located in Fayette County, Pennsylvania. The petitioner proposes to use a bulk blend truck to produce ammonium nitrate-fuel oil and ammonium nitrate-fuel oil emulsions for both face and bench holes.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 29, 1992. Copies of these petitions are available for inspection at that address.

Dated: September 22, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92–23584 Filed 9–28–92; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-55]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: October 21, 1992, 8:30 a.m. to 4 p.m.; and October 22, 1992, 8:30 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, Dryden Flight Research Facility, Conference Room 1, Building 4800, Edwards, CA 93523.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2367.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Dryden Flight Research Facility Overview
—Aeronautics Update
—Advanced Subsonic Technology Program Plans
—Aeronautics and Space Engineering Board Aeronautics Study
—Aerospace Research & Technology Subcommittee Meeting Status
—Flight Research Strategy Implementation at Dryden Flight Research Facility
—Benchmarking in U.S. Aerospace Research Facilities
—Securing U.S. Leadership in Advanced Computing Capabilities
—Facilities Tours

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: September 22, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92–23523 Filed 9–28–92; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–08027–MLA and ASLBP No. 91–623–01–MLA]

Atomic Safety and Licensing Board Before Administrative Judge James P. Gleason, Presiding Officer

In the Matter of Sequoyah Fuels Corporation, (Source Materials License No. Sub–1010); Order (Status Conference).

September 22, 1992

Under the authority of 10 CFR § 2.1209, a Status Conference will be held on this proceeding at 9 a.m. on November 17, 1992 in the fifth floor hearing room of the Atomic Safety and Licensing Board Panel, East-West Towers, 4350 East West Highway, Bethesda, Maryland.

The Conference is being held to obtain detailed, complete and timely information on schedules in the license renewal application process with the view of determining whether the present hearing proceeding can be accelerated. In the interest of obtaining the latest reliable information, it would be helpful if the Sequoyah Fuels Corporation (licensee) and the Staff would arrange to have officials available at the Conference who have knowledge of the licensee's operations, authority over scheduling plant operations and the scheduling of Staff material licensing activities. The identity and expertise of these individuals should be made known to the parties prior to the Conference. It would also be useful for the Licensee and Staff to submit, at least one week before the Conference, reports of the schedule changes made since the

license renewal application was filed on August 29, 1990.

Ordered: Bethesda, Maryland, September 22, 1992.

For the Atomic Safety and Licensing Board.

James P. Gleason,

Presiding Officer, Administrative Judge.

[FR Doc. 92-23543 Filed 9-28-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31216; File No. SR-NASD-92-16]

Self-Regulatory Organizations; National Association of Securities Dealers; Extension of Public Comment Period for Proposed Rule Change

September 22, 1992.

On May 1, 1992, the National Association of Securities Dealers ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and rule 19b-4 thereunder, that would enhance operation of the Select Net Service by adding Consolidated Quotation Service ("CQS") securities to those eligible for trading through SelectNet. Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 30961, July 27, 1992) and by publication in the **Federal Register** (57 FR 34158, August 3, 1992). On August 24, 1992, the Commission extended the period for public comment until September 24, 1992.[1]

The Commission received a request for another extension of the period for public comment on the proposed rule change.[2] The Commission finds that the complexity and significance of the filing dictates a longer comment period to ensure complete analysis of the proposal. Thus, the Commission finds good cause, pursuant to section 19(b)(2) of the Act, to extend the period for comment.

The Commission hereby extends the period for public comment on the proposed rule change for a period of 36 days, until October 30, 1992.

[1] Securities Exchange Act Release No. 31083 (August 24, 1992, 57 FR 39411.

[2] See letter to Elizabeth MacGregor, Branch Chief, Division of Market Regulation, Commission, from Geraldine Brindisi, Security, American Stock Exchange, dated September 22, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23558 Filed 9-28-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 23, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Allied Research Corporation
Common Stock, $.10 Par Value (File No. 7-9167)

Williams Companies, Inc.
$2.21 Cumulative Preferred Stock (File No. 7-9168)

Nuveen Select Tax Free Income Portfolio 4
Beneficial Interest, $.01 Par Value (File No. 7-9169)

West Company Incorporated
Common Stock, $0.25 Par Value (File No. 7-9170)

Bandag, Incorporated
Class A Non-voting Common Stock, $1 Par Value (File No. 7-9171)

Blackrock Florida Insured Municipal 2008 Term Trust, Inc.
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-9172)

Blackrock Insured Municipal 2008 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-9173)

Blackrock New York Insured Municipal 2008 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-9174)

Blackrock California Insured Municipal 2008 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-9175)

HMO America, Inc.
Common Stock, $.01 Par Value (File No. 7-9176)

American Adjustable Rate Term Trust, Inc. 1999
Common Stock, $.01 Par Value (File No. 7-9177)

Metro Bancshares, Inc.
Common Stock, $.01 Par Value (File No. 7-9178)

MuiYield Quality Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7-9179)

TJX Companies, Inc.
Series C Cum. Cv. Pfd. Stock, $1.00 Par Value (File No. 7-9180)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-23527 Filed 9-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18968; 811-6522]

American Vision Funds, Inc.; Proposed Deregistration

September 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposed deregistration under the Investment Company Act of 1940 ("Act").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY: The SEC proposed to declare by order, on its own motion, that American Vision Funds, Inc. (the "Fund") has ceased to be an investment company under the Act.

HEARING OR NOTIFICATION OF HEARING: An order of deregistration will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on October 19, 1992. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018. (Division of

Investment Management, Office of Investment Company Regulation).

STATEMENT OF FACTS: The following is a summary of information regarding the Fund.

1. The Fund is an open-end non-diversified management company organized as a Maryland corporation. The Fund filed a registration statement under the Securities Act of 1933 on December 31, 1991. The registration statement did not become effective. The Fund registered as an investment company under the Act on January 14, 1992.

2. The SEC filed a complaint against the Fund in the United States District Court for the Central District of California on March 17, 1992.[1] The complaint alleged, among other things, that the Fund: (a) Violated section 13(a)(3) of the Act by acquiring assets in violation of the Fund's investment policies and restrictions; (b) violated section 17(f) of and rule 17f–2 under the Act by failing to keep its assets with a proper custodian; (c) violated section 17(g) of the Act by failing to obtain a fidelity bond; (d) violated rule 22c–1 under the Act by selling, redeeming, or repurchasing redeemable securities issued by a registered investment company at prices other than those based on the current net asset value of each security, and (e) violated section 31 of the Act by failing to keep proper books and records. The complaint also alleged that Fund's investment adviser, Public Funding Group, Inc. (the "Advertiser"), and its president, V. Thayne Whipple II, committed fraud in the offer or sale of securities in violation of section 17(a) of the Securities Act of 1933, and in connection with the purchase or sale of securities in violation of section 10(b) of the Securities Exchange Act of 1934, and with aiding and abetting the Fund in committing the violations set forth above.

3. The complaint alleged the following facts. The Fund distributed its securities solely in exchange for portfolio assets. By mid-February 1992, the Fund claimed to have 30 shareholders and total assets of approximately $115 million. The portfolio assets consisted of common stock and "commercial paper" notes. None of the stock held by the Fund was traded on any U.S. stock exchange, nor were any bid or ask prices listed for them during the Fund's existence. None of the commercial paper was rated by any commercially available rating service. All of the "commercial paper" was in fact merely promissory notes that had been signed and presented to the Fund in exchange for Fund shares. Nevertheless, the Adviser calculated the value of the portfolio assets at their face amounts, thus grossly overstating the fund's total asset value. The Fund accepted the stock and notes in exchange for Fund shares in order to allow the use of the Fund's shares by the shareholders as collateral for loans from brokerage firms. To facilitate the use of the Fund's shares as collateral, the Adviser arranged to have the daily net asset values of the Fund's shares reported to the National Association of Securities Dealers, Inc. for public quotation. Subsequently, the Fund shareholders attempted to use the Fund shares as collateral for approximately $18.6 million of margin loans from broker-dealers.

4. On March 31, 1992, the Fund, the Adviser, and Whipple consented to the entry of a judgment and permanent injunction against them. In addition to enjoining them from future violations of the securities laws as set fort in the complaint, the judgment required that the Fund be dissolved by returning the portfolio securities to the shareholders who originally exchanged such securities for shares of the Fund.

5. All of the portfolio securities except shares of IT BK Group of companies, Inc. ("IT Bank") and Sonnergie, Inc. ("Sonnergie") were returned to the persons and entities that exchanged them for shares of the Fund. The Fund shareholders who had exchanged the securities of these two companies did not respond to letters or repeated telephone calls seeking instructions on where to send the IT Bank and Sonnergie stock certificates. When the Fund's president attempted to transfer the shares back to the Fund's shareholders through IT Bank's and Sonnergie's transfer agent, he was informed that the transfer agent records for IT Bank and Sonnergie had been sent to Italy and Germany, respectively.

6. On September 1, 1992, the Fund deposited the stock certificates of IT Bank and Sonnergie with the United States District court for the Central District of California. Each of the remaining thirteen shareholders was mailed a notice stating that their shares of IT Bank and Sonnergie had been deposited with the court. The Fund has no remaining assets and is enjoined from engaging in an further business activities.

7. Section 8(f) of the Act allows the Commission to deregister an investment company on its own motion if it finds that the company has ceased to be an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–23526 Filed 9–28–92; 8:45 am]

[BILLING CODE 8010–01–M]

[1] Securities and Exchange Commission V. Public Funding Group, Inc., *et al.*, Civil Action No. 92 1646 (C.D. Cal. filed March 17, 1992).

[Rel. No. IC–18971; 811–5675]

R.R. Fund, Inc.; Application

September 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: R.R. Fund, Inc..

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N–8F was filed on October 1, 1990 and amended on September 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 16, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 575 Fifth Avenue, 17th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Barry D. Miller, Senior Special Counsel, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management company organized as a corporation under the laws of the State of Maryland. On January 11, 1989, applicant filed a registration statement pursuant to section 8(b) of the 1940 Act. On that date, applicant also filed a registration statement pursuant to the Securities Act of 1933. The registration statement never became effective and applicant never commenced a public offering of its shares.

2. Applicant was formed because of a beneficial tax treatment which has since expired. With consent of applicant's two shareholders, the board of director's authorized the dissolution of applicant on October 16, 1989.

3. Pursuant to the liquidation, the securities held in applicant's portfolio were sold at competitive bid in the market to brokers who were primary government securities dealers. Because applicant's portfolio consisted solely of fixed income securities, no brokerage commissions were incurred.

4. On November 30, 1989, applicant's shareholders redeemed their shares and received a final distribution of $22,323,436 representing the net asset value of applicant ($5,567 of which was paid in the form of a dividend) less $11,000 being held in an escrow account to pay liquidation expenses. Subsequently, the liquidation expenses were paid and the remainder distributed to shareholders.

5. As of the date of the application, the applicant had no assets, debts or liabilities, and was not a party to any litigation or administrative proceeding.

6. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

7. On April 26, 1990, applicant filed Articles of Dissolution dissolving its corporate existence in Maryland.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23557 Filed 9-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18967; 811-3261]

Strategic Treasury Positions, Inc.; Application

September 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Strategic Treasury Positions, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 10, 1992 and amended on August 24, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 19, 1992, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Park 80 West, Plaza Two, Saddle Brook, New Jersey 07662.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504-2406, or Barry D. Miller, Senior Special Counsel (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company that was organized as a corporation under the laws of Texas. On September 16, 1981, applicant registered under the Act and filed a registration statement under the Securities Act of 1933 to register 1,000,000,000 shares of applicant's common stock. Applicant's registration statement was declared effective on November 24, 1981, and applicant commenced its initial public offering on such date.

2. Applicant's assets have steadily decreased since 1987, thereby making it increasingly difficult for applicant to enjoy meaningful economies of scale. On December 30, 1991, the net assets of applicant equaled $1,917,323. If the Fund were to continue in operation, Lexington Management Corporation ("LMC") anticipates that the expense ratio would increase materially.

3. On December 29, 1991, applicant's board of directors approved the Plan of Complete Liquidation and Termination of applicant (the "Plan"). On January 29, 1992, applicant mailed proxy materials relating to the proposed liquidation to its shareholders. At a special meeting of shareholders held on March 16, 1992, applicant's shareholders approved the Plan.

4. Pursuant to the Plan, on May 15, 1992, applicant distributed $1,067,214 to its shareholders, which amount represented the cash value of applicant's portfolio and the net proceeds received from the liquidation of the portfolio holdings of applicant in connection with the winding-up of applicant's business and affairs. Applicant's portfolio securities were sold through brokers at market price without any brokerage commission paid. Each shareholder received his or her proportionate interest based on net asset value.

5. Applicant's liquidation expenses were approximately $3,503. Applicant paid approximately $3 of this amount, and LMC, applicant's management adviser, paid the balance of approximately $3,500.[1]

6. Applicant has no securityholders, assets, debts, or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

7. Applicant intends to file Articles of Dissolution with the Department of Assessments and Taxation of Texas with a request to delay effectiveness until an order has been issued by the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23525 Filed 9-28-92; 8:45 am]

BILLING CODE 8010-01-M

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[1] Per a letter dated September 16, 1992, applicant stated that its investment advisory agreement required LMC to absorb applicant's ordinary business expenses to the extent such expenses exceeded 1.5% of average daily net assets. As a result, LMC paid liquidation expenses of approximately $3,500.

[Rel. No. IC—18966; 811-3335]

Strategic Gold/Minerals Fund, Inc.; Notice of Application

September 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Strategic Gold/Minerals Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 10, 1992 and amended on August 24, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing request should be received by the SEC by 5:30 p.m. on October 19, 1992, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Park 80 West, Plaza Two, Saddle Brook, New Jersey 07662.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504–2406, or Barry D. Miller, Senior Special Counsel (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company that was organized as a corporation under the law of Texas. On December 1, 1981, applicant registered under the Act and filed a registration statement under the Securities Act of 1933 to register 200,000,000 shares of applicant's common stock. Applicant's registration statement was declared effective on May 20, 1982, and applicant commenced its initial public offering on such date.

2. Applicant's assets have steadily decreased since 1985, thereby making it increasingly difficult for applicant to enjoy meaningful economies of scale. On May 14, 1992, applicant had total net assets of $597,636 comprising 326,956 shares outstanding. If the Fund were to continue in operation, Lexington Management Corporation ("LMC") anticipates that the expense ratio would increase materially.

3. On December 29, 1991, applicant's board of directors approved the Plan of Complete Liquidation and Termination of applicant (the "Plan"). On January 29, 1992, applicant mailed proxy materials relating to the proposed liquidation to its shareholders. At a special meeting of shareholders held on March 16, 1992, applicant's shareholders approved the Plan.

4. Pursuant to the Plan, on May 15, 1992, applicant distributed $598,329 to its shareholders, which amount represented the cash value of applicant's portfolio and the net proceeds received from the liquidation of the portfolio holdings of applicant in connection with the winding-up of applicant's business and affairs. The portfolio securities were sold through brokers at market price without any brokerage commission paid. Each shareholder received his or her proportionate interest based on net asset value.

5. Applicant's liquidation expenses were approximately $6,320. Applicant paid approximately $3,520 of this amount, and LMC, applicant's management adviser, paid the balance of approximately $2,800.[1]

6. Applicant has no securityholders, assets, debt, or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

7. Applicant intends to file Articles of Dissolution with the Department of Assessments and Taxation of Texas with a request to delay effectiveness until an order has been issued by the Commission.

[1] Per a letter dated September 16, 1992, applicant stated that its investment advisory agreement required LMC to absorb applicant's ordinary business expenses to the extent such expenses exceeded the most restrictive expense limits imposed by any statute or regulatory authority of any jurisdiction in which applicant's securities were offered for sale. As a result, LMC paid liquidation expenses of approximately $2,800.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–23524 Filed 9–28–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Midland International Airport; Midland, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by City of Midland, Texas, for Midland International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Midland International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before March 16, 1993.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is September 17, 1992. The public comment period ends November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Federal Aviation Administration, Texas Airport Development Office, Forth Worth, Texas, 76193–0651, 817/624–5609. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Midland International Airport are in compliance with applicable requirements of part 150, effective September 17, 1992. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 16, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Midland submitted to the FAA on May 18, 1992, noise exposure maps, descriptions and other documentation which were produced during Midland International Airport FAR part 150 Noise Exposure and Land Use Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Midland. The specific maps under consideration are identified in the submission as Figure D2 for existing conditions and Figure G1 for the future noise exposure conditions. The FAA has determined that these maps for Midland International Airport are in compliance with applicable requirements. This determination is effective on September 17, 1992. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Midland International Airport, also effective on September 17, 1992. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 16, 1993.

The FAA's evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, Southwest Region, Texas Airport Development Office, Fort Worth, Texas 76193-0651.

Midland International Airport, 9506 LaForce Boulevard, Midland, Texas 79711-0305

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Southwest Region, September 17, 1992.

George D. Conley,

Manager, Texas Airport Development Office.

[FR Doc. 92-23567 Filed 9-28-92; 8:45 am]

BILLING CODE 4910-13-M

FAA Approval of Noise Compatibility Program; Valley International Airport; Harlingen, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by City of Harlingen under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On March 18, 1992, the FAA determined that the noise exposure maps submitted by the City of Harlingen under part 150 were in compliance with applicable requirements. On September 11, 1992, the Administrator approved the Valley International Airport noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Valley International Airport noise compatibility program is September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, ASW-651F, Texas Airport Development Office, Federal Aviation Administration, Fort Worth, Texas 76193, 817-624-5609. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Valley International Airport effective September 11, 1992.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an

airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the Texas Airport Development Office in Fort Worth, Texas.

The City of Harlingen submitted to the FAA on November 25, 1991, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1989 through December 1991. The Valley International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 18, 1992. Notice of this determination was published in the **Federal Register** on April 1, 1992.

The Valley International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1996. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 18, 1992, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained six proposed actions for noise mitigation on and/or off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 11, 1992.

Outright approval was granted for most of the specific program elements. The establishment of a noise complaint and investigation program, an update and review of the FAR Part 150 Program in 5 years, an improved approach/departure system, and the acquisition of land for the reduction of noise sensitive land uses were all approved. The extension of Runway 13–31 by 1,300 was disapproved pending the submittal of additional information. The implementation of height hazard and airport zoning was approved in part.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 11, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Valley International Airport.

Issued in Fort Worth, Texas, September 16, 1992.

George D. Conley,

Manager, Texas Airport Development Office.

[FR Doc. 92–23566 Filed 9–28–92; 8:45 am]

BILLING CODE 4910–13–M

Proposed Terminal Control Area at Raleigh, NC; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces two fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to establish a Terminal Control Area (TCA) for the Raleigh-Durham, NC, area, and to provide interested persons an opportunity to discuss the proposal. All comments received during these meetings will be considered prior to the issuance of a Notice of Proposed Rulemaking. The establishment of a TCA is being considered due to the increased volume of traffic arriving and departing the Raleigh-Durham Airport.

TIME AND DATES: These meetings will be held at 7 p.m. to 10 p.m., Tuesday, October 27 and Wednesday, October 28, 1992. Comments must be received on or before December 28, 1992.

PLACE: Million Air Maintenance Facility, 1704 E. International Drive, Raleigh-Durham International Airport. (Across the street from RDU AFSS).

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

CONTACT PERSON FOR MORE INFORMATION: Thomas Adams; Air Traffic Manager; Raleigh-Durham, NC, Airport Traffic Control Tower; 1000 Sawyer Circle; Morrisville, NC; telephone: (919) 840–0070.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by a representative of the Administrator,

FAA Southern Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel. These meetings may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of the comments made at these meetings will be filed in the docket.

Agenda for Each Meeting

Opening Remarks and Discussion of Meeting Procedures, Briefing on Background for Proposal, Public Presentations, Closing Comments.

Issued in Washington, DC, on September 18, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-23574 Filed 9-28-92; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given on the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "THE ROYAL CITY OF SUSA: ANCIENT NEAR EASTERN TREASURES FROM THE LOUVRE" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York from on or about November 17, 1992, to on or about March 7, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: September 23, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-23581 Filed 9-28-92; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 189
Tuesday, September 29, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

Notice

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: September 30, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9308, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing of items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 965th Meeting—September 30, 1992, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 9401–008., Halecrest Company
Project No. 8595–002, Energy Storage Corporation
Project No. 9105–002, Esperanza Power Limited Partnership

CAH–2.
Omitted

CAH–3.
Project No. 7270–011, Northern Wasco County People's Utility District

CAH–4.
Docket No. EL86–54–000, Philadelphia Corporation v. Sandy Hollow Power Company
Project No. 4334–008, Philadelphia Corporation
Project No. 5728–010, Sandy Hollow Power Company

CAH–5.
Project No. 2370–041, Pennsylvania Electric Company

CAH–6.
Project No. 2100–052, California Department of Water Resources

CAH–7.
Project No. 11105–000, City of Oswego, New York

Consent Electric Agenda

CAE–1.
Docket No. ER92–92–764–000, New England Power Company
Docket No. ER92–766–000, Northeast Utilities Service Company

CAE–2.
Docket Nos. ER92–2–000, ER92–3–000, ER92–4–000, ER92–7–000, ER92–14–000, ER92–27–000 and ER92–443–000, United Illuminating Company

CAE–3.
Docket No. ER92–774–000, Maine Public Service Company
Docket No. EL91–56–000, Houlton Water Power Company, Van Buren Light and Power District and Eastern Maine Electric Cooperative V. Maine Public Service Company

CAE–4.
Docket No. ER92–294–001, Montana Power Company

CAE–5.
Docket No. ER92–592–001, Yankee Atomic Electric Company

CAE–6.
Docket No. ER92–624–001, Western Resources, Inc. and Kansas Gas & Electric Company

CAE–7.
Docket Nos. ER92–346–001 and ER92–347–001, Central Hudson Gas & Electric Corporation
Docket No. ER92–379–001, Kansas Power & Light Company
Docket Nos. ER92–382–001 and ER92–550–001, New England Power Company
Docket No. ER92–430–001, Potomac Electric Power Company
Docket Nos. ER92–446–001 and ER92–538–001, Kansas Gas & Electric Company
Docket No. ER92–473–001, Puget Sound Power & Light Company
Docket No. ER92–486–001, UtiliCorp United, Inc.
Docket Nos. ER92–495–001, ER92–496–001, ER92–497–001, ER92–498–001, ER92–499–001, ER92–500–001, ER92–501–001, ER92–502–001, ER92–503–001 and ER92–504–001, Tucson Electric Power Company
Docket No. ER92–525–001, Florida Power & Light Company
Docket No. ER92–529–001, Centerior Energy
Docket No. ER92–532–001, Washington Water Power Company
Docket No. ER92–534–001, St. Joseph Light & Power Company
Docket No. ER92–535–001, UNITIL Power Corporation
Docket No. ER92–539–001, Pacific Gas & Electric Company
Docket Nos. ER92–540–001, ER92–541–001 and ER92–542–001, Duke Power Company
Docket No. ER92–544–001, Montaup Electric Company
Docket No. ER92–547–001, PacifiCorp Electric Operations
Docket No. ER92–548–001, Southern California Edison Company

CAE–8.
Docket No. ER92–589–002, United Illuminating Company

CAE–9.
Docket No. FA89–28–002, System Energy Resources, Inc.

CAE–10.
Docket No. QF92–54–001, Polk Power Partners, L.P.

CAE–11.
Omitted

CAE–12.
Omitted

CAE–13.
Omitted

CAE–14.
Omitted

CAE–15.
Omitted

CAE–16.
Omitted

CAE–17.
Docket No. ER91–471–000, PacifiCorp Electric Operations

CAE–18.
Docket Nos. ER92–143–000 and EL92–21–000, Florida Power & Light Company

CAE–19.
Docket No. ER92–330–003, Green Mountain Power Corporation

CAE–20.
Docket No. EL92–25–000, Cities and Villages of Albany and Hanover, Illinois; Alta Vista, Bellevue, Fairbank, Fredericksburg, Grafton, Guttenberg, Readlyn, Sabula and Strawberry Point, Iowa; and Rushford and St. Charles, Minnesota v. Interstate Power Company

CAE–21.
Docket No. EL92–37–000, Doswell Limited Partnership

CAE–22.
Docket Nos. ER87–122–001 and ER87–232–001, Boston Edison Company

CAE–23.
Docket No. ER89–48–000, Southern Company Services, Inc.

CAE–24.
Docket No. ER92–122–002, Mississippi Power Company

CAE–25.
Docket No. ER92–286–001, New England Power Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. RM92–17–000, Elimination of Certain Filing Fees in Parts 346 and 381

Consent Oil and Gas Agenda

CAG–1.
Omitted

CAG–2.
Docket No. RP92–226–000, Kern River Gas Transmission Company

CAG–3.
Docket No. RP92–137–000, Transcontinental Gas Pipe Line Corporation
CAG–4.
Docket No. RP92–165–000, Trunkline Gas Company
CAG–5.
Docket No. RP92–222–000, Northern Border Pipeline Company
CAG–6.
Docket No. RP92–223–000, Northwest Pipeline Corporation
CAG–7.
Docket No. RP92–225–000, Texas Eastern Transmission Corporation
CAG–8.
Docket No. RP92–227–000, Eastern Shore Natural Gas Company
CAG–9.
Docket No. TA93–1–32–000, Colorado Interstate Gas Company
CAG–10.
Docket No. TM93–1–33–000, El Paso Natural Gas Company
CAG–11.
Docket No. TQ92–6–34–000, Florida Gas Transmission Company
CAG–12.
Docket Nos. TQ92–7–21–000 and TM93–1–21–001, Columbia Gas Transmission Corporation
CAG–13.
Docket No. TA92–1–55–001, Questar Pipeline Company
CAG–14.
Docket No. RP92–224–000, Northwest Pipeline Corporation
CAG–15.
Docket No. RI88–30–004, Phillips 66 Natural Gas Company
CAG–16. Omitted
CAG–17.
Docket No. RP91–200–001, Texas Eastern Transmission Corporation
CAG–18.
Docket No. TQ92–5–1–002, Alabama-Tennessee Natural Gas Company
CAG–19.
Docket No. RP89–48–021, Transwestern Pipeline Company
CAG–20.
Docket No. GP91–8–001, Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73 v. Rocky Mountain Natural Gas Company, a division of KN Energy, Inc.
Docket No. GP91–10–001, Rocky Mountain Natural Gas Company v. Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73
CAG–21.
Docket No. RP91–212–000, Stingray Pipeline Company
CAG–22.
Docket Nos. RP92–132–001 and RP91–203–010, Tennessee Gas Pipeline Company
CAG–23.
Omitted
CAG–24.
Omitted
CAG–25.
Docket No. CP89–1525–005, Northwest Pipeline Corporation
CAG–26.
Docket No. RP91–203–017, Tennessee Gas Pipeline Company
CAG–27.
Docket Nos. RP91–204–010, RP90–111–018, RP91–79–007, TM91–4–2–003, TM92–2–2–001 and RP85–47–006, East Tennessee Natural Gas Company
CAG–28.
Docket Nos. RP86–119–023, RP88–191–029, RP89–30–005, RP90–122–008, RP91–29–012, RP91–167–005, RP88–228–036, RP88–249–008, RP89–29–012, RP89–149–007; RP86–119–023, RP89–242–007, CP87–115–007, CP88–470–005, TA84–2–9–021, TA85–1–9–013, TA89–1–9–003, TA90–1–9–007, TA91–1–1–005, RP91–16–004, CP87–103–010, RP91–210–012 and CP91–3135–003, Tennessee Gas Pipeline Company
CAG–29.
Docket No. RP91–183–001, Midwestern Gas Transmission Company
CAG–30.
Docket No. RP92–190–001, Carnegie Natural Gas Company
CAG–31.
Docket No. RP91–229–008, Panhandle Eastern Pipe Line Company
CAG–32.
Omitted
CAG–33.
Omitted
CAG–34.
Docket No. RP88–44–020, El Paso Natural Gas Company
CAG–35.
Omitted
CAG–36.
Docket Nos. RP91–202–000, 002, RP88–227–000, 001, 002, 003, 004 and 005 (Phase II), Paiute Pipeline Company
CAG–37.
Docket Nos. RP89–65–000 and 005, Inland Gas Company, Inc.
CAG–38.
Omitted
CAG–39.
Docket Nos. RP92–60–001, RP91–188–006 and CP92–261–001, El Paso Natural Gas Company
CAG–40.
Docket Nos. RP88–250–055, CP89–1227–014, RP90–124–010 and RP90–161–006, Northern Natural Gas Company
CAG–41.
Docket No. RS92–34–000, Gas Gathering Corporation
CAG–42.
Docket No. RS92–51–000, Valley Gas Transmission, Inc.
CAG–43.
Docket Nos. RP92–21–000, RP92–73–000 and CP92–508–000, National Fuel Gas Supply Corporation
CAG–44.
Docket Nos. RS92–1–002, CP90–2275–005, RP89–161–023, 024, CP91–687–004, RP89–172–004 and RP92–231–000, ANR Pipeline Company
CAG–45.
Docket No. RS92–90–000, Wyoming Interstate Company, Ltd.
CAG–46.
Docket Nos. CP92–602–000 and RS92–76–000, Pelican Interstate Gas System
CAG–47.
Docket No. CP88–137–008, ANR Pipeline Company
Docket No. CP88–651–009, Northwest Pipeline Company
CAG–48.
Docket No. CP92–166–001, Algonquin LNG, Inc. and Algonquin Gas Transmission Company
CAG–49.
Docket No. CP89–1554–002, Colorado Interstate Gas Company
CAG–50.
Docket No. CP92–246–001, Peoples Natural Gas Company, Division of UtiliCorp United Inc. v. Williams Natural Gas Company and Vulcan Chemicals Division of Vulcan Materials Company
CAG–51.
Omitted.
CAG–52.
Docket Nos. RP91–166–011, TA92–1–37–001 and CP92–79–001, Northwest Pipeline Corporation
Docket No. G–17350–012, Pacific Gas Transmission Company
CAG–53.
Docket No. CP92–522–001, Tarpon Transmission Company
CAG–54.
Docket Nos. CP90–316–002 and CP90–317–002, Empire State Pipeline
Docket Nos. CP90–854–003, 001, CP90–920–002, CP90–967–002 and CP90–968–002, National Fuel Gas Supply Corporation
Docket Nos. CP90–1989–003 and 001, CNG Transmission Corporation
Docket Nos. CP91–724–002 and CP91–2251–001, Tennessee Gas Pipeline Company
Docket No. CI92–63–000, Rochester Gas & Electric Corporation
CAG–55.
Docket No. CI86–56–004, Citizens Gas Supply Corporation
Docket No. CI92–37–000, Canada Imperial Oil Limited
Docket No. CI92–51–000, Mercado Gas Services, Inc.
Docket No. CI92–53–000, GEMCO Gas Marketing Inc.
Docket No. CI92–54–000, Allegheny Energy Marketing Company
Docket No. CI92–59–000, Atlanta Gas Light Company
Docket No. CI92–60–000, Virginia Electric and Power Company
Docket No. CI92–61–000, Llano, Inc.
Docket No. CI92–62–000, Colonial Gas Company
Docket No. 92–63–000, Rochester Gas and Electric Corporation
Docket No. CI92–68–000, Dartmouth Power Associates Limited Partnership
Docket No. CI92–69–000, Universal Resources Corporation
Docket No. CI92–70–000, EnergyNorth Natural Gas, Inc.
Docket No. CI92–76–000, Sioux Pointe Inc.
CAG–56.
Omitted
CAG–57.
Docket No. CP91–1618–002, Tennessee Gas Pipeline Company
CAG–58.
Docket No. CP92–430–000, Enron Natural Gas Liquids Corporation and Tennessee Gas Pipeline Company
CAG–59.

Docket No. CP87–75–006, Tennessee Gas Pipeline Company
CAG–60.
Docket Nos. RS92–16–000, RP91–187–006 and CP91–2448–003, Florida Gas Transmission Company
CAG–61.
Docket Nos. RS92–24–001, RP88–115–030, RP90–104–018, RP90–192–011 and CP89–1119–002, Texas Gas Transmission Corporation
CAG–62.
Docket Nos. RS92–46–001, RP90–109–009, *et al.*, and TA91–1–88–003, Pacific Gas Transmission Company
CAG–63.
Docket No. PR91–23–000, Midcoast Ventures I
CAG–64.
Docket Nos. RP89–183–042, TC89–8–006, RP91–43–006, TM91–3–43–006, RP91–152–020 and RS92–12–001, Williams Natural Gas Company
CAG–65.
Docket Nos. IS87–36–000, 001 and OR92–4–000, Endicott Pipeline Company

Hydro Agenda

H–1.
Omitted

Electric Agenda

E–1.
Docket No. Reduction in Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978. Notice of Proposed Rulemaking.

Miscellaneous Agenda

M–1.
Omitted
M–2.
Docket No. PL92–1–000, Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines and Electric Utilities. Statement of Policy.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket No. RP92–179–002, Florida Gas Transmission Company. Order on rehearing.
PR–2.
Docket Nos. RP91–26–000, *et al.*, RP91–162–000 and RP92–18–000, El Paso Natural Gas Company. Order on outstanding issues and take-or-pay costs.

II. Restructuring Matters

RS–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Docket No. CP89–2173–000, Arkla Energy Resources, a Division of Arkla, Inc. and Mississippi River Transmission Corporation
Docket Nos. CP89–217–000 and 001, Arkla Energy Resources, a Division of Arkla, Inc.
Docket No. CP89–2195–000, ANR Pipeline Company
Docket No. RP91–65–005, Arkla Energy Resources, a Division of Arkla, Inc.
Order (1) on applications to abandon and sell certain facilities to ANR Pipeline Company, and for ANR to require and operate the facilities, and (2) on request for rehearing of prior order certificating Line AC and on clarifying suspension order.

Dated: September 23, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23666 Filed 9–25–92; 9:56 am]

BILLING CODE 6717–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, October 5, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed 1993 Federal Reserve Bank officer salary structure adjustment.
2. Proposed 1993 Federal Reserve Board employee salary structure adjustments and merit program.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–23730 Filed 9–25–92; 3:37 pm]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November, 3, 1992.

PLACE: Room 532, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Hearing of Oral Presentations by the Direct Market Association and the Mail Order Association of America in the Mail Order Merchandise Trade Regulation Rule Proceeding.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Jansen, Office of Public Affairs: (202) 326–2180, Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 92–23681 Filed 9–25–92; 8:45 am]

BILLING CODE 6750–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–92–26]

TIME AND DATE: October 9, 1992 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. FY 93 Expenditure Plan and FY 94 budget Request.
5. Notice of proposed final rulemaking for 19 CFR Parts 210 and 211.
6. Continuation of discussion of APO matters.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Issued: September 22, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–23756 Filed 9–25–92; 3:34 pm]

BILLING CODE 7020–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–92–27]

TIME AND DATE: October 14, 1992 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–201–63 (Extruded Rubber Thread)—briefing and vote.
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Issued: September 22, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–23757 Filed 9–25–92; 3:26 pm]

BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 28, October 5, 12, and 19, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 28

Tuesday, September 29

2:00 p.m.
Briefing on AEOD Annual Report (NUREG-1272, Vol. 6, Nos. 1 and 2) (Public Meeting) (Contact: Tom Novak, 301-492-4484)

Wednesday, September 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 5—Tentative

Wednesday, October 7

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 12—Tentative

Wednesday, October 14

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 19—Tentative

Wednesday, October 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Final Rule, 10 CFR Part 20, 'Disposal of Waste Oil by Incineration'—Response to Petition for Rulemaking from Edison Electric Institute and the Utility Nuclear Waste Management Group" scheduled for September 23, *postponed.*

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: September 24, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-23758 Filed 9-25-92; 8:45 am]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting.

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, October 5, 1992, and at 8:30 a.m. on Tuesday, October 6, 1992, in Washington, D.C. The October 5 meeting, at which the Board will consider 1) the July 17, 1992, Postal Rate Commission Opinion and Recommended Decision in Docket No. MC91-3, Second-Class Pallet Discount, 1991, and 2) a filing with the Postal Rate Commission to Establish a Bulk Small Parcel Service, is closed to the public. (See 57 FR 44404, September 25, 1992)

The October 6 meeting is open to the public and will be held in the Benjamin Franklin Room on the 11th floor of U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

Agenda

Monday Session

October 5—1:00 p.m. (Closed)

1. Consideration of the Postal Rate Commission Opinion and Recommended Decision in Docket No. MC91-3, Second-Class Pallet Discount, 1991. (John L. DeWeerdt, Associate General Counsel, Office of Postal Rates and Mailing Rules.)
2. Consideration of a Filing with the Postal Rate Commission to Establish a Bulk Small Parcel Service. (Charles C. McBride, Director, Strategic Services Integration.)

Tuesday Session

October 6—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 31-September 1, 1992.
2. Remarks of the Postmaster General. (Marvin Runyon.)
3. Board of Governors 1993 Meeting Schedule. (Norma Pace, Chairman.)
4. Board of Governors 1993 Budget. (Norma Pace, Chairman.)
5. Consideration of FY 1993 Operating Budget. (M. Richard Porras, Finance and Planning.)
6. Debt Restructuring Plan. (Michael S. Coughlin, Deputy Postmaster General.)
7. Restoring Mail Service in the Miami Area. (James C. Walton.)
8. Status Report on the Construction of the National Postal Museum. (Dennis E. Wamsley, Facilities.)
9. Tentative Agenda for November 2-3, 1992, meeting in Dallas, Texas.

David F. Harris,

Secretary.

[FR Doc. 92-23674 Filed 9-25-92; 11:03 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 28, 1992.

A closed meeting will be held on Monday, September 28, 1992, at 1:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Monday, September 28, 1992, at 1:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Formal order of investigation.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272-2400.

Dated: September 24, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-23667 Filed 9-25-92; 9:57 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 57, No. 189
Tuesday, September 29, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

Correction

In rule document 92-15878 beginning on page 30101 in the issue of Wednesday, July 8, 1992 make the following corrections:

§ 305.92-6 [Corrected]

On page 30110, in § 305.92-6:

1. In the first column, in the first paragraph, in the second line from the bottom, footnote reference "2" and footnote "2" at the bottom of the page should read "1"; in the second paragraph, in the fifth line, footnote reference "3" and footnote "3" at the bottom of the page should read "2".

2. In the second column, in the first full paragraph, in the fourth line, footnote reference "4" and footnote "4" at the bottom of the page should read "3"; in the second paragraph, in the sixth line, footnote reference "5" and footnote "5" at the bottom of the page should read "4".

3. In the third column, under **Recommendation**, in paragraph 1., in the third line from the bottom, footnote "6" corresponding to footnote reference "5" should read "5"; in paragraph 2.(e), in the last line line, footnote reference "7" and footnote "7" at the bottom of the page should read "6"; and in paragraph 2.(f), in the last line, footnote reference "8" and footnote "8" at the bottom of the page should read "7".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-033-1]

Postentry Quarantine of Plants

Correction

In proposed rule document 92-21533 beginning on page 40872 in the issue of Tuesday, September 8, 1992 make the following correction:

§ 319.37-7 [Corrected]

On page 40875, in the third column, in § 319.37-7(a)(3), in the fourth line, after "requirements" insert "of this section and that services by State inspectors are available".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 274 and 276

[Amendment No. 345]

Food Stamp Program; Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer Systems

Correction

In rule document 92-7510 beginning on page 11218 in the issue of Wednesday, April 1, 1992, make the following corrections:

§ 274.14 [Corrected]

1. On page 11250, in the third column, in § 274.12(c)(3)(i)(B), in the second line from the bottom, insert "the" after "through".

2. On page 11253, in the first column, in § 274.12(e)(4)(vi), in the last line, "program" was misspelled.

3. On the same page, in the second column, in § 274.12(f)(4), in the fourth line, "household" should read "households"; and in the sixth line, "benefit" should read "benefits".

4. On page 11254, in the second column, in § 274.12(f)(10)(vi), in the fifth line, "372.4(b)" should read "272.4(b)".

5. On page 11255, in the 3rd column, in § 272.12(h)(2), in the 13th line, "available" was misspelled.

6. On page 11258, in the third column, in § 272.12(l)(1)(iii), in the first line, "and" should read "or"

7. On the same page, in the same column, in § 272.12(m)(1), in the second line from the bottom, "§ 277.18(1)" should read "§ 277.18(l)".

§ 276.2 [Corrected]

8. On page 11259, in the first column, in § 276.2(b)(7), in the tenth line, "authorized" should read "unauthorized".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-11-2-5406; FRL-4201-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

Correction

In proposed rule document 92-21145 beginning on page 40159 in the issue of Wednesday, September 2, 1992, on page 40159, in the first column, under **SUMMARY**, in the first line, after "limited" insert "approval and limited".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins and Tylosin

Correction

In rule document 92-12753 beginning on page 23058 in the issue of Monday, June 1, 1992, make the following correction:

1. On page 23058, in the third column, in the first paragraph, in the sixth line, "Crowmark" should read "Growmark".

2. On the same page, in the same column, in the last paragraph, in the seventh line, "abambermycins" should read "a bambermycins".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32097]

Burlington Northern Railroad Co.; Purchase Exemption; Chicago Central & Pacific Railroad Co.

Correction

In notice document 92–22365 beginning on page 42762 in the issue of Wednesday, September 16, 1992, in the second column, under **DATES:**, in the fourth line, "September 28, 1992", should read "October 6, 1992".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

Invoice Requirements

Correction

In proposed rule document 92–21037 beginning on page 40361 in the issue of Thursday, September 3, 1992 make the following corrections:

§ 141.89 [Corrected]

1. On page 40367, in § 141.89(a), in the table, in the second column, in 2 d., "is" should read "in".

2. On page 40368, in § 141.89(a), in the table, under Chapter 56, in the second column, in the first line, "NEPS" should read "Neps".

3. On page 40369, in § 141.89(a), in the table, under Chapter 57, "5703" should appear opposite "1." the third time it appears in the second column; "5704" should appear opposite "1." the fourth time it appears in the second column; and "5705" should appear opposite "1." the fifth time it appears in the second column.

4. On page 40370, in § 141.89(a), in the table, under Chapter 58, in the entry for 5811, in the second column, in 2., insert "fiber" after "fabric".

5. On page 40372, in § 141.89(a), in the table, under Chapter 61:

a. "6109.10.0007" should appear opposite "State whether * * *" in the second column.

b. "6109.10.0009" should appear opposite "Identify * * *" the first time it appears in the second column.

c. "6109.10.0037" should appear opposite "Identify * * *" the second time it appears in the second column.

d. "6109.90.1047" should appear opposite "Identify * * *" the third time it appears in the second column.

e. Replace the leaders that appear after "6109.90.1530" with "and",

f. In 6117.10, in the second column, in the first line, "Shaws" should read "Shawls".

6. On page 40373, in § 141.89(a), in the table, under Chapter 62, "6216.00.12 and 6216.10.18" should appear opposite "1." the fifth time it appears in the second column.

7. On page 40375, in § 141.89(a), in the table, under Chapter 64, in the second column, in 6 a., "or" the first time it appears should read "of".

BILLING CODE 1505–01–D

federal register

Tuesday
September 29, 1992

Part II

Department of Education

34 CFR Parts 300 and 301

Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 300 and 301

RIN 1820-AA89

Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities

AGENCY: Department of Education.

ACTION: Final regulations with comments invited.

SUMMARY: The Secretary issues final regulations for the Assistance to States for the Education of Children with Disabilities Program under part B of the Individuals with Disabilities Education Act (part B). The regulations are needed (1) to implement the amendments to part B that were made by the Handicapped Programs Technical Amendments Act of 1988, the Education of the Handicapped Act Amendments of 1990 (1990 Amendments), the National Literacy Act of 1991, and the Individuals with Disabilities Education Act Amendments of 1991 (1991 Amendments), and (2) to make changes based on the Department's experience in administering part B. The Secretary also amends existing regulations to implement the amendments to the Preschool Grants Program under section 619 of the Individuals with Disabilities Education Act that were made by the 1991 Amendments.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of the following sections: § 300.110; §§ 300.121–300.123; §§ 300.125–300.134; § 300.136; §§ 300.138–300.141; § 300.144; § 300.146; § 300.148; § 300.149; § 300.152; § 300.153; § 300.180; § 300.192; § 300.220; § 300.222–300.227; § 300.231; § 300.235; § 300.238; § 300.240; § 300.280; § 300.281; § 300.284; § 300.341; § 300.343; § 300.345; § 300.346; § 300.349; § 300.380–300.383; § 300.402; § 300.482; § 300.483; § 300.505; § 300.510; § 300.512; § 300.532; § 300.533; § 300.543; §§ 300.561–300.563; § 300.565; § 300.569; § 300.571; § 300.572; § 300.574; § 300.575; § 300.589; § 300.600; § 300.653; §§ 300.660–300.662; § 300.750; § 300.751; and § 300.754.

These sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

ADDRESSES: All comments should be addressed to: Lucille Sledger, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3615), Washington, DC 20202–2720.

FOR FURTHER INFORMATION CONTACT: Thomas B. Irvin, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3615), Washington, DC. 20202–2720. Telephone: (202) 205–8825. Individuals with deafness or hearing impairments may call (202) 205–9090 for TDD services.

SUPPLEMENTARY INFORMATION:

I. Part B Program

Part B authorizes formula grants to States and, through the State educational agencies (SEAs), to local educational agencies (LEAs) and intermediate educational units (IEUs) to assist them in meeting the special educational needs of children with disabilities. In order to be eligible for funding under this program, SEAs, LEAs, and IEUs are responsible for ensuring that all children with disabilities have available to them a free appropriate public education (FAPE), and that the procedural protections in part B and the implementing regulations are extended to these children and their parents.

These final regulations implement the changes made to part B by the Handicapped Programs Technical Amendments Act of 1988, the 1990 Amendments (Pub. L. 101–476, enacted October 30, 1990), the National Literacy Act of 1991 (Pub. L. 102–73, enacted July 25, 1991), and the 1991 Amendments (Pub. L. 102–119, enacted October 7, 1991). In addition, these regulations make changes based on the Department's experience in administering part B.

On August 19, 1991, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (56 FR 41266). The NPRM proposed to make the following changes to implement the 1990 Amendments:

(1) Add "autism" and "traumatic brain injury" as separate disability categories in the definition of children with disabilities, and include definitions of those terms.

(2) Delete "in schools" from "social work services in schools" in the list of eligible related services in § 300.13(a) of the current regulations for this part and delete "in schools" from the definition of "social work services in schools" included at § 300.13(b)(11) of the current regulations for this part.

(3) Add a definition of "rehabilitation counseling services" to implement the statutory amendment to the definition of "related services" in section 602(a)(17) of the Act.

(4) Add the statutory definitions of "assistive technology device" and "assistive technology service" and include a requirement that if a child with a disability requires these devices and services in order to receive FAPE, the public agency must ensure that they are made available.

(5) Add provisions on transition services, including (a) a definition of "transition services" in § 300.18; (b) a provision specifying that the public agency must ensure that certain transition services personnel participate in meetings to develop, review, or revise a student's individualized education program (IEP) if transition services are being considered; (c) a Note, based on § 300.344(a)(4) of the current regulations, stating that, if appropriate, the public agency must include the student in IEP meetings concerning transition services; (d) a requirement that the content of the IEP must include a statement of needed transition services and of interagency responsibilities or linkages if other State agencies have responsibility for providing or paying for those services; and (e) a provision specifying that if a participating agency fails to provide agreed upon transition services, the public agency must reconvene the IEP team to identify alternative strategies to be implemented to meet the transition objectives in the student's IEP.

(6) Replace the current regulations on the comprehensive system of personnel development (CSPD) in §§ 300.380–300.387 with new provisions reflecting changes made by the 1990 Amendments, and make other changes to simplify and update the CSPD provisions of the regulations.

The NPRM also proposed to make other changes in the current regulations for this part, including (1) deleting the data collection reporting provisions in § 300.124 and portions of §§ 300.125–300.127 of the current regulations; (2) deleting the current regulation in § 300.382 regarding inservice training, and at § 300.321(c) prohibiting the use of part B funds for preservice training; (3) adding a Note following § 300.128 to clarify the responsibility of the SEA and the State's part H lead agency for child find activities for infants and toddlers with disabilities if those agencies are different; (4) adding a provision to

§ 300.504 to clarify the conditions that must be met if a State adds consent requirements beyond those in the Federal regulations; (5) specifying that findings of fact and decisions in due process hearings must be made available to the public, after deleting personally identifiable information; (6) adding a provision to § 300.510 regarding which officials may not conduct State-level reviews; and (7) transferring requirements on State complaint procedures from the Education Department General Administrative Regulations (EDGAR) (34 CFR §§ 76.780–76.782) to this part in §§ 300.660–300.662, and making some modifications to those requirements.

These final regulations incorporate technical changes made to part B, including changes made by the 1990 Amendments, to update the terminology and references used in the current regulations. Examples of these technical changes include: (1) Deleting all references to "handicapped children" in the regulations and substituting "children with disabilities;" (2) deleting all references to "annual program plan" and substituting "State plan;" (3) revising the list of other regulations that apply to this program in § 300.3 to include all currently applicable provisions of EDGAR; and (4) abbreviating certain frequently used terms and adding a new note following the heading in subpart A, "Definitions," to specify that abbreviations will be used in place of certain terms in the regulations (e.g., "IEP" for "individualized education program" and "SEA" for "State educational agency").

These final regulations also implement changes to part B made by the National Literacy Act, by amending the list of jurisdictions eligible to participate in the part B program (i.e., by deleting the Trust Territory of the Pacific Islands and adding the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau).

In addition, these final regulations incorporate certain technical changes to part B made by the 1991 Amendments. These changes conform the regulations to the statutory changes and are implemented as final regulations. The Secretary, however, invites comment on these changes and on whether additional regulatory changes are needed with respect to the statutory changes made by the 1991 Amendments.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 280 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes that have been made in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Major Changes in the Regulations

The following discussion in section A, Technical Changes, identifies the changes made to reflect statutory amendments to Part B made by the National Literacy Act. Section B, Substantive Changes, identifies all major changes made in the regulations based on the NPRM published on August 19, 1991. Additional changes made in the regulations in this document as a result of the 1991 Amendments are identified separately in section C.

A. Technical Changes

In accordance with changes made by the National Literacy Act, § 300.700 has been revised to reflect the current names of the successor entities to the Trust Territories of the Pacific Islands. Similarly, § 300.711 (previously numbered § 300.710) now lists the current names of these entities, consistent with a statutory change made by the National Literacy Act as amended by the 1991 Amendments.

B. Substantive Changes

Below is a summary of the major substantive changes in these final regulations based on the August 19, 1991 NPRM. References to section numbers are to the final regulations.

1. Changes in Subpart A—General

- The proposed definition of "autism" (§ 300.7(b)(1)) has been revised to clarify that the characteristics listed as generally associated with autism are not an exhaustive list of characteristics necessary for a child to be considered as having autism.
- The proposed definition of "traumatic brain injury" (§ 300.7(b)(12)) has been revised to describe this disability category more appropriately, and to clarify that the term "traumatic brain injury" refers to injuries acquired after birth.
- The proposed definition of "rehabilitation counseling services" (§ 300.16(b)(10)) has been revised to change the term "qualified counseling professional" to "qualified personnel."
- The phrase "in schools" has been retained in the definition of "social work services in schools" (§ 300.16(b)(12)), and the phrase "to receive maximum benefit" in the statement concerning mobilizing school and community resources has been changed.
- The last sentence of the proposed Note following the definition of "transition services" at § 300.18 has been revised to delete the statement that the listed activities are only examples.

2. Changes in Subpart B—State Plans and Local Applications

- Proposed Note 2 following § 300.128 ("Identification, location, and evaluation of children with disabilities") has been revised to clarify that where the part H lead agency is different from the SEA, actual implementation of the child find activities for infants and toddlers with disabilities by the part H lead agency does not alter or diminish the SEA's responsibility for ensuring compliance with child find and evaluation requirements.

3. Changes in Subpart C—Services

- Proposed § 300.308 ("Assistive technology") has been revised to specify that assistive technology devices and services must be provided if required as part of special education under § 300.17, related services under § 300.16, or supplementary aids and services under § 300.550(b)(2).
- Section 300.344 ("Participants in meetings") has been revised (1) to specify that if a purpose of a student's IEP meeting is the consideration of transition services to the student, the public agency must invite the student and a representative of any other agency that is likely to be responsible for providing or paying for transition services, and (2) to clarify what the public agency must do if either the student or the agency representative does not attend.
- Section 300.345 ("Parent participation") has been revised to provide that if a purpose of the IEP meeting is the consideration of transition services, the notice to the parents about the meeting must indicate this purpose and indicate that the student will be invited.
- Section 300.346 ("Content of IEP") has been revised to specify that the statement of needed transition services in a student's IEP must include the three areas listed in the definition of "transition services" in § 300.18(b), unless the IEP team determines that services are not needed in one or more of those areas and includes in the IEP a statement to that effect and the basis for making the determination.
- Proposed § 300.347 ("Agency responsibility for transition services") has been revised (1) to clarify that, if a participating agency does not provide agreed-upon services, the public agency must initiate another IEP meeting "as soon as possible"; (2) to delete the phrase "to be implemented," following "alternative strategies"; and (3) to add

"and if necessary, revising the student's IEP."

• The proposed provision requiring States to describe procedures for enabling teacher aides to acquire the necessary credentials for teaching special education has been deleted from § 300.381 ("Adequate supply of qualified personnel").

• The proposed definition of "regular education personnel," which would have limited the regular education personnel that a State's continuing education system would need to address, has been deleted from § 300.382 ("Personnel preparation and continuing education").

4. Changes in Subpart E—Procedural Safeguards

• Section 300.504 ("Prior notice; parent consent") has been revised (1) to delete the proposed provision requiring States to establish and use informal and formal procedures to deal with parental withholding of consent for services and activities beyond those required in § 300.504(b); and (2) to clarify that if a State has additional parental consent requirements, the State must determine the procedures it will use to ensure that a parent's failure to consent does not result in a failure to provide FAPE to the child. Proposed Note 3 has been revised to reflect these changes. The preexisting provision concerning the circumstances under which a public agency can condition a benefit on parent consent has been moved and modified to accommodate additional State parent consent provisions.

• Section 300.510 ("Administrative appeal; impartial review") has been revised to add a new provision requiring the SEA to transmit review findings and decisions to the State advisory panel and to make those findings and decisions available to the public. The proposed provisions regarding the impartiality of State-level review officials have been deleted.

5. Changes in Subpart F—State Administration

On July 8, 1992, the Department published final regulations making certain amendments to EDGAR and conforming changes in program regulations (57 FR 30328). That regulatory action removed the State complaint procedures (§§ 76.780–76.782) from EDGAR and amended part 300 by adding identical requirements in §§ 300.670–300.672. These final regulations make changes, as described below, to those regulations based on the comments received on the August 19, 1991 NPRM. The State complaint procedures also are renumbered as §§ 300.660–300.662.

• Proposed § 300.660 (Adoption of State complaint procedures) has been revised to clarify that, while the State complaint procedures must provide for filing complaints with the SEA, the SEA may expand its procedures to provide for (1) the filing of a complaint directly with a public agency in lieu of the SEA; and (2) the right to have the SEA review the public agency's decision on the complaint.

• Proposed § 300.661 ("Minimum State complaint procedures") has been revised to clarify that a public agency also has the right to request Secretarial review.

C. Changes Made to Part B by the 1991 Amendments

The primary purpose of the 1991 Amendments was to amend and reauthorize part H of the Act (the Infants and Toddlers with Disabilities program). However, the 1991 Amendments also included revisions to other parts of the Act, including part B.

The following discussion includes descriptions of the revisions to part B made by the 1991 Amendments that have been incorporated into these final regulations:.

1. Permitting Children, Aged 3–5, with Developmental Delays to be Included by States in the Definition of "Children with Disabilities"

The 1991 Amendments revised the definition of "children with disabilities" in section 602(a)(1) of the IDEA. In accordance with that change, § 300.7(b)(2) provides that the term "children with disabilities" may, at a State's discretion, include children, aged 3–5, "(i) who are experiencing developmental delays* * *and (ii) who, for that reason, need special education and related services." (Throughout this document, age ranges referred to in the text are inclusive.) The legislative history of the 1991 Amendments makes clear that the purpose of permitting a State to include these children in its definition of children with disabilities, "is not to expand or diminish the population of children eligible under part B, but rather to provide a State with the discretion to ensure that all eligible preschoolers are served and that children are not inappropriately labeled." (House Report No. 102–198, 4 (1991); Senate Report No. 102–84, 15 (1991).)

The legislative history further clarifies that, although the 1991 revision to the definition of "children with disabilities" in section 602(a)(1) of the IDEA is comparable to a component of the part H definition of "infants and toddlers with disabilities," the amendment should not be construed as requiring a State to use the same criteria for children aged 3–5 as it uses for infants and toddlers. A State may develop different or more stringent criteria for children aged 3–5, inclusive, than it uses for infants and toddlers so long as the criteria do not deny eligibility to a child who would otherwise be eligible under other categories included in section 602(a)(1) of the Act. (House Report No. 102–198, 4 (1991); Senate Report No. 102–84, 15 (1991).)

2. Transition of Individuals from Part H to Part B

The 1991 Amendments added a new provision at section 613(a)(15) that requires that each State plan set forth policies and procedures relating to the smooth transition for those individuals participating in the early intervention program under part H who will participate in preschool programs under part B. This would include a method of ensuring that when a child turns age three an IEP or, if consistent with sections 614(a)(5) and 677(d) of the Act, an individualized family service plan (IFSP) has been developed and is being implemented by the child's third birthday. This change is reflected in a new § 300.154.

3. Permitting LEAs to use IFSPs for Children Aged 3–5

To assist in the transition of children from the part H program to the part B program, the 1991 Amendments added a provision to section 614(a)(5) to permit LEAs to use IFSPs, in lieu of IEPs, for children with disabilities aged 3–5 if consistent with State policy and with the concurrence of the parents. This change is reflected in revised § 300.343 of the regulations. The Secretary notes that the "content of IFSP" provision in the part H regulations (34 CFR 303.344) is more detailed than section 677(d) of the Act. States are encouraged to implement the requirements in 34 CFR 303.344 for the IFSPs that they develop and implement for children aged 3–5.

4. Comprehensive System of Personnel Development (CSPD)

Consistent with a revision of section 613(a)(3) made by the 1991 Amendments, § 300.380 of the regulations has been amended to require that a State's CSPD under part B be consistent with the CSPD for the part H program described in § 303.360. (The 1991 Amendments also add a companion provision to the part H CSPD provision in section 676(b)(8) of the Act.)

5. State Administrative Set-Aside for Small States

The 1991 Amendments revised section 611(c)(2) of the IDEA to increase from $350,000 to $450,000 the minimum amount that each State may reserve from its part B allocation for administrative expenses. This change is reflected in § 300.620.

6. Part B Services for Indian Children with Disabilities

The 1991 Amendments significantly revised section 611(f), which authorizes payments to the Secretary of the Interior under part B for the education of certain Indian children with disabilities. Section 300.709 has been revised in its entirety, consistent with the new section 611(f)(1) of the IDEA. Section 300.709 now provides that, subject to meeting the requirements in § 300.260, the Secretary makes payments to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations, aged 5–21, who are enrolled in elementary and secondary schools for Indian children operated by the Secretary of the Interior, and for Indian students aged 3–5 who are enrolled in programs affiliated with Bureau of Indian Affairs (BIA) schools that are required by the States in which the schools are located to attain or maintain State accreditation and which schools had such accreditation before the enactment of the 1991 Amendments. Previously, the Secretary of the Interior had been responsible for the education of all Indian children with disabilities, aged 3–21, on reservations (1) served by elementary and secondary schools operated by the Department of the Interior, and (2) for whom services were provided through contract with an Indian tribe or organization prior to FY 1989. The amount of payment is one percent of the aggregate amount of funds available to all States for that fiscal year.

In accordance with the new section 611(f)(3) of the IDEA, and in light of the revised responsibilities of the Secretary of the Interior for the education of Indian children with disabilities aged 3–21 as specified in section 611(f)(1) of the IDEA, § 300.260 also has been revised. That section identifies the specific provisions of sections 612, 613, and 614 of the IDEA that the Secretary has determined continue to be appropriate to applications from the Secretary of the Interior. Similarly, § 300.263 has been revised to reflect the regulatory requirements that continue to apply to the Secretary of the Interior in the implementation of the program supported by part B.

While the 1991 Amendments limited the responsibilities of the Secretary of the Interior for the education of Indian children with disabilities, it expanded the responsibilities of SEAs for Indian children with disabilities on reservations. Consistent with the requirements of the new section 611(f)(2) of the IDEA, § 300.300 (Timelines for FAPE) has been revised by adding a new paragraph (c) to specify that, with the exception of children identified in § 300.709(a) (1) and (2), the SEA shall be responsible for ensuring that all of the requirements of part B are implemented for all children aged 3–21 on reservations.

In addition, in accordance with the new section 611(f)(4) of the IDEA, a new § 300.710 has been added to provide that the Secretary make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities, aged 3–5, on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payment is .25 percent of the aggregate amount of funds available to all States under this part for that fiscal year. These funds are to be used for child find, screening, and other procedures for the early identification of children, aged 3–5, parent training, and for direct services.

The Secretary believes that those statutory changes resulting from the 1991 Amendments can be effectively implemented by incorporation into existing regulations without additional regulatory guidance. However, if experience in the implementation of these provisions indicates that additional regulatory guidance is needed, the Secretary will undertake additional rulemaking at a future date.

II. Preschool Grants Program

The Preschool Grants program under section 619 of part B of the Act provides additional Federal financial assistance to States for providing special education and related services to children with disabilities aged 3–5 and, at a State's discretion, for providing FAPE to two-year-old children with disabilities who will reach age three during the school year. The Preschool Grants regulations in 34 CFR part 301 establish the administrative procedures for applying for and distributing Preschool Grants funds.

The substantive rights and protections established under part B of the Act and its implementing regulations at 34 CFR part 300 apply to 3–5 year old children with disabilities. Therefore, these rights and protections, which include the right to FAPE, placement in the least restrictive environment, and the availability of due process procedures, are not repeated in the part 301 regulations.

The 1991 Amendments included several revisions to section 619. The following is a summary of those revisions:

- The 1991 Amendments expanded the age range for which SEAs and LEAs may use Preschool Grants funds to include two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving, or have received, services under part H of the Act. These children are entitled to receive FAPE.

The use of Preschool Grants funds to provide FAPE to two-year-old children with disabilities is at a State's discretion and must be consistent with State policy. This is not a requirement to provide FAPE to all two-year-old children with disabilities who will reach age three during the school year. Rather, this provision increases States' options for use of Preschool Grants funds to meet the needs of children with disabilities and their families during the transition from early intervention services under part H of the Act to preschool special education under part B of the Act. Although children below age 3 cannot be included in the annual part B child count, States are permitted to use their part B funds to serve these children.

- Part H of the Act does not apply to any two-year-old child with disabilities receiving FAPE, in accordance with part B of the Act, with Preschool Grants funds. However, part H of the Act continues to apply to all other two-year-old children with disabilities, including those receiving FAPE with other sources of funds, such as part B funds under section 611 of the Act.

These statutory amendments are incorporated into these final regulations in §§ 301.1, 301.3, 301.6, 301.10, and 301.30.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on all changes proposed to be made in the Department's regulations. However, since the additional changes made in

these final regulations that were not included in the NPRM published for public comment merely incorporate statutory amendments and do not establish new substantive policy, further public comment could have no effect on the content of the final regulations. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these changes is unnecessary and contrary to public interest.

Invitation to Comment on Provisions Added to Part B by the 1991 Amendments

Although the Secretary publishes these regulations as final, the Secretary invites comments on whether additional guidance is required with respect to the regulatory changes made to part 300 and described above that reflect statutory changes made by the 1991 Amendments. In addition, the Secretary invites comments on whether other regulatory changes are desirable to implement the provisions of the 1991 Amendments relating to the transition of children from the part H program to the part B program.

Interested parties may send comments to Ms. Lucille Sleger at the address given at the beginning of this document until November 30, 1992.

All comments submitted in response to this document will be available for public inspection, during and after the comment period, in room 3615, 300 C Street, SW., Washington, DC, between the hours of 8:30 a.m and 4 p.m., Monday through Friday of each week, except Federal holidays.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

The following sections contain information collection requirements: § 300.110; §§ 300.121–300.123; §§ 300.125–300.134; § 300.136; §§ 300.138–300.141; § 300.144; § 300.146; § 300.148; § 300.149; § 300.152; § 300.153; § 300.180; § 300.192; § 300.220; §§ 300.222–300.227; § 300.231; § 300.235; § 300.238; § 300.240; § 300.280; § 300.281; § 300.284; § 300.341; § 300.343; § 300.345; § 300.346; § 300.349; §§ 300.380–300.383; § 300.402; § 300.482; § 300.483; § 300.505; § 300.510; § 300.512; § 300.532; § 300.533; § 300.543; §§ 300.561–300.563; § 300.565; § 300.569; § 300.571; § 300.572; § 300.574; § 300.575; § 300.589; § 300.600; § 300.653; §§ 300.660–300.662; § 300.750; § 300.751; and § 300.754. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

The 50 States, the District of Columbia, Puerto Rico, 7 territories, and the Department of the Interior are eligible to apply for grants under this part. The Department needs and uses information submitted by these entities to determine whether they meet the regulatory requirements listed above. The 60 eligible entities under this program submit triennial State plans in order to receive part B grant awards. The annual public reporting burden for this information collection for the year of an entity's submission is estimated at 29 hours, including the time for gathering the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects

34 CFR Part 300

Administrative practice and procedures, Education, Education of individuals with disabilities, Grant programs—education, Privacy, Private schools, Reporting and record keeping requirements.

34 CFR Part 301

Education, Education of children with disabilities, Grant programs—education, Reporting and record keeping requirements.

Dated: August 18, 1992.

(Catalog of Federal Domestic Assistance number 84.027, Assistance to States for Education of Children with Disabilities; 84.173, Preschool Grants Program)

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 300 and amending part 301 as follows:

1. Part 300 is revised to read as follows:

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Subpart A—General

Purpose, Applicability, and Regulations that Apply to this Program

Sec.
300.1 Purpose.
300.2 Applicability to State, local, and private agencies.
300.3 Regulations that apply.
300.4 Act.
300.5 Assistive technology device.
300.6 Assistive technology service.
300.7 Children with disabilities.
300.8 Free appropriate public education.
300.9 Include.
300.10 Intermediate educational unit.
300.11 Local educational agency.
300.12 Native language.
300.13 Parent.
300.14 Public agency.
300.15 Qualified.
300.16 Related services.
300.17 Special education.
300.18 Transition services.

Subpart B—State Plans and Local Educational Agency Applications

State Plans—General

300.110 Condition of assistance.
300.111 Contents of plan.

State Plans—Contents

300.121 Right to a free appropriate public education.
300.122 Timelines and ages for free appropriate public education.
300.123 Full educational opportunity goal.
300.124 [Reserved]
300.125 Full educational opportunity goal—timetable.
300.126 Full educational opportunity goal—facilities, personnel, and services.
300.127 Priorities.
300.128 Identification, location, and evaluation of children with disabilities.
300.129 Confidentiality of personally identifiable information.
300.130 Individualized education programs.
300.131 Procedural safeguards.
300.132 Least restrictive environment.
300.133 Protection in evaluation procedures.
300.134 Responsibility of State educational agency for all educational programs.
300.135 [Reserved]
300.136 Implementation procedures—State educational agency.
300.137 Procedures for consultation.
300.138 Other Federal programs.

300.139 Comprehensive system of personnel development.
300.140 Private schools.
300.141 Recovery of funds for misclassified children.
300.142–300.143 [Reserved]
300.144 Hearing on application.
300.145 Prohibition of commingling.
300.146 Annual evaluation.
300.147 State advisory panel.
300.148 Policies and procedures for use of Part B funds.
300.149 Description of use of Part B funds.
300.150 State-level nonsupplanting.
300.151 Additional information if the State educational agency provides direct services.
300.152 Interagency agreements.
300.153 Personnel standards.
300.154 Transition of individuals from Part H to Part B.

Local Educational Agency Applications—General

300.180 Submission of application.
300.181 [Reserved]
300.182 The excess cost requirement.
300.183 Meeting the excess cost requirement.
300.184 Excess costs—computation of minimum amount.
300.185 Computation of excess costs—consolidated application.
300.186 Excess costs—limitation on use of Part B funds.
300.187–300.189 [Reserved]
300.190 Consolidated applications.
300.191 [Reserved]
300.192 State regulation of consolidated applications.
300.193 State educational agency approval; disapproval.
300.194 Withholding.

Local Educational Agency Applications—Contents

300.220 Child identification.
300.221 Confidentiality of personally identifiable information.
300.222 Full educational opportunity goal—timetable.
300.223 Facilities, personnel, and services.
300.224 Personnel development.
300.225 Priorities.
300.226 Parent involvement.
300.227 Participation in regular education programs.
300.228 [Reserved]
300.229 Excess cost.
300.230 Nonsupplanting.
300.231 Comparable services.
300.232–300.234 [Reserved]
300.235 Individualized education programs.
300.236 [Reserved]
300.237 Procedural safeguards.
300.238 Use of Part B funds.
300.239 [Reserved]
300.240 Other requirements.

Application from Secretary of the Interior

300.260 Submission of application; approval.
300.261 Public participation.
300.262 Use of Part B funds.
300.263 Applicable regulations.

Public Participation

300.280 Public hearings before adopting a State plan.
300.281 Notice.
300.282 Opportunity to participate; comment period.
300.283 Review of public comments before adopting plan.
300.284 Publication and availability of approved plan.

Subpart C—Services

Free Appropriate Public Education

300.300 Timelines for free appropriate public education.
300.301 Free appropriate public education—methods and payments.
300.302 Residential placement.
300.303 Proper functioning of hearing aids.
300.304 Full educational opportunity goal.
300.305 Program options.
300.306 Nonacademic services.
300.307 Physical education.
300.308 Assistive technology.

Priorities in the Use of Part B Funds

300.320 Definitions of "first priority children" and "second priority children."
300.321 Priorities.
300.322 [Reserved]
300.323 Services to other children.
300.324 Application of local educational agency to use funds for the second priority.

Individualized Education Programs

300.340 Definitions.
300.341 State educational agency responsibility.
300.342 When individualized education programs must be in effect.
300.343 Meetings.
300.344 Participants in meetings.
300.345 Parent participation.
300.346 Content of individualized education program.
300.347 Agency responsibilities for transition services.
300.348 Private school placements by public agencies.
300.349 Children with disabilities in parochial or other private schools.
300.350 Individualized education program—accountability.

Direct Service by the State Educational Agency

300.360 Use of local educational agency allocation for direct services.
300.361 Nature and location of services.
300.370 Use of State agency allocations.
300.371 State matching.
300.372 Applicability of nonsupplanting requirement.

Comprehensive System of Personnel Development

300.380 General.
300.381 Adequate supply of qualified personnel.
300.382 Personnel preparation and continuing education.
300.383 Data system on personnel and personnel development.
300.384–300.387 [Reserved]

Subpart D—Private Schools

Children with Disabilities in Private Schools Placed or Referred by Public Agencies

300.400 Applicability of §§ 300.400–300.402.
300.401 Responsibility of State educational agency.
300.402 Implementation by State educational agency.
300.403 Placement of children by parents.

Children with Disabilities Enrolled by their Parents in Private Schools

300.450 Definition of "private school children with disabilities."
300.451 State educational agency responsibility.
300.452 Local educational agency responsibility.

Procedures for By-Pass

300.480 By-pass—general.
300.481 Provisions for services under a by-pass.

Due Process Procedures

300.482 Notice of intent to implement a by-pass.
300.483 Request to show cause.
300.484 Show cause hearing.
300.485 Decision.
300.486 Judicial review.

Subpart E—Procedural Safeguards

Due Process Procedures for Parents and Children

300.500 Definitions of "consent", "evaluation", and "personally identifiable".
300.501 General responsibility of public agencies.
300.502 Opportunity to examine records.
300.503 Independent educational evaluation.
300.504 Prior notice; parent consent.
300.505 Content of notice.
300.506 Impartial due process hearing.
300.507 Impartial hearing officer.
300.508 Hearing rights.
300.509 Hearing decision; appeal.
300.510 Administrative appeal; impartial review.
300.511 Civil action.
300.512 Timelines and convenience of hearings and reviews.
300.513 Child's status during proceedings.
300.514 Surrogate parents.
300.515 Attorneys' fees.

Protection in Evaluation Procedures

300.530 General.
300.531 Preplacement evaluation.
300.532 Evaluation procedures.
300.533 Placement procedures.
300.534 Reevaluation.

Additional Procedures for Evaluating Children with Specific Learning Disabilities

300.540 Additional team members.
300.541 Criteria for determining the existence of a specific learning disability.
300.542 Observation.
300.543 Written report.

Least Restrictive Environment

300.550 General.

300.551 Continuum of alternative placements.
300.552 Placements.
300.553 Nonacademic settings.
300.554 Children in public or private institutions.
300.555 Technical assistance and training activities.
300.556 Monitoring activities.

Confidentiality of Information

300.560 Definitions.
300.561 Notice to parents.
300.562 Access rights.
300.563 Record of access.
300.564 Records on more than one child.
300.565 List of types and locations of information.
300.566 Fees.
300.567 Amendment of records at parent's request.
300.568 Opportunity for a hearing.
300.569 Result of hearing.
300.570 Hearing procedures.
300.571 Consent.
300.572 Safeguards.
300.573 Destruction of information.
300.574 Children's rights.
300.575 Enforcement.
300.576 Department.

Department Procedures

300.580 [Reserved]
300.581 Disapproval of a State plan.
300.582 Content of notice.
300.583 Hearing Official or Panel.
300.584 Hearing procedures.
300.585 Initial decision; final decision.
300.586 Judicial review.
300.587–300.588 [Reserved]
300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

Subpart F—State Administration

General

300.600 Responsibility for all educational programs.
300.601 Relation of Part B to other Federal programs.

Use of Funds

300.620 Federal funds for State administration.
300.621 Allowable costs.

State Advisory Panel

300.650 Establishment.
300.651 Membership.
300.652 Advisory panel functions.
300.653 Advisory panel procedures.

State Complaint Procedures

300.660 Adoption of State complaint procedures.
300.661 Minimum State complaint procedures.
300.662 Filing a complaint.

Subpart G—Allocation of Funds; Reports

Allocations

300.700 Special definition of the term State.
300.701 State entitlement; formula.
300.702 Limitations and exclusions.
300.703 Ratable reductions.
300.704 Hold harmless provision.
300.705 Allocation for State in which by-pass is implemented for private school children with disabilities.
300.706 Within-State distribution: Fiscal Year 1979 and after.
300.707 Local educational agency entitlement; formula.
300.708 Reallocation of local educational agency funds.
300.709 Payments to the Secretary of the Interior for the education of Indian children.
300.710 Payments to the Secretary of the Interior for Indian tribes or tribal organizations.
300.711 Entitlements to jurisdictions.

Reports

300.750 Annual report of children served—report requirement.
300.751 Annual report of children served—information required in the report.
300.752 Annual report of children served—certification.
300.753 Annual report of children served—criteria for counting children.
300.754 Annual report of children served—other responsibilities of the State educational agency.

Appendix A to Part 300—[Reserved]
Appendix B to Part 300—[Reserved]
Appendix C to Part 300—Notice of Interpretation

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

Subpart A—General

Purpose, Applicability, and Regulations That Apply to this Program

§ 300.1 Purpose.

The purpose of this part is—

(a) To ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist States and localities to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate those children.

(Authority: 20 U.S.C. 1401 Note)

§ 300.2 Applicability to State, local, and private agencies.

(a) *States.* This part applies to each State that receives payments under Part B of the Act.

(b) *Public agencies within the State.* The State plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of children with disabilities. These would include:

(1) The State educational agency;

(2) Local educational agencies and intermediate educational units;

(3) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for students with deafness or students with blindness); and

(4) State correctional facilities.

(c) *Private schools and facilities.* Each public agency in the State is responsible for ensuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency. (See §§ 300.400–300.402)

(Authority: 20 U.S.C. 1412(1), (6); 1413(a); 1413(a)(4)(B))

Note: The requirements of this part are binding on each public agency that has direct or delegated authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

§ 300.3 Regulations that apply.

The following regulations apply to this program:

(a) 34 CFR part 76 (State-Administered Programs) except for §§ 76.780–76.782.

(b) 34 CFR part 77 (Definitions).

(c) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(d) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(e) 34 CFR part 81 (General Education Provisions Act— Enforcement).

(f) 34 CFR part 82 (New Restrictions on Lobbying).

(g) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(h) 34 CFR part 86 (Drug-Free Schools and Campuses).

(i) The regulations in this part—34 CFR part 300 (Assistance to States for Education of Children with Disabilities).

(Authority: 20 U.S.C. 1221e-3(a)(1))

Definitions

Note 1: Definitions of terms that are used throughout these regulations are included in this subpart. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections in which they are defined:

Appropriate professional requirements in the State (§ 300.153(a)(1))
Average per pupil expenditure in public elementary and secondary schools in the United States (§ 300.701(c))
Consent (§ 300.500)
Destruction (§ 300.560)

Direct services (§ 300.370(b)(1))
Education records (§ 300.560)
Evaluation (§ 300.500)
First priority children (§ 300.320(a)) Highest requirements in the State applicable to a specific profession or discipline (§ 300.153(a)(2))
Independent educational evaluation (§ 300.503(a)(3)(i))
Individualized education program (§ 300.340)
Participating agency, as used in the IEP requirements in §§ 300.346 and 300.347 (§ 300.340(b))
Participating agency, as used in the confidentiality requirements in §§ 300.560–300.576 (§ 300.560)
Party or parties (§ 300.584(a))
Personally identifiable (§ 300.500)
Private school children with disabilities (§ 300.450)
Profession or discipline (§ 300.153(a)(3))
Public expense (§ 300.503(a)(3)(ii))
Second priority children (§ 300.320(b))
Special definition of "State" (§ 300.700)
State-approved or recognized certification, licensing, registration, or other comparable requirements (§ 300.153(a)(4))
Support services (§ 300.370(b)(2))

Note 2: Below are abbreviations for selected terms that are used throughout these regulations:

"FAPE" means "free appropriate public education."
"IEP" means "individualized education program."
"IEU" means "intermediate educational unit."
"LEA" means "local educational agency."
"LRE" means "least restrictive environment."
"SEA" means "State educational agency."

As appropriate, each abbreviation is used interchangeably with its nonabbreviated term.

§ 300.4 Act.

As used in this part, "Act" means the Individuals with Disabilities Education Act, formerly the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1400)

§ 300.5 Assistive technology device.

As used in this part, "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(Authority: 20 U.S.C. 1401(a)(25))

§ 300.6 Assistive technology service.

As used in this part, "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes —

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(Authority: 20 U.S.C. 1401(a)(26))

Note: The definitions of "assistive technology device" and "assistive technology service" used in this part are taken directly from section 602(a)(25)–(26) of the Act, but in accordance with Part B, the statutory reference to "individual with a disability" has been replaced with "child with a disability." The Act's definitions of "assistive technology device" and "assistive technology service" incorporate verbatim the definitions of these terms used in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.

§ 300.7 Children with disabilities.

(a)(1) As used in this part, the term "children with disabilities" means those children evaluated in accordance with §§ 300.530–300.534 as having mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who because of those impairments need special education and related services.

(2) The term "children with disabilities" for children aged 3 through 5 may, at a State's discretion, include children—

(i) Who are experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) Who, for that reason, need special education and related services.

(b) The terms used in this definition are defined as follows:

(1) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance, as defined in paragraph (b)(9) of this section.

(2) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(5) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(6) "Multiple disabilities" means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(7) "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital

anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(8) "Other health impairment" means having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes that adversely affects a child's educational performance.

(9) "Serious emotional disturbance" is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance—

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have a serious emotional disturbance.

(10) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) "Speech or language impairment" means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance.

(12) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(13) "Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(a)(1))

Note: If a child manifests characteristics of the disability category "autism" after age 3, that child still could be diagnosed as having "autism" if the criteria in paragraph (b)(1) of this section are satisfied.

§ 300.8 Free appropriate public education.

As used in this part, the term "free appropriate public education" means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an IEP that meets the requirements of §§ 300.340–300.350.

(Authority: 20 U.S.C. 1401(a)(18))

§ 300.9 Include.

As used in this part, the term "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(Authority: 20 U.S.C. 1417(b))

§ 300.10 Intermediate educational unit.

As used in this part, the term "intermediate educational unit" means any public authority, other than an LEA, that—

(a) Is under the general supervision of an SEA;

(b) Is established by State law for the purpose of providing free public education on a regional basis; and

(c) Provides special education and related services to children with disabilities within that State.

(Authority: 20 U.S.C. 1401(a)(23))

§ 300.11 Local educational agency.

(a) [Reserved]

(b) For the purposes of this part, the term "local educational agency" also includes intermediate educational units.

(Authority: 20 U.S.C. 1401(a)(8))

§ 300.12 Native language.

As used in this part, the term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act, which provides as follows:

The term "native language," when used with reference to an individual of limited English proficiency, means the language normally used by that individual, or in the case of a child, the language normally used by the parents of the child.

(Authority: 20 U.S.C. 3283(a)(2); 1401(a)(22))

Note: Section 602(a)(22) of the Act states that the term "native language" has the same meaning as the definition from section 703(a)(2) of the Bilingual Education Act. (The term is used in the prior notice and evaluation sections under § 300.505(b)(2) and § 300.532(a)(1).) In using the term, the Act does not prevent the following means of communication:

(1) In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(2) For individuals with deafness or blindness, or for individuals with no written language, the mode of communication would be that normally used by the individual (such as sign language, braille, or oral communication).

§ 300.13 Parent.

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 300.514. The term does not include the State if the child is a ward of the State.

(Authority: 20 U.S.C. 1415)

Note: The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

§ 300.14 Public agency.

As used in this part, the term "public agency" includes the SEA, LEAs, IEUs, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(2)(B); 1412(6); 1413(a))

§ 300.15 Qualified.

As used in this part, the term "qualified" means that a person has met SEA approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he or she is providing special education or related services.

(Authority: 20 U.S.C. 1417(b))

§ 300.16 Related services.

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) "Audiology" includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(5) "Occupational therapy" includes—

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(10) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(11) "School health services" means services provided by a qualified school nurse or other qualified person.

(12) "Social work services in schools" includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.

(13) "Speech pathology" includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(14) "Transportation" includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(a)(17))

Note: With respect to related services, the Senate Report states:

The Committee bill provides a definition of related services, making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(S. Rep. No. 94-168, p. 12 (1975))

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education.

There are certain kinds of services that might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors, and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and

supervisory activities that are necessary for program planning, management, and evaluation.

§ 300.17 Special education.

(a)(1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered special education rather than a related service under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adaptive physical education, movement education, and motor development.

(Authority: 20 U.S.C. 1401(a)(16))

(3) "Vocational education" means organized educational programs offering a sequence of courses that are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education.

(Authority: 20 U.S.C. 1401(16))

Note 1: The definition of special education is a particularly important one under these regulations, since a child does not have a disability under this part unless he or she needs special education. (See the definition of children with disabilities in § 300.7.) The definition of related services (§ 300.16) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no related services, and the child is not a child with a disability and is therefore not covered under the Act.

Note 2: The above definition of vocational education is taken from the Carl D. Perkins Vocational and Applied Technology Education Act (Pub. L. 98–524, as amended by Pub. L. 101–392). Section 118(a)(3)(A)–(B) of this statute further provides—

Vocational education programs and activities for individuals with handicaps will be provided in the least restrictive environment in accordance with section 612(5)(B) of the Individuals with Disabilities Education Act and will, whenever appropriate, be included as a component of the individualized education program developed under section 614(a)(5) of such Act. Students with handicaps who have individualized education programs developed under section 614(a)(5) of the Individuals with Disabilities Education Act shall, with respect to vocational education programs, be afforded the rights and protections guaranteed such students under sections 612, 614, and 615 of such Act.

§ 300.18 Transition services.

(a) As used in this part, "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

(b) The coordinated set of activities described in paragraph (a) of this section must—

(1) Be based on the individual student's needs, taking into account the student's preferences and interests; and

(2) Include needed activities in the areas of—

(i) Instruction;

(ii) Community experiences;

(iii) The development of employment and other post-school adult living objectives; and

(iv) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(Authority: 20 U.S.C. 1401(a)(19))

Note: Transition services for students with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education. The list of activities in paragraph (b) is not intended to be exhaustive.

Subpart B—State Plans and Local Educational Agency Applications

State Plans—General

§ 300.110 Condition of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit a State plan to the Secretary through its SEA, which plan shall be effective for a period of 3 fiscal years.

(Authority: 20 U.S.C. 1231g, 1412, 1413)

§ 300.111 Contents of plan.

Each State plan must contain the provisions required in §§ 300.121–300.153.

(Authority: 20 U.S.C. 1412, 1413)

State Plans—Contents

§ 300.121 Right to a free appropriate public education.

(a) Each State plan must include information that shows that the State has in effect a policy that ensures that all children with disabilities have the right to FAPE within the age ranges and timelines under § 300.122.

(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State documents that show the source of the policy.

(c) The information must show that the policy—

(1) Applies to all public agencies in the State;

(2) Applies to all children with disabilities;

(3) Implements the priorities established under §§ 300.320–300.324; and

(4) Establishes timelines for implementing the policy, in accordance with § 300.122.

(Authority: 20 U.S.C. 1412(1), (2)(B), (6); 1413(a)(1))

§ 300.122 Timelines and ages for free appropriate public education.

(a) *General.* Each State plan must include in detail the policies and procedures that the State will undertake or has undertaken in order to ensure that FAPE is available for all children with disabilities aged 3 through 18 within the State not later than September 1, 1978, and for all children with disabilities aged 3 through 21

within the State not later than September 1, 1980.

(b) *Documents relating to timelines.* Each State plan must include a copy of each State statute, court order, Attorney General decision, and other State documents that demonstrate that the State has established timelines in accordance with paragraph (a) of this section.

(c) *Exception.* The requirement in paragraph (a) of this section does not apply to a State with respect to children with disabilities aged 3, 4, 5, 18, 19, 20, or 21 to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.

(d) *Documents relating to exceptions.* Each State plan must—

(1) Describe in detail the exception in paragraph (c) of this section applies to the State; and

(2) Include a copy of each State law, court order, and other documents that provide a basis for the exception.

(Authority: 20 U.S.C. 1412(2)(B))

§ 300.123 Full educational opportunity goal.

Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure that the State has a goal of providing full educational opportunity to all children with disabilities aged birth through 21.

(Authority: 20 U.S.C. 1412(2)(A))

§ 300.124 [Reserved]

§ 300.125 Full educational opportunity goal—timetable.

Each State plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all children with disabilities.

(Authority: 20 U.S.C. 1412(2)(A))

§ 300.126 Full educational opportunity goal—facilities, personnel, and services.

Each State plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all children with disabilities.

(Authority: 20 U.S.C. 1412(2)(A))

§ 300.127 Priorities.

Each State plan must include information that shows that —

(a) The State has established priorities that meet the requirements of §§ 300.320–300.324;

(b) The State priorities meet the timelines under § 300.122; and

(c) The State has made progress in meeting those timelines.

(Authority: 20 U.S.C. 1412(3))

§ 300.128 Identification, location, and evaluation of children with disabilities.

(a) *General requirement.* Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, to ensure that—

(1) All children with disabilities, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) *Information.* Each State plan must:

(1) Designate the State agency (if other than the SEA) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section.

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation.

(3) Describe the extent that—

(i) The activities described in paragraph (a) of this section have been achieved under the current State plan; and

(ii) The resources named for these activities in that plan have been used.

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes.

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the SEA obtains—

(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures.

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(Authority: 20 U.S.C. 1412(2)(C))

Note 1: The State is responsible for ensuring that all children with disabilities are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and use of data are subject to the confidentiality requirements of §§ 300.560–300.576.

Note 2: Under both Parts B and H of the Act, States are responsible for identifying, locating, and evaluating infants and toddlers from birth through 2 years of age who have disabilities or who are suspected of having disabilities. In States where the SEA and the State's lead agency for the Part H program are different and the Part H lead agency will be participating in the child find activities described in paragraph (a) of this section, the nature and extent of the Part H lead agency's participation must, under paragraph (b)(2) of this section, be included in the State plan. With the SEA's agreement, the Part H lead agency's participation may include the actual implementation of child find activities for infants and toddlers. The use of an interagency agreement or other mechanism for providing for the Part H lead agency's participation would not alter or diminish the responsibility of the SEA to ensure compliance with all child find requirements, including the requirement in paragraph (a)(1) of this section that all children with disabilities who are in need of special education and related services are evaluated.

§ 300.129 Confidentiality of personally identifiable information.

(a) Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Secretary shall use the criteria in §§ 300.560–300.576 to evaluate the policies and procedures of the State under paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Note: The confidentiality regulations were published in the **Federal Register** in final form on February 27, 1976 (41 FR 8603–8610), and met the requirements of Part B of the Act. Those regulations are incorporated in §§ 300.560–300.576.

§ 300.130 Individualized education programs.

(a) Each State plan must include information that shows that each public agency in the State maintains records of the IEP for each child with disabilities, and each public agency establishes, reviews, and revises each program as provided in §§ 300.340–300.350.

(b) Each State plan must include—

(1) A copy of each State statute, policy, and standard that regulates the manner in which IEPs are developed, implemented, reviewed, and revised; and

(2) The procedures that the SEA follows in monitoring and evaluating those programs.

(Authority: 20 U.S.C. 1412(4), 1413(a)(1))

§ 300.131 Procedural safeguards.

Each State plan must include procedural safeguards that ensure that the requirements of §§ 300.500–300.514 are met.

(Authority: 20 U.S.C. 1412(5)(A))

§ 300.132 Least restrictive environment.

(a) Each State plan must include procedures that ensure that the requirements of §§ 300.550–300.556 are met.

(b) Each State plan must include the following information:

(1) The number of children with disabilities in the State, within each disability category, who are participating in regular education programs, consistent with §§ 300.550–300.556.

(2) The number of children with disabilities who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.133 Protection in evaluation procedures.

Each State plan must include procedures that ensure that the requirements of §§ 300.530–300.534 are met.

(Authority: 20 U.S.C. 1412(5)(C))

§ 300.134 Responsibility of State educational agency for all educational programs.

(a) Each State plan must include information that shows that the requirements of § 300.600 are met.

(b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other documents that show compliance with that paragraph.

(Authority: 20 U.S.C. 1412(6))

§ 300.135 [Reserved]

§ 300.136 Implementation procedures—State educational agency.

Each State plan must describe the procedures the SEA follows to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

(Authority: 20 U.S.C. 1412(6))

§ 300.137 Procedures for consultation.

Each State plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents of children with disabilities.

(Authority: 20 U.S.C. 1412(7)(A))

§ 300.138 Other Federal programs.

Each State plan must provide that programs and procedures are established to ensure that funds received by the State or any public agency in the State under any other Federal program, including subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, under which there is specific authority for assistance for the education of children with disabilities, are used by the State, or any public agency in the State, only in a manner consistent with the goal of providing FAPE for all children with disabilities, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(Authority: 20 U.S.C. 1413(a)(2))

§ 300.139 Comprehensive system of personnel development.

Each State plan must include the procedures required under §§ 300.380–300.383.

(Authority: 20 U.S.C. 1413(a)(3))

§ 300.140 Private schools.

Each State plan must include policies and procedures that ensure that the requirements of §§ 300.400–300.403 and §§ 300.450–300.452 are met.

(Authority: 20 U.S.C. 1413(a)(4))

§ 300.141 Recovery of funds for misclassified children.

Each State plan must include policies and procedures that ensure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act.

(Authority: 20 U.S.C. 1413(a)(5))

§§ 300.142–300.143 [Reserved]

§ 300.144 Hearing on application.

Each State plan must include procedures to ensure that the SEA does not take any final action with respect to an application submitted by an LEA before giving the LEA reasonable notice and an opportunity for a hearing under § 76.401(d) of this title.

(Authority: 20 U.S.C. 1413(a)(8))

§ 300.145 Prohibition of commingling.

Each State plan must provide assurance satisfactory to the Secretary that funds provided under part B of the Act are not commingled with State funds.

(Authority: 20 U.S.C. 1413(a)(9))

Note: This assurance is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of the part B funds. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).)

§ 300.146 Annual evaluation.

Each State plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of children with disabilities, including evaluation of IEPs.

(Authority: 20 U.S.C. 1413(a)(11))

§ 300.147 State advisory panel.

Each State plan must provide that the requirements of §§ 300.650–300.653 are met.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.148 Policies and procedures for use of Part B funds.

Each State plan must set forth policies and procedures designed to ensure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act.

(Authority: 20 U.S.C. 1413(a)(1))

§ 300.149 Description of use of Part B funds.

(a) State allocation. Each State plan must include the following information about the State's use of funds under § 300.370 and § 300.620:

(1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with those funds.

(2) For each position, the percentage of salary paid with those funds.

(3) A description of each administrative activity the SEA will carry out during the next school year with those funds.

(4) A description of each direct service and each support service that the SEA will provide during the next period covered by the State plan with those funds, and the activities the State advisory panel will undertake during that period with those funds.

(b) Local educational agency allocation. Each State plan must include—

(1) An estimate of the number and percent of LEAs in the State that will receive an allocation under this part (other than LEAs that submit a consolidated application);

(2) An estimate of the number of LEAs that will receive an allocation under a consolidated application;

(3) An estimate of the number of consolidated applications and the average number of LEAs per application; and

(4) A description of direct services that the SEA will provide under § 300.360.

(Authority: 20 U.S.C.1412(6))

§ 300.150 State-level nonsupplanting.

Each State plan must provide assurance satisfactory to the Secretary that funds provided under this part will be used so as to supplement and increase the level of Federal (other than funds available under this part), State, and local funds—including funds that are not under the direct control of the SEA or LEAs — expended for special education and related services provided to children with disabilities under this part and in no case to supplant those Federal (other than funds available under this part), State, and local funds unless a waiver is granted in accordance with § 300.589.

(Authority: 20 U.S.C. 1413(a)(9))

Note: This requirement is distinct from the LEA nonsupplanting provision already contained in these regulations at § 300.230. Under this State-level provision, the State must assure that Part B funds distributed to LEAs and IEUs will be used to supplement and not supplant other Federal, State, and local funds (including funds not under the control of educational agencies) that would have been expended for special education and related services provided to children with disabilities in the absence of the Part B funds. The portion of Part B funds that are not distributed to LEAs or IEUs under the statutory formula (20 U.S.C. 1411(d)) are not subject to this nonsupplanting provision. See 20 U.S.C. 1411(c)(3). States may not permit LEAs or IEUs to use Part B funds to satisfy a financial commitment for services that would have been paid for by a health or other agency pursuant to policy or practice but for the fact that these services are now included in the IEPs of children with disabilities.

(H.R. Rep. No. 860, 99th Cong., 21–22 (1986))

§ 300.151 Additional information if the State educational agency provides direct services.

If an SEA provides FAPE for children with disabilities or provides them with direct services, its State plan must include the information required under §§ 300.226, 300.227, 300.231, and 300.235.

(Authority: 20 U.S.C. 1413(b))

§ 300.152 Interagency agreements.

(a) Each State plan must set forth policies and procedures for developing and implementing interagency agreements between—

(1) The SEA; and

(2) All other State and local agencies that provide or pay for services required under this part for children with disabilities.

(b) The policies and procedures referred to in paragraph (a) of this section must—

(1) Describe the role that each of those agencies plays in providing or paying for services required under this part for children with disabilities; and

(2) Provide for the development and implementation of interagency agreements that—

(i) Define the financial responsibility of each agency for providing children with disabilities with FAPE;

(ii) Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

(iii) Establish procedures under which LEAs may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements.

(Authority: 20 U.S.C. 1413(a)(13))

§ 300.153 Personnel standards.

(a) As used in this part:

(1) "Appropriate professional requirements in the State" means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and

(ii) Establish suitable qualifications for personnel providing special education and related services under this part to children and youth with disabilities who are served by State, local, and private agencies (see § 300.2).

(2) "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) "Profession or discipline" means a specific occupational category that—

(i) Provides special education and related services to children with disabilities under this part;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) "State approved or recognized certification, licensing, registration, or other comparable requirements" means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each State plan must include policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State plan must include the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the SEA, and available to the public.

(e) In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children and youth with disabilities must be considered.

(Authority: 20 U.S.C. 1413(a)(14))

Note: The regulations require that the State use its own existing highest requirements to determine the standards appropriate to personnel who provide special education and

related services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part. In some instances, States will be required to show that they are taking steps to retrain or to hire personnel to meet the standards adopted by the SEA that are based on requirements for practice in a specific profession or discipline that were established by other State agencies. States in this position need not, however, require personnel providing services under this part to apply for and obtain the license, registration, or other comparable credential required by other agencies of individuals in that profession or discipline. The regulations permit each State to determine the specific occupational categories required to provide special education and related services and to revise or expand these categories as needed. The professions or disciplines defined by the State need not be limited to traditional occupational categories.

§ 300.154 Transition of individuals from Part H to Part B.

Each State plan must set forth policies and procedures relating to the smooth transition for those individuals participating in the early intervention program under Part H of the Act who will participate in preschool programs assisted under this part, including a method of ensuring that when a child turns age 3 an IEP, or, if consistent with sections 614(a)(5) and 677(d) of the Act, an individualized family service plan, has been developed and implemented by the child's third birthday.

(Authority: 20 U.S.C. 1413(a)(15))

Local Educational Agency Applications—General

§ 300.180 Submission of application.

In order to receive payments under Part B of the Act for any fiscal year, an LEA must submit an application to the SEA.

(Authority: 20 U.S.C. 1414(a))

§ 300.181 [Reserved]

§ 300.182 The excess cost requirement.

An LEA may only use funds under part B of the Act for the excess costs of providing special education and related services for children with disabilities.

(Authority: 20 U.S.C. 1414(a)(1), (a)(2)(B)(i))

§ 300.183 Meeting the excess cost requirement.

(a) An LEA meets the excess cost requirement if it has on the average spent at least the amount determined under § 300.184 for the education of each of its children with disabilities. This amount may not include capital outlay or debt service.

(Authority: 20 U.S.C. 1402(20); 1414(a)(1))

Note: The excess cost requirement means that the LEA must spend a certain minimum amount for the education of its children with disabilities before part B funds are used. This ensures that children served with part B funds have at least the same average amount spent on them, from sources other than part B, as do the children in the school district taken as a whole.

The minimum amount that must be spent for the education of children with disabilities is computed under a statutory formula. Section 300.184 implements this formula and gives a step-by-step method to determine the minimum amount. Excess costs are those costs of special education and related services that exceed the minimum amount. Therefore, if an LEA can show that it has (on the average) spent the minimum amount for the education of each of its children with disabilities, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs, subject to the other requirements of part B (priorities, etc.). In the Note under § 300.184, there is an example of how the minimum amount is computed.

§ 300.184 Excess costs—computation of minimum amount.

The minimum average amount that an LEA must spend under § 300.183 for the education of each of its children with disabilities is computed as follows:

(a) Add all expenditures of the LEA in the preceding school year, except capital outlay and debt service—

(1) For elementary school students, if the child with a disability is an elementary school student; or

(2) For secondary school students, if the child with a disability is a secondary school student.

(b) From this amount, subtract the total of the following amounts spent for elementary school students or for secondary school students, as the case may be—

(1) Amounts the agency spent in the preceding school year from funds awarded under part B of the Act and titles I and VII of the Elementary and Secondary Education Act of 1965; and

(2) Amounts from State and local funds that the agency spent in the preceding school year for—

(i) Programs for children with disabilities;

(ii) Programs to meet the special educational needs of educationally deprived children; and

(iii) Programs of bilingual education for limited English proficient children.

(c) Divide the result under paragraph (b) of this section by the average number of students enrolled in the agency in the preceding school year—

(1) In its elementary schools, if the child with a disability is an elementary school student; or

(2) In its secondary schools, if the child with a disability is a secondary school student.

(Authority: 20 U.S.C. 1414(a)(1))

Note: The following is an example of how an LEA might compute the average minimum amount it must spend for the education of each of its children with disabilities, under § 300.183. This example follows the formula in § 300.184. Under the statute and regulations, the LEA must make one computation for children with disabilities in its elementary schools and a separate computation for children with disabilities in its secondary schools. The computation for elementary school students with disabilities would be done as follows:

a. First, the LEA must determine its total amount of expenditures for elementary school students from all sources—local, State, and Federal (including part B)—in the preceding school year. Only capital outlay and debt service are excluded.

Example: An LEA spent the following amounts last year for elementary school students (including its elementary school students with disabilities):

(1) From local tax funds	$2,750,000
(2) From State funds	7,000,000
(3) From Federal funds	750,000
	10,500,000

Of this total, $500,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures:

	$10,500,000
	−500,000
Total expenditures for elementary school students (less capital outlay and debt service)	10,000,000

b. Next, the LEA must subtract amounts spent for:

(1) Programs for children with disabilities;

(2) Programs to meet the special educational needs of educationally deprived children; and

(3) Programs of bilingual education for limited English proficient children.

These are funds that the LEA actually spent, not funds received last year but carried over for the current school year.

Example: The LEA spent the following amounts for elementary school students last year:

(1) From funds under Chapter 1 of title I of the Elementary and Secondary Education Act of 1965	300,000
(2) From a special State program for educationally deprived children	200,000
(3) From a grant under Part B	200,000
(4) From State funds for the education of children with disabilities	500,000
(5) From a locally-funded program for children with disabilities	250,000

(6) From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1965.....	150,000
Total.....	1,600,000

(An LEA would also include any other funds it spent from Federal, State, or local sources for the three basic purposes: Children with disabilities, educationally deprived children, and bilingual education for limited English proficient children.)

This amount is subtracted from the LEA's total expenditure for elementary school students computed above:

	$10,000,000
	−1,600,000
	8,400,000

c. The LEA next must divide by the average number of students enrolled in the elementary schools of the agency last year (including its students with disabilities).

Example: Last year, an average of 7,000 students were enrolled in the agency's elementary schools. This must be divided into the amount computed under the above paragraph: $8,400,000/7,000 students = $1,200/student.

This figure is in the minimum amount the LEA must spend (on the average) for the education of each of its students with disabilities. Funds under Part B may be used only for costs over and above this minimum. In this example, if the LEA has 100 elementary school students with disabilities, it must keep records adequate to show that it has spent at least $120,000 for the education of those students (100 students times $1,200/student), not including capital outlay and debt service.

This $120,000 may come from any funds except funds under Part B, subject to any legal requirements that govern the use of those other funds.

If the LEA has secondary school students with disabilities, it must do the same computation for them. However the amounts used in the computation would be those the LEA spent last year for the education of secondary school students, rather than for elementary school students.

§ 300.185 Computation of excess costs—consolidated application.

The minimum average amount under § 300.183, if two or more LEAs submit a consolidated application, is the average of the combined minimum average amounts determined under § 300.184 in those agencies for elementary or secondary school students, as the case may be.

(Authority: 20 U.S.C. 1414(a)(1))

§ 300.186 Excess costs—limitation on use of Part B funds.

(a) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b) of this section.

(b) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or State funds are available for nondisabled children in that age range. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services.

(Authority: 20 U.S.C. 1402(20); 1414(a)(1))

§ 300.187–300.189 [Reserved]

§ 300.190 Consolidated applications.

(a) [Reserved]

(b) *Required applications.* An SEA may require LEAs to submit a consolidated application for payments under Part B of the Act if the SEA determines that an individual application submitted by an LEA will be disapproved because—

(1) The agency's entitlement is less than the $7,500 minimum required by section 611(c)(4)(A)(i) of the Act (§ 300.360(a)(1)); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of children with disabilities.

(c) *Size and scope of program.* The SEA shall establish standards and procedures for determinations under paragraph (b)(2) of this section.

(Authority: 20 U.S.C. 1414(c)(1))

§ 300.191 [Reserved]

§ 300.192 State regulation of consolidated applications.

(a) The SEA shall issue regulations with respect to consolidated applications submitted under this part.

(b) The SEA's regulations must—

(1) Be consistent with sections 612(1)–(7) and 613(a) of the Act; and

(2) Provide participating LEAs with joint responsibilities for implementing programs receiving payments under this part.

(Authority: 20 U.S.C. 1414(c)(2)(B))

(c) If an IEU is required by State law to carry out this part, the joint responsibilities given to LEAs under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the IEU. Those administrative responsibilities must be carried out exclusively by the IEU.

(Authority: 20 U.S.C. 1414(c)(2)(C))

§ 300.193 State educational agency approval; disapproval.

(a)–(b) [Reserved]

(c) In carrying out its functions under this section, each SEA shall consider any decision resulting from a hearing under §§ 300.506–300.513 that is adverse to the LEA involved in the decision.

(Authority: 20 U.S.C. 1414(b)(3))

§ 300.194 Withholding.

(a) If an SEA, after giving reasonable notice and an opportunity for a hearing to an LEA, decides that the LEA in the administration of an application approved by the SEA has failed to comply with any requirement in the application, the SEA, after giving notice to the LEA, shall—

(1) Make no further payments to the LEA until the SEA is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the LEA under § 300.180; or

(3) Both.

(b) [Reserved]

(Authority: 20 U.S.C. 1414(b)(2))

Local Educational Agency Applications—Contents

§ 300.220 Child identification.

Each application must include procedures that ensure that all children residing within the jurisdiction of the LEA who have disabilities, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated, including a practical method for determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(Authority: 20 U.S.C. 1414(a)(1)(A))

Note: The LEA is responsible for ensuring that all children with disabilities within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements of §§ 300.560–300.576.

§ 300.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures that ensure that the criteria in §§ 300.560–300.574 are met.

(Authority: 20 U.S.C. 1414(a)(1)(B))

§ 300.222 Full educational opportunity goal—timetable.

Each application must—(a) Include a goal of providing full educational opportunity to all children with disabilities, aged birth through 21; and

(b) Include a detailed timetable for accomplishing the goal.

(Authority: 20 U.S.C. 1414(a)(1)(C), (D))

§ 300.223 Facilities, personnel, and services.

Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in § 300.222.

(Authority: 20 U.S.C. 1414(a)(1)(E))

§ 300.224 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the SEA under § 300.139.

(Authority: 20 U.S.C. 1414(a)(1)(C)(i))

§ 300.225 Priorities.

Each application must include priorities that meet the requirements of §§ 300.320–300.324.

(Authority: 20 U.S.C. 1414(a)(1)(C)(ii))

§ 300.226 Parent involvement.

Each application must include procedures to ensure that, in meeting the goal under § 300.222, the LEA makes provision for participation of and consultation with parents or guardians of children with disabilities.

(Authority: 20 U.S.C. 1414(a)(1)(C)(iii))

§ 300.227 Participation in regular education programs.

(a) Each application must include procedures to ensure that to the maximum extent practicable, and consistent with §§ 300.550–300.553, the LEA provides special services to enable children with disabilities to participate in regular educational programs.

(b) Each application must describe—(1) The types of alternative placements that are available for children with disabilities; and

(2) The number of children with disabilities within each disability category who are served in each type of placement.

(Authority: 20 U.S.C. 1414(a)(1)(C)(iv))

§ 300.228 [Reserved]

§ 300.229 Excess cost.

Each application must provide assurance satisfactory to the SEA that the LEA uses funds provided under part B of the Act only for costs that exceed the amount computed under § 300.184 and that are directly attributable to the education of children with disabilities.

(Authority: 20 U.S.C. 1414(a)(2)(B))

§ 300.230 Nonsupplanting.

(a) Each application must provide assurance satisfactory to the SEA that the LEA uses funds provided under part B of the Act to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section, the total amount or average per capita amount of State and local school funds budgeted by the LEA for expenditures in the current fiscal year for the education of children with disabilities must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of children with disabilities in the most recent preceding fiscal year for which the information is available. Allowance may be made for—

(1) Decreases in enrollment of children with disabilities; and

(2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities.

(Authority: 20 U.S.C. 1414(a)(2)(B))

§ 300.231 Comparable services.

(a) Each application must provide assurance satisfactory to the SEA that the LEA meets the requirements of this section.

(b) An LEA may not use funds under part B of the Act to provide services to children with disabilities unless the LEA uses State and local funds to provide services to those children that, taken as a whole, are at least comparable to services provided to other children with disabilities in that LEA.

(c) Each LEA shall maintain records that show that the LEA meets the requirement in paragraph (b) of this section.

(Authority: 20 U.S.C. 1414(a)(2)(C))

Note: Under the "comparability" requirement, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all children with disabilities in the LEA who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. This, of course, is subject to the other requirements of the Act, including the priorities under §§ 300.320–300.324.

§§ 300.232–300.234 [Reserved]

§ 300.235 Individualized education programs.

Each application must include procedures to assure that the LEA complies with §§ 300.340–300.350.

(Authority: 20 U.S.C. 1414(a)(5))

§ 300.236 [Reserved]

§ 300.237 Procedural safeguards.

Each application must provide assurance satisfactory to the SEA that the LEA has procedural safeguards that meet the requirements of §§ 300.500–300.515.

(Authority: 20 U.S.C. 1414(a)(7))

§ 300.238 Use of Part B funds.

Each application must describe how the LEA will use the funds under part B of the Act during the next school year.

(Authority: 20 U.S.C. 1414(a))

§ 300.239 [Reserved]

§ 300.240 Other requirements.

Each local application must include additional procedures and information that the SEA may require in order to meet the State plan requirements of §§ 300.121–300.153.

(Authority: 20 U.S.C. 1414(a)(6))

Application From Secretary of the Interior

§ 300.260 Submission of application; approval.

(a) In order to receive a grant under this part, the Secretary of the Interior shall submit an application that—

(1) Meets the requirements of section 612(1), 612(2)(C)–(E), 612(4), 612(5), 612(6), and 612(7) of the Act (including monitoring and evaluation activities);

(2) Meets the requirements of section 613(a), (2), (3), (4)(B), (5), (6), (7), (10), (11), (12), (13), (14), and (15), 613(b), and 613(e) of the Act;

(3) Meets the requirements of section 614(a)(1)(A)–(B), (2)(A), (C), (3), (4), (5), and (7) of the Act;

(4) Meets the requirements of this part that implement the sections of the Act listed in paragraphs (a)(1)–(3) of this section.

(5) Includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with LEAs, tribes and tribal organizations, and other private and Federal service providers;

(6) Includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected

local school boards before the adoption of the policies, programs, and procedures required under paragraphs (a)(1)–(3) of this section;

(7) Includes an assurance that the Secretary of the Interior will provide such information as the Secretary may require to comply with section 618(b)(1) of the Act, including data on the number of children and youth with disabilities served and the types and amounts of services provided and needed;

(8) Includes an assurance that, by October 1, 1992, the Secretaries of the Interior and Health and Human Services will enter into a memorandum of agreement, to be provided to the Secretary, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with SEAs and LEAs and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations. That agreement must provide for the apportionment of responsibilities and costs, including, but not limited to, those related to child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies, or both, as needed for a child to remain in school or a program; and

(9) Includes an assurance that the Department of the Interior will cooperate with the Department of Education in the latter's exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under the Act and will fulfill its duties under the Act.

(b) Sections 300.581–300.585 apply to grants available to the Secretary of the Interior under this part.

(Authority: 20 U.S.C. 1411(f))

§ 300.261 Public participation.

In the development of the application for the Department of the Interior, the Secretary of the Interior shall provide for public participation consistent with §§ 300.280–300.284.

(Authority: 20 U.S.C. 1411(f))

§ 300.262 Use of Part B funds.

(a)(1) The Department of the Interior may use five percent of its payment under § 300.709 in any fiscal year, or $350,000, whichever is greater, for administrative costs in carrying out the provisions of this part.

(2) The remainder of the payments to the Secretary of the Interior under § 300.709 in any fiscal year must be used in accordance with the priorities under §§ 300.320–300.324.

(b) Payments to the Secretary of the Interior under § 300.710 must be used in accordance with that section.

(Authority: 20 U.S.C. 1411(f))

§ 300.263 Applicable regulations.

The Secretary of the Interior shall comply with the requirements of §§ 300.301–300.303, §§ 300.305–300.307, and §§ 300.340–300.347, § 300.350, §§ 300.360–300.383, §§ 300.400–300.402, §§ 300.500–300.585, §§ 300.600–300.621, and §§ 300.660–300.662.

(Authority: 20 U.S.C. 1411(f)(2))

Public Participation

§ 300.280 Public hearings before adopting a State plan.

Prior to its adoption of a State plan, the SEA shall—

(a) Make the plan available to the general public;

(b) Hold public hearings; and

(c) Provide an opportunity for comment by the general public on the plan.

(Authority: 20 U.S.C. 1412(7))

§ 300.281 Notice.

(a) The SEA shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the general public about—

(1) The purpose and scope of the State plan and its relation to part B of the Act;

(2) The availability of the State plan;

(3) The date, time, and location of each public hearing;

(4) The procedures for submitting written comments about the plan; and

(5) The timetable for developing the final plan and submitting it to the Secretary for approval.

(c) The notice must be published or announced—

(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and

(2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1412(7))

§ 300.282 Opportunity to participate; comment period.

(a) The SEA shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under § 300.281.

(Authority: 20 U.S.C. 1412(7))

§ 300.283 Review of public comments before adopting plan.

Before adopting its State plan, the SEA shall—

(a) Review and consider all public comments; and

(b) Make any necessary modifications in the plan.

(Authority: 20 U.S.C. 1412(7))

§ 300.284 Publication and availability of approved plan.

After the Secretary approves a State plan, the SEA shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(Authority: 20 U.S.C. 1412(7))

Subpart C—Services

Free Appropriate Public Education

§ 300.300 Timelines for free appropriate public education.

(a) *General.* Each State shall ensure that FAPE is available to all children with disabilities aged 3 through 18 within the State not later than September 1, 1978, and to all children with disabilities aged 3 through 21 within the State not later than September 1, 1980.

(b) *Age ranges 3–5 and 18–21.* This paragraph provides rules for applying the requirement in paragraph (a) of this section to children with disabilities aged 3, 4, 5, 18, 19, 20, and 21:

(1) If State law or a court order requires the State to provide education for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability.

(2) If a public agency provides education to nondisabled children in any of these age groups, it must make FAPE available to at least a proportionate number of children with disabilities of the same age.

(3) If a public agency provides education to 50 percent or more of its children with disabilities in any disability category in any of these age groups, it must make FAPE available to all its children with disabilities of the same age who have that disability. This provision does not apply to children aged 3 through 5 for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

(4) If a public agency provides education to a child with a disability in any of these age groups, it must make

FAPE available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make FAPE available to a child with a disability in one of these age groups if—

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nondisabled children in that age group; or

(ii) The requirement is inconsistent with a court order that governs the provision of free public education to children with disabilities in that State.

(c) *Children aged 3 through 21 on reservations.* With the exception of children identified in § 300.709(a)(1) and (2), the SEA shall be responsible for ensuring that all of the requirements of Part B of the Act are implemented for all children aged 3 through 21 on reservations.

(Authority: 20 U.S.C. 1411(f); 1412(2)(B); S. Rep. No. 94–168, p. 19 (1975))

Note 1: The requirement to make FAPE available applies to all children with disabilities within the State who are in the age ranges required under § 300.300 and who need special education and related services. This includes children with disabilities already in school and children with less severe disabilities, who are not covered under the priorities under § 300.321.

Note 2: In order to be in compliance with § 300.300, each State must ensure that the requirement to identify, locate, and evaluate all children with disabilities is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with §§ 300.530–300.533. If, as a result of the evaluation, it is determined that a child needs special education and related services, an IEP must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

Note 3: The requirement to identify, locate, and evaluate children with disabilities (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93–380. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to ensure that the system is fully operational and effective on a State-wide basis.

Under the statute, the age range for the child find requirement (0–21) is greater than the mandated age range for providing FAPE. One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement that has the same age range as child find. Moreover, while a State is not required to provide FAPE to children with disabilities below the age ranges mandated under § 300.300, the State may, at its discretion, extend services to those children, subject to the priority requirements of §§ 300.320–300.324.

§ 300.301 Free appropriate public education—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(Authority: 20 U.S.C. 1401 (18); 1412(2)(B))

§ 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(Authority: 20 U.S.C. 1412(2)(B); 1413(a)(4)(B))

Note: This requirement applies to placements that are made by public agencies for educational purposes, and includes placements in State-operated schools for children with disabilities, such as a State school for students with deafness or students with blindness.

§ 300.303 Proper functioning of hearing aids.

Each public agency shall ensure that the hearing aids worn by children with hearing impairments including deafness in school are functioning properly.

(Authority: 20 U.S.C. 1412(2)(B))

Note: The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids:

In its report on the 1976 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services.

(Authority: H. R. Rep. No. 95–381, p. 67 (1977))

§ 300.304 Full educational opportunity goal.

(a) Each SEA shall ensure that each public agency establishes and implements a goal of providing full educational opportunity to all children with disabilities in the area served by the public agency.

(b) Subject to the priority requirements of §§ 300.320–300.324, an SEA or LEA may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Note: In meeting the full educational opportunity goal, the Congress also encouraged LEAs to include artistic and cultural activities in programs supported under this part, subject to the priority requirements of §§ 300.320–300.324. This point is addressed in the following statements from the Senate Report on Public Law 94–142:

The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se.

Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in federally supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

(Authority: S. Rep. No. 94–168, p. 13 (1975))

§ 300.305 Program options.

Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Note: The above list of program options is not exhaustive, and could include any program or activity in which nondisabled students participate.

§ 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

§ 300.307 Physical education.

(a) *General.* Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.

(b) *Regular physical education.* Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for those services to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(Authority: 20 U.S.C. 1401(a)(16); 1412(5)(B); 1414(a)(6))

Note: The Report of the House of Representatives on Public Law 94–142 includes the following statement regarding physical education:

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.

* * * * *

The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(Authority: H. R. Rep. No. 94–332, p. 9 (1975))

§ 300.308 Assistive technology.

Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5–300.6, are made available to a child with a disability if required as a part of the child's—

(a) Special education under § 300.17;

(b) Related services under § 300.16; or

(c) Supplementary aids and services under § 300.550(b)(2).

(Authority: 20 U.S.C. 1412(2), (5)(B))

Priorities in the Use of Part B Funds

§ 300.320 Definitions of first priority children and second priority children.

For the purposes of §§ 300.321–300.324, the term:

(a) "First priority children" means children with disabilities who—

(1) Are in an age group for which the State must make FAPE available under § 300.300; and

(2) Are not receiving any education.

(b) "Second priority children" means children with disabilities, within each disability category, with the most severe disabilities who are receiving an inadequate education.

(Authority: 20 U.S.C. 1412(3))

Note 1: After September 1, 1978, there should be no second priority children, since States must ensure, as a condition of receiving Part B funds for fiscal year 1979, that all children with disabilities will have FAPE available by that date.

Note 2: The term "free appropriate public education," as defined in § 300.8, means special education and related services that * * * "are provided in conformity with an IEP" * * *.

New first priority children will continue to be found by the State after September 1, 1978 through on-going efforts to identify, locate, and evaluate all children with disabilities.

§ 300.321 Priorities.

(a) Each SEA and LEA shall use funds provided under part B of the Act in the following order of priorities:

(1) To provide FAPE to first priority children, including the identification, location, and evaluation of first priority children.

(2) To provide FAPE to second priority children, including the identification, location, and evaluation of second priority children.

(3) To meet the other requirements of this part.

(b) The requirements of paragraph (a) of this section do not apply to funds that the State uses for administration under § 300.620.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii))

Note: SEAs as well as LEAs must use part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its part B allotment to be able to serve newly identified first priority children.

After September 1, 1978, part B funds may be used—

(1) To continue supporting child identification, location, and evaluation activities;

(2) To provide FAPE to newly identified first priority children;

(3) To meet the full educational opportunity goal required under § 300.304, including employing additional personnel and providing inservice training, in order to increase the level, intensity and quality of services provided to individual children with disabilities; and

(4) To meet the other requirements of part B.

§ 300.322 [Reserved]

§ 300.323 Services to other children.

If a State or an LEA is providing FAPE to all of its first priority children, that State or LEA may use funds provided under part B of the Act—

(a) To provide FAPE to children with disabilities who are not receiving any education and who are in the age groups not covered under § 300.300 in that State; or

(b) To provide FAPE to second priority children; or

(c) Both.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(2)(A)(ii))

§ 300.324 Application of local educational agency to use funds for the second priority.

An LEA may use funds provided under part B of the Act for second priority children, if it provides assurance satisfactory to the SEA in its application (or an amendment to its application)—

(a) That all first priority children have FAPE available to them;

(b) That the LEA has a system for the identification, location, and evaluation of children with disabilities, as described in its application; and

(c) That whenever a first priority child is identified, located, and evaluated, the LEA makes FAPE available to the child.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (c)(1)(B); 1414(a)(1)(C)(ii))

Individualized Education Programs

§ 300.340 Definitions.

(a) As used in this part, the term "individualized education program" means a written statement for a child with a disability that is developed and implemented in accordance with §§ 300.341-300.350.

(b) As used in §§ 300.346 and 300.347, "participating agency" means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1401(a)(20))

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The SEA shall ensure that each public agency develops and implements an IEP for each of its children with disabilities.

(b) *Private schools and facilities.* The SEA shall ensure that an IEP is developed and implemented for each child with a disability who—

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial school or other private school and receives special education or related services from a public agency.

(Authority: 20 U.S.C. 1412 (4), (6); 1413(a)(4))

Note: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare) that provide special education to a child with a disability either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a child with a disability, that agency would be responsible for ensuring that an IEP is developed for the child.

§ 300.342 When individualized education programs must be in effect.

(a) At the beginning of each school year, each public agency shall have in effect an IEP for every child with a disability who is receiving special education from that agency.

(b) An IEP must—

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 300.343.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, sec. 8(c) (1975))

Note: Under paragraph (b)(2) of this section, it is expected that the IEP of a child with a disability will be implemented immediately following the meetings under § 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

§ 300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with State policy and at the discretion of the LEA, and with the concurrence of the parents, an individualized family service plan described in section 677(d) of the Act for each child with a disability, aged 3 through 5).

(b) [Reserved]

(c) *Timeline.* A meeting to develop an IEP for a child must be held within 30 calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to review each child's IEP periodically and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5))

Note: The date on which agencies must have IEPs in effect is specified in § 300.342 (the beginning of each school year). However, except for new children with disabilities (i.e., those evaluated and determined to need special education and related services for the first time), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect at the beginning of the school year, agencies could hold meetings either at the end of the preceding school year or during the summer prior to the next school year. Meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review and, if appropriate, revise each child's IEP. The timing of those meetings could be on the anniversary date of the child's last IEP meeting, but this is left to the discretion of the agency.

§ 300.344 Participants in meetings.

(a) *General.* The public agency shall ensure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to § 300.345.

(4) The child, if appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a child with a disability who has been evaluated for the first time, the public agency shall ensure—

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(c) *Transition services participants.* (1) If a purpose of the meeting is the consideration of transition services for a student, the public agency shall invite—

(i) The student; and

(ii) A representative of any other agency that is likely to be responsible for providing or paying for transition services.

(2) If the student does not attend, the public agency shall take other steps to ensure that the student's preferences and interests are considered; and

(3) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(Authority: 20 U.S.C. 1401(a)(19), (a)(20); 1412(2)(B), (4), (6); 1414(a)(5))

Note 1: In deciding which teacher will participate in meetings on a child's IEP, the agency may wish to consider the following possibilities:

(a) For a child with a disability who is receiving special education, the teacher could be the child's special education teacher. If the child's disability is a speech impairment, the teacher could be the speech-language pathologist.

(b) For a child with a disability who is being considered for placement in special education, the teacher could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

For a child whose primary disability is a speech or language impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

Note 2: Under paragraph (c) of this section, the public agency is required to invite each student to participate in his or her IEP

meeting, if a purpose of the meeting is the consideration of transition services for the student. For all students who are 16 years of age or older, one of the purposes of the annual meeting will always be the planning of transition services, since transition services are a required component of the IEP for these students.

For a student younger than age 16, if transition services are initially discussed at a meeting that does not include the student, the public agency is responsible for ensuring that, before a decision about transition services for the student is made, a subsequent IEP meeting is conducted for that purpose, and the student is invited to the meeting.

§ 300.345 Parent participation.

(a) Each public agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b)(1) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting and who will be in attendance;

(2) If a purpose of the meeting is the consideration of transition services for a student, the notice must also—

(i) Indicate this purpose;

(ii) Indicate that the agency will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

(c) If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the IEP.

(Authority: 20 U.S.C. 1401(a)(20); 1412 (2)(B), (4), (6); 1414(a)(5))

Note: The notice in paragraph (a) of this section could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c) of this section, the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

§ 300.346 Content of individualized education program.

(a) *General.* The IEP for each child must include—

(1) A statement of the child's present levels of educational performance;

(2) A statement of annual goals, including short-term instructional objectives;

(3) A statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs;

(4) The projected dates for initiation of services and the anticipated duration of the services; and

(5) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(b) *Transition services.* (1) The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in § 300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

(2) If the IEP team determines that services are not needed in one or more of the areas specified in § 300.18 (b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination was made.

(Authority: 20 U.S.C. 1401 (a)(19), (a)(20); 1412 (2)(B), (4), (6); 1414(a)(5))

Note 1: The legislative history of the transition services provisions of the Act suggests that the statement of needed transition services referred to in paragraph (b) of this section should include a commitment by any participating agency to meet any financial responsibility it may have in the provision of transition services. See House Report No. 101–544, p. 11 (1990).

Note 2: With respect to the provisions of paragraph (b) of this section, it is generally expected that the statement of needed transition services will include the areas listed in § 300.18 (b)(2)(i) through (b)(2)(iii). If the IEP team determines that services are not needed in one of those areas, the public agency must implement the requirements in paragraph (b)(2) of this section. Since it is a part of the IEP, the IEP team must reconsider its determination at least annually.

Note 3: Section 602(a)(20) of the Act provides that IEPs must include a statement of needed transition services for students beginning no later than age 16, but permits transition services to students below age 16 (i.e., "* * * and, when determined appropriate for the individual, beginning at age 14 or younger."). Although the statute does not mandate transition services for all students beginning at age 14 or younger, the provision of these services could have a significantly positive effect on the employment and independent living outcomes for many of these students in the future, especially for students who are likely to drop out before age 16. With respect to the provision of transition services to students below age 16, the Report of the House Committee on Education and Labor on Public Law 101–476 includes the following statement:

> Although this language leaves the final determination of when to initiate transition services for students under age 16 to the IEP process, it nevertheless makes clear that Congress expects consideration to be given to the need for transition services for some students by age 14 or younger. The Committee encourages that approach because of their concern that age 16 may be too late for many students, particularly those at risk of dropping out of school and those with the most severe disabilities. Even for those students who stay in school until age 18, many will need more than two years of transitional services. Students with disabilities are now dropping out of school before age 16, feeling that the education system has little to offer them. Initiating services at a younger age will be critical. (House Report No. 101–544, 10 (1990).)

§ 300.347 Agency responsibilities for transition services.

(a) If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(Authority: 20 U.S.C. 1401 (a)(18), (a)(19), (a)(20); 1412(2)(B))

§ 300.348 Private school placements by public agencies.

(a) *Developing individualized education programs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with § 300.343.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) [Reserved]

(b) *Reviewing and revising individualized education programs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative:

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.349 Children with disabilities in parochial or other private schools.

If a child with a disability is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall—

(a) Initiate and conduct meetings to develop, review, and revise an IEP for the child, in accordance with § 300.343; and

(b) Ensure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

(Authority: 20 U.S.C. 1413(a)(4)(A))

§ 300.350 Individualized education program—accountability.

Each public agency must provide special education and related services to a child with a disability in accordance with an IEP. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(Authority: 20 U.S.C. 1412(2)(B); 1414(a) (5), (6); Cong. Rec. at H7152 (daily ed., July 21, 1975))

Note: This section is intended to relieve concerns that the IEP constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the goals and objectives listed in the IEP. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

Direct Service by the State Educational Agency

§ 300.360 Use of local educational agency allocation for direct services.

(a) An SEA may not distribute funds to an LEA, and shall use those funds to ensure the provision of FAPE to children with disabilities residing in the area served by the LEA, if the LEA, in any fiscal year—

(1) Is entitled to less than $7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requirements of §§ 300.220–300.240;

(3) Is unable or unwilling to establish and maintain programs of FAPE;

(4) Is unable or unwilling to be consolidated with other LEAs in order to establish and maintain those programs; or

(5) Has one or more children with disabilities who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements in paragraph (a) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements of §§ 300.182–300.186 do not apply to the SEA.

(Authority: 20 U.S.C. 1411(c)(4); 1413(b); 1414(d))

Note: Section 300.360 is a combination of three provisions in the statute (Sections 611(c)(4), 613(b), and 614(d)). This section focuses mainly on the State's administration and use of local entitlements under Part B.

The SEA, as a recipient of Part B funds, is responsible for ensuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive Part B funds. If an LEA elects not to apply for its Part B entitlement, the State would be required to use those funds to ensure that FAPE is made available to children residing in the area served by that local agency. However, if the local entitlement is not sufficient for this purpose, additional State or local funds would have to be expended in order to ensure that FAPE and the other requirements of the Act are met.

Moreover, if the LEA is the recipient of any other Federal funds, it would have to be in compliance with 34 CFR §§ 104.31–104.39 of the regulations implementing Section 504 of the Rehabilitation Act of 1973. It should be noted that the term "FAPE" has different meanings under Part B and Section 504. For example, under Part B, FAPE is a statutory term that requires special education and related services to be provided in accordance with an IEP. However, under Section 504, each recipient must provide an education that includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *" Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the FAPE requirement.

§ 300.361 Nature and location of services.

The SEA may provide special education and related services under § 300.360(a) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the LRE provisions of §§ 300.550–300.556).

(Authority: 20 U.S.C. 1414(d))

§ 300.370 Use of State agency allocations.

(a) The State may use the portion of its allocation that it does not use for administration under §§ 300.620–300.621—

(1) For support services and direct services in accordance with the priority requirements of §§ 300.320–300.324; and

(2) For the administrative costs of the State's monitoring activities and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985.

(b) For the purposes of paragraph (a) of this section—

(1) "Direct services" means services provided to a child with a disability by the State directly, by contract, or through other arrangements; and

(2) "Support services" includes implementing the comprehensive system of personnel development of §§ 300.380–300.383, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to FAPE for children with disabilities.

(Authority: 20 U.S.C. 1411 (b)(2), (c)(2))

§ 300.371 State matching.

Beginning with the period July 1, 1978-June 30, 1979, and for each following fiscal year, the funds that a State uses for direct and support services under § 300.370 must be matched on a program basis by the State from funds other than Federal funds. This requirement does not apply to funds that the State uses under § 300.360.

(Authority: 20 U.S.C. 1411 (c)(2)(B), (c)(4)(B))

Note: The requirement in § 300.371 would be satisfied if the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.

§ 300.372 Applicability of nonsupplanting requirement.

Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under § 300.706(a) for administration, direct services, or support services.

(Authority: 20 U.S.C. 1411(c)(3))

Comprehensive System of Personnel Development

§ 300.380 General.

Each State shall—

(a) Develop and implement a comprehensive system of personnel development that—

(1) Is consistent with the purposes of the Act and with the comprehensive system of personnel development described in 34 CFR § 303.360;

(2) Meets the requirements in §§ 300.381–300.383; and

(3) Is consistent with the provisions on personnel standards in § 300.153; and

(b) Include in its State plan a description of the personnel development system required in paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1413 (a)(3), (a)(14))

§ 300.381 Adequate supply of qualified personnel.

Each State plan must include a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified personnel (as the term "qualified" is defined at § 300.15), including special education and related services personnel and leadership personnel, necessary to carry out the purposes of this part. The procedures and activities must include the development, updating, and implementation of a plan that—

(a) Addresses current and projected special education and related services personnel needs, including the need for leadership personnel; and

(b) Coordinates and facilitates efforts among SEA and LEAs, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.

(Authority: 20 U.S.C. 1413(a)(3)(A))

§ 300.382 Personnel preparation and continuing education.

Each State plan must include a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this part are appropriately and adequately prepared. The procedures and activities must include—

(a) A system for the continuing education of regular and special education and related services personnel to enable these personnel to meet the needs of children with disabilities under this part;

(b) Procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

(c) Procedures for adopting, if appropriate, promising practices, materials, and technology, proven effective through research and demonstration.

(Authority: 20 U.S.C. 1413(a)(3)(B))

§ 300.383 Data system on personnel and personnel development.

(a) *General.* The procedures and activities required in §§ 300.381 and 300.382 must include the development and maintenance of a system for determining, on an annual basis, the data required in paragraphs (b) and (c) of this section.

(b) *Data on qualified personnel.* (1) The system required by paragraph (a) of this section must enable each State to determine, on an annual basis—

(i) The number and type of personnel, including leadership personnel, employed in the provision of special education and related services, by profession or discipline;

(ii) The number and type of personnel who are employed with emergency, provisional, or temporary certification in each profession or discipline who do not hold appropriate State certification, licensure, or other credentials comparable to certification or licensure for that profession or discipline; and

(iii) The number and type of personnel, including leadership personnel, in each profession or discipline needed, and a projection of the numbers of those personnel that will be needed in five years, based on projections of individuals to be served, retirement and other departures of personnel from the field, and other relevant factors.

(2) The data on special education and related services personnel required in paragraph (b)(1) of this section must include audiologists, counselors, diagnostic and evaluation personnel, home-hospital teachers, interpreters for students with hearing impairments including deafness, occupational therapists, physical education teachers, physical therapists, psychologists, rehabilitation counselors, social workers, speech-language pathologists, teacher aides, recreation and therapeutic recreation specialists, vocational education teachers, work-study coordinators, and other instructional and noninstructional staff.

(3) The data on leadership personnel required by paragraph (b)(1) of this section must include administrators and supervisors of State or local agencies who are involved in the provision or supervision of services or activities necessary to carry out the purposes of this part.

(c) *Data on personnel development.* The system required in paragraph (a) of this section must enable each State to determine, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including—

(1) The numbers of students enrolled in programs for the preparation of special education and related services personnel administered by these institutions of higher education; and

(2) The numbers of students who graduated during the past year with certification or licensure, or with credentials to qualify for certification or licensure, from programs for the preparation of special education and related services personnel administered by institutions of higher education.

(Authority: 20 U.S.C. 1413(a)(3)(A))

§§ 300.384–300.387 [Reserved].

Subpart D—Private Schools

Children With Disabilities in Private Schools Placed or Referred by Public Agencies

§ 300.400 Applicability of §§ 300.400–300.402.

Sections 300.401–300.402 apply only to children with disabilities who are or have been placed in or referred to a

private school or facility by a public agency as a means of providing special education and related services.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.401 Responsibility of State educational agency.

Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§ 300.340–300.350;

(2) At no cost to the parents; and

(3) At a school or facility that meets the standards that apply to the SEA and LEAs (including the requirements of this part); and

(b) Has all of the rights of a child with a disability who is served by a public agency.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.402 Implementation by State educational agency.

In implementing § 300.401, the SEA shall—

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.403 Placement of children by parents.

(a) If a child with a disability has FAPE available and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under §§ 300.450–300.452.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of §§ 300.500–300.515.

(Authority: 20 U.S.C. 1412(2)(B); 1415)

Children With Disabilities Enrolled by Their Parents in Private Schools

§ 300.450 Definition of "private school children with disabilities."

As used in this part, "private school children with disabilities" means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§ 300.400–300.402.

(Authority: 20 U.S.C. 1413(a)(4)(A))

§ 300.451 State educational agency responsibility.

The SEA shall ensure that—

(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school children with disabilities in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The requirements of 34 CFR §§ 76.651–76.662 are met.

(Authority: 20 U.S.C. 1413(a)(4)(A))

§ 300.452 Local educational agency responsibility.

Each LEA shall provide special education and related services designed to meet the needs of private school children with disabilities residing in the jurisdiction of the agency.

(Authority: 20 U.S.C. 1413(a)(4)(A); 1414(a)(6))

Procedures for By-Pass

§ 300.480 By-pass—general.

(a) The Secretary implements a by-pass if an SEA is, and was on December 2, 1983, prohibited by law from providing for the participation of private school children with disabilities in the program assisted or carried out under this part, as required by section 613(a)(4)(A) of the Act and by §§ 300.451–300.452.

(b) The Secretary waives the requirement of section 613(a)(4)(A) of the Act and of §§ 300.451–300.452 if the Secretary implements a by-pass.

(Authority: 20 U.S.C. 1413(d)(1))

§ 300.481 Provisions for services under a by-pass.

(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State to consider matters such as—

(1) The prohibition imposed by State law that results in the need for a by-pass;

(2) The scope and nature of the services required by private school children with disabilities in the State, and the number of children to be served under the by-pass; and

(3) The establishment of policies and procedures to ensure that private school children with disabilities receive services consistent with the requirements of section 613(a)(4)(A) of the Act, §§ 300.451–300.452, and 34 CFR §§ 76.651–76.662.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State in a manner consistent with the requirements of section 613(a)(4)(A) of the Act and §§ 300.451–300.452 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—

(1) A per child amount that may not exceed the amount per child provided by the Secretary under this part for all children with disabilities in the State for the preceding fiscal year; by

(2) The number of private school children with disabilities (as defined by §§ 300.7(a) and 300.450) in the State, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.

(d) The Secretary deducts from the State's allocation under this part the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.

(Authority: 20 U.S.C. 1413(d)(2))

Due Process Procedures

Source: Sections 300.482 through 300.486 appear at 49 FR 48526, Dec. 12, 1984, unless otherwise noted.

§ 300.482 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected SEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA to respond; and

(2) Advises the SEA that it has a specific period of time (at least 45 days) from receipt of the written notice to

submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.483 Request to show cause.

An SEA seeking an opportunity to show cause why a by-pass should not be implemented shall submit a written request for a show cause hearing to the Secretary.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.484 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the SEA and other appropriate public and private school officials of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.

(d) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.485 Decision.

(a) The designee who conducts the show cause hearing—

(1) Issues a written decision that includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 15 days of the date the party receives the designee's decision.

(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies the SEA of the Secretary's final action. That notice is sent by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.486 Judicial review.

If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located. The procedures for judicial review are described in section 613(d)(3)(B)–(D) of the Act.

(Authority: 20 U.S.C. 1413(d)(3)(B)–(D))

Subpart E—Procedural Safeguards

Due Process Procedures for Parents and Children

§ 300.500 Definitions of "consent," "evaluation," and "personally identifiable."

(a) As used in this part: "Consent" means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(b) "Evaluation" means procedures used in accordance with §§ 300.530–300.534 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

(c) "Personally identifiable" means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's social security number or student number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415, 1417(c))

§ 300.501 General responsibility of public agencies.

Each SEA shall ensure that each public agency establishes and implements procedural safeguards that meet the requirements of §§ 300.500–300.515.

(Authority: 20 U.S.C. 1415(a))

§ 300.502 Opportunity to examine records.

The parents of a child with a disability shall be afforded, in accordance with the procedures of §§ 300.562–300.569, an opportunity to inspect and review all education records with respect to—

(a) The identification, evaluation, and educational placement of the child; and

(b) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(A))

§ 300.503 Independent educational evaluation.

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.301.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 300.506 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(Authority: 20 U.S.C. 1415(b)(1)(A))

§ 300.504 Prior notice; parent consent.

(a) *Notice.* Written notice that meets the requirements of § 300.505 must be given to the parents of a child with a disability a reasonable time before the public agency—

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) *Consent; procedures if a parent refuses consent.* (1) Parental consent must be obtained before—

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a child with a disability in a program providing special education and related services.

(2) If State law requires parental consent before a child with a disability is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(3) If there is no State law requiring consent before a child with a disability is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§ 300.506–300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent. If it does so and the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under §§ 300.510–300.513.

(c) *Additional State consent requirements.* In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(d) *Limitation.* A public agency may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required under paragraphs (b) or (c) of this section.

(Authority: 20 U.S.C. 1415(b)(1)(C), (D); 1412(2), (6))

Note 1: Any changes in a child's special education program after the initial placement are not subject to the parental consent requirements in paragraph (b)(1) of this section, but are subject to the prior notice requirement in paragraph (a) of this section and the IEP requirements of §§ 300.340–300.350.

Note 2: Paragraph (b)(2) of this section means that if State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures of §§ 300.506–300.508 to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

Note 3: If a State adopts a consent requirement in addition to those described in paragraph (b) of this section and consent is refused, paragraph (d) of this section requires that the public agency must nevertheless provide the services and activities that are not in dispute. For example, if a State requires parental consent to the provision of all services identified in an IEP and the parent refuses to consent to physical therapy services included in the IEP, the agency is not relieved of its obligation to implement those portions of the IEP to which the parent consents.

If the parent refuses to consent and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, paragraph (c) of this section requires that the agency must implement its procedures to override the refusal. This section does not preclude the agency from reconsidering its proposal if it believes that circumstances warrant.

§ 300.505 Content of notice.

(a) The notice under § 300.504 must include—

(1) A full explanation of all of the procedural safeguards available to the parents under § 300.500, §§ 300.502–300.515, and §§ 300.562–300.569;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors that are relevant to the agency's proposal or refusal.

(b) The notice must be—

(1) Written in language understandable to the general public; and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the SEA or LEA shall take steps to ensure—

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice; and

(3) That there is written evidence that the requirements in paragraphs (c)(1) and (2) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(1)(D))

§ 300.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in § 300.504(a)(1) and (2).

(b) The hearing must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if—

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(Authority: 20 U.S.C. 1415(b)(2))

Note: Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of children with disabilities, and

the provision of FAPE to those children. Mediations have been conducted by members of SEAs or LEA personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under §§ 300.500–300.515.

§ 300.507 Impartial hearing officer.

(a) A hearing may not be conducted—

(1) By a person who is an employee of a public agency that is involved in the education or care of the child; or

(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1414(b)(2))

§ 300.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.

(4) Obtain a written or electronic verbatim record of the hearing.

(5) Obtain written findings of fact and decisions. The public agency, after deleting any personally identifiable information, shall—

(i) Transmit those findings and decisions to the State advisory panel established under § 300.650; and

(ii) Make those findings and decisions available to the public.

(b) Parents involved in hearings must be given the right to—

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(Authority: 20 U.S.C. 1415(d))

§ 300.509 Hearing decision; appeal.

A decision made in a hearing conducted under § 300.506 is final, unless a party to the hearing appeals the decision under § 300.510 or § 300.511.

(Authority: 20 U.S.C. 1415(c))

§ 300.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(b) If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record.

(2) Ensure that the procedures at the hearing were consistent with the requirements of due process.

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 300.508 apply.

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.

(5) Make an independent decision on completion of the review.

(6) Give a copy of written findings and the decision to the parties.

(c) The SEA, after deleting any personally identifiable information, shall—

(1) Transmit the findings and decisions referred to in paragraph (b)(6) of this section to the State advisory panel established under § 300.650; and

(2) Make those findings and decisions available to the public.

(d) The decision made by the reviewing official is final unless a party brings a civil action under § 300.511.

(Authority: 20 U.S.C. 1415(c), (d); H. R. Rep. No. 94–664, at p. 49 (1975))

Note 1: The SEA may conduct its review either directly or through another State agency acting on its behalf. However, the SEA remains responsible for the final decision on review.

Note 2: All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in § 300.508 relating to hearings also apply.

§ 300.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 300.510, and any party aggrieved by the decision of a reviewing officer under § 300.510, has the right to bring a civil action under section 615(e)(2) of the Act.

(Authority: 20 U.S.C. 1415)

§ 300.512 Timelines and convenience of hearings and reviews.

(a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

§ 300.513 Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(Authority: 20 U.S.C. 1415(e)(3))

Note: Section 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

§ 300.514 Surrogate parents.

(a) *General.* Each public agency shall ensure that the rights of a child are protected when—

(1) No parent (as defined in § 300.13) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for

the parents. This must include a method: (1) For determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate—

(i) Has no interest that conflicts with the interest of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraphs (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(B))

§ 300.515 Attorneys' fees.

Each public agency shall inform parents that in any action or proceeding under section 615 of the Act, courts may award parents reasonable attorneys' fees under the circumstances described in section 615(e)(4) of the Act.

(Authority: 20 U.S.C. 1415(b)(1)(D); 1415(e)(4))

Protection in Evaluation Procedures

§ 300.530 General.

(a) Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§ 300.530–300.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of children with disabilities must be selected and administered so as not to be racially or culturally discriminatory.

(Authority: 20 U.S.C. 1412(5)(C))

§ 300.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a child with a disability in a program providing special education and related services, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of § 300.532.

(Authority: 20 U.S.C. 1412(5)(C))

§ 300.532 Evaluation procedures.

State educational agencies and LEAs shall ensure, at a minimum, that:

(a) Tests and other evaluation materials—

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer.

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(Authority: 20 U.S.C. 1412(5)(C))

Note: Children who have a speech or language impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would: (1) Evaluate each child with a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments, and (2) if necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§ 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall—

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Ensure that information obtained from all of these sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Ensure that the placement decision is made in conformity with the LRE rules in §§ 300.550–300.554.

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.340–300.350.

(Authority: 20 U.S.C. 1412(5)(C); 1414(a)(5))

Note: Paragraph (a)(1) of this section includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to ensure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other children with disabilities, such as a child who has a severe articulation impairment as his primary disability. For such a child, the speech-language pathologist, in complying with the multiple source requirement, might use: (1) A standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

§ 300.534 Reevaluation.

Each SEA and LEA shall ensure—

(a) That the IEP of each child with a disability is reviewed in accordance with §§ 300.340–300.350; and

(b) That an evaluation of the child, based on procedures that meet the requirements of § 300.532, is conducted every three years, or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation.

(Authority: 20 U.S.C. 1412(5)(c))

Additional Procedures for Evaluating Children With Specific Learning Disabilities

§ 300.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of § 300.532, each public agency shall include on the multidisciplinary evaluation team—

(a)(1) The child's regular teacher; or
(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and
(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1411 note)

§ 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if—
(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and
(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas—
(i) Oral expression;
(ii) Listening comprehension;
(iii) Written expression;
(iv) Basic reading skill;
(v) Reading comprehension;
(vi) Mathematics calculation; or
(vii) Mathematics reasoning.
(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—
(1) A visual, hearing, or motor impairment;
(2) Mental retardation;
(3) Emotional disturbance; or
(4) Environmental, cultural or economic disadvantage.

(Authority: 20 U.S.C. 1411 note)

§ 300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.
(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1411 note)

§ 300.543 Written report.

(a) The team shall prepare a written report of the results of the evaluation.
(b) The report must include a statement of—
(1) Whether the child has a specific learning disability;
(2) The basis for making the determination;
(3) The relevant behavior noted during the observation of the child;
(4) The relationship of that behavior to the child's academic functioning;
(5) The educationally relevant medical findings, if any;
(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.
(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(Authority: 20 U.S.C. 1411 note)

Least Restrictive Environment

§ 300.550 General.

(a) Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§ 300.550–300.556.
(b) Each public agency shall ensure—
(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Authority: 20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv))

§ 300.551 Continuum of alternative placements.

(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
(b) The continuum required in paragraph (a) of this section must—
(1) Include the alternative placements listed in the definition of special education under § 300.17 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.552 Placements.

Each public agency shall ensure that:
(a) The educational placement of each child with a disability—
(1) Is determined at least annually;
(2) Is based on his or her IEP; and
(3) Is as close as possible to the child's home.
(b) The various alternative placements included at § 300.551 are available to the extent necessary to implement the IEP for each child with a disability.
(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.
(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

(Authority: 20 U.S.C. 1412(5)(B))

Note: Section 300.552 includes some of the main factors that must be considered in determining the extent to which a child with a disability can be educated with children who are nondisabled. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to ensure that each child with a disability receives an education that is appropriate to his or her individual needs.

The requirements of § 300.552, as well as the other requirements of §§ 300.550–300.556, apply to all preschool children with disabilities who are entitled to receive FAPE. Public agencies that provide preschool programs for nondisabled preschool children must ensure that the requirements of § 300.552(c) are met. Public agencies that do not operate programs for nondisabled preschool children are not required to initiate such programs solely to satisfy the requirements regarding placement in the LRE embodied in §§ 300.550–300.556. For these public agencies, some alternative methods for meeting the requirements of §§ 300.550–300.556 include—
(1) Providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);
(2) Placing children with disabilities in private school programs for nondisabled preschool children or private school preschool programs that integrate children with disabilities and nondisabled children; and
(3) Locating classes for preschool children with disabilities in regular elementary schools.

In each case the public agency must ensure that each child's placement is in the LRE in which the unique needs of that child can be met, based upon the child's IEP, and meets all of the other requirements of §§ 300.340–300.350 and §§ 300.550–300.556.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR part 104—Appendix, Paragraph 24) includes several points regarding educational placements of children with disabilities that are pertinent to this section:

1. With respect to determining proper placements, the analysis states: "* * * it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs * * *."

2. With respect to placing a child with a disability in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subpart.

§ 300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(Authority: 20 U.S.C. 1412(5)(B))

Note: Section 300.553 is taken from a requirement in the final regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 Regulations includes the following statement: "[This paragraph] specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children." (34 CFR part 104—Appendix, Paragraph 24.)

§ 300.554 Children in public or private institutions.

Each SEA shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to ensure that § 300.550 is effectively implemented.

(Authority: 20 U.S.C. 1412(5)(B))

Note: Under section 612(5)(B) of the statute, the requirement to educate children with disabilities with nondisabled children also applies to children in public and private institutions or other care facilities. Each SEA must ensure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

§ 300.555 Technical assistance and training activities.

Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.550; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.556 Monitoring activities.

(a) The SEA shall carry out activities to ensure that § 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.550, the SEA shall—

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(5)(B))

Confidentiality of Information

§ 300.560 Definitions.

As used in §§ 300.560–300.576—

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education records means the type of records covered under the definition of education records in part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.561 Notice to parents.

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of § 300.128, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in part 99 of this title.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.566 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 300.568.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.570 Hearing procedures.

(1) A hearing held under § 300.568 must be conducted according to the procedures under § 99.23 of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is—

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99 of this title.

(c) The SEA shall include policies and procedures in its State plan that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.129 and part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Note: Under § 300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b) of this section.

§ 300.574 Children's rights.

The SEA shall include policies and procedures in its State plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Note: Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18.

§ 300.575 Enforcement.

The SEA shall describe in its State plan the policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.576 Department.

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Secretary shall apply the requirements of 5 U.S.C. section 552a (b)(1)–(2), (4)–(11); (c); (d); (e)(1); (2); (3)(A), (B), and (D), (5)–(10); (h); (m); and (n), and the regulations implementing those provisions in part 5b of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Department Procedures

§ 300.580 [Reserved]

§ 300.581 Disapproval of a State plan.

Before disapproving a State plan, the Secretary gives the SEA written notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

§ 300.582 Content of notice.

(a) In the written notice, the Secretary—

(1) States the basis on which the Secretary proposes to disapprove the State plan;

(2) May describe possible options for resolving the issues;

(3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of proposed disapproval; and

(4) Provides information about the procedures followed for a hearing.

(b) The Secretary sends the written notice to the SEA by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(c))

§ 300.583 Hearing official or panel.

(a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(Authority: 20 U.S.C. 1413(c))

§ 300.584 Hearing procedures.

(a) As used in §§ 300.581–300.586 the term *party or parties* means the following:

(1) An SEA that requests a hearing regarding the proposed disapproval of its State plan under this part.

(2) The Department of Education official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Panel.

(b) Within 15 calendar days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.

(3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Panel and the parties may consider subjects such as—

(i) Narrowing and clarifying issues;

(ii) Assisting the parties in reaching agreements and stipulations;

(iii) Clarifying the positions of the parties;

(iv) Determining whether an evidentiary hearing or oral argument should be held; and

(v) Setting dates for—

(A) The exchange of written documents;

(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;

(C) Further proceedings before the Hearing Official or Panel (including an evidentiary hearing or oral argument, if either is scheduled);

(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or

(E) Completion of the review and the initial decision of the Hearing Official or Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties shall be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Panel may examine witnesses.

(j) The Hearing Official or Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(l) The Hearing Official or Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m) (1) The parties shall present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p) (1) The Hearing Official or Panel—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party shall file with the Hearing Official or Panel all written motions, briefs, and other documents and shall at the same time provide a copy to the other parties to the proceedings.

(Authority: 20 U.S.C. 1413(c))

§ 300.585 Initial decision; final decision.

(a) The Hearing Official or Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under § 300.582.

(b) The initial decision of a Panel is made by a majority of Panel members.

(c) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Panel within 15 calendar days of the date the party receives the Panel's decision.

(e) The Hearing Official or Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Panel within seven calendar days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Panel becomes the final decision of the Secretary unless, within 25 calendar days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official's or Panel's proceedings, and written comments. The Secretary may remand the matter for further proceedings.

(j) The Secretary issues the final decision within 30 calendar days after notifying the Hearing Official or Panel that the initial decision is being further reviewed.

§ 300.586 Judicial review.

If a State is dissatisfied with the Secretary's final action with respect to its State plan, the State may, within 60 calendar days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Authority: 20 U.S.C. 1416(b)(1))

§§ 300.587–300.588 [Reserved]

§ 300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, SEAs and LEAs must ensure that Federal funds provided under this part are used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under this part and in no case to supplant those Federal, State, and local funds. The nonsupplanting requirement applies only to funds allocated to LEAs (See § 300.372).

(b) If the State provides clear and convincing evidence that all children with disabilities have FAPE available to them, the Secretary may waive in part the requirement under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Secretary in writing. The Secretary then provides the State with a finance and membership report form that provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of FAPE to all children with disabilities. The special study must include statements by a representative sample of organizations that deal with children with disabilities, and parents and teachers of children with disabilities, relating to the following areas—

(1) The adequacy and comprehensiveness of the State's system for identifying, locating, and evaluating children with disabilities;

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions; and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of FAPE for all children with disabilities, including—

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year; and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Secretary considers the information that the State provides under paragraphs (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have FAPE available to them, and if so, the extent of the waiver.

(g) The State may request a hearing with regard to any final action by the Secretary under this section.

(Authority: 20 U.S.C. 1411(c)(3); 1413(a)(9)(B))

Subpart F—State Administration

General

§ 300.600 Responsibility for all educational programs.

(a) The SEA is responsible for ensuring—

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other public agency—

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the education standards of the SEA (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(c) This part may not be construed to limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(Authority: 20 U.S.C. 1412(6))

Note: The requirement in § 300.600(a) is taken essentially verbatim from section 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of children with disabilities within each State. With respect to SEA responsibility, the Senate Report on Pub. L. 94–142 includes the following statements:

This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency * * *.

Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (S. Rep. No. 94–168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options that may be adopted, including the following:

(1) Written agreements are developed between respective State agencies concerning SEA standards and monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's Office issues an administrative directive establishing the SEA responsibility.

(3) State law, regulation, or policy designates the SEA as responsible for establishing standards for all educational programs for individuals with disabilities, and includes responsibility for monitoring.

(4) State law mandates that the SEA is responsible for all educational programs.

§ 300.601 Relation of part B to other Federal programs.

This part may not be construed to permit a State to reduce medical and other assistance available to children with disabilities, or to alter the eligibility of a child with a disability, under title V (Maternal and Child Health) or title XIX (Medicaid) of the Social Security Act, to receive services that are also part of FAPE.

(Authority: 20 U.S.C. 1413(e))

Use of Funds

§ 300.620 Federal funds for State administration.

A State may use five percent of the total State allotment in any fiscal year under part B of the Act, or $450,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than twenty-five percent of the State's total allotment for the fiscal year under part B of the Act.

(Authority: 20 U.S.C. 1411(b), (c))

§ 300.621 Allowable costs.

(a) The SEA may use funds under § 300.620 for—

(1) Administration of the State plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of children with disabilities;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities;

(3) Technical assistance to LEAs with respect to the requirements of this part;

(4) Leadership services for the program supervision and management of special education activities for children with disabilities; and

(5) Other State leadership activities and consultative services.

(b) The SEA shall use the remainder of its funds under § 300.620 in accordance with § 300.370.

(Authority: 20 U.S.C. 1411(b), (c))

State Advisory Panel

§ 300.650 Establishment.

(a) Each State shall establish, in accordance with the provisions of §§ 300.650–300.653, a State advisory panel on the education of children with disabilities.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in § 300.652, the State may modify the existing panel so that it fulfills all of the requirements of §§ 300.650–300.653, instead of establishing a new advisory panel.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.651 Membership.

(a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of children with disabilities. The membership must include at least one person representative of each of the following groups—

(1) Individuals with disabilities;

(2) Teachers of children with disabilities;

(3) Parents of children with disabilities;

(4) State and local educational officials; and

(5) Special education program administrators.

(b) The State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed.

(Authority: 20 U.S.C. 1413(a)(12))

Note: The membership of the State advisory panel, as listed in paragraphs (a)(1)–(5) of this section, is required in section 613(a)(12) of the Act. As indicated in paragraph (b) of this section, the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having—

(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and individuals with disabilities);

(2) Broad representation within the consumer-advocate groups, to ensure that the interests and points of view of various parents, advocates and individuals with disabilities are appropriately represented;

(3) Broad representation within professional groups (e.g., regular education personnel; special educators, including teachers, teacher trainers, and administrators, who can properly represent various dimensions in the education of

children with disabilities; and appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10–15 members), the panel itself could take steps to ensure that it (1) consults with and receives inputs from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

§ 300.652 Advisory panel functions.

The State advisory panel shall—

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;

(b) Comment publicly on the State plan and rules or regulations proposed for issuance by the State regarding the education of children with disabilities and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Secretary in the performance of his responsibilities under section 618 of the Act.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under § 300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under § 300.620 for this purpose.

(Authority: 20 U.S.C. 1413(a)(12))

State Complaint Procedures

§ 300.660 Adoption of State complaint procedures.

Each SEA shall adopt written procedures for:

(a) Resolving any complaint that meets the requirements of § 300.662 by—

(1) Providing for the filing of a complaint with the SEA; and

(2) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint.

(b) Informing parents and other interested individuals about the procedures in §§ 300.660–300.662.

(Authority: 20 U.S.C. 2831(a))

§ 300.661 Minimum State complaint procedures.

Each SEA shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after a complaint is filed under § 300.660(a) to—

(1) Carry out an independent on-site investigation, if the SEA determines that such an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of part B of the Act or of this part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) Procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

(d) The right of the complainant or the public agency to request the Secretary to review the SEA's final decision.

(Authority: 20 U.S.C. 2831(a))

§ 300.662 Filing a complaint.

An organization or individual may file a signed written complaint under the procedures described in §§ 300.600–300.661. The complaint must include—

(a) A statement that a public agency has violated a requirement of part B of the Act or of this part; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

Subpart G—Allocation of Funds; Reports

Allocations

§ 300.700 Special definition of the term State.

For the purposes of § 300.701, § 300.702, and §§ 300.704–300.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau.

(Authority: 20 U.S.C. 1411(a)(2))

§ 300.701 State entitlement; formula.

(a) The Secretary calculates the maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year as follows:

(1) If the State is eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 3 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(2) If the State is not eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 6 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(Authority: 20 U.S.C. 1411(a)(1))

(b) [Reserved]

(c) For the purposes of this section, the *average per pupil expenditure in public elementary and secondary schools in the United States*, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the United States (which, for the purpose of this section, means the 50 States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the

source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(Authority: 20 U.S.C. 1411(a)(4))

§ 300.702 Limitations and exclusions.

(a) In determining the amount of a grant under § 300.701:

(1) If a State serves all children with disabilities aged 3 through 5 in the State, the Secretary does not count children with disabilities aged 3 through 17 in the State to the extent that the number of those children is greater than 12 percent of the number of all children aged 3 through 17 in the State.

(2) If a State does not serve all children with disabilities aged 3 through 5 in the State, the Secretary does not count children with disabilities aged 5 through 17 to the extent that the number of those children is greater than 12 percent of the number of all children aged 5 through 17 in the State.

(3) The Secretary does not count children with disabilities who are counted under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged 3 through 17 and 5 through 17 in any State is determined by the Secretary on the basis of the most recent satisfactory data available.

(Authority: 20 U.S.C. 1411(a)(5))

§ 300.703 Ratable reductions.

(a) *General.* If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts that all States are entitled to receive for that fiscal year, the maximum amount that all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(Authority: 20 U.S.C. 1411(g)(1))

(b) *Reporting dates for Local educational agencies and reallocations.* (1) In any fiscal year that the State entitlement has been ratably reduced, and that additional funds have not been made available to pay in full the total of the amounts under paragraph (a) of this section, the SEA shall fix dates before which each LEA shall report to the State the amount of funds available to it under this part that it estimates it will expend.

(2) The amounts available under paragraph (a) of this section, or any amount that would be available to any other LEA if it were to submit an application meeting the requirements of this part, that the SEA determines will not be used for the period of its availability shall be available for allocation to those LEAs, in the manner provided in § 300.707, that the SEA determines will need and be able to use additional funds to carry out approved programs.

(Authority: 20 U.S.C. 1411(g)(2))

§ 300.704 Hold harmless provision.

No State shall receive less than the amount it received under part B of the Act for fiscal year 1977.

(Authority: 20 U.S.C. 1411(a)(1))

§ 300.705 Allocation for State in which by-pass is implemented for private school children with disabilities.

In determining the allocation under §§ 300.700–300.703 of a State in which the Secretary will implement a by-pass for private school children with disabilities under §§ 300.451–300.486, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school children with disabilities (as defined in §§ 300.7(a) and 300.450) in the State, as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school children with disabilities who received special education and related services under the by-pass in the preceding year.

(Authority: 20 U.S.C. 1411(a)(1)(A), 1411(a)(3), 1413(d))

§ 300.706 Within-State distribution: fiscal year 1979 and after.

Of the funds received under § 300.701 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979—

(a) 25 percent may be used by the State in accordance with § 300.620 and § 300.370; and

(b) 75 percent shall be distributed to the LEAs in the State in accordance with § 300.707.

(Authority: 20 U.S.C. 1411(c)(1))

§ 300.707 Local educational agency entitlement; formula.

From the total amount of funds available to all LEAs, each LEA is entitled to an amount that bears the same ratio to the total amount as the number of children with disabilities aged 3 through 21 in that agency who are receiving special education and related services bears to the aggregate number of children with disabilities aged 3 through 21 receiving special education and related services in all LEAs that apply to the SEA for funds under part B of the Act.

(Authority: 20 U.S.C. 1411(d))

§ 300.708 Reallocation of local educational agency funds.

If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by the local agency with State and local funds otherwise available to the local agency, the SEA may reallocate funds (or portions of those funds that are not required to provide special education and related services) made available to the local agency under § 300.707, to other LEAs within the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by the other LEAs.

(Authority: 20 U.S.C. 1414(e))

§ 300.709 Payments to the Secretary of the Interior for the education of Indian children.

(a) *General.* (1) The Secretary makes payments to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations, aged 5 through 21, who are enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior.

(2) In the case of Indian students aged 3 through 5 who are enrolled in programs affiliated with Bureau of Indian Affairs (BIA) schools that are required by the States in which the schools are located to attain or maintain State accreditation and had State accreditation prior to October 7, 1991, the schools may count those children for the purpose of distribution of the funds provided under paragraph (a)(1) of this section to the Secretary of the Interior.

(3) The amount of the payment under paragraph (a)(1) of this section for any fiscal year is one percent of the aggregate amounts available to all States under this part for that fiscal year.

(b) *Responsibility for meeting the requirements of part B.* The Secretary of the Interior shall be responsible for meeting all of the requirements of part B of the Act for the children described in paragraph (a) of this section, in accordance with § 300.260.

(Authority: 20 U.S.C. 1411(f))

§ 300.710 Payments to the Secretary of the Interior for Indian tribes or tribal organizations.

(a) *General.* (1) Beginning with funds appropriated under part B of the Act for fiscal year 1992, the Secretary, subject to this section, makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortiums of those tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities, aged 3 through 5, on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior.

(2) The amount of the payment under paragraph (b)(1) of this section for any fiscal year is .25 percent of the aggregate amounts available for all States under this part for that fiscal year.

(3) None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(b) *Distribution of funds.* The Secretary of the Interior shall distribute the total amount of the .25 percent under paragraph (a) of this section in accordance with section 611(f)(4) of the Act.

(Authority: 20 U.S.C. 1411(f))

§ 300.711 Entitlements to jurisdictions.

(a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau, (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99-658).

(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601(c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged 3 through 21 in each jurisdiction. However, no jurisdiction shall receive less than $150,000, and other allocations shall be ratably reduced if necessary to ensure that each jurisdiction receives at least that amount.

(c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or $35,000, whichever is greater.

(Authority: 20 U.S.C. 1411(e))

Reports

§ 300.750 Annual report of children served—report requirement.

(a) The SEA shall report to the Secretary no later than February 1 of each year the number of children with disabilities aged 3 through 21 residing in the State who are receiving special education and related services.

(Authority: 20 U.S.C. 1411(a)(3))

(b) The SEA shall submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1411(a)(3))

Note: It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make FAPE available. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged 3 through 17 (in States that serve all children with disabilities aged 3 through 5) or 5 through 17 (in States that do not serve all children with disabilities aged 3 through 5), a State might find that 14 percent (or some other percentage) of its children have disabilities. In that case, the State must make FAPE available to all of those children with disabilities.

§ 300.751 Annual report of children served—information required in the report.

(a) In its report, the SEA shall include a table that shows—

(1) The number of children with disabilities receiving special education and related services on December 1 of that school year;

(2) The number of children with disabilities aged 3 through 5 who are receiving FAPE;

(3) The number of those children with disabilities aged 6 through 21 within each disability category, as defined in the definition of "children with disabilities" in § 300.7; and

(4) The number of those children with disabilities aged 3 through 21 for each year of age (3, 4, 5, etc.).

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1.

(c) The SEA may not report a child aged 6 through 21 under more than one disability category.

(d) If a child with a disability aged 6 through 21 has more than one disability, the SEA shall report that child in accordance with the following procedure:

(1) A child with deaf-blindness must be reported under the category "deaf-blindness."

(2) A child who has more than one disability (other than deaf-blindness) must be reported under the category "multiple disabilities."

(Authority: 20 U.S.C. 1411(a)(3); (5)(A)(ii); 1418(b))

§ 300.752 Annual report of children served—certification.

The SEA shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

§ 300.753 Annual report of children served—criteria for counting children.

(a) The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that either—

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefitting from that special education.

(b) The SEA may not include children with disabilities in its report who—

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefitting from special education;

(4) Are counted by a State agency under subpart 2 of part D of chapter 1 of Title I of the Elementary and Secondary Education Act of 1965; or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under § 300.186(b).

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

Note 1: Under paragraph (a) of this section, the State may count children with disabilities in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

Note 2: Special education, by statutory definition, must be at no cost to parents. As

of September 1, 1978, under the FAPE requirement, both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Department expects that there would only be limited situations where special education would be clearly separate from regular education—generally, where speech services is the only special education required by the child. For example, the child's parents may have enrolled the child in a regular program in a private school, but the child might be receiving speech services in a program funded by the LEA. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in section 613(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children enrolled by their parents in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that if a public agency places or refers a child with a disability to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If an SEA or LEA is responsible for serving these children, and does provide them special education and related services, they may be counted.

§ 300.754 Annual report of children served—other responsibilities of the State educational agency.

In addition to meeting the other requirements of §§ 300.750–300.753, the SEA shall—

(a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with § 300.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.750–300.753; and

(e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

Note: States should note that the data required in the annual report of children served are not to be transmitted to the Secretary in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

Appendix A to Part 300—[Reserved]

Appendix B to Part 300—[Reserved]

Appendix C to Part 300—Notice of Interpretation

I. Purpose of the IEP
II. IEP Requirements

§ 300.340 Definition

§ 300.341 State educational agency responsibility

1. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?
2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

§ 300.342 When individualized education programs must be in effect

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?
4. How much of a delay is permissible between the time an IEP of a child with a disability is finalized and when special education is provided?
5. For a child with a disability receiving special education for the first time, when must an IEP be developed—before placement or after placement?
6. If a child with a disability has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

§ 300.343 Meetings

7. What is the purpose of the 30 day timeline in § 300.343(c)?
8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?
9. Must IEPs be reviewed or revised at the beginning of each school year?
10. How frequently must IEP meetings be held and how long should they be?
11. Who can initiate IEP meetings?
12. May IEP meetings be tape-recorded?

§ 300.344 Participants in meetings

(Agency representative)

13. Who can serve as the representative of the public agency at an IEP meeting?
14. Who is the representative of the public agency if a child with a disability is served by a public agency other than the SEA or LEA?

(The child's teacher)

15. For a child with a disability being considered for initial placement in special education, which teacher should attend the IEP meeting?
16. If a child with a disability is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?
17. If a child with a disability in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?
18. If a child's primary disability is a speech impairment, must the child's regular teacher attend the IEP meeting?
19. If a child is enrolled in a special education class because of a primary disability and also receives speech-language pathology services, must both specialists attend the IEP meeting?

(The child, parents, other individuals)

20. When may representatives of teacher organizations attend IEP meetings?
21. When may a child with a disability attend an IEP meeting?
22. Do the parents of a student with a disability retain the right to attend the IEP meeting when the student reaches the age of majority?
23. Must related services personnel attend IEP meetings?
24. Are agencies required to use a case manager in the development of an IEP for a child with a disability?
25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

§ 300.345 Parent participation

26. What is the role of the parents at an IEP meeting?
27. What is the role of a surrogate parent at an IEP meeting?
28. Must the public agency let the parents know who will be at the IEP meeting?
29. Are parents required to sign IEPs?
30. If the parent signs the IEP, does the signature indicate consent for initial placement?
31. Do parents have the right to a copy of their child's IEP?
32. Must parents be informed at the IEP meeting of their right to appeal?
33. Does the IEP include ways for parents to check the progress of their children?
34. Must IEPs include specific checkpoint intervals for parents to confer with teachers and to revise or update their children's IEPs?
35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

§ 300.346 Content of the individualized education program (Present levels of educational performance)

36. What should be included in the statement of the child's present levels of educational performance?

(Annual goals and short term instructional objectives)

37. Why are goals and objectives required in the IEP?
38. What are annual goals in an IEP?
39. What are short term instructional objectives in an IEP?
40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?
41. Should there be a relationship between the goals and objectives in the IEP and those that are in the instructional plans of special education personnel?

42. When must IEP objectives be written—before placement or after placement?

43. Can short term instructional objectives be changed without initiating another IEP meeting?

(Specific special education and related services)

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

46. Must the public agency itself directly provide the services set out in the IEP?

47. Does the IEP include only special education and related services or does it describe the total education of the child?

48. If modifications are necessary for a child with a disability to participate in a regular education program, must they be included in the IEP?

49. When must physical education (PE) be described or referred to in an IEP?

50. If a child with a disability is to receive vocational education, must it be described or referred to in the student's IEP?

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

52. Must an IEP for a child with a disability indicate the extent that the child will be educated in the regular educational program?

(Projected dates/Evaluation)

53. Can the anticipated duration of services be for more than twelve months?

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

(Other IEP content questions)

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

56. Is there a prescribed format or length for an IEP?

57. Is it permissible to consolidate the IEP with the individualized service plan developed under another Federal program?

58. What provisions on confidentiality of information apply to IEPs?

§ 300.348 Private school placements by Public Agencies

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

§ 300.349 Children with Disabilities Enrolled in Parochial or Other Private Schools

§ 300.350 Individualized education programs—accountability

60. Is the IEP a performance contract?

Authority: Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411–1420), unless otherwise noted.

Individualized Education Programs (IEPs)

Interpretation of Requirements of Part B of the Individuals With Disabilities Education Act

I. Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and regulations: (1) The IEP meeting(s), where parents and school personnel jointly make decisions about an educational program for a child with a disability, and (2) the IEP document itself, that is, a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning the special education needs of a child with a disability; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a child with a disability to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each child with a disability is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document that may be used by authorized monitoring personnel from each governmental level to determine whether a child with a disability is actually receiving the FAPE agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

Note: The Act does not require that teachers or other school personnel be held accountable if a child with a disability does not achieve the goals and objectives set forth in the IEP. See § 300.350, Individualized education program—accountability.

II. IEP Requirements

This part (1) repeats the IEP requirements in §§ 300.340–300.350 of the regulations (boxed material), (2) provides additional clarification, as necessary, on sections or paragraphs of the regulations on which such clarification is needed, and (3) answers some questions regarding implementation of the IEP requirements that are not expressly addressed in the regulations. These questions and clarifying information are presented in a question and answer format immediately after the particular section of the regulations that is presented.

1. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (See § 300.600 regarding SEA responsibility for all education programs.)

The SEA must ensure that every child with a disability in the State has FAPE available, regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

Note: Section 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of children with disabilities, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for students with deafness or students with blindness), and (4) State correctional facilities.

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a child with a disability in a school or program operated by another State agency:

a. *SEA POLICIES OR INTERAGENCY AGREEMENTS.* The SEA, through its written policies or agreements, must ensure that IEPs are properly written and implemented for all children with disabilities in the State. This applies to each interagency situation that exists in the State, including any of the following:

(1) When an LEA initiates the placement of a child in a school or program operated by another State agency (see "LEA-Initiated Placements" in paragraph "b", below); (2) when a State or local agency other than the SEA or LEA places a child in a residential facility or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities.

Note: This is not an exhaustive list. The SEA's policies must cover any other interagency situation that is applicable in the State, including placements that are made for both educational and non-educational purposes.

Frequently, more than one agency is involved in developing or implementing an IEP of a child with a disability (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of FAPE to a child with a disability. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: The child's LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

Note: The SEA must also ensure that any agency involved in the education of a child with a disability is in compliance with the LRE provisions of the Act and regulations.

and, specifically, with the requirement that the placement of each child with a disability (1) be determined at least annually, (2) be based on the child's IEP, and (3) be as close as possible to the child's home (§ 300.552(a), Placements.)

b. *LEA-INITIATED PLACEMENTS.* When an LEA is responsible for the education of a child with a disability, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in placement in a State-operated school or program.

Note: The IEP must be developed before the child is placed. (See Question 5, below.) When placement in a State-operated school is necessary, the affected State agency or agencies must be involved by the LEA in the development of the IEP. (See response to Question 59, below, regarding participation of a private school representative at the IEP meeting.)

After the child enters the State school, meetings to review or revise the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There must be a clear decision, based on State law, as to whether responsibility for the child's education is transferred to the State school or remains with the LEA, since this decision determines which agency is responsible for reviewing or revising the child's IEP.

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

The "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has FAPE available.

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?

As used in the regulations, the term "be in effect" means that the IEP (1) has been developed properly (i.e., at a meeting(s) involving all of the participants specified in the Act (parent, teacher, agency representative, and, if appropriate, the child)); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goals and objectives, and the services to be provided; and (3) will be implemented as written.

4. How much of a delay is permissible between the time an IEP of a child with a disability is finalized and when special education is provided?

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will be provided by the agency beginning immediately after the IEP is finalized. The Note following § 300.342 identifies some exceptions ((1) when the meetings occur during the summer or other vacation period, or (2) when there are circumstances that require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible following the meeting.

Note: Section 300.346(e) requires that the IEP include the projected dates for initiation of services.

5. For a child with a disability receiving special education for the first time, when must an IEP be developed—before placement or after placement?

An IEP must *be in effect* before special education and related services are provided to a child. (§ 300.342(b)(1), emphasis added.) The appropriate placement for a given child with a disability cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it would not be permissible to first place the child and then develop the IEP. Therefore, the IEP must be developed before placement. The above requirement does not preclude temporarily placing an eligible child with a disability in a program as part of the evaluation process—before the IEP is finalized—to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an interim IEP for the child that sets out the specific conditions and timelines for the trial placement. (See paragraph "c", below.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

Note: Once the IEP of the child with a disability is in effect and the child is placed in a special education program, the teacher might develop detailed lesson plans or objectives based on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (See Questions 37–43, below, regarding IEP goals and objectives.)

6. If a child with a disability has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

It would not be necessary for the new LEA to conduct an IEP meeting if:

(1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting would have to be conducted. This meeting should take place within a short time after the child enrolls in the new LEA (normally, within one week).

Note: The child must be placed in a special education program immediately after the IEP is finalized. (See Question 4, above.)

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final placement decision can be made, it would be permissible to temporarily place the child in an interim program before the IEP is finalized. (See Question 5, above.)

7. What is the purpose of the 30 day timeline in § 300.343(c)?

The 30 day timeline in § 300.343(c) ensures that there will not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child has a disability, the public agency has up to 30 days to hold an IEP meeting.

Note: See Questions 4 and 5, above, regarding finalization of IEP and placement of the child.

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

Paragraph (e) of § 300.532 (Evaluation procedures) provides that the evaluation of each child with a disability must be "made by a multidisciplinary team or group of persons * * *". The decisions regarding (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting are matters that are left to the discretion of State or local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting.

Note: When separate meetings are conducted, placement decisions would be made at the IEP meeting. However, placement options could be discussed at the eligibility meeting.

Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency must include the parents as participants at the meeting. (See § 300.345 for requirements on parent participation.)

Note: If, at a separate eligibility meeting, a decision is made that a child is not eligible for special education, the parents should be notified about the decision.

9. Must IEPs be reviewed or revised at the beginning of each school year?

No. The basic requirement in the regulations is that IEPs must be in effect at the beginning of each school year. Meetings must be conducted at least once each year to review and, if necessary, revise the IEP of each child with a disability. However, the meetings may be held anytime during the year, including (1) at the end of the school year, (2) during the summer, before the new school year begins, or (3) on the anniversary date of the last IEP meeting on the child.

10. How frequently must IEP meetings be held and how long should they be?

Section 614(a)(5) of the Act provides that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428–29 (Nov. 19, 1975) (remarks of Senator Stafford))

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

11. Who can initiate IEP meetings?

IEP meetings are initiated and conducted at the discretion of the public agency. However, if the parents of a child with a disability believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting.

Note: Under § 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the child's IEP.

12. May IEP meetings be tape-recorded?

The use of tape recorders at IEP meetings is not addressed by either the Act or the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an education record, within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR part 99) and Part B (34 CFR §§ 300.560–300.575).

13. Who can serve as the representative of the public agency at an IEP meeting?

The representative of the public agency could be any member of the school staff, other than the child's teacher, who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities. (Section 602(a)(20) of the Act.) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervise the provision of, special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a child with a disability who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency.

Note: IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

14. Who is the representative of the public agency if a child with a disability is served by a public agency other than the SEA or LEA?

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following: (1) The child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative.

Note: In situations where the LEA places a child in an institution, paragraph "b" of the response to Question 1, above, would apply.

15. For a child with a disability being considered for initial placement in special education, which teacher should attend the IEP meeting?

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

Note: Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

16. If a child with a disability is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, as necessary, to consult with and be a resource to the child's regular teacher.

17. If a child with a disability in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?

No. Only one teacher must attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive.

b. While large meetings are generally inappropriate, there may be specific circumstances where the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meeting.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

18. If a child's primary disability is a speech impairment, must the child's regular teacher attend the IEP meeting?

No. A speech-language pathologist would usually serve as the child's teacher for purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

19. If a child is enrolled in a special education class because of a primary disability, and also receives speech-language pathology services, must both specialists attend the IEP meeting?

No. It is not required that both attend. The special education teacher would attend the meeting as the child's teacher. The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

20. When may representatives of teacher organizations attend IEP meetings?

Under the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g) and implementing regulations (34 CFR part 99) and the confidentiality requirements of part B, officials of teacher organizations may not attend IEP meetings if personally identifiable information from the student's education records is discussed—except with the prior written consent of the parents. (See 34 CFR §§ 99.30(a)(1) and 300.571(a)(1).)

In addition, part B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

21. When may a child with a disability attend an IEP meeting?

Generally, a child with a disability should attend the IEP meeting whenever the parent decides that it is appropriate for the child to do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) directly beneficial to the child. The agency should inform the parents before each IEP meeting—as part of the notice of meeting required under § 300.345(b)—that they may invite their child to participate.

Note: The parents and agency should encourage older children with disabilities (particularly those at the secondary school level) to participate in their IEP meetings.

22. Do the parents of a student with a disability retain the right to attend the IEP meeting when the student reaches the age of majority?

The Act is silent concerning any modification of the rights of the parents of a student with a disability when the student reaches the age of majority.

23. Must related services personnel attend IEP meetings?

No. It is not required that they attend. However, if a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child.

Note: This written recommendation could be a part of the evaluation report.

24. Are agencies required to use a case manager in the development of the IEP of a child with a disability?

No. However, some agencies have found it helpful to have a special educator or some other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for an individual child or for all children with disabilities served by the agency. Examples of the kinds of activities that case managers might carry out are (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

No specific person must represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose primary disability is a speech impairment, there may be no other evaluation personnel involved. The note following § 300.532 (Evaluation procedures) states:

Children who have a speech impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each child with a speech impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments, and (2) if necessary, make referrals for additional assessments needed to make an appropriate placement decision.

26. What is the role of the parents at an IEP meeting? The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's need for special education and related services, and (2) join with the other participants in deciding what services the agency will provide to the child.

Note: In some instances, parents might elect to bring another participant to the meeting, e.g., a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.)

27. What is the role of a surrogate parent at an IEP meeting?

A surrogate parent is a person appointed to represent the interests of a child with a disability in the educational decision-making process when that child has no other parent representation. The surrogate has all of the rights and responsibilities of a parent under Part B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) see the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (See § 300.514, Surrogate parents.)

28. Must the public agency let the parents know who will be at the IEP meeting?

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance.*" (§ 300.345(b), emphasis added.) If possible, the agency should give the name and position of each person who will attend. In addition, the agency should inform the parents of their right to bring other participants to the meeting. (See Question 21, above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

29. Are parents required to sign IEPs?

Parent signatures are not required by either the Act or regulations. However, having such signatures is considered by parents, advocates, and public agency personnel to be useful.

The following are some of the ways that IEPs signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting.

Note: This is useful for monitoring and compliance purposes.

If signatures are not used, the agency must document attendance in some other way.

b. An IEP signed by the parents is one way to indicate that the parents approved the child's special education program.

Note: If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. See Question 11, above.

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide.

Note: Even if the school personnel do not sign, the agency still must provide, or ensure the provision of, the services called for in the IEP.

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

The parent's signature on the IEP would satisfy the consent requirement concerning initial placement of the child (§ 300.504(b)(1)(ii)) only if the IEP includes a statement on initial placement that meets the definition of consent in § 300.500:

Consent means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought * * *

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary * * * and may be revoked at any time.

31. Do parents have the right to a copy of their child's IEP?

Yes. Section 300.345(f) states that the public agency shall give the parent, on request, a copy of the IEP. In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself within a reasonable time following the meeting.

32. Must parents be informed at the IEP meeting of their right to appeal?

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (§§ 300.504–300.505), it would not be necessary for the agency to do so again at the IEP meeting.

Section 300.504(a) of the regulations states that "written notice that meets the requirements under § 300.505 must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child."

Section 300.505(a) states that the notice must include "(1) A full explanation of all of the procedural safeguards available to the parents under § 300.500, §§ 300.502–300.515, and §§ 300.562–300.569."

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences through the due process procedures under the Act.

Note: Section 300.506(a) states that "a parent or public educational agency may initiate a hearing on any matters described in § 300.504(a) (1) and (2)."

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (See § 300.506, Impartial due process hearing.)

33. Does the IEP include ways for parents to check the progress of their children?

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding the special education program of a child with a disability. That record includes agreed upon items, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel, in a general way, in checking on a child's progress in the special education program. (See Questions 37–43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

34. Must IEPs include specific checkpoint intervals for parents to confer with teachers and to revise or update their children's IEPs?

No. The IEP of a child with a disability is not required to include specific "checkpoint intervals" (i.e., meeting dates) for reviewing the child's progress. However, in individual situations, specific meeting dates could be designated in the IEP, if the parents and school personnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following:

(1) Public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP (§ 300.343(d)); (2) there should be as many meetings a year as the child needs (see Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (see Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies if there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's placement and/or the special education services), but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended (1) that the IEP be implemented in all areas where there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be provided (e.g., one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps:

(1) Remind the parents that they may resolve their differences through the due process procedures under part B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) that both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (See Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency may not change the child's placement unless the parents and agency agree otherwise. (See § 300.513, Child's status during proceedings.) The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary arrangement.

(2) A child with a disability is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's placement) is being settled through due process.

Note: If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service would continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

36. What should be included in the statement of the child's present levels of educational performance?

The statement of present levels of educational performance will be different for each child with a disability. Thus, determinations about the content of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points that should be taken into account in writing this part of the IEP:

a. The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) non-academic areas (daily life activities, mobility, etc.).

Note: Labels such as mental retardation or deafness may not be used as a substitute for the description of present levels of educational performance.

b. The statement should be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's diagnosis might be included, if appropriate. However, the scores should be (1) self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or other aids), or (2) an explanation should be included. Whatever test results are used should reflect the impact of the disability on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, this problem should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.

37. Why are goals and objectives required in the IEP?

The statutory requirements for including annual goals and short term instructional objectives (Section 602(a)(20)(B)), and for having at least an annual review of the IEP of a child with a disability (Section 614(a)(5)) provide a mechanism for determining (1) whether the anticipated outcomes for the child are being met (i.e., whether the child is progressing in the special education program) and (2) whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goals and objectives in the IEP are not intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans.

38. What are annual goals in an IEP?

The annual goals in the IEP are statements that describe what a child with a disability can reasonably be expected to accomplish within a twelve month period in the child's special education program. As indicated under Question 36, above, there should be a direct relationship between the annual goals and the present levels of educational performance.

39. What are short term instructional objectives in an IEP?

Short term instructional objectives (also called IEP objectives) are measurable, intermediate steps between the present levels of educational performance of a child with a disability and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in a particular area within some specified time period, and (2) to determine the extent that the child is progressing toward those accomplishments.

In other respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goals. These objectives should be projected to be accomplished over an extended period of time (e.g., an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards) that will be used in accomplishing the objectives.

40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?

IEP goals and objectives are concerned primarily with meeting the needs of a child with a disability for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's disability that interfere with learning and educational performance in school. For example, if a child with a learning disability is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goals and objectives for a child with severe mental retardation would be more comprehensive and cover more of the child's school program than if the child has only a mild disability.

41. Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?

Yes. There should be a direct relationship between the IEP goals and objectives for a given child with a disability and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by those who will implement the IEP, and (2) serves as the basis for developing a detailed instructional plan for the child.

Note: See Question 56, below, regarding the length of IEPs.

42. When must IEP objectives be written—before placement or after placement?

IEP objectives must be written before placement. Once a child with a disability is placed in a special education program, the teacher might develop lesson plans or more detailed objectives based on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

43. Can short term instructional objectives be changed without initiating another IEP meeting?

No. Section 300.343(a) provides that the agency "is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and *revising* the IEP of a child with a disability" (emphasis added). Since a change in short term instructional objectives constitutes a revision of the child's IEP, the agency must (1) notify the parents of the proposed change (see § 300.504(a)(1)), and (2) initiate an IEP meeting. Note, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls (see § 300.345(c)).

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

Each public agency must provide FAPE to all children with disabilities under its jurisdiction. Therefore, the IEP for a child with a disability must include all of the specific special education and related services needed by the child—as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and must be provided by the agency through contract or other arrangements.

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

Yes. The IEP of each child with a disability must include all services necessary to meet the child's identified special education and related services needs; and all services in the IEP must be provided in order for the agency to be in compliance with the Act.

46. Must the public agency itself directly provide the services set out in the IEP?

The public agency responsible for the education of a child with a disability could provide IEP services to the child (1) directly, through the agency's own staff resources, or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see § 300.301(a)). However, the services must be at no cost to the parents, and responsibility for ensuring that the IEP services are provided remains with the public agency.

47. Does the IEP include only special education and related services or does it describe the total education of the child?

The IEP is required to include only those matters concerning the provision of special education and related services and the extent that the child can participate in regular education programs.

(**Note:** The regulations define special education as specially designed instruction to meet the unique needs of a child with a

disability, and related services as those services that are necessary to assist the child to benefit from special education.) (See §§ 300.17 and 300.16, respectively.)

For some children with disabilities, the IEP will only address a very limited part of their education (e.g., for a child with a speech impairment, the IEP would generally be limited to the child's speech impairment). For other children (e.g., those with profound mental retardation), the IEP might cover their total education. An IEP for a child with a physical disability with no mental or emotional disability might consist only of specially designed physical education. However, if the child also has a mental or emotional disability, the IEP might cover most of the child's education.

Note: The IEP is not intended to be detailed enough to be used as an instructional plan. See Question 41, above.

48. If modifications are necessary for a child with a disability to participate in a regular education program, must they be included in the IEP?

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g., for a child with a hearing impairment, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. When must physical education (PE) be described or referred to in the IEP?

Section 300.307(a) provides that physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE. The following paragraphs (1) set out some of the different PE program arrangements for students with disabilities, and (2) indicate whether, and to what extent, PE must be described or referred to in an IEP:

a. Regular PE with nondisabled students. If a student with a disability can participate fully in the regular PE program without any special modifications to compensate for the student's disability, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications must be described in the IEP.

b. Specially designed PE. If a student with a disability needs a specially designed PE program, that program must be addressed in all applicable areas of the IEP (e.g., present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. PE in separate facilities. If a student with a disability is educated in a separate facility, the PE program for that student must be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (e.g., a residential school for students with deafness), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (See paragraph "b", above.)

50. If a student with a disability is to receive vocational education, must it be described or referred to in the student's IEP?

The answer depends on the kind of vocational education program to be provided. If a student with a disability is able to participate in the regular vocational education program without any modifications to compensate for the student's disability, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the IEP. Moreover, if the student needs a specially designed vocational education program, then vocational education must be described in all applicable areas of the student's IEP (e.g., present levels of educational performance, goals and objectives, and specific services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting.

Note: The parents should be notified whenever this occurs.

52. Must the IEP of a child with a disability indicate the extent that the child will be educated in the regular educational program?

Yes. Section 300.346(c) provides that the IEP for each child with a disability must include a "statement of * * * the extent that the child will be able to participate in regular educational programs." One way of meeting this requirement is to indicate the percent of time the child will be spending in the regular education program with nondisabled students. Another way is to list the specific regular education classes the child will be attending.

Note: If a child with a severe disability, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any non-curricular activities in which the child will be participating with nondisabled students (e.g., lunch, assembly periods, club activities, and other special events).

53. Can the anticipated duration of services be for more than twelve months?

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term instructional objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service must be reconsidered whenever the IEP is reviewed.

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term instructional objectives.

Note: In many instances, these components are incorporated directly into the objectives.

Other Questions About the Content of an IEP

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

No. It is not permissible for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(a)(20) of the Act defines the IEP as a written statement developed in any meeting with the agency representative, the teacher, the parent, and, if appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Pub. L. 94-142 makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their children with disabilities. (See, e.g., S.

Rep. No. 168, 94th Cong. 1st Sess. 13 (1975); S. Rep. No. 455 (Conference Report), 94th Cong. 1st Sess. 47–50 (1975).)

56. Is there a prescribed format or length for an IEP?

No. The format and length of an IEP are matters left to the discretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 41, above, the IEP is not intended to be a detailed instructional plan. The Federal IEP requirements can usually be met in a one to three page form.

57. Is it permissible to consolidate the IEP with an individualized service plan developed under another Federal program?

Yes. In instances where a child with a disability must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document only if: (1) it contains all of the information required in an IEP, and (2) all of the necessary parties participate in its development.

Examples of individualized service plans that might be consolidated with the IEP are: (1) The Individualized Care Plan (Title XIX of the Social Security Act (Medicaid)), (2) the Individualized Program Plan (Title XX of the Social Security Act (Social Services)), (3) the Individualized Service Plan (Title XVI of the Social Security Act (Supplemental Security Income)), and (4) the Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

58. What provisions on confidentiality of information apply to IEPs?

IEPs are subject to the confidentiality provisions of both (1) Part B (Section 617(c) of the Act; §§ 300.560–300.576 of the regulations), and (2) the Family Educational Rights and Privacy Act ("FERPA", 20 U.S.C. 1232g) and implementing regulations in 34 CFR part 99. An IEP is an education record as that term is used in the FERPA and implementing regulations (34 CFR § 99.3) and is, therefore, subject to the same protections as other education records relating to the student.

Note: Under Section 99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents "if the disclosure is—(1) To other school officials, including teachers, within the educational institution or LEA who have been determined by the agency or institution to have legitimate educational interests * * *" in that information. Insert illus. 01788

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

Generally, a child who requires placement in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed—by either the parents or school personnel. If both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency must ensure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls, or by other means.

60. Is the IEP a performance contract?

No. Section 300.350 makes it clear that the IEP is not a performance contract that imposes liability on a teacher or public agency if a child with a disability does not meet the IEP objectives. While the agency must provide special education and related services in accordance with the IEP of each child with a disability, the Act does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

PART 301—PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

2. The authority citation for part 301 continues to read as follows:

Authority: 20 U.S.C. 1419, unless otherwise noted.

3. Section 301.1 is amended by revising paragraph (a) to read as follows:

§ 301.1 What is the Preschool Grants for Children with Disabilities program?

* * * * *

(a) Providing special education and related services to children with disabilities aged three through five years, and, at a State's discretion, providing a free appropriate public education to two-year-old children with disabilities who will reach age three during the school year;

* * * * *

§ 301.2 [Amended]

4. The heading for § 301.2 in the table of contents is revised to read "Who is eligible for an award?".

5. Section 301.3 is amended by revising paragraphs (a) and (c) to read as follows:

§ 301.3 What kinds of activities may be assisted?

* * * * *

(a) Provide subgrants to LEAs and IEUs to assist them in providing special education and related services to children with disabilities aged three through five years, and, if consistent with State policy, provide a free appropriate public education to two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving, or have received, services under Part H of the Act.

* * * * *

(c) Provide direct and support services from the SEA to children with disabilities aged three through five years, and, at the State's discretion, provide a free appropriate public education, in accordance with the Act, to two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving, or have received, services under Part H.

(Authority: 20 U.S.C. 1419)

6. A new § 301.6 is added to Subpart A to read as follows:

§ 301.6 Does Part H of the Act apply to two-year-old children with disabilities?

Part H of the Act does not apply to any child with disabilities receiving a free appropriate public education, in accordance with Part B of the Act, with funds received under the Preschool Grants program.

(Authority: 20 U.S.C. 1419(g))

7. Section 301.10 is amended by revising paragraph (b)(2) to read as follows:

§ 301.10 How does a State become eligible to receive a grant?

* * * * *

(b) * * *

(2) The State has policies and procedures in its State plan under 34 CFR part 300 that assure the provision of a free appropriate public education—

(i) For all children with disabilities aged three through five years in accordance with the requirements in 34 CFR part 300; and

(ii) For any two-year-old children, provided services by the State under 301.30(b)(3) or by a LEA or IEU under 301.30(a)(2); and

* * * * *

8. Section 301.30 is amended by revising paragraphs (a), (b)(2), and (d), and adding a new paragraph (b)(3) to read as follows:

§ 301.30 How does a State distribute the grant money?

(a) A state shall distribute at least 75 percent of its grant to LEAs and IEUs to be used to provide:

(1) Special education and related services to children with disabilities aged three through five years; and

(2) If consistent with State policy, a free appropriate public education, in accordance with Part B, to two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving or have received, services under Part H of the Act.

(b) * * *

(2) The provision of direct and support services for children with disabilities aged three through five years; and

(3) At the State's discretion, the provision of a free appropriate public education to two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving, or have received, services under Part H of the Act.

* * * * *

(d) If a State provides services to preschool children with disabilities because some or all LEAs and IEUs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs or IEUs to provide special education and related services to children with disabilities aged three through five years, and to two-year-old children with disabilities in accordance with paragraph (b)(3) of this section, residing in the area served by those LEAs and IEUs.

(Authority: 20 U.S.C. 1414(d), 1419(c)(2), 1419(f))

Appendix

(Not to be Codified in the Code of Federal Regulations)

Appendix

Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations.)

The following is an analysis of the comments and of the changes in the regulations since publication of the NPRM on August 19, 1991 (56 FR 41266). Substantive issues are discussed under the section of the regulations to which they pertain. Minor changes made to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed. References to section numbers in this appendix are to the final regulations.

Assistive Technology Device; Assistive Technology Service (§§ 300.5 and 300.6)

Comment: One commenter requested that the proposed definitions of "assistive technology device" and "assistive technology service" be modified to make them as educationally relevant as possible. Another commenter stated that, in the definition of "assistive technology service" (§ 300.6(f)), the term "children" should be used in lieu of "individuals." Another commenter suggested that each State be required to include in the State plan its system for providing information and technological assistance for LEAs regarding assistive technology acquisition.

A commenter requested that procedures for determining when a child needs assistive technology be added to the final regulations. Another commenter requested that evaluations be done by personnel qualified to assess the technological needs of children with disabilities. Another commenter was concerned that school personnel would not have the training and knowledge to provide required services.

Discussion: The definitions of "assistive technology device" and assistive technology service" are taken from sections 602(a)(25) and 602(a)(26) of the Act, and there is no authority to change the substance of those definitions. However, the requirement in § 300.308 limits the provision of assistive technology to educational relevancy—i.e., an assistive technology device or service is only required if it is determined, through the IEP process, to be (1) special education, as defined in § 300.17, (2) a related service, as defined in § 300.16, or (3) supplementary aids and services required to enable a child to be educated in the least restrictive environment. The Secretary believes that the effect of § 300.308 is to limit the provision of assistive technology devices and services to those situations in which they are required in order for a child to receive FAPE.

The Note following "assistive technology service" in the NPRM explained that, except for replacing "child" for "individual," the definition is taken directly from section 602(a)(25)–(26) of the Act. The term "individuals" was inadvertently included in paragraph (f) of that definition. Therefore, that term is being changed to "children" in these final regulations.

The Secretary believes that while an SEA, at its discretion, might choose to provide technical assistance to LEAs about assistive technology or other provisions required in this part, it would be inappropriate and burdensome to require that a State include a description of a technical assistance system on assistive technology in the State plan.

It is not necessary to add procedures for determining the need for assistive technology services because this determination is made as part of the individual evaluation of each child required in §§ 300.530–300.534. These evaluations must be done by qualified individuals, as specified in § 300.532(a)(3).

In instances where LEA personnel do not have the knowledge to provide assistive technology services, funds under this part may be used to obtain the necessary expertise, and, if appropriate, to train existing school personnel. The Secretary does not believe that further guidance is needed on the matters raised by these commenters.

Changes: In § 300.6(f), the clause "or are otherwise substantially involved in the major life functions of individuals with disabilities" has been revised to substitute the term "children" for "individuals."

Autism (§ 300.7(b)(1))

Comment: Some commenters proposed that the phrase "generally evident before the age of three" be eliminated because it may result in excluding children who exhibit those characteristics after age three. One commenter requested that the regulations clarify that autism is a medical diagnosis, while another commenter asked if a medical diagnosis would be required for this disability.

Discussion: The reference to age three is not an age limitation, but merely indicates that children identified as having autism generally exhibit characteristics of this disability before age three. The Secretary does not agree that a medical diagnosis is required to determine whether a child falls within the disability category of "autism." The definition of "children with disabilities" in § 300.7(a)(1) states that the term means "those children evaluated in accordance with §§ 300.530–300.534 * * *." The required procedures in those sections are broad enough to ensure that diagnostic and placement decisions are based on comprehensive information about the child, including medical information that may be needed to determine whether the child has a disability and is in need of special education and related services.

Changes: None.

Comment: Several commenters raised issues regarding the characteristics listed in the definition of "autism." For example, some commenters stated that the proposed definition implies that a child must exhibit all of the characteristics listed to be considered to have autism. In addition, a commenter asked that impairments in the development of social relationships be added to the list of characteristics. Commenters raised two concerns about the term "stereotyped movements"—that the term is too vague and that, in some instances, older children may not exhibit stereotyped movements.

One commenter proposed that the phrase "that markedly restricts activities and interests" be included after "generally evident before age three" to be consistent with the

definition of "Pervasive Developmental Disorder" in the Diagnostic and Statistical Manual of Mental Disorders (DSM–III–R). Several commenters requested that the term "Pervasive Developmental Disorder" be included to ensure that the definition is not restrictive. One commenter requested that a statement be added noting that the term "autistic" does not include children with "autistic-like tendencies."

Discussion: The definition in the NPRM was not intended to require the presence of all of the characteristics listed, nor to be an exhaustive list of characteristics. Children with autism must have impairments in both communication and social interaction. In addition, there are other characteristics that are often, but not always, associated with autism. The term "stereotyped movements" is used by most special educators and medical and health professionals to describe behaviors of many children with autism. The phrase "that markedly restricts activities and interests" does not need to be added because it is implicit in the definition. Children with "autistic-like tendencies" are included if they meet the definition of "autism." Inclusion of the definition of "Pervasive Developmental Disorder" is not needed because the definition of "autism" is sufficiently broad to encompass children who exhibit a range of characteristics of autism.

Changes: The definition has been revised to (1) include, in the first sentence, characteristics generally common to children with autism, and (2) list, in the second sentence, "Other characteristics often associated with autism * * *."

Comment: Several commenters requested that the last sentence in the definition of "autism" regarding the exclusion of children with characteristics of the disability "serious emotional disturbance" be eliminated. They indicated that some characteristics of autism are similar to some characteristics of serious emotional disturbance. A few commenters stated that, in the past, autism was classified under the definition of "serious emotional disturbance."

Discussion: A clarifying change has been made in the definition. However, the Secretary believes that it is important that the regulations distinguish between serious emotional disturbance and autism because children may exhibit characteristics of both disabilities. While the commenters are correct that, in the past, autism was included in the category of "serious emotional disturbance," the current regulations include "autism" in the category of "other health impaired." The legislative history of Public Law 101–476 indicates that autism has suffered from an inaccurate identification with mental illness, and that the designation of autism as a disability category is meant to clarify it as a developmental disability and not as a form of mental illness. (See House Report No. 101–544, 5 (1990).)

Changes: The last sentence of the definition of "autism" has been modified to clarify that the term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.

Traumatic Brain Injury (§ 300.7(b)(12))

Comment: A commenter suggested that the first sentence of the proposed definition of "traumatic brain injury" be amended by adding "acquired" before "injury," and substituting "impairment" for "maladjustment". The commenter also pointed out that "functional disability" and "psychosocial impairment" resulting from an injury to the brain are not always mutually exclusive, and recommended that the definition be amended to allow for both. One commenter requested the inclusion of adverse effects on social-emotional development, not just academic performance.

Discussion: The Secretary agrees that the definition of "traumatic brain injury" should clarify that the injury (1) occurs after birth, and (2) results in total or partial functional disability, or psychosocial impairment, or both, to provide a more accurate and comprehensive description of children in this disability category. It is not necessary to include a statement of adverse effects on social-emotional development in the definition because social-emotional developmental consequences may be reflected in adverse effects on educational performance.

Changes: The definition has been revised to incorporate the commenter's suggestions, to the extent indicated in the above discussion.

Comment: Some commenters requested clarification as to whether medical verification or physician documentation would be required. In addition, a few commenters requested that specific assessment procedures be developed and required. One commenter stated that LEAs do not have individuals skilled in assessing children with traumatic brain injury and expressed concern about assessment costs.

Discussion: The definition of "children with disabilities" in § 300.7(a)(1) states that the term means "those children evaluated in accordance with §§ 300.530–300.534 * * *." The required procedures in those sections are broad enough to ensure that diagnostic and placement decisions are based on comprehensive information about the child, including medical information if it is needed to determine whether the child has a disability and is in need of special education and related services. There should not be a significant increase in the cost of assessing children with traumatic brain injury, since these children are being currently assessed and are receiving special education, although they are identified as having other disabling conditions. The establishment of a separate category should facilitate the development of improved assessment and program planning efforts. These efforts, together with improved personnel training, should help to ensure that required personnel in LEAs are appropriately skilled in the identification, evaluation, and placement of children with traumatic brain injury. (See House Report No. 101–544, 5 (1990).)

Changes: None.

Comment: Several commenters requested clarification as to whether there is any overlap between the definitions of "traumatic brain injury" and "other health impaired." The commenters asked if an injury resulting from infection, tumor, fever, exposure to a toxic substance, or near-drowning would be considered a traumatic brain injury. A commenter also requested that the definition not exclude other acquired brain injuries when the resulting functional areas of disability are similar to the disabilities resulting from traumatic brain injury.

Discussion: The term "traumatic brain injury," as used in professional practice, applies only to children with acquired brain injuries caused by an external physical force. It does not apply to injuries caused by internal occurrences, such as infections, tumors, fever, and exposure to toxic substances. Children whose educational performance is affected as a result of acquired injuries to the brain caused by internal occurrences may meet the criteria of one of the other disability categories, such as "other health impaired," "specific learning disabilities," or "multiple disabilities." The definition of "traumatic brain injury" does include an acquired injury to the brain caused by the external physical force of near-drowning.

Changes: The phrase "or by an internal occurrence such as a stroke or

aneurysm" has been deleted from the first sentence of the definition.

Comment: A commenter suggested that the word "mild" be deleted from the second sentence of the definition of "traumatic brain injury." Another commenter asked that descriptions of the degree of a child's impairment be eliminated from the definition.

Discussion: The Secretary believes that the degree of impairment is not a factor in determining whether a child has a "traumatic brain injury." Therefore, the terms "mild," "moderate," and "severe" should be deleted from this definition. The factors for determining whether a child is eligible under this disability category for services under part B are (1) an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment that adversely affects educational performance, and (2) a need for special education and related services because of that disability or impairment. The particular services provided to the child are determined on an individual basis. Thus, as long as the factors described above are met, children are eligible whether or not they have mild, moderate, or severe impairments.

Changes: The descriptions of degree of impairment (mild, moderate, and severe) have been deleted from the definition.

Rehabilitation Counseling Services (§ 300.16(b)(10))

Comment: Some commenters indicated that rehabilitation counseling services should be provided by State vocational rehabilitation agencies under title I of the Rehabilitation Act of 1973, and not be a requirement under this part. Commenters also expressed concern regarding the potential responsibility and the financial burden to LEAs to provide services that were previously the responsibility of other agencies, as well as the inability of LEAs to commit the resources of other agencies. Two commenters requested that the definition of "rehabilitation counseling services" be broadened to mention additional services. A commenter requested clarification about the intent of the new requirement, especially with respect to services provided under the Rehabilitation Act of 1973.

Discussion: Public Law 101-476 added "rehabilitation counseling" as a type of "counseling service" in the list of related services in part B. The Report of the House Committee on Education and Labor on Public Law 101-476 describes rehabilitation counseling as an important related service in special education, as well as an important transition service in preparing students with disabilities for employment or postsecondary education. In addition, the report states, "It is the intent of the Committee that rehabilitation counseling * * * be provided to all students with disabilities for whom this service is necessary for the achievement of the individualized education program." (See House Report No. 101-544, 7-8 (1990).)

"Rehabilitation counseling services," as defined in § 300.16(b)(10), includes a variety of services, such as career development, employment counseling, and employment preparation. The term also includes vocational rehabilitation services provided to students with disabilities under the Rehabilitation Act of 1973. The Secretary believes that the definition is broad enough not to require the listing of additional services.

Because "rehabilitation counseling services" is a type of related service under "counseling services" in part B, public agencies must provide that service to any student with a disability, if the IEP team determines that the service is required to assist the student to benefit from special education. As indicated in the discussion to the comment that follows, rehabilitation counseling may be provided by existing LEA staff, if they are qualified under § 300.15 to provide those services in areas appropriate to their disciplines.

The Secretary recognizes that LEAs do not have the authority to commit the resources of another agency. However, the SEA is responsible—through the use of interagency agreements required under § 300.151, or other means—to ensure that services that would have been provided by other agencies will continue to be provided, either by those agencies, or by the LEA responsible for providing FAPE to the child. In accordance with § 300.150, States may not permit LEAs to use funds under this part to provide or pay for services that would have been paid for by a health or other agency pursuant to policy or practice but for the fact that these services are now included in a student's IEP.

Changes: None.

Comment: Many commenters requested that the term "qualified counseling professional" be deleted from the definition of "rehabilitation counseling services." They were concerned that it would add a new personnel category that would require States to adopt new certification or licensure standards, and preclude the continued provision of services by existing school staff, who are otherwise qualified. A few commenters suggested that "certified" be used in lieu of "qualified."

Discussion: The Secretary believes that existing school staff (e.g., prevocational counselors, work-study coordinators, or special education teachers), who are qualified under § 300.15, should be permitted to provide rehabilitation counseling services appropriate to their disciplines. The qualifications of personnel providing those services, like the qualifications of personnel providing other services, is a matter to be determined by each State. The method used to specify the qualifications of personnel (e.g., certification, licensure, or registration) is also a matter that is left to State discretion.

Changes: The term "a qualified counseling professional" has been changed to "qualified personnel."

Social Work Services in Schools (300.16(b)(12))

Comment: A large number of commenters did not support the proposed deletion of "in schools" from the definition of "social work services," and requested that the current term "social work services in schools" be retained in the final regulations. These commenters stated, among other reasons, that the existing term helps to ensure that the services provided will be educationally relevant and directly linked to the IEP. Some commenters requested that the term be changed to "school social work services."

A few commenters supported the deletion of "in schools" from the defined term, asserting that the change would enable broader services to be provided. One commenter stated that the proposed change would allow schools and other public and private agencies to work together in providing appropriate mental health services to children with serious emotional disturbance.

Another commenter requested the following changes: (1) Substituting developmental "history" for developmental "assessment," (2) adding the phrase "making home visits," to be consistent with the definition in 34 CFR 303.12(d)(11), and (3) changing "mobilizing" to "identifying and coordinating." A few commenters requested that the qualifications of social workers be clarified. Commenters also urged that services be provided by credentialed school social workers.

Discussion: The phrase "in schools" was proposed to be omitted from the defined term because the Secretary believed that public agencies understood that phrase to limit the

setting in which social work could be provided as a related service. The comments received make clear that this is not the case. The substance of the definition, which was not proposed to be amended, permits these services to be provided in any environment, including a child's home, if they are required to assist the child to benefit from special education.

Because the term "social work services in schools" has been used in this part since 1977 and is commonly accepted by LEAs and other public agencies throughout the Nation, the Secretary does not believe that it is necessary to change the term to "school social work services" or to make other changes to the substance of the definition.

Social work services in schools must be provided by personnel who are qualified under § 300.15. The qualifications of personnel providing those services is a matter to be determined by each State. The method used to specify the qualifications of personnel (e.g., certification, licensure, or registration) is also a matter that is left to State discretion.

Changes: The phrase "in schools" has been retained in the defined term.

Comment: Several commenters requested that, in § 300.16(b)(12)(iv), the goal of receiving "maximum benefit" be deleted. These commenters asserted that "maximum benefit" exceeds the legally required standard for providing FAPE. Some of the commenters stated that the phrase "to receive maximum benefit from his or her educational program" is inconsistent with the decision of the United States Supreme Court in *Board of Education* v. *Rowley*, 458 U.S. 176 (1982)—that part B does not entitle children to maximization of their educational potential, but only to educational benefit.

Discussion: The definition of "social work services in schools," included at § 300.12(b)(12) of the current regulations has remained unchanged since 1977. The phrase "to receive maximum benefit," as used in that definition, was intended only to provide that one activity carried out by personnel qualified to provide social work services in schools is to mobilize resources so that a child can learn as effectively as possible in his or her educational program. This provision did not set a legal standard for that program or entitle the child to a particular educational benefit. However, because of the commenters' concerns that the phrase "to receive maximum benefit" appears to be inconsistent with the Rowley decision, the Secretary believes that the phrase should be revised.

Changes: Section 300.16(b)(12)(iv) has been revised to read: "Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program."

Transition Services (§ 300.18)

Comment: A large number of comments were received on the proposed Note following the definition of transition services. The majority of commenters requested that the last sentence of the Note be revised to delete the statement that the listed activities in the definition are only examples of different types of post-school activities, and, instead, to specify that the listed activities are the minimum that must be provided. Other commenters requested that the listed activities be permissive and not mandatory. One commenter requested that the final regulations define the limits of transition services. (See other comments on transition services relating to §§ 300.344–300.347 in this appendix.)

Discussion: The Secretary agrees with commenters that the statement in the Note—that the listed activities are only examples—must be deleted. The statute defines both "transition services" and "individualized education program." 20 U.S.C. 1401(a)(19) and 1401(a)(20). Paragraph (D) of the definition of IEP provides that an IEP must include a statement of the needed transition services for students with disabilities who are 16 years of age or older, and for certain students below age 16. The Secretary interprets these provisions to require that, at a minimum, the IEP team for each student must address each of the areas listed in § 300.18(b)(2)(i) through § 300.18(b)(2)(iii) (as incorporated from section 602(a)(19) of the Act), and determine what services are needed by the student in each area. If the IEP team determines that no services within a particular area are needed by the student, the IEP must include a statement to this effect, and the basis upon which that determination was made. See § 300.346(b).

Although the definition of transition services in § 300.18 includes a specific list of activities, that list is not intended to be exhaustive. The Secretary does not believe that further guidance is needed regarding the limits of transition services.

Changes: The last sentence of the Note following § 300.18 has been revised to delete the statement that the listed activities are only examples of different types of post-school activities.

Comment: One commenter requested clarification of what is meant by the term "outcomes," as used in "outcome-oriented process." Some commenters requested clarification of the term "coordinated," as used in "a coordinated set of activities." A few commenters requested that recreation and leisure, and orientation and mobility, be added to the coordinated set of activities.

A few commenters requested that the term "if appropriate" be deleted as a modifier of the phrases "acquisition of daily living skills" and "functional evaluation," stating that these activities are needed by all students. Another commenter requested deletion of "if appropriate," stating that the IEP is already individualized.

One commenter requested an emphasis on the responsibility of schools to prepare students with severe disabilities to work and live in the community. Another commenter requested that the definition emphasize the importance of involving the student, parents, other family members, employers, and other community representatives earlier in the student's educational process. One commenter requested a definition of "functional vocational evaluation."

Discussion: The term "outcome," as used in the phrase "outcome-oriented process," refers to the results, or intended effect, of the activities on a student. The Secretary interprets the term "coordinated" to mean both (1) the linkage between each of the component activities that comprise transition services, and (2) the interrelationship between the various agencies that are involved in the provision of transition services to a student. With respect to the comment on "outcomes and the request to clarify the term "coordinated," the Secretary does not believe that further guidance is needed in these regulations. It also is not necessary to specify recreation and leisure, and orientation activities because they could be included under other post-school adult living objectives. As used in § 300.18, the term "if appropriate" is incorporated from the statutory definition of transition services.

It is not necessary to emphasize the responsibility of schools in preparing students with severe disabilities for postschool activities, since transition services are to be provided to each student who is eligible for those services.

The Secretary agrees with the commenter that it is important to involve students, their parents, and appropriate community representatives as early as possible in the educational process—to facilitate a smooth transition from school to employment.

However, it is not appropriate to add this as a requirement in the definition under § 300.18. It also is not necessary to add a definition of "functional vocational evaluation." The term is intended to be sufficiently broad to enable States and LEAs to include whatever services or activities are determined appropriate for individual students.

Changes: None.

Full Educational Opportunity Goal—Data Requirement (§ 300.124)

Comment: Two commenters requested clarification regarding whether the effect of the removal of this section was simply to require data to be submitted separately from the State plan or whether the data requirements would be less specific or otherwise substantively different.

Discussion: When the original regulations in this part were published in 1977, States were required to submit State plans on an annual basis. State plans are now submitted on a triennial basis; but the data for the Part B program are required to be submitted each year as part of the Department's Annual Data Report under section 618 of the Act. This change does not affect the substance of the data requirements.

Changes: None.

Child Identification (§ 300.128, Note 2)

Comment: One commenter felt that the issue of coordination between the Part B and Part H programs was so important that it should be addressed in the regulation rather than a note. The commenter requested clarification regarding the responsibility of the Part H lead agency when it is not the SEA. Another commenter suggested that the two agencies be required to coordinate child find activities with other agencies. Other commenters requested clarification of the components of these activities and applicable procedural safeguards. One commenter questioned whether Part B requires child find activities for children from birth to two years of age.

Discussion: A specific provision requiring the lead agency for Part H to coordinate its child find system with all other child find efforts in the State, including those under Part B, is contained in 34 CFR 303.321(c). Therefore, a Note following § 300.128 is sufficient to address the importance of effective coordination between the two programs.

The Secretary believes that, in States where the SEA and the lead agency for Part H are different, effective coordination between the two agencies is essential to the implementation of the child find activities. The nature and extent of that participation must be included in the State plan. With the agreement of the SEA, the Part H lead agency may undertake the actual implementation of child find efforts for infants and toddlers with disabilities. However, the SEA remains responsible in all events for ensuring compliance with all child find requirements, including those relating to the evaluation of children.

With respect to the scope of the child find requirements under this part, the Secretary interprets those requirements to apply to all children from birth through twenty-one.

Changes: Note 2 has been revised to reflect the above discussion.

Assistive Technology (§ 300.308)

Comment: A few commenters questioned the Department's authority to require assistive technology devices and services under § 300.308, stating that the only new statutory provisions affecting Part B are the definitions of these terms in 20 U.S.C. 1401 (a)(25) and (a)(26).

Several commenters requested that the provisions on assistive technology devices and services be amended to clarify that the cost of personal or medical devices should be borne by parents or other public agencies and not educational agencies. A few commenters requested that the final regulations clarify that an assistive technology device can be taken home by a child if it is needed to complete a homework assignment; other commenters stated that devices should be used only at school. One commenter suggested that, with respect to a child's need for assistive technology devices and services, the phrase "following evaluation of such needs" be added to proposed § 300.308(a).

Discussion: The Secretary believes that the requirements for assistive technology in this part are fully authorized by law. The report of the House Committee on Education and Labor on Public Law 101–476 states:

> * * * The Committee is aware that since the passage of the Education of the Handicapped Act, advances in the development and use of assistive technology have provided new opportunities for children with many disabilities to participate in educational programs. For many children and youth with disabilities, the provision of assistive technology devices and services will redefine "an appropriate placement in the least restrictive environment" and allow greater independence and productivity * * *.
>
> The Committee bill incorporates definitions for assistive technology service and assistive technology device in order * * * (2) to increase the awareness of assistive technology as an important component of meeting the special education and related service needs of many students with disabilities, and thus enable them to participate in, and benefit from, educational programs * * *. (House Report No. 101–544, 8–9 (1990).)

The Secretary believes that assistive technology devices and services may be essential to the provision of FAPE to certain children with disabilities. Section 300.308 provides only that these devices and services must be made available if they are required under current provisions of the regulations relating to special education, related services, and supplementary aids and services.

A determination as to whether an assistive technology device or service is required in order for a child to receive FAPE must be made on an individual basis using the evaluation procedures, the procedures for developing IEPs, and the procedures for placement described in these regulations. Similarly, a decision as to whether a child may use a device or service in settings other than the child's school (e.g., the child's home or other parts of the community) also must be made on an individual basis.

Under § 300.301, a public agency may use whatever State, local, Federal, and private sources of support are available to provide or pay for services, including assistive technology services or devices. These services and devices must be provided at no cost to the child or parent under §§ 300.8 and 300.300.

The Secretary does not believe that it is necessary to add the phrase "following evaluation of such needs" because the concept of determining needs based on evaluation is central to these regulations.

Changes: None.

Comment: Several commenters objected to proposed § 300.308(b), regarding the provision of supplementary aids and services for children who are educated in regular classes, because the proposed language implied that assistive technology devices and services under this part must be provided to children who do not receive special education and related services.

Discussion: Under § 300.550(b)(2), "supplementary aids and services" must be provided to children with disabilities who have been determined to be eligible under Part B and are able to be educated in regular classes with the use of those aids and services. Assistive technology can be a form of "supplementary aids and services."

Changes: Section 300.308 has been revised to make it clear that assistive

technology devices and services must be provided only if they are required under current regulations as part of a child's special education (§ 300.17), related services (§ 300.16), or supplementary aids and services (§ 300.550(b)(2)).

Priorities (§ 300.321(c))

Comment: A few commenters requested that the prohibition against the use of Part B funds for preservice training in § 300.321(c) of the current regulations be retained. These commenters expressed concern about duplication of effort, noting that preservice training is currently the responsibility of institutions of higher education. Another commenter expressed concern that public agencies would be required to use Part B funds for preservice education, thus diverting funds away from the provision of direct services. One commenter expressed support for deleting the provision if the change would provide LEAs more flexibility in using Federal funds for preservice training, but not if it would mean that universities would have increased availability of Part B funds for preservice training previously funded from other sources.

Discussion: The Secretary believes that the prohibition against using funds under this part for preservice training should be deleted, as proposed in the NPRM. Deleting the prohibition will give States and LEAs the flexibility to use funds under this part for preservice training if they choose to do so.

Changes: None.

Participants in Meetings; Parent Participation (§§ 300.344(c) and 300.345(b)(2))

Comment: Several commenters requested that the term "if appropriate" be deleted from the Note following § 300.344(c), and that inclusion of students in their IEP meetings be required. Other commenters requested that the Note reflect a preference for student inclusion and clarify who makes the determination of the appropriateness. These commenters stressed the importance of students having direct involvement in determining their own programs and services.

Discussion: The Secretary agrees with commenters that "if appropriate" should be deleted, and that students should be afforded the opportunity to participate and have a voice in their own transition planning. Providing for the inclusion of older students in their IEP meetings is consistent with the current provisions of this part. Section 300.344(a)(4) states that each public agency "shall ensure that the meeting includes * * * the child, where appropriate." The Note following question 21 of Appendix C of these regulations states that "[t]he parents and the agency should encourage older children with disabilities (particularly those at the secondary level) to participate in their IEP meetings." The Secretary believes that, if a purpose of the IEP meeting is the consideration of transition services for a student, the public agency has a responsibility to (1) invite the student to attend the meeting, and (2) consistent with Executive Order 12606, entitled "The Family," inform the parents, in the notice required at § 300.345(a)(1), that the student will be invited. Also, if the student does not attend, the public agency must use other methods to ensure that the student's preferences and interests are taken into account at the meeting.

The Secretary believes that it is important to add a Note to clarify when the public agency is required to invite students to attend their IEP meetings. All students who are 16 years of age, or older, must be invited, since one of the purposes of the annual IEP meeting will always be the planning of transition services. Also, any student younger than age 16 must be invited before a decision about transition services for the student is made.

Changes: The following changes have been made: (1) the title of § 300.344(c) has been changed to "Transition services participants"; (2) that paragraph has been revised to specify that if a purpose of the meeting is the consideration of transition services for a student, the public agency must invite the student, and, if the student does not attend, take steps to ensure that the student's preferences and interests are considered; (3) proposed Note 2 following § 300.344 in the NPRM has been revised to clarify when public agencies must invite students to their IEP meetings; and (4) § 300.345 (Parent participation) has been revised at paragraph (b)(2) to provide that, if a purpose of the IEP meeting is the consideration of transition services, the notice of the meeting must indicate this purpose, and indicate that the student will be invited.

Comment: Several commenters expressed concern about the requirement in § 300.344(c)(2) of the NPRM that public agencies must ensure that IEP meetings include, "if appropriate, a representative of each other participating agency providing the transition services * * *." The commenters stated that public agencies do not have the authority to require the attendance of personnel from other agencies, and requested that the requirement be deleted, or modified to provide guidance on alternatives for the public agency to follow if other agencies fail to participate (e.g., to require documentation of efforts to involve agencies, or to use other methods to ensure participation).

A commenter requested clarification of the term "a representative of the public agency," as used in § 300.344(a)(1) of the current regulations and proposed § 300.344(c)(1) of the NPRM, noting that the terms appear to be duplicative. Another commenter requested the inclusion of agency representatives who are needed to assist in planning (e.g., case managers or advocates), but whose agencies are not necessarily providing or paying for transition services. One commenter requested that the regulation address the need for providing information on accommodations in postsecondary education and employment that are required under section 504 of the Rehabilitation Act and the Americans With Disabilities Act.

Discussion: The Secretary believes that LEAs need the involvement of, and commitment from, the various agencies that will participate in the provision of transition services to students with disabilities, but agrees with the commenters that LEAs cannot compel the attendance of representatives of transition agencies at IEP meetings. Therefore, the Secretary believes that LEAs need to adopt other methods to ensure the involvement of those agencies (e.g., through individual or conference telephone calls, or correspondence).

The Secretary agrees with the commenter that the provision at proposed § 300.344(c)(1) of the NPRM that requires each IEP meeting to include "a representative of the public agency responsible for providing or supervising the provision of transition services" duplicates the statutory requirement in the current regulations at § 300.344(a)(1) (i.e., "a representative of the public agency * * * who is qualified to provide or supervise the provision of special education").

Under § 300.344(a)(5), participants at IEP meetings are not limited to representatives of agencies that provide or pay for the provision of transition services, but may include, at the discretion of the agency or parents, other individuals who can be helpful in planning transition services. Because § 300.344(a)(5) already provides for the kind of participation requested by the commenter, no further clarification is needed in these regulations. Considering an individual student's need for

reasonable accommodation in post-school environments is an inherent part of transition planning, and is implicit in these regulations. Therefore, it is not necessary to add a requirement on this point.

Changes: Section 300.344(c)(1) of the NPRM has been deleted. The requirement at § 300.344(c)(2) of the NPRM (designated as § 300.344(c)(1)(ii) in these final regulations) has been modified to specify that the public agency must invite "a representative of any other agency that is likely to be responsible for providing or paying for transition services." A provision has been added to specify that if a transition agency fails to send a representative to the IEP meeting, the public agency must take other steps to obtain the participation of that agency.

Content of IEP (§ 300.346).

Comment: A few commenters requested that a note be added to clarify that the statement of needed transition services must be based on current academic, vocational, and functional assessment and evaluation information. Some commenters requested that the regulations specify that the "statement of needed transition services" include (a) goals and objectives, including short-term transitional objectives, and (b) the specific special education services to be provided to the student.

A few commenters requested that the regulations refer to a "plan" rather than a "statement" because this would provide a fully developed schemata for implementation of services. One commenter requested that an exit planning meeting be held prior to graduation to determine if transition goals have been met and if appropriate services are being provided.

Several commenters expressed concern that other agencies would abandon their commitment to provide transition services, and suggested that the regulations require that participating agencies must provide the transition services agreed to in the IEP. Many of these commenters, citing the legislative history of the 1990 Amendments, requested that the Note following § 300.346 be amended to clarify that the statement of agency responsibilities is intended to address shared financial and programmatic responsibility. One commenter suggested deleting the language regarding participating agencies' responsibilities, since that concept is already covered in other areas of the Part B regulations.

Discussion: The Secretary agrees with commenters that it is important to base transition services on current evaluation and assessment information about a student that is derived from a current evaluation that meets the requirements of §§ 300.532 and 300.533.

Nothing in Part B excludes goals and objectives for transition services. However, given that the IEP content requirements in § 300.346(a) do not appear to be appropriate for all types of transition services, the Secretary has determined not to regulate further on this point at this time.

With respect to the request to use the term "plan" in lieu of "statement," the regulation uses the terminology of section 602(a)(20) of the Act. The Secretary believes that it is not necessary to require that an exit planning meeting be held because exit planning should be discussed as a matter of course in IEP meetings on transition services.

The Secretary believes that it is important to ensure that other agencies continue to provide or pay for those transition services for which they are financially and legally responsible. This position is stated in § 300.347(b) of these final regulations (§ 300.347(c) in the NPRM). The Secretary agrees with commenters that the Note following § 300.346 should reflect the legislative history of the Act regarding shared financial responsibilities for transition services.

Changes: A new heading for paragraph (a) ("General") has been added, and the five components of the IEP, as contained in § 300.346 of the current regulations, have been included under that heading. A new paragraph (b) ("Transition services") has been added. The transition services requirements under paragraph (b) have been revised to specify that the IEP for a student must include the three areas listed in § 300.18(b)(2)(i) through § 300.18(b)(2)(iii), unless (1) the IEP team determines that services are not needed in one of those areas, and (2) the IEP includes information to that effect, including the basis for the determination. (The comments and discussion related to these changes are included under § 300.18.)

The Note following § 300.346 in the NPRM (designated as Note 1 in these final regulations) has been revised consistent with the above discussion. A new Note 2 has been added to clarify the requirement in paragraph (b) related to including in a student's IEP the three transition services areas specified in § 300.18(b)(2)(i) through § 300.18(b)(2)(iii).

Comment: Some commenters recommended decreasing the age criterion to "no later than age 14," and requiring a statement of explanation for any 14 or 15-year old student not receiving such services. Another commenter recommended that the required age for providing transition services be lowered to age 15.

Discussion: Section 602(a)(20) of the Act provides that IEPs must include a statement of needed transition services for students beginning no later than age 16, but adds qualifying language related to students below 16 (i.e., "* * * and, when determined appropriate for the individual, beginning at age 14 or younger."). The Secretary believes that it would be inconsistent with the Act to mandate services for all students beginning at age 14 or 15, or to require public agencies to include a statement in a student's IEP explaining why the IEP team determined that transition services were not appropriate.

Although there is no statutory base to mandate transition services for all students beginning at age 14 or younger, the Secretary believes that the provision of these services could have a significantly positive effect on the employment and independent living outcomes of these students in the future, especially for students who are likely to drop out before age 16. As indicated in the Report of the House Committee on Education and Labor on Public Law 101-476:

> Although this language leaves the final determination of when to initiate transition services for students under age 16 to the IEP process, it nevertheless makes clear that Congress expects consideration to be given to the need for transition services for some students by age 14 or younger. The Committee encourages that approach because of their concern that age 16 may be too late for many students, particularly those at risk of dropping out of school and those with the most severe disabilities. Even for those students who stay in school until age 18, many will need more than two years of transitional services. Students with disabilities are now dropping out of school before age 16, feeling that the education system has little to offer them. Initiating services at a younger age will be critical. (House Report No. 101-544, 10 (1990).)

Therefore, the Secretary encourages public agencies to provide transition services to students below age 16 when there is a need for those services.

Changes: A new Note 3 has been added to reflect the above discussion.

Agency responsibilities for transition services (§ 300.347).

Comment: Several commenters expressed concerns about the costs of transition services to educational agencies and requested clarification about the financial responsibilities of other agencies for these services. Two commenters suggested that the regulations require interagency agreements concerning transition

services. One commenter suggested that the requirement to reconvene the IEP team in proposed § 300.347(a) be deleted. One commenter requested that the regulations include a time limit for reconvening the IEP team when a participating agency fails to provide agreed upon services. Another commenter requested that the requirement to reconvene be revised to specify that only the agencies necessary to the particular issue attend the meeting. One commenter requested that the phrase "to be implemented" be deleted from the description of the "alternative strategies" that the reconvened team would identify.

Discussion: Comments regarding the costs of providing transition services are discussed under § 300.346. It is not necessary to add a provision requiring interagency agreements on transition services because the requirements of § 300.152 ("Interagency agreements") apply to transition services.

The Secretary agrees that, in order to ensure that there will not be any undue delay in providing needed transition services to a student, the regulation should include some time-limited standard for reconvening a meeting to identify alternative strategies. The Secretary also agrees that the phrase "to be implemented" is unnecessary. However, the Secretary believes that the statute, which requires that the IEP team be reconvened, requires the public agency to reconvene all members of the team.

When an IEP team is reconvened, an alternative strategy may be able to be identified without changing the student's IEP. In other cases, the IEP team may find it necessary to revise the IEP to include alternative ways to meet the goals that were identified.

Changes: Section 300.347(a) has been revised by (1) requiring that the meeting of the IEP team be initiated "as soon as possible," after a participating agency fails to provide agreed-upon services, (2) deleting the phrase "to be implemented," and (3) adding at the end of the paragraph "and, if necessary, revising the student's IEP."

In addition to changes made based on the comments received, the following other changes have been made: (1) the definition of IEP in § 300.340 of the current regulations is now designated § 300.340(a); (2) the definition of "participating agency" in proposed § 300.347(b) has been moved from § 300.347 and added as a definition under new § 300.340(b); and (3) proposed § 300.347(c) in the NPRM has been redesignated as § 300.347(b).

Comment: Several commenters requested that the regulations clarify that transition services can continue to be provided to students after graduation. One commenter asked for clarification of the responsibility to reconvene the IEP team after graduation.

Discussion: Part B of the Act neither requires nor prohibits the provision of services to a student after the student has completed the State's graduation requirements. Thus, if a student is still within the eligible age range for FAPE within the State, the State, at its discretion, could continue to provide needed transition services to the student and use funds under this part to pay for the transition services, or contribute to the cost of those services through a shared cost arrangement with another agency—provided that all applicable requirements of this part are met.

Changes: None.

General (§ 300.380).

Comment: A few commenters requested that the proposal to require the highest requirements in the State applicable to a specific profession or discipline be eliminated. Another commenter requested that the "highest standards" be defined, and one commenter asked if these standards applied to related services and support personnel.

Discussion: The Secretary believes that a State's CSPD should be consistent with the personnel standards requirements in § 300.153. Those standards apply to all personnel who provide special education or related services to children with disabilities. "Highest requirements in the State applicable to a specific profession or discipline" is defined in § 300.153 to be State-specific.

Changes: No change has been made in response to the comments. However, a technical change has been made by Public Law 102–119 to require that States ensure that the CSPD under Part B is consistent with the purposes of the IDEA and the CSPD for the Part H program.

Adequate supply of qualified personnel (§ 300.381).

Comments: Several commenters requested that proposed § 300.381(c) be deleted or clarified to indicate that it is not mandatory for all teacher aides to acquire credentials for teaching special education from institutions of higher education. One commenter requested that the requirement in the current § 300.381(a) that other agencies have the opportunity to participate in the development, review, and annual update of the CSPD be retained. Another commenter requested the addition of consumer and parent involvement in the plan development. One commenter requested reorganization of the section for consistency with the statute. A few commenters requested clarification of the term "leadership personnel." Some commenters requested clarification concerning whether the provisions of this section apply to personnel who are seeking advanced degrees or degrees in new areas of specialization. One commenter requested that proposed § 300.381 include a specific reference to § 300.153(a).

Discussion: The Secretary agrees that § 300.381(c) should be deleted from the regulations. While States may choose to take steps to enable teacher aides and other paraprofessionals to acquire the necessary credentials for teaching special education as one method to ensure an adequate supply of qualified personnel, it is not appropriate to require that all States use this option.

Section 300.383(b)(3) specifies the kinds of personnel that are included under "leadership personnel." With respect to whether the provisions of this section apply to personnel who are seeking advanced degrees or degrees in new areas of specialization, a State is not prohibited from using funds under this part for those purposes so long as this use is not inconsistent with the priorities in §§ 300.320–300.324.

The Secretary believes that it is not necessary to add a requirement related to the participation of parents and consumers on a State's CSPD because States are required to obtain their involvement through the State advisory panel required under § 300.650. This panel has among its functions, responsibility for advising the SEA of unmet needs within the State and commenting publicly on the State's Part B plan and regulations (see § 300.652). The membership of this panel must include "persons involved in or concerned with the education of children with disabilities," such as parents as well as representatives from a wide variety of groups. State educational agencies also have the discretion to expand the membership of this panel as needed (see § 300.651). In addition, there is nothing in the Act or this part that would preclude States from consulting with parents and consumers on their CSPDs.

The Secretary does not believe that further changes to the proposed regulations in this section are necessary. The regulations proposed in the NPRM reflect the Secretary's intention to increase States' flexibility in ensuring comprehensive personnel development.

Changes: Section 300.381(c) has been deleted.

Personnel preparation and continuing education (§ 300.382).

Comments: Commenters requested the deletion of proposed § 300.382(b) because it defined regular education personnel too narrowly and conflicted with the LRE requirements at § 300.550. Two commenters requested that § 300.382 of the current regulations, which addresses inservice training, be retained; one of the commenters also requested that the section be revised to provide for the training of hearing officers, administrative law judges, and parents. Another commenter suggested that the procedures and activities required by proposed § 300.382(a) should be explicitly tied to a specific needs assessment process.

Discussion: The Secretary agrees with commenters that proposed § 300.382(b) should be deleted from the final regulations because it implies that public agencies must provide such preparation only to certain categories of regular education personnel. Section 300.550 of the regulation requires that, to the maximum extent appropriate, children with disabilities are to be educated with children without disabilities. Through the implementation of this requirement, all regular education personnel, including administrators, teachers, counseling staff, and paraprofessionals, are potentially involved in the provision of education or services to children with disabilities.

With respect to the training of hearing officers, administrative law judges, and parents, § 300.370(b)(2) already permits a State to use funds under this part for that purpose.

The Secretary does not agree that the other requested changes should be made. The requirements proposed in the NPRM reflect the Secretary's intention to increase States' flexibility in this area. The Secretary believes that sufficient guidance is provided.

Changes: Section 300.382(b) has been deleted. A statement has been added to clarify that a purpose of the system of continuing education is to enable regular and special education and related services personnel to meet the needs of children with disabilities under Part B.

Data system on personnel and personnel development (§ 300.383).

Comment: Some commenters requested the inclusion of data on vision specialists, and several commenters requested the inclusion of data on personnel providing assistive technology. One commenter requested clarification of what types of special education personnel, in addition to the list of related service personnel provided in the NPRM, are covered by § 300.383(b)(2). Clarification on data collection regarding contract providers as opposed to personnel who are employees was requested.

One commenter suggested use of the phrase "profession and discipline" instead of "area of specialization" in § 300.383(c). Another commenter requested the deletion of the data requirements in § 300.383(b)(1)(ii) concerning personnel who do not hold appropriate State certification, licensure or other credentials comparable to certification or licensure for that profession or discipline. This commenter proposed the addition of data requirements in two categories: Personnel who meet and those who do not meet the highest requirements in the State. Other commenters stated that the data collection requirements constituted an unreasonable burden on the States and that the data were not relevant to providing special education and related services. Another commenter stated that the States do not have the necessary authority to collect the data regarding higher education.

Several commenters objected to the deletion of §§ 300.384–300.387. One commenter requested that the regulations require inclusion of the data specified in § 300.383 in the State plan.

Discussion: Section 300.383(b)(2) of the NPRM requires the collection of data regarding all personnel who provide or are needed to provide special education and related services, including vision specialists and personnel providing assistive technology. The Secretary believes that sufficient guidance is provided in this section and that no other clarification is needed. In response to requests for changes in the language in the section, as well as questions regarding the authority to require data, the language referred to and the authority to require data were added by Public Law 101–476, and the Secretary regards those provisions as sufficient. Finally, the CSPD provisions in the NPRM simplify and distill the fundamental requirements contained in §§ 300.384–300.387 of the current regulations and fully implement requirements added by Public Law 101–476. The new provisions give States greater flexibility in implementing the CSPD requirements than was possible under the current regulations. Therefore, the Secretary believes that the language in the NPRM should be retained in the final regulations.

Changes: None.

Prior notice; parent consent (§ 300.504(d)).

Comment: The proposed § 300.504(d) provides that States establishing additional State consent requirements must ensure that public agencies have informal and formal procedures for dealing with parental withholding of consent to those requirements. Some commenters suggested deleting all or part of § 300.504(d), stating that current procedures are adequate to ensure the provision of services to children; one of those commenters recommended that no requirements be added unless they are expressly found in the statute.

Some commenters indicated that in order to increase the States' flexibility when a parent withholds consent under additional State consent requirements, informal procedures for resolving disagreements between the parent and the public agency should be encouraged but not required. One commenter requested standards for informal procedures. Commenters also expressed concern about the potential for confusion if States are permitted to adopt additional consent requirements. A commenter indicated that proposed Note 3 should be revised to make it permissive to use formal procedures if informal procedures fail. One commenter requested modification of § 300.504(d) to provide for an expedited resolution in the form of an intermediate ruling so that a change in placement could occur before final resolution of an administrative proceeding.

Discussion: The Secretary believes that States should have the discretion to adopt additional parental consent requirements. Nothing in the Part B statute prohibits a State from implementing additional consent requirements that give parents additional procedural protections and do not otherwise conflict with the procedural protections guaranteed under Part B. The provisions that have been added to § 300.504 are for the purpose of ensuring that additional State consent requirements will be implemented in a manner that is consistent with the procedural protections guaranteed under Part B.

The Secretary agrees that proposed paragraph (d)(2), which requires informal and formal procedures for overriding parental withholding of consent, and proposed paragraph (d)(3), which permits States to designate the due process procedures in §§ 300.506–300.513 as the formal procedures for overriding parental withholding of consent, should be deleted to avoid imposing an additional and unnecessary burden on States, and to give States flexibility in implementing consent override procedures. However, with regard to additional State consent requirements, consent override procedures must be implemented, if necessary, to ensure that children with disabilities continue to receive FAPE. In

addition, the Secretary believes that it is important for the prohibition of the current § 300.504(b)(2) that "[e]xcept for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child" to apply to any other areas in which the State requires consent.

Changes: Sections 300.504(d)(2) and 300.504(d)(3) of the NPRM have been deleted. The consent requirements in the current regulations have been reorganized and revised (1) to provide that if a State requires additional consent requirements, the State must ensure that each public agency in the State establishes and implements effective procedures to ensure that individual children continue to receive FAPE, and (2) to ensure that a public agency does not require parental consent as a condition of any benefit except for services or activities covered by the Federal consent requirements and the additional State consent requirements. Note 3 has been revised to indicate that if parental consent is refused, and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, the agency must implement its procedures to override the refusal.

Hearing rights (§ 300.508(a)(5)).

Comment: Commenters wondered whether the Secretary had the authority under the statute to require that hearing decisions be made public and expressed concern about the cost of implementing this requirement without the addition of new funds. One commenter requested the addition of "within a reasonable time" as a time frame for availability of the decisions. Commenters also requested clarification concerning which hearing decisions are covered and what format is required for dissemination of decisions. One commenter requested that administrative complaint decisions also be included within this requirement. One commenter suggested that summaries be permitted.

Discussion: The Secretary believes that no change is necessary for this section. The requirement that the public agency make hearing findings and decisions available to the State advisory panel and the general public after deleting any personally identifiable information is set forth at 20 U.S.C. 1415(d)(4). It is not necessary to add language requiring that the decisions be made available "within a reasonable period of time" because that concept is implicit.

The types of hearing decisions that must be made available to the public and transmitted to the State advisory council include due process hearing decisions under § 300.506(a) and review decisions under § 300.510 (see comment and discussion under § 300.510, following). The provisions of 20 U.S.C. 1415(d) do not apply to administrative complaint decisions under §§ 300.660–300.662. However, those decisions may be made available to the public at the discretion of the SEA. The format for disseminating decisions is also an individual SEA decision.

Changes: None.

Administrative appeal; impartial review (§ 300.510(c), (d), and Note 1).

Comments: The NPRM proposed to add a new paragraph (c) to § 300.510, and to revise Note 1 following the section, to clarify which officials may not conduct State-level reviews under this program. A number of commenters requested that the proposed paragraph and note be deleted from the final regulations. The comments included objections that the regulation goes beyond the scope of IDEA, and that it is contrary to some judicial opinion. One commenter stated that the regulation does not recognize that there is a distinction between the statutory requirements applicable to hearings and to State-level reviews. Another commenter stated that the proposed regulation conflicts with the SEA's obligation to conduct a review. One commenter felt that the need for the individual conducting the review to have special knowledge and training virtually required that the person be employed by the SEA. A commenter requested that the regulation be revised to permit the SEA to hire individuals whose primary role would be to conduct reviews, with some conditions established to ensure impartiality. Other commenters requested (1) further definition of "employee" of the SEA or any other public agency that may not conduct a review, (2) that language be added to indicate that the review may not be conducted by a person having a personal or professional interest that would conflict with the person's objectivity, and (3) that the regulation require knowledge of special education by the reviewing official.

A commenter requested that the requirement at proposed § 300.508(a)(5) concerning transmitting written findings of fact and decisions to the State advisory panel be applied to State-level review decisions.

Discussion: Based on the lack of consensus about the proposed change on State-level review officials and the wide variety of alternative suggestions offered, the Secretary has determined that the current regulation remains the best guidance at this time.

The Secretary interprets the requirement set forth at 20 U.S.C. 1415(d)(4) to require that both hearing and review decisions must be available to the public and transmitted to the State advisory panel.

Changes: Proposed § 300.510(c) and the change in Note 1 have been deleted. Paragraph (c) of the current regulations (regarding the finality of decisions) has been redesignated as paragraph (d), and a new paragraph (c) has been added to require that review findings and decisions be made available to the State advisory panel and to the public, after deleting any personally identifiable information.

Adoption of State complaint procedures (§ 300.660).

Comment: One commenter requested that the requirements on State complaint procedures in proposed §§ 300.660 through 300.662 be deleted because they exceed statutory authority. Two commenters requested that the requirement to review an appeal from a decision of a public agency with respect to a complaint be deleted or revised. Another commenter requested that the complaint procedures be retained in 34 CFR 76.780–76.783 until the proposed §§ 300.660–300.662 have been in effect for a period of time.

Commenters also requested clarification about whether the complainant can by-pass filing a complaint with an LEA and file the complaint directly with the SEA.

Discussion: The Secretary believes that proposed §§ 300.660–300.662, with certain modifications, should be retained and that they are generally consistent with the requirements previously in the EDGAR regulations at 34 CFR 76.780–76.782. The Secretary agrees that clarification is needed regarding the circumstances under which a complainant can file a complaint with an LEA and those when a complainant can file directly with the SEA. Proposed § 300.662 provides for complaints to be filed with the State. However, a revision is needed to allow an SEA, at its discretion, to have procedures that allow complainants to elect to file a complaint with an LEA or other public agency and to request the SEA to review that agency's decision on the complaint. The SEA must review the public agency's decision to ensure that the complaint was resolved.

Changes: Proposed § 300.660 (a) and (b) (redesignated as § 300.660 (a)(1) and (a)(2) in these final regulations) have been revised to specify that the SEA's procedures must provide for filing a complaint directly with the SEA, and may, at the SEA's discretion, permit the

filing of a complaint with the public agency, including the right to have the SEA review the public agency's decision on the complaint. The provision in proposed paragraph (c), regarding the SEA's procedures for conducting an independent on-site investigation of a complaint, has been deleted, because it is already required in the section on "Minimum State complaint procedures" (§ 300.661). Proposed § 300.660(d) has been redesignated as § 300.660(b).

Comment: One commenter requested the deletion of the proposed requirement that parents be informed about complaint procedures because it is too burdensome for public agencies. Another commenter suggested that the requirement to adopt procedures for informing parents about the State complaint procedures be changed to informing complainants.

One commenter requested that the proposed regulation be revised to clarify the scope of complaints that States must investigate and to provide that States are not required to investigate matters that are the subject of a due process hearing under § 300.506. Another commenter requested that mediation be required as a step prior to filing a complaint.

Several commenters requested guidelines and clarification for determining the responsibility of the State to conduct an independent review. Another commenter requested that the regulation be revised to provide that the SEA need not resolve a complaint if it has been resolved voluntarily.

One commenter requested that States be required to make complaint decisions available to the public. One commenter requested that the States be required to submit complaint management procedures as part of the State plan.

A commenter requested that a note be added to indicate that a State may use these procedures to resolve a complaint that an agency is violating the requirements of section 504 of the Rehabilitation Act of 1973.

Discussion: The Secretary believes that it is essential for parents and other interested individuals to be informed about their right to file a complaint and that this requirement is not unreasonably burdensome. Public agencies may choose to provide this information as part of the explanation of procedural safeguards in the notice requirements under § 300.504(a) and § 300.505(a)(1) or § 300.505(a)(2), or may use other means.

The Secretary believes that no further guidance is needed regarding the parent's right to file a complaint and request a due process hearing regarding the same issues. A parent has the right to file a complaint under proposed §§ 300.660–300.662 and to initiate a hearing under § 300.506 regarding the same issue. However, in order to avoid the possibility of inconsistent decisions on the same subject matter and waste of government resources, a State may delay resolution of identical issues raised in a complaint while those same issues are pending in a due process hearing. This does not relieve the SEA of its responsibility to resolve other issues in the complaint that are not identical to those raised under § 300.506.

It is not necessary to include a provision regarding mediation in the regulations. A State may include procedures that permit, but do not require, complainants to participate in mediation prior to filing a complaint. However, those procedures may not be used to deny or delay the right of an individual or organization to file a complaint or use the due process procedures in § 300.506.

The Secretary believes that no further guidance is needed related to conducting an independent review by the SEA, or regarding a State's responsibility to resolve a complaint that has been voluntarily resolved. It is implicit in proposed §§ 300.660 and 300.661 that a State need not resolve a complaint that has been otherwise resolved to the satisfaction of the complainant.

The Secretary believes that it would be unnecessarily burdensome to require SEAs to make complaint decisions available to the public or to include their complaint resolution procedures in their part B State plan.

Changes: None.

Minimum State complaint procedures (§ 300.661).

Comment: Several commenters requested that proposed § 300.661(a)(2), regarding the opportunity for the complainant to submit additional information, be deleted or revised. One commenter suggested that the regulations specify that the respondent should be given the opportunity to submit additional information in response to the allegations of the complainant.

Several commenters stated that the required complaint procedures are too specific. Another commenter requested that proposed § 300.661 be revised to permit a State to determine its own procedures. Other commenters stated that the requirement that written decisions include findings of fact and conclusions and the reasons for the SEA's final decision is burdensome, too formal, and makes the complaint less amenable to resolution.

Discussion: The Secretary believes that proposed § 300.661(a)(2) should be retained. As noted in the preamble to the NPRM, "many complainants have not been consulted in connection with complaint resolutions under this program in instances in which their input could have been helpful in facilitating the complaint resolution. Thus, proposed § 300.661(a)(2) requires each SEA to have procedures for soliciting input from the complainant as part of its minimum complaint procedures." The Secretary believes that as a matter of course the SEA would consider additional information submitted by the public agency that is the subject of a complaint.

The Secretary believes that the provisions in proposed § 300.661(a)(4)(i) and § 300.661(a)(4)(ii), regarding the content of the SEA's written decision to the complainant, should be retained. These provisions do not prescribe the format or level of formality in which this information must be provided. Moreover, the Secretary believes that the information required is the minimum necessary to enable the Secretary to review the final decision of the State where such review has been requested.

Changes: None.

Comment: One commenter requested that the regulations be revised to clarify that either party to a complaint may request review by the Secretary. Another commenter requested that language be added to encourage local resolution of complaints. Another commenter requested a revision to indicate that the 60-day time limit for issuing a written decision does not begin until after all documents have been received by the SEA.

Discussion: The Secretary agrees that proposed § 300.661(d) should be revised to clarify that the public agency that is the subject of the complaint also has the right to request secretarial review.

The proposed regulations neither preclude nor discourage the use of informal or local complaint procedures as an alternative to the formal complaint procedures set forth in these regulations. Some States have pointed to the success of informal conflict resolution procedures as an alternative to the formal procedures set forth in §§ 300.660–300.662. Public agencies may wish to suggest that parents and other complainants use these alternative procedures. However, these alternative procedures may not be used to deny or delay the right of an individual or organization to file a complaint with the State.

The Secretary believes that the 60 day time limit begins on the date that the

complaint is received by the SEA. This requirement is consistent with § 300.671(a) (previously, 34 CFR 76.781(a)) and long-standing Department policy.

Changes: The requirement in proposed § 300.661(a)(1) (regarding the SEA's procedures to carry out an on-site investigation) has been revised to add the statement "if the SEA determines that such an investigation is necessary." (This statement was included in proposed § 300.660(c).) Section 300.661(d) now indicates that a public agency has the right to request secretarial review.

Filing a complaint (§ 300.662).

Comment: Several commenters requested that the regulations be revised to require greater specificity in the content of complaints that are filed under this part. In particular, one commenter suggested that the name and address of the complainant and involved student and the specific requirements of part B that have been violated be required. Commenters further suggested that a note be added to indicate that this requirement may be met by a "factual statement." One commenter requested that submission of anonymous complaints be permitted, and another requested that oral complaints be permitted.

Discussion: The Secretary does not believe that proposed § 300.662 should be revised to set forth additional content requirements for filing complaints under this part. Sufficient guidance is provided in these regulations, and some of the requested changes would be unduly burdensome upon parents and other complainants. The Secretary also does not believe that proposed § 300.662 should be revised to require that States resolve anonymous and non-written complaints. The Secretary believes that it is reasonable for States to require that complaints be written and signed as a part of an orderly complaint resolution process, and that States, at their option, may include these requirements. These provisions are not intended to preclude a State from also accepting and resolving oral complaints if the State chooses to do so.

Changes: None.

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Part III

Department of Housing and Urban Development

Office of Community and Planning Development

Technical Assistance To Support a Coordinated Agenda for the Southwestern Area of the U.S. (CASA) for Colonias; Notice of Funding Availability for Fiscal Year 1993

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

[Docket No. N-92-3491; FR-3314-N-01]

NOFA for Technical Assistance To Support a Coordinated Agenda for the Southwestern Area of the U.S. (CASA) for Colonias

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1993.

SUMMARY: This NOFA announces the availability of $2.3 million in Community Development Technical Assistance Program funds to be used for the purpose of empowering residents of designated "colonias" in the States of California, New Mexico and Texas in their efforts to improve living standards and conditions within their communities. Technical assistance funds will be available for the development of programs for decent, affordable and energy-efficient housing; community water and sewer systems, including drainage systems and hook-up services to colonia residents; promotion of local economic development programs and projects including the establishment of state or federal (if applicable) Enterprise Zones within the colonias; and providing job training and self-employment programs for colonia youth and residents. These funds are to be awarded competitively as follows:

(1) A minimum of $1.5 million for the purpose of empowering colonia residents through the use of Community Development Block Grant (CDBG) funds to improve living conditions and standards within colonias. Eligible applicants include non-profit and for-profit organizations, states and units of general local government responsible for providing services in the colonias. Activities should be focused on technical assistance to finance business development which creates jobs and self-employment opportunities for colonia residents; and addressing problems affecting residents, such as the availability of energy-efficient affordable housing, adequate water and sewer services and drainage systems, platting and subdivision requirements, and other urgent community needs.

(2) A minimum of $800,000 for the purpose of coordinating federal, state and local program services available for colonia residents, including creation of local, "one-stop," service centers. Service centers would use local public or private facilities or mobile facilities to provide colonia residents with a variety of social and informational services funded in whole or in part with CDBG funds. Centers would also be used to coordinate services and programs available under the CDBG program and the Section 916 set-aside with other federal, state, local or private sector resources.

In the body of this NOFA is information concerning:

(1) The principal objectives of the two technical assistance competitions described above, the funding available, eligible applicants and activities, and factors for award;

(2) The application process, including how to apply and how selections will be made; and

(3) A checklist of application submission requirements.

DATES: The application due date will be specified in the application kit. Applicants will have at least 75 calendar days to prepare and submit their application. The 75-day response time will begin to run from the first date the application kit is available. The application kit will set out a specific date and hour deadline for submission of applications that will be enforced strictly. Applicants are encouraged to submit their materials early to avoid disqualification based upon failure to meet the stated application deadline.

EFFECTIVE DATE: Applications may be requested beginning September 29, 1992.

APPLICATION KIT: To obtain a copy of the application kit, contact: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. Requests for application kits must be in writing, but requests may be faxed to: (202) 708–3363 (this is not a toll-free number). Requests for applications kits must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to "document FR–3314".

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7214, Washington, DC 20410. Telephone Number (202) 708–3176; TDD Number: (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2535–0084.

I. Purpose and Substantive Information

A. Authority

This competition is authorized under section 107(b)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (the ACT). Program requirements (including eligible activities) applicable to awards made under this competition are contained in HUD regulations at 24 CFR 570.400 and 570.402, governing the Community Development Technical Assistance Program.

Note: Section 570.402 of the regulation was revised on August 26, 1991, 56 FR 41936–41940. All references in this NOFA to § 570.402 are to that section, as revised.

Any proposed technical assistance activities must meet the eligibility requirements established in the regulations and as limited by this NOFA.

For purposes of this NOFA:

The term "colonia" means any identifiable community that—

(1) Is in the State of California, New Mexico, or Texas;

(2) Is located within 150 miles of the United States-Mexico Border and if in a standard metropolitan statistical area, the population of the standard metropolitan statistical area cannot exceed 1,000,000 residents.

(3) Is designated as a colonia by the State or county in which it is located;

(4) Is determined to be a colonia on the basis of objective criteria, including lack of a potable water supply, lack of adequate sewage systems, and lack of decent, safe and sanitary housing; and

(5) Was in existence and generally recognized as a colonia before the date of enactment of the National Affordable Housing Act of 1990. [November 28, 1990]

This definition is substantially the same as the definition set forth in section 916(d) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 5308 note).

The term "Enterprise Zone" means any area designated as such under state law or under the federal Enterprise Zones statute (if enacted).

B. Allocation Amount and Form of Award

This NOFA announces the availability of $2.3 million in Technical Assistance Program cooperative agreements to provide for coordinated and strategic

economic and community development and for affordable housing within "colonias" as defined in Section I.A. of this NOFA. HUD reserves the right to increase the amount of funds for the competitions held under this NOFA by up to $1 million per competition, should additional funds for the purpose of section 107(b)(5) of the Act become available before the time of award. These funds are to be awarded competitively in accordance with the following:

(1) For the $1.5 million competition, HUD will make available a minimum of $1.5 million for the purpose of empowering colonia residents through use of CDBG program and Section 916 funds to improve living conditions and standards within a designated colonia.

Subject to the receipt of qualifying applications, cooperative agreements in amounts up to $200,000 each, will be awarded to States, units of general local government and non-profit and for-profit organizations as specified in Section I.D. "Eligible Applicants".

This competition will be referred to in this document as the "$1.5 million competition".

(2) A minimum of $800,000 in Technical Assistance Program cooperative agreements will be made available for the purpose of coordinating CDBG and Section 916 funds with other Federal, State and local program resources and making services available for colonia residents in local "one-stop" service centers. The service centers would use local public or private facilities or mobile facilities to provide colonia residents with a variety of social and informational services convenient for their use.

Subject to the receipt of qualifying applications, one or more cooperative agreements will be awarded to states with a CDBG set-aside under section 916 of the National Affordable Housing Act of 1990 for colonias; and/or to non-profit and for-profit organizations qualified to provide technical assistance services to CDBG communities.

For this $800,000 competition, awards will be made in accordance with the following schedule:

Applicants may apply for funds to coordinate the delivery of CDBG funded programs and services made available to a colonia with other federal, state and local resources. Applicants who wish to coordinate services to colonias on a statewide basis may apply for a cooperative agreement in an amount up to $100,000 each for the state of California and up to $350,000 each for the states of New Mexico and Texas.

Applicants may apply for up to $800,000 in technical assistance program funds to provide coordinated delivery of services to colonias within all three states identified as eligible for assistance under this NOFA.

Section 107(b)(5) of the Act authorizes HUD to award funds for the purpose of providing technical assistance in planning and carrying out CDBG programs under Title I of the Act. Under each of these competitions, HUD will fund the applicants who best meet the criteria for the selection identified in this NOFA under the Factors For Award. HUD reserves the right to negotiate the final award amount and Statement of Work with all applicants. If HUD determines a smaller cooperative agreement amount than that requested would be appropriate to the proposed activities, HUD may reduce the amount of funding for an applicant. If HUD receives an insufficient number of applications in a given competition, or if funds remain after all acceptable applications have been funded, HUD may negotiate increased amounts of cooperative agreement awards with applicants selected for funding within any or each competition category in the NOFA.

C. Description of Technical Assistance Competition

The colonias along the U.S.-Mexico border are located in rural counties ranking among the poorest in the nation. These communities have existed since the 1960s, but conditions have become critical as the populations along the border area have continued to increase. It is estimated that as many as 200,000 people live in the four-county area of the Rio Grande Valley, and it is projected that by the year 2000, the population will increase to one-half million. In 1980, the thirty-county border region held an estimated 1.4 million people. By 1984, the growth of the population had reached 1.6 million, and estimates for the year 2000 call for a population in the region of 2.4 million. In many of the colonias throughout the border area, residents are predominantly hispanic, with incomes below the poverty level and there are no, or limited, economic development opportunities or job prospects for area residents. Four out of the five counties in the nation with the lowest per capita income are in this border region.

Aside from the high poverty rate, other factors continue to contribute to the problems facing colonia residents in the border region. These factors include: Unincorporated illegal subdivisions which inhibit or prevent the delivery of basic water and sewer services to many of these areas; a lack of natural resources and drought conditions; lack of adequate roads or drainage systems; lack of affordable housing; and a high birth rate and poor health care services. In many instances, these areas have "fallen through the cracks" because of a lack of common definition among federal, state and local programs, leaving these areas without a source of funds to provide decent affordable housing, potable water supplies and sewage systems, and economic development opportunities to improve income levels while providing stable long-term employment opportunities to residents of colonias throughout the region.

The Congress, by enacting section 916 of the National Affordable Housing Act of 1990, recognized the special needs of colonia residents and established a set-aside of Community Development Block Grant funds to address the community and economic development needs of residents of these areas.

Activities to be funded with CDBG funds included planning for water, sewer and housing activities, and payments for any charges levied against properties owned and occupied by low- and moderate-income persons to cover the cost of the public improvement—such as hook-up services. While Congress included the state of Arizona under the provisions of section 916, the State of Arizona has indicated to HUD that it has no colonias and has requested exemption for the provisions of section 916. HUD has honored the state's request and therefore has limited eligibility for this competition to the states of California, New Mexico and Texas.

The objectives of this technical assistance program are to:

(1) Produce improved living standards for the residents of colonias in the States of California, New Mexico and Texas through development of programs for decent, affordable, energy efficient housing; job training and self-employment for colonia residents and youth; local economic development programs and projects; community water, sewer and systems, including drainage systems and hook-up services; and energy systems for colonia residents. (The $1.5 million competition.)

(2) Assistance to create local service centers within colonias, either using existing or new local facilities, or to create mobile service centers for coordinated delivery of state, federal and local programs to residents of colonias. Activities may also include the implementation or design of mechanisms to facilitate or finance public works activities, including transportation, parks, hospital and

health care facilities or schools. (The $800,000 competition.)

D. Eligible Applicants

For the $1.5 million competition:

(1) Units of general local government eligible for CDBG funds under the Entitlement Program (24 CFR part 570, subpart D) which contain colonias as defined in this NOFA;

(2) Units of general local government receiving funds, or eligible to receive funds, under the State-administered Program for Non-entitlement Communities (24 CFR part 570, subpart I) in states with colonias as defined in this NOFA;

(3) The states of California, New Mexico and Texas, with a set-aside of funds under section 916 of the National Affordable Housing Act of 1990 for colonias; and

(4) Non-profit (including resident management councils and resident management corporations) and for-profit organizations qualified to provide services to the CDBG entities identified in paragraphs (1)–(3) above in the form of technical assistance in planning, developing or administering their CDBG/Title I-funded programs.

For the $800,000 competition:

(1) The states of California, New Mexico and Texas with a CDBG set-aside under section 916 of the National Affordable Housing Act of 1990 for colonias; and

(2) Non-profit and for-profit organizations qualified to provide technical assistance services to states, areas within states and CDBG communities in the Southwest Border region with areas designated as colonias as defined by this NOFA.

E. Program Requirements

This program is funded under the technical assistance program of section 107(b)(5) of title I of the Housing and Community Development Act of 1974. Technical assistance funds must be used for the provision of skills and knowledge to improve effectiveness in planning, developing and administering CDBG-assisted activities. Technical assistance activities funded under these competitions must be directed at implementation of programs for community and economic development or housing, or both, and coordination of services which are being, or are planned to be carried out (in whole or in part) with CDBG program funding provided by states or units of local government participating in the CDBG Entitlement Program or the State-administered Program for Non-Entitlement Communities. Applicants must establish a CDBG nexus between activities they propose to undertake in response to this NOFA and activities funded with CDBG funds that the technical assistance is proposed to assist.

(1) CDBG Nexus Eligibility Criterion for Entitlement Communities

A "CDBG nexus" exists if the technical assistance activities proposed by the applicant for funding through this NOFA are to be used by the awardee to develop, coordinate or implement specific community and economic development or housing programs, or both, or to coordinate services which are being, or are planned to be carried out, in whole or in part, with an entitlement city's or urban county's CDBG program funds, or with funds made available to an entitlement jurisdiction under the state's section 916 set-aside for colonias.

Proof of nexus shall consist of a statement signed by the Chief Executive Officer of the CDBG-funded community, or the Director of the agency administering the CDBG program funds, that identifies:

(a) The amount of CDBG program/Section 916 funds committed, or planned to be committed, to the activities for which the technical assistance is provided;

(b) The planned date the CDBG/Section 916-funded activities will commence and, where an amendment or other action is needed to carry out the funded activities, a statement of intent to effect the needed amendment or other action;

(c) The specific activities to be undertaken with the CDBG/Section 916 assistance;

(d) The location of the colonia or colonias to be assisted; and

(e) The relationship between the CDBG/Section 916 activities and the proposed strategic development and coordinated service technical assistance activities.

(2) CDBG Nexus for State Applicants

State applicants must establish a nexus between the technical assistance funded under this competition and the activities to be assisted in whole or in part with funds provided to units of general local government under the state's CDBG program or under the provisions of section 916 of the National Affordable Housing Act of 1990. A nexus exists where the technical assistance activities are directed to the development, planning, administration or implementation of specific CDBG/Section 916-assisted activities to improve the living standards for colonia residents.

Proof of nexus shall consist of a statement signed by the Director of the State-Administered CDBG Program for Non-Entitlement Communities, certifying that the technical assistance will be made available only in units of general local government which:

(a) Are undertaking, or have been approved to undertake, community, economic or housing development programs; or to coordinate service delivery activities within colonias with CDBG program/Section 916 funds;

(b) Are not currently using their CDBG funds to undertake programs or coordinate service delivery activities within colonias, but the state will grant a program amendment to permit such activities;

(c) Will be given a funding priority or a commitment of CDBG program/Section 916 funds for community, economic development, or housing programs, or for coordinating the delivery of services within colonias, in the state's next non-entitlement program or Section 916 set-aside funding round.

(d) Plan to submit an application for funding under Section 916 of the state's CDBG colonias set-aside.

The statement must also certify that where technical assistance is provided by the state with funds made available under this competition, the activities will be in addition to, or an enhancement of, the state's existing obligation to provide technical assistance to non-entitlement communities under the CDBG program, pursuant to the state's certification made in accordance with section 106(d)(2)(C)(ii) of the Housing and Community Development Act of 1974.

(3) CDBG Nexus for Non-Entitlement Community Applicants

A non-entitlement community must commit funds from a CDBG grant it currently is administering. If the community's current CDBG program grant does not authorize community, economic development or housing programs or coordinated service activities for colonias, the statement of CDBG funding commitment must be conditioned on receiving an amendment to the community's CDBG program to permit such activities. In this situation, the statement of the non-entitlement community must include a statement of intention to amend its CDBG program to permit such activities for the colonias in accordance with applicable state requirements.

If the non-entitlement community is proposing to effect a CDBG program amendment to permit community development, economic development,

housing or coordinated service activities for a colonia, the applicant must obtain a letter from the state indicating that the state will review and consider the amendment. The letter must be included with the application.

The CDBG nexus for non-entitlement community applicants may also be met if the unit of general local government applying for funds under this NOFA certifies that it will submit an application for CDBG funding under the State-Administered Program for Non-entitlement Communities or for Section 916 funding under the state's colonias set-aside.

(4) CDBG Nexus for Non-Profit and For-Profit Organizations

A CDBG nexus exists if the technical assistance activities proposed by the applicant for funding under this NOFA are to be used by states, entitlement communities or non-entitlement communities to plan, develop or administer programs funded under the Community Development Block Grant Program, or the CDBG set-aside for colonias established under Section 916 of the National Affordable Housing Act of 1990, or to prepare applications for assistance under the CDBG program or section 916. The submission requirements to indicate proof of CDBG nexus flow from the type of applicant to whom assistance is given, as follows:

(1) If a non-profit or for-profit organization is to provide technical assistance services to an entitlement community, the non-profit or for-profit organization must meet the proof of nexus requirements for entitlement communities (see item E.(1), above).

(2) If a state is to be provided with technical assistance services, the proof of nexus submission must meet the requirements for state applicants as described in item E.(2), above.

(3) If technical assistance services are to be provided to non-entitlement communities, the non-profit or for-profit organization must meet the proof of nexus requirements for non-entitlement communities as described in item E.(3), above.

Applicants that will be providing technical assistance services on a multi-state basis must receive proof of nexus from each state receiving assistance.

(5) Designation of Non-Profit and For-Profit Organizations as Technical Assistance Providers

A non-profit or for-profit applicant proposing to provide technical assistance to a community or to a state, or to an agency of the state, must obtain a letter from the state (or states, if proposing to provide assistance in all three states) or local governments, designating the non-profit or for-profit organization as a technical assistance provider. The letter must state specifically that the applicant is "designated" as a technical assistance provider to the state or local government (as appropriate) for the purposes of providing assistance to colonia residents to improve their economic and living environment. The letter of designation must be signed by the chief executive officer of the state or unit of general local government to receive the technical assistance services or by his or her authorized representative.

Designation letters should be clearly marked with the Request for Cooperative Agreement Application (RFCAA) number and the name of the applicant. (Failure to include the RFCAA number and the name of the applicant may result in the letter being misfiled or lost through no fault of the Department. This could prevent the applicant from receiving a cooperative agreement.)

(6) Language Proficiency and Experience in Providing Community and Economic Development Assistance in the Southwest Border Region

All applicants will be expected to demonstrate:

(a) Staff proficiency in the Spanish language, particularly dialects that may be prevalent in the colonias proposed to receive assistance under this competition;

(b) Familiarity with the customs and life styles of residents in communities designated as colonias and selected to receive technical assistance services;

(c) Familiarity and expert knowledge about the history and development of colonias in the states identified as eligible for the CDBG set-aside established in section 916 of the National Affordable Housing Act of 1990;

(d) Familiarity with subdivision development requirements, including platting requirements and issues, which have an impact upon the provision of water, sewer and other services to colonia residents, and expert knowledge concerning issue resolution; and

(e) Experience in providing technical assistance services to communities within the southwest border region, particularly communities designated as, or adjacent to, colonias.

(7) Requirements for CDBG Program Amendments

If a non-entitlement CDBG community in which the technical assistance is to be provided has a CDBG program for which assistance to colonias activities are not authorized, the required statement of CDBG funding commitment (described in the above section I.E., Program Requirements, of this NOFA) must be conditioned on an amendment of the CDBG program to permit these activities. The statement must include a statement of intent to effect the amendment in accordance with state CDBG program requirements and procedures.

In the case of a community funded under the State-administered CDBG program, HUD must also receive with the application a letter from the state indicating that the state will review and consider the amendment. Failure to receive this letter (if applicable) with the application will disqualify the applicant from further funding consideration.

F. Eligible Activities

Eligible technical assistance activities are specified in 24 CFR 570.402(d). The technical assistance must be for the provision of skills and knowledge to facilitate the planning, development and administration of CDBG-funded activities aimed at improving the living standards of colonias residents and coordinating resources with other federal, state or local program resources. Examples of activities applicants can undertake under each competition are identified below.

Activities Under the $1.5 Million Competition

Activities undertaken are to provide technical assistance services to implement a variety of community and economic development programs, projects or activities that would improve the living environment of colonias residents. Eligible technical assistance activities are specified in 24 CFR 570.402. Examples of the broad array of eligible activities are:

(1) For Economic Development Programs, Projects or Activities

- Identifying specific sites or locations in colonias to be targeted for economic development programs, projects or activities, including business development activities;
- Establishing public-service partnerships to finance economic and business development in colonias;
- Identifying sources of capital and securing startup and operating financing for new resident-owned micro and small businesses in colonias;
- Preparing cost estimates, feasibility studies, market analysis, or estimates of infrastructure requirements or other elements necessary to obtain economic and business development financing;

• Identifying and securing builders/developers to undertake the proposed economic or business development program, project or activity;

• Developing training programs to permit residents to colonias to obtain jobs resulting from the proposed economic or business development activities;

• Creating self-employment programs which include training and mentor programs for colonias residents participating in self-employment programs;

• Identifying financial intermediaries committed to economic development in colonias, and securing non-federal development capital for proposed economic development programs, projects or activities;

• Promoting private sector-funded incubators for micro and small business development within colonias;

• Identifying job opportunities for colonia residents with established companies and providing job training to meet the job skills required;

• Creating self-employment programs for colonia residents, including programs for youth entrepreneurs;

• Training residents to become economically self-sufficient by obtaining skills to become home construction workers, plumbers, electricians, carpenters, painters, etc.

(2) For Community Development Programs, Projects or Activities

• Addressing platting issues and requirements to remove impediments and barriers that prohibit implementing community and economic development activities, and creating affordable housing;

• Identifying colonias, or areas within colonias, where CDBG economic development activities would occur, and where creation of a state or federal (if applicable) Enterprise Zone would improve or assist the implementation of the CDBG-funded economic development activities;

• Creating Community Development Corporations to sponsor and undertake a variety of community development activities within a colonia;

• Developing plans and financing for public facilities such as community centers, meeting rooms, or recreation facilities within a colonia;

• Developing strategic plans to manage growth and development within a colonia;

• Providing for citizen participation to allow residents greater access and participation in developing and implementing community development programs, projects or activities;

• Devising financing systems to provide small water districts with the funds necessary to cover upfront costs for engineering, construction, operation and maintenance of community sewer, water, and energy systems;

• Developing mechanisms that permit colonia residents to pay for initiation of water and sewer services through installment payments, rather than a single up-front payment;

• Planning and designing residential and commercial streets and street lighting;

• Identifying models that can be used by colonia residents for the development of sewer and water systems, drainage systems, and street and road construction/maintenance;

• Streamlining government agency operations to create greater efficiency in the planning and use of funds for community and economic development in colonias;

• Providing technical assistance to community groups, organizations and residents in colonias to prepare applications for CDBG funds;

• Providing training to colonias residents to overcome language barriers that may inhibit residents from understanding and competing for funds made available under the CDBG program for colonias;

• Researching and clearing title to properties to permit construction of community and economic development or housing projects, or both, or related programs or activities.

• Providing technical assistance services to permit illegal subdivisions to be improved to meet state and local regulatory requirements, including meeting platting requirements so that building permits for CDBG/Section 916-funded community and economic development and/or housing projects, programs or activities can be legally issued.

(3) For Housing Programs, Projects or Activities

• Improving the administration of CDBG-funded HOME and HOPE 3 programs in colonias;

• Creating self-help housing programs in colonias as a means of providing more affordable, energy efficient housing for colonias residents;

• Establishing financing programs to enable colonia residents to own their own homes at an affordable price;

• Training colonia residents in new home construction techniques and rehabilitation methods for existing units, including energy efficient designs and renovations;

• Training colonia residents to become residential home builders, through on-the-job training and involvement in building and rehabilitation of housing within their colonias;

• Preparing documents necessary to obtain financing for construction and rehabilitation of low- and moderate-income housing in colonias;

• Identifying sites or areas suitable for prefab or mobile home manufacturers to locate within, and supply affordable housing to, colonia residents;

• Streamlining or eliminating government regulations to make housing more affordable to colonia residents;

• Creating homeownership opportunities for colonia residents through initiation of self-help housing construction programs and other residential ownership options;

• Training colonia residents in energy efficient construction and retrofit techniques and energy efficient use within the residences.

Activities Under the $800,000 Competition

• Activities undertaken by states and nonprofit and for-profit organizations qualified to provide technical assistance services are to provide technical assistance services to CDBG communities to coordinate federal, state and local resources for colonia residents and make services available to colonia residents in convenient "one-stop" centers. Eligible technical assistance activities are specified in 24 CFR 570.402. Examples of the broad array of eligible activities are:

• Identifying federal, state and local government regulations, whose elimination (even temporarily) would remove impediments to creating or expanding CDBG funded businesses, water and sewer systems, energy systems or housing; and preparing appropriate waiver requests to eliminate or ameliorate such restrictions;

• Identifying government-required fees, permits, or licensing charges whose elimination (even temporarily) would remove impediments to the creation or expansion of CDBG/Section 916-funded business opportunities, necessary infrastructure, or affordable housing in colonias in the southwest border region;

• Providing technical experts who would serve as "circuit riders" to colonias and who would provide technical assistance in the fields of engineering, finance, or other specialty areas for the planning and development of local water and sewer systems, housing projects, or business and commercial development in colonias;

- Addressing and resolving platting issues which would otherwise prevent the development or delivery of water or sewer services to colonia residents;
- Identifying sites in colonias that would serve as service centers where residents could conveniently seek available assistance from federal, state or local government and private sector agencies or organizations;
- Coordinating with local and state governments to target the selection of colonias to ensure a coordinated development agenda;
- Assisting communities in preparing applications for CDBG program funding, including funding under the Section 916 set-aside;
- Assisting communities in modifying their CHAS to include colonia developments.

II. Factors for Award

A. Rating Factors

HUD will use the following criteria to rate and rank applications received in response to this NOFA. The factors and maximum points for each competition are provided below. The total number of points for each competition is 100. Program policy criteria as identified in 24 CFR 570.402(f)(1)(ii) will not be used in reviewing and selecting applications for funding under the $1.5 million competition. Applications for the $800,000 competition will be rated and ranked in order by score by a HUD evaluation panel, after which the panel will apply the program policy criteria for geographic distribution, as identified in 24 CFR 570.402(f)(1)(ii)(A), in selecting applications for funding.

For the $1.5 Million Competition

(1) (30 points) The probable effectiveness of the application in meeting the needs of colonias and accomplishing program objectives. In rating this factor, HUD will consider:

(a) (12 of 30 points) The extent to which the applicant demonstrates an understanding of the problems facing colonia residents, as evidenced by the description of needs, rationale for, and feasibility of, the proposed statement of work; and the persuasiveness of the applicant's arguments.

(b) (10 of 30 points) The extent to which the applicant has an understanding of platting issues and problems which result from illegal subdivisions which impact CDBG/Section 916 activities, as evidenced by the rationale for, and the feasibility of, the proposed program of action to overcome the identified problems.

(c) (8 of 30 points) The extent to which the Statement of Work provided by the applicant demonstrates that activities are targeted to specific colonias and meet the CDBG nexus requirements as described in Section I, item E.

(2) (16 points) The soundness and cost-effectiveness of the proposed approach. In rating this factor, HUD will consider:

(a) (10 of 16 points) The demonstrated capability of the applicant to implement the proposed program of activities, as evidenced by the applicant's recent, relevant and successful experience in overcoming regulatory, statutory or administrative barriers that prohibit or inhibit the effective and coordinated delivery of services to low- and moderate-income residents.

(b) (6 of 16 points) The extent to which the proposed program of technical assistance services establishes realistic goals for the activities being undertaken, as described in the Statement of Work and supported by the applicant's discussion of how goals will be obtained.

(3) (48 points) The capability of the applicant to carry out the proposed activities in a timely and effective fashion. In rating this factor, HUD will consider:

(a) (5 of 48 points) The extent to which the applicant's organization and staff have recent, relevant and successful experience in providing community, economic development or housing development assistance in the southwest border area, and specifically have provided one or more of these forms of assistance to colonias in the region.

(b) (8 of 48 points) The applicant's knowledge of state and local laws relating to platting and subdivision issues and relevant, recent and successful experience in resolving issues which prevent or inhibit the delivery of programs and services to colonia residents.

(c) (27 of 48 points) The extent to which the applicant's staff has experience and expert knowledge in the following areas:

(i) (7 of 27 points) The extent to which the applicant organization and majority of the staff can demonstrate recent, relevant and successful experience in developing and implementing CDBG program activities in the areas of assistance proposed for funding in the applicant's Statement of Work.

(ii) (7 of 27 points) The extent to which the applicant's staff can demonstrate recent, relevant and successful experience in gaining the support and participation of low-income residents in the type of activities proposed in the Statement of Work.

(iii) (7 of 27 points) The extent to which the applicant's staff has conversational and written skills in the Spanish language, particularly Spanish as spoken in communities along the U.S.-Mexico border.

(iv) (6 of 27 points) The extent to which the applicant's organization and staff have recent, relevant and successful experience in securing private sector participation, and the participation of other federal, state and local entities in the development and implementation of community and economic development and housing activities.

(d) (8 of 48 points) The extent to which the proposed project management plan and budget-by-task presents a clear and feasible schedule for conducting program activities or tasks on time and within budget; provides for a reasonable allocation of program staff by skill and position for undertaking the work activities proposed; and provides appropriate procedures for coordinating activities among key parties during the term of the project.

(4) (6 points) The extent to which the results may be transferable or applicable to other CDBG program participants. In judging this factor, HUD will consider:

(a) (3 of 6 points) The extent to which proposed activities are likely to increase the capability of residents within colonias to apply for CDBG program funds made available under Section 916 of the National Affordable Housing Act of 1990 and successfully to implement CDBG-funded programs, projects or activities.

(b) (3 of 6 points) The extent to which the proposed activities are likely to increase the self-sufficiency of colonia residents, and the extent to which techniques applied could be transferred to other colonias in the region.

For the $800,000 Competition

(1) (28 points) The probable effectiveness of the application in meeting the needs of localities and accomplishing program objectives. In rating this factor, HUD will consider:

(a) (10 of 28 points) The extent to which the applicant demonstrates an understanding of the problems facing colonia residents, as evidenced by the rationale for, and feasibility of, the applicant's work program of activities for coordinating the delivery of available services and programs from federal, state and local sources—particularly CDBG funded activities.

(b) (11 of 28 points) The extent to which the proposed activities are likely to result in the creation and placement

of "one-stop" service centers within colonia, and are likely to provide coordinated delivery of CDBG program services with other services available from federal, state or local sources to colonia residents, as evidenced by the applicant's basis for establishing the goals and work activities in the Statement of Work.

(c) (7 of 28 points) The extent to which the applicant's Statement of Work demonstrates that proposed activities meet the CDBG nexus requirements as specified in Section I, item E.

(2) (36 points) The soundness and cost-effectiveness of the proposed approach. In rating this factor, HUD will consider:

(a) (12 of 36 points) The extent to which the applicant's staff has recent, relevant and successful experience in working with state and local governments (particularly state and local governments which are proposed to receive assistance in the Statement of Work) on CDBG-funded projects, programs or activities, and the justification provided by the applicant for the relevancy of the experience to activities proposed in the Statement of Work.

(b) (12 of 36 points) The extent to which the applicant's staff has relevant, recent and successful hands-on experience in resolving platting and subdivision issues which prevent or inhibit the delivery of services to colonia residents, particularly issues involving illegal subdivisions, platting and subdivision recording requirements, and state and local laws which have impact on the successful achievement of CDBG funded community and economic development and housing programs.

(c) (12 of 36 point) The extent to which the applicant can demonstrate that it has a commitment to form an effective partnership of federal agency, state and local officials to establish a coordinated resource-delivery system on a statewide or region-wide basis (as determined by the geographic coverage called for in the Statement of Work.)

(3) (31 points) The capability of the applicant to carry out the proposed activities in a timely and effective fashion. In rating this factor, HUD will consider:

(a) (8 of 31 points) The extent to which the applicant's staff has demonstrated conversational and written skills in the Spanish language, particularly Spanish as spoken in communities along the United States-Mexico border.

(b) (8 of 31 points) The demonstrated expert knowledge of the project manager and key staff in managing in-house staff, subcontractors and consultants to develop and implement economic and community development and housing programs, projects or activities, as evidenced by recent, relevant and successful experience.

(d) (15 of 31 points) The extent to which the project management plan delineates staff responsibilities by major task and sub-task; provides for a feasible schedule for completing tasks and meeting goals on time and within budget; and provides a reasonable allocation of staff by skill and position for the activities to be performed within the time proposed.

(4) (5 points) The extent to which the results may be transferable or applicable to other CDBG program participants, as determined by the extent to which the applicant's method for coordinating the delivery of federal, state and local resources is likely to be adopted successfully on a statewide or region-wide basis.

B. Selection Process

(1) The Statement of Work proposed by each applicant will be evaluated competitively within each competition, and rated using the factors for award specified in Section II A. After assigning points based upon the rating factors, a HUD evaluation panel will rank the applications in order by score. For the $1.5 million competition, HUD will fund all applications in rank order by score until all available funds have been expended. For the $800,000 competition, the HUD evaluation panel will rate and rank applications in order by score, after which the panel will apply the program policy criteria for geographic distribution as identified in 24 CFR 570.402(f)(1)(ii)(A) in selecting applications for funding.

(2) Applications will receive funding consideration provided they meet the CDBG nexus eligibility requirements and other program requirements specified in Section I.E., and receive rating scores that meet the following requirements:

For the $1.5 Million Competition

Application must receive a minimum score of 60 points for all rating factors. In addition, applicants must receive a minimum score of 5 rating points for factors 1(c), and 7 rating points for factor 1(b).

For the $800,000 Competition

Applicants must receive a minimum score of 60 points for all rating factors. In addition, applicants must receive a minimum score of 5 points for rating factor 1(c), minimum of 8 rating points under factor 2(b), and a minimum of 6 rating points under factor 3(a).

Applicants that do not meet these requirements will not be funded, even if adequate funds are available.

(3) HUD reserves the rights to fund all or a portion of the proposed activities identified in an application; to determine an appropriate amount of funds for the activities; or to reduce the amount of funding based upon the appropriateness of the proposed activities.

For the $800,000 competition, HUD reserves the right to reduce the amount of funding for geographic coverage should HUD elect to fund one or more applications that provide services on a region-wide basis; or to fund one or more applications that provide services on a statewide basis.

(4) If two or more applications have the same number of points and there are not sufficient funds to fund both, HUD will make a determination as follows:

For the $1.5 Million Competition

The application with the most points for factor (3) will be selected. If there is still a tie, the application with the most points for factor (1) will be selected.

For the $800,000 Competition

The application with the most points for factor (2) will be selected. If there is still a tie, the application with the most points for factor (3) will be selected.

(5) If the amount of funds remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD will determine (based upon the proposed activities) the feasibility of funding part of the application and offering a smaller award amount to the applicant. If HUD determines that, given the proposed activities, a smaller award amount would make the activities infeasible, or if the applicant turns down the reduced award amount, HUD will make the same determination for the next highest ranking application until all applications within the funding range have been exhausted or available funds have been expended.

(6) If HUD receives an insufficient number of applications to expend all funds in a given category, or all funds set aside for this NOFA; or if funds remain after HUD approves all acceptable applications; or if more funds become available HUD may move funds from one category to another, or HUD may negotiate increased award amounts with applicants approved for funding.

(7) After all applications have been rated and ranked and awardees have been selected, funds available for this competition that are not used may be

made available for other technical assistance competitions.

C. Conditional Award Approvals

Before receiving an award, an applicant must:

(1) Provide proof of nexus that shall consist of a statement from the Director of the CDBG agency of each State or local government where technical assistance services will be provided. Each proof of nexus shall meet the nexus requirements specified in section I, item E to the satisfaction of HUD.

(2) Meet the requirements for designation as a technical assistance provider, to the satisfaction of HUD, as specified in section I., item E., if the applicant is a non-profit or for-profit organization.

(3) Meet the CDBG program amendment requirement if a local government is not currently authorized to undertake activities to benefit colonias. If such limitations exist, a conditional award may be made. The award will be subject to HUD's receiving, from the chief executive officer of the community, a certification that the program has been amended to permit the assistance to colonias as specified in this NOFA and for which the CDBG funding commitment was made. The program amendment must have received all required approvals by the state.

HUD must receive this certification no later than four months following notification of the conditional award, or the award will be withdrawn or the funding amount reduced.

If an applicant fails to meet these requirements in a manner satisfactory to HUD, HUD may offer a cooperative agreement to the next highest ranking applicant. If an alternative applicant fails to provide the required documents, HUD will make an offer to the next highest ranking applicant. An applicant offered a cooperative agreement will be expected to submit any required documents within 45 days of written notice of an offer of an award. Failure to comply within the 45-day period will disqualify the applicant from further funding consideration.

III. Application Submission Process

A. Obtaining Applications

For an application kit, contact the Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7253, Washington, DC 20410. Requests for application kits must be in writing, but the request may be faxed to (202) 708–3363. (This is not a toll-free number.) Please refer to "FR–3314", and provide the applicant's name, address (including zip code) and telephone number (including area code).

B. Submitting Applications and Deadline Date

Applications for funding under this NOFA must be complete and must be physically received in the place designated in the application kit for receipt, by the deadline date and time specified in the application kit. The application deadline in the application kit is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

IV. Checklist of Application Submission Requirements

A. Application Content

Applicants must complete and submit applications in accordance with instructions contained in the application kit.

The following is a checklist of the application contents that will be specified in the RFCAA:

(1) Transmittal letter;

(2) OMB Standard Forms 424 (Request for Federal Assistance) and 424B (Non-Construction Assurances);

(3) Statement of Work, including Budget-By-Task (Form HUD 40079) and Project Management System Baseline Plan (HUD 441.1 and accompanying narrative);

(4) Narrative statement addressing the factors for award;

(5) Organization plan;

(6) Letter of CDBG Commitment of Funds signed by the chief executive officer of the CDBG recipient community or the Director of the CDBG program (May be submitted later after selection.);

(7) Letter from chief executive officer of the community designating the technical assistance provider, where appropriate (May be submitted later after selection);

(8) Letter from the state indicating its willingness to review and consider an amendment to the community's CDBG program that would permit activities to assist colonias as set forth in the application, where appropriate. (May be submitted later after selection.)

B. Certifications and Exhibits

Applications must also include the following:

(1) Drug-Free Workplace Certification;

(2) Certification prohibiting excessive force against nonviolent civil rights demonstrators, pursuant to 42 U.S.C. 5304 (applies only to applicants that are units of general local government);

(3) Certification on HUD Form 2880 disclosing receipt of at least $200,000 in covered assistance during the fiscal year, pursuant to 24 CFR part 12, subpart C.

V. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

VI. Other Matters

A. Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures in this document relate only to the provision of technical assistance and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, the notice solicits participation in an effort to provide technical assistance that would promote

community and economic development, provide job training and self-employment opportunities, increase the supply of decent and affordable housing, and provide community water, sewer and energy systems for colonias in states designated in Section 916 of the National Affordable Housing Act of 1990 to receive CDBG funding set-asides, and provide for coordinated delivery of resources available to colonias from federal, state, local and private section sources. The notice does not impinge upon the relationships between the federal government and state or local governments.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. The technical assistance to be provided by the funding under this NOFA is expected to help colonia residents to become self-sufficient by improving living conditions and standards. Since the impact on the family is beneficial, no further review is considered necessary.

D. Documentation and Public Access Requirements

Applicant/Recipient Disclosures; HUD Reform Act Responsibilities—Documentation and Public Access.

Pursuant to section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act), HUD will ensure that documentation and other information pertaining to each application submitted under this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance under this NOFA in a quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

HUD responsibilities—disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available, along with the applicant disclosure reports, but in no case for a period generally less than five years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

State and unit of general local government responsibilities—disclosures. States and units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each state and unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

E. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Prohibition Against Lobbying of HUD Personnel

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (TDD/Voice) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable

certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

H. The Catalog of Federal Domestic Assistance Program number is 14.227.

Authority: 42 U.S.C. 5301–5320; 42 U.S.C. 3535(d); 24 CFR 570.402.

Dated: September 15, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92–23522 Filed 9–28–92; 8:45 am]

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Tuesday
September 29, 1992

Part IV

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Parts 6 and 19
Office of Thrift Supervision
12 CFR Part 565
Prompt Corrective Action; Rules of Practice for Hearings; Final Rules

Federal Reserve System

12 CFR Parts 208 and 263

Federal Deposit Insurance Corporation

12 CFR Parts 308 and 325

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 6 and 19

[Docket No. 92-19]

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 263

[Docket No. R-0763; Regulation H]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 325

RIN 3064-AB16

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 565

[Resolution No. 92-403]

RIN 1550-AA57

Prompt Corrective Action; Rules of Practice for Hearings

AGENCIES: Board of Governors of the Federal Reserve System; Office of the Comptroller of the Currency, Treasury; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Final rules.

SUMMARY: The Board of Governors of the Federal Reserve System (Board of Governors), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively "the agencies") have adopted final rules revising their regulations to implement for the institutions that they supervise the system of prompt corrective action established by section 38 of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Section 38 requires each Federal banking agency to implement prompt corrective action for the institutions that it regulates. The agencies have also revised their rules of practice for hearings to establish procedures for the issuance of directives and other actions required under prompt corrective action.

Section 38 requires or permits the agencies to take certain supervisory actions when an insured depository institution falls within one of five specifically enumerated capital categories. It also restricts or prohibits certain activities and requires the submission of a capital restoration plan when an insured institution becomes undercapitalized. The revisions adopted by the agencies are necessary to establish the capital levels at which institutions will be deemed to come within the five capital categories. The revisions also establish procedures for issuing and contesting prompt corrective action directives including directives requiring the dismissal of directors and senior executive officers.

The agencies sought public comment on this proposal in July 1992. The final rule reflects a number of changes to the original proposal to address concerns raised by the commenters.

EFFECTIVE DATE: December 19, 1992.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board: Frederick M. Struble, Associate Director (202/452-3794), Norah Barger, Supervisory Financial Analyst (202/452-2402), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452-3583), Gregory A. Baer, Senior Attorney (202/452-3236), Legal Division; Myron L. Kwast, Assistant Director, Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

OTS: John Connolly, Program Manager, (202) 906-6465, Policy; Lorraine E. Waller, Counsel (Banking and Finance), (202) 906-6457, Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

FDIC: Daniel M. Gautsch, Examination Specialist (202-898-6912), Stephen G. Pfeifer, Examination Specialist (202-898-8904), Division of Supervision; Valerie Jean Best, Counsel (202-898-3812), Claude A. Rollin, Counsel (202-898-3985), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OCC: Kevin J. Bailey, Executive Assistant, Senior Deputy Comptroller for Bank Supervision Operations, (202) 874-5030; Daniel Berkland, National Bank Examiner, Special Supervision, (202) 874-4450; or Beth Kirby, Senior Attorney, Corporate Organization and Resolutions Division, (202) 874-5300, Office of Comptroller of the Currency.

SUPPLEMENTARY INFORMATION:

I. Background

In early July, the Board of Governors of the Federal Reserve System (Federal Reserve Board) (57 FR 29226, July 1, 1992), the Federal Deposit Insurance Corporation (FDIC) (57 FR 29662, July 6, 1992), the Office of the Comptroller of the Currency (OCC) (57 FR 29808, July 7, 1992), and the Office of Thrift Supervision (OTS) (57 FR 29826, July 7, 1992) proposed regulations to implement the provisions of section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102-242), which is entitled "Prompt Corrective Action". Section 131 of FDICIA created a new statutory framework that applies to every insured depository institution a system of supervisory actions indexed to the capital level of the individual institution. The stated purpose of this statutory provision is to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund. The new framework is contained in section 38 of the FDI Act (12 U.S.C. 1831o) ("section 38"). This framework and the authority it confers on the Federal banking agencies are meant to supplement the existing supervisory authority vested in the agencies, and do not limit in any way the agencies' existing authority under other statutes or regulations to initiate supervisory actions to address capital deficiencies, unsafe or unsound conduct, practices, or conditions, or violations of law.

Section 38 requires the Federal banking agencies, within 9 months of the enactment of FDICIA, to promulgate final regulations necessary to carry out the purposes of that section. Under the statute, these regulations must become effective within one year after the date of enactment of FDICIA, or no later than December 19, 1992.

II. Summary of Final Rules

The agencies have received 92 comments from interested persons, and have reviewed the original proposal in light of those comments. As an initial matter, the commenters strongly supported the agencies' efforts to adopt uniform rules implementing the provisions of section 38. The agencies believe that a uniform approach to capital definitions and capital categories, as well as a uniform framework of procedures, will simplify the tasks facing bank and thrift management of monitoring and maintaining the capital levels of insured depository institutions, and will remove any competitive distortions that might

arise if different standards were applied to competing institutions. Accordingly, the agencies have adopted substantially the same rules.

The final rules that have been adopted by the agencies are substantially as originally proposed by the agencies, with modifications to address concerns and issues raised by the commenters. In particular, the final rules define the relevant capital measures for the categories of well-capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized, to be the ratio of total capital to risk-weighted assets, the ratio of Tier 1 capital to risk-weighted assets, and the ratio of Tier 1 capital to total average assets (the leverage ratio).[1] The ratio of tangible equity to total assets has been adopted as the sole relevant capital measure for defining the critically undercapitalized category.

The capital thresholds that have been adopted for each of the five capital categories are the thresholds that were originally proposed by the agencies. Under the final rules, an institution will be deemed to be:

- *Well-capitalized* if the institution has a total risk-based capital ratio of 10.0 percent or greater, a Tier 1 risk-based capital ratio of 6.0 percent or greater, and a leverage ratio of 5.0 percent or greater, and the institution is not subject to an order, written agreement, capital directive, or prompt corrective action directive to meet and maintain a specific capital level for any capital measure;
- *Adequately capitalized* if the institution has a total risk-based capital ratio of 8.0 percent or greater, a Tier 1 risk-based capital ratio of 4.0 percent or greater, and a leverage ratio of 4.0 percent or greater (or a leverage ratio of 3.0 percent or greater if the institution is rated composite 1 in its most recent report of examination, subject to appropriate Federal banking agency guidelines), and the institution does not meet the definition of a well-capitalized institution;
- Undercapitalized if the institution has a total risk-based capital ratio that is less than 8.0 percent, a Tier 1 risk-based capital ratio that is less than 4.0 percent, or a leverage ratio that is less than 4.0 percent (or a leverage ratio that is less than 3.0 percent if the institution is rated composite 1 in its most recent report of examination, subject to appropriate Federal banking agency guidelines);
- Significantly undercapitalized if the institution has a total risk-based capital ratio that is less than 6.0 percent, a Tier 1 risk-based capital ratio that is less than 3.0 percent, or a leverage ratio that is less than 3.0 percent.
- Critically undercapitalized if the institution has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

To the extent possible, the final rules define capital terms in the same way as they are defined under existing capital adequacy standards. The final rules also generally rely on the most recent Consolidated Report of Condition and Income (Call Report) [2] and examination report for determining the capital category of an institution, and provide that the appropriate banking agency will provide written notice to an institution in the event that the agency determines the capital category of the institution on the basis of other information. The final rules also establish a procedure for an institution to notify the appropriate agency in the event that a material event occurs that would result in the reclassification of the institution to a lower capital category. This procedure has been modified in several respects to address concerns raised by commenters. The final rules do not adopt a requirement that an institution calculate its capital position on a daily basis.

The final rules establish a uniform schedule for filing and reviewing capital restoration plans. In addition, the rules adopt several provisions clarifying certain aspects of the capital guarantee required to be made as part of an acceptable capital plan by companies that control an undercapitalized institution, including the limit on the liability of such companies.

The agencies have adopted uniform procedures for the issuance of directives by the appropriate agency under section 38. Under these procedures, an institution will generally be provided advance notice when the appropriate agency proposes that the institution take one or more of the actions committed to agency discretion under section 38. These procedures provide an opportunity for the institution to respond to the proposed agency action, or, where circumstances warrant immediate agency action, an opportunity for administrative review of the agency's action.

A separate procedure has been adopted in the case of proposals by the appropriate Federal banking agency to subject an institution to more stringent treatment based on supervisory factors other than capital. The proposed procedures were modified at the request of commenters to provide an informal hearing whether the treatment is based on a determination that the institution is in unsafe or unsound condition or based on an institution's failure to correct deficient ratings received in an examination. The final rules also implement the statutory requirement that officers and directors dismissed as a result of an agency order issued under section 38 be afforded agency review of the dismissal, including an opportunity for an informal hearing.

The final rules and the public comments are discussed in more detail below.

III. Summary of Statutory Framework

In the request for comment, the agencies provided a brief summary of the statutory framework established by section 38. That summary is reprinted here in order to give context to the agencies' final rules. The summary is not intended to be a complete description of the requirements of section 38, and insured institutions and other persons affected by section 38 should consult the provisions of section 38.

Section 38 provides a framework of supervisory actions based on the capital level of an insured depository institution. Section 38 establishes five capital categories: well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. The statute deems an insured depository institution to be:

"Well capitalized" if the institution significantly exceeds the required minimum level for each relevant capital measure;

"Adequately capitalized" if the institution meets the required minimum level for each relevant capital measure;

"Undercapitalized" if the institution fails to meet the required minimum level for any relevant capital measure;

"Significantly undercapitalized" if the institution is significantly below the required minimum level for any relevant capital measure; or,

"Critically undercapitalized" if the institution has a ratio of tangible equity to total assets of 2 percent or less, or otherwise fails to meet the critical capital level established pursuant to section 38 (c)(3)(A).

Section 38 requires the Federal banking agencies to specify, by regulation, the levels at which an institution would be within each of these five categories. The applicability

[1] For savings associations, all references to Tier 1 capital should be read as core capital, as defined in part 567 of the OTS's regulations, which is the thrift capital measure comparable to Tier 1 capital. 12 CFR part 567. In addition, all references to total average assets should be read as adjusted total assets, as defined in part 567 of the OTS's regulations.

[2] Savings associations report their capital levels on Thrift Financial Reports.

of supervisory actions provided in section 38 to an individual institution depends on the institution's classification within one of these five categories.[3]

A. Provisions Applicable to All Institutions

Section 38 prohibits an insured depository institution from declaring any dividends, making any other capital distribution, or paying a management fee to a controlling person if, following the distribution or payment, the institution would be within any of the three undercapitalized categories.[4] The statute provides a limited exception to this prohibition for stock redemptions that do not result in any decrease in an institution's capital and would improve the institution's financial condition, provided that the redemption has been approved by the institution's appropriate Federal banking agency after consultation with the FDIC.

B. Provisions Applicable to Undercapitalized Institutions

Institutions that are classified as undercapitalized are subject to additional mandatory supervisory actions. These include:

- Increased monitoring by the appropriate Federal banking agency for the institution and periodic review of the institution's efforts to restore its capital;
- A requirement that the institution submit, generally within 45 days, a capital restoration plan acceptable to the appropriate Federal banking agency for the institution and implement that plan;
- A restriction on growth of the institution's total assets; and
- A limitation on the institution's ability to make any acquisition, open any new branch offices, or engage in any new line of business without the prior approval of the appropriate Federal banking agency for the institution or the FDIC.

Section 38 also provides that the appropriate Federal banking agency for an undercapitalized institution may take any of a number of discretionary supervisory actions if the agency determines that any of these actions is necessary to resolve the problems of the institution at the least possible long-term cost to the deposit insurance fund. These discretionary supervisory actions include requiring the institution to raise additional capital, restricting transactions with affiliates, restricting interest rates paid by the institution on deposits, requiring replacement of senior executive officers and directors, restricting the activities of the institution and its affiliates, requiring divestiture of the institution or the sale of the institution to a willing purchaser, and any other supervisory action that the agency believes would better carry out the purpose of section 38. Because these discretionary actions are also applicable to significantly undercapitalized institutions (as well as to critically undercapitalized institutions), these actions are described more fully in the next section.

C. Provisions Applicable to Significantly Undercapitalized Institutions

Section 38 provides that significantly undercapitalized institutions are subject to the four mandatory provisions listed above that are applicable to undercapitalized institutions. Section 38 also restricts the ability of a significantly undercapitalized institution to pay bonuses or raises to senior executive officers of the institution. A significantly undercapitalized institution may pay bonuses and raises to senior executive officers of the institution with the prior written approval of the appropriate Federal banking agency, unless the institution has failed to submit an acceptable capital restoration plan. For so long as an institution has failed to submit an acceptable capital restoration plan, the institution is prohibited from paying any bonus or raise to any senior executive officer.

In addition to these mandatory requirements, section 38 specifies that the appropriate Federal banking agency shall impose one or more restrictions on an institution that is significantly undercapitalized. These discretionary actions include:

- Requiring the institution to sell enough additional capital, including voting shares, so that the institution would be adequately capitalized after the sale;
- Restricting transactions between the institution and its affiliates, including transactions with its insured depository institution affiliates;
- Restricting the interest rates paid on deposits collected by the institution to the prevailing rates in the region where the institution is located;
- Restricting the institution's asset growth or requiring the institution to reduce its total assets;
- Requiring the institution or any subsidiary of the institution to terminate, reduce or alter any activity that the agency determines poses excessive risk to the institution;
- Requiring the institution to hold a new election of its board of directors;
- Requiring the institution to dismiss any director or senior executive officer who had held office at the institution for more than 180 days immediately before the institution became undercapitalized if the agency deems such dismissal to be appropriate, and to employ new officers who may be subject to agency approval;
- Prohibiting the institution from accepting deposits from correspondent depository institutions;
- Prohibiting any bank holding company that controls the institution from making any dividend payment without prior approval of the Federal Reserve Board;
- Requiring the institution to accept an offer to be acquired by another institution or company, or requiring any company that controls the institution to divest the institution;
- Requiring the institution to divest or liquidate any subsidiary that is in danger of becoming insolvent and poses a significant risk to the institution, or that is likely to cause significant dissipation of the institution's assets or earnings;
- Requiring any company that controls the institution to divest or liquidate any affiliate of the institution (other than another insured depository institution) if the appropriate Federal banking agency for the holding company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause significant dissipation of the institution's assets or earnings; and
- Requiring the institution to take any other action that the agency determines would better carry out the purposes of section 38.

While the statute generally provides the agency with discretion to determine whether these actions are appropriate in connection with a particular institution, the statute establishes certain presumptions and requirements with respect to the agency's consideration of these actions. Section 38 requires that the appropriate agency take at least one of the above discretionary supervisory actions in connection with an institution that is significantly undercapitalized or critically undercapitalized. The statute also establishes a presumption that the agency require each significantly undercapitalized or critically undercapitalized institution to (1) be acquired by another institution or company or sell sufficient shares to restore the institution's capital to at least the minimum acceptable capital

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[3] A savings association operating in accordance with a capital plan approved by the OTS before December 19, 1991, is subject to certain exceptions from provisions of section 38 (12 U.S.C. 1831o(o)(2)). However, neither section 38 nor this regulation in any way limits the authority of the OTS under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law or regulation, unsafe or unsound conditions or other practices.

[4] The OTS intends that the permissibility of capital distributions will be determined by the prompt corrective action regulations. A savings association permitted to make a capital distribution under the prompt corrective action regulations may do so if the amount and type of distribution would be permitted under section 563.134 of the OTS's regulations. The OTS will review its capital distributions regulations and consider making amendments that may be necessary based on section 38 of the FDI Act.

level, (2) restrict transactions with affiliates of the institution, including transactions with depository institution affiliates, and (3) restrict the interest rates the institution pays on deposits. The agency must impose each of these three actions unless the agency determines that the action would not further the purpose of section 38.

As discussed above, each of the discretionary actions listed above may also be taken, by issuance of a prompt corrective action directive, in connection with undercapitalized institutions if a finding is made by the agency that the action is necessary to carry out the purposes of section 38. In addition, these discretionary actions may be taken in connection with any undercapitalized institution that fails to submit or implement in any material respect a capital restoration plan, as if the institution were a significantly undercapitalized institution. As noted above, the provision restricting the payment of bonuses and raises to senior executive officers applies to any undercapitalized institution that has failed to submit a capital restoration plan that is acceptable to the appropriate agency.

In addition to the discretionary actions discussed above, section 38 also provides that, where the appropriate agency finds it necessary to carry out the purposes of section 38, the agency may require, by issuance of a prompt corrective action directive, a significantly undercapitalized institution to comply with one or more of the restrictions established by the FDIC on the activities of critically undercapitalized institutions. The same actions may be taken in the case of an undercapitalized institution that has failed to submit or implement, in any material respect, an acceptable capital restoration plan.

D. Provisions Applicable to Critically Undercapitalized Institutions

Section 38 requires that an insured depository institution that is critically undercapitalized be placed in conservatorship (with the concurrence of the FDIC) or receivership within 90 days, unless the appropriate Federal banking agency for the institution and the FDIC concur that other action would better achieve the purposes of section 38. A determination by the agency to defer placing a critically undercapitalized institution in receivership or conservatorship must be reviewed every 90 days and must document the reasons the agency believes other action would better achieve the purposes of section 38.

The statute requires that the institution be placed in receivership if the institution continues to be critically undercapitalized on average during the fourth quarter after the institution initially became critically undercapitalized, unless certain specific statutory requirements are met. To be eligible for the exception, the institution must: (1) Have positive net worth, (2) be in substantial compliance with an approved capital restoration plan, (3) be profitable or have an upward trend in earnings, and (4) have reduced its ratio of nonperforming loans to total loans. In addition, the head of the appropriate Federal banking agency for the institution and the Chairperson of the FDIC must both certify that the institution is viable and not expected to fail.

Critically undercapitalized institutions are also prohibited, beginning 60 days after becoming critically undercapitalized, from making any payment of principal or interest on subordinated debt issued by the institution without the prior approval of the FDIC. Section 38 does not prevent unpaid interest from accruing on subordinated debt under the terms of the debt instrument.

Section 38(i) of the FDI Act also provides that the FDIC, by regulation or order, must restrict the activities of critically undercapitalized institutions. At a minimum, the FDIC must prohibit a critically undercapitalized institution from doing any of the following without the prior written approval of the FDIC:

- Entering into any material transaction other than in the usual course of business. Such activities include any investment, expansion, acquisition, sale of assets or other similar action where the institution would have to notify its appropriate Federal banking agency;
- Extending credit for any highly leveraged transaction (HLT);
- Amending the institution's charter or bylaws unless required to do so in order to carry out any other requirement of any law, regulation or order;
- Making any material change in its accounting methods;
- Engaging in any "covered transactions" within the meaning of section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c), which concerns affiliate transactions;
- Paying excessive compensation or bonuses; and
- Paying interest on new or renewed liabilities at a rate which would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates in the institution's normal market areas.

Pursuant to section 38(j) of the FDI Act, none of these restrictions apply (1) to institutions in conservatorship for which the FDIC or RTC has been appointed the conservator or (2) to any bridge bank that is wholly owned by the FDIC or the RTC. Pursuant to section 38(o)(2) of the FDI Act, none of these restrictions shall apply, before July 1, 1994, to any insured savings association if:

(a) The savings association had submitted a plan meeting the requirements of section 5(t)(A)(ii) of the Home Owners' Loan Act (12 U.S.C. 1464(t)(A)(ii));

(b) The Director of OTS had accepted the plan; and

(c) The savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.

IV. Discussion of Final Rules and Public Comments

The agencies received a total of 92 comment letters from interested persons regarding the proposed rules implementing section 38. Sixty of the commenters were from banks, thrifts and bank and thrift holding companies, while nineteen were from industry trade associations and organizations. Eight were from Federal Reserve Banks. In addition, there were five from law firms and other organizations and individuals.

The comments provided a number of suggestions for clarifying or modifying the proposed rule. These are discussed below.

Many of the commenters supported the underlying purpose of prompt corrective action. However, several expressed concern that section 38 unduly restricts regulatory flexibility and discretion. Several commenters urged, as a general matter, that the agencies retain as much flexibility as possible in implementing the rules governing prompt corrective action and in administering the requirements of section 38. These commenters argued that capital alone is an inexact measure of the financial strength of an institution, and is only one of a number of measures that must be considered in determining the financial strength of an insured institution. Commenters argued that a narrow focus on capital levels to the exclusion of other indications of financial strength could result in unnecessary and counterproductive actions being taken against financially sound institutions. To avoid this result, many commenters argued that the agencies should adopt flexible rules that permit the agencies as much discretion as possible in determining when to take action under section 38 and what actions are appropriate.

The agencies have attempted to address this concern to the extent possible under the statute. Section 38 establishes a framework that is triggered by the capital levels of insured institutions, and subjects an insured institution that has capital below the regulatory minimum levels to several mandatory provisions that apply without any agency action. Section 38 also authorizes the agencies, in their discretion, to impose a number of additional requirements and proscriptions on an institution that is undercapitalized, significantly undercapitalized, or critically undercapitalized. The statute permits the agencies to tailor these discretionary supervisory actions to the specific problems faced by individual institutions, and the final rules retain this flexibility.

In addition, commenters generally were concerned that the agencies provide adequate procedural protections to insured institutions and individuals prior to taking any discretionary actions under section 38. The agencies have established procedures in the rule to give affected institutions and persons notice of, and a right to participate in the process for determining, discretionary actions taken by the agency under section 38. These procedures include the general right to advance notice of any action contemplated by the agency, and the right to provide the agency with any information that an affected institution or person believes should be considered by the agency in exercising its discretion under the statute. These procedures provide a mechanism for an institution to identify facts and circumstances that the agency should consider in determining appropriate action for that institution, and are intended to supplement informal discussions that ordinarily occur between an institution that has less than adequate capital and the institution's appropriate Federal banking agency.

A. Capital Measures

For purposes of defining each of the capital categories (except for the critically undercapitalized category), section 38(c) requires the agencies to prescribe capital standards that include a leverage limit and a risk-based capital requirement. The agencies may establish additional capital measures for these categories if additional capital measures would serve the purposes of section 38. In addition, section 38 permits the agencies to rescind the leverage limit or the risk-based capital measure if the Federal banking agencies concur that either measure is no longer an appropriate means for carrying out the purposes of section 38.

The agencies proposed to adopt the leverage limit and the total risk-based capital measure in defining the capital categories other than the critically undercapitalized category. In addition, the agencies proposed to adopt the Tier 1 risk-based capital ratio as a capital measure in defining these capital categories.

Most commenters supported or did not object to the proposal to adopt these three capital measures. Commenters expressed a strong preference for using capital measures and definitions that are currently in place in order to reduce the burden and costs associated with calculating the capital category of an institution.

Several commenters suggested that the agencies eliminate one or more of the proposed capital measures. In particular, a small number of commenters argued that the agencies should not adopt a leverage ratio as a capital measure. Several other commenters argued that the agencies should not establish a separate threshold for Tier 1 capital to risk-weighted assets. A few commenters argued that the agencies should rely solely on the ratio of Tier 1 capital to risk-weighted assets and should eliminate use of the ratio of total capital to risk-weighted assets and the leverage ratio. Finally, one commenter suggested that the agencies rely only on the leverage ratio for smaller institutions that are not internationally active, dropping the risk-based capital tests for these institutions.

The agencies have determined to adopt the three capital measures originally proposed for defining whether an institution is well-capitalized, adequately capitalized, undercapitalized, or significantly undercapitalized. Section 38 requires the agencies to employ a risk-based capital requirement and the leverage ratio as capital measures for each capital category unless the agencies all agree that these capital measures are no longer an appropriate means for carrying out the purposes of section 38. The agencies continue to believe that the ratio of total capital to risk-weighted assets represents an appropriate capital measure. In addition, the ratio of Tier 1 capital to total assets, which is a component of the total risk-weighted capital ratio, represents an important measure of the highest quality capital available to the institution to absorb losses. Both the total risk-weighted capital ratio and the Tier 1 risk-weighted capital ratios are recognized in the Basle Accord and are elements of the minimum capital adequacy standards currently employed by the Federal banking agencies.

The agencies have considered the suggestion of commenters that the leverage ratio be eliminated as an appropriate capital measure. The agencies do not believe that elimination of the leverage ratio is appropriate at this time. One of the rationales for retaining a leverage ratio after the risk-based capital measure was introduced was that the risk-based capital measure is focused on credit-related risk, and does not explicitly factor in other risks, particularly interest rate risk.

However, the agencies noted in the request for comment that revisions to the risk-based capital standards mandated by FDICIA may warrant review of the capital measures and thresholds specified under section 38 at a later date. Section 305 of FDICIA, which amends section 18 of the FDI Act, requires the agencies to revise their risk-based capital standards by no later than June 1993 to take into account interest rate risk, concentration of credit risk, and the risks of nontraditional activities and multi-family mortgages. The agencies intend to lower or eliminate the leverage capital component from the definitions of "well capitalized," "adequately capitalized," and "undercapitalized" after the risk-based capital standards have been revised by each Federal banking agency to take into account interest rate risk as required by section 305 of FDICIA and after experience has been gained with such standards. The agencies acknowledge the requirements of section 38(c) of the FDI Act and would comply with those requirements, to the extent they apply, before taking any such action.[5] Several commenters supported reconsideration of the need for the leverage ratio after completion of the review required by section 305.

B. Definition of Capital Terms

The agencies had proposed to adopt the same definitions of capital terms for purposes of the prompt corrective action

[5] Section 38(c) of the FDI Act requires that the capital standards prescribed under that section by each appropriate Federal banking agency shall include a leverage limit and a risk-based capital requirement, as well as any other additional relevant capital measures needed to carry out the purpose of section 38 and implemented by regulation. However, an appropriate Federal banking agency may, by regulation, rescind any relevant capital measure required by section 38, upon determining (with the concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of section 38.

provisions of section 38 as are currently used under the capital adequacy guidelines or regulations adopted by the agencies. The commenters strongly favored this approach because it would reduce the burden and complexity that could result from the use of new or modified capital definitions, and would minimize the possibility that an institution may be uncertain regarding its capital levels for purposes of section 38. Accordingly, the final rules adopt the definitions of the various capital elements and terms currently used in the agencies' existing capital adequacy guidelines and regulations.

The agencies requested comment regarding the appropriate period for calculation of capital levels. Under current reporting requirements, as specified in the instructions to the Call Report, the level of capital of an institution is generally calculated as the ratio of the institution's quarter-end capital to the quarterly average of its total assets (in the case of the leverage ratio) or its quarter-end risk-weighted assets (in the case of the risk-based capital ratios).[6] The agencies sought comment on whether capital calculations should be based on the same period calculations for purposes of section 38. The agencies also requested comment on the feasibility of requiring institutions to make a daily calculation of various capital measures.

Commenters generally supported applying the same periods for capital calculations under section 38 as are currently used under the agencies' capital adequacy standards. The commenters also strongly objected to any requirement that capital calculations be required on a daily basis for purposes of implementing section 38. The commenters argued that daily calculations would substantially increase the reporting burden and costs for many institutions. In addition, commenters contended that daily calculations present a distorted picture of the capital position of an institution by focusing on individual daily events (such as a temporary increase in deposits in connection with a lock-box operation) and do not take account of related actions that occur within a reasonably short period or remedial actions that are readily available to the institution (such as a scheduled withdrawal of deposits from a lock-box account). The commenters argued that the calculation periods currently adopted by the agencies in their capital adequacy standards provide a more accurate and reliable estimation of the capital levels of institutions.

Based on these comments, the final rules use the same calculation periods for purposes of section 38 as are currently employed under the agencies' capital adequacy standards. The agencies have determined not to require the daily calculation of capital for purposes of section 38 at this time.

C. Specific Capital Levels for Five Capital Categories

The agencies proposed specific capital levels defining each capital category. Under the standards set forth in section 38, an institution is deemed to be adequately capitalized if it meets the required minimum level for each relevant capital measure. Thus, the agencies proposed to set the capital levels for the adequately capitalized category generally at the same levels as the minimum ratios established under the existing minimum capital adequacy rules and guidelines adopted by the agencies. These minimums are 8 percent for the total risk-based capital ratio, 4 percent for the Tier 1 risk-based capital ratio, and 4 percent for the Tier 1 leverage ratio (3 percent for composite 1-rated banks and savings associations, subject to appropriate Federal banking agency guidelines). An institution would have to meet all these minimums in order to be deemed adequately capitalized.

The statute provides specific guidance as to the capital level for defining a critically undercapitalized institution. Section 38 requires that a critically undercapitalized institution be defined by reference to the institution's ratio of tangible equity to total assets. The statute requires the agencies to establish the threshold ratio for defining a critically undercapitalized institution at no lower than 2 percent.

Taking the capital levels for the adequately capitalized and critically undercapitalized categories as benchmarks, the agencies proposed that the capital levels for the undercapitalized category be defined as any level under 8 percent for the total risk-based capital ratio, under 4 percent for the Tier 1 risk-based capital ratio, or under 4 percent for the Tier 1 leverage ratio (under 3 percent for composite 1-rated banks and savings associations, subject to appropriate Federal banking agency guidelines). An institution would be considered undercapitalized if it were below the specified capital level for any of the three capital measures.

Further, the capital levels for significantly undercapitalized institutions were defined as any level under 6 percent for the total risk-based capital ratio, under 3 percent for the Tier 1 risk-based capital ratio, or under 3 percent for the Tier 1 leverage ratio. An institution would be considered significantly undercapitalized if it were below the specified capital level for any of the three capital measures. Under the proposed definitions, an institution that is significantly undercapitalized also would be deemed to be undercapitalized. Similarly, an institution that is critically undercapitalized also would be deemed to be significantly undercapitalized and undercapitalized. The overlap between these categories is contemplated by the statute and has the effect of applying to significantly undercapitalized institutions and to critically undercapitalized institutions any provisions of section 38 that are applicable to undercapitalized institutions.

The agencies proposed establishing the minimum total risk-based capital level for the well capitalized category at 10 percent and setting the minimum leverage capital level for this category at 5 percent. To emphasize the importance the agencies place on Tier 1 capital, the agencies proposed that the minimum level for the Tier 1 risk-based capital ratio be set at 6 percent for the well capitalized category.

Many commenters indicated agreement with the capital thresholds proposed by the agencies. Several commenters were concerned that the levels be applied equally to institutions of all sizes. Other commenters argued that the capital levels set for the well-capitalized category were established at too high a level. These commenters noted that the standard for well capitalized institutions would require an institution to hold 25 percent more total risk-based capital, 50 percent more Tier 1 capital, and 66 percent more leverage capital than an adequately capitalized institution.

Commenters stated that they were particularly concerned about the well-capitalized levels because several of the newly proposed rules required by FDICIA impose new constraints on institutions that are not within the well-capitalized category. Commenters believe that these provisions will have the practical effect of establishing the well-capitalized category as the minimum acceptable capital category for most institutions. Several commenters argued that high capital thresholds for the well-capitalized category would have significant implications in the near term for the availability of credit in the

[6] Savings associations report their capital amounts on their Thrift Financial Reports based on end of the quarter total assets and total risk-weighted assets.

United States, as depository institutions attempt to meet the higher capital levels of the well-capitalized category through slower asset growth or shrinkage of assets. These commenters also argued that establishing high capital thresholds for this category would significantly impair the ability of domestic depository institutions to compete against foreign institutions that are not subject to this capital-based regulatory and supervisory framework. In order to address these potential effects, these commenters argued that the capital thresholds should be lowered, or phased-in over a period of time.

On the other hand, a few commenters argued that the capital levels proposed by the agencies were too low. In particular, these commenters contended that a higher threshold for the definition of the critically undercapitalized category was necessary in order to minimize potential losses to the federal deposit insurance funds. One commenter argued that, at the thresholds in the proposal, the number of institutions that would qualify for the well-capitalized category was too high and included a large number of institutions that had received unsatisfactory examination ratings. These commenters argued that higher thresholds for each of the capital categories would permit the agencies to initiate supervisory actions under section 38 against a greater number of institutions, thereby permitting action while an institution is still sufficiently healthy to reverse its deterioration.

After considering the comments, the agencies have determined at this time to adopt the capital thresholds as proposed. In the agencies' view the proposed thresholds strike a reasonable balance between the statutory requirements on the one hand, and the need to promote safe and sound banking conditions in a manner that gives due consideration to the international capital standards to which the United States and the other G–10 countries have agreed on the other hand. The agencies believe that such consideration is appropriate in view of the competitive pressures faced by U.S. banks operating in international markets with foreign banks adhering to these standards. In this regard, as with the capital adequacy standards currently adopted by the agencies, the thresholds adopted in the final rules under section 38 will apply to each insured depository institution, regardless of the size of the institution. Comparable thresholds are applied to insured branches of foreign banks.

In establishing these thresholds, the agencies recognize that capital ratios alone are not fully indicative of the capital strength of an institution. The agencies are aware, for example, that some poorly-rated depository institutions have capital ratios above the specified minimums for the well-capitalized and adequately capitalized categories. One reason that some poorly-rated institutions qualify as well capitalized for prompt corrective action purposes is that capital is a lagging indicator of problems of insured depository institutions. In part for this reason, examiners traditionally have reached judgments on an institution's capital needs by also taking into account a range of factors such as interest rate risk and concentration risk. As noted above, the agencies have under way initiatives mandated by FDICIA to review their risk-based capital standards to ensure that they take adequate account of such risks, and also have been engaged in a project under the Federal Financial Institutions Examination Council (FFIEC) to refine and improve procedures for assessing the reserving policies and practices of individual institutions. After those projects have been completed and improvements implemented and assessed, the agencies intend to revisit the question of how the specifications for the well-capitalized category may need to be modified or adjusted.

Several commenters argued that an institution that nominally has capital above the threshold for well-capitalized institutions should not be excluded from that category because the institution is subject to an agency order or directive to raise additional capital. These commenters argued that use of capital directives or agency orders to raise additional capital as a means of defining the well-capitalized category is not contemplated by section 38, and is not consistent with the statute's instruction that capital categories be defined by reference to the actual capital level of an institution.

To qualify as a well-capitalized institution under section 38, the capital levels of an institution must significantly exceed the required minimum level for each relevant capital category. The agencies believe that an institution that is subject to an agency order or directive to raise capital or to maintain capital at a higher capital level does not meet the statutory definition of a well-capitalized institution. Instead, institutions that have been ordered to raise capital or maintain a higher level of capital are subject to an agency determination that, given the particular circumstances and financial condition of the institution, the capital level of the institution is inadequate or minimally adequate. Accordingly, the agencies have adopted the definition of the well-capitalized category as proposed, and have retained the provision disqualifying from the well-capitalized category any institution that is subject to an agency order or directive to meet and maintain a specific capital category. The agencies have modified the language of this section to clarify that the provision applies only to written agreements, orders, capital directives, and prompt corrective action directives that are issued under certain provisions of the FDI Act, the International Lending Supervision Act, the Home Owners' Loan Act, or regulations implementing these laws.

D. Critically Undercapitalized Institutions

The statute requires that the critically undercapitalized category be based on the ratio of tangible equity to total assets of the institution. Section 38 requires that the minimum ratio for this category be established at a level of tangible equity that is no less than 2 percent of the institution's total assets, and that is no higher than the ratio equal to 65 percent of the required minimum level of capital under the leverage limit. The agencies may, by regulation, specify additional capital measures (such as a risk-based capital ratio) in defining the critically undercapitalized category. Any such measures may not, without the concurrence of the FDIC, be set at a level lower than the level specified by the FDIC for insured state-chartered banks that are not members of the Federal Reserve System.

The agencies proposed to define the level for the critically undercapitalized category as a ratio of tangible equity to total assets of 2 percent or less. The agencies did not propose to establish any additional capital measures for the critically undercapitalized category. The commenters that addressed these matters favored the capital level proposed by the agencies for this capital category and generally agreed that no additional capital measure was necessary to define this category. Accordingly, the final rules adopt the original proposal to define an institution as critically undercapitalized if the institution has a ratio of tangible equity to total assets of 2.0 percent or less.

Section 38 provides that the critically undercapitalized category must be defined by reference to the ratio of tangible equity to total assets of an institution. However, section 38 does not define the term "tangible equity." Moreover, the term is not currently defined by the Federal banking agencies

in connection with their capital adequacy standards or by the accounting profession. To implement this provision, the agencies had proposed to define the ratio of tangible equity to total assets in the same manner as the leverage ratio currently established by the agencies by regulation or guideline, which is the ratio of Tier 1 capital to total average assets.

A significant number of commenters argued that the agencies should modify the proposed definition of tangible equity to permit the inclusion of all forms of equity capital, in particular cumulative perpetual preferred stock. These commenters noted that the OCC recognizes the level of cumulative perpetual preferred stock in determining whether a national bank is insolvent for purposes of the National Bank Act.

In adopting the final rules, the agencies have determined to define tangible equity to include the core capital elements recognized in the calculation of Tier 1 capital. In addition, the final rule includes cumulative perpetual preferred stock issued by the institution and related surplus. The agencies recognize that cumulative perpetual preferred stock provides a cushion against losses suffered by the institution and provides protection to the deposit insurance funds. The agencies have determined not to include other instruments, however. The agencies are concerned that the inclusion of other types of instruments, in particular instruments that are hybrids of equity and debt, will distort the capital raising efforts of depository institutions and result in the development and issuance of instruments that, while providing some protection against loss, place a significant burden on the earnings of the institution over the life of the instrument and on the ability of the institution to raise additional capital.

Several commenters also argued that the agencies should not require the deduction of all intangible assets in determining whether an institution is critically undercapitalized. These commenters argued that many assets that are considered intangible in fact have significant value and serve as a ready and marketable source of liquidity to troubled institutions.

In determining whether equity is "tangible" for purposes of the final rule under section 38, the agencies have determined to require the deduction of all intangible assets with one exception.[7] The agencies have sought public comment on a proposal to amend their capital adequacy standards regarding inclusion of certain purchased mortgage servicing rights in the calculation of Tier 1 capital. This proposal is in response to section 475 of FDICIA, which requires the Federal banking agencies to determine whether a portion of certain purchased mortgage servicing rights should be included in the definition of "tangible capital."

To comply with this statutory provision, the agencies must determine whether certain purchased mortgage servicing rights have sufficient value to warrant a determination that these assets should not be treated as intangible assets for purposes of the calculation of tangible capital. The agencies believe that, to the extent that purchased mortgage servicing rights are determined under this statutory provision to be properly included in "tangible capital," these assets should be given identical treatment in the calculation of tangible equity under section 38.[8]

E. Notice of Capital Category

Under section 38, an institution becomes subject to certain mandatory provisions on the basis of the capital category of the institution. These mandatory provisions apply immediately without agency action. As noted above, an undercapitalized institution is immediately subject to a restriction on the payment of dividends and management fees, a limitation on asset growth and expansion, and an obligation to file an acceptable capital restoration plan. In addition to these requirements, an institution that is significantly undercapitalized or critically undercapitalized is subject to a limitation on the payment of bonuses or raises to senior executive officers. A number of other mandatory restrictions are imposed on critically undercapitalized institutions. Moreover, once an institution is deemed to be undercapitalized, significantly undercapitalized or critically undercapitalized, section 38 grants the appropriate Federal banking agency for the institution discretion to take a number of supervisory actions to address the problems of the institution.

The final rules include provisions for an institution and its appropriate Federal banking agency to determine the capital category of the institution, and, thereby to determine when the provisions of section 38 are applicable. Commenters supported the agencies' proposal to base capital calculations principally on the Call Report filed by each institution and on an institution's examination.

Accordingly, the final rules retain provisions that deem an institution to be aware of its capital category as of the date that the Call Report is required to be filed. Similarly, the institution is deemed to be notified of its capital category as of the date that the examination report is provided to the institution.

The final rules also retain the provision permitting the agencies to determine the capital category of an institution based on other information available to the agency, including information obtained in the applications process, through other reports filed by the institution under the banking laws or the securities laws, or in public announcements by the institution. The final rules provide that, in the event that the agency determines the capital category of the institution on the basis of other information, the agency must notify the institution in writing of its determination.

The agencies also requested comment on whether to require capital calculations to be made daily or monthly for purposes of applying the provisions of section 38. A significant number of commenters opposed any requirement that institutions make daily calculations of capital. A number of commenters also argued that daily calculations of capital would present a distorted view of the capital position of an institution because daily calculations emphasize the timing of events and do not permit consideration of offsetting events that are reasonably expected to occur at a later date. These commenters also argued that requiring institutions to calculate capital levels on a daily basis would be impractical, particularly for institutions with extensive branch networks or with foreign offices, and would impose significant added costs and burdens on insured institutions. As explained above, the agencies have not adopted provisions requiring institutions to make daily calculations or file daily reports of capital levels for purposes of section 38.

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[7] For savings associations, pursuant to section 5(t) of the Home Owners' Loan Act (12 U.S.C. 1464(t)), enacted as part of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, certain qualifying supervisory goodwill will also be included in "tangible equity."

[8] Several commenters argued that the definition of tangible equity should include investments in certain types of subsidiaries, which savings associations are required to deduct for purposes of their general capital calculations. The OTS has determined that investments in these subsidiaries will be included in the definition of tangible equity only to the extent permitted in the definition of Tier 1 capital under the Home Owners' Loan Act's transitional rule, which expires July 1, 1994, 12 U.S.C. 1464(t)(5)(D).

Several commenters argued that similar burden would result from the agencies' proposal to establish a procedure that requires an institution to notify the appropriate agency within 5 days of any change in the institution's capital position that would cause the institution to be within a different capital category. The agencies had proposed this notification procedure as a means of supplementing the use of Call Reports and periodic examinations for determining the capital category of insured institutions.

The agencies have made several revisions to the proposed notification procedures to address commenters' concerns. The final rules have been modified to require an institution to notify the appropriate agency only of material events that affect the capital position of the institution. The notice period has also been extended to 15 days from the 5 days originally proposed. The determination of whether the capital category of the institution has changed may be made by reference to the most recent Call Report or examination report.

The rule retains the original proposal that the capital category of the institution will not change until the appropriate agency has reviewed the data provided by the institution along with any explanation offered by the institution. Following review of this information, the agency will determine whether an adjustment to the capital category of the institution is appropriate.

Finally, in response to several comments, the rule has been modified to eliminate the requirement that the institution notify the agency of events that improve the capital level of the institution. Because an institution's capital category is based on the information filed in the most recent Call Report or report of examination, however, an institution that has improved its capital position prior to the time that a new Call Report has been filed or examination report completed would continue to be considered within the capital category reflected in the most recent Call Report or examination report unless the institution voluntarily sought a determination by the agency that the institution is in a different capital category.

The agencies believe that the revised notification procedures address the concerns raised by these commenters while at the same time still providing adequate notice to the appropriate Federal banking agency when an institution's capital category has changed between filing of Call Reports or examinations. The agencies believe that failure to recognize material events that occur during this period could result in delay in application of the supervisory requirements of section 38, including the mandatory provisions of the statute.

F. Procedures Governing Agency Action

1. In General

The final rules establish procedures governing four types of agency action that may be taken under section 38.[9] In three cases, the final rules generally require the appropriate agency to provide notice to an insured institution or company of proposed agency action and an opportunity for the institution or company to submit to the agency information that is relevant to the agency's decision before the agency takes final action. In particular, the final rules establish these procedures for: (1) Issuing a directive under section 38 that imposes requirements or restrictions committed to agency discretion on an undercapitalized institution or a company that controls an undercapitalized institution; (2) determining that an institution should be subject to more stringent treatment because the institution is in unsafe or unsound condition; and (3) determining that an institution should be subject to more stringent treatment because the agency deems the institution to be engaged in an unsafe or unsound practice based on the institution's failure to correct certain deficient ratings received in an examination. The final rules also establish a special procedure, as required by section 38, permitting senior executive officers and directors who have been dismissed from an institution as a result of an agency directive an opportunity to petition for reinstatement.

In establishing these procedures, the agencies have attempted to comply with the statutory mandate that the agencies take prompt action to resolve the problems of troubled institutions while also providing affected institutions, companies, and persons the opportunity to be heard at a meaningful time and in a meaningful manner.

2. Procedures for Issuing Prompt Corrective Action Directives

Section 38 imposes certain mandatory restrictions on institutions that are undercapitalized, significantly undercapitalized, or critically undercapitalized. The statute also provides the agencies with discretion to impose a number of supervisory requirements or restrictions on an insured institution that is undercapitalized, significantly undercapitalized or critically undercapitalized, as well as on any company that controls such an institution. These discretionary supervisory actions are described above. The system enacted in section 38 is based on Congress's belief that prompt action must be taken to resolve problems at insured depository institutions at an early enough stage to minimize costs to the federal deposit insurance funds, and ultimately the taxpayer.

The agencies do not believe that the purpose and mandate of section 38 are compromised by, as a general matter, providing institutions notice of proposed agency action under section 38 and an opportunity to submit relevant information to the agency for its consideration. Under the final rules, the appropriate agency will provide written notice to an institution or company prior to issuing a directive as a general matter. The notice must describe the action contemplated by the agency. The institution or company is then provided at least 14 calendar days to submit written arguments and evidence in response to the proposed agency action. Failure to file a timely response constitutes consent to the issuance of the directive and a waiver of the opportunity to appeal. The agency will consider the submission in determining whether to issue the directive.

The agencies reserve the right to issue directives that are effective immediately when the circumstances of a particular case indicate that immediate action is necessary to serve the purpose of prompt corrective action. In these cases, the final rules provide the institution an opportunity to seek modification or rescission of the directive on an expedited basis. An institution or company that appeals an immediately effective directive is required to file a written appeal within 14 days of receiving the notice, and the agency must consider the appeal within 60 days of receiving it.

The agencies believe that these procedures afford an adequate and fair opportunity for affected persons to present the agency with argument and information relevant to the agency's action. The procedures adhere to the mandate of section 38 that the agencies take prompt corrective action to resolve the problems of insured depository

[9] The agencies will not be required to grant administrative review if an institution, company, or person consents to the action to be taken by the agency either as initially proposed by the agencies or as modified by mutual agreement. Actions taken with such consent have the same legal affect and are enforceable to the same extent and by the same means as actions taken upon exhaustion of these procedures.

institutions at the least possible long-term loss to the deposit insurance fund while providing institutions with an opportunity for agency review.

Commenters raised various objections to the procedures proposed by the agencies for issuing directives under section 38. Some commenters stated that an oral hearing is required by principles of due process and fundamental fairness before an agency can issue a prompt corrective action directive. Certain other commenters expressed concern about the agencies' proposal to allow issuance of a directive without prior notice to the institution in limited cases; other commenters recommended that such an immediately effective directive be issued only after a determination by the agency head that exigent circumstances require immediate action.

The final rules do not adopt the suggestion of several commenters that the agencies provide for an oral hearing in connection with the issuance of a prompt corrective action directive. The agencies believe that the procedures for prior notice and an opportunity for submission of written argument and information are sufficient in light of the purpose and mandate of section 38. As explained above, the language and legislative history of section 38 indicate that Congress intended agency action under section 38 to be taken as promptly as possible. 12 U.S.C. 1831o(a)(2); see also S. Rep. No. 102–167, 102d Cong., 1st Sess. (1991) ("The prompt corrective action system will require regulators to act at the first sign of trouble.").

In addition, Congress clearly indicated those occasions when it believed that an oral hearing is appropriate in connection with actions taken under section 38. Congress gave no indication in either the statutory language or legislative history that it intended to require an oral hearing in connection with supervisory actions committed to agency discretion under section 38.

Finally, the agencies believe that the provision for written submissions prior to issuance of a directive affords adversely affected parties an opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews* v. *Eldridge*, 424 U.S. 319, 333 (1976); *see FDIC* v. *Mallen*, 486 U.S. 230 (1988) (upholding post-deprivation hearing in case of suspension or removal of a bank officer charged with a felony); *Federal Deposit Ins. Corp.* v. *Bank of Coushatta*, 930 F.2d 1122 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 170 (1992) (affirming hearing procedures for FDIC capital directive).

In special cases where immediate action is necessary and prior notice has not been given, the institution is given prompt post-directive administrative review. The courts have found similar post-deprivation procedures to be adequate when necessary to protect the public interest. See *Mallen*, 486 U.S. at 243; *Soranno's Gasco, Inc.* v. *Morgan*, 874 F.2d 1310, 1317–18 (9th Cir. 1989) (power to suspend permit immediately is necessitated by state's interest in enforcing pollution control laws).

Several commenters argued that the 14-day deadline for submission of a response to a proposed directive was too short, favoring deadlines from 30 to 90 days. The final rule provides at least 14 days for submission of a response, but permits the agency to extend that period in individual cases as appropriate.

3. Dismissal of Directors or Senior Executive Officers

Section 38 provides that a director or senior executive officer who is dismissed by an institution in compliance with an agency directive may obtain review of the dismissal by filing, within ten days, a petition for reinstatement with the agency that ordered the dismissal. The statute also provides that the petitioner shall have the opportunity to submit written materials in support of the petition and to appear at a hearing before member(s) or designated employee(s) of the agency. Under the statute, the hearing shall occur within 30 days of the filing of the petition unless the petitioner requests a later date. Under the final rules, within 20 days of the closing of the hearing record, the presiding officer must make a recommendation to the agency regarding the petition for reinstatement, and the agency shall issue a decision within 60 days of the date of the closing of the hearing record.

The statute envisions a post-dismissal hearing procedure, as it refers to the appeal as a "petition for reinstatement" and sets a short time for agency decision following the hearing. Accordingly, the proposed regulation required that an institution ordered to dismiss a senior executive officer or director take that action immediately upon receiving a final directive requiring that action.

The agencies also proposed that any officer or director who is dismissed in compliance with an agency directive under section 38 be provided an opportunity to petition the agency for reinstatement within the statutorily prescribed period, and be afforded an opportunity for an informal agency hearing. The petitioner was provided the right to appear at the hearing, with counsel, and to submit written materials and present oral argument.

The proposed regulation also incorporated the statutory burden of proof imposed upon an officer or director seeking reinstatement. When the dismissal order is based upon an institution's capital category or its failure to submit or implement a capital restoration plan, the petitioner must prove that his or her continued employment would materially strengthen the institution's ability to become adequately capitalized. When the dismissal order is based upon a reclassification of an institution on grounds of unsafe or unsound condition or practice, the petitioner must prove that his or her continued employment would materially strengthen the institution's ability to correct the condition or practice. The agencies proposed to restrict the ability of an officer or director seeking reinstatement to challenge the capital category to which the institution has been assigned.

Commenters generally recognized that most of the procedures for review of a dismissal are set out in the statute and that the agency proposal adopted these statutory standards. Several commenters urged the agencies to amend the proposal to allow dismissed officers and directors to present, as a matter of right, oral testimony or witnesses at the agency hearing. The proposal permitted the presentation of oral testimony or witnesses only with the permission of the presiding officer. The commenters argued that the petitioner must meet a heavy burden of proof in order to be reinstated, and should be permitted to meet that burden through the presentation of oral testimony.

The agencies have decided to retain the provision providing that petitioners may present oral testimony and witnesses with the permission of the presiding officer without providing an absolute right to presentation of oral testimony. Under the proposed procedures, petitioners have the right to submit affidavits or other written statements from any person in making their case. In addition, petitioners may request permission of the presiding officer to present oral testimony or witnesses. Any decision by a presiding officer not to permit oral testimony is subject to review when the agency determines the action that is appropriate on the basis of the record compiled at the hearing.

Commenters also expressed concern that neither the statute nor the proposed rule requires an agency to identify any connection between the conduct of the officer or director and the financial deficiencies experienced by the insured

institution before dismissing or upholding the dismissal of the officer or director. Commenters urged that the agencies consider whether the conduct of an officer or director contributed to the troubled condition of the institution in deciding whether to dismiss the officer or director and in considering a petition for reinstatement.

The agencies note that the burden of proof necessary for reinstatement is established by statute for all petitions for reinstatement. The agencies do not have discretion to establish an alternative burden of proof for cases in which an officer or director believes that he or she has not contributed to the financial weakness of the institution. However, the agencies note that the statute does not limit the types of arguments or evidence that may be presented by a petitioner in meeting the statutory burden of proof. In this regard, the agencies believe that evidence concerning the past performance of the director or officer at the institution may be relevant to determining whether a director or officer would materially strengthen an institution's ability to address its problems. Accordingly, the final rules adopt the procedures for review of petitions for reinstatement as proposed by the agencies.

Finally, one commenter argued that a dismissed officer or director should be allowed to challenge the bank's capital category, since the bank's capital category is the basis for the dismissal. The agencies have decided not to adopt this restriction in the final rule.

4. More Stringent Treatment Based on Non-Capital Supervisory Criteria

In establishing a system of prompt corrective action based primarily on the capital level of each institution, Congress recognized that factors other than capital should in certain circumstances be used to assess the financial condition of an institution. In providing for more stringent treatment based on non-capital indications of financial condition, Congress appears to have had the same concern that underlies prompt corrective action generally: preventing loss to the deposit insurance funds. See S. Rep No. 102–167, 32–38 (giving regulators "flexibility to discipline institutions based on criteria other than capital * * * will help reduce deposit insurance losses * * *."). If actions taken based on criteria other than capital are to be effective, they must be taken promptly.

Section 38 provides that the appropriate Federal banking agency may, under certain circumstances, reclassify a well capitalized insured depository institution as adequately capitalized. Section 38 also permits the appropriate agency to require an adequately capitalized or undercapitalized institution to comply with the supervisory provisions as if the institution were in the next lower category (but not treat a significantly undercapitalized institution as critically undercapitalized) based on supervisory information other than the capital levels of the institution. (While the agencies recognize that these provisions are not strictly a reclassification of the institution in all cases, reclassification to the adequately capitalized category and treatment of an institution as if it were in the next lower capital category are referred to collectively in this document and in the final rules as a "reclassification.")

The statute provides that an institution may be reclassified if the appropriate Federal banking agency determines (after notice and opportunity for hearing) that [the institution] is in an unsafe or unsound condition or, pursuant to section 8(b) (8), deems the institution to be engaging in an unsafe or unsound practice. 12 U.S.C. 1831o(g). Section 8(b)(8) of the FDI Act was amended by FDICIA to provide that an institution may be deemed to be engaged in an unsafe or unsound practice if (1) the institution has received a less-than-satisfactory rating in its most recent examination report for assets, management, earnings or liquidity [10], and (2) the institution has not corrected the deficiency. 12 U.S.C. 1818(b)(8).

Relying on the statutory language, the proposed rule provided different procedures for review of reclassifications based on unsafe or unsound condition and those based on unsafe or unsound practice. In the case of unsafe or unsound condition, the proposed regulation provided for notice to the institution and an opportunity for an informal hearing prior to the reclassification; in the case of unsafe or unsound practice, the proposed regulation provided for notice to the institution, a 14-day period in which the institution could make a written submission objecting to the reclassification, and agency review of that submission prior to any reclassification.

Several commenters argued that the agencies should provide a formal administrative hearing in connection with reclassifications that are based on a finding that the institution is in unsafe or unsound condition. Commenters argued that the provision in section 38 requiring that this type of reclassification occur only "after notice and opportunity for hearing" indicates a Congressional intent that a full administrative hearing be given in these cases. Commenters also contended that principles of fundamental fairness require a full hearing in these cases.

The agencies do not believe that the statute or the principles of fairness require that a formal administrative hearing be afforded in the case of reclassifications based on a finding of unsafe and unsound condition. The courts have determined that the statutory language—"after notice and opportunity for hearing"—does not require a formal hearing. See, *e.g.*, *United States* v. *Florida East Coast Ry.*, 410 U.S. 224, 240 (1973) (use of the word "hearing" in statute "does not necessarily embrace either the right to present evidence orally and to cross-examine opposing witnesses, or the right to present oral argument to the agency's decisionmaker"). Where, as here, the statute does not contain the phrase "hearing on the record" and the legislative history does not indicate a Congressional intent to provide for a formal hearing, the agency may meet the statutory requirements by providing an informal hearing. See, *e.g.*, *Independent U.S. Tanker Owner Comm.* v. *Lewis*, 690 F.2d 908, 922 n.63 (D.C. Cir. 1982).

The final rules adopt the agencies' proposal to provide institutions with an opportunity for an informal hearing in connection with a reclassification based on the institution's condition. Under the procedures adopted by the agencies, an institution will be provided prior written notice of any intention by the agencies to reclassify the institution, along with an explanation of the reasons for the proposed reclassification. The institution is provided an opportunity to present written testimony and argument and an opportunity for an informal hearing prior to the reclassification. The informal hearing is available as a matter of right. At the informal hearing, the institution may present written and oral argument, written evidence and testimony, and, where appropriate, oral testimony.

The agencies believe that these procedures, which include an opportunity for an informal hearing, provide institutions with an adequate opportunity to be heard prior to agency action. These procedures also ensure that agency action in connection with an institution whose nominal capital levels do not provide an accurate indication of the condition of the institution, will be prompt, as mandated by section 38.

[10] For savings associations, the equivalent categories are the management, assets, risk, and operations components of the MACRO rating.

Several commenters objected to the agency proposal to establish a different procedure—without an opportunity for a hearing—for the reclassification of an institution that has received an unsatisfactory examination rating and failed to correct the deficiency. These commenters favored providing at least an informal hearing in the case of both types of reclassification. Commenters argued that the consequences of reclassification were identical, whether based on an examination rating or on a finding that the institution is in unsafe or unsound condition, and, therefore, a hearing should be provided in both cases.

Commenters also argued that the apparent difference in the wording of the statute in authorizing the two methods for reclassification of insured institutions did not indicate a Congressional intent to deprive institutions of a hearing in connection with a reclassification based on an examination rating. Rather, commenters argued that insured institutions should be afforded an opportunity for a hearing prior to reclassification based on an unsatisfactory examination rating because examinations are inherently subjective and the consequences to the institution of reclassification, particularly for an institution that is nominally adequately capitalized, could be significant. Accordingly, commenters contended that principles of fundamental fairness required that an opportunity for a hearing be provided prior to a reclassification based on an examination rating.

Following consideration of the comments, the agencies have modified the final rules to provide an opportunity for an informal hearing in the case of both types of reclassifications. The agencies believe that providing an opportunity for an informal hearing prior to reclassification based on an unsatisfactory examination rating will provide the institution with an adequate and meaningful opportunity to provide the agency with information and argument relevant to the agency's decision without substantially delaying the ability of the agencies to take prompt action as required by section 38.

The agencies do not believe that a formal hearing is required in connection with reclassifications based on an unsatisfactory examination rating. The statute does not require a formal hearing on the record in the case of these types of reclassifications. Instead, the statute grants the agencies significant discretion in reclassifying an institution that has received an unsatisfactory examination rating and failed to correct the deficiency.

In addition, the agencies believe that the availability of an informal hearing meets any requirement of fundamental fairness or due process when viewed in context. The examination rating that serves as the trigger for a reclassification is the result of a process that involves substantial participation by the affected institution. This participation includes an opportunity to provide all relevant information to the examiner, and to meet with the examiner with regard to issues that arise during the examination. Moreover, following the examination, each of the agencies provides an informal appeals process whereby an institution can seek review of an examiner's decision at a higher level of the agency. Thus, an institution that has been reclassified based on its examination ratings will have already been afforded substantial opportunity to present evidence and argument prior to any reclassification procedure.

The agencies also note that reclassification of an institution based on an examination rating is not an automatic result of receiving an unsatisfactory rating. Instead, each agency retains discretion to initiate the procedures for reclassification and will do so based on the facts of each case.

Finally, no restrictions or requirements become effective automatically as a result of reclassification. As commenters noted, section 38 does not make institutions that have been reclassified immediately subject to the mandatory provisions of section 38. Instead, section 38 authorizes the appropriate agency, in its discretion, to impose requirements or proscriptions contained in section 38.

Several commenters expressed concern that any use of the reclassification procedures would result in public disclosure of an institution's examination rating. Consequently, these commenters contended that the agencies should never reclassify an institution on the basis of ratings received in an examination report. Several other commenters argued that examination ratings are subjective in nature and should not serve as the basis of reclassification of an institution under section 38.

The agencies expect to use the reclassification provisions of section 38 when appropriate. The agencies believe that steps can be taken to prevent public disclosure of examination ratings, and that use of the reclassification provisions of section 38 is important to ensuring prompt corrective action. The agencies also believe that examination ratings are a proper basis for reclassification under section 38. As noted above, depository institutions participate in the examination process and are afforded an informal appeal of an examiner's judgment. Furthermore, reclassification based on a less-than-satisfactory rating is not automatic, and is left to the agency's discretion, with corresponding procedural protections.

A small number of commenters favored other changes to the reclassification procedures. In particular, one commenter urged that the period for filing a response to a proposed reclassification be lengthened from 14-days to 45 or 60 days. In light of the agencies' decision to provide an opportunity for an informal hearing in connection with reclassifications based on an examination rating, the agencies have determined not to lengthen the time within which an institution may provide its initial written response to a proposed reclassification.

Another commenter suggested delaying the effective date of any reclassification to allow the institution to adjust to new restrictions on its activities. The agencies believe that, because reclassification does not result in the automatic application of any mandatory provision under section 38, it is not necessary to delay the effective date of any reclassification.

Finally, one commenter requested that the agencies provide by regulation that the presiding officer at a hearing not be an individual that has served as an examiner of the institution. The agencies expect to select presiding officers that may render a qualified recommendation to the agency regarding whether reclassification is appropriate, and do not believe that it is necessary or appropriate to specify in the regulation the qualifications of the presiding officer.

5. Enforcement of Directives

Section 8 of the FDI Act, as amended by FDICIA, includes prompt corrective action directives issued pursuant to section 38 among the orders that may be enforced in the courts pursuant to section 8(i)(1), and also makes any depository institution, company, or institution-affiliated party that violates such a directive subject to civil money penalties pursuant to section 8(i)(2)(A). 12 U.S.C. 1818(i). The final rules adopt the proposed clarification that the failure of a depository institution to implement, in any material respect, a capital restoration plan, or the failure of a company having control of a depository institution to fulfill a

guarantee that the company has given in connection with a capital plan accepted by the appropriate Federal banking agency, will subject responsible parties to civil money penalties. Commenters did not object to this proposal.

G. Capital Restoration Plans

1. Information Required

Section 38 requires an institution that is undercapitalized, significantly undercapitalized, or critically undercapitalized to submit a plan to the appropriate Federal banking agency to restore the institution's capital at least to the minimum capital levels required for adequately capitalized institutions. The statute requires that this capital restoration plan be submitted in writing and specify:

(1) The steps the institution will take to become adequately capitalized;
(2) The levels of capital the institution expects to attain in each year that the plan is in effect;
(3) How the institution will comply with the restrictions and requirements imposed on the institution under section 38;
(4) The types and levels of activities in which the institution will engage; and
(5) Any other information required by the appropriate Federal banking agency.

Section 38 provides that the appropriate Federal banking agency may not accept a capital restoration plan unless the plan:

(1) Contains the information required by statute;
(2) Is based on realistic assumptions and is likely to succeed in restoring the institution's capital; and
(3) Would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed.

The agencies did not propose to require by regulation any additional information in a capital restoration plan submitted under section 38, and the commenters generally agreed that the agencies should not impose additional reporting requirements by regulation. The commenters argued that the agencies could require additional information in cases in which circumstances warranted.

2. Schedule for Submission and Review of Capital Plans

The agencies proposed adopting the schedule for submission and review of capital restoration plans that is generally established in the statute. This schedule provided an institution with 45 days to submit a capital restoration plan after the institution has received notice or been deemed to have notice that the institution is undercapitalized, significantly undercapitalized or critically undercapitalized.[11] The proposal permitted the appropriate Federal banking agency to change this period in individual cases, provided that the agency notified the institution that a different schedule had been adopted.

The proposed schedule also required the appropriate Federal banking agency to review each capital restoration plan within 60 days of submission of the plan unless the agency extends the time for review. The agencies would be required to provide written notice to the institution regarding whether the agency had approved or rejected the capital plan. The agency would also provide a copy of each acceptable capital restoration plan, or amendments thereto, to the FDIC within 45 days of accepting the plan.

The commenters addressing this proposal generally supported adopting the schedule provided in section 38, without revision. Two commenters argued that the agencies should be required to review capital restoration plans in less than 60 days.

The final rules adopt the schedule for filing and review of capital restoration plans as proposed. The agencies have determined not to shorten the review period for capital plans as a general matter because the longer period will permit the agencies to discuss revisions to the plan with the institution before the agency is required to take final action on the plan. The agencies expect, however, not to delay action on capital plans, and to act on these plans well within the regulatory schedule.

3. Failure to Submit or Implement an Acceptable Capital Plan

Section 38 provides that an undercapitalized institution that fails to submit or implement, in any material respect, an acceptable capital plan shall be subject to the same restrictions applicable to an institution that is significantly undercapitalized. In the event that the appropriate Federal banking agency has disapproved an institution's capital restoration plan, the proposal would require the institution to submit a new capital restoration plan within a time specified by the appropriate Federal banking agency. During the period following notice of such disapproval and prior to approval by the agency of a new or revised capital plan, the statute treats the institution in the same manner as a significantly undercapitalized institution. Institutions that fail to submit any capital restoration plan within the required period also are subject to the provisions applicable to significantly undercapitalized institutions. Included in these provisions is the statutory prohibition on payment by the institution of any bonus or raise to any senior executive officer.

Several commenters argued that the rule should be revised to permit an undercapitalized institution that had submitted its original capital restoration plan in good faith an opportunity to formulate and submit a revised capital plan before becoming subject to the provisions applicable to significantly undercapitalized institutions. Commenters expressed concern that rejection of the capital plan by the institution's appropriate agency, and corresponding treatment of the institution as significantly undercapitalized, pre-supposes an unwillingness on the part of the institution to devise and implement an acceptable capital plan. Commenters argued that a capital restoration plan may be found by an agency to be unacceptable for reasons that are unrelated to the willingness or ability of the institution to devise an acceptable capital plan. For example, commenters were concerned that a capital plan may be rejected because an institution was unaware that the appropriate agency expected the institution to take certain steps in addition to the steps proposed by the institution, or because developments may have occurred during the period that the plan is under review by the agency that were not reasonably foreseeable by the institution at the time the plan was submitted.

As an initial matter, the agencies believe that it is important that an undercapitalized institution discuss the development of its capital restoration plan with the appropriate banking agency during the period that the plan is being developed. The agencies have adopted the maximum time periods permitted by section 38 for the formal submission and review of a capital restoration plan in order to permit an opportunity for informal discussions between institutions and the appropriate agency. The adoption of a schedule for formal action does not, and is not intended to, preclude informal discussions between the institution and the appropriate agency regarding the elements of the plan prior to the time that the plan is formally submitted.

[11] As discussed above, an institution is deemed to have been notified of its capital category on the date that it is required to file its Call Report, the date that the institution receives its final report of examination or inspection, or the date that the appropriate federal banking agency notifies the institution of the institution's capital category (based on an adjustment to capital reported by the institution or on other information obtained by the agency).

Further, as noted above, the agencies expect discussions to continue during the period that the agency reviews the plan. These discussions should eliminate the chances that a capital restoration plan will be rejected by the agency for a reason that is not anticipated by the institution.

In cases in which an undercapitalized institution nonetheless has failed to submit a capital restoration plan or a plan submitted by an institution is rejected by the appropriate agency, the statute provides that the institution is subject to the provisions applicable to significantly undercapitalized institutions. This treatment has two consequences under section 38.[12] First, the institution is subject to restrictions on its ability to pay bonuses or salary increases to the institution's senior executive officers. In this regard, section 38 specifically prohibits any institution that has failed to submit a capital restoration plan that is acceptable to its appropriate agency from paying any bonus or raise to its senior executive officers. The purpose of this restriction appears to be to prevent senior officers of an undercapitalized institution from receiving any increase in pay if the officers have not devised and submitted a capital restoration plan that the agency agrees will address the problems faced by the institution.

Second, the appropriate Federal banking agency for the institution is permitted to take, and must consider taking, a number of additional discretionary actions in connection with the institution. In determining whether to exercise its discretion to take additional supervisory actions, the agencies believe that they may consider the types of factors noted by the commenters, including events that have occurred after submission of the original plan, the efforts of management to devise a realistic and acceptable plan, and other factors.

In light of the statutory language and the ability of the agencies to consider the factors identified by commenters on a case-by-case basis in determining appropriate action that the agency should take, the agencies believe that it is appropriate to retain in the final rules the provision indicating that an undercapitalized institution is subject to the provisions applicable to significantly undercapitalized institutions in the event the institution has submitted a capital restoration plan that is rejected by the appropriate agency. Similarly, an undercapitalized institution that fails to implement, in any material respect, its capital restoration plan would immediately be subject to these same provisions upon the institution's failure to implement the plan.

4. Guarantee of Performance of Capital Restoration Plan

Section 38 provides that the appropriate agency may not accept a capital restoration plan submitted by an undercapitalized institution unless each company that controls the institution has guaranteed that the institution will comply with the plan until the institution has been adequately capitalized on average during each of four consecutive calendar quarters, and each such company has provided appropriate assurances of performance. This guarantee by any controlling company is independent of any liability of affiliates of the depository institution pursuant to the cross-guarantee provision of the FDI Act (12 U.S.C. 1815(e)).

The agencies proposed to implement the performance guarantee provision by providing that the agencies will not approve a capital restoration plan required to be submitted by an undercapitalized, significantly undercapitalized, or critically undercapitalized institution under section 38, unless each company that controls the institution submits a written guarantee of the plan.[13] The performance guarantee would include a commitment to take actions required by the capital plan, including, for example, assuring that competent management will be selected, restricting transactions between the institution and the controlling company, and discontinuing certain risky activities within the institution or an affiliate. This guarantee would also include assurances that the institution would fulfill any commitments to raise capital made in the plan. Each company that provides the financial guarantee would be jointly and severally liable for fulfillment of the guarantee, up to the statutory limit of liability. Failure of any company that controls an undercapitalized institution to provide the required guarantee causes the institution to become subject to the provisions of section 38 applicable to significantly undercapitalized institutions.

Section 38 also requires each company that controls an undercapitalized institution to provide adequate assurances that the institution will perform under its capital plan. Providing adequate assurances will include committing to take whatever steps are necessary to ensure that the capital restoration plan is fully implemented.

The agencies requested comment regarding whether it was appropriate to specify by regulation the types of performance assurances that would be required. In addition, the agencies proposed a number of clarifications to the capital guarantee in the original proposal.

Most of the commenters that addressed the guarantee provisions suggested that the agencies determine on a case-by-case basis, and not specify by regulation, the form of guarantee that would be acceptable and whether adequate assurances of performance had been given by companies that control an undercapitalized institution. At this time, the agencies agree with the commenters that the adequacy of a capital guarantee and of the assurances of performance should be determined on a case-by-case basis in connection with an agency's review of capital restoration plans, and not by regulation. This will provide the agencies and companies that control undercapitalized institutions with flexibility to devise guarantees that are appropriate for individual cases, and permit the agencies and the industry to gain experience with the types of assurances that are adequate. As the agencies and the industry gain experience in this area, the agencies will reconsider whether it is appropriate to establish regulatory requirements in this area.

The commenters generally did not object to the agencies' interpretation that each company that provides a performance guarantee under section 38 would be jointly and severally liable for fulfillment of the guarantee. However, several commenters requested clarification regarding whether companies that are intermediate shell holding companies would be permitted to fulfill their guarantee requirement by providing a certification that the parent of the intermediate companies would guarantee performance. Similarly, these commenters sought agency guidance regarding whether intermediate shell holding companies would be permitted to rely on the financial resources of the parent company or of a third party as adequate assurance of performance on the guarantee.

The agencies believe that a guarantee that is backed by the contractual pledge of resources of a parent company may, particularly in situations involving the ownership of an insured institution by a company through a wholly owned domestic shell holding company, satisfy

[12] As explained above, a significantly undercapitalized institution is subject to the same mandatory and discretionary provisions that apply to undercapitalized institutions.

[13] A capital restoration plan does not supersede an existing net worth maintenance agreement.

the requirements of section 38. In other situations, a third party guarantee made by a party with adequate financial resources may be satisfactory for purposes of section 38. The agencies will consider the type of guarantee that would be appropriate in multi-tier holding companies on a case-by-case basis. The agencies will also consider on a case-by-case basis the type of guarantee that is necessary in the case of a parent holding company that is a shell company or has limited resources.

Section 38 limits the aggregate liability under the capital performance guarantee of all companies that control a given insured depository institution to the lesser of:

(1) An amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized; or

(2) The amount necessary (or that would be necessary) to bring the institution into compliance with all capital standards applicable with respect to such institution as of the time the institution fails to comply with its capital restoration plan.

In incorporating this provision into the regulation, the agencies proposed to adopt the same definition of total assets for purposes of computing the first component of the limit on liability as would be used in determining the capital category of the institution. As discussed above, the commenters unanimously favored using the same definition of capital terms to the extent possible in implementing section 38, and argued against the use of definitions that would require daily calculation of risk-weighted assets or capital. The final rules rely on existing definitions and capital calculation procedures in implementing the capital guarantee provisions.

The agencies also proposed to clarify that the second component of the limit on liability refers to the amount necessary to restore the capital of the institution to the applicable minimum capital levels as those levels were defined at the time that the institution initially failed to comply with its capital plan. The amount of a capital guarantee would not change if the minimum capital adequacy standards changed after the time the institution initially failed to comply with its capital restoration plan. [14] The commenters that addressed this issue favored this approach, and the agencies have adopted the proposal in the final rules.

[14] Any modification of the minimum capital requirement for savings associations, required by FIRREA's transition schedules, is not a change of the minimum capital adequacy requirements for purposes of section 38 and this part.

The final rules also include the agencies' proposal for implementing the statutory provision that limits the duration of a guarantee of a capital plan. Under the proposal, the appropriate Federal banking agency would provide notice to the company that the guarantee has expired once the depository institution has remained adequately capitalized for four consecutive calendar quarters. This approach permits the agency and the institution to verify that the limit of liability under the guarantee has expired.

The final rules adopt provisions that make clear that expiration of a guarantee or fulfillment of a guarantee given by a company in connection with one capital restoration plan does not relieve the company from the obligation to guarantee another capital restoration plan that may be required at a future date for the same institution if it again becomes undercapitalized. Similarly, the fact that a company has, at one time, fulfilled a guarantee by providing resources to an institution up to the statutory limit would not reduce the amount of any guarantee of a future capital plan for the same institution. Moreover, the provision or fulfillment by a company of a guarantee for one institution does not affect the obligation of that company to guarantee a capital plan in connection with any other insured depository institution. Commenters generally did not disagree with these provisions.

One commenter asked that a company that has performed on a guarantee of a capital plan be granted a two-year grace period before being required to guarantee another plan by the same institution. The agencies do not believe that the statute contemplates such an exception.

5. Priority in Bankruptcy

In the original proposal for comment, the agencies noted that the FDIC will have a priority claim in any bankruptcy proceedings of a holding company that has guaranteed an institution's compliance with a capital restoration plan. The FDIC's claim against a holding company's estate would have priority over the claims of unsecured creditors and is provided for in section 507(a)(8) of Title 11 of the United States Code, as amended by the Crime Control Act of 1990, Public Law 101-647, 104 Stat. 4789. Sections 365(o) and 523(a)(12) of Title 11 of the United States Code, as amended by the Crime Control Act of 1990, also provide special protections for the FDIC. The agencies did not receive any comment on this matter.

6. Submission of Plans by Reclassified Institutions

Section 38(g) provides that an institution that has been reclassified to a different capital category as a result of an agency determination that the institution is in an unsafe or unsound condition or is engaged in an unsafe or unsound practice must describe the steps the institution will take to address these deficiencies. The final rules reflect this statutory requirement.

Section 38(g) also provides that an institution is not required to submit a capital restoration plan if the institution nominally has adequate capital but has, because of its condition or practices, been made subject to provisions applicable to an undercapitalized institution. The agencies requested comment on whether it was appropriate to require by regulation that all adequately capitalized institutions that are subject to provisions as if the institution were undercapitalized file a plan describing the steps that would be required to address its deficiencies. The commenters strongly urged that this provision not be adopted in the regulation and that the agencies reserve authority to require plans on a case-by-case basis. The agencies agree that these plans may not always be appropriate and have determined to consider the need for these plans on a case-by-case basis as provided in section 38.

7. Revised Capital Restoration Plans

The agencies requested comment regarding whether the final rules should require in all cases that an insured depository institution that is operating under a capital restoration plan that has been approved by the appropriate Federal banking agency must submit an additional or a revised capital restoration plan if the institution's capital classification changes. Commenters generally believed that an inflexible rule would result in requiring an institution to file capital plans more frequently than necessary to address the institution's problems. On the other hand, commenters agreed that the agencies had discretion under section 38 to require a capital plan in individual cases as appropriate.

The final rules do not adopt a regulatory requirement that an institution file a new or revised capital restoration plan in the event that the institution's capital category changes. Instead, the agencies have adopted a provision in the final rules retaining discretion to determine on a case-by-case basis that an institution must

submit a new or revised capital plan. Under the final rules, in the event that the agency determines that a new or revised plan must be submitted, the agency will provide notice to the institution.

H. Monitoring Undercapitalized Institutions.

Section 38 requires the agencies to monitor closely institutions that are undercapitalized, significantly undercapitalized, or critically undercapitalized. The agencies must also monitor compliance by these institutions with their capital restoration plans and with restrictions and requirements imposed under section 38. This monitoring will be carried out through review of the reports filed by the institution, examinations of the institution on an appropriate time schedule, and informal discussions with the institution regarding the steps that it is taking to improve its condition, develop and implement an acceptable capital restoration plan, and comply with applicable requirements.

As part of this monitoring program, the appropriate Federal agency will discuss with the institution any revisions that may need to be made by an institution to its capital plan. The appropriate agency also will discuss elimination of restrictions that are no longer needed as an institution successfully implements its capital plan and improves its financial condition. Once an institution has fulfilled its capital restoration plan and returned to at least the adequately capitalized category, directives issued pursuant to section 38 will be removed.

I. Other Matters

1. Definition of "Management Fee"

Section 38 of the FDI Act prohibits any institution from paying management fees to a controlling person if, following the payment of those fees, the institution would be undercapitalized. The agencies had proposed to define a management fee to be any payment for management services or advice, other than payments to individuals in their capacity as employees of the institution.

Commenters expressed concern that this definition could be interpreted to preclude payments for non-management services obtained from an affiliate, such as data processing services. In order to address this concern, one commenter, representing a group of insured institutions, suggested defining a management fee to be any payment made for the provision of management services or advice in connection with "supervisory, executive, managerial, or policymaking functions." The agencies believe that this formulation covers the types of fees identified by the statute without affecting fees paid for non-management services, which are not prohibited by the mandatory provisions of section 38.

The final rules generally adopt the language suggested by the commenter and define management fees to include any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank, or related overhead expenses, including payments related to supervisory, executive, managerial, or policymaking functions, other than compensation to an individual in the individual's capacity as an officer or employee of the bank. The definition does not include payments to a controlling person for such things as electronic data processing, trust activities, mortgage servicing, audit and accounting services, property management, or other similar service fees.

The agencies point out that while fees paid for nonmanagement services provided by an affiliate are not prohibited by the mandatory provisions of section 38, the agencies have discretion under several provisions of section 38 to restrict any fees paid to an affiliate by an undercapitalized institution or any transaction between the undercapitalized institution and an affiliate. The agencies also stress that all management fees and servicing fees paid by an insured institution to an affiliate are subject to the restrictions and requirements of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1), regardless of the institution's capital category under section 38. Sections 23A and 23B require that services that are provided to an insured institution be provided on terms that are at least as favorable to the insured institution as would be available from a third party.

2. Definition of "Control" and "Controlling Person"

The agencies requested comment regarding the definition of "control," particularly whether an exception should be provided for persons that have acquired control of an institution in a fiduciary capacity or in satisfaction of a debt previously contracted (DPC). The word "control" is used in two provisions of the regulation: first, in the definition of controlling person, noted below, and second, in the requirement that for any capital restoration plan to be acceptable, the plan must be guaranteed by each company having control of the institution.

Section 38 does not define the term "control." Section 3 of the FDI Act, however, adopts the definition of "control" contained in section 2 of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1841(a)(2)). Under the BHC Act, a company controls an institution if the company owns or controls 25 percent or more of the voting securities of that institution, controls the board of directors of the institution; or exercises a controlling influence over the management or policies of the institution.

The BHC Act also provides exclusions for certain types of share ownership from the applicability of the control provisions. Section 2(a)(5)(A) of the BHC Act (12 U.S.C. 1841(a)(5)(A)) states that a bank or company is not deemed to be a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, provided that the bank or company does not retain sole right to vote the shares. Additionally, section 2(a)(5)(D) of the BHC Act (12 U.S.C. 1841(a)(5)(D)) permits a company to hold shares of a depository institution acquired DPC without being deemed to be a bank holding company, provided that the company disposes of the shares within two years (with the possibility of three one-year extensions).

The proposed rules noted that the FDI Act also contains a DPC exception. Section 5 of the Act (12 U.S.C. 1815), addresses the liability of commonly controlled depository institutions for "cross-guarantee" claims. Section 5(e)(7) of the FDI Act (12 U.S.C. 1815(e) (7)) contains an exception for the acquisition by an insured depository institution of shares of another depository institution in satisfaction of a debt previously contracted. That exception is conditioned on the requirement that all transactions between the controlling institution or any affiliate of the controlling institution and the subsidiary institution comply with the restrictions contained in sections 23A and 23B of the Federal Reserve Act.

The agencies requested comment on whether it would be appropriate under section 38 to provide, by regulation, an exception from the definition of "control" for shares held in a fiduciary capacity or for shares acquired DPC. The agencies also requested comment on whether, assuming there were an exception for shares acquired DPC, the exception should be subject to the conditions established in the FDI Act regarding compliance with sections 23A and 23B.

The agencies received 18 comment letters on this matter. All 18 comment letters supported the adoption of a definition of "control" similar to that found presently in the BHC Act. Seventeen comment letters also supported the adoption of fiduciary ownership and DPC exceptions from the definition of "control". Commenters strongly supported adopting these exceptions and argued that without these exceptions companies would be unlikely to hold stock from an insured institution in a fiduciary capacity or accept such stock as collateral for a loan because of the potential liability under section 38. Seven comment letters supported the inclusion of conditions similar to those contained in section 5(e)(7) of the FDI Act in the DPC exception, with one comment letter opposed.

The agencies have included in the final rules implementing section 38 a definition of the term "control" identical to that provided in section 2 of the BHC Act and an exception from that definition for shares held in a fiduciary capacity and for shares acquired DPC. Similar to section 2(a)(5)(A) of the BHC Act, the fiduciary exception is premised on the condition that the bank or company holding the shares not retain the sole right to vote the shares. The DPC exception in the final rule parallels section 2(a)(5)(D) of the BHC Act in that the shares held DPC must be disposed of within two years, with the possibility of three one-year extensions. The agencies did not consider it necessary to include conditions similar to those contained in the DPC exception to section 5 of the FDI Act (12 U.S.C. 1815(e)(7)) in the final rule.

Qualification for an exemption from the definition of control, however, does not exempt the depository institution whose shares are held by another company or depository institution from the provisions of section 38. Whether or not it is "controlled" by another entity, a depository institution whose stock is held DPC or in a fiduciary capacity will still be subject to all relevant provisions of section 38 in accordance with its capital category. For example, an undercapitalized institution whose stock is held DPC may not pay dividends.

The final rules add a definition of the term "controlling person." The term "controlling person" is defined as any person having control of an insured depository institution and any company controlled by that person. Thus, the prohibition on payment of management fees covers payment to any company, including a consulting firm, owned by the principal shareholder of an institution, and any servicing company owned by a bank holding company.

3. Restrictions on Advertising

The proposed rule limited an insured depository institution's use of its capital category for any purpose, except when permitted by the appropriate Federal banking agency or otherwise required by law. This provision was intended to restrict the ability of insured depository institutions to advertise their capital category.

The agencies received eleven comments in support of this limitation on use of the capital category. Twelve commenters objected and urged that financial institutions be allowed to advertise their capital category.

Some commenters expressed concern about the practicality of such a prohibition given that disclosure of the category may be required for purposes of risk-based deposit insurance premiums, brokered deposits, and interbank liabilities. Disclosure may also be necessary in securities filings.

The agencies recognize that disclosure may be appropriate under some circumstances. The prompt corrective action framework in section 38 was designed, however, to be a supervisory tool, not a marketing vehicle. The agencies have long held that capital levels are a lagging indicator of problems in financial institutions. An advertisement that cites a financial institution's capital category under section 38 could be misleading to the general public. Depositors, investors and other affected persons could improperly view the capital category designation as the regulator's definitive assessment of the insured depository institution's true financial condition.

Taking account of the concerns expressed by the commenters, the final rule has narrowed the disclosure restriction to prohibit the advertising of the capital category assigned to an institution pursuant to section 38. The final rule does not restrict advertising of the institution's capital levels or financial condition. The institution may not, however, describe itself in an advertisement or in promotional material as falling within the well capitalized category, as that category is defined by the Federal banking agencies pursuant to section 38. Nor may the institution advertise that its appropriate Federal banking agency has determined it to be well capitalized.

4. Applicability of Capital Categories to Bank Holding Companies and Savings and Loan Holding Companies

Section 38 applies capital-based prompt corrective action to insured depository institutions but not to holding companies that control such institutions. The commenters strongly urged the Federal Reserve Board and the OTS not to impose the framework of section 38 to bank holding companies and to savings and loan holding companies. Several commenters argued that the enactment of section 38 provided the agencies with an opportunity to eliminate the capital adequacy standards that are currently applicable to bank holding companies and savings and loan holding companies.

The Board and the OTS have determined not to apply section 38 to bank holding companies and savings and loan holding companies. The statute, by its terms, applies only to insured depository institutions, and Congress has provided no indication that it intended the framework to be extended. The agencies also have authority under a number of other statutory provisions to supervise the activities and financial condition of holding companies.

The agencies note, however, that, while the complete supervisory framework of section 38 does not govern holding companies, various provisions of section 38 apply to companies that control insured depository institutions. These provisions, including the provisions regarding guarantee of a capital restoration plan, appear to apply to holding companies regardless of the capital level of those holding companies. The Federal Reserve Board intends to consult with the Federal banking agency for each insured depository institution subsidiary of a bank holding company to monitor supervisory actions required under section 38, and, in the supervision of the holding company, to take appropriate action at the holding company level based on an assessment of these developments. In supervising savings and loan holding companies, the OTS will concentrate on ensuring that subsidiary savings associations are well managed and well capitalized and that transactions and relationships between savings associations and their holding companies satisfy fiduciary requirements and do not negatively affect the safety and soundness of the subsidiary associations. OTS will supervise holding companies in a manner consistent with the effectiveness of supervisory actions required under section 38 imposed upon subsidiary associations.

5. Restrictions on Activities of Critically Undercapitalized Institutions

Section 38(i) of the FDI Act provides that the FDIC must, by regulation or

order, restrict the activities of critically undercapitalized institutions. The activities that must be restricted are described above. FDICIA does not provide specific guidance on how to interpret and implement each of the restrictive provisions of section 38(i). Consequently, the FDIC considered a number of options.

The prohibition on entering into "any material transaction other than in the usual course of business" can be interpreted in a general fashion relying on outstanding case law in the area of securities disclosures. The concept of materiality also could be defined from an accounting perspective by establishing specific limits for determining materiality. For example, the FDIC could, by regulation, require that any prospective transaction other than one that is in the usual course of business that results or could result in a 5 percent change in an institution's tangible equity capital account or net income account would automatically be considered a material transaction requiring the FDIC's prior approval. Other transactions could be defined as material on a case by case basis. The FDIC solicited comment on how to define the terms "material" and "usual course of business" as well as what specific guidance, if any, should be provided by the FDIC to the banking industry.

The FDIC received two comments on the materiality issue. One respondent suggested the definition be based on market capitalization as opposed to a percentage based on equity capital. The range suggested was between 5 and 10 percent. The other respondent suggested that the denominator for defining a material transaction be based on 10 percent of total assets.

After consideration of the above comments, the FDIC has decided to define a material transaction on a case-by-case basis. The FDIC believes that defining a material transaction using a fixed percentage of capital or assets could be arbitrary and exclude those transactions that initially may be de minimus in amount or not easily subjected to a quantifiable measure but "material" in substance such as a proposal to engage in a new service-oriented activity. A fixed measurement also could be inconsistent with the statutory requirement that a material transaction includes those activities where the institution would have to notify its appropriate Federal banking agency.

The FDIC did not receive any comments on how to apply the phrase "usual course of business" or what specific guidance, if any, to provide to the banking industry. The FDIC intends to interpret this phrase to mean any activity currently engaged in by the specific institution. Therefore, any new activity not currently exercised by the specific institution, though permissible and approved by the appropriate regulator(s), would require the FDIC's prior written approval. For example, a critically undercapitalized institution that wishes to engage for the first time in commercial real estate lending and to establish a new commercial real estate loan department would be required to obtain the FDIC's prior written approval under this section.

The FDIC recognizes that the types of activities considered "usual" for a particular institution are contingent on its size, location, management expertise, business strategy, etc. Consequently, what may be "usual" for a large urban institution may not be "usual" for a smaller rural institution and vice versa. The FDIC believes that this definition of new activity is consistent with the statutory intent that troubled institutions should focus their attention on their existing problems and existing lines of business.

The FDIC proposed to define the term "highly leveraged transaction" by utilizing the interagency definition published in the **Federal Register** (57 FR 5040, February 11, 1992). Due to the uncertainty over whether the HLT definition will remain in effect, the FDIC has decided to adopt in the final rule an abbreviated definition for HLTs that will apply to critically undercapitalized institutions. The FDIC also intends to rely on existing generally accepted accounting principles when interpreting the restriction on making any "material change in accounting methods."

Section 39(c) of the FDI Act requires the Federal banking agencies to prescribe standards for determining when compensation paid to employees, directors and principal shareholders of insured depository institutions is excessive. An advance notice of proposed rulemaking was recently published in the **Federal Register** (52 FR 31336, July 15, 1992). The FDIC intends to interpret the restrictive provision in section 38(i)(2)(F) involving the payment of excessive compensation or bonuses in a manner that is consistent with the FDIC's actions in fulfilling the requirements of section 39(c) of the FDI Act. In the interim, the FDIC intends to enforce section 38(i) by requiring prior written approval of any change in the institution's compensation of any of its executive officers (as defined in Federal Regulation O (12 CFR part 215), directors and principal shareholders and will consider existing compensation levels on a case-by-case basis.

The provision that restricts "paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas" contains terms that are similar to those mandated by section 301 of FDICIA and the revisions of § 337.6 of the FDIC's regulations (12 CFR 337.6) as recently implemented by the FDIC. Specifically, the FDIC intends to interpret the phrase "significantly exceeding the prevailing rates" the same as defined in § 337.6. The prevailing effective yields of interest are the effective yields on insured deposits of comparable maturities offered by other insured depository institutions in the market area in which deposits are being solicited. A market area is any readily defined geographic area in which the rates offered by any one insured depository institution soliciting deposits in the area may affect the rates offered by other institutions soliciting deposits in the same area.

6. Application of Prompt Corrective Action to Insured Branches

Section 38(a)(2) of the FDI Act, as added by section 131 of FDICIA, provides that each appropriate Federal banking agency and the FDIC (acting in the FDIC's capacity as the insurer of depository institutions) shall take prompt corrective action to resolve the problems of insured depository institutions.

Section 3(c)(2) of the FDI Act defines the term "insured depository institution" as any bank or savings association the deposits of which are insured by the FDIC pursuant to the FDI Act. 12 U.S.C. 1813(c)(2). The term "bank" is defined, in section 3(a)(1) of the FDI Act, to include, *inter alia*, any "insured branch." 12 U.S.C. 1813(a)(1). Section 3(s)(3) defines the term "insured branch" to mean any branch (as defined in section 1(b)(3) of the International Banking Act of 1978) of a foreign bank any deposits in which are insured pursuant to the FDI Act. 12 U.S.C. 1813(s)(3).

The plain language of these statutory provisions requires the application of the prompt corrective action provisions to insured branches of foreign banks, including insured federal branches. Insured branches, however, are not required to maintain minimum capital levels under the FDIC's capital maintenance regulations, 12 CFR part 325. In fact, they are expressly excluded

from the definition of "insured depository institution" which is used in the FDIC's capital maintenance regulations. 12 CFR 325.2(f). Insured branches, however, are required to maintain a pledge of assets, pursuant to 12 CFR 346.19, and a certain volume of eligible assets, pursuant to 12 CFR 346.20.

Insured federal branches, likewise, are not required to maintain minimum capital levels under the OCC's capital maintenance regulations, 12 CFR part 3. See 50 FR 10215, March 14, 1985. In addition to the asset pledge and asset maintenance requirements to which all insured branches are subject, all federal branches are required by section 4 of the International Banking Act of 1978 (12 U.S.C. 3102(g)(2)) to establish capital equivalency deposits which generally must equal at least 5 percent of the branch's third party liabilities. Federal branches also may be required by the OCC to maintain a certain quantity of specified assets in the states in which they operate.

In an effort to promote competitive equality between insured federal and state branches of foreign banks, the OCC and the FDIC proposed a uniform definition of capital categories for all insured branches of foreign banks based upon the FDIC's asset pledge and asset maintenance requirements which apply to all insured branches.

The OCC and the FDIC recognize that the eligible assets and, more particularly, the pledge of assets are not perfect substitutes for capital. Nonetheless, the FDIC has long taken the position that the asset maintenance requirement is analogous to a domestic bank's required capital. Therefore, the OCC and the FDIC have decided to utilize FDIC's regulations governing the pledge of assets and the level of eligible assets to determine an insured branch's capital category.

For prompt corrective action purposes, an insured federal branch will be deemed:

"Well capitalized" if it:

1. Maintains the pledge of assets required under 12 CFR 346.19; and

2. Maintains the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

3. Has not received written notification from (1) the OCC to increase its capital equivalency deposit pursuant to 12 CFR 28.6(a), or to comply with the asset maintenance requirements pursuant to 12 CFR 2809 or (2) the FDIC to pledge additional assets pursuant to 12 CFR 346.19 or to maintain a higher ratio of eligible assets pursuant to 12 CFR 346.20.

"Adequately capitalized" if it:

1. Maintains the pledge of assets required under 12 CFR 346.19;

2. Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

3. Does not meet the definition of a "well capitalized" insured branch.

"Undercapitalized" if it:

1. Fails to maintain the pledge of assets required under 12 CFR 346.19; or

2. Fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

"Significantly undercapitalized" if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 104 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

"Critically undercapitalized" if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 102 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

Section 38 of the FDI Act enumerates the corrective measures that the appropriate Federal banking agency may or must take against, and what restrictions apply to, institutions in each of the five capital categories. Some of the prescribed measures and applicable restrictions may not be practical or appropriate in dealing with insured branches of foreign banks.

Therefore, it is the intent of the OCC and the FDIC to apply to insured branches as many of the prompt corrective measures and restrictions as practical and appropriate, given the unique characteristics of insured branches.

Several respondents expressed the view that the prompt corrective action provisions in section 38 of the FDI Act should apply to insured branches of foreign banks and that the capital levels should be comparable with those for domestic banks. The FDIC and OCC, as the primary federal regulators of insured branches, concur with this approach. As a result, the prompt corrective action rules of the FDIC and OCC intend to accomplish this objective by using the asset pledge and asset maintenance tests noted above for purposes of determining an insured branch's capital category.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that these final rules will not have a significant impact on a substantial number of small entities.

The final rules impose the minimum burdens necessary to implement the prompt corrective action provisions of section 131 of FDICIA for all insured depository institutions, regardless of size. The regulation requires each insured depository institution to monitor its capital levels and to report to the appropriate Federal banking agency any material event that would cause the institution to be classified within a lower capital category. In addition, the final rules require an institution that becomes undercapitalized, significantly undercapitalized, or critically undercapitalized to submit a capital restoration plan.

The filing of the capital plan is a requirement imposed by statute and occurs only when an institution initially becomes undercapitalized, significantly undercapitalized, or critically undercapitalized. In establishing a mechanism for gathering sufficient information to determine the appropriate capital category for each insured depository institution, the Federal banking agencies have attempted to reduce the burden imposed on such institutions by relying primarily on the Call Report that must already be filed and on reports of examination that would otherwise take place. No additional regular reporting requirement has been imposed.

Executive Order 12291

The OCC and OTS have determined that these final rules are not major regulations as defined in Executive Order 12291. These final rules implements section 131 of FDICIA, which established a new statutory framework for resolving the problems of insured depository institutions at the least long-term cost to the FDIC.

List of Subjects

12 CFR Part 6

Banks, Banking, Capital adequacy, National banks.

12 CFR Part 19

Administrative practice and procedure, Crime, Dismissals, Investigations, National banks, Penalties, Reclassification, Securities.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business

information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 263

Administrative practice and procedure, Federal Reserve System.

12 CFR Part 308

Administrative practice and procedure, claims, equal access to justice, lawyers, penalties.

12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, State nonmember banks, Savings associations.

12 CFR Part 565

Administrative practice and procedure, Capital, Savings associations.

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 263

For the reasons outlined above, the Board of Governors amends 12 CFR parts 208 and 263 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for 12 CFR part 208 is revised to read as follows:

Authority: Secs. 9, 11(a), 11(c), 19, 21, 25 and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321–338, 248(a), 248(c), 461, 481–486, 601, and 611, respectively); secs. 4, 13(j) and 38 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814, 1823(j), and 1831o, respectively); sec. 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); secs. 907–910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906–3909); secs. 2, 12(b), 12(g), 12(i), 15B(c) (5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 781(b), 1781(g), 781(i), 78o–4(c) (5), 78q, 78q–1, and 78w, respectively); sec. 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and secs. 1101–1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331–3351).

Subpart A—General Provisions

2. The undesignated centerheading preceding § 208.1 is removed, §§ 208.1 through 208.19 are designated as subpart A to part 208, and the subpart A heading is added to read as set forth above.

3. Subpart B, comprising §§ 208.30 through 208.35, is added to part 208 to read as follows:

Subpart B—Prompt Corrective Action

Sec.

208.30 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.
208.31 Definitions.
208.32 Notice of capital category.
208.33 Capital measures and capital category definitions.
208.34 Capital restoration plans.
208.35 Mandatory and discretionary supervisory actions under section 38.

Subpart B—Prompt Corrective Action

§ 208.30 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o.).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for state member banks, the capital measures and capital levels that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This subpart also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38.

(c) *Scope.* This subpart implements the provisions of section 38 of the FDI Act as they apply to state member banks. Certain of these provisions also apply to officers, directors and employees of state member banks. Other provisions apply to any company that controls a state member bank and to the affiliates of a state member bank.

(d) *Other supervisory authority.* Neither section 38 nor this subpart in any way limits the authority of the Board under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the Board, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Disclosure of capital categories.* The assignment of a bank under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the Board or otherwise required by law, no bank may state in any advertisement or promotional material its capital category under this subpart or that the Board or any other Federal banking agency has assigned the bank to a particular capital category.

§ 208.31 Definitions.

For purposes of this subpart, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in section 38 and section 3 of the FDI Act.

(a) (1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term "controlled" shall be construed consistently with the term "control."

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect thereto.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate Federal banking agency for up to three one-year periods.

(b) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(c) *Leverage ratio* means the ratio of Tier 1 capital to average total consolidated assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure (appendix B to part 208).

(d) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank or related overhead expenses.

including payments related to supervisory, executive, managerial, or policymaking functions, other than compensation to an individual in the individual's capacity as an officer or employee of the bank.

(e) *Risk-weighted assets* means total weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to part 208).

(f) *Tangible equity* means the amount of core capital elements in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to part 208), plus the amount of outstanding cumulative perpetual preferred stock (including related surplus), minus all intangible assets except purchased mortgage servicing rights to the extent that the Board determines pursuant to section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1828 note) that purchased mortgage servicing rights may be included in calculating the bank's Tier 1 capital.

(g) *Tier 1 capital* means the amount of Tier 1 capital as defined in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to part 208).

(h) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to part 208).

(i) *Total assets* means quarterly average total assets as reported in a bank's Report of Condition and Income (Call Report), minus intangible assets as provided in the definition of tangible equity.

(j) *Total risk-based capital ratio* means the ratio of qualifying total capital to weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to part 208).

§ 208.32 Notice of capital category.

(a) *Effective date of determination of capital category.* A state member bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart as of the date the bank is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A state member bank shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Report of Condition and Income (Call Report) is required to be filed with the Board;

(2) A final report of examination is delivered to the bank; or

(3) Written notice is provided by the Board to the bank of its capital category for purposes of section 38 of the FDI Act and this subpart or that the bank's capital category has changed as provided in paragraph (c) of this section or § 208.33(c).

(c) *Adjustments to reported capital levels and capital category.—(1) Notice of adjustment by bank.* A state member bank shall provide the Board with written notice that an adjustment to the bank's capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the bank to be placed in a lower capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination.

(2) *Determination by the Board to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the Board shall determine whether to change the capital category of the bank and shall notify the bank of the Board's determination.

§ 208.33 Capital measures and capital category definitions.

(a) *Capital measures.* For purposes of section 38 and this subpart, the relevant capital measures shall be:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio; and

(3) The leverage ratio.

(b) *Capital categories.* For purposes of section 38 and this subpart, a state member bank shall be deemed to be:

(1) "Well capitalized" if the bank:

(i) Has a total risk-based capital ratio of 10.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) "Adequately capitalized" if the bank:

(i) Has a total risk-based capital ratio of 8.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and

(iii) Has—

(A) A leverage ratio of 4.0 percent or greater, or

(B) A leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMEL rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth; and

(iv) Does not meet the definition of a "well capitalized" bank.

(3) "Undercapitalized" if the bank:

(i) Has a total risk-based capital ratio that is less than 8.0 percent; or

(ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii) (A) Except as provided in clause (B), has a leverage ratio that is less than 4.0 percent; or

(B) Has a leverage ratio that is less than 3.0 percent, if the bank is rated composite 1 under the CAMEL rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth.

(4) "Significantly undercapitalized" if the bank has—

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) "Critically undercapitalized" if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Reclassification based on supervisory criteria other than capital.* The Board may reclassify a well capitalized state member bank as adequately capitalized and may require an adequately capitalized or an undercapitalized state member bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower capital category (except that the Board may not reclassify a significantly undercapitalized bank as critically undercapitalized) (each of these actions are hereinafter referred to generally as "reclassifications") in the following circumstances:

(1) *Unsafe or unsound condition.* The Board has determined, after notice and opportunity for hearing pursuant to § 263.203 of this chapter, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The Board has determined, after notice and opportunity for hearing pursuant to § 263.203 of this chapter, that, in the most recent examination of the bank,

the bank received and has not corrected, a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.

§ 208.34 Capital restoration plans.

(a) *Schedule for filing plan*—(1) *In general.* A state member bank shall file a written capital restoration plan with the appropriate Reserve Bank within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the Board notifies the bank in writing that the plan is to be filed within a different period. An adequately capitalized bank that has been required pursuant to § 208.33(c) to comply with supervisory actions as if the bank were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 208.33(c) unless the Board notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the appropriate Reserve Bank within 45 days of receiving such notice, unless the Board notifies the bank in writing that the plan is to be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the Board instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A bank that is required to submit a capital restoration plan as the result of a reclassification of the bank pursuant to § 208.33(c) shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of that Act by each company that controls the bank.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the Board shall provide written notice to the bank of whether the plan has been approved. The Board may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan.* If a capital restoration plan is not approved by the Board, the bank shall submit a revised capital restoration plan within the time specified by the Board. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized state member bank (as defined in § 208.33(b)(3)) shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the bank has been approved by the Board.

(e) *Failure to submit capital restoration plan.* A state member bank that is undercapitalized (as defined in § 208.33(b)(3)) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(f) *Failure to implement capital restoration plan.* Any undercapitalized state member bank that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(g) *Amendment of capital plan.* A bank that has filed an approved capital restoration plan may, after prior written notice to and approval by the Board, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Notice to FDIC.* Within 45 days of the effective date of Board approval of a capital restoration plan, or any amendment to a capital restoration plan, the Board shall provide a copy of the plan or amendment to the Federal Deposit Insurance Corporation.

(i) *Performance guarantee by companies that control a bank—(1) Limitation on Liability*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific state member bank that is required to submit a capital restoration plan under this subpart shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the bank's total assets at the time the bank was notified or deemed to have notice that the bank was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the bank to the levels required for the bank to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the bank initially fails to comply with a capital restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this subpart shall expire after the Board notifies the bank that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same bank after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a given bank shall be jointly and severally liable for the guarantee for such bank as required under section 38 and this subpart, and the Board may require and collect payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a bank that is controlled by any company submits a capital restoration plan that does not contain the guarantee required under section 38(e) (2) of the FDI Act, the bank shall, upon submission of the plan, be subject to the provisions of section 38 and this subpart that are applicable to banks that have not submitted an acceptable capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a bank to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the bank shall be subject to the provisions of section 38 and this subpart that are applicable to banks that have failed in a material respect to implement a capital restoration plan.

§ 208.35 Mandatory and discretionary supervisory actions under section 38.

(a) *Mandatory supervisory actions—(1) Provisions applicable to all banks.* All state member banks are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks.* Immediately upon receiving notice or being deemed to have notice, as provided in section § 208.32 or section § 208.34 of this subpart, that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the Board monitor the condition of the bank (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this subpart (section 38(e)(2));

(iv) Restricting the growth of the bank's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 3(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 208.32 or § 208.34 of this subpart, that the bank is significantly undercapitalized, or critically undercapitalized, or that the bank is subject to the provisions applicable to institutions that are significantly undercapitalized because the bank failed to submit or implement in any material respect an acceptable capital restoration plan, the bank shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a) (2) and (3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 208.32 of this subpart, that the bank is critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act:

(i) Restricting the activities of the bank (section 38(h)(1)); and

(ii) Restricting payments on subordinated debt of the bank (section 38(h)(2)).

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the Board's discretion to take in connection with: A state member bank that is deemed to be undercapitalized, significantly undercapitalized, or critically undercapitalized, or has been reclassified as undercapitalized, or significantly undercapitalized; an officer or director of such bank; or a company that controls such bank, the Board shall follow the procedures for issuing directives under §§ 263.202 and 263.204 of this chapter, unless otherwise provided in section 38 or this subpart.

Subparts C and D—[Reserved]

Subpart E—Interpretations

4. Subparts C and D are added to part 208 and reserved, the undesignated centerhead preceding section 208.116 is removed, §§ 208.116, 208.117, 208.122, and 208.124 through 208.128 are designated as subpart E of part 208, and the subpart E heading is added to read as set forth above.

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for 12 CFR Part 263 is revised to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j) , 1818, 1828(c), 1831o, 1847(b), 1847(d), 1884(b), 1972(2) (F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o-4, 78o-5, and 78u-2.

2. Section 263.50(b) is amended by removing the word "and" at the end of paragraph (b)(9), removing the period at the end of paragraph (b)(10) and adding in its place a semicolon, and by adding paragraphs (b)(11) through (b)(14) to read as follows:

§ 263.50 Purpose and scope.

* * * * *

(b) * * *

(11) Issuance of a prompt corrective action directive to a member bank under section 38 of the FDI Act (12 U.S.C. 1831o);

(12) Reclassification of a member bank on grounds of unsafe or unsound condition under section 38(g)(1) of the FDI Act (12 U.S.C. 1831o(g)(1));

(13) Reclassification of a member bank on grounds of unsafe and unsound practice under section 38(g)(1) of the FDI Act (12 U.S.C. 1831o(g)(1)); and

(14) Issuance of an order requiring a member bank to dismiss a director or senior executive officer under section 38 (e)(5) and 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831o(e)(5) and 1831o(f)(2)(F)(ii)).

3. A new subpart H is added to part 263 to read as follows:

Subpart H—Issuance and Review of Orders Pursuant to Prompt Corrective Action Provisions of the Federal Deposit Insurance Act

Sec.

§ 263.201 Scope.
§ 263.202 Directives to take prompt corrective action.
§ 263.203 Procedures for reclassifying a state member bank based on criteria other than capital.
§ 263.204 Order to dismiss a director or senior executive officer.
§ 263.205 Enforcement of directives.

Subpart H—Issuance and Review of Orders Pursuant to Prompt Corrective Action Provisions of the Federal Deposit Insurance Act

§ 263.201 Scope.

(a) The rules and procedures set forth in this subpart apply to state member banks, companies that control state member banks or are affiliated with such banks, and senior executive officers and directors of state member banks that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) and subpart B of part 208 of this chapter.

§ 263.202 Directives to take prompt regulatory action.

(a) *Notice of intent to issue directive.*—(1) *In general.* The Board shall provide an undercapitalized, significantly undercapitalized, or critically undercapitalized state member bank or, where appropriate, any company that controls the bank, prior written notice of the Board's intention to issue a directive requiring such bank or company to take actions or to follow proscriptions described in section 38 that are within the Board's discretion to require or impose under section 38 of the FDI Act, including sections 38(e)(5), (f)(2), (f)(3), or (f)(5). The bank shall have such time to respond to a proposed directive as provided by the Board under paragraph (c) of this section.

(2) *Immediate issuance of final directive.* If the Board finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the Board may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring a state member bank or any company that controls a state member bank immediately to take actions or to follow proscriptions described in section 38 that are within the Board's discretion to require or impose under section 38 of the FDI Act, including section 38(e)(5), (f)(2), (f)(3), or (f)(5). A bank or company that is subject to such an immediately effective directive may submit a written

appeal of the directive to the Board. Such an appeal must be received by the Board within 14 calendar days of the issuance of the directive, unless the Board permits a longer period. The Board shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the Board, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.* A notice of intention to issue a directive shall include:

(1) A statement of the bank's capital measures and capital levels;

(2) A description of the restrictions, prohibitions, or affirmative actions that the Board proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the bank or company subject to the directive may file with the Board a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A bank or company may file a written response to a notice of intent to issue a directive within the time period set by the Board. The date shall be at least 14 calendar days from the date of the notice unless the Board determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(2) *Content of response.* The response should include:

(i) An explanation why the action proposed by the Board is not an appropriate exercise of discretion under section 38;

(ii) Any recommended modification of the proposed directive; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank or company regarding the proposed directive.

(d) *Board consideration of response.* After considering the response, the Board may:

(1) Issue the directive as proposed or in modified form;

(2) Determine not to issue the directive and so notify the bank or company; or

(3) Seek additional information or clarification of the response from the bank or company, or any other relevant source.

(e) *Failure to file response.* Failure by a bank or company to file with the Board, within the specified time period, a written response to a proposed directive shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the directive.

(f) *Request for modification or rescission of directive.* Any bank or company that is subject to a directive under this subpart may, upon a change in circumstances, request in writing that the Board reconsider the terms of the directive, and may propose that the directive be rescinded or modified. Unless otherwise ordered by the Board, the directive shall continue in place while such request is pending before the Board.

§ 263.203 Procedures for reclassifying a state member bank based on criteria other than capital.

(a) *Reclassification based on unsafe or unsound condition or practice*—(1) *Issuance of notice of proposed reclassification*—(i) *Grounds for reclassification.* (A) Pursuant to § 208.33(c) of Regulation H (12 CFR 208.33(c)), the Board may reclassify a well capitalized bank as adequately capitalized or subject an adequately capitalized or undercapitalized institution to the supervisory actions applicable to the next lower capital category if:

(*1*) The Board determines that the bank is in unsafe or unsound condition; or

(*2*) The Board deems the bank to be engaged in an unsafe or unsound practice and not to have corrected the deficiency.

(B) Any action pursuant to this paragraph (a)(1)(i) shall hereinafter be referred to as "reclassification."

(ii) *Prior notice to institution.* Prior to taking action pursuant to § 208.33(c) of this chapter, the Board shall issue and serve on the bank a written notice of the Board's intention to reclassify the bank.

(2) *Contents of notice.* A notice of intention to reclassify a bank based on unsafe or unsound condition shall include:

(i) A statement of the bank's capital measures and capital levels and the category to which the bank would be reclassified;

(ii) The reasons for reclassification of the bank;

(iii) The date by which the bank subject to the notice of reclassification may file with the Board a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the Board determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(3) *Response to notice of proposed reclassification.* A bank may file a written response to a notice of proposed reclassification within the time period set by the Board. The response should include:

(i) An explanation of why the bank is not in unsafe or unsound condition or otherwise should not be reclassified;

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank or company regarding the reclassification.

(4) *Failure to file response.* Failure by a bank to file, within the specified time period, a written response with the Board to a notice of proposed reclassification shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(5) *Request for hearing and presentation of oral testimony or witnesses.* The response may include a request for an informal hearing before the Board or its designee under this section. If the bank desires to present oral testimony or witnesses at the hearing, the bank shall include a request to do so with the request for an informal hearing. A request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right to present oral testimony or witnesses.

(6) *Order for informal hearing.* Upon receipt of a timely written request that includes a request for a hearing, the Board shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the bank requests a later date. The hearing shall be held in Washington, DC or at such other place as may be designated by the Board, before a presiding officer(s) designated by the Board to conduct the hearing.

(7) *Hearing procedures.* (i) The bank shall have the right to introduce relevant written materials and to present oral argument at the hearing. The bank may introduce oral testimony and present witnesses only if expressly authorized by the Board or the presiding officer(s). Neither the provisions of the Administrative Procedure Act (5 U.S.C. 554–557) governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in subpart A of this part apply to an informal hearing

under this section unless the Board orders that such procedures shall apply.

(ii) The informal hearing shall be recorded, and a transcript shall be furnished to the bank upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(iii) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(8) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the Board on the reclassification.

(9) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the Board will decide whether to reclassify the bank and notify the bank of the Board's decision.

(b) *Request for rescission of reclassification.* Any bank that has been reclassified under this section, may, upon a change in circumstances, request in writing that the Board reconsider the reclassification, and may propose that the reclassification be rescinded and that any directives issued in connection with the reclassification be modified, rescinded, or removed. Unless otherwise ordered by the Board, the bank shall remain subject to the reclassification and to any directives issued in connection with that reclassification while such request is pending before the Board.

§ 263.204 Order to dismiss a director or senior executive officer.

(a) *Service of notice.* When the Board issues and serves a directive on a state member bank pursuant to § 263.202 requiring the bank to dismiss from office any director or senior executive officer under section 38(f) (2) (F) (ii) of the FDI Act, the Board shall also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive*—(1) *Request for reinstatement.* A director or senior executive officer who has been served with a directive under paragraph (a) of this section (Respondent) may file a written request for reinstatement. The request for reinstetement shall be filed within 10 calendar days of the receipt of the directive by the Respondent, unless further time is allowed by the Board at the request of the Respondent.

(2) *Contents of request; informal hearing.* The request for reinstatement shall include reasons why the Respondent should be reinstated, and may include a request for an informal hearing before the Board or its designee under this section. If the Respondent desires to present oral testimony or witnesses at the hearing, the Respondent shall include a request to do so with the request for an informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right or opportunity to present oral testimony or witnesses.

(3) *Effective date.* Unless otherwise ordered by the Board, the dismissal shall remain in effect while a request for reinstatement is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring a bank to dismiss from office any director or senior executive officer, the Board shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later date. The hearing shall be held in Washington, D.C., or at such other place as may be designated by the Board, before a presiding officer(s) designated by the Board to conduct the hearing.

(d) *Hearing procedures.* (1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the Board or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in subpart A of this part apply to an informal hearing under this section unless the Board orders that such procedures shall apply.

(2) The informal hearing shall be recorded, and a transcript shall be furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the bank would materially strengthen the bank's ability:

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the bank's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the bank based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the Board concerning the Respondent's request for reinstatement with the bank.

(g) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the Board shall grant or deny the request for reinstatement and notify the Respondent of the Board's decision. If the Board denies the request for reinstatement, the Board shall set forth in the notification the reasons for the Board's action.

§ 263.205 Enforcement of directives.

(a) *Judicial remedies.* Whenever a state member bank or company that controls a state member bank fails to comply with a directive issued under section 38, the Board may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i) (1) of the FDI Act.

(b) *Administrative remedies*—(1) *Failure to comply with directive.* Pursuant to section 8(i) (2) (A) of the FDI Act, the Board may assess a civil money penalty against any state member bank or company that controls a state member bank that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who

participates in such violation or noncompliance.

(2) *Failure to implement capital restoration plan.* The failure of a bank to implement a capital restoration plan required under section 38, subpart B of Regulation H (12 CFR part 208, subpart B), or this subpart, or the failure of a company having control of a bank to fulfill a guarantee of a capital restoration plan made pursuant to section 38 (e) (2) of the FDI Act shall subject the bank or company to the assessment of civil money penalties pursuant to section 8(i) (2) (A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the Board may seek enforcement of the provisions of section 38 or subpart B of Regulation H (12 CFR part 208, subpart B) through any other judicial or administrative proceeding authorized by law.

By order of the Board of Governors of the Federal Reserve System.

Dated: September 18, 1992.

William W. Wiles,

Secretary of the Board.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 6 and 19

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

1. Part 6 is added to read as follows:

PART 6—PROMPT CORRECTIVE ACTION

Subpart A—Capital Categories

Sec.

6.1 Authority, purpose, scope, and other supervisory authority.
6.2 Definitions.
6.3 Notice of capital category.
6.4 Capital measures and capital category definitions.
6.5 Capital restoration plans.
6.6 Mandatory and discretionary supervisory actions and section 38.

Subpart B—Directives To Take Prompt Corrective Action

6.20 Scope.
6.21 Notice of intent to issue a directive.
6.22 Response to notice.
6.23 Decision and issuance of a prompt corrective action directive.
6.24 Request for modification or rescission of directive.
6.25 Enforcement of directive.

Authority: 12 U.S.C. 93a, 1831o.

Subpart A—Capital Categories

§ 6.1 Authority, purpose, scope, and other supervisory authority.

(a) *Authority.* This part is issued by the Office of the Comptroller of the Currency (OCC) pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for insured national banks, the capital measures and capital levels, and for insured federal branches, comparable asset-based measures and levels, that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This part 6 also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38.

(c) *Scope.* This subpart implements the provisions of section 38 of the FDI Act as they apply to insured national banks and insured federal branches. Certain of these provisions also apply to officers, directors and employees of these insured institutions. Other provisions apply to any company that controls an insured national bank or insured federal branch and to the affiliates of an insured national bank or insured federal branch.

(d) *Other supervisory authority.* Neither section 38 nor this part in any way limits the authority of the OCC under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OCC, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Disclosure of capital categories.* The assignment of an insured national bank or insured federal branch under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the OCC or otherwise required by law, no bank may state in any advertisement or promotional material its capital category under this subpart or that the OCC or any other federal banking agency has assigned the bank to a particular capital category.

§ 6.2 Definitions.

For purposes of section 38 and this part, the definitions related to capital in part 3 of this chapter shall apply. In addition, except as modified in this section or unless the context otherwise requires, the terms used in this subpart have the same meanings as set forth in section 38 and section 3 of the FDI Act.

(a) *Bank* means all insured national banks and all insured federal branches, except where otherwise provided in this subpart.

(b) (1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term controlled shall be construed consistently with the term control.

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect thereto.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate federal banking agency for up to three one-year periods.

(c) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(d) *Leverage ratio* means the ratio of Tier 1 capital to adjusted total assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

(e) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank or related overhead expenses, including payments related to supervisory, executive, managerial, or policymaking functions, other than compensation to an individual in the

individual's capacity as an officer or employee of the bank.

(f) *Risk-weighted assets* means total risk weighted assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

(g) *Tangible equity* means the amount of Tier 1 capital elements in the OCC's Risk-Based Capital Guidelines (appendix A to part 3 of this chapter) plus the amount of outstanding cumulative perpetual preferred stock (including related surplus) minus all intangible assets except purchased mortgage servicing rights to the extent that the OCC determines pursuant to section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 that purchased mortgage servicing rights may be included in calculating the bank's Tier 1 capital.

(h) *Tier 1 capital* means the amount of Tier 1 capital as defined in the OCC's Minimum Capital Ratios in part 3 of this chapter.

(i) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to risk weighted assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

(j) *Total assets* means quarterly average total assets as reported in a bank's Consolidated Reports of Condition and Income (Call Report), minus intangible assets as provided in the definition of tangible equity. The OCC reserves the right to require a bank to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when computing tangible equity.

(k) *Total risk-based capital ratio* means the ratio of qualifying total capital to risk-weighted assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

§ 6.3 Notice of capital category.

(a) *Effective date of determination of capital category.* A bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this part as of the date the bank is notified of, or is deemed to have notice of, its capital category pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A bank shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Consolidated Report of Condition and Income (Call Report) is required to be filed with the OCC;

(2) A final report of examination is delivered to the bank; or

(3) Written notice is provided by the OCC to the bank of its capital category for purposes of section 38 of the FDI Act and this part or that the bank's capital category has changed as provided in paragraph (c) of this section or § 6.1 of this subpart and subpart M of part 19 of this chapter.

(c) *Adjustments to reported capital levels and capital category*—(1) *Notice of adjustment by bank.* A bank shall provide the OCC with written notice that an adjustment to the bank's capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the bank to be placed in a lower capital category from the category assigned to the bank for purposes of section 38 and this part on the basis of the bank's most recent Call Report or report of examination.

(2) *Determination to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the OCC shall determine whether to change the capital category of the bank and shall notify the bank of the OCC's determination.

§ 6.4 Capital measures and capital category definitions.

(a) *Capital measures.* For purposes of section 38 and this part, the relevant capital measures shall be:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio;

(3) The leverage ratio.

(b) *Capital categories.* For purposes of the provisions of section 38 and this part, a bank shall be deemed to be:

(1) *Well capitalized* if the bank:

(i) Has a total risk-based capital ratio of 10.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) *Adequately capitalized* if the bank:

(i) Has a total risk-based capital ratio of 8.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and

(iii) Has:

(A) A leverage ratio of 4.0 percent or greater; or

(B) A leverage ratio of 3.0 percent or greater if the bank is rated 1 in the most recent examination of the bank; and

(iv) Does not meet the definition of a well capitalized bank.

(3) *Undercapitalized* if the bank:

(i) Has a total risk-based capital ratio that is less than 8.0 percent; or

(ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii) (A) Except as provided in paragraph (b)(3)(iii) (B) of this section, has a leverage ratio that is less than 4.0 percent; or

(B) If the bank is rated 1 in the most recent examination of the bank, has a leverage ratio that is less than 3.0 percent.

(4) *Significantly undercapitalized* if the bank has:

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) *Critically undercapitalized* if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Capital categories for insured federal branches.* For purposes of the provisions of section 38 of the FDI Act and this part, an insured federal branch shall be deemed to be:

(1) *Well capitalized* if the insured federal branch:

(i) Maintains the pledge of assets required under 12 CFR 346.19; and

(ii) Maintains the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Has not received written notification from:

(A) The OCC to increase its capital equivalency deposit pursuant to § 28.6(a) of this chapter, or to comply with asset maintenance requirements pursuant to § 28.9 of this chapter; or

(B) The FDIC to pledge additional assets pursuant to 12 CFR 346.19 or to maintain a higher ratio of eligible assets pursuant to 12 CFR 346.20.

(2) *Adequately Capitalized* if the insured federal branch:

(i) Maintains the pledge of assets prescribed under 12 CFR 346.19; and

(ii) Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Does not meet the definition of a well capitalized insured federal branch.

(3) *Undercapitalized* if the insured federal branch:

(i) Fails to maintain the pledge of assets required under 12 CFR 346.19; or

(ii) Fails to maintain the eligible assets prescribed under 12 CFR 346.20 at

106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(4) *Significantly undercapitalized* if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 104 percent or more of the preceding quarter's average book value of the insured federal branch's third-party liabilities.

(5) *Critically undercapitalized* if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 102 percent or more of the preceding quarter's average book value of the insured federal branch's third-party liabilities.

(d) *Reclassification based on supervisory criteria other than capital.* The OCC may reclassify a well capitalized bank as adequately capitalized and may require an adequately capitalized or an undercapitalized bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower capital category (except that the OCC may not reclassify a significantly undercapitalized bank as critically undercapitalized) (each of these actions are hereinafter referred to generally as reclassifications) in the following circumstances:

(1) *Unsafe or unsound condition.* The OCC has determined, after notice and opportunity for hearing pursuant to subpart M of part 19 of this chapter, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The OCC has determined, after notice and opportunity for hearing pursuant to subpart M of part 19 of this chapter, that in the most recent examination of the bank, the bank received, and has not corrected a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.

§ 6.5 Capital restoration plans.

(a) *Schedule for filing plan*—(1) *In general.* A bank shall file a written capital restoration plan with the OCC within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the OCC notifies the bank in writing that the plan is to be filed within a different period. An adequately capitalized bank that has been required pursuant to § 6.4 and subpart M of part 19 of this chapter to comply with supervisory actions as if the bank were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 6.4 and subpart M of part 19 of this chapter unless the OCC notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the OCC within 45 days of receiving such notice, unless the OCC notifies the bank in writing that the plan must be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the OCC instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A bank that is required to submit a capital restoration plan as the result of a reclassification of the bank, pursuant to § 6.4 and subpart M of part 19 of this chapter, shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of that Act by each company that controls the bank.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the OCC shall provide written notice to the bank of whether the plan has been approved. The OCC may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital restoration plan.* If a capital restoration plan is not approved by the OCC, the bank shall submit a revised capital restoration plan within the time specified by the OCC. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized bank (as defined in § 6.4) shall be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the bank has been approved by the OCC.

(e) *Failure to submit a capital restoration plan.* A bank that is undercapitalized (as defined in § 6.4) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized banks.

(f) *Failure to implement a capital restoration plan.* Any undercapitalized bank that fails, in any material respect, to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized banks.

(g) *Amendment of capital restoration plan.* A bank that has submitted an approved capital restoration plan may, after prior written notice to and approval by the OCC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Notice to FDIC.* Within 45 days of the effective date of OCC approval of a capital restoration plan, or any amendment to a capital restoration plan, the OCC shall provide a copy of the plan or amendment to the Federal Deposit Insurance Corporation.

(i) *Performance guarantee by companies that control a bank*—(1) *Limitation on liability*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific bank that is required to submit a capital restoration plan under this subpart shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the bank's total assets at the time the bank was notified or deemed to have notice that the bank was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the bank to the levels required for the bank to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the bank initially fails to comply with a capital restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this subpart shall expire after the OCC notifies the bank that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in

connection with any capital restoration plan filed by the same bank after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a given bank shall be jointly and severally liable for the guarantee for such bank as required under section 38 and this subpart, and the OCC may require payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a bank that is controlled by any company submits a capital restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the bank shall, upon submission of the plan, be subject to the provisions of section 38 and this part that are applicable to banks that have not submitted an acceptable capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a bank to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the bank shall be subject to the provisions of section 38 and this part that are applicable to banks that have failed in a material respect to implement a capital restoration plan.

(j) *Enforcement of capital restoration plan.* The failure of a bank to implement, in any material respect, a capital restoration plan required under section 38 and this section shall subject the bank to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

§ 6.6 Mandatory and discretionary supervisory actions under section 38.

(a) *Mandatory supervisory actions*—(1) *Provisions applicable to all banks.* All banks are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks.* Immediately upon receiving notice or being deemed to have notice, as provided in § 6.3, that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act—

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the OCC monitor the condition of the bank (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this subpart (section 38(e)(2));

(iv) Restricting the growth of the bank's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 38(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in this subpart, that the bank is significantly undercapitalized, or critically undercapitalized or that the bank is subject to the provisions applicable to institutions that are significantly undercapitalized because it has failed to submit or implement, in any material respect, an acceptable capital restoration plan, the bank shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a) (2) and (3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 6.3, that the bank is critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act—

(i) Restricting the activities of the bank (section 38(h)(1)); and

(ii) Restricting payments on subordinated debt of the bank (section 38(h)(2)).

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the OCC's discretion to take in connection with a bank that is deemed to be undercapitalized, significantly undercapitalized, or critically undercapitalized, or has been reclassified as undercapitalized or significantly undercapitalized; an officer or director of such bank; or a company that controls such bank, the OCC shall follow the procedures for issuing directives under subpart B of this part and subpart N of part 19 of this chapter, unless otherwise provided in section 38 or this part.

Subpart B—Directives To Take Prompt Corrective Action

§ 6.20 Scope.

The rules and procedures set forth in this subpart apply to insured national banks, insured federal branches and senior executive officers and directors of banks that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) and subpart A of this part.

§ 6.21 Notice of intent to issue a directive.

(a) *Notice of intent to issue a directive*—(1) *In general.* The OCC shall provide an undercapitalized, significantly undercapitalized, or critically undercapitalized bank prior written notice of the OCC's intention to issue a directive requiring such bank or company to take actions or to follow proscriptions described in section 38 that are within the OCC's discretion to require or impose under section 38 of the FDI Act, including section 38 (e)(5), (f)(2), (f)(3), or (f)(5). The bank shall have such time to respond to a proposed directive as provided under § 6.22.

(2) *Immediate issuance of final directive.* If the OCC finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the OCC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring a bank immediately to take actions or to follow proscriptions described in section 38 that are within the OCC's discretion to require or impose under section 38 of the FDI Act, including section 38 (e)(5), (f)(2), (f)(3), or (f)(5). A bank that is subject to such an immediately effective directive may submit a written appeal of the directive to the OCC. Such an appeal must be received by the OCC within 14 calendar days of the issuance of the directive, unless the OCC permits a longer period. The OCC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the OCC, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.* A notice of intention to issue a directive shall include:

(1) A statement of the bank's capital measures and capital levels;

(2) A description of the restrictions, prohibitions or affirmative actions that the OCC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the bank subject to the directive may file with the OCC a written response to the notice.

§ 6.22 Response to notice.

(a) *Time for response.* A bank may file a written response to a notice of intent

to issue a directive within the time period set by the OCC. The date shall be at least 14 calendar days from the date of the notice unless the OCC determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(b) *Content of response.* The response should include:

(1) An explanation why the action proposed by the OCC is not an appropriate exercise of discretion under section 38;

(2) Any recommended modification of the proposed directive; and

(3) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed directive.

(c) *Failure to file response.* Failure by a bank to file with the OCC, within the specified time period, a written response to a proposed directive shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the directive.

§ 6.23 Decision and issuance of a prompt corrective action directive.

(a) *OCC consideration of response.* After considering the response, the OCC may:

(1) Issue the directive as proposed or in modified form;

(2) Determine not to issue the directive and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank, or any other relevant source.

§ 6.24 Request for modification or rescission of directive.

Any bank that is subject to a directive under this subpart may, upon a change in circumstances, request in writing that the OCC reconsider the terms of the directive, and may propose that the directive be rescinded or modified. Unless otherwise ordered by the OCC, the directive shall continue in place while such request is pending before the OCC.

§ 6.25 Enforcement of directive.

(a) *Judicial remedies.* Whenever a bank fails to comply with a directive issued under section 38, the OCC may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OCC may assess a civil money penalty against any bank that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OCC may seek enforcement of the provisions of section 38 or this part through any other judicial or administrative proceeding authorized by law.

PART 19—[AMENDED]

2. The authority citation for part 19 of this chapter is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), and 3909; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78u, 78u–2, 78u–3, and 78w; and 31 U.S.C. 330.

3. Part 19 is amended by adding subparts M and N to read as follows:

Subpart M—Procedures for Reclassifying a Bank Based on Criteria Other Than Capital

Sec.

19.220 Scope.

19.221 Reclassification of a bank based on unsafe or unsound condition or practice.

19.222 Request for rescission of reclassification.

Subpart N—Order To Dismiss a Director or Senior Executive Officer

19.230 Scope.

19.231 Order to dismiss a director or senior executive officer.

Subpart M—Procedures for Reclassifying a Bank Based on Criteria Other Than Capital

§ 19.220 Scope.

This subpart applies to the procedures afforded to any bank that has been reclassified to a lower capital category by a notice or order issued by the OCC pursuant to section 38 of the Federal Deposit Insurance Act and this part.

§ 19.221 Reclassification of a bank based on unsafe or unsound condition or practice.

(a) *Issuance of notice of proposed reclassification—(1) Grounds for reclassification.* (i) Pursuant to § 6.4 of this chapter, the OCC may reclassify a well capitalized bank as adequately capitalized or subject an adequately capitalized bank or undercapitalized bank to the supervisory actions applicable to the next lower capital category if:

(A) The OCC determines that the bank is in an unsafe or unsound condition; or

(B) The OCC deems the bank to be engaging in an unsafe or unsound practice and not to have corrected the deficiency.

(ii) Any action pursuant to this paragraph (a)(1) shall hereinafter be referred to as "reclassification."

(2) *Prior notice to institution.* Prior to taking action pursuant to § 6.4 of this chapter, the OCC shall issue and serve on the bank a written notice of the OCC's intention to reclassify the bank.

(b) *Contents of notice.* A notice of intention to reclassify a bank based on unsafe or unsound condition will include:

(1) A statement of the bank's capital measures and capital levels and the category to which the bank would be reclassified;

(2) The reasons for reclassification of the bank;

(3) The date by which the bank subject to the notice of reclassification may file with the OCC a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the OCC determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(c) *Response to notice of proposed reclassification.* A bank may file a written response to a notice of proposed reclassification within the time period set by the OCC. The response should include:

(1) An explanation of why the bank is not in unsafe or unsound condition or otherwise should not be reclassified;

(2) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank or company regarding the reclassification.

(d) *Failure to file response.* Failure by a bank to file, within the specified time period, a written response with the OCC to a notice of proposed reclassification shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(e) *Request for hearing and presentation of oral testimony or witnesses.* The response may include a request for an informal hearing before the OCC under this section. If the bank desires to present oral testimony or witnesses at the hearing, the bank shall include a request to do so with the request for an informal hearing. A request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses shall constitute a

waiver of any right to present oral testimony or witnesses.

(f) *Order for informal hearing.* Upon receipt of a timely written request that includes a request for a hearing, the OCC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the OCC allows further time at the request of the bank. The hearing shall be held in Washington, DC or at such other place as may be designated by the OCC, before a presiding officer(s) designated by the OCC to conduct the hearing.

(g) *Hearing procedures.* (1) The bank shall have the right to introduce relevant written materials and to present oral argument at the hearing. The bank may introduce oral testimony and present witnesses only if expressly authorized by the OCC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act (5 U.S.C. 554–557) governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in subpart A of this part apply to an informal hearing under this section unless the OCC orders that such procedures shall apply.

(2) The informal hearing shall be recorded, and a transcript furnished to the bank upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(h) *Recommendation of presiding officer(s).* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the OCC on the reclassification.

(i) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the OCC will decide whether to reclassify the bank and notify the bank of the OCC's decision.

§ 19.222 Request for rescission of reclassification.

Any bank that has been reclassified under part 6 of this chapter and this subpart, may, upon a change in circumstances, request in writing that the OCC reconsider the reclassification, and may propose that the reclassification be rescinded and that any directives issued in connection with the reclassification be modified, rescinded, or removed. Unless otherwise ordered by the OCC, the bank shall remain subject to the reclassification and to any directives issued in connection with that reclassification while such request is pending before the OCC.

Subpart N—Order To Dismiss a Director or Senior Executive Officer

§ 19.230 Scope.

This subpart applies to informal hearings afforded to any director or senior executive officer dismissed pursuant to an order issued under 12 U.S.C. 1831o and part 6 of this chapter.

§ 19.231 Order to dismiss a director or senior executive officer.

(a) *Service of notice.* When the OCC issues and serves a directive on a bank pursuant to subpart B of part 6 of this chapter requiring the bank to dismiss from office any director or senior executive officer under section 38(f)(2)(F)(ii) of the FDI Act, the OCC shall also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive—(1) Request for reinstatement.* A director or senior executive officer who has been served with a directive under paragraph (a) of this section (Respondent) may file a written request for reinstatement. The request for reinstatement shall be filed within 10 calendar days of the receipt of the directive by the Respondent, unless further time is allowed by the OCC at the request of the Respondent.

(2) *Contents of request; informal hearing.* The request for reinstatement shall include reasons why the Respondent should be reinstated, and may include a request for an informal hearing before the OCC or its designee under this section. If the Respondent desires to present oral testimony or witnesses at the hearing, the Respondent shall include a request to do so with the request for an informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right or opportunity to present oral testimony or witnesses.

(3) *Effective date.* Unless otherwise ordered by the OCC, the dismissal shall remain in effect while a request for reinstatement is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring a bank to dismiss from office any director or senior executive officer, the OCC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later date. The hearing shall be held in Washington, DC, or at such other place as may be designated by the OCC, before a presiding officer(s) designated by the OCC to conduct the hearing.

(d) *Hearing procedures.* (1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the OCC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in subpart A of this part apply to an informal hearing under this section unless the OCC orders that such procedures shall apply.

(2) The informal hearing shall be recorded, and a transcript furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the bank would materially strengthen the bank's ability:

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the bank's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the bank based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Recommendation of presiding officer.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the OCC concerning the Respondent's request for reinstatement with the bank.

(g) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the OCC shall grant or deny the request for reinstatement and notify the Respondent of the OCC's decision. If the OCC denies the request for reinstatement, the OCC shall set forth in the notification the reasons for the OCC's action.

Dated: September 11, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 325

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends parts 308 and 325 of title 12 of the Code of Federal Regulations as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 504; 5 U.S.C. 554–557; 12 U.S.C. 1815(e), 1817(a)-and 1818(j), 1818, 1820, 1828(j), 1829, 1831i, 1831o; 15 U.S.C. 781(h), 78m, 78n(a), 78n(c), 78n(d), 78n(f), 78o, 78o-4(c)(5), 78p, 78q, 78q-1, 78s.

2. Part 308 is amended by adding a new subpart Q to read as follows:

Subpart Q—Issuance and Review of Orders Pursuant to the Prompt Corrective Action Provisions of the Federal Deposit Insurance Act

Sec.

308.200 Scope.
308.201 Directives to take prompt corrective action.
308.202 Procedures for reclassifying a bank based on criteria other than capital.
308.203 Order to dismiss a director or senior executive officer.
308.204 Enforcement of directives.

Subpart Q—Issuance and Review of Orders Pursuant to the Prompt Corrective Action Provisions of the Federal Deposit Insurance Act

§ 308.200 Scope.

The rules and procedures set forth in this subpart apply to banks, insured branches of foreign banks and senior executive officers and directors of banks that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) (12 U.S.C. 1831o) and subpart 9 of Part 325 of this chapter.

§ 308.201 Directives to take prompt corrective action.

(a) *Notice of intent to issue directive.*—(1) *In general.* The FDIC shall provide an undercapitalized, significantly undercapitalized, or critically undercapitalized bank prior written notice of the FDIC's intention to issue a directive requiring such bank to take actions or to follow proscriptions described in section 38 that are within the FDIC's discretion to require or impose under section 38 of the FDI Act, including sections 38 (e)(5), (f)(2), (f)(3), or (f)(5). The bank shall have such time to respond to a proposed directive as provided by the FDIC under paragraph (c) of this section.

(2) *Immediate issuance of final directive.* If the FDIC finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the FDIC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring a bank immediately to take actions or to follow proscriptions described in section 38 that are within the FDIC's discretion to require or impose under section 38 of the FDI Act, including section 38 (e)(5), (f)(2), (f)(3), or (f)(5). A bank that is subject to such an immediately effective directive may submit a written appeal of the directive to the FDIC. Such an appeal must be received by the FDIC within 14 calendar days of the issuance of the directive, unless the FDIC permits a longer period. The FDIC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the FDIC, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.* A notice of intention to issue a directive shall include:

(1) A statement of the bank's capital measures and capital levels;

(2) A description of the restrictions, prohibitions or affirmative actions that the FDIC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the bank subject to the directive may file with the FDIC a written response to the notice.

(c) *Response to notice.*—(1) *Time for response.* A bank may file a written response to a notice of intent to issue a directive within the time period set by the FDIC. The date shall be at least 14 calendar days from the date of the notice unless the FDIC determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(2) *Content of response.* The response should include:

(i) An explanation why the action proposed by the FDIC is not an appropriate exercise of discretion under section 38;

(ii) Any recommended modification of the proposed directive; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed directive.

(d) *FDIC consideration of response.* After considering the response, the FDIC may:

(1) Issue the directive as proposed or in modified form;

(2) Determine not to issue the directive and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank or any other relevant source.

(e) *Failure to file response.* Failure by a bank to file with the FDIC, within the specified time period, a written response to a proposed directive shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the directive.

(f) *Request for modification or rescission of directive.* Any bank that is subject to a directive under this subpart may, upon a change in circumstances, request in writing that the FDIC reconsider the terms of the directive, and may propose that the directive be rescinded or modified. Unless otherwise ordered by the FDIC, the directive shall continue in place while such request is pending before the FDIC.

§ 308.202 Procedures for reclassifying a bank based on criteria other than capital.

(a) *Reclassification based on unsafe or unsound condition or practice.*—(1) *Issuance of notice of proposed reclassification.*—(i) *Grounds for reclassification.* (A) Pursuant to § 325.103(d) of this chapter, the FDIC may reclassify a well capitalized bank as adequately capitalized or subject an adequately capitalized or undercapitalized institution to the supervisory actions applicable to the next lower capital category if:

(*1*) The FDIC determines that the bank is in unsafe or unsound condition; or

(*2*) The FDIC, pursuant to section 8(b)(8) of the FDI Act (12 U.S.C. 1818(b)(8)), deems the bank to be

engaged in an unsafe or unsound practice and not to have corrected the deficiency.

(B) Any action pursuant to this paragraph (a)(1)(i) shall hereinafter be referred to as "reclassification."

(ii) *Prior notice to institution.* Prior to taking action pursuant to § 325.103(d) of this chapter, the FDIC shall issue and serve on the bank a written notice of the FDIC's intention to reclassify the bank.

(2) *Contents of notice.* A notice of intention to reclassify a bank based on unsafe or unsound condition shall include:

(i) A statement of the bank's capital measures and capital levels and the category to which the bank would be reclassified;

(ii) The reasons for reclassification of the bank;

(iii) The date by which the bank subject to the notice of reclassification may file with the FDIC a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the FDIC determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(3) *Response to notice of proposed reclassification.* A bank may file a written response to a notice of proposed reclassification within the time period set by the FDIC. The response should include:

(i) An explanation of why the bank is not in an unsafe or unsound condition or otherwise should not be reclassified; and

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the reclassification.

(4) *Failure to file response.* Failure by a bank to file, within the specified time period, a written response with the FDIC to a notice of proposed reclassification shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(5) *Request for hearing and presentation of oral testimony or witnesses.* The response may include a request for an informal hearing before the FDIC under this section. If the bank desires to present oral testimony or witnesses at the hearing, the bank shall include a request to do so with the request for an informal hearing. A request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right to present oral testimony or witnesses.

(6) *Order for informal hearing.* Upon receipt of a timely written request that includes a request for a hearing, the FDIC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the bank requests a later date. The hearing shall be held in Washington, DC or at such other place as may be designated by the FDIC, before a presiding officer(s) designated by the FDIC to conduct the hearing.

(7) *Hearing procedures.* (i) The bank shall have the right to introduce relevant written materials and to present oral argument at the hearing. The bank may introduce oral testimony and present witnesses only if expressly authorized by the FDIC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act (5 U.S.C. 554–557) governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in this part apply to an informal hearing under this section unless the FDIC orders that such procedures shall apply.

(ii) The informal hearing shall be recorded, and a transcript shall be furnished to the bank upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(iii) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(8) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the FDIC on the reclassification.

(9) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the FDIC will decide whether to reclassify the bank and notify the bank of the FDIC's decision.

(b) *Request for rescission of reclassification.* Any bank that has been reclassified under this section, may, upon a change in circumstances, request in writing that the FDIC reconsider the reclassification, and may propose that the reclassification be rescinded and that any directives issued in connection with the reclassification be modified, rescinded, or removed. Unless otherwise ordered by the FDIC, the bank shall remain subject to the reclassification and to any directives issued in connection with that reclassification while such request is pending before the FDIC.

§ 308.203 Order to dismiss a director or senior executive officer.

(a) *Service of notice.* When the FDIC issues and serves a directive on a bank pursuant to § 308.201 of this part requiring the bank to dismiss from office any director or senior executive officer under § 38(f)(2)(F)(ii) of the FDI Act, the FDIC shall also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive.*—(1) *Request for reinstatement.* A director or senior executive officer who has been served with a directive under paragraph (a) of this section (Respondent) may file a written request for reinstatement. The request for reinstatement shall be filed within 10 calendar days of the receipt of the directive by the Respondent, unless further time is allowed by the FDIC at the request of the Respondent.

(2) *Contents of request; informal hearing.* The request for reinstatement shall include reasons why the Respondent should be reinstated, and may include a request for an informal hearing before the FDIC under this section. If the Respondent desires to present oral testimony or witnesses at the hearing, the Respondent shall include a request to do so with the request for an informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right or opportunity to present oral testimony or witnesses.

(3) *Effective date.* Unless otherwise ordered by the FDIC, the dismissal shall remain in effect while a request for reinstatement is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring a bank to dismiss from office any director or senior executive officer, the FDIC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later

date. The hearing shall be held in Washington, DC, or at such other place as may be designated by the FDIC, before a presiding officer(s) designated by the FDIC to conduct the hearing.

(d) *Hearing procedures.*—(1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the FDIC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in this part apply to an informal hearing under this section unless the FDIC orders that such procedures shall apply.

(2) The informal hearing shall be recorded, and a transcript shall be furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the bank would materially strengthen the bank's ability:

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the bank's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the bank based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the FDIC concerning the Respondent's request for reinstatement with the bank.

(g) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the FDIC shall grant or deny the request for reinstatement and notify the Respondent of the FDIC's decision. If the FDIC denies the request for reinstatement, the FDIC shall set forth in the notification the reasons for the FDIC's action.

§ 308.204 Enforcement of directives.

(a) *Judicial remedies.* Whenever a bank fails to comply with a directive issued under section 38, the FDIC may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act (12 U.S.C. 1818(i)(1)).

(b) *Administrative remedies*—(1) *Failure to comply with directive.* Pursuant to section 8(i)(2)(A) of the FDI Act, the FDIC may assess a civil money penalty against any bank that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or noncompliance.

(2) *Failure to implement capital restoration plan.* The failure of a bank to implement a capital restoration plan required under section 38, or subpart B of part 325 of this chapter, or the failure of a company having control of a bank to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall subject the bank to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 38 or subpart B of part 325 of this chapter through any other judicial or administrative proceeding authorized by law.

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 is revised to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o; 3907, 3909; Pub. L. 102–233, 105 Stat. 1761, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2386 (12 U.S.C. 1828 note).

Subpart A—Minimum Capital Requirements

2. Part 325 is amended by designating §§ 325.1 through 325.6 as subpart A and adding the subpart heading to read as set forth above.

3. Appendixes A and B to part 325 are redesignated as appendixes A and B to subpart A of part 325 and the appendix headings are revised to read as follows:

Appendix A to Subpart A of Part 325—Statement of Policy on Risk-Based Capital

Appendix B to Subpart A of Part 325—Statement of Policy on Capital Adequacy

4. Section 325.2 is amended by redesignating paragraphs (e), (f), (g), (h), (i), (j), (k), (l), (m), (n) and (o) as paragraphs (h), (i), (j), (m), (n), (o), (p), (r), (t), (v) and (x), respectively, and by adding new paragraphs (e), (f), (g), (k), (l), (q), (s), (u) and (w) to read as follows:

§ 325.2 Definitions.

* * * * *

(e)(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term *controlled* shall be construed consistently with the term *control.*

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect thereto.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate federal banking agency for up to three one-year periods.

(f) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(g)(1) *Highly leveraged transaction* means an extension of credit to or investment in a business by an insured depository institution where the financing transaction involves a buyout, acquisition, or recapitalization of an existing business and one of the following criteria is met:

(i) The transaction results in a liabilities-to-assets leverage ratio higher than 75 percent; or

(ii) The transaction at least doubles the subject company's liabilities and results in a liabilities-to-assets leverage ratio higher than 50 percent; or

(iii) The transaction is designated an HLT by a syndication agent or a federal bank regulator.

(2) Notwithstanding paragraph (g)(1) of this section, loans and exposures to any obligor in which the total financing package, including all obligations held by all participants is $20 million or more, or such lower level as the FDIC may establish by order on a case-by-case basis, will be excluded from this definition.

* * * * *

(k) *Leverage ratio* means the ratio of Tier 1 capital to total assets, as calculated under this part.

(l) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank or related overhead expenses, including payments related to supervisory, executive, managerial, or policymaking functions, other than compensation to an individual in the individual's capacity as an officer or employee of the bank.

* * * * *

(q) *Risk-weighted assets* means total risk-weighted assets, as calculated in accordance with the FDIC's Statement of Policy on Risk-Based Capital (appendix A to subpart A of part 325).

* * * * *

(s) *Tangible equity* means the amount of core capital elements as defined in section I.A.1 of the FDIC's Statement of Policy on Risk-based Capital (appendix A to subpart A of part 325), plus the amount of outstanding cumulative perpetual preferred stock (including related surplus), minus all intangible assets except purchased mortgage servicing rights to the extent that the FDIC determines pursuant to section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1828 note) and § 325.5(f) of this part that purchased mortgage servicing rights may be included in calculating the bank's Tier 1 capital.

* * * * *

(u) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to risk-weighted assets, as calculated in accordance with the FDIC's Statement of Policy on Risk-Based Capital (appendix A to subpart A of part 325).

* * * * *

(w) *Total risk-based capital ratio* means the ratio of qualifying total capital to risk-weighted assets, as calculated in accordance with the FDIC's Statement of Policy on Risk-Based Capital (appendix A to subpart A of part 325).

* * * * *

5. Part 325 is amended by adding a new subpart B to read as follows:

Subpart B—Prompt Corrective Action

Sec.

325.101 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.
325.102 Notice of capital category.
325.103 Capital measures and capital category definitions.
325.104 Capital restoration plans.
325.105 Mandatory and discretionary supervisory actions under section 38.

Subpart B—Prompt Corrective Action

§ 325.101 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.

(a) *Authority.* This subpart is issued by the FDIC pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act), as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for FDIC-insured state-chartered nonmember banks, the capital measures and capital levels, and for insured branches of foreign banks, comparable asset-based measures and levels, that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This subpart also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38.

(c) *Scope.* This subpart implements the provisions of section 38 of the FDI Act as they apply to FDIC-insured state-chartered nonmember banks and insured branches of foreign banks for which the FDIC is the appropriate Federal banking agency. Certain of these provisions also apply to officers, directors and employees of those insured institutions. In addition, certain provisions of this subpart apply to all insured depository institutions that are deemed critically undercapitalized.

(d) *Other supervisory authority.* Neither section 38 nor this subpart in any way limits the authority of the FDIC under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with or in addition to any other enforcement action available to the FDIC, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Disclosure of capital categories.* The assignment of a bank or insured branch under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the FDIC or otherwise required by law, no bank may state in any advertisement or promotional material its capital category under this subpart or that the FDIC or any other federal banking agency has assigned the bank to a particular capital category.

§ 325.102 Notice of capital category.

(a) *Effective date of determination of capital category.* A bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart as of the date the bank is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A bank shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Consolidated Report of Condition and Income (Call Report) is required to be filed with the FDIC;

(2) A final report of examination is delivered to the bank; or

(3) Written notice is provided by the FDIC to the bank of its capital category for purposes of section 38 of the FDI Act and this subpart or that the bank's capital category has changed as provided in § 325.103(d).

(c) *Adjustments to reported capital levels and capital category*—(1) *Notice of adjustment by bank.* A bank shall provide the appropriate FDIC regional director with written notice that an adjustment to the bank's capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the bank to be placed in a lower capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination.

(2) *Determination by the FDIC to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the FDIC shall determine whether to change the capital category

of the bank and shall notify the bank of the FDIC's determination.

§ 325.103 Capital measures and capital category definitions.

(a) *Capital measures.* For purposes of section 38 and this subpart, the relevant capital measures shall be:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio; and

(3) The leverage ratio.

(b) *Capital categories.* For purposes of section 38 and this subpart, a bank shall be deemed to be:

(1) *Well capitalized* if the bank:

(i) Has a total risk-based capital ratio of 10.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the FDIC pursuant to section 8 of the FDI Act (12 U.S.C. 1818), the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act (12 U.S.C. 1831o), or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) *Adequately capitalized* if the bank:

(i) Has a total risk-based capital ratio of 8.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and

(iii) Has:

(A) A leverage ratio of 4.0 percent or greater; or

(B) A leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMEL rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth; and

(iv) Does not meet the definition of a *well capitalized* bank.

(3) *Undercapitalized* if the bank:

(i) Has a total risk-based capital ratio that is less than 8.0 percent; or

(ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii)(A) Except as provided in paragraph (b)(3)(iii)(B) of this section, has a leverage ratio that is less than 4.0 percent; or

(B) Has a leverage ratio that is less than 3.0 percent if the bank is rated composite 1 under the CAMEL rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth.

(4) *Significantly undercapitalized* if the bank has:

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii)A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) *Critically undercapitalized* if the insured depository institution has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Capital categories for insured branches of foreign banks.* For purposes of the provisions of section 38 and this subpart, a insured branch of a foreign bank shall be deemed to be:

(1) *Well capitalized* if the insured branch:

(i) Maintains the pledge of assets required under 12 CFR 346.19; and

(ii) Maintains the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Has not received written notification from:

(A) The OCC to increase its capital equivalency deposit pursuant to 12 CFR 28.6(a), or to comply with asset maintenance requirements pursuant to 12 CFR 28.9; or

(B) The FDIC to pledge additional assets pursuant to 12 CFR 346.19 or to maintain a higher ratio of eligible assets pursuant to 12 CFR 346.20.

(2) *Adequately capitalized* if the insured branch:

(i) Maintains the pledge of assets required under 12 CFR 346.19; and

(ii) Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Does not meet the definition of a *well capitalized* insured branch.

(3) *Undercapitalized* if the insured branch:

(i) Fails to maintain the pledge of assets required under 12 CFR 346.19; or

(ii) Fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(4) *Significantly undercapitalized* if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 104 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(5) *Critically undercapitalized* if the insured depository institution fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 102 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(d) *Reclassifications based on supervisory criteria other than capital.* The FDIC may reclassify a well capitalized bank as adequately capitalized and may require an adequately capitalized bank or an undercapitalized bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower capital category (except that the FDIC may not reclassify a significantly undercapitalized bank as critically undercapitalized) (each of these actions are hereinafter referred to generally as "reclassifications") in the following circumstances:

(1) *Unsafe or unsound condition.* The FDIC has determined, after notice and opportunity for hearing pursuant to § 308.202(a) of this chapter, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The FDIC has determined, after notice and opportunity for hearing pursuant to § 308.202(a) of this chapter, that, in the most recent examination of the bank, the bank received and has not corrected a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.

§ 325.104 Capital restoration plans.

(a) *Schedule for filing plan*—(1) *In general.* A bank shall file a written capital restoration plan with the appropriate FDIC regional director within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the FDIC notifies the bank in writing that the plan is to be filed within a different period. An adequately capitalized bank that has been required pursuant to § 325.103(d) of this subpart to comply with supervisory actions as if the bank were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* A. Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 325.103 unless the FDIC notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the appropriate FDIC regional director

within 45 days of receiving such notice, unless the FDIC notifies the bank in writing that the plan must be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the FDIC instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A bank that is required to submit a capital restoration plan as a result of a reclassification of the bank pursuant to § 325.103(d) of this subpart shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of the FDI Act by each company that controls the bank.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the FDIC shall provide written notice to the bank of whether the plan has been approved. The FDIC may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan.* If a capital restoration plan is not approved by the FDIC, the bank shall submit a revised capital restoration plan within the time specified by the FDIC. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized bank (as defined in § 325.103(b) of this subpart) shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the bank has been approved by the FDIC.

(e) *Failure to submit capital restoration plan.* A bank that is undercapitalized (as defined in § 325.103(b) of this subpart) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(f) *Failure to implement capital restoration plan.* Any undercapitalized bank that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(g) *Amendment of capital restoration plan.* A bank that has filed an approved capital restoration plan may, after prior written notice to and approval by the FDIC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Performance guarantee by companies that control a bank*—(1) *Limitation on liability*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific bank that is required to submit a capital restoration plan under this subpart shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the bank's total assets at the time the bank was notified or deemed to have notice that the bank was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the bank to the levels required for the bank to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the bank initially fails to comply with a capital restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this subpart shall expire after the FDIC notifies the bank that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same bank after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a given bank shall be jointly and severally liable for the guarantee for such bank as required under section 38 and this subpart, and the FDIC may require and collect payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a bank that is controlled by any company submits a capital restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the bank shall, upon submission of the plan, be subject to the provisions of section 38 and this subpart that are applicable to banks that have not submitted an acceptable capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a bank to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the bank shall be subject to the provisions of section 38 and this subpart that are applicable to banks that have failed in a material respect to implement a capital restoration plan.

§ 325.105 Mandatory and discretionary supervisory actions under section 38.

(a) *Mandatory supervisory actions*—(1) *Provisions applicable to all banks.* All banks are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks.* Immediately upon receiving notice or being deemed to have notice, as provided in § 325.102 of this subpart, that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act:

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the FDIC monitor the condition of the bank (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this subpart (section 38(e)(2));

(iv) Restricting the growth of the bank's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 38(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 325.102 of this subpart, that the bank is significantly undercapitalized, or critically undercapitalized, or that the bank is subject to the provisions applicable to institutions that are significantly undercapitalized because the bank failed to submit or implement in any material respect an acceptable capital restoration plan, the bank shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive

officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized institutions.* (i) In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (a)(3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 325.102 of this subpart, that the insured depository institution is critically undercapitalized, the institution is prohibited from doing any of the following without the FDIC's prior written approval:

(A) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency;

(B) Extending credit for any highly leveraged transaction;

(C) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(D) Making any material change in accounting methods;

(E) Engaging in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c(b));

(F) Paying excessive compensation or bonuses;

(G) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas; and

(H) Making any principal or interest payment on subordinated debt beginning 60 days after becoming critically undercapitalized except that this restriction shall not apply, until July 15, 1996, with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

(ii) In addition, the FDIC may further restrict the activities of any critically undercapitalized institution to carry out the purposes of section 38 of the FDI Act.

(5) *Exception for certain savings associations.* The restrictions in paragraph (a)(4) of this section shall not apply, before July 1, 1994, to any insured savings association if:

(i) The savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)) prior to December 19, 1991;

(ii) The Director of OTS had accepted the plan prior to December 19, 1991; and

(iii) The savings association remains in compliance with the plan or is operating under a written agreement with the appropriate federal banking agency.

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the FDIC's discretion to take in connection with:

(1) An insured depository institution that is deemed to be undercapitalized, significantly undercapitalized, or critically undercapitalized, or has been reclassified as undercapitalized, or significantly undercapitalized; or

(2) An officer or director of such institution, the FDIC shall follow the procedures for issuing directives under §§ 308.201 and 308.203 of this chapter, unless otherwise provided in section 38 or this subpart.

By order of the Board of Directors.

Dated at Washington, DC, this 15th day of September, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 565

Accordingly, the Office of Thrift Supervision hereby amends subchapter D, chapter V, title 12, Code of Federal Regulations, by adding part 565 as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

1. A new part 565 is added to read as follows:

PART 565–PROMPT CORRECTIVE ACTION

Sec.

565.1 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.
565.2 Definitions.
565.3 Notice of capital category.
565.4 Capital measures and capital category definitions.
565.5 Capital restoration plans.
565.6 Mandatory and discretionary supervisory actions under section 38.
565.7 Directives to take prompt corrective action.
565.8 Procedures for reclassifying a savings association based on criteria other than capital.
565.9 Order to dismiss a director or senior executive officer.
565.10 Enforcement of directives.

Authority: 12 U.S.C. 1831o.

§ 565.1 Authority, purpose, scope, other Supervisory authority, and disclosure of capital categories.

(a) *Authority.* This part is issued by the OTS pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this part is to define, for savings associations, the capital measures and capital levels that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This part also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38.

(c) *Scope.* This part implements the provisions of section 38 of the FDI Act as they apply to savings associations. Certain of these provisions also apply to officers, directors and employees of savings associations. Other provisions apply to any company that controls a savings association and to the affiliates of a savings association.

(d) *Other supervisory authority.* Neither section 38 nor this part in any way limits the authority of the OTS under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OTS, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Disclosure of capital categories.* The assignment of a savings association under this part within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the OTS or otherwise required by law, no savings association may state in any advertisement or promotional material its capital category under this subpart or that the OTS or any other federal banking agency has assigned the savings association to a particular category.

§ 565.2 Definitions.

For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used in this part have the same meanings as set forth in sections 38 and 3 of the FDI Act.

(a)(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term "controlled" shall be construed consistently with the term "control."

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect thereto.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate federal banking agency for up to three one-year periods.

(b) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(c) *Leverage ratio* means the ratio of Tier 1 capital to adjusted total assets, as calculated in accordance with part 567 of this subchapter.

(d) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the savings association or related overhead expenses, including payments related to supervisory, executive, managerial or policymaking functions, other than compensation to an individual in the individual's capacity as an officer or employee of the savings association.

(e) *Risk-weighted assets* means total risk-weighted assets, as calculated in accordance with part 567 of this subchapter.

(f) *Tangible equity* means the amount of a savings association's core capital as defined in part 567 of this subchapter plus the amount of outstanding cumulative perpetual preferred stock (including related surplus), minus all intangible assets not previously deducted except:

(1) Purchased mortgage servicing rights to the extent that the OTS determines pursuant to section 475 of FDICIA that purchased mortgage servicing rights may be included in calculating the savings association's core capital; and

(2) Qualifying supervisory goodwill authorized for inclusion in core capital pursuant to 12 CFR Part 567.

(g) *Tier 1 capital* means the amount of core capital as defined in part 567 of this subchapter.

(h) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to risk-weighted assets, as calculated in accordance with part 567 of this subchapter.

(i) *Total assets,* for purposes of § 565.4(b)(5), means adjusted total assets as calculated in accordance with part 567 of this subchapter, minus intangible assets as provided in the definition of tangible equity.

(j) *Total risk-based capital ratio* means the ratio of total capital to risk-weighted assets, as calculated in accordance with part 567 of this subchapter.

§ 565.3 Notice of capital category.

(a) *Effective date of determination of capital category.* A savings association shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this part as of the date the savings association is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A savings association shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Thrift Financial Report (TFR) is required to be filed with the OTS;

(2) A final report of examination is delivered to the savings association; or

(3) Written notice is provided by the OTS to the savings association of its capital category for purposes of section 38 of the FDI Act and this part or that the savings association's capital category has changed as provided in paragraph (c) of this section or § 565.4(c).

(c) *Adjustments to reported capital levels and category—*(1) *Notice of adjustment by savings association.* A savings association shall provide the OTS with written notice that an adjustment to the savings association's capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the savings association to be placed in a lower capital category from the category assigned to the savings association for purposes of section 38 and this part on the basis of the savings association's most recent TFR or report of examination.

(2) *Determination by the OTS to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the OTS shall determine whether to change the capital category of the savings association and shall notify the savings association of the OTS's determination.

§ 565.4 Capital measures and capital category definitions.

(a) *Capital measures.* For purposes of section 38 and this part, the relevant capital measures shall be:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio and

(3) The leverage ratio.

(b) *Capital categories.* For purposes of section 38 and this part, a savings association shall be deemed to be:

(1) *Well capitalized* if the savings association:

(i) Has a total risk-based capital ratio of 10.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the OTS pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (5 U.S.C. 3907), the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) *Adequately capitalized* if the savings association:

(i) Has a total risk-based capital ratio of 8.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and

(iii) Has:

(A) A leverage ratio of 4.0 percent or greater; or

(B) A leverage ratio of 3.0 percent or greater if the savings association is rated composite 1 under the MACRO rating system in the most recent examination of the savings association; and

(iv) Does not meet the definition of a *well capitalized* savings association.

(3) *Undercapitalized* if the savings association:

(i) Has a total risk-based capital ratio that is less than 8.0 percent; or

(ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii) (A) Except as provided in paragraph (b)(3)(iii) (B) of this section, has a leverage ratio that is less than 4.0 percent; or

(B) Has a leverage ratio that is less than 3.0 percent if the savings association is rated composite 1 under the MACRO rating system in the most recent examination of the savings association.

(4) *Significantly undercapitalized* if the savings association has:

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) *Critically undercapitalized* if the savings association has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Reclassification based on supervisory criteria other than capital.* The OTS may reclassify a well capitalized savings association as adequately capitalized and may require an adequately capitalized or undercapitalized savings association to comply with certain mandatory or discretionary supervisory actions as if the savings association were in the next lower capital category (except that the OTS may not reclassify a significantly undercapitalized savings association as critically undercapitalized) (each of these actions are hereinafter referred to generally as "reclassifications") in the following circumstances:

(1) *Unsafe or unsound condition.* The OTS has determined, after notice and opportunity for hearing pursuant to § 565.8(a) of this part, that the savings association is in an unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The OTS has determined, after notice and opportunity for hearing pursuant to § 565.8(a) of this part, that, in the most recent examination of the savings association, the savings association received, and has not corrected, a less-than-satisfactory rating for any of the equivalent MACRO rating categories for asset quality, management, earnings, or liquidity.

§ 565.5 Capital restoration plans.

(a) *Schedule for filing plan*—(1) *In general.* A savings association shall file a written capital restoration plan with the appropriate Regional Office within 45 days of the date that the savings association receives notice or is deemed to have notice that the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the OTS notifies the savings association in writing that the plan is to be filed within a different period. An adequately capitalized savings association that has been required pursuant to § 565.4(c) to comply with supervisory actions as if the savings association were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a savings association that has already submitted and is operating under a capital restoration plan approved under section 38 and this part is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 565.4(c) unless the OTS notifies the savings association that it must submit a new or revised capital plan. A savings association that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the appropriate Regional Office within 45 days of receiving such notice, unless the OTS notifies the savings association in writing that the plan is to be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the TFR, unless the OTS instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A savings association that is required to submit a capital restoration plan as the result of a reclassification of the savings association pursuant to § 565.4(c) of this part shall include a description of the steps the savings association will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of the FDI Act by each company that controls the savings association.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this part, the OTS shall provide written notice to the savings association of whether the plan has been approved. The OTS may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan.* If a capital restoration plan is not approved by the OTS, the savings association shall submit a revised capital restoration plan, when directed to do so, within the time specified by the OTS. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized savings association (as defined in § 565.4(b)(3) of this part) shall be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the savings association has been approved by the OTS.

(e) *Failure to submit a capital restoration plan.* A savings association that is undercapitalized (as defined in § 565.4(b)(3) of this part) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized institutions.

(f) *Failure to implement a capital restoration plan.* Any undercapitalized savings association that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized institutions.

(g) *Amendment of capital plan.* A savings association that has filed an approved capital restoration plan may, after prior written notice to and approval by the OTS, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the savings association shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Notice to FDIC.* Within 45 days of the effective date of OTS approval of a capital restoration plan, or any amendment to a capital restoration plan, the OTS shall provide a copy of the plan or amendment to the FDIC.

(i) *Performance guarantee by companies that control a savings association.*—(1) *Limitation on liability.*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this part for all companies that control a specific savings association that is required to submit a capital restoration plan under this part shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the savings association's total assets at the time the savings association was notified or deemed to have notice that the savings association was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the savings association to the levels required for the savings association to

be classified as adequately capitalized, as those capital measures and levels are defined at the time that the savings association initially fails to comply with a capital restoration plan under this part.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this part shall expire after the OTS notifies the savings association that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same savings association after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a given savings association shall be jointly and severally liable for the guarantee for such savings association as required under section 38 and this part, and the OTS may require and collect payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a savings association that is controlled by any company submits a capital restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the savings association shall, upon submission of the plan, be subject to the provisions of section 38 and this part that are applicable to savings associations that have not submitted an acceptable capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a savings association to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the savings association shall be subject to the provisions of section 38 and this part that are applicable to savings associations that have failed in a material respect to implement a capital restoration plan.

§ 565.6 Mandatory and discretionary supervisory actions under section 38.

(a) *Mandatory supervisory actions.*—(1) *Provisions applicable to all savings associations.* All savings associations are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized savings associations.* Immediately upon receiving notice or being deemed to have notice, as provided in § 565.3 or § 565.5 of this part, that the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized, the savings association shall become subject to the provisions of section 38 of the FDI Act:

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the OTS monitor the condition of the savings association (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this part (section 38(e)(2));

(iv) Restricting the growth of the savings association's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 38(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized savings associations.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 565.3 or § 565.5 of this part, that the savings association is significantly undercapitalized, or critically undercapitalized, or that the savings association is subject to the provisions applicable to institutions that are significantly undercapitalized because the savings association failed to submit or implement in any material respect an acceptable capital restoration plan, the savings association shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized savings associations.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (a)(3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 565.3 of this part, that the savings association is critically undercapitalized, the savings association shall become subject to the provisions of section 38 of the FDI Act:

(i) Restricting the activities of the savings association (section 38(h)(1)); and

(ii) Restricting payments on subordinated debt of the savings association (section 38(h)(2)).

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the OTS's discretion to take in connection with: A savings association that is deemed to be undercapitalized, significantly undercapitalized or critically undercapitalized, or has been reclassified as undercapitalized, or significantly undercapitalized; an officer or director of such savings association; or a company that controls such savings association, the OTS shall follow the procedures for issuing directives under §§ 565.7 and 565.9 of this part unless otherwise provided in section 38 or this part.

§ 565.7 Directives to take prompt corrective action.

(a) *Notice of intent to issue a directive.*—(1) *In general.* The OTS shall provide an undercapitalized, significantly undercapitalized, or critically undercapitalized savings association or, where appropriate, any company that controls the savings association, prior written notice of the OTS's intention to issue a directive requiring such savings association or company to take actions or to follow proscriptions described in section 38 that are within the OTS's discretion to require or impose under section 38 of the FDI Act, including sections 38(e)(5), (f)(2), (f)(3), or (f)(5). The savings association shall have such time to respond to a proposed directive as provided by the OTS under paragraph (c) of this section.

(2) *Immediate issuance of final directive.* If the OTS finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the OTS may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring a savings association or any company that controls a savings association immediately to take actions or to follow proscriptions described in section 38 that are within the OTS's discretion to require or impose under section 38 of the FDI Act, including section 38(e)(5), (f)(2), (f)(3), or (f)(5). A savings association or company that is subject to such an immediately effective directive may submit a written appeal of the directive to the OTS. Such an appeal must be received by the OTS within 14 calendar days of the issuance of the directive, unless the OTS permits a longer period. The OTS shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the OTS, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.* A notice of intention to issue a directive shall include:

(1) A statement of the savings association's capital measures and capital levels;

(2) A description of the restrictions, prohibitions or affirmative actions that the OTS proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the savings association or company subject to the directive may file with the OTS a written response to the notice.

(c) *Response to notice.*—(1) *Time for response.* A savings association or company may file a written response to a notice of intent to issue a directive within the time period set by the OTS. The date shall be at least 14 calendar days from the date of the notice unless the OTS determines that a shorter period is appropriate in light of the financial condition of the savings association or other relevant circumstances.

(2) *Content of response.* The response should include:

(i) An explanation why the action proposed by the OTS is not an appropriate exercise of discretion under section 38;

(ii) Any recommended modification of the proposed directive; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the savings association or company regarding the proposed directive.

(d) *OTS consideration of response.* After considering the response, the OTS may:

(1) Issue the directive as proposed or in modified form;

(2) Determine not to issue the directive and so notify the savings association or company; or

(3) Seek additional information or clarification of the response from the savings association or company, or any other relevant source.

(e) *Failure to file response.* Failure by a savings association or company to file with the OTS, within the specified time period, a written response to a proposed directive shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the directive.

(f) *Request for modification or rescission of directive.* Any savings association or company that is subject to a directive under this part may, upon a change in circumstances, request in writing that the OTS reconsider the terms of the directive, and may propose that the directive be rescinded or modified. Unless otherwise ordered by the OTS, the directive shall continue in place while such request is pending before the OTS.

§ 565.8 Procedures for reclassifying a savings association based on criteria other than capital.

(a) *Reclassification based on unsafe or unsound condition or practice*—(1) *Issuance of notice of proposed reclassification*—(i) *Grounds for reclassification.* (A) Pursuant to § 565.4(c) of this part, the OTS may reclassify a well capitalized savings association as adequately capitalized or subject an adequately capitalized or undercapitalized institution to the supervisory actions applicable to the next lower capital category if:

(*1*) The OTS determines that the savings association is in unsafe or unsound condition; or

(*2*) The OTS deems the savings association to be engaged in an unsafe or unsound practice and not to have corrected the deficiency.

(B) Any action pursuant to this paragraph (a)(1)(i) shall hereinafter be referred to as "reclassification."

(ii) *Prior notice to institution.* Prior to taking action pursuant to § 565.4(c)(1), the OTS shall issue and serve on the savings association a written notice of the OTS's intention to reclassify the savings association.

(2) *Contents of notice.* A notice of intention to reclassify a savings association based on unsafe or unsound condition shall include:

(i) A statement of the savings association's capital measures and capital levels and the category to which the savings association would be reclassified;

(ii) The reasons for reclassification of the savings association;

(iii) The date by which the savings association subject to the notice of reclassification may file with the OTS a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the OTS determines that a shorter period is appropriate in light of the financial condition of the savings association or other relevant circumstances.

(3) *Response to notice of proposed reclassification.* A savings association may file a written response to a notice of proposed reclassification within the time period set by the OTS. The response should include:

(i) An explanation of why the savings association is not in unsafe or unsound condition or otherwise should not be reclassified; and

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the savings association or company regarding the reclassification.

(4) *Failure to file response.* Failure by a savings association to file, within the specified time period, a written response with the OTS to a notice of proposed reclassification shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(5) *Request for hearing and presentation of oral testimony or witnesses.* The response may include a request for an informal hearing before the OTS or its designee under this section. If the savings association desires to present oral testimony or witnesses at the hearing, the savings association shall include a request to do so with the request for an informal hearing. A request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right to present oral testimony or witnesses.

(6) *Order for informal hearing.* Upon receipt of a timely written request that includes a request for a hearing, the OTS shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the OTS allows further time at the request of the savings association. The hearing shall be held in Washington, DC or at such other place as may be designated by the OTS, before a presiding officer(s) designated by the OTS to conduct the hearing.

(7) *Hearing procedures.* (i) The savings association shall have the right to introduce relevant written materials and to present oral argument at the hearing. The savings association may introduce oral testimony and present witnesses only if expressly authorized by the OTS or the presiding officer(s). Neither the provisions of the Administrative Procedure Act (5 U.S.C. 554–557) governing adjudications required by statute to be determined on the record nor part 509 of this chapter apply to an informal hearing under this section unless the OTS orders that such procedures shall apply.

(ii) The informal hearing shall be recorded and a transcript furnished to the savings association upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(iii) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(8) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the OTS on the reclassification.

(9) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the OTS will decide whether to reclassify the savings association and notify the savings association of the OTS's decision.

(b) *Request for rescission of reclassification.* Any savings association that has been reclassified under this section, may, upon a change in circumstances, request in writing that the OTS reconsider the reclassification, and may propose that the reclassification be rescinded and that any directives issued in connection with the reclassification be modified, rescinded, or removed. Unless otherwise ordered by the OTS, the savings association shall remain subject to the reclassification and to any directives issued in connection with that reclassification while such request is pending before the OTS.

§ 565.9 Order to dismiss a director or senior executive officer.

(a) *Service of notice.* When the OTS issues and serves a directive on a savings association pursuant to section 565.8 requiring the savings association to dismiss any director or senior executive officer under section 38(f)(2)(F)(ii) of the FDI Act, the OTS shall also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive*—(1) *Request for reinstatement.* A director or senior executive officer who has been served with a directive under paragraph (a) of this section (Respondent) may file a written request for reinstatement. The request for reinstatement shall be filed within 10 calendar days of the receipt of the directive by the Respondent, unless further time is allowed by the OTS at the request of the Respondent.

(2) *Contents of request; informal hearing.* The request for reinstatement should include reasons why the Respondent should be reinstated, and may include a request for an informal hearing before the OTS or its designee under this section. If the Respondent desires to present oral testimony or witnesses at the hearing, the Respondent shall include a request to do so with the request for an informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right or opportunity to present oral testimony or witnesses.

(3) *Effective date.* Unless otherwise ordered by the OTS, the dismissal shall remain in effect while a request for reinstatement is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring a savings association to dismiss from office any director or senior executive officer, the OTS shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later date. The hearing shall be held in Washington, DC, or at such other place as may be designated by the OTS, before a presiding officer(s) designated by the OTS to conduct the hearing.

(d) *Hearing procedures.* (1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the OTS or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor part 509 of this chapter apply to an informal hearing under this section unless the OTS orders that such procedures shall apply.

(2) The informal hearing shall be recorded and a transcript furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the savings association would materially strengthen the savings association's ability:

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the savings association's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the savings association based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the OTS concerning the Respondent's request for reinstatement with the savings association.

(g) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing has been requested, the OTS shall grant or deny the request for reinstatement and notify the Respondent of the OTS's decision. If the OTS denies the request for reinstatement, the OTS shall set forth in the notification the reasons for the OTS's action.

§ 565.10 Enforcement of directives.

(a) *Judicial remedies.* Whenever a savings association or company that controls a savings association fails to comply with a directive issued under section 38, the OTS may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies*—(1) *Failure to comply with directive.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OTS may assess a civil money penalty against any savings association or company that controls a savings association that violates or otherwise fails to comply with any final directive issued under section 38 and against any

institution-affiliated party who participates in such violation or noncompliance.

(2) *Failure to implement capital restoration plan.* The failure of a savings association to implement a capital restoration plan required under section 38, or this part, or the failure of a company having control of a savings association to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall subject the savings association or company to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OTS may seek enforcement of the provisions of section 38 or this part through any other judicial or administrative proceeding authorized by law.

Dated: September 16, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-23182 Filed 9-28-92; 8:45 am]

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Federal Register

Tuesday
September 29, 1992

Part V

Department of Transportation

Coast Guard

33 CFR Part 155

Discharge Removal Equipment for Vessels Carrying Oil; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 90-068]

RIN 2115-AD66

Discharge Removal Equipment for Vessels Carrying Oil

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulations requiring vessels carrying oil in bulk as cargo to carry discharge removal equipment to contain and remove on-deck oil spills, install spill prevention coamings, and install emergency towing arrangements. The proposed regulations would implement provisions of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. The purpose of these regulations is to reduce the risk of oil spills, improve vessel oil spill response capabilities, and minimize the impact of oil spills on the environment. Proposed requirements for vessels to carry equipment for the removal of discharges of hazardous substances will be the subject of a separate rulemaking.

DATES: Comments must be received on or before October 29, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 90-068), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at Room B-731, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Frank Wood, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267-6739. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 90-068) and the specific section of this proposal to which each comment applies, and give the basis for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing at this time. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Frank Wood, Project Manager, OPA 90 Staff, and Joan Tilghman, Project Counsel, OPA 90 Staff.

Statutory Authority and Background

In recent years, #several catastrophic oil spills have threatened the marine environment along the coastal areas of the United States. Among these spills were the EXXON VALDEZ in Prince William Sound, the AMERICAN TRADER in California's coastal waters, the PRESIDENTE RIVERA in the Delaware River, and the MEGA BORG in the Gulf of Mexico. The spills resulted in extensive damage to the marine environment, including the loss of fish and wildlife. In response to these disasters and others, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380, August 18, 1990).

Section 4202(a)(6) of OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321) by adding a new paragraph (6) to require vessels that are operating on the navigable waters of the U.S. and that are carrying oil or a hazardous substance in bulk as cargo to carry appropriate discharge removal equipment on board. This equipment must employ the best technology economically feasible and be compatible with the safe operation of the vessel.

The President delegated the authority to implement this provision to the Secretary of Transportation in Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757) published in the **Federal Register** on October 22, 1991. The Secretary further delegated the authority to the Commandant of the Coast Guard in 49 CFR 1.46(m) on March 3, 1992.

Because the statutory requirements for vessels to carry discharge removal equipment for oil spills and to have oil spill response plans are related, the Coast Guard has considered both rulemakings concurrently. The Coast Guard is limiting this rulemaking to requirements for vessels carrying oil because of the statutory deadline for these vessels to submit response plans. For vessels that carry hazardous substances in bulk as cargo, regulations requiring carriage of discharge removal equipment will be the subject of a separate rulemaking.

Section 311(a)(8) of the FWPCA defines "remove or removal" as the "containment and removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare." For purposes of this proposed rule, removal equipment includes salvage equipment, lightering equipment, towing arrangements, sorbents, and other equipment that may be used to minimize or mitigate environmental damage from oil spills.

Section 311(j)(6) requirements apply to all vessels certificated as tank vessels under 46 CFR chapter I, subchapter D, all other certificated vessels that are permitted to carry limited quantities of oil as defined in section 311(a)(1) of the FWPCA, and any uninspected vessel, including foreign flag vessels, that carry oil in bulk as cargo or cargo residue. As used in this proposed rule, oil includes, but is not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredge spoils. This definition includes animal and vegetable oils.

Regulatory History

The Coast Guard published an advance notice of proposed rulemaking (ANPRM) on August 30, 1991 (56 FR 43534). In the ANPRM, the Coast Guard raised 59 questions for public comment and gave notice of a workshop scheduled for November 14, 1991. The Coast Guard received 147 comments on the questions posed on removal equipment in the ANPRM, and considered all of the comments in drafting the proposed rule.

The majority of the comments on the ANPRM stated that removal equipment should be carried on board vessels that carry oil in bulk as cargo. Comments on the type and amount of equipment to be carried ranged from extensive

containment and removal equipment for off-ship deployment to sorbents and mops for on-deck cleanup.

Many comments interpreted the statutory requirement to carry removal equipment as a requirement to carry booms and skimmers. A few comments proposed that self-inflating boom be installed on board vessels for remote deployment by crew members. Most agreed that anchoring boom in deep water was difficult, if not impossible. One suggested the use of sea anchors to maintain the boom in deep water. The majority indicated that, regardless of the equipment required, crew members should remain on board the vessel during an oil spill response and leave off-ship response to shore-based responders.

Comments varied regarding equipment capabilities. Suggested capabilities ranged from containment of the entire cargo to containment of deck spills of less than 10 barrels.

The public workshop was held in Washington, DC on November 14, 1991, with 196 participants. The Coast Guard prepared papers to focus discussion. The issue paper presented on requirements for vessel-carried equipment focused on the following: (1) Requirements for equipment for use on board the vessel to remove on-deck spills, assist in damage control and salvage, and lighter "over the top" to control the source of the discharge; (2) requirements for booms and skimmers on board vessels that transit remote areas or areas where contracted resources are not available; (3) deploying, securing, and maintaining containment booms, particularly in deep water, without physically tending booms from workboats in other than ideal conditions; and (4) warehousing removal equipment, specifically booms and skimmers, on board vessels for deployment by spill response contractors.

The discussions were generally consistent with comments to the ANPRM, but they clarified several options and better defined areas of agreement. Most participants identified emergency towing gear as appropriate equipment that should be required aboard tankers to facilitate assistance by a rescue vessel. (Under 46 U.S.C. 2101, "*tanker* means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.") Although tankers often use single point mooring connections or the vessel's anchor chain for on-board towing capability, these connections are often unrigged and require considerable effort by the ship's crew to make the tanker ready for towing. The discussions did not address a design or specific requirements for an emergency towing package.

There was no agreement that it was appropriate to carry high-capacity, over-the-top lightering equipment aboard a vessel. Some participants recommended that tankers not carry high-capacity pumps on board for lightering or emergency cargo transfer because of safety concerns for the crew. Others expressed the opinion that only trained professionals should provide salvage and lightering equipment.

In response to an ANPRM question about boom technology, no one was able to verify proven technology for deploying and maintaining containment boom, particularly in deep water, in other than ideal conditions, without physically tending it from dedicated workboats. The majority of participants did not recommend requiring a boom that is designed for automatic deployment over the side and remote tending by the crew.

Most participants advised against warehousing removal equipment, such as booms and skimmers, aboard a vessel for deployment by contracted personnel. However, a minority of participants felt that warehoused containment boom might provide the only readily available source of equipment in some incidents, and the boom may significantly enhance an initial response effort. No one recommended that vessels carry portable storage tanks on board.

The Coast Guard taped the workshop proceedings and considered all comments in preparing the proposed rule. Audio tapes and a summary of the proceedings are available for review and copying in the public docket.

Because of the diversity of views and the absence of clearly preferable solutions, the Coast Guard published a notice of intent to form a negotiated rulemaking committee on November 18, 1991 (56 FR 58202) . Based on the comments received on this notice, the Coast Guard established the Oil Spill Response Plan Negotiated Rulemaking Committee (the Committee). A notice announcing the establishment of the Committee was published on January 10, 1992 (57 FR 1139). The Committee sessions were held between January 8 and March 27, 1992, in Washington, DC.

In forming the Committee, the Coast Guard brought together representatives from various interests that would be affected by the proposed rules on vessel response plans and the proposed rules on carriage and inspection of discharge removal equipment. A Coast Guard representative was a member of the Committee. The Coast Guard used the information gathered from the public in comments to the ANPRM and from discussions at the public workshop that was held on November 14, 1991, to narrow the focus of the Committee discussions. The Coast Guard developed and identified issue-related questions for resolution by the Committee.

The Coast Guard agreed in the organizational protocols to consider the written statement of the Committee as the basis of this NPRM, consistent with the Coast Guard's legal obligations, and to draft the proposed regulations and preambles with the same substance and effect as the Committee statement. The consensus recommendations included in the Committee statement reflect the agreement of all Committee members, including the Coast Guard. The Coast Guard used the Committee consensus recommendations in drafting this proposed rule and identified the recommendations in the preamble discussion of the proposed rule. The Committee statement is filed in the public docket.

Committee Recommendations and Discussion of Proposed Regulations

In discussing requirements for vessels to carry discharge removal equipment, the Committee made recommendations concerning vessels to which the rules should apply. The Committee recommended that vessels that carry oil as primary cargo be separated into four categories: tankers, offshore tank barges, coastal tank barges, and inland tank barges. For the purposes of this proposed rule, a tanker is a self-propelled vessel engaged in the carriage of oil in bulk as cargo that has a Certificate of Inspection issued under 46 CFR chapter I, subchapter D, a Certificate of Compliance, or a Tank Vessel Examination letter. The definition of "tanker" includes integrated tug-barges (ITBs) that are designed for push-mode only.

An offshore tank barge is defined as any tank barge that is certificated under 46 CFR chapter I, subchapter D, for navigation in waters more than 20 nautical miles offshore in any ocean or the Gulf of Mexico, any tank barge in Great Lakes service, or any foreign flag tank barge. The definition of offshore tank barge includes ITBs that are designed for dual-mode navigation.

A coastal tank barge is any tank barge that is certificated under 46 CFR chapter I, subchapter D, for coastwise service. The definition of coastal tank barge includes ITBs that are designed for dual-mode navigation. An inland tank barge is any tank barge certificated

under 46 CFR chapter I, subchapter D, for river service or lakes, bays, and sounds service.

In addition to these vessel categories, the Committee discussed applying requirements for vessel-carried equipment to vessels that carry oil in bulk as secondary cargo. Vessels that carry oil as secondary cargo are those that are not principally engaged in the carriage of oil in bulk as cargo, but that are certificated under subchapters H or I and permitted to carry limited quantities of oil in bulk, and similar foreign flag vessels. Although the Committee did not make a recommendation concerning vessels that carry oil as secondary cargo, the Coast Guard is proposing vessel-carried equipment requirements for these vessels.

Discharge Removal Equipment for On-Deck Spills

In discussing on-deck spills, the Committee first considered the amount of oil that the equipment should be able to contain and remove from the deck of the vessel. The Committee recommended that ocean-going and coastal vessels less than 400 feet long carry equipment capable of containing and removing a spill of at least seven barrels (42 U.S. gallons/barrel) of oil from the deck of the vessel. For ocean-going and coastal vessels 400 feet long or longer, the Committee recommended that the vessel carry equipment capable of containing and removing a spill of at least 12 barrels of oil. For inland tank barges, the Committee recommended that the tank barge have equipment available that is capable of containing and removing a spill of at least one barrel of oil. The Committee derived these proposed volumes from suggestions in the public comments to the ANPRM.

Under the proposed rule, tankers, offshore tank barges, and coastal tank barges will be subject to the same requirements for equipment carriage for on-deck spills. The equipment specifically recommended by the Committee for onboard carriage includes non-sparking hand shovels and scoops, non-sparking portable pumps, sorbents, containers for holding recovered waste, personal protective clothing, and emulsifiers to clean the deck. The Coast Guard recognizes that emulsifiers may be necessary to remove oil from the deck to make the deck less slippery and safer for crew members. However, the Coast Guard emphasizes that emulsions and oily residue must be retained on board until the emulsions and oily residue can be safely discharged into a suitable receiving vessel or facility. It is illegal to discharge emulsions and oily residue into the marine environment.

Because most on-deck spills are small, sorbents, portable pumps and hand tools are the most effective equipment for containing and removing them. The Committee recommended that portable pumps be rigged and ready for use on the vessel during transfer operations in case an on-deck spill occurs. The Committee also recommended that containers, scoops, buckets, and shovels be required on deck to aid the crew in removing and containing the waste from the on-deck spill; and that protective clothing be available to protect the crew members or other responders who will be removing the on-deck spill.

The proposed requirements for inland tank barges differ from tankers, offshore tank barges, and coastal tank barges because inland tank barges are typically unmanned and have little or no secure stowage capacity for carried equipment. Therefore, for inland tank barges, the Committee recommended that the equipment for containment and removal of on-deck spills be immediately available for use on board the barge during cargo transfer operations, but not necessarily carried on board. The proposed rule would allow the vessel owner or operator to rely on equipment available at a facility, provided its use for vessel spills has been prearranged by contract or other means approved by the Coast Guard.

Although the Committee made no recommendation on requiring vessels carrying oil as secondary cargo to carry discharge removal equipment, the Coast Guard is proposing equipment carriage requirements for vessels carrying oil as secondary cargo because on-deck spills on these vessels also pose a risk to the environment. Under the proposed rule, the equipment must be capable of removing on-deck spills of at least one-half barrel.

Except as noted, the proposed rules for vessels to carry equipment to remove on-deck spills reflect the recommendations of the Committee.

Deck Edge Coamings for On-Deck Spills

In addition to recommending equipment carriage to remove on-deck spills, the Committee recommended that tankers install deck-edge coamings sufficient to contain on-deck spills of 7 barrels for vessels under 400 feet, and 12 barrels for vessels 400 feet and over, with the vessel on an even keel. The Committee did not recommend that offshore and coastal tank barges install deck-edge coamings, but did agree that the Coast Guard should publish deck-edge coaming requirements for these barges for public comment. The Committee made no recommendations with respect to deck coamings on inland tank barges. The Coast Guard reviewed the Committee's recommendation in light of existing coaming regulations (33 CFR 155.310), and is proposing requirements for deck-edge coamings that support the Committee's recommendation.

Existing 33 CFR 155.310 applies to all tank vessels, as "tank vessel" is defined in 33 CFR 154.105, of 250 barrel capacity or larger that carry oil or hazardous materials, regardless of service and overall length. Section 155.310 requires tank vessels other than tank barges to install a fixed container or enclosed deck area around the manifolds and transfer connections, the capacities of which range from one-half barrel to four barrels, depending upon the pipe sizes within the contained area.

This existing regulation requires that tank barges either (1) install the same containers or enclosures as required for other tank vessels, or (2) have a smaller container at the manifolds and transfer connections and install deck coamings sufficient to contain a one-half barrel spill per cargo hatch, manifold, and transfer connection within the enclosed deck area, under all expected conditions of vessel list and trim encountered during the loading operation. Coaming height for tank barges must be at least four inches but not more than eight inches. Under these regulations, it is not necessary for tank barges to locate the coamings along the deck edge, although this appears to be the common practice for many barges.

The proposed rule reflects the Committee's recommendation for installation of deck-edge coamings to contain oil on deck and prevent its discharge into navigable waters. However, the Committee's recommendation that the coaming be sufficient to contain a spill of 7 or 12 barrels of oil, depending on the length of the vessel, with the vessel on an even keel, could result in a coaming only a fraction of an inch high. Although a low-profile coaming may be sufficient to contain these spills on a vessel on an even keel, it would be insufficient to contain them with the vessel under even modest degrees of heel and trim.

Rather than proposing new requirements that are less protective of the environment than existing regulations, the Coast Guard proposes that the rules for deck-edge coamings be consistent with the requirements of 33 CFR 155.310, with respect to coaming height and with respect to conditions of heel and trim during loading, transfer, and discharge operations. The Coast

Guard proposes that two new paragraphs be added to 33 CFR 155.310 that require tankers and offshore and coastal tank barges carrying oil as cargo to install a peripheral coaming enclosing the cargo transfer connections, manifolds, and cargo hatches. The Coast Guard believes that this proposal reflects the substance and effect of the Committee's recommendation.

Although the Committee recommended that the requirement for deck-edge coamings apply to tankers, the Coast Guard proposes that these requirements be consistent with 33 CFR 155.310 with respect to vessel applicability and that they include offshore tank barges and coastal tank barges. The Coast Guard also proposes that these requirements apply to tankers and offshore and coastal tank barges that carry 250 barrels of oil or more, irrespective of length overall.

This proposed regulation would impose a new requirement on tankers, offshore tank barges, and coastal tank barges to install deck-edge coamings within 3 years of the publication date of the final rule. It would also eliminate the currently available option for offshore and coastal tank barges that carry oil to choose between compliance with the tanker requirements in paragraph (a) of 33 CFR 155.310 or the barge requirements in paragraph (b) of the same section. The Coast Guard is not proposing that inland tank barges install deck-edge coamings. Inland tank barges that carry oil will continue to have the option to choose between compliance with the requirements in paragraph (a) or the requirements in paragraph (b) of 33 CFR 155.310.

On-Water Containment and Removal Equipment

The Committee discussed whether vessels should warehouse equipment on board for use by shore-based response personnel. Suggestions for the types of equipment to be warehoused included sorbents, booms, and skimmers.

The Committee considered the issues of stowage, maintenance, equipment compatibility, and the crew safety in determining if warehousing was appropriate or economically feasible. One advantage of carrying response equipment aboard the vessel is that the equipment is readily available in the event of a discharge. The Committee considered and rejected requirements for the vessel's crew to be deployed off the vessel or to use this equipment in on-water recovery. It is the Coast Guard's position that the crew's primary responsibilities are the safety of the vessel and containment of the cargo. Deploying crew members over the side of the vessel may jeopardize their safety and the safety of the vessel.

The Committee also considered the requirements for vessel response plans to determine whether response requirements could be better met with shore-based equipment or vessel-carried equipment. The Committee did not recommend that vessels warehouse equipment on board, but agreed to set on-scene planning criteria for on-water containment and removal of spilled oil. Vessel owners or operators could meet these planning criteria with carried equipment or rapid mobilization of shore-based equipment.

Consistent with the Committee's recommendation, the Coast Guard is not proposing warehousing equipment on board for responses to discharges off the ship. Although some vessel operators do carry removal equipment on board, the Coast Guard does not believe that requiring all vessels to warehouse oil spill response equipment is practical, economically feasible, or always compatible with the safe operation of the vessel.

Internal Cargo Transfer Capability

The Committee recommended that if the vessel's existing cargo piping system is designed to facilitate cargo transfer in the event of damage to the vessel or the piping system, the vessel should not be required to carry additional hoses or reducers. However, the Committee recommended that all other tankers, offshore tank barges, and coastal tank barges carry hoses and reducers to facilitate internal transfer of cargo. Requiring vessels to have equipment that is appropriate and readily available could facilitate containment of the cargo on the vessel.

Several Committee members indicated that requiring hoses and reducers on board should not have a significant economic impact on tanker owners or operators because most tankers already have protected or redundant piping systems. Finally, the Committee did not recommend that inland tank barges carry additional hoses and reducers. The proposed rule reflects the Committee recommendations.

Lightering Equipment

The Committee discussed the possibility of requiring tankers, offshore tank barges, and coastal tank barges to carry high-capacity, portable, submersible pumps to facilitate both lightering and salvage operations and the intraship transfer of cargo. The Committee recognized the value of these pumps in lightering, but also recognized that pumping equipment is often available from shore-based locations. Several Committee members expressed concern that requiring these pumps to be carried on board the vessel was not economically feasible. Further, the pumps may be incompatible with the safe operation of the vessel if the pumps are employed before adequate stability information is available.

The Committee agreed that, before using pumps to transfer liquid cargo, the vessel's crew must be able to assess damage and have access to the vessel's calculated damage stability and residual structural strength characteristics. Considering the time required to adequately assess damage and perform the necessary stability calculations, some members noted that the difference in availability of pumps carried on board and those brought from shore may not be significant.

The Committee members recommended that a vessel develop an emergency lightering plan to identify the availability and location of necessary lightering resources, including fenders, transfer hoses and connections, portable pumps, lightering and mooring masters, and vessel and barge brokers. Further, the Committee recommended that lightering equipment not be required aboard vessels, but be available from shore-based locations to meet regulatory guidelines.

The Committee recommended that requirements for lightering plans be addressed in a separate rulemaking on vessel response plans (CGD 91–034). The proposed rule on vessel response plans incorporates the Committee recommendations.

Spill Tracking Devices

The Committee agreed that it would be desirable for vessels to carry a simple, spill tracking device. The tracking device would be deployed by the vessel at the time of the discharge to facilitate location of the leading edge of the spill by first responders for 12–24 hours, even in darkness and adverse weather.

The Coast Guard Research and Development (R&D) Center has evaluated several buoy designs for tracking oil spills. However, most were designed for satellite tracking, used more sophisticated technology, and were powered for longer periods of time than was recommended by the Committee for this application.

The Committee recommended that, within two years of the date of the final rule, the R&D Center undertake and complete research, development, and evaluation of a suitable design for a simple spill tracking device. Some

Committee members suggested that the Coast Guard evaluation include, as one of the potential designs, a device with the following characteristics:

(1) A 4–6 meter vertical component with a one-foot diameter radar reflector.

(2) A strobe light was a 24 hour battery.

(3) A counterweight capable of maintaining the device in a vertical position.

(4) A float capable of supporting the entire assembly.

The Committee recommended that the Coast Guard consider using OPA 90 title VII funds to conduct this research, and that tankers and offshore tank barges carry a device that is approved by the Coast Guard no later than 3 years after the publication of the final rule.

Based on the Committee's recommendation, the Coast Guard R&D Center will reevaluate tracking devices and determine if a device with these characteristics would be suitable. If this evaluation identifies a suitable device, the Coast Guard may propose in a separate rulemaking that tankers and offshore tank barges carry the device.

The Coast Guard invites public comment on a reliable practical device to facilitate the location of the leading edge of an oil spill.

Damage Stability Information

The Committee recommended that an owner or operator of a tanker, offshore tank barge, or coastal tank barge have prearranged, prompt access to computerized on-board or shore-based damage stability and residual structural strength calculation programs. The Committee stressed the importance of requiring an owner or operator to maintain vessel strength and stability characteristics on file in the program. Damage stability information is important in developing an effective response when hull failure, groundings, or strandings occur. The Committee recommended that the means of access to this program be identified in the vessel response plan. The proposed rule incorporates these recommendations.

Emergency Towing Capability for Certain Tank Barges

The Committee recommended that offshore and coastal tank barges carry an emergency tow wire rigged and ready for use.

Coast Guard policy has been to distinguish between integrated tug-barges (ITBs) that are designed for push-mode and those designed for dual-mode operation (capable of being pushed or towed). Previously, the Coast Guard has regulated these two designs separately. The Coast Guard invites public comment on emergency towing package requirements for ITBs.

Emergency Towing Capability for Tankers

The Coast Guard issued Navigation and Inspection Circular (NVIC) No. 8–89 on January 8, 1990, endorsing International Maritime Organization (IMO) Resolution A.535(13), Recommendations on Emergency Towing Requirements for Tankers, dated November 17, 1983. NVIC No. 8–89 is an official recommendation. The NVIC has no regulatory authority and cannot be enforced. The salient points of the Resolution include applicability provisions, and provisions for towing system components and connecting fittings.

First, the Resolution recommends strongpoints, chafing chains, and fairleads at the bow and stern of a vessel. Second, it requires fittings to facilitate passing the towing pennant from the rescue vessel using the rescue vessel's power. The Resolution recommends installation of these emergency towing components on all tankers greater than 50,000 deadweight tons (dwt) built after adoption of the Resolution, and on tankers greater than 100,000 dwt built before adoption of the Resolution. It requires installation on tankers built before the date of adoption (November 17, 1983) at the first drydocking, but not later than five years after adoption.

Some Committee members strongly recommended that the Coast Guard adopt the provisions of IMO Resolution A.535(13) in the proposed regulations. Adopting these provisions as regulation would go beyond the existing NVIC and make compliance mandatory and enforceable. Proponents of this position argued that the Resolution is an international standard that was developed by the International Maritime Organization, of which the United States is a member. Therefore, any regulations derived from the Resolution would be more readily enforceable, particularly with respect to foreign flag tankers, than regulations imposed unilaterally by the United States without international consensus.

Other Committee members proposed alternative regulations that would require a towing arrangement similar to that installed on many Trans Alaska Pipeline System (TAPS)-trade tankers. The Committee could not achieve a consensus on minimum emergency towing requirements and was unable to recommend one option. As a result, the Committee developed two regulatory options and recommended that both be published for comment in the NPRM.

Under the first option (Option 1), the Committee recommended that the applicability of the IMO towing requirements be extended. The Committee recommended that all tankers between 20,000 dwt and 50,000 dwt be required to install a strongpoint, fairlead, and chafing chain on one end of the vessel. The Committee also recommended that all tankers 50,000 dwt or greater, irrespective of their construction date, be required to install strongpoints, fairleads, and chafing chains on both ends of the vessel.

Further under Option 1, the Committee discussed modifying the phase-in period for the IMO provisions, and recommended that all tankers of 20,000 dwt and greater be required to install the emergency towing arrangements within three years of the date of the final regulation.

Proponents of the alternative option felt that IMO Resolution A.535(13) was not sufficient to facilitate connection between the rescuing and the rescued vessel in adverse weather. Consequently, these members recommended a second regulatory option.

Option 2 combines features of the IMO-recommended towing package and the requirements included in the Prince William Sound Emergency Towing Package, as identified in the Prince William Sound Tanker Spill Prevention and Response Plan, Volume 2. Towing packages containing features of these two standards are currently installed on many Trans-Alaska Pipeline System (TAPS) trade tankers that transit Prince William Sound, Alaska.

Under Option 2, tankers of 20,000 dwt and above would be required to comply with the recommendations of IMO Resolution A.535(13) regarding the provisions for strongpoints, fairleads, and chafing chains. In addition, Option 2 would require that tankers have on one end a 400 foot long towing wire pendant; a 600 foot long, floating, polypropylene pickup line; and a floating pickup buoy. The towing wire pendant would be constructed of 2½ to 3 inch diameter, 6×37 to 6×41, extra-improved plow steel, IWRC (independent wire rope core), galvanized wire. This option would also require that vessels preconnect and store the chafing chain, pendant wire, and polypropylene line to facilitate the deployment of the pendant by no more than three crew members on a vessel with no power (deadship).

The proponents of Option 2 argued that requiring the tanker to provide a pendant wire and pickup line would facilitate the connection between the tanker and the rescue vessel,

particularly in adverse weather, and minimize the need for tanker crew to rig and deploy the towing arrangement. The proponents of Option 1 argued that the crew of a rescue vessel (typically a tug) would prefer to use the tug's main tow wire than rely on a tanker's emergency wire which the tug crew neither inspected nor maintained.

To reach consensus, proponents of Option 1 recommended that the Coast Guard, in conjunction with the international shipping and salvage community, promote the evaluation and design of an emergency towing package to facilitate a rescue vessel taking a tanker under tow with minimum involvement by the tanker crew in rigging and deploying the towing arrangement. These Committee members recommended that the evaluation consider maintenance, costs, and retrofitting requirements. Under this option, the Coast Guard would propose that the Maritime Safety Committee (MSC) of IMO consider within a 2 year period the design and evaluation of a towing package, which could then be recommended to the Assembly for adoption.

The proponents of the second option agreed that there should be an evaluation, but recommended that within 18 months, the Coast Guard complete a study to evaluate recommended components of the combined towing package and promulgate minimum standards. The regulation would set out minimum design and performance specifications for a system that would provide for storage and facilitate the deployment of an emergency towing arrangement on a vessel without power. The regulations would require installation of the emergency towing arrangement on at least one end of the vessel. The towing arrangement would include a chafing chain, pre-rigged or designed for deployment without the crew physically handling it.

The proponents of the second option made further recommendations. First, they recommended that the approved system be required on all new tankers of 20,000 dwt and above and on existing tankers of 50,000 dwt and above within three years of the date of the regulation establishing the standards (approximately 4 years after the publication of the final rule for this rulemaking). Second, they recommended that the Coast Guard, supported by the involved shipping and towing industry who participated in the evaluation, forward minimum specifications to the IMO and propose that the Assembly update and reissue IMO Resolution A.535(13) to include the regulations for pendant-wire carriage arrangements. Finally, option 2 proponents recommended grandfathering emergency towing arrangements that are already installed on vessels engaged in the TAPS trade. The Coast Guard interprets this to apply to arrangements that are consistent with the arrangements identified in the Prince William Sound Tanker Spill Prevention and Response Plan, Volume 2, so long as they were maintained on board the tanker.

The Coast Guard has included draft regulatory language that would implement Option 2 in § 155.235 and is proceeding with further study and evaluation of these requirements. Comments that will aid this study are solicited. Any recommendation resulting from the evaluation would be the subject of future rulemaking. It should be noted that the effective date for paragraph (b) under Option 2 would be established by this separate rulemaking.

The Committee recommended that existing single hull vessels scheduled to be taken out of service before age thirty (calculated from the keel laying date, as defined in 46 CFR 30.10–37), rather than comply with the requirements of IMO Draft Regulation 13G of Annex I of MARPOL 73/78, be exempt from requirements to install the emergency towing equipment for 5 years after the date of the final regulation, if they are 20 years old or older as of the publication date of the final rule. The Committee made this recommendation to eliminate the cost of upgrading vessels whose deactivation was planned.

There is no practicable regulatory means of exempting some 20 year old tankers, but not others, on the basis of an owner/operator's discretionary schedule to deactivate a tanker or continue it in service. Therefore, in § 155.235 of the proposed rule, five-year phase-in periods are proposed for all tankers 20 year old or older as of the date the final rule is published. The Coast Guard requests comments on this provision because older vessels which benefit from this lengthened phase-in period probably pose a similar risk to the environment, and may pose a greater risk, than newer tankers whose proposed phase-in period is 3 years.

The Committee recommended that the Coast Guard publish both alternatives in the notice of proposed rulemaking. Section 155.235 of the proposed rule incorporates this recommendation, and presents both options for public comment.

Incorporation by Reference

The following material would be incorporated by reference in § 155.140: IMO Resolution A.535(13), Recommendations on Emergency Towing Arrangements for Tankers, dated November 17, 1983. Copies of the material are available for inspection where indicated under "ADDRESSES." Copies of the material are available at the addresses in § 155.140.

Regulatory Evaluation

This proposal is not major under Executive Order 12291. This proposed regulation is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979) because of substantial public interest in the proposed rule. A draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under "ADDRESSES."

The Coast Guard does not expect this proposal to impose substantial new costs on tanker owners and operators for acquiring discharge-removal equipment to carry on board. The proposed equipment for containing and removing on-deck spills includes deck-edge coamings, athwartship barriers, sorbents, hand scoops, mops, buckets, and small portable pumps. Tankers already are in substantial compliance with the proposed requirements for on-board equipment. For owners or operators of offshore and coastal barges, the annualized costs of on-board spill response equipment is approximately $0.01 million; and for owners and operators of inland barges, $0.09 million. (Under the proposed rule, inland tank barges are not required to install deck-edge coamings.) The annualized costs of this equipment for vessels carrying oil in bulk as secondary cargo will amount to $0.5 million. The present value costs of the discharge removal equipment for the period 1993–2015 is $0.12 million for coastal and offshore barges, $.838 million for inland barges, and $4.45 million for secondary cargo carriers.

Proposed requirements for source control equipment (hoses) will impose an annualized cost of $7.37 million on tankers and $.72 million on offshore and coastal barges. The present value costs for source control are $73.66 million for tankers and $7.19 million for coastal and offshore barges.

Annual costs of the damage stability and structural strength calculation programs will be approximately $0.69 million for tankers and $0.09 million for offshore and coastal barges. The present value costs of the damage stability calculation programs are $5.8 million for tankers and $1 million for coastal and offshore barges.

The Coast Guard projects that the annualized cost of equipping tankers with an emergency towing package will be about $6.66 million. The annualized cost of equipping offshore and coastal tank barges will be about $1.84 million. The present value cost of the towing equipment is $62.85 million for tankers and $18 million for coastal and offshore barges.

The total annualized costs of this proposed regulation are $17.97 million, which amount to a per barrel cost of $0.003 to consumers. The total present value cost of the proposed rule is $142.43 million for tankers, $.838 million for inland barges, $26.31 million for coastal and offshore barges, and $4.45 million for secondary cargo carriers. The total present value cost for the proposed rule is $174.028 million. Therefore, this proposal will not result in annual costs of $100 million or more; will have no significant adverse effects on competition, employment, or other aspects of the economy; and will not result in a major increase in costs and prices.

The major benefit of the proposed rule is that it will reduce the risk of oil spills, improve vessel oil spill response capabilities, and mitigate oil spill damage to the environment by helping to ensure that on-deck spills will be contained on the vessel and removed quickly. Further, the proposed emergency towing package requirements will minimize the risk of a spill from a disabled or drifting vessel. Monetary benefits cannot be calculated for an emergency towing package. The benefit is the satisfaction of an international resolution and the ability to quickly and safely rig a tow for a stricken or disabled vessel and, thereby, prevent some of the problems that precipitated the breakup of the AMOCO CADIZ.

The Coast Guard estimates that the proposed requirements for equipment to contain on-deck spills will prevent 477.7 barrels of oil from spilling into the marine environment of the U.S. from 1992 to 2015. This amount includes 12.2 barrels for oceangoing and coastal barges, 21.6 barrels for inland barges, and 443.9 barrels for secondary carriers. The requirements for source control equipment for tank vessels will prevent 2,082 barrels of oil from spilling. The total amount of oil prevented from spilling is estimated to be 2,559.7 barrels over the 23 year period. To compare the costs and benefits of the proposed rule over the next twenty-three years in terms of cost per barrel prevented from spilling, we have discounted the number of barrels that would not be spilled.

It is estimated that the requirements for equipment to contain on-deck spills will prevent 158.67 discounted barrels of oil from spilling, using a 10% discount rate. This estimate includes 1 barrel for oceangoing and coastal barges, 1.77 barrels for inland barges, and 155.9 barrels for secondary carriers. The requirements for source control equipment are estimated to prevent 754 discounted barrels of oil from spilling. The total discounted barrels prevented from spilling over the twenty-three year period is 912.67. Based on the discount rate, we calculate the present value cost per barrel prevented from spilling to be $190,680.

One alternative to the proposed rule is requiring inland tank barges to install deck-edge coamings. The annualized costs of this provision would have been $1.54 million, with a present value cost of $17.66. The Coast Guard rejected this alternative because coamings on inland barges pose safety problems during barge operations and may be costly for older barges with external frames.

A second alternative is to require warehoused equipment on board tank vessels. The present value cost of this requirement would be $666 million over the period 1993–2015. Although some vessel operators do carry removal equipment on board, the Coast Guard rejected this alternative because requiring all vessels to warehouse oil spill response equipment is not practical, economically feasible, or always compatible with the safe operation of the vessel. At the recommendation of the Committee, the Coast Guard decided to propose strict response requirements and allow the vessel owner or operator to decide how best to meet these requirements with warehoused or shore-based equipment. The proposed rules do not preclude the vessel owner or operator from deciding what equipment should be carried on board.

Finally, the Coast Guard considered requiring pumps on board tankships to facilitate lightering and salvage operations and the intraship transfer of cargo. The annualized cost of the pump requirement would be $41.53 million, and the net present value cost for the period 1993–2015 would be $288.69 million. The Coast Guard rejected this alternative because pumps may be incompatible with the safe operation of the vessel. The Coast Guard recognizes the value of these pumps in lightering, but also recognizes that pumping equipment is often available from shore-based locations. Considering the time required to adequately assess damage and perform the necessary stability calculations, the difference in availability of pumps carried on board and those brought from shore may not be significant.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). "Small entities" also includes small, not-for-profit organizations and small governmental jurisdictions.

Most of the small businesses in the marine transportation industry are inland barges and vessels which carry oil in bulk as secondary cargo. This rule imposes costs of less than $0.1 million annually for inland barges and approximately $500,000 annually for secondary vessel industries, with annual costs per company of less than $250 for inland barge companies and less than $1,000 for secondary vessel companies. For barge and secondary vessel owners and operators, the Coast Guard expects the cost burden for equipment to be considerably less than the costs for tankers. Ninety-six percent or $17.38 million of the total annualized costs will be paid by the tanker industry.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this proposal, alone or in combination with other Coast Guard rulemaking initiatives under OPA 90, will economically affect your business.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed regulation that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements. The proposed rule contains no new collection of information requirement.

Federalism

The Coast Guard has analyzed this proposed rule under the principals and criteria contained in Executive Order 12612, Federalism, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would establish regulations requiring certain vessels to carry discharge removal equipment. In *Ray* v. *Atlantic Richfield*, (435 U.S. 51, 98 S.Ct. 988, [1978]), the Supreme Court found that vessel design and equipment standards fall within the exclusive province of the Federal Government. The OPA 90 Conference Report explicitly says that provisions in section 1018 of OPA 90 preserving certain State authority are not meant to disturb this Supreme Court decision (House Conf. Rep., p. 122). Therefore, the Coast Guard intends this final rule to preempt State action addressing the same subject matter.

Environmental Impact

The Coast Guard has prepared a preliminary Environmental Assessment (EA) for this action under the Council on Environmental Quality regulations (40 CFR parts 1500–1800), and Coast Guard policy (COMDTINST M16475.1B) implementing the National Environmental Policy Act (NEPA). The EA discusses the environmental consequences of the proposed action and alternatives, including a no-action alternative. The preliminary EA is available in the docket. After receipt of all comments to this proposed rulemaking action and comments to the EA, the Coast Guard will make a final decision whether to draft an Environmental Impact Statement (EIS).

List of Subjects in 33 CFR Part 155

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), and (j)(6); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1903(b), and sections 155.830 and 155.880 issued under 33 U.S.C. 2735.

Supart A—[Amended]

2. Section 155.140 is added to subpart A to read as follows:

§ 155.140 Incorporation by reference.

(a) Certain material is incorporated by reference in this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish a notice of change in the **Federal Register** and the materials must be available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street NW., Washington, DC, 20002 and at the U.S. Coast Guard, Marine Environmental Protection Division (G–MEP), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London SE1 75R, United Kingdom, Telex 23588

Resolution A.535(13), Recommendations on Emergency Towing Requirements for Tankers, November 17, 1983..... 155.235

3. The table of contents for subpart B is amended by adding entries for §§ 155.200 through 155.240 and revising the entry for § 155.310 to read as follows:

Subpart B—Vessel Equipment

155.200 Definitions.
155.205 Discharge-removal equipment for vessels 400 feet or greater in length.
155.210 Discharge-removal equipment for vessels less than 400 feet in length.
155.215 Discharge-removal equipment for inland tank barges.
155.220 Discharge-removal equipment for vessel carrying oil as a secondary cargo.
155.225 Internal cargo transfer capability.
155.230 Emergency towing capability for tank barges.
155.235 Emergency towing capability for tankers.
155.240 Damage stability information.
155.310 Containment of oil and hazardous material cargo discharges.

* * * * *

4. Sections 155.200 through 155.240 are added to subpart B to read as follows:

§ 155.200 Definitions.

As used in this subpart:

Coastal tank barge means a tank barge, including dual-mode integrated tug-barges, certificated under 46 CFR chapter I, subchapter D, for coastwise service.

Inland tank barge means a tank barge certificated under 46 CFR chapter I, subchapter D, for river service or lakes, bays, and sounds service.

Offshore tank barge means a tank barge, including dual-mode integrated tug-barges, certificated under 46 CFR Chapter I, subchapter D, for ocean service or Great Lakes service, or any foreign flag tank barge.

Tanker means a self-propelled vessel, including push-mode integrated tug-barges, with the principle purpose of carrying oil in bulk as cargo and that has a Certificate of Inspection issued under 46 CFR chapter I, subchapter D, a Certificate of Compliance, or a Tank Vessel Examination letter.

Vessel carrying oil as secondary cargo means a vessel carrying oil pursuant to a permit under 46 CFR 30.01–5, 46 CFR 70.05–30, or 46 CFR 90.05–35 or pursuant to an International Oil Pollution Prevention (IOPP) or Noxious Liquid Substance (NLS) certificate required by §§ 151.33 or 151.35 of this chapter; or any uninspected vessel that carries oil in bulk as cargo.

§ 155.205 Discharge-removal equipment for vessels 400 feet or greater in length.

(a) Tankers, offshore tank barges, and coastal tank barges with an overall length of 400 feet or more must carry appropriate equipment and supplies for the containment and removal of on-deck oil cargo spills of at least 12 barrels.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning;

(5) Protective clothing; and

(6) Non-sparking portable pumps and hoses.

(c) During cargo transfer operations, the equipment and supplies must remain ready, and pumps and hoses must be rigged, for immediate use.

§ 155.210 Discharge-removal equipment for vessels less than 400 feet in length.

(a) Tankers, offshore tank barges, and coastal tank barges with an overall length of less than 400 feet must carry appropriate equipment and supplies for the containment and removal of on-deck oil cargo spills of at least 7 barrels.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning;

(5) Protective clothing; and

(6) Non-sparking portable pumps and hoses.

(c) During cargo transfer operations, the equipment and supplies must remain ready, and pumps and hoses must be rigged, for immediate use.

§ 155.215 Discharge-removal equipment for inland tank barges.

(a) During cargo transfer operations, inland tank barges must have appropriate equipment and supplies ready for immediate use to control and remove on-deck oil cargo spills of at least one barrel.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning;

(5) Protective clothing; and

(c) The tank barge owner or operator may rely on facility-provided equipment if the equipment availability has been pre-arranged by contract or other means approved by the Coast Guard.

§ 155.220 Discharge-removal equipment for vessels carrying oil as secondary cargo.

(a) Vessels carrying oil as secondary cargo must carry appropriate equipment and supplies for the containment and removal of on-deck oil cargo spills of at least one-half barrel.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning;

(5) Protective clothing.

(c) The equipment and supplies must be ready for immediate use during cargo transfer operations.

§ 155.225 Internal cargo transfer capability.

Tankers, offshore tank barges, and coastal tank barges must carry suitable hoses and reducers for internal transfer of cargo to tanks or other spaces within the cargo block, unless the vessel's installed cargo piping system is capable of performing this function.

§ 155.230 Emergency towing capability for tank barges.

(a) Offshore and coastal tank barges must carry an emergency tow wire or tow line rigged and ready for use.

(b) The emergency tow wire or tow line must have the same towing characteristics as the primary tow wire or tow line.

§ 155.235 Emergency towing capability for tankers.

OPTION 1 FOR § 155.235

(a) Except as provided in paragraph (c) of this section, by [*Insert date 3 years after the effective date of the final rule.*], all tankers of 20,000 deadweight tons (dwt) or more but less than 50,000 dwt must comply with the emergency towing provisions of sections 2.2 through 2.7 of IMO Resolution A.535(13) on at least one end of the vessel.

(b) Except as provided in paragraph (c) of this section, by [*Insert date 3 years after the effective date of the final rule.*], all tankers of 50,000 dwt or more must comply with the emergency towing provisions of sections 2.2 through 2.7 of IMO Resolution A.535(13) on both ends of the vessel.

(c) Tankers that are at least 20 years old (calculated from the keel laying date, as defined in 46 CFR 30.10–37) as of [*Insert the effective date of the final rule.*] must comply with the requirements of paragraphs (a) and (b) of this section by [*Insert date 5 years from the effective date of the final rule.*].

OPTION 2 FOR § 155.235

(a) By [*Insert date 3 years after the effective date of the final rule.*], all tankers of 20,000 deadweight tons (dwt) or more must comply with the emergency towing provisions of sections 2.2 through 2.7 of IMO Resolution A.535(13) on both ends of the vessel.

(b) All tankers of 20,000 dwt or more, constructed after [*Insert the effective date of the final rule.*], must be fitted on at least one end of the vessel with—

(1) A 400 foot long towing wire pendant constructed of 2½ to 3 inch diameter, 6×37 to 6×41, extra-improved plow steel, IWRC, galvanized wire;

(2) A 600 foot long, floating, polypropylene pickup line; and

(3) A floating pickup buoy.

(c) The equipment required in paragraph (b) of this section must be preconnected and stored in a manner that will facilitate the deployment of the pendant on a vessel with no power (deadship) by no more than three crew members.

(d) Tankers of 50,000 dwt or more, delivered before [*Insert the effective date of the final rule.*], must comply with the provisions of paragraph (b) of this section by [*Insert date 3 years after the effective date of the final rule.*].

(e) Tankers engaged in the Trans-Alaska Pipeline System (TAPS) trade and fitted with the emergency towing package described in paragraph (b) of this section as of [*Insert the effective date of the final rule.*] are exempted from the requirements in paragraphs (a) and (c) of this section as long as the emergency towing package is maintained on board the tanker.

(f) Tankers that are at least 20 years old (calculated from the keel laying date, as defined in 46 CFR 30.10–37 as of [*Insert the effective date of the final rule.*] must comply with the requirements of paragraphs (a) through (d) of this section by [*Insert date five years from the effective date of the final rule.*].

§ 155.240 Damage stability information.

(a) Owners or operators of tankers, offshore tank barges, and coastal tank barges shall ensure that their vessels have prearranged, prompt access to computerized onboard or shore-based damage stability and residual structural strength calculation programs.

(b) Vessel baseline strength and stability characteristics must be pre-entered into such programs and be consistent with the vessel's existing configuration.

(c) Access to the calculation program must be available 24 hours a day.

(d) The means of access to the calculation program must be identified in the vessel response plan required in subpart D of this part.

5. In § 155.310, the section heading and paragraph (b) introductory text are revised and paragraphs (c) and (d) are added to read as follows:

§ 155.310 Containment of oil and hazardous material cargo discharges.

* * * * *

(b) An offshore or coastal tank barge with a capacity of 250 or more barrels that is carrying hazardous material as cargo, and an inland barge with the capacity of 250 or more barrels that is carrying oil or a hazardous material as cargo must meet paragraph (a) of this section or be equipped with—

* * * * * *

(c) In addition to the requirements of paragraphs (a) and (b) of this section, by [*Insert date 3 years after the effective date of the final rule.*], all tankers and offshore and coastal tank barges with a capacity of 250 or more barrels that are carrying oil as cargo must have peripheral coamings, including port and starboard deck-edge coamings and

forward and aft athwarships coamings, completely enclosing the cargo deck area, cargo hatches, manifolds, transfer connections, and any other openings where cargo may overflow or leak.

(1) Coamings must be at least 4 inches high except in the aft corners.

(2) In the aft corners (port and starboard) of a vessel, the coamings must be at least 8 inches high and extend—

(i) Forward at least 14 feet from each corner; and

(ii) Inboard at least 8 feet from each corner.

(3) Each area enclosed by the coaming required under this paragraphs must have—

(i) A means of draining or removing oil from the enclosed deck area without discharging oil into the water; and

(ii) A mechanical means of closing each drain and scupper in the enclosed deck-area.

(4) For tankships, as "tankship" is defined in 46 CFR 30.10–67, the coaming or other barrier required in 46 CFR 32.56–15 may serve as the aft athwarships coaming if the tankship is otherwise in compliance with the requirements of this paragraph(s).

(d) In addition to the requirements of paragraphs (a) and (b) of this section, an offshore or coastal tank barge, as defined in § 155.200, with a capacity of 250 or more barrels that is carrying oil as cargo must have—

(1) A fixed or portable container under each oil loading manifold and each oil transfer connection within the coaming, that holds at least one-half barrel;

(2) A mechanical means of closing each drain and scupper within the coaming; and

(3) A means of draining or removing discharged oil from the fixed or portable container and from within the coamings without discharging the oil into the water.

Dated: September 23, 1992.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 92–23562 Filed 9–28–92; 8:45 am]

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Tuesday
September 29, 1992

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Aircraft and Proposed Advisory Circular on Ground Deicing and Anti-Icing Program; Interim Final Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 26930; Amendment No. 121-231]

RIN 212-AE51

Aircraft Ground Deicing and Anti-Icing Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This amendment establishes a requirement for part 121 certificate holders to develop an FAA-approved ground deicing/anti-icing program.

This rule is necessary because several accidents and the 1992 International Conference on Airplane Ground Deicing indicate that, under present procedures, the pilot in command may be unable to effectively determine whether the aircraft's critical surfaces are free of all frost, ice, or snow prior to attempting a takeoff.

The rule is intended to provide an added level of safety to flight operations in adverse weather conditions. This rule and associated airport and air traffic control procedures will provide enhanced procedures for safe takeoffs during adverse weather conditions.

DATES: This interim final rule is effective November 1, 1992. Additional comments must be received not later than April 15, 1993.

ADDRESSES: Comments on this interim final rule should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26930, 800 Independence Ave., SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26930. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Larry Youngblut, Flight Standards Service, Regulations Branch, AFS-240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3755.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 1992 (47 FR 32846) the FAA published a Notice of Proposed Rulemaking that would establish requirements for part 121 certificate holders to develop and comply with an FAA-approved ground deicing/anti-icing program. The proposed rule was developed in response to a number of airplane accidents caused in part by icing and to recommendations from an international conference on deicing/anti-icing that considered measures that could be taken to prevent such accidents.

Section 121.629(a) of the Federal Aviation Regulations (14 CFR 121.629(a)) states, in pertinent part, that no person may dispatch or release an aircraft when, in the opinion of the pilot in command or aircraft dispatcher, icing conditions are expected or met that might adversely affect the safety of flight. Section 121.629(b) states, in pertinent part, that no person may take off an aircraft when frost, ice, or snow is adhering to the wings, control surfaces, or propellers of the aircraft. These requirements, which have been virtually unchanged for over 40 years, are based on what is commonly referred to as the "clean aircraft concept." The basis of this concept is that the presence of even minute amounts of frost, ice, or snow (referred to as "contamintion") on particular aircraft surfaces, can cause degradation of aircraft performance and changes in aircraft flight characteristics.

Under the Federal Aviation Regulations, in icing conditions, as in all other conditions, ultimate responsibility for determining whether the aircraft is free of contamination—which is necessary for the aircraft to be airworthy—resets with the pilot in command. When conditions conducive to the formation of frost, ice, or snow or aircraft surfaces exist at the time of takeoff, or it is suspected that these contaminants are adhering to aircraft surfaces, common practice developed by the North American and European aviation communities over many years of operational experience is to deice and/or anti-ice the aircraft before takeoff.

Deicing is a procedure by which frost, ice, or snow is removed from the aircraft in order to provide clean surfaces. Anti-icing is a precautionary procedure which provides protection against the formation of frost or ice and accumulation of snow to treated surfaces of the aircraft for a limited period of time. Two principal types of deicing/anti-icing fluids are used. Type I fluids are unthickened fluids that are normally applied as a mixture of glycol and water. These fluids mainly provide protection against refreezing when no delays or only short delays occur between deicing and takeoff. Type II fluids are thickened fluids. They provide protection against refreezing for longer periods and can be used when longer delays can be anticipated. Type II fluid is used extensively in Canada and Europe, but is used less often in the United States. Type II fluid provides longer holdover times. Holdover time is the estimated time deicing/anti-icing fluid will prevent the formation of frost or ice and the accumulation of snow on the protected surfaces of an aircraft.

According to the National Transportation Safety Board (NTSB), in the last 23 years there have been 15 accidents related to the failure to deice aircraft adequately before takeoff. In all of these accidents, contamination on the aircraft surfaces during takeoff was the cause or a contributing cause of the accident. On March 22, 1992, USAir flight 405 crashed on takeoff from La Guardia Airport in a snowstorm during nighttime operations. While the NTSB has not yet issued a probable cause finding for this accident, the FAA has proceeded on the assumption that the accident was caused, at least in part, by icing. The airplane had been deiced approximately 35 minutes before takeoff.

As a result of this and earlier accidents, the FAA mounted a sharply focused effort to address the issues surrounding ground deicing before the winter of 1992/1993. On May 28 and 29, 1992, the FAA held the International Conference on Airplane Ground Deicing in Reston, Virginia. The conference brought together leading experts from all over the world to share information on ground deicing/anti-icing of transport category airplanes and to recommend actions for preventing accidents caused by icing, and for continuing improvement of flight safety under adverse weather conditions.

The two-day conference was attended by representatives from air carriers and air carrier associations, crewmember associations, manufacturers and manufacturing associations, airport operators, and air traffic controllers and other FAA personnel, as well as by scientific experts on weather, deicing fluids, and deicing equipment. Over 800 people attended the conference. Areas covered by working groups at the conference were aircraft design; ground deicing and anti-icing systems; air traffic control and sequencing; deicing personnel, procedures, and training; and ice detection, recognition, and crew training.

Two major recommendations, which support this rulemaking, made by the working groups are: (1) Critical aircraft surfaces must be kept free of frost, ice, and snow; and (2) Each air carrier should have an approved aircraft deicing program that will ensure full

compliance with the clean aircraft concept. The program should include ground deicing procedures, a comprehensive training program for flight crewmembers, holdover timetables to be used as guidelines, and criteria for determining if a pretakeoff check after deicing is needed.

The FAA based the proposed rule on these recommendations and accident history. As proposed, the rule would require part 121 certificate holders to develop and comply with an FAA-approved ground deicing/anti-icing program that includes procedures that must be followed whenever ground conditions exist that might result in frost, ice, or snow adhering to the aircraft surfaces, unless it uses the alternate check procedures described below under "Implementation of Program." The program is intended to provide the pilot in command with more complete information, training procedures, and ground support, which he or she needs for deciding if takeoff can be safely accomplished. Each program would include a detailed description of how the certificate holder determines that ground deicing/anti-icing procedures must be in effect, who is responsible for deciding that such procedures must be in effect, the operational procedures for implementing ground deicing, and the specific duties and responsibilities of each operational position or group responsible for getting the aircraft safely airborne while such procedures are in effect.

To be approved, each ground deicing/anti-icing program would have to cover at least the following areas:

(1) Ground training and testing requirements for all flight crewmembers and qualification requirements for all other personnel the certificate holder uses in implementing the approved ground deicing/anti-icing program.

(2) Procedures for the use of holdover times.

(3) Deicing/anti-icing and accompanying checking procedures.

Differences between the proposed rule and the final rule involve pretakeoff check requirements, short term training and qualification/testing requirements, implementation plans, use of holdover timetables, definitional changes, and flight with underwing frost under certain conditions. These changes are discussed in the "Discussion of Comments" section of this preamble.

This rule, when implemented, will ensure that the FAA and part 121 certificate holders have taken every practical step possible to improve safety in icing conditions before the 1992/1993 winter season. In this regard, the FAA is aware that part 121 certificate holders have already, under the leadership of the ATA, taken steps to develop a standard model industry training program that would meet the goals of this rulemaking.

NTSB Recommendations

As a result of accident investigations, the NTSB has issued 30 safety recommendations that address issues involving aircraft ground icing and deicing.

These recommendations cover such subjects as informing operators about the characteristics of deicing/anti-icing fluids; informing flight crews about ice formation after deicing; reviewing information that air carrier operators provide to flight crews on runway contamination and engine anti-ice during ground operations; requiring flight crew checks before takeoff if takeoff is delayed following deicing; emphasizing to air carrier maintenance departments the importance of maintaining ground support equipment; and requiring air carrier training programs to cover the effect of wing leading edge contamination on aerodynamic performance.

This final rule as well as previous FAA actions address these recommendations. Previous actions included dissemination of advisory circulars, bulletins, memoranda, informative articles, and notices related to winter operations, as well as publishing Air Carrier Operations Bulletins, Maintenance Bulletins, and Maintenance Action Notices. These materials were intended to impress upon operators the dangers of aircraft wing and control surface contamination and the need to assist the pilot in determining if the aircraft is free of contamination before takeoff.

Long-Term FAA Actions

The problem of airplane ground deicing/anti-icing is much broader than just the issue of the last-minute decision of a pilot in command on whether to attempt a takeoff. Airport and air traffic control procedures, airplane design, pilot awareness training, airplane performance characteristics, and other factors have been considered in NTSB recommendations, and many of them were addressed at the Reston conference. The FAA and the aviation industry are continuing their efforts to address these and other related issues. Efforts in some areas, such as airport and air traffic control procedures, are already underway and will continue during this rulemaking. Other issues, such as the effects of airplane design and their interaction with wing contamination and pilot flying technique, for example, require research. The potential value of aircraft type specific pilot training on procedures for use during ground icing conditions will also be studied, either by the FAA alone or as joint government/industry projects. Many aspects of aircraft design, performance characteristics, handling qualities, and flying technique must be examined along with their interactions, in order to fully understand why the accident history appears to reflect an imbalance among accident rates experienced by different aircraft designs.

Discussion of Comments

Additional Comment Period

A number of commenters object to the 15-day comment period and the rush to place this rule in effect before the 1992–1993 winter season. As discussed elsewhere in this preamble and as was discussed in the NPRM, the FAA has determined that it is in the interest of aviation safety to establish additional ground deicing/anti-icing rules before this winter. The International Conference on Airplane Ground Deicing in general supports the FAA's decision. Nevertheless, the FAA recognizes that less than four months have elapsed between the International Conference and this final rule and that the general public had only 15 days to comment on the NPRM. Therefore, the FAA has determined that it is in the public interest to make this an interim final rule and provide an additional comment period to obtain comments on the actual implementation of this rule this winter. All comments received before April 15, 1993 will be carefully considered. If warranted, the FAA will make changes to the rule before the next winter season.

Comments should identify the regulatory docket number to the Rules Docket address specified above. Commenters wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26930." The postcard will be date stamped and mailed to the commenter.

General

Over 40 comments were submitted by associations representing airlines, pilots, and dispatchers and by parts 121 and 135 certificate holders, the NTSB, and other interested individuals. While most of the commenters generally favor FAA action to improve aviation safety in potential icing conditions, virtually all of

the commenters make recommendations in specific areas, and a number of commenters express concern that the FAA's short timetable could lead to less than the most effective regulatory action. As indicated, several commenters asked that the comment period be extended. The FAA has carefully considered all of the comments received and has modified the proposal in some instances. A full discussion of comments and FAA responses follows.

Applicability and Justification

Several commenters questioned the applicability of the proposed rule to part 121 certificate holders. A number of commenters (including the National Transportation Safety Board) state that the proposed requirements should also apply to operations under parts 125 and 135. These commenters state that icing conditions apply equally to smaller aircraft and larger aircraft, and that there should be no difference in the level of safety required. One commenter states that since all aircraft are required to comply with the clean aircraft concept, the required deicing program should apply to operations under parts 91, 125, and 135. Several commenters stated that the supporting data cited by the FAA justifies the proposed rule's applicability to turbojet aircraft but not to turbopropeller aircraft, and one commenter states that most jet or turbine powered aircraft have operated safely under current rules and recommends that the proposed rule should only address specific aircraft types that have a history of icing related problems. A few commenters suggest that the proposed rule is an overreaction by FAA, since the accidents cited in the supporting data can be explained and distinguished in a way that could lead the FAA to conclude that better monitoring of compliance with existing regulations would address any problems that exist.

Several commenters state that it is unfair to U.S. carriers for the proposed rule not to apply to foreign air carriers. One foreign air carrier states that it and other foreign operators that use Type II fluids could be adversely affected, apparently on the assumption that its takeoff could be delayed to allow the takeoff of a U.S. aircraft that must take off within five minutes after the aircraft has been determined to be free of frost, ice, and snow (see § 121.629 (c)(4) and (d)).

FAA Response

The intent of this interim final rule is to put in place before this winter a rule to improve safety during icing conditions. The FAA determined that limiting the rule's application to operations under part 121 would have the most far-reaching impact. The FAA will continue to study part 125 and 135 operations to determine if future rulemaking is required. Although most icing related accidents have involved turbojet aircraft, the FAA believes part 121 turbopropeller aircraft should be included in this rule since the very real potential for problems in icing conditions exists and there does not appear to be any technical reason for saying that turbopropeller aircraft are immune from wing contamination related icing accidents. The FAA believes, as stated in the preamble to the proposed rule, that this rule is needed based on the accidents discussed and on the recommendations of the Reston Conference described previously in this preamble. These recommendations were not limited to specific aircraft types.

As to the comments that part 129 foreign air carriers will have an unfair advantage, while the FAA does not believe that foreign air carriers will have any significant competitive advantage, the FAA, as stated in the NPRM, will request that the ICAO initiate a review of deicing and anti-icing procedures used by all air carriers. The FAA will continue to work aggressively with other nations' civil aviation authorities to learn from their safety regulatory experiences and to share those of the U.S. so that we all may develop and adopt the most effective and efficient regulations to improve the safety of all aircraft during icing conditions.

The FAA does not envision a situation in which a foreign operator would be adversely affected by a U.S. operator who is subject to this rule because, in the circumstances described above, normal air traffic control procedures would be observed.

In any case, the FAA solicits continued information from anyone who sees specific instances in which a competitive advantage has been obtained by any air carrier as a result of the application of this rule. The competitive effect of the FAA's rules is an important consideration, and, if there is an adverse result on competition, the FAA would consider amendments that do not degrade the overall level of safety achieved by this rule.

Note on Terminology Change

(1) The notice of proposed rulemaking provided alternative conditions for taking off after expiration of a holdover time. One condition was that a takeoff could occur after a "pretakeoff inspection" determines that the aircraft is clean. This procedure is more properly called a "check," since airworthiness related "inspections" are usually performed by certified mechanics, and this procedure will in most instances be performed by the flight crew. Therefore, throughout this document the term "pretakeoff contamination check" is used, even when referring to the NPRM.

(2) The notice of proposed rulemaking in proposed § 121.629(d) provided an alternative procedure for certificate holders that do not have an approved anti-icing/deicing program. Throughout this document the paragraph (d) procedure is referred to as an "outside-the-aircraft check."

In addition, this document uses two terms "aircraft deicing/anti-icing procedure" and "pretakeoff check", which were not used in the NPRM. These terms are discussed and explained later in this section of the preamble.

The Use of Holdover Times

Over half of the commenters to the NPRM address the issue of the use of holdover times. The majority of these comments concern the following issues: (1) appropriateness of holdover times being specific either to a certificate holder or to an aircraft type; (2) use of holdover times as mandatory rather than as guidelines; (3) determining or changing holdover times.

General Discussion of Holdover Times

This rule requires certificate holders to develop holdover times with data acceptable to the Administrator. The only holdover time date currently readily available to the industry and acceptable to the FAA is that developed by the Society of Automotive Engineers (SAE) and the International Organization for Standardization (ISO). Certificate holders may develop other tables; however, certificate holders should be aware that the FAA may need considerable time to verify the acceptability of newly developed tables.

Holdover times developed by the SAE/ISO have been compiled into tables that are specific to fluid type, Type I or Type II, rather than being specific to any particular aircraft type. The tables use outside air temperature (OAT) ranges, fluid concentrations or freezing point (FP) limitations, and the general type of contamination existing, (i.e., frost, freezing fog, snow, freezing rain, and rain on a cold soaked wing) to determine an approximate holdover time range. See figure 1 reproduced from the draft FAA advisory circular, "*Pilots Guide to Large Aircraft Ground Deicing.*"

The tables specifically state that "the responsibility for the application of these data remains with the user". The tables caution they are for use in departure planning only and shall be used in conjunction with pretakeoff check procedures. These tables only provide approximate time ranges and are subject to individual interpretation. The FAA has determined that takeoff after exceeding any maximum holdover time in a certificate holder's table, for the existing weather conditions, is permitted only when other actions are taken.

It should be noted that the FAA and the SAE have initiated studies to develop more precise holdover timetables and as new data becomes available new tables will be developed and made available to the industry.

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Table 1. Guideline for Holdover Times Anticipated by SAE Type II and ISO Type II Fluid Mixtures as a Function of Weather Conditions and OAT.

CAUTION! THIS TABLE IS FOR USE IN DEPARTURE PLANNING ONLY. IT SHOULD BE USED IN CONJUNCTION WITH PRE-TAKEOFF CHECK PROCEDURES.

OAT		Type II Fluid Concentration Neat-Fluid /Water [% by Volume]	Approximate Holdover Times Anticipated Under Various Weather Conditions (hours: minutes)				
°C	°F		FROST	FREEZING FOG	SNOW	FREEZING RAIN	RAIN ON COLD SOAKED WING
0 and above	32 and above	100/0	12:00	1:15-3:00	0:25-1:00	0:08-0:20	0:24-1:00
		75/25	6:00	0:50-2:00	0:20-0:45	0:04-0:10	0:18-0:45
		50/50	4:00	0:35-1:30	0:15-0:30	0:02-0:05	0:12-0:30
below 0 to -7	below 32 to 19	100/0	8:00	0:35-1:30	0:20-0:45	0:08-0:20	CAUTION! clear ice may require touch for confirmation
		75/25	5:00	0:25-1:00	0:15-0:30	0:04-0:10	
		50/50	3:00	0:20-0:45	0:05-0:15	0:01-0:03	
below -7 to -14	below 19 to 7	100/0	8:00	0:35-1:30	0:20-0:45	List of Symbols °C = Celsius °F = Fahrenheit Vol = Volume OAT = Outside Air Temp.	
		75/25	5:00	0:25-1:00	0:15-0:30		
below -14 to -25	below 7 to -13	100/0	8:00	0:35-1:30	0:20-0:45		
below -25	below -13	100/0 if 7°C(13°F) Buffer is maintained	A buffer of at least 7°C(13°F) must be maintained for Type II used for anti-icing at OAT below -25°C(-13°F). Consider use of Type I fluids where SAE or ISO Type II cannot be used.				

THIS TABLE DOES NOT APPLY TO OTHER THAN SAE OR ISO TYPE II FPD FLUIDS.

THE RESPONSIBILITY FOR THE APPLICATION OF THESE DATA REMAINS WITH THE USER.

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Table 2. Guideline for Holdover Times Anticipated by SAE Type I, and ISO Type I Fluid Mixtures as a Function of Weather Conditions and OAT.

CAUTION! THIS TABLE IS FOR USE IN DEPARTURE PLANNING ONLY. IT SHOULD BE USED IN CONJUNCTION WITH PRE-TAKEOFF CHECK PROCEDURES.

Freezing Point of Type I fluid mixture used must be at least 10°C(18°F) below OAT.

Outside Air Temperature		Approximate Holdover Times Anticipated Under Various Weather Conditions (hours:minutes)				
°C	°F	FROST	FREEZING FOG	SNOW	FREEZING RAIN	RAIN ON COLD SOAKED WING
0 & above	32 & above	0:18-0:45	0:12-0:30	0:06-0:15	0:02-0:05	0:06-0:15
below 0 to -7	below 32 to 19	0:18-0:45	0:06-0:15	0:06-0:15	0:01-0:03	CAUTION! Clear ice may require touch for confirmation
below -7	below 19	0:12-0:30	0:06-0:15	0:06-0:15		

THIS TABLE DOES NOT APPLY TO OTHER THAN SAE OR ISO TYPE I FPD FLUIDS.

THE RESPONSIBILITY FOR THE APPLICATION OF THESE DATA REMAINS WITH THE USER.

A specific discussion of comments on the three major issues and FAA responses follows.

• *Certificate Holder or Aircraft Specific Holdover Times*

Several commenters object to the proposed language of § 121.629(c)(3) which states that an approved deicing program must include "the certificate holder's holdover times, specific to each aircraft type * * *." These commenters state that holdover time should not be aircraft type specific. Most of these commenters also believe that holdover times should be standard for all certificate holders. One commenter states that holdover times, while not aircraft type specific, are specific to the type of fluid used and that the FAA should establish "not to exceed" times when aircraft are dependent on Type I fluids.

FAA Response

As previously stated, the only holdover timetables readily available to the industry and acceptable to the FAA are those developed by the SAE/ISO and these holdover times are not aircraft type specific. Because holdover times are generally given as acceptable ranges, however, it is quite conceivable that a rational analysis could lead to an acceptable deicing program in which type-specific holdover times are provided within the ranges of acceptable holdover times given in the SAE/ISO tables. The language in the final rule, therefore, does not prohibit the use of type-specific holdover times, but they are not required.

• *Mandatory vs. Guideline Holdover Times*

Several commenters state that holdover times were developed to be used as guidelines and not as mandatory times. One commenter states that the holdover time guidance provided in current and proposed advisory circulars is too general to be of real use, and that the FAA should immediately commission SAE to "recalibrate" its charts to match standard National Weather Service reporting criteria.

FAA Response

As stated above, each certificate holder must develop its own holdover times with data acceptable to the Administrator and if the maximum holdover time developed by the certificate holder is exceeded, other actions must be accomplished before the aircraft can take off. The FAA will continue to work with the National Weather Service to enhance reporting criteria in order to provide flight crewmembers with current information required in the use of holdover timetables.

• *Determining or Changing Holdover Times*

Two commenters (the Airline Dispatchers Federation and an individual dispatcher) state that the proposed rule does not adequately reflect the role of the dispatcher under existing part 121 rules. These commenters recommend that the dispatcher's role be reflected in the rule language and that the dispatcher and pilot in command must work together in determining holdover times. One suggests that the dispatcher is in a better position to enforce holdover times than is the pilot in command. Several commenters suggest that the proposed rule language places an unreasonable burden on the pilot in command, particularly in a case where a pilot in command would be expected to

increase or decrease the determined holdover time based on changing conditions. Commenters suggest that it would be better to establish at each airport one central agency to determine and revise as appropriate holdover times for all certificate holders operating at that airport.

FAA Response

The information required to determine or change the proper holdover time includes outside air temperature, type and concentration of fluid, weather conditions, and time the last application of fluid began. This information is most readily available to the pilot in command, allowing him or her to determine quickly from the holdover timetable the appropriate holdover time. The certificate holder's program may include holdover time coordination with the dispatcher; however, the information required to determine or change the proper holdover time may be available only to the pilot in command.

Type I and Type II Fluids

A number of commenters expressed views on the potential uses of Types I and II fluids under the proposed rule. Several commenters recommend that the FAA mandate or at least encourage the use of Type II fluids. Others raised questions about the use of Type II fluids, ranging from potential environmental problems (dealt with elsewhere in this preamble) to higher cost and limited availability for the 1992/1993 winter. One commenter questions whether Type II fluids are better in most situations and states that Type II usage in Europe is declining.

FAA Response

Each specific certificate holder determines the type of fluids used in its operations. As stated in the NPRM and in this preamble, each type fluid has its benefits and intended usage. All the information presently available to the FAA indicates that there is no availability problem associated with Type II fluids and that their use continues to grow in Europe and Canada.

Pretakeoff Contamination Check

A number of commenters raise questions concerning the proposed pretakeoff contamination check defined in proposed § 121.629(c)(4) and the optional outside the aircraft check in proposed § 129.629(d). The most frequently raised concern is that the proposed five-minute limitation in § 121.629(c)(4) and (d) is impractical because most airports do not now have a facility at a location near enough to the end of the takeoff runway to perform these checks.

Other concerns are: (1) Pretakeoff contamination checks with the engines running (particularly propeller driven aircraft) are inherently unsafe; (2) a pretakeoff contamination check should be required following ground operations in all icing condition operations, not just when holdover times are exceeded; (3) checks from within the aircraft should be allowed in all cases according to some commenters and should never be allowed according to others.

FAA Response

Section 121.629(c)(3) and (c)(4) of the proposed rule would allow a takeoff after the expiration of a holdover time if a check conducted within five minutes prior to takeoff determines that the wings, control surfaces, and other critical surfaces are free of frost, ice, or snow, and if the check is "accomplished from outside the aircraft unless the program specifies otherwise." Section 121.629(d) of the proposed rule would also allow for a check that must be conducted within five minutes prior to takeoff as an optional alternative for a certificate holder who does not have a deicing program but this check must be accomplished from outside the aircraft.

Some commenters have confused the pretakeoff contamination check referenced in proposed § 121.629(c)(3) and (c)(4) with the outside-the-aircraft check that is required by § 121.629(d). The following describes the different procedures, and checks contained in the final rule. (See Figure 2)

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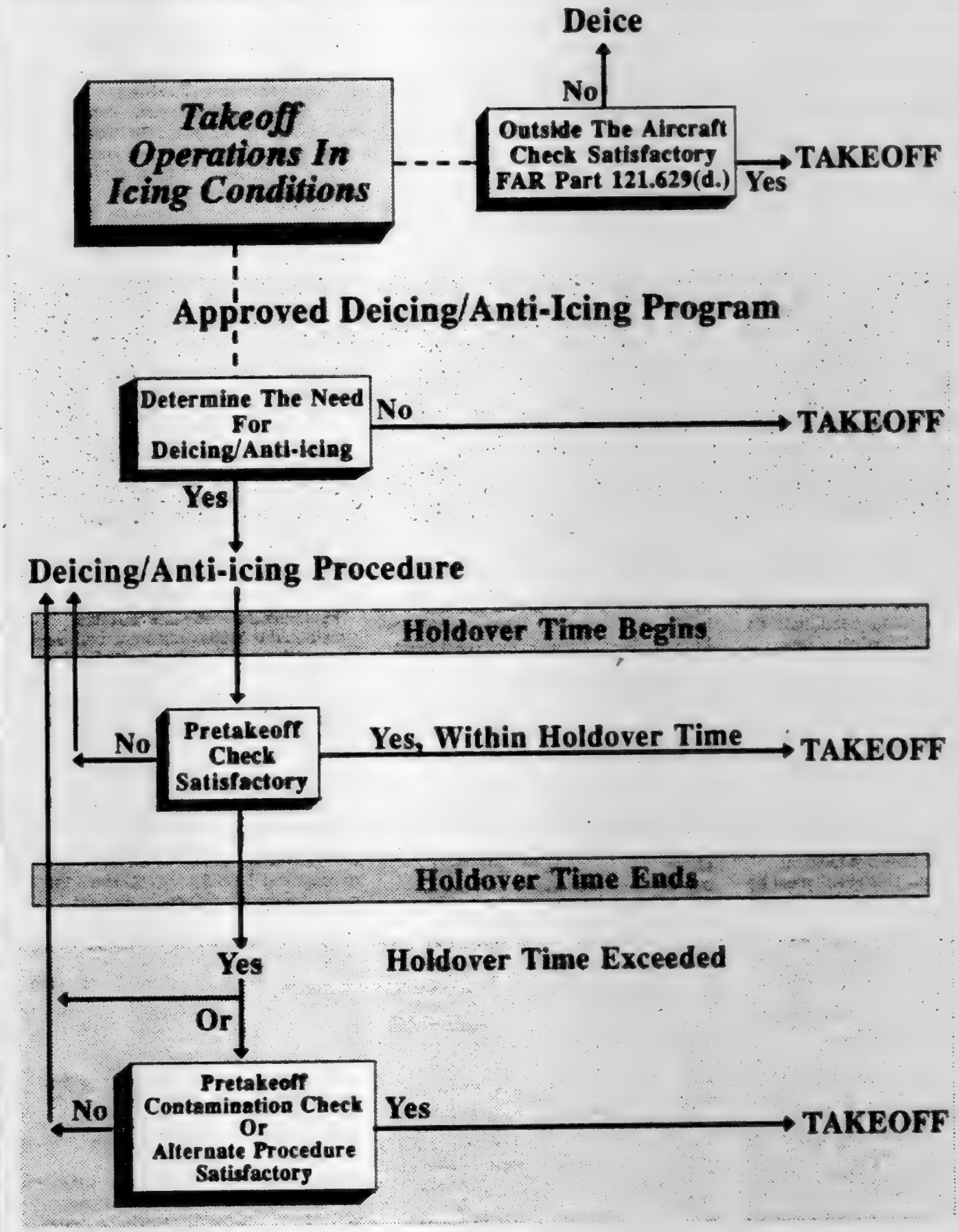

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(1) *Aircraft deicing/anti-icing procedure.* This procedure is completed by ground personnel. The procedure includes checking wings, control surfaces, propellers, engine inlets, and other critical surfaces as defined in the aircraft manufacturer's maintenance manual or Advisory Circular (AC) 121–XXX Aircraft Ground Deicing and Anti-Icing Program and is an integral part of the deicing process. It is referenced in the beginning of § 121.629(c)(4).

(2) *Pretakeoff check.* This check is completed any time the aircraft is deiced or anti-iced and is integral to the use of holdover times. It is accomplished within the holdover time, and normally is accomplished by the flight crew from inside the aircraft. The aircraft's wings or representative aircraft surfaces are checked for contamination. For clarification, and to be consistent with the intended use of holdover timetables, this check is included in § 121.629(c)(4).

(3) *Pretakeoff contamination check.* This check is to determine the condition of an aircraft after the maximum holdover time has been exceeded. This check may be performed from either the inside or the outside of the aircraft depending upon type of aircraft, lighting conditions, and weather conditions, as specified in the certificate holder's approved program. When the pretakeoff contamination check is used, it must be accomplished within five minutes of beginning the takeoff. The aircraft's wings, control surfaces, and other critical surfaces, as defined in the certificate holder's program, must be checked.

(4) *Part 121.629(d) outside-the-aircraft check.* This check is required only if a certificate holder does not have an approved program. This check must be accomplished from outside the aircraft within five minutes of beginning the takeoff. The aircraft's wings, control surfaces, and other critical surfaces, as defined in the manufacturer's AFM, must be checked.

These checks are not substitutes for an Airworthiness Directive requirements.

With respect to the concerns commenters raise about the practicability of the five minute limitation on pretakeoff contamination checks under § 121.629(c)(4) or outside-the-aircraft checks under § 121.629(d), the FAA recognizes that in many situations neither of the checks may be viable at certain airports, at certain peak departure times, and during certain weather conditions. Over the long term, as airport remote deicing and checking facilities are built or expanded, those checks may become more feasible. However, the FAA points out that the five minute limitation arises only in two situations. One is when a certificate holder does not have an approved ground deicing/anti-icing program. The other is after a maximum holdover time is exceeded.

The FAA assumes that a certificate holder will elect not to have an approved ground deicing/anti-icing program only if it concludes that it would be more cost effective to operate without such a program. In electing not to have an approved program the certificate holder has taken into consideration the possibility that it would have to delay or even cancel flights in icing conditions. As a practical matter, the FAA does not expect that such a certificate holder's operations under this rule will differ significantly from its past operations.

The outside-the-aircraft check conducted within five minutes of beginning takeoff is the only alternative means of operating in icing conditions in the absence of an approved program under paragraph (c). That is, even if a certificate holder was to use the deicing facilities of another certificate holder who has an approved program, the first certificate holder could not use the holdover times of the deicing certificate holder. This is because the five-minute limitation under § 121.629(d) recognizes that pilots who operate without an operator approved program, as compared to pilots who operate under an approved program, may lack proper training and the knowledge to effectively determine whether the aircraft is free of contamination prior to takeoff. Proper training includes reviewing precipitation categories, fluid characteristics and concentrations, coordination procedures and check requirements. Without the proper training provided under an approved program the pilot in command who is in possession of a holdover time could easily make an uninformed decision in attempting to takeoff. Therefore, in the absence of an approved program under paragraph (c), paragraph (d) requires the aircraft to be checked from outside the aircraft within five minutes of beginning takeoff.

With respect to certificate holders that have an approved ground deicing/anti-icing program, where a maximum holdover time is exceeded there are three alternatives available. The aircraft can be redeiced and a new holdover time established. The aircraft can takeoff if the certificate holder has obtained approval of an alternate procedure (e.g. a new technology) that is capable of determining that the wings, etc., are clean. The third alternative is to accomplish a pretakeoff contamination check and begin the takeoff within five minutes of completing the check. Thus, if the takeoff could not be initiated within the five minute limitation, and if no alternate procedure has been established, the worse case scenario for the certificate holder is that the aircraft must be redeiced and a new holdover time established. Given the goals of this rulemaking, the FAA does not consider the potential delay to be unacceptable given the risks of taking off when there would be considerable uncertainty about the possibility of aircraft surface contamination.

Inspections for Specific Airplane Types by Airworthiness Directive (AD)

The NPRM preamble pointed out that the FAA had previously issued ADs requiring a tactile inspection any time ground icing conditions might exist for certain airplanes without wing leading edge devices (i.e., airplanes commonly referred to as "hard wing"). FAA invited comments on the need for a similar mandatory requirement for any other airplane types. Several commenters address this request, but none recommend additional airplane types.

Most commenters state that this problem, if it exists (and some believe it does not), should be dealt with by the FAA as it has been in the past by issuance of an AD when warranted. One commenter states that the FAA's belief that non-slatted wings are more susceptible to loss of lift than wings with leading edge slats is not supported by any known aerodynamic data. One commenter recommends that the significance of airplane design be recognized by adding "or on an aircraft" to proposed § 121.639(c)(1)(i) since the design of the aircraft could make it susceptible to contamination while conditions at the airport may not be such that frost, ice, or snow may reasonably be expected to adhere to the aircraft.

FAA Response

As in the past, aircraft specific requirements will be dealt with by the issuance of ADs. Commenters did not indicate any additional aircraft types that warrant a mandatory tactile inspection at this time. Any manufacturer that does not agree that an AD is warranted when proposed may state its objections during the course of that rulemaking.

Deicing programs for aircraft not covered by an AD may voluntarily include a tactile inspection of an aircraft's wing; this could be done immediately after deicing is accomplished or to determine if deicing

is even necessary. Certificate holders should specify in their deicing/anti-icing program any intended use of tactile inspections. As to adding "or on an aircraft" to § 121.629(c)(1)(i), the FAA has determined that the words "at an airport" should be deleted so that the paragraph includes any conditions where frost, ice, or snow may reasonably be expected to adhere to the aircraft.

Takeoff Decision

Several commenters express concern that nothing in the proposed rulemaking should change the existing policy that places the ultimate responsibility for a takeoff on the pilot in command. Two commenters believe that the dispatcher's role in releasing an aircraft, possibly including the determination of holdover times jointly with the pilot in command, should be spelled out in the final rule language.

FAA Response

The FAA agrees that nothing in this rule changes § 91.3(a) which states that "The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft." As stated in the preamble to the NPRM, the new approach taken by this rulemaking is to give the pilot in command additional guidance and certificate holder-developed procedures and, under certain conditions, ground personnel support, in determining the aircraft's airworthiness in potential icing conditions. While this rule will ensure that the pilot in command and supporting personnel receive additional training and that the certificate holder establishes additional procedures for potential icing situations, the ultimate authority and responsibility for the operation of the aircraft remain with the pilot in command.

The FAA does not agree that the role of the dispatcher needs to be further addressed in § 121.629(c). Paragraph (c) states clearly that "no person may dispatch * * * an aircraft any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, unless the certificate holder has an approved deicing program and unless the dispatch, release, and takeoff comply with that program." Thus, the dispatcher is part of the team that will initially determine whether it is safe for a flight to be dispatched in existing and anticipated icing conditions. As discussed elsewhere in this preamble, a dispatcher might not have all or the most current icing and weather information that becomes available to the pilot in command, and that is used by the pilot in command in initially determining and possibly changing a holdover time.

Training of Flight Crewmembers and Other Personnel

A number of commenters express concerns with the proposed training provisions of the certificate holder's approved deicing program. The most significant concerns deal with the short time available to train and qualify affected personnel, training requirements for ground personnel employed by contractors rather than by certificate holders, and the need to ensure that FAA's principal operations inspectors are themselves trained. Commenters also make a few specific training recommendations. Each of these areas and others are specifically addressed below.

• *Training and Qualification Deadline*

Several commenters state that it is impractical to train and complete testing or qualification before November 1, 1992, particularly for ground personnel who work for contractors and not directly for the certificate holder. Suggested solutions are: to require only written notice of new procedures to affected persons before November 1, 1992; to require training only, with testing or qualification delayed until the next scheduled recurrent training program; and to develop a universal training program that could be used for all ground personnel.

One commenter stated its concern that FAA's principal operations inspectors are themselves in need of more effective training if they are to determine the adequacy of a proposed program.

FAA Response

The FAA agrees that it would be impractical to complete both formal training and testing for flight crewmembers and formal training and qualification for other affected personnel before November 1, 1992. Therefore, in order to complete flight crewmember training and testing and training and qualification for other affected personnel for this first year, the FAA will allow certificate holders maximum flexibility in providing the required training and testing/qualifications (e.g., take home brochures, video tapes, self-grading quizzes, or other appropriate review materials). With respect to the training and qualification of persons who work for contractors, the FAA believes that certificate holders must be held responsible for these personnel as they are for their own employees. For those contract personnel who do not normally provide deicing/anti-icing service to the certificate holder, proper deicing/anti-icing procedures and supervision must be assured by a trained flight crewmember, mechanic, or other person employed by the certificate holder using the procedures authorized in their approved program. While training of FAA principal operations inspectors is addressed later in this preamble under the "Program Implementation" section, FAA agrees that thorough and better training of all personnel in government and industry is vital to reducing the incidence of icing-related accidents.

Certificate holders who cannot complete training and qualification of their personnel before the effective date of this rule have the option of using the alternative procedure in § 121.629(d).

• *Dispatcher Training*

The Airline Dispatchers Federation recommends that dispatchers be specifically included in § 121.629(c)(2)(iii) to ensure that dispatchers are trained so that they can carry out with the pilot in command and with Air Traffic Control (ATC), the duties imposed by §§ 121.99, 121.533(c)(d), and 121.535(c)(d).

FAA Response

Section 121.629(c)(2) specifically identifies "aircraft dispatchers" as one of the groups of personnel covered by the term "all other affected personnel." It is not, therefore, necessary to identify dispatchers specifically in the list of areas to be covered under § 121.629(c)(2).

• *Training Program Content*

The Airline Pilots Association (ALPA) states that Advisory Circular (AC) 20–117 has not been as widely distributed to pilots or incorporated into specific training programs as the FAA originally intended, and recommends that approved deicing training programs mandate that all pertinent advisory circulars become an integral part of the training program. Fokker Aircraft recommends that pilot training programs emphasize again the effect of airframe icing on the aircraft's ability to fly. Fokker recommends that training programs include a takeoff technique, recommended by it and other aircraft manufacturers that during ground icing conditions pilots should use a slower rate of rotation to a lower pitch angle. Fokker also recommends that an air carrier's ground deicing program address the advantages of Type II fluids and the disadvantage of Type I fluids in detail.

FAA Response

One of the major areas included in this rule is training of all those personnel involved in the ground deicing/anti-icing process. Each certificate holder in its approved program must include all the applicable material and guidance regarding deicing/anti-icing operations to ensure its personnel are properly trained. The FAA is developing a new Advisory Circular to provide additional guidance to certificate holders. In addition, the following documents are excellent sources for obtaining guidance material:

Advisory Circular 20-117, "Hazards Following Ground Deicing and Ground Operations in Conditions Conducive to Aircraft Icing"

International Standard Organization (ISO) 11075, "Aircraft Deicing/Anti-icing Newtonian Fluids ISO Type I"

ISO 11076, "Aircraft Deicing/Anti-icing Methods with Fluids"

ISO 11077, "Deicing/Anti-icing Self-Propelled Vehicles—Functional Requirements"

ISO 11078, "Aircraft Deicing/Anti-icing Non-Newtonian Fluids ISO Type II"

Society of Automotive Engineers (SAE) Aerospace Recommended Practice (ARP) 4737, "Aircraft Deicing/Anti-icing Methods with Fluids, for Large Transport Aircraft"

FAA Order 8400.10, Air Transportation Operations Inspector's Handbook, Volume 4, chapter 8, Sections 1 and 2.

The FAA also agrees that pilot training for ground icing conditions should include recognition of changes in aircraft handling characteristics and instruction on the takeoff techniques to use, such as decreasing the rotation rate and reducing the angle of rotation of different aircraft types. The FAA plans to work with aircraft manufacturers and industry associations to develop appropriate training material as early as possible.

Airport/ATC Roles

Two commenters state that deicing/anti-icing programs should be jointly developed and implemented by air carriers and airports to ensure fair and uniform procedures and to reduce the burden on air carriers. One commenter discusses a number of airport responsibilities that relate to deicing, for example, ensuring that any materials used will not cause harm or endanger aircraft or their systems, and ensuring that these materials are disposed of properly. This commenter recommends that airports meet with air carriers in developing sound deicing programs.

Other commenters say that the role of ATC must be fully coordinated with that of the air carriers and airports to ensure the proper use of holdover times, to prevent delays after deicing, and to ensure a smooth traffic flow during icing conditions. ATC should also be aware of the differences related to deicing procedures for Part 121 and 135 operations and ensure that both types of operations are treated fairly.

One commenter states that many airports are already developing deicing/anti-icing programs and that these may not be compatible with the proposed rule or part 121 programs under development. Another commenter states that if airports, air carriers, and ATC were to coordinate their efforts, it would be difficult to implement any programs before the November 1, 1992 deadline.

Some commenters provide specific recommendations for airports and ATC in implementing deicing programs. One commenter says that airports should make provisions for end-of-the-runway deicing to reduce delays. Another says that the FAA should review ATC responsibilities related to flow times, take-off and landing sequencing in adverse weather conditions.

FAA Response

The FAA agrees that involvement of airport operators and ATC is essential to increasing aviation safety in potential icing conditions. Officials in FAA's Flight Standards Service have been working with ATC and FAA's airport offices throughout the course of this rulemaking. This effort is short term to ensure the maximum possible effort for this winter and long term to deal with actions that cannot be accomplished quickly. The FAA also agrees that certificate holders should coordinate their deicing/anti-icing programs with the operators of each specific airport where they will be using their deicing program.

Prevention of Delays

Some commenters express concern about delays resulting from deicing, checking, and re-deicing. This could create gridlock in air traffic flow and be extremely costly to airlines and inconvenient for passengers. Commenters also argue that the proposed rule poses a disadvantage to domestic carriers who would face delays from checking requirements while foreign carriers will be able to depart without such delays; this, it is suggested, would create competitive inequality for U.S. carriers and lead to an erosion of revenue for these carriers. Alternatively, one commenter says that the proposal would force foreign airports to deal with disruption to traffic flows due to U.S. carrier deicing and check requirements; this could result in discrimination against U.S. carriers.

Two commenters recommend utilizing gate-hold procedures to reduce delays between deicing and takeoff. In addition, one commenter recommends that the FAA re-examine the Enroute Spacing Program to allow aircraft to be released immediately when cleared.

One commenter recommends that to reduce competitive inequality the FAA should hold discussions with Joint Airworthiness authorities about compatible standards and practices.

FAA Response

The FAA recognizes that there may be some additional delays resulting from this rule if airplanes return for redeicing or if a pretakeoff contamination check is accomplished. However, most weather-related delays already occur under the existing rule and, as discussed under the "Economic Evaluation" section of this preamble, the FAA does not believe that the delay costs associated with this amendment will be significant. As discussed in the preamble to the proposed rule, while this rule does not directly affect operations of foreign air carriers, the FAA will continue to work aggressively with other nations' civil aviation authorities and will request that ICAO initiate a review of pretakeoff deicing and checking procedures used by all air carriers. In the meantime, as is discussed more fully under "International Trade Impact Statement," the FAA does not believe that the competitive disadvantage to U.S. operators is significant.

Underwing Frost

Several commenters express concern that the proposed rule language could lead to rescinding previous FAA policy that allows takeoffs with a small amount of frost on the underside of the wing in the area of fuel tanks when consistent with the aircraft manufacturer's operating and servicing instructions.

FAA Response

The FAA does not intend to change its policy of permitting takeoff with small amounts of frost on the underwings of airplanes caused by cold soaked fuel within aircraft manufacturer established limits accepted by FAA aircraft certification offices and stated in aircraft maintenance manuals and aircraft flight manuals. Language has been added to the final rule to make it clear that takeoffs with frost under the wing in the area of the fuel tanks are

permitted if authorized by the Administrator. Affected certificate holders should include the type of aircraft involved and justification for these operations, including manufacturer supplied data showing how these operations are safely accomplished, as part of their proposed deicing program.

Program Implementation

Some commenters state that implementation of deicing programs should be done by a central organization to ensure uniform standards. One supports an industry-wide solution, rather than delegating the approval of each program to the local level. One commenter states that the rule provides too much discretion to local FAA offices in approving deicing plans which could cause operational discrepancies among carriers and airports. This commenter recommends that the FAA provide comprehensive guidance to local offices in developing deicing programs. Another commenter says that, because the timeline for compliance is so short, implementation should be flexible and determined locally.

Another commenter recommends that the FAA monitor implementation of FAA-approved deicing programs this winter. In addition, the FAA should continue to address actions designed to reduce the time that airplanes are exposed to icing conditions between deicing/anti-icing and takeoff (e.g., aircraft design, deicing/anti-icing technology, air traffic control).

Another commenter recommends that the FAA provide inspectors for post-deicing checks and this could be funded by the aviation trust fund. One commenter is against locating deicing program requirements in current operations specifications; minor modifications to deicing practices will require specifications amendments, resulting in delays. This commenter recommends that FAR 121.629 mandate that air carriers have approved programs in place and follow these programs (which would be monitored by each carrier's principal operations inspector). Details of an approved deicing program should be outlined in an Advisory Circular that facilitates getting as much implemented as possible by November 1, 1992. Several other commenters support using an advisory circular either in addition to or instead of a rule.

One commenter discusses the safety problems for passengers who must walk through deicing fluid in ramp areas to board aircraft; this could also damage the interior of the aircraft.

Two commenters discuss their products related to deicing and express interest in collaborating with the FAA in using these products. One product is a detection system for overwing clear ice or measurement of contamination on the surface. Another product is an anti-icing product. This latter commenter also maintains that the proposed rule could adversely affect its patent as well as its ability to compete with foreign producers of Type II fluids; and that the FAA should shape the rule so as not to diminish the value of the patent nor impede the marketing of the product.

FAA Response

The FAA has conducted and continues to provide training in this area for all principal operations inspectors and principal maintenance inspectors. In addition to this training to facilitate the review of certificate holder programs, the FAA has appointed regional coordinators who will assist local inspectors and who will forward issues to the FAA Headquarters that cannot be resolved locally. The FAA, besides developing Inspector Handbook guidance, is also developing an Advisory Circular that provides guidance to certificate holders and principal inspectors.

The FAA will be closely monitoring the implementation of this rule and, as stated previously, will continue to work with all involved parties to smoothly implement the requirements of this rule.

As previously stated in this preamble, it is ultimately the responsibility of each pilot in command to determine whether his or her aircraft is free of contamination and thus airworthy. The responsibility for checks after deicing cannot be delegated to the FAA. Each certificate holder's operations specifications should refer to the specific locations in the certificate holder's manuals that contain its approved deicing/anti-icing program. The whole program does not have to be physically included with the certificate holder's operations specifications. Finally, ACs provide examples and one method of complying with regulations. They are not mandatory.

The ramp area safety issues mentioned should be addressed in each certificate holder's program.

The FAA encourages innovation to solve the problem of identifying contamination on the aircraft surface and § 121.629(c)(3)(ii) provides an alternate procedure for obtaining approval by the Administrator of an appropriate innovative approach. Also, the FAA does not recommend which type of fluid a certificate holder should use, Type I or Type II, and does not recommend any particular company's product in this rule.

As stated previously in the "Applicability and Justification" section of this preamble, the FAA has determined that all part 121 turboprop aircraft should be included in this rulemaking and will continue to analyze operations under other parts to determine if future rulemaking is required.

Miscellaneous

Other general comments about the proposed rule include discussions of the accidents cited in the NPRM. One commenter says that NTSB accident statistics related to icing problems do not address the thousands of successful takeoffs made annually during icing conditions. Another commenter says that the NTSB investigation of the 1982 Air Florida accident shows that improper engine thrust was the main cause and that perhaps icing problems alone were not the problem. Another commenter says that in the section of the NPRM entitled "Part 121 Passenger Carrier Benefits Section," paragraph (2) should clarify that the five mentioned accidents involved large passenger-carrying air carriers.

One commenter says that the FAA should include in the docket any studies that it relied upon to reach its conclusions in the NPRM, such as the conclusion that non-slatted wing aircraft are more susceptible to lift loss than slatted aircraft.

FAA Response

The NTSB's recommendations are based on its accident investigations and its other studies and thus do, in effect, consider successful operations. Also the NTSB in its investigation of the Air Florida accident cites as one of the probable causes the flight crew's decision to take off with snow and ice on the aircraft's airfoil surfaces.

The FAA has included in the docket a summary of wind tunnel tests of hard leading edge wings and slatted leading edge wings completed by the NASA Lewis Research Center, though the difference in accident history of these designs may not be fully explained by design differences. Pilot techniques, including rotation rates and angles, are also important factors to be considered in assessing stall propensity, along with the rotation speed and the initially computed climb speed. One factor alone has not been isolated as the major explanation for differences in accident rates which have been experienced.

Cost

The comments in this section are separated into subject categories: Delay costs, deicing fluid costs, international trade impact, training and personnel costs, and other costs.

Comments on Delay Costs

One commenter states that the cost of implementing the proposed rule should be calculated including input from the part 121 air carriers and should include estimated delay costs using air carrier data and input.

Another commenter states that checking the upper surfaces of a B–747 would be impractical, would cause delays, and would impose severe restrictions on the departing aircraft flow. The commenter also states that such a requirement would preclude their ad hoc charter operations from many airports during adverse weather, thus imposing a severe economic penalty on them.

Another commenter states that some elements of the proposed rule, as confirmed by the FAA in the NPRM, may not be amenable to accurate cost analysis. The impact on flight delays is difficult to project on short notice, and would require a study beyond the range of the 15-day comment period provided by FAA. The commenter describes a worse case scenario in which approved deicing programs are not completed, and numerous carriers at a large airport are attempting to perform external checks on a 5-minute cycle. This would effectively close the airport under conditions which were previously negotiable. The expense of airport closures is extremely high, as passengers have to be accommodated over a period of a day or more, and airport and crew rotations have to be unscrambled.

A commenter states that they are unable to provide cost data related to specific provisions of the rule in the time permitted for comments. They point out the differences between passenger carriers and integrated express carriers such as UPS. A single aircraft missing the national sort requires them to charter up to thirty executive jets to make their service commitment. In light of the nature of the business, they believe the FAA cost estimates are grossly understated.

One commenter stated that airports will experience various degrees of gridlock from airplanes requiring external checks or returning to be deiced. The increase in delays is estimated to be ten fold during freezing precipitation. During 1991/1992, the commenter claims it suffered 802 deicing delays. It estimated that 700 of these occurred during periods of precipitation. They believe that this could explode to 7,000 delays in 1992/1993. These delays could produce external checking and equipment costs of $30 million.

FAA's Response

The NPRM requested cost information, including estimated delay costs, from part 121 air carriers. Reliable information from commenters is considered in this evaluation.

The proposed rule could increase delays by requiring longer and more detailed inspections of airplane surfaces. However, it would provide flexibility by allowing either the use of an approved deicing program or an outside check five minutes before takeoff. In some instances, the proposed rule could decrease delays. For example, if the pilot decides to return for re-deicing, an outside check could reveal that the airplane surface is actually clear of ice, thereby avoiding a needless deicing.

There are two types of delays: (1) Delays due to the existing rule and (2) delays due to the proposed rule. In either case, an airplane may not take off if its surface is contaminated. The cost information that the commenter provided does not differentiate between these two types of delays, nor does the commenter explain how it arrived at these estimates.

Consequently, the FAA is not able to respond to the specific cost estimates provided by the commenters. However, the FAA does agree with the commenters to the extent that their estimates demonstrate that delay costs could increase.

Deicing Fluid Costs

One commenter believes that the costs are very conservative and do not present a true total, and that, regardless of the cost, the traveling public will ultimately pay for it. The commenter indicates that delays are the same regardless of the type of fluid since delays could result from weather, staff, equipment failure, etc." Also, the type fluid used does not matter because ground holdover times can expire with either fluid. Type II fluids may be beneficial for long term/overnight requirements, but is very costly and impractical for the average ground time of a turn-around type operation that is less than 3-4 hours on the ground.

Another commenter states that carriers have committed from $1–5 million each for plans to acquire new anti-icing equipment and convert old deicing equipment for application of Type II fluids. In addition, the total cost of Type II fluids applied is 3–4 times the cost of Type I fluids. The commenter also states that of the two glycols (ethylene and propylene glycol), ethylene glycol appears to be the most cost effective product due to the fact that there are more suppliers of ethylene glycol; therefore, the competitive influences in the marketplace dictate a lower cost. Ethylene glycol is an inherently less costly molecule to manufacture than propylene glycol. Consequently, by focusing on overall cost effectiveness, and because the possibility exists that propylene glycol may be applied in undiluted form in circumstances where it is not recommended by the aircraft manufacturer, economic and safety considerations give ethylene glycol a preference.

One commenter believes that the FAA concludes erroneously that this is not a major rule. This commenter believes that the shift from Type I to Type II fluids will increase airline unit fluid costs by the difference in price between Type II and Type I fluids, and may also result in a requirement for increased fluid volume. Competition will be lessened because the FAA's encouragement of the use of Type II fluid will likely inhibit and possibly preclude this commenter's entry into the airline market, thereby negating the competitive restraint which Type I anti-adhesion Airborne 99 would otherwise have on Type II pricing.

In addition to the above problems, the commenter states that the NPRM does not fully address the potential adverse effects specified in 5 U.S.C. 601 which specifies the following additional concerns: Employment, investment, productivity innovation, and the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or foreign export markets. For example, some deicing fluids have the potential to improve airport productivity by providing prolonged anti-icing protection through prevention of ice adhesion. In the event that aircraft were delayed on the taxiway beyond the nonformation holdover time of their Type II fluids, they would presumably have to be brought back to the deicing facility for another treatment.

The commenter also states that if the FAA promulgates the proposed rule, it will effectively define anti-icing as the use of Type II thickened fluids. This will create a major barrier both to the use of existing alternative anti-icing systems like Airborne 99 and to the development of innovative new anti-icing technologies. Also, the commenter states that if the proposed regulation in any

way unnecessarily impedes the marketing of the commenter's products, foreign suppliers of Type II fluids will receive an improper benefit from the reduced domestic investment.

FAA's Response

The FAA disagrees with the commenters for several reasons. First, the rule does not mandate the usage of Type II fluid. Second, the holdover tables of the final rule do not differ from the current industry standards enough to cause a significant shift in deicing fluid usage. Third, the FAA recognizes the increasing acceptance of Type II fluid among U.S. carriers. This acceptance is the result of an already wide acceptance by European and Canadian carriers. One of the advantages of using Type II fluid is its longer holdover time. Another advantage is that less fluid is required than Type I fluid.

International Trade Impact

A commenter states that unlike the reasonably uniform levels of safety and economic cost sharing between domestic and foreign air carriers in the aircraft security program, no such attempt has been made with this program. This virtually assures inequalities in airline costs not to mention foreign government cooperation. This issue will pose significant problems for U.S. supplemental air carriers attempting to take advantage of opportunity markets. Accordingly, alternatives must be found to prevent U.S. carriers from suffering even further from regulations of this type.

The commenter further argues that in the International Trade Impact discussion of the docket, a case is made that average costs would increase approximately 4 cents per round trip ticket. Although this might be true for a carrier operating to a scheduled location where ongoing training would be possible, this is not true for operators taking advantage of unscheduled opportunities. In these instances the costs could be prohibitive. As an example, a typical round trip cost between the East Coast and Europe might be $36,000. If it were possible, and enough lead time given, an individual could be sent ahead of the aircraft, conduct training, and assure compliance with the current NPRM. The cost of compliance would be approximately $2,500, or approximately a 14 percent increase. This increase would pose a significant economic burden on a carrier that might operate to a particular location once every 2–5 years. This seems unreasonable and contrary to the assurances that a "competitive disadvantage" is remote as stated in the NPRM.

Another commenter questions the reasoning that domestic carriers should bear the training and equipment costs of the proposed rule, while foreign carriers do not.

Another commenter states that the FAA misunderstands the competitive issues involved in a rule exempting foreign carriers. As suggested above, pretakeoff contamination checking requirements imposed by the rule could introduce serious delays for U.S. carriers. If, under these circumstances, foreign carriers could depart from the same airport without the delays and confusion, passengers and shippers would rush to those carriers if consistent with their travel or shipping needs.

They go on to say that it is not the out-of-pocket costs of the proposed rule which make the most significant difference in international competition; it is the potential perception by laymen that foreign carriers can safely depart without delay under conditions requiring domestic carriers to take delays. The unfair bias will apply under the proposal both at domestic origins as well as foreign ones. The FAA must not create this inequality leading to erosion of U.S. carrier revenues.

FAA's Response

While it is true that foreign air carriers would not incur costs imposed by the proposed rule, they would hardly have a competitive advantage. This is because the cost of compliance incurred by U.S. air carriers is expected to be offset by an increase in aviation safety both real and perceived by the flying public. The expected increase of 4 cents in cost of an average international round trip ticket would not be high enough to lower the demand of travel from U.S. and foreign consumers. The United States has always been perceived as pioneers in aeronautical engineering and especially aviation safety. The rule continues that track record.

In addressing another comment, any air carrier engaged in non-scheduled services does not compete in the same market as scheduled air carriers. Therefore, no adverse impact is expected to be incurred by U.S. scheduled air carriers.

Training and Personnel Costs

One commenter argues that during winter months, they visit 50 cities in North America that are subjected to severe, moderate, or light winter conditions. They argue that the cost per day to send a qualified person to verify that each deicing contractor meets the requirements of the proposed rule is at or above $500 per day not including travel expense.

One commenter states that their flight crewmembers receive ground training on the subjects of deicing/anti-icing and the effects of ice, snow and frost on aircraft performance. These subjects are included in all of the initial and recurrent courses in their approved training program.

A commenter states that up to 20,000 personnel would be covered by the training and qualification testing requirement at the larger companies. This commenter also questions the FAA estimate of training costs. The proposed rule could require initial and recurrent training and qualification costs for over 100,000 employees. A first estimate is one-half day of training for each employee each year, which would indicate over $20 million per year. The present value of 10 years training costs at this rate would exceed FAA's estimate of total cost.

One commenter estimates the annual cost of additional training for flight crewmembers and other affected personnel, as required by the rule, to be $2.5 million.

FAA's Response

The NPRM does not require that each air carrier send a qualified person to verify that each deicing contractor meets the requirements of the proposed rule, therefore, the air carrier would not be required to incur this cost.

Information available to the FAA indicates that air carriers already provide initial and recurrent training in the subject areas of ground deicing and anti-icing. The FAA calculated the incremental cost of added training associated with the requirements of the proposed rule.

The FAA has calculated an initial cost of training for the proposed rule. In subsequent years, however, the added training should be incorporated as a part of the current training that is already taking place. The FAA does not expect any additional future training cost because air carrier employees are routinely provided on-going training to keep them up to date on a number of aviation related issues and practices. The additional procedures required by this rule will likely be a continuation of existing training.

Other Cost Comments

A commenter argues that gate returns for re-deicing will be extremely costly as equipment needed for re-deicing will be in use. This same commenter questions whether the FAA considered a percentage factor of accidents to actual

take-offs made in the 15 year time frame involving ice, snow, and frost or freezing conditions.

Another commenter argues that the FAA has clouded the main issue of deicing/anti-icing costs with cost diagnostics, international trade impact, etc. They argue that these issues are very small contributory items and should not be the concern of the FAA.

One commenter believes that it will cost at least $450 million "to deal with space and environmental issues at the 30 airports required by the FAA to submit de-icing plans."

FAA's Response

The cost of any airplane returning for another re-deicing is not a cost of the current rule since it mandates that no aircraft may take off if ice, snow, or frost is adhering to the surfaces. The FAA recognizes that the proposed rule could result in more airplanes being redeiced due to improved detection procedures. However, the cost of these additional redeicings is difficult to estimate.

There may be some costs associated with dealing with space and environmental issues. The FAA is not convinced that these estimates would be considered reasonable because many variables will affect the final cost outcome. For example, some air carriers are already shifting to Type II fluids and would have switched regardless of the final rule. In addition, flow control procedures at some airports might negate the need for additional space. That is, airplanes as a result of this final rule may line up in queue at the gate instead of the taxiway.

Finally, the FAA is required by mandates from Congress, the President, and the Office of Management and Budget to address the impact that FAA regulations have on small businesses and on international trade. Thus, these topics are very much the concern of the FAA.

Rule Language Changes

The following is a paragraph by paragraph description of significant changes in the final rule language that have been discussed in this preamble. In addition minor editorial changes have been made.

In § 121.629(b) the following sentence has been added: "Takeoffs with frost under the wing in the area of the fuel tanks may be authorized by the Administrator."

In § 121.629(c) the following changes are made:

In paragraph (c)(1)(i) the words "at an airport" are deleted.

In the introductory paragraph of paragraph (c)(3) the words "times, specific to each aircraft type" are deleted and the word "timetables" inserted; the words "the final application of" are added to the description of holdover times; and the words "wings, control surfaces, propellers, engine inlets, and other critical surfaces" are deleted.

In § 121.629 (c)(3)(i) the word "inspection" is replaced by "contamination check" and in § 121.629(c) (3)(i) and (ii) the phrase "as defined in the certificate holder's program" is inserted after "critical surfaces." In § 121.629(c)(3) (i), (ii), and (iii) the words "propellers, engine inlets" are deleted.

In § 121.629(c)(4) the term "pretakeoff check" and the following definition of this term are added: "A pretakeoff check is a check of the aircraft's wings or representative aircraft surfaces for frost, ice, or snow within the aircraft's holdover time." In addition in paragraph (c)(4) the term "pretakeoff inspection" is changed to "pretakeoff contamination check."

Environmental Analysis

This rule is a federal action that is subject to the National Environmental Policy Act (NEPA). Under applicable guidelines of the President's Council on Environmental Quality and agency procedures implementing NEPA, the FAA normally prepares an environmental assessment (EA) to determine the need for an environmental impact statement (EIS) or whether a finding of no significant impact (FONSI) would be appropriate. (40 CFR 1501.3; FAA Order 1050.1D appendix 7. par. 3(a)). In the NPRM the FAA invited comments on any environmental issues associated with the proposed rule, and specifically requested comments on the following: (1) Whether the proposed rule will increase the use of Type I deicing fluid, (2) whether the proposed rule will encourage the use of Type II deicing fluid, (3) the impact, if any, of using these deicing fluids on taxiways "just prior to takeoff," and (4) containment methods currently used that can be adapted to other locations on an airport. Only a few commenters address these environmental issues and most of these commenters focus more on the effect of Federal, State, and local environmental requirements and the lack of local facilities, than on the questions of the potential environmental impact of deicing fluids. A summary of the comments received, the FAA's response and the findings of the FAA's Environmental Assessment follow.

Some commenters say that both Type I and Type II fluids cause environmental problems. One commenter says that the rule would require increased use of Type I fluids to clean aircraft wings prior to Type II application, and that this combination is environmentally hazardous.

One commenter questions what it characterizes as discussions in the United States that Type II fluids are less environmentally acceptable than Type I fluids since, as this commenter points out, both are based on glycols.

Another commenter questions whether airports have the facilities to collect and recycle deicing fluids at takeoff points.

Two commenters believe that environmental constraints will inhibit the operation of remote deicing facilities and recommend that the FAA seek relief from EPA reporting requirements for remote facilities for one to two years. Alternatively, one commenter recommends that the FAA petition the EPA to raise the reportable quantity of ethylene glycol (Type I) from one pound to 1,000 pounds or to exempt the airline industry from all ethylene glycol reporting due to critical safety requirements.

Other commenters also recommend that air carriers be exempt from state and local environmental regulations, which may be even more restrictive than EPA regulations.

One commenter recommends that current environmental constraints be reviewed and additional flexibility for deicing operations be provided in order for the rule's objectives to be met.

One commenter provides recommendations to reduce the discharge of deicing fluids into streams and states that an environmental impact statement should be required where such discharge seems likely.

FAA Response

An Environmental Assessment (EA) that supports a Finding of No Significant Impact (FONSI) is included in the docket for this rulemaking. The EA discusses in detail the potential effect of this rule and addresses in general terms the issues raised by the comments summarized above. The following discussion addresses the major issues raised by commenters.

Presently § 121.629(b) states that no person may takeoff an aircraft when frost, snow, or ice is adhering to the wings, control surfaces, or propellers of the aircraft. As the NPRM preamble, this preamble, and the EA point out, this rule is necessary because several accidents, and recommendations of the 1992

Conference on Airplane Ground Deicing, which was held as a result of these accidents, indicate that under present procedures, the pilot in command may be unable to determine effectively whether the aircraft's critical surfaces are free of all frost, ice, or snow prior to attempting a takeoff. This rule addresses this problem by requiring increased training of appropriate personnel, the use of holdover times, and additional checks of the aircraft's surfaces, all of which are to ensure that an aircraft does not take off if critical aircraft surfaces are contaminated. In essence, this interim final rule, which is necessary before the winter of 1992–1993, requires certain certificate holders to develop a program that will provide the pilot in command with more complete information which he or she needs for deciding whether takeoff can be safely accomplished. Concern with the environmental impacts of this rule emanate principally from the chemical composition of deicing fluids e.g. ethylene glycol has been listed as a hazardous air pollutant under Title III of the Clean Air Act Amendments of 1990. While this rule does not mandate additional use of either Type I or Type II fluids, it could accelerate somewhat the existing trend for U.S. air carriers to follow the European and Canadian practice of increased use of Type II fluids because of the longer holdover times associated with Type II fluids. However, although Type II fluid has a higher biochemical oxygen demand (BOD) that impacts surface water and the fish and other marine life than Type I fluid, it requires approximately 50% less fluid to effectively deice and anti-ice a typical aircraft. Also the use of Type II fluids will significantly reduce the number of redeicings that would be required if Type I fluids were used. These factors along with improved ATC and airport procedures should reduce the use of deicing/anti-icing fluids over the long term.

With respect to the potential environmental effects of both type fluids, as the EA discusses, because of their low volatilities, low ecotoxicities, low toxicity to humans, and biodegradibility, no additional impacts are expected over those already experienced for deicing/anti-icing operations carried out under the current regulations.

With respect to the issues of reporting requirements, relief from state and local environmental requirements, and the availability of collection/recycling facilities, certificate holders that presently use deicing fluids and the operators of airports at which these fluids are used must already comply with all of these requirements when they are applicable. Since this rule requires no additional use of fluids than currently required under the existing clean aircraft requirement, if there are increases in the use of fluids that trigger environmental requirements, those requirements must be met by the airport operator, certificate holder, or other appropriate party, as they would under the present rule. If any of these requirements, or the lack of facilities limit the use of deicing/anti-icing fluids, the result would be that the certificate holder would have to find another means of ensuring that the critical aircraft surfaces are clean before a takeoff is attempted or discontinue operations. Nonetheless, as part of its long term efforts, the FAA will work with certificate holders and with airport operators to monitor the actual and potential environmental effects of this rule and help address any problems that might arise.

Paperwork Reduction Act

Information collection requirements in the amendment to § 121.629 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0567.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this rule. This summary and the evaluation quantify, to the extent practicable, the estimated costs of the rule to the private sector, consumers, and Federal, State, and local governments, and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A " major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the rule, has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he or she should consult the regulatory evaluation contained in the docket.

Costs

This rule will increase costs to the industry and to society in five ways. First, airlines will have to develop a deicing program and the FAA will have to approve it. Second, flight and ground crews will have to be trained for and tested in the new procedures. Third, pretakeoff contamination check procedures will have to be implemented. Fourth, airlines, as an option, could purchase additional deicing equipment to deice closer to the takeoff point. Finally, air carriers and passengers could experience an increase in delays.

The total costs are separated into two categories—small and large air carriers. This was done because this rule will impact small carriers differently than it will large carriers.

Small and Large Part 121 Air Carriers

Small carriers are defined as those that own or operate nine or fewer aircraft under part 121. FAA information indicates that of the 53 part 121 air carriers, 31 are large and 22 are small. Of the 4,151 airplanes that are operated under part 121, small air carriers operate approximately 114 or 2.7 percent and large air carriers operate 4,037 or 97.3 percent.

The number of employees at large and small part 121 air carriers was estimated by allocating the total number of employees based on the number of airplanes that these carriers operate. Based upon information provided by the Airline Transport Association (ATA), approximately 20,000 pilots, 30,000 copilots, 10,000 engineers, and 20,000 mechanics work for part 121 air carriers. If the number of employees at large and small carriers is directly related to the number of airplanes that air carriers operate, then large part 121 carriers have 97.3 percent of the total number of

employees in each category and small carriers have 2.7 percent.

Deicing Program

The FAA expects that the industry will develop a generic deicing program as a normal course of business. This generic industry program is expected to have an initial development cost of $7,200. After the program is developed, each air carrier will likely modify the program for its own operations. The initial cost of the program refinement to all 31 large air carriers will be $224,000 and $5,100 to all 22 small air carriers.

Each air carrier's program will have to be approved and reviewed by the principal operations inspectors assigned to each of the air carriers. The FAA estimates that its initial or first year cost will be $15,300 for the review of all programs.

Training and Qualification Testing

Each certification operator that has a deicing program will be required to provide training for all personnel involved with deicing. The FAA estimates that the initial cost of training will be $8.04 million for large air carriers and $80,400 for small air carriers for a total of $8.1 million. Recurrent training is also required. However, the incremental cost of recurring training will be minimal because the air carrier employees are routinely provided on-going training and materials to keep them up to date on a number of aviation related issues and practices.

This final rule also requires testing for flight crewmembers and qualification for all other personnel concerning the specific requirements of the program and each person's responsibilities and duties under it. The recurrent qualification testing will require an additional 15 minutes per individual. The total annual cost will be $2.03 million ($2.01 million to large firms plus $20,109 to small firms). The initial cost associated with qualification testing is expected to be minimal.

Pretakeoff Contamination Checks

Pretakeoff contamination checks will be implemented under this rule. The program must provide that takeoff after the expiration of the holdover time will be permitted only when one of several conditions such as a pretakeoff contamination check takes place. For purposes of this analysis, the check will be made by individuals who operate the additional deicing equipment that will be purchased for redeicing airplanes at the runway. Thus, the cost of a check is incorporated in the labor costs associated with the additional deicing equipment.

Additional Deicing Equipment

Another cost component associated with the rule is deicing equipment, which consists of the capital equipment, operating and maintenance costs, and labor costs. The total one-time cost of the deicing equipment for all affected airports is estimated to be $10,720,000 to provide 67 portable deicing stations at 28 airports. The total recurring annual maintenance and operating costs at all affected airports will be $1,288,400. The FAA estimates the total recurring annual labor cost at all affected airports to be approximately $139,500.

The total undiscounted cost associated with deicing equipment over the next 10 years will be $25 million. This 10 year-cost is comprised of a one time cost of $10,720,000 for capital equipment, $12,864,000 maintenance and operating costs, and $1,395,000 in labor costs.

Delay Costs

In the NPRM, the FAA stated that delays could not be reliably estimated at that time. The Agency then presented a general step-by-step procedure to estimate potential delay costs. Comments from the industry were not useful in calculating these costs. Even though no additional data have been made available, the FAA has made an estimate of potential delay costs imposed by this rule. This estimate, however, as will be discussed later, should be viewed with its limitations.

As stated previously, after a holdover time has been exceeded a pretakeoff contamination check is one of the options available under this rule. Hence, the rule could increase air carrier delays during ice and snow conditions. Increased delays will increase costs to air carrier operators and passengers.

The FAA expects the pretakeoff contamination check to require between 5 to 15 minutes to complete. The regulatory evaluation assumes for the purposes of this estimate a delay of 10 minutes. The value of passenger time is estimated at $39 per passenger per hour and air carrier operating costs at $1,800 per hour. The delay cost estimate was based on 49 of the largest U.S. airports, for which the FAA had both icing and departure data. These 49 airports account for approximately two-thirds of part 121 operations.

The FAA has estimated a range of air carrier delay costs based on different assumptions about the number of aircraft receiving a pretakeoff contamination check. These estimates are based on data from the past three winters on delays that occurred during snow and ice conditions at U.S. airports. The lower of the two estimates measures delay costs to air carrier operators and passengers who were delayed 20 minutes or more due to snow and ice conditions. By looking only at departures with snow and ice delays of 20 or more minutes, the FAA tried to estimate those airplanes that exceeded their holdover times and would then undergo a 10 minute pretakeoff contamination check. The higher estimate assumes that all departures during snow and icing conditions experience a 10 minute pretakeoff contamination check delay.

Scenario One: This scenario represents the low end of the delay cost estimate. It measures delay costs to air carrier operators and passengers when all part 121 airplane departures that are delayed 20 minutes or more due to snow and ice conditions conduct a pretakeoff contamination check. Each pretakeoff contamination check is assumed to take 10 minutes. The 10-year discounted air carrier delay cost, assuming all aircraft experiencing a 20 minute delay during snow and ice conditions receive a pretakeoff check, is $15 million (discounted).

Scenario Two: The second scenario represents the high cost estimate. It measures delay costs to air carrier operators and passengers due to 10-minute pretakeoff checks for all part 121 departures during icing or snowing conditions. This estimate of the incremental air carrier delay costs is $41 million (discounted).

These estimates omit three critical factors that are needed to determine the total impact of the rule. First is the potential system impacts or "ripple effect" on air carrier delays. The FAA attempted to estimate the cost of this effect; however, it was unsuccessful due to the extreme complexity. Second, the potential decrease in delays due to a shift towards Type II deicing fluids is difficult to estimate because the data is not available to make this estimate. The third factor omitted from the delay cost estimate is the delays due to ice adhering to the surfaces of the aircraft. The estimated number of existing delays represents delays that occurred due to snow and ice (e.g., runway closures, poor braking action, etc.). The presence of delays due to snow and ice does not necessarily mean that snow or ice was adhering to the surfaces of the aircraft.

Re-deicing Delay Costs

The costs and benefits of this rule are a result of the increased checking for and detection of ice adhering to the surface of an airplane. This increased detection could result in additional

delays due to redeicing, though redeicing of contaminated airplanes is already a result of the existing rule. The exact number of delays that occurs as a result of having to return for redeicing cannot be determined at this time due to lack of data. The data needed to measure this cost would be the number of air carriers that have taken off with ice contamination. The FAA has no such measure. However, since Scenario Two above assumes that all future departures for part 121 airplanes will be delayed due to the new procedures of this rule, some of the potential re-deicing costs have been accounted for. In short, this scenario assumes that there would be delays due to pretakeoff contamination checks for all departures during ice and snow conditions. This is a worst case scenario for three reasons. First, not all airplanes would undergo such pretakeoff contamination checks because they would depart before their respective holdover times expire. Second, some airplanes would have alternate procedures to determine if the aircraft is free of contamination. Third, some aircraft would return for redeicing/anti-icing rather than accomplish a pretakeoff contamination check.

The total cost of the final rule is estimated to be between $52 million and $78 million (discounted). Of this total, air carriers would incur non-delay costs of $37 million and delay costs of between $15 million and $41 million.

Benefits

The benefit of the rule is enhanced safety. This safety will be achieved by ensuring that airplanes do not take off with contamination on the surfaces. The analytical approach employed to estimate the potential monetary benefits (safety) of achieving this goal focuses on two existing practices. First, the final rule will implement procedures (pretakeoff contamination checks) that will help prevent airplanes from taking off with ice on surfaces of the aircraft. Second, the final rule will ensure that aircraft that need deicing are actually deiced. Most of the benefits would come from the improved checking procedures (i.e., a formalized deicing/anti-icing procedure that includes standardized holdover tables). Under the current rule, the pilot would perform a visual contamination check before departure. Under this rule, the pilot will spend more time with better information to correctly ascertain whether ice is or is not on the surfaces of that aircraft. The remaining benefits will be derived from deicings due to contamination detected at the time of the check. The FAA cannot estimate the frequency of these occurrences.

The FAA expects the rule to generate total potential safety benefits over the next ten years estimated at $218 million ($1991). On a discounted basis, total potential benefits will amount to an estimated $131 million. This discounted total estimate of benefits is comprised of $125 million for significantly reducing the likelihood of ice-related accidents for passenger-carrying part 121 airplanes and $6 million for part 121 cargo airplanes.

Part 121 Passenger Carrier Benefits

Under the current rule, it is the responsibility of the pilot to decide whether ice, frost, or snow has accumulated on the structure of an airplane. This decision can be very difficult to make, especially when the airplane is sitting at the end of a runway waiting to take off during inclement weather. It is at these times that the likelihood of the pilot making the wrong decision is greatest. The benefits of the rule will come from reducing the likelihood of a pilot making the wrong decision.

Over the past 15 years, there have been five passenger-carrying air carrier accidents where ice, frost, or snow accumulations on the airplane was the primary factor. These accidents resulted in 135 fatalities and 66 serious injuries. In addition, four of the airplanes were destroyed and the other sustained substantial damage.

Based on historical accident and casualty rates, the FAA expects that over the next 10 years, approximately 4 accidents would occur, with 131 fatalities and 64 serious injuries. The present value dollar benefits of preventing these accidents and casualties is estimated to be $166 million (discounted 10 years, 10 percent).

The FAA has attempted to develop a rule that will be effective in preventing all accidents by incorporating program development, training, testing, capital equipment, maintenance, etc. There is some uncertainty, however, as to how effective these components will be. It is conceivable that some aircraft could pass through the system due, in part, to human error and adverse whether conditions, thereby, reducing the effectiveness of the rule. While the actual effectiveness rate would be lower than 100 percent, the FAA estimates that a rate of 75 percent would reflect the reality of correcting a problem that is influenced by a multitude of factors (whether, human error, etc.). Multiplying the $166 million benefits by the 75 percent effectiveness rate results in adjusted benefits of $125 million ($166 million × .75).

Part 121 Cargo Carrier Benefits

The rule will also potentially reduce accidents among large part 121 cargo aircraft. Over the past eight years, there have been three accidents involving large cargo aircraft. These three accidents resulted in two facilities and two serious injuries. Two of the aircraft were substantially damaged and one was destroyed.

Based on these rates the FAA estimates that over the next ten years, there will be approximately 2 accidents, 1 fatality, and 1 serious injury. The estimated value of preventing these accidents is estimated to be $8.4 million (discounted). Multiplying the $8.4 million in cargo benefits by the 75 percent effectiveness rate results in adjusted benefits of $6 million ($8.4 million × .75).

Summary of Benefits

In conclusion, the rule will enhance air carrier safety under conditions of ground icing. The rule will reduce pilot error related to taking off with ice on the airframe by using holdover times and pretakeoff contamination checks. The rule is expected to generate potential total part 121 passenger and cargo carrier benefits of $131 million ($125 million + $6 million).

Benefit-Cost Comparison

The present value cost of the rule, which now includes delay costs, is estimated to range between $52 million and $78 million over the next 10 years. These costs also include program development, training, qualification testing, and capital expenditures. These estimates also do not include the cost of overseas operations.

The benefits of the rule are estimated to be $131 million (discounted) over the next decade. These benefits are derived from preventing accidents due to reduced risk during ground icing conditions.

While the FAA has estimated the cost of delays, it was not able to estimate the ripple effect of those delays nor the effect of increased usage of Type II fluids. However, if the present value cost of the ripple effect of delays ranges between $53 million and $79 million, this rule will still be cost beneficial.

International Trade Impact

The rule is not expected to have a significant incremental impact on international trade. This assessment is based on the belief that while U.S. part 121 operators are expected to incur total

compliance costs of $122 million (undiscounted), they will not be placed at a competitive trade disadvantage.

The average cost of an international round trip airplane ticket is approximately $650. With a potential average cost increase of 4 cents per round trip ticket representing less than one-hundredth of a percent of the total cost of a ticket (without consideration of potential delay costs), the likelihood of U.S. air carriers being placed at a competitive trade disadvantage becomes extremely remote. For a now detailed analysis, the reader is referred to the full international trade impact assessment contained in the docket.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit organizations that are independently owned and operated, and small government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires regulatory agencies to review rules that may have "a significant economic impact on a substantial number of small entities." A substantial number of small entities means a number that is not less than eleven and that is more than one-third of the small entities subject to a proposed or existing rule.

The final rule potentially impacts operators of an aircraft for hire with nine aircraft owned but not necessarily operated. Of the 53 active U.S. commercial domestic carriers, the FAA has identified 22 that own or operate nine or fewer aircraft under part 121. The FAA has determined that this is a substantial number since all 22 of these small entities are expected to be affected by the final rule.

To determine whether there is a significant cost impact on small part 121 operators, the annualized cost of the rule must exceed the annualized cost threshold established by FAA Order 2100.14A. The threshold established by the Order for scheduled operators of aircraft for hire falls under two categories. The first category is scheduled operators whose entire fleet has a seating capacity of over 60. The cost threshold for these operators is $112,600. The second category is other scheduled operators with seating capacities less than 60. Their cost threshold is $62,900.

The FAA estimated the annualized cost of the rule to an individual small operator to be $20,800. This number was derived by first summing the undiscounted costs for small operators. These costs are:

Initial Program Development	$5,145
Initial Training	80,436
Qualification Testing	180,981
Initial Capital	289,440
Recurring Maintenance & Operating Costs	384,990
Potential Delay Costs ($69,265,870 x .027)	1,870,178
Total Undiscounted Costs	$2,811,170

The delay costs for small entities were estimated by multiplying the potential $70 million in undiscounted delay costs (high end of cost range) by the 2.7 percent of part 121 carriers that are small. This gives a cost of $1.9 million ($69,265,870 x .027).

The total undiscounted cost, $2.8 million, is then divided by the 22 small operators to get a $127,780 average undiscounted cost for any single small operator. This number is then multiplied by a capital recovery factor of .16275 (10% interest rate for 10 years) to give an annualized cost of $20,800.

The $20,800 annualized cost does not exceed the $62,900 cost threshold prescribed above. Thus, the final rule will not impose a significant cost on a substantial number of small part 121 operators.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation of the regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 121

Air carriers, Air safety, Air transportation, Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. Section 121.629 is amended by revising paragraph (b) and by adding new paragraphs (c) and (d) to read as follows:

§ 121.629 Operation in icing conditions.

* * * * *

(b) No person may take off an aircraft when frost, ice, or snow is adhering to the wings, control surfaces, propellers, engine inlets, or other critical surfaces of the aircraft or when the takeoff would not be in compliance with paragraph (c) of this section. Takeoffs with frost under the wing in the area of the fuel tanks may be authorized by the Administrator.

(c) Except as provided in paragraph (d) of this section, no person may dispatch, release, or take off an aircraft any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, unless the certificate holder has an approved ground deicing/anti-icing program in its operations specifications and unless the dispatch, release, and takeoff comply with that program. The approved ground deicing/anti-icing program must include at least the following items:

(1) A detailed description of—

(i) How the certificate holder determines that conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft and that ground deicing/anti-icing

operational procedures must be in effect;

(ii) Who is responsible for deciding that ground deicing/anti-icing operational procedures must be in effect;

(iii) The procedures for implementing ground deicing/anti-icing operational procedures;

(iv) The specific duties and responsibilities of each operational position or group responsible for getting the aircraft safely airborne while ground deicing/anti-icing operational procedures are in effect.

(2) Initial and annual recurrent ground training and testing for flight crewmembers and qualification for all other affected personnel (e.g., aircraft dispatchers, ground crews, contract personnel) concerning the specific requirements of the approved program and each person's responsibilities and duties under the approved program, specifically covering the following areas:

(i) The use of holdover times.

(ii) Aircraft deicing/anti-icing procedures, including inspection and check procedures and responsibilities.

(iii) Communications procedures.

(iv) Aircraft surface contamination (i.e., adherence of frost, ice, or snow) and critical area identification, and how contamination adversely affects aircraft performance and flight characteristics.

(v) Types and characteristics of deicing/anti-icing fluids.

(vi) Cold weather preflight inspection procedures.

(vii) Techniques for recognizing contamination on the aircraft.

(3) The certificate holder's holdover timetables and the procedures for the use of these tables by the certificate holder's personnel. Holdover time is the estimated time deicing/anti-icing fluid will prevent the formation of frost or ice and the accumulation of snow on the protected surfaces of an aircraft. Holdover time begins when the final application of deicing/anti-icing fluid commences and expires when the deicing/anti-icing fluid applied to the aircraft loses its effectiveness. The holdover times must be supported by data acceptable to the Administrator. The certificate holder's program must include procedures for flight crewmembers to increase or decrease the determined holdover time in changing conditions. The program must provide that takeoff after exceeding any maximum holdover time in the certificate holder's holdover timetable is permitted only when at least one of the following conditions exists:

(i) A pretakeoff contamination check, as defined in paragraph (c)(4) of this section, determines that the wings, control surfaces, and other critical surfaces, as defined in the certificate holder's program, are free of frost, ice, or snow.

(ii) It is otherwise determined by an alternate procedure approved by the Administrator in accordance with the certificate holder's approved program that the wings, control surfaces, and other critical surfaces, as defined in the certificate holder's program, are free of frost, ice, or snow.

(iii) The wings, control surfaces, and other critical surfaces are redeiced and a new holdover time is determined.

(4) Aircraft deicing/anti-icing procedures and responsibilities, pretakeoff check procedures and responsibilities, and pretakeoff contamination check procedures and responsibilities. A pretakeoff check is a check of the aircraft's wings or representative aircraft surfaces for frost, ice, or snow within the aircraft's holdover time. A pretakeoff contamination check is a check to make sure the wings, control surfaces, and other critical surfaces, as defined in the certificate holder's program, are free of frost, ice, and snow. It must be conducted within five minutes prior to beginning take off. This check must be accomplished from outside the aircraft unless the program specifies otherwise.

(d) A certificate holder may continue to operate under this section without a program as required in paragraph (c) of this section, if it includes in its operations specifications a requirement that, any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, no aircraft will take off unless it has been checked to ensure that the wings, control surfaces, and other critical surfaces are free of frost, ice, and snow. The check must occur within five minutes prior to beginning takeoff. This check must be accomplished from outside the aircraft.

Issued in Washington, DC on September 24, 1992.

Thomas C. Richards,

Administrator.

[FR Doc. 92-23652 Filed 9-25-92; 11:12 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 121-XX]

Proposed Advisory Circular on Ground Deicing and Anti-Icing Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for comments on proposed advisory circular.

SUMMARY: Proposed advisory circular (AC) 121-xx Ground Deicing and Anti-Icing Program, provides guidance about the program elements that should be incorporated in an air carrier's approved ground deicing and anti-icing program. This AC would provide guidance about one method of complying with the requirements of revised Federal Aviation Regulation (FAR) section 121.629.

DATES: Comments must be received on or before October 14, 1992.

ADDRESSES: Written comments are invited on all aspects of the proposed AC. Commenters must identify file number AC 121-xx, Ground Deicing and Anti-Icing Program. Send all comments on the proposed AC to the following location: Federal Aviation Administration, Flight Standards Service, Air Carrier Branch (Attention: AFS-220), 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Katherine Hakala, Flight Standards Service, Air Carrier Branch, AFS-220, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-3762 (8 a.m. to 4:30 p.m. e.s.t.).

SUPPLEMENTARY INFORMATION: The guidance in this AC provides one method, but not the only method, of complying with the requirements of revised FAR 121.629. This guidance material supplements the interim final rule, FAR 121.629 published elsewhere in this issue of the **Federal Register**, 14 CFR 121.629. Due to the impending winter season and the critical safety nature of this proposed AC, it is published in its entirety in order to allow commenters expedient access to the document.

Issued in Washington, DC, on September 23, 1992.

William J. White,

Deputy Director, Flight Standards Service.

Ground Deicing and Anti-Icing Program AC No: 121-XX

1. Purpose.

This advisory circular (AC) provides one means, but not the only means, for obtaining approval of a Ground Deicing and Anti-Icing Program, and for ensuring compliance with Federal Aviation Regulations (FAR) Section 121.629.

2. Related FAR Sections.

121.105, 121.107, 121.123, 121.125, 121.127, 121.135, 121.363(b), 121.365, 121.367, 121.369, 121.375, 121.383(a)(3), 121.401, 121.403, 121.405, 121.415, 121.418, 121.419, 121.422, 121.427, 121.433, 121.463, 121.533, 121.537, 121.539, 121.629, and Special Federal Aviation Regulation (SFAR) No. 58.

3. Background.

a. Accidents Related to Icing.

According to information received in 1992 from the National Transportation Safety Board (NTSB), in the last 23 years there have been 15 accidents related to the failure to deice and/or anti-ice aircraft adequately before takeoff. On March 22, 1992, a U.S. air carrier crashed on takeoff from LaGuardia Airport in a snowstorm during nighttime operations. While the NTSB has not yet issued a probable cause finding for this accident, the FAA has proceeded on the assumption that the accident was caused, at least in part, by icing.

b. Reassessment of Icing Procedures.

Prior to the LaGuardia accident, the FAA and the aviation community in general had placed priority on emphasizing the need during icing conditions for the pilot-in-command (PIC) to ensure a "clean aircraft" before takeoff. The FAA believed that pilot education appeared key to combatting the threat of wing icing. Although the FAA still believes the PIC must ultimately make the decision on whether or not to take off, based on a thorough understanding of factors involved in aircraft icing, the FAA believes that certificate holders who conduct their operations under FAR part 121 must provide their PIC's with pertinent information and operator-developed procedures and criteria in order to make a proper decision.

c. Content of this AC.

Accordingly, this AC provides guidance about the program elements that should be incorporated in an air carrier's approved ground deicing and anti-icing program and provides guidance and suggestions about one method, but not the only method, of complying with all pertinent regulations.

4. Definitions

The terms used in this AC are not defined in FAR part 1, but are defined herein for better understanding of this material as follows:

a. *Holdover Time* is defined as the estimated time the application of deicing or anti-icing fluid will prevent the formation of frost or ice, and the accumulation of snow on the treated surfaces of an aircraft. Holdover time begins when the final application of deicing/anti-icing fluid commences, and it expires when the deicing/anti-icing fluid applied to the aircraft loses its effectiveness.

b. *Deicing* is a procedure by which frost, ice, or snow is removed from the aircraft in order to provide clean surfaces.

c. *Anti-Icing* is a precautionary procedure that provides protection against the formation of frost or ice and accumulation of snow on treated surfaces of the aircraft for a limited period of time.

5. Related Reading Material

The following material should be useful in developing training program subject material and instructions and procedures for incorporation in the certificate holder's manuals: AC 20-117, "Hazards Following Ground Deicing and Operations in Conditions Conducive to Aircraft Icing"; FAA publication, "Winter Operations Guidance for Air Carriers and Other Adverse Weather Topics"; and the following publications of the Society of Automotive Engineers (SAE): AMS 1424, "Deicing/Anti-Icing Fluid, Aircraft, Newtonian—SAE Type I"; AMS 1428, "Fluid, Aircraft Deicing/

Anti-Icing, Non-Newtonian, Pseudo-Plastic, SAE Type II"; and ARP 4737, "Aircraft Deicing/Anti-Icing Methods with Fluids, for Large Transport Aircraft"; AC 120–XX, "Pilot Guide—Large Aircraft Ground Deicing"; International Standards Organization (ISO) publications: ISO 11075, "Aerospace—Aircraft de-icing/anti-icing newtonian fluids ISO type I"; ISO 11076, "Aerospace—Aircraft de-icing/anti-icing methods with fluids"; ISO 11077, "Aerospace—De-icing/anti-icing self propelled vehicles—Functional requirements"; ISO 11078, "Aerospace—Aircraft de-icing/anti-icing non-newtonian fluids ISO type II."

6. Program Elements

A certificate holder's ground deicing and anti-icing program, as approved under FAR 121.629(c), should encompass at least the elements that follow (see paragraph 7 and following for detailed discussion of these elements):

a. Management plan detailing operational responsibilities and procedures.

b. Holdover timetables and procedures for their use.

c. Aircraft deicing/anti-icing procedures and responsibilities, pretakeoff check procedures and responsibilities, and pretakeoff contamination check procedures and responsibilities.

d. Initial and recurrent ground training and testing for flight crewmembers and qualification for all other affected personnel.

7. Management Plan

FAR 121.533, 121.535, and 121.537 state, respectively, that each domestic, flag, and supplemental air carrier and commercial operator is responsible for operational control. In order to properly exercise operational control (when conditions at an airport are such that frost, ice, or snow may reasonably be expected to adhere to its aircraft) the certificate holder should develop, coordinate with other affected parties, implement, and use a management plan to ensure proper execution of its approved deicing/anti-icing program. An operator's management plan should identify the manager responsible for the overall deicing/anti-icing program, identify each subordinate manager, and describe each manager's functions and responsibilities under the applicable FAR which are needed to properly manage the certificate holder's deicing/anti-icing program. The plan should encompass at least the elements discussed in the following paragraphs:

a. Operations

Determine the management position responsible for ensuring that all necessary elements of the management plan and the deicing/anti-icing program have been developed, properly integrated, and coordinated; that the plan and program have been disseminated to all those persons who have duties, responsibilities and functions to perform in accordance with them; and that adequate management oversight of the program continues to be maintained. The following actions should be taken:

(1) Determine who (position description) will be responsible, at each airport where operations are expected to be conducted in conditions conducive to ground icing, for deciding that ground deicing/anti-icing operational procedures are to be executed and when.

(2) Detail the functions, duties, responsibilities, instructions, and procedures to be used by flight crewmembers, aircraft dispatchers, and management personnel for safely dispatching or releasing the particular type aircraft used in its operations while ground deicing/anti-icing operational procedures are in effect. The program should contain a detailed description of how the certificate holder determines that the conditions at an airport are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft; and that ground deicing/anti-icing operational procedures must be in effect.

(3) Determine who (position description) will be responsible for coordinating the applicable portions of the management plan and the deicing/anti-icing program with the managers of the air traffic control tower (ATCT) and the airport.

(4) Determine who (position description) will be authorized to enter into agreements with the manager of the ATCT at each airport regarding particular gate hold procedures during icing conditions; and with the airport manager at each airport regarding aircraft secondary deicing/anti-icing locations and aircraft pretakeoff checking locations.

(5) Ensure that a detailed description of the deicing/anti-icing program is incorporated in the certificate holder's manuals (for the use and guidance of flight, ground operations, and management personnel) in conducting its operations under icing conditions.

b. Maintenance.

Determine who is responsible for ensuring that sufficient competent personnel and adequate facilities and equipment are available (at each airport where operations are expected to be conducted under conditions conducive to ground icing) for the proper deicing and anti-icing of the certificate holder's aircraft. The following actions should be taken:

(1) Ensure that all necessary maintenance elements of the management plan and the deicing/anti-icing program have been developed, properly integrated, and coordinated; that the maintenance plan and program have been disseminated to all those persons who have duties, responsibilities, and functions to perform in accordance with them; and that adequate management oversight of the program continues to be maintained.

(2) Detail the functions, duties, responsibilities, instructions, and procedures to be used by its ground personnel, maintenance personnel, and management personnel for safely dispatching or releasing the particular type aircraft used in its operations while ground deicing/anti-icing operational procedures are in effect.

(3) Ensure that a detailed description of the maintenance portion of the deicing/anti-icing program is incorporated in the certificate holder's manuals (for the use and guidance of maintenance, ground, and management personnel) in conducting its operations under icing conditions.

8. Holdover Timetables and Procedures for Their Use.

FAR 121.629(c)(3) requires that the deicing/anti-icing program include holdover timetables and the procedures for the use of these tables by the certificate holder's personnel. The program should also include procedures to be followed in the event that the certificate holder's established maximum holdover times are exceeded. Each of these areas is discussed in the following paragraphs and illustrated in figure 1.

Note: Use of the holdover timetables requires a pretakeoff check by the flightcrew. These holdover timetables must be available for use of the flightcrew in the cockpit.

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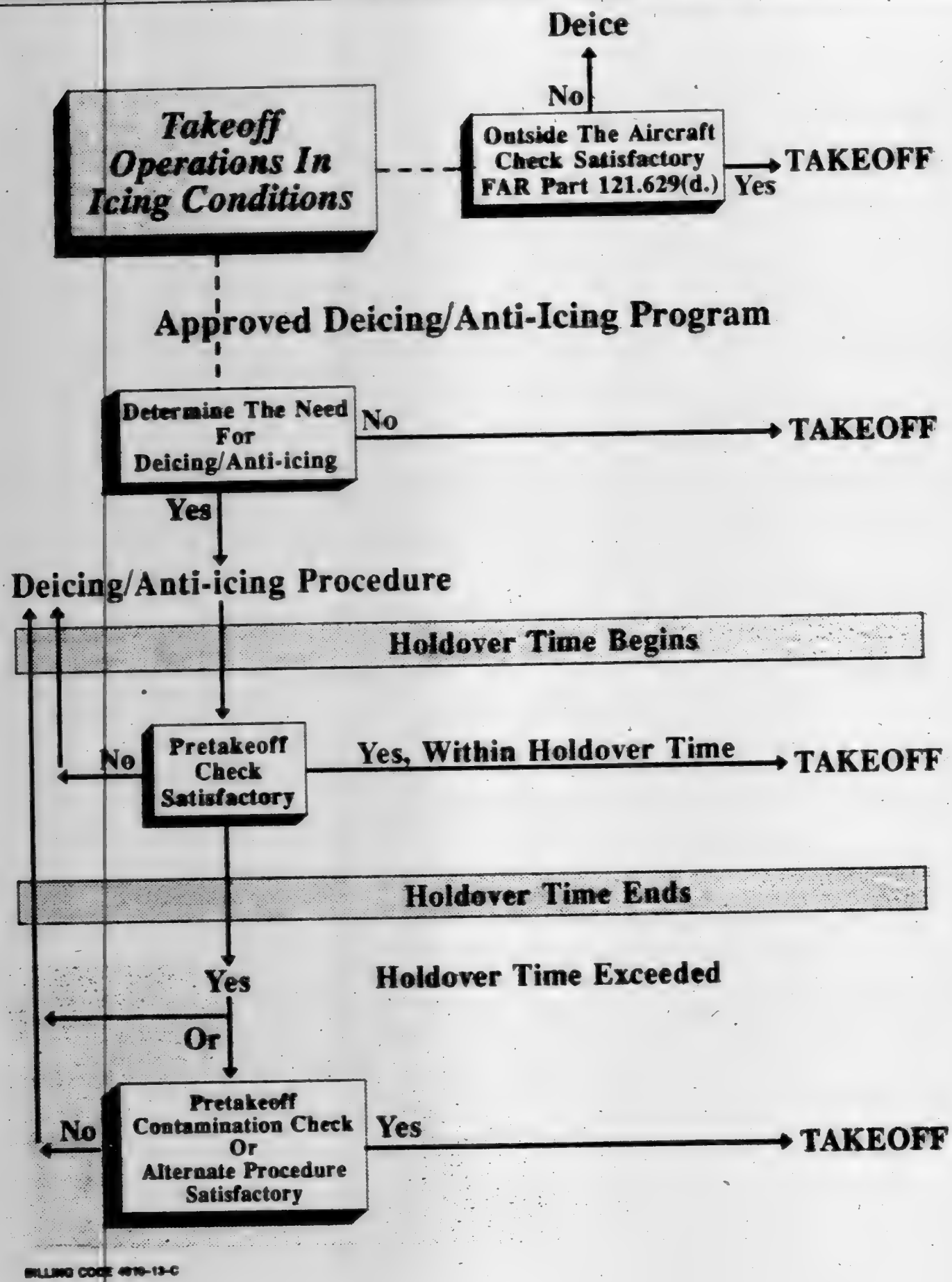

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a. Responsibilities and Procedures.

The certificate holder's program should define operational responsibilities and contain procedures for the flightcrew, aircraft dispatchers or flight followers, and maintenance and ground personnel applicable to the use of holdover times and resultant actions if the certificate holder's maximum holdover time is exceeded. These procedures should include gate procedures, communication between ground crew and flightcrew to establish the start of holdover time and to relay other pertinent information regarding the deicing/anti-icing process, flight crewmember use of the pertinent holdover timetables, and coordination with air traffic control (ATC).

b. Development of Holdover Timetables.

Each certificate holder is required under FAR 121.629(c)(3) to develop holdover timetables for use by its personnel. These timetables are required to be supported by data acceptable to the Administrator. Currently, the only acceptable data is that developed by the Society of Automotive Engineers (SAE) and the International Standards Organization (ISO). ARP 4737, "Aircraft Deicing/Anti-Icing Methods with Fluids, for Large Transport Aircraft," and ISO 11076, "Aerospace—Aircraft deicing/anti-icing methods with fluids," contain the tables that are currently considered acceptable for use by the certificate holders to develop their holdover timetables. Holdover times in excess of those specified in the current editions of the SAE/ISO holdover timetables are not acceptable; however, the certificate holder may require the use of more conservative times than those specified in the SAE/ISO tables. Appendix A of this AC contains the holdover timetables extracted from the current SAE/ISO documents.

c. Use of Holdover Timetables

Holdover times are only an estimate of the time of effectiveness for deicing/anti-icing fluids and are based on a number of variables. FAR section 121.629(c)(4) requires a pretakeoff check of the wings or representative surfaces to be completed by the flightcrew prior to takeoff and within the holdover time range. Air carrier manuals should contain detailed procedures regarding the use of the timetables in their operations. FAR section 121.629(c)(3) requires that the certificate holder's program contain procedures for flight crewmembers to increase or decrease the determined holdover time in changing conditions. Weather conditions that could result in a change to the determined holdover times include, but are not limited to, a significant rise in the ambient temperature to well above freezing, the end of precipitation, or other changes in temperature or precipitation type or intensity. Procedures should consider the certificate holder's capability to disseminate information, in real time, concerning changing weather conditions. Additional guidance regarding holdover timetables is contained in AC 20–117, "Hazards Following Ground Deicing and Ground Operations in Conditions Conducive to Aircraft Icing"; AC 120–XX, "Pilot Guide—Large Aircraft Ground Deicing"; SAE ARP 4737, "Aircraft Deicing/Anti-icing Methods with Fluids, for Large Transport Aircraft"; and ISO 11076, "Aerospace—Aircraft de-icing/anti-icing methods with fluids."

d. Takeoff After the Holdover Time is Exceeded

Under FAR § 121.629(c), takeoff after the maximum holdover time has been exceeded is permitted only if one or more of the following actions has been taken. The certificate holder's program should detail actions to be accomplished if the holdover time is exceeded.

(1) A pretakeoff contamination check is made to ensure that wings, control surfaces and other critical surfaces, as defined in the certificate holder's program, are free of frost, ice or snow. The operator's program should include detailed guidelines and criteria for flightcrew and ground personnel to follow to accomplish this checking requirement. This check is accomplished within five minutes before beginning takeoff and is generally conducted from outside the aircraft, unless the program specifies otherwise. Factors determining whether or not the check can be accomplished from within the aircraft include the ability of the flightcrew to see aircraft surfaces, lighting conditions, weather conditions and other factors which determine the ability to assess the condition of the aircraft; or

(2) It is otherwise determined by an alternate procedure, that wings, control surfaces, and other critical surfaces (as defined in the certificate holder's program) are free of frost, ice, or snow. Other means or determinations consist of procedures, techniques or equipment (such as wing icing sensors) to establish that critical surfaces are not contaminated. These means or determinations should be detailed and approved in the operator's program; or

(3) The wings, control surfaces, and other critical surfaces have been re-deiced and a new holdover time has been established. Coordination procedures should be detailed for the accomplishment of this re-deicing.

9. Aircraft Deicing Anti-Icing Procedures and Responsibilities, Pretakeoff Check Procedures and Responsibilities, and Pretakeoff Contamination Check Procedures and Responsibilities

Certificate holders' manuals should contain detailed procedures for the deicing and anti-icing process specific to each aircraft type. Certificate holders should have aircraft-specific instructions and checking guidelines and procedures for the use of their flight crewmembers and other personnel to determine whether or not aircraft critical surfaces are free of contaminants.

a. Identification of Critical Aircraft Surfaces

The critical aircraft surfaces which should be clear of contaminants before takeoff should be described in the aircraft manufacturers' maintenance manual or other manufacturer-developed documents, such as service or operations bulletins.

(1) Generally, the following should be considered to be critical aircraft surfaces, if the aircraft manufacturer information is not available:

(a) Before engine start, pitot heads, static ports, ram-air intakes for engine control and flight instruments, other kinds of instrument sensor pickup points, fuel vents, propellers and engine inlets.

(b) Wings, empennage, and control surfaces.

(c) Fuselage upper surfaces on center-engine aircraft.

(2) Certificate holders should list in the flight manual or the operations manual, for each type of aircraft used in their operations, the critical surfaces which should be checked on flight-crewmember-conducted, external-aircraft, preflight inspections and pretakeoff checks or pretakeoff contamination checks.

(3) Critical surfaces should be defined for the use of ground personnel for the conduct of required checks following deicing/anti-icing and the pretakeoff contamination check, when required.

b. Identification of Representative Aircraft Surfaces

Certificate holders should list in the flight manual or the operations manual, for each type of aircraft used in their operations, the representative surfaces which may be checked, in lieu of the critical aircraft surfaces, by flight

crewmembers in the conduct of pretakeoff checks.

(1) Some aircraft manufacturers have identified certain aircraft surfaces which the flightcrew can readily observe during day and night operations to determine whether or not ice, frost or snow is accumulating or forming on that surface, and, by using it as a representative surface, can make a reasoned judgement regarding whether or not ice is adhering to other aircraft surfaces. Certificate-holder operational experience can also be used to define representative surfaces. In the absence of this information, the following guidelines should be considered in identifying a representative aircraft surface:

(a) The surface can be clearly seen from inside the cockpit, and it is close enough to the viewer to be able to determine whether or not ice, frost, or snow is forming or accumulating on the surface.

(b) The surface should be unheated.

(c) The surface should have been treated with deicing/anti-icing fluid during the time that fluid was applied to the other aircraft surfaces; however, it is recognized that it is industry practice not to apply Type II fluid forward of the leading edge of the wings, and that Type I fluid may be applied only to the wing surfaces, without being applied to areas visible from the cockpit. Designation of representative surfaces is not limited to treated surfaces.

(d) Surfaces such as propeller spinners and windshield wipers should also be considered.

c. Techniques for Recognizing Contamination on Aircraft Critical or Representative Surfaces.

Certificate holders should have aircraft-specific techniques for the use of their flight crewmembers and other personnel to recognize contamination on critical or representative aircraft surfaces when the certificate holder has procedures for the conduct of preflight external aircraft icing checks, inside- and outside-the-aircraft pretakeoff checks, and pretakeoff contamination checks. Some indications for loss of effectiveness of deicing/anti-icing fluid or contamination on aircraft surfaces include progressive surface freezing or snow accumulation, or random snow accumulation or dulling of surface reflectivity (loss of gloss) caused by the gradual deterioration of the fluid to slush. Deicing/anti-icing fluid manufacturers should also be consulted for information on the fluid characteristics and indications that the fluid is losing its effectiveness.

d. Types of Icing Checks

FAR 121.629 identifies three different icing checks or procedures (to follow ground deicing/anti-icing) which may be required to be accomplished under an opertor's approved deicing/anti-icing program:

(1) *Aircraft deicing/anti-icing procedure.* Certificate holders should have procedures which ensure that, following aircraft deicing and anti-icing fluid application, a preflight external-aircraft icing check of the critical aircraft surfaces has been conducted by qualified ground personnel; this check determines whether or not the critical surfaces are free of frost, ice or snow before push-back or taxi; and the results of the check are communicated to the PIC by an acceptable means.

(2) *Pretakeoff check.* This check is required under FAR 121.629(c)(4) any time that ground icing conditions exist and the aircraft has been deiced/anti-iced and a holdover time is established. It is accomplished within the holdover time range, and normally is accomplished by the flightcrew from inside the cockpit. The aircraft's wings or representative aircraft surfaces are checked for contamination prior to takeoff. The surfaces to be checked are determined by manufacturer data, carrier operational experience, or guidance contained in this AC. The pretakeoff check is integral to the use of holdover times. Because of the variables involved in the determination of holdover times, it is necessary for the flightcrew to look outside the aircraft to assess current weather or other situational conditions, and the aircraft condition, and not rely on the holdover times as the sole determinant that the aircraft is free of contaminants.

(3) *Pretakeoff contamination check.* FAR 121.629(c)(3)(i) requires that certificate holders must have aircraft-specific procedures for use by flight crewmembers and qualified ground personnel to ensure that the aircraft wings, control surfaces, and other critical surfaces remain free of frost, ice, or snow when a holdover time has been exceeded. The pretakeoff contamination check, conducted within 5 minutes of takeoff, is one of three alternative actions to be taken if a holdover time is exceeded. The following should be considered in the development of the procedures.

(a) Certificate holders who operate hardwing airplanes with aft, fuselage-mounted, turbine-powered engines (excluding turbo-propeller-powered engines) should conduct this pretakeoff contamination check from outside the airplane. Because of the difficulty in detecting contaminants on these airplanes, the pretakeoff contamination check should include a physical (tactile) check of selected portions of the wing leading edges and the upper wing surfaces.

(b) Operators of other aircraft may conduct this check from inside or outside the aircraft as specified in the certificate holder's program. Certificate holders should consider the following in the development of guidelines to be used in conjunction with the techniques for flight crewmember recognition of contamination of critical aircraft surfaces and the procedures for conducting pretakeoff contamination checks inside the aircraft.

1. Can enough of the critical surfaces be seen to accurately determine whether or not they are free of contaminants? This determination should consider the aircraft type, the method of conducting the check—that is, from the cockpit or cabin; lighting; and atmospheric conditions.

2. Does the certificate holder have procedures to recognize, and have flight crewmembers been properly trained to recognize changes in weather conditions to allow the PIC to ascertain whether or not the critical aircraft surfaces could reasonably be expected to remain free of contaminates?

10. Initial and Recurrent Ground Training, Testing and Qualification

a. General/All Personnel.

The operator's training program should include initial and annual recurrent ground training, testing for flight crewmembers and qualification for all affected personnel concerning the specific requirements of the program and the duties, responsibilities, and functions detailed in the program. The effective date of FAR section 121.629 requires that initial program training, testing and qualification be completed prior to November 1, 1992. The FAA will allow maximum flexibility in providing the required training, testing, and qualification for this first winter season. Initial training and testing can be accomplished through the issue of bulletins, manual revisions, self-grading quizzes or other review materials. Receipt of training documents will satisfy the testing requirement for this initial winter season. Formal testing will be accomplished in the next recurrent training cycle. On-the-job qualification for ground personnel should include those elements specific to the final deicing/anti-icing rule to include use of holdover times, fluid application, and checking procedures.

b. Operations Ground Training

The following represents the recommended content for a certificate holder's operations ground training program in accordance with the general requirements of FAR section 121.415. Flight crewmembers and other operations personnel should receive training on at least the following subjects:

(1) *The use of holdover times.* Holdover times are a range of times derived from an analysis of airline service experience and the laboratory testing results of the freeze points of particular types of fluids (currently Type I and Type II) under various temperatures, fluid concentrations, and humidity conditions. A discussion of holdover times should include the following:

(a) Source of holdover time data.

(b) Precipitation category (for example, fog, drizzle, rain, snow).

1. Precipitation intensity.

2. Duration of precipitation.

3. Relationship of precipitation change to holdover time.

(c) Relationship of holdover time to particular fluid concentrations for both Type I and Type II fluids.

(d) Identification of when holdover time begins and ends.

(e) Communication procedures reference holdover times.

1. Communication between ground personnel and the flightcrew to determine the start of holdover time, and the particular holdover timetable to be used. Communications from the ground crew to the cockpit crew should consist of the following information:

(aa) Fluid type (for example, Type I or Type II).

(bb) Fluid/water mix ratio.

(cc) Start time of final fluid application/beginning of holdover time.

(dd) Accomplishment of post-deicing/anti-icing check.

2. ATC Coordination.

3. Dispatch or flight following coordination.

4. Means for obtaining most current weather information.

(f) Use of holdover times for the cockpit crew. A pretakeoff check is an integral part of the use of holdover times.

(g) Procedures when holdover time is exceeded.

1. Pretakeoff contamination check.

2. Alternate means to determine whether or not surfaces are free of frost, ice or snow.

3. Re-deice and establish new holdover time.

(2) *Aircraft deicing/anti-icing procedures including checks to detect contaminated surfaces, and responsibilities.*—(a) *Deicing* is a procedure by which frost, ice, or snow is removed from the aircraft in order to provide clean surfaces. The procedure can be accomplished by the use of fluids or mechanical means.

(b) *Anti-Icing* is a procedure by which the application of certain types of anti-icing fluids provides protection against the formation of frost or ice and accumulation of snow on treated surfaces of the aircraft for a limited period of time (holdover time).

(c) *Deicing/Anti-Icing* is a combination of the two procedures above. It can be performed in one or two steps.

1. One-step deicing/anti-icing is carried out with an anti-icing fluid. The fluid used to deice the aircraft remains on aircraft surfaces to provide limited anti-ice capability.

2. Two-step deicing/anti-icing consists of two distinct steps. The first step (deicing) is followed by the second step (anti-icing) as a separate fluid application. Anti-icing fluid is applied to protect the relevant surfaces, thus providing maximum possible anti-ice capability (holdover time).

(d) Safety requirements during fluid application.

(e) Deicing/anti-icing fluid application procedures.

(f) Remote deicing procedures. 1. Aircraft-specific considerations.

2. Location-specific procedures.

(g) *Contractor Deicing.* Many certificate holders will utilize contract services, such as aircraft servicing vendors, fixed base operators, or other air carriers to perform deicing/anti-icing. Operations training should include flightcrew supervisory responsibilities for certificate holders who engage in supplemental operations, who employ contractor deicing/anti-icing services, and who are unable to arrange for the training and qualification of the contractor personnel in advance of operations into airports where these contractor services are to be performed.

(h) *Deicing/Anti-Icing Checking Procedures and Responsibilities.* The training program should have aircraft-specific surface contamination checking guidelines to include the following:

1. *Types of Checks Required.* Each certificate holder should detail the types of checks required and the methods for accomplishing these checks. This will include procedural steps for the conduct of the check as well as the location, and personnel, deicing equipment, and lighting, if applicable, required to accomplish the check.

(aa) Flightcrew preflight inspection/cold weather preflight inspection procedures. This is the normal walk-around preflight inspection conducted by the flightcrew. This inspection should be used to note any aircraft surface contamination and direct any required deicing/anti-icing operations.

(bb) Aircraft deicing/anti-icing procedures include a check performed by qualified ground personnel after the deicing/anti-icing fluid application as an integral part of that process.

(cc) A pretakeoff check is performed prior to takeoff and within the holdover time. This is a check normally conducted from inside the cockpit. Identification of representative surfaces and continual assessment of environmental and other situational conditions should be included in the operator's program.

(dd) Pretakeoff contamination check. Check accomplished after the holdover time has been exceeded and within 5 minutes prior to takeoff. Each carrier will define the content of the pretakeoff contamination check. The check could be conducted from inside or outside the aircraft, depending upon such factors as atmospheric condition, lighting conditions, aircraft type and ability of the crew to see the relevant aircraft surfaces.

(ee) PIC responsibility. The PIC's responsibility is to make the decision on whether or not to make the takeoff based on operator developed guidance and procedures.

2. Identification of critical surfaces or representative surfaces to be checked/inspected during each type of check.

3. Techniques for recognizing contamination on the aircraft.

4. Communications procedures to include communications between ground personnel and the flightcrew, and communications with ATC and company station personnel to coordinate requirements for aircraft pretakeoff contamination check.

(3) *Aircraft surface contamination and critical area identification, and how contamination adversely affects aircraft performance and flight characteristics.*—(a) *Aircraft Ground Icing Conditions.* Certificate holders should ensure that a description of the following conditions is incorporated in the procedures for implementing ground deicing/anti-icing operational procedures. Also, certificate holders should ensure that those persons who have responsibilities under the deicing/anti-icing program for determining whether or not ground deicing/anti-icing procedures should be in effect, understand that under at least the following conditions, frost, ice, or snow

may reasonably be expected to adhere to the aircraft.

1. *In-flight Ice Accumulation.* Certificate holders should have procedures which ensure that the flightcrews of arriving flights report occurrences of in-flight icing to the person responsible for executing the certificate holder's deicing/anti-icing program at each airport where the certificate holder conducts its operations. This is a problem when flights are scheduled for short turnaround times—for example, for 30 minutes or less, and when ambient temperatures on the ground are at or below freezing.

2. *Freezing Precipitation.* Snow, sleet, freezing rain, drizzle, or hail which adheres to aircraft surfaces.

3. *Frost.* (including hoarfrost) is a crystallized deposit, formed from water vapor on surfaces which are at or below 0 °C (32 °F).

4. *Freezing Fog.* Clouds of supercooled water droplets that form a deposit of ice on objects in cold weather conditions.

5. *Snow.* Precipitation in the form of small ice crystals or flakes which may accumulate on or adhere to aircraft surfaces.

6. *Freezing Rain.* Water condensed from atmospheric vapor falling to earth in supercooled drops, forming ice on objects.

7. *Rain or High Humidity (on Cold-Soaked Wing).* Water forming ice or frost on the wing surface when the temperature of the aircraft wing surface is at or below 0 °C (32 °F). Certain aircraft, such as McDonnell Douglas Models DC–9–80 series and MD–88 series airplanes, are currently susceptible to the formation of frost or ice on their wings' upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the aircraft are exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing.

8. *Underwing Frost.* Takeoff with frost under the wing in the area of the fuel tanks (caused by cold-soaked fuel) within limits established by the aircraft manufacturer, accepted by FAA aircraft certification offices and stated in aircraft maintenance and flight manuals, may be permitted.

(b) *Critical Aircraft Surfaces.* Certificate holders should identify for each type of aircraft used in their operations, the critical surfaces which should be checked on flight-crewmember-conducted, preflight, external-aircraft icing checks and pretakeoff checks or pretakeoff contamination checks. Information from the aircraft manufacturer (or from this AC, if the subject information is not available from the aircraft manufacturer) should be used to determine the critical surfaces for each aircraft type.

(c) *Representative Aircraft Surfaces.* Certificate holders should identify for each type of aircraft used in their operations, the representative aircraft surfaces which should be checked on flight-crewmember-conducted pretakeoff checks. Information from the aircraft manufacturer, or information developed from carrier operating experience, should be used to determine representative surfaces. In the absence of such information, information from this AC can be used to determine representative aircraft surfaces.

(d) *Effects of Frost, Ice, Snow, and Slush on Aircraft Performance, Stability, and Control.* The certificate holder should obtain this information from the manufacturer of each type of aircraft it uses in its operations and should ensure that its flight crewmembers, aircraft dispatchers, and management personnel understand these effects. Accident data and NASA studies have confirmed some aircraft manufacturer data that the effects of wing contamination may be significantly more pronounced for hard-leading-edge (hard-wing) airplanes than for slatted-leading-edge (slatted-wing) airplanes. According to McDonnell Douglas, the presence of even minute amounts of ice or other contaminates (equivalent to medium grit sandpaper) on the leading edges or upper surfaces of the wings of a DC–9–10 series airplane results in significant loss of wing lift, which causes the airplane to stall at lower-than-normal angles of attack during takeoff. The discussion of these effects should include, but is not limited to, the following subjects:

1. Increased drag/weight.
2. Tendency for rapid pitch-up during rotation or wing roll off.
3. Loss of lift.
4. Stall occurs at lower-than-normal angle of attack.
5. Buffet or stall occurs before activation of stall warning.
6. Decreased effectiveness of flight controls.

(4) *Types, purpose, characteristics, and capabilities of deicing and anti-icing fluids.* Deicing and anti-icing fluids with differing characteristics and capabilities exist; they may undergo improvements, and new types of fluids may be developed. Certificate holders should ensure that their flight crewmembers, aircraft dispatchers, and management personnel generally understand the purpose and capabilities of the fluids used in the deicing/anti-icing program; and that their flight crewmembers are generally knowledgeable of the characteristics of each type of fluid. Certificate holders should refer to the following SAE publications for additional information on specific deicing and anti-icing methods and procedures and on fluid characteristics and capabilities: AMS 1424, "Deicing/Anti-Icing Fluid, Aircraft, Newtonian—SAE Type I"; AMS 1428, "Fluid, Aircraft Deicing/Anti-Icing, Non-Newtonian, Pseudo-Plastic, SAE Type II"; and ARP 4737, "Aircraft Deicing/Anti-Icing Methods with Fluids, for Large Transport Aircraft"; and the following ISO documents: ISO 11075, "Aerospace—Aircraft de-icing/Anti-icing newtonian fluids ISO type I"; ISO 11076,"Aerospace—Aircraft de-icing/anti-icing methods with fluids"; ISO 11077, "Aerospace—de-icing/anti-icing self propelled vehicles—Functional requirements"; ISO 11078, "Aerospace—Aircraft de-icing/anti-icing non-newtonian fluids ISO type II."
Certificate holders should ensure that at least the following subjects are discussed:

(a) Deicing fluids:

1. Heated water.
2. Newtonian fluid (SAE/ISO Type I) (see Caution).
3. Mixtures of water and SAE/ISO Type I fluid.
4. Mixtures of water and SAE/ISO Type II fluid.

Note: Deicing fluid should be applied heated to assure maximum efficiency.

(b) Anti-icing fluids:

1. Newtonian fluid (SAE/ISO Type I) (see Caution).
2. Mixtures of water and SAE/ISO Type I fluid.
3. Non-Newtonian fluid (SAE/ISO Type II).
4. Mixtures of water and SAE/ISO Type II fluid.

Note: SAE/ISO Type II anti-icing fluid is normally applied cold on clean aircraft surfaces, but may be applied heated. Cold SAE/ISO Type II fluid normally provides longer anti-icing protection. SAE/ISO Type I anti-icing fluid should be applied heated.

Caution: SAE/ISO Type I fluids supplied as concentrates for dilution with water prior to use should not be used undiluted. This is due to adverse aerodynamic effects of propylene glycol based fluids and the freeze point characteristics of ethylene glycol-based fluid.

(c) *Fluid Characteristics.*

1.*Type I Fluids.*

(aa) Unthickened.

(bb) Limited holdover time.

(cc) Applied to form thin liquid film on wing.

2. *Type II Fluids.*
(aa) Thickened.
(bb) Longer holdover times in comparison to those of Type I fluids.
(cc) Application results in a thick liquid film (a gel-like consistency) on wing.
(dd) Wind flow over the wing (shear) causes the fluid to progressively flow off the wing during takeoff.
3. *Deicing/Anti-Icing Fluids Handling/Performance Implications.* The type fluid used and how completely the fluid flows off the wing during takeoff determines the effects of the following handling/performance factors. The aircraft manufacturer may also provide performance information regarding the use of the different deicing/anti-icing fluids.
(aa) Increased rotation speeds/ increased field length.
(bb) Increased control (elevator) pressures on takeoff.
(cc) Increased stall speeds/reduced stall margins.
(dd) Lift loss at climbout/increased pitch attitude.
(ee) Increased drag during acceleration/increased field length.
(ff) Increased drag during climb.
(gg) For Type II fluids, fluid build-up on the runway takeoff end may significantly reduce runway coefficient of friction.

c. Maintenance and Ground Personnel Training

At least the following subjects for ground personnel (for example, maintenance mechanic, ramp agent, contractors) should be discussed.
(1) *Effects of frost, ice, snow, and slush on aircraft surfaces.* This discussion is intended to provide ground personnel with an understanding of the critical effect the presence of ice and snow on flight surfaces can have, and should include, but is not limited to, the following:
(a) Loss of Lift.
(b) Increased drag/weight.
(c) Decreased control.
(d) Aircraft-specific areas.
1. Engine foreign object damage (FOD) potential.
2. Pam-air intakes.
3. Instrument pickup points.
4. Leading edge device (LED) aircraft (slots, slats and flaps) and non-LED aircraft.
(2) *Fluid characteristics and capabilities.* Deicing/anti-icing fluids with differing properties exist and may continue to be developed. To the extent that they are being utilized by an air carrier, they should be addressed in training programs:
(a) General fluid descriptions.
(b) Composition and appearance.
(c) Health precautions/environmental considerations.
(d) Differences between Type I and Type II deicing/anti-icing fluids.
(e) Purpose for each type.
(f) Capabilities.
(g) Shearing characteristics in storage and handling.
(h) Fluid application methods.
(3) *Holdover times.* A discussion of holdover times should include the following:
(a) Source of holdover time data.
(b) Precipitation category.
1. Precipitation intensity.
2. Duration of precipitation.
3. Relationship of precipitation change to holdover time.
(c) Relationship of holdover time to particular fluid concentrations for Type I and Type II fluids.
(d) Identification of when holdover time begins and ends.
(e) Communication procedures between ground personnel and flightcrew to determine the start of holdover times.
(4) *Equipment.* An understanding of the capabilities of the deicing equipment and the qualifications for operation are necessary. The equipment portion of the training program should include the following:
(a) Description of various equipment types.
(b) Operation of the equipment.
(5) *Preflight check.* (a) In the pre-departure sequence, ground deicing may be initiated at one or more of the following times:
1. On overnight aircraft, if appropriate.
2. At the gate, following checking by the cockpit crew and a request for deicing.
3. After a normal preflight by ground personnel or the flightcrew and after the crew is on board the aircraft.
(b) In each case, the preflight and the decision on whether or not to deice/ anti-ice should be based on appropriate consideration of the circumstances and should include the following:
1. Weather conducive to ice formation or snow accumulation.
2. Aircraft critical areas (general and aircraft-specific).

Note: For aircraft-specific items, refer to the aircraft operating manual.

(6) *Deicing/anti-icing procedures.* Ground personnel should be knowledgeable of deicing and anti-icing application procedures:
(a) One-step deice and two-step deice/anti-ice process.
(b) Communications from the ground crew to the cockpit crew should provide the following information:
1. Fluid type.
2. Fluid/water mix ratio.
3. Start time of final deice/anti-ice application.
4. Post-application check accomplished.
(c) Safety requirements and emergency procedures.
(d) Deicing/anti-icing prior to aircrew arrival.
(e) Normal aircrew deicing procedures.
(f) Remote deicing procedures.
1. Aircraft-specific considerations.
2. Location-specific procedures.
3. Safety precautions.
(g) Post-application check. An integral part of a ground personnel training program is the check following deicing to determine that all critical surfaces have had snow, ice or frost removed.
(7) *Pretakeoff contamination check.* This check is accomplished when the holdover time has been exceeded and within 5 minutes of takeoff. Each carrier will define the content of the pretakeoff contamination check. The check could be conducted from inside the aircraft by the flightcrew or from outside the aircraft by qualified ground personnel. Training for ground personnel should include the following:
(a) When the check is required.
(b) The necessary resources, personnel, devices and standards to properly accomplish the check.
(c) Where the check will take place.
(8) *Contractor deicing.* Many certificate holders will utilize parties other than themselves to perform deicing. The second party with whom they reach an agreement to provide deicing services could be another carrier, a fixed-base operator or some other service provider at an airport. Training for deicing services from other than the carrier should include the following:
(a) An approved contract training program and application of standards that meet the carrier's own training and application criteria.
(b) Train-the-trainer program (the carrier trains the contract deicing personnel or designated trainer).
(c) Alternate airport procedures where contract service agreements are not present.
(d) Guidance that the cockpit crew will hold contractor to their own airline standards.
(9) *Ground Personnel Qualification/ Quality Assurance.* Air carrier ground deicing programs must have a set standard to judge a person's qualification as a ground deicing person and a quality assurance program to

monitor and maintain a high level of competence.

(a) The program should be tailored to the individual airline with each air carrier maintaining its own quality assurance responsibility.

(b) The program should have a tracking system that ensures that all required training has been satisfactorily completed and recorded for all ground personnel in the deicing process. Also, a name list of qualified deicing personnel should be made available to all managers responsible for deicing at their location.

(c) An ongoing review plan is needed to evaluate the effectiveness of the training received by the deicing personnel, and there must be an adequate number of people trained each year to foster the success of the program. Recurrent training will be a step in that process.

11. Outside-the-Aircraft Check in Lieu of an Approved Ground Deicing/Anti-Icing Program

A certificate holder may continue to operate without an approved ground deicing/anti-icing program if it has procedures and properly trained personnel for the conduct of an outside-the-aircraft check in accordance with FAR sections 121.629(d), 121.135(b)(2), 121.415(g), 121.165, and 121.123. The authorization for the conduct of this check in lieu of an approved program will be contained in the certificate holder's operations specifications (OpSpecs). As stated in FAR 121.629(d), this check is accomplished when conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft. Under FAR 121.629(d) the check is required to be completed within 5 minutes prior to beginning takeoff and is accomplished from outside the aircraft. Certificate holders' manuals and training programs should detail procedures for the conduct of this check.

Appendix A

Note: This appendix contains holdover timetable data extracted from "SAE Aerospace Recommended Practice"; ARP 4737, "Aircraft Deicing/Anti-Icing Methods with Fluids, for Large Transport Aircraft"; and ISO 11076, "Aerospace—Aircraft de-icing/anti-icing methods with fluids." These excerpts are included to provide the holdover times that are acceptable for use in developing a carrier's holdover timetables. The certificate holder should consult the referenced SAE and ISO documents for complete information for development of timetables and procedures for their use.

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Table 1. Guideline for Holdover Times Anticipated by SAE Type II and ISO Type II Fluid Mixtures as a Function of Weather Conditions and OAT.

CAUTION! THIS TABLE IS FOR USE IN DEPARTURE PLANNING ONLY. IT SHOULD BE USED IN CONJUNCTION WITH PRE-TAKEOFF CHECK PROCEDURES.

OAT		Type II Fluid Concentration Neat-Fluid /Water [% by Volume]	Approximate Holdover Times Anticipated Under Various Weather Conditions (hours: minutes)				
°C	°F		FROST	FREEZING FOG	SNOW	FREEZING RAIN	RAIN ON COLD SOAKED WING
0 and above	32 and above	100/0	12:00	1:15-3:00	0:25-1:00	0:08-0:20	0:24-1:00
		75/25	6:00	0:50-2:00	0:20-0:45	0:04-0:10	0:18-0:45
		50/50	4:00	0:35-1:30	0:15-0:30	0:02-0:05	0:12-0:30
below 0 to -7	below 32 to 19	100/0	8:00	0:35-1:30	0:20-0:45	0:08-0:20	CAUTION! clear ice may require touch for confirmation
		75/25	5:00	0:25-1:00	0:15-0:30	0:04-0:10	
		50/50	3:00	0:20-0:45	0:05-0:15	0:01-0:03	
below -7 to -14	below 19 to 7	100/0	8:00	0:35-1:30	0:20-0:45	List of Symbols °C = Celsius °F = Fahrenheit Vol = Volume OAT = Outside Air Temp.	
		75/25	5:00	0:25-1:00	0:15-0:30		
below -14 to -25	below 7 to -13	100/0	8:00	0:35-1:30	0:20-0:45		
below -25	below -13	100/0 if 7°C(13°F) Buffer is maintained	A buffer of at least 7°C(13°F) must be maintained for Type II used for anti-icing at OAT below -25°C(-13°F). Consider use of Type I fluids where SAE or ISO Type II cannot be used.				

THIS TABLE DOES NOT APPLY TO OTHER THAN SAE OR ISO TYPE II FPD FLUIDS.

THE RESPONSIBILITY FOR THE APPLICATION OF THESE DATA REMAINS WITH THE USER.

Table 2. Guideline for Holdover Times Anticipated by SAE Type I, and ISO Type I Fluid Mixtures as a Function of Weather Conditions and OAT.

CAUTION! . THIS TABLE IS FOR USE IN DEPARTURE PLANNING ONLY. IT SHOULD BE USED IN CONJUNCTION WITH PRE-TAKEOFF CHECK PROCEDURES.

Freezing Point of Type I fluid mixture used must be at least 10°C(18°F) below OAT.

Outside Air Temperature		Approximate Holdover Times Anticipated Under Various Weather Conditions (hours:minutes)				
°C	°F	FROST	FREEZING FOG	SNOW	FREEZING RAIN	RAIN ON COLD SOAKED WING
0 & above	32 & above	0:18-0:45	0:12-0:30	0:06-0:15	0:02-0:05	0:06-0:15
below 0 to -7	below 32 to 19	0:18-0:45	0:06-0:15	0:06-0:15	0:01-0:03	CAUTION! Clear ice may require touch for confirmation
below -7	below 19	0:12-0:30	0:06-0:15	0:06-0:15		

THIS TABLE DOES NOT APPLY TO OTHER THAN SAE OR ISO TYPE I FPD FLUIDS.

THE RESPONSIBILITY FOR THE APPLICATION OF THESE DATA REMAINS WITH THE USER.

[FR Doc. 92-23856 Filed 9-25-92; 11:13 am]
BILLING CODE 4910-13-C

federal register

Tuesday
September 29, 1992

Part VII

Department of Energy

Monitored Retrievable Storage (MRS) Facility, License Application Annotated Outline; Transmittal to NRC; Notice

DEPARTMENT OF ENERGY

Transmittal of Monitored Retrievable Storage (MRS) Facility Annotated Outline for the Preparation of a License Application, Revision 1, to U.S. Nuclear Regulatory Commission (NRC)

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) transmitted the Monitored Retrievable Storage (MRS) Facility Annotated Outline for the Preparation of a License Application, Revision 1, dated August 31, 1992, to the NRC for information and guidance on September 10, 1992. The annotated outline process is the basis for developing a license application before the NRC, if any, for the MRS program. The annotated outline process is iterative, with revisions to be developed in consultation with the NRC.

FOR FURTHER INFORMATION CONTACT: For further information and to obtain a copy of the annotated outline, contact Priscilla Bunton, RW–331, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8365.

Issued in Washington, DC on September 21, 1992.

John W. Bartlett,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 92–23371 Filed 9–24–92; 8:45 am]

BILLING CODE 6450–01–M

Tuesday
September 29, 1992

Federal Register

Part VIII

The President

Proclamation 6478—Child Health Day, 1992

Proclamation 6479—Leif Erikson Day, 1992

Proclamation 6480—Fire Prevention Week, 1992

Proclamation 6481—White Cane Safety Day, 1992

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S E
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Federal
Vol. 57,
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Title 3-

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Federal Register
Vol. 57, No. 189
Tuesday, September 29, 1992

Presidential Documents

Title 3—

The President

Proclamation 6478 of September 26, 1992

Child Health Day, 1992

By the President of the United States of America

A Proclamation

On Child Health Day, we pause as a Nation to assess our children's state of health and to reaffirm our commitment to providing every young American with the best possible start in life, beginning with high quality prenatal care throughout pregnancy for expectant mothers and extending through each child's formative years.

When we examine history, one area of child health that has been marked by remarkable improvement is that of communicable childhood diseases. Over the years scientists and physicians have developed the means to protect children from diseases that, in the past, killed or disabled thousands of boys and girls. Through the practice of childhood immunization, the United States helped to lead the way in eliminating smallpox worldwide by 1980. Heartened by such progress, we aimed to rid the United States of another contagious and potentially devastating disease, measles, by 1990. Unfortunately, however, we remain short of that goal.

Despite the existence of effective childhood vaccines for measles and eight other contagious diseases, more than 50,000 cases of measles were reported in the United States from 1989 to 1991. Out of these cases, 160 persons died.

Such a tragic toll is all the more intolerable because it is preventable. Through a series of vaccinations beginning as early as birth, children can be protected against not only measles but also mumps, rubella, polio, diphtheria, pertussis (whooping cough), tetanus, hepatitis B, and *Haemophilus influenzae* Type B. While as many as 5 in 10 infants and toddlers are receiving all of their recommended childhood immunizations on time, thousands of other children remain at risk of contracting life-threatening or disabling illnesses.

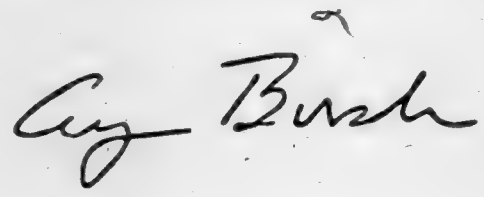
To encourage parents to fulfill their responsibility to have their children immunized and to expand access to vaccinations, the Department of Health and Human Services is moving forward with a concerted immunization initiative. Building on several local pilot programs that were developed in 1991, this initiative will increase the number of vaccinated preschoolers through education programs aimed at parents, through the integration of services, and through the enlistment of teachers, local health clinics, and other concerned individuals and organizations.

All of us who care about children—especially parents and grandparents but also educators, public officials, and health care providers—must renew our commitment to ensuring that every American preschooler is protected through age-appropriate immunizations. Doing so is vital to the well-being of our children and to the future of our Nation.

The Congress, by joint resolution approved May 18, 1928, as amended (36 U.S.C. 143), has called for the designation of the first Monday in October as "Child Health Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Monday, October 5, 1992, as Child Health Day. I urge all Americans to join me in renewing our commitment to protecting the lives of this Nation's youngest citizens.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



[FR Doc. 92-23830
Filed 9-28-92; 11:38 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6479 of September 26, 1992

Leif Erikson Day, 1992

By the President of the United States of America

A Proclamation

When we Americans commemorate the voyages of Leif Erikson, the daring Norse navigator who explored the North American coast some 1,000 years ago, we celebrate the enduring spirit of discovery—a spirit that is leading us to ever new frontiers in learning and commerce. As we remember "Leif the Lucky," the brave son of Iceland and grandson of Norway, we also celebrate the close, cordial ties that exist between the United States and the Nordic countries. Those ties have been strengthened and enriched over the years by the outstanding contributions of Nordic-Americans, who take special interest in this annual observance of Leif Erikson Day.

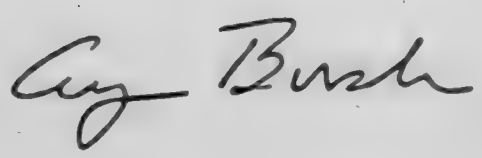
Last year descendants of early Norse explorers reenacted the voyages of Leif Erikson by sailing replicas of Viking ships from Norway to Iceland, Greenland, and North America. The success of this tribute to "1,000 Years of Discovery" rekindled feelings of friendship on both sides of the Atlantic and reaffirmed our admiration for all those who continue to chart new realms of knowledge and human endeavor—from pioneers in science and technology to the courageous peoples who, for the first time in decades or perhaps for the first time ever, are beginning to reap the rewards of democracy and free enterprise.

At a time when relations between Europe and America are being renewed and strengthened in light of the new, post-Cold War era, the Nordic countries have an important role to play in fostering continued transatlantic cooperation, including an open trading system and mutual support of democratic reform. Likewise, Americans who trace their roots to the Nordic countries—Denmark, Finland, Iceland, Norway, and Sweden—provide a living link between continents, much as their ancestors did nearly a millennium ago.

In recognition of the legendary achievements of Leif Erikson and in honor of our Nordic-American heritage, the Congress, by joint resolution approved on September 2, 1964 (78 Stat. 849, 36 U.S.C. 169c), designated October 9 of each year as "Leif Erikson Day" and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 9, 1992, as Leif Erikson Day. I invite all Americans to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



[FR Doc. 92-23840
Filed 9-28-92; 11:39 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 6480 of September 26, 1992

Fire Prevention Week, 1992

By the President of the United States of America

A Proclamation

Despite all that we have learned about fire prevention and safety, residential fires remain our Nation's number one fire problem. Fires in the home account for four out of every five fire-related deaths, three out of every four fire-related injuries, and almost half of all fire-related property losses.

The vast majority of fire-related deaths occur in homes that do not have a working smoke detector. Because the early warning provided by such a device can dramatically increase one's chances of surviving a fire, it is imperative that homeowners not only install but also maintain smoke detectors in recommended areas of the home. During the past quarter-century, home fire protection has improved dramatically with the installation of at least one smoke detector in most homes. Yet, more Americans must avail themselves of this lifesaving technology, and those in homes with smoke detectors must be sure to test and service them regularly.

To convey that message nationwide, the United States Fire Administration and the National Fire Protection Association have dedicated this year's Fire Prevention Week activities to the theme, "Test Your Detector—It's Sound Advice!" I urge Americans to pay heed to fire safety throughout the year and especially during this first week of October. Homeowners should walk through their homes and be certain that there are enough smoke detectors—one on each level, including the basement, and one outside each sleeping area. Smoke detectors should be tested often to ensure that they are working properly, and batteries should be replaced at least once a year.

As we observe Fire Prevention Week, let us also recognize the members of the public and private organizations that are working toward our shared goal of fire safety, including the American Burn Association, the Congressional Fire Services Institute, the Fire Marshals Association of North America, the International Association of Arson Investigators, the International Association of Black Professional Fire Fighters, the International Association of Fire Chiefs, the International Association of Fire Fighters, the International Association of Fire Service Instructors, the National Association of State Fire Marshals, and the National Volunteer Fire Council.

Most important, let us offer special thanks to our Nation's volunteer and career fire fighters. These brave men and women put their lives on the line every day in order to protect the lives and property of their fellow citizens. Last year alone, 105 fire fighters made the ultimate sacrifice in the line of duty. Our Nation will honor them on Sunday, October 11, 1992, during the National Fallen Fire Fighters Memorial Service at the National Fire Academy in Emmitsburg, Maryland. All Americans are invited to join in praying for these heroic individuals and their bereaved families and friends.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of October 4 through October 10, 1992, as Fire Prevention Week. I urge all Americans to participate in fire prevention activities in their homes, schools, and places of work—this week and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-23842
Filed 9-28-92, 11:53 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6481 of September 27, 1992

White Cane Safety Day, 1992

By the President of the United States of America

A Proclamation

The white cane is a simple yet very useful device that enables persons with visual impairments to enjoy greater mobility and independence in their daily lives. This tool also has great symbolic value, for it is a tangible reminder of the courage, determination, and achievements of persons with disabilities.

As we recognize the accomplishments of Americans who use the white cane, it is fitting that we also recognize the importance of promoting their safety. For Americans who are not blind or visually impaired, this means taking responsibility as careful, courteous drivers and pedestrians.

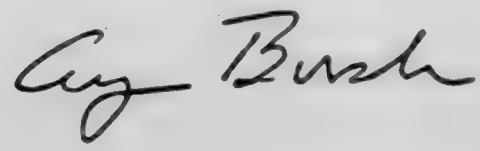
Americans who use the white cane deserve not only the respect and courtesy of others but also the right to equal opportunity. The Americans with Disabilities Act (ADA) that I signed 2 years ago affirmed the rights of persons with disabilities and strengthened our Nation's commitment to eliminating the physical and attitudinal barriers that, in the past, prevented these individuals from participating fully in the mainstream of American life. Today the United States is providing a model for the world as we work toward full and harmonious implementation of the ADA.

In order to ensure that every American is prepared for the opportunities that life offers, we are also working through the AMERICA 2000 program to promote lifelong learning and achievement. The many Americans who have obtained training in use of the white cane have demonstrated their appreciation of the value of learning far beyond the traditional classroom, and their efforts should challenge and inspire others.

Recognizing the importance of the white cane to Americans with visual impairments, the Congress, in 1964, by Public Law 88–628, designated October 15 of each year as "White Cane Safety Day" and requested the President to issue annually a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 15, 1992, as White Cane Safety Day. I encourage all Americans to observe this day with appropriate programs and activities in recognition of the interests and achievements of persons who use the white cane.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



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1001.....44344
1002.....44344
1004.....44344
1005.....44344
1007.....44344
1011.....44344
1030.....44344
1033.....42899, 44344
1036.....42899, 44344
1040.....44344
1044.....44344
1046.....44344
1049.....42899, 44344
1065.....44344
1068.....44344
1079.....44344
1093.....44344
1094.....44344
1096.....44344
1097.....44344
1098.....44344
1099.....44344
1106.....44344
1108.....44344
1124.....44344
1126.....44344
1131.....44344
1135.....44344
1138.....44344
1209.....43943
1413.....42899, 44512, 44709
1744.....39628
1902.....39631
1930.....39631
1944.....39635

8 CFR

204.....41053
209.....42883
214.....40830, 42884
251.....40830
258.....40830
274a.....42884

9 CFR

75.....43605
94.....43606, 43885, 44330
381.....43588

Proposed Rules:

75.....40139
92.....41549
124.....40493
201.....42515
203.....42515
307.....40623
310.....40623
318.....42885
319.....42885

10 CFR

11.....41375
25.....41376
35.....41376
50.....41378, 43886
600.....40083
605.....40582
1706.....44651

Proposed Rules:

26.....42901
50.....44513
70.....42901
73.....42901
1023.....40345

11 CFR

200.....39743

Proposed Rules:

104.....44137

12 CFR

3.....40302, 44078
6.....44866
19.....44866
204.....40597
208.....43889, 44866
217.....43336
225.....41381, 41641, 43889
230.....43337
250.....40597, 41643
262.....41641
263.....44866
265.....40597
308.....44866
325.....44866
545.....40085
562.....40085
563.....40085
563c.....40085
565.....44866
571.....40085
603.....42888
611.....43393
612.....43394
614.....43290, 44489
619.....43290
701.....42486
935.....42888
940.....42888
1616.....43607

Proposed Rules:

3.....42623, 42901
208.....39641, 42623
225.....39641, 42623
325.....42623
363.....42516
509.....40350
516.....40350
517.....42906
528.....40350
541.....40350
543.....40350
545.....40350
552.....40350
556.....40350
558.....40350
559.....40350
561.....40350
563.....40140, 40350, 40524
563b.....40350
563e.....40350
567.....40143, 40147, 40350, 40524
571.....40350, 40524
579.....40350
580.....40350
791.....42532
1625.....39743

13 CFR

121.....41068

Proposed Rules:

108.....43155, 43157
120.....44346

14 CFR

13.....40094
21.....41069, 41072, 41360, 42846, 43776
23.....41069, 41072
36.....41360, 42846
39.....40307–40313, 40601, 40835–40838, 42692, 42693, 43291, 43890, 44489
43.....41360
71.....40095, 40096, 42488, 44657–44659
91.....41360, 42662
95.....44489
97.....41074, 41075, 44085, 44087
121.....42662, 44924
125.....42662
135.....42662, 43776
147.....41360
200.....40097
203.....40097
205.....40097
206.....40097
231.....40097
232.....40097
255.....43780
263.....40097
288.....40097
294.....40097
296.....40097
297.....40097
298.....40097
302.....40097
372.....40097
399.....40097
1214.....41077, 41854

Proposed Rules:

Ch. I.....41894
39.....40359, 40623, 40624, 41114, 41115, 41439, 43944, 44138–44141, 44710
61.....41974
71.....40148–40156, 41441–41445, 42810, 44464, 44712, 44713
73.....44464
93.....42810
101.....41628
107.....43294
108.....43294
207.....42864
208.....42864
212.....42864
294.....42864
298.....42864
380.....42864
389.....42864

15 CFR

29b.....43892
60.....40840
770.....41854
771.....41854
773.....41854
776.....41854
779.....41854
786.....41854
799.....41854
Ch. IX.....43310
944.....43310

Proposed Rules:

799.....41894
806.....43158
Ch. IX.....44347
946.....40877

16 CFR

305.....41388, 43611, 44331
1115.....39597

Proposed Rules:

229.....41706
230.....41707
232.....41706

17 CFR

4.....41173
16.....40601
19.....41389
30.....40603
150.....44490

Proposed Rules:

Ch. II.....43631
33.....40626

19 CFR

10.....40314, 40604, 43059
24.....42697
103.....44089
122.....43395
141.....40605
142.....44090
145.....40255
171.....40605
172.....40605
178.....44090

Proposed Rules:

4.....40627
10.....44714
101.....42712
141.....40361, 44791
142.....40361, 44142
143.....40361
146.....41896
151.....40361, 44143
152.....44143
191.....41446, 44145

20 CFR

404.....44095
655.....40966, 43118, 43495

Proposed Rules:

416.....44146, 44348, 44519
626.....41447
627.....41447
628.....41447
629.....41447
630.....41447
631.....41447
637.....41447

21 CFR

5.....40315–40318, 43397
177.....43398
178.....43631
310.....41857
358.....44493, 44494
520.....42490, 42623
522.....41861, 42623
526.....42623
529.....42489
556.....41861
558.....44791
573.....40318
1308.....43399
1310.....43614
1313.....43614

Proposed Rules:

131.....40255, 43059
166.....43634
310.....40944
864.....43161
872.....43165
884.....42908

22 CFR

121.....41077

24 CFR

25.....40111

81.....40038
135.....40111
203.....44098
234.....44098
570.....40038
905.....40113

25 CFR

Proposed Rules:
211.....40298
212.....40298

26 CFR

1.....40118, 40319, 40841, 41079, 41644, 42490, 43893, 43897, 44332
5c.....43893
5f.....43893
5h.....43893
6.....43893
7.....43893
7a.....43893
10.....43893
13.....43893
14.....43893
14a.....43893
18.....43893
19.....43893
31.....44099
301.....43893
602.....40118, 40319, 41079, 41644, 43893, 43897

Proposed Rules:
1.....39743, 40378, 41707, 41897, 42712, 42720, 43776, 43945
49.....41549
301.....43777

27 CFR

5.....40323
20.....40847, 42623
53.....40324
70.....40327
194.....39597

Proposed Rules:
4.....40380, 40884
5.....40884
25.....44525
250.....40885
251.....40886
252.....40887
290.....40889

28 CFR

2.....41391–41394
11.....44106
50.....39598
80.....39598

Proposed Rules:
2.....41450

29 CFR

506.....40966, 43495
1910.....42102
1915.....42102
1926.....42102
2200.....41676
2676.....42490

Proposed Rules:
103.....43635
403.....41634
2610.....42910

30 CFR

56.....44256
57.....44256
206.....41862
207.....41862
208.....41862
210.....41862
216.....41862
218.....41862
219.....41862
220.....41862
228.....41862
914.....41869
920.....44112
925.....44114, 44660
935.....41690, 44118
944.....41692

Proposed Rules:
75.....40395, 42808
400.....43411
609.....43411
651.....43412
917.....41897, 43946–43952
920.....41712
935.....43954
950.....41714, 41715

31 CFR

10.....41093
204.....40239
205.....44272
315.....39601
353.....39601
358.....40607
520.....44682
550.....41696
575.....39603
580.....39603

Proposed Rules:
270.....41117

32 CFR

60.....40849
220.....41096
323.....40608
619.....44238
701.....40609
706.....41698
806.....41396
861.....44682
1906.....39604

Proposed Rules:
202.....43645
317.....40397
505.....44716

33 CFR

3.....39613, 42699
64.....43401
100.....40125, 40609, 40610, 41419, 41420, 44687, 44688
117.....39614, 41873
135.....41104
136.....41104
137.....41104
157.....40494
165.....40125, 40330, 40612, 41421, 43615, 44121, 44122
334.....40612

Proposed Rules:
89.....43169
117.....43647
155.....44912
162.....41899

34 CFR

Proposed Rules:
231.....44046
238.....44046
300.....44794
301.....44794
305.....43572
612.....44350
785.....44408
786.....44408
787.....44408

36 CFR

51.....42808

Proposed Rules:
51.....40496
242.....43074
1191.....41006

37 CFR

1.....40493
2.....40493
202.....39615

Proposed Rules:
1.....41899, 42721, 43412
5.....43412
10.....43412

38 CFR

1.....44123
3.....40944, 43904
17.....41700
21.....40613, 43616
36.....40615, 43616

Proposed Rules:
3.....40424
21.....41451

39 CFR

111.....43403

Proposed Rules:
111.....39646, 40890, 41716, 43956

40 CFR

52.....40126, 40331–40336, 42889–42895, 43905, 44124, 44689
55.....40792
58.....44495
60.....44496
62.....43405, 44691
136.....41830
148.....41173
156.....42472
170.....42472
180.....40128, 42699, 42700
185.....42700
186.....42700
260.....41173, 41566
261.....41173, 41566
262.....41173
264.....41173, 42832
265.....41173, 42832
266.....41566
268.....41173
270.....41173
271.....41173, 41566, 41699
279.....41566
281.....41874
414.....41836
721.....44050

Proposed Rules:
Ch. I.....42533, 43956, 44147
2.....44718
52.....40157, 40159, 41716, 42536, 42911, 42913, 43420–43425, 43648–43657, 43957, 43959, 44351, 44528–44542, 44718
60.....43171
61.....43173
62.....40628
63.....44147
81.....43846
122.....41344
153.....44290
159.....44290
180.....40161–40163, 42727–42730
228.....43427
250.....44543
260.....43171
264.....43171
265.....43171
268.....44545
270.....43171
271.....43171, 44545
300.....39659, 41452, 44545
372.....10820
721.....10820

41 CFR

101.....44691

42 CFR

60.....41875
405.....42491
410.....39743
412.....39746
413.....39746, 42491, 43906
414.....42491
415.....42491
431.....43922
442.....43922
447.....43906, 43922
483.....43922
488.....43922
489.....43922
498.....43922

Proposed Rules:
100.....41809
413.....43659

43 CFR

3150.....44333
3160.....44333

Public Land Orders:
6942.....42808
6943.....39616
2460 (Revoked in part by PLO 6945).....43405
6945.....43405
6947.....43618

Proposed Rules:
4.....44353
3160.....44547
3710.....41846
3800.....42732

44 CFR

64.....39617, 41104, 41875, 43618
65.....41877, 41878
67.....39619, 41880

Proposed Rules:
67.....41905

45 CFR

400.....42896
641.....40337
1301.....41881

1302.....41886

46 CFR

30.....41812
32.....41812
35.....41812
500.....44697
514.....44697
542.....44700
550.....44697
552.....44697
553.....44697
556.....44697
67.....44126
70.....41812
78.....41812
90.....41812
97.....41812
107.....41812
108.....41812
109.....41812
167.....41812
169.....41812
170.....41812
171.....41812
184.....41812
185.....41812
188.....41812
196.....41812
272.....39621
298.....39621, 44129
502.....44504
510.....39622, 40129
514.....39622, 44504
540.....41887
550.....44504
560.....40616
572.....40616
580.....39622
582.....39622

Proposed Rules:

67.....43432

47 CFR

1.....43406
2.....43290
63.....41106, 41109
73.....39624, 39625, 40342, 40849, 41698, 41700, 42510, 42511, 42701, 43290, 44337–44339, 44511
74.....41110
80.....43406, 44700
90.....40850, 42706, 43408, 44339
95.....40343
97.....40343

Proposed Rules:

Ch. I.....39661
2.....40630, 42916, 43434
13.....41718
15.....40630
21.....42916
22.....40630, 42916
25.....40425, 40426, 40891
61.....40426
63.....41118
69.....40426
73.....39663, 41719, 41911, 41912, 42536–42538, 42732, 44354, 44547–44549
94.....42916
99.....40630

48 CFR

Ch. I.....44258
4.....44259
5.....44260
13.....44260
14.....44261
15.....44261, 44262
19.....44260
22.....44262
25.....44263
30.....43409, 43495
31.....40344, 44264
32.....44267
42.....44264
52.....43409, 43495, 44259, 44261, 44262, 44267, 44268
202.....42626
204.....42626
208.....42626
214.....42626
215.....41422, 42626
216.....42626
219.....42626
223.....42626
225.....42626
226.....42626
227.....42626
228.....42626, 42707
231.....42626
232.....42626, 42707
236.....42626
237.....42626
239.....42626
242.....42626
245.....42626
252.....41422, 42626, 42707
253.....42626
270.....41422
525.....42708
552.....42708
817.....44129
923.....41974
1801.....40851
1803.....40851
1804.....40851
1805.....40851
1806.....40851
1807.....40851
1808.....40851
1809.....40851
1813.....40851
1815.....40851
1816.....40851
1819.....40851
1822.....40851
1823.....40851
1825.....40851
1827.....40851
1831.....40851
1832.....40851
1833.....40851
1836.....40851
1837.....40851
1842.....40851
1845.....40851
1849.....40851
1851.....40851
1852.....40851
1853.....40851
1870.....40851
9903.....43620

Proposed Rules:

45.....40891
9903.....43776
9904.....43776

49 CFR

1.....40620
110.....43062
350.....40946
355.....40946
396.....40946
397.....44129
571.....40131, 41423, 41428
588.....41428
591.....44703
1003.....41111
1012.....44135
1023.....43151
1039.....40620
1109.....39743
1313.....40620
1321.....40857, 43059, 43925
1313.....43291

Proposed Rules:

174.....42466
177.....42466
192.....41119
218.....41454
234.....44355
392.....44158
395.....44158
571.....40165, 41912, 44721
1002.....39743, 41459
1018.....41459
1039.....39663, 41122
1105.....42733
1145.....41122, 44614
1150.....42733
1312.....41459
1313.....41459
1314.....41459

50 CFR

17.....44340, 44703
20.....40032, 43856, 44472, 44616
204.....40858
216.....41701
217.....40859, 40861, 41703
227.....40859, 40861, 41703
285.....42710, 43409, 44340
299.....40858
641.....41892
642.....43153
646.....41892
653.....40134
661.....39626, 40135, 40136, 40622, 41705, 42511, 43621, 44135
663.....40136, 41112, 42898
672.....40137, 40255, 43621, 43926
675.....42710, 43154, 43621, 43627, 43926, 44341
681.....41112
683.....40255

Proposed Rules:

17.....39664, 40429, 43673–43686, 44721
100.....43074
216.....40166
217.....41123
227.....41123
228.....42538
611.....40493
672.....44355, 44729
675.....44729
685.....40493, 43290

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 5620/P.L. 102–368

Dire Emergency Supplemental Appropriations Act, 1992, Including Disaster Assistance To Meet the Present Emergencies Arising From the Consequences of Hurricane Andrew, Typhoon Omar, Hurricane Iniki, and Other Natural Disasters, and Additional Assistance to Distressed Communities. (Sept. 23, 1992; 106 Stat. 1117; 46 pages) Price: $1.50

H.J. Res. 413/P.L. 102–369

To designate September 13, 1992, as "Commodore John Barry Day". (Sept. 24, 1992; 106 Stat. 1163; 2 pages) Price: $1.00

S.J. Res. 303/P.L. 102–370

To designate October 1992 as "National Breast Cancer Awareness Month". (Sept. 24, 1992; 106 Stat. 1165; 2 pages) Price: $1.00

Last List September 11, 1992

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Wednesday
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Pages 4

9-30-92
Vol. 57 No. 190
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Wednesday
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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 57, No. 190

Wednesday, September 30, 1992

Agricultural Marketing Service
See Packers and Stockyards Administration

Agriculture Department
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Federal Grain Inspection Service
See Forest Service
See Packers and Stockyards Administration
See Rural Electrification Administration

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 45039

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol; viticultural area designations:
Texas High Plains Area, TX, 45009

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Corn, etc., 45030
Genetically engineered organisms for release into environment; permit applications, 45030
Veterinary biological products; production and establishment licenses, 45031

Army Department
NOTICES
Meetings:
Science Board, 45039

Centers for Disease Control
NOTICES
Meetings:
Clinical Laboratory Improvement Advisory Committee, 45061

Commerce Department
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Meetings:
Agricultural Advisory Committee, 45039

Defense Department
See Air Force Department
See Army Department
NOTICES
Meetings:
Science Board task forces, 45039

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Business and education standards program, 45040, 45146

Energy Department
See Federal Energy Regulatory Commission
See Southeastern Power Administration
NOTICES
Environmental restoration and waste management program:
Low-Level Radioactive Waste Policy Amendments Act; surcharge rebates; eligibility criteria, procedures, and deadline, 45248
Low-Level Radioactive Waste Policy Amendments Act; surcharge rebates; mixed waste deadline, 45249
Grants and cooperative agreements; availability, etc.:
University research instrumentation program, 45041

Environmental Protection Agency
RULES
Hazardous waste:
Boilers and industrial furnaces; burning of hazardous wastes
Correction, 44999
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Louisiana, 45012
Hazardous waste:
Identification and listing—
Exclusions; correction, 45112
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Glyceryl behenate, 45017
Oryzalin, 45018
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region IX, 45053
Drinking water:
Public water supply supervision program—
Delaware, 45053
West Virginia, 45054
Pesticide registration, cancellation, etc.:
Ciba-Geigy Corp., 45054
U.S. Borax & Chemical Corp., 45055
Pesticides; experimental use permits, etc.:
Hoechst Celanese Corp. et al., 45055
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 45056
Ethyl Corp.; waiver, 45056
Water pollution control:
National pollutant discharge elimination system—
Storm water; construction sites; correction, 45112

Executive Office of the President
See Presidential Commission on Assignment of Women in the Armed Forces

Export Administration Bureau
RULES
Export licensing:
Chemicals and chemical and biological equipment; special license procedure, 44969

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arkansas, 45002
Louisiana, 45002
PROPOSED RULES
Radio stations; table of assignments:
Kansas, 45020
NOTICES
Agency information collection activities under OMB review, 45057
Rulemaking proceedings; petitions filed, granted, denied, etc., 45058

Federal Crop Insurance Corporation
RULES
Crop insurance; various commodities:
Potato, 44969
Crop insurance endorsements, etc.:
Rye and sugarcane, 44968
Wheat, barley, and oats, 44967
Crop insurance regulations:
Nursery crop, 44968

Federal Election Commission
PROPOSED RULES
Contribution and expenditure limitations and prohibitions:
Corporate and labor organizations, 45009

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Kamine/Besicorp Syracuse, L.P., 45049
United Illuminating Co. et al., 45043
Environmental statements; availability, etc.:
CPS Products, Inc., 45046
Natural gas certificate filings:
Trunkline Gas Co. et al., 45047
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Texas Railroad Commission, 45046
Applications, hearings, determinations, etc.:
Arkla Energy Resources, 45048
El Paso Natural Gas Co., 45049
Gateway Pipeline Co., 45049
Kern River Gas Transmission Co., 45049
KN Energy, Inc., 45050
Louisiana-Nevada Transit Co., 45050
Midwestern Gas Transmission Co., 45050
National Fuel Gas Supply Corp., 45050
Northern Natural Gas Co., 45050
OkTex Pipeline, 45051
South Georgia Natural Gas Co., 45051
United Gas Pipe Line Co., 45051
Viking Gas Transmission Co., 45051

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Illinois, 45032 45033
Texas, 45032

Federal Highway Administration
RULES
Motor carrier safety standards:
Driver qualifications—
Vision requirements; waiver applications, 45002

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 45111

Federal Labor Relations Authority
NOTICES
Impasse proceedings, agency cooperation obligation; policy statement, 45058

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Lasha Enterprises, Inc., et al., 45058
Senior Executive Service:
Performance Review Board; membership, 45059

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 45111

Federal Procurement Policy Office
NOTICES
Inherently governmental functions; policy letter, 45096

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Southern Pacific Lines, 45109

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 45111
Applications, hearings, determinations, etc.:
Compagnie de Suez et al., 45059
First Western Corp., 45059
Guillory, Allen Bruce, et al., 45060
Meridian Bancorp, Inc., et al., 45060
Southern National Corp., 45060

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Delivery of checks and warrants to addresses outside United States, territories, and possessions:
Albania, 44998
PROPOSED RULES
Marketable book-entry Treasury bills, notes, and bonds; sale and issue, 45116

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Florida perforate cladonia, etc. (seven Central Florida plants), 45020

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Hawaii, 45035

Forest Service
NOTICES
Appeal exemptions; timber sales:
Boise National Forest, ID, 45033

General Services Administration
RULES
Federal travel:
Maximum reimbursement limitations increase for real estate sale and purchase expenses, 45001

Health and Human Services Department
See Centers for Disease Control
See Health Care Financing Administration
See Social Security Administration

Health Care Financing Administration
RULES
Medicaid:
Management information system; changes in requirements, performance standards, and reapproval conditions; notification procedures
Correction, 45112
Medicare program:
Self-implementing coverage and payments provisions
Correction, 45112

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Property improvement loans; maximum loan amounts and terms increase, 45244
NOTICES
Grant and cooperative agreement awards:
Community development block grant program—
Small cities program, 45063
Grants and cooperative agreements; availability, etc.:
Supportive housing for persons with disabilities—
Persons disabled by infection with human acquired immunodeficiency virus (HIV); set-aside, 45065
Organization, functions, and authority delegations:
Assistant Secretary for Fair Housing and Equal Opportunity; fair housing complaints, 45066
General Counsel; fair housing complaints, 45066

Indian Affairs Bureau
PROPOSED RULES
Columbia River in-lieu fishing sites use; permanent dwellings and structures construction, 45258
Tribal government:
Preparation of rolls of Indians—
Independent Seminole Indians of Florida, 45252

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Partners and partnerships; treatment of transactions, 44974
Tax-exempt bonds; arbitrage restrictions
Correction, 44989

International Trade Administration
NOTICES
Antidumping:
Steel wire rope from—
Korea, 45035
Cheese quota; foreign government subsidies:
Quarterly update, 45037

International Trade Commission
NOTICES
Import investigations:
Uranium from Kazakhstan et al., 45069

Interstate Commerce Commission
NOTICES
Privacy Act:
Systems of records; correction, 45069
Railroad operation, acquisition, construction, etc.:
Three Rivers Railway Co., 45070
Railroad services abandonment:
CSX Transportation, Inc., 45071

Labor Department
See Mine Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 45071

Land Management Bureau
NOTICES
Closure of public lands:
California; correction, 45068
Nevada, 45068
Motor vehicle use restrictions:
Idaho, 45068

Management and Budget Office
See Federal Procurement Policy Office

Minerals Management Service
RULES
Royalty management:
Decisions and orders suspension pending appeal, 44991

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Hecla Mining Co., 45072

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Highway Traffic Safety Administration
NOTICES
Long range strategic planning initiative; recommendations, 45110

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Oceanic and Atmospheric Management Advisory Committee, 45038
Permits:
Endangered and threatened species; correction, 45038

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
Alaska, National park system units, 45166

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 45072
Meetings:
Chemical and Thermal Systems Special Emphasis Panel, 45073

National Transportation Safety Board
NOTICES
Highway accidents; hearings, etc.:
Vernon, NJ; charter bus control loss, overturn, and fire, 45073

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Safety Research Review Committee, 45073
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 45074
Applications, hearings, determinations, etc.:
Catholic University of America, 45094
UMETCO Minerals Corp., 45095

Nuclear Waste Technical Review Board
NOTICES
Exploratory studies facility design and construction alternatives; workshop, 45095

Packers and Stockyards Administration
PROPOSED RULES
Packers and Stockyards Act:
Trade practices, scale test instructions, and advertising allowance guidelines, 45005

Personnel Management Office
RULES
Prevailing rate systems, 44967
PROPOSED RULES
Prevailing rate systems, 45004, 45005

Presidential Commission on Assignment of Women in the Armed Forces
NOTICES
Meetings, 45108

Public Health Service
See Centers for Disease Control

Resolution Trust Corporation
NOTICES
Coastal Barrier Improvement Act; property availability:
Kachina Village, AZ, 45103
Woodlands Village, AZ, 45104

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
Owen Electric Cooperative, 45034

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Pacific Stock Exchange, Inc., 45105
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 45104

Social Security Administration
NOTICES
Social security acquiescence rulings:
Gonzalez v. Sullivan; initial determination effect on administrative finality application, 45061

Southeastern Power Administration
NOTICES
Wolf Creek Hydropower Project; financial sponsor for upgrade, 45052

State Department
NOTICES
Meetings:
Private International Law Advisory Committee, 45108

Thrift Supervision Office
NOTICES
General valuation allowances, 45110

Transportation Department
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Fiscal Service
See Internal Revenue Service
See Thrift Supervision Office

Separate Parts In This Issue

Part II
Department of the Treasury, Fiscal Service, 45116

Part III
Department of Education, 45146

Part IV
Department of the Interior, National Park Service, 45166

Part V
Department of Housing and Urban Development, 45244

Part VI
Department of Energy, 45248

Part VII
Department of the Interior, Bureau of Indian Affairs, 45252

Part VIII
Department of the Interior, Bureau of Indian Affairs, 45257

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
532.....44967
Proposed Rules:
532 (2 documents).....45004, 45005

7 CFR
401 (2 documents).....44967, 44968
406.....44968
422.....44969

9 CFR
Proposed Rules:
201.....45005
203.....45005

11 CFR
Proposed Rules:
109.....45009
110.....45009
114.....45009

15 CFR
772.....44969
773.....44969

24 CFR
201.....45244

25 CFR
Proposed Rules:
67.....45258
248.....45258

26 CFR
1 (2 documents).....44974-44989
602 (2 documents).....44974-44989

27 CFR
Proposed Rules:
9.....45009

30 CFR
243.....44991

31 CFR
211.....44998
Proposed Rules:
349.....45116
356.....45116

40 CFR
266.....44999
Proposed Rules:
52.....45012
180 (2 documents).....45017, 45018
261 (2 documents).....45112

41 CFR
302-6.....45001

42 CFR
405.....45112
411.....45112
413.....45112
433.....45112

47 CFR
73 (2 documents).....45002
Proposed Rules:
73.....45020

49 CFR
391.....45002

50 CFR
Proposed Rules:
17.....45020

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Rules and Regulations

Federal Register
Vol. 57, No. 190
Wednesday, September 30, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AE86

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to redefine the survey area of the Puerto Rico appropriated fund wage area. The final regulations improve the capability of the Department of Defense, the lead agency for the Puerto Rico survey, to conduct the survey and will result in Federal Wage System (FWS) pay rates that are more representative of prevailing rates in the work locations of FWS employees in Puerto Rico.

EFFECTIVE DATE: October 30, 1992.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 606-2848.

SUPPLEMENTARY INFORMATION: On May 8, 1992, OPM published a proposed rule to redefine the survey area for the Puerto Rico appropriated fund wage area (57 FR 19820). Under the proposal, the four municipios in the Ponce area—Juana Diaz, Penuelas, Ponce, and Villalba Municipios—would be deleted from the survey area, and Humacao Municipio, which is located near the host activity at the Roosevelt Roads Naval Complex, would be added. No comments were received during the 60-day comment period. The proposed rule, therefore, is being adopted as a final rule.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,
Acting Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

2. Appendix C to subpart B is amended by revising the wage area listing for Puerto Rico to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

Puerto Rico

Survey Area

Puerto Rico (Municipios):
San Juan
Bayamon
Canovanas
Carolina
Catano
Guaynabo
Humacao
Loiza
Toa Baja
Trujillo Alto

Area of Application: Puerto Rico

* * * * *

[FR Doc. 92-23657 Filed 9-29-92; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

General Crop Insurance Regulations; Wheat, Barley, and Oat Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date (acceptance of applications).

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination with respect to the acceptance of applications for wheat, barley, and oat crop insurance for all counties with a September 30, sales closing date, effective for the 1993 crop year only. This action is necessary in order to treat all producers equitably who are required to carry crop insurance protection in order to obtain certain benefits under the provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 and the Dire Emergency Supplemental Appropriation Act for Fiscal Year 1992. The intended effect of this notice is to advise all interested parties with respect to the acceptance of applications, and to comply with the provisions of the General Crop Insurance Regulations (7 CFR part 401), with respect to the Manager's authority to extend the date for accepting applications for crop insurance.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254-8314.

SUPPLEMENTARY INFORMATION: The provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) and Dire Emergency Supplemental Appropriation Act for Fiscal Year 1992, requires that, subject to certain limitations in the 1990 Act, in order to be eligible to receive certain benefits, a producer must agree to obtain multi-peril crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), and to furnish evidence of such insurance coverage to the county office of the Agricultural Stabilization and Conservation Service (ASCS).

Under its regulations for insuring crops, FCIC requires that applications for crop insurance protection must be filed on or before the sales closing date. The Wheat Endorsement (7 CFR 401.101), the Barley Endorsement (7 CFR 401.103), and the Oat Endorsement (7 CFR 401.105), have sales closing dates established on a geographic basis: September 30, and October 31, for fall seeded crops.

ASCS recently advised that the sign-up period for disaster payments under the 1990 Act would be open through October 31, 1992. It would be inequitable to require that all producers who sign up for disaster payments on or before September 30 obtain crop insurance but not make the same requirement for those producers who submit their disaster application on October 1 or 2. FCIC has determined that no adverse selection will result from extending the sales closing date to October 31, 1992.

Under the provisions of the General Crop Insurance Regulations (7 CFR 401.8), the sales closing date for accepting applications may be extended by notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension.

Notice

Accordingly, pursuant to the authority contained in 7 CFR 401.8, the Federal Crop Insurance Corporation herewith gives notice that applications will be accepted up to the close of business on October 31, 1992, effective for the 1993 crop year only.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC on September 22, 1992.

David Bracht,

Associate Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-23656 Filed 9-29-92; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

General Crop Insurance Regulations; Rye Endorsement and Sugarcane Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date (Acceptance of Applications).

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination with respect to the acceptance of applications and crop reports for rye and sugarcane crop insurance for all counties with a September 30, sales closing date, effective for the 1993 crop year only. This action is necessary in order to treat all producers equitable who are required to carry crop insurance protection in order to obtain certain benefits under the provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 and the Dire Emergency Supplemental Appropriation Act for Fiscal Year 1992. The intended effect of this notice is to extend the date for accepting applications for multi-peril crop insurance for Rye and Sugarcane and to comply with the provisions of the General Crop Insurance Regulations.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: The provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) and Dire Emergency Supplemental Appropriation Act for Fiscal Year 1992, requires that, subject to certain limitations in the 1990 Act, in order to be eligible to receive certain benefits, a producer must agree to obtain multi-peril crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

Under its regulations for insuring crops, FCIC requires that applications for crop insurance protection must be filed on or before the sales closing date. The Rye Endorsement (7 CFR 401.106) and the Sugarcane Endorsement (7 CFR 401.133) have a sales closing date of September 30.

ASCS recently advised that the sign-up period for disaster payments under the 1990 Act would be open through October 2, 1992, for Phase II sign up and from October 13, 1992 through February 12, 1993, for Phase III sign up. It would be inequitable to require that certain producers who sign up for disaster payments on or before September 30 obtain crop insurance but not make the same requirement for those producers who submit their disaster application in later disaster sign-up periods. FCIC has determined that no adverse selection will result from extending the sales closing date to October 31, 1992.

Under the provisions of the General Crop Insurance Regulations (7 CFR 401.8), the sales closing date for accepting applications may be extended by notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension.

Accordingly, pursuant to the authority contained in 7 CFR 401.8, the Federal Crop Insurance Corporation herewith gives notice that crop insurance applications for crop insurance for Rye and Sugarcane crops will be accepted up to the close of business on October 31, 1992, effective for the 1993 crop year only.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC on September 25, 1992.

David Bracht,

Associate Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-23748 Filed 9-29-92; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 406

Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date (acceptance of applications).

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination with respect to the acceptance of applications and crop reports for nursery crop insurance for all counties with a September 30, sales closing date, effective for the 1993 crop year only. This action is necessary in order to treat all producers equitable who are required to carry crop insurance protection in order to obtain certain benefits under the provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 and the Dire Emergency Supplemental Appropriation Act for Fiscal Year 1992. The intended effect of this notice is to extend the date for accepting applications for multi-peril crop insurance for Nursery and to comply with the provisions of the General Crop Insurance Regulations.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: The provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) and Dire Emergency Supplemental Appropriation Act for Fiscal Year 1992, requires that, subject to certain limitations in the 1990 Act, in order to be eligible to receive certain benefits, a producer must agree to obtain multi-peril crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

Under its regulations for insuring crops, FCIC requires that applications for crop insurance protection must be filed on or before the sales closing date. The Nursery Crop Insurance Policy (7 CFR part 406) has a September 30, sales closing date.

ASCS recently advised that the sign-up period for disaster payments under the 1990 Act would be open through October 2, 1993, for Phase II sign up and from October 13, 1992 through February 12, 1993, for Phase III sign up. It would be inequitable to require that certain producers who sign up for disaster payments on or before September 30 obtain crop insurance but not make the same requirement for those producers who submit their disaster application in later disaster sign-up periods. FCIC has determined that no adverse selection will result from extending the sales closing date to October 31, 1992.

Under the provisions of the General Crop Insurance Regulations (7 CFR 401.8), the sales closing date for accepting applications may be extended by notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension.

Accordingly, pursuant to the authority contained in 7 CFR 401.8, the Federal Crop Insurance Corporation herewith gives notice that nursery crop insurance applications for crop insurance for Nursery will be accepted up to the close of business on October 31, 1992, effective for the 1993 crop year only.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC on September 25, 1992.

David Bracht,

Associate Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-23749 Filed 9-29-92; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 422

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date (acceptance of applications).

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination with respect to the acceptance of applications for potato crop insurance for all counties with a September 30, sales closing date, effective for the 1993 crop year only. This action is necessary in order to treat all producers equitably who are required to carry crop insurance protection in order to obtain certain benefits under the provisions of the Food, Agriculture, Conservation and Trade Act of 1990 and the Dire Emergency Supplemental Appropriation Act for Fiscal Year 1992. The intended effect of this notice is to extend the date for accepting applications for multi-peril crop insurance potatoes and to comply with the provisions of the General Crop Insurance Regulations.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254-8314.

SUPPLEMENTARY INFORMATION: The provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) and Dire Emergency Supplemental Appropriation Act for Fiscal Year 1992, requires that, subject to certain limitations in the 1990 Act, in order to be eligible to receive certain benefits, a producer must agree to obtain multi-peril crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

Under its regulations for insuring crops, FCIC requires that applications for crop insurance protection must be filed on or before the sales closing date. The Potato Crop Insurance Policy (7 CFR part 422) has sales closing dates established on a geographic basis: September 30, November 30, December 31, February 28, and April 15.

ASCS recently advised that the sign-up period for disaster payments under the 1990 Act would be open through October 2, 1992, for Phase II sign up and from October 13, 1992 through February 12, 1993, Phase III sign up. It would be inequitable to require that all producers who sign up for disaster payments on or before September 30 obtain crop insurance but not make the same requirement for those producers who submit their disaster application in later disaster sign-up periods. FCIC has determined that no adverse selection will result from extending the sales closing date to October 31, 1992.

Under the provisions of the Potato Crop Insurance Regulations (7 CFR 422.7), the sales closing date for accepting applications may be extended by notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension.

Accordingly, pursuant to the authority contained in 7 CFR 422.7, the Federal Crop Insurance Corporation herewith gives notice that potato crop insurance applications for all counties with a September 30, 1992, sales closing date, will be accepted up to the close of business on October 31, 1992, effective for the 1993 crop year only.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC on September 24, 1992.

David Bracht,

Associate Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-23750 Filed 9-29-92; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 772 and 773

[Docket No. 920824-2224]

Special Chemical License Procedure; Revisions

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by revising the Special Chemical License procedure. This procedure authorizes exports of certain chemicals and chemical and biological equipment described in the provisions in the EAR on proliferation controls (§ 778.8) to approved consignees in Country Groups Q, T, V, W, and Y (except Iran, Iraq, and Syria). Prior to the publication of this rule, the Special Chemical License procedure was restricted to consignees that were subsidiaries or affiliates under the effective control of the U.S. exporter.

This rule amends the EAR by allowing commodities to be exported under the Special Chemical License procedure directly to unaffiliated consignees for their own use or consumption, as well as to consignees that are controlled subsidiaries or affiliates of the U.S. exporter. The result will be substantially increased flexibility for exporters, without detriment to the non-proliferation objectives of the control program.

EFFECTIVE DATE: This rule is effective October 30, 1992.

FOR FURTHER INFORMATION CONTACT: Debbie Kappler, Office of Export Licensing, Bureau of Export Administration, Telephone: (202) 377-5400.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1991 (56 FR 55068) the Bureau of Export Administration

published an interim rule that added a new Special Chemical License that authorized exports of certain chemicals and chemical and biological equipment described in § 778.8 to approved consignees in Country Groups Q, T, V, W, and Y (except Iran, Iraq, and Syria). That interim rule provided that only consignees that were subsidiaries or affiliates under the effective control of the U.S. exporter were eligible to be approved for this procedure. In addition, consignees who imported commodities under this procedure were prohibited from reselling, transferring, or reexporting the commodities to any destination that requires a validated license, without prior written authorization from the Office of Export Licensing (OEL). The approved consignees could resell only to end-users that had been approved in advance by OEL.

BXA received comments on that rule from seven companies. A few commenters stated that the Special Chemical License procedure would be of some help in reducing the paperwork burden because individual validated licenses were no longer needed for many of their exports of chemicals and chemical and biological equipment, and that it could be a benefit to exporters shipping large, predictable quantities of chemicals and equipment to foreign subsidiaries. One commenter also added that the U.S. chemical industry has a significant number of investments abroad in an increasing number of countries outside the Australia Group, and this procedure permits these companies greater flexibility in servicing their foreign investments.

A few commenters specifically requested that distributors be eligible to receive commodities under the Special Chemical License procedure because much of their business is with distributors who are not directly affiliated with the U.S. company. BXA is not making this change, because there would be no effective way to monitor actual end-use. The majority of the commenters expressed concern that this rule posed a competitive disadvantage for many smaller U.S. exporters who may not have subsidiaries or affiliates abroad, and suggested that this procedure be expanded to allow direct shipments of commodities for use or consumption by consignees not affiliated with the U.S. exporter. In addition, they noted that they could not service customers in industries that pose no proliferation risk, such as household chemicals and semiconductor manufacture.

The intent of the Special Chemical License procedure is to eliminate the burden of obtaining an individual validated license for each shipment of chemicals and equipment for those companies exporting large quantities of these kinds of commodities to benign end-uses. BXA is sympathetic to the fact that not all companies that have large volumes of exports of chemicals or chemical and biological equipment sell only to subsidiaries or affiliates aboard. Many sell directly to end-users that are not affiliates. BXA also believes that the safeguards described in the Special Chemical License procedure are adequate to protect against diversion when all recipients have been preapproved. Therefore, the Bureau of Export Administration is amending the Export Administration Regulations to authorize shipments made under the Special Chemical License procedure directly to approved unaffiliated consignees for their own use or consumption, as well as to consignees that are controlled subsidiaries or affiliates of the U.S. exporter.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule revises collections of information requirements subject to the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*), that have been approved by the Office of Management and Budget (OMB) under control numbers 0694–0005, 0694–0007, 0694–0050, and 0694–0067. This rule amending these information collection requirements and a request for approval for the new requirements are being submitted to OMB for review under the PRA. As revised, these collections are estimated to average 15 hours per respondent. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the data requirements, including suggestions for reducing the burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—ATTN: Paperwork Reduction Project (0694–0067).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 772 and 773

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 772 and 773 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: Public Law 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Public Law 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Public Law 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Public Law 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Public Law 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Public Law 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Public Law 95–372, 92 Stat. 668 (43 U.S.C. 1354); Public Law 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Public Law 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

2. The authority citation for 15 CFR part 773 continues to read as follows:

Authority: Public Law 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Public Law 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Public Law 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Public Law 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587), November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 772—[AMENDED]

3. Section 772.2 is amended:

a. By revising paragraph (b)(4); and

b. By removing paragraph (b)(7), to read as follows:

§ 772.2 Types of validated licenses.

* * * * *

(b) * * *

(4) A "Special Chemical License" (§ 773.9 of this subchapter) authorizes the shipment by approved exporters of certain chemicals and chemical and biological equipment to approved consignees in Country Groups Q, T, V, W, and Y (except Iran, Iraq, and Syria) during a two-year period. Licenses may be extended once by amendment for a second two-year period.

* * * * *

PART 773—[AMENDED]

4. Section 773. 9 is revised to read as follows:

§ 773.9 Special Chemical License.

A Special Chemical License procedure is established that authorizes exports of certain chemicals and chemical and biological equipment. This procedure is intended to provide parties who ship significant amounts of these commodities with an alternative to filing applications for individual validated licenses, when exporting to their controlled subsidiaries or affiliates abroad that have been approved by OEL or to unaffiliated foreign consignees, approved by OEL, that are the actual end-users of the commodities.

(a) *Eligible commodities.* The following commodities may be authorized for export or reexport under this § 773.9:

(1) Precursor and intermediate chemicals controlled under ECCNs 1C60C and 1C64E; and

(2) Chemical and biological equipment controlled under ECCNs 1B70E, 1B71E, and 1C65E.

(b) *Eligible destinations.* Exports and reexports may be authorized under this § 773.9 to any destination except Country Groups S and Z, Iran, Iraq, and Syria.

(c) *Eligible consignees.* The Office of Export Licensing (OEL) may authorize shipments to two kinds of consignees under the Special Chemical License procedure:

(1) A consignee that is a subsidiary or other affiliate under the effective control of the U.S. exporter. "Effective control" consists of the authority, ability, and intent of the U.S. exporter to establish the general policies or to control the day-to-day operations of the consignee in a manner that will ensure compliance with the requirements of the license; or

(2) A consignee not affiliated with the U.S. exporter that will import the commodities for its own use or consumption.

(d) *Qualification of applicants.* There is not an automatic privilege to participate in this procedure. Only those firms that demonstrate the ability to adhere to the requirements of this procedure may participate. Among the factors that OEL will consider in evaluating the qualifications of applicants are the following:

(1) Whether there is adverse information on the applicant's compliance with U.S. export controls;

(2) Whether the applicant demonstrates sufficient knowledge and expertise in applying the provisions of this subchapter (the Export Administration Regulations);

(3) Whether the applicant demonstrates that there is a sufficient volume of business with the consignees identified on the application to justify the use of this Special Chemical License procedure.

(e) *Consignees must be approved by OEL*—(1) *Exports.* Exports under this § 773.9 may be made only to consignees specifically authorized by the Office of Export Licensing (OEL) to import commodities under this special licensing procedure. Paragraph (f)(1)(iii) of this section requires license applications to submit to OEL a list of consignees designated to import commodities under this procedure. Commodities exported under this procedure must be solely for use or consumption by the authorized consignee, except that OEL may specifically authorize consignees that are controlled subsidiaries or affiliates of the U.S. exporter to resell, transfer, or reexport such commodities to approved end-users.

(2) *Resales, transfers, or reexports.* Consignees that import commodities under this special licensing procedure are prohibited from transferring or reselling the commodities, or reexporting them to a destination that requires a validated license, unless prior written authorization is obtained from OEL. OEL may authorize consignees that are controlled subsidiaries or affiliates of the U.S. exporter to transfer, resell, or reexport commodities imported under this procedure to end-users approved on the license. Applicants who wish to obtain such authorization for their controlled subsidiaries or affiliates are required by paragraph (f)(1)(iv) of this section to submit a separate list of end-users for each subsidiary or affiliate that intends to resell, transfer, or reexport commodities that have been imported under this procedure. Only actual end-users may be identified; this Special Chemical License does not authorize transfers from a consignee to a party that will resell, transfer, or reexport the commodities.

(f) *Application procedures*—(1) *Documents required.* Each application to export or reexport commodities under this § 773.9 must include the following document:

(i) Form BXA–622P, Application for Export License.

(ii) Form BXA–6052P, Statement by Foreign Consignee in Support of Special License Application in triplicate. This form must be submitted for each foreign consignee—this form is not required for customers of foreign consignees that are controlled subsidiaries or affiliates of the U.S. exporter. Insert "Special Chemical License" in Item 2 of the form.

(iii) List of foreign consignees designated to import commodities under this procedure (indicate the extent of control by the applicant for foreign consignees that are controlled subsidiaries or affiliates of the applicant).

(iv) List of end-users (and their complete addresses) to whom the commodities exported under this procedure will be resold, transferred, or reexported by the foreign consignees that are controlled subsidiaries or affiliates of the U.S. exporter. A separate list of end-users is required for each subsidiary or affiliate that intends to resell, transfer, or reexport commodities that were imported under this procedure. The list should be in triplicate, on letterhead, attached to the consignee's Form BXA–6052P, and should indicate the estimated annual quantity of each chemical included in ECCN 1C60B or 1C64E.

(2) *Preparation of documents*—(i) *Form BXA–622P, Application for Export License.* The applicant shall prepare and submit the application in accordance with the provisions of § 772.4 of this subchapter, except that the applicant shall follow the instructions furnished in Supplement No. 5 to this part 773. The instructions for certain items in Supplement No. 5 to this part 773, are not appropriate for this Special Chemical License procedure. Applicants should use the following instructions, instead:

(A) Item 4: Enter, "Special Chemical License".

(B) Item 6: Enter "See Attached List" and label the attached list as "Attachment Item 6: Consignees". The list must include each consignee alphabetically by country. Complete addresses (city, street, etc.) must be furnished for each consignee. Post Office boxes are not acceptable. This list must be submitted in duplicate. The extent of control by the applicant must be indicated for each consignee that is a controlled subsidiary or affiliate of the applicant. For each end-user consignee, indicate the estimated annual quantity of each chemical included in ECCN 1C60B or 1C64E.

(C) Item 9(b): (*1*) Enter "See Attached List" and label the attached list as "Attachment Item 9(b): Product Description". List the commodities proposed for export under the license in estimated descending order based on the anticipated export volume by value and indicate the appropriate Export Control Classification Number (ECCN) from the Commerce Control List (CCL) for each commodity. This list should be provided in duplicate or on Form BXA–622P–A.

(*2*) Enter the following statement at the bottom of the attachment to Item 9(b):

Except as authorized by OEL, commodities excluded from the Special Chemical License procedure set forth in § 773.9, or excluded under this license, will not be exported to any consignee in any destination under this license.

(ii) *Form BXA–6052P, Statement by Foreign Consignee in Support of Special License Application.* Form BXA–6052P should be completed in accordance with the instructions contained in Supplement No. 6 to this part 773, except that the phrase "Special Chemical License" should be inserted in Item 2 and, when the consignee is a controlled subsidiary or affiliate of the U.S. exporter, a list of actual end-users and their addresses must be provided where Item 5 calls for a list of countries. Each consignee must sign a Form BXA–6052P. Three originals (or single sheet copies printed back-to-back) of Form BXA–6052P shall be manually signed by the consignee or by a responsible official of the consignee who is authorized to bind the consignee to all of the items, undertakings, and commitments set forth on the Form. All copies shall be co-signed by the applicant and submitted with the application to OEL. Each Form BXA–6052P shall contain the following information or certifications on the form or on an attachment to the form, as appropriate:

(A) Notice restricting transfer, resale, or reexport. Each Form BXA–6052P shall include a certification that no commodities received under the license will be transferred or resold, or reexported to a destination that requires a validated license, unless the new party (end-user) has been approved by OEL, and that in no case will the commodities be transferred, resold, or reexported to a party who is not, in fact, the end-user.

(B) Each consignee must describe the scope of activities under the license in sufficient detail for OEL to determine whether the commodities imported under the license are intended for use or consumption by the consignee only, for transfer or resale, or both. Only controlled subsidiaries or affiliates of the applicant are eligible to import commodities that are intended for transfer or resale. If any of the commodities are intended for transfer or resale, the controlled subsidiary or affiliate must attach the list of end-users required by § 773.9(f)(1)(iv).

(g) *Action on applications.*—(1) *Approved of applications.* When an application or a portion of an application is approved under this procedure, the Office of Export Licensing will issue an export license authorizing the export of commodities covered during the validity period, subject to the provisions of this subchapter (the Export Administration Regulations) and to the terms and provisions of the license.

(i) *Validity period.* Licenses authorizing exports under this § 773.9 will be valid for two years from the last day of the month in which they are issued and may be extended once by amendment for a two-year period. Thereafter, a new application must be submitted.

(ii) *License number.* The license number will be indicated immediately below the validation stamp. The license number will consist of the letters "SC" followed by four digits. Each consignee is then given a three-digit designation number. The "SC" license number and the three-digit consignee designation number are noted on the validated BXA–6052P forms. The license authorization number for exports to consignees is the combination of the four-digit "SC" number and the three-digit consignee designation number. Exporters are required to use the complete license number when preparing Shipper's Export Declarations or other export documents or when communicating (after issuance) with the Office of Export Licensing.

(2) *Appliations returned without action.* When an application is returned without action, the application, together with related documents, will be returned to the applicant with Form BXA–851, Advice on Application Returned Without Action (RWA). This document will state the reason for return of the license application and will explain the deficiencies or additional information required for OEL to reconsider the application. Resubmissions must be made within 120 days of the RWA to be considered. Thereafter, a new application will be required.

(3) *Rejected applications.* When the Office of Export Licensing intends to reject an application, it will notify the applicant in writing and give the reasons for the intended rejection in accordance with the provisions of § 770.13(j) of this subchapter. The applicant may apply for an individual or other appropriate type of validated license for transactions that would have been covered by the rejected license application.

(h) *Action on Form BXA–6052P.*—(1) *Approval.* Concurrently with the approval of a license application under this § 773.9 or the approval of an amendment adding a consignee, two validated copies will be sent to the license holder. One copy is to be retained by the license holder and one copy is to be sent by the license holder to the approved consignee.

(2) *Rejection.* If a consignee is not approved, the Form will be returned to the applicant/license holder with a rider stating the reason for this action.

(3) *Notice to approved consignee.* A letter of transmittal for each approved Form BXA–6052P must be sent by the exporter to each approved consignee and must include (or have attached) the following:

(i) A description of recordkeeping requirements applicable to the activities of the consignee;

(ii) Information to each consignee that is a controlled subsidiary or affiliate of the U.S. exporter, and is authorized to transfer, resell, or reexport on the approved Form BXA–6052P, of the restrictions on any commodities imported under the license, including the

approved list of end-users eligible to receive such commodities; and

(iii) A description of any special conditions or restrictions on the license applicable to the consignee.

(i) *Amendments*—(1) *Forms.* All requests for amendment of licenses issued under this § 773.9 must be submitted on Form BXA–685P, Request for Amendment Action, in accordance with the requirements of § 772.11 of this subchapter.

(2) *Changes that require an amendment*—(i) *Extension of validity period.* A license issued under this § 773.9 is valid for two years. The validity period may be extended for an additional two years by submitting Form BXA–685P, and the following certification:

I (we) certify that all the facts and intentions set forth in our previously submitted application remain the same except (enter the word "none" or specify the changes).

(ii) *Addition of consignees.* If the license holder wishes to add a new consignee, a Form BXA–6052P must be submitted with the Form BXA–685P, in accordance with § 772.11 of this subchapter.

(iii) *Deletion of consignees.* The license holder may amend a license issued under this section to remove one or more consignees.

(iv) *Change of name*—(A) *License holder.* If the license holder changes the firm name, the change must be submitted on Form BXA–685P. The license holder must send a copy of the newly validated Form BXA–685P to all consignees and inform them to attach the copy to their validated Form BXA–6052P.

(B) *Consignee.* If a consignee changes its name, the license holder must submit the change on Form BXA–685P to be accompanied by a new Form BXA–6052P from the consignee.

(v) *Change of address.* If a consignee moves from one country to another, the license holder must submit Form BXA–685P, indicating the new address, and a ne. Form BXA–6052P showing the new address.

(vi) *Adding new commodities.* A license holder must submit Form BXA–685P to request the addition of commodities not covered by the license application or previous amendments thereto.

(vii) *Addition of new end-users.* When a consignee that is a controlled subsidiary or affiliate of the U.S. exporter wishes to add new end-users, the license holder must submit Form BXA–685P identifying the new end-users and for each new end-user, the estimated annual quantity of each chemical included in ECCN 1C60B or 1C64E.

(j) *Export clearance*—(1) *Value of shipments.* There is no value limitation on shipments under the Special Chemical License procedure. However, the value of each shipment must be shown on the Shipper's Export Declaration.

(2) *Shipper's Export Declaration.* The Shipper's Export Declaration covering an export made under a Special Chemical License shall be prepared in accordance with standard instructions. Although the Special Chemical License may describe the commodities in broad terms, commodity descriptions on the Declaration shall be specific.

(i) The description shall: (A) Conform to the applicable Commerce Control List description, and cite the Export Control Classification Number in parentheses beneath the Schedule B number;

(B) Incorporate any additional information where required by Schedule B (e.g., the type, size, or name of the specific commodity).

(ii) Firms authorized to file summary SED reports to the U.S. Census Bureau may, at the request of the Office of Export Licensing (OEL), be required to submit for OEL inspection copies of such reports applicable to exports under a Special Chemical License.

(3) *Mail shipments.* Shipments by mail shall be made in accordance with the instructions contained in § 786.1(b) of this subchapter.

(4) *Destination control statement.* The U.S. exporter shall enter one of the destination control statements contained in § 786.6 (d)(1) or (d)(2) of this subchapter on the commercial invoice and bill of lading or airway-bill covering exports under the Special Chemical License procedure.

(k) *Notification of consignee by exporter.* The U.S. exporter shall notify each consignee that no commodities imported under the Special Chemical License procedure may be transferred or resold, or reexported to a destination that requires a validated license, without prior written authorization from OEL. OEL may authorize consignees that are controlled subsidiaries or affiliates of the U.S. exporter to transfer, resell, or reexport commodities imported under this procedure to end-users approved on the license.

(l) *Reexport notification requirements.* Unless specifically exempted on the license or subsequently in writing by OEL, all approved consignees (controlled subsidiaries or affiliates of the U.S. exporter) not located in a country listed in Supplement No. 2 or 8 to this part 773, when reselling commodities received under this procedure to pre-approved end-users in countries listed in Supplement No. 5 to part 778, of this subchapter, must notify these end-users on the commercial invoice (or by such other means specifically approved by OEL) of the restrictions on unauthorized reexports. The notice shall read as follows:

These commodities were authorized for export from the United States under a Special Chemical License procedure on the condition that they may not be reexported without prior approval from the United States authorities. This prior approval is not required for reexports to NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland.

(m) *Reporting requirement for changed facts.* Consistent with the provisions of § 772.6(e) of this subchapter, the licensee shall report to BXA within 30 days of any material or substantive change in type or increase in quantity of any chemical controlled by ECCN 1C60B or 1C64E that is supplied to any end-user under this license. Minor, routine changes need not be reported. Compliance with this requirement to report does not relieve the licensee of any other obligation under this subchapter (the Export Administration Regulations).

(n) *Recordkeeping requirements.* The license holder and consignees must maintain records of all transactions under the license in accordance with the recordkeeping requirements of § 787.13 of this subchapter. The license holder, any approved consignees, or any approved end-user of a controlled subsidiary or affiliate of the license holder may be requested to produce records of transactions conducted under the Special Chemical License procedure for inspection and copying by an authorized agent, official, or employee of the Bureau of Export Administration, the U.S. Customs Service, or the U.S. Government in accordance with the provisions of § 787.13(f) of this subchapter.

(o) *Exceptions.* In the event that the license holder or an approved consignee is unable to meet any of the requirements of the Special Chemical License procedure, but believes that unusual circumstances warrant a waiver or an exception of one or more of these requirements, the license holder, and only the license holder, may consult with or write to OEL, explaining the circumstances in full, and submit a written request for a waiver or exception.

Dated: September 24, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92-23678 Filed 9-29-92; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8439]

RIN 1545-AH22

Treatment of Transactions Between Partners and Partnerships

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the treatment of transactions between partners and partnerships and, in some instances, between partners themselves, under section 707 of the Internal Revenue Code. Changes to the applicable law were made by the Tax Reform Act of 1984. The final regulations affect partnerships and their partners, and are necessary to provide them with guidance needed to comply with the applicable tax law.

DATES: These regulations are effective April 24, 1991, and apply to transactions with respect to which all transfers considered part of a sale occur after April 24, 1991.

FOR FURTHER INFORMATION CONTACT: Susan T. Eilavitch or J. Scott Hargis at (202) 622-3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1243. The estimated annual burden per respondent varies from 15 minutes to 25 minutes, depending on individual circumstances, with an estimated average of 20 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224 and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Introduction

This document adds new regulations § 1.707-0 and §§ 1.707-2 through 1.707-9 to the Income Tax Regulations (26 CFR part 1) under section 707(a)(2) of the Internal Revenue Code (the Code). No change is made to existing § 1.707-1.

Background

On April 25, 1991, a notice of proposed rulemaking relating to the treatment of transactions between partners and partnerships was published in the **Federal Register** (56 FR 19055). Written comments were received and a public hearing was held on September 23, 1991. After full consideration of the comments and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

I. Enactment of Section 707(a)(2)

Section 707(a)(2)(B) of the Code grants the Secretary broad regulatory authority to identify those transactions that, though structured as contributions and distributions under sections 721 and 731, are more properly treated under section 707(a) as sales or exchanges between a partnership and a partner acting in a capacity other than as a member of the partnership. Section 707(a)(2)(A), in relevant part, grants broad regulatory authority to treat a transfer of property by a partner to a partnership and a related direct or indirect allocation and distribution to the partner as a sale or exchange if the transfers are properly viewed together as occurring between a partnership and a partner acting in a capacity other than as a partner. The final regulations apply to contributions and distributions described in section 707(a)(2)(A) and transfers described in section 707(a)(2)(B) of the Code.

II. General Rules Regarding Disguised Sales to Partnership

A. Tax Consequences

The final and proposed regulations provide that if a contribution and related distribution are treated as a disguised sale, the contribution and distribution will be treated as a sale or exchange between the partnership and a person acting in a capacity other than as a member of the partnership for all purposes of the Code. Moreover, if the consideration treated as transferred to a partner pursuant to a sale is less than the fair market value of the property transferred to the partnership, the transfer will be treated as a sale in part and a contribution in part.

In the case of non-simultaneous transfers, comments proposed that, absent a contractual or legal obligation to make the subsequent transfer, the disguised sale recharacterization should be deemed to occur at the time of the subsequent transfer. Careful consideration was given to various alternatives for implementing a later sale approach. The theoretical basis of the approach of the proposed regulations, however, is more consistent with disguised sale principles and the legislative directive to prevent taxpayers from inappropriately deferring or avoiding tax on the sale of property. For example, any later sale approach would most likely generate a different amount of gain than that inherent in the property at the date of the original transfer. See H.R. Rep. No. 432 (Pt. 2), 98th Cong., 2d Sess. 1218, 1220 (1984) (H.R. Rep.); S. Prt. No. 169 (Vol. I), 98th Cong., 2d Sess. 224-25, 230 (1984) (S. Prt.).

In addition, any later sale approach would require complex rules and operate in a complex manner. The complexity of any later sale approach stems from the difficulty of determining the value of the transferred property and the basis attributable to that property on the later date. Each of the suggested later sale approaches addressed this difficulty by adopting some recharacterization of the subsequent transfer. The recharacterizations considered were to treat the subsequent transfer as (1) a partial redemption of the partner's interest in the partnership on the later date, (2) a deemed distribution of property on the later date, or (3) a sale of some or all of the partnership interest to the other partners on the later date. If any of these approaches were adopted, rules would have to be provided to coordinate with the other provisions of subchapter K, including the distribution provisions of section 731 and section 733, the basis adjustment provisions of section 734, and the provisions relating to disproportionate distributions of section 751 assets.

For these reasons, the final regulations retain the rules of the proposed regulations relating to non-simultaneous transfers. Accordingly, if a

transfer to a partner that is part of a disguised sale occurs subsequent to the partner's transfer of property to the partnership, the partner will be treated as if he or she received an obligation of the partnership as consideration for the property on the date the partnership acquired ownership of the property.

Comments requested that the regulations detail the collateral tax consequences of disguised sale recharacterization. These regulations are intended to provide rules that determine when a disguised sale has taken place rather than to resolve in detail the varying tax issues arising from sale recharacterization. Since the tax principles and rules that generally apply to sales apply to transactions characterized as sales under these regulations, the Service and the Treasury believe that it is unnecessary to address the various collateral consequences in the final regulations. Collateral consequences will be addressed in subsequent guidance to the extent the Service deems appropriate.

Comments also questioned the absence of anti-abuse rules directed at specific situations, such as related party transactions. The Service and the Treasury believe that general tax principles adequately address these issues. Other comments questioned whether transfers caused by a termination of a partnership under section 708(b)(1)(B) could result in disguised sale treatment under these regulations. The final regulations clarify that such transfers are disregarded for purposes of the disguised sale rules.

B. Facts and Circumstances Test

The final regulations retain the facts and circumstances approach of the proposed regulations. In addition, the final regulations retain the list of factors that, among others, tend to indicate the existence of a disguised sale.

C. Presumptions Related to the Timing of Transfers

The final regulations follow the proposed regulations by providing that transfers between a partnership and a partner that are made within two years of each other are presumed to be a sale (unless one of the exceptions applicable to guaranteed payments for capital, reasonable preferred returns or operating cash flow distributions applies), and transfers made more than two years apart are presumed not to be a sale. Each of these presumptions may be rebutted only by facts and circumstances that clearly establish the contrary. The presumptions are intended to establish which party has the burden of going forward in litigation. In addition, the regulations require that the party against whom the presumption runs must clearly establish that the transaction is or is not a disguised sale as the case may be. Thus, a mere preponderance of evidence (the standard of persuasion that would apply in the absence of the clearly establish requirement) will not suffice.

D. Multiple Property Transfers

In response to comments, the rule contained in the proposed regulations requiring a partner contributing multiple properties to a partnership to allocate the amount realized among the properties based on their values has been deleted. Thus, the final regulations do not provide special rules for the allocation of amounts realized in these transactions.

E. Mixing Bowl Example

The proposed regulations contain an example showing that the Service can rebut the presumption for transfers more than two years apart where, among other facts, more than one partner contributes property to a partnership, the partnership agreement provides for cross-allocations with respect to the contributed properties, and one partner receives a liquidating distribution of the property contributed by the other partner. See Prop. Reg. § 1.707–3(g) *Example 8.* The final regulations retain the mixing bowl example without change, notwithstanding the submission of numerous comments requesting more specific guidance. See § 1.707–3(f) *Example 8.* The example was written to illustrate the facts and circumstances test. The Service and the Treasury emphasize that the example relies on a confluence of factors and is not intended to provide bright-line guidance or to indicate whether the result might change if one or more of the enumerated factors were changed or eliminated.

F. Other Examples

The final regulations provide minor clarification to some of the other examples in § 1.707–3(f), but without adding new facts that would alter the results stated in the proposed regulations.

III. Special Rules Applicable to Certain Distributions

The final regulations adopt, with certain modifications, the special rules applicable to guaranteed payments and preferred returns contained in the proposed regulations. In addition, the final regulations provide greater flexibility with respect to the rules applicable to operating cash flow distributions and reimbursements of preformation expenditures.

A. Guaranteed Payments for Capital

In many cases, a legitimate guaranteed payment for capital is not subject to the entrepreneurial risks of partnership operations and would be treated as part of a sale if the payment were tested under the general rules of § 1.707–3. Accordingly, the final regulations retain the rule of the proposed regulations that a legitimate guaranteed payment for capital is excepted from the general rule and is not treated as part of a sale of property.

Further, the proposed and final regulations provide that a transfer that is characterized by the parties as a guaranteed payment for capital and that is reasonable within the meaning of § 1.707–4(a)(3) will be presumed to be, in fact, a guaranteed payment for capital. A transfer that is characterized by the parties as a guaranteed payment for capital and that is not reasonable will be presumed not to be a guaranteed payment for capital. Each presumption can be rebutted only by facts and circumstances that clearly establish the contrary. If a transfer characterized by the parties as a guaranteed payment for capital is not respected as such, the transfer is subject to the general rules of the final regulations, including the presumptions for transfers made less than or more than two years apart. The final regulations do not provide explicitly that a distribution properly characterized as a guaranteed payment for services is not treated as part of a sale. Although distributions of this type are not specifically excepted from the regulations and are subject to any applicable presumption, guaranteed payments for services should not be considered part of a sale of property under the facts and circumstances test, because they are not related to a transfer of property by a partner. Similarly, a transfer of money that represents a bona fide loan or a transfer of money in repayment of a bona fide loan should not be considered part of a sale of property under the facts and circumstances test.

B. Reasonable Preferred Returns

The final regulations retain the rule of the proposed regulations that a transfer of money that is characterized by the parties as a preferred return and that is reasonable within the meaning of § 1.707–4(a)(3) is presumed not to be part of a sale unless the facts and circumstances clearly establish that the transfer is part of a sale.

C. Operating Cash Flow Distributions

The final regulations retain the rule that provides that transfers of money to a partner during a taxable year that do not exceed the partner's interest in net operating cash flow are presumed not to be part of a sale unless the facts and circumstances clearly establish that the transfers are part of a sale. For this purpose, a partner's interest in a net operating cash flow distribution is determined based on the lesser of the partner's percentage interest in overall partnership profits for the year or the partner's percentage interest in overall partnership profits for the life of the partnership. The final regulations also retain the safe harbor allowing a partner, in any taxable year of the partnership, to use the partner's smallest percentage interest in any material item of partnership income or gain that may be realized in the three-year period beginning with such taxable year.

D. Modifications Made by the Final Regulations to the Special Rules Applicable to Guaranteed Payments, Preferred Returns, and Operating Cash Flow Distributions.

In response to comments, the final regulations have modified the special rules for guaranteed payments, preferred returns, and operating cash flow distributions to provide greater flexibility in their application. Under the proposed and final regulations, a distribution that is characterized as a guaranteed payment for capital or a preferred return is reasonable if the distribution is made pursuant to a written provision of the partnership agreement and is reasonable in amount. The proposed regulations provide, generally, that a distribution is reasonable in amount if the sum of the guaranteed payment for capital and preferred return does not exceed the amount determined by multiplying the partner's unreturned capital balance at the beginning of the taxable year by a specified percentage. The final regulations modify the determination of whether a distribution is reasonable in amount by permitting the partner to choose to replace, in that calculation, its beginning-of-the-year unreturned capital balance with a weighted average capital balance for the year and by clarifying the rule's application where a guaranteed payment or preferred return is compounded more frequently than annually.

Comments also criticize *Example 2* of § 1.707–4(a)(4) of the proposed regulations which describes a distribution determined not to be a guaranteed payment for capital. The final regulations retain the example, but clarify that the non-contributing partner, D, funds entirely the guaranteed payment to C (i.e., is obligated to contribute any shortfall to the partnership necessary to make payment to the contributing partner, C, even in the event of a partnership liquidation). The example also clarifies that had the partnership (or D) purchased the property from C in an installment sale, a market rate of interest would have resulted in payments approximately equal to the guaranteed payments.

In further response to comments, the final regulations clarify the presumption regarding operating cash flow distributions. In determining the net cash flow of a partnership, the final regulations provide that the starting taxable income or loss figure is increased by tax exempt interest and is decreased by capital expenditures only when made other than from reserves or from borrowings the proceeds of which are not included in operating cash flow. If a transfer of operating cash flow exceeds the amount allowed under the operating cash flow presumption, the transfer will qualify for the presumption up to the amount allowed under the presumption. The excess or portion of the transfer that does not qualify as an operating cash flow distribution is tested under the facts and circumstances test, subject to any presumptions that may apply.

The final regulations also modify the proposed regulations to provide that accumulated guaranteed payments for capital, preferred returns, and operating cash flow distributions that meet the requirements for a favorable presumption remain subject to that favorable presumption if paid in subsequent years. As a result of this change, the rule of the proposed regulations regarding distributions within 75 days of year end is no longer necessary and has been deleted.

E. Reimbursement of Preformation Expenditures

The proposed regulations provide that transfers made to reimburse partners for certain capital expenditures incurred within one year prior to contributing property to a partnership are excepted from the rules of § 1.707–3(a) of the proposed regulations. The final regulations extend this exception to expenditures incurred within two years of the transfer by the partner to the partnership. The final regulations retain the proposed rule that reimbursements of capital expenditures are excepted from disguised sale treatment if they do not exceed 20 percent of the fair market value of the property. In the case of a reimbursement that exceeds 20 percent of the value, the final regulations allow the reimbursement to qualify for this exception to the extent of 20 percent of value. Under an alternative rule included in the final regulations, 100 percent of the reimbursements of capital expenditures are excepted from disguised sale treatment if the value of the property contributed by the partner does not exceed 120 percent of the partner's basis in the contributed property.

F. Discretion To Provide Other Exceptions

The final regulations provide that the Commissioner may by revenue ruling or other published guidance except other types of transfers or payments to a partner from treatment as part of a sale. This provision is intended to increase the Commissioner's ability to provide guidance that accommodates reasonable and customary business practices.

IV. Special Rules Relating to Liabilities

A. In General

The final regulations retain the proposed regulation's concept of debt incurred in anticipation of a transfer. Thus, the final regulations continue to distinguish between qualified and nonqualified liabilities. Under the proposed and final regulations, a partnership's assumption of (or taking subject to) a nonqualified liability is treated as part of a sale. In contrast, the assumption of (or taking subject to) a qualified liability is treated as part of a sale only to the extent the partner is otherwise treated as having sold a portion of the property.

The proposed regulations include in the definition of qualified liabilities certain liabilities incurred in the ordinary course of a trade or business in which the property transferred was used, but only if substantially all of the assets of the business are transferred. Comments questioned the necessity for, and application of, the requirement that substantially all of the assets of the business be contributed. The final regulations replace the substantially all requirement with a requirement that the partner must transfer to the partnership all the assets related to that trade or business other than assets that are not material to a continuation of the trade or business. See § 1.705–5(f) *Example 4.*

In response to comments, the final regulations clarify the definition of a qualified liability in two other respects. The final regulations clarify that a qualified liability need only encumber the transferred property throughout the

two-year period prior to the transfer. The final regulations also provide that, consistent with section 7701(g), the fair market value limitation contained in § 1.707–5(a)(6)(ii) of the proposed regulations applies only with respect to recourse liabilities.

New examples have been added to § 1.707–5(f) to illustrate further the substantive rules.

B. Partner's Share of Liability

The final regulations adopt the proposed rule providing that a partner's share of a recourse liability equals the partner's share of the liability under section 752 and the corresponding regulations. The final regulations, however, depart from the proposed rule for determining a partner's share of a nonrecourse liability. The final regulations provide that a partner's share of a nonrecourse liability is determined by applying the same percentage used to determine the partner's share of the excess nonrecourse liability under section 1.752–3(a)(3) (the so-called third-tier allocation rule).

The final regulations change the proposed rule regarding a partner's share of a nonrecourse liability in response to comments and in an effort to achieve greater simplicity. The Service and the Treasury did not adopt the nonrecoruse debt allocation rules provided in section 752 and the regulations thereunder in their entirety, because this approach would tend to produce an inverse relationship between the gain inherent in the contributed property and the extent to which a disguised sale of the property results from the encumbrance.

C. Multiple Liabilities Assumed in Connection With a Plan

The proposed regulations allow the netting of nonqualified liabilities in connection with an integrated plan, but do not allow the netting of nonqualified liabilities with qualified liabilities. The comments criticized this limited netting rule as treating a transferor of appreciated property subject to a nonqualified liability less favorably if the co-transferor's property were encumbered with a qualified liability than if the co-transferor's property were encumbered with a nonqualified liability. In response, the final regulations expand the precontribution netting rule to allow the netting of nonqualified liabilities with qualified as well as nonqualified liabilities assumed or taken subject to in connection with an integrated transaction.

D. Refinancing

The proposed regulations provide that certain partnership debt incurred to refinance other partnership debt will be treated as that other debt. Comments suggested that a similar refinancing rule is needed in situations in which a partner refinances debt prior to a transfer to the partnership. In response to these comments, the final regulations provide that the same refinancing rule applies both to a refinancing by a partner prior to transfer of property to a partnership and to a refinancing of partnership debt.

E. Tiered Partnerships and Other Related Persons

The final regulations include a liability tacking rule for tiered partnerships. The final regulations clarify that if a lower-tier partnership succeeds to a liability of an upper-tier partnership, the liability in the lower-tier partnership retains the same characterization as qualified or nonqualified that it had in the upper-tier partnership. Under the final regulations, the Commissioner may by guidance published in the Internal Revenue Bulletin provide that a similar rule applies in the case of transactions between other related parties.

V. Outbound Transactions Involving a Disguised Sale of Property by a Partnership to a Partner

Section 1.707–6 of the proposed and final regulations provide rules relating to disguised sales by a partnership to a partner. The rules are similar to the rules provided in §§ 1.707–3 and 1.707–5 for disguised sales by a partner to a partnership. However, the final regulations expand the definition of qualified liability in the context of outbound transactions, so that a partnership liability is qualified if it has been in existence for more than two years regardless of whether it has encumbered partnership property during that period.

VI. Disclosure

The proposed and final regulations provide that certain transactions are to be reported by partners and partnerships on Internal Revenue Service Form 8275 or on a statement attached to the partner's return. (Meeting the disclosure requirements of these final regulations does not necessarily satisfy the disclosure requirements of section 6662 of the Code and the regulations proposed thereunder (regarding the penalty for underpayment of tax), if that section is otherwise applicable.) The proposed regulations require disclosure in three situations. Because the final regulations modify the rules for allocation of nonrecourse liabilities, disclosure is no longer required in this situation. The final regulations thus require disclosure in only two situations: (1) When certain transfers to a partner are made within two years of a transfer of property by the partner to the partnership; and (2) when debt is incurred within two years of the earlier of a written agreement to transfer or of a transfer of the property that secures the debt, if the debt, nevertheless, is treated as a qualified liability. Similar disclosure rules are provided in the case of outbound transactions under § 1.707–6 of the final regulations. A further modification of the disclosure rules is contained in § 1.707–8(c) of the final regulations. The final regulations now permit disclosure by the partnership rather than by each transferor separately if more than one partner transfers property to a partnership pursuant to a plan.

VII. Effective Dates

The final regulations apply to transactions with respect to which all transfers considered part of a sale occur after April 24, 1991. However, pursuant to Notice 92–46 published in the Internal Revenue Bulletin, a partnership and its partners may apply the proposed regulations instead of the final regulations to any transaction with respect to which all transfers considered part of a sale occur after April 24, 1991, if at least one of the transfers considered part of a sale occurs before November 30, 1992. The final regulations state that a determination of disguised sale treatment for the period between the effective date of section 707(a)(2) of the Code and April 24, 1991, is to be made based on the statutory language and the guidance provided in the legislative history of section 707(a)(2).

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Chief Counsel for Advocacy of the Small

Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these final regulations are David R. Haglund and Susan T. Edlavitch of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.701–1 through 1.771–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 1.707–2 through 1.707–9 also issued under 26 U.S.C. 707(a)(2). * * *

Par. 2. Section 1.707–0 and §§ 1.707–2 through 1.707–9 are added to read as follows:

§ 1.707–0 Table of contents.

This section lists the captions that appear in §§ 1.707–1 through 1.707–9.

Section 1.707–1 Transactions Between Partner and Partnership

(a) Partner not acting in capacity as partner.
(b) Certain sales or exchanges of property with respect to controlled partnerships.
(1) Losses disallowed.
(2) Gains treated as ordinary income.
(3) Ownership of a capital or profits interest.
(c) Guaranteed payments.

Section 1.707–2 Disguised Payments for Services. [Reserved]

Section 1.707–3 Disguised Sales of Property to Partnership; General Rules

(a) Treatment of transfers as a sale.
(1) In general.
(2) Definition and timing of sale.
(3) Application of disguised sale rules.
(4) Deemed terminations under section 708.
(b) Transfers treated as a sale.
(1) In general.
(2) Facts and circumstances.
(c) Transfers made within two years presumed to be a sale.
(1) In general.
(2) Disclosure of transfers made within two years.
(d) Transfers made more than two years apart presumed not to be a sale.
(e) Scope.
(f) Examples.

Section 1.707–4 Disguised Sales of Property to Partnership; Special Rules Applicable to Guaranteed Payments, Preferred Returns, Operating Cash Flow Distributions, and Reimbursements of Preformation Expenditures

(a) Guaranteed payments and preferred returns.
(1) Guaranteed payment not treated as part of a sale.
(i) In general.
(ii) Reasonable guaranteed payments.
(iii) Unreasonable guaranteed payments.
(2) Presumption regarding reasonable preferred returns.
(3) Definition of reasonable preferred returns and guaranteed payments.
(i) In general.
(ii) Reasonable amount.
(4) Examples.
(b) Presumption regarding operating cash flow distributions.
(1) In general.
(2) Operating cash flow distributions.
(i) In general.
(ii) Operating cash flow safe harbor.
(iii) Tiered partnerships.
(c) Accumulation of guaranteed payments, preferred returns, and operating cash flow distributions.
(d) Exception for reimbursements of preformation expenditures.
(e) Other exceptions.

Section 1.707–5 Disguised Sales of Property to Partnership; Special Rules Relating to Liabilities

(a) Liability assumed or taken subject to by partnership.
(1) In general.
(2) Partner's share of liability.
(i) Recourse liability.
(ii) Nonrecourse liability.
(3) Reduction of partner's share of liability.
(4) Special rule applicable to transfers of encumbered property to a partnership by more than one partner pursuant to a plan.
(5) Special rule applicable to qualified liabilities.
(6) Qualified liability of a partner defined.
(7) Liability incurred within two years of transfer presumed to be in anticipation of the transfer.
(i) In general.
(ii) Disclosure of transfers of property subject to liabilities incurred within two years of the transfer.
(b) Treatment of debt-financed transfers of consideration by partnerships.
(1) In general.
(2) Partner's allocable share of liability.
(i) In general.
(ii) Debt-financed transfers made pursuant to a plan.
(A) In general.
(B) Special rule.
(iii) Reduction of partner's share of liability.
(c) Refinancings.
(d) Share of liability where assumption accompanied by transfer of money.
(e) Tiered partnerships and other related persons.
(f) Examples.

Section 1.707–6 Disguised Sales of Property by Partnership to Partner; General Rules

(a) In general.
(b) Special rules relating to liabilities.
(1) In general.
(2) Qualified liabilities.
(c) Disclosure rules.
(d) Examples.

Section 1.707–7 Disguised Sales of Partnership Interests. [Reserved]

Section 1.707–8 Disclosure of Certain Information

(a) In general.
(b) Method of providing disclosure.
(c) Disclosure by certain partnerships.

Section 1.707–9 Effective Dates and Transitional Rules

(a) Sections 1.707–3 through 1.707–6.
(1) In general.
(2) Transfers occurring on or before April 24, 1991.
(3) Effective date of section 73 of the Tax Reform Act of 1984.
(b) Section 1.707–8 disclosure of certain information.

§ 1.707–2 Disguised payments for services. [Reserved]

§ 1.707–3 Disguised sales of property to partnership; general rules.

(a) *Treatment of transfers as a sale—*
(1) *In general.* Except as otherwise provided in this section, if a transfer of property by a partner to a partnership and one or more transfers of money or other consideration by the partnership to that partner are described in paragraph (b)(1) of this section, the transfers are treated as a sale of property, in whole or in part, to the partnership.

(2) *Definition and timing of sale.* For purposes of §§ 1.707–3 through 1.707–5, the use of the term sale (or any variation of that word) to refer to a transfer of property by a partner to a partnership and a transfer of consideration by a partnership to a partner means a sale or exchange of that property, in whole or in part, to the partnership by the partner acting in a capacity other than as a member of the partnership, rather than a contribution and distribution to which sections 721 and 731, respectively, apply. A transfer that is treated as a sale under paragraph (a)(1) this section is treated as a sale for all purposes of the Internal Revenue Code (*e.g.*, sections 453, 483, 1001, 1012, 1031 and 1274). The sale is considered to take place on the date that, under general principles of Federal tax law, the partnership is considered the owner of the property. If

the transfer of money or other consideration from the partnership to the partner occurs after the transfer of property to the partnership; the partner and the partnership are treated as if, on the date of the sale, the partnership transferred to the partner an obligation to transfer to the partner money or other consideration.

(3) *Application of disguised sale rules.* If a person purports to transfer property to a partnership in a capacity as a partner, the rules of this section apply for purposes of determining whether the property was transferred in a disguised sale, even if it is determined after the application of the rules of this section that such person is not a partner. If after the application of the rules of this section to a purported transfer of property to a partnership, it is determined that no partnership exists because the property was actually sold, or it is otherwise determined that the contributed property is not owned by the partnership for tax purposes, the transferor of the property is treated as having sold the property to the person (or persons) that acquired ownership of the property for tax purposes.

(4) *Deemed terminations under section 708.* In applying the rules of this section, transfers resulting from a termination of a partnership under section 708(b)(1)(B) are disregarded.

(b) *Transfers treated as a sale*—(1) *In general.* A transfer of property (excluding money or an obligation to contribute money) by a partner to a partnership and a transfer of money or other consideration (including the assumption of or the taking subject to a liability) by the partnership to the partner constitute a sale of property, in whole or in part, by the partner to the partnership only if based on all the facts and circumstances—

(i) The transfer of money or other consideration would not have been made but for the transfer of property; and

(ii) In cases in which the transfers are not made simultaneously, the subsequent transfer is not dependent on the entrepreneurial risks of partnership operations.

(2) *Facts and circumstances.* The determination of whether a transfer of property by a partner to the partnership and a transfer of money or other consideration by the partnership to the partner constitute a sale, in whole or in part, under paragraph (b)(1) of this section is made based on all the facts and circumstances in each case. The weight to be given each of the facts and circumstances will depend on the particular case. Generally, the facts and circumstances existing on the date of the earliest of such transfers are the ones considered in determining whether a sale exists under paragraph (b)(1) of this section. Among the facts and circumstances that may tend to prove the existence of a sale under paragraph (b)(1) of this section are the following:

(i) That the timing and amount of a subsequent transfer are determinable with reasonable certainty at the time of an earlier transfer;

(ii) That the transferor has a legally enforceable right to the subsequent transfer;

(iii) That the partner's right to receive the transfer of money or other consideration is secured in any manner, taking into account the period during which it is secured;

(iv) That any person has made or is legally obligated to make contributions to the partnership in order to permit the partnership to make the transfer of money or other consideration;

(v) That any person has loaned or has agreed to loan the partnership the money or other consideration required to enable the partnership to make the transfer, taking into account whether any such lending obligation is subject to contingencies related to the results of partnership operations;

(vi) That a partnership has incurred or is obligated to incur debt to acquire the money or other consideration necessary to permit it to make the transfer, taking into account the likelihood that the partnership will be able to incur that debt (considering such factors as whether any person has agreed to guarantee or otherwise assume personal liability for that debt);

(vii) That the partnership holds money or other liquid assets, beyond the reasonable needs of the business, that are expected to be available to make the transfer (taking into account the income that will be earned from those assets);

(viii) That partnership distributions, allocation or control of partnership operations is designed to effect an exchange of the burdens and benefits of ownership of property;

(ix) That the transfer of money or other consideration by the partnership to the partner is disproportionately large in relationship to the partner's general and continuing interest in partnership profits; and

(x) That the partner has no obligation to return or repay the money or other consideration to the partnership, or has such an obligation but it is likely to become due at such a distant point in the future that the present value of that obligation is small in relation to the amount of money or other consideration transferred by the partnership to the partner.

(c) *Transfers made within two years presumed to be a sale*—(1) *In general.* For purposes of this section, if within a two-year period a partner transfers property to a partnership and the partnership transfers money or other consideration to the partner (without regard to the order of the transfers), the transfers are presumed to be a sale of the property to the partnership unless the facts and circumstances clearly establish that the transfers do not constitute a sale.

(2) *Disclosure of transfers made within two years.* Disclosure to the Internal Revenue Service in accordance with § 1.707–8 is required if—

(i) A partner transfers property to a partnership and the partnership transfers money or other consideration to the partner with a two-year period (without regard to the order of the transfers);

(ii) The partner treats the transfers other than as a sale for tax purposes; and

(iii) The transfer of money or other consideration to the partner is not presumed to be a guaranteed payment for capital under § 1.707–4(a)(1)(ii), is not a reasonable preferred return within the meaning of § 1.707–4(a)(3), and is not an operating cash flow distribution within the meaning of § 1.707–4(b)(2).

(d) *Transfers made more than two years apart presumed not to be a sale.* For purposes of this section, if a transfer of money or other consideration to a partner by a partnership and the transfer of property to the partnership by that partner are more than two years apart, the transfers are presumed not to be a sale of the property to the partnership unless the facts and circumstances clearly establish that the transfers constitute a sale.

(e) *Scope.* This section and § § 1.707–4 through 1.707–9 apply to contributions and distributions of property described in section 707(a)(2)(A) and transfers described in section 707(a)(2)(B) of the Internal Revenue Code.

(f) *Examples.* The following examples illustrate the application of this section.

Example 1. Treatment of simultaneous transfers as a sale. A transfers property X to partnership AB on April 9, 1992, in exchange for an interest in the partnership. At the time of the transfer, property X has a fair market value of $4,000,000 and an adjusted tax basis of $1,200,000. Immediately after the transfer, the partnership transfers $3,000,000 in cash to A. Assume that, under this section, the partnership's transfer of cash to A is treated as part of a sale of property X to the partnership. Because the amount of cash A receives on April 9, 1992, does not equal the fair market value of the property, A is considered to have sold a portion of property

X with a value of $3,000,000 to the partnership in exchange for the cash. Accordingly, A must recognize $2,100,000 of gain ($3,000,000 amount realized less $900,000 adjusted tax basis ($1,200,000 multiplied by $3,000,000/$4,000,000)). Assuming A receives no other transfers that are treated as consideration for the sale of the property under this section, A is considered to have contributed to the partnership, in A's capacity as a partner, $1,000,000 of the fair market value of the property with an adjusted tax basis of $300,000.

Example 2. Treatment of transfers at different times as a sale. (i) The facts are the same as in *Example 1*, except that the $3,000,000 is transferred to A one year after A's transfer of property X to the partnership. Assume that under this section the partnership's transfer of cash to A is treated as part of a sale of property X to the partnership. Assume also that the applicable Federal short-term rate for April, 1992, is 10 percent, compounded semiannually.

(ii) Under paragraph (a)(2) of this section, A and the partnership are treated as if, on April 9, 1992, A sold a portion of property X to the partnership in exchange for an obligation to transfer $3,000,000 to A one year later. Section 1274 applies to this obligation because it does not bear interest and is payable more than six months after the date of the sale. As a result, A's amount realized from the receipt of the partnership's obligation will be the imputed principal amount of the partnership's obligation to transfer $3,000,000 to A, which equals $2,721,088 (the present value on April 9, 1992, of a $3,000,000 payment due one year later, determined using a discount rate of 10 percent, compounded semiannually). Therefore, A's amount realized from the receipt of the partnership's obligation is $2,721,088 (without regard to whether the sale is reported under the installment method). A is therefore considered to have sold only $2,721,088 of the fair market value of property X. The remainder of the $3,000,000 payment ($278,912) is characterized in accordance with the provisions of section 1272. Accordingly, A must recognize $1,904,761 of gain ($2,721,088 amount realized less $816,327 adjusted tax basis ($1,200,000 multiplied by $2,721,088/$4,000,000)) on the sale of property X to the partnership. The gain is reportable under the installment method of section 453 if the sale is otherwise eligible. Assuming A receives no other transfers that are treated as consideration for the sale of property under this section, A is considered to have contributed to the partnership, in A's capacity as a partner, $1,278,912 of the fair market value of property X with an adjusted tax basis of $383,673.

Example 3. Operation of presumption for transfers within two years. (i) C transfers undeveloped land to the CD partnership in exchange for an interest in the partnership. The partnership intends to construct a building on the land. At the time the land is transferred to the partnership, it is unencumbered and has an adjusted tax basis of $500,000 and a fair market value of $1,000,000. The partnership agreement provides that upon completing construction of the building the partnership will distribute $900,000 to C.

(ii) If, within two years of C's transfer of land to the partnership, a transfer is made to C pursuant to the provision requiring a distribution upon completion of the building, the transfer is presumed to be, under paragraph (c) of this section, part of a sale of the land to the partnership. C may rebut the presumption that the transfer is part of a sale if the facts and circumstances clearly establish that—

(A) The transfer to C would have been made without regard to C's transfer of land to the partnership; or

(B) The partnership's obligation or ability to make this transfer to C depends, at the time of the transfer to the partnership, on the entrepreneurial risks of partnership operations.

(iii) For example, if the partnership will be able to fund the transfer of cash to C only to the extent that permanent loan proceeds exceed the cost of constructing the building, the fact that excess permanent loan proceeds will be available only if the cost to complete the building is significantly less than the amount projected by a reasonable budget would be evidence that the transfer to C is not part of a sale. Similarly, a condition that limits the amount of the permanent loan to the cost of constructing the building (and thereby limits the partnership's ability to make a transfer to C) unless all or a substantial portion of the building is leased would be evidence that the transfer to C is not part of a sale, if a significant risk exists that the partnership may not be able to lease the building to that extent. Another factor that may prove that the transfer of cash to C is not part of a sale would be that, at the time the land is transferred to the partnership, no lender has committed to make a permanent loan to fund the transfer of cash to C.

(iv) Facts indicating that the transfer of cash to C is not part of a sale, however, may be offset by other factors. An offsetting factor to restrictions on the permanent loan proceeds may be that the permanent loan is to be a recourse loan and certain conditions to the loan are likely to be waived by the lender because of the creditworthiness of the partners or the value of the partnership's other assets. Similarly, the factor that no lender has committed to fund the transfer of cash to C may be offset by facts establishing that the partnership is obligated to attempt to obtain such a loan and that its ability to obtain such a loan is not significantly dependent on the value that will be added by successful completion of the building, or that the partnership reasonably anticipates that it will have (and will utilize) an alternative source to fund the transfer of cash to C if the permanent loan proceeds are inadequate.

Example 4. Operation of presumption for transfers within two years. E is a partner in the equal EF partnership. The partnership owns two parcels of unimproved real property (*parcels 1 and 2*). Parcels 1 and 2 are unencumbered. Parcel 1 has a fair market value of $500,000, and parcel 2 has a fair market value of $1,500,000. E transfers additional unencumbered, unimproved real property (*parcel 3*) with a fair market value of $1,000,000 to the partnership in exchange for an increased interest in partnership profits of 66⅔ percent. Immediately after this transfer, the partnership sells parcel 1 for $500,000 in a transaction not in the ordinary course of business. The partnership transfers the proceeds of the sale $333,333 to E and $166,667 to F in accordance with their respective partnership interests. The transfer of $333,333 to E is presumed to be, in accordance with paragraph (c) of this section, a sale, in part, of parcel 3 to the partnership. However, the facts of this example clearly establish that $250,000 of the transfer to E is not part of a sale of parcel 3 to the partnership because E would have been distributed $250,000 from the sale of parcel 1 whether or not E had transferred parcel 3 to the partnership. The transfer to E exceeds by $83,333 ($333,333 minus $250,000) the amount of the distribution that would have been made to E if E had not transferred parcel 3 to the partnership. Therefore, $83,333 of the transfer is presumed to be part of a sale of a portion of parcel 3 to the partnership by E.

Example 5. Operation of presumption for transfers more than two years apart. (i) G transfers undeveloped land to the GH partnership in exchange for an interest in the partnership. At the time the land is transferred to the partnership, it is unencumbered and has an adjusted tax basis of $500,000 and a fair market value of $1,000,000. H contributes $1,000,000 in cash in exchange for an interest in the partnership. Under the partnership agreement, the partnership is obligated to construct a building on the land. The projected construction cost is $5,000,000, which the partnership plans to fund with its $1,000,000 in cash and the proceeds of a construction loan secured by the land and improvements.

(ii) Shortly before G's transfer of the land to the partnership, the partnership secures commitments from lending institutions for construction and permanent financing. To obtain the construction loan, H guarantees completion of the building for a cost of $5,000,000. The partnership is not obligated to reimburse or indemnify H if H must make payment on the completion guarantee. The permanent loan will be funded upon completion of the building, which is expected to occur two years after G's transfer of the land. The amount of the permanent loan is to equal the lesser of $5,000,000 or 80 percent of the appraised value of the improved property at the time the permanent loan is closed. Under the partnership agreement, the partnership is obligated to apply the proceeds of the permanent loan to retire the construction loan and to hold any excess proceeds for transfer to G 25 months after G's transfer of the land to the partnership. The appraised value of the improved property at the time the permanent loan is closed is expected to exceed $5,000,000 only if the partnership is able to lease a substantial portion of the improvements by that time, and there is a significant risk that the partnership will not be able to achieve a satisfactory occupancy level. The partnership completes construction of the building for the projected cost of $5,000,000 approximately two years after G's transfer of the land. Shortly thereafter, the permanent loan is funded in the amount of $5,000,000. At the time of funding the land and building have an

appraised value of $7,000,000. The partnership transfers the $1,000,000 excess permanent loan proceeds to G 25 months after G's transfer of the land to the partnership.

(iii) G's transfer of the land to the partnership and the partnership's transfer of $1,000,000 to G occurred more than two years apart. In accordance with paragraph (d) of this section, those transfers are presumed not to be a sale unless the facts and circumstances clearly establish that the transfers constitute a sale of the property, in whole or part, to the partnership. The transfer of $1,000,000 to G would not have been made but for G's transfer of the land to the partnership. In addition, at the time G transferred the land to the partnership, G had a legally enforceable right to receive a transfer from the partnership at a specified time an amount that equals the excess of the permanent loan proceeds over $4,000,000. In this case, however, there was a significant risk that the appraised value of the property would be insufficient to support a permanent loan in excess of $4,000,000 because of the risk that the partnership would not be able to achieve a sufficient occupancy level. Therefore, the facts of this example indicate that at the time G transferred the land to the partnership the subsequent transfer of $1,000,000 to G depended on the entrepreneurial risks of partnership operations. Accordingly, G's transfer of the land to the partnership is not treated as part of a sale.

Example 6. Rebuttal of presumption for transfers more than two years apart. The facts are the same as in *Example 5*, except that the partnership is able to secure a commitment for a permanent loan in the amount of $5,000,000 without regard to the appraised value of the improved property at the time the permanent loan is funded. Under these facts, at the time that G transferred the land to the partnership the subsequent transfer of $1,000,000 to G was not dependent on the entrepreneurial risks of partnership operations, because during the period before the permanent loan is funded, the permanent lender's obligation to make a loan in the amount necessary to fund the transfer is not subject to the contingencies related to the risks of partnership operations, and after the permanent loan is funded, the partnership holds liquid assets sufficient to make the transfer. Therefore, the facts and circumstances clearly establish that G's transfer of the land to the partnership is part of a sale.

Example 7. Operation of presumption for transfers more than two years apart. The facts are the same as in *Example 6*, except that H does not guarantee either that the improvements will be completed or that the cost to the partnership of completing the improvements will not exceed $5,000,000. Under these facts, if there is a significant risk that the improvements will not be completed, G's transfer of the land to the partnership will not be treated as part of a sale because the lender is required to make the permanent loan if the improvements are not completed. Similarly, the transfers will not be treated as a sale to the extent that there is a significant risk that the cost of constructing the improvements will exceed $5,000,000, because, in the absence of a guarantee of the cost of the improvements by H, the $5,000,000 proceeds of the permanent loan might not be sufficient to retire the construction loan and fund the transfer to G. In either case, the transfer of cash to G would be dependent on the entrepreneurial risks of partnership operations.

Example 8. Rebuttal of presumption for transfers more than two years apart. (i) On February 1, 1992, I, J, and K form partnership IJK. On formation of the partnership, I transfers an unencumbered office building with a fair market value of $50,000,000 and an adjusted tax basis of $20,000,000 to the partnership, and J and K each transfer United States government securities with a fair market value and an adjusted tax basis of $25,000,000 to the partnership. Substantially all of the rentable space in the office building is leased on a long-term basis. The partnership agreement provides that all items of income, gain, loss, and deduction from the office building are to be allocated 45 percent to J, 45 percent to K, and 10 percent to I. The partnership agreement also provides that all items of income, gain, loss, and deduction from the government securities are to be allocated 90 percent to I, 5 percent to J, and 5 percent to K. The partnership agreement requires that cash flow from the office building and government securities be allocated between partners in the same manner as the items of income, gain, loss, and deduction from those properties are allocated between them. The partnership agreement complies with the requirements of § 1.704–1(b)(2)(ii)(*b*). It is not expected that the partnership will need to resort to the government securities or the cash flow therefrom to operate the office building. At the time the partnership is formed, I, J, and K contemplated that I's interest in the partnership would be liquidated sometime after January 31, 1994, in exchange for a transfer of the government securities and cash (if necessary). On March 1, 1995, the partnership transfers cash and the government securities to I in liquidation of I's interest in the partnership. The cash transferred to I represents the excess of I's share of the appreciation in the office building since the formation of the partnership over J's and K's share of the appreciation in the government securities since they are acquired by the partnership.

(ii) I's transfer of the office building to the partnership and the partnership's transfer of the government securities and cash to I occurred more than two years apart. Therefore, those transfers are presumed not to be a sale unless the facts and circumstances clearly establish that the transfers constitute a sale. Absent I's transfer of the office building to the partnership, I would not have received the government securities from the partnership. The facts including the amount and nature of partnership assets) indicate that, at the time that I transferred the office building to the partnership, the timing of the transfer of the government securities to I was anticipated and was not dependent on the entrepreneurial risks of partnership operations. Moreover, the facts indicate that the partnership allocations were designed to effect an exchange of the burdens and benefits of ownership of the government securities in anticipation of the transfer of those securities to I and those burdens and benefits were effectively shifted to I on formation of the partnership. Accordingly, the facts and circumstances clearly establish that I sold the office building to the partnership on February 1, 1992, in exchange for the partnership's obligation to transfer the government securities to I and to make certain other cash transfers to I.

§ 1.707–4 Disguised sales of property to partnership; special rules applicable to guaranteed payments, preferred returns, operating cash flow distributions, and reimbursements of preformation expenditures.

(a) *Guaranteed payments and preferred returns*—(1) *Guaranteed payment not treated as part of a sale*—(i) *In general.* A guaranteed payment for capital made to a partner is not treated as part of a sale of property under § 1.707–3(a) (relating to treatment of transfers as a sale). A party's characterization of a payment as a guaranteed payment for capital will not control in determining whether a payment is, in fact, a guaranteed payment for capital. The term *guaranteed payment for capital* means any payment to a partner by a partnership that is determined without regard to partnership income and is for the use of that partner's capital. See section 707(c). For this purpose, one or more payments are not made for the use of a partner's capital if the payments are designed to liquidate all or part of the partner's interest in property contributed to the partnership rather than to provide the partner with a return on an investment in the partnership.

(ii) *Reasonable guaranteed payments.* Notwithstanding the presumption set forth in § 1.707–3(c) (relating to transfers made within two years of each other), for purposes of section 707(a)(2) and the regulations thereunder a transfer of money to a partner that is characterized by the parties as a guaranteed payment for capital, is determined without regard to the income of the partnership and is reasonable (within the meaning of paragraph (a)(3) of this section) is presumed to be a guaranteed payment for capital unless the facts and circumstances clearly establish that the transfer is not a guaranteed payment for capital and is part of a sale.

(iii) *Unreasonable guaranteed payments.* A transfer of money to a partner that is characterized by the parties as a guaranteed payment for capital but that is not reasonable (within the meaning of paragraph (a)(3) of this section) is presumed not to be a

guaranteed payment for capital unless the facts and circumstances clearly establish that the transfer is a guaranteed payment for capital. A transfer that is not a guaranteed payment for capital is subject to the rules of § 1.707–3.

(2) *Presumption regarding reasonable preferred returns.* Notwithstanding the presumption set forth in § 1.707–3(c) (relating to transfers made within two years of each other), a transfer of money to a partner that is characterized by the parties as a preferred return and that is reasonable (within the meaning of paragraph (a)(3) of this section) is presumed not to be part of a sale of property to the partnership unless the facts and circumstances (including the likelihood and expected timing of the subsequent allocation of income or gain to support the preferred return) clearly establish that the transfer is part of a sale. The term *preferred return* means a preferential distribution of partnership cash flow to a partner with respect to capital contributed to the partnership by the partner that will be matched, to the extent available, by an allocation of income or gain.

(3) *Definition of reasonable preferred returns and guaranteed payments*—(i) *In general.* A transfer of money to a partner that is characterized as a preferred return or guaranteed payment for capital is reasonable only to the extent that the transfer is made to the partner pursuant to a written provision of a partnership agreement that provides for payment for the use of capital in a reasonable amount, and only to the extent that the payment is made for the use of capital after the date on which that provision is added to the partnership agreement.

(ii) *Reasonable amount.* A transfer of money that is made to a partner during any partnership taxable year and is characterized as a preferred return or guaranteed payment for capital is reasonable in amount if the sum of any preferred return and any guaranteed payment for capital that is payable for that year does not exceed the amount determined by multiplying either the partner's unreturned capital at the beginning of the year or, at the partner's option, the partner's weighted average capital balance for the year (with either amount appropriately adjusted, taking into account the relevant compounding periods, to reflect any unpaid preferred return or guaranteed payment for capital that is payable to the partner) by the safe harbor interest rate for that year. The safe harbor interest rate for a partnership's taxable year equals 150 percent of the highest applicable federal rate, at the appropriate compounding period or periods, in effect at any time from the time that the right to the preferred return or guaranteed payment for capital is first established pursuant to a binding, written agreement among the partners through the end of the taxable year. A partner's unreturned capital equals the excess of the aggregate amount of money and the fair market value of other consideration (net of liabilities) contributed by the partner to the partnership over the aggregate amount of money and the fair market value of other consideration (net of liabilities) distributed by the partnership to the partner other than transfers of money that are presumed to be guaranteed payments for capital under paragraph (a)(1)(ii) of this section, transfers of money that are reasonable preferred returns within the meaning of this paragraph (a)(3), and operating cash flow distributions within the meaning of paragraph (b)(2) of this section.

(4) *Examples.* The following examples illustrate the application of paragraph (a) of this section:

Example 1. Transfer presumed to be a guaranteed payment. (i) A transfers property with a fair market value of $100,000 to partnership AB. At the time of A's transfer, the partnership agreement is amended to provide that A is to receive a guaranteed payment for the use of A's capital of 10 percent (compounded annually) of the fair market value of the transferred property in each of the three years following the transfer. The partnership agreement provides that partnership net taxable income and loss will be allocated equally between partners A and B, and that partnership cash flow will be distributed in accordance with the allocation of partnership net taxable income and loss. The partnership would be allowed a deduction in the year paid if the transfers made to A are treated as guaranteed payments under section 707(c). Under the partnership agreement, that deduction would be allocated in the same manner as any other item of partnership deduction. The partnership agreement complies with the requirements of § 1.704–1(b)(2)(ii)(*b*). The partnership agreement does not provide for the payment of a preferred return and, other than the guaranteed payment to be paid to A, no transfer is expected to be made during the three year period following A's transfer that is not an operating cash flow distribution (within the meaning of paragraph (b)(2) of this section). Assume that the highest applicable federal rate in effect at the time of A's transfer is eight percent compounded annually.

(ii) The transfer of money to be made to A under the partnership agreement is characterized by the parties as a guaranteed payment for capital and is determined without regard to the income of the partnership. The transfer is also reasonable within the meaning of § 1.707–4(a)(3). The transfer, therefore, is presumed to be a guaranteed payment for capital. The presumption set forth in § 1.707–3(c) (relating to transfers made within two years of each other) thus does not apply to this transfer. The transfer will not be treated as part of a sale of property to the partnership unless the facts and circumstances clearly establish that the transfer is not a guaranteed payment for capital but is part of a sale.

(iii) The presumption that the transfer is a guaranteed payment for capital is not rebutted, because there are no facts indicating that the transfer is not a guaranteed payment for the use of capital.

Example 2. Transfers characterized as guaranteed payments treated as part of a sale. (i) C and D form partnership CD. C transfers property with a fair market value of $100,000 and an adjusted tax basis of $20,000 in exchange for a partnership interest. D is responsible for managing the day-to-day operations of the partnership and makes no capital contribution to the partnership upon its formation. The partnership agreement provides that C is to receive payments characterized as guaranteed payments and determined without regard to partnership income of $8,333 per year for the first four years of partnership operations for the use of C's capital. In addition, the partnership agreement provides that—

(A) Partnership net taxable income and loss will be allocated 75 percent to C and 25 percent to D; and

(B) All partnership cash flow (determined prior to consideration of the guaranteed payment) will be distributed 75 percent to C and 25 percent to D except that guaranteed payments that the partnership is obligated to make to C are payable solely out of D's share of the partnership's cash flow.

(ii) If D's share of the partnership's cash flow is not sufficient to make the guaranteed payment to C, then D is obligated to contribute any shortfall to the partnership, even in the event the partnership is liquidated. Thus, the effect of the guaranteed payment arrangement is that the guaranteed payment to C is funded entirely by D. The partnership agreement complies with the requirements of § 1.704–1(b)(2)(ii)(*b*). Assume that, at the time the partnership is formed, the partnership or D could borrow $25,000 pursuant to a loan requiring equal payments of principal and interest over a four-year term at the current market interest rate of approximately 12 percent (compounded annually). Assume that the highest applicable federal rate in effect at the time the partnership is formed is 10 percent compounded annually.

(iii) The transfer of money to be made to C under the partnership agreement is characterized by the parties as a guaranteed payment for capital and is determined without regard to the income of the partnership. The transfer is also reasonable within the meaning of § 1.707–4(a)(3). The transfer, therefore, is presumed to be a guaranteed payment for capital. The presumption set forth in § 1.707–3(c) (relating to transfers made within two years of each other) thus does not apply to this transfer. The transfer will not be treated as part of a sale of property to the partnership unless the facts and circumstances clearly establish that

the transfer is not a guaranteed payment for capital and is part of a sale.

(iv) For the first four years of partnership operations, the total guaranteed payments made to C under the partnership agreement will equal $33,332. If the characterization of those payments as guaranteed payments for capital within the meaning of section 707(c) were respected, C would be allocated $24,999 of the deductions that would be claimed by the partnership for those payments, thereby leaving the balance in C's capital account approximately $25,000 less than it would have been if the guaranteed payments had not been made. The guaranteed payments thus have the effect of offsetting approximately $25,000 of the credit made to C's capital account for the property transferred to the partnership by C. C's resulting capital account is approximately equivalent to the capital account C would have had if C had only contributed 75 percent of the property to the partnership. Furthermore, the effect of D's funding the guaranteed payment to C (either through reduced distributions of cash flow to D or additional contributions) is that D's capital account is approximately equivalent to the capital account D would have had if D had contributed 25 percent of the property (or contributed cash so that the partnership could purchase the 25 percent). Moreover, a $25,000 loan requiring equal payments of principal and interest over a four-year term at the current market interest rate of 12 percent (compounded annually), would have resulted in annual payments of principal and interest of $8,230.86. Consequently, the guaranteed payments effectively place the partners in the same economic position that they would have been in had D purchased a one-quarter interest in the property from C financed at the current market rate of interest, and then C and D each contributed their share of the property to the partnership. In view of the burden the guaranteed payments place on D's right to transfers of partnership cash flow and D's legal obligation to make contributions to the partnership to the extent necessary to fund the guaranteed payments, D has effectively purchased through the partnership a one-quarter interest in the property from C.

(v) Under these facts, the presumption that the transfers to C are guaranteed payments for capital is rebutted, because the facts and circumstances clearly establish that the transfers are part of a sale and not guaranteed payments for capital. Under § 1.707–3(a), C and the partnership are treated as if C sold a one-quarter interest in the property to the partnership in exchange for a promissory note evidencing the partnership's obligation to make the guaranteed payments.

(b) *Presumption regarding operating cash flow distributions*—(1) *In general.* Notwithstanding the presumption set forth in § 1.707–3(c) (relating to transfers made within two years of each other), an operating cash flow distribution is presumed not to be part of a sale of property to the partnership unless the facts and circumstances clearly establish that the transfer is part of a sale.

(2) *Operating cash flow distributions*—(i) *In general.* One or more transfers of money by the partnership to a partner during a taxable year of the partnership are operating cash flow distributions for purposes of paragraph (b)(1) of this section to the extent that those transfers are not presumed to be guaranteed payments for capital under paragraph (a)(1)(ii) of this section, are not reasonable preferred returns within the meaning of paragraph (a)(3) of this section, are not characterized by the parties as distributions to the partner acting in a capacity other than as a partner, and to the extent they do not exceed the product of the net cash flow of the partnership from operations for the year multiplied by the lesser of the partner's percentage interest in overall partnership profits for that year or the partner's percentage interest in overall partnership profits for the life of the partnership. For purposes of the preceding sentence, the net cash flow of the partnership from operations for a taxable year is an amount equal to the taxable income or loss of the partnership arising in the ordinary course of the partnership's business and investment activities, increased by tax exempt interest, depreciation, amortization, cost recovery allowances and other noncash charges deducted in determining such taxable income and decreased by—

(A) Principal payments made on any partnership indebtedness;

(B) Property replacement or contingency reserves actually established by the partnership;

(C) Capital expenditures when made other than from reserves or from borrowings the proceeds of which are not included in operating cash flow; and

(D) Any other cash expenditures (including preferred returns) not deducted in determining such taxable income or loss.

(ii) *Operating cash flow safe harbor.* For any taxable year, in determining a partner's operating cash flow distributions for the year, the partner may use the partner's smallest percentage interest under the terms of the partnership agreement in any material item of partnership income or gain that may be realized by the partnership in the three-year period beginning with such taxable year. This provision is merely intended to provide taxpayers with a safe harbor and is not intended to preclude a taxpayer from using a different percentage under the rules of paragraph (b)(2)(i) of this section.

(iii) *Tiered partnerships.* In the case of tiered partnerships, the upper-tier partnership must take into account its share of the net cash flow from operations of the lower-tier partnership applying principles similar to those described in paragraph (b)(2)(i) of this section, so that the amount of the upper-tier partnership's operating cash flow distributions is neither overstated nor understated.

(c) *Accumulation of guaranteed payments, preferred returns, and operating cash flow distributions.* Guaranteed payments for capital, preferred returns, and operating cash flow distributions presumed not to be part of a sale under the rules of paragraphs (a) and (b) of this section do not lose the benefit of the presumption by reason of being retained for distribution in a later year.

(d) *Exception for reimbursements of preformation expenditures.* A transfer of money or other consideration by the partnership to a partner is not treated as part of a sale of property by the partner to the partnership under § 1.707–3(a) (relating to treatment of transfers as a sale) to the extent that the transfer to the partner by the partnership is made to reimburse the partner for, and does not exceed the amount of, capital expenditures that—

(1) Are incurred during the two-year period preceding the transfer by the partner to the partnership; and

(2) Are incurred by the partner with respect to—

(i) Partnership organization and syndication costs described in section 709; or

(ii) Property contributed to the partnership by the partner, but only to the extent the reimbursed capital expenditures do not exceed 20 percent of the fair market value of such property at the time of the contribution. However, the 20 percent of fair market value limitation of this paragraph (d)(2)(ii) does not apply if the fair market value of the contributed property does not exceed 120 percent of the partner's adjusted basis in the contributed property at the time of contribution.

(e) *Other exceptions.* The Commissioner may provide by guidance published in the Internal Revenue Bulletin that other payments or transfers to a partner are not treated as part of a sale for purposes of section 707(a)(2) and the regulations thereunder.

§ 1.707–5 Disguised sales of property to partnership; special rules relating to liabilities.

(a) *Liability assumed or taken subject to by partnership*—(1) *In general.* For

purposes of this section and §§ 1.707–3 and 1.707–4, if a partnership assumes or takes property subject to a qualified liability (as defined in paragraph (a)(6) of this section) of a partner, the partnership is treated as transferring consideration to the partner only to the extent provided in paragraph (a)(5) of this section. By contrast, if the partnership assumes or takes property subject to a liability of the partner other than a qualified liability, the partnership is treated as transferring consideration to the partner to the extent that the amount of the liability exceeds the partner's share of that liability immediately after the partnership assumes or takes subject to the liability as provided in paragraphs (a) (2), (3) and (4) of this section.

(2) *Partner's share of liability.* A partner's share of any liability of the partnership is determined under the following rules:

(i) *Recourse liability.* A partner's share of a recourse liability of the partnership equals the partner's share of the liability under the rules of section 752 and the regulations thereunder. A partnership liability is a recourse liability to the extent that the obligation is a recourse liability under § 1.752–1(a)(1) or would be treated as a recourse liability under that section if it were treated as a partnership liability for purposes of that section.

(ii) *Nonrecourse liability.* A partner's share of a nonrecourse liability of the partnership is determined by applying the same percentage used to determine the partner's share of the excess nonrecourse liability under § 1.752–3(a)(3). A partnership liability is a nonrecourse liability of the partnership to the extent that the obligation is a nonrecourse liability under § 1.752–1(a)(2) or would be a nonrecourse liability of the partnership under § 1.752–1(a)(2) if it were treated as a partnership liability for purposes of that section.

(3) *Reduction of partner's share of liability.* For purposes of this section, a partner's share of a liability, immediately after a partnership assumes or takes subject to the liability, is determined by taking into account a subsequent reduction in the partner's share if—

(i) At the time that the partnership assumes or takes subject to a liability, it is anticipated that the transferring partner's share of the liability will be subsequently reduced; and

(ii) The reduction of the partner's share of the liability is part of a plan that has as one of its principal purposes minimizing the extent to which the assumption of or taking subject to the liability is treated as part of a sale under § 1.707–3.

(4) *Special rule applicable to transfers of encumbered property to a partnership by more than one partner pursuant to a plan.* For purposes of paragraph (a)(1) of this section, if the partnership assumes or takes property or properties subject to the liabilities of more than one partner pursuant to a plan, a partner's share of the liabilities assumed or taken subject to by the partnership pursuant to that plan immediately after the transfers equals the sum of that partner's shares of the liabilities (other than that partner's qualified liabilities, as defined in paragraph (a)(6) of this section) assumed or taken subject to by the partnership pursuant to the plan. This paragraph (a)(4) does not apply to any liability assumed or taken subject to by the partnership with a principal purpose of reducing the extent to which any other liability assumed or taken subject to by the partnership is treated as a transfer of consideration under paragraph (a)(1) of this section.

(5) *Special rule applicable to qualified liabilities.* (i) If a transfer of property by a partner to a partnership is not otherwise treated as part of a sale, the partnership's assumption of or taking subject to a qualified liability in connection with a transfer of property is not treated as part of a sale. If a transfer of property by a partner to the partnership is treated as part of a sale without regard to the partnership's assumption of or taking subject to a qualified liability (as defined in paragraph (a)(6) of this section) in connection with the transfer of property, the partnership's assumption of or taking subject to that liability is treated as a transfer of consideration made pursuant to a sale of such property to the partnership only to the extent of the lesser of—

(A) The amount of consideration that the partnership would be treated as transferring to the partner under paragraph (a)(1) of this section if the liability were not a qualified liability; or

(B) The amount obtained by multiplying the amount of the qualified liability by the partner's net equity percentage with respect to that property.

(ii) A partner's net equity percentage with respect to an item of property equals the percentage determined by dividing—

(A) The aggregate transfers of money or other consideration to the partner by the partnership (other than any transfer described in this paragraph (a)(5)) that are treated as proceeds realized from the sale of the transferred property; by

(B) The excess of the fair market value of the property at the time it is transferred to the partnership over any qualified liability encumbering the property or, in the case of any qualified liability described in paragraph (a)(6)(i) (C) or (D) of this section, that is properly allocable to the property.

(6) *Qualified liability of a partner defined.* A liability assumed or taken subject to by a partnership in connection with a transfer of property to the partnership by a partner is qualified liability of the partner only to the extend—

(i) The liability is—

(A) A liability that was incurred by the partner more than two years prior to the earlier of the date the partner agrees in writing to transfers the property or the date the partner transfers the property to the partnership and that has encumbered the transferred property throughout that two-year period;

(B) A liability that was not incurred in anticipation of the transfer of the property to a partnership, buy that was incurred by the partner within the two-year period prior to the earlier of the date the partner agrees in writing to transfer the property or the date the partner transfers the property to the partnership and that has encumbered the transferred property since it was incurred (see paragraph (a)(7) of this section for further rules regarding a liability incurred within two years of a property transfer or of a written agreement to transfer);

(C) A liability that is allocable under the rules of § 1.163–8T to capital expenditures with respect to the property; or

(D) A liability that was incurred in the ordinary course of the trade or business in which property transferred to the partnership was used or held but only if all the assets related to that trade or business are transferred other than assets that are not material to a continuation of the trade or business; and

(ii) If the liability is a recourse liability, the amount of the liability does not exceed the fair market value of the transferred property (less the amount of any other liabilities that are senior in priority and that either encumber such property or are liabilities described in paragraph (a)(6)(i) (C) or (D) of this section) at the time of the transfer.

(7) *Liability incurred within two years of transfer presumed to be in anticipation of the transfer*—(i) *In general.* For purposes of this section, if within a two-year period a partner incurs a liability (other than a liability described in paragraph (a)(6)(i) (C) or (D) of this section) and transfers property to a partnership or agrees in

writing to transfer the property, and in connection with the transfer the partnership assumes or takes the property subject to the liability, the liability is presumed to be incurred in anticipation of the transfer unless the facts and circumstances clearly establish that the liability was not incurred in anticipation of the transfer.

(ii) *Disclosure of transfers of property subject to liabilities incurred within two years of the transfer.* If a partner treats a liability assumed or taken subject to by a partnership as a qualified liability under paragraph (a)(6)(i)(B) of this section, such treatment is to be disclosed to the Internal Revenue Service in accordance with § 1.707–8.

(b) *Treatment of debt-financed transfers of consideration by partnerships*—(1) *In general.* For purposes of § 1.707–3, if a partner transfers property to a partnership, and the partnership incurs a liability and all or a portion of the proceeds of that liability are allocable under § 1.163–8T to a transfer of money or other consideration to the partner made within 90 days of incurring the liability, the transfer of money or other consideration to the partner is taken into account only to the extent that the amount of money or the fair market value of the other consideration transferred exceeds that partner's allocable share of the partnership liability.

(2) *Partner's allocable share of liability*—(i) *In general.* A partner's allocable share of a partnership liability for purposes of paragraph (b)(1) of this section equals the amount obtained by multiplying the partner's share of the liability as described in paragraph (a)(2) of this section by the fraction determined by dividing—

(A) The portion of the liability that is allocable under § 1.163–8T to the money or other property transferred to the partner; by

(B) The total amount of the liability.

(ii) *Debt-financed transfers made pursuant to a plan.*—(A) *In general.* Except as provided in paragraph (b)(2)(iii) of this section, if a partnership transfers to more than one partner pursuant to a plan all or a portion of the proceeds of one or more partnership liabilities, paragraph (b)(1) of this section is applied by treating all of the liabilities incurred pursuant to the plan as one liability, and each partner's allocable share of those liabilities equals the amount obtained by multiplying the sum of the partner's shares of each of the respective liabilities (as defined in paragraph (a)(2) of this section) by the fraction obtained by dividing—

(*1*) The portion of those liabilities that is allocable under § 1.163–8T to the money or other consideration transferred to the partners pursuant to the plan; by

(*2*) The total amount of those liabilities.

(B) *Special rule.* Paragraph (b)(2)(ii)(A) of this section does not apply to any transfer of money or other property to a partner that is made with a principal purpose of reducing the extent to which any transfer is taken into account under paragraph (b)(1) of this section.

(iii) *Reduction of partner's share of liability.* For purposes of paragraph (b)(2) of this section, a partner's share of a liability, immediately after the partnership assumes or takes subject to the liability, is determined by taking into account a subsequent reduction in the partner's share if—

(A) It is anticipated that the partner's share of the liability that is allocable to a transfer of money or other consideration to the partner will be reduced subsequent to the transfer; and

(B) The reduction of the partner's share of the liability is part of a plan that has as one of its principal purposes minimizing the extent to which the partnership's distribution of the proceeds of the borrowing is treated as part of a sale.

(c) *Refinancings.* To the extent that the proceeds of a partner or partnership liability (the *refinancing debt*) are allocable under the rules of § 1.163–8T to payments discharging all or part of any other liability of that partner or of the partnership, as the case may be, the refinancing debt is treated as the other liability for purposes of applying the rules of this section.

(d) *Share of liability where assumption accompanied by transfer of money.* For purposes of § § 1.707–3 through 1.707–5, if pursuant to a plan a partner pays or contributes money to the partnership and the partnership assumes or takes subject to one or more liabilities (other than qualified liabilities) of the partner, the amount of those liabilities that the partnership is treated as assuming or taking subject to is reduced (but not below zero) by the money transferred.

(e) *Tiered partnerships and other related persons.* If a lower-tier partnership succeeds to a liability of an upper-tier partnership, the liability in the lower-tier partnership retains the characterization as qualified or nonqualified that it had under these rules in the upper-tier partnership. A similar rule applies to other related party transactions involving liabilities to the extent provided by guidance published in the Internal Revenue Bulletin.

(f) *Examples.* The following examples illustrate the application of this section.

Example 1. Partnership's assumption of nonrecourse liability encumbering transferred property. (i) A and B form partnership AB, which will engage in renting office space. A transfers $500,000 in cash to the partnership, and B transfers an office building to the partnership. At the time it is transferred to the partnership, the office building has a fair market value of $1,000,000, an adjusted basis of $400,000, and is encumbered by a $500,000 liability, which B incurred 12 months earlier to finance the acquisition of other property. No facts rebut the presumption that the liability was incurred in anticipation of the transfer of the property to the partnership. Assume that this liability is a nonrecourse liability of the partnership within the meaning of section 752 and the regulations thereunder. The partnership agreement provides that partnership items will be allocated equally between A and B, including excess nonrecourse deductions under § 1.752–3(a)(3). The partnership agreement complies with the requirements of § 1.704–1(b)(2)(ii)(*b*).

(ii) The nonrecourse liability secured by the office building is not a qualified liability within the meaning of paragraph (a)(6) of this section. B would be allocated 50 percent of the excess nonrecourse liability under the partnership agreement. Accordingly, immediately after the partnership's assumption of that liability, B's share of the liability equals $250,000, which is equal to B's 50 percent share of the excess nonrecourse liability of the partnership as determined in accordance with B's share of partnership profits under § 1.752–3(a)(3).

(iii) The partnership's taking subject to the liability encumbering the office building is treated as a transfer of $250,000 of consideration to B (the amount by which the liability ($500,000) exceeds B's share of that liability immediately after taking subject to $250,000)). B is treated as having sold $250,000 of the fair market value of the office building to the partnership in exchange for the partnership's taking subject to a $250,000 liability. This results in a gain of $150,000 ($250,000 minus ($250,000/$1,000,000 multiplied by $400,000)).

Example 2. Partnership's assumption of recourse liability encumbering transferred property. (i) C transfers property Y to a partnership. At the time of its transfer to the partnership, property Y has a fair market value of $10,000,000 and is subject to an $8,000,000 liability that C incurred, immediately before transferring property Y to the partnership, in order to finance other expenditures. Upon the transfer of property Y to the partnership, the partnership assumed the liability encumbering that property. The partnership assumed this liability solely to acquire property Y. Under section 752 and the regulations thereunder, immediately after the partnership's assumption of the liability encumbering property Y, the liability is a recourse liability of the partnership and C's share of that liability is $7,000,000.

(ii) Under the facts of this example, the liability encumbering property Y is not a qualified liability.

Accordingly, the partnership's assumption of the liability results in a transfer of consideration to C in connection with C's transfer of property Y to the partnership in the amount of $1,000,000 (the excess of the liability assumed by the partnership ($8,000,000) over C's share of the liability immediately after the assumption ($7,000,000)). See paragraphs (a) (1) and (2) of this section.

Example 3. Subsequent reduction of transferring partner's share of liability. (i) The facts are the same as in Example 2. In addition, property Y is a fully leased office building, the rental income from property Y is sufficient to meet debt service, and the remaining term of the liability is ten years. It is anticipated that, three years after the partnership's assumption of the liability, C's share of the liability under section 752 will be reduced to zero because of a shift in the allocation of partnership losses pursuant to the terms of the partnership agreement. Under the partnership agreement, this shift in the allocation of partnership losses is dependent solely on the passage of time.

(ii) Under paragraph (a)(3) of this section, if the reduction in C's share of the liability was anticipated at the time of C's transfer, and the reduction was part of a plan that has as one of its principal purposes minimizing the extent of sale treatment under § 1.707–3 (*i.e.*, a principal purpose of allocating a large percentage of losses to C in the first three years when losses were not likely to be realized was to minimize the extent to which C's transfer would be treated as part of a sale), C's share of the liability immediately after the assumption is treated as equal to C's reduced share.

Example 4. Trade payables as qualified liabilities. (i) D and E form partnership DE which will engage in a consulting business that requires no overhead and minimal cash on hand for daily operating expenses. Previously, D and E, as individual sole proprietors, operated separate consulting businesses. D and E each transfer to the partnership sufficient cash to cover daily operating expenses together with the goodwill and trade payables related to each sole proprietorship. Due to uncertainty over the collection rate on the trade receivables related to their sole proprietorships, D and E agree that none of the trade receivables will be transferred to the partnership.

(ii) Under the facts of this example, all the assets related to the consulting business (other than the trade receivables) together with the trade payables were transferred to partnership DE. The trade receivables retained by D and E are not material to a continuation of the trade or business by the partnership because D and E contributed sufficient cash to cover daily operating expenses. Accordingly, the trade payables transferred to the partnership constitute qualified liability under paragraph (a)(6) of this section.

Example 5. Partnership's assumption of a qualified liability as sole consideration. (i) F transfers property Z to a partnership. At the time of its transfer to the partnership, property Z has a fair market value of $165,000 and an adjusted tax basis of $75,000. Also, at the time of the transfer, property Z is subject to a $75,000 liability that F incurred more than two years before transferring property Z to the partnership. The liability has been secured by property Z since it was incurred by F. Upon the transfer of property Z to the partnership, the partnership assumed the liability encumbering that property. The partnership made no other transfers to F in consideration for the transfer of property Z to the partnership. Assume that, under section 752 and the regulations thereunder, immediately after the partnership's assumption of the liability encumbering property Z, the liability is a recourse liability of the partnership and F's share of that liability is $25,000.

(ii) The $75,000 liability secured by property Z is a qualified liability of F because F incurred the liability more than two years prior to the assumption of the liability by the partnership and the liability has encumbered property Z for more than two years prior to that assumption. *See* paragraph (a)(6) of this section. Therefore, since no other transfer to F was made as consideration for the transfer of property Z, under paragraph (a)(5) of this section, the partnership's assumption of the qualified liability of F encumbering property Z is not treated as part of a sale.

Example 6. Partnership's assumption of a qualified liability in addition to other consideration. (i) The facts are the same as in *Example 5*, except that the partnership makes a transfer to D of $30,000 in money that is consideration for F's transfer of property Z to the partnership under § 1.707–3.

(ii) As in *Example 5*, the $75,000 liability secured by property Z is a qualified liability of F. Since the partnership transferred $30,000 to F in addition to assuming the qualified liability under paragraph (a)(5) of this section, the partnership's assumption of this qualified liability is treated as a transfer of additional consideration to F to the extent of the lesser of—

(A) The amount that the partnership would be treated as transferring to F if the liability were not a qualified liability ($50,000 (*i.e.*, the excess of the $75,000 qualified liability over F's $25,000 share of that liability)); or

(B) The amount obtained by multiplying the qualified liability ($75,000) by F's net equity percentage with respect to property Z (one-third).

(iii) F's net equity percentage with respect to property Z equals the fraction determined by dividing—

(A) The aggregate amount of money or other consideration (other than the qualified liability) transferred to F and treated as part of a sale of property Z under § 1.707–3(a) ($30,000 transfer of money); by

(B) F's net equity in property Z ($90,000 (*i.e.*, the excess of the $165,000 fair market value over the $75,000 qualified liability)).

(iv) Accordingly, the partnership's assumption of the qualified liability of F encumbering property Z is treated as a transfer of $25,000 (one-third of $75,000) of consideration to F pursuant to a sale. Therefore, F is treated as having sold $55,000 of the fair market value of property Z to the partnership in exchange for $30,000 in money and the partnership's assumption of $25,000 of the qualified liability. Accordingly, F must recognize $30,000 of gain on the sale (the excess of the $55,000 amount realized over $25,000 of F's adjusted basis for property Z (*i.e.*, one-third of F's adjusted basis for the property, because F is treated as having sold one-third of the property to the partnership)).

Example 7. Partnership's assumptions of liabilities encumbering properties transferred pursuant to a plan. (i) Pursuant to a plan, G and H transfer property 1 and property 2, respectively, to an existing partnership in exchange for interests in the partnership. At the time the properties are transferred to the partnership, property 1 has a fair market value of $10,000 and an adjusted tax basis of $6,000, and property 2 has a fair market value of $10,000 and an adjusted tax basis of $4,000. At the time properties 1 and 2 are transferred to the partnership, a $6,000 nonrecourse liability (*liability 1*) is secured by property 1 and a $7,000 recourse liability of F (*liability 2*) is secured by property 2. Properties 1 and 2 are transferred to the partnership, and the partnership takes subject to liability 1 and assumes liability 2. G and H incurred liabilities 1 and 2 immediately prior to transferring properties 1 and 2 to the partnership and used the proceeds for personal expenditures. The liabilities are not qualified liabilities. Assume that G and H are each allocated $2,000 of liability 1 in accordance with § 1.707–5(a)(2)(ii) (which determines a partner's share of a nonrecourse liability). Assume further that G's share of liability 2 is $3,500 and H's share is $0 in accordance with § 1.707–5(a)(2)(i) (which determines a partner's share of a recourse liability).

(ii) G and H transferred properties 1 and 2 to the partnership pursuant to a plan. Accordingly, the partnership's taking subject to liability 1 is treated as a transfer of only $500 of consideration to G, (the amount by which liability 1 ($6,000) exceeds G's share of liabilities 1 and 2 ($5,500)), and the partnership's assumption of liability 2 is treated as a transfer of only $5,000 of consideration to H (the amount by which liability 2 ($7,000) exceeds H's share of liabilities 1 and 2 ($2,000)). G is treated under the rule in § 1.707–3 as having sold $500 of the fair market value of property 1 in exchange for the partnership's taking subject to liability 1 and H is treated as having sold $5,000 of the fair market value of property 2 in exchange for the assumption of liability 2.

Example 8. Partnership's assumption of liability pursuant to a plan to avoid sale treatment of partnership assumption of another liability. (i) The facts are the same as in *Example 7*, except that—

(A) H transferred the proceeds of liability 2 to the partnership; and

(B) H incurred liability 2 in an attempt to reduce the extent to which the partnership's taking subject to liability 1 would be treated as a transfer of consideration to G (and thereby reduce the portion of G's transfer of property 1 to the partnership that would be treated as part of a sale).

(ii) Because the partnership assumed liability 2 with a principal purpose of reducing the extent to which the partnership's

taking subject to liability 1 would be treated as a transfer of consideration to G, liability 2 is ignored in applying paragraph (a)(3) of this section. Accordingly, the partnership's taking subject to liability 1 is treated as a transfer of $4,000 of consideration to G (the amount by which liability 1 ($6,000) exceeds G's share of liability 1 ($2,000)). On the other hand, the partnership's assumption of liability 2 is not treated as a transfer of any consideration to H because H's share of that liability equals $7,000 as a result of H's transfer of $7,000 in money to the partnership.

Example 9. Partnership's assumptions of qualified liabilities encumbering properties transferred pursuant to a plan in addition to other consideration. (i) Pursuant to a plan, I transfers property 1 and J transfers property 2 plus $10,000 in cash to partnership IJ in exchange for equal interests in the partnership. At the time the properties are transferred to the partnership, property 1 has a fair market value of $100,000, an adjusted tax basis of $5,000, and is encumbered by a qualified liability of $50,000 (*liability 1*). Property 2 has a fair market value of $100,000, an adjusted tax basis of $5,000, and is encumbered by a qualified liability of $70,000 (*liability 2*). Pursuant to the plan, the partnership transferred to I $10,000 in cash. That amount is consideration for I's transfer of property 1 to the partnership under § 1.707–3. In accordance with § 1.707–5(a)(2), I and J are each allocated $25,000 of liability 1 and $35,000 of liability 2.

(ii) Because the partnership transferred $10,000 to I as consideration for the transfer of property, under § 1.707–5(a)(5), the partnership's assumption of liability 1 is treated as a transfer of additional consideration to I, even though liability 1 is a qualified liability, to the extent of the lesser of—

(A) The amount that the partnership would be treated as transferring to I if the liability were not a qualified liability; or

(B) The amount obtained by multiplying the qualified liability by I's net equity percentage with respect to property 1.

(iii) Because I and J transferred properties 1 and 2 to the partnership pursuant to a plan, treating I's qualified liability as a nonqualified liability under § 1.707–5(a)(5)(i)(A) enables I to apply the special rule applicable to transfers of encumbered property to a partnership by more than one partner pursuant to a plan under § 1.707–5(a)(4). Under this alternative test, the partnership's assumption of liability 1 encumbering property 1 is treated as a transfer of zero ($0) additional consideration to I pursuant to a sale. This is because the amount of liability 1 ($50,000) does not exceed the sum of I's share of liability 1 treated as a nonqualified liability ($25,000) and I's share of liability 2 ($35,000)).

(iv) The alternative under § 1.707–5(a)(5)(i)(B) is the amount obtained by multiplying the qualified liability ($50,000) by I's net equity percentage with respect to property 1. I's net equity percentage with respect to property 1 equals one-fifth, the fraction determined by dividing—

(A) The aggregate amount of money or other consideration (other than the qualified liability) transferred to I and treated as part of a sale of property 1 under § 1.707–3(a) (the $10,000 transfer of money; by

(B) I's net equity in property 1 ($50,000 *i.e.*, the excess of the $100,000 fair market value over the $50,000 qualified liability).

(v) Under this alternative test, the partnership's assumption of the qualified liability encumbering property 1 is treated as a transfer of $10,000 (one-fifth of the $50,000 qualified liability) of additional consideration to I pursuant to a sale.

(vi) Applying § 1.707–5(a)(5) to these facts, the partnership's assumption of liability 1 is treated as a transfer of additional consideration to I to the extent of the lesser of—

(A) zero; or

(B) $10,000.

(vii) Therefore, the partnership's assumption of I's qualified liability encumbering property 1 is not treated as a transfer of any additional consideration to I pursuant to a sale, and I is treated as having only received $10,000 of the fair market value of property 1 to the partnership in exchange for $10,000 in cash. Accordingly, I must recognize $9,500 of gain on the sale, that is, the excess of the $10,000 amount realized over $500 of I's adjusted tax basis for property 1 (one-tenth of I's adjusted tax basis for the property, because I is treated as having sold one-tenth of the property to the partnership). Since no other transfer to J was made as consideration for the transfer of property 2, the partnership's assumption of the qualified liability of J encumbering property 2 is not treated as part of a sale.

Example 10. Treatment of debt-financed transfers of consideration by partnership. (i) K transfers property Z to partnership KL in exchange for an interest therein on April 9, 1992. On September 13, 1992, the partnership incurs a liability of $20,000. On November 17, 1992, the partnership transfers $20,000 to K, and $10,000 of this transfer is allocable under the rules of § 1.163–8T to proceeds of the partnership liability incurred on September 13, 1992. The remaining $10,000 is paid from other partnership funds. Assume that, under section 752 and the corresponding regulations, the $20,000 liability incurred on September 13, 1992, is a recourse liability of the partnership and K's share of that liability is $10,000 on November 17, 1992.

(ii) Because a portion of the transfer made to K on November 17, 1992, is allocable under § 1.163–8T to proceeds of a partnership liability that was incurred by the partnership within 90 days of that transfer, K is required to take the transfer into account in applying the rules of this section and § 1.707–3 only to the extent that the amount of the transfer exceeds K's allocable share of the liability used to fund the transfer. K's allocable share of the $20,000 liability used to fund $10,000 of the transfer to K is $5,000 (K's share of the liability ($10,000) multiplied by the fraction obtained by dividing—

(A) The amount of the liability that is allocable to the distribution to K ($10,000); by

(B) The total amount of such liability ($20,000)).

(iii) Therefore, K is required to take into account only $15,000 of the $20,000 partnership transfer to K for purposes of this section and § 1.707–3. Under these facts, assuming the within-two-year presumption is not rebutted, this $15,000 transfer will be treated under the rule in § 1.707–3 as part of a sale by K of property Z to the partnership.

Example 11. Borrowing against pool of receivables. (i) M generates receivables which have an adjusted basis of zero in the ordinary course of its business. For M to use receivables as security for a loan, a commercial lender requires M to transfer the receivables to a partnership in which M has a 90 percent interest. In January, 1992, M transfers to the partnership receivables with a face value of $100,000. N (who is not related to M) transfers $10,000 cash to the partnership in exchange for a 10 percent interest. The partnership borrows $80,000, secured by the receivables, and makes a distribution of $72,000 of the proceeds to M and $8,000 of the proceeds to N within 90 days of incurring the liability. M's share of the liability under § 1.707–5(a)(2) is $72,000 (90 percent × $80,000).

(ii) Because the transfer of the loan proceeds to M is allocable under § 1.163–8T to proceeds of a partnership loan that was incurred by the partnership within 90 days of that transfer, M is required to take the transfer into account in applying the rules of this section and § 1.707–3 only to the extent that the amount of the transfer ($72,000) exceeds M's allocable share of the liability used to fund the transfer. Because the distribution was a debt-financed transfer pursuant to a plan, M's allocable share of the liability is $72,000 ($72,000 × $80,000/80,000) under § 1.707–5(b)(2)(ii). Therefore, M is not required to take into account any of the loan proceeds for purposes of this section and § 1.707–3.

(iii) When the receivables are collected, M must be allocated the gain on the contributed receivables under section 704(c). However, the lender permits the partnership to distribute cash to the partners only to the extent of the value of new receivables contributed to the partnership. In 1993, M contributes additional receivables and receives a distribution of cash. The taxable income recognized by the partnership on the receivables is taxable income of the partnership arising in the ordinary course of the partnership's activities. To the extent the distribution does not exceed 90 percent (M's percentage interest in overall partnership profits) of the partnership's operating cash flow under § 1.707–4(b), the distribution to M is presumed not to be a part of a sale of receivables by M to the partnership, and the presumption is not rebutted under these facts.

§ 1.707–6 Disguised sales of property by partnership to partner; general rules.

(a) *In general.* Rules similar to those provided in § 1.707–3 apply in determining whether a transfer of property by a partnership to a partner and one or more transfers of money or other consideration by that partner to the partnership are treated as a sale of property, in whole or in part, to the partner.

(b) *Special rules relating to liabilities*—(1) *In general.* Rules similar

to those provided in § 1.707–5 apply to determine the extent to which an assumption of or taking subject to a liability by a partner, in connection with a transfer of property by a partnership, is considered part of a sale. Accordingly, if a partner assumes or takes property subject to a qualified liability (as defined in paragraph (b)(2) of this section) of a partnership, the partner is treated as transferring consideration to the partnership only to the extent provided in paragraph (b). If the partner assumes or takes subject to a liability that is not a qualified liability, the amount treated as consideration transferred to the partnership is the amount that the liability assumed or taken subject to by the partner exceeds the partner's share of that liability (determined under the rules of § 1.707–5(a)(2)) immediately before the transfer. Similar to the rules provided in § 1.707–5(a)(4), if more than one partner assumes or takes subject to a liability pursuant to a plan, the amount that is treated as a transfer of consideration by each partner is the amount by which all of the liabilities (other than qualified liabilities) assumed or taken subject to by the partner pursuant to the plan exceed the partner's share of all of those liabilities immediately before the assumption or taking subject to. This paragraph (b)(1) does not apply to any liability assumed or taken subject to by a partner with a principal purpose of reducing the extent to which any other liability assumed or taken subject to by a partner is treated as a transfer of consideration under this paragraph (b).

(2) *Qualified liabilities.* (i) If a transfer of property by a partnership to a partner is not otherwise treated as part of a sale, the partner's assumption of or taking subject to a qualified liability is not treated as part of a sale. If a transfer of property by a partnership to the partner is treated as part of a sale without regard to the partner's assumption of or taking subject to a qualified liability, the partner's assumption of or taking subject to that liability is treated as a transfer of consideration made pursuant to a sale of such property to the partner only to the extent of the lesser of—

(A) The amount of consideration that the partner would be treated as transferring to the partnership under paragraph (b) of this section if the liability were not a qualified liability; or

(B) The amount obtained by multiplying the amount of the liability at the time of its assumption or taking subject to by the partnership's net equity percentage with respect to that property.

(ii) A partnership's net equity percentage with respect to an item of property encumbered by a qualified liability equals the percentage determined by dividing—

(A) The aggregate transfers to the partnership from the partner (other than any transfer described in this paragraph (b)(2)) that are treated as the proceeds realized from the sale of the transferred property to the partner; by

(B) The excess of the fair market value of the property at the time it is transferred to the partner over any qualified liabilities of the partnership that are assumed or taken subject to by the partner at that time.

(iii) For purposes of this section, the definition of a qualified liability is that provided in § 1.707–5(a)(6) with the following exceptions—

(A) In applying the definition, the qualified liability is one that is originally an obligation of the partnership and is assumed or taken subject to by the partner in connection with a transfer of property to the partner; and

(B) If the liability was incurred by the partnership more than two years prior to the earlier of the date the partnership agrees in writing to transfer the property or the date the partnership transfers the property to the partner, that liability is a qualified liability whether or not it has encumbered the transferred property throughout the two-year period.

(c) *Disclosure rules.* Similar to the rules provided in §§ 1.707–3(c)(2) and 1.707–5(a)(7)(ii), a partnership is to disclose to the Internal Revenue Service, in accordance with § 1.707–8, the facts in the following circumstances:

(1) When a partnership transfers property to a partner and the partner transfers money or other consideration to the partnership within a two-year period (without regard to the order of the transfers) and the partnership treats the transfers as other than a sale for tax purposes; and

(2) When a partner assumes or takes subject to a liability of a partnership in connection with a transfer of property by the partnership to the partner, and the partnership incurred the liability within the two-year period prior to the earlier of the date the partnership agrees in writing to the transfer of property or the date the partnership transfers the property, and the partnership treats the liability as a qualified liability under rules similar to § 1.707–5(a)(6)(i)(B).

(d) *Examples.* The following examples illustrate the rules of this section.

Example 1. Sale of property by partnership to partner. (i) A is a member of a partnership. The partnership transfers property X to A. At the time of the transfer, property X has a fair market value of $1,000,000. One year after the transfer, A transfers $1,100,000 to the partnership. Assume that under the rules of section 1274 the imputed principal amount of an obligation to transfer $1,100,000 one year after the transfer of property X is $1,000,000 on the date of the transfer.

(ii) Since the transfer of $1,100,000 to the partnership by A is made within two years of the transfer of property X to A, under rules similar to those provided in § 1.707–3(c), the transfers are presumed to be a sale unless the facts and circumstances clearly establish otherwise. If no facts exist that would rebut this presumption, on the date that the partnership transfers property X to A, the partnership is treated as having sold property X to A in exchange for A's obligation to transfer $1,100,000 to the partnership one year later.

Example 2. Assumption of liability by partner. (i) B is a member of an existing partnership. The partnership transfers property Y to B. On the date of the transfer, property Y has a fair market value of $1,000,000 and is encumbered by a nonrecourse liability of $600,000. B takes the property subject to the liability. The partnership incurred the nonrecourse liability six months prior to the transfer of property Y to B and used the proceeds to purchase an unrelated asset. Assume that, under rule of § 1.707–5(a)(2)(ii) (which determines a partner's share of a nonrecourse liability), B's share of the nonrecourse liability immediately before the transfer of property Y was $100,000.

(ii) The liability is not allocable under the rules of § 1.163–8T to capital expenditures with respect to the property transferred to B and was not incurred in the ordinary course of the trade or business in which the property transferred to the partner was used or held. Since the partnership incurred the nonrecourse liability within two years of the transfer to B, under rules similar to those provided in § 1.707–5(a)(5), the liability is presumed to be incurred in anticipation of the transfer unless the facts and circumstances clearly establish the contrary. Assuming no facts exist to rebut this presumption, the liability taken subject to by B is not a qualified liability. The partnership is treated as having received, on the date of the transfer of property Y to B, $500,000 ($600,000 liability assumed by B less B's share of the $100,000 liability immediately prior to the transfer) as consideration for the sale of one-half ($500,000/$1,000,000) of property Y to B. The partnership is also treated as having distributed to B, in B's capacity as a partner, the other one-half of property Y.

§ 1.707–7 Disguised sales of partnership interests. [Reserved]

§ 1.707–8 Disclosure of certain information.

(a) *In general.* The disclosure referred to in § 1.707–3(c)(2) (regarding certain transfers made within two years of each other), § 1.707–5(a)(7)(ii) (regarding a liability incurred within two years prior to a transfer of property), and § 1.707–6(c) (relating to transfers of property from a partnership to a partner in situations analogous to those listed

above) is to be made in accordance with paragraph (b) of this section.

(b) *Method of providing disclosure.* Disclosure is to be made on a completed Form 8275 or on a statement attached to the return of the transferor of property for the taxable year of the transfer that includes the following:

(1) A caption identifying the statement as disclosure under section 707;

(2) An identification of the item (or group of items) with respect to which disclosure is made;

(3) The amount of each item; and

(4) The facts affecting the potential tax treatment of the item (or items) under section 707.

(c) *Disclosure by certain partnerships.* If more than one partner transfers property to a partnership pursuant to a plan, the disclosure required by this section may be made by the partnership on behalf of all the transferors rather than by each transferor separately.

§ 1.707-9 Effective dates and transitional rules.

(a) *Sections 1.707-3 through 1.707-6*—(1) *In general.* Except as provided in paragraph (a)(3) of this section, §§ 1.707-3 through 1.707-6 apply to any transaction with respect to which all transfers that are part of a sale of an item of property occur after April 24, 1991.

(2) *Transfers occurring on or before April 24, 1991.* Except as otherwise provided in paragraph (a)(3) of this section, in the case of any transaction with respect to which one or more of the transfers occurs on or before April 24, 1991, the determination of whether the transaction is a disguised sale of property (including a partnership interest) under section 707(a)(2) is to be made on the basis of the statute and the guidance provided regarding that provision in the legislative history of section 73 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 494). See H.R. Rep. No. 861, 98th Cong., 2d Sess. 859-62 (1984); S. Prt. No. 169 (Vol. I), 98th Cong., 2d Sess. 223-32 (1984); H.R. Rep. No. 432 (Pt. 2), 98th Cong., 2d Sess. 1216-21 (1984).

(3) *Effective date of section 73 of the Tax Reform Act of 1984.* Sections 1.707-3 through 1.707-6 do not apply to any transfer of money or other consideration to which section 73(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 494) does not apply pursuant to section 73(b) of that Act.

(b) *Section 1.707-8 disclosure of certain information.* The disclosure provisions described in § 1.707-8 apply to transactions with respect to which all transfers that are part of a sale of property occur after September 30, 1992.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by adding the following entries in the table:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
1.707-3(c)(2)	1545-1243
1.707-5(a)(7)(ii)	1545-1243
1.707-6(c)	1545-1243
1.707-8	1545-1243
* * * * *	

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: August 4, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-23728 Filed 9-25-92; 4:46 pm]

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26 CFR Parts 1 and 602

[T.D. 8418]

RIN 1545-AJ67; 1545-AO14; 1545-AO33; 1545-AQ19; 1545-AO19; 1545-AO15

Arbitrage Restrictions on Tax-Exempt Bonds; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to Treasury Decision 8418, which was published in the **Federal Register** for Monday, May 18, 1992 (57 FR 20971). The final and temporary regulations relate to the arbitrage rebate requirements applicable to tax-exempt bonds issued by States and local governments under section 103 of the Internal Revenue Code.

EFFECTIVE DATE: May 18, 1992.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo (202) 622-7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections provide rules under section 148 concerning the use of proceeds of state and local bonds to acquire higher yielding investments.

Need for Correction

As published, T.D. 8418 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final and temporary regulations (T.D. 8418), which was the subject of FR Doc. 92-11321, is corrected as follows:

1. On page 20971, column 1, in the preamble under the heading "*Paperwork Reduction Act*", last line of that column, the language "1545-1303." is corrected to read "1545-1301. All of these paperwork requirements will be consolidated under control number 1545-1098.".

2. On page 20973, column 2, in the preamble under the heading "2. *Special Allocation Rules for Working Capital Expenditures*" paragraph 2, lines 10 through 13, the language "a refunded issue, amounts from a bona fide debt service fund, and extraordinary non-periodic legal judgments. In addition, the special" is corrected to read "a refunded issue and amounts from a bona fide debt service fund. In addition, the special".

3. On page 20977, column 2, under the authority citation, lines 8 and 9, remove the language, "Section 1.149(d)-1T also issued under 26 U.S.C. 148(f) and (i).".

§ 1.148-0 [Corrected]

4. On page 20978, column 3, § 1.148-0(b)(3), last line of that paragraph, the language "1989, or issued after June 14, 1989." is corrected to read "1989, or issued after June 14, 1989; provided that the provisions of 26 CFR 1.148-9T (c) and (h) (as contained in the CFR edition revised as of April 1, 1991) generally apply to any bond that is issued on or before June 17, 1992.".

5. On page 20981, column 3, § 1.148-0(d), the table of contents for § 1.148-9 is corrected by removing the entries for paragraphs (h) and (h)(1) through (h)(3).

§ 1.148-1 [Corrected]

6. On page 20982, column 2, § 1.148-1(a), lines 11 through 13, the language "OT for scope and effective date. See § 1.148-6 for 6 month temporary investment exception. See § 1.148-7 for" is corrected to read "0 for scope and effective date. See § 1.148-6 for expenditure exceptions. See § 1.148-7 for".

§ 1.148–2 [Corrected]

7. On page 20984, column 3, § 1.148–2(c)(1), the formula "FV = PV(1 + i)" is corrected to read "FV = PV(1 + i)^n".

8. On page 20985, column 2, § 1.148–2(c)(2), paragraph (i) of *Example 2*, second line from the bottom of that paragraph, the language "the first installment computation is the same" is corrected to read "the first installment computation date is the same".

9. On page 20986, column 2, § 1.148–2(d)(2), ninth line from the bottom of the column, the language "there are bid and asked prices). The bid" is corrected to read "there are bid and asked prices). If the price paid to purchase an obligation of the type described in the proviso clause of the preceding sentence is higher than the mean of the bid and asked prices, that higher price may be treated as the fair market value of the obligation if that obligation is purchased in a bona fide arm's length transaction without regard to any amount paid to reduce the yield on the obligation. The bid".

10. On page 20986, column 3, § 1.148–2(d)(4), beginning in line 4, the last sentence "See paragraph (e)(2)(iii)(B) of this section for special rule determining this present value." is removed.

§ 1.148–3 [Corrected]

11. On page 20989, column 3, § 1.148–3(b)(7)(iv)(B), lines 4 through 8, the language "value is an amount equal to the sum of the issue price for the bond, determined under § 1.148–6(c), and the amount of accrued original issue discount, determined under section 1288(a)." is corrected to read "value is an amount equal to the present value of the bond."

12. On page 20995, column 1, § 1.148–3(c)(7), under *Example 2*, lines 7 through 11, the language "September 15, 1991, is the issue price of the bonds, plus any accrued original issue discount. See paragraph (b)(7)(iv)(A) of this section. The aggregate early retirement value of the bonds is par plus accrued interest" is corrected to read "September 15, 1991, is par plus accrued interest".

13. On page 21003, column 2, § 1.148–3(d)(4), paragraph (ii)(A) of *Example 9*, lines 3 and 4, the language "All the proceeds of the bonds are expended by that date." is removed.

14. On page 21005, column 3, § 1.148–3(d)(4), paragraph (ii)(G) of *Example 11*, the first line in the table is corrected to read as follows:

Date	Debt service	Guarantee	PV (7.1485008956 percent)
9/01/88		$144,497.67	$144,497.67

* * * * *

§ 1.148–4 [Corrected]

15. On page 21008, column 2, § 1.148–4(c)(5), line 1, the language "(5) *Safe harbors for purchases of*" is corrected to read "(5) *Safe harbor for purchases of*".

16. On page 21009, column 2, § 1.148–4(d)(3)(ii), lines 3 and 4, the language "in paragraphs (d) (3) (ii) (A) and (d) (3) (ii) (B) of this section may be" is corrected to read "in paragraphs (d) (3) (ii) (B) and (d) (3) (ii) (C) of this section may be".

17. On page 21011, column 1, § 1.148–4(e)(6)(i)(A), third line from the bottom of that paragraph, the language "issue, the present value of that bond" is corrected to read "the issue, the present value of that bond".

§ 1.148–5 [Corrected]

18. On page 21012, column 1, § 1.148–5(c)(1)(iii), seventh and eighth lines from the bottom of paragraph, the language "described in paragraph (c) (1) (ii) (A) or (c) (1) (ii) (C) of this section that is" is corrected to read "described in paragraph (c)(1)(ii)(A) of the section that is".

§ 1.148–6 [Corrected]

19. On page 21017, column 1, § 1.148–6(i)(2), seventh line from the bottom of that paragraph, the language "148(f)(4)(c) (viii) or (viii) for any period" is corrected to read "148(f)(4)(C) (vii) or (viii) for any period".

§ 1.148–8 [Corrected]

20. On page 21021, column 3, § 1.148–8(c)(3), lines 3 and 4, the language "determined under this paragraph (c) exceed the fair market value of the bond" is corrected to read "determined under this paragraph (c) be less than the fair market value of the bond".

21. On page 21021, column 3, § 1.148–8(d)(3), fifth line from the bottom of that column, the language "§ 1.103–13(b)(5)(viii), or section 143(g)(2)." is corrected to read "§ 1.103–13(b)(5)(viii), section 143(g)(2) or § 1.148–10(b).".

22. On page 21023, column 2, § 1.148–8(e)(13), line 4, the language "and is not purchased pursuant an" is corrected to read "and is not purchased pursuant to an".

23. On page 21023, column 2, § 1.148–8(e)(14), line 3, the language "an issue, a contract entered into for the" is corrected to read "to an issue, a contract entered into for the".

24. On page 21023, column 2, § 1.148–8(e)(14), line 5, the language "the issue (and elated amounts) from" is corrected to read "the issue (and related amounts) from".

25. On page 21024, column 1, § 1.148–8(h)(4), line 3, the language "§§ 1.148–0T(b)(2)(ii)(C) and 1.148–3" is corrected to read "§§ 1.148–0(b)(2)(ii)(C) and 1.148–3".

§ 1.148–9 [Corrected]

26. On page 21024, bottom of column 1 and top of column 2, § 1.148–9, remove paragraph (h).

27. On page 21025, column 2, in instructional "**Par. 7.**", line 1, the language "**Par. 7.** A new 1.148–11 is added to" is corrected read "**Par. 7.** A new § 1.148–11 is added to".

§ 1.148–11 [Corrected]

28. On page 21026, column 1, § 1.148–11(b)(2)(i), lines 2 and 3, the language "issue is not refunding issue if the proceeds of the issue are used to pay" is corrected to read "issue is not a refunding issue as a result of the use of the proceeds of the issue to pay".

29. On page 21026, column 1, § 1.148–11(b)(2)(i)(C), lines 2 and 3, the language "expenditure (as defined in § 1.148–4(d)(3)(ii))." is corrected to read "expenditure under § 1.148–4(d)(3)(ii)(C).".

30. On page 21026, column 3, § 1.148–11(c)(1)(i)(A) is corrected to read as follows:

* * * * *

"(A) The amounts are reasonably expected by the issuer to become available to be used either for investment for a period of more than 6 months from their date of receipt or for payment of debt service on the prior issue or any other issue (whether or not so used); and"

* * * * *

31. On page 21028, column 1, § 1.148–11(e)(2)(i), seventh line from the top of the column, the language "complies with § 1.148–4(e); provided that" is corrected to read "complies with § 1.148–4 provided that".

32. On page 21028, column 1, § 1.148–11(e)(2)(ii), line 14, the language "with § 1.148–4(e); provided that the" is corrected to read "with § 1.148–4; provided that the".

33. On page 21028, column 3, § 1.148–11(f)(2)(vii), last line of that paragraph, the language "defined in § 1.103–13(b)(12) is 13 months." is corrected to read "defined in § 1.103–13(b)(12)) is 13 months.".

34. On page 21028, column 3, § 1.148–11(f)(3), line 3, the language "may elect

to waive any temporary" is corrected to read "may waive any temporary".

35. On page 21029, column 1, § 1.148 11(g), second and fourth lines from the bottom of that paragraph, the reference "149(d)(3)(v)" is corrected to read "149(d)(3)(A)(v)(II)" in both locations.

36. On page 21030, column 2, § 1.148–11(j)(5), line 2, the language "*allocations*. This paragraph (j) does not" is corrected to read "*allocations*. Except for purposes of section 149(d(3)(A)(i), this paragraph (j) does not".

37. On page 21030, column 2, § 1.148–11(j)(5), last line, the language "permit re-allocations of the 1980 issue." is corrected to read "permit allocations of the 1980 issue under section 148.".

§ 1.148–13T [Corrected]

38. On page 21031, column 1, § 1.148–13T(b)(1), last line of that paragraph, the language "date and" is corrected to read "date; and".

39. On page 21031, column 1, immediately before instructional paragraph 10, a new instructional "**Par. 9A.**" is added to read as follows:

"**Par. 9A.** Section 1.149(d)–1T is removed."

§ 1.149(d)–1 [Corrected]

40. On page 21031, column 2, § 1.149(d)–1(d)(2), second line from the bottom of that paragraph, the language "§ 1.148–0T(b)(2)(ii) for bonds to which" is corrected to read "§ 1.148–0(b)(2)(ii) for bonds to which".

41. On page 21031, column 2, immediately before instructional paragraph 11, instructional "**Par. 10A.**" is added to read as follows:

"**Par. 10A.** Sections 1.150–0T and 1.150–1T are removed."

§ 602.101 [Corrected]

42. On pages 21632 and 21633, bottom of column 3 and continue on the top of column 1 of the next page, § 602.101(c), the entries in the table are corrected to read as follows:

* * * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	*
1.148–1	1545–1098
1.148–2	1545–1098
1.148–3	1545–1098
1.148–4	1545–1098
1.148–5	1545–1098
1.148–6	1545–1098
1.148–7	1545–1098
1.148–8	1545–1098
* * * * *	*
1.148–11	1545–1098

CFR part or section where identified and described	Current OMB control number
* * * * *	*

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–23733 Filed 9–29–92; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 243

RIN 1010–AB13

Revision of Regulation Governing Suspension of Decisions and Orders Pending Appeal

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) of the Department of the Interior is amending its regulations governing administrative appeals from decisions and orders issued by its Royalty Management Program (RMP). The changes eliminate unnecessary steps in the process appellants must undertake to obtain a stay of an appealed MMS decision or order; clarify the administrative appeals process; clarify the requirements for securing unpaid amounts owed the Government pending appeal; and establish a wider range of acceptable surety instruments. The intent and effects of the rule are to reduce administrative burden and costs for both industry and the Federal Government while protecting the interests of Federal and Indian mineral lessors during the pendency of an appeal.

EFFECTIVE DATE: September 30, 1992.

ADDRESSES: Information on the types of surety instruments and the format for surety instruments may be obtained from the Chief, Accounts Receivable and Followup Section (ARFUS). The address for courier delivery is Chief, ARFUS, Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, room A–212, Denver, Colorado 80225, or for U.S. Postal Service delivery is Chief, ARFUS, Minerals Management Service, Royalty Management Program, P.O. Box 5810, Denver, Colorado 80217. The telephone number is (303) 231–3401, (FTS) 326–3401, or FAX (303) 231–3711.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225, at (303) 231–3432 or (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Connie G. Bartram of the Royalty Management Program, Fiscal Accounting Division, Lakewood, Colorado.

I. Background

In the Notice of Proposed Rulemaking (55 FR 6401, February 23, 1990), MMS explained how RMP issues decisions and orders that are subject to administrative appeal to the Director, MMS, pursuant to 30 CFR part 290 (1990). These decisions and orders relate to royalties and other payments due on oil and gas, geothermal, coal, and other solid mineral leases on Federal and Indian lands. These decisions and orders include orders for payments of royalty deficiencies, rentals, interest, penalties (other than penalties assessed under the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA)), royalty-in-kind contract payments, or other assessments. Some of these decisions or orders are issued by RMP's Royalty Valuation and Standards Division regarding transportation and processing allowances which may be deducted in determining the royalty value of oil, gas, and other minerals produced under Federal and Indian leases. Other decisions and orders are issued by: Fiscal Accounting Division to collect interest and liquidated damages, and to follow-up on delinquent balances; Production Accounting Division to enforce the reporting of production and royalty amounts; and Royalty Compliance Division to collect royalty and other underpayments and enforce access to records required for audit. All of the decisions and orders are necessary to enforce the regulations. In cases where the Director issues or concurs in RMP decisions or orders, an appeal to the Director is precluded (30 CFR 290.2).

The MMS currently has regulations at 30 CFR 243.2 addressing the effectiveness of RMP decisions or orders pending administrative appeal. These regulations provide:

> Compliance with any orders or decisions issued by the Royalty Management Program after August 12, 1983, including payments of additional royalty, rentals, bonuses, penalties or other assessments, shall not be suspended by reason of an appeal having been taken

unless such suspension is authorized in writing by the Director, MMS (or by the Deputy Assistant Secretary for Indian Affairs when Indian lands are involved), and then only upon a determination, at the discretion of the Director, MMS, or Deputy Associate [sic] Secretary for Indian Affairs, that such suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

At the time the rule was issued in 1984, it was MMS's interpretation that most decisions and orders would not be suspended pending the administrative appeal requested by the appellant. The term "appellant" covers the lessee, payor, reporter, operator, or other party adversely affected by an order or decision issued by MMS. In other words, lessees, payors, reporters, and operators generally were required to pay disputed amounts pending the administrative appeal process, subject to refund if the appellant prevailed. However, in 1986, the Interior Board of Land Appeals (IBLA) construed 30 CFR 243.2 to mean that unless there were special circumstances resulting in detriment to the lessor, the Director was required to stay effectiveness of decisions and orders pending appeal, provided the appellant posted an adequate surety instrument (*Marathon Oil Company*, 90 IBLA 236 (1986)). The MMS has followed IBLA's interpretation since 1986 and, upon request from appellants, has stayed orders that otherwise would have required payment of hundreds of millions of dollars in royalty and other payments during the appeal process. For fluids (oil, gas, and geothermal) leases, the surety instrument is filed with MMS. When coal or other solid mineral leases are involved, the surety instrument held by the Bureau of Land Management (BLM) is increased to cover unpaid royalties, rents, interest, and other mineral-related revenues. Exceptions to this procedure are when BLM has no surety instrument on the lease, the appellant requests to file a separate surety instrument with MMS, or the appellant is not the lessee of record. In these cases, a surety instrument must be provided to MMS pending the appeal. The purpose of this rulemaking is to clarify the regulations regarding suspension of RMP decisions and orders pending appeal.

II. Comments Received on Proposed Rule

As stated above, MMS published a Notice of Proposed Rulemaking in the **Federal Register** on February 23, 1990 (55 FR 6401). The proposed rule provided for a 60-day public comment period ending on April 24, 1990, which was extended to May 24, 1990, by notice in the **Federal Register** on April 3, 1990 (55 FR 12386). During the comment period, 16 commenters submitted written responses which are addressed in this section. The MMS did not receive comments from State or Indian representatives.

(a) Several commenters declared that the administrative appeals process required by MMS is too long. In this regard, some commenters have suggested that appeals to the Director typically take 6 to 8 months for routine cases and often take 2 to 3 years on complex cases. Also, appeals to IBLA typically take 12 to 18 months for routine cases and as long as 5 years to review some appeals. The commenter concluded that the MMS administrative appeals process is not efficient and is very costly to the appellant because the party is required either to pay the disputed amount and seek a refund without interest if it prevails in the appeal or to pay the cost of a surety instrument that is posted during the appeal process. Consequently, the commenter recommended that MMS amend the existing regulations to provide that if an administrative appeal is brought and not completed in 1 year from the time the lessee's briefing is completed or the parties have jointly agreed to an extension of that time, the appellant can abandon the administrative appeals process without prejudice and seek judicial review.

Response: The administrative appeals process is being evaluated to expedite the appeal through the Department. Any changes to the appeals process would need to be made through separate rulemaking and are not a part of this action. Moreover, MMS cannot dictate the IBLA process in these rules; IBLA would need to issue its own regulations establishing time limits. As a result, MMS cannot establish a time period for the total administrative review and the final Department decision.

(b) Several commenters objected to the proposed provision under 30 CFR 243.2(a) (1990) that states:

> Suspension of an order or decision requiring the payment of a specified amount of money shall be contingent upon the appellant's submission within a time period to be prescribed by MMS of an MMS-specified surety deemed adequate to indemnify the lessor from loss or damage * * *.

One of these commenters argued that the preamble to the proposed rulemaking suggests that the suspension pending appeal aspect of the proposal follows the decision in *Marathon Oil Company*, 90 IBLA 236 (1986), yet the total proposal stops well short of the changes in Agency procedures needed.

The commenter further stated that 5 U.S.C. 704 (the Administrative Procedure Act) permits MMS to require administrative appeals, but with the proviso that the action under review be inoperative while the appeal is pending. The commenter maintains that there is no authority that allows MMS to condition administrative appeals by requiring a surety instrument to be posted before an appeal will be considered. The commenter states MMS requires an appellant to take all available administrative appeals but without having the action in dispute stayed, unless an MMS-specified surety instrument is posted, and argues that this procedure is not authorized by the Administrative Procedure Act.

In conclusion, the commenter stated the Secretary of the Interior has the authority, subject to certain well-recognized court-imposed limitations, to require that a party exhaust administrative remedies before seeking judicial review of MMS action. However, if the Secretary elects to exercise that authority, the commenter argues that the Secretary lacks any authority to limit the circumstances under which the effectiveness of an action is suspended pending appeal.

Response: The requirement for the appellant to furnish a surety instrument deemed adequate to indemnify the lessor from loss or damage is critical to stay an order or decision requiring payment. The MMS is required to file a quarterly report with the U.S. Department of the Treasury (Treasury) on unpaid accounts receivable amounts and the length of time the amounts have been outstanding. The Treasury reviews the MMS report to determine if MMS' suspended receivables are fully secured, and thereby will indemnify the lessor from loss. The MMS believes the surety instrument procedure does not constitute a final agency action under the Administrative Procedure Act, 5 U.S.C. 704. The commenters provided no legal support for their argument that a requirement to post a surety instrument as a condition to pursuing an administrative appeal makes an intermediate agency action final.

(c) Many commenters objected to the proposed requirements under 30 CFR 243.2(a) that stated:

> If a decision or order does not require payment of a specific amount of money, but requires recalculation of an obligation followed by payment, suspension of the decision or order is contingent upon the appellant's submission, within the time period prescribed by MMS, of an MMS-

specified surety in an amount MMS determines to reasonably approximate the amount deemed to be owed * * *.

The commenters suggested that in situations where MMS believes some systemic problem exists and does not require payment of a specific amount of money, but requires lessee recalculation of its royalty obligation followed by payment, the regulation should be amended to delete the requirement of a surety instrument altogether. Furthermore, the commenter suggests that because restructured accounting requirements are inherently speculative, the imposition of any surety instrument requirements should be postponed until MMS quantifies the amount in dispute.

Response: The MMS has reconsidered this provision and amended the final regulations to require a surety instrument only when an order or decision requires the payment of a specified amount of money, including an estimated bill which specifies an amount required to be paid.

(d) Several commenters contended that suspension of an order should be automatic at the time an appeal is filed. In this regard, one commenter stated that MMS should take necessary action to determine whether or not it will allow a stay prior to issuing an order and should include such notice in the order to ensure certainty for the appellant. Also, the commenter claims that such a procedure would prevent wasted effort by the appellant in obtaining a surety instrument for an appeal that is denied. Where a stay is denied, the commenter argues that the appellant should be allowed to bypass the administrative appeals process and seek judicial review, without prejudice, in order to expedite resolution and limit the loss of interest, should the appellant ultimately prevail.

Response: The MMS agrees with the comments and has clarified the regulations at 30 CFR 243.2(a), accordingly. The final regulations provide that an order automatically is suspended upon filing the notice of appeal in 30 CFR 290 unless MMS notifies the party at the time of the decision or order that any order will not be suspended. The suspension is conditioned on the provision of an adequate surety instrument, where applicable.

(e) Most of the commenters requested that MMS establish alternate forms of surety instruments under 30 CFR 243.2(b) in addition to those specified in the regulations. The proposed regulations provided:

For purposes of this section, an "MMS-specified surety" means either an MMS-specified "administrative appeal bond" or an MMS-specified "irrevocable letter of credit" * * * The MMS will not accept any other type of surety.

Several commenters believed that MMS should recognize any type of surety instrument that meets the MMS objective of lessor indemnification. Commenters argued that lessees should be given the flexibility to choose a surety instrument type most suitable for their situation. One commenter stated other types of surety instruments are accepted as financial warranties by Government Agencies. For example, the Colorado Board of Reclamation requires for a mining permit any one or more of the following: (1) A surety bond issued by a corporate surety; (2) a letter of credit issued by a bank; (3) a certificate of deposit; (4) a deed of trust as security agreement encumbering real or personal property and creating a lien in favor of the lessor; (5) assurance that a sufficient fund will be created; and (6) a financial statement for the lessee's most recent fiscal year certified by an independent accountant showing evidence of financial stability.

The commenter went on to suggest that other methods could be used where MMS permits an appellant to meet its surety obligation by posting a surety instrument on a case-by-case basis or by posting a single national bond. Also, the commenter believed that the existing lease bonds established by lessees should already be sufficient to cover royalty obligations and no additional surety instrument should be required. As a final recommendation, the commenter urged MMS to extend appellants the flexibility to select from a wider range of surety instrument options.

Response: In the preamble to the proposed regulations, MMS stated that it was studying the use of alternative surety instruments and would like comments on the feasibility of establishing interest-bearing escrow accounts at financial institutions, submitting Treasury bonds or notes to be held by MMS, or any other alternatives. The MMS studied various forms of surety instruments including the alternatives suggested in the public comments. Consideration was given to the relative cost to the appellant in obtaining different forms of surety coverage, the importance of the appellant providing a surety instrument timely, the protection afforded to the lessor, and the burden on MMS in administering various types of surety instruments. For example, one surety form MMS studied was interest-bearing Treasury book-entry bonds and notes deposited with the Federal Reserve Bank. After conferring with Federal Reserve Bank officials, MMS is adding Treasury book-entry bonds and notes to 30 CFR 243.2(b).

A surety instrument type that was recommended in the public comments and found to be a workable alternative to the administrative appeal bond and the irrevocable letter of credit was the certificate of deposit. The MMS will accept the certificate of deposit as a surety instrument on the appeal if it is in book-entry form. This type of surety instrument must be issued by an acceptable financial institution, must be interest-bearing, readily available to the appellant, and must afford acceptable protection to the lessor. Accordingly, MMS is adding this form of surety instrument to 30 CFR 243.2(b). However, if either the letter of credit or the certificate of deposit is not issued by a bank with an acceptable bank rating or confirmed by a bank with an acceptable rating, the appellant must submit another surety instrument.

In response to the comment that MMS should allow the appellant to meet its surety obligation on a case-by-case basis or post a single nationwide bond, MMS believes a separate surety instrument is required for each appeal unless the amount under appeal is properly secured by another posted surety instrument. The appellant may post a single administrative bond or letter of credit that covers multiple bills for collection that are under appeal. The single surety instrument must list in detail all bills with the amount. The single surety instrument will be amended annually to either add new bills under appeal or remove bills that have been adjudicated. The single surety instrument will only be updated once a year to minimize the administrative burden to the appellant and MMS. New bills under appeal during the year would require a separate surety instrument until they could be covered by the single surety instrument.

Finally, in response to the comment that existing lease bonds posted by lessees should already be sufficient to cover royalty obligations and no additional surety instrument should be required, the MMS disagrees with the statement for appeal amounts greater than $1,000. The lease bonds for onshore Federal and Indian leases may be insufficient to cover disputed amounts under appeal and may also be used to cover lease reclamation expenses. The Offshore Federal lease bonds are focused on recovery of minimal lease abandonment costs and only nominal amounts of unpaid royalties. Accordingly, the bonds would not be adequate to cover amounts under an

appeal. As a result, MMS has rejected the recommendations to allow existing lease bonds to cover the surety requirement necessary for the appeal, except for minor amounts under appeal of $1,000 or less on fluids (oil, gas, and geothermal) leases. In those cases, MMS, will allow existing lease bonds to cover the surety requirement. For coal and other solid mineral leases, MMS will require that BLM lease surety instruments be increased to cover royalty obligations in accordance with established procedures. In cases where there is no lease surety instrument, or the appellant chooses to provide a separate surety instrument to MMS, or the appellant is not the lessee of record, then an "MMS-specified surety instrument" is required.

(f) One commenter stated that 30 CFR 243.2(c) should be revised to ensure that MMS is required to furnish the amended or updated surety instrument amount to the appellant within a timeframe that would allow the appellant to update the surety instrument. The commenter recommended that MMS should furnish the amended amount to the appellant within 30 days of the expiration date of the surety instrument. This would allow the appellant to complete the administrative processing necessary to meet MMS requirements.

Response: The procedure currently used by MMS to update surety instrument amounts is to notify the appellant 45 days prior to the expiration date of the current surety instrument. MMS' notice is not required by the regulations, and its failure to provide the notice will not relieve the appellant of the duty to update its surety instrument. Also, appellants have suggested that an automatic renewal clause in the posted surety instrument would eliminate the burden on the appellant and MMS to meet deadlines to update surety instruments due to expire. The MMS agrees with this initiative and § 243.2(b)(1) requires an automatic renewal clause in new letters of credit and certificates of deposit.

(g) One commenter objected to the proposed requirement under 30 CFR 243.2(d) that stated:

> An appeal from an order or decision requiring payment of money shall be dismissed by the Director, MMS, or the Assistant Secretary for Indian Affairs, if the appellant fails to make the required payment of fails to submit adequate surety * * *. If an appeal is dismissed pursuant to this paragraph, the decision or order shall be deemed final and any monies owed will be due and payable with no further right of administrative review pursuant to 30 CFR part 290 or 43 CFR part 4.

The commenter believed that there would be factual disputes as to whether a particular party failed to make the required payment or failed what constitutes the required payment or adequate surety instrument under the regulation. To be fair to the appellant, the commenter stated that MMS's dismissal of an appeal for failure to prepay should not be foreclosed and the appellant should have the right to appeal the dismissal. It was recommended that the appeal be limited to the question of whether the appellant had failed to make the required payment or to submit an adequate surety instrument.

Response: The MMS has reconsidered this issue and determined that the Director generally should continue to consider an administrative appeal even if the appellant fails to provide an adequate surety instrument. However, in such an event, for oil and gas leases MMS may pursue a civil in penalty in accordance with section 109 of FOGRMA, 30 U.S.C. 1719, and MMS regulations at 30 CFR 241.20 and 241.51, for failure to either pay or comply with the regulatory requirement to post an adequate surety instrument in order to obtain suspension of an order. The MMS also will take appropriate enforcement action for coal and other leases not covered by FOGRMA.

(h) Concern was expressed with the proposal under 30 CFR 243.2(e) when Indian lands are involved. In particular, many commenters objected to the discussion in the preamble of the proposed rule that stated:

> A situation where MMS might not stay an order to pay is where an Indian lessor would suffer substantial hardship if payments were not made for an extended period of time. The MMS anticipates that these situations would be unusual.

The commenters concluded that even though the preamble to the proposal states that MMS anticipates that the suspension denial situation would be unusual, the proposed rule itself states no grounds for such a denial. As such, the commenters urged MMS to adopt specific language stating that where an appellant has filed a timely appeal, the MMS will deny suspension only to avoid irreparable harm to the lessor.

Response: The MMS agrees with the commenter's recommendation. The final rule in paragraph (d) has been changed to state that MMS or the Deputy Commissioner of Indian Affairs may deny a stay of an order only when an Indian lessor would suffer irreparable harm. The MMS will consult with the BIA, through a mutually agreed-upon process to determine when an Indian lessor would suffer irreparable harm.

(i) Most of the commenters objected to the proposed requirement under 30 CFR 243.2 that stated:

> An MMS order which may be appealed pursuant to 30 CFR part 290 either to the Director, MMS, the Assistant Secretary for Indian Affairs, or the Interior Board of Land Appeals must be appealed in order to exhaust administrative remedies unless the order has been made effective. * * *

One commenter believed that the proposed rule requiring an appellant to exhaust administrative remedies in all circumstances should be eliminated. They argued that it is not the law and has never been the law, and that in *McKart* v. *U.S.* (395 U.S. 194, 89 S. Ct. 1657, 1665 (1969)), the Supreme Court noted that the central purpose of the exhaustion of remedies doctrine is to avoid hindering the judicial review process by failure of the litigant to allow the Agency to make a factual record, or to exercise its discretion or apply its expertise. Furthermore, it argued that courts have refused to require exhaustion of remedies in certain well-established situations, for example: (1) Where the question on appeal is solely one of statutory interpretation; (2) where the administrative process would be futile; (3) where the administrative remedies are inadequate; and (4) where the Agency has had an opportunity to exercise its expertise and has done so.

The commenter recommended that MMS abandon the mandatory exhaustion of remedies portion of the rulemaking and leave administrative appeals a choice wholly up to the appellant. On the other hand, if MMS elects to require the appellant to follow the administrative process before seeking judicial review, MMS should allow certain well-established, court-imposed exceptions.

Response: The MMS believes that the requirement for exhaustion of administrative remedies has resulted in well-considered administrative decision making and has saved substantial time and costs to both Federal courts and litigants in matters which otherwise would have been the subject of extended judicial proceedings. Reversing the longstanding policy on exhaustion of administrative remedies would only burden the courts with many cases which are now resolved at the administrative level. The majority of administrative decisions do not result in actions for judicial review. Therefore, the requirement for exhaustion of administrative remedies will be continued.

The requirement to exhaust administrative remedies has been eliminated already with respect to one royalty-related issue. The Bureau of Land Management (BLM) regulations at 43 CFR 3451.2(e) provide that when BLM gives notice to a coal lessee that its lease terms are being readjusted from a cents-per-ton basis to an ad valorem basis, the readjusted lease terms are effective on the readjustment date even if the lessee appeals the propriety of BLM's readjustment determination through BLM's procedures. Consequently, as of the readjustment date, the lessee is required to pay royalty in accordance with the MMS regulations in 30 CFR part 206 on the value of coal production. If the lessee continues to pay royalty at the cents-per-ton rate and fails to pay royalty in accordance with its readjusted lease terms, and MMS issues an order requiring the lessee to pay the additional royalties, because 43 CFR 3451.2(e) makes the readjustment final, the lessee will not be permitted to appeal or post a surety instrument for the difference in royalties between the cents-per-ton rate and the minimum value required under 30 CFR part 206. However, if the lessee disputes how MMS is calculating value under 30 CFR part 206, it will be permitted to appeal and post a surety instrument with respect to that component of the additional royalty. By way of illustration, assume the cents-per-ton rate was $.50. After readjustment, the lessee fails to pay its additional royalties and MMS orders it to pay its percentage royalty on a value of $16 per ton. The lessee believes the value should only be $15 per ton under 30 CFR part 206. The lessee may appeal to the MMS Director and post a surety instrument only with respect to the dispute between the $15 and $16 value. It must pay the difference between $.50 per ton and the percentage royalty based on a $15 per ton value pending its appeal to the MMS Director. This limitation on what is subject to appeal to the MMS Director is stated in § 243.2(a).

(j) One commenter recommended under 30 CFR 243.3 that the title of Assistant Secretary for Land and Minerals Management be added as an authority that can issue a decision or order which would be a final action for judicial review.

Response: The MMS agrees with the comment and the final rule is amended accordingly.

III. Conclusion

The MMS is amending 30 CFR 243.2 to reflect clearly how RMP decisions and orders will be suspended pending administrative appeal, provided the appeal is timely filed and the appellant submits a surety instrument. Also, in those cases where a surety instrument is not filed, the appellant may be subject to civil penalties for failure to either pay or post the required surety instrument to suspend the decision and order pending administrative appeal. The rule provides that decisions and orders issued by RMP, including, but not limited to, orders for payments of additional royalty, rentals, interest, penalties, royalty-in-kind contract payments, or other assessments, will be suspended by reason of an appeal having been taken pursuant to 30 CFR part 290. Unless the Director, or the Director's delegate, notifies the appellant in writing that the decision or order will not be suspended pending appeal at the time RMP issues the decision or order, it is suspended by reason of an appeal having been taken. Under the final rule, MMS would continue its current practice and stay RMP decisions and orders pending appeal unless there are unusual circumstances. A situation where MMS might not stay an order to pay is where an Indian lessor would suffer irreparable harm if payments were not made for an extended period of time. The MMS anticipates that these situations would be unusual.

The final regulation provides further that suspension of a decision or order requiring the payment of a specified amount of money in excess of $1,000 is contingent upon the appellant's submission, within the time period MMS prescribes, of an MMS-specified surety instrument. For example, an order to a lessee to pay a specified amount of underpaid royalties could not be suspended unless the lessee posted an adequate surety instrument. Of course, an appellant also could pay the disputed amount pending appeal, subject to refund without interest in accordance with MMS refund procedures.

The type of surety instrument that is acceptable depends on what type of lease is involved. In paragraph (b) of § 243.2, MMS defines an "MMS-specified surety instrument" for fluids (oil, gas, and geothermal) leases as including an MMS-specified "administrative appeal bond," an MMS-specified irrevocable letter of credit, Treasury book-entry bonds or notes, and bank book-entry certificates of deposit. An "MMS-specified surety instrument" for coal and other solid mineral leases will continue to be the BLM lease surety instrument which must be increased to cover disputed royalty obligations which are the subject of the appeal, as necessary. The MMS practice of using the BLM surety instrument to suspend MMS decisions and orders pending appeal for other than fluids leases was effective with the December 19, 1988, Memorandum of Understanding between MMS, BLM, and the Bureau of Indian Affairs. The MMS is continuing this practice in the final rule. However, if BLM has no lease surety coverage, or the appellant chooses to provide a separate surety instrument to MMS, or the appellant is not the lessee of record, then an "MMS-specified surety instrument" is required.

The new rule continues the practice of using Form MMS–4326, "administrative appeal bond," as an acceptable surety instrument. The bond must be issued by a qualified surety company approved by the Treasury. Letters of credit are also acceptable. The form used for the letter of credit which is acceptable to MMS may be obtained from the person named in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

Treasury bonds or notes must be book-entry only. The bank book-entry certificate of deposit must be issued by a financial institution acceptable to MMS.

The MMS has millions of dollars of existing surety instruments. These surety instruments will be accepted until their expiration date at which time they must be updated to comply with the new requirements.

Under the new rules, MMS will accept a single surety instrument that covers multiple amounts under appeal. The surety instrument must be amended annually to either add new amounts or remove amounts that have been adjudicated. New amounts under appeal during each year would require a separate surety instrument until covered by the single surety instrument at the annual amendment.

The "MMS-specified surety instrument" for RMP is subject to approval by the bond-approving officer. The designated bond-approving officer for RMP is the Associate Director for Royalty Management or delegated officials. The MMS will provide the appellants in writing with information and standard forms on "MMS-specified surety instrument" requirements.

To evaluate the adequacy of bank instruments and the financial security provided, MMS has established a procedure to use a bankrating service. The RMP currently uses the Keefe Bankwatch rating service. Acceptable minimum ratings are: "C" for any bank used for surety instruments under $1 million, a "B/C" rating for surety instruments between $1 million and $10

million, and a "B" rating for surety instruments over $10 million. If the bank issuing the surety instrument either does not meet the bankrating level or falls below the rating for the amount of the required coverage, the bank may have an acceptable bank confirm the surety instrument. The appellant may also choose to submit another surety type that is acceptable to MMS. A satisfactory replacement surety instrument must be submitted to MMS after written notice to avoid collection on the existing surety instrument. The MMS will publish a notice in the **Federal Register** when there is a change in the bankrating service used by RMP.

Paragraph § 243.2(c) provides that the bond, letter of credit, Treasury book-entry bond or note, or bank book-entry certificate of deposit must be adequate to cover the amount owed plus interest accrued to date, as well as the estimated interest that will accrue for 1 additional year. The Treasury book-entry bond or note must be for an amount equal to 120 percent of the required surety amount to allow for market fluctuations. If the administrative appeal process continues more than 1 year, then the appellant would be required to increase the amount of the existing surety instrument, extend the surety period, or submit a new surety instrument, as necessary to cover estimated interest that will accrue for 1 additional year. This procedure continues existing MMS practice for appeals applicable to fluids (oil, gas, and geothermal) leases. As explained above, MMS will use existing BLM lease surety instruments for appeals applicable to coal and other solid mineral leases increased to cover royalty obligations, as necessary. These surety instruments must also be increased annually to cover additional interest.

These regulations reaffirm the Department's intent that, in the usual case, a lessee, payor, reporter, operator, or other party receiving an RMP decision or order is required to pursue an administrative appeal before seeking judicial review. Under the Department's rules in 43 CFR 4.21 (1990), RMP decisions or orders on appeal to IBLA are suspended pending review of the matter by IBLA unless other regulations provide otherwise. Paragraph § 243.2(e) provides that generally RMP decisions and orders continue to be suspended pending IBLA review provided the appellant maintains adequate surety coverage. This paragraph applies the surety coverage requirements of § 243.2 to appeals to IBLA. In some situations, as discussed above, the Director could deny a stay pending IBLA administrative review provided that the Director so notifies the appellant in writing. Under paragraph § 243.2(d), if the Director makes a decision or order immediately effective, then the appellant's rights to such further administrative review or judicial review are provided in 43 CFR part 4.

The final rule also adds two new §§ 243.2(e) and 243.2(f) for purposes of clarification and procedural efficiency. The new § 243.2(e) provides that final actions of the Department of the Interior with respect to MMS orders will be suspended pending judicial review under 5 U.S.C. 705 if the plaintiff seeking review submits or maintains a surety instrument in accordance with § 243.2. Thus, the same surety instruments submitted as security pending administrative appeal may be continued in effect for purposes of a suspension pending judicial review. Final actions of the Department within the meaning of this subsection include decisions of the IBLA, decisions of the Assistant Secretary for Land and Minerals Management or the Assistant Secretary for Indian Affairs (which are not appealable to the IBLA), decisions of the Director of the Office of Hearings and Appeals or the Secretary, or MMS decisions or orders which have been made effective pending further administrative appeal under § 243.2(a) where the appellant chooses to seek immediate judicial review rather than to pursue further administrative appeal.

An exception exists for any particular case where the Department may, in view of unusual circumstances, seek to make particular action effective pending judicial review, in which case the Government will notify the court that it will not agree to suspension of the effectiveness of the decision pending judicial review. In that event, the court will determine whether the particular decision will be effective pending review, or be suspended on such conditions as the court may find appropriate.

The new § 243.2(f) sets forth the circumstances under which MMS will seek to collect against the surety instrument. This largely reflects and clarifies existing law. If the MMS Director decides an administrative appeal adversely to the appellant, and the appellant neither pays the amount due nor pursues an appeal to the IBLA (and maintains an adequate surety instrument pending that appeal), the agency will collect against the surety instrument. Similarly, if the IBLA, the Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides a case in MMS' favor, and the appellant neither pays the amount due nor seeks judicial review and maintains an adequate surety instrument in effect, the MMS will collect against the surety instrument. Likewise, if a court on judicial review rules in the Department's favor (in a final nonappealable decision) and the appellant/plaintiff fails to pay the amount due, MMS will collect against the surety instrument. Finally, if an appellant fails to increase the amount of the surety instrument as required under § 243.2(c), or otherwise fails to maintain an adequate surety instrument in effect as required by this rule, the agency will collect against the surety instrument.

The MMS is also adding a new 30 CFR 243.3 to restate that recipients of orders generally must exhaust their administrative remedies before seeking judicial review of MMS orders. If the Director pursuant to § 243.2, or if IBLA pursuant to 43 CFR 4.21, denies a suspension of an order pending appeal, then the recipient may seek either further administrative review or immediate judicial review of that order. No further exhaustion of administrative remedies is required. Because orders approved by Secretarial officers also are final actions for the Department, as discussed above, they too are subject to immediate judicial review. However, § 243.3 clarifies that if an MMS order is not a final action, then that order must be appealed administratively before seeking judicial review. This is in accordance with well-established case law and corresponds with IBLA's rules at 43 CFR 4.21(b) (see *McKart* v. *United States*, 395 U.S. 185 (1969)).

IV. Other Issues

(a) Decisions by the Director or Secretarial Officers

While most RMP decisions and orders are subject to review by the Director and then IBLA, there are exceptions. The regulations at 30 CFR part 290 provide that if the Director issues or expressly approves an RMP decision or order, then the matter is not subject to appeal to the Director and must go to IBLA for administrative review. In those situations, paragraph § 243.2(d)(1) establishes the applicable criteria for suspension of the decision or order pending IBLA review. In those instances where the Director of the Office of Hearings and Appeals or the Secretary takes jurisdiction of an appeal pursuant to 43 CFR 4.5, and grants a further suspension of the effectiveness of the decision or order under review, paragraph (d)(2) establishes the criteria for surety coverage.

Some RMP decisions or orders may be issued or approved by a Secretarial officer such as an Assistant Secretary. In those situations, the decision or order is final for the Department and not subject to administrative review within the Department *(Blue Star, Inc.*, 41 IBLA 333 (1979); *Marathon Oil Co.*, 108 IBLA 177 (1989)). If a lessee or other payor seeks judicial review of such a decision or order, then the stay issue is governed by the Administrative Procedure Act, 5 U.S.C. 704 and 705.

(b) Indian Leases

Under the existing rules in § 243.2, suspensions of decisions and orders involving Indian leases are issued by the Deputy Commissioner of Indian Affairs. Because suspensions are now routinely issued, the final rule provides for MMS to suspend decisions or orders involving Indian leases. As noted above, MMS may deny suspension in appropriate circumstances for Indian leases and will continue to consult with the Deputy Commissioner of Indian Affairs on matters involving Indian leases.

V. Effective Date

Pursuant to the provisions of 5 U.S.C. 553(d), the Department finds that there is good cause to make this final rule effective on the date of publication. The MMS expects to issue many orders before September 30, 1992, and it will benefit persons who appeal such orders if they can take advantage of the expanded surety instrument provisions of these rules. Also, the new rules will reduce the burdens on appellants by eliminating the requirement to provide surety instruments for appeals of small amounts and eliminating the requirement to provide surety instruments for appeals of certain orders to perform restructured accountings.

VI. Procedural Matters

Executive Order No. 12291 and Regulatory Flexibility Act

The Department has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The changes included in this rulemaking are clarifying amendments only and not substantive changes. There would be no additional reporting or other requirements from industry because the requirement currently exists in MMS regulations.

Executive Order No. 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

The Department has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

List of Subjects in 30 CFR Part 243

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources.

Dated: November 8, 1991.

Richard Roldan,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 243 is amended as set forth below:

PART 243—APPEALS, ROYALTY MANAGEMENT PROGRAM

Subpart A—General Provisions

1. The authority citation for part 243 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Section 243.2 is revised to read as follows:

§ 243.2 Suspension of orders or decisions pending appeal.

(a) Compliance with any orders or decisions issued by the Royalty Management Program (RMP) of the Minerals Management Service (MMS), including orders for payments of royalty deficiencies (other than orders to pay additional royalties for the difference between a cents-per-ton royalty clause and an ad volorem royalty clause pursuant to the terms of coal leases following readjustment by the Bureau of Land Management (BLM)), rentals, interest, penalties (other than civil penalties provided for under section 109 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1719, and implemented in 30 CFR 241.51), royalty-in-kind contract payments, or other assessments, shall be suspended by reason of an appeal having been taken pursuant to 30 CFR part 290 unless the Director, MMS, notifies the appellant in writing that the decision or order shall not be suspended pending appeal. Unless the amount under appeal is $1,000 or less, suspension of an order or decision requiring the payment of a specified amount of money shall be contingent upon the appellant's submission within a time period prescribed by MMS of an MMS-specified surety instrument deemed adequate to indemnify the lessor from loss or damage. Nothing in this paragraph shall be construed to prohibit an appellant from paying any demanded amount pending appeal. If the appeal is granted in whole or in part, the appellant will be entitled to a refund of the amount paid, without interest, in accordance with MMS refund procedures.

(b)(1) For purposes of this section, an "MMS-specified surety instrument" for fluids (oil, gas, and geothermal) leases means either: An MMS-specified administrative appeal bond; an MMS-specified irrevocable letter of credit; Treasury book-entry bond or note; or financial institution book-entry certificate of deposit. The "MMS-specified surety instrument" shall be in a form specified by MMS instructions or approved by MMS. A bond must be issued by a qualified surety company which has been approved by the Department of the Treasury. An irrevocable letter of credit or a certificate of deposit must be from a financial institution acceptable to MMS with a minimum 1-year period of coverage subject to automatic renewal up to 5 years. The MMS will use a bankrating service to determine whether a financial institution has an acceptable rating to provide a surety instrument

deemed adequate to indemnify the lessor from loss or damage. The MMS will accept only an "MMS-specified surety instrument" as qualified in this paragraph and in paragraph (c) of this section. The MMS will accept a single surety instrument that covers multiple amounts under appeal. The single surety instrument must be amended annually to either add new amounts or remove amounts that have been adjudicated. New amounts under appeal each year require a separate surety instrument until covered by the single surety instrument during the annual amendment.

(2) For purposes of this section, an "MMS-specified surety instrument" for other than fluids (oil, gas, and geothermal) leases, is the BLM lease surety instrument which must be increased at the request of MMS to cover royalty and interest obligations. However, if BLM has no lease surety instrument coverage, or the appellant chooses to provide a separate surety instrument to MMS, or the appellant is not the lessee of record, then an "MMS-specified surety instrument" in accordance with paragraph (b)(1) of this section is required.

(3) The "MMS-specified surety instrument" for RMP is subject to approval by a bond-approving officer. The designated bond-approving officer for RMP is the Associate Director for Royalty Management or delegated officials. The MMS will provide in writing to the appellant information and standard forms on "MMS-specified surety instrument" requirements.

(c)(1) The amount of the bond, letter of credit, Treasury book-entry bond or note, or financial institution book-entry certificate of deposit will be determined by MMS and will include the principal amount owed plus any accrued interest owed and projected interest for a 1-year period. In the case of Treasury book-entry bonds or notes, the amount must be equal to 120 percent of the required surety amount.

(2) If a decision on the appeal is not made within 1 year from the date the appeal is filed, appellants who submitted a bond shall amend the bond amount to cover additional estimated interest for another 1-year period. Appellants who submitted a letter of credit, a Treasury book-entry bond or note, or a financial institution book-entry certificate of deposit shall submit, at least 10 calendar days prior to the expiration date, a new surety instrument or an amendment to the existing surety instrument for an additional 1-year period of time with an increase in the amount to cover estimated interest for a 1-year period. In all cases, MMS will determine the additional estimated interest and amended surety instrument amount. If a surety instrument is not amended to include the additional interest coverage at least 10 calendar days prior to the expiration date of the surety instrument, MMS may make a demand against and collect from the surety. The collection against the surety will include the principal amount owed plus accrued interest.

(d)(1) An MMS decision or order that is appealed to the Interior Board of Land Appeals pursuant to 30 CFR part 290 and 43 CFR part 4, shall be suspended pending appeal if the appellant submits or maintains a surety instrument in accordance with the provisions of this section, unless the Director or the Deputy Commissioner of Indian Affairs (when Indian lands are involved) notifies the appellant in writing at the time the decision or order is issued that it will not be suspended pending appeal. The Director or the Deputy Commissioner of Indian Affairs may deny suspension of an appeal to avoid irreparable harm to the lessor.

(2) In any case where the Director of the Office of Hearings and Appeals or the Secretary takes jurisdiction of an administrative appeal involving a Royalty Management Program decision or order pursuant to 43 CFR part 4.5 and grants a suspension of effectiveness of the decision or order subject to the submission of an adequate surety instrument, the appellant must maintain that surety instrument in accordance with the requirements of this section.

(e) An Interior Board of Land Appeals decision, other final action of the Department of the Interior regarding a Royalty Management Program decision or order, or a Royalty Management Program decision or order which is made effective pending appeal under paragraph (a), which is the subject of an action for judicial review in a United States District Court of competent jurisdiction will be suspended pending judicial review pursuant to 5 U.S.C. 705 if the plaintiff seeking review submits or maintains a surety instrument in accordance with the provisions of this section, unless the Government notifies the court that it will not agree to a suspension of the effectiveness of the decision or order pending judicial review.

(f) The MMS may initiate collection against a surety instrument if: (1) The MMS Director decides an administrative appeal adversely to the appellant, and the appellant fails either to pay the disputed amount or pursue a further administrative appeal and maintain an adequate surety instrument pending such appeal;

(2) The Interior Board of Land Appeals, the Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides an administrative appeal adversely to the appellant, and the appellant fails either to pay the disputed amount or pursue judicial review and maintain an adequate surety instrument pending such judicial review, in accordance with paragraph (e);

(3) A court of competent jurisdiction issues a final nonappealable decision adverse to the appellant/plaintiff and the appellant/plaintiff fails to pay the disputed amount; or

(4) The appellant fails to increase the amount of the surety instrument as required under paragraph (c) or otherwise fails to maintain an adequate surety instrument in effect.

3. A new § 243.3 is added under subpart A to read as follows:

§ 243.3 Exhaustion of administrative remedies.

In order to exhaust administrative remedies, a decision or order of MMS' Royalty Management Program must be appealed pursuant to 30 CFR part 290 to the Director (or the Deputy Commissioner of Indian Affairs when Indian lands are involved), and subsequently to the Interior Board of Land Appeals under 30 CFR part 290.7 and 43 CFR part 4 unless the order has been made effective by the Director, or by the Assistant Secretary for Land and Minerals Management, or by the Assistant Secretary for Indian Affairs, or by the Interior Board of Land Appeals pursuant to 43 CFR part 4, as applicable.

[FR Doc. 92-23635 Filed 9-29-92; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 211

RIN 1510-AA33

Delivery of Checks and Warrants to Addresses Outside the United States, Its Territories and Possessions

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule; revision.

SUMMARY: This final rule revises the regulations governing the delivery of checks outside the United States by removing the reference to the former People's Republic of Albania. With the resumption of diplomatic relations, there is reasonable assurance that payees

residing in Albania will receive and be able to negotiate checks for full value.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: William S. Mehr, Chief, Support Service Section, Product Integrity Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, (202) 874–6932.

SUPPLEMENTARY INFORMATION: The United States resumed diplomatic relations with the Republic of Albania on March 15, 1991. There is reasonable assurance that payees living in Albania will receive checks or warrants drawn against funds of the United States, its agencies or instrumentalities thereof, and will be able to negotiate the same for full value. For this reason, 31 CFR 211.1(a) is being revised to delete the reference to the People's Republic of Albania.

Because this rule removes a restriction on the delivery of checks and warrants to a foreign country, the Department of the Treasury has determined that notice of proposed rulemaking, public procedure and a delayed effective date are not required pursuant to 5 U.S.C. 553(a)(1), 5 U.S.C. 553(b)(B), and 5 U.S.C. 553(d)(1). This rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because no notice of proposed rulemaking is required under 5 U.S.C. 553 or any other law.

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 31 CFR Part 211

Checks, Foreign banking.

For the reasons set out in the preamble, 31 CFR part 211 is amended as set forth below.

PART 211—DELIVERY OF CHECKS AND WARRANTS TO ADDRESSES OUTSIDE THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS

1. The authority citation for part 211 continues to read as follows:

Authority: 31 U.S.C. 127 and 5 U.S.C. 301.

2. Section 211.1(a) is revised to read as follows:

§ 211.1 Withholding delivery of checks.

(a) It is hereby determined that postal, transportation or banking facilities in general or local conditions in the Republic of Cuba, Democratic Kampuchea, the Democratic People's Republic of Korea (North Korea), and the Socialist Republic of Vietnam are such that there is not a reasonable assurance that a payee in those areas will actually receive checks or warrants drawn against funds of the United States, or agencies or instrumentalities thereof, and be able to negotiate the same for full value:

* * * * *

Russell D. Morris,

Commissioner.

[FR Doc. 92–23559 Filed 9–29–92; 8:45 am]

BILLING CODE 4810–35–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 266

[EPA/OSW–FR–92; SWH–FRL–4513–9]

Burning of Hazardous Waste in Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments and corrections.

SUMMARY: On August 27, 1991 (56 FR 42504) and August 25, 1992 (57 FR 38558), the Environmental Protection Agency (EPA) published several technical amendments, clarifications, and corrections to the final rule for boilers and industrial furnaces burning hazardous waste. Today's notice provides clarifications to the final rule by reinstating language deleted due to an administrative error and corrects two errors appearing in the August 25, 1992 amendments.

DATES: The effective dates of the regulations, August 21, 1991 for the regulations published at (56 FR 42504), and August 11, 1992 for the regulations published at (57 FR 38558), remain unchanged. The reinstatement of § 266.103(c) (1) and (3) is effective August 21, 1991. The technical corrections to (57 FR 38558) are effective August 11, 1992.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or (703) 920–9810. For more specific aspects of the rule, contact Shiva Garg, Office of Solid Waste (OS–322W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone (703) 308–8459.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1991 at 56 FR 42504, EPA published a final rule that amended 40 CFR part 266 and other regulations. In § 266.103, paragraphs (c)(1) and (c)(3), EPA set out the text only of paragraph (c)(3)(i) and the introductory text of paragraph (c)(1). Due to an administrative error, the amendatory instructions resulted in paragraphs (c)(1) (i) through (xiii) and (c)(3) (ii) and (iii) of § 266.103 being deleted from the 1992 edition of title 40 of the Code of Federal Regulations (40 CFR). This document clarifies that paragraphs (c)(1) (i) through (xiii) and (c)(3) (ii) and (iii) of § 266.103 remain in effect, and are regarded by EPA to have been in effect continuously in the form published in 1991 edition of 40 CFR part 266. The Agency published another final rule at 57 FR 38558 (August 25, 1992) which amended § 266.103(c)(1) again, effective August 11, 1992. These amendments still remain in effect. For the sake of clarity, this document republishes § 266.103(c)(1) in its entirety as it became effective on August 11, 1992 after the last amendments, and § 266.103(c)(3) as it continues to remain in effect from August 21, 1991.

Today's document also corrects two errors in the August 25, 1992 final rule, effective August 11, 1992.

List of Subjects in 40 CFR Part 266

Energy, Hazardous waste, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: September 21, 1992.

Don R. Clay,

Assistant Administrator for Solid Waste and Emergency Response.

A. Technical Corrections

On August 25, 1992, EPA published several technical clarification amendments and corrections to the final BIF rule. Today's notice corrects two errors published in that notice.

I. In rule document number 92–20202, beginning on page 38558 in the **Federal Register** published on Tuesday, August 25, 1992, the following corrections are made:

PART 266—[AMENDED]

1. On page 38566, third column, in line 7 of amendment 11 to Appendix IX of Part 266, change "g/m ^{3}" to "μg/m ^{3}".

2. On page 38566, third column, in line 7 of amendment 12 to Appendix IX of Part 266, change "g/m ^{3}" to "μg/m ^{3}".

B. Technical Clarifications

For the reasons set out in the preamble, 40 CFR part 266 is amended as follows:

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

I. In part 266:

1. The authority citation for part 266 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

2. As discussed in the preamble, § 266.103, paragraphs (c)(1) and (c)(3) are revised to read as follows:

§ 266.103 Interim status standards for burners.

* * * * *

(c) * * *

(1) *Limits on operating conditions.* The owner or operator shall establish limits on the following parameters based on operations during the compliance test (under procedures prescribed in paragraph (c)(4)(iv) of this section) or as otherwise specified and include these limits with the certification of compliance. The boiler or industrial furnace must be operated in accordance with these operating limits and the applicable emissions standards of §§ 266.104(b) through (e), 266.105, 266.106, 266.107, and 266.103(a)(5)(i)(D) at all times when there is hazardous waste in the unit.

(i) Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e)), pumpable hazardous waste;

(ii) Feed rate of each metal in the following feedstreams:

(A) Total feedstreams, except that:

(*1*) Facilities that comply with Tier I or Adjusted Tier I metals feed rate screening limits may set their operating limits at the metals feed rate screening limits determined under § 266.106(b) or (e); and

(*2*) Industrial furnaces that must comply with the alternative metals implementation approach under paragraph (c)(3)(ii) of this section must specify limits on the concentration of each metal in the collected particulate matter in lieu of feed rate limits for total feedsteams;

(B) Total hazardous waste feed (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e)); and

(C) Total pumpable hazardous waste feed (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e));

(iii) Total feed rate of chlorine and chloride in total feed streams, except that facilities that comply with Tier I or Adjusted Tier I feed rate screening limits may set their operating limits at the total chlorine and chloride feed rate screening limits determined under § 266.107(b)(1) or (e);

(iv) Total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light-weight aggregate kilns is not limited;

(v) Carbon monoxide concentration, and where required, hydrocarbon concentration in stack gas. When complying with the CO controls of § 266.104(b), the CO limit is 100 ppmv, and when complying with the HC controls of § 266.104(c), the HC limit is 20 ppmv. When complying with the CO controls of § 266.104(c), the CO limit is established based on the compliance test;

(vi) Maximum production rate of the device in appropriate units when producing normal product, unless complying with the Tier I or Adjusted Tier I feed rate screening limits for chlorine under § 266.107(b)(1) or (e) and for all metals under § 266.106(b) or (e), and the uncontrolled particulate emissions do not exceed the standard under § 266.105;

(vii) Maximum combustion chamber temperature where the temperature measurement is as close to the combustion zone as possible and is upstream of any quench water injection (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e));

(viii) Maximum flue gas temperature entering a particulate matter control device (unless complying with Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under § 266.107(b) or (e));

(ix) For systems using wet scrubbers, including wet ionizing scrubbers (unless complying with Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106 (b) or (e) and the total chlorine and chloride feed rate screening limits under § 266.107(b)(1) or (e)):

(A) Minimum liquid to flue gas ration;

(B) Minimum scrubber blowdown from the system or maximum suspended solids content of scrubber water; and

(C) Minimum pH level of the scrubber water;

(x) For systems using venturi scrubbers, the minimum differential gas pressure across the venturi (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under § 266.107(b)(1) or (e));

(xi) For systems using dry scrubbers (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under § 266.107(b)(1) or (e)):

(A) Minimum caustic feed rate; and

(B) Maximum flue gas flow rate;

(xii) For systems using wet ionizing scrubbers or electrostatic precipitators (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under § 266.107(b)(1) or (e)):

(A) Minimum electrical power in kilovolt amperes (kVA) to the precipitator plates; and

(B) Maximum flue gas flow rate;

(xiii) For systems using fabric filters (baghouses), the minimum pressure drop (unless complying with the Tier I or Adjusted Tier I metal feed rate screening limits under § 266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under § 266.107(b)(1) or (e)).

* * * * *

(3) *Compliance testing.*—(i) *General.* Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under paragraph (b) of this section and under conditions established in the notification of compliance testing required by paragraph (c)(2) of this section. The owner or operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar onsite unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The Director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of § 266.103(c).

(ii) *Special requirements for industrial furnaces that recycle collected PM.* Owners and operators of industrial furnaces that recycle back into the furnace particulate matter (PM) from the air pollution control system must comply with one of the following procedures for testing to determine compliance with the metals standards of § 266.106(c) or (d):

(A) The special testing requirements prescribed in "Alternative Method for Implementing Metals Controls" in appendix IX of this part; or

(B) Stack emissions testing for a minimum of 6 hours each day while hazardous waste is burned during

interim status. The testing must be conducted when burning normal hazardous waste for that day at normal feed rates for that day and when the air pollution control system is operated under normal conditions. During interim status, hazardous waste analysis for metals content must be sufficient for the owner or operator to determine if changes in metals content may affect the ability of the facility to meet the metals emissions standards established under § 266.106(c) or (d). Under this option, operating limits (under paragraph (c)(1) of this section) must be established during compliance testing under paragraph (c)(3) of this section only on the following parameters;

(*1*) Feed rate of total hazardous waste;

(*2*) Total feed rate of chlorine and chloride in total feed streams;

(*3*) Total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light-weight aggregate kilns is not limited;

(*4*) Carbon monoxide concentration, and where required, hydrocarbon concentration in stack gas;

(*5*) Maximum production rate of the device in appropriate units when producing normal product; or

(C) Conduct compliance testing to determine compliance with the metals standards to establish limits on the operating parameters of paragraph (c)(1) of this section only after the kiln system has been conditioned to enable it to reach equilibrium with respect to metals fed into the system and metals emissions. During conditioning, hazardous waste and raw materials having the same metals content as will be fed during the compliance test must be fed at the feed rates that will be fed during the compliance test.

(iii) *Conduct of compliance testing.* (A) If compliance with all applicable emissions standards of §§ 266.104 through 266.107 is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards must be as close as possible to the original operating conditions.

(B) Prior to obtaining test data for purposes of demonstrating compliance with the applicable emissions standards of §§ 266.104 through 266.107 or establishing limits on operating parameters under this section, the facility must operate under compliance test conditions for a sufficient period to reach steady-state operations. Industrial furnaces that recycle collected particulate matter back into the furnace and that comply with paragraphs (c)(3)(ii)(A) or (B) of this section, however, need not reach steady state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals.

(C) Compliance test data on the level of an operating parameter for which a limit must be established in the certification of compliance must be obtained during emissions sampling for the pollutant(s) (i.e., metals, PM, HCl/Cl_2, organic compounds) for which the parameter must be established as specified by paragraph (c)(1) of this section.

* * * * *

[FR Doc. 92-23601 Filed 9-29-92; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-6

[FTR Amendment 27]

RIN 3090-AE69

Federal Travel Regulation; Increase in Maximum Reimbursement Limitations for Real Estate Sale and Purchase Expenses

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to increase the maximum dollar limitations on reimbursement for allowable real estate sale and purchase expenses incident to a change of official station. Section 5724a(a)(4)(B) of title 5, United States Code requires that the dollar limitations be updated effective October 1 of each year based on the percent change, if any, in the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component, for December of the preceding year over December of the second preceding year. This final rule will have a favorable impact on Federal employees authorized to relocate in the interest of the Government since it increases relocation allowance maximums.

EFFECTIVE DATE: This final rule is effective October 1, 1992, and applies to employees whose effective date of transfer is on or after October 1, 1992. For purposes of this regulation, the effective date of transfer is the date on which the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson,Transportation Management Division (FBX), Washington, DC 20406,telephone FTS or commercial (703) 305-5253.

SUPPLEMENTARY INFORMATION: This final rule makes the annual adjustment to the maximum reimbursement limitations for the sale and purchase of an employee's residence when the employee transfers in the interest of the Government. The total amount of expenses that may be reimbursed in connection with the sale of a residence shall not exceed 10 percent of the actual sale price or $20,799, whichever is the lesser amount. The total amount of expenses that may be reimbursed in connection with the purchase of a residence shall not exceed 5 percent of the purchase price or $10,399, whichever is the lesser amount.

The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302-6

Government employees, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR part 302-6 is amended to read as follows:

PART 302-6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. The authority citation for part 302-6 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 302-6.2 [Amended]

2. Section 302-6.2 is amended by removing the amount "$20,115" in paragraph (g)(1), and adding in its place the amount "$20,799"; and by removing the amount "$10,057" in paragraph (g)(2) and adding in its place the amount "$10,399".

Dated: August 26, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-23552 Filed 9-29-92; 8:45 am]
BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-651; RM-7544]

Radio Broadcasting Services; Bald Knob and Clarendon, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On reconsideration, the Commission grants the request of John Paul Capps and Elizabeth Capps, d/b/a Capps Radio Company, to substitute Channel 296C3 for Channel 296A at Bald Knob, Arkansas, and modify the license for Station KKSY(FM), as requested. Additionally, in order to accommodate the modification at Bald Knob, Channel 281A is substituted for Channel 297A at Clarendon, Arkansas, and the construction permit issued to B & H Broadcasting Co. for Station KXRC(FM) is modified accordingly. The proposal was previously denied based upon the Commission's determination that the proposal would not fully comply with the requirements of Section 73.315 of its Rules. See 56 FR 66827, December 26, 1991. Coordinates for Channel 296C3 at Bald Knob are 35–11–10 and 91–46–13. Coordinates for Channel 281A at Clarendon are 34–37–19 and 91–22–46. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 90–651, adopted August 31, 1992, and released September 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 297A and adding Channel 296C3 at Bald Knob; and by removing Channel 297A and adding Channel 281A at Clarendon.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–23633 Filed 9–29–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90-550; RM 7345]

Radio Broadcasting Services; Lafayette, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Lafayette Joint Venture, substitutes Channel 238C2 for 238A at Lafayette, Louisiana, and modifies its construction permit for Station KRRQ(FM) to specify operation on the higher class channel. See 55 FR 48870, November 23, 1990. Channel 238C2 can be allotted at petitioner's site 24.1 kilometers (15.0 miles) northwest of the community at the following coordinates: 30–21–44 and 92–12–53. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–550, adopted August 25, 1992, and released September 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, N.W., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 238A and adding Channel 238C2 at Lafayette.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–23631 Filed 9–29–92 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

Qualification of Drivers; Vision Waivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of waiver application period.

SUMMARY: The FHWA announces its decision to extend the time it will accept vision waiver applications from September 21, 1992 to December 31, 1992. This action will allow the agency to enroll a larger number of waived drivers in its research program while affording those drivers an opportunity for continued or enhanced employment. A larger sample size of vision deficient drivers will ensure a desirable level of confidence in the subsequent statistical analysis.

DATES: Vision waiver applications must be received on or before December 31, 1992.

ADDRESSES: Applications must be submitted to the Vision Waiver Program, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas or Ms. Sandra L. Zywokarte, (202) 366–2981, Office of Motor Carrier Standards, or Mr. Paul L. Brennan, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On March 25, 1992, the FHWA published its notice of intent to accept applications from drivers of commercial motor vehicles (CMV) for waivers of certain vision requirements contained in the Federal Motor Carrier Safety Regulations (FMCSRS). See 57 FR 10295. The public was notified that the FHWA

would accept such applications until September 21, 1992.

The FHWA did not obtain a sufficient number of applications by September 21 to ensure an adequate sample size for the vision waiver research program. The validity of this research effort is directly related to its sample size. The FHWA, therefore, is extending the time it will accept vision waiver applications to December 31, 1992. We believe that this additional time will enable the FHWA to issue a sufficient number of vision waivers necessary to generate statistical data that will produce a desirable level of confidence.

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

Issued on: September 23, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-23563 Filed 9-29-92; 8:45 am]

BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 57, No. 190
Wednesday, September 30, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AF16

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is issuing a proposed rule to authorize a special schedule practice for U.S. civil service prevailing rate (wage) employees in the Commonwealth of the Northern Mariana Islands (CNMI)—a practice consistent with the special schedules authorized in the other U.S. insular areas of Guam, Midway, American Samoa, and the U.S. Virgin Islands. No change in pay rates is involved, since the proposed special schedule practice would authorize rates identical to those on the foreign area schedule from which the employees are currently paid. The Department of the Interior, which has four authorized wage positions at the American Memorial Park on Saipan, CNMI, would be assigned lead agency responsibility for establishing and issuing this schedule. This change is necessary because the pay of wage employees in CNMI is now based on the foreign area wage schedule—a schedule no longer applicable since the change in status of CNMI from territory to commonwealth (part of the United States).

DATES: Comments must be submitted on or before November 30, 1992.

ADDRESSES: Send or deliver comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606-2848.

SUPPLEMENTARY INFORMATION: The use of the foreign area schedule to set the wages for these employees dates back to the period when the Northern Mariana Islands were part of the Trust Territory of the Pacific Islands (TTPI), a United Nations Trusteeship administered by the United States. With implementation of the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States," the trusteeship agreement was terminated, and in December 1990, the United Nations terminated the TTPI. Under the Covenant, U.S. Federal law applies to CNMI.

This amendment also would put in regulation the entitlement to post differentials for wage employees recruited from outside of the insular area where employed—an entitlement previously described in Federal Personnel Manual Supplement 532-1.

A number of administrative changes in the regulatory descriptions of foreign and insular area special schedules are also included. Specifically, the amended regulations would: (1) Split treatment of the foreign area schedule and the related special schedules into separate sections, (2) adopt the term "insular areas" to cover U.S. territories, possessions, and associated commonwealths (not otherwise surveyed—e.g., Puerto Rico), (3) change "will" to "shall" in § 532.255, (4) delete the production facilitating chart in § 532.255 because that chart is now shown in § 532.263 (production facilitating special schedules), and (5) remove the reference in § 532.259 to the U.S. Virgin Islands transition that ended in fiscal year 1990.

The Federal Prevailing Rate Advisory Committee has reviewed and concurred in these changes.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) or Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

2. Section 532.255 is amended by revising the heading and paragraph (a), removing the word "will" where it appears in the introductory text to paragraph (b) and in paragraphs (c) and (d) and inserting in its place the word "shall", and by revising paragraph (e) to read as follows:

§ 532.255 Regular appropriated fund wage schedules in foreign areas.

(a) The Department of Defense shall establish and issue regular appropriated fund wage schedules for U.S. citizens who are employees in foreign areas. These wage schedules shall provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

* * * * *

(e) Pay schedules for production facilitating positions shall be established in accordance with the table in § 532.263(c) of this subpart.

3. Section 532.259 is revised to read as follows:

§ 532.259 Special appropriated fund wage schedules for U.S. insular areas.

(a) Lead agencies shall establish and issue special wage schedules for U.S. civil service wage employees in certain U.S. insular areas. The Department of Defense is the lead agency for Guam, Midway, and the U.S. Virgin Islands. The Department of Transportation is the lead agency for American Samoa. The Department of the Interior is the lead agency for the Commonwealth of the Northern Mariana Islands. These schedules shall provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

(b) Special schedules shall be established at the same time and with rates identical to the foreign area appropriated fund wage schedules established under § 532.255 of this subpart.

(c) Wage employees recruited from outside the insular area where employed, who meet the same eligibility requirements as those specified for General Schedule employees in § 591.209 of subpart B of part 591, are also paid as a part of basic pay a differential for recruitment and retention purposes. The differential rate shall be that established for General Schedule employees in appendix B of subpart B of part 591 and shall be adjusted effective concurrently with the special schedules.

[FR Doc. 92–23655 Filed 9–29–92; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 532

RIN 3620–AF11

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to add San Patricio County, Texas, as an area of application to the Nueces, Texas, Federal Wage System (FWS) Nonappropriated Fund (NAF) wage area for pay-setting purposes. The Department of Navy recently commissioned a Naval Base in Ingelside, Texas. Ingelside Naval Base is located in San Patricio County, which is not currently defined for NAF pay-setting purposes. The intent of this action is to assign San Patricio County to the proper NAF wage area for pay-setting purposes.

DATES: Comments must be received on or before October 30, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense notified OPM that the Department of Navy recently commissioned a Naval Base in Ingelside, Texas; and anticipates hiring FWS NAF employees. The Ingelside Naval Base is located in San Patricio County, which is not currently defined for NAF pay-setting purposes. Navy does not anticipate that the Ingelside Naval Base will employ the minimum of 26 employees required to establish an FWS NAF wage area. Thus, San Patricio County must be defined as an area of application to an existing wage area in accordance with the criteria in § 532.219 of title 5, Code of Federal Regulations.

Geographically, the Ingelside Naval Base in San Patricio County is closest (approximately 10 miles) to the Corpus Christi Naval Air Station in Nueces County, the survey area for the Nueces, Texas, wage area. San Patricio County is also contiguous to Nueces County. The next closest survey area is approximately 140 miles distant in Bexar County, Texas. Transportation facilities and commuting patterns for workers also favor definition to Nueces County rather than to Bexar County. In addition, the Office of Management and Budget has defined San Patricio and Nueces Counties as jointly forming the Corpus Christi, Texas, Metropolitan Statistical Area.

The Federal Prevailing Rate Advisory Committee reviewed this issue and recommended, by consensus, the addition of San Patricio County to the Nueces, Texas, area of application.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. Appendix D to subpart B is amended by revising the area of application listing for the Nueces, Texas, wage area to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Texas

* * *

NUECES

* * *

Area of Application, Survey area plus:

Texas:
Bee
Calhoun
Kleberg
San Patricio
Webb

* * * * *

[FR Doc. 92–23658 Filed 9–29–92; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Parts 201 and 203

Regulations and Policy Statements under the Packers and Stockyards Act: Trade Practices, Scale Test Instructions, Advertising Allowance Guidelines

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Proposed rule; review of existing regulations.

SUMMARY: The Agency is currently reviewing all regulations and policy statements issued under the provisions of the Packers and Stockyards (P&S) Act. A review of 16 priority regulations and policy statements has been completed. As a result of the priority review, this document proposes to remove six regulations, amend one regulation and one policy statement, and retain seven regulations and one policy statement in their present form.

DATES: Comments must be submitted on or before November 30, 1992.

ADDRESSES: Comments may be mailed to the Administrator, Packers and Stockyards Administration, room 3039, South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected during normal business hours in the Office of the Administrator.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, (202) 720–6951, or Kenneth Stricklin, Packer and Poultry Division, (202) 720–7363.

SUPPLEMENTARY INFORMATION: The Agency proposes to remove § 201.64

which prohibits market agencies selling on commission from guaranteeing a price to the livestock consignor. Such guarantees have been considered an unfair and deceptive practice because they cause selling agencies to compete for consignments on the basis of price guarantees instead of usual and customary stockyard services. However, the prohibition against price guarantees restricts the ability of selling agencies to compete with other types of marketing businesses which are not affected by this regulation.

Structural changes in the livestock marketing industry have altered the importance of this regulation. Market agencies selling on commission are only one of several marketing alternatives available to most livestock sellers today. Other alternatives include packer and dealer buying stations and direct purchases by packers, dealers and producers. Removal of § 201.64 will permit selling agencies to compete more effectively in the overall market structure.

Market agencies selling on commission are prohibited from employing packers or persons employed to purchase livestock for a packer by § 201.66. This regulation was intended to prohibit less than arm's length transactions between a packer and selling agency, thereby avoiding any conflict of interest. While this regulation eliminates a potential conflict of interest, it also restricts potential buying power in some instances. Since dealers and order buyers are permitted to be employed by a selling agency, except in key positions, we can see no viable reason to continue to exclude packer employees from employment by a selling agency under similar circumstances. Concerns regarding potential conflicts of interest are addressed under § 201.56 by restricting employment in specific key positions. Further, provisions of the P&S Act which prohibit unfair and deceptive practices would make any unfair advantage gained from such employment unlawful. The Agency proposes to remove § 201.66.

The Agency proposes to remove §§ 201.72–1, 201.78–1, 201.106–1, 201.106–2 of the regulations issued under the P&S Act. These regulations provide detailed procedures and instructions for testing scales subject to the provisions of the P&S Act. They are outdated since National Bureau of Standards (now National Institute of Standards and Technology) Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices", has been incorporated in § 201.71. In some instances, these regulations are in conflict with the current requirements. While such instructions, as contained in the regulations, are helpful in assisting subject scale owners to obtain proper and adequate tests of their scales, it is not necessary that such instructions be in the form of regulations.

Under the provisions of § 201.56, market agencies selling on commission are prohibited from purchasing livestock out of consignments for speculative resale. This regulation also specifies conditions under which livestock can be purchased out of consignment to fill orders and requires disclosure to the consignor in such transactions. As proposed herein, § 201.56 would be amended to permit selling agencies, their owners, officers, agents and employees (except specified key employees) to purchase livestock out of consignment for any purpose provided the livestock is first offered for sale in an open, competitive manner to other available buyers. This proposal limits the definition of key employees to the auctioneer, weighmaster and commission salesman. Such key employees will be prohibited from purchasing livestock out of consignment for any purpose for their own account.

The proposed change in § 201.56 will permit selling agencies to market livestock in a manner that best represents the interest of the livestock seller without unnecessarily restricting purchases from consignments. These proposed changes will provide greater flexibility and allow market mechanisms an opportunity to work with less regulatory intervention.

It is also proposed that policy statement § 203.14 be amended. This policy statement serves as a guideline for meat packers with respect to the use of advertising allowances and other promotional services in connection with product marketing. It is recommended that several of the examples used in the guidelines be eliminated to provide clarity and user friendliness. By doing so, the Agency will be consistent with the FTC who amended their guidelines in August 1990 by eliminating several examples of how to implement promotional programs. The guidelines use examples as to how meat packers can either promote products or notify customers of promotions. They do not state the exact manner as to how a packer implements a particular promotional plan. A review of the examples has revealed that, although they have not resulted in needless litigation, they are too complex, too detailed, and too many.

A review of the following regulations and statements of general policy has been completed and it was determined that each should be retained in its present form:

§ 201.11 Suspended registrant, officer, agents, and employees.
§ 201.42 Custodial accounts for trust funds.
§ 201.43 Payment and accounting for livestock and live poultry.
§ 201.67 Packers not to own or finance selling agencies.
§ 201.72 Scales; testing of.
§ 201.97 Annual reports.
§ 201.99 Purchase of livestock by packers on a carcass grade, carcass weight, or grade and weight basis.
§ 203.10 Statement with respect to insolvency; definition of current assets and current liabilities.

In the process of reviewing these regulations, it was determined that they were necessary to the efficient and effective enforcement of the P&S Act and to the orderly conduct of the marketing system. In each instance the regulations were deemed to be fashioned to maximize the benefits to society, and in each instance, the benefits outweigh the enforcement and compliance costs. The absence of any of the regulations would be detrimental to industry and could result in increased litigation. None of the regulations have a significant economic impact or pose a hinderance to economic growth.

The changes proposed in §§ 201.56 and 203.14 do not impose or change any recordkeeping or information collection requirements. Existing requirements in these regulations have been previously approved by OMB under Control No. 0590–0001.

As provided by the Regulatory Flexibility Act, it is hereby certified that these rules will not have a significant economic impact on a substantial number of small entities and a statement explaining the reasons for the certification is set forth in the following paragraph and is being provided to the Chief Counsel for Advocacy of the Small Business Administration.

While these proposed amended rules impact small entities, they will not have a significant economic impact on any entity, large or small. The primary effect of these proposed rules is to remove restrictions which will provide greater flexibility for market mechanisms to work and provide clarity and consistency with other regulations and guidelines. Although the primary effect is to remove restrictions, the proposed changes further restrict purchases by auctioneers, salesmen, and weighmasters to eliminate conflicts of interest in fulfilling their fiduciary

responsibilities in consignment transactions.

These proposed amendments to rules are not major rules for the purposes of E.O. 12291. The proposed amendments do not impose any new paperwork requirements; do not have implications of Federalism under the Criteria of E.O. 12612; and do not impact on family formation under the Criteria of E.O. 12606.

These proposed amendments to rules have been reviewed under Executive Order 12778, Civil Justice Reform. These amendments to rules are not intended to have retroactive effect. These amendments to rules would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with these amendments to rules. Prior to judicial challenge of these amendments to rules, a party must be first found by the Secretary to be in violation of the P&S Act and in violation of the accompanying regulations. Second, the party must appeal that finding and the validity of the regulation to the Secretary in the course of the administrative proceeding. Only after taking these steps, the party may challenge the regulation in a court of competent jurisdiction.

List of Subjects in 9 CFR Parts 201 and 203

Advertising allowances, Market Agency employees, Price guarantees, Purchases from consignment, Scale test instructions.

Done at Washington, DC, this 24th day of September 1992.

Virgil M. Rosendale,

Administrator, Packers and Stockyards Administration.

For reasons set forth in the preamble, the Packers and Stockyards Administration proposes to amend 9 CFR parts 201 and 203 as follows:

1. The authority citation for parts 201 and 203 continues to read as follows:

Authority: 7 U.S.C. 204, 228; 7 C.F.R. 2.17(e), 2.56.

PART 201—[AMENDED]

2. Remove § 201.64.
3. Remove § 201.66.
4. Remove § 201.72–1.
5. Remove § 201.78–1.
6. Remove § 201.106–1.
7. Remove § 201.106–2.
8. Revise § § 201.56 and 203.14 to read as follows:

§ 201.56 Market agencies selling on commission; purchases from consignment.

(a) *Livestock to be sold openly at highest available bid.* Every market agency engaged in the business of selling livestock on a commission or agency basis shall sell the livestock consigned to it openly, at the highest available bid, and in such a manner as to best promote the interest of each consignor.

(b) *Purchases from consignment.* No market agency engaged in the business of selling livestock on a commission basis shall purchase livestock from consignments, and no such market agency shall permit its owners, officers, agents, employees or any firm in which such market agency or its owners, officers, agents, or employees have an ownership or financial interest to purchase livestock consigned to such market agency, without first offering the livestock for sale in an open and competitive manner to other available buyers, and then only at a price higher than the highest available bid on such livestock.

(c) *Key employees not to purchase livestock out of consignments.* No market agency engaged in selling livestock on commission shall permit its auctioneers, weighmasters, or salesmen to purchase livestock out of consignment for any purpose for their own account, either directly or indirectly.

(d) *Purchase from consignments: disclosure required.* When a market agency purchases consigned livestock or sells consigned livestock to any owner, officer, agent, employee, or any business in which such market agency, owner, officer, agent, or employee has an ownership or financial interest, the market agency shall disclose on the account of sale the name of the buyer and the nature of the relationship existing between the market agency and the buyer.

(Approved by the Office of Management and Budget under control number 0590–0001)

PART 203—[AMENDED]

§ 203.14 Statement with respect to advertising allowances and other merchandising payments and services.

The Guidelines

1. *Who is a customer?* (a) A "customer" is a person who buys for resale directly from the packer, or through the packer's agent or broker; and in addition, a customer is any buyer of the packer's product for resale who purchases from or through a wholesaler or other intermediate reseller.

(Note.—In determining whether a packer has fulfilled its obligations toward its customers, the Packers and Stockyards Administration will recognize that there may be some exceptions to this general definition of "customer." For example, the purchaser of distress merchandise would not be considered a "customer" simply on the basis of such purchase. Similarly, a retailer who purchases solely from other retailers or one who makes only sporadic purchases, or one who does not regularly sell the packer's product or who is a type of retail outlet not usually selling such products will not be considered a "customer" of the packer unless the packer has been put on notice that such retailer is selling its product.)

(b) "Competing customers" are all businesses that compete in the resale of the packer's products of like grade and quality at the same functional level of distribution, regardless of whether they purchase direct from the packer or through some intermediary.

Example: A packer sells directly to some independent retailers, sells to the headquarters of chains and of retailer-owned cooperatives, and also sells to wholesalers. The direct-buying independent retailers, the headquarters of chains and of retailer-owned cooperatives, and the wholesalers' independent retailer customers are customers of the packer. Individual retail outlets which are part of the chains or members of the retailer-owned cooperatives are not customers of the packer.

2. *Definition of services.* "Services" are any kind of advertising or promotion of a packer's product, including but not limited to, cooperative advertising, handbills, window and floor displays, demonstrators and demonstrations, customer coupons, and point of purchase activity.

3. *Need for a plan.* If a packer makes payments or furnishes services, it should do so under a plan that meets several requirements. If there are many competing customers to be considered, or if the plan is at all complex, the packer would be well advised to put its plan in writing. The requirements are:

(a) Proportionally equal terms—The payments or services under the plan should be made available to all competing customers on proportionally equal terms. This means that payments or services should be made proportionately on some basis that is fair to all customers who compete in the resale of the packer's products. No single way to achieve the proper proportion is prescribed, and any method that treats competing customers on proportionally equal terms may be used. Generally, this can best be done by basing the payments made or the services furnished on the dollar volume or on the quantity of goods purchased during a specified period. Other methods which are fair to all competing customers are also acceptable.

Example 1: A packer may properly offer to pay a specified part (say 50 percent) of the cost of local advertising up to an amount equal to a set percentage (such as 5 percent) of the dollar volume of such purchases during a specified time.

Example 2: A packer may properly place in reserve for each customer a specified amount of money for each unit purchased and use it to reimburse those customers for the cost of advertising and promoting the packer's product during a specified time.

Example 3: A packer's plan should not provide an allowance on a basis that has rates graduated with the amount of goods

purchased, as for instance, 1 percent of the first $1,000 purchases per month, 2 percent on second $1,000 per month, and 3 percent on all over that.

(b) Packer's duty to inform—The packer should take reasonable action, in good faith, to inform all its competing customers of the availability of its promotional program. Such notification should include all the relevant details of the offer in time to enable customers to make an informed judgment whether to participate. Where such one-step notification is impracticable, the packer may, in lieu thereof, maintain a continuing program of first notifying all competing customers of the types of promotions offered by the packer and a specific source for the customer to contact in order to receive full and timely notice of all relevant details of the packer's promotions. Such notice should also inform all competing customers that the packer offers advertising allowances and/or other promotional assistance that are usable in a practical business sense by all retailers regardless of size. When a customer indicates its desire to be put on the notification list, the packer should keep that customer advised of all promotions available in its area as long as the customer so desires. The packer may make the required notification by any means it chooses; but in order to show later that it gave notice to a certain customer, it is in a better position to do so if it was given in writing or a record was prepared at the time of notification showing date, person notified, and contents of notification.

If more direct methods of notification are impracticable, a packer may employ one or more of the following methods, the sufficiency of which will depend upon the complexity of its own distribution system. Different packers may find that different notification methods are most effective for them:

(1) The packer may enter into contracts with its wholesaler, distributors or other third parties which conform to the requirements of item 5, infra.

(2) The packer may place appropriate announcements on product containers or inside thereof with conspicuous notice of such enclosure on the outside.

(3) The packer may publish notice of the availability and essential features of a promotional plan in a publication of general distribution in the trade.

Example 1: A packer has a wholesaler-oriented plan directed to wholesalers distributing its products to retailing customers. It should notify all the competing wholesalers distributing its products of the availability of this plan, but the packer is not required to notify retailing customers.

Example 2: A packer who sells on a direct basis to some retailers in an area, and to other retailers in the area through wholesalers, has a plan for the promotion of its products at the retail level. If the packer directly notifies not only all competing direct purchasing retailers but also all competing retailers purchasing through the wholesalers as to the availability, terms and conditions of the plan, the packer is not required to notify its wholesalers.

Example 3: A packer regularly engages in promotional programs and the competing customers include large direct purchasing retailers and smaller customers who purchase through wholesalers. The packer may encourage, but not coerce, the retailer purchasing through a wholesaler to designate a wholesaler as its agent for receiving notice of, collecting, and using promotional allowances for the customer. If a wholesaler or other intermediary by written agreement with a retailer is actually authorized to collect promotional payments from suppliers, the packer may assume that notice of and payment under a promotional plan to such wholesaler or intermediary constitutes notice and payment to the retailer.

(A packer should not rely on a written agreement authorizing an intermediary to receive notice of and/or payment under a promotional plan for a retailer if the packer knows, or should know, that the retailer was coerced into signing the agreement. In addition, a packer should assume that an intermediary is not authorized to receive notice of and/or payment under a promotional plan for a retailer unless there is a written authorization signed by such retailer.)

(c) Availability to all competing customers—The plan should be such that all types of competing customers may participate. It should not be tailored to favor or discriminate against a particular customer or class of customers but should, in its terms, be usable in a practical business sense by all competing customers. This may require offering all such customers more than one way to participate in the plan or offering alternative terms and conditions to customers for whom the basic plan is not usable and suitable. The packer should not, either expressly or by the way the plan operates, eliminate some competing customers, although it may offer alternative plans designed for different customer classes. If it offers alternative plans, all of the plans offered should provide the same proportionate equality and the packer should inform competing customers of the various alternative plans.

When a packer, in good faith, offers a basic plan, including alternatives, which is reasonably fair and nondiscriminatory and refrains from taking any steps which would prevent any customer, or class of customers, from participating in its program, it shall be deemed to have satisfied its obligation to make its plan functionally available to all customers, and the failure of any customer or customers to participate in the program shall not be deemed to place the packer in violation of the provisions of the Packers and Stockyards Act.

Example 1: A packer offers a plan of short-term store displays of varying sizes, including some which are suitable for each of its competing customers and at the same time are small enough so that each customer may make use of the promotion in a practical business sense. The plan also calls for uniform, reasonable certification of performance by the retailer. Because they are reluctant to process a reasonable amount of paperwork, some small retailers do not participate. This fact is not deemed to place a packer in violation of Item 3(c) and it is under no obligation to provide additional alternatives.

Example 2: A packer offers a plan for cooperative advertising on radio, television, or in newspapers of general circulation.[1] Because the purchases of some of its customers are too small, this offer is not "functionally available" to them. The packer should offer them alterative(s) on proportionally equal terms that are usable by them and suitable for their business.

(d) Need to understand terms—In informing customers of the details of a plan, the packer should provide them sufficient information to give a clear understanding of the exact terms of the offer, including all alternatives, and the conditions upon which payment will be made or services furnished.

(e) Checking customer's use of payments—The packer should take reasonable precautions to see that services it is paying for are furnished and also that it is not overpaying for them. Moreover, the customer should expend the allowance solely for the purpose for which it was given. If the packer knows or should know that what it pays or furnishes is not being properly used by some customers, the improper payments or services should be discontinued.[2]

A packer who, in good faith, takes reasonable and prudent measures to verify the performance of its competing customers will be deemed to have satisfied its obligations under the Act. Also, a packer who, in good faith, concludes a promotional agreement with wholesalers or other intermediaries and who otherwise conforms to the standards of Item 5 shall be deemed to have satisfied this obligation. If a packer has taken such steps, the fact that a particular customer has retained an allowance in excess of the cost, or approximate cost if the actual cost is not known, of services performed by the customer shall not alone be deemed to place a packer in violation of the Act.

(When customers may have different but closely related costs in furnishing services that are difficult to determine such as the cost for distributing coupons from a bulletin board or using a window banner, the packer may furnish to each customer the same payment if it has a reasonable relationship to the cost of providing the service or is not grossly in excess thereof.)

4. *Competing customers.* The packer is required to provide in its plan only for those customers who compete with each other in the resale of the packer's products of like grade and quality. Therefore a packer should make available to all competing wholesalers any plan providing promotional payments or services to wholesalers, and similarly should

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[1] In order to avoid the tailoring of promotional programs that discriminate against particular customers or class of customers, the packer in offering to pay allowances for newspaper advertising should offer to pay the same percentage of the cost of newspaper advertising for all competing customers in a newspaper of the customer's choice, or at least in those newspapers that meet the requirements for second-class mail privileges.

[2] The granting of allowances or payments that have little or no relationship to cost or approximate cost of the service provided by the retailer may be considered a violation of section 202 of the Act.

make available to all competing retailers any plan providing promotional payments or services to retailers. With these requirements met, a packer can limit the area of its promotion. However, this section is not intended to deal with the question of a packer's liability for use of an area promotion where the effect may be to injure the packer's competition.

5. *Wholesaler or third party performance of packer's obligations.* A packer may, in good faith, enter into written agreements with intermediaries, such as wholesalers, distributors or other third parties, including promoters of tripartite promotional plans, which provide that such intermediaries will perform all or part of the packer's obligations under this part. However, the interposition of intermediaries between the packer and its customers does not relieve the packer of its ultimate responsibility of compliance with the provisions of the Packers and Stockyards Act. The packer, in order to demonstrate its good faith effort to discharge its obligations under this part, should include in any such agreement provisions that the intermediary will:

(1) Give notice to the packer's customers in conformity with the standards set forth in items 3(b) and (d), supra;

(2) Check customer performance in conformity with the standards set forth in item 3(e), supra;

(3) Implement the plan in a manner which will insure its functional availability to the packer's customers in conformity with the standards set forth in item 3(c), supra (This must be done whether the plan is one devised by the packer itself or by the intermediary for use by the packer's customers.); and

(4) Provide certification in writing and at reasonable intervals that the packer's customers have been and are being treated in conformity with the agreement.

A packer who negotiates such agreements with its wholesalers, distributors or third party promoters will be considered by the Administration to have justified its "good faith" obligations under this section only if it accompanies such agreements with the following supplementary measures: At regular intervals the packer takes affirmative steps to verify that its customers are receiving the proportionally equal treatment to which they are entitled by making spot checks designed to reach a representative cross section of its customers. Whenever such spot checks indicate that the agreements are not being implemented in such a way that its customers are receiving such proportionally equal treatment, the packer takes immediate steps to expand or to supplement such agreements in a manner reasonably designed to eliminate the repetition or continuation of any such discriminations in the future.

Intermediaries, subject to the Packers and Stockyards Act, administering promotional assistance programs on behalf of a packer may be in violation of the provisions of the Packers and Stockyards Act, if they have agreed to perform the packer's obligations under the Act with respect to a program which they have represented to be usable and suitable for all the packer's competing customers if it should later develop that the program was not offered to all or, if offered, was not usable or suitable, or was otherwise administered in a discriminatory manner.

6. *Customer's liability.* A customer, subject to the Packers and Stockyards Act, who knows, or should know, that it is receiving payments or services which are not available on proportionally equal terms to its competitors engaged in the resale of the same packer's products may be in violation of the provisions of the Act. Also, customers (subject to the Packers and Stockyards Act) that make unauthorized deductions from purchase invoices for alleged advertising or other promotional allowances may be proceeded against under the provisions of the Act.

Example: A customer subject to the Act should not induce or receive an allowance in excess of that offered in the packer's advertising plan by billing the packer at "vendor rates" or for any other amount in excess of that authorized in the packer's promotion program.

7. *Meeting competition.* A packer charged with discrimination under the provisions of the Packers and Stockyards Act may defend its actions by showing that the payments were made or the services were furnished in good faith to meet equally high payments made by a competing packer to the particular customer, or to meet equivalent services furnished by a competing packer to the particular customer. This defense, however, is subject to important limitations. For instance, it is insufficient to defend solely on the basis that competition in a particular market is very keen, requiring that special allowances be given to some customers if a packer is "to be competitive."

8. *Cost justification.* If is no defense to a charge of unlawful discrimination in the payment of an allowance or the furnishing of a service for a packer to show that such payment or service could be justified through savings in the cost of manufacture, sale, or delivery. (Approved by the Office of Management and Budget under control number 0590–0001)

[FR Doc. 92–23575 Filed 9–29–92; 8:45 am]

BILLING CODE 3410-KD-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 109, 110 and 114

[Notice 1992–16]

Independent Expenditures; Corporate and Labor Organization Expenditures

AGENCY: Federal Election Commission.

ACTION: Change in MCFL public hearing time.

SUMMARY: On July 29, 1992, the Commission published proposed regulations that would implement the Supreme Court's opinion in *Federal Election Commission* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). See 57 FR 33548. The Notice of Proposed Rulemaking announced that a public hearing would be held on October 14 and 15, 1992 at 10 a.m. The Commission has decided to change the starting time for the public hearing to 9:30 a.m. on both days. The additional time is necessary to accommodate all the witnesses who wish to testify.

DATES: The Commission will hold the hearing on October 14, 1992 at 9:30 a.m. and on October 15, 1992 at 9:30 a.m.

ADDRESSES: The hearing will be held at the Federal Election Commission, Ninth Floor Hearing Room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or toll free (800) 424–9530.

Dated: September 24, 1992.

Scott E. Thomas,

Vice Chairman, Federal Election Commission.

[FR Doc. 92–23643 Filed 9–29–92; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 757; 92F–014P]

Texas High Plains Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Northwest Texas to be known as "Texas High Plains." This proposal is the result of a petition filed by Clinton M. McPherson of Lubbock, Texas.

ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

DATES: Written comments must be received by November 16, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; Attn: Notice No. 757.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Clinton M. McPherson proposing to establish a viticultural area in the Texas panhandle to be known as "Texas High Plains." The proposed viticultural area contains approximately 8 million acres of flat, intensively cultivated land with cotton, sorghum and wheat the predominant crops, irrigated from the Ogallala aquifer. The elevation is from 3,000 to 4,000 feet above sea level. Vineyards presently occupy approximately 2,000 acres, but the petitioner maintains that there is growing interest in viticulture in the area. There are presently 4 wineries active within the proposed area. Nearly half of all commercial wine grapes grown in Texas are grown in the proposed area. The petitioner states many wines from Texas High Plains grapes are achieving high acclaims in national and international competitions. He attributes the excellent quality to the Texas High Plains' high elevation, cool nights, rich soils, dry, disease free conditions, and constant breezes.

Evidence of Name

The petitioner submitted evidence that the name "Texas High Plains" is used to refer to a large portion of the Texas panhandle and that the area specified in the petition is within the larger area locally or nationally known by that name. The evidence includes:

A Texas Highway Department poster which shows a map of the State of Texas, with a shaded area in the northwest portion of the state designated as the Texas High Plains. The east and west boundaries of the shaded area agree with the proposed boundaries, though the shaded area extends further to the north and south than the proposed area.

The Wine Spectator, February 29, 1992, edition contains an article entitled "Dawn of New Texas Wine" which refers to the "High Plains around Lubbock, where many of the best wine grapes grow".

The Texas Monthly, September, 1991, edition describes a vast area in northwest Texas known as the High Plains region.

The Los Angeles Times, June 1, 1987, edition carried an article titled "Texas Wine: Taste it and Believe It" which described several wineries on the "Texas high plains"—Pheasant Ridge and Llano Estacado, both within the proposed area.

Spirit magazine, September, 1986, edition carried an article titled "The Wine Industry—Coming of Age in Texas?" which referred to the High Plains as an area in which the soil would be compatible with European vines.

Evidence of Boundaries

Evidence that the boundaries of the proposed area are as specified in the petition includes the following:

The Fall, 1991, Market Report, a publication of the Texas Wine Marketing Research Institute, Texas Tech University, contains a map of the grape growing regions in Texas as broken down by counties. The western boundary agrees with that proposed, but the area shown on the map extends further to the north and slightly further to the east and south.

The 1986–87 Texas Almanac and State Industrial Guide published a map of the "vegetational areas" of Texas, showing the High Plains as a somewhat larger area than the one proposed, interrupted by a strip of "rolling plains" along the northern boundary of the proposed area.

The Texas Water Plan, published by the Texas Water Development Board in November, 1968, contains a map showing Texas climatological divisions, including the High Plains. The eastern boundary agrees with that proposed, but the area shown on the map extends further to the west, north and south.

According to the petitioner, the proposed boundaries omit portions of the larger area known as the "Texas High Plains" because they have been found to be unsuitable for commercial viticulture. The petitioner reports that, over the last 20 years, observers have found that risk of freeze damage became intolerable along the New Mexico border (the western boundary of the proposed area) and to the north of the proposed boundaries. This change in the minimum temperature during winter coincides roughly with the 4,000 foot elevation of these areas, higher than most of the proposed area.

In many of the narrative descriptions and maps submitted with the petition, an escarpment called the "Caprock" is used as the eastern boundary of the Texas High Plains. Since this escarpment is not represented on the U.S.G.S. maps as a single line, the petitioner has selected the 3,000 foot contour line as the eastern boundary for the proposed area. This contour line runs to the west of the escarpment; in some places it appears to be as much as 15 miles to the west.

The southern boundary of the proposed area was chosen by the petitioner because, he states, it corresponds to changes in temperature, soil type and wind which alter the growing conditions significantly. His evidence will be discussed further in the sections on soil and climate.

Viticultural History

Records of the Texas Agricultural Experiment Station in Lubbock show studies were done between 1909 and 1937 on the adaptability of many grape cultivars, including *vitis vinifera*, at the station. In the 1950s and '60s, French-American hybrids, American and

vinifera cultivars were planted in research plots at Texas Tech University, also in Lubbock. As a result of this work, commercial viticulture began in the area in 1945, and was expanded in the 1960s and again in 1973. Llano Estacado, the first winery in the area, had its first crush in 1976. Three more wineries have been developed in the Texas High Plains since then: Pheasant Ridge, Teysha and La Escarbada XIT.

In a report on the 1985 Lone Star State Wine Competition, Greater Lubbock, in its November, 1985, issue, noted that wineries within the proposed area won the only gold medal awarded, 60% of the silver medals, and nearly 40% of the bronze medals in the statewide competition. The Los Angeles Times, Monday, June 1, 1987, article, "Texas Wine: Taste It and Believe It" mentioned awards won by Llano Estacado and Pheasant Ridge at the 1986 San Francisco Fair and Wine Competition, competing against nearly 2,000 other wines, "including a bunch from California."

Geographical Features

The petitioner provided the following evidence relating to features which he contends distinguish the proposed viticultural area from the surrounding areas:

Topography

The petition states that the proposed area is distinguished from the surrounding area in part by its elevation. According to the petitioner, the most pronounced change in terrain occurs at the proposed eastern boundary of the area where an escarpment "provides an east facing wall 200–1,000 feet high along the entire east boundary of the proposed appellation, separating the Texas High Plains from the Rolling Plains to the east." The proposed area is described in the Texas Almanac as the "largest level plain of its kind in the United States." The high plains rise gradually from 3,000 feet in the east to more than 400 feet in spots along the New Mexico border.

Underlying the Texas High Plains is the Ogallala Aquifer. The Texas Almanac notes that this is an important source of irrigation water for crops grown in the area. The area has no major rivers, but there are numerous "playas" (small intermittent lakes) scattered through the area which catch water after rains and allow it to percolate back to the aquifer.

Soil

The authors of Our Texas, Ralph W. Steen and Frances Donecker, state that the High Plains were considered a "great American desert," suitable only for grazing, until late in the nineteenth century, when the land was found to be fertile. According to a report on Conservation Tillage issued by the Texas Agricultural Experiment Station (TAES) in July, 1987, soils in the proposed area vary from predominantly brown clay loams with clay textured subsoils in the north to fine sandy loams in the central and southern regions. The Ogallala aquifer, which supports irrigation within the proposed area, ends near the proposed southern boundary. The lack of available groundwater results in soils which are sandy, shallow and highly eroded to the south and east of the proposed area. The petitioner told of one vineyard south of the proposed boundary which was abandoned due to drifting sand.

Climate

According to the petitioner, the proposed area is characterized by low annual rainfall, moderate temperature, and variable, but gentle, wind.

According to a report on Irrigation Water Management by the Texas Water Resources Institute in August, 1987, average annual rainfall within the proposed area varies from 14 inches near the western boundary to 20 inches in the east. The report notes that the greatest monthly rainfall in the area occurs between May and September, a fact the petitioner attributes to warm moist air carried into the area from the Gulf of Mexico. This tropical air sometimes brings moderate to heavy thunderstorms with hail and intense winds. According to a chart from TAES, annual precipitation gradually increases to the east of the proposed area, and decreases to the west.

Other charts from TAES compare the annual temperatures in various parts of Texas. Mean annual temperature varies from 58° on the north to 61° on the south of the proposed area, a range which the petitioner claims is important to the quality potential of wine grapes. The proposed viticultural area's coldest temperatures range just above and below 0°, with colder temperatures to the north, and warmer temperatures to the south. According to the petitioner, growers to the north of the proposed boundary have abandoned plantings due to frequent freeze loss.

The petitioner also notes that, due to the low relative humidity on the High Plains, there is a very low incidence of such disease and pest problems as downy mildew, Pierces disease, phylloxera, and black rot, which are found in other parts of Texas.

Proposed Boundary

The boundary of the proposed Texas High Plains viticultural area may be found on six United States Geological Survey (U.S.G.S.) maps with a scale of 1:250,000. The boundary is described in § 9.144.

Executive Order 12291

It has been determined that this proposed regulation is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties. We particularly request comments concerning the name and boundaries of the proposed area. The area described in the petition is very large, but the evidence shows that the name "High Plains" applies to a much larger area which extends beyond the borders of the State of Texas to the west and north, and further south within the State. The use of the name "Texas High Plains" to describe the proposed area is only warranted if there is a

difference in growing conditions which coincides with the political boundaries. We are also concerned that use of the name "Texas High Plains" for a viticultural area which is smaller than the area commonly called by that name may tend to confuse consumers. We request comments as to whether there are areas suitable for viticulture within the larger area known as "Texas High Plains" which would be excluded from the proposed viticultural area. Commenters who believe a potential for confusion exists should suggest alternate names for the proposed area.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.144 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.144 Texas High Plains.

(a) *Name.* The name of the viticultural area described in this section is "Texas High Plains."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Texas High Plains viticultural area are six U.S.G.S. topographical maps of the 1:250,000 scale. They are titled:

(1) "Clovis, New Mexico; Texas" 1954, revised 1973.

(2) "Brownfield, Texas; New Mexico" 1954, revised 1973.

(3) "Hobbs, New Mexico; Texas" 1954, revised 1973.

(4) "Plainview, Texas" 1954, revised 1974.

(5) "Lubbock, Texas" 1954, revised 1975.

(6) "Big Spring, Texas" 1954, revised 1975.

(c) *Boundary.* The Texas High Plains viticultural area is located in Armstrong, Bailey, Borden, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Parmer, Randall, Swisher, Terry and Yoakum Counties, Texas. The boundary is as follows:

(1) Beginning on the Hobbs, New Mexico; Texas, map at the intersection of the Texas-New Mexico border and U.S. Route 180 east of Hobbs, New Mexico,

(2) The boundary follows U.S. Route 180 east through Seminole, Texas and onto the Big Spring, Texas, U.S.G.S. map where it intersects with the 3000 foot contour line in the town of Lamesa;

(3) The boundary then follows the 3000 foot contour line in a generally northeasterly direction across the U.S.G.S. maps of Big Spring and Lubbock, Texas

(4) The boundary continues along the 3000 foot contour line onto the map of Plainview, Texas, where it follows a generally northwesterly direction until it intersects with State Highway 217 approximately 12 miles east of Canyon, Texas;

(5) The boundary then follows State Highway 217 west to Canyon, Texas, leaves State Highway 217 and proceeds in a straight line in a northwesterly direction until it intersects with U.S. Route 60, still within Canyon, Texas;

(6) The boundary then follows U.S. Route 60 in a southwesterly direction onto the U.S.G.S. map of Clovis, New Mexico; Texas, where it intersects the Texas-New Mexico border;

(7) The boundary then follows the Texas-New Mexico border south, across the U.S.G.S. map of Brownfield, Texas; New Mexico, to the beginning point on the Hobbs, New Mexico; Texas, U.S.G.S. map.

Approved: September 23, 1992.

Stephen E. Higgins,

Director.

[FR Doc. 92-23700 Filed 9-29-92; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA-4-1-5207; FRL-4515-4]

Approval and Promulgation of Air Quality Implementation Plans Louisiana; Correction of Deficiencies in VOC RACT Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes to approve the revisions to the State of Louisiana's air quality regulations concerning reasonably available control technology (RACT) for sources emitting volatile organic compounds and recodify the federally-approved State Implementation Plan (SIP) to match the State's regulatory code. This action is necessary for several reasons. First, on May 26, 1988, EPA notified the State of Louisiana that its SIP for attaining the national ambient air quality standard (NAAQS) for ozone was substantially inadequate as it applied to the seven parishes comprising the Baton Rouge ozone nonattainment area: Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, St. James, and West Baton Rouge. This notice called for the State to correct deficiencies in its Volatile Organic Compound (VOC) RACT rules as they applied to those parishes. Second, on November 8, 1989, EPA notified Louisiana that its ozone SIP was substantially inadequate as it applied to Calcasieu Parish, which comprises the Lake Charles ozone nonattainment area, and also called for the State to correct existing deficiencies in its VOC RACT rules as these applied to Calcasieu Parish. Third, the Clean Air Act, as amended on November 15, 1990, required the State to revise its SIP to correct VOC RACT deficiencies within six months of enactment. Finally, the VOC RACT rules must be recodified to provide consistency between the State's code and the SIP. The effect of today's proposed action will be to correct existing deficiencies in the VOC RACT rules of the Louisiana SIP as required by

EPA notices of deficiency and the Clean Air Act, as amended, and to recodify the VOC RACT rules to conform with the State's code. This action is being taken under section 110 and Part D of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990.

DATES: Comments on today's proposed action must be received on or before October 30, 1992.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6T–AP), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202–2733. Copies of the documents relevant to today's action are available for public inspection during normal business hours at the above location and at the Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana, 70810. Anyone wishing to review these documents at the USEPA office is asked to contact the person named below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Guy Donaldson at (214) 655–7214.

SUPPLEMENTARY INFORMATION: In the **Federal Register** on November 24, 1987, EPA's Proposed Post-1987 Policy for Ozone and Carbon Monoxide stated that air quality monitors revealed exceedances of the ozone standard in the Baton Rouge area of Louisiana and that a "SIP call" would be issued (See 52 FR 45044). A SIP call is a finding by EPA that the SIP does not provide for attainment by the required date.[1] In a letter dated May 26, 1988 to Governor Buddy Roemer, EPA notified the State of Louisiana that because the Baton Rouge area had failed to attain the NAAQS for ozone by December 31, 1987, as required under section 172 of the Clean Air Act, its SIP was substantially inadequate and would need to be revised. Later on November 8, 1989, EPA notified the State that its SIP as it applied to Calcasieu Parish was substantially inadequate to achieve the ozone NAAQS in that area (i.e., Lake Charles).[2] EPA requested that the State respond to the SIP calls in two phases. Pursuant to the first phase, the State was to: (1) Correct identified deficiencies in the exisiting SIP's VOC regulations; (2) adopt VOC regulations previously required or committed to but never adopted; and (3) update the area's base year emissions inventory. Just as the Post '87 SIP calls were being anticipated, the Louisiana Department of Environmental Quality (LDEQ) recodified its air quality regulations. The bulk of this effort was conditionally approved March 8, 1989, at 54 FR 9783.[3] The VOC RACT rules were not approved as part of the recodification at that time because the majority of the VOC RACT rules as recodified were substantially changed from the rules previously approved as part of the SIP. This is because the State had revised its VOC RACT rules for various reasons, but the revisions had not been incorporated into the federally-approved SIP. Given the discrepancies between the State code and the SIP, EPA decided not to approve the recodification of the VOC RACT rules to avoid confusing the public about which version was part of the federally-approved SIP. Now that the revised language is considered acceptable, EPA is simultaneously approving the substantive revisions and the recodification and will refer to the VOC RACT rules by the recodified designations.

To understand the corrections to the VOC RACT rules, some background on RACT is necessary. The Clean Air Act, as amended in 1977, required that States promulgate rules that require RACT for existing industrial sources that are located in ozone nonattainment areas. EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761). To help the States develop RACT rules, EPA issued Control Technology Guideline (CTG) documents. The Agency prepared three sets of CTG's covering 24 industrial source categories. These categories included coating operations, stage I vapor control from gasoline service stations, leaks from petroleum refinery equipment, storage of petroleum liquids in tanks, and other activities associated with VOC emissions.

States used the CTG's to develop RACT for VOC sources located in either urban or rural nonattainment areas, "urban" and "rural" being defined by population. Since urban areas were believed to need more controls than rural areas and CTGs were not meant to be all-encompassing, States also had to develop RACT for non-CTG major sources [4] in urban nonattainment areas. For the purposes of the Post '87 SIP calls, East and West Baton Rouge Parishes were urban nonattainment and Ascension, Iberville, Pointe Coupee, St. James and Calcasieu Parishes were rural nonattainment. The distinction between urban and rural does not affect most of these revisions because, generally, Louisiana adopts rules on a statewide basis. But it should be noted that some of the rules do not apply to the same degree in all of the parishes covered by the Post '87 SIP calls.

On May 25, 1988, EPA published a guidance document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations" (the Blue Book). This document did not expand or modify existing Federal requirements but provided information to clarify past EPA guidance. The CTGs and the Blue Book were used to identify the deficiencies to be corrected in response to the Post '87 SIP calls. Correction of these deficiencies would provide better enforceability of the VOC RACT rules and a greater degree of equity.

Since the Post '87 SIP calls, Congress amended the Clean Air Act on November 15, 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Under the amended Act, those areas that were designated nonattainment before enactment of the Amendments, and which retained that designation and were classified as marginal or above as of enactment,[5] were required to meet the section 182(a)(2)(A) RACT fix-up requirement by May 15, 1991. The Baton Rouge and Lake Charles nonattainment areas are classified as serious and marginal, respectively, and therefore, are subject to the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required to correct RACT as it was required under preamendment

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[1] Under the pre-amended Act, section 110(a)(2)(H) provided for a finding by the Administrator that a "plan is substantially inadequate to achieve the [NAAQS]." This provision was carried forth under the amended Act. In addition, section 110(k)(5) of the amended Act reinforces the Agency's authority to make such a finding.

[2] To avoid repetition, hereinafter the Baton Rouge and Lake Charles SIP calls will be referred to as the Post '87 SIP calls.

[3] The conditional approval of the rules has not been changed to final approval because the State still has not submitted changes to correct certain errors in the recodified rules. Also, since the publication of that conditional approval, EPA has found that one rule, previously thought to be unchanged, was changed substantially. The Agency issued a correction to the conditional approval (57 FR 8075, March 6, 1992) to note that the language of the recodified rule in question is not being approved.

[4] Sources that are not the subject of a CTG.

[5] Air monitoring data since the post-87 SIP call indicates that St. James Parish may have attained the NAAQS for ozone. It has retained its nonattainment designation but is classified as incomplete data. Therefore, St. James Parish is not subject to section 182(a)(2)(A) of the amended act. Louisiana will, however, have to correct any deficiencies regarding enforceability of existing rules in order to be redesignated to attainment. See the General Preamble 57 FR 13498, at 13525 (April 16, 1992)

guidance.[6] The Post '87 SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas.

The Louisiana Department of Environmental Quality (LDEQ) adopted revisions to the VOC RACT rules in a series of actions making revisions to various sections of LAC:33:III: Chapter 1 (pertaining to General Provisions) and Chapter 21 (pertaining to Control of Emissions of Organic Compounds). The first submittal in response to the Post '87 SIP calls, sent to EPA in a letter dated June 13, 1990 [7], contained revisions to Chapter 21 as adopted on January 20 and February 20, 1990. The second submittal from the Governor, dated October 26, 1990, contained further corrections to Chapter 21 as adopted July 20, 1990. A third submittal dated May 9, 1991, contained revisions as adopted by emergency rulemaking procedures on May 1, 1991. A fourth submittal, received May 24, 1991, contained revisions to the VOC regulations adopted by LDEQ on November 20, 1990 and April 20, 1991.

Because LDEQ could not meet the statutory deadline using its regular rulemaking procedures, it resorted to emergency procedures allowed under the State's Administrative Procedures Act (LSA R.S. 49:953(B), 30:2011, and 30:2054) to make final corrections to the VOC RACT rules. These procedures allow rules to be revised without public hearing but limit their effectiveness to 120 days. However, since the rules are only effective for 120 days, LDEQ also used its regular rulemaking process and adopted rules again on July 20, 1991. These regulations were submitted to EPA on March 26, 1992.

The Louisiana emergency measure submitted on May 9, 1991, was not subject to notice and public hearing at the State level. Pursuant to section 110(a)(1) of the Clean Air Act, EPA requires States to submit SIPs and SIP revisions that the State has adopted "after reasonable notice and public hearing." The State cured this defect through its submittal of March 26, 1992. At that time, the State resubmitted the same rule, after it fulfilled the public notice and hearing requirements. Therefore, EPA is proposing to approve these submittals in this action.

At the same time that Louisiana submitted the rules that went through the public participation process, Louisiana resubmitted the recodification of the VOC RACT rules and submitted rules adopting capture efficiency test methods. It was necessary to resubmit the remodified version of the VOC RACT rules (previously submitted on January 6, 1988 but later recalled), to include changes to the State rules that were not included in the SIP and adopted prior to the June 13, 1990 submittal. The recodified VOC RACT rules, first submitted in 1988, serve as the baseline superseding all previous regulation submittals concerning VOC RACT rules.

Louisiana's revised regulations, submitted in response to the Post '87 SIP call letters, also respond to the RACT fix-up requirements of the Clean Air Act, as amended in 1990. Taken together, these submittals meet the requirements of section 182(a)(2)(A) of the amended Act.

The Post '87 SIP calls identified many deficiencies in the Louisiana VOC rules. Certain deficiencies were common to several rules. For example, many rules allowed "State Director's Discretion" to approve alternate methods of compliance. To correct those rules, the State needed to expressly provide that alternate means of compliance require both State and EPA approval. Another correction that was incorporated into many of the rules was the concept of "Once in, Always In." In other words, if a facility's throughput makes it subject to a control requirement at any time, then it is always subject to the control requirement. Finally, provisions for recordkeeping, test methods and monitoring requirements had to be added to improve the enforceability of many of the rules.

This notice contains a capsule description of each rule as it has been revised in its final form. A detailed explanation of the revisions is found in the Technical Support Document (TSD) prepared for this proposed action. A copy of this TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

LAC:33:III:111. Definitions. This section has been revised to add a definition for Administration Authority*. The asterisk denotes that, both EPA and LDEQ must approve any alternative or equivalent test methods, waivers, monitoring methods, testing and monitoring procedures or other alternative methods of compliance not specified in the rule. Administrative Authority without an asterisk is only used in those rules where the State can retain approval authority. This is the mechanism by which Louisiana has removed the deficiency which had existed with regard to State director's discretion. The definition of VOC was also revised to remove a lower vapor pressure cutoff so that the definition now is consistent with the CAA as interpreted in EPA policy. Definitions were also added for the following terms to improve the enforceability of the rules; coating, miscellaneous metal parts, non-attainment area, and ozone exceedance.

LAC:33:III 2101. Compliance Schedules. This rule was changed to require all facilities to achieve compliance 1 year after becoming affected by a regulation. This is consistent with the CAA as interpreted in EPA's policy to require expeditious compliance.

LAC:33:III 2103. Storage of Volatile Organic Compounds. This rule covers control requirements for VOC storage tanks. Several changes were made to improve enforceability of the rule. First, State director's discretion for the approval of alternate seals was removed. Second, test methods were added for measuring secondary seal gaps and for determining the performance of add-on control devices. Third, the exemption was removed for tanks larger than 420,000 gallons storing crude oil or condensate in nonattainment parishes. Finally, recordkeeping requirements were added for demonstrating continuous compliance for vapor loss control systems.

LAC:33:III 2105. Storage Volatile Organic Compounds (Small Tanks). This section was combined into Section 2103.

LAC:33:III 2107. Volatile Organic Compounds—Loading. This Section deals with the control of VOC emissions during loading tanks, trucks or trailers. The rule was revised to include "once in, always in" requirements. The rule was also clarified to state that the control efficiency of any vapor control device must be at least 90%. A provision was added requiring visual monitoring to detect liquid and vapor leaks and recordkeeping requirements to demonstrate continuous compliance. Test methods were added for determining control device efficiency.

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[6] Among other things, the pre-amendment guidance consists of those portions of the Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cut-points, Deficiencies and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (for which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[7] EPA has already taken action on a portion of Louisiana's June 13, 1990, submittal. Those portions, Subchapter B, Organic Solvents, Section 2123, paragraphs C.6 and D.3, were approved on September 7, 1990 (55 FR 36811). Louisiana revised these sections pursuant to an Order of the United States District Court for the Western District of Louisiana in the case of *United States* v. *General Motors Corporation*, Civil Action No. CV87-1890S.

LAC:33:III 2109. Oil/Water—Separation. This regulation outlines requirements for single and multiple compartment volatile organic compound water separators. In the Parishes subject to the Post '87 SIP calls, the exemption level was changed so that now VOC/water separators that are minor sources (emit less than 100 tons/yr) are required to have controls. The new exemption level is for separators that process less than 200 gallons/day or materials with a vapor pressure less than 0.5 psia. To improve the enforceability of the regulation, appropriate test methods and recordkeeping requirements were added. Also, director's discretion was removed for the approval of alternate control methods.

LAC:33:III 2111. Pumps and Compressors. This regulations was changed to effect only pumps and compressors handling volatile organic compounds having a true vapor pressure of 1.5 psia. This change was necessary because the definition of VOC was changed to remove the 1.5 psia cutoff.

LAC:33:III 2113. Housekeeping. This is a general provision in the Louisiana regulations to encourage measures to reduce the quantity of VOC emissions through good work practices. It does not arise from any Clean Air Act requirement, but is being approved as part of the SIP for its strengthening effect. The changes added specific requirements for housekeeping and maintenance plans.

LAC:33:III 2115. Waste Gas Disposal. This rule covers the Group III CTG categories of Manufacture of High-density Polyethylene, Polypropylene and Polystyrene Resins, and Air Oxidation Reactors. In addition, the rule covers non-CTG major sources that have waste gas streams. The main changes to this rule were made to improve the enforceability of the rule. They include removal of director's discretion for approval of exemption from the rule or for alternate means of control. Test methods were added for the determination of control device efficiency. Control device monitoring requirements were added so that the continued compliance of the control device will be demonstrated. Recordkeeping provisions were added so that past compliance will be recorded. In addition, recordkeeping requirements for facilities demonstrating exemption from the rule were added. Also, the rule now clearly states that the control requirement for non-halogented waste streams is 95 percent reduction or 50 ppm exhaust concentration, whichever is more stringent.

LAC:33:III 2117. Exemptions. This rule lists compounds that are exempt from the VOC control requirements due to low photochemical reactivity. It was revised to add four compounds to the list; dichlorotrifluouroethane (HCFC-123), tetrafluouroethane (HFC-134a), dichlorofluouroethane (HCFC-141b) and chlorodifluouroethane HCFC-142b). This change was made in response to revisions to the EPA policy on exempt compounds made January 18, 1989 (54 FR 1987) and is in keeping with the EPA definition of VOC promulgated February 3, 1992 (57 FR 3941).

LAC:33:III 2119. Variances. This regulation has provisions to allow variances from the requirements of the regulations. It was revised to show that any variances must be approved by both EPA and LDEQ.

LAC:33:III 2121. Fugitive Emission Control. This regulation sets requirements to control emissions from leaking components in Petroleum Refineries, Synthetic Organic Chemical Manufacturing Industry (SOCMI) plants, and Natural Gas Processing Plants. The emissions are controlled through requiring leak detection and repair (LDAR) programs. Several requirements were added that increased the stringency of these regulations to follow EPA guidelines. The changes included adding quarterly monitoring requirements for valves and pumps in light liquid service and valves in gas service in SOCMI and polymer manufacturing plants. Also, the revisions added a requirement that fugitive leaks detected by sight, sound or smell be repaired immediately regardless of concentration. The applicability of the rule was also expanded to cover the methyl tertiary butyl ether (MTBE) manufacturing industry.

Other changes were made to clarify previously vague areas in the rule for better enforceability. These changes included adding definitions for Inaccessible Valves, Heavy Liquid Service, Light Liquid Service and Light Liquid. Other changes were made to require both EPA and State approval for alternate monitoring plans.

LAC:33:III:2123. Organic Solvents. This regulation contains requirements designed to reduce emissions from solvent-using industries. Extensive changes were made to this regulation to lower exemption limits and improve enforceability. Sources in East and West Baton Rouge Parishes (pre-amendment urban nonattainment areas) that have potential emissions greater than 10 tons/year are now affected by this regulation. In other nonattainment parishes the exemption limit was lowered to 100 lbs/day.

To improve enforceability, "once in, always in" provisions were added. As a result, once a source is subject to the regulations, it is always subject, thereby simplifying applicability determinations. The rule now also explicitly states that the limits on the VOC content of the coatings minus water and exempt solvents. Also, test methods and recordkeeping requirements were added. Control device monitoring requirements were included. The revised regulations now explicitly state that VOC limits are on an as applied basis. Also, exemptions were added for plastisol coatings and for coatings applied to the exterior of fully assembled aircraft.

LAC:33:III:2125. Vapor Degreasers. Extensive revisions were made to this rule which covers regulations for open top vapor degreasers, conveyorized vapor degreasers and cold cleaners. For open top vapor degreasers, the revised regulation now requires either a minimum freeboard ratio of .75, a refrigerated chiller capable of 85% reduction, an enclosed design or control by a carbon adsorber. Numerous requirements were added for safety switches to stop the vaporization of solvent if a malfunction occurs in the degreaser.

For conveyorized degreasers, provisions were added to require that emissions be controlled by either a refrigerated condenser or a carbon adsorber. Various operating practice requirements and shutdown provisions were added in order to limit emissions. Cold cleaners are required by the revisions to have either a freeboard ratio greater than 0.7 or a water cover. This will result in reduced emissions. The applicability of the regulation was revised to cover cold cleaners using solvents with vapor pressures greater than 0.6 psi.

LAC:33:III:2127. Cutback Paving Asphalt. This rule regulates the use of cutback asphalt. The changes that have been made are to require recordkeeping to demonstrate compliance with the rule. Requirements were also added to cover emulsified asphalt to limit the VOC content of these materials.

LAC:33:III:2129. Perchloroethylene Dry Cleaning Systems. This regulation has control requirements to reduce emissions from dry cleaners. The revisions require weekly visual inspections to locate any liquid leaks. Any leaks that are discovered are required to be repaired within 15 working days. Test method and recordkeeping provisions were also added to allow consistent determinations of compliance.

LAC:33:III:2131. Filling of Gasoline Storage Vessels. This rule requires that gasoline storage vessels at service stations be equipped with vapor return lines to return vapors displaced during filling to the delivery vessel. One change that was made to this rule concerned exempting tanks greater than 40,000 gallons in capacity because these tanks are covered under Section 2103 which requires other types of control for these larger tanks. The rule was also revised to lower the exemption level from 500,000 gallons/month to 120,000 gallons/month. The exemption limit for the size of receiving vessels was also lowered from 2000 gallons to 250 gallons. Vapor tightness testing requirements were added and a requirement that any control devices used must achieve 90% control. Appropriate test methods and recordkeeping requirements were also added to the rule.

LAC:33:III:2133. Gasoline Bulk Plants. This regulation was revised to add several provisions to reduce VOC emissions and improve enforceability. The revised regulation includes a requirement that only leak-tight vehicles be serviced. This regulation now requires that all loading and vapor lines be equipped with fittings that close automatically when disconnected. Finally, so that compliance is documented, visual monitoring and recordkeeping requirements were added.

LAC:33:III:2135. Bulk Gasoline Terminals. This regulation was changed for easier enforceability. It was clarified that the exemption level is 20,000 gallons/day averaged over any 30 day period. "Once in always in" requirements were added. An equation for recovery efficiency was added. In addition, the proper test methods were added to provide for consistent testing. Control device efficiency was specified to be 90 percent. The revisions also added a requirement for inspections for visible liquid leaks, visible fumes, or odors resulting from gasoline dispensing. If leaks are observed, loading must be discontinued until the leak is repaired. To document continuing compliance, the revisions require the maintenance of daily records of exhaust gas temperature of direct flame incinerators, and inlet and outlet temperatures of chillers and catalytic incinerators. Also, the breakthrough of volatile organic compounds in a carbon adsorption unit must be recorded.

LAC:33:III.2137. Gasoline Terminal Vapor-Tight Control Procedure. This regulation is designed to prevent vapor leaks from gasoline tank trucks during loading and transport. This is to ensure that vapors collected during unloading at service stations (See 2131) are returned to the gasoline terminal for disposal. The following corrections were made to the regulation. First, the correct test method is now referenced. Second, State director's discretion to allow less frequent than annual monitoring was removed.

LAC:33:III.2139. Refinery Vacuum Producing Systems. This regulation is designed to reduce emissions from steam jet ejectors and mechanical pumps. Emissions are required to be controlled by one of the methods specified in 2115. A, B, and F (Waste Gas Disposal Rule). The rule refers back to 2115 to incorporate the test methods and recordkeeping requirements to aid in enforcement of the regulation.

LAC:33:III.2141. Refinery Unit Turnarounds. This regulation is designed to prevent VOC emissions during refinery process unit turnarounds. One of the main requirements is that vapors released during the depressurization of vessels be collected and controlled by one of the methods in 2115. A, B and F (Waste Gas Disposal) and that records be kept in accordance with 2115.

LAC:33:III.2143. Graphic Arts (Printing) by Rotogravure and Flexographic Process. This regulation is designed to control emissions from the printing industry by reducing the VOC content of inks or the institution of add-on controls. Deficiencies in the regulation were corrected to aid enforcement. One change prohibits cross-line averaging without approval of EPA and the state. The applicability of the regulation was clarified by stating that facilities with the potential to emit more than 100 tons/yr on an uncontrolled basis at full production (8760 hours per year basis) are subject to the regulation. Also, "once in, always in" provisions were added to further clarify applicability. A provision was also added to require continuous monitoring of control device operational parameters. Finally, to ensure consistent enforcement, compliance test methods were added to the rule A recordkeeping section was added, requiring records of testing, control device operating parameters and the solvent content of inks used. Language was also added stating that VOC content must be measured less water and exempt solvents.

LAC:33:III.2145. Pharmaceutical Manufacturing Facilities. This regulation is designed to regulate emissions from the Pharmaceutical Manufacturing industry. The requirements of this regulation were made more stringent by removing the exemption for facilities that emit less than 550 lbs/day of VOC. Now all reactors, distillation operations, crystallizers, centrifuges and vacuum dryers that have a potential to emit, prior to control, more than 15 lbs/day are subject to the requirements. The regulation was also made more stringent to conform to EPA policy by requiring that visible liquid leaks be repaired within 15 days. To ensure continuing compliance, requirements were added for monitors to be maintained to measure and record operational parameters of all control devices. Finally, test methods were added requiring that the appropriate reference methods be used to demonstrate compliance.

Proposed Action: Today's notice proposes to approve revisions to the Louisiana SIP as submitted on June 13, 1990, October 26, 1990, May 24, 1991, and March 26, 1992. These revisions to the VOC RACT rules are proposed as satisfying the requirements of the May 26, 1988 SIP call for the Baton Rouge nonattainment area, the November 8, 1989 SIP call for the Lake Charles nonattainment area and the RACT fix-up requirements of section 182(a)(2)(A) of the amended Act. The proposed recodification meets the requirements of Section 110 and part D of the Clean Air Act, as amended.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 16, 1992.

W.B. Hathaway,

Acting Regional Administrator.

[FR Doc. 92–23707 Filed 9–29–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300264; FRL–4162–2]

RIN 2070–AC18

Glyceryl Behenate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of glyceryl behenate (CAS Reg. No. 18641-57-1) when used as an inert ingredient (adjuvant; encapsulating agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This proposed regulation was requested by the Parexel International Corp.

DATES: Comments, identified by the document control number [OPP-300264], must be received on or before October 30, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711I, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-7252.

SUPPLEMENTARY INFORMATION: Parexel International Corp., One Alewife Place, Cambridge, MA 02140, submitted pesticide petition (PP) 1E03934 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of glyceryl behenate (CAS Reg. No. 18641-57-1) when used as an inert ingredient (adjuvant; encapsulating agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support the proposed tolerance exemption for glycerol tribehenate will not need to be submitted. The rationale for this decision is described below.

1. Glyceryl behenate is affirmed by the Food and Drug Administration under 21 CFR 184.1328 as generally recognized as safe (GRAS) when added directly to human food.

2. Behenic acid is a minor constituent of most seed and milk fats, and marine animal oils and a major constituent of mustard seed and rape oil.

3. The U.S. Food and Drug Administration has established specifications for the ingredients contained in glyceryl behenate for use in food with no limitation other than current good manufacturing practice under 21 CFR 184.1328.

4. Glyceryl behenate is approved by the U.S. Food and Drug Administration for use as a formulation aid (lubricant for tablets and capsules) as defined in 21 CFR 170.3(o)(14).

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300264]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic on a substantial number of

small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: September 18, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c)

Inert ingredients	Limits	Uses
Glyceryl behenate		Adjuvant, encapsulating agent

* * * * *

[FR Doc. 92-23616 Filed 9-29-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 9E3768 and 0E3947/P551; FRL-4163-3]

Pesticide Tolerance for Oryzalin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the herbicide oryzalin in or on the raw agricultural commodities guava and papaya. The proposed regulation to establish maximum permissible levels for residues of the herbicide in or on the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 9E3768 and 0E3947/P551], must be received on or before October 30, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resource Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions (PP) 9E3768 and 0E3947 to EPA on behalf of the Agricultural Experiment Station of Hawaii. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 386a(e), propose the establishment of tolerances for residues of the herbicide oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the raw agricultural commodities banana and guava (PP OE3947) and papaya (PP 9E3768) at 0.05 part per million (ppm). The petition proposing tolerances for banana and guava (PP 0E3947) was subsequently amended by IR-4 withdrawing, without prejudice to subsequent filing, the proposal for establishment of a tolerance for residues of oryzalin in or on banana.

The petitioner proposed that these uses of oryzalin be limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. A 1-year feeding study in rats fed diets containing 300, 900, and 2,700 ppm with a no-observed-effect level (NOEL) of 300 ppm (equivalent to 15 milligrams (mg)/kilogram (kg)/day) based on decreased hematocrit, hemoglobin, and red blood cells.

2. A 1-year feeding study in mice fed diets containing 500, 1,350, and 3,650 ppm with a NOEL of 500 ppm (equivalent to 75 mg/kg/day) based on alterations in hematology and blood chemistry and relative organ weights.

3. A three-generation reproduction study in rats with dosage levels of 250, 750, and 2,250 ppm with a NOEL for reproductive effects greater than 2,250 ppm (equivalent to 112.5 mg/kg/day).

4. A developmental toxicity study in rabbits given gavage doses of 0, 25, 75, and 125 mg/kg/day with maternal and fetotoxic NOEL's of 25 mg/kg/day, and no developmental toxicity observed at any dosage level tested.

5. A developmental toxicity study in rats given gavage doses of 0, 25, 75, and 225 mg/kg/day with no maternal, fetotoxic, or developmental effects observed under the conditions of the study.

6. A battery of mutagenicity tests were all negative under the conditions of the tests and include: an unscheduled DNA synthesis in rat hepatocytes; two dominant lethal assays in rat; and an Ames test (with and without S9 activation) at up to 300 micrograms per plate. A chromatid exchange assay in

Chinese hamster bone marrow was negative orally, and positive when administered by the intraperitoneal route.

7. A 2-year carcinogenicity study in mice fed diets containing 500, 1,350, and 3,650 ppm with a systemic NOEL of 500 ppm (equivalent to 75 mg/kg/day) based on a reduction in uterus and ovary weights. There were no carcinogenic effects observed under the conditions of the study at any dosage level tested.

8. A 2-year feeding/carcinogenicity study in rats fed diets containing 0, 300, 900, and 2,700 ppm with a systemic NOEL of 300 ppm (equivalent to 15 mg/kg/day) based on reduced survival, inhibition of growth, elevated organ weights, increased leukocyte counts, and reduced red blood cell, hemoglobin, and hematocrit levels.

The rat chronic/feeding oncogenicity study demonstrated a dose-related increase in tumors of the thyroid gland, skin, and mammary gland at the 2,700 ppm level, which exceeded the maximum tolerated dose (MTD). Some of the tumors (skin and mammary gland) occurred at the 900-ppm level which did not exceed the MTD. There were also mammary gland tumors at the 300-ppm level. The Agency concluded that there is limited evidence of carcinogenicity for oryzalin in male and female rats. Oryzalin is classified as a Category C carcinogen (a possible human carcinogen). This classification is based on the fact that oryzalin did not produce tumors in more than one species or strain, did not produce tumors in multiple experiments, and did produce tumors to an unusual degree with regard to incidence, tumor site or type, or age of animal at onset.

A carcinogenicity risk assessment for oryzalin has been completed by the Agency based on the available information. The potential carcinogenic risk to the general population from dietary exposure resulting from existing uses of oryzalin is calculated at 8.14 X 10^{-7}. The dietary risk assessment is based on a potency estimator (Q^*) of 0.13 $(mg/kg/day)^{-1}$ and dietary exposure estimated at 0.000006 mg/kg/day based on the anticipated residue contribution (ARC) from several existing uses. Tolerance level residues, anticipated residues, and percent of crop treated information were used to calculate the ARC for existing uses. The proposed uses would increase potential carcinogenic risk, as calculated by the theoretical maximum residue contribution for the named commodities, by 4.2 X 10^{-8}. The estimated carcinogenic risk is calculated at 8.56 X 10^{-7} for existing uses and the proposed uses on guava and papaya.

The nature of the residue is adequately understood for purposes of the proposed tolerances. An adequate analytical method, gas chromatography with electron capture detector, is available for enforcement purposes. The analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues are expected to occur in meat, milk, poultry, or eggs since guava and papaya are not considered livestock feed items.

There are currently no actions pending against the continued registration of this chemical.

EPA issued a proposed rule on oryzalin, amending 40 CFR 180.304 by designating the existing text as paragraph (a) and adding new paragraph (b) providing for regional registration for the commodities green coffee beans and papayas, published in the **Federal Register** of June 20, 1990 (55 FR 25141). This document proposing to revise 40 CFR 180.304 supersedes the proposed rule of June 20, 1990.

Based on the above information considered by the Agency the tolerances established by amending 40 CFR 180.304 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3768 and 0E3947/P551]. All written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 8, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.304, to read as follows:

§ 180.304 Oryzalin; tolerances for residues.

(a) Tolerances are established for the combined residues of the herbicide oryzalin (3,4-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Almond, hulls	0.05
Avocados	0.05
Citrus fruits	0.05
Cottonseed	0.05
Figs	0.05
Grain, barley	0.05
Grain, wheat	0.05
Kiwifruits	0.05
Nuts	0.05
Olives	0.05
Peas (succulent)	0.05
Pistachios	0.05
Pome fruits	0.05
Pomegranates	0.05
Potatoes	0.05
Small fruits	0.05
Soybeans	0.1
Stone fruits	0.05

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Guava	0.05
Papayas	0.05

[FR Doc. 92-23617 Filed 9-29-92; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-216, RM-8068]

Radio Broadcasting Services; Clearwater and Rozel, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Gary Violet proposing the substitution of Channel 254C2 for Channel 254A at Clearwater, Kansas, and modification of the construction permit for Channel 254A to specify operation on the higher class channel. The coordinates for Channel 254C2 at Rozel are 37-23-31 and 97-35-55. To accommodate the upgrade at Clearwater, we shall propose to substitute Channel 235C1 for vacant Channel 254C1 at Rozel, Kansas. The coordinates for Channel 235C1 are 38-13-42 and 99-28-27. There is a site restriction 7 kilometers (4.3 miles) northwest of the community. If no interest is expressed in retaining a channel in the community, we propose to delete Channel 254C1 at Rozel without replacement. We shall propose to modify the construction permit for Channel 254A, Clearwater, in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 16, 1992, and reply comments on or before December 1, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Donald E. Johnson, Blair Joyce & Silva, 1825 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-216, adopted August 31, 1992, and released September 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23632 Filed 9-29-92; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Proposed Endangered or Threatened Status for Seven Central Florida Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes endangered status pursuant to the Endangered Species Act of 1973 as amended (Act) for the following five plants: *Cladonia perforata* (Florida perforate cladonia), *Crotalaria avonensis* (Avon Park harebells), *Nolina brittoniana* (Britton's beargrass), *Polygala lewtonii* (Lewton's polygala), and *Polygonella myriophylla* (sandlace). The Service proposes threatened status for two plants: *Clitoria fragrans* (pigeon wings) and *Eriogonum longifolium* var. *gnaphalifolium* (scrub buckwheat). All seven plants are found in Highlands and Polk Counties in central Florida; four of the species range farther to the north or east, into Hernando, Lake, Osceola, Orange, and Marion Counties. One plant (the lichen) occurs on a barrier island in Okaloosa County, in northwest Florida. Loss of habitat, mainly to citrus groves and residential development, is the primary threat to these species. This proposal, if made final, would extend the Act's protection and recovery provisions to these seven species. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 30, 1992. Public hearing requests must be received by November 16, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Michael M. Bentzien, Assistant Field Supervisor, at the above address (telephone: 904-232-2580).

SUPPLEMENTARY INFORMATION:

Background

The seven plants proposed for listing inhabit dry upland vegetation (including scrub, high pine, or intermediate "turkey oak barrens") in central peninsular Florida; one, the lichen *Cladonia perforata*, also occurs in coastal scrub in northwestern Florida.

Scrub is "a xeromorphic shrub community dominated by a layer of evergreen, or nearly evergreen oaks * * * or Florida rosemary (*Ceratiola ericoides*), or both, with or without a pine overstory, occupying well drained, infertile, sandy soils" (Myers 1990, pp. 154-155). The usual pine species in scrub is sand pine (*Pinus clausa*). Scrub is the habitat of the Florida scrub jay (*Aphelocoma coerulescens coerulescens*), a federally threatened species. Scrub occurs on dune ridges along Florida's Gulf and Atlantic coasts and on older inland sand ridges. Endemic plant species (species with limited geographic distributions) occur in scrub in various parts of Florida, with the largest concentration of endemics on the southernmost high interior ridge, the Lake Wales Ridge, northwest of Lake

Okeechobee. Plants endemic to the Lake Wales Ridge are concentrated in scrub dominated by Florida rosemary on sites where the sand is apparently particularly devoid of nutrients; sites with slightly better nutrient status usually have dense stands of oaks, hickory, and sand pines (Myers 1990).

The scrub ecosystem is maintained by infrequent high intensity fires, with fires occurring as often as once a decade to less than once a century in sparsely-vegetated rosemary scrub (Myers 1990).

High pine (also called sandhills vegetation) is the other major type of natural vegetation on dry uplands in central Florida. It once was a very widespread forest type in the southeastern United States from Virginia to Texas (Myers 1990, citing several authors). High pine is longleaf pine forest with an open, grassy understory of wiregrass (*Aristida stricta*) and other grasses, numerous herbs, and deciduous turkey oaks (*Quercus laevis*) or bluejack oaks (*Q. incana*) that tolerate being burned to the ground. Frequent low-intensity fires maintained the grassy understory and prevented hardwoods from becoming canopy trees. In central Florida, high pine is intermingled with scrub; and "turkey oak barrens," intermediate between the two types of vegetation, exist in Polk and Highlands Counties (Christman 1988). Most of the "barrens" that are in evidence today may represent the results of logging of longleaf pine, followed by fire suppression, which allowed turkey oaks to reach tree size, and allowed evergreen oaks to invade, but Christman considers some of the barrens to be much older.

On central Florida's Lake Wales Ridge, the great majority of high pine was converted to citrus groves many years ago. Today, scrub is being converted to groves. Urban development is also destroying large areas of upland vegetation. Of approximately 546,800 acres of xeric upland vegetation originally in Highlands and Polk Counties, only approximately 15% remains intact (S. Friedman and J. Fitzpatrick 1992).

Because scrub and high pine in central Florida have many endemic (narrowly distributed) plant taxa (species, subspecies, and varieties) (Muller et al. 1989), the Service has responded by listing 13 plants from this region (50 FR 45616, Nov. 1, 1985; 52 FR 2227, Jan. 21, 1987; 52 FR 42068, Nov. 2, 1987). The Service has also listed scrub animals: two lizards (52 FR 42658, Nov. 6, 1987) and the Florida scrub jay (52 FR 20715, June 3, 1987). Other plant species are candidates for listing, including: *Schizachyrium niveum* (scrub bluestem), a species whose northern range limit is imperfectly known; it has been collected as far north as Alachua County, Florida; *Calamintha ashei* (Ashe's savory, a mint), has an unusual distribution, occurring in central Florida and southeast Georgia; and *Panicum abscissum* (cutthroat grass), which inhabits moist seeps near scrub and high pine.

Conservation measures that are underway to conserve the central Florida upland flora include:

(1) The State of Florida's Conservation and Recreation Lands program (CARL) is buying land in Highlands and Polk Counties. A completed acquisition, the Arbuckle State Forest and Park (13,700 acres), includes excellent examples of scrub vegetation. Acquisitions in progress in Polk County include Catfish Creek (1,100 acres acquired, 5,200 remaining) and Saddle Blanket Lakes (78 acres acquired, 800 remaining); and in Highlands County, Placid Lakes (negotiations underway). In these two counties, a massive Lake Wales Ecosystems proposal now under consideration incorporates most of the intact scrub and high pine in reasonably large tracts on the Lake Wales Ridge, totalling 32,000 acres (FL Dept. Natural Resources 1992).

(2) The Nature Conservancy has acquired preserves at Tiger Creek and Lake Apthorpe. This private organization has also purchased land at other locations, is assisting State and Federal land projects, and is working on fire management and other management issues for biological preserves.

(3) The Fish and Wildlife Service has proposed to create a Lake Wales Ridge National Wildlife Refuge, totalling about 10,000 acres, for endangered species that inhabit scrub vegetation. The 12 sites that might be acquired overlap with those in State projects. A large tract at Carter Creek (Sebring Highlands subdivision), Highlands County, is tentatively a high priority for acquisition, if funds become available.

Further information on conservation of these plants is provided below, under "Available Conservation Measures".

Discussion of the Seven Species Proposed for Listing

Cladonia perforata (Florida perforate cladonia) is a conspicuous lichen, "forming large dense clusters 20–60 mm [0.8–2.5 inches] tall" (Hilsenbeck and Muller 1991). *Cladonia* and similar lichens (family Cladoniaceae) are probably the most commonly collected lichens (Evans 1952). *Cladonia subtenuis* or *Cladonia evansii* are used as miniature shrubbery in architectural models and floral arrangements. The latter species is characteristic of scrub (T. Hendrickson, pers. comm., 1992).

The branches of *Cladonia* lichens differ from those of other branched (fruticose) lichens in that the *Cladonia* branches (podetia) are developmentally derived from spore-producing structures, rather than from the vegetative body (thallus) of the fungus that makes up the basic structure of a typical lichen. For *Cladonia perforata*, the vegetative body is not in evidence, and "the podetia, which grow in intricate tufts, are pale yellowish grey, and the surface appears more or less glossy. Individual podetia are mostly 40–60 mm. (1–1.5 inches) in height and their larger axes measure 3–6 mm. in diameter" (Evans 1952, p. 326). The podetia branch dichotomously (i.e., they fork), or they form whorls (splitting into three or more branches). "Wherever a branching takes place a circular opening is formed in the axil (just above the branch), and the larger of these openings measure 1–1.5 mm. (0.06 inches) in diameter" (Evans 1952). Toward the top of the plant, where the branches are smaller, the openings are smaller, too. The surfaces of the podetia are uniform. The podetial wall's interior surface, facing the central canal, consists of loosely woven hyphae (fungal strands). A very similar species (not in Florida according to Moore (1968) although reported from southwest Florida by Evans (1952)), *Cladonia uncialis*, has podetial surfaces with more or less distinct greenish areolae, rather than appearing uniform. *Cladonia uncialis* does not have a perforation in every axil, and its podetial walls have a solid layer of cartilaginous tissue on the interior (Evans 1952).

Cladonia leporina, which is common in Florida, is very similar to *Cladonia perforata* except that it has no holes in the podetia and the podetia have red tips consisting of spore-producing tissue (apothecia). *Cladonia perforata* has larger, more regularly branched podetia, with perforations. *Cladonia perforata* is illustrated in Hale (1983, p. 18) and in Buckley and Hendrickson (1988).

Cladonia perforata was first collected by George Llano in 1945 on Santa Rosa Island, and was named by Evans (1952). Llano and Evans both stated the site was in Escambia County, but Wilhelm and Burkhalter (1990) showed that the site was really in Okaloosa County and was paved over sometime between 1945 and the mid 1950's, when Llano revisited the area. The lichen was not collected again until Moore (1968) found it in Highlands County, central Florida, during her massive survey of Florida

and Lake Apthorpe. Scrub buckwheat is likely to be protected at Catfish Creek and several other tracts if State or Federal land acquisition occurs as planned.

Nolina brittoniana (scrub beargrass) was collected and described by G.V. Nash (1895). H.H. Bartlett (1909) reviewed the genus in the Southeast and described the only other species of *Nolina* in Florida, *Nolina atopocarpa*, a candidate for Federal listing that occurs in the panhandle and in the peninsula from St. Augustine south of Charlotte County. The genus *Nolina* belongs to the family Agavaceae (agave family), which includes century plants and yuccas. The genus is centered in southwestern North America (Mabberley 1987). The Agavaceae are often included in the Liliaceae (lily family), in the broad sense.

Nolina brittoniana is a perennial growing from a short, thick, fleshy, bulblike rootstock. The leaves are 1–2 meters long (3–6 feet) and 6–13 mm (0.2–0.5 inch) wide, forming a rosette with the youngest leaves upright and the oldest lying nearly flat on the ground. The flowering stem, usually solitary, grows at least 2 meters (6 feet) high from the rosette in April. The inflorescence is a panicle with about 6 branches; when in bloom, the branches are covered with small, white six-parted flowers, making the plant very conspicuous (Kral 1983, Wunderlin et al. 1980b). Individual plants appear to usually have all male or female flowers. The plants bear abundant seed, which is easily germinated, and the plant is not difficult to propagate (S. Wallace, Bok Tower Gardens, pers. comm., 1990). In nature, this species occurs as scattered specimens, and rarely if ever forms large colonies. *Nolina atopocarpa*, a species of dry flatwoods, may occur in the vicinity of *Nolina brittoniana;* this species has shorter leaves, greenish flowers, and asymmetric fruits (*N. brittoniana* has symmetrical fruits, triangular in cross section).

Nolina brittoniana occurs in scrub, high pine, and even occasionally in hammocks (Christman 1988). Its range is from the south end of the Lake Wales Ridge in Highlands County north to Orange County (Orlando) and northern Lake County. An apparently isolated locality was reported from Hernando County, north of Tampa.

On the Lake Wales Ridge, *Nolina brittoniana* occurs in both Highlands and Polk Counties, where it occurs in most of the tracts that are targeted for acquisition by the State or by the Fish and Wildlife Service. Northeast of Polk County, *Nolina brittoniana* occurred in the northwest corner of Osceola County and western Orange County (where it was collected in 1958). The plant probably still exists in Orange County, but remaining habitat is being destroyed very rapidly. In Lake County, *Nolina brittoniana* occurs in remnants of high pine on hills west of Lake Apopka, near Clermont. Also in Lake County, the type specimens of *Nolina brittoniana* were collected near Eustis in 1894, and the plant was collected near Tavares in 1941. Robert McCartney (pers. comm., 1990), a knowledgeable field worker, considers the northern range limit for *Nolina brittoniana* to be northern Lake County; however, to the north, a specimen was collected on "low ground" near Belleview, Marion County in 1928. Christman (1988) doubts this locality, but suitable habitat does exist in the vicinity. The plant was collected in a "much disturbed, old white sand scrub with hardwood intrusion" north of Tampa in Hernando County, in 1961. Larger scrubs in the same area have probably not been searched for rare plants.

Polygala lewtonii (Lewton's polygala) is a member of the Polygalaceae (milkwort family). It was first collected near Frostproof, Florida by F.L. Lewton in 1894, and was named by Small (1898). Further information on plants named by Small is provided in Austin 1987. The status of *Polygala lewtonii* as a distinct species was affirmed by Blake (1924) and James (1957). The genus has since been reviewed by Miller (1970) and Saulmon (1971).

Polygala lewtonii is a perennial with a taproot. Each plant produces one to several annual stems, which are spreading, upward-curving, or erect, and are often branched. The leaves are small, sessile, rather succulent, broader toward the tip, and are borne upright, tending to overlap along the stem, like shingles. The normally opening flowers are in erect, loosely flowered racemes up to 1.5 cm (0.6 inch) long. They are about 0.5 cm long and bright pink (Wunderlin et al. 1981) or "attractive purplish-red (Ward and Godfrey 1979). Each flower is about 3.5 mm (0.14 inch) long. Two of the five sepals are enlarged and wing-like, between which the largest of the three petals forms a keel that ends in a tuft of finger-like projections (Ward and Godfrey 1979). This species is closely related to *Polygala polygama*, a widespread species that tends to form larger clumps and has a longer root, narrower leaves, and differently shaped wing sepals. *Polygala polygama* has short branches that hug the ground, bearing inconspicuous self-pollinating (cleistogamous) flowers. *Polygala lewtonii* is inferred to have similar cleistogamous flowers (James 1957 cited in Ward and Godfrey 1979), but Wunderlin et al. (1981) are not clear that they have been observed.

Polygala lewtonii occurs most frequently in habitats intermediate between high pine and scrub (turkey oak barrens), as well as in both habitats (Christman 1988, Wunderlin et al. 1981). It has been collected in Highlands, Polk, Osceola, Lake, and Marion Counties. In Highlands County, it was collected at two sites near Sebring in 1945 and 1955, but was not seen again (Wunderlin et al. 1981) until recently, when it was found in turkey oak barrens northeast of Sebring (J. Fitzpatrick, Archbold Biological Station, pers. comm., 1992).

In Polk County, *Polygala lewtonii* is currently known to occur in Arbuckle State Forest and Park, the State's Catfish Creek land acquisition project (G. Babb, The Nature Conservancy, *in litt.*, 1991), The Nature Conservancy's Tiger Creek Preserve (Wunderlin et al. 1981), at a site near Davenport that was partly bulldozed in 1991, and in the Poinciana residential development (N. Bissett, *in litt.*, 1991). It also occurs at a site with the endangered Florida ziziphus (*Ziziphus celata*) (DeLaney et al. 1989).

In Osceola County, *Polygala lewtonii* was collected in 1974 at the northwest corner of the county, on a dry prairie above Lake Davenport. In Lake County, the plant has been collected in scrub four miles north of Astatula and from at least five sites in the hills between Lake Apopka and Clermont. These hills were once covered with high pine that had a significant number of scrub plant species, including the endangered *Prunus geniculata* (scrub plum), *Nolina brittoniana* (Wunderlin et al. 1981), and *Warea amplexifolia* (wide-leaf mustard) (Judd 1980). *Polygala lewtonii* was collected once near Eustis (James 1957, cited in Wunderlin et al. 1981). The plant was collected from Ocala National Forest (Marion County) in firebreaks near Juniper Springs, 1949, and apparently not again until 1991, when it was found in scrub (C. Greenberg, Univ. of FL, pers. comm., 1992).

Polygonella myriophylla, a member of the Polygonaceae (jointweed family), was first collected by J.K. Small and DeWinkler on a scrub ridge south of Frostproof, Polk County, Florida. Small (1924) described it as a new species, *Dentoceras myriophylla*. Horton (1963) combined two of Small's genera with the genus *Polygonella*, making this species *Polygonella myriophylla*. The common name of sandlace comes from Christman (1988); other possibilities are Small's jointweed (Florida Natural

Areas Inventory) or woody wireweed (Wunderlin 1982).

Polygonella myriophylla is a sprawling shrub that, as G.L. Webster noted on a herbarium specimen, has the habit of the popular landscaping plant creeping juniper, *Juniperus horizontalis* (cited in Wunderlin et al. 1980c). The shrub's many branches zigzag along the ground and root at the nodes, forming low mats. The lower parts of the creeping branches have reddish-brown bark that cracks and partly separates in long, flat, interlacing strips. The short lateral branches are upright, leafy, and end in flowering racemes. *Polygonella myriophylla* has the distinctive sheathing stipules (ocreae and ocreolae) typical of the jointweed family. The leaves are needle-like, fleshy, 3–10 mm (0.1–0.4 inch) long. The small flowers have white (or pink or yellow) petal-like sepals up to 3–4 mm (0.1 inch) long. Because this shrub's appearance is so unique, information on its distribution and abundance is particularly complete and accurate.

Polygonella myriophylla is curiously absent from the southern tip of the Lake Wales Ridge. Its range extends from Archbold Biological Station northward along the Lake Wales Ridge to the Davenport-Poinciana area in northern Polk County. Further northeast, it occurs at one site in Osceola County and three in western Orange County where it occurs with the endangered scrub lupine *Lupinus aridorum* (Wunderlin 1984). The Orange County sites are at Vineland, a rapidly developing portion of the Orlando metropolitan area. A report of *Polygonella myriophylla* from Lake County was based on a misidentification (Wunderlin et al. 1980c, Christman 1988). Kral's (1983) distribution map places this plant in DeSoto County, based on a specimen collected by J.K. Small and J.B. DeWinkler in 1919, before Highlands County was created in 1921 (specimen cited in Wunderlin et al. 1980c).

Polygonella myriophylla occurs within scrubs that cover about 25,000 acres (Christman 1988). It is currently protected at Archbold Biological Station (where it is rare), Saddle Blanket Lakes and Catfish Creek (State acquisition projects), and Lake Apthorpe (The Nature Conservancy). It is abundant in several tracts that are proposed for acquisition by the State or the Service.

Previous Federal Action

Federal government actions on four of the seven plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. *Nolina brittoniana, Polygala lewtonii,* and *Polygonella myriophylla* were included in these documents as endangered species, and *Clitoria fragrans* as a threatened species.

On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This proposal included *Nolina brittoniana, Polygala lewtonii,* and *Polygonella myriophylla.* General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 6, 1976 proposal.

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480). This notice included *Clitoria fragrans, Eriogonum longifolium* var. *gnaphalifolium* (under the name *Eriogonum floridanum*), and *Polygala lewtonii* as category 1 candidates, and *Nolina brittoniana* and *Polygonella myriophylla* as category 2 candidates. Category 1 candidates are those for which the Service currently has on file substantial information on biological vulnerability and threats to support preparation of listing proposals, while category 2 candidates are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. On November 28, 1983, the Services published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640); the notice changed *Erigonum longifolium* var. *gnaphalifolium* to a category 2 species. Another updated notice of review published September 27, 1985 (50 FR 39526) changed *Polygonella myriophylla* to a category 3C species (no longer a candidate for Federal listing), based on a status survey that gave the impression that the plant was secure because it is locally abundant. Christman (*in litt.* 1987, 1988) pointed out that this was a mistake: *Polygonella myriophylla* is "much rarer, and more endangered, than several federally-listed scrub species, including *Paronychia chartacea, Chionanthus pygmaeus, Polygonella basiramia,* and *Prunus geniculata,* for example."

On February 21, 1990 (55 FR 6184), the plant notice was again revised, assigning category 1 candidate status to all five plants that had previously been candidates, based on an abundance of new survey information. The 1990 notice assigned category 2 status to *Crotalaria avonensis* and to *Cladonia perforata.* Since then, a status survey on *Cladonia perforata* has been completed and further information on *Crotalaria avonensis* has been received from Mr. Kris DeLaney, qualifying these species for category 1 status.

Based on the Service's system for ranking candidate species for listing, which has a range of 1 to 12, the listing priority number for each of the five endangered species in this proposal is 2. *Clitoria fragrans* and *Eriogonum longifolium* var. *gnaphalifolium,* the two threatened species, have been assigned a listing priority number of 8 and 9, respectively. A complete explanation of the Service's listing and recovery priority guidelines was published in the **Federal Register** of September 21, 1983 (48 FR 43098).

Petitions

The Service was petitioned to list the lichen *Cladonia perforata* by Ms. Ann Buckley in a letter received June 5, 1989. The Service found the action requested by the petition to be warranted, but precluded by work on other species having higher priority for listing (55 FR 31610, August 3, 1990). An administrative finding of "warranted but precluded" was repeated in October 1991, as discussed below, in connection with the Service's annual review of recycled petitions.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Clitoria fragrans, Nolina brittoniana, Polygala lewtonii,* and *Polygonella myriophylla* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1991, the

Service found that the petitioned listing of these species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of this proposal constitutes the final petition finding for these five species.

The Service has not received petitions to list *Eriogonum longifolium* var. *gnaphalifolium* or *Crotalaria avonensis*, although Mr. Kris DeLaney informally urged that the latter species be listed.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cladonia perforata* A.W. Evans (Florida perforate cladonia), *Clitoria fragrans* Small (pigeon wings), *Crotalaria avonensis* DeLaney & Wunderlin (Avon Park harebells), *Eriogonum longifolium* Nuttall var. *gnaphalifolium* Gandoger (*Eriogonum floridanum* Small) (scrub buckwheat), *Nolina brittoniana* Nash (Britton's beargrass), *Polygala lewtonii* Small (Lewton's polygala), and *Polygonella myriophylla* (Small) Horton (sandlace) are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

All seven plants have already suffered serious loss of habitat to agriculture (citrus groves and pastures) and residential development, and all are threatened by future development. The Lake Wales Ridge in Polk and Highlands Counties originally had 250,000 acres of xeric upland vegetation (scrub and high pine), of which 27,500 acres remain. Because the plant species endemic to scrub or high pine in central Florida had much narrower local distributions within the Ridge (each species is likely to be found in only a fraction of seemingly suitable habitat), the loss of habitat for particular species has often been more severe than the overall figures indicate.

Citrus groves are being expanded rapidly on the southern Lake Wales Ridge because the area escaped the worst effects of severe freezes during the 1980's, especially December 1989. Development of a citrus grove recently caused the destruction of one population of *Cladonia perforata*, and other significant recent losses of scrub habitat have been documented from aerial photography by workers at Archbold Biological Station. Property taxation in most Florida counties favors agricultural land use and penalizes leaving land "idle" in native vegetation. These policies may change; Polk County already has "preservation" zoning to protect natural vegetation.

The population of the Lake Wales Ridge is increasing as retirees and other immigrants to Florida, as well as retirees from within Florida, are attracted to areas with low costs of living and the perception of few urban problems. Despite the current recession, immigration into central Florida will continue. This threatens the seven plants because most of them (*Cladonia perforata* and *Polygala lewtonii* appear to be exceptions) occur in subdivisions with unimproved lots without streets or utilities. The lack of streets discouraged building; the divided ownerships of these subdivisions and the high prices for which lots were originally sold discouraged the conversion of these subdivisions to citrus. As a result, these subdivisions have unintentionally protected the native vegetation, and several may be acquired as biological preserves, despite the difficulty of purchasing land on a lot-by-lot basis. There may be little time available to begin land acquisition at the largest subdivision under consideration for acquisition, Sebring Highlands (Carter Creek), where assessments collected from landowners have built up to a large enough sum to pave the main road through the subdivision. An electric line has already been built, so with the road paved, widespread construction of houses can be anticipated.

Funding for State or Federal land acquisition to conserve central Florida plants is not yet assured. Existing land acquisition plans by the Service focus on purchasing and managing scrub rather than high pine; this leaves *Eriogonum longifolium* var. *gnaphalifolium* and *Polygala lewtonii* unprotected. The State intends to purchase high pine, but funding for land management could be limited.

The largest populations of the lichen *Cladonia perforata* are on private land; the principal landowner intends to protect the lichen, but it is necessary to be cautious about the long-term conservation of this area.

In the counties north of Highlands and Polk, the pressures of residential development are generally severe, and historic populations of plants in the Orlando (Orange County), and Eustis and Clermont (Lake County) areas are known to have disappeared.

Clitoria fragrans occurs on Avon Park Air Force Range and has been collected on a low ridge with scrub in southern Osceola County, in a region of large ranches. The plant's habitat is appropriately managed on the Air Force Range, and conversations with range conservationists with the Soil Conservation Service indicate that scrub is quite likely to remain intact on ranches. Similarly, *Eriogonum longifolium* var. *gnaphalifolium* and *Polygala lewtonii* are probably secure in Ocala National Forest, although evaluation is needed of the distribution and management of these two species in the Forest. Because these species are relatively secure in parts of their ranges, relatively secure habitats are a major reason for proposing to list these two species as threatened rather than endangered species.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

There is little commercial trade in these seven plants, although *Nolina brittoniana* and *Polygonella myriophylla* are propagated and sold on a limited scale (Association of Florida Native Nurseries 1989). Commercial trade in these species should not adversely affect them, provided that nursery operators abide by State law and the Florida Native Plant Society's policy on transplanting native plants from the wild.

C. *Disease or Predation*

Not applicable.

D. *The Inadequacy of Existing Regulatory Mechanisms*

Nolina brittoniana and *Polygala lewtonii* are listed as endangered species, and *Clitoria fragrans* and *Eriogonum longifolium* var. *gnaphalifolium* are listed as threatened species under the Preservation of Native Flora of Florida law (section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will provide additional protection through the consultation requirements of section 7, recovery planning, and the prohibitions of section 9, which include the Act's additional penalties for taking of plants in violation of Florida law. The Florida law provides for automatic addition of Federally listed plants to the State's list as endangered species.

Efforts by the Service to protect the threatened Florida scrub jay may benefit other plants and animals of the scrub. The scrub jay inhabits much of the scrub vegetation on the Lake Wales Ridge. The Endangered Species Act's prohibition against taking of listed

animals (section 9(a)(1)(B)) means that landowners seeking to destroy scrub habitat upon which scrub jays depend run the risk of a "taking" violation unless they obtain a section 10(a)(2) permit, which the Service can issue only if the landowner submits or participates in an acceptable conservation plan for the scrub jay.

As explained in the background section, 13 plant species from central Florida scrub and high pine habitat are already federally listed and recovery plans have been prepared (Fish and Wildlife Service 1987a, 1990). A proposal to list a fourteenth species, *Conradina brevifolia*, as endangered was published in the **Federal Register** on May 5, 1992. Efforts already underway to conserve the 13 listed plants should benefit *Conradina brevifolia* and most of the species in the current proposal.

E. *Other Natural or Manmade Factors Affecting its Continued Existence*

Fire occurs in scrub vegetation at irregular intervals. For all of the plants proposed for listing other than the lichen *Cladonia perforata*, fire is probably beneficial. For the lichen, however, fire seems to be entirely destructive. The largest populations of the lichen are in the largest existing rosemary balds, which seem to have been affected by fires at extremely long intervals; the area "supports an uneven-aged stand of sand pines, with the oldest trees approaching 100 years" (Myers 1990). At the neighboring Archbold Biological Station, *Cladonia perforata* probably benefitted from many years of fire suppression, which also left the Station grounds susceptible to wildfire. Today, the Station is implementing a prescribed fire program that probably offers the best long-term chance to maintain rosemary balds with *Cladonia* lichens, but there is a real possibility that lichen populations may be harmed by fires.

Human activities, including off road vehicle use, trash dumping, and inadvertent trampling during outdoor recreation activities, threaten most of these plants. The lichen *Cladonia perforata* appears to be vulnerable to public use on Eglin Air Force Base, Santa Rosa Island.

Hurricane storm surges may wash over the lichen populations on Santa Rosa Island.

The limited geographic distribution of each of the seven species, the fragmentation of remaining habitat into small segments isolated from each other, and the small sizes of populations of some species, especially *Cladonia perforata* and *Polygala lewtonii*, exacerbate the threats faced by these species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose the rule. Based on this evaluation, the preferred action is to list *Crotalaria avonensis*, *Nolina brittoniana*, *Polygala lewtonii*, and *Polygonella myriophylla* as endangered species, and *Clitoria fragrans* and *Eriogonum longifolium* var. *gnaphalifolium* as threatened. Each of the species proposed for listing as endangered is likely to become extinct in a significant portion of its range within the foreseeable future, meeting the Act's requirements for listing as an endangered species. The two species proposed for listing as threatened are likely to become endangered species if effective conservation measures are not taken, meeting the Act's definition of threatened species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species. Except for the relatively few protected sites with one or more of these species, the populations of these species are on unprotected private land where they would gain no added protection from designation of critical habitat, and where such a designation might motivate landowners to extirpate the plants. Designation of critical habitat might also attract persons wishing to collect plants for horticultural purposes, with or without the written permission of the landowner that is required by Florida law. For these reasons, it would not now be prudent to determine critical habitat for the seven plant species. The State and The Nature Conservancy are working to acquire lands to conserve these plants. Many private owners of scrub habitat occupied by the threatened Florida scrub jay have been, or will be, contacted by the Service as part of its efforts to prevent taking of the bird without permit (including destruction of nests or of occupied habitat). As a result, these landowners are aware of the importance of scrub habitat, if not of individual plant species. Protection of the plant species will be addressed through the recovery process and through the section 7 consultation process. For these reasons, the Service considers designation of critical habitat not to be prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Conservation of *Eriogonum longifolium* may require ensuring that use of herbicides in forestry or road right-of-way maintenance does not jeopardize this plant. It is not clear whether restrictions on herbicide use would be necessary to protect *Clitoria fragrans*, which occurs on grazing lands. The other species appear not to occur in situations where herbicide restrictions would be warranted. Implementation of any such restrictions would involve the Environmental Protection Agency.

Cladonia perforata occurs on a Gulf barrier island that is part of Eglin AFB; *Clitoria fragrans* occurs on Avon Park Air Force Range, and *Eriogonum longifolium* var. *gnaphalifolium* occurs in the Ocala National Forest. The Service is currently aware of no ongoing

or pending Federal actions (except for possible EPA involvement noted above) either on these lands or elsewhere that would affect these plants.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species, and 17.71 and 17.72 for threatened species, set forth a series of general prohibitions and exceptions that apply to all listed plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances.

It is anticipated that few trade permits will be sought or issued because the seven plant species are of limited horticultural interest, and only two (*Nolina brittoniana* and *Polygonella myriophylla*) may be in commerce across state lines. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final rule resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the ranges, distributions, and population sizes of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulation on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Jacksonville, Florida, Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in **Federal Register** on October 25, 1983 (48 FR 49244).

References

A complete list of all references cited herein, as well as others, is available upon request from the Service's Jacksonville Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Mr. David Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The Authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Histroic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Agavaceae—Agave family:						
Nolina brittoniana	Britton's beargrass	U.S.A. (FL)	E	NA	NA	
Cladoniaceae—Reindeer moss family:						
Cladonia perforata	Florida perforate cladonia	U.S.A. (FL)	E	NA	NA	
Fabaceae—Pea family:						

Species		Histroic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Clitoria fragrans	Pigeon wings	U.S.A. (FL)	T	NA	NA	
Crotalaria avonensis	Avon Park harebells	U.S.A. (FL)	E	NA	NA	
Polygalaceae—Milkwort family:						
Polygala lewtonii	Lewton's polygala	U.S.A. (FL)	E	NA	NA	
Polygonaceae—Buckwheat family:						
Eriogonum longifolium var. *gnaphalifolium (=Eriogonum floridanum).*	Scrub buckwheat	U.S.A. (FL)	T	NA	NA	
Polygonella myriophylla	Sandlace	U.S.A. (FL)	E	NA	NA	

Dated: August 31, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-23668 Filed 9-29-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 190
Wednesday, September 30, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-149-1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application	Applicant	Date received	Organisms	Field test location
92-244-02 renewal of permit 92-066-01, issued on 06-04-92.	Holden's Foundation Seeds, Incorporated.	08-31-92	Corn plants genetically engineered to express a phosphinothricin acetyl transferase (PAT) gene for tolerance to the herbicide glufosinate.	Hawaii.
92-244-03 renewal of permit 92-105-02, issued on 06-18-92.	Holden's Foundation Seeds, Incorporated.	08-31-92	Corn plants genetically engineered to express male sterility linked with kanamycin or phosphinothricin tolerance as markers.	Hawaii.
92-245-01	AgriPro Seeds	09-01-92	Soybean plants genetically engineered to express the enzyme 5-enol-pyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Puerto Rico.
92-245-02 renewal of permit 92-080-05, issued on 05-22-92.	Cargill Hybrid Seeds	09-01-92	Corn plants genetically engineered to express male sterility linked with kanamycin or phosphinothricin tolerance as markers.	Hawaii.

Done in Washington, DC, this 25th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-23697 Filed 9-29-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket 92-150-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact, have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit applications would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of four permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test locations
92-175-01, renewal of permit 91-218-02, issued on 10-04-91.	Upjohn Company	08-28-92	Corn plants genetically engineered to express a glufosinate phosphinothricin acetyltransferase (PAT) gene for tolerance to phosphinothricin herbicides.	Puerto Rico.
92-218-01, renewal of permit 91-042-02, issued on 04-26-91.	Auburn University	08-31-92	*Xanthomonas campestris* pv. *campestris* genetically engineered to express a bioluminescence gene as a marker.	Alabama.
92-219-01, renewal of permit 89-320-01, issued on 02-12-90.	Calgene, Incorporated	08-31-92	Tomato plants genetically engineered to express an anti-sense polygalacturonase (PG) gene to delay ripening.	Florida.
92-127-01	Ciba-Geigy Corporation	09-01-92	Corn plants genetically engineered to express a phosphinothricin acetyl transferase (PAT) gene for tolerance to phosphinothricin herbicides, and a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HD-1 for resistance to lepidopteran insects.	Hawaii.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 25th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-23698 Filed 9-29-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-146-1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits, Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the months of June and July 1992. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Maxine Kitto, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For copies of the list or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses for Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S.

Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month the Veterinary Biologics section of Biotechnology, Biologics and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the lists for the months of June and July 1992. The monthly lists are also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 25th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-23696 Filed 9-29-92; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Request for Comments on the Applicant for Designation in the Geographic Area Currently Assigned to the Farwell (TX) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicant for designation to provide official services in the geographic area currently assigned to Farwell Grain Inspection, Inc. (Farwell).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by October 30, 1992.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send responses to the automatic telecopier machine at 202-720-1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 3, 1992, **Federal Register** (57 FR 34109), FGIS asked persons interested in providing official services in the geographic area assigned to Farwell to submit an application for designation. Applications were due by September 2, 1992. Farwell, the only applicant, applied for designation in the entire area currently assigned to them.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicant for designation in the Farwell area. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of this agency. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicant written notification of the decision.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 22, 1992

Neil E. Porter

Acting Director, Compliance Division

[FR Doc. 92-23506 Filed 9-29-92; 8:45 am]

BILLING CODE 3410-EN-F

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Area Presently Assigned to the Alton (IL) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designation of Thomas P. Russell dba Alton Grain Inspection Department (Alton), will end March 31, 1993, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) by October 30, 1992.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202-720-1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Alton, headquartered in Florissant, Missouri, to provide

official grain inspection services under the Act on April 1, 1990.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designation of Alton ends on March 31, 1993.

The geographic area presently assigned to Alton, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Calhoun, Jersey, and Madison (West of State Route 4 and North of Interstate 70 and 270) Counties.

Interested persons, including Alton, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning April 1, 1993, and ending March 31, 1996. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 22, 1992

Neil E. Porter

Acting Director, Compliance Division

[FR Doc. 92–23507 Filed 9–29–92; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Cairo (IL) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Cairo Grain Inspection Agency, Inc. (Cairo), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: November 1, 1992.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 1, 1992, **Federal Register** (57 FR 18883), FGIS announced that the designation of Cairo ends on October 31, 1992, and asked persons interested in providing official services within the specified geographic area to submit an application for designation. Applications were due by June 1, 1992.

There were two applicants: Cairo and the Missouri Department of Agriculture (Missouri). Cairo and Missouri each applied for the entire Cairo geographic area. FGIS named and requested comments on the applicants for designation in the July 1, 1992, **Federal Register** (57 FR 29273). Comments were due by July 31, 1992. FGIS received 26 comments by the deadline. Twenty one commenters, (fourteen grain firms presently served by Cairo, five trade organizations, and two designated official agencies) supported designation of Cairo based on prompt, professional, and excellent quality service. One commenter supported designation of Cairo based on acquaintance. Four commenters supported designation of Missouri based on timely and accurate service, cost benefits, and the scope of services offered. Of the four, one is a grain firm currently served by Missouri, one is a State department of agriculture, one is a trade organization, and one is a grain firm in the area currently served by Cairo.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Cairo is better able to provide official services in the geographic area for which they applied.

Effective November 1, 1992, and ending October 31, 1995, Cairo is designated to provide official inspection services under the United States Grain Standards Act, as amended (Act) in the geographic area specified in the May **Federal Register**.

Interested persons may obtain official services by contacting Cairo at 618–734–0689.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 23, 1992

Neil E. Porter

Acting Director, Compliance Division

[FR Doc. 92–23576 Filed 9–29–92; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Exemption From Appeal, Tamarack Tussock Salvage and Stand Rehabilitation Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics on the Tamarack Tussock project area, Emmett Ranger District, Boise National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Don Dittmer, Timber Management Assistant, Emmett Ranger District, Boise National Forest, 1648 N. Washington, Emmett, ID 83617, telephone: 208–365–3811.

SUPPLEMENTARY INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir tussock moth, and bark beetle populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Emmett Ranger District personnel have developed a proposal to harvest dead and dying timber, and reforest damaged acres. The Forest Service has completed the Tamarack Tussock Salvage and Stand Rehabilitation Project Environmental Assessment (EA), identified issues, developed alternatives, and analyzed the effects of implementing timber salvage and other recovery activities.

The analysis area for the Tamarack Tussock Salvage and Stand Rehabilitation Project EA is located about 13 miles northeast of Ola, Idaho, and four miles northwest of Sagehen Reservoir. The Forest will salvage trees killed or severely damaged by the tussock moth and bark beetles on 3,930 acres and recover approximately 18.5 million board feet (MMbf), using tractor/jammer and skyline logging systems. The tussock moth infestation has created several large, open areas of dead and dying trees, which contain few healthy, live trees. Salvage of these stands would result in "salvage

openings," resembling clearcuts. A total of 950 acres of salvage opening would be created, including one opening each of about 200 and 170 acres. These acres would be rehabilitated by planting with ponderosa pine, Douglas-fir and western larch, to increase the sites' timber productivity, resilience and diversity of forest stands. Natural regeneration will be used to reforest small areas (less than five acres in size).

The project also calls for construction of 3.2 miles of road, reconstruction of about 0.8 miles and maintenance of about 71 miles, to facilitate timber harvest in the area. In addition, about 36 miles of road will be administratively closed between October 1 and June 30 when sale and post-sale activities are underway, and about 30 miles of road will be physically closed when sale and post-sale activities are completed, until big-game hiding cover is re-established (15–20 years).

Management direction for the Tamarack Tussock project area is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan (specifically, the Sagehen Management Area 48) provides for the removal of salvage timber from lands within the project area. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual, and other onsite resources. The selected alternative for the Tamarack Tussock project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

Forest Pest Management Specialists and District Foresters have analyzed the insect situation and have found no economical or practical means to control the current insect epidemic. Although salvage harvesting and reforestation will not control the epidemic, these activities will: (1) Recover valuable timber that would otherwise deteriorate, and (2) reforest those areas left without tree cover as a result of the insect-caused mortality with tree species more resistant to the tussock moth and western spruce budworm, to help minimize the potential for future outbreaks of these insects. It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through the timber salvage operations, the financial value of dead and dying trees can be captured, and live but infested, unhealthy trees—which have been predisposed to attack by other insects and diseases—can be removed. In addition, Knutson-Vandenburg (K–V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic. The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is justification to expedite this project.

The decision for the Tamarack Tussock project will be implemented after publication of this notice in the **Federal Register**. If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that the salvage harvest could not be implemented during the 1992 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead, dying and unhealthy timber is $1,237,758. Of this, approximately $309,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of much of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Tamarack Tussock Salvage and Stand Rehabilitation Project, Emmett Ranger District, Boise National Forest, from appeal. The environmental assessment discloses the effects of the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: September 24, 1992.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 92–23672 Filed 9–29–92; 8:45 am]

BILLING CODE 3410–01–M

Rural Electrification Administration

Owen Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a Finding of No Significant Impact (FONSI) with respect to the potential environmental impact resulting from a proposal by Owen Electric Cooperative (OEC) to construct the Walton Service Center in Boone County, Kentucky. The FONSI is based on the borrower's environmental report (BER) prepared for OEC by Mr. Gary Gilpin of Gilpin Group Environmental Consulting and Planning. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the OEC's BER as the environmental assessment for the project.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Corwin, Environmental Protection Specialist, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The Walton Service Center is located in Boone County, Kentucky. The proposed facilities will involve the construction of a twenty-eight thousand square foot metal building for warehousing, construction vehicle parking, light vehicle maintenance activities and meeting facilities, two storm water sedimentation ponds one-half of an acre and one-third of an acre in size, a three-quarter of an acre outside pole storage area, the possible erection of a self-supporting lattice type radio tower and parking and paved areas. OEC has purchased a little over 10 acres for the new service center of which about eight will be affected by the proposed construction activities.

Alternatives considered to the project as proposed were no action, alternative facilities and alternative construction sites.

Based on an independent analysis of the adopted BER, REA has concluded that the construction of the Walton Service Center will have no significant impact on air quality, water quality, wetlands, the 100-year floodplain, existing land uses, prime farmland, historic properties, federally-listed threatened and endangered species or designated critical habitat or species proposed for listing or proposed critical habitat.

No other potential significant impact resulting from the construction and use of the proposed project has been identified. Copies of the environmental assessment and FONSI are available for review at, or can be obtained from, REA at the address provided herein or from Owen Electric Cooperative, Inc., 510 South Main Street, Owenton, Kentucky, 40359–0901.

Dated: September 24, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92–23644 Filed 9–29–92; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32b1)-4-92]

Foreign-Trade Zone 9—Honolulu, Hawaii; Request for Manufacturing Authority (Luggage, Bags, and Cases)

A request has been submitted to the Foreign-Trade Zones (FTZ) Board pursuant to § 400.32(b)(1) of the Board's regulations for approval of zone export manufacturing authority within FTZ 9 by the State of Hawaii's Department of Business, Economic Development and Tourism, on behalf of the State of Hawaii, grantee of FTZ 9. It was formally filed on September 22, 1992.

The proposed operation involves the production for export of plastic and leather luggage, suitcases, handbags, wallets, and sportbags (included in HTS paragraph 4202) by the Hawaii Bag Company, Inc. (HBC). Up to 35 percent of the value of the finished products would be made from components sourced abroad, including articles of steel (HTS 7326.90.9090.5), rubber or plastic fabric (HTS 5903.10.2090.2), leather (HTS 4101.31.6090.8), plastic material (HTS 3926.90.9090.8), plastic fasteners (HTS 3926.90.9090.8), buckles and clasps (HTS 8308.90.6000.0), rigid plastic tubing (HTS 3917.29.0050.2), plastic sheeting (HTS 3920.99.5000.2), and cotton webbing (HTS 6307.90.9986.7).

Zone procedures would exempt HBC from payment of Customs duties on foreign components used in the exported finished products. (Customs duty rates on components range from 3.1 to 7.0 percent.) The request indicates that zone procedures would encourage export activity by helping the firm to reduce production costs, improving its international competitiveness.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 16, 1992.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: September 24, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-23734 Filed 9-29-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-580-811]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rope From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Anna Snider, Amy Beargie, or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-4733.

PRELIMINARY DETERMINATION: We preliminarily determine that steel wire rope from Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on April 29, 1992 (57 FR 19280, May 5, 1992), the following events have occurred. On May 26, 1992, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of steel wire rope from Korea. (57 FR 23428, June 3, 1992).

On June 5, 1992, the Department presented an antidumping duty questionnaire to Korea Iron & Steel Wire, Ltd. (KIS), Man Ho Rope Manufacturing Co., Ltd. (Man Ho), and Young Heung Iron & Steel Co., Ltd. (Young Heung). These three respondents accounted for at least 60 percent of Korean exports of steel wire rope to the United States.

Responses to Section A of the questionnaire were due on June 19, 1992, and responses to the remaining sections were due on July 6, 1992. At the request of the respondents, the response deadline for Sections B and C was extended to July 27, 1992. Responses to Sections A, B, and C were received on their respective due dates. We issued supplemental sales questionnaires on August 18, 1992, and received the corresponding responses on September 1, 1992.

In a submission dated August 4, 1992, the petitioner alleged that KIS, Man Ho, and Young Heung were selling steel wire rope in the home market at prices below the cost of production. On August 25, 1992, the Department determined that petitioner had reasonable grounds to believe or suspect that the three Korean respondents were selling steel wire rope below cost in the home market and, accordingly, initiated a cost of production investigation pursuant to section 773(b) of the Act (*See* August 24, 1992 Memo from the Director of the Office of Antidumping Compliance to the Deputy Assistant Secretary for Compliance—Initiation of Cost Investigation). The Department issued a cost of production and constructed value questionnaire to each respondent on August 25, 1992. Responses to the questionnaire were originally due on September 22, 1992. However, in response to respondents' request for an extension, the Department extended the deadline for the responses to October 1, 1992. We will consider whether respondents made sales at below cost in the home market in the final determination.

On August 6, 1992, petitioner requested that the Department postpone the preliminary determination from September 16, 1992 until September 23, 1992, pursuant to 19 CFR 353.15(c). The Department granted this request on August 24, 1992. (57 FR 39390, August 31, 1992).

Respondents have requested by letter dated September 17, 1992 that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination until not later than 135 days after the date of publication of this notice. See "Postponement of Final Determination" section of this notice.

Scope of the Investigation

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel; other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060 and 7312.10.9090.

Excluded from this investigation is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under the HTS subheading 7312.10.6000. Although HTS subheadings are provided for convenience and customs purposes, our own written

description of the scope of these proceedings is dispositive.

Period of Investigation

The period of investigation (POI) extends from November 1, 1991 through April 30, 1992.

Such or Similar Merchandise

We have determined that all products covered by this investigation constitute a single category of such or similar merchandise. For purposes of calculating a dumping margin, the Department compared products sold in the United States with identical or similar products sold in the home market. Home market products were considered identical to U.S. products if the merchandise shared the following characteristics: (1) Type of steel wire, *i.e.*, bright carbon steel or galvanized carbon steel; (2) diameter of wire rope; (3) type of core, *i.e.*, fiber or steel; (4) class of wire rope (number of strands by number of wires), *e.g.*, 6×7, 6×19, 6×37 or 8×19; and (5) other characteristics including grade of steel, number of wires per strand, and design of strands.

Where there were no sales of identical merchandise in the home market with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the criteria described above, ranked in order of importance from 1 through 5. For criterion (5), respondents were instructed to use grade of steel, number of wires per strand, and design of strands in the order they deemed appropriate. The information provided in the responses leads us to determine preliminarily that the ranking chosen by respondents is reasonable. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(c) of the Act.

Fair Value Comparisons

To determine whether sales of steel wire rope from Korea to the United States were made at less than fair value, we compared United States price with the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For KIS, Man Ho and Young Heung, we based United States price on purchase price in accordance with section 772(b) of the Act because all sales were made directly to unrelated parties prior to importation into the United States.

A. KIS

We calculated purchase price based on packed, f.o.b., c.& f., or c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, foreign brokerage, marine insurance, wharfage, container handling charges, containerization expenses, inspection fees, export licensing charges, postage, and other movement expenses, in accordance with section 772(d)(2) of the Act.

Pursuant to section 772(d)(1)(B) of the Act, we added duty drawback paid by the Korean government to the respondent as a rebate of duties paid on materials imported for production of steel wire rope. In accordance with section 772(d)(1)(C) of the Act, we added to United States price an amount for value-added taxes (VAT) calculated by applying the home market tax rate to gross U.S. price.

B. Man Ho

We calculated purchase price based on packed, f.o.b., c.& f., or c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, foreign brokerage, terminal handling charges, stevedoring charges, marine insurance, wharfage, containeration expenses, container taxes, inspection expenses, shoring charges and other movement charges, in accordance with section 772(d)(2) of the Act.

Pursuant to section 772(d)(1)(B) of the Act, we added duty drawback paid by the Korean government to the respondent as a rebate of duties paid on materials imported for production of steel wire rope. In accordance with section 772(d)(1)(C) of the Act, we added to United States price an amount for value-added taxes (VAT) calculated by applying the home market tax rate to gross U.S. price.

C. Young Heung

We calculated purchase price based on packed, f.o.b., c.& f., or c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, foreign brokerage, marine insurance, terminal handling charges, destination delivery charges, containerization expenses, inspection expenses, shoring charges, letter of credit charges, and other movement expenses, in accordance with section 772(d)(2) of the Act.

Pursuant to section 772(d)(1)(B) of the Act, we added duty drawback paid by the Korean government to the respondent as a rebate of duties paid on materials imported for production of steel wire rope. In accordance with section 772(d)(1)(C) of the Act, we added to United States price an amount for value-added taxes (VAT) calculated by applying the home market tax rate to gross U.S. price.

Foreign Market Value (FMV)

In order to determine whether there were sufficient sales of steel wire rope in the home market to serve as a viable basis for calculating foreign market value, we compared the volume of home market sales of steel wire rope with the volume of third country sales of the same product in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales of steel wire rope by each of the respondents. Therefore, pursuant to section 773(a)(1)(A) of the Act, we calculated foreign market value based on home market sales.

A. KIS

Home market prices were based on the packed, ex-factory, ex-warehouse, or delivered prices to unrelated parties in the home market. Where applicable, we made adjustments for movement expenses (including inland freight, loading expenses, inspection fees, and servicing fees), rebates, direct selling expenses including product liability premiums and warranty expenses, differences in credit expenses, differences in costs attributable to differences in the physical characteristics of the merchandise, and differences in packing expenses. As a circumstance of sale adjustment, we added the same amount of VAT tax to home market price as that added to U.S. price.

KIS failed to provide the information necessary to calculate FMVs for six models sold in the United States and, as a consequence, we were unable to calculate margins for eleven U.S. sales. For purposes of the preliminary determination, the Department has applied to the affected sales a margin equal to the respondent's weighted-average rate.

B. Man Ho

Home market prices were based on the packed, delivered prices to unrelated parties in the home market. Where applicable, we made adjustments for movement expenses (including inland freight, delivery charges, warehousing expenses, and inspection fees), rebates, direct selling expenses including product liability premiums, differences in credit expenses, differences in costs

attributable to differences in the physical characteristics of the merchandise, and differences in packing expenses. As a circumstance of sale adjustment, we added the same amount of VAT tax to home market price as that added to U.S. price.

C. Young Heung

Home market prices were based on the packed, delivered prices to unrelated parties in the home market. Where applicable, we made adjustments for movement expenses including inland freight, rebates, direct selling expenses including product liability premiums, differences in credit expenses, differences in costs attributable to differences in the physical characteristics of the merchandise, and differences in packing expenses. As a circumstances of sale adjustment, we added the same amount of VAT tax to home market price as that added to U.S. price.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries (except for those of KIS and Young Heung) of steel wire rope, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Korea Iron & Steel Wire, Ltd	[1] 0.25
Man Ho Rope Mfg., Ltd	.99
Young Heung Iron & Steel Co., Ltd	[1] .06
All others	.99

[1] De minimis.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Postponement of Final Determination

As stated above, the respondents have requested that, in the event of an affirmative determination, the Department postpone the final determination. In accordance with 19 CFR 353.20(b), we are postponing the date of the final determination until not later than 135 days after the date of publication of this notice.

Public Comment

In accordance with 19 CFR 353.38(c) and 19 CFR 353.8(d), case briefs or other written comments in at least ten copies may be submitted to the Assistant Secretary for Import Administration no later than December 4, 1992, and rebuttal briefs no later than December 11, 1992. Pursuant to 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on December 15, 1992 at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain:

(1) The party's name, address, and telephone number;

(2) The number of participants; and

(3) A list of the issues to be discussed.

In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 23, 1992

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–23732 Filed 9–29–92; 8:45 am]

BILLING CODE 3510–DS–M

Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786 or 377–0983.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for several of the countries for which subsidies were identified in our annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional

information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA.

Dated: September 25, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (cents per pound)	Net [2] subsidy (cents per pound)
Belgium	European Community (EC) Restitution Payments	49.1	49.1
Canada	Export Assistance on Certain Types of Cheese	29.1	29.1
Denmark	EC Restitution Payments	60.7	60.7
Finland	Export Subsidy	158.1	158.1
France	EC Restitution Payments	58.3	58.3
Greece	EC Restitution Payments	66.8	66.8
Ireland	EC Restitution Payments	73.5	73.5
Italy	EC Restitution Payments	75.5	75.5
Luxembourg	EC Restitution Payments	49.1	49.1
Netherlands	EC Restitution Payments	51.0	51.0
Norway	Indirect (Milk) Subsidy	20.6	20.6
	Consumer Subsidy	45.6	45.6
Portugal	EC Restitution Payments	66.2	66.2
Spain	EC Restitution Payments	50.8	50.8
Switzerland	Deficiency Payments	51.4	51.4
U.K.	EC Restitution Payments	182.0	182.0
W. Germany	EC Restitution Payments	50.4	50.4
		55.9	55.9

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 92-23735 Filed 9-29-92; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Oceanic and Atmospheric Management Advisory Committee; Open Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

SUMMARY: The Oceanic and Atmospheric Management Advisory Committee (OAMAC) will meet on October 5–6, 1992, to advise the Secretary on issues related to the management of oceanic and atmospheric resources that fall within the legislative and administrative purview of the National Oceanic and Atmospheric Administration (NOAA). This Committee reviews on a selective basis, Earth systems research and data management, the status of marine and atmospheric science, service programs of NOAA, and NOAA's laboratories, fleet, satellites and supercomputers, and their application to resource management and to products and services beneficial to the American public.

TIME AND PLACE: October 5, 1992, from 8:30 a.m. until 5 p.m. at the Willard Hotel, 1401 Pennsylvania Avenue NW, Washington, DC, and on October 6, 1992, at the Willard Hotel from 8:30 a.m. until 4 p.m.

AGENDA: This is the third meeting of OAMAC. The committee will consider reports from the five subcommittees: (1) NOAA Definition and Public Appreciation (2) Fleet Modernization (3) Weather Station Closings (4) Fisheries—International Support (4) Marine Sanctuaries.

PUBLIC PARTICIPATION: The meeting will be opened to the public. Seat will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: R.A. Edwards, Deputy Assistant Secretary of Commerce for Oceans and Atmosphere, room 5804, Hoover Building, Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. Telephone: (202) 377–3567.

R.A. Edwards,

Deputy Assistant Secretary for Oceans and Atmosphere.

Accordingly the following agenda for the second meeting of the Oceanic and Atmospheric Management Advisory Committee is published.

Agenda for the October 5–6, 1992 Meeting of the Oceanic and Atmospheric Advisory Committee

October 5, 1992

8:30 a.m.
Meeting (Willard Hotel).
OAMAC Overview and Business.
Subcommittee Reports.
12:30 p.m.—Lunch break.
2 p.m.
Lunch concludes.
Other Business.
5 p.m.
Meeting concludes.

October 6, 1992

8:30 a.m.—Subcommittee reports continue.
Noon—Lunch Break
1:30 p.m.
Lunch concludes.
OAMAC business.
2 p.m.—Conclude OAMAC Business.
2:30 p.m.—Adjournment.

[FR Doc. 92-23669 Filed 9-29-92; 8:45 am]
BILLING CODE 3510-08-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of correction regarding application for permit (P45K).

SUMMARY: This notice revises the first paragraph under the name and address of applicant section previously published in the **Federal Register** September 14, 1992 (57 FR 41922). The applicant's correct name and address should read as follows: The U.S. Fish and Wildlife Service, National Fisheries Research Center, Seattle-Columbia River Field Station, Star Route, Cook, WA 98604.

Dated: September 15, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources.

[FR Doc. 92-23619 Filed 9-29-92; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, section 10(a) and 41 CFR 101-6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting in the Hearing Room on the basement level of the Commission's Washington, DC headquarters, 2033 K Street, NW., Washington, DC on October 19, 1992, beginning at 8:30 a.m. and lasting until 12:30 p.m. The agenda will consist of:

Agenda

I. Introductory remarks, Commissioner Joseph B. Dial;
II. Demonstration of AUDIT;
III. Discussion of new agricultural futures contracts offered by CBOT;
IV. Discussion of speculative position limits;
V. Discussion of CFTC reauthorization;
VI. Discussion of agricultural trade options;
VII. Discussion of futures-style margining of options;
VIII. Discussion of *Arkansas Best;*
IX. Discussion on CFTC's Excellence 2000;
X. Discussion concerning agricultural education programs;
XI. Other Committee Business; and
XII. Closing Remarks by Commissioner Joseph B. Dial.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the May 6, 1991 fourth renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Joseph B. Dial, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee c/o Kimberly N. Griles, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Griles in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on September 24, 1992.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-23680 Filed 9-29-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Submarine Service Life; Meeting

ACTION: Change in Date of Advisory Committee Meeting.

SUMMARY: The meeting of the Defense Science Board Task Force on Submarine Service Life scheduled for October 5 and 6, 1992, at the MITRE Corporation, McLean, Virginia, as published in the **Federal Register** (Vol. 57, No 183, Page 43441, Monday September 21, 1992, FR Doc. 92-22688) has been rescheduled for October 19 and 20, 1992.

Dated: September 24, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-23622 Filed 9-29-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board will hold its Fall General Board Meeting on 20-22 October 1992 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC.

* * * * *

The purpose of this meeting is to provide attendees the opportunity to hear results of important SAB studies and to enable members and senior Air Force leaders to become better acquainted. Additionally, the attendees will begin planning for future studies.

This meeting will involve discussions of classified defense and contractor proprietary matters listed in section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-23624 Filed 9-29-92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Notice of Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: 15 October 1992.

Time:

0800-0835 Hours OPEN COI/ WELCOME
0835-1200 Closed
1300-1700 Closed

Place: Picatinny Arsenal, Dover, NJ

Agenda: The Army Science Board's Systems Issue Group will meet with government and contractor representatives to discuss results of the test firings at Yuma Proving Grounds, review pressure oscillation analysis and discuss the latest design of the Regenerative Liquid Propellant Gun. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed is so inextricably intertwined so as to preclude opening

any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–23912 Filed 9–29–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Business and Education Standards Program

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Year 1993.

SUMMARY: The Secretary announces a priority for fiscal year (FY) 1993 under the Business and Education Standards Program. Under this absolute priority, the Secretary will fund projects that develop skill standards so that workers and trainees are aware of the skills that are required to perform a job well in national labor markets. The Secretary takes this action in an effort to help meet the needs of business, industry, and educational institutions that educate and train workers. This absolute priority is the first step in developing competent entry-level workers who have attained national skill standards.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Debra J. Nolan, U.S. Department of Education, 400 Maryland Ave. SW., room 4512, Switzer Building, Washington, DC 20202–7242. Telephone: 202–205–9650. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Business and Education Standards Program is authorized by section 416 of the Carl D. Perkins Vocational and Applied Technology Education Act, as amended by Public Law 101–392, 104 Stat. 756, 818 (1990). On July 6, 1992, the Secretary published a notice of proposed priority for this program in the **Federal Register** (57 FR 29714). Under this final priority the Secretary funds projects that will organize and operate business-labor-education technical committees to develop national skill standards and skill certificates for competencies in industries and trades. The following entities are eligible for an award under this program: Industrial trade associations, labor organizations, national joint apprenticeship committees, and comparable national organizations, such as educational associations, industry councils, business and industry organizations, and associations of private or national research organizations.

The Secretary encourages applicants, in meeting this final priority, to replicate standards or adapt methods used in this country and abroad. In the United States, for example, the automotive industry is notable in the development of skill standards and the certification of individuals who have completed vocational-technical education programs. The work of the Vocational-Technical Education Consortium of States is notable in converting job analysis information into curriculum objectives and methods for assessing student achievement.

Other organizations that have attempted to define and measure employability and workplace competencies include the National Occupational Competency Testing Institute, the Educational Testing Service, the American College Testing Service, the American Society for Training and Development, the Secretary of Labor's Commission on Achieving Necessary Skills, and the National Occupational Information Coordinating Committee.

Other countries, such as Canada, the Netherlands, and Scotland, have done considerable work in developing national industry-based skill standards. These countries have been successful in establishing industry-occupational platform committees with strong representation from management, labor, education, and government.

The Netherlands has developed a computerized interactive curriculum information system for entering job analysis data and using artificial intelligence methods to convert those data into skill standards and vocational curricular objectives. The Netherlands has invited the United States to make use of this system, and the Secretary encourages interested applicants to consider this. Applicants may obtain an abstract that describes the Netherlands system from the National Occupational Information Coordinating Committee in Washington, DC (Telephone: 202–653–5665).

The Assistant Secretary for Vocational and Adult Education has consulted with the Assistant Secretary of Labor for Employment and Training regarding the Business and Education Standards Program. Both Departments will be involved in reviewing applications submitted under the FY 1993 competition and will continue meeting throughout the operation of the program.

The Business and Education Standards Program directly supports National Education Goal 5—to ensure that every adult American will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program is also an important element of AMERICA 2000, the President's strategy to help America achieve the National Education Goals. Specifically, it addresses Track III of the AMERICA 2000 strategy—transforming America into "A Nation of Students"—by establishing standards for job skills and knowledge through a cooperative effort by business, industry, labor, and education groups, so that workers can see what skills are needed to perform a job and can evaluate their own grasp of those skills.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Public Comment

In the notice of proposed priority, the Secretary invited comments on the proposed priority. Four commenters submitted letters supporting the business and education standards priority. There were no comments opposing the priority. One of the commenters, in addition to supporting the priority, offered suggestions that were not related to the priority. Thus, the Secretary will not address these suggestions in this notice. The Secretary has made no changes in this priority since publication of the notice of proposed priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under the FY 1993 competition only applications that meet this absolute priority:

Projects that propose to carry out all of the following activities:

(1) Develop a coalition—of employers, labor organizations, associations, vocational educators and others—who will participate in the development of skill standards that will serve as a basis for a certification process. The coalition must broadly represent entities

associated with a majority of the persons employed in a particular industry or industry cluster.

(2) Develop standards that include job-specific, academic, and reasoning skills along with a basis for a certification process that show promise of being maintained and updated after termination of the project.

(3) Develop methods for using skill standards as the basis for the development of curricula in vocational-technical education and for certification.

(4) Propose procedures for testing the validity of the skill standards to ensure nondiscrimination on the basis of race, color, national origin, gender, age, or disability.

(5) Develop a method for determining whether certified personnel are better performers than non-certified personnel.

(6) Propose procedures for identifying and accommodating probable future skill standards at the national and world class levels for business and industry.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

APPLICABLE PROGRAM REGULATIONS: 34 CFR part 421.

Program Authority: 20 U.S.C. 2416.

(Catalog of Federal Domestic Assistance Number 84.244, Business and Education Standards Program)

Dated: September 11, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-23637 Filed 9-29-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

University Research Instrumentation Program 1993

AGENCY: Office of University and Science Education, Department of Energy.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce the availability of the University Research Instrumentation (URI) Program solicitation, and to inform potential applicants of the closing date and location for transmittal of applications for awards under this program. This program provides grants to selected universities and colleges so that they can purchase advanced equipment which will enhance their capability to conduct energy research. The catalog number is 81.077 (Catalog of Federal Domestic Assistance), University Research Instrumentation Program.

DATES: Applications may be delivered by hand, U.S. First Class Mail, or express mail and must be received by the Idaho Field Office no later than 4:30 p.m. local prevailing time, Monday, December 7, 1992.

ADDRESSES: To be eligible, the application must be received by the U.S. Department of Energy, Idaho Field Office, 785 DOE Place, M/S 1220, Idaho Falls, ID 83401/1562, ATTN: J.H. Nadler, 1993 URI Program.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Copies of the Program Solicitation may be obtained from the URI Program Manager, Office of University and Science Education, OUSE/ST-511, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8949.

SUPPLEMENTARY INFORMATION: The purpose of the University Research Instrumentation Program is to assist university and college scientists in strengthening their capabilities to conduct long-range research in specific energy research and development areas of direct interest to DOE through the acquisition of specialized research instrumentation. This program is consistent with, and part of, a government-wide effort to increase the availability of advanced research instrumentation in universities and colleges. For FY 1993, the appropriation recommended in the conference report for the Energy and Water Development Appropriations Bill is $5.647 million. In anticipation of enactment of this bill, DOE invites all qualified colleges and universities to write for a copy of its University Research Instruction Program solicitation, DOE-ER-0184/8, Notice of Program Announcement Number DE-PS05-93ER79139. Selection for award under this solicitation is subject to the availability of funds. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation.

In FY 1993 applications will only be accepted in the designated principal research areas. The URI program's funds will be concerned primarily with capital equipment costing $100,000 or more needed for on-campus research in one of six specific energy research areas (listed below in alphabetical order). The following research areas are divided into subjects, and in same instances, the subjects are further divided into segments. The applicant should only submit an application that fits within the current research area, subject(s), and if applicable, segment(s) stated in the 1993 URI Guide. A research area and/or subject extracted from previous guides (1984-1992) does not meet the criteria for submission and will not be accepted. Within each research area no preference is given to any of the subjects, or if applicable, any of the segments.

A. Biological and Environmental

1. Health Effects and Life Science

Research on the cellular and molecular effects of radiation and energy related chemicals to provide data needed to predict long-term health effects and research that provides fundamental information on the macromolecular structure and function of living systems.

a. Improved and innovative methods for detecting and quantitating DNA damage and repair;

b. Improved quantitation of the health and environmental effects of radon exposure;

c. More efficient and cost effective approaches to mapping and sequencing the human genome;

d. High resolution analysis of the structure and function of biological macromolecules.

2. Environmental Processes and Effects

a. Subsurface microbiology and factors affecting mobilization and immobilization of chemicals in soils and ground water systems, including new technologies to characterize microbes and the groundwater systems within which they grow;

b. Determination of the movement and fate of carbon, nutrients, and contaminants introduced along the ocean margins;

c. Development of fundamental integrated ecological studies in terrestrial systems that will contribute to understanding response functions of global and regional research activities.

3. Atmospheric and Climate Research

a. Measure and control systems for experimental research on the biological effects of CO_2 and climate variables; instrumentation to produce and measure trace materials (e.g., C_{11} isotope) for real-time studies of carbon fixation and metabolism within plants;

b. Ground based remote sensing instruments such as: Radio Acoustical Sounder (RASS) for temperature profiles, Differential Absorption Lidar (DIAL) and Raman Lidars for water vapor profiles, Doppler Wind Systems and High Resolution Interferometers Sounder (HIS) for solar and infrared spectral measurements, and other remote sensing instrument technology capable of identifying and profiling specific atmospheric constituents including aerosols.

B. Chemical Sciences

Equipment needs to augment research in specific areas of the Chemical Science include fundamental studies related to chemical reactivity, transformations, and conversion. Studies of the chemistry of fossil resources, particularly the characterization and transformation of coal, are critical to new or existing concepts of energy production and storage.

1. *Chemical Kinetics.* Dynamics and kinetics of high-temperature chemical reactions, reaction mechanisms of complex hydrocarbons, and formation of hazardous byproducts.

2. *Surface Chemistry.* Studies including the chemistry of adsorbates, surface compositions, and studies of molecules at the solid-gas interface.

3. *Separation Processes.* Organic and organometallic molecules used in separation processes, including solvent extraction.

4. *Correlation Effects.* Correlation effects which accompany multielectron transfer and excitation in laser-assisted atomic ion collisions, atomic processes in intense magnetic and electric fields.

C. Engineering

Instrumentation for use as diagnostic tools in basic or applied research on:

1. Multiphase flows, such as flows in porous media, gas-liquid flows, slurries, fluidized beds, flows including biologically active substances, e.g., bacteria and enzymes.

2. Fracture mechanics, metal fatigue, and mitigation of the effects of aging in energy-related structures.

3. Process control in advanced materials processing, such as determination of nonequilibrium states in thermal plasmas and evolution of particulates in plasma streams, tracking and identification of radicals, and the like.

D. Geosciences

Geophysics and geochemistry of rock-fluid systems emphasizing flow, interaction, and transport of fluids (oil, gas, geothermal fluids, magma, and ground water) in porous and fractured rocks of the earth's near-surface regime. Research topics include both natural processes and phenomena as well as those generated or modified by human interaction. The emphasis is on active geologic processes as they shed light on past phenomena and enhance our predictive capabilities for the future.

Basic and applied research in the geosciences funded by the Department of Energy contribute to important aspects of the Fossil, Renewable, and Nuclear Energy technologies and to Environmental Restoration and Waste Management. Of particular interest is instrumentation that will contribute to advanced training and education necessary in providing the cadre for the future.

1. *Geophysical Imaging:* Determination of geologic structure and properties of fluid-bearing reservoirs by acoustic and electromagnetic methods.

2. Geochemical Characterization: Measurement and interpretation of chemical, structural, and textural properties of rocks and minerals, including surface characterization of minerals and mineral-fluid interactions.

3. *Down-Hole Instrumentation:* Measurements of geophysical and geochemical properties under *in situ* conditions to provide information on rock properties and behavior. Includes hole-to-hole, hole-to-surface, and surface-to-hole active and passive measurements.

E. Materials Science

Equipment, apparatus, instrumentation, and facilities for controlled synthesis and processing of advanced materials including structural ceramics; structural ceramic matrix composites; polymers; photovoltaic semiconductors; structural intermetallic compounds; ceramic, polymeric, and intermetallic superconductors; magnetic materials; surfaces of controlled microstructure and microchemistry; and adhesive bonds or welds between either similar or dissimilar kinds of materials.

1. *Ceramic Fiber Synthesis.* Synthesis of controlled ceramic fiber, whisker, or powder of micron or submicron dimensions with reduced and controlled levels of impurity and foreign particulate contamination and in compliance with relevant health, environment, and safety concerns.

2. *Composition Control.* Reaction processes for the production of research laboratory quantities of controlled composition and purity materials with appropriate concern for the control of reaction temperatures, pressure, and chemical environment.

3. *Material Synthesis.* Hydrothermal and other forms of pressure-assisted reaction synthesis, biomimetic reactions, atomic vapor resonant ionization processes (to achieve very high purity), electrochemical synthesis, polymer synthesis, colloidal synthesis, ceramic precursor synthesis, cluster, and nanophase synthesis.

4. *Vapor Deposition.* Various "assisted" vapor reaction and deposition processes such as MBE, MOCBD, sputtering, etc., and including laser, plasma, microwave, particle beam, photon or other methods that may promote synthesis or process reactions that would not otherwise occur, or permit reactions to occur at lower temperatures.

5. *Bulk Processing.* Processing issues including processing material in bulk form with the objective of achieving a microstructure that gives desired properties in the bulk form. Subtopics that are included are high pressure (-GPa regime) reaction, self-propagating and self-organizing synthesis of consolidated products, hot isostatic pressing, and various "assisted" forms of consolidation including, but not necessarily limited to, RF, microwave, plasma, and various static and/or dynamic applied fields that are capable of achieving the densification of composite or multiphasic ensembles, or lowering the reacting temperature and time required to achieve full densification, and of providing preferred orientation of nonisotropic bulk materials.

6. *Fabrication and Joining.* Other appropriate topics include sheet metal fabrication and forming under multiaxial deforming forces, cross-linking and surface modification fabrication routes in polymers, welding and joining of both similar as well as dissimilar materials, e.g., joining a metal to ceramic, and near-net-shape forming and shaping processes.

F. Mechanistic Plant and Microbial Research

1. Basic Plant Sciences

Research devoted to understanding the fundamental cellular and molecular mechanisms of plant conversion of solar energy into chemical energy. This would include studies on growth and development, as well as other physiological processes that determine plant productivity as renewable resources (biomass).

2. Fermentation Microbiology

(a) Examination of the various basic biochemical processes involved in the

broad spectrum of metabolic, both anaerobic and aerobic, transformations carried out by non-medical microorganisms;

(b) Research on the physiology, biochemistry and molecular biology of both monocultures and complex consortia;

(c) Organisms occupying unique, exotic niches with the potential to be exploited in future energy-related biotechnologies.

While the equipment requested may be equally suitable and may be used for research on other energy-related topics, the need for the instrument(s) must be justified (and the application will be reviewed) in terms of its value and ability to enhance the institution's capabilities in the principal designated energy-related research area specified on the cover sheet. The instrument's utility in advancing other areas of scientific or technical research is of peripheral interest during the application's review procedure.

Participation in the URI Program is limited to U.S. universities and colleges that currently have active, ongoing DOE-funded research support (including subcontracts) totalling at least $150,000 in value in the specific research area for which the equipment is requested during the past two fiscal years (October 1, 1990 to September 30, 1992).

DOE is establishing this limitation to ensure that the instrumentation acquired with these grants will significantly expanded the research capability of institutions which have already demonstrated the capability to perform long-range energy research. The Office of University and Science Education believes that restricting eligibility to institutions which have performed $150,000 of DOE-supported research over a two-year period will limit eligibility in this grant program to those institutions which, because of their existing commitment to energy research, are best able to incorporate advanced instrumentation into their research programs. Special consideration will be given to Historically Black Colleges and Universities (HBCUs) and other traditional minority institutions which meet the institutional eligibility criteria, and have significant research capabilities in the selected research area. DOE will consider any requests for larger instruments, costing about $100,000 or more, which are required to advance research in the designated research area. Smaller research instruments (less than $100,000 each) will not be eligible for consideration in this program. General purpose computing equipment is also not eligible under this program. However, laboratory computers and associated peripherals dedicated for use directly with the instrument requested (or for use with existing research instruments in the selected area) may be considered. Computer equipment for theoretical research will be eligible under this program, but will be given secondary consideration relative to instrumentation for experimental research.

For more detailed background information about the URI solicitation, please refer to the following related documents: (1) DOE request for public comment on the URI program, June 7, 1983 (48 FR 26328), (2) October 18, 1983, DOE changes to the program (48 FR 48277); and (3) December 15, 1983, DOE program solicitation announcement (48 FR 55774). The authority for the University Research Instrumentation Program is contained in section 31 (a) and (b) of the Atomic Energy Act of 1954 (42 U.S.C. 2051) and section 209 of the Department of Energy Organization Act (42 U.S.C. 7139).

Steven W. Morrell,

Contracting Officer, Procurement & Contracts Division, Oak Ridge Field Office.

[FR Doc. 92-23740 Filed 9-29-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-434-001, et al.]

United Illuminating Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Fillings

Take notice that the following filings have been made with the Commission:

1. United Illuminating Co.

[Docket No. ER92-434-001]

September 21, 1992.

Take notice that on September 17, 1992, United Illuminating Company tendered for filing its refund report in the above-referenced docket.

Comment date: October 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Empire District Electric Co.

[Docket No. ER91-616-001]

September 21, 1992.

Take notice that on September 14, 1992, Empire District Electric Company tendered for filing its compliance refund report in the above-referenced docket.

Comment date: October 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Co.

[Docket No. ER92-608-000]

September 21, 1992.

Take notice that on September 10, 1992, Central Hudson Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Grayling Generating Station Limited Partnership

[Docket No. ER92-839-000]

September 21, 1992.

Take notice that on September 14, 1992, Grayling Generating Station Limited Partnership (Grayling), a Michigan limited partnership, tendered for filing, pursuant to 18 CFR 35.1 and 35.13, proposed Supplement No. 8 to Rate Schedule FERC No. 1, applicable to the sale of energy and capacity to Consumers Power Co. (Consumers) from a biomass waste wood generating facility located in Crawford County, Michigan. The facility is a qualifying small power production plant of more than 30 MW within the meaning of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978.

Supplement No. 8 makes three changes to Rate Schedule FERC No. 1. First, the not-to-exceed nameplate rating of the facility has been increased from 14 NW to 39 MW. This increase does not affect the amount of capacity sold or purchased under Rate Schedule FERC No. 1, which amount was and is a maximum of 28.17 MW. Second, the billing procedures have been modified. Originally, Grayling was required to calculate the amounts owed each month and invoice Consumers Power. When Grayling proved unable to calculate such amounts in a timely manner, the parties agreed to have Consumers Power calculate the monthly bill through its metering equipment. Third, CSS Form 0991 has been added, requiring Grayling to comply with certain federal laws, such as equal opportunity and environmental quality. Consumers Power requires inclusion of this form in all its contracts. Each change is technical in nature and does not affect rates or service.

Grayling also is requesting that the sixty-day notice period under 18 CFR 35.3 be waived and that Supplement No. 8 be accepted as effective on May 15, 1992 (for the billing and CSS Form 0991 changes) and on September 28, 1990 (for the nameplate rating change).

Copies of this filing have been served on Consumers Power Company.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Co.

[Docket No. ER92-700-000]

September 21, 1992.

Take notice that on August 31, 1992, Pennsylvania Power & Light Company tendered for filing supplemental information in the above-referenced docket.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Interstate Power Co.

[Docket No. ER91-687-000]

September 21, 1992.

Take notice that on August 24, 1992, Interstate Power Company tendered for filing revised page of the negotiated capacity agreement with Wisconsin Power & Light Company.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Green Mountain Power Corp.

[Docket Nos. ER92-361-000 and ER92-362-000]

September 21, 1992.

Take notice that on Augsut 18, 1992, Green Mountain Power Corporation tendered for filing an amendment in the above-referenced dockets.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Co.

[Docket No. ER92-841-000]

September 21, 1992.

Take notice that on September 16, 1992, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and Utilities Commission, City of New Smyrna Beach, Florida. FPL requests an effective date of October 1, 1992.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Indiana & Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Co. et al.

[Docket Nos. EL88-1-000; ER88-31-002 and ER88-32-002; ER90-270-003 and ER90-271-003]

September 21, 1992.

Taken notice that on September 15, 1992, Indiana Michigan Power Company (I&M) tendered a modified compliance filing in the above-referenced dockets, in compliance with the Commission's June 3, 1992 Opinion and Order on Initial Decision. The modified compliance filing amends a prior compliance filing made by I&M on July 15, 1992 in order to reflect a correction to allocation factors related to the Rockport Plant Unit No. 1 deferrals.

Copies of the modified filing were served upon Richmond Power & Light, the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: October 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. United Illuminating Co.

[Docket No. ER92-589-001]

September 21, 1992.

Take notice that on September 4, 1992, United Illuminating Company tendered for filing its refund report in the above-referenced docket.

Comment date: October 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Company Services, Inc.

[Docket No. ER92-826-000]

September 21, 1992.

Take notice that on September 4, 1992, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as "Southern Companies"), tendered for filing Amendment No. 1, dated September 3, 1992, to Service Schedule EP of the Interchange Contract between Florida Power & Light Company and Southern Companies. The Amendment extends the term and includes other modifications to Schedule EP. Southern Companies state that the modifications will have no effect on the rate or will result in a rate decrease.

Southern Companies request expedited review of the Amendment. Southern Companies also request waiver of the sixty day prior notice requirement and an immediate effective date.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Co.

[Docket No. ER92-410-000]

September 21, 1992.

Take notice that on September 15, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an Addendum No. 2 dated August 27, 1992 to the Rate Settlement Agreement between PG&E and the Department of Water Resources of the State of California (DWR) dated March 23, 1992, previously filed with the Commission on March 27, 1992. Pursuant to the Commission Staff verbally requesting that certain components and a factor used in the calculation of the "Annual Transmission Rate Adjustment Factor" (ATRAF) in Attachment 1 to Exhibit II of the Rate Settlement Agreement either not be used or explained further as to why they are appropriate, PG&E has amended the Rate Settlement Agreement to reflect certain changes.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Nevada Power Co.

[Docket No. ER92-840-000]

September 21, 1992.

Take notice that on September 15, 1992, Nevada Power Company (NPC), tendered for filing a request for a waiver of § 35.14 of the Federal Energy Regulatory Commission's Regulations for all tariffed service provided by NPC to the City of Needles (Needles) under Rate Schedule FERC No. 41. The Primary purpose of the filing is to allow NPC to exclude the purchase power costs and energy of the Boulder Canyon Project Schedule B (Hoover B) power from the calculation of the fuel adjustment clause for power sold to Needless. The request asks that the waiver be for all service rendered since March 1990.

NPC states that copies of the filing were served upon Needles.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Western Massachusetts Electric Co.

[Docket No. ER92-458-000]

September 21, 1992.

Take notice that on September 15, 1992, Western Massachusetts Electric Company submitted for filing supplemental information of a rate schedule filed with the Commission in this Docket.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Gulf States Utilities Co.

[Docket No. EC92-24-000]

September 21, 1992.

Take notice that on September 14, 1992, Gulf States Utilities Company (Gulf States) filed an application seeking an order pursuant to section 203 of the

Federal Power Act authorizing the sale of two substations by Gulf States to Texaco Chemical Company (Texaco). These facilities serve Texaco's plant located at Port Neches, Texas.

Comment date: October 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Bangor Hydro-Electric Co.

[Docket No. ER92-697-000]

September 21, 1992.

Take notice that on September 14, 1992, Bangor Hydro-Electric Company (Bangor) tendered for filing an Amendment to Filing. The Rate Schedule included in this Amendment provides for the sale by Bangor to other utilities which enter into Service Agreements with Bangor, capacity and associated energy at negotiated rates not to exceed Bangor's cost of service.

Bangor requests that the Commission waive is notice requirement in order to allow the Rate Schedule to become effective as soon as review can be completed, in no event later than October 1, 1992.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Union Electric Co.

[Docket No. ER92-842-000]

September 21, 1992.

Take notice that on September 16, 1992, Union Electric Company (UE) tendered for filing (1) a Wholesale Power Service Agreement between UE and the Central Illinois Public Service Company (CIPS), (2) An amendment to the CIPS—UE Facility Use Agreement, and (3) an amendment to the Interconnection Agreement between CIPS, Illinois Power Company (IP), and UE. These three Agreements (collectively Agreements) are being filed in connection with a sales agreement whereby UE will sell to CIPS property used to provide service to UE's northern Illinois retail business, as well as certain related facilities located in Illinois. UE proposes as an effective date for the Agreements the day following the "closing date" as defined in the sales agreement.

Under the Wholesale Power Agreement, CIPS has agreed to purchase certain quantities of power and energy from UE, in accordance with the terms and conditions contained therein. The Wholesale Agreement shall terminate three years from its effective date.

The Amendment to the Facility Use Agreement reflects the change of ownership in facilities and calls for payments to compensate UE for the use of certain facilities.

The Amendment to the Interconnection Agreement reflects the change of ownership of facilities and the new interconnection points.

UE requests waiver to the extent necessary of the Commission's notice requirements so that the Agreements may take effect as of the date requested.

A copy of the filing was served upon Central Illinois Public Service Company, Illinois Power Company, the Iowa Utilities Board, the Missouri Public Service Commission, and the Illinois Commerce Commission.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. PacifiCorp

[Docket No. ER92-835-000]

September 21, 1992.

Take notice that on September 15, 1992, PacifiCorp tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules of and Regulations. the Red Butte Interconnection Agreement (Agreement) between PacifiCorp and Utah Associated Municipal Power Systems (UAMPS) dated December 21, 1990.

The Agreement provides for reciprocal emergency transmission services under certain conditions commencing with the energization of UAMPS' Central—St. George 138 kV transmission line.

Copies of this filing were supplied to UAMPS, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Power Co.

[Docket No. ES92-59-000]

September 22, 1992.

Take notice that on September 15, 1992, Consumers Power Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $900 million of secured and/or unsecured short-term and/or evidence of indebtedness, including but not limited to notes, drafts, debentures and commercial paper on or before December 31, 1994, with a final maturity date not more than 364 days from the date of issue.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. O.L.S. Energy-Agnews, Inc.

[Docket No. QF85-9-002]

September 22, 1992.

On September 4, 1992, O.L.S. Energy-Agnews, Inc. (Applicant), filed a petition with the Federal Energy Regulatory Commission for a temporary waiver of the operating standard. No determination has been made that the submittal constitutes a complete filing.

The 28 NW topping-cycle cogeneration facility is located in San Jose, California. The facility consists of two combustion turbine generators and associated heat recovery boilers, and an extraction/condensing steam turbine generator (STG). Steam extracted from the STG is used by the Agnews Department of Developmental Services of the State of California for space and water heating purposes. The facility uses natural gas as its primary energy source.

Applicant requests temporary waiver of the 5% operating standard for the period between October 19, 1990, and February 4, 1991. Applicant states that the temporary waiver is requested due to the limited operation of the facility during the start-up and testing period prior to the start of commercial operation of the facility.

Comment date: October 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23719 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10371-003, Washington]

CPS Products, Inc.; Availability of Environmental Assessment

September 23, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Bear Creek Project, to be located on Bear Creek in Skagit County, near Concrete, Washington, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23654 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-09645T, Texas-73]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Denying Designation of Tight Formation

September 23, 1992.

Take notice that on September 21, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Middle Wilcox Sand Formation in a portion of Zapata County, Texas, does not qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The notice of determination covers approximately 640 acres within Railroad Commission District 4 and consists of portions of the following surveys:

Survey	Portion	Area
J. Santos Gutierrez A-32	20	NE/4
C & M RR A-130	187	NW/2
A.J. Nolen A-534	616	NW/16
Maria Josefa Guerra A-31.	19	NW/16
Isabel Maria Sanchez A-81.	21	S/2 of NE/4
G C & S F RR A-296	599	SW/10 SE/4
Surveying vacancy between Porcion 21 (A-81) and Porcion 599 (A-296).		

The notice of determination also contains Texas' findings that the referenced portion of the Middle Wilcox Sand Formation does not meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23651 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-09646T Texas-74]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 24, 1992.

Take notice that on September 21, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation in portions of Freestone and Limestone Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area, consisting of approximately 4,547 acres, is described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended Travis Peak Formation is located in Freestone and Limestone Counties, Texas, within Railroad Commission District 5. The area of application covers approximately 4,547 acres and consists of all or portions of the following surveys:

Survey name	Abstract No.	County
William Ritchie	A-485	Limestone.
William Ritchie	A-119	Freestone.
BBB & CCR Co	A-110	Freestone.
John Williams	A-577	Limestone.
John Williams	A-762	Freestone.
Robert Barr	A-615	Limestone.
Robert Barr	A-703	Freestone.
Isaac Connelly	A-117	Freestone.
Isaac Connelly	A-104	Limestone.
J. Peterson	A-520	Freestone.
M.C. Rejon	A-26	Limestone.
Berry Ham	A-708	Freestone.
William Townsend	A-700	Freestone.
A.J. Click	A-111	Limestone.
A.J. Click	A-121	Freestone.

[FR Doc. 92-23726 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-09647T]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 24, 1992.

Take notice that on September 21, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Edwards Limestone Formation in a portion of LaSalle County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Edwards Limestone Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North

Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date of this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended Edwards Limestone Formation is located in LaSalle County, Texas, within Railroad Commission District 1.

Survey		Abstract No.
Name	Number	
J.M. Martin	696 S&E NE/160 ac..	1291
H.E. & W.T.R.R	699 S&E NW/160 ac..	882
H.E. & W.T.R.R	695	884
H. & G.N.R.R	9	314
Jose M. Garcia	902	1176
A.B. & M	901	830
B.S. & F	685	769
J. Adams	10	1684
J.M. Martin	698	1290
B.S. & F	715	838
Raymundo Arismendes.	716	1689
H.E. & W.T.R.R	747	870
J.E. DeMoss	748	1377
H.E. & W.T.R.R	697	883
T. Garcia de Martin	700	1294
Leona Irr. & Agr. Assn.	749	905
Juan Adams	750 S&E W/200 ac..	1681
G.C. & S.F.R.R	17	920
John Dillard	16 S&E N/320 ac...	1638
Juan Adams	718	1683
G.C. & S.F.R.R	15 S&E W.320 ac...	921
Jos. E. Fitzsimmons.	708	1159
S.A. Yates	14	1779
G.C. & S.F.R.R	19	919
Tom Dillard	18	1637
G.C. & S.F.R.R	23	933
Raymundo Arismendes.	68	1692
B.S. & F	719 West 80 acres.	840
	S&E N/20 ac	
	S&E—Save and Except.	

[FR Doc. 92-23727 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-698-000, et al.]

Trunkline Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Co.

[Docket No. CP92-698-000]

September 21, 1992.

Take notice that on September 11, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-698-000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon transportation services provided to Panhandle Eastern Pipe Line Company (PEPL) under Trunkline's Rate Schedules T-73 and T-88, effective November 1, 1992, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that under Rate Schedule T-73, Trunkline provides firm transportation service of up to 13,200 Mcf of natural gas per day (Mcfd) for PEPL from a point of receipt in East Cameron Block 359, offshore Louisiana. Trunkline further states that it then transports the gas to the East Cameron Block 338 interconnection with Stingray Pipeline Company (Stingray). Trunkline says that it uses its capacity entitlement in Stingray to transport the gas to an interconnection between Stingray and High Island Offshore System (HIOS) in High Island Block A-330 for Trunkline's account. Trunkline indicates that it utilizes its entitlement capacities in HIOS and U-T Offshore System (U-TOS) to transport the gas onshore where Natural Gas Pipeline Company of America (NGPL) receives the gas and transports it to Trunkline's facilities in Cameron Parish, Louisiana. Trunkline then transports and redelivers the gas to PEPL at the point of interconnection between PEPL and Trunkline located in Tuscola, Douglas County, Illinois (Tuscola Interconnect).

Trunkline states that under Rate Schedule T-88, Trunkline provides firm transportation service of up to 6,000 Mcfd for PEPL from a point of receipt in High Island Block A-343, offshore Texas. Trunkline says that it utilizes its capacity entitlements in HIOS, U-TOS and NGPL to transport the gas to Trunkline's onshore facilities. Trunkline states that it then transports and redelivers the gas to PEPL at the Tuscola Interconnect.

Trunkline states that PEPL and Trunkline have agreed to terminate Rate Schedules T-73 and T-88 effective November 1, 1992.

Comment date: October 13, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corp.

[Docket No. CP92-703-000]

September 22, 1992

Take notice that on September 14, 1992, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP92-703-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new point of delivery for sales service to an existing wholesale customer pursuant to its blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Columbia requests authorization to construct and operate the facilities necessary to provide a new point of delivery for sales service to Washington Gas Light company (Washington Gas) in Prince William County, Virginia; to serve a new residential development, as follows:

Wholesale customer	Estimated design day delivery (Dth)	Estimated annual delivery (Dth)	Estimated construction cost ($)
Washington Gas Light Company	1,000	365,000	82,100

Columbia states that the additional point of delivery has been requested by Columbia's existing wholesale customer to serve a new residential development (Lake Manassas). Columbia indicates that the quantities to be provided through the new delivery point are within Columbia's currently authorized level of sales service and will be within existing peak day entitlements of Washington Gas. Columbia states that the sales to be made through the proposed new point of delivery will be under Columbia's currently effective service agreement with Washington Gas under Rate Schedule CDS. Finally Columbia indicates that Washington Gas has agreed to reimburse Columbia for all cost exceeding $45,000 plus any gross-up for tax purposes.

Comment date: November 6, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Com., Division of Enron Corp.

[Docket No. CP92-710-000]

September 22, 1992.

Take notice that on September 17, 1992, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-710-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to

operate and maintain existing delivery facilities, originally installed to serve single end-users through local distribution companies (LDCs), to serve multiple end-users, under Northern's blanket certificate issued in Docket No. CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it originally installed 90 farm taps to provide service to single end-users through local distribution companies. Almost all of these facilities were constructed and certified in the 1960's and 1970's. However, Northern states, it was recently brought to Northern's attention that certain LDC's and landowners installed additional distribution lines and meters downstream of Northern's farm tap facilities, to provide service to customers other than those Northern had installed the farm taps to serve. Northern conducted an investigation to identify the locations on its system where facilities had been installed by others.

To be in compliance with the Regulations, Northern initially filed an application on February 10, 1992, at Docket No. CP92-342-000, pursuant to its blanket certificate and § 157.205 and 157.212 of the Regulations for authorization to operate and maintain 90 existing delivery facilities to serve multiple end-users. Northern states that because of an adverse intervention by Minnegasco, Inc., a Division of Arkla, (Minnegasco), its application was treated as a section 7 by the Commission. Northern further states that because Minnegasco's intervention has been withdrawn, Northern cannot justify the $39,440 filing fee, and therefore Northern is withdrawing its application in Docket No. CP92-342-000, and filing the instant application.

Northern also states that volumes delivered to the existing delivery points will not impact Northern's peak day or annual deliveries.

Comment date: November 6, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23720 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-65-008, CP89-2107-003]

Arkla Energy Resources, a division of Arkla, Inc.; Filing

September 23, 1992.

Take notice that on September 18, 1992, Arkla Energy Resources, a division of Arkla, Inc. ("AER") tendered for filing the following tariff sheets to its FERC Gas Tariff:

Second Revised Vol. No. 1

Second Subst Fifth Revised Sheet No. 11
Second Subst Fifth Revised Sheet No. 16
Substitute Seventh Revised Sheet No. 11
Substitute Seventh Revised Sheet No. 16
Substitute Eighth Revised Sheet No. 11
Substitute Eighth Revised Sheet No. 16
Second Subst Eleventh Revised Sheet No. 11
Second Subst Eleventh Revised Sheet No. 16
Second Subst Twelfth Revised Sheet No. 11
Second Subst Twelfth Revised Sheet No. 16
Second Subst Thirteenth Revised Sheet No. 11
Substitute Thirteenth Revised Sheet No. 16
Substitute Fifteenth Revised Sheet No. 11
Substitute Fifteenth Revised Sheet No. 16
Original Sheet No. 18A
Original Sheet No. 18B
Original Sheet No. 18C
Original Sheet No. 18D
Original Sheet No. 46A
Original Sheet No. 46B
Original Sheet No. 46C
Original Sheet No. 46D
Original Sheet No. 46E
Original Sheet No. 46F
Original Sheet No. 46G
Original Sheet No. 46H
Original Sheet No. 46I
Original Sheet No. 46J
Original Sheet No. 46K
Original Sheet No. 46L
Original Sheet No. 46M
Original Sheet No. 46N
Original Sheet No. 46O
Original Sheet No. 46P
Original Sheet No. 46Q
Original Sheet No. 46R
Original Sheet No. 46S
Original Sheet No. 46T
Original Sheet No. 46U
Original Sheet No. 46V
Original Sheet No. 46W
Original Sheet No. 46X
Original Sheet No. 46Y
Original Sheet No. 46Z
Original Sheet No. 46AA
Original Sheet No. 46BB
Original Sheet No. 46CC

First Revised Vol. No. 1-A

Third Substitute Third Revised Sheet No. 5
Substitute Fourth Revised Sheet No. 5
Substitute Fifth Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 21
Original Sheet No. 21A
First Revised Sheet No. 33
Original Sheet No. 55A
Original Sheet No. 55B
Original Sheet No. 55C
First Revised Sheet No. 56

AER states that it is filing the above tariff sheets to implement the terms of the Settlement approved in the Commission's order of August 6, 1992. Arkla Energy Resources, a division of Arkla, Inc., 60 FERC ¶ 61,160.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23648 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M#

[Docket No. RP92-211-001]

El Paso Natural Gas Co.; Compliance Filing

September 23, 1992.

Take notice that on September 18, 1992, El Paso Natural Gas Company ("El Paso") filed pursuant to part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act and in compliance with the directive of the Commission in its order issued August 31, 1992, Substitute Third Revised Sheet No. 251 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective September 1, 1992.

El Paso states that by order issued August 31, 1992, the Commission accepted, to become effective September 1, 1992, certain tariff sheets providing for the elimination of the maximum rate under Rate Schedule IS-1, applicable to interruptible sales, and in place thereof establish a negotiated gas cost rate. Ordering paragraph (B) of the August 31, 1992 order required El Paso to file tariff language to comply with the reporting requirements and affiliate transaction requirements of part 284 of the Commission's Regulations and Order No. 497 with respect to its IS-1 sales.

Accordingly, El Paso submitted Substitute Third Revised Sheet No. 251 expressly including in its tariff that El Paso shall comply with the provisions against undue discrimination contemplated by the reporting requirements of part 284 of the Commission's Regulations, by Order No. 497 and the Commission's orders issued November 29, 1988 and April 28, 1989 at Docket Nos. CP88-332-000 and CP88-332-001, respectively, to protect against undue preference to affiliates or to El Paso's own merchant service.

El Paso requested that the tendered tariff sheet be accepted for filing and permitted to become effective September 1, 1992, the same date as authorized by the Commission's order issued August 31, 1992 at Docket No. RP92-211-000.

Copies of the filing were served upon all parties of record in Docket No. RP92-211-000 and interested state regulatory commissions.

El Paso states that copies of the filing were served upon all parties of record in Docket No. RP92-211-000 and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23649 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-36-000]

Gateway Pipeline Co.; Conference

September 24, 1992.

Take notice that on Tuesday, October 6, 1992, at 10 a.m., a conference will be convened in the above-captioned docket to discuss Gateway Pipeline Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference, however, will not confer parties status. For additional information, interested persons can call Ingrid Olson at (202) 208-0691 or William C. Lansinger, Jr., at (202) 208-2082.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23722 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88-269-002]

Kamine/Besicorp Syracuse, L.P.; Amendment to Filing

September 24, 1992.

On September 22, 1992, Kamine/Besicorp Syracuse, L.P. tendered for filing a supplement to its filing in this docket.

The supplement provides additional information pertaining to the ownership structure of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed by October 7, 1992, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23716 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-99-000]

Kern River Gas Transmission Co.; Filing

September 24, 1992.

Take notice that on September 22, 1992, Kern River Gas Transmission Company ("Kern River"), submitted for filing ten copies each of 1st Revised 2nd Substitute Original Sheet No. 5 and 1st Revised Substitute Original No. 6 to Original Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1992.

Kern River states that the purpose of the filing is to reflect the new Annual Charge Adjustment (ACA). The New ACA rate is $0.0023 compared to $0.0024, a decrease of $0.0001.

Kern River states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20425, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such petitions or protests should be filed on or before October 1, 1992. Protests will be considered by the Commission in determining appropriate action but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23715 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-53-001]

K N Energy, Inc., Tariff Filing

September 23, 1992.

On September 10, 1992, K N Energy, Inc. ("K N") tendered for filing the following revised tariff sheet:

First Revised Volume No. 1-A

Fifth Revised Sheet No. 4

as part of its Annual Charge Adjustment (ACA) filing. Certain rates contained therein were inadvertently misstated. On September 10, 1992 K N filed Substitute Fifth Revised Sheet No. 4 to correct this error.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rule of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23646 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-40-000]

Louisiana-Nevada Transit Co.; Prefiling Conference

September 23, 1992.

Take notice that a prefiling conference will be held in this proceeding on Wednesday, October 14, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The purpose of the conference is to discuss the summary of LNT's plan for implementation of Order No. 636 and Order No. 636-A. All parties and the Commission Staff are invited to attend. For additional information, contact William J. Collins at (202) 208-0248.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23650 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-5-000]

Midwestern Gas Transmission Co., Filing

September 23, 1992.

Take notice that on September 18, 1992, Midwestern Gas Transmission Company (Midwestern) filed its Thirty-Eighth Revised Sheet No. 5 and Twenty-Fifth Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1992. Midwestern states that this filing reflects the new Annual Charge Adjustment of $.0022 per dekatherm.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23647 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-21-000]

National Fuel Gas Supply Corporation; Prefiling Conference

September 24, 1992.

Take notice that a prefiling conference will be convened in this proceeding on October 7, 1992, at 10 a.m., in Washington, DC at the offices of the Federal Energy Regulatory Commission, at 810 First Street NE., Washington, DC.

The purpose of this prefiling conference is to discuss further National Fuel Gas Supply Corporation's summary of its proposal to comply with Order No. 636, as a follow-up to the second prefiling conference that was held on September 9, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, interested parties may call Donald Williams at (202) 208-0743.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23717 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP92-1-010 and RP91-224-006]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 23, 1992.

Take notice that Northern Natural Gas Company (Northern) on September 21, 1992, tendered for filing to become part of Northern's F.E.R.C. Gas Tariff Third Revised Volume 1, the following tariff sheets, proposed to be effective November 1, 1991.

Substitute Fourth Revised Sheet No. 52F.14
Substitute Second Revised Sheet No. 52F.14a
Substitute Original Sheet No. 52F.14b
Substitute Fourth Revised Sheet No. 52F.15
Substitute Sixth Revised Sheet No. 56A

Northern states that such tariff sheets are being submitted in compliance with the Commission's Letter Order dated August 25, 1992, in Docket Nos. RP92-1-007 and RP91-224-003, to clarify the tariff provisions regarding processing.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc 92-23645 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-70-000]

OkTex Pipeline; Telephone Conference

September 24, 1992.

Take notice that on Thursday, November 19, 1992, at 10 a.m., a telephone conference will convene in the above-captioned docket to discuss OkTex Pipeline's (OkTex) summary of its proposed plan for implementation of Order No. 636.

The telephone conference will be held in room 8308, 825 North Capitol Street, NE., Washington, DC 20426. All interested parties are invited to attend at the Commission's offices or at OkTex's office in Tulsa, Oklahoma. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Albert Francese at (202) 208-0736 or Robert J. Szekely at (202) 208-0442.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23721 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-49-000]

South Georgia Natural Gas Co.; Conference

September 24, 1992.

Take notice that on Monday, November 2, 1992, at 11 a.m., a conference will be convened in the above-captioned docket to discuss South Georgia Natural Gas Company's (South Georgia) summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Albert Francese at (202) 208-0736 or Robert J. Szekely at (202) 208-0442.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23718 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-26-000]

United Gas Pipe Line Co., Conference

September 24, 1992.

Take notice that on Thursday, October 8, 1992 at 10 a.m., and if necessary Friday, October 9, 1992, a conference will be convened in the above-captioned docket to discuss United Gas Pipe Line Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in Hearing Room 1, of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Ingrid Olson at (202) 208-0681 or Bill Lansinger at (202) 208-2082.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23723 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-82-001]

Viking Gas Transmission Co.; Tariff Filing

September 24, 1992.

Take notice that on September 22, 1992, Viking Gas Transmission Company, (Viking) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Twenty First Revised Sheet No. 6, with a proposed effective date of November 1, 1992.

Viking states that the purpose of this filing is to supplement its previous annual purchased gas adjustment filing in this docket to reflect a new Annual Charge Adjustment (ACA).

Viking states that it has mailed copies of this filing to all of its affected customers and the applicable state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 1, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23724 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-82-000]

Viking Gas Transmission Co.; Tariff Filing

September 24, 1992.

Take notice that on September 22, 1992, Viking Gas Transmission Company (Viking), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Twentieth Revised Sheet No. 6, with a proposed effective date of October 1, 1992.

Viking states that the purpose of this filing is to reflect a new Annual Charge Adjustment (ACA). Viking states that the new ACA (as adjusted for heating value and pressure base) rate is $.0023.

Viking states that it has mailed copies of this filing to all of its affected customers and the applicable state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 1, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23725 Filed 9-29-92; 8:45 am]

BILLING CODE 6717-01-M

Southeastern Power Administration

Intent To Select Financial Sponsor and Intent To Formulate Power Marketing Policy

AGENCY: Southeastern Power Administration, Department of Energy.

ACTION: Notice.

SUMMARY: Notice of intent to select a financial sponsor for the proposed upgrade of the Wolf Creek Hydropower Project, Russell County, Kentucky, and Notice of Intent to Formulate a Power Marketing Policy to market additional capacity from Wolf Creek Project upgrade.

DATES: All submissions or requests should be made as soon as possible but not later than November 30, 1992.

ADDRESSES: Submissions Concerning the Proposed Marketing Policy: Comments/recommendations pertaining to the proposed marketing policy should be sent to John A. McAllister, Jr., Administrator, Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, (706) 283–9911.

SUBMISSIONS BY A PROPOSED SPONSOR: Potential sponsors should send a copy of the applications and/or proposals to both the Administrator of Southeastern Power Administration and the Nashville District of the Corps of Engineers at the addresses shown.

FOR FURTHER INFORMATION ABOUT THE PROPOSED PROJECT, CONTACT: CEORNEP–P, Sue Ferguson, Technical Manager, Nashville District Corps of Engineers, P.O. Box 1070, U.S. Courthouse 801 Broadway, Nashville, Tennessee 37202–1070, (615) 736–7191.

FOR FURTHER INFORMATION ABOUT THE PROPOSED MARKETING OF THE POWER FROM THE PROPOSED PROJECT, CONTACT: Leon Jourolmon, Director, Power Marketing Division, Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, (706) 283–9911.

SUPPLEMENTARY INFORMATION: 1. Wolf Creek Dam and Lake Cumberland constitute a significant portion of the Cumberland River Reservoir System. The project, authorized by the Flood Control Acts of 1938 and 1946, is operated to serve flood control, hydropower, recreation, fish and wildlife and water quality needs. Located at River Mile 460.9, Wolf Creek Dam controls drainage from almost 5,800 square miles. About 2.1 million acre-feet of Lake Cumberland storage is reserved for power production. The power plant contains six units brought online between 1951 and 1952. They have a total nameplate capacity of 270 megawatts (310 MW maximum peaking capacity). Average annual generation at Wolf Creek is 906 Gigawatt-hours, produced at a plant factor of 38 percent.

2. In the mid-1980's the Corps of Engineers investigated the economic and environmental soundness of upgrading the Wolf Creek powerplant. The resulting plan included replacing key electrical and mechanical components of the existing units to improve generating capacity and efficiency. These improvements would allow the plant to be operated more as a peaking plant. The benefits of the project would be derived from shifting the current energy production from off-peak to peak hours, where it has a higher value. No new energy would be produced. The upgrade plan has the potential to increase capacity between 80 MW and 110 MW and could cost roughly $40 million to $65 million (1992 prices).

3. The Wolf Creek Project is connected to the transmission systems of the Tennessee Valley Authority and East Kentucky Power Cooperative. Marketing of the additional capacity from this upgrade would have to be made over TVA's or East Kentucky's transmission system. Arrangements are in place whereby TVA will either buy or wheel to customers on the periphery of its systems, existing power from the project; however, transmission of additional capacity may have to be negotiated.

4. The present Federal policy set forth in the Water Resources Development Act of 1986 (Pub. L. 99–662) with regard to water resource projects is to encourage each agency to negotiate reasonable private financing for the development of approved project purposes. A sponsor is solicited to fund the construction of the upgrade of the Wolf Creek Hydropower Project and to pay the annual operation, maintenance, and major replacement costs and administrative costs associated with the proposed upgrade. The sponsor may also be expected to pay all the costs of preliminary studies required to be conducted by the Corps of Engineers before project construction can begin. These studies, include, among other things, the environmental, engineering and economic feasibility of the project. The project will be Federally owned. In return for providing the funding, the sponsor may receive an allocation of capacity from the proposed project upgrade, or other suitable compensation.

5. The Corps of Engineers and Southeastern Power Administration, jointly, intend to select the private sponsor to provide the financing for the planning, design and construction of the proposed Wolf Creek Hydropower Project upgrade, based on the proposals to be submitted pursuant to this notice.

6. Criteria to be utilized in the sponsor selection process will include but not be limited to:

—The sponsor must recognize that preference in the sale of power is given to public bodies and cooperatives as described in section 5 of the 1944 Flood Control Act, as amended.

—The sponsor must demonstrate the capability to finance the upgrade activities in accordance with requirements to be established by the Corps of Engineers and Southeastern Power Administration.

—The sponsor will be the entity whose proposal would result in provision of power at the least possible rate consistent with sound business principles.

7. The Corps of Engineers' and Southeastern Power Administration's selection process involves this public request for proposals and/or comments. Upon receipt of any response, the Corps of Engineers and Southeastern Power Administration will consider such comments and proposals and make final selection of the sponsor. All interested parties will be notified of the final selection.

8. If the proposal submitted involves an allocation of capacity from the Wolf Creek Project upgrade, a power marketing policy to cover the disposition of capacity from this upgrade will be required. Pursuant to Procedure for Public Participation in the Formulation of Marketing Policy published in the **Federal Register** of July 6, 1978, 43 FR 29186, Southeastern intends to develop a written marketing policy for future disposition of capacity from the proposed upgrade of the Wolf Creek Hydropower Project. The policy will address to the extent feasible those policy elements necessary to carry out the provisions of section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s. The proposed policy, however, would be only for any increased capacity which would result from the upgrade of the Wolf Creek Project and does not include any power currently marketed under the existing marketing policy for the Cumberland system of projects.

A copy of the current power marketing policy for the Cumberland System of Projects, published in the **Federal Register** on March 16, 1983, (48 FR 11148), of which the Wolf Creek Project is a part, may be obtained from the Southeastern Power Administration at the address shown above.

Proposals and recommendations for consideration in formulating the proposed written marketing policy, as well as for proposals to become a sponsor of the project upgrade, are solicited as are requests for further information or consultation.

Issued in Elberton, Georgia, September 17, 1992.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 92-23741 Filed 9-29-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4514-3]

Approval of Modification of Prevention of Significant Air Quality Deterioration (PSD) Permit to CertainTeed Corporation (EPA Project Number SJ 80-02)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on September 14, 1992, the Environmental Protection Agency issued a modified PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The modified PSD permit grants approval to CertainTeed to increase glass production from the glass melting furnace at their fiberglass manufacturing facility from 240 to 260 metric tons per day. Permitted emission limits are unchanged. The permit is subject to certain conditions, including an allowable emission rate as follows:

Source	Pollutants	Maximum emissions
Dry ESP Outlet	Particulate	8.4 lbs/hr 0.1 gr/scf.
C-11 Wet ESP Outlets (Combined total)	Particulate	11.8 lbs/hr 0.1 gr/scf.
C-12 Wet ESP Outlet	Particulate	2.6 lbs/hr 0.1 gr/scf.
Final Stack	Particulate	22.8 lbs/hr 0.1 gr/scf
	Opacity	20 percent.
	Hydrocarbons	18.0 lbs/hr.
	Nitrogen Oxides [1]	
	Sulfur Dioxide	54.0 lb/hr (oil-fired) 24.3 lb/hr (gas-fired) 24.3 lb/hr (gas-fired).

[1] Nitrogen Oxides: 40 lbs/hr (oil-fired, maximum design capacity) 55.9 lbs/hr (gas-fired, maximum design capacity)

FOR FURTHER INFORMATION CONTACT: Copies of the permit modification are available for public inspection upon request; address request to: Linda Barajas, (A-5-1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1244.

SUPPLEMENTARY INFORMATION: The modified PSD permit does not change BACT requirements for this project.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed within 60 days of the date of this notice.

Dated: September 21, 1992.

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

[FR Doc. 92-23708 Filed 9-29-92; 8:45 am]

BILLING CODE 6560-50-M

Public Water System Supervision Program Revision for the State of Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the provisions of Section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of Delaware has revised their approved State Public Water System Supervision Primary Program. Delaware has adopted drinking water regulations for filtration, disinfection, turbidity, giardia lamblia, viruses, legionella, and heterotrophic bacteria that corresponds to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, giardia lamblia, viruses, legionella, and heterotrophic bacteria promulgated by EPA on June 29, 1989 (54 FR 27486); and total coliforms (including fecal coliforms and E. Coli) that corresponds to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. Coli) promulgated by EPA on June 29, 1989 (54 FR 27544). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by October 30, 1992 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public request is made by October 30, 1992, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on October 30, 1992.

A request for a public hearing shall include the following:

(1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing.

(3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Regional Administrator, U.S. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.
- Delaware Division of Public Health, Department of Health and Social Services, P.O. Box 637, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Ghassan M. Khaled, U.S. EPA, Region 3, Drinking Water Section (3WM41), at the Philadelphia address given above; telephone (215) 597-0609.

Dated: September 21, 1992.

Edwin B. Erickson,

Regional Administrator, EPA Region 3.

[FR Doc. 92-23710 Filed 9-29-92; 8:45 am]

BILLING CODE 6560-30-M

[FRL-4515-5]

Public Water System Supervision Program Revision for the State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the provisions of Section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of West Virginia has revised their approved State Public Water System Supervision Primacy Program. West Virginia has adopted drinking water regulations for filtration, disinfection, turbidity, giardia lamblia, viruses, legionella, and heterotrophic bacteria that corresponds to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, giardia lambia, viruses, legionella, and heterotrophic bacteria promulgated by EPA on June 29, 1989 (54 FR 27486); and total coliforms (including fecal coliforms and E. Coli) that corresponds to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. Coli) promulgated by EPA on June 29, 1989 (54 FR 27544). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by October 30, 1992 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public request is made by October 30, 1992, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on October 30, 1992.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Regional Administrator, U.S. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.
- West Virginia Office of Environmental Health Services, Morrison Building, 815 Quarrier Street, Charleston, West Virginia 25301.

FOR FURTHER INFORMATION CONTACT: Ghassan M. Khaled, U.S. EPA, Region 3, Drinking Water Section (3WM41), at the Philadelphia address given above; telephone (215) 597-0609.

Dated: September 21, 1992.

Edwin B. Erickson,

Regional Administrator, EPA, Region 3.

[FR Doc. 92-23709 Filed 9-29-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30343; FRL-4164-2]

Ciba-Geigy Corp.; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 30, 1992.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30343] and the file symbol/registration number to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Attention PM 19, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 19, Dennis H. Edwards, Rm. 207, CM #2, (703-305-6386).

SUPPLEMENTARY INFORMATION: EPA received applications to register pesticide products containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of the applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 100-TUU. Applicant: Ciba-Geigy Corporation, Animal Health Division, PO Box 18300, Greensboro, NC 27419-8300. Product name: Azamethiphos Technical. Insecticide. Active ingredient: Azamethiphos s (6-chloro-oxazolo [4,5-b] pyridine-2 (3H)-on-3-ylmethyl) *O,O*-dimethyl-phosphorothioate 93 percent. Proposed classification/Use: General. For formulation into end use products intended for nondomestic indoor use. (PM 19)

2. File Symbol: 100-TUL. Applicant: Ciba-Geigy Corp. Product name: Alfacron 10 WP. Insecticide. Active ingredient: Azamethiphos s (6-chloro-oxazolo [4,5-b] pyridine-2 (3H)-on-3-ylmethyl) *O,O*-dimethyl-phosphorothioate 10 percent. Proposed classification/Use: General. For the control of house flies inside horse facilities. (PM 19)

3. File Symbol: 100-TUG. Applicant: Ciba-Geigy Corp. Product name: Alfacron 1% Bait. Insecticide. Active ingredient: Azamethiphos s (6-chloro-oxazolo [4,5-b] pyridine-2 (3H)-on-3-ylmethyl) *O,O*-dimethyl-phosphorothioate 1 percent. Proposed classification/Use: General. Attracts

and kills resistant and susceptible flies inside horse facilities. (PM 19)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: September 15, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–23504 Filed 9–29–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30247A; FRL–3794–9]

U. S. Borax and Chemical Corp; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by U. S. Borax and Chemical Corporation, to conditionally register the pesticide product Firebrake® ZB, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of January 23, 1985 (50 FR 3024), which announced that U. S. Borax and Chemical Corporation, 3075 Wilshire Blvd., Los Angeles, CA 90010, had submitted an application to conditionally register the pesticide product 20 Mule Team Firebrake® ZB (EPA File Symbol 1624–REN), containing the active ingredient zinc borate at 100 percent; an active ingredient not included in any previously registered product.

The application was approved for general use on July 15, 1991, as Firebrake® ZB (EPA Registration No. 1624–120) as a fire retardant and fungicide for manufacturing or formulating use only in producing plastics and coatings resistant to fungal growth.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of zinc borate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of zinc borate during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on zinc borate.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1128, CM #2, Arlington, VA 22202, (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: September 4, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–23505 Filed 9–29–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50750; FRL–4163–2]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

8340-EUP-10. Extension. Hoechst Celanese Corporation, Rt. 202-206, P.O. Box 2500, Somerville, NJ 08876. This experimental use permit allows the use of 1,204.50 pounds of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate on 511 acres of soybeans, tree and vine crops, and noncrop areas to evaluate the control of weeds. The program is authorized in the States of Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Mississippi, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington. The experimental use permit is effective from June 6, 1992 to June 6, 1993. A temporary tolerance for residues of the active ingredient in or on soybeans and tree and vine crops has been established. (Joanne Miller, PM 23, Rm. 237, CM #2, (703-305-7830))

707-EUP-122. Renewal. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 321 pounds (each year) of the fungicide myclobutanil on 535 acres (each year) of cucurbits to evaluate the control of powdery mildew. The program is authorized in the States of Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from August 11, 1992 to January 22, 1994. A temporary tolerance for residues of the active ingredient in or on cucurbits has been established. (Susan Lewis, PM 21, Rm. 227, CM #2, (703-305-6900))

55947-EUP-11. Sandoz Crop Protection Corporation, 1300 East Touhy Avenue, Des Plaines, IL 60018. This experimental use permit allows the use of 3,390 pounds of the herbicide 2-chloro-N-[(1-methyl-2-methoxy]-N-(2,4-dimethyl-thien-3-yl)-acetamide on 3,920 acres of corn to evaluate the control of yellow nutsedge, annual grasses, and annual broadleaf weeds. The program is authorized in the States of Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Missouri, Minnesota, Nebraska, North Carolina, North Dakota, Pennsylvania, Ohio, South Dakota, Tennessee, Virginia, and Wisconsin. The experimental use permit will be effective from March 1, 1993 to March 1, 1994. A temporary tolerance for residues of the active ingredient in or on corn has been established. (Cynthia Giles-Parker, PM 22, Rm. 229, (703-305-5540))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: September 18, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-23615 Filed 9-29-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-44591; FRL-4165-8]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tributyl phosphate (TBP) (CAS No. 126-73-8) and commercial hexane (CAS Nos. 96-37-7 and 110-54-3) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for TBP were submitted by the Tributyl Phosphate Task Force of the Synthetic Organic Chemical Manufacturers Association, Inc., on behalf of the test sponsor and pursuant to a test rule at 40 CFR 799.4360. They were received by EPA on August 14, 1992. The submission describes a two generation reproductive toxicity study of TBP administered in the feed to CD® (sprague dawley) rats. Health effects testing is required by this test rule. This chemical is used in aircraft hydraulic fluids; for extraction and separation processes in the Plutonium Uranium Reduction Extraction process; as a defoamer in the paper industry; in textile sizers, inks, and lacquers; and as a plasticizer.

Test data for commercial hexane were submitted by The American Petroleum Institute on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.2155. They were received by EPA on August 27, 1992. The submission describes the disposition and pharmacokinetics of commercial hexane following *iv bolus* injection, dermal absorption or nose-only inhalation. Health effects testing is required by this test rule. This chemical is used as a solvent to extract seed oils.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44591). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: September 22, 1992.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-23714 Filed 9-29-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-83002N; FRL-4165-3]

Receipt of Requests for Exclusion and Waiver from Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of requests for exclusion and waiver from testing.

SUMMARY: EPA requires that specified chemical substances be tested to determine if they are contaminated with halogenated dibenzo-*p*-dioxins (HDDs)

or halogenated dibenzofurans (HDFs), and that results be reported to EPA. However, provisions have been made for exclusion and waiver from these requirements if an appropriate application is submitted to EPA and is approved. EPA has received requests for an exclusion and waiver from these requirements from the Ethyl Corporation, and will accept comments on these requests. EPA will publish another Federal Register notice announcing its decisions on this request.

DATES: Submit written comments on or before October 15, 1992.

ADDRESSES: Submit written comments in triplicate, identified with the document control number OPPTS–83002N, to: Public Docket Office (TS–793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR part 766 (52 FR 21412, June 5, 1987) EPA requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs. Under 40 CFR 766.32(a)(1)(i) and (ii), a company may be granted an exclusion from the testing requirements of part 766 if the process and reaction conditions are such that HDDs and HDFs would not be produced, or appropriate testing of the chemical substances has already been done, respectively.

Under 40 CFR 766.32(a)(2)(i) a waiver may be granted if a responsible company official certifies that the chemical substance is produced only in quantities of 100 kilograms or less per year, and only for research and development purposes. Under 40 CFR 766.32(a)(2)(ii) a waiver may be granted if, in the judgement of EPA, the cost of testing would drive the chemical substance off the market or prevent resumption of manufacture or import of the chemical substance; or if it is not currently manufactured, and the chemical substance will be produced so that no unreasonable risk will occur due to its manufacture, import, processing, distribution, use, or disposal. Under 40 CFR 766.32(a)(2)(iii), waivers may be appropriately conditioned with respect to such factors as time and conditions of manufacture and use.

Under the regulation, a request for either an exclusion or a waiver must be made before September 4, 1987, for persons manufacturing, importing, or processing a chemical substance as of June 5, 1987; or 60 days before resumption of manufacture or importation of a chemical substance not being manufactured, imported, or processed as of June 5, 1987.

Ethyl Corporation requests an exclusion under 40 CFR 766.32(a)(1)(i) and a waiver under 40 CFR 766.32(a)(2)(ii) for 2,4,6-tribromophenol (CAS No. 118–79–6), which is produced as an impurity. Some of their supporting data was submitted as confidential business information (CBI). CBI, while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC from 8 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: September 22, 1992.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 92–23713 Filed 9–29–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 24, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.
Title: Section 43.21(c), Holding company annual report.
Action: Existing collection in use without an OMB control number.
Respondents: Businesses or other for-profit.
Frequency of Response: Annual reporting.
Estimated Annual Burden: 20 responses; 1 hour average burden per response; 20 hours total annual burden per response.
Needs and Uses: Filing of Security and Exchange Commission (SEC) Form 10K is required by §§ 1.785 and 43.21(c) of the FCC rules and authorized by section 219 of the Communications Act of 1934, as amended. Filing of the form is required. Each company, not of itself a communication common carrier, that directly or indirectly controls any communication common carrier having annual revenues in excess of $2,500,000 must file annually with the Commission, not later than the date prescribed by the SEC for its purposes, two complete copies of any annual report Forms 10K. It is anticipated that the Commission will soon be instituting a rulemaking to modify the dollar requirement from $2.5 million to $100 million. The information is used by FCC staff to regulate and monitor the telephone industry and by the public to analyze the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication.

OMB Number: None.
Title: Section 43.21(d), Miscellaneous and specialized common carrier annual letter.
Action: Existing collection in use without an OMB control number.
Respondents: Businesses or other for-profit.
Frequency of Response: Annual reporting.
Estimated Annual Burden: 13 responses; 1 hour average burden per response; 13 hours total annual burden.
Needs and Uses: Filing of § 43.21(d) data is required by §§ 21.1 and 43.21(d) of the FCC Rules and authorized by section 219 of the Communications Act of 1934, as amended. The information if required from each miscellaneous common carrier with operating revenues over $100 million for the calendar year. A letter is required from these large communications common carriers showing the company's operating revenues for that year and the value of its total communications plant at the end of the year. The information is used by FCC staff members to regulate and monitor the telephone

industry and by the public to analyze the industry. The information is compiled and published in the Commission's annual common carrier statistical publication and market share report. The revenue amounts are used as the basis for an equitable compensation mechanism for pay phone operators by the operator service providers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-23629 Filed 9-29-92; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1908]

Petitions for Reconsideration and Clarification and Petition for Stay of Actions in Rule Making Proceedings

September 23, 1992.

Petitions for reconsideration and clarification and petitions for stay have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed October 15, 1992. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of part 76, subpart J, § 76.501 of the Commission's Rules and Regulations Relative to Elimination of of the Prohibition on Common Ownership of Cable Television Systems and National Television Networks. (MM Docket No. 82-434) Number of Petitions Filed: 2

Subject: Amendment of part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Land Mobile Band. (PR Docket No. 86-3) Number of Petitions Filed: 2

Subject: Amendment of part 90 of the Commission's Rules to provide for the Use of the 220-222 Mhz Band by the Private Land Mobile Radio Services. (PR Docket No. 89-552) Number of Petitions Filed: 1

Subject: Conflicts Between Applications and Petitions for Rulemaking To Amend the FM Table of Allotments. (MM Docket No. 91-348) Number of Petitions Filed: 1

Petition for Stay

Subject: Amendment of part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Land Mobile Band. (PR Docket No. 86-3) Number of Petitions Filed: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-23630 Filed 9-29-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Relating to the Issuance of a Policy Statement

AGENCY: Federal Labor Relations Authority.

ACTION: Notice relating to the issuance of a policy statement.

SUMMARY: This notice solicits written comments on a question of whether the Federal Labor Relations Authority should issue a policy statement requested by the Federal Service Impasses Panel regarding an agency's obligation to continue to cooperate in certain impasse proceedings and, if the Authority issues such statement, what the Authority's policy should be.

DATES: Written comments must be submitted by the close of business on October 30, 1992, to be considered.

ADDRESSES: Send written comments to the Federal Labor Relations Authority, 500 C Street, SW., room 213, Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: Alicia N. Columna, Director, Case Control Office, 500 C Street, SW., Washington, DC 20424, (202) 382-0748.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority was established by Reorganization Plan No. 2 of 1978, effective January 1, 1979 (43 FR 36037). Since January 11, 1979, the Authority has conducted its operations under the Federal Service Labor-Management Relation Statute (92 Stat. 1192).

The Authority has received a request from the Federal Service Impasses Panel that it issue a general statement of policy or guidance in accordance with § 2429.4 of its rules and regulations. Interested persons are invited to express their views in writing as to whether the Authority should issue a policy statement on the question raised by the Panel, and if the Authority issues a statement, what the Authority's policy should be.

Notice

To Heads of Agencies, Presidents of Labor Organizations and Other Interested Persons:

The Authority has received a request from the Federal Service Impasses Panel pursuant to § 2429.4 of the Authority's rules and regulations (5 CFR 2429.4), that the Authority address a major policy issue arising in a case before the Panel. The specific question, as stated by the Panel, is as follows:

Is there a duty on the part of an agency to continue to cooperate with impasse proceedings if a question concerning representation arises following the Panel's assertion of jurisdiction over an impasse?

The issue before the Authority at this time is whether a policy statement on this question is warranted, and if the Authority issues a policy statement, what the policy should be. In conformity with § 2427.4 of our rules and regulations, the Authority solicits your views on these matters in writing. To receive consideration, such views must be submitted to the Authority by close of business on October 30, 1992.

Issued: Washington, DC, September 24, 1992.

Federal Labor Relations Authority.

Jean McKee,

Chairman.

Pamela Talkin,

Member.

Tony Armendariz,

Member.

[FR Doc. 92-23699 Filed 9-29-92; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Lasha Enterprises, Inc., 1750 N.W. 96th Avenue, Miami, FL 33172; Officers: Manfred J. Koberg, President/Director/Stockholder; Zenaida de la Vega, Vice President/Secretary; Sigurd Koberg, Treasurer

Eduardo C. Ferrer, d.b.a. E. C. Ferrer, CHB, 4301 Atlantic Ave., Unit #8, Long Beach, CA 90807, Sole Proprietorship

Panorama Express, Inc., d.b.a. Panorama Express, 2301 S. Federal Highway, Ft. Lauderdale, FL 33316; Officers: Roberta C.L. Robbert, President/Director/Stockholder; Zoila Ochoa, Secretary

Dated: September 25, 1992.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-23692 Filed 9-29-92; 8:45 am]

BILLING CODE 6730-01-M

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: William J. Herron, Jr., Director of Personnel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Christopher L. Koch,

Chairman.

The Members of the Performance Review Board are:

1. William D. Hathaway, Commissioner
2. Ming Chen Hsu, Commissioner
3. Francis J. Ivancie, Commissioner
4. Norman D. Kline, Chief Administrative Law Judge
5. Frederick M. Dolan, Jr. Administrative Law Judge
6. Charles E. Morgan, Administrative Law Judge
7. Russell A. Rockwell, Chief of Staff
8. Robert A. Ellsworth, Director, Policy Planning and Analysis
9. Robert D. Bourgoin, General Counsel
10. Joseph C. Polking, Secretary
11. Edward P. Walsh, Managing Director
12. Bruce A. Dombrowski, Deputy Managing Director
13. John Robert Ewers, Deputy Managing Director
14. Seymour Glanzer, Director, Bureau of Hearing Counsel
15. Norman W. Littlejohn, Director, Bureau of Administration
16. Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis
17. Wm. Jarrel Smith, Jr., Director, Bureau of Investigations
18. Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing

[FR Doc. 92-23691 Filed 9-29-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Compagnie de Suez, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Compagnie de Suez, Paris, France, and Banque Indosuez, Paris, France; to engage *de novo* through their subsidiary Indosuez Carr Futures, Inc., Chicago, Illinois, in providing securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Sullivan Bancshares, Inc., Sullivan, Illinois; to engage *de novo* in purchasing short term loan participations from The First National Bank of Sullivan, Sullivan, Illinois, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. The Farmers and Merchants Bankshares, Incorporated, Stuttgart, Arkansas; to engage *de novo* in residential, commercial, and agricultural real estate appraisal services pursuant to § 225.25(b)(13) of the Board's Regulation Y. These activities will be conducted in Arkansas, Prairie, Monroe, Jefferson and Lonoke Counties in the State of Arkansas.

Board of Governors of the Federal Reserve System, September 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23686 Filed 9-29-92; 8:45 am]

BILLING CODE 6210-01-F

First Western Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval, under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted,

these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Western Corp., Kimball, Nebraska; to acquire 100 percent of the voting shares of Citywide Bank of Northglenn, Northglenn, Colorado.

In connection with this application, Applicant also seeks approval to retain its wholly owned lending and leasing subsidiary, First Mortgage Bancorp, Kimball, Nebraska, and thereby continue to engage in direct lending activities pursuant to § 225.25(b)(1) and in leasing real and personal property pursuant to § 225.25(b)(5), and to retain its wholly owned insurance agency, Elm Creek Insurance Agency, Elm Creek, Nebraska, and thereby continue to engage in general insurance agency activities in a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23683 Filed 9-29-92; 8:45 am]

BILLING CODE 6210-01-F

Allen Bruce Guillory, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Allen Bruce Guillory, Mamou, Louisiana; to retain 1.15 percent of the voting shares of Guaranty Capital Corporation, Mamou, Louisiana, for a total of 10.85 percent, and thereby indirectly acquire Guaranty Bank of Mamou, Mamou, Louisiana.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. David Boyd Dean, Houston, Texas; to acquire an additional 11.52 percent of the voting shares of First Bancorporation of Cleveland, Inc., Cleveland, Texas, for a total of 13.87 percent and thereby indirectly acquire First Bank and Trust, Cleveland, Texas.

2. Garland Max Poynor, Jacksboro, Texas; to acquire an additional 5.19 percent of the voting shares of First Jacksboro Bancshares, Inc., Jacksboro, Texas, for a total of 29.60 percent, and thereby indirectly acquire The First National Bank, Jacksboro, Texas.

Board of Governors of the Federal Reserve System, September 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23682 Filed 9-29-92; 8:45 am]

BILLING CODE 6210-01-F

Meridian Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 23, 1992.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Meridian Bancorp, Inc., Reading, Pennsylvania; to acquire 100 percent of the voting shares of Meridian Bank, New Jersey, Cherry Hill, New Jersey, a *de novo* bank.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia, and Trust Company of Georgia, Atlanta, Georgia; to acquire 100 percent of the voting shares of HomeTrust Bank of Georgia, Gainesville, Georgia.

Board of Governors of the Federal Reserve System, September 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23685 Filed 9-29-92; 8:45 am]

BILLING CODE 6210-01-F

Southern National Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a

company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Southern National Corporation, Lumberton, North Carolina; to acquire FedFirst Bancshares, Inc., Winston-Salem, North Carolina, and thereby indirectly acquire First Federal Savings Bank, Winston-Salem, North Carolina, which will be merged into Southern National Bank of North Carolina, Lumberton, North Carolina, pursuant to § 5(d)(3) of the Federal Deposit Insurance Act, and thereby engage in owning and operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23684 Filed 9-29-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Clinical Laboratory Improvement Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee Meeting.

Times and Dates: 8 a.m.-5 p.m., October 28, 1992, 8 a.m.-4 p.m., October 29, 1992

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services and the Assistant Secretary for Health regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters to be Discussed: This is the initial meeting of the Clinical Laboratory Improvement Advisory Committee. The agenda will include discussion of the role of the committee, information and data needs of the committee, the need for and topic areas for subcommittees, and time schedules for committee activities. It will also include an overview of the laboratory standards portion of the Clinical Laboratory Improvement Amendments (CLIA) Final Rule, the research plan for conducting CLIA studies, and the ongoing and planned implementation activities.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Henry M. Colvin, Assistant Director for Program Policy, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 1600 Clifton Road, NE, Mailstop G-25, Atlanta, Georgia 30333, telephone 404/639-1706.

Anyone wishing to make an oral presentation should submit their request in writing to Mr. Colvin by close of business, October 16, 1992. The request should include the name, address, and telephone number of the participant, the approximate time needed, and a brief summary of the topic to be presented. Depending on the number of requests received, up to 10 minutes will be allowed for each oral presentation.

Dated: September 24, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-23671 Filed 9-29-92; 8:45 am]

BILLING CODE 4160-18-M

Social Security Administration

[Social Security Acquiescence Ruling 92-7(9)]

Gonzalez v. Sullivan; Effect of Initial Determination Notice Language on the Application of Administrative Finality

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 92-7(9)

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Walt Burton, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966-5041.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Ninth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after September 30, 1992. If we made a determination or decision on your application for benefits between September 12, 1990, the date of the Court of Appeals' decision and September 30, 1992, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), or 416.1485(b), that application of the Ruling would change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e), or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling

as provided for by 20 CFR 404.985(c), or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Gwendolyn S. King

Commissioner of Social Security

Acquiescence Ruling 92–7(9)

Gonzalez v. Sullivan, 914 F.2d 1197 (9th Cir. 1990)—Effect of Initial Determination Notice Language on the Application of Administrative Finality—Titles II and XVI of the Social Security Act.

Issue

Whether an initial determination in the Social Security or Supplemental Security Income (SSI) programs must be reopened when the notice of the initial determination did not explicitly state that the failure to seek reconsideration results in a final determination, and the claimant did not pursue a timely appeal.

Statute/Regulation/Ruling Citation

Section 205(b)(1) of the Social Security Act (42 U.S.C. 405(b)(1)), 20 CFR 404.904, 404.905, 404.957(c)(1), 404.987, 404.988, 404.989, 416.1404, 416.1405, 416.1457(c)(1), 416.1487, 416.1488, 416.1489.

Circuit

Ninth(Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington)—*Gonzalez v. Sullivan*, 914 F.2d 1197 (9th Cir. 1990)

Applicability Of Ruling

This Ruling applies to determinations or decisions on subsequent applications at all administrative levels (i.e., initial, reconsideration, administrative law judge hearing and Appeals Council).

Description Of Case

Mr. Gonzalez first applied for disability benefits on May 26, 1983, alleging that his disability began on March 8, 1982. In a notice dated July 27, 1983, the Secretary denied the application. The notice stated that:

> If you believe that this determination is not correct, you may request that your case be reexamined. If you want this reconsideration, you must request it not later than 60 days from the date you receive this notice. You may make your request through any social security office. If additional evidence is available, you should submit it with your request. Please read the enclosed leaflet for a full explanation of your right to question the determination made on your claim.
>
> If you do not request reconsideration of your case within the prescribed time period, you still have the right to file another application at any time.

On October 24, 1984, Mr. Gonzalez reapplied for disability benefits, once again alleging that he had been disabled since March 8, 1982. After a hearing, an Administrative Law Judge denied the plaintiff's application. The decision stated, in relevant part, that the issue of disability was *res judicata* through July 27, 1983, the date of the initial denial on the previous application. The Administrative Law Judge also did not reopen the determination on the claimant's previous application. The Administrative Law Judge's decision became the final decision of the Secretary for the period after July 27, 1983. Mr. Gonzalez appealed to district court. After the district court found that substantial evidence supported the Secretary's decision, Mr. Gonzalez appealed to the United States Court of Appeals for the Ninth Circuit. On appeal to the Ninth Circuit, the claimant raised, for the first time, the issue of the sufficiency of the notice of the initial determination on his first application.

Holding

The Ninth Circuit held that the notice given in the determination on the first application violates a claimant's fifth amendment right to procedural due process. In addition, the court stated that:

> Moreover, the form of the notice used here is sufficiently misleading that it introduces a high risk of error into the disability decisionmaking process.... One of the fundamental requirements of procedural due process is that a notice must be reasonably calculated to afford parties their right to present objections.... The notice given in this case does not clearly indicate that if no request for reconsideration is made, the determination is final.

Statement As To How Gonzalez Differs From Social Security Policy

It is SSA's policy to issue notices that provide claimants procedural due process. SSA believes that the notices of initial determination used in the past have done that. The notice and the enclosed leaflet explained the claimant's rights and the result of not appealing the determination.

The notice language at issue in *Gonzalez* was revised in 1989 to explain more clearly the difference between appealing a determination, which prevents the determination from becoming final, and filing a new application. SSA completed implementation of the 1989 notice language change in February 1990. SSA is further revising that language in accordance with section 5107 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (OBRA '90). The statute provides that determinations made on or after July 1, 1991, may not be given *res judicata* effect if the claimant demonstrates that he/she failed to appeal the determination "acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for benefits in lieu of seeking review of an adverse determination, provided by any officer or employee" of the SSA or a State agency making determinations for the Secretary.

As stated above, the Ninth Circuit Court of Appeals has found that the Secretary's former notice language resulted in a denial of due process.

Explanation Of How SSA Will Apply The Decision Within The Circuit

This Ruling applies only to cases involving claimants who: (1) reside in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, or Washington; and (2) received an adverse initial determination made prior to July 1, 1991; and (3) did not timely appeal that determination. Claimants who file new claims after receiving notices of initial determinations made on or after July 1, 1991 are protected by the provisions of OBRA '90 as explained above. SSA will apply this Ruling in adjudicating a subsequent application at the initial, reconsideration, Administrative Law Judge, or Appeals Council levels.

A new determination based on the merits of the claim must be issued and a notice of the determination must be sent to the claimant in accordance with 20 CFR 404.992 or 416.1492 if:

- the claimant received a notice like that received by Mr. Gonzalez, as described above; and
- the claimant files a subsequent application; and
- the claimant either requests reopening of the prior initial determination or requests some or all of the benefits claimed in the prior application.

For purposes of this Ruling, the time limits for reopening and revising final agency determinations do not apply.

[FR Doc. 92–23634 9–29–92; 8:45 am]

BILLING CODE 4190–29–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3368; FR-3157-N-02]

Funding Availability for the HUD-Administered Small Cities Community Development Block Grant Program; Fiscal Year 1992 Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards for Fiscal Year 1992.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department under the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program for Fiscal Year (FY) 1992. The announcement contains the names and addresses of grantees and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, room 7184, 451 7th Street, SW., Washington, DC 20410, Telephone (202) 708–1322. The TDD number is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Title I of the Housing and Community Development Act of 1974, as amended (the HCD Act), authorizes the Community Development Block Grant (CDBG) Program. Section 106 of title I permits States to assume administrative responsibility for the CDBG Program for nonentitled units of general local government within their jurisdictions. Section 106 provides that HUD will administer the CDBG Program for nonentitled areas within a State which does not assume administrative responsibility for the program.

Hawaii and New York are the only two States which have not elected to assume administrative responsibility for the nonentitled CDBG Program. HUD therefore continues to operate the nonentitlement CDBG Program in these two States in accordance with 24 CFR part 570, subpart F.

Hawaii's FY 1992 Nonentitlement Allocation

In Hawaii, HUD distributes nonentitlement CDBG funds on a formula basis as set out in 24 CFR 570.435 because there are only three eligible jurisdictions—the counties of Hawaii, Kauai, and Maui. The State of Hawaii's Fiscal Year 1992 nonentitlement allocation (including reallocated funds) totals $2,778,000. All three counties are allocated funds from this amount, in accordance with the formula set forth in 24 CFR 570.435, but must apply to HUD for the funds. County officials for these three counties have been notified of the amounts available to their respective counties for purposes of preparing applications. HUD expects to make final decisions regarding these applications in the next 60 days. The amounts available to each of three counties are as follows:

1. County of Hawaii, Lorraine R. Inouye, 25 Aupuni Street, Hilo, HI 96720: Amount available—$1,254,000
2. County of Kauai, JoAnn A. Yukimura, Lihue, HI 96766 Amount available—$508,000
3. County of Maui, Linda Crockett-Lingle, 200 South High Street, Maui, HI 96793: Amount available—$1,016,000.

For further information regarding these applications and grants, contact:

Ms. Patty Nicholas, Director, Community Planning and Development Division, Department of Housing and Urban Development, 500 Ala Moana Boulevard, Suite 500, Honolulu, HI 96813–1323.

New York's FY 1992 Nonentitlement Allocation

In New York State, HUD conducts an annual competition in which nonentitled units of general local government may apply for nonentitled CDBG funds allocated to New York State. The Fiscal Year 1992 competition in New York State was announced by means of a Notice of Funding Availability (NOFA) published in the **Federal Register** on March 2, 1992 (57 FR 7438). The NOFA announced the allocation of the State's nonentitled CDBG funds between the New York Regional Office and the Buffalo Field Office as well as the amount of funds for available for Single Purpose and Comprehensive grants. A total of $41,199,000 was available for nonentitled communities in New York State. The NOFA also explained in detail how HUD would apply regulatory threshold requirements for funding eligibility and the selection criteria for rating and scoring applications.

In New York, HUD received applications presenting 243 projects for consideration, seeking a total of more than $92 million in funding. One hundred and two (102) separate projects were selected for funding, totalling $41,199,000 in awards. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names, addresses and amounts of those awards as follows. For further information regarding these grants, contact either:

U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 26 Federal Plaza, New York, NY 10278–0068.

or;

U.S. Department of Housing and Urban Development, Community Planning and Development Division, Lafayette Court, 465 Main St., Buffalo, NY 14203.

The following awards were announced August 7, 1992.

Single Purpose Grants—New York Regional Office

1. Town of Liberty, Jack I. Simons, 120 North Main Street, Liberty, NY 12754—$400,000
2. Sullivan County, Walter Sipple, County Government Center, Monticello, NY 12701—$245,000
3. Village of Walden, Charles Frank, 8 Scofield Street, Walden, NY 12586—$400,000
4. Town of Rockland, Elton Harris, Town Hall, Livingston Manor, NY 1275?—$243,900
5. Town of Shawangunk, Kevin V. Hunt, P.O. Box 247, Wallkill, NY 12589—$400,000
6. Town of Shandaken, Neil Grant, P.O. Box 134, Shandaken, NY 12480—$400,000
7. Village of Greenport, William R. Pell, III, Village Hall, 236 Third Street, Greenport, NY 11944—$400,000
8. Town of Ulster, Frank Sottile, Town Hall, Neighborhood Road, Lake Katrine, NY 12449—$399,100
9. Village of Bloomingburg, Ronald Scott, P.O. Box 96, Bloomingburg, NY 12721—$400,000
10. Village of New Square, Mates Freisel, 766 North Main Street, New Square, NY 10977—$400,000
11. Village of Monticello, John M. Diuguid, 2 Pleasant Street, Monticello, NY 12701—$400,000

Comprehensive Grants—New York Regional Office

1. City of Kingston, John A. Amarello, 1 Garraghan Drive, Kingston, NY 12401—$600,000
2. City of Port Jervis, Richard K. Roberts, Municipal Building, Port Jervis, NY 12771—$600,000

Single Purpose Grants—Buffalo Field Office

1. City of Amsterdam, Mario Villa, City Hall, 61 Church St., Amsterdam, NY 12010—$400,000
2. City of Cortland, Ronald T. Walsh, Jr., City Hall, 25 Court St., Cortland, NY 13045—$364,630
3. City of Fulton, George C. Valette, Two Tower Drive–Suite B, Watertown Hill, Fulton, NY 13069—$112,400
4. City of Lockport, Thomas C. Rotundo, Jr., Municipal Bldg., One Locks Plaza, Lockport, NY 14094—$400,000
5. City of North Tonawanda, Elizabeth C. Hoffman, City Hall, 216 Payne Avenue, N. Tonawanda, NY 14120—$400,000
6. City of Ogdensburg, John C. Krol, City Hall, 330 Ford Street, Ogdensburg, NY 13669—$400,000
7. City of Oneonta, David W. Brenner, City Hall, 258 Main Street, Oneonta, NY 13820—$395,000
8. Town of Altona, Glenn Watts, Town Hall, Altona, NY 12910—$400,000
9. Town of Ausable, Robert Mitchell, Town Hall, South Sable St., Keeseville, NY 12944—$400,000
10. Town of Bellmont, JoAnne Hannon, Route 374, Merrill, NY 12955—$400,000
11. Town of Brandon, Patrick Kingston, RFD 1, North Bangor, NY 12966—$400,000
12. Town of Brighton, Al Graf, RFD Box 171E, Saranac Lake, NY 12983—$400,000
13. Town of Brookfield, Loren C. Corbin, Town Hall, Maine St., Brookfield, NY 13314—$400,000
14. Town of Caroline, Robert Spaulding, P.O. Box 36, Slaterville Springs, NY 14881—$400,000
15. Town of Champlain, Gerald Mayo, Town Hall, Champlain, NY 12919—$400,000
16. Town of Chateaugay, Patrick W. Burke, Town Hall, 45 East Main St., Chateaugay, NY 12920—$400,000
17. Town of Chesterfield, Roger E. Poland, Town Hall, Keeseville, NY 12944—$400,000
18. Town of Cincinnatus, Jack Stafford, Town Hall, Cincinnatus, NY 13040—$398,400
19. Town of Dannemora, Robert Kanaly, Town Hall, Dannemora, NY 12929—$400,000
20. Town of Forestport, Russell J. Hirschey, Town Hall, Forestport, NY 13338—$400,000
21. Town of Franklin, John P. O'Neill, RFD 1, Box 94, Vermontville, NY 12989—$400,000
22. Town of Friendship, Lawrence Riehle, 50 West Main St., Friendship, NY 14739—$400,000
23. Town of Gouverneur, Donald A. Peck, RD #5—Box 10, Gouverneur, NY 13643—$400,000
24. Town of Harrisburg, Stephen N. Bernat, RD 1, Lowville, NY 13367—$400,000
25. Town of Independence, James V. Clark, P.O. Box 38, Marietta Ave., Whitesville, NY 14897—$400,000
26. Town of Italy, Leslie Fitzwater, RD 2, Naples, NY 14512—$383,500
27. Town of Lewis, Joseph E. Boone, Town Hall, Lewis, NY 12950—$400,000
28. Town of Lorraine, William W. Johnson, 6 RD 1, Box 892, Lorraine, NY 13659—$400,000
29. Town of Salisbury, Robert T. Jorrey, Box 241, Salisbury Center, NY 13454—$400,000
30. Town of Savannah, Donald G. Colvin, 1564 North Main Street, Savannah, NY 13146—$99,700
31. Town of Shelby, John Fox, 11248 Maple Ridge Road, Medina, NY 14103—$400,000
32. Town of Smithfield, David G. Brooks, P.O. Box 146, Peterboro, NY 13134—$400,000
33. Town of Stephentown, Michael Angley, Staples Road, Stephentown, NY 12168—$400,000
34. Town of Stockton, Arthur A. Nist, 22 North Main Street, Stockton, NY 14784—$101,210
35. Town of Sullivan, John Gladney, RD #2, Lakeport Road, Chittenango, NY 13037—$369,000
36. Town of Verona, Maurice G. Deeley, Germany Road, RD #1, Box 249, Durhamville, NY, 13054—$400,000
37. Town of Watson, Virgil E. Taylor, Star Route, Lowville, NY, 13367—$297,000
38. Town of Wells, Allen L. Hunt, Town Hall, N.Y. Route 30, Wells, NY, 12190—$400,000
39. Town of Willet, K.C. Burlingame, Town Hall, P.O. Box 37, Willet, NY, 13863—$390,000
40. Town of Willsboro, Teresa Sayward, Town Office, Willsboro, NY, 12996—$400,000
41. Town of Wilmington, Joanne Zaumetzer, Town Hall, Wilmington, NY, 12997—$400,000
42. Village of Adams, Charles A. Peck, 2 North Main Street, Adams, NY, 13605—$400,000
43. Village of Arcade, Gordon H. Cramer, Village Office, 17 Church St., Arcade, NY, 14009—$179,050
44. Village of Canisteo, Arthur J. Burdick, 35 Main St., Canisteo, NY, 14823—$400,000
45. Village of Dolgeville, Bruce Smith, 41 N. Main St., Dolgeville, NY, 13329—$400,000
46. Village of Dresden, Timothy Chambers, 69 Seneca St., Dresden, NY, 14441—$400,000
47. Village of Edwards, Joseph C. Brassard, Town Hall, Main St., Edwards, NY, 13635—$400,000
48. Village of Franklinville, Raymond G. Doty, Village Hall, Franklinville, NY, 14737—$400,000
49. Village of Fredonia, Louis C. Mancuso, Village Hall, 9–11 Church St., Fredonia, NY, 14063—$362,100
50. Village of Gouverneur, Laura M. Slate, 33 Clinton St., Gouverneur, NY, 13642—$400,000
51. Village of Hancock, Robert H. Drumm, 66 East Front St., Hancock, NY, 13783—$400,000
52. Village of Homer, Mary Alice Bellardini, Village Hall, 31 North Main St., Homer, NY, 13077—$358,360
53. Village of Malone, Richard A. Gokey, 16 Elm St., Malone, NY, 12953—$400,000
54. Village of Millport, Kenneth Wood, 5508 Main St., Millport, NY, 14864—$400,000
55. Village of Moravia, Robert E. Copley, Central St., Moravia, NY, 13118—$352,000
56. Village of Northville, Sheldon F. Ginter, Third Street, Northville, NY, 12134—$400,000
57. Village of Penn Yan, Floyd Paddock, P.O. Box 426, 3 Maiden Lane, Penn Yan, NY, 14527—$385,000
58. Village of Phoenix, Carole G. Fields, 821 Main Street, Phoenix, NY, 13135—$400,000
59. Village of Port Henry, Richard Gonyeau, 25 South Main Street, Port Henry, NY, 12974 $258,950
60. Village of Saranac Lake, Richard V. DePuy, Power & Light Building, 2 Main Street, Saranac Lake, NY, 12983—$400,000
61. Village of Victory Mills, A. Bruce Cornell, P.O. Box 149, Pine Street, Victory Mills, NY, 12884—$400,000
62. Cayuga County, Herbert Marshall, Jr., County Office Bldg., 160 Genesee St., Auburn, NY, 13021—$400,000
63. Chenango County, Glenn Angell, 5 Court St., County Office Bldg., Norwich, NY, 13815—$400,000
64. Essex County, Joseph E. Boone, County Building Church St., Elizabethtown, NY, 12932—$395,000
65. Greene County, Frank Stabile, Jr., HCR 3, P.O. Box 909, Cairo, NY, 12413—$82,500
66. Jefferson County, William H. Fulkerson, 175 Arsenal St., Watertown, NY, 13601—$400,000
67. Madison County, Robert H. Kuiper, P.O. Box 635, Madison County Office Bldg., Wampsville, NY, 13163—$600,000
68. Montgomery County, Robert W. D'Arcangelis, Park St., P.O. Box 1500 County Annex Bldg., Fonda, NY, 12068—$400,000

69. Otsego County, Carl F. Higgins, County Office Bldg., 197 Main St., Cooperstown, NY, 13326—$595,000
70. Rensselaer County, John L. Buono, County Office Building, 1600 7th Avenue, Troy, NY, 12180—$360,000
71. St. Lawrence County, Betty H. Bradley, County Courthouse, Court Street, Canton, NY, 13617—$600,000
72. Warren County, Victor R. Grant, Municipal Center, Lake George, NY, 12845—$578,200

Comprehensive Grants—Buffalo Field Office

1. City of Ithaca, Benjamin Nichols, 108 East Green St., Ithaca, NY 14850—$600,000
2. City of Little Falls, Roger Stock, City Hall, 659 Main St., Little Falls, NY 13326—$553,000
3. City of Oswego, Terrance Hamill, City Hall, Oswego, NY 13126—$600,000
4. Village of Canastota, Joseph Paone, Village Hall, 205 S. Peterboro, Canastota, NY 13032—$577,000
5. City of Hornell, Shawn Hogan, 108 Broadway, Hornell, NY 14843—$600,000
6. City of Auburn, James Galvin, Memorial City Hall, 24 South St., Auburn, NY 13021—$564,000
7. City of Hudson, Michael Yusko, Jr., City Hall, Hudson, NY 12534—$600,000
8. City of Cohoes, Robert D. Signoracci, City Hall, Mohawk Street, Cohoes, NY, 12047—$600,000
9. City of Oneida, Army Carcini, City Hall, 109 North Main Street, P.O. Box 550, Oneida, NY, 13421—$600,000
10. Village of Lake Placid, Robert J. Peacock, 301 Main Street, Lake Placid, NY, 12946—$600,000
11. City of Plattsburg, Clyde M. Rabideau, Jr., City Hall, Plattsburgh, NY, 12901—$600,000
12. Village of Potsdam, William J. Lawson, Civic Center, P.O. Box 5168, Potsdam, NY, 13676—$600,000
13. Village of Medina, Howard A. Lake, 600 Main St., Medina, NY, 14103—$600,000
14. City of Mechanicville, Patrick Hildreth, City Hall, 36 N. Main Street, Mechanicville, NY, 12118—$600,000

Dated: September 21, 1992.

Randall Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92-23694 Filed 9-29-92; 8:45 am]

BILLING CODE 4210-29-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3411; FR-3195-N-02]

Fund Availability (NOFA) for Supportive Housing for Persons With Disabilities—Set-aside for Persons Disabled as a Result of Infection With the Human Acquired Immunodeficiency Virus

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability; Limited reopening of competition.

SUMMARY: On April 7, 1992, HUD announced in a Notice of Fund Availability (NOFA), published in the **Federal Register** (57 FR 11868), a competition for 285 units ($20,310,000) of the set-aside established in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Act, 1991 (Pub. L. 101-504, approved November 5, 1990) for supportive housing for persons disabled as a result of infection with the Human Acquired Immunodeficiency Virus (HIV). This competition has been completed, and there were not sufficient approvable applications to use all of the set-aside. HUD has decided to conduct a limited competition for the remaining 120 units in the set-aside. This competition is limited to all applicants who were unsuccessful in the April 7, 1992 competition.

DATES: The deadline date for receipt of revised applications is October 16, 1992. Revised applications must be received by 5:15 p.m. on the deadline date. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: Two copies of the revised applications must be delivered to Robert Wilden, Director, Housing for Elderly and Handicapped People Division, Division, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6116, Washington, DC 20410. HUD will date-stamp incoming applications to evidence timely receipt, and upon request, provide the applicant with an acknowledgement of receipt. Applications submitted by facsimile are not acceptable.

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Director, Housing for Elderly and Handicapped People Division, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6116, Washington, DC 20410, telephone (202) 708-2730. The TDD number is 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-220), the information collection requirements have been assigned OMB Control Number 2502-0462.

Purpose and Substantive Description

On April 7, 1992, HUD announced in a Notice of Fund Availability (NOFA), published in the **Federal Register** (57 FR 11868), a competition for 285 units ($20,310,000) of the set-aside established in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Act, 1991 (Pub. L. 101-504, approved November 5, 1990) for supportive housing for persons disabled as a result of infection with the Human Acquired Immunodeficiency Virus (HIV). This competition has been completed, and there were not sufficient approvable applications to use all of the set-aside.

This NOFA announces another competition for the remaining set-aside units. This competition is limited to all applicants who were unsuccessful in the April 7, 1992 competition. The allocation of capital advance for this NOFA (remainder of set-aside) is 120 units; $11,490,000. Because of this limited amount of funds, it is impractical to conduct a larger competition. All such applicants will receive a personal letter informing them of this limited competition and a copy of this NOFA. Applicants are to revise their previous applications based upon the requirements specified in the April 7, 1992 NOFA. HUD will provide technical assistance as needed. Applicants are to submit their revised applications within 45 days of this NOFA. HUD Headquarters will review the revised applications and make selections based on the April 7, 1992 NOFA.

Applicants who were successful in response to the original announcement of this competition will be notified of their selection, and will not be affected by today's notice.

Authority: Section 811, National Affordable Housing Act, Sec. 7(d). Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 18, 1992.

James E. Schoenberger,

Associate General Deputy, Assistant Secretary for Housing Federal Housing Commissioner.

[FR Doc. 92-23618 Filed 9-29-92; 8:45 am]

BILLING CODE 4210-27-M

Office of Fair Housing and Equal Opportunity

[Docket No. D-92-1002, FR-3345-D-01]

Amendment of Redelegation of Authority Under the Fair Housing Act

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of amendment of redelegation of authority.

SUMMARY: By this notice, the Assistant Secretary for Fair Housing and Equal Opportunity for the Department of Housing and Urban Development is amending a redelegation of authority published in the **Federal Register** on January 3, 1992, at 57 FR 296, which redelegated authority, initially redelegated from the General Counsel to the Assistant Secretary, to the Directors of the HUD Regional Offices for Fair Housing and Equal Opportunity (Regional Directors) to make determinations of no reasonable cause respecting fair housing complaints under 24 CFR 103.400. This amendment to the redelegation of authority published on January 3, 1992, clarifies that the Assistant Secretary for Fair Housing and Equal Opportunity is authorized to reopen for purposes of reconsideration determinations by the Regional Directors, as well as his or her own determinations of no reasonable cause.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Roy J. Rodriquez, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, room 5206, 451 Seventh Street, SW., Washington, DC 20410-2000, telephone: (202) 619-8041. (This is not a toll-free number.) A telecommunications device for hearing impaired persons (TDD) is available at 1-800-543-8294.

SUPPLEMENTARY INFORMATION: Part 103 of title 24 of the Code of Federal Regulations contains HUD's regulations governing the processing of complaints by members of the public under the Fair Housing Act. Under 24 CFR 103.400, in processing complaints under the Act, the General Counsel of HUD was delegated authority to make determinations of whether or not reasonable cause exists to believe that discrimination occurred. The General Counsel redelegated the authority in 24 CFR 103.400 to make determinations of no reasonable cause concerning fair housing complaints to the Assistant Secretary for Fair Housing and Equal Opportunity in a revised rule published in the **Federal Register** on December 28, 1990, at 55 FR 53293.

Under a redelegation of authority published in the **Federal Register** on January 3, 1992, at 57 FR 296, the Assistant Secretary for Fair Housing and Equal Opportunity redelegated to the Regional Directors the authority to issue determinations of no reasonable cause in processing fair housing complaints and to carry out functions attendant to such determinations. This redelegation did not affect the authority of the General Counsel, or the authority redelegated in part of Regional Counsel, to make determinations under 24 CFR 103.400.

This amendment to the redelegation of authority published on January 3, 1992, at 57 FR 296, clarifies that the Assistant Secretary for Fair Housing and Equal Opportunity is authorized to reopen for purposes of reconsideration determinations by Regional Directors, as well as his or her own determinations of no reasonable cause.

If the Assistant Secretary for Fair Housing and Equal Opportunity reopens for purposes of reconsideration a no reasonable cause determination, the Assistant Secretary or his or her designee shall promptly notify all parties to the complaint.

In another notice published elsewhere in today's **Federal Register**, the General Counsel amends a redelegation of authority published in the **Federal Register** on January 25, 1991, at 56 FR 2931, which redelegated authority to Regional Counsel respecting fair housing complaints under 24 CFR 103.400, to clarify that the General Counsel is authorized to reopen for purposes of reconsideration determinations of no reasonable cause by Regional Counsel, as well as his or her own determinations of no reasonable cause.

Accordingly, the Assistant Secretary for Fair Housing and Equal Opportunity amends the redelegation of authority published on January 3, 1992, at 57 FR 296, to read as follows:

Section A—Authority Redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity redelegates to the Directors of the HUD Regional Offices of Fair Housing and Equal Opportunity (Regional Directors) the authority under 24 CFR 103.400:

(1) To determine in processing fair housing complaints that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur;

(2) To carry out the following functions attendant to such a determination;

a. Issuing a short and plain written statement of the facts upon which the Regional Director has based the no reasonable case of determination.

b. Dismissing the complaint based on the no reasonable cause determination.

c. Notifying the aggrieved person and the respondent of the dismissal (including the written statement of facts) as required by 24 CFR 103.400(a)(1); and

d. Making public disclosure of the dismissal as described in 24 CFR 103.400(a)(1).

Section B—Authority Excepted

(1) The Assistant Secretary for Fair Housing and Equal Opportunity is authorized to reopen for purposes of reconsideration determinations of no reasonable cause by Regional Directors, as well as his or her own determinations of no reasonable cause.

(2) If the Assistant Secretary for Fair Housing and Equal Opportunity reopens for purposes of reconsideration any no reasonable cause determination, the Assistant Secretary or his or her designee shall promptly notify all parties to the complaint.

Section C—No Further Redelegation

The authority granted in Section A of this redelegation may not be further redelegated pursuant to this redelegation.

Section D—Redelegation Revoked

The redelegation of authority published in the **Federal Register** on January 3, 1992, at 57 FR 296 (Docket No. D-91-975; FR-3197-D-01) is revoked.

Authority: 42 U.S.C. 3600-3619; 42 U.S.C. 3535(d).

Dated: September 21, 1992.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92-23627 Filed 9-29-92; 8:45 am]

BILLING CODE 4210-01-M

Office of the General Counsel

[Docket No. D-92-1001; FR-3344-D-01]

Amendment of Redelegation of Authority Under the Fair Housing Act

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of amendment of redelegation of authority.

SUMMARY: By this notice, the General Counsel for the Department of Housing and Urban Development is amending a redelegation of authority published in the **Federal Register** on January 25, 1991, at 56 FR 2931, which redelegated authority to Regional Counsel to make determinations respecting fair housing complaints under 24 CFR 103.400. This amendment clarifies that the General Counsel is authorized to reopen for purposes of reconsideration determinations of no reasonable cause Regional Counsel have made concerning fair housing complaints, as well as his or her own determinations of no reasonable cause.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Harry L. Carey, Assistant General Counsel, Fair Housing Division, Office of the General Counsel, Department of Housing and Urban Development, room 9238, Washington, DC 20410. Telephone (202) 708–0570. (This is not a toll-free number.) The toll-free TDD Number for hearing impaired persons is 1–800–543–8294.

SUPPLEMENTARY INFORMATION: 24 CFR part 103 contains the Department's regulations governing the processing of complaints filed by members of the public under the Fair Housing Act. In a final rule published December 28, 1990, at 55 FR 53283, HUD revised 24 CFR 103.400(a) concerning determinations of whether there is or is not reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur in connection with a complaint filed under the Fair Housing Act. Under the final rule, the Assistant Secretary for Fair Housing and Equal Opportunity refers to the General Counsel all complaints where the Assistant Secretary, based on the facts, believes that a discriminatory housing practice has occurred or is about to occur. All other cases will be dismissed by the Assistant Secretary under 24 CFR 103.400(a)(1). Where a referral is made, the General Counsel either: (1) Issues a reasonable cause determination and a charge (24 CFR 103.400(a)(2)(i)); (2) issues a no reasonable cause determination and a dismissal (24 CFR 103.400(a)(2)(ii)); or (3) refers the matter to the Department of Justice if the complaint involves the legality of a local zoning or land use law or ordinance (24 CFR 103.400(a)(3)).

Under a redelegation of authority published on January 25, 1991, at 56 FR 2931, the General Counsel redelegated to the Regional Counsel of the ten HUD regions the authority under 24 CFR 103.400, except authority concerning complaints involving complex facts or novel issues of law or the legality of local zoning or land use laws or ordinances. In that redelegation of authority, the General Counsel redelegated concurrent authority to determine which complaints involve complex facts or novel issues of law or involve the legality of local zoning or land use laws to the Associate General Counsel for Equal Opportunity and Administrative Law and to the Assistant General Counsel for Fair Housing.

This amendment to the redelegation of authority published on January 25, 1991, at 56 FR 2931, clarifies that the General Counsel is authorized to reopen for purposes of reconsideration Regional Counsel determinations of no reasonable cause. After such reconsideration, the General Counsel may affirm the Regional Counsel's determination that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, issue an independent determination that no reasonable cause exists, or issue a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.

This amendment to the redelegation of authority also clarifies that the General Counsel may decide to reopen for purposes of reconsideration his or her own determinations of no reasonable cause.

If the General Counsel reopens for purposes of reconsideration a no reasonable cause determination, the General Counsel or his or her designee shall promptly notify all parties to the complaint.

In another notice published elsewhere in today's **Federal Register**, the Assistant Secretary for Fair Housing and Equal Opportunity is publishing an amendment to the redelegation of authority published on January 3, 1992, at 57 FR 298, in which the Assistant Secretary for Fair Housing and Equal Opportunity redelegated to the Directors of HUD Regional Offices for Fair Housing and Equal Opportunity the authority to make determinations of no reasonable cause. The amendment to the redelegation of authority clarifies that the Assistant Secretary for Fair Housing and Equal Opportunity is authorized to reopen for purposes of reconsideration determinations of no reasonable cause made by Directors of HUD Regional Offices for Fair Housing and Equal Opportunity, as well as his or her own determinations of no reasonable cause.

According, the General Counsel amends the redelegation of authority published on January 25, 1991, at 56 FR 2931, to read as follows:

Section A—Authority Delegated

(1) The General Counsel redelegates the authority under 24 CFR 103.400, except with regard to complaints found by the General Counsel to involve either complex facts or novel issues of law, or the legality of local zoning or land use laws or ordinances, to the ten Regional Counsel.

(2) The General Counsel redelegates the authority to determine which complaints involve complex facts or novel issues of law, or involve the legality of local zoning or land use laws to the Associate General Counsel for Equal Opportunity and Administrative Law and to the Assistant General Counsel for Fair Housing.

Section B—Authority Excepted

(1) The General Counsel is authorized to reopen for purposes of reconsideration determinations made by Regional Counsel that no reasonable cause exists that a discriminatory housing practice has occurred or is about to occur. The General Counsel may, following reconsideration, affirm a determination that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, issue an independent determination that no reasonable cause exists, or issue a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.

(2) The General Counsel may reopen for purposes of reconsideration his or her own determinations of no reasonable cause.

(3) If the General Counsel reopens for purposes of reconsideration a no reasonable cause determination, the General Counsel or his or her designee shall promptly notify all parties to the complaints.

Section C—No Further Redelegation

The authority granted in section A of this redelegation may not be further redelegated pursuant to this redelegation.

Section D—Redelegation Revoked

The redelegation of authority published in the **Federal Register** on January 25, 1991, at 56 FR 2931 (Docket No. D–91–941; FR–2969) is revoked.

Authority: 42 U.S.C. 3600–3619; 42 U.S.C. 3525(d).

Dated: September 21, 1992.

Frank Keating,

General Counsel.

[FR Doc. 92-23626 Filed 9-29-92; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-066-4333-12]

Notice of Closure; Palm Springs-South Coast Resource Area, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Notice of Closure of Public Entry to Public Lands.

SUMMARY: The original notice of closure as cited in the **Federal Register**/Vol. 57, No. 147, Page 33731, published on July 30, 1992 is hereby corrected under Summary to read, closed to public entry from the hours of 10 p.m. and 5:30 a.m.

Dated: September 19, 1992.

Russell L. Kaldenberg,

Area Manager.

[FR Doc. 92-23621 Filed 9-29-92; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-92-4333-11; NV5-92-39]

Nevada: Temporary Closure of Certain Public Lands in the Las Vegas District for Management of the 1992 "Gold Coast 300" Off-Highway Vehicle (OHV) Race

ACTION: Temporary closure of certain Public Lands in Clark County, Nevada, on and adjacent to the 1992 "GOLD COAST 300" race course on October 10, 1992. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittee(s) and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark County, Nevada will be temporarily closed to public access from 0001 hours, October 10, 1992, to 2359 hours, October 10, 1992, to protect persons, property, and public land resources on and adjacent to the High Desert Racing Association (HDRA) 1992 "GOLD COAST 300" OHV race course. Spectators are restricted to the start/finish, and the area shown as the high speed test section, along the paved I-15 frontage road only.

These temporary closures and restrictions are made pursuant to 43 CFR part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1992 "GOLD COAST 300" OHV race course.

The following public lands restricted or closed are described as: The Hidden Valley area, T. 23 S., R. 61 E., all of sections 1 through 36; T. 24 S., R. 61 E., all of sections 1 through 36. The Erie area, T. 24 S., R. 60 E., all of sections 1 through 36; T. 23 S., R. 60 E., all of section 36. The Jean area, T. 25 S., R. 59 E., all of sections 1 through 36. The Jean Lake area, T. 25 S., R. 60 E., all of sections 1 through 36; T. 25 S., R. 61 E., all of sections 1 through 36. The Roach Lake area, T. 26 S., R. 59 E., all of sections 1 through 36; T. 27 S., R. 59 E., all of sections 1 through 36. The Beer Bottle Pass area, T. 26 S., R. 60 E., all of sections 1 through 36. The Lucy Grey area, T. 27 S., T. 60 E., all of sections 1 through 36.

The above legal land descriptions are for public lands within Clark County, Nevada. A map showing specific areas closed to public access is available from the following BLM office: The Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 647-5000. Any person who fails to comply with this closure order issued under 43 CFR part 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Dated: September 16, 1992.

Colin P. Christensen,

Acting District Manager, Las Vegas District.

[FR Doc. 92-23623 Filed 9-29-92; 8:45 am]

BILLING CODE 4310-HC-M

[ID-010-02-1530-70-F279]

Foothills Fire in Rural Ada and Elmore Counties, ID; Emergency Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of roads, trails and all cross-country travel to mechanized vehicles (motor vehicles and mountain bikes) on BLM-administered lands within the perimeter of the Foothills Fire in rural Ada and Elmore Counties, Idaho.

SUMMARY: Operation of all mechanized vehicles (motorized vehicles and mountain bikes) is prohibited on public lands administered by the Bureau of Land Management within the boundaries of the Foothills Fire in Ada and Elmore Counties, Idaho to protect soil, watershed and wildlife values. The area is roughly bounded by the Foothills/Mayfield Road on the south, Lucky Peak Reservoir on the west, Cow Creek Road on the east and the South Fork of the Boise River on the north.

The closure will be in effect immediately and will continue for an indeterminate period, until such time as the authorized officer determines that the soil and vegetation within the burned area are sufficiently stabilized to sustain vehicle traffic. At that time some roads and trails will be re-opened for vehicle use. Exceptions to this closure, which will be posted, include vehicle use for administrative and emergency purposes. Under special circumstances, and upon request, the authorized officer may issue a permit allowing vehicle access into the area for other purposes, on a case-by-case basis. Within the perimeter of the fire, only the Blacks Creek Road will remain open to vehicle traffic. All traffic on the Blacks Creek Road will be confined to the roadbed and will not be permitted to travel off the road.

Definitions

(a) "Public lands" mean any lands or interest in lands owned by the United States and administered by the Bureau of Land Management.

(b) "Authorized Officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform under title 43.

(c) "Emergency vehicles" means any military, fire or law enforcement vehicles in use for emergency purposes.

(d) "Administrative vehicles" refers to vehicles used by an employee, agent, or designated representative of the Federal Government, or one of its contractors, in the course of their employment, agency or representation.

SUPPLEMENTARY INFORMATION: This closure is being jointly established and administered by the BLM, the Boise National Forest, the Idaho Department of Lands, and the Idaho Department of Fish and Game. Mechanized vehicle use on lands within the burned area of the fire administered by those agencies are similarly restricted. Authority for this closure is contained in CFR title 43, subpart 8341.2 and complies with CFR title 43, subpart 8364.1 Closure and Restriction Orders. Violation of this closure order is in accordance with CFR title 43, subpart 8360.0-7 punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: September 16, 1992.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 92-23620 Filed 9-29-92; 8:45 am]

BILLING CODE 4310-GG-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 732-TA-539-A through 539-F (Final)]

Uranium From Kazakhstan, Kyrgystan, Russia, Tajikistan, Ukraine, and Uzbekistan

AGENCY: United States International Trade Commission.

ACTION: Change in hearing date and date for prehearing briefs for the subject investigations.

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: On June 2, 1992, the Commission instituted the subject investigations and established a schedule for their conduct (57 FR 27065, June 17, 1992). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from August 11, 1992, to October 16, 1992 (57 FR 30946, July 13, 1992), and the Commission, revised its schedule in the investigations to conform with the Commerce's new schedule (57 FR 33735, July 30, 1992). On September 22, 1992, the Commission received a request from counsel for petitioners to change the date of the Commission's hearing and the date for the prehearing briefs.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than October 5, 1992; the prehearing conference will be held at the U.S. International Trade Commission Building on October 13, 1992; the prehearing staff report will be placed in the nonpublic record on October 5, 1992; the deadline for filing prehearing briefs is October 20, 1992; the hearing will be held at the U.S. International Trade Commission Building on October 23, 1992; and the deadline for filing posthearing briefs is October 28, 1992.

For further information concerning these investigations see the Commission's notice of investigations cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207)..

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: September 28, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–23856 Filed 9–29–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Privacy Act Records; Fee Billing and Collection System; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Corrected Notice of additional Privacy Act system of records.

SUMMARY: At 57 FR 43261 (September 18, 1992), the Commission published a notice pertaining to the existence and character of an additional Privacy Act System of Records pursuant to 5 USC 552a(e)(4). The category of individuals covered by the system is the holders of fee billing accounts with the Commission. The categories of records in the system are developed from information which is supplied by individuals or entities that apply for accounts and financial information which may be obtained from credit bureaus or the Commission field staff. The information obtained will be available to the Commission and its staff and may be made available to government agencies such as the Internal Revenue Service, the Department of Justice, the General Accounting Office and credit bureaus and debt collection contractors for the purposes of collecting debt owed to the Commission.

This corrected notice is being published to provide for public comment on the proposed system of records. Also reference to the potential routine use of this information to publish a list of delinquent account holders is being omitted because the Commission has decided not to propose publishing such a list.

DATES: This notice is effective November 18, 1992. Comments are due October 30, 1992.

ADDRESSES: An original and two copies of comments on this proposed system of records should be submitted to: Privacy Officer, Room 1312, Interstate Commerce Commission, Washington, DC 20423

System Address for this system is as follows:

The System is located at the Interstate Commerce Commission Headquarters in Washington, DC. The System Manager and address are as follows:

Chief, Budget and Fiscal Office, Interstate Commerce Commission, Room 1330, 12th and Constitution Avenue, NW., Washington, DC 20423

FOR FURTHER INFORMATION CONTACT: Kathleen M. King 202–927–5493, [TDD for hearing impaired: [(202)–927–5721.]

SUPPLEMENTARY INFORMATION: The above described System is called Fee Billing and Collection System (32–20–0014). The policies and practices for storing, retrieving, accessing, retaining, and disposing of the records in the System are as follows: The records are maintained on magnetic discs and kept in a locked file cabinet under direct control of the responsible official. The record source categories for the System are the individuals and entities who request fee billing accounts, credit bureaus, and ICC field staff. Access to these files will be made upon request and presentation of proper identification. Notification and contesting record procedures are the same as for all other Privacy Act files. No exemption in the Privacy Act applies to this system of record. The authority for maintenance of this system is found at 49 USC 10321, and 31 USC 3711 *et seq.* and 9701.

By the Commission, S. Arnold Smith, Privacy Officer.

Sidney L. Strickland, Jr.,

Secretary.

Pursuant to 5 USC 552a(e)(4), the Interstate Commerce Commission republishes this notice pertaining to the existence and character, of an additional system of records.

32–20–0014

SYSTEM NAME:

Fee Billing and Collection System.

SYSTEM LOCATION:

Interstate Commerce Commission, Budget and Fiscal Office, Room 1330, 12th and Constitution Avenue, NW, Washington, DC 20423.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or entities that hold fee billing accounts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual or entities submit Form ICC–1032 to request establishment of an account for fee billing purposes. Files contain a record of charges, including applicable interest, penalties and administrative charges and payments for fee billing accounts. File include correspondence and other documentation relating to collection activities of the ICC. The files may include financial information obtained from credit bureaus of developed by ICC field staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintenance of the system is found in 49 USC 10321, 31 USC 3711 *et seq.* and 9701.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Maintaining a recordkeeping and accounting system to record changes, including applicable interest, penalties and administrative charges, and payments for fee billing accounts.

The information in the system of records may be provided to other federal agencies and entities including but not limited to the Internal Revenue Service, the General Accounting Office, and the Department of Justice. The information also may be provided to credit bureaus and debt collection contractors, as authorized by the Debt Collection Act of 1982, 31 USC 3711, *et seq.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Budget and Fiscal files consist of paper records maintained in folders, and on automated data storage devices and magnetic computer discs Files are secured at all times.

RETRIEVABILITY:

Indexed in data base by account number and name of account holder. Paper records filed by account number.

SAFEGUARDS:

Access to the records is limited to authorized staff in the Budget and Fiscal Office and to other authorized officials or employees of the ICC on a need-to-know basis as determined by the Budget and Fiscal Office. All records are kept in limited access areas during duty hours and in locked files at all other times.

RETENTION AND DISPOSAL:

To be retained for 5 years.

SYSTEM MANAGER AND ADDRESS:

Interstate Commerce Commission, Chief, Budget and Fiscal Office, Room 1330, 12th and Constitution Avenue, NW, Washington, DC 20423.

NOTIFICATION PROCEDURES:

See 49 CFR part 1007.

RECORD ACCESS PROCEDURES:

See 49 CFR part 1007.

CONTESTING RECORD PROCEDURES:

See 49 CFR part 1007.

RECORD SOURCE CATEGORIES:

Account holders, credit bureaus, ICC field staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92–23704 Filed 9–29–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32055]

The Three Rivers Railway Company—Acquisition and Operation Exemption—The Pittsburgh and Lake Erie Railroad Company

The Three Rivers Railway Company (TRRC), a wholly owned noncarrier subsidiary of CSX Transportation, Inc. (CSXT), has filed a notice of exemption to acquire and operate approximately 67.8 miles of rail line owned by The Pittsburgh and Lake Erie Railroad Company (P&LE). Additionally, it will acquire by assignment from P&LE and operate: (1) A leasehold interest in 61.15 miles of rail lines owned by CSXT and (2) 223.3 miles of incidental trackage rights over the lines of third party carriers. These properties together constitute substantially all of the rail lines currently operated by P&LE. The properties consist of the following:

(a) Substantially all of the operating rail lines currently owned by P&LE, including the following main or branch lines (together with associated branch and/or side tracks and rights to operate over associated P&LE track and property):

(1) Approximately 19.67 miles of P&LE's main line between milepost 44.415 at West Pittsburgh, PA, and milepost 64.065 at Youngstown, OH;

(2) Approximately 38.49 miles of P&LE's main line between milepost 15.37 at McKeesport, PA, and milepost 53.86 at Brownsville Junction, PA;

(3) Approximately 4.19 miles of P&LE's Ohio River Branch between milepost 0.0 and milepost 4.19 in Beaver County, PA;

(4) Approximately 0.25 miles of P&LE's Neville Island Branch, connecting with CSXT's main line at approximately milepost CP–5 at Stowe Township, PA;

(5) Approximately 1.7 miles of P&LE's Koppel Branch, connecting with CSXT's main line at Big Beaver Township and Koppel Borough, PA and;

(6) Approximately 3.5 miles of P&LE's New Castle and Big Run Branches, in Taylor Township and New Castle, PA; [1]

(b) P&LE's leasehold interest in approximately 61.15 miles of rail line owned by CSXT, between milepost CP 43 at West Pittsburgh, PA, and milepost CP 17Y at Sinns, PA; [2]

(c) Incidental trackage rights over:

(1) 86.5 miles of rail lines owned by Consolidated Rail Corporation, consisting of 60.6 miles between Youngstown, OH, and Ashtabula, OH (milepost 58.3 to milepost 0.0),[3] and 25.9 miles of rail line between Youngstown and Shenango, PA (mileposts 58.3 to milepost 57.6, milepost 68.2 to milepost 87.9, and milepost 130.8 to milepost 136.3);

(2) 136.8 miles of rail line owned by Norfolk and Western Railway Company, extending from milepost 138.3 at Geneva, OH (near Ashtabula), through Erie County, to milepost 1.5 at Buffalo, NY.

The proposed transportation was to have been consummated on or about September 11, 1992. TRRC certifies that upon consummation it will become a class III carrier.

This notice of exemption is related to Finance Docket No. 32056, *CSX Transp., Inc.—Control—The Three Rivers Ry. Co.* In that proceeding, CSX Corporation (CSX) and its wholly owned Subsidiary, CSXT, have petitioned under 49 U.S.C. 10505 for an exemption from the prior approval requirements of 49 U.S.C. 11343 *et seq.*, for their continuance in control of TRRC following consummation of the proposed transaction.[4]

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[1] TRRC will also acquire P&LE's entire stock interest in the Mahoning State Line Railroad Company (Mahoning). P&LE currently holds 92.75 percent of the issued and outstanding common stock of Mahoning and will transfer that stock to TRRC under the terms of the Purchase and Sale Agreement. Mahoning owns a 4.61-mile branch line located between Bentley, and Shaw Junction, PA. However, that line was taken out of service, and no rail operations have been conducted on it for several years. Mahoning has no employees.

[2] The Sinns-West Pittsburgh line was sold to CSXT and simultaneously leased back to P&LE in 1991. See Finance Docket No. 31827, *CSX Transp., Inc.—Acq. & Lease Exempt.—Pittsburgh and Lake Erie R. Co.* (not printed), served June 28, 1991.

[3] Mileposts do not accurately reflect route miles because the trackage rights assigned included trackage from milepost 0.0 at Ashtabula to Ashtabula Harbor and certain trackage in Ashtabula Harbor yard.

[4] If the requested control exemption is not granted before the proposed acquisition is consummated, CSXT states that it will simultaneously with consummation place all the outstanding stock of TRRC in an independent voting trust pending final action on the control exemption. Under 49 CFR part 1013, its draft voting trust agreement was informally approved by Commission staff, and it was so notified in a letter dated August 28, 1992.

Any comments must be filed with the Commission and served on G. Paul Moates, Sidley & Austin, 1722 Eye Street NW., Washington, DC 20006.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 24, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23705 Filed 9-29-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 439X)]

CSX Transportation, Inc.—Abandonment Exemption—in Wayne County, MI

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR Part 1152 Subpart F-Exempt Abandonments to abandon a 1.06-mile rail line between milepost CSN-0.0, at Valuation Station 0+00, and milepost CSN-1.06, at Valuation Station 55.80, in Detroit, Wayne County, MI.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the 2-year period. CSXT further certified that the notice requirements at 49 CFR 1105.12 and 49 CFR 1152.50(d)(1) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on November 4, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by October 15, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 26, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to CSXT's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by October 9, 1992. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 22, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23706 Filed 9-29-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/reporting reporting requirement.
- The title of the recordkeeping/reporting requirement.
- The OMB and/or Agency identification numbers, if applicable.
- How often the recordkeeping/reporting requirement is needed.
- Whether small businesses or organizations are affected.
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ([202] 523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 ([202] 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

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[1] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Extension

Employment and Training Administration

Producers/Purchasers Survey Data Request
1205–0109; ETA 8566
On Occasion
Businesses or other for-profit; Small businesses or organizations 30 respondents; 53 total hours; 1 hour 45 minutes per response; 1 form.

To acquire aggregate statistics needed by the Secretary of Labor to make determinations of eligibility of petitioning worker to apply for worker trade adjustment assistance in accordance with Section 223 of the Trade Act of 1974, as amended.

Mine Safety and Health Administration

Rock Burst Control Plan
1219–0097
On occasion
Business and other for-profit; small businesses or organizations
2 respondents; 12 hours per response; 24 total burden hours

Requires metal and nonmetal mine operation to develop a rock burst control plan within 90 days after a rock burst has been experienced. Plans are required to be made available to MSHA inspectors and are used by the mine operator for work assignments to assure miner safety and to schedule correction work.

Signed at Washington, DC, this 25th day of September, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92-23702 Filed 9-29-92; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitons for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Hecla Mining Company

[Docket No. M-92-09-M]

Hecla Mining Company, Box C-8000, Coeur d'Alene, Idaho 83814-1931 has filed a petition to modify the application of 30 CFR 57.4761 (underground shops) to its Lucky Friday Mine (I.D. No. 10-00088) located in Shoshone County, Idaho. The petitioner proposes to perform limited routine maintenance and repair work at the shaft stations of Lucky Friday 4900, 5300, 5500, 5700, 5900 and 6100 level development headings. The petitioner requests that existing air control doors near the shaft station qualify as control doors for the temporary maintenance and repair area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 30, 1992. Copies of these petitions are available for inspection at that address.

Dated: September 23,1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-23703 Filed 9-29-92; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 2, 1992. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357-7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows: 1. *Applicant:* Sean Turner, Dept. Biological Sciences, University of Cincinnati, Cincinnati, OH 45221-0006.

Activity for Which Permit Requested

Import into USA. Enter Specially Protected Area. Enter Site of Special Scientific Interest. Recovery of lichnenized sandstone rocks from Linnaeus Terrace. Specific rocks are part of a long term experiment on growth enhancement of photosynthetic, endolithic microorganisms beginning in 1987. Rocks will be returned to McMurdo station for shipment to the University of Cincinnati for completion of analysis. Travel to the Cape Royds Adelie penguin rookery and collection of algal samples from the ponds surrounding the rookery. Samples collected will be of floating photosynthetic algal mats from the ponds nearest Shackleton's hut.

Location: Linnaeus Terrace, Asgard Mountains, Victoria Land. Cape Royds, Ross Island.

Dates: 10/15/92-2/15/93.

2. *Applicant:* Peter P. Sheridan, Dept. Biological Sciences, University of Cincinnati, Cincinnati, OH 45221-0006.

Activity for Which Permit Requested

Import into USA. Enter Specially Protected Area. Enter Site Recovery of lichnenized sandstone rocks from Linnaeus Terrace. Specific rocks are part of a long term experiment on growth enhancement of photosynthetic, enolithic microorganisms beginning in 1987. Rocks will be returned to McMurdo station for shipment to the University of Cincinnati for completion of analysis. Travel to the Cape Royds Adelie penguin rookery and collection of algal samples from the ponds surrounding the rookery. Samples collected will be of floating photosynthetic algal mats from the ponds nearest Shackleton's hut.

Location: Linnaeus Terrace, Asgard Mountains, Victoria Land. Cape Royds, Ross Island.

Dates: 10/15/92–2/15/93.

3. *Applicant:* Gerald L. Kooyman, Physiological Research Lab 0204, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, CA 92093.

Activity for Which Permit Requested

Taking. Enter specially protected area. Two breeding birds will be captured on the sea ice near the Cape Crozier colony. They will be held for about 30 minutes while they are weighed and a satellite transmitter is attached by quick-drying epoxy and nylon ties to the mid-line of the back. After attachment, the birds will be released to continue their journey to sea. When they return two or three weeks later, the transmitter will be removed. If recapture fails, the unit will be shed in late December when the bird moults. The Crozier birds occupy the most southerly and one of the smallest known colonies. It borders the southern Ross Sea polynga. There is no information on where these birds feed, nor how long the foraging cycles are. The satellite location data would provide this information, and whether their distribution at sea mixes with those birds from larger colonies to the north.

The birds at the McMurdo Sound ice edge will be handled in a similar manner as above to attach time-depth recorders or 3 satellite transmitters. Eight of these birds will be stomach lavaged for food habitat studies. Except for the satellite transmitters which will be moulted off, the TDR's will be removed after a few hours of diving by the birds. Birds are commonly found feeding in this area, but nothing is known about their foraging behavior, food habits or from what colonies they may come. This study will begin to determine this, as well as for the first time observe and determine foraging behavior in the areas where the birds are feeding.

Location: Cape Crozier emperor penguin colony. McMurdo Sound ice edge.

Dates: 10/15/92–01/1/93.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92–23660 Filed 9–29–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Chemical and Thermal Systems; Meetings

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date and Time: October 14, 1992; 8:30 a.m. to 5 p.m.

Place: Room 523, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Drs. Charles Malderelli and Robert Wellek, Program Directors, room 1115, National Science Foundation, 1800 G Street, NW, Washington, DC 20550. Telephone: (202) 357–9606.

Date and Time: October 21, 1992; 8:30 a.m. to 5 p.m.

Place: Room 540B, 1800 G Street, N.W., Washington, DC 20550.

Contact Person: Drs. Charles Malderelli and Robert Wellek, Program Directors, room 1115, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–9606.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support of research proposals submitted to the NSF for possible funding.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 24, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–23628 Filed 9–29–92; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Secaucus, NJ; Highway Accident

In connection with its investigation of a charter bus loss of control, overturn, and fire in Vernon, New Jersey, on July 26, 1992, the National Transportation Safety Board will convene a public hearing at 9 a.m., on Wednesday, October 21, 1992, in Ballroom D of the Meadowlands Hilton Hotel, Two Harmon Plaza, Secaucus, New Jersey. For further information contact Ted Lopatkiewicz, Office of Public Affairs, National Transportation Safety Board, 490 L'Enfant Plaza East, SW., Washington, DC 20594, telephone (202) 382–0660.

Dated: September 24, 1992.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 92–23729 Filed 9–29–92; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee; Notice of Meeting

The Nuclear Safety Research Review Committee (NSRRC) will hold a telephone conference meeting on October 22, 1992, from 4 p.m. until approximately 6 p.m. (If necessary, the meeting will be extended to approximately 7 p.m.) The designated conference room for the meeting will be the Rockville Room in the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814, with conference call hook-ups to participating committee members not present in the conference room. The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA). This meeting is open for attendance by members of the public who wish to be present at the committee's deliberations. Communication with committee members not present in the conference room will be by speaker phone located in the designated conference room.

The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) and through him to the Commission on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The purpose of this meeting is to deliberate on reports submitted to the Committee by two of its subcommittees. The first subject of deliberations will be the report of the Severe Accident Subcommittee on the "Severe Accident Research Program Plan Update," Draft NUREG–1365, Rev. 1. The second subject will be the report of the Advanced Reactor Subcommittee on AP–600 thermal-hydraulic testing plans, including the proposed conduct of integral systems tests at the ROSA facility of the Japanese Atomic Energy Research Institute.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be subject to the approval of the Committee chairperson in accordance with procedures established by the Committee.

Inquiries regarding this notice, any subsequent changes in the status of the meeting, the filing of written statements, and requests to speak at the meeting may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/492–3904), Monday through Friday, between 8:15 a.m. and 5 p.m.

Dated: September 24, 1992.

John Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92-23675 Filed 9-29-92; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 4, 1992, through September 18, 1992. The last biweekly notice was published on September 16, 1992 (57 FR 42767).

Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, And Opportunity For a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 30, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no

significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: September 1, 1992

Description of amendments request: The proposed amendments would revise the Unit Nos. 1 and 2 Spent Fuel Pool enrichment limit. The Spent Fuel Pool enrichment limit is being decreased from the current value of 5.0 weight percent (w/o) U-235 to 4.52 w/o U-235 because of errors in the calculations performed by ABB/Combustion Engineering which supported 5.0 w/o U-235. Baltimore Gas and Electric Company has imposed administrative limits on the maximum allowable enrichment, based on analysis performed when the errors were identified, until the requested decrease in the enrichment limit is processed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The only accident previously evaluated in the Updated Final Safety Analysis Report which involves the Spent Fuel Pool is the fuel handling accident. Fuel assembly enrichment is not a precursor to this accident. The isotopic inventory assumed in the fuel handling accident is not adversely effected by the decrease in enrichment of U-235. Therefore, the proposed change to the Spent Fuel Pool enrichment limit does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not increase the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change to the allowed enrichment of fuel in the Spent Fuel Pool does not result in any change to the configuration or operation of the plant. Specifically, no new hardware is being added to the plant as a part of the proposed change nor are there significantly different types of operations being introduced.

The only potential for a new type of accident lies in the area of accidental criticality. The Spent Fuel Pool maintains fuel in a subcritical condition with k-effective less than 0.95 (no credit is taken for soluble boron being present in the pool). The required degree of subcriticality continues to be met at the new enrichment limit of 4.52 w/o U-235 which ensures an accidental criticality will not occur. Therefore, the proposed change to the Spent Fuel Pool enrichment limit does not create the possibility of a new or different type of accident from those previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

The margin of safety maintained in the Spent Fuel Pool is the degree to which the fuel is maintained subcritical. The proposed change to the allowed enrichment of fuel in the Spent Fuel Pool will ensure that the margin of safety is maintained. The maximum multiplication factor for storing fuel assemblies with a 4.52 w/o U-235 is 0.95. The previously approved maximum multiplication factor for 5.0 w/o was 0.946. The new maximum multiplication factor does not represent a significant reduction in the margin of safety. Therefore, the proposed change to the Spent Fuel Pool enrichment limit does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: September 1, 1992

Description of amendments request: The proposed amendments will make changes to Technical Specification 3.8.2.1, AC Distribution - Operating, for Units 1 and 2, by adding additional requirements to the Limiting Condition for Operation (LCO). The LCO changes will require that all 480 volt emergency busses must be operable in Modes 1 through 4. In addition, two safety-related motor control centers for each unit are added to the list of AC busses which must be operable.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Adding the additional operating requirements to the Alternating Current (AC) Electrical Distribution System will have no effect on the probability of an accident as more busses will be required to be in service. The proposed Limiting Condition for Operation (LCO) specifies that all four 480-volt Emergency Busses and the two safety-related Motor Control Centers (MCCs) are required to be operable during power operation. These changes ensure that there are two independent and redundant power sources to the engineered safety features systems as assumed in the Chapter 14 accident analyses and that the plant will be able to meet the single-failure criteria.

Adding the additional operating requirements to the AC Electrical Distribution System will decrease the consequences of an accident as electrical redundancy to Engineered Safety Features Actuation System (ESFAS) is required. Therefore, changing the operating bus requirements will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed changes to the AC Electrical Distribution System operating bus requirements do not represent a significant change in the configuration of the plant. Specifically, no new hardware is being added to the plant as part of the proposed changes. Ensuring additional emergency busses are operable does not create the possibility of a new or different type of accident. Therefore, this change would not create the possibility of a new or different type of accident from those previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

The proposed changes to the AC Electrical Distribution System operating bus requirements will ensure that the margin of safety is maintained or increased. Increasing the number of busses that are required for operation ensures that there are two independent and redundant power sources to the engineered safety features systems and that the plant will be able to meet single-failure criteria. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: September 1, 1992

Description of amendments request: The proposed amendments are requested in response to Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection For Light-Water Reactors,' pursuant to 10 CFR 50.54 (f)." The amendment request is divided into two specific areas.

Change No. 1 of the proposed amendments would revise the Technical Specifications for both Units 1 and 2 to improve the reliability of the Reactor Coolant System's power-operated relief valves (PORVs) and their associated block valves for overpressure protection during normal operation and anticipated transients. This requested change is based on the recommendations in Enclosure A of Generic Letter 90-06.

Change No. 2 would revise the Technical Specifications for both Units 1 and 2 to improve the availability of the Reactor Coolant Systems's power-operated relief valves (PORVs) for low temperature overpressure protection. This requested change is based on the recommendations in Enclosure B of Generic Letter 90-06.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[Change No. 1]

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementation of these changes will increase the availability of the power-operated relief valves (PORVs) and their associated block valves. The increased availability is obtained through maintaining power to the block valves which are closed to control PORV seat leakage and by requiring shutdown and repairing the PORV(s) if the PORV(s) is inoperable for reasons other than excessive seat leakage. There is also an improvement in the availability of the LTOP system by requiring shutdown if the block valves cannot be restored to operable status. Closing the block valves to control excessive PORV seat leakage establishes reactor coolant pressure boundary integrity. Maintaining power to the block valve provides the flexibility of reopening the valves to allow the PORV to be used to control reactor pressure.

An inadvertent opening of both PORVs is considered as an initiator for a Reactor Coolant System (RCS) depressurization transient in Updated Final Safety Analysis Report (UFSAR), Section 14.8. This transient, if not terminated, would be considered a small break loss of coolant accident (LOCA). The small break LOCA analyses results are provided in Section 14.17. However, the RCS depressurization transient is considered to occur during power operation. Closing the block valve for a PORV that is inoperable due to causes other than excessive seat leakage and removing power to the block valves assures that the valve will not be inadvertently opened when the condition of the PORV is uncertain. Since this change does not propose opening the PORVs during power operation, and the power is removed from the closed block valve, there is no increase in the probability of this event. The change to the Action Statement to close the block valve to isolate a PORV that has excessive seat leakage and maintain power to the block valve does not significantly increase the probability of a small break LOCA. This revision will allow the block valve to remain operable and to be subsequently opened to allow the PORV to be used to control reactor pressure. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Placing the PORV in override closed when the block valve is inoperable establishes remedial measures to preclude the potential for having a stuck-open PORV that could not be isolated because of an inoperable block valve. The time allowed to restore the block valve(s) to operable status is based upon the remedial action time limits for an inoperable PORV.

The allowed out-of-service times (AOT) have been revised to provide adequate time to reach the non-applicable condition. The AOT for inoperable PORV(s) due to causes other than excessive seat leakage have been established to be consistent with their LTOP safety function.

These proposed changes will increase the availability of the PORVs and their associated block valves for overpressure protection during normal operation and anticipated transients. Additionally, there is no change in the function of the PORVs or the block valves in response to any previously evaluated accidents. Therefore, the proposed changes will not include a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The changes to the Action Statements for the PORVs and the associated block valves will improve the availability of these valves for overpressure protection during normal operation and anticipated transients. These proposed changes do not involve a change in the design of the PORVs or the block valves

and do not make a change in the function of these valves. Therefore, the proposed changes would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed changes will improve the availability of the PORVs and the block valves for overpressure protection during normal operation and anticipated transients and will ensure that the margin of safety for overpressure protection events is maintained for the LTOP region. The proposed changes do not impact the setpoints or response of the PORVs or block valves. Therefore, the changes would not involve a significant reduction in a margin of safety.

[Change No. 2]

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementation of the shortened allowed out-of-service time (AOT) for the low temperature overpressure protection (LTOP) systems in Modes 5 and 6 will increase the availability of this system. The plant is at the highest risk from low temperature overpressure transients with the reactor coolant temperature less than or equal to 200F, especially when in a water-solid condition. The additional administrative restriction provides assurance that the LTOP system is available if needed for a low temperature overpressure transient. Requiring the block valves to be opened when in the LTOP region will allow the power-operated relief valves (PORVs) to perform their LTOP safety function.

The proposed changes do not impact the current design or analysis for a low-temperature overpressure event. There is no change in the function of the low temperature overpressure protection system in response to any previously evaluated event so there is no change in the probability or consequences. Therefore, these changes would not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed changes do not involve a change in the design or operation of the low temperature overpressure protection systems. The decrease in the AOT for a PORV inoperable in Modes 5 and 6 will provide additional availability of the LTOP system. Requiring the block valves to be open while in the LTOP region will ensure that the PORVs will function as required. Therefore, this change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The changes do not impact the setpoints or response of the LTOP systems, but increase the availability of the systems by decreasing the AOT for a PORV in Modes 5 and 6. Having the block valves open will ensure that the margin of safety that the LTOP system provides for low temperature overpressure transients is maintained. Therefore, the changes would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: August 25, 1992

Description of amendments request: The proposed change increases the acceptable limits for control rod average scram insertion time from 0.040 to 0.049 seconds for each of the rod positions listed in Technical Specifications (TSs) 3.1.3.3 and 3.1.3.4. In addition, the proposed change revises the values of mu (mean value for statistical scram time distribution), sigma (standard deviation) and tau sub A (average scram time) specified in TS 3.2.2.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability of an accident previously evaluated. The values of mu, sigma, and [tau sub A] in Technical Specification 3.2.2.2 do not affect any physical system or equipment which would change the probability of an accident. The proposed change to Technical Specifications 3.1.3.3. and 3.1.3.4 to increase the control rod average insertion times will not cause unplanned initiation of the control rod system, will not impede the initiation of the control rod system, and will not affect the probability of a control roddrop accident. Therefore, the proposed change does not result in a significant increase in the probability of an accident previously evaluated.

The proposed change does not involve a significant increase in the consequences of an accident previously evaluated. Technical Specifications 3.1.3.3 and 3.1.3.4 ensure that control rod insertion times are consistent with those used in the accident analysis. Specifically, control rod scram insertion times are listed in the Technical Specifications to ensure that actual control rod drive performance during a plant transient is bounded by the reactivity assumed in the safety analysis to be inserted by a reactor scram. The control rod system is analyzed to bring the reactor subcritical at a rate fast enough to prevent the Minimum Critical Power Ratio (MCPR) from becoming less than the Safety Limit MCPR of Technical Specification 2.1.2 during the limiting power transient analyzed in Section 15.2 of the Updated Final Safety Analysis Report. The proposed change will define the scram insertion time from de-energization of the scram solenoid to dropout of the control rod position reed switch instead of from de-energization of the scram solenoid to pick-up of the control rod position reed switch. The proposed values of mu, sigma, and [tau sub A] will maintain fuel thermal limits equivalent to the existing fuel thermal limits and ensure that the Safety Limit MCPR stated in Technical Specification 2.1.2 is not exceeded. Consequently, fuel failure assumptions previously used in analyses will not be exceeded, thereby ensuring the consequences of previously evaluated accidents and operational transients will not be significantly increased.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes to Technical Specifications 3.1.3.3. and 3.1.3.4 to increase the control rod average insertion times and the proposed changes to the values of mu, sigma, and [tau sub A] in Technical Specification 3.2.2.2 do not alter or change the manner in which the control rod system performs its safety function. Also, the proposed changes will not cause unplanned initiation of the control rod system, nor will the proposed changes impede the initiation of the control rod system. No new or different mode of plant operation will be created as a result of the proposed changes; therefore, no new or different kinds of accident than that previously evaluated will be created.

3. The proposed change does not involve a significant reduction in the margin of safety. As discussed in Item 1 above, technical Specifications 3.1.3.3 and 3.1.3.4 ensure that control rod insertion times are consistent with those used in the accident analysis. Specifically, control rod scram insertion times are listed in the Technical Specifications to ensure that actual control rod drive performance during a plant transient is bounded by the reactivity assumed in the safety analysis to be inserted by a reactor scram. The control rod system is analyzed to bring the reactor subcritical at a rate fast enough to prevent the MCPR from becoming less than the Safety Limit MCPR of Technical Specification 2.1.2 during the limiting power transient analyzed in Section 15.2 of the Updated Final Safety Analysis Report. The proposed change will define the scram insertion time from de-energization of the scram solenoid to dropout of the control rod position reed switch instead of from de-energization of the scram solenoid to pickup of the control rod position reed switch. The proposed values of mu, sigma, and [tau sub A] will maintain fuel thermal limits equivalent to the existing fuel thermal limits

and ensure that the Safety Limit MCPR stated in Technical Specification 2.1.2 is not exceeded. By ensuring that the Safety Limit MCPR is not exceeded, fuel failure assumptions previously used in the safety analysis will not be exceeded; therefore, the margin of safety will not be significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: November 27, 1991

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 3.3.1.2 and 3.3.1.3 so one safety injection accumulator may be inoperable due to improper pressure, borated water volume, or boron concentration for the same Limiting Condition for Operation (LCO) time currently allowed by the TSs for inoperability due to being isolated. The existing TS provide no LCO for inoperability due to these causes. The proposed amendment is intended to reduce operator confusion and prevent unnecessary entry into TS 3.0 (eight-hour shutdown requirement).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously analyzed because the proposed change, including the four-hour LCO time requirement, is consistent with requirements provided within the existing TSs. The proposed change only clarifies the existing TS by providing an Action Statement to address an inoperable accumulator. In addition, the accumulators are an accident mitigating system that is not part of any previously evaluated accident initiating sequences; therefore, the probability of a previously analyzed accident is not significantly increased.

The safety significance associated with an inoperable accumulator is considered to be no different than that associated with an isolated accumulator. Additional time would be provided to allow the accumulator safety parameters to be returned to within specifications without taking the plant through the perturbation of a power reduction.

Although there are physical differences between an isolated accumulator and an inoperable accumulator, the implementation of a four hour LCO due to an inoperable accumulator does not affect the margin of safety, nor does it increase the consequences of an accident previously evaluated. Our past and present LOCA [Loss- of-Coolant Accident] calculation methods, performed in accordance with 10CFR50 Appendix K, are not able to show acceptable results with an inoperable accumulator. The inherent presumption is that the four hour time period is short enough that we are allowed to consider the accumulators as always being operable. [NOTE: The NRC staff does not endorse the licensee's position in the preceding sentence. The statement, however, does not affect our determination.] More specifically, a qualitative assessment shows that the probability of a LOCA occurring during the four hour LCO is low enough to be inconsequential. Therefore, implementation of a four hour LCO due to an inoperable accumulator is consistent with the margin of safety incorporated into the existing Technical Specifications.

It can be postulated that the proposed LCO time to hot shutdown may exceed the time requirement of the existing specification. However, any difference between the current and proposed time to hot shutdown is expected to be minor and is considered to have an inconsequential impact on plant safety.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change provides a specific Action Statement to address a probable plant condition. Additionally, no modifications are being made to plant equipment or procedures; therefore, no new or different accident scenarios can be introduced.

3. Operation of the facility, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety. Implementation of the proposed amendment will allow an accumulator to bein operable for four hours prior placing the reactor in hot shutdown with normal operating procedures. The time until achieving hot shutdown will not be significantly different than the current situation,wwhich requires hot shutdown within eight hours. Based on a qualitative assessment of LOCA calculation methods, the implementation of a four hour LCO due to an inoperable accumulator will maintain the margin of safety already provided by the LCO for an isolated accumulator. Therefore, operation of the facility in accordance with the proposed amendment will not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied, Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: September 8, 1992

Description of amendment request: The proposed change decreases the sum of the minimum safety injection intact line flow rates, with a single charging/ safety injection pump running, as described in Technical Specification Surveillance Requirement 4.5.2.h.1.a from "greater than or equal to 379 gpm" to "greater than or equal to 348 gpm."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects Safety Injection flow which is a mitigative condition following the occurrence of an accident and has no impact on the probability of an accident occurring.

The change in the Surveillance flowrate is accommodated by the current ECCS-LOCA analysis without altering its analyzed consequences, i.e., there are no changes in the limiting case LOCA consequences for minimum safety injection flow and the existing margins to the 10 CFR 50.46 acceptance limits for core cooling are preserved. Similarly, there is no impact on the consequences predicted by the accident analyses as presented in the FSAR. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The limiting consequences associated with minimum conditions of Safety Injection flow are already addressed within the ECCS-LOCA analysis provided in FSAR Sections 6.2 and 6.3, and the supporting documentation. The proposed change in the acceptable minimum Safety Injection flow condition for one Safety Injection pump is consistent with the analyzed accident assumptions. The proposed change makes no other changes to the facility or its operation. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed change decreases the sum of the minimum Safety Injection intact line flow rates as described in Technical Specification 4.5.2.h.1.a "to greater than or equal to 348 gpm." This limit is established in conjunction with the minimum flow requirement of the ECCS-LOCA analysis. The acceptance limits for the ECCS-LOCA analysis are described in NUREG-1038 (Supplement 4) as being the 10 CFR 50.46 prescribed criteria for core cooling. The proposed change is consistent with the assumptions under which the ECCS-LOCA analysis was performed. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendment request: September 2, 1992

Description of amendment request: The proposed amendment would remove Table 3.7.1, "Primary Containment Isolation" from the current Technical Specifications as addressed in Generic Letter 91-08. References to Table 3.7.1 will also be removed. The table will be incorporated into the plant procedures in the Administrative Controls Section of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

This is an administrative change to remove the component list of Primary Containment Isolation Valves, Table 3.7.1 from the Technical Specifications. The Limiting Condition for Operation (LCO), 3.7.D, is being revised to define which components the LCO applies. The wording of the revised LCO encompasses all of the components listed in the current Specification 3.7.D. Removal of this component list does not change the probability of any accident initiators or change any other relevant initial assumptions. Also, there is no change to the consequences of an accident previously evaluated, because removing this list from Technical Specifications does not change either the onsite or offsite dose consequences resulting from the event. The component list will be controlled by an Administrative Procedure and can only be changed by the 10 CFR 50.59 change process with review and approval per the Onsite Review and Investigative Function specified by Technical Specification Section 6.0, Administrative Controls. Therefore, there is no increase in either the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

This is an administrative change to control the list of Primary Containment Isolation Valves outside the Dresden Unit 2 and Unit 3 Technical Specifications. The administrative controls provided to control this component list assure that the design and operation of the plant will continue to be in accordance with the UFSAR, Facility License and the associated Technical Specifications. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3) Involve a significant reduction in the margin of safety because:

The Limiting Condition for Operation for Technical Specification 3.7.D, Primary Containment Isolation Valves, is revised by this Technical Specification change to specifically define the components to which the LCO applies. Therefore, removal of Technical Specification Table 3.7.1, which lists the specific components to which the LCO applies does not change the scope or applicability of the specification. The component list will be controlled administratively with any changes to the list made in accordance with the 10 CFR 50.59 change process. Therefore, this is an administrative change only and there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket No. 50-237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of amendment request: September 2, 1992

Description of amendment request: The proposed amendment would revise the technical specifications to reference Siemens Nuclear Power's (SNP) new, NRC-approved methodologies for reload licensing calculations. The use of these methodologies increases the Safety Limit Minimum Critical Power Ratio (SLMCPR) to reflect the effects of fuel channel bow and core modelling. Specifications referring to the SLMCPR for GE fuel will be removed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The NRC-approved methodologies to be referenced in the Technical Specifications are used to evaluate core operating limits and do not introduce physical changes to the plant. SNP will continue to analyze the same spectrum of limiting events for each reload under the new methodology. The increase in the SLMCPR adequately accounts for the effects of the new methods and potential effects of channel bow, and will continue to maintain fuel cladding integrity by ensuring that 99.9% of the fuel rods will avoid transition boiling during limiting anticipated operational occurrences. The removal of the SLMCPR for GE fuel has no effect since the Dresden Station Unit 2 core currently does not contain GE fuel. Therefore, the changes do not effect the probability or consequences of accidents previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The referenced NRC-approved methodologies will continue to be used to analyze limiting transients, and do not introduce any physical changes to the plant; therefore, the possibility of a new or different kind of accident is not created. Similarly, the basis of the SLMCPR has not been changed and will continue to maintain fuel cladding integrity during limiting anticipated operational occurrences.

The proposed amendment does not involve a significant reduction in a margin of safety.

The referenced NRC-approved methodologies will continue to ensure fuel design and licensing criteria are met. The increase in the SLMCPR reflects the new methods, bounds the effect of fuel channel bow for Cycle 14, and provides additional conservatism to facilitate future reload licensing reviews under the provisions of 10

CFR 50.59. Therefore, the margin between the safety limit and potential fuel failure after the onset of transition boiling is not decreased.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: July 29, 1992

Description of amendment request: This amendment request is a followup to the amendment request of May 29, 1992, published in the Federal Register on July 8, 1992 (57 FR 30242), which changed the Technical Specifications Section 1.0, Definitions, to accommodate a 24-month fuel cycle and which proposed the extension of the surveillance intervals for 26 specific surveillances. This amendment request proposes extending the surveillance intervals to 24 months for the following additional specific surveillances:

(1) Main Steam Stop Valves
(2) Overpressure Protection System (OPS) Backup Nitrogen System
(3) Main Fire Pump Capacity
(4) Emergency Fire Pump Diesel Preventive Maintenance
(5) Steam Driven Auxiliary Boiler Feed Pump
(6) Fire Hose Station
(7) Containment Air Filtration System
(8) Reactor Cavity Level Alarm System
(9) Diesel Driven Fire Pumps
(10) Diesel Fire Pump Batteries
(11) Hydrogen Recombiners
(12) Fan Cooler Units - Charcoal; Post Accident Containment Air Vent - Charcoal
(13) Containment Spray Check Valves; City Water Service/Containment Isolation Valves
(14) Internal and External Visual Inspection of Containment Structure and Related Components
(15) Acoustic Monitor
(16) Accumulator Level CCR and Transmitters
(17) Recirculation Sump Level Monitoring (Discrete)
(18) Reactor Coolant Vents
(19) Containment Sump Pumps and Instrumentation
(20) Control Rods - Full Length Rod Drop Time
(21) Diesel Generator Building Water Sprinkling System
(22) PORVs and Block Valves

The submittal of item (5), Steam Driven Auxiliary Boiler Feed Pump, completes the safety evaluation required for extending the surveillance interval for TS 4.8.A.2 which includes all Auxiliary Boiler Feed Pumps. The safety evaluation for the Motor Driven Auxiliary Boiler Feed Pumps was submitted with the May 29, 1992, amendment request.

The submittal of item (6), Fire Hose Station, completes the safety evaluation required for extending the surveillance interval for TS 4.14.E.1.c, which includes all interior fire stations. The safety evaluation for interior fire stations inside containment was submitted with the May 29, 1992, amendment request.

The submittal of item (13), Containment Spray Check Valves; City Water Service/Containment Isolation Valves completes the safety evaluation required for extending the surveillance interval for TS 4.14.A.1.g(ii) which covers valves in the High Pressure Fire Protection System required for protection of Safe Shutdown Systems and not testable with the plant on-line. The safety evaluation for the remainder of the valves in this category was submitted with the May 29, 1992, amendment request.

It is also proposed to change TS Table 1.4.1, Item 22, Accumulator Level and Pressure, to Item 22a., Accumulator Level, and Item 22b., Accumulator Pressure. This is an administrative change and is proposed because the safety evaluations for these two functions were submitted separately.

The changes requested by the licensee are related to a 24-month fuel cycle and are in accordance with Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Main Steam Stop Valves

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

In all of the tests examined, the main steam stop valves performed acceptably. For an operating cycle that has been extended several months, no degradation mechanism has been identified which would change the results of these previous tests. There is minimal risk that the valves would not perform acceptably over an extended cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Past tests provide reasonable confidence that the main steam stop valves will perform in an acceptable manner for an extended operating cycle. In addition, redundancy exists which prevents the blowdown of more than one steam generator even if one valve fails to close. Thus, it is concluded that the plant will perform within its design basis for an extended operating cycle.

3. There has been no reduction in the margin of safety.

Based upon reliability demonstrated by past surveillance testing and redundancy there is minimal impact upon the margin of safety by extending the surveillance cycle to a maximum of 30 months.

(2) Over Pressure Protection System Backup Nitrogen System

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

In addition to the surveillance test performed at refueling intervals, Section 3.1.A.4 requires that the OPS be operable whenever RCS temperature is equal to or less than 305F subject to other limitations. The determination of operability is by test. Under these circumstances it is highly unlikely that both the normal OPS system and the backup would fail.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The primary overpressure protection system is a kept [is kept] in standby during normal operation and is not required except when the plant is preceding [proceeding] to cold shutdown. By its design, the primary nitrogen system is inherently reliable. The backup nitrogen system has similar characteristics. Loss of both systems at the same time is considered highly unlikely.

3. There has been no reduction in the margin of safety.

Due to the reliability of the primary and backup nitrogen systems and the requirement to determine operability of the primary system by test just prior to use, it is not believed that the margin of safety is significantly compromised by extending the surveillance interval for the backup nitrogen system.

(3) Main Fire Pump Capacity

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The system is in standby status during plant operation except for test periods which are of limited duration. Periodic tests confirm continued pump operability. Accordingly little wear is induced on the pumps and their capacity is expected to be unaffected by a longer plant operating cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Extension of the plant operating cycle will primarily extend the time spent by the pumps in standby service which will have no affect upon pump capacity.

3. There has been no reduction in the margin of safety.

As the pump capacity is expected to be unaffected by a longer plant operating cycle there will be no impact upon the margin of safety.

(4) Emergency Fire Pump Diesel Preventive Maintenance

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Except for periodic testing, the diesel is in a standby state and not subject to operational stress. Periodic testing imposes limited wear as evidenced by the absence of major repairs during past maintenance. Extension of the operating cycle for several months is expected to have vitally [virtually] no impact upon diesel operability. Monthly testing would detect any degradation.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Extension of the surveillance interval by several months is expected to have no impact on operability of the diesel. Monthly tests will serve to confirm operability during this period.

3. There has been no reduction in the margin of safety.

As there is expected to be no impact upon diesel operability, no impact upon the margin of safety is expected.

(5) Steam Driven Auxiliary Boiler Feed Pump

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Past test data indicates a highly reliable system with no deficiencies noted in four surveillances. In addition, there is an ASME [American Society of Mechanical Engineers] Section XI quarterly test which would monitor pump performance during the extended operating cycle. There is sufficient confidence that the turbine driven pump would perform adequately during the extended operating cycle. There is also the added assurance provided by the quarterly ASME Section XI test.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Given the high reliability of the turbine driven auxiliary feedwater pump, monitoring provided by the ASME Section XI test and the redundant diverse motor driven auxiliary feedwater pumps there is sufficient assurance that a new type, or different kind of accident, will not be introduced.

3. There has been no [significant] reduction in the margin of safety.

Due to the high reliability of turbine driven pump, the alternate motor driven pumps and other periodic means of monitoring pump operability, the margin of safety has not been compromised.

(6) Fire Hose Station

The proposed change does not involve a significant hazards consideration since:

1. There is no increase in the probability or consequences of an accident.

The system is normally not required to operate and during the operating period is in standby. It is not subject to operating conditions during their [this] period. Extending the plant operating period by several months is not expected to result in any accelerated degradation mechanism.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Past surveillance tests have not indicated any degradation mechanism which would be expected to render the hose system inoperable if its term in standby were extended several months.

3. There has been no significant reduction in the margin of safety.

Past test data confirm that the hoses are reliable when inspected on an 18 month basis. Extending the surveillance interval by several months is expected to have minimal impact on the hoses.

(7) Containment Air Filtration System

The proposed change does not involve a significant hazards consideration since:

1. There is no increase in the probability or consequences of an accident.

Except for the fans, the HEPA [high-efficiency particulate air] filter/charcoal bank is in standby status during normal operation and is not subjected to operational stress. In addition, every 31 days flow is initiated through the unit and maintained for 15 minutes for the purpose of detecting abnormalities. This periodic test would detect any unit degradation during the extended operating interval. Adequate monitoring by this test as well as good past performance virtually assures adequate performance of the unit in an extended operation cycle.

2. The possibility of a new or different kind of accident from any analyzed has not been created.

Due to the factors enumerated in (1) above, the capability of the Containment Fan Cooler System to perform its intended safety function in an extended operating cycle in [is] virtually assured. In addition due to the design of the systems for Containment Heat Removal, defense in depth exists due to the multiple combination of components which can perform this function.

3.There has been no significant reduction in the margin of safety.

Due to the proven reliability based on past test data, the defense-in-depth design of the Containment heat removal system and periodic testing the margin of safety is essentially unchanged by the proposed change in surveillance testing.

(8) Reactor Cavity Level Alarm System

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The level switches and associated alarm circuits have proven to be generally reliable devices. Only one departure from the norm was observed over the past five years and it was in the conservative direction. The alarm occurred when required but did not clear. This deviation is considered independent of time and would have occurred regardless of the interval between tests. Extension of the surveillance interval is expected to have minimal impact on performance of the monitoring system.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The reactor cavity sump monitoring system is considered highly reliable based on past performance. In addition the system is redundant. Thus, it is considered highly likely that the system will perform in the extended surveillance interval.

3. There has been no significant reduction in the margin of safety.

As it is considered highly likely that the monitoring system will perform its intended safety function during the extended surveillance interval, the impact upon the margin of safety is minimal.

(9) Diesel Driven Fire Pumps

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Past testing of the diesel driven pumps has established an excellent reliability record. In addition a search of written reports indicates only one deficiency. From a reliability viewpoint, safety will not be compromised by extending the surveillance interval.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

In addition to demonstrated reliability, the system is a static system which is subjected to minimal wear during test periods. Under these circumstances the pump can be relied upon to perform its function for an operating cycle extended to 30 months.

3. There has been no [significant] reduction in the margin of safety.

In addition to the above points monthly testing is conducted which would detect any degradation in the extended operating cycle. If there is a mode of degradation it is expected to be gradual and not catastrophic permitting corrective action prior to unacceptable pump performance.

(10) Diesel Fire Pump Batteries

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Inspection of the batteries on a weekly, monthly and refueling interval provides adequate assurance that the batteries are maintained in a continuous operable status. Extending the refueling interval inspection for the batteries to 24 months (+25%) is expected to have no impact upon the performance of the batteries.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Historical data does not indicate any deficiencies related to the diesel batteries. Frequent inspection and operation of the diesel-driven fire pump as a system indicates a highly reliable system. Extending the operating cycle is not expected to influence the operability of the batteries.

3. There has been no [significant] reduction in the margin of safety.

Based upon past acceptable inspections as well as the periodic (weekly) inspection of the batteries extending the operating cycle is not expected to compromise the margin of safety.

(11) Hydrogen Recombiners

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Past test data indicates that the Recombiners are highly reliable. Absent an emergency, the Recombiners are in a standby condition with no operational stresses. Extension of the surveillance interval would only lengthen the time spent at standby. Under these circumstances it is considered highly likely that the recombiners would perform their intended function if called upon during the extended standby interval.

2. The possibility of a new or different kind of accident from any previously analyzed.

In addition to being a proven reliable system, the recombiner system is redundant and provides a diverse means of controlling hydrogen build-up post accident to the Containment Vent System. Thus the extended surveillance interval is considered to have no affect on hydrogen control.

3. There has been no significant reduction in the margin of safety.

In addition to the above points testing is performed every two months on the fans and six months on controls. This provides added assurance that the recombiner system would function if called upon during the extended interval.

(12) Fan Cooler Units - Charcoal; Post Accident Containment Air Vent - Charcoal

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

There is no significant increase in the probability or consequences of an accident. The primary failure mode of the charcoal is air inleakage over time so that adsorption properties of the charcoal would be reduced to unacceptable levels. The past surveillances indicate that this in not the case. Extending the operating cycle is not expected to change the acceptable results achieved in the past.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Based on past test results it is expected that the adsorption property will remain above acceptable levels for an operating cycle which is extended several months. In addition, each operating cycle is started with fresh charcoal thus eliminating any degradation which occurred during the previous cycle.

3. There has been no [significant] reduction in the margin of safety.

The charcoal absorbers [adsorbers] are maintained in standby status. Past test results do not indicate that normal plant operation unduly compromises the absorption [adsorption] capacity of the charcoal. A longer plant operating cycle is not expected to change this conclusion.

(13) Containment Spray Check Valves: City Water Service/Containment Isolation Valves

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

There is no significant increase in the probability or consequences of an accident. The Containment Spray System and City Water Service to containment are static systems which are in standby during normal operation. Thus the systems are not subjected to the wear and tear of normal operation. Any degradation mechanism is slow acting over time. Exercising of the valves at refueling intervals demonstrates that the valves would change position and function if required. Extension of the normal operating cycle by several months is not expected to influence the operability of these valves.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The possibility of a new or different kind of accident from any previously analyzed has not been created. Past tests over an 18 month (+25%) cycle has demonstrated that valve operability is essentially insensitive to the duration of the operating cycle. Therefore, it is expected that the valves would perform their intended safety function if called upon during the extended operating cycle.

3. There has been no [significant] reduction in the margin of safety.

For the reasons enumerated above, operability of the valves is not expected to be adversely affected by a longer operating cycle.

(14) Internal and External Visual Inspection of Containment Structure and Related Components

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

As could be expected minor observations were identified on eight of nine inspections mostly concerning surface cracking as a result of normal service wear. In no instance was an observation identified which has the potential to accelerate in a short period of time to compromise structural or leakage integrity. As noted above this type of deterioration is a normal and expected phenomenon. Over the proposed extended surveillance interval there is no basis to conclude that the Containment would not provide its intended design function.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

As it is concluded that the containment building would continue to perform its intended safety function over a longer operating cycle, the possibility of a new or different type of accident has not been created.

3. There has been no [significant] reduction in the margin of safety.

The nature of the observations noticed in past surveillances have been superficial with respect to structural integrity and containment leakage. A longer operating cycle extended by several months is not expected to change the results of future surveillance.

(15) Acoustic Monitor

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

No failures or deficiencies were observed in the surveillances performed in the last four refuelings indicating a system of high reliability. There were no modes of degradation observed which would be expected to radically change the performance of the acoustic monitors if the operating cycle were extended to 30 months.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The devices are static and are in a standby condition during a normal operating cycle. Thus the amount of service induced stress is minimized. Under these circumstances it is expected that the monitors would perform acceptably over an operating cycle extended by several months.

3. There has been no [significant] reduction in the margin of safety.

The monitors have a demonstrated reliability and, during normal operation, do not function. Under these circumstances there is expected to be a minimal impact upon safety by extending the normal operating cycle by several months.

(16) Accumulator Level CCR and Transmitters

The proposed change does not involve a significant hazards consideration since:

As part of the ongoing efforts associated with the extended Technical Specification Surveillance Interval Extension Program for Indian Point Unit 2, the accumulator level setpoint was evaluated. The evaluation took into account the instrument and channel uncertainties associated with a 30 month calibration interval. Because of the effects on instrument drift and the range of the instrumentation, an acceptable setpoint could not be obtained for 30 months with the current Technical Specification limits. In order to develop an acceptable setpoint for 30 months, the acceptable operating band associated with the level measurement must be increased. The current Technical Specification limits for accumulator volume are a minimum volume of 787.5 ft^3 and a maximum accumulator volume of 802.5 ft^3. To support the proposed change to the Indian Point Unit 2 Technical Specifications, an evaluation of the affect of increasing the accumulator water volume band to a minimum volume of 775 ft^3 and a maximum volume of 815 ft^3 was performed.

The evaluations addressed the impact of assumed minimum and maximum accumulator water volume limits of 775 ft^3 and 815 ft^3 respectively, on the licensing basis LOCA [loss-of-coolant accident], Non-LOCA, Radiological Consequences, Containment Design, Setpoints, and other safety related areas accident analyses and licensing bases. These evaluations have demonstrated that the results and conclusions which form the licensing basis for operation of the Indian Point Unit 2 remain valid up to these assumed limits (i.e., increasing the accumulator water volume band to a minimum volume of 775 ft^3 and a maximum volume of 815 ft^3). The proposed Technical Specification limit band can be expanded to the limits assumed in the evaluation (minimum and maximum accumulator water volume limits of 775 ft^3 and 815 ft^3 respectively) with no adverse impact on the Indian Point Unit 2 licensing basis analyses. A summary of this conclusion

is provided in Table 1 for the related LOCA evaluations.

Conformance of the proposed amendments to the standards for a determination of no significant hazards, as defined in the three factor test of 10 CFR 50.92, is shown in the following:

1. There is no significant increase in the probability or consequences of an accident.

Large Break LOCA, Small Break LOCA, Blowdown Hydraulic Forcing Functions, Post-LOCA Longterm Core Cooling, Hot Leg Switchover to Prevent Potential Boron Precipitation, Non-LOCA Analyses, Steam Generator Tube Rupture, Radiological Consequences, Containment Design, setpoints, Emergency operating Procedures, and Probabilistic Risk Assessment considerations maintain conformance with the required acceptance criteria regulations. In addition, an assessment of NSSS primary components, including the reactor pressure vessel system, reactor coolant pump, steam generator, pressurizer, control rod drive mechanisms, and RCS piping, as well as Instrumentation and Control Systems and Fluid Systems considerations concluded that the integrity of these components, systems, and considerations will be unaffected by the increase in the accumulator water level band. Therefore, the probability of an accident previously analyzed will not be increased and the consequences of the accidents considered in the Indian Point Unit 2 licensing basis remain unchanged.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The increase in the accumulator water volume band to a minimum volume of 775 ft^3 and a maximum volume of 815 ft^3 does not significantly change the plant configuration in a manner which introduces a new potential hazard to the Indian Point Unit 2 plant. Since design limitations continued to be met and component integrity is maintained, no new failure mode is expected. Therefore, an accident which is different than any already evaluated in the FSAR [Final Safety Analysis Report] will not be created as a result of this change.

3. There has been no [significant] reduction in the margin of safety.

The margin of safety with respect to design basis analyses, licensing basis analyses, setpoints, and pressure boundary components remain in compliance with the codes and standards per the Indian Point Unit 2 licensing basis. Hence, the margin of safety is not reduced as a result of the increase in the accumulator water volume band to a minimum volume of 775 ft^3 and maximum volume of 815 ft^3.

Based on the above, it is concluded that operation of Indian Point Unit 2 in accordance with the proposed amendment does not result in the creation of an unreviewed safety question, does not create the possibly of a new or different kind of accident from any accident previously evaluated, and does not reduce any margins to plant safety. Therefore, the license amendment does not involve a Significant Hazards Consideration as defined in 10 CFR 50.92.

(17) Recirculation Sump Level Monitoring (Discrete)

The proposed change does not involve a significant hazards considerations since:

1. There is no increase in the probability or consequences of an accident. Historical data from four surveillances indicates no test failures. Therefore it is concluded that minimal risk is involved in extending the surveillance interval to 24 months (+25%).

2. The possibility of a new or different kind of accident has not been created. Past test data indicates the sump monitoring system to be highly reliable. Operation for the extended surveillance interval is anticipated without problems.

3. There has been no significant reduction in the margin of safety. In addition to being highly reliable, the discrete monitoring system is redundant to a continuous monitoring level monitoring system which contributes to minimizing the risk in extending the surveillance interval.

(18) Reactor Coolant Vents

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident previously evaluated.

Past historical test data and a redundant means of venting the RCS [reactor coolant system] contribute to minimizing any risk due to an extended surveillance interval. It is concluded that any increase in the probability or consequence due to an accident from an extended surveillance interval is negligible.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Venting of the RCS has not been identified as an accident precursor nor is credit taken in the accident analysis. Therefore any uncertainty created by extending the surveillance interval will not contribute to creation of a new or different kind of accident from any previously analyzed.

3. There has been no significant reduction in the margin of safety.

The basis for establishing this surveillance is ASME Section XI. The proposed surveillance interval is within the testing frequency required by ASME Section XI.

(19) Containment Sump Pumps and Instrumentation

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident. Past test data indicates that the monitoring system is generally reliable with only one instance where test acceptance criteria were not met. However, the system was not inoperable. Due to the previous good test results and redundancy, extension of the surveillance interval will not significantly compromise safety.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Due to the generally good test results and design redundancy there is reasonable confident that the monitoring system will remain operable over the extended surveillance interval.

3. There has been no significant reduction in the margin of safety.

The reasonably good past performance of this system as evidenced by past test data indicates that the margin of safety will not be significantly compromised by an extended operating cycle.

(20) Control Rods - Full Length Rod Drop Time

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Past historical data indicates that the rod drop time limit was met by a large margin. Evaluation of test data indicated no anomalies which could be attributed to a time dependent degradation mechanism which could degrade rod drop times to an unacceptable value if the operating surveillance was extended by several months.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The degree of success demonstrated by post testing indicates that the control rods will continue to perform their intended function under a longer operating cycle which is extended by several months.

3. There has been no [significant] reduction in the margin of safety.

Past test data indicates that considerable margin exists between acceptance limits and measured data which will not be significantly reduced by extending the operating cycle.

(21) Diesel Generator Building Water Sprinkling System

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Past test data is generally positive with some deficiencies noted in the earliest test reviewed which did not relate to operability of the system. Since the system is a static system extension of the operating interval is not expected to impact operability of the system.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The extension of the surveillance interval is not expected to influence operability of the system. As the system has historically been proven to be reliable, its safety function will not be compromised.

3. There has been no reduction in the margin of safety.

As operability of the system is not expected to be affected by the longer surveillance interval, the margin of safety represented by this system will not be compromised.

(22) PORVs and Block Valves

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Since only one deficiency was noted over the time interval reviewed, the historical data supports the conclusion that safety will not be compromised by extending the interval between surveillances to 24 months with a maximum of 30 months.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Based upon past historical data the limit switches have a demonstrated reliability. In addition, failure of a limit switch would not preclude operation of the PORVs or block valves.

3. There has been no [significant] reduction in the margin of safety.

Given the demonstrated reliability of the limit switches and the fact that operability of neither the PORVs nor block valves is dependent upon the limit switches, it is concluded that the margin of safety has not been significantly diminished.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 7, 1992

Description of amendment request: The licensee has proposed to amend the Technical Specification (TS) to remove Table 3.12-1, Safety-Related Shock Suppressors (Snubbers), and references to Table 3.12-1, in accordance with Generic Letter 84-13, which permits licensees to remove snubber listings from the TS and Generic Letter 91-08 which addresses administrative controls for component lists which are removed from the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the requirements of 10 CFR 50.92, the proposed changes to the Technical Specifications are deemed not to involve any "Significant Hazards Considerations" because operation of Indian Point Unit No. 2 in accordance with these changes would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated;

The relocation of the listing of snubbers to a plant procedure is an administrative change. No technical requirements are affected in that the function, operation or surveillance requirements for any system or component are not being altered. Therefore, the conclusions of current accident analyses are not affected.

Further, as required by Generic Letter 84-13, any changes in snubber quantities, types or locations will require the completion of a safety evaluation per the requirements of 10 CFR 50.59 to determine that the proposed change will not involve an unreviewed safety question. Therefore, future snubber changes will be evaluated against similar criteria.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated;

All changes described herein are administrative, introduce no new mode of plant operation, do not involve physical modification to any structure, system or component and do not affect the function, operation or surveillance requirements for any system or component. Therefore the changes can not result in an unanalyzed accident. Further, as required by Generic Letter 84-13, any changes in snubber quantities, types or locations will require the completion of a safety evaluation per the requirements of 10 CFR 50.59 to determine that the proposed change will not involve an unreviewed safety question. Therefore, future snubber changes will be evaluated against similar criteria.

3) Involve a significant reduction in a margin of safety.

The administrative changes involved do not affect the requirement that all snubbers required to protect the primary coolant system or any other safety system or component be operable during reactor operation because no change to the current quantities, types or locations of snubbers is proposed. Further, these administrative changes do not impact the surveillance requirements that verify the existing snubbers will perform their design functions. Therefore, no margins of safety established by design or verified by testing to ensure operability of safety-related systems or components are affected. Further, as required by Generic Letter 84-13, any changes in snubber quantities, types or locations will require the completion of a safety evaluation per the requirements of 10 CFR 50.59 to determine that the proposed change will not involve an unreviewed safety question. Therefore, future snubber changes will be evaluated against similar criteria.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: August 31, 1992

Description of amendment request: The proposed amendments would revise surveillance requirements of Technical Specifications (TSs) 4.8.1.1.2.h.6)b) and 4.8.1.1.2.h.7 to decouple two different tests of the diesel generators (DGs):

1. TS 4.8.1.1.2.h.7 requires, in part, that the DGs be tested periodically, during shutdown, by operating them at specified loads for 24 hours, and that "Within 5 minutes after completing this 24-hour test, perform Specification 4.8.1.1.2.h.6)b)." This quoted sentence would be deleted.

2. TS 4.8.1.1.2.h.6)b) requires periodic testing to verify automatic starting and loading of DGs by simulating a loss-of-offsite power (LOOP) in conjunction with an engineered safety features actuation system (ESFAS) test signal. A footnote to TS 4.8.1.1.2.h.6)b) states that:

If Specification 4.8.1.1.2.h.6)b) is not satisfactorily completed, it is not necessary to repeat the preceding 24-hour test. Instead, the diesel generator may be operated at the load required by Surveillance Requirement 4.8.1.1.2.a5 [i.e., 6800-7000] kW for 1 hour or until operating temperature has stabilized.

This footnote would be changed to read:

Prior to performing Surveillance Requirement 4.8.1.1.2.h.6)b), the diesel generator shall be operated at the load required by Surveillance Requirement 4.8.1.1.2.a5 for 1 hour or until operating temperature has stabilized. Surveillance Requirement 4.8.1.1.2h.6)b) shall be started within 5 minutes of stopping the diesel generator upon completion of this prerequisite.

Basis for proposed no significant hazards consideration determination: The effect of the proposed change would be to remove the requirement to perform the LOOP/ESFAS test within 5 minutes after completing the 24-hour test. Instead, the LOOP/ESFAS test would be preceded by a period of operation at a specified load for 1 hour or until operating temperature has stabilized. The basis for requiring the LOOP/ESFAS test within 5 minutes of the 24-hour test was to demonstrate hot restart capability under full-load operating temperature conditions. However, operating experience had shown that stable, full-load operating temperatures are achieved in less than 1 hour. Thus, coupling is unnecessary and decoupling the two tests provides additional flexibility for outage scheduling and execution.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Separating the 24-hour test from the LOOP/ESFAS test will have no effect on the initiating events assumed for any existing accident analysis. The basis for the existing requirement is to ensure the hot restart capability of the DGs. The proposed change in requirements will continue to demonstrate that capability, and the DGs will remain able to perform their safety function as assumed in the accident analyses. Therefore, there will be no effect on the consequences of any existing accident analyses.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not introduce any new equipment into the plant or require any existing equipment to be operated in a manner different than that for which it was designed to operate. The proposed change only involves the duration for which the full-load temperature conditions are maintained prior to performing the LOOP/ESFAS test. Therefore, the performance, reliability, or capability of the DGs to perform their design function will not be affected.

3. The proposed change does not involve a significant reduction in a margin of safety. The basis for the existing requirement is to ensure the hot restart capability of the DGs. The proposed change will continue to ensure that capability, thereby maintaining the margin of safety afforded by the existing surveillance requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30303-1810.

NRC Project Director: David B. Matthews

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 26, 1991, as supplemented by letters dated January 24, 1992 and June 24, 1992.

Brief description of amendments: This was previously published in the Federal Register on September 18, 1991 (56 FR 47238). The amendment proposed to make changes to the Technical Specifications in accordance with the guidance provided in Generic Letter 89-01. The changes consist of relocating the procedural details of Radiological Effluent Technical Specifications (RETS) into the Offsite Dose Calculations Manual (ODCM) or the Process Control Program (PCP) in a manner that ensures these details are incorporated into plant operating procedures. In addition, programmatic controls would be added to the Administrative Controls section of the Technical Specifications to satisfy the regulatory requirements and controls changes to the procedural details of the ODCM or PCP. By letter dated June 24, 1992, Houston Lighting and Power submitted a supplement to the June 26, 1991 amendment request. The supplement proposed to retain the definitions of an unrestricted area and venting in the Technical Specifications. The January 24, 1992, supplemental letter requested a 15-day implementation period following the date of issuance of the license amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The amendment involves only relocation of the requirements for responses to radiological effluent releases from one governing source to another. The requirements themselves are not changed; therefore, accident probability and/or consequences are unaffected.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The design of STPEGS is not changed by the proposed amendment. The proposed amendment relocates existing procedural details without change which does not create the possibility of a new or different accident from any accident previously evaluated. Any changes in the future will be performed in accordance with 10 CFR 50.59 and will have a clear establishment of the basis of the requirement, an appropriate analysis or evaluation, a determination of conformance to regulations, review by a multidisciplinary review group (PORC), Plant Manager approval and post approval review by the NSRB [Nuclear Safety Review Board]. Therefore, changes to the ODCM or PCP are controlled to prevent the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment adds programmatic controls to the Administrative Controls section of Technical Specifications to satisfy the regulatory requirements and changes to the procedural details of the ODCM or PCP will be controlled by the Administrative Controls section of Technical Specifications. The addition of these controls does not involve a significant reduction in the margin of safety. The relocation of the procedural details for radiological effluents has been performed to ensure that these controls are placed appropriately in the ODCM or PCP such that these details are incorporated into plant procedures and programs. Incorporation of these radiological effluent details into the plant procedures and programs ensures that there is not a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P. C., 1615 L Street, N.W, Washington, D.C. 20036

Houston Lighting & Power Company, City Public Service Board of San Antonio,Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 4, 1992

Brief description of amendments: The proposed amendment changes the Technical Specifications to reflect the results of a correction to the containment free volume calculation. The original calculation for the South Texas Project, MC-5281 "Free and Sprayed Volumes Inside Containment>Revision 1, overestimated the containment free volume. The proposed amendment reflects the evaluation of the as-built facility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or

consequences of an accident previously evaluated.

The containment and safety-related systems inside containment remain operable as previously analyzed. The changes in the containment volume, pressure, and temperature, do not increase or cause an increase in the likelihood of a DEPSG [doubled-ended pump suction guillotine], MSLB [main steamline break], or any other DBA. The increase in peak containment post accident pressure resulting from the reduced free volume is bounded by the original design pressure.

Current containment leakage test results are well within acceptance criteria even with an increased test pressure which was greater than the recalculated post accident peak containment pressure. In addition, equipment inside containment remains qualified and functional in the changed environment and onsite/offsite doses and airborne concentration remain with[in] stipulated limits. In addition, no changes in either equipment or operator actions are required which would affect either probability or consequences.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

All containment and safety-related systems inside containment will function within design or EQ [environmental qualification] limits and all analysis results are bounded by design and regulatory requirements. No new modes of operation are proposed or supposed. No physical plant changes are necessary or proposed as a result of the changes. The proposed changes do not adversely affect or alter equipment which is assumed to operate in accident conditions. In addition, no new operator actions are required and no existing actions are either altered or deleted.

(3) The proposed changes do not involve significant reductions in the margin of safety.

The margin of safety as defined in NSAC 125 (Guidelines for 10 CFR 50.59 Safety Evaluations, Nuclear Safety Analysis Center) Section 3.6 is the difference between a failure point and the acceptance limit.

The containment pressure acceptance limit is the containment design pressure of 56.5 psig per SRP [Standard Review Plan] and SER [Safety Evaluation Report] Sections 6.2.1. Since the calculated peak containment internal pressure resulting from reduced free volume (40.5 psig) is below the acceptance limit, this change does not reduce the margin of safety.

Current leakage rates are significantly below the acceptance limits. The margin between the measured value and the acceptance value was 45 percent on Unit 1 and 71 percent on Unit 2. These margins provide reasonable assurance that actual leak rates will remain within the acceptance criteria even at the higher pressure resulting from the reduced volume. Therefore, the increase in the calculated peak pressure does not decrease the margin of safety.

Although, the proposed change in containment accident peak temperature from 323 degree F to 328 degree F results in a reduction in the margin of safety from 17 degree F to 12 degree F, it is not considered to be a significant reduction. Equipment will continue to perform as designed because the time-temperature equivalency of the qualification test adequately exceeds the duration of the increased peak containment accident temperature. In addition, revised onsite and offsite radiological doses and airborne concentrations do not exceed previously accepted values.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P. C., 1615 L Street, N.W, Washington, D.C. 20036

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: August 14, 1992

Description of amendment request: In response to Generic Letter 91-11, Public Service Electric and Gas Company, the licensee, has proposed to change the Salem, Unit 1 Technical Specifications (TS) for the operation of the vital instrument bus inverters to make them identical to the TS currently in place for Salem, Unit 2. The changes would add a separate Action Statement for an inoperable inverter. Currently, there is only an Action Statement for equipment associated with the vital instrument bus. The proposed change would allow an inverter to be inoperable for up to 24 hours. There are also administrative changes to clarify the existing Limiting Condition of Operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes to the Salem, Unit 1 Technical Specifications:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would revise Technical Specification 3.8.2 to make the Unit 1 vital instrument bus Limiting Conditions of Operation (LCO) and action statements identical to those of

Unit 2. The proposed changes do not alter the design or operation of the vital instrument buses or inverters.

The proposed changes would add an allowed outage time (AOT) of 24 hours for one inoperable inverter. The Unit 1 Technical specifications presently require restoration of an inverter to operable and energized status within 8 hours, based on the action statement applicable to the AC buses. The 24 hour period allowed for the inverter would only apply if the affected vital instrument bus remains energized or is re-energized within 8 hours in accordance with the present action statement. The vital instrument bus may be energized through a constant voltage transformer in the event the inverter is not available to provide the normal AC power feed. 24 hours to restore the inverter to operable status is consistent with standard industry practice (eg., Westinghouse Standard Technical Specifications, revision 4) for allowing restoration of inverter operability without incurring an unacceptable risk of losing a vital instrument bus following a loss of the preferred (offsite) power source.

The proposed changes would also clarify that the AC distribution system operability requirements including energizing the 115 V AC buses through an operable inverter. These clarifications reflect present practices and are compatible with the Technical Specifications as written.

2) Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would not introduce any changes to the design or operating configuration of the AC distribution system. Therefore, the proposed changes do not introduce the possibility of a new or different kind of accident.

3) Do not involve a significant reduction in a margin of safety.

The changes to the Unit 1 vital instrument bus and inverter Technical Specification requirements are consistent with the present requirements for Unit 2, which have been determined to ensure an acceptable margin of safety relative to AC power availability. The proposed changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 8, 1992 and September 1, 1992

Description of amendment request: This amendment request would change Technical Specification (TS) 6.3.1 and 6.4.1 to delete existing licensed operator qualification and training requirements that are superseded based on 1) INPO accreditation of Public Sercie Electric and Gas Company's (PSE&G's) licensed operator training program, which are based on a systems approach to training, and 2) promulgation of the revised 10 CFR 55. The existing requirement is replaced by a requirement that licensed operator qualifications and associated training programs comply with the requirements of 10 CFR 55.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are administrative changes to clarify the current requirements for licensed operator qualifications and training programs and to conform to the revised 10 CFR 55 rule. Although licensed operator qualifications and training can have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised rule, concluded that this impact remains acceptable as long as licensed operator training programs are accredited and based on a systems approach to training. PSE&G's licensed operator training programs have been accredited by INPO and are based on a systems approach to training. The proposed TS changes take credit for the INPO accreditation of the licensed operator training programs and require continued compliance with the requirements of 10 CFR 55. The TS requirements for all other unit staff qualifications and training programs remain unchanged. Therefore, the proposed TS changes do not increase the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes are administrative changes to clarify the current requirements for licensed operator qualifications and training programs and to conform to the revised 10 CFR 55 rule. The changes do not affect plant design, hardware, system operation, or procedures. Additionally, in promulgating the revised rule, the NRC concluded that the impact of the revised rule on the possibility of creating a new or different kind of accident is acceptable as long as licensed operator training programs are accredited and based on a systems approach to training. As noted previously, PSE&G's licensed operator training programs have been accredited by INPO and are based on a systems approach to training. The proposed TS changes take credit for the INPO accreditation and require continued compliance with the requirements of 10 CFR 55. The TS requirements for all other unit staff qualifications and training programs remain unchanged. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The proposed TS changes are administrative changes to clarify the current requirements for licensed operator qualifications and training programs and to conform to the revised 10 CFR 55 rule. Licensed operator qualifications and training can have an indirect impact on a margin of safety; however, the NRC, in promulgating the revised rule, determined that the impact on margin of safety was acceptable when licensees maintain licensed operator training programs that are accredited and based on a systems approach to training. As noted previously, PSE&G's licensed operator training programs have been accredited by INPO and are based on a systems approach to training. The NRC has concluded, as stated in NUREG-1262, that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining INPO accredited, systems based licensed operator training programs is equivalent to maintaining NRC approved licensed operator training programs which conform with applicable NRC regulatory guides or NRC endorsed ANSI/ANS standards. The TS requirements for the qualifications and training programs for all other unit staff remain unchanged. The licensed operator qualifications and training programs will continue to be required to comply with the requirements of 10 CFR 55. The margin of safety is maintained by virtue of maintaining INPO accredited licensed operator training programs and through continued compliance with the requirements of 10 CFR 55. Therefore, the proposed TS changes do not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 14, 1992

Description of amendment request: This amendment would modify Technical Specification (TS) 3/4.3.2, Engineered Safety Feature Actuation System Instrumentation, Limiting Conditions for Operation, Action Requirements, and Surveillance Requirements including associated tables. The amendment includes administrative changes, provides consistency between Salem Unit 1 and Salem Unit 2, and ensures technical accuracy.

This amendment also proposes to change TS 3/4.3.2 to allow entry into Mode 1 with one Main Feedwater pump out-of-service, allow the ACTION statement in TS Functional Units 4a and 4b to require taking the Unit to one mode below the Mode of Applicability instead of two, and would delete all references to three and four loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review of Criterion 1 and the licensee's analysis of Criteria 2 and 3 are presented below.

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes involve providing clarity and consistency within the TS and between the two Units, providing more accurate references and descriptions, providing better consistency with actual plant conditions, and correcting typographical errors. These changes are either administrative, editorial, or do not represent changes to plant equipment or operation, and therefore, would not increase the probability or consequences of a previously analyzed accident.

There are also changes in this amendment to allow taking the Units to Mode 1 with one Main Feedwater Pump out-of-service. Two Main Feedwater Pumps are not required until greater than 50% power. The ACTION statements in TS Functional Units 4a and 4b would be changed to allow taking the Units to one mode below the Mode of Applicability rather than two. This would be consistent with general industry practice. All references to three and four loop operation would be deleted as the current Salem Accident Analysis does not support three loop operation. These changes do not represent

changes to plant equipment or operation, and therefore, would not increase the probability or consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident. As stated above, the proposed changes are either administrative, editorial, or do not represent modifications to plant equipment or operation. Therefore, there can be no impact on plant response to the point where a different accident is created.

3. Involve a significant reduction in a margin of safety. As stated above, the proposed changes are either administrative, editorial, or do not represent modifications to plant equipment or operation. Therefore, there can be no reduction in any margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Charles L. Miller

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: September 16, 1992

Description of amendment request: This proposed change will provide for an exemption to the requirement to perform the hot SIS test during the anticipated permanent shutdown of SONGS 1 in November 1992 following the current Cycle 11 operation. The San Onofre, Unit 1, Technical Specification 4.2.1.I.A, "Hot Safety Injection System Test," requires that a Hot Safety Injection System (SIS) test be performed in MODE 3 when the plant is being shutdown from MODE 1, and MODE 5 is planned to be entered. The test must be performed while the Reactor Coolant System (RCS) pressure is above 1,500 psi. The test includes determination of the force required to open Main Feed Pump Safety Injection Discharge valves HV-851A and HV-851B, and the margin of available actuation force. The proposed change will also correct a typographical error in item (1) of Specification 4.2.1.I.A so that the valves are identified correctly as HV-851A and HV-851B.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The Technical Specification requires that the hot SIS test be performed while the plant is being brought down from Mode 1, and Mode 5 is planned to be entered. The purpose of the test is to assure that the SIS will be operable if needed during future plant operation. Therefore, the requirement for the test is based on the assumption that the plant will be brought back up to power subsequently, and the plant operation will continue. In the case of SONGS 1 however, the plant is being shutdown permanently, and therefore, the SIS will not be required to be operable following the shutdown. Consequently, the requirement for the hot SIS test is not applicable to SONGS 1 permanent shutdown. The proposed exemption will eliminate the need to perform this test.

The proposed exemption will have no impact on the plant design, operation, or the operability of SIS in Modes 1-3, as required, while the plant is being shutdown. The exemption will mean that the operability of the SIS cannot be assured for subsequent fuel cycles. However, the future SIS operability is not needed since the plant is being shutdown permanently. As a practical matter, exemption from the test will eliminate any risks that may be associated with the test while the plant is being shutdown, and allow entry into Mode 5 to be made sooner. Therefore, the proposed exemption to the Technical Specification requirement will not result in an increase in the probability of an accident previously evaluated. Since the SIS will not be needed following the permanent shutdown of the plant, the proposed exemption will not result in an increase in the consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change will provide for an exemption to the requirement to perform a hot SIS test while the plant is being shutdown permanently. Since this requirement has no impact on the current operation of the SIS, the exemption to perform this test will not lead to any reduction in the capability of the SIS during the current fuel cycle. The proposed exemption has no impact on the existing plant design, operation, or safety analyses. Nor does it have any impact on any factors that could create accidents. Consequently, the proposed exemption will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in margin of safety?

Response: No

The proposed exemption will have no impact on the existing plant design or the safety analyses, and therefore, will not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 23, 1992

Description of amendments request: The proposed changes to the Technical Specifications (TS) would add new programmatic requirements governing radioactive effluents, radiological environmental monitoring and solid radioactive wastes to the Administrative Controls Section of the TS. The existing TS containing procedural details on radioactive effluents, radiological environmental monitoring, solid radioactive wastes and associated reporting requirements are being relocated to the Offsite Dose Calculation Manual or to the Process Control Program, as appropriate, in accordance with Generic Letter 89-01.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative in nature and alter only the format and location of programmatic controls and procedural details relative to radioactive effluents, radiological environmental monitoring, solid radioactive wastes, and associated reporting requirements. Compliance with applicable regulatory requirements will continue to be maintained. In addition, the proposed changes do not alter the conditions or assumptions in any of the FSAR accident analyses. Since the FSAR

accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amounts of any effluents released offsite. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not involve any actual change in the methodology used in the control of radioactive effluents, solid radioactive wastes, or radiological environmental monitoring. These changes are considered administrative in nature and provide for the relocation of procedural details outside of the technical specifications but add appropriate administrative controls to provide continued assurance of compliance to applicable regulatory requirements. These proposed changes also comply with the guidance contained in Generic Letter 89-01. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, P. O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Elinor G. Adensam

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: August 24, 1992

Description of amendments request: The proposed revisions to the Technical Specifications (TS) are requested in order to implement the new 10 CFR Part 20 requirements at Joseph M. Farley Nuclear Plant, Units 1 and 2. The proposed TS changes revise (1) the Bases and Administrative Controls sections to appropriately incorporate the new 10 CFR Part 20 references, (2) the Administrative Controls Section to provide operational flexibility needed for liquid and gaseous releases, and (3) the Administrative Controls Section regarding the distance used to make measurements of radioactivity to determine if the major portion of a body can receive and excessive exposure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes will facilitate the implementation of the new 10 CFR 20 requirements. Compliance with other applicable regulatory requirements will continue to be maintained. In addition, the existing alarm/trip setpoints for instruments which monitor the spent fuel pool area and containment for gaseous activity, and the curie limit for the outside temporary liquid holdup tanks are being retained. These values are based on the old 10 CFR 20 requirements which were evaluated and shown to be conservative relative to the values that would be obtained based on the new 10 CFR 20 requirements. Also, the proposed changes do not alter the conditions or assumptions in any of the FSAR accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amount of effluents released offsite. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not involve any actual change in the methodology used in the control of solid radioactive wastes or radiological environmental monitoring. The methodology that will be used in the control of radioactive effluents will result in the same effluent release rate as the current methodology now being used. The operational flexibility needed for effluent releases allows the use of concentration values ten times the values given in the new 10 CFR 20. However, this is acceptable since annual doses will be limited to the doses specified in 10 CFR 50, Appendix I and 40 CFR 190. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: August 28, 1992

Description of amendments request: The proposed changes are administrative in nature and will make title changes and clarifying changes to the Technical Specifications as given below:

1. The title "Vice President - Nuclear" will be changed in Section 6.0 to "Vice President."

2. In Section 6.1.2, the term "Nuclear Generation" will be replaced with "Plant Farley nuclear operations."

3. Sections 6.3.1 and 6.4.1 are revised to remove references to the March 28, 1990, NRC letter and Appendix A to 10 CFR Part 55 as all of the requirements are now included in the body of 10 CFR Part 55.

4. The title "Performance and Planning Manager" will be changed in Sections 6.5.1 and 6.5.3 to "Systems Performance Manager."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes are administrative in nature and involve no physical alternation of the plant or changes to setpoints or operating parameters. The changes do not affect operation, maintenance, or testing of the plant. The changes will accurately reflect organizational titles and names, the proper reference to 10 CFR 55, and a title of a

manager which may approve non-administrative procedures. For these reasons, the response of the plant to previously evaluated accidents will remain unchanged.

2. The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. Since no change is being made to the design, operation, maintenance, or testing of the plant, a new mode of failure is not created. Therefore, a new or different kind of accident will not occur as a result of these changes.

3. The proposed changes do not involve a significant reduction in a margin of safety. The organizational title and name revisions are administrative changes. The CFR reference change reflects the fact that 10 CFR 55 no longer contains an Appendix A. The requirements which were previously in Appendix A of 10 CFR 55 have been incorporated into the body of 10 CFR 55 making this revision an administrative change. The change in the title of the Performance and Planning Manager to the title of Systems Performance Manager is an administrative change. Therefore, these administrative changes will not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, P. O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 21, 1992 (TS 92-07)

Description of amendment request: The proposed amendments would revise the allowable value for the Reactor Coolant System loss of flow reactor trip setpoint from greater than or equal to 89.4 percent to greater than or equal to 89.6 percent of design flow per loop.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change to increase the reactor coolant system (RCS) loss of flow reactor trip allowable value from greater than or equal to 89.4 percent to greater than or equal to 89.6 percent does not alter the functions of any safety-related equipment. The change implements a more conservative allowable value that is consistent with the latest assumptions for SQN's accident analysis. This new value provides for reactor trip initiation consistent with SQN's previous analysis with the additional consideration of RCS flow measurement uncertainties for elbow taps without the normalization from a primary[-]to[-]secondary calorimetric. Therefore, accident mitigation functions remain consistent with the analysis and there is not an increase in the consequences of an accident. Likewise, the increase in this allowable value will not increase the probability of an accident because this function provides accident mitigation actions and is not considered the source of any accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As discussed above, the RCS loss of flow reactor trip function provides an accident mitigation function and is not an initiator of any accident. Therefore, the increase in the allowable value for this function will not create a new or different kind of accident previously analyzed, but does implement a more conservative value that is consistent with the accident analysis.

3. Involve a significant reduction in a margin of safety.

This change implements a conservative increase in the loss of flow allowable value to maintain the margin of safety. This increase is being implemented to offset the potential decrease in margin created by using the elbow taps to determine RCS flow. Therefore, this change does not reduce any margin of safety and provides conservative values that will maintain the margin of safety within the SQN accident analysis assumptions.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Ell B33, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 21, 1992 (TS 92-09)

Description of amendment request: The proposed amendments would revise Action a of Specification 3.6.5.2, Containment Air Return Fans, and the Modes 5 and 6 Actions of Specification 3.7.7, Control Room Emergency Ventilation System, by adding exclusion statements that indicate the limitation of Specification 3.0.4 is not applicable. These proposed changes would allow changes in plant operating modes with the control room indication of ice bed temperatures inoperable, but with local temperature monitoring available and obtainable on at least a 12-hour frequency. Also, the proposed changes would allow changes in plant operating modes between Modes 5 and 6 (only) when the Control Room Emergency Ventilation System is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This addition of an exclusion to TS 3.0.4 for ice bed temperature monitoring will continue to provide a level of temperature monitoring capability that will verify the operability of the ice condenser and thereby ensure its ability to mitigate the consequences of an accident. Loss of all ice bed temperature monitoring capability will require unit shutdown within an acceptable time interval that ensures the availability of the ice condenser safety functions for accident mitigation. For the inoperability of control room emergency ventilation system (CREVS) in Modes 5 and 6, the exclusion to TS 3.0.4 will not remove the actions to return the inoperable train to operable status or place the unaffected train in operation. Similarly, with both trains inoperable, suspension of core alterations or positive reactivity changes will still be required. For operation in Modes 5 and 6, these actions are acceptable based on postulated accidents and are unchanged by the proposed change; therefore, the allowance to change between Modes 5 and 6 while maintaining these positions does not reduce the ability of the CREVS to perform the accident mitigation safety functions assumed in the analysis. Therefore, the TS

3.0.4 exclusion as applied in this proposed change to TSs 3.6.5.2 and 3.7.7 will not increase the consequences of an accident previously evaluated.

The allowance to change operational modes while maintaining the required actions as described will not reduce the availability or functionality of the ice bed temperature monitoring system or CREVS. This continues to ensure that the unit is maintained within the assumptions used in the safety analysis. These systems provide monitoring and accident mitigation functions, and these changes will not increase their potential to create accidents because they are not considered the source of any accident. Therefore, the proposed changes will not increase the probability of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As discussed above, the systems affected by this change provide monitoring and accident mitigation functions and are not postulated to be the source of any accident. This change only provides the allowance to change modes while maintaining the required actions that allow continued operation for indefinite periods of time. Therefore, this change cannot contribute to the initiation of an accident or create the possibility of a new or different accident.

3. Involve a significant reduction in a margin of safety.

This change does not alter any functions of the ice bed temperature monitoring system or CREVS, and maintains the same action requirements for system inoperability. These systems will continue to provide the same level of ice condenser temperature indication and control room environment control as assumed in the safety analysis. Therefore, the margin of safety is not reduced as a result of adding an exclusion to TS 3.0.4 for TSs 3.6.5.2 and 3.7.7.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Ell B33, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 10, 1992

Description of amendment request: The proposed amendment would revise Technical Specification Section 15.4.6, "Emergency Power System Periodic Tests." Specification A.3 currently requires that each diesel generator be given an inspection, at least annually. For the current inspection only, an 18-month interval would be allowed since the last inspection of diesel generator GO2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of a facility in accordance with a proposed amendment does not result in a significant hazards consideration if it does not result in a significant increase in the probability or consequences of an accident previously evaluated. Extending the present G02 annual inspection interval to a maximum of 18 months is not expected to have an adverse effect on diesel reliability. A formal diesel generator reliability program has been established which has not indicated a reduction in diesel generator reliability based on established trigger values. Previous inspections have found no abnormalities which would be expected to affect the diesel during this time. G02 has been maintained in accordance with the manufacturer's recommendations since installation and the diesel generator vendor concurs that an 18-month inspection is acceptable. A significant increase in the probability of a failure of the diesel generator to perform its function, as analyzed in the PBNP FSAR, during the six month additional time between inspections will not occur. Therefore, an increase in the probability or consequences of a previously analyzed accident will not occur.

2. Operation of a facility in accordance with a proposed amendment does not result in a significant hazards consideration if it does not result in a new or different kind of accident than any accident previously evaluated.

The proposed amendments will allow a one-time extension of the Diesel Generator G02 annual inspection interval to 18 months. These amendments will not result in, nor are they the result of any change in the design or function of the emergency diesel generators. The diesel generators will continue to function as designed and analyzed in the PBNP FSAR. A new or different kind of accident than any previously evaluated cannot result.

3. Operation of a facility in accordance with a proposed amendment does not result in a significant hazards consideration if it does not result in a significant reduction in a margin of safety.

The extension of the annual diesel inspection is needed to ensure that Gas Turbine Generator G05 is back in service prior to performing the annual inspection of Emergency Diesel Generator G02. G05 is capable of providing power to on-site electrical distribution systems, including the safeguards buses, and would be utilized in the event of a loss of off-site power and the operable emergency diesel generator. By delaying the Diesel Generator G02 inspection, which requires removing the diesel generator from service, a backup (G05), is available should a failure of G01 occur on demand, thereby improving the availability of on-site electrical power to required equipment under normal and accident conditions. Therefore, a margin of safety will not be significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Notice of Issuance of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: June 25, 1991

Brief description of amendments: These amendments delete the Iodine Removal System from Technical Specifications 3/4 3.6.2.2 for Units 1, 2, and 3. The Iodine Removal System uses hydrazine as an additive to the containment spray system at Palo Verde. The removal of the hydrazine additive from the containment spray system will not result in a significant increase in post-Loss of Coolant Accident (LOCA) doses outside of containment.

Date of issuance: September 8, 1992

Effective date: September 8, 1992

Amendment Nos.: 64, 50, and 37

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43803) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: February 13, 1992

Brief description of amendments: The amendments revise the Technical Specifications relating to reactivity control systems to provide clarification and simplification for the control element assemblies and other minor administrative corrections. The Bases Section is revised to reflect the TS changes.

Date of issuance: September 3, 1992

Effective date: September 3, 1992

Amendment Nos.: 174 and 151

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9439) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 3, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: February 7, 1992

Brief description of amendment: The amendment revises Operating License (NPF-63) to allow the use of an alternate steam generator tube plugging criterion for the portion of the tubes within the tubesheet. The proposed revision would amend Technical Specification (TS) 4.4.5 specifying an F* (F-star) distance within the tubesheet below which indications would not require repair or plugging.

Date of issuance: September 4, 1992

Effective date: September 4, 1992

Amendment No.: 31

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11104) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: December 16, 1991

Brief description of amendment: The amendment revises Technical Specification 4.2.3.5 so the allowable time period for the use of calibrated instrumentation utilized in the performance of the reactor coolant system calorimetric flow measurement would be increased from 7 to 21 days.

Date of issuance: September 8, 1992

Effective date: September 8, 1992

Amendment No.: 32

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 19, 1992 (57 FR 6035) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois; Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 7, 1992, as supplemented July 1, 1992

Brief description of amendments: The amendments consist of administrative changes which revise the types of procedures that require review by the Onsite Review and Investigative Function (OnSR&IF), specifies the level of review and approval for procedures governed by the proposed Technical Review and Control process, clarifies the authority assigned to the OnSR&IF, and incorporates editorial changes to provide conforming changes to the proposed administrative changes.

Date of issuance: September 4, 1992

Effective date: September 4, 1992

Amendment Nos.: 50, 50, 39, 39, 86, 70, 140, and 129

Facility Operating License Nos. NPF-37, NPF-66; NPF-72, NPF-77; NPF-11, NPF-18; and DPR-39, DPR-48: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24668) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 4, 1992 No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington,

Illinois 60481; for LaSalle, the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348; for Zion, the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: April 24, 1992

Brief description of amendments: Revision of Technical Specifications to add two new sections under Administrative Controls; Section 6.11 - Radiation Protection Program and Section 6.12 - High Radiation Area.

Date of issuance: September 11, 1992

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 118 and 114

Facility Operating License Nos. DPR-19 and DPR-25. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24668). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 11, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: September 24, 1991, as modified January 31, and April 30, 1992. The licensee submitted additional information to supplement the application by letters dated February 24, March 23 and 26, April 23, May 11, August 12 and 13, 1992.

Brief description of amendment: The proposed amendment would change the licensed thermal power level of the reactor from the current limit of 3293 MWt to an increased limit of 3430 MWt. This request is in accordance with the generic BWR power uprate program established by the General Electric Company (GE) and approved by the NRC staff in a letter dated September 29, 1991.

Date of issuance: September 9, 1992

Effective date: Start of the third refueling outage (RFO3), currently scheduled for September 12, 1992, with full implementation prior to startup from RFO3.

Amendment No.: 87

Facility Operating License No. NPF-43. The amendment revises Facility Operating License NPF-43 and the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9442) and June 24, 1992 (57 FR 28198). The supplemental letters submitted additional information and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 13, 1992, as supplemented July 8 and August 26, 1992

Brief description of amendments: The amendments consist of changes to the Technical Specifications for Catawba Unit 1 Cycle 7 operation including revisions to reflect use of methodology developed by the Duke Power Company for accident and transient analysis, as well as other revisions.

Date of issuance: September 14, 1992

Effective date: September 14, 1992

Amendment Nos.: 101 and 95

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1992 (57 FR 32240) The August 26, 1992, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 14, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Iowa Electric Light and Power Company, Docket No. 50-331, Duane ArnoldEnergy, Center, Linn County, Iowa

Date of application for amendment: November 15, 1991

Brief description of amendment: The amendment revised the Technical Specifications applicable to loading fuel assemblies adjacent to Source range Monitors, added Limiting Conditions for Operation and Surveillance Requirements and made administrative changes.

Date of issuance: August 25, 1992

Effective date: August 25, 1992

Amendment No.: 186

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64654) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Long Island Power Authority, Docket No. 50-322, Shoreham Nuclear Power Station, Unit 1, Suffolk County, New York

Date of application for amendment: June 28, 1990 as supplemented on June 13, June 27, October 31, and December 5, 1991.

Brief description of amendment: License No. NPF-82 was transferred from the Long Island Lighting Company (LILCO) to the Long Island Power Authority (LIPA) by Order dated February 29, 1992. This amendment revises Licensee No. NPF-82 and the Technical Specifications to reflect the transfer of the license from LILCO to LIPA.

Date of issuance: September 4, 1992

Effective date: Thirty (30) calendar days from date of issuance.

Amendment No.: 9

Possession Only License No. NPF-82: Transfer license from LILCO to LIPA.

Date of initial notice in **Federal Register:** March 20, 1991, (56 FR 11781) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 1992.

No significant hazards consideration comments received: On March 20, 1991, the NRC published in the **Federal Register** a Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing related to the requested action (56 FR 11781). The NRC has received comments and a request for hearing. However, the petitioners in their letter dated June 3, 1992, requested permission to withdraw their opposition in accordance with their settlement agreement with the licensee. The Atomic Safety and Licensing Board in its Order of June 17, 1992, granted the petitioner's request to withdraw.

Local Public Document Room location: Shoreham - Wading River

Public Library, Route 25A, Shoreham, New York 11786-9697.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company,Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station,Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: January 10, 1992 as revised by letter dated July 20, 1992 and as supplemented by letter dated April 3, 1992.

Brief description of amendments: These amendments change the Technical Specification (TS) Section 3.9.C., Allowable Out of Service Times (AOTs) for the Emergency Service Water (ESW) pumps. The changes delete Section 3.9.C.3 of the TS which addressed use of the Emergency Cooling Water (ECW) pump as an equivalent ESW pump. The changes also modify surveillance requirements for the ECW pump, ESW Booster pumps and the Emergency Cooling Water Tower fans. The amendment modifies the Bases to reflect the above changes. Finally, the amendments modify terminology and numbering in Section 3.9.C and 4.9.C to make the TS consistent with the Updated Final Safety Analysis Report.

Date of issuance: September 16, 1992

Effective date: September 16, 1992

Amendments Nos.: 170 and 174

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 5, 1992 (57 FR 4492) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 22, 1992

Brief description of amendment: The amendment adds response time testing requirements for the reactor protection system and main steam isolation valve actuation instrumentation including the analog transmitter trip system (ATTS). These testing requirements are applied to instrument channels for which response time is significant to the Final Safety Analysis Report transient and accident analyses.

Date of issuance: September 9, 1992

Effective date: September 9, 1992

Amendment No.: 183

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30256) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf CreekGenerating Station, Coffey County, Kansas

Date of amendment request: June 19, 1992

Brief description of amendment: The amendment revises Technical Specification 6.8 to clarify the approval process for plant procedures, makes an editorial correction to Technical Specification 3.3 and updates position titles in Technical Specification 6.5.1.2.

Date of issuance: September 10, 1992

Effective date: September 10, 1992

Amendment No.: Amendment No. 56

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 5, 1992 (57 FR 34593) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1992. No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: July 8, 1992

Brief description of amendment: Permits the licensee to revise the organizational and staffing sections of the Administrative Controls Technical Specifications to be consistent with the present plant status.

Date of issuance: September 4, 1992

Effective date: September 4, 1992

Amendment No.: 145

Possession Only License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 5, 1992, (57 FR 34593). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 1992.

No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 23rd day of September 1992.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II. Office of Nuclear Reactor Regulation

[FR Doc. 92-23542 Filed 9-29-92; 8:45 am]

BILLING CODE 7590-F

[Docket No. 50-17]

Catholic University of America (Catholic University of America AGN-201 Research Reactor); Order Approving Decommissioning Plan and Authorizing Decommissioning

I.

By application dated February 6, 1992, the Catholic University of America (the licensee) requested authorization to decommission and dismantle the Catholic University of America's Aerojet-General Nucleonics Corporation (AGN) AGN-201 Research Reactor, Facility License No. R-31, located on the licensee's campus in Washington, DC, and to dispose of the component parts, in accordance with the Decommissioning Plan for the AGN-201 Research Reactor (Decommissioning Plan) submitted as part of the application. A "Notice of Proposed Issuance of Orders Approving Decommissioning Plan, Authorizing Decommissioning, and Terminating Facility License" was published in the **Federal Register** on August 20, 1992, (57 FR 37850). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

II.

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed the application with respect to the provisions of the Commission's rules and regulations and has found that the decommissioning, dismantling and disposal of component parts as stated in

the licensee's Decommissioning Plan will be consistent with the regulations in 10 CFR chapter I, and will not be inimical to the common defense and security, or the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

III.

Pursuant to 10 CFR 51.21, 51.30, and 51.35, the Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

IV.

Accordingly, pursuant to Section 103, 161b, 161i, and 161o, of the Atomic Energy Act of 1954, as amended, the licensee is hereby authorized to decommission and dismantle the AGN-201 Research Reactor facility covered by Facility License No. R-31, as amended, and dispose of the component parts in accordance with its Decommissioning Plan, and the Commission's rules and regulations, subject to the following conditions:

(a)(1) The licensee may make changes in facilities and procedures described in the approved Decommissioning Plan without prior Commission approval, unless the proposed change involves a change in the Technical Specifications (TS) incorporated in the license or an unreviewed safety question.

(2) A proposed change shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Decommissioning Plan may be increased; or (ii) if a possibility for an accident or malfunction of a different type than evaluated previously in the Decommissioning Plan may be created; or (iii) if the margin of safety as defined in the basis for any TS is reduced.

(b)(1) The licensee shall maintain records of changes in the facilities and of changes in procedures made pursuant to this section, to the extent that these changes constitute changes in the facilities or procedures as described in the Decommissioning Plan. These records must include a written safety evaluation which provides the basis for the determination that the change does not involve an unreviewed safety question.

(2) The licensee shall submit, as specified in 50.4, a report containing a brief description of any changes, including a summary of the safety evaluation of each. The report must be submitted annually.

(3) The records of changes in the facility or changes in procedures shall be maintained until the date of termination of the license.

(c) If the licensee desires (1) a change in the TS or (2) to make a change in the facilities or procedures described in the Decommissioning Plan which involve an unreviewed safety question or a change in the TS, the licensee shall submit an application for amendment of the license pursuant to 10 CFR 50.90 or request approval of a revision to the Decommissioning Plan.

V.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it has performed to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the Decommissioning Plan and in the Commission's guidance which is set forth in the staff's Safety Evaluation. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility License No. R-31.

VI.

For further detail with respect to this action, see (1) the licensee's application for authorization to decommission and dismantle the facility, and dispose of component parts, dated February 6, 1992; (2) the Commission's Safety Evaluation; and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Copies of items (2) and (3) may be obtained by request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III/IV/V.

Dated at Rockville, Maryland this 24th day of September 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-23677 Filed 9-29-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-08681-MLA; ASLBP No. 92-666-01-MLA (Source Materials License No. Sua-1358)]

UMETCO Minerals Corp.; Memorandum and Order

September 24, 1992.

Before Administrative Judge James P. Gleason, Presiding Officer

Prehearing Conference

Notice is hereby given that under the authority of 10 CFR 2.1209 a prehearing conference will be held in this proceeding on October 29, 1992 in the San Juan County Commission Chambers, 2nd Floor, 117 S. Main Street, Monticello, Utah. The conference will commence at 1 p.m. and will be preceded by a site visit to the UMETCO White Mesa Mill in Blanding, Utah at 10 a.m.

The conference is being held for the purpose of simplifying the issues, to define the matters in controversy and to expedite the orderly disposition of the proceeding. It is anticipated that the future hearing procedure will be determined by the conclusion of the conference. Persons who may desire to submit their views on this license proceeding, either orally or in written form, will have that opportunity during the conference. Such statements will not be considered a part of the decisional record and will be limited to a time to be announced at the beginning of the conference.

Ordered. Bethesda, Maryland, September 24, 1992.

For the Atomic Safety and Licensing Board.

James P. Gleason,

Presiding Officer, Administrative Judge.

[FR Doc. 92-23676 Filed 9-29-92; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Stuctural Geology & Geoengineering Panel to hold workshop on Exploratory Studies Facility Design and Construction Alternatives

Pursuant to its authority under section 5051 of Public Law 100-203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Technical Review Board's (the Board) Panel on Structural Geology & Geoengineering will hold a two-and-a-half-day workshop on November 4-6, 1992. The workshop will focus on alternative design and construction strategies for the proposed exploratory studies facility (ESF) at Yucca Mountain, Nevada. A site at Yucca Mountain currently is being

characterized by the Department of Energy (DOE) for its suitability as the possible location of a permanent repository for civilian spent fuel and defense high-level waste. The workshop, which is open to the public, will be held at the Stouffer Concourse Hotel, 3801 Quebec Street, Denver, Colorado 80207; (303) 399–7500.

The workshop tentatively has four sessions, each of which will consist of a brief status update by DOE staff and/or contractors followed by informal round-table discussion. Tentative session topics include (1) the baseline ESF—approaches to developing the baseline configuration and alternative strategies; (2) exploration and testing—the definition of early exploration and testing, and how the ESF can best be used to accomplish key elements of the site-suitability and site-characterization programs; (3) management and acquisition strategies—a review of alternatives for obtaining early delivery of construction at minimum cost; and (4) a summary and wrap-up of recommendations for a preferred alternative for obtaining early access to the underground.

The Board has invited representatives from the DOE and its contractors and from the construction industry to the workshop. Expert consultants to the Board also will be attending.

Transcripts of the workshop will be available on a library-basis from Victoria Reich, Board librarian, beginning December 17, 1992. For further information, contact Paula N. Alford, Director, External Affairs, Nuclear Water Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: September 25, 1992.

William Barnard,

Executive Director, Nuclear Technical Review Board.

[FR Doc. 92–23738 Filed 9–29–92; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Policy Letter on Inherently Governmental Functions

AGENCY: Office of Management and Budget, Executive Office of the President, Office of Federal Procurement Policy.

ACTION: Policy letter on inherently governmental functions.

SUMMARY: The Office of Federal Procurement Policy (OFPP) publishes today the final version of a policy letter providing guidance to Executive Departments and agencies on (1) what functions are inherently governmental functions that must only be performed by Government officers and employees and (2) what contractible functions so closely support Government officers and employees in their performance of inherently governmental functions that the terms and performance of those contracts require closer scrutiny from Federal officials. This policy letter has been developed because executive agencies, members of Congress, the General Accounting Office, and the public have from time to time either requested guidance regarding, or inquired about, the propriety of awarding contracts for certain types of functions or administering contracts in certain ways. Previous guidance on this issue has also not been as detailed as that which we now provide.

FOR FURTHER INFORMATION CONTACT: Richard A. Ong, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW.—Suite 9001, Washington, DC 20503 (202) 395–7209. To obtain a copy of this policy letter, please call OMB's Publications Office at (202) 395–7332.

SUPPLEMENTARY INFORMATION:

Comments received. We received 34 comments in response to our proposed policy letter published in the **Federal Register** on December 16, 1991 (56 Fed. Reg. 65279): Eight from industry or trade groups, four from private individuals, two from employee organizations, one from a Federally funded research and development center, and 19 from Government agencies.

1. *Purpose of the policy letter.* This policy letter on inherently governmental functions is being published to provide guidance on what kinds of functions, as a matter of policy, must be performed by officials of the Executive Branch of the United States and what kinds of functions may be performed by private persons under contract with the Federal Government.

Previous guidance on these matters that has been available to the Executive Branch has not been detailed and sometimes Federal agencies have permitted contractors to perform functions that should be performed by Government personnel. We now provide more detailed guidance.

2. *Relationship of policy letter to other OFPP publications on service contracting.* This policy letter is also one of several that the Office of Federal Procurement Policy (OFPP) has published recently that have focused on some aspect of service contracting in the Federal Government. At this time, OFPP has determined it is best to deal with individual aspects of service contracting rather than trying to publish comprehensive guidance in one document. We will consider collecting all of the guidance on service contracts in one document in the future.

Thus, we do not cover in detail in this policy letter such matters as cost effectiveness of contracting for services, conflicts of interest of service contractors, and management of service contracts. These issues are dealt with in OMB Circular No. A–76, Performance of Commercial Activities, August 4, 1983 (under revision); OFPP Policy Letter 89–1, Conflict of Interest Policies Applicable to Consultants, 54 FR 51805 (December 18, 1989); OFPP Memorandum for Agency Senior Procurement Executives, Government-Wide Guidance on Contract Administration (March 15, 1991); OFPP Policy Letter 91–2, Service Contracting, 56 FR 15110 (April 15, 1991); proposed OFPP Policy Letter 92–_____, Past Performance Information, 56 FR 63988 (December 6, 1991); and proposed OFPP Policy Letter of 92–_____, Management of Service Contracting, 56 FR 66091 (December 20, 1991).

3. *Relationship to OMB Circular No. A–76.* One commenter asked that we make clear our apparent intent to clarify rather than alter the guidance originally found in OMB Circular No. A–76 on inherently governmental functions. That is our intent. No fundamental change is intended.

We have altered the form of the original Circular A–76 definition of an inherently governmental function in the interest of clarity. Specific examples cited in the original A–76 definition have been incorporated into appendix A and a list of the general principles underlying the selection of the functions listed in that appendix has been added in their stead.

The terms "function" and "activity" as used in this policy letter and Circular A–76, respectively, are interchangeable.

The same commenter above suggested that we add a new appendix C, containing a nonexclusive list of functions that are commercial activities that should be contracted. We have not adopted this suggestion because the scheme proposed is the same one we have implicitly adopted. The proposed appendix C is nothing more than the list of examples of commercial activities found as an Attachment to Circular A–76. We do not believe it is necessary to incorporate that A–76 attachment in this policy letter. The fact that we have not provided this appendix C thus should

not be construed as narrowing the scope of functions that have been contracted in the past. Nonetheless, we have added language to section 5 to clarify the relationship between Circular A–76 and this policy letter on this point.

Another commenter stated that the relationship between this policy letter and Circular A–76 is unclear. This policy letter is to be the exclusive source of guidance on what constitutes, as a matter of policy, an inherently governmental function.

4. *Libraries.* Several persons questioned the inclusion of library operations as a ministerial function that should be contracted out in subsection 7(a) of the December version of the policy letter. The fact that employees render professional services in performing a function does not mean that the function in question is necessarily inherently governmental. In fact, the Government frequently seeks out contract services precisely because of the level of sophistication required to perform a particular function. On the other hand, agencies may determine that aspects of their library operations, such as handling certain types of information in certain circumstances, involve performance of an inherently governmental function. Therefore, we have removed the reference to libraries.

5. *Contract audits for inspectors general.* One commenter suggested that Federal inspector general (IG) work should be done by using Government resources, with exceptions justified on a case-by-case basis, unless specific technical expertise is needed temporarily and is not available within the Government. This suggestion was not adopted because (1) Congress has specifically authorized the use of contract auditors in ¶ 6(a)(9) of the Inspector General Act codified at 5 U.S.C. App. 3, and (2) financial and compliance audit activities are not considered inherently governmental functions.

Another commenter questioned whether subsection 12(g) of Appendix A pertaining to the determination of whether contract costs are reasonable, allocable, and allowable proscribes the use of contract audit services. It does not. The decision on what costs are reasonable, allocable, and allowable is ultimately a Government decision, but that decision may be based on recommendations made by contract auditors. Certified public accountants, for example, only render "opinions" and contracts sometimes provide that audit reports are advisory only. Moreover, the use of contract auditors has been authorized by Congress, as noted above.

6. *Agency determinations.* One commenter interpreted the policy letter as authorizing Federal managers to make a final determination on whether a function is an inherently governmental function, under this policy letter, without such determination's being subject to being overturned by the Office of Management and Budget (OMB) or being subject to a cost comparison study under Circular A–76. In general, agencies are expected to make their own determinations, subject to oversight by OMB. Language has been added to subsection 7(c) to clarify this point.

7. *Agency discretion.* One commenter questioned the need for the language in former subsection 7(e) regarding agency discretion to award nonpersonal service contracts. We agree it is unnecessary. It is already clear that awarding a contract is an agency responsibility.

8. *Incorporation in OMB Circular No. A–76, other documents.* Several commenters suggested that the policy letter be incorporated in Circular A–76, "Commercial Activities," currently being revised. We did not incorporate this suggestion because A–76 is already a lengthy document. Also, contracting for inherently governmental functions is indeed a consideration in contracting out, but it is not unique to the A–76 program. All Federal officials who contract for nonpersonal services must consider the problem of inherently governmental functions, and we thus believe separate guidance applicable to all such contracting, not just to nonpersonal service contracting in the A–76 context, is the better alternative. Other commenters urged that the policy letter be combined with one or more other OFPP policy letters, such as those on conflict of interest, service contracting, and past performance and published in a form other than a policy letter. This suggestion has merit but we believe it best to try to deal with discrete portions of service contracting rather than to try to deal with all facets of a complex problem at once, as discussed in point 2, above.

9. *Agency discretion regarding resource allocation.* One commenter suggested we should address the issues of the future balance between official and contractor workforce in the performance of "basic governmental work," the specific expertise needed to manage the contractor workforce now or in the future, where this expertise should be located, and the way in which it can be maintained. We believe this is a matter for agencies themselves to determine, given their knowledge of their mission, their resources, the kinds of services they wish to contract, and the size of their service contracting effort. We merely highlight the problem of lack of oversight as a loss of Government control and require agencies to be aware of their existing oversight responsibilities. They are, however, to use their own discretion to figure out how to manage their contracts.

10. *Evaluation of proposals.* One commenter believes there is an apparent conflict between former subsection 14(b) in appendix A and section 8 of appendix B. There is no conflict as new subsection 12(b) refers to participation as a voting member on source selection boards only.

11. *Appendix B. controls.* The same commenter also suggested that appendix B should contain a discussion of possible controls that the Government should employ to prevent the functions listed there from being perceived as inherently governmental function. We do not believe this is necessary, as any function that is in appendix B is by definition not an inherently governmental function.

12. *Applicability to nonpersonal services.* Three commenters questioned why the policy letter applies only to nonpersonal service contracts. Upon consideration, we have accordingly deleted the definition of "service contract" in section 5. No useful purpose is served by defining "personal services" differently from the FAR and no harm arises from having the policy letter apply to the minimal number of true personal service contracts. Personal service contracts that are really personnel appointments are excluded from the coverage of the policy letter. Thus, FAR 37.102(b) need not be amended as a result of this policy letter.

13. *Subcontractors.* Commenters questioned whether subsection 12(d) of appendix A should apply to subcontractors. It does not and clarifying language has been added.

14. *Supplies or services purchased by prime contractors.* Some commenters questioned the apparent effect of subsection 12 in appendix A of preventing contractors from buying supplies and services for their own account. It is not the intent of this policy letter to prevent contractor mess halls from buying food to be prepared for military personnel. Nor does it affect what or how contractors buy to be incorporated into supplies or services to be delivered to the Government. Similarly, contractors may purchase supplies or services for the Government while acting within reasonable Government guidelines. Section 12 is

only meant to address the Government's direct acquisition of supplies or services.

15. *Independent judgement.* The emphasis placed on independent judgement by this policy letter does not preclude the wholesale adoption of contractor advice, opinions, recommendations, ideas, or conclusions. They merely may not be adopted, in whole or in part, without officials' first exercising independent judgement.

16. *Duties of contracting officers.* We have added language to section 8 to spell out the analytical steps to be followed by contracting officers seeking to comply with this policy letter.

17. *Risk of injury to the public.* One commenter stated that the definition of an inherently governmental function does not clearly address the danger to the public interest when a function is contracted out and the public is at risk if contractors, such as fire fighters or military support contractors, fail or refuse to act in time of crisis. The risk of injury to the public is an important consideration. We believe, however, that ¶7(b)(5) appropriately identifies this point as a consideration in determining whether a function is, as a matter of policy, an inherently governmental function. The decision to include several of the functions listed in appendix A reflects an underlying concern for this risk.

18. *Binding nature of decisions.* This same commenter noted that it is an overstatement to say that the use of discretion (referred to in what is now subsection 7(a) of the policy letter) must have the effect of committing the Government to a course of action. This is because a scientific consulting firm, for example, could submit a study that would have a tremendous impact or regulations or other agency actions but would not necessary lead to a commitment to a course of action.

We have addressed the element of discretion in subsection 7(a) to convey the idea that the mere existence of the element of discretion is not determinative of whether, as a matter of policy, an inherently governmental function is involved. Moreover, it is useful to observe that a study that has a tremendous impact is not per se a bad thing. A study may have that effect because of its great merit. We should be concerned, however, when a study is allowed to proceed to the point where alternative views, solutions, research, or conclusions, and so forth, cannot realistically be included or taken into account. In this case, the contractor has in effect made all important decisions. Section 7(b)(3) addresses this issue.

19. *Federally funded research and development centers (FFRDCs).* One commenter stated that while profit-making contractors can perform functions listed in appendix B, the policy letter should cross-reference FAR 35.017 pertaining to FFRDCs and "recognize that FFRDCs are an equally viable source of expertise requiring less rigorous oversight." We have not adopted this suggestion. We do not agree that FFRDCs necessarily require less oversight. We do recognize, however, that they are dealt with in detail in FAR Part 35 and that its provisions may suffice to enable satisfactory agency oversight of FFRDCs. Whether fewer or additional control measures are necessary to ensure agency control over FFRDCs is a matter for agencies to decide in the circumstances of each case.

20. *Architect-engineer evaluation boards.* This same commenter questioned whether section 3, which states that services obtained by personnel appointments and advisory committees are not covered by this policy letter, could be construed to prohibit private individuals appointed to architect-engineer source evaluation boards in accordance with FAR 36.602 from voting. To the extent such boards are advisory committees, the policy letter is not applicable to them. If they are not, the commenter makes an excellent point. FAR 36.602–4 makes clear that the agency is to make the final selection and FAR 36.602–3(d) provides for the evaluation board to set out in its report the considerations upon which its recommendations were based. This is an acceptable mechanism and we have accordingly revised subsection 12(b) of appendix A and section 14 of appendix B to make clear that it is selection of sources that is the most sensitive function. Contractor activities that result in recommendations and that explain how those recommendations were arrived at adequately preserve agency options. A related change has been made in subsection 7(f) stating that requiring contractors to explain how they arrived at their recommendations is another available control measure.

21. *Factors to consider in totality of the circumstances*—(a) *Complexity and oversight.* One commenter questioned the inclusion of ¶7(d)(2) of the proposed policy letter relating to the complexity of the task to be performed. Upon consideration, we conclude that complexity is better considered in conjunction with the provision that was at 7(d)(12) relating to oversight procedures, resources, and practices. We have amended paragraph 12 accordingly and moved it, as well as the provision in former ¶7(d)(4) relating to the duration of the contract, to new subsection 7(d), Post-award responsibilities. This was done to remove questions relating to contract oversight from the "totality of the circumstances" test. It is important to understand that, if an agency has inadequate oversight procedures or poor oversight practices, the underlying function of any agency contract affected by these deficiencies is not thereby transformed into an inherently governmental function. As the totality test focuses on the nature of the function in question and as there can be a transfer of oversight responsibility even if the underlying function is contractible, the issue of de facto transfer of control should therefore be dealt with elsewhere. (Note that a transfer of contract management responsibility to the contractor is explicitly not permitted by appendix A, subsection 12(e).)

(b) *Ultimate user of contractor work product.* Several commenters questioned the inclusion of this factor at ¶7(d)(3) of the proposed policy letter. We agree it should be taken out. Who will use the contractor's work product is important and this has bearing on how much management attention to give to the contract, but it doesn't say anything about the nature of the underlying function or the adequacy of agency contract administration.

(c) *Review of contractor action.* The same commenter questions the advisability of including a factor (new ¶7(d)(5)) that relates to the finality of any contractor's adjudication of any claim and the type of agency review of contractor adjudications. We see no problem with agencies' providing for contractor adjudication of claims so long as citizens know that they have a right of recourse to agency decisionmakers if they are dissatisfied with the decision of the contractor. (Note, however, that certain kinds of hearings may still not be conducted by contractors, e.g., hearings to determine the eligibility of any person for a security clearance, or hearings involving actions that affect matters of personal reputation or eligibility to participate in Government programs. See appendix A, section 14.)

Thus, we distinguish between, on the one hand, holding hearings and making recommendations and, on the other, retaining the authority to issue the final adjudicatory decision. Contractors may perform the former functions so long as there is adequate oversight, agencies retain the authority to issue the final decision, and the public has a right to insist that the agency make the final decision, if is so desires. This is easier to understand if one views the contractor's action as more of an advisory action

than one that binds the claimant with only limited opportunities to change the result before the agency. Note that in the absence of an appeal by a claimant, the agency need not rule on each contractor decision or ruling. It should, of course, inspect or sample contractor decisions or rulings from time to time to ensure that contractors comply with agency guidelines and procedures.

(d) *Limiting or extinguishing discretion.* The same commenter noted that our speaking in terms of contractor limiting or extinguishing discretion in former ¶7(d)(5) could mistakenly create the impression that some of the Government's authority can be exercised by a contractor. The policy letter attempts to clarify this issue at subsection 7(a).

(e) *Public perception.* Several commenters questioned the inclusion of this factor at ¶7(d)(11) of the proposed policy letter, believing that public perception is too ambiguous a concept. We agree. A function can probably be analyzed in the light of other factors listed without the need to resort to the concept of perceptions. Appendix A of the policy letter is itself an up-to-date listing that already takes into account the factor of public perceptions. The paragraph has been deleted.

(f) *Laws applicable to the Civil Service.* Several commenters questioned the inclusion of this factor at ¶7(d)(13) of the proposed policy letter. We agree and have deleted this factor. The considerations listed may be relevant to what good contract management should require by way of contract conditions, but they don't say anything about the nature of the function or the adequacy of agency contract administration practices.

(g) *Record keeping requirement.* One commenter found the meaning of paragraph 7(d)(15) of the proposed policy letter unclear. This factor was included to cover situations such as a contractor's providing aircraft-related training. If the contractor proves to be incompetent or negligent, the fact that the contractor did maintain or was required to maintain records of who was trained permits corrective action to be taken, such as locating improperly trained students and requiring retraining. If records are not maintained, the Government cannot exercise ultimate control because it cannot correct any errors. Nonetheless, the provision appears to have only limited application and has been deleted.

22. *Collection of fees.* Two commenters questioned the provisions of section 20 of appendix A of the proposed policy letter prohibiting collection of fees or other public moneys, pointing out that contractors in mess halls for military personnel currently collect charges for meals and Department of Housing and Urban Development (HUD) contractors collect fees from purchasers of HUD properties. We have modified the policy letter to enable routine collection of fees where good cash management practices and other controls are in effect, where there is little danger of miscalculating the amount of money ultimately due the Government, and where there is little difficulty in obtaining payment. For example, a contractor could have discretion to determine that a family seeking entrance to a park consists of four people rather than three, and that one of the four is a child under 12, but the contractor would not have the discretion to determine the amount of the fee to be paid by each person in a particular category. HUD contractors may also collect fees from purchasers of HUD properties in accordance with subsection 17(a) of appendix A. We also make clear that routine voucher and invoice examination by contractors is an acceptable practice.

23. *Contract for one function or several.* One commenter questioned whether the policy letter reflects our belief that only contracts with multiple functions are susceptible to confusion with respect to inherently governmental functions. This is not our belief. The policy letter is intended to provide guidance with respect to discrete functions regardless of whether there is a mixture of several functions in a contract or there is only one function that is being contracted.

24. *Post-award responsibilities.* Section 7(e) has been amended to make clear that agency contract oversight is to ensure contractor performance in accordance with the terms of the contract, but that oversight must not be exercised so as to create a personal service contract. Language from subsection 7(d) of the proposed policy letter has been moved to subsection 7(e), as explained in section 21, above.

25. *Drafting of Congressional testimony, responses to Congressional correspondence, and agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity.* Two commenters questioned whether contractors should be able to draft Congressional testimony, subject to ultimate agency approval. Approval is a key power reserved to any official and we by no means agree that officials do or will approve contractor work in a perfunctory manner. We have nonetheless reexamined this issue and, because of the importance of Congressional testimony and correspondence and of agency responses to audit reports, we are now deciding, as a matter of policy, that these documents should not be drafted by contractors. We have thus added a new subsection (c) to the body of the policy letter to this effect. We deleted the relative portions of appendix A because we do not believe that drafting documents per se is an inherently governmental function and failing to exercise sufficient oversight with respect to drafting of such documents does not transform the underlying function into an inherently governmental function, as noted in subsection 21(a), above. Contractor reports, conclusions, summaries, analyses, and other work products may, of course, still be quoted or otherwise referenced in Congressional testimony, correspondence, responses to audit reports, or set out in such things as attachments, appendices, or enclosures thereto.

26. *Reliance on contractor support.* One commenter called attention to our statement in section 4 of the policy letter that agencies "award service contracts for various reasons, such as to acquire special skills not available in the Government or to meet the need for intermittent services." The commenter pointed out that " 'support service' contractors have come to serve as the permanent workforce for many programs" seemingly implying that our statement does not take this into account. In fact, our statement is an accurate one, citing only two of the reasons why agencies award service contracts as examples. Contracting actions under Circular A–76 are also a reason why agencies award service contracts.

Whatever the reason for using service contracts to accomplish agency missions, it is important to understand that agency use of service contracts is limited by our policy letter in two ways: the function must not be an inherently governmental function, and if it is not, the agency must be able to exercise effective oversight of any contract awarded. We make clear that management of a contract is just as important as deciding whether the contract may properly be awarded in the first place.

Our policy letter is limited in scope and does not focus on why agencies use service contracts. Rather we are concerned that service contracts, when used, are used only when contractors may perform the functions in question and when agencies have the resources to manage the contracts. It is true that

meaningful oversight of contractor performance, the resources available for such oversight, the actual practice of the agency regarding oversight, the duration of the contract, and the complexity of the tasks to be performed.

(f) *Management controls.* When functions described in appendix B are involved, additional management attention to the terms of the contract and the manner of performance is necessary. How close the scrutiny or how extensive or stringent the management controls need to be is for agencies to determine. Examples of additional control measures that might be employed are:

(1) Developing carefully crafted statements of work and quality assurance plans, as described in OFPP Policy Letter 91–2, Service Contracting, that focus on the issue of Government oversight and measurement of contractor performance;

(2) Establishing audit plans for periodic review of contracts by Government auditors;

(3) Conducting preaward conflict of interest reviews to ensure contract performance in accordance with objective standards and contract specifications;

(4) Physically separating contractor personnel from Government personnel at the worksite; and

(5) Requiring contractors to (a) submit reports that contain recommendations and that explain and rank policy or action alternatives, if any, (b) describe what procedures they used to arrive at their recommendations, (c) summarize the substance of their deliberations, (d) report any dissenting views, (e) list sources relied upon, and/or (f) otherwise make clear the methods and considerations upon which their recommendations are based.

(g) *Identification of contractor personnel and acknowledgement of contractor participation.* Contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties must be required to identify themselves as such to avoid creating an impression in the minds of members of the public or the Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. All documents or reports produced by contractors are to be suitably marked as contractor products.

(h) *Degree of reliance.* The extent of reliance on service contractors is not by itself a cause for concern. Agencies must, however, have a sufficient number of trained and experienced staff to manage Government programs properly. The greater the degree of reliance on contractors the greater the need for oversight by agencies. What number of Government officials is needed to oversee a particular contract is a management decision to be made after analysis of a number of factors. These include, among others, the scope of the activity in question; the technical complexity of the project or its components; the technical capability, numbers, and workloads of Federal oversight officials; the inspection techniques available; and the importance of the activity. Current contract administration resources shall not be determinative. The most efficient and cost effective approach shall be utilized.

(i) *Exercise of approving or signature authority.* Official responsibility to approve the work of contractors is a power reserved to Government officials. It should be exercised with a thorough knowledge and understanding of the contents of documents submitted by contractors and a recognition of the need to apply independent judgment in the use of these work products.

8. *Responsibilities*—(a) *Heads of agencies.* Heads of departments and agencies are responsible for implementing this policy letter. While these policies must be implemented in the Federal Acquisition Regulation (FAR), it is expected that agencies will take all appropriate actions in the interim to develop implementation strategies and initiate staff training to ensure effective implementation of these policies.

(b) *Federal Acquisition Regulatory Council.* Pursuant to subsections 6(a) and 25(f) of the OFPP Act, as amended, 41 U.S.C. 405(a) and 421(f), the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this policy letter is published in the **Federal Register**. Issuance of final regulations within this 210-day period shall be considered issuance "in a timely manner" as prescribed in 41 U.S.C. 405(b).

(c) *Contracting officers.* When requirements are developed, when solicitations are drafted, and when contracts are being performed, contracting officers are to ensure:

(1) That functions to be contracted are not among those listed in appendix A of this letter and do not closely resemble any functions listed there;

(2) That functions to be contracted that are not listed in appendix A, and that do not closely resemble them, are not inherently governmental functions according to the totality of the circumstances test in subsection 7(b), above;

(3) That the terms and the manner of performance of any contract involving functions listed in appendix B of this letter are subject to adequate scrutiny and oversight in accordance with subsection 7(f), above; and

(4) That all other contractible functions are properly managed in accordance with subsection 7(e), above.

(d) *All officials.* When they are aware that contractor advice, opinions, recommendations, ideas, reports, analyses, and other work products are to be considered in the course of their official duties, all Federal Government officials are to ensure that they exercise independent judgment and critically examine these products.

9. *Judicial review.* This policy letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this policy letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.

10. *Information contact.* For information regarding this policy letter contact Richard A. Ong, Deputy Associate Administrator, the Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503. Telephone (202) 395–7209.

11. *Effective date.* This policy letter is effective 30 days after the date of publication.

Allan V. Burman,

Administrator.

Appendix A

The following is an illustrative list of functions considered to be inherently governmental functions:[1]

1. The direct conduct of criminal investigations.

2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).

3. The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support role.

4. The conduct of foreign relations and the determination of foreign policy.

5. The determination of agency policy, such as determining the content and application of regulations, among other things.

6. The determination of Federal program priorities or budget requests.

7. The direction and control of Federal employees.

8. THe direction and control of intelligence and counter-intelligence operations.

9. The selection or nonselection of individuals for Federal Government employment.

10. The approval of position descriptions and performance standards for Federal employees.

11. The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

12. In Federal procurement activities with respect to prime contracts,

(a) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

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[1] With respect to the actual drafting of Congressional testimony, of responses to Congressional correspondence, and of agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity, see special provisions in subsection 6(c) of the text of the policy letter.

(b) Participating as a voting member on any source selection boards;

(c) Approval of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(d) Awarding contracts;

(e) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(f) Terminating contracts; and

(g) Determining whether contract costs are reasonable, allocable, and allowable.

13. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

14. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

15. The approval of Federal licensing actions and inspections.

16. The determination of budget policy, guidance, and strategy.

17. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 U.S.C. 952 (relating to private collection contractors) and title 31 U.S.C. 3718 (relating to private attorney collection services), but not including:

(a) Collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard cash management techniques, and

(b) Routine voucher and invoice examination.

18. The control of the treasury accounts.

19. The administration of public trusts.

Appendix B

The following list is of services and actions that are not considered to be inherently governmental functions. However, they may approach being in that category because of the way in which the contractor performs the contract or the manner in which the Government administers contractor performance. When contracting for such services and actions, agencies should be fully aware of the terms of the contract, contractor performance, and contract administration to ensure that appropriate agency control is preserved.

This is an illustrative listing, and is not intended to promote or discourage the use of the following types of contractor services:

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

2. Services that involve or relate to reorganization and planning activities.

3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.

4. Services that involve or relate to the development of regulations.

5. Services that involve or relate to the evaluation of another contractor's performance.

6. Services in support of acquisition planning.

7. Contractors' providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

8. Contractors' providing technical evaluation of contract proposals.

9. Contractors' providing assistance in the development of statements of work.

10. Contractors' providing support in preparing responses to Freedom of Information Act requests.

11. Contractors' working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in FAR 4.402(b)).

12. Contractors' providing information regarding agency policies or regulations, such as attending conferences of behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

13. Contractors' participating in any situation where it might be assumed that they are agency employees or representatives.

14. Contractors' participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

15. Contractors' serving as arbitrators or providing alternative methods of dispute resolution.

16. Contractors' constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

17. Contractors' providing inspection services.

18. Contractors' providing legal advice and interpretations of regulations and statutes to Government officials.

19. Contractors' providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

[FR Doc. 92-23641 Filed 9-29-92; 8:45 am]
BILLING CODE 3110-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Kachina Village, Coconino County, AZ

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Kachina Village, located in Coconino County, Arizona, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until December 29, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Robert Wessel, Resolution Trust Corporation, c/o Great American FSA, 600 B Street, M/C 5480, San Diego, CA 92183, (619) 231-3035, Fax (619) 231-4051.

SUPPLEMENTARY INFORMATION: The Kachina Village property is located in the unincorporated area of Kachina Village, south of the City of Flagstaff, Coconino County, Arizona. The site is situated west of Tovar Trail and about 200 feet north of Kachina Trail. The property contains wetlands, has recreational value and is adjacent to the Coconino National Forest. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property consists of approximately 57.5 acres of undeveloped land. Several natural springs and streams run through the property and drain into a wash area. The northeast part of the property is slightly elevated above the rest of the property and is partially forested. There is no developed access to the property.

Property Size: Approximately 57.5 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before December 29, 1992 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by December 29 1992 to Mr. Robert Wessel

at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Kachina Village, **Federal Register** Publication Date: [**insert Federal Register** publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: September 24, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92–23683 Filed 9–29–92; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; Woodlands Village, Coconino County, AZ

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Woodlands Village, located in the City of Flagstaff, Coconino County, Arizona, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until December 29, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Scott Dressler, Resolution Trust Corporation, c/o Great American FSA, 600 B Street, M/C 0208, San Diego, CA 92183, (619) 231–6535, Fax (619 231–6329.

SUPPLEMENTARY INFORMATION: The Woodlands Village property is located at the intersection of Highway 17 and Interstate Highway 40 in Flagstaff, Coconino County, Arizona. The property has recreational value and is adjacent to lands managed by the State of Arizona for forestry purposes. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property consists of approximately 290 acres comprised by a master planned community with 148 acres of undeveloped land in the vicinity of the Coconino National Forest. The vegetation on the site is characterized as native and is critical to the support of local wildlife populations.

Property size: Approximately 290 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before December 29, 1992 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by December 29, 1992, to Mr. Scott Dressler at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: Woodlands Village

Federal Register Publications Date: _____ [insert **Federal Register** publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: September 24, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92–23661 Filed 9–29–92; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

September 24, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 129(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Allied Research Corporation
Common Stock, $.01 Par Value (File No. 7–9154)

Blackrock California Insured Municipal 2008 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–9155)

Blackrock New York Insured Municipal 2008 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–9156)

Blackrock Florida Insured Municipal 2008 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–9157)

Blackrock Insured Municipal 2008 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–9158)

Equus Investments Incorporated
Common Stock, $.001 Par Value (File No. 7–9159)

Equus II Incorporated
Common Stock, $.001 Par Value (File No. 7–9160)

HMO America, Inc.
Common Stock, $.01 Par Value (File No. 7–9161)

PLC Systems, Inc.
Common Stock, No Par Value (File No. 7–9162)

PLC Systems, Inc.
Warrants to purchase Common Stock at $4.80, No Par Value (File No. 7–9163)

PLC Systems, Inc.
Units (consisting of two Common Shares and one warrant to purchase one Common Share at $4.80) No Par Value (File No. 7–9164)

Paxar Corporation
Common Stock, $.10 Par Value (File No. 7–9165)

Conner Peripherals, Inc.
Common Stock, No Par Value (File No. 7–9166)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to

submit on or before October 16, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-23639 Filed 9-24-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31226; File No. SR-PSE-92-15]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Adjudication of Minor Rule Plan Violations

September 23, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 17, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its rules regarding the adjudication of minor rule violations and related disciplinary procedures. The proposed rule changes fall into the following six categories:

(1) Amendments to the PSE's Minor Rule Plan ("MRP");

(2) Amendments to the recommended fine schedules for MRP violations;

(3) Amendments to the PSE's Summary Sanction Procedures;

(4) Amendments to rules governing hearings and appeals;

(5) Amendments to Exchange Rule 6.2, governing admission to and conduct on the options trading floor; and

(6) Fines and charges for late Financial and Operational Combined Uniform Single ("FOCUS") reports and Securities Investor Protection Corporation ("SIPC") reports.

The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Amendments to the PSE's Minor Rule Plan

The Exchange is proposing to amend its rules to incorporate detailed procedures relating to the Exchange's MRP and to add certain rules to its list of MRP violations.[1] Specifically, the PSE proposes to adopt Exchange Rule 10.13, entitled "Minor Rule Plan," which is designed to streamline the Exchange's disciplinary process so that the Exchange and its committees do not spend undue time resolving cases involving minor rule violations. The PSE believes that the amended MRP provides for procedures whereby members and member organizations may be disciplined appropriately in cases involving minor rule violations where a sanction more serious than a warning or cautionary letter is appropriate. Cases under the proposed MRP will be resolved without the issuance of a formal complaint and without a formal hearing.

Each case will be decided by a committee designated to consider a staff report on the matter and a written statement, if any, submitted by the person or organization alleged to have committed a minor rule violation. The PSE believes that the abbreviated procedures are justified because violations subject to the proposed MRP are either objective or technical in nature and easily verifiable, thereby lending themselves to the use of a fine schedule. The PSE believes that the MRP will provide better allocation of Exchange resources by eliminating time-consuming procedures that would otherwise be required in connection with formal proceedings. The PSE also believes that the due process protection and notice provisions established under the MRP will result in fair proceedings for those alleged to have committed a minor rule violation.

Specifically, proposed PSE Rule 10.13 authorizes the PSE's Executive Committee, Ethics and Business Conduct Committee, Options Floor Trading Committee and Equity Floor Trading Committee to impose a fine of up to $5,000 on any member, member organization, or person associated with a member or member organization for any violation of an Exchange Rule that has been determined to be minor in nature. The MRP also contains recommended fine schedules for each type of rule violation. These fines are graduated to account for repeat offenders. At the discretion of the Exchange, however, a serious, aggravated or repeated violation of a minor rule may be adjudicated through formal proceedings under PSE Rule 10.3, possibly resulting in other, more serious sanctions.

Under the MRP, the PSE will serve a person or organization accused of a minor rule violation with a written statement setting forth: (i) The Exchange Rule(s) alleged to have been violated; (ii) the act or omission constituting each violation; and (iii) notice that the accused person or organization may submit a written statement to a designated committee for its consideration. Payment of a fine imposed under the MRP will be deemed a waiver of any right to a disciplinary proceeding under Exchange Rule 10.11 and of any right to a review of the matter by the Exchange's Board of Governors. However, fines imposed under the MRP may be contested by filing with the PSE's Compliance Department a written application meeting the requirements of Exchange Rule 10.11. The application must be submitted within five business days after receipt of written notification of the fine. A determination contested pursuant to this provision becomes a formal disciplinary action and penalties imposed by a hearing panel will be reported publicly to the Exchange membership after the decision has become "final" pursuant to Exchange Rule 10.7.

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[1] The Exchange's MRP was initially approved by the Commission in 1985. See Securities Exchange Act Release no. 22854 (November 21, 1985), 50 FR 48853 (order approving File No. SR-PSE-85-24) ("MRP Approval Order").

A person or organization sanctioned under the MRP need not report the minor rule violation to the Commission on SEC Form BD, provided that the sanction consists of a fine not exceeding $2,500, and provided that the sanctioned person or organization has not sought an adjudication, a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Fines in excess of $2,500 imposed pursuant to the MRP will be subject to current rather than quarterly reporting to the Commission.

The Exchange proposes to add the following new rules to its list of minor violations:

(1) Trading as both market maker and floor broker on the same business day in options covering the same underlying security (Exchange Rule 6.38(a));

(2) Failure to remain for a specified amount of time after trade processing (Exchange Rule 6.17);

(3) Failure to honor a ten-up market (Exchange Rule 6.86);

(4) Failure to identify an order as for a broker-dealer under the ten-up rule (Exchange Rule 6.86(a));

(5) Improper vocalization of a trade (Exchange Rules 6.69, 6.73, and Options Floor Procedure Advice ("OFPA") G–10);

(6) Disruptive action involving physical contact while on the trading floor (Exchange Rule 6.2);

(7) Use of abusive language on the trading floor (Exchange Rule 6.2);

(8) Minor position limit violation (Exchange Rule 6.8);

(9) Minor exercise limit violation (Exchange Rule 6.9);

(10) Failure to submit trade data to the Exchange in a timely manner (Exchange Rule 10.2(c));

(11) Failure to file a FOCUS report in a timely manner (Exchange Rule 2.12(b)); and

(12) Failure to file a SIPC Form SIPC–6 or Form SIPC–7 in a timely manner (Exchange Rule 2.12(a)).

The amended MRP also sets forth specific procedures relating to the issuance of floor citations on the options and equity floors. The only significant change to the current procedures is that Exchange options Order Book Officials ("OBO") would now be permitted to issue floor citations on the options floor.[2] Specifically paragraph (g) under proposed Rule 10.13, entitled "Floor Citations," allows a floor official and/or an OBO to issue floor citations for violations of rules specified in paragraph (h) of proposed Rule 10.13, entitled "Minor Rule Plan: Options Floor Decorum and Minor Trading Rule Violations," and paragraph (i) of proposed Rule 10.13, entitled "Minor Rule Plan: Equity Floor Decorum and Minor Trading Rule Violations." Except as provided in proposed Rule 10.14, entitled "Summary Sanction Procedure," the circumstances underlying the issuance of each floor citation shall be reviewed by a designated committee to determine the sufficiency of the evidence supporting the violation.

Proposed paragraph (h) lists 22 MRP violations, including, among other things, a floor broker's failure to use due diligence in the handling or execution of an order; a floor broker's failure to record a change in the limit or size of an order; a floor broker's improper execution of a cross transaction; a market maker's failure to respond to an OBO's call for market makers or to respond to demands for bids and/or offers; trading as both a market maker and floor broker on the same business day in options covering the same underlying securities; a member's inadvertent placement of a non-public order with an OBO; a member's failure to honor a ten-up market or to identify a broker-dealer order under the ten-up rule; improper communication on the floor by use of hand signals; improper vocalization of a trade; violations of standards of conduct or dress or disruptive action on the trading floor; and minor position and exercise limit violations.

Proposed paragraph (i) lists five equity floor decorum violations involving, among other things, member conduct on the equity floor, use of badges on the equity floor, proper time stamping of trade tickets, and proper reporting of transactions executed at the Exchange.

Proposed paragraph (j) of Rule 10.13, entitled "Minor Rule Plan: Record Keeping and Other Minor Rule Violations," lists three violations, including failure to submit trade data to the Exchange in a timely manner and failure to file FOCUS and SIPC reports in a timely manner. Under the proposal, minor violations of these rules can be handled under the MRP but cannot be handled through the issuance of a Floor Citation.

The PSE believes that violations of these rules should not require formal disciplinary proceedings, and, moreover, that the inclusion of these rules in the MRP will provide for prompt, effective and meaningful discipline when these rules are violated.

2. Recommended Fine Schedule for MRP Violations

The Recommended Fine Schedule for MRP violations was initially approved by the Commission in 1985 [3] and was subsequently amended in 1989.[4] The Exchange proposes to increase the amount of the recommended fines for a number of MRP violations, as indicated in the Fine Schedule. While the Exchange does not intend to publish the Fine Schedule itself in the Rules of the Board or Governors, the PSE represents that the schedule will be circulated to the Exchange membership periodically.

3. Summary Sanction Procedures.

Proposed Rule 10.14, entitled "Summary Sanction Procedure," provides the Exchange with an alternative to the commencement of a disciplinary action as provided in Exchange Rule 10.3. Under proposed Rule 10.14, the PSE may summarily sanction members, member organizations, and persons associated with a member or member organization for the following infractions:

(1) Violation of a standard of conduct or dress on the trading floor (Exchange Rule 6.2, Equity Floor Procedure Advice ("EFPA") 1–A and EFPA 1–B;

(2) Disruptive action on the trading floor (Exchange Rule 6.2, EFPA 1–A and EFPA 1–B);

(3) Disruptive action involving physical contact while on the trading floor (Exchange Rule 6.2, EFPA 1–A and EFPA 1–B);

(4) Failure to act in a professional manner (Exchange Rule 6.2, EFPA 1–A and EFPA 1–B);

(5) Use of abusive language on the trading floor (Exchange Rule 6.2, EFPA 1–A and EFPA 1–B);

(6) Failure to time stamp an order ticket (Exchange Rules 5.28(b) and 6.69, OFPA G–12 and EFPA 3–A);

(7) Inadvertent placement of non-public order with an OBO (Exchange Rule 6.52(a); and

(8) Failure to report a transaction properly (Exchange Rules 5.12 and 5.13 and EFPA 2–C);

In issuing a summary sanction, the proposal requires two floor officials to, among other things, issue a floor citation and apprise the person cited of the alleged violation, notify the PSE's Compliance Department of the alleged violation, and indicate on the citation the amount of the fine. Sanctions imposed under proposed Rule 10.14 may

[2] Currently, on the options trading floor, a floor citation may only be issued by two floor officials. See PSE Rule 6.2, Commentary .05.

[3] See MRP Approval Order, *supra* note 1.

[4] See Securities Exchange Act Release No. 27162 (August 30, 1989), 54 FR 35969 (order approving File No. SR–PSE–89–08).

be appealed pursuant to Exchange Rule 10.11.

Because all of the foregoing violations are included in the proposed MRP, they may be adjudicated either through the Summary Sanction Procedure (whereby findings are made by two floor officials) or through the MRP procedures set forth in proposed Rule 10.13 (whereby findings are made by a full committee). The PSE believes that cases involving these violations are objective in nature and not reasonably subject to dispute; therefore, the Exchange believes that the summary proceedings are appropriate.

The proposed Summary Sanction Procedure expands the PSE's current rules by making the sanctions applicable to the equity floor as well as to the options floor. The PSE notes that under the proposal, the Summary Sanction Procedure will cover only certain designated violations, primarily those relating to floor decorum.

4. Amendments to Rules Governing Hearings and Appeals

The PSE proposes to amend Exchange Rule 10.11, to be entitled "Appeal of Floor Citations and Minor Rule Plan Sanctions," to make the procedures set forth in Exchange Rule 10.11 applicable to MRP violations. Under Exchange Rule 10.11, an aggrieved person may apply to the Exchange's Compliance Department for review of a contested violation. The aggrieved person may request permission to make an oral presentation or may request that the matter be reviewed solely on the basis of written documentation.

In addition, the PSE proposes to amend Exchange Rule 10.4, entitled "Hearing," to provide that parties objecting to the composition of a hearing panel must submit their objection to the Hearing Administrator within five business days of receiving notification of the composition of the panel. The proposed amendment also provides that parties must submit to the Hearing Administrator a list of witnesses and documentary evidence or other materials to be presented at the hearing at least five business days prior to the hearing. In addition, the proposal provides that parties to a hearing must be given at least 15 calendar days notice of the time and place of the hearing and a statement of the matters to be considered at the hearing.

5. Amendments to Rules Governing Admission to and Conduct on the Options Trading Floor

The PSE proposes to amend Exchange Rule 6.2 entitled "Admission to and Conduct on the Options Trading Floor," in order to make Exchange Rule 6.2 consistent with a similar rule (EFPA 1–B) governing conduct on the equity trading floor. The proposed amendments to Exchange Rule 6.2 make more specific the types of conduct prohibited in connection with the Exchange's standards of dress and conduct. In addition, the PSE proposes to delete OFPA F–4 from its rules and to incorporate its provisions, with minor revisions, into Exchange Rule 6.2 in order to provide greater clarity and consistency.

In general, Exchange Rule 6.2 requires that all persons on the options trading floor be dressed in a manner appropriate for business purposes and in accordance with good taste and professional standards. Exchange Rule 6.2 also requires that all persons on the options trading floor conduct themselves in accordance with a seemly and professional standard of behavior.

6. Fines and Charges for Late FOCUS and SIPC Reports

The Exchange proposes to amend Exchange Rule 2.12, entitled "Financial Reports," to double the charge imposed for a member organization's late filing of a Report of Financial Condition on SEC Form X–17A–5. Specifically, for reports 1–30 days late, the charge will increase from $100 to $200; for reports 31–60 days late, the charge will increase from $200 to $400; for reports 61–90 days late, the charge will increase from $400 to $800.

The PSE proposes to include under the MRP cases involving SIPC and FOCUS reports 90 days late. Currently, those cases must be resolved by a hearing panel of the Ethics and Business Conduct Committee, unless the matter is resolved by offer of settlement or default judgment. The PSE believes that, in general, such cases do not warrant formal disciplinary proceedings and that adjudication of these cases requires more time and effort than necessary. The Recommended Fine Schedule imposes the following fines for late filings of FOCUS reports (Form X–17A–5) and Form SIPC–6 and Form SIPC–7 reports: First violation, $1,200; second violation $1,800; and third violation, $2,400.

Statutory Basis for the Proposed Rule Changes

The PSE believes that its proposals are consistent with section 6(b)(5) of the Act in that they will promote just and equitable principles of trade. In addition, the PSE believes that its proposals are consistent with section 6(b)(7) of the Act in that they will provide a fair procedure for disciplining members and persons associated with members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23638 Filed 9-29-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1707]

Secretary of State's Advisory Committee on Private International Law; International Protection of Cultural Property; Draft UNIDROIT Convention on the Return of Stolen and Illegally Exported Cultural Objects; Request for Public Comment and Study Group Meeting

A revised draft of a proposed convention (multilateral treaty) on the return of stolen or illegally exported cultural objects has been prepared under the auspices of the International Institute for the Unification of Private Law (UNIDROIT). The United States is a member state of UNIDROIT, an international organization headquartered in Rome, Italy, which is comprised of 55 member states. UNIDROIT will hold its 3rd meeting of governmental representatives to consider the revised draft convention starting on November 2, 1992. In order to prepare United States government positions for that meeting, public comments are being sought on the revised draft convention and a Study Group of the Secretary of State's Advisory Committee on Private International Law will hold a meeting on this subject on Friday, October 16 at the Philadelphia Museum of Art.

UNIDROIT had earlier requested comments from governments in 1991 in preparation for its first meeting of governmental representatives to review the draft convention. Comments by interested persons and organizations were solicited by **Federal Register** notice and through general publication in December, 1990 to assist the Department of State to prepare responses to UNIDROIT's request. Persons or organizations who have previously commented on this draft convention may wish to review the present revised draft and to submit further comment.

The revised draft convention contains provisions on two basic subjects: Restitution of stolen cultural objects and return of illegally exported cultural objects (some governments have proposed that the latter be expanded to include illegally excavated objects). Other provisions cover standards for asserting claims for return, certain rights of compensation and repose, and application of national laws and related matters.

The proposed convention would not alter United States obligations under an earlier multilateral convention prepared by UNESCO which entered into force for the United States in 1983, nor as presently drafted, would it significantly alter rights of recovery under U.S. law as to stolen objects. Except for the United States, Canada and Australia, most "art importing" countries have not joined the UNESCO treaty. One of the issues on which comments are now sought is whether the United States should support a convention which may be acceptable to other "art importing" countries, even if it has standards different from those presently applicable under U.S. law. Another will be whether United States positions should take into account the possibility of future laws regulating the export of certain objects such as certain archaeological, anthropological or ethnological historical objects, in view of the fact that the United States, unlike many countries, generally does not now regulate the export of such items. In addition, commentators should note that it has been proposed by some governments that the convention also cover illegally excavated objects; the implications of adding this additional category of objects potentially covered by the convention will be discussed.

The revised draft convention is accompanied by a report of the second governmental meeting on this convention held in January 1992 (UNIDROIT documents 1992 Study LXX-30 and 31), and an earlier explanatory report which provides background information and sets forth underlying premises for the approaches taken and alternative solutions that were considered. Copies of these and other relevant documents may be obtained from the Office of the Legal Adviser at the address indicated below or by calling (202) 653-9852.

Comments on the draft convention should be received not later than Wednesday October 14 addressed to Harold S. Burman, by writing to the Office of the Legal Adviser, attention L/PIL Room 501, 2100 "K" Street, NW., Washington, DC 20037-7180, or by fax to (202) 632-5283.

The meeting of the Advisory Committee Study Group will be held from 10:15 a.m. until 4:30 p.m. in the Seminar Room at the Philadelphia Museum of Art, located at 26th Street and Benjamin Franklin Parkway in Philadelphia, PA. Members of the public may attend up to the capacity of the meeting room and subject to the direction of the chair. Persons wishing to attend should provide their name, affiliation, address and telephone number to Miss Rosalia Gonzales at the Office of the Legal Adviser indicated above or (202) 653-9853; not later than Wednesday October 14.

Dated: September 24, 1992

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 92-23636 Filed 9-29-92; 8:45 am]

BILLING CODE 4710-08-M

THE PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

Meeting

SUMMARY: The Presidential Commission on the Assignment of Women in the Armed Forces will hold its next hearing October 1st through October 4th. Presentations to include: GAO Briefings on Women in Desert Storm and Sexual Harassment in the Service Academies; A Navy "Lost-Time" presentation; testimony by Admiral J.M. Kime, Commandant of the Coast Guard; Captain Rick Hauck (UNS), a former Astronaut; and a briefing on a military survey about the roles of women in the military. Panels of the Commission's four Fact Finding Panels will present final reports of their findings to the full Commission.

LOCATION: Sheraton/Crystal City Hotel, Ballroom C (2nd Floor), South Eads Street at 18th, Arlington, Virginia 22202, (703) 486-1111.

DATES:

Thursday, October 1st
8 am-3:30 pm/General Session
3:30-5:30 pm/Panel 1: Final Review of Findings
Friday, October 2nd
8 am-10:15 am/Panel 2: Final Review of Findings
10:30-12:30 pm/Panel 3: Final Review of Findings
2 pm-4:00 pm/Panel 4: Final Review of Findings
4 pm-5:30 pm/Approve Commission Findings
Saturday, October 3rd
8 am-5:30 pm/General Session
Sunday, October 4th
10:30-TBD/General Session

Note: The next hearings of the Presidential Commission on the Assignment of Women in the Armed Forces are scheduled in Washington, DC, October 22-24, and

November 2–3 or November 9–10. Please call the Commission office for further details.

STATUS: Open to public.

CONTACT: Please call for more information and possible schedule changes: Contact: Magee Whelan or Kevin Kirk (202) 376–6905.

The Presidential Commission on the Assignment of Women in the Armed Forces was established by Congress in the National Defense Authorization Act of 1992 (Public Law 102–190). The 15-member commission shall assess the laws and policies governing the assignment of women in the military and shall make recommendations on such matters to the President by November 15, 1992.

W. S. Orr,

Staff Director.

[FR Doc. 92–23688 Filed 9–29–92; 8:45 am]

BILLING CODE 6820–CD–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CR sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the federal safety laws and regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Southern Pacific Lines

Docket Number H–92–4

The Southern Pacific Lines (SP) seeks a waiver of compliance from certain sections of 49 CFR part 231, Safety Appliance Standards, and 49 CFR part 232, Power Brakes and Drawbars regulations, to allow it to run rail tests of Mark V RoadRailer equipment coupled in trains behind double-stack container cars.

A double-stack container car is a deep-well articulated car comprised of five units permanently coupled together. Each unit will carry two or more cargo containers stacked on top of each other (a double-stack configuration). The Mark V RoadRailers are almost identical to the standard semi-trailer presently used to haul cargo over the highway, the only difference being that they are equipped with a special drawbar and are supported and moved on a standard 70-ton freight car truck.

The RoadRailer Mark V semi-trailers, by design, cannot be subjected to traditional switching procedures that are conducted in railroad classification yards. The standard RoadRailer coupler assembly will only couple to another RoadRailer vehicle or to a specially designed vehicle located behind the locomotive referred to as an AdaptoRailer. The RoadRailer semi-trailer has no safety appliances and the test waiver will permit non-compliance with all the provisions of the Safety Appliance Standards (49 CFR part 231). These regulatory standards include provisions for the number, location and dimensional specifications for the handholds, ladders, sill steps and hand brakes that are required for each railroad freight car. The Mark V RoadRailer bogie ABDW braking capabilities will be compatible with the existing double-stack air brake equipment and the brake pipe dimension will be the same, that is, 1¼ inch inside diameter.

The SP test plan substitutes a CouplerMate and associated 70-ton bogie as the interface vehicle instead of an AdaptoRailer. The CouplerMate will provide the connection between the RoadRailer and conventional standard automatic coupler behind the doublestack container car. Also, a CouplerMate and associated bogie will be at the end of the RoadRailer portion of the train. The SP states that the CouplerMate bogies at the ends of the block of RoadRailer units will be modifications of the CouplerMate II design used for a similar National Railroad Passenger Corporation (Amtrak) test to determine the efficacy of hauling RoadRailers in mail service behind passenger trains (for in-depth discussion see FR 28127, July 9, 1990, Docket Number H–90–2).

Prior to the testing by Amtrak, RoadRailer conducted compression tests on the CouplerMate II interface vehicle to confirm its structural capabilities when mated to a RoadRailer dry van semi-trailer in both front and rear positions. The two CouplerMate bogies in the SP test will be equipped with all the safety appliances required by the Safety Appliance Standards, 49 CFR part 231, with the exception of the hand brake described in part 231.1(a). The bogies are provided with a spring biased parking brake which is used in lieu of the conventional type manually operated hand brake and it is not necessary for a person to mount and dismount the CouplerMate bogie to apply or release the handbrake.

The SP petition contains data derived from an earlier Burlington Northern Railroad mixed train test conducted at the American Association of Railroad's (AAR) test facility in Pueblo, Colorado. To accommodate the coupling of the RoadRailer unit to the double-stack container car, a newly designed connector on the double-stack car was utilized and tested at the same time. The BN report entitled Double-Stack/RoadRailer Connector Tests, describes the test procedures and results. These tests, were patterned after the AAR Chapter XI certification for new and untried cars, included high speed stability, stop distance, curving, and tests over perturbed track, such as rock and roll, pitch and bounce, yaw and sway, and bunched spiral (for the depth discussion see **Federal Register** 32416, August 7, 1989, Docket Number PB–89–4 and SA–89–8). However, it should be noted that the connecter in the BN test is much different from the CouplerMate design to be tested by the SP.

The SP proposed test program's initial phase will involve no more than ten RoadRailer units being operated behind the double-stack container cars. Instrumentation will be provided to monitor trains over the route between Los Angeles, California and Portland, Oregon. After a body of experience is gained, the SP proposes to gradually increase the number of RoadRailer units in steps of no more than ten.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–92–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before November 2, 1992. will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on September 22, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-23673 Filed 9-29-92; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. 92-41; Notice 2]

Long Range Strategic Planning

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) has initiated a long range strategic planning initiative. A notice requesting public comment on the initiative was published on July 28, 1992. This notice extends the closing date for the comment period from September 28, 1992 to October 30, 1992.

DATES: Comments on Docket No. 92-41, Notice 1, must be received on or before October 30, 1992.

ADDRESSES: Comments should refer to the Docket No. 92-41 and should be submitted to: Docket Section, NHTSA, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Dr. Carl E. Nash, Director, Office of Strategic Planning and Evaluation, NPP-10, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-1574.

SUPPLEMENTARY INFORMATION: This notice grants a petition by Toyota Motor Corporate Services of North America to extend one month the time period in which the public may submit comments, suggestions and recommendations on the agency's strategic planning initiative including highway safety, motor vehicle safety, the Agency's non-safety programs and/or other of NHTSA's activities. The extension will assure that the public has adequate time to provide substantive comments on the strategic planning initiative. The comment closing date is extended from September 28, 1992 to October 30, 1992.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 92-23679 Filed 9-29-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 92-417]

General Valuation Allowances

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Request for comment; extension of comment period.

SUMMARY: The Office of Thrift Supervision (OTS) is hereby extending until November 2, 1992 the comment period on the request for comment entitled "General Valuation Allowances" published on September 1, 1992 (57 FR 39736). The comment period was originally scheduled to close on October 1, 1992.

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 92-294. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: John C. Price, Jr., Deputy Assistant Director for Policy, (202) 906-5745; Robert J. Fishman, Program Manager, (202) 906-5672; William J. Magrini, Project Manager, (202) 906-5744; or Dorene Rosenthal, Attorney, (202) 906-7268; Regulations, Legislation and Opinions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Director of the OTS has determined that, due to the number of OTS regulatory initiatives currently pending, it is appropriate to extend the comment period for the request for comment on General Valuation Allowances. The OTS currently has nine regulatory initiatives out for public comment. Based upon the number of initiatives and the complexity and importance of the matters raised in the General Valuation Allowances notice, the Director has determined that the original 30-day comment period is not sufficient to allow for meaningful comment on the proposed guidance on General Valuation Allowances. Therefore, the comment period is hereby extended from its original closing date of October 1, 1992 for an additional 30 days, until November 2, 1992.

Dated: September 28, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-23887 Filed 9-29-92; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 190
Wednesday, September 30, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR, 43057, September 17, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 8 a.m., Wednesday, September 23, 1992.

CHANGES IN THE MEETING: The following topics were added to the agenda during the closed portion of the meeting.

1. District Bank Dividends and Retained Earnings Policy
2. Office of Finance—Expanded Discount Note Program

The above matter is exempt under 552b(c)(9)(A)–(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,
Deputy Executive Director.

[FR Doc. 92–23795 Filed 9–28–92; 9:18 am]
BILLING CODE 6725–01–M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:00 p.m., Monday, October 5, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of the 1993 budget for the Office of Employee Benefits.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 25, 1992.

William W. Wiles,
Secretary of the Board.

[FR Doc. 92–23796 Filed 9–28–92; 9:19 am]
BILLING CODE 6210–01–M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 3:30 p.m., Monday, October 5, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; and (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific items include: 1992 Federal Reserve Bank early retirement proposals.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 25, 1992.

William W. Wiles, Secretary of the Board.

[FR Doc. 92–23797 Filed 9–28–92; 9:19 am]
BILLING CODE 6210–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 23, 1994

TIME AND DATE: 10 a.m., Thursday, October 1, 1992.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Ford Construction Company*, Docket No WEST 90–346 (Issues include whether the judge erred in vacating two citations charging violations of 30 C.F.R. § 56.14130(g), which requires that equipment operators wear seat belts.)
2. *Gatliff Coal Company, Inc.*, Docket No. KENT 89–242–R, etc. (Issues include whether the judge erred in concluding that Gatliff's violation of 30 C.F.R. § 77.1701, was not of a significant and substantial nature and was not caused by its unwarrantable failure to comply with the safety standard.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 92–23798 Filed 9–28–92; 9:20 am]
BILLING CODE 6735–01–M

Corrections

Federal Register
Vol. 57, No. 190
Wednesday, September 30, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4511-2]

Final NPDES General Permits for Storm Water Discharges From Construction Sites

Correction

In notice document 92-23326 beginning on page 44412, in the issue of Friday, September 25, 1992, make the following correction:

On page 44412, in the first column, in the **DATES** section, the effective date is corrected to read September 25, 1992.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-4197-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

Correction

In proposed rule document 92-20030 beginning on page 37921 in the issue of Friday, August 21, 1992, make the following corrections:

1. On page 37923, in the second column, under *A. Petition for Exclusion*, in the second paragraph, in the sixth line from the bottom, after "additional" insert "factors required by the Hazardous and Solid Waste Amendments".

2. On page 37925, in the third column, in the second full paragraph, in the ninth line, after "evaluation" insert "of the these constituent levels is necessary or appropriate".

3. On page 37926, in the first column, in the sixth line, "become" should read "becomes"; and in the last paragraph, in the fourth line, insert ")" after "annually".

4. On the same page, in the second column, in the fourth line, "create" should read "treat".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-4197-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

Correction

In proposed rule document 92-20031 beginning on page 37927 in the issue of Friday, August 21, 1992, make the following corrections:

1. On page 37928, in the first column, in the first full paragraph, in the eighth line, "OF" should read "of".

2. On the same page, in the third column, in the second full paragraph, in the second line from the bottom, "hearing" should read "hearings".

3. On page 37929, in the 2d column, in the 13th line, "consultants" should read "constituents".

4. On page 37930, in the second column, in the sixth line, "existed" should read "exited".

5. On the same page, in the same column, in the first full paragraph, in the tenth line, "semivolatile" was misspelled.

6. On page 37932, in the second column, in the seventh line, "Apex's" should read "Ampex's".

7. On page 37933, in footnote 1 of Table 6, "260.222" should read "260.22".

8. On the same page, in the first column, in the second full paragraph, in the eighth line from the bottom, "SWE-" should read "SW-".

9. On page 37934, in the first column, in the third line, insert a comma after "nickel".

10. On the same page, in the second and third columns, in the heading for Table 10, in the second line, "(SSR)" should read "(SRR)" each time it appears.

Appendix IX—[Corrected]

11. On page 37936, the heading "**Appendix XI • • •**" should read "**Appendix IX • • •**".

12. On the same page, in Appendix IX, in Table 1, in the third column, in the first line, "F004" should read "F005".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[MB-35-F]

RIN 0938-AE36

Medicaid Program; Medicaid Management Information System (MMIS) Performance Review; Notification Procedures for Changes in Requirements, Performance Standards, and Reapproval Conditions

Correction

In rule document 92-20523 beginning on page 38778 in the issue of Thursday, August 27, 1992, make the following correction:

On page 38781, in the third column, in amendatory instruction 1., in the authority citation, in the fifth line, "1396(a)(25)" should read "1396a(a)(25)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 411, and 413

[BPD-725-FC]

RIN 0938-AF27

Medicare Program; Self-Implementing Coverage and Payments Provisions: 1990 Legislation

Correction

In rule document 92-16447 beginning on page 36006 in the issue of Wednesday, August 12, 1992, make the following corrections:

§ 405.502 [Corrected]

1. On page 36013, in the third column, in § 405.502(a), in the fifth line, "services" should be deleted the second time it appears.

§ 411.62 [Corrected]

2. On page 36015, in the second column, under § 411.62(b)(1), in the second line, after "receive" insert "a".

3. On page 36016, in the first column, under § 411.62(c)(3)(ii), in the first line, "other an" should read "other than".

§ 413.118 [Corrected]

4. On page 36017, in the second column, in § 413.118(d)(4), in the fourth line, "payments" should read "payment".

BILLING CODE 1505-01-D

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federal register

Wednesday
September 30, 1992

Part II

Department of the Treasury

Fiscal Service

31 CFR Parts 349 and 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 349 and 356

[Department of the Treasury Circular, Public Debt Series No. 1-92]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury hereby publishes, for comment, a revised proposed rule which sets out the terms and conditions for the sale and issue by the Department to the public of marketable book-entry Treasury bills, notes, and bonds. This rule, also referred to as the uniform offering circular, will apply to securities held in the book-entry system established by the Department and maintained through the Federal Reserve Banks, commonly referred to as the commercial book-entry system, as well as to those held in the TREASURY DIRECT system [31 CFR part 357). Part 356, for the most part, consolidates into one document the terms and conditions which currently exist in a variety of other documents. It will replace 31 CFR part 349, relating to the offering of Treasury bills. In addition, individual offering circulars for Treasury notes and bonds will no longer be published once this uniform offering circular becomes effective in final form.

DATES: Comments must be received on or before October 30, 1992.

ADDRESSES: Comments should be sent to: Office of Financing, Bureau of the Public Debt, room 534, E Street Building, Washington, DC 20239–0001. Comments received will be available for public inspection and copying at the Treasury Department Library, FOIA Collection, room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Persons wishing to visit the library should call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael W. Sunner, Deputy Assistant Commissioner, Office of Financing, Bureau of the Public Debt (202) 219–3350, or Margaret Marquette, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (202) 219–3320.

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 1992, the Department of the Treasury published a proposed rule setting out the terms and conditions governing the sale and issue of marketable book-entry Treasury bills, notes, and bonds (57 FR 3870). Sixteen written comments were received in response to the proposed rule. The comments were from various sources, including trade associations, financial institutions, and broker/dealers. The Department found the comments extremely useful in making the revisions described herein. Although some minor comments are not addressed here, all comments have been considered in the formulation of this revised rule.

The majority of comments were in the following areas: single bidder criteria, net long position reporting, restriction on competitive and noncompetitive bidding, submitting bids for customers, and certifications. The comments are discussed, as appropriate, in the following Section-by-Section Analysis.

II. Section-by-Section Analysis

Section 356.2 Definitions

Two comments were received suggesting that the definitions of "bidder" and "single bidder" be consolidated to clarify the distinction, if any, between them. The proposed rule defined "bidder" as a person or an entity that bids in an auction. It further defined bidder as one or more entities and/or persons which, because of their affiliation, have the potential to act in concert with respect to formulating or entering a bid in an auction. Section 356.15 provided that bidders would be treated collectively as a single bidder where such bidders, because of their affiliation, have the potential for aggregating bids.

The Department has revised the definition of bidder to clarify the concept that a bidder may be a person or an entity or, in some cases, two or more persons or entities that are considered collectively to be one bidder, based on their relationship or actions in participating in an auction. Section 356.15 has been deleted from the revised rule, and references throughout the document to "single bidder" have been changed to "bidder." Bidder categories are defined in appendix A, Bidder Definitions.

The definition of the term "customer" has been revised to emphasize that it is more limited than the term customer is in ordinary usage. Specifically, in order for a person or an entity to be considered a customer, such person or entity must submit its bid through either a depository institution or a dealer. Further, the person or entity must direct the depository institution or dealer to bid for a specified par amount of securities in a specific auction. It should be noted that only depository institutions and dealers are permitted to submit bids for customers.

The Department has modified several other terms to make them more precise. In addition, it has added some terms and deleted others. Further, it has provided references throughout the document, where appropriate, to the distinction between multiple-price auctions and single-price auctions.

Section 356.10 Offering Announcement

Six comments were received regarding the provision that certain terms and conditions of the sale of securities would not be included in the offering circular but would rather be contained in the appropriate offering announcement for a security. This, together with the statement that the offering announcement will control in the event of inconsistencies between the offering announcement and the offering circular, raised concerns that the Department may intend to modify these provisions frequently and with little notice. Commenters were concerned that frequent or last-minute changes in such terms and conditions would introduce uncertainty, cause confusion, and make it difficult for bidders to ensure that they are in compliance with current auction rules. The commenters urged the Department to consolidate its auction rules, including the maximum award limitation, the maximum recognized bid at a single yield, the net long position reporting amount, and the designated time for calculating the net long position, in the offering circular. Commenters generally felt that the rules should be amended formally, with an appropriate notice and comment period.

The Department concurs in the recommendation to consolidate its auction rules, to the greatest extent possible, in the offering circular. Therefore, it has revised this part to include additional specific terms and conditions. It should be noted, however, that the Department reserves the right to modify any terms and conditions of new securities offerings without first publishing such changes for public comment. Changes will be made by means of an amendment to the offering circular, by notice in the offering announcement, or by other public notice. When a change is other than a temporary change and is announced by other than an amendment to the offering circular, it is the intent of the Department to amend the circular timely to reflect such change.

Section 356.11 Submission of Bids

One commenter suggested that, in the case where a tender is submitted by a person whose name is not included on the list of persons authorized to submit tenders on behalf of a submitter, prior to rejecting the tender, the Department should contact the submitter to determine whether the person is, in fact, authorized to submit tenders. Given the time constraints that usually exist in conducting auctions, the Department does not believe that such a provision should be added to the rule. In addition, the Department believes that it is the responsibility of the submitter to keep current the list of persons authorized to submit tenders.

Section 356.12 Noncompetitive and Competitive Bidding

Eight comments were received on this section. The commenters expressed concern over the restriction that a bidder submitting a competitive bid for its own account for an issue of securities may not submit a noncompetitive bid for its own account for the same issue. Several commenters pointed out that, because of the aggregation requirements of the single bidder criteria, many potential noncompetitive bidders would be precluded from participating in Treasury auctions solely as the result of the competitive bidding activities of their affiliates. This would be true, it was stated, even if the noncompetitive bidder has no relationship with the affiliate other than having a mutual parent, and does not communicate with the affiliate concerning its investment strategy.

Commenters specifically recommended that investment advisors should not be prohibited from submitting noncompetitive bids on behalf of clients solely because an affiliate has submitted a proprietary competitive bid. Also, it was suggested that there should be no restriction on the ability of an investment advisor or other entity with discretionary authority to submit noncompetitive bids on behalf of one customer and competitive bids for another. Similarly, it was contended that a fiduciary of managed accounts should not be precluded from bidding competitively for one account and noncompetitively for another account in the same auction as this could hamper the fiduciary from fulfilling its fiduciary responsibilities.

One commenter stated that a bidder that is bidding competitively should not be precluded from submitting a noncompetitive bid on behalf of a managed third-party account so long as the manager agrees not to resell the securities purchased for that account for a period of time long enough to prevent arbitrage activity in the primary distribution. The commenter suggested that retention of the securities until the next business day after the auction would satisfy that requirement.

The Department has retained the restriction against a bidder bidding both competitively and noncompetitively. Noncompetitive bidding is provided to permit smaller bidders to participate directly in auctions. It is believed that investors that bid competitively should not be afforded the noncompetitive option. A change has been made, however, in the bidder definitions to allow a "major organizational component" meeting identified criteria to request recognition as a separate bidder, thereby allowing an affiliate that has been recognized as a separate bidder to bid competitively or noncompetitively without regard to the bids of another separately recognized affiliate. In addition, a bidder category has been established for trusts and other fiduciary estates that allows each trust or fiduciary estate meeting the definition to be considered a bidder.

Two commenters suggested that § 356.12(b)(2) clarify that a bidder that has a position in an outstanding issue of a security is not prohibited from submitting a noncompetitive bid in an auction of an additional issue of that security, i.e., an announced reopening of the same security. In response to this suggestion, § 356.12(b) has been changed from "a bidder submitting a competitive bid for its own account for an issue of securities may not submit a noncompetitive bid for its own account for the same issue of securities" to "a bidder bidding competitively for its own account may not bid noncompetitively for its own account in the same auction."

The Department adopted the recommendation made by one commenter to add, in § 356.12(b)(2), the words "for its own account" to clarify that a dealer or depository institution submitting a noncompetitive bid for an unaffiliated customer is not prohibited from holding positions in the security being auctioned for its own account through when-issued trading or futures or forward contracts.

Another commenter expressed concern over the rule disallowing a noncompetitive bid if the bidder holds a position in when-issued trading. The commenter felt that the rule is unnecessarily restrictive for noncompetitive bidders and asked that an exemption be provided for low volume bidders to allow "dual bids" in when-issued trading and noncompetitive bidding. The Department has not modified this restriction. The Department believes that any bidder engaged in when-issued trading of a security need not be provided the opportunity also to bid noncompetitively for that security.

The Department has included in the revised rule specific maximum amounts that will apply to noncompetitive and competitive bids. Section 356.12(b)(1) states that a noncompetitive bidder may not bid for more than $1 million for bills and $5 million for notes and bonds in a single auction. Section 356.12(c)(2) states that a competitive bid at a single yield or discount rate that exceeds 35% of the public offering amount will be reduced to that amount.

Section 356.13 Net Long Position

Nine comments were received on this section. Several commenters expressed concern about the requirement that a bidder report its net long position when the sum of all its bids and its net long position exceeds the reporting amount specified in the offering announcement. While the commenters appreciated that the change to a higher reporting threshold reduced the number of bidders required to report, they disliked that the approach would require a bidder, in addition to computing its net long position, to aggregate the position with the amount of its bid before being able to determine whether it must report its net long position. As auction participants bidding competitively frequently do not determine the amount of their bids until the last possible moment prior to the deadline for submitting tenders, the aggregation requirement imposes an added burden on such bidders. The commenters recommended that the Department return to a reporting threshold that would be based solely on the net long position as of a specified time, eliminating the bid amount component from the computation. Under this approach, it was also suggested that an increase in the amount of the net long position threshold, for example, from the previous $200 million to $500 million, would achieve the Department's goal of reducing the number of bidders that would be required to concern themselves with the possibility of having to report a net long position.

The Department has retained the $2 billion threshold for net long position reporting, as calculated by the sum of a bidder's net long position and its bids. As noted earlier, the Department wished to eliminate the need for net long position reporting by bidders who are

certain that they will never approach the combined $2 billion threshold. The Department believes that this goal and its goal of ensuring that a bidder not receive a disproportionate share of the issue can most effectively be achieved by considering both a bidder's bids and its net long position in determining whether the position must be reported.

The Department has incorporated into the revised offering circular two items related to net long position reporting that had previously been found only in offering announcements. The first is the inclusion of the current $2 billion threshold amount that triggers the requirement to report a net long position. The second is the inclusion of a specific time, i.e., one-half hour prior to the closing time for receipt of competitive bids, for calculating the net long position. A requirement has also been added that, if the person making the bidding decision knows of an increase of $200 million or more in the bidder's net long position prior to the submission of the bid, the larger amount must be used in complying with net long position reporting requirements.

Several commenters stated that the net long position reporting requirement is particularly burdensome for bidders with large numbers of affiliates and third-party accounts for which they have management discretion. One commenter stated that the rule would put the bidder into the position of arbitrating among a large number of proprietary and managed accounts with respect to the sizes of the positions they may accumulate in advance of an auction, the timing with respect to when they may or may not add to positions, and the amounts of securities they may acquire. Additionally, the commenter pointed out that the bidder would face numerous legal and policy objections. Perhaps most significant among them would be the concern that each related person or entity, by being required to reveal the net long position of the entire organization, would be implicitly revealing bid information to its submitter.

The Department believes that the revised bidder definitions, which provide a procedure for affiliates and other "major organizational components" to be recognized as separate bidders, give bidders with a large number of affiliates the ability to reduce significantly the reporting burden. The new definitions also address the concern regarding disclosure of an entire organization's net long position since an affiliate recognized as a separate bidder would report only its own position.

One commenter noted that the requirement that a bidder report its net long position to every dealer submitting a bid on its behalf could present problems in certain situations. For example, entities within a holding company structure frequently submit bids through one or more submitters that are not part of that holding company. Under the single bidder criteria, those entities would be considered a single bidder for auction purposes. Therefore, under the net long position reporting requirement, any one of those entities would be required to report information regarding the net long position and bids of its affiliates. If one of those affiliates was a primary dealer, none of the other affiliates would be able to bid through another dealer since primary dealers and other submitters would not permit bid and other information to be disclosed to their direct competitors. To address this problem, the commenter recommended that provision be made for one member within a group of affiliated bidders to be designated as the affiliate responsible for reporting the aggregate net long position of the bidder group. This would permit an affiliate of a primary dealer or bank to submit bids through an unrelated dealer since the affiliate would not be required to report the position of an affiliated primary dealer to a competing submitter. It would also simplify, for an affiliate, the process of collecting information since the information would flow in only one direction and would not have to be collected by each affiliate.

The revised bidder definitions will help alleviate this problem. In addition, § 356.13 has been revised to provide that, in cases where a bidder that is required to report the amount of its net long position bids through more than one submitter or Federal Reserve Bank, the bidder's total net long position should be reported through only one submitter or Federal Reserve Bank.

Four commenters commented on the calculation of the net long position. One commenter opposed the requirement that cash settled futures be included in the determination since, to the extent that a futures contract does not require delivery of a specific security being auctioned, the contract does not afford an opportunity to acquire any control over that security. The recommendation was made that, for purposes of determining a net long position, a bidder should include only futures contracts calling for delivery of the specific security being auctioned, as opposed to cash-settled futures contracts or futures contracts where the auctioned security is one of several potentially deliverable instruments.

Section 356.13(b) has been revised to indicate that a net long position includes only those futures contracts that require delivery of the specific security being auctioned. It does not include futures contracts for which the security being auctioned is one of several securities that may be delivered, or futures contracts that are cash-settled.

Two commenters made reference to the requirement that a bidder include in its net long position its holdings of outstanding securities with the same CUSIP number as the new offering where the offering announcement identifies the security being offered as an additional issue of an outstanding one. Since the 35% calculation is based on the amount being auctioned, this requirement could cause a bidder to receive less than 35% of the additional amount because of such holdings. The commenter suggested that either the holdings of the issue being reopened be excluded from the bidder's net long position or, alternatively, the maximum award be 35% of the total amount issued in all auctions of that issue, rather than 35% of only the additional amount.

The Department has retained the requirement that holdings of outstanding securities with the same CUSIP number as the security being auctioned be included in calculating a bidder's net long position. It has also retained the provision, now found in § 356.22(b), limiting a competitive bidder to an award of 35% of the public offering less its net long position. If the holdings of the issue being reopened were to be excluded from the net long position computation, a holder of a large outstanding amount could receive an auction award that, when combined with its net long position, would highly concentrate the holdings of the security as a result of the reopening. Similarly, if the 35% limit were to be applied to the combined auction amounts, holders of relatively small amounts of outstanding securities would be in a position to receive significantly more than 35% of the additional offering. A change such as that proposed could result in a limited distribution of additional offerings.

One commenter requested a clarification of the rule that a net short position should not be reported and would not be used to determine the bidder's auction award. Specifically, the commenter questioned whether the statement that a net short position should not be reported means that a net short position should not be factored into the threshold calculation. For

example, in a situation in which a bidder with a $500 million net short position intends to place a $2.4 billion bid in an auction, should the bidder certify that its net long position plus the total of all its bids exceeds $2 billion? The Department has clarified this provision by providing in § 356.13(a) that a net short position should be considered a net long position of zero in the calculation of a bidder's net long position.

Commenters supported the position taken in the proposed rule that STRIPS components should be included in the calculation of a net long position only if the bidder holds all components necessary for reconstitution into the security being auctioned. One of those commenters indicated that this position should be taken because the components, unless subject to reconstitution, represent an interest distinct from the Treasury security being offered. One commenter noted that it might be operationally difficult to determine on a real-time basis whether a bidder has all the components necessary for reconstitution.

The provision that STRIPS components should be included in the calculation of a bidder's net long position only if the bidder holds all components necessary for reconstitution into the security to be auctioned has been changed. The revised rule provides that holdings of STRIPS principal components of the security being auctioned, including when-issued trading positions of such principal components, are to be included in a bidder's net long position. This change recognizes that the principal component is the only component that belongs exclusively to a single reconstituted security. Administratively, this change should lessen the burden of reporting STRIPS positions as it presumably will be easier for a bidder to determine if it owns the principal component than to determine if it holds all the components necessary for reconstitution.

Three comments were received concurring with the exclusion of repurchase and reverse repurchase transactions, securities lending transactions, and options from the calculation of a bidder's net long position. One commenter said that repurchase and reverse repurchase transactions and securities lending transactions are financing transactions which provide only a temporary transfer of one party's interest in a security to another. As there is no simple and consistent formula for incorporating them into the net long position reporting requirement, it was urged that they not be included. Two commenters felt that options should likewise be excluded from the determination of the bidder's net long position because it would be difficult, analytically and logistically, to provide for their inclusion. One of the commenters stated that it would be more appropriate for the Department to obtain information regarding these transactions through other means, such as large position reporting.

The Department agrees with the comments made on the exclusion of repurchase and reverse repurchase transactions, securities lending transactions, and options. The revised rule continues to exclude them from the net long position calculation.

Section 356.14 Submitting Bids for Customers

Seven comments were received on this section, formerly entitled "Bidding for customers," primarily in connection with customer net long position reporting. One commenter stated that § 356.14(c), by requiring a submitter of a competitive bid for a customer to report a customer's net long position, appears to shift the compliance burden to the submitter. Commenters generally felt that bidders, not submitters, should bear the primary responsibility for complying with the net long position reporting requirement.

Commenters also viewed the requirement to document every inquiry and response as being excessively burdensome and unnecessary. They felt that, by submitting a bid on behalf of a customer, the submitter confirms that an inquiry has been made and a response received. One commenter said that it was not reasonable, in the case of small customers, to expect individualized inquiries to be made of them as to their net long positions. Accordingly, the adoption of a *de minimis* exemption was recommended for customers submitting bids of $1 million or less.

Several commenters took strong exception to the requirement that if the submitter "has reason to believe" that a customer's information is incorrect, the customer's bid shall not be submitted by the submitter. One commenter stated that this standard appeared to be based on the theory that submitters should adopt a supervisory and investigatory role with respect to customers. Commenters pointed out that, both as a legal and as a practical matter, submitters have limited ability to perform such a role. For example, submitters generally do not have knowledge of bids submitted through other submitters, and bidders, for legal or valid business reasons, may wish not to disclose that information. Additionally, it was felt that the "reason to believe" standard was vague and subjective. Another commenter expressed concern that, if it could be inferred that there is a single submitter rule that parallels the single bidder rule, then the "reason to believe" standard could apply not only to the entity submitting the bid but also, in the case of a holding company, to all entities within that company. That commenter felt that the requirements associated with reporting a customer's net long position would be the equivalent of an absolute liability standard.

Section 356.14(c) on net long position of customers has been revised. The requirement for the submitter to inquire of every customer and document the customer's response has been deleted. The section now requires that the submitter report the net long position information as provided by the customer and requires that the submitter inform only those customers bidding competitively through that submitter for $10 million or more of the net long position reporting obligation. The "reason to believe" standard has also been deleted. This section now provides that if the submitter "knows that the position information provided by the customer is incorrect," the customer's bid shall not be submitted by the submitter.

With respect to § 356.14(b)(3), formerly 356.14(b)(4), one commenter recommended the elimination of the requirement that bids submitted on behalf of trust estates provide a reference to the document creating the trust, with date of execution. The commenter felt that the requirement serves no purpose, and would be an administrative burden for the submitter.

The Department has not adopted this recommendation. The bidder definitions, in defining a trust or other fiduciary estate, now state that, in order for a trust or fiduciary estate to be considered a bidder, it must be able to be identified by the name or title of the trustee or fiduciary; specific reference to the trust instrument, court order, or legal authority under which the trustee or fiduciary is acting; and the unique IRS-assigned employer identification number for the entity. The requirement to provide this information on the tender is not only consistent with the bidder definitions, but it reduces the possibility of mistakenly characterizing as a "trust or other fiduciary estate" a fund that does not meet the definition. The only substantive change to this section is the addition of a reference to "fiduciary estate" in those places where "trust" appears.

Section 356.15 Certification

This section, formerly Section 356.16, has been revised to indicate that a submitter, by submitting a tender, and a customer, by bidding for a security, are deemed to have certified that they are in compliance with this rule and the offering announcement governing the sale and issue of the security. In addition, the submitter is deemed to have certified that the information provided on the tender with regard to bids for its own account is accurate and complete, and that the information provided with regard to bids for customers accurately and completely reflects information provided by the customer. The customer is deemed to have certified that the information provided to the submitter is accurate and complete.

Eight comments were received on the requirement for written certifications. The majority of comments related to § 356.16(b) on certifications by customers. Two comments related to § 356.16(a) on certifications by submitters.

With regard to certifications by submitters, one commenter requested confirmation that the requirement for submitters to make a written certification that they are in compliance with the offering circular is a procedural mechanism under which submitters would confirm annually that the submitter is in material compliance with the requirements of the auction rules, rather than a requirement under which the submitter takes responsibility for the accuracy of the information furnished by customers. Another commenter expressed concern about certifying compliance with the proposed single bidder criteria. That commenter suggested that a submitter should be responsible for certifying compliance with the criteria only when the submitter manages the account submitting a bid or when the affiliate in issue is an affiliate of the submitter. The submitter should not be responsible for certifying compliance, it was argued, when the submitter and bidder have a customer relationship only. In that case, the certification responsibility should be with the customer or its manager-advisor. This commenter suggested that the Department use a bidder identification number to assist in compliance with the criteria. At most, it was stated, the submitter should only have to certify that the personnel submitting a bid on its behalf do not have actual knowledge of noncompliance by an unrelated customer.

The Department has retained a written certification requirement for submitters. By completing the certification on the paper tender form or the annual certification for automated bidding, a submitter is certifying that it is in compliance with this Part and the applicable offering announcement, but it is not certifying to the accuracy of information provided by customers.

With regard to customer certifications, two commenters objected to the requirement that all customers bidding competitively or noncompetitively through submitters must have on file with the submitter, prior to the time the submitter submits a bid in an auction, an annually submitted written certification that they are in compliance with the offering circular and applicable offering announcements. The commenters felt that the certification requirement and the customer notification requirement contained in § 356.14(d) would create a significant administrative burden on submitters with a large customer base.

In addition, one commenter felt that since the requirement for customer certifications would apply even where the submitter has no direct relationship with the person on whose behalf a bid is placed, i.e., for customers of customers, this might imply a certain level of due diligence. This commenter suggested that the certifications for such customers should be sent directly to the appropriate Federal Reserve Bank, as is done with customer confirmations.

Commenters objected, in particular, to the requirement that customers bidding noncompetitively make a written certification. The commenters stated that the majority of such customers purchase small amounts of securities, and are not engaged in any of the trading practices that the offering circular is attempting to address. Several commenters suggested that the Department include a *de minimis* exception to the certification requirement for any customer submitting a bid of $1 million or less. The suggestion was also made to permit first-time bidders to submit certifications within some reasonable time, e.g., 7 days, after bidding in an auction to accommodate those who decide at the last minute to participate in an auction. In response to the above concerns, the Department has deleted the requirement for annual written customer certifications.

Section 356.24 Notice of Awards; Confirmations

All four comments received on this section, formerly Section 356.23, related to confirmation of large customer bids. One commenter requested that the provision that a submitter submitting a customer bid is responsible for notifying its customer of the confirmation requirement be modified to indicate that the notification is required only when a customer actually is awarded $500 million or more. This section has been revised to indicate that a submitter submitting a customer bid is responsible for notifying its customer of the confirmation requirement if the customer is awarded $500 million or more as a result of bids submitted by the submitter.

Two commenters noted that the offering circular does not address a customer's failure to confirm its bid when required to do so. They made reference to the provision in the "Joint Report on the Government Securities Market" of the Treasury, the Securities and Exchange Commission, and the Federal Reserve Board that if a customer fails to confirm an award, the dealer will be held responsible for the bid, unless the 35% rule would be violated, in which case the issue would be reduced proportionately. The commenters felt that the Department should not hold the dealer responsible for the bid or reduce the amount of the issue. One commenter suggested that the Department should deal directly with the customer, and both commenters suggested that an inquiry should be made into the reasons for the customer's failure to confirm.

The Department has not specifically addressed this comment in the revised rule. However, consistent with other changes that have been made, the Department views the customer as being responsible for confirming awards of $500 million or more.

A customer net long position confirmation requirement has been added to § 356.24. Under this requirement, any customer awarded $100 million or more in an auction must furnish a written statement to a Federal Reserve Bank indicating whether it had a reportable net long position and, if a position had to be reported, the amount of such reportable position and the name of the depository institution or dealer through which the customer had requested that the position be reported.

Section 356.34 Remedies

A new section on remedies has been added to the revised rule. This section provides for liquidated damages of 1% of the par amount of securities awarded the bidder in an auction if the bidder fails to pay for the securities in a timely manner.

Appendix A—Department of the Treasury Bidder Definitions

Appendix A, formerly entitled "Department of the Treasury Single Bidder Criteria," has been revised substantially. Twelve comments were received on this section. All commenters felt that the single bidder criteria were excessively broad. They specifically objected to the definition of a single bidder as entities and/or persons which, because of their affiliation, have the potential to act in concert with respect to formulating or entering a bid in a Treasury auction. They likewise objected to the presumption that an affiliation is deemed to exist if there is (a) control in management (including investment strategy) or (b) control through ownership (defined as 25% or more).

Commenters generally agreed that the Department should treat as a single bidder entities that do, in fact, act together. One commenter recommended that the Department define a single bidder as any group of entities that act in concert with respect to formulating or entering a bid in a Treasury auction. It then recommended that the responsibility for determining the entities that constitute a single bidder be placed on the bidders themselves. It pointed out that, under § 356.16, all submitters and customers must certify that they are in compliance with the offering circular and applicable offering announcements governing the sale and issue of securities. As a result, they would be certifying that the positions of all entities that act together are reflected in the bidder's net long position, and that the amount awarded to that bidder will not exceed the maximum amount that may be awarded to a single bidder at a particular yield or rate.

That commenter suggested that, as an alternative to the above, the Department enumerate certain factors it would view as presumptive of acting in concert and then establish a mechanism for rebutting those presumptions. Another commenter proposed that the Department adopt an affiliate certification system to address the numerous situations in which exchanges of information between affiliates do not occur. Under this system, affiliates would be permitted to certify, on a form developed by the Department, that they have established "Chinese walls," management policies, or other procedures to prohibit interaffiliate communications in relation to Treasury auctions. Affiliates submitting such a certification would be considered separate bidders for purposes of Treasury auctions, and, therefore, would not be required to aggregate bids for purposes of the net long reporting requirement and would not be subject to the other limitations imposed with respect to a single bidder.

Commenters objected to the concept that an affiliation exists if there is control in management or control through ownership. One commenter suggested that control in management should not be a standard by which control is determined because it is hard to define and may lead to difficult interpretive questions. That commenter felt that objective criteria should be used to define control.

Several commenters objected to the 25% ownership threshold used to define control through ownership. They felt that the 25% threshold, when applied to large banks and broker/dealers, would group together a wide variety of affiliated companies whose management and business activities are completely separate. In addition, they felt that it was common to have minority investments that might exceed 25% but that by definition do not involve control. In most of those cases, management would not want to share information about its positions in Treasury securities with a minority stockholder that might be a competitor. Those commenters suggested that the ownership threshold be returned to 50% or greater, consistent with the current single bidder guidelines.

In addition, the suggestion was made to develop a procedure whereby certain ownership situations that fall within the literal definition of an affiliate but do not give rise to actual control or otherwise give rise to policy concerns could be excluded from the single bidder definition. The example was given of a bank that forecloses on stock pledged by a company that defaults under a loan.

Several commenters expressed concern that the single bidder criteria contain inconsistencies in the treatment of certain categories of bidders, in particular, banks, broker/dealers, and investment agents. Commenters recommended that the Department develop a uniform standard for banks, broker/dealers, and investment agents with respect to directed, managed, and proprietary accounts. Specifically, they recommended that such bidders should be advised to treat directed accounts as separate bidders and managed accounts collectively as a single bidder. In addition, they recommended that directed accounts be treated as bidders separate from any proprietary accounts, and that managed accounts collectively be treated as a bidder separate from proprietary accounts. These guidelines would apply regardless of whether the various accounts are held by a single entity or by multiple affiliates. Another commenter recommended that each fiduciary account be treated separately as a single bidder. That commenter also recommended that accounts with shared investment authority be treated separately from those with sole investment authority.

The revised rule, in appendix A, after specifying that persons or entities who intentionally act together are considered, collectively, to be one bidder, defines and categorizes bidders. The definitions contain, for each category, information to determine if persons or entities are considered one bidder or more than one bidder for purposes of complying with bidding limitations and net long position reporting requirements.

The revised appendix A contains several changes from the prior version. First, the bidder definitions are intended to be all inclusive. Second, the definition of a bidder as one or more entities and/or persons who, because of their affiliation, have the potential to act in concert with respect to formulating or entering a bid in a Treasury auction has been deleted.

Third, the presumption of an affiliation has been revised. The proposed rule stated that an affiliation is deemed to exist if there is (a) control in management (including investment strategy), (b) control through ownership (defined as 25% or more), or (c) an agreement, formal or informal, written or oral, to act together for the purpose of acquiring securities. The revised rule defines an affiliate of a corporation or partnership as any: (a) entity that is more than 50% owned, directly or indirectly, by the corporation or partnership, (b) entity that is more than 50% owned, directly or indirectly, by any other affiliate of the corporation or partnership, (c) person or entity that owns, directly or indirectly, more than 50% of the corporation or partnership, (d) person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the corporation or partnership, or (e) entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the corporation or general partners of the partnership or of any affiliate of the corporation or partnership.

Fourth, the revised rule, unlike the proposed rule, makes provision for affiliates or other "major organizational components" of a corporation or partnership to request recognition as a separate bidder if such affiliates or components are prohibited by law from

exchanging, or have established written internal procedures (Chinese walls) designed to prevent the exchange of, information related to bidding in Treasury auctions with other components in the corporate structure. The rule identifies characteristics of a major organizational component and includes a certification that must be completed by any component or components requesting recognition as a separate bidder.

Fifth, the category of political subdivision has been changed to government-related entity and has been expanded to include, as separate bidders, governmental entities, bodies, or corporations established under Federal, State, or local law, and foreign central banks, governments of foreign states, and international organizations in which the United States holds membership. Funds of a government-related entity that meet the definition of the trust or fiduciary estate category are also separate bidders.

Sixth, the distinction in the previous proposed rule between persons acting as trustees and other fiduciaries, and entities acting in those same capacities has been deleted. The revised rule contains one category for trusts or other fiduciary estates meeting specified requirements.

Seventh, the separate categories for "mutual fund or pension fund" and "investment agent/money manager" contained in the proposed rule have been deleted. Under the revised rule, if such person or entity meets the "corporation," "partnership," or "individual" category definition, such person or entity may be included within such category.

Eighth, a new category is provided for a person whether acting in his or her individual capacity, as a sole proprietor, or for any entity not otherwise defined as a bidder. Certain related persons are also included in the "individual" category. The separate category for "family" contained in the proposed rule has been deleted.

Finally, the revised rule contains a new category for "other bidder." This category is not a catch-all but is meant to accommodate bidders that are institutions or organizations with unique employer identification numbers but which do not fit within any other bidder category.

Procedural Requirements

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required.

Although this rule is being issued in proposed form to secure the benefit of public comment, the notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1535-_____), Washington, DC 20503, with copies to Bureau of the Public Debt, Forms Management Officer, Washington, DC 20239-1300.

The collections of information in this proposed rule are in §§ 356.11, 356.12, 356.13, and 356.14, and in appendix A. This information is required by the Department of the Treasury to conduct auctions of Treasury marketable securities, and will be used to process bids submitted for the purchase of Treasury marketable securities and to ensure compliance with the provisions of this part. The likely respondents are individuals and households, State and local governments, businesses and other for-profit institutions, non-profit institutions, and small businesses and organizations.

Estimated total annual reporting burden: 126,225 hours.

Estimated average annual burden hours per respondent: .51 hours.

Estimated number of respondents: 247,500.

Estimated annual frequency of responses: on occasion.

List of Subjects

31 CFR Part 349

Federal Reserve System, Government securities, Securities.

31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities. For the reasons set forth in the preamble, 31 CFR chapter II, subchapter B, is proposed to be amended as follows:

PART 349—[REMOVED]

1. Part 349 is removed.
2. Part 356 is added to read as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1-92)

Subpart A—General Information

Sec.
356.0 Authority for sale and issue.
356.1 Applicability.
356.2 Definitions.
356.3 Book-entry securities and systems.
356.4 Functions of Federal Reserve Banks.
356.5 Description of securities.

Subpart B—Bidding, Certifications, and Payment

356.10 Offering announcement.
356.11 Submission of bids.
356.12 Noncompetitive and competitive bidding.
356.13 Net long position.
356.14 Submitting bids for customers.
356.15 Certifications.
356.16 Responsibility for payment.

Subpart C—Determination of Auction Awards and Settlement

356.20 Determination of auction awards.
356.21 Proration of awards.
356.22 Limitation on auction awards.
356.23 Announcing auction results.
356.24 Notice of awards; confirmations.
356.25 Payment for awarded securities.

Subpart D—Miscellaneous Provisions

356.30 Payment of principal and interest on notes and bonds.
356.31 STRIPS.
356.32 Taxation.
356.33 Reservation of rights.
356.34 Remedies.
356.35 Reservations as to terms of offerings.
356.36 Paperwork Reduction Act approval.

Appendix A to Part 356—Bidder Definitions

Appendix B to Part 356—Formulas and Tables

Exhibit A to Part 356—Sample Announcements of Treasury Offerings to the Public

Exhibit B to Part 356—Sample Autocharge Agreement to Deliver and Charge for Securities Awarded in Department of the Treasury Auctions

Exhibit C to Part 356—Minimum Par Amounts for STRIPS

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*

Subpart A—General Information

§ 356.0 Authority for sale and issue.

The Secretary of the Treasury is authorized under chapter 31 of title 31, United States Code, to issue United States obligations and to offer them for sale under such terms and conditions as the Secretary may prescribe.

§ 356.1 Applicability.

Unless otherwise specified in an offering announcement, the provisions in this Part, including the Appendices which are incorporated herein by reference, govern the sale and issuance of all marketable Treasury securities and any other obligations issued by the Secretary that, by the terms of the offering announcement, are made subject to this Part.

§ 356.2 Definitions.

In this Part, unless the context indicates otherwise:

Accrued interest means an amount payable to the Department for such part of the next semiannual interest payment that represents interest income attributed to the period prior to the date of issue. (See appendix B.)

Auction means a bidding process by which the Department sells marketable Treasury securities to the public.

Autocharge agreement means a written agreement between a submitter and a depository institution, acknowledged by a Federal Reserve Bank, which authorizes a Federal Reserve Bank to deliver securities awarded to the submitter and its customers at auction to the book-entry account of the depository institution or, when authorized, to a Treasury Direct account, and to charge a funds account of the depository institution for the settlement amount of the securities. (See exhibit B for a sample autocharge agreement.)

Bid means an offer to purchase a stated par amount of securities, either competitively or noncompetitively, in an auction.

Bidder, as further defined in appendix A, means a person or an entity that bids either directly or through an entity authorized to submit bids for customers in an auction. In some cases, two or more persons or entities are considered to be one bidder based on their relationship or their actions in participating in an auction.

Book-entry security means a security the issuance and maintenance of which are represented by an accounting entry or electronic record and not by a certificate.

Call means the redemption, pursuant to the terms specified in its offering announcement, of a security, in whole or in part, prior to maturity, at the option of the Secretary.

Competitive bid means a bid to purchase a stated par amount of securities at a yield or discount rate specified by the bidder.

Corpus means the principal component of a stripped security and future callable semiannual interest payments, if any.

CUSIP means Committee on Uniform Securities Identification Procedures.

CUSIP number means the unique identifying number assigned to each separate security issue and each separate STRIPS component. CUSIP numbers are provided by the CUSIP Service Bureau of Standard & Poor's Corporation.

Customer means a bidder that has directed a depository institution or dealer to submit a competitive or noncompetitive bid on the bidder's behalf for a specified amount of securities in a specific auction. Only depository institutions and dealers may submit bids for customers, whether directly at a Federal Reserve Bank or the Bureau of the Public Debt, or through an intermediary depository institution or dealer.

Dated date means the date from which interest accrues. The dated date and issue date are the same except when the date from which interest accrues is prior to the issue date.

Dealer means an entity that is registered or has given notice of its status as a government securities broker or government securities dealer, pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934.

Department means the United States Department of the Treasury.

Depository institution means an entity described in section 19(b)(1)(A), excluding subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)). Under section 19(b)(1)(A) of the Federal Reserve Act, the term *depository institution* includes:

(1) Any insured bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(2) Any mutual savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(3) Any savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(4) Any insured credit union as defined in 12 U.S.C. 1752 or any credit union which is eligible to make application to become an insured credit union under 12 U.S.C. 1781;

(5) Any member as defined in 12 U.S.C. 1422; and

(6) Any savings association (as defined in 12 U.S.C. 1813) which is an insured depository institution (as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1811, *et seq.*) or is eligible to apply to become an insured depository institution under such Act.

Discount means the difference between par and the price of the security, when the price is less than par.

Discount amount means the discount divided by 100 and multiplied by the par amount.

Discount rate, also referred to as "bank discount rate," means an annualized rate of return to maturity on bills, expressed in percentage terms and based on a 360-day year. (See appendix B for formulas and examples.)

Federal Reserve Bank means a Federal Reserve Bank or a branch of a Federal Reserve Bank.

Funds account means a cash account maintained by a depository institution at a Federal Reserve Bank.

Interest rate means the annual percentage rate of interest paid on the par amount of a specific issue of notes or bonds. (See appendix B for methods and examples of interest calculations on notes and bonds.)

Issue date means the date specified in the offering announcement on which a security is issued as an obligation of the United States, and from which interest normally begins to accrue.

Marketable security means a security that is negotiable and transferable, i.e., may be bought and sold in the secondary market.

Maturity date means the date specified in the offering announcement on which a security becomes due and payable, and ceases to earn interest.

Minimum to hold means the smallest amount of a security that will be issued to a bidder and may be held in any book-entry account. Unless otherwise stated in the offering announcement, the minimum to hold is the same as the minimum bid amount given in the offering announcement.

Multiple-price auction means an auction in which each successful bidder pays the price equivalent to the yield or rate that it bid.

Multiple to hold means the smallest additional amount of a security that will be issued to a bidder and may be held in any book-entry account above the minimum to hold. Unless otherwise stated in the offering announcement, the multiple to hold is the same as the multiple to bid amount given in the offering announcement.

Noncompetitive bid means a bid to purchase securities at the weighted average yield or discount rate of awards to competitive bidders.

Par means a price of 100. (See appendix B.)

Par amount means the stated value of a security that will be paid at maturity.

Person means a natural person.

Premium means the difference between par and the price of the security, when the price is greater than par.

Premium amount means the premium divided by 100 and multiplied by the par amount.

Price means the price of a security as calculated using the formulas in appendix B.

Public offering means the par amount of securities offered to the public for purchase in an auction. For all bills except cash management bills, the public offering is the amount specified in the offering announcement, less securities awarded in the auction to the Federal Reserve Banks for their own account (up to the amount of maturing securities held by the Federal Reserve) and for the account of foreign and international monetary authorities (up to the amount of maturing securities held by foreign and international accounts). For notes, bonds, and cash management bills, the public offering is the same as the amount specified in the offering announcement.

Reopening means the auction of an additional amount of an outstanding security.

Secretary means Secretary of the Treasury.

Security means a Treasury bill, note, or bond, each as described in this part, and any other obligation issued by the Secretary that, by the terms of the applicable offering announcement, is made subject to this part. Security includes an interest or principal component under the STRIPS program (see below).

Settlement means final and complete payment made by a submitter for securities awarded in an auction.

Settlement amount means the par amount of securities awarded less any discount amount and plus any premium amount and accrued interest.

Single-price auction means an auction in which all successful bidders pay the same price regardless of the yields or rates they each bid.

STRIPS (Separate Trading of Registered Interest and Principal of Securities) means the Department's program under which eligible securities are authorized to be separated into principal and interest components, and traded separately. These components are maintained in book-entry form on the books of a Federal Reserve Bank.

Submitter means the person or entity submitting bids directly to a Federal Reserve Bank or the Bureau of the Public Debt for its own account, for the account of others, or both. The only submitters that are permitted to submit for the account of others are depository institutions and dealers.

Tender means the document or computer transmission submitted to a Federal Reserve Bank or the Bureau of the Public Debt by which a bidder bids for securities.

Tint means an interest component associated with a stripped security.

TREASURY DIRECT means the TREASURY DIRECT Book-Entry Securities System.
(See 31 CFR part 357, subpart C.)

Weighted average means the average of the yields or discount rates at which securities are awarded to competitive bidders weighted by the par amount of securities allotted at each yield or discount rate.

Yield, also referred to as "yield to maturity," means the annualized rate of return to maturity on a note or bond expressed as a percentage. (See appendix B.)

§ 356.3 Book-entry securities and systems.

Securities issued subject to this part shall be held in either of two systems for maintaining book-entry securities, described below. Securities may be transferred from one system to the other in accordance with Treasury regulations governing book-entry Treasury bills, notes, and bonds. See Department of the Treasury Circular No. 300, as currently revised, and Department of the Treasury Circular, Public Debt Series No. 2–86, as amended (31 CFR parts 306 and 357).

(a) *Commercial book-entry system.*[1] The commercial book-entry system is established, maintained, and operated by the Federal Reserve Banks, acting as fiscal agents of the United States, pursuant to 12 U.S.C. 391. The Federal Reserve Banks maintain book-entry accounts for themselves, depository institutions, and other authorized entities, such as government and international agencies and foreign central banks. In their accounts, depository institutions maintain securities held for their own account and for the accounts of others, including other depository institutions and dealers, which may, in turn, maintain accounts for others.

(b) *TREASURY DIRECT.* TREASURY DIRECT is a system in which the book-entry securities of account holders are identified and maintained directly on the records of the Bureau of the Public Debt, Department of the Treasury.

[1] Upon the adoption of a final rule therefor, the commercial book-entry system will be referred to as the Treasury/Reserve Automated Debt Entry System (TRADES).

§ 356.4 Functions of Federal Reserve Banks.

Federal Reserve Banks, as fiscal agents of the United States, are authorized to perform all activities necessary to carry out the provisions of this part, any offering announcements, and applicable regulations.

§ 356.5 Description of securities.

Securities offered pursuant to this part are offered exclusively in book-entry form and are direct obligations of the United States, issued under chapter 31 of title 31 of the United States Code. The securities are subject to the terms and conditions set forth in this part, as well as the general regulations governing United States securities (31 CFR part 306), the regulations governing book-entry Treasury bills, notes, and bonds (31 CFR part 357), and the offering announcements, all to the extent applicable. When the Department issues additional securities with the same CUSIP number as outstanding securities, all securities with the same CUSIP number are considered the same security.

(a) *Treasury bills.* Treasury bills are issued at a discount, are redeemed at their par amount at maturity, and have maturities of not more than one year.

(b) *Treasury notes.* Treasury notes are issued with a stated rate of interest, earn interest semiannually, and are redeemed at their par amount at maturity. They are sold at discount, par, or premium, depending upon the auction results. They have maturities of at least one year, but of not more than ten years.

(c) *Treasury bonds.* Treasury bonds are issued with a stated rate of interest, earn interest semiannually, and are redeemed at their par amount at maturity. They are sold at discount, par, or premium, depending upon the auction results. They typically have maturities of more than ten years.

Subpart B—Bidding, Certifications, and Payment

§ 356.10 Offering announcement.

The Department provides public notice of the sale of bills, notes, and bonds by issuing an offering announcement. The offering announcement lists the specifics of each offering, e.g., offering amount, term and type of security, CUSIP number, and issue and maturity dates. The offering announcement and this Part, including the Appendices, specify the terms and conditions of sale. To the extent that the provisions of an offering announcement are inconsistent with the provisions of this Part, the provisions of the offering

announcement will control. (See exhibit A for sample announcements.)

§ 356.11 Submission of bids.

(a) *General.* (1) Bids may be submitted directly to a Federal Reserve Bank that is authorized to accept tenders or to the Bureau of the Public Debt, Washington, DC, or through a depository institution or dealer that is authorized, pursuant to § 356.14, to submit bids on behalf of customers. Except as otherwise provided in this Section, tenders must be submitted in an approved format. Competitive and noncompetitive bids must be received prior to the respective closing times specified in the offering announcement, except as provided below in paragraph (b)(2) of this section. Bids not received timely will not be recognized in the auction. Bids for securities are binding on the bidder after the closing time specified in the offering announcement.

(2) If the awarded securities are to be issued in the commercial book-entry system, a submitter must have on file at a Federal Reserve Bank a certificate listing those persons who are authorized to submit tenders on its behalf. The certificate must be duly executed by an authorized person on behalf of the submitter. A tender will not be recognized if the person submitting the tender is not listed on the certificate. The submitter is responsible for any tenders submitted for the submitter by persons who are designated on the certificate as authorized to submit tenders on its behalf.

(b) *Submission of paper tenders.* (1) Paper tenders should be on preprinted forms provided by the Federal Reserve Bank to which the tender is submitted or preprinted forms of the Bureau of the Public Debt, and should provide the information requested on the form. Paper tenders in any other form or incomplete tenders may be accepted or rejected at the option of the Department.

(2) The submitter is responsible for ensuring that the paper tender is received timely at the Federal Reserve Bank or the Bureau of the Public Debt, Washington, DC. A noncompetitive bid submitted by mail is considered timely if the envelope containing the tender bears a U.S. Postal Service cancellation date prior to the auction date and is received on or before the issue date.

(3) Neither the Federal Reserve Bank nor the Department shall be, in any way, responsible for any unauthorized paper tender submissions or for any delays, errors, or omissions in the submission of paper tenders.

(c) *Submission of tenders by computer.* Competitive and noncompetitive tenders may be submitted by computer transmission to a Federal Reserve Bank. Tenders may be submitted by computer only by those submitters that have previously arranged with a Federal Reserve Bank for such submission.

(1) For computer tenders, the submitter must use a software application provided by the Federal Reserve Bank or otherwise comply with the computer communications standards for Treasury auctions. Incomplete tenders or transmissions that do not comply with the communications standards may be accepted or rejected at the option of the Department.

(2) All tenders submitted by computer are binding on the submitter to the same extent as if they had been paper tenders. No paper tender should be submitted that duplicates a tender submitted by computer.

(3) Tenders submitted by computer must be received by the applicable closing time; the Federal Reserve Bank's computer time stamp will establish the time of receipt.

(4) The submitter bears sole risk for any disruption or failure in the operation of its own computer, any electronic-based communications facilities, or any communications lines between the submitter and the Federal Reserve Bank.

(5) If disruptions or failures in the operation of the Federal Reserve Bank's computer or communications facilities result in the non-receipt or untimely receipt of tenders otherwise timely submitted, the Department at its option may accept or reject such tenders.

(6) The submitter is responsible for tenders submitted using computer equipment on its premises, whether or not such tenders are authorized.

(7) Neither the Federal Reserve Bank nor the Department shall be, in any way, responsible for any delays, errors, or omissions in the submission of tenders.

§ 356.12 Noncompetitive and competitive bidding.

(a) *General.* All bids must state the par amount of securities bid for and must equal or exceed the minimum bid amount stated in the offering announcement. Bids that exceed the minimum bid amount must be in the multiple stated in the offering announcement.

(b) *Noncompetitive.* A bidder bidding competitively for its own account may not bid noncompetitively for its own account in the same auction. A request for reinvestment of securities maturing in TREASURY DIRECT is a noncompetitive bid.

(1) *Maximum bid.* A bidder may not bid noncompetitively for more than $1 million in a bill auction or more than $5 million in a note or bond auction. The maximum bid limitation does not apply to bidders who are bidding solely through TREASURY DIRECT reinvestment requests.

(2) *Additional restrictions.* A bidder may not bid noncompetitively for its own account if, in the security being auctioned, it holds a position in when-issued trading or in futures or forward contracts between the date of the offering announcement and the designated closing time for the receipt of competitive tenders. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned prior to the designated closing time for receipt of competitive tenders.

(c) *Competitive.* A bidder bidding noncompetitively for its own account may not bid competitively for its own account in the same auction.

(1) *Bid format.* A competitive bid must show the yield or discount rate bid, expressed with two decimals. Fractions may not be used.

(2) *Maximum recognized bid.* There is no limitation on the maximum dollar amount that a bidder may bid for competitively, either at one yield or discount rate, or at different yields or discount rates. However, a competitive bid by a bidder at a single yield or discount rate that exceeds 35% of the public offering amount will be reduced to that amount. For example, if the public offering is $10 billion, the maximum bid amount that will be recognized at any one yield or discount rate from any bidder is $3.5 billion. (See § 356.22 for award limitations.)

§ 356.13 Net long position.

(a) *Reporting the net long position.* (1) When bidding competitively, a bidder must report the amount of its net long position when the total of all of its bids in an auction plus the bidder's net long position in the security being auctioned equals or exceeds $2 billion. If the bidder either has no position or has a net short position and the total of all of its bids equals or exceeds $2 billion, a net long position of zero must be reported. In cases where a bidder that is required to report the amount of its net long position bids through more than one submitter or Federal Reserve Bank, the bidder's total net long position should be reported through only one submitter or Federal Reserve Bank. A bidder that is a customer must report its net long position through one depository institution or dealer. (See § 356.14(c).)

(2) When one person or entity is making the bidding decisions (i.e., whether to bid and how much to bid) for

one or more other persons or entities, all bids for and net long positions of such persons and entities must be combined for purposes of the net long position reporting requirements of this section. If the total of the combined bids and positions equals or exceeds the net long position reporting threshold of $2 billion, the person or entity making the bidding decisions must provide the names of such bidders and the aggregate net long position. The names and the aggregate position must be provided, prior to the closing time for receipt of competitive bids, to the Federal Reserve Banks to which the bids are submitted.

(b) *Determination of net long position.* The net long position must be determined as of the designated reporting time, which is one-half hour prior to the closing time for receipt of competitive bids. However, if the net long position increases by $200 million or more after the designated reporting time and the person making the bidding decision knows of the increase, the larger amount must be used in complying with net long position reporting requirements. A net long position includes the par amount of:

(1) Holdings of outstanding securities with the same CUSIP number as the security being auctioned;

(2) Positions, in the security being auctioned, in

(i) When-issued trading,

(ii) Futures contracts that require delivery of the specific security being auctioned (but not futures contracts for which the security being auctioned is one of several securities that may be delivered, and not futures contracts that are cash-settled), and

(iii) Forward contracts; and

(3) Holdings of STRIPS principal components of the security being auctioned, including when-issued trading positions of such principal components.

§ 356.14 Submitting bids for customers.

Depository institutions and dealers may submit bids for their own account, for customers, or, in the case of customers that are also depository institutions or dealers, for customers of those customers, subject to the requirements set out below in paragraphs (a), (b), and (c) of this section. Others are permitted to submit bids only for their own account.

(a) *Payment.* By submitting a bid on behalf of a customer, a submitter agrees to remit payment for securities awarded as a result of such bid.

(b) *Customer lists.* A customer list must be submitted or be available, as provided below, whenever bids for more than one customer are included on the same tender. The customer list must include direct customers of the submitter as well as customers of a depository institution or dealer who is submitting bids through the submitter.

(1) For competitive bids submitted by paper tender, the submitter must provide a separate tender for each yield or discount rate at which a bid is submitted. As a part of such tender, the submitter must provide a list that includes the name of each customer and the amount bid by each customer. For competitive bids submitted by computer, the submitter may submit bids at multiple yields or discount rates on the same tender. On each such tender, the submitter must submit the name of each customer and the amount bid at each yield or discount rate by each customer.

(2) For noncompetitive bids, a list must be provided that includes the name of each customer and the amount bid by each customer. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders, and must be received by the Federal Reserve Bank to which the tender was submitted by close of business on the auction day.

(3) Bids submitted on behalf of trusts or other fiduciary estates must identify on the customer list the name or title of the trustee or fiduciary; a reference to the document creating the trust or fiduciary estate with date of execution; and the employer identification number of the trust or fiduciary estate.

(c) *Net long position of customers.* (1) The submitter, when submitting bids for any customer bidding competitively through that submitter for $10 million or more, must inform that customer of the customer's net long position reporting obligation as described in § 356.13.

(2) A submitter, when submitting a competitive bid for a customer, must report the net long position amount if such amount is provided by the customer.

(3) If the submitter knows that the position information provided by the customer is incorrect, the customer's bid shall not be submitted by the submitter.

(4) If the amount of a customer's net long position is to be reported by the submitter by paper tender, a separate tender must be submitted for that customer that includes the amount of the net long position.

§ 356.15 Certifications.

(a) *Submitters.* By submitting a tender for a security, a submitter is deemed to have certified that it is in compliance with this part and the offering announcement governing the sale and issue of the security. Further, the submitter is deemed to have certified that the information provided on the tender with regard to bids for its own account is accurate and complete, and that the information provided on the tender with regard to bids for customers accurately and completely reflects information provided by the customer. Prior to submitting a computer tender, a submitter must have on file a written certification that the submitter is certifying, each time it submits a computer tender, that it is in compliance with this part and the applicable offering announcement. The certification must be signed and dated by an authorized person on behalf of the submitter, be filed with the Federal Reserve Bank to which the computer tender is submitted, and be renewed at least annually.

(b) *Customers.* By bidding for a security, a customer is deemed to have certified that it is in compliance with this part and the offering announcement governing the sale and issue of the security and that the information provided to the submitter in connection with the bid is accurate and complete.

§ 356.16 Responsibility for payment.

A bidder agrees to pay the settlement amount for any securities awarded to it in the auction. (See Section 356.25.) In addition, certain payments or provisions for payment are required at the time a tender is submitted. The specific requirements, outlined below, depend on whether awarded securities will be delivered to TREASURY DIRECT or the commercial book-entry system.

(a) *TREASURY DIRECT.* For securities to be held in TREASURY DIRECT, payment of the par amount and announced accrued interest, if any, must be submitted with the tender unless provision has been made for payment by charge to the funds account of a depository institution.

(1) *Payment with tender.* For bills, payment must be by cash, depository institution (cashier's or teller's) check, certified check, currently dated Treasury or fiscal agency check made payable to the bidder, or definitive Treasury securities maturing on or before the issue date of the securities being auctioned, but which are not overdue as defined in the general regulations governing United States securities (31 CFR 306.25). Also, maturing securities

held in TREASURY DIRECT may be used as payment for new securities that are being offered, provided that the appropriate transaction request is received timely. For notes or bonds, payment must be in one of the forms described above for bills, or by personal check. Checks submitted to a Federal Reserve Bank must be made payable to that Bank and checks submitted to the Bureau of the Public Debt must be made payable to the Bureau of the Public Debt.

(2) *Authorized charge to a funds account.* If a depository institution or dealer submits a tender on behalf of a TREASURY DIRECT bidder and payment is not submitted with the tender, an authorization from a depository institution to charge the institution's funds account at a Federal Reserve Bank must be submitted with the tender.

(b) *Commercial book-entry system.* For securities to be held in the commercial book-entry system, payment of the par amount and announced accrued interest, if any, must be submitted with the tender unless provision has been made for payment by charge to the funds account of a depository institution.

(1) *Payment with tender.* Where payment is submitted with the tender, payment must be by one of the means specified above under (a)(1).

(2) *Authorized charge to a funds account.* Where payment is not submitted with the tender, an authorization to charge the funds account of a depository institution must be provided as follows:

(i) A depository institution with a funds account submitting tenders directly to a Federal Reserve Bank may authorize the Bank to charge its funds account upon delivery of the securities.

(ii) A submitter that chooses not to pay by charge to its funds account or a submitter that does not have a funds account must, prior to the submission of a tender, have an approved autocharge agreement on file at the Federal Reserve Bank to which the tender is submitted. By submitting a tender to be paid for under such autocharge agreement, the submitter authorizes the Federal Reserve Bank to provide, to the depository institution whose funds account will be charged under the agreement, notice of the total par amount of, and price to be charged for, securities awarded as a result of the submitter's tender.

Subpart C—Determination of Auction Awards and Settlement

§ 356.20 Determination of auction awards.

(a) *Determining the range and amount of accepted competitive bids*—(1) *Accepting bids.* Determinations of awards in auctions are made at the Bureau of the Public Debt after the closing time for receipt of bids. In determining auction awards, the Bureau of the Public Debt first accepts in full all noncompetitive bids received by the closing time specified in the offering announcement. Then competitive bids are accepted, starting with those at the lowest yields or discount rates through successively higher yields or discount rates, up to the amount required to meet the public offering. Bids at the highest accepted yield or discount rate will be prorated (as described below), if necessary. If the amount of noncompetitive bids would absorb most or all of the public offering, competitive bids will be accepted in an amount determined by the Department to be sufficient to provide a fair determination of the yield or discount rate for the securities being auctioned.

(2) *Accepting bids at the high yield or discount rate.* When the total amount of bids at the highest accepted yield or discount rate exceeds the amount of the public offering remaining after acceptance of noncompetitive bids and competitive bids at the lower yields or discount rates, a percentage of the bids received at the highest accepted yield or discount rate will be awarded. This proration is performed for the purpose of awarding a par amount of securities close to the public offering amount. The percentage is derived by dividing the remaining par amount needed to fill the public offering by the par amount of the bids recognized at the high yield or rate and rounding up to the next whole percentage point.

(b) *Determining the interest rate for new note and bond issues.* The interest rate established as a result of the auction will generally be set at the ⅛ of one percent increment that produces the price closest to, but not above, par when evaluated at the weighted average yield of awards to competitive bidders.

(c) *Determining purchase prices for awarded securities.* (See appendix B for formulas and tables. Price calculations will be rounded to three decimal places on the basis of price per hundred, e.g., 99.954.)

(1) *Multiple-price auctions*—(i) *Competitive bids.* The price of securities awarded to competitive bidders is the price equivalent to each yield or discount rate at which their bids were accepted.

(ii) *Noncompetitive bids.* The price of securities awarded to noncompetitive bidders is the price equivalent to the weighted average yield or discount rate of accepted competitive bids.

(2) *Single-price auctions.* The price of securities awarded to both competitive and noncompetitive bidders is the price equivalent to the highest yield or discount rate at which bids were accepted.

§ 356.21 Proration of awards.

(a) *Awards to submitters.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2) of this part, the Federal Reserve Banks are responsible for prorating awards for submitters at the percentage announced by the Department. For example, if 80% is the announced percentage at the highest yield or discount rate, then each bid at that rate or yield shall be awarded 80% of the amount bid. Hence, a bid for $100,000 at the highest accepted yield or discount rate would be awarded $80,000. In all cases, awards will be for, at least, the minimum to hold, and awards must be in an appropriate multiple to hold. For example, Treasury bills may be issued with a minimum to hold of $10,000 and multiples to hold of $5,000. Where a $100,000 bid is accepted at the high discount rate, and the percent awarded at the high discount rate was 11%, the award to that bidder would be $15,000, because bills cannot be held in an amount of $11,000. Awards at the highest accepted yield or rate are adjusted upwards, if necessary, to an appropriate multiple to hold. If tenders at the highest accepted rate were prorated at, for example, a rate of 4%, the award for a $100,000 bid would be $10,000, instead of $4,000, in order to meet the minimum to hold for a bill issue.

(b) *Awards to customers.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2) of this part, depository institutions and dealers are responsible for prorating awards for their customers at the same percentage as that announced by the Department. For example, if 80% is the announced percentage at the highest yield or discount rate, then each customer bid at that rate or yield shall be awarded 80%. The same prorating rules apply to customers as apply to submitters.

§ 356.22 Limitation on auction awards.

(a) *Awards to noncompetitive bidders.* The maximum award that will be made to any bidder is $1 million for bills and $5 million for notes and bonds. This

does not apply to bidders bidding solely through TREASURY DIRECT reinvestment requests.

(b) *Awards to competitive bidders.* The maximum award that will be made to any bidder is 35% of the public offering less the bidder's net long position as reportable under § 356.13.

For example, in a note auction with a $10 billion public offering, a bidder with a reported net long position of $1 billion could receive a maximum auction award of $2.5 billion. When the bids and net long positions of more than one person or entity must be combined as required by § 356.13(a)(2), such combined amount will be used for the purpose of this award limitation.

§ 356.23 Announcing auction results.

After the conclusion of the auction, the Department will make an official announcement of the auction results through a press release. The press release will include such information as the amounts of bids recognized and accepted, the range of yields or discount rates at which securities were awarded, noncompetitive yield or discount rate, proration percentage, the interest rate for a note or bond, a breakdown of the amounts of noncompetitive and competitive bids recognized and accepted from the public, the amounts recognized and accepted from the Federal Reserve Banks for their own accounts and for foreign and international monetary authorities, and the minimum par amount required to strip a STRIPS-eligible note or bond.

§ 356.24 Notice of awards; confirmations.

(a) *Notice of awards.* Notice of awards will be provided by a Federal Reserve Bank or the Department to submitters of successful competitive bids. Submitters of noncompetitive bids will be notified only when the price to be paid by noncompetitive bidders is over par or if noncompetitive bids are not accepted in full.

(b) *Confirmation of award to customer.* A submitter submitting a bid for a customer is responsible for notifying its customer of the award.

(c) *Confirmation of award and settlement amount to a depository institution having an autocharge agreement with a submitter.* Not later than the day after each auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a submitter as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date.

(d) *Customer net long position confirmation.* Any customer awarded a par amount of $100 million or more in an auction must furnish in writing a statement indicating whether it had a reportable net long position as defined in Section 356.13, and, if a position had to be reported, the amount of any such position and the name of the depository institution or dealer through which the customer requested that the position be reported. This statement must be provided to the Federal Reserve Bank where the bid was submitted no later than close of business on the day before the issue date. A submitter submitting a customer bid is responsible for notifying its customer of this confirmation requirement if the customer is awarded a par amount of $100 million or more as a result of bids submitted by the submitter.

(e) *Customer bid confirmation.* Any customer awarded a par amount of $500 million or more in an auction must furnish, no later than 10 a.m. on the day following the auction, written confirmation of its bid to the Federal Reserve Bank where the bid was submitted. A submitter submitting a customer bid is responsible for notifying its customer of this confirmation requirement if the customer is awarded a par amount of $500 million or more as a result of bids submitted by the submitter.

§ 356.25 Payment for awarded securities.

Payment for securities is to be accomplished by the issue date. Payment will be accomplished as follows:

(a) *Payment with tender.* When payment is made with the tender as provided for in § 356.16(a)(1) and (b)(1), settlement is accomplished as follows:

(1) *When an amount is due the submitter.* When the payment previously remitted by the submitter exceeds the settlement amount, the balance will be refunded to the submitter following the auction.

(2) *When the submitter owes an additional amount.* When the settlement amount exceeds the payment previously remitted by the submitter, the submitter will be notified of the additional amount due and is responsible for remitting it immediately. Such additional amount may be due if the auction calculations result in a premium or if accrued interest is due.

(b) *Payment by authorized charge to a funds account.* Where the submitter's method of payment is an authorized charge to the funds account of a depository institution as provided for in § 356.16(a)(2) and (b)(2), the settlement amount will be charged to the specified funds account on the issue date.

Subpart D—Miscellaneous Provisions

§ 356.30 Payment of principal and interest on notes and bonds.

Principal on notes and bonds will be paid on the maturity date as specified in the offering announcement unless the security is called pursuant to its terms and in accordance with appropriate public notice. Interest on notes and bonds accrues from the dated date. Interest is payable on a semiannual basis on the interest payment dates specified in the offering announcement through the date that the principal becomes payable. In the event any principal or interest payment date is a Saturday, Sunday, or other day on which the Federal Reserve Banks are not open for business, the amount is payable (without additional interest) on the next business day.

§ 356.31 STRIPS.

(a) *General.* A note or bond may be designated in the offering announcement as eligible for the STRIPS program. At the option of the holder, and generally at any time from its issue date until its call or maturity, any such security may be "stripped," i.e., divided into separate principal and interest components maintained in the commercial book-entry system. The principal components of such stripped security have a single CUSIP number that is different from the CUSIP number of the fully-constituted (unstripped) security. When an interest payment is stripped, an interest component is created and the interest payment date becomes the maturity date for the component. A short or long first interest payment and all interest payments within a callable period are not eligible to be stripped from the principal component. All interest components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. The CUSIP numbers of all interest components are different from the CUSIP number of any fully-constituted security and any principal component. The CUSIP numbers and payment dates for the principal and interest components are provided in the offering announcement if not previously announced.

(b) *Minimum par amounts required for STRIPS.* For a note or bond to be stripped into the components described above, the par amount of the note or bond must be in an amount that, based on its interest rate, will produce a semiannual interest payment in a multiple of $1,000. Exhibit C to this part provides the minimum par amounts

required to strip a note or bond at various interest rates, as well as the corresponding interest payments. Amounts greater than the minimum par amount must be in multiples of that amount. The minimum par amount required to strip a particular security will be provided in the press release announcing the auction results.

(c) *Reconstituting a security.* Stripped interest and principal components may be reconstituted, i.e., restored to their fully-constituted form, and maintained in the commercial book-entry system. A principal component and all related unmatured interest components, in the appropriate minimum or multiple amounts, must be submitted together for reconstitution.

(d) *Applicable regulations.* Unless otherwise provided in this part, the Department's general regulations governing United States securities (31 CFR part 306) apply to notes and bonds separated into their STRIPS components.

§ 356.32 Taxation.

Securities issued under this part are subject to all applicable taxes imposed under the Internal Revenue Code of 1986. Under Section 3124 of title 31, United States Code, the securities are exempt from taxation by a State or political subdivision of a State, except for State estate or inheritance taxes and other exceptions as provided in that section.

§ 356.33 Reservation of rights.

The Secretary reserves the right to accept or reject or refuse to recognize any or all bids or tenders submitted under this part. The Secretary also reserves the right to award more or less securities than the amount of securities specified in the offering announcement. The Secretary further reserves the right to waive any provision or provisions of this part for any or all bidders or submitters. Decisions of the Secretary under this Section shall be final.

§ 356.34 Remedies.

(a) *General.* When a person or an entity fails to comply with the requirements of this part, the Secretary will consider the circumstances of such failure and determine an appropriate remedy. Such remedy may include prohibiting the person or entity from participating in future auctions for its own account, for the account of others, or both. The Secretary may refer such occurrences to the appropriate regulatory agency for enforcement action.

(b) *Liquidated damages.* A bidder agrees to pay liquidated damages of 1% of the par amount of securities awarded the bidder in an auction if the bidder fails to pay for the awarded securities in a timely manner. The Secretary may waive, in whole or in part, the payment of liquidated damages. This liquidated damages provision shall not preclude the use of any other available remedy.

§ 356.35 Reservations as to terms of offerings.

The Secretary reserves the right to supplement or amend provisions of this part. The Secretary further reserves the right to modify the terms and conditions of new securities and to depart from the customary pattern of securities offerings at any time. Public notice of any such changes will be provided.

§ 356.36 Paperwork Reduction Act approval.

The collections of information contained in §§ 356.11, 356.12, 356.13, and 356.14, and in appendix A of this part have been approved by the Office of Management and Budget under control number 1535-_____.

Appendix A to Part 356—Bidder Definitions

For the purpose of this part, the categories set forth below further define a bidder. These definitions are to be used by persons and entities in determining whether they are considered one bidder or more than one bidder for the purpose of bidding in auctions and for the purpose of complying with the requirements of this part. Notwithstanding these definitions, any persons or entities that intentionally act together with respect to bidding in a Treasury auction are considered, collectively, to be one bidder.

The following definitions will be used by the Department in applying competitive and noncompetitive award limitations and related requirements, as described in this part.

(a) *Corporation*—A corporation and all affiliates, whether persons, partnerships, or other entities, hereinafter referred to as a corporate structure, are considered, collectively, to be one bidder.

An affiliate is any: entity that is more than 50% owned, directly or indirectly, by the corporation; entity that is more than 50% owned, directly or indirectly, by any other affiliate of the corporation; person or entity that owns, directly or indirectly, more than 50% of the corporation; person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the corporation; or entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the corporation or of any affiliate of the corporation.

Under certain circumstances, one or more major organizational components (e.g., the parent or a subsidiary) in a corporate structure, either separately or together with one or more other organizational components in the corporate structure, may be recognized as a bidder separate from the larger corporate structure. All of the following criteria must be met for such component or components to qualify for recognition as a separate bidder:

(1) Such component or components must be prohibited by law or regulation from exchanging, or must have established written internal procedures (i.e., Chinese walls) designed to prevent the exchange of, information related to bidding in Treasury auctions with any other component in the corporate structure;

(2) Such component or components must not be created for the purpose of circumventing the Department's bidding and award limitations;

(3) Decisions related to purchasing Treasury securities at auction and participation in specific auctions must be made by employees of such component or components. Employees of such component or components that make decisions to purchase or dispose of Treasury securities must not perform the same function for other components within the corporate structure; and

(4) The records of such component or components related to the bidding for, acquisition of, and disposition of Treasury securities must be maintained by such component or components. Those records must be identifiable—separate and apart from similar records for other components within the corporate structure.

To obtain recognition as a separate bidder, each component or group of components must request such recognition from the Department, provide a description of the component or group and its position within the corporate structure, and provide the following certification:

"[Name of the bidder] hereby certifies that to the best of its knowledge and belief it meets the criteria for a separate bidder as described in appendix A to 31 CFR part 356. The above-named bidder also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the component or group of components from:

"(1) Exchanging any of the following information with any other part of the corporate structure: (a) yields or rates at which it plans to bid; (b) amounts of securities for which it plans to bid; (c) positions that it holds or plans to acquire in a security being auctioned; and (d) investment strategies that it plans to follow, or

"(2) In any way intentionally acting together with any other part of the corporate structure with respect to formulating or entering bids in a Treasury auction.

"The above-named bidder agrees that it will promptly notify the Department in writing when any of the information provided to obtain separate bidder status changes or when this certification is no longer valid."

(b) *Partnership*—A partnership for which the Internal Revenue Service has assigned a tax-identification number; general partners acting on behalf of the partnership; and all affiliates, whether persons, corporations, or other entities; hereinafter referred to as a partnership structure, are considered, collectively, to be one bidder. A partnership

structure that contains one or more corporations is considered one bidder under either this "partnership" category or the "corporation" category, but not both.

An affiliate is any: entity that is more than 50% owned, directly or indirectly, by the partnership; entity that is more than 50% owned, directly or indirectly, by any other affiliate of the partnership; person or entity that owns, directly or indirectly, more than 50% of the partnership; person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the partnership; or entity, a majority of whose general partners or a majority of whose board of directors are general partners or directors of the partnership or of any affiliate of the partnership.

Under certain circumstances, one or more major organizational components (e.g., the partnership or a subsidiary) in a partnership structure, either separately or together with one or more other organizational components in the partnership structure, may be recognized as a bidder separate from the larger partnership structure. All of the following criteria must be met for such component or components to qualify for recognition as a separate bidder:

(1) Such component or components must be prohibited by law or regulation from exchanging, or must have established written internal procedures (i.e., Chinese walls) designed to prevent the exchange of, information related to bidding in Treasury auctions with any other component in the partnership structure;

(2) Such component or components must not be created for the purpose of circumventing the Department's bidding and award limitations;

(3) Decisions related to purchasing Treasury securities at auction and participation in specific auctions must be made by employees of such component or components. Employees of such component or components that make decisions to purchase or dispose of Treasury securities must not perform the same function for other components within the partnership structure; and

(4) The records of such component or components related to the bidding for, acquisition of, and disposition of Treasury securities must be maintained by such component or components. Those records must be identifiable—separate and apart from similar records for other components within the partnership structure.

To obtain recognition as a separate bidder, each component or group of components must request such recognition from the Department, provide a description of the component or group and its position within the partnership structure, and provide the following certification:

"[Name of the bidder] hereby certifies that to the best of its knowledge and belief it meets the criteria for a separate bidder as described in appendix A to 31 CFR part 356. The above-named bidder also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the component or group of components from:

(1) Exchanging any of the following information with any other part of the partnership structure: (a) yields or rates at which it plans to bid; (b) amounts of securities for which it plans to bid; (c) positions that it holds or plans to acquire in a security being auctioned; and (d) investment strategies that it plans to follow, or

"(2) In any way intentionally acting together with any other part of the partnership structure with respect to formulating or entering bids in a Treasury auction.

"The above-named bidder agrees that it will promptly notify the Department in writing when any of the information provided to obtain separate bidder status changes or when this certification is no longer valid."

(c) *Government-related entity*—

(1) The government of each of the 50 states and of the District of Columbia is considered to be one bidder.

(2) A unit of local government, including any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, is considered to be one bidder.

(3) The government of a commonwealth, territory, or possession of the United States is considered to be one bidder.

(4) A governmental entity, body, or corporation established under Federal, State, or local law is considered to be one bidder.

(5) A foreign central bank, the government of a foreign state, or an international organization in which the United States holds membership is considered to be one bidder.

An investment, reserve, or other fund of one of the above government-related entities, not otherwise meeting the definition of the "trust or other fiduciary estate" category, is considered part of that entity and not a separate bidder unless applicable law requires that the investments of such fund be made separately.

(d) *Trust or other fiduciary estate*—A legal entity created under a valid trust instrument, court order, or other legal authority that designates a trustee or fiduciary to act for the benefit of a named beneficiary may be considered a bidder. To be considered a bidder, such legal entity must be able to be identified by the name or title of the trustee or fiduciary; specific reference to the trust instrument, court order, or legal authority under which the trustee or fiduciary is acting; and the unique IRS-assigned employer identification number (not social security number) for the entity. Further, it must be the trustee or fiduciary who makes the decisions related to participation in auctions on behalf of the trust or fiduciary estate.

(e) *Individual*—A person, whether acting in his or her individual capacity, as a sole proprietor, for any entity not otherwise defined as a bidder, or in more than one such capacity, is considered to be one bidder. When a person meets the definition of an affiliate within a corporate or partnership structure as defined above, such person may only be considered a bidder in this "individual" category when the bidder of which they are a part is not bidding in the same auction. A person acting in an official capacity as an employee or other representative of a bidder defined in any other category is not considered an "individual" bidder when acting in such capacity. A person, his or her spouse, and any children under the age of 21 having a common household are considered, collectively, to be one "individual" bidder.

(f) *Other bidder*—A bidder defined by any of the above categories is not considered a bidder in this category. A bidder not defined by any of the above categories may possibly be considered a bidder in this category. For purposes of this definition, "other bidder" means an institution or organization with a unique IRS-assigned employer identification number. This definition of other bidder includes such entities as an association, church, university, union, or club. This category does not include any person or entity acting in a fiduciary or investment management capacity, a sole proprietorship, an investment account, an investment fund, a form of registration, or investment ownership designation.

Notwithstanding the definitions in this appendix, it is the intent of the Department that no auction participant receive a larger auction award by acquiring securities through an intermediary than it could have received had it been considered a bidder under these definitions.

Appendix B to Part 356—Formulas and Tables

I. Computation of Interest on Treasury Bonds and Notes

II. Formulas for Conversion of Bond and Note Yields to Equivalent Prices

III. Computation of Purchase Price, Discount Rate, and Investment Rate for Treasury Bills

I. Computation of Interest on Treasury Bonds and Notes

A. Regular Half-Year Payment Period

Interest on marketable Treasury bonds and notes is payable on a semiannual basis. The regular interest payment period is a full half-year of six calendar months. Examples of half-year periods are: (1) February 15 to August 15, (2) May 31 to November 30, and (3) February 29 to August 31 (in a leap year). Calculation of an interest payment for a note with a par amount of $1,000 and an interest rate of 8% is made in this manner: ($1,000 × .08) ÷ 2 = $40. Specifically, a semiannual interest payment represents one half of one year's interest, and is computed on this basis regardless of the actual number of days in the half-year.

B. Daily Interest Decimal

In cases where an interest payment period is shorter or longer than six months or where accrued interest is payable by an investor, a daily interest decimal, based on the actual number of days in the half-year or half-years involved, must be computed. The number of days in any half-year period is shown in Table 1.

TABLE.—1

Interest period	Beginning and ending days are 1st or 15th of the months listed under interest period (number of days)		Beginning and ending days are the last days of the months listed under interest period (number of days)	
	Regular year	Leap year	Regular year	Leap year
January to July	181	182	181	182
February to August	181	182	184	184
March to September	184	184	183	183
April to October	183	183	184	184
May to November	184	184	183	183
June to December	183	183	184	184
July to January	184	184	184	184
August to February	184	184	181	182
September to March	181	182	182	183
October to April	182	183	181	182
November to May	181	182	182	183
December to June	182	183	181	182

Table 2 below sets forth the daily interest decimals covering interest from ⅛% to 20% on $1,000 for one day in increments of ⅛ of one percent. These decimals represent $1/181$, $1/182$, $1/183$, or $1/184$ of a full semiannual interest payment, depending on which half-year is applicable.

BILLING CODE 4810-35-M

TABLE 2

Decimal for one day's interest on $1,000 at various rates of interest, payable semiannually or on a semiannual basis, in regular years of 365 days and in years of 366 days (to determine applicable number of days, see TABLE 1).

Rate per Annum (percent)	Half-Year of 184 Days	Half-Year of 183 Days	Half-Year of 182 Days	Half-Year of 181 Days
1/8%	0.003396739	0.003415301	0.003434066	0.003453039
1/4%	0.006793478	0.006830601	0.006868132	0.006906077
3/8%	0.010190217	0.010245902	0.010302198	0.010359116
1/2%	0.013586957	0.013661202	0.013736264	0.013812155
5/8%	0.016983696	0.017076503	0.017170330	0.017265193
3/4%	0.020380435	0.020491803	0.020604396	0.020718232
7/8%	0.023777174	0.023907104	0.024038462	0.024171271
1%	0.027173913	0.027322404	0.027472527	0.027624309
1-1/8%	0.030570652	0.030737705	0.030906593	0.031077348
1-1/4%	0.033967391	0.034153005	0.034340659	0.034530387
1-3/8%	0.037364130	0.037568306	0.037774725	0.037983425
1-1/2%	0.040760870	0.040983607	0.041208791	0.041436464
1-5/8%	0.044157609	0.044398907	0.044642857	0.044889503
1-3/4%	0.047554348	0.047814208	0.048076923	0.048342541
1-7/8%	0.050951087	0.051229508	0.051510989	0.051795580
2%	0.054347826	0.054644809	0.054945055	0.055248619
2-1/8%	0.057744565	0.058060109	0.058379121	0.058701657
2-1/4%	0.061141304	0.061475410	0.061813187	0.062154696
2-3/8%	0.064538043	0.064890710	0.065247253	0.065607735
2-1/2%	0.067934783	0.068306011	0.068681319	0.069060773
2-5/8%	0.071331522	0.071721311	0.072115385	0.072513812
2-3/4%	0.074728261	0.075136612	0.075549451	0.075966851
2-7/8%	0.078125000	0.078551913	0.078983516	0.079419890
3%	0.081521739	0.081967213	0.082417582	0.082872928
3-1/8%	0.084918478	0.085382514	0.085851648	0.086325967
3-1/4%	0.088315217	0.088797814	0.089285714	0.089779006

TABLE 2 (Continued) 84

3-3/8%	0.091711957	0.092213115	0.092719780	0.093232044
3-1/2%	0.095108696	0.095628415	0.096153846	0.096685083
3-5/8%	0.098505435	0.099043716	0.099587912	0.100138122
3-3/4%	0.101902174	0.102459016	0.103021978	0.103591160
3-7/8%	0.105298913	0.105874317	0.106456044	0.107044199
4%	0.108695652	0.109289617	0.109890110	0.110497238
4-1/8%	0.112092391	0.112704918	0.113324176	0.113950276
4-1/4%	0.115489130	0.116120219	0.116758242	0.117403315
4-3/8%	0.118885870	0.119535519	0.120192308	0.120856354
4-1/2%	0.122282609	0.122950820	0.123626374	0.124309392
4-5/8%	0.125679348	0.126366120	0.127060440	0.127762431
4-3/4%	0.129076087	0.129781421	0.130494505	0.131215470
4-7/8%	0.132472826	0.133196721	0.133928571	0.134668508
5%	0.135869565	0.136612022	0.137362637	0.138121547
5-1/8%	0.139266304	0.140027322	0.140796703	0.141574586
5-1/4%	0.142663043	0.143442623	0.144230769	0.145027624
5-3/8%	0.146059783	0.146857923	0.147664835	0.148480663
5-1/2%	0.149456522	0.150273224	0.151098901	0.151933702
5-5/8%	0.152853261	0.153688525	0.154532967	0.155386740
5-3/4%	0.156250000	0.157103825	0.157967033	0.158839779
5-7/8%	0.159646739	0.160519126	0.161401099	0.162292818
6%	0.163043478	0.163934426	0.164835165	0.165745856
6-1/8%	0.166440217	0.167349727	0.168269231	0.169198895
6-1/4%	0.169836957	0.170765027	0.171703297	0.172651934
6-3/8%	0.173233696	0.174180328	0.175137363	0.176104972
6-1/2%	0.176630435	0.177595628	0.178571429	0.179558011
6-5/8%	0.180027174	0.181010929	0.182005495	0.183011050
6-3/4%	0.183423913	0.184426230	0.185439560	0.186464088
6-7/8%	0.186820652	0.187841530	0.188873626	0.189917127
7%	0.190217391	0.191256831	0.192307692	0.193370166
7-1/8%	0.193614130	0.194672131	0.195741758	0.196823204
7-1/4%	0.197010870	0.198087432	0.199175824	0.200276243
7-3/8%	0.200407609	0.201502732	0.202609890	0.203729282
7-1/2%	0.203804348	0.204918033	0.206043956	0.207182320

TABLE 2 (Continued)

85

7-5/8%	0.207201087	0.208333333	0.209478022	0.210635359
7-3/4%	0.210597826	0.211748634	0.212912088	0.214088398
7-7/8%	0.213994565	0.215163934	0.216346154	0.217541436
8%	0.217391304	0.218579235	0.219780220	0.220994475
8-1/8%	0.220788043	0.221994536	0.223214286	0.224447514
8-1/4%	0.224184783	0.225409836	0.226648352	0.227900552
8-3/8%	0.227581522	0.228825137	0.230082418	0.231353591
8-1/2%	0.230978261	0.232240437	0.233516484	0.234806630
8-5/8%	0.234375000	0.235655738	0.236950549	0.238259669
8-3/4%	0.237771739	0.239071038	0.240384615	0.241712707
8-7/8%	0.241168478	0.242486339	0.243818681	0.245165746
9%	0.244565217	0.245901639	0.247252747	0.248618785
9-1/8%	0.247961957	0.249316940	0.250686813	0.252071823
9-1/4%	0.251358696	0.252732240	0.254120879	0.255524862
9-3/8%	0.254755435	0.256147541	0.257554945	0.258977901
9-1/2%	0.258152174	0.259562842	0.260989011	0.262430939
9-5/8%	0.261548913	0.262978142	0.264423077	0.265883978
9-3/4%	0.264945652	0.266393443	0.267857143	0.269337017
9-7/8%	0.268342391	0.269808743	0.271291209	0.272790055
10%	0.271739130	0.273224044	0.274725275	0.276243094
10-1/8%	0.275135870	0.276639344	0.278159341	0.279696133
10-1/4%	0.278532609	0.280054645	0.281593407	0.283149171
10-3/8%	0.281929348	0.283469945	0.285027473	0.286602210
10-1/2%	0.285326087	0.286885246	0.288461538	0.290055249
10-5/8%	0.288722826	0.290300546	0.291895604	0.293508287
10-3/4%	0.292119565	0.293715847	0.295329670	0.296961326
10-7/8%	0.295516304	0.297131148	0.298763736	0.300414365
11%	0.298913043	0.300546448	0.302197802	0.303867403
11-1/8%	0.302309783	0.303961749	0.305631868	0.307320442
11-1/4%	0.305706522	0.307377049	0.309065934	0.310773481
11-3/8%	0.309103261	0.310792350	0.312500000	0.314226519
11-1/2%	0.312500000	0.314207650	0.315934066	0.317679558
11-5/8%	0.315896739	0.317622951	0.319368132	0.321132597
11-3/4%	0.319293478	0.321038251	0.322802198	0.324585635

TABLE 2 (Continued)

86

11-7/8%	0.322690217	0.324453552	0.326236264	0.328038674
12%	0.326086957	0.327868852	0.329670330	0.331491713
12-1/8%	0.329483696	0.331284153	0.333104396	0.334944751
12-1/4%	0.332880435	0.334699454	0.336538462	0.338397790
12-3/8%	0.336277174	0.338114754	0.339972527	0.341850829
12-1/2%	0.339673913	0.341530055	0.343406593	0.345303867
12-5/8%	0.343070652	0.344945355	0.346840659	0.348756906
12-3/4%	0.346467391	0.348360656	0.350274725	0.352209945
12-7/8%	0.349864130	0.351775956	0.353708791	0.355662983
13%	0.353260870	0.355191257	0.357142857	0.359116022
13-1/8%	0.356657609	0.358606557	0.360576923	0.362569061
13-1/4%	0.360054348	0.362021858	0.364010989	0.366022099
13-3/8%	0.363451087	0.365437158	0.367445055	0.369475138
13-1/2%	0.366847826	0.368852459	0.370879121	0.372928177
13-5/8%	0.370244565	0.372267760	0.374313187	0.376381215
13-3/4%	0.373641304	0.375683060	0.377747253	0.379834254
13-7/8%	0.377038043	0.379098361	0.381181319	0.383287293
14%	0.380434783	0.382513661	0.384615385	0.386740331
14-1/8%	0.383831522	0.385928962	0.388049451	0.390193370
14-1/4%	0.387228261	0.389344262	0.391483516	0.393646409
14-3/8%	0.390625000	0.392759563	0.394917582	0.397099448
14-1/2%	0.394021739	0.396174863	0.398351648	0.400552486
14-5/8%	0.397418478	0.399590164	0.401785714	0.404005525
14-3/4%	0.400815217	0.403005464	0.405219780	0.407458564
14-7/8%	0.404211957	0.406420765	0.408653846	0.410911602
15%	0.407608696	0.409836066	0.412087912	0.414364641
15-1/8%	0.411005435	0.413251366	0.415521978	0.417817680
15-1/4%	0.414402174	0.416666667	0.418956044	0.421270718
15-3/8%	0.417798913	0.420081967	0.422390110	0.424723757
15-1/2%	0.421195652	0.423497268	0.425824176	0.428176796
15-5/8%	0.424592391	0.426912568	0.429258242	0.431629834
15-3/4%	0.427989130	0.430327869	0.432692308	0.435082873
15-7/8%	0.431385870	0.433743169	0.436126374	0.438535912
16%	0.434782609	0.437158470	0.439560440	0.441988950

TABLE 2 (Continued)

87

16-1/8%	0.438179348	0.440573770	0.442994505	0.445441989
16-1/4%	0.441576087	0.443989071	0.446428571	0.448895028
16-3/8%	0.444972826	0.447404372	0.449862637	0.452348066
16-1/2%	0.448369565	0.450819672	0.453296703	0.455801105
16-5/8%	0.451766304	0.454234973	0.456730769	0.459254144
16-3/4%	0.455163043	0.457650273	0.460164835	0.462707182
16-7/8%	0.458559783	0.461065574	0.463598901	0.466160221
17%	0.461956522	0.464480874	0.467032967	0.469613260
17-1/8%	0.465353261	0.467896175	0.470467033	0.473066298
17-1/4%	0.468750000	0.471311475	0.473901099	0.476519337
17-3/8%	0.472146739	0.474726776	0.477335165	0.479972376
17-1/2%	0.475543478	0.478142077	0.480769231	0.483425414
17-5/8%	0.478940217	0.481557377	0.484203297	0.486878453
17-3/4%	0.482336957	0.484972678	0.487637363	0.490331492
17-7/8%	0.485733696	0.488387978	0.491071429	0.493784530
18%	0.489130435	0.491803279	0.494505495	0.497237569
18-1/8%	0.492527174	0.495218579	0.497939560	0.500690608
18-1/4%	0.495923913	0.498633880	0.501373626	0.504143646
18-3/8%	0.499320652	0.502049180	0.504807692	0.507596685
18-1/2%	0.502717391	0.505464481	0.508241758	0.511049724
18-5/8%	0.506114130	0.508879781	0.511675824	0.514502762
18-3/4%	0.509510870	0.512295082	0.515109890	0.517955801
18-7/8%	0.512907609	0.515710383	0.518543956	0.521408840
19%	0.516304348	0.519125683	0.521978022	0.524861878
19-1/8%	0.519701087	0.522540984	0.525412088	0.528314917
19-1/4%	0.523097826	0.525956284	0.528846154	0.531767956
19-3/8%	0.526494565	0.529371585	0.532280220	0.535220994
19-1/2%	0.529891304	0.532786885	0.535714286	0.538674033
19-5/8%	0.533288043	0.536202186	0.539148352	0.542127072
19-3/4%	0.536684783	0.539617486	0.542582418	0.545580110
19-7/8%	0.540081522	0.543032787	0.546016484	0.549033149
20%	0.543478261	0.546448087	0.549450549	0.552486188

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C. Short First Payment Period

In cases where the first interest payment period for a bond or note covers less than a full half-year period (a "short coupon"), the daily interest decimal is multiplied by the number of days from, but not including, the issue date to, and including, the first interest payment date, resulting in the amount of the interest payable per $1,000 par amount. In cases where the par amount of securities is greater than $1,000, the appropriate multiple should be multiplied by the unrounded interest payment amount for $1,000 par amount.

Example

A 2-year note paying 8⅜% interest was issued on July 2, 1990, with the first interest payment on December 31, 1990. The number of days in the full half-year period of June 30 to December 31, 1990, was 184 (see Table 1). The number of days for which interest actually accrued was 182 (not including July 2, but including December 31). The daily interest decimal, $0.227581522 (see Table 2, line for 8⅜%, under the column for half-year of 184 days), was multiplied by 182, resulting in a payment of $41.419837004 per $1,000. Because the note was issued in a minimum denomination of $5,000, $41.419837004 was multiplied by 5, resulting in a payment of $207.099185020, or $207.10, for a $5,000 note. For $20,000 of these notes, $41.419837004 would be multiplied by 20, resulting in a payment of $828.39674008 ($828.40).

D. Long First Payment Period

In cases where the first interest payment period for a bond or note covers more than a full half-year period (a "long coupon"), the daily interest decimal is multiplied by the number of days from, but not including, the issue date to, and including, the last day of the fractional period that ends one full half-year before the interest payment date. That amount is added to the regular interest amount for the full half-year ending on the first interest payment date, resulting in the amount of interest payable for $1,000 par amount. In cases where the par amount of securities is greater than $1,000, the appropriate multiple should be applied to the unrounded interest payment amount for $1,000 par amount.

Example

A 5-year 2-month note paying 7⅞% interest was issued on December 3, 1990, with the first interest payment due on August 15, 1991. Interest for the regular half-year portion of the payment was computed to be $39.375 per $1,000 par amount. The fractional portion of the payment, from December 3 to February 15, fell in a 184-day half-year (August 15, 1990, to February 15, 1991). Accordingly, the daily interest decimal for 7⅞% was $0.213994565. This decimal, multiplied by 74 (the number of days from but not including December 3, 1990, to and including February 15), resulted in interest for the fractional portion of $15.835597810. When added to $39.375 (the normal interest payment portion ending on August 15, 1991), this produced a first interest payment of $55.210597810, or $55.21 per $1,000 par amount. For $7,000 par amount of these notes, $55.210597810 would be multiplied by 7, resulting in an interest payment of $386.474184670 ($386.47).

E. Accrued Interest

Accrued interest will be payable by the purchaser of a Treasury bond or note when interest accrues prior to the issue date of the security. Because the purchaser receives a full interest payment despite having held the security for only a portion of the interest payment period, the Department is compensated through the payment of accrued interest at settlement.

If accrued interest covers a fractional portion of a full half-year period, the number of days in the full half-year period and the stated interest rate will determine the daily interest decimal to be used in computing the accrued interest. The decimal is multiplied by the number of days for which interest has accrued. If a reopened bond or note has a long first interest payment period (a "long coupon"), and the dated date for the reopened issue is less than six full months before the first interest payment, the accrued interest will fall into two separate half-year periods, and a separate daily interest decimal must be multiplied by the respective number of days in each half-year period during which interest has accrued. All accrued interest computations are rounded to five decimal places for a $1,000 par amount, using normal rounding procedures. Accrued interest for a par amount of securities greater than $1,000 is calculated by applying the appropriate multiple to accrued interest payable for $1,000 par amount, taken to five decimal places.

Examples

(1) Involving One Half-Year:

A bond paying interest at a rate of 8¾%, originally issued on August 15, 1990, as a 30-year bond with a first interest payment date of February 15, 1991, was reopened as a 29-year 9-month bond on November 15, 1990. Interest had accrued for 92 days, from August 15 to November 15. The regular interest period from August 15 to February 15, 1991, covered 184 days. Accordingly, the daily interest decimal, $0.237771739, multiplied by 92, resulted in an accrued interest payable of $21.874999988, or $21.87500, for each $1,000 bond purchased. If the bonds have a par amount of $150,000, then 150 is multiplied by $21.87500, resulting in an amount payable of $3,281.25.

(2) Involving Two Half-Years:

A 10¾% bond, originally issued on July 2, 1985, as a 20-year 1-month bond, with a first interest payment date of February 15, 1986, was reopened as a 19-year 10-month bond on November 4, 1985. Interest had accrued for 44 days, from July 2 to August 15, 1985, during a 181-day half-year (February 15 to August 15); and for 81 days, from August 15 to November 4, during a 184-day half-year (August 15, 1985, to February 15, 1986). Accordingly, $0.296961328 was multiplied by 44, and $0.292119585 was multiplied by 81, resulting, in products of $13.066298344 and $23.661684765 which, added together, resulted in accrued interest payable of $36.727983109, or $36.72798, for each $1,000 bond purchased. If the bonds have a par amount of $11,000, then 11 is multiplied by $36.72798, resulting in an amount payable of $404.00778 ($404.01).

II. Formulas for Conversion of Bond and Note Yields to Equivalent Prices [1]

Definitions

P = price per 100 (dollars), rounded to three places, using normal rounding procedures

C = the regular annual interest per $100, payable semiannually, e.g., 10.125 (the decimal equivalent of a 10⅛% interest rate)

i = nominal annual rate of return or yield to maturity, based on semiannual interest payments and expressed in decimals, e.g., .0719

n = number of full semiannual periods from the issue date to maturity, except that, if the issue date is a coupon frequency date, n will be one less than the number of full semiannual periods remaining to maturity. Coupon frequency dates are the two semiannual dates based on the maturity date of each note or bond issue. For example, a security maturing on November 15, 1995, would have coupon frequency dates of May 15 and November 15.

r = (1) number of days from the issue date to the first interest payment (regular or short first payment period), or (2) number of days in fractional portion (or "initial short period") of long first payment period

s = (1) number of days in the full semiannual period ending on the first interest payment date (regular or short first payment period), or (2) number of days in the full semiannual period in which the fractional portion of a long first payment period falls, ending at the onset of the regular portion of the first interest payment

$v^n = 1/[1+(i/2)]^n$ = present value of 1 due at the end of n periods

$a_n = (1-v^n)/(i/2) = v + v^2 + v^3 + \ldots + v^n$ = present value of 1 per period for n periods

A = accrued interest

A. For bonds and notes with a regular first interest payment period:

Formula:

$$P[1+(r/s)(i/2)] = (C/2)(r/s) + (C/2)a_n + 100\,v^n$$

Example:

For an 8¾% 30-year bond, issued May 15, 1990, due May 15, 2020, with interest payments on November 15 and May 15, solve for the price per 100 (P) at a yield of 8.84%.

Definitions:

C = 8.75

i = .0884

r = 184 (May 15 to November 15, 1990)

s = 184 (May 15 to November 15, 1990)

n = 59 (There are 60 full semiannual periods, but n is reduced by 1 because the issue date is a coupon frequency date.)

$v^n = 1/[(1+.0884/2)]^{59}$, or .077940

[1] In the following examples, intermediate rounding is used to allow the reader to follow the calculations. In actual practice, the Department does not round prior to determining the final result.

$a_n = (1 - .077940)/.0442$, or 20.861086

Resolution:

$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)a_n + 100\ v^n$

or

$P[1 + (184/184)(.0884/2)] = (8.75/2)(184/184) + (8.75/2)(20.861086) + 100(.077940)$

(1) $P[1 + .0442] = 4.375 + 91.267251 + 7.7940$

(2) $P[1.0442] = 103.436251$

(3) $P = 103.436251 \div 1.0442$

(4) $P = 99.057892$

(5) $P = 99.058$

B. For bonds and notes with a short first interest payment period:

Formula:

$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)a_n + 100\ v^n$

Example:

For an 8½% 2-year note, issued April 2, 1990, due March 31, 1992, with interest payments on September 30 and March 31, solve for the price per 100 (P) at a yield of 8.59%.

Definitions:

C = 8.50

i = .0859

n = 3

r = 181 (April 2 to September 30, 1990)

s = 183 (March 31 to September 30, 1990)

$v^n = 1/[(1 + .0859/2)]^3$, or .881474

$a_n = (1 - .881474)/.04295$, or 2.759627

Resolution:

$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)a_n + 100\ v^n$

or

$P[1 + (181/183)(.0859/2)] = (8.50/2)(181/183) + (8.50/2)(2.759627) + 100(.881474)$

(1) $P[1 + .042481] = 4.203552 + 11.728415 + 88.1474$

(2) $P[1.042481] = 104.079367$

(3) $P = 104.079367 \div 1.042481$

(4) $P = 99.838143$

(5) $P = 99.838$

C. For bonds and notes with a long first interest payment period:

Formula:

$P[1 + (r/s)(i/2)] = [(C/2)(r/s)]v + (C/2)a_n + 100\ v^n$

Example:

For an 8½% 5-year 2-month note, issued March 1, 1990, due May 15, 1995, with interest payments on November 15 and May 15 (first payment on November 15, 1990), solve for the price per 100 (P) at a yield of 8.53%.

Definitions:

C = 8.50

i = .0853

n = 10

r = 75 (March 1 to May 15, 1990, which is the fractional portion of the first interest payment)

s = 181 (November 15, 1989, to May 15, 1990)

$v = 1/(1 + .0853/2)$, or .959095

$v^n = 1/(1 + .0853/2)^{10}$, or .658589

$a_n = (1 - .658589)/.04265$, or 8.004947

Resolution:

$P[1 + (r/s)(i/2)] = [(C/2)(r/s)]v + (C/2)a_n + 100\ v^n$ or

$P[1 + (75/181)(.0853/2)] = [(8.50/2)(75/181)].959095 + (8.50/2)(8.004947) + 100(.658589)$

(1) $P[1 + .017673] = 1.689014 + 34.021025 + 65.8589$

(2) $P[1.017673] = 101.568939$

(3) $P = 101.568939 \div 1.017673$

(4) $P = 99.805064$

(5) $P = 99.805$

D. (1) For bonds and notes reopened during a regular interest period where the purchase price includes predetermined accrued interest.

(2) For new bond and note issues accruing interest from the coupon-frequency date immediately preceding the issue date, with the interest rate established in the auction being used to determine the accrued interest payable on the issue date.

Formula:

$(P + A)[1 + (r/s)(i/2)] = C/2 + (C/2)a_n + 100v^n$

Where $A = [(s - r)/s](C/2)$

Example:

For a 9½% 10-year note, interest accruing from November 15, 1985, issued November 29, 1985, due November 15, 1995, with interest payments on May 15 and November 15, solve for the price per 100 (P) at a yield of 9.54%. Accrued interest is from November 15 to November 29 (14 days).

Definitions:

C = 9.50

i = .0954

n = 19

r = 167 (November 29, 1985, to May 15, 1986)

s = 181 (November 15, 1985, to May 15, 1986)

$v^n = 1/[(1 + .0954/2)]^{19}$, or .412570400

$a_n = (1 - .412570)/.0477$, or 12.315094

$A = [(181 - 167)/181](9.50/2)$, or .367403

Resolution:

$(P + A)[1 + (r/s)(i/2)] = C/2 + (C/2)a_n + 100v^n$

or

$(P + .367403)[1 + (167/181)(.0954/2)] = (9.50/2) + (9.50/2)(12.315094) + 100(.412570)$

(1) $(P + .367403)[1 + .04401 1] = 4.75 + 58.496697 + 41.2570$

(2) $(P + .367403)[1.044011] = 104.503697$

(3) $(P + .367403) = 104.503697 \div 1.044011$

(4) $(P + .367403) = 100.098272$

(5) $P = 100.098272 - .367403$

(6) $P = 99.730869$

(7) $P = 99.731$

E. For bonds and notes reopened during the regular portion of a long first payment period:

Formula:

$(P + A)[1 + (r/s)(i/2)] = (r'/s'')(C/2) + C/2 + (C/2)a_n + 100v^n$

Where $A = AI' + AI$

$AI' = (r'/s'')(C/2)$

$AI = [(s - r)/s](C/2)$

and r = number of days from the reopening date to the first interest payment date

s = number of days in the semiannual period for the regular portion of the first interest payment period

r' = number of days in the fractional portion (or "initial short period") of the first interest payment period

s'' = number of days in the semiannual period ending with the commencement date of the regular portion of the first interest payment period

Example:

A 10¾% 19-year 9-month bond due August 15, 2005, is issued on July 2, 1985, and reopened on November 4, 1985, with interest payments on February 15 and August 15 (first payment on February 15, 1986), solve for the price per 100(P) at a yield of 10.47%. Accrued interest is calculated from July 2 to November 4.

Definitions:

C = 10.75

i = .1047

n = 39

r = 103 (November 4, 1985, to February 15, 1986)

s = 184 (August 15, 1985, to February 15, 1986)

r' = 44 (July 2 to August 15, 1985)

s'' = 181 (February 15 to August 15, 1985)

$v^n = 1 / [(1 + .1047 / 2)]^{39}$, or .136695

$a_n = (1 - .136695)/.05235$, or 16.491022

$AI' = (44/181)(10.75/2)$, or 1.306630

$AI = [(184 - 103)/184](10.75/2)$, or 2.366168

$A = AI' + AI$, or 3.672798

Resolution:

$(P + A)[1 + (r/s)(i/2)] = (r'/s'')(C/2) + C/2 + (C/2)a_n + 100v^n$ or

$(P + 3.672798)[1 + (103/184)(.1047/2)] = (44/181)(10.75/2) + 10.75/2 + (10.75/2)(16.491022) + 100(.136695)$

(1) $(P + 3.672798)[1 + .0293 05] = 1.306630 + 5.375 + 88.639243 + 13.6695$

(2) $(P + 3.672798)[1.029305] = 108.990373$

(3) $(P + 3.672798) = 108.990373 \div 1.029305$

(4) $(P + 3.672798) = 105.887344$

(5) $P = 105.887344 - 3.672798$

(6) $P = 102.214546$

(7) $P = 102.215$

F. For bonds and notes reopened during a short first payment period:

Formula:

$(P + A)[1 + (r/s)(i/2)] = (r''/s)(C/2) + (C/2)a_n + 100v^n$

Where $A = [(r'' - r)/s](C/2)$

and r'' = number of days from the original issue date to the first interest payment date

Example:

For a 10½% 8-year note due May 15, 1991, originally issued on May 16, 1983, and reopened on August 15, 1983, with interest payments on November 15 and May 15 (first payment on November 15, 1983), solve for the price per 100 (P) at yield of 10.53%. Accrued interest is calculated from May 16 to August 15.

Definitions:

C = 10.50

i = .1053

n = 15

r = 92 (August 15, 1983, to November 15, 1983)

s = 184 (May 15, 1983, to November 15, 1983)

r'' = 183 (May 16, 1983, to November 15, 1983)

$v^n = 1/[(1 + .1053/2)]^{15}$, or .463170

$a_n = (1 - .463170)/.05265$, or 10.196201

$A = [(183 - 92)/184](10.50/2)$, or 2.596467

Resolution:

$(P + A)[1 + (r/s)(i/2)] = (r''/s)(C/2) + (C/2)a_n + 100v^n$ or

$(P + 2.596467)[1 + (92/184)(.1053/2)] = (183/184)(10.50/2) + (10.50/2)(10.196201) + 100(.463170)$

(1) $(P + 2.596467)[1 + .026325] = 5.221167 + 53.530055 + 46.3170$

(2) $(P + 2.596467)[1.026325] = 105.068522$

(3) (P+2.596467)=105.068522÷1.026325
(4) (P+2.596467)=102.373539
(5) P=102.373539−2.596467
(6) P=99.777072
(7) P=99.777

G. For bonds and notes reopened during the fractional portion (initial short period) of a long first payment period:

Formula:

$(P+A)[1+(r/s)(i/2)]=[(r'/s)(C/2)]v+(C/2)a_n+100v^n$

Where $A=[(r'r)/s](C/2)$
and r=number of days from the reopening date to the end of the short period
r'=number of days in the short period
s=number of days in the semiannual period ending with the end of the short period

Example:

For a 9¾% 6-year 2-month note due December 15, 1994, originally issued on October 15, 1988, and reopened on November 15, 1988, with interest payments on June 15 and December 15 (first payment on June 15, 1989), solve for the price per 100 (P) at a yield of 9.79%. Accrued interest is calculated from October 15 to November 15.

Definitions:

C=9.75
i=.0979
n=12
r=30 (November 15, 1988, to December 15, 1988)
s=183 (June 15, 1988, to December 15, 1988)
r'=61 (October 15, 1988, to December 15, 1988)
v=1/(1+.0979/2), or .953334
$v^n=[1/(1+.0979/2)]^{12}$, or .563563
$a_n=(1-.563563)/.04895$, or 8.915975
A=[(61−30)/183](9.75/2), or .825820

Resolution:

$(P+A)[1+(r/s)(i/2)]=[(r'/s)(C/2)]v+(C/2)_{an}+100v^n$ or
(P+.825820)[1+(30/183)(.0979/2)]=[(61/183)(9.75/2)](.953334)+(9.75/2)(8.915975)+100(.563563)
(1) (P+.825820)[1+.00802 5]=1.549168+43.465378+56.3563
(2) (P+.825820)[1.008025]=101.370846
(3) (P+.825820)=101.370846÷1.008025
(4) (P+.825820)=100.563821
(5) P=100.563821−.825820
(6) P=99.738001
(7) P=99.738

III. Computation of Purchase Price, Discount Rate, and Investment Rate (Equivalent Coupon-Equivalent Yield) for Treasury Bills

A. Conversion of the discount rate to a purchase price for Treasury bills of all maturities:

Formula:

P=100 [(1−dr)/360]
Where d=discount rate, in decimals
r=number of days remaining to maturity
P=price per 100 (dollars)

Example:

For a bill issued November 24, 1989, due February 22, 1990, at a discount rate of 7.61%, solve for price per 100 (P).

Definitions:

d=.0761
r=90 (November 24, 1989 to February 22, 1990)

Resolution:

P=100 (1−dr/360)
(1) P=100 [1−(.0761)(90)/360]
(2) P=100 (1−.019025)
(3) P=100 (.980975)
(4) P=98.0975
(5) P=98.098

Note: Purchase prices per $100 are rounded to three decimal places, using normal rounding procedures.

B. Computation of purchase prices and discount amounts based on price per $100, for Treasury bills of all maturities:

1. To determine the purchase price of any bill, divide the par amount by 100 and multiply the resulting quotient by the price per $100.

Example

To compute the purchase price of a $10,000 13-week bill sold at a price of $98.098 per $100, divide the par amount ($10,000) by 100 to obtain the multiple (100). That multiple times 98.098 results in a purchase price of $9,809.80.

2. To determine the discount amount for any bill, subtract the purchase price from the par amount of the bill.

Example

For a $10,000 bill with a purchase price of $9,809.80, the discount amount would be $190.20, or $10,000−$9,809.80.

C. Conversion of prices to discount rates for Treasury bills of all maturities:

Formula:

$$d=\left[\frac{100-P}{100}\times\frac{360}{r}\right]$$

Where P=price per 100 (dollars)
d=discount rate
r=number of days remaining to maturity

Example:

For a 26-week bill issued December 30, 1982, due June 30, 1983, with a price of $95.930, solve for the discount rate (d).

Definitions:

P=95.930
r=182 (December 30, 1982, to June 30, 1983)

Resolution:

$$d=\left[\frac{100-P}{100}\times\frac{360}{r}\right]$$

$$(1)\quad d=\left[\frac{100-95.930}{100}\times\frac{360}{182}\right]$$

(2) d=[.0407×1.978022]
(3) d=.080506
(4) d=8.051%

Note: Since April 18, 1983, bills have been sold only on a discount rate basis, where the discount rates bid are submitted with two decimals, e.g., 7.32%. In price-basis auctions, discount rates calculated from prices were rounded to three places, using normal rounding procedures.

D. Calculation of investment rate (coupon-equivalent yield) for Treasury bills:

1. For bills of not more than one half-year to maturity:

Formula:

$$i=\left[\frac{100-P}{P}\times\frac{y}{r}\right]$$

Where i=investment rate, in decimals
P=price per 100 (dollars)
r=number of days remaining to maturity
y=number of days in year following the issue date; normally 365 but, if the year following the issue date includes February 29, then y is 366.

Example:

For a cash management bill issued June 1, 1990, due June 21, 1990, with a price of $99.559 (computed from a discount rate of 7.93%), solve for the investment rate (i).

Definitions:

P=99.559
r=20 (June 1, 1990, to June 21, 1990)
y=365

Resolution:

$$i=\left[\frac{100-P}{P}\times\frac{y}{r}\right]$$

$$(1)\quad i=\left[\frac{100-99.559}{99.559}\times\frac{365}{20}\right]$$

(2) i=[.004430×18.25]
(3) i=.080848
(4) i=8.08%

2. For bills of more than one half-year to maturity:

Formula: $P\,[1+(r-y/2)(i/y)]\,(1+i/2)=100$

This formula must be solved by using the quadratic equation, which is:

$ax^2+bx+c=0$

Therefore, rewriting the bill formula in the quadratic equation form gives:

$$\left(\frac{r}{2y}-.25\right)i^2+\left(\frac{r}{y}\right)i+\left(\frac{P-100}{P}\right)=0$$

and solving for "i" produces:

$$i=\frac{-b+\sqrt{b^2-4ac}}{2a}$$

Where i=investment rate in decimals
b=r/y
a=(r/2y)−.25
c=(P−100)/P
P=price per 100 (dollars)
r=number of days remaining to maturity
y=number of days in year following the issue date; normally 365, but if the year following the issue date includes February 29, then y is 366.

Example:

For a 52-week bill issued June 7, 1990, due June 6, 1991, with a price of $92.265 (computed from a discount rate of 7.65%), solve for the investment rate (i).

Definitions:

r=364 (June 7, 1990, to June 6, 1991)
y=365
P=92.265
b=364/365, or .997260
a=(364/730)−.25, or .24863
c=(92.265−100)/92.265, or −.083835

Resolution:

$$i = \frac{-b + \sqrt{b^2 - 4ac}}{2a}$$

$$(1)\ i = \frac{-.997260 + \sqrt{(.997260)^2 - 4[(.24863)(-.083835)]}}{2(.248630)}$$

$$(2)\ i = \frac{-.997260 + \sqrt{.994528 + .083376}}{.497260}$$

(3) i=(−.997260+1.038222)/.497260
(4) i=.040962/.497260
(5) i=.082375 or
(6) i=8.24%

Exhibit A to Part 356—Sample Announcements of Treasury Offerings to the Public

I. Treasury Quarterly Financing Announcement
II. Treasury Weekly Bill Announcement
III. Treasury Cash Management Bill Announcement

I. Treasury Quarterly Financing Announcement

For release when authorized at press conference, May 1, 19XX.

Contact: Office of Financing, 202/219–3350.

Treasury May Quarterly Financing

The Treasury will auction two notes and one bond totaling approximately $37,000 million, to be issued May 15, 19XX. This offering will provide about $18,025 million of new cash and will refund $18,976 million of securities maturing that date.

In addition to the public holdings, Federal Reserve Banks hold $3,662 million of the maturing securities for their own accounts, which may be refunded by issuing additional amounts of the new securities at the average yield of accepted competitive tenders.

The maturing securities held by the public include $1,099 million held by Federal Reserve Banks as agents for foreign and international monetary authorities. Amounts bid for these accounts by Federal Reserve Banks will be added to the offering. Bids for such accounts will be accepted at the average yield of accepted competitive tenders.

The 9¾-year note and 30-year bond being offered today will be eligible for the STRIPS program.

Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D. C.

Details about each of the new securities are given in the attached offering highlights and in the Treasury Department's Uniform Offering Circular.

Attachment

Highlights of Treasury Offerings May 19XX Quarterly Financing

[May 1, 19XX]

Offering amount	$13,500	$11,750 million	$11,750 million.
Description of Offering:			
Term and type of security.	3=year notes	9¾ year notes	30-year bonds of 20XX.
Series	Series S–19XX	Series A–20XX	Bonds of May 20XX.
CUSIP number	912827 A7 7	912827 ZX 3	912810 EJ 3.
Auction date	May 7, 19XX	May 8, 19XX	May 9, 19XX.
Issue date	May 15, 19XX	May 15, 19XX	May 15, 19XX.
Dated date	May 15, 19XX	February 15, 19XX	May 15, 19XX.
Maturity date	May 15, 19XX	February 15, 20XX	May 15, 20XX.
Interest rate	Determined based on the average of accepted competitive bids.	7¾%	Determined based on the average of accepted competitive bids.
Yield	Determined at auction	Determined at auction	Determined at auction.
Interest payment dates.	November 15 and May 15	August 15 and February 15	November 15 and May 15.
Minimum bid amount	$5,000	$1,000	$1,000.
Multiples	$5,000	$1,000	$1,000.
Accrued interest payable by investor.	None	$19.05387 per $1,000	None.
Premium or discount	Determined at auction	Determined at auction	Determined at auction.

Highlights of Treasury Offerings May 19XX Quarterly Financing—Continued

[May 1, 19XX]

STRIPS Information:			
Minimum amount required.	Not applicable	$800,000	Determined at auction.
Corpus CUSIP number	Not applicable	912820 AZ 0	912803 AW 3.
New TINT CUSIP number.	Not applicable	Not applicable	912833 LD 0.
New TINT due date	Not applicable	Not applicable	May 15, 20XX.
The following rules apply to all securities mentioned above:			
Submission of Bids:			
Noncompetitive bids	Accepted in full up to $5,000,000 at the weighted average yield of accepted competitive bids.		
Competitive bids	(1) Must be expressed as an annual yield with two decimals, e.g., 7.10%. (2) Net long position for each bidder must be reported when the sum of the total bid amount, at all yields, and the net long position is $2 billion or greater. (3) The net long position must be determined as of one-half hour prior to the closing time for receipt of competitive tenders.		
Maximum recognized bid at a single yield.	35% of offering amount.		
Maximum award	35% of offering amount.		
Receipt of Tenders:			
Noncompetitive tenders.	Prior to 12:00 noon Eastern time on auction day.		
Competitive tenders	Prior to 1:00 p.m. Eastern time on auction day.		
Payment terms	Full payment with tender or by charge to a funds account on issue date.		

II. Treasury Weekly Bill Announcement

For release at 2:30 p.m., October 9, 19XX.
Contact: Office of Financing, 202/219–3350.

Treasury's Weekly Bill Offering

The Treasury will auction two series of Treasury bills totaling approximately $18,800 million, to be issued October 18, 19XX. This offering will provide about $1,375 million of new cash, as the maturing weekly bills are currently outstanding in the amount of $17,421 million.

Federal Reserve Banks hold $4,294 million of the maturing bills for their own accounts, which may be refunded within the offering amount at the weighted average discount rate of accepted competitive tenders.

Federal Reserve Banks hold $1,104 million as agents for foreign and international monetary authorities, which may be refunded within the offering amount at the weighted average discount rate of accepted competitive tenders. Additional amounts may be issued for such accounts if the aggregate amount of new bids exceeds the aggregate amount of maturing bills.

Tenders for the bills will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC.

Details about each of the new securities are given in the attached offering highlights and in the Treasury Department's Uniform Offering Circular.

Attachment

Highlights of Treasury Offerings of Weekly Bills

[October 9, 19XX]

Offering Amount	$9,400 million	$9,400 million.
Description of Offering:		
Term and type of security	91-day bill	182-day bill.
CUSIP number	912794 VR 2	912794 WE 0.
Auction date	October 15, 19XX	October 15, 19XX.
Issue date	October 18, 19XX	October 18, 19XX.
Maturity date	January 17, 19XX	April 18, 19XX.
Original issue date	January 18, 19XX	October 18, 19XX.
Currently outstanding	$19,127 million	
Minimum bid amount	$10,000	$10,000.
Multiples	$5,000	$5,000.
The following rules apply to all securities mentioned above:		
Submission of Bids:		
Noncompetitive bids	Accepted in full up to $1,000,000 at the weighted average discount rate of accepted competitive bids.	
Competitive bids	(1) Must be expressed as a discount rate with two decimals, e.g., 7.10%. (2) Net long position for each bidder must be reported when the sum of the total bid amount, at all discount rates, and the net long position is $2 billion or greater. (3) The net long position must be determined as of one-half hour prior to the closing time for receipt of competitive tenders.	
Maximum Recognized Bid at a Single Yield.	35% of public offering.	
Maximum Award	35% of public offering.	

Receipt of Tenders:	
Noncompetitive tenders.	Prior to 12:00 noon Eastern time on auction day.
Competitive tenders	Prior to 1:00 p.m. Eastern time on auction day.
Payment Terms	Full payment with tender or by charge to a funds account on issue date.

III. Treasury Cash Management Bill Announcement

For Release at 2:30 p.m., August 27, 19XX.
Contact: Office of Financing, 202/219–3350.

Treasury to Auction Cash Management Bills

The Treasury will auction approximately $5,000 million of 16-day Treasury cash management bills to be issued September 3, 19XX.

Competitive tenders will be received at all Federal Reserve Banks and Branches. Noncompetitive tenders will *not* be accepted. Tenders will not be received at the Bureau of the Public Debt, Washington, DC.

Details about the new security are given in the attached offering highlights and in the Treasury Department's Uniform Offering Circular.

Attachment

Highlights of Treasury Offering of 16-Day Cash Management Bill

[August 27, 19XX]

Offering Amount	$5,000 million
Description of Offering:	
Term and type of security.	16-day Cash Management Bill.
CUSIP number	912794 XG 4.
Auction date	August 29, 19XX.
Issue date	September 3, 19XX.
Maturity date	September 19, 19XX.
Original issue date	March 21, 19XX.
Currently outstanding	$20,125 million.
Minimum bid amount	$1,000,000.
Multiples	$1,000,000.
Minimum to hold amount.	$10,000.
Multiples	$5,000.
Submission of Bids:	
Noncompetitive bids	Not accepted.
Competitive bids	(1) Must be expressed as a discount rate with two decimals, e.g., 7.10%. (2) Net long position for each bidder must be reported when the sum of the total bid amount, at all discount rates, and the net long position is $2 billion or greater. (3) The net long position must be determined as of one-half hour prior to the closing time for receipt of competitive tenders.
Maximum Recognized Bid at a Single Yield.	35% of offering amount.
Maximum Award	35% of offering amount.
Receipt of Tenders:	
Noncompetitive tenders.	Not accepted.
Competitive tenders	Prior to 1:00 p.m. Eastern time on auction day.
Payment Terms	Full payment with tender or by charge to a funds account on issue date.

Exhibit B to Part 356—Sample Autocharge Agreement to Deliver and Charge for Securities Awarded in Department of Treasury Auctions

Federal Reserve Bank of _____
Attention: (Name of Fiscal Officer)
(Address)
(Address)

To Whom It May Concern:

I. The depository institution ("DI") and the submitting entity ("Submitter"), as identified below, agree that

(a) The Submitter is authorized to submit tenders to the Federal Reserve Bank of _____ ("Bank");

(b) The Bank is authorized to deliver, as provided herein, Treasury securities awarded to the Submitter through the auction process;

(c) The Bank, or other Federal Reserve Bank identified in Section II below, is authorized to charge the DI's funds account for payment of awarded securities that are delivered by the Bank hereunder. Such charge is to be made at the same time the securities are delivered;

(d) The Submitter [ ] is, [ ] is not authorized to submit TREASURY DIRECT tenders. Where such tenders are authorized, the Bank is instructed to deliver awarded securities to the TREASURY DIRECT Book-Entry System and charge the DI's funds account for the securities delivered; and

(e) The Bank [ ] is, [ ] is not authorized to deliver the awarded securities to the DI's securities account at a Federal Reserve Bank other than the Bank.

The above authorizations apply to: [ ] bills; [ ] notes; [ ] bonds.

II. For securities to be delivered to a Federal Reserve Bank other than the Bank receiving the tender, the Submitter must complete the following:

Awarded securities are to be delivered hereunder by the Bank to the DI's securities account at the Federal Reserve Bank of _____.

III. The following wire instructions are to be used by the Bank to deliver securities to the DI:

Wire Instructions: _____

IV. General Provisions.

This agreement is effective on the date it is received by the Bank, although the Bank normally will not act under the agreement until it has acknowledged receipt of such.

The Submitter hereunder is the entity submitting bids to a Bank for its own account or for the account of others. The Sub mitter is responsible to the Treasury for full payment of all securities awarded, including any securities awarded under customer bids submitted by the Submitter.

Any Federal Reserve Bank identified herein is authorized to act on information in any tender in the name of the Submitter that reasonably appears to be valid and genuine. The DI, by executing this agreement,

guarantees the authority and signature of the person signing this agreement on behalf of the Submitter.

This agreement will remain in effect until written notice is received by the Bank from either the DI or the Submitter that the agreement has been terminated, provided that if securities are scheduled to be delivered hereunder, such notice must be received in accordance with the termination procedures hereafter described.

As to termination action by the DI, notice of termination will not be effective unless received in writing by a Fiscal/Securities Department officer by the later of (i) 5:00 p.m. (the Bank's time) on the business day prior to the issue date of the securities scheduled to be delivered hereunder or (ii) if the submitter has authorized the Bank to advise the DI of securities to be delivered, two hours after such advice is sent by the Bank. Such termination action by the DI shall not affect the Submitter's responsibility to make full payment for the securities awarded. A DI may, at any time, waive in writing its right to terminate hereunder.

As to termination action by the Submitter after an auction but prior to delivery of awarded securities, the written notice of termination will not be effective, and this agreement shall remain in full force and effect, unless the Submitter has provided to the Bank, and the latter has acknowledged, a new autocharge agreement executed by a DI having a funds account at a Federal Reserve Bank.

Written notices to be sent hereunder in connection with the termination of this autocharge agreement shall be sent by either the Submitter or the DI to the Bank authorized to receive tenders hereunder.

In the event that this autocharge agreement is terminated, it is the sole responsibility of the party terminating the agreement to notify the other party hereto.

AGREED TO BY _____
(Full DI Name and ABA #)

Signature: _____
Name: _____
Title: _____
Date: _____

AGREED TO BY _____
(Full name of Submitter)

Signature: _____
Name: _____
Title: _____
Date: _____

ACKNOWLEDGED BY: Federal Reserve Bank of _____ ("Bank"):

Signature: _____
Name: _____
Title: _____
Date: _____

DI'S SIGNATURE AND WIRE INSTRUCTIONS VERIFIED BY:
(For use only by Federal Reserve Bank named in Section II above)

Signature: _____
Name: _____
Title: _____
Date: _____

Federal Reserve Bank of _____

Instructions for Completing the Autocharge Agreement

1. Depository Institution: This is the DI whose funds account at a Federal Reserve Bank will be debited, under this autocharge agreement, for the price of Treasury securities awarded at auction to the Submitter. Also, this DI must have a book-entry securities account at the Federal Reserve Bank to which securities will be delivered against payment on settlement day pursuant to the autocharge agreement and the Submitter's tender submission.

2. Submitter: The Submitter must identify the full name of the entity that is submitting bids under this autocharge agreement. The name shown on the autocharge agreement should be the same as that appearing on related tender forms.

3. Bank: This is the Federal Reserve Bank to which the Submitter will be submitting tenders in Treasury auctions.

4. Signature for DI: This is the signature of an officer of the DI having authority to enter into or terminate this autocharge agreement, and whose signature is on file at the Federal Reserve Bank where the DI has a funds account.

5. Signature for Submitter: This is the signature of an officer of the Submitter having authority to enter into or terminate the autocharge agreement.

6. Signature for Bank: This is the signature of an officer of the Bank having authority to acknowledge this autocharge agreement.

BILLING CODE 4810-35-M

EXHIBIT C TO PART 356

MINIMUM PAR AMOUNTS FOR STRIPS

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
0.125	1600000.00	1000.00	6.875	320000.00	11000.00	13.625	1600000.00	109000.00
0.250	800000.00	1000.00	7.000	200000.00	7000.00	13.750	160000.00	11000.00
0.375	1600000.00	3000.00	7.125	1600000.00	57000.00	13.875	1600000.00	111000.00
0.500	400000.00	1000.00	7.250	800000.00	29000.00	14.000	100000.00	7000.00
0.625	320000.00	1000.00	7.375	1600000.00	59000.00	14.125	1600000.00	113000.00
0.750	800000.00	3000.00	7.500	80000.00	3000.00	14.250	800000.00	57000.00
0.875	1600000.00	7000.00	7.625	1600000.00	61000.00	14.375	320000.00	23000.00
1.000	200000.00	1000.00	7.750	800000.00	31000.00	14.500	400000.00	29000.00
1.125	1600000.00	9000.00	7.875	1600000.00	63000.00	14.625	1600000.00	117000.00
1.250	160000.00	1000.00	8.000	25000.00	1000.00	14.750	800000.00	59000.00
1.375	1600000.00	11000.00	8.125	320000.00	13000.00	14.875	1600000.00	119000.00
1.500	400000.00	3000.00	8.250	800000.00	33000.00	15.000	40000.00	3000.00
1.625	1600000.00	13000.00	8.375	1600000.00	67000.00	15.125	1600000.00	121000.00
1.750	800000.00	7000.00	8.500	400000.00	17000.00	15.250	800000.00	61000.00
1.875	320000.00	3000.00	8.625	1600000.00	69000.00	15.375	1600000.00	123000.00
2.000	100000.00	1000.00	8.750	160000.00	7000.00	15.500	400000.00	31000.00
2.125	1600000.00	17000.00	8.875	1600000.00	71000.00	15.625	64000.00	5000.00
2.250	800000.00	9000.00	9.000	200000.00	9000.00	15.750	800000.00	63000.00
2.375	1600000.00	19000.00	9.125	1600000.00	73000.00	15.875	1600000.00	127000.00
2.500	80000.00	1000.00	9.250	800000.00	37000.00	16.000	25000.00	2000.00
2.625	1600000.00	21000.00	9.375	64000.00	3000.00	16.125	1600000.00	129000.00
2.750	800000.00	11000.00	9.500	400000.00	19000.00	16.250	160000.00	13000.00
2.875	1600000.00	23000.00	9.625	1600000.00	77000.00	16.375	1600000.00	131000.00
3.000	200000.00	3000.00	9.750	800000.00	39000.00	16.500	400000.00	33000.00
3.125	64000.00	1000.00	9.875	1600000.00	79000.00	16.625	1600000.00	133000.00
3.250	800000.00	13000.00	10.000	20000.00	1000.00	16.750	800000.00	67000.00
3.375	1600000.00	27000.00	10.125	1600000.00	81000.00	16.875	320000.00	27000.00
3.500	400000.00	7000.00	10.250	800000.00	41000.00	17.000	200000.00	17000.00
3.625	1600000.00	29000.00	10.375	1600000.00	83000.00	17.125	1600000.00	137000.00
3.750	160000.00	3000.00	10.500	400000.00	21000.00	17.250	800000.00	69000.00
3.875	1600000.00	31000.00	10.625	320000.00	17000.00	17.375	1600000.00	139000.00
4.000	50000.00	1000.00	10.750	800000.00	43000.00	17.500	80000.00	7000.00
4.125	1600000.00	33000.00	10.875	1600000.00	87000.00	17.625	1600000.00	141000.00
4.250	800000.00	17000.00	11.000	200000.00	11000.00	17.750	800000.00	71000.00
4.375	320000.00	7000.00	11.125	1600000.00	89000.00	17.875	1600000.00	143000.00
4.500	400000.00	9000.00	11.250	160000.00	9000.00	18.000	100000.00	9000.00
4.625	1600000.00	37000.00	11.375	1600000.00	91000.00	18.125	320000.00	29000.00
4.750	800000.00	19000.00	11.500	400000.00	23000.00	18.250	800000.00	73000.00
4.875	1600000.00	39000.00	11.625	1600000.00	93000.00	18.375	1600000.00	147000.00
5.000	40000.00	1000.00	11.750	800000.00	47000.00	18.500	400000.00	37000.00
5.125	1600000.00	41000.00	11.875	320000.00	19000.00	18.625	1600000.00	149000.00
5.250	800000.00	21000.00	12.000	50000.00	3000.00	18.750	32000.00	3000.00
5.375	1600000.00	43000.00	12.125	1600000.00	97000.00	18.875	1600000.00	151000.00
5.500	400000.00	11000.00	12.250	800000.00	49000.00	19.000	200000.00	19000.00
5.625	320000.00	9000.00	12.375	1600000.00	99000.00	19.125	1600000.00	153000.00
5.750	800000.00	23000.00	12.500	16000.00	1000.00	19.250	800000.00	77000.00
5.875	1600000.00	47000.00	12.625	1600000.00	101000.00	19.375	320000.00	31000.00
6.000	100000.00	3000.00	12.750	800000.00	51000.00	19.500	400000.00	39000.00
6.125	1600000.00	49000.00	12.875	1600000.00	103000.00	19.625	1600000.00	157000.00
6.250	32000.00	1000.00	13.000	200000.00	13000.00	19.750	800000.00	79000.00
6.375	1600000.00	51000.00	13.125	320000.00	21000.00	19.875	1600000.00	159000.00
6.500	400000.00	13000.00	13.250	800000.00	53000.00	20.000	10000.00	1000.00
6.625	1600000.00	53000.00	13.375	1600000.00	107000.00			
6.750	800000.00	27000.00	13.500	400000.00	27000.00			

BILLING CODE 4810-35-C

Dated: September 24, 1992.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-23585 Filed 9-29-92; 8:45 am]

BILLING CODE 4810-35-M

federal register

Wednesday
September 30, 1992

PART III

Department of Education

Business and Education Standards Program; Notice Inviting Applications for New Awards for Fiscal Year 1993; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.244]

Business and Education Standards Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national standards for competencies in industries and trades. This program is authorized under section 416 of the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. 2416, as amended by Public Law 101-392, 104 Stat. 753 (1990).

The Secretary wishes to highlight for potential applicants that the Business and Education Standards Program is an element of AMERICA 2000, the President's education strategy to help America move itself toward the National Education Goals. The Business and Education Standards Program also supports National Education Goal 5 of ensuring that every American possesses the knowledge and skills necessary to compete in a global economy and exercises the rights and responsibilities of citizenship. Specifically, the program addresses Track III of the AMERICA 2000 strategy—transforming America into "A Nation of Students"—by establishing standards for job skills and knowledge through a cooperative effort by business, labor, and education groups, so that workers can see what skills are needed to perform a job and can evaluate their own grasp of those skills.

Eligible Applicants: The following entities are eligible for an award under this program:

- Industrial trade associations.
- Labor organizations.
- National joint apprenticeship committees.
- Comparable national organizations, such as educational associations, industry councils, business and industry organizations, and associations of private or national research organizations.

Deadline for Transmittal of Applications: November 20, 1992.

Deadline for Intergovernmental Review: January 19, 1993.

Available Funds: $3,500,000 for the first 18 months (funding for the second 18 months is subject to the availability of funds).

Estimated Range of Awards: $450,000 to $550,000 (funding for the first 18 months).

Estimated Number of Awards: 7.

Note.—The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months (two 18-month grant cycles).

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR part 421.

Priorities

The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under the FY 1993 grant competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses. The Secretary assigns the fifteen points reserved in 34 CFR 421.20(b) as follows: 5 points to selection criterion (a)—Program factors—in 34 CFR 421.21(a) for a total of 20 points for that criterion; 5 points to selection criterion (c)—Plan of operation—in 34 CFR 421.21(c) for a total of 20 points for that criterion; and 5 points to selection criterion (d)—Evaluation plan—in 34 CFR 421.21(d) for a total of 15 points for that criterion.

(a) *Program factors.* (20 points) The Secretary reviews each application to assess the quality and effectiveness of the applicant's approach to developing national standards for competencies in industries and trades, including the extent to which the application proposes—

(1) To develop standards for—

(i) The competencies required for actual jobs, including the increased competency requirements created by the changing workplace;

(ii) Major divisions or specialty areas identified within the occupations the applicant proposes to study;

(iii) The minimum hours of study needed to be competent in those divisions or specialty areas;

(iv) Minimum tools and equipment required in those divisions or specialty areas;

(v) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas; and

(vi) Minimum qualifications for instructional staff in those divisions or specialty areas; and

(2) An adequate needs assessment of the program factors described in paragraph (a)(1) of this section as a part of the project.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including—

(1) The extent of the need for national standards for competencies in the major division or specialty areas identified within the occupations that the applicant proposes to study;

(2) How the applicant identified and documented those needs;

(3) How the standards to be developed will meet those needs, including the need of business for competent entry-level workers in the occupations to be studied; and

(4) The benefits to business, labor, and education that will result from meeting those needs.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The plan of management will be effective, will ensure proper and efficient administration of the program, and includes timelines that show starting and ending dates for all tasks;

(2) The specific procedures proposed will accomplish the project's objectives, including how the procedures for

selecting the business-labor-education technical committees will ensure that the members are knowledgeable about the occupations to be studied and include representatives of business, labor, and education;

(3) The applicant plans to organize and operate the business-labor-education technical committees effectively in developing national standards for competencies in industries and trades;

(4) The development of proposed competencies for major divisions or specialty areas within occupations will be coordinated with education and industrial trade associations, labor organizations, and businesses;

(5) The methods the applicant proposes to use to select project participants, if applicable, will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan includes specific procedures for—

(1) A formative evaluation to help assess and improve the accuracy of standards for competencies; and

(2) A summative evaluation conducted by an independent evaluator.

(e) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in fields related to the objectives of the project.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) The experience and training of the project director and key personnel in project management.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A clear description of the dissemination procedures;

(2) A description of the types of materials the applicant plans to make available;

(3) Provisions for publicizing the proposed national standards for competencies in industries and trades; and

(4) Provisions for encouraging the adoption and use of the proposed standards by education and training programs.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list in the appendix to the Department's combined application notice published elsewhere in this issue of the **Federal Register.**

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.244, U.S. Department of Education, room 4518, Switzer Building, 330 C Street SW., 20202–7242.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address. Instructions for transmittal of applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA #83.244), Washington, DC 20202–4725.

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA #84.244), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes.—(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into five parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)).

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Additional Assurances and Certifications.

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note.—ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included as appendix A of this notice. Questions and answers pertaining to this program are included, as appendix B, to assist potential applicants.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and SIX copies of the application. Please mark each application as original or copy. Local or State agencies may choose to submit two copies with the original.

No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Debra J. Nolan, U.S. Department of Education, 400 Maryland Avenue SW. (room 4518—MES), Washington, DC 20202–7242. Telephone: (202) 205–9650. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Priority Authority: 20 U.S.C. 2416.

Dated: September 14, 1992.

Betsy Brand,

Assistant Secretary, Vocational and Adult Education.

BILLING CODE 4000–01–M

Appendix A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84.244

TITLE: Business and Education Standards Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total Direct Cost (lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

SECTION C - Budget Estimates (Federal Funds Only) for Balance of Project

Budget Periods

	Second	Third	Fourth	Fifth

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST not of Federal funds.

SECTION C - Budget Estimates (Federal Funds Only) for Balance of Project

If the project period exceeds 12 months, include cost estimates for the continuation budget periods, as appropriate. This SECTION does not apply to projects that are full-funded.

NOTE: Grant recipients under the Business and Education Standards Program (CFDA 84.244) are required to provide not less than 50 percent of the total cost of the demonstration project conducted under this program. In other words, the amount shown on Line 3, Section B, must be at least 50 percent of the TOTAL PROJECT COST.

BILLING CODE 4000-01-C

Instructions for Part III—Budget Narrative

The Budget Narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Instructions for Part IV—Program Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this Notice; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Program Narrative to no more than 30 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length.

Applicants may include as an appendix to the Program Narrative supporting documentation, also on 8½" × 11" paper, (e.g., letters of support, footnotes, resumes, etc.) or any other pertinent information that might assist the Secretary in reviewing the application.

Applicants are advised that—

(1) Under 34 CFR 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates applications solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments that pertain to the established technical review criteria, such as commitment and resources.

Additional Materials: Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project OMB 1830–0013, Washington, DC 20503.

(Information collection approved under OMB control number 1830–0013. Expiration date: February 28, 1995.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

BILLING CODE 4000-01-C

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of the application is optional.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in an "Program Narrative" of no more than thirty pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualification. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project.

(3) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. How should my application be organized?

A. The Application Narrative should be organized to follow the exact sequence of the components in the selection criteria pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project generally enhance the review of the application.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed (i.e., travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual staff development meeting, you may also wish to include a trip or two to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," simply state in writing that you are meeting a proscribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of

regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101–392, 104 Stat. 753 (1990)).

(2) The Education Department General Administrative Regulations (EDGAR).

For a free copy (EDGAR), contact the U.S. Department of Education, Grants and Contracts Services, 400 Maryland Avenue, SW. (Room 3653—ROB–3), Washington, DC 20202–4835. Telephone: (202) 708–5580.

[FR Doc. 92–23642 Filed 9–29–92; 8:45 am]

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federal register

Wednesday
September 30, 1992

Part IV

Department of the Interior

National Park Service

National Park System Units in Alaska; Description of Boundaries; Notice

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Units in Alaska; Description of Boundaries

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets out the legal descriptions of the external boundaries of national parks, monuments and preserves (hereinafter parklands) established or expanded in Alaska under sections 201 and 202 of the Alaska National Interest Lands Conservation Act (ANILCA). Also described are the external boundaries of units of the National Wilderness Preservation System established within these parklands under section 701 of ANILCA. Limited descriptions are included for wild rivers established on parklands under section 601. Publication of these legal descriptions is required by section 103 of ANILCA. Generalized location maps are included also.

DATES: Pursuant to section 103(b) of ANILCA these boundary descriptions are effective as of December 2, 1980.

FOR FURTHER INFORMATION CONTACT: Regional Director, National Park Service (Attn: Land Resources Division), 2525 Gambell Street, room 107, Anchorage, Alaska 99503 (Phone: 907–257–2584), or Director, National Park Service (Attn: Land Resources Division), P.O. Box 37127, Washington, DC 20013–7127 (Phone: 202–343–4828).

SUPPLEMENTARY INFORMATION: Under section 103(b) of the Alaska National Interest Lands Conservation Act (ANILCA), Public Law 96–487 (94 Stat. 2371) the Secretary of the Interior was directed to publish legal descriptions and boundary maps for the land status changes effected by ANILCA, including national parklands and their wilderness areas. The official legal descriptions for parklands, and wilderness areas and wild rivers designated therein, are included in this notice. While generalized location maps for these areas are also included in this notice, the 1:250,000 scale maps developed for public use under section 103(b), whose official names and dates are listed below, are incorporated by this notice and are available for inspection at U.S. Geological Survey offices in Alaska, in Denver, Colorado and in Reston, Virginia, and at the National Park Service Regional Office in Anchorage, Alaska (see below for addresses). Limited descriptions of wild and study rivers within parklands are included also, although they are not depicted on the 1:250,000 scale maps.

Twenty-one national parkland units in Alaska were established or expanded by ANILCA, consisting of 8 parks, 2 monuments, 10 preserves and one wild river. Included in these 21 units is one previously existing national park that was expanded and renamed, and two previously existing national monuments that were expanded and redesignated as parks and preserves.

The parklands established or expanded by ANILCA and administered by the National Park Service, with the date of their official maps noted in parentheses, are as follows:

Alagnak Wild River (December, 1983)
Aniakchak National Monument and Preserve (October 1978)
Bering Land Bridge National Preserve (October 1978)
Cape Krusenstern National Monument (October 1979)
Denali National Park and Preserve (July 1980)
Gates of the Arctic National Park and Preserve (July 1980)
Glacier Bay National Park and Preserve (October 1978)
Katmai National Park and Preserve (July 1980)
Kenai Fjords National Park (October 1978)
Kobuk Valley National Park (October 1979)
Lake Clark National Park and Preserve (October 1978)
Noatak National Preserve (July 1980)
Wrangell-St. Elias National Park and Preserve (August 1980)
Yukon-Charley Rivers National Preserve (October 1978)

Use of National Park System Lands

The legal descriptions that follow are those of external boundaries of the above-listed parklands. State and private land holdings within these boundaries are not identified in the legal descriptions. Inclusion of these lands within the described boundaries should not be interpreted as authorizing public use of such lands. Uses of the public lands within the described boundaries are controlled by the laws and regulations governing administration of units of the National Park System and provisions of ANILCA. Persons desiring information on land status within the described boundaries may contact the Land Resources Division of the Alaska Regional Office of the National Park Service or individual park offices in Alaska.

The term "public lands" as used throughout this Notice is defined by ANILCA as those lands, waters, and interests therein, the title to which is in the United States after December 2, 1980, except:

(A) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(B) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act, Public Law 92–203 (85 Stat. 688), as amended, which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(C) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

Those lands selected by the State or a Native Corporation within the external boundaries of the national parklands are to be administered by the National Park Service under applicable laws until conveyed by interim conveyance, tentative approval or patent. Those lands selected by, but not ultimately conveyed to, the State or a Native Corporation within the external boundaries of a national parkland, shall become part of that unit.

Many of the boundaries described for Alaska parklands follow natural features, such as ocean coastline, hydrographic divides, banks of rivers, or lakeshores. Where a water body forms a portion of the boundary, general riparian law shall apply to that boundary.

Section 103(a) of ANILCA provides that coastal boundaries of National Park Service units created or expanded by ANILCA do not extend seaward beyond the line of mean high tide to include lands owned by the State of Alaska. However, the official maps of the above-listed parklands depict portions of the ANILCA boundaries as including bays, inlets and other tidal areas within such parklands. The following legal descriptions for each of the parklands, and subsequent map revisions for these parklands, clarify this matter by respectively describing and illustrating that the ANILCA boundaries in coastal areas follow the line of mean high tide. Lands above mean high tide on islands, islets, rocks, reefs or spires in the above-mentioned bays, inlets and other tidal areas are part of the parklands, and are so described and illustrated. The State of Alaska owns the beds of inland navigable water bodies, tidelands and submerged marine lands, except such beds, tidelands and marine lands that were reserved to the United States at the time of Statehood.

All public lands within Federal reservations for defense, navigation, communications and other purposes within the external boundaries of any parkland described are part of that parkland. Rights of holding agencies are set forth in section 1310 of ANILCA.

Wilderness Units Described

In this notice, legal descriptions of the external boundaries of units of the National Wilderness Preservation System established by ANILCA within national parklands in Alaska can be found after the boundary description for the parkland in which they are located. The wilderness units established by ANILCA, with the date of their official maps noted in parentheses, are as follows:

Denali Wilderness (July 1980)—in Denali National Park
Gates of the Arctic Wilderness (July 1980)—in Gates of the Arctic National Park
Glacier Bay Wilderness (October 1978)—in Glacier Bay National Park
Katmai Wilderness (July 1980)—in Katmai National Park and Preserve
Kobuk Valley Wilderness (October 1979)—in Kobuk Valley National Park
Lake Clark Wilderness (October 1978)—in Lake Clark National Park and Preserve
Noatak Wilderness (July 1980)—in Noatak National Preserve
Wrangell-St. Elias Wilderness (August 1980)—in Wrangell-St. Elias National Park and Preserve

Use of Wilderness Units

In addition to the laws and regulations governing the use of national parklands, described above, the use of wilderness units is governed by provisions of the Wilderness Act (16 U.S.C. 1131 et seq.) and ANILCA.

National Wild and Scenic Rivers

ANILCA designated the following national wild rivers in national parklands in Alaska: Aniakchak Wild River in Aniakchak National Monument and Preserve; Alatna, John, Kobuk, Noatak (upper), North Fork of the Koyukuk and Tinayguk Wild Rivers in Gates of the Arctic National Park and Preserve; a portion of the Alagnak Wild River within Katmai National Preserve; the Salmon Wild River in Kobuk Valley National Park; Chilikadrotna, Mulchatna and Tlikakila Wild Rivers in Lake Clark National Park and Preserve; Noatak Wild River in Noatak National Preserve; and Charley Wild River in Yukon-Charley Rivers National Preserve.

The ANILCA descriptions of national wild rivers within national parklands are included in this notice, but they are not depicted on the 1:250,000 scale maps. These limited descriptions can be found following the description of the parkland in which they occur. The rivers and any need for river corridor boundaries have been addressed in the general management plan for each parkland.

In addition to regulations governing use of national parklands, use of these river areas is governed by the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287), as amended by ANILCA.

Availability of Maps

The maps of the Alaska national parklands included in this notice are generalized depictions of the lands described. Maps at this scale cannot accurately depict the actual boundaries and should be used only as general location references. Persons desiring more detailed information on parkland and wilderness boundaries are directed to maps, at the scale of 1:250,000, which are available for review at the following locations:

National Park Service, Land Resources Division, Room 201, 2525 Gambell Street, Anchorage, Alaska 99503
U.S. Geological Survey, Library—Cartographic Information Center, 952 National Center, Reston, Virginia 22092.

Additionally, these 1:250,000 scale maps are available for sale and review at the following U.S. Geological Survey offices:

U.S. Geological Survey, Alaska, Distribution Section, 4230 University Drive, room 101, Anchorage, Alaska 99503
U.S. Geological Survey, Alaska, Distribution Section, 101 12th Avenue, Fairbanks, Alaska 99701
U.S. Geological Survey, Distribution Branch, Box 25285–0046, Federal Center, Denver, Colorado 80226.

The maps from which the legal descriptions in this notice were written are at the 1:63,360 scale, where available, and reflect greater detail and accuracy than that depicted on the 1:250,000 scale maps prepared for public use. These maps are available for review in the National Park Service Alaska Regional Office in Anchorage, Alaska at the address noted above. A list of the specific maps used to develop these legal descriptions follows the description for each parkland.

The large number of maps (approximately 579) necessary to depict the Alaska national parklands at the 1:63,360 scale precludes their simultaneous immediate reproduction for public use. However, as the U.S. Geological Survey revises individual maps at this scale, the new boundary lines are depicted. These revised maps are available through normal U.S. Geological Survey sales outlets.

Dated: September 4, 1992.

John M. Morehead,

Regional Director, Alaska Region, National Park Service.

Conservation System Units Established in Alaska Within the National Park System

Aniakchak National Monument and Preserve

Section 201(1), Public Law 96–487 (ANILCA):

Aniakchak National Monument

Aniakchak National Monument as generally depicted on a map numbered ANIA–90,005, dated October 1978, consists of approximately one hundred and thirty-eight thousand acres of public lands, as defined by the ANILCA, within the following described boundary:

Beginning at the corner of sections 7, 8, 17 and 18, T. 39 S., R. 54 W., Seward Meridian;

Thence northerly, between sections 7 and 8, 5 and 6, along a common boundary with the Aniakchak National Preserve, to the corner of sections 5, 6, 31 and 32, Tps. 38 and 39 S., R. 54 W., Seward Meridian;

Thence easterly between Tps. 38 and 39 S., to the corner of sections 3, 4, 33 and 34, Tps. 38 and 39 S., R. 54 W., Seward Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, to the summit of a ridge, between sections 27 and 28, T. 38 S., R. 54 W., Seward Meridian, approximate elevation 2,060 feet;

Thence on an approximate forward bearing of N. 77° E., to the northerly end of the summit of a mountain, located in section 27, T. 38 S., R. 54 W., Seward Meridian, approximate elevation 2,200 feet;

Thence on an approximate forward bearing of N. 26° E., to the summit of a small mountain, located in section 22, T. 38 S., R. 54 W., Seward Meridian, approximate elevation 1,650 feet;

Thence on an approximate forward bearing of N. 68° W., to the summit of a mountain, located in section 21, T. 38 S., R. 54 W., Seward Meridian, approximate elevation 1,800 feet;

Thence on an approximate forward bearing of N. 55° W., to the summit of a mountain, located in Section 18, T. 38 S., R. 54 W., Seward Meridian, approximate elevation 2,285 feet;

Thence on an approximate forward bearing of N. 65° W., to the summit of a mountain, located in section 12, T. 38 S., R. 55 W., Seward Meridian, approximate elevation 2,400 feet;

Thence on an approximate forward bearing of N. 23° E., to the summit of a mountain, located in section 1, T. 38 S., R. 55 W., Seward Meridian, approximate elevation 2,585 feet;

Thence on an approximate forward bearing of N. 31° W., to the junction of the forks of High Creek, located in the easterly ½ of section 25, T. 37 S., R. 55 W., Seward Meridian;

Thence northerly, along the right bank of High Creek, to the intersection with the Ninth Standard Parallel South, on the south boundary of section 33, T. 36 S., R. 54 W., Seward Meridian;

Thence westerly on the Ninth Standard Parallel South, to the standard corner of T. 36 S., Rs. 54 and 55 W., Seward Meridian;

Thence westerly, departing from the common boundary with the Aniakchak National Preserve, on the Ninth Standard Parallel South, to the closing corner of T. 37 S., Rs. 56 and 57 W., Seward Meridian;

Thence southerly, between Rs. 56 and 57 W., to the corner of Ts. 37 and 38 S., Rs. 56 and 57 W., Seward Meridian;

Thence southerly, along a common boundary with the Alaska Peninsula National Wildlife Refuge, between Rs. 56 and 57 W., to the corner of section 13, 18, 19 and 24, T. 38 S., Rs. 56 and 57 W., Seward Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, to the corner of sections 15, 16, 21 and 22, T. 38 S., R. 57 W., Seward Meridian;

Thence southerly, between sections 21 and 22, 27 and 28, 33 and 34, 3 and 4, 9 and 10, 15 and 16, to the corner of sections 15, 16, 21 and 22, T. 39 S., R. 57 W., Seward Meridian;

Thence easterly, between sections 15 and 22, 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 39 S., Rs. 56 and 57 W., Seward Meridian;

Thence southerly, between Rs. 56 and 57 W., to the corner of sections 19, 24, 25 and 30, T. 39 S., Rs. 56 and 57 W., Seward Meridian;

Thence easterly, departing from the common boundary with the Alaska Peninsula National Wildlife Refuge, between sections 19 and 30, 20 and 29, 21 and 28, 22 and 27, 23 and 26, 24 and 25, 19 and 30, 20 and 29, 21 and 28, to the corner of sections 21, 22, 27 and 28, T. 39 S., R. 55 W., Seward Meridian;

Thence northerly, between sections 21 and 22, 15 and 16, to the corner of sections 9, 10, 15 and 16, T. 39 S., R. 55 W., Seward Meridian;

Thence easterly, between sections 10 and 15, 11 and 14, 12 and 13, 7 and 18, to the corner of sections 7, 8, 17 and 18, T. 39 S., R. 54 W., Seward Meridian, the place of beginning.

Aniakchak National Preserve

Aniakchak National Preserve as generally depicted on a map numbered ANIA–90,005, dated October 1978, consists of approximately three hundred and seventy-six thousand acres of public lands, as defined by the ANILCA, within the following described boundary:

Beginning at the meander corner of sections 29 and 30, at the line of mean high tide of the Pacific Ocean, T. 39 S., Rs. 49 and 50 W., Seward Meridian;

Thence northerly, along a common boundary with the Alaska Peninsula National Wildlife Refuge, between Rs. 49 and 50 W., to the corner of sections 19, 24, 25 and 30, T. 39 S., Rs. 49 and 50 W., Seward Meridian;

Thence westerly, between sections 24 and 25, 23 and 26, to the ¼ section corner of sections 23 and 26, T. 39 S., R. 50 W., Seward Meridian;

Thence northerly, on the north and south centerline of section 23, to the ¼ section corner of sections 14 and 23, T. 39 S., R. 50 W., Seward Meridian;

Thence westerly, between sections 14 and 23, to the corner of sections 14, 15, 22 and 23, T. 39 S., R. 50 W., Seward Meridian;

Thence northerly, between sections 14 and 15, to the corner of sections 10, 11, 14 and 15, T. 39 S., R. 50 W., Seward Meridian;

Thence westerly, between sections 10 and 15, to the ¼ section corner of sections 10 and 15, T. 39 S., R. 50 W., Seward Meridian;

Thence northerly, on the north and south centerline of section 10, to the ¼ section corner of sections 3 and 10, T. 39 S., R. 50 W., Seward Meridian;

Thence westerly, between sections 3 and 10, to the corner of sections 3, 4, 9 and 10, T. 39 S., R. 50 W., Seward Meridian;

Thence northerly, between sections 3 and 4, to the ¼ section corner of sections 3 and 4, T. 39 S., R. 50 W., Seward Meridian;

Thence westerly, on the east and west centerline of section 4, to the center ¼ section corner of section 4, T. 39 S., R. 50 W., Seward Meridian;

Thence approximately due North, to the summit of a mountain, located in the southerly portion of section 28, T. 38 S., R. 50 W., Seward Meridian, approximate elevation 3,271 feet;

Thence northwesterly, along the crest of a ridge between the drainages of Yantarni Creek and Northeast Creek, to the intersection of the section line between sections 7 and 12, T. 38 S., Rs. 50 and 51 W., Seward Meridian;

Thence northerly, between Rs. 50 and 51 W., to a point between sections 31 and 36, T. 37 S., Rs. 50 and 51 W., Seward Meridian, on the crest of a ridge between the drainages of Yantarni Creek and Northeast Creek, approximate elevation 700 feet;

Thence northwesterly, along the crest of a ridge between the drainages of Yantarni Creek, Northeast Creek, Main Creek and Painter Creek to a point between sections 6 and 34, Tps. 36 and 37 S., R. 51 W., Seward Meridian;

Thence northerly and northwesterly, departing from the common boundary with the Alaska Peninsula National Wildlife Refuge, along the crest of a ridge between the drainages of Painter Creek, Old Creek and Pumice Creek, to a point between sections 3 and 34, Tps. 35 and 36 S., R. 52 W., Seward Meridian;

Thence westerly, between Tps. 35 and 36 S., to the corner of Tps. 35 and 36 S., Rs. 54 and 55 W., Seward Meridian;

Thence southerly, between Rs. 54 and 55 W., to the standard corner of T. 36 S., Rs. 54 and 55 W., Seward Meridian;

Thence easterly, on the Ninth Standard Parallel South, along a common boundary with the Aniakchak National Monument, to a point on the right bank of High Creek, on the south of section 33, T. 36 S., R. 54 W., Seward Meridian;

Thence southerly, along the right bank of High Creek, to the junction of the forks of High Creek, located in the easterly ½ of section 35, T. 37 S., R. 55 W., Seward Meridian;

Thence on an approximate forward bearing of S. 31° E., to the summit of a mountain located in section 1, T. 38 S., R. 55 W., Seward Meridian, approximate elevation 2,565 feet;

Thence on an approximate forward bearing of S. 23° W., to the summit of a mountain located in section 12, T. 38 S., R. 55 W., Seward Meridian, approximate elevation 2,400 feet;

Thence on an approximate forward bearing of S. 65° E., to the summit of a mountain located in section 18, T. 38 S., R. 54 W., Seward Meridian, approximate elevation 2,285 feet;

Thence on an approximate forward bearing of S. 55° E., to the summit of a mountain located in section 21, T. 38 S., R. 54 W., Seward Meridian, approximate elevation 1,800 feet;

Thence on an approximate forward bearing of S. 68° E., to the summit of a small mountain located in section 22, T. 38 S., R. 54 W., Seward Meridian, approximate elevation 1,650 feet;

Thence on an approximate forward bearing of S. 26° W., to the northerly end of the summit of a mountain located in section 27, T. 38 S., R. 54 W., Seward Meridian, approximate elevation 2,200 feet;

Thence on an approximate forward bearing of S. 77° W., to the summit of a ridge between sections 27 and 28, T. 38 S., R. 54 W., Seward Meridian, approximate elevation 2,060 feet;

Thence southerly, between sections 27 and 28, 33 and 34, to the corner of sections 3, 4, 33 and 34, Tps. 38 and 39 S., R. 54 W., Seward Meridian;

Thence westerly, between Tps. 38 and 39 S., to the corner of sections 5, 6, 31 and 32, Tps. 38 and 39 S., R. 54 W., Seward Meridian;

Thence southerly, between sections 5 and 6, 7 and 8, to the corner of sections 7, 8, 17 and 18, T. 39 S., R. 54 W., Seward Meridian;

Thence westerly, between sections 7 and 18, 12 and 13, 11 and 14, 10 and 15, to the corner of sections 9, 10, 15 and 16, T. 39 S., R. 55 W., Seward Meridian;

Thence southerly, between sections 15 and 16, 21 and 22, to the corner of sections 21, 22, 27 and 28, T. 39 S., R. 55 W., Seward Meridian;

Thence westerly, between sections 21 and 28, 20 and 29, 19 and 30, 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, to the corner of sections 19, 24, 25 and 30, T. 39 S., Rs. 56 and 57 W., Seward Meridian;

Thence southerly, departing from a common boundary with the Aniakchak National Monument, along a common boundary with the Alaska Peninsula National Wildlife Refuge, between Rs. 56 and 57 W., to the corner of sections 13, 18, 19 and 24, T. 40 S., Rs. 56 and 57 W., Seward Meridian;

Thence easterly, between sections 18 and 19, 17 and 20, 16 and 21, 15 and 22, 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 40 S., Rs. 55 and 56 W., Seward Meridian;

Thence southerly, between Rs. 55 and 56 W., to the standard corner of T. 40 S., Rs. 55 and 56 W., Seward Meridian;

Thence easterly, on the Tenth Standard Parallel South, to the closing corner of T. 41 S., Rs. 54 and 55 W., Seward Meridian;

Thence southerly, between Rs. 54 and 55 W., to the meander corner of sections 7 and

12, T. 41 S., Rs. 54 and 55 W., Seward Meridian, at the line of mean high tide of Kujulik Bay;

Thence departing from the common boundary with the Alaska Peninsula National Wildlife Refuge, easterly, northerly and southeasterly, along the line of mean high tide of Kujulik Bay, Pacific Ocean, Aniakchak Bay and Amber Bay, to the meander corner of sections 25 and 30, T. 39 S., Rs. 49 and 50 W., Seward Meridian, the place of beginning.

Units of the National Wild and Scenic Rivers Systems Within the Aniakchak National Monument and Preserve

Section 601, Public Law 96–487 (ANILCA):

"Aniakchak, Alaska. That portion of the river, including its major tributaries, Hidden Creek, Mystery Creek, Albert Johnson Creek, and North Fork Aniakchak River, within the Aniakchak National Monument and Preserve; to be administered by the Secretary of the Interior."

Note: Pursuant to section 605(d) of ANILCA and as provided for under section 3(b) of the Wild and Scenic Rivers Act, the necessity for any river corridor boundaries for the Aniakchak Wild River and its tributaries within the Aniakchak National Monument and Preserve has been considered during the comprehensive conservation planning process for the monument and preserve. In accordance with the General Management Plan for Aniakchak National Monument and Preserve, approved November 7, 1986, no specific river corridor boundaries are deemed necessary for the Aniakchak River in order to protect the river and its immediate environments. Proposed management of the monument and preserve meets and is compatible with management standards established by the Wild and Scenic Rivers Act.

The following U.S. Geological Survey 1:63,360 Series (Topographic) Quadrangle maps were used in preparing the legal boundary descriptions for Aniakchak National Monument and Preserve:

Bristol Bay, Alaska: (A–1) 1963.

Chignik, Alaska: (C–1) 1963; (D–1) 1963; (D–2) 1963.

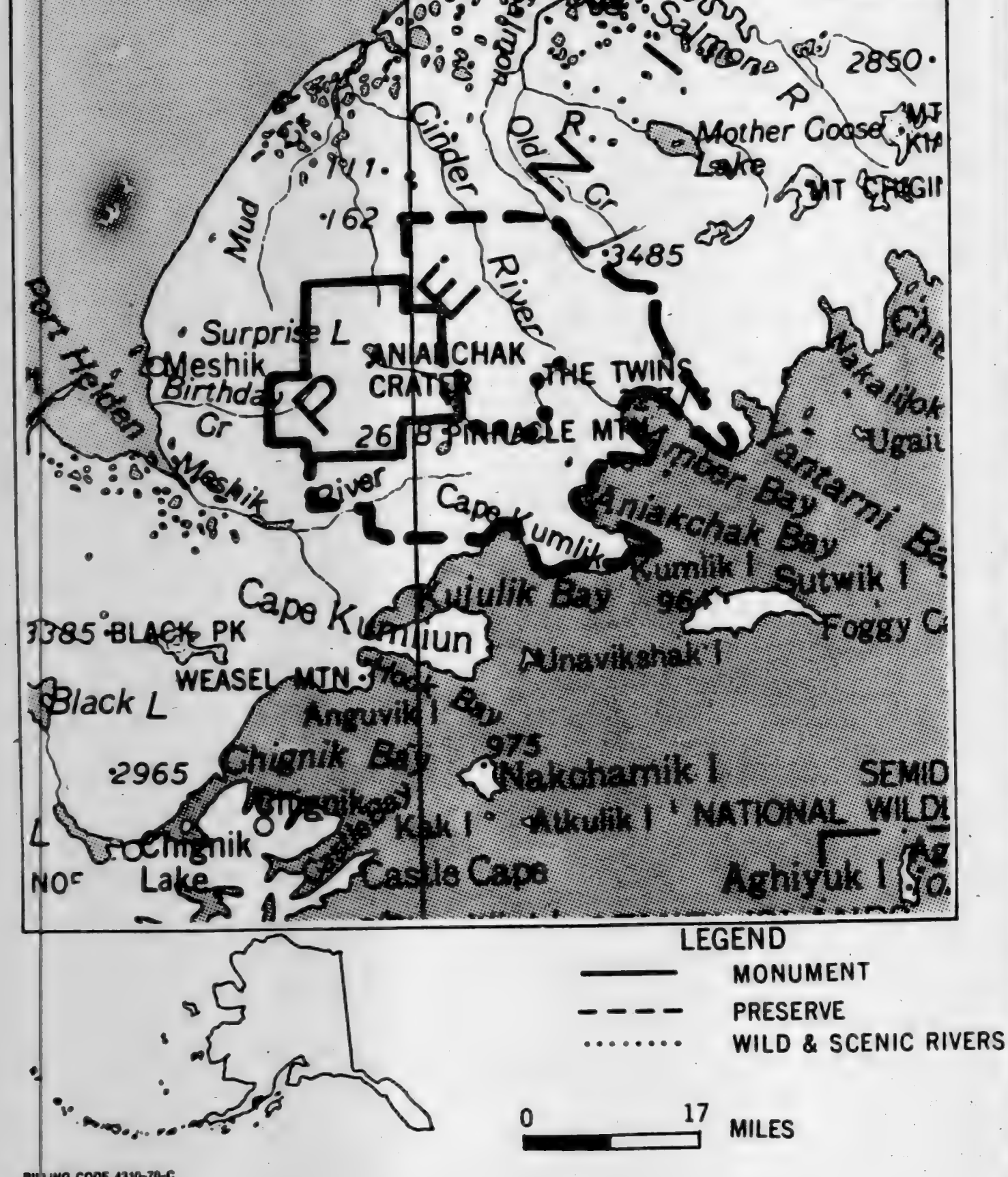
Sutwik Island, Alaska: (C–5) 1963; (C–6) 1963; (D–4) 1963; (D–5) 1963; (D–6) 1963.

Ugashik, Alaska: (A–5) 1963; (A–6) 1963.

BILLING CODE 4310–70–F

ANIAKCHAK NATIONAL MONUMENT AND PRESERVE

PUBLIC LAW 96-487



LEGEND

MONUMENT

PRESERVE

WILD & SCENIC RIVERS

0 17 MILES

BILLING CODE 4310-70-C

Bering Land Bridge National Preserve

Section 201(2), Public Law 96–487 (ANILCA):

Bering Land Bridge National Preserve as generally depicted on a map numbered BELA–90,005, dated October 1978, consists of approximately two million four hundred and fifty-seven thousand acres of public lands, as defined by the ANILCA, within the following described boundary:

Beginning at a point between sections 21 and 22, T. 2 S., R. 20 W., Kateel River Meridian, on the crest of a ridge, approximate elevation 2,550 feet;

Thence northerly, between sections 21 and 22, 15 and 16, 9 and 10, 3 and 4, to the corner of sections 3, 4, 33 and 34, Tps. 1 and 2 S., R. 20 W., Kateel River Meridian;

Thence westerly, between Tps. 1 and 2 S., to the corner of sections 1, 2, 35 and 36, Tps. 1 and 2 S., R. 21 W., Kateel River Meridian;

Thence northerly, between sections 35 and 36, to the corner of sections 25, 26, 35 and 36, T. 1 S., R. 21 W., Kateel River Meridian;

Thence easterly, between sections 25 and 36, to the corner of sections 25, 30, 31 and 36, T. 1 S., Rs. 20 and 21 W., Kateel River Meridian;

Thence northerly, between Rs. 20 and 21 W., to the corner of sections 19, 24, 25 and 30, T. 1 S., Rs. 20 and 21 W., Kateel River Meridian;

Thence easterly, between sections 19 and 30, to the corner of sections 19, 20, 29 and 30, T. 1 S., R. 20 W., Kateel River Meridian;

Thence northerly, between sections 19 and 20, to the corner of sections 17, 18, 19 and 20, T. 1 S., R. 20 W., Kateel River Meridian;

Thence easterly, between sections 17 and 20, 16 and 21, to the corner of sections 15, 16, 21 and 22, T. 1 S., R. 20 W., Kateel River Meridian;

Thence northerly, between sections 15 and 16, 9 and 10, 3 and 4, to the closing corner of sections 3 and 4, T. 1 S., R. 20 W., Kateel River Meridian;

Thence westerly, along the Kateel River Base Line, to the standard corner of sections 33 and 34, T. 1 N., R. 20 W., Kateel River Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, to the corner of sections 9, 10, 15 and 16, T. 1 N., R. 20 W., Kateel River Meridian;

Thence westerly, between sections 9 and 16, 8 and 17, to the corner of sections 7, 8, 17 and 18, T. 1 N., R. 20 W., Kateel River Meridian;

Thence northerly, between sections 7 and 8, 5 and 6, 31 and 32, 29 and 30, to the corner of sections 19, 20, 29 and 30, T. 2 N., R. 20 W., Kateel River Meridian;

Thence westerly, between sections 19 and 30, to the corner of sections 19, 24, 25 and 30, T. 2 N., Rs. 20 and 21 W., Kateel River Meridian;

Thence northerly, between Rs. 20 and 21., to the corner of sections 7, 12, 13 and 18, T. 2 N., Rs. 20 and 21 W., Kateel River Meridian;

Thence easterly, between sections 7 and 18, to the corner of sections 7, 8, 17 and 18, T. 2 N., R. 20 W., Kateel River Meridian;

Thence northerly, between sections 7 and 8, to the corner of sections 5, 6, 7 and 8, T. 2 N., R. 20 W., Kateel River Meridian;

Thence easterly, between sections 5 and 8, to the corner of sections 4, 5, 8 and 9, T. 2 N., R. 20 W., Kateel River Meridian;

Thence northerly, between sections 4 and 5, to the corner of sections 4, 5, 32 and 33, Tps. 2 and 3 N., R. 20 W., Kateel River Meridian;

Thence easterly, between Tps. 2 and 3 N., to the ¼ section corner of sections 4 and 33, Tps. 2 and 3 N. R. 20 W., Kateel River Meridian;

Thence northerly, on the north and south centerline of section 33, to the ¼ section corner of sections 28 and 33, T. 3 N., R. 20 W., Kateel River Meridian;

Thence easterly, between sections 28 and 33, 27 and 34, to the ¼ section corner of sections 27 and 34, T. 3 N., R. 20 W., Kateel River Meridian;

Thence northerly, on the north and south centerline of section 27, to the ¼ section corner of sections 22 and 27, T. 3 N., R. 20 W., Kateel River Meridian;

Thence easterly, between sections 22 and 27, 23 and 26, to the ¼ section corner of section 23 and 26, T. 3 N., R. 20 W., Kateel River Meridian;

Thence northerly, on the north and south centerline of section 23, to the ¼ section corner of sections 14 and 23, T. 3 N., R. 20 W., Kateel River Meridian;

Thence easterly, between sections 14 and 23, to the corner of sections 13, 14, 23 and 24, T. 3 N., R. 20 W., Kateel River Meridian;

Thence northerly, between sections 13 and 14, 11 and 12, to the ¼ section corner of sections 11 and 12, T. 3 N., R. 20 W., Kateel River Meridian;

Thence easterly, on the east and west centerline of section 12, to the ¼ section corner of sections 7 and 12, T. 3 N., Rs. 19 and 20 W., Kateel River Meridian;

Thence northerly, between Rs. 19 and 20 W., to the closing corner of T. 4 N., Rs. 19 and 20 W., Kateel River Meridian;

Thence westerly, along the First Standard Parallel North, to the standard corner of sections 31 and 32, T. 5 N., R. 19 W., Kateel River Meridian;

Thence northerly, between sections 31 and 32, 29 and 30, 19 and 20, to the corner of sections 17, 18, 19 and 20, T. 5 N., R. 19 W., Kateel River Meridian;

Thence westerly, between sections 18 and 19, 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 5 N., Rs. 20 and 21 W., Kateel River Meridian;

Thence southerly, between Rs. 20 and 21 W., to the standard corner of T. 5 N., Rs. 20 and 21 W., Kateel River Meridian;

Thence westerly, along the First Standard Parallel North, to the standard corner of sections 33 and 34, T. 5 N., R. 22 W., Kateel River Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, to the corner of sections 15, 16, 21 and 22, T. 5 N., R. 22 W., Kateel River Meridian;

Thence westerly, between sections 16 and 21, 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 5 N., Rs. 22 and 23 W., Kateel River Meridian;

Thence northerly, between Rs. 22 and 23 W., to the corner of Tps. 6 and 7 N., Rs. 22 and 23 W., Kateel River Meridian;

Thence easterly, between Tps. 6 and 7 N., to the corner of Tps. 6 and 7 N., Rs. 21 and 22 W., Kateel River Meridian;

Thence northerly, between Rs. 21 and 22 W., to the meander corner between sections 25 and 30, T. 8 N., Rs. 21 and 22 W., Kateel River Meridian, at the line of mean high tide on the southern shore of Kotzebue Sound;

Thence westerly, northwesterly, westerly to the mouth of the Nugnugaluktuk River, easterly, northerly, westerly, southwesterly into Shishmaref Inlet, northerly, westerly, and southwesterly along the line of mean high tide of Kotzebue Sound, Chukchi Sea, Shishmaref Inlet and Cowpack Inlet, to the meander corner of sections 13 and 18, T. 11 N., Rs. 32 and 33 W., including all lands, barrier and offshore islands including Cape Espenberg, lying above the line of mean high tide within 6 miles of the mainland coast between the eastern range line of T. 8 N., R. 22 W. and the western range line of T. 11 N., R. 32 W., Kateel River Meridian;

Thence southerly, between Rs. 32 and 33 W., to the corner of Tps. 9 and 10 N., Rs. 32 and 33 W., Kateel River Meridian;

Thence easterly, between Tps. 9 and 10 N., to the corner of Tps. 9 and 10 N., Rs. 31 and 32 W., Kateel River Meridian;

Thence southerly, between Rs. 31 and 32 W., to the standard corner of T. 9 N., Rs. 31 and 32 W., Kateel River Meridian;

Thence easterly, along the Second Standard Parallel North, to the closing corner of T. 8 N., Rs. 31 and 32 W., Kateel River Meridian;

Thence southerly, between Rs. 31 and 32 W., to the corner of Tps. 7 and 8 N., Rs. 31 and 32 W., Kateel River Meridian;

Thence westerly, between Tps. 7 and 8 N., to the corner of Tps. 7 and 8 N., Rs. 37 and 38 W., Kateel River Meridian;

Thence northerly, between Rs. 37 and 38 W., to the meander corner between sections 13 and 18, T. 8 N., Rs. 37 and 38 W., at the line of mean high tide of the Arctic Lagoon;

Thence, southwesterly, southeasterly, southwesterly, northwesterly and southwesterly, along the line of mean high tide of Arctic Lagoon, Kugrupaga Inlet, Ikpek Lagoon and Chukchi Sea, including all lands, barrier and offshore islands lying above the line of mean high tide and within 6 miles of the mainland coastline and westerly of the eastern range line of T. 8 N., R. 38 W., to the westernmost point of the spit at the northeasterly end of Lopp Lagoon located in section 21, T. 5 N., R. 42 W., Kateel River Meridian;

Thence, southeasterly and southerly, along the line of mean high tide of Lopp Lagoon and the right bank of an unnamed river, to a point on the first Standard parallel North at its intersection with the right bank of the aforementioned unnamed river, on the south boundary of section 35, T. 5 N., R. 42 W., Kateel River Meridian;

Thence easterly, along the First Standard Parallel North, to the closing corner of T. 4 N., Rs. 41 and 42 W., Kateel River Meridian;

Thence southerly, between Rs. 41 and 42 W., to the corner of sections 13, 18, 19 and 24,

T. 4 N., Rs. 41 and 42 W., Kateel River Meridian;

Thence easterly, between sections 18 and 19, 17 and 20, 16 and 21, 15 and 22, 14 and 23, 13 and 24, 18 and 19, 17 and 20, 16 and 21, to the corner of sections 15, 16, 21 and 22, T. 4 N., R. 40 W., Kateel River Meridian;

Thence northerly, between sections 15 and 16, 9 and 10, 3 and 4, to the closing corner of sections 3 and 4, T. 4 N., R. 40 W., Kateel River Meridian;

Thence westerly, along the First Standard Parallel North, to the standard corner of T. 5 N., Rs. 39 and 40 W., Kateel River Meridian;

Thence northerly, between Rs. 39 and 40 W., to the corner of Tps. 5 and 6 N., Rs. 39 and 40 W., Kateel River Meridian;

Thence easterly, between Tps. 5 and 6 N., to the corner of Tps. 5 and 6 N., Rs. 37 and 38 W., Kateel River Meridian;

Thence northerly, between Rs. 37 and 38 W., to the corner of Tps. 6 and 7 N., Rs. 37 and 38 W., Kateel River Meridian;

Thence easterly, between Tps. 6 and 7 N., to the corner of sections 2, 3, 34 and 35, Tps. 6 and 7 N., R. 30 W., Kateel River Meridian;

Thence southerly, between sections 2 and 3, 10 and 11, 14 and 15, 22 and 23, 26 and 27, 34 and 35, 2 and 3, 10 and 11, 14 and 15, to the corner of sections 14, 15, 22 and 23, T. 5 N., R. 30 W., Kateel River Meridian;

Thence easterly, between sections 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 5 N., Rs. 29 and 30 W., Kateel River Meridian;

Thence southerly, between Rs. 29 and 30 W., to the standard corner of T. 5 N., Rs. 29 and 30 W., Kateel River Meridian;

Thence easterly, along the First Standard Parallel North, to the ¼ section corner of section 6, T. 4 N., R. 27 W., Kateel River Meridian;

Thence southerly, on the north and south centerline of section 6, to the center ¼ section corner of section 6, T. 4 N., R. 27 W., Kateel River Meridian;

Thence easterly, on the east and west centerlines of sections 5 and 6, to the center ¼ section corner of section 5, T. 4 N., R. 27 W., Kateel River Meridian;

Thence northerly, on the north and south centerline of section 5, to the ¼ section corner of section 5, T. 4 N., R. 27 W., Kateel River Meridian;

Thence easterly, along the First Standard Parallel North, to the ¼ section corner of section 4, T. 4 N., R. 27 W., Kateel River Meridian;

Thence southerly, on the north and south centerline of section 4, to the ¼ section corner of sections 4 and 9, T. 4 N., R. 27 W., Kateel River Meridian;

Thence easterly, between sections 4 and 9, to the corner of sections 3, 4, 9 and 10, T. 4 N., R. 27 W., Kateel River Meridian;

Thence southerly, between sections 9 and 10, to the ¼ section corner of sections 9 and 10, T. 4 N., R. 27 W., Kateel River Meridian;

Thence easterly, on the east and west centerlines of sections 10 and 11, to the center ¼ section corner of section 11, T. 4 N., R. 27 W., Kateel River Meridian;

Thence northerly, on the north and south centerline of section 11 to the ¼ section corner of sections 2 and 11, T. 4 N., R. 27 W., Kateel River Meridian;

Thence easterly, between sections 2 and 11, to the corner of sections 1, 2, 11 and 12, T. 4 N., R. 27 W., Kateel River Meridian;

Thence southerly, between sections 11 and 12, 13 and 14, 23 and 24, to the ¼ section corner of sections 23 and 24, T. 4 N., R. 27 W., Kateel River Meridian;

Thence westerly, on the east and west centerlines of sections 23 and 22, to the ¼ section corner of sections 21 and 22, T. 4 N., R. 27 W., Kateel River Meridian;

Thence southerly, between sections 21 and 22, to the corner of sections 21, 22, 27 and 28, T. 4 N., R. 27 W., Kateel River Meridian;

Thence westerly, between sections 21 and 28, to the corner of sections 20, 21, 28 and 29, T. 4 N., R. 27 W., Kateel River Meridian;

Thence southerly, between sections 28 and 29, 32 and 33, to the ¼ section corner of sections 32 and 33, T. 4 N., R. 27 W., Kateel River Meridian;

Thence westerly, on the east and west centerline of section 32, to the ¼ section corner of sections 31 and 32, T. 4 N., R. 27 W., Kateel River Meridian;

Thence southerly, between sections 31 and 32 to the corner of sections 5, 6, 31 and 32, Tps. 3 and 4 N., R. 27 W., Kateel River Meridian;

Thence westerly, between Tps. 3 and 4 N., to the ¼ section corner of sections 1 and 36, Tps. 3 and 4 N., R. 28 W., Kateel River Meridian;

Thence southerly, on the north and south centerline of section 1, to the ¼ section corner of sections 1 and 12, T. 3 N., R. 28 W., Kateel River Meridian;

Thence easterly, between sections 1 and 12, to the corner of sections 1, 6, 7 and 12, T. 3 N., Rs. 27 and 28 W., Kateel River Meridian;

Thence southerly, between Rs. 27 and 28 W., to the ¼ section corner of sections 7 and 12, T. 3 N., Rs. 27 and 28 W., Kateel River Meridian;

Thence easterly, on the east and west centerline of section 7, to the center ¼ section corner of section 7, T. 3 N., R. 27 W., Kateel River Meridian;

Thence southerly, on the north and south centerlines of sections 7 and 18, to the center ¼ section corner of section 18, T. 3 N., R. 27 W., Kateel River Meridian;

Thence westerly, on the east and west centerline of section 18, to the ¼ section corner of sections 13 and 18, T. 3 N., Rs. 27 and 28 W., Kateel River Meridian;

Thence southerly, between Rs. 27 and 28 W., to the ¼ section corner of sections 31 and 36, T. 3 N., Rs. 27 and 28 W., Kateel River Meridian;

Thence easterly, on the east and west centerline of section 31, to the center ¼ section corner of section 31, T. 3 N., R. 27 W., Kateel River Meridian;

Thence southerly, on the north and south centerline of section 31, to the ¼ section corner of sections 6 and 31, Tps. 2 and 3 N., R. 27 W., Kateel River Meridian;

Thence easterly, between Tps. 2 and 3 N., to the ¼ section corner of sections 5 and 32, Tps. 2 and 3 N., R. 27 W., Kateel River Meridian;

Thence southerly, on the north and south centerline of section 5, to the center ¼ section corner of section 5, T. 2 N., R 27 W., Kateel River Meridian;

Thence easterly, on the east and west centerline of section 5, to the ¼ section corner of sections 4 and 5, T. 2 N., R. 27 W., Kateel River Meridian;

Thence southerly, between sections 4 and 5, 8 and 9, to the ½ section corner of sections 8 and 9, T. 2 N., R. 27 W., Kateel River Meridian;

Thence easterly, on the east and west centerlines of sections 9, 10 and 11, to the center ¼ section corner of section 11, T. 2 N., R. 27 W., Kateel River Meridian;

Thence southerly, on the north and south centerlines of sections 11, 14 and 23, to the center ¼ section corner of section 23, T. 2 N., R. 27 W., Kateel River Meridian;

Thence easterly, on the east and west centerline of section 23 to the ¼ section corner of sections 23 and 24, T. 2 N., R. 27 W., Kateel River Meridian;

*Thence southerly, between sections 23 and 24, to the south-south ⅛₄ corner of sections 23 and 24, T. 2 N., R. 27 W., Kateel River Meridian;

*Thence easterly, on the east and west centerline of the south ½ of the southwest ¼ of section 24 to the south-south center ⅛₄ corner of section 24, T. 2 N., R. 27 W., Kateel River Meridian;

*Thence southerly on the north and south centerline of section 24 to the ¼ section corner of sections 24 and 25, T. 2 N., R. 27 W., Kateel River Meridian;

Thence easterly, between sections 24 and 25, to the corner of sections 19, 24, 25 and 30, T. 2 N., Rs. 26 and 27 W., Kateel River Meridian;

Thence southerly, between Rs. 26 and 27 W., to the standard corner of T. 1 N., Rs. 26 and 27 W., Kateel River Meridian;

Thence on an approximate forward bearing of S. 46½° E., to a small knoll located in the southwesterly portion of section 35, T. 1 S., R. 26 W., Kateel River Meridian, approximate elevation 313 feet;

Thence on an approximate forward bearing of S. 28½° E., to a point on the crest of the ridge located in the southwesterly portion of section 19, T. 2 S., R. 25 W., Kateel River Meridian, approximate elevation 1,790 feet;

Thence southeasterly, northeasterly, easterly, southeasterly and northerly along the crest of the ridge, between the drainages of Ella Creek, Birch Creek, Niukluk River, Pargon River, Minnie Creek, South Fork Kuzitrin River, Boston Creek, Caviar Creek, Fish River, tributaries of the Koyuk River, Wagon Wheel Creek, Lava Creek, and Telephone Creek, to a point between sections 21 and 22, T. 2 S., R. 20 W., Kateel River Meridian, the place of beginning.

* Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

The following U.S. Geological Survey 1:63,360 Series (Topographic) quadrangle Maps were used in preparing the legal boundary description for the Bering Land Bridge National Preserve:

Bendeleben, Alaska: (A–4) 1950; (B–2) 1950; (B–3) 1950; (B–4) 1950 mr 1986; (B–5) 1950; (C–2) 1950 mr 1979; (C–5) 1950; (D–2) 1950 lr 1976;

(D–3) 1950 lr 1976; (D–5) 1950 lr 1978; (D–6) 1950 mr 1978.

Kotzebue, Alaska: (A–3) 1950; (A–4) 1950, (B–4) 1950; (B–6) 1950 mr 1973; (C–4) 1950 mr 1971; (C–5) 1950 mr 1973; (C–6) 1950 mr 1971.

Shishmaref, Alaska: (A–1) 1950; (A–2) 1950; (A–3) 1950 mr 1973; (A–4) 1950; (B–1) 1950 mr 1973; (B–2) 1950 mr 1963.

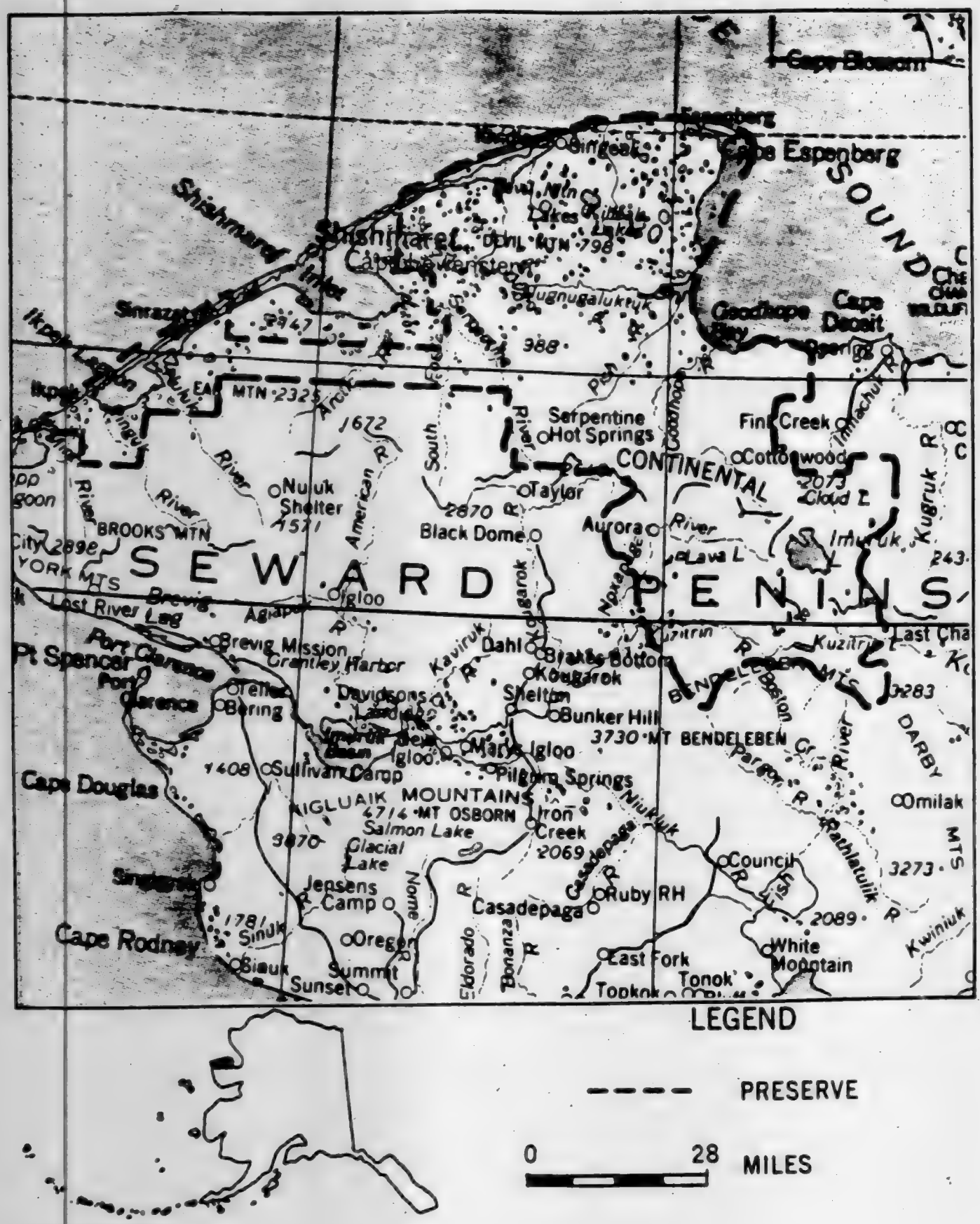
Teller, Alaska: (C–4) 1950 mr 1976; (C–5) 1950 mr 1973; (D–1) 1950 mr 1973; (D–2) 1950 mr 1973; (D–3) 1950 lr 1976; (D–4) 1950; (D–5) 1950 mr 1973; (D–6) 1950 mr 1973.

mr—minor revisions
lr—limited revisions

BILLING CODE 4310-70-F

BERING LAND BRIDGE NATIONAL PRESERVE

PUBLIC LAW 96-487



BILLING CODE 4310-70-C

Cape Krusenstern National Monument

Section 201 (3), Public Law 96–487 (ANILCA):

Cape Krusenstern National Monument as generally depicted on a map numbered CAKR–90,007, dated October 1979, consists of approximately five hundred and sixty thousand acres of public lands, as defined by the ANILCA, within the following described boundary:

Beginning at the meander corner of sections 7 and 12, at the line of mean high tide of Kotzebue Sound, T. 19 N., Rs. 18 and 19 W., Kateel River Meridian;

Thence northerly, between Rs. 18 and 19 W., to a point between sections 1 and 6, T. 20 N., Rs. 18 and 19 W., Kateel River Meridian on the right bank of Mamelak Creek;

Thence northwesterly, along the right bank of Mamelak Creek, to an intersection with the Fifth Standard Parallel North, Kateel River Meridian;

Thence westerly, along the Fifth Standard Parallel North, to the standard corner of T. 21 N., Rs. 18 and 19 W., Kateel River Meridian;

Thence northerly, between Rs. 18 and 19 W., to the ¼ section corner of sections 31 and 36, T. 21 N., Rs. 18 and 19 W., Kateel River Meridian;

Thence westerly, on the east and west centerline of section 36, to the center ¼ section corner of section 36, T. 21 N., R. 19 W., Kateel River Meridian;

Thence northerly, on the north and south centerline of section 36, to the ¼ section corner of sections 25 and 36, T. 21 N., R. 19 W., Kateel River Meridian;

Thence westerly, between sections 25 and 36, 26 and 35, to a point on a ridge between sections 26 and 35, T. 21 N., R. 19 W., Kateel River Meridian;

Thence northwesterly, westerly, northerly and northwesterly along a ridge, to an intersection with the east and west centerline of section 22, T. 21 N., R. 19 W., Kateel River Meridian;

Thence westerly, on the east and west centerlines of sections 22 and 21, to the ¼ section corner of sections 20 and 21, T. 21 N., R. 19 W., Kateel River Meridian;

Thence northerly, between sections 20 and 21, to the corner of sections 16, 17, 20 and 21, T. 21 N., R. 19 W., Kateel River Meridian;

Thence westerly, between sections 17 and 20, to the corner of sections 17, 18, 19 and 20, T. 21 N., R. 19 W., Kateel River Meridian;

Thence northerly, between sections 17 and 18, to the top of a hill between sections 17 and 18, T. 21 N., R. 19 W., Kateel River Meridian, approximate elevation 750 feet;

Thence on an approximate forward bearing of N. 72° W., to the top of a hill in the northerly portion of section 13, T. 21 N., R. 20 W., Kateel River Meridian, approximate elevation 1,070 feet;

Thence on an approximate forward bearing of N. 82° W., to the top of a hill in the northwesterly portion of section 14, T. 21 N., R. 20 W., Kateel River Meridian, approximate elevation 1,215 feet;

Thence on an approximate forward bearing of N. 52° W., to a point on top of a ridge between sections 10 and 11, T. 21 N., R. 20 W., Kateel River Meridian, approximate elevation 1,175 feet;

Thence on an approximate forward bearing of N. 87° W., to a saddle in the southerly portion of section 10, T. 21 N., R. 20 W., Kateel River Meridian, approximate elevation 1,080 feet;

Thence on an approximate forward bearing of N. 76° W., to the top of a hill in the southwesterly portion of section 10, T. 21 N., R. 20 W., Kateel River Meridian, approximate elevation 1,120 feet;

Thence on an approximate forward bearing of N. 68° W., to the top of a hill near the center of section 9, T. 21 N., R. 20 W., Kateel River Meridian, approximate elevation 1,060 feet;

Thence on an approximate forward bearing of N. 16° W., to the top of a hill in the southwesterly portion of section 4, T. 21 N., R. 20 W., Kateel River Meridian, approximate elevation 1,175 feet;

Thence on an approximate forward bearing of N. 38° E., to the top of a hill in the northeasterly portion of section 4, T. 21 N., R. 20 W., Kateel River Meridian, approximate elevation 734 feet;

Thence on an approximate forward bearing of N. 35° W., to the ¼ section corner of sections 4 and 33, Tps. 21 and 22 N., R. 20 W., Kateel River Meridian;

Thence westerly, between Tps. 21 and 22 N., to the corner of Tps. 21 and 22 N., Rs. 20 and 21 W., Kateel River Meridian;

Thence northerly, between Rs. 20 and 21 W., to the corner of Tps. 23 and 24 N., Rs. 20 and 21 W., Kateel River Meridian;

Thence westerly, between Tps. 23 and 24 N., to the corner of sections 1, 2, 35 and 36, Tps. 23 and 24 N., R. 21 W., Kateel River Meridian;

Thence northerly, between sections 35 and 36, to a point on a ridge between sections 35 and 36, near the ¼ section corner of sections 35 and 36, T. 24 N., R. 21 W., Kateel River Meridian, approximate elevation 550 feet;

Thence northwesterly, along a ridge to horizontal control station "Mulgrave 1950" in the southwesterly portion of section 26, T. 24 N., R. 21 W., Kateel River Meridian, approximate elevation 1,056 feet;

Thence on an approximate forward bearing of N. 23° E., to the top of a hill in the southerly portion of section 23, T. 24 N., R. 21 W., Kateel River Meridian, approximate elevation 670 feet;

Thence on an approximate forward bearing of N. 35° W., to the top of a hill in the westerly portion of section 4, T. 24 N., R. 21 W., Kateel River Meridian, approximate elevation 960 feet;

Thence on an approximate forward bearing of N. 27° E., to the top of a hill located near the center of section 24, T. 25 N., R. 21 W., Kateel River Meridian, approximate elevation 1,070 feet;

Thence on an approximate forward bearing of N. 11° W., to the top of a hill in the southwesterly portion of section 13, T. 25 N., R. 21 W., Kateel River Meridian, approximate elevation 912 feet;

Thence on an approximate forward bearing of N. 10° E., to the center ¼ section corner of section 12, T. 25 N., R. 21 W., Kateel River Meridian;

Thence on an approximate forward bearing of N. 27° E., to the E. ¼ section corner between sections 1 and 12, T. 25 N., R. 21 W., Kateel River Meridian;

Thence on an approximate forward bearing of N. 28° W., to the top of a hill in the southwesterly portion of section 36, T. 26 N., R. 21 W., Kateel River Meridian, approximate elevation 905 feet;

Thence on an approximate forward bearing of N. 15° E., to the top of a hill in the southwesterly portion of section 25, T. 26 N., R. 21 W., Kateel River Meridian, approximate elevation 980 feet;

Thence on an approximate forward bearing of N. 35° E., to the top of a hill in the northerly portion of section 19, T. 26 N., R. 20 W., Kateel River Meridian, approximate elevation 910 feet;

Thence on an approximate forward bearing of N. 15° W., to the top of a hill in the northwesterly portion of section 18, T. 26 N., R. 20 W., Kateel River Meridian, approximate elevation 1,155 feet;

Thence on an approximate forward bearing of N. 7° W., to the top of a hill in the southwesterly portion of section 7, T. 26 N., R. 20 W., Kateel River Meridian, approximate elevation 1,132 feet;

Thence on an approximate forward bearing of N. 35° E., to the top of a hill in the northeasterly portion of section 7, T. 26 N., R. 20 W., Kateel River Meridian, approximate elevation 1,025 feet;

Thence on an approximate forward bearing of N. 16° W., to the top of a hill near the center of section 6, T. 26 N., R. 20 W., Kateel River Meridian, approximate elevation 965 feet;

Thence on an approximate forward bearing of N. 58° W., to the top of a hill in sections 1 and 36, Tps. 26 and 27 N., R. 21 W., Kateel River Meridian, approximate elevation 875 feet;

Thence on an approximate forward bearing of N. 14° W., to the ¼ section corner of sections 25 and 36, T. 27 N., R. 21 W., Kateel River Meridian;

Thence northerly on the north and south centerline of section 25, to the ¼ section corner of sections 24 and 25, T. 27 N., R. 21 W., Kateel River Meridian;

Thence on an approximate forward bearing of N. 36° W., to the top of a hill in the westerly portion of section 24, T. 27 N., R. 21 W., Kateel River Meridian, approximate elevation 1,043 feet;

Thence on an approximate forward bearing of N. 54° E., to the center ¼ section corner of section 18, T. 27 N., R. 20 W., Kateel River Meridian;

Thence on an approximate forward bearing of N. 12° E., to the top of a hill located in the southeasterly portion of section 6, T. 27 N., R. 20 W., Kateel River Meridian, approximate elevation 1,478 feet;

Thence on an approximate forward bearing of N. 72° E., to the top of a hill located in the northeasterly portion of section 4, T. 27 N., R. 20 W., Kateel River Meridian, approximate elevation 1,947 feet;

Thence on an approximate forward bearing of N. 27° E., to the peak of a mountain in the westerly portion of section 34, T. 28 N., R. 20 W., Kateel River Meridian, approximate elevation 1,975 feet;

Thence on an approximate forward bearing of N. 16° E., to the peak of a mountain and horizontal control station "Mulgrave 1954" in the southwesterly portion of section 27, T. 28 N., R. 20 W., Kateel River Meridian, approximate elevation 2,285 feet;

Thence northwesterly and westerly, along the crest of a ridge, to the peak of a mountain near the center of section 28, T. 28 N., R. 20 W., Kateel River Meridian, approximate elevation 1,973 feet;

Thence on an approximate forward bearing of N. 69° W., to the N. 1/16 section corner between sections 28 and 29, T. 28 N., R. 20 W., Kateel River Meridian;

Thence on an approximate forward bearing of S. 80° W., to the top of a hill located in the northerly portion of section 29, T. 28 N., R. 20 W., Kateel River Meridian, approximate elevation 1,225 feet;

Thence on an approximate forward bearing of S. 73° W., to the top of a hill in the northwesterly portion of section 35, T. 28 N., R. 21 W., Kateel River Meridian, approximate elevation 1,032 feet;

Thence on an approximate forward bearing of S. 71° W., to the top of a hill in the northwesterly portion of section 5, T. 27 N., R. 21 W., Kateel River Meridian, approximate elevation 904 feet;

Thence on an approximate forward bearing of N. 78° W., to the corner of Tps. 27 and 28 N., Rs. 21 and 22 W., Kateel River Meridian;

Thence westerly, between Tps. 27 and 28 N., to the corner of Tps. 27 and 28 N., Rs. 23 and 24 W., Kateel River Meridian;

Thence southerly, between Rs. 23 and 24 W., to the corner of sections 1, 6, 7 and 12, T. 27 N., Rs 23 and 24 W., Kateel River Meridian;

Thence westerly, between sections 1 and 12, 2 and 11, to the corner of sections 2, 3, 10 and 11, T. 27 N., R. 24 W., Kateel River Meridian;

Thence southerly, between sections 10 and 11, to the corner of sections 10, 11, 14, and 15, T. 27 N., R. 24 W., Kateel River Meridian;

Thence westerly, between sections 10 and 15, to the corner of sections 9, 10, 15 and 16, T. 27 N., R. 24 W., Kateel River Meridian;

Thence southerly, between sections 15 and 16, 21 and 22, to the corner of sections 21, 22, 27 and 28, T. 27 N., R. 24 W., Kateel River Meridian;

Thence westerly, between sections 21 and 28, 20 and 29, to the corner of sections 19, 20, 29 and 30, T. 27 N., R. 24 W., Kateel River Meridian;

Thence southerly, between sections 29 and 30, 31 and 32, to the corner of sections 5, 6, 31 and 32, Tps. 26 and 27 N., R. 24 W., Kateel River Meridian;

Thence westerly, between Tps. 26 and 27 N., to the corner of Tps. 26 and 27 N., Rs. 24 and 25 W., Kateel River Meridian;

Thence southerly, between Rs. 24 and 25 W., to the meander corner between sections 19 and 24, T. 26 N., Rs. 24 and 25 W., Kateel River Meridian, at the line of mean high tide of the Chukchi Sea;

Thence southeasterly, southerly, easterly, northwesterly and easterly following the line of mean high tide of the Chukchi Sea and Kotzebue Sound, including all lands and islands above the line of mean high tide within T. 19 N., Rs. 19 and 20 W., Kateel River Meridian, to the meander corner between sections 7 and 12, T. 19 N., Rs. 18 and 19 W., Kateel River Meridian, the place of beginning.

The following U.S. Geological survey 1:63,360 Series (Topographic) quadrangle maps were used in preparing the legal boundary description for the Cape Krusenstern National Monument:

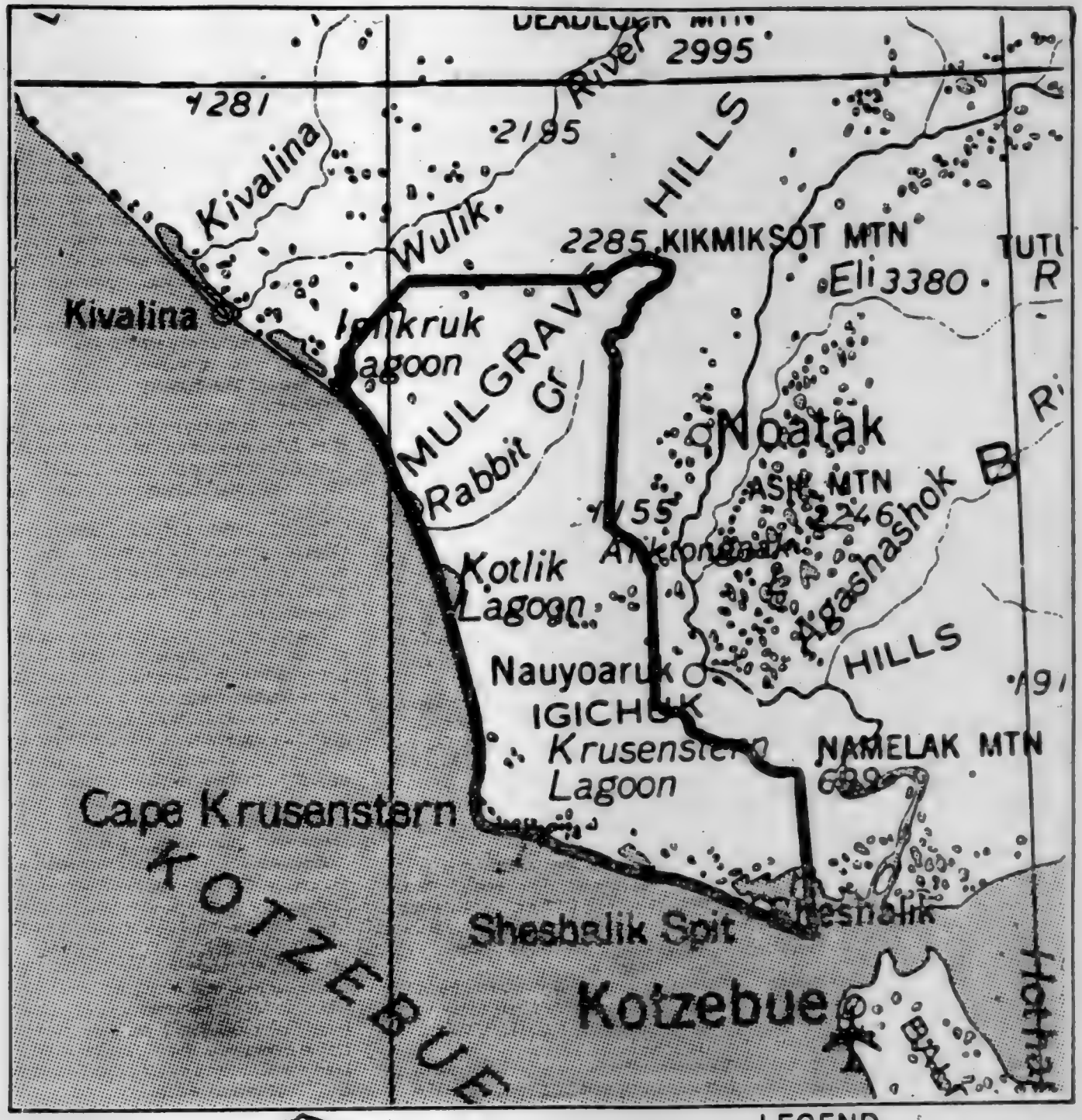
Kotzebue, Alaska: (D–2) 1951.

Noatak, Alaska: (A–2) 1952; (A–3) 1952; (A–4) 1952; (B–3) 1955; (B–4) 1955; (C–3) 1955; (C–4) 1955; (C–5) 1952; (D–3) 1955; (D–4) 1955; (D–5) 1955.

BILLING CODE 4310–70–F

CAPE KRUSENSTERN NATIONAL MONUMENT

PUBLIC LAW 96-487



LEGEND

MONUMENT

0 17 MILES

BILLING CODE 4310-70-C

Denali National Park and Preserve

Section 202(3)(a), Public Law 96–487 (ANILCA):

Denali National Park

Denali National Park as generally depicted on a map numbered DENA–90,007, dated July 1980, consists of the former Mount McKinley National Park and an addition of approximately two million four hundred and twenty-six thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at the intersection of the northern boundary segment 7–1 or its easterly prolongation, of Mount McKinley National Park as revised by Act of Congress, March 19, 1932 and the line of mean high water of the left bank of the Nenana River, at or near corner No. 7, as described in the official field notes for U.S. Survey 2177, Alaska, located in section 9, T. 19 S., R. 7 W., Fairbanks Meridian;

Thence westerly along the boundary of Mount McKinley National Park as surveyed and described in the official field notes for U.S. Survey No. 2177, Alaska, approximately 26 miles to a point between sections 7 and 12, T. 13 S., Rs. 11 and 12 W., Fairbanks Meridian;

Thence northerly, between Rs. 11 and 12 W., to the closing corner of T. 13 S., Rs. 11 and 12 W., Fairbanks Meridian;

Thence westerly, along the Third Standard Parallel South, to the standard corner of T. 12 S., Rs. 11 and 12 W., Fairbanks Meridian;

Thence northerly, between Rs. 11 and 12 W., to the corner of Tps. 11 and 12 S., Rs. 11 and 12 W., Fairbanks Meridian;

Thence easterly, between Tps. 11 and 12 S., to the corner of Tps. 11 and 12 S., Rs. 8 and 9 W., Fairbanks Meridian;

Thence northerly, between Rs. 8 and 9 W., to the corner of Tps. 10 and 11 S., Rs. 8 and 9 W., Fairbanks Meridian;

Thence westerly, between Tps. 10 and 11 S., to the meander corner of sections 5 and 32, on the right bank of the Kantishna River, Tps., 10 and 11 S., R. 16 W., Fairbanks Meridian;

*Thence southwesterly, on the line of mean high water along the right banks of the Kantishna River, Birch Creek and Hult Creek, along a common boundary with the Denali National Preserve, to a point at the intersection with the east and west line between sections 1 and 12 and 6 and 7, T. 17 S., Rs. 22 and 23 W., Fairbanks Meridian;

*Thence westerly between sections 6 and 7 and 1 and 12 to the summit of a ridge between sections 1 and 12, west of the Foraker River, T. 17 S., R. 23 W., Fairbanks Meridian;

Thence southwesterly, along the crest of a ridge between the Foraker River and tributaries of the Herron River to a summit on the ridge, located in the western half of section 22, T. 17 S., R. 23 W., Fairbanks Meridian, approximate elevation 1,860 feet;

*Thence westerly, southwesterly, westerly and northwesterly along the crest of a ridge to vertical angle benchmark "Castle" located on the summit of a mountain in section 25, T. 17 S., R. 24 W., Fairbanks Meridian, approximate elevation 2,079 feet;

*Thence southerly and southwesterly, along the crest of a ridge between tributaries to Castle Rocks Lake and White Creek to the summit of a mountain located in section 13, T. 18 S., R. 24 W., Fairbanks Meridian, approximate elevation 1,822 feet;

Thence due west to a point at the line of mean high water on the easterly shore of Castle Rocks Lake located in section 15, T. 18 S., R. 24 W., Fairbanks Meridian;

Thence southwesterly, northerly and southwesterly along the line of mean high water of Castle Rocks Lake and the left bank of an unnamed creek, the outlet of Castle Rocks Lake, to a point at the confluence of the unnamed creek and the right bank of the Herron River located in section 20, T. 18 S., R. 24 W., Fairbanks Meridian;

Thence southeasterly, along the right bank of Herron River, to the intersection of line 3–4 of Mount McKinley National Park as surveyed and described in the official field notes for U.S. Survey No. 2177, Alaska, between Mile Posts 40 and 40.943, located in section 10, T. 19 S., R. 24 W., Fairbanks Meridian;

Thence south 68° W., along the boundary of Mount McKinley National Park on line 3–4, approximately 3 miles to corner No. 4 as described in the official field notes for U.S. Survey No. 2177, Alaska, located in section 18, T. 19 S., R. 24 W., Fairbanks Meridian;

Thence S. 17° 48' E., along the boundary of Mount McKinley National Park on line 4–5, approximately 4,400 feet to the summit of a ridge as described in the official field notes for U.S. Survey No. 2177, Alaska, located in section 19, T. 19 S., R. 24 W., Fairbanks Meridian;

Thence on an approximate forward bearing of S. 76° W., to the summit of a mountain, located in section 28, T. 19 S., R. 25 W., Fairbanks Meridian, approximate elevation 1,770 feet;

Thence due west to a point between sections 25 and 30, T. 19 S., Rs. 25 and 26 W., Fairbanks Meridian;

Thence southerly, departing from a common boundary with the Denali National Preserve, between Rs. 25 and 26 W., to the corner of T. 22 S., Rs. 25 and 26 W., Fairbanks Meridian, on the S. boundary of the Fairbanks Meridian;

Thence easterly, along the south boundary of T. 22 S., Fairbanks Meridian, to the corner of sections 15 and 16, T. 33 N., R. 15 W., Seward Meridian;

Thence southerly, between sections 15 and 16, 21 and 22, 27 and 28, 33 and 34, to the standard corner of sections 33 and 34, T. 33 N., R. 15 W., Seward Meridian;

Thence easterly, along the Eighth Standard Parallel North to the closing corner of sections 3 and 4, T. 32 N., R. 15 W., Seward Meridian;

Thence southerly, between sections 3 and 4, 9 and 10, 15 and 16, 21 and 22, 27 and 28, 33 and 34, 3 and 4, 9 and 10, to a point on the divide between Ripsnorter Creek and Dall Glacier, located between sections 9 and 10, T. 31 N., R. 15 W., Seward Meridian, approximate elevation 7,800 feet;

Thence southerly, along the crest of a ridge which divides the drainage of Dall Glacier and Chedotlothna Glacier, along a common boundary with the Denali National Preserve, to the summit of a mountain located in section 23, T. 31 N., R. 15 W., Seward Meridian, approximate elevation 8,900 feet;

Thence southeasterly, descending a spur ridge to a point on the right side of Dall Glacier located in the northern half of section 36, T. 31 N., R. 15 W., Seward Meridian, approximate elevation 4,940 feet;

Thence on an approximate forward bearing of S. 29° E., to a point on the divide between Dall Glacier and Yentna Glacier located in section 7, T. 30 N., R. 14 W., Seward Meridian, approximate elevation 6,210 feet;

Thence northeasterly and southeasterly, along the crest of a ridge which divides the drainages of the Dall Glacier and Yentna Glacier, to the summit of a mountain in the southeastern quarter of section 35, T. 31 N., R. 14 W., Seward Meridian, approximate elevation 7,290 feet;

Thence easterly and southeasterly along a ridge to a summit of a mountain in the eastern portion of section 1, T. 30 N., R. 14 W., Seward Meridian, approximate elevation 6,830 feet;

Thence on an approximate forward bearing of N. 80° E. to a summit of a mountain in the northeast corner of section 5, T. 30 N., R. 13 W., Seward Meridian, approximate elevation 6,600 feet;

Thence northeasterly along the crest of a ridge to a summit of a mountain in the southeastern quarter of section 32, T. 31 N., R. 13 W., Seward Meridian, approximate elevation 7,046 feet;

Thence on an approximate forward bearing of S. 50° E., to a point at the toe of a ridge between Yentna Glacier and Lacuna Glacier located in the southwesterly portion of section 11, T. 30 N., R 13 W., Seward Meridian, approximate elevation 2,600 feet;

Thence on an approximate forward bearing of S. 8° E., to the summit of a mountain located in the northeasterly portion of section 2, T. 29 N., R. 13 W., Seward Meridian, approximate elevation 5,695 feet;

Thence southeasterly and southerly, along the crest of the ridge which divides the drainages of Yentna Glacier and Cripple Creek, to the summit of a mountain located in Section 12, T. 29 N., R. 13 W., Seward Meridian, approximate elevation 5,482 feet;

Thence southerly, along the crest of a ridge which divides the drainages of Cripple Creek, Stern Gulch and Sunflower Creek to a point on the Seventh Standard Parallel North, between sections 6 and 31, Tps. 28 and 29 N., R. 12 W., Seward Meridian;

Thence easterly, departing from a common boundary with the Denali National Preserve, along the Seventh Standard Parallel North, to the closing corner of T. 28 N., Rs. 11 and 12 W., Seward Meridian;

Thence southerly, between Rs. 11 and 12 W., to the corner of Tps. 27 and 28 N., Rs. 11 and 12 W., Seward Meridian;

Thence easterly, between Tps. 27 and 28 N., to the corner of sections 4, 5, 32 and 33, Tps. 27 and 28 N., R. 10 W., Seward Meridian;

Thence northerly, between sections 32 and 33, 28 and 29, 20 and 21, 16 and 17, 8 and 9, 4 and 5, to the closing corner of sections 4 and 5, T. 28 N., R. 10 W., Seward Meridian;

Thence easterly, along the Seventh Standard Parallel North, to the standard ¼ section corner of section 34, T. 29 N., R. 10 W., Seward Meridian;

Thence northerly, along the north and south centerline of section 34, to the center-south ⅛ section corner of section 34, T. 29 N., R. 10 W., Seward Meridian;

Thence easterly, along the east and west centerline of the southeast ¼ of section 34, to the southeast ⅛ section corner of section 34, T. 29 N., R. 10 W., Seward Meridian;

Thence northerly, along the north and south centerline of the southeast ¼ of section 34, to the center-east ⅛ section corner of section 34, T. 29 N., R. 10 W., Seward Meridian;

Thence easterly, along the east and west centerline of section 34, to the ¼ section corner of sections 34 and 35, T. 29 N., R. 10 W., Seward Meridian;

Thence northerly, between sections 34 and 35, to the corner of sections 26, 27, 34 and 35, T. 29 N., R. 10 W., Seward Meridian;

Thence easterly, between sections 26 and 35, to the ¼ section corner of sections 26 and 35, T. 29 N., R. 10 W., Seward Meridian;

Thence northerly, along the north and south centerline of section 26, to the center ¼ section corner of section 26, T. 29 N., R. 10 W., Seward Meridian;

Thence easterly, along the east and west centerline of section 26, to the ¼ section corner of sections 25 and 26, T. 29 N., R. 10 W., Seward Meridian;

Thence northerly, between sections 25 and 26, 23 and 24, to the south ⅛ section corner of sections 23 and 24, T. 29 N., R. 10 W., Seward Meridian;

Thence easterly, along the east and west centerline of the southwest ¼ of section 24, to the center-south ⅛ corner of section 24, T. 29 N., R. 10 W., Seward Meridian;

Thence northerly, along the north and south centerline of section 24, to the center ¼ section corner of section 24, T. 29 N., R. 10 W., Seward Meridian;

Thence easterly, along the east and west centerline of section 24, to the center-east ⅛ section corner of section 24, T. 29 N., R. 10 W., Seward Meridian;

Thence northerly, along the north and south centerline of the northeast ¼ to the northeast ⅛ section corner of section 24, T. 29 N., R. 10 W., Seward Meridian;

Thence easterly, along the east and west centerline of the northeast ¼ to the north ⅛ section corner of sections 19 and 24, T. 29 N., Rs. 9 and 10 W., Seward Meridian;

Thence northerly, between Rs. 9 and 10 W., to the corner of sections 7, 12, 13 and 18, T. 29 N., Rs. 9 and 10 W., Seward Meridian;

Thence easterly, between sections 7 and 18, to the corner of sections 7, 8, 17 and 18, T. 29 N., R. 9 W., Seward Meridian;

Thence northerly, between sections 7 and 8, to the corner of sections 5, 6, 7 and 8, T. 29 N., R. 9 W., Seward Meridian;

Thence easterly, between sections 5 and 8, to the corner of sections 4, 5, 8 and 9, T. 29 N., R. 9 W., Seward Meridian;

Thence northerly, between sections 4 and 5, to the corner of sections 4, 5, 32 and 33, Tps. 29 and 30 N., R. 9 W., Seward Meridian;

Thence easterly, between Tps. 29 and 30 N., to the corner of Tps. 29 and 30 N., Rs. 5 and 6 W., Seward Meridian;

Thence northerly, between Rs. 5 and 6 W., to the corner of Tps. 31 and 32 N., Rs. 5 and 6 W., Seward Meridian;

Thence easterly, between Tps. 31 and 32 N., to the corner of Tps. 31 and 32 N., Rs. 4 and 5 W., Seward Meridian;

Thence northerly, between Rs. 4 and 5 W., to the closing corner of T. 32 N., Rs. 4 and 5 W., Seward Meridian;

Thence westerly, along the Eighth Standard Parallel North, to the standard corner of T. 33 N., Rs. 4 and 5 W., Seward Meridian;

Thence northerly, between Rs. 4 and 5 W., to the corner of T. 33 N., Rs. 4 and 5 W., Seward Meridian;

Thence easterly, along the north boundary of T. 33 N., R. 4 W., Seward Meridian, to the corner of sections 33 and 34, T. 22 S., R. 13 W., Fairbanks Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, to the summit of a mountain between sections 3 and 4, T. 22 S., R. 13 W., Fairbanks Meridian, approximate elevation 5,643 feet;

Thence northerly, along the crest of the ridge which divides the drainages of Eldridge Glacier, Partin Creek, Shotgun Creek and McCallie Creek, to the summit of a mountain located in section 10, T. 21 S., R. 13 W., Fairbanks Meridian, approximate elevation 6,962 feet;

Thence northeasterly, along the crest of the ridge which divides the drainages of McCallie Creek and Ohio Creek, to the summit of a mountain located in section 1, T. 21 S., R. 13 W., Fairbanks Meridian, approximate elevation 6,208 feet;

Thence northwesterly and northeasterly, descending a spur ridge, to a peak located in the northwest portion of section 31, T. 20 S., R. 12 W., Fairbanks Meridian, approximate elevation 4,930 feet;

Thence northeasterly descending a spur ridge to a point on the east-west centerline of section 29, T. 20 S., R. 12 W., Fairbanks Meridian;

Thence easterly, along the east and west centerline of section 29, to the center ¼ corner of section 29, T. 20 S., R. 12 W., Fairbanks Meridian;

Thence northeasterly, ascending a spur ridge, to the summit of a mountain located in section 16, T. 20 S., R. 12 W., Fairbanks Meridian, approximate elevation 6,500 feet;

Thence northeasterly, along the crest of the ridge which divides the drainages of the West Fork of Chulitna River and Copeland Creek, to the summit of a mountain located in section 12, T. 20 S., R. 12 W., Fairbanks Meridian, approximate elevation 6,100 feet;

Thence easterly, along the crest of the ridge which divides the drainages of the West Fork of Chulitna River and Long Creek, to the summit of a mountain located in section 7, T. 20 S., R. 11 W., Fairbanks Meridian, approximate elevation 5,300 feet;

Thence northeasterly, descending a spur ridge, to the point between sections 6 and 7, T. 20 S., R. 11 W., Fairbanks Meridian;

Thence easterly, between sections 6 and 7, 5 and 8, to a point on the left bank of a ditch located near the ¼ section corner of sections 5 and 8, T. 20 S., R. 11 W., Fairbanks Meridian;

Thence northeasterly, along the left bank of a ditch, to a point between sections 3 and 4, T. 20 S., R. 11 W., Fairbanks Meridian;

Thence northerly, between sections 3 and 4, 33 and 34, 27 and 28, to the meander corner of sections 27 and 28, at the line of mean high water on the right bank of the West Fork of the Chulitna River, T. 19 S., R. 11 W., Fairbanks Meridian;

Thence southeasterly, along the right bank of the West Fork of the Chulitna River, to the meander corner of sections 6 and 31, Tps. 19 and 20 S., R. 10 W., Fairbanks Meridian;

Thence easterly, between Tps. 19 and 20 S., to the closing corner of Tps. 19 and 20 S., Rs. 9 and 10 W., Fairbanks Meridian;

Thence northerly, between Rs. 9 and 10 W., to the corner of Tps. 18 and 19 S., R. 9 W., Fairbanks Meridian;

Thence easterly, between Tps. 18 and 19 S., to the corner of sections 3, 4, 33 and 34, Tps. 18 and 19 S., R. 9 W., Fairbanks Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, to the corner of sections 22 and 27, T. 18 S., R. 9 W., Fairbanks Meridian;

Thence easterly, between sections 22 and 27, to the closing corner of sections 22 and 26, T. 18 S., R. 9 W., Fairbanks Meridian;

Thence northerly, between sections 22 and 26, to the corner of sections 23 and 26, T. 18 S., R. 9 W., Fairbanks Meridian;

Thence easterly, between sections 23 and 26, 24 and 25, to the corner of sections 19, 24, 25 and 30, T. 18 S., Rs. 8 and 9 W., Fairbanks Meridian;

Thence northerly, between Rs. 8 and 9 W., to the corner of sections 13, 18, 19 and 24, T. 18 S., Rs. 8 and 9 W., Fairbanks Meridian;

Thence easterly, between sections 18 and 19, to the corner of sections 17, 18, 19 and 20, T. 18 S., R. 8 W., Fairbanks Meridian;

Thence northerly, between sections 17 and 18, to the corner of sections 7, 8, 17 and 18, T. 18 S., R. 8 W., Fairbanks Meridian;

Thence easterly, between sections 8 and 17, 9 and 16, to the corner of sections 9, 10, 15 and 16, T. 18 S., R. 8 W., Fairbanks Meridian;

Thence northerly, between sections 9 and 10, to the corner of sections 3, 4, 9 and 10, T. 18 S., R. 8 W., Fairbanks Meridian;

Thence easterly, between sections 3 and 10, 2 and 11, to a point 150 feet northwesterly and perpendicular from the centerline of the Alaska Railroad right-of-way, between sections 2 and 11, T. 18 S., R. 8 W., Fairbanks Meridian;

Thence northeasterly, along a line 150 feet north-westerly and perpendicular from the centerline of the Alaska Railroad right-of-way, to a point between sections 1 and 6, T. 18 S., Rs. 7 and 8 W., Fairbanks Meridian;

Thence northerly, between Rs. 7 and 8 W., approximately 2½ miles to an intersection with the north bank of Windy Creek and the southerly boundary of Mount McKinley National Park as surveyed and described in the official field notes for U.S. Survey No. 2177, Alaska, between sections 19 and 24, T. 17 S., Rs. 7 and 8 W., Fairbanks Meridian;

Thence easterly and northerly, along the left banks of Windy Creek, Jack River and Nenana River, at the line of mean high water, to the point at the intersection with the northerly boundary of Mount McKinley National Park, line 7–1 or its easterly prolongation, at or near corner No. 7 as surveyed and described in the official field notes for U.S. Survey No. 2177, Alaska,

located in section 9, T. 13 S., R. 7 W., Fairbanks Meridian, the point of beginning.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

Denali National Preserve

Denali National Preserve as generally depicted on a map numbered DENA–90,007, dated July 1980, consists of approximately one million three hundred and thirty thousand acres of public lands, as defined in the ANILCA, within the following described boundaries:

North Unit

Beginning at the meander corner of sections 5 and 32, on the right bank of the Kantishna River, Tps. 10 and 11 S., R. 18 W., Fairbanks Meridian;

*Thence southwesterly, on the line of mean high water along the right banks of Kantishna River, Birch Creek and Hult Creek, along a common boundary with the Denali National Park, to a point at the intersection with the east and west line between sections 1 and 12 and 6 and 7, T. 17 S., Rs. 22 and 23 W., Fairbanks Meridian;

Thence westerly, between sections 6 and 7 and 1 and 12, to the crest of a ridge between sections 1 and 12 west of the Foraker River, T. 17 S., R. 23 W., Fairbanks Meridian;

*Thence southwesterly, along the crest of a ridge between the Foraker River and tributaries of the Herron River to a summit on the ridge, located in the western half of section 22, T. 17 S., R. 23 W., Fairbanks Meridian, approximate elevation 1,860 feet;

*Thence westerly, southwesterly, westerly, and northwesterly along the crest of a ridge, to vertical angle benchmark "Castle" located on the summit of a mountain in section 25, T. 17 S., R. 24 W., Fairbanks Meridian, approximate elevation 2,079 feet;

*Thence southerly and southwesterly, along the crest of the ridge between tributaries to Castle Rocks Lake and White Creek, to the summit of a mountain located in section 13, T. 18 S., R. 24 W., Fairbanks Meridian, approximate elevation 1,822 feet;

Thence due west to a point at the line of mean high water on the easterly shore of Castle Rocks Lake located in section 15, T. 18 S., R. 24 W., Fairbanks Meridian;

Thence, southwesterly, northerly and southwesterly along the line of mean high water of Castle Rocks Lake and the left bank of an unnamed creek, the outlet of Castle Rocks Lake, to a point at the confluence of the unnamed creek and the right bank of Herron River located in section 20, T. 18 S., R. 24 W., Fairbanks Meridian;

Thence southeasterly, along the right bank of Herron River, to the intersection of line 3–4 of Mount McKinley National Park as surveyed and described in the official field notes for U.S. Survey No. 2177, Alaska, between Mile Posts 40 and 40.943, located in section 10, T. 19 S., R. 24 W., Fairbanks Meridian;

Thence S. 68° W., along the boundary of Mount McKinley National Park on line 3–4, approximately 3 miles to corner No. 4 as described in the official field notes for U.S. Survey No. 2177, Alaska, located in section 18, T. 19 S., R. 24 W., Fairbanks Meridian;

Thence S. 17° 48' E., along the boundary of Mount McKinley National Park on line 4–5, approximately 4,400 feet to the summit of a ridge as described in the official field notes for U.S. Survey No. 2177, Alaska, located in section 19, T. 19 S., R. 24 W., Fairbanks Meridian;

Thence on an approximate forward bearing of S. 76° W., to the summit of a mountain located in section 28, T. 19 S., R. 25 W., Fairbanks Meridian, approximate elevation 1,770 feet;

Thence due west, to a point between sections 25 and 30, T. 19 S., Rs. 25 and 26 W., Fairbanks Meridian;

Thence northerly, departing from a common boundary with the Denali National Park, between Rs. 25 and 26 W., to the corner of Tps. 18 and 19 S., Rs. 25 and 26 W., Fairbanks Meridian;

Thence westerly, between Tps. 18 and 19 S., to the corner of Tps. 18 and 19 S., Rs. 26 and 27 W., Fairbanks Meridian;

Thence northerly, between Rs. 26 and 27 W., to the corner of sections 13, 18, 19 and 24, T. 18 S., Rs. 26 and 27 W., Fairbanks Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 18 S., Rs. 27 and 28 W., Fairbanks Meridian;

Thence northerly, between Rs. 27 and 28 W., to the closing corner of T. 17 S., Rs. 27 and 28 W., Fairbanks Meridian;

Thence westerly, along the Fourth Standard Parallel South, to the standard corner of T. 16 S., Rs. 27 and 28 W., Fairbanks Meridian;

Thence northerly, between Rs. 27 and 28 W., to the corner of Tps. 14 and 15 S., Rs. 27 and 28 W., Fairbanks Meridian;

Thence easterly, between Tps. 14 and 15 S., to the corner of sections 4, 5, 32 and 33, Tps. 14 and 15 S., R. 24 W., Fairbanks Meridian;

Thence northerly, between sections 32 and 33, 28 and 29, 20 and 21, 16 and 17, 8 and 9, 4 and 5, 32 and 33, 28 and 29, 20 and 21, 16 and 17, 8 and 9, 4 and 5, to the closing corner of sections 4 and 5, T. 13 S., R. 24 W., Fairbanks Meridian;

Thence easterly, along the Third Standard Parallel South, to the standard corner of sections 33 and 34, T. 12 S., R. 23 W., Fairbanks Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, to the corner of sections 3, 4, 33 and 34, Tps. 10 and 11 S., R. 23 W., Fairbanks Meridian;

Thence easterly, between Tps. 10 and 11 S., to a point on the crest of a ridge between sections 3 and 34, Tps. 10 and 11 S., R. 22 W., Fairbanks Meridian, approximate elevation 900 feet;

Thence on an approximate forward bearing of N. 16° W., to the summit of a ridge between sections 27 and 34, T. 10 S., R. 22 W., Fairbanks Meridian, approximate elevation 1,110 feet;

Thence on an approximate forward bearing of N. 49° W., to the ¼ section corner of sections 27 and 28, T. 10 S., R. 22 W., Fairbanks Meridian;

Thence on an approximate forward bearing of N. 33° E., to the summit of a ridge located in section 22, T. 10 S., R. 22 W., Fairbanks Meridian, approximate elevation 1,045 feet;

Thence on an approximate forward bearing of N. 40° E., to the corner of sections 14, 15, 22 and 23, T. 10 S., R. 22 W., Fairbanks Meridian;

Thence on an approximate forward bearing of N. 27° E., to the corner of sections 1, 2, 11 and 12, T. 10 S., R. 22 W., Fairbanks Meridian;

Thence on an approximate forward bearing of N. 66° E., to the summit of a ridge located in section 1, T. 10 S., R. 22 W., Fairbanks Meridian, approximate elevation 1,515 feet;

Thence on an approximate forward bearing of S. 87° E., to the summit of a ridge located in section 6, T. 10 S., R. 21 W., Fairbanks Meridian, approximate elevation 1,510 feet;

Thence on an approximate forward bearing of S. 56° E., to the corner of sections 5, 6, 7 and 8, T. 10 S., R. 21 W., Fairbanks Meridian;

Thence easterly, between sections 5 and 8, 4 and 9, 3 and 10, 2 and 11, 1 and 12, to the corner of sections 1, 6, 7 and 12, T. 10 S., Rs. 20 and 21 W., Fairbanks Meridian;

Thence southerly, between Rs. 20 and 21 W., to the corner of sections 7, 12, 13 and 18, T. 10 S., Rs. 20 and 21 W., Fairbanks Meridian;

Thence on an approximate forward bearing of S. 66° E., to the summit of a ridge located in section 18, T. 10 S., R. 20 W., Fairbanks Meridian, approximate elevation 852 feet;

Thence on an approximate forward bearing of S. 74° E., to the summit of a ridge located in section 16, T. 10 S., R. 20 W., Fairbanks Meridian, approximate elevation 1,382 feet;

Thence on an approximate forward bearing of S. 27° W., to the summit of a ridge located in section 29, T. 10 S., R. 20 W., Fairbanks Meridian, approximate elevation 1,910 feet;

Thence on an approximate forward bearing of S. 72° E., to vertical angle bench mark "ROOSEVELT" located in section 35, T. 10 S., R. 20 W., Fairbanks Meridian, approximate elevation 1,947 feet;

Thence on an approximate forward bearing of S. 47° E., to the summit of a ridge in section 35, T. 10 S., R. 20 W., Fairbanks Meridian, approximate elevation 1,523 feet;

Thence southeasterly, along the crest of a ridge to a point between sections 2 and 35, Tps. 10 and 11 S., R. 20 W., Fairbanks Meridian;

Thence easterly, between Tps. 10 and 11 S., to the meander corner of sections 5 and 32 on the right bank of the Kantishna River, Tps. 10 and 11 S., R. 18 W., Fairbanks Meridian, the place of beginning.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

South Unit

Beginning at the standard corner of sections 1 and 6, T. 28 N., Rs. 13 and 14 W., Seward Meridian;

Thence southerly, between Rs. 13 and 14 W., to the corner of Tps. 25 and 26 N., Rs. 13 and 14 W., Seward Meridian;

Thence westerly, between Tps. 25 and 26 N., to the corner of Tps. 25 and 26 N., Rs. 19 and 20 W., Seward Meridian;

Thence northerly, between Rs. 19 and 20 W., to the closing corner of T. 28 N., Rs. 19 and 20 W., Seward Meridian;

Thence easterly, along the Seventh Standard Parallel North, to the standard corner of T. 29 N., Rs. 18 and 19 W., Seward Meridian;

Thence northerly, between Rs. 18 and 19 W., to the corner of Tps. 29 and 30 N., Rs. 18 and 19 W., Seward Meridian;

Thence easterly, between Tps. 29 and 30 N., to the corner of Tps. 29 and 30 N., Rs. 16 and 17 W., Seward Meridian;

Thence northerly, between Rs. 16 and 17 W., to the corner of Tps. 30 and 31 N., Rs. 16 and 17 W., Seward Meridian;

Thence easterly, between Tps. 30 and 31 N., to the corner of Tps. 30 and 31 N., Rs. 15 and 16 W., Seward Meridian;

Thence northerly, between Rs. 15 and 16 W., to the corner of sections 13, 18, 19 and 24, T. 31 N., Rs. 15 and 16 W., Seward Meridian;

Thence easterly, between sections 18 and 19, to the corner of sections 17, 18, 19 and 20, T. 31 N., R. 15 W., Seward Meridian;

Thence northerly, between sections 17 and 18, to the corner of sections 7, 8, 17 and 18, T. 31 N., R. 15 W., Seward Meridian;

Thence easterly, between sections 8 and 17, to the corner of sections 8, 9, 16 and 17, T. 31 N., R. 15 W., Seward Meridian;

Thence northerly, between sections 8 and 9 to the corner of sections 4, 5, 8 and 9, T. 31 N., R. 15 W., Seward Meridian;

Thence easterly, between sections 4 and 9, to the corner of sections 3, 4, 9 and 10, T. 31 N., R. 15 W., Seward Meridian;

Thence southerly, along a common boundary with the Denali National Park, between sections 9 and 10 to a point on the divide between Ripsnorter Creek and Dall Glacier located between sections 9 and 10, T. 31 N., R. 15 W., Seward Meridian, approximate elevation 7,600 feet;

Thence southeasterly, along the crest of a ridge which divides the drainages of Dall Glacier and Chedotlothna Glacier, to the summit of a mountain located in section 23, T. 31 N., R. 15 W., Seward Meridian, approximate elevation 8,900 feet;

Thence southeasterly, descending a spur ridge to a point on the right side of Dall Glacier located in the northern half of section 36, T. 31 N., R. 15 W., Seward Meridian, approximate elevation 4,940 feet;

Thence on an approximate forward bearing of S. 29° E., to a point on the divide between Dall Glacier and Yentna Glacier located in section 7, T. 30 N., R. 14 W., Seward Meridian, approximate elevation 6,210 feet;

Thence northeasterly and southeasterly, along the crest of a ridge which divides the drainages of the Dall Glacier and Yentna Glacier, to the summit of a mountain in the southeastern quarter of section 35, T. 31 N., R. 14 W., Seward Meridian, approximate elevation 7,290 feet;

Thence easterly and southeasterly along a ridge to a summit of a mountain in the northeastern quarter of section 1, T. 30 N., R. 14 W., Seward Meridian, approximate elevation 6,830 feet;

Thence on an approximate forward bearing of N. 80° E., to a summit of a mountain in the northeast corner of section 5, T. 30 N., R. 13 W., Seward Meridian, approximate elevation 6,600 feet;

Thence northeasterly, along the crest of a ridge to a summit of a mountain in the southeastern quarter of section 32, T. 31 W., R. 13 W., Seward Meridian, approximate elevation 7,046 feet;

Thence on an approximate forward bearing of S. 50° E., to a point at the toe of a ridge between Yentna Glacier and Lacuna Glacier located in the southwesterly portion of section 11, T. 30 N., R. 13 W., Seward Meridian, approximate elevation 2,800 feet;

Thence on an approximate forward bearing of S. 8° E., to the summit of a mountain located in the northeasterly portion of section 2, T. 29 N., R. 13 W., Seward Meridian, approximate elevation 5,695 feet;

Thence southeasterly and southerly, along the crest of the ridge which divides the drainages of Yentna Glacier and Cripple Creek, to the summit of a mountain located in section 12, T. 29 N., R. 13 W., Seward Meridian, approximate elevation 5,482 feet;

Thence southerly, along the crest of a ridge which divides the drainages of Cripple Creek, Stern Gulch and Sunflower Creek, to a point on the Seventh Standard Parallel North, between sections 6 and 31, Tps. 28 and 29 N., R. 12 W., Seward Meridian;

Thence westerly, departing from the common boundary with the Denali National Park, along the Seventh Standard Parallel North to the closing corner of sections 1 and 6, T. 28 N., Rs. 13 and 14 W., Seward Meridian, the place of beginning.

Units of the National Wilderness Preservation System Within the Denali National Park

Section 701(1), Public Law 96–487 (ANILCA), as amended by the Alaska Railroad Transfer Act, Public Law 97–468, Title VI:

Denali Wilderness

The Denali Wilderness as generally depicted on a map numbered DENA–90,007, dated July 1980, consists of approximately one million nine hundred thousand acres of public lands, as defined in the ANILCA, within the following described boundaries:

North Unit

Beginning on the Mount McKinley National Park boundary as surveyed and described in the official field notes for U.S. Survey No. 2177, Alaska with its intersection with the line between sections 7 and 12, T. 13 S., Rs. 11 and 12 W., Fairbanks Meridian;

Thence westerly, along line 7-1, as surveyed and described in the official field notes for U.S. Survey No. 2177, Alaska, approximately 16½ miles to Corner No. 1, located in section 8, T. 13 S., R. 14 W., Fairbanks Meridian;

Thence southerly, along line 1-2, as surveyed and described in the official field notes for U.S. Survey No. 2177, Alaska, approximately 23½ miles to Corner No. 2, located in section 23, T. 16 S., R. 15 W., Fairbanks Meridian;

Thence S 84°47' W., along line 2-3, as surveyed and described in the official field notes for U.S. Survey No. 2177, Alaska, approximately 14¼ miles to a point between sections 28 and 29, T. 16 S., R. 17 W., Fairbanks Meridian;

Thence on an approximate forward bearing of S. 56° E., approximately 1¼ miles to the corner of sections 27, 28, 33 and 34, T. 16 S., R. 17 W., Fairbanks Meridian;

Thence southerly, between sections 33 and 34, to the standard corner of sections 33 and 34, T. 16 S., R. 17 W., Fairbanks Meridian;

Thence easterly, along the Fourth Standard Parallel South, to the ¼ section corner of section 4, T. 17 S., R. 17 W., Fairbanks Meridian;

Thence southerly, on the north and south centerline of section 4, to the center ¼ section corner of section 4, T. 17 S., R. 17 W., Fairbanks Meridian;

Thence easterly, on the east and west centerline of section 4, to the ¼ section corner of sections 3 and 4, T. 17 S., R. 17 W., Fairbanks Meridian;

Thence southerly, between sections 3 and 4, 9 and 10, to a point 150 feet northerly of, and on a line perpendicular to, the centerline of the Denali Highway, between sections 9 and 10, T. 17 S., R. 17 W., Fairbanks Meridian;

Thence easterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the southeasterly portion of section 10, due North of the east-east 1/64 section corner of sections 10 and 15, T. 17 S., R. 17 W., Fairbanks Meridian;

Thence due North, to a point in the southerly portion of section 10, due West of the south-south 1/64 section corner of sections 10 and 11, T. 17 S., R. 17 W., Fairbanks Meridian;

Thence due East, to a point in the southwesterly portion of section 11, due North of the west 1/16 section corner of sections 11 and 14, T. 17 S., R. 17 W., Fairbanks Meridian;

Thence due South, to a point 150 feet northerly from, and on a line perpendicular to, the centerline of the Denali Highway, in the northwesterly portion of section 14, T. 17 S., R. 17 W., Fairbanks Meridian;

Thence easterly on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point between sections 15 and 16, T. 17 S., R. 16 W., Fairbanks Meridian;

Thence due North, to the south-north 1/64 section corner of sections 15 and 16, T. 17 S., R. 16 W., Fairbanks Meridian;

Thence due East, to the south-north 1/64 section corner of sections 14 and 15, T. 17 S., R. 16 W., Fairbanks Meridian;

Thence due South, to the ¼ section corner of sections 14 and 15, T. 17 S., R. 16 W., Fairbanks Meridian;

Thence due East, to the center ¼ section corner of section 14, T. 17 S., R. 16 W., Fairbanks Meridian;

Thence due South, to a point 150 feet northerly of, and on a line perpendicular to, the centerline of the Denali Highway, in the central portion of section 14, T. 17 S., R. 16 W., Fairbanks Meridian;

Thence easterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the northwesterly portion of section 19, 3630 feet due West of the line between sections 19 and 20, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due North to a point between sections 18 and 19, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence easterly, between sections 18 and 19, 1320 feet to a point between sections 18 and 19, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due South, to a point 150 feet northerly of, and on a line perpendicular to, the centerline of the Denali Highway, in the northerly portion of section 19, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence northeasterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the southeasterly portion of section 3, due North of the east 1/16 section corner of sections 3 and 10, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due North, to a point in the southeasterly portion of section 3, 2310 feet due North of the line between sections 3 and 10, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due East, 1650 feet to a point in the westerly portion of section 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due South, to a point 150 feet northerly of, and on a line perpendicular to, the centerline of the Denali Highway, in the southwesterly portion of section 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence easterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the southerly portion of section 2, 2,310 feet due East of the line between sections 2 and 3, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due North, to a point in the southerly portion of section 2, due West of the north-south 1/64 section corner of sections 1 and 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due East, to a point 150 feet northerly of, and on a line perpendicular to the centerline of the Denali Highway, in the southeasterly portion of section 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence northeasterly, along a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point 990 feet due West of the line between sections 1 and 2, in the southeasterly portion of section 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due North, to a point in the northeasterly portion of section 2, due West of the south-north 1/64 section corner of sections 1 and 2, T. 17 S., R. 14 W. Fairbanks Meridian;

Thence due East, to a point 150 feet northwesterly of, and on a line perpendicular to, the centerline of the Denali Highway, in the northwesterly portion of section 1, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence northeasterly, along a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the southerly portion of section 22, due East of the south-south 1/64 section corner of sections 21 and 22, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence due West, to a point 300 feet from, and on a line perpendicular to the centerline of the Denali Highway in the southerly portion of section 22, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence northerly, along a line 300 feet from, and parallel to, the centerline of the Denali Highway, to a point in the northerly portion of section 22, due East of the north 1/16 section corner of sections 21 and 22, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence due West to a point in the northwesterly portion of section 22, due South of the east-west 1/64 section corner of sections 15 and 22, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence due North, to a point in the center portion of section 15, due East of the 1/4 section corner of sections 15 and 16, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence due West, to a point in the westerly portion of section 15, due South of the west 1/16 section corner of sections 10 and 15, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence due North, to the west 1/16 section corner of sections 10 and 15, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence easterly, between sections 10 and 15, to the corner of sections 10, 11, 14, and 15, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence southerly, between sections 14 and 15, 22 and 23, to a point 300 feet northerly of, and on a line perpendicular to, the centerline of the Denali Highway, between sections 22 and 23, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence easterly on a line 300 feet from, and parallel to the centerline of the Denali Highway, to a point in the northeasterly portion of section 23, due South of the east 1/16 section corner of sections 14 and 23, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence due South to a point 150 feet northerly of, and on a line perpendicular to, the centerline of the Denali Highway, in the northeasterly portion of section 23, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence southeasterly and northeasterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway to a point between sections 13 and 24, T. 15 S., R. 11 W., Fairbanks Meridian;

Thence due West between sections 13 and 24 to a point 1,650 feet due West of the corner of sections 13, 18, 19 and 24, T. 15 S., Rs. 10 and 11 W., Fairbanks Meridian;

Thence due North, approximately 990 feet to a point in the southeasterly portion of section 13, T. 15 S., R. 11 W., Fairbanks Meridian;

Thence due East, to a point on a line 150 feet westerly of, and on a line perpendicular to, the centerline of the Denali Highway, in the southeasterly portion of section 13, T. 15 S., R. 11 W., Fairbanks Meridian;

Thence northerly, easterly, and northwesterly on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point between sections 30 and 31, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence westerly, between sections 30 and 31, 25 and 36, T. 14 S., Rs. 10 and 11 W., to a point at the line of mean high water on the right bank of the Teklanika River, between sections 25 and 36, T. 14 S., R. 11 W., Fairbanks Meridian;

Thence northwesterly, along the right bank of the Teklanika River at the line of mean high water, to a point in the northeasterly portion of section 25, T. 14 S., R. 11 W., due West of the south-north 1/64 section corner of sections 25 and 30, T. 14 S., Rs. 10 and 11 W., Fairbanks Meridian;

Thence due East, to a point 150 feet west of, and on a line perpendicular to the centerline of the Denali Highway, in section 30, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence northerly, southeasterly and northeasterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the northwesterly portion of section 10, due South of the west-west 1/64 section corner of sections 3 and 10, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence due North, to a point in the southwesterly portion of section 3, due East of the south-south 1/64 section corner of sections 3 and 4, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence due East to a point in the southerly portion of section 3, due North of the east-west 1/64 corner of sections 3 and 10, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence due South to a point 150 feet from, and on a line perpendicular to, the centerline of the Denali Highway, in the southwesterly portion of section 3, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence northeasterly on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the northwesterly portion of section 11, due South of the west-west 1/64 section corner of sections 2 and 11, T. 14 S., R. 9 W., Fairbanks Meridian;

Thence due North to a point between sections 2 and 11, T. 14 S., R. 9 W., Fairbanks Meridian;

Thence easterly, between sections 2 and 11, to the east-west 1/64 section corner of sections 2 and 11, T. 14 S., R. 9 W., Fairbanks Meridian;

Thence due South, to a point 150 feet northerly of, and on a line perpendicular to, the centerline of the Denali Highway, near the center of section 11, T. 14 S., R. 9 W., Fairbanks Meridian;

Thence easterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point 330 feet westerly of the center of an unnamed tributary of Jenny Creek, on a line perpendicular to that tributary, in the southeast portion of section 7, T. 14 S., R. 8 W., Fairbanks Meridian;

Thence northwesterly 990 feet on a line 330 feet from, and parallel to the centerline of the unnamed tributary of Jenny Creek, to a point in the central portion of section 7, T. 14 S., R. 8 W., Fairbanks Meridian;

Thence northeasterly 660 feet crossing at right angles the tributary of Jenny Creek to a point on a line perpendicular to the tributary, in the eastern portion of section 7, T. 14 S., R. 8 W., Fairbanks Meridian;

Thence southeasterly on a line 330 feet from and parallel to the centerline of the unnamed tributary of Jenny Creek, to a point 150 feet northerly of, and on a line perpendicular to, the centerline of the Denali Highway, in the southeastern portion of section 7, T. 14 S., R. 8 W., Fairbanks Meridian;

Thence easterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point on the east-west centerline of section 10, T. 14 S., R. 8 W., Fairbanks Meridian;

Thence due West to a point due South of the east-west 1/64 section corner of sections 3 and 10, T. 14 S., R. 8 W., Fairbanks Meridian;

Thence due North to a point due East of the north ⅛ section corner of sections 9 and 10, T. 14 S., R. 8 W., Fairbanks Meridian;

Thence due East to a point due South of the west-east ⅛₄ section corner of sections 3 and 10, T. 14 S., R. 8 W., Fairbanks Meridian;

Thence due South to a point 150 feet northerly of, and on a line perpendicular to, the centerline of the Denali Highway, in the northeasterly portion of section 10, T. 14 S., R. 8 W., Fairbanks Meridian;

Thence easterly on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point between sections 7 and 12, T. 14 S., Rs. 7 and 8 W., Fairbanks Meridian;

Thence northerly between Rs. 7 and 8 W., to the corner of sections 25, 30, 31 and 36, T. 13 S., Rs. 7 and 8 W., Fairbanks Meridian;

Thence easterly, between sections 30 and 31, 29 and 32, 28 and 33, to a point on the westerly right-of-way of the Alaska Railroad, between sections 28 and 33, T. 13 S., R. 7 W., Fairbanks Meridian;

Thence northerly, along the westerly right-of-way of the Alaska Railroad to a point on the Mt. McKinley National Park boundary, as surveyed and described in the official field notes for U.S. Survey 2177, Alaska, located in section 8, T. 13 S., R. 7 W., Fairbanks Meridian;

Thence westerly, along the boundary of Mt. McKinley National Park as surveyed and described in the official field notes for U.S. Survey No. 2177, Alaska, to a point between sections 7 and 12, T. 13 S., Rs. 11 and 12 W., Fairbanks Meridian, the place of beginning.

Note: Along the existing (on December 2, 1980) highway through the park, the wilderness boundary begins 150 feet on either side of the center line of the road and 150 feet back from the edge of all existing (on December 2, 1980) turnouts and parking areas (Report of the Committee on Energy and Natural Resources, United States Senate, Report No. 96-413, p. 216). This information supplements and amends, as necessary, the foregoing descriptions.

South Unit

Beginning at a point on the old Mt. McKinley National Park boundary on Lake Creek, as described in the Act of Congress dated March 19, 1932, and in the official notes for U.S. Survey No. 2177, located in section 29, T. 16 S., R. 17 W., Fairbanks Meridian;

Thence southwesterly, southeasterly and northeasterly, along the old Mt. McKinley National Park boundary, to a point on the westerly right-of-way of the Alaska Railroad, in the northwesterly portion of section 21, T. 17 S., R. 7 W., Fairbanks Meridian;

Thence northerly along the westerly right-of-way of the Alaska Railroad to the point of intersection with the westerly right-of-way of State Highway 3 between Anchorage and Fairbanks in the southeasterly portion of section 15, T. 14 S., R. 7 W., Fairbanks Meridian;

Thence northwesterly along the westerly right-of-way of State Highway 3 between Anchorage and Fairbanks to the point of intersection with the westerly right-of-way of the Alaska Railroad in the northwesterly portion of section 10, T. 14 S., R. 7 W., Fairbanks Meridian;

Thence northwesterly, along the westerly right-of-way of the Alaska Railroad, to a point at the line of mean high water on the left bank of Hines Creek located in section 4, T. 14 S., R. 7 W., Fairbanks Meridian;

Thence southwesterly, along the line of mean high water on the left bank of Hines Creek, to a point between sections 7 and 12, T. 14 S., Rs. 7 and 8 W., Fairbanks Meridian;

Thence northerly, between Rs. 7 and 8 W., to a point 150 feet southerly of, and on a line perpendicular to, the centerline of the Denali Highway, between sections 7 and 12, T. 14 S., Rs. 7 and 8 W., Fairbanks Meridian;

Thence westerly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point at the line of mean high water on the left bank of an unnamed creek near the center of section 11, T. 14 S., R. 9 W., Fairbanks Meridian;

Thence southwesterly and northwesterly, along the left bank of the unnamed creek and the right bank of the Savage River, to a point in section 10 due South of the west-east ⅛₄ section corner of sections 3 and 10, T. 14 S., R. 9 W., Fairbanks Meridian;

Thence due North, to a point 150 feet southwesterly of, and on a line perpendicular to, the centerline of the Denali Highway, in the northerly portion of section 10, T. 14 S., R. 9 W., Fairbanks Meridian;

Thence northwesterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point at the intersection with the east and west centerlines of the NE ¼ of the NE ¼ of section 4 and the NW ¼ of the NW ¼ of section 3, T. 14 S., R. 9 W., Fairbanks Meridian;

Thence due West, to a point in the northeasterly portion of section 4, T. 14 S., R. 9 W., due South of the east ⅛ section corner of sections 4 and 33, Tps. 13 and 14 S., R. 9 W., Fairbanks Meridian;

Thence due North, to a point between sections 4 and 33, Tps. 13 and 14 S., R. 9 W., Fairbanks Meridian;

Thence westerly, between Tps. 13 and 14 S., to a point 150 feet easterly of, and on a line perpendicular to, the centerline of the Denali Highway, between sections 4 and 33, Tps. 13 and 14 S., R. 9 W., Fairbanks Meridian;

Thence southwesterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the northwesterly portion of section 10, due South of the east-west ⅛₄ section corner of sections 3 and 10, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence due South, to a point in the northwesterly portion of section 10, due East of the north ⅛ section corner of sections 9 and 10, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence due West, to a point 150 feet easterly of, and on a line perpendicular to, the centerline of the Denali Highway in the northwesterly portion of section 10, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence southwesterly, northwesterly and southerly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the southerly portion of section 18, 1,650 feet due West of the line between sections 17 and 18, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence due South to a point in the northeasterly portion of section 19, 1,650 feet south of the line between sections 18 and 19 T. 14 S., R. 10 W., Fairbanks Meridian;

Thence due West to a point at the line of mean high water on the right bank of an unnamed creek in the northeasterly portion of section 18, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence northwesterly, along the right bank of the unnamed creek to a point 150 feet easterly of, and on a line perpendicular to, the centerline of the Denali Highway, in the northerly portion of section 18, T. 14 S., R. 10 W., Fairbanks Meridian;

Thence southerly, westerly and southerly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the southeasterly portion of section 13, T. 15 S., R. 11 W., due West of the south ⅛ section corner of sections 13 and 18, T. 15 S., Rs. 10 and 11 W., Fairbanks Meridian;

Thence due East to a point at the line of mean high water on the left bank of Igloo Creek in the southeasterly portion of section 13, T. 15 S., R. 11 W., Fairbanks Meridian;

Thence southerly, along the left bank of Igloo Creek, to a point 150 feet easterly of, and on a line perpendicular to, the centerline of the Denali Highway, in the southeasterly portion of section 13, T. 15 S., R. 11 W., Fairbanks Meridian;

Thence southwesterly and westerly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point between sections 1 and 6, T. 16 S Rs. 11 and 12 W., Fairbanks Meridian;

Thence due South, between sections 1 and 6 to a point at the line of mean high water on the left bank of an unnamed creek, near the center ¼ corner of sections 1 and 6, T. 16 S., Rs. 11 and 12 W., Fairbanks Meridian;

Thence westerly, along the left bank of the unnamed creek to a point in the easterly portion of section 1, T. 16 S., R. 12 W., due North of the east ⅛ section corner of sections 1 and 12, T. 16 S., R. 12 W., Fairbanks Meridian;

Thence due South, to a point in the easterly portion of section 1, T. 16 S., R. 12 W., due West of the north-south ⅛₄ section corner of sections 1 and 6, T. 16 S., Rs. 11 and 12 W., Fairbanks Meridian;

Thence due West to a point 150 feet easterly of, and on a line perpendicular to, the centerline of the Denali Highway, in the southwesterly portion of section 1, T. 16 S., R. 12 W., Fairbanks Meridian;

Thence southerly and southwesterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the northwesterly portion of section 23, due South of the west ⅛ section corner of sections 14 and 23, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence due South 150 feet to a point 300 feet from the centerline of the Denali Highway, in the northwesterly portion of section 23, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence westerly and southerly, on a line 300 feet from, and parallel to, the centerline of the Denali Highway, to a point in the southerly portion of section 22, due West of the south-south ⅛₄ corner of sections 22 and 23, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence due West to a point 150 feet easterly of, and on a line perpendicular to, the centerline of the Denali Highway, in the southerly portion of section 22, T. 16 S., R. 13 W., Fairbanks Meridian;

Thence southerly and southwesterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the westerly portion of section 1, T. 17 S., R. 14 W., 990 feet due East of the line between sections 1 and 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due South, to a point in the southwesterly portion of section 1, due East of the north-south 1/64 section corner of sections 1 and 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due West, to a point 150 feet southerly of, and on a line perpendicular to, the centerline of the Denali Highway, in the southeasterly portion of section 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence southwesterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the southeasterly portion of section 2, 990 feet due West of the line between sections 1 and 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due South, to a point in the southeasterly portion of section 2, due West of the south-south 1/64 section corner of sections 1 and 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due West, 1,980 feet to a point in the southern portion of section 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due North, to a point 150 feet southerly of, and on a line perpendicular to, the centerline of the Denali Highway, in the southerly portion of section 2, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence westerly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the southwesterly portion of section 2, 330 feet east of the line between sections 2 and 3, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due South to a point between sections 2 and 11, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due West, between sections 2 and 11, and 3 and 10, to the east 1/16 section corner of sections 3 and 10, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due North, to a point 150 feet southerly of, and on a line perpendicular to, the centerline of the Denali Highway, in the southeasterly portion of section 3, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence westerly and southwesterly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the northerly portion of section 19, 2,310 feet due West of the line between sections 19 and 20, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due South to a point on the east-west centerline of section 19, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence westerly, 1,320 feet along the east and west centerline of section 19, to a point in the western portion of section 19, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence due North, to a point 150 feet southerly of, and on a line perpendicular to, the centerline of the Denali Highway, in the northwesterly portion of section 19, T. 17 S., R. 14 W., Fairbanks Meridian;

Thence westerly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point in the easterly portion of section 21, due North of the east-east 1/64 section corner, between sections 21 and 28, T. 17 S., R. 15 W., Fairbanks Meridian;

Thence due South to a point at the line of mean high water on the left bank of an unnamed creek in the southeasterly portion of section 21, T. 17 S., R. 15 W., Fairbanks Meridian;

Thence southwesterly and westerly, along the left bank of the unnamed creek to a point in the southwesterly portion of section 21, due North of the east-west 1/64 section corner of sections 21 and 28, T. 17 S., R. 15 W., Fairbanks Meridian;

Thence due North to a point in the westerly portion of section 21, on the east-west centerline of section 21, T. 17 S., R. 15 W., Fairbanks Meridian;

Thence easterly along the east-west centerline of section 21 to a point 150 feet southwesterly of, and on a line perpendicular to, the centerline of the Denali Highway near the center of section 21, T. 17 S., R. 15 W., Fairbanks Meridian;

Thence westerly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point due North of the east 1/16 section corner of sections 15 and 22, T. 17 S., R. 16 W., Fairbanks Meridian;

Thence due South to a point due West of the south-south 1/64 section corner of sections 14 and 15, T. 17 S., R. 16 W., Fairbanks Meridian;

Thence due West to the south-south 1/64 section corner of sections 15 and 16, T. 17 S., R. 16 W., Fairbanks Meridian;

Thence northerly between sections 15 and 16 to a point 150 feet southerly of, and on a line perpendicular to, the centerline of the Denali Highway between sections 15 and 16, T. 17 S., R. 16 W., Fairbanks Meridian;

Thence westerly, on a line 150 feet from, and parallel to, the centerline of the Denali Highway, to a point between sections 8 and 9, T. 17 S., R. 17 W., Fairbanks Meridian;

Thence southerly, between sections 8 and 9, to the corner of sections 8 and 9, 16 and 17, T. 17 S., R. 17 W., Fairbanks Meridian;

Thence westerly, between sections 8 and 17, 7 and 18, to the corner of sections 7, 12, 13 and 18, T. 17 S., Rs. 17 and 18 W., Fairbanks Meridian;

Thence northerly, between Rs. 17 and 18 W., to the closing corner of T. 17 S., Rs. 17 and 18 W., Fairbanks Meridian;

Thence easterly, along the Fourth Standard Parallel South, approximately 200 feet to the standard west 1/16 section corner of section 32, T. 16 S., R. 17 W., Fairbanks Meridian;

Thence northerly, along the north and south centerlines of the west 1/2 of sections 32 and 29 to a point at the centerline of Lake Creek, in the westerly portion of section 29, T. 16 S., R. 17 W., Fairbanks Meridian;

Thence northwesterly and northeasterly, along the centerline of Lake Creek, to a point on the old Mt. McKinley National Park boundary, in section 29, T. 16 S., R. 17 W., Fairbanks Meridian, the place of beginning.

Note: Along the existing (on December 2, 1980) highway through the park, the wilderness boundary begins 150 feet on either side of the center line of the road and 150 feet back from the edge of all existing (on December 2, 1980) turnouts and parking areas (Report of the Committee on Energy and Natural Resources, United States Senate, Report No. 96-413, p. 216). This information supplements and amends, as necessary, the foregoing descriptions.

The following U.S. Geological Survey 1:63,360 Series (Topographic) Quadrangle Maps were used in preparing the legal boundary descriptions for the Denali National Park and Preserve and Denali Wilderness:

Healy, Alaska: (A-5) 1950 mr 1977; (A-6) 1949 mr 1975; (B-4) 1949 mr 1971; (B-5) 1950 mr 1972; (B-6) 1954 mr 1963; (C-4) 1950 mr 1970; (C-5) 1953 mr 1966; (C-6) 1954 mr 1965; (D-4) 1950 lr 1973; (D-5) 1951 mr 1973; (D-6) 1954 mr 1965.

Kantishna River, Alaska: (A-3) 1953 mr 1972; (A-4) 1953 mr 1972.

Mt. McKinley, Alaska: (A-1) 1954; (A-2) 1954; (A-3) 1954; (A-5) 1952 mr 1970; (B-1) 1954 mr 1963; (B-2) 1954 mr 1973; (B-3) 1954 mr 1963; (B-4) 1953 mr 1963; (B-5) 1953 mr 1964; (B-6) 1958; (C-1) 1954 mr 1974; (C-2) 1954 mr 1967; (C-4) 1953 mr 1965; (C-5) 1953 mr 1963; (C-6) 1958; (D-1) 1954 mr 1962; (D-2) 1954 mr 1963; (D-3) 1952 mr 1967; (D-4) 1953 mr 1968; (D-5) 1953 mr 1964.

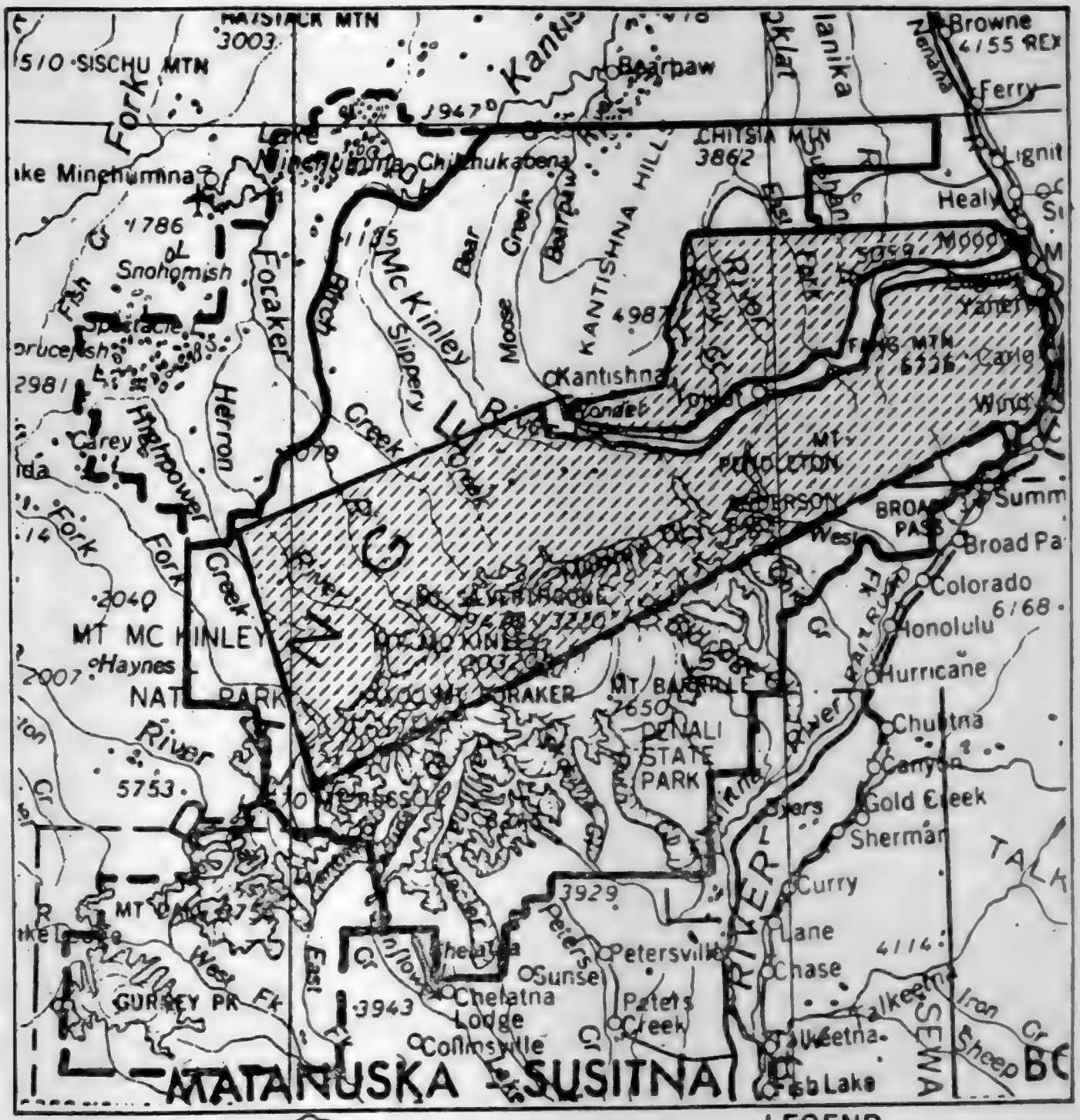
Talkeetna, Alaska: (B-3) 1954 mr 1971; (B-4) 1954 lr 1976; (B-5) 1958; (B-6) 1958; (C-1) 1958 mr 1974; (C-2) 1958 lr 1977; (C-3) 1958; (C-4) 1958 mr 1973; (C-5) 1958; (C-6) 1958; (D-1) 1958 mr 1971; (D-3) 1958 mr 1973; (D-4) 1958 mr 1976; (D-5) 1958.

mr—minor revisions
lr—limited revisions

BILLING CODE 4310-70-F

DENALI NATIONAL PARK AND PRESERVE

PUBLIC LAW 96-487



Gates of the Arctic National Park and Preserve

Section 201(4)(a), Public Law 96–487 (GAAR):

Gates of the Arctic National Park

Gates of the Arctic National Park as generally depicted on a map numbered GAAR–90,011, dated July 1980, consists of approximately seven million fifty-two thousand acres of public lands, as defined by the ANILCA, within the following described boundaries:

Unit Number 1

Beginning at the corner of sections 19, 24, 25 and 30, T. 20 N., Rs. 18,and 19 E., Kateel River Meridian;

Thence easterly, between sections 19 and 30, 20 and 29, 21 and 28, 22 and 27, along a common boundary with the Gates of the Arctic National Preserve, to the summit of a ridge located in sections 22 and 27, T. 20 N., R. 19 E., Kateel River Meridian, approximate elevation 4,000 feet;

Thence southeasterly, northeasterly, easterly and southeasterly, along the crest of a ridge, to a high point on the ridge located in the westerly portion of section 5, T. 19 N., R. 20 E., Kateel River Meridian, approximate elevation 2,900 feet;

Thence on an approximate forward bearing of S. 14° E., to the summit of a mountain located in section 17, T. 19 N., R. 20 E., Kateel River Meridian, approximate elevation 2,577 feet;

"Thence on an approximate forward bearing of S. 14° E., to the corner of sections 20, 21, 28 and 29, T. 19 N., R. 20 E., Kateel River Meridian;

"Thence on an approximate forward bearing of east to a point on the left bank of the Kobuk River at the center of the confluence of the outlet stream from Walker Lake with the Kobuk River, in section 19, T. 19 N., R. 21 E., Kateel River Meridian;

Thence northeasterly, along the left bank of the Kobuk River and Kichatnakaka Creek to a point between sections 1 and 36, Tps. 19 and 20 N., R. 22 E., Kateel River Meridian;

Thence easterly between Tps. 19 and 20 N., to the corner of Tps. 19 and 20 N., Rs. 22 and 23 E., Kateel River Meridian;

Thence easterly, departing from the common boundary with the Gates of the Arctic National Preserve, between Tps. 19 and 20 N., to the corner of sections 3, 4, 33 and 34, Tps. 19 and 20 N., R. 23 E., Kateel River Meridian;

Thence northerly between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, to the closing corner of sections 3 and 4, T. 20 N., R. 23 E., Kateel River Meridian;

Thence easterly, along the Fifth Standard Parallel North, to the standard corner of T. 21 N., Rs. 23 and 24 E., Kateel River Meridian;

Thence northerly, between Rs. 23 and 24 E., to the corner of Tps. 21 and 22 N., Rs. 23 and 24 E., Kateel River Meridian;

Thence easterly, between Tps. 21 and 22 N., to the corner of sections 3, 4, 33 and 34, Tps. 21 and 22 N., R. 25 E., Kateel River Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, to the corner of sections 3, 4, 33 and 34, Tps. 22 and 23 N., R. 25 E., Kateel River Meridian;

Thence easterly, between Tps. 22 and 23 N., to the corner of Tps. 22 and 23 N., R. 26 E., on the boundary of the Kateel River Meridian;

Thence southerly, between Kateel River and Fairbanks Meridians, to the corner of sections 18 and 19, T. 29 N., R. 24 W., Fairbanks Meridian;

Thence easterly, between sections 18 and 19, 17 and 20, 16 and 21, to the corner of sections 15, 16, 21 and 22, T. 29 N., R. 24 W., Fairbanks Meridian;

Thence northerly, between sections 15 and 16, 9 and 10, 3 and 4, 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, to the corner of sections 3, 4, 33 and 34, Tps. 30 and 31 N., R. 24 W., Fairbanks Meridian;

Thence westerly, between Tps. 30 and 31 N., to the corner of Tps. 30 and 31 N., R. 24 W., on the boundary of the Fairbanks Meridian;

Thence northerly, between Fairbanks and Kateel River Meridians, to the corner of Tps. 31 and 32 N., R. 24 W., Fairbanks Meridian;

Thence easterly, between Tps. 31 and 32 N., to the corner of Tps. 31 and 32 N., Rs. 18 and 19 W., Fairbanks Meridian;

Thence northerly, between Rs. 18 and 19 W., to the closing corner of T. 32 N., Rs. 18 and 19 W., Fairbanks Meridian;

Thence easterly, along the Eighth Standard Parallel North, to the closing corner of T. 32 N., Rs. 17 and 18 W., Fairbanks Meridian;

Thence southerly, between Rs. 17 and 18 W., to the corner of Tps. 31 and 32 N., Rs. 17 and 18 W., Fairbanks Meridian;

Thence easterly, between Tps. 31 and 32 N., to the corner of Tps. 31 and 32 N., Rs. 16 and 17 W., Fairbanks Meridian;

Thence southerly, between Rs. 16 and 17 W., to the corner of Tps. 29 and 30 N., Rs. 16 and 17 W., Fairbanks Meridian;

Thence easterly, between Tps. 29 and 30 N., to the corner of Tps. 29 and 30 N., Rs. 15 and 16 W., Fairbanks Meridian;

Thence southerly, between Rs. 15 and 16 W., to the standard corner of T. 29 N., Rs. 15 and 16 W., Fairbanks Meridian;

Thence westerly, along the Seventh Standard Parallel North, to the closing corner of T. 29 N., Rs. 16 and 17 W., Fairbanks Meridian;

"Thence southerly, between Rs. 16 and 17 W., to the meander corner of sections 31 and 36 at the line of mean high water on the right bank of the most northerly interconnecting waterway of the Koyukuk River, T. 26 N., Rs. 16 and 17 W., Fairbanks Meridian;

"Thence northeasterly, along the line of mean high water on the right bank of the most northerly interconnecting waterways of the Middle Fork of the Koyukuk River, closing the mouth of the North Fork Koyukuk River, to the meander corner of sections 13 and 14, T. 26 N., R. 14 W., Fairbanks Meridian;

Thence northerly, between sections 13 and 14, to the north 1/16 section corner of sections 13 and 14, T. 26 N., R. 14 W., Fairbanks Meridian;

Thence easterly, along the east and west centerline of the northwest ¼ of section 13, to the northwest 1/16 section corner of section 13, T. 26 N., R. 14 W., Fairbanks Meridian;

Thence northerly, along the north and south centerlines of the northwest ¼ of section 13, and the southwest ¼ of section 12, to the center-west 1/16 section corner of section 12, T. 26 N., R. 14 W., Fairbanks Meridian;

Thence easterly, on the east and west centerline of section 12, to the center ¼ section corner of section 12, T. 26 N., R. 14 W., Fairbanks Meridian;

Thence northerly, along the north and south centerlines of sections 12, 1 and 36, to the ¼ section corner of sections 25 and 36, T. 27 N., R. 14 W., Fairbanks Meridian;

Thence easterly, between sections 25 and 36, to the corner of sections 25, 30, 31 and 36, T. 27 N., Rs. 13 and 14 W., Fairbanks Meridian;

Thence northerly, between Rs. 13 and 14 W., to the corner of sections 19, 24, 25 and 30, T. 27 N., Rs. 13 and 14 W., Fairbanks Meridian;

Thence easterly, between sections 19 and 30, to the corner of sections 19, 20, 29 and 30, T. 27 N., R. 13 W., Fairbanks Meridian;

Thence on an approximate forward bearing of N. 30° E., to the summit of a low point on Twelvemile Mountain located in the southwest portion of section 20, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation 2,200 feet;

Thence on an approximate forward bearing of N. 9° E., to a summit of Twelvemile Mountain located in the westerly portion of section 20, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation 2,950 feet;

Thence on an approximate forward bearing of N. 3° E., to a summit of Twelvemile Mountain located in the northwesterly portion of section 20, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation 3,100 feet;

Thence on an approximate forward bearing of N. 60° E., to the summit of Twelvemile Mountain located in the northerly portion of section 20, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation 3,180 feet;

Thence on an approximate forward bearing of N. 36° E., to a summit of Twelvemile Mountain located in the southeasterly portion of section 17, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation 3,160 feet;

Thence on an approximate forward bearing of N. 6° E., to the summit of a low point on Twelvemile Mountain located in the easterly portion of section 17, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation 2,000 feet;

Thence on an approximate forward bearing of N. 48° W., to the center-north 1/16 section corner of section 17, T. 27 N., R. 13 W., Fairbanks Meridian;

Thence northerly, on the north and south centerline of section 17, to the ¼ section corner of sections 8 and 17, T. 27 N., R. 13 W., Fairbanks Meridian;

Thence westerly, between sections 8 and 17, 7 and 18, 12 and 13, to the corner of sections 11, 12, 13 and 14, T. 27 N., R. 14 W., Fairbanks Meridian;

Thence northerly, between sections 11 and 12, to the ¼ section corner of sections 11 and 12, T. 27 N., R. 14 W., Fairbanks Meridian;

Thence on an approximate forward bearing of N. 25° W., to the summit of a mountain

located in the southerly portion of section 2, T. 27 N., R. 14 W., Fairbanks Meridian, approximate elevation 3,125 feet;

Thence northerly and northeasterly, along the crest of a ridge between the drainages of the North and Middle Forks of the Koyukuk River, to the summit of a mountain located in section 8, T. 30 N., R. 12 W., Fairbanks Meridian, approximate elevation 3,150 feet;

Thence on an approximate forward bearing of N. 27° E., to the ¼ section corner of sections 5 and 8, T. 30 N., R. 12 W., Fairbanks Meridian;

Thence northerly, on the north and south centerlines of sections 5 and 32, to the center ¼ section corner of section 32, T. 31 N., R. 12 W., Fairbanks Meridian;

Thence on an approximate forward bearing of N. 16° E., to the summit of a mountain located in the southerly portion of section 29, T. 31 N., R. 12 W., Fairbanks Meridian, approximate elevation 3,020 feet;

Thence northeasterly, along the crest of a ridge between the drainages of Washington Creek, Canyon Creek, Glacier River and the Middle Fork of the Koyukuk River, to the summit of a mountain located in the southerly portion of section 2, T. 31 N., R. 12 W., Fairbanks Meridian, approximate elevation 3,150 feet;

Thence on an approximate forward bearing of S. 69° E., to the junction of Hammond River and Canyon Creek located in the easterly portion of section 12, T. 31 N., R. 12 W., Fairbanks Meridian;

Thence on an approximate forward bearing of S. 82° E., to the summit of a mountain located in the easterly portion of section 7, T. 31 N., R. 11 W., Fairbanks Meridian, approximate elevation 2,738 feet;

Thence southeasterly and northerly, along the crest of a ridge, to the summit of a mountain located in the northerly portion of section 11, T. 31 N., R. 11 W., Fairbanks Meridian, approximate elevation 3,065 feet;

Thence on an approximate forward bearing of N. 32° E., to the summit of a mountain located in section 36, T. 32 N., R. 11 W., Fairbanks Meridian, approximate elevation 3,033 feet;

Thence northerly, along the crest of a ridge between the drainages of Vi Creek, Hammond River, Kalhabuk Creek and the Middle Fork of the Koyukuk River, to the northerly point of the crest of a ridge located in section 5, T. 33 N., R. 10 W., Fairbanks Meridian, approximate elevation 4,100 feet;

Thence on an approximate forward bearing of N. 2° W., on a line passing at midpoint between two lakes in section 32, to the crest of a ridge located near the center of section 29, T. 34 N., R. 10 W., Fairbanks Meridian, approximate elevation 3,200 feet;

Thence northwesterly, northerly and northeasterly along the crest of a ridge between drainages of Dietrich and Hammond Rivers, to the summit of a mountain located in the northwesterly portion of section 31, T. 35 N., R. 10 W., Fairbanks Meridian, approximate elevation 3,110 feet;

Thence on an approximate forward bearing of N. 9° E., to the summit of a mountain located in sections 18 and 19, T. 35 N., R. 10 W., Fairbanks Meridian, approximate elevation 4,010 feet;

Thence northerly, along the crest of a ridge between the Dietrich River drainage and Big Jim and Trembley Creeks, to the summit of a mountain located in the southwesterly portion of section 29, T. 36 N., R. 10 W., Fairbanks Meridian, approximate elevation 4,130 feet;

Thence on an approximate forward bearing of N. 8° E., to the summit of a mountain located near the center of section 17, T. 36 N., R. 10 W., Fairbanks Meridian, approximate elevation 4,230 feet;

Thence northerly, along the crest of a ridge, between the drainages of Dietrich River and Kuyuktuvuk Creek, to a point of intersection with the Continental Divide, located near the center of section 31, T. 15 S., R. 10 E., Umiat Meridian, approximate elevation 6,000 feet;

Thence southwesterly, along the Continental Divide, along a common boundary with the Gates of the Arctic National Preserve, to a point on a ridge where the Continental Divide bears southerly, located in the northerly portion of section 2, T. 16 S., R. 9 E., Umiat Meridian, approximate elevation 6,300;

Thence northwesterly, along the crest of a ridge, to a point between sections 12 and 13, T. 15 S., R. 8 E., Umiat Meridian, approximate elevation 4,650 feet;

Thence on an approximate forward bearing of N. 65° W., to the most southerly point on the shore of an unnamed lake located in the Oolah Valley in section 11, T. 15 S., R. 8 E., Umiat Meridian;

Thence on an approximate forward bearing of N. 59° W., to the summit of a mountain located in section 4, T. 15 S., R. 8 E., Umiat Meridian, approximate elevation 6,323 feet;

Thence northwesterly, along the crest of a ridge between the drainages of Itkillik and Nanushuk Rivers, to the summit of a mountain located near the center of section 26, T. 14 S., R. 6 E., Umiat Meridian, approximate elevation 7,116 feet;

Thence on an approximate forward bearing of N. 70° W., to an easterly summit of Marshmallow Mountain located in the easterly portion of section 20, T. 14 S., R. 6 E., Umiat Meridian, approximate elevation 6,570 feet;

Thence westerly, along the crest of Marshmallow Mountain, to a westerly summit of Marshmallow Mountain located in the northerly portion of section 24, T. 14 S., R. 5 E., Umiat Meridian, approximate elevation 6,972 feet.

Thence on an approximate forward bearing of S. 71° W., to the easterly point of the summit of a mountain located in the northerly portion of section 28, T. 14 S., R. 5 E., Umiat Meridian, approximate elevation 6,500 feet.

Thence southwesterly, northwesterly, and northeasterly, along the crest of a ridge, between the Alapah Creek, Anaktuvuk River, Itikmalakpak Creek and the Kayak Creek drainages and northwesterly on a spur ridge, to a point between sections 1 and 36, Tps. 13 and 14 S., R. 4 E., Umiat Meridian;

Thence westerly, departing from the common boundary with the Gates of the Arctic National Preserve, between Tps. 13 and 14 S., to the corner of Tps. 13 and 14 S., Rs. 1 and 2 E., Umiat Meridian;

Thence northerly, between Rs. 1 and 2 E., to the corner of sections 25, 30, 31 and 36, T. 13 S., Rs. 1 and 2 E., Umiat Meridian;

Thence westerly, between sections 25 and 36, 26 and 35, 27 and 34, 28 and 33, 29 and 32, 30 and 31, 25 and 36, 26 and 35, 27 and 34, 28 and 33, 29 and 32, 30 and 31, to the corner of sections 25, 30, 31 and 36, T. 13 S., Rs. 1 and 2 W., Umiat Meridian;

Thence northerly, between Rs. 1 and 2 W., to the closing corner of T. 13 S., Rs. 1 and 2 W., Umiat Meridian;

Thence westerly, along the Third Standard Parallel South, to the standard corner of T. 12 S., Rs. 1 and 2 W., Umiat Meridian;

Thence northerly, between Rs. 1 and 2 W., to the corner of sections 13, 18, 19 and 24, T. 12 S., Rs. 1 and 2 W., Umiat Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 12 S., Rs. 2 and 3 W., Umiat Meridian;

Thence southerly, between Rs. 2 and 3 W., to the corner of sections 25, 30, 31 and 36, T. 12 S., Rs. 2 and 3 W., Umiat Meridian;

Thence westerly, between sections 25 and 36, to the corner of sections 25, 26, 35 and 36, T. 12 S., R. 3 W., Umiat Meridian;

Thence southerly, between sections 35 and 36 to the standard corner of sections 35 and 36, T. 12 S., R. 3 W., Umiat Meridian;

Thence westerly, along the Third Standard Parallel South, to the standard corner of sections 34 and 35, T. 12 S., R. 4 W., Umiat Meridian;

Thence northerly, between sections 34 and 35, 26 and 27, 22 and 23, to the corner of sections 14, 15, 22 and 23, T. 12 S., R. 4 W., Umiat Meridian;

Thence westerly, between sections 15 and 22, 16 and 21, 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 12 S., Rs. 4 and 5 W., Umiat Meridian;

Thence northerly, between Rs. 4 and 5 W., to the corner of sections 13, 18, 19 and 24, T. 11 S., Rs. 4 and 5 W., Umiat Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, to the corner of sections 15, 16, 21 and 22, T. 11 S., R. 7 W., Umiat Meridian;

Thence southerly, between sections 21 and 22, 27 and 28, 33 and 34, to the corner of sections 3, 4, 33 and 34, Tps. 11 and 12 S., R. 7 W., Umiat Meridian;

Thence westerly, between Tps. 11 and 12 S., to the corner of Tps. 11 and 12 S., Rs. 7 and 8 W., Umiat Meridian;

Thence southerly, between Rs. 7 and 8 W., to the corner of sections 19, 24, 25 and 30, T. 12 S., Rs. 7 and 8 W., Umiat Meridian;

Thence westerly, between sections 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, to the corner of sections 19, 24, 25 and 30, T. 12 S., Rs. 10 and 11 W., Umiat Meridian;

Thence southerly, between Rs. 10 and 11 W., to the corner of T. 12 S., Rs. 10 and 11 W., on the boundary of the Umiat Meridian;

Thence westerly, between the Umiat and Kateel River Meridians, to the closing corner of T. 34 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence southerly, between Rs. 18 and 19 E., to the corner of sections 19, 24, 25 and 30, T. 34 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence westerly, between sections 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, to the corner of sections 19, 24, 25 and 30, T. 34 N., Rs. 15 and 16 E., Kateel River Meridian;

Thence northerly, between Rs. 15 and 16 E., to the closing corner of T. 34 N., Rs. 15 and 16 E., on the boundary of the Kateel River Meridian;

Thence westerly, between the Kateel River and Umiat Meridians, to a point of intersection between the western portion of section 10, T. 34 N., R. 14 E., Kateel River Meridian and section 27, T. 12 S., R. 16 W., Umiat Meridian, with a line projected due north of a peak located in the western portion of section 28, T. 30 N., R. 14 E., Kateel River Meridian, approximate elevation 4,640 feet;

Thence due south to a peak located along the crest of a divide between the drainages of the Nigu and Noatak Rivers in the western portion of section 28, T. 30 N., R. 14 E., Kateel River Meridian, approximate elevation 4,640 feet;

Thence westerly, northerly and northwesterly, along the crest of a divide between the drainages of the Nigu and Noatak Rivers to a summit of a mountain located on a ridge at the junction with a spur ridge located in section 3, T. 30 N., R. 13 E., Kateel River Meridian, approximate elevation 3,250 feet;

Thence southwesterly and westerly, along the crest of a ridge between the drainages of Midas Creek and Mountain Creek, along a common boundary with the Noatak National Preserve, to the summit of a mountain located in section 21, T. 30 N., R. 12 E., Kateel River Meridian, approximate elevation 4,021 feet;

Thence on an approximate forward bearing of S. 87° W., to the summit of a hill located in section 24, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 3,473 feet;

Thence northwesterly, along the crest of a ridge to the summit of a mountain located in sections 14 and 15, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 4,100 feet;

Thence on an approximate forward bearing of S. 28° W., to the summit of a mountain located in section 22, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 3,202 feet;

Thence southwesterly, along the crest of a ridge between Douglas Creek and a tributary of the Noatak River, to the summit of a mountain, located in sections 12 and 13, T. 29 N., R. 10 E., Kateel River Meridian, approximate elevation 3,657 feet;

Thence due south, to a point on the right bank of Douglas Creek located in section 24, T. 29 N., R. 10 E., Kateel River Meridian;

Thence southerly, along the right bank of Douglas Creek, to a point on the right bank of Douglas Creek at the junction of the Noatak River and Douglas Creek located in the northern portion of section 2, T. 28 N., R. 10 E., Kateel River Meridian;

Thence on an approximate forward bearing of S. 24° W., to the summit of a mountain located in section 22, T. 28 N., R. 10 E., Kateel River Meridian, approximate elevation 3,439 feet;

Thence on an approximate forward bearing of S. 51° W., to the summit of a small mountain located in sections 28 and 29, T. 28 N., R. 10 E., Kateel River Meridian, approximate elevation 2,441 feet;

Thence easterly, southerly and westerly, along the divide between the drainages of Kavachurak Creek and Tunukuchiak Creek and Ambler River, to the summit of a mountain located in section 22, T. 26 N., R. 9 E., Kateel River Meridian, approximate elevation 4,298 feet;

Thence northerly, along the crest of the spur ridge to the summit of a mountain located in section 15, T. 26 N., R. 9 E., Kateel River Meridian, approximate elevation 3,980 feet;

Thence on an approximate forward bearing of N. 37° W., to the summit of a mountain located in section 5, T. 26 N., R. 9 E., Kateel River Meridian, approximate elevation 4,625 feet;

Thence southwesterly, along the divide between the drainages of the Ambler and Noatak Rivers, to the summit of a mountain located in sections 23 and 24, T. 26 N., R. 8 E., Kateel River Meridian, approximate elevation 4,508 feet;

Thence on an approximate forward bearing of S. 11° W., to the summit of a mountain located in section 35, T. 26 N., R. 8 E., Kateel River Meridian, approximate elevation 4,720 feet;

Thence easterly, southerly, easterly and southerly along the divide between the Ambler and Imelyak Rivers to the summit of a ridge located in the southern half of section 19, T. 25 N., R. 9 E., Kateel River Meridian, approximate elevation 3,600 feet;

Thence southerly, departing from the common boundary with the Noatak National Preserve, along the divide between tributaries of the Ambler River, to a point between sections 9 and 16, T. 24 N., R. 9 E., Kateel River Meridian, approximate elevation 2,800 feet;

Thence easterly, between sections 9 and 16, 10 and 15, 11 and 14, to the crest of a ridge between sections 11 and 14, T. 24 N., R. 9 E., Kateel River Meridian, approximate elevation 2,600 feet;

Thence northeasterly, along the crest of a ridge between the drainages of tributaries of the Ambler River to the summit of a mountain located in the northwesterly portion of section 4, T. 24 N., R. 10 E., Kateel River Meridian, approximate elevation 3,609 feet;

Thence on an approximate forward bearing of east, to the summit of a mountain located in the northwesterly portion of section 2, T. 24 N., R. 10 E., Kateel River Meridian, approximate elevation 4,499 feet;

Thence northeasterly, along the crest of a ridge between the drainages of Ulaneak Creek, Ambler and Ipnelivik Rivers, to the summit of a mountain located in section 27, T. 25 N., R. 11 E., Kateel River Meridian, approximate elevation 5,040 feet;

Thence on an approximate forward bearing of S. 28° E., to the summit of a mountain located in sections 34 and 35, T. 25 N., R. 11 E., Kateel River Meridian, approximate elevation 4,600 feet;

Thence southerly, along the crest of a ridge between the drainages of Ipnelivik River and Ulaneak Creek, to the summit of a mountain located in sections 25 and 26, T. 24 N., R. 11 E., Kateel River Meridian, approximate elevation 4,600 feet;

Thence on an approximate forward bearing of S. 60° E., to the summit of a mountain located in section 31, T. 24 N., R. 12 E., Kateel River Meridian, approximate elevation 5,076 feet;

Thence southerly, easterly and northeasterly, along the crest of a ridge, to the summit of a mountain between sections 5 and 32, Tps. 23 and 24 N., R. 12 E., Kateel River Meridian, approximate elevation 4,500 feet;

Thence easterly, between Tps. 23 and 24 N., to the summit of a mountain between sections 4 and 33, Tps. 23 and 24 N., R. 12 E., Kateel River Meridian, approximate elevation 4,926 feet;

Thence southerly, along the crest of a ridge, between the drainages of Kogoluktuk River, to the summit of a mountain located in sections 34 and 35, T. 23 N., R. 12 E., Kateel River Meridian, approximate elevation 4,160 feet;

Thence on an approximate forward bearing of S. 20° E., to the summit of a mountain located in section 11, T. 22 N., R. 12 E., Kateel River Meridian, approximate elevation 3,292 feet;

Thence southerly, easterly and southeasterly, along the crest of a ridge between the drainages of Kogoluktuk River and Ivik Creek, to a point between sections 2 and 35, Tps. 21 and 22 N., R. 13 E., Kateel River Meridian;

Thence easterly, between Tps. 21 and 22 N., to the corner of Tps. 21 and 22 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence southerly, between Rs. 18 and 19 E., to the standard corner of T. 21 N., Rs 18 and 19 E., Kateel River Meridian;

Thence westerly, along the Fifth Standard Parallel North, to the closing corner of T. 20 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence southerly, between Rs. 18 and 19 E., to the corner of sections 19, 24, 25 and 30, T. 20 N., Rs. 18 and 19 E., Kateel River Meridian, the place of beginning.

* Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

Unit Number 2

Beginning at the corner of sections 13, 18, 19 and 24, T. 11 S., Rs. 2 and 3 W., Umiat Meridian;

Thence northerly, between Rs. 2 and 3 W., to the corner of Tps. 9 and 10 S., Rs. 2 and 3 W., Umiat Meridian;

Thence westerly, between Tps. 9 and 10 S., to the corner of Tps. 9 and 10 S., Rs. 3 and 4 W., Umiat Meridian;

Thence northerly, between Rs. 3 and 4 W., to the corner of sections 13, 18, 19 and 24, T. 9 S., Rs. 3 and 4 W., Umiat Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, to the corner of sections 15, 16, 21 and 22, T. 9 S., R. 5 W., Umiat Meridian;

Thence southerly, between sections 21 and 22, 27 and 28, 33 and 34, 3 and 4, 9 and 10, 15 and 16, to the corner of sections 15, 16, 21 and 22, T. 10 S., R. 5 W., Umiat Meridian;

Thence easterly, between sections 15 and 22, 14 and 23, 13 and 24, to the corner of

sections 13, 18, 19 and 24, T. 10 S., Rs. 4 and 5 W., Umiat Meridian;

Thence southerly, between Rs. 4 and 5 W., to the corner of Tps. 10 and 11 S., Rs. 4 and 5 W., Umiat Meridian;

Thence easterly, between Tps. 10 and 11 S., to the corner of sections 4, 5, 32 and 33, Tps. 10 and 11 S., R. 4 W., Umiat Meridian;

Thence southerly, between sections 4 and 5, 8 and 9, 16 and 17, to the corner of sections 16, 17, 20 and 21, T. 11 S., R. 4 W., Umiat Meridian;

Thence easterly, between sections 16 and 21, 15 and 22, 14 and 23, 13 and 24, 18 and 19, 17 and 20, 16 and 21, 15 and 22, 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 11 S., Rs. 2 and 3 W., Umiat Meridian, the place of beginning.

Gates of the Arctic National Preserve

Gates of the Arctic National Preserve as generally depicted on a map numbered GAAR–90,011, dated July 1980, consists of approximately nine hundred thousand acres of public lands, as defined by the ANILCA, within the following described boundaries:

Unit Number 1

Beginning at the corner of sections 19, 24, 25 and 30, T. 20 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence easterly, between sections 19 and 30, 20 and 29, 21 and 28, 22 and 27, along a common boundary with the Gates of the Arctic National Park, to the summit of a ridge located in sections 22 and 27, T. 20 N., R. 19 E., Kateel River Meridian, approximate elevation 4,000 feet;

Thence southeasterly, northeasterly, easterly and southeasterly along the crest of a ridge, to a high point on a ridge located in the westerly portion of section 5, T. 19 N., R. 20 E., Kateel River Meridian, approximate elevation 2,900 feet;

*Thence on an approximate forward bearing of S. 14° E., to the summit of a mountain located in section 17, T. 19 N., R. 20 E., Kateel River Meridian, approximate elevation 2,577 feet;

*Thence on an approximate forward bearing of S. 14° E., to the corner of sections 20, 21, 28 and 29, T. 19 N., R. 20 E., Kateel River Meridian;

*Thence on an approximate forward bearing of east to a point on the left bank of the Kobuk River at the center of the confluence of the outlet stream from Walker Lake with the Kobuk River, in section 19, T. 19 N., R. 21 E., Kateel River Meridian;

Thence northeasterly, along the left bank of the Kobuk River and Kichaiakaka Creek, to a point between sections 1 and 36, Tps. 19 and 20 N., R. 22 E., Kateel River Meridian;

Thence easterly, between Tps. 19 and 20 N., to the corner of Tps. 19 and 20 N., Rs. 22 and 23 E., Kateel River Meridian;

Thence southerly, departing from the common boundary with the Gates of the Arctic National Park, between Rs. 22 and 23 E., to the corner of Tps. 17 and 18 N., Rs. 22 and 23 E., Kateel River Meridian;

Thence westerly, between Tps. 17 and 18 N., to the corner of Tps. 17 and 18 N., Rs. 20 and 21 E., Kateel River Meridian;

Thence southerly, between Rs. 20 and 21 E., to the standard corner of T. 17 N., Rs. 20 and 21 E., Kateel River Meridian;

Thence westerly, along the Fourth Standard Parallel North, to the closing corner of T. 16 N., Rs. 20 and 21 E., Kateel River Meridian;

Thence southerly, between Rs. 20 and 21 E., to the corner of Tps. 14 and 15 N., Rs. 20 and 21 E., Kateel River Meridian;

Thence westerly, between Tps. 14 and 15 N., to the corner of Tps. 14 and 15 N., Rs. 14 and 15 E., Kateel River Meridian;

Thence northerly, between Rs. 14 and 15 E., to the closing corner of T. 16 N., Rs. 14 and 15 E., Kateel River Meridian;

Thence westerly, along the Fourth Standard Parallel North, to the standard corner of T. 17 N., Rs. 13 and 14 E., Kateel River Meridian;

Thence northerly, between Rs. 13 and 14 E., to the corner of Tps. 17 and 18 N., Rs. 13 and 14 E., Kateel River Meridian;

Thence easterly, between Tps. 17 and 18 N., to the corner of Tps. 17 and 18 N., Rs. 14 and 15 E., Kateel River Meridian;

Thence northerly, between Rs. 14 and 15 E., to the corner of Tps. 18 and 19 N., Rs. 14 and 15 E., Kateel River Meridian;

Thence easterly, between Tps. 18 and 19 N., to the corner of Tps. 18 and 19 N., Rs. 15 and 16 E., Kateel River Meridian;

Thence southerly, between Rs. 15 and 16 E., to the corner of Tps. 17 and 18 N., Rs. 15 and 16 E., Kateel River Meridian;

Thence easterly, between Tps. 17 and 18 N., to the corner of Tps. 17 and 18 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence northerly between Rs. 18 and 19 E., to the corner of sections 19, 24, 25 and 30, T. 20 N., Rs. 18 and 19 E., Kateel River Meridian, the place of beginning.

Unit Number 2

Beginning at a point on the Continental Divide, at the junction of ridges, located near the center of section 31, T. 15 S., R. 10 E., Umiat Meridian, approximate elevation 6,000 feet;

Thence southwesterly, along the Continental Divide, along a common boundary with the Gates of the Arctic National Park, to a point on a ridge where the Continental Divide bears southerly, located in the northerly portion of section 2, T. 16 S., R. 9 E., Umiat Meridian, approximate elevation 6,300 feet;

Thence northwesterly, along the crest of a ridge to a point between sections 12 and 13, T. 15 S., R. 8 E., Umiat Meridian, approximate elevation 3,650 feet;

Thence on an approximate forward bearing of N. 65° W., to the most southerly point on the shore of an unnamed lake located in the Oolah Valley in Section 11, T. 15 S., R. 8 E., Umiat Meridian;

Thence on an approximate forward bearing of N. 59° W., to the summit of a mountain located in section 4, T. 15 S., R. 8 E., Umiat Meridian, approximate elevation 6,323 feet;

Thence northwesterly, along the crest of a ridge between the drainages of Itkillik and Nanushuk Rivers, to the summit of a mountain located near the center of section 26, T. 14 S., R. 6 E., Umiat Meridian, approximate elevation 7,118 feet;

Thence on an approximate forward bearing of N. 70° W., to an easterly summit of Marshmallow Mountain located in the easterly portion of section 20, T. 14 S., R. 6 E., Umiat Meridian, approximate elevation 6,570 feet;

Thence westerly, along the crest of Marshmallow Mountain to a westerly summit of Marshmallow Mountain located in the northerly portion of section 24, T. 14 S., R. 5 E., Umiat Meridian, approximate elevation 6,972 feet;

Thence on an approximate forward bearing of S. 71° W., to the easterly point of the summit of a mountain located in the northerly portion of section 28, T. 14 S., R. 5 E., Umiat Meridian, approximate elevation 6,500 feet;

Thence southwesterly, northwesterly, and northeasterly, along the crest of a ridge between the Alapah Creek, Anaktuvuk River, and Itikmalakpak Creek and the Kayak Creek drainages and northwesterly on a spur ridge, to a point between sections 1 and 36, Tps. 13 and 14 S., R. 4 E., Umiat Meridian;

Thence easterly, departing from the common boundary with the Gates of the Arctic National Park, between Tps. 13 and 14 S., to the corner of Tps. 13 and 14 S., Rs. 4 and 5 E., Umiat Meridian;

Thence northerly, between Rs. 4 and 5 E., to the corner of sections 13, 18, 19 and 24, T. 13 S., Rs. 4 and 5 E., Umiat Meridian;

Thence easterly, between sections 18 and 19, 17 and 20, to the corner of sections 16, 17, 20 and 21, T. 13 S., R. 5 E., Umiat Meridian;

Thence northerly, between sections 16 and 17, 8 and 9, 4 and 5, to the closing corner of sections 4 and 5, T. 13 S., R. 5 E., Umiat Meridian;

Thence easterly, along the Third Standard Parallel South, to the closing corner of T. 13 S., Rs. 5 and 6 E., Umiat Meridian;

Thence southerly, between Rs. 5 and 6 E., to the corner of sections 13, 18, 19 and 24, T. 13 S., Rs. 5 and 6 E., Umiat Meridian;

Thence easterly, between sections 18 and 19, 17 and 20, 16 and 21, 15 and 22, 14 and 23, 13 and 24, 18 and 19, 17 and 20, 16 and 21, 15 and 22, 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 13 S., Rs. 7 and 8 E., Umiat Meridian;

Thence northerly, between Rs. 7 and 8 E., to the closing corner of T. 13 S., Rs. 7 and 8 E., Umiat Meridian;

Thence easterly, along the Third Standard Parallel South, to the standard corner of T. 12 S., Rs. 8 and 9 E., Umiat Meridian;

Thence northerly, between Rs. 8 and 9 E., to the corner of Tps. 11 and 12 S., Rs. 8 and 9 E., Umiat Meridian;

Thence easterly, between Tps. 11 and 12 S., to a point on the crest of a ridge between sections 6 and 31, Tps. 11 and 12 S., R. 11 E., Umiat Meridian, approximate elevation 4,650 feet;

Thence southerly, along the crest of a ridge between the drainages of Atigun and Itkillik Rivers, to the summit of a mountain located in the southerly portion of section 18, T. 12 S., R. 11 E., Umiat Meridian, approximate elevation 5,156 feet;

Thence on an approximate forward bearing of S. 35° E., to the summit of a mountain located near the center of section 20, T. 12 S.,

R. 11 E., Umiat Meridian, approximate elevation 4,950 feet;

Thence southeasterly and southwesterly, between the drainages of Atigun and Itkillik Rivers, to the point of intersection with the Continental Divide located at a high point on the ridge in the easterly portion of section 20, T. 15 S., R. 10 E., Umiat Meridian, approximate elevation 6,480 feet;

Thence southwesterly, along the Continental Divide, to a high point on the Continental Divide at the junction of ridges located near the center of section 31, T. 15 S., R. 10 E., Umiat Meridian, approximate elevation 6,000 feet, the place of beginning.

Units of the National Wilderness Preservation System Within the Gates of the Arctic National Park

Section 701 (2), Public Law 96–487 (ANILCA):

Gates of the Arctic Wilderness

The Gates of the Arctic Wilderness as generally depicted on a map numbered GAAR–80,011, dated July 1980, consists of approximately seven million and fifty-two thousand acres of public lands, as defined in the ANILCA, within the following described boundaries:

Unit Number 1

Beginning at the corner of sections 19, 24, 25 and 30, T. 20 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence easterly, between sections 19 and 30, 20 and 29, 21 and 28, 22 and 27, to the summit of a ridge located in sections 22 and 27, T. 20 N., R. 19 E., Kateel River Meridian, approximate elevation 4,000 feet;

Thence southeasterly, northeasterly, easterly and southeasterly, along the crest of a ridge, to a high point on the ridge located in the westerly portion of section 5, T. 19 N., R. 20 E., Kateel River Meridian, approximate elevation 2,900 feet;

*Thence on an approximate forward bearing of S. 14° E., to the summit of a mountain located in section 17, T. 19 N., R. 20 E., Kateel River Meridian, approximate elevation 2,577 feet;

*Thence on an approximate forward bearing of S. 14° E., to the corner of sections 20, 21, 28 and 29, T. 19 N., R. 20 E., Kateel River Meridian;

*Thence on an approximate forward bearing of east, to a point on the left bank of the Kobuk River at the confluence of the outlet stream from Walker Lake with the Kobuk River, in section 19, T. 19 N., R. 21 E., Kateel River Meridian;

Thence northeasterly, along the left bank of the Kobuk River and Kichaiakaka Creek, to a point between sections 1 and 36, Tps. 19 and 20 N., R. 22 E., Kateel River Meridian;

Thence easterly, between Tps. 19 and 20 N., to the corner of sections 3, 4, 33 and 34, Tps. 19 and 20 N., R. 23 E., Kateel River Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, to the closing corner of sections 3 and 4, T. 20 N., R. 23 E., Kateel River Meridian;

Thence easterly, along the Fifth Standard Parallel North, to the standard corner of T. 21 N., Rs. 23 and 24 E., Kateel River Meridian;

Thence northerly, between Rs. 23 and 24 E., to the corner of Tps. 21 and 22 N., Rs. 23 and 24 E., Kateel River Meridian;

Thence easterly, between Tps. 21 and 22 N., to the corner of sections 3, 4, 33 and 34, Tps. 21 and 22 N., R. 25 E., Kateel River Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, to the corner of sections 3 and 4, 33 and 34, Tps. 22 and 23 N., R. 25 E., Kateel River Meridian;

Thence easterly, between Tps. 22 and 23 N., to the corner of Tps. 22 and 23 N., R. 26 E., on the boundary of the Kateel River Meridian;

Thence southerly, between Kateel River and Fairbanks Meridians, to the corner of sections 18 and 19, T. 29 N., R. 24 W., Fairbanks Meridian;

Thence easterly, between sections 18 and 19, 17 and 20, 16 and 21, to the corner of sections 15, 16, 21 and 22, T. 29 N., R. 24 W., Fairbanks Meridian;

Thence northerly, between sections 15 and 16, 9 and 10, 3 and 4, 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, to the corner of sections 3, 4, 33 and 34, Tps. 30 and 31 N., R. 24 W., Fairbanks Meridian;

Thence westerly, between Tps. 30 and 31 N., to the corner of Tps. 30 and 31 N., R. 24 W., on the boundary of the Fairbanks Meridian;

Thence northerly, between Fairbanks and Kateel River Meridians, to the corner of Tps. 31 and 32 N., R. 24 W., Fairbanks Meridian;

Thence easterly, between Tps. 31 and 32 N., to the corner of Tps. 31 and 32 N., R. 18 and 19 W., Fairbanks Meridian;

Thence northerly, between Rs. 18 and 19 W., to the closing corner of T. 32 N., Rs. 18 and 19 W., Fairbanks Meridian;

Thence easterly, along the Eighth Standard Parallel North, to the closing corner of T. 32 N., Rs. 17 and 18 W., Fairbanks Meridian;

Thence southerly, between Rs. 17 and 18 W., to the corner of Tps. 31 and 32 N., Rs. 17 and 18 W., Fairbanks Meridian;

Thence easterly, between Tps. 31 and 32 N., to the corner of Tps. 31 and 32 N., Rs. 16 and 17 W., Fairbanks Meridian;

Thence southerly, between Rs. 16 and 17 W., to the corner of Tps. 29 and 30 N., Rs. 16 and 17 W., Fairbanks Meridian;

Thence easterly, between Tps. 29 and 30 N., to the corner of Tps. 29 and 30 N., Rs. 15 and 16 W., Fairbanks Meridian;

Thence southerly, between Rs. 15 and 16 W., to the standard corner of T. 29 N., Rs. 15 and 16 W., Fairbanks Meridian;

Thence westerly, along the Seventh Standard Parallel North, to the closing corner of T. 28 N., Rs. 16 and 17 W., Fairbanks Meridian;

*Thence southerly, between Rs. 16 and 17 W., to the meander corner of sections 31 and 36 at the line of mean high water on the right bank of the most northerly interconnecting waterway of the Koyukuk River, T. 28 N., Rs. 16 and 17 W., Fairbanks Meridian;

*Thence northeasterly, along the line of mean high water on the right bank of the most northerly interconnecting waterways of the Middle Fork of the Koyukuk River, closing the mouth of the North Fork Koyukuk River, to the meander corner of sections 13 and 14, T. 28 N., R. 14 W., Fairbanks Meridian;

Thence northerly, between sections 13 and 14, to the north 1/16 section corner of sections 13 and 14, T. 28 N., R. 14 W., Fairbanks Meridian;

Thence easterly, along the east and west centerline of the northwest 1/4 of section 13, to the northwest 1/16 section corner of section 13, T. 28 N., R. 14 W., Fairbanks Meridian;

Thence northerly, along the north and south centerlines of the northwest 1/4 of section 13, and the southwest 1/4 of section 12, to the center-west 1/16 section corner of section 12, T. 28 N., R. 14 W., Fairbanks Meridian;

Thence easterly, on the east and west centerline of section 12, to the center 1/4 section corner of section 12, T. 28 N., R. 14 W., Fairbanks Meridian;

Thence northerly, along the north and south centerlines of sections 12, 1 and 36, to the 1/4 section corner of sections 25 and 36, T. 27 N., R. 14 W., Fairbanks Meridian;

Thence easterly, between sections 25 and 36, to the corner of sections 25, 30, 31 and 36, T. 27 N., Rs. 13 and 14 W., Fairbanks Meridian;

Thence northerly, between Rs. 13 and 14 W., to the corner of sections 19, 24, 25 and 30, T. 27 N., Rs. 13 and 14 W., Fairbanks Meridian;

Thence easterly, between sections 19 and 30, to the corner of sections 19, 20, 29 and 30, T. 27 N., R. 13 W., Fairbanks Meridian;

Thence on an approximate forward bearing of N. 30° E., to the summit of a low point on Twelvemile Mountain located in the southwest portion of section 20, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation 2,200 feet;

Thence on an approximate forward bearing of N. 9° E., to a summit of Twelvemile Mountain located in the westerly portion of section 20, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation of 2,950 feet;

Thence on an approximate forward bearing of N. 3° E., to a summit of Twelvemile Mountain located in the northwesterly portion of section 20, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation 3,100 feet;

Thence on an approximate forward bearing of N. 60° E., to the summit of Twelvemile Mountain located in the northerly portion of section 20, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation 3,180 feet;

Thence on an approximate forward bearing of N. 36° E., to a summit of Twelvemile Mountain located in the southeasterly portion of section 17, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation 3,100 feet;

Thence on an approximate forward bearing of N. 6° E., to the summit of a low point on Twelvemile Mountain located in the easterly portion of section 17, T. 27 N., R. 13 W., Fairbanks Meridian, approximate elevation 2,600 feet;

Thence on an approximate forward bearing of N. 48° W., to the center-north 1/16 section corner of section 17, T. 27 N., R. 13 W., Fairbanks Meridian;

Thence northerly, on the north and south centerline of section 17, to the ¼ section corner of sections 8 and 17, T. 27 N., R. 13 W., Fairbanks Meridian;

Thence westerly, between sections 8 and 17, 7 and 18, 12 and 13, to the corner of sections 11, 12, 13 and 14, T. 27 N., R. 14 W., Fairbanks Meridian;

Thence northerly, between sections 11 and 12, to the ¼ section corner of sections 11 and 12, T. 27 N., R. 14 W., Fairbanks Meridian;

Thence on an approximate forward bearing of N. 25° W., to the summit of a mountain located in the southerly portion of section 2, T. 27 N., R. 14 W., Fairbanks Meridian, approximate elevation 3,125 feet;

Thence northerly and northeasterly, along the crest of a ridge between the drainages of the North and Middle Forks of the Koyukuk River, to the summit of a mountain located in section 8, T. 30 N., R. 12 W., Fairbanks Meridian, approximate elevation 3,150 feet;

Thence on an approximate forward bearing of N. 27° E., to the ¼ section corner of sections 5 and 8, T. 30 N., R. 12 W., Fairbanks Meridian;

Thence northerly, on the north and south centerlines of sections 5 and 32, to the center ¼ section corner of section 32, T. 31 N., R. 12 W., Fairbanks Meridian;

Thence on an approximate forward bearing of N. 16° E., to the summit of a mountain located in the southerly portion of section 29, T. 31 N., R. 12 W., Fairbanks Meridian, approximate elevation 3,020 feet;

Thence northeasterly, along the crest of a ridge between the drainages of Washington Creek, Canyon Creek, Glacier River and the Middle Fork of the Koyukuk River, to the summit of a mountain located in the southerly portion of section 2, T. 31 N., R. 12 W., Fairbanks Meridian, approximate elevation 3,150 feet;

Thence on an approximate forward bearing of S. 69° E., to the junction of Hammond River and Canyon Creek located in the easterly portion of section 12, T. 31 N., R. 12 W., Fairbanks Meridian;

Thence on an approximate forward bearing of S. 62° E., to the summit of a mountain located in the easterly portion of section 7, T. 31 N., R. 11 W., Fairbanks Meridian, approximate elevation 2,738 feet;

Thence southeasterly and northerly, along the crest of a ridge, to the summit of a mountain located in the northerly portion of section 11, T. 31 N., R. 11 W., Fairbanks Meridian, approximate elevation 3,085 feet;

Thence on an approximate forward bearing of N. 32° E., to the summit of a mountain located in section 36, T. 32 N., R. 11 W., Fairbanks Meridian, approximate elevation 3,033 feet;

Thence northerly, along the crest of a ridge between the drainages of Vi Creek, Hammond River, and Kalhabuk Creek and the Middle Fork of the Koyukuk River, to the northerly point of the crest of a ridge located in section 5, T. 33 N., R. 10 W., Fairbanks Meridian, approximate elevation 4,100 feet;

Thence on an approximate forward bearing of N. 2° W., on a line passing at midpoint between two lakes in section 32, to the crest of a ridge located near the center of section 29, T. 34 N., R. 10 W., Fairbanks Meridian, approximate elevation 3,200 feet;

Thence northwesterly, northerly and northeasterly along the crest of a ridge between the drainages of Dietrich and Hammond Rivers, to the summit of a mountain located in the northwesterly portion of section 31, T. 35 N., R. 10 W., Fairbanks Meridian, approximate elevation 3,110 feet;

Thence on an approximate forward bearing of N. 9° E., to the summit of a mountain located in sections 18 and 19, T. 35 N., R. 10 W., Fairbanks Meridian, approximate elevation 4,010 feet;

Thence northerly, along the crest of a ridge between the Dietrich River drainage and Big Jim and Trembley Creeks, to the summit of a mountain located in the southwesterly portion of section 29, T. 36 N., R. 10 W., Fairbanks Meridian, approximate elevation 4,130 feet;

Thence on an approximate forward bearing of N. 8° E., to the summit of a mountain located near the center of section 17, T. 36 N., R. 10 W., Fairbanks Meridian, approximate elevation 4,230 feet;

Thence northerly, along the crest of a ridge, between the drainages of Dietrich River and Koyuktuvuk Creek, to a point of intersection with the Continental Divide, located near the center of section 31, T. 15 S., R. 10 E., Umiat Meridian, approximate elevation 6,000 feet;

Thence southwesterly, along the Continental Divide, to a point on a ridge where the Continental Divide bears southerly, located in the northerly portion of section 2, T. 16 S., R. 9 E., Umiat Meridian, approximate elevation 6,300 feet;

Thence northwesterly, along the crest of a ridge, to a point between sections 12 and 13, T. 15 S., R. 8 E., Umiat Meridian, approximate elevation 3,650 feet;

Thence on an approximate forward bearing of N. 65° W., to the most southerly point on the shore of an unnamed lake located in the Oolah Valley in section 11, T. 15 S., R. 8 E., Umiat Meridian;

Thence on an approximate forward bearing of N. 50° W., to the summit of a mountain located in section 4, T. 15 S., R. 8 E., Umiat Meridian, approximate elevation 6,323 feet;

Thence northwesterly, along the crest of a ridge between the drainages of Itkillik and Nanushuk Rivers, to the summit of a mountain located near the center of section 28, T. 14 S., R. 6 E., Umiat Meridian, approximate elevation 7,118 feet;

Thence on an approximate forward bearing of N. 70° W., to an easterly summit of Marshmallow Mountain located in the easterly portion of section 20, T. 14 S., R. 6 E., Umiat Meridian, approximate elevation 6,570 feet;

Thence westerly, along the crest of Marshmallow Mountain, to a westerly summit of Marshmallow Mountain located in the northerly portion of section 24, T. 14 S., R. 5 E., Umiat Meridian, approximate elevation 6,972 feet;

Thence on an approximate forward bearing of S. 71° W., to the easterly point of the summit of a mountain located in the northerly portion of section 28, T. 14 S., R. 5 E., Umiat Meridian, approximate elevation 6,500 feet;

Thence southwesterly, northwesterly and northeasterly, along the crest of a ridge between the Alapah Creek, Anaktuvuk River and Itikmalapak Creek and the Kayak Creek drainages and northwesterly on a spur ridge, to a point between sections 1 and 36, Tps. 13 and 14 S., R. 4 E., Umiat Meridian;

Thence westerly between Tps. 13 and 14 S., to the corner of sections 3, 4, 33 and 34, Tps. 13 and 14 S., R. 4 E., Umiat Meridian;

Thence southerly, between sections 3 and 4, 9 and 10, 15 and 16, 21 and 22, 27 and 28, 33 and 34, to the corner of sections 3, 4, 33 and 34, Tps. 14 and 15 S., R. 4 E., Umiat Meridian;

Thence westerly, between Tps. 14 and 15 S., to the corner of sections 5, 6, 31 and 32, Tps. 14 and 15 S., R. 4 E., Umiat Meridian;

Thence southerly, between sections 5 and 6, 7 and 8, 17 and 18, to the corner of sections 17, 18, 19 and 20, T. 15 S., R. 4 E., Umiat Meridian;

Thence easterly, between sections 17 and 20, 16 and 21, 15 and 22, 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 15 S., Rs. 4 and 5 E., Umiat Meridian;

Thence southerly, between Rs. 4 and 5 E., to the corner of Tps. 15 and 16 S., Rs. 4 and 5 E., Umiat Meridian;

Thence westerly, between Tps. 15 and 16 S., to the corner of sections 4, 5, 32 and 33, Tps. 15 and 16 S., R. 4 E., Umiat Meridian;

Thence southerly, between sections 4 and 5, 8 and 9, 16 and 17, to the corner of sections 16, 17, 20 and 21, T. 16 S., R. 4 E., Umiat Meridian;

Thence westerly, between sections 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 16 S., Rs. 3 and 4 E., Umiat Meridian;

Thence southerly, between Rs. 3 and 4 E., to the corner of sections 25, 30, 31 and 36, T. 16 S., Rs. 3 and 4 E., Umiat Meridian;

Thence westerly, between sections 25 and 36, 26 and 35, 27 and 34, 28 and 33, 29 and 32, 30 and 31, to the corner of sections 25, 30, 31 and 36, T. 16 S., Rs. 2 and 3 E., Umiat Meridian;

Thence northerly, between Rs. 2 and 3 E., to the corner of sections 7, 12, 13 and 18, T. 16 S., Rs. 2 and 3 E., Umiat Meridian;

Thence westerly, between sections 12 and 13, 11 and 14, 10 and 15, to the corner of sections 9, 10, 15 and 16, T. 16 S., R. 2 E., Umiat Meridian;

Thence southerly, between sections 15 and 16, 21 and 22, 27 and 28, 33 and 34, to the corner of sections 3, 4, 33 and 34, Tps. 16 and 17 S., R. 2 E., Umiat Meridian;

Thence westerly, between Tps. 16 and 17 S., to the corner of Tps. 16 and 17 S., Rs. 1 and 2 E., Umiat Meridian;

Thence northerly, between Rs. 1 and 2 E., to the corner of sections 1, 6, 7 and 12, T. 16 S., Rs. 1 and 2 E., Umiat Meridian;

Thence westerly, between sections 1 and 12, 2 and 11, to the corner of sections 2, 3, 10 and 11, T. 16 S., R. 1 E., Umiat Meridian;

Thence southerly, between sections 10 and 11, to the corner of sections 10, 11, 14 and 15, T. 16 S., R. 1 E., Umiat Meridian;

Thence westerly, between sections 10 and 15, to the corner of sections 9, 10, 15 and 16, T. 16 S., R. 1 E., Umiat Meridian;

Thence southerly, between sections 15 and 16, and 21 and 22, to the corner of sections 21, 22, 27 and 28, T. 16 S., R. 1 E., Umiat Meridian;

*Thence westerly, between sections 21 and 28, to the corner of sections 20, 21, 28 and 29, T. 16 S., R. 1 E., Umiat Meridian;

*Thence northerly, between sections 20 and 21, to the corner of sections 16, 17, 20 and 21, T. 16 S., R. 1 E., Umiat Meridian;

*Thence westerly, between sections 17 and 20, to the corner of sections 17, 18, 19 and 20, T. 16 S., R. 1 E., Umiat Meridian;

*Thence southerly, between sections 19 and 20, to the corner of sections 19, 20, 29 and 30, T. 16 S., R. 1 E., Umiat Meridian;

Thence westerly, between sections 19 and 30, to the corner of sections 19, 24, 25 and 30, T. 16 S., Rs. 1 E. and 1 W., Umiat Meridian;

Thence southerly, between Rs. 1 E. and 1 W., to the corner of sections 25, 30, 31 and 36, T. 16 S., Rs. 1 E. and 1 W., Umiat Meridian;

Thence westerly, between sections 25 and 36, to the corner of sections 25, 26, 35 and 36, T. 16 S., R. 1 W., Umiat Meridian;

Thence southerly, between sections 35 and 36, to the corner of sections 1, 2, 35 and 36, Tps. 16 and 17 S., R. 1 W., Umiat Meridian;

Thence westerly, between Tps. 16 and 17 S., to the corner of sections 2, 3, 34 and 35, Tps. 16 and 17 S., R. 1 W., Umiat Meridian;

Thence southerly, between sections 2 and 3, to the corner of sections 2 and 3, on the boundary of the Umiat Meridian, T. 17 S., R. 1 W.;

Thence westerly, between the Umiat and Fairbanks Meridians, to the corner of sections 4 and 5, T. 17 S., R. 1 W., Umiat Meridian;

Thence northerly, between sections 4 and 5, and 32 and 33, to the corner of sections 28, 29, 32 and 33, Tps. 16 S., R. 1 W., Umiat Meridian;

Thence westerly, between sections 29 and 32, and 30 and 31, to the corner of sections 25, 30, 31 and 36, Tps. 16 S., Rs. 1 and 2 W., Umiat Meridian;

Thence northerly, between Rs. 1 and 2 W., to the corner of sections 1, 6, 7 and 12, T. 16 S., Rs. 1 and 2 W., Umiat Meridian;

Thence easterly, between sections 6 and 7, 5 and 8, 4 and 9, and 3 and 10, to the corner of sections 2, 9, 10 and 11, T. 16 S., R. 1 W., Umiat Meridian;

Thence northerly, between sections 2 and 3, 34 and 35, 26 and 27, to the corner of sections 22, 23, 26 and 27, T. 15 S., R. 1 W., Umiat Meridian;

Thence westerly, between sections 22 and 27, 21 and 28, to the corner of sections 20, 21, 28 and 29, T. 15 S., R. 1 W., Umiat Meridian;

Thence northerly, between sections 20 and 21, to the corner of sections 16 and 17, 20 and 21, T. 15 S., R. 1 W., Umiat Meridian;

Thence westerly, between sections 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 15 S., Rs. 1 and 2 W., Umiat Meridian;

Thence northerly, between Rs. 1 and 2 W., to the corner of sections 7, 12, 13 and 18, T. 15 S., Rs. 1 and 2 W., Umiat Meridian;

Thence westerly, between sections 12 and 13, 11 and 14, 10 and 15, 9 and 16, 8 and 17, to the corner of sections 7, 8, 17 and 18, T. 15 S., R. 2 W., Umiat Meridian;

Thence northerly, between sections 7 and 8, 5 and 6, to the corner of sections 5, 6, 31 and 32, Tps. 14 and 15 S., R. 2 W., Umiat Meridian;

Thence westerly, between Tps. 14 and 15 S., to the corner of sections 4, 5, 32 and 33, Tps. 14 and 15 S., R. 4 W., Umiat Meridian;

Thence northerly, between sections 32 and 33, 28 and 29, 20 and 21, to the corner of sections 16, 17, 20 and 21, T. 14 S., R. 4 W., Umiat Meridian;

Thence easterly, between sections 16 and 21; 15 and 22, to the corner of sections 14, 15, 22 and 23, T. 14 S., R. 4 W., Umiat Meridian;

Thence northerly, between sections 14 and 15, 10 and 11, 2 and 3, 34 and 35, 26 and 27, 22 and 23, 14 and 15, 10 and 11, 2 and 3, to the closing corner of sections 2 and 3, T. 13 S., R. 4 W., Umiat Meridian;

Thence westerly, along the Third Standard Parallel South, to the standard corner of sections 34 and 35, T. 12 S., R. 4 W., Umiat Meridian;

Thence northerly, between sections 34 and 35, 26 and 27, 22 and 23, to the corner of sections 14, 15, 22 and 23, T. 12 S., R. 4 W., Umiat Meridian;

Thence westerly, between sections 15 and 22, 16 and 21, 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 12 S., Rs. 4 and 5 W., Umiat Meridian;

Thence northerly, between Rs. 4 and 5 W., to the corner of sections 13, 18, 19 and 24, T. 11 S., Rs. 4 and 5 W., Umiat Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, to the corner of sections 15, 16, 21 and 22, T. 11 S., R. 7 W., Umiat Meridian;

Thence southerly, between sections 21 and 22, 27 and 28, 33 and 34, to the corner of sections 3, 4, 33 and 34, Tps. 11 and 12 S., R. 7 W., Umiat Meridian;

Thence westerly, between Tps. 11 and 12 S., to the corner of Tps. 11 and 12 S., Rs. 7 and 8 W., Umiat Meridian;

Thence southerly, between Rs. 7 and 8 W., to the corner of sections 19, 24, 25 and 30, T. 12 S., Rs. 7 and 8 W., Umiat Meridian;

Thence westerly, between sections 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, to the corner of sections 19, 24, 25 and 30, T. 12 S., Rs. 10 and 11 W., Umiat Meridian;

Thence southerly, between Rs. 10 and 11 W., to the corner of T. 12 S., Rs. 10 and 11 W., on the boundary of the Umiat Meridian;

Thence westerly, between the Umiat and Kateel River Meridians, to the closing corner of T. 34 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence southerly, between Rs. 18 and 19 E., to the corner of sections 19, 24, 25 and 30, T. 34 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence westerly, between sections 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, 24 and 25, 23 and 26, 22 and 27, 21 and 28, 20 and 29, 19 and 30, to the corner of sections 19, 24, 25 and 30, T. 34 N., Rs. 15 and 16 E., Kateel River Meridian;

Thence northerly, between Rs. 15 and 16 E., to the closing corner of T. 34 N., Rs. 15 and 16 E., on the boundary of the Kateel River Meridian;

Thence westerly, between the Kateel River and Umiat Meridians, to a point of intersection between the western portion of section 10, T. 34 N., R. 14 E., Kateel River Meridian and section 27, T. 12 S., R. 16 W., Umiat Meridian with a line projected due north of a peak located in the western portion of section 26, T. 30 N., R. 14 E., Kateel River Meridian, approximate elevation 4,640 feet;

Thence due south to a peak located along the crest of a divide between the drainages of the Nigu and Noatak Rivers in the western portion of section 26, T. 30 N., R. 14 E., Kateel River Meridian, approximate elevation 4,640 feet;

Thence westerly, northerly and northwesterly along the crest of a divide between the drainages of the Nigu and Noatak Rivers to a summit of a mountain located on a ridge at the junction with a spur ridge located in section 3, T. 30 N., R. 13 E., Kateel River Meridian, approximate elevation 3,250 feet;

Thence southwesterly and westerly, along the crest of a ridge between the drainages of Midas Creek and Mountain Creek, to the summit of a mountain located in section 21, T. 30 N., R. 12 E., Kateel River Meridian, approximate elevation 4,021 feet;

Thence on an approximate forward bearing of S. 87° W., to the summit of a hill located in section 24, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 3,473 feet;

Thence northwesterly, along the crest of a ridge, to the summit of a mountain located in sections 14 and 15, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 4,100 feet;

Thence on an approximate forward bearing of S. 28° W., to the summit of a mountain located in section 22, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 3,202 feet;

Thence southwesterly, along the crest of the ridge between Douglas Creek and a tributary of the Noatak River, to the summit of a mountain located in sections 12 and 13, T. 29 N., R. 10 E., Kateel River Meridian, approximate elevation 3,657 feet;

Thence due south, to a point on the right bank of Douglas Creek located in section 24, T. 29 N., R. 10 E., Kateel River Meridian;

Thence southerly, along the right bank of Douglas Creek, to a point on the right bank of Douglas Creek at the junction of the Noatak River and Douglas Creek located in the northern portion of Section 2, T. 28 N., R. 10 E., Kateel River Meridian;

Thence on an approximate forward bearing of S. 24° W., to the summit of a mountain located in section 22, T. 28 N., R. 10 E., Kateel River Meridian, approximate elevation 3,439 feet;

Thence on an approximate bearing of S. 51° W., to the summit of a small mountain located in sections 28 and 29, T. 28 N., R. 10 E., Kateel River Meridian, approximate elevation 2,441 feet;

Thence easterly, southerly and westerly, along the divide between the drainages of Kavachurak Creek and Tunukuchiak Creek and Ambler River, to the summit of a mountain located in section 22, T. 28 N., R. 9 E., Kateel River Meridian, approximate elevation 4,298 feet;

Thence northerly, along the crest of the spur ridge to the summit of a mountain

located in section 15, T. 26 N., R. 9 E., Kateel River Meridian, approximate elevation 3,980 feet;

Thence on an approximate forward bearing of N. 37° W., to the summit of a mountain located in section 5, T. 26 N., R. 9 E., Kateel River Meridian, approximate elevation 4,625 feet;

Thence southwesterly, along the divide between the drainages of Ambler and Noatak Rivers, to the summit of a mountain located in sections 23 and 24, T. 26 N., R. 8 E., Kateel River Meridian, approximate elevation 4,508 feet;

Thence on an approximate forward bearing of S. 11° W., to the summit of a mountain located in section 35, T. 26 N., R. 8 E., Kateel River Meridian, approximate elevation 4,720 feet;

Thence easterly, southerly, easterly and southerly, along the divide between the drainages of Ambler and Imelyak Rivers, and between tributaries of the Ambler River, to a point between sections 9 and 16, T. 24 N., R. 9 E., Kateel River Meridian, approximate elevation 2,800 feet;

Thence easterly, between sections 9 and 16, 10 and 15, 11 and 14, to the crest of a ridge between sections 11 and 14, T. 24 N., R. 9 E., Kateel River Meridian, approximate elevation 2,600 feet;

Thence northeasterly, along the crest of a ridge between the drainages of tributaries of the Ambler River to the summit of a mountain located in the northwesterly portion of section 4, T. 24 N., R. 10 E., Kateel River Meridian, approximate elevation 3,609 feet;

Thence on an approximate forward bearing of east, to the summit of a mountain located in the northwesterly portion of section 2, T. 24 N., R. 10 E., Kateel River Meridian, approximate elevation 4,499 feet;

Thence northeasterly, along the crest of a ridge between the drainages of Ulaneak Creek, Ambler and Ipnelivik Rivers, to the summit of a mountain located in section 27, T. 25 N., R. 11 E., Kateel River Meridian, approximate elevation 5,040 feet;

Thence on an approximate forward bearing of S. 28° E., to the summit of a mountain located in sections 34 and 35, T. 25 N., R. 11 E., Kateel River Meridian, approximate elevation 4,600 feet;

Thence southerly, along the crest of a ridge between the drainages of Ipnelivik River and Ulaneak Creek, to the summit of a mountain located in sections 25 and 26, T. 24 N., R. 11 E., Kateel River Meridian, approximate elevation 4,600 feet;

Thence on an approximate forward bearing of S. 60° E., to the summit of a mountain located in section 31, T. 24 N., R. 12 E., Kateel River Meridian, approximate elevation 5,076 feet;

Thence southerly, easterly and northeasterly, along the crest of a ridge, to the summit of a mountain between sections 5 and 32, Tps. 23 and 24 N., R. 12 E., Kateel River Meridian, approximate elevation 4,500 feet;

Thence easterly, between Tps. 23 and 24 N., to the summit of a mountain between sections 4 and 33, Tps. 23 and 24 N., R. 12 E., Kateel River Meridian, approximate elevation 4,926 feet;

Thence southerly, along the crest of a ridge, between the drainages of Kogoluktuk River, to the summit of a mountain located in sections 34 and 35, T. 23 N., R. 12 E., Kateel River Meridian, approximate elevation 4,160 feet;

Thence on an approximate forward bearing of S. 20° E., to the summit of a mountain located in section 11, T. 22 N., R. 12 E., Kateel River Meridian, approximate elevation 3,292 feet;

Thence southerly, easterly and southeasterly, along the crest of a ridge between the drainages of Kogoluktuk River and Ivik Creek, to a point between sections 2 and 35, Tps. 21 and 22 N., R. 13 E., Kateel River Meridian;

Thence easterly, between Tps. 21 and 22 N., to the corner of Tps. 21 and 22 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence southerly, between Rs. 18 and 19 E., to the standard corner of T. 21 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence westerly, along the Fifth Standard Parallel North, to the closing corner of T. 20 N., Rs. 18 and 19 E., Kateel River Meridian;

Thence southerly, between Rs. 18 and 19 E., to the corner of sections 19, 24, 25 and 30, T. 20 N., Rs. 18 and 19 E., Kateel River Meridian, the place of beginning.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

Unit Number 2

Beginning at the corner of sections 13, 18, 19 and 24, T. 11 S., Rs. 2 and 3 W., Umiat Meridian;

Thence northerly, between Rs. 2 and 3 W., to the corner of Tps. 9 and 10 S., Rs. 2 and 3 W., Umiat Meridian;

Thence westerly, between Tps. 9 and 10 S., to the corner of Tps. 9 and 10 S., Rs. 3 and 4 W., Umiat Meridian;

Thence northerly, between Rs. 3 and 4 W., to the corner of sections 13, 18, 19 and 24, T. 8 S., Rs. 3 and 4 W., Umiat Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, to the corner of sections 15, 16, 21 and 22, T. 9 S., R. 5 W., Umiat Meridian;

Thence southerly, between sections 21 and 22, 27 and 28, 33 and 34, 3 and 4, 9 and 10, 15 and 16, to the corner of sections 15, 16, 21 and 22, T. 10 S., R. 5 W., Umiat Meridian;

Thence easterly, between sections 15 and 22, 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 10 S., Rs. 4 and 5 W., Umiat Meridian;

Thence southerly, between Rs. 4 and 5 W., to the corner of Tps. 10 and 11 S., Rs. 4 and 5 W., Umiat Meridian;

Thence easterly, between Tps. 10 and 11 S., to the corner of sections 4, 5, 32 and 33, Tps. 10 and 11 S., R. 4 W., Umiat Meridian;

Thence southerly, between sections 4 and 5, 8 and 9, 16 and 17, to the corner of sections 16, 17, 20 and 21, T. 11 S., R. 4 W., Umiat Meridian;

Thence easterly, between sections 16 and 21, 15 and 22, 14 and 23, 13 and 24, 18 and 19, 17 and 20, 16 and 21, 15 and 22, 14 and 23, 13 and 24 to the corner of sections 13, 18, 19 and 24, T. 11 S., Rs. 2 and 3 W., Umiat Meridian, the place of beginning.

Unit Number 3

Beginning at the corner of sections 19, 24, 25 and 30, T. 15 S., Rs. 1 E., and 1 W., Umiat Meridian;

Thence easterly, between sections 19 and 30, 20 and 29, to the corner of sections 20, 21, 28 and 29, T. 15 S., R. 1 E., Umiat Meridian;

Thence northerly, between sections 20 and 21, 16 and 17, 8 and 9, 4 and 5, to the corner of sections 4, 5, 32 and 33, Tps. 14 and 15 S., R. 1 E., Umiat Meridian;

Thence easterly, between Tps. 14 and 15 S., to the corner of sections 5, 6, 31 and 32, Tps. 14 and 15 S., R. 2 E., Umiat Meridian;

Thence northerly, between sections 31 and 32, 29 and 30, 19 and 20, 17 and 18, 7 and 8, 5 and 6, to the corner of sections 5, 6, 31 and 32, Tps. 13 and 14 S., R. 2 E., Umiat Meridian;

Thence westerly, between Tps. 13 and 14 S., to the corner of Tps. 13 and 14 S., Rs. 1 and 2 E., Umiat Meridian;

Thence northerly, between Rs. 1 and 2 E., to the corner of sections 25, 30, 31 and 36, T. 13 S., Rs. 1 and 2 E., Umiat Meridian;

Thence westerly, between sections 25 and 36, 26 and 35, 27 and 34, 28 and 33, 29 and 32, 30 and 31, 25 and 36, 26 and 35, 27 and 34, 28 and 33, 29 and 32, 30 and 31, to the corner of sections 25, 30, 31 and 36, T. 13 S., Rs. 1 and 2 W., Umiat Meridian;

Thence northerly, between Rs. 1 and 2 W., to the closing corner of T. 13 S., Rs. 1 and 2 W., Umiat Meridian;

Thence westerly, along the Third Standard Parallel South, to the standard corner of T. 12 S., Rs. 1 and 2 W., Umiat Meridian;

Thence northerly, between Rs. 1 and 2 W., to the corner of sections 13, 18, 19 and 24, T. 12 S., Rs. 1 and 2 W., Umiat Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 12 S., Rs. 2 and 3 W., Umiat Meridian;

Thence southerly, between Rs. 2 and 3 W., to the corner of sections 25, 30, 31 and 36, T. 12 S., Rs. 2 and 3 W., Umiat Meridian;

Thence westerly, between sections 25 and 36, to the corner of sections 25, 26, 35 and 36, T. 12 S., R. 3 W., Umiat Meridian;

Thence southerly, between sections 35 and 36, to the standard corner of sections 35 and 36, T. 12 S., R. 3 W., Umiat Meridian;

Thence easterly, along the Third Standard Parallel South, to the closing corner of sections 1 and 2, T. 13 S., R. 3 W., Umiat Meridian;

Thence southerly, between sections 1 and 2, to the corner of sections 1, 2, 11 and 12, T. 13 S., R. 3 W., Umiat Meridian;

Thence westerly, between sections 2 and 11, 3 and 10, to the corner of sections 3, 4, 9 and 10, T. 13 S., R. 3 W., Umiat Meridian;

Thence southerly, between sections 9 and 10, 15 and 16, 21 and 22, 27 and 28, 33 and 34, 3 and 4, to the corner of sections 3, 4, 9 and 10, T. 14 S., R. 3 W., Umiat Meridian;

Thence westerly, between sections 4 and 9, 5 and 8, to the corner of sections 5, 6, 7 and 8, T. 14 S., R. 3 W., Umiat Meridian;

Thence southerly, between sections 7 and 8, 17 and 18, 19 and 20, to the corner of sections 19, 20, 29 and 30, T. 14 S., R. 3 W., Umiat Meridian;

Thence easterly, between sections 20 and 29, 21 and 28, 22 and 27, 23 and 26, 24 and 25, 19 and 30, 20 and 29, to the corner of sections 20, 21, 28 and 29, T. 14 S., R. 2 W., Umiat Meridian;

Thence southerly, between sections 28 and 29, 32 and 33, to the corner of sections 4, 5, 32 and 33, Tps. 14 and 15 S., R. 2 W., Umiat Meridian;

Thence easterly, between Tps. 14 and 15 S., to the corner of Tps. 14 and 15 S., Rs. 1 and 2 W., Umiat Meridian;

Thence southerly, between Rs. 1 and 2 W., to the corner of sections 1, 6, 7 and 12, T. 15 S., Rs. 1 and 2 W., Umiat Meridian;

Thence easterly, between sections 6 and 7, 5 and 8, 4 and 9, 3 and 10, to the corner of sections 2, 3, 10 and 11, T. 15 S., R. 1 W., Umiat Meridian;

Thence southerly, between sections 10 and 11, to the corner of sections 10, 11, 14 and 15, T. 15 S., R. 1 W., Umiat Meridian;

Thence easterly, between sections 11 and 14, 12 and 13, to the corner of sections 7, 12, 13 and 18, T. 15 S., Rs. 1 E. and 1 W., Umiat Meridian;

Thence southerly, between Rs. 1 E. and 1 W., to the corner of sections 19, 24, 25 and 30, T. 15 S., Rs. 1 E. and 1 W., Umiat Meridian, the place of beginning.

Units of the National Wild and Scenic Rivers System Within the Gates of the Arctic National Park and Preserve

Section 601, Public Law 96–487 (ANILCA)

"Alatna, Alaska.—The main stem within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior."

"John, Alaska.—That portion of the river within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior."

"Kobuk, Alaska.—That portion within the Gates of the Arctic National Park and Preserve; to be administered by the Secretary of the Interior."

"Noatak, Alaska.—The river from its source in the Gates of the Arctic National Park to its confluence with the Kelly River in the Noatak National Preserve; to be administered by the Secretary of the Interior."

"North Fork of the Koyukuk, Alaska.—That portion within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior."

"Tinayguk, Alaska.—That portion within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior."

Note: Pursuant to section 605(d) of ANILCA and as provided for under section 3(b) of the Wild and Scenic Rivers Act, the necessity for any river corridor boundaries for the preceding named rivers within the Gates of the Arctic National Park and Preserve has been considered during the comprehensive conservation planning process for the park and preserve. In accordance with the General Management Plan for Gates of the Arctic National Park and Preserve, approved November 7, 1986, no specific river corridor boundaries are deemed necessary for the preceding named rivers in order to protect the rivers and their immediate environments. Proposed management of the park and preserve meets and is compatible with management standards established by the Wild and Scenic Rivers Act.

The following U.S. Geological Survey 1:63,360 Series (Topographic) Quadrangle Maps were used in preparing the legal boundary descriptions for the Gates of the Arctic National Park and Preserve and Gates of the Arctic Wilderness:

Ambler River, Alaska: (B–1) pe 1990; (B–2) pe 1990; (C–1) pe 1990; (C–2) pe 1990; (D–1) pe 1990; (D–2) pe 1990.

Chandalar, Alaska: (C–6) 1971 pr 1975; (D–6) 1971 pr 1975.

Chandler Lake, Alaska: (A–1) 1971; (A–2) 1971; (A–3) 1971; (A–4) pe 1986; (A–5) pe 1986; (B–1) 1971; (B–2) 1971; (B–3) pe 1987; (B–4) pe 1987; (B–5) pe 1987; (C–5) pe 1987.

Hughes, Alaska: (C–3) pe 1986; (C–4) pe 1986; (C–5) pe 1986; (C–6) pe 1986; (D–2) pe 1986; (D–3) pe 1986; (D–4) pe 1986; (D–5) pe 1986; (D–6) pe 1986.

Killik River, Alaska: (A–5) 1984; (B–1) pe 1986; (B–2) pe 1986; (B–3) pe 1986; (B–4) pe 1986; (B–5) 1984; (C–1) pe 1986.

Phillip Smith Mountain, Alaska: (A–5) 1971 pr 1975; (B–5) 1971 pr 1975.

Survey Pass, Alaska: (A–2) pe 1986; (A–3) pe 1986; (A–4) pe 1986; (B–1) pe 1986; (B–2) pe 1986; (B–4) pe 1990; (B–5) pe 1990; (B–6) pe 1990; (D–6) 1984.

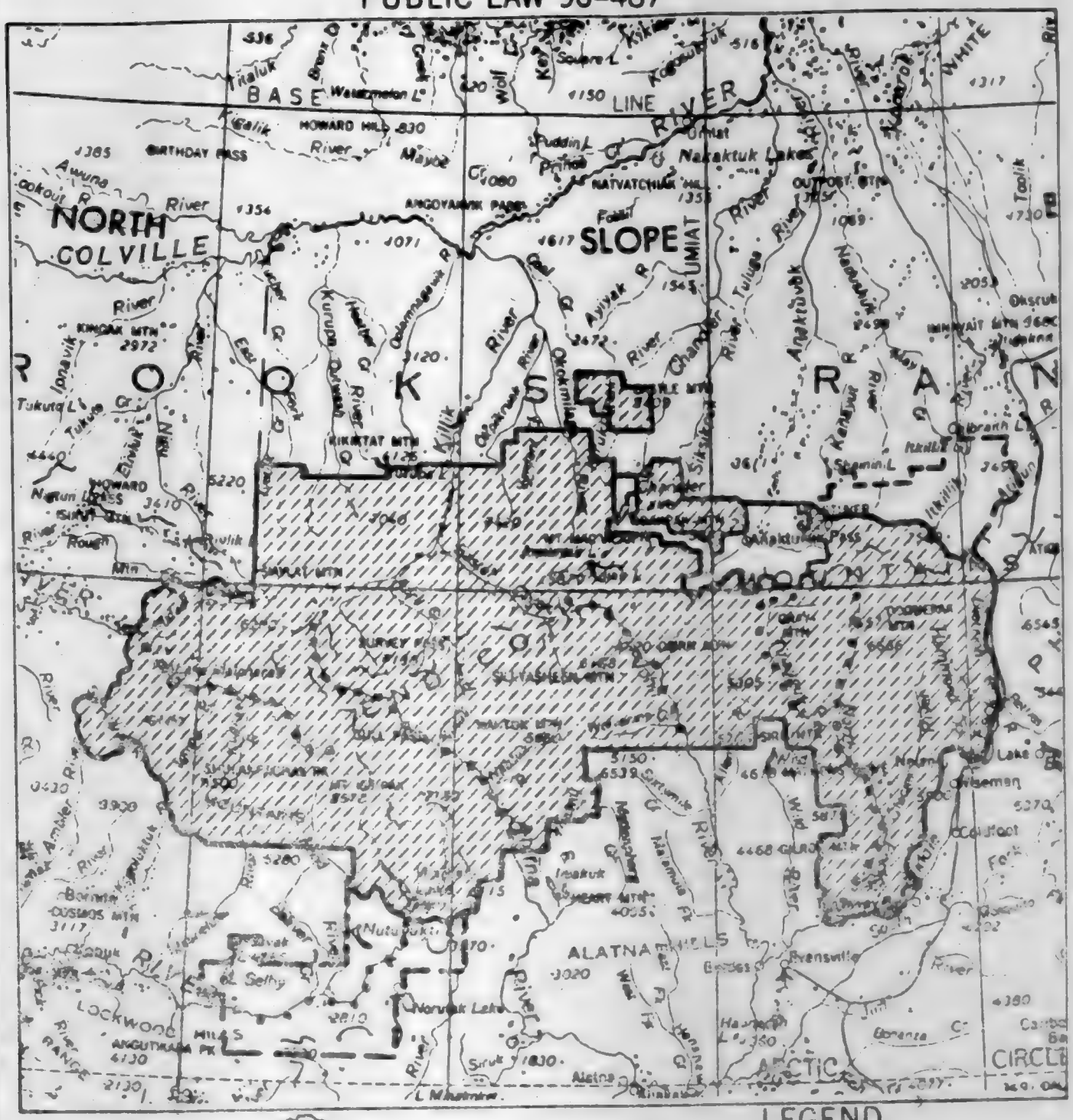
Wiseman, Alaska: (A–1) 1970 pr 1975; (A–2) 1970; (A–3) 1970; (B–1) 1971 pr 1975; (B–2) 1971; (B–3) 1971; (B–6) pe 1986; (C–1) 1971; (C–3) 1971; (C–4) 1971; (C–5) 1971; (C–6) pe 1986.

pe—provisional edition
mr—minor revisions
pr—photorevised

BILLING CODE 4310–70–F

GATES OF THE ARCTIC NATIONAL PARK AND PRESERVE

PUBLIC LAW 96-487


BASE LINE
NORTH SLOPE
COLVILLE
RIVER
GATES OF THE ARCTIC
NATIONAL PARK
NATIONAL PRESERVE
ARCTIC CIRCLE
BIRTHDAY PASS
ANGAYUKAQSRAQ PASS
HOWARD PASS
SURVEY PASS
ALATNA HILLS
LOCKWOOD HILLS
KNOBAK MTN
2972
ANGUTAURAK PK
4130
Walker Lake
Nakaktuk Lakes
Howard Mts
Killik River
Chandler River
Anaktuvuk River
Noluk Lake
Iniakuk Lake
Selby
Survey Pass
Howard Pass
Nutuvukti
Siruk
Alatna
Bettles
Evansville
Wiseman
Coldfoot
Allakaket
Hughes
Huslia
Galbraith Lake
Toolik
Oksrukuyik
Minnie Kunaknana
Tukuto L
Howard Pass
Survey Pass
Ernie Pass
Oolah Pass
Oakstuk Pass
Summit L
Itkillik
Killik
Ipnavik
Tukuto
Ekokpak
Nigu
Rooftop
Amber
Bonanza
Dakli
Ayiyak
Oksrukuyik
Kurupa
Ologomaksuk
Tuluga
Nanushuk
Ivishak
Sagavanirktok
Galbraith
Toolik
Kuparuk
Itkillik
Alatna
Koyukuk
Chandler
Wild
Middle Fork
North Fork
Mt Doonerak
6565
Frigid Crags
6666
Boreal Mtn
6611
Frigid Crags
6666
Survey Pass
6500
Mt Chase
8512
Mt Doonerak
8610
Sukakpak Mtn
5900
Table Mtn
5420
Frigid Crags
6666
Boreal Mtn
6611

Glacier Bay National Park and Preserve

Section 202(1), Public Law 96–487 (ANILCA):

Glacier Bay National Park

Glacier Bay National Park as generally depicted on a map numbered GLBA–90,004, dated October 1978, consists of the former Glacier Bay National Monument and an addition of approximately five hundred and twenty-three thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at the line of mean high tide on the easterly shore of the Gulf of Alaska and on the right bank of the mouth of Sea Otter Creek in section 16, T. 35 S., R. 45 E., Copper River Meridian;

Thence due west, 3 miles to a point on the line demarking the Territorial Sea of the United States of America;

Thence southeasterly and easterly, along the line demarking the Territorial Sea of the United States in those places where the Territorial Sea line is appropriate, in the Gulf of Alaska, Cross Sound and Icy Strait, and along the median line in North Inian Pass and North Passage to a point on the line in the Territorial Sea as projected from the median line of North Passage to the median line of Icy Passage, due south from the meander corner of sections 20 and 21, T. 40 S., R. 58 E., Copper River Meridian;

Thence northerly, through the Territorial Sea and between sections 20 and 21, 16 and 17, 8 and 9, to the corner of sections 4, 5, 8 and 9, T. 40 S., R. 58 E., Copper River Meridian;

Thence easterly, between sections 4 and 9, to the corner of sections 3, 4, 9 and 10, T. 40 S., R. 58 E., Copper River Meridian;

Thence northerly, between sections 3 and 4, to the corner of sections 3, 4, 33 and 34, Tps. 39 and 40 S., R. 58 E., Copper River Meridian;

Thence easterly, between Tps. 39 and 40 S., to the corner of sections 1, 2, 35 and 36, Tps. 39 and 40 S., R. 58 E., Copper River Meridian;

Thence northerly, between sections 35 and 36, 25 and 26, to the ¼ section corner of sections 25 and 26, T. 39 S., R. 58 E., Copper River Meridian;

Thence easterly, on the east and west centerline of section 25, to the center ¼ corner of section 25, T. 39 S., R. 58 E., Copper River Meridian;

Thence southeasterly, in a straight line, to the south corner of sections 31 and 32, T. 39 S., R. 59 E., Copper River Meridian;

Thence easterly, between Tps. 39 and 40 S., to the corner of sections 2, 3, 34 and 35, Tps. 39 and 40 S., R. 59 E., Copper River Meridian;

Thence southerly, between sections 2 and 3, 10 and 11, and continuing due south to a point on the median line in Icy Passage between the mainland and Pleasant Island;

Thence southeasterly and northerly, along the median line of Icy Passage and Excursion Inlet, to a point on a straight line between the special meander corner on the east and west centerline of section 10 on the east shore of Excursion Inlet, and the special meander corner on the east and west centerline of section 9 on the west shore of Excursion Inlet, T. 39 S., R. 60 E., Copper River Meridian;

Thence easterly, in a straight line to the special meander corner on the east and west centerline of section 10, on the east shore of Excursion Inlet, T. 39 S., R. 60 E., Copper River Meridian;

Thence northerly, along the mean high tide line of Excursion Inlet to triangulation station "End," in the westerly portion of section 10, T. 39 S., R. 60 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 76° E., to the summit of a ridge in the northwesterly portion of section 11, T. 39 S., R. 60 E., Copper River Meridian, approximate elevation 3,150 feet;

Thence easterly along a crest of a ridge to the summit of a mountain in the northeast ¼ of section 10, T. 39 S., R. 61 E., Copper River Meridian, approximate elevation 4,800 feet;

Thence northwesterly along the crest of the Chilkat Range separating the Lynn Canal drainages from the Excursion River and Glacier Bay drainages, to the summit of a mountain in the southwest ¼ of section 9, T. 36 S., R. 58 E., Copper River Meridian, approximate elevation 5,110 feet;

Thence northerly and northeasterly along the crest of the Chilkat Range, crossing Endicott Gap, to the summit of a mountain in the south ½ of section 28, T. 34 S., R. 59 E., Copper River Meridian, approximate elevation 4,605 feet;

Thence northwesterly, northeasterly, northwesterly, and northerly along the crest of the Chilkat Range to the summit of a mountain in the east ½ of section 7, T. 32 S., R. 58 E., Copper River Meridian, approximate elevation 6,000 feet;

Thence northwesterly along the crest of the Takhinsha Mountains separating the drainages of the Takhin River and Tsirku River from the Glacier Bay drainages, to the summit of Mt. Harris in the northeast ¼ of section 21, T. 30 S., R. 53 E., Copper River Meridian, approximate elevation 6,392 feet;

Thence southwesterly, westerly, southwesterly and westerly along the International Boundary between the United States of America and Canada, to the summit of Mt. Fairweather in the south ½ of section 1, T. 35 S., R. 47 E., Copper River Meridian, approximate elevation 15,300 feet;

Thence northerly and northwesterly, along the International Boundary between the United States of America and Canada, to the crest of a ridge in the southeasterly portion of section 14, T. 28 S., R. 43 E., Copper River Meridian, approximate elevation 4,200 feet;

Thence southwesterly, along a common boundary with the Tongass National Forest, on the crest of a ridge, to the summit of a peak in the northerly portion of section 8, T. 29 S., R. 43 E., Copper River Meridian, approximate elevation 1,810 feet;

Thence on an approximate forward bearing of S. 45° W., to the summit of a peak in the westerly portion of section 4, T. 30 S., R. 42 E., Copper River Meridian, approximate elevation 3,755 feet;

Thence southwesterly, southerly, and southeasterly, on the crest of a ridge (the Brabazon Range), to the summit of a low peak in the southeast portion of section 29, T. 31 S., R. 43 E., Copper River Meridian, approximate elevation 2,345 feet;

Thence on an approximate forward bearing of S. 36° E., to the most southeasterly point of land at the line of mean high water, in the northeasterly portion of section 4, T. 32 S., R. 43 E., Copper River Meridian;

Thence due south to a point at the line of mean high water on the left bank of the Alsek River in the northeasterly portion of section 9, T. 32 S., R. 43 E., Copper River Meridian;

Thence easterly, departing from a common boundary with the Tongass National Forest, along the left bank of the Alsek River, along a common boundary with the Glacier Bay National Preserve, to the special meander corner on the north and south centerline of section 10, T. 32 S., R. 43 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 10 to a point on the left bank of Doame River in the southerly portion of section 10, T. 32 S., R. 43 E., Copper River Meridian;

Thence southerly, along the left bank of the Doame River, the westerly shores of Lower Doame Lake and two unnamed lakes, to the most southwesterly point of the unnamed lake in the northeasterly portion of section 34, T. 32 S., R. 43 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 28° E., to the summit of a peak in the southwesterly portion of section 35, T. 32 S., R. 43 E., Copper River Meridian, approximate elevation 2,810 feet;

Thence southerly, southwesterly and northwesterly, along the crest of a ridge and a spur ridge, to a point in a saddle at the headwaters of an unnamed creek in the southeasterly portion of section 1, T. 33 S., R. 43 E., Copper River Meridian, approximate elevation 1,880 feet;

*Thence westerly, descending to and along the right bank of an unnamed creek and the left bank of Doame River, to a point between sections 7 and 12, T. 33 S., Rs. 42 and 43 E., Copper River Meridian;

*Thence southerly between Rs. 42 and 43 E., to a point at the line of mean high tide of the Gulf of Alaska, T. 33 S., Rs. 42 and 43 E., Copper River Meridian;

Thence southeasterly, departing from the common boundary with the Glacier Bay National Preserve, along the line of mean high tide of the easterly shore of the Gulf of Alaska, including any coastal islands above the line of mean high tide, to the right bank of the mouth of Sea Otter Creek in section 16, T. 35 S., R. 45 E., Copper River Meridian, the place of beginning.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

Glacier Bay National Preserve

Glacier Bay National Preserve as generally depicted on a map numbered GLBA–90,004, dated October 1978, consists of approximately fifty-seven thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at the special meander corner at the line of mean high water, on the north and

south centerline of section 10, on the left bank of the Alsek River, T. 32 S., R. 43 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 10, along a common boundary with the Glacier Bay National Park, to a point on the left bank of Doame River in the southerly portion of section 10, T. 32 S., R. 43 E., Copper River Meridian;

Thence southerly, along the left bank of the Doame River, the westerly shores of Lower Doame Lake and two unnamed lakes to the most southwesterly point of the unnamed lake in the northeasterly portion of section 34, T. 32 S., R. 43 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 28° E., to the summit of a peak in the southwesterly portion of section 35, T. 32 S., R. 43 E., Copper River Meridian, approximate elevation 2,810 feet;

Thence southerly, southwesterly and northwesterly, along the crest of a ridge and a spur ridge, to a point in a saddle at the headwaters of an unnamed creek in the southeasterly portion of section 1, T. 33 S., R. 43 E., Copper River Meridian, approximate elevation 1,800 feet;

*Thence westerly, descending to and along the right bank of an unnamed creek and the left bank of Doame River, to a point between sections 7 and 12, T. 33 S., Rs. 42 and 43 E., Copper River Meridian;

*Thence southerly between Rs. 42 and 43 E., to a point at the line of mean high tide of the Gulf of Alaska, T. 33 S., Rs. 42 and 43 E., Copper River Meridian;

Thence northwesterly, departing from a common boundary with the Glacier Bay National Park, along the line of mean high tide of the eastern shore of the Gulf of Alaska and along the line of mean high tide of the Doame and East Alsek Rivers, including any coastal barrier or offshore islands above the line of mean high tide, to a point on the eastern shore of and at the mouth of Dry Bay in section 24, T. 32 S., R. 40 E., Copper River Meridian;

Thence northeasterly (generally) and easterly along the line of mean high tide of the eastern shore of Dry Bay and the line of mean high water of the left bank of the Alsek River, along a common boundary with the Tongass National Forest, closing the mouths of any rivers or creeks, to a point in section 9 due south of the most southeasterly point of land in the northeasterly portion of section 4, T. 32 S., R. 43 E., Copper River Meridian;

Thence easterly, departing from a common boundary with the Tongass National Forest, along the line of mean high water of the left bank of the Alsek River, to the special meander corner on the north and south centerline of section 10, T. 32 S., R. 43 E., Copper River Meridian, the place of beginning.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

Units of the National Wilderness Preservation System Within the Glacier Bay National Park

Section 701 (3), Public Law 96–487 (ANILCA):

Glacier Bay Wilderness

The Glacier Bay Wilderness as generally depicted on a map numbered GLBA–90,004, dated October 1978, consists of approximately two million seven hundred and seventy thousand acres of public lands as defined in the ANILCA, within the following described boundaries:

Unit Number 1

Beginning at the line of mean high tide on the easterly shore of the Gulf of Alaska and on the right bank of the mouth of Sea Otter Creek in section 16, T. 35 S., R. 45 E., Copper River Meridian;

*Thence southeasterly, easterly, northerly, northeasterly, southeasterly, easterly and northerly, along the line of mean high tide of the eastern shore of the Gulf of Alaska, Lituya Bay, the Gulf of Alaska, Cross Sound, Taylor Bay, North Inian Pass, and Dundas Bay, to the meander corner of sections 24 and 25, on the southerly shore of Dundas Bay, T. 40 S., R. 54 E., Copper River Meridian;

*Thence on an approximate forward bearing of N. 9° E., across Dundas Bay to the meander corner of sections 13 and 18, on the northerly shore of Dundas Bay, T. 40 S., Rs. 54 and 55 E., Copper River Meridian;

Thence easterly and northerly, along the line of mean high tide of Dundas Bay and the right bank of the Dundas River to the meander corner of sections 9 and 10, T. 40 S., R. 55 E., Copper River Meridian;

Thence due east to the left bank of the Dundas River in the southwesterly portion of section 10, T. 40 S., R. 55 E., Copper River Meridian;

Thence southerly, northeasterly, northerly and northwesterly, along the line of mean high tide along the left bank of the Dundas River, the shores of the Dundas Bay, Icy Strait, Sitakaday Narrows, Berg Bay, Whidbey Passage, Geikie Inlet and Glacier Bay to the most easterly point of land in the southeasterly portion of section 13, T. 36 S., R. 53 E., Copper River Meridian;

*Thence on an approximate forward bearing of N. 31° E., across Hugh Miller Inlet to the most southeasterly point of an island within the portions of sections 1, 7 and 12, T. 36 S., Rs. 53 and 54 E., Copper River Meridian;

Thence northwesterly, along the line of mean high tide of the northeasterly shore of the island to the meander corner of sections 1 and 2, T. 36 S., R. 53 E., Copper River Meridian;

Thence northerly, between sections 1 and 2, to the meander corner of sections 1 and 2 on Gilbert Peninsula, T. 36 S., R. 53 E., Copper River Meridian;

Thence easterly, northerly, northwesterly, westerly, northeasterly, easterly and southeasterly, along the line of mean high tide of Glacier Bay, Johns Hopkins Inlet and Tarr Inlet, closing the mouth of the north end of Scidmore Bay, the northwesterly end of Tarr Inlet and along the International Boundary between the United States of America and Canada, to the meander corner of sections 20 and 29, T. 34 S., R. 53 E., Copper River Meridian;

*Thence on an approximate forward bearing of N. 50° E., across Rendu Inlet to the meander corner of sections 20 and 21, T. 34 S., R. 53 E., Copper River Meridian;

Thence southeasterly, northerly, easterly, southerly, southeasterly, northerly, easterly and southerly, along the line of mean high tide of Glacier Bay, Queen Inlet, Tidal Inlet, and Muir Inlet, to the most westerly point of land known as Point George in the northerly portion of section 10, T. 35 S., R. 56 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 15° E., across Adams Inlet to the left bank of the mouth of a creek draining Dirt Glacier in the northeasterly portion of section 15, T. 35 S., R. 56 E., Copper River Meridian;

Thence southeasterly, along the line of mean high tide of Glacier Bay, to the meander corner of sections 7 and 18, T. 38 S., R. 58 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 80° W., to the most easterly point of an unnamed island in the southeasterly portion of section 12, T. 38 S., R. 57 E., Copper River Meridian;

Thence northwesterly, along the northeasterly shore of the island at the line of mean high tide to the most northerly point of the same island in section 12, T. 38 S., R. 57 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 45° W., to the most northeasterly point of an unnamed island in the northwesterly portion of section 12, T. 38 S., R. 57 E., Copper River Meridian;

Thence westerly, along the northerly shore of the unnamed island to the most westerly point of same island in the northeasterly portion of section 11, T. 38 S., R. 57 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 30° W., to the most northwesterly point of an unnamed island in the southeasterly portion of section 11, T. 38 S., R. 57 E., Copper River Meridian;

Thence southwesterly along the westerly shore of an unnamed island along the line of mean high tide to the most southwesterly point of the same island in the southeasterly portion of section 11, T. 38 S., R. 57 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 25° W., to a point on the northerly shore of Strawberry Island due north of horizontal control station "Soon" in the northerly portion of section 4, T. 39 S., R. 57 E., Copper River Meridian;

Thence southwesterly, southerly and easterly, along the westerly and southerly shores of Strawberry Island, at the line of mean high tide, to a point due south of horizontal control station "Berry" in the northerly portion of section 9, T. 39 S., R. 57 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 8° E., to a point on the westerly shore of Young Island, due west of horizontal control station "Coal" in the northeasterly portion of section 21, T. 39 S., R. 57 E., Copper River Meridian;

Thence southerly and southeasterly, along the westerly shore of Young Island at the line of mean high tide, to a point due south of horizontal control station "Best" in the

easterly portion of section 27, T. 39 S., R. 57 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 58° E., to the most westerly point of Lester Island, due west of horizontal control station "Poor" in the southwesterly portion of section 26, T. 39 S., R. 57 E., Copper River Meridian;

Thence southeasterly, northeasterly and easterly, along the southerly shore of Lester Island at the line of mean high tide, to the most southern tip of land on the Lester Island near the center of section 29, T. 39 S., R. 58 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 80° E., to the special meander corner on the east and west centerline of section 29, T. 39 S., R. 58 E., Copper River Meridian;

Thence easterly, on the east and west centerlines of sections 29, 28, 27, 26 and 25 to the center ¼ section corner of section 25, T. 39 S., R. 58 E., Copper River Meridian;

Thence southeasterly, in a straight line to the south corner of sections 31 and 32, T. 39 S., R. 59 E., Copper River Meridian;

Thence easterly, between Tps. 39 and 40 S., to the corner of sections 2, 3, 34 and 35, Tps. 39 and 40 S., R. 59 E., Copper River Meridian;

Thence southerly, between sections 2 and 3, 10 and 11, to the meander corner of sections 10 and 11, T. 40 S., R. 59 E., Copper River Meridian;

Thence southeasterly, northerly, northwesterly and southeasterly, along the line of mean high tide of Icy Passage, Excursion Inlet and Sawmill Bay to a point on the Glacier Bay National Park boundary at triangulation station "End", on the east side of the northern end of Excursion Inlet in the westerly portion of section 10, T. 39 S., R. 60 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 76° E., to the summit of a ridge in the westerly portion of section 11, T. 39 S., R. 60 E., Copper River Meridian, approximate elevation 3,150 feet;

Thence easterly, along a crest of a ridge to the summit of a mountain in the northeast ¼ of section 10, T. 39 S., R. 61 E., Copper River Meridian, approximate elevation 4,800 feet;

Thence northwesterly, along the crest of the Chilkat Range separating the Lynn Canal drainages from the Excursion River and Glacier Bay drainages, to the summit of a mountain in the southwest ¼ of section 9, T. 38 S., R. 58 E., Copper River Meridian, approximate elevation 5,110 feet;

Thence northerly and northeasterly, along the crest of the Chilkat Range, crossing Endicott Gap to the summit of a mountain in the south ½ of section 28, T. 34 S., R. 59 E., Copper River Meridian, approximate elevation 4,805 feet;

Thence northwesterly, northeasterly, northwesterly, and northerly, along the crest of the Chilkat Range to the summit of a mountain in the east ½ of section 7, T. 32 S., R. 58 E., Copper River Meridian, approximate elevation 6,006 feet;

Thence northwesterly along the crest of the Takhinsha Mountains separating the drainages of the Takhin River and Tsirku River from the Glacier Bay drainages, to the summit of Mt. Harris in the northeast ¼ of section 21, T. 33 S., R. 53 E., Copper River Meridian, approximate elevation 6,382 feet;

Thence southwesterly, westerly, southwesterly, and westerly, along the International Boundary between the United States of America and Canada, to the summit of Mt. Fairweather in the south ½ of section 1, T. 35 S., R. 47 E., Copper River Meridian, approximate elevation 15,300 feet;

Thence northerly and northwesterly, along the International Boundary between the United States of America and Canada, to the crest of a ridge in the southeasterly portion of section 14, T. 28 S., R. 43 E., Copper River Meridian, approximate elevation 4,200 feet;

Thence southwesterly, on the crest of a ridge to the summit of a peak in the northerly portion of section 8, T. 29 S., R. 43 E., Copper River Meridian, approximate elevation 1,810 feet;

Thence on an approximate forward bearing of S. 45° W., to the summit of a peak in the westerly portion of section 4, T. 30 S., R. 42 E., Copper River Meridian, approximate elevation 3,755 feet;

Thence southwesterly, southerly, and southeasterly, on the crest of a ridge (the Brabazon Range), to the summit of a low peak in the southeasterly portion of section 29, T. 31 S., R. 43 E., Copper River Meridian, approximate elevation 2,345 feet;

Thence on an approximate forward bearing of N. 62° E., to the most southerly tip of land on the left bank of the Alsek River, in the northeasterly portion of section 28, T. 31 S., R. 43 E., Copper River Meridian;

Thence northerly, easterly and southerly, along the line of mean high water of an unnamed lake formed by the Alsek River, to the meander corner of sections 2 and 11, T. 32 S., R. 43 E., Copper River Meridian;

Thence easterly, between sections 2 and 11, to the corner of sections 1, 2, 11 and 12, T. 32 S., R. 43 E., Copper River Meridian;

Thence southerly, between sections 11 and 12, to the north 1/16 section corner of sections 11 and 12, T. 32 S., R. 43 E., Copper River Meridian;

Thence easterly, on the east and west centerline of the northwest ¼ of section 12, to the center-north 1/16 section corner of section 12, T. 32 S., R. 43 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 12, to the ¼ section corner of sections 12 and 13, T. 32 S., R. 43 E., Copper River Meridian;

Thence westerly, between sections 12 and 13, to the corner of sections 11, 12, 13 and 14, T. 32 S., R. 43 E., Copper River Meridian;

Thence southerly, between sections 13 and 14, to the ¼ section corner of sections 13 and 14, T. 32 S., R. 43 E., Copper River Meridian;

Thence westerly, on the east and west centerline of section 14, to the special meander corner on the easterly shore of Lower Doame Lake, T. 32 S., R. 43 E., Copper River Meridian;

Thence southerly and westerly, along the line of mean high water of Lower Doame Lake, to the left bank of Doame River in the southwesterly portion of section 14, T. 32 S., R. 43 E., Copper River Meridian;

Thence southerly, along the left bank of the Doame River and the westerly shores of two unnamed lakes, to the most southwesterly point of the unnamed lake in the northeasterly portion of section 34, T. 32 S., R. 43 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 28° E., to the summit of a peak in the southwesterly portion of section 35, T. 32 S., R. 43 E., Copper River Meridian, approximate elevation 2,810 feet;

Thence southerly, southwesterly, and northwesterly, along the crest of a ridge and a spur ridge, to a point in a saddle at the headwaters of an unnamed creek in the southeasterly portion of section 1, T. 33 S., R. 43 E., Copper River Meridian, approximate elevation 1,800 feet;

*Thence westerly, descending to and along the right bank of an unnamed creek and the left bank of Doame River, to a point between sections 7 and 12, T. 33 S., Rs. 42 and 43 E., Copper River Meridian;

*Thence southerly between Rs. 42 and 43 E., to a point at the line of mean high tide of the Gulf of Alaska, T. 33 S., Rs. 42 and 43 E., Copper River Meridian;

Thence southeasterly, along the line of mean high tide of the easterly shore of the Gulf of Alaska, including any coastal islands above the line of mean high tide, to the right bank of the mouth of Sea Otter Creek in section 16, T. 35 S., R. 45 E., Copper River Meridian, the place of beginning.

The Glacier Bay Wilderness No. 1 includes all islands above the line of mean high tide within the Glacier Bay National Park Boundary, with the exception of Cenotaph Island located in Lituya Bay within portions of sections 23, 24, 25 and 26, T. 37 S., R. 47 E., Copper River Meridian and an unnamed island located in Glacier Bay within portions of sections 5, 6, 7 and 8, T. 36 S., R. 54 E., Copper River Meridian.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

Unit Number 2

Beginning at the meander corner of sections 20 and 21 at the line of mean high tide of Icy Strait, T. 40 S., R. 58 E., Copper River Meridian;

Thence northerly, between sections 20 and 21, 16 and 17, 8 and 9, 4 and 5, to the south 1/16 section corner of sections 4 and 5, T. 40 S., R. 58 E., Copper River Meridian;

Thence westerly, on the east and west centerlines of the southeast ¼ and southwest ¼ of section 5 and the southeast ¼ of section 6, to the special meander corner of section 6 at the line of mean high tide of Glacier Bay, T. 40 S., R. 58 E., Copper River Meridian;

Thence southerly and easterly, along the line of mean high tide of Glacier Bay and Icy Strait to the meander corner of sections 20 and 21, T. 40 S., R. 58 E., Copper River Meridian, the place of beginning.

The following U.S. Geological Survey 1:63,360 Series (Topographic) Quadrangle maps were used in preparing the legal boundary descriptions for Glacier Bay National Park and Preserve and Glacier Bay Wilderness areas:

Juneau, Alaska: (B–4) 1948 mr 1972; (B–5) 1950 mr 1966; (B–6) 1948 mr 1967; (C–4) 1949 mr 1966; (C–5) 1948 mr 1973; (C–6) 1950 mr 1966; (D–5) 1949 mr 1962; (D–6) 1949 mr 1972

Mt. Fairweather, Alaska: (A–2) 1948 mr 1982; (A–3) 1961; (B–1) 1948 mr 1966; (B–2) 1948 mr 1971; (B–3) 1961; (B–4) 1961; (C–1) 1948 mr 1973; (C–2) 1948 mr 1973; (C–5) 1961; (C–6) 1961; (D–1) 1948 mr 1972; (D–2) 1948 mr 1972; (D–3) 1961; (D–4) 1961; (D–5) 1961; (D–6) 1961; (D–7) 1961.

Skagway, Alaska: (A–3) 1954 mr 1972; (A–4) 1961 mr 1972; (A–5) 1961; (A–6) 1961; (A–7) 1961; (B–4) 1954 mr 1972; (B–8) 1961.

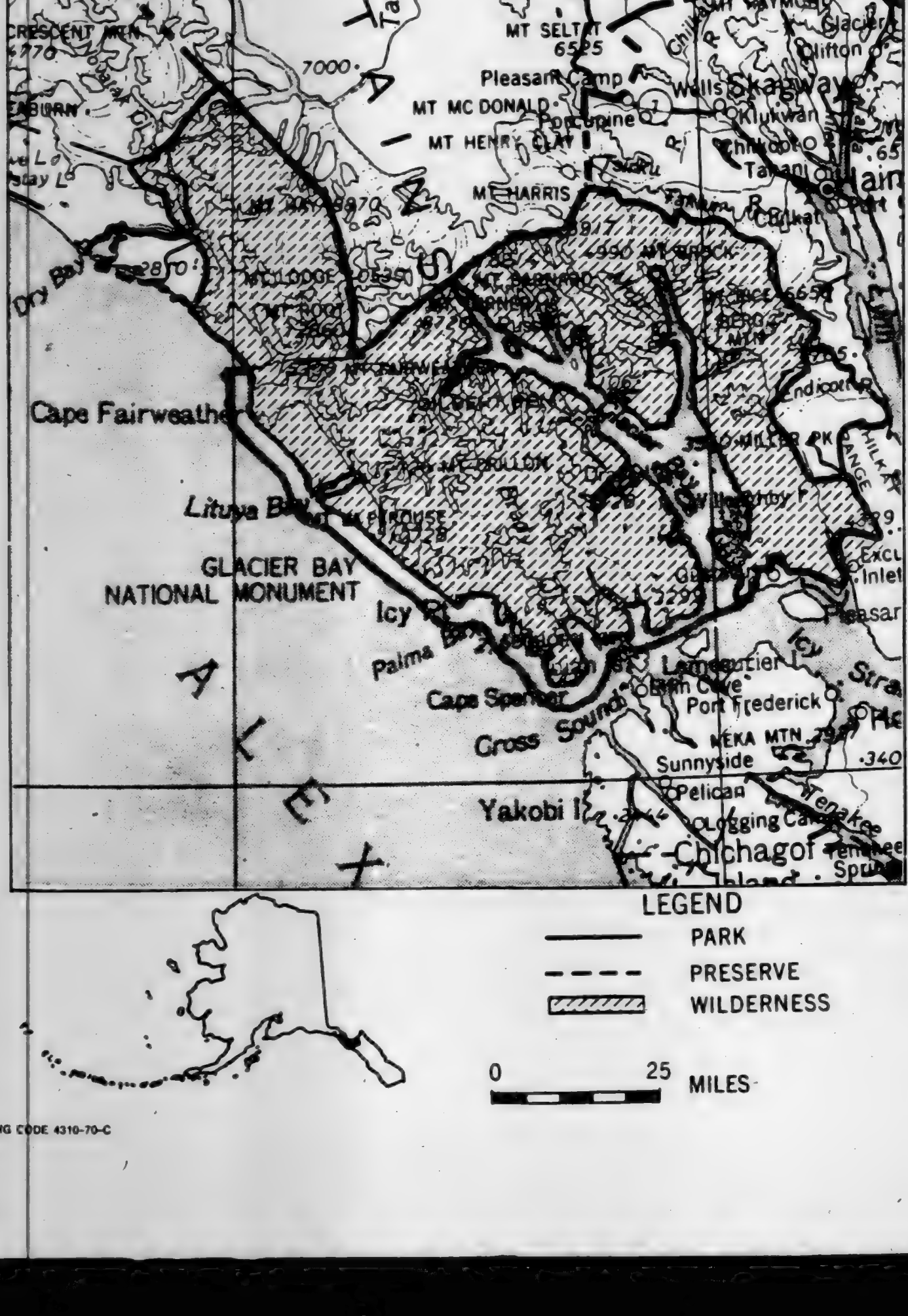
Yakutat, Alaska: (A–1) 1959; (A–2) 1959 mr 1973; (B–1) 1959; (B–2) 1959 mr 1973.

mr—minor revisions

BILLING CODE 4310-70-F

GLACIER BAY NATIONAL PARK AND PRESERVE

PUBLIC LAW 96-487



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Katmai National Park and Preserve

Section 202(1), Public Law 96–487 (ANILCA):

Katmai National Park

Katmai National Park as generally depicted on a map numbered KATM–90,007, dated July 1980, consists of the former Katmai National Monument and an addition of approximately one million and thirty-seven thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at vertical angle bench mark "Kubugakli" located in the southeasterly portion of section 6, T. 27 S., R. 35 W., Seward Meridian, approximate elevation 139 feet;

Thence S. 40° E., along a common boundary with the Becharof National Wildlife Refuge, to the line of mean high tide of Shelikof Strait;

Thence departing from the common boundary with the Becharof National Wildlife Refuge, northeasterly, northwesterly, westerly and southwesterly, along the line of mean high tide line of Shelikof Strait and Kamishak Bay, and including all offshore islands, islets and rocks in front of and within five statute miles of the mainland coastline, but excluding those islands, islets and rocks on the west side of Akunwarvik Bay, to a point on the right bank of the Kamishak River at its mouth, located in the westerly portion of section 29, T. 13 S., R. 29 W., Seward Meridian;

Thence southerly, along the right bank of the Kamishak River, to the point between sections 5 and 32, Tps. 13 and 14 S., R. 29 W., Seward Meridian;

Thence westerly, between Tps. 13 and 14 S., to the corner of Tps. 13 and 14 S., Rs. 31 and 32 W., Seward Meridian;

Thence southerly, between Rs. 31 and 32 W., to the corner of Tps. 14 and 15 S., Rs. 31 and 32 W., Seward Meridian;

Thence westerly, between Tps. 14 and 15 S., to the corner of Tps. 14 and 15 S., Rs. 32 and 33 W., Seward Meridian;

Thence northerly, between Rs. 32 and 33 W., to the crest of a ridge between sections 1 and 6, T. 13 S., Rs. 32 and 33 W., Seward Meridian, approximate elevation 4,000 feet;

Thence northwesterly, along the crest of a ridge between the Battle Lake and Paint River drainages, to the junction of ridges located in the southerly portion of section 31, T. 12 S., R. 32 W., Seward Meridian, approximate elevation 3,425 feet;

Thence westerly and northerly, along the crest of a ridge between the Battle Lake and Moraine Creek drainages, and along a common boundary with the Katmai National Preserve, to a point on the east and west centerline of section 27, T. 12 S., R. 33 W., Seward Meridian, approximate elevation 2,925 feet;

Thence westerly, on the east and west centerlines of sections 27 and 28, to the intersection of a ridge in sections 28 and 29, T. 12 S., R. 33 W., Seward Meridian, approximate elevation 1,800 feet;

Thence westerly, along the crest of a ridge between the headwaters of Moraine Creek, an unnamed creek draining into the Battle Lake drainage and the Battle Lake drainages, to the summit of a mountain in sections 30 and 25, T. 12 S., Rs. 33 and 34 W., Seward Meridian, approximate elevation 3,450 feet;

Thence northwesterly, along the crest of a ridge between the Battle Lake drainage and an unnamed river which flows into the stream which is the outlet to Battle Lake through sections 25, 24, 23, 22 and 15 to a point on the right bank of an unnamed river which flows into the stream which is the outlet to Battle Lake located in the northwest ¼ of the southwest ¼ of section 15, T. 12 S., R. 34 W., Seward Meridian;

Thence southwesterly, along the right bank of the unnamed creek and the west shore of a small lake to the most westerly point on the west shore of the unnamed lake located in the northwest ¼ of section 21, T. 12 S., R. 34 W., Seward Meridian;

Thence on an approximate bearing of S. 1° W., to a point which is the most westerly point on the western shore of a small unnamed lake in the northwest ¼ of section 28, T. 12 S., R. 34 W., Seward Meridian;

Thence southerly, easterly and northerly along the shore of the small unnamed lake to a point on the shore intersecting with a ridge in the northeast ¼ of the northwest ¼ of section 28, T. 12 S., R. 34 W., Seward Meridian;

Thence southeasterly, southwesterly, westerly, southerly and southwesterly along a spur ridge and the crest of an unnamed ridge between the Battle Lake, Kulik Lake, Kukaklek Lake and Nonvianuk Lake drainages, to the summit of a mountain located in sections 28 and 33, T. 13 S., R. 35 W., Seward Meridian, approximate elevation 2,788 feet;

Thence on an approximate bearing of S. 18° E., to the headwaters of an unnamed creek located near the center of section 33, T. 13 S., R. 35 W., Seward Meridian;

Thence southerly and westerly, along the right bank of an unnamed creek and the line of mean high water of the easterly and southerly shores of Nonvianuk Lake closing the mouths of the stream draining the Kulik Lake and other streams to the most northerly point of land in section 5, T. 14 S., R. 37 W., Seward Meridian;

Thence due south, to a point between sections 8 and 17, T. 14 S., R. 37 W., Seward Meridian;

Thence westerly, between sections 8 and 17, 7 and 18, 12 and 13, 11 and 14, 10 and 15, 9 and 16, to the corner of sections 8, 9, 16 and 17, T. 14 S., R. 38 W., Seward Meridian;

Thence northerly, between sections 8 and 9, to the ¼ section corner of sections 8 and 9, T. 14 S., R. 38 W., Seward Meridian;

*Thence westerly on the east and west centerlines of sections 8 and 7 to the ¼ section corner of sections 7 and 12, T. 14 S., Rs. 38 and 39 W., Seward Meridian;

*Thence northerly between sections 7 and 12 to a point on the right bank of an unnamed stream which is a tributary to American Creek between sections 7 and 12, T. 14 S., Rs. 38 and 39 W., Seward Meridian;

*Thence northwesterly and southwesterly along the right bank of the unnamed stream which is a tributary to American Creek, to a junction of unnamed streams which are tributaries to American Creek, located near the southern boundary of the southeast ¼ of section 22, T. 14 S., R. 39 W., Seward Meridian;

*Thence on an approximate forward bearing of S. 45° W., to a junction of unnamed streams which are tributaries to American Creek, located near the eastern boundary of the southeast ¼ of section 28, T. 14 S., R. 39 W., Seward Meridian;

*Thence northwesterly, southwesterly and southerly along the left bank of the unnamed stream which is a tributary to American Creek, to a point located N. 53° E. of the summit of a mountain located in sections 1, 6, 7 and 12, T. 15 S., Rs. 39 and 40 W., Seward Meridian, approximate elevation 2,175 feet;

*Thence on a bearing of S. 53° W., to the summit of a mountain located in sections 1, 6, 7 and 12, T. 15 S., Rs. 39 and 40 W., Seward Meridian, approximate elevation 2,175 feet;

*Thence along the crest of a ridge between the drainage of King Salmon Creek and tributaries of the Alagnak River to the summit of Sugarloaf Mountain located in section 9, T. 15 S., R. 40 W., Seward Meridian, approximate elevation 2,085 feet;

*Thence on an approximate forward bearing of S. 14° W., departing from the common boundary with the Katmai National Preserve, to the summit of a mountain located in the northeast ¼ of section 20, T. 15 S., R. 40 W., Seward Meridian, approximate elevation 1,770 feet;

*Thence on an approximate forward bearing of S. 42° W., to the summit of a mountain located in the northwest ¼ of section 1, T. 16 S., R. 41 W., Seward Meridian, approximate elevation 720 feet;

*Thence on an approximate forward bearing of S. 42° W., to a junction of unnamed creeks which are tributaries to King Salmon Creek, located in the easterly portion of section 16, T. 16 S., R. 41 W., Seward Meridian;

Thence on an approximate forward bearing of S. 55° W., to the top of a hill located in the northerly portion of section 21, T. 16 S., R. 41 W., Seward Meridian, approximate elevation 790 feet;

Thence on an approximate forward bearing of N. 75° W., to the corner of sections 16, 17, 20 and 21, T. 16 S., R. 41 W., Seward Meridian;

Thence northerly, between sections 16 and 17, to the ¼ section corner of section 16 and 17, T. 16 S., R. 41 W., Seward Meridian;

Thence westerly, on the east and west centerlines of sections 17 and 18, to the ¼ section corner of sections 13 and 18, T. 16 S., Rs. 41 and 42 W., Seward Meridian;

Thence northerly, between Rs. 41 and 42 W., to the corner of sections 7, 12, 13 and 18, T. 16 S., Rs. 41 and 42 W., Seward Meridian;

Thence westerly, between sections 12 and 13, to the corner of sections 11, 12, 13 and 14, T. 16 S., R. 42 W., Seward Meridian;

Thence northerly, between sections 11 and 12, to the ¼ section corner of sections 11 and 12, T. 16 S., R. 42 W., Seward Meridian;

Thence westerly, on the east and west centerline of section 11, 1 mile to the ¼ section corner of sections 10 and 11, T. 16 S., R. 42 W., Seward Meridian;

Thence northerly, between sections 10 and 11, to the north 1/16 section corner of sections 10 and 11, T. 16 S., R. 42 W., Seward Meridian;

Thence westerly, on the east and west centerline of the north half of section 10, to the north 1/16 section corner of sections 9 and 10, T. 16 S., R. 42 W., Seward Meridian;

Thence southerly, between sections 9 and 10, to the 1/4 section corner of sections 9 and 10, T. 16 S., R. 42 W., Seward Meridian;

Thence westerly, on the east and west centerlines of sections 9 and 8, to the center-east 1/16 section corner of section 8, T. 16 S., R. 42 W., Seward Meridian;

Thence southerly, on the north and south centerline of the southeast 1/4 to the southeast 1/16 section corner of section 8, T. 16 S., R. 42 W., Seward Meridian;

Thence westerly, on the east and west centerline of the south half of section 8, to the south 1/16 section corner of sections 7 and 8, T. 16 S., R. 42 W., Seward Meridian;

Thence southerly, between sections 7 and 8, 17 and 18, to the corner of sections 17, 18, 19 and 20, T. 16 S., R. 42 W., Seward Meridian;

Thence westerly, between sections 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 16 S., Rs. 42 and 43 W., Seward Meridian;

Thence southerly, between Tps. 42 and 43 W., to the north 1/16 section corner of sections 19 and 24, T. 16 S., Rs. 42 and 43 W., Seward Meridian;

Thence westerly, on the east and west centerlines of the north half of section 24 and the northeast 1/4 of section 23, to the center-north 1/16 section corner of section 23, T. 16 S., R. 43 W., Seward Meridian;

Thence southerly, on the north and south centerline of section 23, to the center 1/4 section corner of section 23, T. 16 S., R. 43 W., Seward Meridian;

Thence westerly, on the east and west centerline of the north half of section 23, to the 1/4 section corner of sections 22 and 23, T. 16 S., R. 43 W., Seward Meridian;

Thence southerly, between sections 22 and 23, to the south 1/16 section corner of sections 22 and 23, T. 16 S., R. 43 W., Seward Meridian;

Thence westerly, on the east and west centerline of the southeast 1/4 of section 22, to the center-south 1/16 section corner of section 22, T. 16 S., R. 43 W., Seward Meridian;

Thence southerly, on the north and south centerline of section 22, to the 1/4 section corner of sections 22 and 27, T. 16 S., R. 43 W., Seward Meridian;

Thence westerly, between sections 22 and 27, to the corner of sections 21, 22, 27 and 28, T. 16 S., 43 W., Seward Meridian;

Thence southerly, between sections 27 and 28, to the 1/4 section corner of sections 27 and 28, T. 16 S., R. 43 W., Seward Meridian;

Thence westerly, on the east and west centerline of section 28, to the center 1/4 section corner of section 28, T. 16 S., R. 43 W., Seward Meridian;

Thence southerly, on the north and south centerline of section 28, to the 1/4 section corner of sections 28 and 33, T. 16 S., R. 43 W., Seward Meridian;

Thence westerly, between sections 28 and 33, to the corner of sections 28, 29, 32 and 33, T. 16 S., R. 43 W., Seward Meridian;

Thence southerly, between sections 32 and 33, to the standard corner of sections 32 and 33, T. 16 S., R. 43 W., Seward Meridian;

Thence westerly, on the Fourth Standard Parallel South, to the closing 1/4 section corner of section 2, T. 17 S., R. 44 W., Seward Meridian;

Thence southerly, on the north and south centerline of section 2, to the center 1/4 section corner of section 2, T. 17 S., R. 44 W., Seward Meridian;

Thence westerly, on the east and west centerline of section 2, to the 1/4 section corner of sections 2 and 3, T. 17 S., R. 44 W., Seward Meridian;

Thence southerly, between sections 2 and 3, 10 and 11, 14 and 15, to the corner of sections 14, 15, 22 and 23, T. 17 S., R. 44 W., Seward Meridian;

Thence westerly, between sections 15 and 22, to the 1/4 section corner of sections 15 and 22, T. 17 S., R. 44 W., Seward Meridian;

Thence southerly, on the north and south centerlines of sections 22, 27 and 34, to the 1/4 section corner of sections 3 and 34, Tps. 17 and 18 S., R. 44 W., Seward Meridian;

Thence easterly, between Tps. 17 and 18 S., to the corner of sections 2, 3, 34 and 35, Tps. 17 and 18 S., R. 44 W., Seward Meridian;

Thence southerly, between sections 2 and 3, 10 and 11, 14 and 15, to the corner of sections 14, 15, 22 and 23, T. 18 S., R. 44 W., Seward Meridian;

Thence easterly, between sections 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 18 S., Rs. 43 and 44 W., Seward Meridian;

Thence southerly, between Rs. 43 and 44 W., to the corner of Ts. 18 and 19 S., Rs. 43 and 44 W., Seward Meridian;

Thence southerly, along a common boundary with the Becharof National Wildlife Refuge, between Rs. 43 and 44 W., to the 1/4 section corner of sections 1 and 6, T. 19 S., Rs. 43 and 44 W., Seward Meridian;

Thence on an approximate forward bearing of S. 89° E., to the vertical angle bench mark "Contact" located in section 4, T. 19 S., R. 42 W., Seward Meridian, approximate elevation 1,156 feet;

Thence on an approximate forward bearing of S. 18° W., to the summit of a mountain located in sections 29 and 32, T. 19 S., R. 42 W., Seward Meridian, approximate elevation 1,125 feet;

Thence on an approximate forward bearing of S. 2° W., to vertical angle bench mark "Granite" located on a mountain in sections 2 and 11, T. 21 S., R. 43 W., Seward Meridian, approximate elevation 1,683 feet;

Thence on an approximate forward bearing of S. 30° E., to vertical angle bench mark horizontal control station "Red" located in the southeasterly portion of section 2, T. 23 S., R. 42 W., Seward Meridian, approximate elevation 1,721 feet;

Thence on an approximate forward bearing of S. 40° E., to vertical angle bench mark horizontal control station "Gert" located in the southwesterly portion of section 20, T. 23 S., R. 41 W., Seward Meridian, approximate elevation 1,141 feet;

Thence on an approximate forward bearing of S. 78° E., to the confluence of the King Salmon River, Takayofa Creek, and Contact Creek, located in the southeasterly portion of section 20, T. 23 S., R. 41 W., Seward Meridian;

Thence on an approximate forward bearing of S. 45° E., to the intersection of a ridge and the line between sections 13 and 18, T. 24 S., Rs. 40 and 41 W., Seward Meridian, approximate elevation 1,100 feet;

Thence southeasterly and easterly, along the crest of a ridge between the drainages of the King Salmon River and streams flowing into Becharof Lake, to a point between sections 14 and 23, T. 25 S., R. 38 W., Seward Meridian;

Thence easterly, between sections 14 and 23, 13 and 24, 18 and 19, 17 and 20, 16 and 21, to the corner of sections 15, 16, 21 and 22, T. 25 S., R. 37 W., Seward Meridian;

Thence on an approximate forward bearing of S. 32° E., to the summit of a mountain located in section 22, T. 25 S., R. 37 W., Seward Meridian, approximate elevation 2,267 feet;

Thence southerly along the crest of a ridge between the drainages of streams flowing into Becharof Lake and streams flowing into Shelikof Strait to the summit of a small mountain in the northwest 1/4 of section 22, T. 26 S., R. 37 W., Seward Meridian, approximate elevation 1,746 feet;

Thence easterly and southeasterly, along the crest of a ridge to a point N. 40° W., of vertical angle bench mark "Kubugakli", located in section 6, T. 27 S., R. 35 W., Seward Meridian, approximate elevation 1,150 feet;

Thence S. 40° E., to vertical angle bench mark "Kubugakli", the point of beginning.

Included within the Katmai National Park are those lands, waters, islands, islets and rocks within the foregoing National Park boundary above the line of mean high tide.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

Katmai National Preserve

Katmai National Preserve as generally depicted on a map numbered KATM–90,007, dated July 1980, consists of approximately three hundred and eight thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at a point located at the junction of ridges between the headwaters of the Crevice Creek, Moraine Creek and Battle Lake drainages, located in the southerly portion of section 31, T. 12 S., R. 32 W., Seward Meridian, approximate elevation 3,425 feet;

Thence westerly and northerly, along the crest of a ridge between the Battle Lake and Moraine Creek drainages, along a common boundary with the Katmai National Park, to a point on the east and west centerline of section 27, T. 12 S., R. 33 W., Seward Meridian, approximate elevation 2,925 feet;

Thence westerly, on the east and west centerlines of sections 27 and 28, to the intersection of a ridge in sections 28 and 29, T. 12 S., R. 33 W., Seward Meridian, approximate elevation 1,800 feet;

Thence westerly, along the crest of a ridge between the headwaters of Moraine Creek,

an unnamed creek draining into the Battle Lake drainage and the Battle Lake drainages, to the summit of a mountain in sections 30 and 25, T. 12 S., Rs. 33 and 34 W., Seward Meridian, approximate elevation 3,450 feet;

Thence northwesterly, along the crest of a ridge between the Battle Lake drainage and an unnamed river which flows into the stream which is the outlet to Battle Lake through sections 25, 24, 23, 22 and 15 to a point on the right bank of an unnamed river which flows into the stream which is the outlet to Battle Lake located in the northwest ¼ of the southwest ¼ of section 15, T. 12 S., R. 34 W., Seward Meridian;

Thence southwesterly, along the right bank of the unnamed creek and the west shore of a small lake, to the most westerly point on the west shore of the unnamed lake located in the northwest ¼ of section 21, T. 12 S., R. 34 W., Seward Meridian;

Thence on an approximate forward bearing of S. 1° W., to a point which is the most westerly point on the western shore of a small unnamed lake in the northwest ¼ of section 28, T. 12 S., R. 34 W., Seward Meridian;

Thence southerly, easterly and northerly along the shore of the small unnamed lake to a point on the shore intersecting with a ridge in the northeast ¼ of the northwest ¼ of section 28, T. 12 S., R. 34 W., Seward Meridian;

Thence southeasterly, southwesterly, westerly, southerly and southwesterly, along a spur ridge and the crest of an unnamed ridge between the Battle Lake, Kulik Lake, Kukaklek Lake and Nonvianuk Lake drainages, to the summit of a mountain located in sections 28 and 33, T. 13 S., R. 35 W., Seward Meridian, approximate elevation 2,788 feet;

Thence on an approximate forward bearing of S. 18° E., to the headwaters of an unnamed creek located near the center of section 33, T. 13 S., R. 35 W., Seward Meridian;

Thence southerly and westerly, along the right bank of an unnamed creek and the line of mean high water of the easterly and southerly shores of Nonvianuk Lake closing the mouths of the stream draining Kulik Lake and other streams to the most northerly point of land in section 5, T. 14 S., R. 37 W., Seward Meridian;

Thence due south, to a point between sections 8 and 17, T. 14 S., R. 37 W., Seward Meridian;

Thence westerly, between sections 8 and 17, 7 and 18, 12 and 13, 11 and 14, 10 and 15, 9 and 16, to the corner of sections 8, 9, 16 and 17, T. 14 S., R. 38 W., Seward Meridian;

Thence northerly, between sections 8 and 9, to the ¼ section corner of sections 8 and 9, T. 14 S., R. 38 W., Seward Meridian;

*Thence westerly on the east and west centerlines of sections 8 and 7 to the ¼ section corner of sections 7 and 12, T. 14 S., Rs. 38 and 39 W., Seward Meridian;

*Thence northerly between sections 7 and 12 to a point on the right bank of an unnamed stream which is a tributary to American creek between sections 7 and 12, T. 14 S., Rs. 38 and 39 W., Seward Meridian;

*Thence northwesterly and southwesterly along the right bank of the unnamed stream, which is a tributary to American Creek, to a junction of unnamed streams which are tributaries to American Creek, located near the southern boundary of the southeast ¼ of section 22, T. 14 S., R. 39 W., Seward Meridian;

*Thence on an approximate forward bearing of S. 45° W., to a junction of unnamed streams which are tributaries to American Creek, located near the eastern boundary of the southeast ¼ of section 28, T. 14 S., R. 39 W., Seward Meridian;

*Thence northwesterly, southwesterly, and southerly, along the left bank of the unnamed stream which is a tributary to American Creek, to a point located N. 53° E., of the summit of a mountain located in sections 1, 6, 7 and 12, T. 15 S., Rs. 39 and 40 W., Seward Meridian, approximate elevation 2,175 feet;

*Thence on a bearing of S. 53° W., to the summit of a mountain located in sections 1, 6, 7 and 12, T. 15 S., Rs. 39 and 40 W., Seward Meridian, approximate elevation 2,175 feet;

*Thence along the crest of a ridge between the drainage of King Salmon Creek and tributaries of the Alagnak River to the summit of Sugarloaf Mountain located in section 9, T. 15 S., R. 40 W., Seward Meridian, approximate elevation 2,085 feet;

*Thence on an approximate forward bearing of N. 88° W., departing from the common boundary with the Katmai National Park, to the summit of a small mountain located in section 8, T. 15 S., R. 40 W., Seward Meridian, approximate elevation 1,657 feet;

*Thence on an approximate forward bearing of N. 44° W., to the summit of a mountain located in section 36, T. 14 S., R. 41 W., Seward Meridian, approximate elevation 2,442 feet;

Thence on an approximate forward bearing of N. 25° E., to the summit of a mountain located in the northerly portion of section 17, T. 14 S., R. 40 W., Seward Meridian, approximate elevation 1,160 feet;

Thence on an approximate forward bearing of N. 46° W., to the corner of sections 1, 6, 7 and 12, T. 14 S., Rs. 40 and 41 W., Seward Meridian;

Thence northerly, between Rs. 40 and 41 W., to a point on the left bank of the Alagnak River at the line of mean high water between sections 31 and 36, T. 13 S., Rs. 40 and 41 W., Seward Meridian;

Thence easterly and northeasterly, along the left bank of the Alagnak River and the line of mean high water, to a point between sections 33 and 34, T. 12 S., R. 38 W., Seward Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, to the corner of sections 9, 10, 15 and 16, T. 12 S., R. 38 W., Seward Meridian;

Thence easterly, between sections 10 and 15, to the corner of sections 10, 11, 14 and 15, T. 12 S., R. 38 W., Seward Meridian;

Thence northerly, between sections 10 and 11, to the corner of sections 2, 3, 10 and 11, T. 12 S., R. 38 W., Seward Meridian;

Thence easterly, between sections 2 and 11, to the corner of sections 1, 2, 11 and 12, T. 12 S., R. 38 W., Seward Meridian;

Thence northerly, between sections 1 and 2, to the corner of sections 1, 2, 35 and 36, Tps. 11 and 12 S., R. 38 W., Seward Meridian;

Thence on an approximate forward bearing of N. 60° E., to the summit of a mountain located in the northerly portion of section 31, T. 11 S., R. 37 W., Seward Meridian, approximate elevation 1,310 feet;

Thence on an approximate forward bearing of N. 52° E., to vertical angle bench mark "Kal" located in the southeasterly portion of section 30, T. 11 S., R. 37 W., Seward Meridian, approximate elevation 1,346 feet;

Thence on an approximate forward bearing of N. 33° E., to the summit of a mountain in section 18, T. 11 S., R. 37 W., Seward Meridian, approximate elevation 970 feet;

Thence on an approximate forward bearing of N. 45° E., to the corner of sections 9, 10, 15 and 16, T. 11 S., R. 37 W., Seward Meridian;

Thence easterly, between sections 10 and 15, to the corner of sections 10, 11, 14 and 15, T. 11 S., R. 37 W., Seward Meridian;

Thence northerly, between sections 10 and 11, to the corner of sections 2, 3, 10 and 11, T. 11 S., R. 37 W., Seward Meridian;

Thence easterly, between sections 2 and 11, to the corner of sections 1, 2, 11 and 12, T. 11 S., R. 37 W., Seward Meridian;

Thence northerly, between sections 1 and 2, to the corner of sections 1, 2, 35 and 36, Tps. 10 and 11 S., R. 37 W., Seward Meridian;

Thence easterly, between Tps. 10 and 11 S., to the corner of Tps. 10 and 11, R. 36 and 37 W., Seward Meridian;

Thence northerly, between Rs. 36 and 37 W., to the corner of sections 25, 30, 31 and 36, T. 10 S., Rs. 36 and 37 W., Seward Meridian;

Thence easterly, between sections 30 and 31, 29 and 32, 28 and 33, 27 and 34, 26 and 35, 25 and 36, 30 and 31, 29 and 32, 28 and 33, to the corner of sections 27, 28, 33 and 34, T. 10 S., R. 35 W., Seward Meridian;

Thence southerly, between sections 33 and 34, to the ¼ section corner of sections 33 and 34, T. 10 S., R. 35 W., Seward Meridian;

Thence easterly, on the east and west centerlines of sections 34 and 35, to the ¼ section corner of sections 35 and 36, T. 10 S., R. 35 W., Seward Meridian;

Thence southerly, between sections 35 and 36, 1 and 2, to the ¼ section corner of sections 1 and 2, T. 11 S., R. 35 W., Seward Meridian;

Thence easterly, on the east and west centerline of section 1, to the ¼ section corner of sections 1 and 6, T. 11 S., Rs. 34 and 35 W., Seward Meridian;

Thence southerly, between Rs. 34 and 35 W., to the corner of sections 1, 6, 7 and 12, T. 11 S., Rs. 34 and 35 W., Seward Meridian;

Thence easterly, between sections 6 and 7, to the ¼ section corner of sections 6 and 7, T. 11 S., R. 34 W., Seward Meridian;

Thence southerly, on the north and south centerline of section 7, to the ¼ section corner of sections 7 and 18, T. 11 S., R. 34 W., Seward Meridian;

Thence easterly, between sections 7 and 18, 8 and 17, 9 and 16, to the corner of sections 9, 10, 15 and 16, T. 11 S., R. 34 W., Seward Meridian;

Thence northerly, between sections 9 and 10, to the ¼ section corner of sections 9 and 10, T. 11 S., R. 34 W., Seward Meridian;

Thence easterly, on the east and west centerline of section 10, to the center ¼ section corner of section 10, T. 11 S., R. 34 W., Seward Meridian;

Thence northerly, on the north and south centerlines of sections 10 and 3, to the center ¼ section corner of section 3, T. 11 S., R. 34 W., Seward Meridian;

Thence easterly, on the east and west centerline of section 3, to the ¼ section corner of sections 2 and 3, T. 11 S., R. 34 W., Seward Meridian;

Thence northerly, between sections 2 and 3, to the corner of sections 2, 3, 34 and 35, Tps. 10 and 11 S., R. 34 W., Seward Meridian;

Thence easterly, between Tps. 10 and 11 S., to the corner of sections 1, 2, 35 and 36, Tps. 10 and 11 S., R. 34 W., Seward Meridian;

Thence northerly, between sections 35 and 36, to the ¼ section corner of sections 35 and 36, T. 10 S., R. 34 W., Seward Meridian;

Thence easterly, on the east and west centerline of section 36, to the center ¼ section corner of section 36, T. 10 S., R. 34 W., Seward Meridian;

Thence northerly, on the north and south centerline of section 36, to the ¼ section corner of sections 25 and 36, T. 10 S., R. 34 W., Seward Meridian;

Thence easterly, between sections 25 and 36, 30 and 31, 29 and 32, 28 and 33, 27 and 34, 26 and 35, 25 and 36, 30 and 31, 29 and 32, to the ¼ section corner of sections 29 and 32, T. 10 S., R. 32 W., Seward Meridian;

Thence southerly, on the north and south centerlines of sections 32 and 5, to a point on a ridge between the Emerald Lake and the Mirror Lake drainages, located in the northerly portion of section 5, T. 11 S., R. 32 W., Seward Meridian, approximate elevation 2,025 feet;

Thence southeasterly, southerly, westerly and southerly, between the Mirror Lake, Spectacle Lake and Moraine Creek and the Gibraltar Lake and Paint River drainages, to the junction of ridges between the headwaters of the Crevice Creek, Moraine Creek, and Battle Lake drainages, located in the southerly portion of section 31, T. 12 S., R. 32 W., Seward Meridian, the place of beginning.

*In Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

Units of the National Wilderness Preservation System Within the Katmai National Park and Preserve

Section 701 (4), Public Law 96–487 (ANILCA):

Katmai Wilderness

The Katmai Wilderness as generally depicted on a map numbered KATM–90,007, dated July 1980, consists of approximately three million four hundred and seventy-three thousand acres of public lands, as defined in the ANILCA, within the following described boundaries:

Beginning at vertical angle bench mark "Kubugakh" located in the southeasterly portion of section 6, T. 27 S., R. 35 W., Seward Meridian, approximate elevation 139 feet;

Thence S. 40° E. to the line of mean high tide of Shelikof Strait;

Thence northeasterly, northerly, and westerly, along the line of mean high tide of Shelikof Strait to a point on the east and west centerline of section 17 on the westerly shore of Amalik Bay, T. 24 S., R. 32 W., Seward Meridian;

Thence westerly, on the east and west centerline of section 17, to the ¼ section corner of sections 17 and 18, T. 24 S., R. 32 W., Seward Meridian;

Thence southerly, between sections 17 and 18, to the corner of sections 17, 18, 19 and 20, T. 24 S., R. 32 W., Seward Meridian;

Thence westerly, between sections 18 and 19, 13 and 24, to the ¼ section corner of sections 13 and 24, T. 24 S., R. 33 W., Seward Meridian;

Thence northerly on the north and south centerline of section 13, to the center ¼ section corner of section 13, T. 24 S., R. 33 W., Seward Meridian;

Thence westerly, on the east and west centerline of section 13, to the ¼ section corner of sections 13 and 14, T. 24 S., R. 33 W., Seward Meridian;

Thence northerly, between sections 13 and 14, 11 and 12, 1 and 2, to the corner of sections 1, 2, 35 and 36, Tps. 23 and 24 S., R. 33 W., Seward Meridian;

Thence easterly, between Tps. 23 and 24 S., to the corner of Tps. 23 and 24 S., Rs. 32 and 33 W., Seward Meridian;

Thence southerly, between Rs. 32 and 33 W., to the ¼ section corner of sections 1 and 6, T. 24 S., Rs. 32 and 33 W., Seward Meridian;

Thence easterly, on the east and west centerline of section 6, to the center ¼ section corner of section 6, T. 24 S., R. 32 W., Seward Meridian;

Thence southerly, on the north and south centerline of section 6, to the ¼ section corner of sections 6 and 7, T. 24 S., R. 32 W., Seward Meridian;

Thence easterly, between sections 6 and 7, 5 and 8, to the corner of sections 4, 5, 8 and 9, T. 24 S., R. 32 W., Seward Meridian;

Thence southerly, between sections 8 and 9, to the meander corner of sections 8 and 9, T. 24 S., R. 32 W., Seward Meridian, at the line of mean high tide of Shelikof Strait;

Thence northeasterly, along the line of mean high tide of Shelikof Strait to a point on the north and south centerline of section 34, T. 21 S., R. 30 W., Seward Meridian;

Thence southerly, on the north and south centerline of sections 34 and 3, to the center ¼ section corner of section 3, T. 22 S., R. 30 W., Seward Meridian;

Thence westerly, on the east and west centerline of section 3, to the ¼ section corner of sections 3 and 4, T. 22 S., R. 30 W., Seward Meridian;

Thence southerly, between sections 3 and 4, to the corner of sections 3, 4, 9 and 10, T. 22 S., R. 30 W., Seward Meridian;

Thence westerly, between sections 4 and 9, to the ¼ section corner of sections 4 and 9, T. 22 S., R. 30 W., Seward Meridian;

Thence southerly, on the north and south centerline of section 9, to the center ¼ section corner of section 9, T. 22 S., R. 30 W., Seward Meridian;

Thence westerly, on the east and west centerline of sections 9 and 8, to the center ¼ section corner of section 8, T. 22 S., R. 30 W., Seward Meridian;

Thence southerly, on the north and south centerline of section 8, to the ¼ section corner of sections 8 and 17, T. 22 S., R. 30 W., Seward Meridian;

Thence westerly, between sections 8 and 17, to the corner of sections 7, 8, 17 and 18, T. 22 S., R. 30 W., Seward Meridian;

Thence southerly, between sections 17 and 18, to the ¼ section corner of sections 17 and 18, T. 22 S., R. 30 W., Seward Meridian;

Thence westerly, on the east and west centerline of section 18, to the special meander corner on the east and west centerline of section 18, T. 22 S., R. 30 W., Seward Meridian, at the line of mean high tide in Kukak Bay;

Thence southwesterly and northeasterly, along the line of mean high tide of Kukak Bay and Shelikof Strait to a point located N. 28° E. of the corner of sections 31, 32, 5 and 6, Tps. 13 and 14 S., R. 26 W., Seward Meridian, on the line of mean high tide of Shelikof Strait;

Thence S. 28° W., to the corner of sections 31, 32, 5 and 6, Tps. 13 and 14 S., R. 26 W., Seward Meridian;

Thence westerly, between Tps. 13 and 14 S., to the corner of Tps. 13 and 14 S., Rs. 31 and 32 W., Seward Meridian;

Thence southerly, between Rs. 31 and 32 W., to the corner of Tps. 14 and 15 S., Rs. 31 and 32 W., Seward Meridian;

Thence westerly, between Tps. 14 and 15 S., to the corner of Tps. 14 and 15 S., Rs. 32 and 33 W., Seward Meridian;

Thence southerly, between Rs. 32 and 33 W., to a point on the crest of a ridge between the McNeil River and Kulik Lake drainages, between sections 1 and 6, T. 15 S., Rs. 32 and 33 W., Seward Meridian, approximate elevation 4,100 feet;

Thence on an approximate forward bearing of S. 86° E., to the summit of a mountain in the southwesterly portion of section 6, T. 15 S., R. 32 W., Seward Meridian, approximate elevation 4,515 feet;

Thence on an approximate forward bearing of S. 10° E., to the summit of a mountain in the easterly portion of section 30, T. 15 S., R. 32 W., Seward Meridian, approximate elevation 4,485 feet;

Thence southeasterly, southwesterly and northwesterly, along the crest of a ridge to the summit of a mountain located near the east and west centerline of the west ½ of section 31, T. 15 S., R. 32 W., Seward Meridian, approximate elevation 4,100 feet;

Thence on an approximate forward bearing of S. 80° W., approximately 7,300 feet to the summit of a hill located in section 35, T. 15 S., R. 33 W., Seward Meridian, approximate elevation 2,860 feet;

Thence southerly and northwesterly, along the crest of a ridge between the headwater streams of Kulik Lake to a point on the summit of a ridge located in the northeasterly portion of section 5, T. 16 S., R. 33 W., Seward Meridian, approximate elevation 3,633 feet;

Thence on an approximate forward bearing of S. 70° W., to the summit of a mountain located in the southeasterly portion of section 2, T. 16 S., R. 34 W., Seward Meridian, approximate elevation 4,500 feet;

Thence westerly and northerly, along the crest of a ridge between headwaters streams of the Kulik Lake drainage to the summit of a mountain located in the northerly portion of

section 27, T. 15 S., R. 34 W., Seward Meridian, approximate elevation 4,550 feet;

Thence on an approximate forward bearing of S. 80° W., to the junction of unnamed creeks located in the northwesterly portion of section 28, T. 15 S., R. 34 W., Seward Meridian;

Thence on an approximate forward bearing of N. 56° W., to the summit of a mountain located in section 20, T. 15 S., R. 34 W., Seward Meridian, approximate elevation 4,370 feet;

Thence on an approximate forward bearing of N. 1° W., to the summit of a mountain located in the southerly portion of section 5, T. 15 S., R. 34 W., Seward Meridian, approximate elevation 4,265 feet;

Thence northerly, along the crest of a ridge and a spur ridge between the Kulik Lake and American Creek drainages to a point on the southerly shore of Kulik Lake and the mouth of an unnamed creek located in the northwesterly portion of section 18, T. 14 S., R. 34 W., Seward Meridian;

Thence westerly, along the southerly shore of Kulik Lake, to a point between sections 14 and 15, T. 14 S., R. 35 W., Seward Meridian;

Thence southerly, between sections 14 and 15, to the ¼ section corner of sections 14 and 15, T. 14 S., R. 35 W., Seward Meridian;

Thence westerly, along the east and west centerlines of section 15 and 16, to the special meander corner on the easterly shore of Nonvianuk Lake located in the easterly portion of section 16, T. 14 S., R. 35 W., Seward Meridian;

Thence southerly and westerly in general, along the southern shore of Nonvianuk Lake to the Nonvianuk River; thence along the left bank of the Nonvianuk River to the Alagnak River; thence along the left bank of the Alagnak River to a point between sections 31 and 36, T. 13 S., Rs. 40 and 41 W., Seward Meridian;

Thence southerly, between Rs. 40 and 41 W., to the corner of section 1, 6, 7 and 12, T. 14 S., Rs 40 and 41 W., Seward Meridian;

Thence on an approximate forward bearing of S. 46° E., to the summit of a mountain located in the northerly portion of section 17, T. 14 S., R. 40 W., Seward Meridian, approximate elevation 1,160 feet;

Thence on an approximate forward bearing of S. 25° W., to the summit of a mountain located in section 36, T. 14 S., R. 41 W., Seward Meridian, approximate elevation 2,442 feet;

°Thence on an approximate forward bearing of S. 44° E., to the summit of a small mountain located in section 8, T. 15 S., R. 40 W., Seward Meridian, approximate elevation 1,657 feet;

°Thence on an approximate forward bearing of S. 88° E., to the summit of Sugarloaf Mountain located in section 9, T. 15 S., R. 40 W., Seward Meridian, approximate elevation 2,085 feet;

°Thence on an approximate forward bearing of S. 14° W., to the summit of a mountain located in the northeast ¼ of section 20, T. 15 S., R. 40 W., Seward Meridian, approximate elevation 1,770 feet;

°Thence on an approximate forward bearing of S. 42° W., to the summit of a mountain located in the northwest ¼ of section 1, T. 16 S., R. 41 W., Seward Meridian, approximate elevation 720 feet;

°Thence on an approximate forward bearing of S. 42° W., to a junction of unnamed creeks which are tributaries to King Salmon Creek, located in the easterly portion of section 16, T. 16 S., R. 41 W., Seward Meridian;

Thence on an approximate forward bearing of S. 55° W., to the top of a hill located in the northerly portion of section 21, T. 16 S., R. 41 W., Seward Meridian, approximate elevation 790 feet;

Thence on an approximate forward bearing of N. 75° W., to the corner of sections 16, 17, 20 and 21, T. 16 S., R. 41 W., Seward Meridian;

Thence southerly, between sections 20 and 21, 28 and 29, to the corner of sections 28, 29, 32 and 33, T. 16 S., R. 41 W., Seward Meridian;

Thence easterly, between sections 28 and 33, to the corner of sections 27, 28, 33 and 34, T. 16 S., R. 41 W., Seward Meridian;

Thence southerly, between sections 33 and 34, to the standard corner of sections 33 and 34, T. 16 S., R. 41 W., Seward Meridian;

Thence easterly, along the Fourth Standard Parallel south, to the closing corner of sections 5 and 6, T. 17 S., R. 41 W., Seward Meridian;

Thence southerly, between sections 5 and 6, to the north 1/16 section corner of sections 5 and 6, T. 17 S., R. 41 W., Seward Meridian;

Thence easterly, on the east and west centerline of the north ½ of section 5, to the north 1/16 section corner of sections 4 and 5, T. 17 S., R. 41 W., Seward Meridian;

Thence southerly, between sections 4 and 5, to the ¼ section corner of sections 4 and 5, T. 17 S., R. 41 W., Seward Meridian;

Thence easterly, on the east and west centerline of section 4, to the ¼ section corner of sections 3 and 4, T. 17 S., R. 41 W., Seward Meridian;

Thence southerly, between sections 3 and 4, to the south 1/16 section corner of sections 3 and 4, T. 17 S., R. 41 W., Seward Meridian;

Thence easterly, on the east and west centerlines of the south ½ of section 3, to the south 1/16 section corner of sections 2 and 3, T. 17 S., R. 41 W., Seward Meridian;

Thence southerly, between sections 2 and 3, to the corner of sections 2, 3, 10 and 11, T. 17 S., R. 41 W., Seward Meridian;

Thence easterly, between sections 2 and 11, to the west 1/16 section corner of sections 2 and 11, T. 17 S., R. 41 W., Seward Meridian;

Thence southerly, along the north and south centerline of the west ½ of section 11, to a point on the north shore of the North Arm of Naknek Lake located in the southerly portion of section 11, T. 17 S., R. 41 W., Seward Meridian;

Thence southeasterly, along the northerly shore of the North Arm of Naknek Lake to the most southerly point of mainland in section 2, T. 18 S., R. 38 W., Seward Meridian;

Thence on an approximate forward bearing of S. 63° W., to the most easterly point of an island in the North Arm of Naknek Lake located in section 9, T. 18 S., R. 38 W., Seward Meridian;

Thence on an approximate forward bearing of S. 26° W., to the most northerly point on the mainland on the southern shore of Naknek Lake in section 16, T. 18 S., R. 38 W., Seward Meridian;

Thence westerly and southeasterly and westerly along the southerly shore of the North Arm of Naknek Lake and the shore of the Iliuk Arm of Naknek Lake closing the mouth of the Savonoski River and all other streams to a point on the left bank of Margot Creek located in section 33, T. 19 S., R. 38 W., Seward Meridian;

Thence southerly, along the left bank of Margot Creek to a point between sections 6 and 7, T. 20 S., R. 38 W., Seward Meridian;

Thence westerly, between sections 6 and 7, to a point 300 feet easterly of, and parallel to, the centerline of an existing road, located between sections 6 and 7, T. 20 S., R. 38 W., Seward Meridian;

Thence southeasterly, 300 feet from, and parallel to, the centerline of an existing road, to a point 300 feet from, and parallel to, the centerline of the road at its terminus;

Thence on a curve to the right, maintaining a radius of 300 feet from the terminus of the centerline of the road and parking area to a point 300 feet from, and parallel to, the centerline of the road at its terminus;

Thence southwesterly and northwesterly, 300 feet from, and parallel to, the centerline of an existing road, to a point on the east and west centerline of the southeast ¼ of section 7, T. 19 S., R. 39 W., Seward Meridian;

Thence westerly, on the east and west centerline of the south ½ of section 7, to a point on the easterly shore of Lake Brooks located in section 7, T. 19 S., R. 39 W., Seward Meridian;

Thence northerly, along the easterly shore of Lake Brooks, closing the stream which is the outlet of Lake Brooks, to a point between sections 7 and 12, T. 19 S., Rs. 39 and 40 W., Seward Meridian;

Thence northerly, between Rs. 39 and 40 W., to the south 1/16 section corner of sections 31 and 36, T. 18 S., Rs. 39 and 40 W., Seward Meridian;

Thence easterly, on the east and west centerlines of the south ½ of section 31 and the south ½ of section 32 to a point on the western shore of the Iliuk Arm of Naknek Lake located in section 32, T. 18 S., R. 39 W., Seward Meridian;

Thence westerly, northerly and southwesterly, along the shore of Naknek Lake and the left bank of the Naknek River to a point between sections 7 and 12, T. 18 S., Rs. 43 and 44 W., Seward Meridian;

Thence southerly, between Rs. 43 and 44 W., to the ¼ section corner of sections 1 and 6, T. 19 S., Rs. 43 and 44 W., Seward Meridian;

Thence on an approximate forward bearing of S. 89° E., to vertical angle bench mark "Contact" located in section 4, T. 19 S., R. 42 W., Seward Meridian, approximate elevation 1,156 feet;

Thence on an approximate forward bearing of S. 18° W., to the summit of a mountain located in sections 29 and 32, T. 19 S., R. 42 W., Seward Meridian, approximate elevation 1,125 feet;

Thence on an approximate forward bearing of S. 2° W., to vertical angle bench mark "Granite" located on a mountain in sections 11 and 2, T. 21 S., R. 43 W., Seward Meridian, approximate elevation 1,683 feet;

Thence on an approximate forward bearing of S. 30° E., to vertical angle bench mark "Red" located in the southeasterly portion of section 2, T. 23 S., R. 42 W., Seward Meridian, approximate elevation 1,721 feet;

Thence on an approximate forward bearing of S. 40° E., to vertical angle bench mark horizontal control station "Gert" located in the southwesterly portion of section 20, T. 23 S., R. 41 W., Seward Meridian, approximate elevation 1,141 feet;

Thence on an approximate forward bearing of S. 78° E., to the confluence of the King Salmon River, Takayofa Creek and Contact Creek located in the southeasterly portion of section 20, T. 23 S., R. 41 W., Seward Meridian;

Thence on an approximate forward bearing of S. 45° E., to the intersection of a ridge and the line between sections 13 and 18, T. 24 S., Rs. 40 and 41 W., Seward Meridian, approximate elevation 1,100 feet;

Thence southeasterly and easterly, along the crest of a ridge between the drainages of the King Salmon River and streams flowing into Becharof Lake, to a point between sections 14 and 23, T. 25 S., R. 38 W., Seward Meridian;

Thence easterly, between sections 14 and 23, 13 and 24, 18 and 19, 17 and 20, 16 and 21, to the corner of sections 15, 16, 21 and 22, T. 25 S., R. 37 W., Seward Meridian;

Thence on an approximate forward bearing of S. 32° E., to the summit of a mountain located in section 22, T. 25 S., R. 37 W., Seward Meridian, approximate elevation 2,267 feet;

Thence southerly, along the crest of a ridge between the drainages of streams flowing into Becharof Lake and streams flowing into Shelikof Strait, to the summit of a small mountain in the northwest ¼ of section 22, T. 26 S., R. 37 W., Seward Meridian, approximate elevation 1,748 feet;

Thence easterly and southeasterly, along the crest of a ridge to a point N. 40° W., of vertical angle bench mark "Kubugakli", located in section 6, T. 27 S., R. 35 W., Seward Meridian, approximate elevation 1,150 feet;

Thence S. 40° E., to vertical angle bench mark "Kubugakli", the point of beginning.

Included within the Katmai National Wilderness Area are all lands and waters in the foregoing wilderness boundary, except as specifically excluded below, in addition to all islands in the North Arm of Naknek Lake, all islands in Lake Coville and all islands, islets and rocks above the line of mean high tide, seaward within Katmai National Park, except those islands located in sections 28 (south ½), 32 and 33, T. 21 S., R. 30 W., Seward Meridian, sections 4, 5, 6 and 7, T. 22 S., R. 30 W., Seward Meridian, sections 1, 11 (east ½) and 12, T. 22 S., R. 31 W., Seward Meridian, sections 7, 8, 17 (northwest ¼) and 18, T. 24 S., R. 32 W., Seward Meridian, and section 12, T. 24 S., R. 33 W., Seward Meridian;

The following lands and waters are excluded from wilderness at Lake Coville:

Beginning at the corner of sections 1, 2, 11 and 12, T. 17 S., R. 38 W., Seward Meridian;

Thence westerly, between sections 2 and 11, to a point on the easterly shore of Lake Coville, between sections 2 and 11, T. 17 S., R. 38 W., Seward Meridian;

Thence northwesterly and southeasterly, along the shore of Lake Coville to the most northeasterly point of land on the south shore of the body of water separating Lake Coville and Lake Grosvenor in the west-central portion of section 12, T. 17 S., R. 38 W., Seward Meridian, on the westerly shore of Lake Grosvenor;

Thence due north, approximately 300 feet to a point at the line of mean high water on the northwesterly shore of Lake Grosvenor located in the west-central portion of section 12, T. 17 S., R. 38 W., Seward Meridian;

Thence northeasterly, along the shore of Lake Grosvenor, to a point between sections 1 and 12, T. 17 S., R. 38 W., Seward Meridian;

Thence westerly, between sections 1 and 12, to the corner of sections 1, 2, 11 and 12, T. 17 S., R. 38 W., Seward Meridian, the place of beginning.

*In Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

Units of the National Wild and Scenic Rivers Systems Within the Katmai National Preserve

Section 601, Public Law 96–487 (ANILCA):

"Alagnak, Alaska.—That segment of the main stem and the major tributary to the Alagnak, the Nonvianuk River, within Katmai National Preserve; to be administered by the Secretary of the Interior."

Note: Pursuant to section 605(d) of ANILCA and as provided for under section 3(b) of the Wild and Scenic Rivers Act, the necessity for any river corridor boundaries for the Alagnak Wild River and its major tributary the Nonvianuk River, within the Katmai National Preserve, has been considered during the comprehensive conservation planning process for the preserve. In accordance with the General Management Plan for Katmai National Park and Preserve, approved November 7, 1986, no specific river corridor boundaries are deemed necessary for the Alagnak and Nonvianuk Rivers in order to protect the rivers and their immediate environments. Proposed management of the preserve meets and is compatible with management standards established by the Wild and Scenic Rivers Act. Boundaries for that portion of the Alagnak Wild River lying outside the Katmai National Preserve and designated by section 603, ANILCA, have been determined in a separate and complementary study and were published in the **Federal Register**, December 7, 1983, Volume 48, Number 236, Page 54,907.

The following U.S. Geological Survey 1:63,360 Series (Topographic) Quadrangle Maps were used in preparing the legal boundary descriptions for the Katmai National Park and Preserve and Katmai Wilderness:

Afognak, Alaska: (C–5) 1951 mr 1973; (C–6) 1951 mr 1973; (D–4) 1951 mr 1966; (D–5) 1951 mr 1972; (D–6) 1951 mr 1968.

Dillingham, Alaska: (A–1) 1951 mr 1973; (A–2) 1952 mr 1973.

Ilianna, Alaska: (A–1 and A–2) 1951 mr 1958; (A–3) 1951 mr 1968; (A–4) 1952 mr 1966; (A–5) 1952 mr 1966; (A–6) 1951 mr 1968; (A–7) 1951 mr 1969; (A–8) 1952 mr 1966; (B–5) 1954 mr 1966; (B–6) 1954 mr 1966; (B–7) 1951 mr 1968.

Karluk, Alaska: (D–4) 1951 mr 1973; (D–5) 1951 mr 1973.

Mt. Katmai, Alaska: (A–1) 1951 mr 1973; (A–2) 1951 mr 1966; (A–3) 1951 lr 1977; (A–4) 1951 mr 1984; (A–5) 1951 mr 1984; (A–6) 1951 lr 1975; (B–1) 1951–1977; (B–2) 1951 mr 1966; (B–5) 1953 mr 1966; (B–6) 1953 mr 1966; (C–4) 1951 mr 1965; (C–5) 1953 mr 1967; (C–6) 1951 mr 1971; (D–2) 1951 mr 1973; (D–3) 1951 mr 1972; (D–4) 1951 mr 1965; (D–5) 1951 mr 1972; (D–6) 1951 mr 1970.

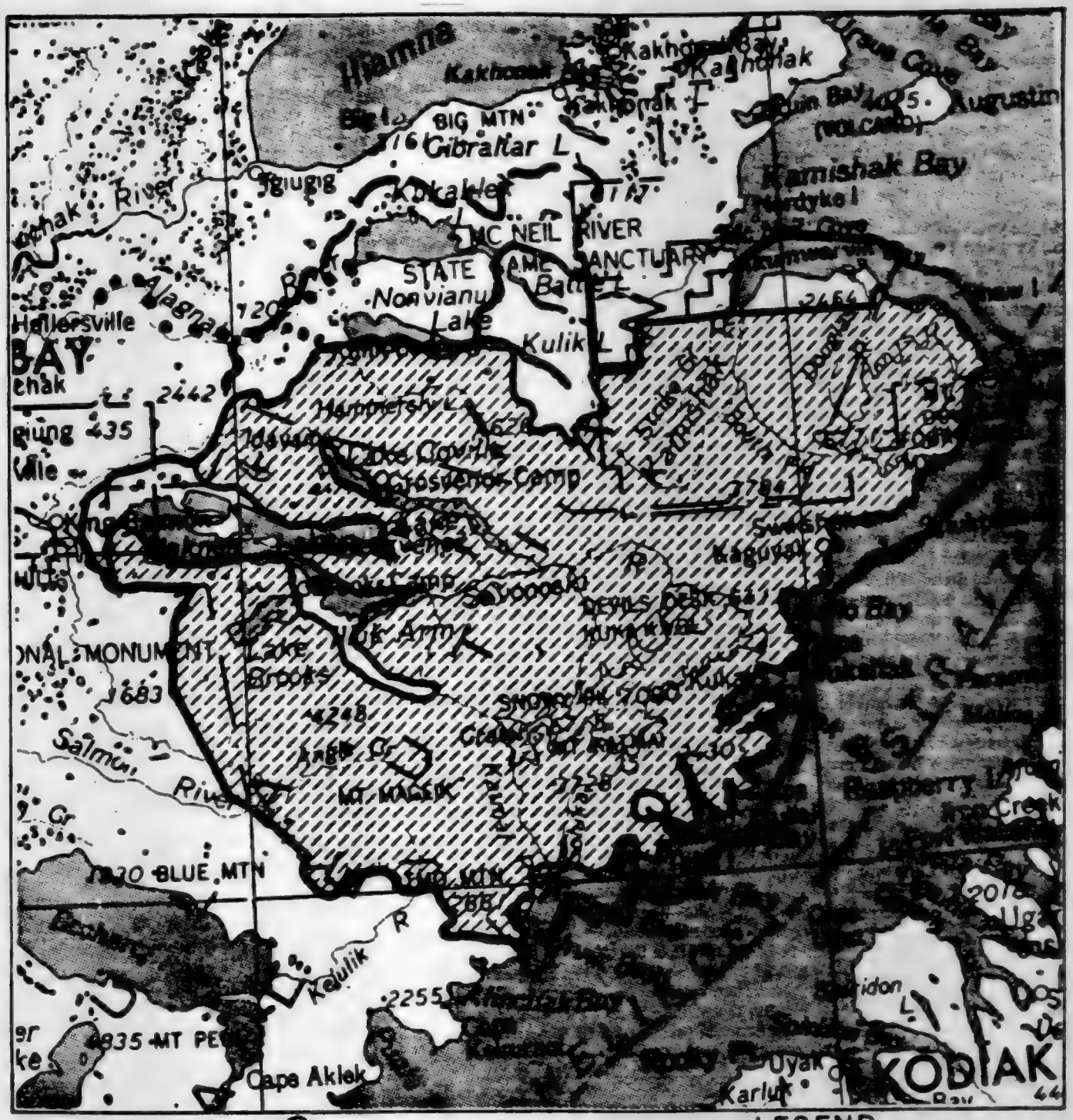
Naknek, Alaska: (A–1) 1951 mr 1973; (B–1) 1951; (C–1) 1951 mr 1970; (C–2) 1952 mr 1973; (D–1) 1951 mr 1970; (D–2) 1952 mr 1969.

mr—minor revisions
lr—limited revisions

BILLING CODE 4310-70-F

KATMAI NATIONAL PARK AND PRESERVE

PUBLIC LAW 96-487



BILLING CODE 4310-70-C

Kenai Fjords National Park

Section 201(5), Public Law 96–487 (ANILCA):

Kenai Fjords National Park

Kenai Fjords National Park as generally depicted on a map numbered KEFJ–90,007, dated October 1978, consists of approximately five hundred and sixty-seven thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at the point between sections 13 and 18, T. 3 S., Rs. 1 and 2 W., Seward Meridian, at the line of mean high tide on Resurrection Bay, the Gulf of Alaska;

Thence northerly, between Rs. 1 and 2 W., to the closing corner of T. 1 S., Rs. 1 and 2 W., Seward Meridian;

Thence westerly, along the Seward Baseline, to the standard corner of T. 1 N., Rs. 1 and 2 W., Seward Meridian;

Thence northerly, between Rs. 1 and 2 W., to the thread of the Resurrection River (center of the main channel), T. 1 N., Rs. 1 and 2 W., Seward Meridian;

Thence northwesterly, along the thread of the Resurrection River and a common boundary with the Chugach National Forest, to the confluence of the Resurrection River with an unnamed stream flowing easterly into the Resurrection River and a point common with the Kenai National Wildlife Refuge boundary, located in section 34, T. 3 N., R. 3 W., Seward Meridian;

Thence on an approximate forward bearing of S. 30° W., departing from the common boundary with the Chugach National Forest, along a common boundary with the Kenai National Wildlife Refuge, to vertical angle bench mark "Menker", located in section 9, T. 2 N., R. 3 W., Seward Meridian, approximate elevation 3,205 feet;

Thence on an approximate forward bearing of S. 17° E., to the summit of a mountain located in the southwesterly portion of section 15, T. 2 N., R. 3 W., Seward Meridian, approximate elevation 5,107 feet;

Thence on an approximate forward bearing of S. 2° E., to the summit of a mountain located in the southwesterly portion of section 10, T. 1 N., R. 3 W., Seward Meridian, approximate elevation 5,300 feet;

Thence on an approximate forward bearing of S. 65° W., over Harding Ice Field, to the summit of a mountain located in section 9, T. 1 S., R. 5 W., Seward Meridian, approximate elevation 5,355 feet;

Thence on an approximate forward bearing of S. 18½° E., over Harding Ice Field, to the summit of a mountain located in section 25, T. 2 S., R. 5 W., Seward Meridian, approximate elevation 5,244 feet;

Thence on an approximate forward bearing of S. 47° W., over Harding Ice Field, to the summit of a mountain located in section 4, T. 4 S., R. 6 W., Seward Meridian, approximate elevation 5,873 feet;

Thence on an approximate forward bearing of S. 4° W., across Chernoff Glacier, to the summit of a mountain located in sections 5, 6, 31 and 32, Tps. 5 and 6 S., R. 6 W., Seward Meridian, approximate elevation 5,375 feet;

Thence N. 49½° W., to a point between Tps. 5 and 6 S., R. 6 W., Seward Meridian;

Thence westerly, between Tps. 5 and 6 S., to the corner of sections 4, 5, 32 and 33, Tps. 5 and 6 S., R. 8 W., Seward Meridian;

Thence southerly, between sections 4 and 5, to the corner of sections 4, 5, 8 and 9, T. 6 S., R. 8 W., Seward Meridian;

Thence westerly, between sections 5 and 8, 6 and 7, to the corner of sections 1, 6, 7 and 12, T. 6 S., Rs. 8 and 9 W., Seward Meridian;

Thence southerly, between Rs. 8 and 9 W., to the corner of sections 19, 24, 25 and 30, T. 6 S., Rs. 8 and 9 W., Seward Meridian;

Thence westerly, between sections 24 and 25, 23 and 26, 22 and 27, to the corner of sections 21, 22, 27 and 28, T. 6 S., R. 9 W., Seward Meridian;

Thence southerly, between sections 27 and 28, 33 and 34, 3 and 4, 9 and 10, to the corner of sections 9, 10, 15 and 16, T. 7 S., R. 9 W., Seward Meridian;

Thence westerly, between sections 9 and 16, to the corner of sections 8, 9, 16 and 17, T. 7 S., R. 9 W., Seward Meridian;

Thence southerly, between sections 16 and 17, 20 and 21, 28 and 29, 32 and 33, 4 and 5, to the corner of sections 4, 5, 8 and 9, T. 8 S., R. 9 W., Seward Meridian;

Thence westerly, between sections 5 and 8, to the corner of sections 5, 6, 7 and 8, T. 8 S., R. 9 W., Seward Meridian;

Thence southerly, between sections 7 and 8, 17 and 18, to the corner of sections 17, 18, 19 and 20, T. 8 S., R. 9 W., Seward Meridian;

Thence westerly, between sections 18 and 19, 13 and 24, 14 and 23, 15 and 22, to the corner of sections 15, 16, 21 and 22, T. 8 S., R. 10 W., Seward Meridian;

Thence southerly, between sections 21 and 22, 27 and 28, 33 and 34, to the standard corner of sections 33 and 34, T. 8 S., R. 10 W., Seward Meridian;

Thence easterly, departing from the common boundary with the Kenai National Wildlife Refuge, on the Second Standard Parallel South, to the standard corner of sections 34 and 35, T. 8 S., R. 9 W., Seward Meridian;

Thence on an approximate forward bearing of S. 34° E., to the vertical angle bench mark "Shoulder" on the summit of a mountain in the southwest portion of section 2, T. 9 S., R. 9 W., Seward Meridian, approximate elevation 3,255 feet;

Thence southwesterly, along the crest of a ridge between the Petrof Glacier basin and Nuka Passage to the summit of a mountain located near the center of section 28, T. 9 S., R. 9 W., Seward Meridian, approximate elevation 1,036 feet;

Thence on an approximate forward bearing of S. 53° W., to the corner of sections 28, 29, 32 and 33, T. 9 S., R. 9 W., Seward Meridian;

Thence southerly, between sections 32 and 33, to a point on the line of mean high tide on the left bank of an unnamed river flowing southeasterly into Nuka Passage, between sections 32 and 33, T. 9 S., R. 9 W., Seward Meridian;

Thence northeasterly along the line of mean high tide of the unnamed river and the Gulf of Alaska, to a point between sections 13 and 18, T. 3 S., Rs. 1 and 2 W., Seward Meridian, the point of beginning.

The Kenai Fjords National Park also includes all of Nuka Island above the line of mean high tide.

The following U.S. Geological Survey 1:63,360 Series (Topographic) Quadrangle Maps were used in preparing the legal boundary description for the Kenai Fjords National Park:

Blying Sound, Alaska: (C–7) 1952; (C–8) 1951 mr 1963; (D–7) 1951 mr 1972; (D–8) 1951 mr 1963.

Kenai, Alaska: (A–1) 1951 mr 1971.

Seldovia, Alaska: (B–1) 1953 mr 1973; (B–2) 1951 mr 1971; (B–3) 1951 mr 1971; (C–1) 1953; (C–2) 1953; (C–3) 1951 mr 1973; (D–1) 1951 mr 1979.

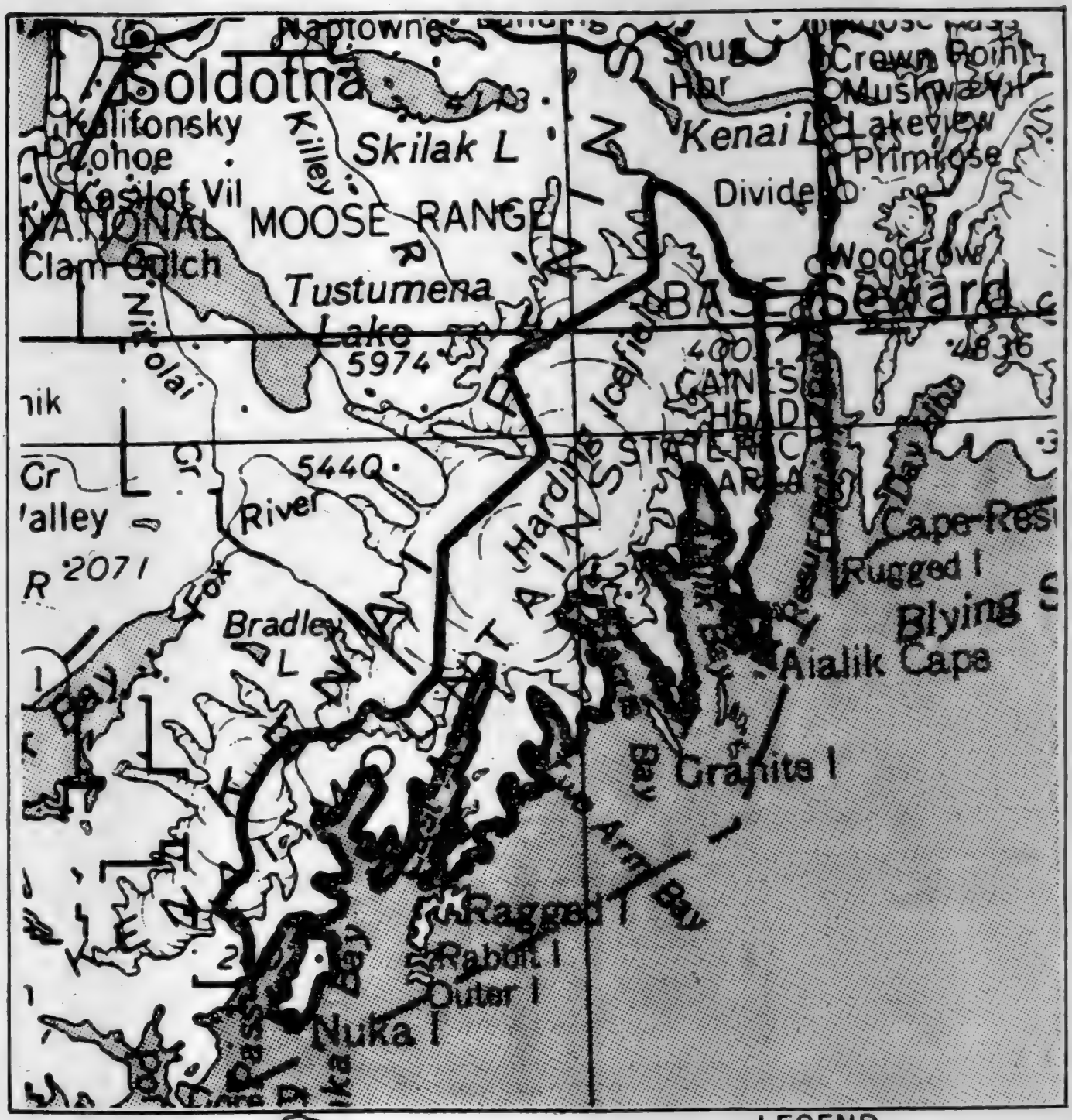
Seward, Alaska: (A–7) 1950 mr 1975; (A–8) 1951 mr 1973; (B–8) 1951 mr 1976.

mr—minor revisions

BILLING CODE 4310–70–F

KENAI FJORDS NATIONAL PARK

PUBLIC LAW 96-487



BILLING CODE 4310-70-C

Kobuk Valley National Park.

Section 201 (6), Public Law 96–487 (ANILCA):

Kobuk Valley National Park

Kobuk Valley National Park as generally depicted on a map numbered KOVA—90,009, dated october 1979, consists of approximately one million seven hundred and ten thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at the corner of sections 3, 4, 33 and 34, Tps. 18 and 19 N., R. 3 E., Kateel River Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, departing from a common boundary with the Selawik National Wildlife Refuge, to the corner of sections 3, 4, 33 and 34, Tps. 19 and 20 N., R. 3 E., Kateel River Meridian;

Thence easterly, between Tps. 19 and 20 N., to the corner of sections 1, 2, 35 and 36, Tps. 19 and 20 N., R. 3 E., Kateel River Meridian;

Thence northerly, between sections 35 and 36, 25 and 26, 23 and 24, 13 and 14, to the corner of sections 11, 12, 13 and 14, T. 20 N., R. 3 E., Kateel River Meridian;

Thence westerly, between sections 11 and 14, 10 and 15, 9 and 16, 8 and 17, to the corner of sections 7, 8, 17 and 18, T. 20 N., R. 3 E., Kateel River Meridian;

Thence northerly, between sections 7 and 8, 5 and 6, to the closing corner of sections 5 and 6, T. 20 N., R. 3 E., Kateel River Meridian;

Thence westerly, along the Fifth Standard Parallel North, to the standard corner of T. 21 N., Rs. 2 and 3 E., Kateel River Meridian;

Thence northerly, between Rs. 2 and 3 E., to the corner of Tps. 21 and 22 N., Rs. 2 and 3 E., Kateel River Meridian;

Thence easterly, between Tps. 21 and 22 N., to a point due north of vertical angle bench mark "Jade", located in section 3, T. 21 N., R. 3 E., Kateel River Meridian, elevation 3,333 feet;

Thence due south to vertical angle bench mark "Jade", located in section 3, T. 21 N., R. 3 E., Kateel River Meridian, elevation 3,333 feet;

Thence easterly, along the crest of the Jade Mountains, between the drainages of Nuna Creek and Jade Creek and an unnamed tributary of the Kobuk River to the summit of a peak located in the southeasterly portion of section 5, T. 21 N., R. 4 E., Kateel River Meridian, approximate elevation 2,850 feet;

Thence on an approximate forward bearing of N. 30° E., to the summit of a small peak between Miluet Creek and Nuna Creek, located in the northern ½ of section 27, T. 22 N., R. 4 E., Kateel River Meridian, approximate elevation 1,825 feet;

Thence northerly, along the crest of a ridge between Miluet Creek and Nuna Creek to the summit of a mountain located in section 8, T. 23 N., R. 5 E., Kateel River Meridian, approximate elevation 3,515 feet;

Thence northwesterly along the crest of the Baird Mountains between the drainages of the Kobuk River and Noatak River, along a common boundary with the Noatak National Preserve, to the summit of a mountain located in the southwesterly portion of section 26, T. 25 N., R. 4 E., Kateel River Meridian, approximate elevation 3,000 feet;

Thence westerly along the crest of the Baird Mountains between the drainages of the Kobuk River and Noatak River to the summit of a mountain in sections 19 and 30, T. 25 N., R. 2 E., Kateel River Meridian, approximate elevation 3,522 feet;

Thence northwesterly and southwesterly along the crest of the Baird Mountains between the drainages of the Kobuk River and Noatak River to the summit of a mountain in section 14, T. 25 N., R. 2 W., Kateel River Meridian, approximate elevation 3,229 feet;

Thence northwesterly along the crest of the Baird Mountains between the drainages of the Kobuk River and the Noatak River to the summit of a mountain in section 33, T. 29 N., R. 5 W., Kateel River Meridian, approximate elevation 2,528 feet;

Thence southwesterly along the crest of the Baird Mountains between the drainages of the Kobuk River and the Noatak River to the summit of a mountain in sections 8 and 17, T. 25 N., R. 7 W., Kateel River Meridian, approximate elevation 3,200 feet;

Thence southerly, departing from the common boundary with the Noatak National Preserve, along the crest of a ridge between the drainages of the Squirrel River and the Salmon River, to the summit of a mountain located in the northwesterly portion of section 22, T. 25 N., R. 7 W., Kateel River Meridian, approximate elevation 2,750 feet;

Thence on an approximate forward bearing of S. 28° W., to the summit on the toe ridge in the southeasterly portion of section 21, T. 25 N., R. 7 W., Kateel River Meridian, approximate elevation 2,000 feet;

Thence on an approximate forward bearing of S. 38° E., to the summit of a mountain located in sections 34 and 35, T. 25 N., R. 7 W., Kateel River Meridian, approximate elevation 2,881 feet;

Thence southerly and southeasterly, along the crest of a ridge between the drainages of tributaries of the Squirrel River and Salmon River and Kallarichuk River, to the summit of a mountain in the northwesterly portion of section 35, T. 21 N., R. 7 W., Kateel River Meridian, approximate elevation 2,890 feet;

Thence southeasterly, along the crest of a ridge between tributaries of the Kallarichuk River to the easterly summit of a mountain located in section 11, T. 20 N., R. 6 W., Kateel River Meridian, approximate elevation 1,285 feet;

Thence on an approximate forward bearing of S. 40° E., to the corner of sections 13, 18, 19 and 24, T. 20 N., Rs. 5 and 6 W., Kateel River Meridian;

Thence southerly, between Rs. 5 and 6 W., to the ¼ corner of sections 25 and 30, T. 19 N., Rs. 5 and 6 W., Kateel River Meridian;

Thence southerly, along a common boundary with the Selawik National Wildlife Refuge, between Rs. 5 and 6 W., to a point on the crest of a ridge of the Waring Mountains located between sections 13 and 18, T. 18 N., Rs. 5 and 6 W., Kateel River Meridian, approximate elevation 900 feet;

Thence easterly, southeasterly and northeasterly, along the crest of the ridge and the crest of the Waring Mountains between the drainages of the Kobuk and Selawik Rivers, to the summit of a mountain located in the northwesterly portion of section 28, T. 18 N., R. 3 W., Kateel River Meridian, approximate elevation 975 feet;

Thence on an approximate forward bearing of S. 85° E., to the summit of a mountain located in the northerly portion of section 27, T. 18 N., R. 3 W., Kateel River Meridian, approximate elevation 800 feet;

Thence northeasterly, southerly, and easterly along the crest of the Waring Mountains, between the drainages of the Kobuk River and the Selawik River to the summit of a mountain located in section 24, T. 18 N., R. 2 W., Kateel River Meridian, approximate elevation 1,050 feet;

Thence on an approximate forward bearing of N. 30° E., to the summit of a mountain located in the northerly portion of section 18, T. 18 N., R. 1 W., Kateel River Meridian, approximate elevation 900 feet;

Thence northerly, easterly and southerly, along the crest of the Waring Mountains, between the drainages of the Kobuk River and Selawik River to the summit of a mountain located in the easterly portion of section 9, T. 18 N., R. 1 W., Kateel River Meridian, approximate elevation 950 feet;

Thence on an approximate forward bearing of S. 80° E., to the summit of a mountain located in sections 10 and 11, T. 18 N., R. 1 W., Kateel River Meridian, approximate elevation 1,150 feet;

Thence easterly and southeasterly, along the crest of the Waring Mountains between the drainages of the Kobuk River and the Selawik River to the summit of a ridge located in the northwesterly portion of section 12, T. 18 N., R. 2 E., Kateel River Meridian, approximate elevation 1,550 feet;

Thence on an approximate forward bearing of S. 40° E., to the corner of sections 7, 12, 13 and 18, T. 18 N., Rs. 2 and 3 E., Kateel River Meridian;

Thence southerly, between Rs. 2 and 3 E., to the south ⅛ section corner of sections 13 and 18, T. 18 N., Rs. 2 and 3 E., Kateel River Meridian;

Thence easterly, on the east and west centerline of the southwest ¼ of section 18 to the center south ⅛ section corner of section 18, T. 18 N., R. 3 E., Kateel River Meridian;

Thence northerly, on the north and south centerlines of sections 18 and 7, to the center ¼ section corner of section 7, T. 18 N., R. 3 E. Kateel River Meridian;

Thence easterly, on the east and west centerline of section 7, to the ¼ section corner of sections 7 and 8, T. 18 N., R. 3 E., Kateel River Meridian;

Thence northerly, between sections 7 and 8, to the corner of sections 5, 6, 7 and 8, T. 18 N., R. 3 E., Kateel River Meridian;

Thence on an approximate forward bearing of N. 50° E., to the summit of a mountain located in section 5, T. 18 N., R. 3 E., Kateel River Meridian, approximate elevation 1,215 feet;

Thence on an approximate forward bearing of S. 45° E., to the summit of a ridge located in the westerly portion of section 4, T. 18 N., R. 3 E., Kateel River Meridian, approximate elevation 1,050 feet;

Thence on an approximate forward bearing of N. 60° E., to the corner of sections 3, 4, 33

and 34, Tps. 18 and 19 N., R. 3 E., Kateel River Meridian, to the place of beginning.

Units of the National Wilderness Preservation System Within the Kobuk Valley National Park

Section 701(5), Public Law 96–487 (ANILCA):

Kobuk Valley Wilderness

The Kobuk Valley Wilderness as generally depicted on a map numbered KOVA–90,009, dated October 1979, consists of approximately one hundred and ninety thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at the corner of sections 3, 4, 33 and 34, Tps. 18 and 19 N., R. 3 E., Kateel River Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, to the corner of sections 15, 16, 21 and 22, T. 19 N., R. 3 E., Kateel River Meridian;

Thence westerly, between sections 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 19 N., Rs. 1 and 2 E., Kateel River Meridian;

Thence northerly, between Rs. 1 and 2 E., to the corner of Tps. 19 and 20 N., Rs. 1 and 2 E., Kateel River Meridian;

Thence westerly, between Tps. 19 and 20 N., to the corner of Tps. 19 and 20 N., Rs 1 E. and 1 W., Kateel River Meridian;

Thence northerly, between Rs. 1 E. and 1 W., to a point between sections 31 and 36, T. 21 N., Rs. 1 E. and 1 W., Kateel River Meridian, on the left bank of the Kobuk River;

Thence southwesterly, along the line of mean high water on the left bank of the Kobuk River, to the left bank of the unnamed creek at its confluence with the Kobuk River, located in the southern portion of section 15, T. 20 N., R. 2 W., Kateel River Meridian;

Thence southerly, along the left bank of the unnamed creek to a point between sections 22 and 27, T. 20 N., R. 2 W., Kateel River Meridian;

Thence westerly, between sections 22 and 27, 21 and 28, 20 and 29, 19 and 30, to the corner of sections 19, 24, 25 and 30, T. 20 N., Rs. 2 and 3 W., Kateel River Meridian;

Thence southerly, between Rs. 2 and 3 W., to the corner of Tps. 18 and 19 N., Rs. 2 and 3 W., Kateel River Meridian;

Thence westerly, between Tps. 18 and 19 N., to the corner of Tps. 18 and 19 N., Rs. 5 and 6 W., Kateel River Meridian;

Thence southerly, between Rs. 5 and 6 W., to a point on the crest of a ridge of the Waring Mountains located between sections 13 and 18, T. 18 N., Rs. 5 and 6 W., Kateel River Meridian, approximate elevation 900 feet;

Thence easterly, southeasterly and northeasterly, along the crest of the ridge and the crest of the Waring Mountains between the drainages of the Kobuk and Selawik Rivers to the summit of a mountain located in the northwesterly portion of section 28, T. 18 N., R. 3 W., Kateel River Meridian, approximate elevation 975 feet;

Thence on an approximate forward bearing of S. 85° E., to the summit of a mountain located in the northerly portion of section 27, T. 18 N., R. 3 W., Kateel River Meridian, approximate elevation 800 feet;

Thence northeasterly, southerly, and easterly, along the crest of the Waring Mountains between the drainages of the Kobuk and Selawik Rivers to the summit of a mountain located in section 24, T. 18 N., R. 2 W., Kateel River Meridian, approximate elevation 1,050 feet;

Thence on an approximate forward bearing of N. 30° E., to the summit of a mountain located in the northerly portion of section 18, T. 18 N., R. 1 W., Kateel River Meridian, approximate elevation 900 feet;

Thence northerly, easterly and southerly, along the crest of the Waring Mountains, between the drainages of the Kobuk River and Selawik River to the summit of a mountain located in the easterly portion of section 9, T. 18 N., R. 1 W., Kateel River Meridian, approximate elevation 950 feet;

Thence on an approximate forward bearing of S. 80° E., to the summit of a mountain located in sections 10 and 11, T. 18 N., R. 1 W., Kateel River Meridian, approximate elevation 1,150 feet;

Thence easterly and southeasterly, along the crest of the Waring Mountains between the drainages of the Kobuk River and the Selawik River to the summit of a ridge located in the northwesterly portion of section 12, T. 18 N., R. 2 E., Kateel River Meridian, approximate elevation 1,550 feet;

Thence on an approximate forward bearing of S. 40° E., to the corner of sections 7, 12, 13 and 18, T. 18 N., Rs. 2 and 3 E., Kateel River Meridian;

Thence southerly between Rs. 2 and 3 E., to the south 1/16 section corner of sections 13 and 18, T. 18 N., Rs. 2 and 3 E., Kateel River Meridian;

Thence easterly, on the east and west centerline of the southwest 1/4 of section 18 to the center south 1/16 section corner of section 18, T. 18 N., R. 3 E., Kateel River Meridian;

Thence northerly, on the north and south centerlines of sections 18 and 7, to the center 1/4 section corner of section 7, T. 18 N., R. 3 E., Kateel River Meridian;

Thence easterly, on the east and west centerline of section 7, to the 1/4 section corner of sections 7 and 8, T. 18 N., R 3 E., Kateel River Meridian;

Thence northerly, between sections 7 and 8, to the corner of sections 5, 6, 7 and 8, T. 18 N., R. 3 E., Kateel River Meridian;

Thence on an approximate forward bearing of N. 50° E., to the summit of a mountain located in section 5, T. 18 N., R. 3 E., Kateel River Meridian, approximate elevation 1,215 feet;

Thence on an approximate forward bearing of S. 45° E., to the summit of a ridge located in the westerly portion of section 4, T. 18 N., R. 3 E., Kateel River Meridian, approximate elevation 1,050 feet;

Thence on an approximate forward bearing of N. 60° E., to the corner of sections 3, 4, 33 and 34, Tps. 18 and 19 N., R. 3 E., Kateel River Meridian, the place of beginning.

Units of the National Wild and Scenic Rivers System Within the Kobuk Valley National Park

Section 601, Public Law 96–487 (ANILCA):

"Salmon, Alaska.—That portion within the Kobuk Valley National Park; to be administered by the Secretary of the Interior."

Note: Pursuant to section 605(d) of ANILCA and as provided for under section 3(b) of the Wild and Scenic Rivers Act, the necessity for any river corridor boundaries for the Salmon Wild River within the Kobuk Valley National Park has been considered during the comprehensive conservation planning process for the park. In accordance with the General Management Plan for Kobuk Valley National Park, approved November 7, 1986, no specific river corridor boundaries are deemed necessary for the Salmon Wild River in order to protect the river and its immediate environments. Proposed management of the park meets and is compatible with management standards established by the Wild and Scenic Rivers Act.

The following U. S. Geological Survey 1:63,360 Series (Topographic) quadrangle maps were used in preparing the legal boundary descriptions for the Kobuk Valley National Park and the Kobuk Valley Wilderness Area:

Ambler River, Alaska: (A–5) 1955 mr 1971; (A–6) 1955 mr 1967; (B–4) pe 1990; (B–5) pe 1990; (C–4) pe 1990; (C–5) pe 1990; (C–6) pe 1990.

Baird Mountains, Alaska: (A–1) 1955 mr 1964; (A–2) 1955 mr 1964; (A–3) 1955; (B–3) 1955; (C–1) pe 1990; (C–3) 1955; (D–1) pe 1990; (D–2) pe 1990; (D–3) 1955.

Selawik, Alaska: (D–1) 1955 mr 1967; (D–2) 1955 mr 1973.

Shungnak, Alaska: (D–5) 1955 mr 1973; (D–6) 1955 mr 1973.

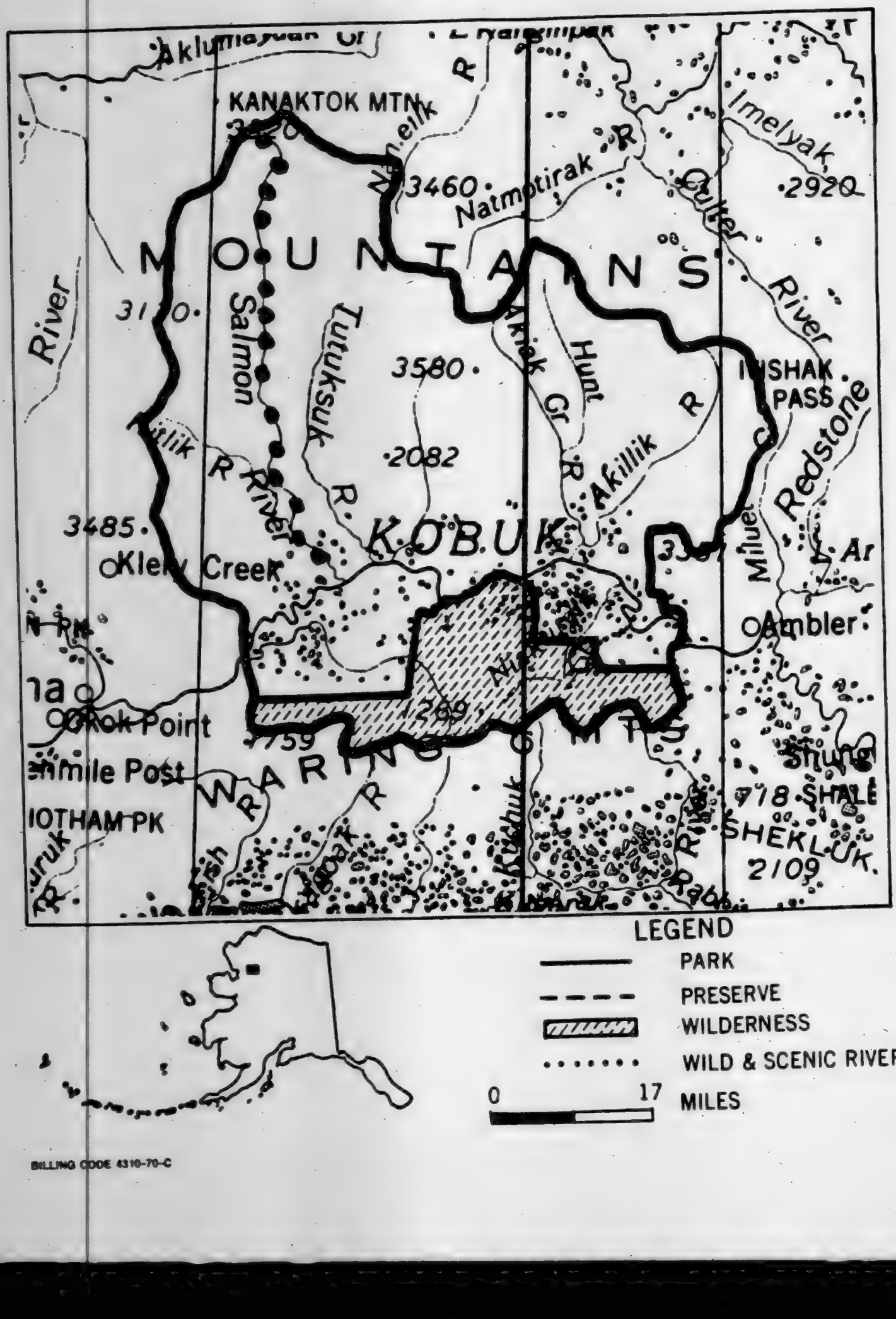
mr—minor revisions

pe—provisional edition

BILLING CODE 4310–70–F

KOBUK VALLEY NATIONAL PARK

PUBLIC LAW 96-487



BILLING CODE 4310-70-C

Lake Clark National Park and Preserve

Section 201(7)(a), Public Law 96–487 (ANILCA):

Lake Clark National Park

Lake Clark National Park as generally depicted on a map numbered LACL–90,008, dated October 1978, consists of approximately two million four hundred thirty-nine thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at the meander corner of sections 3 and 34, Tps. 2 and 3 N., R. 18 W., Seward Meridian, at the line of mean high tide on Cook Inlet;

Thence westerly, between Tps. 2 and 3 N., to the corner of sections 5, 6, 31 and 32, Tps. 2 and 3 N., R. 18 W., Seward Meridian;

Thence northerly, between sections 31 and 32, to the corner of sections 29, 30, 31 and 32, T. 3 N., R. 18 W., Seward Meridian;

Thence westerly, between sections 30 and 31, to the corner of sections 25, 30, 31 and 36, T. 3 N., Rs. 18 and 19 W., Seward Meridian;

Thence northerly, between Rs. 18 and 19 W., to the ¼ section corner of sections 19 and 24, T. 3 N., Rs. 18 and 19 W., Seward Meridian;

Thence westerly, on the east and west centerline of section 24, to the ¼ section corner of sections 23 and 24, T. 3 N., R. 19 W., Seward Meridian;

Thence northerly, between sections 23 and 24, 13 and 14, 11 and 12, 1 and 2, 35 and 36, 25 and 26, 23 and 24, 13 and 14, 11 and 12, 1 and 2, to the closing corner of sections 1 and 2, T. 4 N., R. 19 W., Seward Meridian;

Thence westerly, on the First Standard Parallel North, to the standard corner of T. 5 N., Rs. 18 and 19 W., Seward Meridian;

Thence northerly, between Rs. 18 and 19 W., to the corner of Tps. 5 and 6 N., Rs. 18 and 19 W., Seward Meridian;

Thence easterly, between Tps. 5 and 6 N., to the corner of sections 3, 4, 33 and 34, Tps. 5 and 6 N., R. 18 W., Seward Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, 33 and 34, 27 and 28, 21 and 22, to the corner of sections 15, 16, 21 and 22, T. 8 N., R. 18 W., Seward Meridian;

Thence westerly, between sections 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 8 N., Rs. 19 and 20 W., Seward Meridian;

Thence northerly, between Rs. 19 and 20 W., to the closing corner of T. 8 N., Rs. 19 and 20 W., Seward Meridian;

Thence easterly, on the Second Standard Parallel North, to the standard corner of T. 9 N., Rs. 17 and 18 W., Seward Meridian;

Thence northerly, between Rs. 17 and 18 W., to the corner of sections 13, 18, 19 and 24, T. 9 N., Rs. 17 and 18 W., Seward Meridian;

Thence easterly, between sections 18 and 19, 17 and 20, 16 and 21, 15 and 22, 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 9 N., Rs. 16 and 17 W., Seward Meridian;

Thence northerly, between Rs. 16 and 17 W., to the corner of Tps. 9 and 10 N., Rs. 16 and 17 W., Seward Meridian;

Thence westerly, between Tps. 9 and 10 N., to the corner of Tps. 9 and 10 N., Rs. 20 and 21 W., Seward Meridian;

Thence northerly, between Rs. 20 and 21 W., to the closing corner of T. 12 N., Rs. 20 and 21 W., Seward Meridian;

Thence westerly, on the Third Standard Parallel North, to the standard corner of T. 13 N., Rs. 20 and 21 W., Seward Meridian;

Thence northerly, between Rs. 20 and 21 W., to the closing corner of T. 16 N., Rs. 20 and 21 W., Seward Meridian;

Thence westerly, on the Fourth Standard Parallel North, to the closing corner of T. 16 N., Rs. 23 and 24 W., Seward Meridian;

Thence southerly, between Rs. 23 and 24 W., to the crest of a ridge between sections 19 and 24, T. 16 N., Rs. 23 and 24 W., Seward Meridian, approximate elevation 6,400 feet;

Thence easterly, northeasterly and southeasterly, along a common boundary with the Lake Clark National Preserve, along the crest of a ridge, between the Stony River and South Fork of the Kuskokwim River drainages, to the summit of a peak in the westerly portion of section 20, T. 16 N., R. 23 W., Seward Meridian, approximate elevation 6,686 feet;

Thence on an approximate forward bearing of N. 81° E., to the summit of a peak in the westerly portion of section 21, T. 16 N., R. 23 W., Seward Meridian, approximate elevation 6,515 feet;

Thence southerly, easterly and southwesterly, along the crest of a ridge, between the Stony River and South Fork of the Kuskokwim River and Chilligan River drainages, to a point between sections 32 and 33, T. 16 N., R. 23 W., Seward Meridian;

Thence southerly, between sections 32 and 33, to the corner of sections 4, 5, 32 and 33, Tps. 15 and 16 N., R. 23 W., Seward Meridian;

Thence easterly, between Tps. 15 and 16 N., to the crest of a ridge between the Stony River and Chilligan River drainages, between sections 3 and 34, Tps. 15 and 16 N., R. 23 W., Seward Meridian, approximate elevation 5,000 feet;

Thence easterly, southerly, southwesterly and southeasterly, along the crest of a ridge, between the Stony River, Necons River and Chilligan River drainages, to the summit of a peak in the northwesterly portion of section 35, T. 15 N., R. 23 W., Seward Meridian, approximate elevation 7,375 feet;

Thence on an approximate forward bearing of S. 71° E., to a point at the most northerly end of an unnamed lake in the southerly portion of section 36, T. 15 N., R. 23 W., Seward Meridian;

Thence on an approximate forward bearing of S. 63° E., to the summit of a peak in the northwesterly portion of section 6, T. 14 N., R. 22 W., Seward Meridian, approximate elevation 5,277 feet;

Thence southeasterly, southwesterly and southeasterly, along the crest of a ridge, between the Necons River, Merrill River, Chilligan River and Igitna River drainages, to the summit of a peak in the westerly portion of section 24, T. 13 N., R. 23 W., Seward Meridian, approximate elevation 5,310 feet;

Thence on an approximate forward bearing of S. 42° E., to a point on the northeasterly end of a small unnamed lake on Merrill Pass, in the southerly portion of section 24, T. 13 N., R. 23 W., Seward Meridian;

Thence on an approximate forward bearing of S. 12° E., to the summit of a peak in the easterly portion of section 25, T. 13 N., R. 23 W., Seward Meridian, approximate elevation 5,290 feet;

Thence southwesterly, westerly and southerly, along the crest of a ridge, between the Merrill River, Necons River, Telaquana River, Another River, and Neacola River drainages, to the summit of a peak in the southerly portion of section 22, T. 10 N., R. 24 W., Seward Meridian, approximate elevation 6,300 feet;

Thence on an approximate forward bearing of N. 77° E., to the summit of a peak in the westerly portion of section 24, T. 10 N., R. 24 W., Seward Meridian, approximate elevation 3,960 feet;

Thence southerly and westerly, along the crest of a ridge, between the Telaquana River and Neacola River drainages, to the summit of a peak in the central portion of section 2, T. 9 N., R. 24 W., Seward Meridian; approximate elevation 6,410 feet;

Thence on an approximate forward bearing of South, to the summit of a peak in the southerly portion of section 11, T. 9 N., R. 24 W., Seward Meridian; approximate elevation 6,220 feet;

Thence southerly and westerly, along the crest of a ridge, to the summit of a peak in the westerly portion of section 14, T. 9 N., R. 24 W., Seward Meridian; approximate elevation 5,800 feet;

Thence on an approximate forward bearing of S. 20° E., to the summit of a peak in the southeasterly portion of section 23, T. 9 N., R. 24 W., Seward Meridian, approximate elevation 5,655 feet;

Thence southerly and westerly, along the crest of a ridge, between the Telaquana River, Trail Creek, Tlikakila River, Twin Lakes and Turquoise Lake drainages, to a point between sections 26 and 35, T. 9 N., R. 26 W., Seward Meridian;

Thence westerly, between sections 26 and 35, 27 and 34, 28 and 33, 29 and 32, 30 and 31, 25 and 36, 26 and 35, 27 and 34, 28 and 33, to the crest of a ridge between the Summit Creek and Turquoise Lake drainages, between sections 28 and 33, T. 9 N., R. 27 W., Seward Meridian, approximate elevation 3,295 feet;

Thence southwesterly, along the crest of a ridge, between the Summit Creek and Turquoise Lake drainages, to a point on the east and west centerline of section 33, T. 9 N., R. 27 W., Seward Meridian;

Thence westerly, on the east and west centerline of section 33, to the ¼ section corner of sections 32 and 33, T. 9 N., R. 27 W., Seward Meridian;

Thence southerly, between sections 32 and 33, to the standard corner of sections 32 and 33, T. 9 N., R. 27 W., Seward Meridian;

Thence westerly, on the Second Standard Parallel North, to the closing corner of T. 8 N., Rs. 27 and 28 W., Seward Meridian;

Thence southerly, between Rs. 27 and 28 W., to the crest of a ridge between the Chilikadrotna River and College Creek drainages between sections 1 and 6, T. 5 N., Rs. 27 and 28 W., Seward Meridian, approximate elevation 3,700 feet;

Thence easterly, along the crest of a ridge, between the Chilikadrotna River and College Creek drainages, to the summit of a peak in the central portion of section 11, T. 5 N., R. 27 W., Seward Meridian, approximate elevation 4,281 feet;

Thence on an approximate forward bearing of S. 20° E., to the summit of a peak in the southwesterly portion of section 31, T. 5 N., R. 26 W., Seward Meridian, approximate elevation 4,211 feet;

Thence easterly, along the crest of a ridge, between the Portage Lake and Kijik River drainages, to the summit of a peak in the southerly portion of section 33, T. 5 N., R. 26 W., Seward Meridian, approximate elevation 4,150 feet;

Thence on an approximate forward bearing of South, to the summit of a peak in the southwesterly portion of section 8, T. 4 N., R. 26 W., Seward Meridian, approximate elevation 4,800 feet;

Thence southerly and westerly, along the crest of a ridge, between the Kijik River and other Lake Clark drainages, to the saddle in the ridge northeasterly of the headwaters of Portage Creek in the northerly portion of section 28, T. 4 N., R. 27 W., Seward Meridian, approximate elevation 3,150 feet;

Thence southwesterly, to the headwaters of Portage Creek in the northerly portion of section 28, T. 4 N., R. 27 W., Seward Meridian;

Thence southwesterly and southerly, along the right bank of Portage Creek, to the mouth of Portage Creek on the shore of Lake Clark at the line of mean high water in section 17, T. 3 N., R. 27 W., Seward Meridian;

Thence southwesterly, along the line of mean high water of Lake Clark, to the right bank at the mouth of the most easterly unnamed creek in section 10, T. 2 N., R. 29 W., Seward Meridian;

Thence on an approximate forward bearing of S. 35° E., crossing Lake Clark, to the most southwesterly point of Tommy Island, in section 24, T. 2 N., R. 29 W., Seward Meridian;

Thence southeasterly, along the shore of Tommy Island, to the most southerly point of Tommy Island, in section 25, T. 2 N., R. 29 W., Seward Meridian;

Thence on an approximate forward bearing of S. 30° E., crossing Lake Clark, to a point on the left bank at the mouth of Tommy Creek on the southeast shore of Lake Clark at the line of mean high water in section 25, T. 2 N., R. 29 W., Seward Meridian;

Thence southerly, along the shore of Lake Clark, along the line of mean high water, to the left bank at the mouth of an unnamed creek on the southeast shore of Lake Clark, in the northeasterly portion of section 36, T. 2 N., R. 29 W., Seward Meridian;

Thence on an approximate forward bearing of S. 12° E., to the summit of a peak in the southeasterly portion of section 1, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 3,904 feet;

Thence on an approximate forward bearing of S. 40° W., to the summit of a peak in the northwesterly portion of section 27, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 3,460 feet;

Thence on an approximate forward bearing of S. 1° E., to the summit of a peak in the southerly portion of section 27, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 3,400 feet;

Thence on an approximate forward bearing of S. 50° W., to the summit of a peak in the central portion of section 33, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 4,140 feet;

Thence southerly, easterly, southeasterly and southerly, along the crest of the divide between the Tazimina River and the Tanalian River, Takoka Creek, Brooks Creek and Pile River drainages, to the summit of a peak in the easterly portion of section 27, T. 2 S., R. 26 W., Seward Meridian, approximate elevation 4,750 feet;

Thence on an approximate forward bearing of S. 45° E., departing from the common boundary with the Lake Clark National Preserve, to the summit of a peak in the southwesterly portion of section 6, T. 3 S., R. 25 W., approximate elevation 4,500 feet;

Thence easterly, northeasterly and southerly, along the crest of a ridge, between the tributaries of the Pile River and the tributaries of the Iliamna River drainages, to the summit of a peak in the easterly portion of section 2, T. 3 S., R. 25 W., Seward Meridian, approximate elevation 4,300 feet;

Thence on an approximate forward bearing of S. 50° E., to the summit of a peak in the central portion of section 17, T. 3 S., R. 24 W., Seward Meridian, approximate elevation 3,350 feet;

Thence northeasterly and southeasterly, along the crest of a ridge between the Iliamna River, Iniskin River, Clearwater Creek, and Chinitna River and the Holland Creek and Tooie Creek drainages, to the summit of a peak in the southwesterly portion of section 5, T. 4 S., R. 23 W., Seward Meridian, approximate elevation 2,507 feet;

Thence southerly, along the crest of a ridge, between the Marsh Creek and an unnamed creek drainages, to a point between sections 5 and 8, T. 4 S., R. 23 W., Seward Meridian;

Thence easterly, between sections 5 and 8, 4 and 9, to the meander corner of sections 4 and 9, T. 4 S., R. 23 W., Seward Meridian, at the line of mean high tide of Chinitna Bay;

Thence easterly, northerly, northwesterly, southeasterly and northeasterly, along the line of mean high tide of Chinitna Bay, Cook Inlet and Tuxedni Bay, including the islands in sections 5, 6, 7 and 8, T. 2 S., R. 19 W., in sections 1, 2 and 12, T. 2 S., R. 20 W., in sections 25, 26 and 36, T. 2 N., R. 20 W., in sections 30 and 31, T. 2 N., R. 19 W., and within T. 2 N., Rs. 21 and 22 W., and T. 3 N., R. 21 W., Seward Meridian, to the meander corner of sections 3 and 34, Tps. 2 and 3 N., R. 18 W., Seward Meridian, the place of beginning.

Lake Clark National Park includes only those lands, islands, islets, rocks and spires above the line of mean high tide.

Lake Clark National Preserve

Lake Clark National Preserve as generally depicted on a map numbered LACL–90,008, dated October 1978, consists of approximately one million two hundred and fourteen thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at the summit of a peak in the easterly portion of section 27, T. 2 S., R. 26 W., Seward Meridian, approximate elevation 4,750 feet;

Thence southerly and westerly, departing from a common boundary with the Lake Clark National Park, along the crest of a ridge, between the Pile River and Tazimina Lakes drainages, to the summit of a peak in the northwesterly portion of section 36, T. 2 S., R. 27 W., Seward Meridian, approximate elevation 4,480 feet;

Thence on an approximate forward bearing of N. 74° W., to the summit of a peak in the southwesterly portion of section 27, T. 2 S., R. 27 W., Seward Meridian, approximate elevation 4,500 feet;

Thence southerly and westerly, along the crest of a ridge, between the Pile River and Tazimina River drainages, to the summit of a peak in the northerly portion of section 18, T. 3 S., R. 27 W., Seward Meridian, approximate elevation 4,055 feet;

Thence on an approximate forward bearing of N. 83° W., to the summit of a peak in the northeasterly portion of section 14, T. 3 S., R. 28 W., Seward Meridian, approximate elevation 3,800 feet;

Thence northerly and westerly, along the crest of a ridge, between the Canyon Creek and Tazimina River drainages, to the summit of a peak in the northwesterly portion of section 31, T. 2 S., R. 28 W., Seward Meridian, approximate elevation 4,320 feet;

Thence on an approximate forward bearing of N. 69° W., to the summit of a peak in the northwesterly portion of section 26, T. 2 S., R. 29 W., Seward Meridian, approximate elevation 1,852 feet;

Thence on an approximate forward bearing of N. 75° W., to the meander corner of sections 21 and 22, T. 2 S., R. 29 W., Seward Meridian, at the line of mean high water of Chekok Lake;

Thence on an approximate forward bearing of N. 66° W., to the summit of a peak in the northwesterly portion of section 20, T. 2 S., R. 29 W., Seward Meridian, approximate elevation 3,508 feet;

Thence southwesterly, along the crest of the divide between the Chekok Creek and Tazimina River drainages, to a point on the crest of a ridge between sections 20 and 29, T. 3 S., R. 30 W., Seward Meridian;

Thence westerly, between sections 20 and 29, 19 and 30, 24 and 25, 23 and 26, 22 and 27, 21 and 28, to the ¼ section corner of sections 21 and 28, T. 3 S., R. 31 W., Seward Meridian;

Thence southerly, along the north and south centerline of section 28, to the center ¼ section corner of section 28, T. 3 S., R. 31 W., Seward Meridian;

Thence westerly, along the east and west centerlines of sections 28 and 29, to the center ¼ section corner of section 29, T. 3 S., R. 31 W., Seward Meridian;

Thence southerly, along the north and south centerlines of sections 29, 32 and 5, to a point on the crest of a ridge on Roadhouse Mountain, in the northerly portion of section 5, T. 4 S., R. 31 W., Seward Meridian, approximate elevation 2,925 feet;

Thence southwesterly and northwesterly, along the top of Roadhouse Mountain, to the summit of a peak in the easterly portion of

section 1, T. 4 S., R. 32 W., Seward Meridian, approximate elevation 2,600 feet;

Thence on an approximate forward bearing of N. 43° W., to the confluence of unnamed creeks which are tributaries to Alexcy Lake, in the northerly portion of section 35, T. 3 S., R. 32 W., Seward Meridian;

Thence westerly, along the left bank of an unnamed creek, which is a tributary to Alexcy Lake and along said creek to a point at the mouth of the creek on the easterly shore of Alexcy Lake in the easterly portion of section 26, T. 3 S., R. 32 W., Seward Meridian;

Thence northerly and westerly, along the line of mean high water of Alexcy Lake, to the meander corner of sections 21 and 28, T. 3 S., R. 32 W., Seward Meridian;

Thence westerly, between sections 21 and 28, to the corner of sections 20, 21, 28 and 29, T. 3 S., R. 32 W., Seward Meridian;

Thence northerly, between sections 20 and 21, to the corner of sections 16, 17, 20 and 21, T. 3 S., R. 32 W., Seward Meridian;

Thence westerly, between sections 17 and 20, to the corner of sections 17, 18, 19 and 20, T. 3 S., R. 32 W., Seward Meridian;

Thence northerly, between sections 17 and 18, to the ¼ section corner of sections 17 and 18, T. 3 S., R. 32 W., Seward Meridian;

Thence westerly, along the east and west centerline of section 18, to the center-west ⅛ section corner of section 18, T. 3 S., R. 32 W., Seward Meridian;

Thence northerly, along the north and south centerline of the northwest ¼ of section 18, the southwest ¼ and the northwest ¼ of sections 7 and 6, to the northwest ⅛ section corner of section 6, T. 3 S., R. 32 W., Seward Meridian;

Thence westerly, along the east and west centerline of the northwest ¼ of section 6, to the special meander corner on the east and west centerline of the northwest ¼ of section 6, on the southeast shore of Sixmile Lake, T. 3 S., R. 32 W., Seward Meridian;

Thence northeasterly and northerly, along the line of mean high water of Sixmile Lake, to the special meander corner on the east and west centerline of section 10, on the east shore of the channel between Lake Clark and Sixmile Lake located in the easterly portion of section 10, T. 2 S., R. 32 W., Seward Meridian;

Thence westerly, along the east and west centerlines of sections 10 and 9, to the center ¼ section corner of section 9, T. 2 S., R. 32 W., Seward Meridian;

Thence northerly, along the north and south centerline of section 9, to the ¼ section corner of sections 4 and 9, T. 2 S., R. 32 W., Seward Meridian;

Thence westerly, between sections 4 and 9, to the corner of sections 4, 5, 8 and 9, T. 2 S., R. 32 W., Seward Meridian;

Thence northerly, between sections 4 and 5, to the ¼ section corner of sections 4 and 5, T. 2 S., R. 32 W., Seward Meridian;

Thence westerly, along the east and west centerlines of sections 5 and 6, to a point on the top of a spur ridge, on the east and west centerline of section 6, T. 2 S., R. 32 W., Seward Meridian, approximate elevation 1,300 feet;

Thence northwesterly and southwesterly, along a spur ridge and the crest of Hoknede Mountain to the summit of a peak in the northwesterly portion of section 11, T. 2 S., R. 33 W., Seward Meridian, approximate elevation 2,410 feet;

Thence on an approximate forward bearing of S. 40° W., to the ¼ section corner of sections 10 and 11, T. 2 S., R. 33 W., Seward Meridian;

Thence westerly, along the east and west centerline of section 10, to the ¼ section corner of sections 9 and 10, T. 2 S., R. 33 W., Seward Meridian;

Thence northerly, between sections 9 and 10, to the corner of sections 3, 4, 9 and 10, T. 2 S., R. 33 W., Seward Meridian;

Thence westerly, between sections 4 and 9, to the ¼ section corner of sections 4 and 9, T. 2 S., R. 33 W., Seward Meridian;

Thence northerly, along the north and south centerline of section 4, to the ¼ section corner of sections 4 and 33, Tps. 1 and 2 S., R. 33 W., Seward Meridian;

Thence westerly, between Tps. 1 and 2 S., to the corner of sections 5, 6, 31 and 32, Tps. 1 and 2 S., R. 33 W., Seward Meridian;

Thence northerly, between sections 31 and 32, 29 and 30, 19 and 20, 17 and 18, 7 and 8, to the corner of sections 5, 6, 7 and 8, T. 1 S., R. 33 W., Seward Meridian;

Thence easterly, between sections 5 and 8, to the corner of sections 4, 5, 8 and 9, T. 1 S., R. 33 W., Seward Meridian;

Thence northerly, between sections 4 and 5, to the ¼ section corner of sections 4 and 5, T. 1 S., R. 33 W., Seward Meridian;

Thence easterly, along the east and west centerlines of sections 4, 3, 2 and 1, to the ¼ section corner of section 1 and 6, T. 1 S., Rs. 32 and 33 W., Seward Meridian;

Thence on an approximate forward bearing of S. 57° E., to the summit of a peak in the westerly portion of section 6, T. 1 S., R. 32 W., Seward Meridian, approximate elevation 1,540 feet;

Thence easterly and northeasterly, along the crest of a ridge, between the Chulitna River and other Lake Clark drainages, to the northeasterly summit of a hill in the northeasterly portion of section 25, T. 1 N., R. 32 W., Seward Meridian, approximate elevation 2,200 feet;

Thence on an approximate forward bearing of N. 58° E., to the corner of sections 19, 24, 25 and 30, T. 1 N., Rs. 31 and 32 W., Seward Meridian;

Thence northerly, between Rs. 31 and 32 W., to a point on a spur ridge, between sections 19 and 24, T. 2 N., Rs. 31 and 32 W., Seward Meridian, approximate elevation 1,000 feet;

Thence northeasterly, along a spur ridge and the crest of a ridge, between drainages of the Koksetna River and tributaries of the Chulitna River, to a point between sections 33 and 34, T. 3 N., R. 31 W., Seward Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, to the closing corner of sections 3 and 4, T. 4 N., R. 31 W., Seward Meridian;

Thence easterly, along the First Standard Parallel North, to the standard corner of T. 5 N., Rs. 29 and 30 W., Seward Meridian;

Thence northerly, between Rs. 29 and 30 W., to the corner of Tps. 6 and 7 N., Rs. 29 and 30 W., Seward Meridian;

Thence easterly, between Tps. 6 and 7 N., to the corner of Tps. 6 and 7 N., Rs. 28 and 29 W., Seward Meridian;

Thence northerly, between Rs. 28 and 29 W., to the corner of Tps. 7 and 8 N., Rs. 28 and 29 W., Seward Meridian;

Thence westerly, between Tps. 7 and 8 N., to the corner of Tps. 7 and 8 N., Rs. 29 and 30 W., Seward Meridian;

Thence northerly, between Rs. 29 and 30 W., to the closing corner of T. 8 N., Rs. 29 and 30 W., Seward Meridian;

Thence westerly, along the Second Standard Parallel North, to the standard corner of T. 9 N., Rs. 29 and 30 W., Seward Meridian;

Thence northerly, between Rs. 29 and 30 W., to the corner of Tps. 10 and 11 N., Rs. 29 and 30 W., Seward Meridian;

Thence easterly, between Tps. 10 and 11 N., to the corner of Tps. 10 and 11 N., Rs. 28 and 29 W., Seward Meridian;

Thence northerly, between Rs. 28 and 29 W., to the corner of Tps. 11 and 12 N., Rs. 28 and 29 W., Seward Meridian;

Thence easterly, between Tps. 11 and 12 N., to the corner of Tps. 11 and 12 N., Rs. 26 and 27 W., Seward Meridian;

Thence northerly, between Rs. 26 and 27 W., to the closing corner of T. 12 N., Rs. 26 and 27 W., Seward Meridian;

Thence westerly, along the Third Standard Parallel North, to the standard corner of T. 13 N., Rs. 26 and 27 W., Seward Meridian;

Thence northerly, between Rs. 26 and 27 W., to the corner of Tps. 13 and 14 N., Rs. 26 and 27 W., Seward Meridian;

Thence easterly, between Tps. 13 and 14 N., to the corner of Tps. 13 and 14 N., Rs. 24 and 25 W., Seward Meridian;

Thence northerly, between Rs. 24 and 25 W., to the corner of Tps. 14 and 15 N., Rs. 24 and 25 W., Seward Meridian;

Thence easterly, between Tps. 14 and 15 N., to the corner of Tps. 14 and 15 N., Rs. 23 and 24 W., Seward Meridian;

Thence northerly, between Rs. 23 and 24 W., to a point on the crest of a ridge, between sections 19 and 24, T. 16 N., Rs. 23 and 24 W., Seward Meridian, approximate elevation 6,400 feet;

Thence easterly, northeasterly and southeasterly, along a common boundary with the Lake Clark National Park, along the crest of a ridge, between the Stony River and South Fork of the Kuskokwim River drainages to the summit of a peak in the westerly portion of section 20, T. 16 N., R. 23 W., Seward Meridian, approximate elevation 6,686 feet;

Thence on an approximate forward bearing of N. 81° E., to the summit of a peak in the westerly portion of section 21, T. 16 N., R. 23 W., Seward Meridian, approximate elevation 6,515 feet;

Thence southerly, easterly and southwesterly, along the crest of a ridge, between the Stony River and South Fork of the Kuskokwim River and Chilligan River drainages, to a point between sections 32 and 33, T. 16 N., R. 23 W., Seward Meridian;

Thence southerly, between sections 32 and 33, to the corner of sections 4, 5, 32 and 33, Tps. 15 and 16 N., R. 23 W., Seward Meridian;

Thence easterly, between Tps. 15 and 16 N., to the crest of a ridge between the Stony River and Chilligan River drainages, between sections 3 and 34, Tps. 15 and 16 N., R. 23 W., Seward Meridian, approximate elevation 5,000 feet;

Thence easterly, southerly, southwesterly and southeasterly, along the crest of a ridge, between the Stony River, Necons River and Chilligan River drainages, to the summit of a peak in the northwesterly portion of section 35, T. 15 N., R. 23 W., Seward Meridian, approximate elevation 7,375 feet;

Thence on an approximate forward bearing of S. 71° E., to a point at the most northerly end of an unnamed lake in the southerly portion of section 36, T. 15 N., R. 23 W., Seward Meridian;

Thence on an approximate forward bearing of S. 63° E., to the summit of a peak in the northwesterly portion of section 6, T. 14 N., R. 22 W., Seward Meridian, approximate elevation 5,277 feet;

Thence southeasterly, southwesterly and southeasterly, along the crest of a ridge, between the Necons River, Merrill River, Chilligan River and Igitna River drainages, to the summit of a peak in the westerly portion of section 24, T. 13 N., R. 23 W., Seward Meridian, approximate elevation 5,310 feet;

Thence on an approximate forward bearing of S. 42° E., to a point on the northeasterly end of a small unnamed lake on Merrill Pass, in the southerly portion of section 24, T. 13 N., R. 23 W., Seward Meridian;

Thence on an approximate forward bearing of S. 12° E., to the summit of a peak in the easterly portion of section 25, T. 13 N., R. 23 W., Seward Meridian, approximate elevation 5,290 feet;

Thence southwesterly, westerly and southerly, along the crest of a ridge, between the Merrill River, Necons River, Telaquana River, Another River and Neacola River drainages, to the summit of a peak in the southerly portion of section 22, T. 10 N., R. 24 W., Seward Meridian, approximate elevation 6,300 feet;

Thence on an approximate forward bearing of N. 77° E., to the summit of a peak in the westerly portion of section 24, T. 10 N., R. 24 W., Seward Meridian, approximate elevation 3,960 feet;

Thence southerly and westerly, along the crest of a ridge, between the Telaquana River and Neacola River drainages, to the summit of a peak in the central portion of section 2, T. 9 N., R. 24 W., Seward Meridian, approximate elevation 6,410 feet;

Thence on an approximate forward bearing of South, to the summit of a peak in the southerly portion of section 11, T. 9 N., R. 24 W., Seward Meridian, approximate elevation 6,220 feet;

Thence southerly and westerly, along the crest of a ridge, to the summit of a peak in the westerly portion of section 14, T. 9 N., R. 24 W., Seward Meridian, approximate elevation 5,800 feet;

Thence on an approximate forward bearing of S. 20° E., to the summit of a peak in the southeasterly portion of section 23, T. 9 N., R. 24 W., Seward Meridian, approximate elevation 5,655 feet;

Thence southerly and westerly, along the crest of a ridge, between the Telaquana River, Trail Creek, Tlikakila River, Twin Lakes and Turquoise Lake drainages to a point between sections 26 and 35, T. 9 N., R. 26 W., Seward Meridian;

Thence westerly, between sections 26 and 35, 27 and 34, 28 and 33, 29 and 32, 30 and 31, 25 and 36, 26 and 35, 27 and 34, 28 and 33, to the crest of a ridge between the Summit Creek and Turquoise Lake drainages, between sections 28 and 33, T. 9 N., R. 27 W., Seward Meridian, approximate elevation 3,295 feet;

Thence southwesterly, along the crest of a ridge, between the Summit Creek and Turquoise Lake drainages, to a point on the east and west centerline of section 33, T. 9 N., R. 27 W., Seward Meridian;

Thence westerly, on the east and west centerline of section 33, to the ¼ section corner of sections 32 and 33, T. 9 N., R. 27 W., Seward Meridian;

Thence southerly, between sections 32 and 33, to the standard corner of sections 32 and 33, T. 9 N., R. 27 W., Seward Meridian;

Thence westerly, on the Second Standard Parallel North, to the closing corner of T. 8 N., Rs. 27 and 28 W., Seward Meridian;

Thence southerly, between Rs. 27 and 28 W., to the crest of a ridge between the Chilikadrotna River and College Creek drainages, between sections 1 and 6, T. 5 N., Rs. 27 and 28 W., Seward Meridian, approximate elevation 3,700 feet;

Thence easterly, along the crest of a ridge, between the Chilikadrotna River and College Creek drainages, to the summit of a peak in the central portion of section 11, T. 5 N., R. 27 W., Seward Meridian, approximate elevation 4,281 feet;

Thence on an approximate forward bearing of S. 20° E., to the summit of a peak in the southwesterly portion of section 31, T. 5 N., R. 26 W., Seward Meridian, approximate elevation 4,211 feet;

Thence easterly, along the crest of a ridge, between the Portage Lake and Kijik River drainages, to the summit of a peak in the southerly portion of section 33, T. 5 N., R. 26 W., Seward Meridian, approximate elevation 4,150 feet;

Thence on an approximate forward bearing of South, to the summit of a peak in the southwesterly portion of section 8, T. 4 N., R. 26 W., Seward Meridian, approximate elevation 4,800 feet;

Thence southerly and westerly, along the crest of a ridge, between the Kijik River and other Lake Clark drainages, to the saddle in the ridge northeasterly of the headwaters of Portage Creek, in the northerly portion of section 28, T. 4 N., R. 27 W., Seward Meridian, approximate elevation 3,150 feet;

Thence southwesterly to the headwaters of Portage Creek in the northerly portion of section 28, T. 4 N., R. 27 W., Seward Meridian;

Thence southwesterly and southerly, along the right bank of Portage Creek, to the mouth of Portage Creek on the shore of Lake Clark at the line of mean high water in section 17, T. 3 N., R. 27 W., Seward Meridian;

Thence southwesterly, along the line of mean high water of Lake Clark, to the right bank at the mouth of the most easterly unnamed creek in section 10, T. 2 N., R. 29 W., Seward Meridian;

Thence on an approximate forward bearing of S. 35° E., crossing Lake Clark, to the most southwesterly point of Tommy Island, in section 24, T. 2 N., R. 29 W., Seward Meridian;

Thence southeasterly, along the shore of Tommy Island, to the most southerly point of Tommy Island, in section 25, T. 2 N., R. 29 W., Seward Meridian;

Thence on an approximate forward bearing of S. 30° E., crossing Lake Clark, to a point on the left bank of the mouth of Tommy Creek on the southeast shore of Lake Clark at the line of mean high water in section 25, T. 2 N., R. 29 W., Seward Meridian;

Thence southerly, along the shore of Lake Clark along the line of mean high water, to the left bank at the mouth of an unnamed creek on the southeast shore of Lake Clark in the northeasterly portion of section 36, T. 2 N., R. 29 W., Seward Meridian;

Thence on an approximate forward bearing of S. 12° E., to the summit of a peak in the southeasterly portion of section 1, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 3,904 feet;

Thence on an approximate forward bearing of S. 40° W., to the summit of a peak in the northwesterly portion of section 27, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 3,460 feet;

Thence on an approximate forward bearing of S. 1° E., to the summit of a peak in the southerly portion of section 27, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 3,400 feet;

Thence on an approximate forward bearing of S. 50° W., to the summit of a peak in the central portion of section 33, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 4,140 feet;

Thence southerly, easterly, southeasterly and southerly, along the crest of the divide between the Tazimina River and the Tanalian River, Takoka Creek, Brooks Creek and Pile River drainages, to the summit of a peak in the easterly portion of section 27, T. 2 S., R. 26 W., Seward Meridian, approximate elevation 4,750 feet, the place of beginning.

Units of the National Wilderness Preservation System Within the Lake Clark National Park and Preserve

Section 701(6), Public Law 96–478 (ANILCA):

Lake Clark Wilderness

The Lake Clark Wilderness as generally depicted on a map numbered LACL—90,008, dated October 1978, consists of approximately two million four hundred and seventy thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at the standard corner of sections 34 and 35, T. 9 N., R. 18 W., Seward Meridian;

Thence northerly, between sections 34 and 35, 26 and 27, to the crest of a ridge between sections 26 and 27, T. 9 N., R. 18 W., Seward Meridian, approximate elevation 5,500 feet;

Thence northeasterly and northerly, along the crest of a ridge, to a point between sections 10 and 11, T. 9 N., R. 18 W., Seward Meridian;

Thence northerly, between sections 10 and 11, 2 and 3, to the corner of sections 2, 3, 34 and 35, Tps. 9 and 10 N., R. 18 W., Seward Meridian;

Thence westerly, between Tps. 9 and 10 N., to the corner of Tps. 9 and 10 N., Rs. 20 and 21 W., Seward Meridian;

Thence northerly, between Rs. 20 and 21 W., to the closing corner of T. 12 N., Rs. 20 and 21 W., Seward Meridian;

Thence westerly, on the Third Standard Parallel North, to the standard corner of T. 13 N., Rs. 20 and 21 W., Seward Meridian;

Thence northerly, between Rs. 20 and 21 W., to a point on the summit of a ridge, between the Skwentna River and Chilligan River drainages, between sections 13 and 18, T. 16 N., Rs. 20 and 21 W., Seward Meridian;

Thence southwesterly and northwesterly, along the crest of a ridge, between the Skwentna River and Chilligan River drainages, to the summit of a peak in the southerly portion of section 11, T. 16 N., R. 21 W., Seward Meridian, approximate elevation 5,810 feet;

Thence on an approximate forward bearing of N. 24° E., to the summit of a peak in the southwesterly portion of section 1, T. 16 N. R. 21 W., Seward Meridian, approximate elevation 6,310 feet;

Thence on an approximate forward bearing of N. 57° W., to the summit of a peak in the northeasterly portion of section 3, T. 16 N., R. 21 W., Seward Meridian, approximate elevation 5,565 feet;

Thence westerly and southerly, along the crest of a ridge, between the Styx River, the South Fork of the Kuskokwim River and Chilligan River drainages, to the summit of a peak in the southeasterly portion of section 8, T. 16 N., R. 22 W., Seward Meridian, approximate elevation 5,208 feet;

Thence on an approximate forward bearing of N. 88° W., to the summit of a peak in the southwesterly portion of section 8, T. 16 N., R. 22 W., Seward Meridian, approximate elevation 7,570 feet;

Thence southwesterly, along the crest of a ridge, between the South Fork of the Kuskokwim River and Chilligan River drainages, to the summit of a peak in the northeasterly portion of section 23, T. 16 N., R. 23 W., Seward Meridian, approximate elevation 6,660 feet;

Thence on an approximate forward bearing of S. 61° W., to the summit of a peak in the northerly portion of section 27, T. 16 N., R. 23 W., Seward Meridian, approximate elevation 6,200 feet;

Thence southwesterly, along the crest of a ridge, between the South Fork of the Kuskokwim River and Chilligan River drainages, to a point between sections 32 and 33, T. 16 N., R. 23 W., Seward Meridian;

Thence southerly, between sections 32 and 33, to the corner of sections 4, 5, 32 and 33, Tps. 15 and 16 N., R. 23 W., Seward Meridian;

Thence easterly, between Tps. 15 and 16 N., to the crest of a ridge, between the Stony River and Chilligan River drainages, between sections 3 and 34, Tps. 15 and 16 N., R. 23 W., Seward Meridian, approximate elevation 5,000 feet;

Thence southeasterly and southwesterly, along the crest of a ridge, between the Stony River, Chilligan River and Necons River drainages, to horizontal control station "Merrill" in the southerly portion of section 28, T. 13 N., R. 25 W., Seward Meridian, approximate elevation 4,080 feet;

Thence on an approximate forward bearing of S. 7° W., to a point on the right bank of the most westerly channel of the Necons River at its confluence with Two Lakes in section 7, T. 12 N., R. 25 W., Seward Meridian;

Thence southeasterly along the northerly shore of Two Lakes, to the southernmost point between sections 16 and 17 on the shore of Two Lakes, T. 12 N., R. 25 W., Seward Meridian;

Thence on an approximate forward bearing of S. 73° E., to the summit of a peak located in the southwesterly portion of section 15, T. 12 N., R. 25 W., Seward Meridian, approximate elevation 5,520 feet;

Thence southerly and westerly, along the crest of a ridge, between the Tlikakila River and Two Lakes drainages, to the summit of a peak in the northwesterly portion of section 4, T. 11 N., R. 25 W., Seward Meridian, approximate elevation 5,500 feet, this position being at the headwaters of a creek which is a tributary to the Necons River;

Thence westerly, northerly, westerly and southwesterly, through a ravine, along the left bank of an unnamed creek and along the left bank of the Necons River, to a point between sections 7 and 8, T. 11 N., R. 26 W., Seward Meridian;

Thence southerly, between sections 7 and 8, 17 and 18, 19 and 20, 29 and 30, 31 and 32, to the corner of sections 5, 6, 31 and 32, Tps. 10 and 11 N., R. 26 W., Seward Meridian;

Thence easterly, between Tps. 10 and 11 N., to the crest of a ridge, between the Necons River and Lake Telaquana drainages, between sections 6 and 31, Tps. 10 and 11 N., R. 25 W., Seward Meridian;

Thence southeasterly, along the crest of a ridge, between the Necons River and Lake Telaquana drainages, to the summit of a peak in the southeasterly portion of section 5, T. 10 N., R. 25 W., Seward Meridian, approximate elevation 5,000 feet;

Thence southerly, through a ravine and along the left bank of an unnamed creek, to a point at the mouth of the unnamed creek, on the shore of Telaquana Lake, in the northerly portion of section 17, T. 10 N., R. 25 W., Seward Meridian;

Thence southerly and westerly, along the shore of Telaquana Lake, to a point between sections 19 and 24, T. 10 N., Rs. 25 and 26 W., Seward Meridian;

Thence southerly, between Rs. 25 and 26 W., to the ¼ section corner of sections 31 and 36, T. 10 N., Rs. 25 and 26 W., Seward Meridian;

Thence westerly, along the east and west centerline of section 36, to the ¼ section corner of sections 35 and 36, T. 10 N., R. 26 W., Seward Meridian;

Thence on an approximate forward bearing of S. 40° W., to the summit of a peak in the southerly portion of section 35, T. 10 N., R. 26 W., Seward Meridian, approximate elevation 3,205 feet;

Thence on an approximate forward bearing of S. 11° W., to the summit of a peak in sections 2 and 11, T. 9 N., R. 26 W., Seward Meridian, approximate elevation 3,420 feet;

Thence on an approximate forward bearing of N. 85° W., to the summit of a peak in the southerly portion of section 3, T. 9 N., R. 26 W., Seward Meridian, approximate elevation 3,296 feet;

Thence on an approximate forward bearing of N. 62° W., to the summit of a peak in the westerly portion of section 4, T. 9 N., R. 26 W., Seward Meridian, approximate elevation 3,107 feet;

Thence on an approximate forward bearing of S. 89° W., to the summit of a peak in the westerly portion of section 2, T. 9 N., R. 27 W., Seward Meridian, approximate elevation 3,218 feet;

Thence on an approximate forward bearing of S. 65° W., to the ¼ section corner of sections 2 and 3, T. 9 N., R. 27 W., Seward Meridian;

Thence westerly, along the east and west centerlines of sections 3, 4 and 5, to the center ¼ section corner of section 5, T. 9 N., R. 27 W., Seward Meridian;

Thence southerly, along the north and south centerlines of sections 5, 8, 17, 20, 29 and 32, to the standard ¼ section corner of section 32, T. 9 N., R. 27 W., Seward Meridian;

Thence easterly, along the Second Standard Parallel South, to the closing corner of T. 8 N., Rs. 27 and 28 W., Seward Meridian;

Thence southerly, between Rs. 27 and 28 W., to a point between sections 25 and 30, T. 7 N., Rs. 27 and 28 W., Seward Meridian, on the right bank of the Chilikadrotna River;

Thence southeasterly and northeasterly, along the right bank of Chilikadrotna River and the northwesterly shore of Twin Lakes, to a point on the right bank of an unnamed creek near the line between sections 28 and 29, T. 7 N., R. 27 W., Seward Meridian;

Thence northeasterly, along the right bank of the unnamed creek, to a point between sections 22 and 27, T. 7 N., R. 27 W., Seward Meridian;

Thence easterly and southeasterly, along a spur ridge and the crest of a ridge, to the summit of a peak in the southerly portion of section 25, T. 7 N., R. 27 W., Seward Meridian, approximate elevation 5,363 feet;

Thence on an approximate forward bearing of S. 53° E., to the confluence of two unnamed creeks, in the northerly portion of section 31, T. 7 N., R. 26 W., Seward Meridian;

Thence southwesterly and southeasterly, along the left bank of an unnamed creek, to a point on the shore of Twin Lakes, in the southeasterly portion of section 6, T. 6 N., R. 26 W., Seward Meridian;

Thence southwesterly, along the northerly shore of the east lake of Twin Lakes and the channel connecting Twin Lakes, to a point at the most westerly end of the channel connecting Twin Lakes, in the northwesterly portion of section 7, T. 6 N., R. 26 W., Seward Meridian;

Thence southwesterly, closing the mouth of the channel and along the southerly shore of the west lake of Twin Lakes, to a point on the right bank of an unnamed creek, in the northwesterly portion of section 7, T. 6 N., R. 26 W., Seward Meridian;

Thence southerly, along the right bank of an unnamed creek, to the confluence of two unnamed creeks, in the northerly portion of section 19, T. 6 N., R. 26 W., Seward Meridian;

Thence on an approximate forward bearing of West, to the summit of a peak, in the northeasterly portion of section 24, T. 6 N., R. 27 W., Seward Meridian, approximate elevation 4,420 feet;

Thence southwesterly and northwesterly, along the divide between the drainages of Twin Lakes and unnamed tributaries of the Chilikadrotna River to the summit of a peak in the easterly portion of section 9, T. 6 N., R. 27 W., Seward Meridian, approximate elevation 4,040 feet;

Thence on an approximate forward bearing of N. 48° W., to the summit of a peak in the southwesterly portion of section 4, T. 6 N., R. 27 W., Seward Meridian, approximate elevation 3,710 feet;

Thence northwesterly along the crest of the divide between the drainages of Twin Lakes and unnamed tributaries of the Chilikadrotna River to a point between sections 31 and 36, T. 7 N., Rs. 27 and 28 W., Seward Meridian;

Thence southerly, between Rs. 27 and 28 W., to a point on the right bank of College Creek, between sections 7 and 12, T. 5 N., Rs. 27 and 28 W., Seward Meridian;

Thence westerly and southerly, along the right bank of College Creek, to a point on the left bank of an unnamed creek which is a tributary of Lachbuna Lake in the easterly portion of section 26, T. 5 N., R. 28 W., Seward Meridian;

Thence on an approximate forward bearing of S. 6° E., to the summit of a peak in the southeasterly portion of section 35, T. 5 N., R. 28 W., Seward Meridian, approximate elevation 3,966 feet;

Thence southerly, along the crest of a ridge, to the summit of a peak in the southeasterly portion of section 35, T. 5 N., R. 28 W., Seward Meridian, approximate elevation 3,900 feet;

Thence on an approximate forward bearing of S. 30° E., to the summit of a peak in the westerly portion of section 11, T. 4 N., R. 28 W., Seward Meridian, approximate elevation 3,600 feet;

Thence southerly and easterly, along the crest of a ridge, to the summit of a peak in the southerly portion of section 12, T. 4 N., R. 28 W., Seward Meridian, approximate elevation 4,050 feet;

Thence on an approximate forward bearing of S. 2° E., to the summit of a peak in the southerly portion of section 13, T. 4 N., R. 28 W., Seward Meridian, approximate elevation 3,890 feet;

Thence on an approximate forward bearing of S. 5° E., to the summit of a peak in the northeasterly portion of section 25, T. 4 N., R. 28 W., Seward Meridian, approximate elevation 3,965 feet;

Thence on an approximate forward bearing of N. 83° E., to the summit of a peak in the northerly portion of section 29, T. 4 N., R. 27 W., Seward Meridian, approximate elevation 4,345 feet;

Thence northeasterly and southeasterly, along the crest of a ridge, between the Portage Creek, and other unnamed tributaries to Lake Clark and Kijik River drainages, to the summit of a peak, in the northeasterly portion of section 24, T. 4 N., R. 27 W., Seward Meridian, approximate elevation 4,900 feet;

Thence southerly and westerly, along the crest of a ridge and a spur ridge, to a point between sections 26 and 35, T. 4 N., R. 27 W., Seward Meridian;

Thence westerly, between sections 26 and 35, to the left bank of an unnamed creek between sections 26 and 35, T. 4 N., R. 27 W., Seward Meridian;

Thence southerly and westerly, along the left bank of the unnamed creek, to a point at the line of mean high water on the shore of Lake Clark in the southwesterly portion of section 2, T. 3 N., R. 27 W., Seward Meridian;

Thence easterly and northerly, along the shore of Lake Clark at the line of mean high water, to a point between sections 32 and 33, T. 4 N., R. 26 W., Seward Meridian;

Thence southerly across Lake Clark to a point between sections 4 and 5 on the southern shore of Lake Clark at the line of mean high water, T. 3 N., R. 26 W., Seward Meridian;

Thence southerly, along the shore of Lake Clark along the line of mean high water, to the left bank at the mouth of an unnamed creek on the southeast shore of Lake Clark in the northeasterly portion of section 36, T. 2 N., R. 29 W., Seward Meridian;

Thence on an approximate forward bearing of S. 12° E., to the summit of a peak in the southeasterly portion of section 1, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 3,904 feet;

Thence on an approximate forward bearing of S. 40° W., to the summit of a peak in the northwesterly portion of section 27, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 3,460 feet;

Thence on an approximate forward bearing of S. 1° E., to the summit of a peak in the southerly portion of section 27, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 3,400 feet;

Thence on an approximate forward bearing of S. 50° W., to the summit of a peak in the central portion of section 33, T. 1 N., R. 29 W., Seward Meridian, approximate elevation 4,140 feet;

Thence southerly, easterly, southeasterly and southerly, along the crest of the divide between the Tazimina River and the Tanalian River, Takoka Creek, Brooks Creek and Pile River drainages, to the summit of a peak in the easterly portion of section 27, T. 2 S., R. 26 W., Seward Meridian, approximate elevation 4,750 feet;

Thence on an approximate forward bearing of S. 45° E., to the summit of a peak in the southwesterly portion of section 6, T. 3 S., R. 25 W., Seward Meridian, approximate elevation 4,500 feet;

Thence easterly, northeasterly and southerly, along the crest of a ridge, between the tributaries of the Pile River and the tributaries of the Iliamna River drainages, to the summit of a peak in the easterly portion of section 2, T. 3 S., R. 25 W., Seward Meridian, approximate elevation 4,300 feet;

Thence on an approximate forward bearing of S. 50° E., to the summit of a peak in the central portion of section 17, T. 3 S., R. 24 W., Seward Meridian, approximate elevation 3,350 feet;

Thence northeasterly and southeasterly, along the crest of a ridge between the Iliamna River, Iniskin River, Clearwater Creek and Chinitna River and the Holland Creek and Tooie Creek drainages, to the summit of a peak in the southwesterly portion of section 5, T. 4 S., R. 23 W., Seward Meridian, approximate elevation 2,507 feet;

Thence on an approximate forward bearing of N. 11° E., to the summit of a peak in the central portion of section 32, T. 3 S., R. 23 W., Seward Meridian, approximate elevation 1,806 feet;

Thence on an approximate forward bearing of N. 30° E., to the summit of Brown Mountain, in the southeasterly portion of section 16, T. 3 S., R. 23 W., Seward Meridian, approximate elevation 3,405 feet;

Thence on an approximate forward bearing of N. 80° E., to the summit of a peak in the easterly portion of section 14, T. 3 S., R. 23 W., Seward Meridian, approximate elevation 3,200 feet;

Thence on an approximate forward bearing of S. 62° E., to the summit of a peak in the easterly portion of section 19, T. 3 S., R. 22 W., Seward Meridian, approximate elevation 2,800 feet;

Thence easterly, along the crest of a ridge, between the East Glacier Creek and Horn Creek drainages, to the summit of a peak in the northwesterly portion of section 25, T. 3 S., R. 22 W., Seward Meridian, approximate elevation 2,270 feet;

Thence on an approximate forward bearing of N. 40° E., to the summit of a peak in the northeasterly portion of section 18, T. 3 S., R. 21 W., Seward Meridian, approximate elevation 3,140 feet;

Thence northerly, along the crest of a ridge between Hickerson Lake and East Glacier Creek drainages, to the summit of a peak in the southeasterly portion of section 36, T. 2 S., R. 22 W., Seward Meridian, approximate elevation 2,350 feet;

Thence on an approximate forward bearing of N. 45° E., to the summit of a peak in the northeasterly portion of section 29, T. 2 S., R. 21 W., Seward Meridian, approximate elevation 2,350 feet;

Thence southeasterly and easterly, along the crest of a ridge, between the Red Glacier and Hickerson Lake and Shelter Creek drainages, to the summit of a peak in the northeasterly portion of section 2, T. 3 S., R. 21 W., Seward Meridian, approximate elevation 3,130 feet;

Thence on an approximate forward bearing of N. 40° E., to the summit of Lenore Hill in the northerly portion of section 30, T. 2 S., R. 20 W., Seward Meridian, approximate elevation 3,302 feet;

Thence northerly, along the crest of a ridge, to the summit of a peak in the westerly portion of section 7, T. 2 S., R. 20 W., Seward Meridian, approximate elevation 3,310 feet;

Thence on an approximate forward bearing of N. 68° W., to the summit of a peak in the northeasterly portion of section 11, T. 2 S., R. 21 W., Seward Meridian, approximate elevation 1,990 feet;

Thence on an approximate forward bearing of N. 76° W., to the summit of a peak in the southwesterly portion of section 3, T. 2 S., R.

21 W., Seward Meridian, approximate elevation 2,100 feet;

Thence westerly and northerly, along the crest of a ridge, between the Red Glacier and Red Creek and Latteral Glacier drainages, to the summit of a peak in the northerly portion of section 5, T. 2 S., R. 21 W., Seward Meridian, approximate elevation 2,745 feet;

Thence on an approximate forward bearing of N. 32° W., to the summit of a peak in the easterly portion of section 24, T. 1 S., R. 22 W., Seward Meridian, approximate elevation 3,615 feet;

Thence on an approximate forward bearing of N. 19° W., to the summit of a peak in the southwesterly portion of section 12, T. 1 S., R. 22 W., Seward Meridian, approximate elevation 3,085 feet;

Thence on an approximate forward bearing of N. 2° E., to the summit of a peak in the southerly portion of section 30, T. 1 N., R. 21 W., Seward Meridian, approximate elevation 4,302 feet;

Thence westerly, northerly and easterly, along the crest of a ridge, between the Johnson Glacier, Tuxedni Glacier and Tuxedni River and Open Creek drainages, to the summit of a peak in the easterly portion of section 28, T. 2 N., R. 21 W., Seward Meridian, approximate elevation 1,440 feet;

Thence on an approximate forward bearing of N. 48° E. to a point on the southern shore of Tuxedni Bay, at the line of mean high tide, located in the northeastern portion of section 28, T. 2 N., R. 21 W., Seward Meridian;

Thence northwesterly and southeasterly along the line of mean high tide of Tuxedni Bay, to a point S. 48° W. of the summit of a hill in the northerly portion of section 23, T. 2 N., R. 21 W., Seward Meridian, approximate elevation 840 feet, said point in the northwesterly portion of section 23, T. 2 N., R. 21 W., Seward Meridian;

Thence on an approximate forward bearing of N. 48° E. to the summit of a hill, in the northerly portion of section 23, T. 2 N., R. 21 W., Seward Meridian, approximate elevation 840 feet;

Thence on an approximate forward bearing of N. 10° W., to the summit of a low hill, near the center of section 14, T. 2 N., R. 21 W., Seward Meridian, approximate elevation 1,650 feet;

Thence on an approximate forward bearing of N. 57° E., to the summit of a low hill, near the center of section 14, T. 2 N., R. 21 W., Seward Meridian, approximate elevation 1,550 feet;

Thence northeasterly, along the crest of a ridge, to the summit of a hill in the northeasterly portion of section 14, T. 2 N., R. 21 W., Seward Meridian, approximate elevation 1,650 feet;

Thence on an approximate forward bearing of N. 41° E., to the summit of a peak, in the southeasterly portion of section 1, T. 2 N., R. 21 W., Seward Meridian, approximate elevation 3,500 feet;

Thence northerly and westerly, along the crest of a ridge between the Tuxedni River and Crescent River drainages, to the saddle in the ridge southwesterly of the headwaters of an unnamed tributary of Crescent Lake in section 27, T. 3 N., R. 21 W., Seward Meridian, approximate elevation 2,750 feet;

Thence northeasterly, to the headwaters of the unnamed tributary of Crescent Lake in section 27, T. 3 N., R. 21 W., Seward Meridian;

Thence northerly, along the right bank of an unnamed tributary of Crescent Lake, to a point on the shore of Crescent Lake at the line of mean high water at the mouth of the stream in the northwesterly portion of section 14, T. 3 N., R. 21 W., Seward Meridian;

Thence westerly, northerly and easterly, along the line of mean high water of Crescent Lake, to a point on the left bank of an unnamed tributary of Crescent Lake in the southwesterly portion of section 2, T. 3 N., R. 21 W., Seward Meridian;

Thence northerly, along the left bank of the unnamed tributary of Crescent Lake, to the headwaters of said creek in the southeasterly portion of section 34, T. 4 N., R. 21 W., Seward Meridian;

Thence on an approximate forward bearing of N. 38° E., to the summit of a peak in the northwesterly portion of section 35, T. 4 N., R. 21 W., Seward Meridian, approximate elevation 5,000 feet;

Thence easterly, along the crest of a ridge, to the summit of a peak in the westerly portion of section 36, T. 4 N., R. 21 W., Seward Meridian, approximate elevation 4,022 feet;

Thence on an approximate forward bearing of N. 61° E., to the summit of a peak in the southwesterly portion of section 29, T. 4 N., R. 20 W., Seward Meridian, approximate elevation 4,065 feet;

Thence on an approximate forward bearing of S. 76° E., to the summit of a peak in the southwesterly portion of section 27, T. 4 N., R. 20 W., Seward Meridian, approximate elevation 3,570 feet;

Thence easterly and southerly, along the crest of a ridge, between the Crescent River and Redoubt Creek drainages, to a point between sections 23 and 24, T. 3 N., R. 19 W., Seward Meridian;

Thence northerly, between sections 23 and 24, 13 and 14, 11 and 12, 1 and 2, 35 and 36, 25 and 26, 23 and 24, 13 and 14, 11 and 12, 1 and 2, to the closing corner of sections 1 and 2, T. 4 N., R. 19 W., Seward Meridian;

Thence westerly, on the First Standard Parallel North, to the standard corner of T. 5 N., Rs. 18 and 19 W., Seward Meridian;

Thence northerly, between Rs. 18 and 19 W., to the corner of Tps. 5 and 6 N., Rs. 18 and 19 W., Seward Meridian;

Thence easterly, between Tps. 5 and 6 N., to the corner of sections 3, 4, 33 and 34, Tps. 5 and 6 N., R. 18 W., Seward Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, 33 and 34, 27 and 28, 21 and 22, to the corner of sections 15, 16, 21 and 22, T. 8 N., R. 18 W., Seward Meridian;

Thence westerly, between sections 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, to the corner of sections 13, 18, 19 and 24, T. 8 N., Rs. 19 and 20 W., Seward Meridian;

Thence northerly, between Rs. 19 and 20 W., to the closing corner of T. 8 N., Rs. 19 and 20 W., Seward Meridian;

Thence easterly, on the Second Standard Parallel North, to the standard corner of sections 34 and 35, T. 9 N., R. 18 W., Seward Meridian, the place of beginning.

Units of the National Wild and Scenic Rivers System Within the Lake Clark National Park and Preserve

Section 601, Public Law 96–487 (ANILCA):

"Chilikadrotna, Alaska.—That portion of the river within the Lake Clark National Park and Preserve; to be administered by the Secretary of the Interior."

"Mulchatna River, Alaska.—That portion within the Lake Clark National Park and Preserve; to be administered by the Secretary of the Interior."

"Tlikakila, Alaska.—That portion within the Lake Clark National Park; to be administered by the Secretary of the Interior."

Note: Pursuant to section 605(d) of ANILCA and as provided for under section 3(b) of the Wild and Scenic Rivers Act, the necessity for any river corridor boundaries for the Chilikadrotna, Mulchatna and Tlikakila Wild Rivers within the Lake Clark National Park and Preserve has been considered during the comprehensive conservation planning process for the park and preserve. In accordance with the General Management Plan for Lake Clark National Park and Preserve, approved July 30, 1984, no specific river corridor boundaries are deemed necessary for the Chilakadrotna, Mulchatna and Tlikakila Rivers in order to protect the rivers and their immediate environments. Proposed management of the park and preserve meets and is compatible with management standards established by the Wild and Scenic Rivers Act.

The following U.S. Geological Survey 1:63,360 Series (Topographic) Quadrangle Maps were used in preparing the legal boundary descriptions for the Lake Clark National Park and Preserve and Lake Clark Wilderness:

Iliamna, Alaska: (D–1) 1958 mr 1972; (D–2) 1958 lr 1977; (D–3) 1954; (D–4) 1954; (D–5) 1954 mr 1973.

Kenai, Alaska: (A–7) 1958; (A–8) 1958; (B–7) 1958 mr 1973; (B–8) 1958; (C–7) 1958 mr 1972; (D–6) 1958 mr 1973; (D–7) 1958; (D–8) 1958.

Lake Clark, Alaska: (A–1) 1958; (A–2) 1958 mr 1970; (A–3) 1954 mr 1970; (A–4) 1954; (A–5) 1954; (A–6) 1954; (B–1) 1958 mr 1973; (B–3) 1954 mr 1980; (B–4) 1954; (B–5) 1954 mr 1978; (C–3) 1954; (C–4) 1954 lr 1975; (D–2) 1958 mr 1969; (D–3) 1954; (D–4) 1954; (D–5) 1954.

Lime Hills, Alaska: (A–1) 1958; (A–2) 1958; (A–3) 1954; (A–4) 1954; (B–1) 1958 lr 1977; (B–2) 1958 mr 1970; (B–3) 1954; (C–1) 1958; (C–2) 1958 lr 1975.

Seldovia, Alaska: (D–8) 1958 mr 1974.

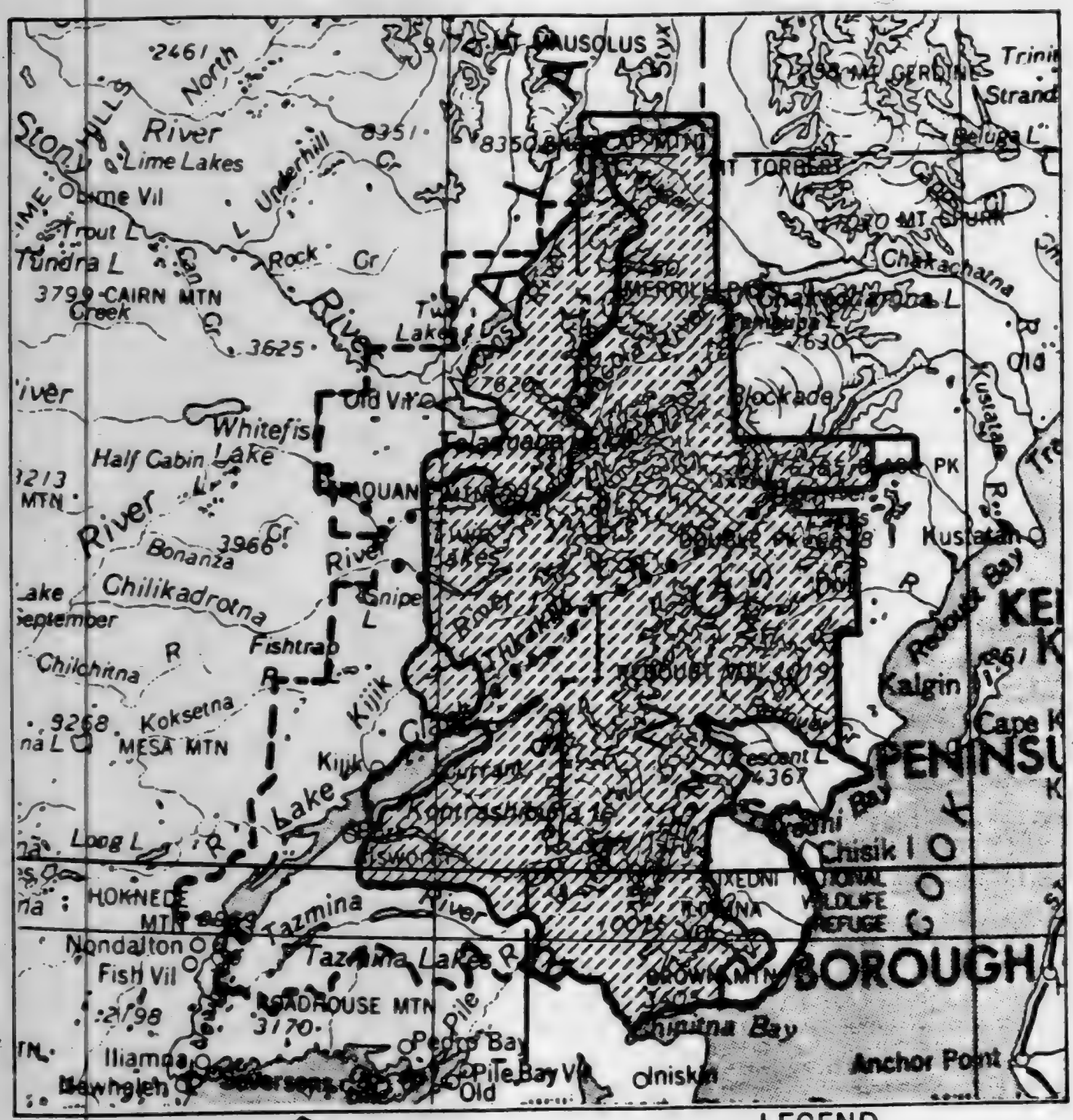
Tyonek, Alaska: (A–8) 1958; (B–8) 1958; (C–8) 1958.

mr—minor revisions
lr—limited revisions

BILLING CODE 4310-70-F

LAKE CLARK NATIONAL PARK AND PRESERVE

PUBLIC LAW 96-487


Mt Mausolus
Styx
Trinity
Strand
Beluga L.
Mt Gerdine
Mt Torbert
Chakachamna L.
Chakachatna
Old
Kustatan R.
Kustatan
Kalgin
Cape K
Peninsula
Chisik I.
Kenai National Wildlife Refuge
Borough
Cook Inlet
Redoubt Bay
Crescent L.
Redoubt Mtn.
Double Peak
Blockade
Old Village
Whitefish Lake
Half Cabin Lake
Bonanza
Chilikadrotna
Fishtrap
Snipe L.
Kijik
Lake Clark
Loop L.
Hoknedi Mtn.
Tazmina
Tazmina River
Tazmina Lakes
Nondalton
Fish Village
Roadhouse Mtn.
Pedro Bay
Pile Bay
Pile Bay Village
Iliamna
Newhalen
Old Iliamna
Oniskin
Anchor Point
Chinitna Bay
Brown Mtn.
Mesa Mtn.
Cairn Mtn.
Tundra L.
Trout L.
Underhill Cr.
Rock Cr.
Stony River
North Fork
Lime Village
Lime Hills
Turquoise Lakes
Broad Pass
Portage
Portage Creek
Old Village
Tuxedni Bay
Kijik
Chilchitna
Kokselna
Chilchitna R.
Fishtrap R.
Loop L.
Tazmina River
Tazmina Lakes
Pile Bay
Pedro Bay

Noatak National Preserve

Section 201(8)(a), Public Law 96–487 (ANILCA):

Noatak National Preserve

Noatak National Preserve as generally depicted on a map numbered NOAT–90,004, dated July 1980, consists of approximately six million four hundred and sixty thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at a point on the summit of a mountain between the drainages of Agashashok River, North Fork of the Squirrel River, and Akikukchiak Creek, located in the northerly portion of section 24, T. 26 N., R. 12 W., Kateel River Meridian, approximate elevation 3,851 feet;

Thence easterly, southerly, easterly, northerly, and easterly, along the crest of the Baird Mountains and the divide between drainages of the Noatak and Squirrel Rivers, southeasterly and easterly to the summit of a mountain in sections 8 and 17, T. 25 N., R. 7 W., Kateel River Meridian, approximate elevation 3,200 feet;

Thence northeasterly, along the crest of the Baird Mountains and along a common boundary with the Kobuk Valley National Park, between the drainages of the Noatak River and the Salmon River, to the summit of a mountain in section 33, T. 29 N., R. 5 W., Kateel River Meridian, approximate elevation 2,528 feet;

Thence southeasterly, along the crest of the Baird Mountains between the drainages of the Noatak River and Kobuk River to the summit of a mountain in sections 13 and 14, T. 25 N., R. 2 W., Kateel River Meridian, approximate elevation 3,700 feet;

Thence northeasterly, easterly, southeasterly, easterly, and southeasterly, along the crest of the Baird Mountains between the drainages of the Noatak River and the Kobuk River to the summit of a mountain located in section 8, T. 23 N., R. 5 E., Kateel River Meridian, approximate elevation 3,515 feet;

Thence northeasterly, departing from the common boundary with the Kobuk Valley National Park, along the crest of the Baird Mountains between the drainages of the Noatak River and the Ambler River, to the summit of a ridge located in the southern ½ of section 19, T. 25 N., R. 9 E., Kateel River Meridian, approximate elevation 3,600 feet;

Thence northerly, westerly, northerly and westerly, along a common boundary with the Gates of the Arctic National Park, along the crest of mountains between the drainages of Ambler River and Imelyak River, to the summit of a mountain located in the northeast ¼ of section 35, T. 26 N., R. 8 E., Kateel River Meridian, approximate elevation 4,720 feet;

Thence on an approximate forward bearing of N. 11° E., to the summit of a mountain located in sections 23 and 24, T. 26 N., R. 8 E., Kateel River Meridian, approximate elevation 4,508 feet;

Thence northeasterly, along the divide between the drainages of the Ambler and Noatak Rivers, to the summit of a mountain located in section 5, T. 26 N., R. 9 E., Kateel River Meridian, approximate elevation 4,625 feet;

Thence on an approximate forward bearing of S. 37° E., to the summit of a mountain located in section 15, T. 26 N., R. 9 E., Kateel River Meridian, approximate elevation 3,980 feet;

Thence southerly, along the crest of the spur ridge to the summit of a mountain located in section 22, T. 26 N., R. 9 E., Kateel River Meridian, approximate elevation 4,298 feet;

Thence easterly, northerly, and westerly, along the divide between the drainages of Kavachurak Creek and Tunukuchiak Creek, to the summit of a small mountain located in sections 28 and 29, T. 28 N., R. 10 E., Kateel River Meridian, approximate elevation 2,441 feet;

Thence on an approximate forward bearing of N. 51° E., to the summit of a mountain located in section 22, T. 28 N., R. 10 E., Kateel River Meridian, approximate elevation 3,439 feet;

Thence on an approximate forward bearing of N. 24° E., to a point on the right bank of Douglas Creek at the junction of the Noatak River and Douglas Creek located in the northern portion of section 2, T. 28 N., R. 10 E., Kateel River Meridian;

Thence northerly, along the right bank of Douglas Creek to a point on the right bank of Douglas Creek in section 13 located due south of the summit of a mountain, approximate elevation 3,637 feet located in sections 12 and 13, T. 29 N., R. 10 E., Kateel River Meridian;

Thence due north to the summit of a mountain located in sections 12 and 13, T. 29 N., R. 10 E., Kateel River Meridian, approximate elevation 3,657 feet;

Thence northeasterly, along the crest of a ridge between the drainages of Douglas Creek and a tributary of the Noatak River to the summit of a mountain located in section 22, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 3,302 feet;

Thence on an approximate forward bearing of N. 28° E., to the summit of a mountain located in sections 14 and 15, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 4,100 feet;

Thence southeasterly, along the crest of a ridge to the summit of a mountain located in section 24, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 3,473 feet;

Thence on an approximate forward bearing of N. 87° E., to the summit of a mountain located in section 21, T. 30 N., R. 12 E., Kateel River Meridian, approximate elevation 4,021 feet;

Thence easterly and northeasterly along the crest of a ridge between the drainages of Midas Creek and Mountain Creek to the summit of a mountain located at the intersection with a ridge dividing the drainages of Nigu and the Noatak Rivers, located in section 3, T. 30 N., R. 13 E., Kateel River Meridian, approximate elevation 3,250 feet;

Thence northwesterly, departing from the common boundary with the Gates of the Arctic National Park, along the crest of mountains between the drainage of the Nigu River and the drainage of Rough Mountain Creek, to a point on a ridge located in the western portion of section 19, T. 31 N., R. 13 E., Kateel River Meridian, approximate elevation 2,850 feet, due north of the summit of a peak located in section 8, T. 28 N., R. 13 E., Kateel River Meridian, approximate elevation 5,600 feet;

Thence northwesterly, along the crest of mountains and along a common boundary with the National Petroleum Reserve in Alaska, between the drainages of the Nigu River, Etivluk River and tributaries of the Aniuk River, to a summit of Kavaksurak Mountain, located in sections 27 and 28, T. 34 N., R. 8 E., Kateel River Meridian, approximate elevation 4,450 feet;

Thence westerly, southwesterly, northerly, westerly, northwesterly, southwesterly and northwesterly along the crest of the DeLong Mountains, and along a common boundary with the National Petroleum Reserve in Alaska, between the drainages of the Itivluk River, Ipnavik River, Kuna River, Kiligwa River, and Nuka River tributaries of the Colville River, and drainages of tributaries of the Noatak River, to the summit of a hill in the northwest ¼ of section 21, T. 9 S., R. 33 W., Umiat Meridian, approximate elevation 2,950 feet;

Thence southwesterly, westerly, northwesterly and southwesterly along the crest of the DeLong Mountains, and along a common boundary with the National Petroleum Reserve in Alaska, between the drainages of the Nuka River, Colville River, Utukok River, and Kokolik River and drainages of tributaries of the Noatak River, to a summit of a mountain in section 1, T. 11 S., R. 43 W., Umiat Meridian, approximate elevation 3,675 feet;

Thence southerly, northwesterly, westerly and southwesterly along the crest of the DeLong Mountains, departing from the common boundary with the National Petroleum Reserve in Alaska, between the drainages of the Kokolik River, Tingmerkpuk River and Kukpowruk River and drainages of the Kelly River and Wrench Creek, tributaries of the Noatak River, to the summit of the peak in section 11, T. 34 N., R. 18 W., Kateel River Meridian, approximate elevation 2,800 feet;

Thence southerly and southeasterly along the crest of mountains between drainages of Wrench Creek and Wulik River, to a summit of a mountain in sections 15 and 16, T. 31 N., R. 17 W., Kateel River Meridian, approximate elevation 3,192 feet;

Thence northeasterly along the crest of a ridge to a point between sections 2 and 11, T. 31 N., R. 17 W., Kateel River Meridian, approximate elevation 2,700 feet;

Thence easterly, between sections 2 and 11, 1 and 12, to the corner of sections 1, 6, 7 and 12, T. 31 N., Rs. 16 and 17 W., Kateel River Meridian;

Thence southerly, between Rs. 16 and 17 W., to the corner of sections 19, 24, 25 and 30, T. 31 N., Rs. 16 and 17 W., Kateel River Meridian;

Thence westerly, between sections 24 and 25, to the corner of sections 23, 24, 25 and 26, T. 31 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 25 and 26, to the corner of sections 25, 26, 35 and 36, T. 31 N., R. 17 W., Kateel River Meridian;

Thence westerly, between sections 26 and 35, to the corner of sections 26, 27, 34 and 35, T. 31 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 34 and 35, to the corner of sections 2, 3, 34 and 35, Tps. 30 and 31 N., R. 17 W., Kateel River Meridian;

Thence westerly, between Tps. 30 and 31 N., to the corner of sections 5, 6, 31 and 32, Tps. 30 and 31 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 5 and 6, 7 and 8, 17 and 18, 19 and 20, 29 and 30, 31 and 32, 5 and 6, 7 and 8, 17 and 18, 19 and 20, 29 and 30, 31 and 32, to the standard corner of sections 31 and 32, T. 29 N., R. 17 W., Kateel River Meridian;

Thence westerly, along the Seventh Standard Parallel North to the closing corner of sections 1 and 2, T. 28 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 1 and 2, to a point on the left bank, at the line of mean high water of the Noatak River, between sections 1 and 2, T. 28 N., R. 18 W., Kateel River Meridian;

Thence southwesterly, along the line of mean high water on the left bank of the Noatak River, to a point between sections 6 and 31, Tps. 27 and 28 N., R. 18 W., Kateel River Meridian;

Thence easterly, between Tps. 27 and 28 N., to the corner of sections 3, 4, 33 and 34, Tps. 27 and 28 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 3 and 4, to the corner of sections 3, 4, 9 and 10, T. 27 N., R. 18 W., Kateel River Meridian;

Thence westerly, between sections 4 and 9, to the corner of sections 4, 5, 8 and 9, T. 27 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 8 and 9, 16 and 17, 20 and 21, 28 and 29, to the corner of sections 28, 29, 32 and 33, T. 27 N., R. 18 W., Kateel River Meridian;

Thence easterly, between sections 28 and 33, 27 and 34, 26 and 35, to the corner of sections 25, 26, 35 and 36, T. 27 N., R. 18 W., Kateel River Meridian;

Thence northerly, between sections 25 and 26, to the corner of sections 23, 24, 25 and 26, T. 27 N., R. 18 W., Kateel River Meridian;

Thence easterly, between section 24 and 25, to the corner of sections 19, 24, 25 and 30, T. 27 N., Rs. 17 and 18 W., Kateel River Meridian;

Thence northerly, between Rs. 17 and 18 W., to the corner of sections 13, 18, 19 and 24, T. 27 N., Rs. 17 and 18 W., Kateel River Meridian;

Thence easterly, between sections 18 and 19, 17 and 20, 16 and 21, to the corner of sections 15, 16, 21 and 22, T. 27 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 21 and 22, to the corner of sections 21, 22, 27 and 28, T. 27 N., R. 17 W., Kateel River Meridian;

Thence westerly, between sections 21 and 28, to the corner of sections 20, 21, 28 and 29, T. 27 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 28 and 29, to the corner of sections 28, 29, 32 and 33, T. 27 N., R. 17 W., Kateel River Meridian;

Thence easterly, between sections 28 and 33, to the corner of sections 27, 28, 33 and 34, T. 27 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 33 and 34, to the corner of sections 3, 4, 33 and 34, Tps. 26 and 27 N., R. 17 W., Kateel River Meridian;

Thence westerly, between Tps. 26 and 27 N., to the corner of sections 4, 5, 32 and 33, Tps. 26 and 27 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 4 and 5, to the corner of sections 4, 5, 8 and 9, T. 26 N., R. 17 W., Kateel River Meridian;

Thence westerly, between sections 5 and 8, to the corner of sections 5, 6, 7 and 8, T. 26 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 7 and 8, to the corner of sections 7, 8, 17 and 18, T. 26 N., R. 17 W., Kateel River Meridian;

Thence westerly, between sections 7 and 18, to the corner of sections 7, 12, 13 and 18, T. 26 N. Rs. 17 and 18 W., Kateel River Meridian;

Thence southerly, between Rs. 17 and 18 W., to the corner of sections 13, 18, 19 and 24, T. 26 N., Rs. 17 and 18 W., Kateel River Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, to the corner of sections 15, 16, 21 and 22, T. 26 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 21 and 22, 27 and 28, 33 and 34, to the corner of sections 3, 4, 33 and 34, Tps. 25 and 26 N., R. 18 W., Kateel River Meridian;

Thence westerly, between Tps. 25 and 26 N., to the corner of sections 4, 5, 32 and 33, Tps. 25 and 26 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 4 and 5, 8 and 9, 16 and 17, to the corner of sections 16, 17, 20 and 21, T. 25 N., R. 18 W., Kateel River Meridian;

Thence westerly, between sections 17 and 20, to the corner of sections 17, 18, 19 and 20, T. 25 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 19 and 20, 29 and 30, 31 and 32, to the standard corner of sections 31 and 32, T. 25 N., R. 18 W., Kateel River Meridian;

Thence westerly, along the Sixth Standard Parallel North, to the closing corner of sections 2 and 3, T. 24 N., R. 19 W., Kateel River Meridian;

Thence southerly, between sections 2 and 3, 10 and 11, to the corner of sections 10, 11, 14 and 15, T. 24 N., R. 19 W., Kateel River Meridian;

Thence westerly, between sections 10 and 15, to the corner of sections 9, 10, 15 and 16, T. 24 N., R. 19 W., Kateel River Meridian;

Thence southerly, between sections 15 and 16, to the corner of sections 15, 16, 21 and 22, T. 24 N., R. 19 W., Kateel River Meridian;

Thence westerly, between sections 16 and 21, to the corner of sections 16, 17, 20 and 21, T. 24 N., R. 19 W., Kateel River Meridian;

Thence southerly, between sections 20 and 21, 28 and 29, to the corner of sections 28, 29, 32 and 33, T. 24 N., R. 19 W., Kateel River Meridian;

Thence easterly, between sections 28 and 33, 27 and 34, to the corner of sections 26, 27, 34 and 35, T. 24 N., R. 19 W., Kateel River Meridian;

Thence southerly, between sections 34 and 35, to the corner of sections 2, 3, 34 and 35, Tps. 23 and 24 N., R. 19 W., Kateel River Meridian;

Thence easterly, between Tps. 23 and 24 N., to the corner of Tps. 23 and 24 N., Rs. 18 and 19 W., Kateel River Meridian;

Thence southerly, between Rs. 18 and 19 W., to the corner of sections 7, 12, 13 and 18, T. 23 N., Rs. 18 and 19 W., Kateel River Meridian;

Thence easterly, between sections 7 and 18, 8 and 17, to the corner of sections 8, 9, 16 and 17, T. 23 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 16 and 17, to the corner of sections 16, 17, 20 and 21, T. 23 N., R. 18 W., Kateel River Meridian;

Thence easterly, between sections 16 and 21, to the corner of sections 15, 16, 21 and 22, T. 23 N., R. 18 W., Kateel River Meridian;

Thence northerly, between sections 15 and 16, 9 and 10, 3 and 4, 33 and 34, to the corner of sections 27, 28, 33 and 34, T. 24 N., R. 18 W., Kateel River Meridian;

Thence easterly, between sections 27 and 34, to the corner of sections 26, 27, 34 and 35, T. 24 N., R. 18 W., Kateel River Meridian;

Thence northerly, between sections 26 and 27, to the corner of sections 22, 23, 26 and 27, T. 24 N., R. 18 W., Kateel River Meridian;

Thence easterly, between sections 23 and 26, 24 and 25, to the corner of sections 19, 24, 25 and 30, T. 24 N., Rs. 17 and 18 W., Kateel River Meridian;

Thence southerly, between Rs. 17 and 18 W., to the corner of sections 19, 24, 25 and 30, T. 23 N., Rs. 17 and 18 W., Kateel River Meridian;

Thence westerly, between sections 24 and 25, 23 and 26, to the corner of sections 22, 23, 26 and 27, T. 23 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 26 and 27, 34 and 35, to the corner of sections 2, 3, 34 and 35, Tps. 22 and 23 N., R. 18 W., Kateel River Meridian;

Thence westerly, between Tps. 22 and 23 N., to the corner of sections 5, 6, 31 and 32, Tps. 22 and 23 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 5 and 6, 7 and 8, to the corner of sections 7, 8, 17 and 18, T. 22 N., R. 18 W., Kateel River Meridian;

Thence easterly, between sections 8 and 17, to the corner of sections 8, 9, 16 and 17, T. 22 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 16 and 17, to the corner of sections 16, 17, 20 and 21, T. 22 N., R. 18 W., Kateel River Meridian;

Thence easterly, between sections 16 and 21, 15 and 22, 14 and 23, to the corner of sections 13, 14, 23 and 24, T. 22 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 23 and 24, 25 and 26, to the corner of sections 25, 26, 35 and 36, T. 22 N., R. 18 W., Kateel River Meridian;

Thence easterly, between sections 25 and 36, to the corner of sections 25, 30, 31 and 36, T. 22 N., Rs. 17 and 18 W., Kateel River Meridian;

Thence southerly, between Rs. 17 and 18 W., to the corner of sections 1, 6, 7 and 12, T. 21 N., Rs. 17 and 18, Kateel River Meridian;

Thence easterly, between sections 6 and 7, to the corner of sections 5, 6, 7 and 8, T. 21 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 7 and 8, to the corner of sections 7, 8, 17 and 18, T. 21 N., R. 17 W., Kateel River Meridian;

Thence easterly, between section 8 and 17, 9 and 16, 10 and 15, to the corner of sections 10, 11, 14 and 15, T. 21 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 14 and 15, 22 and 23, to the corner of sections 22, 23, 26 and 27, T. 21 N., R. 17 W., Kateel River Meridian;

Thence westerly, between sections 22 and 27, 21 and 28, to the corner of sections 20, 21, 28 and 29, T. 21 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 28 and 29, to the corner of sections 28, 29, 32 and 33, T. 21 N., R. 17 W., Kateel River Meridian;

Thence westerly, between sections 29 and 32, 30 and 31, to the corner of sections 25, 30, 31 and 36, T. 21 N., Rs. 17 and 18 W., Kateel River Meridian;

Thence southerly, between Rs. 17 and 18 W., to the standard corner of T. 21 N., Rs. 17 and 18 W., Kateel River Meridian;

Thence easterly, along the Fifth Standard Parallel North, to the closing corner of sections 1 and 2, T. 20 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 1 and 2, to the corner of sections 1, 2, 11 and 12, T. 20 N., R. 18 W., Kateel River Meridian;

Thence easterly, between sections 1 and 12, to the corner of sections 1, 6, 7 and 12, T. 20 N., Rs. 17 and 18 W., Kateel River Meridian;

Thence northerly, between Rs. 17 and 18 W., to the closing corner of T. 20 N., Rs. 17 and 18 W., Kateel River Meridian;

Thence easterly, along the Fifth Standard Parallel North, to the closing corner of sections 1 and 2, T. 20 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 1 and 2, 11 and 12, 13 and 14, 23 and 24, to the corner of sections 23, 24, 25 and 26, T. 20 N., R. 17 W., Kateel River Meridian;

Thence westerly, between sections 23 and 26, to the corner of sections 22, 23, 26 and 27, T. 20 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 26 and 27, 34 and 35, to the corner of sections 2, 3, 34 and 35, Tps. 19 and 20 N., R. 17 W., Kateel River Meridian;

Thence easterly, between Tps. 19 and 20 N., to the corner of sections 2, 3, 34 and 35, Tps. 19 and 20 N., R. 16 W., Kateel River Meridian;

Thence southerly, between sections 2 and 3, to the corner of sections 2, 3, 10 and 11, T. 19 N., R. 16 W., Kateel River Meridian;

Thence easterly, between sections 2 and 11, to the corner of sections 1, 2, 11 and 12, T. 19 N., R. 16 W., Kateel River Meridian;

Thence southerly, between sections 11 and 12, 13 and 14, to the corner of sections 13, 14, 23 and 24, T. 19 N., R. 16 W., Kateel River Meridian;

Thence easterly, between sections 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 19 N., Rs. 15 and 16 W., Kateel River Meridian;

Thence northerly, between Rs. 15 and 16 W., to the corner of sections 25, 30, 31 and 36, T. 20 N., Rs. 15 and 16 W., Kateel River Meridian;

Thence easterly, between sections 30 and 31, to the corner of sections 29, 30, 31 and 32, T. 20 N., R. 15 W., Kateel River Meridian;

Thence northerly, between sections 29 and 30, 19 and 20, 17 and 18, to the summit of a ridge located in sections 17 and 18, T. 20 N., R. 15 W., Kateel River Meridian, approximate elevation 1,325 feet, which is descending from a mountain located in sections 17 and 18, T. 20 N., R. 15 W., Kateel River Meridian, approximate elevation 1,357 feet;

Thence northeasterly, northwesterly and northeasterly, along the crest of mountains between the drainages of the Noatak River and Agashashok River and the drainages of the Squirrel River, to the summit of a mountain in sections 5 and 8, T. 23 N., R. 15 W., Kateel River Meridian, approximate elevation 2,036 feet;

*Thence easterly, northeasterly and northerly, along the crest of mountains between the drainages of the Agashashok River and drainages of the Squirrel River, to the summit of a mountain located in the northerly portion of section 24, T. 26 N., R. 12 W., Kateel River Meridian, approximate elevation 3,851 feet, the place of beginning.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts segments of this portion of the description.

Units of the National Wilderness Preservation System Within the Noatak National Preserve

Section 701(7), Public Law 96–487 (ANILCA):

Noatak Wilderness

The Noatak Wilderness as generally depicted on a map numbered NOAT–90,004, dated July 1980, consists of approximately five million eight hundred thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at a point on the summit of a mountain between the drainages of Agashashok River, North Fork of the Squirrel River, and Akikukchiak Creek, located in the northerly portion of section 24, T. 26 N., R. 12 W., Kateel River Meridian, approximate elevation 3,851 feet;

*Thence easterly, southerly, easterly, northerly, and easterly, along the crest of the Baird Mountains and the divide between drainages of the Noatak and Squirrel Rivers, southeasterly and easterly to the summit of a mountain in sections 8 and 17, T. 25 N., R. 7 W., Kateel River Meridian, approximate elevation 3,200 feet;

Thence northeasterly, along the crest of the Baird Mountains and along a common boundary with the Kobuk Valley National Park, between the drainages of the Noatak River and the Salmon River, to the summit of a mountain in section 33, T. 29 N., R. 5 W., Kateel River Meridian, approximate elevation 2,528 feet;

Thence southeasterly, along the crest of the Baird Mountains between the drainages of the Noatak River and Kobuk River to the summit of a mountain in sections 13 and 14, T. 25 N., R. 2 W., Kateel River Meridian, approximate elevation 3,700 feet;

Thence northeasterly, easterly, southeasterly, easterly, and southeasterly, along the crest of the Baird Mountains between the drainages of the Noatak River and the Kobuk River to the summit of a mountain located in section 8, T. 23 N., R. 5 E., Kateel River Meridian, approximate elevation 3,515 feet;

*Thence northeasterly, departing from the common boundary with the Kobuk Valley National Park, along the crest of the Baird Mountains between the drainages of the Noatak River and the Ambler River, to the summit of a ridge located in the southern ½ of section 19, T. 25 N., R. 9 E., Kateel River Meridian, approximate elevation 3,600 feet;

Thence northerly, westerly, northerly and westerly, along a common boundary with the Gates of the Arctic National Park, along the crest of mountains between the drainages of Ambler River and Imelyak River, to the summit of a mountain located in the northeast ¼ of section 35, T. 26 N., R. 8 E., Kateel River Meridian, approximate elevation 4,720 feet;

Thence on an approximate forward bearing of N. 11° E., to the summit of a mountain located in sections 23 and 24, T. 26 N., R. 8 E., Kateel River Meridian, approximate elevation 4,508 feet;

Thence northeasterly, along the divide between the drainages of the Ambler and Noatak Rivers, to the summit of a mountain located in section 5, T. 26 N., R. 9 E., Kateel River Meridian, approximate elevation 4,625 feet;

Thence on an approximate forward bearing of S. 37° E., to the summit of a mountain located in section 15, T. 26 N., R. 9 E., Kateel River Meridian, approximate elevation 3,980 feet;

Thence southerly, along the crest of the spur ridge to the summit of a mountain located in section 22, T. 26 N., R. 9 E., Kateel River Meridian, approximate elevation 4,298 feet;

Thence easterly, northerly, and westerly, along the divide between the drainages of Kavachurak Creek and Tunukuchiak Creek, to the summit of a small mountain located in sections 28 and 29, T. 28 N., R. 10 E., Kateel River Meridian, approximate elevation 2,441 feet;

Thence on an approximate forward bearing of N. 51° E., to the summit of a mountain located in section 22, T. 28 N., R. 10 E., Kateel River Meridian, approximate elevation 3,439 feet;

Thence on an approximate forward bearing of N. 24° E., to a point on the right bank of Douglas Creek at the junction of the Noatak River and Douglas Creek located in the northern portion of section 2, T. 28 N., R. 10 E., Kateel River Meridian;

Thence northerly, along the right bank of Douglas Creek to a point on the right bank of Douglas Creek in section 13 located due south of the summit of a mountain, approximate elevation 3,657 feet located in

sections 12 and 13, T. 29 N., R. 10 E., Kateel River Meridian;

Thence due north to the summit of a mountain located in sections 12 and 13, T. 29 N., R. 10 E., Kateel River Meridian, approximate elevation 3,657 feet;

Thence northeasterly, along the crest of a ridge between the drainages to Douglas Cre .k and a tributary of the Noatak River to the summit of a mountain located in section 22, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 3,302 feet;

Thence on an approximate forward bearing of N. 28° E., to the summit of a mountain located in sections 14 and 15, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 4,100 feet;

Thence southeasterly, along the crest of a ridge to the summit of a mountain located in section 24, T. 30 N., R. 11 E., Kateel River Meridian, approximate elevation 3,473 feet;

Thence on an approximate forward bearing of N. 87° E., to the summit of a mountain located in section 21, T. 30 N., R. 12 E., Kateel River Meridian, approximate elevation 4,021 feet;

Thence easterly and northeasterly along the crest of a ridge between the drainages of Midas Creek and Mountain Creek to the summit of a mountain located at the intersection with a ridge dividing the drainages of Nigu and the Noatak Rivers, located in section 3, T., 30 N., R. 13 E., Kateel River Meridian, approximate elevation 3,250 feet;

Thence northwesterly, departing from the common boundary with the Gates of the Arctic National Park, along the crest of mountains between the drainage of the Nigu River and the drainage of Rough Mountain Creek, to a point on a ridge located in the western portion of section 19, T. 31 N., R. 13 E., Kateel River Meridian, approximate elevation 2,850 feet, due north of the summit of a peak located in section 8, T. 28 N., R. 13 E., Kateel River Meridian, approximate elevation 5,600 feet;

Thence northwesterly, along the crest of mountains and along a common boundary with the National Petroleum Reserve in Alaska, between the drainages of the Nigu River, Etivluk River and tributaries of the Aniuk River, to a summit of Kavaksurak Mountain, located in sections 27 and 28, T. 34 N., R. 8 E., Kateel River Meridian, approximate elevation 4,450 feet;

Thence westerly, southwesterly, northerly, westerly, northwesterly, southwesterly and northwesterly along the crest of the DeLong Mountains, and along a common boundary with the National Petroleum Reserve in Alaska, between the drainages of the Itivluk River, Ipnavik River, Kuna River, Kiligwa River, and Nuka River-tributaries of the Colville River, and drainages of tributaries of the Noatak River, to the summit of a hill in the northwest ¼ of section 21, T. 9 S., R. 33 W., Umiat Meridian, approximate elevation 2,950 feet;

Thence southwesterly, westerly, northwesterly and southwesterly along the crest of the DeLong Mountains, and along a common boundary with the National Petroleum Reserve in Alaska, between the drainages of the Nuka River, Colville River, Utukok River, and Kokolik River and drainages of tributaries of the Noatak River, to a summit of a mountain in section 1, T. 11 S., R. 43 W., Umiat Meridian, approximate elevation 3,675 feet;

Thence southerly, northwesterly, westerly and southwesterly along the crest of the DeLong Mountains, departing from the common boundary with the National Petroleum Reserve in Alaska, between the drainages of the Kokolik River, Tingmerkpuk River and Kukpowruk River and drainages of the Kelly River and Wrench Creek, tributaries of the Noatak River, to the summit of the peak in section 11, T. 34 N., R. 18 W., Kateel River Meridian, approximate elevation 2,800 feet;

Thence southerly and southeasterly along the crest of mountains between drainages of Wrench Creek and Wulik River, to a summit of a mountain in sections 15 and 16, T. 31 N., R. 17 W., Kateel River Meridian, approximate elevation 3,192 feet;

Thence northeasterly along the crest of a ridge to a point between sections 2 and 11, T. 31 N., R. 17 W., Kateel River Meridian, approximate elevation 2,700 feet;

Thence easterly, between sections 2 and 11, 1 and 12, to the corner of sections 1, 6, 7 and 12, T. 31 N., Rs. 16 and 17 W., Kateel River Meridian;

Thence southerly, between Rs. 16 and 17 W., to the corner of sections 19, 24, 25 and 30, T. 31 N., Rs. 16 and 17 W., Kateel River Meridian;

Thence westerly, between sections 24 and 25, to the corner of sections 23, 24, 25 and 26, T. 31 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 25 and 26, to the corner of sections 25, 26, 35 and 36, T. 31 N., R. 17 W., Kateel River Meridian;

Thence westerly, between sections 26 and 35, to the corner of sections 26, 27, 34 and 35, T. 31 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 34 and 35, to the corner of sections 2, 3, 34 and 35, Tps. 30 and 31 N., R. 17 W., Kateel River Meridian;

Thence westerly, between Tps. 30 and 31 N., to the corner of sections 5, 6, 31 and 32, Tps. 30 and 31 N., R. 17 W., Kateel River Meridian;

Thence southerly, between sections 5 and 6, 7 and 8, 17 and 18, 19 and 20, 29 and 30, 31 and 32, 5 and 6, 7 and 8, 17 and 18, 19 and 20, 29 and 30, 31 and 32, to the standard corner of sections 31 and 32, T. 29 N., R. 17 W., Kateel River Meridian;

Thence westerly, along the Seventh Standard Parallel North to the closing corner of sections 1 and 2, T. 28 N., R. 18 W., Kateel River Meridian;

Thence southerly, between sections 1 and 2, to a point on the left bank, at the line of mean high water of the Noatak River, between sections 1 and 2, T. 28 N., R. 18 W., Kateel River Meridian;

Thence southwesterly, along the line of mean high water on the left bank of the Noatak River, to a point between sections 6 and 31, Tps. 27 and 28 N., R. 18 W., Kateel River Meridian;

Thence easterly, between Tps. 27 and 28 N., to a point on a ridge between sections 1 and 36, Tps. 27 and 28 N., R. 16 W., Kateel River Meridian, approximate elevation 1,200 feet;

Thence southeasterly, northeasterly, easterly, and southerly along the crest of a ridge between the drainages of Noatak and Eli Rivers, to the summit of a mountain located in the northerly portion of section 24, T. 26 N., R. 12 W., Kateel River Meridian, approximate elevation 3,851 feet, the place of beginning.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts segments of this portion of the description.

Units of the National Wild and Scenic Rivers System Within the Noatak National Preserve

Section 601, Public Law 96–487 (ANILCA):

"Noatak, Alaska.—The river from its source in the Gates of the Arctic National Park to its confluence with the Kelly River in the Noatak National Preserve; to be administered by the Secretary of the Interior."

Note: Pursuant to section 605(d) of ANILCA and as provided for under section 3(b) of the Wild and Scenic Rivers Act, the necessity for any river corridor boundaries for the Noatak Wild River within the Noatak National Preserve has been considered during the comprehensive conservation planning process for the preserve. In accordance with the General Management Plan for Noatak National Preserve, approved November 7, 1986, no specific river corridor boundaries are deemed necessary for the Noatak River in order to protect the river and its immediate environments. Proposed management of the preserve meets and is compatible with management standards established by the Wild and Scenic Rivers Act.

The following U. S. Geological Survey 1:63,360 Series (Topographic) Quadrangle Maps were used in preparing the legal boundary descriptions for the Noatak National Preserve and Noatak Wilderness:

Ambler River, Alaska: (B–3) pe 1990; (B–4) pe 1990; (B–5) pe 1990; (C–2) pe 1990; (C–3) pe 1990; (C–4) pe 1990; (C–5) pe 1990; (C–6) pe 1990; (D–1) pe 1990; (D–2) pe 1990.

Baird Mountains, Alaska: (A–6) 1955; (B–6) 1955; (C–1) pe 1990; (C–3) 1955; (C–4) 1955; (C–5) 1955; (C–6) 1955; (D–1) pe 1990; (D–2) pe 1990; (D–3) 1955; (D–5) 1955; (D–6) 1955.

DeLong Mountains, Alaska: (A–1) 1955; (A–2) 1955; (B–1) 1955; (B–2) 1955; (C–1) 1955.

Howard Pass, Alaska: (A–1) 1984; (A–2) 1984; (A–3) 1984; (B–2) 1984; (B–3) 1984; (B–4) 1984; (B–5) 1984; (C–5) 1984.

Killik River, Alaska: (A–5) 1984.

Misheguk Mountain, Alaska: (B–5) pe 1990; (C–1) 1984; (C–2) 1984; (C–3) 1984; (C–4) 1984; (C–5) 1984.

Noatak, Alaska: (A–1) 1955; (A–2) 1955; (B–1) 1955; (B–2) 1955; (C–1) 1955; (C–2) 1955; (D–1) 1955; (D–2) 1955; mr 1977.

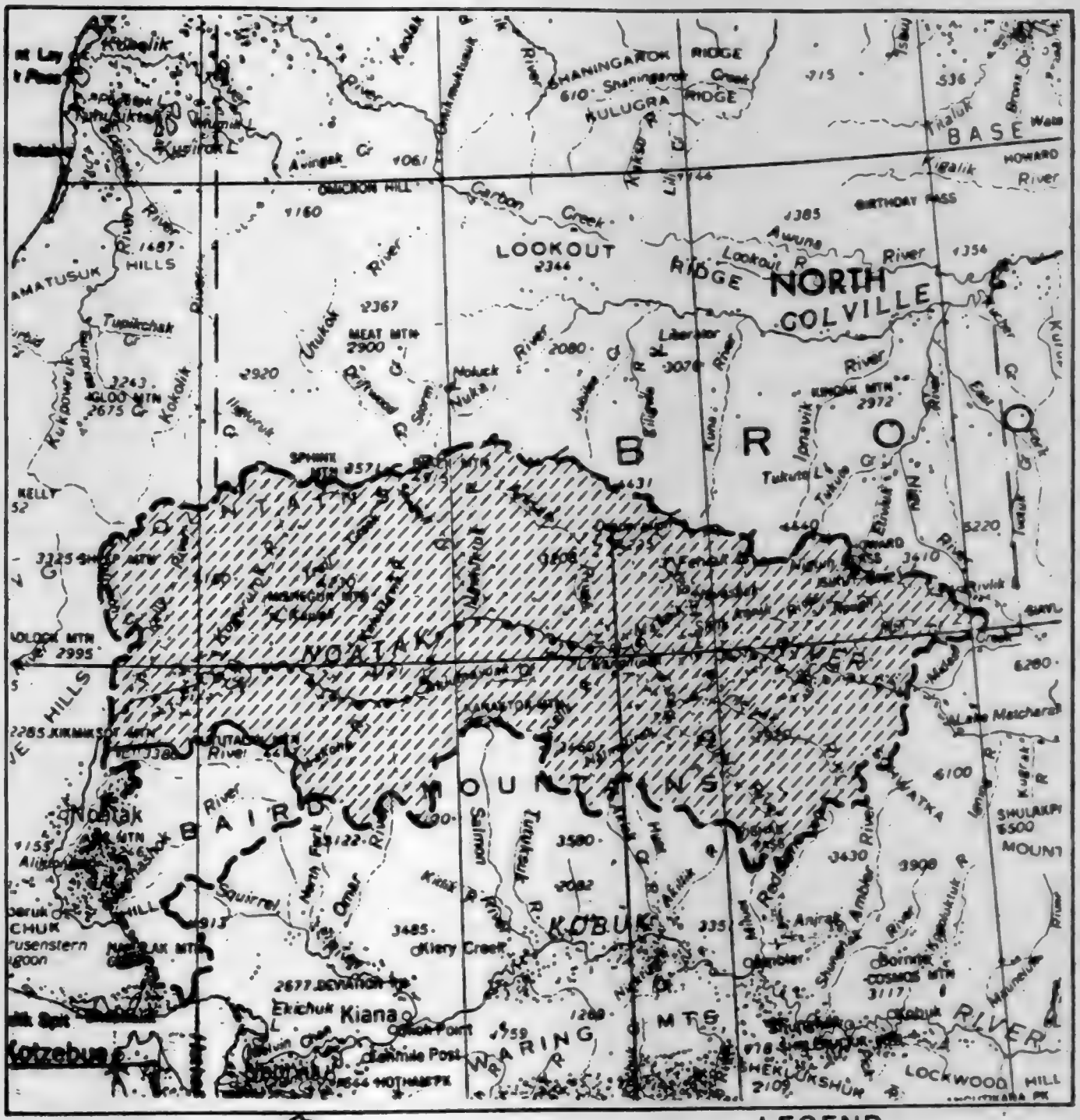
Survey Pass, Alaska: (D–6) 1984.

mr—minor revisions
pe—provisional edition

BILLING CODE 4310-70-F

NOATAK NATIONAL PRESERVE

PUBLIC LAW 96-487



BILLING CODE 4310-70-C

Wrangell-St. Elias National Park and Preserve

Section 201(9), Public Law 96–487 (ANILCA):

Wrangell-St. Elias National Park

Wrangell-St. Elias National Park as generally depicted on a map numbered WRST–90.007, dated August 1980, consists of approximately eight million one hundred and forty-seven thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning on the International Boundary between the United States of America and Canada at 60° 00′ N latitude, in section 22, T. 22 S., R. 37 E., Copper River Meridian;

Thence northwesterly, northerly, westerly, and northerly, along the International Boundary to the meander corner of section 35 only, on the right bank of the main channel of White River on the International Boundary, T. 1 S., R. 24 E., Copper River Meridian;

Thence westerly, northwesterly, southwesterly, and northwesterly, along a common boundary with the Wrangell-St. Elias National Preserve (North Unit), along the right bank of the main channel of the White River and the left bank of the main channel of Lime Creek to a point between sections 29 and 32 on the left bank of the main channel of Lime Creek, T. 1 S., R. 20 E., Copper River Meridian;

Thence easterly between sections 29 and 32, 28 and 33, to an intersection with the extension of a spur ridge between sections 28 and 33, T. 1 S., R. 20 E., Copper River Meridian;

Thence northerly, along the crest of the spur ridge and northwesterly on the crest of a ridge, between the drainages of Lime Creek and other unnamed tributaries of the White River, to control station "Lime" located in the southeasterly portion of section 12, T. 1 S., R. 19 E., Copper River Meridian, approximate elevation 7,074 feet;

Thence northwesterly on the crest of a ridge between the drainages of Lime Creek, Lime Glacier, Solo Creek, Geohenda Creek and North Fork of the White River to the summit on the ridge in the westerly portion of section 2, T. 1 N., R. 18 E., Copper River Meridian, approximate elevation 8,400 feet;

Thence on an approximate forward bearing of S. 80° W., to the summit of a peak in the southwesterly portion of section 3, T. 1 N., R. 18 E., Copper River Meridian, approximate elevation 9,815 feet;

Thence on an approximate forward bearing of N. 87° W., to the summit of a peak in the southwesterly portion of section 5, T. 1 N., R. 18 E., Copper River Meridian, approximate elevation 10,091 feet;

Thence on an approximate forward bearing of S. 66° W., to the summit of a peak in the northeasterly portion of section 12, T. 1 N., R. 17 E., Copper River Meridian, approximate elevation 9,605 feet;

Thence on an approximate forward bearing of N. 69° W., to the summit of a peak in the northeasterly portion of section 4, T. 1 N., R. 17 E., Copper River Meridian, approximate elevation 10,522 feet;

Thence on an approximate forward bearing of N. 57° W., to the summit of a peak in the northwesterly portion of section 32, T. 2 N., R. 17 E., Copper River Meridian, approximate elevation 9,100 feet;

Thence on an approximate forward bearing of N. 60° W., to the summit of a peak in the southwesterly portion of section 30, T. 2 N., R. 17 E., Copper River Meridian, approximate elevation 8,305 feet;

Thence on an approximate forward bearing of N. 59° W., to the summit of a peak near the center of section 16, T. 2 N., R. 16 E., Copper River Meridian, approximate elevation 9,435 feet;

Thence on an approximate forward bearing of N. 45° W., to the summit of a peak near the center of section 8, T. 2 N., R. 16 E., Copper River Meridian, approximate elevation 9,410 feet;

Thence on an approximate forward bearing of S. 72° W., to the summit of a peak in the northerly portion of section 13, T. 2 N., R. 15 E., Copper River Meridian, approximate elevation 9,376 feet;

Thence on an approximate forward bearing of N. 65° W., to the summit of a peak in the southeasterly portion of section 4, T. 2 N., R. 15 E., Copper River Meridian, approximate elevation 10,000 feet;

Thence on an approximate forward bearing of S. 43° W., to the summit of a peak in the southeasterly portion of section 18, T. 2 N., R. 15 E., Copper River Meridian, approximate elevation 9,450 feet;

Thence on an approximate forward bearing of S. 19° W., to the summit of a peak in the northeasterly portion of section 1, T. 1 N., R. 14 E., Copper River Meridian, approximate elevation 9,300 feet;

Thence on an approximate forward bearing of S. 84° W., to the summit of a peak in the northeasterly portion of section 2, T. 1 N., R. 14 E., Copper River Meridian, approximate elevation 9,525 feet;

Thence on an approximate forward bearing of N. 81° W., to the summit of a peak in the southeasterly portion of section 33, T. 2 N., R. 14 E., Copper River Meridian, approximate elevation 9,205 feet;

Thence on an approximate forward bearing of S. 84° W., to the summit of a peak near the center of section 3, T. 1 N., R. 13 E., Copper River Meridian, approximate elevation 9,415 feet;

Thence on an approximate forward bearing of N. 76° W., to the summit of a peak in the southerly portion of section 28, T. 2 N., R. 12 E., Copper River Meridian, approximate elevation 8,910 feet;

Thence on an approximate forward bearing of N. 13° E., to the summit of a peak in the northwesterly portion of section 15, T. 2 N., R. 12 E., Copper River Meridian, approximate elevation 8,560 feet;

Thence on an approximate forward bearing of S. 88° W., to the summit of a peak in the easterly portion of section 15, T. 2 N., R. 11 E., Copper River Meridian, approximate elevation 9,082 feet;

Thence on an approximate forward bearing of N. 29° W., to the summit of a peak in the northeasterly portion of section 32, T. 3 N., R. 11 E., Copper River Meridian, approximate elevation 9,799 feet;

Thence on an approximate forward bearing of N. 83° W., to the summit of a peak in the easterly portion of section 27, T. 3 N., R. 10 E., Copper River Meridian, approximate elevation 9,882 feet;

Thence on an approximate forward bearing of N. 70° W., to the summit of Mount Jarvis in the southwesterly portion of section 20, T. 3 N., R. 10 E., Copper River Meridian, approximate elevation 13,421 feet;

Thence on an approximate forward bearing of N. 20° W., to the summit of a peak in the southerly portion of section 6, T. 3 N., R. 10 E., Copper River Meridian, approximate elevation 13,025 feet;

Thence on an approximate forward bearing of N. 18° W., to the summit of a peak in the easterly portion of section 11, T. 4 N., R. 9 E., Copper River Meridian, approximate elevation 8,750 feet;

Thence on an approximate forward bearing of N. 6° E., to the summit of a peak in the northerly portion of section 26, T. 5 N., R. 9 E., Copper River Meridian, approximate elevation 9,085 feet;

Thence easterly, northeasterly and northerly, on the crest of the divide between the Copper River, tributaries of the Jacksina River, and Goat Creek drainages, to the summit of Tanada Peak in the northerly portion of section 14, T. 6 N., R. 10 E., Copper River Meridian, approximate elevation 9,358 feet;

Thence northeasterly and northerly, on the crest of the divide between the Copper Lake and Goat Creek drainages, to a point between sections 6 and 31, Tps. 6 and 7 N., R. 11 E., Copper River Meridian;

Thence easterly, between Tps. 6 and 7 N., to the crest of a ridge between sections 1 and 36, Tps. 6 and 7 N., R. 11 E., Copper River Meridian;

Thence easterly and northeasterly, along the crest of the divide between the Tanada Lake and Jacksina Creek drainages, to the junction of ridges in the southerly portion of section 11, T. 7 N., R. 12 E., Copper River Meridian, approximate elevation 7,400 feet;

Thence northwesterly, along the crest of a ridge between the Tanada Lake and Jack Creek drainages, to the summit of a peak in the southwesterly portion of section 3, T. 7 N., R. 12 E., Copper River Meridian, approximate elevation 6,065 feet;

Thence on an approximate forward bearing of N. 78° W., to the headwaters of an unnamed creek on the northerly end of a small lake in the southwesterly portion of section 4, T. 7 N., R. 12 E., Copper River Meridian;

Thence northerly, along the left bank of an unnamed creek to the junction of unnamed creeks in the northeasterly portion of section 32, T. 8 N., R. 12 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 18° W., to the summit of a hill near the center of section 29, T. 8 N., R. 12 E., Copper River Meridian, approximate elevation 4,830 feet;

Thence on an approximate forward bearing of N. 60° W., to the headwaters of an unnamed creek at the north end of a small lake in the southerly portion of section 19, T. 8 N., R. 12 E., Copper River Meridian;

Thence northerly, along the right bank of the unnamed creek to a point between

sections 31 and 36, T. 9 N., Rs. 11 and 12 E., Copper River Meridian;

Thence northerly, between Rs. 11 and 12 E., to a point 16 feet southerly of the centerline of the Nabesna Road on a line perpendicular to the centerline of said road and between sections 25 and 30, T. 9 N., Rs. 11 and 12 E., Copper River Meridian;

Thence northwesterly, paralleling the Nabesna Road at a distance of sixteen feet southerly from the center line of the road, to a point on the north and south centerline of section 11, T. 10 N., R. 8 E., Copper River Meridian;

Thence southerly, on the north and south centerlines of sections 11, 14 and 23, to a point on the north and south centerline of section 23 on the left bank of the Copper River, T. 10 N., R. 8 E., Copper River Meridian;

Thence southerly and southwesterly, along the left banks of the Copper River and the westernmost channel of the east branch of Drop Creek which enters the Copper River in the northeasterly portion of section 23, and along the left bank of Drop Creek to a point between sections 19 and 24, T. 7 N., Rs. 7 and 8 E., Copper River Meridian;

Thence southerly, between Rs. 7 and 8 E., to the corner of sections 1, 6, 31 and 36, Tps. 6 and 7 N., Rs. 7 and 8 E., Copper River Meridian;

Thence westerly between Tps. 6 and 7 N., to the intersection of a ridge in the eastern half of sections 1 and 36, Tps. 6 and 7 N., R. 7 E., Copper River Meridian, approximate elevation 5,125 feet;

Thence southwesterly, along the crest of the spur ridge, and westerly and southwesterly, on the crest of a ridge between the Boulder Creek and Drop Glacier drainages, to a point between sections 17 and 20, T. 6 N., R. 7 E., Copper River Meridian;

Thence westerly, between sections 17 and 20, 18 and 19, 13 and 24, to the intersection of a ridge between the easterly portions of sections 13 and 24, T. 6 N., Rs. 6 and 7 E., Copper River Meridian, approximate elevation 9,425 feet;

Thence northwesterly, westerly, and southwesterly along the crest of a ridge between the drainages of the Sanford River, Sheep Creek, and other unnamed tributaries of the Copper River to a summit on the ridge near the center of section 15, T. 6 N., R. 5 E., Copper River Meridian, approximate elevation 5,130 feet;

Thence on an approximate forward bearing of S. 49° W., to the corner of sections 15, 16, 21 and 22, T. 6 N., R. 5 E., Copper River Meridian;

Thence westerly, between sections 16 and 21, 17 and 20, to a point on the right bank of an unnamed creek near the corner of sections 16, 17, 20 and 21, T. 6 N., R. 5 E., Copper River Meridian;

Thence westerly and northwesterly, along the right bank of the unnamed creek to a point at the intersection of the creek with the left bank of the easternmost interconnecting waterway of the Copper River, at the line of ordinary high water, in the northern portions of sections 7 and 12, T. 7 N., Rs. 2 and 3 E., Copper River Meridian;

*Thence southwesterly, departing from a common boundary with the Wrangell-St. Elias National Preserve (North Unit), along the left bank of the most easterly interconnecting waterways of the Copper River along the line of ordinary high water, to a point between sections 10 and 15, T. 6 N., R. 1 E., Copper River Meridian;

Thence easterly, along a common boundary with the Wrangell-St. Elias National Preserve (West Unit), between sections 10 and 15, 11 and 14, 12 and 13, to the corner of sections 7, 12, 13 and 18, T. 6 N., Rs. 1 and 2 E., Copper River Meridian;

Thence southerly, between Rs. 1 and 2 E., to the corner of sections 1, 6, 7 and 12, T. 5 N., Rs. 1 and 2 E., Copper River Meridian;

Thence easterly, between sections 6 and 7, 5 and 8, to the corner of sections 4, 5, 8 and 9, T. 5 N., R. 2 E., Copper River Meridian;

Thence southerly, between sections 8 and 9, to the corner of sections 8, 9, 16 and 17, T. 5 N., R. 2 E., Copper River Meridian;

Thence easterly, between sections 9 and 16, 10 and 15, to the corner of sections 10, 11, 14 and 15, T. 5 N., R. 2 E., Copper River Meridian;

Thence southerly, between sections 14 and 15, to the corner of sections 14, 15, 22 and 23, T. 5 N., R. 2 E., Copper River Meridian;

Thence easterly, between sections 14 and 23, 13 and 24, 18 and 19, 17 and 20, 16 and 21, to the corner of sections 15, 16, 21 and 22, T. 5 N., R. 3 E., Copper River Meridian;

Thence southerly, between sections 21 and 22, 27 and 28, 33 and 34, to the standard corner of sections 33 and 34, T. 5 N., R. 3 E., Copper River Meridian;

Thence westerly, on the First Standard Parallel North, to the closing corner of sections 4 and 5, T. 4 N., R. 3 E., Copper River Meridian;

Thence southerly, between sections 4 and 5, 8 and 9, 16 and 17, 20 and 21, 28 and 29, 32 and 33, 4 and 5, 8 and 9, 16 and 17, to the corner of sections 16, 17, 20 and 21, T. 3 N., R. 3 E., Copper River Meridian;

Thence easterly, between sections 16 and 21, 15 and 22, 14 and 23, to a point on the crest of the divide between the Nadina Glacier and Klawasi River drainages, T. 3 N., R. 3 E., Copper River Meridian;

Thence northeasterly, along the crest of the divide between the drainages of Nadina Glacier and Klawasi River, to a point between sections 28 and 33, T. 4 N., R. 4 E., Copper River Meridian;

Thence easterly, between sections 28 and 33, 27 and 34, 26 and 35, 25 and 36, to a point on the divide between the drainages of Sanford River and Dadina River, T. 4 N., R. 4 E., Copper River Meridian;

Thence easterly and southeasterly, along the crest of the divide between the Sanford River and Dadina River drainages, to a point between sections 3 and 34, Tps. 3 and 4 N., R. 5 E., Copper River Meridian;

Thence easterly, between Tps. 3 and 4 N., to the corner of sections 2, 3, 34 and 35, Tps. 3 and 4 N., R. 6 E., Copper River Meridian;

Thence southerly, between sections 2 and 3, to the corner of sections 2, 3, 10 and 11, T. 3 N., R. 6 E., Copper River Meridian;

Thence easterly, between sections 2 and 11, to the corner of sections 1, 2, 11 and 12, T. 3 N., R. 6 E., Copper River Meridian;

Thence southerly, between sections 11 and 12, to the corner of sections 11, 12, 13 and 14, T. 3 N., R. 6 E., Copper River Meridian;

Thence easterly, between sections 12 and 13, to the corner of sections 7, 12, 13 and 18, T. 3 N., Rs. 6 and 7 E., Copper River Meridian;

Thence southerly, between Rs. 6 and 7 E., to the corner of sections 7, 12, 13 and 18, T. 2 N., Rs. 6 and 7 E., Copper River Meridian;

Thence easterly, between sections 7 and 18, 8 and 17, to the corner of sections 8, 9, 16 and 17, T. 2 N., R. 7 E., Copper River Meridian;

Thence southerly, between sections 16 and 17, 20 and 21, 28 and 29, 32 and 33, 4 and 5, to the corner of sections 4, 5, 8 and 9, T. 1 N., R. 7 E., Copper River Meridian;

Thence easterly, between sections 4 and 9, 3 and 10, 2 and 11, 1 and 12, 6 and 7, 5 and 8, 4 and 9, to the corner of sections 3, 4, 9 and 10, T. 1 N., R. 8 E., Copper River Meridian;

Thence southerly, between sections 9 and 10, to the corner of sections 9, 10, 15 and 16, T. 1 N., R. 8 E., Copper River Meridian;

Thence easterly, between sections 10 and 15, to the corner of sections 10, 11, 14 and 15, T. 1 N., R. 8 E., Copper River Meridian;

Thence southerly, between sections 14 and 15, 22 and 23, to the corner of sections 22, 23, 26 and 27, T. 1 N., R. 8 E., Copper River Meridian;

Thence easterly, between sections 23 and 26, to a point on the divide between the Long Glacier and Kluvesna and Kotsina River drainages, T. 1 N., R. 8 E., Copper River Meridian;

Thence southwesterly, along the crest of the divide between the Long Glacier and Kluvesna, Clear Creek, and Kotsina River drainages, to the summit of a peak in the northwesterly portion of section 34, T. 1 S., R. 7 E., Copper River Meridian, approximate elevation 5,061 feet;

Thence on an approximate forward bearing of S. 2° E., to a point on the right bank of the Kotsina River and the right bank of an unnamed tributary to the Kotsina River at the confluence of the unnamed tributary with the Kotsina River in the northwesterly portion of section 10, T. 2 S., R. 7 E., Copper River Meridian;

Thence westerly, southerly and westerly, along the right bank of the Kotsina River to a point at its confluence with the left bank of the Copper River, at the line of ordinary high water, in the northeasterly portion of section 12, T. 4 S., R. 5 E., Copper River Meridian;

Thence southerly, departing from a common boundary with the Wrangell-St. Elias National Preserve (West Unit), along the left bank of the Copper River, at the line of ordinary high water, closing the mouth of the Kotsina River, to a point between sections 12 and 13, T. 4 S., R. 5 E., Copper River Meridian;

Thence easterly, between sections 12 and 13, to the corner of sections 7, 12, 13 and 18, T. 4 S., Rs. 5 and 6 E., Copper River Meridian;

*Thence southerly between Rs. 5 and 6 E. to the meander corner on the left bank of the Copper River, at the line of ordinary high water, between sections 19 and 24, T. 4 S., Rs. 5 and 6 E., Copper River Meridian;

*Thence easterly, southerly, southwesterly, southerly, southwesterly and southeasterly, along the left bank of the Copper River, at the line of ordinary high water, closing the mouth of the Chitina River and the mouths of all

other streams, to a point between sections 33 and 34, T. 8 S., R. 3 E., Copper River Meridian;

Thence southeasterly, southerly and southeasterly, along a common boundary with the Chugach National Forest, along the line of ordinary high water of the left bank of the Copper River closing the mouths of all streams, to a point near the junction of the Wernicke River and Copper River S. 32° W. of the summit of a small hill in the central area of a 1,500 foot contour which spans the section line between sections 2 and 11, T. 12 S., R. 5 E., Copper River Meridian, said point near the southern boundary of section 10, T. 12 S., R. 5 E., Copper River Meridian;

Thence N. 32° E., to the crest of a ridge between sections 2 and 35, Tps. 11 and 12 S., R. 5 E., Copper River Meridian, approximate elevation 3,500 feet;

Thence northeasterly and southeasterly, on the crest of the divide between the drainages of Wernicke River and the Bremner River to the summit of a peak in the center of section 26, T. 12 S., R. 9 E., Copper River Meridian, approximate elevation 6,075 feet;

Thence on an approximate forward bearing of S. 10° W., to the summit of a peak in the southeasterly portion of section 27, T. 13 S., R. 9 E., Copper River Meridian, approximate elevation 8,212 feet;

Thence easterly, northerly, southeasterly, southwesterly, and southerly, along the crest of a ridge between Miles Glacier and Fan Glacier, to the summit of Mount Tom White located in sections 18 and 19, T. 14 S., R. 10 E., Copper River Meridian, approximate elevation 11,191 feet;

Thence easterly and northeasterly, departing from a common boundary with the Chugach National Forest, on the crest of a ridge, between Martin River Glacier, Fan Glacier, and Bremner Glacier, to the summit of Mount Hawkins in the southeasterly portion of section 4, T. 14 S., R. 11 E., Copper River Meridian, approximate elevation 9,368 feet;

Thence on an approximate forward bearing of S. 15° E., to the summit of a peak located in sections 9 and 10, T. 14 S., R. 11 E., Copper River Meridian, approximate elevation 8,813 feet;

Thence on an approximate forward bearing of S. 45° E., to the summit of a peak in the northwesterly portion of section 23, T. 14 S., R. 11 E., Copper River Meridian, approximate elevation 7,806 feet;

Thence on an approximate forward bearing of S. 7° W., to the summit of peak in the westerly portion of section 35, T. 14 S., R. 11 E., Copper River Meridian, approximate elevation 6,400 feet;

Thence on an approximate forward bearing of S. 44° E., to the summit of a peak in the easterly portion of section 20, T. 15 S., R. 12 E., Copper River Meridian, approximate elevation 8,200 feet;

Thence southeasterly, along the crest of a ridge, between Steller Glacier, Bering Glacier and Bagley Ice Field, to the summit of a peak in the southerly portion of section 1, T. 16 S., R. 12 E., Copper River Meridian, approximate elevation 8,215 feet;

Thence on an approximate forward bearing of N. 82° E., to the summit of Mount Steller in the northerly portion of section 3, T. 16 S., R. 13 E., Copper River Meridian, approximate elevation 10,515 feet;

Thence easterly, along the crest of Waxell Ridge, between Bering Glacier and Bagley Ice Field, to the summit of a peak in the northeasterly portion of section 31, T. 15 S., R. 16 E., Copper River Meridian, approximate elevation 4,400 feet;

Thence on an approximate forward bearing of S. 64° E., to the summit of a ridge between sections 7 and 8, T. 16 S., R. 17 E., Copper River Meridian, approximate elevation 3,800 feet;

Thence northeasterly, easterly, southeasterly and southwesterly, along the crest of a ridge, between Bering Glacier, Yahtse Glacier, and Bagley Ice Field, to the summit of a ridge between sections 25 and 36, T. 16 S., R. 17 E., Copper River Meridian, approximate elevation 8,800 feet;

Thence on an approximate forward bearing of S. 36° E., to the summit of a peak in the southwesterly portion of section 8, T. 18 S., R. 19 E., Copper River Meridian, approximate elevation 6,200 feet;

Thence southeasterly, along the crest of a ridge between the drainages of the Yahtse Glacier and Duktoth River, to the summit of a peak in the northeasterly portion of section 15, T. 18 S., R. 19 E., Copper River Meridian, approximate elevation 6,700 feet;

Thence on an approximate forward bearing of S. 5° W., to the summit of a peak in the northwesterly portion of section 3, T. 19 S., R. 19 E., Copper River Meridian, approximate elevation 7,072 feet;

Thence on an approximate forward bearing of S. 60° E., to the summit of Mount Leeper in the northwesterly portion of section 12, T. 19 S., R. 19 E., Copper River Meridian, approximate elevation 9,603 feet;

Thence southerly, easterly and southeasterly, on the crest of the ridge, between Yakataga Glacier, Guyot Glacier, Leeper Glacier and Yahtse Glacier, to a point between sections 2 and 3, T. 20 S., R. 20 E., Copper River Meridian;

Thence southerly, between sections 2 and 3, 10 and 11, 14 and 15, 22 and 23, 26 and 27, 34 and 35, to the corner of sections 2, 3, 34 and 35, Tps. 20 and 21 S., R. 20 E., Copper River Meridian;

Thence easterly, between Tps. 20 and 21 S., to the corner of Tps. 20 and 21 S., Rs. 20 and 21 E., Copper River Meridian;

Thence southerly, between Rs. 20 and 21 E., to the corner of Tps. 21 and 22 S., Rs. 20 and 21 E., Copper River Meridian;

Thence easterly, between Tps. 21 and 22 S., to the ¼ section corner of sections 6 and 31, Tps. 21 and 22 S., R. 23 E., Copper River Meridian;

Thence southerly, on the north and south centerlines of sections 6 and 7, to the crest of a ridge between Carson Creek and Independence Creek drainages, in the southerly portion of section 7, T. 22 S., R. 23 E., Copper River Meridian, approximate elevation 3,600 feet;

Thence northeasterly, easterly and southeasterly, on the crest of a ridge, between the Carson Creek and Independence Creek drainages, to horizontal control station "Amber" in the southeasterly portion of section 16, T. 22 S., R. 23 E., Copper River Meridian, approximate elevation 2,272 feet;

Thence on an approximate forward bearing of east, to a point at the mouth on the left bank of Independence Creek on the shore of Icy Bay, at the line of mean high tide in the southeasterly portion of section 14, T. 22 S., R. 23 E., Copper River Meridian;

Thence northeasterly, northwesterly, easterly and southeasterly, along the line of mean high tide of Icy Bay, including any coastal islands above the line of mean high tide, to a point between sections 4 and 33, Tps. 21 and 22 S., R. 24 E., Copper River Meridian;

Thence easterly, between Tps. 21 and 22 S., to the corner of Tps. 21 and 22 S., Rs. 25 and 26 E., Copper River Meridian;

Thence southerly, between Rs. 25 and 26 E., to a point between sections 1 and 6, at the line of mean high tide of the Gulf of Alaska, T. 25 S., Rs. 25 and 26 E., Copper River Meridian;

Thence southeasterly, along the line of mean high tide of the Gulf of Alaska, including any coastal islands above the line of mean high tide, to a point located in the northwesterly portion of section 4, T. 26 S., R. 30 E. and lying due south of an unnamed inlet's most western point located near the section line of sections 4 and 33, Tps. 25 and 26 E., R. 30 E., Copper River Meridian;

Thence north, along the common boundary with Wrangell-St. Elias National Preserve (South Unit), across the spit to an unnamed inlet's most western point located near the section line of sections 4 and 33, Tps. 25 and 26 S., R. 30 E., Copper River Meridian;

Thence easterly, along the north shoreline of the unnamed inlet, to a point on the left bank of the most eastern braided stream at the mouth of Manby Stream in the northwesterly portion of section 3, T. 26 S., R. 30 E., Copper River Meridian;

Thence northerly, along the left bank of Manby Stream, to a point between sections 16 and 21, T. 25 S., R. 30 E., Copper River Meridian;

Thence easterly, between sections 16 and 21, 15 and 22, 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 25 S., Rs. 30 and 31 E., Copper River Meridian;

Thence northerly, between Rs. 30 and 31 E., to a point between sections 1 and 6, on the southwesterly shore of Malaspina Lake, in T. 25 S., Rs. 30 and 31 E., Copper River Meridian;

Thence northerly, easterly, northeasterly, and southeasterly, along the line of mean high water of the northerly shore of Malaspina Lake, to a point between sections 13 and 18, T. 24 S., Rs. 31 and 32 E., Copper River Meridian;

Thence northerly, between Rs. 31 and 32 E., to the corner of Tps. 22 and 23 S., Rs. 31 and 32 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 49° E., to the summit of a hill in the northeasterly portion of section 31, T. 22 S., R. 32 E., Copper River Meridian, approximate elevation 3,000 feet;

Thence on an approximate forward bearing of N. 17° E., to the summit of a hill in the southwesterly portion of section 20, T. 22 S., R. 32 E., Copper River Meridian, approximate elevation 3,625 feet;

Thence on an approximate forward bearing of N. 5° W., to the summit of Floral Hills in the southwesterly portion of section 17, T. 22

S., R. 32 E., Copper River Meridian, approximate elevation 4,175 feet;

Thence on an approximate forward bearing of S. 83° E., to the summit of a peak in the easterly portion of section 20, T. 22 S., R. 33 E., Copper River Meridian, approximate elevation 5,336 feet;

Thence on an approximate forward bearing of S. 39° E., to the summit of a peak in the northwesterly portion of section 34, T. 22 S., R. 33 E., Copper River Meridian, approximate elevation 4,388 feet;

Thence on an approximate forward bearing of N. 80° E., to the summit of a peak in the northerly portion of section 36, T. 22 S., R. 33 E., Copper River Meridian, approximate elevation 4,780 feet;

Thence on an approximate forward bearing of S. 77° E., to the summit of a peak in the northwesterly portion of section 32, T. 22 S., R. 34 E., Copper River Meridian, approximate elevation 4,280 feet;

Thence on an approximate forward bearing of S. 71° E., to a point at the mouth on the right bank of an unnamed creek in the southwesterly portion of section 33, at the line of mean high tide of Disenchantment Bay, T. 22 S., R. 34 E., Copper River Meridian;

Thence northerly, northeasterly, southerly, and southeasterly, departing from a common boundary with the Wrangell-St. Elias National Preserve (South Unit), along the line of mean high tide of Disenchantment Bay, including any coastal islands above the line of mean high tide, to a point on the line of mean high tide of Disenchantment Bay at 60°00′ N. latitude;

Thence due east, along a common boundary with the Tongass National Forest, on the line of latitude of 60°00′ N., to the International Boundary between the United States of America and Canada in section 22, T. 22 S., R. 37 E., Copper River Meridian, the place of beginning.

Excluded from the Wrangell-St. Elias National Park is the Wrangell-St. Elias National Preserve (Central Unit) as described in the following.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

Wrangell-St. Elias National Preserve

Wrangell-St. Elias National Preserve as generally depicted on a map numbered WRST–90,007, dated August 1980, consists of approximately four million one hundred and seventy-one thousand acres of public land, as defined in the ANILCA, within the following described boundaries:

North Unit

Beginning at a point in the northern portions of sections 7 and 12, on the left bank of the most easterly interconnecting waterway of the Copper River, at the line of ordinary high water, T. 7 N., Rs. 2 and 3 E., Copper River Meridian;

Thence northeasterly and easterly, departing from a common point on the boundary of the Wrangell-St. Elias National Park, along the left bank of the most easterly interconnecting waterways of the Copper River, at the line of ordinary high water, to a point perpendicular to and opposite the left bank of Indian Creek in the southeasterly portion of section 15, and northeasterly portion of section 22, T. 10 N., R. 5 E., Copper River Meridian;

Thence northwesterly across the Copper River to a point on the left bank of Indian Creek at its confluence with the Copper River, at the line of ordinary high water, near the southern edge of section 15, T. 10 N., R. 5 E., Copper River Meridian;

Thence northerly, along the left bank of Indian Creek, to the southerly boundary of the right-of-way of the Glenn Highway in the northerly portion of section 11, T. 10 N., R. 5 E., Copper River Meridian;

Thence northeasterly and easterly, along the easterly and southerly boundary of the right-of-way of the Glenn Highway, to a point between sections 25 and 30, T. 11 N., Rs. 7 and 8 E., Copper River Meridian;

Thence southerly, between Rs. 7 and 8 E., to a point between sections 25 and 30 on the left bank of Slana River, T. 11 N., Rs. 7 and 8 E., Copper River Meridian;

Thence easterly, along the left bank of Slana River to a point on the north and south centerline of section 29, T. 11 N., R. 8 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 29, to the ¼ section corner of sections 29 and 32, T. 11 N., R. 8 E., Copper River Meridian;

Thence easterly, between sections 29 and 32, 28 and 33, to a point on the southerly boundary of the right-of-way of the Nabesna Road which is 100 feet southwesterly of the centerline of said road on a line perpendicular to the centerline of said road and between sections 28 and 33, T. 11 N., R. 8 E., Copper River Meridian;

Thence southeasterly, along the southerly boundary of the right-of-way of the Nabesna Road, to a point between sections 3 and 34, Tps. 10 and 11 N., R. 8 E., Copper River Meridian;

Thence easterly, between Tps. 10 and 11 N., to the corner of sections 4, 5, 32 and 33, Tps. 10 and 11 N., R. 10 E., Copper River Meridian;

Thence southerly, between sections 4 and 5, to the ¼ section corner of sections 4 and 5, T. 10 N., R. 10 E., Copper River Meridian;

Thence easterly, on the east and west centerline of section 4, to the center ¼ section corner of section 4, T. 10 N., R. 10 E., Copper River Meridian;

Thence on an approximate forward bearing of south, to the summit of a peak near the center of section 9, T. 10 N., R. 10 E., Copper River Meridian, approximate elevation 4,100 feet;

Thence southerly and easterly on the crest of the ridge between the drainages of the Tanada Creek, Caribou Creek, Jack Creek, Suslota Creek, and Little Tok River to the summit of Noyes Mountain in the northerly portion of section 16, T. 10 N., R. 12 E., Copper River Meridian, approximate elevation 8,147 feet;

Thence southeasterly, along the crest of a divide between the drainages of Jack Creek, Platinum Creek, and Tetlin River to a junction of ridges in the easterly portion of section 36, T. 10 N., R. 13 E., Copper River Meridian;

Thence southerly and southeasterly, along a common boundary with the Tetlin National Wildlife Refuge, along the crest of a ridge between the drainages of the Cheslina River, Totschunda Creek, Platinum Creek and the Nabesna River to a point between sections 31 and 36, T. 9 N., Rs. 14 and 15 E., Copper River Meridian;

Thence southerly, between Rs. 14 and 15 E., to the standard corner of T. 9 N., Rs. 14 and 15 E., Copper River Meridian;

Thence easterly, on the Second Standard Parallel North, to a point between Tps. 8 and 9 N., R. 21 E., Copper River Meridian, on the right bank of the Chisana River;

Thence on an approximate forward bearing of S. 38° E., to the summit of a mountain in the northwesterly portion of section 30, T. 8 N., R. 22 E., Copper River Meridian, approximate elevation 3,575 feet;

Thence southeasterly, along the crest of a ridge, between the Snag Creek and Wellesley Lakes drainages, to a point between sections 4 and 33, Tps. 7 and 8 N., R. 23 E., Copper River Meridian;

Thence easterly, between Tps. 7 and 8 N., to the International Boundary between the United States of America and Canada at the closing corner of sections 5 and 32, Tps. 7 and 8 N., R. 24 E., Copper River Meridian;

Thence southerly, departing from a common boundary with the Tetlin National Wildlife Refuge, along the International Boundary between the United States of America and Canada, to a point on the International Boundary on the right bank of the main channel of the White River, section 35, T. 1 S., R. 24 E., Copper River Meridian;

*Thence westerly, northwesterly, southwesterly, and northwesterly along a common boundary with the Wrangell-St. Elias National Park, along the right bank of the main channel of the White River and the left bank of the main channel of Lime Creek to a point between sections 29 and 32 on the left bank of the main channel of Lime Creek, T. 1 S., R. 20 E., Copper River Meridian;

*Thence easterly between sections 29 and 32, 28 and 33, to an intersection with the extension of a spur ridge between sections 28 and 33, T. 1 S., R. 20 E., Copper River Meridian;

Thence northerly, along the crest of the spur ridge and northwesterly on the crest of a ridge, between the drainages of Lime Creek and other unnamed tributaries of the White River, to control station "Lime", located in the southeasterly portion of section 12, T. 1 S., R. 19 E., Copper River Meridian, approximate elevation 7,074 feet;

Thence northwesterly, on the crest of a ridge between the drainages of Lime Creek, Lime Glacier, Solo Creek, Geohenda Creek and the north fork of the White River, to the summit on the ridge in the westerly portion of section 2, T. 1 N., R. 18 E., Copper River Meridian, approximate elevation 8,400 feet;

Thence on an approximate forward bearing of S. 80° W., to the summit of a peak in the southwesterly portion of section 3, T. 1 N., R. 18 E., Copper River Meridian, approximate elevation 9,315 feet;

Thence on an approximate forward bearing of N. 87° W. to the summit of a peak in the southwesterly portion of section 5, T. 1 N., R. 18 E., Copper River Meridian, approximate elevation 10,091 feet;

Thence on an approximate forward bearing of S. 66° W., to the summit of a peak in the northeasterly portion of section 12, T. 1 N., R. 17 E., Copper River Meridian, approximate elevation 9,605 feet;

Thence on an approximate forward bearing of N. 69° W., to the summit of a peak in the northeasterly portion of section 4, T. 1 N., R. 17 E., Copper River Meridian, approximate elevation 10,522 feet;

Thence on an approximate forward bearing of N. 57° W., to the summit of a peak in the northwesterly portion of section 32, T. 2 N., R. 17 E., Copper River Meridian, approximate elevation 9,100 feet;

Thence on an approximate forward bearing of N. 60° W., to the summit of a peak in the southwesterly portion of section 30, T. 2 N., R. 17 E., Copper River Meridian, approximate elevation 8,305 feet;

Thence on an approximate forward bearing of N. 59° W., to the summit of a peak near the center of section 16, T. 2 N., R. 16 E., Copper River Meridian, approximate elevation 9,435 feet;

Thence on an approximate forward bearing of N. 45° W., to the summit of a peak near the center of section 8, T. 2 N., R. 16 E., Copper River Meridian, approximate elevation 9,410 feet;

Thence on an approximate forward bearing of S. 72° W., to the summit of a peak in the northerly portion of section 13, T. 2 N., R. 15 E., Copper River Meridian, approximate elevation 9,376 feet;

Thence on an approximate forward bearing of N. 65° W., to the summit of a peak in the southeasterly portion of section 4, T. 2 N., R. 15 E., Copper River Meridian, approximate elevation 10,000 feet;

Thence on an approximate forward bearing of S. 43° W., to the summit of a peak in the southeasterly portion of section 18, T. 2 N., R. 15 E., Copper River Meridian, approximate elevation 9,850 feet;

Thence on an approximate forward bearing of S. 19° W., to the summit of a peak in the northeasterly portion of section 1, T. 1 N., R. 14 E., Copper River Meridian, approximate elevation 9,300 feet;

Thence on an approximate forward bearing of S. 84° W., to the summit of a peak in the northeasterly portion of section 2, T. 1 N., R. 14 E., Copper River Meridian, approximate elevation 9,525 feet;

Thence on an approximate forward bearing of N. 81° W., to the summit of a peak in the southeasterly portion of section 33, T. 2 N., R. 14 E., Copper River Meridian, approximate elevation 9,205 feet;

Thence on an approximate forward bearing of S. 84° W., to the summit of a peak near the center of section 3, T. 1 N., R. 13 E., Copper River Meridian, approximate elevation 9,415 feet;

Thence on an approximate forward bearing of N. 76° W., to the summit of a peak in the southerly portion of section 28, T. 2 N., R. 12 E., Copper River Meridian, approximate elevation 8,910 feet;

Thence on an approximate forward bearing of N. 13° E., to the summit of a peak in the northwesterly portion of section 15, T. 2 N., R. 12 E., approximate elevation 8,560 feet;

Thence on an approximate forward bearing of S. 88° W., to the summit of a peak in the easterly portion of section 15, T. 2 N., R. 11 E., Copper River Meridian, approximate elevation 9,082 feet;

Thence on an approximate forward bearing of N. 29° W., to the summit of a peak in the northeasterly portion of section 32, T. 3 N., R. 11 E., Copper River Meridian, approximate elevation 9,799 feet;

Thence on an approximate forward bearing of N. 83° W., to the summit of a peak in the easterly portion of section 27, T. 3 N., R. 10 E., Copper River Meridian, approximate elevation 9,882 feet;

Thence on an approximate forward bearing of N. 70° W., to the summit of Mount Jarvis in the southwesterly portion of section 20, T. 3 N., R. 10 E., Copper River Meridian, approximate elevation 13,421 feet;

Thence on an approximate forward bearing of N. 20° W., to the summit of a peak in the southerly portion of section 6, T. 3 N., R. 10 E., Copper River Meridian, approximate elevation 13,025 feet;

Thence on an approximate forward bearing of N. 18° W., to the summit of a peak in the easterly portion of section 11, T. 4 N., R. 9 E., Copper River Meridian, approximate elevation 8,750 feet;

Thence on an approximate forward bearing of N. 6° E., to the summit of a peak in the northerly portion of section 26, T. 5 N., R. 9 E., Copper River Meridian, approximate elevation 9,085 feet;

Thence easterly, northeasterly and northerly, on the crest of the divide between the Copper River, tributaries of the Jacksina River and Goat Creek drainages, to the summit of Tanada Peak in the northerly portion of section 14, T. 6 N., R. 10 E., Copper River Meridian, approximate elevation 9,358 feet;

Thence northeasterly and northerly, on the crest of the divide between the Copper Lake and Goat Creek drainages, to a point between sections 6 and 31, Tps. 6 and 7 N., R. 11 E., Copper River Meridian;

Thence easterly, between Tps. 6 and 7 N., to the crest of a ridge between sections 1 and 36, Tps. 6 and 7 N., R. 11 E., Copper River Meridian;

Thence easterly and northeasterly, along the crest of the divide between the Tanada Lake and Jacksina Creek drainages, to the junction of ridges in the southerly portion of section 11, T. 7 N., R. 12 E., Copper River Meridian, approximate elevation 7,400 feet;

Thence northwesterly, along the crest of a ridge between the Tanada Lake and Jack Creek drainages, to the summit of a peak in the southwesterly portion of section 3, T. 7 N., R. 12 E., Copper River Meridian, approximate elevation 6,065 feet;

Thence on an approximate forward bearing of N. 78° W., to the headwaters of an unnamed creek on the northerly end of a small lake in the southwesterly portion of section 4, T. 7 N., R. 12 E., Copper River Meridian;

Thence northerly, along the left bank of an unnamed creek to the junction of unnamed creeks in the northeasterly portion of section 32, T. 8 N., R. 12 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 18° W., to the summit of a hill near the center of section 29, T. 8 N., R. 12 E., Copper River Meridian; approximate elevation 4,830 feet;

Thence on an approximate forward bearing of N. 60° W., to the headwaters of an unnamed creek at the north end of a small lake in the southerly portion of section 19, T. 8 N., R. 12 E., Copper River Meridian;

Thence northerly, along the right bank of the unnamed creek to a point between sections 31 and 36, T. 9 N., Rs. 11 and 12 E., Copper River Meridian;

Thence northerly, between Rs. 11 and 12 E., to a point 16 feet southerly of the centerline of the Nabesna Road on a line perpendicular to the centerline of said road and between sections 25 and 30, T. 9 N., Rs. 11 and 12 E., Copper River Meridian;

Thence northwesterly, paralleling the Nabesna Road at a distance of sixteen feet southerly from the center line of the road, to a point on the north and south centerline of section 11, T. 10 N., R. 8 E., Copper River Meridian;

Thence southerly, on the north and south centerlines of sections 11, 14 and 23, to a point on the north and south centerline of section 23 on the left bank of the Copper River, T. 10 N., R. 8 E., Copper River Meridian;

Thence southerly and southwesterly, along the left banks of the Copper River and the westernmost channel of the east branch of Drop Creek which enters the Copper River in the northeasterly portion of section 23, and along the left bank of Drop Creek to a point between sections 19 and 24, T. 7 N., Rs. 7 and 8 E., Copper River Meridian;

Thence southerly, between Rs. 7 and 8 E., to the corner of sections 1, 6, 31 and 36, Tps. 6 and 7 N., Rs. 7 and 8 E., Copper River Meridian;

Thence westerly between Tps. 6 and 7 N., to the intersection of a ridge in the eastern half of sections 1 and 36, Tps. 6 and 7 N., R. 7 E., Copper River Meridian, approximate elevation 5,125 feet;

Thence southwesterly, along the crest of the spur ridge, and westerly and southwesterly, on the crest of a ridge between the Boulder Creek and Drop Glacier drainages, to a point between sections 17 and 20, T. 6 N., R. 7 E., Copper River Meridian;

Thence westerly, between sections 17 and 20, 18 and 19, 13 and 24, to the intersection of a ridge between the easterly portions of sections 13 and 24, T. 6 N., Rs. 6 and 7 E., Copper River Meridian, approximate elevation 9,425 feet;

Thence northwesterly, westerly, and southwesterly, along the crest of a ridge between the drainages of the Sanford River, Sheep Creek, and other unnamed tributaries of the Copper River to a summit on the ridge near the center of section 15, T. 6 N., R. 5 E., Copper River Meridian, approximate elevation 5,130 feet;

Thence on an approximate forward bearing of S. 49° W., to the corner of sections 15, 16, 21 and 22, T. 6 N., R. 5 E., Copper River Meridian;

Thence westerly between sections 16 and 21, 17 and 20 to a point on the right bank of an unnamed creek near the corner of sections 16, 17, 20 and 21, T. 6 N., R. 5 E., Copper River Meridian;

*Thence westerly and northwesterly, along the right bank of the unnamed creek to a

point at the intersection of the creek with the left bank of the easternmost interconnecting waterway of the Copper River, at the line of ordinary high water, in the northern portions of sections 7 and 12, T. 7 N., Rs. 2 and 3 E., Copper River Meridian, the place of beginning.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

West Unit

*Beginning on the left bank of the Copper River at a point on the right bank of Kotsina River at its confluence with the Copper River, at the line of ordinary high water, in the northeasterly portion of section 12, T. 4 S., R. 5 E., Copper River Meridian;

*Thence northwesterly, northerly, northeasterly and easterly, departing from a common point on the boundary of the Wrangell-St. Elias National Park, along the left bank of the most easterly interconnecting waterways of the Copper River, at the line of ordinary high water, to a point between sections 10 and 15, T. 6 N., R. 1 E., Copper River Meridian;

Thence easterly, along a common boundary with the Wrangell-St. Elias National Park; between sections 10 and 15, 11 and 14, 12 and 13, to the corner of sections 7, 12, 13 and 18, T. 6 N., Rs. 1 and 2 E., Copper River Meridian;

Thence southerly, between Rs. 1 and 2 E., to the corner of sections 1, 6, 7 and 12, T. 5 N., Rs. 1 and 2 E., Copper River Meridian;

Thence easterly, between sections 6 and 7, 5 and 8, to the corner of sections 4, 5, 8 and 9, T. 5 N., R. 2 E., Copper River Meridian;

Thence southerly, between sections 8 and 9, to the corner of sections 8, 9, 16 and 17, T. 5 N., R. 2 E., Copper River Meridian;

Thence easterly, between sections 9 and 16, 10 and 15, to the corner of sections 10, 11, 14 and 15, T. 5 N., R. 2 E., Copper River Meridian;

Thence southerly, between sections 14 and 15, to the corner of sections 14, 15, 22 and 23, T. 5 N., R. 2 E., Copper River Meridian;

Thence easterly, between sections 14 and 23, 13 and 24, 18 and 19, 17 and 20, 16 and 21, to the corner of sections 15, 16, 21 and 22, T. 5 N., R. 3 E., Copper River Meridian;

Thence southerly, between sections 21 and 22, 27 and 28, 33 and 34, to the standard corner of sections 33 and 34, T. 5 N., R. 3 E., Copper River Meridian;

Thence westerly, along the First Standard Parallel North, to the closing corner of sections 4 and 5, T. 4 N., R. 3 E., Copper River Meridian;

Thence southerly, between sections 4 and 5, 8 and 9, 16 and 17, 20 and 21, 28 and 29, 32 and 33, 4 and 5, 8 and 9, 16 and 17, to the corner of sections 16, 17, 20 and 21, T. 3 N., R. 3 E., Copper River Meridian;

Thence easterly, between sections 16 and 21, 15 and 22, 14 and 23, to a point on the crest of the divide between the Nadina Glacier and Klawasi River drainages, T. 3 N., R. 3 E., Copper River Meridian;

Thence northeasterly, along the crest of the divide between the drainages of Nadina Glacier and Klawasi River, to a point between sections 28 and 33, T. 4 N., R. 4 E., Copper River Meridian;

Thence easterly, between sections 28 and 33, 27 and 34, 26 and 35, 25 and 36, to a point on the divide between the drainages of Sanford River and Dadina River, T. 4 N., R. 4 E., Copper River Meridian;

Thence easterly and southeasterly, along the crest of the divide between the Sanford River and Dadina River drainages, to a point between sections 3 and 34, Tps. 3 and 4 N., R. 5 E., Copper River Meridian;

Thence easterly, between Tps. 3 and 4 N., to the corner of sections 2, 3, 34 and 35, Tps. 3 and 4 N., R. 6 E., Copper River Meridian;

Thence southerly, between sections 2 and 3, to the corner of sections 2, 3, 10 and 11, T. 3 N., R. 6 E., Copper River Meridian;

Thence easterly, between sections 2 and 11, to the corner of sections 1, 2, 11 and 12, T. 3 N., R. 6 E., Copper River Meridian;

Thence southerly, between sections 11 and 12, to the corner of sections 11, 12, 13 and 14, T. 3 N., R. 6 E., Copper River Meridian;

Thence easterly, between sections 12 and 13, to the corner of sections 7, 12, 13 and 18, T. 3 N., Rs. 6 and 7 E., Copper River Meridian;

Thence southerly, between Rs. 6 and 7 E., to the corner of sections 7, 12, 13 and 18, T. 2 N., Rs. 6 and 7 E., Copper River Meridian;

Thence easterly, between sections 7 and 18, 8 and 17, to the corner of sections 8, 9, 16 and 17, T. 2 N., R. 7 E., Copper River Meridian;

Thence southerly, between sections 16 and 17, 20 and 21, 28 and 29, 32 and 33, 4 and 5, to the corner of sections 4, 5, 8 and 9, T. 1 N., R. 7 E., Copper River Meridian;

Thence easterly, between sections 4 and 9, 3 and 10, 2 and 11, 1 and 12, 6 and 7, 5 and 8, 4 and 9, to the corner of sections 3, 4, 9 and 10, T. 1 N., R. 8 E., Copper River Meridian;

Thence southerly, between sections 9 and 10, to the corner of sections 9, 10, 15 and 16, T. 1 N., R. 8 E., Copper River Meridian;

Thence easterly, between sections 10 and 15, to the corner of sections 10, 11, 14 and 15, T. 1 N., R. 8 E., Copper River Meridian;

Thence southerly, between sections 14 and 15, 22 and 23, to the corner of sections 22, 23, 26 and 27, T. 1 N., R. 8 E., Copper River Meridian;

Thence easterly, between sections 23 and 26, to a point on the divide between the Long Glacier and Kluvesna and Kotsina River drainages, T. 1 N., R. 8 E., Copper River Meridian;

Thence southwesterly, along the crest of the divide between the Long Glacier and Kluvesna, Clear Creek, and Kotsina River drainages, to the summit of a peak in the northwesterly portion of section 34, T. 1 S., R. 7 E., Copper River Meridian, approximate elevation 5,061 feet;

Thence on an approximate forward bearing of S. 2° E., to a point on the right bank of the Kotsina River and the right bank of an unnamed tributary to the Kotsina River at the confluence of the unnamed tributary with the Kotsina River in the northwesterly portion of section 10, T. 2 S., R. 7 E., Copper River Meridian;

Thence westerly, southerly, and westerly, along the right bank of the Kotsina River to a point at its confluence with the left bank of the Copper River, at the line of ordinary high water, in the northeasterly portion of section 12, T. 4 S., R. 5 E., Copper River Meridian, the place of beginning.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

Central Unit

Beginning at a point on the left bank of the Chitina River, at the line of mean high water, at its confluence with the left bank of Marble Creek in the easterly portion of section 21, T. 10 S., R. 21 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 31° E., along the common boundary with the Wrangell-St. Elias National Park, to the ¼ corner of sections 10 and 11, T. 10 S., R. 21 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 76° E., to the north ¼ corner of sections 11 and 12, T. 10 S., R. 21 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 37° E., to the summit of a peak near the center of section 31, T. 9 S., R. 22 E., Copper River Meridian, approximate elevation 6,870 feet;

Thence northeasterly, easterly, northerly and northwesterly, on the crest of a ridge between Barnard Glacier and Ram and Tittmann Glaciers, to the summit of a peak in the northerly portion of section 19, T. 7 S., R. 23 E., Copper River Meridian, approximate elevation 9,000 feet;

Thence on an approximate forward bearing of N. 26° E., to the summit of a peak in the northwesterly portion of section 8, T. 7 S., R. 23 E., Copper River Meridian, approximate elevation 7,540 feet;

Thence northeasterly, northwesterly, southwesterly, westerly and northwesterly, on the crest of a ridge between the Chitina River, White River, Glacier Creek, Dan Creek, and Chitistone River drainages, to the summit of a peak in the northeasterly portion of section 27, T. 5 S., R. 16 E., Copper River Meridian, approximate elevation 6,800 feet;

Thence southwesterly, on the crest of a ridge and spur ridge to a point on the right bank of Dan Creek near the center of section 4, T. 6 S., R. 16 E., Copper River Meridian;

Thence westerly and southwesterly, along the right bank of Dan Creek and the left bank of Nizina River, to a point between sections 7 and 8, T. 6 S., R. 15 E., Copper River Meridian;

Thence northerly, between sections 7 and 8, to the meander line on the right bank of Nizina River in section 12, T. 6 S., R. 14 E., (surveyed), Copper River Meridian;

Thence northeasterly, along the right bank of the Nizina River to the right bank of the mouth of an unnamed creek in the easterly portion of section 12, T. 6 S., R. 14 E., (surveyed), Copper River Meridian;

Thence northerly, along the right bank of the unnamed creek to a point on the north boundary of section 1, T. 6 S., R. 14 E., (surveyed), Copper River Meridian;

Thence westerly, on the north boundaries of sections 1 and 2, T. 6 S. R. 14 E., (surveyed) Copper River Meridian, to the corner of sections 31 and 36, T. 5 S., Rs. 14 and 15 E., Copper River Meridian;

Thence northerly, between Rs. 14 and 15 E., to a point between sections 19 and 24, on the left bank of McCarthy Creek, T. 5 S., Rs. 14 and 15 E., Copper River Meridian;

Thence northeasterly, along the left bank of McCarthy Creek, to a junction on the right bank of an unnamed creek in the northerly portion of section 8, T. 5 S., R. 15 E., Copper River Meridian;

Thence northeasterly, along the right bank of the unnamed creek and its extension to the summit of a peak in the southwesterly portion of section 33, T. 4 S., R. 15 E., Copper River Meridian, approximate elevation 5,630 feet;

Thence northeasterly, northerly and northwesterly, on the crest of a ridge between the drainages of West Fork Glacier, West Fork River, McCarthy Creek, and Nizina River to the summit of a peak in the easterly portion of section 36, T. 2 S., R. 14 E., Copper River Meridian, approximate elevation 8,068 feet;

Thence westerly, on the crest of a ridge to the summit of a peak in the southwesterly portion of section 35, T. 2 S., R. 14 E., Copper River Meridian, approximate elevation 8,400 feet;

Thence southerly and southwesterly, on the crest of Bonanza Ridge between the drainages of Root Glacier and McCarthy Creek, to the summit of a peak near the center of section 10, T. 4 S., R. 14 E., Copper River Meridian, approximate elevation 6,521 feet;

Thence westerly and northwesterly, on the crest of a ridge to the summit of a peak in the northwesterly portion of section 4, T. 4 S., R. 14 E., Copper River Meridian, approximate elevation 5,720 feet;

Thence on an approximate forward bearing of N. 37° W., to the corner of sections 4, 5, 32 and 33, Tps. 3 and 4 S., R. 14 E., Copper River Meridian;

Thence westerly, between Tps. 3 and 4 S., to the corner of sections 4, 5, 32 and 33, Tps. 3 and 4 S., R. 13 E., Copper River Meridian;

Thence northerly, between sections 32 and 33, to the toe of a spur ridge between sections 32 and 33, T. 3 S., R. 13 E., Copper River Meridian, approximate elevation 3,200 feet;

Thence northwesterly, on the spur ridge and crest of a ridge between the drainages of Kennicott Glacier and Hidden Creek and Lakina Glacier, to the summit of a peak in the southwesterly portion of section 30, T. 2 S., R. 12 E., Copper River Meridian, approximate elevation 9,650 feet;

Thence southwesterly, on the crest of a ridge between the drainages of Kuskulana and Lakina Glaciers, Mill Creek, and Chokosna River, to the summit of a peak in the northerly portion of section 34, T. 3 S., R. 10 E., Copper River Meridian, approximate elevation 6,800 feet;

Thence southwesterly, southerly, and westerly, on the crest of a ridge between the drainages of Kuskulana and Chokosna rivers, to the summit of a peak in the southeasterly portion of section 16, T. 4 S., R. 9 E., Copper River Meridian, approximate elevation 5,920 feet;

Thence southerly, on a spur ridge, to the intersection of an unnamed creek near the line between sections 21 and 28, T. 4 S., R. 9 E., Copper River Meridian;

Thence southerly, along the right bank of the unnamed creek and westerly shore of an unnamed lake, to the northerly boundary of the right-of-way of the Chitina-McCarthy Road in the southeasterly portion of section 4, T. 5 S., R. 9 E., Copper River Meridian;

Thence northwesterly, along the northerly boundary of the right-of-way of the Chitina-McCarthy Road, to a point on the south boundary of section 33, T. 4 S., R. 8 E., Copper River Meridian;

Thence westerly, on the First Standard Parallel South, to the meander corner of section 1 on the left bank of Kuskulana River, T. 5 S., R. 7 E., Copper River Meridian;

Thence southerly and westerly, along the left bank of Kuskulana River to the right bank of an unnamed creek in the southerly portion of section 1, T. 5 S., R. 7 E., Copper River Meridian;

Thence southerly, along the right bank of the unnamed creek and the easterly shore of an unnamed lake, to the most southeasterly point of the unnamed lake in the southerly portion of section 12, T. 5 S., R. 7 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 1° E., to the most northeasterly point of the eastern shore of an unnamed lake in the northerly portion of section 13, T. 5 S., R. 7 E., Copper River Meridian;

Thence southeasterly and southerly, along the easterly shore of an unnamed lake and left bank of an unnamed creek, to its confluence with the Chitina River in the easterly portion of section 24, T. 5 S., R. 7 E., Copper River Meridian;

Thence southeasterly, along the right bank of the Chitina River, to the meander corner of sections 19 and 24, T. 5 S., Rs. 7 and 8 E., Copper River Meridian;

Thence southerly, between Rs. 7 and 8 E., to the meander corner of sections 25 and 30 on the left bank of the Chitina River at the line of mean high water, T. 5 S., Rs. 7 and 8 E., Copper River Meridian;

Thence easterly and southeasterly, along the left bank of the Chitina River, at the line of mean high water, to a point at its confluence with the left bank of Marble Creek in the easterly portion of section 21, T. 10 S., R. 21 E., the place of beginning.

All references to sections and townships are to protracted units unless specifically identified as surveyed units.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

South Unit

Beginning at a point at the line of mean high tide on Disenchantment Bay at the right bank of the mouth of an unnamed creek in the southwesterly portion of section 33, T. 22 S., R. 34 E., Copper River Meridian;

Thence southwesterly, departing from a common point on the boundary of the Wrangell-St. Elias National Park, along the line of mean high tide of Disenchantment and Yakutat Bays, including all coastal barrier or other islands above the line of mean high tide, to a point located in the northwesterly portion of section 4, T. 26 S., R. 30 E. and lying due south of an unnamed inlet's most western point located near the section line of sections 4 and 33, Tps. 25 and 26 S., R. 30 E., Copper River Meridian;

Thence north, along a common boundary with the Wrangell-St. Elias National Park, across the spit to an unnamed inlet's most western point located near the section line of sections 4 and 33, Tps. 25 and 26 S., R. 30 E., Copper River Meridian;

Thence easterly, along the north shoreline of the unnamed inlet, to a point on the left bank of the most eastern braided stream at the mouth of Manby Stream in the northwesterly portion of section 3, T. 26 S., R. 30 E., Copper River Meridian;

Thence northerly, along the left bank of Manby Stream, to a point between sections 16 and 21, T. 25 S., R. 30 E., Copper River Meridian;

Thence easterly, between sections 16 and 21, 15 and 22, 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 25 S., Rs. 30 and 31 E., Copper River Meridian;

Thence northerly, between Rs. 30 and 31 E., to a point between sections 1 and 6, on the southwesterly shore of Malaspina Lake, T. 25 S., Rs. 30 and 31 E., Copper River Meridian;

Thence northerly, easterly, northeasterly and southeasterly, along the line of mean high water of the northerly shore of Malaspina Lake, to a point between sections 13 and 18, T. 24 S., Rs. 31 and 32 E., Copper River Meridian;

Thence northerly, between Rs. 31 and 32 E., to the corner of Tps. 22 and 23 S., Rs. 31 and 32 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 49° E., to the summit of a hill in the northeasterly portion of section 31, T. 22 S., R. 32 E., Copper River Meridian, approximate elevation 3,000 feet;

Thence on an approximate forward bearing of N. 17° E., to the summit of a hill in the southwesterly portion of section 20, T. 22 S., R. 32 E., Copper River Meridian, approximate elevation 3,625 feet;

Thence on an approximate forward bearing of N. 5° W., to the summit of Floral Hills in the southwesterly portion of section 17, T. 22 S., R. 32 E., Copper River Meridian, approximate elevation 4,175 feet;

Thence on an approximate forward bearing of S. 83° E., to the summit of a peak in the easterly portion of section 20, T. 22 S., R. 33 E., Copper River Meridian, approximate elevation 5,336 feet;

Thence on an approximate forward bearing of S. 39° E., to the summit of a peak in the northwesterly portion of section 34, T. 22 S., R. 33 E., Copper River Meridian, approximate elevation 4,388 feet;

Thence on an approximate forward bearing of N. 80° E., to the summit of a peak in the northerly portion of section 36, T. 22 S., R. 33 E., Copper River Meridian, approximate elevation 4,780 feet;

Thence on an approximate forward bearing of S. 77° E., to the summit of a peak in the northwesterly portion of section 32, T. 22 S., R. 34 E., Copper River Meridian, approximate elevation 4,280 feet;

Thence on an approximate forward bearing of S. 71° E., to a point at the mouth on the right bank of an unnamed creek in the southwesterly portion of section 33, and at the line of mean high tide of Disenchantment Bay, T. 22 S., R. 34 E., Copper River Meridian, the place of beginning.

Units of the National Wilderness Preservation System Within the Wrangell-St. Elias National Park and Preserve

Section 701(8), Public Law 96-487 (ANILCA):

Wrangell-St. Elias Wilderness

The Wrangell-St. Elias Wilderness as generally depicted on a map numbered WRST-90,007, dated August 1980, consists of approximately eight million seven hundred thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at the meander corner of section 35 only, on the right bank of the main channel of the White River on the International Boundary between the United States of America and Canada, T. 1 S., R. 24 E., Copper River Meridian;

Thence westerly, along the right bank of the main channel of the White River, to the meander corner of sections 4 and 33, Tps. 1 and 2 S., R. 22 E., Copper River Meridian;

Thence westerly, between Tps. 1 and 2 S., to a point on the right bank of the White River between sections 6 and 31, Tps. 1 and 2 S., R. 21 E., Copper River Meridian;

Thence southwesterly along the right bank of White River to a point between sections 2 and 3, T. 2 S., R. 20 E., Copper River Meridian;

Thence northerly, between sections 2 and 3, 34 and 35, 26 and 27, 22 and 23, to the corner of sections 14, 15, 22 and 23, T. 1 S., R. 20 E., Copper River Meridian;

Thence easterly, between sections 14 and 23, 13 and 24, 18 and 19, 17 and 20, 16 and 21, 15 and 22, to a point between sections 15 and 22, at the toe of a spur ridge, T. 1 S., R. 21 E., Copper River Meridian;

Thence northeasterly, along a spur ridge to the summit of a peak in the easterly portion of section 15, T. 1 S., R. 21 E., Copper River Meridian, approximate elevation 4,360 feet;

Thence on an approximate forward bearing of N. 49° E., to the summit of a peak in the southeasterly portion of section 1, T. 1 S., R. 21 E., Copper River Meridian, approximate elevation 4,800 feet;

Thence northerly, westerly, northeasterly and southeasterly, along the crest of a ridge between Beaver Creek and White River drainages, to a point between sections 18 and 19, T. 1 N., R. 22 E., Copper River Meridian;

Thence easterly, between sections 18 and 19, 17 and 20, 16 and 21, to a point between sections 16 and 21, and on the crest of a ridge, T. 1 N., R. 22 E., Copper River Meridian, approximate elevation 6,280 feet;

Thence northeasterly, westerly and northwesterly, along the crest of the divide between White River and Beaver Creek drainages, to a point between sections 19 and 24, T. 2 N., Rs. 21 and 22 E., Copper River Meridian;

Thence northerly, between Rs. 21 and 22 E., to the meander corner of sections 1 and 6, on the right bank of Beaver Creek, T. 2 N., Rs. 21 and 22 E., Copper River Meridian;

Thence westerly, along the right bank of Beaver Creek, to a point between sections 1 and 36, Tps. 2 and 3 N., R. 21 E., Copper River Meridian;

Thence westerly, between Tps. 2 and 3 N., to the ¼ section corner of sections 4 and 33, Tps. 2 and 3 N., R. 21 E., Copper River Meridian;

Thence northerly, on the north and south centerlines of sections 33 and 28, to the ¼ section corner of sections 21 and 28, T. 3 N., R. 21 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 36° W., to the summit of a peak in the southwesterly portion of section 21, T. 3 N., R. 21 E., Copper River Meridian, approximate elevation 5,280 feet;

Thence northwesterly and westerly along the crest of a ridge between Carl Creek, James Creek, Toby Creek, California Creek, and Beaver Creek drainages, to a point between sections 5 and 6, T. 3 N., R. 20 E., Copper River Meridian;

Thence southerly, between sections 5 and 6, to the corner of sections 5, 6, 7 and 8, T. 3 N., R. 20 E., Copper River Meridian;

Thence westerly, between sections 6 and 7, to the ¼ section corner of sections 6 and 7, T. 3 N., R. 20 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 7, to the center ¼ section corner of section 7, T. 3 N., R. 20 E., Copper River Meridian;

Thence westerly, on the east and west centerline of section 7, to the special meander corner on the east and west centerline of section 7, T. 3 N., R. 20 E., Copper River Meridian, on the easterly shore of Little Beaver Lake;

Thence southwesterly, along the shoreline of Little Beaver Lake, to the most southerly point of the lake in the westerly portion of section 7, T. 3 N., R. 20 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 77° W., to the summit of a peak, near the center of section 12, T. 3 N., R. 19 E., Copper River Meridian, approximate elevation 5,600 feet;

Thence southwesterly, along the crest of a ridge and a southwesterly sloping spur between the Chathenda and Bryan Creek drainages, to the right bank of Bryan Creek in the southerly portion of section 18, T. 3 N., R. 19 E., Copper River Meridian;

Thence westerly and northwesterly, along the right bank of Bryan Creek, to the special meander corner on the east and west centerline of section 13, T. 3 N., R. 18 E., Copper River Meridian;

Thence westerly, on the east and west centerlines of sections 13, 14, 15, 16 and 17 to the ¼ section corner of sections 17 and 18, T. 3 N., R. 18 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 69° W., to the summit of a peak, in the easterly portion of section 18, T. 3 N., R. 18 E., Copper River Meridian, approximate elevation 5,545 feet;

Thence on an approximate forward bearing of N. 20° W., to the summit of Euchre Mountain, near the center of section 7, T. 3 N., R. 18 E., Copper River Meridian, approximate elevation 6,862 feet;

Thence on an approximate forward bearing of north, to the center ¼ section corner of section 18, T. 4 N., R. 18 E., Copper River Meridian;

Thence on an approximate forward bearing of N. 48° W., to the summit of a point on a ridge in the southwesterly portion of section 2, T. 4 N., R. 17 E., Copper River Meridian, approximate elevation 4,185 feet;

Thence on an approximate forward bearing of S. 75° W., to the summit of a peak, in the southwesterly portion of section 3, T. 4 N., R. 17 E., Copper River Meridian, approximate elevation 4,830 feet;

Thence northwesterly, southwesterly and northerly, along the crest of the divides between the drainages of Cross Creek, Notch Creek, Nikonda Glacier and Nabesna Glacier, to a point on the east and west centerline of the southeast ¼ of section 14, T. 4 N., R. 14 E., Copper River Meridian;

Thence westerly, on the east and west centerlines of the south ½ of sections 14, 15, 16, 17, 18 and 13, to the south 1/16 section corner of section 13 and 14, T. 4 N., R. 13 E., Copper River Meridian;

Thence northerly, between sections 13 and 14, 11 and 12, 1 and 2, to the closing corner of sections 1 and 2, T. 4 N., R. 13 E., Copper River Meridian;

Thence westerly, on the First Standard Parallel North, to the standard corner of sections 34 and 35, T. 5 N., R. 13 E., Copper River Meridian;

Thence northerly, between sections 34 and 35, 26 and 27, 22 and 23, 14 and 15, 10 and 11, to the corner of sections 2, 3, 10 and 11, T. 5 N., R. 13 E., Copper River Meridian;

Thence westerly, between sections 3 and 10, to the corner of sections 3, 4, 9 and 10, T. 5 N., R. 13 E., Copper River Meridian;

Thence northerly, between sections 3 and 4, 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, 33 and 34, to the meander corner of sections 33 and 34, on the right bank of Jacksina Creek, T. 7 N., R. 13 E., Copper River Meridian;

Thence southwesterly, along the right bank of Jacksina Creek, to a point due south of the confluence of Canyon Creek, near the center of section 5, T. 6 N., R. 13 E., Copper River Meridian;

Thence northerly, across Jacksina Creek and along the left bank of Canyon Creek, to a point on the north and south centerline of section 5, T. 6 N., R. 13 E., Copper River Meridian;

Thence northerly, on the north and south centerline of section 5, to the ¼ section corner of sections 5 and 32, Tps. 6 and 7 N., R. 13 E., Copper River Meridian;

Thence westerly, between Tps. 6 and 7 N., to a point between sections 5 and 32 on the crest of a ridge, Tps. 6 and 7 N., R. 13 E., Copper River Meridian, approximate elevation 3,150 feet;

Thence northwesterly, on the crest of a divide between Jack Creek and Canyon Creek drainages, to the summit of a peak, in the southerly portion of section 11, T. 7 N., R. 12 E., Copper River Meridian, approximate elevation 6,900 feet;

Thence southwesterly, on the crest of the divide between Tanada Lake, Jacksina Creek and Pass Creek drainages, to a point between sections 1 and 36, Tps. 6 and 7 N., R. 11 E., Copper River Meridian;

Thence westerly, between Tps. 6 and 7 N., to a point between sections 6 and 31, on the crest of a ridge, Tps. 6 and 7 N., R. 11 E.,

Copper River Meridian, approximate elevation 6,500 feet;

Thence southwesterly, on the crest of the divide between the drainages of Copper Lake and Goat Creek, to the junction of ridges, in the northerly portion of section 14, T. 6 N., R. 10 E., Copper River Meridian, approximate elevation 9,000 feet;

Thence northwesterly, on the crest of the divide between Copper Lake and Copper River drainages, to a point between sections 7 and 18, T. 7 N., R. 10 E., Copper River Meridian;

Thence westerly, between sections 7 and 18, 12 and 13, to the corner of sections 11, 12, 13 and 14, T. 7 N., R. 9 E., Copper River Meridian;

Thence northerly, between sections 11 and 12, 1 and 2, to the corner of sections 1, 2, 35 and 36, Tps. 7 and 8 N., R. 9 E., Copper River Meridian;

Thence westerly, between Tps. 7 and 8 N., to the corner of sections 3, 4, 33 and 34, Tps. 7 and 8 N., R. 9 E., Copper River Meridian;

Thence northerly, between sections 33 and 34, 27 and 28, 21 and 22, 15 and 16, 9 and 10, 3 and 4, to the closing corner of sections 3 and 4, T. 8 N., R. 9 E., Copper River Meridian;

Thence westerly, on the Second Parallel North, to the closing corner of sections 1 and 2, T. 8 N., R. 5 E., Copper River Meridian;

Thence southerly, between sections 1 and 2, to the corner of sections 1, 2, 11 and 12, T. 8 N., R. 5 E., Copper River Meridian;

Thence westerly, between sections 2 and 11, to the corner of sections 2, 3, 10 and 11, T. 8 N., R. 5 E., Copper River Meridian;

Thence southerly, between sections 10 and 11, to the corner of sections 10, 11, 14 and 15, T. 8 N., R. 5 E., Copper River Meridian;

Thence westerly, between sections 10 and 15, to the corner of sections 9, 10, 15 and 16, T. 8 N., R. 5 E., Copper River Meridian;

Thence southerly, between sections 15 and 16, to the corner of sections 15, 16, 21 and 22, T. 8 N., R. 5 E., Copper River Meridian;

Thence westerly, between sections 16 and 21, to the corner of sections 16, 17, 20 and 21, T. 8 N., R. 5 E., Copper River Meridian;

Thence southerly, between sections 20 and 21, to the corner of sections 20, 21, 28 and 29, T. 8 N., R. 5 E., Copper River Meridian;

Thence westerly, between sections 20 and 29, to the corner of sections 19, 20, 29 and 30, T. 8 N., R. 5 E., Copper River Meridian;

Thence southerly, between sections 29 and 30, to the corner of sections 29, 30, 31 and 32, T. 8 N., R. 5 E., Copper River Meridian;

Thence westerly, between sections 30 and 31, to the corner of sections 25, 30, 31 and 36, T. 8 N., Rs. 4 and 5 E., Copper River Meridian;

Thence southerly, between Rs. 4 and 5 E., to the corner of sections 13, 18, 19 and 24, T. 7 N., Rs. 4 and 5 E., Copper River Meridian;

Thence westerly, between sections 13 and 24, to the corner of sections 13, 14, 23 and 24, T. 7 N., R. 4 E., Copper River Meridian;

Thence southerly, between sections 23 and 24, 25 and 26, to the corner of sections 25, 26, 35 and 36, T. 7 N., R. 4 E., Copper River Meridian;

Thence westerly, between sections 26 and 35, 27 and 34, to the corner of sections 27, 28, 33 and 34, T. 7 N., R. 4 E., Copper River Meridian;

Thence southerly, between sections 33 and 34, 3 and 4, 9 and 10, to a point between sections 9 and 10, and on the left bank of an unnamed creek, T. 6 N., R. 4 E., Copper River Meridian;

Thence southeasterly, along the left bank of the unnamed creek to a point between sections 19 and 24, T. 6 N., Rs. 4 and 5 E., Copper River Meridian;

Thence southerly, between Rs. 4 and 5 E., to the corner of sections 13, 18, 19 and 24, T. 5 N., Rs. 4 and 5 E., Copper River Meridian;

Thence westerly, between sections 13 and 24, to the corner of sections 13, 14, 23 and 24, T. 5 N., R. 4 E., Copper River Meridian;

Thence northerly, between sections 13 and 14, to the ¼ section corner of sections 13 and 14, T. 5 N., R. 4 E., Copper River Meridian;

Thence westerly, on the east and west centerline of section 14, to the ¼ section corner of sections 14 and 15, T. 5 N., R. 4 E., Copper River Meridian;

Thence northerly, between sections 14 and 15, to the corner of sections 10, 11, 14 and 15, T. 5 N., R. 4 E., Copper River Meridian;

Thence westerly, between sections 10 and 15, 9 and 16, 8 and 17, 7 and 18, to the corner of sections 7, 12, 13 and 18, T. 5 N., Rs. 3 and 4 E., Copper River Meridian;

Thence southerly, between Rs. 3 and 4 E., to the corner of sections 13, 18, 19 and 24, T. 5 N., Rs. 3 and 4 E., Copper River Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, to the corner of sections 15, 16, 21 and 22, T. 5 N., R. 3 E., Copper River Meridian;

Thence southerly between sections 21 and 22, 27 and 28, 33 and 34, to the standard corner of sections 33 and 34, T. 5 N., R. 3 E., Copper River Meridian;

Thence westerly, on the First Standard Parallel North, to the closing corner of sections 4 and 5, T. 4 N., R. 3 E., Copper River Meridian;

Thence southerly, between sections 4 and 5, 8 and 9, 16 and 17, 20 and 21, 28 and 29, 32 and 33, 4 and 5, 8 and 9, 16 and 17, 20 and 21, 28 and 29, 32 and 33, to the corner of sections 4, 5, 32 and 33, Tps. 2 and 3 N., R. 3 E., Copper River Meridian;

Thence easterly, between Tps. 2 and 3 N., to the corner of Tps. 2 and 3 N., Rs. 3 and 4 E., Copper River Meridian;

Thence southerly, between Rs. 3 and 4 E., to the corner of sections 19, 24, 25 and 30, T. 2 N., Rs. 3 and 4 E., Copper River Meridian;

Thence easterly, between sections 19 and 30, 20 and 29, 21 and 28, 22 and 27, to a point between sections 22 and 27, and on the right bank of an unnamed creek, T. 2 N., R. 4 E., Copper River Meridian;

Thence southerly, along the right bank of the unnamed creek, to its confluence with the Dadina River, in the northerly portion of section 27, T. 2 N., R. 4 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 73° E., to the summit of a peak, in the northeasterly portion of section 36, T. 2 N., R. 4 E., Copper River Meridian, approximate elevation 4,520 feet;

Thence on an approximate forward bearing of S. 59° E., to the junction of Chichokna River and Chetaslina River, in the southwesterly portion of section 4, T. 1 N., R. 5 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 20° E., to the summit of a peak, in the southerly portion of section 22, T. 1 N., R. 5 E., Copper River Meridian, approximate elevation 3,660 feet;

Thence on an approximate forward bearing of S. 57° E., to the summit of a peak, in the northwesterly portion of section 36, T. 1 N., R. 5 E., Copper River Meridian, approximate elevation 5,080 feet;

Thence on an approximate forward bearing of S. 24° W., to the summit of a peak, in the northwesterly portion of section 1, T. 1 S., R. 5 E., Copper River Meridian, approximate elevation 4,920 feet;

Thence on an approximate forward bearing of S. 35° E., to the ¼ section corner of sections 7 and 12, T. 1 S., Rs. 5 and 6 E., Copper River Meridian;

Thence southerly, between Rs. 5 and 6 E., to a point between sections 19 and 24, and on the left bank of the Cheshnina River, T. 1 S., Rs. 5 and 6 E., Copper River Meridian;

Thence easterly, along the left banks of the Cheshnina River and a tributary of the Cheshnina River, to a point between sections 21 and 22, T. 1 S., R. 6 E., Copper River Meridian;

Thence southerly, between sections 21 and 22, 27 and 28, to a point between sections 27 and 28, on the right bank of an unnamed creek, T. 1 S., R. 6 E., Copper River Meridian;

Thence southerly and southeasterly, along the right bank of the unnamed creek, to its confluence with an unnamed lake, in the northeasterly portion of section 3, T. 2 S., R. 6 E., Copper River Meridian;

Thence easterly, along the northerly shore of the unnamed lake, to the most northeasterly point of the unnamed lake, in the northwesterly portion of section 2, T. 2 S., R. 6 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 63° E., to a point between sections 1 and 2, and at the confluence of the stream flowing from Long Glacier and Kotsina River, T. 2 S., R. 6 E., Copper River Meridian;

Thence southerly, between sections 1 and 2, 11 and 12, to a point between sections 11 and 12, on the crest of a ridge, T. 2 S., R. 6 E., Copper River Meridian, approximate elevation 4,800 feet;

Thence southeasterly, northeasterly and southerly, along the crest of the divide between Kotsina River, Elliot Creek and Kuskulana River drainages, to the summit of a peak, in the southwesterly portion of section 25, T. 2 S., R. 9 E., Copper River Meridian, approximate elevation 6,330 feet;

Thence on an approximate forward bearing of S. 60° E., to a point between sections 4 and 5, and on a toe of a spur, T. 3 S., R. 10 E., Copper River Meridian;

Thence southerly and southeasterly, between the Kuskulana Glacier and Slatka Creek drainages, to the summit of a peak, in the northerly portion of section 34, T. 3 S., R. 10 E., Copper River Meridian, approximate elevation 6,800 feet;

Thence southwesterly, southerly and westerly, on the crest of a ridge between the drainages of Kuskulana and Chokosna Rivers, to the summit of a peak, in the southeasterly portion of section 16, T. 4 S., R. 9 E., Copper River Meridian, approximate elevation 5,920 feet;

Thence southerly, on a spur ridge, to a point on the line between sections 21 and 28, T. 4 S., R. 9 E., Copper River Meridian;

Thence easterly, between sections 21 and 28, to the intersection with the left bank of an unnamed creek in sections 21 and 28, T. 4 S., R. 9 E., Copper River Meridian;

Thence southerly, along the left bank of the unnamed creek and westerly shore of an unnamed lake, to a point 200 feet from, and parallel to, the centerline of the Chitina-McCarthy Road, in the southeasterly portion of section 4, T. 5 S., R. 9 E., Copper River Meridian;

Thence easterly, along the north side of Chitina-McCarthy Road at a distance of 200 feet from, and parallel to, the centerline, to a point on the north and south centerline of section 10, T. 5 S., R. 9 E., Copper River Meridian;

Thence northerly, on the north and south centerlines of sections 10 and 3, to the center-south 1/16 section corner of section 3, T. 5 S., R. 9 E., Copper River Meridian;

Thence easterly, on the east and west centerline of the southeast 1/4 of section 3, to the south 1/16 section corner of sections 2 and 3, T. 5 S., R. 9 E., Copper River Meridian;

Thence southerly, between sections 2 and 3, 10 and 11, to a point between sections 10 and 11, 200 feet from, and parallel to, the centerline on the northerly side of the Chitina-McCarthy Road, T. 5 S., R. 9 E., Copper River Meridian;

Thence southeasterly, along the easterly side of the Chitina-McCarthy Road 200 feet from, and parallel to, the centerline, to a point on the north and south centerline of the northwest 1/4 of section 13, T. 5 S., R. 9 E., Copper River Meridian;

Thence northerly, on the north and south centerline of the northwest 1/4 of section 13, to the west 1/16 section corner of sections 12 and 13, T. 5 S., R. 9 E., Copper River Meridian;

Thence easterly, between sections 12 and 13, to the 1/4 section corner of sections 12 and 13, T. 5 S., R. 9 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 13, to the center 1/4 section corner of section 13, T. 5 S., R. 9 E., Copper River Meridian;

Thence easterly, on the east and west centerline of section 13, to the 1/4 section corner of sections 13 and 18, T. 5 S., Rs. 9 and 10 E., Copper River Meridian;

Thence southerly, between Rs. 9 and 10 E., to the corner of sections 13, 18, 19 and 24, T. 5 S., Rs. 9 and 10 E., Copper River Meridian;

Thence easterly, between sections 18 and 19, to a point between sections 18 and 19 at the toe of a spur, T. 5 S., R. 10 E., Copper River Meridian, approximate elevation 2,150 feet;

Thence southeasterly, easterly, northeasterly and southeasterly, on a spur and crest of the Crystalline Hills between Gilahina River and Chitina River drainages, to a point on the east and west centerline of section 24, T. 5 S., R. 11 E., Copper River Meridian;

Thence easterly, on the east and west centerlines of sections 24, 19, 20 and 21, to a point in the western portion of section 21 on the east and west centerline of section 21, and the right bank of an unnamed creek, T. 5 S., R. 12 E., Copper River Meridian;

Thence southerly, along the right bank of the unnamed creek, to the confluence of Lakina River, in the northwesterly portion of section 28, T. 5 S., R. 12 E., Copper River Meridian;

Thence northeasterly, along the left bank of Lakina River, to the confluence with an unnamed creek, in the southwesterly portion of section 10, T. 5 S., R. 12 E., Copper River Meridian;

Thence easterly, along the left bank of the unnamed creek, to a point between sections 11 and 12, T. 5 S., R. 12 E., Copper River Meridian;

Thence northerly, between sections 11 and 12, to a point between sections 11 and 12 and on the crest of a ridge, T. 5 S., R. 12 E., Copper River Meridian, approximate elevation 3,800 feet;

Thence northeasterly, northerly, northwesterly and northeasterly, along the crest of the divide between Fohlin Creek and Fourth of July Creek drainages, and along a spur to the corner of sections 4, 5, 32 and 33, Tps. 3 and 4 S., R. 13 E., Copper River Meridian;

Thence easterly, between Tps. 3 and 4 S., to the corner of sections 4, 5, 32 and 33, Tps. 3 and 4 S., R. 14 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 37° E., to the summit of a peak, near the center of section 4, T. 4 S., R. 14 E., Copper River Meridian, approximate elevation 5,720 feet;

Thence southeasterly and northeasterly, on the crest of the divide between Root Glacier and McCarthy Creek drainages, to the summit of a peak, in the southerly portion of section 35, T. 3 S., R. 14 E., Copper River Meridian, approximate elevation 5,837 feet;

Thence easterly, on a spur, to a point at the confluence of an unnamed creek and McCarthy Creek, in the northerly portion of section 1, T. 4 S., R. 14 E., Copper River Meridian;

Thence northerly, along the left bank of a channel of McCarthy Creek, to a point between sections 1 and 36, Tps. 3 and 4 S., R. 14 E., Copper River Meridian;

Thence easterly, between Tps. 3 and 4 S., to the corner of Tps. 3 and 4 S., Rs. 14 and 15 E., Copper River Meridian;

Thence southerly, between Rs. 14 and 15 E., to a point between sections 1 and 6 on the right bank of Lubbe Creek, T. 4 S., Rs. 14 and 15 E., Copper River Meridian;

Thence northeasterly, along the right bank of Lubbe Creek, to the toe of a spur, in the northwesterly portion of section 6, T. 4 S., R. 15 E., Copper River Meridian;

Thence southeasterly and southwesterly, on a spur, the crest of a ridge and a spur, to the summit of a peak, in the southerly portion of section 7, T. 4 S., R. 15 E., Copper River Meridian, approximate elevation 4,467 feet;

Thence on an approximate forward bearing of S. 25° E., to the summit of a peak in a saddle, in the southwesterly portion of section 17, T. 4 S., R. 15 E., Copper River Meridian, approximate elevation 5,500 feet;

Thence northeasterly, along the crest of the divide between Dimond Creek and East Fork McCarthy Creek drainages, to the summit of a peak, in the southerly portion of section 17, T. 4 S., R. 15 E., Copper River Meridian, approximate elevation 5,655 feet;

Thence on an approximate forward bearing of S. 2° E., to the confluence of an unnamed creek and East Fork McCarthy Creek, in the southeasterly portion of section 20, T. 4 S., R. 15 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 14° E., to the summit of a peak, in the easterly portion of section 29, T. 4 S., R. 15 E., Copper River Meridian, approximate elevation 4,980 feet;

Thence southeasterly and southerly, on the crest of the divide between McCarthy Creek and Nizina River drainages, to the summit of a peak, in the northwesterly portion of section 12, T. 5 S., R. 15 E., Copper River Meridian, approximate elevation 5,560 feet;

Thence on an approximate forward bearing of S. 81° E., to the summit of a hill, in the easterly portion of section 7, T. 5 S., R. 16 E., Copper River Meridian, approximate elevation 1,960 feet;

Thence on an approximate forward bearing of N. 83° E., to the meander corner of sections 8 and 9, on the right bank of Chitistone River, T. 5 S., R. 16 E., Copper River Meridian;

Thence easterly, along the right bank of the Chitistone River, to the meander corner of sections 4 and 5, T. 5 S., R. 17 E., Copper River Meridian;

Thence southerly, between sections 4 and 5, to the meander corner of sections 4 and 5, on the left bank of the Chitistone River, T. 5 S., R. 17 E., Copper River Meridian;

Thence southeasterly, along the right bank of an unnamed creek, to a point on the north and south centerline of the northeast 1/4 of section 9, T. 5 S., R. 17 E., Copper River Meridian;

Thence southerly, on the north and south centerlines of the northeast 1/4 and southeast 1/4 of section 9, to the southeast 1/16 section corner of section 9, T. 5 S., R. 17 E., Copper River Meridian;

Thence easterly, on the east and west centerline of the southeast 1/4 of section 9, to the south 1/16 section corner of sections 9 and 10, T. 5 S., R. 17 E., Copper River Meridian;

Thence southerly, between sections 9 and 10, 15 and 16, to a point between sections 15 and 16, on the right bank of Glacier Creek, T. 5 S., R. 17 E., Copper River Meridian;

Thence southeasterly, along the right bank of Glacier Creek, to a junction with an unnamed creek, in the northwesterly portion of section 25, T. 5 S., R. 17 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 50° W., to the summit of a peak, in the southerly portion of section 26, T. 5 S., R. 17 E., Copper River Meridian, approximate elevation 5,500 feet;

Thence southerly and southeasterly, on the crest of the divide between Glacier Creek, Copper Creek, Canyon Creek and Young Creek drainages, to the summit of a peak, in the southerly portion of section 30, T. 7 S., R. 18 E., Copper River Meridian, approximate elevation 5,350 feet;

Thence on an approximate forward bearing of S. 6° W., to the mouth of an unnamed creek on the most easterly shore of Big Bend Lakes, in the northwesterly portion of section 6, T. 8 S., R. 18 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 26° W., to the corner of sections 1, 6, 7

and 12, T. 8 S., Rs. 17 and 18 E., Copper River Meridian;

Thence southerly, between Rs. 17 and 18 E., to a point between sections 13 and 18 on the crest of a ridge, T. 8 S., Rs. 17 and 18 E., Copper River Meridian;

Thence southeasterly, on the crest of a ridge, to a point between sections 19 and 20, T. 8 S., R. 18 E., Copper River Meridian;

Thence southerly, between sections 19 and 20, 29 and 30, 31 and 32, to the standard corner of sections 31 and 32, T. 8 S., R. 18 E., Copper River Meridian;

Thence easterly, on the Second Standard Parallel South, to the ¼ section corner of section 4 only, T. 9 S., R. 18 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 4, to the special meander corner on the north and south centerline of section 4, and on the right bank of the Chitina River, T. 9 S., R. 18 E., Copper River Meridian;

Thence southwesterly, along the right bank of the main channel of Chitina River, to the most southwesterly point on the right bank of Chitina River, in the southwesterly portion of section 18, T. 9 S., R. 18 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 56° W., to the mouth of an unnamed creek on the left bank of the Chitina River, in the southwesterly portion of section 18, T. 9 S., R. 18 E., Copper River Meridian;

Thence northwesterly and southerly, along the left bank of the Chitina River and the left bank of the Copper River at the line of ordinary high water, to a point between sections 20 and 29, T. 10 S., R. 4 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 83° E., to the summit of a hill, in the northeasterly portion of section 28, T. 10 S., R. 4 E., Copper River Meridian, approximate elevation 680 feet;

Thence on an approximate forward bearing of N. 84° E., to the most northerly point on the shore of an unnamed lake, at the mouth of an unnamed creek, in the northerly portion of section 27, T. 10 S., R. 4 E., Copper River Meridian;

Thence northerly and northeasterly, along the left bank of an unnamed creek, to a point on the east and west centerline of section 11, T. 10 S., R. 4 E., Copper River Meridian;

Thence easterly, on the east and west centerlines of sections 11 and 12, to the center ¼ section corner of section 12, T. 10 S., R. 4 E., Copper River Meridian;

Thence northerly, on the north and south centerline of section 12, to the ¼ section corner of sections 1 and 12, T. 10 S., R. 4 E., Copper River Meridian;

Thence easterly, between sections 1 and 12, 6 and 7, to the ¼ section corner of sections 6 and 7, T. 10 S., R. 5 E., Copper River Meridian;

Thence northerly, on the north and south centerline of section 6, to the center ¼ section corner of section 6, T. 10 S., R. 5 E., Copper River Meridian;

Thence easterly, on the east and west centerline of section 6, to the ¼ section corner of sections 5 and 6, T., 10 S., R. 5 E., Copper River Meridian;

Thence northerly, between sections 5 and 6, to the corner of sections 5, 6, 31 and 32, Tps. 9 and 10 S., R. 5 E., Copper River Meridian;

Thence easterly, between Tps. 9 and 10 S., to the ¼ section corner of sections 5 and 32, Tps. 9 and 10 S., R. 5 E., Copper River Meridian;

Thence northerly, on the north and south centerline of section 32, to the center ¼ section corner of section 32, T. 9 S., R. 5 E., Copper River Meridian;

Thence easterly, on the east and west centerline of section 32, to the ¼ section corner of sections 32 and 33, T. 9 S., R. 5 E., Copper River Meridian;

Thence northerly, between sections 32 and 33, to the corner of sections 28, 29, 32 and 33, T. 9 S., R. 5 E., Copper River Meridian;

Thence easterly, between sections 28 and 33, to the ¼ section corner of sections 28 and 33, T. 9 S., R. 5 E., Copper River Meridian;

Thence northerly, on the north and south centerline of section 28, to the center ¼ section corner of section 28, T. 9 S., R. 5 E., Copper River Meridian;

Thence easterly, on the east and west centerlines of sections 28, 27 and 26, to a point on the right bank of Mac Creel Creek, T. 9 S., R. 5 E., Copper River Meridian;

Thence southeasterly, to a point on the right bank of Mac Creel Creek, to a point between sections 26 and 35, T. 9 S., R. 5 E., Copper River Meridian;

Thence easterly, between sections 26 and 35, 25 and 36, 30 and 31, to the meander corner of sections 30 and 31, on the left bank of Little Bremner River, T. 9 S., R. 6 E., Copper River Meridian;

Thence northerly, along the left bank of Little Bremner River, to the right bank of an unnamed creek, in the southerly portion of section 30, T. 9 S., R. 6 E., Copper River Meridian;

Thence southeasterly, along the right bank of an unnamed creek and the southerly shore of an unnamed lake, to a point on the north and south centerline of section 32, T. 9 S., R. 6 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 32, to the ¼ section corner of sections 5 and 32, Tps. 9 and 10 S., R. 6 E., Copper River Meridian;

Thence easterly, between Tps. 9 and 10 S., to a point between sections 3 and 34, on the right bank of an unnamed creek in the western portion of sections 3 and 34, Tps. 9 and 10 S., R. 6 E., Copper River Meridian;

Thence southeasterly, along the right banks of an unnamed creek and Salmon Creek, and the westerly shore of an unnamed lake, to the most southerly point on the unnamed lake, in the easterly portion of section 3, T. 10 S., R. 6 E., Copper River Meridian;

Thence on an approximate forward bearing of S. 16° E., to the left bank of Bremner River at the most northerly point of land in the southeasterly portion of section 3, T. 10 S., R. 6 E., Copper River Meridian;

Thence southwesterly, along the left bank of Bremner River, to the mouth and left bank of Eagle Creek, in the northwesterly portion of section 15, T. 10 S., R. 6 E., Copper River Meridian;

Thence southwesterly, along the left bank of Eagle Creek, to a point between sections 16 and 21, T. 10 S., R. 6 E., Copper River Meridian;

Thence westerly, between sections 16 and 21, 17 and 20, to the ¼ section corner of sections 17 and 20, T. 10 S., R. 6 E., Copper River Meridian;

Thence northerly, on the north and south centerline of section 17, to the center ¼ section corner of section 17, T. 10 S., R. 6 E., Copper River Meridian;

Thence westerly, on the east and west centerline of section 17, to the ¼ section corner of sections 17 and 18, T. 10 S., R. 6 E., Copper River Meridian;

Thence northerly, between sections 17 and 18, to the corner of sections 7, 8, 17 and 18, T. 10 S., R. 6 E., Copper River Meridian;

Thence westerly, between sections 7 and 18, 12 and 13, 11 and 14, 10 and 15, to the corner of sections 9, 10, 15 and 16, T. 10 S., R. 5 E., Copper River Meridian;

Thence southerly, between sections 15 and 16, to the ¼ section corner of sections 15 and 16, T. 10 S., R. 5 E., Copper River Meridian;

Thence westerly, on the east and west centerline of section 16, to the ¼ section corner of sections 16 and 17, T. 10 S., R. 5 E., Copper River Meridian;

Thence southerly, between sections 16 and 17, to the corner of sections 16 and 17, 20 and 21, T. 10 S., R. 5 E., Copper River Meridian;

Thence westerly, between sections 17 and 20, to the ¼ section corner of sections 17 and 20, T. 10 S., R. 5 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 20, to the center ¼ section corner of section 20, T. 10 S., R. 5 E., Copper River Meridian;

Thence westerly, on the east and west centerline of sections 20 and 19, to the ¼ section corner of sections 19 and 24, T. 10 S., Rs. 4 and 5 E., Copper River Meridian;

Thence southerly, between Rs. 4 and 5 E., to the corner of sections 19, 24, 25 and 30, T. 10 S., Rs. 4 and 5 E., Copper River Meridian;

Thence westerly, between sections 24 and 25, to the corner of sections 23, 24, 25 and 26, T. 10 S., R. 4 E., Copper River Meridian;

Thence southerly, between sections 25 and 26, to the ¼ section corner of sections 25 and 26, T. 10 S., R. 4 E., Copper River Meridian;

Thence westerly, on the east and west centerline of section 26, to the special meander corner on the east and west centerline of section 26, on the left bank of the Bremner River at the line of ordinary high water, T. 10 S., R. 4 E., Copper River Meridian;

Thence southeasterly, along the left banks of Bremner River and Copper River, at the line of ordinary high water, to a point S. 32° W., of the summit of a small hill in the central area of a 1,500 foot contour which spans the section line between sections 2 and 11, T. 12 S., R. 5 E., Copper River Meridian, said point near the southern boundary of section 10, T. 12 S., R. 5 E., Copper River Meridian;

Thence N. 32° E., to crest of a ridge between sections 2 and 35, Tps. 11 and 12 S., R. 5 E., Copper River Meridian, approximate elevation 3,500 feet;

Thence northeasterly and southeasterly, on the crest of the divide between the drainages of Wernicke River and the Bremner River to the summit of a peak in the center of section 26, T. 12 S., R. 9 E., Copper River Meridian, approximate elevation 6,075 feet;

Thence on an approximate forward bearing of S. 10° W., to the summit of a peak in the southeasterly portion of section 27, T. 13 S., R. 9 E., Copper River Meridian, approximate elevation 8,212 feet;

Thence easterly, northerly, southeasterly, southwesterly, and southerly, along the crest of a ridge between Miles Glacier and Fan Glacier, to the summit of Mount Tom White located in sections 18 and 19, T. 14 S., R. 10 E., Copper River Meridian, approximate elevation 11,191 feet;

Thence easterly and northeasterly, on the crest of a ridge, between Martin River Glacier, Fan Glacier, and Bremner Glacier, to the summit of Mount Hawkins in the southeasterly portion of section 4, T. 14 S., R. 11 E., Copper River Meridian, approximate elevation 9,368 feet;

Thence on an approximate forward bearing of S. 15° E., to the summit of a peak located in sections 9 and 10, T. 14 S., R. 11 E., Copper River Meridian, approximate elevation 8,813 feet;

Thence on an approximate forward bearing of S. 45° E., to the summit of a peak in the northwesterly portion of section 23, T. 14 S., R. 11 E., Copper River Meridian, approximate elevation 7,606 feet;

Thence on an approximate forward bearing of S. 7° W., to the summit of a peak in the westerly portion of section 35, T. 14 S., R. 11 E., Copper River Meridian, approximate elevation 6,400 feet;

Thence on an approximate forward bearing of S. 44° E., to the summit of a peak in the easterly portion of section 20, T. 15 S., R. 12 E., Copper River Meridian, approximate elevation 9,200 feet;

Thence southeasterly, along the crest of a ridge, between Steller Glacier, Bering Glacier and Bagley Ice Field, to the summit of a peak in the southerly portion of section 1, T. 16 S., R. 12 E., Copper River Meridian, approximate elevation 8,215 feet;

Thence on an approximate forward bearing of N. 82° E., to the summit of Mount Steller in the northerly portion of section 3, T. 16 S., R. 13 E., Copper River Meridian, approximate elevation 10,515 feet;

Thence easterly, along the crest of Waxell Ridge, between Bering Glacier and Bagley Ice Field, to the summit of a peak in the northeasterly portion of section 31, T. 15 S., R. 16 E., Copper River Meridian, approximate elevation 4,400 feet;

Thence on an approximate forward bearing of S. 64° E., to the summit of a ridge between sections 7 and 8, T. 16 S., R. 17 E., Copper River Meridian, approximate elevation 3,800 feet;

Thence northeasterly, easterly, southeasterly and southwesterly, along the crest of a ridge, between Bering Glacier, Yahtse Glacier, and Bagley Ice Field, to the summit of ridge between sections 25 and 36, T. 16 S., R. 17 E., Copper River Meridian, approximate elevation 8,800 feet;

Thence on an approximate forward bearing of S. 36° E., to the summit of a peak in the southwesterly portion of section 8, T. 18 S., R. 19 E., Copper River Meridian, approximate elevation 6,200 feet;

Thence southeasterly, along the crest of a ridge between the drainages of the Yahtse Glacier and Duktoth River, to the summit of a peak in the northeasterly portion of section 15, T. 18 S., R. 19 E., Copper River Meridian, approximate elevation 6,700 feet;

Thence on an approximate forward bearing of S. 5° W., to the summit of a peak in the northwesterly portion of section 3, T. 19 S., R. 19 E., Copper River Meridian, approximate elevation 7,072 feet;

Thence on an approximate forward bearing of S. 60° E., to the summit of Mount Leeper in the northwesterly portion of section 12, T. 19 S., R. 19 E., Copper River Meridian, approximate elevation 9,603 feet;

Thence southerly, easterly and southeasterly, on the crest of the ridge, between Yakataga Glacier, Guyot Glacier, Leeper Glacier and Yahtse Glacier, to a point between sections 2 and 3, T. 20 S., R. 20 E., Copper River Meridian;

Thence southerly, between sections 2 and 3, 10 and 11, 14 and 15, 22 and 23, 26 and 27, 34 and 35 to the corner of sections 2, 3, 34 and 35, Tps. 20 and 21 S., R. 20 E., Copper River Meridian;

Thence easterly, between Tps. 20 and 21 S., to the corner of Tps. 20 and 21 S., Rs. 20 and 21 E., Copper River Meridian;

Thence southerly, between Rs. 20 and 21 E., to the corner of Tps. 21 and 22 S., Rs. 20 and 21 E., Copper River Meridian;

Thence easterly, between Tps. 21 and 22 S., to the ¼ section corner of sections 6 and 31, Tps. 21 and 22 S., R. 23 E., Copper River Meridian;

Thence southerly, on the north and south centerlines of sections 6 and 7, to the crest of a ridge between Carson Creek and Independence Creek drainages, in the southerly portion of section 7, T. 22 S., R. 23 E., Copper River Meridian, approximate elevation 3,600 feet;

Thence northeasterly, easterly and southeasterly, on the crest of a ridge, between the Carson Creek and Independence Creek drainages, to horizontal control station "Amber" in the southeasterly portion of section 16, T. 22 S., R. 23 E., Copper River Meridian, approximate elevation 2,272 feet;

Thence on an approximate forward bearing of east, to a point at the mouth on the left bank of Independence Creek on the shore of Icy Bay at the line of mean high tide, in the southeasterly portion of section 14, T. 22 S., R. 23 E., Copper River Meridian;

Thence northeasterly, northwesterly, easterly and southeasterly, along the line of mean high tide of Icy Bay, including any coastal islands above the line of mean high tide, to a point between sections 4 and 33, Tps. 21 and 22 S., R. 24 E., Copper River Meridian;

Thence easterly, between Tps. 21 and 22 S., to the corner of Tps. 21 and 22 S., Rs. 25 and 26 E., Copper River Meridian;

Thence southerly, between Rs. 25 and 26 E., to a point between sections 1 and 6, at the line of mean high tide of the Gulf of Alaska, T. 25 S., Rs. 25 and 26 E., Copper River Meridian;

Thence southeasterly, along the line of mean high tide of the Gulf of Alaska, including any coastal islands above the line of mean high tide, to a point on the left bank of the mouth of Alder Stream, in the northeasterly portion of section 6, T. 26 S., R. 30 E., Copper River Meridian;

Thence northwesterly, along the left bank of Alder Stream, to its intersection with the line between Rs. 29 and 30 E., T. 25 S., Rs. 29 and 30 E., Copper River Meridian;

Thence northerly, between Rs. 29 and 30 E., to the corner of sections 13, 18, 19 and 24, T. 25 S., Rs. 29 and 30 E., Copper River Meridian;

*Thence easterly, between sections 18 and 19, 17 and 20, 16 and 21, 15 and 22, 14 and 23, 13 and 24, to the corner of sections 13, 18, 19 and 24, T. 25 S., Rs. 30 and 31 E., Copper River Meridian;

*Thence northerly, between Rs. 30 and 31 E., to a point between sections 1 and 6, on the southwesterly shore of Malaspina Lake, T. 25 S., Rs. 30 and 31 E., Copper River Meridian;

*Thence northeasterly and easterly along the southern shore of Malaspina Lake at the line of mean high water, to the intersection with the line between sections 3 and 32, Tps. 24 and 25 S., R. 31 E., Copper River Meridian;

*Thence easterly along the line between Tps. 24 and 25 S., R. 31 E., to a point at mean high water on the southern shoreline of Malaspina Lake, in section 2, T. 25 S., R. 31 E., Copper River Meridian;

*Thence southerly, southeasterly, easterly and northeasterly, along the southern shore of Malaspina Lake, at the line of mean high water, closing Kame Stream, Sudden Stream and any other streams draining the lake, to a point on the right bank of the most westerly channel of Grand Wash in section 29, T. 24 S., R. 32 E., Copper River Meridian;

Thence northeasterly, along the right bank of the most westerly channel of Grand Wash, traversing sections 29, 20, 17, 16, 9 and 4, to its intersection with the line between Tps. 23 and 24 S., R. 32 E., Copper River Meridian;

Thence easterly, between Tps. 23 and 24 S., to the corner of Tps. 23 and 24 S., Rs. 32 and 33 E., Copper River Meridian;

Thence northerly, between Rs. 32 and 33 E., to the corner of sections 25, 30, 31 and 36, T. 23 S., Rs. 32 and 33 E., Copper River Meridian;

Thence easterly, between sections 30 and 31, to the corner of sections 29, 30, 31 and 32, T. 23 S., R. 33 E., Copper River Meridian;

Thence northerly, between sections 29 and 30, to the corner of sections 19, 20, 29 and 30, T. 23 S., R. 33 E., Copper River Meridian;

Thence easterly, between sections 20 and 29, to the corner of sections 20, 21, 28 and 29, T. 23 S., R. 33 E., Copper River Meridian;

Thence northerly, between sections 20 and 21, 16 and 17, 8 and 9, to the corner of sections 4, 5, 8 and 9, T. 23 S., R. 33 E., Copper River Meridian;

Thence easterly, between sections 4 and 9, 3 and 10, 2 and 11, 1 and 12, 6 and 7, 5 and 8, to the meander corner of sections 5 and 8, at the line of mean high tide on the westerly shore of Disenchantment Bay, T. 23 S., R. 34 E., Copper River Meridian;

Thence northerly, northeasterly, southerly, and southeasterly, along the line of mean high tide of Disenchantment Bay, including any coastal islands above the line of mean high tide, to a point at the line of mean high tide of Disenchantment Bay at 60°00′ N. latitude;

Thence due east along the line of latitude of 60°00′ N., to the International Boundary

between the United States of America and Canada in section 22, T. 22 S., R. 37 E., Copper River Meridian;

Thence northwesterly, northerly, westerly, and northerly, along the International Boundary to the meander corner of section 35 only, on the right bank of the main channel of White River on the International Boundary, T. 1 S., R. 24 E., Copper River Meridian, the place of beginning.

The following described lands containing the Tebay Lakes are excluded from the Wrangell-St. Elias Wilderness:

Beginning at the ¼ section corner of sections 13 and 14, T. 8 S., R. 6 E., Copper River Meridian;

Thence northerly, between sections 13 and 14, to the corner of sections 11, 12, 13 and 14, T. 8 S., R. 6 E., Copper River Meridian;

Thence easterly, between sections 12 and 13, to the ¼ section corner of sections 12 and 13, T. 8 S., R. 6 E., Copper River Meridian;

Thence northerly, on the north and south centerline of section 12, to the center ¼ section corner of section 12, T. 8 S., R. 6 E., Copper River Meridian;

Thence easterly, on the east and west centerline of section 12, to the ¼ section corner of sections 7 and 12, T. 8 S., Rs. 6 and 7 E., Copper River Meridian;

Thence northerly, between sections 7 and 12, to the corner of sections 1, 6, 7 and 12, T. 8 S., Rs. 6 and 7 E., Copper River Meridian;

Thence easterly, between sections 6 and 7, to the ¼ section corner of sections 6 and 7, T. 8 S., R. 7 E., Copper River Meridian;

Thence northerly, on the north and south centerline of section 6, to the center ¼ section corner of section 6, T. 8 S., R. 7 E., Copper River Meridian;

Thence easterly, on the east and west centerline of section 6, to the ¼ section corner of sections 5 and 6, T. 8 S., R. 7 E., Copper River Meridian;

Thence northerly, between sections 5 and 6, to the corner of sections 5, 6, 31 and 32, Tps. 7 and 8 S., R. 7 E., Copper River Meridian;

Thence easterly, between Tps. 7 and 8 S., to the ¼ section corner of sections 5 and 32, Tps. 7 and 8 S., R. 7 E., Copper River Meridian;

Thence northerly, on the north and south centerlines of sections 32 and 29, to the left bank of Tebay River, near the center of section 29, T. 7 S., R. 7 E., Copper River Meridian;

Thence southwesterly, along the left bank of Tebay River, to the right bank of an unnamed creek, in the westerly portion of section 29, T. 7 S., R. 7 E., Copper River Meridian;

Thence northwesterly, along the right bank of an unnamed creek, to a point on the north and south centerline of section 30, T. 7 S., R. 7 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 30, to the center ¼ section corner of section 30, T. 7 S., R. 7 E., Copper River Meridian;

Thence westerly, on the east and west centerline of section 30, to the ¼ section corner of sections 25 and 30, T. 7 S., Rs. 6 and 7 E., Copper River Meridian;

Thence southerly, between sections 25 and 30, to the corner of sections 25, 30, 31 and 36, T. 7 S., Rs. 6 and 7 E., Copper River Meridian;

Thence westerly, between sections 25 and 36, to the ¼ section corner of sections 25 and 36, T. 7 S., R. 6 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 36, to the center ¼ section corner of section 36, T. 7 S., R. 6 E., Copper River Meridian;

Thence westerly, on the east and west centerline of section 36, to the ¼ section corner of sections 35 and 36, T. 7 S., R. 6 E., Copper River Meridian;

Thence southerly, between sections 35 and 36, to the corner of sections 1, 2, 35 and 36, Tps. 7 and 8 S., R. 6 E., Copper River Meridian;

Thence westerly, between Tps. 7 and 8 S., to the corner of sections 2, 3, 34 and 35, Tps. 7 and 8 S., R. 6 E., Copper River Meridian;

Thence southerly, between sections 2 and 3, to the ¼ section corner of sections 2 and 3, T. 8 S., R. 6 E., Copper River Meridian;

Thence westerly, on the east and west centerlines of sections 3 and 4, to the center ¼ section corner of section 4, T. 8 S., R. 6 E., Copper River Meridian;

Thence southerly, on the north and south centerline of section 4, to the ¼ section corner of sections 4 and 9, T. 8 S., R. 6 E., Copper River Meridian;

Thence westerly, between sections 4 and 9, 5 and 8, 6 and 7, to the ¼ section corner of sections 6 and 7, T. 8 S., R. 6 E., Copper River Meridian;

Thence southerly, on the north and south centerlines of sections 7 and 18, to the special meander corner on the north and south centerline of section 18, on the left bank of Falls Creek, T. 8 S., R. 6 E., Copper River Meridian;

Thence easterly, southerly and southwesterly, along the left bank of Falls Creek, to the special meander corner on the east and west centerline of section 18, T. 8 S., R. 6 E., Copper River Meridian;

Thence easterly, on the east and west centerline of section 18, to the ¼ section corner of sections 17 and 18, T. 8 S., R. 6 E., Copper River Meridian;

Thence southerly, between sections 17 and 18, to the corner of sections 17, 18, 19 and 20, T. 8 S., R. 6 E., Copper River Meridian;

Thence easterly, between sections 17 and 20, to the corner of sections 16, 17, 20 and 21, T. 8 S., R. 6 E., Copper River Meridian;

Thence northerly, between sections 16 and 17, to the ¼ section corner of sections 16 and 17, T. 8 S., R. 6 E., Copper River Meridian;

Thence easterly, on the east and west centerlines of sections 16, 15 and 14, to the ¼ section corner of sections 13 and 14, T. 8 S., R. 6 E., Copper River Meridian, to the place of beginning.

*Department of the Interior 1:250,000 scale map issued in 1981, incorrectly depicts this portion of the description.

The following U.S. Geological Survey 1:63,360 Series and (Topographic) Quadrangle Maps were used in preparing the legal boundary descriptions for the Wrangell-St. Elias National Park and Preserve and Wrangell-St.Elias Wilderness:

Bering Glacier, Alaska: (A–1) pe 1985; (A–2) 1959; (A–3) 1959; (B–1) pe 1985; (B–3) pe 1985; (B–4) pe 1985; (C–1) pe 1985; (C–4) pe 1985; (C–5) pe 1985; (C–6) pe 1985; (C–7) pe 1985; (C–8) pe 1985; (D–1) pe 1985; (D–2) pe 1985; (D–8) pe 1985.

Cordova, Alaska: (D–1) 1959; (D–2) 1959; (D–3) 1950 mr 1978.

Gulkana, Alaska: (A–1) 1950; (A–2) 1950; (A–3) 1949 mr 1975; (B–1) 1950; (B–2) 1949 mr 1964; (B–3) 1950 lr 1977; (C–1) 1949 mr 1966; (C–2) 1949 mr 1962.

Icy Bay, Alaska: (D–1) pe 1985.

McCarthy, Alaska: (A–1) 1950; (A–2) 1950; (A–3) 1959; (A–4) 1959; (A–5) 1959; (A–6) 1950; (B–1) 1959; (B–2) 1959; (B–3) 1959; (B–4) 1959; (B–5) 1959 mr 1970; (B–6) 1950; (B–7) 1959; (B–8) 1951; (C–1) 1959; (C–2) 1959 ; (C–3) 1959; (C–5) 1959; (C–6) 1959; (C–7) 1959; (C–8) 1951 mr 1976; (D–1) 1959; (D–2) 1959; (D–3) 1959; (D–4) 1960; (D–5) 1960; (D–6) 1960; (D–7) 1959; (D–8) 1960.

Mt. St. Elias, Alaska: (A–3) pe 1985; (A–4) pe 1985; (A–5) pe 1985; (A–6) pe 1985; (A–7) pe 1985; (A–8) pe 1985; (B–3) pe 1985; (B–4) pe 1985; (B–5) pe 1985; (B–7) pe 1985; (B–8) pe 1985.

Nabesna, Alaska: (A–1) 1959 mr 1970; (A–2) 1960; (A–3) 1960 mr 1973; (A–4) 1959; (A–5) 1959 mr 1973; (A–6) 1959; (B–1) 1960; (B–4) 1960 mr 1970; (B–5) 1960 ; (B–6) 1960; (C–2) 1955 mr 1963; (C–3) 1955 mr 1973; (C–4) 1960 mr 1973; (C–5) 1960 mr 1971; (C–6) 1948 mr 1969.

Valdez, Alaska: (A–1) 1951 mr 1972; (A–2) 1951 mr 1973; (A–3) 1950 mr 1962; (B–1) 1951 mr 1970; (B–2) 1951 mr 1972; (B–3) 1951 mr 1966; (C–1) 1951 mr 1967; (C–2) 1951 mr 1971; (C–3) 1951 mr 1971; (D–1) 1959; (D–2) 1959; (D–3) 1958 mr 1967; (D–4) 1949 mr 1974.

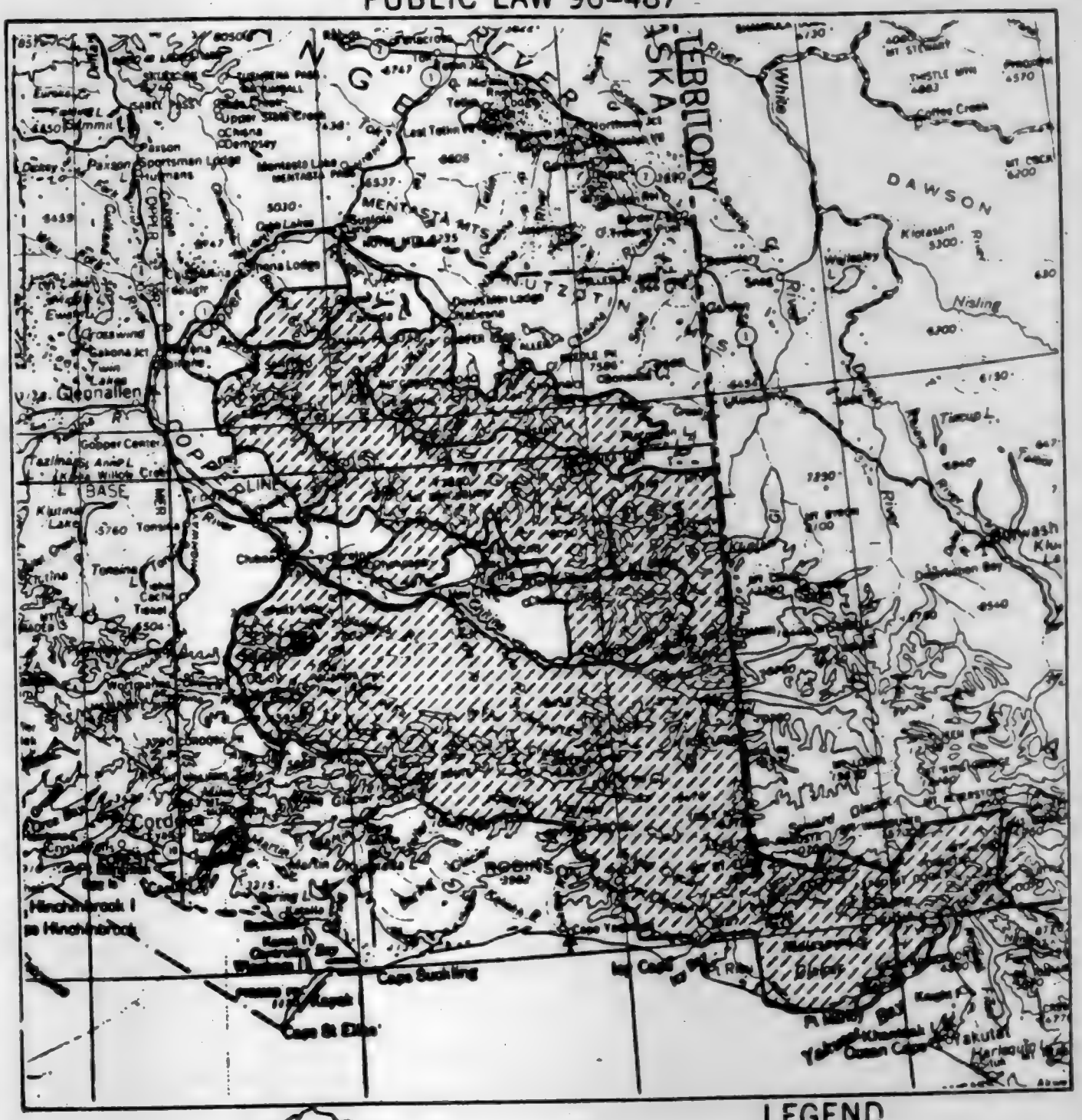
Yakutat, Alaska: (C–6) pe 1985; (C–7) pe 1985; (C–8) pe 1985; (D–3) 1959; (D–4) 1959; (D–5) 1959; (D–6) pe 1985; (D–7) pe 1985; (D–8) pe 1985.

mr—minor revisions
lr—limited revisions
pe—provisional edition

BILLING CODE 4310-70-F

WRANGELL—SAINT ELIAS NATIONAL PARK AND PRESERVE

PUBLIC LAW 96-487



LEGEND

PARK

PRESERVE

WILDERNESS

0 50 MILES

BILLING CODE 4310-70-C

Yukon-Charley Rivers National Preserve

Section 201(10), Public Law 96–487 (ANILCA):

Yukon-Charley Rivers National Preserve

Yukon-Charley Rivers National Preserve as generally depicted on a map numbered YUCH–90,008, dated October 1978, consists of approximately one million seven hundred and thirteen thousand acres of public lands, as defined in the ANILCA, within the following described boundary:

Beginning at the closing corner of sections 15 and 22, T. 1 N., R. 33 E., Fairbanks Meridian, on the International Boundary between the United States of America and Canada;

Thence northerly, along the International Boundary between the United States of America and Canada, to the closing corner of sections 17 and 20, T. 7 N., R. 33 E., Fairbanks Meridian;

Thence westerly, between sections 17 and 20, 18 and 19, 13 and 24, 14 and 23, to the ¼ section corner of sections 14 and 23, T. 7 N., R. 32 E., Fairbanks Meridian;

Thence southerly, on the north and south centerlines of sections 23 and 26, to the center ¼ section corner of section 26, T. 7 N., R. 32 E., Fairbanks Meridian;

Thence westerly, on the east and west centerlines of section 26, 27 and 28, to the center ¼ section corner of section 28, T. 7 N., R. 32 E., Fairbanks Meridian;

Thence southerly, on the north and south centerlines of sections 28, 33, 4, 9 and 16, to the ¼ section corner of sections 16 and 21, T. 6 N., R. 32 E., Fairbanks Meridian;

Thence westerly, between sections 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, to the corner of sections 14, 15, 22 and 23, T. 6 N., R. 30 E., Fairbanks Meridian;

Thence northwesterly, southwesterly and northerly, along the crest of a ridge, to a point at the mouth of an unnamed creek and the line of mean high water on the left bank of the Kandik River, located in the southwesterly portion of section 5, T. 7 N., R. 29 E., Fairbanks Meridian;

Thence westerly, along the left bank of the Kandik River to the meander corner of sections 5 and 6, T. 7 N., R. 29 E., Fairbanks Meridian;

Thence northerly, between sections 5 and 6, to the corner of sections 5, 6, 31 and 32, Tps. 7 and 8 N., R. 29 E., Fairbanks Meridian;

Thence westerly, between Tps. 7 and 8 N., to the crest of a ridge between sections 6 and 31, Tps. 7 and 8 N., R. 29 E., Fairbanks Meridian;

Thence southwesterly, northwesterly, westerly and southwesterly along the crest of the ridge, between the Easy Moose Creek drainage, the Black River drainage and Judge Creek Drainage, to a point between sections 29 and 32, T. 8 N., R. 27 E., Fairbanks Meridian;

Thence westerly, between sections 29 and 32, to the right bank of Judge Creek between sections 29 and 32, T. 8 N., R. 27 E., Fairbanks Meridian;

Thence southerly, along the right bank of Judge Creek, to a point between sections 5 and 32, Tps. 7 and 8 N., R. 27 E., Fairbanks Meridian;

Thence westerly, between Tps. 7 and 8 N., to the corner of Tps. 7 and 8 N., Rs. 20 and 21 E., Fairbanks Meridian;

Thence northerly, between Rs. 20 and 21 E., to the closing corner of T. 8 N., Rs. 20 and 21 E., Fairbanks Meridian;

Thence westerly, along the Second Standard Parallel North, to the standard corner of T. 9 N., Rs. 19 and 20 E., Fairbanks Meridian;

Thence northerly, between Rs. 19 and 20 E., to the corner of Tps. 9 and 10 N., Rs. 19 and 20 E., Fairbanks Meridian;

Thence westerly, between Tps. 9 and 10 N., to the meander corner of sections 5 and 32, on the left bank of the Yukon River at the line of mean high water, Tps. 9 and 10 N., R. 18 E., Fairbanks Meridian;

Thence southeasterly, along the left bank of the Yukon River, to the meander corner of sections 18 and 19, T. 8 N., R. 20 E., Fairbanks Meridian;

Thence westerly, between sections 18 and 19, 13 and 24, 14 and 23, 15 and 22, 16 and 21, to the corner of sections 16, 17, 20, and 21, T. 8 N., R. 19 E., Fairbanks Meridian;

Thence southerly, between sections 20 and 21, 28 and 29, 32 and 33, 4 and 5, 8 and 9, 16 and 17, 20 and 21, 28 and 29, 32 and 33, 4 and 5, 8 and 9, 16 and 17, 20 and 21, 28 and 29, 32 and 33, to a point on the crest of a ridge between sections 32 and 33, T. 6 N., R. 19 E., Fairbanks Meridian;

Thence southwesterly along the crest of a ridge to the summit of a ridge located in section 25, T. 5 N., R. 18 E., Fairbanks Meridian, approximate elevation 4,350 feet;

Thence southeasterly and southwesterly along the crest of a ridge between the drainage of the Yukon Fork South Fork Birch Creek and drainages of Thanksgiving Creek, Webber Creek, Woodchopper Creek, Hanna Creek and Beverly Creek, and along a common boundary with the Steese National Conservation area, to a summit of the ridge in section 16, T. 3 N., R. 19 E., Fairbanks Meridian, approximate elevation 4,130 feet;

Thence southwesterly along the crest of a ridge between drainages of the Salcha River and the drainages of Beverly Creek and Crescent Creek, departing from the common boundary with the Steese National Conservation Area, to the summit of a mountain in section 9, T. 2 N., R. 18 E., Fairbanks Meridian, approximate elevation 4,110 feet;

*Thence southerly along the crest of mountains between the drainages of Last Creek, Serpentine Creek, Paldo Creek, Stone Boy Creek, Slate Creek and Goodpaster River and the drainages of tributaries of the Charley River, to the summit of a mountain in section 18, T, 4 S., R. 19 E., Fairbanks Meridian, approximate elevation 5,125 feet;

*Thence easterly along the crest of mountains between the drainages of the tributaries of the Charley River and the drainages of the Goodpaster River, Joseph Creek and a tributary of the Middle Fork North Fork Fortymile River to the summit of a mountain located in the southeast ¼, section 24, T. 5 S., R. 23 E., Fairbanks Meridian, approximate elevation 4,500 feet;

*Thence northeasterly along the crest of mountains between the drainages of the tributaries of the Charley River and the drainages of tributaries of the North Fork Fortymile River, to a summit at a junction of ridges in section 36, T. 1 S., R. 25 E., Fairbanks Meridian, approximate elevation 6,400 feet;

Thence northeasterly, northwesterly, easterly and northerly, along the crest of mountains between the drainages of Copper River, a tributary of the Charley River and Granite Creek and along the crest of a spur ridge between the drainages of Diamond Fork Seventymile River, Flume Creek, Bonanza Creek, Easter Creek and the drainages of Glacier Creek and Alder Creek, tributaries of the Seventymile River, to a point at the intersection of the right bank of Easter Creek and the right bank of the Seventymile River in the northwesterly portion of section 19, T. 2 N., R. 27 E., Fairbanks Meridian;

Thence northerly and westerly, along the right bank of the Seventymile River to a point between sections 13 and 18, T. 2 N., Rs. 26 and 27 E., Fairbanks Meridian;

Thence northerly, between Rs. 26 and 27 E., to the closing corner of T. 4 N., Rs. 26 and 27 E., Fairbanks Meridian;

Thence easterly, along the First Standard Parallel North, to a point on a spur ridge located in the northwesterly portion of section 2, T. 4 N., R. 27 E., Fairbanks Meridian;

Thence southeasterly and northerly along the crest of a ridge between the drainages of Washington Creek and Seventymile River, and the drainages of Glenn Creek, Logan Creek, Butte Creek, Fourth of July Creek, and Michigan Creek to the summit of a mountain in sections 12 and 13, T. 2 N., R. 29 E., Fairbanks Meridian, approximate elevation 2,820 feet;

Thence southeasterly along the crest of a ridge and spur ridge between the drainages of Seventymile River, and drainages of Trout Creek and other tributaries of the Yukon River, to the meander corner of sections 2 and 35, Tps. 1 and 2 N., R. 31 E., Fairbanks Meridian, on the left bank of the Yukon River;

Thence southeasterly and easterly, along the left bank of the Yukon River closing the mouth of the Seventymile River, to the point for the special meander corner on the north and south centerline of section 8, T. 1 N., R. 32 E., Fairbanks Meridian;

Thence southerly, along the north and south centerlines of sections 8 and 17, to the ¼ section corner of sections 17 and 20, T. 1 N., R. 32 E., Fairbanks Meridian;

Thence easterly, between sections 17 and 20, 16 and 21, 15 and 22, 14 and 23, 13 and 24, 18 and 19, 17 and 20, 16 and 21, 15 and 22, to the closing corner of sections 15 and 22, T. 1 N., R. 33 E., Fairbanks Meridian at the intersection with the International Boundary between the United States of America and Canada, the point of beginning.

*Department of the Interior 1:250,000 scale map issued in 1981 incorrectly depicts segments of this portion of the description.

Units of the National Wild and Scenic Rivers System Within the Yukon-Charley Rivers National Preserve

Section 601, Public Law 96–487 (ANILCA):

"Charley, Alaska.—The entire river, including its major tributaries, Copper Creek, Bonanza Creek, Hosford Creek, Derwent Creek, Flat-Orthmer Creek, Crescent Creek, and Moraine Creek, within the Yukon-Charley Rivers National Preserve; to be administered by the Secretary of the Interior."

Note: Pursuant to section 605(d) of ANILCA and as provided for under section 3(b) of the Wild and Scenic Rivers Act, the necessity for any river corridor boundaries for the Charley Wild River and its tributaries within the Yukon-Charley Rivers National Preserve has been considered during the comprehensive conservation planning process for the preserve. In accordance with the General Management Plan for Yukon-Charley Rivers National Preserve, approved November 7, 1986, no specific river corridor boundaries are deemed necessary for the Charley Wild River in order to protect the river, its tributaries and their immediate environments. Proposed management of the preserve meets and is compatible with management standards established by the Wild and Scenic Rivers Act.

The following U.S. Geological Survey 1:63,360 Series (Topographic) Quadrangle maps were used in preparing the legal boundary description for the Yukon-Charley Rivers National Preserve:

Big Delta, Alaska: (C–1) 1958; (D–1) 1958 mr 1986.

Charley River, Alaska: (A–1) 1956 mr 1973; (A–2) 1956 mr 1972; (A–3) 1956 mr 1972; (A–6) 1956 mr 1972; (B–1) 1956 mr 1970; (B–2) 1956 mr 1977; (B–3) 1956 mr 1976; (B–4) 1956 mr 1972; (B–5) 1956 mr 1974; (B–6) 1956 mr 1973; (C–2) 1956; (C–3) 1956; (C–6) 1956 mr 1971.

Circle, Alaska: (A–1) 1955 mr 1966; (C–1) 1955 mr 1967.

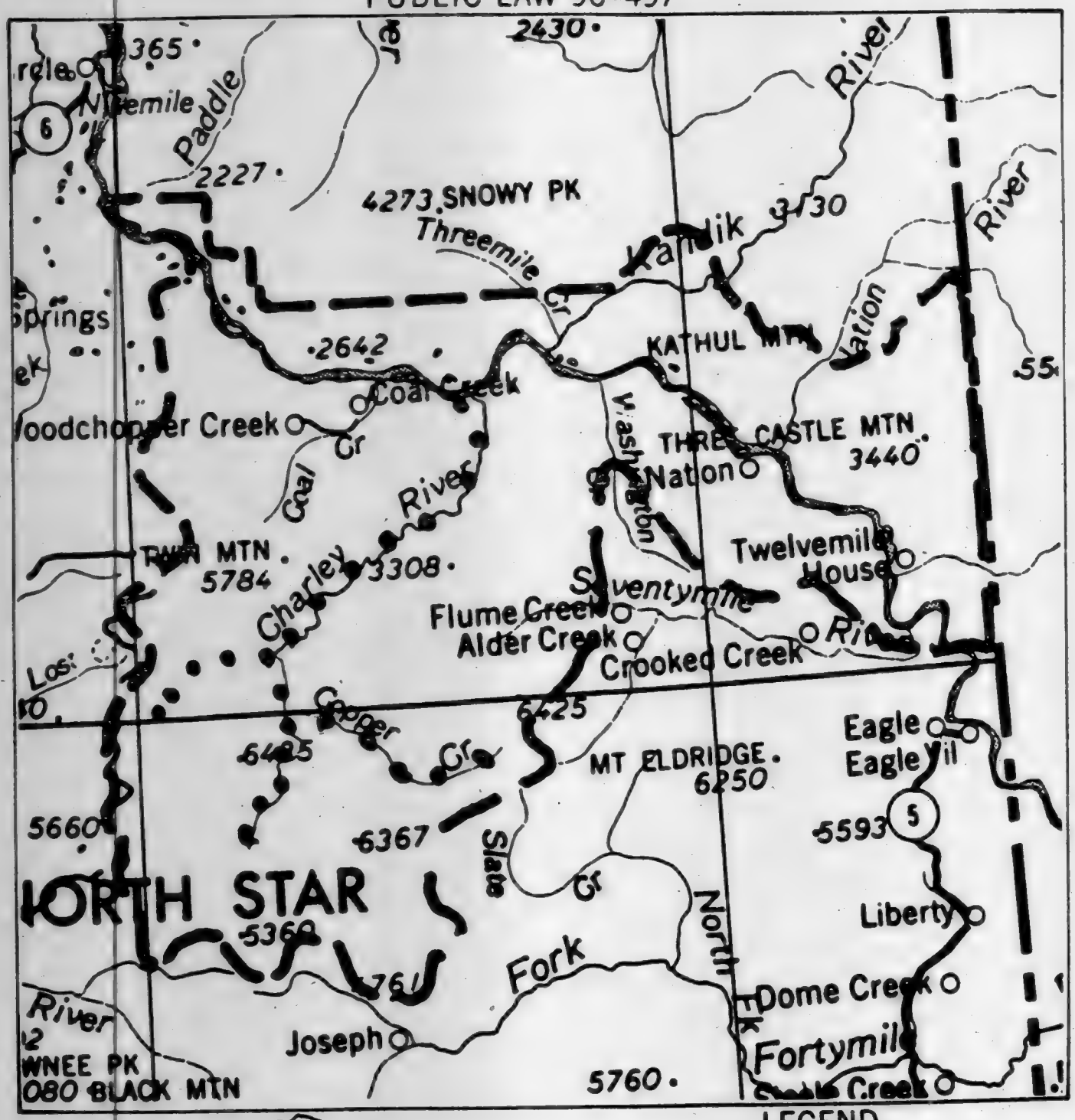
Eagle, Alaska: (B–5) 1956; (B–6) 1956; (C–4) 1956; (C–5) 1956; (C–6) 1956; (D–1) 1956; (D–2) 1956; (D–3) 1956; (D–4) 1956; (D–6) 1956.

mr—minor revisions

BILLING CODE 4310-70-F

YUKON—CHARLEY RIVERS NATIONAL PRESERVE

PUBLIC LAW 96-497



LEGEND

PRESERVE

WILD & SCENIC RIVERS

0 20 MILES

[FR Doc. 92-22009 Filed 9-29-92; 8:45 am]

BILLING CODE 4310-70-C

federal register

Wednesday
September 30, 1992

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing

24 CFR Part 201

Increased Maximum Loan Amounts and Terms for Property Improvement Loans Insured Under Title I of the National Housing Act; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-92-1613; FR-3087-F-01]

RIN 2502-AF88

Increased Maximum Loan Amounts and Terms for Property Improvement Loans Insured Under Title I of the National Housing Act

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements section 340(b) of the National Affordable Housing Act (NAHA). Section 304(b) amended sections 2(b)(1) and 2(b)(3) of the National Housing Act to increase the maximum allowable loan amounts and loan terms for single family and multifamily property improvement loans insured under Title I of the National Housing Act. Section 340(a) of the NAHA required the Secretary of HUD to conduct a study of the need for increased maximum loan amounts and the effect of these increases, and to submit a report to the Congress on the findings and conclusions of the study.

The Secretary's report, transmitted to the Congress on August 8, 1991, concluded that higher maximum loan amounts are needed. However, a decision was made to defer increasing the loan limits and loan terms until the Department's regulatory reforms for the Title I program were in place, and until the Department had the benefit of an analysis of the program being carried out by Price Waterhouse as part of a study of FHA's General Insurance Fund.

On October 18, 1991 (56 FR 52414), the Department published its Title I regulatory reforms, and these reforms became effective on November 18, 1991. Price Waterhouse has now completed its analysis of the Title I program, and has concluded that the program is financially sound and larger loans show no tendency to be riskier than smaller loans. This final rule, therefore, makes effective the increased loan limits and loan terms authorized by section 340(b) of the NAHA.

EFFECTIVE DATES: September 30, 1992. The increased loan amounts and loan terms in the rule apply to any loan for which a credit application is received on or after September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, room 9158, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–2680. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Under title I, section 2 of the National Housing Act, the Department insures approved lending institutions for losses sustained from defaulted property improvement loans and manufactured home loans. The regulations implementing these programs are contained in 24 CFR part 201.

Section 340(b) of the National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990) amended section 2(b)(1) of the National Housing Act to increase the maximum allowable loan amounts for single family and multifamily property improvement loans insured under title I. The single family loan limit was increased from $17,500 to $25,000; however, the present $17,500 loan limit was retained for property improvement loans in connection with existing manufactured homes. The multifamily loan limits were increased from $43,750 (or an average of $8,750 per family unit) to $60,000 (or an average of $12,000 per family unit).

Section 340(b) of the NAHA also amended section 2(b)(3) of the National Housing Act to increase the maximum allowable loan term for single family and multifamily property improvement loans. The maximum term for both single family and multifamily loans was increased from 15 years and 32 days to 20 years and 32 days; however, the present maximum term of 15 years and 32 days was retained for property improvement loans on existing manufactured homes.

Section 340(b) of the NAHA authorized the Secretary of Housing and Urban Development to apply the increased maximum loan amounts to property improvement loans executed on or after June 1, 1991. However, section 340(a) of that Act specified that the Secretary must first conduct a study of the need for increasing the loan limits and the effect of these increases, and submit a report to the Congress on the findings and conclusions of the study.

Report to the Congress

The Secretary's report, which was transmitted to the Congress on August 8, 1991, found that higher maximum loan amounts are needed to keep pace with the increased cost of home repair and remodeling projects since the loan limits were last increased in 1981. The report concluded that, because of the current loan limits, many homeowners are unable to finance such common home improvements as kitchen remodeling, room additions, and conversions of unfinished space (such as attics) into usable living space. Improvements of this type would enable homeowners to renovate their present homes to improve livability, rather than having to relocate to other housing at a higher cost and possibly less favorable loan terms.

The title I program is also widely used by State and local government agencies, which use their scarce resources along with funds obtained from private lenders to provide housing assistance to low- and moderate-income families. A number of agencies have indicated that the present loan limits place a serious constraint on these public-private partnerships, because the cost of needed improvements often exceeds the loan limits.

To evaluate the probable effect of loan limit increases on the financial soundness of the title I program, the Department conducted an analysis of claim rates for various sizes of single family property improvement loans. However, because of some uncertainties about the results of the claim rate analysis, the Secretary determined that any increase in the loan limits should be deferred until other regulatory changes to reform the title I program had been implemented. The Secretary also decided that implementation of the increased loan limits should be postponed until the results of a Price Waterhouse study of FHA's General Insurance Fund were known, since this study might recommend additional changes to the title I program.

On October 18, 1991, the Department published a final rule in the **Federal Register** (56 FR 52414), implementing its title I reforms. In the final rule, the Department established higher qualifications standards for lenders and dealers, eliminated any role in the program by unregulated and unsupervised third parties, established more objective criteria for lenders to use in approving loans, and tightened loan origination procedures. These changes became effective on November 18, 1991.

On January 9, 1992, Price Waterhouse furnished the Department with a draft of its final report on the General Insurance Fund, including an analysis of the title I property improvement program. Price Waterhouse concluded that, for the loans originated in any particular year, the loan insurance premiums collected by the Department can be expected to exceed the net loss on claim payments.

As a consequence, Price Waterhouse offered no recommendations for improvements to the program.

Price Waterhouse also conducted a special analysis to determine whether the larger loans that would result from an increase in the loan limits would be more risky than smaller loans, and they concluded that larger loans show no tendency to be riskier than smaller loans.

Changes Made by This Rule

Based upon the Department's findings in its report to the Congress and the Price Waterhouse analysis of the title I program, the Secretary has concluded that the maximum loan amounts and maximum loan terms for single family and multifamily property improvement loans should be increased to the levels authorized by the Congress.

First, the Department is amending § 201.2(hh) to clarify the requirements for a manufactured home to qualify as real property in order to obtain a single family property improvement loan. It has been a longstanding policy of the Department that a manufactured home qualifies as real property if the home is placed on a permanent foundation, the home and lot are classified as realty by the State or locality in which the property is located, and any loans on the property are secured by mortgages or deeds of trust covering the home and lot (see HUD Handbook 4700.1, REV–1 dated September 19, 1973, section 2–7). This amendment simply reiterates these existing requirements. In a conforming change, § 201.2(j) is being amended to refer to "a manufactured home that qualifies as real property."

Second, the Department is amending § 201.10(a)(1) to increase the maximum loan amount for a single family property improvement loan to $25,000, except that the loan limit on a manufactured home that qualifies as real property remains at $17,500. The multifamily loan limits are increased to $60,000 or an average of $12,000 per dwelling unit, whichever is less. In addition, the maximum loan amount for nonresidential property improvement loans is increased to $25,000; this loan limit is not prescribed by statute but has traditionally been the same as that for single family property improvement loans.

In a related change, the Department is also amending § 201.10(a)(2) to increase the threshold amount at which a lender must obtain the prior approval of the Secretary before making a property improvement loan. Currently, a lender must obtain prior approval on any loan which will result in the borrower having a total unpaid principal balance exceeding $17,500, or $20,000 where the financing of a solar energy system is involved. The new threshold for prior approval is $25,000.

Finally, the Department is amending § 201.11(a) to increase the maximum term of a single family or multifamily property improvement loan to 20 years and 32 days, except that the maximum loan term on a manufactured home that qualifies as real property remains at 15 years and 32 days. In addition, § 201.11(c)(1) is amended to provide that, in connection with a refinanced loan, the total allowable time period from the date of the original loan to the final maturity on the refinanced loan shall not exceed the maximum term permitted under § 201.11(a) plus 9 years and 11 months, or a total of 30 years for most single family or multifamily property improvement loans.

The Department is not making any change in the maximum loan amount or loan term of a manufactured home improvement loan, which is defined in § 201.2(t) as a loan for the alteration, repair or improvement of an existing manufactured home that is classified as personality by the State or locality in which the home is located. The maximum loan limit for this type of loan remains at $5,000, and the maximum term is limited to 12 years and 32 days.

Justification for Final Rulemaking

It is the Department's general policy to publish a rule for notice and comment before issuing a rule for effect, in accordance with its own rule on rulemaking, 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is determined to be "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1)

In this case, the Department finds that the solicitation of public comment before issuing the rule for effect is unnecessary and is contrary to the public interest. This rule implements section 340(b) of the NAHA, which authorizes the Secretary of HUD to increase the maximum loan amounts and maximum loan terms for certain types of property improvement loans. The increase in maximum loan amounts and maximum loan terms convey a substantial benefit on program participants (i.e. Title I borrowers and lenders). The Department has determined that delaying the effectiveness of this rule to await public comment would be unnecessary and contrary to the interest of Title I program participants.

Other Matters

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on small entities. The amendments made by this rule enable Title I lenders, the majority of which are large depository institutions, to increase the loan amounts and loan terms to the levels authorized by the Congress, for eligible borrowers. Increasing the loan amounts and loan terms benefit Title I lenders by making Title I loan terms more favorable, and consequently, more competitive.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this rule are directed to lenders and borrowers, and will not

impinge upon the relationship between the Federal Government and State and local governments. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, The Family, has determined that this rule will not have potential for significant impact on family formation, maintenance, or general well-being, and thus, is not subject to review under the Order. No change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule is listed as item number 1158 in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804, 16827) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.142—Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures.

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Mobile homes, Manufactured homes and lots, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 201 is amended as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 3535(d)).

2. In § 201.2, the introductory text of paragraph (j) and paragraph (hh) are revised to read as follows:

§ 201.2 Definitions.

* * * * *

(j) *Existing structure* means a dwelling, including a manufactured home that qualifies as real property, which was completed and occupied at least 90 days prior to an application for a title I loan, or a nonresidential structure which was a completed building with a distinctive functional use prior to an application for a Title I loan. However, these occupancy and completion requirements shall not apply to:

* * * * *

(hh) *Single family property improvement loan* means a loan to finance alterations, repairs and improvements to or in connection with an existing structure used or to be used as a single family residence, including an existing one-family manufactured home that qualifies as real property in that the home is placed on a permanent foundation, the home and lot are classified as realty by the State or locality in which the property is located, and any loans on the property are secured by mortgages or deeds of trust covering the home and lot.

* * * * *

3. In § 201.10, paragraphs (a)(1)(i)–(iii) and (2) are revised to read as follows:

§ 201.10 Loan amounts.

(a) * * *

(1) * * *

(i) Single family property improvement loans—$25,000, except that a loan for a manufactured home that qualifies as real property shall be limited to $17,500.

(ii) Multifamily property improvement loans—$60,000 or an average of $12,000 per dwelling unit, whichever is less.

(iii) Nonresidential property improvement loans—$25,000.

* * * * *

(2) Notwithstanding the maximum loan amounts in paragraph (a)(1) of this section, the prior approval of the Secretary shall be obtained for any property improvement loan that will result in any borrower having a total unpaid principal obligation under such loans that exceeds $25,000.

* * * * *

4. In § 201.11, paragraphs (a) and (c)(1) are revised to read as follows:

§ 201.11 Loan maturities.

(a) *Property improvement loans.* The term of a property improvement loan shall be not less than six months and not more than 20 years and 32 days from the date of the loan, except that:

(1) The maximum term for a single family property improvement loan on a manufactured home that qualifies as real property shall not exceed 15 years and 32 days from the date of the loan; and

(2) The maximum term for a manufactured home improvement loan shall not exceed 12 years and 32 days from the date of the loan.

* * * * *

(c) * * *

(1) The term of a loan to refinance a borrower's existing insured property improvement or manufactured home loan shall not exceed the maximum term permitted under paragraph (a) or (b) of this section for the particular type of loan. In addition, the total time period from the date of the original loan to the final maturity of the refinanced loan shall not exceed:

(i) In the case of a property improvement loan, the maximum term permitted under paragraph (a) of this section plus 9 years and 11 months; and

(ii) In the case of manufactured home loan, the maximum term permitted under paragraph (b) of this section plus 4 years and 11 months.

* * * * *

Dated: September 15, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92–23693 Filed 9–29–92; 8:45 am]

BILLING CODE 4210–27–M

federal register

Wednesday
September 30, 1992

Part VI

Department of Energy

Office of Environmental Restoration and Waste Management

Surcharge Rebates; Eligibility Criteria and Procedures for the January 1, 1993, Deadline of the Low-Level Radioactive Waste Policy Amendments Act of 1985; Notices

DEPARTMENT OF ENERGY

Office of Environmental Restoration and Waste Management

Surcharge Rebates; Eligibility Criteria and Procedures for the January 1, 1993, Deadline of the Low-Level Radioactive Waste Policy Amendments Act of 1985

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Notice of eligibility criteria and procedures.

SUMMARY: The Low-Level Radioactive Waste Policy Amendments Act of 1985 (the Act) established incentives and milestones for the development of new disposal facilities in compact regions and States that do not currently have operating disposal facilities for low-level radioactive waste (LLW). The Act provides a January 1, 1993, date as a deadline for a State to be able to store, manage or dispose of all its LLW. States or compact regions that meet this milestone are eligible to receive a rebate of surcharges collected between January 1, 1990, and December 31, 1992, and held by the Department of Energy (DOE) with interest earned. A State that fails to meet the January 1, 1993, milestone will forfeit the State's surcharge incentive payments to the LLW generators.

This Notice interprets the statutory criteria the DOE will use for evaluating States, compact regions, and LLW generators that may be eligible for the January 1, 1993, surcharge rebates, and the procedures DOE will use to determine if these entities are eligible to receive surcharge rebates following the January 1, 1993, deadline.

DATES: *Effective Date:* September 30, 1992.

Comment Procedures: While public comments are not required, DOE will accept written comments from interested persons concerning this Notice, if those comments are submitted to DOE within 45 days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Terry L. Plummer, Office of Waste Management, Environmental Restoration and Waste Management, U.S. Department of Energy, Washington, DC 20585–0002, (301–903–7176).

SUPPLEMENTARY INFORMATION:

I. Background

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021b note), assigns responsibility for LLW disposal to each State in which LLW is generated, but encourages the formation of compact regions to manage LLW disposal sites on a regional basis. States and compact regions without operating disposal facilities were provided specific milestones to meet in 1986, 1988, 1990, and 1992.

States with operating LLW disposal facilities were allowed to assess additional fees or surcharges beginning in 1986. Twenty-five percent of the surcharge fees collected are then transferred monthly into an escrow account held by the Secretary of the Department of Energy. As an incentive for States and compact regions meeting the established milestones of the Act, a rebate of the fee, with interest, is provided by the Secretary of Energy. The Secretary of Energy has provided surcharge rebates from this escrow account to those States and compact regions that complied with the 1986, 1988, and 1990 milestones in the Act.

The Act's final milestone incentive provides that 25 percent of any amount collected for LLW disposed during the period beginning January 1, 1990, and ending December 31, 1992, shall be returned with interest earned, to the State or compact region in which the waste originated if, by January 1, 1993, the State or compact region is able to provide for the disposal of all LLW generated within such State or compact region.

A State that has not provided for disposal of all LLW by the January 1, 1993, deadline may become eligible for surcharge rebates, if the State agrees to take title to the waste, be obligated to take possession of the waste, and be liable for all damages directly or indirectly incurred by the generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1993, as the generator or owner notifies the State that the waste is available for shipment.

By a separate *Federal Register* Notice published today, DOE is requesting comments on the proposed exclusion of "mixed waste" from the requirements of the Act's 1993 milestone. Accordingly, this Notice excludes the disposal of "mixed waste" as a requirement.

II. Rebate Eligibility Criteria for Surcharge Rebates

A. Criteria a State or Compact Region Should Meet

1. A. State or compact region should provide documentation of the January 1, 1993, availability of one or a combination of the following options:

a. An operating disposal or storage facility for all LLW; (The storage facilities may be at the point of LLW generation or away from the point of LLW generation);

b. A valid contract with another State or compact region for the disposal or storage of all LLW;

c. If a State or compact region cannot provide for the disposal or storage of low-level radioactive waste under the above options by January 1, 1993, it may be eligible for a proprated portion of the rebate surcharges before January 1, 1996, if it can provide documentation of the availability of one or a combination of:

1. An operating disposal facility for all LLW;

2. A valid contract with another State or compact region for the disposal or storage of all LLW.

2. To comply with the documentation requirements, the State or compact region may either:

a. Transmit to DOE a letter from the Governor or the executive director (chairman) of the compact commission requesting the surcharge rebate; state the capability for disposal or storage and the initial date of operation; and provide the name of a contact person, telephone number, and an address to which the surcharge rebate should be sent; or

b. Transmit to DOE a letter from the Governor or the executive director (chairman) of the compact commission requesting the surcharge rebate; state that a contract for disposal or storage is in place, and transmit a certified copy of the contract, executed by all parties, for disposal or storage with the date of disposal or storage capability. This letter should also include the name of a contact person, telephone number, and an address to which the surcharge rebate should be sent.

3. If the State is using storage of LLW as a means of managing the LLW, then the letter to DOE should include a certification by the Governor that the State takes title to, takes possession of or is obligated to take possession of, and assumes liability for the LLW in storage.

B. Requirements a LLW Generator or Owner Should Meet

1. To be eligible for a surcharge rebate, a LLW generator or owner shall show through documentation:

a. The LLW generator or owner paid surcharges between January 1, 1990 and December 31, 1992;

b. The LLW generator or owner is storing LLW waste between January 1, 1993, and January 1, 1996; and

c. The LLW is available for shipment.

2. To comply with the documentation requirements, the LLW generator or owner must:

a. Submit to DOE a letter requesting a surcharge rebate;

b. Show that he/she made the waste available for shipment to the State (i.e., a notarized copy of a registered letter to the State with reference to an official State position on the lack of disposal or storage capability or a notarized copy of a registered letter to the State that has not been answered within a reasonable period of time would be acceptable proof of compliance);

c. Certify that he/she is storing LLW waste between January 1, 1993, and January 1, 1996;

d. Supply low-level radioactive waste disposal permit number or customer number (issued by the sited State or the LLW disposal facility operator), the total final disposal volume of LLW in cubic feet (excluding volume shipped during a penalty period) shipped to each sited State between January 1, 1990, and December 31, 1992, and the total non-penalty surcharges paid to each sited State for disposal during that period;

e. Supply the name of a contact person, telephone number, and an address to which surcharge rebates should be sent; and

f. Specify whether surcharge rebates should be made monthly, semiannually, or a single lump sum payment on February 1, 1996.

III. Notification Procedure

A. To notify States, compact regions, and LLW generators of their potential eligibility for, and methods of applying for, surcharge rebates, DOE will:

1. Publish this notice in the **Federal Register**;
2. Send notice to the address of record of each LLW generator;
3. Notify appropriate State agencies and the Governors;
4. Notify the compact commissions; and
5. Notify the Host State Technical Coordinating Committee and the Low-Level Radioactive Waste Forum.

B. Additionally, DOE may:

1. Publish a notice in widely circulated State papers;
2. Notify industry and trade organizations; and
3. Publish a notice in trade magazines and newsletters.

IV. Compliance Review

DOE will review the documentation submitted by States, compact regions, and LLW generators and owners in support of requests for surcharge rebates. If DOE determines that the submitted documentation adequately addresses the eligibility and documentation requirements, the State, compact region, or LLW generator or owner will be deemed eligible for a surcharge rebate. Eligibility will be effective for States and compact regions, retroactive to the first of the month in which the documentation is received by DOE. For LLW generators and owners, eligibility will be retroactive to the first of the month in which the LLW was made available for shipment to the State. DOE may request additional information, as necessary, to assist in making an eligibility determination.

V. Distribution of Surcharge Rebates

A. Determination of Eligibility

By February 1, 1993, or within 30 days of making a determination of eligibility for a surcharge rebate, whichever is later, DOE will distribute surcharge rebates to eligible parties. Surcharge rebates will be sent to the address provided in the eligible party's request for a surcharge rebate. LLW generators or owners that are eligible for a surcharge rebate may elect to have DOE send the surcharge rebate in monthly, semiannual, or annual increments. To minimize processing costs, surcharge rebates of less than ten dollars per month will be issued in a single check semiannually with the except of account balances of fifty dollars or less on February 1, 1993, which will be issued as a lump sum payment on February 1, 1996.

B. Determination of Ineligibility

Section 5(d)(2)(F) of the Act requires that any funds not paid to a State, compact region, on LLW generators or owners be returned to the sited State that collected the surcharge. This is to be done no later than 30 days after a determination of ineligibility for a surcharge rebate is made. Determinations of ineligibility will be made within 30 days after January 1, 1996, since States, compact regions, or LLW generators or owners could be eligible for surcharge rebates up to that point.

VI. Information Collection

The information collection and record keeping requirements in this Notice are subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and the Office of Management and Budget's (OMB) implementing regulation, 5 CFR part 1320, and have been cleared by OMB for DOE use under OMB Control Number 1910–0900.

Issued in Washington, DC, on September 15, 1992.

Paul D. Grimm,

Principal Deputy Assistant Secretary, Environmental Restoration and Waste Management.

[FR Doc. 92–23742 Filed 9–29–92; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Surcharge Rebates; Mixed Waste and the 1993 Deadline of the Low-Level Radioactive Waste Policy Amendments Act of 1985

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The Low-Level Radioactive Waste Policy Amendments Act of 1985 (the Act) establishes a deadline for a State or compact region to provide for the disposal of all low-level radioactive waste (LLW) generated within such State or compact region. Those States and/or compact regions that are able to provide on January 1, 1993, for the disposition of all the LLW generated within the State or compact region, will be eligible for a rebate of 25 percent of the surcharge fees collected between January 1, 1990, and December 31, 1992, and held by DOE with interest earned.

The purpose of this Notice of Inquiry (NOI) is to request public comment on DOE's conclusion that no disposal of "mixed waste" is required for the Act's 1993 surcharge rebate.

This NOI will facilitate the gathering of comments prior to publishing the final interpretative NOI.

DATES: Written comments in response to this NOI must be received by DOE by October 30, 1992.

ADDRESSES: Interested persons are invited to submit written comments in response to this NOI statement to Terry L. Plummer, U.S. Department of Energy, Division of Technical Support, Office of Waste Management, Environmental Restoration and Waste Management, EM–351, Washington, DC 20585–0002, (301–903–7176); or Robert Newton, Attorney, Office of General Counsel, GC–12, U.S. Department of Energy, Washington, DC 20585 (202–586–0806).

FOR FURTHER INFORMATION CONTACT: Terry L. Plummer, Office of Waste Management, Environmental Restoration and Waste Management, U.S. Department of Energy, Washington, DC 20585–0002 (301–903–7176).

SUPPLEMENTARY INFORMATION:

I. Background

In 1985, Congress passed the Low-Level Radioactive Waste Policy Amendments Act (Pub. L. 99–240). The Act's purpose is to ensure the safe management and disposal of LLW and to ensure that adequate LLW disposal capacity is available to accommodate all of the Nation's LLW. The Act assigns responsibility for LLW disposal to each State in which LLW is generated, but encourages the formation of compact regions to manage LLW on a regional basis. Among the major provisions in the Act are: (1) In return for continued access to the operating LLW disposal facilities, sited States will not have to accept LLW in excess of the cumulative ceilings established for each site in the legislation; (2) generators in non-sited States and compact regions will be subject to escalating surcharges on their LLW by the sited States during a 7-year time period; (3) to help ensure progress by the non-sited States and compact regions, specific milestones in 1986, 1988, 1990, and 1992 are established; and if those milestones are not met, penalty surcharges may be imposed by the sited States, along with possible denial of access to operating LLW disposal facilities; and (4) generators or owners who are assessed the surcharges will be eligible for repayment, with interest, if the State in which the waste was generated refuses to take title and possession of the LLW.

II. "Mixed Waste" Issue

This section provides a discussion of the disposal of the category of low-level radioactive waste defined as "mixed waste" and whether disposal of "mixed waste" is required for eligibility for the 1993 surcharge rebates.

Section 5(d)(2)(B)(iv) of the Act establishes a January 1, 1993, deadline for a State or compact region to provide for the disposal of all low-level radioactive waste generated within such State or compact region. Low-level radioactive waste has generally been grouped into four classifications according to the concentration of certain radionuclides in the waste; Class A, Class B, Class C, and Greater-Than-Class-C. Some low-level radioactive waste regardless of classification is referred to as "mixed waste" because it contains both radioactive and hazardous constituents. Under the Resource Conservation and Recovery Act (RCRA), the hazardous wastes in mixed waste are regulated by the Environmental Protection Agency (EPA), while the radioactive wastes are subject to Nuclear Regulatory Commission (NRC) regulations.

DOE has tentatively concluded that excluding mixed waste from the categories of low-level radioactive waste that must meet the 1993 deadline requirement is an appropriate and reasonable interpretation of the Act.

In reaching this conclusion, DOE considered the legislative history of the 1985 Amendments which suggests that Congress clearly recognized the unique requirements of "mixed waste" and intended to omit "mixed waste" from the milestone requirements of the Act. The Senate Committee on Energy and Natural Resources Report, (Report 99–199, page 4) discusses some of the unique problems of "mixed waste" as follows:

> Mixed-wastes designated for disposal at low-level radioactive waste disposal facilities are currently subject to conflicting regulatory requirements. Mixed wastes are those waste materials that contain low-level radiation as well as hazardous substances. Less than 1 percent of the waste disposed of at low-level radioactive waste disposal facilities falls in the category of mixed wastes. Nevertheless, disposal of these mixed wastes is in jeopardy because of the conflicting regulatory requirements of the Nuclear Regulatory Commission (under 10 CFR part 61) and the Environmental Protection Agency (under the Solid Waste Disposal Act). A facility operator dealing with such wastes may find that if he complies with one set of regulations, he may risk violation of the other set, unless these inconsistencies are resolved. Furthermore, the current system of dual permitting and enforcement authorities resulting from these two sets of regulations makes the disposal of mixed waste a needlessly complex and difficult process.

Despite recognizing some of the unique problems involving "mixed waste," and although both House and Senate versions of the Act contained "mixed waste" provisions, the "mixed waste" provision was omitted prior to passage of the Act when no agreement could be reached by Congressional sponsors. (See, House Report, 99–314, Part I, p. 13, "Sec. 15. Mixed Wastes." Senate Report 99–199, p.17, "Section 7—Mixed Wastes.")

Because of the NRC and EPA continued dual jurisdiction over mixed waste, the development of mixed waste regulations, policy, and technical guidance from the NRC and EPA has taken longer than expected. There are no commercial LLW disposal facilities presently accepting mixed waste for disposal, nor are there any facilities under construction for the disposal of mixed waste. Moreover, generators have not paid States or compact regions any surcharge fees for any mixed waste disposal, not is it anticipated that generators are likely to pay surcharges for mixed waste disposal before December 31, 1992.

Thus, based on the foregoing discussion, DOE is tentatively concluding that disposal of mixed waste is not required by the Act's 1993 surcharge rebate requirement.

Comment Procedures

All interested persons are invited to submit written comments to DOE by the date mentioned in the **DATE** section of this notice.

Issued in Washington, DC, on September 15, 1992.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92–23743 Filed 9–29–92; 8:45 am]

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Federal Register

Wednesday
September 30, 1992

Part VII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 67

Preparation of a Roll of Independent Seminole Indians of Florida; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 67

RIN 1076-AC48

Preparation of a Roll of Independent Seminole Indians of Florida

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to add a new part 67 to title 25 of the Code of Federal Regulations to provide procedures to govern the preparation, certification, and approval of a descendancy roll of Independent Seminole Indians of Florida. The Act of April 30, 1990, provides for the use and distribution of funds awarded the Seminole Indians in dockets 73, 151, and 73–A of the Indian Claims Commission. Section 7 directs the Secretary of the Interior under regulations prescribed by the Secretary to compile a roll of Independent individuals of Seminole Indian descent. The descendancy roll of Independent Seminole Indians of Florida will be used as the basis for compiling a list of persons eligible for a per capita distribution of a portion of the Seminole judgment funds.

DATES: Written comments must be received on or before October 30, 1992.

ADDRESSES: Written comments should be directed to the Chief, Branch of Tribal Relations, Bureau of Indian Affairs, Eastern Area Office, 3701 North Fairfax Drive, Mailstop 260, Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong Vann, Branch of Tribal Relations, Bureau of Indian Affairs, Eastern Area Office, 3701 North Fairfax Drive, Mailstop 260, Arlington, VA 22201, telephone number: (703) 235–2572 (FTS2000: 703–235–2575).

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of the authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Section 7 of the Act of April 30, 1990 (Act), Public Law 101–277, 104 Stat. 143, which provides for the use and distribution of funds awarded the Seminole Indians in dockets 73, 151, and 73–A of the Indian Claims Commission, directs the Secretary to compile a roll of certain individuals of Seminole Indian descent under regulations prescribed by the Secretary. To be eligible for enrollment, Seminole Indian descendants must have been living on April 30, 1990, must be listed on or be lineal descendants of persons listed on the annotated Florida Seminole Agency Census of 1957 as independent Seminoles, and must not be members of a federally recognized tribe.

To establish eligibility for enrollment the proposed rule requires persons to file or have filed on their behalf an application form with the Superintendent, Seminole Agency, Bureau of Indian Affairs, by the deadline specified in proposed § 67.4(b). The proposed deadline is 150 days from the date of publication of the Final Rule in the **Federal Register**. An application filed more than 150 days after the date of publication of the Final Rule will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

Section 7(d) of the Act provides that except for persons who apply for enrollment and are determined eligible and who apply for and accept a per capita share of the payment, "distribution of the award in accordance with this Act shall not be construed to impair, diminish or affect in any manner any rights and claims of the independent Seminole Indians, either as a group or individually, to any lands or natural resources in the State." Because acceptance of a per capita share of the judgment funds may impair, diminish or affect the claims of the Independent Seminole Indians to lands or natural resources in the State of Florida, the BIA has determined that individual applicants must be made aware of this before accepting a per capita share of the judgment funds.

The proposed rule provides for the applicant to make an election on the application form as to whether he or she wishes to share in the per capita payment. In other words, individuals will not only be applying to establish that they qualify for enrollment, but will also be electing whether they wish to receive a per capita payment of the judgment funds if they are determined to meet the qualifications for enrollment.

Because of the serious potential impact of such an election, the proposed rule restricts the making of the election to accept the per capita payment to adult applicants or to legal guardians of incompetent adults or in the case of minors, such election is restricted to the parents or legal guardians. Therefore, those who fail to elect to share in the payment will not be eligible to share in the payment even though they have qualified for enrollment.

In most cases where the BIA is preparing a roll of Indians, general public notice and actual notice to potentially eligible individual beneficiaries is provided. Actual notice to potentially eligible individuals is possible because of the existence, in most cases, of a previously prepared roll or a tribal membership roll. In this instance, there exists no previously prepared or tribal membership roll because the Independent Seminole Indians of Florida have not been affiliated with any other group or tribe of Indians.

The census roll prepared in 1957 does not show addresses for the persons named on the roll. Even if there were addresses shown, after the elapse of more than 30 years the addresses would be so out-of-date that it would be impractical to use them. Consequently, no general mailings of notices to potentially eligible beneficiaries is anticipated. Reasonable effort will be made to place notices for public display in community buildings, tribal buildings, and Indian centers as well as publishing notices in newspapers in appropriate localities throughout the State of Florida. It is also anticipated that public meetings will be held in appropriate localities in the State of Florida to explain the provisions of the Act and the need to apply for enrollment by the deadline specified.

The primary author of this document is Kaye Armstrong Vann, Area Tribal Relations Specialist, Bureau of Indian Affairs, Eastern Area Office.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed rule to the office listed in the "**ADDRESSES**" section of this document.

The information collection requirement contained in this proposed rule does not require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that this is not a major rule under E.O. 12291 because only a limited number of individuals will be affected. Those individuals who are enrolled will be eligible to participate in the distribution of a portion of a relatively small judgment award granted the Seminole Indians.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Department of the Interior has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and that neither an environmental assessment nor an environmental impact statement is required pursuant to the National Environmental Policy Act of 1969.

List of Subjects in 25 CFR Part 67

Indians—claims, Indians—enrollment.

For the reasons set out in the preamble, a new part 67 of title 25, chapter I of the Code of Federal Regulations is proposed to be added as set forth below.

PART 67—PREPARATION OF A ROLL OF INDEPENDENT SEMINOLE INDIANS OF FLORIDA

Sec.

67.1 Definitions.
67.2 Purpose.
67.3 Information collection.
67.4 Qualifications-for enrollment and the deadline for filing application forms.
67.5 Notices.
67.6 Application forms.
67.7 Filing of application forms.
67.8 Burden of proof.
67.9 Action by Superintendent.
67.10 Appeals.
67.11 Decision of the Area Director on appeals.
67.12 Exhaustion of administrative remedies.
67.13 Preparation, certification and approval of the roll.
67.14 Preparation of per capita payment roll.
67.15 Special instructions.

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; and Pub. L. 101–277, 104 Stat. 143.

§ 67.1 Definitions.

As used in these regulations:

Act means the Act of Congress approved April 30, 1990, Public Law 101–277, 104 Stat. 143, which authorizes the use and distribution of funds awarded the Seminole Indians in dockets 73, 151, and 73–A of the Indian Claims Commission.

Adopted person means a person whose natural parents' parental rights have been terminated by court order and persons other than the natural parents have exercised or do exercise parental rights with regard to the adopted person.

Applicant means a person who is making application for inclusion on the roll prepared by the Secretary pursuant to the Act of April 30, 1990, by either personally filing an application or by having a sponsor complete and file an application on his or her behalf.

Assistant Secretary means the Assistant Secretary for Indian Affairs or authorized representative.

Bureau means the Bureau of Indian Affairs, Department of the Interior.

Commissioner means the Commissioner of Indian Affairs or authorized representative.

Director means the Area Director, Eastern Area Office, Bureau of Indian Affairs or authorized representative.

Lineal descendant(s) means those persons who are the issue of the ancestor through whom enrollment rights are claimed; namely, the children, grandchildren, etc. It does not include collateral relatives such as brothers, sisters, nieces, nephews, cousins, etc., or adopted children, adopted grandchildren, etc.

Living means born on or before and alive on the date specified.

Secretary means the Secretary of the Interior or authorized representative.

Sponsor means any person who files an application for enrollment or an appeal on behalf of another person.

Superintendent means the Superintendent, Seminole Agency, Bureau of Indian Affairs or authorized representative.

§ 67.2 Purpose.

The regulations in this part govern the compilation of a roll of persons who meet the requirements specified in section 7 of the Act who will be eligible to share in the distribution of a portion of the judgment funds awarded the Seminole Indians in Dockets, 73, 151, and 73–A of the Indian Claims Commission.

§ 67.3 Information collection.

The information collection requirement contained in this part does not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

§ 67.4 Qualifications for enrollment and the deadline for filing application forms.

(a) The roll shall contain the names of persons of Seminole Indian descent who:

(1) Were born on or before, and living on April 30, 1990;

(2) Are listed on or who are lineal descendants for persons listed on the annotated Seminole Agency Census of 1957 as Independent Seminoles; and

(3) Are not members of an Indian tribe recognized by the Secretary on the most recent list of such Indian tribes published in the **Federal Register**.

(b) To qualify for enrollment, all persons must file application forms with the Superintendent, Seminole Agency, Bureau of Indian Affairs, 6075 Stirling Road, Hollywood, Florida 33024 by (*insert date 150 days from the date of publication of the Final Rule in the* **Federal Register**). An application filed more than 150 days after the date of publication of the Final Rule will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

§ 67.5 Notices

(a) The Director shall give notice to all Area Directors of the Bureau and all Superintendents within the jurisdiction of the Director, of the preparation of the roll for public display in Bureau field offices. Notices shall be placed for public display in community buildings, tribal buildings, and Indian centers.

(b) The Superintendent shall, on the basis of available residence data, publish and republish when advisable, notices of the preparation of the roll in appropriate localities utilizing media suitable to the circumstances.

(c) Notices shall advise of the preparation of the roll and the relevant procedures to be followed including the qualifications for enrollment and the deadline for filing application forms to be eligible for enrollment. The notices shall also state how and where application forms may be obtained, as well as the name, address, and telephone number of a person who maybe contacted for further information.

§ 67.6 Application forms.

(a) Application forms to be filed by or for applicants for enrollment shall be furnished by the Area Director, Superintendent, or other designated persons upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom forms are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing application forms shall be furnished with each form. The form shall indicate prominently the deadline date for filing application forms.

(b) Among other information, each application form shall contain:

(1) Certification as to whether the application form is for a natural child or an adopted child of the parent through whom eligibility is claimed.

(2) If the application form is filed by a sponsor, the name and address of the sponsor and the sponsor's relationship to the applicant.

(3) A control number for the purpose of keeping a record of forms furnished to interested individuals.

(4) Certification that the information given on the application form is true to the best of the knowledge and belief of the person filing the application.

Criminal penalties are provided by statute for knowingly filing false information in such applications (18 U.S.C. 1001).

(5) An election by the applicant as to whether the applicant, if determined to meet the qualifications of enrollment, wishes to share in the per capita payment.

(c) Application forms may be filed by sponsors on behalf of other persons. However, the election as to whether the applicant wishes to share in the per capita payment must be made by the applicant, if an adult, or by the legal guardian of an incompetent adult or if the applicant is a minor, by the minor's parent or legal guardian. Where an application form has been filed by a sponsor, the sponsor will be furnished a copy of the application form to forward to the applicant for the applicant to elect whether, if determined to meet the qualifications for enrollment, he or she wishes to share in the per capita payment. The Superintendent shall also make a reasonable effort to furnish a copy of the sponsored application form directly to the applicant for completion of the election.

(d) Every applicant or sponsor shall furnish the applicant's mailing address on the application form. Thereafter, the applicant or sponsor shall promptly notify the Superintendent of any change in address, giving appropriate identification of the applicant. Otherwise, the mailing address as stated on the application form shall be accepted as the address of record for all purposes under the regulations in this part.

§ 67.7 Filing of application forms.

(a) Application forms filed by mail must be postmarked no later than midnight on the deadline date specified in § 67.4(b). Where there is no postmark date showing on the envelope or the postmark date is illegible, application forms mailed from within the United States, including Alaska and Hawaii, received more than 15 days after the specified deadline, and application forms mailed from outside of the United States received more than 30 days after the specified deadline in the office of the Superintendent, will be rejected for failure to file in time.

(b) Application forms filed by personal delivery must be received in the office of the Superintendent no later than close of business on the deadline date specified in § 67.4(b).

(c) If the deadline date for filing application forms falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the deadline will be the next working day thereafter.

§ 67.8 Burden of proof.

The burden of proof rests upon the applicant to establish eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings, or affidavits, may be used to support claims of eligibility for enrollment. Records of the Bureau of Indian Affairs may be used to establish eligibility.

§ 67.9 Action by Superintendent.

(a) The Superintendent shall notify each individual applicant or sponsor, as applicable, upon receipt of an application. The Superintendent shall consider each application and all documentation. Upon determining an individual's eligibility, the Superintendent shall notify the individual, parent, or guardian having legal custody of a minor, or sponsor, as applicable.

(1) Notification of the decision by the Superintendent shall be in writing by certified mail, to be received by the addressee only, return receipt requested.

(2) If a decision by the Superintendent is sent out of the United States, registered mail will be used. If a certified or registered notice is returned as "Unclaimed" the Superintendent shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Superintendent. If the acknowledgment of receipt is not returned, computation of the period specified for changes in election and for appeals shall begin on the date the notice was remailed. Certified or registered notice returned for any reason other than "Unclaimed" need not be remailed.

(3) If an individual files an application on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person to whom the notice is applicable. Where an individual is represented by a sponsor, notification to the sponsor of eligibility or adverse action shall be considered notification to the individual.

(b) If the Superintendent determines that an applicant is eligible for enrollment as an Independent Seminole Indian of Florida, the applicant will be notified of that decision.

(1) On the basis of an applicant's election with regard to whether he or she wishes to share in the per capita payment, the Superintendent's decision shall also state whether the applicant's name will be included on the per capita payment roll. If no election has been made by the applicant, parent, or legal guardian on the application form, the individual applicant's name will not be included on the per capita payment roll.

(2) The eligible individual will have 30 days from notification of his or her eligibility in which to request a change in the election of whether to share in the per capita payment. Computation of the 30 day period will be in accordance with § 67.9(a)(2) and § 67.9(d). Upon written request received within the 30 day period, to avoid hardship or gross injustice, the Superintendent may grant additional time not to exceed 30 days in which to submit a request for a change in election.

(3) A change in the election of whether to share in the per capita payment can only be made by adult applicants or by the legal guardian of an incompetent adult, or in the case of minors, by the parents or legal guardians of such minors.

(c) If the Superintendent determines that an applicant is not eligible for enrollment as an Independent Seminole Indian of Florida, the Superintendent shall notify the applicant of the decision and shall fully explain the reasons for the adverse action and explain the rejected applicant's right to appeal to the Area Director. The decision of the Area Director shall be final and conclusive.

(d) Except as provided in paragraph (a)(2) of this section, a notice of adverse action concerning an individual's enrollment eligibility or the inclusion or exclusion of an individual's name on the per capita payment roll is considered to have been made and computation of the period for appeal shall begin on the earliest of the following dates:

(1) Delivery date indicated on the return receipt;

(2) Date of acknowledgment of receipt;

(3) Date of personal delivery; or

(4) Date of return by the post office of an undelivered certified or registered letter.

(e) To avoid hardship or gross injustice, the Area Director or the Superintendent may waive technical deficiencies in application forms or other submittals. Failure to file by the deadline date does not constitute a technical deficiency.

§ 67.10 Appeals.

(a) Appeals from or on behalf of applicants who have been rejected for enrollment must be in writing and must be filed pursuant to part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal.

(b) A copy of part 62 of this chapter shall be furnished with each notice of adverse action. All sections of part 62 shall be applicable to appeals filed under this part except §§ 62.10, 62.11 and 62.12.

§ 67.11 Decision of the Area Director on appeals.

(a) The Area Director will consider the record as presented together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(b) The decision of the Area Director on an appeal shall be final and conclusive and written notice, which shall state that the decision is final and conclusive, shall be given the individual applicant, parent, legal guardian, or sponsor, as applicable.

(c) If an individual files an appeal on behalf of more than one applicant, one notice of the Area Director's decision may be addressed to the person who filed the appeal. The Area Director's decision must list the name of each person to whom the decision is applicable. Where an individual applicant is represented by a sponsor, notification to the sponsor of the Area Director's decision is sufficient.

(d) If an applicant who was rejected for enrollment by the Superintendent is determined by the Area Director on appeal to meet the qualifications for enrollment, written notice of the decision shall be by certified mail, to be received by the addressee only, return receipt requested.

(1) On the basis of the individual's election with regard to whether he or she wishes to share in the per capita payment, the Area Director's decision shall also state whether the individual's name will be included on the per capita payment roll. If no election is made by the individual applicant, parent, or legal guardian, the individual's name will not be included on the per capita payment roll.

(2) The eligible individual will have 30 days from notification of his or her eligibility in which to request a change in the election of whether to share in the per capita payment. Computation of the 30-day period will be in accordance with § 67.9(a)(2) and § 67.9(d). Upon written request received within the 30-day period, to avoid hardship or gross injustice, the Area Director may grant additional time not to exceed 30 days in which to submit a request for a change in election.

(3) The change in the election of whether to share in the per capita payment can only be made by adult applicants, or by the legal guardian of an incompetent adult, or in the case of minors, by the parents or legal guardian of such minors.

§ 67.12 Exhaustion of administrative remedies.

The decision of the Area Director on appeal which shall be final for the Department, is subject to judicial review under 5 U.S.C. 704.

§ 67.13 Preparation, certification and approval of the roll.

(a) The Superintendent shall prepare a minimum of three (3) copies of the roll of those persons determined to be qualified for enrollment as an Independent Seminole Indian of Florida. The roll shall contain for each person a roll number or identification number, name, address, sex, date of birth, date of death (when applicable), and the name and relationship of the ancestor on the annotated Seminole Agency Census of 1957 through whom eligibility for enrollment was established.

(b) A certificate shall be attached to the roll by the Superintendent certifying that to the best of his or her knowledge and belief, the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Area Director shall approve the roll.

§ 67.14 Preparation of a per capita payment roll.

(a) The Superintendent shall, based on the roll approved under § 67.12(c), prepare a per capita payment roll. The payment roll shall be comprised of those persons whose name appears on the approved roll and who have elected to share in the per capita payment.

(b) The per capita payment roll shall contain for each person a roll number or identification number, name, and address.

(c) The Area Director shall authorize the distribution of the judgment funds to those persons named on the per capita payment roll.

§ 67.15 Special instructions.

To facilitate the work of the Superintendent and Area Director, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this Part.

Dated: July 15, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92-23712 Filed 9-29-92; 8:45 am]

BILLING CODE 4310-02-M

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Federal Register

Wednesday
September 30, 1992

Part VIII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 248

Use of Columbia River In-Lieu Fishing Sites; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 248

RIN 1076 AC79

Use of Columbia River In-Lieu Fishing Sites

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs proposes to amend the regulation at 25 CFR 248.6 consistent with the decision of the Ninth Circuit Court of Appeals and the final Judgment in *Sohappy* v. *Hodel*, Ninth Circuit No. 88–3531, 911 F.2d 1312 (9th Cir. 1990). The court declared invalid that portion of the regulation prohibiting permanent occupancy of the five Columbia River in-lieu fishing sites. This proposed amendment revises the rule to delete the prohibition against construction of permanent dwellings and structures on the five in-lieu sites.

DATES: Comments must be received on or before November 30, 1992.

ADDRESSES: Comments should be sent to: Ron Eggers, Branch of Fisheries, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Ave., Portland, Oregon 97232–4169.

FOR FURTHER INFORMATION CONTACT: Ron Eggers, Branch of Fisheries, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Ave., Portland, Oregon 97232–4169; Telephone No. (503) 231–6749; or by mail at the address listed above.

SUPPLEMENTARY INFORMATION: Several Pacific Northwest Indian tribes hold treaty rights to fish on the Columbia River. In the 1930's the construction of Bonneville Dam submerged some of the Indians' usual and accustomed fishing sites along the river. In 1945 Congress authorized acquisition of replacement sites to be held by the Secretary of the Interior for the use and benefit of the Indians. Act of March 2, 1945, 59 Stat. 10, 22, *as amended*, Act of June 8, 1955, 69 Stat. 85. The five sites acquired under that Act are managed by the Bureau of Indian Affairs pursuant to regulations at 25 CFR part 248.

25 CFR 248.6 provides in part that "no dwellings or structures shall be erected, placed, or maintained upon the sites, except that camping facilities may be placed thereon only as herein described and fish drying facilities and fishing platforms may be erected by Indians for use during the fishing season." The intent of the regulation was to prohibit permanent occupancy of the sites in order to provide a rational and reasonable means for ensuring health and safety on the sites and for providing a fair opportunity to all eligible Indians to use the sites for fishing purposes.

Sohappy v. *Hodel*, Civil No. 86–715–FR (D. Or.), was filed by individual Indians and a group called "Chiefs and Council of the Columbia River Indians" in order to challenge the Bureau of Indian Affairs' eviction of several Indians living in permanent dwellings on the sites. The Federal district court held that the regulation prohibiting permanent occupancy is consistent with rights reserved by treaty and with the 1945 statute authorizing acquisition of the five sites. The Ninth Circuit Court of Appeals reversed, holding that the 1945 act and the tribes' treaties do not preclude construction of permanent dwellings at the sites. *Sohappy* v. *Hodel*, 911 F.2d 1312 (9th Cir. 1990). The case was remanded to the district court where final Judgment was entered on August 30, 1991.

The Judgment declares 25 CFR 248.6 invalid insofar as it prohibits permanent occupancy of the five sites and provides that the Bureau of Indian Affairs "shall take good faith steps" to amend the regulation consistent with the Ninth Circuit's decision and the final Judgment. The Judgment does not preclude the Bureau from taking reasonable actions necessary to enforce applicable health and safety laws. Therefore, the Bureau of Indian Affairs proposes to revise § 248.6 to delete the prohibition against construction of permanent dwellings and structures on the sites and to retain the requirement that the sites be used in a manner that conforms to applicable health, sanitation and safety laws.

The Judgment in *Sohappy* v. *Hodel* does not affect the Indian tribes' right, title or interest in the sites or the nature and extent of the tribes' sovereign authority to use or manage the sites for fishing purposes under their treaties. See *Settler* v. *Lameer*, 507 F.2d 231 (9th Cir. 1974). It is also important to note that the regulations in 25 CFR part 248 do not apply to the fishing access sites designated in section 401 of the Act of November 1, 1988, 102 Stat. 2944. The Indian tribes, the Bureau of Indian Affairs, and the U.S. Army Corps of Engineers are working together on plans for development, management and regulation of those sites.

This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant Federalism effects.

The primary author of this document is Ron Eggers, Branch of Fisheries, Portland Area Office, Bureau of Indian Affairs.

The policy of this Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested person may submit their written comments, suggestions, or objections regarding the proposed rule to the location identified in the "**ADDRESSES**" section of this preamble.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 because it simply amends a regulation governing Indian use of the Columbia River in-lieu fishing sites consistent with a Federal district court judgment. The rule will not have any significant effects on the economy or result in increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies or geographical regions. The rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because of the limited applicability as stated above.

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969. It is of an administrative, financial, legal, technical, and procedural nature, and therefore neither an environmental assessment nor an environmental impact statement is warranted.

There are no information collection requirement(s) contained in this rule that require the approval of the Office of Management and Budget Under 44 U.S.C. 3501 et seq.

List of Subjects in 25 CFR Part 248

Fisheries, Fishing, Indians.

For reasons set out in the preamble, § 248.6 of part 248 of subchapter J of chapter I of volume 25 of the Code of

Federal Regulations is proposed to be amended as follows:

PART 248—USE OF COLUMBIA RIVER IN-LIEU FISHING SITES

1. The authority citation for 25 CFR part 248 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9.

2. Section 248.6 is revised to read as follows:

§ 248.6 Structures.

Dwellings, camping facilities, and other structures such as fish drying facilities and fishing platforms may be erected, placed or maintained on the sites for use in the conduct of treaty fishing and related activities. Sites must be used in a manner that conforms to the health, sanitation, and safety requirements of the State or local law, or, in the absence of appropriate State or local laws, to the health, sanitation, and safety recommendations of the U.S. Public Health Service. The privileges or right of access to or use of the sites of any individual may be suspended or withdrawn, in the discretion of the Area Director, when such individual having violated such health, sanitation, and safety requirements repeats such violation after having been given notice to cease and desist therefrom.

Dated: July 31, 1992.

William D. Bettenberg,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92-23711 Filed 9-29-92; 8:45 am]

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FEDE
39597-
40071-
40301-
40591-
40827-
41053-
41375-
41641-
41853-
42485-
42681-
42881-
43125-
43335-
43605-
43885-
44077-
44305-
44481-
44651-
44967

Reader Aids

Federal Register

Vol. 57, No. 190

Wednesday, September 30, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

39597-40070.....1
40071-40300.....2
40301-40590.....3
40591-40826.....4
40827-41052.....8
41053-41374.....9
41375-41640.....10
41641-41852.....11
41853-42484.....14
42485-42680.....15
42681-42880.....16
42881-43124.....17
43125-43334.....18
43335-43604.....21
43605-43884.....22
43885-44076.....23
44077-44304.....24
44305-44480.....25
44481-44650.....28
44651-44966.....29
44967-45260.....30

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

2.....40024
3.....40024
11.....40024
305.....44791

3 CFR

Executive Orders:
12154 (See EO 12814).....42483
12543 (See DOT final rule of August 26, 1992).....41696
12722 (See DOT rule of August 21).....39603
12724 (See DOT rule of August 21).....39603
12730 (Continued by Notice of September 25, 1992).....44649
12735 (See State Dept. final rule of Aug. 24).....41077
12775 (See DOT rule of August 17).....39603
12779 (See DOT rule of August 17).....39603
12814.....42483

Administrative Orders:
Presidential Determinations:
No. 91-52 of September 13, 1991 (See Presidential Determination No. 92-45 of August 28, 1992).....43125
No. 92-39 of August 17, 1992.....40071
No. 92-40 of August 17, 1992.....40073
No. 92-42 of August 25, 1992.....40075
No. 92-43 of August 25, 1992.....40077
No. 92-44 of August 25, 1992.....40079
No. 92-45 of August 28, 1992).....43125
No. 92-46 of September 4, 1992.....42881

Memorandums:
Memorandum of September 17, 1990 (Continued by Memorandum of September 25, 1992).....44647

Notices:
September 18, 1992.....43603
September 25, 1992.....44649

Proclamations:
6467.....40591
6468.....40827
6469.....41051
6470.....41373
6471.....42679
6472.....43127
6473.....43129
6474.....43333
6475.....44305
6476.....44307
6477.....44309
6478.....44959
6479.....44961
6480.....44963
6481.....44965

4 CFR

Proposed Rules:
Ch. III.....43776

5 CFR

531.....43131
532.....44967
536.....43131
550.....40070, 43131
870.....43131
890.....43131, 43132

Proposed Rules:
532.....42513, 44343, 45004, 45005

7 CFR

2.....40829
16.....44077
210.....40729
272.....44481
274.....44791
275.....44481
276.....44791
301.....42485
319.....43134
401.....44967, 44968
406.....44968
422.....44969
723.....43580
800.....40301
916.....42681
917.....42681, 42683
920.....41853, 42684
928.....44311
944.....42685, 42687
959.....44312
966.....42688
967.....42689
980.....42688
987.....43335
1207.....40081
1427.....40593
1464.....43580
1703.....44313
1956.....42691

Proposed Rules:
13.....43628
319.....40872, 43628, 44791
780.....43937
910.....42515, 43943
1001.....44344
1002.....44344
1004.....44344
1005.....44344
1007.....44344
1011.....44344
1030.....44344
1033.....42899, 44344
1036.....42899, 44344
1040.....44344
1044.....44344
1046.....44344
1049.....42899, 44344
1065.....44344
1068.....44344
1079.....44344
1093.....44344
1094.....44344
1096.....44344
1097.....44344
1098.....44344
1099.....44344
1106.....44344
1108.....44344
1124.....44344
1126.....44344
1131.....44344
1135.....44344
1138.....44344
1209.....43943
1413.....42899, 44512, 44709
1744.....39628
1902.....39631
1930.....39631
1944.....39635

8 CFR
204.....41053
209.....42883
214.....40830, 42884
251.....40830
258.....40830
274a.....42884

9 CFR
75.....43605
94.....43606, 43885, 44330
381.....43588

Proposed Rules:
75.....40139
92.....41549
124.....40493
201.....42515, 45005
203.....42515, 45005
307.....40623
310.....40623
318.....42885
319.....42885

10 CFR
11.....41375
25.....41376
35.....41376
50.....41378, 43886
600.....40083
605.....40582
1706.....44651

Proposed Rules:
26.....42901
50.....44513
70.....42901
73.....42901
1023.....40345

11 CFR
200.....39743

Proposed Rules:
104.....44137
109.....45009
110.....45009
114.....45009

12 CFR
3.....40302, 44078
6.....44866
19.....44866
204.....40597
208.....43889, 44866
217.....43336
225.....41381, 41641, 43889
230.....43337
250.....40597, 41643
262.....41641
263.....44866
265.....40597
308.....44866
325.....44866
545.....40085
562.....40085
563.....40085
563c.....40085
565.....44866
571.....40085
603.....42888
611.....43393
612.....43394
614.....43290, 44489
619.....43290
701.....42486
935.....42888
940.....42888
1616.....43607

Proposed Rules:
3.....42623, 42901
208.....39641, 42623
225.....39641, 42623
325.....42623
363.....42516
509.....40350
516.....40350
517.....42906
528.....40350
541.....40350
543.....40350
545.....40350
552.....40350
556.....40350
558.....40350
559.....40350
561.....40350
563.....40140, 40350, 40524
563b.....40350
563e.....40350
567.....40143, 40147, 40350, 40524
571.....40350, 40524
579.....40350
580.....40350
791.....42532
1625.....39743

13 CFR
121.....41068

Proposed Rules:
108.....43155, 43157
120.....44346

14 CFR
13.....40094
21.....41069, 41072, 41360, 42846, 43776
23.....41069, 41072
36.....41360, 42846
39.....40307–40313, 40601, 40835–40838, 42692, 42693, 43291, 43890, 44489
43.....41360
71.....40095, 40096, 42488, 44657–44659
91.....41360, 42662
95.....44489
97.....41074, 41075, 44085, 44087
121.....42662, 44924
125.....42662
135.....42662, 43776
147.....41360
200.....40097
203.....40097
205.....40097
206.....40097
231.....40097
232.....40097
255.....43780
263.....40097
288.....40097
294.....40097
296.....40097
297.....40097
298.....40097
302.....40097
372.....40097
399.....40097
1214.....41077, 41854

Proposed Rules:
Ch. I.....41894
39.....40359, 40623, 40624, 41114, 41115, 41439, 43944, 44138–44141, 44710
61.....41974
71.....40148–40156, 41441–41445, 42810, 44464, 44712, 44713
73.....44464
93.....42810
101.....41628
107.....43294
108.....43294
207.....42864
208.....42864
212.....42864
294.....42864
298.....42864
380.....42864
389.....42864

15 CFR
29b.....43892
60.....40840
770.....41854
771.....41854
772.....44969
773.....41854, 44969
776.....41854
779.....41854
786.....41854
799.....41854
Ch. IX.....43310
944.....43310

Proposed Rules:
799.....41894
806.....43158
Ch. IX.....44347
946.....40877

16 CFR
305.....41388, 43611, 44331
1115.....39597

Proposed Rules:
229.....41706
230.....41707
232.....41706

17 CFR
4.....41173
16.....40601
19.....41389
30.....40603
150.....44490

Proposed Rules:
Ch. II.....43631
33.....40626

19 CFR
10.....40314, 40604, 43059
24.....42697
103.....44089
122.....43395
141.....40605
142.....44090
145.....40255
171.....40605
172.....40605
178.....44090

Proposed Rules:
4.....40627
10.....44714
101.....42712
141.....40361, 44791
142.....40361, 44142
143.....40361
146.....41896
151.....40361, 44143
152.....44143
191.....41446, 44145

20 CFR
404.....44095
655.....40966, 43118, 43495

Proposed Rules:
416.....44146, 44348, 44519
626.....41447
627.....41447
628.....41447
629.....41447
630.....41447
631.....41447
637.....41447

21 CFR
5.....40315–40318, 43397
177.....43398
178.....43631
310.....41857
358.....44493, 44494
520.....42490, 42623
522.....41861, 42623
526.....42623
529.....42489
556.....41861
558.....44791
573.....40318
1308.....43399
1310.....43614
1313.....43614

Proposed Rules:
131.....40255, 43059
166.....43634

310.....40944
864.....43161
872.....43165
884.....42908

22 CFR

121.....41077

24 CFR

25.....40111
91.....40038
135.....40111
201.....45244
203.....44098
234.....44098
570.....40038
905.....40113

25 CFR

Proposed Rules:
67.....45258
211.....40298
212.....40298
248.....45258

26 CFR

1.....40118, 40319, 40841, 41079, 41644, 42490, 43893, 43897, 44332, 44974–44989
5c.....43893
5f.....43893
5h.....43893
6.....43893
7.....43893
7a.....43893
10.....43893
13.....43893
14.....43893
14a.....43893
18.....43893
19.....43893
31.....44099
301.....43893
602.....40118, 40319, 41079, 41644, 43893, 43897
602.....44974–44989

Proposed Rules:
1.....39743, 40378, 41707, 41897, 42712, 42720, 43776, 43945
49.....41549
301.....43777

27 CFR

5.....40323
20.....40847, 42623
53.....40324
70.....40327
194.....39597

Proposed Rules:
4.....40380, 40884
5.....40884
9.....45009
25.....44525
250.....40885
251.....40886
252.....40887
290.....40889

28 CFR

2.....41391–41394
11.....44106
50.....39598
80.....39598

Proposed Rules:
2.....41450

29 CFR

506.....40966, 43495
1910.....42102
1915.....42102
1926.....42102
2200.....41676
2676.....42490

Proposed Rules:
103.....43635
403.....41634
2610.....42910

30 CFR

56.....44256
57.....44256
206.....41862
207.....41862
208.....41862
210.....41862
216.....41862
218.....41862
219.....41862
220.....41862
228.....41862
243.....44991
914.....41869
920.....44112
925.....44114, 44660
935.....41690, 44118
944.....41692

Proposed Rules:
75.....40395, 42808
400.....43411
609.....43411
651.....43412
917.....41897, 43946–43952
920.....41712
935.....43954
950.....41714, 41715

31 CFR

10.....41093
204.....40239
205.....44272
211.....44998
315.....39601
353.....39601
358.....40607
520.....44682
550.....41696
575.....39603
580.....39603

Proposed Rules:
270.....41117
349.....45116
356.....45116

32 CFR

60.....40849
220.....41096
323.....40608
619.....44238
701.....40609
706.....41698
806.....41396
861.....44682
1906.....39604

Proposed Rules:
202.....43645
317.....40397
505.....44716

33 CFR

3.....39613, 42699
64.....43401
100.....40125, 40609, 40610, 41419, 41420, 44687, 44688
117.....39614, 41873
135.....41104
136.....41104
137.....41104
157.....40494
165.....40125, 40330, 40612, 41421, 43615, 44121, 44122
334.....40612

Proposed Rules:
89.....43169
117.....43647
155.....44912
162.....41899

34 CFR

Proposed Rules:
231.....44046
238.....44046
300.....44794
301.....44794
305.....43572
612.....44350
785.....44408
786.....44408
787.....44408

36 CFR

51.....42808

Proposed Rules:
51.....40496
242.....43074
1191.....41006

37 CFR

1.....40493
2.....40493
202.....39615

Proposed Rules:
1.....41899, 42721, 43412
5.....43412
10.....43412

38 CFR

1.....44123
3.....40944, 43904
17.....41709
21.....40613, 43616
36.....40615, 43616

Proposed Rules:
3.....40424
21.....41451

39 CFR

111.....43403

Proposed Rules:
111.....39646, 40890, 41716, 43956

40 CFR

52.....40126, 40331–40336, 42889–42895, 43905, 44124, 44689
55.....40792
58.....44495
60.....44496
62.....43405, 44691
136.....41830
148.....41173
156.....42472
170.....42472
180.....40128, 42699, 42700
185.....42700
186.....42700
260.....41173, 41566
261.....41173, 41566
262.....41173
264.....41173, 42832
265.....41173, 42832
266.....41566, 44999
268.....41173
270.....41173
271.....41173, 41566, 41699
279.....41566
281.....41874
414.....41836
721.....44050

Proposed Rules:
Ch. I.....42533, 43956, 44147
2.....44718
52.....40157, 40159, 41716, 42536, 42911, 42913, 43420–43425, 43648–43657, 43957, 43959, 44351, 44528–44542, 44718, 45012
60.....43171
61.....43173
62.....40628
63.....44147
81.....43846
122.....41344
153.....44290
159.....44290
180.....40161–40163, 42727–42730, 45017, 45018
228.....43427
250.....44543
260.....43171
261.....45112
264.....43171
265.....43171
268.....44545
270.....43171
271.....43171, 44545
300.....39659, 41452, 44545
372.....10820
721.....10820

41 CFR

101.....44691
302–6.....45001

42 CFR

60.....41875
405.....42491, 45112
410.....39743
411.....45112
412.....39746
413.....39746, 42491, 43906, 45112
414.....42491
415.....42491
431.....43922
433.....45112
442.....43922
447.....43906, 43922
483.....43922
488.....43922
489.....43922
498.....43922

Proposed Rules:
100.....41809
413.....43659

43 CFR

3150.....44333
3160.....44333

Public Land Orders:
6942.....42808
6943.....39616

2460 (Revoked in part by PLO 6945)..... 43405
6945..... 43405
6947..... 43618
Proposed Rules:
4..... 44353
3160..... 44547
3710..... 41846
3800..... 42732

44 CFR

64..... 39617, 41104, 41875, 43618
65..... 41877, 41878
67..... 39619, 41880
Proposed Rules:
67..... 41905

45 CFR

400..... 42896
641..... 40337
1301..... 41881
1302..... 41886

46 CFR

30..... 41812
32..... 41812
35..... 41812
500..... 44697
514..... 44697
542..... 44700
550..... 44697
552..... 44697
553..... 44697
555..... 44697
67..... 44126
70..... 41812
78..... 41812
90..... 41812
97..... 41812
107..... 41812
108..... 41812
109..... 41812
167..... 41812
169..... 41812
170..... 41812
171..... 41812
184..... 41812
185..... 41812
188..... 41812
196..... 41812
272..... 39621
298..... 39621, 44129
502..... 44504
510..... 39622, 40129
514..... 39622, 44504
540..... 41887
550..... 44504
560..... 40616
572..... 40616
580..... 39622
582..... 39622
Proposed Rules:
67..... 43432

47 CFR

1..... 43406
2..... 43290
63..... 41106, 41109
73..... 39624, 39625, 40342, 40849, 41698, 41700, 42510, 42511, 42701, 43290, 44337–44339, 44511, 45002
74..... 41110
80..... 43406, 44700
90..... 40850, 42706, 43408, 44339
95..... 40343
97..... 40343
Proposed Rules:
Ch. I..... 39661
2..... 40630, 42916, 43434
13..... 41718
15..... 40630
21..... 42916
22..... 40630, 42916
25..... 40425, 40426, 40891
61..... 40426
63..... 41118
69..... 40426
73..... 39663, 41719, 41911, 41912, 42536–42538, 42732, 44354, 44547–44549, 45020
94..... 42916
99..... 40630

48 CFR

Ch. I..... 44258
4..... 44259
5..... 44260
13..... 44260
14..... 44261
15..... 44261, 44262
19..... 44260
22..... 44262
25..... 44263
30..... 43409, 43495
31..... 40344, 44264
32..... 44267
42..... 44264
52..... 43409, 43495, 44259, 44261, 44262, 44267, 44268
202..... 42626
204..... 42626
208..... 42626
214..... 42626
215..... 41422, 42626
216..... 42626
219..... 42626
223..... 42626
225..... 42626
226..... 42626
227..... 42626
228..... 42626, 42707
231..... 42626
232..... 42626, 42707
236..... 42626
237..... 42626
239..... 42626
242..... 42626
245..... 42626
252..... 41422, 42626, 42707
253..... 42626
270..... 41422
525..... 42708
552..... 42708
817..... 44129
923..... 41974
1801..... 40851
1803..... 40851
1804..... 40851
1805..... 40851
1806..... 40851
1807..... 40851
1808..... 40851
1809..... 40851
1813..... 40851
1815..... 40851
1816..... 40851
1819..... 40851
1822..... 40851
1823..... 40851
1825..... 40851
1827..... 40851
1831..... 40851
1832..... 40851
1833..... 40851
1836..... 40851
1837..... 40851
1842..... 40851
1845..... 40851
1849..... 40851
1851..... 40851
1852..... 40851
1853..... 40851
1870..... 40851
9903..... 43620
Proposed Rules:
45..... 40891
9903..... 43776
9904..... 43776

49 CFR

1..... 40620
110..... 43062
350..... 40946
355..... 40946
391..... 45002
396..... 40946
397..... 44129
571..... 40131, 41423, 41428
588..... 41428
591..... 44703
1003..... 41111
1012..... 44135
1023..... 43151
1039..... 40620
1109..... 39743
1313..... 40620
1321..... 40857, 43059, 43925
1313..... 43291
Proposed Rules:
174..... 42466
177..... 42466
192..... 41119
218..... 41454
234..... 44355
392..... 44158
395..... 44158
571..... 40165, 41912, 44721
1002..... 39743, 41459
1018..... 41459
1039..... 39663, 41122
1105..... 42733
1145..... 41122, 44614
1150..... 42733
1312..... 41459
1313..... 41459
1314..... 41459

50 CFR

17..... 44340, 44703
20..... 40032, 43856, 44472, 44616
204..... 40858
216..... 41701
217..... 40859, 40861, 41703
227..... 40859, 40861, 41703
285..... 42710, 43409, 44340
299..... 40858
641..... 41892
642..... 43153
646..... 41892
653..... 40134
661..... 39626, 40135, 40136, 40622, 41705, 42511, 43621, 44135
663..... 40136, 41112, 42898
672..... 40137, 40255, 43621, 43926
675..... 42710, 43154, 43621, 43627, 43926, 44341
681..... 41112
683..... 40255
Proposed Rules:
17..... 39664, 40429, 43673–43686, 44721, 45020
100..... 43074
216..... 40166
217..... 41123
227..... 41123
228..... 42538
611..... 40493
672..... 44355, 44729
675..... 44729
685..... 40493, 43290

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 4551/P.L. 102–371

Civil Liberties Act Amendments of 1992. (Sept. 27, 1992; 106 Stat. 1167; 3 pages) Price: $1.00

Last List September 29, 1992

Public Laws

102d Congress, 2nd Session, 1992

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 2nd Session, 1992.

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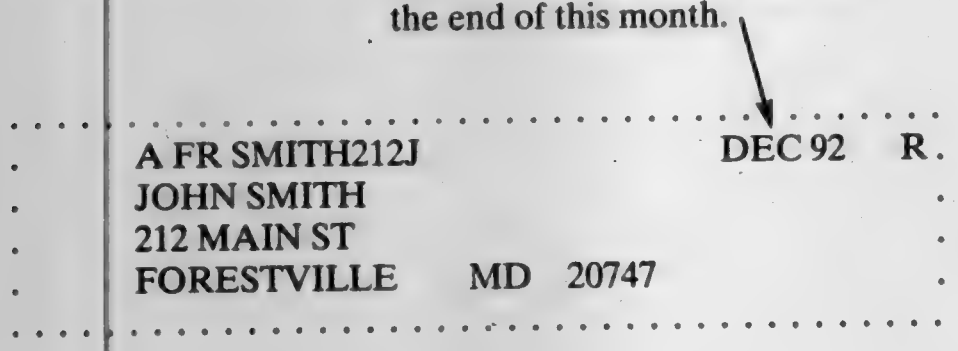

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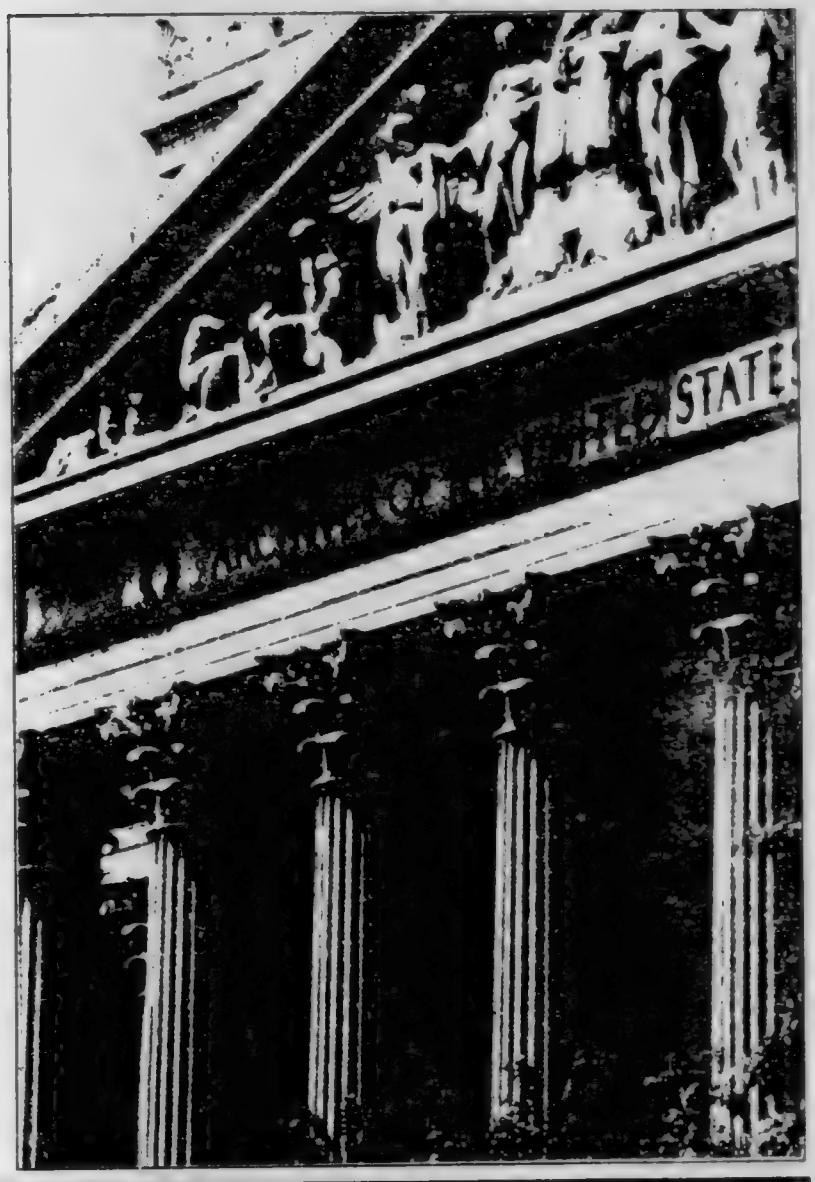

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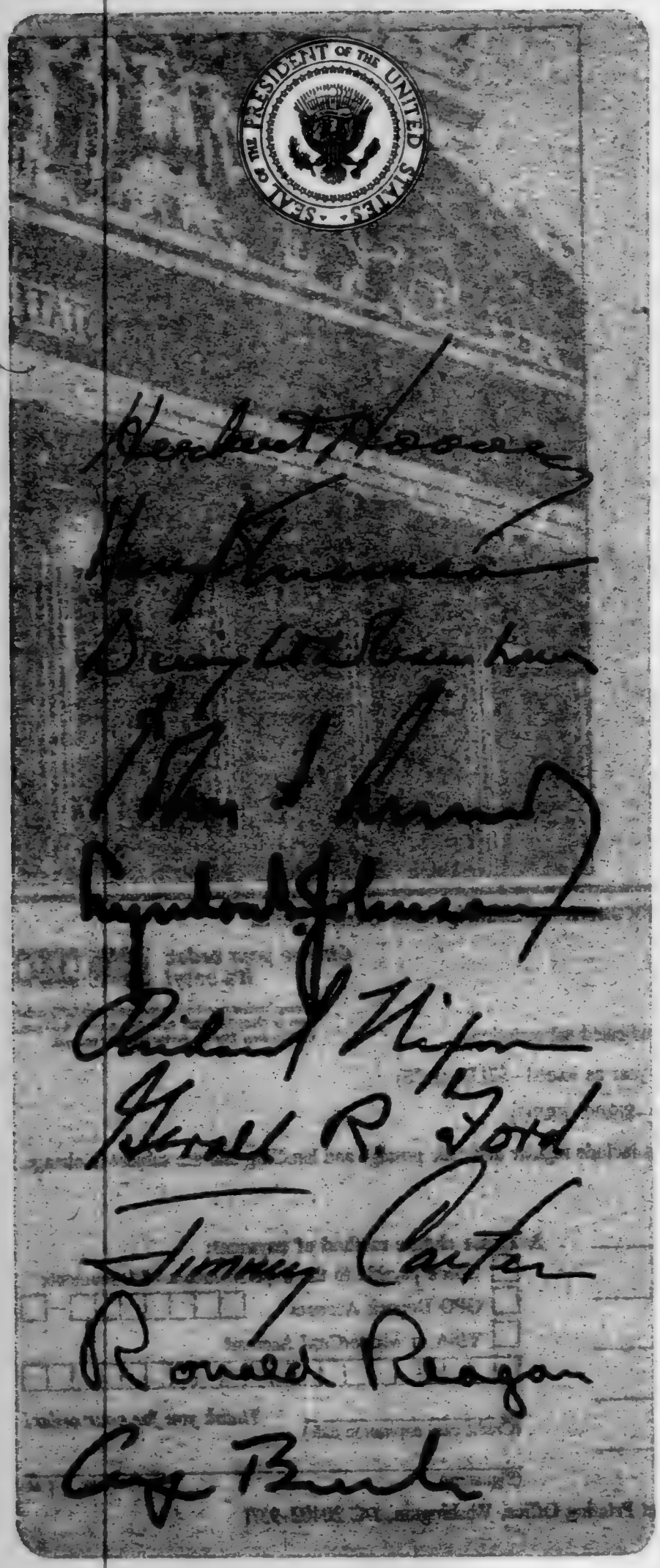

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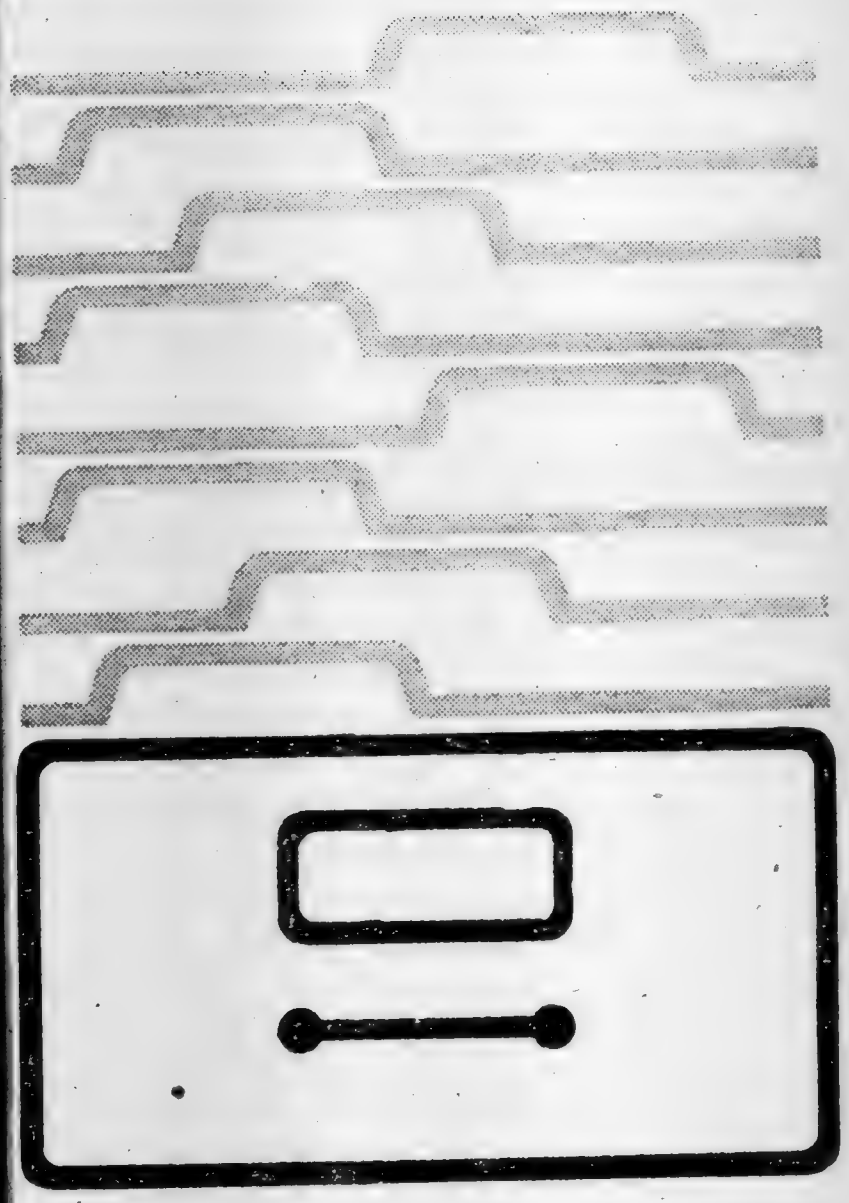

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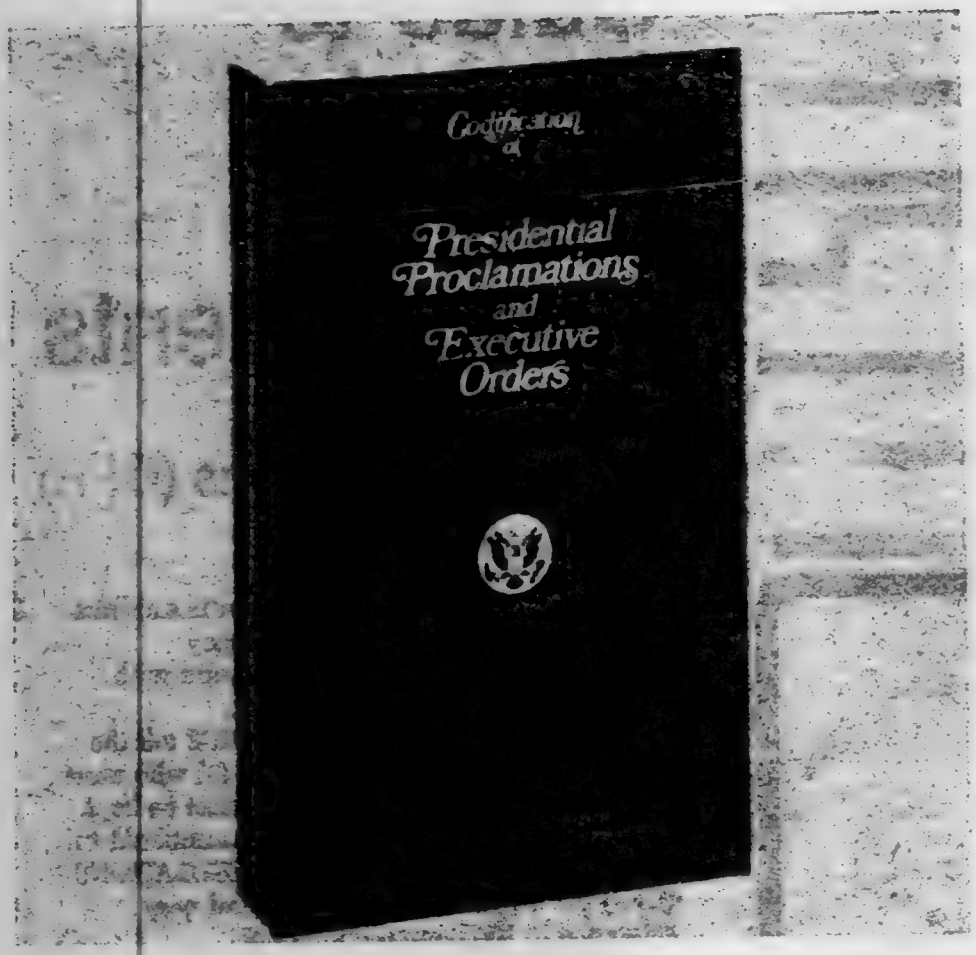

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LSA

List of CFR Sections Affected

June 1992

Save this issue for Titles 28–41 (Annual)

Editor's Note:
The revision for the 1992 edition of title 38 will be delayed until September 1, 1992. The 1992 revision will include amendments promulgated during the period of July 1, 1991 through September 1, 1992. For the convenience of the user, this **LSA** contains all amendments promulgated since the July 1, 1991 revision.

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Title 1–16
Changes January 2, 1992 through June 30, 1992

Title 17–27
Changes April 1, 1992 through June 30, 1992

Title 28–41
Changes July 1, 1991 through June 30, 1992

Title 42–50
Changes October 1, 1991 through June 30, 1992

LSA—LIST OF CFR SECTIONS AFFECTED

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HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1-16—as of Jan. 1
17-27—as of April 1
28-41—as of July 1
42-50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

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Cite a page reference from this publication using the volume number (i.e. 57 FR for 1992) and the page number. Example: 24727 cite as 57 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1-16; the MARCH issue is the ANNUAL for Titles 17-27; the JUNE issue is the ANNUAL for Titles 28-41; the SEPTEMBER issue is the ANNUAL for Titles 42-50. ANNUAL ISSUES to be saved are clearly designated on the cover.

PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1992.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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§§ 1.908–1.1000	(869–013–00092–7)	22.00	Apr. 1, 1991
§§ 1.1001–1.1400	(869–017–00093–1)	19.00	Apr. 1,1992
§§ 1.1401–End	(867–017–00094–9)	26.00	Apr. 1, 1992
2–29	(869–013–00095–1)	21.00	Apr. 1, 1991
30–39	(869–017–00096–5)	15.00	Apr. 1, 1992
40–49	(869–017–00097–3)	12.00	Apr. 1, 1992
50–299	(869–017–00098–1)	15.00	Apr. 1, 1992
300–499	(869–013–00099–4)	17.00	Apr. 1, 1991
500–599	(869–013–00100–1)	6.00	[5] Apr. 1, 1990
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992
27 Parts:			
1–199	(869–013–00102–8)	29.00	Apr. 1, 1991
200–End	(869–017–00103–1)	11.00	Apr. 1, 1992
28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
0–99	(869–013–00105–2)	18.00	July 1, 1991
100–499	(869–013–00106–1)	7.50	July 1, 1991
500–899	(869–013–00107–9)	27.00	July 1, 1991
900–1899	(869–013–00108–7)	12.00	July 1, 1991
1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
1911–1925	(869–013–00111–7)	9.00	[6] July 1, 1989
1926	(869–013–00112–5)	12.00	July 1, 1991
1927–End	(869–013–00113–3)	25.00	July 1, 1991
30 Parts:			
1–199	(869–013–00114–1)	22.00	July 1, 1991
200–699	(869–013–00115–0)	15.00	July 1, 1991
700–End	(869–013–00116–8)	21.00	July 1, 1991
31 Parts:			
0–199	(869–013–00117–6)	15.00	July 1, 1991
200–End	(869–013–00118–4)	20.00	July 1, 1991
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–013–00119–2)	25.00	July 1, 1991
190–399	(869–013–00120–6)	29.00	July 1, 1991
400–629	(869–013–00121–4)	26.00	July 1, 1991
630–699	(869–013–00122–2)	14.00	July 1, 1991
700–799	(869–013–00123–1)	17.00	July 1, 1991
800–End	(869–013–00124–9)	18.00	July 1, 1991
33 Parts:			
1–124	(869–013–00125–7)	15.00	July 1, 1991
125–199	(869–013–00126–5)	18.00	July 1, 1991
200–End	(869–013–00127–3)	20.00	July 1, 1991
34 Parts:			
1–299	(869–013–00128–1)	24.00	July 1, 1991
300–399	(869–013–00129–0)	14.00	July 1, 1991
400–End	(869–013–00130–3)	26.00	July 1, 1991

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
35	(869-013-00131-1)	10.00	July 1, 1991
36 Parts:			
1-199	(869-013-00132-0)	13.00	July 1, 1991
200-End	(869-013-00133-8)	26.00	July 1, 1991
37	(869-013-00134-6)	15.00	July 1, 1991
38 Parts:			
0-17	(869-013-00135-4)	24.00	July 1, 1991
18-End	(869-013-00136-2)	22.00	July 1, 1991
39	(869-013-00137-1)	14.00	July 1, 1991
40 Parts:			
1-51	(869-013-00138-9)	27.00	July 1, 1991
52	(869-013-00139-7)	28.00	July 1, 1991
53-60	(869-013-00140-1)	31.00	July 1, 1991
61-80	(869-013-00141-9)	14.00	July 1, 1991
81-85	(869-013-00142-7)	11.00	July 1, 1991
86-99	(869-013-00143-5)	29.00	July 1, 1991
100-149	(869-013-00144-3)	30.00	July 1, 1991
150-189	(869-013-00145-1)	20.00	July 1, 1991
190-259	(869-013-00146-0)	13.00	July 1, 1991
260-299	(869-013-00147-8)	31.00	July 1, 1991
300-399	(869-013-00148-6)	13.00	July 1, 1991
400-424	(869-013-00149-4)	23.00	July 1, 1991
425-699	(869-013-00150-8)	23.00	[6] July 1, 1989
700-789	(869-013-00151-6)	20.00	July 1, 1991
790-End	(869-013-00152-4)	22.00	July 1, 1991
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-013-00153-2)	8.50	[7] July 1, 1990
101	(869-013-00154-1)	22.00	July 1, 1991
102-200	(869-013-00155-9)	11.00	July 1, 1991
201-End	(869-013-00156-7)	10.00	July 1, 1991
42 Parts:			
1-60	(869-013-00157-5)	17.00	Oct. 1, 1991
61-399	(869-013-00158-3)	5.50	Oct. 1, 1991
400-429	(869-013-00159-1)	21.00	Oct. 1, 1991
430-End	(869-013-00160-5)	26.00	Oct. 1, 1991
43 Parts:			
1-999	(869-013-00161-3)	20.00	Oct. 1, 1991
1000-3999	(869-013-00162-1)	26.00	Oct. 1, 1991
4000-End	(869-013-00163-0)	12.00	Oct. 1, 1991
44	(869-013-00164-8)	22.00	Oct. 1, 1991
45 Parts:			

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1-199	(869-013-00165-6)	18.00	Oct. 1, 1991
200-499	(869-013-00166-4)	12.00	Oct. 1, 1991
500-1199	(869-013-00167-2)	26.00	Oct. 1, 1991
1200-End	(869-013-00168-1)	19.00	Oct. 1, 1991
46 Parts:			
1-40	(869-013-00169-9)	15.00	Oct. 1, 1991
41-69	(869-013-00170-2)	14.00	Oct. 1, 1991
70-89	(869-013-00171-1)	7.00	Oct. 1, 1991
90-139	(869-013-00172-9)	12.00	Oct. 1, 1991
140-155	(869-013-00173-7)	13.00	Oct. 1, 1991
156-165	(869-013-00174-5)	14.00	Oct. 1, 1991
166-199	(869-013-00175-3)	14.00	Oct. 1, 1991
200-499	(869-013-00176-1)	20.00	Oct. 1, 1991
500-End	(869-013-00177-0)	11.00	Oct. 1, 1991
47 Parts:			
0-19	(869-013-00178-8)	19.00	Oct. 1, 1991
20-39	(869-013-00179-6)	19.00	Oct. 1, 1991
40-69	(869-013-00180-0)	10.00	Oct. 1, 1991
70-79	(869-013-00181-8)	18.00	Oct. 1, 1991
80-End	(869-013-00182-6)	20.00	Oct. 1, 1991
48 Chapters:			
1 (Parts 1-51)	(869-013-00183-4)	31.00	Oct. 1, 1991
1 (Parts 52-99)	(869-013-00184-2)	19.00	Oct. 1, 1991
2 (Parts 201-251)	(869-013-00185-1)	13.00	Oct. 1, 1991
2 (Parts 252-299)	(869-013-00186-9)	10.00	Oct. 1, 1991
3-6	(869-013-00187-7)	19.00	Oct. 1, 1991
7-14	(869-013-00188-4)	26.00	Oct. 1, 1991
15-End	(869-013-00189-3)	30.00	Oct. 1, 1991
49 Parts:			
1-99	(869-013-00190-7)	20.00	Oct. 1, 1991
100-177	(869-013-00191-5)	23.00	Oct. 1, 1991
178-199	(869-013-00192-1)	17.00	Oct. 1, 1991
200-399	(869-013-00193-1)	22.00	Oct. 1, 1991
400-999	(869-013-00194-0)	27.00	Oct. 1, 1991
1000-1199	(869-013-00195-8)	17.00	Oct. 1, 1991
1200-End	(869-013-00196-6)	19.00	Oct. 1, 1991
50 Parts:			
1-199	(869-013-00197-4)	21.00	Oct. 1, 1991
200-599	(869-013-00198-2)	17.00	Oct. 1, 1991
600-End	(869-013-00199-1)	15.00	Oct. 1, 1991
CFR Index and Finding Aids	(869-017-00053-7)	31.00	Jan. 1, 1992
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Footnotes at end of table.

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[2]The July 1, 1985 edition of 32 CFR parts 1—189 contains a note only for parts 1—39 inclusive. For the full text of the Defense Acquisition Regulations in parts 1—39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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J E

9 92

U M I

TITLE

1 .....
305 ..
425 ..

Proclar

4865
6399
6400
6401
6402
See
tic
6403
6404
6405
6406
6407
6408
6409
6410
6411
6412
6413
6414
6415
6416
6417
6418
6419
6420
6421
6422
6423
6424
6425
6426
6427
See
6428
6429
6430
6431
6432
6433
6434
6435
6436

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 1—GENERAL PROVISIONS

Title 1—*Proposed Rules:*

Page
1 ..... 859, 860
305 13667
425 14669

TITLE 3—THE PRESIDENT

Proclamations

4865 *See* EO 12807..... 23133
6399 1365
6400 2429
6401 2671
6402 4833
See Presidential Determination 92-11 of Jan. 28, 1992..... 5787
6403 5973
6404 6065
6405 6787
6406 7313
6407 7873
6408 8255
6409 8395
6410 8835
6411 9041
6412 9645
6413 9647
6414 9971
6415 10119
6416 10413
6417 10737
6418 12693
6419 12865
6420 12989
6421 13265
6422 13621
6423 17845
6424 18795
6425 19067
6426 19357
6427 19359
See EO 12804..... 19361
6428 19363
6429 19371
6430 20191
6431 20391
6432 20393
6433 20395
6434 20397
6435 20631
6436 21347
Page
6437 21349
6438 21583
6439 21585
6440 21587
6441 21721
6442 22143
6443 24179
6444 24935
6445 26921
6446 26969
6447 26981
6448 27345
6449 28033
6450 28579
6451 28581

Executive Orders

Aug. 31, 1917 Revoked in part by PLO 6922..... 4856
5327 Modified by PLO 6926 of April 21, 1992..... 19092
Revoked in part by PLO 6934..... 28637
10879 Superseded by EO 12793..... 10281
12049 Superseded by EO 12788..... 2213
12193 *See* EO 12791 8717
12295 *See* EO 12791..... 8717
12324 Revoked by EO 12807..... 23133
12351 *See* EO 12791..... 8717
12409 *See* EO 12791..... 8717
12438 Revoked by EO 12797..... 11671
12463 *See* EO 12791..... 8717
12506 *See* EO 12791..... 8717
12514 Revoked by EO 12787..... 517
12554 *See* EO 12791..... 8717
12587 *See* EO 12791..... 8717
12625 Revoked by EO 12805..... 20627
12629 *See* EO 12791..... 8717
12670 *See* EO 12791..... 8717
12706 *See* EO 12791..... 8717
12753 Superseded by EO 12791..... 8717
12754 Amended by EO 12790..... 8057
12787 517
12788 2213
12789 5225
12790 8057
12791 8717
12792 9165
12793 10281
12794 11417
12795 11421
12796 11423

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 3 Executive Orders—Con. Page

12797 11671
12798 12175
12799 12401
Corrected 13413
12800 12985
12801 14319
12802 14321
12803 19063
12804 19361
12805 20627
12806 21989
12807 23133
12808 23299
12809 23925
12810 23437
12811 28585

Administrative Orders

Memorandums:

Dec. 27, 1991 1069
Jan. 21, 1992 3111
Feb. 10, 1992 ..... 5365, 5367, 24345
Feb. 13, 1992 6663
Feb. 18, 1992 7531
Mar. 20, 1992 11554
May 18, 1992 22409
June 15, 1992 ..... 27135, 27137

Presidential Determinations:

No. 92-9 of Dec. 16, 1991 329
No. 92-10 of Dec. 30, 1991 1071
No. 92-11 of Jan. 28, 1992 5787
See Proc. 6402 4833
No. 92-12 of Jan. 31, 1992 19077
No. 92-13 of Feb. 4, 1992 5789
No. 92-14 of Feb. 10, 1992 6659
No. 92-15 of Feb. 18, 1992 7315
No. 92-16 of Feb. 18, 1992 7317
No. 92-17 of Feb. 26, 1992 8569
No. 92-18 of Feb. 28, 1992 8571
No. 92-19 of Mar. 16, 1992 11553
No. 92-20 of Apr. 3, 1992 13623
No. 92-21 of Apr. 10, 1992 12863
No. 92-22 of Apr. 22, 1992 15217
No. 92-23 of Apr. 27, 1992 22145
No. 92-24 of Apr. 27, 1992 20025
No. 92-25 of May 6, 1992 22147
No. 92-27 of May 26, 1992 24925
No. 92-28 of May 26, 1992 24927
No. 92-29 of June 2, 1992 24539
No. 92-30 of June 3, 1992 24929
No. 92-31 of June 3, 1992 24931
No. 92-32 of June 3, 1992 24933
No. 92-33 of June 15, 1992 28583

TITLE 4—ACCOUNTS

Chapter III—General Accounting Office (CASB) (Parts 300—499)

Page

Chapter III Removed 14152

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

9 Removal at 56 FR 18660 confirmed 10123
212.301 Amended 10123
213 Authority citation revised 17847
213.3102 (j) revised 17847
213.3202 Regulation at 56 FR 18661 confirmed 10123
213.3301—213.3302 Regulation at 56 FR 18660 confirmed 10123
213.3301b Regulation at 56 FR 18660 confirmed 10123
214.201 Regulation at 56 FR 18661 confirmed 10123
297.501 (b)(8) heading revised and existing text redesignated as (b)(8)(i); (b)(8)(ii) added 20956
300.301 Removal at 56 FR 18661 confirmed 10123
300.402 Revised 10124
305 Removal at 56 FR 18661 confirmed 10123
317 Regulation at 56 FR 18661 confirmed 10123
317.901 (c)(1)(ii) revised 10124
319 Regulation at 56 FR 18661 confirmed 10123
319.102 Revised 10124
330.203 (a)(3) and (b) revised; interim 21890
330.302 (a) revised; interim 21890
330.303 (b)(4)(i) revised; interim 21890
330.307 (a)(2) and (b) revised; interim 21890
335.102 Introductory text, (a), and (f)(2) revised 10124
338.101 (b) revised 10124
351.807 Added 21890
352.307 (b) revised 10124
352.703 (b)(3) revised 10124

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

352.803 (c)(2), (3) and (d)(3) revised; (c)(4) and (d)(4) removed; (d)(2) amended; (d)(5) redesignated as (d)(4)....10124
352.904 (b)(3) revised....10125
353.305 Regulation at 56 FR 18662 confirmed....10123
359.406 (b) revised....10125
359.503 (b) revised....10125
359.701 (a)(2) removed; (a)(3) and (4) redesignated as (a)(2) and (3); new (a)(2) revised....10125
410 Authority citation revised....19517
410.511 Added....19517
430.202 (c) revised....14638
430.204 (h) revised; (i) through (k) redesignated as (j) through (l); new (i) added....7321
430.403 (c) revised....14638
430.404 Amended; interim....23044
430.405 (b), (d)(1),(e), (g), (i) introductory text, (1), (j)(1) and (2) revised; interim....23044
430.406 (c), (d)(1) and (e) revised; interim....23044
430.407 (b) revised; interim....23045
430.504 (c) revised....14638
432.102 (f)(13) revised; (f)(14) removed; (f)(15) redesignated as (f)(14)....10125
(c)(3) and (f)(12) revised; (c)(4) removed; (c)(5) redesignated as (c)(4); interim....20042
432.103 (a), (d), (e) and (i) revised; (j) added; interim....23045
432.105 Revised; interim....23045
432.107 (a)(1), (2) and (4)(i)(A) revised; interim....23045
432.108 (a)(2) and (3), (b)(1)(ii) and (iii) revised; (a)(4) and (b)(1)(iv) added; interim....20043
451 Authority citation revised....14638
451.306 (a) revised....14638
530 Authority citation revised....3114
530.202 Amended; interim....3114
530.203 (d) through (f) revised; (g) added; interim....3114
530.204 (d) removed; interim....3115
530.206 Added; interim....3115

Page

530.307 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c)....26604
531 Authority citation revised....2432, 12404
531.101 Amended....2432
531.202 (g) through (l) redesignated as (h) through (m); new (g) added; interim....12404
531.203 (d)(2)(v) amended; (d)(2)(vi) redesignated as (d)(2)(vii); new (d)(2)(vi) added....3712
531.205 Heading, (a) introductory text and (b) revised....2432
531.206 Added; interim....12404
531.301—531.306 (Subpart C) Added....2432
531.406 (a) amended....3712
(b)(3) added; interim....12404
531.407 (c)(5) and (6) amended; (c)(7) added....3712
531.414 Added....3712
532.201—532.283 (Subpart B) Appendix D regulation at 56 FR 15274 confirmed....7533
Appendix C amended....19791
534.301 (Subpart C) Removal at 56 FR 18662 confirmed....10123
534.402 Regulation at 56 FR 18662 confirmed....10123
534.403 (f) revised....10125
534.501—534.506 (Subpart E) Regulation at 56 FR 18662 confirmed....10123
534.501 (a)(1) and (b)(1) revised....10125
534.503 (c) revised....10125
534.505 (b) revised....10125
536 Authority citation revised....12404
536.102 Regulation at 56 FR 18662 confirmed....10123
536.103 (c)(1) and (3) revised; interim....12404
536.104 (c) added; interim....12404
536.105 Regulation at 56 FR 18663 confirmed....10123
536.202 (c) added....3712
536.205 (f) redesignated as (g); new (f) added....3712
536.208 Regulation at 56 FR 18663 confirmed....10123
536.209 Regulation at 56 FR 18663 confirmed....10123

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 5 Chapter I—Con. Page

536.305 Removal at 56 FR 18663 confirmed 10123
540.102 Amended; interim 23046
540.103 (a)(3) added; interim 23046
540.105 (b) amended; interim 23046
540.107 (d)(2) revised; interim 23046
540.109 (b)(1)(i), (d)(2), (3) and (f) removed; (b)(1)(ii), (iii), (d)(1) and (g) through (h) redesignated as (b)(1)(i), (ii), (d) and (f) through (h); (b)(1)(i) and (i) added; new (d) revised; interim 23046
550.101—550.172 (Subpart A) Authority citation revised 2434
550.101 (b)(9) revised 2434
550.103 (j) revised 2434
550.107 (a) revised 2434
550.111 (d)(2) revised 2434
550.113 (a) revised 2434
550.114 (c) revised 2434
550.151 Revised 2435
550.154 (a) introductory text revised 2435
550.201—550.206 (Subpart B) Authority citation revised 2435
550.202 Amended 2435
550.603 Regulation at 56 FR 6206 confirmed 12406
550.705 (a)(1) and (2) amended; (a)(3) added; interim 12405
550.708 (b) and (c) amended; (d) added; interim 12405
553 Regulation at 56 FR 6206 confirmed 12406
553.101 Revised 12406
553.201 Heading and (e)(3) revised; (b)(4) added 12406
553.202 Heading revised 12406
553.203 Heading and (b) revised 12406
575 Authority citation revised 2435
575.103 Amended 2435
575.203 Amended 2435
575.303 Amended 2435
575.403 Amended 2435
575.405 (c)(2) revised 2435
591.203 Regulation at 56 FR 18663 confirmed 10123
(a)(5) and (6) revised; (a)(7) added 10126
630.211 Regulation at 56 FR 18663 confirmed 10123

Page

733.124 (b) amended 21189
735 Authority citation revised 11804
735.106 Removed; new 735.106 redesignated from 735.107; interim 11804
735.107 Redesiganted as 735.106; interim 11804
735.401—735.412 (Subpart D) Removed 11804
735.401—735.412 (Subpart D) Removed; interim 11804
752.201 (b)(6) revised; (b)(7) removed; interim 20043
752.301 Amended; interim 20043
752.401 (c) and (d) revised; interim 20043
772 Added 3712
831 Authority citation amended 3713
831.201 (b)(5) amended; (b)(6) added 3713
831.805 Added 3713
831.2011 Added 3713
841 Authority citation amended 3714
841.506 Redesignated as 841.507; new 841.506 added 3714
841.507 Redesignated as 841.508; new 841.507 redesignated from 841.506; (d) added 3714
841.508 Redesignated from 841.507 3714
842 Authority citation amended 3714
842.105 (c) added 3714
846 Authority citation revised 3714
846.201 (b) revised 3714
870 Authority citation revised 3715
870.202 (c) added 3715
890 Authority citation revised ...3715, 10609, 10611, 14324, 19374
890.101 (a) amended; interim 14324
890.102 (d) revised 3715
890.202 Revised; interim 14324
890.203 (b) amended 19374
890.204 (a) amended; interim 14324
890.205 Added 19374
890.301 Regulation at 56 FR 25996 confirmed 2979
(h), (t) and (x) revised 21191

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

890.303 (d) redesignated as (d)(1); (d)(2) and (3) added..... 21191
890.304 Regulation at 56 FR 25996 confirmed..... 2979
890.306 Regulation at 56 FR 25996 confirmed..... 2979
(l) added..... 21191
890.401 (b)(3) added..... 10609
(b)(2) revised..... 21191
890.502 Regulation at 56 FR 25996 confirmed..... 2979
(g) revised..... 10611
890.503 (c)(3) revised; (c)(4) removed; (c)(5) and (6) redesignated as (c)(4) and (5); new (c)(5) amended; interim..... 14324
890.505 Revised; interim..... 14324
890.803 (a)(3)(i)(C) revised..... 21192
890.805 Introductory text, (a) and (c) removed; (b), (d) and (e) redesignated as (a), (b) and (c); new (a) revised..... 21192
890.806 Regulation at 56 FR 25997 confirmed..... 2979
(a) revised..... 21192
890.807 Regulation at 56 FR 25997 confirmed..... 2979
890.808 Regulation at 56 FR 25997 confirmed..... 2979
(b)(3) and (d)(1) revised..... 21192
890.901—890.907 (Subpart I) Added..... 10610
890.1104 (d) revised..... 21192
890.1208 (d) amended; interim..... 14325
905.306 (a) Table I and (b) Table II amended..... 10613
930.210 (h) through (l) redesignated as (i) through (m); new (h) added; new (k) amended..... 1369

Chapter II—Merit Systems Protection Board (Parts 1200—1299)

1201 Appendix II revised..... 21723

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2633 Removed; interim..... 11804
2634 Heading and authority citation revised..... 11804
2634.101—2634.105 (Subpart A) Revised; interim..... 11804
2634.101 Corrected..... 21854

Page

2634.105 (a), (b), (c), (e), (f), (h) through (l) and (n) corrected..... 21854
2634.201—2634.205 (Subpart B) Revised; interim..... 11806
2634.201 (a) introductory text, *Example* 2 and (d)(1) corrected..... 21854
2634.203 Corrected..... 21854
2634.301—2634.311 (Subpart C) Revised; interim..... 11808
2634.301 (c)(3) corrected..... 21854
2634.302 (a)(1)(ii) corrected..... 21854
2634.303 (a)(1) corrected..... 21854
2634.307 (b) corrected..... 21854
2634.310 (b)(2)(ii) corrected..... 21854
2634.401—2634.408 (Subpart D) Revised; interim..... 11814
2634.403 (b)(9)(ii)(D) corrected..... 21854
2634.404 (c)(9)(ii)(C) corrected..... 21854
2634.501—2634.503 (Subpart E) Revised; interim..... 11821
2634.601—2634.607 (Subpart F) Revised; interim..... 11821
2634.603 (c)(3) corrected..... 21854
2634.604 (b) corrected..... 21854
2634.701—2634.704 (Subpart G) Revised; interim..... 11824
2634.801—2634.805 (Subpart H) Revised; interim..... 11825
2634.803 (a) corrected..... 21855
2634.804 (b)(1) corrected..... 21855
2634.805 Corrected..... 21855
2634.901—2634.909 (Subpart I) Revised; interim..... 11826
2634.905 (c) *Example* 3 corrected..... 21855
2634 Appendix A revised; interim..... 11829
Appendix B revised; interim..... 11830
Appendix C added; interim..... 11830
Appendix B corrected..... 21855
2636 Authority citation revised..... 602
2636.203 (a)(13) and *Example* 7 added; (a) *Examples* 3 and 6 revised; interim..... 602
2636.205 Effective date deferred..... 5369
2638 Authority citation revised..... 11890
2638.701—2638.704 (Subpart G) Added..... 11890

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 5 Chapter XVI—Con. Page

Technical correction 15219
2641 Authority citation revised 3116
2641 Appendixes A and B amended 3116
Appendix B amended 11673

Title 5—*Proposed Rules:*

530 26619
532 ..... 3032, 11586, 11920, 19820
735 11586
831 120
841 120
842 ..... 120, 7666
843 ..... 120, 7666
890 ..... 13667, 23126

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

1.301—1.346 (Subpart K) Redesignated as subpart L 3909
1d.7 Revised 11906
2.17 Heading revised; (l) added 19792
2.19 Heading and (g) revised; (h) added 19793
2.21 Heading revised; (h) added 19793
2.23 Heading, (a)(11) and (b) revised; (a)(1) amended; (a)(4), (5), (6), (10), (14), (16), (18), (20) and (21) removed 2217
Heading revised; (j) added 19794
2.30 Revised 9649
2.30a Revised 9654
2.35 (a) revised 11261
2.41 (a) revised; (c) removed 11261
2.50 (a)(13) added 19794
2.51 Heading revised; (a)(46) added 19794
2.53 (a)(2) added 19794
2.55 Heading revised; (a)(5) added 19795
2.60 (a)(40) revised; (a)(42), (43) and (44) added 19795
2.62 (a)(19) added 19796
2.65 Heading revised; (a)(42) added 19796
2.70 Heading and (a)(11) revised; (a)(1) amended; (a)(4), (5), (6), (10), (28), (29), (31), (33), (36), (37) and (b)(2) removed 2219
Heading revised; (a)(37) added 19796
2.71 Added 2219
2.72 Heading revised; (a)(5) added 19797
2.105 Revised 9654
2.106 Revised 9654
(a)(49) revised 19797
2.107 Revised 9656
2.108 Revised 9658
2.109 Revised 9659

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

28.116 (a) and (c) revised 27892
28.122 Revised 27892
28.123 Revised 27892
28.148 Revised 27892
28.151 Revised 27892
28.909 (b) and (c) revised 27892
28.910 (a) and (b) revised; (c) added 27892
28.911 Revised 27893
28.956 Revised 27893
29 Determination 27347
34 Removed 9034
51.835—51.845 (Subpart) Revised 1212
51.2541 Introductory text revised 1636
51.2542 (a) Tables I, II and III revised 1636
51.2547 Added 1636
52.2101—52.2111 (Subpart) Nomenclature change 2981
52.2102 (b) corrected 27895
52.2106 (a) amended; (b) and (c) revised 2982
52.2107 (b), (c) and (d) revised 2982
52.2112 Removed 2982
53.132 Revised 21341
53.136 Revised 21342
54.27 (a) and (b) amended 11427
54.123 Revised 21343
54.127 Revised 21344
58.43 Revised 2222
58.45 Revised 2222

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

Page

271.2 Amended 3911
271.5 (b) revised 3911
272.1 (g)(124) added 2828
(g)(125) added 11248
274.3 (a) introductory text and (b) amended; (a)(4) added 11249
274.10 (b)(1) amended 11249
274.12 Added 11249
275.23 (e)(10) added 2828
276.2 (b)(7) added 11259
277.18 (c)(1) introductory text; (2)(ii)(A), (B), (C) and (d)(1)(v) amended 11259
278.1 (j)(2) and (k)(1)(iii) amended; (k)(1)(iv) redesignated as (k)(1)(v); new (k)(1)(iv) added 3912
(b)(5) redesignated as (b)(6); (q) introductory text amended; new (b)(5), (q)(1) and (2) added 3915
278.6 (a), (b)(1), (2)(i), (e)(1)(i), (i) introductory text and (j) amended; (i)(2)(iii) revised; (l) and (m) redesignated as (n) and (o); new (l) and (m) added 3912
278.9 (i) added 3913
278.10 Added 11259
279.3 (a)(2) amended 3913
279.6 (a) amended 3913
279.8 (c) amended 3913
279.11 (c) added 3913

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301.38-3 (a) and (b)(3) amended; (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added 3118
301.38-6 (a) amended 3118
301.64 (a) and (b) amended; interim 521
301.64-1 Paragraph designations removed; amended; interim 521
301.64-3 (c) amended; interim 522
(c) revised; interim 10974

Page

301.64-4 Heading and introductory text revised; interim 522
301.64-10 Introductory text revised; (c) and (d) added; interim 522
318.13-15 Regulations at 56 FR 18501 withdrawn 14475
318.58-15 Regulation at 56 FR 18501 withdrawn 14474
319 Technical corrections 21332
Authority citation revised 27898
319.37-2 (a) table amended; interim 334
319.56-2 (h) amended 10976
319.56-2u Added 3120
319.56-2v Added 22413
319.56-2w Added 27898
321.2 Amended; interim 334
321.9 (g) and (h) removed; (b) through (f) revised; interim 334
354.3 (a) amended; (e) redesignated as (f); new (e) added 769
(f)(1) amended; (g), (h) and (i) added 770
Technical correction 3089
354.4 (c) added 770
Technical correction 3089
Regulation at 56 FR 18501 withdrawn; (c) correctly designated as (a) 14475
354.5 Added 771
Technical correction 3089
360 Authority citation revised 8838
360.200 (a) amended 8838

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

401 Sunset review date extended 2007
401.111 Amended; interim 2008
401.113 Amended; interim 2008
401.117 Amended; interim 2008
458 Regulation at 56 FR 30490 confirmed 173

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 7

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700—799)

Page

703 Added....23914
718 Authority citation revised....14460
718.2 Revised; interim....14460
718.3 Amended; interim....14460
718.10 (c) amended; interim....14460
718.13 Revised; interim....14460
718.22 (a) introductory text revised; interim....14461
718.40 Heading, (a), (b) and (c) revised; introductory text added; interim....14461
718.42 Heading, (b), (c), (d), (e) introductory text and (f) revised; interim....14461
719.2 Amended; interim....14461
719.8 (i) through (l) redesignated as (j) through (m); new (i) added; interim....14462
729.103 (b) amended....27144
729.204 (d)(2) amended....27144
729.212 (a)(2) and (e)(1)(iii)(B) revised....27144

Chapter VIII—Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)

800.0 (b)(42) revised....3273
800.15 (b)(1) revised....2439
800.16 (a) revised....2439
800.84 (c) revised; interim....11428
800.160 (a) revised; interim....11428
800.162 (d) added....2439
(a)(2) revised....3273
801.12 Added....2673
810 Authority citation revised....3274
810.101 Revised....3274
810.102 (d) amended....3274
810.104 (b) amended....3274
810.107 (b) introductory text revised....3274

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

Page

905.306 (a) Table I amended....336
Regulation at 56 FR 55981 confirmed....1858
(a) Table I amended; interim....19520
907 Marketing percentages....338
Limitation of handling...1217, 2436, 2829, 2984, 3918, 4699, 4837, 5976
915.306 (a) introductory text and (1) revised; interim....3716
Regulation at 57 FR 3716 confirmed....27348
915.332 (a)(2) Table I amended....28588
916 Limitation of handling....3920
Regulation at 57 FR 3920 confirmed....27350
916.350 Heading revised; (a) introductory text republished; (a)(3) through (8) redesignated as (a)(4) through (9); new (a)(3) added; interim....20738
916.356 Heading, (a)(1), (i), (ii) and (2) through (5) revised; (a) introductory text republished; (a)(1)(iii) through (vi) removed; interim....20738
917.442 Heading revised; (a) introductory text text republished; (a)(3) through (9) redesignated as (a)(4) through (10); new (a)(3) added; interim....20739
917.459 Heading, (a)(1), (i), (ii), (2), (3), (4), (5) and Table I revised; (a) introductory text and (6) republished; (a)(1)(iii) through (vi) removed; interim....20739
918 Budget of expenses....4148
920.20 Revised....1219
920.21 Revised....1219
920.22 Revised....1220
920.41 (a) amended....24353
925 Budget of expenses....24352
925.141 Added....24354
932 Budget of expenses....24354

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

944.312 (a)(1) corrected; interim ... 2674
944.401 Regulation at 56 FR 49671 confirmed ... 4149
947.340 (e) revised; interim ... 24542
959.322 Introductory text, (f)(1), (3)(i), (g) introductory text, (4) and (h) revised; (g)(5) added; (i) removed ... 28592
966.323 Introductory text revised; (f) removed; interim ... 27351
979 Budget of expenses ... 2675
980.212 (b)(1) revised; interim ... 27352
981 Marketing percentages ... 10976
981.467 (d) revised ... 1859, 2985, 27353
982 Marketing percentages ... 1074
985.153 (c)(2)(i) revised; (c)(2)(ii) amended ... 28595
985.211 Added ... 28595
989 Budget of expenses ... 1860
989.212 Revised ... 28597
998 Budget of expenses ... 24354

Chapter X—Agricultural—Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1001.40 (c)(1)(iii) revised; (d) added ... 174
1001.43 (f) added ... 174
1001.50 (d) added ... 174
1001.54 Revised ... 174
1001.61 (d) and (e) temporarily suspended ... 20958
1001.62 (c) and (d) temporarily suspended ... 20958
1004.40 (c)(1)(iii) revised; (d) added ... 175
1004.43 (d) added ... 175
1004.50 Heading revised; (g) added ... 175
1004.53 (a)(2) revised ... 175
1004.60 (k) added ... 175
1004.71 (b)(2) amended ... 175
1007.13 (b)(4) and (5) temporarily suspended through 8-31-92 ... 3921
1032.7 (b)* temporarily suspended in part 12-91 through 1-92
1065 Marketing percentages ... 4150
1065.6 Temporarily suspended in part through 8-31-92 ... 4152

Page

1065.7 (b)(1) temporarily suspended in part through 8-31-92 ... 4152
1065.13 (d)(1) temporarily suspended through 8-31-92 ... 4152
1106.6 Suspended in part ... 3276
1106.7 (b)(1) suspended in part ... 3276
1106.13 (d)(1) suspended ... 3276
1124.40 (c)(1)(iii) revised; (d) added ... 175
1124.43 (e) added ... 175
1124.50 (c) revised; (d) added ... 175
1124.53 Revised ... 175

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1211 Added ... 18799
1211.1—1211.78 (Subpart A) Heading added; interim ... 27900
1211.250—1211.252 (Subpart C) Added; interim ... 27900
1212 Added ... 2988
1212.250—1212.252 (Subpart C) Added; interim ... 21592
1240 Technical correction ... 11262

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Part 1400—1499)

1413.1 (a) revised; interim ... 14462
1413.3 Amended; interim ... 14462
1413.5 Added; interim ... 14462
1413.6 (a)(4)(v) removed; (a)(4)(vi) and (vii) redesignated as (a)(4)(v) and (vi); (a)(4) introductory text, (i), and new (a)(4)(vi) revised; interim ... 14462
1413.7 (c) introductory text and (1) revised; interim ... 14462
1413.10 (b) removed; (c) and (d) redesignated as (b) and (c); new (d) added; interim ... 14462
1413.11 (a) and (b)(4) revised ... 12409
(j) removed; interim ... 14463
1413.50 (a)(1), (4) and (5) revised; interim ... 14463
1413.54 (a)(1) revised ... 3922
(b), (c)(1), (d) and (e) revised ... 12409

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 7 Chapter XIV—Con. Page

(a)(2) revised....14326
(a)(3) revised; (a)(5) added....14328
(c)(3) redesignated as (c)(4); (c)(2) and new (c)(4) revised; new (c)(3) and (f) added; interim....14463
(a)(4) revised....15001
1413.61 (b)(2) removed; (b)(3) and (4) redesignated as (b)(2) and (3); (a), (b)(1)(iii), (iv), and new (b)(2) and (3) revised; interim....14463
1413.62 (e) removed; (f) through (h) redesignated as (e) through (g); interim....14464
1413.63 (a)(1), (c)(1) and (4) revised; (c)(5) and (6) added; interim....14464
1413.72 (c) removed; (d) redesignated as (c) and revised; interim....14464
1413.79 (b)(1)(v) and (d) removed; (b)(1)(iii), (iv), (2) and (3) revised; interim....14464
1413.108 (b)(1) introductory text and (2) introductory text revised; interim....14464
1413.109 (d) added....12409
1413.111 (b)(1) removed; (b)(2) revised; interim....14464
1413.150 (a)(3) introductory text revised; interim....14465
1414.4 Amended; interim....14465
1414.6 (a) revised; interim....14465
1421.7 (c) revised....12409
1421.25 (a)(5)(vi) and (6) revised....4544
1421.742 Revised....3717, 27354
1425 Authority citation revised....1369
1425.10 (b)(3) revised....1369
1427.5 (a) introductory text revised....14328
1427.8 (a), (b) and (c) redesignated as (b), (c) and (d); new (a) added; new (c) introductory text revised....14328
1427.50 (a) revised....14328
1427.51 (f) revised....14328
1427.56 Revised....14329
1427.100 (a) and (b) revised....14329
1427.101 (f) revised....14329
1427.103 (b)(3) and (c)(4) revised....14329
1427.106 Revised....14329
1427.107 (b) through (e) redesignated as (c) through (f); new (b) added; new (f) revised....14329
1435.6 (e)(1) introductory text revised; interim....12410
1435.7 (c) revised; interim....12410
1435.9 (c) revised; interim....12411
1435.12 (d) revised; interim....12411
1446.307 (b) revised....27145
1446.309 (a)(1) amended; (a)(7) added....27145
1446.410 (b) revised....27145
1446.703 (b) introductory text revised....27145
1446.704 Revised....27145
1477 Revised....10963
1478 Revised....10968

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1530.205 Corrected....175
1530.206 (b) correctly designated....175

Chapter XVII—Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)

1700 Authority citation revised....6285
1700.1—1700.9 (Subpart A) Revised....6285
1700.24 Revised....6290
1700.25 Revised....6290
1710 Added....1053
1710.2 (a) corrected....4513
1710.6 (a) introductory text and (5) corrected....4513
1710.101 (c) corrected....4513
1710.102 Added....2832
Technical correction....5931
1710.104 (b)(2) corrected....4513
1710.105 (c) corrected....4513
1710.112 (b)(3) and (8) corrected....4513
1710.114 (b)(1) corrected....4513
1710.204 (a) corrected....4513
1710.250 (e) corrected....4513
1710.251 (b) and (c) introductory text corrected....4513

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Chapter XVIII—Farmers Home Administration, Department of Agriculture (Parts 1800—2099)

Page

1807 Removal at 56 FR 67471 effective date delayed to 3-31-92 3276
1822.270 Regulation at 56 FR 67472 effective date delayed to 3-31-92 3276
1822.277 Regulation at 56 FR 67472 effective date delayed to 3-31-92 3276
1822.278 Regulation at 56 FR 67472 effective date delayed to 3-31-92 3276
1823.401—1823.418 (Subpart N) Regulation at 56 FR 67472 effective date delayed to 3-31-92 3276
1823.414 Regulation at 56 FR 67472 effective date delayed to 3-31-92 3276
1866 Removed 774
1890t Removal at 56 FR 67472 effective date delayed to 3-31-92 3276
1900 Authority citation revised 19523
1900.52 (b) revised; interim 19523
1900.53 (c) redesignated as (d); (b) revised; new (c) added; interim 18622
1900.55 (a)(17) and (18) added; (b) amended 18623
1900.56 (a)(2) revised 18623
1900.57 (m)(3) removed; (m)(4) redesignated as (m)(3); (n) added; interim 18623
(n) added; interim 19523
1900.59 (d) added; interim 18623
1901.204 (a)(23) added 11559
1910 Authority citation revised 19523
1910.01—1910.50 (Subpart A) Exhibit B revised; interim 19524
1910.4 (b)(20), (g) and (k) amended; interim 19523
1910.6 (e) through (i) redesignated as (f) through (j); new (e) added; (b)(2), new (f), (g) introductory text and (2) amended; interim 19523
1910.7 (a) amended; interim; interim 19523

Page

1910.50 Revised; interim 19523
1924 Authority citation revised 12992
1924.57 (d)(1) revised; interim 12992
1924.59 Revised; interim 18623
1924.60 Revised; interim 18625
1927 Regulation at 56 FR 67472 effective date delayed to 3-31-92 3276
1940.590 (g) added 11559
1940.551—1940.600 (Subpart L) Exhibit C revised 3924
1940.951—1940.1000 (Subpart T) Added 11559
1940.1000 OMB number 11567
1941.18 (b)(2) amended 18676
1941.19 (b) removed; introductory text and (a) redesignated as (a) and (b); new (b)(1) through (4) redesignated as (b)(3) through (6); (b) introductory text, (1) and (2) added; new (a) and (b)(4) revised; (f)(1), (2) and (g) amended 18676
1941.25 (a)(1) and (2) revised; (a)(3) added 18676
1941.33 (b)(2)(ii) amended 18677
1941.1—1941.50 (Subpart A) Exhibit A regulation at 56 FR 67480 effective date delayed to 3-31-92 3276
1941.84 Regulation at 56 FR 67480 effective date delayed to 3-31-92 3276
1942.1 (d) revised 21193
1942.2 (a)(1) and (2)(ii) revised 21194
1942.17 (s) removed; (b)(2), (3) and (4) redesignated as (b)(3), (4) and (5); new (b)(2) and (d)(2)(ix) added; (a), (b) introductory text, (1), (d)(1)(i) introductory text, (e) introductory text, (3)(ii) and (f)(2) introductory text (g)(2)(i)(D) introductory text, (3)(i)(E) introductory text, (h) introductory text and (p)(6)(i) introductory text revised 21194
1942.112 (a)(1) introductory text revised 21195

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 7 Chapter XVIII—Con. Page

1942.351—1942.400 (Subpart H) Sections revised 21195
1942.351—1942.400 (Subpart H) Exhibit D removed 21198
1942.454 Amended 4358
1942.457 Revised 4358
1942.463 (b)(1) revised 4358
1942.464 (b) revised 4358
1942.475 Revised 4358
1942.500 Revised 4358
1942.521 (f) amended 21199
1943.4 Amended; interim 19524
1943.13 (a)(1) removed; (a)(2) through (6) redesignated as (a)(1) through (5); new (a)(2), (3) and (b)(6) introductory text revised; interim 19524
1943.16 (c)(1) introductory text revised 18677
1943.18 (b) introductory text, (1) and (3) amended 18677
1943.19 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
Introductory text added; (d) and (f) removed; (e), (g) and (h) redesignated as (d), (e) and (f); (a), (b) and (c) revised; new (f) amended 18677
1943.24 (g) removed; (h) through (l) redesignated as (g) through (k) 18678
1943.32 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
(a) amended 18678
1943.33 (b)(2)(ii) amended 18678
1943.34 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
1943.35 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
1943.38 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
(a) amended 18678
1943.1—1943.50 (Subpart A) Exhibit A regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
Exhibit B revised; interim 19524

Page

1943.66 (h)(1) introductory text revised 18678
1943.68 (c) amended 18678
1943.69 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
Introductory text added; (d) removed; (e) through (h) redesignated as (d) through (g); (a), (b), (c) and (d) introductory text revised 18678
(d)(3)(vi) and (g) amended 18679
1943.73 (a) introductory text amended 18679
1943.83 (b)(2)(ii) amended 18679
1943.84 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
1943.85 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
1943.88 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
(a) and (c) amended 18679
1944.18 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
1944.24 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
1944.30 Regulation at 56 FR 67482 effective date delayed to 3-31-92 3276
1944.31 Regulation at 56 FR 67483 effective date delayed to 3-31-92 3276
1944.32 Regulation at 56 FR 67482 effective date delayed to 3-31-92 3276
1944.33 Regulation at 56 FR 67482 effective date delayed to 3-31-92 3276
1944.37 Regulation at 56 FR 67482 effective date delayed to 3-31-92 3276
1944.38 Regulation at 56 FR 67482 effective date delayed to 3-31-92 3276
1944.46 Regulation at 56 FR 67483 effective date delayed to 3-31-92 3276
1944.1—1944.50 (Subpart A) Exhibits E through E-2 reg-

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

ulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.168 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.169 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.175 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.176 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.236 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1944.463 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1944.469 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1945.129 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1945.156 (b)(3) removed....18679
1945.169 Introductory text and (e) through (i) removed; (b), (c), (d), and (j) through (r) redesignated as (c), (d), (e) and (f) through (n); heading, new (d)(1) and (3) revised; (b) added....18679
(f)(3), (4) introductory text and (j)(3) amended....18680
1945.175 (c)(4) and (6) removed; (c)(5) redesignated as (c)(4); (c)(3) amended; (c)(1) introductory text amended....18680
1945.183 (d)(1) revised....18680
1945.189 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1951 Authority citation revised....18680
1951.10 (a)(5) removed; (a)(6) and (7) redesignated as (a)(5) and (6)....18680
1951.151—1951.155 (Subchapter D) Added....774
1951.201 Revised....11568
1951.220 (a) amended....775
(e)(1)(ii) amended....21199

Page

1951.224 (a)(1)(i), (ii) and (d) amended....21199
1951.232 Introductory text amended....21199
1951.501—1951.550 (Subpart K) Exhibit B corrected....1313
1951.901—1951.950 (Subpart S) Sections revised; interim....18626
1951.911 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1951.901—1951.950 (Subpart S) Appendix A amended; interim....18650
Exhibit A amended; interim....18650
Exhibits B and C-1 amended; interim....18658
Exhibit E amended; interim....18659
Exhibit F amended; interim....18660
Exhibit G amended; interim....18661
Exhibits H and I amended; interim....18662
Exhibit J-1 amended; interim....18664
Exhibit L amended; interim....18669
Exhibits N and O amended; interim....18670
1955.3 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1955.10 (d)(3) and (f)(1) introductory text revised....1372
1955.15 (d)(2)(iv)(C) and (D) revised; interim....18671
1955.50 Revised....1372
1955.53 Amended; interim....19525, 19528
1955.63 (a) revised; interim....19528
1955.66 (p) removed; (c)(2) amended; interim....19525
1955.103 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
Amended; interim....19525, 19528
1955.105 (c)(5) and (d) amended; interim....19528
1955.106 (b) revised....19525
1955.107 (e) revised; (f) added; interim....19525

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 7 Chapter XVIII—Con. Page

Introductory text revised; interim....19528
1955.108 Introductory text and (c) revised; (d) amended; interim....19528
1962.6 (c)(2)(i) amended....20741
1962.17 (c)(5) revised; (c)(6) removed....18680
1962.30 (b)(1) removed; (b)(2) through (9) redesignated as (b)(1) through (8); (a), new (b)(1), (4), (5) and (6) revised....18680
1964.12 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.11 (c)(1) introductory text amended....20741
1965.12 Introductory text, (e)(2) and (f) amended; (a)(6) and (7) removed; (a)(8) and (9) redesignated as (a)(6) and (7); heading, (a) introductory text, (b) and (g) revised; (a)(8) through (13) added....18680
1965.13 (a) amended....775
1965.25 Heading and (a) revised....18681
1965.27 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.31 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.65 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.77 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.79 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.90 (c) amended....776
1965.126 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1980 Authority citation revised....4337
1980.13 (b) introductory text revised....6067
1980.47 Heading and introductory text revised; (d) added....6068
1980.83 (b) table amended....6068
1980.108 (a)(1)(iii) and (iv) revised....18681
1980.113 (d)(8)(ii)(D) revised; interim....12992
1980.311 Revised....1638
1980.453 Amended....4359
1980.454 (e) and undesignated text amended; (a) and (c) revised....4359
1980.813 (a) introductory text revised....21199
1980.901—1980.1000 (Subpart J) Added; interim....4337

Title 7—*Proposed Rules:*

1—26 (Subtitle A) 6483
13 27371
27—209 (Ch. I) 6483
28 ....14492, 21358
29 14669
68 2482
110 20380
210—299 (Ch. II) 6483
246 9505
273 ....3961, 4793
300—399 (Ch. III) 6483
300 26620
301 27948
302 15033
319 ....217, 846, 3089, 3963, 26620
354 14492
400—499 (Ch. IV) 6483
400 2232
401 1116
500—599 (Ch. V) 6483
600—699 (Ch. VI) 6483
700—799 (Ch. VII) 6483
703 4378
723....28801
729 1879
736 28133
800—899 (Ch. VIII) 6483
900—999 (Ch. IX) 6483
905 24384
911 24385
915 24386
921 24388
922 24388
923 24388
924 24388
925 ....219, 2690
926 27373
932 1663
946 24561

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

947 24562
948 27375
953 27376
958 24390
959 4164
981 3032
982 24563
985 24391
998 ..... 3965, 24392
1000—1199 (Ch. X) 6483
1001 ..... 15, 383, 11276, 20790
1002 ..... 383, 11276, 20790
1004 ..... 15, 383, 20790
1005 ..... 383, 20790
1006 ..... 383, 20790
1007 ..... 220, 383, 20790, 27377
1011 ..... 383, 20790
1012 ..... 383, 20790
1013 ..... 383, 20790
1030 ..... 383, 20790, 27949
1032 ..... 383, 20790
1033 ..... 383, 20790
1036 ..... 383, 20790
1040 ..... 383, 20790
1044 ..... 383, 20790
1046 ..... 383, 20790
1049 ..... 383, 20790
1050 ..... 383, 20790
1064 ..... 383, 20790
1065 ..... 383, 1664, 1665, 20790
1068 ..... 383, 20790
1075 ..... 383, 20790
1076 ..... 383, 20790
1079 ..... 383, 20790
1093 ..... 383, 19554, 20790
1094 ..... 383, 20790
1096 ..... 383, 20209, 20790
1097 ..... 383, 20790
1098 ..... 383, 20210, 20790, 27378
1099 ..... 383, 2691, 20790
1106 ..... 221, 383, 20790
1108 ..... 383, 20790
1124 ..... 15, 383, 20790
1126 ..... 383, 20790
1131 ..... 383, 20790
1134 ..... 383, 20790
1135 ..... 383, 20790
1137 ..... 383, 20790
1138 ..... 383, 20790
1139 ..... 383, 20790
1200—1299 (Ch. XI) 6483
1205 3089
1209 ..... 1666, 3360, 24720
1210 3727
1230 27949
Ch. XII 6483

Page

Ch. XIII 6483
1400—1499 (Ch. XIV) 6483
1410 28468
1413 11588
1427 20211
1446 1879
1464 28801
1500—1599 (Ch. XV) 6483
1600—1699 (Ch. XVI) 6483
1700—1799 (Ch. XVII) 6483
1703 ..... 21900, 26782
1800—2099 (Ch. XVIII) 6483
1924 27379
1944 ..... 1678, 17858, 27379
1980 17858
Ch. XIX 6483
2100—2199 (Ch. XXI) 6483
2200—2299 (Ch. XXII) 6483
2300—2399 (Ch. XXIII) 6483
2400—2499 (Ch. XXIV) 6483
2500—2599 (Ch. XXV) 6483
2600—2699 (Ch. XXVI) 6483
2700—2799 (Ch. XXVII) 6483
2800—2899 (Ch. XXVIII) 6483
2900—2999 (Ch. XXIX) 6483
3000—3099 (Ch. XXX) 6483
3100—3199 (Ch. XXXI) 6483
3200—3299 (Ch. XXXII) 6483
3300—3399 (Ch. XXXIII) 6483
3400—3499 (Ch. XXXIV) 6483
3600—3699 (Ch. XXXVI) 6483
3700—3799 (Ch. XXXVII) 6483
3800—3899 (Ch. XXXVIII) 6483
3900—3999 (Ch. XXXIX) 6483
4000—4099 (Ch. XL) 6483
4100 (Ch. XLI) 6483

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

3 Authority citation revised 11570
3.1 (d)(1-a) revised 11570
3.12 Revised 11571
3.13 Revised 11571
3.14 Revised 11571
3.15 Redesignated as 3.16; new 3.15 added 11571
3.16 Redesignated as 3.17; new 3.16 redesignated from 3.15 11571

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 8 Chapter I—Con. Page

3.17 Redesignated as 3.18; new 3.17 redesignated from 3.16 and revised....11571
3.18 Redesignated as 3.19; new 3.18 redesignated from 3.17....11571
3.19 Redesignated as 3.20; new 3.19 redesignated from 3.18 and revised....11571
3.20 Redesignated as 3.21; new 3.20 redesignated from 3.19....11571
Revised....11572
3.21 Redesignated as 3.22; new 3.21 redesignated from 3.20....11571
Revised....11572
3.22 Redesignated as 3.23; new 3.22 redesignated from 3.21....11571
3.23 Redesignated as 3.24; new 3.23 redesignated from 3.22....11571
3.24 Redesignated as 3.25; new 3.24 redesignated from 3.23....11571
3.25 Redesignated as 3.27; new 3.25 redesignated from 3.24....11571
3.26 Redesignated as 3.28....11571
Added....11572
3.27 Redesignated as 3.29; new 3.27 redesignated from 3.25....11571
(c) amended....11572
3.28 Redesignated as 3.30; new 3.28 redesignated from 3.26....11571
3.29 Redesignated as 3.31; new 3.29 redesignated from 3.27....11571
3.30 Redesignated as 3.32; new 3.30 redesignated from 3.28....11571
3.31 Redesignated as 3.33; new 3.31 redesignated from 3.29....11571
Revised....11572
3.32 Redesignated as 3.34; new 3.32 redesignated from 3.30....11571
(a) amended....11572
3.33 Redesignated as 3.35; new 3.33 redesignated from 3.31....11571
Revised....11572
3.34 Redesignated as 3.36; new 3.34 redesignated from 3.32....11571
3.35 Redesignated as 3.37; new 3.35 redesignated from 3.33....11571
3.36 Redesignated as 3.38; new 3.36 redesignated from 3.34....11571
3.37 Redesignated as 3.39; new 3.37 redesignated from 3.35....11571
Revised....11573
3.38 Redesignated as 3.40; new 3.38 redesignated from 3.36....11571
3.39 Redesignated from 3.17....11571
Amended....11573
3.40 Redesignated from 3.38....11571
103 Authority citation revised....5227, 11573
103.3 (a)(1)(v) added....11573
103.7 Regulation at 56 FR 31060 confirmed....3926
(b)(1) revised....5227
(b)(1) amended....6182
(b)(1) amended; interim....6460
(a) amended....11573
204.6 (a) and (h)(3) corrected....1860
204.8 Regulation at 56 FR 23210 confirmed; (a), (b), (e)(1) and (g)(3) amended; (d)(1) revised; (d)(2) redesignated as (d)(3); new (d)(2) added....14792
(e)(1) and (g)(3) amended....14793
214.2 (h)(4)(v)(E) and (6)(vi) introductory text corrected....749
(d) added; interim; eff. 2-12-92 through 3-31-92....6184
Regulation at 57 FR 6184 comment time extended....10978
(h)(1)(ii)(B)(*1*), (4)(i)(B)(*1*) through (*6*), (iii)(B)(*1*), (vi)(A)(*2*), (ix) and (9)(iii)(B)(*1*) revised; interim....12178
(h)(1)(i), (ii)(B)(*3*), (4) heading, (i)(A)(*3*), (C), (ii), (vii)(A), (B), (C), (9)(iii)(B)(*3*), (13)(iii)(A) and (15)(ii)(B)(*1*) revised; (h)(1)(ii)(B)(*4*), (4)(i)(A)(*4*), (D), (vii)(D), (viii) and

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

(9)(iii)(B)(4) removed; (h)(4)(ix) redesignated as (h)(4)(viii)..... 12181
(o)(4) through (15) redesignated as (o)(5) through (16); (o)(1), (2)(ii)(C), (3)(i), (ii), (iii), (iv) introductory text, new (o)(5), (6)(ii) and (iv), (7)(iii) revised; (o)(3)(v), (4) and (17) added..... 12182
(p)(5) through (15) redesignated as (p)(7) through (17); (p)(4) redesignated as (p)(5); (o)(2)(i), (7)(ii)(A), (B), (C), (iv)(12) and (13)(ii) amended; (p)(1), (2)(i), (ii)(C), (F), (3), (5), (i)(A), new (p)(7), (8)(iii), and (14)(iii) revised; (p)(2)(ii)(H), (4), (6) and (18) added..... 12186
(p)(5)(ii)(D), (8)(ii)(A), (B) and (C) amended..... 12190
242 Authority citation revised..... 6461, 11573
242.2 (d) revised; (h) added..... 11573
242.6 Added; interim..... 6461
242.8 (a) amended..... 11574
245a Authority citation revised..... 3926
245a.1 Regulation at 56 FR 31061 confirmed..... 3926
245a.2 Regulation at 56 FR 31061 confirmed..... 3926
245a.3 Regulation at 56 FR 31061 confirmed; (e) amended..... 3926
251 Authority citation revised..... 6185
251.1 (a) and (d) added; interim; eff. 2-21-92 through 3-13-92..... 6185
Regulation at 57 FR 6185 comment time extended..... 10978
258 Added; interim; eff. 2-21-92 through 3-13-92..... 6185
Regulation at 57 FR 6185 comment time extended..... 10978
264 Authority citation revised..... 6462
264.1 (a) amended; interim..... 6462
(a) corrected..... 14627
274a Authority citation revised..... 6462
274a.12 (a) introductory text and (12) revised; (a)(13) added; interim..... 6462
Corrected..... 14627

Page

274a.13 (a) amended; interim..... 6462
(a) corrected..... 14627
292 Authority citation revised..... 11574
292.3 Heading, (a) introductory text and (b) revised; (a)(15) added..... 11574
299.1 Amended..... 6183, 6462
Corrected..... 14627
299.5 Table amended; interim (OMB numbers)..... 6183, 6462

Title 8—*Proposed Rules:*

0-199 (Ch. I) 10743
103 ..... 1404, 2057
208 1404
209 1404
274a 1404

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

75 Technical correction..... 5210
75.1 Heading and text amended..... 2440
75.2 Heading and text amended..... 2440
75.4 (a), footnote 1, (c)(1), footnote 2, (2), footnote 3, (d) introductory text, (2), (3) and (4) amended..... 2440
75.5 Amended..... 2440
77.1 Amended; interim..... 20194
78.41 (b) and (c) amended; interim..... 3719, 15220
78.43 Regulation at 56 FR 46109 confirmed..... 3926
82.30 Amended; interim..... 778
82.32 (b)(2) and (e) revised; interim..... 779
91.1 Amended..... 23047
91.3 (a) and (c) footnote 1 revised..... 23047
(b) and (c) amended..... 23048
91.4 Amended..... 23047
91.5 (a) footnote 2 revised..... 23047
91.6 (a)(5) amended..... 23048
91.8 (a)(2) footnote 5 revised..... 23047
(a)(2) amended..... 23048
91.14 (a)(13)(vi) heading amended; (a)(13)(vi)(A) re-

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 9 Chapter I—Con. Page

designated as (a)(13)(vi)(B); new (a)(13)(vi)(A) added..... 10979
(a)(8) through (15) redesignated as (a)(9) through (16); new (a)(8) added..... 15002
(c)(6), (7) and (8) amended..... 23047
(b), (c)(7) and (d) amended..... 23048
91.15 (a), (b) and (c) amended..... 23048
(a) amended..... 23048
91.16 Amended..... 23047, 23048
91.17 (a) and (b) amended..... 23047
91.19 Amended..... 23047, 23048
91.24 Amended..... 23047
91.25 (a), (c), (e) and (f)(3) amended..... 23047
91.26 (b)(1) amended..... 23047
91.28 (d)(1) amended..... 23047
92.101 (c)(3)(i) amended..... 28080
92.103 (a)(4) added; footnote 7 revised..... 21725
92.104 (a) amended..... 28080
92.105 (c)(1) and (2) revised..... 21726
92.106 (b)(1) amended..... 21726
92.205 Amended..... 28080
92.220 (b) revised..... 12190
92.301 (c)(2)(iv) introductory text, (vi)(A)(2), (vii)(B) introductory text, (C) and (xi)(C)(4) amended..... 28080
92.304 (a)(4)(ii) and (7)(ii) amended..... 27901
92.314 Amended..... 28080
92.326 Amended..... 28080
92.403 (c) revised; (e) amended; interim..... 2010
Regulation at 57 FR 2010 confirmed..... 27902
92.405 (a) and (b)(i) amended..... 28080
92.406 (a) and (b) amended..... 28080
92.427 (b)(2) introductory text revised; interim..... 2010
(b)(1), (2)(i) and (ii) amended..... 28080
(d)(1) introductory text and (e)(2) amended..... 28081
Regulation at 57 FR 2010 confirmed..... 27902
92.428 (a) amended..... 28081
92.429 Amended..... 28081
92.505 (a) amended..... 28081
93.1 Amended..... 23048, 23049
Nomenclature change..... 23048
93.3 (a), (b) and (d) amended..... 23049
93.4 (a)(4) amended..... 23049
93.5 Introductory text amended..... 23049
93.6 (a)(2)(ii), (iii) and (iv) amended..... 23049
93.7 Amended..... 23049
93.8 (b) amended..... 23049
94 Authority citation revised..... 23928
94.1 (a)(2) amended..... 15004
94.11 (a) amended..... 15004
94.15 Introductory text, (a) and (b) redesignated as (a) introductory text, (1) and (2); new (b) added..... 23928
96 Authority citation revised..... 28082
96.1 Redesignated as 96.2; new 96.1 added..... 28082
96.2 Redesignated as 96.3; new 96.2 redesignated from 96.1; amended..... 28082
96.3 Redesignated as 96.4; new 96.3 redesignated from 96.2..... 28082
Amended..... 28083
96.4 Removed; new 96.4 redesignated from 96.3..... 28082
Introductory text and (a) removed; (b) through (e) redesignated as (a) through (d)..... 28083
105 Authority citation corrected..... 5210
130 (Subchapter F) Added..... 771
Technical correction..... 3089
145—147 (Subchapter F) Redesignated as subchapter G..... 771
151 (Subchapter G) Redesignated as subchapter H..... 771
156 (Subchapter H) Redesignated as subchapter I..... 771
160—162 (Subchapter I) Redesignated as subpart J..... 771
165 (Subchapter J) Redesignated as subchapter K..... 771
166—167 (Subchapter K) Redesignated as subchapter L..... 771

Chapter III—Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

317.23 Removed..... 24544

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

318.10 (c)(3)(i) table 3A amended; (c)(3)(iv) revised..... 27874
320.1 (b)(7) added..... 27877
327.2 (b) amended; interim..... 18080
327.3 (b) removed; (c) and (d) redesignated as (b) and (c)..... 27906
327.21 (a)(1) amended..... 27906
381.143 Removed..... 24544
381.147 (d) Redesignated in part as (d)(1) and (2); new (d)(1) revised; new (d)(3) added..... 28085
391.2 Revised..... 18388
391.3 Revised..... 18388
391.4 Revised..... 18388

Title 9—*Proposed Rules:*

1-199 (Ch. I) 6483
3..... 12214, 12218
5..... 12222
11..... 12222
16..... 12222
75 28134
91 ..... 19555, 23066
92 ..... 3144, 3145, 5294, 21754
94 ..... 3729, 22669, 27951
145 29044
147 29044
160 23540
161 ..... 23540, 27845
162 23540
200-299 (Ch. II) 6483
300-399 (Ch. III) 6483
303 21858
317 ..... 2692, 5956, 10298, 10300, 14499
318 3732
319 3732
320 ..... 2692, 5956, 10298, 14499
327 13053
381 ..... 2692, 5956, 10298, 10300, 14499, 19460, 21858
391 2483
545..... 12226
563..... 12223

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

1.3 (a) amended..... 1639
1.11 (c) and (d) revised..... 1639
1.27 Added..... 1639
1.28 Added..... 1639
1.29 Revised..... 1639

Page

1.31 (b) amended..... 1639
1.41 Redesignated as 1.42; new 1.41 added..... 1639
1.42—1.47 Undesignated center heading added..... 1640
1.42 Redesignated as 1.41..... 1639
2 Authority citation revised... 5797, 18390
2.104 (b)(2) revised..... 18390
2.202 (c) revised..... 20198
2.702 Revised..... 4153
2.1201 Revised..... 4153
2 Appendix C revised..... 5797
Appendix C corrected..... 8519
11.15 (c)(3) redesignated as (c)(5); (c)(1) introductory text, (2) and new (5) revised; new (c)(3) and (4) added..... 2442
15.29 Revised..... 4153
19 Regulation at 56 FR 23360 effective date confirmed..... 23929
20 Regulation at 56 FR 23360 effective date confirmed..... 23929
Technical correction 27845
25.8 (c) revised..... 3720
25.17 (e) revised..... 3720
25.19 Revised..... 3720
25.21 (a) revised; (c) added..... 3720
25.23 Revised..... 3721
25.25 Revised..... 3721
25.27 (a) revised..... 3721
25.31 (d) added..... 3721
25 Appendix A revised..... 3721
40 Authority citation revised..... 18390
40.4 Amended..... 18390
40.5 (b)(1)(vi) added..... 18390
40.31 (k) and (l) added..... 18390
40.32 (e) revised; (g) added..... 18390
40.33 Added..... 18391
40.41 (g) added..... 18391
40.65 (a) introductory text revised..... 18391
50 Policy statement..... 6262
50.2 Amended..... 18391
50.33a (e) revised..... 18391
51 Authority citation revised..... 18391
51.14 (a) amended..... 18391
51.20 (b)(10) added..... 18392
51.60 (b)(1)(vii) added..... 18392
51.97 (c) added..... 18393
54.29 (c) corrected..... 4912
54.33 (d) correctly designated; (d) and (e) corrected..... 4912
70 Authority citation revised..... 18393
70.4 Amended..... 18392

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 10 Chapter I—Con. Page

70.5 (b)(1)(vii) revised 18392
70.8 (b) revised 18392
70.21 (a)(1) revised; (b) added 18392
70.22 (n) added 18393
70.23 (a)(7) and (11) revised; (a)(12) added 18392
70.23a Added 18393
70.25 (a) revised 18393
70.31 (e) added 18393
70.32 (k) added 18393
70.59 (a) introductory text revised 18393
73.57 (d)(2) revised 7645
75 Authority citation revised 18393
75.4 (k)(6) added 18393
110 Authority citation revised 18393
110.2 Amended 18393
110.9a (e) added 18393
140 Authority citation revised 18394
140.1 Revised 18394
140.2 (a)(4) added 18394
140.3 (m) added 18394
140.9a (b) revised 18394
140.13b Added 18394
150 Authority citation revised 18394
150.3 (h) revised; (m) added 18394
170 Technical correction 19458
170.3 Amended 18394
170.12 (b)(2), (c)(2), (d)(2), (e)(1), (f) and (i) revised 13630
170.21 Table amended 18395
170.31 Table amended 18395
171 Authority citation revised 13631
Technical correction 19458
171.16 (c) introductory text revised 13631

Chapter II—Department of Energy (Parts 200—699)

205.90—205.98 (Subpart G) Removed 23930
205.191 Removed 23930
205.199D Removed 23930
205.199E Removed 23930
304 Authority citation revised 23932
304.4 Revised 23932
304.5 (d) amended 23933
417 Removed 23931
445 Removed 23931
456 Removed 23931
490 Removed 23931
595 Removed 23523
600.2 (c), (d), (e) and (f) redesignated as (d), (e), (f) and (g); new (c) added 3
600.7 (b)(2)(1)(G) redesignated as (b)(2)(1)(H); new (b)(2)(i)(G) added 3
600.12 (c) added 3
600.14 (c) and (e)(1)(ii) revised; (f) amended 3
600.16 Heading and (a)(3)(ii) revised; (i) amended 4
600.31 (d)(1) revised; (f)(3) amended; (f)(4) added 4
600.103 (b)(6) and (h) revised; (f)(1) amended 4
600.109 (a) revised 4
600.112 (a) through (d) revised; (e) through (h) redesignated as (f) through (i); new (e) added 4
600.113 (b) revised; (e)(1) amended 5
600.119 (c)(1) and (d)(2) revised 5
600.120 (c)(1) introductory text revised 5
600.125 Added 5
600.420 (a) amended 5
600.421 (i) revised 5
600.424 (b)(7)(ii) amended 5
600.436 (g)(2)(i) amended 5

Chapter III—Department of Energy (Parts 700—799)

708 Added 7541

Chapter X—Department of Energy (General Provisions) (Parts 1000—1099)

1001 Removed 23930
1021 Revised 15144

Title 10—*Proposed Rules:*

0-199 (Ch. I) ...4166, 6299, 7327, 7893, 9985, 20656, 27394
11 222
19 ..... 222, 21216
20 ...222, 11920, 14500, 21216, 27187, 27711
21 222
25 222

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

26 ..... 222, 18415
30 ..... 222, 6077, 21218, 24763, 27711
31 222
32 ..... 222, 27711
33 222
34 ..... 222, 20430
35 ...222, 8282, 10143, 21043, 21218, 24763, 27711
39 222
40 ..... 222, 6077, 21218
50 ...222, 537, 2059, 14514, 15034, 21218, 27187, 28642
51 21218
52 ..... 222, 537, 24394
53 222
54 222
55 222
60 222
61 ..... 222, 8093, 14500
70 ..... 222, 6077, 18415, 21218
71 222
72 ..... 222, 21218, 28645
73 ..... 222, 18415, 22670
74 222
75 222
95 222
100 ..... 4168, 11691, 23548, 27006
110 ..... 222, 17859
140 ..... 222, 2059
150 222
170 ..... 847, 4744, 18095, 20211, 22021
171 ..... 847, 4744, 18095, 20211, 22021
200-699 (Ch. II) 7327
220 27395
282 28452
300 27395
320 27395
440 2060
455 432
600 28135
605 28137
700-999 (Ch. III) 7327
820 ..... 855, 1519, 20796
830 855
835 855
1000-1099 (Ch. X) 7327
1024 3364

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

100.7 (b)(19) removed..... 1640
Technical correction 2638
Regulation at 56 FR 67123 eff. 4-2-92..... 11263

Page

100.8 Technical correction..... 2638
Regulation at 56 FR 67123 eff. 4-2-92..... 11263
104.3 Technical correction..... 2638
Regulation at 56 FR 67124 eff. 4-2-92..... 11263
106.5 (d)(1)(ii) amended; (f) and (g)(2)(ii)(B) revised (effective date pending)..... 8993
(f) introductory text and (1) corrected..... 11137
Regulation at 57 FR 8993 effective in part 1-1-91 and 6-18-92..... 27146
106.6 (d) and (e)(2)(ii)(B) revised (effective date pending)..... 8993
Regulation at 57 FR 8993 eff. 6-18-92..... 27146
110 Authority citation revised..... 1640
110.12 Removed..... 1640
114.1 (a)(2)(iv) removed..... 1640
9034.1 Regulations at 56 FR 34132 and 56570 effective date corrected to 11-7-91..... 6665
9034.5 Regulations at 56 FR 34132 and 56570 effective date corrected to 11-7-91..... 6665
9036.2 Regulations at 56 FR 34132 and 56570 effective date corrected to 11-7-91..... 6665
9036.4 Regulations at 56 FR 34133 and 56570 effective date corrected to 11-7-91..... 6665
9036.5 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91..... 6665
9036.6 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91..... 6665
9037.1 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91..... 6665
9037.2 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91..... 6665

Title 11—*Proposed Rules:*

102 13056
110 ..... 13054, 13056
200 20430

311-245 (9) O - 92 - 2

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

Page

5.50 (h)(1)(i), (ii), (2) and (3) correctly added; CFR correction....1641
8.2 (a) revised....22416
34 Authority citation revised....12202
34.42 (g) through (k) redesignated as (h) through (l); (g) added....12202
34.43 Heading, (a) introductory text, (1), (2), (4)(iv) and (5) revised; (a)(6) and (d) added....12202
34.44 (b) and (c) redesignated as (c) and (d); (b) added....12202

Chapter II—Federal Reserve System (Parts 200—299)

201.51 Revised....176
201.52 Revised....176
202 Supplement I amended....12203
Appendix A amended....20399
203 Appendix A amended....20400
204.9 (a)(1) revised....8060
205 Appendix B added....20400
207 OTC margin stock list....2997, 15220
208.18 Regulation at 55 FR 27771 compliance date revised....6
208.110 Removed....21593
208 Appendix A amended....2012
211.2 (t) revised; interim....12997
211.21 (b)(1) and (2) amended; (b)(3) through (b)(8) added; interim....12997
211.22 Added; interim....12998
211.25 Added; interim....12999
211.26 Added; interim....13000
211.27 Added; interim....13001
211.28 Added; interim....13001
211.29 Added; interim....13001
211.30 Added; interim....13001
213 Appendix D amended....20400
215 Authority citation revised....21205, 22423
215.1 (a) revised....21205
Regulation at 57 FR 21205 republished....22424

Page

215.2 (e) through (l) redesignated as (g) through (n); new (e) and (f) added; (a), (c), (d), new (h), (i), (l) and (m) revised....21205
Regulation at 57 FR 21205 republished....22424
215.3 (a)(4), (8), (b)(2) and (5) revised....21206
Regulation at 57 FR 21206 republished....22425
215.4 (c) footnote 3 removed; (d) footnote 4 redesignated as footnote 3....21205
(a)(1), (b)(1) and (c) revised; (b)(2), (3) and (e) redesignated as (b)(3), (4) and (d); new (b)(2) added....21206
Regulations at 57 FR 21205 and 21206 republished....22424, 22425
215.5 (a) footnote 5 redesignated as footnote 4....21205
(a) footnote 4 and (d) revised....21206
Regulations at 57 FR 21205 and 21206 republished....22424, 22425
215.6 Redesignated as 215.7; new 215.6 added....21207
Regulation at 57 FR 21207 republished....22426
215.7 Redesignated as 215.8; new 215.7 redesignated from 215.6....21207
Regulation at 57 FR 21207 republished....22426
215.8 Footnote 6 redesignated as footnote 5....21205
Redesignated as 215.9; new 215.8 redesignated as 215.9....21207
Relations at 57 FR 21205 and 21207 republished....22424, 22426
215.9 Footnote 7 redesignated as footnote 6....21205
Redesignated as 215.10; new 215.9 redesignated as 215.8....21207
Regulations at 57 FR 21205 and 21207 republished....22424, 22426
215.10 (a) footnote 8 and (b) footnote 9 redesignated as (a) footnote 7 and (b) footnote 8....21205

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

Redesignated as 215.11; new 215.10 redesignated from 215.9 ... 21207
Regulations at 57 FR 21205 and 21207 republished ... 22424, 22426
215.11 Redesignated as 215.13; new 215.11 redesignated from 215.10 ... 21207
Regulation at 57 FR 21207 republished ... 22526
215.12 Added ... 21207
Regulation at 57 FR 21207 republished ... 22426
215.13 Redesignated from 215.11 and revised ... 21207
Regulation at 57 FR 21207 republished ... 22426
220 OTC margin stock list ... 2997, 15220
221 OTC margin stock list ... 2997, 15220
224 OTC margin stock list ... 2997, 15220
225 Authority citation revised ... 21207, 22426
225.4 (f) added ... 21207
Regulation at 57 FR 21207 republished ... 22426
225.11 (f) added; interim ... 13001
225.12 (f) added; interim ... 13001
(d) introductory text, (1) and (2) redesignated as (d)(1) introductory text, (i) and (ii); (d)(2) added ... 28778
225.13 (a) introductory text and (b)(2) revised; (b)(4) and (5) added; interim ... 13003
225.23 (f)(2) introductory text republished; (f)(2)(i) revised ... 28779
225.25 Footnotes 7 through 14 redesignated as footnotes 8 through 15; (b)(5) introductory text, (i), (ii), (iii), (iv) introductory text, (A) through (D), (v) and (vi) redesignated as (b)(5)(i) introductory text, (A), (B), (C), (D) introductory text, (*1*) through (*4*), (E) and (F); new (b) (5) heading and (ii) added; (b)(5)(i) introductory text, (D) introductory text, (*3*) and (F) revised ... 20961

Page

225.61—225.67 (Subpart G) Regulation at 55 FR 27771 compliance date revised ... 6
225.114 Removed ... 9973
225.132 (c)(2) amended ... 28779
225 Appendix A amended ... 2012
Appendix D amended ... 2013
226 Supplement I corrected ... 81, 749
Appendix I amended ... 20400
227.11 (c)(1), (2) and (3) revised; (d) added ... 20401
229.13 (g)(1)(ii) through (v) removed; (g)(2) heading, (i), (ii) and (3) redesignated as (g)(1)(ii) heading, (A), (B) and (4); (b), (c) introductory text, (d) introductory text, (e)(1), (f) introductory text, new (g)(1)(ii)(A), (B), (h)(1), (3) and (4) amended; (g)(1) introductory text, (i) and (h)(2) revised; new (g)(2) and (3) added ... 3279
229 Appendixes C and E amended; interim ... 3280
263 Authority citation revised ... 13001
263.50 (b)(7) and (8) amended; (b)(9) and (10) added; interim ... 13001
265 Authority citation revised ... 13002
265.6 Introductory text republished; (e) added ... 6789
(b)(2) added; interim ... 13002
265.7 (d)(8) added; interim ... 13002
265.11 (c)(11)(v)(A) removed; (c)(11)(v)(B) and (C) redesiganted as (c)(11)(v)(A) and (B); (c)(11)(vi) revised ... 11907

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303.3 (d) redesignated as (e); new (d) added ... 5815
303.7 (f)(5) redesignated as (f)(6); new (f)(5) added ... 5815
323 Authority citation revised ... 9049
323.2 (g) through (k) redesignated as (h) through (l); new (g) added ... 9049
323.3 (a) introductory text, (1) and (4)(iv) revised; (a)(5)

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 12 Chapter III—Con. Page

amended; (a)(6), (7) and (d) added 9050
323.4 (b) and (c) redesignated as (c) and (d); new (b) added 9050
325 Authority citation revised 7647
325.1 Amended 7647
325.5 (f)(5) and (8) removed; (f)(6) and (7) redesignated as (f)(5) and (6); (f)(4), new (f)(5) and (6) amended 7647
335.212 Amended 4702
335.312 Amended 4702
335.410 Revised 4702
335.411 Revised 4702
335.412 Removed 4702
335.420 Added 4703
335.421 Added 4703
335.422 Added 4703
337 Authority citation revised 7649, 17850, 23941, 28457
337.3 (a) amended 7649
(c) added 17850
Corrected; OMB number 28457
337.6 Revised 23941
360 Transferred to subchapter B; subchapter C heading removed 10415
361 Added 15004
386 Heading removed 10415

Chapter V—Office oif Thrift Supervision, Department of Treasury (Parts 500—599)

500.10—500.17 (Subpart B) Revised 14335
500.32 Removed 14336
516 Added 14336
543.1 (b) amended 14338
543.2 (a) and (g)(1) introductory text revised; (b), (g) introductory text and (h)(3) removed; (d), (e) and (f) amended 14338
543.8 (b) revised 14339
543.9 (a) revised; (c) amended 14339
544.2 (a) and (b) introductory text revised; (c) amended; (d) and (e) removed 14339
544.3 Introductory text revised 14339
544.5 (a), (c) and (d) revised 14339
545.74 (b)(7), (c) introductory text, (3)(vi), (4)(iii) and (e) revised; (c)(4)(i)(D) amended; (f) and (g) removed 14340
545.77 Revised 14340
545.82 (f) heading, (1) introductory text and (3) revised 14340
545.92 (a), (b), (c), (e), (f) and (h)(1) revised; (h)(3) removed; (j) added 14341
545.93 (b) and (c) amended 14341
545.94 Removed 14341
545.95 Revised 14341
545.96 (b) revised; (d) removed 14342
546.2 (d)(2) and (e) amended 14342
546.4 (c) and concluding text revised 14342
550.2 (a) amended 14342
552.2-1 (b) introductory text, (1) introductory text and (i) revised 14342
552.2-2 (b) and (c) amended; (d) removed 14342
552.4 (a) and (b) introductory text revised; (c) and (d) amended; (e) and (f) removed 14343
552.5 Revised 14343
552.6-3 (a) amended 14343
552.10 Revised 14343
552.13 (i) revised; (m) removed 14343
556.5 Revised 12207
558.3 Amended 14335
558.4 Amended 14335
559.3 Amended 14335
563.1 Revised 14344
563.4 Removed 14344
563.10 (b)(1) amended; (c) heading and (1) introductory text revised 14344
563.22 (c)(2) revised; (e) heading and (1) amended; (d)(1), (e)(2), (3) and (f) removed 14344
563.37 (c) revised 14344
563.38 (b) amended 14344
563.41 (e)(2)(ii)(D) revised 14344
563.43 (d) amended; (e) and (f) revised 14344
563.45 Amended 14345
563.74 (e) revised 14345
563.75 Removed 14345
563.80 (e)(2) revised 14345
563.81 Heading, (a), (b), (c), (d) introductory text, (1)(iv),

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

(2), (h) and (k) revised; (d)(1) introductory text, (iii), (v), (vi) introductory text, (f) and (g) amended; (e), (i) and (j) removed 14345
563.93 (b)(6)(iii) amended; (d)(3)(iii) revised; (g) removed 14347
563.131 (a)(1), (b), (d) and (e) amended; (c) introductory text revised 14347
563.132 (a)(1)(ii), (c)(2) and (4) amended; (c)(5) removed; (c) heading, (1) introductory text and (3) revised 14347
563.133 Removed 14347
563.134 (c) and (e)(3) amended 14347
563.160 (f)(3) amended 14335
563.170 (c)(4) amended 14335
563.190 Revised 12698
563b.3 (i)(3)(i) amended 14347
563b.8 (w) removed 14348
563b.27 (e) amended 14335
563b.28 (c)(2) amended 14335
(a) revised; (c) removed 14348
563b.29 (a) amended 14348
563b.39 (d) and (m) revised 14348
563b.41 (a) revised; (c) removed 14348
563c.102 Amended 26990
563f.7 Revised 14348
564 Authority citation revised 12705
564.2 (g) through (k) redesignated as (h) through (l); new (g) added 12705
564.3 Heading, (a) introductory text, (1) and (2) revised; (d) added 12705
566.3 Removed 14348
566.4 Revised 14348
566.5 Removed 14348
567.1 (jj) added 12709
567.3 (a)(1), (2), (d)(1), (3) and (5) amended 14335
(d)(2)(i) introductory text amended 14348
567.4 (a)(1) introductory text, (2) introductory text, (3)(i) introductory text and (4) amended 14335
567.6 (a)(1)(iii)(D) added 12709
571.1 (a)(1) amended 14335
571.2 (b), (d)(1) and (e)(4)(ii) amended 14335

Page

571.12 Removed 14348
571.14 Removed 12698
571.16 (c)(10) amended 14335
571.19 Removed 26990
574.3 (c)(1)(ii) revised 14348
574.4 (f)(1) introductory text revised 14349
574.5 (a)(1) revised 14349
574.6 (b) and (d)(2) revised; (j) added 14349
574.7 (f) removed 14349
574.9 Removed 14349
579.5 Amended 14335
584.2-1 (c)(1) revised 14349
584.2-2 (b) amended 14349
584.9 (d) revised 14349

Chapter VI—Farm Credit Administration (Parts 600—699)

611 Authority citation revised 26992
611.1137 Added (effective date pending) 26992
613 Authority citation revised 13637
613.3045 Regulation at 56 FR 65989 eff. 2-26-92 6553
613.3140 Removed (effective date pending) 13637
Removal at 57 FR 13637 eff. 5-27-92 22157
613.3145 Added (effective date pending) 13637
Regulation at 57 FR 13637 eff. 5-27-92 22157
613.3150 Revised 13638
Regulation at 57 FR 13638 eff. 5-27-92 22157
613.3151 Added (effective date pending) 13638
Regulation at 57 FR 13638 eff. 5-27-92 22157
613.3152 Added (effective date pending) 13638
Regulation at 57 FR 13638 eff. 5-27-92 22157
613.3160 (a) revised; (b) introductory text amended (effective date pending) 13638
Regulation at 57 FR 13638 eff. 5-27-92 22157
613.3170 Revised (effective date pending) 13638

TITLE 12 Chapter VI—Con. Page

Regulation at 57 FR 13638 eff. 5-27-92....22157
613.3175 Added (effective date pending)....13639
Regulation at 57 FR 13639 eff. 5-27-92....22157
618.8030 Regulation at 56 FR 65990 eff. 2-26-92....6553

Chapter VII—National Credit Union Administration (Parts 700—799)

703 Interpretive ruling and policy statement....22157
703.5 (e) stayed....6553
704 Revised....22630
704.1 Existing text designated as (a); new (b) added....28085
704.2 Corrected....28085
704.6 (b)(2)(vi)(A) correctly revised; (d) corrected....28085
704.7 (b)(3) corrected....28085
704.10 (b)(2) corrected....28086
704.11 (i) corrected....28086
704.12 (c)(2) correctly revised; (c)(5) corrected....28086
704 Appendix A corrected....28086
705 Authority citation revised....20742
705.7 (b)(2) revised....20742
722 Authority citation revised....28998
722.2 (g) through (k) redesignated as (h) through (l); new (g) added....28998
722.3 (a)(4)(iv) and (5) revised; (a)(6) added....28998
741.9 (a)(3) and (b)(3) revised....22636
(a)(3) and (b)(3) corrected....28086
747.0 (a) and (b) corrected....523
747.1 (a), (b), (c) introductory text, (1) and (3) corrected....523
747.3 (f)(1) and (g) corrected....523
747.9 (a) corrected....523
747.16 Corrected....523
747.33 (a) corrected....523
747.201 Corrected....523
747.207 Corrected....523
747.208 (a) corrected....523
747.301 Introductory text corrected....523
747.304 Corrected....523
747.305 Corrected....523
747.306 (a) corrected....523
747.401—747.406 (Subpart E) Heading corrected....523

Page
747.401 Corrected....523
747.405 (c) corrected....523
747.606 (c) corrected....523
747.703 (a) corrected....523
747.803 (b)(1)(iv) corrected....523
747.901—747.905 (Subpart J) Heading corrected....523
747.901 Corrected....523
747.902 Corrected....523
747.903 (a)(3) corrected....523
747.904 (b)(1) and (2) corrected....523
(d)(2) corrected....524
747.905 (a) corrected....524

Chapter IX—Federal Housing Finance Board (Parts 900—999)

900.30 Revised....6468
900.53 Correctly designated....749
932 Authority citation revised....6190
932.3 Revised....6190
932.18 Corrected....81
932.21 Corrected....81
932.23 Corrected....81
932.55 Removed; interim....2834
Removal at 57 FR 2834 confirmed....11429
932.56 Removed; interim....2834
Removal at 57 FR 2834 confirmed....11429
932.57 Removed; interim....2834
Removal at 57 FR 2834 confirmed....11429
941 Added; interim....2384
Regulation at 57 FR 2384 confirmed....11429
941.6 (c)(3) amended; (c)(2) revised....11429
941.7 (f)(1)(ii) and (2) amended; (d)(1), (4)(i) and (ii) revised....11429
941.8 (a) amended; (d) added....11429
941.10 (b) revised....11429

Chapter XI—Federal Financial Institutions Examination Council (Parts 1100—1199)

1102 Added....10982

Chapter XV—Thrift Depositor Protection Oversight Board (Parts 1500—1599)

Chapter XV Heading revised....4715

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Chapter XVI—Resolution Trust Corporation (Parts 1600—1699)

Page
1609 Revised; interim.....19501
Policy statement.....24937

Title 12—*Proposed Rules:*

1—199 (Ch. I) 6205
8 8424
202 1405
204 8096
208 .....6563, 14362
215 6077
225 .....6077, 6563, 13362, 28807
229 3365
230 .....12735, 22021
250.....28809
262.....28807
300—399 (Ch. III) 8282
325 .....1105, 11005
327 .....21617, 21623, 21627, 28810
330 17866
337 .....7669, 11442
500—599 (Ch. V) 5080
545 12760
563 .....8732, 24994
563b 2061
567 12761
571 12760
603 8851
607 .....19405, 21755, 27006
611 .....23348, 26786
612 26787
613 1882
615 .....5294, 7672, 23348, 26788
618 .....19405, 21755, 27006
627 23348
700 .....18836, 24395
701 .....18837, 20798
702 29050
705 2484
722 2485
910 20061
934 .....11014, 19556
1102 .....10143, 11017
1502 26789
1503 24994

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration (Parts 1—199)

101.3-2 Amended.....524, 26768

Page
108.2 Amended.....11909
108.503-1 (e) revised.....11909
(c)(1)(iii) revised.....26770
108.503-2 (b) revised.....26770
108.503-3 (f) introductory text amended; (f)(1) revised.....26770
108.503-7 (b)(1) through (b)(4) redesignated as (b)(2) through (b)(5); new (b)(1) added; new (b)(3) revised.....26770
108.503-8 (a)(3) amended.....26770
108.503-10 (a) amended.....26770
108.503-11 (b)(2) amended.....26770
108.504 (e) amended.....26770
120.202-1 Amended.....10984
120.202-4 Revised.....10984
120.202-5 (e) revised.....10985
121 Waiver...6290, 14638, 18396, 20962, 27677
121.402 (d)(1) revised; interim.....2444
121.601 Table amended...4838, 4840, 18810, 27911
121.1010 (c) amended.....18810
121.1704 Revised.....28780
122 Authority citation revised.....3849
122.8-4 (g) revised.....6574, 13267
122.61 Added; interim.....3849
122.61-1 Added; interim.....3849
122.61-2 Added; interim.....3849
122.61-3 Added; interim.....3850
122.61-4 Added; interim.....3850
122.61-5 Added; interim.....3850
122.61-6 Added; interim.....3850
122.61-7 Added; interim.....3850
122.61-8 Added; interim.....3851
122.61-9 Added; interim.....3851
122.61-10 Added; interim.....3851
122.61-11 Added; interim.....3851
124.210 (b) amended.....28780
124.211 (d) amended.....28780
134.12 (a) amended.....28780
134.14 (a) revised; (b) amended..28780

Chapter III—Economic Development Administration, Department of Commerce (Parts 300—399)

301 Authority citation revised.....2223
301.50 Revised.....2223
301.51—301.60 Removed.....2223
305.45 (a), (b), (c)(4) and (8) revised; interim.....11674

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 13

Title 13—*Proposed Rules:*

Page

108 1688
121 .....541, 6569, 14518, 27906, 28814

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

1 Technical correction 11575
11 Technical correction 11575
21 Special FAA conditions...7, 338, 605, 1221, 2225, 2444, 3516, 8720, 9167, 12867, 13004, 22165, 23525
23 Special FAA conditions...1221, 2225, 2444, 8720
25 Special FAA conditions...7, 338, 605, 13004, 22165
25.251 (a) and (b) revised 28949
25.305 (e) and (f) added 28949
25.629 Revised 28949
25.813 (a) and (c) revised 19244
(a) introductory text, (c)(1) introductory text and (2)(i) corrected 29120
29 Special FAA conditions...3516, 9167, 12867, 23525
39 Technical correction 23126
39.13 ...178, 180—182, 606, 607, 780–782, 784, 785, 787, 789, 791–793, 1075, 1077, 2014, 2016, 2447, 3000, 3001, 3003, 3004, 3006, 3008, 3517, 3518, 3927, 3929, 3931, 3932, 3935, 3936, 4154, 4841, 4843, 4844, 4846–4848, 4850, 4926, 5051, 5370, 5371, 5373, 5374, 5376, 5377, 5379, 5380, 5976, 6069, 6071, 6191, 6667, 7650, 8061—8063, 8258, 8260—8262, 8575, 8576, 8721, 8722, 8724, 8725, 9169—9172, 9382, 9383, 9974, 10127, 10128, 10130, 10132, 10133, 10286, 10416, 10418, 10420—10423, 10802, 10803, 12868, 12870, 13005, 13007, 13009, 13640, 13642, 14794, 15006, 15008, 15009, 15011, 15012, 17851, 17852, 17854, 18397, 19080, 19082, 19250, 19376, 19530–19533, 19798, 19800—19802, 20199, 20743, 20745, 21208, 21727, 21728, 21730, 22427, 23050, 23052, 23054, 23136, 23526, 23528—23530, 23531, 24357, 24939—24942, 27247, 27149, 27152—27154, 27156, 27158, 27355, 28458, 28597—28599, 28601, 28603, 28604
Corrected...2639, 8839, 9155, 10985, 10986, 11138, 12963, 14751
Technical correction 23126
45 Technical correction 11575
61 Technical correction 11575
65 Technical correction 11575
71 Technical corrections...11575, 20572
71.1 Revised; effective to 9-15-93 9642
71.1 ...10804, 10986, 11575, 11576, 11675, 12872, 14476, 14477, 19083, 19251, 19376, 19804, 19805, 20401, 20746, 22643, 24358, 26771, 27159, 27911, 28459—28461, 28999
Regulation at 56 FR 55031 corrected 20044
71.77 (b)(1) corrected 3090
71.163 12872
71.181 Regulation at 56 FR 64478 effective date corrected 10987
71.203 341
71.207 341
71.401 169
71.501 170
73.25 .....8840, 19251, 19252
73.32 22427
73.63 26771
75 Technical correction 11575
75.100 Corrected 341
91 Technical correction 11575
SFAR No. 65 added 14473
SFAR No. 50-2 amended 26766
SFAR No. 66 added 28031
91.25 Effective date corrected 328
91.609 (b) added 19353
91.875 OMB number 5977
93 Technical correction 11575
95 ..... 6193, 24359
97.21—97.35 ...1078, 1081, 1223, 1224, 4360, 4362, 5978, 5981, 6469, 6474, 8398, 8401, 9661, 9663, 11677, 11679, 14478, 14480, 18811, 18813, 21594, 21596,

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page
24182, 24183, 24359, 26772, 29000
101 Technical correction 11575
103 Technical correction 11575
105 Technical correction 11575
121 Technical correction 11575
SFAR No. 38-2 amended 23923
121.310 (f)(3)(ii) revised; (f)(3)(iii), (iv) and (v) added 19244
(f)(3)(ii), (iv) and (v) corrected 29120
125 SFAR No. 38-2 amended 23923
127 Technical correction 11575
SFAR No. 38-2 amended 23923
129 SFAR No. 38-2 amended 23923
135 Technical correction 11575
SFAR No. 38-2 amended 23923
SFAR No. 50-2 amended 26766
135.153 Revised 9951
135.177 (a)(4) removed 19245
135.178 Added 19245
(b)(1) introductory text and (c)(1) corrected 29120
137 Technical correction 11575
139 Technical correction 11575, 23126
139.311 (a)(3) compliance date stayed 15163
(f) revised 15164
147.5 (a)(2) and (3) revised 28959
147.15 (a) through (d), (f) introductory text, (g) and (h) revised 28959
147.17 (a)(2) revised 28959
147.19 Revised 28959
147.21 (b) introductory text, (c) and (d)(3) revised; (e) removed 28959
147.23 Revised 28959
147.31 (b), (c)(1)(iv), (3) and (e) revised; (c)(4) added 28959
147.35 (a) revised 28959
147.36 Revised 28959
147.38 (a) revised 28960
147 Appendixes A, B, and C amended 28960
Appendix D amended 28961
171 Technical correction 11575
171.271 (e) corrected 3090

Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

Page
225.10 Revised 22646
382 Exemption 12872

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

1203b Added 4926
1212 Revised 4928
1214.100—1214.119 (Subpart 1214.1) Revised; interim 4545
1215 Appendix A revised 20747

Title 14—*Proposed Rules:*

1—199 (Ch. I) ...236, 383, 4744, 6570, 7893, 10836, 11921, 18118, 19407, 19556, 20145, 23165, 29052
21 ...9513, 11691, 11693, 12242, 13058, 13061, 23165, 28142
23 .....9513, 11691, 11693, 12242, 23165
25 ..... 11693, 13058, 13061
36 28142
39 ...18, 19, 21, 237, 649, 650, 652, 654—656, 855, 857, 1120, 1122, 1124, 1126, 1229, 1230, 1690, 1692—1694, 1696, 1697, 2232, 2233, 2486, 2488, 2489, 2491, 2492, 2494, 2692, 2693, 2695, 2697, 2857, 3033, 3966, 5081—5085, 5088, 5089, 5091, 5093, 5094, 5096, 5098, 5099, 6551, 6690, 7328, 7330—7332, 7334, 7335, 7338, 7559, 7560, 7562, 7673, 7676, 7679, 7681, 7682, 7684, 7894, 7895, 8585, 8734, 9077, 9078, 9215, 9392, 9394, 10301, 10443, 10617, 0618, 10743, 10745, 10747, 10836, 10838, 10840, 10844, 11023, 11352, 11589, 11696, 11697, 11921, 11922, 11924, 11926, 11927, 12467, 12888, 13061, 13062, 13325, 13669, 13671, 14366, 14368, 14518, 14627, 14751, 14799—14801, 15036, 15258—15260, 15263, 18119, 18840, 18841, 18443, 18445, 18847, 18849, 19265,

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 14 Title 14—Con. Page

19266, 20063, 20213, 20800, 21219, 21911, 22443, 22445, 23168, 23169, 23549, 23550, 23552, 23553, 23966, 23968, 23969, 23978, 24200, 24201, 24395, 24401, 24407, 26629, 26631, 26797, 26798, 26800, 27191, 27192, 27194, 27195, 27197, 27199, 27200, 27712, 27953, 27955, 29120

61 21362
71 ...4168, 4589, 10303—10306, 10841, 10843, 10846, 10848, 11352, 11698—11701, 11797, 11929, 13672, 14520—14523, 14670, 14751, 15264, 15265, 18120, 18954, 19408, 19821, 20064, 20067, 20215—20219, 20433, 20572, 20801, 21633, 21913, 22022, 22186, 22672, 23126, 23257, 24202, 24412, 24413, 28469
73 ..... 12889, 19409, 20066
91 ..... 4352, 8830, 21362, 23038
107 ..... 5352, 8834, 12396
108 ..... 5352, 8834, 12396
121 21362
135 4352
149 21362
153 21362
154 21362
170 3830
199 21362
200—399 (Ch. II) 4744, 11921
200 3366
203 3366
205 3366
206 3366
228 21362
231 3366
232 3366
235 ..... 3366, 21362
255 19821
263 3366
270 21362
288 3366
292 ..... 3366, 21362
294 3366
296 3366
297 3366
298 3366
302 3366
310a 21362
320 21362
326 21362
372 3366
380 3366
382 23555
384 ..... 3366, 21362
387 ..... 3366, 21362
399 3366
400—499 (Ch. III) 4744

TITLE 15—COMMERCE AND FOREIGN TRADE

Subtitle A—Office of the Secretary of Commerce (Parts 0—29)

4.8 (b), (c), (e) and (g) amended 28781
4 Appendix C amended 28781
29b.16 (b)(2)(i) and (ii) revised; (c)(6) redesignated as (c)(7) and republished; (b)(2)(iii) and new (c)(6) added; interim 4716
29b.21 (a)(1) and (2) revised; (a)(3) and (4) added; interim 4716

Chapter IV—Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)

400.45 (a) corrected 2319

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

768 Authority citation revised 4555
768.1 (a)(2)(i) amended 4556
768.2 (a)(1) and (9)(i) amended 4556
769.6 (b)(4) amended 4557
770 Authority citation revised 8, 4555
770.1 (b)(1) and (4) amended 4556
770.2 Amended 4556, 4557
770.3 (a)(1) revised 4557
770.6 (a)(2)(i) amended 4556
770.7 (c)(2) amended 4556, 4557
770.9 Amended 4556, 4557
770.10 (f)(2) amended 4556
(f)(2) and (3) amended 4557
770.14 (a)(4) revised 4558

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

(a) introductory text and (3)(ii) amended 19334, 19336
770 Supplement No. 1 amended 8, 11577, 19806
Supplement No.2 amended 4558
771 Authority citation revised 4555
771.2 (b)(2)(ii) amended 4556
(c) introductory text and (i) amended 4557
(c)(11) revised; (c)(12) removed 4558
(c)(13)(i)(B) revised; interim 26774
771.3 (a) and (b) amended 4556
771.4 (a)(3) amended 4556
771.5 (a), (b)(2), (c)(1)(i), (3) and (e) amended 4556
(a)(1) revised; (a)(2) removed; (a)(3) redesignated as (a)(2); new (a)(2)(i) and (c)(1)(i) amended; (c)(3) *Example* and (d) revised 4558
771.6 (a) amended 4556, 4558
771.14 (b) revised 19334
(b) amended 19336
771.15 (c)(3) amended 4556
771.16 (a) amended 4556
Introductory text amended 4558
771.18 (b)(1)(i) amended 4556, 4557
771.22 (b)(8)(ii) amended 4557
(c)(1)(ii) introductory text amended 4456, 4557
(c)(2)(ii) and (iii) amended; (c)(2)(iv) removed 4558
771.23 (c) amended 4556
(b) and (c) revised 4558
771.24 Removed 4559
771.25 Heading, (a), (c) and (f)(1) revised; (d) introductory text amended 4559
(b) and (f)(2) amended ... 19335, 19336
772 Authority citation revised 4555
772.1 (f) amended 4557
772.4 (e) amended 4556
(a)(2)(iv) added; (e) revised 4559
772.7 (b) amended 4557
772.8 (d)(2) amended 4557
772.9 (c)(1) and (2) amended 4557
772.11 (f)(9) amended 4556
(d)(2) and (e)(6) revised 4559
772 Supplement No. 1 amended 4556, 4559
773 Authority citation revised 4555
773.1 (e) amended 4557

Page

(a)(1) revised 4559
773.2 (b)(6), (c)(2)(iv)(B) and (f)(1) amended 4556
(a)(1), (b), (c)(2)(iv)(B) and (D) revised 4560
773.3 (b)(1)(iv) and (i)(2)(i) amended 4556
(b), (e)(1)(iii) and (2)(v) revised; (d)(3)(ii)(E)(*3*)(*i*), (e)(1)(ix) concluding text and (x) through (xiii) amended; (d)(3)(ii)(E)(*3*)(*iii*) removed; (e)(1)(xiv) and (xv) added 4560
(a)(1)(ii) revised; interim 18817
773.5 (c) amended 4556, 4557
773.7 (b)(5), (d)(1)(iv)(B)(*4*), (*6*), (*8*), (g)(4), (i)(4), (k) introductory text, (1) and concluding text amended 4556
(b) and (d)(1)(iv)(B)(*5*) revised 4560
773 Supplement No. 1 and No. 4 revised 4561
Supplement No. 5 amended ... 4556, 4557
Supplement No. 1 amended 4557
Supplement No. 1 amended; interim 18817
Supplement No. 8 amended 19335
774 Authority citation revised 4555
774.2 (j) amended 4556
(k)(1)(ii) amended 4557
(a)(1) amended 4561
(i) revised; (k)(2) amended; interim 18818
(i)(1), (j), (k) introductory text and (2) amended ... 19335, 19336
(m) added; interim 20965
774.3 (d)(1)(i) revised 4561
(d) removed; interim 18818
774 Supplement No. 1 amended 4556, 4561
775 Authority citation revised 4555
775.1 (b) table amended ... 4556, 4561, 19336
775.2 (b)(2) and (e)(2) amended 4556
(e)(2) and (j)(3) amended 4562
775.3 (a)(1), (d)(1), (f)(3), (h)(2) and (i)(1)(i) amended 4556

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 15 Chapter VII—Con. Page

(g)(3)(i) and (ii) amended....4562
(b) amended....19336
775.5 (a)(3) amended....4562
775.6 (a) and (c)(1) amended....4556
(a) amended....4562
775.7 (a)(1) introductory text and (b)(1) amended....4556
(a)(3) amended....4562
775.8 (a) and (b)(1) amended....4556
(a), (b)(1) and (2) amended....4562
775.9 (c) amended....4556, 4562
775.10 (b)(1)(i), (ii), (b)(2)(i) and (3) amended....4556
775 Supplement No. 1 amended....19336
776 Authority citation amended....4556
776.6 Revised....4562
776.7 Removed....4562
776.8 (a)(2) and (a) concluding text amended....4556
Footnote 2 redesignated as footnote 1; (a)(1) revised....4562
776.9 (b)(4)(ii) amended....4556
776.10 Revised....4562
(a)(1) amended; interim....20965
776.11 (a)(2) amended....4556
Removed....4563
Added; interim....20965
776.12 (e)(2)(v) and (vi) amended....4556
(a)(1)(ii) and (b)(2) amended; (b)(4) and (5) revised....4563
776.14 (a) amended....4563
776.16 (a) amended....4556, 4557
776.17 Revised....4563
776.18 Added....4563
776.20 Removed....4564
777 Authority citation revised....4556
777.6 (e)(4) amended....4556
778 Authority citation revised....8
Authority citation revised....4555
778.2 (a) introductory text and (2) amended....4556
778.7 (c)(1) introductory text and (d)(3)(i) amended....4557
(a)(1) revised; (a)(2) removed; (a)(3) redesignated as (a)(2)....4564
(c)(1)(ii) revised; interim....26774
778.8 (a)(2) amended....4556
(a)(1) introductory, (i), (ii), (2), (4), (5)(iv)(A) introductory text, (5)(v), (c)(1), (d)(3)(iii), (viii), (xi) and (4) amended....4557
Heading, (a)(3) and (d)(3)(xii) revised....4564
778.9 (c) amended....4557
(a)(1) and (b)(1) revised; interim....26774
778 Supplement No. 5 amended....8
Supplement No. 2 amended....4564
Supplement No. 6 revised; interim....26774
779 Authority citation revised....4555
779.1 Heading amended; (a) revised; (d) added....4564
779.2 Introductory text republished in part; footnotes 7 and 8 revised....4564
779.3 Note revised; OMB number....4564
779.4 (b), (e) and (f) revised; (c) and (d) removed; (g), (h) and (i) removed; (j) redesignated as (g)....4564
779.5 (a)(2) and (e)(2) revised; (b) and (e)(1)(vii) amended; (e)(3) removed....4566
779.8 (a)(3) amended; (b)(2) removed; (b)(3) and (4) redesignated as (b)(2) and (3); new (b)(2) introductory text, (i) and (3) revised....4566
(b)(2) revised; interim....18819
779.9 Introductory text amended....4567
779 Supplement No. 2 amended....4567
Supplement No. 3 and No. 4 removed....4567
782.2 Heading revised; (a)(1) amended....9
785 Authority citation revised....8
Authority citation revised....4555
785.1 (a) amended....4557
Heading amended....11577
785.2 Heading and (c) revised....4567
Heading revised; (a)(1) amended; (d) added....11577
(a)(1) and (c) amended....19806
785.4 Heading, (a), (d) and (e) revised; (g)(1)(ii) amended....4567
785.6 (b) amended....4556

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

Page

(a) revised....4571
785.7 (c) amended....4557
(d) amended....4571
785 Supplement No. 1 removed....4571
786 Authority citation revised....4555
786.3 (i)(2)(i), (j)(1) and (2) amended....4556
(o) amended....4557
786.6 (a)(1)(ii) and (c)(2) revised....4571
786.7 Introductory text, (e)(1) introductory text and (2) introductory text amended....4556
(a), (b), introductory text, (c)(1) introductory text, (e)(1) introductory text, (2) introductory text and (3) introductory text amended....4557
786.9 (d) amended....4557
787.14 (a)(1) and (2) amended....4557
790 Authority citation revised....4555
790.1 (b)(1)(i) amended....4556
790.6 Amended....4556, 4572
791 Authority citation revised....4555
791.1 (d) amended....4556
799 Authority citation revised....4555, 18820
799.1 (d)(1)(i) revised....4572
Supplement No. 1, Category 1 amended (ECCN 1C60C, 1D60C, 1E60C, 1E61B, 1E70E)....4572
Supplement No. 1, Category 1 amended; interim (ECCN 1B01A, 1B18A, 1B19A, 1C18A, 1C19A)....18820
Supplement No. 1, Category 1 amended; interim (ECCN 1B28B)....26994
Supplement No. 1, Category 2 amended (ECCN 2B85F)....4572
Supplement No. 1, Category 2 amended; interim (ECCN 2A19A, 2B05A, 2B18A)....18820
Supplement No. 1, Category 3 amended (ECCN 3A93F)....4573
Supplement No. 1, Category 3 amended; interim (ECCN 3B01A)....18820
Supplement No. 1, Category 4 amended; interim (ECCN 4A01A)....18820

Page

Supplement No. 1, Category 6 amended; interim (ECCN 6A01A, 6A02A, 6A03A, 6A18A)....18820
Supplement No. 1, Category 8 amended; interim (ECCN 8A01A, 8A02A, 8A18A)....18820
Supplement No. 1, Category 9 amended (ECCN 9A91F)....4573
Supplement No. 1, Category 9 amended; interim (ECCN 9B01A, 9B06A, 9B26B)....18820
Supplement No. 1, Category 9 amended; interim (ECCN 9B07A)....18822
Supplement No. 1, Category 9 amended; interim (ECCN 9A23B)....26994
Supplement No. 1, Category 9 amended; interim (ECCN 9B07A, 9B23B, 9B24B, 9B27B, 9D24B, 9E21B)....26995
Supplement No. 1, Category 0 amended; interim (ECCN 0A18A)....18820
799.2 Supplement No. 1 amended....4556, 4573

Chapter XII—United States Travel and Tourism Administration, Department of Commerce (Parts 1200—1299)

1201 Removed....4156

Title 15—*Proposed Rules:*

200—299 (Ch. II) ...10620, 18121, 28647
303 ....384, 24414
900—999 (Ch. IX) ...8964, 14524, 23067
1150 2065

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

4.7 (c)(3) revised....10805
4.8 Revised....10806
4.9 (a) introductory text redesignated as (a)(3) and amend-

CHANGES JANUARY 2, 1992 THROUGH JUNE 30, 1992

TITLE 16 Chapter I—Con. Page

ed; (a)(2) revised; (a)(4) added..... 10805
4.10 (a)(5) revised; (a)(11) added..... 10807
4.11 (a)(1)(i)(C), (D), (E), (iii)(A), (B), (C), (iv)(A), (B), (C), (2)(i)(A) and (ii)(B) revised; (d) amended..... 10807
4.13 (e), (f), (h), (i)(1), (j) and (k) revised..... 10808
305 Energy efficiency ranges..... 11680
305.9 (a) revised..... 6072
456 Revised..... 18822
600 Appendix amended..... 4935

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

Page

1500.18 (a)(16) added..... 27915
1500.272 (c) and (d) revised..... 28605
1700.14 (a) introductory text republished; (a)(20) added..... 27920

Title 16—*Proposed Rules:*

19 24998
23 24998
245 24998
433 28814
1205 3147
1211 9395
1303 18418
1500 7686

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

Page

1 Fee schedule....1372
Authority citation revised....23143
1.10 (j)(3) and (4) revised....23143
1.17 (h)(3)(vi) revised....20637
1.41 (e) revised....20637
(o) through (t) added....27924
1.41a (a)(5) revised....27925
1.43 Revised....20637
1.57 (a)(1) revised....23143
1.62 Revised....23143
3.1 (a)(3), (b) and (c) revised; (d), (e) and (f) added....23144
3.10 Heading, (a), (b) and (d) revised....23144
3.11 (b) revised; (d) added....23145
3.12 Heading, (a), (b), (c) introductory text, (d)(1) introductory text, (iv), (v), (2), (f) and (h) revised; (d)(4) and (5) removed; (i) and (j) added....23145
3.13 Removed....23148
3.14 Removed....23148
3.15 Removed....23148
3.16 Removed....23148
3.17 Removed....23148
3.18 Removed....23148
3.20 Removed....23148
3.21 (c) and (d) added....23148
3.22 Introductory text, (a) and (c) revised....23148
3.30 Revised....23148
3.32 (a), (c), (e), (g) and (h) revised....23149
3.33 (a) introductory text, (e) and (f) introductory text revised....23150
3.40 (c) revised....23151
3.42 (a) revised....23151
3.44 (a)(3) and (5) revised....23151
3.50 (a) and (b)(1) revised....23151
3.51 (a) introductory text and (b) revised....23151
3.52 Removed....23151
3.53 Removed....23151
3.54 Removed....23151

Page

3.55 (a) introductory text, (3), (b), (e) and (f) revised; (g) through (k) removed....23151
3.56 Removed....23152
3.60 Revised....23152
3.61 Revised....23154
3.62 Removed....23154
3.63 Revised....23154
3.64 Added....23154
3.70 (a) and (c) revised....23155
3.75 (c) revised....23155
5.2 (d) introductory text revised....20637
5.3 Removed....20637
7.100—7.101 (Subpart B) removed....20637
7.200 Removed....20637
12.2 (w) removed....20637
(d)(4) removed; (d)(1), (h), (i)(1), (p) and (r) removed....20637
12.5 (a) amended....20638
12.6 (a) amended....20638
12.8 (a) and (b) amended....20638
12.10 (a)(3) and (c) amended....20638
12.22 (b) revised....20638
12.301 Removed....20637
12.302 Removed....20637
12.303 Introductory text and concluding text revised....20638
12.304 (d) removed....20637
12.408 (a)(2) and (3) amended....20638
15.03 Revised....20403
15.04 Removed....20638
20 Removed....20638
30 Appendix B amended....10988
32.2 Revised....27926
140.61 Removed....20638
140.72 (a) amended....20638
140.73 (a) introductory text and (b) amended....20638
140.77 (a), (b) and (c) amended....20638
140.81 Removed....20638
140.96 (b) removed....20638
140.97 Added....12874
Effective date corrected....20572
149.110 Removed....20638

Chapter II—Securities and Exchange Commission (Parts 200—399)

202 Authority citation revised....18216
202.3 (a) amended....18216

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

TITLE 17 Chapter II—Con. Page

230 Authority citation revised....18043, 18216
230 Technical correction....29119
230.174 (g) added....18043
230.419 Added....18043
230.499 Revised....18216
239.62 Revised....18216
239.63 Revised....18218
239.64 Revised....18218
240 Authority citation revised....18218
Phase-in period extended....28781
Technical correction....29119
240.3a51-1 Added....18032
240.12b-37 Revised....18218
240.13f-2(T) Revised....18227
240.15g-1 Added....18032
240.15g-2 Added....18033
240.15g-3 Added....18033
240.15g-4 Added....18034
240.15g-5 Added....18034
240.15g-6 Added....18034
240.15g-8 Added....18045
240.15g-100 Added....18035
249.244 Revised....18219
249.445 Revised....18219
249.446 Revised....18219
250.111 Revised....18232
259.602 Revised....18219
259.603 Revised....18219
260 Authority citation revised....18220
260.0-12 Revised....18220
269 Authority citation revised....18221
269.6 Revised....18220
269.7 Revised....18220
269.8 Revised....18220
270.0-11 Revised....18228
274.401 Revised....18221
274.402 Revised....18221
274.403 Revised....18221

Title 17—*Proposed Rules:*

1 26801
17 25007
19 27713
150 27202
200—399 (Ch. II) 18421
240 ....18046, 24415, 26891
150 12766
270 23980

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

Page

2 Authority citation revised....21733
2.1 (a)(1)(ii)(B), (C), (E) and (ix) removed....21733
2.5 Removed....21733
2.10 Removed....21733
2.11 Removed....21733
2.53 Removed....21893
2.56 Removed....21893
2.56a Removed....21893
2.56b Removed....21893
2.61 Removed....21893
2.63 Removed....21893
2.66 Removed....21893
2.70 Removed....21893
2.75 Removed....21893
2.77 Removed....21893
2.79 Removed....21893
2.90 Removed....21893
2.90a Removed....21893
2.90b Removed....21893
2.91 Removed....21893
4 Authority citation revised....21737
4.32 (b)(1) and (2) revised....21737
4.34 (h) added....21737
4.41 (g)(4) revised....21737
4.51 (g)(3) revised....21737
8 Authority citation revised....21737
8.11 (a)(2) and (c) revised....21737
16 Authority citation revised....21738
16.18 (d) amended....21738
24 Authority citation revised....21738
24.1 Amended....21738
35 Authority citation revised....21734
35.1 (d)(2) and (3) amended....21734
35.7 Amended....21734
35.8 Amended....21734
35.9 Amended....21734
35.18 Amended....21734
35.20 Removed....21734
35.27 Removed....21734
50 Removed....21734
101 13064
103 Removed....21738
131 Authority citation revised....21734
131.20 Amended....21734
131.51 Amended....21734

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

Page

131.52 Amended 21734
131.53 Amended 21734
131.60 Removed 21734
141 Authority citation revised 21738
141.15 Added 21738
141.100 Removed; new 141.100 redesignated from 141.200 21734
141.200 Redesignated as 141.100 21734
154 Authority citation revised 21893
154.81—154.86 Undesignated center heading removed 21893
154.81 Removed 21893
154.82 Removed 21893
154.83 Removed 21893
154.84 Removed 21893
154.85 Removed 21893
154.86 Removed 21893
155 Removed 21893
157 Authority citation removed 21893
157.7 (b) through (h) removed 21893
157.42 Removed 21894
159 Removed 21894
160 Removed 21894
260 Authority citation revised 21894
260.100 Removed 21894
271 Authority citation revised 13018
271.101 (a) Table I and Table II amended 19252
271.102 (c) Table III amended 19253
271.703 (c)(2)(i)(B) revised 13018
281 Authority citation revised 21894
281.101—281.111 (Subpart A) Removed 21894
284.1 (a) revised; (c) added 13315
284.8 (a)(1) and (d) revised; (a)(4) and (b)(2) through (5) added; (b) amended 13315
284.9 (a)(1) revised; (b) amended; (b)(2) through (5) added 13315
284.12 Amended 13315
284.14 Added 13315
284.106 (a) introductory text, (c) introductory text and (d) introductory text amended; (g) added 13317
284.126 (g) added 13317

Page

284.221 (d) revised 13317
284.223 (d)(1) introductory text, (3) introductory text and (4) introductory text amended; (d)(5) added 13318
284.241—284.243 (Subpart H) Added 13318
284.281—284.288 (Subpart J) Added 13318
292 Authority citation revised 21734
292.203 (c)(1) amended; (c)(2) removed 21734
292.401 Removed; new 292.401 redesignated from 292.402 21734
292.402 Redesignated as 292.401; new 292.402 redesignated from 292.403 21734
292.403 Redesignated as 292.402 21734
300 Authority citation revised 21734
300.10 (d)(2), (4), (f)(2)(i) and (vi) removed; (d)(3), (5), (6) and (f)(2)(ii) through (v) redesignated as (d)(2) through (4) and (f)(2)(i) through (iv) 21734
375 Authority citation revised 21894
375.307 (a)(13) removed 21894
381 Authority citation revised 15225
381.201 Amended 15225
381.202 Amended 15225
381.203 Amended 15225
381.204 (a) and (b) amended 15225
381.205 (a)(1) through (4) and (b)(1) through (4) amended 15225
381.207 (b) amended 15225
381.208 (a) amended 15225
381.209 (b) amended 15225
381.301 Amended 15225
381.302 (a) amended 15225
381.303 (a) amended 15225
381.305 (a) amended 15226
381.401 Amended 15226
381.403 Amended 15226
381.404 Amended 15226
381.502 (c)(2)(i), (ii), (d)(2)(i), (ii), (e)(2)(i), (ii), (f)(2)(i) and (ii) amended 15226
381.505 (a) amended 15226
381.507 Amended 15226

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

TITLE 18 Chapter I—Con. Page

381.508 Amended 15226
381.509 Amended 15226
381.510 Amended 15226
381.601 Amended 15226
385 Authority citation revised 21734
385.602 (c)(1)(iv) removed 21734

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

1301.3 Added 23532

Title 18—*Proposed Rules:*

1—399 (Ch. I) 17867
33 ..... 23171, 27511
35 ..... 23171, 27511
101 13064
154 13673
157 13673
201 13673
284 ..... 13673, 26803
285 26803
290 ..... 23171, 27511

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4 Authority citation amended 23945
4.23 Amended 24943
4.69 Revised 23945
4.93 (b)(1) and (2) Amended 13019
19.9 (c) amended 24944
24.1 (b) introductory text revised 26775
101.3 (b) amended 15013
123.4 (b) amended 24944
133 Court order 28605
141 Authority citation amended 27160
141.1 (c) revised 27160
141.68 (f) and (h) amended 24944
(h) corrected 28012
141.102 Heading revised 10989
143.23 Introductory text amended 24944
143.24 Heading revised; text amended 24944
143.25 Amended 24944
145.4 (c) amended 24944
145.12 (b)(1), (c) and (e)(1) amended 24944

Page

(b)(1) corrected 28012
148.12 (c) amended 24944
148.27 Amended 24944
151.12 Removed 10989

Title 19—*Proposed Rules:*

101 ..... 26805, 26806
175 21914

TITLE 20—EMPLOYEES' BENEFITS

Chapter I—Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

10.304 (b) revised 15227

Chapter III—Social Security Administration, Department of Health and Human Services (Parts 400—499)

404 Technical correction 24308
404.110 (d)(1) revised 23156
404.111 (c) amended; (d) added 23157
404.213 (d)(1) introductory text and (e)(5) revised 22429
404.241 (a) revised; (c)(1)(v) and (vi) added 23157
404.301—404.395 (Subpart D) Authority citation revised 21598
404.381 (a) revised 21598
404.822 (e)(5) revised 21600
404.900—404.999d (Subpart J) Authority citation revised 23056
404.903 (q) added 23057
404.1501—404.1599 (Subpart P) Appendix 1 amended 23946, 23947, 24187
404.2040a Added 23057
404 Appendix IV amended 22429
416.640a Added 23057
(g)(4) corrected 27091
416.1403 (a)(11) added 23058

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

655.0 Regulations at 56 FR 24667 and 57 FR 183 effective date extended through 6-30-92 10989
655.000 Regulations at 56 FR 24667 and 57 FR 183 effec-

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

Page

tive date extended through 6-30-92 10989
655.500—655.550 (Subpart F) Regulations at 56 FR 24654, 56 FR 24667 and 57 FR 183 effective date extended through 6-30-92 10989
655.600 655.675 (Subpart G) Regulations at 56 FR 24654, 56 FR 24667 and 57 FR 183 extended through 6-30-92 10989

Title 20—*Proposed Rules:*

416 22187
660 14803

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

2.125 (h)(2) introductory text revised 17980
3 Meeting 24544
5 Authority citation revised 18823
5.10 (a)(34) added 28462
5.20 (f) redesignated as (g); new (f) added 12875
5.38 Added 18823
5.80 (c)(1) and (2)(i) amended 17980
10.30 (e)(2) introductory text amended; (e)(4) added 17980
10.45 (d) introductory text revised 17980
14.100 (c)(15) heading and (ii) revised 14350
81.1 Regulation at 57 FR 10616 effective date corrected 11797
172.225 Revised 12711
172.270 Added 12711
176.170 Regulation at 57 FR 10616 effective date corrected 11797
(b)(2) table amended 20200
(a)(5) table amended 23949
177.1520 Regulation at 57 FR 10616 effective date corrected 11797
178.1010 (b)(39) and (c)(34) added 11682
178.2010 (b) table amended 10992, 18081
178.3690 (a) revised; (b)(1) amended 18082

Page

178.3910 (a)(2) table amended 23952
184.1505 Regulation at 57 FR 10616 effective date corrected 11797
310.305 (a) revised; (b)(2), (c)(4) and (d)(1) amended 17980
310.537 Added 29173
312 Technical correction 19458
312.34 (a) amended 13248
312.35 (a) amended 13249
312.42 (b)(3)(iii) and (4) added 13249
312.44 (b)(1)(xi) added; (b)(2)(i) revised 13249
314.1 (a)(1) and (2) amended 17981
314.3 (b) revised 17981
314.50 (a)(2) and (c)(1) amended; (g)(3) added 17982
314.54 Added 17982
314.55 Removed 17983
314.56 Removed 17983
314.60 Existing text designated as (a) and amended; (b) added 17983
314.70 (e) added 17983
314.71 (b) amended 17983
314.80 (a), (c)(1)(ii) and (d)(1) amended; (b) revised 17983
314.81 (b)(3)(iii) added 17983
314.92—314.99 (Subpart C) Added 17983
314.100-314.170 (Subpart C) Redesignated as subpart D 17983
Heading revised 17987
314.100 Revised 17987
314.101 Revised 17987
314.102 Revised 17988
314.103 (a) revised; (b) and (c)(2) amended 17989
314.104 Revised 17989
314.105 Revised 17989
314.110 Revised 17989
314.120 Revised 17990
314.122 Added 17990
314.125 Heading, (a) introductory text, (b) introductory text, (7), (9), (10), (12), (14), (15), (16) and (17) revised; (b)(18) added 17991
314.127 Added 17991
314.150 Revised 17993
314.151 Added 17994
314.152 Revised 17994
314.153 Added 17995

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

TITLE 21 Chapter I—Con. Page

314.160 Revised 17995
314.161 Added 17995
314.162 Added 17996
314.200—314.235 (Subpart D) Redesignated as subpart E 17983
314.200 (a) introductory text, (b)(1) and (c)(3) revised; (c)(1) and (g)(1) amended 17996
314.300 (Subpart E) Redesignated as subpart F 17983
314.410—314.445 (Subpart F) Redesignated as subpart G 17983
314.430 Heading, (a) through (d), (e) introductory text, (f)(5), (6) and (g) introductory text revised 17996
314.440 Heading, (a) introductory text, (1) and (2) revised 17997
320.1 (a) and (e) revised 17997
320.21—320.32 (Subpart B) Heading revised 17998
320.21 Revised 17998
320.22 Revised 17998
320.23 Revised 17999
320.24 Revised 17999
320.30 Revised 18000
320.31 Revised 18000
320.32 Redesignated as 320.38; new 320.32 redesignated from 320.51 and revised 18000
320.33 Redesignated from 320.52; heading and introductory text revised 18001
320.34 Redesignated from 320.55 18001
320.35 Redesignated from 320.56 18001
320.36 Redesignated from 320.62 18001
320.38 Redesignated from 320.32 18000
320.50 Removed 18000
320.51 Redesignated as 320.32 18000
320.52 Redesignated as 320.33 18001
320.53 Removed 18001
320.54 Removed 18001
320.55 Redesignated as 320.34 18001
320.56 Redesignated as 320.35 18001
320.57 Removed 18001
320.58 Removed 18001
320.59 Removed 18001
320.60 Removed 18001
320.61 Removed 18001
320.62 Redesignated as 320.36 18001
341.78 (b) amended; (c)(1) and (2) redesignated as (c)(2) and (1); new (c)(2) revised; (c)(3) added 29177
348 Added; eff. 6-19-93 27656
433.1 (d)(2) amended 18001
510 Technical correction 21854
510.600 (c)(1) table and (2) table amended 11683, 12711, 26995
520.1484 Added 19085
(b) revised 26604
522.2100 (a)(1) amended 21209
522.2471 Added 12712
546.180d (c)(6)(iv)(*d*)(*3*) amended 12711
(c)(6)(i)(*a*)(*3*), (*b*)(*3*), (ii)(*d*), (iii)(*a*)(*3*), (*b*)(*3*), (*c*)(*3*), (iv)(*a*)(*3*) and (*b*)(*3*) amended 26996
556.308 Amended 21209
556.735 Added 12712
558 Technical correction 21854
558.15 (g)(1) table and (2) table corrected 14639
558.55 (d)(2) table corrected; CFR correction 12712
558.95 (a)(2) amended 23059
558.335 (f)(3)(ii)(*a*) revised; (f)(3)(ix) added 11683
558.355 (b)(7) and (14) revised 23953
558.625 (b)(51) removed 23059
573 Hearing 28606
573.870 (a) table amended 24187
606.60 (c) amended 11263
(c) corrected 12862
807.3 (n) through (q) added; interim 18066
Regulation at 57 FR 18066 stayed 23059
807.87 (h) redesignated as (k); new (h), (i) and (j) added; interim 18066
Regulation at 57 FR 18066 stayed 23059
807.92 Added; interim 18066
Regulation at 57 FR 18066 stayed 23059
807.93 Added; interim 18067

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

Page

Regulation at 57 FR 18067 stayed 23059
807.94 Added; interim 18067
Regulation at 57 FR 18067 stayed 23059
807.95 (c)(3) removed; (d) redesignated as (e); new (d) added; interim 18067
Regulation at 57 FR 18067 stayed 23059
812 Extension of applicability 12875, 29001
821 Added 22967

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1308.11 (g)(3) added 18825
1308.26 Table revised; interim 19534
1308.32 Introductory text revised 23301

Title 21—*Proposed Rules:*

1—1299 (Ch. I) 22447
5 ..... 11277, 19410, 29119
10 21044
12 21044
16 21044
20 ..... 11277, 19410, 21044, 28647, 29119
100 ..... 11277, 19410, 29119
101 ..... 11277, 12773, 19410, 29119
105 ..... 11277, 19410, 29119
130 ..... 11277, 19410, 29119
146 23555
163 ..... 23989, 28011
226 21044
314 ..... 13234, 27202, 30802
334 23174
341 ..... 27658—27666
355 ..... 19823, 21332
356 ..... 20434, 28555
500 21044
510 21044
511 21044
514 21044
601 ..... 13234, 19410, 27202, 30802
821 ..... 12376, 20656, 22971
880 27397
890 27397
1301 15037
1304 15037
1308 11447

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

Page

43 Authrity citation revised 28980
43.12 (d) added 28980
43.13 Revised 28981
43.14 Revised 28981
43.15 Revised 28982
43.17 Revised 28982
121 Revised 15230

Chapter XI—International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

1101 Revised 24945

Chapter II—Agency For International Development, International Development Cooperation Agency (Parts 200—299)

211 Revised 19766

Title 22—*Proposed Rules:*

43 15266
120 ..... 19666, 27715
121 ..... 12774, 14671
122 ..... 19666, 27715
123 ..... 19666, 27715
124 ..... 19666, 27715
125 ..... 19666, 27715
126 ..... 19666, 27715
127 ..... 19666, 27715
130 ..... 19666, 27715
172 20656
1101 14674

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

771.135 (n)(i), (ii) and (iii) redesignated as (n)(1), (2) and (3) 12411

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

TITLE 23

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Page

1313 Revised 29011

Title 23—*Proposed Rules:*

1-999 (Ch. I) 17868, 21915, 23460
1 21362
12 21362
17 21362
140 21362
470 21362
490 21362
642 21362
650 21362
655 21362
661 21362
666 21362
750 .....19823, 21152
770 21362
920 21362
922 21362

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

0 Authority citation revised 28783
0—99 (Subtitle A) Appendix A amended; interim..... 14758
0.735-101 Revised.....28783
0.735-102 Revised.....28783
0.735-104 Revised.....28783
20 Authority citation revised 20201
20.3 (a) revised.....20201
20.10 Amended.....20201
50 Authority citation revised.....12036
50.20 (n) revised; interim.....12036
70 Added; interim..... 14756

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

103 Authority citation revised.....18398
103.400 (a)(1) and (2)(ii) revised.....18398

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

Page

200 Authority citation revised.....27927
200.926d OMB number..... 27927
201 High-cost limits.....12715
203 High-cost limits.....12715
Authority citation revised 15211, 27927
203.18 (c) revised.....15211
203.52 OMB number..... 27927
203.259 (a) revised.....15211
203.270 (c) revised.....15211
203.284 Undesignated center heading and section revised.....15211
203.550 OMB number..... 27927
204 Authority citation revised.....15212
204.260 Revised..... 15212
204.270—204.275 Undesignated center heading revised..... 15212
204.271 (a) revised.....15212
204.276 Undesignated center heading and section revised.....15213
219 Authority citation revised.....12036
219.325 (b) introductory text and (3) introductory text revised; (b)(5) added; interim.....12036
221 Authority citation revised.....12036
221.524 (e) revised; interim..... 12036
221.538 (b)(2) revised; interim..... 14758
231.8 (b)(2) revised; interim..... 14758
232.70 Revised; interim..... 14758
232.73 Revised; interim..... 14758
234 High-cost limits.....12715
Authority citation revised.....27927
234.64 OMB number..... 27927
236 Authority citation revised.....12036
236.55 (b) revised; interim..... 12036
236.60 Revised; interim.....12036
241 Authority citation revised.....12036
241.166 Added; interim..... 12036

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

Page

241.251 (a) heading and (c) added; interim.....12037
241.1000—241.1120 (Subpart E) Revised; interim.....12037
241.1200—241.1250 (Subpart F) Revised; interim.....12040
242.67 (b) revised; interim.....14758
248 Authority citation revised.....12041
248.1—248.7 (Subpart A); interim.....12041
248.101—248.183 (Subpart B) Added; interim.....12042
248.201—248.261 (Subpart B) Redesignated as subpart C; interim.....12041
Heading revised; interim.....12060
248.213 (b)(9) redesignated as (b)(10); new (b)(9) added; interim.....12060
248.221 (c) and (d) added; interim.....12060
248.233 (f) added; interim.....12060
248.234 (c) redesignated as (d); new (c) added; interim.....12060
248.235 Removed; interim.....12060
248.300—248.319 (Subpart D) Added; interim.....12060

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

570 Authority citation revised.....27119
570.200 (f)(1)(ii) revised; interim.....27119
570.201 (e) revised; (n) added; interim.....27119
570.496 (c) revised; interim.....14759
570.500 (a)(1)(v) revised; (c) amended; (a)(3) added; interim.....27120
570.501 (b) amended; interim.....27120
570.503 (b)(8) introductory text amended; (b)(8)(ii) revised; interim.....27120
570.603 Revised; interim.....14759
570.611 (b) revised; interim.....27120
571 Revised; interim.....11837
571.301 (a)(1) correctly revised; interim.....20970
576.51 (b)(2)(i) corrected.....11430

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public adn Indian Housing Programs) (Parts 700—799)

Page

750.3 Regulation at 56 FR 27111 corrected.....11263
750.5 Regulation at 56 FR 27111 corrected.....11263

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

880.210 (d) revised; interim.....14759
881.210 (d) revised; interim.....14759
882.407 (c)(6) revised; interim.....14759
882.713 (c)(7) revised; interim.....14759
882.804 (c)(1) revised; interim.....14760
883.312 (d) revised; interim.....14760
884.113 (d) revised; interim.....14760
884.207 (b)(5) revised; interim.....14760
885.740 (d)(1)(i) and (ii) revised; interim.....14760
886.313 (c)(2) revised; interim.....14760
889.265 (d) revised; interim.....14760
890.260 (d)(1) and (2) revised; interim.....14761

Chapter IX—Office of Assistant for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

901 Regulation at 57 FR 2188 comment time extended.....23953
905 Revised.....28250
905.120 (c)(1) and (2) revised; interim.....14761
905.602 (d) added.....28785
905.627 (b) revised.....28785
905.639 (c) correctly revised.....15014
941.208 (d) revised; interim.....14761

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

TITLE 24 Chapter IX—Con. Page

961.40 (a)(2) introductory text revised; (a)(2)(iii) added; interim 14761
963 Added 20189
965.101 (d) amended 28358
965.302 Revised 28358
965.401 Amended 28358
965.471 Revised 28358
965.472 Amended 28358
965.701 Revised 28358
968.102 (d) added 28785
968.110 (e)(1), (2) and (f) revised; interim 14761
968.225 (b) revised 28785

Title 24—*Proposed Rules:*

50 13592
55 13592
200 13592
203 ..... 13592, 24424
204 ..... 13592, 24424
812 12686
882 12686
887 12686
888 18684
905 27716
912 12686
990 ..... 11448, 27716

TITLE 25—INDIANS

Chapter III—National Indian Gaming Commission (Parts 500—599)

502 Added 12392
Effective date corrected 20145

Chapter IV—Office of Navajo and Hopi Indian Relocation (Parts 700—799)

700.709 (d) revised 24363

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—702)

1 Authority citation amended ... 10994, 12210, 12419, 13022, 14795, 15241, 19255, 20748, 20977, 22649, 24749
Technical corrections ... 21152, 21855, 21894

Page

1.42-4 Added 24749
1.58-9 Added 19255
(c)(3)(iii)(A)(*3*)(*iii*), (d) *Example* 1, *Example* 2 and (e)(2)(i) corrected 24848
1.58-9T Removed 19262
1.61-3 (a) amended 12419
1.103-13 (f) removed 20977
1.103-14 (e) removed 20977
1.103-15 (c) revised 20977
1.103-18 (a), (c)(2)(B), (d), (f)(2)(i), (ii), (g)(3)(ii) and (3)(iv) corrected; (k)(2)(i) correctly designated 13027
(l)(2)(i) corrected; (l)(3) correctly added 13028
(c)(1)(iii) corrected 26891
(c)(2)(ii)(B) corrected 28611
1.148-0 Added 20977
1.148-0T Removed 20977
1.148-1 Added 20982
1.148-1T Removed 20977
1.148-2 Added 20984
1.148-2T Removed 20977
1.148-3 Added 20987
1.148-3T Removed 20977
1.148-4 Added 21005
1.148-4T Removed 20977
1.148-5 Added 21011
1.148-5T Removed 20977
1.148-6 Added 21012
1.148-6T Removed 20977
1.148-7 Added 21020
1.148-7T Removed 20977
1.148-8 Added 21020
1.148-8T Removed 20977
1.148-9 Added 21024
1.148-9T Removed 20977
1.148-10 (c) through (i) added 21024
1.148-10T Removed 20977
1.148-11 Added 21025
1.148-12T Added 21030
1.148-13T Added 21031
1.149(d)-1 Added 21031
1.150-0 Added 21031
1.150-1 (g) corrected; (h)(1) correctly designated 13028
(a) through (e) revised 21031
1.263(a)-1 (b) amended 12419
1.263A-1T (a)(5)(i) revised 12419
1.355-2 (d)(3)(iv) amended 28463
1.382-2 (a)(3)(ii) *Example* 2 and *Example* 3 corrected 24188
1.382-2T (h)(4)(x)(J) added 12210

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

Page

1.382-3 (e) and (o) added 12210
1.446-1 (c)(1)(ii) revised 12419
1.451-3 (a)(8) added 12420
1.461-0 Added 12420
1.461-1 (a)(2) and (3) revised 12420
1.461-2 Heading and (g) revised; (f) and (h) removed 12421
1.461-3T Redesignated as 1.461-7T 12421
1.461-4 Added 12421
1.461-5 Added 12427
1.461-6 Added 12428
1.461-7T Redesignated from 1.461-3T 12421
1.461(h)-4T Removed 12421
1.469-0 Added 20748
1.469-0T Removed 20748
1.469-1 Added 20750
(f)(4)(iii) *Example* 6 corrected 28612
1.469-1T (d)(2), (e)(2), (3)(iii), (vi)(D), (E), (4)(iv), (5), (f)(4), (g)(4)(ii)(C), and (h)(4) revised 20753
1.469-2 Added 20754
1.469-2T (c)(2)(iii), (iv), (6)(i), (ii), (iii), (iv) *Example* 1, *Example* 2, (d)(2)(ix), (5)(iii)(A), (6)(v)(E), (8), (e)(2)(ii), (iii), (3)(iii)(B), (f)(5)(i), (6), (9)(iii), (iv) and (10) revised 20758
1.469-3 Added 20758
1.469-3T (e) and (f) revised 20758
1.469-5 Added 20758
1.469-5T (f)(1), (h)(3), (j) and (k) *Example* 5 revised 20759
1.469-6T Removed 20759
1.469-7T Removed 20759
1.469-8T Removed 20759
1.469-9T Removed 20759
1.469-10T Removed 20759
1.469-11 Added 20759
1.469-11T Removed 20759
1.597-8T Added 14795
1.704-1 (b)(2)(ii)(*d*)(*6*) corrected; (b)(2)(iv)(*r*) amended 11430
1.704-2 (f)(3), (h)(1), (4), (l)(1)(ii) and (m) *Example* 4 corrected 11430
(b)(4), (c), (e)(3), (f)(7) *Example* 1, *Example* 2 and (i)(4) corrected 28611
1.861-10 Added 13022
(e)(3)(ii), (iii)(A), (6) and (11) *Example* corrected 28012

Page

1.871-2 (c) added 15241
1.871-9 Amended 15241
1.904-0 Revised 20642
1.904-4 (c)(8) removed; (c)(9) redesignated as (c)(8); (b)(1)(i), (2)(i), (iv), *Example*, (c)(1), (2)(ii), (7)(ii), (iii), new (c)(8), (e)(3)(i) and (iii) amended; (c)(4) introductory text, (5)(ii), (iii), (6)(ii), (e)(1) and (2)(i)(V) revised; (c)(5)(iv) added; (e)(3)(iii)(A) designation removed; (e)(3)(iii)(B) redesignated as (e)(3)(iv) 20644
(h)(3)(iv) and (v) redesignated as (h)(4) and (5), new (h)(5)(A), (B) and (C) redesignated as (h)(5)(i), (ii) and (iii); (e)(3)(iv), (f), (g)(1), (2)(ii)(A), (iv), new (h)(5)(i) and (ii) amended; (e)(5)(i), (ii), (g)(3)(i), (h)(3)(iv), (5)(iii) *Example* 2, *Example* 4 and (l) added; (h)(2), (3) introductory text, (i), (ii), (iii), new (h)(4) introductory text, *Example* 1, *Example* 2, *Example* 3, (5)(iii) introductory text, *Example* 1 and (k) revised 20645
1.904-5 (a) introductory text, (3), (b), (c)(1)(i), (ii), (2)(iii)(A) and (2)(iv) amended; (c)(2)(i), (ii) introductory text, (ii)(B), (D) and (E) revised 20648
(c)(3), (4)(ii), (d)(2), (3), *Example* 1, *Example* 2, (e)(1), (f)(1), (2), (i)(1), (l), (m)(2) and (3) *Example* 4 amended; (c)(4)(iii) *Example* 1, (d)(1), (f)(3), (g), (h)(3), (i)(3), (j), (k)(1) and (m)(7) revised; (f)(2) redesignated in part as (f)(2)(i) and amended; (f)(2)(ii) and (i)(4) added 20649
1.904-6 Heading, (a) heading, (2) and (b)(2)(i) revised; (a)(1)(ii), (b)(1) and (c) amended; (a)(1)(iv) added 20652
1.904-7 (a) revised; (c) and (d) amended 20653
1.904(b)-3 (f) amended 15241
1.953-2 (d) amended 15241

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

TITLE 26 Chapter I—Con. Page

1.1291–0T Revised (temporary)....10994
1.1291–9T Added (temporary).... 10994
(e) corrected.... 28463
1.1291–10T (b)(2), (d)(2)(vii) and (e) revised; (b)(4) and (f) added (temporary).....10996
(b)(2)(ii) corrected.... 28463
1.1295–1T Removed (temporary).....10996
1.1303–1 (b) amended.... 15241
1.1361–0—1.1375–1A Undesignated center heading added.... 22649
1.1361–0 Redesignated from 1.1360–0A; nomenclature change.... 22649
1.1361–0A Redesignated as 1.1360–0.... 22649
1.1361–1 Added.... 22649
(b)(1), (6), (l)(4)(v) *Example* 2 and (l)(7) corrected.... 28613
1.1374–1 Redesignated from 1.1374–1A; (b)(2) and (d)(2) amended....22653
1.1374–1A Redesignated as 1.1374–1.... 22653
1.1375–1 Redesignated from 1.1375–1A; (b)(1)(ii) and (c)(2) concluding text amended....22653
1.1375–1A Redesignated as 1.1375–1.... 22653
1.1441–5 (d) amended.... 15241
1.1501–13T (o)(1)(i) corrected.....21152
1.6013–6 (a)(2)(ii) amended..... 15241
25.2701–1 (b)(2)(i)(C) introductory text, (*2*), (ii) introductory text, (E), (c)(3) and (4) corrected.... 11264
25.2701–3 (b)(1) and (2) correctly added; (b)(3), (4)(ii)(A), (iv), (5)(i), (d) *Example* 1, *Example* 2, *Example* 4 and *Example* 5 corrected....11265
25.2702–5 (c)(8)(ii)(C)(*2*)(*i*) and (*ii*) correctly added; (c)(8)(ii)(*3*) corrected; (c)(8)(ii)(*2*)(*iii*) removed..... 11265
25.2704–2 (b) corrected....11265
25.2704–3 Corrected....11265
31 Authority citation amended....13031, 15241

Page

31.3121(b)(19)–1 (a)(1) amended....15241
31.3306(c)(18)–1 (a)(1) amended....15241
31.3402(f)(1)–1 OMB number..... 15241
31.3406–0 Added.... 13031
31.3406(d)–5 Added.... 13031
35a Authority citation amended....13055
35a.3406–1 Removed....13035
301 Authority citation amended....15017, 15241
Technical correction..... 21855, 22167
301.6402–6 Added.... 13038
301.6501(c)–1 (e)(3) corrected..... 11265
301.6724–1 (f)(1)(ii), (3), (g) and (h)(2)(i) amended; (f)(2) revised.... 13035
301.7514–1 (a)(2)(ii) and (5)(ii) amended; (a)(2)(iii) through (vi) and (7) added; (a)(3) and (6) revised.... 15015
301.7624–1 Redesignated from 301.7624–1T; heading amended....15017
301.7624–1T Redesignated as 301.7624–1.... 15017
301.7701–10 Amended....15241
301.7701(b)–0 Added....15241
301.7701(b)–1 Added....15242
(e) *Example* 3 corrected....28612
301.7701(b)–2 Added....15244
(f)(3) corrected....28612
301.7701(b)–3 Added....15245
(b)(6) corrected.... 28612
301.7701(b)–4 Added....15247
(d) *Example* 5 corrected..... 28612
301.7701(b)–5 Added....15250
301.7701(b)–6 Added....15250
(b) *Example* 1 corrected..... 28612
301.7701(b)–7 Added....15251
(e) *Example* 3 corrected....28612
301.7701(b)–8 Added....15252
(b)(2) introductory text corrected....28612
301.7701(b)–9 Added....15253
601.501 (a) and (b)(4) amended....27356
601.502 Introductory text, (i), (ii), (a) and (b) redesignated as a (a) introductory text, (1), (2), (b) and (c); (a)(2) and (c)(4) amended 27356
601.503 (b)(1) amended....27356
601.504 (b)(2)(i) amended....27356

CHANGES APRIL 1, 1992 THROUGH JUNE 30, 1992

Page

601.505 (b)(2)(ii) and (iii) amended....27356
602 Technical correction...21152, 21894
602.101 (c) table amended (OMB numbers)...10996, 11266, 12211, 13035, 15253, 19262, 21032
(c) table corrected (OMB numbers)....27511

Title 26—*Proposed Rules:*

1—799 (Ch. I)....11277
1...11024, 12244, 13066, 13676, 13680, 14369, 14371, 14803, 14804, 15038, 19556, 20660, 20802, 20805, 21044, 21152, 23176, 23356, 24426, 27401, 27716, 28470, 28907
31....21045—21051
40....13067
49....13067

Page

301 ...14804, 15272, 19828, 19831, 20805, 22189, 22194, 23356, 28470
602....11024

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

5.22 (i) revised; eff. 7-30-92....29020
9.139 Added....20764
9.141 Added....20761
47.52 (a) and (c) revised....24189

Title 27—*Proposed Rules:*

4....19267, 23357, 27401
9....14681, 23559, 27401
20....27956
24....23357

JE
9 92
UMI

Chapt

0.15 (e)
0.45 (l)
0.50—0.5
dix a
0.55 (u
0.63 Re
0.89a (
0.100—0
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0.160—0
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0.172 (
2.19 (c)
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2.40 (a
(l) add
2.67 Ac
14 Aut
14.6 Re
14.7 Re
14.10 (
14 App
16.71 F
16.72 F
16.75 A
(c) an
16.81 (
nate
(e) a
16.101
new
(q) re
and
32 Rev
35 Add
36 Add
43 Aut
43.3 Re
44.101
44.200
44.201
44.301
44.303
(e) a

NOTE 1: S

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

Page

0.15 (e)(2) revised 30693
0.45 (l) added 56578
0.50—0.52 (Subpart J) Appendix amended **19377**
0.55 (u) added 55235
0.63 Revised **1643**
0.89a (a) revised 64192
0.100—0.104 (Subpart R) Appendix amended **7877**
0.160—0.172 (Subpart Y) Appendix amended **6198**
0.172 (a) revised 48734
2.19 (c) introductory text amended; (c)(1), (2) and (3) revised; (c)(4) and concluding text added 30868
2.20 Amended 30869, 30870
Amended; interim **21210**
2.40 (a)(12) amended 30871
(l) added 30873
2.67 Added 51176
14 Authority citation revised **21738**
14.6 Revised **21738**
14.7 Removed **21740**
14.10 (a) revised **21740**
14 Appendix amended **13320**
16.71 Revised 58305
16.72 Revised 58305
16.75 Added **8263**
(c) and (d) added **8263**
16.81 (c), (d) and (e) redesignated as (g), (c) and (d); new (e) and (f) added 58306
16.101 (o) redesignated as (q); new (o) and (p) added **3284**
(q) redesignated as (s); new (q) and (r) added **20654**
32 Revised **24913**
35 Added 35716
36 Added 35592
43 Authority citation revised **27356**
43.3 Revised **27357**
44.101 (a)(7) and (c) revised 40249
44.200 (a) revised 40249
44.201 Removed 40249
44.301 (d)(2) revised 40249
44.303 (b), (c) and (d) revised; (e) added 40249

Page

50 Authority citation revised 32327
50.9 (e)(4) amended; (e)(5) added 32327
51.20 Existing text designated as (a); (b) through (e) added 51836
51.28 (a)(4), (5), (d)(7) and (g)(2) added; (g) redesignated as (g)(1) 51836
51.50 (a) revised; (d) amended 51837
64.2 (d)(6), (7), (u) and (v) amended; (d)(8), (w) and (x) added 32328
68 Authority citation revised 50052
68.1 Revised; interim 50053
68.2 (d), (f), (l) and (n) through (r) revised; interim 50053
68.4 Redesignated as 68.5; new 68.4 added; interim 50053
68.5 Redesignated as 68.6; new 68.5 redesignated from 68.4; interim 50053
(b) revised; interim 50054
68.6 Redesignated as 68.7; new 68.6 redesignated from 68.5; interim 50053
(a) revised; interim 50054
68.7 Redesignated as 68.8; new 68.7 redesignated from 68.6; interim 50053
(a), (b) introductory text, (5), (c) and (d) revised; (e) added; interim 50054
68.8 Redesignated as 68.9; new 68.8 redesignated from 68.7; interim 50053
(c) introductory text and (2) revised; interim 50054
68.9 Redesignated as 68.11; new 68.9 redesignated from 68.8; interim 50053
68.10 Redesignated as 68.12; interim 50053
Added; interim 50054
68.11 Redesignated as 68.13; new 68.11 redesignated from 68.9; interim 50053
68.12 Redesignated as 68.14; new 68.12 redesignated from 68.10; interim 50053
68.13 Redesignated as 68.15; new 68.13 redesignated from 68.11; interim 50053

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 28 Chapter I—Con. Page

68.14 Redesignated as 68.16; new 68.14 redesignated from 68.12; interim 50053
(a)(1) revised; interim 50054
68.15 Redesignated as 68.17; new 68.15 redesignated from 68.13; interim 50053
Revised; interim 50054
68.16 Redesignated as 68.18; new 68.16 redesignated from 68.14; interim 50053
68.17 Redesignated as 68.19; new 68.17 redesignated from 68.15; interim 50053
68.18 Redesignated as 68.20; new 68.18 redesignated from 68.16; interim 50053
68.19 Redesignated as 68.21; new 68.19 redesignated from 68.17; interim 50053
68.20 Redesignated as 68.22; new 68.20 redesignated from 68.18 interim 50053
68.21 Redesignated as 68.23; new 68.21 redesignated from 68.19; interim 50053
68.22 Redesignated as 68.24; new 68.22 redesignated from 68.20; interim 50053
68.23 Redesignated as 68.25; new 68.23 redesignated from 68.21; interim 50053
(a) and (c) revised; interim 50054
68.24 Redesignated as 68.26; new 68.24 redesignated from 68.22; interim 50053
68.25 Redesignated as 68.27; new 68.25 redesignated from 68.23; interim 50053
Revised; interim 50055
68.26 Redesignated as 68.28; new 68.26 redesignated from 68.24; interim 50053
68.27 Redesignated as 68.29; new 68.27 redesignated from 68.25; interim 50053
68.28 Redesignated as 68.30; new 68.28 redesignated from 68.26; interim 50053
(a) revised; interim 50055
68.29 Redesignated as 68.31; new 68.29 redesignated from 68.27; interim 50053
68.30 Redesignated as 68.32; new 68.30 redesignated from 68.28; interim 50053
68.31 Redesignated as 68.33; new 68.31 redesignated from 68.29; interim 50053
68.32 Redesignated as 68.34; new 68.32 redesignated from 68.30; interim 50053
68.33 Redesignated as 68.35; new 68.33 redesignated from 68.31; interim 50053
(a) heading and (b)(5) revised; interim 50055
68.34 Redesignated as 68.36; new 68.34 redesignated from 68.32; interim 50053
68.35 Redesignated as 68.37; new 68.35 redesignated from 68.33; interim 50053
68.36 Redesignated as 68.38; new 68.36 redesignated from 68.34; interim 50053
68.37 Redesignated as 68.39; new 68.37 redesignated from 68.35; interim 50053
(b) revised; interim 50056
68.38 Redesignated as 68.40; new 68.38 redesignated from 68.36; interim 50053
(a) revised; interim 50056
68.39 Redesignated as 68.41; new 68.39 redesignated from 68.37; interim 50053
68.40 Redesignated as 68.42; new 68.40 redesignated from 68.38; interim 50053
68.41 Redesignated as 68.43; new 68.41 redesignated from 68.39; interim 50053
68.42 Redesignated as 68.44; new 68.42 redesignated from 68.40; interim 50053
68.43 Redesignated as 68.45; new 68.43 redesignated from 68.41; interim 50053
68.44 Redesignated as 68.46; new 68.44 redesignated from 68.42; interim 50053
68.45 Redesignated as 68.47; new 68.45 redesignated from 68.43; interim 50053
68.46 Redesignated as 68.48; new 68.46 redesignated from 68.44; interim 50053

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

68.47 Redesignated as 68.49; new 68.47 redesignated from 68.45; interim ... 50053
68.48 Redesignated as 68.50; new 68.48 redesignated from 68.46; interim ... 50053
68.49 Redesignated as 68.51; new 68.49 redesignated from 68.47; interim ... 50053
68.50 Redesignated as 68.52; new 68.50 redesignated from 68.48; interim ... 50053
68.51 Redesignated as 68.53; new 68.51 redesignated from 68.49; interim ... 50053
68.52 Redesignated as 68.54; new 68.52 redesignated from 68.50; interim ... 50053
(c) revised; interim ... 50056
68.53 Redesignated from 68.51; interim ... 50053
Revised ... 50057
(a) technical correction ... 64545
68.54 Redesignated from 68.52; interim ... 50053
Revised ... 50058
75 Added ... 15021
79 Added ... 12435

Chapter V—Bureau of Prisons, Department of Justice (500—599)

500 Authority citation revised ... 31530
500.1 (a) and (c) amended ... 31530
503 Authority citation revised ... 31531
503.2 (b)(7) added ... 31531
503.4 (e) removed ... 31531
503.6 (a)(7) through (9) redesignated as (a)(8) through (10); new (a)(7) added; new (a)(10) amended; (c) and (d) revised ... 31531
524 Authority citation revised ... 30676
524.10—524.16 (Subpart B) Revised ... 30676
541 Authority citation revised ... 31530
541.22 (a)(6)(iii) corrected ... 31530
(b) revised ... 23260
541.62 (c) amended ... 31530
542 Authority citation revised ... 58634

Page

542.11 (a)(2) amended; (a)(4) revised ... 58634
544.70—544.76 (Subpart H) Correctly revised ... 9211
545 Authority citation correctly revised ... 31530
545.23 (a) corrected ... 31530
545.24 (e) corrected ... 31531
546 Removed ... 31531
570 Authority citation added; subpart authorities removed ... 21158
570.41 (b) amended ... 21158

Title 28—*Proposed Rules:*

2 ... 21221
11 ... 49729
16 ... 48469, 50833
... 3974
23 ... 6691
32 ... 50160
37 ... 14630
40 ... 19557
50 ... 862
65 ... 1439
75 ... 29914
76 ... 45907
80 ... 862

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

5.2 (j) revised; interim ... 19206
5.5 (a)(4)(iv) removed ... 28776
6.2 (c) amended ... 54708
18.3 (a) amended ... 54708
40 Removed ... 54786
41 Removed ... 54786
92 Removed ... 46116
96 Authority citation revised ... 50784
96.202 Amended ... 50784
96 Appendix C added ... 50784

Chapter I—National Labor Relations Board (Parts 100—199)

100.101—100.123 (Subpart A) Authority citation revised ... 27927
100.123 Added ... 27928
102.42 Revised ... 49142
102.46 Revised ... 49142
102.48 (d)(2) revised ... 49143
102.65 (e)(2) correctly revised ... 61373

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 29 Chapter I—Con. Page

(e)(2) correctly revised..... 12876
102.67 (k)(3) revised..... 49143
102.69 (j)(3) revised..... 49144
102.90 Revised..... 49144
102.111 Revised..... 49144
(a) and (b) revised..... 4157
Regulation at 57 FR 4157 corrected..... 9977
102.114 Heading revised; (b) through (e) redesignated as (c) through (f); new (b) added; new (c) republished..... 50821
Corrected..... 54539
102 Appendix A added..... 4158

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

500 Authority citation revised..... 30327, 54787
500.20 (b) amended..... 54709
500.121 (a) and (b) revised..... 3905
500.122 (b) revised..... 30327
500.170 Revised..... 54787
500.212 (a) and (b) revised..... 5942
502.1 (b)(1), (2), (d) and (f) revised..... 27343
502.2 (m) and (n) revised..... 27343
502.10 (a)(1) and (c)(1) revised..... 27344
502.12 (b) revised..... 27344
502.13 (a) revised..... 27344
502.34 (a) and (c) revised..... 27344
506 Regulations at 56 FR 24654 and 24667 effective date extended through 3-31-92..... 183
Regulations at 56 FR 24654, 56 FR 24667 and 57 FR 183 effective date extended through 6-30-92..... 10989
507 Added; interim..... 54727, 54739
507.700—507.760 (Subpart H) Revised; interim..... 1325, 1338
507.800—507.855 (Subpart I) Revised; interim..... 1333, 1338
508 Added; interim..... 56865, 56876
510 Implementation..... 611
510 Appendix A amended..... 1103
Appendix B amended..... 1104
516 Authority citation revised..... 61101
516.34 Added..... 61101
541.5d Added; interim..... 45826
Regulation at 56 FR 45826 comment period extended..... 50256
570.52 Revised..... 58630
570.61 Revised..... 58631
570.63 Revised..... 58632
579.2 Amended..... 54708
580.5 Amended..... 54708
580.10 Amended..... 54708
778 Authority citation revised..... 61101
778.603 Added..... 61101
791.2 (a) corrected; CFR correction..... 67520
870.10 (b), (c)(2) through (5) and (d) revised..... 32254
(c)(4) table corrected..... 40660

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1600 Technical correction..... 30502
1600.735-501—1600.735-519 (Subpart E) Technical correction..... 30502
1602 Heading and authority citation revised..... 35755
Waiver..... 26996
1602.1—1602.6 (Subpart A) Heading revised..... 35755
1602.1 Revised; transferred to Subpart A..... 35755
1602.2 Removed..... 35755
1602.3 Removed..... 35755
1602.4 Removed..... 35755
1602.5 Removed..... 35755
1602.6 Removed..... 35755
1602.7 Amended..... 35755
1602.10 Revised..... 35755
1602.11 Amended..... 35755
1602.12 Amended; OMB numbers..... 35755
1602.14 (a) amended; (a) designation and (b) removed; OMB numbers..... 35755
1602.19 Amended..... 35755
1602.21 (b) amended..... 35755
1602.26 Amended..... 35755
1602.28 (a) amended; OMB numbers..... 35755
1602.31 (a) designation and (b) removed; amended; OMB numbers..... 35755
1602.37 Amended..... 35756

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

1602.40 (a) designation and (b) removed; amended; OMB numbers 35756
1602.45 Amended 35756
1602.49 (b) removed; (c) redesignated as (b); (a) amended; OMB numbers 35756
1602.54 Amended 35756
1602.56 (Subpart R) Added 35756
1613.232 Amended 11431
1613.414 (b) amended 11431
1613.806 (a) amended 11431
1614 Added; eff. 10-1-92 12646
1627.3 (b)(3) removed; (b)(4) redesignated as (b)(3) and amended 35756
1627.4 (a)(2) removed; (a)(3) redesignated as (a)(2) and amended 35756
1627.5 (c) amended 35756
1627.16 (c) removed 4158
1630 Added; eff. 7-26-92 35734
1641 Added; eff. 7-26-92 ..... 2962, 2964

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1910.101—1910.120 (Subpart H) Authority citation revised 6403
1910.109 (k) revised 6403
1910.119 Added 6403
(b), (e)(1)(i), (iii), (v), (e)(3)(iii), (f)(1), Appendix A and Appendix C corrected 7847
Regulation at 57 FR 6403 stayed in part until 8-26-92 23061
1910.1000—1910.1500 (Subpart Z) Authority citation amended 64175
1910.1001 Note revised 43700
Note revised 7878
(a)(1), (2), (b), (c)(1), (2), (d)(2)(iii), (e)(1), (2), (f)(1)(v), (vi), (viii), (ix), (g)(2) Table 1, (h)(1), (2)(i), (iii), (3)(ii), (iii), (iv), (v), (i)(1)(i), (3)(iv), (j)(2)(i), (3), (4)(i), (ii), (5)(i), (iii)(A), (B), (C), (E), (k)(1) thorugh (6), (l)(1)(i), (2)(i), (4)(i), (7)(i)(A), (C), (ii), (m)(2)(ii)(C), (3)(ii)(C), (n)(1), (2) and Appendixes A, B, D, G and H amended; (j)(1)(iii), (2)(iii) and Note removed 24330
1910.1030 Added 64175
OMB number 12717
1910.1048 (m)(1)(i) through (4)(ii) stayed to 11-6-91 37651
(m)(1)(i) through (4)(ii) stayed to 2-4-92 57593
(m)(1)(i) through (4)(ii) stayed to 5-5-92 2681
(m)(1)(i) through (4)(ii) stayed 19262
(g)(3)(ii) Table 1 removed; (c)(1), (d)(1)(ii), (g)(2)(i), (3)(iv), (m)(1) introductory text, (i), (3), (4), (n)(1) and (2) revised; (d)(2)(iii), (l)(8), (9), (m)(5) and (p)(3) added 22307
Republished 22310
Table 1 corrected 24701
OMB number 27161
1910.1101 Note revised 43700
Note revised 7878
Removed 24330
1926.58 Note revised 43700
Note revised 7878
Heading, (a)(1) through (6), (b), (c)(1), (d), (e)(1), (2), (6)(iii), (f)(1)(i), (2)(i), (ii), (iii), (7)(i), (ii), (g)(1)(i)(D), (2)(i), (ii), (h)(2) Table D-4, (i)(1), (2)(i), (ii), (j)(1)(iii), (2)(i), (iii)(A), (k)(1)(i), (2)(i), (v), (vi)(A), (B), (3)(i), (iii)(A) through (D), (l)(1), (m)(1)(i), (2)(i)(B), (4)(i)(A), (C), (4)(ii), (n)(1)(i), (ii)(C), (2)(i), (ii)(B), (D) and Appendixes A, B, H, I and J amended; (k)(1)(iii), (2)(iv) and Note removed 24331
(n)(2)(ii)(B) corrected 29119
1926.1052 (c)(1) revised 41794
1926.1053 (a)(3) revised 41794
1952 Enforcement 55192
Enforcement 10819

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2570.62 (a) amended 54708

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 29

Chapter XXVI—Pension Benefit Guaranty Corporation (Parts 2600—2699)

Page

2603 Authority citation revised....55818
2603.2 (d) and (e) added; interim; effective through 4-17-92....55818
Regulation at 56 FR 55818 confirmed....66358
2603.18 (f) added; interim; effective through 4-17-92....55818
Regulation at 56 FR 55818 confirmed....66358
2603.37 (b) redesignated as (b)(1); (a) and new (b)(1) amended; (b)(2) added; interim; effective through 4-17-92....55818
Regulation at 56 FR 55818 confirmed....66358
2603.41 (a) amended; (a) and (c) redesignated in part as (a)(1) and (c)(1); (a)(2) and (c)(2) added; interim; effective through 4-17-92....55819
Regulation at 56 FR 55819 confirmed....66358
2610 Authority citation revised....52193
2610 Appendixes A and B amended....**13041**
2610.11 (b)(2) amended....52193
2610.21 Amended....52193
2610.22 (a)(1) revised; (a)(2) and (3) introductory text amended....52193
2610.24 Amended....66573
2610 Appendixes A and B amended....32089, 51820
Appendixes A and B amended....**1644**
2615 Heading and authority citation revised; interim....57980
2615.1—2615.23 (Subpart A) Heading added; interim....57980
2615.1 Nomenclature change; interim....57980
2615.2 Nomenclature change; interim....57980
2615.3 (a) and (e) amended; interim....57980
2615.4 Nomenclature change; interim....57980
2615.6 Nomenclature change; interim....57980
2615.7 Nomenclature change; interim....57980
2615.16 Amended; interim....57980
2615.30 (Subpart B) Added; interim....57980
2617 Authority citation revised....57982
2617.40—2617.43 (Subpart E) Revised....**22170**
2617.40—2617.42 (Subpart E) Added; interim....57982
2619 Appendix B amended....46526, 64984
Appendix D amended....64983
Appendix B corrected....65112
Appendix B amended....**1645, 5382, 26605**
Appendix B corrected....**5049**
2621 Appendix A amended....64985
2622 Appendix A amended....32089, 51821
Appendix A amended....**1644, 13041**
2644 Appendix A amended....32090, 51822
Appendix A amended....**1646, 13042**
2676.15 (c) table amended....32090, 40552, 46526, 51822, 57983, 64986
(c) table amended....**1646, 5382, 8841, 13043, 11652, 20765, 26606**
(c) table corrected....**11652**

Title 29—*Proposed Rules:*

0—99 (Subtitle A) **6301**
5 ....**19208**
102 ....**11452**
103 ....**7897**
191 47892
200—299 (Ch. II) **6301**
400—499 (Ch. IV) **6301**
402 ....**14244**
403 ....**14244**
500—599 (Ch. V) **6301**
500 64216
507 37175
541 ....45824, 50302
1600-1699 ....**11455**
1602 ....**27708**
1614 ....**12563**
1625 ....**10626**
1640 ....**14630**
1641 55578

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

1900-1999 (Ch. XVII) 6301
1904 21222
1910 ..... 32302, 47348, 48133, 57036
..... 387, 3096, 4858, 8101, 24438, 26001
1915 57036
..... 387, 24438, 28152
1926 ..... 47348, 57036
..... 387, 24438
1952 49444
..... 1889
2200 ..... 20200, 27958
2500—2599 (Ch. XXV) 6301
2510 36750
2610 12666
2617 ..... 36750, 58014, 66482

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

56.6000—56.6904 (Subpart E) Regulation at 56 FR 2089 stayed in part to 9-13-91 32091
Revised; eff. 11-1-92 46501
56.6000 Stayed in part to 10-1-92 46501
56.6130 (b) stayed in part to 10-1-92 46501
56.6131 (a)(1) stayed to 10-1-92 46501
56.6202 (a)(1) stayed to 10-1-92 46501
56.6304 (b) stayed to 10-1-92 46501
56.6306 Stayed to 10-1-92 46501
56.6407 (a) corrected 52193
56.6501 (a) stayed to 10-1-92 46501
(c)(5) corrected 52193
56.6902 (b) stayed to 10-1-92 46501
56.6903 Stayed to 10-1-92 46501
56.6000—56.6904 (Subpart E) Appendix I stayed to 10-1-92 46501
56.7055 Regulation at 56 FR 2096 stayed to 9-13-91 32091
Regulation at 56 FR 2096 stayed to 11-1-91; revised; eff. 11-1-91 46508
56.7056 Regulation at 56 FR 2096 stayed to 9-13-91 32091
Regulation at 56 FR 2096 stayed to 11-1-91; revised; eff. 11-1-91 46508
57.5304 Note corrected 52193

Page

57.6000—57.6960 (Subchapter E) Regulation at 56 FR 2096 stayed in part to 9-13-91 32091
Revised; eff. 11-1-92 46508
57.6000 Stayed in part to 10-1-92 46508
57.6130 (b) stayed in part to 10-1-92 46508
57.6131 (a)(1) stayed to 10-1-92 46508
(a) correctly designated 52193
57.6202 (a)(1) stayed to 10-1-92 46508
57.6304 (b) stayed to 10-1-92 46508
57.6306 Stayed to 10-1-92 46508
Note corrected 52193
57.6330 Note corrected 52193
57.6501 (a) stayed to 10-1-92 46508
(c)(5) corrected 52193
57.6902 (b) stayed to 10-1-92 46508
57.6903 Stayed to 10-1-92 46508
57.6000—57.6960 (Subpart E) Appendix I stayed to 10-1-92 46508
57.7055 Regulation at 56 FR 2104 stayed to 9-13-91 32091
Regulation at 56 FR 2104 stayed to 11-1-91; revised; eff. 11-1-91 46517
Heading corrected 52193
57.7056 Regulation at 56 FR 2104 stayed to 9-13-91 32091
Regulation at 56 FR 2104 stayed to 11-1-91; revised; eff. 11-1-91 46517
70 Authority citation revised 20913
70.2 Amended; eff. 8-16-92 20913
70.208 (e) revised; eff. 8-16-92 20913
75.2 Revised; eff. 8-16-92 20913
75.300—75.389 (Subpart D) Revised; eff. 8-16-92 20914
75.323 (c)(2) introductory text corrected 28785
75.370 Expires 8-16-93 20914
75.380 Redesignated from 75.1704; eff. 8-16-92 20914
75.381 Redesignated from 75.1704-1; eff. 8-16-92 20914
75.382 Redesignated from 75.1704-2; eff. 8-16-92 20914
75.383 Redesignated from 75.1707; eff. 8-16-92 20914
75.385 Redesignated from 75.1705; eff. 8-16-92 20914

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 30 Chapter I—Con. Page

75.386 Redesignated from 75.1706; eff. 8-16-92 ..... **20914**
75.388 Redesignated from 75.1701; eff. 8-16-92 ..... **20914**
75.1103-4 (e) introductory text revised; eff. 8-16-92 ..... **20928**
75.1103-7 (b) revised; eff. 8-16-92 ..... **20929**
75.1301 (a)(2) revised; OMB number 51616
75.1316 (a) revised 51616
75.1325 (b) revised 51616
75.1701 Redesignated as 75.388; eff. 8-16-92 ..... **20914**
75.1704 Redesignated as 75.380; eff. 8-16-92 ..... **20914**
75.1704-1 Redesignated as 75.381; eff. 8-16-92 ..... **20914**
75.1704-2 Redesignated as 75.382; eff. 8-16-92 ..... **20914**
75.1705 Redesignated as 75.385; eff. 8-16-92 ..... **20914**
75.1706 Redesignated as 75.386; eff. 8-16-92 ..... **20914**
75.1707 Redesignated as 75.383; eff. 8-16-92 ..... **20914**
75.1721 (b)(7) and (8) revised; eff. 8-16-92 ..... **20929**
75.1801 Removed; eff. 8-16-92 ..... **20929**
75.1802 Removed; eff. 8-16-92 ..... **20929**
75.1803 Removed; eff. 8-16-92 ..... **20929**
75.1804 Removed; eff. 8-16-92 ..... **20929**
75.1805 Removed; eff. 8-16-92 ..... **20929**
77.215-2 (c) revised 7471
77.215-3 (a) and (b) revised 7471
77.216-3 (a) revised 7471
77.316-4 Revised 7471
77.216-5 Revised 7472
100.3 (c) introductory text and (g) revised 2970
100.4 Revised 2971

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

202 Authority citation revised 57275
Training seminars 66358
Training seminars 13320
202.350—202.353 (Subpart H) Added 57275
203 Training seminars 66358
206 Training seminars 66358
Training seminars 13320

Page

206.152 (a)(1) and (b)(1)(i) revised 46530
206.153 (a)(1) revised 46530
206.350 Revised 57276
206.351 Revised 57276
206.352 Added 57278
206.353 Added 57279
206.354 Added 57280
206.355 Added 57281
(c)(1)(ii) and (d)(1)(ii) corrected 12376
206.356 Added 57283
206.357 Added 57284
206.358 Added 57285
207 Training seminars 13320
210 Authority citation revised 57286
210.350 Revised 57286
210.351 Revised 57286
210.352 Revised 57286
210.353 Added 57286
210.354 Added 57286
210.355 Added 57286
212 Authority citation revised 57286
212.50—212.52 (Subpart B) Heading revised; authority citation removed 57286
212.350 Added 57286
212.351 Added 57286
250 Evaluation of MMS operating regulations 31870
250.0 (y) added 32098
250.1 (c)(1), (2), (3), (d)(3), (9), (11), (12), (13) and (15) revised 32098
250.2 Amended 32098
250.10 (a)(3) revised; (d) redesignated as (d)(1); (d)(2) added 32099
250.14 (f) added 32099
250.32 (a) revised 32099
250.34 (b)(5) and (8)(i)(B) revised; (b)(9) through (15) redesignated as (b)(11) through (17); new (b)(9) and (10) added 32099
250.40 (a) introductory text revised 32099
250.42 Introductory text amended 32100
250.43 (a) amended 32100
250.44 Amended 32100
250.50—250.67 (Subpart D) Heading revised 32100

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

250.70—250.87 (Subpart E) Heading revised 32100
250.90—250.108 (Subpart F) Heading revised 32100
250.120—250.127 (Subpart H) Heading revised 32100
250.153 (c)(4) redesignated as (b)(4) **26997**
250.154 (b)(1) redesignated as (b)(1)(i); (b)(1)(ii) added 32100
250.170—250.177 (Subpart K) Heading revised 32100
250.180—250.183 (Subpart L) Heading revised 32100
250.190 (c) revised 32100
250.194 (c) added 32100
250.250—250.297 (Subpart P) Revised 32100

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

700.11 (d) reinstated **12463**
705 Authority citation revised 46987
705.3 (c) amended 46987
705.4 (b)(5) amended 46987
705.10 Revised 46988
705.17 (a) amended 46988
706 Authority citation revised 46988
706.4 (c) amended 46988
706.5 (b)(1) and (4) amended 46988
761.5 Amended 65634
780.14 (c) amended 65635
780.35 (b) introductory text amended 65635
784.23 (c) amended 65635
785 Authority citation revised 65635
785.16 Reinstated; heading revised; (a) amended 65635
800.10 Revised 59994
800.40 (a)(3) added 59994
816.74 (a) through (d) revised; (e) redesignated as (h); new (e), (f) and (g) added 65635
816.81 (a) introductory text revised 65635
816.89 (d) removed 65635
816.100 Amended 65635
816.101 Added 65635
816.104 Revised 65636
816.105 Revised 65636

Page

816.133 (d) reinstated 65636
817.74 (a) through (d) revised; (e) redesignated as (h); new (e), (f) and (g) added 65636
817.81 (a) introductory text revised 65636
817.89 (d) removed 65636
817.133 (d) reinstated 65636
901.15 (l) added 30506
(j)(2)(ii) and (viii) removed; (l)(4) revised; (m), (n) and (o) added **20048**
(e) introductory text amended 32511
901.16 (b), (g), (j)(1) and (k) removed; (l) and (m) added 30507
(l) and (m) removed 41794
(a), (c), (d), (e), (f), (h), (i), (j)(2), (3) and (4) removed **20048**
904.10 (b)(1), (6), (20) and (36) removed 32964
904.15 (i) added 32964
(j) added **14797**
906.15 (n) added 33383
906.16 (b), (c), (f), (g) and (h) removed 33384
913.15 (m) added 37012
(n) added 64993
913.16 (a) through (k) removed; (l) through (r) added 64994
914.15 (ff) added 37015
(gg) added 37019
(hh) added 60062
(ii) added 64995
(jj) added 65000
(ll) added **14355**
(kk) added **20051**
(mm) added **22659**
(nn) added **27932**
914.16 (f) added 37015
(a) revised 37019
(g) added 65000
(h) added **14355**
(i), (j) and (k) added **22659**
915.15 (i) added 56594
915.16 Added 56594
916.12 CFR correction **6481**
916.15 (k) added 46547
916.16 (b) added 46548
(l) added **12720**
916.25 (c) added **12718**
917.15 (ii) added 47911
(jj) added **13046**
917.16 (e) and (f) added 47911

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 30 Chapter VII—Con. Page

920.15 (m) added ... 37851
(o) added ... 61162
(n) added ... 63659
(p) added; (a) removed ... 1106
920.16 (b) through (g) added ... 37851
(h) through (n) added ... 63659
931.12 Removed ... 67526
931.15 (o) added ... 67526
(p) added ... 12723
(q) added ... 27934
931.16 (c) added ... 67527
(b) removed ... 12723
934.10 (a) and (b) revised; (c) removed ... 826
934.15 (n) added ... 826
934.16 (b), (e) and (f) revised; (j) and (k) removed; (l) through (y) added ... 827
935.15 (zz) added ... 52473
(aaa) added ... 64193
(ccc) added ... 12727
(bbb) added ... 12731
938.15 (t) added ... 55087
938.16 (kk) through (qq) added ... 55087
943.15 (e) added ... 5987
(f) added ... 13644
(g) added ... 21607
943.16 (b) through (j) added ... 21607
944.15 (q) added ... 41803
(r) added ... 58857
(s) added ... 20054
944.16 (a) through (g) removed; new (a) through (m) added ... 41804
(n) and (o) added ... 58858
946.15 (ee) added ... 37156
948.15 (l) added ... 50269
(m) added ... 58311
948.16 (d), (e), (g), (h), (k), (m), (o), (p), (r), (u), (y), (z), (bb), (ff), (gg) and (ll) removed; (f), (n) and (kk) revised; (nn) through (zz), (aaa), (bbb) and (ccc) added ... 50269
(ddd) through (iii) added ... 58311
950.30 Revised ... 12733
950.35 Added ... 12733

Title 30—*Proposed Rules:*

1-199 (Ch. I) ... 6301
46 ... 48720
48 ... 48376, 59235
56 ... 48720, 67364
... 8102
57 ... 48720, 67364
... 8102
58 ... 500, 7900
70 ... 67364
... 8102
71 ... 48376, 59235, 67364
... 8102
72 ... 500, 7900
75 ... 67364
... 8102
77 ... 48376, 48720, 59235
... 8102
100 ... 2972, 9518
201-299 (Ch. II) ... 47049
201 ... 27008
202 ... 23068, 27008
203 ... 27008
206 ... 64724
... 865, 27008
207 ... 27008
208 ... 27008
210 ... 27008
212 ... 27008
215 ... 27008
216 ... 27008
217 ... 27008
218 ... 31891, 46396
... 27008
219 ... 27008
220 ... 27008
228 ... 27008
229 ... 27008
230 ... 31891, 46396
... 27008
232 ... 27008
233 ... 27008
234 ... 27008
241 ... 27008
242 ... 27008
243 ... 27008
700 ... 65716
... 2065
701 ... 44049, 45780, 48714, 51861, 52494, 55103
... 8102
724 ... 48924
740 ... 33152, 38175, 42712, 46396
761 ... 33152, 33170, 38175, 42712, 46396
772 ... 32050, 33152, 38175, 42712, 46396
773 ... 45780, 55103
778 ... 45780, 55103
780 ... 44049, 52494
... 8102

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

784 ...33170, 37194, 40286, 44049, 52494
8102
785 ....48714, 51861, 65716
2065
795 ....57376, 66003
3975
780 ....**8102**
784 ....**8102**
816 ....44049, 52494, 59904, 60012
2235, 4085, 8102
817 ...33170, 37194, 40286, 44049, 52494, 60012
2235, 4085, 8102
827 65716
2065
840 ....45780, 55103
843 ....45780, 55103
845 51184
846 48924
870 ....50754, 57376, 66003
3975
872 ....57376, 66003
3975
873 ....57376, 66003
3975
874 ....57376, 66003
3975
875 ....57376, 66003
3975
876 ....57376, 66003
3975
886 ....57376, 66003
3975
901 44050
904 ....51188, 55642, 65030
913 31577
914 ....31093, 37864, 37868, 47051
543, 21634
916 58018
917 ....30722, 33398, 65031, 67558
3601, 12775, 12776, 14818, 21636, 21637
918 61215
21639
920 ....30517, 55642
13680, 13682, 14820
925 60077
931 ....37051, 37870, 55249, 65032
934 ....47929, 65033, 65034
935 ...31896, 37871, 42299, 46588, 48720, 49856, 67559
...2066, 12777, 12779, 12782, 23176, 23178, 23179, 27718
936 ....**12784**
938 ....**12785, 22673**
943 ....31094, 55643

Page

....**1136, 21640**
944 ....41314, 63699
....**2067, 13684, 14821, 23181**
948 33399
....**12790**
950 ....31898, 37873, 42712, 67560
....**1137**

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

3 Heading and authority citation revised....42938
3.30 (Subpart C) Added....42938
12 Removed....**19377**
17 Added....40788
26 Added....**24545**

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

123 Removed....**21740**

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

211.1 (a) amended....56932
316 Revised....**14276**
332 Revised....**14281**
342 Revised....**14282**
351 Authority citation revised....**14285**
351.2 (b) revised....**14285**
351.3 (a) revised....**14285**
351.5 (a), (b) and (d) revised....**14285**
351.7 (a) revised....**14285**
352 Authority citation revised....**14286**
352.3 (a) and (b) revised....**14286**

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

500.563 Heading revised; (c)(1) and (2) amended; (c)(3) added....65992
(c)(4) added....**28613**
500.564 Amended....65993
500.570 Added....**1872**

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 31 Chapter V—Con. Page

500.571 Added 17855
(a) revised; (b) redesignated as (c); new (b) added 28613
500.572 Added 20766
500.573 Added 20766
500.612 Added 9053
500.801 (b)(1) and (6) amended; (b)(2) and (3) revised; (c) added 1387
500.803 Amended 1387
500.808 (a)(6)(ii) and (c) amended 1387
500.809 Revised 1387
500.901 Amended (OMB number) 6297
Amended (OMB number) 9053
505 Authority citation revised 45895
505.10 Amended 45895
505.31 (a)(2) and (b) revised 45895
515.207 Added 15216
515.311 Amended 49847
515.533 (b) redesignated as (c); new (b) added 15216
515.560 (c)(1) revised; (c)(5) removed 49847
(k) revised 15216
515.563 (a)(1) and (2) revised 49847
515.564 (a) introductory text and (1) revised; (c) added 49847
515.569 (d) and (e) redesignated as (e) and (f); new (d) added 49847
515.801 (b)(1) amended; (b)(2) and (3) revised; (c) added 1388
515.803 Amended 1388
515.808 (a)(6)(iii) and (d) amended 1388
515.809 Revised 1388
515.901 Revised (OMB number) 6297
520 Authority citation revised 45895
Authority citation revised 1388, 6297
520.101 (a)(3) removed; (a)(4) redesignated as (a)(3); (a)(1) and new (3) revised 45895
520.801 (b)(1) amended; (b)(2) and (3) revised 1388
(c) added 1389
520.803 Amended 1389
520.809 Revised 1389
520.901 Amended (OMB number) 6297
530 Removed 1389

Page

535.217 (b) revised 40553
535.801 (b)(1) and (6) amended; (b)(2) and (3) revised; (c) added 1389
535.803 Amended 1389
535.807 Added 1389
535.905 Amended (OMB number) 6297
545.599 Added 32056
550.514 Removed 66338
Technical correction 525
550.801 (b)(1) amended 1389
(b)(2) and (3) revised; (b)(6) amended; (c) added 1390
550.802 Amended 1390
550.806 Revised 1390
550.807 (a)(7)(iii) and (c) amended 1390
550 Appendix A amended 37157
Appendix B added 37157
Appendix B amended 65994
Appendix A amended 10799
555 Authority citation revised 10291
555.503 Added 10291
555.901 (Subpart I) Added 10291
560.409 Added 61373
560.514 Added 61374
560.801 (b)(1) and (6) amended; (b)(2) and (3) revised; (c) added 1390
560.802 Amended 1390
560.806 (b)(3) amended 1390
(d) amended 1391
560.807 Revised 1391
575.806 Revised 1391
575.901 Added (OMB number) 6297
575 Appendix A amended 48104
580 Added 10821
580.211 Added 23955
580.405 Amended 23955

Chapter VIII—Office of International Investment, Department of the Treasury (Parts 800—899)

Chapter VIII Established 58780
800 Added 58780

Title 31—*Proposed Rules:*

0-50 (Subtitle A) 7564
91 7686
92 7686
100 7686

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

103 10307
200-399 (Ch. II) 8286
205 ..... 10102, 10951
349 ..... 3870, 10748
356 ..... 3870, 10748
357 ..... 12244, 20572

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (1—399)

25—33 (Subchapter B) Heading added 6199
25 Redesignated from part 280 6199
25.100 (b)(3) amended 6199
25.110 (b) amended 6199
25.200 (a) and (b) amended 6199
25.205 Amended 6200
25.210 Amended 6200
25.215 Amended 6200
25.220 (b) amended 6200
25.225 Amended 6200
25.300 Amended 6200
25.305 Introductory text, (c)(2), (4) and (5) amended 6200
25.310 Amended 6200
25.312 (c) and (d) amended 6200
25.314 (d)(1)(iv) amended 6200
25.320 (a)(2) and (b) amended 6200
25.325 (a)(2) amended 6200
25.400 (a) and (b)(1) amended 6200
25.405 (a) introductory text, (1) and (2) amended 6200
25.410 (b) amended 6200
25.411 (d) and (f) amended 6200
25.413 Introductory text amended 6200
25.420 Amended 6200
25.505 (a) and (b) amended 6200
25.605 (a) amended 6200
25.615 (a) amended 6200
25.620 (a) introductory text and (b) amended 6200
28 Redesignated from part 282 6199
28.200 (a) amended 6200
28.205 (a) amended 6200
28.300 (a) and (b) amended 6200
33 Redesignated from part 278 6199
33.4 (a) and (b) amended 6200
33.5 Amended 6200
33.21 (g)(2) amended 6200
33.24 (b)(4) and (e)(2)(ii) amended 6200
33.25 (e) and (f) amended 6200
33.26 (c) amended 6200
33.30 (b), (d)(4) and (f)(2) amended 6200
33.32 (c)(3) and (g)(2) amended 6201
33.36 (c)(1) introductory text, (d)(2) introductory text and (f)(3) amended 6201
33.37 (a)(3), (c)(1), (2), (3) and (4) amended 6201
33.41 (b) introductory text, (d)(3), (e)(1)(i), (ii), (2)(i), (ii), (iii) and (3) amended 6201
33.42 (a)(2) amended 6201
33.43 (d) amended 6201
33.44 Introductory text and (b) amended 6201
33.50 (b)(5) amended 6201
33.51 (c), (d) and (e) amended 6201
40—146 (Subchapter B) Redesignated as subchapter C 6199
40a Revised 66359
93 Added; interim 51328
102 Revised 3541
150—152 (Subchapter C) Redesignated as subchapter D 6199
154—159a (Subchapter D) Redesignated as subchapter E 6199
155 Revised 5383
Effective date corrected 7878
160—173 (Subchapter E) Redesignated as subchapter F 6199
162 Added 50271
163 Removed 43871
174—179 (Subchapter F) Redesignated as subchapter G 6199
174 Removed 22429
185—186 (Subchapter G) Redesignated as subchapter H 6199
Subchapter L Heading added 60062
187 Redesignated from part 197; authority citation revised 64481
187.1 Amended 64481
187.5 (d)(1) amended 64481
187.6 Amended 64481

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 32 Chapter I—Con. Page

187 Enclosure 1 amended....64481
188 Redesignated from part 214; authority citation revised....64481
188.6 Amended....64481
189 Redesignated from part 235....64481
190 Redesignated from part 265....64481
190.1 (a) amended....64481
190.4 (d) amended....64481
190.5 (a)(3) amended....64481
190 Appendix amended....64482
192 Redesignated from part 301....32964
192.1 (a) amended....32964
192.2 Amended....32964
192.4 Amended....32964
192.5 Footnote 2 amended....32964
192.6 Footnote 3 revised....32965
195 Redesignated from part 300....32965
195.3 Amended....32965
195.5 (b) amended....32965
195.8 (d)(1) amended....32965
195.9 (b), (c)(2) and (3) amended....32965
195.10 (a) introductory text, (2) and (f) amended....32965
195.11 (c) amended....32965
197 Redesignated as part 187....64481
199 Authority citation revised....44006, 59877
199.2 (b) amended....52203, 59872, 59877
199.4 (c)(3)(ix) introductory text amended; (c)(3)(ix)(A)(*4*), (*5*), (B)(*2*), (C), (g)(39) and (72) revised; (g)(73) redesignated as (g)(74); (b)(8), (9) and new (g)(73) added....52196
(b)(5)(ix)(A) and (B) removed; (a)(12), (b)(5)(ix) and (6) redesignated as (a)(13), (b)(6) and (7); new (a)(12), (b)(4)(vii) (viii), (ix), (6)(i) through (iv) and (h)(5)(vi) added....52203
(b)(1)(iv), (d)(3)(vi) introductory text and (B) revised....59872
199.6 (b)(4)(x)(B) introductory text, (*3*) introductory text, (*iv*) and (*vi*) revised; note removed; (b)(4)(x)(B)(*3*)(*vii*) added....52198
(a)(6) through (9), redesignated as (a)(7) through (10); new (a)(6) added....52205
(b)(1)(iii), (4)(iv)(D), (vii)(E), (x)(B)(*3*)(*viii*) and (c)(1)(v) added; (b)(4)(iv)(B) revised....59878
199.7 Technical correction....32965
(b)(3) and (4) redesignated as (b)(4) and (5); (a) introductory text, (b)(2)(ix) introductory text, (A), new (b)(5)(i) introductory text, (ii) and (c)(2)(i)(A) revised; (b)(2)(x)(D), (3), (5)(iii), (c)(1)(iii) note and (i)(3) added....59878
199.14 (g)(1) revised....44006
(g)(1)(v)(A), (B), (vi)(A) and (B)(*2*) amended; (g)(1)(v)(C) added....50273
204 Redesignated from part 288; authority citation revised....64482
204.1 Amended....64482
204.4 (c)(1)(i), (ii), (vii), (viii) and (ix) amended....64482
204.5 (f) amended....64482
204.6 (a)(1), (4), (b)(1)(v), (2) and (3) amended....64482
204.8 Amended....64482
204.9 Heading amended....64482
204.10 Introductory text amended....64482
205 Added....64194
208 Removed....24363
210.3 (b) revised....42939
214 Redesignated as part 188....64481
223 Added....64554
235 Redesignated as part 189....64481
247 Redesignated from part 297....58179
247.3 (c)(2) amended....58179
247.5 (e) amended....58179
247 Appendixes A through F amended....58179
255 Added....41940
265 Redesignated as part 190....64481
266 Revised....36003
271 Redesignated from part 286f; authority citation revised....64482
271.2 (c) amended....64482
271.3 (a) and (b) amended....64482

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

273 Removed....6199
275 Redesignated from part 294....57984
275.2 (b) amended....57984
275.4 Amended....57984
275.5 (a)(3) and (b)(1) amended....57984
275.7 (b) amended....57984
275.8 (b) introductory text, (c) and (f) amended....57984
275.9 (a)(2)(ii), (b)(1), (3), (c) and (d) amended....57984
275.10 (d) amended....57984
275.11 (c) and (d) amended....57984
275.12 (a), (c)(1), (2), (3), (4) and (d) amended....57984
275.13 (c) amended....57984
275 Enclosure 1 amended....57984
278 Redesignated as part 33....6199
280 Redesignated as part 25....6199
282 Redesignated as part 28....6199
284 Technical correction....31085
285 (Subchapters N and O) Headings corrected; part 285 transferred from subchapter O to subchapter N....58179
286—299 (Subchapter P) Heading revised....60062
286 Transferred to subchapter N....5388
286a Redesignated as part 310....55631
286b Redesignated as part 311....55631
286b.7 (b)(2) added....32966
286c Redesignated as part 313....55631
286d Redesignated as part 314....55631
286e Redesignated as part 315....55631
286f Redesignated as part 271....64482
286i Redesignated as part 293....58179
Correctly redesignated as 293....59217
287 Transferred to subchapter N; heading revised....58501
Heading corrected....8074
287a Redesignated as 316....6074
288 Redesignated as part 204....64482
289 Redesignated as part 337....64482
290 Revised....49685
290.7 (d) and (e) redesignated as (e) and (f)....15254
Transferred to subchapter N....5388

Page

(c) redesignated as (d); new (c) added....56932
290 Appendix D added....56932
290a Redesignated as part 317....55631
291 Transferred to subchapter N....5388
291a Redesignated as part 318....55631
291b Redesignated as part 338....64482
292 Heading and authority citation revised....55088
Transferred to subchapter N; heading revised....58501
Transferred to subchapter N....5388
292.6 (b) revised....55088
292.8 (a) revised....55088
292.9 (a) introductory text, (b)(1) introductory text and (d) introductory text revised....55088
292a Correctly designated as part 319....57799
293 Removed....51976
Correctly redesignated from 286i....59217
293.4 (a) footnote 3 and (b) footnote amended....58179
Correctly designated....59217
293.5 (e) footnote 6 amended....58179
Correctly designated....59217
293.6 (e)(1) amended....58179
Correctly designated....59217
293.7 (a)(1) thorugh (4) amended....58180
Correctly designated....59217
293 Appendixes A through D headings amended....58180
Correctly designated....59217
294 Redesignated as part 275....57984
295 Added....49694
Transferred to subchapter N....5388
295c Redesignated as 320....6074
296 Redesignated as part 336....64482
297 Redesignated as part 247....58179
298 Removed; new part 298 redesignated from part 298b....58180
298.2 (b) amended....58180
298.4 (i)(3) amended....58180
298a Redesignated as part 321....55631
298b Redesignated as part 298....58180

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 32 Chapter I—Con. Page

299 Transferred to subchapter N; heading revised....58501
Transferred to subchapter N....5388
299a Redesignated as part 322....55631
300—301 (Subchapter Q) Heading removed....31537
300 Redesignated as part 195....32965
301 Redesignated as part 192....32964
310 Redesignated from part 286a....55631
Authority citation revised....57800
310.1 (a) amended....57800
310.2 (c) amended....57800
310.6 (a)(2), (c)(4) and (f) amended....57800
310.10 (a)(1), (b)(2), (3) and (f) amended....57800
310.11 (b) amended....57800
310.12 (a)(3) and (d) amended....57800
310.20 (a)(2)(i) and (iii) amended....57800
310.30 (a)(6), (8), (d)(1), (f)(4), (h)(3) and (l) amended....57800
310.31 (a)(1)(i), (iii) and (b)(1)(ii) amended....57800
310.32 (b)(1) and (d)(2) amended....57800
310.33 (e) amended....57800
310.40 (b) and (c)(3) amended....57800
310.41 (e)(2)(iv), (5), (g)(2) and (k)(7) amended....57800
310.43 (b)(1) amended....57800
310.44 (a)(3)(ii), (iii), (f)(1)(i) and (ii) amended....57800
310.50 (b)(1), (4) and (e)(1) amended....57800
310.51 (a)(6) and (b) amended....57800
310.52 (a)(2) amended....57800
310.60 (e)(4) and (f)(3) amended....57800
310.61 (a), (b)(1)(i) and (2) amended....57800
310.62 (i)(1)(i), (3), (l)(1), (3)(iv), (m)(1), (n)(1), (o)(1) and (3) amended....57800
310.63 (b)(1)(iv), (v), (2)(ii), (iii), (3)(ii), (iii), (4)(iii), (5)(iv), (vii), (d)(1)(ii), (2), (f), (g)(1) amended; (d)(4) redesignated as (d)(1)(iv) and amended....57800
310.64 (a)(1), (2), (b)(1) and (3) amended....57801
310.72 (a)(3) amended....57801
310.112 (a) and (b) amended....57801
310 Appendixes A through I amended....57801
311 Redesignated from part 286b....55631
Heading and Authority citation revised....57801
311.5 (b) introductory text and (1) amended....57801
311.6 (a)(2) amended....57801
311.7 (a) amended....57801
(b)(2) introductory text revised....24547
312 Added....51976
312.12 (g) added....24547
313 Redesignated from part 286c....55631
Heading and authority citation revised....57802
313.1 Amended....57802
314 Redesignated from part 286d....55631
Authority citation revised....57802
314.1 Amended....57802
315 Redesignated from part 286e....55631
Authority citation revised....57802
315.1 Amended....57802
316 Redesignated from 287a; authority citation revised....6074
316.3 Amended....6074
316.4 Amended....6074
316.6 (a), (b), (c)(1), (3)(xvi), (d)(1), (2), (e)(2) and (f)(2) amended....6074
317 Redesignated from part 290a....55631
Authority citation revised....57802
317.6 (a) amended....57802
317.7 (a) amended....57802
317.10 (b)(1), (e) introductory text, (1) and (f)(2) amended....57802
318 Redesignated from part 291a....55631
Authority citation revised....57802
318.1 Amended....57802
318.4 (a) and (b) amended....57802
318.5 (b) amended....57802
319 Authority citation revised....56595

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

Correctly redesignated from part 292a 57799
319.5 (b) and (d) amended; (e) revised 56595
319.7 Amended 56595
319.8 (b) revised 56595
319.10 (b) amended 56595
319.11 (d) amended 56595
319.13 Revised 56595
320 Redesignated from 295c; authority citation revised 6074
320.3 (a) and (c) amended 6074
320.4 (b)(1), (2) and (c)(1)(iii) amended 6074
320.6 (a) amended 6074
321 Redesignated from part 298a 55631
Authority citation revised 57802
321.4 (d)(1) and (2) amended 57802
321.6 (a)(1), (b)(2)(i) and (6) amended 57802
321.11 (b) introductory text and (5) amended 57803
321.15 (g)(1) and (2) amended 57803
322 Redesignated from part 299a 55631
Authority citation revised 57803
322.4 (b)(1) amended 57803
322.5 Amended 57803
322.6 Amended 57803
322.10 (b)(1) through (13) amended 57803
323 Redesignated from part 1286 57803
Appendixes A and C amended 57803
336 Redesignated from part 296 64482
336.2 (b) amended 64482
336.3 (b) amended 64482
336.4 (a) amended 64482
336.5 (d) amended 64482
336.6 Amended 64482
337 Redesignated from part 289 64482
337.1 Amended 64482
337.2 Revised 64482
338 Redesignated from part 291b 64482
340 Added 4854
350—399 (Subchapter R) Heading revised 31537
Heading corrected 60062
350 Revised 7547
352 Revised 31537
355 Added 23157

Page

362 Revised 31540
376 Added 65421

Chapter V—Department of the Army (Parts 400—699)

518 Revised 48932
518.5 Amended 56010
518.10 (c) introductory text amended; (e) revised 56010
518.21 Introductory text revised 56010
518.22 (b) amended 56010
518.24 (a) amended; (b) revised 56010
518.29 (e) revised; (f) added 56010
518.37 (d)(1) revised 56010
518.50 Correctly designated 56010
518.54 Introductory text revised; (g)(1) removed; (g)(2) and (3) redesignated as (g)(1) and (2) 56010
518.60 Revised 56010
518.61 Revised 56010
518.85 (g)(3) revised 56011
518.99 (b)(2) introductory text, (3) introductory text and (c) amended 56011
518 Appendix E amended 56011
519 Revised 65392
Regulation at 56 FR 65392 withdrawn 9501
552.126—552.130 (Subpart J) Added 37130
583.1 Removed 525
591 Removed 6677
619 Carrier qualification program requirement temporarily suspended 45895
626 Suspended 37019
Revised 11368
627 Suspended 37019
Revised 12604

Chapter VI—Department of the Navy (Parts 700—799)

701.1—701.11 (Subpart A) Revised 66574
701.21—701.31 (Subpart B) Revised 66586
701.31—701.32 (Subpart C) Revised 66590
701.40—701.53 (Subpart D) Revised 66592

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 32 Chapter VI—Con. Page

701.117—701.120 (Subpart G) Authority citation revised..... 59217
701.119 Heading and (b) heading revised; (b)(2) removed..... 59217
(b)(5) removed..... 2682
706.2 Table Three amended..... 37285
Table Four amended..... 37285
Table Four amended..... 5858, 23062, 24548
Table Five amended..... 47152, 47153
Table One amended..... 4855, 4938, 11266
Table Two amended..... 4854, 14356
Table Three amended..... 4855, 4938, 5857, 11266, 14357, 23061, 24548
Table Five amended..... 4855, 5857, 28463
719 Authority citation revised..... 57803
719.112 Revised..... 57803
720.1—720.13 (Subpart A) Revised..... 5228
720.20—720.25 (Subpart B) Revised..... 5232
725 Revised; interim..... 2463
726 Revised..... 55088
750 Revised..... 4722
751 Revised..... 5055
755 Revised..... 42232
756 Revised..... 4736
757 Revised..... 5072

Chapter VII—Department of the Air Force (Parts 800—1099)

806b Authority citation revised..... 33384
806b.13 (b)(19)(i), (ii) and (iii) removed; (b)(20) redesignated as (b)(19)..... 33384
(b)(7) and (10) revised..... 42939
(b)(7)(i) and (10)(i) revised..... 60923
860 Removed..... 2840
861 Revised..... 30328

Chapter XII—Defense Logistics Agency (Parts 1200—1299)

1285 Revised..... 65423
1286 Redesignated as part 323..... 57803

Chapter XIX—Central Intelligence Agency (Parts 1900—1999)

1904 Added..... 41458
1905 Added..... 41459

Title 32—*Proposed Rules:* Page

153 33218
165 55250
169a 67024
199 ..... 30360, 30887, 41496, 48134, 48135, 57498, 64488
220 66381
228 30365
229 ..... 46259, 46261
251 59236
293 46137
295 37873
312 46137
..... 12891
..... 15275
321 5122
335 ..... 4387, 21365
505 11376
619 50303
8066 50303

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1 Technical correction..... 41392
1.30-1—1.30-40 (Subpart 1.30) Added..... 30252
1.30-1 (d)(1) correctly revised..... 43701
26 Authority citation revised..... 14485
26.03 Revised; eff. 8-19-92..... 14485
(c) corrected..... 21740
26.04 Note removed; (d) added; eff. 8-19-92..... 14486
(d) corrected..... 21741
26.09 (b) revised; eff. 8-19-92..... 14486
88 Authority citation revised..... 33385
88.11 (a) revised..... 33385
88.12 Added..... 33386
100 Temporary regulations list..... 33708, 51980
Temporary regulations list..... 2020, 19086
100.T01-165-1 Added (temporary)..... 27174
100.T01-165-2 Added (temporary)..... 27174
100.35-05 Added (temporary)..... 8419
100.35T01-158 Added (temporary)..... 27684
100.35T01-159 Added (temporary)..... 27693

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

100.35-T0511 Added (temporary)....20055
100.35-T0523 Added (temporary)....27681
100.35-T0538 Added (temporary)....42940
100.35-T0547 Added (temporary)....51332
100.35-T0728 Added (temporary)....42941
100.35-T0731 Added (temporary)....19086
100.35-T0749 Added (temporary)....23303
100.35-T0901 Added (temporary)....31086
100.35-T0902 Added (temporary)....20404
100.35-T0903 Added (temporary)....21741
100.35-T0905 Added (temporary)....23534
100.35-T0906 Added (temporary)....31873
Added (temporary)....21212
100.35-T0910 Added (temporary)....27679
100.35-T0911 Added (temporary)....27680
100.35-T0912 Added (temporary)....27678
100.35-T0913 Added (temporary)....31872
100.35-T0914 Added (temporary)....31875
100.35-T0915 Added (temporary)....31874
100.35-T0916 Added (temporary)....34022
100.35-T1074 Added (temporary)....50656
100.35-T1095 Added (temporary)....48105
100.35-T1104 Added (temporary)....14640
100.35-T9108 Added (temporary)....40553
100.102 Implementation (temporary)....29898
Implementation (temporary)....29020
100.104 Implementation (temporary)....23955
100.108 Implementation (temporary)....24951
100.109 Implementation (temporary)....29899

Page

Implementation (temporary)....23533
100.201 (a) and Table One revised....21211
100.501 Implementation (temporary)...29897, 29898, 42687, 60062, 66788
Implementation (temporary)...23533, 27680
100.502 Implementation (temporary)....33707
Implementation at 56 FR 33707 canceled....46376
100.504 Implementation (temporary)....33708
100.507 Implementation (temporary)....26606
100.509 Implementation (temporary)....30507
100.510 Implementation (temporary)....33707
100.511 Implementation (temporary)....29897, 33708
Implementation (temporary)....11577
100.512 Implementation (temporary)....23303
100.514 Implementation (temporary)....29898
100.716 Added; eff. 7-6-92....23302
100.1105 Implementation (temporary)....47911
(b)(2) amended; interim....51332
110.T01-160 Added (temporary)....27695
110.134 (a)(1), (2) and (b) revised; (a)(6) through (22) and (c) added; effective 7-4-92 to 7-16-92....27174
110.140 (b)(3) corrected....40360
110.155 (c)(5), (d)(7), (8), (9) and (m)(2) suspended; Notes 1 and 2, (c)(1)(ii), (2)(ii), (3)(ii), (4)(ii), (d)(11)(iii), (12)(iii), (13)(vi), (14)(iv), (15)(iii), (e)(1)(iii), (iv) and (f)(4) added; (d)(1) through (5), (10)(i) and (16) introductory text revised; (f)(1) introductory text and (n)(1) amended (temporary)....27693
110.224 (d)(1) table amended....11578
117.123 (b) redesignated as (c); (a) introductory text and new (c) introductory text revised; new (b) added....1392

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 33 Chapter I—Con. Page

117.175 (a) revised; eff. 5-1-92 to 10-31-92 ... **14644**
117.189 (d) added; eff. 5-1-92 to 10-31-92 ... **13322**
117.205 (c) added; eff. 5-29-92 through 10-31-92 ... **24191**
117.255 (a)(2) revised (temporary) ... 35187, 49145, 59881
(a)(2) revised (temporary) ... **3009**
(a)(2) revised; (a)(3) and (4) added (temporary) ... **9387**
(a)(2), (3) and (4) revised; (a)(5) added; interim; eff. 5-27-92 through 12-31-92 ... **22174**
117.261 (gg) removed ... **11579**
117.287 (e) revised ... 38073
(e) corrected ... 43649
(d)(3) revised ... **29021**
117.415 (c) revised ... **2841**
117.444 Added ... 43872
117.525 (a)(2) revised; eff. 7-8-92 ... **24190**
117.545 Removed ... **7879**
117.561 Revised (temporary) ... 30334
117.573 Revised ... **14643**
117.588 Added ... 41460
117.595 Revised ... 57491
117.611 Revised ... 41461
117.618 Revised ... 60064
117.619 Revised ... 41461
117.620 Added ... 41462
117.627 Revised ... 37474
117.679 Removed ... 57287
117.685 Redesignated as 117.686; new 117.685 added; eff. 7-22-92 ... **27696**
117.686 Redesignated from 117.685; eff. 7-22-92 ... **27696**
117.703 Revised ... **22175**
117.733 (b) suspended; (k) added, eff. 8-1-91 through 9-29-91 ... 40419
117.822 (a) revised; (c) added ... 54789
(a) revised ... **6678**
Regulation at 57 FR 6678 effective date corrected ... **29120**
117.827 Removed ... 36099
117.837 Revised ... **11580**
117.838 Removed ... **7655**
117.867 Removed ... 67528
117.881 (b) removed ... 67528
117.885 Removed ... 67528
117.891 Removed ... 67528
117.893 (a) revised ... 66599
117.899 Revised ... 49706
117.911 (d) revised (temporary) ... 57288
(d) revised; eff. 4-1-92 through 5-29-92 ... **12877**
117.997 (e) added ... 49411
117.1017 Removed ... **13645**
117.1019 Removed ... **13645**
117.1039 Removed ... 67528
117.1041 (b)(1) added ... 41284
117 Appendix A amended ... 57492, 60064
127 Authority citation revised ... 35819
127.003 Revised ... 35819
127.611 Revised ... 35819
147.1114 Added ... **9055**
147.1115 Added ... **9055**
147.1116 Added ... **9054**
153.105 (a)(6) and (b)(2) removed ... 61163
154.106 Revised ... 35819
154.500 (d)(3) revised ... 35820
161.114 Revised ... 37475
165 Temporary regulations list ... 33708, 51980
Temporary regulations list ... **2020**, **19086**
Authority citation revised ... **22176**
165.165 Added ... 40251
Revised ... **11685**
(c)(2), (d)(5) and (6) corrected ... **13413**
165.170 Added ... 50274
Removed ... **11686**
165.203 Added ... **22176**
165.204 Added ... 55820
165.713 Added ... 30509
165.752 Revised ... 36005
Corrected ... 41284
165.805 (a) revised ... 66599
165.T0105 Added (temporary) ... 32111
165.T0107 Added (temporary) ... **18827**
165.T01-008 Added (temporary) ... **6790**
165.T0110 Added (temporary) ... 36004
165.0118 Added (temporary) ... 37853
165.T01-019 Added (temporary) ... **21608**
165.T01-40 Added (temporary) ... **29022**
165.T0155 Added (temporary) ... **27700**

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

165.T01-061 Added (temporary)..... 29023
165.T01-065 Added (temporary)..... 27702, 29044
165.T0128 Added (temporary)..... 43701
165.T0154 Added (temporary)..... 27703
165.T01148 Addded (temporary)..... 54539
165.T01-161 Added (temporary)..... 27695
165.T01-165-4 Added (temporary)..... 27177
165.T01-165-6 Added (temporary)..... 27177
165.T01-165-7 Added (temporary)..... 27178
165.T01-165-8 Added (temporary)..... 27178
165.T01-165-9 Added (temporary)..... 27179
165.T01-165-11 Added (temporary)..... 27179
165.T01-165-12 Added (temporary)..... 27179
165.T01-168 Added (temporary)..... 1107
Technical correction..... 4366
165.T01-170 Added (temporary)..... 1107
Technical correction..... 4366
165.T01-171 Added (temporary)..... 348
165.T01-172 Added (temporary)..... 14488
165.T0209 Added (temporary)..... 13646
Regulation at 57 FR 13646 effective date corrected..... 13646
165.T02015 Added (temporary)..... 21214
165.T02016 Added (temporary)..... 21213
165.T0226 Added (temporary)..... 24953
165.T02040 Added (temporary)..... 31876
165.T02-048 Added (temporary)..... 42944
165.T02-049 Added (temporary)..... 42944
165.T5-009 Added (temporary)..... 30508
165.T05-010 Added (temporary)..... 49412

Page

165.T0512 Added (temporary)..... 65189
Added (temporary)..... 24952
165.T05-12 Added (temporary)..... 20405
165.T05-13 Added (temporary)..... 18399
165.T518 Added (temporary)..... 27697
165.T520 Added (temporary)..... 27697
165.T0526 Added (temporary)..... 27180
165.T540 Added (temporary)..... 37852
165.T0552 Added (temporary)..... 63660
165.T0719 Added (temporary)..... 11431
165.T0747 Added (temporary)..... 27698
165.T0786 Added (temporary)..... 42235
165.T07121 Added (temporary)..... 65190
165.T0800 Added (temporary)..... 23535
165.T0801 Added (temporary)..... 8266
165.T0929 Added (temporary)..... 30335
165.T0930 Added (temporary)..... 40251
165.T0938 Added (temporary)..... 23304
165.T09-40 Added (temporary)..... 24750
165.T0944 Added (temporary)..... 24751
165.T1056 Added (temporary)..... 40250
165.T1071 Added (temporary)..... 30334
165.T1080 Added (temporary)..... 31086
165.T1094 Added (temporary)..... 32111
165.T1097 Added (temporary)..... 48106
165.T1100 Added (temporary)..... 32112
165.T1106 Added (temporary..... 35830
165.T1107 Added (temporary..... 35831
165.1108 (a) corrected..... 40360
165.T1110 Added (temporary..... 35831
165.T1113 Added (temporary)..... 42234

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 33 Chapter I—Con. Page

165.T1129 Added (temporary)....42943
165.T1131 Added (temporary)....42942
165.T1133 Added (temporary)....42943
165.T1137 Added (temporary)....42688
165.T1146 Added (temporary)....49412
165.T1161 Added (temporary)....5078
165.1162 Added (temporary)....29024
165.T1189 Added (temporary)....30509

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

207.440 (u) revised....10245
242 Added....54712
330 Revised....59134
330.12 Amended....51838
334.775 Added....42528

Chapter IV—Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

402.3 (g) revised....2471
402.11 Revised....2471
(b) corrected....10522

Title 33—*Proposed Rules:*

1—199 (Ch. I) 4744
1 65786
24 21362
26 58292
64 47930
95 56180
100 ...29916, 31899, 32150, 37886, 56180, 63700
...7348, 10308, 10849, 12266, 12557, 18850, 23458
105 21362
110 38093
...10308, 11455, 12266, 12557, 12891, 19831, 23458
115 12557
117 ...32151, 34046, 35839, 37504, 40420, 41498, 47932, 48770, 49445, 56609, 56610, 63701, 66326, 66609
...1138, 8428, 10321, 10322, 11591, 11592, 11702, 13685, 13686, 18852, 19833—19835, 21225, 23363, 25000—25002, 27719, 27720, 28816
130 ....49006, 61216
131 ....49006, 61216
132 ....49006, 61216
137 ....49006, 61216
143 ....65786, 66766
....10149
150 2236
154 8708
155 ....43534, 58202, 60949, 66611
....1139, 1890, 6792, 9402, 27514
157 ....44051, 56284,
....1243, 1854
161 ....36910, 40946, 48771
162 ....48773, 65720
....8852, 14682
164....12378
165 ....36121, 37052, 55104
...1141, 10308, 12266, 12557, 20435, 20666, 21366, 23458, 23561, 24203, 24204, 24444, 27720, 27721
173 56180
174 56180
175 56180
177 56180
179 56180
181 56180
183 56180
200—399 (Ch. II) 40446, 51868
207 59913
323 26894
328 65964
....26894
330 48136
334 41500
400—499 (Ch. IV) 4744
402 47431
....8103

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

3 Heading revised....65388
3.1—3.4 Designated as subpart A....65388
3.4 (b) and (e)(3) amended....65388
3.5—3.10 (Subpart B) Added....65388
97 Regulations at 56 FR 28012 and 28021 eff. 8-19-91....27703

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Chapter II—Office of Secondary Education, Department of Education (Parts 200—299)

Page

201.52 (b)(1), (c) and (d) revised (effective date pending)..... 24752
201.54 Removed (effective date pending)..... 24752
208 Heading and authority citation revised..... 21710
208.11 (b)(2)(viii) amended; (b)(3)(iv) through (vi) redesignated as (b)(3)(v) through (vii); new (b)(3)(iv) added (effective date pending)..... 21710
208.21 (a) introductory text, (2) and (c) amended (effective date pending)..... 21720
208.22 (b)(2)(ii) amended; (d) redesignated as (f); (b)(2)(iv), (d) and (e) added (effective date pending)..... 21710
208.24 Redesignated as 208.25; new 208.24 added (effective date pending)..... 21711
208.25 Redesignated as 208.26; new 208.25 redesignated from 208.24 (effective date pending)..... 21711
208.26 Redesignated from 208.25 (effective date pending)..... 21711
208.31 (a)(1) and (b) amended (effective date pending)..... 21711
208.32 Revised (effective date pending)..... 21711
212 Revised (effective date pending)..... 27558
222.3 Regulation at 56 FR 23173 eff. 7-17-91..... 27703
222.23 Regulation at 56 FR 23173 eff. 7-17-91..... 27703
222.91 Amended; authority citation revised (effective date pending)..... 12464
Regulation at 57 FR 12464 eff. 6-10-92..... 27704
222.94 (a), (d) introductory text, (1) introductory text, (2) introductory text and authority citation revised; (c) amended (effective date pending)..... 12464
Regulation at 56 FR 23173 eff. 7-17-91..... 27703
Regulation at 57 FR 12464 eff. 6-10-92..... 27704
222.95 (a) revised (effective date pending)..... 12465
Regulation at 57 FR 12465 eff. 6-10-92..... 27704
222.96 Introductory text and (a) revised (effective date pending)..... 12465
Regulation at 57 FR 12465 eff. 6-10-92..... 27704
222.98 (a) revised (effective date pending)..... 12465
Regulation at 57 FR 12465 eff. 6-10-92..... 27704
222.99 Heading, (b) introductory text, (1) introductory text, (i), (ii), (2) introductory text, (iii), (3) introductory text, (i), (ii)(A) and (B) amended; authority citation revised (effective date pending)..... 12465
Regulation at 57 FR 12465 eff. 6-10-92..... 27704
222.101 (a) revised (effective date pending)..... 12465
Regulation at 57 FR 12465 eff. 6-10-92..... 27704
222.102(b)(1)(i), (ii), (c) introductory text, (1), (2)(i) and authority citation revised (effective date pending)..... 12465
Regulation at 57 FR 12465 eff. 6-10-92..... 27704
298.12 (a)(5) and (6) redesignated as (a)(6) and (7); new (a)(5) added (efffective date pending)..... 1208
Regulation at 57 FR 1208 eff. 2-27-92..... 27704

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

301 Heading revised (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 34 Chapter III—Con. Page

301.1 Heading, introductory text, (a), (b) and (c) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

301.3 (a), (b) and (c) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

301.4 (a) revised (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

301.5 (c) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

301.10 (a)(2) and (b)(2) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

301.12 Heading, (b) and (c) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

301.20 Heading, (a) introductory text, (1), (2), (b) and (c) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

301.21 Amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

301.30 (a), (b)(1), (2) and (d) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

301.31 (a) and (b) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

301.32 Amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303 Heading revised (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.1 Heading, (a) and (c) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.4 (a)(3) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.5 Amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.7 Amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.12 (b) and Note 1 amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.16 Heading, (a) and Note 2 amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.151 Heading, (a) and (b)(4) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.180 (a) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.301 (d)(2) amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.302 Amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.320 Introductory text and Note 1 amended (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.321 (d)(2)(i) and (ii) amended; (d)(2)(iii) added (effective date pending)..... 54688
Regulation at 56 FR 54688 eff. 12-28-91..... 27704

303.322 (b)(1) amended (effective date pending)..... 54688

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

Regulation at 56 FR 54688 eff. 12-28-91 27704
303.360 (b)(3)(i) and (ii) redesignated as (b)(3)(ii) and (iii); new (b)(3)(i) added (effective date pending) 54688
Regulation at 56 FR 54688 eff. 12-28-91 27704
303.404 Note 2 amended (effective date pending) 54688
Regulation at 56 FR 54688 eff. 12-28-91 27704
303.460 (b)(2) amended (effective date pending) 54688
Regulation at 56 FR 54688 eff. 12-28-91 27704
303.521 (c) amended (effective date pending) 54688
Regulation at 56 FR 54688 eff. 12-28-91 27704
303.522 (b)(4) amended (effective date pending) 54689
Regulation at 56 FR 54689 eff. 12-28-91 27704
303.527 Note amended (effective date pending) 54689
Regulation at 56 FR 54689 eff. 11-25-91 27704
303.601 (a)(1) amended (effective date pending) 54688
Regulation at 56 FR 54688 eff. 12-28-91 27704
304 Heading revised (effective date pending) 54689
Regulation at 56 FR 54689 eff. 12-28-91 27704
304.1 Revised (effective date pending) 54689
Regulation at 56 FR 54689 eff. 12-28-91 27704
304.2 Revised (effective date pending) 54689
Regulation at 56 FR 54689 eff. 12-28-91 27704
304.3 Revised (effective date pending) 54689
Regulation at 56 FR 54689 eff. 12-28-91 27704
304.4 (b) amended (effective date pending) 54689
Regulation at 56 FR 54689 eff. 12-28-91 27704
304.20 (a)(2) introductory text, (ii) and (b)(1) revised (effective date pending) 54689
Regulation at 56 FR 54689 eff. 12-28-91 27704
304.41 (a) amended (effective date pending) 54689
Regulation at 56 FR 54689 eff. 12-28-91 27704
304.51 (a), (b)(1), (2) and (3) revised (effective date pending) 54689
Regulation at 56 FR 54689 eff. 12-28-91 27704
305.1 (a) revised (effective date pending) 54689
Regulation at 56 FR 54689 eff. 12-28-91 27704
305.3 (a)(2)(i), (iv) and (v) revised; (a)(2)(vi), (vii), (viii) and (ix) added (effective date pending) 54690
Regulation at 56 FR 54690 eff. 12-28-91 27704
305.10 (a) through (e) amended (effective date pending) 54690
Regulation at 56 FR 54690 eff. 12-28-91 27704
305.31 (c)(2)(v)(C) and (d)(2)(iv)(C) revised 54690
Regulation at 56 FR 54690 eff. 12-28-91 27704
305.40 (a) and (b) amended; (c) revised; (d) added (effective date pending) 54690
Regulation at 56 FR 54690 eff. 12-28-91 27704
307 Heading revised 51584
Regulation at 56 FR 51584 eff. 11-25-91 27704
307.1 Heading and text amended (effective date pending) 51585
Regulation at 56 FR 51585 eff. 11-25-91 27704
307.2 Heading and text amended (effective date pending) 51585
Regulation at 56 FR 51585 eff. 11-25-91 27704
307.3 Heading amended (effective date pending) 51585
Regulation at 56 FR 51585 eff. 11-25-91 27704
307.4 Heading revised; (b) amended; (c) added (effective date pending) 51585
Regulation at 56 FR 51585 eff. 11-25-91 27704
(c) amended (effective date pending) 28965

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 34 Chapter III—Con. Page

307.10 Revised (effective date pending)....51585
Regulation at 56 FR 51585 eff. 11-25-91....27704
307.11 Heading, (a) introductory text, (1)(i), (ii), and (iii) revised; (a)(1) introductory text, (iv), (2) introductory text, (i) through (vi), (3), (b)(2), (c)(1), (2) and (3) amended (effective date pending)....51585
Regulation at 56 FR 51585 eff. 11-25-91....27704
307.12 (b) introductory text amended (effective date pending)....51585
(b) introductory text, (1), (2), (3) and (c) amended (effective date pending)....51586
Regulations at 56 FR 51585 and 51586 eff. 11-25-91....27704
307.13 (a), (b)(1), (2), (3), (c)(1), (2), (3), (d) and (e) amended (effective date pending)....51586
Regulation at 56 FR 51586 eff. 11-25-91....27704
307.14 Added (effective date pending)....51586
Regulation at 56 FR 51586 eff. 11-25-91....27704
307.15 Added (effective date pending)....51586
Regulation at 56 FR 51586 eff. 11-25-91....27704
307.31 (b) and (c) amended (effective date pending)....51585
Introductory text and (a) amended (effective date pending)....51586
Regulations at 56 FR 51585 and 51586 eff. 11-25-91....27704
307.33 (a)(1) through (4), (b)(2), (3), (4), (8), (9), (c) introductory text, (3), (f)(2), and (g) amended (effective date pending)....51585
Heading revised; (a)(1), (2), (4), (b)(1), (4), (6), (7), (8), (10), (c)(5), (f)(1), and (2) amended (effective date pending)....51587
Regulations at 56 FR 51585 and 51587 eff. 11-25-91....27704
307.35 Removed; new 307.35 redesignated from 307.36; heading and introductory text revised; (a) introductory text, (2), (3), (b)(5), and (c)(1)(iv) amended (effective date pending)....51587
Regulation at 56 FR 51587 eff. 11-21-91....27704
307.36 Redesignated as new 307.35; new 307.36 added (effective date pending)....51587
Regulation at 56 FR 51587 eff. 11-21-91....27704
307.37 Added (effective date pending)....51589
Regulation at 56 FR 51589 eff. 11-21-91....27704
307.41 Introductory text amended (effective date pending)....51585
Introductory text amended (effective date pending)....51589
Regulations at 56 FR 51585 and 51589 eff. 11-21-91....27704
307.42 Added (effective date pending)....51589
Regulation at 56 FR 51589 eff. 11-21-91....27704
309 Heading revised (effective date pending)....54690
Regulation at 56 FR 54690 eff. 12-28-91....27704
309.1 Heading, introductory text and (a) revised (effective date pending)....54690
Regulation at 56 FR 54690 eff. 12-28-91....27704
309.2 Revised (effective date pending)....28965
309.3 Introductory text, (a), (c) and (f) amended; (g) and (h) added (effective date pending)....54690
Regulation at 56 FR 54690 eff. 12-28-91....27704
(i) added (effective date pending)....28965
309.4 (a)(1) revised; (a)(4) removed; (a)(5) redesignated as (a)(4) and amended; new (a)(5) through (9) added (effective date pending)....54690
Regulation at 56 FR 54690 eff. 12-28-91....27704

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

309.5 (b) amended; (c) revised (effective date pending)..... 54691
Regulation at 56 FR 54691 eff. 12-28-91..... 27704
(c) amended (effective date pending)..... 28965
309.21 (b)(1), (c)(2)(ii) and (f)(2)(iv) amended (effective date pending)..... 54691
Regulation at 56 FR 54691 eff. 12-28-91..... 27704
309.22 Revised (effective date pending)..... 28965
309.30—309.33 (Subpart D) Heading amended (effective date pending)..... 54691
Regulation at 56 FR 54691 eff. 12-28-91..... 27704
Heading amended (effective date pending)..... 28966
309.30 (a)(1) through (5) revised; (a)(6) through (9) added (effective date pending)..... 54691
Regulation at 56 FR 54691 eff. 12-28-91..... 27704
(a)(8) and (9) amended; (a)(10) and (11) added (effective date pending)..... 28966
309.32 Added (effective date pending)..... 54691
Regulation at 56 FR 54691 eff. 12-28-91..... 27704
309.33 Added (effective date pending)..... 54691
OMB number..... 14314
Regulation at 56 FR 54691 eff. 12-28-91..... 27704
Redesignated as 309.34; new 309.33 added (effective date pending)..... 28966
309.34 Redesignated from 309.33 (effective date pending)..... 28966
315 Heading revised (effective date pending)..... 54691
Regulation at 56 FR 54691 eff. 12-28-91..... 27704
315.1 Revised (effective date pending)..... 54692
Regulation at 56 FR 54692 eff. 12-28-91..... 27704
315.3 (b)(1) revised; (b)(4) amended; (b)(5) through (9) added (effective date pending)..... 54692
Regulation at 56 FR 54692 eff. 12-28-91..... 27704
315.4 (c), (d) introductory text, (1), (2) and (3) introductory text revised (effective date pending)..... 54692
Regulation at 56 FR 54692 eff. 12-28-91..... 27704
(c) revised (efffective date pending)..... 28966
315.10 (b) and (d) amended (effective date pending)..... 54691
(a) and (c) revised; (e) and (f) added (effective date pending)..... 54692
Regulations at 56 FR 54691 and 54692 eff. 12-28-91..... 27704
315.11 (a)(2) and (b)(2) amended (effective date pending)..... 54691
(a)(1) amended (effective date pending)..... 54692
Regulations at 56 FR 54691 and 45692 eff. 12-28-91..... 27704
315.12 (a) introductory text, (2), (3), (4) and (b)(2) amended (effective date pending)..... 54691
Regulation at 56 FR 54691 eff. 12-28-91..... 27704
315.13 (d)(2) amended (effective date pending)..... 54691
(b) amended (effective date pending)..... 54692
Regulations at 56 FR 54691 and 54692 eff. 12-28-91..... 27704
315.14 Amended (effective date pending)..... 54692
Regulation at 56 FR 54692 eff. 12-28-91..... 27704
315.32 (a) introductory text, (1), (d)(2)(i), (ii) and (iii) amended (effective date pending)..... 54691
(c)(4), (d)(1)(iv) and (2)(ii) amended (effective date pending)..... 54692
Regulations at 56 FR 54691 and 54692 eff. 12-28-91..... 27704
315.33 (a) introductory text, (2) and (3) amended (effective date pending)..... 54691
(b)(5) and (c)(1)(iv) amended (effective date pending)..... 54692
Regulations at 56 FR 54691 and 54692 eff. 12-28-91..... 27704

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 34 Chapter III—Con. Page

315.41 Added (effective date pending).....54692
OMB number.....14314
Regulation at 56 FR 54692 eff. 12-28-91.....27704
316 Heading revised (effective date pending).....54693
Regulation at 56 FR 54693 eff. 12-28-91.....27704
316.1 (a) revised (effective date pending).....54693
Regulation at 56 FR 54693 eff. 12-28-91.....27704
316.3 (a), (b), (e) and (f) revised (effective date pending).....54693
Regulation at 56 FR 54693 eff. 12-28-91.....27704
316.4 (a) revised (effective date pending).....54693
Regulation at 56 FR 54693 eff. 12-28-91.....27704
316.5 (c) revised (effective date pending).....54693
Regulation at 56 FR 54693 eff. 12-28-91.....27704
316.21 (a)(2), (b)(1), (2), (5), (6) and (e)(4) revised (effective date pending).....54693
Regulation at 56 FR 54694 eff. 12-28-91.....27704
316.22 (a) revised; (c) added (effective date pending).....54694
Regulation at 56 FR 54694 eff. 12-28-91.....27704
316.30 Revised (effective date pending).....54694
Regulation at 56 FR 54694 eff. 12-28-91.....27704
316.31 Revised (effective date pending).....54694
Regulation at 56 FR 54694 eff. 12-28-91.....27704
316.32 Added (effective date pending).....54694
Regulation at 56 FR 54694 eff. 12-28-91.....27704
318 Revised (effective date pending).....57199
Regulation at 56 FR 57199 eff. 12-28-91.....27704
319 Heading revised (effective date pending).....54694
Regulation at 56 FR 54694 eff. 12-28-91.....27704

Page

319.1 Introductory text amended (effective date pending).....54694
Regulation at 56 FR 54694 eff. 12-28-91.....27704
319.2 (a) amended; (b) revised; (c) and (d) added (effective date pending).....54694
Regulation at 56 FR 54694 eff. 12-28-91.....27704
319.3 (a) revised (effective date pending).....54694
Regulation at 56 FR 54694 eff. 12-28-91.....27704
319.10 Heading and (a) revised (effective date pending).....54695
Regulation at 56 FR 54695 eff. 12-28-91.....27704
319.11 Added (effective date pending).....54695
Regulation at 56 FR 54695 eff. 12-28-91.....27704
319.20 Heading revised; (a) introductory text and (1) amended (effective date pending).....54695
Regulation at 56 FR 54695 eff. 12-28-91.....27704
319.21 (a) and (b) amended (effective date pending).....54695
Regulation at 56 FR 54695 eff. 12-28-91.....27704
319.22 (b)(1)(i), (iii), (2)(ii), (iv), (vii), (3)(v) and (5)(iv) amended (effective date pending).....54695
Regulation at 56 FR 54695 eff. 12-28-91.....27704
319.30 (h) revised (effective date pending).....54695
Regulation at 56 FR 54695 eff. 12-28-91.....27704
319.33 Added (effective date pending).....54695
Regulation at 56 FR 54695 eff. 12-28-91.....27704
320 Heading revised (effective date pending).....54695
Regulation at 56 FR 54695 eff. 12-28-91.....27704
320.1 Revised (effective date pending).....54695
Regulation at 56 FR 54695 eff. 12-28-91.....27704
320.2 Amended (effective date pending).....54695

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

Regulation at 56 FR 54695 eff. 12-28-91 ... **27704**

320.3 Redesignated as 320.4; new 320.3 added (effective date pending) ... 54695

Regulation at 56 FR 54695 eff. 12-28-91 ... **27704**

320.4 Redesignated as 320.5; new 320.4 redesignated from 320.3 (effective date pending) ... 54695

(b)(1), (4) and (5) revised; (b)(6) through (9) added (effective date pending) ... 54696

Regulations at 56 FR 54695 and 54696 eff. 12-28-91 ... **27704**

320.5 Redesignated from 320.4 (effective date pending) ... 54695

Regulation at 56 FR 54695 eff. 12-28-91 ... **27704**

320.10 Revised (effective date pending) ... 54696

Regulation at 56 FR 54696 eff. 12-28-91 ... **27704**

320.30 (a)(2)(v)(C) and (b)(2)(iv)(C) amended (effective date pending) ... 54696

Regulation at 56 FR 54696 eff. 12-28-91 ... **27704**

320.32 Added (effective date pending) ... 54696

OMB number ... **14314**

Regulation at 56 FR 54696 eff. 12-28-91 ... **27704**

320.40 (a) amended (effective date pending) ... 54696

Regulation at 56 FR 54696 eff. 12-28-91 ... **27704**

320.41 Added (effective date pending) ... 54696

OMB number ... **14314**

Regulation at 56 FR 54696 eff. 12-28-91 ... **27704**

324 Heading revised (effective date pending) ... 54697

Authority citation revised ... **28966**

Regulation at 56 FR 54697 eff. 12-28-91 ... **27704**

324.1 Revised (effective date pending) ... 54697

Regulation at 56 FR 54697 eff. 12-28-91 ... **27704**

324.2 (a) and (b) amended (effective date pending) ... 54697

Regulation at 56 FR 54697 eff. 12-28-91 ... **27704**

Page

324.3 (b)(1), (3) and (4) revised; (b)(5) through (8) added (effective date pending) ... 54697

Regulation at 56 FR 54697 eff. 12-28-91 ... **27704**

324.4 (b) and (c) amended (effective date pending) ... 54697

Regulation at 56 FR 54697 eff. 12-28-91 ... **27704**

324.10—324.11 (Subpart B) Heading revised (effective date pending) ... 54697

Regulation at 56 FR 54697 eff. 12-28-91 ... **27704**

324.10 Revised (effective date pending) ... 54697

Regulation at 56 FR 54697 eff. 12-28-91 ... **27704**

(c) added (effective date pending) ... **28966**

324.11 (a), (b) introductory text and (1) amended (effective date pending) ... 54698

Regulation at 56 FR 54698 eff. 12-28-91 ... **27704**

324.30 (b) revised (effective date pending) ... 54698

Regulation at 56 FR 54698 eff. 12-28-91 ... **27704**

324.31 (a)(2)(C) and (b)((2)(iv)(C) amended; (f) and (g) revised (effective date pending) ... 54698

Regulation at 56 FR 54698 eff. 12-28-91 ... **27704**

324.32 (a)(2)(v)(C) and (b)(2)(iv)(C) amended (effective date pending) ... 54698

Regulation at 56 FR 54698 eff. 12-28-91 ... **27704**

324.41 Added (effective date pending) ... 54698

OMB number ... **14315**

Regulation at 56 FR 54698 eff. 12-28-91 ... **27704**

325 Added (effective date pending) ... 66291

Regulation at 56 FR 66291 eff. 2-3-92 ... **27704**

326 Heading revised (effective date pending) ... 54698

Regulation at 56 FR 54698 eff. 12-28-91 ... **27704**

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 34 Chapter III—Con. Page

326.1 Heading, (a)(1), (2)(i), (iii) and (b) amended (effective date pending)..... 54698
Regulation at 56 FR 54698 eff. 12-28-91..... **27704**
326.3 Introductory text, (b)(1), (4) and (5) revised; (b)(6) through (9) added (effective date pending)..... 54698
Regulation at 56 FR 54698 eff. 12-28-91..... **27704**
326.4 (c)(2) amended (effective date pending)..... 54698
(b) and (c)(1) amended (effective date pending)..... 54699
Regulations at 56 FR 54698 and 54699 eff. 12-28-91..... **27704**
326.10 (a)(1), (3), (4) and (b) amended (effective date pending)..... 54698
(a)(3) amended (effective date pending)..... 54699
Regulations at 56 FR 54698 and 54699 eff. 12-28-91..... **27704**
326.20 (a), (b)(2) and (3) amended (effective date pending)..... 54698
(b)(3) amended (effective date pending)..... 54699
Regulations at 56 FR 54698 and 54699 eff. 12-28-91..... **27704**
326.30 (b) through (h) amended (effective date pending)..... 54698
(b), (i) and (j) amended; (k) revised; (l) added (effective date pending)..... 54699
Regulations at 56 FR 54698 and 54699 eff. 12-28-91..... **27704**
326.32 (g) amended (effective date pending)..... 54698
(a)(2)(v)(C) and (b)(2)(iv)(C) amended (effective date pending)..... 54699
Regulations at 56 FR 54698 and 54699 eff. 12-28-91..... **27704**
326.33 (g) amended (effective date pending)..... 54698
(a)(2)(v)(C) and (b)(2)(iv)(C) amended (effective date pending)..... 54699
Regulations at 56 FR 54698 and 54699 eff. 12-28-91..... **27704**
326.40 Amended (effective date pending)..... 54698, 54699
Regulations at 56 FR 54698 and 54699 eff. 12-28-91..... **27704**
326.42 Added (effective date pending)..... 54699
OMB number..... **14315**
Regulation at 56 FR 54699 eff. 12-28-91..... **27704**
327 Heading revised (effective date pending)..... 54699
Regulation at 56 FR 54699 eff. 12-28-91..... **27704**
327.1 Amended (effective date pending)..... 54699
Regulation at 56 FR 54699 eff. 12-28-91..... **27704**
327.2 (a) amended; (c) and (d) added (effective date pending)..... 54699
Regulation at 56 FR 54699 eff. 12-28-91..... **27704**
327.3 (b)(1), (4) and (5) revised; (b)(6), (7) and (8) added (effective date pending)..... 54699
Regulation at 56 FR 54699 eff. 12-28-91..... **27704**
327.4 (a) designation and (b) removed (effective date pending)..... 54700
Regulation at 56 FR 54700 eff. 12-28-91..... **27704**
327.10 Revised (effective date pending)..... 54700
Regulation at 56 FR 54700 eff. 12-28-91..... **27704**
327.30 Revised (effective date pending)..... 54701
Regulation at 56 FR 54701 eff. 12-28-91..... **27704**
Amended (effective date pending)..... **28966**
327.31 (a)(2)(v)(C), (b)(2)(iv)(C), (g) introductory text, (2) and (3) amended (effective date pending)..... 54701
Regulation at 56 FR 54701 eff. 12-28-91..... **27704**
327.40 (b) revised (effective date pending)..... 54701
Regulation at 56 FR 54701 eff. 12-28-91..... **27704**
327.41 Added (effective date pending)..... 54701
OMB number..... **14315**
Regulation at 56 FR 54701 eff. 12-28-91..... **27704**

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

328 Added (effective date pending)..... 56457
Regulation at 56 FR 56457 eff. 12-28-91..... **27704**
330 Heading revised (effective date pending)..... 54701
Regulation at 56 FR 54701 eff. 12-28-91..... **27704**
330.1 Revised (effective date pending)..... 54701
Regulation at 56 FR 54701 eff. 12-28-91..... **27704**
330.2 Revised (effective date pending)..... 54701
Regulation at 56 FR 54701 eff. 12-28-91..... **27704**
330.4 (b) amended (effective date pending)..... 54701
Regulation at 56 FR 54701 eff. 12-28-91..... **27704**
330.50 (b) revised (effective date pending)..... 54701
Regulation at 56 FR 54701 eff. 12-28-91..... **27704**
331 Heading revised (effective date pending)..... 54701
Regulation at 56 FR 54701 eff. 12-28-91..... **27704**
331.1 Revised (effective date pending)..... 54702
Regulation at 56 FR 54702 eff. 12-28-91..... **27704**
331.2 Revised (effective date pending)..... 54702
Regulation at 56 FR 54702 eff. 12-28-91..... **27704**
331.4 Heading revised; (b) amended (effective date pending)..... 54702
Regulation at 56 FR 54702 eff. 12-28-91..... **27704**
332.1 Revised (effective date pending)..... 54702
Regulation at 56 FR 54702 eff. 12-28-91..... **27704**
332.2 Amended (effective date pending)..... 54702
Regulation at 56 FR 54702 eff. 12-28-91..... **27704**
332.3 Revised (effective date pending)..... 54702
Regulation at 56 FR 54702 eff. 12-28-91..... **27704**
332.4 (b) amended (effective date pending)..... 54702

Page

Regulation at 56 FR 54702 eff. 12-28-91..... **27704**
332.10 (a) introductory text, (1), (4), (b) and (e) amended; (f) through (i) added (effective date pending)..... 54702
Regulation at 56 FR 54702 eff. 12-28-91..... **27704**
332.30 (b) amended (effective date pending)..... 54703
Regulation at 56 FR 54703 eff. 12-28-91..... **27704**
332.32 (a)(2)(v)(A), (b)(2)(iv)(A) and (f)(2)(i) amended (effective date pending)..... 54703
OMB number..... **14315**
Regulation at 56 FR 54703 eff. 12-28-91..... **27704**
332.41 Added (effective date pending)..... 54703
OMB number..... **14315**
Regulation at 56 FR 54703 eff. 12-28-91..... **27704**
333 Heading revised (effective date pending)..... 54703
Regulation at 56 FR 54703 eff. 12-28-91..... **27704**
333.1 Revised (effective date pending)..... 54703
Regulation at 56 FR 54703 eff. 12-28-91..... **27704**
333.2 Existing text designated as (a); (b) added (effective date pending)..... 54703
Regulation at 56 FR 54703 eff. 12-28-91..... **27704**
333.3 Heading revised; (a) through (f) amended; (g) and (h) added (effective date pending)..... 54703
Regulation at 56 FR 54703 eff. 12-28-91..... **27704**
333.4 Heading revised (effective date pending)..... 54703
Regulation at 56 FR 54703 eff. 12-28-91..... **27704**
333.5 (a)(1) revised (effective date pending)..... 54703
Regulation at 56 FR 54703 eff. 12-28-91..... **27704**
333.6 (b) and (c) amended (effective date pending)..... 54703
Regulation at 56 FR 54703 eff. 12-28-91..... **27704**

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 34 Chapter III—Con. Page

333.21 (d)(2)(iv) and (f)(1) amended (effective date pending) 54704
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**
333.22 (c)(2)(iii) and (e)(2)(iv) amended (effective date pending) 54704
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**
333.31 Added (effective date pending) 54704
OMB number **14315**
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**
338 Heading revised (effective date pending) 54704
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**
338.1 Revised (effective date pending) 54704
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**
338.3 Introductory text amended; (b)(1), (4) and (5) revised; (b)(6) through (9) added (effective date pending) 54704
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**
338.4 (c) revised (effective date pending) 54704
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**
338.10 (a)(2) introductory text, (i), (ii), (iv), (3), (4) and (b)(11) amended; (a)(2)(iii) revised (effective date pending) 54704
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**
338.20 (a) and (b) amended (effective date pending) 54704
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**
338.30 (b) and (c) amended (effective date pending) 54704
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**
338.31 (a)(2)(v)(C), (b)(2)(iv)(C) and (h) amended (effective date pending) 54704
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**

Page

338.41 Added (effective date pending) 54704
OMB number **14315**
Regulation at 56 FR 54704 eff. 12-28-91 ..... **27704**
345.20 OMB number **14315**
345.21 OMB number **14315**
345.31 OMB number **14315**
345.40 OMB number **14315**
345.41 OMB number **14315**
345.43 OMB number **14315**
345.46 OMB number **14315**
347 Added (effective date pending) 40195
Regulation at 56 FR 40195 eff. 9-27-91 ..... **27703**
350.3 Regulation at 56 FR 28031 eff. 8-19-91 ..... **27703**
356.3 Regulation at 56 FR 28031 eff. 8-19-91 ..... **27703**
361.1 (b)(3) added; (c)(2) amended; (effective date pending) **28440**
361.41 (b)(1) and (2) revised; (b)(3) added (effective date pending) **28440**
361.43 (a)(4) revised (effective date pending) **28441**
361.86 Revised 33149
Regulation at 56 FR 33149 eff. 9-2-91 ..... **27703**
363 Revised (effective date pending) **28437**
376 Authority citation revised **28441**
376.1 Amended (effective date pending) **28441**
376.3 (c) added (effective date pending) **28441**
376.4 Revised (effective date pending) **28441**
380.5 (a)(6) revised (effective date pending) **28441**
380.9 (c) revised (effective date pending) **28441**
380.11 OMB number **14315**
380.12 OMB number **14315**
380.13 OMB number **14315**
380.20 (Subpart C) Added (effective date pending) **28442**

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Chapter VI—Office of Vocational and Adult Education, Department of Education (Parts 400-499)

Page

425 Redesignated as 460 (effective date pending)....24091
426 Redesignated as 461 (effective date pending)....24091
431 Redesignated as 471 (effective date pending)....24091
432 Redesignated as 472 (effective date pending)....24091
433 Redesignated as 462 (effective date pending)....24091
434 Redesignated as 463 (effective date pending)....24091
435 Redesignated as 474 (effective date pending)....24091
436 Redesignated as 475 (effective date pending)....24091
437 Redesignated as 476 (effective date pending)....24091
438 Redesignated as 477 (effective date pending)....24091
441 Redesignated as 491 (effective date pending)....24091
445 Regulation at 56 FR 20309 eff. 6-16-91....27703
460 Redesignated from 425 (effective date pending)....24091
460.2 (b) through (h) redesignated as (e), (b), (c) and (g) through (j); new (d), (f), (k) and (l) added (effective date pending)....24091
460.3 Revised (effective date pending)....24091
460.4 (a) and (c) amended (effective date pending)....24092
461 Redesignated from 426 and revised (effective date pending)....24091
462 Redesignated from 433 (effective date pending)....24091
462.50 (d) revised (effective date pending)....24100
463 Redesignated from 434 (effective date pending)....24091
464 Added (effective date pending)....24100
471 Redesignated from 431 (effective date pending)....24091
472 Redesignated from 432 (effective date pending)....24091
472.20 (c) added (effective date pending)....24102
472.30 (c) removed; (d) revised (effective date pending)....24102
473 Added (effective date pending)....24102
474 Redesignated from 435 (effective date pending)....24091
475 Redesignated from 436 (effective date pending)....24091
476 Redesignated from 437 (effective date pending)....24091
477 Redesignated from 438 (effective date pending)....24091
489 Added (effective date pending)....24105
490 Added (effective date pending)....24107
491 Redesignated from 441 (effective date pending)....24091

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

600 Authority citation revised....36695
600.30 (b) and (c) redesignated as (c) and (d); (a) introductory text revised; new (a)(6), (b), (e) and (f) added (effective date pending)....36695
OMB number....6557
Regulation at 56 FR 36695 eff. 9-14-91....27703
600.32 Added (effective date pending)....36696
Regulation at 56 FR 36696 eff. 9-14-91....27703
642.5 (b) amended (effective date pending)....9005
Regulation at 57 FR 9005 eff. 5-6-92....27704
643.3 (a)(1)(iii) amended; (a)(1)(v) and (vi) added (effective date pending)....9005
Regulation at 57 FR 9005 eff. 5-6-92....27704
Regulation at 57 FR 9005 eff. 5-6-92....27704
643.6 (b) amended (effective date pending)....9005
Regulation at 57 FR 9005 eff. 5-6-92....27704

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 34 Chapter VI—Con. Page

Regulation at 57 FR 9005 eff. 5-6-92 27704

644.3 (a)(3) amended; (a)(5) and (6) added (effective date pending) 9005

644.6 (b) amended (effective date pending) 9005

645.3 (a)(1)(iii) amended; (a)(1)(v) and (vi) added (effective date pending) 9005

Regulation at 57 FR 9005 eff. 5-6-92 27704

645.6 (b) amended (effective date pending) 9005

Regulation at 57 FR 9005 eff. 5-6-92 27704

646.3 (a)(3) amended; (a)(5) and (6) added (effective date pending) 9005

Regulation at 57 FR 9005 eff. 5-6-92 27704

646.6 (b) amended (effective date pending) 9005

Regulation at 57 FR 9005 eff. 5-6-92 27704

652 Added (effective date pending) 10729

Regulation at 57 FR 10729 eff. 5-11-92 27704

664 Authority citation revised 28976

664.14 (a)(2) revised (effective date pending) 28976

668 Authority citation revised 61337

668.1 (c)(4) removed; (c)(5) through (11) redesignated as (c)(4) through (10); (c)(3), new (c)(9) and (10) amended; (b) revised (effective date pending) 36696

Regulation at 56 FR 36696 eff. 9-14-91 27703

668.2 Revised (effective date pending) 36696

Regulation at 56 FR 36696 eff. 9-14-91 27703

668.7 Authority citation amended 36697

(a)(4)(iv) and authority citation revised (effective date pending) 9006

Regulation at 56 FR 36697 eff. 9-14-91 27703

Regulation at 57 FR 9006 eff. 5-6-92 27704

668.13 (c)(3) and (4)(iii)(B) amended; (c)(5), (d)(3) and (h) through (k) added (effective date pending) 36697

Regulation at 56 FR 36697 eff. 9-14-91 27703

668.15 (a)(1), (b) introductory text, (1)(i), (ii) introductory text and (e) amended; (f) redesignated as (h); new (h)(1) revised; (f), (g) and (i) added (effective date pending) 33338

OMB number 43702

Regulation at 56 FR 33338 eff. 9-2-91 27703

668.20 Heading revised; (c)(1) and (2) amended; (c)(3) added (effective date pending) 36698

Regulation at 56 FR 36698 eff. 9-14-91 27703

668.23 (b) revised (effective date pending) 36698

(d) revised (effective date pending) 66495

Regulation at 56 FR 36698 eff. 9-14-91 27703

Regulation at 56 FR 66495 eff. 2-6-92 27704

668.25 Revised (effective date pending) 33341

OMB number 43702

Regulation at 56 FR 33341 eff. 9-2-91 27703

668.44 (c) through (f) removed; (a)(3) amended (effective date pending) 36698

Regulation at 56 FR 36698 eff. 9-14-91 27703

668.51—668.61 (Subpart E) Revised (effective date pending) 61337

Regulation at 56 FR 61337 eff. 1-16-92 27704

668.51 (c) introductory text and (1) amended (effective date pending) 36698

Regulation at 56 FR 36698 eff. 9-14-91 27703

668.90 (a)(3)(i), (ii) and (iii) amended; (a)(3)(iv) and (v) added (effective date pending) 36698

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

(a)(3)(iii) amended (effective date pending) ... 33342
Regulation at 56 FR 33342 eff. 9-2-91 ... **27703**
Regulation at 56 FR 36698 eff. 9-14-91 ... **27703**
668.95 (b)(1)(ii) amended (effective date pending) ... 36699
Regulation at 56 FR 36699 eff. 9-14-91 ... **27703**
668 Appendix A removed (effective date pending) ... 36698
Removal at 56 FR 36698 eff. 9-14-91 ... **27703**
671 Added (effective date pending) ... **24955**
682 OMB number ... 64703
682.208 (e) added (effective date pending) ... 48992
Regulation at 56 FR 48992 eff. 11-10-91 ... **27704**
682.401 (b)(14) added (effective date pending) ... 33342
OMB number ... 43702
Regulation at 56 FR 33342 eff. 9-2-91 ... **27703**
682.410 (c)(1)(iii) amended (effective date pending) ... 33342
Regulation at 56 FR 33342 eff. 9-2-91 ... **27703**
682.603 (c) amended (effective date pending) ... 33342
Regulation at 56 FR 33342 eff. 9-2-91 ... **27703**
682.606 (b)(2) amended (effective date pending) ... 33342
Regulation at 56 FR 33342 eff. 9-2-91 ... **27703**
690 Technical correction ... **2021**
690.2 (a) and (b) redesignated as (b) and (c) and amended; new (a) added (effective date pending) ... 56916
Regulation at 56 FR 56916 eff. 12-28-91 ... **27704**
690.3 (a) introductory text, (1), (2) and (b) amended (effective date pending) ... 56916
Regulation at 56 FR 56916 eff. 12-28-91 ... **27704**
690.7 (a)(1)(i) amended (effective date pending) ... 56916
Regulation at 56 FR 56916 eff. 12-28-91 ... **27704**
690.13 Amended (effective date pending) ... 56916

Page

Regulation at 56 FR 56916 eff. 12-28-91 ... **27704**
690.31 (a) introductory text, (1) through (4), (6), (7) and (b) amended; (a)(8) added (effective date pending) ... **28569**
690.32 (a) introductory text, (1) through (5) and (b) amended; (a)(6) added (effective date pending) ... **28569**
690.61 (b)(2) amended (effective date pending) ... 56916
Regulation at 56 FR 56916 eff. 12-28-91 ... **27704**
690.63 (a) introductory text, (3)(i), (ii) and (c) amended (effective date pending) ... 56916
Regulation at 56 FR 56916 eff. 12-28-91 ... **27704**
690.64 (c)(1) and (2) introductory text revised (effective date pending) ... 56916
Regulation at 56 FR 56916 eff. 12-28-91 ... **27704**
690.75 (a)(3) revised (effective date pending) ... 56916
Regulation at 56 FR 56916 eff. 12-28-91 ... **27704**
690.76 (b) revised (effective date pending) ... 56916
690.77 Nomenclature change; (a)(3) and (b) introductory text revised (effective date pending) ... 56916
Regulation at 56 FR 56916 eff. 12-28-91 ... **27704**
690.78 (d)(3) revised (effective date pending) ... 56916
Regulation at 56 FR 56916 eff. 12-28-91 ... **27704**
690.79 (c) revised (effective date pending) ... 56917
Regulation at 56 FR 56917 eff. 12-28-91 ... **27704**
690.83 (a) and authority citation revised; (b) redesignated as (b)(2); (b)(1), (c) and (d) added (effective date pending) ... 56917
Regulation at 56 FR 56917 eff. 12-28-91 ... **27704**
(c)(1)(ii) amended (effective date pending) ... **28569**
690.84 Removed (effective date pending) ... 56917

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 34 Chapter VI—Con. Page

Regulation at 56 FR 56917 eff. 12-28-91 27704

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

722 Added (effective date pending) 14961
Regulation at 57 FR 14961 eff. 6-10-92 27704
770 Revised (effective date pending) 9351
Regulation at 57 FR 9351 eff. 5-6-92 27704
791 Added (effective date pending) 8997
Regulation at 57 FR 8997 eff. 5-6-92 27704

Title 34—*Proposed Rules:*

1-99 (Subtitle A) 6205
81 506
100-799 (Subtitle B) 6205
200 21916
201 2863
208 54650
212 7300
222 46670
282 28452
300 ..... 41266, 67420
303 ..... 67420, 18986, 29180
361 30620
363 ..... 57778, 3158
400 51448
401 51448
402 51448
403 51448
405 51448
406 51448
407 51448
408 51448
409 51448
410 51448
411 51448
412 51448
413 51448
414 51448
415 51448
416 51448
417 51448
418 51448
419 51448
421 51448
422 51448
423 51448
424 51448
425 ..... 51448, 55542
426 ..... 51448, 55542
427 51448
428 51448
431 55542
432 55542
433 55542
434 55542
435 55542
436 55542
437 55542
438 55542
441 55542
460 55542
461 55542
462 55542
463 55542
464 55542
471 55542
472 55542
473 55542
474 55542
475 55542
476 55542
477 55542
489 55542
490 55542
491 55542
600 ..... 63574, 9618
664 ..... 63574, 66496
668 43978
682 59158
722 26750
769 9374
770 51122
791 55416
1200 55416

NOTE 1: **Boldface page numbers indicate 1992 changes.**

TITLE 35—PANAMA CANAL

Chapter 1—Panama Canal Regulations (Parts 1—299)

60.1 (b)(8) revised; (b)(9) and (10) added 59882
60.2 (b)(1) and (c) revised 59882
60.3 (f)(3)(ii) revised 59882
60.4 (a)(1) and (2) revised; (a)(3) added 59882

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

60.6 (d) introductory text revised 59882
60.8 (b) and (m) introductory text revised 59882
60.9 (f) revised 59882
60.10 (a), (d)(4)(i) and (e) revised 59883
60.11 (c) and (d) revised 59883
60.12 (a), (d)(3) and (e) revised 59883
60.13 (b), (d) and (e)(1) revised 59883
60.14 (a) revised 59884
60.15 Revised 59884
60.17 (b) and (c) revised; (d) added 59884
101.2 (a) and (b) revised 55632
251.4 (h) revised 40555
251.25 Revised 40555
251.31 (a), (b) introductory text, (1) and (c) revised; (b)(4) removed; (b)(5) redesignated as (b)(4) and revised; (e) added 40556
251.32 (b) revised; (d) added 40556
(b) corrected 28907
253.8 (b) introductory text and (d) revised 40556

Title 35—*Proposed Rules:*

35 514
101 31362
133 13067

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

7.8 (b) revised 41943
7.83 (a) revised 30696
Effective date delayed to 10-1-93 37158
7.96 (j) and (k) redesignated as (k) and (l); new (j) added 4576
28 Revised 42790

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

211.6 Added; interim 50513
211.17 (q) added 46550

Page

217.12 (a) revised 46550
217.19 (a) revised 46550
217.20 Removed 46551
223 Authority citation revised 65842
223.48 Revised 65842
223.49 (a) introductory text, (1) through (4), (c) and (d) revised; (j) added 36103
223.50 Revised 36104
(f) revised 55823
223.191 Added 65843
223.203 Added 65844
228.102 (b)(5) removed; (b)(3) and (4) amended 56157
230 Added; interim 63585
241 Heading and authority citation revised 63463
241.1—241.3 Designated as subpart A 63463
241.20—241.23 (Subpart B) Added 63463
242 Regulation at 55 FR 27121 effective date extended to 6-30-92 351
Authority citation revised 22535
242.1—242.9 (Subpart A) Revised 22951, 22964
242.10—242.20 (Subpart B) Revised 22953, 22964
242.15 (c) amended 351
242.22—242.24 (Subpart C) Revised 22957, 22964
242.23 (n)(1)(vii) table, (8)(ii) table and (25)(iii) table corrected; (n)(14)(iii) and (iv) correctly designated 43553
242.25—242.27 (Subpart D) Revised 22535

Chapter III—Corps of Engineers, Department of the Army (Parts 300—399)

327.30 Regulation at 56 FR 29587 effective date stayed 49706
Appendix C amended 21895
327.31 Regulation at 56 FR 29587 effective date stayed 49706
Revised 61163
Corrected 65190

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 36

Chapter VII—Library of Congress (Parts 700—799)

Page

704.22 Added 49414

Chapter XI—Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

1191 Authority citation revised 45518
1191 Added 35453
1191.1 Corrected 38174
Revised 45518
1191 Appendix amended 45518, 45520, 45526
Appendix corrected 1393, 1396
1192 Added 45558

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1202.32 Revised 22430
1202.100 Revised 22430
1220.2 Revised 19807
1220.14 Amended 19807
1220.34 Revised 19807
1220.36 Revised 19807
1228.30 (b)(3) revised 22432
1228.74 Revised 22432
1228.76 Revised 22432
Corrected 24308
1228.78 Added 22432
1228.150 Amended 21742
1228.180 (a)(2) and (c) revised 22432
1228.182 (a)(2)(ii) revised; (b)(2) and (3)(ii) amended 22432
1228.182 (a)(2)(ii) revised 22432
1228.183 Added 22433
1228.184 Introductory text, (a) introductory text, (b) introductory text, (1), (c) introductory text and (e)(1) revised 22433
1228.186 Introductory text revised 22433
1228.188 Revised 22433
1228.190 (b)(2) amended 22432
(b)(1) revised 22434
1228.192 Added 22434
1228.194 Revised 22434
1228.198 (a) and (b)(4) revised 22434
1238.2 Revised 19807

Page

1250 Authority citation revised 22430
1250.34 Amended 22430
1250.58 (a) and (c) revised 22430
1253.2 Amended 21742
1253.3 (b), (c), (e), (g) and (h) revised; (j) added 21742
1253.5 (a) revised 21742
1253.6 (c), (d), (h), (i) and (k) revised 21742
1253.7 (b) and (j) revised 21742
1254 Authority citation revised 58312
1254.26 (b) and (e) introductory text revised 58312
1254.38 (f)(1) and (4) revised 22431
1258.2 (c)(3), (6)(ii) and (8) revised 21743
1258.4 Introductory text and (f) revised; (g) through (i) removed 21743
1258.12 (g) revised 21743
1258.14 Revised 21743
1260.1 Revised 21744
1260.12 (a), (c) introductory text, (2) and (d) revised; (e) added 21744
1260.46 (b) and (c) revised 21744

Title 36—*Proposed Rules:*

7 ..... 3392, 4592, 10850
13 ..... 37262, 46589
51 ..... 41894, 54554
62 ..... 58790, 65203
..... 4592
200–299 (Ch. II) 6483
217 10444
219 42300
242 ..... 63702, 64404
..... 3676
254 49948
261 66388
290 66388
296 ..... 46259, 46261
..... 19472
1202 9672
1228 9673
1250 9672
1254 ..... 9672, 22447
1258 9676
1260 9677
1300 55416

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

Page

1.12 (a) and (d) revised....65151
(d) corrected....66670
1.13 (b) revised....65151
1.14 (d) revised....55461
1.16 Revised....65151
1.17 Revised....65152
(i)(1) revised; (p) added....2033
1.18 Revised....65152
1.19 Revised....65152
1.20 Revised....65153
1.21 Revised....65153
1.24 Revised....65153
1.26 (c) revised....65153
1.28 (d)(2) revised....2033
1.51 (b) revised....2033
1.52 (c) revised....2033
1.56 Revised....2034
1.63 (b)(3) and (d) revised....2034
1.67 (c) added....2034
1.97 Revised....2034
1.98 Revised....2035
1.99 Removed....2035
1.171 Revised....65153
1.175 (a)(7) revised....2035
1.193 (c) removed....2035
1.291 (a) and (c) revised....2035
1.296 Revised....65153
1.313 (b) revised....2035
1.362 (a), (b) and (e) revised....65154
1.378 (a), (b), (c)(1), (2) and (e) revised....65154
1.445 (a) revised....65154
1.482 (a) revised....65154
1.492 Revised....65154
1.555 Revised....2036
1.651 Revised....42529
(c)(3) corrected....42529
1.684 Revised....42529
(c)(3) corrected....46823
1.740 (a)(14) revised....65155
1.770 Revised....65155
2.6 Revised....65155
(a)(15), (b)(4) and (8) corrected....66670
2.120 (d)(1) revised....46379
(d)(1) corrected....54917
10.23 (c)(10) and (11) revised....2036

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

Page

201 Authority citation revised....38341
Authority citation revised....3296
201.4 (d) revised....59885
201.5 (c)(1) introductory text and footnote 2 amended....59885
201.9 (b) revised....59885
201.10 (f)(2) revised....59885
201.12 (h) revised....59885
201.17 (k) added; eff. 1-1-94....3296
201.18 (e)(1) and (3) amended....59885
201.25 Added....38341
201.26 Added....50658
202.1 (e) added....6202
202.3 (b)(4)(ii)(B), (5)(ii)(C) and (c)(2) amended....59885
(b)(5)(ii)(C) and (C)(2) correctly designated as (b)(6)(ii)(C) and (c)(2); (b)(3)(ii), (6)(ii), (C), and (c)(2) footnote 6 amended....65190
202.17 (c)(2)(ii) amended....59885
202.18 Added....65002
202.19 (c)(5) revised....47403
(f)(3) amended....59885
202.20 (c)(2)(vii) introductory text and (ix) revised; (c)(2)(iii) introductory text amended; (c)(2)(xix) added....47403
(c)(2)(xix) correctly designated....55632
(c)(1)(iv) revised....60065
(c)(2)(xvii) amended....65191
203.6 (b)(1) through (4) amended....59885
204.6 (a) amended....59886
211.3 (a) revised....59886

Chapter III—Copyright Royalty Tribunal (Parts 300—399)

304.5 (c)(1) through (4) revised....60924
307.3 Revised....56157
310 Added....19053
Technical correction....21152

Title 37—*Proposed Rules:*

1 ....37321, 40660, 41890
....2698, 21536, 23257
2 ....21536, 23257
10 ....37321, 40660, 41890

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 37 Title 37—Con. Page

201 ..... 31580, 32474
202 48137

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

[EDITORIAL NOTE: The revision for the 1992 edition of title 38 will be delayed until September 1, 1992. The 1992 revision will include amendments promulgated during the period of July 1, 1991 through September 1, 1992. For the convenience of the user, this LSA contains all amendments promulgated since the July 1, 1991 revision.]

Chapter I—Department of Veterans Affairs (Parts 0—99)

1.519 (e) amended 59218
1.554a Added **2229**
21.4154 (b)(3) corrected **28087**
3.1—3.1009 (Subpart A) Authority citation revised ... 65846, 65849, 65851, 65853
Authority citation revised ... **8268**, **10425**
3.2 (i) added 57986
3.3 (a)(3) amended 57986
3.7 (x) authority citation revised; (x)(20) and (21) added 65848
3.17 Amended 57986
3.30 Heading, introductory text, (a) heading, (b) heading, (c) heading and (d) heading revised; (e) redesignated as (f); new (e) added **10425**
3.54 (a)(3)(viii) added; (a)(3) authority citation revised 57986
3.55 (b) through (e) and cross reference revised **10426**
3.104 (a) amended 65846
Technical correction **2320**
3.105 (a) amended 65846
Technical correction **2320**
3.215 Revised **10426**
3.216 Added **8268**
Amended **27935**
3.272 (k) introductory text amended 65847
3.309 (d)(3) and (4)(i) revised **10426**
3.311a (d) removed; heading, (c) and authority citation revised 51653
(c)(1) amended; (d) added; authority citation revised 52474
3.342 (c)(1) and (2) amended; (c)(3) added 65851
3.343 (d) removed **10426**
3.400 (u)(3), (4), (v)(3), (4) and (w) revised **10426**
3.454 (b)(1), (2), (c) and (d) amended 65850
(b)(3) added 65851
(b)(3) corrected **7847**
3.500 (q) amended 65847
(w) added **8268**
3.501 (i)(1) and (2) revised; (i)(3) and (4) redesignated as (i)(6) and (7); new (i)(3), (4) and (5) added 65849
(n) added 65853
3.551 (b) heading revised; (b) redesignated as (b)(1); (d), (f) and (g) redesignated as (f), (g) and (h); (b)(2), (3) and new (d) added; (e) and (h)(1) introductory text revised 65849
(c)(2), (4), (6) and (7) removed; (c)(3) and (5) redesignated as (c)(2) and (3); (a), (b)(1), (c) introductory text, (1), new (c)(2), (3), (h)(2) and (3) amended 65850
(h) correctly redesignated as (i) **8578**
3.850—3.857 Undesignated center heading revised 65853
3.853 Added 65853
3.951 Existing text designated as (b); (a) and authority citation added **10426**
3.1600—3.1612 (Subpart B) Authority citation revised **29025**
3.1610 Revised **29025**
3.1612 (b)(3), (c), (e)(1) and (2)(i) revised; (e)(2)(iii) and (3) redesignated as (e)(3) and (4) 65851
4 Technical correction **11352**
4.17 Introductory text amended; authority citation added 57985
4.73 Table amended 51653
4.84a Table revised **24364**
4.88a Table amended **10136**
4.104 Table amended 51653
4.124a Table amended; authority citation added 51653
Table revised **24364**
8 Authority citation revised 57492
8.5 Amended; authority citation added 57492
9.2 (a) and (b) amended **11910**

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

9.3 (e) revised 11910
9.4 Revised 11910
9.24 (a)(1) and (2) amended 11910
13 Authority citation revised 65853
13.109 Heading, (d)(5) and authority citation revised 65853
14 Authority citation revised 4104
14.634 Removed; new 14.634 redesignated from 14.636; amended; authority citation added 4104
14.635 Removed; new 14.635 redesignated from 14.637; amended 4104
14.636 Redesignated as 14.634 4104
14.637 Redesignated as 14.635 4104
17.100 Introductory text, (e), (h), (i) and (m) removed; (a) through (d), (f), (g), (j), (k) and (l) redesignated as (f) through (n); new (a) through (e) added; new (h), (k)(1) and (2) amended 52475
17.101 Redesignated as 17.102; new 17.101 added 52475
17.102 Redesignated as 17.103; new 17.102 redesignated from 17.101 52475
17.103 Redesignated from 17.102 52475
17.123 (b)(1)(i)(A) revised 4367
19 Revised 4104
20 Added 4109
20.102 (d) corrected 20055
21.4001—21.4280 (Subpart D) Authority citation revised 29027
21.4135 (s) revised; eff. 8-1-93 24367
21.4138 (e) revised; eff. 8-1-93 24367
21.4154 (b)(3) revised 28087
21.4204 (a) revised; OMB number; eff. 8-1-93 24367
21.4234 (d)(4) revised 29027
21.4700—21.4705 (Subpart F-2) Added; interim 14489
21.5820 (b) introductory text, (b)(1)(ii)(A), (B), (C), (2)(ii)(A), (B) and (C) amended 44008
21.5822 (b)(1)(i), (ii), (2)(i) and (ii) amended 44008
21.6005 (j) correctly designated 28086

Page

21.7000—21.7310 (Subpart K) Authority citation revised 29027
21.7020 (b)(25)(i)(E), (F) and (26)(ii) revised; (b)(25)(i)(G) added 15023
21.7042 (a)(3), (b)(2) and (e)(2)(iii) revised 15023
(a)(4), (a) authority citation, (c)(4) and (c) authority citation revised 29026
21.7044 (a)(5) and (a) authority citation revised 29026
21.7050 (a) and (b) revised 15024
21.7076 (b)(1) corrected 31332
(a) and (b)(1) introductory text revised; (b)(9) added 15024
21.7114 Revised 29027
21.7120 (c) revised 15024
21.7135 (e)(5) added; (l) and (q) revised 15024
21.7136 (a), (b)(1), (2) and (3) introductory text revised; interim 11911
21.7137 (a) and (c)(2) revised; interim 11911
21.7138 Corrected 31332
21.7139 (a) introductory text revised 15025
21.7140 (d) correctly designated as (f) 31332
(c)(1)(iii) revised 15025
21.7142 (a)(5) and (6) revised; (a)(7) added; (a) authority citation revised 15025
21.7145 Heading, (a), (d) and (f) revised 15025
21.7153 (c) revised; (d) added 15025
21.7154 (b)(1)(ii) revised; (b)(1)(iii) added 15026
(a)(2)(ii), (iii) and authority citation revised; eff. 7-9-92 24368
21.7156 (a)(2) revised 15026
21.7172 (a)(1) and (2) revised; (a) authority citation added 15026
21.7220 (c) added 15026
21.7222 (b) revised 15026
21.7280 (b)(3)(ii) revised 15026
36.4212 Nomenclature change; (a)(1), (2) and (3) amended 29900, 40792, 48736, 67196

Nomenclature change; (a)(1), (2) and (3) amended 7656

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 38 Chapter I—Con. Page

36.4225 Added....40559
(d) and (e) added....828
36.4226 Added....40560
36.4311 Nomenclature change; (a), (b) and (c) amended...29900, 40792, 48736, 67196
Nomenclature change; (a), (b), and (c) amended....7656
36.4348 Added....40561
(d) and (e) added....829
36.4349 Added....40562
36.4503 (a) amended...29900, 40793, 48736, 67197
(a) amended....7656
46 Added....55462

Title 38—*Proposed Rules:*

1 ....1440, 3035, 3975, 15046
3 ....30893, 40661
...1442, 1699, 2236, 10449, 10853, 24446, 29052
4 ....37053, 61216, 65874
....10450
13 40661
14 3852
19 4131
20 4131
21 ....46140, 49735, 51663, 51861, 60078
....865, 9081, 15047, 24447, 26632
36 13068

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

20 IMM amended; incorporation by reference....3554, 9978, 21033
111 DMM amended; incorporation by reference...36729, 46554, 48438, 51840, 51982, 57733, 58859, 67569
Corrected....1519
DMM amended; incorporation by reference...5779, 5858, 6558, 14357, 20407, 27181, 28466, 29029
111.2 (c) revised....41463
111.3 (e) table amended...56013, 56015
(e) table amended....21611, 21613
221 Authority citation revised....55823
221.8 (a) amended; (c) added....55823
222 Authority citation revised....55823
224 Authority citation revised....55823
224.3 Revised....55823
224.41 (b)(1) amended....55823
233 Technical correction....55157
Heading and authority citation revised....55823
233.1 Heading, (a) introductory text, (b) and (c) revised; (a)(1), (2) and (3) amended; (a)(4), (5) and (d) added....55823
265 Authority citation revised....55824
265.8 Redesignated as 265.9; new 265.8 added....56934
(e)(3) revised....57805
265.9 Redesignated as 265.10; new 265.9 redesignated from 265.8....56934
265.10 Heading revised; (c) added....55824
Redesignated as 265.11; new 265.10 redesignated from 265.9....56934
265.11 Redesignated from 265.10....56934
265 Appendix A revised....57984
273.2 (a)(1), (e) introductory text, (2) and (g) amended....55825
273.3 (a)(5) amended....55825
273.5 (b)(1), (2) and (c) introductory text amended....55825
273.8 (a)(4) amended....55825
602.2 Revised....58859
602.3 Revised....58859
959.18 Amended....55825

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.61—3001.68 (Subpart C) Appendix A amended....20410

Title 39—*Proposed Rules:*

20 10151
39 32136
71 32138
111 ....36750, 63895
...2702, 9402, 10224, 11593, 12893, 13327, 14525, 19698, 21367, 23072
265 ....31363, 43736
3001 ....42713, 55860, 56955, 66391
....24564

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

Page

Chapter I Nomenclature change....28087, 28088
1.25 (e) added....5323
3.100—3.106 (Subpart A) Appendix C amended....5323
17.8 Revised....5323
17.14 (b) revised....5323
22 Authority citation revised....4318
22.01 (a)(2) revised....4318
22.03 Amended....5323
22.04 (a), (b) and (d)(2) revised; (d)(1) amended....5324
22.05 (c)(1) revised; (c)(5) amended....5324
22.06 Amended....5325
22.07 (b) amended....5324
22.08 Amended....5325
22.09 (a) amended....5325
22.11 (d) amended....5325
22.16 (b) and (c) amended....5325
22.23 (b) amended....5325
22.27 (a) amended....5325
22.29 (a), (c) and (d) amended; (b) revised....5325
22.30 (a)(1), (2) and (b) amended; (c) and (d) revised....5325
22.31 (a) revised....5326
22.32 Revised....5326
22.34 Revised....4318
22.43 Added....4318
24 Authority citation revised....49380
24.01 (a) revised; (c) redesignated as (d); new (c) added....49380
24.02 (a) revised....49380
24.04 (a) revised....49380
24.08 Revised....49380
27.2 Amended....5326
27.10 (h) through (l) revised....5326
27.14 (a)(2) and (b) revised....5326
27.16 (f)(3) revised....5326
27.31 (a) amended; (b) introductory text and (c) revised....5327
27.35 (b) revised....5327
27.37 (d) revised....5327
27.38 (f) and (g) revised....5327
27.39 (a), (b)(3), (c), (f) and (h) through (l) revised....5327
27.40 Revised....5327

Page

27.41 Revised....5327
27.42 Revised....5327
27.46 (c) and (e) revised....5327
27.48 Revised....5328
35.115 (i) revised....8074
35.2010 Deviation from rule....47403
47 Added; interim....8390
51 Authority citation revised....42219
51.100 (s) added....3945
51.165 (a)(1)(xix) revised....3946
51.166 (b)(29) revised....3946
51 Appendix V amended....42219, 57288
Appendix M amended....65435
Appendix S amended....3946
52 State implementation plan determinations....52476, 54789, 65441
Authority delegation notice....67197
Authority citation revised....27936, 27939, 27942
52.21 (b)(30) revised....3946
52.24 (f)(18) revised....3946
52.50 (c)(53) added....32514
(c)(58) added; eff. 8-10-92....24370
52.63 Added....32514
52.65 Added; eff. 8-10-92....24370
52.120 (c)(67) added....355
(c)(68) added....8271
52.136 Removed....8271
52.137 Removed....8271
52.145 (d) added....50186
52.220 (c)(184) added....41285
(c)(183) and (184)(i)(B) added....10138
(c)(177)(E) added; eff. 7-10-92....24550
(c)(185) added....15029
(c)(183)(i)(C), (185)(i)(A)(2), (B)(2) and (187) added; eff. 8-24-92....28090
52.320 (c)(54) added; eff. 7-17-92....27000
(c)(58) added; eff. 7-24-92....28092
(c)(55) added; eff. 8-25-92....28617
52.329 (a)(1), (2) and (3) revised; (a)(4) removed; eff. 7-17-92....27000
52.343 (a)(1), (3) and (8) revised; eff. 7-17-92....27000
52.370 (c)(58) added....52210
(c)(61) added....10140
52.420 (c)(43) added....353
52.520 (c)(72) added....51984
(c)(73) added....7552

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 40 Chapter I—Con. Page

(c)(69) added; eff. 8-10-92..... 24371
(c)(74) added; eff. 8-10-92..... 24379
52.531 Added..... 51984
52.570 (c)(40) added; eff. 8-10-92..... 24373
52.720 (c)(83) added..... 10142
(c)(83) removed..... 24957
(c)(86) added; eff. 7-26-92..... 28618
52.741 (z)(2) added..... 33712
(z)(3) added..... 33714
(z)(1) amended; (z)(4) added..... 58503
(a)(3) amended..... 3946
(z)(3) revised..... 7550
(z)(1) and (4) revised..... 27936
52.770 (c)(87) added..... 8086
52.777 (c)(2) added..... 8086
52.820 (c)(54) added..... 56159
(c)(55) added..... 60925
(c)(56) added..... 2473
52.870 (c)(26) added; eff. 7-23-92..... 27939
52.873 Existing text designated as (a); (b) added; eff. 7-23-92..... 27939
52.970 (c)(58) added..... 8076
52.1020 (c)(30) added..... 3948
52.1031 Table amended..... 3948
52.1070 (c)(89) added; eff. 8-24-92..... 28093
52.1120 (c)(91) added..... 50660
52.1167 Table amended..... 50660
52.1170 (c)(91) added; eff. 7-13-92..... 24756
(c)(89) added; eff. 8-24-92..... 28093
52.1320 (c)(78) added..... 33715
(c)(76) added..... 8077
(c)(77) added; eff. 7-23-92..... 27942
52.1323 (h) added; eff. 7-23-92..... 27942
52.1420 (c)(38) added..... 30336
(c)(39) added..... 50516
52.1520 (c)(41) added..... 40253
(c)(44) added..... 64704
52.1525 Table amended..... 40253
52.1570 (c)(48) added..... 50518
52.1605 Table amended..... 50518
52.1620 (c)(43) added..... 32512
(c)(44) added..... 57494
52.1623 Removed..... 57495
52.1639 Revised..... 38074
52.1670 (c)(83) added..... 37477
52.1675 (h) revised..... 37477
52.1683 Revised..... 41463
52.1870 (c)(68) added..... 3013
52.1920 (c)(41) added..... 33171
(c)(40) added..... 37654
(c)(42) added..... 8080
52.1970 (c)(87) added..... 36007
(c)(85) and (91) added..... 46556
(c)(92) added; eff. 8-10-92..... 24374
52.1977 Added..... 36007
Revised..... 46556
Revised; eff. 8-10-92..... 24375
52.2070 (c)(37) added..... 49415
(c)(38) added..... 50515
Clarification..... 4367
52.2081 Table amended....49415, 50515
Clarification..... 4367
52.2120 (c)(34) added..... 4160
52.2126 Added..... 4161
52.2220 (c)(104) added..... 45897
(c)(105) added; eff. 8-25-92..... 28626
52.2225 (a) introductory text and (1) revised; eff. 8-25-92..... 28626
52.2270 (c)(69) added..... 40256
(c)(75) added..... 46119
(c)(73) added; eff. 7-24-92..... 28098
52.2301 Added..... 40257
52.2303 Revised; eff. 7-24-92..... 28098
52.2320 (c)(24) added; eff. 8-25-92..... 28626
52.2420 (c)(93) added..... 56160
(c)(77) removed..... 3011
(c)(95) added..... 8082
(c)(96) added..... 9389
(c)(97) added; effective 7-6-92..... 19379
(c)(72) removed; eff. 8-17-92..... 27182
52.2423 (h) added..... 3011
(i) added; eff. 8-17-92..... 27182
52.2570 (c)(60) added..... 56469
57.103 (p) removed; (q) through (x) redesignated as (p) through (w)..... 5328
57.806 (a)(2) revised..... 5328
57.809 (c)(2) amended..... 5328
58 Appendix D amended..... 64483
60 Authority delegation notices...50518, 55826, 59886, 63875, 65994
Authority delegation notices...5388, 19262, 22176
60.4 (c) table corrected..... 41391
(b)(H), (U), (W), (EE), (OO) and (UU) revised..... 1226
60.539 (h)(1) and (3) amended; (h)(2) revised..... 5328
60 Appendix A corrected..... 24550
61 Guidance..... 46380

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

Authority delegation notices...50518, 55826, 63875, 65994
Authority delegation notices...5388, 11686, 19262, 22176
61.4 (b)(H), (U), (W), (EE), (OO) and (UU) revised...1226
61.109 Existing text designated as (a); (b) added...37160
61.122 Revised...65943
61.126 Revised...65943
61.130 Heading revised; (c) and (d) added...47406
61.131 Amended...47407
61.139 Revised...47407
61.200—61.210 (Subpart R) Revised...23317
61.220 Text designated as (a); (b) added...67542
61.359 Added...8016
61 Appendix B amended...23320
62 Authority citation revised...4738
62.1820 (c)(22) added; eff. 8-25-92...28620
62.1824 (c) added; eff. 8-25-92...28620
62.3911 Undesignated heading and section added...56321
62.4176 Undesignated heading and section added...56321
62.6355 Undesignated heading and section added...56321
62.6911 Undesignated heading and section added...56321
62.8350 (b)(7) added...4738
62.8353 (c) revised...4738
66.3 (g) through (l) redesignated as (h) through (m); new (g) added...5328
66.6 (b) revised...5329
66.72 (a) amended...5329
66.81 (b) amended; (c) revised...5329
66.95 (c) amended...5329
73 Added...65601
80 Program extension...46119, 57986
Authority citation revised...64710
80.2 (cc) and (dd) added...64710
(bb) removed...19537
80.27 (a) table amended...37022
(a)(1) introductory text, removed; (a) introductory text redesignated as (a)(1) introductory text and revised; (a)(2) introductory text and (d) revised...64710
(a)(2) table amended...20205

Page

80.28 (b)(1), (3), (c)(1), (4), (d)(1), (4), (e)(1), (2), (5), (f)(1), (2) and (4) revised; (g)(8) added...64711
80.29 (c) removed; (d) and (e) redesignated as (c) and (d); (a), new (c) and (d) revised...19537
80.31 Removed...19538
81 Attainment status designations corrected...37654
Authority citation revised...56709
Authority citation revised...27939, 27942
81.38 Amended...37289
81.53 Amended...37289
81.132 Amended...37289
81.134 Amended...37289
81.137 Amended...37289
81.300 Revised...56709
81.301 Amended...56709
81.302 Amended...56711
81.303 Amended...56714
81.304 Amended...56721
81.305 Amended...56722
81.306 Amended...56732
81.307 Amended...56736
81.308 Amended...56738
81.309 Amended...56738
81.310 Amended...56739
81.311 Amended...37288, 56741
81.312 Amended...56746
81.313 Amended...56746
81.314 Amended...56749
81.315 Amended...56753
81.316 Amended...56756
81.317 Amended...56760
Amended; eff. 7-23-92...27939
81.318 Amended...56763
81.319 Amended...56769
81.320 Amended...56771
81.321 Amended...56773
81.322 Amended...56774, 63466
81.323 Amended...56776
81.324 Amended...56779
81.325 Amended...56783
81.326 Amended...56786
Amended; eff. 7-23-92...27942
81.327 Amended...56790
81.328 Amended...56794
81.329 Amended...56797
81.330 Amended...56799
81.331 Amended...56800
81.332 Amended...56802
81.333 Amended...56804
81.334 Amended...56806, 56800

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 40 Chapter I—Con.

Page

81.335 Amended ... 56809
81.336 Amended ... 56811
81.337 Amended ... 56815
81.338 Amended ... 56817
81.339 Amended ... 56820
81.340 Amended ... 43874, 56823
81.341 Amended ... 56825
81.342 Amended ... 56825
81.343 Amended ... 56827
81.344 Amended ... 46119, 56831
81.345 Amended ... 56839
81.346 Amended ... 56841
81.347 Amended ... 56841
81.348 Amended ... 56846
81.349 Amended ... 56848
81.350 Amended ... 56850
Amended ... 3015
81.351 Amended ... 56853
81.352 Amended ... 56854
81.353 Amended ... 56854
81.354 Amended ... 56855
81.355 Amended ... 56855
81.356 Amended ... 56858
82 Authority citation revised ... 67371
82.4 (e) added ... 67371
82.5 (c), (d) and (e) revised ... 67372
82.6 (c), (d) and (e) revised ... 30873
82.9 (d)(3) corrected ... 67372
82.13 (h) revised ... 67372
82 Appendixes A, B, D and E removed; Appendix C redesignated as Appendix D; new Appendixes A through C and E added ... 67372
85.1807 (a)(6), (o)(2), (q)(1), (4), (5), (t)(1), (2), (u)(1), (3)(iv), (4), (5), (v)(1), (2), (w)(1), (2), (3), (z)(1) and (2) revised; (o)(3), (x) and (aa)(1) amended ... 5329
85.1808 (d) revised ... 5330
86 Authority citation revised ... 64711
86.091-11 (a)(1)(iv)(A) revised; (a)(1)(iv)(B) removed ... 64711
86.091-23 (c)(2)(ii) added ... 64711
86.093-11 Added ... 64711
86.094-11 (a)(1)(iii) revised ... 19538
86.113-91 (b)(2) revised ... 19538
86.113-94 (b)(2) revised ... 19538
86.614-84 (b)(5), (o)(2), (s)(1), (2), (t)(1), (3)(iv), (4), (5), (u)(2), (5), (v)(1), (2), (w)(1) through (4), (z)(1) and (2) revised; (o)(3), (x) and (aa)(1) amended ... 5330
86.615-84 (d) revised ... 5332
86.1014-84 (b)(5), (o)(2), (s)(1), (2) introductory text, (i), (ii), (t)(1), (3)(iv), (4), (5), (u)(2), (v)(1), (2), (w)(1) through (4), (x)(1), (z)(1) and (2) revised; (o)(3), (x)(2) and (aa)(1) amended ... 5332
86.1015-84 (d) revised ... 5333
86.1105-87 (c) and (d) revised; (e) added ... 64712
86.1115-87 (b)(5), (o)(2), (s)(1), (2), (t)(1), (3)(iv), (4), (5), (u)(1), (2), (v)(1) through (4), (y)(1) and (2) revised; (o)(3), (w) and (z)(1) amended ... 5333
86.1116-87 (d) revised ... 5334
86.1313-91 (b)(2) revised ... 19538
114.10 Amended ... 5334
114.11 (c) removed; (a) and (b) redesignated as (b) and (c); new (a) added; new (b), (c)(4) and (d) revised ... 5334
122.26 (e)(1) amended; (e)(2)(iv) and (6) revised ... 56554
(b)(15) added; (c)(2)(i)(D), (e)(1), (2)(i), (iii) and (iv) revised ... 11412
122.28 (b)(2) redesignated as (b)(3); new (b)(2) added ... 11412
(b)(3)(ii) and (c)(3) amended ... 11413
122.44 (i)(2) revised; (i)(3) added ... 11413
123.64 (b)(3)(ii)(B) revised ... 5335
124.2 Amended ... 5335
124.19 (a) introductory text and (c) amended; (a)(2), (b), (d) introductory text, (e), (f)(1)(i), (ii) and (iii) revised; (g) added ... 5335
124.72 Amended ... 5335
124.74 (b)(1) amended ... 5336
124.75 (b) amended ... 5336
124.78 (a)(2) amended ... 5336
124.89 (b)(1) and (2) revised ... 5336
124.90 (a) and (c) amended; (b) introductory text and (d) revised ... 5336
124.91 (a)(1) introductory text and (g) amended; (a)(1)(ii), (3), (b), (c)(1), (2), (d), (e), (f), and (h) revised; (i) added ... 5336
124.115 Amended ... 5337

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

124.124 Amended 5337
124.125 Revised 5337
124.126 Revised 5337
124.127 Revised 5337
124.128 Revised 5337
124 Appendix A amended 5337, 5338
131.3 (j) revised; (k) and (l) added 64893
131.4 Revised 64893
131.5 (a) through (e) redesignated as (a)(1) through (5); introductory text designated as (a) introductory text; (b) added 64894
131.7 Added 64894
131.8 Added 64895
136.3 (b) amended 43702
Table IA, Table IB, Table IC, Table ID, Table IE, (b), (c), (d) and (e) revised 50759
141.2 Regulation at 56 FR 26547 effective date corrected to 12-7-92 32113
141.4 Technical correction 61287
141.6 (a) revised; (g) added 30274
(g) amended 22178
141.11 (b) introductory text revised; eff. 7-30-92 30274
Regulation at 56 FR 26548 effective date corrected to 12-7-92 32113
141.12 Table amended 30274
141.21 (f)(7) redesignated as (f)(8); new (f)(7) added 1852
(f)(3)(ii) and (iv) amended; (f)(6)(iii) added; (f)(7) revised; eff. 7-10-92 24747
141.23 (a)(4)(i) introductory text, (i)(1), (k) (1) table, (2), (4) table and (5)(ii) table revised; (l) through (q) added; eff. 7-30-92 30274
141.24 (e), (f), (g) introductory text, (h)(8), (12)(iv), (v), (vii) and (13)(i) revised; (g)(8) and (h)(19) added; effective 7-30-92 30277
(h) introductory text amended 22178
141.32 (e)(16), (25) through (27) and (46) added; effective 1-1-93 30280
Regulation at 56 FR 26548 effective date corrected to 12-7-92 32113
141.50 (a)(15), (b)(4), (5) and (6) added; effective 1-1-93 30280
141.51 (b)(3) added; effective 1-1-93 30280
Regulation at 56 FR 26548 effective date corrected to 12-7-92 32113
141.61 (c)(2), (3) table, (4) table and (16) table amended; eff. 1-1-93 30280
141.62 (b)(1) revised eff. 7-1-91; (b)(3) added eff. 1-1-93 30280
141.80 Regulation at 56 FR 26548 effective date corrected to 12-7-92; (a)(2) corrected 32113
(a)(2) revised; eff. 12-7-92 28788
141.81 Regulation at 56 FR 26548 effective date corrected to 12-7-92 32113
141.82 Regulation at 56 FR 26548 effective date corrected to 12-7-92 32113
141.83 Regulation at 56 FR 26548 effective date corrected to 12-7-92 32113
141.84 Regulation at 56 FR 26548 effective date corrected to 12-7-92 32113
(g) revised; eff. 12-7-92 28788
141.85 Regulation at 56 FR 26548 effective date corrected to 12-7-92 32113
(a)(1) amended; (a)(4)(iv)(B) revised; eff. 12-7-92 28788
141.86 Regulation at 56 FR 26548 effective date corrected to 7-7-91; (b)(2) corrected 32113
(a)(9) revised; (b)(2), (d)(1) table and (ii)(B) amended 28789
141.87 Regulation at 56 FR 26548 effective date corrected to 12-7-92 32113
(e)(2) amended; (e)(4) revised 28788
141.88 Regulation at 56 FR 26548 effective date corrected to 12-7-92 32113
(c) revised 28788
(e)(2) amended 28789
141.89 Regulation at 56 FR 26548 effective date corrected to 7-7-91 32113

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 40 Chapter I—Con. Page

(a) table amended; (a) footnotes 5, 6 and 7 and (a)(4) revised **28789**
141.90 Regulation at 56 FR 26548 effective date corrected to 7-7-91 32113
(c)(1) and (e)(2)(ii) revised **28789**
141.91 Regulation at 56 FR 26548 effective date corrected to 7-7-91 32113
142.14 Regulation at 56 FR 26562 effective date corrected to 7-7-91 32113
142.15 Regulation at 56 FR 26562 effective date corrected to 7-7-91 32113
142.16 Regulation at 56 FR 26563 effective date corrected to 7-7-91 32113
142.19 Regulation at 56 FR 26563 effective date corrected to 12-7-92 32113
142.57 (b) revised; effective 7-30-92 30281
142.62 Regulation at 56 FR 26563 effective date corrected to 12-7-92 32113
(f), (g) introductory text and (h)(7) revised; eff. 7-30-92 ..... **28789**
142.63 Technical correction 61287
143.4 (b)(12) and (13) revised; effective 7-30-92 30281
146 Test program approval **1109**
147.750 Added 41072
147.751 (a) revised 41072
147.753 Heading revised 41072
147.754 Removed 41072
147.755 Removed 41072
148.1 (d) revised **8088**
148.10 Table A amended **8088**
164.2 (c) revised; (g) through (j) redesignated as (h) through (k); new (g) added **5342**
164.4 (a), (c) and (d) revised **5342**
164.6 (b) amended **5342**
164.7 Revised **5342**
164.20 (c) amended **5342**
164.31 (c) amended **5342**
164.40 (e) revised **5342**
164.60 (c) amended **5343**
164.81 (f) amended **5343**
164.90 (b) amended **5343**
164.100 Revised **5343**
164.101 (a)(1) and (b) amended; (c) revised **5343**
164.102 (c) revised **5343**
164.103 Revised **5343**
164.110 (a) amended; (c) revised **5343**
164.111 Amended **5344**
164.121 (j)(3) and (4) revised **5344**
164.122 (a) and (b) amended **5344**
164.123 (a) revised; (b) amended **5344**
180 Authority citation revised **3298**
180.1 (h) table amended **646, 1647**
180.3 (d)(14) added **1649**
180.34 (f)(9)(ix) revised **1648**
180.284 Revised 63468
180.285 Introductory text revised 51842
180.342 (c) redesignated as (d); new (c) added 41465
180.356 (a) table amended; (c) removed 63467
180.364 (a) table amended **22437**
180.407 Revised **1650**
(c) added **5390**
180.408 (a) table amended 40258
(b) table amended 65003
180.415 (a) table amended **10998**
(a) table and (b) table revised **22435**
180.428 (b) table corrected 40258
180.430 Revised 42531
180.434 Table amended 29902
180.441 (c) added **24554**
180.443 (a) table amended **4370**
180.447 (c) added **22181**
180.449 Revised 65004
180.456 Added **8844**
180.457 Added **29032**
180.458 Added **3298**
180.459 Added **8845**
180.460 Added **29031**
180.1001 (d) table amended 41464
(d) table amended **8842, 24958**
(e) table amended **18083**
180.1042 Table corrected 65002
180.1098 Revised **22436**
180.1101 Added **14646**
180.1104 Added 32515
180.1105 Added 32515
180.1106 Added 41466
180.1110 Added **24552**
180.1111 Added **29033**
185.1000 (c) added **10293**
185.4000 (b) table amended 65003
186.300 Revised 65004

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

186.750 Introductory text revised 51842
186.1075 Added 3298
186.4000 (b) table amended 40259, 65002
209.3 (k) revised 5344
209.14 (b) revised; (c) amended 5344
209.17 Amended 5344
209.19 (b) revised; (c) amended 5344
209.24 (a) and (c) amended 5345
209.27 (a), (c) and (d) revised 5345
209.30 (b) revised 5345
209.31 (a), (c)(4), (d) and (e) revised 5345
209.32 Revised 5345
209.33 Revised 5345
209.34 Revised 5345
209.35 Revised 5346
209.36 (a) amended 5346
222.12 (a), (b)(4), (c), (e) and (f) revised 5346
223.4 (d) amended 5346
228.12 (a)(3) amended; (b)(85) added 47414
(b)(91) added 2039
(a)(3) amended 48110
233.53 (c)(3)(ii)(B) amended 5346
248 Procurement guidelines 43702
252 Procurement guidelines 43702
253 Procurement guidelines 43703
257 Authority citation revised 51016
257.1 (c)(10) added; eff. 10-9-93 51016
257.2 Amended; eff. 10-9-93 51016
257 Appendix I revised; eff. 10-9-93 51016
258 Added; eff. 10-9-93 51016
258.1 Corrected 28627
258.14 (b)(1) corrected 28627
258.26 Correctly designated 28627
258.50 (c)(1) corrected 51022
(a) correctly revised; (b)(1), (2) and (c) corrected 28628
258.61 (a)(2) and (d) corrected 28628
258.70—258.72 (Subpart G) Added; eff. 4-9-94 51016
258.71 (a) corrected 28628
260.10 Amended 66368
Amended; eff. 7-29-92 3486
261 Hazardous waste identification and listing 41072
Petition denied 41944
Regulation at 55 FR 38058 removed 58312
261.2 (d)(3) and (4) correctly designated as (d)(4) and (5) 32688
(d)(2) revised 42512
261.3 (c)(2)(ii)(B) amended 32692
(c)(2)(ii)(C) added 41176
(c)(2)(ii)(B) correctly designated 42512
Revised 7632
(a)(2)(i), (c)(2)(ii)(B) and (d)(1) corrected; (c)(2)(ii)(C) correctly added 23063
261.4 (a)(9) revised 30195
(a)(11) added 41177
(b)(15) added 21534
(a)(10) revised 27888
261.6 (a)(2) introductory text and (ii) amended 32692
261.11 (a)(3) introductory text revised 14
261.35 (b) revised 30195
261 Appendix IX amended 41289, 67000, 67207
262 Authority citation revised 43705
262.34 (a)(3) through (5) redesignated as (2) through (4); (a)(1) revised 30195
262.53 (b) revised 43705
262.56 (b) revised 43705
264.13 (a)(1) revised 3088
264.15 (b)(4) revised; eff. 7-29-92 3486
264.19 Added; eff. 7-29-92 3486
264.73 (b)(6) revised; eff. 7-29-92 3487
264.147 (a)(2) revised; (b) introductory text amended 30200
264.221 (c) and (d) revised; (f), (g) and (h) redesignated as (g), (h) and (i); new (f) added; eff. 7-29-92 3487
264.222 Added; eff. 7-29-92 3487
264.223 Added; eff. 7-29-92 3488
264.226 (d) added; eff. 7-29-92 3488
264.228 (b)(2) and (3) redesignated as (b)(3) and (4); new (b)(2) added; eff. 7-29-92 3488
264.251 (c) through (g) redesignated as (g) through (k); new (c) through (f) added; eff. 7-29-92 3488

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 40 Chapter I—Con. Page

264.252 Added; eff. 7-29-92 3489
264.253 Added; eff. 7-29-92 3489
264.254 (c) added; eff. 7-29-92 3489
264.301 (c) and (d) revised; (f) through (k) redesignated as (g) through (l); new (f) added; eff. 7-29-92 3489
264.302 Added; eff. 7-29-92 3490
264.303 (c) added; eff. 7-29-92 3490
264.304 Added; eff. 7-29-92 3491
264.310 (b)(3), (4) and (5) redesignated as (b)(4), (5) and (6); new (b)(3) added; eff. 7-29-92 3491
264.570—264.575 (Subpart W) Revised 30196
264.573 (a)(4) revised 5861
265 Authority citation revised 3491
265.13 (a)(1) revised 8088
265.15 (b)(4) revised; eff. 7-29-92 3491
265.19 Added; eff. 7-29-92 3491
265.73 (b)(6) revised; eff. 7-29-92 3492
265.91 (a)(3) added 66369
265.112 (d)(2) revised 42512
265.113 (a) introductory text and (b) introductory text amended 42512
265.147 (a)(2) revised 30200
(a)(1)(i) and (ii) correctly added 47912
265.221 Heading, (a) and (c) revised; (f) and (g) redesignated from 265.222 (a) and (b); eff. 7-29-92 3492
265.222 Heading revised; (a) and (b) redesignated as 265.221 (f) and (g); new (a) through (c) added; eff. 7-29-92 3492
265.223 Added; eff. 7-29-92 3492
265.226 Heading revised; (b) added; eff. 7-29-92 3493
265.228 (b)(2) and (3) redesignated as (b)(3) and (4); new (b)(2) added; eff. 7-29-92 3493
265.254 Revised; eff. 7-29-92 3493
265.255 Added; eff. 7-29-92 3493
265.259 Added; eff. 7-29-92 3494
265.260 Added; eff. 7-29-92 3494

Page

265.301 Heading, (a) and (c) revised; (f), (g), (h) and (i) redesignated from 265.302 (a), (b), (c) and (d); eff. 7-29-92 3494
265.302 (a), (b), (c) and (d) redesignated as 265.301 (f), (g), (h) and (i); heading revised; (a), (b) and (c) added; eff. 7-29-92 3494
265.303 Added; eff. 7-29-92 3494
265.304 Added; eff. 7-29-92 3495
265.310 (b)(2), (3) and (4) redesignated as (b)(3), (4) and (5); new (b)(2) added; eff. 7-29-92 3495
265.370 Amended 32692
265.440 (a) revised 30198
265.443 (b)(2)(ii) redesignated as (iii); new (b)(2)(ii) added; (m) introductory text and (1) introductory text revised; (m)(3) amended 30198
(a)(4) revised 5861
266.40 (c) and (d) introductory text amended 32692
Corrected 42512
266.100 (b)(2) and (3) corrected 32688
(a) amended; (c)(1) introductory text, (ii), (2)(i) and (ii) revised; (c)(3) and (f) added 42513
(a) revised 43877
(a) note removed 27888
266.102 (b)(1), (e)(4)(i)(C), (6) introductory text, (i)(B)(*1*)(*ii*), (*2*), (ii) introductory text, (B)(*2*) and (iv)(B) corrected; (d)(4)(iii)(D) correctly redesignated as (d)(4)(iv) 32688
(e)(4)(ii)(C)(*1*), (*2*), (*3*), (iii)(C)(*1*) and (*2*) correctly designated 42512
(b)(1) amended; (e)(10) revised 42514
266.103 (a)(1)(ii), (b)(2)(ii)(A), (B), (D), (iv), (v)(A)(*5*), (vi), (3)(ii), (5)(i)(B)(*1*), (*2*), (ii)(B) introductory text, (*1*), (*2*), (6) introductory text, (c) introductory text, (1) introductory text, (iv), (ix), (xi), (xii), (4)(i)(C), (ii)(B)(5), (iv)(C)(*2*)(*ii*), (7)(i)(A), (B)

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

introductory text, (ii)(B)(*1*)(*ii*), (*2*), and (g)(1) introductory text corrected....32689
(a)(5)(i)(D) and (b)(5)(i)(A) corrected....42512
(a)(3), (5) introductory text, (ii)(A), (B), (6)(viii), (c)(1), (3), (e) and (k) revised....42514
266.104 (a)(1), (3), (b)(2), (c)(3), (e)(1), (2), (4), (f)(3)(iii) and (g)(2) corrected....32689
266.106 (a), (b)(2)(i), (ii)(B), (5), (6), (c)(2), (d)(3), (e), (f)(2)(ii) introductory text and (B) corrected; (d)(i) and (ii) correctly designated as (d)(1) and (2)....32690
266.107 (a), (b)(2), (3), (d), (e) and (h) corrected....32690
266.108 (a) introductory text, (1) table and (c) corrected....32690
(a)(2) revised....42515
266.109 (a)(1)(i), (2)(iv) introductory text, (A) and (b)(2) corrected....32690
(a)(1)(i) revised....42515
266.110 (f)(3) corrected....32690
(a) revised....42515
266.111 (d)(2) revised....42515
266.112 Corrected designated....32690
(a)(1), (b)(1)(i), (ii) and (c) introductory text revised; (b)(2)(iii) added....42515
266 Appendix I corrected....32690
Appendixes II and III correctly added; Appendixes IV, VII and VIII corrected....32691
Appendix IX added....32692
Appendix X added....32796
Appendix IX corrected....42512
Appendixes XI and XII added....42517
268.3 (b) revised....8089
268.35 (e) revised....20770
(c) revised; (k) added....28632
268.41 (a) table amended; (b) revised....41177
(a) revised....8089
268.42 Table 2 amended....41177
Table 2 amended....8089
270.1 (b) amended....32692
270.4 (a) revised; eff. 7-29-92....3495
270.17 (b) introductory text revised; (b)(2) and (3) redesignated as (b)(6) and (7); new

Page

(b)(2) through (5) added; eff. 7-29-92....3495
270.18 (c) introductory text, (1) and (d) revised; eff. 7-29-92....3496
270.21 (b) introductory text, (1) and (c) revised; eff. 7-29-92....3496
270.22 Redesignated as 270.26; heading revised; (c) introductory text and (14) through (16) amended....30198
(a)(2)(ii)(B), (C), (5)(vii) and (6) introductory text corrected....32691
(a)(6) introductory text and (b)(1) corrected....32692
270.26 Redesignated from 270.22; heading revised; (c) introductory text and (14) through (16) amended....30198
270.42 (g)(1) introductory text, (i), (iv) and appendix I corrected; (c)(1)(iv) revised....32692
Appendix I amended; eff. 7-29-92....3496
270.66 (b)(1) introductory text, (4), (c)(2)(i), (ii), (3)(vi), (vii), (f)(3) and (8) corrected....32692
270.73 (f) and (g) corrected....32692
Corrected....42512
271 State hazardous waste management program authorizations; correction....30336, 37291, 51762
State hazardous waste management program authorizations....32328, 33206, 33717, 33866, 35831, 36010, 37290, 41958, 42944, 47153, 47675, 57593, 60926
State hazardous waste management program authorizations....4370, 4371, 4738, 7321, 7552, 7553, 8089, 9501, 9389, 9978, 15029, 15254, 18083, 18827, 19087, 19807, 20055, 20056, 20422, 20770, 21351, 23063, 27942
271.1 (j) Table 1 corrected....32692
(j) Table 1 and Table 2 amended....41177
(j) Table 1 amended; eff. 7-29-92....3497
(j) Table 1 amended....27888
271.10 (e)(2) Note revised....43705

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 40 Chapter I—Con. Page

272 State hazardous waste management program authorizations....41626, 41958
State hazardous waste management program authorizations; correction....51762
272.650 (a) and (b) revised; eff. 8-10-92....24758
272.651 Introductory text, (a)(1) and (b) revised....11581
Revised; eff. 8-10-92....24758
272.652 Removed....11582
272.700 (a) amended; (b) revised....3723
272.701 Introductory text, (a)(1), (2)(i), (ii) introductory text, (b), (c) and (d) revised....3723
272.1150 (a) and (b) revised....3724
272.1151 Introductory text, (a)(1)(ii), (3)(ii), (b), (c) and (d) revised....3725
272.1800 (a) and (b) revised....4162
272.1801 Introductory text, (a)(1), (2), (c)(1) and (d) revised....4162
280.20 (c)(1)(ii)(B) revised; (c)(1)(ii)C) added....38345
280.91 (d) revised....66373
281 State underground storage tank program authorizations....51333
State underground storage tank program authorizations....186, 8420, 24759, 29034, 29035
300 Policy statement....66601
National Priorities List sites recategorization....1872
300.1100—300.1105 (Subpart L) Added....18382
300 Appendix B amended....46122
Appendix B amended; eff. 10-25-91....48442
Appendix B amended....356
372 Petition denied....58859
403.13 (m)(2) revised....5347
600 Authority citation revised....55465
600.513-91 Added....55465
712.30 (w) table and (x) table amended....42691
(x) table amended....49146
(x) table amended....29034
716.120 (a) table and (d) table amended....42693
(d) table amended....49146
(d) table amended....29034
721.224 (a)(2)(i), (ii), (iii) and (b)(1) revised; eff. 7-13-92....20424
721.288 Removed....43877
721.466 Added....40210
721.490 Added....40211
721.500 Added....40211
(b)(1) revised....46729
721.756 (b)(1) corrected....29903
721.1006 Removed....47677
721.1054 Added....56472
721.1060 Removed....9983
721.1100 Added....40211
(b)(1) revised....46729
721.1105 Added....40212
(b)(1) revised....46729
721.1140 Added....40212
721.1204 Added....40212
721.1233 Added....40233
721.1245 Added....40213
721.1261 Added....40213
721.1272 (a)(2)(i) through (vi), and (b)(1) revised; (b)(3) removed; eff. 7-13-92....20424
721.1298 Added....40213
721.1475 Text prior to 55 FR 33305 correctly redesignated as 721.1525....29903
721.1525 Correctly redesignated from 721.1475 text prior to 55 FR 33305....29903
721.1541 Added....4578
721.1582 Added....40214
(b)(1) revised....46729
721.1590 (a)(2) corrected....29903
721.1620 Added....40214
(b)(1) revised....46729
721.1643 Added....40214
721.1645 Removed....43878
721.1711 Added....40214
721.1796 Added....40215
721.1835 (a)(2)(i)(B) corrected....29903
721.1890 Removed....9984
721.1896 Added....40215
721.1897 (b)(2) corrected....29903
721.1898 Added....40215
721.2184 Added....40215
721.2198 Added....40216
761.19 (b) table revised....13323
761.60 (a)(3)(iii)(B)(6) and (g)(1)(ii) amended....13323
761.75 (b)(8)(iii) amended....13323

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

766.35 (a)(2)(ii)(A), (b)(4)(i) and (f) revised **24960**
799.1053 (e)(1)(ii)(A) and (g) revised **24960**
(g)(1) corrected **27845**
799.1700 (c)(4)(i)(A)(*2*)(ii) added; (c)(4)(i)(C) removed; (d) revised **24960**
799.2155 (c)(8)(i), (ii)(A) and (d) revised **24961**
799.3300 (e)(2)(ii)(A) and (f) revised **24961**
799.4360 (c)(8)(ii), (d)(5)(ii)(A), (6)(ii)(A) and (f) revised **24961**
799.5000 Table amended ... 43881, 47915, 65445
Table amended **7659, 24961**
Revised **18829**

Title 40—*Proposed Rules:*

1-799 (Ch. I) ... 40446, 42572, 46756, 51868 ..... **1443, 7564, 8286, 24765, 28156**
22 33401
28 29996
50 ..... **8429**
51 ..... 40843, 59238, 65203
52 ... 29996, 31364, 33738, 37195, 38399, 40287, 40843, 41500, 42302, 42572, 46590, 48472, 49857, 52008, 52010, 52011, 54554, 55644, 56485, 58528, 59238, 64727, 64729, 64731, 65203, 65204, 66003, 66612, 67266 ... **23, 24, 1700, 1705, 3976, 3978, 7900, 8104, 9678, 10749, 12791, 12901, 12903, 12906, 13498, 13687, 17863—18070, 19271, 20068, 22194, 24447, 24449, 24451, 24453, 24455, 26807, 28156, 27723, 27959**
55 63774
58 ..... **7687, 11458**
60 ... 33490, 40843, 46396, 59238, 64382, 65203
61 ... 37196, 41811, 46252, 55432, 64217, 67561 ..... **8017, 21368**
63 ..... 42305, 64382
72 ..... 63002, 66005 ..... **3603**
73 ..... 63002, 66005 ..... **3603**
75 ..... 63002, 66005 ..... **3603, 4169**
77 ..... 63002, 66005 ..... **3603**
79 ..... 33228 ..... **13168**
80 ... 29919, 31148, 31176, 32533, 43682, 48140, 52316, 65461, 67038, ... **2068, 3980, 5409, 6206, 10323, 13220, 13416, 20234, 22449**
81 ..... 58656 ..... **1700, 1705**
82 ..... 43842, 46041, 49548, 50693 ..... **1984, 1992, 14764, 19166**
85 ..... 45866, 48350
86 ... 30230, 32533, 43682, 48140, 48272, 48350, 65035, 65461, 67038 ..... **6206, 10853, 13220, 18544, 22675, 24457**
88 ..... 48614, 50196, 52013
90 ..... 20069, 20070
110 ..... 65964 ..... **26894**
112 ..... 54612 ..... **26894**
116 ..... 65964 ..... **26894**
117 ..... 65964 ..... **20014, 26894**
122 ..... 40848, 56555, 65964 ..... **8522, 21918, 22197, 26894**
123 ..... **8522, 22197**
124 ..... **8522**
131 ..... 58420, 63471
136 ..... 30519, 37331, 55410
141 ... 33050, 43573, 49153, 52241, 60949
142 ..... 33050, 43573, 52241, 60949
146 41108
148 ..... **958**
156 ..... **4390**
165 ..... **3038**
172 33890
180 ... 33236, 36125, 40291, 42574, 42575, 42577, 42578, 42580, 43737, 46257, 65035 ... **1244, 7701, 7703, 8106, 8736, 8737, 8739, 10324, 11056, 13069, 13070, 13073, 22202, 23366, 24565, 28157, 29053—29055**
185 ..... 33236, 50190, 50466, 67268 ..... **23366**
186 ..... 33236, 46257
192 67569
206 64724
228 ..... 47173, 47432, 49858
230 ..... 65964 ..... **26894**
232 65964

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 40 Title 40—Con. Page

26894
260 .....30519, 33490, 37331, 46396
958, 21450, 24004, 28158
261 ...30519, 32993, 33238, 35758, 37331, 48000, 51592, 55257, 63848
...958, 7636, 9518, 10629, 21450, 24004, 28158
262 .....**958, 21450, 24004, 28158**
264 ...30200, 30201, 33490, 43574, 46396, 55646, 63848
958, 18853, 21450, 24004, 28158
265 ...30200, 30201, 33490, 43574 46396, 55646, 63848
958, 18853
266 48000
268 55160
...958, 4170, 6487, 21450, 22024, 24004, 28158
270 .....33490, 46396
958
271 .....33490, 35758, 46396, 51592
958, 9525, 22203, 28159
280 .....30201, 40292, 43574
281 46756
6302, 25003
300 .....31900, 35840, 46142, 65462
4824, 5410, 21576, 28817
302 .....35758, 51592, 63848
20014
355 .....**20014**
372 .....34156, 48474, 48475
28159
401 .....**26894**
414 .....63897, 66120
2238
435 65964
455 .....**12560**
501 .....**8522, 22197**
580 .....**27413**
581 .....**27413**
583 .....**27413**
600 .....43682, 48140
13220
704 57144
2138, 4177
721 .....34047, 42714, 47714
9995, 10326, 20437, 23182
744 .....37686, 47717
750 .....**7340**
761 .....30201, 43574
7340
763 .....**11364, 20438, 23183**
764 .....49863, 59239
2239
795 43574
798 .....**32537, 43574**
799 .....32292, 43574, 43897, 57144
2138, 4177, 12908, 14371, 24568

NOTE 1: **Boldface page numbers indicate 1992 changes.**

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 50—Public Contracts, Department of Labor (Parts 50-1—50-999)

50-202 Authority citation revised.....32258
50-202.2 Revised.....32258
50-202.16 (Subpart C) Removed.....32258

Chapter 51—Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)

51-1 Revised.....48976
51-2 Revised.....48977
51-3 Revised.....48979
51-3.3 (c) corrected.....64002
51-4 Revised.....48980
51-4.3 Heading corrected.....64002
51-5 Revised.....48981
51-5.2 (d) corrected.....64002
51-5.3 (b) corrected.....64002
51-5.4 (b) corrected.....64002
51-5.5 (d) corrected.....64002
51-5.6 Corrected.....64002
51-6 Redesignated as 51-7; new 51-6 added.....48983
51-6.8 (a) corrected.....64002
51-7 Redesignated as 51-8; new 51-7 redesignated from 51-6.....48983
Revised.....48986
51-8 Redesingated as 51-9; new 51-8 redesignated from 51-7.....48983
51-8.14 (c) revised.....48987
51-9 Redesignated as 51-10; new 51-9 redesignated from 51-8.....48983
51-10 Redesignated from 51-9.....48983

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Chapter 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

Page

60–250 Authority citation revised....498
60–250.2 Amended....498
Technical correction....3089
60–742 Added; eff. 7-26-92....2962, 2965

Chapter 101—Federal Property Management Regulations (Parts 101–1—101–99)

101–5 Heading revised....33873
101–5.000 Revised....33873
101–5.101 Revised....33873
101–5.102 Revised....33873
101–5.104–1 Revised....33873
101–5.104–2 (b) revised....33874
101–5.104–3 (a) revised....33874
101–5.105 (a) revised....33874
101–5.106 (a) and (b) revised....33874
101–5.200—101–5.205–4 (Subpart 101–5.2) Heading revised....33874
101–5.200 Revised....33874
101–5.202 Heading and (a) revised....33874
101–5.203 Heading revised....33874
101–5.203–1 Revised....33874
101–5.203–2 Revised....33874
101–5.203–5 Revised....33874
101–5.203–6 (a), (c) and (d) revised....33875
101–5.203–7 Revised....33875
101–5.204 Heading revised....33875
101–5.204–1 Revised....33875
101–5.204–2 Revised....33875
101–5.204–3 Revised....33875
101–5.205–1 Revised....33875
101–5.205–2 Revised....33875
101–5.205–3 Heading, introductory text, (a) and (c) revised....33875
101–5.205–4 Revised....33876
101–16—101–21 (Subchapter D Appendix) Temporary Reg. D–75 added....42162
Temporary Reg. D–73 and Supp. 2 removed; Temporary Reg. D–76 added....42168
101–26.102.3 Introductory text, (b) and (c) revised....3949
101–26.104 (b) revised....3949
101–26.602 (a) revised....21895
101–26.602–5 Added....21895
101–26.4800—101–26.4801 (Subpart 101–26.48) Removed....3950
101–33.002 (d) added....21895
101–33.003 Revised....21896
101–38.202–4 Revised....24760
101–38.701 Revised....24762
101–39.000 Revised....59887
101–39.003 (b) revised....59887
101–39.004 Revised....59887
101–39.100 (e) and (f) revised....59887
101–39.101 Introductory text and (a) revised....59887
101–39.102 (a) revised....59887
101–39.102–1 (b) revised....59887
101–39.104–1 Heading, (a) and (b)(2) revised....59887
101–39.105 Revised....59888
101–39.105–2 (a) revised....59888
101–39.106 Introductory text revised....59888
101–39.107 (a) and (b) revised....59888
101–39.200—101–39.208 (Subpart 101–39.2) Heading revised....59888
101–39.200 Revised....59888
101–39.201 Revised....59888
101–39.202 Revised....59888
101–39.203 Revised....59888
101–39.204 Revised....59888
101–39.205 Removed....59889
101–39.206 Revised....59889
101–39.207 Revised....59889
101–39.208 Revised....59890
101–39.300—101–39.307 (Subpart 101–39.3) Heading revised....59890
101–39.300 Revised....59890
101–39.301 Introductory text and (d) revised....59890
101–39.302 Revised....59890
101–39.303 Revised....59890
101–39.304 Revised....59890
101–39.305 Revised....59890
101–39.306 Introductory text, (d), (g)(1), (2) and (4) revised....59891
101–39.307 Revised....59891
101–39.400 Revised....59891
101–39.401 Introductory text, (a) introductory text, (1), (b) and (c) revised....59891
101–39.402 Revised....59891
101–39.403 (a), (c) and (d) revised....59891

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 41 Chapter 101—Con. Page

101-39.404 Revised....59891
101-39.405 Revised....59891
101-39.406 Revised....59892
101-39.4900—101-39.4901 (Subpart 101-39.49) Revised....59892
101-41.807-4 Heading, (a) and (b) revised....40259
101-37—101-41 (Subchapter G Appendix) Temporary Reg. G-54 added....33876
Temporary Reg. G-48, Supp. 4 added; effective to 6-30-92....65445
Temporary Reg. G-55 added....4373
Temporary Reg. G-54, Supp. 1 added; effective to 11-15-92....26607
101-47.601 (a) revised....56935
101-47.602 (a) revised....56936
101-47.603 (b) revised....56936
101-47.604 Heading, (a) and (g) revised....56936
101-48.001-3 Revised....40260
101-48.001-10 Added....40260
101-48.100 Revised....40260
101-48.101-2 (d) added....40260
101-48.101-4 (a) and (c) revised....40260
101-48.101-5 (a) introductory text, (1), (c) introductory text, (d)(1), (5), (6) and (e) revised; (d)(7) added....40260
101-48.101-6 (a) and (d) revised; (f) redesignated as (g) and revised; new (f) added....40261
101-48.101-7 (a) revised....40261
101-48.101-8 (a) revised....40261
101-48.101-9 Revised....40261
101-48.102-2 (b) revised....40261
101-48.102-3 Revised....40261
101-48.201-2 Revised....40261
101-48.201-3 Revised....40261
101-48.201-4 Revised....40262
101-48.201-5 Revised....40262
101-48.202 Added....40262
101-48.302 (b) revised....40262
101-48.304 Redesignated as 101-48.305; new 101-48.304 added....40262
101-48.305 Redesignated as 101-48.306; new 101-48.305 redesignated from 101-48.304 and revised....40262
101-48.305-1 Redesignated as 101-48.306-1....40262

Page

101-48.305-2 Redesignated as 101-48.306-2....40262
101-48.306 Redesignated from 101-48.305 and revised....40262
101-48.306-1 Redesignated from 101-48.305-1 and revised....40262
101-48.306-2 Redesignated from 101-48.305-2 and revised....40262

Chapter 301—Travel Allowances (Parts 301-1—301-99)

301-1 Authority citation revised....28633
301-1.1 Amended....28633
301-1.2 (a), (b) and (c) amended....28633
301-1.3 (c)(1), (2) and (6) amended....28633
301-1.102 (b) introductory text and (3) amended....28633
301-2 Authority citation revised....28633
301-2.2 (d)(4) amended....28633
301-2.3 (e) amended....28633
301-3 Authority citation revised....28633
301-3.3 (d)(2)(i) amended....28633
301-3.4 (b)(1)(ii) amended....28633
301-3.5 (a) introductory text amended....28633
301-3.6 (b)(1) introductory text amended....28633
301-4 Authority citation revised....28633
301-4.2 (a) introductory text and (b) introductory text amended....28633
301-5 Authority citation revised....28633
301-5.1 (a) amended....28633
301-6 Authority citation revised....28633
301-6.4 (c) amended....28633
301-7 Authority citation revised....28633
301-7.1 Introductory text amended....28633
301-7.2 (b) introductory text amended....28633
301-7.4 Amended....6678
301-8 Authority citation revised....28633

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

301-8.1 Introductory text, (a), (c) and (d) amended 28633
301-8.2 (b) and (d) amended 28633
301-8.3 (c) revised; effective to 10-1-94 37478
301-8.4 (c) amended 28633
301-8.5 (b) amended 28633
301-9 Authority citation revised 28634
301-9.2 Redesignated as 301-9.3; new 301-9.2 added 8091
301-9.3 Redesignated as 301-9.4; new 301-9.3 redesignated from 301-9.2 8091
301-9.4 Redesignated from 301-9.3 8091
Amended 28634
301-10 Authority citation revised 28634
301-10.1 (b)(3) amended 28634
301-10.2 (b) introductory text and (2)(iii) amended 28634
301-11 Authority citation revised 28634
301-11.3 (a) amended 28634
301-11.4 (a) amended 28634
301-11.6 (b)(23) through (27) redesignated as (b)(24) through (28); (b)(19) and new (b)(24) amended; new (b)(23) addd 8092
301-12 Authority citation revised 28634
301-12.2 Amended 28634
301-12.4 Introductory text and (c) amended 28634
301-12.7 (a) and (c) amended 28635
301-14 Authority citation revised 28634
301-14.2 Amended 28634
301-14.4 Amended 28634
301-14.9 Amended 28634
301-14.10 Amended 28634
301-15 Authority citation revised 28634
301-15.43 (a) amended 28634
301-16 Authority citation revised 28634
301-16.1 Amended 28634
Chapter 301 Appendix A revised 6678
Appendix A amended 28634

NOTE 1: **Boldface page numbers indicate 1992 changes.**

Chapter 302—Relocation Allowances (Parts 302-1—302-99)

Page

302-1 Authority citation revised 28634
302-1.1 Amended 28635
302-1.2 (b) introductory text amended 28635
302-1.3 (c) corrected 40946
(a) introductory text amended 28634
(a) introductory text and (c) amended 28635
302-1.4 (i) revised 46989
(d), (f)(1)(ii), (iii), (iv), (2) and (j)(1) introductory text amended 28634
Introductory text, (b), (e) introductory text, (f)(2) and (k) amended 28635
302-1.5 (b)(1) and (2) introductory text amended 28635
302-1.6 Introductory text amended 28635
302-1.8 Revised 46989
302-1.9 (b) amended 28635
302-1.10 (g) amended 28634
302-1.12 (e)(6) amended; (a), (b)(1), (2) introductory text, (3) and (5) amended 28635
302-1.13 (a)(2) introductory text, (c)(2)(ii), (d)(1)(i)(D) and (2)(i) amended 28635
302-1.14 (b) introductory text amended 28635
302-1.105 (c) amended 28635
302-2 Authority citation revised 28635
302-2.3 (c)(2), (e)(1), (2) and (3) amended 28635
302-3 Authority citation revised 28635
302-3.1 (b) introductory text revised; (b)(2) removed; (b)(3) through (6) redesignated as (b)(2) through (5) 46989
(c) introductory text, (2) and (4) amended 28635
302-3.2 (b) amended 28635
302-3.3 (b) amended 28635
302-3.4 Amended 28635
302-4 Authority citation revised 28635
302-4.1 (c)(3) revised 57289

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

TITLE 41 Chapter 302—Con. Page

(b) introductory text amended 28635
302-4.3 (b) amended 28635
302-4.4 Amended 28635
302-5 Authority citation revised 28635
302-5.1 Amended 28635
302-5.2 (e) and (i) amended 28635
302-5.3 Amended 28635
302-5.5 Amended 28635
302-6 Authority citation revised 28635
302-6.1 Introductory text, (g)(1) introductory text, (ii), (2), (4) and (5) amended 28635
302-6.2 (g)(1) and (2) revised 51177
302-6.3 (b) amended 28635
302-6.4 Amended 28635
302-6.5 Amended 28635
302-7 Authority citation revised 28636
302-7.1 (a) and (b) revised 46989
302-7.3 Revised 46990
302-7.5 Revised 46990
302-8 Auhtority citation revised 28636
302-8.1 Amended 28636
302-8.2 (a), (b)(1), (e) and (f) amended 28636
302-8.3 (a)(3) amended 28636
302-8.4 (e)(3) amended 28636
302-9 Authority citation revised 28636
302-9.1 (a) and (d) amended 28636
302-9.3 (b) amended 28636
302-9.4 Amended 28636
302-10 Authority citation revised 28636
302-10.1 (a)(1), (2) and (b) amended 28636
302-10.2 (a) amended 28636
302-10.3 (b) introductory text, (2), (c)(1), (2) and (d)(2) amended 28636
302-10.4 (b) and (e) amended 28636
302-10.5 (a)(1) and (c) amended 28636
302-10.6 Amended 28636
302-11 Authority citation revised 28636
302-11.1 Amended 28636
302-11.2 (b) amended 28636
302-11.3 (i) amended 28636
302-11.4 Introductory text amended 28636
302-11.5 Introductory text and (e) amended 28636
302-11.6 (a) and (e) amended 28636
302-11.8 (a), (d), (e)(1), (2)(i), (ii), (4) and (f)(3)(ii) amended 28636
302-11.9 (a) amended 28636
302-11.12 Amended 28636
302-11.13 Introductory text amended 28636
302-11 Appendixes A, B and C amended 1112
Appendix B amended 28636
302-12 Authority citation revised 28636
302-12.1 Amended 28636
302-12.3 Amended 28637
302-12.4 (b) introductory text and (1) amended 28637
302-12.5 (b) amended 28637
302-12.6 (a)(2) and (b)(2) amended 28637
302-12.7 Amended 28637

Chapter 303—Payment of Expenses Connected with the Death of Certain Employees (Parts 303-1—303-99)

303-1 Authority citation revised 28637
303-1.1 Revised 57289
(a) amended 28637
303-1.2 Amended 57290
Amended 28637
303-1.3 Redesignated as 303-1.4 57289
Added 57290
303-1.4 Redesignated as 303-1.7; new 303-1.4 redesignated from 303-1.3 57289
303-1.5 Revised 57290
303-1.7 Redesignated from 303-1.4 57289
303-2 Authority citation revised 28637
303-2.1 Amended 57290
303-2.3 Revised 57290
303-2.6 (a)(1) revised; (b) removed; (c) redesignated as (b) 57290
(a)(3) amended 28637
303-2.7 Removed 28637
303-2.8 Amended 57290

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1991 THROUGH JUNE 30, 1992

Page

Chapter 304—Payment from a non-Federal source for travel expenses (Parts 304-1—304-99)

304-1 Authority citation revised 28637
304-2 Authority citation revised 28637
304-2.2 Amended 28637
304-2.3 Amended 28637
304-2.4 Introductory text and (e) amended 28637

Title 41—*Proposed Rules:*

50-1—50-999 (Ch. 50) 6301
60-1—60-999 (Ch. 60) 6301
60-742 55578
61-1—61-999 (Ch. 61) 6301
73 ..... 2843, 2844
101-1—101-999 (Ch. 101) 12286
101-2 24767
101-18 64221
105-1—105-999 (Ch. 105) 12286
105 23368
106 23368
107 23368
201-1—201-999 (Ch. 201) 12286
301-1—301-999 (Ch. 301) 12286
302-1—302-999 (Ch. 302) 12286
303-1—303-999 (Ch. 303) 12286
304-1—304-999 (Ch. 304) 12286

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

Page

5 Appendix C amended....2477
59 CFR correction....13046
60 Authority citation revised....28793
60.1 (a) amended....28793
60.5 (a) revised....28793
60.7 (a)(2) and (c)(2) revised; OMB numbers....28794
60.8 (a)(1), (2), (4), (5), (9), (11), (b)(2) and (3) revised; (a)(12) added; OMB number....28794
60.10 (a)(1) and (b)(2) amended....28794
60.11 (a)(1)(ii) and (b)(1) amended; (b) introductory text, (2), (e), (f)(1), (2), (4) and (5) amended; OMB numbers....28794
60.12 (c) revised; OMB numbers....28795
60.13 (b) and (c) revised....28795
60.14 OMB numbers....28795
60.15 (a) and (b) amended....28795
60.18 Introductory text and (a) revised; OMB number....28795
60.19 Amended....28795
60.20 (a) and (c) amended....28795
60.21 (b) amended; OMB number....28795
60.30—60.43 (Subpart D) Heading amended....28795
60.30 Heading, (a), (b)(3), (4) and (c) revised; (b)(5) and (d) added....28795
60.31 Heading, (a) and (b)(1) revised; (c) amended; OMB numbers....28796
60.32 (a)(2) and (c)(3) revised; OMB number....28796
60.33 OMB numbers....28796
60.34 (a), (b)(1), (3), (c) and (d) revised; OMB numbers....28796
60.35 Introductory text, (a)(1), (b), (c) introductory text, (3), (d), (e) and (f) revised; (a)(2) amended; OMB numbers....28796
60.36 Revised....28797
60.37 Revised....28797

Page

60.38 Introductory text revised; (a) amended; OMB numbers....28797
60.39 (b)(3) revised; OMB numbers....28797
60.40 (a) introductory text, (2), (b), (c) introductory text, (1)(i), (c)(1)(iii) introductory text, (2) and (3) revised; OMB numbers....28797
60.41 (a) and (b) amended; (c)(2), (d) and (e)(2) revised....28798
60.42 Heading, (a)(1) introductory text, (2), (3), (4) and (b) through (e) revised; OMB numbers....28798
60.43 Heading, (a) and (c) revised....28799
60.50 (a)(1) concluding text revised....28799
60.51 (f)(1) amended; OMB numbers....28799
60.53 Heading revised; OMB number....28799
60.54 OMB number....28799
60.56 OMB number....28799
60.57 Revised....28799
60.60 (a) revised....28799
60.61 (a)(2) revised; OMB number....28799
62.71—62.76 (Subpart D) Revised....56597
100 (Subchapter J) Added....28099
110 (Subchapter J) Added....51808
110.103 Corrected....59332
110.101—110.103 (Subpart A) Appendix corrected....59218, 59332
124.708 (c) added....8272

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

400.200 Amended....24975
400.203 Amended; interim....29155
405.301—405.380 (Subpart C) Heading and authority citation revised....19092
405.380 Undesignated center heading and section added....19092
405.501—405.580 (Subpart E) Authority citation revised....59621
Authority citation revised....24975

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 42 Chapter IV—Con. Page

405.501 (b) revised....24975
405.502 (f)(1) revised....59621
(f)(4) revised....24975
405.505 Revised....27305
405.509 (c) added....59621
405.517 Added....59621
405.521 Revised....59621
405.522 Revised....59622
405.523 Revised....59622
405.524 Revised....59622
405.530 Removed....59622
405.531 Removed....59622
405.532 Removed....59622
405.533 Removed....59622
405.550—405.580 Undesignated center heading removed....59622
405.550—405.580 (Subpart F) Revised....59622
405.553 Removed....59622
405.555 Removed....59622
405.557 Removed....59622
405.801—405.874 (Subpart H) Authority citation revised....27305
405.874 Added....27305
405.2100—405.2184 (Subpart U) Authority citation revised....7134
405.2163 (b) revised....7134
405.2171 (d) revised....7134
405.2401—405.2472 (Subpart X) Heading and authority citation revised....24975
405.2401 (a) revised; (b) amended....24975
405.2410 Revised....24976
405.2418 Redesignated as 405.2460....24976
405.2425 Redesignated as 405.2462....24976
405.2426 Redesignated as 405.2464....24976
405.2427 Redesignated as 405.2466....24976
405.2428 Redesignated as 405.2469....24977
405.2429 Redesignated as 405.2470....24977
405.2430—405.2452 Undesignated center heading and sections added....24978
405.2430 Redesignated as 405.2472....24978
405.2460—405.2472 Undesignated center heading added....24980
405.2460 Redesignated from 405.2418 and revised....24976

Page

405.2462 Redesignated from 405.2425 and revised....24976
405.2464 Redesignated from 405.2426 and revised....24976
405.2466 Redesignated from 405.2427 and revised....24976
405.2468 Redesignated from 405.2428; (a), (b) and (d) revised....24977
405.2470 Redesignated from 405.2429 and revised....24977
405.2472 Redesignated from 405.2430; Introductory text republished; (a) revised....24978
406.12 Corrected....50058
406.20 (c) corrected....50058
407.2 Revised....24980
407.40 (b) corrected....50058
410 Authority citation revised....7134, 24981
410.3 (a)(1) revised....24981
410.5 Introductory text revised; (d) added....7134
(b) revised....24981
410.10 (s) added....24981
410.32 (b) introductory text republished; (b)(2) and (5) revised....7135
(t) introductory text republished; (b)(6) added....24981
410.150 (b)(8) revised....24981
410.152 (f), (h) and (j) heading revised....24981
410.160 (b) revised....24981
410.165 (a) revised....24981
411 Authority citation revised....61381
411.1 (a) revised; interim....61381
411.350—411.361 (Subpart J) Added; interim....61381
412.80 (a)(1)(ii)(B) amended....3016
412.113 (a)(3) amended....3016
412.116 (b)(3)(ii)(B) and (C) amended....3016
412.278 (f)(1) corrected; (f)(3) correctly designated as (f)(4); (f)(3) added; CFR correction....13046
412.302 (a), (c)(1)(i)(D), (v), (d)(2) and (3) amended....3016
412.308 (c)(4)(ii) amended....3016
412.320 (a) redesignated in part as (a)(1) and (2); (a) introductory text, (1), (2) and (b)(1) amended....3016

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

412.324 (b)(2) and (3) amended....3016
412.328 (c)(1) and (f)(1)(iii) amended....3016
(f)(3)(iii) amended....3017
412.336 (c)(1) amended....3017
412.344 (d)(1) and (2) amended....3017
412.348 (b)(1)(ii) amended....3017
413 Authority citation revised....54545, 59219
413.40 (g)(1) corrected....59219
413.114 Regulation at 54 FR 37274 confirmed; (a), (c) and (d) nomenclature change; (b) revised; (d)(1)(i) amended....54545
413.130 (a)(3), (10) and (f) amended....3017
413.134 (f)(2)(iii)(D) amended....3017
413.170 Heading revised; (c)(7) added....59624
414 Authority citation revised....50823
Heading revised....65998
414.224 Added....65998
414.230 (Subpart D) Added....50823
415 Added....59624
416 Authority citation revised....7135
416.49 Revised....7135
417 Authority citation revised....46509
Authority citation revised....7135, 8201, 24981
417.1—417.2 (Subpart A) Heading added....51985
417.1 Redesignated from 417.100; introductory text revised....51985
417.2 Added....51985
417.100—417.180 (Subpart A) Heading removed....51985
417.100—417.109 Undesignated center heading removed....51985
Designated as subpart B....51985
417.100 Redesignated as 417.1; introductory text revised....51985
417.107 (i) revised....7135
417.110—417.119 Undesignated center heading removed; redesignated as 417.910 through 417.919....51985

Page

417.120—417.126 Undesignated center heading removed; redesignated as 417.920 through 417.926....51985
417.130—417.137 Undesignated center heading removed; redesignated as 417.930 through 417.937....51985
417.140—417.144 Undesignated center heading removed; designated as subpart D....51985
417.150—417.159 Undesignated center heading removed....51985
Designated as subpart E....51986
417.160—417.166 Undesignated center heading removed....51985
Designated as subpart F....51986
417.170—417.180 Undesignated center heading and sections removed....51985
417.201—417.292 (Subpart B) Heading and sections removed....51985
417.228—417.239 Undesignated center heading removed....51985
417.240—417.247 Undesignated center heading removed....51985
417.249—417.292 Undesignated center heading removed....51985
417.400—417.694 (Subpart C) Heading removed....51985
417.400—417.418 Designated as subpart J....51986
417.401 Introductory text amended....51986
417.404—417.418 Undesignated center heading removed....51985
417.416 (d)(1) revised....24981
417.420—417.460 Undesignated center heading removed....51985
Designated as subpart K....51986
417.436 (a) introductory text republished; (a)(6) redesignated as (a)(7); (a)(5) and new (a)(7) revised; new (a)(6) and (d) added; interim....8201
417.470—417.494 Undesignated center heading removed....51985
Designated as subpart L....51986
417.472 (f) redesigned as (g); new (f) added; interim....8202
417.520—417.523 Undesignated center heading removed....51985
Designated as subpart M....51986

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 42 Chapter IV—Con. Page

417.524—417.528 Undesignated center heading removed.....51985
Designated as subpart N.....51986
417.530—417.576 Undesignated center heading removed.....51985
Designated as subpart O.....51986
417.580—417.598 Undesignated center heading removed.....51985
Designated as subpart P.....51986
417.600—417.638 Undesignated center heading removed.....51985
Designated as subpart Q.....51986
417.640—417.694 Undesignated center heading removed.....51985
Designated as subpart R.....51986
417.800—417.810 (Subpart D) Heading removed.....51985
Redesignated as subpart U.....51986
417.800 (b) revised.....7135
417.801 (b) introductory text republished; (b)(5) redesignated as (b)(6); (b)(4) and new (b)(6) revised; (b)(5) added; interim.....8202
417.910—417.937 Designated as subpart V.....51986
417.910—417.919 Redesignated from 417.110 through 417.119.....51985
417.920—417.926 Redesignated from 417.120 through 417.126.....51985
417.930—417.937 Redesignated from 417.130 through 417.137.....51985
418 Authority citation revised.....7135
418.92 Revised.....7135
420 Authority citation revised.....27306, 24982
420.200—420.206 (Subpart C) Heading revised.....27306
420.200 Revised.....27306
420.201 Amended.....24982, 27306
420.204 Revised.....27306
420.205 Revised.....27306
420.206 (a) introductory text republished; (a)(1), (3), (b)(2), (3) and (c) revised.....27306
421 Authority citation revised.....27307
421.1 (a) revised.....27307
421.200 Introductory text revised.....27307
421.202 Introductory text and (c) revised.....27307
421.210 Added.....27307
424.1 (c) revised.....24982
424.40 (c)(3) revised.....24982
424.57 Added.....27306
431 Response to comments.....65853
431.20 Added; interim.....8202
431.107 (a) revised; (b) introductory text republished; (b)(2) and (3) revised; (b)(4) added; interim.....8202
431.635 Added.....28103
433 Authority citation revised.....56139
433.45 Revised.....56139
Regulation at 56 FR 56139 withdrawn.....64195
434.38 Added; interim.....8202
435.3 Amended; interim.....29155
435.217 Revised; interim.....29155
435.726 (b) revised; interim.....29155
435.735 (b) revised; interim.....29155
436.2 Amended; interim.....29155
436.217 Revised; interim.....29155
440.1 Revised; interim.....29155
440.30 Introductory text republished; (a) and (c) revised.....7135
440.181 Added; interim.....29156
440.250 (k) revised; interim.....29156
441.350—441.365 (Subpart H) Added; interim.....29156
441.351 OMB number pending.....29156
441.352 OMB number pending.....29156
441.353 OMB number pending.....29156
441.356 OMB number pending.....29156
441.365 OMB number pending.....29156
482 Authority citation revised.....7136
482.27 Revised.....7136
482.53 (b)(3) revised.....7136
482.57 (b)(2) revised.....7136
482.66 Regulation at 54 FR 37275 confirmed; introductory text, (a) introductory text, (6) introductory text and (7) introductory text republished; (a)(4), (6)(i), (7)(i) and (b) revised.....56546

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

483 Authority citation revised....54546
Authority citation revised....7136
Authority citation revised....8202
483.10 Introductory text republished; (b)(4) revised; (b)(8), (9) and (10) redesignated as (b)(9), (10) and (11) and revised; new (b)(8) added; interim....8202
483.75 Heading and (j) revised....7136
483.80 Removed....54546
483.150 (a) corrected....59331
483.156 Correctly designated....59331
483.460 (n) heading revised....7136
484 Authority citation revised....7136
Authority citation revised....8203
484.10 Introductory text republished; (c)(2) revised; interim....8203
484.14 (g) and (i)(2)(i) corrected....51334
(j) added....7136
484.36 (a)(2)(i)(F) and (G)(*1*) corrected....51334
485 Authority citation revised....7137
485.58 (g) added....7137
485.304 Introductory text republished; (q) added....7137
488 Authority citation revised....7137, 24982
488.1 Amended....24982
488.52 Removed....7137
489 Heading revised....8203
489.10 (b) redesignated as (c) and revised; new (b) added; interim....8204
489.100–489.104 (Subpart I) Added; interim....8203
491 Authority citation revised....7137
491.1—491.11 (Subpart A) Heading revised....24982
491.1 Revised....24982
491.2 Amended....24982
491.4 Revised....24982
491.5 (a) revised....24982
491.6 Revised....24983
491.7 Revised....24983
491.8 Revised....24983
491.9 (c)(2) and (d)(1)(iii) revised; (d)(1) introductory text republished....7137

Page

Revised....24983
491.10 (a) and (b) revised....24984
491.11 Revised....24984
493 Authority citation revised....7137
493.1—493.25 (Subpart A) Revised....7139
493.2 Amended....7136
493.35—493.39 (Subpart B) Added....7142
493.43—493.51 (Subpart C) Added....7143
493.55—493.63 (Subpart D Added....7144
493.602—493.649 (Subpart F) Added....7213
493.602—493.634 Text removed....7139
493.701 (Subpart G) Removed....7139
493.801—493.865 (Subpart H) Revised....7146
493.901—493.959 (Subpart I) Revised....7151
493.1101—493.1111 (Subpart J) Revised....7162
493.1201—493.1285 (Subpart K) Revised....7163
493.1401—493.1495 (Subpart K) Redesignated as subpart M and revised....7172
493.1501 (Subpart M) Redesignated as 493.1701 (Subpart P)....7172
493.1601 (Subpart N) Redesignated as 493-1775 (Subpart Q)....7172
493.1701—493.1721 (Subpart P) Revised....7183
493.1701—493.1710 (Subpart O) Removed....7172
493.1775—493.1780 (Subpart Q) Revised....7184
493.1800—493.1850 (Subpart R) Added....7237
493.2001 (Subpart T) Added....7185
494 Authority citation revised....7185
494.51 Revised....7185
498 Authority citation revised....8204, 24985
498.2 Amended....24984

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 42 Chapter IV—Con. Page

498.3 (b) introductory text republished; (b)(11) added; interim 8204
(b)(7) revised 24984

Chapter V—Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

1000 Authority citation revised 3329
1000.10 Amended 3329
1000.20 Amended 3330
1001 Revised 3330
1001.301 (a) and (b)(1)(i) correctly revised 9669
1001.1601 (a)(1) correctly revised 9669
1002 Revised 3343
1003 Authority citation revised 3345
1003.100 Revised 3345
1003.101 Amended 3345
1003.102 Revised 3345
(b)(2) correctly revised 9670
1003.103 Revised 3346
1003.105 Revised 3346
1003.106 Revised 3347
1003.107 Revised 3348
1003.109 Revised 3348
1003.110 Amended 3348
1003.111 Removed 3348
1003.112 Removed 3348
1003.113 Removed 3348
1003.114 Revised 3348
1003.115—1003.125 Removed 3348
1003.127 Revised 3348
1003.128 (a) and (d) revised 3349
1003.129 Revised 3349
1003.130 Removed 3349
1003.131 Removed 3349
1003.132 Revised 3349
1003.133 (a) amended 3349
1003.134 Added 3349
1003.135 Added 3349
1004 Authority citation revised 3349
1004.30 (b) and (c) introductory text revised 3349
1004.40 Revised 3349
1004.50 (a) and (c)(1) revised 3349
1004.60 (c) added 3349
1004.90 (d)(7) revised 3350
1004.100 (g) removed 3350
1004.110 Revised 3350
1004.120 Revised 3350
1004.130 Revised 3350
1005 Added 3351
1006 Added 3354
1007 Added 3355

Title 42—*Proposed Rules:*

36 ..... 51189, 56691
400 ..... 55382, 56612
409 ..... 50542, 55382
410 55382
411 55382
..... 8588
412 55382
..... 23618
413 ..... 50834, 55382, 59240, 59979
..... 23618
418 4516
420 56612
421 56612
424 55382
440 ..... 55382, 66392
..... 4516
441 66392
..... 4516
447 ..... 56141, 64228
482 4516
483 ..... 4516, 8961
485 55382
488 55382
..... 4516
489 55382
799 4177

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

4.200—4.357 (Subpart D) Authority citation revised 61383
4.350—4.357 Undesignated center heading added 61383
4.350 Added 61384
(c)(6) corrected 65782
4.351 Added 61384
(b)(1), (2)(ii) and (4) corrected 65782
(b)(4) corrected 8319
4.352 Added 61384
(b)(2) corrected 65782
4.353 Added 61385

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

4.354 Added....61385
4.355 Added....61385
4.356 Added....61385
4.357 Added....61386
20 Appendix X availability....10293

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

3150 Authority citation revised....9012
3150.2 Added; interim; effective to 12-31-92....9012
3160 Technical correction...2039, 3136, 5211
Authority citation revised....3024
Notes 1 and 2 removed....3024
3160.0-9 Added....3024
3162.7-4 Interpretation....63661
3164.1 (b) table amended....3025
3165.4 (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added; interim; effective to 12-31-92....9013

Public Land Orders

1176 Revoked in part by PLO 6923....5987
1537 Revoked by PLO 6899....55827
1722 Revoked by PLO 6899....55827
1825 Revoked in part by PLO 6919....2841
2051 Revoked in part by PLO 6933....27000
4249 Revoked in part by PLO 6901....56321
4522 Amended by PLO 6926....19092
Revoked in part by PLO 6934....28637
4747 Amended by PLO 6902....56322
5187 Revoked in part by PLO 6900....55828
5150 Amended by PLO 6932....24985
6649 Extended by PLO 6935....28638
6831 *See* PLO 6883 corrected....50059
6849 Corrected by PLO 6907....57806
6883 50058
Corrected....60929
6884 49847
Corrected....56275
6885 Corrected....50059
6886 50661
6887 50824
6888 50661
Corrected....66602

Page

6889 51177
6890 51334
Corrected....58122
6891 51986
6892 52210
6893 52210
6894 52211
Corrected....2842
6895 52212
6896 52477
6897 54896
6898 55827
6899 55826
6900 55828
6901 56321
6902 56322
6903 56936
6904 56936
6905 57805
6906 57806
6907 57806
6908 57806
6909 57807
6910 59219
6911 60927
6912 60928
6913 60928
6914 60929
6915 60929
Corrected....3674
6916 64713
Corrected....2951
6917 66602
6918 66602
6919 2841
Corrected....5211
Corrected by PLO 6927....21613
6920 2842
6921 4144
6922 4856
6923 5987
6924 6560
6925 10426
6926 ....6926, 19092
6927 21613
6928 22659
6929 24191
6930 26607
6931 26607
6932....24985
Corrected....28555
6933....27000
6934 28637
6935 28638

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 43

Title 43—*Proposed Rules:*

Page

4 ..... 55157, 55263, 58330
37 1344
2090 49962
2200 49962
2300 59914
2740 61104
3100 8605
3150 9010
3160 9010
3180 4177
3260 59240
3610 3092
3800 ..... 54815, 66614

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

59 Authority citation revised..... 19540
59.1 Amended..... 19540
59.4 (c) amended..... 19540
59.24 (b) introductory text and (3) amended..... 19540
61 Authority citation revised..... 19540
61.5 (d) redesignated in part as (d)(1) and (3); (d) (1) revised; new (d)(2) added..... 19541
61.15 Removed..... 19541
61.16 Amended..... 19541
61 Appendixes A(1) and (2) amended..... 19541
62 Authority citation revised..... 19541
62.6 (a)(1) and (2) revised..... 19541
64 Authority citation revised..... 11688
64.6 Table amended...55467-55469, 58314, 60066, 65005
Table amended...357, 359, 2683, 3556, 9504, 10832, 11688, 18831, 18833, 18834, 22438, 23159, 27001, 27003
65 Authority citation revised...19380, 29038
65.4 Table amended; interim..... 51336
Table amended..... 51338
Table amended...360, 9057, 19380, 27357, 27359
Table amended; interim...362, 9056, 19382
(c) added..... 29038
67 Flood elevation determinations..... 51339, 67001
Flood elevation determinations.....526, 9059, 9212, 19542, 27361
Authority citation revised..... 19542
71 Heading and authority citation revised..... 22661
71.1 Amended..... 22661
71.2 (b) through (d) revised; (e) through (k) added..... 22661
71.3 Revised..... 22662
71.4 (a), (b), (c) introductory text and (d) introductory text revised; (e) through (h) added..... 22662
72 Revised..... 29038
75 Authority citation revised..... 19542
75.14 Amended..... 19542
80.310 Revised..... 19552
81 Authority citation revised..... 11267
81.1 (b)(1) revised..... 11267
83.25 (e) revised..... 26776
206.250—206.253 (Subpart I) Revised..... 64560
353 User fees..... 10834

Title 44—*Proposed Rules:*

65 ..... 50838, 51358
67 ..... 51362, 55478, 65037
..... 2864, 3603, 5510, 9082, 19558, 27406
72 ..... 50838, 51358
81 65037
83 ..... 58019, 66824
206 ..... 18441, 18442
1035 25007

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services, General Administration (Parts 1—199)

3.42 (g) added..... 1874
3.5 Revised..... 1874
96 Authority citation revised..... 1977
96.50 (d) amended; interim..... 1977
96.81 Revised; interim..... 1977
96.83 Added; interim..... 1977
96.84 Revised; interim..... 1978
96.86 Revised; interim..... 1978
96.87 Revised; interim..... 1978

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Chapter II—Office of Family Assistance (Assistance Programs), Family Support Administration, Department of Health and Human Services (Parts 200—299)

Page

205 Authority citation revised....66375
205.56 (b) revised; interim....66375
205.58 (a) and (b)(4) revised; interim....66375
223 Authority citation revised....64203
233.20 (a)(1)(ii), (3)(vi) and (x) revised....64203
233.53 (a) and (c)(4) introductory text revised....64204
235 Authority citation revised....64204
235.112 Added....64204
(b)(2) corrected....1204
235.113 Added....64205
(b)(3)(ii)(G) and (I) corrected....5048

Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Family Support Administration, Department of Health and Human Services (300—399)

303.70 (e) revised....28110

Chapter IV—Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services (Parts 400—499)

Chapter IV Heading revised....1115
400.2 Amended....1115
400.60 (b) amended....1115
400.100 (b) amended....1115
400.203 (b) amended....1115
400.204 (b) amended....1115
400.209 (b) amended....1115
402.31 (b) redesignated in part as (b)(1) and (2); new (b)(1) revised; new (b)(2) amended....19386
402.41 (d) introductory text correctly revised....49707
402.43 (a) and (b) amended....19386

Page

402.51 (e)(1) amended; (e)(4) added; OMB number....19386

Chapter VI—National Science Foundation (Parts 600—699)

650 Revised....18053

Chapter VII—Commission on Civil Rights (Parts 700—799)

708 26634

Chapter X—Office of Community Services, Family Support Administration, Department of Health and Human Services (Parts 1010—1080)

Chapter X Heading revised....27946
1080 Authority citation revised....27946
1080.4 (b), (c) and (d) redesignated as (c), (d) and (e); new (b), (f) and (g) added....27946
1080.5 (b)(2) removed; (b)(3) through (7) redesignated as (b)(2) through (6); (b)(1) introductory text revised, new (b)(3), (5) and (6) revised; new (b)(7) added; OMB number....27946
1080.6 (a) revised; (c) amended....27946
1080.8 Revised....27946

Chapter XI—National Foundation on the Arts and the Humanities (Parts 1100—1199)

1160 Revised....49848
1160.4 (e) introductory text corrected....51842

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1611 Appendix A revised....8578

Chapter XX—Commission on the Bicentennial of the United States Constitutions (2000—2099)

Chapter XX Removed....29041

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 45

Chapter XXIV—James Madison Memorial Fellowship Foundation (Part 2400—2499)

Page

Chapter XXIV Established..... 7322

Chapter XXV—Commission on National and Community Service (2500—2599)

Chapter XXV Established..... 5299

Title 45—*Proposed Rules:*

5b 25004
301 58205
303 58205
641 7355
708 26634
1150 6303
1155 6206
1180 6208
1303 3394
2017 55416
2301 55416
2490 55416
2500-2506 (Ch. XXV) 57404

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

10.504 Correctly added..... 7326
16.205 Revised..... 60930
28.30 (a) corrected..... 49822
28.110 Table corrected..... 49822
28.115 Table corrected..... 49822
28.120 (h)(2) corrected..... 49822
28.135 (a) and table corrected..... 49822
28.140 Table corrected..... 49822
28.375 (c)(6) corrected..... 49822
28.380 (b) corrected..... 49822
28.385 (b) corrected..... 49822
28.410 Heading corrected..... 49822
28.500 (b) revised..... 364
28.580 (a) revised..... 364
30.25-1 Table amended..... 52134
30.25-3 Correctly added..... 65006
44 Exemption..... 22663
45 Exemption..... 22663
67.13-3 (c) through (g) redesignated as (d) through (h); (b) revised; new (c) added..... 51654
67.13-7 (b) revised..... 51655
67 Appendix D revised..... 51655

Page

68 Authoity citation revised..... 7642
68.05-1—68.05-13 (Subpart 68.05) Added..... 7642
151.05 Corrected..... 65006
151.05-1 Table amended..... 52135
151.50-60 Revised..... 52135
Correctly revised..... 65006
153 Table amended..... 52135
153.1060 Revised..... 52135
Correctly revised..... 65006
153 Table 1 corrected..... 65006
170 Stability criteria..... 11267
189.55-1 (b) corrected..... 57754
197.501—197.580 (Subpart C) Added..... 52135
197.501 (c) correctly added..... 65006
197.540 (b) corrected..... 65006
197.560 (b)(1) and (2)(i) corrected..... 65006

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

221 Revised..... 23478
249 Clarification..... 14358
327 Revised..... 50275
381 Authority citation revised..... 13047
381.3 (a) and (c) amended..... 13047
381.5 Introductory text amended..... 13047
381.6 (b) amended..... 13047
382.2 (c)(2) and (d) amended..... 57808
383 Revised..... 21036
Authority citation correctly revised..... 24191

Chapter III—Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)

401.405 Revised..... 23957
401.410 Revised..... 23958
401.420 Revised..... 23958
401.428 Revised..... 23958

Chapter IV—Federal Maritime Commission (Parts 500—599)

502.92 Regulation at 57 FR 3026 confirmed..... 9984
502.92 (c) revised; interim..... 3026
504.4 (a)(3) added..... 50662
510—540 (Subchapter B) Heading revised..... 61166

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

514 Added 61166
515 Authority citation revised 4582
515.3 Existing text designated as (a); (b) and (c) 4582
550.1 (e) added 50827
(e) correctly revised 54797
(b) revised; (f) added 60932
(b) revised; (c) through (f) removed 65999
560.308 Added 4582
571.118 Amended 23963
572.310 Added 4583
580.5 (d)(24) and (25) revised 51995
Clarification 3950
581.3 (e) republished 51996
Clarification 3950
581.4 (a)(3) republished 51996
Clarification 3950
581.11 Revised 51996
Clarification 3950
583 Revised 51993
Clarification 3950
583.3 (c) corrected 56323
586.2 Removed 65857

Title 46—*Proposed Rules:*

1-199 (Ch. I) 4744
2 ..... 65786, 66765, 10149
10 65786
12 65786
15 65206
25 56180
31 ..... 56284, 1243
32 ..... 56284, 1243
35 ..... 56284, 514, 1243, 12378
67 ..... 10544, 21546
70 11058
72 11058
154a 21546
200-399 (Ch. II) 4744
237 21362
250 21362
262 21362
278 21362
279 21362
292 21362
294 21362
310 21362
316 21362
318 21362

Page

319 21362
320 21362
321 21362
322 21362
323 21362
333 21362
334 21362
381 8287
401 ..... 63911, 64839
500-599 (Ch. IV) 4744, 12286
502 ..... 2702, 26809
510 ..... 23563, 24004
514 ..... 55860, 66006, 18122
515 24569
520 23564
525 24006
530 24006
540 19097
550 ..... 50824, 23564, 23566, 25005, 26809
552 ..... 57298, 66827, 11703, 25005
553 25005
555 25005
560 ..... 19583, 24569, 24571
572 ..... 14551, 24569, 24571, 26637, 28011
580 ..... 19583, 23368, 23563, 23564, 23566, 26637, 27413
581 ..... 18855, 19102, 24220, 26637, 27008, 27413
582 23563
583 27413
586 ..... 56487, 2070, 6210

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

Memorandum Opinion and Order 6481
0.241 (a)(8) revised 18088
0.243 Removed 18088
0.251 (f)(12) revised 19387
0.283 (c)(3) revised 18088
0.291 (h) revised 8579
(f) revised 18088
(f) correctly revised 22181
0.311 (d) revised 18088
0.331 (a)(9) revised 18089
0.401 (a)(3)(i) revised 64714

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 47 Chapter I—Con. Page

0.418 Revised ... 64714
0.482 Amended ... 64714
0.491 Revised ... 64714
1 Authority citation revised ... 57598
Authority citation revised ... **187**
Order ... **3133**
Policy statements ... **24986, 56937**
1.18 Added ... 51178
1.80 (h) revised ... **23161**
1.115 (e)(1) amended ... **19387**
1.402 Revised ... **7882**
1.403 Revised ... **7882**
1.790 Revised ... **8579**
1.823 (b)(3) added ... 58506
1.824 Heading, (a) and (b) revised ... 57815
1.912 (a), (b)(1) and (e) amended; (b)(3) and (d) revised ... 64714
1.922 Table amended ... 64715
1.926 (a)(1) revised ... **8274**
(a)(2) revised ... 64715
(c) added ... 65858
1.931 (a) amended ... 64715
1.951 (a) revised; (c) removed; (d) redesignated as (c) ... **8274**
1.952 (b) amended ... **8274**
1.962 (g) amended ... 64715
1.972 (a)(1) amended; (c) revised ... **8274**
1.1101—1.1117 (Subpart G) Authority citation removed ... 57598
1.1102 Amended ... 56602, 63662, 64715, 65858
Amended ... **8275**
1.1104 Amended ... **23160**
1.1105 Amended ... 57598, 63663
Amended ... **23161**
1.1111 (b) and (c) introductory text through (5) redesignated as (a)(6) and (b) introductory text through (5); new (b) introductory text, (3) and (4) amended; new (c) added ... 56602
1.1112 (g) added ... 56602
1.2001—1.2003 (Subpart P) Added ... **187**
2.106 Table amended ... 51656
Footnote NG47 revised ... 57815
Table amended (effective date pending) ... 64855
Table amended; Footnote US317 added ... **8275**
Regulation at 56 FR 64855 eff. 4-19-92 ... 11689

Page
2.948 (b)(8) revised ... **24990**
2.1201 Regulation at 56 FR 26619 comment period extended to 10-24-91 ... 51178
2.1202 Regulation at 56 FR 26619 comment period extended to 10-24-91 ... 51178
2.1203 Regulation at 56 FR 26619 comment period extended to 10-24-91 ... 51178
2.1204 Regulation at 56 FR 26619 comment period extended to 10-24-91 ... 51178
2.1205 Regulation at 56 FR 26619 comment period extended to 10-24-91 ... 51178
2.1207 Regulation at 56 FR 26620 comment period extended to 10-24-91 ... 51178
2.1209 Regulation at 56 FR 26620 comment period extended to 10-24-91 ... 51178
2.1211 Regulation at 56 FR 26620 comment period extended to 10-24-91 ... 51178
2.1213 Regulation at 56 FR 26620 comment period extended to 10-24-91 ... 51178
2.1215 Regulation at 56 FR 26620 comment period extended to 10-24-91 ... 51178
2.1219 Regulation at 56 FR 26620 comment period extended to 10-24-91 ... 51178
5.207 Revised ... **7882**
13.2 (b)(7) added ... **9065**
13.5 (d) added ... 56602
13.21 (a)(7) added ... **9065**
13.22 (b)(6) added ... **9065**
15 Reconsideration petition ... 57823
15.31 (a) revised ... **24990**
15.119 (a) note added; (f)(1))(iii) and (3)(ii) removed; (f)(1)(iv) through (xi) and (3)(ii) through (v) redesignated as (f)(1)(iii) through (x) and (3)(i) through (iv) (d), (i)(4) and (5) table amended, (e)(1)(i), (ii), (f) introductory text, (1)(iii), (x), (2)(i), (ii), (iii), (3)(iii), (h)(i) introductory text, (l) and (n)(6) revised ... **19094**
15.205 (a) revised ... **13048**
15.237 Heading revised ... **13048**

NOTE 1: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

21.11 (a), (d) and (f) revised 57815
21.23 (a) and (b) amended 57816
21.30 (a)(4) amended 57816
21.33 (a) revised 57816
21.101 (a) table footnote 6 revised 57816
21.107 (b) table footnote 1 revised 57816
21.307 (a), (b) introductory text, (4), (c)(1) introductory text, (i) introductory text, (B), (2)(i)(A), (G), (ii)(A), (iii)(A), (d)(1)(ii), (e)(1) introductory text through (iv), (2), (f)(1) and (2)(i) revised 57816
21.900 Amended 57817
21.901 (d)(1) removed 57598
(a) amended; (b)(4) and (5) revised; (b)(6) and (f) added 57817
21.902 (f)(2) revised; (i) and (j) redesignated as (j) and (k); new (i) added 57598
(f)(2), (i)(2)(i), (ii), (6)(i), (iii)(A) through (F) and (iv) amended; (i)(1) revised 57818
(i)(1) revised 65191
21.905 (c) amended 57818
21.908 (b) amended 57818
21.909 (c) added 57818
21.912 (a) and (c) amended; (d) through (g) added 57818
21.913 (g) added 57599
21.914 Amended 57819
22 Unserved areas applications filing deadlines waived 829
Interpretation 28466
22.2 Amended 58506
Amended 831
22.6 (b)(3) removed; (b)(2) and (d)(3) added 58506
(b)(2)(ii) removed 13648
22.9 (d)(7)(ii) revised; (d)(7)(iii) added 13648
22.13 (a)(1)(iv) added 58506
22.23 (c)(3) revised 13648
22.27 (b)(2) revised 63663
22.28 (a) and (b) introductory text revised 3027
22.29 (a) introductory text revised 3028
22.31 (a)(1)(ii) and (b)(2)(iii) added; (f) revised 58506
(j) added 3028
22.32 (e)(5) revised; (e)(6) added 3028

Page

22.33 (b)(3) added 58507
22.40 (b) revised 3028
22.43 (c)(1) and (2) revised; (c)(4)(i) added 58507
(c)(1) introductory text amended; (d)(1)(vi), (vii) and (viii) removed; (d)(3)(vi) revised 13648
22.117 (b)(1) amended 13648
22.902 (b) introductory text revised; (b)(3), (4), (5), (d)(4) and (5) added 58507
(b)(4)(ii) introductory text, (b)(4)(ii)(B)(3) and (d)(4) amended 13648
22.903 (a)(1)(i), (ii) and (j) added 58508
Revised 13648
22.904 Revised 831
22.911 (a)(1) added 831
22.912 (c) added 831
22.913 Heading, (a) introductory text and (d) revised 13649
22.914 Revised 27705
22.916 (c) revised 58509
22.917 (b)(2) correctly added 58315
(b)(2) removed; (a)(1) introductory text revised; (f) added 58509
(g) added 3028
22.918 (c) redesiganted as (d); new (c) added 58509
(c)(2) amended 13649
22.920 (c) added 58510
22.921 Revised 58510
22.923 Heading, (a) introductory text and (c) introductory text revised; (a)(1) and (c)(1) amended 13649
22.924 Added 58510
(b)(1) and (b)(2) amended 13649
(b)(3) amended; (c)(3) revised 13650
22.925 Added 58511
Revised 13650
22.926 Added 58511
Revised 13650
22.930 (d) amended 831
(d) revised 13650
22.940 Added 3029
22.941 Added 3029
22.942 Added 3029
22.943 Added 3030
22.944 Added 3030
22.945 Added 3031

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 47 Chapter I—Con. Page

25 Decision and remand..... 1227
25.114 (c)(24) revised..... 14798
25.134 Added..... 66001
25.252 (c) Table 1 amended..... 21214
43 Authority citation revised..... 9671
43.41 Added..... 9671
43.51 Technical correction..... 5510
43.61 Revised..... 8580
61 Memorandum opinion and order..... 66602
Memorandum opinion and order..... 20206
61.3 (m) through (jj) redesignated as (n) through (kk); new (m) added..... 55239
61.33 (f) redesignated as (f)(1); (f)(2) added..... 55239
61.38 (a) amended..... 55239
61.41 (c) introductory text and (d) introductory text amended..... 55239
61.42 (b)(3) and (c) revised..... 55239
61.47 (h) amended..... 55239
61.48 (b) redesignated as (1); (b)(2) added..... 55239
61.55 Added..... 55239
61.58 (c)(6) redesignated as (c)(7) and revised; new (c)(6) added..... 55239
63 Interpretive rulings..... 65445
Heading and authority citation revised..... 7884
63.01 (k)(5) added..... 647
Technical correction..... 5510
63.30—63.90 Undesignated center heading revised..... 7884
63.100 Added..... 7884
64 Memorandum opinion and order..... 2842
Authority citation revised... 4740, 21040
Petition denied..... 5391
64.704 (c) and (d) compliance dates temporarily stayed..... 10998
64.709 Added..... 56165
64.710 Added..... 56165
64.711 Added..... 56165
64.712 Added..... 56165
64.713 Added..... 56165
64.714 Added..... 56166
64.715 Added..... 56166
64.716 Added..... 56166
64.903 Added..... 4375
64.904 Added..... 4376
64.1100 (Subpart K) Added..... 4740
64.1301 (Subpart M) Added..... 21040
65 Reconsideration order adoption..... 65192
68 Reconsideration petition..... 57823
Authority citation revised..... 27183
68.4 (a)(2) revised..... 27183
68.112 (b)(1), (3) and (c) revised; (b)(5) added..... 27183
68.318 (c)(2) added..... 56166
69 Report and order..... 51656
Memorandum opinion and order..... 4856
69.4 (b)(8) added..... 24380
69.120 Added..... 24380
69.210 Added..... 51844
69.305 (c) redesignated as (d) and revised; new (c) added..... 24380
69.306 (c) revised..... 24380
69.307 Existing text designated as (b) and revised; new (a) added..... 24380
73 Technical correction..... 50419
Petition denied in part..... 3952
Policy statement..... 8849
Policy decision..... 21744
73 Order on reconsideration..... 27367
73.14 Amended (effective date pending)..... 64856
Regulation at 56 FR 64856 eff. 4-19-92..... 11689
73.21 Revised (effective date pending)..... 64856
Regulation at 56 FR 64856 eff. 4-19-92..... 11689
73.22 Removed (effective date pending)..... 64856
Regulation at 56 FR 64856 eff. 4-19-92..... 11689
73.23 Redesignated from 73.3570 and revised (effective date pending)..... 64856
Regulation at 56 FR 64856 eff. 4-19-92..... 11689
73.24 (b) Note and (i) removed; (j) and (k) redesignated as (i) and (j); (e), (h) and new (i) revised (effective date pending)..... 64857
Regulation at 56 FR 64857 eff. 4-19-92..... 11689
73.25 (a)(1), (2) introductory text, (i), (ii) and (iii) removed; heading, (a), (b) and (c) revised (effective date pending)..... 64857

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

Regulation at 56 FR 64857 eff. 4-19-92 11689
73.26 Revised (effective date pending) 64857
Regulation at 56 FR 64857 eff. 4-19-92 11689
73.27 Revised (effective date pending) 64857
Regulation at 56 FR 64857 eff. 4-19-92 11689
73.28 (a) removed; (b) and (c) redesiganted as (a) and (b); new (a) revised (effective date pending) 64857
Regulation at 56 FR 64857 eff. 4-19-92 11689
73.29 Revised (effective date pending) 64857
Regulation at 56 FR 64857 eff. 4-19-92 11689
73.30 Added (effective date pending) 64857
Regulation at 56 FR 64857 eff. 4-19-92 11689
73.35 Added (effective date pending) 64858
Regulation at 56 FR 64858 eff. 4-19-92 11689
73.37 Revised (effective date pending) 64858
Regulation at 56 FR 64858 eff. 4-19-92 11689
73.53 (b)(1) revised; (c) Note added (effective date pending) 64859
Regulation at 56 FR 64859 eff. 4-19-92 11689
73.68 (d)(3) revised (effective date pending) 64859
Regulation at 56 FR 64859 eff. 4-19-92 11689
73.69 (d)(4) revised (effective date pending) 64859
Regulation at 56 FR 64859 eff. 4-19-92 11689
73.72 (a) revised (effective date pending) 64859
Regulation at 56 FR 64859 eff. 4-19-92 11689
73.88 Note added (effective date pending) 64859
Regulation at 56 FR 64859 eff. 4-19-92 11689
73.99 Revised (effective date pending) 64860
Regulation at 56 FR 64860 eff. 4-19-92 11689
73.150 (a) introductory text, (b)(1) introductory text, (2), (3), (5)(iv), (v) and (6)(vii) revised; (b)(1)(i) amended (effective date pending) 64861
Regulation at 56 FR 64861 eff. 4-19-92 11689
73.151 (b) added (effective date pending) 64862
Regulation at 56 FR 64862 eff. 4-19-92 11689
73.152 (c)(2)(iv) added (effective date pending) 64863
Regulation at 56 FR 64863 eff. 4-19-92 11689
73.153 Amended (effective date pending) 64862
Regulation at 56 FR 64862 eff. 4-19-92 11689
73.182 Revised (effective date pending) 64862
Regulation at 56 FR 64862 eff. 4-19-92 11689
73.183 (a) note added; (b) removed; (c) through (f) redesignated as (b) through (e); new (c) and (e) revised (effective date pending) 64866
Regulation at 56 FR 64866 eff. 4-19-92 11689
73.184 (a) and (b) note revised; (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e) and revised (effective date pending) 64866
Regulation at 56 FR 64866 eff. 4-19-92 11689
73.185 (c), (i) and (j) removed; (d), (e), (h) and (k) redesignated as (c), (d), (e) and (f); (b), new (c), (d), (e), (f) introductory text and (f)(2) revised (effective date pending) 64867
Regulation at 56 FR 64867 eff. 4-19-92 11689
73.187 (a) and (b) revised (effective date pending) 64868
Regulation at 56 FR 64868 eff. 4-19-92 11689
73.189 (b)(2)(i), (ii), (iii), (3) and (6) revised (effective date pending) 64868

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CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 47 Chapter I—Con. Page

Regulation at 56 FR 64868 eff. 4-19-92 11689
73.190 (a), (b), (c), (e), Figure 7 and Figure 8 revised (effective date pending) 64869
Regulation at 56 FR 64869 eff. 4-19-92 11689
73.202 (b) table amended 50277, 50278, 50519, 50520, 50827, 50828, 51658, 51659, 51844, 51845, 52478, 54546-54548, 55633, 55828, 55829, 56166-56169, 56472, 56473, 56603, 56939, 56940, 57294, 58315, 58512, 58513, 58862, 60932, 60933, 61168, 61169, 63663, 63664, 64209, 64211, 65194, 65195, 65860, 66789, 66790
(b) table amended ..... 189, 831, 1650—1652, 2481, 2844, 3134-3137, 3951, 3952, 4163, 4857, 5381-5394, 5861, 5862, 6075, 6076, 6203, 6482, 6561, 6688, 7660, 7661, 7885, 7886, 8421, 8422, 8580, 8581, 8726, 8727, 9504, 10294, 10427-10429, 10741, 10742, 10999, 11432, 12734, 13324, 14491, 14646, 17856, 17857, 19095, 19809, 19810, 19811, 20771, 21040, 21352, 21353, 21354, 21896, 22438—22441, 23162, 24554, 27368, 27369, 28111, 28112
Regulation at 57 FR 11432 corrected 12465
73.207 Regulation at 54 FR 9802 eff. 6-26-89 56938
(a) revised 57293
73.208 Regulation at 54 FR 9806 eff. 6-26-89 56938
73.209 Regulation at 54 FR 9802 eff. 6-26-89 56938
73.215 Regulation at 54 FR 9802 eff. 6-26-89 56938
(a)(2) and (e) revised; (a)(4) added 57294
73.311 Regulation at 54 FR 9804 eff. 6-26-89 56938
73.316 Regulation at 54 FR 9804 eff. 6-26-89 56938
(b) and (c)(8) revised 57294
73.606 (b) table amended 49707, 64211
(b) table amended 4857, 7885, 11000
73.614 (b)(1) amended 49707
73.659 (a)(3) revised 64209
73.660 (a) revised 64209
73.662 (c), (e) and (h) revised 64209
73.667 (a) amended 49707
73.681 Amended 49707
73.1030 (b) table revised (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1125 Note added (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1150 (c) added (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1201 (c)(2) revised (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1212 (a)(2)(i) amended 210
(a)(2)(i) and (ii) 8279
73.1217 Added 28640
73.1570 (b)(1)(ii) revised (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1650 (b)(2) introductory text revised; (b)(2)(i) and (ii) added (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1665 Note added (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1705 (c) revised (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1725 Revised (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1740 (a)(1)(i) revised (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.1940 Revised 208, 27708
73.1941 Added 208
73.1942 Added 209
Heading, (a)(1)(i), (xii), (2) and (b) introductory text revised; (a)(1)(vii) removed 27709
73.1943 Added 210

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

73.1944 Added 210
73.3516 (a) revised (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.3517 (c), (d), Note 1 and Note 2 added (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.3526 (a)(11) amended 64209
(a)(12) added 18091
73.3550 (i) revised (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.3555 Note 4 revised; Note 8, Note 9 and Note 10 added (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
(a) through (e) and Note 4 revised 18091
73.3556 Added 18093
73.3564 (e) added (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.3570 Redesignated as 73.23 and revised (effective date pending) 64856
Regulation at 56 FR 64856 eff. 4-19-92 11689
73.3571 (a)(3) added; (d)(1) and (e) removed; (d)(2), (3), (4), (f) through (i), (j)(1) through (4), (k) and (l) redesiganted as (d)(1), (2), (3), (e) through (h), (i)(1) through (4), (j) and (k); (a) introductory text, (1), new (d)(1), (2), (3), (f), (h) and (i)(1) revised (effective date pending) 64874
73.3580 (d)(4)(i)(A) and (ii)(A) redesignated as (d)(4)(i)(B) and (ii)(B); (d)(1) and (g)(1)(ii)(G) revised; (d)(4)(i)(A), (B)(4), (ii)(A), (B)(4) and (g)(1)(ii)(H) added; (g) introductory text and (h) amended 14647
Regulation at 56 FR 64874 eff. 4-19-92 11689
73.3598 (c) added (effective date pending) 64874
Regulation at 56 FR 64874 eff. 4-19-92 11689
73.3616 (d) revised; (e) added 18093
73.4160 Removed (effective date pending) 64874
Removal at 56 FR 64874 eff. 4-19-92 11689
73.4255 Revised (effective date pending) 64874
Regulation at 56 FR 64874 eff. 4-19-92 11689
74 Policy decision 21744
74.641 (a)(1) table amended; (b) introductory text revised 50663
74.902 (h) revised; (i) and (j) added 57819
74.903 (a)(2) revised; (b)(5), (d) and (e) added 57600
74.931 (e) revised 57600
(a) revised; (h), (i) and (j) added 57819
(h), (i) and (j) revised; (k) added 65191
74.932 (a) introductory text and (b) revised 57819
74.985 Revised 57601
74.986 Added 57820
74.990 Added 57820
74.991 Added 57821
74.992 Added 57821
74.1204 (g) amended 56170
74.1235 (c)(1) and (2) added 56170
76 Policy statement 8849
Policy decision 21744
76.5 (jj) added 11001
76.33 Regulation at 56 FR 33391 eff. 10-25-91 52479
76.53 Amended 49707
76.54 Regulation at 56 FR 33392 eff. 10-25-91 52479
76.205 Revised 210
76.206 Added 210
Heading, (a)(1)(i), (xii), (2) and (b) introductory text revised; (a)(1)(vii) removed 27709
76.207 Added 212
76.221 (a) amended 212
(a) amended 8279
76.305 (a) and (c) revised 11001
76.601 Revised 11001
76.605 (a), (b) and Note (1) revised; Note (2) redesignated as Note (3); new Note (2) added 11002

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CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 47 Chapter I—Con. Page

76.606 Added 11003
76.607 Added 11004
76.609 (d)(2), (g), (h)(2) and (i) revised; (e) and (h) introductory text amended; (j) added 11004
78.13 (e) added 57601
78.105 (a)(1) table amended; (b) introductory text revised 50664
80.5 Amended 26778
80.19 Table amended 64715
80.23 Introductory text amended; (c) removed; (d) and (e) redesignated as (c) and (d) 26778
80.59 (c) revised 64715
80.141 (d) added 57988
80.203 (g) amended 57496
(c) revised 57988
(m) added 8727
80.207 (d) footnote 2 revised 26778
80.209 (a) revised 26778
80.310 Revised 19552
80.369 (e)(4) added 19552
80.371 (c) table amended 26779
80.373 (f) table amended 19552
(f) introductory text revised; tables amended 26779
80.375 (a) amended 26779
80.377 Amended 26779
80.385 (a)(2) revised 26780
80.802 (a)(2) revised 26779
80.1065—80.1135 (Subpart W) Added 9065
87.21 (b) table amended 64715
87.25 Note removed 64715
87.173 (b) table amended 51656
90 Technical correction 27184
90.17 (b) table amended (effective date pending) 64874
Regulation at 56 FR 64874 eff. 4-19-92 11689
(c)(10) revised 24991
90.19 (e)(15) revised 24991
90.21 (b) table amended; (c)(18) added 26608
(c)(6) revised 24991
90.23 (c)(7) revised 24991
90.25 (c)(13) revised 24991
90.53 (b)(12) revised 24991
90.63 (d)(14) revised 24991
90.65 (c)(27) revised 24991
90.67 (c)(17) revised 24991
90.69 Heading and (a) revised 19811
90.71 (b) table amended; (c)(11) added 24991
90.73 (d)(18) revised 24991
90.79 (d)(12) revised 24991
90.81 (d)(3) revised 24991
90.89 (c)(9) revised 24991
90.91 (c)(9) revised 24991
90.93 (c)(3) revised 24991
90.95 (d)(7) revised 24991
90.119 (a)(15) added; (e)(1) and (h) revised 65858
90.127 (b) amended 65858
90.149 (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added 65858
90.155 (a) revised; (c) added 65859
90.157 (a) revised; (b) removed; (c) redesignated as (b) 65859
90.173 (k) added 65859
(j) amended 24992
90.175 Introductory text revised; (f)(15) added 65859
(a) amended 24992
90.176 (c) added 24992
90.209 (b)(6) revised 8423
90.213 (a) table amended 24192
90.242 (a) introductory text and (2)(ii) revised; (a)(2)(i) amended (effective date pending) 64874
Regulation at 56 FR 64874 eff. 4-19-92 11689
90.261 Revised 24992
90.555 (b) table amended 26608
90.611 (d) revised 65859
90.631 (f) amended 65860
90.633 (d) revised 65860
94 Technical correction 66001
94.9 (b)(2) revised 64716
94.25 (k) revised 63663
94.61 Table amended 57822
94.63 (a) revised 57822
94.65 (f) revised 57822
94.67 Table amended 57822
94.71 Table amended 57822
94.73 Table amended 57822
94.75 Table amended 57822
94.92 Table amended 57822
94.95 Removed 57822
95.1 (c) added 8275
95.418 (d) added 22442
95.801—95.863 (Subpart F) Added 8275
97.3 (a)(8) revised; (a)(37) through (41) redesignated as (a)(38), (40), (42), (43) and

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CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

(44); new (a)(37), (39) and (41) added 56171
97.111 (b)(3) revised; (b)(7) added 56171
97.113 (b)(2) revised 56171
97.201 (d) revised 56171
97.207 (f) revised 56171
97.211 Heading revised 56171
97.213 Heading and introductory text revised 56171
97.215 Heading revised 56171
97.216 Added 56172
97.301 Technical correction 51762
97.303 Technical correction 51762
97.309 (a) revised 56172
97.505 (a)(5)(i) revised 21041

Title 47—*Proposed Rules:*

0—199 (Ch. I) 57300, 58863, 65721
..... 6487, 18857, 24574
0 21052
1 ..... 9528, 14683, 18444, 20238, 21226, 24006, 24205
2 ..... 52496, 55484, 56611
..... 5993, 6695, 12792, 24006
18 10453
21 24006
22 ..... 52496, 58529
25 18444
43 3038
61 52496
63 65464
..... 3038, 4391
64 ..... 18444, 22681, 26642
68 18445
69 ..... 51666, 51869, 52496, 57301
..... 24459
73 ..... 50303, 50304, 50547—50550, 50842, 50843, 51667, 51870, 52497, 55648, 55649, 55861, 55862, 56181, 56182, 46489, 46490, 57302, 57606, 57608, 57871, 58207, 58530, 58531, 58864, 60080, 60956, 60957, 61220, 63704, 64228, 64229, 65206, 65207, 65721, 65875, 66006, 66827
..... 242, 866—868, 2703, 2883, 2884, 3158, 3159, 3981, 4179, 4180, 4859, 5412, 5413, 5870, 6083, 6084, 6210, 7704, 7902, 8430, 9530, 9680, 9996, 9997, 10327, 10454, 10749, 10750, 11058, 11458, 11459, 12793, 12794, 13328, 14553—14555, 14683, 14684, 14686—14688, 17870, 19105, 19836, 19837, 20805, 20806, 21055, 21056, 21368, 21369, 21755, 21761, 21919, 21920, 23188, 23567, 24577, 27415, 27416, 28162, 28163, 28167
74 52496
..... 4592, 21755
76 56339
..... 868, 6792
80 ..... 56955, 57501,
..... 11704
87 26812
90 ..... 49875, 52496, 56611, 63472
..... 4180, 6570, 8854, 20069, 20070

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular (FAC) 90-9 67126
Federal Acquisition Circular (FAC) 90-10 67412
Summary presentation 20372
5.207 (b)(4) amended 67128
5.303 (a) amended 67128
7.305 (c) amended 55372
8.401 (b) revised 55372
8.702 (a) amended 67129
8.705-2 Amended 67136
8.705-4 (a) amended 67136
9.104-1 (e) revised 55374
9.104-3 (c) revised 55378
9.107 Added 67129
9.406-1 (a) revised 67129
9.407-1 (b) redesignated as (b)(1); (b)(2) added 67130
9.502 (d) revised 55377
9.504 (e) amended 55377
9.505 (b)(1) and (2) revised 55377
9.505-4 (a) revised 55377
9.507-1 (d) added 55377
10.001 Amended; interim 67131
10.002 (d) redesignated as (e) and amended; interim 67131
10.006 (a) revised; interim 67131
14.201-7 (a), (b)(1) and (c)(1) amended; interim 67413
15.804-2 (a) revised; interim 67413
15.804-3 (c)(7) and (i) amended; (e) introductory text revised; interim 67414

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CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 48 Chapter 1—Con. Page

15.804-4 (h) amended; interim 67414
15.804-6 Heading and (a) revised; (b)(2) Table 15-2 amended; interim 67414
15.806-1 (b) amended; interim 67414
15.806-2 (a)(2) amended; interim 67414
15.808 (a)(6) and (7) amended; interim 67414
19.202-1 (e) added 67132
19.402 (c)(2) through (5) redesignated as (c)(3) through (6); new (c)(2) added 67132
19.804-3 (c)(2) amended 55380
19.808-1 (b) amended 55378
22.102-1 Introductory text revised 55374
22.102-2 (c) added 55374
22.1003-5 (k) amended 67136
22.1500—22.1509 (Subpart 22.15) Added; interim **20373**
23.301 Revised 55374
23.302 Heading, (b) and (c) revised; (d) and (e) added 55374
23.303 Revised 55374
23.601—23.602 (Subpart 23.6) Added 55374
25.108 (d)(1) amended 67133
25.109 (a) and (d) revised 55379
25.201 Amended; interim **20375**
25.701 Removed **20376**
25.702 (a)(3) amended; (b) removed; (c) redesignated as (b) **20376**
25.703 (a) paragraph designation and (b) removed **20376**
25.1000—25.1005 (Subpart 25.10) Removed 67416
26.103 (b) amended **20377**
31.101 Amended 67133
31.205-46 (a)(2)(i) and (6) concluding text amended **20377**
33.103 (b)(1) amended 67136
33.201 Amended; interim 67417
33.202 Revised 67417
33.204 Revised; interim 67417
33.207 (a) introductory text revised; interim 67417
33.214 Redesignated as 33.215; new 33.214 added; interim 67417
33.215 Redesignated from 33.214; interim 67417

Page

36.513 Existing text designated as (a); (b) and (c) added 55375
37.112 Added 55380
38.201 (b) amended 55372
42.1205 (a)(3) revised 67134
45.608-8 (b) amended 67136
49.101 (f) added 67134
49.105-2 Revised 67134
49.110 Heading and (a) revised 67135
50.203 (b)(4) revised 67135
51.103 (b) amended 55372
52.202-1 Amended 67137
52.203-4 Amended 67137
52.207-3 Amended 55372
52.209-7 Amended 55377
52.209-8 Amended 55377
52.214-17 Amended 55380
52.214-27 Amended; interim 67415
52.214-28 Amended; interim 67415
52.215-23 Amended; interim 67415
52.215-24 Amended; interim 67415
52.215-25 Amended; interim 67415
52.215-39 Amended 67137
52.222-18 Added; interim **20374**
52.223-3 Revised 55375
52.223-7 Added 55375
52.225-5 Amended; interim **20375**
52.225-11 Revised **20376**
52.225-12 Removed 67416
52.225-13 Removed 67416
52.228-11 (b)(1) amended 67137
52.233-1 Amended; interim 67417
52.236-7 Amended 55376
52.236-13 Revised 55376
52.246-4 Amended 67136
53.203 (b) amended 67137
(b) amended **20377**

Chapter 2—Department of Defense (Parts 200—299)

[EDITORIAL NOTE: The revision date for the 1991 edition of title 48, chapter 2, was delayed until December 31, 1991. The 1991 revision includes amendments promulgated during the period of October 1, 1990 through December 31, 1991. For amendments promulgated during that period, see the December, 1991 LSA.]

201—251 CFR correction **13048**
201.603-2 Added **14990**
203.7100—203.7108 (Subpart 203.71) Added **14990**
204.402 Revised; interim **14992**
204.404-70 Revised **14992**

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CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

206.302-1 (a)(2)(i) introductory text revised 14992
206.302-5 (c)(ii) amended 14992
209.406-1 Revised 14992
209.406-4 Removed 14992
211.7003-1 (b)(4) amended; interim 4741
211.7004-1 (l)(3)(ii) amended; (p)(2) introductory text, (i) and (ii) revised; interim 4741
211.7004-6 (a)(3) amended; interim 4741
211.7005 Revised; interim 4741
215.605 (c)(ii)(A)(*1*) and (B)(*2*) amended 14992
215.804-1 Removed 14992
217.103-1 (a)(iii), (b)(ii)(A), (iv)(B), (C), (D), (vi)(A)(*1*), (B) and (vii) revised 14992
222.7000 (a) amended 14993
223.7001—223.7002 (Subpart 223.70) Added; interim 14993
225.770 Added; interim 29042
225.770-1 Added; interim 29042
225.770-2 Added; interim 29042
225.770-3 Added; interim 29042
225.770-4 Added; interim 29042
225.7002-1 (a) introductory text revised 14993
225.7004 Revised; interim 14993
225.7004-1 (a) table amended; (b) redesignated as (c); new (b) added 14993
225.7004-2 Heading, (a) and (b)(2)(i) revised; (b)(3) added 14993
225.7004-3 Revised 14993
225.7004-5 Revised 14993
225.7012-1 (a) introductory text revised 14994
225.7012-4 (a)(1) revised 14994
225.7014-1 Revised; interim 14994
225.7014-2 Revised; interim 14994
225.7014-3 Revised; interim 14994
225.7016 Regulation at 56 FR 67215 confirmed 14990
225.7016-1 Regulation at 56 FR 67215 confirmed 14990
225.7016-2 Regulation at 56 FR 67215 confirmed 14990
225.7016-3 Regulation at 56 FR 67215 confirmed 14990
225.7016-4 Regulation at 56 FR 67215 confirmed 14990
225.7016-5 Regulation at 56 FR 67215 confirmed 14990

Page

225.7017 Added; interim 14994
225.7017-1 Added; interim 14994
225.7017-2 Added; interim 14994
225.7017-3 Added; interim 14994
225.7017-4 Added; interim 14994
232.111 Added; interim 4741
232.111-70 Added; interim 3358
232.173 Added; interim 3359
232.173-1 Added; interim 3359
232.173-2 Added; interim 3359
232.173-3 Added; interim 3359
232.173-4 Added; interim 3359
232.173-5 Added; interim 3359
235.002 Revised 14994
235.006 (b)(1)(C)(*1*)(*iii*) revised 14994
235.017 Added 14994
237.106 (2) revised 14994
237.170-2 (b) amended 14995
237.170-3 Amended 14995
239.7500—239.7501-2 (Subpart 239.75) Added; interim 14995
245.302-7 Added 14995
249.402-4 Added; interim 534
Removed 6076
252.203-7003 Added 14995
252.204-7000 Amended 14996
252.204-7003 Added; interim 14996
252.211-7005 Removal at 56 FR 67221 confirmed 14990
252.211-7021 (b)(1), (2) and (3) amended; interim 4743
252.223-7005 Added; interim 14996
252.225-703 Added; interim 29042
252.225-7016 Removed; interim 14996
252.225-7017 Revised; interim 14996
252.225-7023 Amended; interim 14996
252.225-7029 Regulation at 56 FR 67221 confirmed 14989
252.225-7030 Added; interim 14996
252.232-7006 Added; interim 3359
252.237-7019 Regulation at 56 FR 67222 confirmed 14990
(a)(1) and (b) revised 14996

Chapter 3—Department of Health and Human Services (Parts 300—399)

305.303 (a) amended 11689

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CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 48 Chapter 3—Con. Page

306.301-1 (g)(1) and (2) amended 11689
306.302-1 (b)(4)(i) designation removed; (b)(4)(ii) redesignated as (c) and amended 11689
313.105 Revised 11689
315.407 (h) and (i) redesignated as (g) and (n) 11690
319.201-70 (d)(3) amended 11690
319.501 Revised 11690
319.505 Amended 11690
319.705-3 Amended 11690
319.705-4 (c) removed 11690
328 Added 58316
352.228-7 Added 58316
352.228-70 Removed 58317
352.270-6 Regulation at 56 FR 33882 confirmed; (a) amended 54797
Corrected 57602

Chapter 5—General Services Administration (Parts 500—599)

501.105 Revised (OMB numbers) 64213
Revised (OMB numbers) 14648
501.170-1 Revised 14649
501.603-70 (h)(1)(ii) and (v) revised 14649
502.101 Revised 9213
509.405 Revised 51660
513.505-2 Revised 7555
513.7001 (a), (b)(1) and (g) revised 26609
514.406-3 Revised 14649
515.804-3 Temporary Reg. AC-92-1 added 5864
515.804-70 Temporary Reg. AC-92-1 added 5864
519.704 (c)(2) revised 59220
519.705-2 Revised 64213
519.705-4 (a) revised 59220
(a)(5) revised 64214
519.706-70 (f)(2)(iii) revised 64214
519.708 Revised 64214
522.000 Added 7555
522.001 Added 7555
522.101-1 Revised 7556
522.101-3 Added 7556
522.103-5 Added 7556
522.406-13 Revised 7556
522.807 Revised 7556
522.1001 Removed 7556
522.1003-4 Revised 7556
522.1003-7 Revised 7556

Page

522.1006 (b) and (c) revised 22666
522.1013 Added 7556
522.1014 Added 7556
522.1021 Revised 7556
522.1303 Revised 7556
522.1403 Revised 7556
525 Temporary Reg. AC-90-2, Supp. 1 added 52479
525.402 (a) revised 648
532.502-3 Removed 14649
538.203-70 Temporary Reg. AC-92-1 added 5867
552 Temporary Reg. AC-90-2, Supp. 1 added 52479
Temporary Reg. AC-91-2; Supp. 1 added 21041
552.219-72 Introductory text revised 64214
552.219-73 Added 64214
552.222-43 Revised 22666
552.223-72 Amended 14649
552.232-74 Removed 14649
552.238-70 Amended 51660
552.242-70 Revised 26609
552.270-3 Revised 23163
570.702-1 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-2 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-5 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-11 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-14 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-15 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-17 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-18 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-19 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-21 Temp. Reg. AC-91-1, Supp. 1 added 4939

Chapter 7—Agency for International Development (Parts 700—799)

701.105 (b) amended 67224
(a) revised (OMB numbers) 5235
701.372 (b) amended 67224
701.376-4 Amended 67224
701.470 (a)(2) amended 67224
701.601 (b)(3) amended 67224

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

702.170-3 (a) amended 67224
702.170-10 (a)(1)(ii) amended 67224
702.170-13 (a)(1), (2) and (b) amended 67224
705.202 Regulation at 56 FR 27208 confirmed 52212
(b) revised 5235
705.207 Regulation at 56 FR 27208 confirmed 52212
706.302-5 Regulation at 56 FR 27208 confirmed 52212
706.302-70 (b)(2) amended 5235
706.302-71 Regulation at 56 FR 27208 confirmed 52212
706.501 Amended 67224
710 Added 23321
715.504 (a) amended 67224
719.270 (k) amended 67224
719.272 Regulation at 56 FR 27208 confirmed 52212
726.000 Regulation at 56 FR 27209 confirmed 52212
726.101 Regulation at 56 FR 27209 confirmed 52212
726.102 Regulation at 56 FR 27209 confirmed 52212
726.104 Regulation at 56 FR 27209 confirmed 52212
726.201 Regulation at 56 FR 27209 confirmed 52212
726.301 Regulation at 56 FR 27209 confirmed 52212
(a) amended 52213
728.105-1 (b) amended 67224
728.305-70 (a) revised 67224
731.205-6 Revised 5235
731.205-46 Revised 5236
731.205-70 Added 5236
731.371 Revised 5236
731.372 Added 5236
731.373 Added 5236
731.770 (a) amended 67225
731.772 Revised 5236
731.774 Added 5236
732 Revised 67225
737.206 (c)(2)(ii) amended 67225
737.270 (a) amended 67225
749.111-71 (a)(1), (2)(i) and (ii) amended 5236
750.7109-1 Amended 67225
750.7110-1 Amended 67225
750.7110-2 Amended 67225
750.7110-3 Amended 67225
752.200 Amended 5236
752.210-70 Added 23321
752.226-1 Regulation at 56 FR 27209 confirmed 52212
752.226-2 Regulation at 56 FR 27210 confirmed 52212
752.228-3 (b) revised 67226
752.232-70 (a), (b) and (d) amended 67226
752.7000 Amended 5237
752.7004 (b)(4) amended 67226
752.7005 Removed 23321
752.7015 Amended 5237
752.7026 (b)(3) amended 67226
752.7034 Added 5237
752.7035 Added 5237
753.107 Amended 67226
Chapter 7 Appendix H amended 67226

Chapter 9—Department of Energy (Parts 900—999)

950.7000—950.7011 (Subpart 950.70) Heading amended 57827
950.7000 Amended 57827
950.7001 Revised 57827
950.7002 Amended 57827
950.7003 Revised 57828
950.7004 Removed 57828
950.7005 Removed 57828
950.7006 Revised 57828
950.7007 Removed 57828
950.7008 Removed 57828
950.7009 Amended 57828
950.7010 Revised 57828
950.7011 Redesignated as 950.7101 57828
950.7101 (Subpart 950.71) Heading added 57828
950.7101 Redesignated from 950.7011 57828
952.250-70 Revised 57828
952.250-71 Removed 57830
952.250-72 Removed 57830
970.0901 Added 65448
970.2870 Revised 57830
970.5204-7 Removed 57830
970.5204-8 Heading amended 57830
970.5204-20 Added 65448

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

1602.170-9 Amended; interim 14359

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 48 Chapter 16—Con. Page

1609 Added; interim....14359
1631.205-41 Added....57496
1632.170 Revised; interim....14360
1632.171 Revised; interim....14360
1632.172 Revised; interim....14360
1649.002-70 Revised....19387
1652.216-71 (b)(2)(ii) amended; (b)(2)(iv)(B) revised....57497
Amended; interim....14360
1652.232-70 Heading and introductory text revised; interim....14360
1652.232-71 Heading and introductory text revised; amended; interim....14361
1652.249-70 Amended....19388

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.104-370 (e) corrected....56691
1801.370 (a)(1)(i), (ii) and (b) amended....832
1804.677 Added....3137
1804.677-1 Added....3137
1804.677-2 Added....3137
1804.677-3 Added....3137
1804.677-4 Added....3137
1804.677-5 Added....3138
1804.677-6 Added....3138
1806.202-70 (a)(2)(i) and (3) amended....832
1806.302-770 (a) and (c) amended....832
1806.304 (c) amended....832
1807.7204 Amended....832
1807.7206 Amended....832
1809.104-70 Added; interim....8280
1812.104-70 (d) amended....832
1815.808 (b) amended....832
1815.872 (c)(1) and (2) corrected....56691
1815.970 (e) amended....832
1815.970-2 (d) amended....832
1816 Revised....832
1816.603-2 Correctly designated....4912
1823.302 Heading revised; introductory text amended....836
1823.303-70 Amended....836
1823.370 Amended....836
1823.7002 (c) amended....836
1825.102 Corrected....52213
1825.901 (Subpart 1825.9) Revised....836

Page

1830.7001—1830.7002-2 (Subpart 1830.70) Revised....836
1831 Revised....837
1832.402—1832.412 (Subpart 1832.4) Revised....838
1832.501-1 Added; interim....63877
1832.503-4 Added; interim....63877
1832.702—1832.705-270 (Subpart 1832.7) Revised....839
1832.903—1832.970 (Subpart 1832.9) Revised....839
1842.202 (c) revised....839
1842.202-70 (f) added....840
1842.705-70 (b) and (c) revised....840
1842.801 (Subpart 1842.8) Revised....840
1842.1008 Amended....840
1842.7101 (Subpart 1842.71) Added....840
1844.102 Revised....841
1844.102-70 Revised....841
1844.102-71 Heading and (a) amended....841
1844.302-70 Revised....841
1844.302-71 Revised....842
1844.304-70 Added....842
1844.305 Added....842
1844.307-70 Added....842
1852.216-72 Revised....842
1852.216-73 Revised....842
1852.216-74 Revised....842
1852.216-76 Revised....843
1852.216-79 Revised....843
1852.216-80 Revised....843
1852.216-82 Revised....843
1852.216-83 Revised....844
1852.216-84 Revised....844
1852.216-85 Revised....844
1852.216-86 Revised....844
1852.216-87 Revised....844
1852.219-76 (a) corrected....56691
1852.231-70 Redesignated from 1852.232-80 and revised....844
1852.232-12 Redesignated from 1852.232-76 and revised....844
1852.232-70 Added; interim....63877
1852.232-75 Removed....844
1852.232-76 Redesignated as 1852.232-12 and revised....844
1852.232-80 Redesignated as 1852.231-70 and revised....844
1853.204-70 Heading revised; (o) added....3139
1853.215-2 Revised....844

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

1853.242-70 (b) amended 844
1870.303 Appendix I amended 3139

Chapter 28—Department of Justice (Parts 2800—2899)

2801.270—2801.270-4 (Subpart 2801.2) added 24555
2803.101-3—2803.104-12 (Subpart 2803.1) Revised 24556
2804.601 (b) revised 24557
2804.7000 (Subpart 2804.70) Added 24557
2805.2 Added 24557
2805.302-70 (Subpart 2805.3) Added 24557
2806.303-2 Added 24557
2806.304 Added 24557
2807.103 Revised 24558
2810.001 Added 24558
2810.002 Added 24558
2813.7001—2813.7002 (Subpart 2813.70) Added 24558
2817.200 (Subpart 2817.2) Added 24559
2833.105-70 (Subpart 2833.1) Added 24559
2834.002-70 (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e) 24559

Chapter 52—Department of the Navy Acquisition Regulations (Parts 5200—5299)

5243 Added; interim 63672
5252 Authority citation revised 63675
5252.243-9000 Added; interim 63675
5252.243-9001 Added; interim 63675

Chapter 99—Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

9900 Added 14153
9903—9904 (Subchapter B) Added 14153

Title 48—*Proposed Rules:*

15 57182
19 2820
21 24704

Page

23 58296
31 ..... 4181, 11550, 22204
35 64922
42 11550
45 2818
51 22204
52 ..... 58296, 64922
..... 2820, 22204
213 26814
215 55264
225 52597
..... 11059, 21854
231 ..... 11059, 21854
242 ..... 11059, 21854
246 50693
252 ..... 50693, 53497, 55264
270 55264
400—499 (Ch. 4) 6483
500—599 (Ch. 5) 12286
503 50073
505 8854
509 10454
515 56956
..... 8854
516 8854
517 8856
538 56956
..... 8856
552 50073
..... 8854, 8856
935 56621
1039 11929
1200—1299 (Ch. 12) 4744
1512 8612
1516 8612
1552 8612
1804 58865
1870 58865
2401 24334
2402 24334
2403 24334
2405 24334
2406 24334
2409 24334
2413 24334
2414 24334
2415 24334
2416 24334
2419 24334
2425 24334
2426 24334
2428 24334
2432 24334
2433 24334
2436 24334

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 48 Title 48—Con. Page

2437 24334
2446 24334
2453 25334
2900—2999 (Ch. 29) 6301
5149 18445
5152 18445
5300—5399 (Ch. 53) 1710
5446 66008
..... 8740
5452 66008
..... 8740
9903 23189
9905 23189

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1 Technical correction 10062
1.44 (o)(6) and (p) removed 8582
1.45 (a)(8) revised 27947
1.46 (l), (m), (z) and (ll) revised 8582
1.53 (k) added 8582
1.59 (c)(5) revised 27947
1.66 (a) revised; nomenclature change 59893
(y) added 8582
1.67 Nomenclature change 59893
23 Authority citation revised 18410
23.89—23.111 (Subpart F) Added 18411
37.13 Revised 64215
71.5 (b) revised 52003

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

[EDITORIAL NOTE: The revision date for the 1991 edition of title 49, chapter 1, was delayed until December 31, 1991. The 1991 revision includes amendments promulgated during the period of October 1, 1990 through December 31, 1991. For amendments promulgated during that period, see the December, 1991 LSA.]

107 Authority citation revised 20428
107.201 (a) and (c) revised 20428
107.202 (d) added 20428
107.203 (a) revised 20428
107.205 (a) revised 20428
107.209 (c) revised 20428
107.211 Revised 20428
107.215 (a) introductory text revised 20428
107.217 (a) and (c) revised 20429
107.221 (c) revised 20429
107.223 Removed; new 107.223 redesignated from 107.225 and revised 20429
107.225 Redesignated as 107.223 20429
107.503 (b)(1) and (c) amended 365
171.6 (b)(2) table amended (OMB numbers) 1877
171.8 Amended 20952
172 Heading revised 20952
172.101 Table amended 1878
172.700—172.704 (Subpart H) Added 20952
172.702 Heading revised; (d) correctly added 22182
173.1 (b) revised 20953
173.166 Added 1878
174.7 Revised 20953
175.20 Revised 20953
176.13 Revised 20954
177.800 Revised 20954
177.816 Revised 20954
177.825 (d) revised 20954
180.413 (a) introductory text amended 365

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

209.337 Added (OMB numbers) 66791
212 Authority citation revised 28115
212.3 (d)(5) and (6) revised; (e) redesignated as (g); (d)(7), new (e) and (f) added 28115
212.101 (b)(1) and (c) revised 28115
212.105 (e)(1)(i) revised 28115
212.109 Revised 28115
212.201 (d)(5) and (f) revised 28115
212.227 Redesignated as 212.231; new 212.227 added 28115
212.229 Added 28116
212.231 Redesignated from 212.227 28115
214 Added 28127

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

229 Authority citation revised 66792
230 Authority citation revised 66792
231 Authority citation revised 66792
232 Authority citation revised 66792
234 Regulation at 56 FR 33738 effective date revised to 1-1-92 61169
240 Meetings 55240
245 Meetings 59893

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

383 Waivers 13650
385 Authority citation revised 51344
385.12 Revised 51344
390.21 (a) revised 3142
391 Waivers 10295

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

501.8 (g)(3) added 22442
509.2 Revised (OMB numbers) 21214
544 Appendixes A, B and C revised 23538
556.4 (b) added 66376
571 Technical correction 56016
Petition denied 3556
571.3 (b) amended 63681
571.21 Amended; eff. 10-8-92 50670
571.101 Amended 51848
571.106 Amended; eff. 11-6-91 50521
571.108 Amended 56942
571.111 Amended 58516
571.114 Amended; effective in part 9-1-92 and 9-1-93 2043
Technical correction 4086
Amended 23963
571.118 Corrected 28012
571.123 Amended 61387
571.205 Amended 1654, 13656
571.208 Amended; eff. 12-14-92 26617
571.210 Amended 63681, 63685
571.209 Amended 56325

Page

571.214 Figure 2 revised 21615
572 Petition denied 3556
572.4 (c) revised 57836
572.70—572.78 (Subpart I) Added 57836
572.73 Correctly designated 4086
575.104 (e)(1)(iv) revised 57989
586.6 OMB number 21616
587 Petition denied 3556
587.6 (b) introductory text, (1), (3), (5), (7) and (c) revised; (b)(8) added 7558
591.5 (j) revised 2047
591.6 (g) revised 2047
(g)(1) amended 29043
591.7 (b) revised 2047
(c) and (d) added 2048

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

Chapter VI Nomenclature change 13657
639 Added 51794
663 Dispostition of inquiries 10834

Chapter VIII—National Transportation Safety Board (Parts 800—899)

821.7 (a) and (b) revised 56172
821.10 Revised 56172

Chapter X—Interstate Commerce Commission(Parts 1000—1399)

Chapter X Policy Statement 19812
1001.1 (a) revised 24381
1001.3 Redesignated as 1001.4; new 1001.3 added 24381
1001.4 Redesignated as 1001.5; new 1001.4 redesignated from 1001.3 24381
1001.5 Redesignated as 1001.6; new 1001.5 redesignated from 1001.4 24381
1001.6 Redesignated from 1001.5 24381
1011 Petition denied 67002
1011.8 (c)(3) amended 13049
1033 Revised 66793
1039 Authority citation revised 11913
1039.22 Added 11913
1053 Removed 21616

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 49 Chapter X—Con. Page

1105.5 Concluding text corrected....49821
1105.7 (e)(3)(i) corrected....49821
1105.10 (a)(5) corrected....49821
1105.12 Appendix corrected....49821
1118 Heading revised....**9213**
1118.1 Revised....**9213**
1118.4 (d) revised....**9213**
1121.4 (g) revised....**5237**
1145.1 Revised....58318
1145.2 Revised....58318
1145.3 Redesignated as 1145.4 and revised; new 1145.3 added....58318
1145.4 Redesignated as 1145.5 and revised; new 1145.4 redesignated from 1145.3 and revised....58318
(e) corrected....61096
1145.5 Redesignated as 1145.6; new 1145.5 redesignated from 1145.4....58318
Revised....58319
1145.6 Redesignated as 1145.7; new 1145.6 redesignated from 1145.5....58318
(c) revised....58320
1145.7 Redesignated as 1145.8; new 1145.7 redesignated from 1145.6....58318
Revised....58320
1145.8 Redesignated from 1145.7....58318
1152 Authority citation corrected....49821
1152.2 (m) revised....61387
1152.25 (a)(2)(iv) and (c)(1) amended....**13049**
1152.28 (a)(3) added; (b) amended....**13049**
1152.31 (a)(1) revised....61387
1152.50 (a)(2) amended....13049
1152.52 (n) revised....61387
1160 Petition denied....67002
1180.6 (a)(8) revised; (a)(9) removed....**28641**
1181 Petition denied....67002
1186 Petition denied....67002
1201 Amended....**27185**
1313.7 (d) redesignated as (e); new (d) added; heading and new (e)(1) revised....58320
1332.2 Added....**23539**
1332.3 Revised....**23539**

NOTE 1: **Boldface page numbers indicate 1992 changes.**

Title 49—*Proposed Rules:*

Page

6 ....**23460**
1-99 (Subtitle A) **4744**
9 ....**9224**
81 ....**21362**
100-199 (Ch. I) **4744**
101 ....**21362**
107 ....51294, 56962
110 ....**7474**
171 ....51294, 56962
....**3854, 6696**
172 ....**3854, 6696, 24532**
173 ....**3854, 6696**
174 ....**3854, 6696**
175 ....**1891**
176 ....**3854, 6696**
192 54816
198 ....**7705**
200-299 (Ch. II) **4744**
225 52241
234 28819
245 52498
....**6571**
300-399 (Ch. III) **4744, 21362**
350 50305
....**13572**
355 ....**13572**
383 ....**9100**
390 ....**2885**
391 ....**6793, 21362, 23370**
392 ....**2885, 21362**
396 50305
....**13572, 21362**
398 ....**21362**
400-499 (Ch. IV) **4744**
500-599 (Ch. V) **4744**
527 ....**21362**
533 ....50694, 58020
541 ....56339, 65876
544 51871
552 56343
564 ....52242, 65038
567 61392
....**3983**
568 61392
....**3983**
571 ...52242, 52499, 55266, 55650, 58662, 63473, 63474, 63914, 63921, 64733, 65038, 65541, 66395, 67038, 67042
...**242, 252, 870, 2496, 4594, 6579, 7712, 10327, 10855, 12286, 12289, 12794, 18859, 21362, 22682, 22687, 24207**

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

572 ..... 63922, 67042
..... 12794
575 6579
582 56963
590 21362
591 2071
600-699 (Ch. VI) 4744, 21915, 23460
603 21362
623 21362
635 21362
659 ..... 24768, 28572
670 21362
1000-1399 (Ch X) 14688, 20442
1001 8858
..... 11652
1003 22204
1004 ..... 22205, 23072, 28825
1020 21920
1023 ..... 20072, 23372, 27009
1033 ..... 6697, 10328
1035 67269
..... 5123, 10151, 13688, 20442, 25007
1039 ..... 6697, 9997, 10328, 11929, 27961
1048 8430
1057 ..... 2512, 24008, 24009
1063 56490
1109 64737
1141 ..... 4594, 8108
1152 58868
1244 2888
1313 9997
1321 23568
1332 5413

TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

14 Authority citation revised..... 27108
14.12 (i) and (j) amended; (k) added..... 21355
14.101—14.172 (Subject J) Revised..... 27108
16 Authority citation revised..... 56942
Embargo..... 17857
16.13 (a)(1) revised..... 56942
17.11 (h) table amended; interim..... 54957, 54967, 56333
(h) table amended..... 64723
(h) table amended...212, 594, 1834, 13661, 14790, 21569, 27858
17.12 (h) table amended...49853, 55785, 57849, 60937, 60940, 61182
(h) table amended...1403, 14653, 14785, 19819, 20588, 20592, 20595, 20787, 21574, 24199, 27863, 27867
(h) table corrected..... 28011
(h) table amended; eff. 1-1-93..... 28024
17.40 (i) amended..... 594
(j) added; eff. 1-1-93..... 28024
17.95 (b) amended..... 1834
17.108 (a)(4) through (7) added; map revised..... 5990
23 Authority citation revised..... 21898
23.23 (a) amended; (f) revised..... 49709
(f) table amended..... 50060
23.57 (a) and (b)(1) revised..... 21899
25.23 Added..... 66795
32.2 (j) added..... 66795
32.11 Amended..... 58182
32.12 (f)(11) through (16), (aa) introductory text, (aa)(1) through (7) and (dd)(5) redesignated as (ff)(12) through (17) (aa)(1) introductory text, (i) through (vii) and (dd)(6); new (f)(11), (aa) introductory text and (dd)(5) added; (aa)(1) introductory text amended..... 58182
(f)(3), (i)(4), (p)(2), (4)(iii), (5), (s)(2), (u)(1), (y)(2) heading, (i), (ii), (hh)(4)(i), (10)(ii), (11)(ii), (jj)(2), (qq)(4)(ii), (v), (7)(i) and (iii) revised; (h)(10)(v), (11)(viii) and (qq)(4)(viii) added..... 66795
32.21 Amended..... 58183
32.22 (v)(2) through (7) redesignated as (v)(3) through (8); new (v)(2) and (cc)(3) added..... 58183
(e)(2), (4)(i), (10)(i), (p), (q)(2), (v)(1), (dd)(1), (ff)(1)(i), (iii), (6)(ii), (iv), (8)(ii), (hh)(2), (jj)(4), (nn)(3) and (5)(ii) revised; (q)(5)(iv) added..... 66796
32.31 Amended..... 58183
32.32 (k) through (uu) redesignated as (l) through (vv); new (u)(3)(1) and (z)(2) through (7) redesignated as (u)(3)(i) and (z)(3) through

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 50 Chapter I—Con. Page

(8); new (k), (z)(2) and (hh)(6) added....58183
(s)(2), (6), (t), (z)(1), (ii)(1), (mm)(2), (pp)(1)(iii) through (ix), (ss)(4)(iv) and (tt)(3)(ii) revised; (s)(5)(iii) and (iv) added....66796
32.41 (Subpart D) Removed....66797
33.2 (f) removed....66797
33.4 Amended....58183
33.22 (a) through (j) redesignated as (b) through (k); new (a) added....58183
88.28 (d) added....58183
100 Regulation at 55 FR 27121 effective date extended to 6-30-92....351
Authority citation revised....22535, 22964
100.1—100.9 (Subpart A) Revised....22951, 22964
100.10—100.20 (Subpart B) Revised....22953, 22964
100.15 (c) amended....351
100.22—100.24 (Subpart C) Revised....22957, 22964
100.25—100.27 (Subpart D) Revised....22535

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

204.1 (b) table amended (OMB numbers)....50063, 65016
216 Embargo....17857
216.3 Amended....50676
216.24 (e)(5)(iv), (v) introductory text, (F), and (viii) revised....50677
Regulation at 56 FR 47423 eff. 11-1-91....50278
Regulations at 56 FR 47423 and 50278 effective date delayed to 12-1-91....56603
Regulations as 56 FR 47423, 50278 and 56603 effective date delayed to 5-1-92....67226
(e)(5)(xiii) correctly designated....3142
222.23 (a) amended....58624
227 Technical correction....23458
227.4 (g) and (h) added....14662

Page

227.12 (a)(3) Table 1 amended....58184
227.21 Revised....14663
227.72 (e)(1) amended....14663
247.4 Regulation at 56 FR 47424 eff. 11-1-91....50278
Regulations at 56 FR 47424 and 50278 effective date delayed to 12-1-91....56603
Regulations at 56 FR 47424, 50278 and 56603 effective date delayed to 5-1-92....67226
265.101—265.107 (Subpart A) Revised....55092
285 Temporary regulations....55095
Permits....54797
285 Figure 1 added....374
Temporary regulations....11913, 28131
285.2 Amended....372
285.3 (b) and (f) revised; (g) added....372
285.21 (e) and (k) revised....50063
(e) correctly designated....56544, 61096
(c) revised....372
285.23 (f)(1), (2) and (g) revised....372
285.24 (c) revised....8730
285.25 (c) revised....373
285.26 Revised....373
285.28 (a) revised....373
285.29 (a), (b) and (e) revised; OMB number....373
285.30 (c)(2) and (d) revised....374
285.31 (a)(1), (2), (5), (10) and (15) revised; (a)(30) through (33) and (c) added....374
298 Added (effective date pending)....58185
Regulation at 56 FR 58185 effective 12-17-91....66001

Chapter III—International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)

301 Revised....12879
301.19 (e) revised; (f) removed....57295
371 Inseason orders....2054
380.23 Revised....13051
380.24 Revised....13051
380.26 Revised....13052
380.27 Revised....13052
380.29 Revised....13052

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

Page

600—699 (Chapter VI) Policy guidelines for emergency rules....375
601.32 Amended....379
601.33 (c), (e) and (h) revised....379
601.39 (a) revised....380
605.15 (b)(2) through (4) redesignated as (b)(3) through (5); new (b)(2) added....380
605.23 (d) introductory text revised; (d)(2) redesignated as (d)(3); new (d)(2) added....380
605.24 (a)(2) amended; (a)(3)(i), (5)(i) introductory text, (ii), and (7)(i) revised; (a)(3)(v) added....380
611 Reassessment....56603
Specifications....1654, 2844, 3952
611.22 (a) and (c) amended; (b)(1) revised....27370
611.50 (b)(2) revised; (b)(4) Table 1 removed....535
620.7 (i) added; interim emergency effective to 5-12-92....5079
(i) corrected....9076
Regulation at 57 FR 5079 effective date extended through 8-10-92....20788
625 Technical correction....4248
625.4 (m) added; interim emergency; effective to 3-5-92....63690
Regulation at 56 FR 63690 effective date extended through 3-5-92....213
Technical correction....6297
Regulations at 56 FR 63690 and 57 FR 213 effective date extended through 6-3-92....8582
625.5 Heading revised; text added; interim emergency; effective to 3-5-92....63690
Regulation at 56 FR 63690 effective date extended through 3-5-92....213
Technical correction....6297
Regulations at 56 FR 63690 and 57 FR 213 effective date extended through 6-3-92....8582

Page

625.7 (a)(1), (2), (b)(4) and (5) suspended; (a)(3) through (8) and (b)(6) through (9) added; interim emergency; effective to 3-5-92....63690
Regulation at 56 FR 63690 effective date extended through 3-5-92....213
Technical correction....6297
Regulations at 56 FR 63690 and 57 FR 213 effective date extended through 6-3-92....8582
625.24 Added; interim emergency; effective to 3-5-92....63691
(b) corrected....66603
Regulations at 56 FR 63691 and 66603 effective date extended through 3-5-92....213
Technical correction....6297
Regulations at 56 FR 63690, 66603 and 57 FR 213 effective date extended through 6-3-92....8582
625.26 Added; interim emergency; effective to 3-5-92....63691
Regulation at 56 FR 63691 effective date extended through 3-5-92....213
(c)(1), (2), (d), (e) and (f)(1) corrected....66603
Regulations at 56 FR 63691 and 57 FR 213 effective date extended through 6-3-92....8582
630 Authority citation revised....65016
Temporary regulations....14361
630.1 Revised....65016
630.2 Amended....65016
630.3 Revised....59222
630.4 (c) revised....59222
Revised....65016
630.5 Revised....65017
630.7 Revised....65018
630.10 Added....65018
630.20—630.26 (Subpart B) Revised....65019
630.40 (Subpart C) Added....65021
641 Temporary regulations....6561
641.2 Amended....11915
641.4 (b)(4) removed; heading, (a)(3), (c) through (f), (i) and (k) revised; (b)(4) removed....58651

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 50 Chapter VI—Con. Page

(a)(2) and (b)(2)(xi) revised; (g) amended; (l) added; effective to 5-7-95 ... 11916
641.24 (a)(2)(iv) revised; (a)(4) and (5) added ... 11916
641.25 (c) suspended; (e) added; effective to 12-31-91 ... 58188
(b) and (c) revised ... 11916, 21752
641.28 Redesignated as 641.29; new 641.28 added ... 11916
641.29 Redesignated from 641.28 ... 11916
Added; eff. 4-3-92 through 5-14-92 ... 11918
642 Temporary regulations ... 49853, 66001
Temporary regulations ... 1662, 4376
642.4 Revised; interim ... 11583
(b)(2)(v) revised ... 27005
642.5 (b) introductory text amended; interim ... 11585
642.7 (f) and (v) amended; interim ... 11585
646 Temporary regulations ... 52479
646.2 Amended ... 56022
Corrected ... 59970
Revised; interim ... 11583
646.4 Revised ... 56022
(d) corrected ... 59970
Revised ... 7888
(a)(1)(iii) corrected; (d) correctly designated ... 11137
646.5 Figure 1 redesignated as Figure 2 to part 646; revised ... 56023
(a) and (c) revised ... 7890
646.6 Revised ... 56024
(a) introductory text revised ... 7890
646.7 Revised ... 56024
Revised ... 7890
(kk) corrected ... 28907
646.10 Added ... 7891
(a)(2) corrected ... 11137
646.21 (a), (b) and (d) revised; (f) through (i) added ... 56025
(d) revised ... 7892
646.22 Figure 2 redesignated as figure 3 to part 646; (c) redesignated as (e); (b) revised; new (c), (d), (f) and (g) added ... 56026
646.23 Revised ... 56026
(e) and (f) corrected ... 59970
646.24 (b) revised ... 56027

Page

646.25 Revised ... 56027
646.26 (a)(1) removed; (a)(2) through (22) redesignated as (a)(1) through (21); (c)(1) introductory text, (ii), (2) and (3) amended; (c)(4) added ... 56027
646 Figure 2 redesignated from 646.5 figure 1 ... 56023
Figure 3 redesignated from 646.22 figure 2 ... 56026
Figure 1 added ... 56027
649.20 (b) revised ... 215
649.21 (c)(1) and (2) revised; (c)(3) added ... 215
650 Temporary regulations ... 4377, 21752
651 Temporary regulations ... 20789
651.20 (f)(1)(iii) regulation at 56 FR 24727 confirmed ... 50663
652 Temporary regulations ... 61182, 61183
Temporary regulations ... 844
Fishing quotas ... 3725
655.22 (a), (b), (c) and (d) revised; (f) redesignated as (g); new (f) added ... 536
656.2 Amended ... 19096
657.2 Amended ... 5238
658 Temporary regulations ... 66604
661 Inseason adjustments ... 51660, 51661, 55634
Temporary regulations ... 51662, 55634
Appendix amended ... 19404
663 Restrictions ... 49727
Reassessment ... 56603
Temporary regulations ... 58321, 64723
Specifications ... 1654
Temporary regulations ... 10429, 21041
Restrictions ... 14666, 23065
663.7 (n) and (o) added; interim emergency; eff. 4-15-92 to 7-16-92 ... 13665
(p) added ... 20060
(p) corrected ... 22021
663.22 (b)(2) through (5) revised; (b)(7) removed ... 12212
(b)(2) removed ... 23065
(b)(2) corrected ... 28907
663.23 (b)(4) added; interim emergency effective to 1-2-92 ... 50065
(b)(3) revised ... 2853

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

(b)(2) revised; interim emergency; eff. 3-27-92 through 7-1-92 ... 11272
(b)(5) added; interim emergency; eff. 4-15-92 to 7-16-92 ... 13665
(b)(4) added; interim emergency; eff. 4-16-92 through 7-21-92 ... 14665
(b)(1) revised ... 20060
633 Appendix amended ... 20060
Appendix A corrected ... 22021
672 Technical correction ... 50157, 56116, 56943
Temporary regulations ... 51179, 51848, 52213, 55096
Recordkeeping and reporting requirements ... 50279
Temporary regulations ... 2854, 3142, 3960, 4939, 6562, 8280, 8583, 8849, 10142, 10297, 11274, 11433, 11918, 18835, 19552, 21215, 22182, 23163, 23344, 23965, 24381, 24559, 24992, 26781, 27709, 27710
Specifications ... 2844
Recordkeeping and reporting requirements ... 2853, 6688
Technical correction ... 20325
672.2 Regulations at 56 FR 38349 effective date extended through 12-31-91; interim ... 57989
Amended ... 2686, 10432, 23344
672.5 (b)(3)(ii)(A)(*11*) and (c)(2)(iii)(I) amended; (c)(3)(ii)(F) revised ... 10432
672.6 Added ... 10432
672.7 (g) added ... 23344
672.20 Regulations at 56 FR 38349 effective date extended through 12-31-91; interim ... 57989
(a)(2)(iv), (h)(2) and (i)(4) revised ... 2686
(a)(1), (c)(2) and (3) amended; (c)(6), (d)(1)(i), (e)(4) and (g)(1)(i) revised; (g)(3) redesignated as (g)(4); new (g)(3) added; Table 1 removed ... 10434
(f)(1)(i), (g)(4) and (h)(2) suspended; (f)(1)(vi), (g)(5), (6), (7) and (h)(3) added; interim emergency eff. 3-30-92 through 7-2-92 ... 11439
(g)(3), (4), (5) and (6) correctly designated as (g)(4), (5), (6) and (7); (g)(7) corrected ... 14667

Page

(g)(5) revised; interim; eff. 5-20-92 through 7-2-92 ... 21356
(c)(1)(i) and (ii) redesignated as (c)(1)(i)(A) and (B); (a)(2)(v), (c)(1)(i) heading and (c)(1)(ii) added; (c)(2) revised ... 23344
672.23 (d) added; interim emergency ... 50282
(d) removed ... 54798
(d) added ... 382
(d) removed ... 2686
(d) corrected ... 4085
(d) added; interim emergency; eff. 3-30-92 through 5-31-92 ... 11274
(a) suspended; (e) and (f) added; interim emergency eff. 3-30-92 through 7-2-92 ... 11439
672.24 (e) added ... 2686
(a)(2) revised ... 10434
(e)(2) corrected ... 15031
(f)(1)(ii) and (2)(ii) Technical correction ... 20325
675 Temporary regulations ... 52214, 55097
Temporary regulations ... 2854, 3142, 5238, 6203, 6688, 8583, 8584, 10142, 12213, 14667, 18093, 20207, 20655, 23347, 24381, 24560
Apportionment ... 215, 27185
Inseason adjustments ... 2688
Recordkeeping and reporting requirements ... 2856, 19819
Specifications ... 3952
Inseason adjustments; correction ... 8850, 9598
Technical correction ... 20325
675.2 Amended ... 10434, 23345
675.5 (b)(3)(ii)(A)(*11*) introductory text and (c)(2)(iii)(I) amended; (c)(3)(ii)(F) revised ... 10434
675.6 Added ... 10435
675.7 (h) added ... 23346
675.20 (a)(1) amended; (h)(3)(iii) revised; Table 1 removed ... 10435
(h)(1), (6) and (i)(2) suspended; (h)(7), (8) and (i)(3) added; interim emergency eff. 3-30-92 through 7-2-92 ... 11440

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

TITLE 50 Chapter VI—Con. Page

(a)(2)(iii), (3)(i), (ii) and (iii) added 23346
675.21 (a)(5), (b), (c), (d), (e) and (f) suspended; (a)(7), (g), (h), (i) and (j) added; interim emergency eff. 3-30-92 through 7-2-92 11440
(h)(1) and (2) revised; interim; eff. 5-20-92 through 7-2-92 21356
675.22 (f) revised 10435
(g) added 23346
675.23 (d) added 382
(d) removed 2687
(d) corrected 4085
675.24 (f) added 2687
(c)(1)(i) and (f)(1) heading revised 10435
(f)(1)(ii) and (2)(ii) corrected 15031
(c)(2)(ii) corrected 15032
(c)(2)(iii) added; interim emergency eff. 5-21-92 through 8-25-92 22185
675.26 (a)(2)(ii)(A), (B), (b) and (d)(3) suspended; (a)(2)(ii)(C), (D), (d)(4) and (e) added; interim emergency eff. 5-21-92 through 8-25-92 22185
675 Figure 2 revised 10536
680.2 Amended 59895
680.4 (b) and (d) through (h) revised 59895
681 Interim final quota 21752
681.2 Amended 10438
681.4 (a)(1), (b) and (d) through (h) revised 10439
681.5 (b)(2)(ix) redesignated as (b)(2)(x); (c)(3)(iii) and (iv) revised; new (b)(2)(ix), (c)(3)(v) and (d) added 10439
681.6 (a), (b) and (c) amended 10439
681.7 (b)(1), (c)(1)(i), (ii), (2), (3) and (4) revised; (b)(7) through (13) added 10439
681.24 (e) through (g) added 10440
681.29 Added 10440
681.30 Redesignated as 681.40; new 681.30 added 10440
681.31 Redesignated as 681.41 10440
Added 10441
681.32 Redesignated as 681.42 10440
Added 10442
681.33 Redesignated as 681.43 10440
681.34 Redesignated as 681.44 10440
681.35 Redesignated as 681.45 10440
681.40 Redesignated from 681.30 10440
681.41 Redesignated from 681.31 10440
681.42 Redesignated from 681.32 10440
681.43 Redesignated from 681.33 10440
681.44 Redesignated from 681.34 10440
681.45 Redesignated from 681.35 10440
685 Technical correction 10062
685.2 Amended; effective to 4-22-94 51852
Amended 52217
Amended 7664
685.5 (l) removed; (m) and (n) redesignated as (l) and (m); new (n) through (q) added; effective to 4-22-94 51852
(u) revised; emergency interim; effective to 12-16-91 59897
(r) and (s) added 52217
(t) added 7664
685.11 Heading, (a), (b) and (c) revised 52217
685.14 Added 52217
685.15 Added; effective to 4-22-94 (OMB number pending) 51852
OMB number 58516
(c)(6) corrected 63550
685.16 Added; effective to 4-22-94 51853
685.17 Added; efffective to 4-22-94 51853
685.18 Added; emergency interim; effective to 12-16-91 59897
685.24 Added 7664
685.25 Added 7664

Title 50—*Proposed Rules:*

1—199 (Ch. I) 51868, 65964
12 57872
13 57872
14 ..... 57502, 57872

NOTE 1: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JUNE 30, 1992

Page

17 ...50075, 50550, 50701, 51668, 5200, 52503, 52506, 55107, 55266, 55487, 55862, 56344, 56491, 56882, 57503, 58020, 58026, 58332, 58339, 58348, 58664, 58804, 58869, 59917, 60957, 63705, 64229, 65207, 65209, 65877, 66614, 67046, 68400, ...35, **544—548, 596, 658, 659, 1246, 1443, 2075, 2239, 2241, 3604, 4745, 4747, 4912, 5511, 5871, 9680, 9681, 11459, 14372, 14374, 14378, 14556, 14689, 19585, 19837, 19844, 19852, 19856, 20073, 20325, 20806, 21369, 21374, 21377, 21381, 21921, 21925, 21929, 21933, 22453, 24220—24222, 25007, 27203, 28167, 27962, 28167, 28474, 28825**

20 57872
..... **19863, 19865, 24736, 27672**

21 57872

23 ..... **262, 7713, 7719, 20443, 28825**

80 50844

100 ..... 63702, 64404
..... **3676**

200-299 (Ch. II) 64234

215 ..... **22450**

216 ..... **27010, 27207**

217 ..... **18446, 22453, 27962**

222 58869
..... **2247, 3040, 27416**

227 ..... **18446, 22453, 27416**

228 ..... **20667**

251 50305

285 ..... **17872, 18122**

Page

301 ..... **390**

400—499 (Ch. IV) 51868, 65964

424 ..... **21056**

600—699 (Ch. VI) 58214

611 ...50084, 58531, 58866, 59920, 64002, 65782
..... **1250, 24222**

625 ..... **19874, 24012, 24577**

630 ..... 51367, 54819
..... **21761**

641 ..... 51367, 59922, 67571
..... **5994**

646 ..... 50551, 57302
..... **19874, 20668**

649 51191

650 ..... **1721**

651 ..... **24013**

652 ..... 51368, 58537

653 ..... **23199, 26814**

655 ..... **6699**

658 50844

663 ..... 50084, 59241
..... **24589**

672 ...51669, 56355, 56623, 58214, 58666, 59922, 63487, 64002, 64288, 64738, 66009,
..... **2814, 11930, 17879, 22695, 27725**

675 ...51669, 56355, 56623, 58214, 58531, 59922, 63487, 64738, 65782, 66009
..... **2247, 2814, 17879, 22695, 24014**

678 ..... **1250, 24222**

681 ..... 58029, 65209

683 ..... **26816**

685 ..... 55651, 55652, 60961

NOTE 1: **Boldface page numbers indicate 1992 changes.**

Additions to Table I, June 1992

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being added to Table I as a result of authority citations carried in the **Federal Register** during January through June 1992. Recent legislation is carried by public law number.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1992. Additions during 1991 are in the December 1991 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

U.S. Code:	CFR
5 U.S.C.	
102	32 Part 626
533	5 Part 531
552	13 Part 301 24 Part 2002
552a	32 Parts 316, 320
553	13 Part 301
883a	46 Part 515
1104	5 Part 890
1302	7 Part 772
1302	42 Part 417
1395l	42 Part 417
1395cc	42 Parts 417, 498
1715	46 Part 515
1744	5 Part 890
3301	5 Part 772
3302	5 Part 772
4111	41 Part 304-1
5307	5 Parts 530, 531
5401—5410 (Ch. 54)	5 Part 531
5514	22 Part 1007
7202	5 Part 842
7301	5 Part 772 29 Part 100
7701	5 Parts 831, 841, 842, 846, 870, 890
8456	5 Part 213
8913	48 Part 1609
5 U.S.C. Appendix	
App	5 Parts 735, 2634, 2638
1-15	50 Part 100
402	5 Part 2636
404	5 Part 2636
7 U.S.C.	
4a	17 Part 1
7b	17 Part 1
16a	17 Part 1
71 et seq	7 Part 810
136	40 Part 22
138a	21 Part 5
901 et seq	7 Part 1700
901—950	7 Part 1710
1421 et seq	7 Part 1425
4201 note	7 Part 1980
7 U.S.C.—Con.	CFR
6001 et seq	7 Part 1211
6201 et seq	7 Part 1212
8 U.S.C.	
1101	22 Parts 41, 43
1101 note	22 Part 43
1153	22 Part 43
1186a	8 Part 242
1251	8 Part 242
1252 note	8 Parts 3, 103, 242
1252b	8 Parts 3, 103, 242, 292
1254	8 Part 242
1356	8 Part 103
1362	8 Part 242
10 U.S.C.	
21	32 Part 626
111	32 Part 626
113	32 Parts 28, 33, 725
136	32 Part 102
139	32 Part 155
151—158	32 Part 626
301	32 Parts 340, 355
939	32 Parts 750
507	19 Part 141 751,756, 757
5013	32 Parts 750 751, 756, 757
5148	32 Part 756
7420	15 Parts 770, 771, 772, 774, 786, 790, 799
7430	15 Parts 770, 771, 772, 774, 786, 790, 799
12 U.S.C.	
375a	12 Parts 225, 337
375b	12 Part 337
552	12 Part 516
559	12 Part 516
1422b	12 Part 941
1431	12 Part 941
1462a	12 Part 516
1463—1464	12 Part 516
1701q	24 Part 70
1707	24 Part 234
1715 et seq	24 Part 248

12 U.S.C.—Con.	CFR
1715l	24 Part 221
1715u	24 Part 203
1766	12 Part 705
1817 note	12 Part 304
1818	12 Part 323
1819	12 Part 323
1821	12 Part 337
1828 note	12 Part 325
1831	12 Part 225
1831f-1	12 Part 337
1833e	12 Part 361
2279aa-5	12 Part 611
3015	12 Part 265
3105	12 Part 263
3107	12 Part 263
3109	12 Part 265
3331 et seq	12 Parts 323, 564
3331	12 Part 34
3339	12 Part 722
3348	12 Parts 564, 1102
15 U.S.C.	
18ll	17 Part 240
77c	17 Part 230
77d	17 Part 230
77e	17 Part 230
77j	17 Part 230
77eee	17 Part 240
77ggg	17 Part 240
77nnn	17 Part 240
78i	17 Part 240
78ll	17 Parts 202, 230, 260
80a-23	17 Part 240
80b-3	17 Part 240
80b-4	17 Part 240
80b-11	17 Part 240
1691 et seq	12 Part 613
3301—3432	18 Part 2
3621	21158 Part 570
3622	21158 Part 570
3624	21158 Part 570
16 U.S.C.	
3	36 Part 242 50 Part 100
668dd	36 Part 242 50 Part 100
705	50 Part 14
791—828r	18 Part 375
791a—825r	18 Part 24
2601—2645	18 Part 281, 375
3101—3126	50 Part 100
3801	7 Part 703
7101—7352	18 Part 24
17 U.S.C.	
111	37 Part 201
116	37 Part 201
119	37 Part 310
408	37 Part 201
409	37 Part 201
410	37 Part 201

	CFR
18 U.S.C.	
2257	28 Part 75
2510 et seq	15 Parts 768, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 785, 786, 790, 791, 799
3551—3586	36 Part 242 50 Part 100
3621	28 Part 570
3622	28 Part 570
3624	28 Part 570
20 U.S.C.	
1125a	34 Part 671
1201 et seq	34 Parts 460, 461
1207a	34 Part 471
1208aa	34 Part 464
1211	34 Parts 472, 473
1211a	34 Parts 462, 463, 474
1211-2	34 Parts 489, 490
1213	34 Part 475
1213a	34 Part 476
1213b	34 Part 477
2415	34 Part 491
3061-3068	34 Part 791
4501 et seq	45 Part 2400
5381	34 Part 652
5386	34 Part 652
5031—5039	34 Part 722
5505	40 Part 47
21 U.S.C.	
136	9 Part 130
136a	9 Part 130 7 Part 319
321	21 Part 348
331	21 Part 21
351	21 Parts 21, 348
352	21 Parts 21, 348
353	21 Part 348
355	21 Part 348
360	21 Parts 21, 348
360e	21 Part 21
360h	21 Part 21
360i	21 Part 21
371	21 Parts 21, 348
374	21 Part 21
853a	47 Part 1
22 U.S.C.	
262m-7	31 Part 26
290f	22 Part 1007
2381	48 Part 710
3201 et seq	15 Parts 768, 772, 773, 774, 775, 776, 777, 779, 785, 786, 790, 791, 799
3201	15 Parts 770, 778
4060	5 Part 890
4069c	5 Part 890

	CFR
25 U.S.C.	
398—398c	43 Part 3160
2701 et seq	25 Part 502
26 U.S.C.	
61	26 Part 1
304	26 Part 1
597	26 Part 1
832	26 Part 1
988	26 Part 1
1043	5 Part 2634
1291	26 Part 1
1361	26 Part 1
7701	26 Part 31, 301
29 U.S.C.	
206	29 Part 1614
633a	29 Part 1614
791	29 Part 1614
794a	29 Part 1614
30 U.S.C.	
183 et seq	43 Part 3160
185	15 Parts 770, 771, 772, 774, 786, 790, 799
31 U.S.C.	
321	31 Part 26
1352	32 Part 28
3103	31 Part 342
3105	31 Parts 316, 332
33 U.S.C.	
1319	40 Part 22
35 U.S.C.	
200—212	45 Part 650
38 U.S.C.	
224	28 Part 14
501	38 Parts 3, 14, 19, 20, 21
2302—2308	38 Part 3
4211—4212	41 Part 60-250
5901—5905	38 Part 14
40 U.S.C.	
486	41 Part 301-1 48 Part 1609
41 U.S.C.	
422	48 Parts 9900, 9903, 9904
701 et seq	32 Part 25
42 U.S.C.	
216	32 Part 626 42 Part 100
263a	42 Parts 405, 410, 416, 418, 482, 485, 488, 491
294—294l-1	42 Part 60
300e	42 Part 419
300aa-1	21 Part 5
300aa-15	42 Part 100 42 Part 417
300e	42 Parts 1005, 1006
405	42 Parts 417, 1005, 1006
1302	42 Parts 1005, 1006
1320a-7a	42 Part 1005
1320c-5	42 Part 418
1395d	42 Part 418
1395e	42 Part 418
1395f	42 Part 418
1395j—1395v	42 Part 405
1395l	42 Parts 405, 417, 420
1395m	42 Parts 410, 421
1395x	42 Parts 418, 420, 498
1395cc	42 Parts 405, 417, 484, 498, 1001
1395hh	42 Part 405
1395uu	42 Part 421
1396	42 Part 1002
1396b	42 Part 1007
1437	24 Parts 70, 990, 963
1437d	24 Part 901
1437dd	24Part 905
2000e-16	29 Part 1614
2021b et seq	10 Part 2
2021b	10 Part 171
2139a	15 Parts 768, 770, 771, 772, 773, 774, 775, 776, 777, 779, 786, 785, 790, 791, 799
2201	10 Part 708
2210 note	28 Part 79
2243	10 Parts 2, 40, 51, 70, 110, 140, 150
2456a	14 Part 1203b
3535	24 Parts 70, 200 221, 571, 901, 963
3601	12 Part 613
4001 et seq	44 Part 71
4028	44 Part 71
4321 et seq	43 Part 3160
5310	24 Part 70
5814	10 Part 708
5815	10 Part 708
5851	10 Part 40
6212	15 Parts 771, 772, 774, 786, 790, 799
6936	40 Part 265
6991	40 Part 22
7101—7352	18 Parts 24, 821
7251	10 Part 708
7254—7256	10 Part 708
7254	10 Part 1021
7401—7671q	40 Part 52
7413	40 Part 22
7524	40 Part 22
7547	40 Part 22
7607	40 Part 22
9609	40 Part 22
9822 note	12 Part 705
12117	29 Part 1641 41 Part 60-742
12501	45 Parts 2500-2506
43 U.S.C.	
1354	15 Part 770, 771, 772, 786, 799
6212	15 Part 770

	CFR
44 U.S.C	
3506	32 Part 350
45 U.S.C.	
362	20 Part 259
431	49 Part 214
438	49 Part 214
46 U.S.C.	
466	15 Part 770
466c	15 Parts 771, 772, 786, 790, 799
2103	46 Part 68
10301	19 Part 4
10302	19 Part 4
10314	19 Part 4
10315	19 Part 4
12106	46 Part 68
1241e-0	46 Part 381
46 U.S.C. Appendix	
1114	46 Part 381
1122	46 Part 381
1195	46 Part 221
1241	46 Part 381
47 U.S.C.	
151	47 Part 63
155	47 Part 68
201—205	47 Part 63
201-4	47 Part 64
218	47 Part 63
225	21040 Part 64
226	21040 Part 64
227	21040 Part 64
522	47 Part 68
2103	46 Part 68
12106	46 Part 68
49 U.S.C.	
10761	49 Part 1039
11902—11904	49 Part 1039
49 U.S.C. Appendix	
1601 note	49 Part 23
1804	49 Part 107
2219	49 Part 23
50 U.S.C.	
1431	32 Part 626
1701 et seq	15 Parts 777, 786, 791 31 Part 580
U.S. Statutes at Large:	
48 Stat.	
1070-71	47 Part 64
85 Stat.	
164	33 Part 26
100 Stat.	
3190	5 Part 890
101 Stat.	
697	42 Part 1001
3131	5 Part 890
1568	12 Part 611
1638	12 Part 611
104 Stat.	
523	33 Part 26
1388-335	5 Part 531
1388-336	5 Parts 531, 536
1466	5 Parts 530, 531, 550, 575
1469	5 Part 550
1516	32 Parts 626, 627
2064	22 Part 193
5027	22 Part 41
105 Stat.	
661	22 Part 51
820	22 Part 51
1234	31 Part 555
2208	33 Part 26
2236	12 Part 215, 225
Public Laws:	
98-511	34 Part 471
98-524	34 Part 491
100-654	5 Part 890
100-690	32 Part 25
101-12	5 Part 772
101-513	5 Part 890
101-624	7 Parts 1477, 1478
101-625	24 Part 901
102-140	13 Part 122
102-229	7 Parts 1477, 1478
Executive Orders:	
10577	29 Part 1614
11222	29 Part 1614
11476	32 Parts 750 751, 756, 757
11478	29 Part 1614
11912	15 Parts 770, 771, 772, 774, 786, 790, 799
12002	15 Parts 768, 771, 773, 775, 776, 777, 778, 779, 785, 790, 791
12058	15 Parts 768, 770, 771, 773, 775, 776, 777, 778, 779, 785, 790, 791
12106	29 Part 1614
12107	22 Part 1007
12163	48 Part 710
12214	15 Parts 771, 773, 775, 785, 790, 791
12333	32 Part 355
12356	32 Part 350
12674	5 Parts 735, 2638 24Part 0
12730	15 Part 790
12731	5 Parts 735, 2634, 2638
12735	15 Parts 768, 773, 775, 777, 785, 790, 791
12779	31 Part 580
12787	32 Part 340
Reorganization Plans	
1978 Plan No. 1	29 Part 1614

Removals from Table I, June 1992

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being removed from Table I as a result of documents published in the **Federal Register** during January through June 1992.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1992. Removals during 1991 are in the December 1991 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

U.S. Code:	CFR
2 U.S.C.	
441i	11 Part 110
5 U.S.C.	
504	32 Part 155
552	4 Part 303 45 Parts 2000, 2001, 2002, 2005
552a	32 Parts 287a, 295c
553	49 Part 1053
559	49 Part 1053
1104	5 Part 890
5307	5Part 531
5701—5709	41 Part 304–1
7701	5 Part 890
8457	5 Part 213
5 U.S.C. Appendix	
III	5 Parts 2634, 2638
IV	5 Parts 2634, 2638
7 U.S.C.	
7	17 Part 20
12a	17 Part 20
75a	7 Part 810
76	7 Part 810
136i	40 Part 22
136m	40 Part 22
263a	42 Parts 417, 483, 484
263b–263n	Part 14
516	7 Part 34
901—950	7 Part 1700
1153	7 Part 718
1314	7 Part 718
1375	7 Part 718
1705	22 Part 211
1721	22 Part 211
1722	22 Part 211
1723	22 Part 211
1989	7 Part 1866
8 U.S.C.	
1153 note	22 Parts 41, 43
1187	22 Part 41
1301	42 Part 417
1392	17 Part 20
1356	8 Part 103
10 U.S.C.	
78	12 Part 263
113	32 Parts 278, 282
125	32 Part 174
131	32 Part 626
133	32 Parts 174, 208
2301—2314	32 Part 591
2733	32 Parts 750, 751
3012	32 Part 591
5013	32 Part 750
5031	32 Parts 750, 751, 757
7430	15 Part 799
8012	32 Part 860
12 U.S.C.	
375a	12 Part 337
375b	12 Part 337
1395	42 Part 417
1464	12 Part 325
1715	24 Part 204
1715l note	24 Part 248
1715z–11	24 Part 200
1821	12 Part 337
1831i	12 Part 225
2221	12 Part 611
3331–51	12 Part 323
3535	24 Part 200
15 U.S.C.	
77c	17 Part 230
77d	17 Part 230
77e	17 Part 230
77f	17 Part 240
77h	17 Part 240
77s	17 Part 260
77t	17 Part 260
77ddd	17 Part 260
77hhh	17 Part 260
78d–1	17 Part 260
78w	17 Part 260
79t	17 Part 260
80a–37	17 Part 260
77nnn	17 Part 269
717 et seq	18 Part 281
717—717w	18 Part 159
717i	18 Part 155
717o	18 Part 155
7170	18 Part 50, 160
761 et seq	10 Part 490
764	10 Part 445
766	10 Part 445

15 U.S.C.—Con.	CFR
772	10 Part 445
16 U.S.C.	
263b—263n	21 Part 14
551	50 Part 100
668dd et seq	36 Part 242 50 Part 100
825c	18 Part 160
825h	18 Part 160
551	50 Part 100
704	50 Part 14
791a—825r	18 Part 37
791—828c	18 Part 375
796	18 Part 103
797	18 Part 103
816	18 Part 24
817	18 Parts, 24, 42
825	18 Part 103
825c	18 Parts 50, 103, 160
825g	18 Part 103
825h	18 Parts 24, 50, 103, 160
2601 et seq	18 Part 375
2601—2645	18 Part 385
3101 et seq	36 Part 242 50 Part 100
4223—4244	50 Part 14
18 U.S.C.	
7	36 Part 242 50 Part 100
3559	36 Part 242 50 Part 100
3571	36 Part 242 50 Part 100
20 U.S.C.	
1201 et seq	34 Part 425, 426
1207a	34 Part 431
1211	34 Part 432
1211a	34 Parts 433, 434, 435
1213	34 Part 436
1213a	34 Part 437
1213b	34 Part 438
1444	34 Part 324
22 U.S.C.	
287c	31 Part 530
4050	5 Part 890
4069c	5 Part 890
5001 et seq	15 Parts 768, 773, 775, 786
25 U.S.C.	
398—398e	43 Part 3160
26 U.S.C.	
1043	5 Part 2634
30 U.S.C.	
181 et seq	43 Part 3160
31 U.S.C.	
240—243	32 Part 756
753	31 Part 342
754b	31 Part 342
757c	31 Part 316, 332
1352	32 Part 282
1353	41 Part 304-1
3701—3721	32 Part 750, 751, 753, 757
3720A	20 Part 404
9701	18 Part 159
33 U.S.C.	
1361	40 Part 22
35 U.S.C.	
200 et seq	45 Part 650
38 U.S.C.	
210	38 Part 14
223	28 Part 14
2011—2012	41 Part 60-250
3401—3405	38 Parts 14, 19
41 U.S.C.	
506	10 Part 417
701 et seq	32 Part 280 45 Part 2016
42 U.S.C.	
216	42 Part 417
263a	42 Parts 410, 417, 483, 484, 488, 493
263b—263n	21 Part 5
294—294l	42 Part 60
300e	42 Part 417
300e—300e-17	42 Part 417
300g-3	40 Part 22
300aa-1—300ff	21 Part 5
1301	42 Part 417
1395	42 Part 417
1395c—1395f	42 Part 418
1395g	42 Part 418
1395m	42 Part 410
1395x—1395cc	42 Part 418
1395cc	42 Parts 417, 420, 498
1395hh	42 Part 488
1437g	24 Part 990
1480	7 Part 1866
2139	10 Part 110
2651-53	32 Part 757
3543	24 Part 200
3544	24 Part 200
3535	24 Part 571
4013	44 Part 71
4331 et seq	43 Part 3160
6201 et seq	10 Part 490
6341—6346	10 Part 445
7101 et seq	10 Parts 456, 490, 1001
7101—7352	18 Part 37
7102—7352	18 Part 159
7112	10 Part 595
7151	10 Part 445
7158	10 Part 445
7178	18 Part 375
7191	10 Part 595
7254	10 Part 595
7401—7642	40 Part 52
8101 et seq	12 Part 932

	CFR
42 U.S.C.—Con.	
8211 et seq.	10 Part 456
9205	10 Part 417
43 U.S.C.	
1334	18 Part 159
6212	15 Part 770
45 U.S.C.	
228j	20 Part 259
446	15 Part 777
46 U.S.C.	
1114	46 Part 381
1122	46 Part 381
1241	46 Part 381
47 U.S.C.	
158	47 Part 1
201	47 Part 64
214	47 Part 63
225	47 Part 64
49 U.S.C.	
10321	49 Part 1053
50 U.S.C.	
1512	32 Part 626
1514	32 Part 626
1702	15 Part 791
1704	15 Part 791
50 U.S.C. Appendix	
2168	4 Parts 301—305, 331, 332, 351, 400—418, 420
2401 et seq.	15 Parts 786, 799
U.S. Statutes at Large:	
48 Stat.	
1066	47 Part 64
1070	47 Part 64
66 Stat.	
173	8 Part 251
182	8 Part 251
195	8 Part 251
219	8 Part 251
220	8 Part 251
68 Stat.	
454	22 Part 211
76 Stat.	
394	17 Part 202
92 Stat.	
3350	18 Part 281
94 Stat.	
611 et seq.	10 Part 456
97 Stat.	
719	2001, 2002
100 Stat.	
1890	18 Part 381
3063	45 Parts 2001, 2002
3190	5 Part 890
3207	45 Part 2005
101 Stat.	
1331	8 Part 245a
1744	5 Part 890
3131	5 Part 890
103 Stat.	
511	12 Part 34
104 Stat.	
5089	37 Part 201
5131-31	37 Part 201
Public Laws:	
95-369	31 Part 123
95-454	5 Part 213
95-521	5 Part 735
95-617	18 Part 281
98-101	45 Parts 2001, 2002, 2015
98-150	5 Part 735
99-58	15 Part 777
99-64	15 Part 777
99-194	45 Part 2015
99-412	10 Part 456
100-93	42 Part 1001
100-180	15 Part 777
100-203	7 Part 1700
100-204	8 Part 245a
100-233	12 Part 611
100-418	15 Parts 777, 790, 791
100-449	15 Part 777
100-654	5 Part 890
100-690	32 Part 280 45 Part 2016
101-73	12 Parts 772, 1609
101-144	12 Part 705
101-510	32 Parts 626, 627
101-513	5 Part 870 22 Part 193
Presidential Documents:	
Executive Orders:	
10485	18 Part 159
11246	31 Part 12
11281	31 Part 520
11322	31 Part 530
11419	31 Part 530
11514	24 Part 50
11790	10 Parts 445, 490
11912	10 Part 490
11991	24 Part 50
12009	10 Parts 445, 490, 595, 1001 18 Parts 2, 4, 8, 16, 35, 154, 157, 159, 260, 281, 292, 300, 375, 381, 385, 821
12127	44 Part 71
12525	15 Parts 777, 790, 791
12532	15 Parts 768, 773, 775, 786, 799
12543	15 Part 790
12549	42 Part 2016
12571	15 Parts 768, 772, 773, 774, 775, 786, 799
Reorganization Plans:	
1970 Plan No. 3	40 Part 180

1991

56 FR Page	
29889-30306	July 1
30307-30482	2
30483-30678	3
30679-30856	5
30857-31042	8
31043-31304	9
31305-31532	10
31533-31854	11
31855-32060	12
32061-32318	15
32319-32498	16
32499-32950	17
32951-33188	18
33189-33366	19
33367-33702	22
33703-33838	23
33839-34002	24
34003-34140	25
34141-35798	26
35799-35996	29
35997-36078	30
36079-36722	31
36723-36996	Aug. 1
36997-37138	2
37139-37266	5
37267-37452	6
37453-37640	7
37641-37820	8
37821-38070	9
38071-38318	12
38319-40218	13
40219-40480	14
40481-40742	15
40743-41054	16
41055-41280	19
41281-41430	20
41431-41620	21
41621-41746	22
41747-41918	23
41919-42220	26
42221-42522	27
42523-42676	28
42677-42918	29
42919-43546	30
43547-43688	Sep. 3
43689-43860	4
43861-43994	5
43995-45880	6
45881-46106	9
46107-46220	10
46221-46364	11
46365-46522	12
46523-46718	13
46719-46976	16
46977-47122	17
47123-47350	18
47351-47670	19
47671-47898	20
47899-48094	23
48095-48414	24
48415-48722	25
48723-49130	26
49131-49386	27
49387-49660	30
49661-49836	Oct. 1
49837-50028	2
50029-50234	3
50235-50472	4
50473-50642	7
50643-50808	8
50809-51144	9
51145-51316	10
51317-51630	11
51631-51822	15
51823-51964	16
51965-52186	17
52187-52442	18
52443-54528	21
54529-54770	22
54771-55050	23
55051-55194	24
55195-55436	25
55437-55594	28
55595-55794	29
55795-55976	30
55977-56144	31
56145-56288	Nov. 1
56289-56460	4
56461-56566	5
56567-56918	6
56919-57230	7
57231-57480	8
57481-57572	12
57573-57792	13
57793-57968	14
57969-58172	15
58173-58298	18
58299-58490	19
58491-58634	20
58635-58840	21
58841-59204	22
59205-59848	25
59849-60044	26
60045-60892	27
60893-61108	29
61109-61346	Dec. 2
61347-63398	3
63399-63626	4
63627-63860	5
63861-64184	6
64185-64468	9
64469-64550	10
64551-64700	11
64701-64938	12
64939-65170	13
65171-65414	16

65415-65676	17
65677-65796	18
65797-65978	19
65979-66338	20
66339-66556	23
66557-66778	24
66779-66952	26
66953-67138	27
67139-67466	30
67467-67716	31

1992

57 FR Page	
1-172	Jan. 2
173-328	3
329-516	6
517-600	7
601-754	8
755-1068	9
1069-1210	10
1211-1364	13
1365-1634	14
1635-1856	15
1857-2006	16
2007-2212	17
2213-2430	21
2431-2672	22
2673-2822	23
2823-2978	24
2979-3110	27
3111-3270	28
3271-3514	29
3515-3706	30
3707-3908	31
3909-4146	Feb. 3
4147-4356	4
4357-4542	5
4543-4690	6
4691-4834	7
4835-4924	10
4925-5050	11
5051-5226	12
5227-5364	13
5365-5786	14
5787-5972	18
5973-6066	19
6067-6180	20
6181-6284	21
6285-6456	24
6457-6552	25
6553-6662	26
6663-6788	27
6789-7314	28
7315-7530	Mar. 2
7531-7644	3
7645-7874	4
7875-8058	5
8059-8256	6
8257-8396	9
8397-8568	10
8569-8718	11
8719-8834	12
8835-9040	13
9041-9166	16
9167-9380	17
9381-9500	18
9501-9648	19
9649-9972	20
9973-10118	23
10119-10280	24
10281-10414	25
10415-10608	26
10609-10736	27
10737-10800	30
10801-10972	31
10973-11260	Apr. 1
11261-11424	2
11425-11552	3
11553-11670	6
11671-11904	7
11905-12176	8
12177-12402	9
12403-12694	10
12695-12862	13
12863-12988	14
12989-13266	15
13267-13622	16
13623-14320	17
14320-14474	20
14475-14636	21
14637-14790	22
14791-15000	23
15001-15216	24
15217-17844	27
17845-18078	28
18079-18386	29
18387-18796	30
18797-19062	May 1
19063-19248	4
19249-19362	5
19363-19514	6
19515-19790	7
19791-20024	8
20025-20190	11
20191-20394	12
20395-20626	13
20627-20734	14
20735-20954	15
20955-21186	18
21187-21346	19
21347-21586	20
21587-21720	21
21721-21888	22
21889-22156	26
22157-22408	27
22409-22642	28
22643-23042	29
23043-23134	June 1

23135-23300	2
23301-23522	3
23523-23924	4
23925-24178	5
24179-24344	8
24345-24538	9
24539-24748	10
24749-24934	11
24935-26602	12
26603-26766	15
26767-26920	16
26921-27140	17
27141-27344	18
27345-27676	19
27677-27888	22
27889-28032	23
28033-28456	24
28457-28582	25
28583-28776	26
28777-28996	29
28997-29180	30

10
11
12
13
16
17
18
19
20
23
24
25
26
27
30
31
Apr. 1
2
3
6
7
8
9
10
13
14
15
16
17
20
21
22
23
24
27
28
29
30
May 1
4
5
6
7
8
11
12
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14
15
18
19
20
21
22
26
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28
29
June 1

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List of CFR Sections Affected

July 1992

Editor's Note:
The revision date for the 1992 edition of title 38 will be delayed until September 1, 1992. The 1992 revision will include amendments promulgated during the period of July 1, 1991 through September 1, 1992. For the convenience of the user, this LSA contains all amendments promulgated since the July 1, 1991 revision.

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List of CFR Sections Affected

July 1992

Title 1-16
Changes January 2, 1992
through July 31, 1992

Title 17-27
Changes April 1, 1992
through July 31, 1992

Title 28-41
Changes July 1, 1992
through July 31, 1992

Title 42-50
Changes October 1, 1991
through July 31, 1992

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INDEX

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LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1-16—as of Jan. 1
17-27—as of April 1
28-41—as of July 1
42-50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

Boldface page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the current year from the previous year.

Cite a page reference from this publication using the volume number (i.e. 57 FR for 1992) and the page number. Example: 24727 cite as 57 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1-16; the MARCH issue is the ANNUAL for Titles 17-27; the JUNE issue is the ANNUAL for Titles 28-41; the SEPTEMBER issue is the ANNUAL for Titles 42-50. ANNUAL ISSUES to be saved are clearly designated on the cover.

PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1992.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1990 Compilation and Parts 100 and 101)	(869-013-00002-1)	14.00	[1] Jan. 1, 1991
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
0-26	(869-017-00007-8)	17.00	Jan. 1, 1992
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
900-999	(869-017-00016-7)	29.00	Jan. 1, 1992
1000-1059	(869-017-00017-5)	17.00	Jan. 1, 1992
1060-1119	(869-017-00018-3)	13.00	Jan. 1, 1992
1120-1199	(869-017-00019-1)	9.50	Jan. 1, 1992
1200-1499	(869-017-00020-5)	22.00	Jan. 1, 1992
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
1940-1949	(869-017-00023-0)	23.00	Jan. 1, 1992
1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-017-00026-4)	17.00	Jan. 1, 1992
9 Parts:			
1-199	(869-017-00027-2)	23.00	Jan. 1, 1992
200-End	(869-017-00028-1)	18.00	Jan. 1, 1992
10 Parts:			
0-50	(869-017-00029-9)	19.00	Jan. 1, 1992
51-199	(869-017-00030-2)	18.00	Jan. 1, 1992
200-399	(869-017-00031-1)	13.00	[4] Jan. 1, 1987
400-499	(869-017-00032-9)	20.00	Jan. 1, 1992
500-End	(869-017-00033-7)	28.00	Jan. 1, 1992
11	(869-017-00034-5)	12.00	Jan. 1, 1992
12 Parts:			
1-199	(869-017-00035-3)	13.00	Jan. 1, 1992
200-219	(869-017-00036-1)	13.00	Jan. 1, 1992
220-299	(869-017-00037-0)	22.00	Jan. 1, 1992
300-499	(869-017-00038-8)	18.00	Jan. 1, 1992
500-599	(869-017-00039-6)	17.00	Jan. 1, 1992
600-End	(869-017-00040-0)	22.00	Jan. 1, 1992
13	(869-017-00041-8)	25.00	Jan. 1, 1992
14 Parts:			
1-59	(869-017-00042-6)	25.00	Jan. 1, 1992
60-139	(869-017-00043-4)	22.00	Jan. 1, 1992
140-199	(869-017-00044-2)	11.00	Jan. 1, 1992

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
200–1199	(869–017–00045–1)	20.00	Jan. 1, 1992
1200–End	(869–017–00046–9)	14.00	Jan. 1, 1992
15 Parts:			
0–299	(869–017–00047–7)	13.00	Jan. 1, 1992
300–799	(869–017–00048–5)	21.00	Jan. 1, 1992
800–End	(869–017–00049–3)	17.00	Jan. 1, 1992
16 Parts:			
0–149	(869–017–00050–7)	6.00	Jan. 1, 1992
150–999	(869–017–00051–5)	14.00	Jan. 1, 1992
1000–End	(869–017–00052–3)	20.00	Jan. 1, 1992
17 Parts:			
1–199	(869–017–00054–0)	15.00	Apr. 1, 1992
200–239	(869–017–00055–8)	17.00	Apr. 1, 1992
240–End	(869–017–00056–6)	24.00	Apr. 1, 1992
18 Parts:			
1–149	(869–017–00057–4)	16.00	Apr. 1, 1992
150–279	(869–017–00058–2)	19.00	Apr. 1, 1992
280–399	(869–017–00059–1)	14.00	Apr. 1, 1992
400–End	(869–017–00060–4)	9.50	Apr. 1, 1992
19 Parts:			
1–199	(869–017–00061–2)	28.00	Apr. 1, 1992
200–End	(869–017–00062–1)	9.50	Apr. 1, 1992
20 Parts:			
1–399	(869–017–00063–9)	16.00	Apr. 1, 1992
400–499	(869–017–00064–7)	31.00	Apr. 1, 1992
500–End	(869–017–00065–5)	27.00	Apr. 1, 1992
21 Parts:			
1–99	(869–017–00066–3)	14.00	Apr. 1, 1992
100–169	(869–017–00067–1)	14.00	Apr. 1, 1992
170–199	(869–017–00068–0)	18.00	Apr. 1, 1992
200–299	(869–017–00069–8)	5.50	Apr. 1, 1992
300–499	(869–017–00070–1)	29.00	Apr. 1, 1992
500–599	(869–017–00071–0)	21.00	Apr. 1, 1992
600–799	(869–017–00072–8)	7.00	Apr. 1, 1992
800–1299	(869–017–00073–6)	18.00	Apr. 1, 1992
1300–End	(869–017–00074–4)	9.00	Apr. 1, 1992
22 Parts:			
1–299	(869–017–00075–2)	26.00	Apr. 1, 1992
300–End	(869–017–00076–1)	19.00	Apr. 1, 1992
23	(869–017–00077–9)	19.00	Apr. 1, 1992
24 Parts:			
0–199	(869–017–00078–7)	34.00	Apr. 1, 1992
200–499	(869–017–00079–5)	32.00	Apr. 1, 1992
500–699	(869–017–00080–0)	13.00	Apr. 1, 1992
700–1699	(869–017–00081–7)	34.00	Apr. 1, 1992
1700–End	(869–017–00082–5)	13.00	Apr. 1, 1992
25	(869–017–00083–3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0–1–1.60	(869–017–00084–1)	17.00	Apr. 1, 1992
§§ 1.61–1.169	(869–017–00085–0)	33.00	Apr. 1, 1992
§§ 1.170–1.300	(869–017–00086–8)	19.00	Apr. 1, 1992
§§ 1.301–1.400	(869–017–00087–6)	17.00	Apr. 1, 1992
§§ 1.401–1.500	(869–013–00088–9)	30.00	Apr. 1, 1991

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1, 1992
§§ 1.1401-End	(867-017-00094-9)	26.00	Apr. 1, 1992
2-29	(869-017-00095-7)	22.00	Apr. 1, 1992
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-013-00099-4)	17.00	Apr. 1, 1991
500-599	(869-013-00100-1)	6.00	[5] Apr. 1, 1990
600-End	(869-017-00101-5)	6.50	Apr. 1, 1992
27 Parts:			
1-199	(869-017-00102-3)	34.00	Apr. 1, 1992
200-End	(869-017-00103-1)	11.00	Apr. 1, 1992
28	(869-013-00104-4)	28.00	July 1, 1991
29 Parts:			
0-99	(869-013-00105-2)	18.00	July 1, 1991
100-499	(869-013-00106-1)	7.50	July 1, 1991
500-899	(869-013-00107-9)	27.00	July 1, 1991
900-1899	(869-013-00108-7)	12.00	July 1, 1991
1900-1910 (§§ 1901.1 to 1910.999)	(869-013-00109-5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869-013-00110-9)	14.00	July 1, 1991
1911-1925	(869-013-00111-7)	9.00	[6] July 1, 1989
1926	(869-013-00112-5)	12.00	July 1, 1991
1927-End	(869-013-00113-3)	25.00	July 1, 1991
30 Parts:			
1-199	(869-013-00114-1)	22.00	July 1, 1991
200-699	(869-013-00115-0)	15.00	July 1, 1991
700-End	(869-013-00116-8)	21.00	July 1, 1991
31 Parts:			
0-199	(869-013-00117-6)	15.00	July 1, 1991
200-End	(869-013-00118-4)	20.00	July 1, 1991
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-189	(869-013-00119-2)	25.00	July 1, 1991
190-399	(869-013-00120-6)	29.00	July 1, 1991
400-629	(869-013-00121-4)	26.00	July 1, 1991
630-699	(869-013-00122-2)	14.00	July 1, 1991
700-799	(869-013-00123-1)	17.00	July 1, 1991
800-End	(869-013-00124-9)	18.00	July 1, 1991
33 Parts:			
1-124	(869-013-00125-7)	15.00	July 1, 1991
125-199	(869-013-00126-5)	18.00	July 1, 1991
200-End	(869-013-00127-3)	20.00	July 1, 1991
34 Parts:			
1-299	(869-013-00128-1)	24.00	July 1, 1991
300-399	(869-013-00129-0)	14.00	July 1, 1991
400-End	(869-013-00130-3)	26.00	July 1, 1991

Footnotes at end of table.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
35	(869-013-00131-1)	10.00	July 1, 1991
36 Parts:			
1-199	(869-013-00132-0)	13.00	July 1, 1991
200-End	(869-013-00133-8)	26.00	July 1, 1991
37	(869-013-00134-6)	15.00	July 1, 1991
38 Parts:			
0-17	(869-013-00135-4)	24.00	July 1, 1991
18-End	(869-013-00136-2)	22.00	July 1, 1991
39	(869-013-00137-1)	14.00	July 1, 1991
40 Parts:			
1-51	(869-013-00138-9)	27.00	July 1, 1991
52	(869-013-00139-7)	28.00	July 1, 1991
53-60	(869-013-00140-1)	31.00	July 1, 1991
61-80	(869-013-00141-9)	14.00	July 1, 1991
81-85	(869-013-00142-7)	11.00	July 1, 1991
86-99	(869-013-00143-5)	29.00	July 1, 1991
100-149	(869-013-00144-3)	30.00	July 1, 1991
150-189	(869-013-00145-1)	20.00	July 1, 1991
190-259	(869-013-00146-0)	13.00	July 1, 1991
260-299	(869-013-00147-8)	31.00	July 1, 1991
300-399	(869-013-00148-6)	13.00	July 1, 1991
400-424	(869-013-00149-4)	23.00	July 1, 1991
425-699	(869-013-00150-8)	23.00	[6] July 1, 1989
700-789	(869-013-00151-6)	20.00	July 1, 1991
790-End	(869-013-00152-4)	22.00	July 1, 1991
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-013-00153-2)	8.50	[7] July 1, 1990
101	(869-013-00154-1)	22.00	July 1, 1991
102-200	(869-013-00155-9)	11.00	July 1, 1991
201-End	(869-013-00156-7)	10.00	July 1, 1991
42 Parts:			
1-60	(869-013-00157-5)	17.00	Oct. 1, 1991
61-399	(869-013-00158-3)	5.50	Oct. 1, 1991
400-429	(869-013-00159-1)	21.00	Oct. 1, 1991
430-End	(869-013-00160-5)	26.00	Oct. 1, 1991
43 Parts:			
1-999	(869-013-00161-3)	20.00	Oct. 1, 1991
1000-3999	(869-013-00162-1)	26.00	Oct. 1, 1991
4000-End	(869-013-00163-0)	12.00	Oct. 1, 1991
44	(869-013-00164-8)	22.00	Oct. 1, 1991

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
45 Parts:			
1-199	(869-013-00165-6)	18.00	Oct. 1, 1991
200-499	(869-013-00166-4)	12.00	Oct. 1, 1991
500-1199	(869-013-00167-2)	26.00	Oct. 1, 1991
1200-End	(869-013-00168-1)	19.00	Oct. 1, 1991
46 Parts:			
1-40	(869-013-00169-9)	15.00	Oct. 1, 1991
41-69	(869-013-00170-2)	14.00	Oct. 1, 1991
70-89	(869-013-00171-1)	7.00	Oct. 1, 1991
90-139	(869-013-00172-9)	12.00	Oct. 1, 1991
140-155	(869-013-00173-7)	13.00	Oct. 1, 1991
156-165	(869-013-00174-5)	14.00	Oct. 1, 1991
166-199	(869-013-00175-3)	14.00	Oct. 1, 1991
200-499	(869-013-00176-1)	20.00	Oct. 1, 1991
500-End	(869-013-00177-0)	11.00	Oct. 1, 1991
47 Parts:			
0-19	(869-013-00178-8)	19.00	Oct. 1, 1991
20-39	(869-013-00179-6)	19.00	Oct. 1, 1991
40-69	(869-013-00180-0)	10.00	Oct. 1, 1991
70-79	(869-013-00181-8)	18.00	Oct. 1, 1991
80-End	(869-013-00182-6)	20.00	Oct. 1, 1991
48 Chapters:			
1 (Parts 1-51)	(869-013-00183-4)	31.00	Oct. 1, 1991
1 (Parts 52-99)	(869-013-00184-2)	19.00	Oct. 1, 1991
2 (Parts 201-251)	(869-013-00185-1)	13.00	Oct. 1, 1991
2 (Parts 252-299)	(869-013-00186-9)	10.00	Oct. 1, 1991
3-6	(869-013-00187-7)	19.00	Oct. 1, 1991
7-14	(869-013-00188-4)	26.00	Oct. 1, 1991
15-End	(869-013-00189-3)	30.00	Oct. 1, 1991
49 Parts:			
1-99	(869-013-00190-7)	20.00	Oct. 1, 1991
100-177	(869-013-00191-5)	23.00	Oct. 1, 1991
178-199	(869-013-00192-1)	17.00	Oct. 1, 1991
200-399	(869-013-00193-1)	22.00	Oct. 1, 1991
400-999	(869-013-00194-0)	27.00	Oct. 1, 1991
1000-1199	(869-013-00195-8)	17.00	Oct. 1, 1991
1200-End	(869-013-00196-6)	19.00	Oct. 1, 1991
50 Parts:			
1-199	(869-013-00197-4)	21.00	Oct. 1, 1991
200-599	(869-013-00198-2)	17.00	Oct. 1, 1991
600-End	(869-013-00199-1)	15.00	Oct. 1, 1991
CFR Index and Finding Aids	(869-017-00053-7)	31.00	Jan. 1, 1992
Complete 1992 CFR set		620.00	1992
Microfiche CFR Edition:			
Complete set (one-time mailing)		185.00	1989
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Subscription (mailed as issued)		188.00	1991
Subscription (mailed as issued)		188.00	1992
Individual copies		2.00	1992

Footnotes at end of table.

[1]Because title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR parts 1—189 contains a note only for parts 1—39 inclusive. For the full text of the Defense Acquisition Regulations in parts 1—39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR chapters 1—100 contains a note only for chapters 1 to 49 inclusive. For the full text of procurement regulations in chapters 1 to 49, consult the three CFR volumes issued as of July 1, 1984 containing those chapters.

[4]No amendments to this volume were promulgated during the period January 1, 1987 through December 31, 1991. The CFR volume issued as of January 1, 1987 should be retained.

[5]No amendments to this volume were promulgated during the period April 1, 1990 through March 30, 1991. The CFR volume issued as of April 1, 1990 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1989 through June 30, 1991. The CFR volume issue as of July 1, 1989 should be retained.

[7]No amendments to this volume were promulgated during the period July 1, 1990 through June 30, 1991. The CFR volume issued as of July 1, 1990 should be retained.

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Guide to Record Retention Requirements in the Code of Federal Regulations	15.00		Jan. 1, 1992
List of Sections Affected, 1949-1963	Out of print		1966
List of CFR Sections Affected, 1964-1972			
(Titles 1 through 27) Vol. I	Out of print		1980
(Titles 28 through 50) Vol. II	Out of print		1980
List of CFR Sections Affected, 1973-1985			
(Titles 1 through 16) Vol. I	27.00		1990
(Titles 17 through 27) Vol. II	25.00		1990
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CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 1—GENERAL PROVISIONS

Chapter I—Administrative Committee of the Federal Register (Parts 1 through 22)

Page

51 Technical amendment; incorporation by reference..... 31947

Chapter III—Administrative Conference of the United States (Parts 300—399)

305.92—1 Added..... 30102
305.92—2 Added..... 30103
305.92—3 Added..... 30104
305.92—4 Added..... 30106
305.92—5 Added..... 30108
Corrected..... 32881
305.92—6 Added..... 30110

Title 1—*Proposed Rules:*

1 ..... 859, 860
305 13667
425 14669

TITLE 3—THE PRESIDENT

Proclamations

4865 *See* EO 12807..... 23133
6399 1365
6400 2429
6401 2671
6402 4833
See Presidential Determination 92-11 of Jan. 28, 1992..... 5787
6403 5973
6404 6065
6405 6787
6406 7313
6407 7873
6408 8255
6409 8395
6410 8835
6411 9041
6412 9645
6413 9647
6414 9971
6415 10119
6416 10413
6417 10737
6418 12693
6419 12865
6420 12989
6421 13265
6422 13621
6423 17845
6424 18795
6425 19067
6426 19357
6427 19359
See EO 12804..... 19361
6428 19363
6429 19371
6430 20191
6431 20391
6432 20393
6433 20395
6434 20397
6435 20631
6436 21347
6437 21349
6438 21583
6439 21585
6440 21587
6441 21721
6442 22143
6443 24179
6444 24935
6445 26921
6446 26969
6447 26981
6448 27345
6449 28033
6450 28579
6451 28581
6452 29429
6453 29625
6454 29629
6455 30069
6456 30097
6457 31627
6458 31945
6459 32413
6460 32877
6461 33423
6462 33857

Executive Orders

Aug. 31, 1917 Revoked in part by PLO 6922..... 4856
5327 Modified by PLO 6926 of April 21, 1992..... 19092
Revoked in part by PLO 6934..... 28637
10879 Superseded by EO 12793..... 10281

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 3 Executive Orders—Con. Page

12049 Superseded by EO 12788....2213
12193 *See* EO 12791....8717
12295 *See* EO 12791....8717
12324 Revoked by EO 12807....23133
12351 *See* EO 12791....8717
12409 *See* EO 12791....8717
12438 Revoked by EO 12797....11671
12463 *See* EO 12791....8717
12506 *See* EO 12791....8717
12514 Revoked by EO 12787....517
12554 *See* EO 12791....8717
12587 *See* EO 12791....8717
12625 Revoked by EO 12805....20627
12629 *See* EO 12791....8717
12670 *See* EO 12791....8717
12706 *See* EO 12791....8717
12722 *See* Notice of July 21, 1992....32875
12724 *See* Notice of July 21, 1992....32875
12753 Superseded by EO 12791....8717
12754 Amended by EO 12790....8057
12787....517
12788....2213
12789....5225
12790....8057
12791....8717
12792....9165
12793....10281
12794....11417
12795....11421
12796....11423
12797....11671
12798....12175
12799....12401
12800....12985
Corrected....13413
12801....14319
12802....14321
12803....19063
12804....19361
12805....20627
12806....21989
12807....23133
12808....23299
See EO 12810....24347
12809....23925
12810....23437
12811....28585
12812....32879

Page

Administrative Orders

Memorandums:

Dec. 27, 1991....1069
Jan. 21, 1992....3111
Feb. 10, 1992....5365, 5367, 24345
Feb. 13, 1992....6663
Feb. 18, 1992....7531
Mar. 20, 1992....11554
May 18, 1992....22409
June 15, 1992....27135, 27137

Notices:

July 21, 1992....32875

Presidential Determinations:

No. 91-36 of May 29, 1991 *See* Presidential Determination No. 92-29 of June 2, 1992....24539
No. 92-9 of Dec. 16, 1991....329
No. 92-10 of Dec. 30, 1991....1071
No. 92-11 of Jan. 28, 1992....5787
See Proc. 6402....4833
No. 92-12 of Jan. 31, 1992....19077
No. 92-13 of Feb. 4, 1992....5789
No. 92-14 of Feb. 10, 1992....6659
No. 92-15 of Feb. 18, 1992....7315
No. 92-16 of Feb. 18, 1992....7317
No. 92-17 of Feb. 26, 1992....8569
No. 92-18 of Feb. 28, 1992....8571
No. 92-19 of Mar. 16, 1992....11553
No. 92-20 of Apr. 3, 1992....13623
No. 92-21 of Apr. 10, 1992....12863
No. 92-22 of Apr. 22, 1992....15217
No. 92-23 of Apr. 27, 1992....22145
No. 92-24 of Apr. 27, 1992....20025
No. 92-25 of May 6, 1992....22147
No. 92-27 of May 26, 1992....24925
No. 92-28 of May 26, 1992....24927
No. 92-29 of June 2, 1992....24539
No. 92-30 of June 3, 1992....24929
No. 92-31 of June 3, 1992....24931
No. 92-32 of June 3, 1992....24933
No. 92-33 of June 15, 1992....28583
No. 92-34 of June 22, 1992....30099
No. 92-35 of June 30, 1992....33421
No. 92-36 of July 21, 1992....33623

TITLE 4—ACCOUNTS

Chapter I—General Accounting Office (Parts 1—99)

22 Removed....31272

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

30.1 (b) redesignated as (c); new (b) added 31272
Corrected 33392

Chapter III—General Accounting Office (CASB) (Parts 300—499)

Chapter III Removed 14152

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

9 Removal at 56 FR 18660 confirmed 10123
212.301 Amended 10123
213 Authority citation revised 17847
213.3102 (j) revised 17847
213.3202 Regulation at 56 FR 18661 confirmed 10123
213.3301—213.3302 Regulation at 56 FR 18660 confirmed 10123
213.3301b Regulation at 56 FR 18660 confirmed 10123
214.201 Regulation at 56 FR 18661 confirmed 10123
294 Authority citation revised 32150
294.106 Revised 32150
294.107 (b) and (c) revised 32150
294.111 (b) revised 32150
294.112 Added 32150
297.501 (b)(8) heading revised and existing text redesignated as (b)(8)(i); (b)(8)(ii) added 20956
300.301 Removal at 56 FR 18661 confirmed 10123
300.402 Revised 10124
305 Removal at 56 FR 18661 confirmed 10123
317 Regulation at 56 FR 18661 confirmed 10123
317.901 (c)(1)(ii) revised 10124
319 Regulation at 56 FR 18661 confirmed 10123
319.102 Revised 10124
330.203 (a)(3) and (b) revised; interim 21890
330.302 (a) revised; interim 21890
330.303 (b)(4)(i) revised; interim 21890
330.307 (a)(2) and (b) revised; interim 21890
335.102 Introductory text, (a), and (f)(2) revised 10124
338.101 (b) revised 10124
351.802 (b) revised 32685
351.803 (b) revised 32685
351.807 Added 21890
352.307 (b) revised 10124
352.703 (b)(3) revised 10124
352.803 (c)(2), (3) and (d)(3) revised; (c)(4) and (d)(4) removed; (d)(2) amended; (d)(5) redesignated as (d)(4) 10124
352.904 (b)(3) revised 10125
353.305 Regulation at 56 FR 18662 confirmed 10123
359.406 (b) revised 10125
359.503 (b) revised 10125
359.701 (a)(2) removed; (a)(3) and (4) redesignated as (a)(2) and (3); new (a)(2) revised 10125
410 Authority citation revised 19517
410.511 Added 19517
430.202 (c) revised 14638
430.204 (h) revised; (i) through (k) redesignated as (j) through (l); new (j) added 7321
430.403 (c) revised 14638
430.404 Amended; interim 23044
430.405 (b), (d)(1),(e), (g), (i) introductory text, (1), (j)(1) and (2) revised; interim 23044
430.406 (c), (d)(1) and (e) revised; interim 23044
430.407 (b) revised; interim 23045
430.504 (c) revised 14638
432.102 (f)(13) revised; (f)(14) removed; (f)(15) redesignated as (f)(14) 10125
(c)(3) and (f)(12) revised; (c)(4) removed; (c)(5) redesignated as (c)(4); interim 20042
432.103 (a), (d), (e) and (i) revised; (j) added; interim 23045
432.105 Revised; interim 23045
432.107 (a)(1), (2) and (4)(i)(A) revised; interim 23045
432.108 (a)(2) and (3), (b)(1)(ii) and (iii) revised; (a)(4) and (b)(1)(iv) added; interim 20043

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 5 Chapter I—Con. Page

451 Authority citation revised....14638
451.306 (a) revised....14638
530 Authority citation revised....3114
530.202 Amended; interim....3114
530.203 (d) through (f) revised; (g) added; interim....3114
530.204 (d) removed; interim....3115
530.206 Added; interim....3115
530.307 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c)....26604
531 Authority citation revised....2432, 12404, 32152
531.101 Amended....2432
(c) amended....32152
531.102 (b) revised....32153
531.202 (g) through (l) redesignated as (h) through (m); new (g) added; interim....12404
531.203 (d)(2)(v) amended; (d)(2)(vi) redesignated as (d)(2)(vii); new (d)(2)(vi) added....3712
531.205 Heading, (a) introductory text and (b) revised....2432
531.206 Added; interim....12404
531.301—531.306 (Subpart C) Added....2432
531.406 (a) amended....3712
(b)(3) added; interim....12404
531.407 (c)(5) and (6) amended; (c)(7) added....3712
531.414 Added....3712
532.201—532.283 (Subpart B) Appendix D regulation at 56 FR 15274 confirmed....7533
Appendix A amended....30635
532.211 (d)(2) redesignated as (d)(3); new (d)(2) added....29783
532.219 (c) revised....29783
Appendix C amended....19791
534.301 (Subpart C) Removal at 56 FR 18662 confirmed....10123
534.402 Regulation at 56 FR 18662 confirmed....10123
534.403 (f) revised....10125
534.501—534.506 (Subpart E) Regulation at 56 FR 18662 confirmed....10123
534.501 (a)(1) and (b)(1) revised....10125
534.503 (c) revised....10125
534.505 (b) revised....10125

Page

536 Authority citation revised....12404
536.102 Regulation at 56 FR 18662 confirmed....10123
536.103 (c)(1) and (3) revised; interim....12404
536.104 (c) added; interim....12404
536.105 Regulation at 56 FR 18663 confirmed....10123
536.202 (c) added....3712
536.205 (f) redesignated as (g); new (f) added....3712
536.208 Regulation at 56 FR 18663 confirmed....10123
536.209 Regulation at 56 FR 18663 confirmed....10123
536.305 Removal at 56 FR 18663 confirmed....10123
540.102 Amended; interim....23046
540.103 (a)(3) added; interim....23046
540.105 (b) amended; interim....23046
540.107 (d)(2) revised; interim....23046
540.109 (b)(1)(i), (d)(2), (3) and (f) removed; (b)(1)(ii), (iii), (d)(1) and (g) through (h) redesignated as (b)(1)(i), (ii), (d) and (f) through (h); (b)(1)(i) and (i) added; new (d) revised; interim....23046
550.101—550.172 (Subpart A) Authority citation revised....2434, 31630
550.101 (b)(9) revised....2434
550.103 (j) revised....2434
(r) revised; (s) added....31630
550.105 (b)(1) revised....31630
550.106 Revised....31630
550.107 (a) revised....2434
550.111 (d)(2) revised....2434
550.113 (a) revised....2434
550.114 (c) revised....2434
550.151 Revised....2435
550.154 (a) introductory text revised....2435
550.201—550.206 (Subpart B) Authority citation revised....2435
550.202 Amended....2435
550.603 Regulation at 56 FR 6206 confirmed....12406
550.705 (a)(1) and (2) amended; (a)(3) added; interim....12405
550.708 (b) and (c) amended; (d) added; interim....12405

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

553 Regulation at 56 FR 6206 confirmed....12406
553.101 Revised....12406
553.201 Heading and (e)(3) revised; (b)(4) added....12406
553.202 Heading revised....12406
553.203 Heading and (b) revised....12406
575 Authority citation revised....2435
575.103 Amended....2435
575.203 Amended....2435
575.303 Amended....2435
575.403 Amended....2435
575.405 (c)(2) revised....2435
591.203 Regulation at 56 FR 18663 confirmed....10123
(a)(5) and (6) revised; (a)(7) added....10126
630.211 Regulation at 56 FR 18663 confirmed....10123
733.124 (b) amended....21189
735 Authority citation revised....11804
735.106 Removed; new 735.106 redesignated from 735.107; interim....11804
735.107 Redesiganted as 735.106; interim....11804
735.401—735.412 (Subpart D) Removed....11804
735.401—735.412 (Subpart D) Removed; interim....11804
752.201 (b)(6) revised; (b)(7) removed; interim....20043
752.301 Amended; interim....20043
752.401 (c) and (d) revised; interim....20043
772 Added....3712
831 Authority citation amended....3713
831.201 (b)(5) amended; (b)(6) added....3713
831.603 Amended....33597, 33598
831.620 (b)(2)(ii) amended....33597
831.624 (b) and (c) amended....33597
831.805 Added....3713
831.1701—831.1718 (Subpart Q) Redesiganted as 838.1001—838.1018 (Subpart J)....33596
831.2001 Amended....29784
831.2003 (a) amended....29784
831.2009 Redesignated as 838.1010....33596

Page

831.2011 Added....3713
831.2104 Regulation at 49 FR 20631 confirmed....32154
831.2107 Regulation at 49 FR 20631 confirmed....32154
831.2203 (b) revised....33598
838 Added....33574
838.1001—838.1018 (Subpart J) Redesignated from 831.1701—831.1718 (Subpart Q)....33596
838.1001 Removed....33596
838.1002 (c) and (d) revised....33597
(b) and (g) amended....33598
838.1003 Amended....33598
838.1004 (c)(1)(i) and (ii) amended; (e) revised....33597
838.1006 (b) and (d)(2) amended....33597
(c)(3) and (d)(3) amended....33598
838.1007 (a)(1), (2), (3) and (b) amended....33597
(c) amended....33598
838.1009 (a)(1) and (b) amended....33597
(a)(2) amended....33598
838.1010 Removed; new 838.1010 redesignated from 831.2009....33596
(e) and (f)(2)(ii) amended....33597
(e)(2) and (g)(1) amended....33598
838.1011 (a)(3) and (b)(2)(ii) amended....33597
838.1012 Revised....33597
838.1016 (a) amended....33597, 33598
838.1002—838.1018 (Subpart J) Appendixes A and B amended....33597
841 Authority citation amended....3714
841.101—841.110 (Subpart A) Regulation at 52 FR 19242 confirmed....32154
841.102 Regulation at 55 FR 14229 confirmed....32154
841.106 (b)(2) revised....32154
841.110 Removed....32154
841.110 (f) amended....33598
841.201—841.203 (Subpart B) Regulation at 52 FR 19244 confirmed....32154
841.204 Regulations at 55 FR 994 and 41179 confirmed....32154

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 5 Chapter I—Con. Page

841.401—841.413 (Subpart C) Regulation at 52 FR 19244 confirmed....32154
841.506 Redesignated as 841.507; new 841.506 added....3714
841.507 Redesignated as 841.508; new 841.507 redesignated from 841.506; (d) added....3714
841.508 Redesignated from 841.507....3714
841.601—841.607 (Subpart F) Regulation at 52 FR 12132 confirmed....32154
841.604 Amended....32155
841.701—841.708 (Subpart G) Regulation at 55 FR 14229 confirmed....14229
841.801—841.804 (Subpart H) Regulation at 52 FR 2058 confirmed....32154
841.802 Amended....33598
841.804 Amended....33598
841.901—841.916 (Subpart I) Removed....33598
841.1001—841.1008 (Subpart J) Regulation at 52 FR 5432 confirmed....32154
842 Authority citation amended....3714
842.105 (c) added....3714
842.602 Amended....33598
842.615 (b) amended....33598
842.703 (b) revised....33598
842.801—842.809 (Subpart H) Regulation at 52 FR 2069 confirmed....32689
842.801 (a)(1) amended....32689
842.802 Amended....32689, 32690
842.803 (a), (b) and (d) revised....32690
842.804 (a) amended....32690
842.805 (f) amended; (g) added....32690
842.807 Revised....32690
842.808 (a) revised....32691
842.809 (a) and (d) revised; (b), introductory text, (c)(1)(ii) and (c)(2)(ii) amended; (b)(1) and (2) added; (e) removed....32691
843.102 Amended....29784, 33599
843.203 Existing text redesignated as (a); (b) added....29784

Page

846 Authority citation revised....3714
846.102 Amended....33599
846.201 (b) revised....3714
846.202 (a) amended....33599
870 Authority citation revised....3715
870.202 (c) added....3715
870.901 (a)(4) and (b) added....29784
890 Authority citation revised...3715, 10609, 10611, 14324, 19374
890.101 (a) amended; interim....14324
890.102 (d) revised....3715
890.202 Revised; interim....14324
890.203 (b) amended....19374
890.204 (a) amended; interim....14324
890.205 Added....19374
890.301 Regulation at 56 FR 25996 confirmed....2979
(h), (t) and (x) revised....21191
890.303 (d) redesignated as (d)(1); (d)(2) and (3) added....21191
890.304 Regulation at 56 FR 25996 confirmed....2979
890.306 Regulation at 56 FR 25996 confirmed....2979
(l) added....21191
890.401 (b)(3) added....10609
(b)(2) revised....21191
890.502 Regulation at 56 FR 25996 confirmed....2979
(g) revised....10611
890.503 (c)(3) revised; (c)(4) removed; (c)(5) and (6) redesignated as (c)(4) and (5); new (c)(5) amended; interim....14324
890.505 Revised; interim....14324
890.802 Revised....33599
890.803 (a)(3)(i)(C) revised....21192
890.805 Introductory text, (a) and (c) removed; (b), (d) and (e) redesignated as (a), (b) and (c); new (a) revised....21192
890.806 Regulation at 56 FR 25997 confirmed....2979
(a) revised....21192
890.807 Regulation at 56 FR 25997 confirmed....2979
890.808 Regulation at 56 FR 25997 confirmed....2979
(b)(3) and (d)(1) revised....21192
(c) amended....33598
(b)(1) amended....33599

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

890.901—890.907 (Subpart I) Added 10610
890.1104 (d) revised 21192
890.1208 (d) amended; interim 14325
905.306 (a) Table I and (b) Table II amended 10613
930.210 (h) through (l) redesignated as (i) through (m); new (h) added; new (k) amended 1369

Chapter II—Merit Systems Protection Board (Parts 1200—1299)

1201 Appendix II revised 21723, 32881
Amended 21881

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2610 Added; interim 33268
2633 Removed; interim 11804
2634 Heading and authority citation revised 11804
2634.101—2634.105 (Subpart A) Revised; interim 11804
2634.101 Corrected 21854
2634.105 (a), (b), (c), (e), (f), (h) through (l) and (n) corrected 21854
2634.201—2634.205 (Subpart B) Revised; interim 11806
2634.201 (a) introductory text, *Example* 2 and (d)(1) corrected 21854
2634.203 Corrected 21854
2634.301—2634.311 (Subpart C) Revised; interim 11808
2634.301 (c)(3) corrected 21854
2634.302 (a)(1)(ii) corrected 21854
2634.303 (a)(1) corrected 21854
2634.307 (b) corrected 21854
2634.310 (b)(2)(ii) corrected 21854
2634.401—2634.408 (Subpart D) Revised; interim 11814
2634.403 (b)(9)(ii)(D) corrected 21854
2634.404 (c)(9)(ii)(C) corrected 21854
2634.501—2634.503 (Subpart E) Revised; interim 11821
2634.601—2634.607 (Subpart F) Revised; interim 11821
2634.603 (c)(3) corrected 21854
2634.604 (b) corrected 21854

Page

2634.701—2634.704 (Subpart G) Revised; interim 11824
2634.801—2634.805 (Subpart H) Revised; interim 11825
2634.803 (a) corrected 21855
2634.804 (b)(1) corrected 21855
2634.805 Corrected 21855
2634.901—2634.909 (Subpart I) Revised; interim 11826
2634.905 (c) *Example* 3 corrected 21855
2634 Appendix A revised; interim 11829
Appendix B revised; interim 11830
Appendix C added; interim 11830
Appendix B corrected 21855
2636 Authority citation revised 602
2636.203 (a)(13) and *Example* 7 added; (a) *Examples* 3 and 6 revised; interim 602
2636.205 Effective date deferred 5369
2638 Authority citation revised 11890
2638.701—2638.704 (Subpart G) Added 11890
Technical correction 15219
2641 Authority citation revised 3116
2641 Appendixes A and B amended 3116
Appendix B amended 11673

Title 5—*Proposed Rules:*

351 31332
530 26619
532 ..... 3032, 11586, 11920, 19820, 33130
591 32183
735 11586
831 ..... 120, 31333
841 120
842 ..... 120, 7666
843 ..... 120, 7666, 31333
890 ..... 13667, 23126

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

1.301—1.346 (Subpart K) Redesignated as subpart L 3909

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 7 Subtitle A—Con. Page

1d.7 Revised 11906
2.17 Heading revised; (l) added 19792
2.19 Heading and (g) revised; (h) added 19793
2.21 Heading revised; (h) added 19793
2.23 Heading, (a)(11) and (b) revised; (a)(1) amended; (a)(4), (5), (6), (10), (14), (16), (18), (20) and (21) removed 2217
Heading revised; (j) added 19794
2.30 Revised 9649
2.30a Revised 9654
2.35 (a) revised 11261
2.41 (a) revised; (c) removed 11261
2.50 (a)(13) added 19794
2.51 Heading revised; (a)(46) added 19794
2.53 (a)(2) added 19794
2.55 Heading revised; (a)(5) added 19795
2.60 (a)(40) revised; (a)(42), (43) and (44) added 19795
2.62 (a)(19) added 19796
2.65 Heading revised; (a)(42) added 19796
2.70 Heading and (a)(11) revised; (a)(1) amended; (a)(4), (5), (6), (10), (28), (29), (31), (33), (36), (37) and (b)(2) removed 2219
Heading revised; (a)(37) added 19796
2.71 Added 2219
2.72 Heading revised; (a)(5) added 19797
2.105 Revised 9654
2.106 Revised 9654
(a)(49) revised 19797
2.107 Revised 9656
2.108 Revised 9658
2.109 Revised 9659

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

28.116 (a) and (c) revised 27892
28.122 Revised 27892
28.123 Revised 27892
28.148 Revised 27892
28.151 Revised 27892
28.909 (b) and (c) revised 27892
28.910 (a) and (b) revised; (c) added 27892
28.911 Revised 27893
28.956 Revised 27893
29 Determination 27347
34 Removed 9034
51.835—51.845 (Subpart) Revised 1212
51.2541 Introductory text revised 1636
51.2542 (a) Tables I, II and III revised 1636
51.2547 Added 1636
52.2101—52.2111 (Subpart) Nomenclature change 2981
52.2102 (b) corrected 27895
52.2106 (a) amended; (b) and (c) revised 2982
52.2107 (b), (c) and (d) revised 2982
52.2112 Removed 2982
53.132 Revised 21341
53.136 Revised 21342
54.27 (a) and (b) amended 11427
54.123 Revised 21343
54.127 Revised 21344
58.43 Revised 2222
58.45 Revised 2222

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

271 Rehearing 31123
271.2 Amended 3911
271.5 (b) revised 3911
272.1 (g)(124) added 2828
(g)(125) added 11248
274.3 (a) introductory text and (b) amended; (a)(4) added 11249
274.10 (b)(1) amended 11249
274.12 Added 11249
275.23 (e)(10) added 2828
276.2 (b)(7) added 11259
277.18 (c)(1) introductory text; (2)(ii)(A), (B), (C) and (d)(1)(v) amended 11259
278.1 (j)(2) and (k)(1)(iii) amended; (k)(1)(iv) redesignated as (k)(1)(v); new (k)(1)(iv) added 3912
(b)(5) redesignated as (b)(6); (q) introductory text

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

amended; new (b)(5), (q)(1) and (2) added.....3915
278.6 (a), (b)(1), (2)(i), (e)(1)(i), (i) introductory text and (j) amended; (i)(2)(iii) revised; (l) and (m) redesignated as (n) and (o); new (l) and (m) added.....3912
278.9 (i) added.....3913
278.10 Added.....11259
279.3 (a)(2) amended.....3913
279.6 (a) amended.....3913
279.8 (c) amended.....3913
279.11 (c) added.....3913

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301.38-3 (a) and (b)(3) amended; (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added.....3118
301.38-6 (a) amended.....3118
301.52 (a) revised; interim.....31304
301.52-2a Amended; interim.....31304
301.64 (a) and (b) amended; interim.....521
301.64-1 Paragraph designations removed; amended; interim.....521
301.64-3 (c) amended; interim.....522
Regulation at 56 FR 46108 confirmed.....31948
(c) revised; interim.....10974
301.64-4 Heading and introductory text revised; interim.....522
301.64-10 Introductory text revised; (c) and (d) added; interim.....522
301.93—301.93-10 (Subpart) Removed; interim.....31306
318.13-4 (c) removed; (d) and (e) redesignated as (c) and (d); new (d) amended; interim.....31307
318.13-4g Removed; interim.....31307
318.13-15 Regulations at 56 FR 18501 withdrawn.....14475
318.58-15 Regulation at 56 FR 18501 withdrawn.....14474
319 Technical corrections.....21332
Authority citation revised.....27898
319.37-2 (a) table amended; interim.....334

Page

319.56-2 (h) amended.....10976
319.56-2u Added.....3120
319.56-2v Added.....22413
319.56-2w Added.....27898
321.2 Amended; interim.....334
321.9 (g) and (h) removed; (b) through (f) revised; interim.....334
354.3 (a) amended; (e) redesignated as (f); new (e) added.....769
(f)(1) amended; (g), (h) and (i) added.....770
Technical correction.....3089
354.4 (c) added.....770
Technical correction.....3089
Regulation at 56 FR 18501 withdrawn; (c) correctly designated as (a).....14475
354.5 Added.....771
Technical correction.....3089
360 Authority citation revised.....8838
360.200 (a) amended.....8838

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

401 Sunset review date extended.....2007
401.111 Amended; interim.....2008
401.113 Amended; interim.....2008
401.117 Amended; interim.....2008
458 Regulation at 56 FR 30490 confirmed.....173

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700—799)

703 Added.....23914
718 Authority citation revised.....14460
718.2 Revised; interim.....14460
718.3 Amended; interim.....14460
718.10 (c) amended; interim.....14460
718.13 Revised; interim.....14460
718.22 (a) introductory text revised; interim.....14461
718.40 Heading, (a), (b) and (c) revised; introductory text added; interim.....14461

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 7 Chapter VII—Con. Page

718.42 Heading, (b), (c), (d), (e) introductory text and (f) revised; interim....14461
719.2 Amended; interim....14461
719.8 (i) through (l) redesignated as (j) through (m); new (i) added; interim....14462
729.103 (b) amended....27144
729.204 (d)(2) amended....27144
729.212 (a)(2) and (e)(1)(iii)(B) revised....27144

Chapter VIII—Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)

800.0 (b)(42) revised....3273
800.15 (b)(1) revised....2439
800.16 (a) revised....2439
800.84 (c) revised; interim....11428
800.160 (a) revised; interim....11428
800.162 (d) added....2439
(a)(2) revised....3273
801.12 Added....2673
810 Authority citation revised....3274
810.101 Revised....3274
810.102 (d) amended....3274
810.104 (b) amended....3274
810.107 (b) introductory text revised....3274

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.306 (a) Table I amended....336
Regulation at 56 FR 55981 confirmed....1858
(a) Table I and (b) Table II amended; interim....10613
(a) Table I amended; interim....19520
Regulation at 57 FR 10613 confirmed....31090
(a) Table I corrected....31235
916.230 Added; interim....31092
907 Marketing percentages....338
Limitation of handling...1217, 2436, 2829, 2984, 3918, 4699, 4837, 5976
915.306 (a) introductory text and (1) revised; interim....3716
Regulation at 57 FR 3716 confirmed....27348

Page

915.332 (a)(2) Table I amended....28588
916 Limitation of handling....3920
Regulation at 57 FR 3920 confirmed....27350
916.350 Heading revised; (a) introductory text republished; (a)(3) through (8) redesignated as (a)(4) through (9); new (a)(3) added; interim....20738
916.356 Heading, (a)(1), (i), (ii) and (2) through (5) revised; (a) introductory text republished; (a)(1)(iii) through (vi) removed; interim....20738
(a)(1)(i) table corrected....31235
917.254 Added; interim....31092
917.442 Heading revised; (a) introductory text text republished; (a)(3) through (9) redesignated as (a)(4) through (10); new (a)(3) added; interim....20739
917.459 Heading, (a)(1), (i), (ii), (2). (3), (4), (5) and Table I revised; (a) introductory text and (6) republished; (a)(1)(iii) through (vi) removed; interim....20739
917.461 (a)(1) revised; interim....31093
918 Budget of expenses....4148
920.20 Revised....1219
920.21 Revised....1219
920.22 Revised....1219
920.41 (a) amended....1220
925 Budget of expenses....24353
925.141 Added....24352
932 Budget of expenses....24354
944.312 (a)(1) corrected; interim....2674
944.401 Regulation at 56 FR 49671 confirmed....4149
946.336 (a)(2)(i), (ii), (b)(1) and (2) revised; (a)(2)(iii) redesignated as (a)(2)(iv); new (a)(2)(iii) added; (i) removed; interim....30380
947.340 (e) revised; interim....24542
948.386 (h) removed; interim....30382
959.322 Introductory text, (f)(1), (3)(i), (g) introductory text, (4) and (h) revised; (g)(5) added; (i) removed....28592
966.323 Introductory text revised; (f) removed; interim....27351

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

971 Suspended through 7-17-95 31632
979 Budget of expenses 2675
980.1 (a)(2)(i) and (b)(1) revised; interim 30382
980.212 (b)(1) revised; interim 27352
981 Marketing percentages 10976
981.441 (d)(1)(i) amended 30383
981.467 (d) revised 1859, 2985, 27353
982 Marketing percentages 1074
985.153 (c)(2)(i) revised; (c)(2)(ii) amended 28595
985.211 Added 28595
989 Budget of expenses 1860
989.212 Revised 28597
989.244 Added 31634
998 Budget of expenses 24354

Chapter X—Agricultural—Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1001.40 (c)(1)(iii) revised; (d) added 174
1001.43 (f) added 174
1001.50 (d) added 174
1001.54 Revised 174
1001.61 (d) and (e) temporarily suspended 20958
1001.62 (c) and (d) temporarily suspended 20958
1004.40 (c)(1)(iii) revised; (d) added 175
1004.43 (d) added 175
1004.50 Heading revised; (g) added 175
1004.53 (a)(2) revised 175
1004.60 (k) added 175
1004.71 (b)(2) amended 175
1007.13 (b)(4) and (5) temporarily suspended through 8-31-92 3921
1032.7 (b) temporarily suspended in part 12-91 through 1-92
1065 Marketing percentages 4150
1065.6 Temporarily suspended in part through 8-31-92 4152
1065.7 (b)(1) temporarily suspended in part through 8-31-92 4152
1065.13 (d)(1) temporarily suspended through 8-31-92 4152

Page

1093.13 (c)(1), (2) and (4) suspended 31309
1096.13 (d)(3) and (4) amended 31636
1106.6 Suspended in part 3276
1106.7 (b)(1) suspended in part 3276
1106.13 (d)(1) suspended 3276
1124.40 (c)(1)(iii) revised; (d) added 175
1124.43 (e) added 175
1124.50 (c) revised; (d) added 175
1124.53 Revised 175

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1205.500 (o) through (r) added 29185
1205.505 Revised 29186
1205.510 Revised 29186
Revised; interim 29432
1205.511 Revised 29190
1205.512 (h) revised 29190
1205.513 (k) revised 29190
1205.514 Redesignated as 1205.516 29190
Added 29191
1205.515 Redesignated as 1205.517; new 1205.515 added 29191
1205.516 Redesignated as 1205.518; new 1205.516 redesignated from 1205.514 and revised 29190
1205.517 Redesignated from 1205.515 and revised 29191
1205.518 Redesignated from 1205.516 29190
1205.520 Undesignated center heading and section revised 29192
1205.525 Revised 29192
1205.530 (a)(2) revised 29192
1205.531 Revised 29192
1205.532 Revised 29192
1205.533 Revised 29192
1205.540 Revised 29192
1205.541 Added (OMB numbers) 29192
1209 Added 31951
1211 Added 18799

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 7 Chapter XI—Con. Page

1211.1—1211.78 (Subpart A) Heading added; interim.....27900
1211.250—1211.252 (Subpart C) Added; interim.....27900
1212 Added.....2988
1212.250—1212.252 (Subpart C) Added; interim.....21592
1220.110 (b) revised.....31095
1220.115 (b) revised.....31095
1220.223 (a)(5)(ii) revised.....31096
1220.301—1220.332 (Subpart B) Revised.....29439
1240 Technical correction.....11262

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Part 1400—1499)

1413.1 (a) revised; interim.....14462
1413.3 Amended; interim.....14462
1413.5 Added; interim.....14462
1413.6 (a)(4)(v) removed; (a)(4)(vi) and (vii) redesignated as (a)(4)(v) and (vi); (a)(4) introductory text, (i), and new (a)(4)(vi) revised; interim.....14462
1413.7 (c) introductory text and (1) revised; interim.....14462
1413.10 (b) removed; (c) and (d) redesignated as (b) and (c); new (d) added; interim.....14462
1413.11 (a) and (b)(4) revised.....12409
(j) removed; interim.....14463
1413.50 (a)(1), (4) and (5) revised; interim.....14463
1413.54 (a)(1) revised.....3922
(b), (c)(1), (d) and (e) revised.....12409
(a)(2) revised.....14326
(a)(3) revised; (a)(5) added.....14328
(c)(3) redesignated as (c)(4); (c)(2) and new (c)(4) revised; new (c)(3) and (f) added; interim.....14463
(a)(4) revised.....15001
1413.61 (b)(2) removed; (b)(3) and (4) redesignated as (b)(2) and (3); (a), (b)(1)(iii), (iv), and new (b)(2) and (3) revised; interim.....14463
1413.62 (e) removed; (f) through (h) redesignated as (e) through (g); interim.....14464
1413.63 (a)(1), (c)(1) and (4) revised; (c)(5) and (6) added; interim.....14464

Page

1413.72 (c) removed; (d) redesignated as (c) and revised; interim.....14464
1413.79 (b)(1)(v) and (d) removed; (b)(1)(iii), (iv), (2) and (3) revised; interim.....14464
1413.108 (b)(1) introductory text and (2) introductory text revised; interim.....14464
1413.109 (d) added.....12409
1413.111 (b)(1) removed; (b)(2) revised; interim.....14464
1413.150 (a)(3) introductory text revised; interim.....14465
1414.4 Amended; interim.....14465
1414.6 (a) revised; interim.....14465
1421.7 (c) revised.....12409
1421.25 (a)(5)(vi) and (6) revised.....4544
1421.742 Revised.....3717, 27354
1425 Authority citation revised.....1369
1425.10 (b)(3) revised.....1369
1427.5 (a) introductory text revised.....14328
1427.8 (a), (b) and (c) redesignated as (b), (c) and (d); new (a) added; new (c) introductory text revised.....14328
1427.50 (a) revised.....14328
1427.51 (f) revised.....14328
1427.56 Revised.....14329
1427.100 (a) and (b) revised.....14329
1427.101 (f) revised.....14329
1427.103 (b)(3) and (c)(4) revised.....14329
1427.106 Revised.....14329
1427.107 (b) through (e) redesignated as (c) through (f); new (b) added; new (f) revised.....14329
1430.340 (a) and (d) amended; (b)(5) added.....30897
1430.341 (u) revised.....30898
1435.4 (b) revised.....33425
1435.6 (e)(1) introductory text revised; interim.....12410
1435.7 (c) revised; interim.....12410
1435.9 (c) revised; interim.....12411
1435.12 (d) revised; interim.....12411
1446.307 (b) revised.....27145
1446.309 (a)(1) amended; (a)(7) added.....27145

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

1435.400—1435.404 (Subpart) Regulation at 56 FR 47353 confirmed....32158
1435.401 Revised....32158
1435.402 Revised....32159
1446.410 (b) revised....27145
1446.703 (b) introductory text revised....27145
1446.704 Revised....27145
1477 Revised....10963
1478 Revised....10968

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1530.205 Corrected....175
1530.206 (b) correctly designated....175

Chapter XVII—Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)

1700 Authority citation revised....6285
1700.1—1700.9 (Subpart A) Revised....6285
1700.24 Revised....6290
1700.25 Revised....6290
1710 Added....1053
1710.2 (a) corrected....4513
1710.6 (a) introductory text and (5) corrected....4513
1710.101 (c) corrected....4513
1710.102 Added....2832
Technical correction....5931
1710.104 (b)(2) corrected....4513
1710.105 (c) corrected....4513
1710.112 (b)(3) and (8) corrected....4513
1710.114 (b)(1) corrected....4513
1710.204 (a) corrected....4513
1710.250 (e) corrected....4513
1710.251 (b) and (c) introductory text corrected....4513

Chapter XVIII—Farmers Home Administration, Department of Agriculture (Parts 1800—2099)

1807 Removal at 56 FR 67471 effective date delayed to 3-31-92....3276
1822.270 Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276

Page

1822.277 Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276
1822.278 Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276
1823.401—1823.418 (Subpart N) Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276
1823.414 Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276
1866 Removed....774
1890t Removal at 56 FR 67472 effective date delayed to 3-31-92....3276
1900 Authority citation revised....19523
1900.52 (b) revised; interim....19523
1900.53 (c) redesignated as (d); (b) revised; new (c) added; interim....18622
1900.55 (a)(17) and (18) added; (b) amended....18623
1900.56 (a)(2) revised....18623
1900.57 (m)(3) removed; (m)(4) redesignated as (m)(3); (n) added; interim....18623
(n) added; interim....19523
1900.59 (d) added; interim....18623
1901.204 (a)(23) added....11559
1910 Authority citation revised....19523
1910.01—1910.50 (Subpart A) Exhibit B revised; interim....19524
1910.4 (b)(20), (g) and (k) amended; interim....19523
1910.6 (e) through (i) redesignated as (f) through (j); new (e) added; (b)(2), new (f), (g) introductory text and (2) amended; interim....19523
1910.7 (a) amended; interim; interim....19523
1910.50 Revised; interim....19523
1924 Authority citation revised....12992
1924.57 (d)(1) revised; interim....12992
1924.59 Revised; interim....18623
1924.60 Revised; interim....18625
1927 Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 7 Chapter XVIII—Con. Page

1940.590 (g) added 11559
1940.551—1940.600 (Subpart L) Exhibit C revised 3924
1940.589 Heading revised 33099
1940.590 (h) added 33099
1940.951—1940.1000 (Subpart T) Added 11559
1940.1000 OMB number 11567
1941.18 (b)(2) amended 18676
1941.19 (b) removed; introductory text and (a) redesignated as (a) and (b); new (b)(1) through (4) redesignated as (b)(3) through (6); (b) introductory text, (1) and (2) added; new (a) and (b)(4) revised; (f)(1), (2) and (g) amended 18676
1941.25 (a)(1) and (2) revised; (a)(3) added 18676
1941.33 (b)(2)(ii) amended 18677
1941.1—1941.50 (Subpart A) Exhibit A regulation at 56 FR 67480 effective date delayed to 3-31-92 3276
1941.84 Regulation at 56 FR 67480 effective date delayed to 3-31-92 3276
1942.1 (d) revised 21193
1942.2 (a)(1) and (2)(ii) revised 21194
1942.17 (s) removed; (b)(2), (3) and (4) redesignated as (b)(3), (4) and (5); new (b)(2) and (d)(2)(ix) added; (a), (b) introductory text, (1), (d)(1)(i) introductory text, (e) introductory text, (3)(ii) and (f)(2) introductory text (g)(2)(i)(D) introductory text, (3)(i)(E) introductory text, (h) introductory text and (p)(6)(i) introductory text revised 21194
1942.112 (a)(1) introductory text revised 21195
1942.301—1942.350 (Subpart G) Heading revised 33099
1942.304 Revised 33099
1942.305 (a)(1) amended; (a)(3) added; (b) introductory text, (3)(i), (iii), (iv) and (v) revised 33099
1942.306 (a) introductory text amended; (a)(3), (4), (7) and (b) revised; (a)(8) and (9) added 33100
1942.307 (b) removed; (c) redesignated as (b); new (a)(4) and (5) added 33100
1942.310 (a) revised; (b)(4) amended; (c)(1) introductory text revised 33100
(c)(4) amended 33101
1942.311 (a)(1) amended 33101
1942.313 (a)(2) and (4) amended 33101
1942.314 Heading revised; (g) added 33101
1942.314 (e) amended 33101
1942.315 (b) amended 33101
1942.349 Amended 33101
1942.350 Revised 33101
1942.351—1942.400 (Subpart H) Sections revised 21195
1942.351—1942.400 (Subpart H) Exhibit D removed 21198
1942.454 Amended 4358
1942.457 Revised 4358
1942.463 (b)(1) revised 4358
1942.464 (b) revised 4358
1942.475 Revised 4358
1942.500 Revised 4358
1942.521 (f) amended 21199
1943.4 Amended; interim 19524
1943.13 (a)(1) removed; (a)(2) through (6) redesignated as (a)(1) through (5); new (a)(2), (3) and (b)(6) introductory text revised; interim 19524
1943.16 (c)(1) introductory text revised 18677
1943.18 (b) introductory text, (1) and (3) amended 18677
1943.19 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
Introductory text added; (d) and (f) removed; (e), (g) and (h) redesignated as (d), (e) and (f); (a), (b) and (c) revised; new (f) amended 18677
1943.24 (g) removed; (h) through (l) redesignated as (g) through (k) 18678
1943.32 Regulation at 56 FR 67481 effective date delayed to 3-31-92 3276
(a) amended 18678
1943.33 (b)(2)(ii) amended 18678

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

1943.34 Regulation at 56 FR 67481 effective date delayed to 3-31-92....3276
1943.35 Regulation at 56 FR 67481 effective date delayed to 3-31-92....3276
1943.38 Regulation at 56 FR 67481 effective date delayed to 3-31-92....3276
(a) amended....18678
1943.1—1943.50 (Subpart A) Exhibit A regulation at 56 FR 67481 effective date delayed to 3-31-92....3276
Exhibit B revised; interim....19524
1943.66 (h)(1) introductory text revised....18678
1943.68 (c) amended....18678
1943.69 Regulation at 56 FR 67481 effective date delayed to 3-31-92....3276
Introductory text added; (d) removed; (e) through (h) redesignated as (d) through (g); (a), (b), (c) and (d) introductory text revised....18678
(d)(3)(vi) and (g) amended....18679
1943.73 (a) introductory text amended....18679
1943.83 (b)(2)(ii) amended....18679
1943.84 Regulation at 56 FR 67481 effective date delayed to 3-31-92....3276
1943.85 Regulation at 56 FR 67481 effective date delayed to 3-31-92....3276
1943.88 Regulation at 56 FR 67481 effective date delayed to 3-31-92....3276
(a) and (c) amended....18679
1944.18 Regulation at 56 FR 67481 effective date delayed to 3-31-92....3276
1944.24 Regulation at 56 FR 67481 effective date delayed to 3-31-92....3276
1944.30 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.31 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1944.32 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276

Page

1944.33 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.37 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.38 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.46 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1944.1—1944.50 (Subpart A) Exhibits E through E-2 regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.168 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.169 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.175 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.176 Regulation at 56 FR 67482 effective date delayed to 3-31-92....3276
1944.236 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1944.463 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1944.469 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1945.129 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1945.156 (b)(3) removed....18679
1945.169 Introductory text and (e) through (i) removed; (b), (c), (d), and (j) through (r) redesignated as (c), (d), (e) and (f) through (n); heading, new (d)(1) and (3) revised; (b) added....18679
(f)(3), (4) introductory text and (j)(3) amended....18680
1945.175 (c)(4) and (6) removed; (c)(5) redesignated as (c)(4); (c)(3) amended;

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 7 Chapter XVIII—Con. Page

(c)(1) introductory text amended....18680
1945.183 (d)(1) revised....18680
1945.189 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1951 Authority citation revised....18680
1951.10 (a)(5) removed; (a)(6) and (7) redesignated as (a)(5) and (6)....18680
1951.151—1951.155 (Subchapter D) Added....774
1951.201 Revised....11568
Amended....33101
1951.220 (a) amended....775
(e)(1)(ii) amended....21199
1951.224 (a)(1)(i), (ii) and (d) amended....21199
1951.232 Introductory text amended....21199
1951.501—1951.550 (Subpart K) Exhibit B corrected....1313
1951.901—1951.950 (Subpart S) Sections revised; interim....18626
1951.911 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1951.901—1951.950 (Subpart S) Appendix A amended; interim....18650
Exhibit A amended; interim....18650
Exhibits B and C-1 amended; interim....18658
Exhibit E amended; interim....18659
Exhibit F amended; interim....18660
Exhibit G amended; interim....18661
Exhibits H and I amended; interim....18662
Exhibit J-1 amended; interim....18664
Exhibit L amended; interim....18669
Exhibits N and O amended; interim....18670
1955.3 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1955.10 (d)(3) and (f)(1) introductory text revised....1372

Page

1955.15 (d)(2)(iv)(C) and (D) revised; interim....18671
(b)(3) amended....31642
1955.50 Revised....1372
1955.53 Amended; interim....19525, 19528
1955.63 (a) revised; interim....19528
1955.64 (a)(3) amended....31642
1955.66 (p) removed; (c)(2) amended; interim....19525
(a)(2)(iii)(F) revised....31642
1955.103 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
Amended; interim....19525, 19528
Amended....31642
1955.105 (c)(5) and (d) amended; interim....19528
1955.106 (b) revised....19525
1955.107 (e) revised; (f) added; interim....19525
Introductory text revised; interim....19528
1955.108 Introductory text and (c) revised; (d) amended; interim....19528
1955.137 (a) heading revised; (b), (c), (d) and (e) redesignated as (e), (f), (g) and (h); new (b), (c) and (d) added....31642
1955.139 (c)(2)(v) amended....31644
1955.101—1955.150 (Subpart C) Exhibit A added....31644
1962.6 (c)(2)(i) amended....20741
1962.17 (c)(5) revised; (c)(6) removed....18680
1962.30 (b)(1) removed; (b)(2) through (9) redesignated as (b)(1) through (8); (a), new (b)(1), (4), (5) and (6) revised....18680
1964.12 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.11 (c)(1) introductory text amended....20741
1965.12 Introductory text, (e)(2) and (f) amended; (a)(6) and (7) removed; (a)(8) and (9) redesignated as (a)(6) and (7); heading, (a) introductory text, (b) and (g) revised; (a)(8) through (13) added....18680
1965.13 (a) amended....775

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

1965.25 Heading and (a) revised....18681
1965.27 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.31 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.65 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.77 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.79 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1965.90 (c) amended....776
1965.126 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1980 Authority citation revised....4337
1980.13 (b) introductory text revised....6067
1980.47 Heading and introductory text revised; (d) added....6068
1980.83 (b) table amended....6068
1980.108 (a)(1)(iii) and (iv) revised....18681
1980.113 (d)(8)(ii)(D) revised; interim....12992
1980.311 Revised....1638
1980.453 Amended....4359
1980.454 (e) and undesignated text amended; (a) and (c) revised....4359
1980.813 (a) introductory text revised....21199
1980.901—1980.1000 (Subpart J) Added; interim....4337
2003.1—2003.5 (Subpart A) Exhibit A amended....33101

Title 7—*Proposed Rules:*

1—26 (Subtitle A) 6483
12 29658
13 ....27371, 31668
27—209 (Ch. I) 6483
28 ....14492, 21358
29 14669
51 ....29449, 33459
55 ....29660, 32184
56 ....29660, 32184
58 33130

Page

59 ....29660, 32184
68 2482
70 ....29660, 32184
110 20380
210—299 (Ch. II) 6483
246 9505
273 ....3961, 4793
300—399 (Ch. III) 6483
300 26620
301 ....27948, 33905
302 15033
318 31130
319 ....217, 846, 3089, 3963, 26620
354 14492
400—499 (Ch. IV) 6483
400 ....2232, 30430
401 1116
500—599 (Ch. V) 6483
600—699 (Ch. VI) 6483
700—799 (Ch. VII) 6483
703 4378
723....28801, 31235
729 1879
736 28133
800—899 (Ch. VIII) 6483
800 31668
900—999 (Ch. IX) 6483
905 24384
910 31670
911 24385
915 24386
921 24388
922 24388
923 24388
924 24388
925 ....219, 2690
926 27373
928 31142
932 1663
946 24561
947 24562
948 27375
953 27376
958 24390
959 4164
981 3032
982 24563
985 24391
987 31670
998 ....3965, 24392
1000—1199 (Ch. X) 6483
1001 ....15, 383, 11276, 20790
1002 ....383, 11276, 20790
1004 ....15, 383, 20790

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 7—Con.

Page

1005 ..... 383, 20790
1006 ..... 383, 20790
1007 ..... 220, 383, 20790, 27377
1011 ..... 383, 20790
1012 ..... 383, 20790
1013 ..... 383, 20790
1030 ..... 383, 20790, 27949
1032 ..... 383, 20790
1033 ..... 383, 20790
1036 ..... 383, 20790
1040 ..... 383, 20790
1044 ..... 383, 20790
1046 ..... 383, 20790
1049 ..... 383, 20790
1050 ..... 383, 20790
1064 ..... 383, 20790
1065 ..... 383, 1664, 1665, 20790
1068 ..... 383, 20790
1075 ..... 383, 20790
1076 ..... 383, 20790
1079 ..... 383, 20790
1093 ..... 383, 19554, 20790
1094 ..... 383, 20790
1096 ..... 383, 20209, 20790
1097 ..... 383, 20790
1098 ..... 383, 20210, 20790, 27378
1099 ..... 383, 2691, 20790
1106 ..... 221, 383, 20790
1108 ..... 383, 20790
1124 ..... 15, 383, 20790
1126 ..... 383, 20790
1131 ..... 383, 20790
1134 ..... 383, 20790
1135 ..... 383, 20790
1137 ..... 383, 20790
1138 ..... 383, 20790
1139 ..... 383, 20790
1200—1299 (Ch. XI) 6483
1205 3089
1209 ..... 1666, 3360, 24720
1210 3727
1230 27949
Ch. XII 6483
Ch. XIII 6483
1400—1499 (Ch. XIV) 6483
1410 28468
1413 11588
1421 32454
1427 ..... 20211, 32454
1435 33459
1446 1879
1464 28801
1500—1599 (Ch. XV) 6483
1600—1699 (Ch. XVI) 6483
1700—1799 (Ch. XVII) 6483

Page

1703 ..... 21900, 26782, 32184
1800—2099 (Ch. XVIII) 6483
1924 27379
1942 31462
1944 ..... 1678, 17858, 27379
1980 17858
Ch. XIX 6483
2100—2199 (Ch. XXI) 6483
2200—2299 (Ch. XXII) 6483
2300—2399 (Ch. XXIII) 6483
2400—2499 (Ch. XXIV) 6483
2500—2599 (Ch. XXV) 6483
2600—2699 (Ch. XXVI) 6483
2700—2799 (Ch. XXVII) 6483
2800—2899 (Ch. XXVIII) 6483
2900—2999 (Ch. XXIX) 6483
3000—3099 (Ch. XXX) 6483
3100—3199 (Ch. XXXI) 6483
3200—3299 (Ch. XXXII) 6483
3300—3399 (Ch. XXXIII) 6483
3400—3499 (Ch. XXXIV) 6483
3600—3699 (Ch. XXXVI) 6483
3700—3799 (Ch. XXXVII) 6483
3800—3899 (Ch. XXXVIII) 6483
3900—3999 (Ch. XXXIX) 6483
4000—4099 (Ch. XL) 6483
4100 (Ch. XLI) 6483

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

3 Authority citation revised 11570
3.1 (d)(1-a) revised 11570
3.12 Revised 11571
3.13 Revised 11571
3.14 Revised 11571
3.15 Redesignated as 3.16; new 3.15 added 11571
3.16 Redesignated as 3.17; new 3.16 redesignated from 3.15 11571
3.17 Redesignated as 3.18; new 3.17 redesignated from 3.16 and revised 11571
3.18 Redesignated as 3.19; new 3.18 redesignated from 3.17 11571
3.19 Redesignated as 3.20; new 3.19 redesignated from 3.18 and revised 11571

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

3.20 Redesignated as 3.21; new 3.20 redesignated from 3.19.....11571
Revised.....11572
3.21 Redesignated as 3.22; new 3.21 redesignated from 3.20.....11571
Revised.....11572
3.22 Redesignated as 3.23; new 3.22 redesignated from 3.21.....11571
3.23 Redesignated as 3.24; new 3.23 redesignated from 3.22.....11571
3.24 Redesignated as 3.25; new 3.24 redesignated from 3.23.....11571
3.25 Redesignated as 3.27; new 3.25 redesignated from 3.24.....11571
3.26 Redesignated as 3.28.....11571
Added.....11572
3.27 Redesignated as 3.29; new 3.27 redesignated from 3.25.....11571
(c) amended.....11572
3.28 Redesignated as 3.30; new 3.28 redesignated from 3.26.....11571
3.29 Redesignated as 3.31; new 3.29 redesignated from 3.27.....11571
3.30 Redesignated as 3.32; new 3.30 redesignated from 3.28.....11571
3.31 Redesignated as 3.33; new 3.31 redesignated from 3.29.....11571
Revised.....11572
3.32 Redesignated as 3.34; new 3.32 redesignated from 3.30.....11571
(a) amended.....11572
3.33 Redesignated as 3.35; new 3.33 redesignated from 3.31.....11571
Revised.....11572
3.34 Redesignated as 3.36; new 3.34 redesignated from 3.32.....11571
3.35 Redesignated as 3.37; new 3.35 redesignated from 3.33.....11571
3.36 Redesignated as 3.38; new 3.36 redesignated from 3.34.....11571
3.37 Redesignated as 3.39; new 3.37 redesignated from 3.35.....11571
Revised.....11573
3.38 Redesignated as 3.40; new 3.38 redesignated from 3.36.....11571
3.39 Redesignated from 3.17.....11571
Amended.....11573
3.40 Redesignated from 3.38.....11571
103 Authority citation revised.....5227, 11573
103.1 (f)(2)(xxv) and (xxxvi) amended; (f)(2)(xxxvii) added; interim.....33861
103.3 (a)(1)(v) added.....11573
103.7 Regulation at 56 FR 31060 confirmed.....3926
(b)(1) revised.....5227
(b)(1) amended.....6182
(b)(1) amended; interim.....6460
(a) amended.....11573
204.6 (a) and (h)(3) corrected.....1860
204.8 Regulation at 56 FR 23210 confirmed; (a), (b), (e)(1) and (g)(3) amended; (d)(1) revised; (d)(2) redesignated as (d)(3); new (d)(2) added.....14792
(e)(1) and (g)(3) amended.....14793
204.9 Added; interim.....33861
214.2 (h)(4)(v)(E) and (6)(vi) introductory text corrected.....749
(d) added; interim; eff. 2-12-92 through 3-31-92.....6184
Regulation at 57 FR 6184 comment time extended.....10978
(h)(1)(ii)(B)(*1*), (4)(i)(B)(*1*) through (*6*), (iii)(B)(*1*), (vi)(A)(*2*), (ix) and (9)(iii)(B)(*1*) revised; interim.....12178
(h)(1)(i), (ii)(B)(*3*), (4) heading, (i)(A)(*3*), (C), (ii), (vii)(A), (B), (C), (9)(iii)(B)(*3*), (13)(iii)(A) and (15)(ii)(B)(*1*) revised; (h)(1)(ii)(B)(*4*), (4)(i)(A)(*4*), (D), (vii)(D), (viii) and (9)(iii)(B)(*4*) removed; (h)(4)(ix) redesignated as (h)(4)(viii).....12181
(o)(4) through (15) redesignated as (o)(5) through (16);

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 8 Chapter I—Con. Page

(o)(1), (2)(ii)(C), (3)(i), (ii), (iii), (iv) introductory text, new (o)(5), (6)(ii) and (iv), (7)(iii) revised; (o)(3)(v), (4) and (17) added 12182

(p)(5) through (15) redesignated as (p)(7) through (17); (p)(4) redesignated as (p)(5); (o)(2)(i), (7)(ii)(A), (B), (C), (iv)(12) and (13)(ii) amended; (p)(1), (2)(i), (ii)(C), (F), (3), (5), (i)(A), new (p)(7), (8)(iii), and (14)(iii) revised; (p)(2)(ii)(H), (4), (6) and (18) added 12186

(p)(5)(ii)(D), (8)(ii)(A), (B) and (C) amended 12190

Regulation at 57 FR 6184 effective date extended through 10-31-92 29193

(f)(9)(ii) revised; interim 31955

(c)(1) amended 33426

(f)(10)(ii) revised; (f)(11) introductory text amended; interim 31956

214.6 (d)(2)(ii) revised 33273

242 Authority citation revised 6461, 11573

242.2 (d) revised; (h) added 11573

Corrected 30898

242.6 Added; interim 6461

242.8 (a) amended 11574

245.8 Added; interim 33862

245a Authority citation revised 3926

245a.1 Regulation at 56 FR 31061 confirmed 3926

245a.2 Regulation at 56 FR 31061 confirmed 3926

245a.3 Regulation at 56 FR 31061 confirmed; (e) amended 3926

251 Authority citation revised 6185

251.1 (a) and (d) added; interim; eff. 2-21-92 through 3-13-92 6185

Regulation at 57 FR 6185 comment time extended 10978

Regulation at 57 FR 6185 effective date extended through 10-31-92 29193

258 Added; interim; eff. 2-21-92 through 3-13-92 6185

Regulation at 57 FR 6185 comment time extended 10978

Regulation at 57 FR 6185 effective date extended through 10-31-92 29193

264 Authority citation revised 6462

264.1 (a) amended; interim 6462

(a) corrected 14627

270 Added 33866

274a Authority citation revised 6462

274a.12 (a) introductory text and (12) revised; (a)(13) added; interim 6462

Corrected 14627

(c)(3) revised; interim 31956

274a.13 (a) amended; interim 6462

(a) corrected 14627

292 Authority citation revised 11574

292.3 Heading, (a) introductory text and (b) revised; (a)(15) added 11574

299.1 Amended 6183, 6462

Corrected 14627

299.5 Table amended; interim (OMB numbers) 6183, 6462

Title 8—*Proposed Rules:*

0-199 (Ch. I) 10743

103 ..... 1404, 2057

208 1404

209 1404

274a 1404

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

54 Heading revised 33630

54.1 Amended 33630

54.2—54.9 Designated as Subpart A 33630

54.10—54.13 (Subpart B) Added 33631

75 Technical correction 5210

75.1 Heading and text amended 2440

75.2 Heading and text amended 2440

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

75.4 (a), footnote 1, (c)(1), footnote 2, (2), footnote 3, (d) introductory text, (2), (3) and (4) amended 2440
75.5 Amended 2440
77.1 Amended; interim 20194, 31430
78.41 (b) and (c) amended; interim 3719, 15220, 31431
78.43 Regulation at 56 FR 46109 confirmed 3926
79 Revised 33631
82.30 Amended; interim 778
82.32 (b)(2) and (e) revised; interim 779
91.1 Amended 23047
91.3 (a) and (c) footnote 1 revised 23047
(b) and (c) amended 23048
91.4 Amended 23047
91.5 (a) footnote 2 revised 23047
91.6 (a)(5) amended 23048
91.8 (a)(2) footnote 5 revised 23047
(a)(2) amended 23048
91.14 (a)(13)(vi) heading amended; (a)(13)(vi)(A) redesignated as (a)(13)(vi)(B); new (a)(13)(vi)(A) added 10979
(a)(8) through (15) redesignated as (a)(9) through (16); new (a)(8) added 15002
(c)(6), (7) and (8) amended 23047
(b), (c)(7) and (d) amended 23048
91.15 (a), (b) and (c) amended 23048
(a) amended 23048
91.16 Amended 23047, 23048
91.17 (a) and (b) amended 23047
91.19 Amended 23047, 23048
91.24 Amended 23047
91.25 (a), (c), (e) and (f)(3) amended 23047
91.26 (b)(1) amended 23047
91.28 (d)(1) amended 23047
92.101 (c)(3)(i) amended 28080
92.103 (a)(4) added; footnote 7 revised 21725
92.104 (a) amended 28080
92.105 (c)(1) and (2) revised 21726
92.106 (b)(1) amended 21726
92.205 Amended 28080
92.220 (b) revised 12190
92.301 (c)(2)(iv) introductory text, (vi)(A)(*2*), (vii)(B) introductory text, (C) and (xi)(C)(*4*) amended 28080

Page

92.304 (a)(4)(ii) and (7)(ii) amended 27901
92.314 Amended 28080
92.326 Amended 28080
92.403 (c) revised; (e) amended; interim 2010
Regulation at 57 FR 2010 confirmed 27902
92.405 (a) and (b)(1) amended 28080
92.406 (a) and (b) amended 28080
92.427 (b)(2) introductory text revised; interim 2010
(b)(1), (2)(i) and (ii) amended 28080
(d)(1) introductory text and (e)(2) amended 28081
Regulation at 57 FR 2010 confirmed 27902
92.428 (a) amended 28081
92.429 Amended 28081
92.505 (a) amended 28081
93.1 Amended 23048, 23049
Nomenclature change 23048
93.3 (a), (b) and (d) amended 23049
93.4 (a)(4) amended 23049
93.5 Introductory text amended 23049
93.6 (a)(2)(ii), (iii) and (iv) amended 23049
93.7 Amended 23049
93.8 (b) amended 23049
94 Authority citation revised 23928
94.1 (a)(2) amended 15004
94.11 (a) amended 15004
94.15 Introductory text, (a) and (b) redesignated as (a) introductory text, (1) and (2); new (b) added 23928
96 Authority citation revised 28082
96.1 Redesignated as 96.2; new 96.1 added 28082
Amended 29785
96.2 Redesignated as 96.3; new 96.2 redesignated from 96.1; amended 28082
96.3 Redesignated as 96.4; new 96.3 redesignated from 96.2 28082
Amended 28083, 29785
96.4 Removed; new 96.4 redesignated from 96.3 28082
Introductory text and (a) removed; (b) through (e) re-

311-245 (10) O - 92 - 2

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 9 Chapter I—Con. Page

designated as (a) through (d).....28083
(b) and (c)(2) amended.....29785
96.5 (a) through (d) amended.....29785
96.7 Amended.....29785
96.8 (b) amended.....29785
96.9 (a) amended.....29785
96.10 Amended.....29785
96.12 Introductory text amended.....29785
96.13 Amended.....29785
98.2 Amended.....29194
98.3 (g) amended.....29194
98.4 (a), (b) and (d) amended.....29194
98.7 Introductory text amended.....29194
98.9 Amended.....29194
98.10 Amended.....29194
105 Authority citation corrected.....5210
122 Authority citation revised.....30899
122.1 (c) revised; (d) removed; (e) through (h) redesignated as (d) through (g).....30899
122.2 Amended.....30899
122.4 Amended.....30899
130 (Subchapter F) Added.....771
Technical correction.....3089
145—147 (Subchapter F) Redesignated as subchapter G.....771
151 (Subchapter G) Redesignated as subchapter H.....771
156 (Subchapter H) Redesignated as subchapter I.....771
Authority citation revised.....30899
156.2 (b) revised; (c) removed; (d) through (i) redesignated as (c) through (h); new (d) amended.....30899
156.4 Amended.....30899
156.5 Amended.....30899
156.6 Amended.....30899
156.8 (b) amended.....30899
160—162 (Subchapter I) Redesignated as subpart J.....771
165 (Subchapter J) Redesignated as subchapter K.....771
166—167 (Subchapter K) Redesignated as subchapter L.....771

Chapter III—Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

Page

317.23 Removed.....24544
318.10 (c)(3)(i) table 3A amended; (c)(3)(iv) revised.....27874
(c)(3)(i) table 3A and (iv) corrected.....33633
320.1 (b)(7) added.....27877
327.2 (b) amended; interim.....18080
(b) amended.....30637
327.3 (b) removed; (c) and (d) redesignated as (b) and (c).....27906
327.21 (a)(1) amended.....27906
381.143 Removed.....24544
381.147 (d) Redesignated in part as (d)(1) and (2); new (d)(1) revised; new (d)(3) added.....28085
391.2 Revised.....18388
391.3 Revised.....18388
391.4 Revised.....18388

Title 9—*Proposed Rules:*

1-199 (Ch. I).....6483
3.....12214, 12218
5.....12222
11.....12222
16.....12222
50.....31671
51.....29225, 31671
54.....33656
75.....28134
77.....31671
78.....31671
91.....19555, 23066
92.....3144, 3145, 5294, 21754, 31671
94.....3729, 22669, 27951
124.....30926
145.....29044, 31563
147.....29044, 31563
160.....23540, 30432
161.....23540, 27845, 30432
162.....23540, 30432
200-299 (Ch. II).....6483
300-399 (Ch. III).....6483
303.....21858
317.....2692, 5956, 10298, 10300, 14499, 31972
318.....3732
319.....3732
320.....2692, 5956, 10298, 14499

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

327 13053
381 ...2692, 5956, 10298, 10300, 14499, 19460, 21858, 31972
391 2483
545 12226
563 12223

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

1.3 (a) amended 1639
1.11 (c) and (d) revised 1639
1.27 Added 1639
1.28 Added 1639
1.29 Revised 1639
1.31 (b) amended 1639
1.41 Redesignated as 1.42; new 1.41 added 1639
1.42—1.47 Undesignated center heading added 1640
1.42 Redesignated as 1.41 1639
2 Authority citation revised ...5797, 18390
2.104 (b)(2) revised 18390
2.202 (c) revised 20198
2.702 Revised 4153
2.1201 Revised 4153
2 Appendix C revised 5797
Appendix C corrected 8519
11.15 (c)(3) redesignated as (c)(5); (c)(1) introductory text, (2) and new (5) revised; new (c)(3) and (4) added 2442
15.29 Revised 4153
19 Regulation at 56 FR 23360 effective date confirmed 23929
20 Regulation at 56 FR 23360 effective date confirmed 23929
Technical correction 27845
25.8 (c) revised 3720
25.17 (e) revised 3720
25.19 Revised 3720
25.21 (a) revised; (c) added 3720
25.23 Revised 3721
25.25 Revised 3721
25.27 (a) revised 3721
25.31 (d) added 3721
25 Appendix A revised 3721
40 Authority citation revised 18390
40.4 Amended 18390
40.5 (b)(1)(vi) added 18390
40.31 (k) and (l) added 18390
40.32 (e) revised; (g) added 18390
40.33 Added 18391

Page

40.41 (g) added 18391
40.65 (a) introductory text revised 18391
50 Policy statement 6262
50.2 Amended 18391
50.33a (e) revised 18391
50.82 (a) revised 30387
51 Authority citation revised 18391
51.14 (a) amended 18391
51.20 (b)(10) added 18392
51.60 (b)(1)(vii) added 18392
51.97 (c) added 18393
54.29 (c) corrected 4912
54.33 (d) correctly designated; (d) and (e) corrected 4912
70 Authority citation revised ...18393, 33428
70.4 Amended 18392, 33428
70.5 (b)(1)(vii) revised 18392
70.8 (b) revised 18392
70.19 (a)(2) revised 33428
70.21 (a)(1) revised; (b) added 18392
70.22 (n) added 18393
(h)(1) and (k) revised 33428
70.23 (a)(7) and (11) revised; (a)(12) added 18392
70.23a Added 18393
70.25 (a) revised 18393
70.31 (e) added 18393
70.32 (k) added 18393
(g) revised 33429
70.59 (a) introductory text revised 18393
72 Authority citation revised 33429
72.184 (a) revised 33429
73.2 Amended 33429
73.20 (b)(2) and (c) revised; (b)(3) redesignated as (b)(4); new (b)(3) added 33430
73.26 (h)(6) revised 33430
73.40 (a) designation, (b) and (d) removed 33430
73.46 (g)(6) and (h)(1) revised 33430
73.50 (g)(1) and (h) revised 33430
73.55 (b)(4)(ii), (g)(4) and (h)(1) revised 33431
73.57 (d)(2) revised 7645
73.60 Introductory text and (e) revised 33431
73.67 (c) introductory text, (2), (d) introductory text and (f) introductory text revised 33431
73.70 (c) revised 33431
73 Appendixes B and C amended 33432

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 10 Chapter I—Con. Page

75 Authority citation revised.....18393
75.4 (k)(6) added.....18393
(f)(1) revised.....33432
110 Authority citation revised.....18393
110.2 Amended.....18393
110.9a (e) added.....18393
140 Authority citation revised.....18394
140.1 Revised.....18394
140.2 (a)(4) added.....18394
140.3 (m) added.....18394
140.9a (b) revised.....18394
140.13b Added.....18394
150 Authority citation revised.....18394
150.3 (h) revised; (m) added.....18394
170 Technical correction.....19458
170.3 Amended.....18394, 32707
170.12 (b)(2), (c)(2), (d)(2), (e)(1), (f) and (i) revised.....13630
170.20 Revised.....32707
170.21 Introductory text revised; table amended... 18395, 32707
170.31 Table amended.....18395
Revised.....32708
171 Authority citation revised.....13631, 32714
Technical correction.....19458
171.5 Amended.....32714
171.11 (b) revised.....32714
171.15 (b)(3), (c)(2), (d) and (e) revised.....32714
171.16 (c) introductory text revised.....13631
(c) introductory text, (c)(4), (d) and (e) revised.....32714
171.19 (b) and (c) revised.....32717

Chapter II—Department of Energy (Parts 200—699)

205.90—205.98 (Subpart G) Removed.....23930
205.191 Removed.....23930
205.199D Removed.....23930
205.199E Removed.....23930
304 Authority citation revised.....23932
304.4 Revised.....23932
304.5 (d) amended.....23933
417 Removed.....23931
445 Removed.....23931
456 Removed.....23931
490 Removed.....23931
595 Removed.....23523

Page

600.2 (c), (d), (e) and (f) redesignated as (d), (e), (f) and (g); new (c) added.....3
600.7 (b)(2)(i)(G) redesignated as (b)(2)(i)(H); new (b)(2)(i)(G) added.....3
600.12 (c) added.....3
600.14 (c) and (e)(1)(ii) revised; (f) amended.....3
600.16 Heading and (a)(3)(ii) revised; (i) amended.....4
600.31 (d)(1) revised; (f)(3) amended; (f)(4) added.....4
600.103 (b)(6) and (h) revised; (f)(1) amended.....4
600.109 (a) revised.....4
600.112 (a) through (d) revised; (e) through (h) redesignated as (f) through (i); new (e) added.....4
600.113 (b) revised; (e)(1) amended.....5
600.119 (c)(1) and (d)(2) revised.....5
600.120 (c)(1) introductory text revised.....5
600.125 Added.....5
600.420 (a) amended.....5
600.421 (i) revised.....5
600.424 (b)(7)(ii) amended.....5
600.436 (g)(2)(i) amended.....5

Chapter III—Department of Energy (Parts 700—799)

707 Added.....32656
708 Added.....7541

Chapter X—Department of Energy (General Provisions) (Parts 1000—1099)

1001 Removed.....23930
1021 Revised.....15144

Title 10—*Proposed Rules:*

0-199 (Ch. I) ...4166, 6299, 7327, 7893, 9985, 20656, 27394
11 222
19 .....222, 21216
20 ...222, 11920, 14500, 21216, 27187, 27711
21 222
25 222
26 .....222, 18415

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

30 .....222, 6077, 21218, 24763, 27711
31 222
32 .....222, 27711
33 222
34 .....222, 20430
35 ...222, 8282, 10143, 21043, 21218, 24763, 27711
39 222
40 .....222, 6077, 21218
50 ...222, 537, 2059, 14514, 15034, 21218, 27187, 28642
51 21218
52 .....222, 537, 24394
53 222
54 222
55 222
60 222
61 .....222, 8093, 14500, 32743
70 .....222, 6077, 18415, 21218
71 222
72 .....222, 21218, 28645
73 .....222, 18415, 22670
74 222
75 222
95 222
100 .....4168, 11691, 23548, 27006
110 .....222, 17859
140 .....222, 2059
150 222
170 .....847, 4744, 18095, 20211, 22021
171 .....847, 4744, 18095, 20211, 22021
200–699 (Ch. II) 7327
220 27395
282 28452
300 27395
320 27395
440 2060
455 432
600 28135
605 .....28137, 30171
700–999 (Ch. III) 7327
707 32664
820 .....855, 1519, 20796
830 855
835 855
1000–1099 (Ch. X) 7327
1024 3364
1706 31143

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

100.7 (b)(19) removed.....1640
Technical correction.....2638

Page

Regulation at 56 FR 67123 eff. 4-2-92.....11263
100.8 Technical correction.....2638
Regulation at 56 FR 67123 eff. 4-2-92.....11263
102.14 (a) revised (effective date pending).....31426
104.3 Technical correction.....2638
Regulation at 56 FR 67124 eff. 4-2-92.....11263
106.5 (d)(1)(ii) amended; (f) and (g)(2)(ii)(B) revised (effective date pending).....8993
(f) introductory text and (1) corrected.....11137
Regulation at 57 FR 8993 effective in part 1-1-91 and 6-18-92.....27146
106.6 (d) and (e)(2)(ii)(B) revised (effective date pending).....8993
Regulation at 57 FR 8993 eff. 6-18-92.....27146
110 Authority citation revised.....1640
110.12 Removed.....1640
114.1 (a)(2)(iv) removed.....1640
9034.1 Regulations at 56 FR 34132 and 56570 effective date corrected to 11-7-91.....6665
9034.5 Regulations at 56 FR 34132 and 56570 effective date corrected to 11-7-91.....6665
9036.2 Regulations at 56 FR 34132 and 56570 effective date corrected to 11-7-91.....6665
9036.4 Regulations at 56 FR 34133 and 56570 effective date corrected to 11-7-91.....6665
9036.5 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91.....6665
9036.6 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91.....6665
9037.1 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91.....6665
9037.2 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91.....6665

Title 11—*Proposed Rules:*

102 13056

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 11—Con.

Page

109 33549
110 ..... 13054, 13056, 33549
114 33548
200 20430

TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

4 Authority citation revised..... 32416
4.13 Revised..... 32416
4.15 (a) introducory text, (1) and (b) revised..... 32416
4.16 (a) and (b)(7) revised..... 32417
4.17 Revised..... 32417
4.18 (d) added..... 32419
5.50 (h)(1)(i), (ii), (2) and (3) correctly added; CFR correction..... 1641
8.2 (a) revised..... 22416
34 Authority citation revised..... 12202
34.42 (g) through (k) redesignated as (h) through (l); (g) added..... 12202
34.43 Heading, (a) introductory text, (1), (2), (4)(iv) and (5) revised; (a)(6) and (d) added..... 12202
34.44 (b) and (c) redesignated as (c) and (d); (b) added..... 12202

Chapter II—Federal Reserve System (Parts 200—299)

201.51 Revised..... 176
201.52 Revised..... 176
202 Supplement I amended..... 12203
Appendix A amended..... 20399
203 Appendix A amended..... 20400
204.9 (a)(1) revised..... 8060
205 Appendix B added..... 20400
207 OTC margin stock list... 2997, 15220, 33101
208.18 Regulation at 55 FR 27771 compliance date revised..... 6
208.110 Removed..... 21593
208 Appendix A amended..... 2012
211.2 (t) revised; interim..... 12997
211.21 (b)(1) and (2) amended; (b)(3) through (b)(8) added; interim..... 12997
211.22 Added; interim..... 12998
211.25 Added; interim..... 12999

Page

211.26 Added; interim..... 13000
211.27 Added; interim..... 13001
211.28 Added; interim..... 13001
211.29 Added; interim..... 13001
211.30 Added; interim..... 13001
213 Appendix D amended..... 20400
215 Authority citation revised..... 21205, 22423
215.1 (a) revised..... 21205
Regulation at 57 FR 21205 republished..... 22424
215.2 (e) through (l) redesignated as (g) through (n); new (e) and (f) added; (a), (c), (d), new (h), (i), (l) and (m) revised..... 21205
Regulation at 57 FR 21205 republished..... 22424
215.3 (a)(4), (8), (b)(2) and (5) revised..... 21206
Regulation at 57 FR 21206 republished..... 22425
215.4 (c) footnote 3 removed; (d) footnote 4 redesignated as footnote 3..... 21205
(a)(1), (b)(1) and (c) revised; (b)(2), (3) and (e) redesignated as (b)(3), (4) and (d); new (b)(2) added..... 21206
Regulations at 57 FR 21205 and 21206 republished... 22424, 22425
215.5 (a) footnote 5 redesignated as footnote 4..... 21205
(a) footnote 4 and (d) revised..... 21206
Regulations at 57 FR 21205 and 21206 republished... 22424, 22425
215.6 Redesignated as 215.7; new 215.6 added..... 21207
Regulation at 57 FR 21207 republished..... 22426
215.7 Redesignated as 215.8; new 215.7 redesignated from 215.6..... 21207
Regulation at 57 FR 21207 republished..... 22426
215.8 Footnote 6 redesignated as footnote 5..... 21205
Redesignated as 215.9; new 215.8 redesignated as 215.9..... 21207
Relations at 57 FR 21205 and 21207 republished..... 22424, 22426

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

215.9 Footnote 7 redesignated as footnote 6.....21205
Redesignated as 215.10; new 215.9 redesignated as 215.8.....21207
Regulations at 57 FR 21205 and 21207 republished...22424, 22426

215.10 (a) footnote 8 and (b) footnote 9 redesignated as (a) footnote 7 and (b) footnote 8.....21205
Redesignated as 215.11; new 215.10 redesignated from 215.9.....21207
Regulations at 57 FR 21205 and 21207 republished...22424, 22426

215.11 Redesignated as 215.13; new 215.11 redesignated from 215.10.....21207
Regulation at 57 FR 21207 republished.....22526
215.12 Added.....21207
Regulation at 57 FR 21207 republished.....22426
215.13 Redesignated from 215.11 and revised.....21207
Regulation at 57 FR 21207 republished.....22426
220 OTC margin stock list...2997, 15220, 33101
221 OTC margin stock list...2997, 15220, 33101
224 OTC margin stock list...2997, 15220, 33101
225 Authority citation revised.....21207, 22426
225.4 (f) added.....21207
Regulation at 57 FR 21207 republished.....22426
225.11 (f) added; interim.....13001
225.12 (f) added; interim.....13001
(d) introductory text, (1) and (2) redesignated as (d)(1) introductory text, (i) and (ii); (d)(2) added.....28778
225.13 (a) introductory text and (b)(2) revised; (b)(4) and (5) added; interim.....13003
225.23 (f)(2) introductory text republished; (f)(2)(i) revised.....28779
225.25 Footnotes 7 through 14 redesignated as footnotes 8 through 15; (b)(5) introductory text, (i), (ii), (iii), (iv) introductory text, (A) through (D), (v) and (vi) redesignated as (b)(5)(i) introductory text, (A), (B), (C), (D) introductory text, (*1*) through (*4*), (E) and (F); new (b) (5) heading and (ii) added; (b)(5)(i) introductory text, (D) introductory text, (*3*) and (F) revised.....20961
225.61—225.67 (Subpart G) Regulation at 55 FR 27771 compliance date revised.....6
225.114 Removed.....9973
225.125 (h) revised.....30391
225.132 (c)(2) amended.....28779
225 Appendix A amended.....2012
Appendix D amended.....2013
226 Supplement I corrected.....81, 749
Appendix I amended.....20400
227.11 (c)(1), (2) and (3) revised; (d) added.....20401
229.13 (g)(1)(ii) through (v) removed; (g)(2) heading, (i), (ii) and (3) redesignated as (g)(1)(ii) heading, (A), (B) and (4); (b), (c) introductory text, (d) introductory text, (e)(1), (f) introductory text, new (g)(1)(ii)(A), (B), (h)(1), (3) and (4) amended; (g)(1) introductory text, (i) and (h)(2) revised; new (g)(2) and (3) added.....3279
229 Appendixes C and E amended; interim.....3280
263 Authority citation revised.....13001
263.50 (b)(7) and (8) amended; (b)(9) and (10) added; interim.....13001
265 Authority citation revised.....13002
265.6 Introductory text republished; (e) added.....6789
(b)(2) added; interim.....13002
265.7 (d)(8) added; interim.....13002
265.11 (c)(11)(v)(A) removed; (c)(11)(v)(B) and (C) redesignated as (c)(11)(v)(A) and (B); (c)(11)(vi) revised.....11907

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 12

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

Page

303.3 (d) redesignated as (e); new (d) added....5815
303.7 (f)(5) redesignated as (f)(6); new (f)(5) added....5815
323 Authority citation revised....9049
323.2 (g) through (k) redesignated as (h) through (l); new (g) added....9049
323.3 (a) introductory text, (1) and (4)(iv) revised; (a)(5) amended; (a)(6), (7) and (d) added....9050
323.4 (b) and (c) redesignated as (c) and (d); new (b) added....9050
325 Authority citation revised....7647
325.1 Amended....7647
325.5 (f)(5) and (8) removed; (f)(6) and (7) redesignated as (f)(5) and (6); (f)(4), new (f)(5) and (6) amended....7647
335.212 Amended....4702
335.312 Amended....4702
335.410 Revised....4702
335.411 Revised....4702
335.412 Removed....4702
335.420 Added....4703
335.421 Added....4703
335.422 Added....4703
337 Authority citation revised....7649, 17850, 23941, 28457
337.3 (a) amended....7649
(c) added....17850
Corrected; OMB number....28457
337.6 Revised....23941
360 Transferred to subchapter B; subchapter C heading removed....10415
361 Added....15004
386 Heading removed....10415

Chapter V—Office of Thrift Supervision, Department of Treasury (Parts 500—599)

500.10—500.17 (Subpart B) Revised....14335
500.32 Removed....14336
516 Added....14336
543.1 (b) amended....14338

Page

543.2 (a) and (g)(1) introductory text revised; (b), (g) introductory text and (h)(3) removed; (d), (e) and (f) amended....14338
543.8 (b) revised....14339
543.9 (a) revised; (c) amended....14339
544.2 (a) and (b) introductory text revised; (c) amended; (d) and (e) removed....14339
544.3 Introductory text revised....14339
544.5 (a), (c) and (d) revised....14339
545 Authority citation revised....33437
545.14 (c) revised....33437
545.35 (d) revised....33437
545.38 (b)(3) revised....33437
545.74 (b)(7), (c) introductory text, (3)(vi), (4)(iii) and (e) revised; (c)(4)(i)(D) amended; (f) and (g) removed....14340
(d)(2) revised....33437
545.77 Revised....14340
545.82 (f) heading, (1) introductory text and (3) revised....14340
(c)(2) removed; (e) introductory text revised....33437
545.92 (a), (b), (c), (e), (f) and (h)(1) revised; (h)(3) removed; (j) added....14341
545.93 (b) and (c) amended....14341
545.94 Removed....14341
545.95 Revised....14341
545.96 (b) revised; (d) removed....14342
546.2 (d)(2) and (e) amended....14342
546.4 (c) and concluding text revised....14342
550.2 (a) amended....14342
552.2-1 (b) introductory text, (1) introductory text and (i) revised....14342
552.2-2 (b) and (c) amended; (d) removed....14342
552.4 (a) and (b) introductory text revised; (c) and (d) amended; (e) and (f) removed....14343
552.5 Revised....14343
552.6-3 (a) amended....14343
552.10 Revised....14343
552.13 (i) revised; (m) removed....14343

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

556.5 Revised 12207
558.3 Amended 14335
558.4 Amended 14335
559.3 Amended 14335
561 Authority citation revised 33437
561.155 (b)(2) revised; (c) added 33437
563 Authority citation revised 33437
563.1 Revised 14344
563.4 Removed 14344
563.10 (b)(1) amended; (c) heading and (1) introductory text revised 14344
(b)(2), (c)(1)(i) and (3)(v) revised; (d) removed; (e) redesignated as (d) 33438
563.22 (c)(2) revised; (e) heading and (1) amended; (d)(1), (e)(2), (3) and (f) removed 14344
563.37 (c) revised 14344
563.38 (b) amended 14344
563.41 (e)(2)(ii)(D) revised 14344
563.43 (d) amended; (e) and (f) revised 14344
563.45 Amended 14345
563.74 (e) revised 14345
563.75 Removed 14345
563.80 (e)(2) revised 14345
(e)(1) introductory text amended 33438
563.81 Heading, (a), (b), (c), (d) introductory text, (1)(iv), (2), (h) and (k) revised; (d)(1) introductory text, (iii), (v), (vi) introductory text, (f) and (g) amended; (e), (i) and (j) removed 14345
563.84 (b)(7) introductory text revised 33438
563.93 (b)(6)(iii) amended; (d)(3)(iii) revised; (g) removed 14347
563.94 Removed 33438
563.96 Amended 33438
563.131 (a)(1), (b), (d) and (e) amended; (c) introductory text revised 14347
(b) revised 33438
563.132 (a)(1)(ii), (c)(2) and (4) amended; (c)(5) removed; (c) heading, (1) introductory text and (3) revised 14347
563.133 Removed 14347

Page

563.134 (c) and (e)(3) amended 14347
(a)(3), (6) and (b)(1) revised 33438
563.160 (f)(3) amended 14335
563.170 (c)(4) amended 14335
563.173 (c)(2) revised 33438
563.175 (a)(13)(iii) revised 33438
563.190 Revised 12698
563.233 (c) and (d) revised 33438
563b.3 (i)(3)(i) amended 14347
563b.8 (w) removed 14348
563b.27 (e) amended 14335
563b.28 (c)(2) amended 14335
(a) revised; (c) removed 14348
563b.29 (a) amended 14348
563b.39 (d) and (m) revised 14348
563b.41 (a) revised; (c) removed 14348
563c Authority citation revised 33439
563.14 Removed 33439
563c.102 Amended 26990
563f.7 Revised 14348
564 Authority citation revised 12705
564.2 (g) through (k) redesignated as (h) through (l); new (g) added 12705
564.3 Heading, (a) introductory text, (1) and (2) revised; (d) added 12705
566.3 Removed 14348
566.4 Revised 14348
566.5 Removed 14348
567 Authority citation revised 33439
567.1 (jj) added 12709
(a)(2)(i) removed; (a)(2)(ii), (iii) and (iv) redesignated as (a)(2)(i), (ii) and (iii); (a)(3)(iii), (k), (o), (q), (u), (v), (w)(2)(ii)(C) and (gg) revised; (p) and (ee) amended; (kk) and (ll) added 33439
567.2 (b) heading and (2) revised 33440
567.3 (a)(1), (2), (d)(1), (3) and (5) amended 14335
(d)(2)(i) introductory text amended 14348
567.4 (a)(1) introductory text, (2) introductory text, (3)(i) introductory text and (4) amended 14335

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 12 Chapter V—Con. Page

(a)(1) introductory text and concluding text amended.....33440
567.5 (a)(1) introductory text, (ii), (iv) and (b)(4) amended; (a)(2)(v)(A) introductory text and (b)(3)(i) revised.....33440
567.6 (a)(1)(iii)(D) added.....12709
(a) introductory text, (1)(ii)(N), (O) and (2)(i)(C) revised; (a)(1)(vi)(C) redesignated as (a)(1)(vi)(C)(*1*); (a)(1) heading, (ii)(R), (v)(A), (vi) heading, (A), (2) introductory text, (iv) heading, (A), (B) and (C) revised; (a)(1)(ii)(S) and new (vi)(C)(*2*) amended.....22440
567.9 (c)(1) and (3)(i) introductory text revised.....33441
567.10 (a) heading, (2) introductory text and (f) revised; (a)(1) removed.....33441
567.11 (a) revised; (c) amended.....33441
571 Authority citation revised.....33442
571.1 (a)(1) amended.....14335
571.2 (b), (d)(1) and (e)(4)(ii) amended.....14335
571.12 Removed.....14348
571.14 Removed.....12698
571.16 (c)(10) amended.....14335
571.19 Removed.....26990
571.23 Removed.....33442
574.3 (c)(1)(ii) revised.....14348
574.4 (f)(1) introductory text revised.....14349
574.5 (a)(1) revised.....14349
574.6 (b) and (d)(2) revised; (j) added.....14349
574.7 (f) removed.....14349
574.9 Removed.....14349
579.5 Amended.....14335
584.2-1 (c)(1) revised.....14349
584.2-2 (b) amended.....14349
584.9 (d) revised.....14349

Chapter VI—Farm Credit Administration (Parts 600—699)

603 Authority citation revised.....32421
603.355 Heading revised; existing text designated as (a) and amended; (b) added.....32421
611 Authority citation revised.....26992
611.1137 Added (effective date pending).....26992
Regulation at 57 FR 26992 eff. 7-27-92.....33104
613 Authority citation revised.....13637
613.3045 Regulation at 56 FR 65989 eff. 2-26-92.....6553
613.3140 Removed (effective date pending).....13637
Removal at 57 FR 13637 eff. 5-27-92.....22157
613.3145 Added (effective date pending).....13637
Regulation at 57 FR 13637 eff. 5-27-92.....22157
613.3150 Revised.....13638
Regulation at 57 FR 13638 eff. 5-27-92.....22157
613.3151 Added (effective date pending).....13638
Regulation at 57 FR 13638 eff. 5-27-92.....22157
613.3152 Added (effective date pending).....13638
Regulation at 57 FR 13638 eff. 5-27-92.....22157
613.3160 (a) revised; (b) introductory text amended (effective date pending).....13638
Regulation at 57 FR 13638 eff. 5-27-92.....22157
613.3170 Revised (effective date pending).....13638
Regulation at 57 FR 13638 eff. 5-27-92.....22157
613.3175 Added (effective date pending).....13639
Regulation at 57 FR 13639 eff. 5-27-92.....22157
618.8030 Regulation at 56 FR 65990 eff. 2-26-92.....6553

Chapter VII—National Credit Union Administration (Parts 700—799)

703 Interpretive ruling and policy statement.....22157
703.5 (e) stayed.....6553
704 Revised.....22630
704.1 Existing text designated as (a); new (b) added.....28085
704.2 Corrected.....28085

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

704.6 (b)(2)(vi)(A) correctly revised; (d) corrected....28085
704.7 (b)(3) corrected....28085
704.10 (b)(2) corrected....28086
704.11 (i) corrected....28086
704.12 (c)(2) correctly revised; (c)(5) corrected....28086
704 Appendix A corrected....28086
705 Authority citation revised....20742
705.7 (b)(2) revised....20742
722 Authority citation revised....28998
722.2 (g) through (k) redesignated as (h) through (l); new (g) added....28998
722.3 (a)(4)(iv) and (5) revised; (a)(6) added....28998
741.9 (a)(3) and (b)(3) revised....22636
(a)(3) and (b)(3) corrected....28086
747.0 (a) and (b) corrected....523
747.1 (a), (b), (c) introductory text, (1) and (3) corrected....523
747.3 (f)(1) and (g) corrected....523
747.9 (a) corrected....523
747.16 Corrected....523
747.33 (a) corrected....523
747.201 Corrected....523
747.207 Corrected....523
747.208 (a) corrected....523
747.301 Introductory text corrected....523
747.304 Corrected....523
747.305 Corrected....523
747.306 (a) corrected....523
747.401—747.406 (Subpart E) Heading corrected....523
747.401 Corrected....523
747.405 (c) corrected....523
747.606 (c) corrected....523
747.703 (a) corrected....523
747.803 (b)(1)(iv) corrected....523
747.901—747.905 (Subpart J) Heading corrected....523
747.901 Corrected....523
747.902 Corrected....523
747.903 (a)(3) corrected....523
747.904 (b)(1) and (2) corrected....523
(d)(2) corrected....524
747.905 (a) corrected....524

Chapter IX—Federal Housing Finance Board (Parts 900—999)

900.30 Revised....6468
900.53 Correctly designated....749
932 Authority citation revised....6190
932.3 Revised....6190
932.18 Corrected....81
932.21 Corrected....81
932.23 Corrected....81
932.55 Removed; interim....2834
Removal at 57 FR 2834 confirmed....11429
932.56 Removed; interim....2834
Removal at 57 FR 2834 confirmed....11429
932.57 Removed; interim....2834
Removal at 57 FR 2834 confirmed....11429
941 Added; interim....2384
Regulation at 57 FR 2384 confirmed....11429
941.6 (c)(3) amended; (c)(2) revised....11429
941.7 (f)(1)(ii) and (2) amended; (d)(1), (4)(i) and (ii) revised....11429
941.8 (a) amended; (d) added....11429
941.10 (b) revised....11429

Chapter XI—Federal Financial Institutions Examination Council (Parts 1100—1199)

1102 Added....10982
1102.20—1102.39 (Subpart B) Added....31650

Chapter XV—Thrift Depositor Protection Oversight Board (Parts 1500—1599)

Chapter XV Heading revised....4715

Chapter XVI—Resolution Trust Corporation (Parts 1600—1699)

1609 Revised; interim....19501
Policy statement....24937
1615 Added; interim....32882
1620 Added....32395

Title 12—*Proposed Rules:*

1—199 (Ch. I) 6205, 31336
6 29808
8 8424
19 29808
34 31594

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 12—Con.

Page

200—299 (Ch. II) 31336
202 1405
204 8096
206 31974
208 ..... 6563, 14362, 29226, 31594
215 6077
225 ..... 6077, 6563, 13362, 28807, 31594
229 3365
230 ..... 12735, 22021
250 28809
262 28807
263 29226
300—399 (Ch. III) 8282, 31336
308 29662
325 ..... 1105, 11005, 29662
327 ..... 21617, 21623, 21627, 28810, 29938
330 17866
333 30433
337 ..... 7669, 11442
362 30435
365 31594
500—599 (Ch. V) 5080
545 12760
563 ..... 8732, 24994, 31336, 31594, 33662
563b 2061
565 ..... 29826, 31404
567 12761
571 12760
603 8851
607 ..... 19405, 21755, 27006, 31673
611 ..... 23348, 26786
612 26787
613 1882
615 ..... 5294, 7672, 23348, 26788
618 ..... 19405, 21755, 27006, 31673
625 31463
627 23348
700 ..... 18836, 24395
701 ..... 18837, 20798
702 29050
705 2484
722 2485
910 20061
934 ..... 11014, 19556
1102 ..... 10143, 11017
1502 26789
1503 24994
1625 33133

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration (Parts 1—199)

Page

101.3-2 Amended..... 524, 26768, 30392
108.2 Amended..... 11909
108.503-1 (e) revised..... 11909
(c)(1)(iii) revised..... 26770
108.503-2 (b) revised..... 26770
108.503-3 (f) introductory text amended; (f)(1) revised..... 26770
108.503-7 (b)(1) through (b)(4) redesignated as (b)(2) through (b)(5); new (b)(1) added; new (b)(3) revised..... 26770
108.503-8 (a)(3) amended..... 26770
108.503-10 (a) amended..... 26770
108.503-11 (b)(2) amended..... 26770
108.504 (e) amended..... 26770
120.202-1 Amended..... 10984
120.202-4 Revised..... 10984
120.202-5 (e) revised..... 10985
121 Waiver...6290, 14638, 18396, 20962, 27677
121.402 (d)(1) revised; interim..... 2444
121.601 Table amended...4838, 4840, 18810, 27911
121.1010 (c) amended..... 18810
121.1704 Revised..... 28780
Amended..... 32890
122 Authority citation revised..... 3849
122.8-4 (g) revised..... 6574, 13267
122.61 Added; interim..... 3849
122.61-1 Added; interim..... 3849
122.61-2 Added; interim..... 3849
122.61-3 Added; interim..... 3850
122.61-4 Added; interim..... 3850
122.61-5 Added; interim..... 3850
122.61-6 Added; interim..... 3850
122.61-7 Added; interim..... 3850
122.61-8 Added; interim..... 3851
122.61-9 Added; interim..... 3851
122.61-10 Added; interim..... 3851
122.61-11 Added; interim..... 3851
124.210 (b) amended..... 28780
124.211 (d) amended..... 28780
134.12 (a) amended..... 28780
134.14 (a) revised; (b) amended..... 28780

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Chapter III—Economic Development Administration, Department of Commerce (Parts 300—399)

Page

301 Authority citation revised....2223
301.50 Revised....2223
301.51—301.60 Removed....2223
305.45 (a), (b), (c)(4) and (8) revised; interim....11674

Title 13—*Proposed Rules:*

108 1688
121 ...541, 6569, 14518, 27906, 28814, 32926

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

1 Technical correction....11575
11 Technical correction....11575
21 Special FAA conditions...7, 338, 605, 1221, 2225, 2444, 3516, 8720, 9167, 12867, 13004, 22165, 23525, 31957, 33869, 33872
23 Special FAA conditions...1221, 2225, 2444, 8720, 31957
25 Special FAA conditions...7, 338, 605, 13004, 22165, 33869, 33872
25.251 (a) and (b) revised....28949
25.305 (e) and (f) added....28949
25.629 Revised....28949
25.813 (a) and (c) revised....19244
(a) introductory text, (c)(1) introductory text and (2)(i) corrected....29120
29 Special FAA conditions...3516, 9167, 12867, 23525
39 Technical correction....23126
39.13 ...178, 180—182, 606, 607, 780-782, 784, 785, 787, 789, 791-793, 1075, 1077, 2014, 2016, 2447, 3000, 3001, 3003, 3004, 3006, 3008, 3517, 3518, 3927, 3929, 3931, 3932, 3935, 3936, 4154, 4841, 4843, 4844, 4846-4848, 4850, 4926, 5051, 5370, 5371, 5373, 5374, 5376, 5377, 5379, 5380, 5976, 6069, 6071, 6191, 6667, 7650, 8061—8063, 8258, 8260—8262, 8575, 8576, 8721, 8722, 8724, 8725, 9169—9172, 9382, 9383, 9974, 10127, 10128, 10130, 10132, 10133, 10286, 10416, 10418, 10420—10423, 10802, 10803, 12868, 12870, 13005, 13007, 13009, 13640, 13642, 14794, 15006, 15008, 15009, 15011, 15012, 17851, 17852, 17854, 18397, 19080, 19082, 19250, 19376, 19530-19533, 19798, 19800—19802, 20199, 20743, 20745, 21208, 21727, 21728, 21730, 22427, 23050, 23052, 23054, 23136, 23526, 23528—23531, 24357, 24939—24942, 27247, 27149, 27152—27154, 27156, 27158, 27355, 28458, 28597—28599, 28601, 28603, 28604, 29196, 29198, 29199, 29201, 29202, 29786, 30111, 30114, 30393, 30394, 31097, 31099, 31101—31104, 31433—31436, 31438, 31440—31442, 31444, 31658, 31960, 33105, 33107, 33109
Corrected...2639, 8839, 9155, 10985, 10986, 11138, 12963, 14751, 30534
Technical correction....23126
45 Technical correction....11575
61 Technical correction....11575
65 Technical correction....11575
71 Technical corrections...11575, 20572
71.1 Revised; effective to 9-15-93....9642
71.1 ...10804, 10986, 11575, 11576, 11675, 12872, 14476, 14477, 19083, 19251, 19376, 19804, 19805, 20401, 20746, 22643, 24358, 26771, 27159, 27911, 28459—28461, 28999, 30115, 30637, 30822, 31961, 31962, 32722, 32890, 33110, 33872, 33873
Regulation at 56 FR 55031 corrected....20044
Amended....32890
Regulation at 57 FR 24357 corrected....33873
71.77 (b)(1) corrected....3090
71.163 12872

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 14 Chapter I—Con. Page

71.181 Regulation at 56 FR 64478 effective date corrected....10987
71.203 341
71.207 341
71.401 169
71.501 170
73.25 ....8840, 19251, 19252
73.32 22427
73.63 26771
75 Technical correction....11575
75.100 Corrected....341
91 Technical correction....11575
SFAR No. 65 added....14473
SFAR No. 50–2 amended....26766
SFAR No. 66 added....28031
SFAR No. 62 amended....30822
91.25 Effective date corrected....328
91.609 (b) added....19353
91.875 OMB number....5977
93 Technical correction....11575
95 ....6193, 24359
97.21—97.35 ...1078, 1081, 1223, 1224, 4360, 4362, 5978, 5981, 6469, 6474, 8398, 8401, 9661, 9663, 11677, 11679, 14478, 14480, 18811, 18813, 21594, 21596, 24182, 24183, 24359, 26772, 29000, 29443, 29444, 32723, 32725
101 Technical correction....11575
103 Technical correction....11575
105 Technical correction....11575
121 Technical correction....11575
SFAR No. 38–2 amended....23923
121.310 (f)(3)(ii) revised; (f)(3)(iii), (iv) and (v) added....19244
(f)(3)(ii), (iv) and (v) corrected....29120
121 Appendix I amended....31277
125 SFAR No. 38–2 amended....23923
127 Technical correction....11575
SFAR No. 38–2 amended....23923
129 SFAR No. 38–2 amended....23923
135 Technical correction....11575
SFAR No. 38–2 amended....23923
SFAR No. 50–2 amended....26766
135.153 Revised....9951
135.177 (a)(4) removed....19245
135.178 Added....19245
(b)(1) introductory text and (c)(1) corrected....29120
137 Technical correction....11575
139 Technical correction....11575, 23126

Page

139.311 (a)(3) compliance date stayed....15163
(f) revised....15164
147.5 (a)(2) and (3) revised....28959
147.15 (a) through (d), (f) introductory text, (g) and (h) revised....28959
147.17 (a)(2) revised....28959
147.19 Revised....28959
147.21 (b) introductory text, (c) and (d)(3) revised; (e) removed....28959
147.23 Revised....28959
147.31 (b), (c)(1)(iv), (3) and (e) revised; (c)(4) added....28959
147.35 (a) revised....28959
147.36 Revised....28959
147.38 (a) revised....28960
147 Appendixes A, B, and C amended....28960
Appendix D amended....28961
171 Technical correction....11575
171.271 (e) corrected....3090

Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

225.10 Revised....22646
382 Exemption....12872

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

1203b Added....4926
1212 Revised....4928
1214.100—1214.119 (Subpart 1214.1) Revised; interim....4545
1215 Appendix A revised....20747

Title 14—*Proposed Rules:*

1—199 (Ch. I) ...236, 383, 4744, 6570, 7893, 10836, 11921, 18118, 19407, 19556, 20145, 23165, 29052
21 ...9513, 11691, 11693, 12242, 13058, 13061, 23165, 28142, 31986
23 ....9513, 11691, 11693, 12242, 23165
25 ....11693, 13058, 13061
29 31986
36 28142
39 ...18, 19, 21, 237, 649, 650, 652, 654—656, 855, 857, 1120, 1122, 1124, 1126, 1229, 1230, 1690,

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

1692—1694, 1696, 1697, 2232, 2233, 2486, 2488, 2489, 2491, 2492, 2494, 2692, 2693, 2695, 2697, 2857, 3033, 3966, 5081—5085, 5088, 5089, 5091, 5093, 5094, 5096, 5098, 5099, 6551, 6690, 7328, 7330—7332, 7334, 7335, 7338, 7559, 7560, 7562, 7673, 7676, 7679, 7681, 7682, 7684, 7894, 7895, 8585, 8734, 9077, 9078, 9215, 9392, 9394, 10301, 10443, 10617, 10618, 10743, 10745, 10747, 10836, 10838, 10840, 10844, 11023, 11352, 11589, 11696, 11697, 11921, 11922, 11924, 11926, 11927, 12467, 12888, 13061, 13062, 13325, 13669, 13671, 14366, 14368, 14518, 14627, 14751, 14799—14801, 15036, 15258—15260, 15263, 18119, 18840, 18841, 18443, 18445, 18847, 18849, 19265, 19266, 20063, 20213, 20800, 21219, 21911, 22443, 22445, 23168, 23169, 23549, 23550, 23552, 23553, 23966, 23968, 23969, 23971—23973, 23975, 23976, 23978, 24200, 24201, 24395, 24401, 24407, 26629, 26631, 26797, 26798, 26800, 27191, 27192, 27194, 27195, 27197, 27199, 27200, 27712, 27953, 27955, 29120, 29450, 29451, 29453, 29681, 29683, 29684, 29844, 29846, 29847, 29849, 30173, 30174, 30176, 30686, 30687, 30689, 30690, 30693, 30695, 30697, 30698, 30700, 31341, 31754, 31989—31990, 31992, 32744, 32746, 32747, 33460

61 ..... 21362, 32680

71 ...4168, 4589, 10303—10306, 10841, 10843, 10846—10848, 11352, 11698—11701, 11797, 11929, 13672, 14520—14523, 14670, 14751, 15264, 15265, 18120, 18954, 19408, 19821, 20064, 20067, 20215—20219, 20433, 20572, 20801, 21633, 21913, 22022, 22186, 22672, 23126, 23257, 24202, 24412, 24413, 28469, 29454, 29455, 29686, 29687, 30178, 30179, 30702, 30932, 31993, 32749, 33906, 33908

Page

73 ..... 12889, 19409, 20066

91 ..... 4352, 8830, 21362, 23038

107 ..... 5352, 8834, 12396

108 ..... 5352, 8834, 12396

121 ..... 21362, 32846

135 4352

149 21362

153 21362

154 21362

170 3830

199 21362

200—399 (Ch. II) 4744, 11921

200 3366

203 3366

205 3366

206 3366

228 21362

231 3366

232 3366

235 ..... 3366, 21362

255 19821

263 3366

270 21362

288 3366

292 ..... 3366, 21362

294 3366

296 3366

297 3366

298 3366

302 3366

310a 21362

320 21362

326 21362

372 3366

380 3366

382 23555

384 ..... 3366, 21362

387 ..... 3366, 21362

399 3366

400—499 (Ch. III) 4744

TITLE 15—COMMERCE AND FOREIGN TRADE

Subtitle A—Office of the Secretary of Commerce (Parts 0—29)

4.8 (b), (c), (e) and (g) amended 28781

4 Appendix C amended 28781

6 Removed 30116

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 15 Subtitle A—Con. Page

29b.16 (b)(2)(i) and (ii) revised; (c)(6) redesignated as (c)(7) and republished; (b)(2)(iii) and new (c)(6) added; interim.....4716

29b.21 (a)(1) and (2) revised; (a)(3) and (4) added; interim.....4716

Chapter IV—Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)

400.45 (a) corrected.....2319

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

768 Authority citation revised.....4555
768.1 (a)(2)(i) amended.....4556
768.2 (a)(1) and (9)(i) amended.....4556
769.6 (b)(4) amended.....4557
770 Authority citation revised.....8, 4555
770.1 (b)(1) and (4) amended.....4556
770.2 Amended.....4556, 4557
770.3 (a)(1) revised.....4557
770.6 (a)(2)(i) amended.....4556
770.7 (c)(2) amended.....4556, 4557
770.9 Amended.....4556, 4557
770.10 (f)(2) amended.....4556
(f)(2) and (3) amended.....4557
770.14 (a)(4) revised.....4558
(a) introductory text and (3)(ii) amended.....19334, 19336
770 Supplement No. 1 amended.....8, 11577. 19806
Supplement No.2 amended.....4558
771 Authority citation revised.....4555
771.2 (b)(2)(ii) amended.....4556
(c) introductory text and (i) amended.....4557
(c)(11) revised; (c)(12) removed.....4558
(c)(13)(i)(B) revised; interim.....26774
771.3 (a) and (b) amended.....4556
771.4 (a)(3) amended.....4556
771.5 (a), (b)(2), (c)(1)(i), (3) and (e) amended.....4556
(a)(1) revised; (a)(2) removed; (a)(3) redesignated as (a)(2); new (a)(2)(i) and (c)(1)(i) amended; (c)(3) *Example* and (d) revised.....4558
771.6 (a) amended.....4556, 4558
771.14 (b) revised.....19334
(b) amended.....19336
771.15 (c)(3) amended.....4556
771.16 (a) amended.....4556
Introductory text amended.....4558
771.18 (b)(1)(i) amended.....4556, 4557
771.19 (a), (b)(1)(i) and (2)(i) revised; (c) redesignated as (d); new (c) added.....30900
771.22 (b)(8)(ii) amended.....4557
(c)(1)(ii) introductory text amended.....4456, 4557
(c)(2)(ii) and (iii) amended; (c)(2)(iv) removed.....4558
771.23 (c) amended.....4556
(b) and (c) revised.....4558
771.24 Removed.....4559
771.25 Heading, (a), (c) and (f)(1) revised; (d) introductory text amended.....4559
(b) and (f)(2) amended... 19335, 19336
771.27 Added.....31659
772 Authority citation revised.....4555
772.1 (f) amended.....4557
772.4 (e) amended.....4556
(a)(2)(iv) added; (e) revised.....4559
772.7 (b) amended.....4557
772.8 (d)(2) amended.....4557
772.9 (c)(1) and (2) amended.....4557
772.11 (f)(9) amended.....4556
(d)(2) and (e)(6) revised.....4559
772 Supplement No. 1 amended.....4556, 4559
773 Authority citation revised.....4555
773.1 (e) amended.....4557
(a)(1) revised.....4559
773.2 (b)(6), (c)(2)(iv)(B) and (f)(1) amended.....4556
(a)(1), (b), (c)(2)(iv)(B) and (D) revised.....4560
773.3 (b)(1)(iv) and (i)(2)(i) amended.....4556
(b), (e)(1)(iii) and (2)(v) revised; (d)(3)(ii)(E)(*3*)(*i*), (e)(1)(ix) concluding text and (x) through (xiii) amended; (d)(3)(ii)(E)(*3*)(*iii*) removed; (e)(1)(xiv) and (xv) added.....4560
(a)(1)(ii) revised; interim.....18817

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

773.5 (c) amended 4556, 4557
773.7 (b)(5), (d)(1)(iv)(B)(*4*), (*6*), (*8*), (g)(4), (i)(4), (k) introductory text, (1) and concluding text amended 4556
(b) and (d)(1)(iv)(B)(*5*) revised 4560
773 Supplement No. 1 and No. 4 revised 4561
Supplement No. 5 amended 4556, 4557
Supplement No. 1 amended 4557
Supplement No. 1 amended; interim 18817
Supplement No. 8 amended 19335
774 Authority citation revised 4555
774.2 (j) amended 4556
(k)(1)(ii) amended 4557
(a)(1) amended 4561
(i) revised; (k)(2) amended; interim 18818
(i)(1), (j), (k) introductory text and (2) amended 19335, 19336
(m) added; interim 20965
(a)(1) amended 30900
774.3 (d)(1)(i) revised 4561
(d) removed; interim 18818
774 Supplement No. 1 amended 4556, 4561
775 Authority citation revised 4555
775.1 (b) table amended 4556, 4561, 19336
775.2 (b)(2) and (e)(2) amended 4556
(e)(2) and (j)(3) amended 4562
775.3 (a)(1), (d)(1), (f)(3), (h)(2) and (i)(1)(i) amended 4556
(g)(3)(i) and (ii) amended 4562
(b) amended 19336
775.5 (a)(3) amended 4562
775.6 (a) and (c)(1) amended 4556
(a) amended 4562
775.7 (a)(1) introductory text and (b)(1) amended 4556
(a)(3) amended 4562
775.8 (a) and (b)(1) amended 4556
(a), (b)(1) and (2) amended 4562
775.9 (c) amended 4556, 4562
775.10 (b)(1)(i), (ii), (b)(2)(i) and (3) amended 4556
775 Supplement No. 1 amended 19336

Page

776 Authority citation amended 4556
776.6 Revised 4562
776.7 Removed 4562
776.8 (a)(2) and (a) concluding text amended 4556
Footnote 2 redesignated as footnote 1; (a)(1) revised 4562
776.9 (b)(4)(ii) amended 4556
776.10 Revised 4562
(a)(1) amended; interim 20965
776.11 (a)(2) amended 4556
Removed 4563
Added; interim 20965
776.12 (e)(2)(v) and (vi) amended 4556
(a)(1)(ii) and (b)(2) amended; (b)(4) and (5) revised 4563
776.14 (a) amended 4563
776.16 (a) amended 4556, 4557
776.17 Revised 4563
776.18 Added 4563
776.20 Removed 4564
777 Authority citation revised 4556
777.6 (e)(4) amended 4556
778 Authority citation revised 8
Authority citation revised 4555
778.2 (a) introductory text and (2) amended 4556
778.7 (c)(1) introductory text and (d)(3)(i) amended 4557
(a)(1) revised; (a)(2) removed; (a)(3) redesignated as (a)(2) 4564
(c)(1)(ii) revised; interim 26774
778.8 (a)(2) amended 4556
(a)(1) introductory, (i), (ii), (2), (4), (5)(iv)(A) introductory text, (5)(v), (c)(1), (d)(3)(iii), (viii), (xi) and (4) amended 4557
Heading, (a)(3) and (d)(3)(xii) revised 4564
778.9 (c) amended 4557
(a)(1) and (b)(1) revised; interim 26774
778 Supplement No. 5 amended 8
Supplement No. 2 amended 4564
Supplement No. 6 revised; interim 26774
779 Authority citation revised 4555

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

TITLE 15 Chapter VII—Con. Page

779.1 Heading amended; (a) revised; (d) added....4564
Supplement 1 amended....31311
779.2 Introductory text republished in part; footnotes 7 and 8 revised....4564
Supplement No. 1 amended....31312
779.3 Note revised; OMB number....4564
779.4 (b), (e) and (f) revised; (c) and (d) removed; (g), (h) and (i) removed; (j) redesignated as (g)....4564
779.5 (a)(2) and (e)(2) revised; (b) and (e)(1)(vii) amended; (e)(3) removed....4566
779.8 (a)(3) amended; (b)(2) removed; (b)(3) and (4) redesignated as (b)(2) and (3); new (b)(2) introductory text, (i) and (3) revised....4566
(b)(2) revised; interim....18819
779.9 Introductory text amended....4567
779 Supplement No. 2 amended....4567
Supplement No. 3 and No. 4 removed....4567
782.2 Heading revised; (a)(1) amended....9
785 Authority citation revised....8
Authority citation revised....4555
785.1 (a) amended....4557, 31660
Heading amended....11577
785.2 Heading and (c) revised....4567
Heading revised; (a)(1) amended; (d) added....11577
(a)(1) and (c) amended....19806
785.4 Heading, (a), (d) and (e) revised; (g)(1)(ii) amended....4567
785.6 (b) amended....4556
(a) revised....4571
785.7 (c) amended....4557
(d) amended....4571
785 Supplement No. 1 removed....4571
786 Authority citation revised....4555
786.3 (i)(2)(i), (j)(1) and (2) amended....4556
(o) amended....4557
786.6 (a)(1)(ii) and (c)(2) revised....4571

Page

786.7 Introductory text, (e)(1) introductory text and (2) introductory text amended....4556
(a), (b), introductory text, (c)(1) introductory text, (e)(1) introductory text, (2) introductory text and (3) introductory text amended....4557
786.9 (d) amended....4557
787.14 (a)(1) and (2) amended....4557
790 Authority citation revised....4555
790.1 (b)(1)(i) amended....4556
790.6 Amended....4556, 4572
791 Authority citation revised....4555
791.1 (d) amended....4556
799 Authority citation revised....4555, 18820
799.1 (d)(1)(i) revised....4572
Supplement No. 1, Category 1 amended (ECCN 1C60C, 1D60C, 1E60C, 1E61B, 1E70E)....4572
Supplement No. 1, Category 1 amended; interim (ECCN 1B01A, 1B18A, 1B19A, 1C18A, 1C19A)....18820
Supplement No. 1, Category 1 amended; interim (ECCN 1B28B)....26994
Supplement No. 1, Category 1 amended; interim (ECCN 1B70E)....31311
Supplement No. 1, Category 1 amended; interim (ECCN 1C1B, 1E60C, 1E61B)....31312
Supplement No. 1, Category 2 amended (ECCN 2B85F)....4572
Supplement No. 1, Category 2 amended; interim (ECCN 2A19A, 2B05A, 2B18A)....18820
Supplement No. 1, Category 3 amended (ECCN 3A93F)....4573
Supplement No. 1, Category 3 amended; interim (ECCN 3B01A)....18820
Supplement No. 1, Category 4 amended; interim (ECCN 4A01A)....18820
Supplement No. 1, Category 6 amended; interim (ECCN 6A01A, 6A02A, 6A03A, 6A18A)....18820

CHANGES JANUARY 2, 1992 THROUGH JULY 31, 1992

Page

Supplement No. 1, Category 8 amended; interim (ECCN 8A01A, 8A02A, 8A18A)..... 18820
Supplement No. 1, Category 9 amended (ECCN 9A91F)..... 4573
Supplement No. 1, Category 9 amended; interim (ECCN 9B01A, 9B06A, 9B26B)..... 18820
Supplement No. 1, Category 9 amended; interim (ECCN 9B07A)..... 18822
Supplement No. 1, Category 9 amended; interim (ECCN 9A23B)..... 26994
Supplement No. 1, Category 9 amended; interim (ECCN 9B07A, 9B23B, 9B24B, 9B27B, 9D24B, 9E21B)..... 26995
Supplement No. 1, Category 0 amended; interim (ECCN 0A18A)..... 18820
799.2 Supplement No. 1 amended..... 4556, 4573

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

906 Removed..... 31445
907 Removed..... 31445
928 Authority citation revised..... 31113
928.1 Revised..... 31113
928.2 (a), (c), (d) and (g) revised..... 31113
928.3 Heading, (a), (b)(7), (c)(1)(ii), (3) introductory text and (iii) revised; (b)(8) and (9) added..... 31114
928.4 (a), (b)(2) and (3) revised..... 31114
928.5 (a), (b)(1), (2)(i) and (iii) revised..... 31114
932 Revised..... 31116
945 Removed..... 31660

Chapter XII—United States Travel and Tourism Administration, Department of Commerce (Parts 1200—1299)

1201 Removed..... 4156

Page

Title 15—*Proposed Rules:*

200—299 (Ch. II) ...10620, 18121, 28647
303 ..... 384, 24414
900—999 (Ch. IX) ...8964, 14524, 23067
921 31926
922 31150
1150 2065

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

4.7 (c)(3) revised..... 10805
4.8 Revised..... 10806
4.9 (a) introductory text redesignated as (a)(3) and amended; (a)(2) revised; (a)(4) added..... 10805
4.10 (a)(5) revised; (a)(11) added..... 10807
4.11 (a)(1)(i)(C), (D), (E), (iii)(A), (B), (C), (iv)(A), (B), (C), (2)(i)(A) and (ii)(B) revised; (d) amended..... 10807
4.13 (e), (f), (h), (i)(1), (j) and (k) revised..... 10808
305 Energy efficiency ranges..... 11680
305.9 (a) revised..... 6072
456 Revised..... 18822
600 Appendix amended..... 4935

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

1500.18 (a)(16) added..... 27915
1500.272 (c) and (d) revised..... 28605
1700.14 (a) introductory text republished; (a)(20) added..... 27920

Title 16—*Proposed Rules:*

19 24998
23 24998
245 24998
433 28814
1204 31467
1205 ..... 3147, 31155
1211 9395
1303 18418
1500 7686

J L

9 92

UMI

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

Page

1 Fee schedule....1372
Authority citation revised....23143
1.10 (j)(3) and (4) revised....23143
1.17 (h)(3)(vi) revised....20637
1.41 (e) revised....20637
(o) through (t) added....27924
1.41a (a)(5) revised....27925
1.43 Revised....20637
1.57 (a)(1) revised....23143
1.62 Revised....23143
3.1 (a)(3), (b) and (c) revised; (d), (e) and (f) added....23144
3.10 Heading, (a), (b) and (d) revised....23144
3.11 (b) revised; (d) added....23145
3.12 Heading, (a), (b), (c) introductory text, (d)(1) introductory text, (iv), (v), (2), (f) and (h) revised; (d)(4) and (5) removed; (i) and (j) added....23145
3.13 Removed....23148
3.14 Removed....23148
3.15 Removed....23148
3.16 Removed....23148
3.17 Removed....23148
3.18 Removed....23148
3.20 Removed....23148
3.21 (c) and (d) added....23148
3.22 Introductory text, (a) and (c) revised....23148
3.30 Revised....23148
3.32 (a), (c), (e), (g) and (h) revised....23149
3.33 (a) introductory text, (e) and (f) introductory text revised....23150
3.40 (c) revised....23151
3.42 (a) revised....23151
3.44 (a)(3) and (5) revised....23151
3.50 (a) and (b)(1) revised....23151
3.51 (a) introductory text and (b) revised....23151
3.52 Removed....23151
3.53 Removed....23151
3.54 Removed....23151

Page

3.55 (a) introductory text, (3), (b), (e) and (f) revised; (g) through (k) removed....23151
3.56 Removed....23152
3.60 Revised....23152
3.61 Revised....23154
3.62 Removed....23154
3.63 Revised....23154
3.64 Added....23154
3.70 (a) and (c) revised....23155
3.75 (c) revised....23155
5.2 (d) introductory text revised....20637
5.3 Removed....20637
7.100—7.101 (Subpart B) removed....20637
7.200 Removed....20637
12.2 (w) removed....20637
(d)(4) removed; (d)(1), (h), (i)(1), (p) and (r) removed....20637
12.5 (a) amended....20638
12.6 (a) amended....20638
12.8 (a) and (b) amended....20638
12.10 (a)(3) and (c) amended....20638
12.22 (b) revised....20638
12.301 Removed....20637
12.302 Removed....20637
12.303 Introductory text and concluding text revised....20638
12.304 (d) removed....20637
12.408 (a)(2) and (3) amended....20638
15.03 Revised....20403
15.04 Removed....20638
20 Removed....20638
30 Appendix B amended....10988
32.2 Revised....27926
140.2 (a) revised....29203
140.61 Removed....20638
140.72 (a) amended....20638
140.73 (a) introductory text and (b) amended....20638
140.77 (a), (b) and (c) amended....20638
140.81 Removed....20638
140.96 (b) removed....20638
140.97 Added....12874
Effective date corrected....20572
145.6 (d) revised....29203
145 Appendix A amended....29203
Appendix A corrected....31563
149.110 Removed....20638

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

TITLE 17

Chapter II—Securities and Exchange Commission (Parts 200—399)

Page

202 Authority citation revised....18216
202.3 (a) amended....18216
230 Authority citation revised....18043, 18216
230 Technical correction....29119
230.174 (g) added....18043
230.419 Added....18043
230.499 Revised....18216
239.62 Revised....18216
239.63 Revised....18218
239.64 Revised....18218
240 Authority citation revised....18218
Phase-in period extended....28781
Technical correction....29119
Authority citation amended....32168
240.3a51-1 Added....18032
240.12b-37 Revised....18218
240.13f-2(T) Revised....18227
240.15g-1 Added....18032
240.15g-2 Added....18033
240.15g-3 Added....18033
240.15g-4 Added....18034
240.15g-5 Added....18034
240.15g-6 Added....18045
240.15g-8 Added....18035
240.15g-100 Added....31446
Amended....32168
240.17h-1T Added....32170
240.17h-2T Added....18219
249.244 Revised....18219
249.328T Added....32171
249.445 Revised....18219
249.446 Revised....18219
249.501 Revised....34032
250 Authority citation revised....31122
250.52 Revised....31122
250.111 Revised....18232
259.602 Revised....18219
259.603 Revised....18219
260 Authority citation revised....18220
260.0-12 Revised....18220
269 Authority citation revised....18221
269.6 Revised....18220
269.7 Revised....18220
269.8 Revised....18220
270.0-11 Revised....18228
274.401 Revised....18221
274.402 Revised....18221
274.403 Revised....18221

Title 17—*Proposed Rules:*

1 26801
17 25007
19 27713
150 ....27202, 31674
200—399 (Ch. II) 18421
229 ....29582, 31156
230 ....32458, 32461
239 32461
240 ....18046, 24415, 26891, 29564, 29582, 32461, 34048
249 ....29564, 32461, 34048
250 ....12766, 31156
270 23980

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

2 Authority citation revised....21733
2.1 (a)(1)(ii)(B), (C), (E) and (ix) removed....21733
2.5 Removed....21733
2.10 Removed....21733
2.11 Removed....21733
2.53 Removed....21893
2.56 Removed....21893
2.56a Removed....21893
2.56b Removed....21893
2.61 Removed....21893
2.63 Removed....21893
2.66 Removed....21893
2.70 Removed....21893
2.75 Removed....21893
2.77 Removed....21893
2.79 Removed....21893
2.90 Removed....21893
2.90a Removed....21893
2.90b Removed....21893
2.91 Removed....21893
4 Authority citation revised....21737
4.32 (b)(1) and (2) revised....21737
4.34 (h) added....21737
4.41 (g)(4) revised....21737
4.51 (g)(3) revised....21737
8 Authority citation revised....21737
8.11 (a)(2) and (c) revised....21737
16 Authority citation revised....21738

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

Page

16.18 (d) amended 21738
24 Authority citation revised 21738
24.1 Amended 21738
35 Authority citation revised 21734
35.1 (d)(2) and (3) amended 21734
35.7 Amended 21734
35.8 Amended 21734
35.9 Amended 21734
35.18 Amended 21734
35.20 Removed 21734
35.27 Removed 21734
50 Removed 21734
101 13064
103 Removed 21738
131 Authority citation revised 21734
131.20 Amended 21734
131.51 Amended 21734
131.52 Amended 21734
131.53 Amended 21734
131.60 Removed 21734
141 Authority citation revised 21738
141.15 Added 21738
141.100 Removed; new 141.100 redesignated from 141.200 21734
141.200 Redesignated as 141.100 21734
152 Heading and authority citation revised 32894
152.1 Heading revised; existing text designated as (a); (b) added 32894
154 Authority citation revised 21893
154.81—154.86 Undesignated center heading removed 21893
154.81 Removed 21893
154.82 Removed 21893
154.83 Removed 21893
154.84 Removed 21893
154.85 Removed 21893
154.86 Removed 21893
155 Removed 21893
157 Authority citation removed 21893
Rehearing denied 29631
157.7 (b) through (h) removed 21893
157.42 Removed 21894
159 Removed 21894
160 Removed 21894
260 Authority citation revised 21894
260.100 Removed 21894

Page

271 Authority citation revised 13018
Rehearing 31123
271.101 (a) Table I and Table II amended 19252
271.102 (c) Table III amended 19253
271.703 (c)(2)(i)(B) revised 13018
281 Authority citation revised 21894
281.101—281.111 (Subpart A) Removed 21894
284.1 (a) revised; (c) added 13315
284.8 (a)(1) and (d) revised; (a)(4) and (b)(2) through (5) added; (b) amended 13315
284.9 (a)(1) revised; (b) amended; (b)(2) through (5) added 13315
284.12 Amended 13315
284.14 Added 13315
284.106 (a) introductory text, (c) introductory text and (d) introductory text amended; (g) added 13317
284.126 (g) added 13317
284.221 (d) revised 13317
284.223 (d)(1) introductory text, (3) introductory text and (4) introductory text amended; (d)(5) added 13318
284.241—284.243 (Subpart H) Added 13318
284.281—284.288 (Subpart J) Added 13318
292 Authority citation revised 21734
292.203 (c)(1) amended; (c)(2) removed 21734
292.401 Removed; new 292.401 redesignated from 292.402 21734
292.402 Redesignated as 292.401; new 292.402 redesignated from 292.403 21734
292.403 Redesignated as 292.402 21734
300 Authority citation revised 21734
300.10 (d)(2), (4), (f)(2)(i) and (vi) removed; (d)(3), (5), (6) and (f)(2)(ii) through (v) redesignated as (d)(2) through (4) and (f)(2)(i) through (iv) 21734

TITLE 18 Chapter I—Con. Page

375 Authority citation revised....21894
375.307 (a)(13) removed....21894
381 Authority citation revised....15225
381.201 Amended....15225
381.202 Amended....15225
381.203 Amended....15225
381.204 (a) and (b) amended....15225
381.205 (a)(1) through (4) and (b)(1) through (4) amended....15225
381.207 (b) amended....15225
381.208 (a) amended....15225
381.209 (b) amended....15225
381.301 Amended....15225
381.302 (a) amended....15225
381.303 (a) amended....15225
381.305 (a) amended....15226
381.401 Amended....15226
381.403 Amended....15226
381.404 Amended....15226
381.502 (c)(2)(i), (ii), (d)(2)(i), (ii), (e)(2)(i), (ii), (f)(2)(i) and (ii) amended....15226
381.505 (a) amended....15226
381.507 Amended....15226
381.508 Amended....15226
381.509 Amended....15226
381.510 Amended....15226
381.601 Amended....15226
385 Authority citation revised....21734
385.602 (c)(1)(iv) removed....21734

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

1301.3 Added....23532
1301.12 (f) revised....33634
1301.19 (a) introductory text revised....33634

Title 18—*Proposed Rules:*

1—399 (Ch. I) 17867
33 ....23171, 27511
35 ....23171, 27511
101 13064
154 13673
157 13673
201 13673
284 ....13673, 26803
285 26803
290 ....23171, 27511

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

Page

4 Authority citation amended....23945
4.23 Amended....24943
4.69 Revised....23945
4.93 (b)(1) and (2) amended....13019, 29634, 33274
4.94 (b) amended....29633
10.59 (f) amended....30639
19.9 (c) amended....24944
24.1 (b) introductory text revised....26775
101.3 (b) amended....15013
123.4 (b) amended....24944
133 Court order....28605
141 Authority citation amended....27160
141.1 (c) revised....27160
141.68 (f) and (h) amended....24944
(h) corrected....28012
141.102 Heading revised....10989
143.23 Introductory text amended....24944
143.24 Heading revised; text amended....24944
143.25 Amended....24944
145.4 (c) amended....24944
145.12 (b)(1), (c) and (e)(1) amended....24944
(b)(1) corrected....28012
148.12 (c) amended....24944
148.27 Amended....24944
151.12 Removed....10989
162 Authority citation amended....30640
Technical correction....31754
162.46 (d)(1) redesignated as (d); (d)(2) removed....30640
162.48 Heading revised; existing text redesignated as (a) and amended; (b) added....30640
353.31 (a)(1) introductory text, (b)(4) and (g) introductory text revised; interim....30902
353.32 (a)(2) and (b) introductory text revised; (a)(3) and (b)(3) added; interim....30903
355.31 (a)(1), (b)(4) and (g) introductory text revised; interim....30903

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

Page

355.32 (a)(2) and (b) introductory text revised; (a)(3) and (b)(3) added; interim.....30903

Title 19—*Proposed Rules:*

10 33909
101 ...26805, 26806, 31677, 33461, 33462
102 33462
133 30703
142 33463
175 21914

TITLE 20—EMPLOYEES' BENEFITS

Chapter I—Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

10.304 (b) revised..... 15227

Chapter III—Social Security Administration, Department of Health and Human Services (Parts 400—499)

404 Technical correction..... 24308
404.110 (d)(1) revised..... 23156
404.111 (c) amended; (d) added..... 23157
404.213 (d)(1) introductory text and (e)(5) revised..... 22429
404.241 (a) revised; (c)(1)(v) and (vi) added..... 23157
404.301—404.395 (Subpart D) Authority citation revised...21598, 30119
404.315 (d) revised..... 30119
404.335 (b)(2), (3) and (c)(2) amended; (c) introductory text and (1) revised; (b)(4) and (c)(3) added.....30119
404.336 (b)(2), (3) and (c)(2) amended; (c) introductory text and (1) revised; (b)(4) and (c)(3) added.....30119
404.381 (a) revised.....21598
404.822 (e)(5) revised.....21600
404.900—404.999d (Subpart J) Authority citation revised..... 23056
404.903 (q) added..... 23057
404.1501—404.1599 (Subpart P) Authority citation revised..... 30126
404.1501 (i) revised..... 30120
404.1505 (a) and (b) amended..... 30120
404.1511 Revised..... 30120

Page

404.1520a (c)(3) revised.....30120
404.1560 (a) revised.....30120
404.1577 Revised..... 30120
404.1578 Revised..... 30121
404.1579 (a) redesignated in part as (a)(2) and amended; (a)(1) added..... 30121
404.1594 (a) revised.....30121
404.1501—404.1599 (Subpart P) Appendix 1 amended...23946, 23947, 24187, 30121
404.2040a Added.....23057
404 Appendix IV amended.....22429
416.640a Added.....23057
(g)(4) corrected..... 27091
416.1403 (a)(11) added..... 23058

Chapter IV—Employees' Compensation Appeals Board, Department of Labor (Parts 500—599

506 Technical correction.....32895

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

655 Regulations at 56 FR 24648, 57 FR 182, 57 FR 10989 and 57 FR 29203 effective date extended through 09-08-92.....30640
655.0 Regulations at 56 FR 24667 and 57 FR 183 effective date extended through 6-30-92.....10989
Regulations at 56 FR 24667, 57 FR 183 and 57 FR 10989 effective date extended through 7-10-92.....29204
655.000 Regulations at 56 FR 24667 and 57 FR 183 effective date extended through 6-30-92.....10989
Regulations at 56 FR 24667, 57 FR 183 and 57 FR 10989 effective date extended through 7-10-92.....29204
655.500—655.550 (Subpart F) Regulations at 56 FR 24654, 56 FR 24667 and 57 FR 183 effective date extended through 6-30-92.....10989
Regulations at 56 FR 24654, 56 FR 24667, 57 FR 183 and

TITLE 20 Chapter V—Con. Page

57 FR 10989 effective date extended through 7-10-92.....29204
655.600—655.675 (Subpart G) Regulations at 56 FR 24654, 56 FR 24667 and 57 FR 183 extended through 6-30-92.....10989
Regulations at 56 FR 24654, 56 FR 24667, 57 FR 183 and 57 FR 10989 extended through 7-10-92.....29204

Title 20—*Proposed Rules:*

404 32926
416 .....22187, 29244, 32926, 33137
660 14803

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

2.125 (h)(2) introductory text revised.....17980
3 Meeting.....24544
5 Authority citation revised.....18823
5.10 (a)(34) added.....28462
5.20 (f) redesignated as (g); new (f) added.....12875
5.38 Added.....18823
5.80 (c)(1) and (2)(i) amended.....17980
10.30 (e)(2) introductory text amended; (e)(4) added.....17980
10.45 (d) introductory text revised.....17980
14.100 (c)(15) heading and (ii) revised.....14350
73.1 (a)(3) table amended.....32175
81.1 Regulation at 57 FR 10616 effective date corrected.....11797
172.225 Revised.....12711
172.270 Added.....12711
176.170 Regulation at 57 FR 10616 effective date corrected.....11797
(b)(2) table amended.....20200
(a)(5) table amended.....23949
176.210 (d)(3) amended.....31313
177.1520 Regulation at 57 FR 10616 effective date corrected.....11797
178.1010 (b)(39) and (c)(34) added.....11682
177.1312 Added.....32422
178.1005 (e)(1) table amended.....32423
178.2010 (b) table amended.....10992, 18081
178.3690 (a) revised; (b)(1) amended.....18082
178.3910 (a)(2) table amended.....23952
184.1505 Regulation at 57 FR 10616 effective date corrected.....11797
310.305 (a) revised; (b)(2), (c)(4) and (d)(1) amended.....17980
310.537 Added.....29173
312 Technical correction.....19458
312.34 (a) amended.....13248
312.35 (a) amended.....13249
312.42 (b)(3)(iii) and (4) added.....13249
312.44 (b)(1)(xi) added; (b)(2)(i) revised.....13249
314.1 (a)(1) and (2) amended.....17981
314.3 (b) revised.....17981
314.50 (a)(2) and (c)(1) amended; (g)(3) added.....17982
314.54 Added.....17982
314.55 Removed.....17983
314.56 Removed.....17983
314.60 Existing text designated as (a) and amended; (b) added.....17983
314.70 (e) added.....17983
314.71 (b) amended.....17983
314.80 (a), (c)(1)(ii) and (d)(1) amended; (b) revised.....17983
314.81 (b)(3)(iii) added.....17983
314.92—314.99 (Subpart C) Added.....17983
314.94 (a)(9)(iii) corrected.....29353
314.100—314.170 (Subpart C) Redesignated as subpart D.....17983
Heading revised.....17987
314.100 Revised.....17987
314.101 Revised.....17987
(d)(3) and (4) corrected.....29353
314.102 Revised.....17988
(b) corrected.....29353
314.103 (a) revised; (b) and (c)(2) amended.....17989
314.104 Revised.....17989
314.105 Revised.....17989
314.110 Revised.....17989
314.120 Revised.....17990
314.122 Added.....17990
(b) corrected.....29353

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

Page

314.125 Heading, (a) introductory text, (b) introductory text, (7), (9), (10), (12), (14), (15), (16) and (17) revised; (b)(18) added 17991
314.127 Added 17991
(a)(3)(iii)(A)(*1*) corrected 29353
314.150 Revised 17993
314.151 Added 17994
314.152 Revised 17994
314.153 Added 17995
314.160 Revised 17995
314.161 Added 17995
314.162 Added 17996
314.200—314.235 (Subpart D) Redesignated as subpart E 17983
314.200 (a) introductory text, (b)(1) and (c)(3) revised; (c)(1) and (g)(1) amended 17996
314.300 (Subpart E) Redesignated as subpart F 17983
314.410—314.445 (Subpart F) Redesignated as subpart G 17983
314.430 Heading, (a) through (d), (e) introductory text, (f)(5), (6) and (g) introductory text revised 17996
314.440 Heading, (a) introductory text, (1) and (2) revised 17997
320.1 (a) and (e) revised 17997
320.21—320.32 (Subpart B) Heading revised 17998
320.21 Revised 17998
320.22 Revised 17998
320.23 Revised 17999
320.24 Revised 17999
(b)(4) corrected 29354
320.30 Revised 18000
320.31 Revised 18000
320.32 Redesignated as 320.38; new 320.32 redesignated from 320.51 and revised 18000
320.33 Redesignated from 320.52; heading and introductory text revised 18001
320.34 Redesignated from 320.55 18001
320.35 Redesignated from 320.56 18001
320.36 Redesignated from 320.62 18001
320.38 Redesignated from 320.32 18000
320.50 Removed 18000

Page

320.51 Redesignated as 320.32 18000
320.52 Redesignated as 320.33 18001
320.53 Removed 18001
320.54 Removed 18001
320.55 Redesignated as 320.34 18001
320.56 Redesignated as 320.35 18001
320.57 Removed 18001
320.58 Removed 18001
320.59 Removed 18001
320.60 Removed 18001
320.61 Removed 18001
320.62 Redesignated as 320.36 18001
341.78 (b) amended; (c)(1) and (2) redesignated as (c)(2) and (1); new (c)(2) revised; (c)(3) added 29177
348 Added; eff. 6-19-93 27656
433.1 (d)(2) amended 18001
510 Technical correction 21854
510.600 (c)(1) table and (2) table amended 11683, 12711, 26995, 30641, 31313, 32175
520.1484 Added 19085
(b) revised 26604
522.2100 (a)(1) amended 21209
520.2220a (b) amended 32176
522.2471 Added 12712
524.1005 (b)(1) amended 31314
540.274b (c)(3)(iv)(*c*) amended 32896
546.180d (c)(6)(iv)(*d*)(*3*) amended 12711
(c)(6)(i)(*a*)(*3*), (*b*)(*3*), (ii)(*d*), (iii)(*a*)(*3*), (*b*)(*3*), (*c*)(*3*), (iv)(*a*)(*3*) and (*b*)(*3*) amended 26996
556.308 Amended 21209
556.735 Added 12712
558 Technical correction 21854
558.15 (g)(1) table and (2) table corrected 14639
558.55 (d)(2) table corrected; CFR correction 12712
558.76 (d)(3)(xiii) revised 32176
558.95 (a)(2) amended 23059
558.335 (f)(3)(ii)(*a*) revised; (f)(3)(ix) added 11683
558.355 (b)(7) and (14) revised 23953
558.363 (c)(1)(vi) added 32176

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

TITLE 21 Chapter I—Con. Page

558.625 (b)(51) removed....23059
573 Hearing....28606
Hearing denied....33244
573.870 (a) table amended....24187
606.60 (c) amended....11263
(c) corrected....12862
807.3 (n) through (q) added; interim....18066
Regulation at 57 FR 18066 stayed....23059
807.87 (h) redesignated as (k); new (h), (i) and (j) added; interim....18066
Regulation at 57 FR 18066 stayed....23059
(i)(2) corrected....29354
807.92 Added; interim....18066
Regulation at 57 FR 18066 stayed....23059
807.93 Added; interim....18067
Regulation at 57 FR 18067 stayed....23059
807.94 Added; interim....18067
Regulation at 57 FR 18067 stayed....23059
807.95 (c)(3) removed; (d) redesignated as (e); new (d) added; interim....18067
Regulation at 57 FR 18067 stayed....23059
812 Extension of applicability....12875, 29001
821 Added....22967

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1308.11 (g)(3) added....18825
1308.12 (b)(1) introductory text revised....31126
1308.26 Table revised; interim....19534
1308.32 Introductory text revised....23301
1308.34 Table revised....32423

Title 21—*Proposed Rules:*

1—1299 (Ch. I) ...22447, 32185, 33283, 33915
5 ....11277, 19410, 29119, 32750
10 21044
12 21044
16 21044
20 ...11277, 19410, 21044, 28647, 29119, 32750
100 ....11277, 19410, 29119
101 ...11277, 12773, 19410, 29119, 32058, 32750, 32751
105 ....11277, 19410, 29119
130 ....11277, 19410, 29119
131 32470
146 23555
163 ....23989, 28011
166 33916
226 21044
314 ....13234, 27202, 30802
334 23174
341 ....27658—27666, 33663
355 ....19823, 21332
356 ....20434, 28555, 30534
500 21044
510 21044
511 21044
514 21044
601 ....13234, 19410, 27202, 30802
821 ....12376, 20656, 22971, 31754
880 27397
890 27397
1301 ....15037, 33465
1304 ....15037, 33465
1308 ....11447, 32937
1400-1499 (Ch. III) 31160

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

41 Authority citation revised....31447
41.11 (b)(1) revised....31448
41.12 Revised....31448
41.53 Revised....31449
41.54 Revised....31449
41.55 Revised....31450
41.56 Revised....31450
41.57 Revised....31450
43 Authrity citation revised....28980
43.12 (d) added....28980
43.13 Revised....28981
43.14 Revised....28981
43.15 Revised....28982
43.17 Revised....28982
121 Revised....15230
121.1 Amended; interim....32148
172 Added....32896

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

Page

Chapter II—Agency For International Development, International Development Cooperation Agency (Parts 200—299)

211 Revised 19766

Chapter XI—International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

1101 Revised 24945

Title 22—*Proposed Rules:*

43 15266
120 ..... 19666, 27715
121 ..... 12774, 14671
122 ..... 19666, 27715
123 ..... 19666, 27715
124 ..... 19666, 27715
125 ..... 19666, 27715
126 ..... 19666, 27715
127 ..... 19666, 27715
130 ..... 19666, 27715
172 20656
172 Added 32896
1101 14674

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

771.135 (n)(i), (ii) and (iii) redesignated as (n)(1), (2) and (3) 12411

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1313 Revised; interim 29011

Title 23—*Proposed Rules:*

1-999 (Ch. I) 17868, 21915, 23460
1 21362
12 21362
17 21362
140 ..... 21362, 31467
470 21362
490 21362

Page

642 21362
650 ..... 21362, 29689
655 21362
661 21362
666 21362
750 ..... 19823, 21152, 31470
770 21362
920 21362
922 21362

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

0 Authority citation revised 28783
0.735-101 Revised 28783
0.735-102 Revised 28783
0.735-104 Revised 28783
20 Authority citation revised 20201
20.3 (a) revised 20201
20.10 Amended 20201
25 Revised 31051
Regulation on 57 FR 31051 effective date corrected 31754
44 Heading and authority citation revised 33254
44.3 (c) amended 33254
44.6 (a) revised; (b) amended 33254
45 Added 33254
50 Authority citation revised 12036, 32110
50.3 (i) added; interim 32110
50.17 (i) redesignated as (j); new (i) added; interim 32110
50.19 Added; interim 32110
50.20 (n) revised; interim 12036
(o) revised; interim 32110
70 Added; interim 14756
85 Authority citation revised 33255
85.26 (b)(1) and (2) amended 33255
0—99 (Subtitle A) Appendix A amended; interim 14758

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

103 Authority citation revised 18398

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

TITLE 24 Chapter I—Con. Page

103.400 (a)(1) and (2)(ii) revised....18398

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200 Authority citation revised....27927
200.926d OMB number....27927
201 High-cost limits....12715
201.55 (a)(1) revised....30395
202 Authority citation revised....31056
202.8 (a) introductory text, (b)(1), (c) and (d) revised....31056
Regulation at 57 FR 31056 effective date corrected....31754
203 High-cost limits....12715
Authority citation revised...15211, 27927
203.18 (c) revised....15211
203.52 OMB number....27927
203.259 (a) revised....15211
203.270 (c) revised....15211
203.284 Undesignated center heading and section revised....15211
203.550 OMB number....27927
204 Authority citation revised....15212
204.260 Revised....15212
204.270—204.275 Undesignated center heading revised....15212
204.271 (a) revised....15212
204.276 Undesignated center heading and section revised....15213
207 Authority citation revised....33255, 33849
207.19 (f)(6) added....33255
207.24a Added....33849
213 Authority citation revised....33255
213.30 (h) redesignated as (i); new (h) added....33255
213.41 Added....33850
215 Authority citation revised....33850
215.16 Added....33850
219 Authority citation revised....12036
Revised....32405

Page

219.325 (b) introductory text and (3) introductory text revised; (b)(5) added; interim....12036
220 Authority citation revised....33850
220.506a Added....33850
221 Authority citation revised....12036, 33255, 33850
221.524 (e) revised; interim....12036
221.530 (f) added....33255
221.538 (b)(2) revised; interim....14758
221.545a Added....33850
231 Authority citation revised....33850
231.8 (b)(2) revised; interim....14758
231.15 Added....33850
232 Authority citation revised....33255, 33850
232.45 (c) added....33255
232.70 Revised; interim....14758
232.73 Revised; interim....14758
232.591 Added....33850
234 High-cost limits....12715
Authority citation revised...27927, 33850
234.64 OMB number....27927
234.521 Added....33851
236 Authority citation revised....12036
236.55 (b) revised; interim....12036
236.60 Revised; interim....12036
236.85 Added....33851
236.901 (Subpart E) Revised....33256
241 Authority citation revised....12036
241.166 Added; interim....12036
241.251 (a) heading and (c) added; interim....12037
241.1000—241.1120 (Subpart E) Revised; interim....12037
241.1200—241.1250 (Subpart F) Revised; interim....12040
242 Authority citation revised....33256
242.67 (b) revised; interim....14758
242.79 Existing text designated as (a); (b) added....33256
242.87a Added....33851
248 Authority citation revised....12041
248.1—248.7 (Subpart A); interim....12041
248.101—248.183 (Subpart B) Added; interim....12042

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

Page

248.201—248.261 (Subpart B) Redesignated as subpart C; interim....12041
Heading revised; interim....12060
248.213 (b)(9) redesignated as (b)(10); new (b)(9) added; interim....12060
248.221 (c) and (d) added; interim....12060
248.233 (f) added; interim....12060
248.234 (c) redesignated as (d); new (c) added; interim....12060
248.235 Removed; interim....12060
248.300—248.319 (Subpart D) Added; interim....12060
277.12 Added....33256
280 Authority citation revised....33256
280.207 (h) amended....33256

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

570 Authority citation revised....27119
570.200 (f)(1)(ii) revised; interim....27119
570.201 (e) revised; (n) added; interim....27119
570.496 (c) revised; interim....14759
570.500 (a)(1)(v) revised; (c) amended; (a)(3) added; interim....27120
570.501 (b) amended; interim....27120
570.502 (b) introductory text and (4) revised....33256
570.503 (b)(8) introductory text amended; (b)(8)(ii) revised; interim....27120
570.603 Revised; interim....14759
570.610 Amended....33256
570.611 (b) revised; interim....27120
571 Revised; interim....11837
571.301 (a)(1) correctly revised; interim....20970
574 Added; interim....32111
575 Authority citation revised....33256
575.59 (h) amended....33256
576 Authority citation revised....33256
576.51 (b)(2)(i)corrected....11430
576.79 (i) amended....33256
577 Authority citation revised....33256
577.335 (g) amended....33256
578 Authority citation revised....33256
578.335 (g) amended....33256
579 Authority citation revised....33256
579.325 (g) amended....33256

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public adn Indian Housing Programs) (Parts 700—799)

750.3 Regulation at 56 FR 27111 corrected....11263
750.5 Regulation at 56 FR 27111 corrected....11263

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

880 Authority citation revised....33256, 33851
880.207 (g) added....33851
880.210 (d) revised; interim....14759
880.211 Existing text designated as (a); (b) added....33256
881 Authority citation revised....33257, 33851
881.207 (g) added....33851
881.210 (d) revised; interim....14759
881.211 Existing text designated as (a); (b) added....33257
882 Authority citation revised....33851
882.109 (r) added....33851
882.407 (c)(6) revised; interim....14759
882.713 (c)(7) revised; interim....14759
882.804 (c)(1) revised; interim....14760
883 Authority citation revised....33257, 33851
883.310 (c) added....33851

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

TITLE 24 Chapter VIII—Con. Page

883.312 (d) revised; interim.....14760
883.313 Existing text designated as (a); (b) added.....33257
884 Authority citation revised.....33257, 33852
884.110 (d) added.....33852
884.113 (d) revised; interim.....14760
884.124 Existing text designated as (a); (b) added.....33257
884.207 (b)(5) revised; interim.....14760
885 Authority citation revised.....33257, 33852
885.10 Added.....33257
885.429 Added.....33852
885.717 (d) added.....33852
885.740 (d)(1)(i) and (ii) revised; interim.....14760
886 Authority citation revised.....33257, 33852
886.113 (m) redesignated as (n); new (m) added.....33852
886.131 Existing text designated as (a); (b) added.....33257
886.307 (p) added.....33852
886.313 (c)(2) revised; interim.....14760
886.336 Existing text designated as (a); (b) added.....33257
887 Authority citation revised.....33852
887.251 (m) added.....33852
889 Authority citation revised.....33853
889.265 (d) revised; interim.....14760
(g) added.....33853
890 Authority citation revised.....33853
890.260 (d)(1) and (2) revised; interim.....14761
(h) added.....33853

Chapter IX—Office of Assistant for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

901 Regulation at 57 FR 2188 comment time extended.....23953
905 Revised.....28250
Authority citation revised.....33853
905.120 (c)(1) and (2) revised; interim.....14761
905.346 Added.....33853
905.602 (d) added.....28785
905.627 (b) revised.....28785
905.639 (c) correctly revised.....15014
905.1001—905.1021 (Subpart O) Regulation at 56 FR 47860 effective date extended through 1-20-93.....31962
906 Regulation at 56 FR 47866 effective date extended through 1-20-93.....31962
941.208 (d) revised; interim.....14761
961.40 (a)(2) introductory text revised; (a)(2)(iii) added; interim.....14761
963 Added.....20189
965 Authority citation revised.....33853
965.101 (d) amended.....28358
965.302 Revised.....28358
965.401 Amended.....28358
965.471 Revised.....28358
965.472 Amended.....28358
965.701 Revised.....28358
965.800—965.805 (Subpart I) Added.....33853
968.102 (d) added.....28785
968.110 (e)(1), (2) and (f) revised; interim.....14761
968.225 (b) revised.....28785

Title 24—*Proposed Rules:*

50 13592
55 13592
200 13592
203 .....13592, 24424
204 .....13592, 24424
812 12686
882 12686
887 12686
888 18684
905 27716
912 12686
990 .....11448, 27716

TITLE 25—INDIANS

Chapter III—National Indian Gaming Commission (Parts 500—599)

502 Added.....12392
Effective date corrected.....20145

Chapter IV—Office of Navajo and Hopi Indian Relocation (Parts 700—799)

700.709 (d) revised.....24363

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

Page

Title 25—*Proposed Rules:*

515 ..... 30346, 30353
519 30346
522 30346
523 30346
524 30346
556 30346
558 30346
571 30584
575 30584
577 30584

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—702)

1 Authority citation amended...10994, 12210, 12419, 13022, 14795, 15241, 19255, 20748, 20977, 22649, 24749
Technical correction...21152, 21855, 21894, 31754
1.42-4 Added..... 24749
1.58-9 Added..... 19255
(c)(3)(iii)(A)(3)(iii), (d) *Example* 1, *Example* 2 and (e)(2)(i) corrected..... 24848
1.58-9T Removed..... 19262
1.61-3 (a) amended..... 12419
1.79-3 (d)(2) revised..... 33635
1.79-3T Removed..... 33635
1.103-13 (f) removed..... 20977
1.103-14 (e) removed..... 20977
1.103-15 (c) revised..... 20977
1.103-18 (a), (c)(2)(B), (d), (f)(2)(i), (ii), (g)(3)(ii) and (3)(iv) corrected; (k)(2)(i) correctly designated..... 13027
(l)(2)(i) corrected; (l)(3) correctly added..... 13028
(c)(1)(iii) corrected..... 26891
(c)(2)(ii)(B) corrected..... 28611
1.148-0 Added..... 20977
1.148-0T Removed..... 20977
1.148-1 Added..... 20982
1.148-1T Removed..... 20977
1.148-2 Added..... 20984
1.148-2T Removed..... 20977
1.148-3 Added..... 20987
1.148-3T Removed..... 20977
1.148-4 Added..... 21005
1.148-4T Removed..... 20977
1.148-5 Added..... 21011

Page

1.148-5T Removed..... 20977
1.148-6 Added..... 21012
1.148-6T Removed..... 20977
1.148-7 Added..... 21020
1.148-7T Removed..... 20977
1.148-8 Added..... 21020
1.148-8T Removed..... 20977
1.148-9 Added..... 21024
1.148-9T Removed..... 20977
1.148-10 (c) through (i) added..... 21024
1.148-10T Removed..... 20977
1.148-11 Added..... 21025
1.148-12T Added..... 21030
1.148-13T Added..... 21031
1.149(d)-1 Added..... 21031
1.150-0 Added..... 21031
1.150-1 (g) corrected; (h)(1) correctly designated..... 13028
(a) through (e) revised..... 21031
1.263(a)-1 (b) amended..... 12419
1.263A-1T (a)(5)(i) revised..... 12419
1.355-2 (d)(3)(iv) amended..... 28463
1.382-2 (a)(3)(ii) *Example* 2 and *Example* 3 corrected..... 24188
1.382-2T (h)(4)(x)(J) added..... 12210
1.382-3 (e) and (o) added..... 12210
1.446-1 (c)(1)(ii) revised..... 12419
1.451-3 (a)(8) added..... 12420
1.461-0 Added..... 12420
1.461-1 (a)(2) and (3) revised..... 12420
1.461-2 Heading and (g) revised; (f) and (h) removed..... 12421
1.461-3T Redesignated as 1.461-7T..... 12421
1.461-4 Added..... 12421
1.461-5 Added..... 12427
1.461-6 Added..... 12428
1.461-7T Redesignated from 1.461-3T..... 12421
1.461(h)-4T Removed..... 12421
1.469-0 Added..... 20748
1.469-0T Removed..... 20748
1.469-1 Added..... 20750
(f)(4)(iii) *Example* 6 corrected..... 28612
1.469-1T (d)(2), (e)(2), (3)(iii), (vi)(D), (E), (4)(iv), (5), (f)(4), (g)(4)(ii)(C), and (h)(4) revised..... 20753
1.469-2 Added..... 20754
1.469-2T (c)(2)(iii), (iv), (6)(i), (ii), (iii), (iv) *Example* 1, *Example* 2, (d)(2)(ix), (5)(iii)(A), (6)(v)(E), (8),

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

TITLE 26 Chapter I—Con. Page

(e)(2)(ii), (iii), (3)(iii)(B), (f)(5)(i), (6), (9)(iii), (iv) and (10) revised 20758
1.469–3 Added 20758
1.469–3T (e) and (f) revised 20758
1.469–5 Added 20758
1.469–5T (f)(1), (h)(3), (j) and (k) *Example* 5 revised 20759
1.469–6T Removed 20759
1.469–7T Removed 20759
1.469–8T Removed 20759
1.469–9T Removed 20759
1.469–10T Removed 20759
1.469–11 Added 20759
1.469–11T Removed 20759
1.509(a)–3 (a)(3)(i) amended 33443
1.512(b)–1 (a) revised 33443
1.597–8T Added 14795
1.704–1 (b)(2)(ii)(*d*)(*6*) corrected; (b)(2)(iv)(*r*) amended 11430
1.704–2 (f)(3), (h)(1), (4), (l)(1)(ii) and (m) *Example* 4 corrected 11430
(b)(4), (c), (e)(3), (f)(7) *Example* 1, *Example* 2 and (i)(4) corrected 28611
1.861–10 Added 13022
(e)(3)(ii), (iii)(A), (6) and (11) *Example* corrected 28012
1.871–2 (c) added 15241
1.871–9 Amended 15241
1.904–0 Revised 20642
1.904–4 (c)(8) removed; (c)(9) redesignated as (c)(8); (b)(1)(i), (2)(i), (iv), *Example*, (c)(1), (2)(ii), (7)(ii), (iii), new (c)(8), (e)(3)(i) and (iii) amended; (c)(4) introductory text, (5)(ii), (iii), (6)(ii), (e)(1) and (2)(i)(V) revised; (c)(5)(iv) added; (e)(3)(iii)(A) designation removed; (e)(3)(iii)(B) redesignated as (e)(3)(iv) 20644
(h)(3)(iv) and (v) redesignated as (h)(4) and (5), new (h)(5)(A), (B) and (C) redesignated as (h)(5)(i), (ii) and (iii); (e)(3)(iv), (f), (g)(1), (2)(ii)(A), (iv), new (h)(5)(i) and (ii) amended; (e)(5)(i), (ii), (g)(3)(i), (h)(3)(iv), (5)(iii) *Example* 2, *Example* 4 and (l) added; (h)(2), (3) introductory text, (i), (ii), (iii), new (h)(4) introductory text, *Example* 1, *Example* 2, *Example* 3, (5)(iii) introductory text, *Example* 1 and (k) revised 20645
1.904–5 (a) introductory text, (3), (b), (c)(1)(i), (ii), (2)(iii)(A) and (2)(iv) amended; (c)(2)(i), (ii) introductory text, (ii)(B), (D) and (E) revised 20648
(c)(3), (4)(ii), (d)(2), (3), *Example* 1, *Example* 2, (e)(1), (f)(1), (2), (i)(1), (l), (m)(2) and (3) *Example* 4 amended; (c)(4)(iii) *Example* 1, (d)(1), (f)(3), (g), (h)(3), (i)(3), (j), (k)(1) and (m)(7) revised; (f)(2) redesignated in part as (f)(2)(i) and amended; (f)(2)(ii) and (i)(4) added 20649
1.904–6 Heading, (a) heading, (2) and (b)(2)(i) revised; (a)(1)(ii), (b)(1) and (c) amended; (a)(1)(iv) added 20652
1.904–7 (a) revised; (c) and (d) amended 20653
1.904(b)–3 (f) amended 15241
1.953–2 (d) amended 15241
1.1291–0T Revised (temporary) 10994
1.1291–9T Added (temporary) 10994
(e) corrected 28463
1.1291–10T (b)(2), (d)(2)(vii) and (e) revised; (b)(4) and (f) added (temporary) 10996
(b)(2)(ii) corrected 28463
1.1295–1T Removed (temporary) 10996
1.1303–1 (b) amended 15241
1.1361–0—1.1375–1A Undesignated center heading added 22649
1.1361–0 Redesignated from 1.1360–0A; nomenclature change 22649
1.1361–0A Redesignated as 1.1360–0 22649
1.1361–1 Added 22649
(b)(1), (6), (l)(4)(v) *Example* 2 and (l)(7) corrected 28613
1.1374–1 Redesignated from 1.1374–1A; (b)(2) and (d)(2) amended 22653

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

Page

1.1374-1A Redesignated as 1.1374-1 22653
1.1375-1 Redesignated from 1.1375-1A; (b)(1)(ii) and (c)(2) concluding text amended 22653
1.1375-1A Redesignated as 1.1375-1 22653
1.1441-5 (d) amended 15241
1.1501-13T (o)(1)(i) corrected 21152
1.6013-6 (a)(2)(ii) amended 15241
25.2701-1 (b)(2)(i)(C) introductory text, (*2*), (ii) introductory text, (E), (c)(3) and (4) corrected 11264
25.2701-3 (b)(1) and (2) correctly added; (b)(3), (4)(ii)(A), (iv), (5)(i), (d) *Example* 1, *Example* 2, *Example* 4 and *Example* 5 corrected 11265
25.2702-5 (c)(8)(ii)(C)(*2*)(*i*) and (*ii*) correctly added; (c)(8)(ii)(*3*) corrected; (c)(8)(ii)(*2*)(*iii*) removed 11265
25.2704-2 (b) corrected 11265
25.2704-3 Corrected 11265
31 Authority citation amended 13031, 15241
31.3121(b)(19)-1 (a)(1) amended 15241
31.3306(c)(18)-1 (a)(1) amended 15241
31.3402(f)(1)-1 OMB number 15241
31.3406-0 Added 13031
31.3406(d)-5 Added 13031
35a Authority citation amended 13055
35a.3406-1 Removed 13035
43.0-1 Redesignated from 43.0-1T; heading amended 33636
43.0-1T Redesignated as 43.0-1 33636
43.4471-1 Redesignated from 43.4471-1T; heading amended 33636
43.4471-1T Redesignated as 43.4471-1 33636
43.4472-1 Added 33636
48 Authority citation amended 32428
48.4081-0 Added 32429
48.4081-1 Added 32429
48.4081-2 Added 32430
48.4081-3 Added 32431
48.4081-4 Added 32432
48.4081-5 Added 32433

Page

48.4081-6 Added 32433
48.4081-7 Added 32436
48.4081-8 Added 32437
48.4081-9 Added 32437
48.4082-1 Removed 32428
48.4083-1 Removed 32428
48.4083-2 Removed 32428
48.4084 Removed 32428
48.4084-1 Removed 32429
48.9000-0 Removed 32429
53 Authority citation revised 33444
53.4940-1 (d)(1) amended 33444
301 Authority citation amended 15017, 15241
Technical correction 21855, 22167
301.6402-6 Added 13038
301.6501(c)-1 (e)(3) corrected 11265
301.6724-1 (f)(1)(ii), (3), (g) and (h)(2)(i) amended; (f)(2) revised 13035
301.7514-1 (a)(2)(ii) and (5)(ii) amended; (a)(2)(iii) through (vi) and (7) added; (a)(3) and (6) revised 15015
301.7624-1 Redesignated from 301.7624-1T; heading amended 15017
301.7624-1T Redesignated as 301.7624-1 15017
301.7701-10 Amended 15241
301.7701(b)-0 Added 15241
301.7701(b)-1 Added 15242
(e) *Example* 3 corrected 28612
301.7701(b)-2 Added 15244
(f)(3) corrected 28612
301.7701(b)-3 Added 15245
(b)(6) corrected 28612
301.7701(b)-4 Added 15247
(d) *Example* 5 corrected 28612
301.7701(b)-5 Added 15250
301.7701(b)-6 Added 15250
(b) *Example* 1 corrected 28612
301.7701(b)-7 Added 15251
(e) *Example* 3 corrected 28612
301.7701(b)-8 Added 15252
(b)(2) introductory text corrected 28612
301.7701(b)-9 Added 15253
601.501 (a) and (b)(4) amended 27356
601.502 Introductory text, (i), (ii), (a) and (b) redesignated as (a) introductory text, (1),

CHANGES APRIL 1, 1992 THROUGH JULY 31, 1992

TITLE 26 Chapter I—Con. Page

(2), (b) and (c); (a)(2) and (c)(4) amended....27356
601.503 (b)(1) amended....27356
601.504 (b)(2)(i) amended....27356
601.505 (b)(2)(ii) and (iii) amended....27356
602 Technical correction...21152, 21894
602.101 (c) table amended (OMB numbers)...10996, 11266, 12211, 13035, 15253, 19262, 21032, 32438
(c) table corrected (OMB numbers)....27511

Title 26—*Proposed Rules:*

1—799 (Ch. I)....11277
1 ...11024, 12244, 13066, 13676, 13680, 14369, 14371, 14803, 14804, 15038, 19556, 20660, 20802, 20805, 21044, 21152, 23176, 23356, 24426, 27401, 27716, 28470, 28907, 29246, 29851, 30451, 31344, 33467, 33663
31 ....21045—21051
40 13067
49 ....13067, 33918
301 ...14804, 15272, 19828, 19831, 20805, 22189, 22194, 23356, 28470, 29248, 32472, 32473
602 11024

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

4.35 (e) added....33114
4.35a Added....33114
5.22 (i) revised; eff. 7-30-92....29020
5.47a (a) revised....31128
9.139 Added....20764
9.141 Added....20761
19.988 Revised....32178
47 Authority citation revised....29787
47.43 (a) revised....29787
47.52 (a) and (c) revised....24189
179 Authority citation revised....29787
179.111 (a) amended....29787

Title 27—*Proposed Rules:*

4 ....19267, 23357, 27401, 29456, 33139
9 ....14681, 23559, 27401, 33139
20 ....27956, 29763
24 ....23357, 33467

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

Page

0.1 Amended 32439
0.26 (Subpart O) Revised 32438
0.157 Added 31314
0.160—0.172 (Subpart Y) Appendix amended 30396
20 Authority citation revised 31318
20.32 (a) and (b) amended 31318
44.301 Regulation at 56 FR 40249 corrected 30397

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

5.5 (a)(4)(iv) removed 28776
20 Authority citation revised; nomenclature change 31450

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

506 Regulations at 56 FR 24654, 56 FR 24667, 57 FR 183 and 57 FR 10989 effective date extended through 7-10-92 29204
507 Regulations at 56 FR 24648, 57 FR 182, 57 FR 10989 and 57 FR 29203 effective date extended through 09-08-92 30640

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1425 Authority citation revised 30399
1425.2 Revised 30399

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1919.1000 (a)(3) and table Z-1-A amended 29205
Table Z-3 amended 29206
1910.1030 (d)(2)(vii)(A), (B), (g)(1)(i)(D), (2)(vii)(A), (h)(1)(iii)(B), (3)(ii) and (i)(2) correctly added; (g)(1)(i)(B), (C), (ii)(A) and (B) corrected 29206
1910.1450 Appendix B amended 29204
1910.1500 Amended 29204

Chapter XXVI—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2610 Appendixes A and B amended 31319
2619 Appendix B amended 31320
2622 Appendix A amended 31319
Appendix B amended 31320
2644 Appendix A amended 31321
2676.15 (c) table amended 31322

Title 29—*Proposed Rules:*

42 32939
470 33403

TITLE 30—MINERAL RESOURCES

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

861.101 Suspended 33875
921.2 (c) revised 33124
921.4 (b) revised 33124
924.14 (b), (d), (e) and (f) revised; (c) and (g) added 33124
925.12 Removed 33123
925.15 (ddd) added 33123
925.16 (c) removed 33123
934.20 Revised 33116
934.25 Revised 33116
946.15 (ff) added 29792
950.15 (m) added 30131
950.16 (o), (p) and (q) added 30131

Title 30—*Proposed Rules:*

48 29853
75 29853
77 29853
202 31471
902 33664
914 ..... 31161, 31162, 33665
935 ..... 31163, 33139

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

TITLE 30—Con. Page
938 ..... 33666, 33668

TITLE 31—MONEY AND FINANCE: TREASURY

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

550 Appendix A revised 29425
Appendix B revised 29427

Title 31—*Proposed Rules:*

357 33470

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (1—399)

165a Added; interim 29620
169a Authority citation and footnote 1 revised; footnote 8 removed; footnotes 5 through 7 redesignated as footnotes 6 through 8 29207
169a.2 Revised 29207
169a.3 Amended 29207
169.4a Revised 29207
169a.8 (c) revised; heading and (a) amended 29208
169a.9 (a) introductory text, (1) introductory text and (i) revised; (a)(1)(ii), (iv), (2)(i)(A), (B) and (D) amended 29208
169a.10 Revised 29208
169a.11 Amended 29208
169a.13 Revised 29208
169a.15 (a), (b), (c)(3), (d)(1), (2)(ii)(A), (iii) and (4)(i)(E) revised; (d)(2)(i), (v), (3)(viii), (4)(i)(C), (F), (H), (ii)(A), (D)(2), (3) and (E) introductory text amended 29209
169a.16 (a) and (b) amended 29210
169a.17 (a), (d) and (g)(1) revised; (l) added 29210
169a.18 (b) revised 29210
169a.21 (a), (b) heading, (c) introductory text, (1), (2), (5), (6) and (7) amended; (c)(3) revised 29210
169a.22 Revised 29210
169a Appendixes A and B amended 29210
Appendix B amended 29211
Appendix C revised; Appendix D amended 29212
Appendix E removed 29218
290 Appendix B amended 30904
321.2 (c) revised 33124
321.4 (b) revised 33124
321.14 (b), (d), (e) and (f) revised; (c) and (g) added 33124
385 Revised 32178

Chapter V—Department of the Army (Parts 400—699)

505 Authority citation revised 33126
505.5 (d) revised; (e) amended 33126

Chapter VI—Department of the Navy (Parts 700—799)

706.2 Table Four amended 31451, 31452
Table Five amended 28463, 31452

Title 32—*Proposed Rules:*

165 29619
516 31852
701 33285

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

81 Appendix A amended 29219
95.055 Revised 33261
100 Temporary regulations list 30644
100.35T01-079 Added (temporary) 30642
100.35-T0913 Added (temporary) 30644
100.103 (b) revised (temporary) 30403
100.501 Implementation (temporary) 30643
100.502 Implementation (temporary) 33444
100.504 Implementation (temporary) 30643
100.511 Implementation (temporary) 33444
100.513 Implementation (temporary) 33445
117.261 (hh) revised 30647

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

Page

117.591 Revised 30405
117 Appendix A amended 30405
151.04 (c) revised 33261
161 Authority citation revised 31662
161.109 Added 31662
161.376 (a)(5) added 31663
165 Temporary regulations list 30644
165.111 Added 30407
165.T01-070 Added (temporary) 30651
165.T01-083 Added (temporary) 31323
165.T01-085 Added (temporary) 30650
165.T02013 Added (temporary) 31664
165.T05-12 Added (temporary) 31453
165.T551 Added (temporary) 33637
402.3 (b)(10) added 30905
402.9 (f) through (i) added 30905

Title 33—*Proposed Rules:*

100 30704
110 31471
117 ..... 30451, 30705, 33286
155 ..... 29354, 33287
165 31472
168 30058
334 32474

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

74 Authority citation revised; sectional authority citations amended 30335
74.3 Amended (effective date pending) 30335
74.47 Revised (effective date pending) 30335
74.73 Heading, (a) and (b) revised (effective date pending) 30335
74.74 (a), (c) and (d) revised (effective date pending) 30335
74.75 (a) revised; (b) redesignated as (c); new (b) added (OMB number pending) 30336

Page

74.76 (c) amended (effective date pending) 30336
74.91 Amended (effective date pending) 30336
74.93 Revised (effective date pending) 30336
74.94 Removed (effective date pending) 30336
74.96 Revised (effective date pending) 30336
74.144 Amended (effective date pending) 30336
74.171 Added (effective date pending) 30336
74.172 Removed (effective date pending) 30336
74.173 Removed (effective date pending) 30336
74.174 Removed (effective date pending) 30336
74.175 Revised (effective date pending) 30336
74 Appendixes D and E removed (effective date pending) 30336
75 Authority citation revised; sectional authority citations amended 30336
75.1 (b) amended; (effective date pending) 30336
75.3 Removed (effective date pending) 30336
75.4 (a) introductory text and (1) revised (effective date pending) 30336
75.60—75.62 Undesignated center heading added (effective date pending) 30337
75.60 Added (effective date pending) 30337
75.61 Added (effective date pending) 30337
75.62 Added (effective date pending) 30337
75.105 (c)(2)(i) and (3) revised (effective date pending) 30337
75.107 Removed (effective date pending) 30337
75.108 Removed (effective date pending) 30337
75.110 Removed (effective date pending) 30337
75.111 Removed (effective date pending) 30337

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

TITLE 34 Subtitle A—Con. Page

75.113 Removed (effective date pending)....30337
75.114 Removed (effective date pending)....30337
75.115 Removed (effective date pending)....30337
75.116 Removed (effective date pending)....30337
75.118 Note removed (effective date pending)....30337
75.130—75.134 Undesignated center heading removed (effective date pending)....30338
75.130 Removed (effective date pending)....30338
75.131 Removed (effective date pending)....30338
75.132 Removed (effective date pending)....30338
75.133 Removed (effective date pending)....30338
75.134 Removed (effective date pending)....30338
75.150—75.154 Undesignated center heading removed (effective date pending)....30338
75.150 Removed (effective date pending)....30338
75.151 Removed (effective date pending)....30338
75.152 Removed (effective date pending)....30338
75.153 Removed (effective date pending)....30338
75.154 Removed (effective date pending)....30338
75.155 Revised (effective date pending)....30338
75.160 Removed (effective date pending)....30338
75.200 Heading revised, (b)(4) and (5) added (effective date pending)....30338
75.216 Revised (effective date pending)....30338
75.218 Revised (effective date pending)....30338
75.233 Revised (effective date pending)....30338
75.234 Revised (effective date pending)....30338
75.235 (b) revised (effective date pending)....30338
75.253 (a)(2) revised; (d) redesignated as (e); new (d) added (effective date pending)....30338
75.261 Revised; (OMB number pending)....30338
75.262 Added (effective date pending)....30339
75.510 Removed (effective date pending)....30339
75.518 Removed (effective date pending)....30339
75.534 Introductory test and (a) revised (effective date pending)....30339
75.560 (a) revised (effective date pending)....30339
75.563 Revised (effective date pending)....30339
75.580—75.581 Undesignated center heading removed (effective date pending)....30339
75.580 (a) designation and (b) through (d) removed (effective date pending)....30339
75.581 Removed (effective date pending)....30339
75.590 (c) revised (effective date pending)....30339
75.608 Revised (effective date pending)....30339
75.616 Revised (effective date pending)....30339
75.617 Added (effective date pending)....30339
75.621 Amended; authority citation and cross-reference revised....30339
75.622 Revised (effective date pending)....30339
75.625—75.626 Cross-reference revised (effective date pending)....30339
75.625 Removed (effective date pending)....30339
75.626 (a) paragraph designation and (b) removed (effective date pending)....30339
75.681 Cross-reference amended (effective date pending)....30339
75.684 Removed (effective date pending)....30340
75.690 Removed (effective date pending)....30340
75.707 (h) table amended (effective date pending)....30340

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

Page

75.720 Revised (OMB number pending)....30340
75.740 Heading and authority citation revised; existing text designated as (a); (b) added (effective date pending)....30340
75.750—75.755 Undesignated center heading removed (effective date pending)....30340
75.750 Removed (effective date pending)....30340
75.751 Removed (effective date pending)....30340
75.752 Removed (effective date pending)....30340
75.753 Removed (effective date pending)....30340
75.754 Removed (effective date pending)....30340
75.755 Removed (effective date pending)....30340
76 Authority citation revised....30340
76.3 Removed (effective date pending)....30340
76.102 Revised (effective date pending)....30340
76.125 (a) amended; (c) and authority citation revised (effective date pending)....30341
76.136 Amended (effective date pending)....30341
76.305 Removed (effective date pending)....30341
76.401 (a) revised (effective date pending)....30341
76.560 Removed (effective date pending)....30341
76.580—76.581 Undesignated center heading removed....30341
76.580 (a) designation and (b) through (d) removed (effective date pending)....30341
76.581 Removed (effective date pending)....30341
76.591 Amended (effective date pending)....30341
76.600 Amended (effective date pending)....30341
76.681 Heading revised; cross reference added (effective date pending)....30341
76.684 Removed (effective date pending)....30341
76.690 Removed (effective date pending)....30341

Page

76.707 (h) table amended (effective date pending)....30341
76.720 Revised (OMB number pending)....30341
76.740 Heading and authority citation revised; existing text designated as (a); (b) added (effective date pending)....30342
76.770 Revised (effective date pending)....30342
76.771 Removed (effective date pending)....30342
76.772 Removed (effective date pending)....30342
76.780—76.783 Center heading removed (effective date pending)....30342
76.780 Removed (effective date pending)....30342
76.781 Removed (effective date pending)....30342
76.782 Removed (effective date pending)....30342
76.783 (b) amended (effective date pending)....30342
76.901 Revised (effective date pending)....30342
77.1 (c) amended (effective date pending)....30342

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

237 (a)(4) and (b) amended; (c) added (effective date pending)....30342
237.7 (a) revised (effective date pending)....30342
263 Authority citation revised....30342
263.2 (c) added (effective date pending)....30342
263.9 Added (effective date pending)....30342

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

TITLE 34

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

Page

300.670—300.672 Undesignated center heading added (effective date pending)..... 30342
300.670 Added (effective date pending)..... 30343
300.671 Added (effective date pending)..... 30343
300.672 Added (effective date pending)..... 30343
356 Authority citation revised..... 30343
356.2 (d) added (effective date pending)..... 30343
356.3 (b) and (c)(2) amended; (d) added (effective date pending)..... 30343

Chapter V—Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)

562 Authority citation revised..... 30343
562.2 (b)(1)(iii) and (2) amended; (b)(3) added (effective date pending)..... 30343
562.3 (c) added (effective date pending)..... 30343

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

630 Authority citation revised..... 30343
630.11 Introductory text amended (effective date pending)..... 30343
630.22 Added (effective date pending)..... 30343
630.23 Added (effective date pending)..... 30343
653.2 (c) added (effective date pending)..... 30343
563.3 (b) amended (effective date pending)..... 30343
654.2 (c) added (effective date pending)..... 30344

Page

654.4 (a) amended (effective date pending)..... 30344
674.1 (b)(1) revised (effective date pending)..... 32344
674.2 (b) amended (effective date pending)..... 32344
674.8 (a) introductory text and (3) revised (effective date pending)..... 32344
674.18 (b)(4) amended (effective date pending)..... 32345
674.19 (e)(2)(i) revised (effective date pending)..... 32345
674.31 (b)(2)(i)(B), (3) and (5)(iii)(A) revised (effective date pending)..... 32345
674.32 (a)(2)(ii) and authority citation revised (effective date pending)..... 32345
674.33 (a)(1) and (3)(iii) revised (effective date pending)..... 32345
674.34 (b)(1), (c)(3), (4), (5), (d)(3) introductory text, (4) introductory text, (iii) and (e)(2) revised (effective date pending)..... 32345
674.35 (b)(1), (c) introductory text, (3), (4) and (g) revised (effective date pending)..... 32345
674.36 (b)(1), (c)(3) and (d) revised (effective date pending)..... 32345
674.38 (a)(1) revised (effective date pending)..... 32346
674.42 (a)(2)(x) added; (b)(1)(i) revised (effective date pending)..... 32346
674.43 (a) introductory text and (b)(3) introductory text revised (effective date pending)..... 32346
674.45 (c)(1) introductory text, (i) and (ii)(B) revised; (c)(1)(iii) added (effective date pending)..... 32346
674.47 (a)(2) revised (effective date pending)..... 32346
674.49 (c)(1), (2), (3), (e)(4)(i), (f) introductory text, (2) introductory text, (ii)(A), (f)(3), (h)(1)(i) and (ii) revised (effective date pending)..... 32346
674.50 (a)(6) amended (effective date pending)..... 32347

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

Page

674.52 (d) revised (effective date pending)..... 32347
674.57 (a)(2) amended (effective date pending)..... 32347
674 Appendix A revised (effective date pending)..... 32347
Appendix B revised (effective date pending)..... 32349
Appendix C revised (effective date pending)..... 32351
Appendix D revised (effective date pending)..... 32354
675 Authority citation revised..... 32356
675.2 (b) amended..... 32356
675.16 (b)(1) and (3) amended (effective date pending)..... 32356
675.18 (a)(4) amended (effective date pending)..... 32356
675.22 (b)(6) amended (effective date pending)..... 32356
675.23 (b)(2)(ii) amended (effective date pending)..... 32356
675.26 (a)(1) introductory text, (ii) nd (2) revised (effective date pending)..... 32356
675.28 (a), (b)(2) and (c)(2)(ii) revised (effective date pending)..... 32356
675.34 (a)(2) revised (effective date pending)..... 32357
676.2 (b) amended (effective date pending)..... 32357
676.3 (b) amended (effective date pending)..... 32357
676.16 (f) amended (effective date pending)..... 32357
676.18 (a)(3) amended (effective date pending)..... 32357

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

762.2 (d) added (effective date pending)..... 30344
762.4 Existing text designated as (a); (b) added (effective date pending)..... 30344

Title 34—*Proposed Rules:*

366 30866
668 30826

TITLE 35—PANAMA CANAL

Page

Title 35—*Proposed Rules:*

133 32187

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

7.96 (l) redesignated as (m); new (l) added..... 29797

Chapter III—Corps of Engineers, Department of the Army (Parts 300—399)

327.30 Appendix C amended..... 29220

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1.12 (a) and (d) revised..... 29641
1.17 (i)(1) revised..... 29642, 32439
1.32 Removed..... 29642
1.46 Revised..... 29642
1.104 (e) revised..... 29642
1.331—1.335 Undesignated center heading revised..... 29642
1.331 Removed..... 29642
1.332 Removed..... 29642
1.333 Removed..... 29642
1.334 Removed..... 29642
2.185—2.187 Undesignated center heading removed..... 29642
2.185 Removed..... 29642
2.186 Removed..... 29642
2.187 Removed..... 29642
3 Added..... 29642

Title 37—*Proposed Rules:*

1 ..... 29248, 31344
10 29248

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

[EDITORIAL NOTE: The revision date for the 1992 edition of title 38 will be delayed until September 1, 1992. The 1992 revision will include amendments promulgated during the period of July 1, 1991 through September 1, 1992. For the convenience of the user, this LSA contains all amendments promulgated since the July 1, 1991 revision.]

Page

Chapter I—Department of Veterans Affairs (Parts 0—99)

0 Nomenclature change 31006
1 Nomenclature change 31006, 31007
Authority citation revised 33877
1.519 (e) amended 59218
1.554a Added 2229
1.964 (e) revised 33875
3 Nomenclature change ..... 31007—31012
3.1—3.1009 (Subpart A) Authority citation revised 65846, 65849, 65851, 65853
Authority citation revised 8268, 10425
3.2 (i) added 57986
3.3 (a)(3) amended 57986
3.7 (x) authority citation revised; (x)(20) and (21) added 65848
3.17 Amended 57986
3.30 Heading, introductory text, (a) heading, (b) heading, (c) heading and (d) heading revised; (e) redesignated as (f); new (e) added 10425
3.54 (a)(3)(viii) added; (a)(3) authority citation revised 57986
3.55 (b) through (e) and cross reference revised 10426
3.104 (a) amended 65846
Technical correction 2320
3.105 (a) amended 65846
Technical correction 2320
3.215 Revised 10426
3.216 Added 8268
Amended 27935
3.272 (k) introductory text amended 65847
3.309 (d)(3) and (4)(i) revised 10426
3.311a (d) removed; heading, (c) and authority citation revised 51653

Page

(c)(1) amended; (d) added; authority citation revised 52474
3.316 Added 33877
3.342 (c)(1) and (2) amended; (c)(3) added 65851
3.343 (d) removed 10426
3.400 (u)(3), (4), (v)(3), (4) and (w) revised 10426
3.454 (b)(1), (2), (c) and (d) amended 65850
(b)(3) added 65851
(b)(3) corrected 7847
3.500 (q) amended 65847
(w) added 8268
3.501 (i)(1) and (2) revised; (i)(3) and (4) redesignated as (i)(6) and (7); new (i)(3), (4) and (5) added 65849
(n) added 65853
3.551 (b) heading revised; (b) redesignated as (b)(1); (d), (f) and (g) redesignated as (f), (g) and (h); (b)(2), (3) and new (d) added; (e) and (h)(1) introductory text revised 65849
(c)(2), (4), (6) and (7) removed; (c)(3) and (5) redesignated as (c)(2) and (3); (a), (b)(1), (c) introductory text, (1), new (c)(2), (3), (h)(2) and (3) amended 65850
(h) correctly redesignated as (i) 8578
3.850—3.857 Undesignated center heading revised 65853
3.853 Added 65853
3.951 Existing text designated as (b); (a) and authority citation added 10426
3.1600—3.1612 (Subpart B) Authority citation revised 29025
3.1610 Revised 29025
3.1612 (b)(3), (c), (e)(1) and (2)(i) revised; (e)(2)(iii) and (3) redesignated as (e)(3) and (4) 65851
4 Technical correction 11352
Nomenclature change 31012
4.17 Introductory text amended; authority citation added 57985
4.73 Table amended 51653
4.84a Table revised 24364
4.88a Table amended 10136

NOTE: Boldface page numbers in title 38 indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

Page

4.104 Table amended....51653
4.124a Table amended; authority citation added....51653
Table revised....24364
6 Nomenclature change....31012
8 Authority citation revised....57492
Nomenclature change....31013, 31014
8.5 Amended; authority citation added....57492
9 Nomenclature change....31014
9.2 (a) and (b) amended....11910
9.3 (e) revised....11910
9.4 Revised....11910
9.24 (a)(1) and (2) amended....11910
10 Nomenclature change....31014
11 Nomenclature change....31014
12 Nomenclature change....31014
13 Authority citation revised....65853
Nomenclature change....31014
13.109 Heading, (d)(5) and authority citation revised....65853
14 Authority citation revised....4104, 33878
Nomenclature change....31015
14.628 Authority citation and (a)(2) introductory text revised....33878
14.634 Removed; new 14.634 redesignated from 14.636; amended; authority citation added....4104
14.635 Removed; new 14.635 redesignated from 14.637; amended....4104
14.636 Redesignated as 14.634....4104
14.637 Redesignated as 14.635....4104
16 Nomenclature change....31015
17 Nomenclature change....31015, 31018
17.100 Introductory text, (e), (h), (i) and (m) removed; (a) through (d), (f), (g), (j), (k) and (l) redesignated as (f) through (n); new (a) through (e) added; new (h), (k)(1) and (2) amended....52475
17.101 Redesignated as 17.102; new 17.101 added....52475
17.102 Redesignated as 17.103; new 17.102 redesignated from 17.101....52475
17.103 Redesignated from 17.102....52475
17.123 (b)(1)(i)(A) revised....4367
18 Nomenclature change....31018

Page

18a Nomenclature change....31018
18b Nomenclature change....31018
19 Revised....4104
20 Added....4109
20.102 (d) corrected....20055
21.1—21.430 (Subpart A) Nomenclature change....31019
21.1020—21.1045 (Subpart B) Nomenclature change....31021, 31022
21.3020—21.3333 (Subpart C) Nomenclature change....31022
21.3022 (g) and (h) revised; (i) added....29798
21.3045 (g) authority citation, (7) and (8) revised; (g)(9) added....29799
21.3046 (d)(4)(ii) revised....29799
21.3145 Undesignated center heading and section added....29799
21.3333 (a), (b) authority citation and (1) revised....29799
21.4001—21.4280 (Subpart D) Authority citation revised....29027, 29800
Nomenclature change....31022, 31025
21.4020 (a)(6), (7) and authority citation revised; (a)(8) added....29800
21.4022 (a)(7) through (9) and authority citation revised....29800
21.4135 (g) revised....29800
(s) revised; eff. 8-1-93....24367
21.4136 (e) introductory text revised; (e) authority citation added....29800
21.4137 (a) revised....29800
21.4138 (e) revised; eff. 8-1-93....24367
21.4154 (b)(3) corrected....28087
(b)(3) revised....28087
21.4200 (g)(1), (2) and authority citation revised....29800
21.4201 (e)(3)(ii)(B) and (C) revised; (e)(3)(ii)(D), (E) and (e) authority citation added....29800
21.4203 (h) introductory text and (2) revised....29801
21.4204 (a) revised; OMB number; eff. 8-1-93....24367
21.4205 Introductory text, (a), (b) introductory text and (c)(1)(i) through (iv) revised; (c)(1) authority citation added....29801

NOTE: Boldface page numbers in title 28 indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

TITLE 38 Chapter I—Con. Page

21.4234 (d)(4) revised....29027
21.4251 (a)(6)(iii) revised....29801
21.4263 (c) removed; (d) through (l) redesignated as (c) through (k); heading, (a), (b), new (c) introductory text, (d)(3), (d) authority citation, (e), (f), (g)(3)(vi)(A) through (F), (g) authority citation, (h), (i) introductory text, (3), (4) and (j) revised; new (i)(5) removed....29801
21.4270 (a) footnote 1 and authority citation, (b) heading, (1)(ii), (2) through (5) and authority citation revised; (b)(6) and (7) added....29804
21.4277 Heading revised; (c) added....29804
21.4278 (a) revised....29804
21.4300—21.4307 (Subpart E) Nomenclature change....31025
21.4500—21.4507 (Subpart F) Nomenclature change....31025, 31026
21.4600—21.4646 (Subpart F-1) Nomenclature change....31026
21.4700—21.4705 (Subpart F-2) Added; interim....14489
21.5001—21.5300 (Subpart G) Nomenclature change....31026, 31029
21.5701—21.5901 (Subpart H) Nomenclature change....31027
21.5820 (b) introductory text, (b)(1)(ii)(A), (B), (C), (2)(ii)(A), (B) and (C) amended....44008
21.5822 (b)(1)(i), (ii), (2)(i) and (ii) amended....44008
21.6001—21.6420 (Subpart I) Nomenclature change....31027, 31028
21.6005 (j) correctly designated....28086
21.6501—21.5423 (Subpart J) Nomenclature change....31028
21.7000—21.7310 (Subpart K) Authority citation revised....29027
Nomenclature change....31028—31030
21.7020 (b)(25)(i)(E), (F) and (26)(ii) revised; (b)(25)(i)(G) added....15023
21.7042 (a)(3), (b)(2) and (e)(2)(iii) revised....15023
(a)(4), (a) authority citation, (c)(4) and (c) authority citation revised....29026

Page

21.7044 (a)(5) and (a) authority citation revised....29026
21.7050 (a) and (b) revised....15024
21.7076 (b)(1) corrected....31332
(a) and (b)(1) introductory text revised; (b)(9) added....15024
21.7114 Revised....29027
21.7120 (c) revised....15024
21.7135 (e)(5) added; (l) and (q) revised....15024
21.7136 (a), (b)(1), (2) and (3) introductory text revised; interim....11911
21.7137 (a) and (c)(2) revised; interim....11911
21.7138 Corrected....31332
21.7139 (a) introductory text revised....15025
21.7140 (d) correctly designated as (f)....31332
(c)(1)(iii) revised....15025
21.7142 (a)(5) and (6) revised; (a)(7) added; (a) authority citation revised....15025
21.7145 Heading, (a), (d) and (f) revised....15025
21.7153 (c) revised; (d) added....15025
21.7154 (b)(1)(ii) revised; (b)(1)(iii) added....15026
(a)(2)(ii), (iii) and authority citation revised; eff. 7-9-92....24368
21.7156 (a)(2) revised....15026
21.7172 (a)(1) and (2) revised; (a) authority citation added....15026
21.7220 (c) added....15026
21.7222 (b) revised....15026
21.7280 (b)(3)(ii) revised....15026
21.7500—21.7810 (Subpart L) Nomenclature change....31030, 31031
36 Nomenclature change....31031, 31032
36.4212 Nomenclature change; (a)(1), (2) and (3) amended....29900, 40792, 48736, 67196
Nomenclature change; (a)(1), (2) and (3) amended....7656, 31324
36.4225 Added....40559
(d) and (e) added....828
36.4226 Added....40560
36.4311 Nomenclature change; (a), (b) and (c) amended....29900, 40792, 48736, 67196
Nomenclature change; (a), (b), and (c) amended....7656, 31324
36.4348 Added....40561

NOTE: Boldface page numbers in title 38 indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

Page

(d) and (e) added 829
36.4349 Added 40562
36.4503 (a) amended ... 29900, 40793, 48736, 67197
(a) amended 7656, 31324
39 Nomenclature change 31032
41 Nomenclature change 31032
43 Nomenclature change 31033
44 Nomenclature change 31033
45 Nomenclature change 31033
46 Added 55462

Title 38—*Proposed Rules:*

1 ..... 1440, 3035, 3975, 15046
3 ..... 30893, 40661
... 1442, 1699, 2236, 10449, 10853, 24446, 29052, 30707
4 ..... 37053, 61216, 65874
..... 10450
13 40661
14 8852
17 33471
19 4131
20 4131
21 ... 46140, 49735, 51663, 51861, 60078, 33473, 33474
..... 865, 9081, 15047, 24447, 26632, 33473, 33474
36 13068

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

20 IMM amended; incorporation by reference 30654
111 DMM amended; incorporation by reference 30780, 32899
233.7 (j)(2) and (4) revised 32726
601.105 Table amended 31129

Title 39—*Proposed Rules:*

111 ..... 32188, 32475
3001 31346

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

51 Authority citation revised 32334
51.165 (a)(1)(xii)(D) revised; (a)(1)(v)(C)(*8*), (*9*), (xii)(E) and (xx) through (xxv added 32334
51.166 (b)(21)(iv) revised; (b)(2)(iii)(*h*) through (*k*), (21)(v) and (30) through (37) added 32335
52 Authority citation revised 32336
52.21 (b)(21)(iv) revised; (b)(2)(iii)(*h*) through (*k*), (21)(v) and (31) through (38) added 32336
52.24 (f)(13)(iv) revised; (f)(5)(iii)(*h*), (*i*), (13)(v) and (19) through (24) added 32337
60 Authority delegation notices 29649
Authority citation revised 32338
60.2 Amended 32338
60.14 (h) through (l) added 32339
60.17 (a)(31) amended; (a)(62) added 30656
60 Appendix A amended 30656
61 Authority delegation notices 29649
261.4 (b)(15) correctly revised 29220
70 Added 32295
82 Authority citation revised 31260
82.1—82.20 Designated as subpart A 31261
82.1—82.13 Designated as Subpart A and revised 33787
82.14 Removed 33787
82.20 Removed 33787
82.1—82.20 (Subpart A) Appendixes A through E redesignated from appendixes A through E to part 82 31261
82.30—82.42 (Subpart B) Added 31261
82 Appendixes A through C and E redesignated as Appendixes A through C and E to Subpart A and revised; Appendix D redesignated as Appendix D to Subpart A 33787
86 Authority citation revised 30055
86.091-28 (e) added 31897
86.094-2 Amended 31897
86.094-7 (h) revised; OMB number 31897
86.094-8 (b) through (h) revised; (k) added 31898
86.094-9 (k) added 31899
86.094-16 Added 31900

NOTE: Boldface page numbers in title 38 indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

TITLE 40 Chapter I—Con. Page

86.094-21 (a) through (b)(1) and (b)(5)(i)(C) through (b)(7) revised; (g) added..... 31900
86.094-22 Added..... 31902
86.094-24 Added..... 31903
86.094-35 (a) introductory text through (a)(1)(iii)(E), (a)(2)(iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b), (d)(2) through (h) revised; (a)(1)(iii)(k) added..... 31907
86.095-24 (a) through (b)(1)(iv), (b)(2) through (h) revised; (b)(1)(xi) added..... 31909
86.095-35 (a) introductory text through (a)(1)(iii)(E), (a)(2)(iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b) and (d)(2) through (h) revised; (a)(1)(iii)(L) and (a)(2)(iii)(K) added..... 31913
86.096-8 (b) through (h) revised; (k) added..... 31915
86.097-7 (k) added..... 31916
86.201-94—86.246-94 (Subpart C) Added..... 31916
86.608-90 (a) introductory text and (1) revised; (a)(3) added..... 31921
86.701-94 Revised..... 31922
86.708-94 (b) revised..... 31922
86.709-94 (b) revised..... 31922
86.709-99 (b) revised..... 31922
86.901-93—86.911-93 (Subpart J) Added..... 30055
86.1005-90 (a)(1)(ii) amended; (a)(1)(iii) and (a)(2)(vi)(c) revised..... 31922
86.1008-90 (a)(2) revised; (a)(5) added..... 31922
86.1009-84 (a) and (c)(1) revised..... 31923
86.1015 Correctly designated..... 30657
122.44 (d)(1)(vi)(B) revised..... 33049
123.46 (a) revised..... 33049
124.78 Correctly designated..... 30657
130.7 (d)(1) redesignated in part as (d)(2); (b) revised; (c)(1) introductory text, (ii), (2), (d) introductory text, (1), (2) and (e) amended..... 33049
130.8 (b)(5) added..... 33050
130.10 (b)(2) and (d)(3) revised..... 33050
141.2 Amended..... 31838
141.6 (h) added..... 31838
141.12 Table amended..... 31838
141.23 (k)(4) and (5) redesignated as (k)(5) and (6); (a)(4) introductory text, (a)(4)(i) introductory text, Table, (c) introductory text, (1), (i)(1), new (k)(5) and (6) revised; (a)(4)(iii) and new (k)(4) added..... 31838
141.24 (f) introductory text, (4), (5), (7), (10), (11), introductory text, (12), (14) introductory text, (15) introductory text, (16) introductory text, (17), (18), (h)(10), (12)(ii), (iii), (iv), (vi), (vii), (viii), (18) and (19)(i)(B) revised; (h)(12)(ix) through (xiv) added..... 31841
141.32 (e)(53) through (75) added..... 31843
141.40 (e) through (h), (n)(11) and (12) revised; eff. 1-17-94..... 31845
141.50 (a)(19) through (23) added; (b) table amended; effective in part 8-17-92 and 1-17-94..... 31846
141.51 (b) table amended; eff. 1-17-94..... 31846
141.60 (a)(3) and (b)(3) added..... 31846
141.61 (a)(19), (20), (21) and (c)(19) through (33) added; (b) and (c) introductory text revised; effective in part 8-17-92 and 1-17-94..... 31846
141.62 (b) introductory text and (c) revised; (b)(11) through (b)(15) added; eff. 1-17-94..... 31847
141.89 (a) table amended..... 31847
142.16 (e) introductory text and (2) revised; eff. 1-17-94..... 31847
142.62 (a) and (b) revised; eff. 1-17-94..... 31848
147.2650 Revised..... 33446
147.2651 Revised..... 33447
148.1 (d) revised..... 31963

CHANGES JULY 1, 1992 THROUGH JULY 31, 1992

Page

164.2 (k) through (r) correctly redesignated as (l) through (s)..... 30657
180.298 (c) table amended..... 31325
180.333 Removed..... 30132
180.415 (a) table revised..... 31454
180.438 (a) table amended..... 32440
185.1310 (b) added..... 32441
261.4 (b)(15) correctly revised ... 29220
(b)(6)(ii) introductory text and (9) revised..... 30658
265.301 (d)(1) revised..... 30658
271 State hazardous waste management program authorizations...29446, 30905, 32726, 33638
712.30 Regulation at 57 FR 29034 effective date corrected..... 30771
716.120 Regulation at 57 FR 29034 effective date corrected..... 30771
721.805 Added..... 31330
721.1120 Added..... 31330
721.3120 Added..... 31968
721.3180 Added..... 32446
721.3340 Added..... 31968
721.4000 Added..... 31968
721.5250 Added..... 31968
721.5525 Added..... 31969
721.6060 Added..... 31969
721.6820 Added..... 31969
721.7240 Added..... 31969
721.9570 Added..... 31970

Title 40—*Proposed Rules:*

1-799 (Ch. I) 30708, 31473
25 31164

Page

40 31058
51 ..... 33287, 33314
52 ..... 31477, 31678, 32191, 33314
72 29940
73 29940
80 31165
85 33141
86 33141
122 32475
123 33051
180 ...30180, 30454, 31164, 31346, 31479, 32753, 33475, 33477
185 32753
186 32753
260 31164
261 31164
262 31164
264 31164
268 31164
300 30452

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 50—Public Contracts, Department of Labor (Parts 50-1—50-999)

50-201.101 (a)(2)(xii) added..... 31571

Chapter 101—Federal Property Management Regulations (101-1—101-99)

101-45.303-3 (c) revised; (d) added..... 32446
101-45.304-6 Revised..... 29805
101-45.4901-97 Revised..... 32447
101-45.4901-97A Removed 32447

UL

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NOTE: E

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

Page

5 Appendix C amended....2477
Appendixes A and B amended....2480
59 CFR correction....13046
60 Authority citation revised....28793
Technical correction....30534
60.1 (a) amended....28793
60.5 (a) revised....28793
60.7 (a)(2) and (c)(2) revised; OMB numbers....28794
60.8 (a)(1), (2), (4), (5), (9), (11), (b)(2) and (3) revised; (a)(12) added; OMB number....28794
60.10 (a)(1) and (b)(2) amended....28794
60.11 (a)(1)(ii) and (b)(1) amended; (b) introductory text, (2), (e), (f)(1), (2), (4) and (5) amended; OMB numbers....28794
60.12 (c) revised; OMB numbers....28795
60.13 (b) and (c) revised....28795
60.14 OMB numbers....28795
60.15 (a) and (b) amended....28795
60.18 Introductory text and (a) revised; OMB number....28795
60.19 Amended....28795
60.20 (a) and (c) amended....28795
60.21 (b) amended; OMB number....28795
60.30—60.43 (Subpart D) Heading amended....28795
60.30 Heading, (a), (b)(3), (4) and (c) revised; (b)(5) and (d) added....28795
60.31 Heading, (a) and (b)(1) revised; (c) amended; OMB numbers....28796
60.32 (a)(2) and (c)(3) revised; OMB number....28796
60.33 OMB numbers....28796
60.34 (a), (b)(1), (3), (c) and (d) revised; OMB numbers....28796
60.35 Introductory text, (a)(1), (b), (c) introductory text, (3), (d), (e) and (f) revised; (a)(2) amended; OMB numbers....28796
60.36 Revised....28797
60.37 Revised....28797
60.38 Introductory text revised; (a) amended; OMB numbers....28797
60.39 (b)(3) revised; OMB numbers....28797
60.40 (a) introductory text, (2), (b), (c) introductory text, (1)(i), (c)(1)(iii) introductory text, (2) and (3) revised; OMB numbers....28797
60.41 (a) and (b) amended; (c)(2), (d) and (e)(2) revised....28798
60.42 Heading, (a)(1) introductory text, (2), (3), (4) and (b) through (e) revised; OMB numbers....28798
60.43 Heading, (a) and (c) revised....28799
60.50 (a)(1) concluding text revised....28799
60.51 (f)(1) amended; OMB numbers....28799
60.53 Heading revised; OMB number....28799
60.54 OMB number....28799
60.56 OMB number....28799
60.57 Revised....28799
60.60 (a) revised....28799
60.61 (a)(2) revised; OMB number....28799
62.71—62.76 (Subpart D) Revised....56597
100—110 (Subchapter J) Heading correctly revised....32447
100 Added....28099
Corrected....32447
110 (Subchapter J) Added....51808
110.103 Corrected....59332
110.101—110.103 (Subpart A) Appendix corrected....59218, 59332
124.708 (c) added....6272

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

400.200 Amended....24975
400.203 Amended; interim....29155

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 42 Chapter IV—Con. Page

405.301—405.380 (Subpart C) Heading and authority citation revised 19092
405.380 Undesignated center heading and section added 19092
405.480 (a) introductory text republished; (a)(2) revised 33896
405.501—405.580 (Subpart E) Authority citation revised 59621
Authority citation revised 24975
Heading and authority citation revised 33896
405.501 (b) revised 24975
(a) revised; (d) redesignated as (e); new (d) added 33896
405.502 (f)(1) revised 59621
(f)(4) revised 24975
405.505 Revised 27305
405.509 (c) added 59621
405.517 Added 59621
405.521 Revised 59621
405.522 Revised 59622
405.523 Revised 59622
405.524 Revised 59622
405.530 Removed 59622
405.531 Removed 59622
405.532 Removed 59622
405.533 Removed 59622
405.550—405.580 Undesignated center heading removed sections designated as Subpart F and revised 59622
405.553 Removed 59622
405.555 Removed 59622
405.557 Removed 59622
405.801—405.874 (Subpart H) Authority citation revised 27305
405.874 Added 27305
405.2100—405.2184 (Subpart U) Authority citation revised 7134
405.2163 (b) revised 7134
405.2171 (d) revised 7134
405.2401—405.2472 (Subpart X) Heading and authority citation revised 24975
405.2401 (a) revised; (b) amended 24975
405.2410 Revised 24976
405.2418 Redesignated as 405.2460 24976
405.2425 Redesignated as 405.2462 24976
405.2426 Redesignated as 405.2464 24976
405.2427 Redesignated as 405.2466 24976
405.2428 Redesignated as 405.2468 24977
405.2429 Redesignated as 405.2470 24977
405.2430—405.2452 Undesignated center heading and sections added 24978
405.2430 Redesignated as 405.2472 24978
405.2460—405.2472 Undesignated center heading added 24980
405.2460 Redesignated from 405.2418 and revised 24976
405.2462 Redesignated from 405.2425 and revised 24976
405.2464 Redesignated from 405.2426 and revised 24976
405.2466 Redesignated from 405.2427 and revised 24976
405.2468 Redesignated from 405.2428; (a), (b) and (d) revised 24977
405.2470 Redesignated from 405.2429 and revised 24977
405.2472 Redesignated from 405.2430; Introductory text republished; (a) revised 24978
406.12 Corrected 50058
406.20 (c) corrected 50058
407.2 Revised 24980
407.40 (b) corrected 50058
410 Authority citation revised 7134, 24981
410.3 (a)(1) revised 24981
410.5 Introductory text revised; (d) added 7134
(b) revised 24981
410.10 (s) added 24981
Introductory text republished; (t) added 33896
410.12 (a) introductory text and (a)(2) revised 33986
410.32 (b) introductory text republished; (b)(2) and (5) revised 7135
(b) introductory text republished; (b)(6) added 24981
410.69 Added 33896
410.150 (b)(8) revised 24981
410.152 (f), (h) and (j) heading revised 24981
410.160 (b) revised 24981
410.165 (a) revised 24981

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

411 Authority citation revised....61381
411.1 (a) revised; interim....61381
411.15 Introductory text and (m)(1) republished; (m)(2) revised....33897
411.350—411.361 (Subpart J) Added; interim....61381
412.1 (a) revised....33897
412.2 (d) introductory text republished; (d)(5) revised....33897
412.71 (b) introductory text republished; (b)(8) revised....33897
412.80 (a)(1)(ii)(B) amended....3016
412.113 (a)(3) amended....3016
412.113 (c) revised....33897
412.116 (b)(3)(ii)(B) and (C) amended....3016
412.278 (f)(1) corrected; (f)(3) correctly designated as (f)(4); (f)(3) added; CFR correction....13046
412.302 (a), (c)(1)(i)(D), (v), (d)(2) and (3) amended....3016
412.308 (c)(4)(ii) amended....3016
412.320 (a) redesignated in part as (a)(1) and (2); (a) introductory text, (1), (2) and (b)(1) amended....3016
412.324 (b)(2) and (3) amended....3016
412.328 (c)(1) and (f)(1)(iii) amended....3016
(f)(3)(iii) amended....3017
412.336 (c)(1) amended....3017
412.344 (d)(1) and (2) amended....3017
412.348 (b)(1)(ii) amended....3017
413 Authority citation revised....54545, 59219
413.1 (b) amended; (f) added....33898
413.40 (g)(1) corrected....59219
413.80 (a) revised; (h) added....33898
413.114 Regulation at 54 FR 37274 confirmed; (a), (c) and (d) nomenclature change; (b) revised; (d)(1)(i) amended....54545
413.130 (a)(3), (10) and (f) amended....3017
413.134 (f)(2)(iii)(D) amended....3017
413.170 Heading revised; (c)(7) added....59624
414 Authority citation revised....50823
Heading revised....65998
414.224 Added....65998
414.230 (Subpart D) Added....50823
414.450—414.453 (Subpart H) added....33898
415 Added....59624
416 Authority citation revised....7135
416.42 (b) revised....33899
416.49 Revised....7135
416.61 (a)(8) added; (b) amended....33899
417 Authority citation revised....46509
Authority citation revised....7135, 8201, 24981
417.1—417.2 (Subpart A) Heading added....51985
417.1 Redesignated from 417.100; introductory text revised....51985
417.2 Added....51985
417.100—417.180 (Subpart A) Heading removed....51985
417.100—417.109 Undesignated center heading removed....51985
Designated as subpart B....51985
417.100 Redesignated as 417.1; introductory text revised....51985
417.107 (i) revised....7135
417.110—417.119 Undesignated center heading removed; redesignated as 417.910 through 417.919....51985
417.120—417.126 Undesignated center heading removed; redesignated as 417.920 through 417.926....51985
417.130—417.137 Undesignated center heading removed; redesignated as 417.930 through 417.937....51985
417.140—417.144 Undesignated center heading removed; designated as subpart D....51985
417.150—417.159 Undesignated center heading removed....51985
Designated as subpart E....51986
417.160—417.166 Undesignated center heading removed....51985
Designated as subpart F....51986
417.170—417.180 Undesignated center heading and sections removed....51985

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 42 Chapter IV—Con. Page

417.201—417.292 (Subpart B) Heading and sections removed....51985
417.228—417.239 Undesignated center heading removed....51985
417.240—417.247 Undesignated center heading removed....51985
417.249—417.292 Undesignated center heading removed....51985
417.400—417.694 (Subpart C) Heading removed....51985
417.400—417.418 Designated as subpart J....51986
417.401 Introductory text amended....51986
417.404—417.418 Undesignated center heading removed....51985
417.416 (d)(1) revised....24981
417.420—417.460 Undesignated center heading removed....51985
Designated as subpart K....51986
417.436 (a) introductory text republished; (a)(6) redesignated as (a)(7); (a)(5) and new (a)(7) revised; new (a)(6) and (d) added; interim....8201
417.470—417.494 Undesignated center heading removed....51985
Designated as subpart L....51986
417.472 (f) redesigned as (g); new (f) added; interim....8202
417.520—417.523 Undesignated center heading removed....51985
Designated as subpart M....51986
417.524—417.528 Undesignated center heading removed....51985
Designated as subpart N....51986
417.530—417.576 Undesignated center heading removed....51985
Designated as subpart O....51986
417.580—417.598 Undesignated center heading removed....51985
Designated as subpart P....51986
417.600—417.638 Undesignated center heading removed....51985
Designated as subpart Q....51986
417.640—417.694 Undesignated center heading removed....51985
Designated as subpart R....51986
417.800—417.810 (Subpart D) Heading removed....51985
Redesignated as subpart U....51986
417.800 (b) revised....7135
417.801 (b) introductory text republished; (b)(5) redesignated as (b)(6); (b)(4) and new (b)(6) revised; (b)(5) added; interim....8202
417.910—417.919 Redesignated from 417.110 through 417.119....51985
417.910—417.937 Designated as subpart V....51986
417.920—417.926 Redesignated from 417.120 through 417.126....51985
417.930—417.937 Redesignated from 417.130 through 417.137....51985
418 Authority citation revised....7135
418.92 Revised....7135
420 Authority citation revised....24982, 27306
420.200—420.206 (Subpart C) Heading revised....27306
420.200 Revised....27306
420.201 Amended....24982, 27306
420.204 Revised....27306
420.205 Revised....27306
420.206 (a) introductory text republished; (a)(1), (3), (b)(2), (3) and (c) revised....27306
421 Authority citation revised....27307
421.1 (a) revised....27307
421.200 Introductory text revised....27307
421.202 Introductory text and (c) revised....27307
421.210 Added....27307
424.1 (c) revised....24982
424.40 (c)(3) revised....24982
424.57 Added....27308
431 Response to comments....65853
431.20 Added; interim....8202
431.107 (a) revised; (b) introductory text republished; (b)(2) and (3) revised; (b)(4) added; interim....8202
431.635 Added....28103
433 Authority citation revised....56139
433.45 Revised....56139
Regulation at 56 FR 56139 withdrawn....64195
434.38 Added; interim....8202
435.3 Amended; interim....29155

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

435.217 Revised; interim 29155
435.726 (b) revised; interim 29155
435.735 (b) revised; interim 29155
436.2 Amended; interim 29155
436.217 Revised; interim 29155
440.1 Revised; interim 29155
440.30 Introductory text republished; (a) and (c) revised 7135
440.181 Added; interim 29156
440.250 (k) revised; interim 29156
441.350—441.365 (Subpart H) Added; interim 29156
441.351 OMB number pending 29156
441.352 OMB number pending 29156
441.353 OMB number pending 29156
441.356 OMB number pending 29156
441.365 OMB number pending 29156
482 Authority citation revised 7136, 33899
482.27 Revised 7136
482.53 (b)(3) revised 7136
482.52 (a) introductory text, (a)(4) and (5) revised 33900
482.57 (b)(2) revised 7136
482.66 Regulation at 54 FR 37275 confirmed; introductory text, (a) introductory text, (6) introductory text and (7) introductory text republished; (a)(4), (6)(i), (7)(i) and (b) revised 56546
483 Authority citation revised 54546
Authority citation revised 7136
Authority citation revised 8202
483.10 Introductory text republished; (b)(4) revised; (b)(8), (9) and (10) redesignated as (b)(9), (10) and (11) and revised; new (b)(8) added; interim 8202
483.75 Heading and (j) revised 7136
483.80 Removed 54546
483.150 (a) corrected 59331
483.156 Correctly designated 59331
483.460 (n) heading revised 7136
484 Authority citation revised 7136
Authority citation revised 8203

Page

484.10 Introductory text republished; (c)(2) revised; interim 8203
484.14 (g) and (i)(2)(i) corrected 51334
(j) added 7136
484.36 (a)(2)(i)(F) and (G)(*1*) corrected 51334
485 Authority citation revised 7137
485.58 (g) added 7137
485.304 Introductory text republished; (q) added 7137
488 Authority citation revised 7137, 24982, 34012
488.1 Amended 24982
488.52 Removed 7137
488.201—488.211 (Subpart D) Added 34012
489 Heading revised 8203
489.10 (b) redesignated as (c) and revised; new (b) added; interim 8204
489.20 Introductory text republished; (d) revised 33900
489.100—489.104 (Subpart I) Added; interim 8203
491 Authority citation revised 7137
491.1—491.11 (Subpart A) Heading revised 24982
491.1 Revised 24982
491.2 Amended 24982
491.4 Revised 24982
491.5 (a) revised 24982
491.6 Revised 24983
491.7 Revised 24983
491.8 Revised 24983
491.9 (c)(2) and (d)(1)(iii) revised; (d)(1) introductory text republished 7137
Revised 24983
491.10 (a) and (b) revised 24984
491.11 Revised 24984
493 Authority citation revised 7137
493.1—493.25 (Subpart A) Revised 7139
493.2 Amended 7136, 34013
493.35—493.39 (Subpart B) Added 7142
493.43—493.51 (Subpart C) Added 7143
493.55—493.63 (Subpart D Added 7144

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 42 Chapter IV—Con. Page

493.501—493.521 (Subpart E) Added....34014
493.602—493.649 (Subpart F) Added....7213
493.602—493.634 Text removed....7139
493.633 (b) corrected....31664
493.639 (b) corrected....31664
493.701 (Subpart G) Removed....7139
493.801—493.865 (Subpart H) Revised....7146
493.901—493.959 (Subpart I) Revised....7151
493.1101—493.1111 (Subpart J) Revised....7162
493.1201—493.1285 (Subpart K) Revised....7163
493.1401—493.1495 (Subpart K) Redesignated as subpart M and revised....7172
493.1501 (Subpart M) Redesignated as 493.1701 (Subpart P)....7172
493.1601 (Subpart N) Redesignated as 493-1775 (Subpart Q)....7172
493.1701—493.1721 (Subpart P) Revised....7183
493.1701—493.1710 (Subpart O) Removed....7172
493.1775—493.1780 (Subpart Q) Revised....7184
493.1800—493.1850 (Subpart R) Added....7237
493.2001 (Subpart T) Added....7185
494 Authority citation revised....7185
494.51 Revised....7185
498 Authority citation revised....8204, 24985
498.2 Amended....24984
498.3 (b) introductory text republished; (b)(11) added; interim....8204
(b)(7) revised....24984
(d)(11) and (12) added....34021

Chapter V—Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

1000 Authority citation revised....3329
1000.10 Amended....3329
1000.20 Amended....3330
1001 Revised....3330
1001.301 (a) and (b)(1)(i) correctly revised....9669
1001.1601 (a)(1) correctly revised....9669
1002 Revised....3343
1003 Authority citation revised....3345
1003.100 Revised....3345
1003.101 Amended....3345
1003.102 Revised....3345
(b)(2) correctly revised....9670
1003.103 Revised....3346
1003.105 Revised....3346
1003.106 Revised....3347
1003.107 Revised....3348
1003.109 Revised....3348
1003.110 Amended....3348
1003.111 Removed....3348
1003.112 Removed....3348
1003.113 Removed....3348
1003.114 Revised....3348
1003.115—1003.125 Removed....3348
1003.127 Revised....3348
1003.128 (a) and (d) revised....3349
1003.129 Revised....3349
1003.130 Removed....3349
1003.131 Removed....3349
1003.132 Revised....3349
1003.133 (a) amended....3349
1003.134 Added....3349
1003.135 Added....3349
1004 Authority citation revised....3349
1004.30 (b) and (c) introductory text revised....3349
1004.40 Revised....3349
1004.50 (a) and (c)(1) revised....3349
1004.60 (c) added....3349
1004.90 (d)(7) revised....3350
1004.100 (g) removed....3350
1004.110 Revised....3350
1004.120 Revised....3350
1004.130 Revised....3350
1005 Added....3351
1006 Added....3354
1007 Added....3355

Title 42—*Proposed Rules:*

36 ....51189, 56691
400 ....55382, 56612
409 ....50542, 55382

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page
410 55382
411 55382
..... 8588
412 55382
..... 23618, 30301
413 ..... 50834, 55382, 59240, 59979
..... 23618, 30301
418 4516
420 56612
421 56612
424 55382
440 ..... 55382, 66392
..... 4516
441 66392
..... 4516
447 ..... 56141, 64228
482 4516
483 ..... 4516, 8961
485 55382
488 55382
..... 4516
489 55382
799 4177

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

4.200—4.357 (Subpart D) Authority citation revised 61383
4.350—4.357 Undesignated center heading added 61383
4.350 Added 61384
(c)(6) corrected 65782
4.351 Added 61384
(b)(1), (2)(ii) and (4) corrected 65782
(b)(4) corrected 8319
4.352 Added 61384
(b)(2) corrected 65782
4.353 Added 61385
4.354 Added 61385
4.355 Added 61385
4.356 Added 61385
4.357 Added 61386
20 Appendix X availability 10293

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

2740 Authority citation revised 32732
2740.0—3 (c) added 32732
2740.0—5 (c) (f) and (g) added 32732
2740.0—6 (a) amended 32732
2740.0—7 (d) added 32732
2740.0—9 Added 32732
2741.5 (i) removed; (j) redesignated as (i) 32733
2741.5 (i) removed; (j) redesignated as (i) 32733
2743.1—2743.4 (Subpart 2743) Added 32733
3150 Authority citation revised 9012
3150.2 Added; interim; effective to 12-31-92 9012
3160 Technical correction 2039, 3136, 5211
Authority citation revised 3024
Notes 1 and 2 removed 3024
3160.0-9 Added 3024
3162.7-4 Interpretation 63661
3164.1 (b) table amended 3025
3165.4 (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added; interim; effective to 12-31-92 9013
3260 Authority citation revised 29651
3266.1 Revised 29651
4700 Authority citation revised 29654
4700.0-9 Added 29654
4770.3 (c) added 29654

Public Land Orders

1176 Revoked in part by PLO 6923 5987
1537 Revoked by PLO 6899 55827
1722 Revoked by PLO 6899 55827
1825 Revoked in part by PLO 6919 2841
2051 Revoked in part by PLO 6933 27000
4249 Revoked in part by PLO 6901 56321
4522 Amended by PLO 6926 19092
Revoked in part by PLO 6934 28637
4747 Amended by PLO 6902 56322
5150 Amended by PLO 6932 24985
Corrected by PLO 6937 32180

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 43 Public Land Orders—Con. Page

5187 Revoked in part by PLO 6900.....55828
6649 Extended by PLO 6935.....28638
6831 *See* PLO 6883 corrected.....50059
6849 Corrected by PLO 6907.....57806
6883 50058
Corrected.....60929
6884 49847
Corrected.....56275
6885 Corrected.....50059
6886 50661
6887 50824
6888 50661
Corrected.....66602
6889 51177
6890 51334
Corrected.....58122
6891 51986
6892 52210
6893 52210
6894 52211
Corrected.....2842
6895 52212
6896 52477
6897 54896
6898 55827
6899 55826
6900 55828
6901 56321
6902 56322
6903 56936
6904 56936
6905 57805
6906 57806
6907 57806
6908 57806
6909 57807
6910 59219
6911 60927
6912 60928
6913 60928
6914 60929
6915 60929
Corrected.....3674
6916 64713
Corrected.....2951
6917 66602
6918 66602
6919 2841
Corrected.....5211
Corrected by PLO 6927.....21613
6920 2842
6921 4144
6922 4856
6923 5987
6924 6560
6925 10426
6926 .....6926, 19092
6927 21613
6928 22659
6929 24191
6930 26607
6931 26607
6932 24985
Corrected.....28555, 31404
Corrected by PLO 6937.....32180
6933.....27000
6934 28637
6935 28638
6936 32180
6937 32180

Title 43—*Proposed Rules:*

4 .....55157, 55263, 58330
37 1344
2090 49962
2200 49962
2300 59914
2740 61104
3100 8605
3150 9010
3160 .....9010, 32756
3180 4177
3260 59240
3610 3092
3800 .....54815, 66614

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

59 Authority citation revised.....19540
59.1 Amended.....19540
59.4 (c) amended.....19540
59.24 (b) introductory text and (3) amended.....19540
61 Authority citation revised.....19540
61.5 (d) redesignated in part as (d)(1) and (3); (d) (1) revised; new (d)(2) added.....19541
61.15 Removed.....19541
61.16 Amended.....19541
61 Appendixes A(1) and (2) amended.....19541
62 Authority citation revised.....19541
62.6 (a)(1) and (2) revised.....19541

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

64 Authority citation revised.....11688
64.6 Table amended...55467-55469, 58314, 60066, 65005
Table amended...357, 359, 2683, 3556, 9504, 10832, 11688, 18831, 18833, 18834, 22438, 23159, 27001, 27003
65 Authority citation revised...19380, 29038
65.4 Table amended; interim.....51336
Table amended.....51338
Table amended...360, 9057, 19380, 27357, 27359, 32900
Table amended; interim.....362, 9056, 19382, 32901
(c) added.....29038
67 Flood elevation determinations.....51339, 67001
Flood elevation determinations 526, 9059, 9212, 19542, 27361, 32735
Authority citation revised.....19542
71 Heading and authority citation revised.....22661
71.1 Amended.....22661
71.2 (b) through (d) revised; (e) through (k) added.....22661
71.3 Revised.....22662
71.4 (a), (b), (c) introductory text and (d) introductory text revised; (e) through (h) added.....22662
72 Revised.....29038
75 Authority citation revised.....19542
75.14 Amended.....19542
80.310 Revised.....19552
81 Authority citation revised.....11267
81.1 (b)(1) revised.....11267
83.25 (e) revised.....26776
206.250—206.253 (Subpart I) Revised.....64560
353 User fees.....10834

Title 44—*Proposed Rules:*

59 33669
61 33669
65 .....50838, 51358
67 .....51362, 55478, 65037
...2864, 3603, 5510, 9082, 19558, 27406, 32939
72 .....50838, 51358
81 65037
.....32192
83 .....58019, 66824
206 .....18441, 18442, 29854

Page

362 30455
1035 25007

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services, General Administration (Parts 1—199)

3.5 Revised.....1874
3.42 (g) added.....1874
96 Authority citation revised.....1977
96.50 (d) amended; interim.....1977
96.81 Revised; interim.....1977
96.83 Added; interim.....1977
96.84 Revised; interim.....1978
96.86 Revised; interim.....1978
96.87 Revised; interim.....1978

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

Chapter II Heading revised.....30157
201 Authority citation revised.....30424
201.1 (g) and (h) revised.....30425
204 Authority citation revised.....30425
204.3 Added.....30425
205 Authority citation revised.....66375
Authority citation revised.....30425
205 (a)(2)(v) revised.....30157
205.10 (a)(4)(ii)(K) added.....30425
205.50 Regulations at 49 FR 35599 and 54 FR 42243 confirmed; (a)(2)(v) revised.....30157
205.56 (b) revised; interim.....66375
205.58 (a) and (b)(4) revised; interim.....66375
206 Authority citation revised; sectional authority citations removed.....30157
206.10 Regulation at 49 FR 35599 confirmed; (a)(1)(ii) and (b)(2) revised; (b)(5) added.....30157
232 Authority citation revised.....30157, 30425
232.2 (a) revised.....30425

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 45 Chapter II—Con. Page

232.20 Regulations at 49 FR 35599 and 54 FR 42243 confirmed; (a) and (b)(2) revised 30157
(a)(3)(iv)(E), (3)(xiii), (11)(i)(B) through (D), (ii)(B) and (13)(i)(A) revised; (a)(6)(ix) removed; (a)(11)(viii) added 30425
233 Authority citation revised 64203
Authority citation revised 30158
233.10 (b)(2)(ii)(b) revised 30158
233.20 (a)(1)(ii), (3)(vi) and (x) revised 64203
(a)(3)(i)(B)(4), (5), (ii)(F), (xiv)(A), (xviii), (xx), (7)(ii), (11)(i)(D), (ii)(B) and (14) revised; (a)(1)(iii), (iv), (v), (3)(iv)(A) through (G) and (11)(i)(E) added 30158
(a)(3)(iv)(E), (3)(xiii), (11)(i)(B) through (D), (ii)(B) and (13)(i)(A) revised; (a)(6)(ix) removed; (a)(11)(viii) added 30425
233.31 Regulation at 49 FR 35602 confirmed 30157
(b)(5) revised 30160
233.36 (a) introductory text and (3) revised 30160
233.51 Introductory text revised 30160
233.53 (a) and (c)(4) introductory text revised 64204
233.100 (d) added 30426
233.101 Added 30426
233.107 Added 30428
234 Authority citation revised 30160
234.60 (a)(13) revised 30160
235 Authority citation revised 64204
235.112 Added 64204
(b)(2) corrected 1204
235.113 Added 64205
(b)(3)(ii)(G) and (I) corrected 5048
237 Authority citation revised; sectional authority citations removed 30160
237.50 (b) revised 30161

NOTE: Boldface page numbers indicate 1992 changes.

Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (300—399)

Page

Chapter III—Heading revised 30681
301 Authority citation revised 30429
301.1 Amended 30429
302.54 Revised 30681
302.70 (a)(8) and (d)(1) revised; (a)(10) added; (d)(2) amended 30681
303.3 (b)(6) removed 28110
(b)(6) correctly removed 29763, 31235
303.4 (c) revised 30681
303.7 (b)(2) revised 30681
303.8 Added 30681
303.70 (e) revised 28110
303.100 Revised 30682

Chapter IV—Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services (Parts 400—499)

Chapter IV Heading revised 1115
400.2 Amended 1115
400.60 (b) amended 1115
400.100 (b) amended 1115
400.203 (b) amended 1115
400.204 (b) amended 1115
400.209 (b) amended 1115
402.31 (b) redesignated in part as (b)(1) and (2); new (b)(1) revised; new (b)(2) amended 19386
402.41 (d) introductory text correctly revised 49707
402.43 (a) and (b) amended 19386
402.51 (e)(1) amended; (e)(4) added; OMB number 19386

Chapter VI—National Science Foundation (Parts 600—699)

650 Revised 18053

Chapter VII—Commission on Civil Rights (Parts 700—799)

708 26634

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Chapter VIII—Office of Personnel Management (Parts 800—899)

Page

801 Appendix A amended 32448

Chapter X—Office of Community Services, Family Support Administration, Department of Health and Human Services (Parts 1010—1080)

Chapter X Heading revised 27946
1080 Authority citation revised 27946
1080.4 (b), (c) and (d) redesignated as (c), (d) and (e); new (b), (f) and (g) added 27946
1080.5 (b)(2) removed; (b)(3) through (7) redesignated as (b)(2) through (6); (b)(1) introductory text revised, new (b)(3), (5) and (6) revised; new (b)(7) added; OMB number 27946
1080.6 (a) revised; (c) amended 27946
1080.8 Revised 27946

Chapter XI—National Foundation on the Arts and the Humanities (Parts 1100—1199)

1160 Revised 49848
1160.4 (e) introductory text corrected 51842

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1355 Authority citation revised 30429
1355.20 Amended 30429

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1611 Appendix A revised 8578

Chapter XX—Commission on the Bicentennial of the United States Constitutions (2000—2099)

Chapter XX Removed 29041

NOTE: Boldface page numbers indicate 1992 changes.

Chapter XXIV—James Madison Memorial Fellowship Foundation (Part 2400—2499)

Page

Chapter XXIV Established 7322

Chapter XXV—Commission on National and Community Service (2500—2599)

Chapter XXV Established 5299

Title 45—*Proposed Rules:*

5b 25004
96 31682
301 58205
303 58205
641 7355
670 33918
671 33918
672 33918
708 26634
1150 6303
1155 6206
1180 6208
1303 3394
1607 33697
1609 33698
1610 33698
1611 33698
1612 33699
1626 33699
2017 55416
2301 55416
2490 55416
2500-2506 (Ch. XXV) 57404

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

10.504 Correctly added 7326
16.205 Revised 60930
16.207 (b) revised 31275
28.30 (a) corrected 49822
28.110 Table corrected 49822
28.115 Table corrected 49822
28.120 (h)(2) corrected 49822
28.135 (a) and table corrected 49822
28.140 Table corrected 49822
28.375 (c)(6) corrected 49822
28.380 (b) corrected 49822
28.385 (b) corrected 49822

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 46 Chapter I—Con. Page
28.410 Heading corrected..... 49822
28.500 (b) revised..... 364
28.580 (a) revised..... 364
30.25-1 Table amended..... 52134
30.25-3 Correctly added..... 65006
44 Exemption..... 22663
45 Exemption..... 22663
67.13-3 (c) through (g) redesignated as (d) through (h); (b) revised; new (c) added..... 51654
67.13-7 (b) revised..... 51655
67 Appendix D revised..... 51655
68 Authoity citation revised..... 7642
68.05-1—68.05-13 (Subpart 68.05) Added..... 7642
151.05 Corrected..... 65006
151.05-1 Table amended..... 52135
151.50-60 Revised..... 52135
Correctly revised..... 65006
153 Table amended..... 52135
153.1060 Revised..... 52135
Correctly revised..... 65006
153 Table 1 corrected..... 65006
170 Stability criteria..... 11267
189.55-1 (b) corrected..... 57754
197.501—197.580 (Subpart C) Added..... 52135
197.501 (c) correctly added..... 65006
197.540 (b) corrected..... 65006
197.560 (b)(1) and (2)(i) corrected..... 65006

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

221 Revised..... 23478
249 Clarification..... 14358
327 Revised..... 50275
381 Authority citation revised..... 13047
381.3 (a) and (c) amended..... 13047
381.5 Introductory text amended..... 13047
381.6 (b) amended..... 13047
382.2 (c)(2) and (d) amended..... 57808
383 Revised..... 21036
Authority citation correctly revised..... 24191

Chapter III—Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)

401.405 Revised..... 23957
401.410 Revised..... 23958
401.420 Revised..... 23958
401.428 Revised..... 23958

Chapter IV—Federal Maritime Commission (Parts 500—599)

502.92 Regulation at 57 FR 3026 confirmed..... 9984
502.92 (c) revised; interim..... 3026
504.4 (a)(3) added..... 50662
510—540 (Subchapter B) Heading revised..... 61166
514 Added..... 61166
515 Authority citation revised..... 4582
515.3 Existing text designated as (a); (b) and (c)..... 4582
550.1 (e) added..... 50827
(e) correctly revised..... 54797
(b) revised; (f) added..... 60932
(b) revised; (c) through (f) removed..... 65999
560.308 Added..... 4582
571.118 Amended..... 23963
572.310 Added..... 4583
580.5 (d)(24) and (25) revised..... 51995
Clarification..... 3950
581.3 (e) republished..... 51996
Clarification..... 3950
581.4 (a)(3) republished..... 51996
Clarification..... 3950
581.11 Revised..... 51996
Clarification..... 3950
583 Revised..... 51993
Clarification..... 3950
583.3 (c) corrected..... 56323
586.2 Removed..... 65857

Title 46—*Proposed Rules:*

1-199 (Ch. I) 4744
2 ..... 65786, 66765
..... 10149
10 65786
12 65786
15 65206
25 56180
31 56284,
..... 1243
32 56284
..... 1243
35 56284,
..... 514, 1243, 12378
67 ..... 10544, 21546
70 11058
72 11058

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

154a 21546
174 32624
200-399 (Ch. II) 4744
237 21362
250 21362
262 21362
278 21362
279 21362
292 21362
294 21362
310 21362
316 21362
318 21362
319 21362
320 21362
321 21362
322 21362
323 21362
333 21362
334 21362
381 8287
401 ..... 63911, 64839
500-599 (Ch. IV) 4744, 12286
502 ..... 2702, 26809
510 ..... 23563, 24004
514 ..... 55860, 66006, 18122
515 24569
520 23564
525 24006
530 24006
540 19097
550 ..... 50824, 23564, 23566, 25005, 26809
552 ..... 57298, 66827, 11703, 25005
553 25005
555 25005
560 ..... 19583, 24569, 24571
572 ..... 14551, 24569, 24571, 26637, 28011, 31481
580 ..... 19583, 23368, 23563, 23564, 23566, 26637, 27413
581 ..... 18855, 19102, 24220, 26637, 27008, 27413
582 23563
583 27413
586 ..... 56487, 2070, 6210, 29259, 30182

NOTE: Boldface page numbers indicate 1992 changes.

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

Page

Chapter I Memorandum Opinion and Order 6481
Chapter I Order 33275
0.241 (a)(8) revised 18088
0.243 Removed 18088
0.251 (f)(12) revised 19387
0.283 (c)(3) revised 18088
0.291 (h) revised 8579
(f) revised 18088
(f) correctly revised 22181
0.311 (d) revised 18088
0.331 (a)(9) revised 18089
0.401 (a)(3)(i) revised 64714
0.418 Revised 64714
0.482 Amended 64714
0.491 Revised 64714
1 Authority citation revised 57598
Authority citation revised 187
Order 3133
Policy statements 56937
Policy statements 24986
1.18 Added 51178
Existing text designated as (a); (b) added 32180
1.80 (h) revised 23161
1.115 (e)(1) amended 19387
1.402 Revised 7882
1.403 Revised 7882
1.790 Revised 8579
1.823 (b)(3) added 58506
1.824 Heading, (a) and (b) revised 57815
1.912 (a), (b)(1) and (e) amended; (b)(3) and (d) revised 64714
1.922 Table amended 64715
1.926 (a)(2) revised 64715
(c) added 65858
(a)(1) revised 8274
1.931 (a) amended 64715
1.951 (a) revised; (c) removed; (d) redesignated as (c) 8274
1.952 (b) amended 8274
1.962 (g) amended 64715
1.972 (a)(1) amended; (c) revised 8274
1.1101—1.1117 (Subpart G) Authority citation removed 57598
1.1102 Amended 56602, 63662, 64715, 65858
Amended 8275

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 47 Chapter I—Con. Page

1.1104 Amended....23160
1.1105 Amended....57598, 63663
Amended....23161
1.1111 (b) and (c) introductory text through (5) redesignated as (a)(6) and (b) introductory text through (5); new (b) introductory text, (3) and (4) amended; new (c) added....56602
1.1112 (g) added....56602
1.2001—1.2003 (Subpart P) Added....187
2.106 Table amended....51656
Footnote NG47 revised....57815
Table amended (effective date pending)....64855
Table amended; Footnote US317 added....8275
Regulation at 56 FR 64855 eff. 4-19-92....11689
2.948 (b)(8) revised....24990
2.1201 Regulation at 56 FR 26619 comment period extended to 10-24-91....51178
2.1202 Regulation at 56 FR 26619 comment period extended to 10-24-91....51178
2.1203 Regulation at 56 FR 26619 comment period extended to 10-24-91....51178
2.1204 Regulation at 56 FR 26619 comment period extended to 10-24-91....51178
2.1205 Regulation at 56 FR 26619 comment period extended to 10-24-91....51178
2.1207 Regulation at 56 FR 26620 comment period extended to 10-24-91....51178
2.1209 Regulation at 56 FR 26620 comment period extended to 10-24-91....51178
2.1211 Regulation at 56 FR 26620 comment period extended to 10-24-91....51178
2.1213 Regulation at 56 FR 26620 comment period extended to 10-24-91....51178
2.1215 Regulation at 56 FR 26620 comment period extended to 10-24-91....51178
2.1219 Regulation at 56 FR 26620 comment period extended to 10-24-91....51178

Page

5.207 Revised....7882
13.2 (b)(7) added....9065
13.5 (d) added....56602
13.21 (a)(7) added....9065
13.22 (b)(6) added....9065
15 Reconsideration petition....57823
15.3 (f) amended....33448
15.31 (a) revised....24990
(h) amended....33448
15.107 (c) revised....33448
15.115 (b)(3) revised....33448
15.119 (a) note added; (f)(1))(iii) and (3)(ii) removed; (f)(1)(iv) through (xi) and (3)(ii) through (v) redesignated as (f)(1)(iii) through (x) and (3)(i) through (iv) (d), (i)(4) and (5) table amended, (e)(1)(i), (ii), (f) introductory text, (1)(iii), (x), (2)(i), (ii), (iii), (3)(iii), (h)(i) introductory text, (l) and (n)(6) revised....19094
15.205 (a) revised....13048
15.207 (b) revised....33448
15.237 Heading revised....13048
21.11 (a), (d) and (f) revised....57815
21.23 (a) and (b) amended....57816
21.30 (a)(4) amended....57816
21.33 (a) revised....57816
21.101 (a) table footnote 6 revised....57816
21.107 (b) table footnote 1 revised....57816
21.307 (a), (b) introductory text, (4), (c)(1) introductory text, (i) introductory text, (B), (2)(i)(A), (G), (ii)(A), (iii)(A), (d)(1)(ii), (e)(1) introductory text through (iv), (2), (f)(1) and (2)(i) revised....57816
21.900 Amended....57817
21.901 (d)(1) removed....57598
(a) amended; (b)(4) and (5) revised; (b)(6) and (f) added....57817
21.902 (f)(2) revised; (i) and (j) redesignated as (j) and (k); new (i) added....57598
(f)(2), (i)(2)(i), (ii), (6)(i), (iii)(A) through (F) and (iv) amended; (i)(1) revised....57818
(i)(1) revised....65191
21.905 (c) amended....57818
21.908 (b) amended....57818

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

21.909 (c) added....57818
21.912 (a) and (c) amended; (d) through (g) added....57818
21.913 (g) added....57599
21.914 Amended....57819
22 Unserved areas applications filing deadlines waived....829
Interpretation....28466
22.2 Amended....58506
Amended....831
22.6 (b)(3) removed; (b)(2) and (d)(3) added....58506
(b)(2)(ii) removed....13648
22.9 (d)(7)(ii) revised; (d)(7)(iii) added....13648
22.13 (a)(1)(iv) added....58506
22.23 (c)(3) revised....13648
22.27 (b)(2) revised....63663
22.28 (a) and (b) introductory text revised....3027
22.29 (a) introductory text revised....3028
22.31 (a)(1)(ii) and (b)(2)(iii) added; (f) revised....58506
(j) added....3028
22.32 (e)(5) revised; (e)(6) added....3028
22.33 (b)(3) added....58507
22.40 (b) revised....3028
22.43 (c)(1) and (2) revised; (c)(4)(i) added....58507
(c)(1) introductory text amended; (d)(1)(vi), (vii) and (viii) removed; (d)(3)(vi) revised....13648
22.117 (b)(1) amended....13648
22.902 (b) introductory text revised; (b)(3), (4), (5), (d)(4) and (5) added....58507
(b)(4)(ii) introductory text, (b)(4)(ii)(B)(3) and (d)(4) amended....13648
22.903 (a)(1)(i), (ii) and (j) added....58508
Revised....13648
22.904 Revised....831
22.911 (a)(1) added....831
22.912 (c) added....831
22.913 Heading, (a) introductory text and (d) revised....13649
22.914 Revised....27705
22.916 (c) revised....58509
22.917 (b)(2) correctly added....58315
(b)(2) removed; (a)(1) introductory text revised; (f) added....58509

Page

(g) added....3028
22.918 (c) redesiganted as (d); new (c) added....58509
(c)(2) amended....13649
22.920 (c) added....58510
22.921 Revised....58510
22.923 Heading, (a) introductory text and (c) introductory text revised; (a)(1) and (c)(1) amended....13649
22.924 Added....58510
(b)(1) and (b)(2) amended....13649
(b)(3) amended; (c)(3) revised....13650
22.925 Added....58511
Revised....13650
22.926 Added....58511
Revised....13650
22.930 (d) amended....831
(d) revised....13650
22.940 Added....3029
22.941 Added....3029
22.942 Added....3029
22.943 Added....3030
22.944 Added....3030
22.945 Added....3031
25 Decision and remand....1227
25.114 (c)(24) revised....14798
25.134 Added....66001
25.252 (c) Table 1 amended....21214
43 Authority citation revised....9671
43.41 Added....9671
43.51 Technical correction....5510
43.61 Revised....8580
61 Memorandum opinion and order....66602
Memorandum opinion and order....20206
61.3 (m) through (jj) redesignated as (n) through (kk); new (m) added....55239
61.33 (f) redesignated as (f)(1); (f)(2) added....55239
61.38 (a) amended....55239
61.41 (c) introductory text and (d) introductory text amended....55239
61.42 (b)(3) and (c) revised....55239
61.47 (h) amended....55239
61.48 (b) redesignated as (1); (b)(2) added....55239
61.55 Added....55239
61.58 (c)(6) redesignated as (c)(7) and revised; new (c)(6) added....55239

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 47 Chapter I—Con. Page

63 Interpretive rulings....65445
Heading and authority citation revised....7884
63.01 (k)(5) added....647
Technical correction....5510
63.30—63.90 Undesignated center heading revised....7884
63.100 Added....7884
64 Memorandum opinion and order....2842
Authority citation revised....4740, 21040
Petition denied....5391
64.704 (c) and (d) compliance dates temporarily stayed....10998
64.709 Added....56165
64.710 Added....56165
64.711 Added....56165
64.712 Added....56165
64.713 Added....56165
64.714 Added....56166
64.715 Added....56166
64.716 Added....56166
64.903 Added....4375
64.904 Added....4376
64.1100 (Subpart K) Added....4740
64.1301 (Subpart M) Added....21040
65 Reconsideration order adoption....65192
68 Reconsideration petition....57823
Authority citation revised....27183
68.4 (a)(2) revised....27183
68.112 (b)(1), (3) and (c) revised; (b)(5) added....27183
68.318 (c)(2) added....56166
69 Report and order....51656
Memorandum opinion and order....4856
69.4 (b)(8) added....24380
69.120 Added....24380
69.210 Added....51844
69.305 (c) redesignated as (d) and revised; new (c) added....24380
69.306 (c) revised....24380
69.307 Existing text designated as (b) and revised; new (a) added....24380
73 Technical correction....50419
Petition denied in part....3952
Policy statement....8849
Policy decision....21744
Order on reconsideration....27367
73.14 Amended (effective date pending)....64856
Regulation at 56 FR 64856 eff. 4-19-92....11689

Page

73.21 Revised (effective date pending)....64856
Regulation at 56 FR 64856 eff. 4-19-92....11689
73.22 Removed (effective date pending)....64856
Regulation at 56 FR 64856 eff. 4-19-92....11689
73.23 Redesignated from 73.3570 and revised (effective date pending)....64856
Regulation at 56 FR 64856 eff. 4-19-92....11689
73.24 (b) Note and (i) removed; (j) and (k) redesignated as (i) and (j); (e), (h) and new (i) revised (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.25 (a)(1), (2) introductory text, (i), (ii) and (iii) removed; heading, (a), (b) and (c) revised (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.26 Revised (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.27 Revised (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.28 (a) removed; (b) and (c) redesiganted as (a) and (b); new (a) revised (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.29 Revised (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.30 Added (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.35 Added (effective date pending)....64858
Regulation at 56 FR 64858 eff. 4-19-92....11689
73.37 Revised (effective date pending)....64858

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

Regulation at 56 FR 64858 eff. 4-19-92 11689
73.53 (b)(1) revised; (c) Note added (effective date pending) 64859
Regulation at 56 FR 64859 eff. 4-19-92 11689
73.68 (d)(3) revised (effective date pending) 64859
Regulation at 56 FR 64859 eff. 4-19-92 11689
73.69 (d)(4) revised (effective date pending) 64859
Regulation at 56 FR 64859 eff. 4-19-92 11689
73.72 (a) revised (effective date pending) 64859
Regulation at 56 FR 64859 eff. 4-19-92 11689
73.88 Note added (effective date pending) 64859
Regulation at 56 FR 64859 eff. 4-19-92 11689
73.99 Revised (effective date pending) 64860
Regulation at 56 FR 64860 eff. 4-19-92 11689
73.150 (a) introductory text, (b)(1) introductory text, (2), (3), (5)(iv), (v) and (6)(vii) revised; (b)(1)(i) amended (effective date pending) 64861
Regulation at 56 FR 64861 eff. 4-19-92 11689
73.151 (b) added (effective date pending) 64862
Regulation at 56 FR 64862 eff. 4-19-92 11689
73.152 (c)(2)(iv) added (effective date pending) 64863
Regulation at 56 FR 64863 eff. 4-19-92 11689
73.153 Amended (effective date pending) 64862
Regulation at 56 FR 64862 eff. 4-19-92 11689
73.182 Revised (effective date pending) 64862
Regulation at 56 FR 64862 eff. 4-19-92 11689
73.183 (a) note added; (b) removed; (c) through (f) redesignated as (b) through (e); new (c) and (e) revised (effective date pending) 64866

Page

Regulation at 56 FR 64866 eff. 4-19-92 11689
73.184 (a) and (b) note revised; (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e) and revised (effective date pending) 64866
Regulation at 56 FR 64866 eff. 4-19-92 11689
73.185 (c), (i) and (j) removed; (d), (e), (h) and (k) redesignated as (c), (d), (e) and (f); (b), new (c), (d), (e), (f) introductory text and (f)(2) revised (effective date pending) 64867
Regulation at 56 FR 64867 eff. 4-19-92 11689
73.187 (a) and (b) revised (effective date pending) 64868
Regulation at 56 FR 64868 eff. 4-19-92 11689
73.189 (b)(2)(i), (ii), (iii), (3) and (6) revised (effective date pending) 64868
Regulation at 56 FR 64868 eff. 4-19-92 11689
73.190 (a), (b), (c), (e), Figure 7 and Figure 8 revised (effective date pending) 64869
Regulation at 56 FR 64869 eff. 4-19-92 11689
73.202 (b) table amended 50277, 50278, 50519, 50520, 50827, 50828, 51658, 51659, 51844, 51845, 52478, 54546-54548, 55633, 55828, 55829, 56166-56169, 56472, 56473, 56603, 56939, 56940, 57294, 58315, 58512, 58513, 58862, 60932, 60933, 61168, 61169, 63663, 63664, 64209, 64211, 65194, 65195, 65860, 66789, 66790
(b) table amended ..... 189, 831, 1650—1652, 2481, 2844, 3134-3137, 3951, 3952, 4163, 4857, 5381-5394, 5861, 5862, 6075, 6076, 6203, 6482, 6561, 6688, 7660, 7661, 7885, 7886, 8421, 8422, 8580, 8581, 8726, 8727, 9504, 10294, 10427-10429, 10741, 10742, 10999, 11432, 12734, 13324, 14491, 14646, 17856, 17857, 19095, 19809, 19810, 19811, 20771, 21040, 21352, 21353, 21354, 21896, 22438—22441, 23162, 24554, 27368,

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 47 Chapter I—Con. Page
27369, 28111, 28112, 29654, 29655, 29805, 29806, 31665, 31666, 31970, 31971, 33449, 33450

Regulation at 57 FR 11432 corrected 12465
73.207 Regulation at 54 FR 9802 eff. 6-26-89 56938
(a) revised 57293
73.208 Regulation at 54 FR 9806 eff. 6-26-89 56938
73.209 Regulation at 54 FR 9802 eff. 6-26-89 56938
73.215 Regulation at 54 FR 9802 eff. 6-26-89 56938
(a)(2) and (e) revised; (a)(4) added 57294
73.311 Regulation at 54 FR 9804 eff. 6-26-89 56938
73.316 Regulation at 54 FR 9804 eff. 6-26-89 56938
(b) and (c)(8) revised 57294
73.606 (b) table amended 49707, 64211
(b) table amended 4857, 7885, 11000
73.614 (b)(1) amended 49707
73.659 (a)(3) revised 64209
73.660 (a) revised 64209
73.662 (c), (e) and (h) revised 64209
73.667 (a) amended 49707
73.681 Amended 49707
73.1030 (b) table revised (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1125 Note added (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1150 (c) added (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1201 (c)(2) revised (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1212 (a)(2)(i) amended 210
(a)(2)(i) and (ii) 8279
73.1217 Added 28640
73.1570 (b)(1)(ii) revised (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1650 (b)(2) introductory text revised; (b)(2)(i) and (ii) added (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1665 Note added (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1705 (c) revised (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1725 Revised (effective date pending) 64872
Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1740 (a)(1)(i) revised (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.1940 Revised 208, 27708
73.1941 Added 208
73.1942 Added 209
Heading, (a)(1)(i), (xii), (2) and (b) introductory text revised; (a)(1)(vii) removed 27709
73.1943 Added 210
73.1944 Added 210
73.3516 (a) revised (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.3517 (c), (d), Note 1 and Note 2 added (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.3526 (a)(11) amended 64209
(a)(12) added 18091
73.3550 (i) revised (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.3555 Note 4 revised; Note 8, Note 9 and Note 10 added (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
(a) through (e) and Note 4 revised 18091
73.3556 Added 18093
73.3564 (e) added (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

73.3570 Redesignated as 73.23 and revised (effective date pending)....64856
Regulation at 56 FR 64856 eff. 4-19-92....11689
73.3571 (a)(3) added; (d)(1) and (e) removed; (d)(2), (3), (4), (f) through (i), (j)(1) through (4), (k) and (l) redesiganted as (d)(1), (2), (3), (e) through (h), (i)(1) through (4), (j) and (k); (a) introductory text, (1), new (d)(1), (2), (3), (f), (h) and (i)(1) revised (effective date pending)....64874
73.3580 (d)(4)(i)(A) and (ii)(A) redesignated as (d)(4)(i)(B) and (ii)(B); (d)(1) and (g)(1)(ii)(G) revised; (d)(4)(i)(A), (B)(4), (ii)(A), (B)(4) and (g)(1)(ii)(H) added; (g) introductory text and (h) amended....14647
Regulation at 56 FR 64874 eff. 4-19-92....11689
73.3598 (c) added (effective date pending)....64874
Regulation at 56 FR 64874 eff. 4-19-92....11689
73.3616 (d) revised; (e) added....18093
73.4160 Removed (effective date pending)....64874
Removal at 56 FR 64874 eff. 4-19-92....11689
73.4255 Revised (effective date pending)....64874
Regulation at 56 FR 64874 eff. 4-19-92....11689
74 Policy decision....21744
74.641 (a)(1) table amended; (b) introductory text revised....50663
74.902 (h) revised; (i) and (j) added....57819
74.903 (a)(2) revised; (b)(5), (d) and (e) added....57600
74.931 (e) revised....57600
(a) revised; (h), (i) and (j) added....57819
(h), (i) and (j) revised; (k) added....65191
74.932 (a) introductory text and (b) revised....57819
74.985 Revised....57601
74.986 Added....57820

Page

74.990 Added....57820
74.991 Added....57821
74.992 Added....57821
74.1204 (g) amended....56170
74.1235 (c)(1) and (2) added....56170
76 Policy statement....8849
Policy decision....21744
76.5 (jj) added....11001
76.33 Regulation at 56 FR 33391 eff. 10-25-91....52479
76.53 Amended....49707
76.54 Regulation at 56 FR 33392 eff. 10-25-91....52479
76.205 Revised....210
76.206 Added....210
Heading, (a)(1)(i), (xii), (2) and (b) introductory text revised; (a)(1)(vii) removed....27709
76.207 Added....212
76.221 (a) amended....212
(a) amended....8279
76.305 (a) and (c) revised....11001
76.601 Revised....11001
76.605 (a), (b) and Note (1) revised; Note (2) redesignated as Note (3); new Note (2) added....11002
76.606 Added....11003
76.607 Added....11004
76.609 (d)(2), (g), (h)(2) and (i) revised; (e) and (h) introductory text amended; (j) added....11004
78.13 (e) added....57601
78.105 (a)(1) table amended; (b) introductory text revised....50664
80.5 Amended....26778
80.19 Table amended....64715
80.23 Introductory text amended; (c) removed; (d) and (e) redesignated as (c) and (d)....26778
80.59 (c) revised....64715
80.141 (d) added....57988
80.203 (g) amended....57496
(c) revised....57988
(m) added....8727
80.207 (d) footnote 2 revised....26778
80.209 (a) revised....26778
80.310 Revised....19552
80.369 (e)(4) added....19552
80.371 (c) table amended....26779
80.373 (f) table amended....19552
(f) introductory text revised; tables amended....26779

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 47 Chapter I—Con. Page

80.375 (a) amended 26779
80.377 Amended 26779
80.385 (a)(2) revised 26780
80.802 (a)(2) revised 26779
80.1065—80.1135 (Subpart W) Added 9065
87.21 (b) table amended 64715
87.25 Note removed 64715
87.173 (b) table amended 51656
90 Technical correction 27184
Order 32450
90.17 (b) table amended (effective date pending) 64874
Regulation at 56 FR 64874 eff. 4-19-92 11689
(c)(10) revised 24991
90.19 (e)(15) revised 24991
90.21 (c)(6) revised 24991
(b) table amended; (c)(18) added 26608
90.23 (c)(7) revised 24991
90.25 (c)(13) revised 24991
90.53 (b)(12) revised 24991
90.63 (d)(14) revised 24991
90.65 (c)(27) revised 24991
90.67 (c)(17) revised 24991
90.69 Heading and (a) revised 19811
90.71 (b) table amended; (c)(11) added 24991
90.73 (d)(18) revised 24991
90.79 (d)(12) revised 24991
90.81 (d)(3) revised 24991
90.89 (c)(9) revised 24991
90.91 (c)(9) revised 24991
90.93 (c)(3) revised 24991
90.95 (d)(7) revised 24991
90.119 (a)(15) added; (e)(1) and (h) revised 65858
90.127 (b) amended 65858
90.149 (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added 65858
90.155 (a) revised; (c) added 65859
90.157 (a) revised; (b) removed; (c) redesignated as (b) 65859
90.173 (k) added 65859
(j) amended 24992
90.175 Introductory text revised; (f)(15) added 65859
(a) amended 24992
90.176 (c) added 24992
90.209 (b)(6) revised 8423
90.213 (a) table amended 24192
90.242 (a) introductory text and (2)(ii) revised; (a)(2)(i) amended (effective date pending) 64874
Regulation at 56 FR 64874 eff. 4-19-92 11689
90.261 Revised 24992
90.301 (a) table amended 32450
90.555 (b) table amended 26608
90.611 (d) revised 65859
90.631 (f) amended 65860
90.633 (d) revised 65860
90.709 (a)(4) added; eff. 10-20-92 32449
90.713 (a) and (b) revised 32449
90.719 Note revised 32450
90.725 (a) introductory text, (d) introductory text and (h) introductory text revised 32450
90.733 (d) revised 32450
94 Technical correction 66001
94.9 (b)(2) revised 64716
94.25 (k) revised 63663
94.61 Table amended 57822
94.63 (a) revised 57822
94.65 (f) revised 57822
94.67 Table amended 57822
94.71 Table amended 57822
94.73 Table amended 57822
94.75 Table amended 57822
94.92 Table amended 57822
94.95 Removed 57822
95.1 (c) added 8275
95.418 (d) added 22442
95.801—95.863 (Subpart F) Added 8275
97.3 (a)(8) revised; (a)(37) through (41) redesignated as (a)(38), (40), (42), (43) and (44); new (a)(37), (39) and (41) added 56171
97.111 (b)(3) revised; (b)(7) added 56171
97.113 (b)(2) revised 56171
97.201 (d) revised 56171
97.207 (f) revised 56171
(a) revised 32736
97.211 Heading revised 56171
97.213 Heading and introductory text revised 56171
97.215 Heading revised 56171
97.216 Added 56172
97.301 Technical correction 51762
97.303 Technical correction 51762
97.309 (a) revised 56172
97.505 (a)(5)(i) revised 21041

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

Title 47—*Proposed Rules:*

0—199 (Ch. I) 57300, 58863, 65721
..... 6487, 18857, 24574, 33163
0 21052
1 ...9528, 14683, 18444, 20238, 21226, 24006, 24205, 33700
2 .....52496, 55484, 56611
.....5993, 6695, 12792, 24006
18 10453
21 24006
22 .....52496, 58529
.....29260, 30189
25 18444
34 33700
35 33700
43 .....3038, 33700
61 52496
63 65464
.....3038, 4391
64 ..... 18444, 22681, 26642
65 31994
68 18445
69 .....51666, 51869, 52496, 57301
.....24459, 31994
73 ...50303, 50304, 50547—50550, 50842, 50843, 51667, 51870, 52497, 55648, 55649, 55861, 55862, 56181, 56182, 46489, 46490, 57302, 57606, 57608, 57871, 58207, 58530, 58531, 58864, 60080, 60956, 60957, 61220, 63704, 64228, 64229, 65206, 65207, 65721, 65875, 66006, 66827
...242, 866—868, 2703, 2883, 2884, 3158, 3159, 3981, 4179, 4180, 4859, 5412, 5413, 5870, 6083, 6084, 6210, 7704, 7902, 8430, 9530, 9680, 9996, 9997, 10327, 10454, 10749, 10750, 11058, 11458, 11459, 12793, 12794, 13328, 14553—14555, 14683, 14684, 14686—14688, 17870, 19105, 19836, 19837, 20805, 20806, 21055, 21056, 21368, 21369, 21755, 21761, 21919, 21920, 23188, 23567, 24577, 27415, 27416, 28162, 28163, 28167, 29691, 29855, 31691, 31692, 31996, 32499, 33478
74 52496
.....4592, 21755
76 56339
.....868, 6792
80 .....56955, 57501,
.....11704
87 26812
90 .....49875, 52496, 56611, 63472
.....4180, 6570, 8854, 20069, 20070, 33700
97 30456

NOTE: Boldface page numbers indicate 1992 changes.

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular (FAC) 90-9.....67126
Federal Acquisition Circular (FAC) 90-10.....67412
Summary presentation.....20372
5.207 (b)(4) amended.....67128
5.303 (a) amended.....67128
7.305 (c) amended.....55372
8.401 (b) revised.....55372
8.702 (a) amended.....67129
8.705-2 Amended.....67136
8.705-4 (a) amended.....67136
9.104-1 (e) revised.....55374
9.104-3 (c) revised.....55378
9.107 Added.....67129
9.406-1 (a) revised.....67129
9.407-1 (b) redesignated as (b)(1); (b)(2) added.....67130
9.502 (d) revised.....55377
9.504 (e) amended.....55377
9.505 (b)(1) and (2) revised.....55377
9.505-4 (a) revised.....55377
9.507-1 (d) added.....55377
10.001 Amended; interim.....67131
10.002 (d) redesignated as (e) and amended; interim.....67131
10.006 (a) revised; interim.....67131
14.201-7 (a), (b)(1) and (c)(1) amended; interim.....67413
15.804-2 (a) revised; interim.....67413
15.804-3 (c)(7) and (i) amended; (e) introductory text revised; interim.....67414
15.804-4 (h) amended; interim.....67414
15.804-6 Heading and (a) revised; (b)(2) Table 15-2 amended; interim.....67414
15.806-1 (b) amended; interim.....67414
15.806-2 (a)(2) amended; interim.....67414
15.808 (a)(6) and (7) amended; interim.....67414

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 48 Chapter 1—Con. Page

19.202-1 (e) added....67132
19.402 (c)(2) through (5) redesignated as (c)(3) through (6); new (c)(2) added....67132
19.804-3 (c)(2) amended....55380
19.808-1 (b) amended....55378
22.102-1 Introductory text revised....55374
22.102-2 (c) added....55374
22.1003-5 (k) amended....67136
22.1500—22.1509 (Subpart 22.15) Added; interim....20373
23.301 Revised....55374
23.302 Heading, (b) and (c) revised; (d) and (e) added....55374
23.303 Revised....55374
23.601—23.602 (Subpart 23.6) Added....55374
25.108 (d)(1) amended....67133
25.109 (a) and (d) revised....55379
25.201 Amended; interim....20375
25.701 Removed....20376
25.702 (a)(3) amended; (b) removed; (c) redesignated as (b)....20376
25.703 (a) paragraph designation and (b) removed....20376
25.1000—25.1005 (Subpart 25.10) Removed....67416
26.103 (b) amended....20377
31.101 Amended....67133
31.205-46 (a)(2)(i) and (6) concluding text amended....20377
33.103 (b)(1) amended....67136
33.201 Amended; interim....67417
33.202 Revised....67417
33.204 Revised; interim....67417
33.207 (a) introductory text revised; interim....67417
33.214 Redesignated as 33.215; new 33.214 added; interim....67417
33.215 Redesignated from 33.214; interim....67417
36.513 Existing text designated as (a); (b) and (c) added....55375
37.112 Added....55380
38.201 (b) amended....55372
42.1205 (a)(3) revised....67134
45.608-8 (b) amended....67136
49.101 (f) added....67134
49.105-2 Revised....67134
49.110 Heading and (a) revised....67135
50.203 (b)(4) revised....67135
51.103 (b) amended....55372
52.202-1 Amended....67137
52.203-4 Amended....67137
52.207-3 Amended....55372
52.209-7 Amended....55377
52.209-8 Amended....55377
52.214-17 Amended....55380
52.214-27 Amended; interim....67415
52.214-28 Amended; interim....67415
52.215-23 Amended; interim....67415
52.215-24 Amended; interim....67415
52.215-25 Amended; interim....67415
52.215-39 Amended....67137
52.222-18 Added; interim....20374
52.223-3 Revised....55375
52.223-7 Added....55375
52.225-5 Amended; interim....20375
52.225-11 Revised....20376
52.225-12 Removed....67416
52.225-13 Removed....67416
52.228-11 (b)(1) amended....67137
52.233-1 Amended; interim....67417
52.236-7 Amended....55376
52.236-13 Revised....55376
52.246-4 Amended....67136
53.203 (b) amended....67137
(b) amended....20377

Chapter 2—Department of Defense (Parts 200—299)

[EDITORIAL NOTE: The revision date for the 1991 edition of title 48, chapter 2, was delayed until December 31, 1991. The 1991 revision includes amendments promulgated during the period of October 1, 1990 through December 31, 1991. For amendments promulgated during that period, see the December, 1991 LSA.]

201—251 CFR correction....13048
201.603-2 Added....14990
203.7100—203.7108 (Subpart 203.71) Added....14990
204.402 Revised; interim....14992
204.404-70 Revised....14992
206.302-1 (a)(2)(i) introductory text revised....14992
206.302-5 (c)(ii) amended....14992
209.406-1 Revised....14992
209.406-4 Removed....14992
211.7003-1 (b)(4) amended; interim....4741
211.7004-1 (l)(3)(ii) amended; (p)(2) introductory text, (i) and (ii) revised; interim....4741
211.7004-6 (a)(3) amended; interim....4741

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

211.7005 Revised; interim....4741
215.605 (c)(ii)(A)(*1*) and (B)(*2*) amended....14992
215.804-1 Removed....14992
217.103-1 (a)(iii), (b)(ii)(A), (iv)(B), (C), (D), (vi)(A)(*1*), (B) and (vii) revised....14992
222.7000 (a) amended....14993
223.570—223.570-4 (Subpart 223.5) Revised; interim....32737
223.7001—223.7002 (Subpart 223.70) Added; interim....14993
225.770 Added; interim....29042
225.770-1 Added; interim....29042
225.770-2 Added; interim....29042
225.770-3 Added; interim....29042
225.770-4 Added; interim....29042
225.7002-1 (a) introductory text revised....14993
225.7004 Revised; interim....14993
225.7004-1 (a) table amended; (b) redesignated as (c); new (b) added....14993
225.7004-2 Heading, (a) and (b)(2)(i) revised; (b)(3) added....14993
225.7004-3 Revised....14993
225.7004-5 Revised....14993
225.7012-1 (a) introductory text revised....14994
225.7012-4 (a)(1) revised....14994
225.7014-1 Revised; interim....14994
225.7014-2 Revised; interim....14994
225.7014-3 Revised; interim....14994
225.7016 Regulation at 56 FR 67215 confirmed....14990
225.7016-1 Regulation at 56 FR 67215 confirmed....14990
225.7016-2 Regulation at 56 FR 67215 confirmed....14990
225.7016-3 Regulation at 56 FR 67215 confirmed....14990
225.7016-4 Regulation at 56 FR 67215 confirmed....14990
225.7016-5 Regulation at 56 FR 67215 confirmed....14990
225.7017 Added; interim....14994
225.7017-1 Added; interim....14994
225.7017-2 Added; interim....14994
225.7017-3 Added; interim....14994
225.7017-4 Added; interim....14994
232.111 Added; interim....4741
232.111-70 Added; interim....3358
232.173 Added; interim....3359
232.173-1 Added; interim....3359
232.173-2 Added; interim....3359

Page

232.173-3 Added; interim....3359
232.173-4 Added; interim....3359
232.173-5 Added; interim....3359
235.002 Revised....14994
235.006 (b)(1)(C)(*1*)(*iii*) revised....14994
235.017 Added....14994
237.106 (2) revised....14994
237.170-2 (b) amended....14995
237.170-3 Amended....14995
239.7500—239.7501-2 (Subpart 239.75) Added; interim....14995
245.302-7 Added....14995
249.402-4 Added; interim....534
Removed....6076
252.203-7003 Added....14995
252.204-7000 Amended....14996
252.204-7003 Added; interim....14996
252.211-7005 Removal at 56 FR 67221 confirmed....14990
252.211-7021 (b)(1), (2) and (3) amended; interim....4743
252.223—7004 Revised; interim....32737
252.223-7005 Added; interim....14996
252.225-703 Added; interim....29042
252.225-7016 Removed; interim....14996
252.225-7017 Revised; interim....14996
252.225-7023 Amended; interim....14996
252.225-7029 Regulation at 56 FR 67221 confirmed....14989
252.225-7030 Added; interim....14996
252.232-7006 Added; interim....3359
252.237-7019 Regulation at 56 FR 67222 confirmed....14990
(a)(1) and (b) revised....14996

Chapter 3—Department of Health and Human Services (Parts 300—399)

305.303 (a) amended....11689
306.301-1 (g)(1) and (2) amended....11689
306.302-1 (b)(4)(i) designation removed; (b)(4)(ii) redesignated as (c) and amended....11689
313.105 Revised....11689
315.407 (h) and (i) redesignated as (g) and (n)....11690
319.201-70 (d)(3) amended....11690
319.501 Revised....11690

NOTE: Boldface page numbers indicate 1992 changes.

311-245 (10) O - 92 - 5

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 48 Chapter 3—Con. Page

319.505 Amended 11690
319.705-3 Amended 11690
319.705-4 (c) removed 11690
328 Added 58316
352.228-7 Added 58316
352.228-70 Removed 58317
352.270-6 Regulation at 56 FR 33882 confirmed; (a) amended 54797
Corrected 57602

Chapter 5—General Services Administration (Parts 500—599)

501.105 Revised (OMB numbers) 64213
Revised (OMB numbers) 14648
501.170-1 Revised 14649
501.603-70 (h)(1)(ii) and (v) revised 14649
502.101 Revised 9213
509.405 Revised 51660
513.505-2 Revised 7555
513.7001 (a), (b)(1) and (g) revised 26609
514.406-3 Revised 14649
515.804-3 Temporary Reg. AC-92-1 added 5864
515.804-70 Temporary Reg. AC-92-1 added 5864
519.704 (c)(2) revised 59220
519.705-2 Revised 64213
519.705-4 (a) revised 59220
(a)(5) revised 64214
519.706-70 (f)(2)(iii) revised 64214
519.708 Revised 64214
522.000 Added 7555
522.001 Added 7555
522.101-1 Revised 7556
522.101-3 Added 7556
522.103-5 Added 7556
522.406-13 Revised 7556
522.807 Revised 7556
522.1001 Removed 7556
522.1003-4 Revised 7556
522.1003-7 Revised 7556
522.1006 (b) and (c) revised 22666
522.1013 Added 7556
522.1014 Added 7556
522.1021 Revised 7556
522.1303 Revised 7556
522.1403 Revised 7556
525 Temporary Reg. AC-90-2, Supp. 1 added 52479
525.402 (a) revised 648
532.502-3 Removed 14649
538.203-70 Temporary Reg. AC-92-1 added 5867
552 Temporary Reg. AC-90-2, Supp. 1 added 52479
Temporary Reg. AC-91-2; Supp. 1 added 21041
552.219-72 Introductory text revised 64214
552.219-73 Added 64214
552.222-43 Revised 22666
552.223-72 Amended 14649
552.232-74 Removed 14649
552.238-70 Amended 51660
552.242-70 Revised 26609
552.270-3 Revised 23163
570.702-1 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-2 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-5 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-11 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-14 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-15 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-17 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-18 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-19 Temp. Reg. AC-91-1, Supp. 1 added 4939
570.702-21 Temp. Reg. AC-91-1, Supp. 1 added 4939

Chapter 7—Agency for International Development (Parts 700—799)

701.105 (b) amended 67224
(a) revised (OMB numbers) 5235
701.372 (b) amended 67224
701.376-4 Amended 67224
701.470 (a)(2) amended 67224
701.601 (b)(3) amended 67224
702.170-3 (a) amended 67224
702.170-10 (a)(1)(ii) amended 67224
702.170-13 (a)(1), (2) and (b) amended 67224
705.202 Regulation at 56 FR 27208 confirmed 52212
(b) revised 5235
705.207 Regulation at 56 FR 27208 confirmed 52212

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

706.302-5 Regulation at 56 FR 27208 confirmed 52212
706.302-70 (b)(2) amended 52235
706.302-71 Regulation at 56 FR 27208 confirmed 52212
706.501 Amended 67224
710 Added 23321
715.504 (a) amended 67224
719.270 (k) amended 67224
719.272 Regulation at 56 FR 27208 confirmed 52212
726.000 Regulation at 56 FR 27209 confirmed 52212
726.101 Regulation at 56 FR 27209 confirmed 52212
726.102 Regulation at 56 FR 27209 confirmed 52212
726.104 Regulation at 56 FR 27209 confirmed 52212
726.201 Regulation at 56 FR 27209 confirmed 52212
726.301 Regulation at 56 FR 27209 confirmed 52212
(a) amended 52213
728.105-1 (b) amended 67224
728.305-70 (a) revised 67224
731.205-6 Revised 52235
731.205-46 Revised 52236
731.205-70 Added 52236
731.371 Revised 52236
731.372 Added 52236
731.373 Added 52236
731.770 (a) amended 67225
731.772 Revised 52236
731.774 Added 52236
732 Revised 67225
737.206 (c)(2)(ii) amended 67225
737.270 (a) amended 67225
749.111-71 (a)(1), (2)(i) and (ii) amended 52236
750.7109-1 Amended 67225
750.7110-1 Amended 67225
750.7110-2 Amended 67225
750.7110-3 Amended 67225
752.200 Amended 52236
752.210-70 Added 23321
752.226-1 Regulation at 56 FR 27209 confirmed 52212
752.226-2 Regulation at 56 FR 27210 confirmed 52212
752.228-3 (b) revised 67226
752.232-70 (a), (b) and (d) amended 67226
752.7000 Amended 52237
752.7004 (b)(4) amended 67226
752.7005 Removed 23321

Page

752.7015 Amended 52237
752.7026 (b)(3) amended 67226
752.7034 Added 52237
752.7035 Added 52237
753.107 Amended 67226
Chapter 7 Appendix H amended 67226

Chapter 9—Department of Energy (Parts 900—999)

909.104-1 (h) added; interim 32675
923.570—923.570-3 (Subpart 923.5) Added; interim 32676
950.7000—950.7011 (Subpart 950.70) Heading amended 57827
950.7000 Amended 57827
950.7001 Revised 57827
950.7002 Amended 57827
950.7003 Revised 57828
950.7004 Removed 57828
950.7005 Removed 57828
950.7006 Revised 57828
950.7007 Removed 57828
950.7008 Removed 57828
950.7009 Amended 57828
950.7010 Revised 57828
950.7011 Redesignated as 950.7101 57828
950.7101 (Subpart 950.71) Heading added 57828
950.7101 Redesignated from 950.7011 57828
952.250-70 Revised 57828
952.250-71 Removed 57830
952.250-72 Removed 57830
970.0901 Added 65448
970.2305 Added; interim 32676
970.2305-1 Added; interim 32676
970.2305-2 Added; interim 32676
970.2305-3 Added; interim 32676
970.2305-4 Added; interim 32676
970.2305-5 Added; interim 32677
970.2870 Revised 57830
970.5204-7 Removed 57830
970.5204-8 Heading amended 57830
970.5204-20 Added 65448
970.5204-57 Added; interim 32677
970.5204-58 Added; interim 32677

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 48

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

Page

1602.170-9 Amended; interim.....14359
1609 Added; interim.....14359
1631.205-41 Added.....57496
1632.170 Revised; interim.....14360
1632.171 Revised; interim.....14360
1632.172 Revised; interim.....14360
1649.002-70 Revised.....19387
1652.216-71 (b)(2)(ii) amended; (b)(2)(iv)(B) revised.....57497
Amended; interim.....14360
1652.232-70 Heading and introductory text revised; interim.....14360
1652.232-71 Heading and introductory text revised; amended; interim.....14361
1652.249-70 Amended.....19388

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.104-370 (e) corrected.....56691
1801.370 (a)(1)(i), (ii) and (b) amended.....832
1804.470-3 Existing text designated as (a); (b) added.....30909
1804.470-4 Existing text designated as (a) and amended; (b) added.....30909
1804.677 Added.....3137
1804.677-1 Added.....3137
1804.677-2 Added.....3137
1804.677-3 Added.....3137
1804.677-4 Added.....3137
1804.677-5 Added.....3138
1804.677-6 Added.....3138
1806.202-70 (a)(2)(i) and (3) amended.....832
1806.302-770 (a) and (c) amended.....832
1806.304 (c) amended.....832
1807.7204 Amended.....832
1807.7206 Amended.....832
1809.104-70 Added; interim.....8280
1812.104-70 (d) amended.....832
1815.808 (b) amended.....832
1815.872 (c)(1) and (2) corrected.....56691
1815.970 (e) amended.....832
1815.970-2 (d) amended.....832
1816 Revised.....832
1816.603-2 Correctly designated.....4912
1823.302 Heading revised; introductory text amended.....836
1823.303-70 Amended.....836
1823.370 Amended.....836
1823.7002 (c) amended.....836
1825.102 Corrected.....52213
1825.901 (Subpart 1825.9) Revised.....836
1830.7001—1830.7002-2 (Subpart 1830.70) Revised.....836
1831 Revised.....837
1832.402—1832.412 (Subpart 1832.4) Revised.....838
1832.501-1 Added; interim.....63877
1832.503-4 Added; interim.....63877
1832.702—1832.705-270 (Subpart 1832.7) Revised.....839
1832.903—1832.970 (Subpart 1832.9) Revised.....839
1834 Revised; interim.....30910
1842.202 (c) revised.....839
1842.202-70 (f) added.....840
1842.705-70 (b) and (c) revised.....840
1842.801 (Subpart 1842.8) Revised.....840
1842.1008 Amended.....840
1842.7101 (Subpart 1842.71) Added.....840
1844.102 Revised.....841
1844.102-70 Revised.....841
1844.102-71 Heading and (a) amended.....841
1844.302-70 Revised.....841
1844.302-71 Revised.....842
1844.304-70 Added.....842
1844.305 Added.....842
1844.307-70 Added.....842
1852.204-76 Amended.....30909
1852.204-77 Added.....30909
1852.204-78 Added.....30909
1852.216-72 Revised.....842
1852.216-73 Revised.....842
1852.216-74 Revised.....842
1852.216-76 Revised.....843
1852.216-79 Revised.....843
1852.216-80 Revised.....843
1852.216-82 Revised.....843
1852.216-83 Revised.....844
1852.216-84 Revised.....844
1852.216-85 Revised.....844

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

1852.216-86 Revised..... 844
1852.216-87 Revised..... 844
1852.219-76 (a) corrected..... 56691
1852.231-70 Redesignated from 1852.232-80 and revised..... 844
1852.232-12 Redesignated from 1852.232-76 and revised..... 844
1852.232-70 Added; interim..... 63877
1852.232-75 Removed..... 844
1852.232-76 Redesignated as 1852.232-12 and revised..... 844
1852.232-80 Redesignated as 1852.231-70 and revised..... 844
1853.204-70 Heading revised; (o) added..... 3139
1853.215-2 Revised..... 844
1853.242-70 (b) amended..... 844
1870.303 Appendix I amended..... 3139

Chapter 20—Nuclear Regulatory Commission (2000—2099)

Chapter 20 Established..... 29221

Chapter 28—Department of Justice (Parts 2800—2899)

2801.270—2801.270-4 (Subpart 2801.2) added..... 24555
2803.101-3—2803.104-12 (Subpart 2803.1) Revised..... 24556
2804.601 (b) revised..... 24557
2804.7000 (Subpart 2804.70) Added..... 24557
2805.2 Added..... 24557
2805.302-70 (Subpart 2805.3) Added..... 24557
2806.303-2 Added..... 24557
2806.304 Added..... 24557
2807.103 Revised..... 24558
2810.001 Added..... 24558
2810.002 Added..... 24558
2813.7001—2813.7002 (Subpart 2813.70) Added..... 24558
2817.200 (Subpart 2817.2) Added..... 24559
2833.105-70 (Subpart 2833.1) Added..... 24559
2834.002-70 (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e)..... 24559

NOTE: Boldface page numbers indicate 1992 changes.

Chapter 52—Department of the Navy Acquisition Regulations (Parts 5200—5299)

Page

5243 Added; interim..... 63672
5252 Authority citation revised..... 63675
5252.243-9000 Added; interim..... 63675
5252.243-9001 Added; interim..... 63675

Chapter 99—Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

9900 Added..... 14153
9903—9904 (Subchapter B) Added..... 14153

Title 48—*Proposed Rules:*

5 33702
7 33702
10 33702
15 57182
..... 33702
16 33702
17 33702
19 2820
21 24704
23 58296
31 ..... 4181, 11550, 22204, 32768
35 64922
37 33702
42 11550
44 33702
45 2818
46 33702
51 22204
52 ..... 58296, 64922
..... 2820, 22204, 32768, 33702
213 26814
215 55264
223 32769
225 52597
..... 11059, 21854
228 29269
231 ..... 11059, 21854
232 29269
242 ..... 11059, 21854
246 50693
252 ..... 50693, 53497, 55264
..... 29269, 32769
270 55264

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 48—Con.

Page

400—499 (Ch. 4) 6483
500—599 (Ch. 5) 12286
503 50073
505 8854
509 10454
515 56956
..... 8854
516 8854
517 8856
538 56956
..... 8856
552 50073
..... 8854, 8856
935 56621
1039 11929
1200—1299 (Ch. 12) 4744
1512 8612
1516 8612
1552 8612
1804 58865
1832 30933
1852 30933
1870 58865
2401 24334
2402 24334
2403 24334
2405 24334
2406 24334
2409 24334
2413 24334
2414 24334
2415 24334
2416 24334
2419 24334
2425 24334
2426 24334
2428 24334
2432 24334
2433 24334
2436 24334
2437 24334
2446 24334
2453 25334
2900—2999 (Ch. 29) 6301
5149 18445
5152 18445
5300—5399 (Ch. 53) 1710
5446 66008
..... 8740
5452 66008
..... 8740
9903 23189
9905 23189

NOTE: Boldface page numbers indicate 1992 changes.

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

Page

1 Technical correction..... 10062
1.44 (o)(6) and (p) removed..... 8582
1.45 (a)(8) revised..... 27947
1.46 (l), (m), (z) and (ll) revised..... 8582
1.53 (k) added..... 8582
1.59 (c)(5) revised..... 27947
1.66 (a) revised; nomenclature change..... 59893
(y) added..... 8582
1.67 Nomenclature change..... 59893
23 Authority citation revised..... 18410
23.89—23.111 (Subpart F) Added..... 18411
24 Authority citation revised 33266
24.103 (d) redesignated in part as (d)(1); (d)(2) added; eff. 12-31-92..... 33266
37.13 Revised..... 64215
71.5 (b) revised..... 52003

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

[EDITORIAL NOTE: The revision date for the 1991 edition of title 49, chapter 1, was delayed until December 31, 1991. The 1991 revision includes amendments promulgated during the period of October 1, 1990 through December 31, 1991. For amendments promulgated during that period, see the December, 1991 LSA.]

107 Authority citation revised..... 20428, 30630
107.201 (a) and (c) revised..... 20428
107.202 (d) added..... 20428
107.203 (a) revised..... 20428
107.205 (a) revised..... 20428
107.209 (c) revised..... 20428
107.211 Revised..... 20428
107.215 (a) introductory text revised..... 20428
107.217 (a) and (c) revised..... 20429
107.221 (c) revised..... 20429
107.223 Removed; new 107.223 redesignated from 107.225 and revised..... 20429

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

107.225 Redesignated as 107.223 20429
107.503 (b)(1) and (c) amended 365
107.601—107.620 (Subpart G) Added 30630
Clarification 33416
171.2 (a) and (b) revised 30631
Clarification 33416
171.6 (b)(2) table amended (OMB numbers) 1877
171.8 Amended 20952
172 Heading revised 20952
172.101 Table amended 1878
172.700—172.704 (Subpart H) Added 20952
172.702 Heading revised; (d) correctly added 22182
173.1 (b) revised 20953
173.166 Added 1878
174.7 Revised 20953
175.20 Revised 20953
176.13 Revised 20954
177.800 Revised 20954
177.816 Revised 20954
177.825 (d) revised 20954
180.413 (a) introductory text amended 365
199 Authority citation revised 31280
199.1 (d) revised 31280
Technical correction 33392

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

209.337 Added (OMB numbers) 66791
212 Authority citation revised 28115
212.3 (d)(5) and (6) revised; (e) redesignated as (g); (d)(7), new (e) and (f) added 28115
212.101 (b)(1) and (c) revised 28115
212.105 (e)(1)(i) revised 28115
212.109 Revised 28115
212.201 (d)(5) and (f) revised 28115
212.227 Redesignated as 212.231; new 212.227 added 28115
212.229 Added 28116
212.231 Redesignated from 212.227 28115
214 Added 28127
Regulation at 57 FR 28127 effective date corrected 29561
Regulations at 57 FR 28127 and 29561 effective date delayed to 8-24-92 30429
219.3 (c) revised 31279
229 Authority citation revised 66792
230 Authority citation revised 66792
231 Authority citation revised 66792
232 Authority citation revised 66792
234 Regulation at 56 FR 33738 effective date revised to 1-1-92 61169
240 Meetings 55240
245 Meetings 59893
Revised 30602

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

383 Waivers 13650, 31457
383.23 (b) amended 31457
385 Authority citation revised 51344
385.12 Revised 51344
390.5 Amended 33278, 33646
390.21 (a) revised 3142
390.23 Revised 33647
390.25 Added 33647
391 Waivers 10295, 31458
391.43 (a)(1) revised; (c) through (f) redesignated as (d) through (g); new (c) added; newly redesignated (d) through (g) amended 33278
391.83 (c) revised 31278
395.1 Added 33647
395.2 Revised 33648
395.3 Revised 33649
395.7 Removed 33649
395.8 (k)(2) and (l) removed; (k)(3) redesignated as (2) 33649
395.10 Removed 33649
395.11 Removed 33649
395.12 Removed 33649

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

501.8 (g)(3) added 22442

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 49 Chapter V—Con. Page

509.2 Revised (OMB numbers)..... 21214
544 Appendixes A, B and C revised..... 23538
556.4 (b) added..... 66376
571 Technical correction..... 56016
Petition denied..... 3556
571.3 (b) amended..... 63681
571.21 Amended; eff. 9-8-92..... 50670
571.101 Amended..... 51848
571.106 Amended; eff. 11-6-91..... 50521
571.108 Amended..... 56942
Amended..... 32740
571.111 Amended..... 58516
571.114 Amended; effective in part 9-1-92 and 9-1-93..... 2043
Technical correction..... 4086
Amended..... 23963
571.118 Corrected..... 28012
571.121 Amended..... 30917
571.123 Amended..... 61387
571.205 Amended..... 1654, 13656, 30164
Corrected..... 31563
571.208 Amended; eff. 12-14-92..... 26617
571.209 Amended..... 56325
571.210 Amended..... 63681, 63685
Amended; eff. 9-1-93..... 32904
571.214 Figure 2 revised..... 21615
Amended; eff. 9-1-93..... 30921, 30922
572 Petition denied..... 3556
572.4 (c) revised..... 57836
572.70—572.78 (Subpart I) Added..... 57836
572.73 Correctly designated..... 4086
575.104 (e)(1)(iv) revised..... 57989
586.1 Revised; eff. 9-1-93..... 30922
586.2 Revised; eff. 9-1-93..... 30922
586.3 Revised; eff. 9-1-93..... 30922
586.4 (b) revised; eff. 9-1-93..... 30923
586.5 Heading revised; eff. 9-1-93..... 30923
586.6 OMB number..... 21616
Heading revised; eff. 9-1-93..... 30923
586.7 Redesignated as 586.9; new 586.7 added; eff. 9-1-93..... 30923
586.8 Added; eff. 9-1-93..... 30923
586.9 Redesignated from 586.7 and revised; eff. 9-1-93..... 30923
587 Petition denied..... 3556
587.6 (b) introductory text, (1), (3), (5), (7) and (c) revised; (b)(8) added..... 7558

NOTE: Boldface page numbers indicate 1992 changes.

Page

591.5 (j) revised..... 2047
591.6 (g) revised..... 2047
(g)(1) amended..... 29043
591.7 (b) revised..... 2047
(c) and (d) added..... 2048

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

Chapter VI Nomenclature change..... 13657
Policy statements..... 30880
639 Added..... 51794
663 Dispostition of inquiries..... 10834
665 Added; interim..... 33397

Chapter VIII—National Transportation Safety Board (Parts 800—899)

821.7 (a) and (b) revised..... 56172
821.10 Revised..... 56172

Chapter X—Interstate Commerce Commission(Parts 1000—1399)

Chapter X Policy Statement..... 19812
1001.1 (a) revised..... 24381
1001.3 Redesignated as 1001.4; new 1001.3 added..... 24381
1001.4 Redesignated as 1001.5; new 1001.4 redesignated from 1001.3..... 24381
1001.5 Redesignated as 1001.6; new 1001.5 redesignated from 1001.4..... 24381
1001.6 Redesignated from 1001.5..... 24381
1011 Petition denied..... 67002
1011.8 (c)(3) amended..... 13049
1033 Revised..... 66793
1039 Authority citation revised..... 11913
1039.22 Added..... 11913
1053 Removed..... 21616
1057.12 (c)(4) added..... 32905
1105.5 Concluding text corrected..... 49821
1105.7 (e)(3)(i) corrected..... 49821
1105.10 (a)(5) corrected..... 49821
1105.12 Appendix corrected..... 49821
1109 Added..... 32451
1118 Heading revised..... 9213
1118.1 Revised..... 9213
1118.4 (d) revised..... 9213

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

1121.4 (g) revised 5237
1145.1 Revised 58318
1145.2 Revised 58318
1145.3 Redesignated as 1145.4 and revised; new 1145.3 added 58318
1145.4 Redesignated as 1145.5 and revised; new 1145.4 redesignated from 1145.3 and revised 58318
(e) corrected 61096
1145.5 Redesignated as 1145.6; new 1145.5 redesignated from 1145.4 58318
Revised 58319
1145.6 Redesignated as 1145.7; new 1145.6 redesignated from 1145.5 58318
(c) revised 58320
1145.7 Redesignated as 1145.8; new 1145.7 redesignated from 1145.6 58318
Revised 58320
1145.8 Redesignated from 1145.7 58318
1152 Authority citation corrected 49821
1152.2 (m) revised 61387
1152.25 (a)(2)(iv) and (c)(1) amended 13049
1152.28 (a)(3) added; (b) amended 13049
1152.31 (a)(1) revised 61387
1152.50 (a)(2) amended 13049
1152.52 (n) revised 61387
1160 Petition denied 67002
1180.6 (a)(8) revised; (a)(9) removed 28641
1181 Petition denied 67002
1186 Petition denied 67002
1201 Amended 27185
Corrected 31754
1313.7 (d) redesignated as (e); new (d) added; heading and new (e)(1) revised 58320
1332.2 Added 23539
1332.3 Revised 23539

Title 49—*Proposed Rules:*

Page

1-99 (Subtitle A) 4744
6 23460
9 9224
24 33164
71 29270
81 21362
100-199 (Ch. I) 4744
101 21362
107 ..... 51294, 56962
110 7474
171 ..... 51294, 56962
..... 3854, 6696
172 ..... 3854, 6696, 24532
173 ..... 3854, 6696
174 ..... 3854, 6696
175 1891
176 ..... 3854, 6696
192 54816
198 7705
200-299 (Ch. II) 4744
225 52241
234 28819
245 52498
..... 6571
300-399 (Ch. III) 4744, 21362
350 50305
..... 13572
355 13572
383 9100
390 ..... 2885, 33712
391 ..... 6793, 21362, 23370
392 ..... 2885, 21362
394 33712
396 50305
..... 13572, 21362, 29457
398 21362
400-499 (Ch. IV) 4744
500-599 (Ch. V) 4744
527 21362
533 ..... 50694, 58020
541 ..... 56339, 65876
544 51871
552 56343
..... 29459, 31348
564 ..... 52242, 65038
567 61392
..... 3983
568 61392
..... 3983
571 ...52242, 52499, 55266, 55650, 58662, 63473, 63474, 63914, 63921, 64733, 65038, 65541, 66395, 67038, 67042
...242, 252, 870, 2496, 4594, 6579, 7712, 10327, 10855, 12286, 12289, 12794, 18859, 21362, 22682, 22687, 24207, 30189, 32942
572 ..... 63922, 67042
..... 12794
575 6579
582 56963

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 49—Con.

Page

590 21362
591 2071
600–699 (Ch. VI) 4744, 21915, 23460
603 21362
623 21362
635 21362
659 ..... 24768, 28572
670 21362
1000—1399 (Ch X) ... 14688, 20442, 33166
1001 8858
..... 11652
..... 22204
1003 ..... 22205, 23072, 28825
1004 21920
1020 ..... 20072, 23372, 27009
1023 ..... 6697, 10328
1033 67269
1035 ..... 5123, 10151, 13688, 20442, 25007
..... 31488
1037 ..... 6697, 9997, 10328, 11929, 27961, 30709, 31489, 33478
1039 8430
1048 ..... 2512, 24008, 24009
1057 56490
1063 64737
1109 ..... 4594, 8108
1141 58868
1152 ..... 31165, 31693
1180 33314
1207 2888
1244 33314
1249 9997
1313 23568
1321 5413
1332 .....

TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

14 Authority citation revised..... 27108
14.12 (i) and (j) amended; (k) added..... 21355
14.101—14.172 (Subject J) Revised..... 27108
16 Authority citation revised..... 56942
Embargo..... 17857
16.13 (a)(1) revised..... 56942
17.11 (h) table amended; interim..... 54957, 54967, 56333
(h) table amended..... 64723
(h) table amended... 212, 594, 1834, 13661, 14790, 21569, 27858
17.12 (h) table amended... 49853, 55785, 57849, 60937, 60940, 61182
(h) table amended... 1403, 14653, 14785, 19819, 20588, 20592, 20595, 20787, 21574, 24199, 27863, 27867, 30168
(h) table corrected..... 28011
(h) table amended; eff. 1-1-93..... 28024
17.40 (i) amended..... 594
(j) added; eff. 1-1-93..... 28024
17.95 (b) amended..... 1834
17.108 (a)(4) through (7) added; map revised..... 5990
23 Authority citation revised..... 21898
23.23 (a) amended; (f) revised..... 49709
(f) table amended..... 50060
(f) table amended..... 33452
23.57 (a) and (b)(1) revised..... 21899
25.23 Added..... 66795
32.2 (j) added..... 66795
32.11 Amended..... 58182
32.12 (f)(11) through (16), (aa) introductory text, (aa)(1) through (7) and (dd)(5) redesignated as (ff)(12) through (17) (aa)(1) introductory text, (i) through (vii) and (dd)(6); new (f)(11), (aa) introductory text and (dd)(5) added; (aa)(1) introductory text amended..... 58182
(f)(3), (i)(4), (p)(2), (4)(iii), (5), (s)(2), (u)(1), (y)(2) heading, (i), (ii), (hh)(4)(i), (10)(ii), (11)(ii), (jj)(2), (qq)(4)(ii), (v), (7)(i) and (iii) revised; (h)(10)(v), (11)(viii) and (qq)(4)(viii) added..... 66795
32.21 Amended..... 58183
32.22 (v)(2) through (7) redesignated as (v)(3) through (8); new (v)(2) and (cc)(3) added..... 58183
(e)(2), (4)(i), (10)(i), (p), (q)(2), (v)(1), (dd)(1), (ff)(1)(i), (iii), (6)(ii), (iv), (8)(ii), (hh)(2), (jj)(4), (nn)(3) and (5)(ii) revised; (q)(5)(iv) added..... 66796
32.31 Amended..... 58183
32.32 (k) through (uu) redesignated as (l) through (vv); new (u)(3)(1) and (z)(2) through (7) redesignated as (u)(3)(i) and (z)(3) through

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

(8); new (k), (z)(2) and (hh)(6) added 58183
(s)(2), (6), (t), (z)(1), (ii)(1), (mm)(2), (pp)(1)(iii) through (ix), (ss)(4)(iv) and (tt)(3)(ii) revised; (s)(5)(iii) and (iv) added 66796
32.41 (Subpart D) Removed 66797
33.2 (f) removed 66797
33.4 Amended 58183
33.22 (a) through (j) redesignated as (b) through (k); new (a) added 58183
88.28 (d) added 58183
100 Regulation at 55 FR 27121 effective date extended to 6-30-92 351
Authority citation revised ... 22535, 22964
100.1—100.9 (Subpart A) Revised 22951, 22964
100.10—100.20 (Subpart B) Revised 22953, 22964
100.15 (c) amended 351
100.22—100.24 (Subpart C) Revised 22957, 22964
100.25—100.27 (Subpart D) Revised 22535

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

204.1 (b) table amended (OMB numbers) 50063, 65016
215.32 (f)(2) removed; (f)(1) redesignated as (f); (c)(1) revised 33902
216 Embargo 17857
216.3 Amended 50676
216.24 (e)(5)(iv), (v) introductory text, (F), and (viii) revised 50677
Regulation at 56 FR 47423 eff. 11-1-91 50278
Regulations at 56 FR 47423 and 50278 effective date delayed to 12-1-91 56603
Regulations as 56 FR 47423, 50278 and 56603 effective date delayed to 5-1-92 67226
(e)(5)(xiii) correctly designated 3142

Page

217.12 Amended; interim; eff. 7-24-92 through 8-31-92 33455
222.23 (a) amended 58624
227 Technical correction 23458
227.4 (g) and (h) added 14662
227.12 (a)(3) Table 1 amended 58184
227.21 Revised 14663
227.72 (e)(1) amended 14663
(e)(2)(i) and (3)(ii) suspended; (e)(2)(v), (3)(v), (6)(vi), (vii), (viii) and (e)(8) added; interim; eff. 7-24-92 through 8-31-92 (OMB number pending) 33455
247.4 Regulation at 56 FR 47424 eff. 11-1-91 50278
Regulations at 56 FR 47424 and 50278 effective date delayed to 12-1-91 56603
Regulations at 56 FR 47424, 50278 and 56603 effective date delayed to 5-1-92 67226
260 Inspection service program 33456
260.71 Removed 30924
265.101—265.107 (Subpart A) Revised 55092
285 Temporary regulations 55095
Permits 54797
Temporary regulations ... 11913, 28131, 29655, 29656
285.1 (c) amended 32923
285.2 Amended 372, 32920
285.3 (b) and (f) revised; (g) added 372
(f) revised; (h) added 32920
285.5 (c) amended 32923
285.20 (a)(1)(i) removed; (a)(1)(ii) through (iv) redesignated as (a)(1)(i) through (iii); new (a)(1)(i), (ii), (b)(1) and (3) revised 32920
285.21 (e) and (k) revised 50063
(e) correctly designated ... 56544, 61096
(c) revised 372
(a) and (b) revised 32920
285.22 Revised 32920
285.23 (f)(1), (2) and (g) revised 372
Revised 32921
285.24 (c) revised 8730
Revised 32921
285.25 (c) revised 373

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 50 Chapter II—Con. Page

(b) amended 32923
285.26 Revised 373
Table revised 32922
285.28 (a) revised 373
285.29 (a), (b) and (e) revised; OMB number 373
(a) revised 32922
285.30 (c)(2) and (d) revised 374
(c)(1) and (d) revised 32922
285.31 (a)(1), (2), (5), (10) and (15) revised; (a)(30) through (33) and (c) added 374
(a)(10), (17), (18), (26) and (28) revised; (a)(34) through (38) added 32922
285 Figure 1 added 374
298 Added (effective date pending) 58185
Regulation at 56 FR 58185 effective 12-17-91 66001
299 Revised; interim 33650
299.5 OMB number pending 33650

Chapter III—International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)

301 Revised 12879
301.19 (e) revised; (f) removed 57295
371 Inseason orders 2054
380.23 Revised 13051
380.24 Revised 13051
380.26 Revised 13052
380.27 Revised 13052
380.29 Revised 13052

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

600—699 (Chapter VI) Policy guidelines for emergency rules 375
601.32 Amended 379
601.33 (c), (e) and (h) revised 379
601.39 (a) revised 380
605.15 (b)(2) through (4) redesignated as (b)(3) through (5); new (b)(2) added 380
605.23 (d) introductory text revised; (d)(2) redesignated as (d)(3); new (d)(2) added 380
605.24 (a)(2) amended; (a)(3)(i), (5)(i) introductory text, (ii), and (7)(i) revised; (a)(3)(v) added 380
611 Reassessment 56603
Specifications 1654, 2844, 3952
611.22 (a) and (c) amended; (b)(1) revised 27370
611.50 (b)(2) revised; (b)(4) Table 1 removed 535
620.7 (i) added; interim emergency effective to 5-12-92 5079
(i) corrected 9076
Regulation at 57 FR 5079 effective date extended through 8-10-92 20788
625 Technical correction 4248
625.4 (m) added; interim emergency; effective to 3-5-92 63690
Regulation at 56 FR 63690 effective date extended through 3-5-92 213
Technical correction 6297
Regulations at 56 FR 63690 and 57 FR 213 effective date extended through 6-3-92 8582
625.5 Heading revised; text added; interim emergency; effective to 3-5-92 63690
Regulation at 56 FR 63690 effective date extended through 3-5-92 213
Technical correction 6297
Regulations at 56 FR 63690 and 57 FR 213 effective date extended through 6-3-92 8582
625.7 (a)(1), (2), (b)(4) and (5) suspended; (a)(3) through (8) and (b)(6) through (9) added; interim emergency; effective to 3-5-92 63690
Regulation at 56 FR 63690 effective date extended through 3-5-92 213
Technical correction 6297
Regulations at 56 FR 63690 and 57 FR 213 effective date extended through 6-3-92 8582
625.24 Added; interim emergency; effective to 3-5-92 63691
(b) corrected 66603
Regulations at 56 FR 63691 and 66603 effective date extended through 3-5-92 213
Technical correction 6297
Regulations at 56 FR 63690, 66603 and 57 FR 213 effec-

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

tive date extended through 6-3-92....8582
625.26 Added; interim emergency; effective to 3-5-92....63691
Regulation at 56 FR 63691 effective date extended through 3-5-92....213
(c)(1), (2), (d), (e) and (f)(1) corrected....66603
Regulations at 56 FR 63691 and 57 FR 213 effective date extended through 6-3-92....8582
630 Authority citation revised....65016
Temporary regulations...14361, 29447, 32452, 33458
630.1 Revised....65016
630.2 Amended....65016
630.3 Revised....59222
630.4 (c) revised....59222
Revised....65016
630.5 Revised....65017
630.7 Revised....65018
630.10 Added....65018
630.20—630.26 (Subpart B) Revised....65019
630.40 (Subpart C) Added....65021
641 Temporary regulations....6561
641.2 Amended....11915
641.4 (b)(4) removed; heading, (a)(3), (c) through (f), (i) and (k) revised; (b)(4) removed....58651
(a)(2) and (b)(2)(xi) revised; (g) amended; (l) added; effective to 5-7-95....11916
641.24 (a)(2)(iv) revised; (a)(4) and (5) added....11916
641.25 (c) suspended; (e) added; effective to 12-31-91....58188
(b) and (c) revised....11916, 21752
641.28 Redesignated as 641.29; new 641.28 added....11916
641.29 Redesignated from 641.28....11916
Added; eff. 4-3-92 through 5-14-92....11918
642 Temporary regulations...49853, 66001
Temporary regulations....1662, 4376
642.4 Revised; interim....11583
(b)(2)(v) revised....27005
642.5 (b) introductory text amended; interim....11585
642.7 (f) and (v) amended; interim....11585
646 Temporary regulations....52479
646.2 Amended....56022
Corrected....59970
Revised; interim....11583
646.4 Revised....56022
(d) corrected....59970
Revised....7888
(a)(1)(iii) corrected; (d) correctly designated....11137
646.5 Figure 1 redesignated as Figure 2 to part 646; revised....56023
(a) and (c) revised....7890
646.6 Revised....56024
(a) introductory text revised....7890
646.7 Revised....56024
Revised....7890
(kk) corrected....28907
(w) and (x) revised....33128
646.10 Added....7891
(a)(2) corrected....11137
646.21 (a), (b) and (d) revised; (f) through (i) added....56025
(d) revised....7892
(g) amended; (h) and (i) revised....33128
646.22 Figure 2 redesignated as figure 3 to part 646; (c) redesignated as (e); (b) revised; new (c), (d), (f) and (g) added....56026
646.23 Revised....56026
(e) and (f) corrected....59970
646.24 (b) revised....56027
646.25 Revised....56027
646.26 (a)(1) removed; (a)(2) through (22) redesignated as (a)(1) through (21); (c)(1) introductory text, (ii), (2) and (3) amended; (c)(4) added....56027
646 Figure 2 redesignated from 646.5 figure 1....56023
Figure 3 redesignated from 646.22 figure 2....56026
Figure 1 added....56027
649 Specifications....30684
649.20 (b) revised....215
649.21 (c)(1) and (2) revised; (c)(3) added....215
650 Temporary regulations...4377, 21752
651 Temporary regulations....20789

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 50 Chapter VI—Con. Page

651.20 (f)(1)(iii) regulation at 56 FR 24727 confirmed....50663
652 Temporary regulations...61182, 61183
Temporary regulations....844
Fishing quotas....3725
655 Temporary regulations....32923
655.22 (a), (b), (c) and (d) revised; (f) redesignated as (g); new (f) added....536
656.2 Amended....19096
657.2 Amended....5238
658 Temporary regulations....66604
Temporary regulations....29447
661 Inseason adjustments...51660, 51661, 55634
Temporary regulations...51662, 55634
Inseason adjustments....31666, 32924
Temporary regulations ...32741, 33128, 33279
Appendix amended....19404
663 Restrictions....49727
Reassessment....56603
Temporary regulations...58321, 64723
Specifications....1654
Temporary regulations...10429, 21041, 32181
Restrictions....14666, 23065
663.7 (n) and (o) added; interim emergency; eff. 4-15-92 to 7-16-92....13665
(p) added....20060
(p) corrected....22021
663.22 (b)(2) through (5) revised; (b)(7) removed....12212
(b)(2) removed....23065
(b)(2) corrected....28907
663.23 (b)(4) added; interim emergency effective to 1-2-92....50065
(b)(3) revised....2853
(b)(2) revised; interim emergency; eff. 3-27-92 through 7-1-92....11272
(b)(5) added; interim emergency; eff. 4-15-92 to 7-16-92....13665
(b)(4) added; interim emergency; eff. 4-16-92 through 7-21-92....14665
(b)(1) revised....20060
Regulation at 57 FR 14665 effective date extended through 10-19-92....32924
663 Appendix amended....20060
Appendix A corrected....22021

672 Technical correction...50157, 56116, 56943
Temporary regulations...51179, 51848, 52213, 55096
Recordkeeping and reporting requirements....50279
Temporary regulations...2854, 3142, 3960, 4939, 6562, 8280, 8583, 8849, 10142, 10297, 11274, 11433, 11918, 18835, 19552, 21215, 22182, 23163, 23344, 23965, 24381, 24559, 24992, 26781, 27709, 27710, 29222, 29223, 29806, 30685, 30924, 31331, 31971, 32453, 32924, 33902
Specifications....2844, 30168
Recordkeeping and reporting requirements....2853, 6688
Technical correction....20325
Fishery management measures....29223
672.1 (d) revised....33281
672.2 Regulations at 56 FR 38349 effective date extended through 12-31-91; interim....57989
Amended...2686, 10432, 23344, 33281, 33904
672.4 (j) added....33904
672.5 (b)(3)(ii)(A)(*11*) and (c)(2)(iii)(I) amended; (c)(3)(ii)(F) revised....10432
672.6 Added....10432
672.7 (g) added....23344
(h) and (i) added....33904
672.20 Regulations at 56 FR 38349 effective date extended through 12-31-91; interim....57989
(a)(2)(iv), (h)(2) and (i)(4) revised....2686
(a)(1), (c)(2) and (3) amended; (c)(6), (d)(1)(i), (e)(4) and (g)(1)(i) revised; (g)(3) redesignated as (g)(4); new (g)(3) added; Table 1 removed....10434
(f)(1)(i), (g)(4) and (h)(2) suspended; (f)(1)(vi), (g)(5), (6), (7) and (h)(3) added; interim emergency eff. 3-30-92 through 7-2-92....11439
(g)(3), (4), (5) and (6) correctly designated as (g)(4), (5), (6) and (7); (g)(7) corrected....14667
(g)(5) revised; interim; eff. 5-20-92 through 7-2-92....21356

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

(c)(1)(i) and (ii) redesignated as (c)(1)(i)(A) and (B); (a)(2)(v), (c)(1)(i) heading and (c)(1)(ii) added; (c)(2) revised....23344
(f)(1)(ii), (2)(i), (g)(1) and (2) revised; (g)(3) removed; (g)-(4) redesignated as (g)(3) 33282
672.23 (d) added; interim emergency....50282
(d) removed....54798
(d) added....382
(d) removed....2686
(d) corrected....4085
(d) added; interim emergency; eff. 3-30-92 through 5-31-92....11274
(a) suspended; (e) and (f) added; interim emergency eff. 3-30-92 through 7-2-92....11439
672.24 (e) added....2686
(a)(2) revised....10434
(e)(2) corrected....15031
(f)(1)(ii) and (2)(ii) Technical correction....20325
675 Temporary regulations...52214, 55097
Temporary regulations...2854, 3142, 5238, 6203, 6688, 8583, 8584, 10142, 12213, 14667, 18093, 20207, 20655, 23347, 24381, 24560, 29656, 29806, 29807, 30924, 31129, 33904
Apportionment....215, 27185, 32925
Inseason adjustments....2688
Recordkeeping and reporting requirements....2856, 19819
Specifications....3952
Inseason adjustments; correction....8850, 9598
Technical correction....20325
Fishery management measures....29223
675.2 Amended....10434, 23345, 33904
675.4 (j) added....33904
675.5 (b)(3)(ii)(A)(*11*) introductory text and (c)(2)(iii)(I) amended; (c)(3)(ii)(F) revised....10434
675.6 Added....10435
675.7 (h) added....23346
(i) and (j) added 33904
675.20 (a)(1) amended; (h)(3)(iii) revised; Table 1 removed....10435

Page

(h)(1), (6) and (i)(2) suspended; (h)(7), (8) and (i)(3) added; interim emergency eff. 3-30-92 through 7-2-92....11440
(a)(2)(iii), (3)(i), (ii) and (iii) added....23346
675.21 (a)(5), (b), (c), (d), (e) and (f) suspended; (a)(7), (g), (h), (i) and (j) added; interim emergency eff. 3-30-92 through 7-2-92....11440
(h)(1) and (2) revised; interim; eff. 5-20-92 through 7-2-92....21356
675.22 (f) revised....10435
(g) added....23346
675.23 (d) added....382
(d) removed....2687
(d) corrected....4085
675.24 (f) added....2687
(c)(1)(i) and (f)(1) heading revised....10435
(f)(1)(ii) and (2)(ii) corrected....15031
(c)(2)(ii) corrected....15032
(c)(2)(iii) added; interim emergency eff. 5-21-92 through 8-25-92....22185
675.26 (a)(2)(ii)(A), (B), (b) and (d)(3) suspended; (a)(2)(ii)(C), (D), (d)(4) and (e) added; interim emergency eff. 5-21-92 through 8-25-92....22185
675 Figure 2 revised....10536
680.2 Amended....59895
680.4 (b) and (d) through (h) revised....59895
681 Interim final quota....21752
681.2 Amended....10438
681.4 (a)(1), (b) and (d) through (h) revised....10439
681.5 (b)(2)(ix) redesignated as (b)(2)(x); (c)(3)(iii) and (iv) revised; new (b)(2)(ix), (c)(3)(v) and (d) added....10439
681.6 (a), (b) and (c) amended....10439
681.7 (b)(1), (c)(1)(i), (ii), (2), (3) and (4) revised; (b)(7) through (13) added....10439
681.24 (e) through (g) added....10440
681.29 Added....10440
681.30 Redesignated as 681.40; new 681.30 added....10440

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

TITLE 50 Chapter VI—Con. Page

681.31 Redesignated as 681.41 ... 10440
Added ... 10441
681.32 Redesignated as 681.42 ... 10440
Added ... 10442
681.33 Redesignated as 681.43 ... 10440
681.34 Redesignated as 681.44 ... 10440
681.35 Redesignated as 681.45 ... 10440
681.40 Redesignated from 681.30 ... 10440
681.41 Redesignated from 681.31 ... 10440
681.42 Redesignated from 681.32 ... 10440
681.43 Redesignated from 681.33 ... 10440
681.44 Redesignated from 681.34 ... 10440
681.45 Redesignated from 681.35 ... 10440
685 Technical correction ... 10062
685.2 Amended; effective to 4-22-94 ... 51852
Amended ... 52217
Amended ... 7664
685.5 (l) removed; (m) and (n) redesignated as (l) and (m); new (n) through (q) added; effective to 4-22-94 ... 51852
(u) revised; emergency interim; effective to 12-16-91 ... 59897
(r) and (s) added ... 52217
(t) added ... 7664
685.11 Heading, (a), (b) and (c) revised ... 52217
685.14 Added ... 52217
685.15 Added; effective to 4-22-94 (OMB number pending) ... 51852
OMB number ... 58516
(c)(6) corrected ... 63550
685.16 Added; effective to 4-22-94 ... 51853
685.17 Added; efffective to 4-22-94 ... 51853
685.18 Added; emergency interim; effective to 12-16-91 ... 59897
685.24 Added ... 7664
685.25 Added ... 7664

Title 50—*Proposed Rules:*

1—199 (Ch. I) ... 51868, 65964
12 ... 57872
13 ... 57872
14 ... 57502, 57872
... 30457
16 ... 29856
17 ... 50075, 50550, 50701, 51668, 5200, 52503, 52506, 55107, 55266, 55487, 55862, 56344, 56491, 56882, 57503, 58020, 58026, 58332, 58339, 58348, 58664, 58804, 58869, 59917, 60957, 63705, 64229, 65207, 65209, 65877, 66614, 67046, 68400, ... 35, 544—548, 596, 658, 659, 1246, 1443, 2075, 2239, 2241, 3604, 4745, 4747, 4912, 5511, 5871, 9680, 9681, 11459, 14372, 14374, 14378, 14556, 14689, 19585, 19837, 19844, 19852, 19856, 20073, 20325, 20806, 21369, 21374, 21377, 21381, 21921, 21925, 21929, 21933, 22453, 24220—24222, 25007, 27203, 28167, 27962, 28167, 28474, 28825, 30191, 31166, 33478
20 ... 57872
... 19863, 19865, 24736, 27672, 30884
21 ... 57872
23 ... 262, 7713, 7719, 20443, 28825
80 ... 50844
100 ... 63702, 64404
... 3676
200—299 (Ch. II) ... 64234
215 ... 22450
216 ... 27010, 27207
217 ... 18446, 22453, 27962, 30196, 30709, 31168
222 ... 58869
... 2247, 3040, 27416, 30709
227 ... 18446, 22453, 27416, 30196, 30709
228 ... 20667
251 ... 50305
285 ... 17872, 18122
301 ... 390
400—499 (Ch. IV) ... 51868, 65964
424 ... 21056
600—699 (Ch. VI) ... 58214
603 ... 30458
611 ... 50084, 58531, 58666, 59920, 64002, 65782
... 1250, 24222, 29692, 29856, 32952, 33716
625 ... 19874, 24012, 24577
630 ... 51367, 54819
... 21761
... 32956
640 ...
641 ... 51367, 59922, 67571
... 5994

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH JULY 31, 1992

Page

642 33924
646 ..... 50551, 57302
..... 19874, 20668
649 51191
650 1721
651 24013
652 ..... 51368, 58537
653 ..... 23199, 26814
655 6699
658 50844
663 ..... 50084, 59241
..... 24589, 30534, 32499
672 ...51669, 56355, 56623, 58214, 58666, 59922, 63487, 64002, 64288, 64738, 66009,
..... 2814, 11930, 17879, 22695, 27725
675 ...51669, 56355, 56623, 58214, 58531, 59922, 63487, 64738, 65782, 66009
..... 2247, 2814, 17879, 22695, 24014
678 ..... 1250, 24222, 29856
681 ..... 58029, 65209
683 26816
685 ..... 55651, 55652, 60961
..... 28692, 29692, 32952, 33716, 33926

NOTE: Boldface page numbers indicate 1992 changes.

Additions to Table I, July 1992

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being added to Table I as a result of authority citations carried in the **Federal Register** during January through July 1992. Recent legislation is carried by public law number.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1992. Additions during 1991 are in the December 1991 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

U.S. Code:	CFR
5 U.S.C.	
102	32 Part 626
504	5 Part 2610
533	5 Part 531
552	12 Part 1615
	13 Part 301
	24 Part 2002
552a	32 Parts 316, 320, 505, 603
553	13 Part 301
	49 Part 1109
559	49 Part 1109
581	29 Part 1425
582	49 Part 1109
883a	46 Part 515
1104	5 Part 890
1302	7 Part 772
1302	42 Part 417
1395l	42 Part 417
1395cc	42 Parts 417, 498
1715	46 Part 515
1744	5 Part 890
3301	5 Part 772
3302	5 Part 772
4111	41 Part 304-1
5307	5 Parts 530, 531
5335	5 Part 531
5401—5410 (Ch. 54)	5 Part 531
5514	22 Part 1007
5547	5 Part 550
7202	5 Part 842
7301	5 Part 772
	29 Part 100
7701	5 Parts 831, 841, 842, 846, 870, 890
8456	5 Part 213
8913	48 Part 1609
5 U.S.C. Appendix	
App.	5 Parts 735, 2610, 2634, 2638
1-15	50 Part 100
3	12 Part 603
301	22 Part 172
402	5 Part 2636
404	5 Part 2636

	CFR
7 U.S.C.	
4a	17 Part 1
7b	17 Part 1
16a	17 Part 1
71 et seq.	7 Part 810
136	40 Part 22
138a	21 Part 5
901 et seq.	7 Part 1700
901—950	7 Part 1710
1209	7 Part 1209
1421 et seq.	7 Part 1425
4201 note	7 Part 1980
6001 et seq.	7 Part 1211
6101 et seq.	7 Part 1209
6201 et seq.	7 Part 1212
8 U.S.C.	
1101	8 Part 270
	22 Parts 41, 43
1101 note	22 Part 43
11038	Part 270
1104	22 Part 41
1153	22 Part 43
1186a	8 Part 242
1202	22 Part 172
1251	8 Part 242
1252 note	8 Parts 3, 103, 242
1252b	8 Parts 3, 103, 242, 292
1254	8 Part 242
1324c	8 Part 270
1356	8 Part 103
1362	8 Part 242
10 U.S.C.	
21	32 Part 626
111	32 Part 626
113	32 Parts 28, 33, 725
136	32 Part 102
139	32 Part 155
151—158	32 Part 626
301	32 Parts 340, 355
507	19 Part 141
939	32 Parts 750 751,756, 757
5013	32 Parts 750

10 U.S.C.—Con.	CFR
751, 756, 757	
5148	32 Part 756
7420	15 Parts 770, 771, 772, 774, 786, 790, 799
7430	15 Parts 770, 771, 772, 774, 786, 790, 799
12 U.S.C.	
93a	12 Part 4
375a	12 Parts 225, 337
375b	12 Part 337
552	12 Part 516
559	12 Part 516
1422b	12 Part 941
1431	12 Part 941
1441a	12 Parts 1615, 1620
1462a	12 Part 516
1463—1464	12 Part 516
1701q	24 Part 70
1707	24 Part 234
1708	24 Part 25
1709	24 Parts 25, 202
1715 et seq	24 Part 248
1715b	24 Parts 202, 221
1715l	24 Part 221
1715u	24 Part 203
1734(f)-14	24 Part 25
1751	24 Part 202
1766	12 Part 705
1817 note	12 Part 304
1818	12 Part 323
1819	12 Part 323
1821	12 Part 337
1828 note	12 Part 325
1831	12 Part 225
1831f-1	12 Part 337
1833e	12 Part 361
2279aa-5	12 Part 611
3015	12 Part 265
3105	12 Part 263
3107	12 Part 263
3109	12 Part 265
3331 et seq	12 Parts 323, 564
3331	12 Part 34
3332	12 Part 1102
3335	12 Part 1102
3339	12 Part 722
3347	12 Part 1102
3348	12 Parts 564, 1102
3808	12 Part 563
15 U.S.C.	
78q	17 Part 240
77c	17 Part 230
77d	17 Part 230
77e	17 Part 230
77j	17 Part 230
77eee	17 Part 240
77ggg	17 Part 240
77nnn	17 Part 240
78i	17 Part 240

15 U.S.C.—Con.	CFR
78ll	17 Parts 202, 230, 260
79i	17 Part 250
80a-23	17 Part 240
80b-3	17 Part 240
80b-4	17 Part 240
80b-11	17 Part 240
1123	37 Part 3
1691 et seq	12 Part 613
3301—3432	18 Part 2
3621	21158 Part 570
3622	21158 Part 570
3624	21158 Part 570
16 U.S.C.	
3	36 Part 242
	50 Part 100
668dd	36 Part 242
	50 Part 100
705	50 Part 14
791—828r	18 Part 375
791a—825r	18 Part 24
1456	15 Part 932
1458	15 Part 928
2601—2645	18 Parts 281, 375
3101—3126	50 Part 100
3801	7 Part 703
7101—7352	18 Part 24
17 U.S.C.	
111	37 Part 201
116	37 Part 201
119	37 Part 310
408	37 Part 201
409	37 Part 201
410	37 Part 201
18 U.S.C.	
2257	28 Part 75
2510 et seq	15 Parts 768, 770—779, 785, 786, 790, 791, 799
3551—3586	36 Part 242
	50 Part 100
3621	28 Part 570
3622	28 Part 570
3624	28 Part 570
19 U.S.C.	
1608	19 Part 162
1612	19 Part 162
1613b	19 Part 162
20 U.S.C.	
1125a	34 Part 671
1135 et seq	34 Part 630
1201 et seq	34 Parts 460, 461
1207a	34 Part 471
1208aa	34 Part 464
1211	34 Parts 472, 473
1211a	34 Parts 462, 463, 474
1211-2	34 Parts 489, 490
1213	34 Part 475

20 U.S.C.—Con.	CFR
1213a	34 Part 476
1213b	34 Part 477
2415	34 Part 491
3061–3068	34 Part 791
3221—3282	34 Part 562
3385b	34 Part 263
3474	20 Part 404
4501 et seq	45 Part 2400
5381	34 Part 652
5386	34 Part 652
5031—5039	34 Part 722
5505	40 Part 47
21 U.S.C.	
134b	9 Part 79
134f	9 Part 79
136	9 Part 130
136a	9 Part 130 7 Part 319
321	21 Part 348
331	21 Part 21
351	21 Parts 21, 348
352	21 Parts 21, 348
353	21 Part 348
355	21 Part 348
360	21 Parts 21, 348
360e	21 Part 21
360h	21 Part 21
360i	21 Part 21
371	21 Parts 21, 348
374	21 Part 21
853a	47 Part 1
22 U.S.C.	
262m–7	31 Part 26
290f	22 Part 1007
2381	48 Part 710
2658	22 Part 172
2664	22 Part 172
3201 et seq	15 Parts 768, 772, 773, 774, 775, 776, 777, 779, 785, 786, 790, 791, 799
3201	15 Parts 770, 778
3926	22 Part 172
4060	5 Part 890
4069c	5 Part 890
25 U.S.C.	
398—398c	43 Part 3160
405e	24 Part 905
2701 et seq	25 Part 502
26 U.S.C.	
61	26 Part 1
304	26 Part 1
597	26 Part 1
832	26 Part 1
988	26 Part 1
1043	5 Part 2634
1291	26 Part 1
1361	26 Part 1
4082	26 Part 48
7701	26 Part 31, 301

	CFR
29 U.S.C.	
206	29 Part 1614
633a	29 Part 1614
760—762	34 Part 356
791	29 Part 1614
794a	29 Part 1614
30 U.S.C.	
183 et seq	43 Part 3160
185	15 Parts 770, 771, 772, 774, 786, 790, 799
31 U.S.C.	
321	31 Part 26
1352	32 Part 28
483a	12 Part 1615
3103	31 Part 342
3105	31 Parts 316, 332
9701	32 Part 165 40 Part 86
33 U.S.C.	
1319	40 Part 22
2734	33 Part 161
35 U.S.C.	
6	37 Part 3
200—212	45 Part 650
38 U.S.C.	
224	28 Part 14
501	38 Parts 3, 14, 19, 20, 21
2302—2308	38 Part 3
4211—4212	41 Part 60-250
5901—5905	38 Part 14
5902	38 Part 14
40 U.S.C.	
486	41 Part 301-1 48 Part 1609
41 U.S.C.	
418	48 Part 20
422	48 Parts 9900, 9903, 9904
701 *et seq*	10 Part 707 32 Part 25
42 U.S.C.	
216	32 Part 626
263a	42 Parts 405, 488 410, 416, 418, 482, 485, 488, 491
294—294l-1	42 Part 60
300e	42 Parts 417, 419
300aa-1	21 Part 5
300aa-15	42 Part 100
301	45 Part 233
405	42 Parts 1005, 1006
602	45 Parts 204, 233, 234
603	45 Part 234
606	45 Part 233, 234
607	45 Part 233
1202	45 Part 233
1301	45 Parts 201, 301, 1355
1302	42 Parts 417, 1005, 1006
1316	45 Part 201

42 U.S.C.—Con.	CFR
1320a–7a	42 Parts 1005, 1006
1320b–6	42 Part 482
1320c–5	42 Part 1005
1352	45 Part 233
1382	45 Part 233
1395d	42 Part 418
1395e	42 Part 418
1395f	42 Part 418
1395j—1395v	42 Part 405
1395l	42 Parts 405, 417, 420
1395m	42 Parts 410, 421
1395x	42 Parts 418, 420, 498
1395cc	42 Parts 405, 417, 484, 498, 1001
1395hh	42 Part 405
1395uu	42 Part 421
1396	42 Part 1002
1396b	42 Part 1007
1437	24 Parts 70, 990, 963
1437c	24 Part 905
1437bb	24 Part 905
1437cc	24 Part 905
1437d	24 Parts 901, 905
1437dd	24Part 905
2000e–16	29 Part 1614
2012	10 Part 707
2013	10 Part 707
2021b *et seq.*	10 Part 2
2021b	10 Part 171
2051	10 Part 707
2061	10 Part 707
2139a	15 Parts 768, 770, 771, 772, 773, 774, 775, 776, 777, 779, 786, 785, 790, 791, 799
2165	10 Part 707
2201	10 Part 708
2201b	10 Part 707
2201i	10 Part707
2201p	10 Part 707
2210 note	28 Part 79
2243	10 Parts 2, 40, 51, 70, 110, 140, 150
2456a	14 Part 1203b
3535	24 Parts 70, 200 221, 571, 901, 963
3601	12 Part 613
3711,*et seq.*	28 Part 20 48 Part 20
4001 et seq	44 Part 71
4028	44 Part 71
4321 et seq	43 Part 3160
5310	24 Part 70
5814	10 Parts 707, 708
5815	10 Part 707, 708
5841	48 Part 20
5851	10 Part 40
6212	15 Parts 771, 772, 774, 786, 790, 799
6936	40 Part 265
6991	40 Part 22
7101—7352	18 Parts 24, 821
7251	10 Parts 707, 708
7254—7256	10 Parts 707, 708
7254	10 Part 1021
7256	10 Part 707
7401 *et. seq.*	40 Part 70
7401—7671q	40 Part 52
7401—7642	40 Part 52
7411	40 Part 51
7413	40 Part 22
7414	40 Part 82
7491	40 Part 51
7524	40 Part 22
7547	40 Part 22
7552	40 Part 86
7601	40 Part 82
7602	40 Part 51
7607	40 Part 22
9609	40 Part 22
9822 note	12 Part 705
11361	24 Part 882
12117	29 Part 1641 41 Part 60-742
12501	45 Parts 2500–2506
12901-12912	24 Part 574 42 Part 100
43 U.S.C.	
1354	15 Parts 770, 771, 772, 786, 799
6212	15 Part 770
44 U.S.C	
3506	32 Part 350
45 U.S.C.	
362	20 Part 259
431	49 Part 214
438	49 Part 214
46 U.S.C.	
466	15 Part 770
466c	15 Parts 771, 772, 786, 790, 799
2103	46 Part 68
10301	19 Part 4
10302	19 Part 4
10314	19 Part 4
10315	19 Part 4
12106	46 Part 68
1241e–0	46 Part 381
46 U.S.C. Appendix	
1114	46 Part 381
1122	46 Part 381
1195	46 Part 221
1241	46 Part 381

	CFR
47 U.S.C.	
151	47 Part 63
155	47 Part 68
201—205	47 Part 63
201-4	47 Part 64
218	47 Part 63
225	47 Part 64
226	47 Part 64
227	47 Part 64
522	47 Part 68
2103	46 Part 68
12106	46 Part 68
49 U.S.C.	
1302	49 Part 383
10761	49 Part 1039
11902—11904	49 Part 1039
49 U.S.C. Appendix	
1601 et seq	49 Part 665
1601 note	49 Part 23
1608	49 Part 665
1804	49 Part 107
2219	49 Part 23
12701 *et seq.*	49 Part 383
50 U.S.C.	
1431	32 Part 626
1701 et seq	15 Parts 777, 786, 791 31 Part 580
U.S. Statutes at Large:	
48 Stat.	
1070-71	47 Part 64
85 Stat.	
164	33 Part 26
88 Stat.	
1242	48 Part 20
89 Stat.	
579	45 Part 233
95 Stat.	
843	45 Part 233
96 Stat.	
324	45 Parts 206, 233
100 Stat.	
2916	45 Part 233
3190	5 Part 890
3359	45 Part 206, 233
101 Stat.	
697	42 Part 1001
3131	5 Part 890
1568	12 Part 611
1638	12 Part 611
104 Stat.	
523	33 Part 26
1388-335	5 Part 531
1388-336	5 Parts 531, 536
1466	5 Parts 530, 531, 550, 575

104 Stat.—Con.	CFR
1469	5 Part 550
1516	32 Parts 626, 627
2064	22 Part 193
2399	40 Parts 51, 52, 60
5027	22 Part 41
105 Stat.	
661	22 Part 51
820	22 Part 51
1234	31 Part 555
2208	33 Part 26
2236	12 Parts 215, 225
Public Laws:	
98-511	34 Part 471
98-524	34 Part 491
100-654	5 Part 890
100-690	32 Part 25
101-12	5 Part 772
101-513	5 Part 890
101-624	7 Parts 1477, 1478
101-625	24 Part 901
102-140	13 Part 122
102-229	7 Parts 1477, 1478
Executive Orders:	
10577	29 Part 1614
11222	29 Part 1614
11476	32 Parts 750, 751, 756, 757
11478	29 Part 1614
11912	15 Parts 770, 771, 772, 774, 786, 790, 799
12002	15 Parts 768, 771, 773, 775, 776, 777, 778, 779, 785, 790, 791
12058	15 Parts 768, 770, 771, 773, 775, 776, 777, 778, 779, 785, 790, 791
12106	29 Part 1614
12107	22 Part 1007
12163	48 Part 710
12214	15 Parts 771, 773, 775, 785, 790, 791
12333	32 Part 355
12356	32 Part 350
12600	5 Part 294
12674	5 Parts 735, 2638 24Part 0
12730	15 Part 790
12731	5 Parts 735, 2634, 2638
12735	15 Parts 768, 773, 775, 777, 785, 790, 791
12779	31 Part 580
12787	32 Part 340
Reorganization Plans	
1978 Plan No. 1	29 Part 1614

Removals from Table 1, July 1992

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being removed from Table I as a result of documents published in the **Federal Register** during January through July 1992.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1992. Removals during 1991 are in the December 1991 LSA (List of CFR Sections ɔcted).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

U.S. Code:	CFR
2 U.S.C.	
441i	11 Part 110
5 U.S.C.	
504	32 Part 155
552	4 Part 303 45 Parts 2000, 2001, 2002, 2005
552a	32 Parts 287a, 295c
552a note	45 Part 205
553	49 Part 1053
554	10 Part 70
559	49 Part 1053
1104	5 Part 890
5307	5Part 531
5701—5709	41 Part 304-1
7701	5 Parts 531, 890
8457	5 Part 213
5 U.S.C. Appendix	
133z-15 note	15 Part 907
III	5 Parts 2634, 2638
IV	5 Parts 2634, 2638
7 U.S.C.	
7	17 Part 20
12a	17 Part 20
75a	7 Part 810
76	7 Part 810
136i	40 Part 22
136m	40 Part 22
263a	42 Parts 417, 483, 484
263b-263n	Part 14
516	7 Part 34
901—950	7 Part 1700
1153	7 Part 718
1314	7 Part 718
1375	7 Part 718
1705	22 Part 211
1721	22 Part 211
1722	22 Part 211
1723	22 Part 211
1989	7 Part 1866
8 U.S.C.	
1153 note	22 Parts 41, 43
1187	22 Part 41
1301	42 Part 417
1392	17 Part 20
1356	8 Part 103
10 U.S.C.	
78	12 Part 263
113	32 Parts 278, 282
125	32 Part 174
131	32 Part 626
133	32 Parts 174, 208
2301—2314	32 Part 591
2733	32 Parts 750, 751
3012	32 Part 591
5013	32 Part 750
5031	32 Parts 750, 751, 757
7430	15 Part 799
8012	32 Part 860
12 U.S.C.	
1 Et seq.	12 Part 4
375a	12 Part 337
375b	12 Part 337
1395	42 Part 417
1464	12 Part 325
1715	24 Parts 204, 221
1715l note	24 Part 248
1715z-11	24 Part 200
1821	12 Part 337
1831i	12 Part 225
2221	12 Part 611
2243	12 Part 603
2252	12 Part 603
3331-51	12 Part 323
3535	24 Part 200
3806	12 Part 563
15 U.S.C.	
77c	17 Part 230
77d	17 Part 230
77e	17 Part 230
77f	17 Part 240
77h	17 Part 240
77s	17 Part 260
77t	17 Part 260
77ddd	17 Part 260
77hhh	17 Part 260
78d-1	17 Part 260
78w	17 Part 260
79g	17 Part 250
79l	17 Part 250
79t	17 Part 260
80a-37	17 Part 260
77nnn	17 Part 269
313	15 Parts 906, 945

	CFR
15 U.S.C.—Con.	
717 et seq.	18 Part 281
717—717w	18 Part 159
717i	18 Part 155
717o	18 Part 155
761 et seq.	10 Part 490
764	10 Part 445
766	10 Part 445
772	10 Part 445
791	17 Part 250
7170	18 Parts 50, 160
16 U.S.C.	
263b—263n	21 Part 14
551	50 Part 100
668dd et seq.	36 Part 242 50 Part 100
825c	18 Part 160
825h	18 Part 160
551	50 Part 100
704	50 Part 14
791a—825r	18 Part 37
791—828c	18 Part 375
796	18 Part 103
797	18 Part 103
816	18 Part 24
817	18 Parts, 24, 42
825	18 Part 103
825c	18 Parts 50, 103, 160
825g	18 Part 103
825h	18 Parts 24, 50, 103, 160
2601 et seq.	18 Part 375
2601—2645	18 Part 385
3101 et seq.	36 Part 242 50 Part 100
4223—4244	50 Part 14
18 U.S.C.	
7	36 Part 242 50 Part 100
926	27 Parts 47, 179
3559	36 Part 242 50 Part 100
3571	36 Part 242 50 Part 100
20 U.S.C.	
1135	34 Part 630
1135a–2	34 Part 630
1135e—1135e–1	34 Part 630
1201 et seq.	34 Part 425, 426
1207a	34 Part 431
1211	34 Part 432
1211a	34 Parts 433, 434, 435
1213	34 Part 436
1213a	34 Part 437
1213b	34 Part 438
1444	34 Part 324
3281—3341	34 Part 562
22 U.S.C.	
287c	31 Part 530
501	15 Part 906
2778	27 Part 179
22 U.S.C.—Con.	CFR
4050	5 Part 890
4069c	5 Part 890
5001 et seq.	15 Parts 768, 773, 775, 786
25 U.S.C.	
398—398e	43 Part 3160
450e	24 Part 905
2623	34 Part 263
26 U.S.C.	
1043	5 Part 2634
6091	27 Part 179
6511	27 Part 179
6676	27 Part 179
6805	27 Part 179
29 U.S.C.	
761a	34 Part 356
30 U.S.C.	
181 et seq.	43 Part 3160,
31 U.S.C.	
240—243	32 Part 756
711	4 Part 22
753	31 Part 342
754b	31 Part 342
757c	31 Parts 316, 332
1352	32 Part 282
1353	41 Part 304–1
3529	4 Part 22
3701—3721	32 Parts 750, 751, 753, 757
3720A	20 Part 404
9701	18 Part 159
33 U.S.C.	
883d—883f	15 Part 906
884	15 Part 906
1361	40 Part 22
35 U.S.C.	
200 et seq.	45 Part 650
38 U.S.C.	
210	38 Part 14
223	28 Part 14
2011—2012	41 Part 60–250
3401—3405	38 Parts 14, 19
5901—5905	38 Part 14
41 U.S.C.	
506	10 Part 417
701 et seq.	32 Part 280 45 Part 2016
42 U.S.C.	
216	42 Part 417
263a	42 Parts 410, 417, 482, 483, 484, 488, 493
263b—263n	21 Part 5
294—294l	42 Part 60
300e	42 Part 417
300e—300e–17	42 Part 417
300g–3	40 Part 22
300aa–1—300ff	21 Part 5
1301	42 Part 417

42 U.S.C.—Con.	CFR
1395	42 Part 417
1395c—1395f	42 Part 418
1395g	42 Part 418
1395l	42 Part 405
1395m	42 Part 410
1395x—1395cc	42 Part 418
1395cc	42 Parts 417, 420, 498
1395hh	42 Part 488
1396a	42 Part 482
1437g	24 Part 990
1480	7 Part 1866
2021b	10 Part 171
2139	10 Part 110
2651-53	32 Part 757
3543	24 Part 200
3544	24 Part 200
3535	24 Parts 50, 571
3701	28 Part 20
4013	44 Part 71
4331 et seq	43 Part 3160
4332	24 Part 50
6201 et seq	10 Part 490
6341—6346	10 Part 445
7101 et seq	10 Parts 456, 490, 1001
7101—7352	18 Part 37
7102—7352	18 Part 159
7112	10 Part 595
7151	10 Part 445
7158	10 Part 445
7178	18 Part 375
7191	10 Part 595
7254	10 Part 595
7401—7671q	40 Part 52
7401—7642	40 Part 52
7407	40 Part 51
8101 et seq	12 Part 932
8211 et seq	10 Part 456
9205	10 Part 417
43 U.S.C.	
1334	18 Part 159
6212	15 Part 770
44 U.S.C.	
3504	27 Part 47
45 U.S.C.	
228j	20 Part 259
446	15 Part 777
46 U.S.C.	
1114	46 Part 381
1122	46 Part 381
1241	46 Part 381
47 U.S.C.	
158	47 Part 1
201	47 Part 64
214	47 Part 63
225	47 Part 64
49 U.S.C.	
3102	49 Part 383
10321	49 Part 1053

	CFR
49 U.S.C. Appendix	
2040	49 Part 199
2505	49 Part 383
50 U.S.C.	
1512	32 Part 626
1514	32 Part 626
1702	15 Part 791
1704	15 Part 791
50 U.S.C. Appendix	
2168	4 Parts 301—305, 331, 332, 351, 400—418, 420
2401 et seq	15 Parts 786, 799
U.S. Statutes at Large:	
37 Stat.	
832—833	9 Part 122
48 Stat.	
1066	47 Part 64
1070	47 Part 64
49 Stat.	
621	45 Part 201
628	45 Part 201
646	45 Part 201
647	45 Part 201
647	20 Part 404
60 Stat.	
1087	9 Part 156
1090	9 Part 156
64 Stat.	
556	45 Part 201
66 Stat.	
173	8 Part 251
182	8 Part 251
195	8 Part 251
219	8 Part 251
220	8 Part 251
68 Stat.	
454	22 Part 211
76 Stat.	
200	45 Part 201
394	17 Part 202
79 Stat.	
1127	15 Part 6
86 Stat.	
1280	15 Part 932
90 Stat.	
1013	15 Part 932
92 Stat.	
3350	18 Part 281
94 Stat.	
611 et seq	10 Part 456
97 Stat.	
719	45 Parts 2001, 2002
100 Stat.	
1890	18 Part 381
3063	45 Parts 2001, 2002
3190	5 Part 890
3207	45 Part 2005
3207-170	49 Part 383

	CFR
101 Stat.	
1331	8 Part 245a
1744	5 Part 890
3131	5 Part 890
103 Stat.	
511	12 Part 34
104 Stat.	
1388	45 Part 245
1388-336	5 Part 531
5027	22 Part 41
5089	37 Part 201
5131-31	37 Part 201
Public Laws:	
93-83	28 Part 20
93-400	32 Part 169a
95-369	31 Part 123
95-454	5 Part 213
95-521	5 Part 735
95-617	18 Part 281
98-101	45 Parts 2001, 2002, 2015
98-150	5 Part 735
99-58	15 Part 777
99-64	15 Part 777
99-194	45 Part 2015
99-412	10 Part 456
100-93	42 Part 1001
100-180	15 Part 777
100-203	7 Part 1700
	20 Part 404
100-204	8 Part 245a
100-233	12 Part 611
100-418	15 Parts 777, 790, 791
100-449	15 Part 777
100-654	5 Part 890
Public Laws—Con.	CFR
100-690	32 Part 280
	45 Part 2016
101-73	12 Parts 772, 1609
101-144	12 Part 705
101-508	20 Part 404
101-510	32 Parts 626, 627
101-513	5 Part 870
	22 Part 193
Presidential Documents:	
Executive Orders:	
10485	18 Part 159
11246	31 Part 12
11281	31 Part 520
11322	31 Part 530
11419	31 Part 530
11514	24 Part 50
11717	15 Part 6
11790	10 Parts 445, 490
11912	10 Part 490
11991	24 Part 50
12009	10 Parts 445, 490, 595, 1001
	18 Parts 2, 4, 8, 16, 35, 152, 154, 157, 159, 260, 281, 292, 300, 375, 381, 385, 821
12127	44 Part 71
12525	15 Parts 777, 790, 791
12532	15 Parts 768, 773, 775, 786, 799
12543	15 Part 790
12549	42 Part 2016
12571	15 Parts 768, 772, 773, 774, 775, 786, 799
Reorganization Plans:	
1965 Plan No. 2	15 Part 907
1970 Plan No. 3	40 Part 1802

1991

56 FR Page	
29889-30306	July 1
30307-30482	2
30483-30678	3
30679-30856	5
30857-31042	8
31043-31304	9
31305-31532	10
31533-31854	11
31855-32060	12
32061-32318	15
32319-32498	16
32499-32950	17
32951-33188	18
33189-33366	19
33367-33702	22
33703-33838	23
33839-34002	24
34003-34140	25
34141-35798	26
35799-35996	29
35997-36078	30
36079-36722	31
36723-36996	Aug. 1
36997-37138	2
37139-37266	5
37267-37452	6
37453-37640	7
37641-37820	8
37821-38070	9
38071-38318	12
38319-40218	13
40219-40480	14
40481-40742	15
40743-41054	16
41055-41280	19
41281-41430	20
41431-41620	21
41621-41746	22
41747-41918	23
41919-42220	26
42221-42522	27
42523-42676	28
42677-42918	29
42919-43546	30
43547-43688	Sep. 3
43689-43860	4
43861-43994	5
43995-45880	6
45881-46106	9
46107-46220	10
46221-46364	11
46365-46522	12
46523-46718	13
46719-46976	16
46977-47122	17
47123-47350	18
47351-47670	19
47671-47898	20
47899-48094	23
48095-48414	24
48415-48722	25
48723-49130	26
49131-49386	27
49387-49660	30
49661-49836	Oct. 1
49837-50028	2
50029-50234	3
50235-50472	4
50473-50642	7
50643-50808	8
50809-51144	9
51145-51316	10
51317-51630	11
51631-51822	15
51823-51964	16
51965-52186	17
52187-52442	18
52443-54528	21
54529-54770	22
54771-55050	23
55051-55194	24
55195-55436	25
55437-55594	28
55595-55794	29
55795-55976	30
55977-56144	31
56145-56288	Nov. 1
56289-56460	4
56461-56566	5
56567-56918	6
56919-57230	7
57231-57480	8
57481-57572	12
57573-57792	13
57793-57968	14
57969-58172	15
58173-58298	18
58299-58490	19
58491-58634	20
58635-58840	21
58841-59204	22
59205-59848	25
59849-60044	26
60045-60892	27
60893-61108	29
61109-61346	Dec. 2
61347-63398	3
63399-63626	4
63627-63860	5
63861-64184	6
64185-64468	9
64469-64550	10
64551-64700	11
64701-64938	12
64939-65170	13
65171-65414	16

65415–65676	17
65677–65796	18
65797–65978	19
65979–66338	20
66339–66556	23
66557–66778	24
66779–66952	26
66953–67138	27
67139–67466	30
67467–67716	31

1992

57 FR Page	
1–172	Jan. 2
173–328	3
329–516	6
517–600	7
601–754	8
755–1068	9
1069–1210	10
1211–1364	13
1365–1634	14
1635–1856	15
1857–2006	16
2007–2212	17
2213–2430	21
2431–2672	22
2673–2822	23
2823–2978	24
2979–3110	27
3111–3270	28
3271–3514	29
3515–3706	30
3707–3908	31
3909–4146	Feb. 3
4147–4356	4
4357–4542	5
4543–4690	6
4691–4834	7
4835–4924	10
4925–5050	11
5051–5226	12
5227–5364	13
5365–5786	14
5787–5972	18
5973–6066	19
6067–6180	20
6181–6284	21
6285–6456	24
6457–6552	25
6553–6662	26
6663–6788	27
6789–7314	28
7315–7530	Mar. 2
7531–7644	3
7645–7874	4
7875–8058	5
8059–8256	6
8257–8396	9
8397–8568	10
8569–8718	11
8719–8834	12
8835–9040	13
9041–9166	16
9167–9380	17
9381–9500	18
9501–9648	19
9649–9972	20
9973–10118	23
10119–10280	24
10281–10414	25
10415–10608	26
10609–10736	27
10737–10800	30
10801–10972	31
10973–11260	Apr. 1
11261–11424	2
11425–11552	3
11553–11670	6
11671–11904	7
11905–12176	8
12177–12402	9
12403–12694	10
12695–12862	13
12863–12988	14
12989–13266	15
13267–13622	16
13623–14320	17
14320–14474	20
14475–14636	21
14637–14790	22
14791–15000	23
15001–15216	24
15217–17844	27
17845–18078	28
18079–18386	29
18387–18796	30
18797–19062	May 1
19063–19248	4
19249–19362	5
19363–19514	6
19515–19790	7
19791–20024	8
20025–20190	11
20191–20394	12
20395–20626	13
20627–20734	14
20735–20954	15
20955–21186	18
21187–21346	19
21347–21586	20
21587–21720	21
21721–21888	22
21889–22156	26
22157–22408	27
22409–22642	28
22643–23042	29
23043–23134	June 1

23135-23300	2	29181-29428	July 1
23301-23522	3	29429-29628	2
23523-23924	4	29629-29782	6
23925-24178	5	29783-30098	7
24179-24344	8	30099-30378	8
24345-24538	9	30379-30634	9
24539-24748	10	30635-30896	10
24749-24934	11	30897-31088	13
24935-26602	12	31089-31302	14
26603-26766	15	31303-31428	15
26767-26920	16	31429-31628	16
26921-27140	17	31629-31946	17
27141-27344	18	31947-32148	20
27345-27676	19	32149-32412	21
27677-27888	22	32413-32684	22
27889-28032	23	32685-32878	23
28033-28456	24	32879-33096	24
28457-28582	25	33097-33266	27
28583-28776	26	33267-33424	28
28777-28996	29	33425-33622	29
28997-29180	30	33623-33856	30
		33857-34060	31

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LSA

List of CFR Sections Affected

August 1992

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Editor's Note:
Please retain this issue of the **LSA** until you receive the 1992 editions of title 38 (parts 0–17 and parts 18–end) of the Code of Federal Regulations. The 1992 revision will include amendments promulgated during the period of July 1, 1991 through September 1, 1992. This **LSA** contains all amendments promulgated since the July 1, 1991 revision. These amendments will not be included in the September, 1992 issue of the **LSA**.

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List of CFR Sections Affected

August 1992

Title 1-16
Changes January 2, 1992
through August 31, 1992

Title 17-27
Changes April 1, 1992
through August 31, 1992

Title 28-41
Changes July 1, 1992
through August 31, 1992

Title 42-50
Changes October 1, 1991
through August 31, 1992

LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1-16—as of Jan. 1
17-27—as of April 1
28-41—as of July 1
42-50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

Boldface page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the current year from the previous year.

Cite a page reference from this publication using the volume number (i.e. 57 FR for 1992) and the page number. Example: 24727 cite as 57 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1-16; the MARCH issue is the ANNUAL for Titles 17-27; the JUNE issue is the ANNUAL for Titles 28-41; the SEPTEMBER issue is the ANNUAL for Titles 42-50. ANNUAL ISSUES to be saved are clearly designated on the cover.

PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1992.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1990 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
0-26	(869-017-00007-8)	17.00	Jan. 1, 1992
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
900-999	(869-017-00016-7)	29.00	Jan. 1, 1992
1000-1059	(869-017-00017-5)	17.00	Jan. 1, 1992
1060-1119	(869-017-00018-3)	13.00	Jan. 1, 1992
1120-1199	(869-017-00019-1)	9.50	Jan. 1, 1992
1200-1499	(869-017-00020-5)	22.00	Jan. 1, 1992
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
1940-1949	(869-017-00023-0)	23.00	Jan. 1, 1992
1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-017-00026-4)	17.00	Jan. 1, 1992
9 Parts:			
1-199	(869-017-00027-2)	23.00	Jan. 1, 1992
200-End	(869-017-00028-1)	18.00	Jan. 1, 1992
10 Parts:			
0-50	(869-017-00029-9)	19.00	Jan. 1, 1992
51-199	(869-017-00030-2)	18.00	Jan. 1, 1992
200-399	(869-017-00031-1)	13.00	[4] Jan. 1, 1987
400-499	(869-017-00032-9)	20.00	Jan. 1, 1992
500-End	(869-017-00033-7)	28.00	Jan. 1, 1992
11	(869-017-00034-5)	12.00	Jan. 1, 1992
12 Parts:			
1-199	(869-017-00035-3)	13.00	Jan. 1, 1992
200-219	(869-017-00036-1)	13.00	Jan. 1, 1992
220-299	(869-017-00037-0)	22.00	Jan. 1, 1992
300-499	(869-017-00038-8)	18.00	Jan. 1, 1992
500-599	(869-017-00039-6)	17.00	Jan. 1, 1992
600-End	(869-017-00040-0)	22.00	Jan. 1, 1992
13	(869-017-00041-8)	25.00	Jan. 1, 1992
14 Parts:			
1-59	(869-017-00042-6)	25.00	Jan. 1, 1992
60-139	(869-017-00043-4)	22.00	Jan. 1, 1992
140-199	(869-017-00044-2)	11.00	Jan. 1, 1992

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
200–1199	(869–017–00045–1)	20.00	Jan. 1, 1992
1200–End	(869–017–00046–9)	14.00	Jan. 1, 1992
15 Parts:			
0–299	(869–017–00047–7)	13.00	Jan. 1, 1992
300–799	(869–017–00048–5)	21.00	Jan. 1, 1992
800–End	(869–017–00049–3)	17.00	Jan. 1, 1992
16 Parts:			
0–149	(869–017–00050–7)	6.00	Jan. 1, 1992
150–999	(869–017–00051–5)	14.00	Jan. 1, 1992
1000–End	(869–017–00052–3)	20.00	Jan. 1, 1992
17 Parts:			
1–199	(869–017–00054–0)	15.00	Apr. 1, 1992
200–239	(869–017–00055–8)	17.00	Apr. 1, 1992
240–End	(869–017–00056–6)	24.00	Apr. 1, 1992
18 Parts:			
1–149	(869–017–00057–4)	16.00	Apr. 1, 1992
150–279	(869–017–00058–2)	19.00	Apr. 1, 1992
280–399	(869–017–00059–1)	14.00	Apr. 1, 1992
400–End	(869–017–00060–4)	9.50	Apr. 1, 1992
19 Parts:			
1–199	(869–017–00061–2)	28.00	Apr. 1, 1992
200–End	(869–017–00062–1)	9.50	Apr. 1, 1992
20 Parts:			
1–399	(869–017–00063–9)	16.00	Apr. 1, 1992
400–499	(869–017–00064–7)	31.00	Apr. 1, 1992
500–End	(869–017–00065–5)	27.00	Apr. 1, 1992
21 Parts:			
1–99	(869–017–00066–3)	13.00	Apr. 1, 1992
100–169	(869–017–00067–1)	14.00	Apr. 1, 1992
170–199	(869–017–00068–0)	18.00	Apr. 1, 1992
200–299	(869–017–00069–8)	5.50	Apr. 1, 1992
300–499	(869–017–00070–1)	29.00	Apr. 1, 1992
500–599	(869–017–00071–0)	21.00	Apr. 1, 1992
600–799	(869–017–00072–8)	7.00	Apr. 1, 1992
800–1299	(869–017–00073–6)	18.00	Apr. 1, 1992
1300–End	(869–017–00074–4)	9.00	Apr. 1, 1992
22 Parts:			
1–299	(869–017–00075–2)	26.00	Apr. 1, 1992
300–End	(869–017–00076–1)	19.00	Apr. 1, 1992
23	(869–017–00077–9)	19.00	Apr. 1, 1992
24 Parts:			
0–199	(869–017–00078–7)	34.00	Apr. 1, 1992
200–499	(869–017–00079–5)	32.00	Apr. 1, 1992
500–699	(869–017–00080–0)	13.00	Apr. 1, 1992
700–1699	(869–017–00081–7)	34.00	Apr. 1, 1992
1700–End	(869–017–00082–5)	13.00	Apr. 1, 1992
25	(869–017–00083–3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0–1–1.60	(869–017–00084–1)	17.00	Apr. 1, 1992
§§ 1.61–1.169	(869–017–00085–0)	33.00	Apr. 1, 1992
§§ 1.170–1.300	(869–017–00086–8)	19.00	Apr. 1, 1992
§§ 1.301–1.400	(869–017–00087–6)	17.00	Apr. 1, 1992
§§ 1.401–1.500	(869–017–00088–4)	38.00	Apr. 1, 1992

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1,1992
§§ 1.1401-End	(867-017-00094-9)	26.00	Apr. 1, 1992
2-29	(869-017-00095-7)	22.00	Apr. 1, 1992
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00099-0)	20.00	Apr. 1, 1992
500-599	(869-017-00100-7)	6.00	[5] Apr. 1, 1990
600-End	(869-017-00101-5)	6.50	Apr. 1, 1992
27 Parts:			
1-199	(869-017-00102-3)	34.00	Apr. 1, 1992
200-End	(869-017-00103-1)	11.00	Apr. 1, 1992
28	(869-013-00104-4)	28.00	July 1, 1991
29 Parts:			
0-99	(869-017-00105-8)	19.00	July 1, 1992
100-499	(869-017-00106-6)	9.00	July 1, 1992
500-899	(869-013-00107-9)	27.00	July 1, 1991
900-1899	(869-013-00108-7)	12.00	July 1, 1991
1900-1910 (§§ 1901.1 to 1910.999)	(869-013-00109-5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869-013-00110-9)	14.00	July 1, 1991
1911-1925	(869-013-00111-7)	9.00	[6] July 1, 1989
1926	(869-013-00112-5)	12.00	July 1, 1991
1927-End	(869-013-00113-3)	25.00	July 1, 1991
30 Parts:			
1-199	(869-013-00114-1)	22.00	July 1, 1991
200-699	(869-013-00115-0)	15.00	July 1, 1991
700-End	(869-013-00116-8)	21.00	July 1, 1991
31 Parts:			
0-199	(869-013-00117-6)	15.00	July 1, 1991
200-End	(869-013-00118-4)	20.00	July 1, 1991
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-189	(869-013-00119-2)	25.00	July 1, 1991
190-399	(869-013-00120-6)	29.00	July 1, 1991
400-629	(869-013-00121-4)	26.00	July 1, 1991
630-699	(869-013-00122-2)	14.00	July 1, 1991
700-799	(869-013-00123-1)	17.00	July 1, 1991
800-End	(869-017-00124-4)	20.00	July 1, 1992
33 Parts:			
1-124	(869-013-00125-7)	15.00	July 1, 1991
125-199	(869-013-00126-5)	18.00	July 1, 1991
200-End	(869-017-00127-9)	23.00	July 1, 1992
34 Parts:			
1-299	(869-013-00128-1)	24.00	July 1, 1991
300-399	(869-013-00129-0)	14.00	July 1, 1991
400-End	(869-013-00130-3)	26.00	July 1, 1991

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
35	(869-013-00131-1)	10.00	July 1, 1991
36 Parts:			
1-199	(869-017-00132-5)	15.00	July 1, 1992
200-End	(869-013-00133-8)	26.00	July 1, 1991
37	(869-013-00134-6)	15.00	July 1, 1991
38 Parts:			
0-17	(869-013-00135-4)	24.00	July 1, 1991
18-End	(869-013-00136-2)	22.00	July 1, 1991
39	(869-017-00137-6)	16.00	July 1, 1992
40 Parts:			
1-51	(869-013-00138-9)	27.00	July 1, 1991
52	(869-013-00139-7)	28.00	July 1, 1991
53-60	(869-013-00140-1)	31.00	July 1, 1991
61-80	(869-013-00141-9)	14.00	July 1, 1991
81-85	(869-013-00142-7)	11.00	July 1, 1991
86-99	(869-013-00143-5)	29.00	July 1, 1991
100-149	(869-013-00144-3)	30.00	July 1, 1991
150-189	(869-013-00145-1)	20.00	July 1, 1991
190-259	(869-013-00146-0)	13.00	July 1, 1991
260-299	(869-013-00147-8)	31.00	July 1, 1991
300-399	(869-013-00148-6)	13.00	July 1, 1991
400-424	(869-013-00149-4)	23.00	July 1, 1991
425-699	(869-013-00150-8)	23.00	[6] July 1, 1989
700-789	(869-013-00151-6)	20.00	July 1, 1991
790-End	(869-013-00152-4)	22.00	July 1, 1991
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
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10-17		9.50	[3] July 1, 1984
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18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-013-00153-2)	8.50	[7] July 1, 1990
101	(869-013-00154-1)	22.00	July 1, 1991
102-200	(869-013-00155-9)	11.00	July 1, 1991
201-End	(869-013-00156-7)	10.00	July 1, 1991
42 Parts:			
1-60	(869-013-00157-5)	17.00	Oct. 1, 1991
61-399	(869-013-00158-3)	5.50	Oct. 1, 1991
400-429	(869-013-00159-1)	21.00	Oct. 1, 1991
430-End	(869-013-00160-5)	26.00	Oct. 1, 1991
43 Parts:			
1-999	(869-013-00161-3)	20.00	Oct. 1, 1991
1000-3999	(869-013-00162-1)	26.00	Oct. 1, 1991
4000-End	(869-013-00163-0)	12.00	Oct. 1, 1991
44	(869-013-00164-8)	22.00	Oct. 1, 1991

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
45 Parts:			
1-199	(869-013-00165-6)	18.00	Oct. 1, 1991
200-499	(869-013-00166-4)	12.00	Oct. 1, 1991
500-1199	(869-013-00167-2)	26.00	Oct. 1, 1991
1200-End	(869-013-00168-1)	19.00	Oct. 1, 1991
46 Parts:			
1-40	(869-013-00169-9)	15.00	Oct. 1, 1991
41-69	(869-013-00170-2)	14.00	Oct. 1, 1991
70-89	(869-013-00171-1)	7.00	Oct. 1, 1991
90-139	(869-013-00172-9)	12.00	Oct. 1, 1991
140-155	(869-013-00173-7)	13.00	Oct. 1, 1991
156-165	(869-013-00174-5)	14.00	Oct. 1, 1991
166-199	(869-013-00175-3)	14.00	Oct. 1, 1991
200-499	(869-013-00176-1)	20.00	Oct. 1, 1991
500-End	(869-013-00177-0)	11.00	Oct. 1, 1991
47 Parts:			
0-19	(869-013-00178-8)	19.00	Oct. 1, 1991
20-39	(869-013-00179-6)	19.00	Oct. 1, 1991
40-69	(869-013-00180-0)	10.00	Oct. 1, 1991
70-79	(869-013-00181-8)	18.00	Oct. 1, 1991
80-End	(869-013-00182-6)	20.00	Oct. 1, 1991
48 Chapters:			
1 (Parts 1-51)	(869-013-00183-4)	31.00	Oct. 1, 1991
1 (Parts 52-99)	(869-013-00184-2)	19.00	Oct. 1, 1991
2 (Parts 201-251)	(869-013-00185-1)	13.00	Oct. 1, 1991
2 (Parts 252-299)	(869-013-00186-9)	10.00	Oct. 1, 1991
3-6	(869-013-00187-7)	19.00	Oct. 1, 1991
7-14	(869-013-00188-4)	26.00	Oct. 1, 1991
15-End	(869-013-00189-3)	30.00	Oct. 1, 1991
49 Parts:			
1-99	(869-013-00190-7)	20.00	Oct. 1, 1991
100-177	(869-013-00191-5)	23.00	Oct. 1, 1991
178-199	(869-013-00192-1)	17.00	Oct. 1, 1991
200-399	(869-013-00193-1)	22.00	Oct. 1, 1991
400-999	(869-013-00194-0)	27.00	Oct. 1, 1991
1000-1199	(869-013-00195-8)	17.00	Oct. 1, 1991
1200-End	(869-013-00196-6)	19.00	Oct. 1, 1991
50 Parts:			
1-199	(869-013-00197-4)	21.00	Oct. 1, 1991
200-599	(869-013-00198-2)	17.00	Oct. 1, 1991
600-End	(869-013-00199-1)	15.00	Oct. 1, 1991
CFR Index and Finding Aids	(869-017-00053-7)	31.00	Jan. 1, 1992
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Footnotes at end of table.

[1] Because title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR parts 1—189 contains a note only for parts 1—39 inclusive. For the full text of the Defense Acquisition Regulations in parts 1—39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR chapters 1—100 contains a note only for chapters 1 to 49 inclusive. For the full text of procurement regulations in chapters 1 to 49, consult the three CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1987 through December 31, 1991. The CFR volume issued as of January 1, 1987 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1990 through March 30, 1991. The CFR volume issued as of April 1, 1990 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 through June 30, 1991. The CFR volume issue as of July 1, 1989 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1990 through June 30, 1991. The CFR volume issued as of July 1, 1990 should be retained.

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List of CFR Sections Affected, 1964-1972			
(Titles 1 through 27) Vol. I	Out of print		1980
(Titles 28 through 50) Vol. II	Out of print		1980
List of CFR Sections Affected, 1973-1985			
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CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 1—GENERAL PROVISIONS

Chapter I—Office of the Federal Register (Parts 50—299)

Page

51 Technical amendment; incorporation by reference..... 31947

Chapter III—Administrative Conference of the United States (Parts 300—399)

305.92—1 Added..... 30102
305.92—2 Added..... 30103
305.92—3 Added..... 30104
305.92—4 Added..... 30106
305.92—5 Added..... 30108
Corrected..... 32881
305.92—6 Added..... 30110

Title 1—*Proposed Rules:*

1 ..... 859, 860
305 13667
425 14669

TITLE 3—THE PRESIDENT

Proclamations

4865 *See* EO 12807..... 23133
6399 1365
6400 2429
6401 2671
6402 4833
See Presidential Determination 92-11 of Jan. 28, 1992..... 5787
6403 5973
6404 6065
6405 6787
6406 7313
6407 7873
6408 8255
6409 8395
6410 8835
6411 9041
6412 9645
6413 9647
6414 9971
6415 10119
6416 10413
6417 10737
6418 12693
6419 12865
Page
6420 12989
6421 13265
6422 13621
6423 17845
6424 18795
6425 19067
6426 19357
6427 19359
See EO 12804..... 19361
6428 19363
6429 19371
6430 20191
6431 20391
6432 20393
6433 20395
6434 20397
6435 20631
6436 21347
6437 21349
6438 21583
6439 21585
6440 21587
6441 21721
6442 22143
6443 24179
6444 24935
6445 26921
6446 26969
6447 26981
6448 27345
6449 28033
6450 28579
6451 28581
6452 29429
6453 29625
6454 29629
6455 30069
6456 30097
6457 31627
6458 31945
6459 32413
6460 32877
6461 33423
6462 33857
6463 36349
6464 36887
6465 39095
6466 39097

Executive Orders

Aug. 31, 1917 Revoked in part by PLO 6922..... 4856
5327 Modified by PLO 6926 of April 21, 1992..... 19092

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 3 Executive Orders—Con. Page

Revoked in part by PLO 6934 28637
8597 Revoked by PLO 6939 of July 22, 1992 35467
10879 Superseded by EO 12793 10281
12049 Superseded by EO 12788 2213
12193 *See* EO 12791 8717
12291 *See* EO 12803 19063
12295 *See* EO 12791 8717
12324 Revoked by EO 12807 23133
12351 *See* EO 12791 8717
12409 *See* EO 12791 8717
12438 Revoked by EO 12797 11671
12463 *See* EO 12791 8717
12498 *See* EO 12803 19063
12506 *See* EO 12791 8717
12514 Revoked by EO 12787 517
12543 *See* EO 12801 14319
12554 *See* EO 12791 8717
12587 *See* EO 12791 8717
12625 Revoked by EO 12805 20627
12629 *See* EO 12791 8717
12670 *See* EO 12791 8717
12706 *See* EO 12791 8717
12722 *See* Notice of July 21, 1992 32875
12724 *See* Notice of July 21, 1992 32875
12753 Superseded by EO 12791 8717
12754 Amended by EO 12790 8057
12787 517
12788 2213
12789 5225
12790 8057
12791 8717
12792 9165
12793 10281
12794 11417
12795 11421
12796 11423
12797 11671
12798 12175
12799 12401
12800 12985
Corrected 13413
12801 14319
12802 14321
12803 19063
12804 19361
12805 20627
12806 21989
12807 23133
12808 23299
See EO 12810 24347
12809 23925
12810 23437
12811 28585
12812 32879
12813 34851

Administrative Orders

Memorandums:

Dec. 27, 1991 1069
Jan. 21, 1992 3111
Feb. 10, 1992 ..... 5365, 5367, 24345
Feb. 13, 1992 6663
Feb. 18, 1992 7531
Mar. 20, 1992 11554
May 18, 1992 22409
June 15, 1992 ..... 27135, 27137

Notices:

July 21, 1992 32875

Presidential Determinations:

No. 85-14 of July 1, 1985 *See* Presidential Determination No. 92-41 of August 17, 1992 38235
No. 91-36 of May 29, 1991 *See* Presidential Determination No. 92-29 of June 2, 1992 24539
No. 92-9 of Dec. 16, 1991 329
No. 92-10 of Dec. 30, 1991 1071
No. 92-11 of Jan. 28, 1992 5787
See Proc. 6402 4833
No. 92-12 of Jan. 31, 1992 19077
No. 92-13 of Feb. 4, 1992 5789
No. 92-14 of Feb. 10, 1992 6659
No. 92-15 of Feb. 18, 1992 7315
No. 92-16 of Feb. 18, 1992 7317
No. 92-17 of Feb. 26, 1992 8569
No. 92-18 of Feb. 28, 1992 8571
No. 92-19 of Mar. 16, 1992 11553
No. 92-20 of Apr. 3, 1992 13623
No. 92-21 of Apr. 10, 1992 12863
No. 92-22 of Apr. 22, 1992 15217
No. 92-23 of Apr. 27, 1992 22145
No. 92-24 of Apr. 27, 1992 20025
No. 92-25 of May 6, 1992 22147
No. 92-27 of May 26, 1992 24925
No. 92-28 of May 26, 1992 24927
No. 92-29 of June 2, 1992 24539
No. 92-30 of June 3, 1992 24929
No. 92-31 of June 3, 1992 24931
No. 92-32 of June 3, 1992 24933
No. 92-33 of June 15, 1992 28583
No. 92-34 of June 22, 1992 30099

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

No. 92-35 of June 30, 1992 33421
No. 92-36 of July 21, 1992 33623
No. 92-37 of Aug. 3, 1992 36587
No. 92-38 of Aug. 11, 1992 38577
No. 92-41 of Aug. 17, 1992 38235

TITLE 4—ACCOUNTS

Chapter I—General Accounting Office (Parts 1—99)

22 Removed..... 31272
30.1 (b) redesignated as (c); new (b) added..... 31272
Corrected..... 33392

Chapter III—General Accounting Office (CASB) (Parts 300—499)

Chapter III Removed..... 14152

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

9 Removal at 56 FR 18660 confirmed..... 10123
212.301 Amended..... 10123
213 Authority citation revised..... 17847
213.3102 (j) revised..... 17847
213.3202 Regulation at 56 FR 18661 confirmed..... 10123
213.3301—213.3302 Regulation at 56 FR 18660 confirmed..... 10123
213.3301b Regulation at 56 FR 18660 confirmed..... 10123
214.201 Regulation at 56 FR 18661 confirmed..... 10123
294 Authority citation revised..... 32150
294.106 Revised..... 32150
294.107 (b) and (c) revised..... 32150
294.111 (b) revised..... 32150
294.112 Added..... 32150
297.501 (b)(8) heading revised and existing text redesignated as (b)(8)(i); (b)(8)(ii) added..... 20956
300.301 Removal at 56 FR 18661 confirmed..... 10123
300.402 Revised..... 10124
305 Removal at 56 FR 18661 confirmed..... 10123

Page

317 Regulation at 56 FR 18661 confirmed..... 10123
317.901 (c)(1)(ii) revised..... 10124
319 Regulation at 56 FR 18661 confirmed..... 10123
319.102 Revised..... 10124
330.203 (a)(3) and (b) revised; interim..... 21890
330.302 (a) revised; interim..... 21890
330.303 (b)(4)(i) revised; interim..... 21890
330.307 (a)(2) and (b) revised; interim..... 21890
335.102 Introductory text, (a), and (f)(2) revised..... 10124
338.101 (b) revised..... 10124
351.802 (b) revised..... 32685
351.803 (b) revised..... 32685
351.807 Added..... 21890
352.307 (b) revised..... 10124
352.703 (b)(3) revised..... 10124
352.803 (c)(2), (3) and (d)(3) revised; (c)(4) and (d)(4) removed; (d)(2) amended; (d)(5) redesignated as (d)(4)..... 10124
352.904 (b)(3) revised..... 10125
353.305 Regulation at 56 FR 18662 confirmed..... 10123
359.406 (b) revised..... 10125
359.503 (b) revised..... 10125
359.701 (a)(2) removed; (a)(3) and (4) redesignated as (a)(2) and (3); new (a)(2) revised..... 10125
410 Authority citation revised..... 19517
410.511 Added..... 19517
430.202 (c) revised..... 14638
430.204 (h) revised; (i) through (k) redesignated as (j) through (l); new (i) added..... 7321
430.403 (c) revised..... 14638
430.404 Amended; interim..... 23044
430.405 (b), (d)(1),(e), (g), (i) introductory text, (1), (j)(1) and (2) revised; interim..... 23044
430.406 (c), (d)(1) and (e) revised; interim..... 23044
430.407 (b) revised; interim..... 23045
430.504 (c) revised..... 14638
432.102 (f)(13) revised; (f)(14) removed; (f)(15) redesignated as (f)(14)..... 10125

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 5 Chapter I—Con. Page

(c)(3) and (f)(12) revised; (c)(4) removed; (c)(5) redesignated as (c)(4); interim..... 20042
432.103 (a), (d), (e) and (i) revised; (j) added; interim..... 23045
432.105 Revised; interim..... 23045
432.107 (a)(1), (2) and (4)(i)(A) revised; interim..... 23045
432.108 (a)(2) and (3), (b)(1)(ii) and (iii) revised; (a)(4) and (b)(1)(iv) added; interim..... 20043
451 Authority citation revised..... 14638
451.306 (a) revised..... 14638
530 Authority citation revised..... 3114
530.202 Amended; interim..... 3114
530.203 (d) through (f) revised; (g) added; interim..... 3114
530.204 (d) removed; interim..... 3115
530.206 Added; interim..... 3115
530.307 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c)..... 26604
531 Authority citation revised..... 2432, 12404, 32152
531.101 Amended..... 2432
(c) amended..... 32152
531.102 (b) revised..... 32153
531.202 (g) through (l) redesignated as (h) through (m); new (g) added; interim..... 12404
531.203 (d)(2)(v) amended; (d)(2)(vi) redesignated as (d)(2)(vii); new (d)(2)(vi) added..... 3712
531.205 Heading, (a) introductory text and (b) revised..... 2432
531.206 Added; interim..... 12404
531.301—531.306 (Subpart C) Added..... 2432
531.406 (a) amended..... 3712
(b)(3) added; interim..... 12404
531.407 (c)(5) and (6) amended; (c)(7) added..... 3712
531.414 Added..... 3712
532.201—532.283 (Subpart B) Regulations at 56 FR 63865 confirmed..... 35745
532.211 (d)(2) redesignated as (d)(3); new (d)(2) added..... 29783
532.219 (c) revised..... 29783
Appendix C amended..... 19791

Page

532.201—532.283 (Subpart B) Appendix D regulation at 56 FR 15274 confirmed..... 7533
Appendix A amended..... 30635
534.301 (Subpart C) Removal at 56 FR 18662 confirmed..... 10123
534.402 Regulation at 56 FR 18662 confirmed..... 10123
534.403 (f) revised..... 10125
534.501—534.506 (Subpart E) Regulation at 56 FR 18662 confirmed..... 10123
534.501 (a)(1) and (b)(1) revised..... 10125
534.503 (c) revised..... 10125
534.505 (b) revised..... 10125
536 Authority citation revised..... 12404
536.102 Regulation at 56 FR 18662 confirmed..... 10123
536.103 (c)(1) and (3) revised; interim..... 12404
536.104 (c) added; interim..... 12404
536.105 Regulation at 56 FR 18663 confirmed..... 10123
536.202 (c) added..... 3712
536.205 (f) redesignated as (g); new (f) added..... 3712
536.208 Regulation at 56 FR 18663 confirmed..... 10123
536.209 Regulation at 56 FR 18663 confirmed..... 10123
536.305 Removal at 56 FR 18663 confirmed..... 10123
540.102 Amended; interim..... 23046
540.103 (a)(3) added; interim..... 23046
540.105 (b) amended; interim..... 23046
540.107 (d)(2) revised; interim..... 23046
540.109 (b)(1)(i), (d)(2), (3) and (f) removed; (b)(1)(ii), (iii), (d)(1) and (g) through (h) redesignated as (b)(1)(i), (ii), (d) and (f) through (h); (b)(1)(i) and (i) added; new (d) revised; interim..... 23046
550.101—550.172 (Subpart A) Authority citation revised..... 2434, 31630
550.101 (b)(9) revised..... 2434
550.103 (j) revised..... 2434
(r) revised; (s) added..... 31630
550.105 (b)(1) revised..... 31630
550.106 Revised..... 31630
550.107 (a) revised..... 2434

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

550.111 (d)(2) revised 2434
550.113 (a) revised 2434
550.114 (c) revised 2434
550.151 Revised 2435
550.154 (a) introductory text revised 2435
550.201—550.206 (Subpart B) Authority citation revised 2435
550.202 Amended 2435
550.603 Regulation at 56 FR 6206 confirmed 12406
550.705 (a)(1) and (2) amended; (a)(3) added; interim 12405
550.708 (b) and (c) amended; (d) added; interim 12405
553 Regulation at 56 FR 6206 confirmed 12406
553.101 Revised 12406
553.201 Heading and (e)(3) revised; (b)(4) added 12406
553.202 Heading revised 12406
553.203 Heading and (b) revised 12406
575 Authority citation revised 2435, 37394, 37398
575.102 (a) introductory text revised; (c) redesignated as (d); new (c) added 37398
575.103 Amended 2435, 37398
575.106 (a) revised 37398
575.108 (b) revised 37398
575.202 (a) introductory text revised; (c) redesignated as (d); new (c) added 37398
575.203 Amended 2435, 37398
575.204 Heading, (b) and (c)(1) revised; (d) added 37399
575.205 (c) added 37399
575.206 (a) revised 37399
575.208 (b) revised 37399
575.302 (a) introductory text and new (d) revised; (c) redesignated as (d); new (c) added 37399
575.303 Amended 2435, 37399
575.308 (b) revised 37399
575.402 (a)(2) and (b) revised 37394
575.403 Amended 2435
575.405 (c)(2) revised 2435
(e) and (f) redesignated as (f) and (g); (d)(2) revised; new (e) added 37394
575.406 (f) amended 37394
591.203 Regulation at 56 FR 18663 confirmed 10123

Page

(a)(5) and (6) revised; (a)(7) added 10126
630.211 Regulation at 56 FR 18663 confirmed 10123
733.124 (b) amended 21189
735 Authority citation revised 11804
735.106 Removed; new 735.106 redesignated from 735.107; interim 11804
735.107 Redesiganted as 735.106; interim 11804
735.401—735.412 (Subpart D) Removed 11804
735.401—735.412 (Subpart D) Removed; interim 11804
752.201 (b)(6) revised; (b)(7) removed; interim 20043
752.301 Amended; interim 20043
752.401 (c) and (d) revised; interim 20043
772 Added 3712
831 Authority citation amended 3713
Authority citation revised 38743
831.201 (b)(5) amended; (b)(6) added 3713
831.603 Amended 33597, 33598
831.620 (b)(2)(ii) amended 33597
831.624 (b) and (c) amended 33597
831.805 Added 3713
831.1001—831.1006 (Subpart J) Added 38743
831.1701—831.1718 (Subpart Q) Redesignated as 838.1001—838.1018 (Subpart J) 33596
831.2001 Amended 29784
831.2003 (a) amended 29784
831.2009 Redesignated as 838.1010 33596
831.2011 Added 3713
831.2104 Regulation at 49 FR 20631 confirmed 32154
831.2107 Regulation at 49 FR 20631 confirmed 32154
831.2203 (b) revised 33598
838 Added 33574
838.1001—838.1018 (Subpart J) Redesignated from 831.1701—831.1718 (Subpart Q) 33596
838.1001 Removed 33596
838.1002 (c) and (d) revised 33597
(b) and (g) amended 33598

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 5 Chapter I—Con. Page

838.1003 Amended....33598
838.1004 (c)(1)(i) and (ii) amended; (e) revised....33597
838.1006 (b) and (d)(2) amended....33597
(c)(3) and (d)(3) amended....33598
838.1007 (a)(1), (2), (3) and (b) amended....33597
(c) amended....33598
838.1009 (a)(1) and (b) amended....33597
(a)(2) amended....33598
838.1010 Removed; new 838.1010 redesignated from 831.2009....33596
(e) and (f)(2)(ii) amended....33597
(e)(2) and (g)(1) amended....33598
838.1011 (a)(3) and (b)(2)(ii) amended....33597
838.1012 Revised....33597
838.1016 (a) amended....33597, 33598
838.1002—838.1018 (Subpart J) Appendixes A and B amended....33597
841 Authority citation amended....3714
841.101—841.110 (Subpart A) Regulation at 52 FR 19242 confirmed....32154
841.102 Regulation at 55 FR 14229 confirmed....32154
841.106 (b)(2) revised....32154
841.110 Removed....32154
841.110 (f) amended....33598
841.201—841.203 (Subpart B) Regulation at 52 FR 19244 confirmed....32154
841.204 Regulations at 55 FR 994 and 41179 confirmed....32154
841.401—841.413 (Subpart C) Regulation at 52 FR 19244 confirmed....32154
841.506 Redesignated as 841.507; new 841.506 added....3714
841.507 Redesignated as 841.508; new 841.507 redesignated from 841.506; (d) added....3714
841.508 Redesignated from 841.507....3714
841.601—841.607 (Subpart F) Regulation at 52 FR 12132 confirmed....32154
841.604 Amended....32155
841.701—841.708 (Subpart G) Regulation at 55 FR 14229 confirmed....14229
841.801—841.804 (Subpart H) Regulation at 52 FR 2058 confirmed....32154
841.802 Amended....33598
841.804 Amended....33598
841.901—841.916 (Subpart I) Removed....33598
841.1001—841.1008 (Subpart J) Regulation at 52 FR 5432 confirmed....32154
842 Authority citation amended....3714
842.105 (c) added....3714
842.602 Amended....33598
842.615 (b) amended....33598
842.703 (b) revised....33598
842.801—842.809 (Subpart H) Regulation at 52 FR 2069 confirmed....32689
842.801 (a)(1) amended....32689
842.802 Amended....32689, 32690
842.803 (a), (b) and (d) revised....32690
842.804 (a) amended....32690
842.805 (f) amended; (g) added....32690
842.807 Revised....32690
842.808 (a) revised....32691
842.809 (a) and (d) revised; (b), introductory text, (c)(1)(ii) and (c)(2)(ii) amended; (b)(1) and (2) added; (e) removed....32691
843.102 Amended....29784, 33599
843.203 Existing text redesignated as (a); (b) added....29784
846 Authority citation revised....3714
846.102 Amended....33599
846.201 (b) revised....3714
846.202 (a) amended....33599
870 Authority citation revised....3715
870.202 (c) added....3715
870.901 (a)(4) and (b) added....29784
890 Authority citation revised...3715, 10609, 10611, 14324, 19374
890.101 (a) amended; interim....14324
890.102 (d) revised....3715
890.202 Revised; interim....14324
890.203 (b) amended....19374

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

890.204 (a) amended; interim.....14324
890.205 Added.....19374
890.301 Regulation at 56 FR 25996 confirmed.....2979
(h), (t) and (x) revised.....21191
890.303 (d) redesignated as (d)(1); (d)(2) and (3) added.....21191
890.304 Regulation at 56 FR 25996 confirmed.....2979
890.306 Regulation at 56 FR 25996 confirmed.....2979
(l) added.....21191
890.401 (b)(3) added.....10609
(b)(2) revised.....21191
890.502 Regulation at 56 FR 25996 confirmed.....2979
(g) revised.....10611
890.503 (c)(3) revised; (c)(4) removed; (c)(5) and (6) redesignated as (c)(4) and (5); new (c)(5) amended; interim.....14324
890.505 Revised; interim.....14324
890.802 Revised.....33599
890.803 (a)(3)(i)(C) revised.....21192
890.805 Introductory text, (a) and (c) removed; (b), (d) and (e) redesignated as (a), (b) and (c); new (a) revised.....21192
890.806 Regulation at 56 FR 25997 confirmed.....2979
(a) revised.....21192
890.807 Regulation at 56 FR 25997 confirmed.....2979
890.808 Regulation at 56 FR 25997 confirmed.....2979
(b)(3) and (d)(1) revised.....21192
(c) amended.....33598
(b)(1) amended.....33599
890.901—890.907 (Subpart I) Added.....10610
890.1104 (d) revised.....21192
890.1208 (d) amended; interim.....14325
905.306 (a) Table I and (b) Table II amended.....10613
930.210 (h) through (l) redesignated as (i) through (m); new (h) added; new (k) amended.....1369

Chapter II—Merit Systems Protection Board (Parts 1200—1299)

1201 Appendix II revised...21723, 32881

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

Page

2610 Added; interim.....33268
2633 Removed; interim.....11804
2634 Heading and authority citation revised.....11804
2634.101—2634.105 (Subpart A) Revised; interim.....11804
2634.101 Corrected.....21854
2634.105 (a), (b), (c), (e), (f), (h) through (l) and (n) corrected.....21854
2634.201—2634.205 (Subpart B) Revised; interim.....11806
2634.201 (a) introductory text, *Example* 2 and (d)(1) corrected.....21854
2634.203 Corrected.....21854
2634.301—2634.311 (Subpart C) Revised; interim.....11808
2634.301 (c)(3) corrected.....21854
2634.302 (a)(1)(ii) corrected.....21854
2634.303 (a)(1) corrected.....21854
2634.307 (b) corrected.....21854
2634.310 (b)(2)(ii) corrected.....21854
2634.401—2634.408 (Subpart D) Revised; interim.....11814
2634.403 (b)(9)(ii)(D) corrected.....21854
2634.404 (c)(9)(ii)(C) corrected.....21854
2634.501—2634.503 (Subpart E) Revised; interim.....11821
2634.601—2634.607 (Subpart F) Revised; interim.....11821
2634.603 (c)(3) corrected.....21854
2634.604 (b) corrected.....21854
2634.701—2634.704 (Subpart G) Revised; interim.....11824
2634.801—2634.805 (Subpart H) Revised; interim.....11825
2634.803 (a) corrected.....21855
2634.804 (b)(1) corrected.....21855
2634.805 Corrected.....21855
2634.901—2634.909 (Subpart I) Revised; interim.....11826
2634.905 (c) *Example* 3 corrected.....21855
2634 Appendix A revised; interim.....11829
Appendix B revised; interim.....11830
Appendix C added; interim.....11830
Appendix B corrected.....21855
2635 Revised; eff. 2-3-93.....35041

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 5 Chapter XVI—Con. Page

2636 Authority citation revised....602
2636.203 (a)(13) and *Example* 7 added; (a) *Examples* 3 and 6 revised; interim....602
2636.205 Effective date deferred....5369
2638 Authority citation revised....11890
2638.701—2638.704 (Subpart G) Added....11890
Technical correction....15219
2641 Authority citation revised....3116
2641 Appendixes A and B amended....3116
Appendix B amended....11673

Title 5—*Proposed Rules:*

297 35491
351 31332
530 26619
532 ....3032, 11586, 11920, 19820, 33130
591 32183
735 11586
831 ....120, 31333
841 120
842 ....120, 7666
843 ....120, 7666, 31333
890 ....13667, 23126

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

1.301—1.346 (Subpart K) Redesignated as subpart L....3909
1d.7 Revised....11906
2.17 Heading revised; (l) added....19792
2.19 Heading and (g) revised; (h) added....19793
2.21 Heading revised; (h) added....19793
2.23 Heading, (a)(11) and (b) revised; (a)(1) amended; (a)(4), (5), (6), (10), (14), (16), (18), (20) and (21) removed....2217
Heading revised; (j) added....19794
2.30 Revised....9649
2.30a Revised....9654
2.35 (a) revised....11261
2.41 (a) revised; (c) removed....11261
2.50 (a)(13) added....19794
2.51 Heading revised; (a)(46) added....19794
2.53 (a)(2) added....19794
2.55 Heading revised; (a)(5) added....19795
2.60 (a)(40) revised; (a)(42), (43) and (44) added....19795
2.62 (a)(19) added....19796
2.65 Heading revised; (a)(42) added....19796
2.70 Heading and (a)(11) revised; (a)(1) amended; (a)(4), (5), (6), (10), (28), (29), (31), (33), (36), (37) and (b)(2) removed....2219
Heading revised; (a)(37) added....19796
2.71 Added....2219
2.72 Heading revised; (a)(5) added....19797
2.105 Revised....9654
2.106 Revised....9654
(a)(49) revised....19797
2.107 Revised....9656
2.108 Revised....9658
2.109 Revised....9659

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

28 Technical correction....34495
28.116 (a) and (c) revised....27892
28.122 Revised....27892
28.123 Revised....27892
28.148 Revised....27892
28.151 Revised....27892
28.201—28.603 (Subpart C) Authority citation revised....34497
28.401—28.451 Undesignated center heading revised; eff. 8-5-93....34497
28.401 Added; eff. 8-5-93....34497
28.402 Revised; eff. 8-5-93....34497
28.403 Revised; eff. 8-5-93....34497
28.404 Revised; eff. 8-5-93....34497
28.405 Revised; eff. 8-5-93....34497
28.406 Revised; eff. 8-5-93....34497
28.407 Revised; eff. 8-5-93....34497
28.408 Removed; eff. 8-5-93....34497
28.409 Removed; eff. 8-5-93....34497
28.410 Removed; eff. 8-5-93....34497

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

28.411—28.416 Undesignated center heading added; eff. 8-5-93.....34497
28.411 Revised; eff. 8-5-93.....34497
28.412 Revised; eff. 8-5-93.....34497
28.413 Revised; eff. 8-5-93.....34497
28.414 Added; eff. 8-5-93.....34497
28.415 Added; eff. 8-5-93.....34498
28.416 Added; eff. 8-5-93.....34498
28.420 Removed; eff. 8-5-93.....34498
28.421—28.426 Undesignated center heading revised; eff. 8-5-93.....34498
28.421 Revised; eff. 8-5-93.....34498
28.422 Revised; eff. 8-5-93.....34498
28.423 Revised; eff. 8-5-93.....34498
28.424 Revised; eff. 8-5-93.....34498
28.425 Revised; eff. 8-5-93.....34498
28.426 Added; eff. 8-5-93.....34498
28.430 Removed; eff. 8-5-93.....34498
28.431—28.434 Undesignated center heading revised; eff. 8-5-93.....34498
28.431 Revised; eff. 8-5-93.....34498
28.432 Revised; eff. 8-5-93.....34498
28.433 Revised; eff. 8-5-93.....34498
28.434 Revised; eff. 8-5-93.....34498
28.435 Removed; eff. 8-5-93.....34498
28.441—28.442 Undesignated center heading revised; eff. 8-5-93.....34498
28.441 Revised; eff. 8-5-93.....34498
28.442 Revised; eff. 8-5-93.....34498
28.443 Removed; eff. 8-5-93.....34498
28.444 Removed; eff. 8-5-93.....34498
28.451 Undesignated center heading and section revised; eff. 8-5-93.....34498
28.452 Removed; eff. 8-5-93.....34498
28.460 Removed; eff. 8-5-93.....34498
28.461—28.480 Undesignated center heading and authority citation added; eff. 8-5-93.....34498
28.461—28.467 Undesignated center heading revised; eff. 8-5-93.....34498
28.461 Revised; eff. 8-5-93.....34498
28.462 Revised; eff. 8-5-93.....34499
28.463 Revised; eff. 8-5-93.....34499
28.464 Added; eff. 8-5-93.....34499
28.465 Added; eff. 8-5-93.....34499
28.466 Added; eff. 8-5-93.....34499
28.467 Added; eff. 8-5-93.....34499
28.470 Removed; eff. 8-5-93.....34499

Page

28.471 Undesignated center heading and section revised; eff. 8-5-93.....34499
28.472 Removed; eff. 8-5-93.....34499
28.473 Removed; eff. 8-5-93.....34499
28.475 Undesignated center heading and section removed; eff. 8-5-93.....34499
28.480 Revised; eff. 8-5-93.....34499
28.482 Authority citation removed.....34498
28.501—28.507 Authority citation revised.....34499
28.525 (a) revised; (b) and (c) redesignated as (c) and (d); authority citation and new (b) added; eff. 8-5-93.....34499
28.909 (b) and (c) revised.....27892
28.910 (a) and (b) revised; (c) added.....27892
28.911 Revised.....27893
28.956 Revised.....27893
29 Determination.....27347
34 Removed.....9034
51.835—51.845 (Subpart) Revised.....1212
51.2541 Introductory text revised.....1636
51.2542 (a) Tables I, II and III revised.....1636
51.2547 Added.....1636
52.2101—52.2111 (Subpart) Nomenclature change.....2981
52.2102 (b) corrected.....27895
52.2106 (a) amended; (b) and (c) revised.....2982
52.2107 (b), (c) and (d) revised.....2982
52.2112 Removed.....2982
53.132 Revised.....21341
53.136 Revised.....21342
54.27 (a) and (b) amended.....11427
54.123 Revised.....21343
54.127 Revised.....21344
58.43 Revised.....2222
58.45 Revised.....2222

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

210.18 (a), (c) introductory text, (e)(1), (g)(1) introductory text, (i)(B), (j), (l) introductory text and (m) amended;

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 7 Chapter II—Con. Page

(g)(1)(i)(A) introductory text, (*1*) (l)(1) and (3) revised; (g)(1)(i)(A)(*2*), (*3*) and (q) redesignated as (g)(1)(i)(A)(*3*), (*4*), and (r); new (g)(1)(i)(A)(*2*) and (q) added; interim 38584
210.19 (c)(2)(ii) and (d) amended; interim..... 38586
210.30 (d)(3) redesignated as (d)(4); new (d)(3) added; interim..... 38586
215.2 Amended interim 38586
215.11 (b)(2) amended; interim..... 38586
215.13 (e) revised; interim..... 38586
220.2 Amended interim 38587
220.13 (f)(2) amended; interim..... 38587
220.15 (f) revised; interim..... 38587
246 Authority citation revised..... 34505
246.4 (a)(19) revised..... 34506
246.7 (i)(6) amended; (m)(1)(i)(C) and (3) removed; (m)(1)(i)(D) and (4) redesignated as (m)(1)(i)(C) and (3); (m)(1)(i) introductory text, (iii), (2), and new (m)(3) revised; (m)(4), (5) and (6) added..... 34506
246.10 (e)(1) amended..... 34506
271 Rehearing..... 31123
271.2 Amended..... 3911
271.5 (b) revised..... 3911
272.1 (g)(124) added..... 2828
(g)(125) added..... 11248
274.3 (a) introductory text and (b) amended; (a)(4) added..... 11249
274.10 (b)(1) amended..... 11249
274.12 Added..... 11249
275.23 (e)(10) added..... 2828
276.2 (b)(7) added..... 11259
277.18 (c)(1) introductory text; (2)(ii)(A), (B), (C) and (d)(1)(v) amended..... 11259
278.1 (j)(2) and (k)(1)(iii) amended; (k)(1)(iv) redesignated as (k)(1)(v); new (k)(1)(iv) added..... 3912
(b)(5) redesignated as (b)(6); (q) introductory text amended; new (b)(5), (q)(1) and (2) added..... 3915
278.6 (a), (b)(1), (2)(i), (e)(1)(i), (i) introductory text and (j) amended; (i)(2)(iii) revised; (l) and (m) redesignated as (n) and (o); new (l) and (m) added..... 3912
278.9 (i) added..... 3913
278.10 Added..... 11259
279.3 (a)(2) amended..... 3913
279.6 (a) amended..... 3913
279.8 (c) amended..... 3913
279.11 (c) added..... 3913

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301.38-3 (a) and (b)(3) amended; (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added..... 3118
301.38-6 (a) amended..... 3118
301.52 (a) revised; interim..... 31304
301.52-2a Amended; interim..... 31304
301.64 (a) and (b) amended; interim..... 521
Regulation at 57 FR 521 confirmed..... 37685
301.64-1 Paragraph designations removed; amended; interim..... 521
Regulation at 57 FR 521 confirmed..... 37685
301.64-3 (c) amended; interim..... 522
(c) revised; interim..... 10974
Regulation at 56 FR 46108 confirmed..... 31948
Regulation at 57 FR 522 confirmed..... 37685
301.64-4 Heading and introductory text revised; interim..... 522
Regulation at 57 FR 522 confirmed..... 37685
301.64-10 Introductory text revised; (c) and (d) added; interim..... 522
Regulation at 57 FR 522 confirmed..... 37685
301.93—301.93-10 (Subpart) Removed; interim..... 31306
302 Removed..... 37080
318.13-4 (c) removed; (d) and (e) redesignated as (c) and (d); new (d) amended; interim..... 31307
318.13-4g Removed; interim..... 31307

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

318.13-15 Regulations at 56 FR 18501 withdrawn 14475
318.58-15 Regulation at 56 FR 18501 withdrawn 14474
319 Technical corrections 21332
Authority citation revised 27898
319.37-2 (a) table amended; interim 334
319.56-2 (h) amended 10976
319.56-2u Added 3120
319.56-2v Added 22413
319.56-2w Added 27898
321.2 Amended; interim 334
321.9 (g) and (h) removed; (b) through (f) revised; interim 334
354.2 Table amended 37685
354.3 (a) amended; (e) redesignated as (f); new (e) added 769
(f)(1) amended; (g), (h) and (i) added 770
Technical correction 3089
354.4 (c) added 770
Technical correction 3089
Regulation at 56 FR 18501 withdrawn; (c) correctly designated as (a) 14475
354.5 Added 771
Technical correction 3089
360 Authority citation revised 8838
360.200 (a) amended 8838

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

400.161 (i) revised 34666
400.170 (c) revised 34666
401 Sunset review date extended 2007
401.111 Amended; interim 2008
401.113 Amended; interim 2008
401.117 Amended; interim 2008
458 Regulation at 56 FR 30490 confirmed 173

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700—799)

703 Added 23914
718 Authority citation revised 14460

Page

718.2 Revised; interim 14460
Regulation at 57 FR 14460 confirmed; amended 34203
718.3 Amended; interim 14460
Regulation at 57 FR 14460 confirmed 34203
718.10 (c) amended; interim 14460
Regulation at 57 FR 14460 confirmed 34203
718.13 Revised; interim 14460
Regulation at 57 FR 14460 confirmed 34203
718.22 (a) introductory text revised; interim 14461
Regulation at 57 FR 14461 confirmed 34203
718.40 Heading, (a), (b) and (c) revised; introductory text added; interim 14461
Regulation at 57 FR 14461 confirmed 34203
718.42 Heading, (b), (c), (d), (e) introductory text and (f) revised; interim 14461
Regulation at 57 FR 14461 confirmed 34203
719.2 Amended; interim 14461
Regulation at 57 FR 14461 confirmed 34203
719.8 (i) through (l) redesignated as (j) through (m); new (i) added; interim 14462
Regulation at 57 FR 14462 confirmed 34203
720 Authority citation revised 34203
720.2 Added 34203
729.103 (b) amended 27144
729.204 (d)(2) amended 27144
729.212 (a)(2) and (e)(1)(iii)(B) revised 27144

Chapter VIII—Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)

800.0 (b)(42) revised 3273
800.15 (b)(1) revised 2439
800.16 (a) revised 2439
800.84 (c) revised; interim 11428
800.160 (a) revised; interim 11428
800.162 (d) added 2439
(a)(2) revised 3273
801.12 Added 2673

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 7 Chapter VIII—Con. Page

810 Authority citation revised....3274
810.101 Revised....3274
810.102 (d) amended....3274
810.104 (b) amended....3274
810.107 (b) introductory text revised....3274

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905 Budget of expenses....39102
905.306 (a) Table I amended....336
Regulation at 56 FR 55981 confirmed....1858
(a) Table I and (b) Table II amended; interim....10613
(a) Table I amended; interim....19520
Regulation at 57 FR 10613 confirmed....31090
(a) Table I corrected....31235
907 Marketing percentages....338
Limitation of handling...1217, 2436, 2829, 2984, 3918, 4699, 4837, 5976
907.118 Added....34206
910 Budget of expenses....39105
911 Budget of expenses....39102
915 Budget of expenses....39103
916.230 Added; interim....31092
915.306 (a) introductory text and (1) revised; interim....3716
Regulation at 57 FR 3716 confirmed....27348
915.332 (a)(2) Table I amended....28588
916 Limitation of handling....3920
Regulation at 57 FR 3920 confirmed....27350
916.350 Heading revised; (a) introductory text republished; (a)(3) through (8) redesignated as (a)(4) through (9); new (a)(3) added; interim....20738
916.356 Heading, (a)(1), (i), (ii) and (2) through (5) revised; (a) introductory text republished; (a)(1)(iii) through (vi) removed; interim....20738
(a)(1)(i) table corrected....31235
917.254 Added; interim....31092

Page

917.442 Heading revised; (a) introductory text text republished; (a)(3) through (9) redesignated as (a)(4) through (10); new (a)(3) added; interim....20739
917.459 Heading, (a)(1), (i), (ii), (2), (3), (4), (5) and Table I revised; (a) introductory text and (6) republished; (a)(1)(iii) through (vi) removed; interim....20739
917.461 (a)(1) revised; interim....31093
918 Budget of expenses....4148
920.20 Revised....1219
920.21 Revised....1219
920.22 Revised....1219
920.41 (a) amended....1220
921 Budget of expenses....39103
922 Budget of expenses....39103
923 Budget of expenses....39103
924 Budget of expenses....39103
925 Budget of expenses....24353
925.141 Added....24352
926 Budget of expenses....39107
927 Budget of expenses....39108
929 Budget of expenses....39100
929.10 Revised....38748
929.13 Revised....38748
929.15 Revised....38748
929.16 Removed....38748
929.17 Added....38748
929.21 Revised....38748
929.41 Revised....38748
929.45 Revised....38748
929.48 Revised....38749
929.49 (a), (b), (c) and (d) revised; (e), (f), (g) and (h) added....38749
929.50 Revised....38749
929.52 (a) revised....38750
929.55 (a) and (b) revised; (c) added....38750
929.59 Added....38750
929.60—929.63 Redesignated as 929.62—929.65....38750
929.60 Added....38750
929.61 Added....38751
929.62—929.65 Redesignated from 929.60—929.63....38750
929.65—929.75 Redesignated as 929.66—929.76....38750
929.66—929.76 Redesignated from 929.65—929.75....38750
931 Budget of expenses....39109

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

932 Budget of expenses..... 24354
932.152 (f)(1), (g)(1) Table II and (g)(2) Table III revised; (h) added; interim..... 36353
932.153 Revised; interim..... 35747
944.312 (a)(1) corrected; interim..... 2674
944.401 Regulation at 56 FR 49671 confirmed..... 4149
(b)(12) revised; interim..... 35749
(b)(3) and (5) revised; interim..... 36355
945 Budget of expenses..... 38404
946 Budget of expenses..... 38405
946.336 (a)(2)(i), (ii), (b)(1) and (2) revised; (a)(2)(iii) redesignated as (a)(2)(iv); new (a)(2)(iii) added; (i) removed; interim..... 30380
947 Budget of expenses..... 39103
947.340 (e) revised; interim..... 24542
Regulation at 57 FR 24542 confirmed..... 38588
948 Budget of expenses..... 39107
948.386 (h) removed; interim..... 30382
953 Budget of expenses..... 39107
958 Budget of expenses..... 39103
959.322 Introductory text, (f)(1), (3)(i), (g) introductory text, (4) and (h) revised; (g)(5) added; (i) removed..... 28592
966.323 Introductory text revised; (f) removed; interim..... 27351
967 Budget of expenses..... 38406
971 Suspended through 7-17-95..... 31632
979 Budget of expenses..... 2675
980.1 (a)(2)(i) and (b)(1) revised; interim..... 30382
980.212 (b)(1) revised; interim..... 27352
981 Marketing percentages..... 10976
Regulation at 57 FR 10976 confirmed..... 38408
Budget of expenses..... 38410
981.441 (d)(1)(i) amended..... 30383
981.467 (d) revised..... 1859, 2985, 27353
982 Marketing percentages..... 1074
Regulation at 57 FR 1074 confirmed..... 38412
Budget of expenses..... 39103
985 Budget of expenses..... 39103
985.153 (c)(2)(i) revised; (c)(2)(ii) amended..... 28595
985.211 Added..... 28595
987.152 (a) revised; interim..... 39114

Page

989 Budget of expenses..... 1860
989.157 Regulation at 55 FR 28019 continued..... 34208
989.173 Regulation at 55 FR 28019 continued..... 34208
989.212 Revised..... 28597
989.244 Added..... 31634
993 Budget of expenses..... 38413
997.30 (d) amended..... 39114
997.40 (a)(2) amended..... 39114
998 Budget of expenses... 24354, 38415
998.100 Heading revised; interim..... 34063
998.200 Heading revised; (d) and (h)(3) amended; interim..... 34063
998.300 Heading and (z) revised; interim..... 34063

Chapter X—Agricultural—Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1001.40 (c)(1)(iii) revised; (d) added..... 174
1001.43 (f) added..... 174
1001.50 (d) added..... 174
1001.54 Revised..... 174
1001.61 (d) and (e) temporarily suspended..... 20958
1001.62 (c) and (d) temporarily suspended..... 20958
1004.40 (c)(1)(iii) revised; (d) added..... 175
1004.43 (d) added..... 175
1004.50 Heading revised; (g) added..... 175
1004.53 (a)(2) revised..... 175
1004.60 (k) added..... 175
1004.71 (b)(2) amended..... 175
1007.13 (b)(4) and (5) temporarily suspended through 8-31-92..... 3921
1007.32 (a) suspended; eff. 8-1-92 through 8-31-92..... 39115
1007.61 (a) suspended in part; eff. 8-1-92 through 8-31-92..... 39115
1032.7 (b) temporarily suspended in part 12-91 through 1-92
1065 Marketing percentages..... 4150
1065.6 Temporarily suspended in part through 8-31-92..... 4152

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 7 Chapter X—Con. Page

1065.7 (b)(1) temporarily suspended in part through 8-31-92 ... 4152
1065.13 (d)(1) temporarily suspended through 8-31-92 ... 4152
1093.13 (c)(1), (2) and (4) suspended ... 31309
1096.13 (d)(3) and (4) amended ... 31636
1098.7 (d)(2)(ii) suspended in part ... 39352
1106.6 Suspended in part ... 3276
1106.7 (b)(1) suspended in part ... 3276
1106.13 (d)(1) suspended ... 3276
1124.40 (c)(1)(iii) revised; (d) added ... 175
1124.43 (e) added ... 175
1124.50 (c) revised; (d) added ... 175
1124.53 Revised ... 175

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1205.500 (o) through (r) added ... 29185
1205.505 Revised ... 29186
1205.510 Revised ... 29186
Revised; interim ... 29432
1205.511 Revised ... 29190
1205.512 (h) revised ... 29190
1205.513 (k) revised ... 29190
1205.514 Redesignated as 1205.516 ... 29190
Added ... 29191
1205.515 Redesignated as 1205.517; new 1205.515 added ... 29191
1205.516 Redesignated as 1205.518; new 1205.516 redesignated from 1205.514 and revised ... 29190
1205.517 Redesignated from 1205.515 and revised ... 29191
1205.518 Redesignated from 1205.516 ... 29190
1205.520 Undesignated center heading and section revised ... 29192
1205.525 Revised ... 29192
1205.530 (a)(2) revised ... 29192
1205.531 Revised ... 29192
1205.532 Revised ... 29192
1205.533 Revised ... 29192
1205.540 Revised ... 29192
1205.541 Added (OMB numbers) ... 29192
1209 Added ... 31951
Technical correction ... 35004
1209.301 (g) corrected ... 34349
1211 Added ... 18799
1211.1—1211.78 (Subpart A) Heading added; interim ... 27900
1211.250—1211.252 (Subpart C) Added; interim ... 27900
1212 Added ... 2988
1212.250—1212.252 (Subpart C) Added; interim ... 21592
1220.110 (b) revised ... 31095
1220.115 (b) revised ... 31095
1220.223 (a)(5)(ii) revised ... 31096
1220.301—1220.332 (Subpart B) Revised ... 29439
1240 Technical correction ... 11262

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Part 1400—1499)

1413.1 (a) revised; interim ... 14462
Regulation at 57 FR 14462 confirmed ... 34203
1413.3 Amended; interim ... 14462
Regulation at 57 FR 14462 confirmed ... 34203
1413.5 Added; interim ... 14462
Regulation at 57 FR 14462 confirmed ... 34203
1413.6 (a)(4)(v) removed; (a)(4)(vi) and (vii) redesignated as (a)(4)(v) and (vi); (a)(4) introductory text, (i), and new (a)(4)(vi) revised; interim ... 14462
Regulation at 57 FR 14462 confirmed ... 34203
1413.7 (c) introductory text and (1) revised; interim ... 14462
Regulation at 57 FR 14462 confirmed ... 34203
1413.10 (b) removed; (c) and (d) redesignated as (b) and (c); new (d) added; interim ... 14462
Regulation at 57 FR 14462 confirmed ... 34203
1413.11 (a) and (b)(4) revised ... 12409

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

Regulation at 57 FR 14463 confirmed....34203
(j) removed; interim....14463
1413.50 (a)(1), (4) and (5) revised; interim....14463
Regulation at 57 FR 14463 confirmed....34203
1413.54 (a)(1) revised....3922
Regulation at 57 FR 14463 confirmed....34203
(b), (c)(1), (d) and (e) revised....12409
(a)(2) revised....14326
(a)(3) revised; (a)(5) added....14328
(c)(3) redesignated as (c)(4); (c)(2) and new (c)(4) revised; new (c)(3) and (f) added; interim....14463
(a)(4) revised....15001
1413.61 (b)(2) removed; (b)(3) and (4) redesignated as (b)(2) and (3); (a), (b)(1)(iii), (iv), and new (b)(2) and (3) revised; interim....14463
Regulation at 57 FR 14463 confirmed....34203
1413.62 (e) removed; (f) through (h) redesignated as (e) through (g); interim....14464
Regulation at 57 FR 14464 confirmed....34203
1413.63 (a)(1), (c)(1) and (4) revised; (c)(5) and (6) added; interim....14464
Regulation at 57 FR 14464 confirmed....34203
1413.72 (c) removed; (d) redesignated as (c) and revised; interim....14464
Regulation at 57 FR 14464 confirmed....34203
1413.79 (b)(1)(v) and (d) removed; (b)(1)(iii), (iv), (2) and (3) revised; interim....14464
Regulation at 57 FR 14464 confirmed....34203
1413.108 (b)(1) introductory text and (2) introductory text revised; interim....14464
Regulation at 57 FR 14464 confirmed....34203
1413.109 (d) added....12409
1413.111 (b)(1) removed; (b)(2) revised; interim....14464
Regulation at 57 FR 14464 confirmed; (b)(2)(iv) and (v) revised....34203

Page

1413.150 (a)(3) introductory text revised; interim....14465
Regulation at 57 FR 14465 confirmed....34203
1414.4 Amended; interim....14465
Regulation at 57 FR 14465 confirmed....34203
1414.6 (a) revised; interim....14465
Regulation at 57 FR 14465 confirmed....34203
1421.7 (c) revised....12409
1421.25 (a)(5)(vi) and (6) revised....4544
1421.742 Revised....3717, 27354
1425 Authority citation revised....1369
1425.10 (b)(3) revised....1369
1427.5 (a) introductory text revised....14328
1427.8 (a), (b) and (c) redesignated as (b), (c) and (d); new (a) added; new (c) introductory text revised....14328
1427.50 (a) revised....14328
1427.51 (f) revised....14328
1427.56 Revised....14329
1427.100 (a) and (b) revised....14329
1427.101 (f) revised....14329
1427.103 (b)(3) and (c)(4) revised....14329
1427.106 Revised....14329
1427.107 (b) through (e) redesignated as (c) through (f); new (b) added; new (f) revised....14329
1430.340 (a) and (d) amended; (b)(5) added....30897
1430.341 (u) revised....30898
1435.4 (b) revised....33425
1435.6 (e)(1) introductory text revised; interim....12410
Regulation at 57 FR 12410 confirmed....37685
1435.7 (c) revised; interim....12410
Regulation at 57 FR 12410 confirmed....37685
1435.9 (c) revised; interim....12411
Regulation at 57 FR 12411 confirmed....37685
1435.12 (d) revised; interim....12411
Regulation at 57 FR 12411 confirmed....37685
1446.307 (b) revised....27145
1446.309 (a)(1) amended; (a)(7) added....27145

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 7 Chapter XIV—Con. Page

1435.400—1435.404 (Subpart) Regulation at 56 FR 47353 confirmed....32158
1435.401 Revised....32158
1435.402 Revised....32159
1446.410 (b) revised....27145
1446.703 (b) introductory text revised....27145
1446.704 Revised....27145
1477 Revised....10963
1478 Revised....10968

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1530.205 Corrected....175
1530.206 (b) correctly designated....175

Chapter XVII—Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)

1700 Authority citation revised....6285
1700.1—1700.9 (Subpart A) Revised....6285
1700.24 Revised....6290
1700.25 Revised....6290
1710 Added....1053
1710.2 (a) corrected....4513
1710.6 (a) introductory text and (5) corrected....4513
1710.101 (c) corrected....4513
1710.102 Added....2832
Technical correction....5931
1710.104 (b)(2) corrected....4513
1710.105 (c) corrected....4513
1710.112 (b)(3) and (8) corrected....4513
1710.114 (b)(1) corrected....4513
1710.204 (a) corrected....4513
1710.250 (e) corrected....4513
1710.251 (b) and (c) introductory text corrected....4513

Chapter XVIII—Farmers Home Administration, Department of Agriculture (Parts 1800—2099)

1806.4 (b)(1) amended....36590
1806.6 (a)(1)(v) and (c)(2) amended....36590

Page

1807 Removal at 56 FR 67471 effective date delayed to 3-31-92....3276
1822.270 Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276
1822.277 Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276
1822.278 Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276
1823.401—1823.418 (Subpart N) Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276
1823.414 Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276
1863 Removed....36590
1866 Removed....774
1890t Removal at 56 FR 67472 effective date delayed to 3-31-92....3276
1900 Authority citation revised....19523
1900.52 (b) revised; interim....19523
1900.53 (c) redesignated as (d); (b) revised; new (c) added; interim....18622
1900.55 (a)(17) and (18) added; (b) amended....18623
1900.56 (a)(2) revised....18623
1900.57 (m)(3) removed; (m)(4) redesignated as (m)(3); (n) added; interim....18623
(n) added; interim....19523
1900.59 (d) added; interim....18623
1901.204 (a)(23) added....11559
1910 Authority citation revised....19523
1910.01—1910.50 (Subpart A) Exhibit B revised; interim....19524
1910.4 (b)(20), (g) and (k) amended; interim....19523
1910.6 (e) through (i) redesignated as (f) through (j); new (e) added; (b)(2), new (f), (g) introductory text and (2) amended; interim....19523
1910.7 (a) amended; interim; interim....19523
1910.50 Revised; interim....19523
1924 Authority citation revised....12992

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

1924.57 (d)(1) revised; interim....12992
1924.59 Revised; interim....18623
1924.60 Revised; interim....18625
1925 Added....36590
1927 Regulation at 56 FR 67472 effective date delayed to 3-31-92....3276
1940.590 (g) added....11559
1940.551—1940.600 (Subpart L) Exhibit C revised....3924
1940.589 Heading revised....33099
1940.590 (h) added....33099
1940.951—1940.1000 (Subpart T) Added....11559
1940.1000 OMB number....11567
1941.18 (b)(2) amended....18676
(b)(3) amended....37400
1941.19 (b) removed; introductory text and (a) redesignated as (a) and (b); new (b)(1) through (4) redesignated as (b)(3) through (6); (b) introductory text, (1) and (2) added; new (a) and (b)(4) revised; (f)(1), (2) and (g) amended....18676
1941.25 (a)(1) and (2) revised; (a)(3) added....18676
1941.33 (b)(2)(ii) amended....18677
1941.1—1941.50 (Subpart A) Exhibit A regulation at 56 FR 67480 effective date delayed to 3-31-92....3276
1941.84 Regulation at 56 FR 67480 effective date delayed to 3-31-92....3276
1942.1 (d) revised....21193
1942.2 (a)(1) and (2)(ii) revised....21194
1942.17 (s) removed; (b)(2), (3) and (4) redesignated as (b)(3), (4) and (5); new (b)(2) and (d)(2)(ix) added; (a), (b) introductory text, (1), (d)(1)(i) introductory text, (e) introductory text, (3)(ii) and (f)(2) introductory text (g)(2)(i)(D) introductory text, (3)(i)(E) introductory text, (h) introductory text and (p)(6)(i) introductory text revised....21194
1942.112 (a)(1) introductory text revised....21195

Page

1942.301—1942.350 (Subpart G) Heading revised....33099
1942.304 Revised....33099
1942.305 (a)(1) amended; (a)(3) added; (b) introductory text, (3)(i), (iii), (iv) and (v) revised....33099
(a)(3) corrected....35627
1942.306 (a) introductory text amended; (a)(3), (4), (7) and (b) revised; (a)(8) and (9) added....33100
1942.307 (b) removed; (c) redesignated as (b); new (a)(4) and (5) added....33100
1942.310 (a) revised; (b)(4) amended; (c)(1) introductory text revised....33100
(c)(4) amended....33101
1942.311 (a)(1) amended....33101
1942.313 (a)(2) and (4) amended....33101
1942.314 Heading revised; (g) added....33101
(e) amended....33101
1942.315 (b) amended....33101
1942.349 Amended....33101
1942.350 Revised....33101
1942.351—1942.400 (Subpart H) Sections revised....21195
1942.351—1942.400 (Subpart H) Exhibit D removed....21198
1942.454 Amended....4358
1942.457 Revised....4358
1942.463 (b)(1) revised....4358
1942.464 (b) revised....4358
1942.475 Revised....4358
1942.500 Revised....4358
1942.521 (f) amended....21199
1943.4 Amended; interim....19524
1943.13 (a)(1) removed; (a)(2) through (6) redesignated as (a)(1) through (5); new (a)(2), (3) and (b)(6) introductory text revised; interim....19524
1943.16 (c)(1) introductory text revised....18677
1943.18 (b) introductory text, (1) and (3) amended....18677
1943.19 Regulation at 56 FR 67481 effective date delayed to 3-31-92....3276
Introductory text added; (d) and (f) removed; (e), (g) and

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 7 Chapter XVIII—Con. Page

(h) redesignated as (d), (e) and (f); (a), (b) and (c) revised; new (f) amended.....18677

1943.24 (g) removed; (h) through (l) redesignated as (g) through (k).....18678

1943.32 Regulation at 56 FR 67481 effective date delayed to 3-31-92.....3276

(a) amended.....18678

1943.33 (b)(2)(ii) amended.....18678

1943.34 Regulation at 56 FR 67481 effective date delayed to 3-31-92.....3276

1943.35 Regulation at 56 FR 67481 effective date delayed to 3-31-92.....3276

1943.38 Regulation at 56 FR 67481 effective date delayed to 3-31-92.....3276

(a) amended.....18678

1943.1—1943.50 (Subpart A) Exhibit A regulation at 56 FR 67481 effective date delayed to 3-31-92.....3276

Exhibit B revised; interim.....19524

1943.66 (h)(1) introductory text revised.....18678

1943.68 (c) amended.....18678

1943.69 Regulation at 56 FR 67481 effective date delayed to 3-31-92.....3276

Introductory text added; (d) removed; (e) through (h) redesignated as (d) through (g); (a), (b), (c) and (d) introductory text revised.....18678

(d)(3)(vi) and (g) amended.....18679

1943.73 (a) introductory text amended.....18679

1943.83 (b)(2)(ii) amended.....18679

1943.84 Regulation at 56 FR 67481 effective date delayed to 3-31-92.....3276

1943.85 Regulation at 56 FR 67481 effective date delayed to 3-31-92.....3276

1943.88 Regulation at 56 FR 67481 effective date delayed to 3-31-92.....3276

(a) and (c) amended.....18679

1944 Authority citation revised.....36590

Page

1944.18 Regulation at 56 FR 67481 effective date delayed to 3-31-92.....3276

1944.24 Regulation at 56 FR 67481 effective date delayed to 3-31-92.....3276

1944.30 Regulation at 56 FR 67482 effective date delayed to 3-31-92.....3276

1944.31 Regulation at 56 FR 67483 effective date delayed to 3-31-92.....3276

1944.32 Regulation at 56 FR 67482 effective date delayed to 3-31-92.....3276

1944.33 Regulation at 56 FR 67482 effective date delayed to 3-31-92.....3276

1944.37 Regulation at 56 FR 67482 effective date delayed to 3-31-92.....3276

1944.38 Regulation at 56 FR 67482 effective date delayed to 3-31-92.....3276

1944.46 Regulation at 56 FR 67483 effective date delayed to 3-31-92.....3276

1944.1—1944.50 (Subpart A) Exhibits E through E-2 regulation at 56 FR 67482 effective date delayed to 3-31-92.....3276

1944.168 Regulation at 56 FR 67482 effective date delayed to 3-31-92.....3276

1944.169 Regulation at 56 FR 67482 effective date delayed to 3-31-92.....3276

1944.175 Regulation at 56 FR 67482 effective date delayed to 3-31-92.....3276

1944.176 Regulation at 56 FR 67482 effective date delayed to 3-31-92.....3276

1944.235 (f)(1) amended.....36590

1944.236 Regulation at 56 FR 67483 effective date delayed to 3-31-92.....3276

1944.463 Regulation at 56 FR 67483 effective date delayed to 3-31-92.....3276

1944.469 Regulation at 56 FR 67483 effective date delayed to 3-31-92.....3276

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

1945 Authority citation revised....36591
1945.129 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1945.135 Revised....36591
1945.156 (b)(3) removed....18679
1945.169 Introductory text and (e) through (i) removed; (b), (c), (d), and (j) through (r) redesignated as (c), (d), (e) and (f) through (n); heading, new (d)(1) and (3) revised; (b) added....18679
(f)(3), (4) introductory text and (j)(3) amended....18680
1945.175 (c)(4) and (6) removed; (c)(5) redesignated as (c)(4); (c)(3) amended; (c)(1) introductory text amended....18680
1945.183 (d)(1) revised....18680
1945.189 Regulation at 56 FR 67483 effective date delayed to 3-31-92....3276
1951 Authority citation revised....18680, 36590
1951.10 (a)(5) removed; (a)(6) and (7) redesignated as (a)(5) and (6)....18680
1951.151—1951.155 (Subchapter D) Added....774
1951.201 Revised....11568
Amended....33101
1951.220 (a) amended....775
(e)(1)(ii) amended....21199
(d) revised....36591
1951.224 (a)(1)(i), (ii) and (d) amended....21199
1951.227 (c) amended....36591
1915.230 (d)(1)(i) amended....36590
1951.232 Introductory text amended....21199
1951.501—1951.550 (Subpart K) Exhibit B corrected....1313
1951.514 Amended....36591
1951.901—1951.950 (Subpart S) Sections revised; interim....18626
1951.911 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
(b)(6)(ii) amended....36591
1951.901—1951.950 (Subpart S) Appendix A amended; interim....18650
Exhibit A amended; interim....18650
Exhibits B and C-1 amended; interim....18658
Exhibit E amended; interim....18659
Exhibit F amended; interim....18660
Exhibit G amended; interim....18661
Exhibits H and I amended; interim....18662
Exhibit J-1 amended; interim....18664
Exhibit L amended; interim....18669
Exhibits N and O amended; interim....18670
Exhibit H amended....36591
1955.3 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
1955.5 (d) amended....36590
1955.10 (d)(3) and (f)(1) introductory text revised....1372
1955.15 (d)(2)(iv)(C) and (D) revised; interim....18671
(b)(3) amended....31642
1955.50 Revised....1372
1955.53 Amended; interim....19525, 19528
1955.55 (e) and (f)(1)(ii) amended....36591
1955.63 (a) revised; interim....19528
1955.64 (a)(3) amended....31642
1955.65 (c)(1) amended; (c)(4) revised....36591
1955.66 (p) removed; (c)(2) amended; interim....19525
(a)(2)(iii)(F) revised....31642
1955.67 (a) introductory text and (b) amended....36591
1955.68 (a) amended....36592
1955.69 (a) amended....36592
1955.103 Regulation at 56 FR 67484 effective date delayed to 3-31-92....3276
Amended; interim....19525, 19528
Amended....31642
1955.105 (c)(5) and (d) amended; interim....19528
1955.106 (b) revised....19525
1955.107 (e) revised; (f) added; interim....19525
Introductory text revised; interim....19528
1955.108 Introductory text and (c) revised; (d) amended; interim....19528
(d)(3) revised....36592

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 7 Chapter XVIII—Con. Page

1955.137 (a) heading revised; (b), (c), (d) and (e) redesignated as (e), (f), (g) and (h); new (b), (c) and (d) added.....31642
1955.139 (c)(2)(v) amended.....31644
(c)(2)(v) amended.....36592
1955.141 (a) amended.....36592
1955.101—1955.150 (Subpart C) Exhibit A added.....31644
1962 Authority citation revised.....36592
1962.6 (c)(2)(i) amended.....20741
1962.17 (c)(5) revised; (c)(6) removed.....18680
1962.29 (a)(1) amended; (b) introductory text revised.....36592
1962.30 (b)(1) removed; (b)(2) through (9) redesignated as (b)(1) through (8); (a), new (b)(1), (4), (5) and (6) revised.....18680
1962.40 (e)(4) revised.....36592
1962.42 (a)(1)(v), (b)(1), (2), (3) and (c)(7) amended.....36592
1964.12 Regulation at 56 FR 67484 effective date delayed to 3-31-92.....3276
1965.3 Amended.....36592
1965.11 (c)(1) introductory text amended.....20741
(b) introductory text amended; (b)(3) revised.....36592
1965.12 Introductory text, (e)(2) and (f) amended; (a)(6) and (7) removed; (a)(8) and (9) redesignated as (a)(6) and (7); heading, (a) introductory text, (b) and (g) revised; (a)(8) through (13) added.....18680
1965.13 (a) amended.....775
1965.25 Heading and (a) revised.....18681
1965.27 Regulation at 56 FR 67484 effective date delayed to 3-31-92.....3276
1965.31 Regulation at 56 FR 67484 effective date delayed to 3-31-92.....3276
1965.65 Regulation at 56 FR 67484 effective date delayed to 3-31-92.....3276
1965.75 (c)(2) amended.....36592

Page

1965.77 Regulation at 56 FR 67484 effective date delayed to 3-31-92.....3276
1965.79 Regulation at 56 FR 67484 effective date delayed to 3-31-92.....3276
1965.90 (c) amended.....776
1965.104 (b) introductory text amended.....36593
1965.126 Regulation at 56 FR 67484 effective date delayed to 3-31-92.....3276
1980 Authority citation revised.....4337
1980.13 (b) introductory text revised.....6067
1980.47 Heading and introductory text revised; (d) added.....6068
1980.83 (b) table amended.....6068
1980.108 (a)(1)(iii) and (iv) revised.....18681
1980.113 (d)(8)(ii)(D) revised; interim.....12992
1980.311 Revised.....1638
1980.453 Amended.....4359
1980.454 (e) and undesignated text amended; (a) and (c) revised.....4359
1980.813 (a) introductory text revised.....21199
1980.901—1980.1000 (Subpart J) Added; interim.....4337
2003.1—2003.5 (Subpart A) Exhibit A amended.....33101

Title 7—*Proposed Rules:*

1—26 (Subtitle A) 6483
12 29658
13 .....27371, 31668
27—209 (Ch. I) 6483
28 .....14492, 21358
29 14669
51 .....29449, 33459
55 .....29660, 32184
56 .....29660, 32184
58 .....33130, 35492
59 .....29660, 32184
68 .....2482, 39140
70 .....29660, 32184
110 20380
210—299 (Ch. II) 6483
246 9505
273 .....3961, 4793
300—399 (Ch. III) 6483

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

300 ..... 26620, 34349, 37732
301 ..... 27948, 33905
302 15033
318 ..... 31130, 35627
319 ...217, 846, 3089, 3963, 26620, 34349, 37732, 37735
354 14492
400—499 (Ch. IV) 6483
400 ..... 2232, 30430
401 ..... 1116, 38783
500—599 (Ch. V) 6483
600—699 (Ch. VI) 6483
700—799 (Ch. VII) 6483
703 4378
723..... 28801, 31235
729 1879
736 28133
800—899 (Ch. VIII) 6483
800 31668
900—999 (Ch. IX) 6483
905 24384
906 34268
910 ..... 31670, 39368
911 24385
915 ..... 24386, 38445
921 24388
922 24388
923 24388
924 24388
925 ..... 219, 2690
926 27373
928 31142
932 1663
946 24561
947 24562
948 ..... 27375, 34269, 38446
953 27376
958 24390
959 4164
981 3032
982 24563
985 24391
987 31670
993 38621
998 ..... 3965, 24392
1000—1199 (Ch. X) 6483
1001 .....15, 383, 11276, 20790, 36609
1002 ..... 383, 11276, 20790, 36609
1004 .....15, 383, 20790, 36609
1005 ..... 383, 20790, 36609
1006 ..... 383, 20790
1007 .....220, 383, 20790, 27377, 36609
1011 ..... 383, 20790, 36609
1012 ..... 383, 20790
1013 ..... 383, 20790
1030 ..... 383, 20790, 27949, 36609

Page

1032 ..... 383, 20790
1033 ..... 383, 20790, 36536, 36609
1036 ..... 383, 20790, 36536, 36609
1040 ..... 383, 20790, 36609
1044 ..... 383, 20790, 36609
1046 ..... 383, 20790, 36609
1049 ..... 383, 20790, 36536, 36603
1050 ..... 383, 20790
1064 ..... 383, 20790
1065 ...383, 1664, 1665, 20790, 36609, 39140, 39141
1068 ..... 383, 20790, 36609
1075 ..... 383, 20790
1076 ..... 383, 20790
1079 ..... 383, 20790, 36609
1093 ..... 383, 19554, 20790, 36609
1094 ..... 383, 20790, 36609
1096 ..... 383, 20209, 20790, 36609
1097 ..... 383, 20790, 36609
1098 ....383, 20210, 20790, 27378, 36609
1099 ..... 383, 2691, 20790, 36609
1106 ..... 221, 383, 20790, 36609
1108 ..... 383, 20790, 36609
1124 ...15, 383, 20790, 34694, 36609, 39142
1126 ..... 383, 20790, 36609, 39143
1131 ..... 383, 20790, 36609
1134 ..... 383, 20790
1135 ..... 383, 20790, 34694, 36609
1137 ..... 383, 20790, 39145
1138 ..... 383, 20790, 36609
1139 ..... 383, 20790, 39146
1200—1299 (Ch. XI) 6483
1205 3089
1209 ..... 1666, 3360, 24720, 36610
1210 3727
1230 27949
Ch. XII 6483
Ch. XIII 6483
1400—1499 (Ch. XIV) 6483
1410 28468
1413 ..... 11588, 34087
1421 32454
1427 ..... 20211, 32454
1435 33459
1446 1879
1464..... 28801
1500—1599 (Ch. XV) 6483
1600—1699 (Ch. XVI) 6483
1700—1799 (Ch. XVII) 6483
1703 ..... 21900, 26782, 32184
1800—2099 (Ch. XVIII) 6483
1924 27379
1942 ..... 31462, 37736
1944 ..... 1678, 17858, 27379

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 7—Con. Page

1980 17858
Ch. XIX 6483
2100—2199 (Ch. XXI) 6483
2200—2299 (Ch. XXII) 6483
2300—2399 (Ch. XXIII) 6483
2400—2499 (Ch. XXIV) 6483
2500—2599 (Ch. XXV) 6483
2600—2699 (Ch. XXVI) 6483
2700—2799 (Ch. XXVII) 6483
2800—2899 (Ch. XXVIII) 6483
2900—2999 (Ch. XXIX) 6483
3000—3099 (Ch. XXX) 6483
3100—3199 (Ch. XXXI) 6483
3200—3299 (Ch. XXXII) 6483
3300—3399 (Ch. XXXIII) 6483
3400—3499 (Ch. XXXIV) 6483
3600—3699 (Ch. XXXVI) 6483
3700—3799 (Ch. XXXVII) 6483
3800—3899 (Ch. XXXVIII) 6483
3900—3999 (Ch. XXXIX) 6483
4000—4099 (Ch. XL) 6483
4100 (Ch. XLI) 6483

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

3 Authority citation revised 11570
3.1 (d)(1-a) revised 11570
3.12 Revised 11571
3.13 Revised 11571
3.14 Revised 11571
3.15 Redesignated as 3.16; new 3.15 added 11571
3.16 Redesignated as 3.17; new 3.16 redesignated from 3.15 11571
3.17 Redesignated as 3.18; new 3.17 redesignated from 3.16 and revised 11571
3.18 Redesignated as 3.19; new 3.18 redesignated from 3.17 11571
3.19 Redesignated as 3.20; new 3.19 redesignated from 3.18 and revised 11571
3.20 Redesignated as 3.21; new 3.20 redesignated from 3.19 11571
Revised 11572
3.21 Redesignated as 3.22; new 3.21 redesignated from 3.20 11571
Revised 11572
3.22 Redesignated as 3.23; new 3.22 redesignated from 3.21 11571
3.23 Redesignated as 3.24; new 3.23 redesignated from 3.22 11571
3.24 Redesignated as 3.25; new 3.24 redesignated from 3.23 11571
3.25 Redesignated as 3.27; new 3.25 redesignated from 3.24 11571
3.26 Redesignated as 3.28 11571
Added 11572
3.27 Redesignated as 3.29; new 3.27 redesignated from 3.25 11571
(c) amended 11572
3.28 Redesignated as 3.30; new 3.28 redesignated from 3.26 11571
3.29 Redesignated as 3.31; new 3.29 redesignated from 3.27 11571
3.30 Redesignated as 3.32; new 3.30 redesignated from 3.28 11571
3.31 Redesignated as 3.33; new 3.31 redesignated from 3.29 11571
Revised 11572
3.32 Redesignated as 3.34; new 3.32 redesignated from 3.30 11571
(a) amended 11572
3.33 Redesignated as 3.35; new 3.33 redesignated from 3.31 11571
Revised 11572
3.34 Redesignated as 3.36; new 3.34 redesignated from 3.32 11571
3.35 Redesignated as 3.37; new 3.35 redesignated from 3.33 11571
3.36 Redesignated as 3.38; new 3.36 redesignated from 3.34 11571
3.37 Redesignated as 3.39; new 3.37 redesignated from 3.35 11571

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

Revised ... 11573
3.38 Redesignated as 3.40; new 3.38 redesignated from 3.36 ... 11571
3.39 Redesignated from 3.17 ... 11571
Amended ... 11573
3.40 Redesignated from 3.38 ... 11571
103 Authority citation revised ... 5227, 11573
103.1 (f)(2)(xxxv) and (xxxvi) amended; (f)(2)(xxxvii) added; interim ... 33861
103.3 (a)(1)(v) added ... 11573
103.7 Regulation at 56 FR 31060 confirmed ... 3926
(b)(1) revised ... 5227
(b)(1) amended ... 6182
(b)(1) amended; interim ... 6460
(a) amended ... 11573
(c)(4) amended ... 34507
204.6 (a) and (h)(3) corrected ... 1860
204.8 Regulation at 56 FR 23210 confirmed; (a), (b), (e)(1) and (g)(3) amended; (d)(1) revised; (d)(2) redesignated as (d)(3); new (d)(2) added ... 14792
(e)(1) and (g)(3) amended ... 14793
204.9 Added; interim ... 33861
214.2 (h)(4)(v)(E) and (6)(vi) introductory text corrected ... 749
(d) added; interim; eff. 2-12-92 through 3-31-92 ... 6184
Regulation at 57 FR 6184 comment time extended ... 10978
(h)(1)(ii)(B)(*1*), (4)(i)(B)(*1*) through (*6*), (iii)(B)(*1*), (vi)(A)(*2*), (ix) and (9)(iii)(B)(*1*) revised; interim ... 12178
(h)(1)(i), (ii)(B)(*3*), (4) heading, (i)(A)(*3*), (C), (ii), (vii)(A), (B), (C), (9)(iii)(B)(*3*), (13)(iii)(A) and (15)(ii)(B)(*1*) revised; (h)(1)(ii)(B)(*4*), (4)(i)(A)(*4*), (D), (vii)(D), (viii) and (9)(iii)(B)(*4*) removed; (h)(4)(ix) redesignated as (h)(4)(viii) ... 12181
(o)(4) through (15) redesignated as (o)(5) through (16); (o)(1), (2)(ii)(C), (3)(i), (ii), (iii), (iv) introductory text, new (o)(5), (6)(ii) and (iv), (7)(iii) revised; (o)(3)(v), (4) and (17) added ... 12182
(p)(5) through (15) redesignated as (p)(7) through (17); (p)(4) redesignated as (p)(5); (o)(2)(i), (7)(ii)(A), (B), (C), (iv)(12) and (13)(ii) amended; (p)(1), (2)(i), (ii)(C), (F), (3), (5), (i)(A), new (p)(7), (8)(iii), and (14)(iii) revised; (p)(2)(ii)(H), (4), (6) and (18) added ... 12186
(p)(5)(ii)(D), (8)(ii)(A), (B) and (C) amended ... 12190
Regulation at 57 FR 6184 effective date extended through 10-31-92 ... 29193
(f)(9)(ii) revised; interim ... 31955
(c)(1) amended ... 33426
(f)(10)(ii) revised; (f)(11) introductory text amended; interim ... 31956
214.6 (d)(2)(ii) revised ... 33273
240.20 Redesignated from 240.48 and revised ... 34507
240.48 Redesignated as 240.20 and revised ... 34507
242 Authority citation revised ... 6461, 11573
242.2 (d) revised; (h) added ... 11573
Corrected ... 30898
242.6 Added; interim ... 6461
242.8 (a) amended ... 11574
245.8 Added; interim ... 33862
245a Authority citation revised ... 3926
245a.1 Regulation at 56 FR 31061 confirmed ... 3926
245a.2 Regulation at 56 FR 31061 confirmed ... 3926
245a.3 Regulation at 56 FR 31061 confirmed; (e) amended ... 3926
251 Authority citation revised ... 6185
251.1 (a) and (d) added; interim; eff. 2-21-92 through 3-13-92 ... 6185
Regulation at 57 FR 6185 comment time extended ... 10978
Regulation at 57 FR 6185 effective date extended through 10-31-92 ... 29193
258 Added; interim; eff. 2-21-92 through 3-13-92 ... 6185

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 8 Chapter I—Con. Page

Regulation at 57 FR 6185 comment time extended.....10978
Regulation at 57 FR 6185 effective date extended through 10-31-92.....29193
264 Authority citation revised.....6462
264.1 (a) amended; interim.....6462
(a) corrected.....14627
270 Added.....33866
274a Authority citation revised.....6462
274a.12 (a) introductory text and (12) revised; (a)(13) added; interim.....6462
Corrected.....14627
(c)(3) revised; interim.....31956
274a.13 (a) amended; interim.....6462
(a) corrected.....14627
292 Authority citation revised.....11574
292.3 Heading, (a) introductory text and (b) revised; (a)(15) added.....11574
299.1 Amended.....6183, 6462
Corrected.....14627
299.5 Table amended; interim (OMB numbers).....6183, 6462

Title 8—*Proposed Rules:*

0-199 (Ch. I).....10743
103.....1404, 2057
208.....1404
209.....1404
274a.....1404

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

54 Heading revised.....33630
54.1 Amended.....33630
54.2—54.9 Designated as Subpart A.....33630
54.10—54.13 (Subpart B) Added.....33631
75 Technical correction.....5210
75.1 Heading and text amended.....2440
75.2 Heading and text amended.....2440

Page

75.4 (a), footnote 1, (c)(1), footnote 2, (2), footnote 3, (d) introductory text, (2), (3) and (4) amended.....2440
75.5 Amended.....2440
77.1 Amended; interim...20194, 31430, 37687
Regulation at 57 FR 20194 confirmed.....37869
78.41 (b) and (c) amended; interim.....3719, 15220, 31431
Regulation at 57 FR 3719 confirmed.....37081
Regulation at 57 FR 15220 confirmed.....37080
(a) and (b) amended; interim.....37688
78.43 Regulation at 56 FR 46109 confirmed.....3926
79 Revised.....33631
82.30 Amended; interim.....778
82.32 (b)(2) and (e) revised; interim.....779
91.1 Amended.....23047, 39353
91.3 (a) and (c) footnote 1 revised.....23047
(b) and (c) amended.....23048
91.4 Amended.....23047
91.5 (a) footnote 2 revised.....23047
91.6 (a)(5) amended.....23048
91.8 (a)(2) footnote 5 revised.....23047
(a)(2) amended.....23048
91.14 (a)(13)(vi) heading amended; (a)(13)(vi)(A) redesignated as (a)(13)(vi)(B); new (a)(13)(vi)(A) added.....10979
(a)(8) through (15) redesignated as (a)(9) through (16); new (a)(8) added.....15002
(c)(6), (7) and (8) amended.....23047
(b), (c)(7) and (d) amended.....23048
(a)(7)(i)(B) added.....37689
(a)(7) through (16) redesignated as (a)(8) through (17); new (a)(7) added.....39353
91.15 (a), (b) and (c) amended.....23048
(a) amended.....23048
91.16 Amended.....23047, 23048
91.17 (a) and (b) amended.....23047
91.19 Amended.....23047, 23048
91.24 Amended.....23047
91.25 (a), (c), (e) and (f)(3) amended.....23047
91.26 (b)(1) amended.....23047

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

91.28 (d)(1) amended 23047
92.101 (c)(3)(i) amended 28080
92.103 (a)(4) added; footnote 7 revised 21725
92.104 (a) amended 28080
92.105 (c)(1) and (2) revised 21726
92.106 (b)(1) amended 21726
92.205 Amended 28080
92.220 (b) revised 12190
92.301 (c)(2)(iv) introductory text, (vi)(A)(*2*), (vii)(B) introductory text, (C) and (xi)(C)(*4*) amended 28080
92.303 (c) amended 37690
92.304 (a)(4)(ii) and (7)(ii) amended 27901
92.314 Amended 28080
92.326 Amended 28080
92.403 (c) revised; (e) amended; interim 2010
Regulation at 57 FR 2010 confirmed 27902
92.405 (a) and (b)(1) amended 28080
92.406 (a) and (b) amended 28080
92.427 (b)(2) introductory text revised; interim 2010
(b)(1), (2)(i) and (ii) amended 28080
(d)(1) introductory text and (e)(2) amended 28081
Regulation at 57 FR 2010 confirmed 27902
92.428 (a) amended 28081
92.429 Amended 28081
92.505 (a) amended 28081
93.1 Amended 23048, 23049
Nomenclature change 23048
93.3 (a), (b) and (d) amended 23049
93.4 (a)(4) amended 23049
93.5 Introductory text amended 23049
93.6 (a)(2)(ii), (iii) and (iv) amended 23049
93.7 Amended 23049
93.8 (b) amended 23049
94 Authority citation revised 23928
Heading revised; interim 37083
94.1 (a)(2) amended 15004
94.11 (a) amended 15004
(a) amended; interim 37083
94.13 Introductory text amended; interim 37083
94.15 Introductory text, (a) and (b) redesignated as (a) introductory text, (1) and (2); new (b) added 23928
96 Authority citation revised 28082
96.1 Redesignated as 96.2; new 96.1 added 28082
Amended 29785
96.2 Redesignated as 96.3; new 96.2 redesignated from 96.1; amended 28082
96.3 Redesignated as 96.4; new 96.3 redesignated from 96.2 28082
Amended 28083, 29785
96.4 Removed; new 96.4 redesignated from 96.3 28082
Introductory text and (a) removed; (b) through (e) redesignated as (a) through (d) 28083
(b) and (c)(2) amended 29785
96.5 (a) through (d) amended 29785
96.7 Amended 29785
96.8 (b) amended 29785
96.9 (a) amended 29785
96.10 Amended 29785
96.12 Introductory text amended 29785
96.13 Amended 29785
98.2 Amended 29194
98.3 (g) amended 29194
98.4 (a), (b) and (d) amended 29194
98.7 Introductory text amended 29194
98.9 Amended 29194
98.10 Amended 29194
101.2 Amended 38756
102.5 (d)(2) revised; (f) added 38760
105 Authority citation corrected 5210
112.7 (k) amended; (l) added; note removed 38756
113.113 Revised 38756
122 Authority citation revised 30899
122.1 (c) revised; (d) removed; (e) through (h) redesignated as (d) through (g) 30899
122.2 Amended 30899
122.4 Amended 30899
130 (Subchapter F) Added 771
Technical correction 3089
145—147 (Subchapter F) Redesignated as subchapter G 771

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 9 Chapter I—Con. Page

151 (Subchapter G) Redesignated as subchapter H..... 771
156 (Subchapter H) Redesignated as subchapter I..... 771
Authority citation revised..... 30899
156.2 (b) revised; (c) removed; (d) through (i) redesignated as (c) through (h); new (d) amended..... 30899
156.4 Amended..... 30899
156.5 Amended..... 30899
156.6 Amended..... 30899
156.8 (b) amended..... 30899
160—162 (Subchapter I) Redesignated as subpart J..... 771
165 (Subchapter J) Redesignated as subchapter K..... 771
166—167 (Subchapter K) Redesignated as subchapter L..... 771

Chapter III—Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

303.1 (e) through (g) redesignated as (f) through (h); new (e) added..... 34182
317.23 Removed..... 24544
318.10 (c)(3)(i) table 3A amended; (c)(3)(iv) revised..... 27874
(c)(3)(i) table 3A and (iv) corrected..... 33633
318.309 (b),(c) and (d)(1)(viii) revised..... 37872
320.1 (b)(7) added..... 27877
327.2 (b) amended; interim..... 18080
(b) amended..... 30637
Regulation at 57 FR 18080 confirmed..... 36890
327.3 (b) removed; (c) and (d) redesignated as (b) and (c)..... 27906
327.21 (a)(1) amended..... 27906
381.10 (e) added..... 34184
381.143 Removed..... 24544
381.147 (d) Redesignated in part as (d)(1) and (2); new (d)(1) revised; new (d)(3) added..... 28085
381.309 (b), (c) and (d)(1)(viii) revised..... 37872
391.2 Revised..... 18388
391.3 Revised..... 18388
391.4 Revised..... 18388

Title 9—*Proposed Rules:*

Page

1-199 (Ch. I)..... 6483
3 12214, 12218
5..... 12222
11..... 12222
16..... 12222
50..... 31671
51..... 29225, 31671, 37736
54..... 33656
75..... 28134
77..... 31671
78..... 31671
91..... 19555, 23066
92 ...3144, 3145, 5294, 21754, 31671, 37737
94..... 3729, 22669, 27951
124..... 30926
145..... 29044, 31563
147..... 29044, 31563
160..... 23540, 30432
161..... 23540, 27845, 30432
162..... 23540, 30432
200-299 (Ch. II)..... 6483
300-399 (Ch. III)..... 6483
303..... 21858
317 ...2692, 5956, 10298, 10300, 14499, 31972, 39332
318..... 3732, 35505, 38448
319..... 3732
320..... 2692, 5956, 10298, 14499
327..... 13053
381 ...2692, 5956, 10298, 10300, 14499, 19460, 21858, 31972, 38450, 39332
391..... 2483
545..... 12226
563..... 12223

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

1.3 (a) amended..... 1639
1.11 (c) and (d) revised..... 1639
1.27 Added..... 1639
1.28 Added..... 1639
1.29 Revised..... 1639
1.31 (b) amended..... 1639
1.41 Redesignated as 1.42; new 1.41 added..... 1639
1.42—1.47 Undesignated center heading added..... 1640
1.42 Redesignated as 1.41..... 1639

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

2 Authority citation revised...5797, 18390
2.104 (b)(2) revised... 18390
2.202 (c) revised...20198
2.702 Revised... 4153
2.1201 Revised... 4153
2 Appendix C revised... 5797
Appendix C corrected... 8519
11.15 (c)(3) redesignated as (c)(5); (c)(1) introductory text, (2) and new (5) revised; new (c)(3) and (4) added... 2442
15.29 Revised... 4153
19 Regulation at 56 FR 23360 effective date confirmed... 23929
19.13 (b) revised... 38590
20 Regulation at 56 FR 23360 effective date confirmed... 23929
Technical correction... 27845
Removed...36891
20.1008 (a) revised...38590
20.1903 (b) revised... 39357
20.1906 (b) revised... 39357
25.8 (c) revised...3720
25.17 (e) revised...3720
25.19 Revised... 3720
25.21 (a) revised; (c) added... 3720
25.23 Revised... 3721
25.25 Revised... 3721
25.27 (a) revised...3721
25.31 (d) added... 3721
25 Appendix A revised... 3721
40 Authority citation revised...18390
40.4 Amended... 18390
40.5 (b)(1)(vi) added... 18390
40.31 (k) and (l) added... 18390
40.32 (e) revised; (g) added...18390
40.33 Added...18391
40.41 (g) added... 18391
40.65 (a) introductory text revised...18391
50 Policy statement...6262, 35455
50.2 Amended... 18391
50.33a (e) revised...18391
50.36a (a)(2) revised...39358
50.44 (a) introductory text, (b) introductory text and (c)(1) introductory text revised... 39358
50.46 (a)(1)(i) revised... 39358
50.55a Introductory text, (a), (b)(1), (2) introductory text, (iii), (iv)(A), (g)(1), (2), (3) introductory text, (i), (ii), (4), (5)(i), (iv), (h) and footnote 8 revised; (g)(3)(iii) and (iv) removed; (b)(2)(vii), (viii), (f), (g) introductory text and (6)(ii)(A) added... 34673
50.59 (b)(2) revised... 39358
50.71 (e)(4) revised...39358
50.82 (a) revised...30387
51 Authority citation revised...18391
51.14 (a) amended...18391
51.20 (b)(10) added... 18392
51.60 (b)(1)(vii) added... 18392
51.97 (c) added...18393
54.29 (c) corrected...4912
54.33 (d) correctly designated; (d) and (e) corrected... 4912
70 Authority citation revised...18393, 33428
70.4 Amended... 18392, 33428
70.5 (b)(1)(vii) revised... 18392
70.8 (b) revised... 18392
70.19 (a)(2) revised...33428
70.21 (a)(1) revised; (b) added...18392
70.22 (n) added... 18393
(h)(1) and (k) revised... 33428
70.23 (a)(7) and (11) revised; (a)(12) added... 18392
70.23a Added...18393
70.25 (a) revised...18393
70.31 (e) added...18393
70.32 (k) added... 18393
(g) revised...33429
70.59 (a) introductory text revised...18393
72 Authority citation revised...33429
72.184 (a) revised...33429
73.2 Amended... 33429
73.20 (b)(2) and (c) revised; (b)(3) redesignated as (b)(4); new (b)(3) added...33430
73.26 (h)(6) revised... 33430
73.40 (a) designation, (b) and (d) removed... 33430
73.46 (g)(6) and (h)(1) revised.... 33430
73.50 (g)(1) and (h) revised..... 33430
73.55 (b)(4)(ii), (g)(4) and (h)(1) revised...33431
73.57 (d)(2) revised... 7645
73.60 Introductory text and (e) revised... 33431
73.67 (c) introductory text, (2), (d) introductory text and (f) introductory text revised... 33431
73.70 (c) revised...33431
73 Appendixes B and C amended...33432
75 Authority citation revised...18393
75.4 (k)(6) added... 18393

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 10 Chapter I—Con. Page

(f)(1) revised....33432
110 Authority citation revised....18393
110.2 Amended....18393
110.9a (e) added....18393
140 Authority citation revised....18394
140.1 Revised....18394
140.2 (a)(4) added....18394
140.3 (m) added....18394
140.9a (b) revised....18394
140.13b Added....18394
150 Authority citation revised....18394
150.3 (h) revised; (m) added....18394
170 Technical correction....19458
170.3 Amended....18394, 32707
170.12 (b)(2), (c)(2), (d)(2), (e)(1), (f) and (i) revised....13630
170.20 Revised....32707
170.21 Introductory text revised; table amended....18395, 32707
170.31 Table amended....18395
Revised....32708
171 Authority citation revised....13631, 32714
Technical correction....19458
171.5 Amended....32714
171.11 (b) revised....32714
171.15 (b)(3), (c)(2), (d) and (e) revised....32714
171.16 (c) introductory text revised....13631
(c) introductory text, (c)(4), (d) and (e) revised....32714
(d) table corrected....39421
171.19 (b) and (c) revised....32717

Chapter II—Department of Energy (Parts 200—699)

205.90—205.98 (Subpart G) Removed....23930
205.191 Removed....23930
205.199D Removed....23930
205.199E Removed....23930
220 Removed....36891
300 Removed....36891
304 Authority citation revised....23932
304.4 Revised....23932
304.5 (d) amended....23933
320 Removed....36891
417 Removed....23931
445 Removed....23931
456 Removed....23931
490 Removed....23931
595 Removed....23523
600.2 (c), (d), (e) and (f) redesignated as (d), (e), (f) and (g); new (c) added....3
600.7 (b)(2)(1)(G) redesignated as (b)(2)(1)(H); new (b)(2)(i)(G) added....3
600.12 (c) added....3
600.14 (c) and (e)(1)(ii) revised; (f) amended....3
600.16 Heading and (a)(3)(ii) revised; (i) amended....4
600.31 (d)(1) revised; (f)(3) amended; (f)(4) added....4
600.103 (b)(6) and (h) revised; (f)(1) amended....4
600.109 (a) revised....4
600.112 (a) through (d) revised; (e) through (h) redesignated as (f) through (i); new (e) added....4
600.113 (b) revised; (e)(1) amended....5
600.119 (c)(1) and (d)(2) revised....5
600.120 (c)(1) introductory text revised....5
600.125 Added....5
600.420 (a) amended....5
600.421 (i) revised....5
600.424 (b)(7)(ii) amended....5
600.436 (g)(2)(i) amended....5

Chapter III—Department of Energy (Parts 700—799)

707 Added....32656
708 Added....7541

Chapter X—Department of Energy (General Provisions) (Parts 1000—1099)

1001 Removed....23930
1021 Revised....15144

Title 10—*Proposed Rules:*

0-199 (Ch. I) ...4166, 6299, 7327, 7893, 9985, 20656, 27394, 34886, 37737
11 222
19 ....222, 21216
20 ...222, 11920, 14500, 21216, 27187, 27711, 36611
21 222
25 222

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

26 ..... 222, 18415
30 ..... 222, 6077, 21218, 24763, 27711
31 222
32 ..... 222, 27711
33 222
34 ..... 222, 20430
35 ... 222, 8282, 10143, 21043, 21218, 24763, 27711
39 222
40 ..... 222, 6077, 21218
50 ... 222, 537, 2059, 14514, 15034, 21218, 27187, 28642, 36999
51 21218
52 ..... 222, 537, 24394
53 222
54 222
55 222
60 222
61 ..... 222, 8093, 14500, 32743
70 ..... 222, 6077, 18415, 21218
71 222
72 ..... 222, 21218, 28645
73 ..... 222, 18415, 22670
74 222
75 222
95 222
100 .... 4168, 11691, 23548, 27006, 39371
110 ..... 222, 17859
140 ..... 222, 2059, 36909
150 222
170 ..... 847, 4744, 18095, 20211, 22021
171 ..... 847, 4744, 18095, 20211, 22021
200-699 (Ch. II) 7327
220 27395
282 28452
300 27395
320 27395
440 2060
455 432
600 28135
605 ..... 28137, 30171
700-999 (Ch. III) 7327
707 32664
820 ..... 855, 1519, 20796
830 855
835 855
1000-1099 (Ch. X) 7327
1024 3364
1706 31143

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

100.7 (b)(19) removed 1640
Technical correction 2638
Regulation at 56 FR 67123 eff. 4-2-92 11263
100.8 Technical correction 2638
Regulation at 56 FR 67123 eff. 4-2-92 11263
102.14 (a) revised (effective date pending) 31426
104.3 Technical correction 2638
Regulation at 56 FR 67124 eff. 4-2-92 11263
106.5 (d)(1)(ii) amended; (f) and (g)(2)(ii)(B) revised (effective date pending) 8993
(f) introductory text and (1) corrected 11137
Regulation at 57 FR 8993 effective in part 1-1-91 and 6-18-92 27146
106.6 (d) and (e)(2)(ii)(B) revised (effective date pending) 8993
Regulation at 57 FR 8993 eff. 6-18-92 27146
110 Authority citation revised 1640
110.3 (c) heading revised; (c)(6) removed; (d) added (effective date pending) 36345
110.12 Removed 1640
114.1 (a)(2)(iv) removed 1640
200 (Subchapter B) Added 34510
9034.1 Regulations at 56 FR 34132 and 56570 effective date corrected to 11-7-91 6665
9034.5 Regulations at 56 FR 34132 and 56570 effective date corrected to 11-7-91 6665
9036.2 Regulations at 56 FR 34132 and 56570 effective date corrected to 11-7-91 6665
9036.4 Regulations at 56 FR 34133 and 56570 effective date corrected to 11-7-91 6665
9036.5 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91 6665
9036.6 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91 6665
9037.1 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91 6665

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 11 Chapter I—Con. Page

9037.2 Regulations at 56 FR 34134 and 56570 effective date corrected to 11-7-91.....6665

Title 11—*Proposed Rules:*

102 13056
109 33549
110 .....13054, 13056, 33549, 36023
114 33548
200 20430

TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

4 Authority citation revised.....32416
4.13 Revised.....32416
4.15 (a) introducory text, (1) and (b) revised.....32416
4.16 (a) and (b)(7) revised.....32417
4.17 Revised.....32417
4.18 (d) added.....32419
5.50 (h)(1)(i), (ii), (2) and (3) correctly added; CFR correction.....1641
8.2 (a) revised.....22416
34 Authority citation revised.....12202
34.42 (g) through (k) redesignated as (h) through (l); (g) added.....12202
34.43 Heading, (a) introductory text, (1), (2), (4)(iv) and (5) revised; (a)(6) and (d) added.....12202
34.44 (b) and (c) redesignated as (c) and (d); (b) added.....12202

Chapter II—Federal Reserve System (Parts 200—299)

201.51 Revised.....176, 34064
201.52 Revised.....176, 34065
202 Supplement I amended.....12203
Appendix A amended.....20399
203 Appendix A amended.....20400
204.2 (a)(1)(iii), (b)(1)(ii), (e)(6) and (i)(1)(iii)(B) revised; (b)(3)(iii) amended; (b)(3)(iv) removed; (b)(3)(v) redesignated as (b)(3)(iv); (u) added.....38427
204.3 (c)(3) and (h) revised.....38417
(a) introductory text amended; (g) revised.....38427

Page

204.9 (a)(1) revised.....8060
204.133 Added.....38427
204.134 Added.....38428
204.135 Added.....38429
204.136 Added.....38429
205 Appendix B added.....20400
207 OTC margin stock list...2997, 15220, 33101
208.18 Regulation at 55 FR 27771 compliance date revised.....6
208.110 Removed.....21593
208 Appendix A amended.....2012
211.2 (t) revised; interim.....12997
211.21 (b)(1) and (2) amended; (b)(3) through (b)(8) added; interim.....12997
211.22 Added; interim.....12998
211.25 Added; interim.....12999
211.26 Added; interim.....13000
211.27 Added; interim.....13001
211.28 Added; interim.....13001
211.29 Added; interim.....13001
211.30 Added; interim.....13001
213 Appendix D amended.....20400
215 Authority citation revised.....21205, 22423
215.1 (a) revised.....21205
Regulation at 57 FR 21205 republished.....22424
215.2 (e) through (l) redesignated as (g) through (n); new (e) and (f) added; (a), (c), (d), new (h), (i), (l) and (m) revised.....21205
Regulation at 57 FR 21205 republished.....22424
215.3 (a)(4), (8), (b)(2) and (5) revised.....21206
Regulation at 57 FR 21206 republished.....22425
215.4 (c) footnote 3 removed; (d) footnote 4 redesignated as footnote 3.....21205
(a)(1), (b)(1) and (c) revised; (b)(2), (3) and (e) redesignated as (b)(3), (4) and (d); new (b)(2) added.....21206
Regulations at 57 FR 21205 and 21206 republished...22424, 22425
215.5 (a) footnote 5 redesignated as footnote 4.....21205
(a) footnote 4 and (d) revised.....21206

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

Regulations at 57 FR 21205 and 21206 republished...22424, 22425

215.6 Redesignated as 215.7; new 215.6 added.....21207
Regulation at 57 FR 21207 republished.....22426

215.7 Redesignated as 215.8; new 215.7 redesignated from 215.6.....21207
Regulation at 57 FR 21207 republished.....22426

215.8 Footnote 6 redesignated as footnote 5.....21205
Redesignated as 215.9; new 215.8 redesignated as 215.9.....21207
Relations at 57 FR 21205 and 21207 republished.....22424, 22426

215.9 Footnote 7 redesignated as footnote 6.....21205
Redesignated as 215.10; new 215.9 redesignated as 215.8.....21207
Regulations at 57 FR 21205 and 21207 republished...22424, 22426

215.10 (a) footnote 8 and (b) footnote 9 redesignated as (a) footnote 7 and (b) footnote 8.....21205
Redesignated as 215.11; new 215.10 redesignated from 215.9.....21207
Regulations at 57 FR 21205 and 21207 republished...22424, 22426

215.11 Redesignated as 215.13; new 215.11 redesignated from 215.10.....21207
Regulation at 57 FR 21207 republished.....22526

215.12 Added.....21207
Regulation at 57 FR 21207 republished.....22426

215.13 Redesignated from 215.11 and revised.....21207
Regulation at 57 FR 21207 republished.....22426

220 OTC margin stock list...2997, 15220, 33101

221 OTC margin stock list...2997, 15220, 33101

224 OTC margin stock list...2997, 15220, 33101

225 Authority citation revised.....21207, 22426

225.4 (f) added.....21207

Page

Regulation at 57 FR 21207 republished.....22426

225.11 (f) added; interim.....13001

225.12 (f) added; interim.....13001
(d) introductory text, (1) and (2) redesignated as (d)(1) introductory text, (i) and (ii); (d)(2) added.....28778

225.13 (a) introductory text and (b)(2) revised; (b)(4) and (5) added; interim.....13003

225.23 (f)(2) introductory text republished; (f)(2)(i) revised.....28779

225.25 Footnotes 7 through 14 redesignated as footnotes 8 through 15; (b)(5) introductory text, (i), (ii), (iii), (iv) introductory text, (A) through (D), (v) and (vi) redesignated as (b)(5)(i) introductory text, (A), (B), (C), (D) introductory text, (*1*) through (*4*), (E) and (F); new (b) (5) heading and (ii) added; (b)(5)(i) introductory text, (D) introductory text, (*3*) and (F) revised.....20961

225.61—225.67 (Subpart G) Regulation at 55 FR 27771 compliance date revised.....6

225.114 Removed.....9973

225.125 (h) revised.....30391

225.132 (c)(2) amended.....28779

225 Appendix A amended.....2012
Appendix D amended.....2013

226 Supplement I corrected.....81, 749
Appendix I amended.....20400

226.5b (f)(2)(ii) and (iii) revised; (f)(2)(iv) added.....34681

227.11 (c)(1), (2) and (3) revised; (d) added.....20401

229 Authority citation revised.....36598, 36600

229.1 (a) revised.....36598

229.3 (a)(1) revised; (a) concluding text added.....36600

229.12 (a) revised; (f) amended; (f)(1)(ii) and (2) removed.....36601

229.13 (g)(1)(ii) through (v) removed; (g)(2) heading, (i), (ii) and (3) redesignated as (g)(1)(ii) heading, (A), (B) and (4); (b), (c) introductory text, (d) introductory text,

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 12 Chapter II—Con. Page

(e)(1), (f) introductory text, new (g)(1)(ii)(A), (B), (h)(1), (3) and (4) amended; (g)(1) introductory text, (i) and (h)(2) revised; new (g)(2) and (3) added 3279

(b), (c) introductory text, (d) introductory text, (e)(1), (f) introductory text, (h)(1), (2) and (4) amended; (g)(2)(ii) and (3)(iii) revised 36598

229 Appendixes C and E amended; interim 3280

Appendix E amended 36598, 36601

263 Authority citation revised 13001

263.50 (b)(7) and (8) amended; (b)(9) and (10) added; interim 13001

265 Authority citation revised 13002

265.6 Introductory text republished; (e) added 6789

(b)(2) added; interim 13002

265.7 (d)(8) added; interim 13002

265.11 (c)(11)(v)(A) removed; (c)(11)(v)(B) and (C) redesignated as (c)(11)(v)(A) and (B); (c)(11)(vi) revised 11907

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303.3 (d) redesignated as (e); new (d) added 5815

303.7 (f)(5) redesignated as (f)(6); new (f)(5) added 5815

323 Authority citation revised 9049

323.2 (g) through (k) redesignated as (h) through (l); new (g) added 9049

323.3 (a) introductory text, (1) and (4)(iv) revised; (a)(5) amended; (a)(6), (7) and (d) added 9050

323.4 (b) and (c) redesignated as (c) and (d); new (b) added 9050

325 Authority citation revised 7647

325.1 Amended 7647

325.5 (f)(5) and (8) removed; (f)(6) and (7) redesignated as (f)(5) and (6); (f)(4), new (f)(5) and (6) amended 7647

Page

335.212 Amended 4702

335.312 Amended 4702

335.410 Revised 4702

335.411 Revised 4702

335.412 Removed 4702

335.420 Added 4703

335.421 Added 4703

335.422 Added 4703

337 Authority citation revised 7649, 17850, 23941, 28457

337.3 (a) amended 7649

(c) added 17850

Corrected; OMB number 28457

337.6 Revised 23941

360 Transferred to subchapter B; subchapter C heading removed 10415

361 Added 15004

386 Heading removed 10415

Chapter V—Office of Thrift Supervision, Department of Treasury (Parts 500—599)

500.10—500.17 (Subpart B) Revised 14335

500.32 Removed 14336

516 Added 14336

543.1 (b) amended 14338

543.2 (a) and (g)(1) introductory text revised; (b), (g) introductory text and (h)(3) removed; (d), (e) and (f) amended 14338

543.8 (b) revised 14339

543.9 (a) revised; (c) amended 14339

544.2 (a) and (b) introductory text revised; (c) amended; (d) and (e) removed 14339

544.3 Introductory text revised 14339

544.5 (a), (c) and (d) revised 14339

545 Authority citation revised 33437

545.14 (c) revised 33437

545.35 (d) revised 33437

545.38 (b)(3) revised 33437

545.74 (b)(7), (c) introductory text, (3)(vi), (4)(iii) and (e) revised; (c)(4)(i)(D) amended; (f) and (g) removed 14340

(d)(2) revised 33437

545.77 Revised 14340

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

545.82 (f) heading, (1) introductory text and (3) revised 14340
(c)(2) removed; (e) introductory text revised 33437
545.92 (a), (b), (c), (e), (f) and (h)(1) revised; (h)(3) removed; (j) added 14341
(i) removed; interim 37064
545.93 (b) and (c) amended 14341
545.94 Removed 14341
545.95 Revised 14341
545.96 (b) revised; (d) removed 14342
546.2 (d)(2) and (e) amended 14342
546.4 (c) and concluding text revised 14342
550.2 (a) amended 14342
552.2-1 (b) introductory text, (1) introductory text and (i) revised 14342
552.2-2 (b) and (c) amended; (d) removed 14342
552.4 (a) and (b) introductory text revised; (c) and (d) amended; (e) and (f) removed 14343
552.5 Revised 14343
552.6-3 (a) amended 14343
552.10 Revised 14343
552.13 (i) revised; (m) removed 14343
556.5 Revised 12207
558.3 Amended 14335
558.4 Amended 14335
559.3 Amended 14335
561 Authority citation revised 33437
561.55 (b)(2) revised; (c) added 33437
563 Authority citation revised 33437
563.1 Revised 14344
563.4 Removed 14344
563.10 (b)(1) amended; (c) heading and (1) introductory text revised 14344
(b)(2), (c)(1)(i) and (3)(v) revised; (d) removed; (e) redesignated as (d) 33438
563.22 (c)(2) revised; (e) heading and (1) amended; (d)(1), (e)(2), (3) and (f) removed 14344
563.37 (c) revised 14344
563.38 (b) amended 14344
563.41 (e)(2)(ii)(D) revised 14344

Page

563.43 (d) amended; (e) and (f) revised 14344
563.45 Amended 14345
563.74 (e) revised 14345
563.75 Removed 14345
563.80 (e)(2) revised 14345
(e)(1) introductory text amended 33438
563.81 Heading, (a), (b), (c), (d) introductory text, (1)(iv), (2), (h) and (k) revised; (d)(1) introductory text, (iii), (v), (vi) introductory text, (f) and (g) amended; (e), (i) and (j) removed 14345
563.84 (b)(7) introductory text revised 33438
563.93 (b)(6)(iii) amended; (d)(3)(iii) revised; (g) removed 14347
563.94 Removed 33438
563.96 Amended 33438
563.131 (a)(1), (b), (d) and (e) amended; (c) introductory text revised 14347
(b) revised 33438
563.132 (a)(1)(ii), (c)(2) and (4) amended; (c)(5) removed; (c) heading, (1) introductory text and (3) revised 14347
563.133 Removed 14347
563.134 (c) and (e)(3) amended 14347
(a)(3), (6) and (b)(1) revised 33438
563.160 (f)(3) amended 14335
563.170 (c)(4) amended 14335
563.173 (c)(2) revised 33438
563.175 (a)(13)(iii) revised 33438
563.190 Revised 12698
563.233 (c) and (d) revised 33438
563b.3 (i)(3)(i) amended 14347
563b.8 (w) removed 14348
563b.27 (e) amended 14335
563b.28 (c)(2) amended 14335
(a) revised; (c) removed 14348
563b.29 (a) amended 14348
563b.39 (d) and (m) revised 14348
563b.41 (a) revised; (c) removed 14348
563c Authority citation revised 33439
563.14 Removed 33439
563c.102 Amended 26990
563f.7 Revised 14348

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 12 Chapter V—Con. Page

564 Authority citation revised....12705
564.2 (g) through (k) redesignated as (h) through (l); new (g) added....12705
564.3 Heading, (a) introductory text, (1) and (2) revised; (d) added....12705
566.3 Removed....14348
566.4 Revised....14348
566.5 Removed....14348
567 Authority citation revised....33439
567.1 (jj) added....12709
(a)(2)(i) removed; (a)(2)(ii), (iii) and (iv) redesignated as (a)(2)(i), (ii) and (iii); (a)(3)(iii), (k), (o), (q), (u), (v), (w)(2)(ii)(C) and (gg) revised; (p) and (ee) amended; (kk) and (ll) added....33439
567.2 (b) heading and (2) revised....33440
567.3 (a)(1), (2), (d)(1), (3) and (5) amended....14335
(d)(2)(i) introductory text amended....14348
567.4 (a)(1) introductory text, (2) introductory text, (3)(i) introductory text and (4) amended....14335
(a)(1) introductory text and concluding text amended....33440
567.5 (a)(1) introductory text, (ii), (iv) and (b)(4) amended; (a)(2)(v)(A) introductory text and (b)(3)(i) revised....33440
567.6 (a)(1)(iii)(D) added....12709
(a) introductory text, (1)(ii)(N), (O) and (2)(i)(C) revised; (a)(1)(vi)(C) redesignated as (a)(1)(vi)(C)(*1*); (a)(1) heading, (ii)(R), (v)(A), (vi) heading, (A), (2) introductory text, (iv) heading, (A), (B) and (C) revised; (a)(1)(ii)(S) and new (vi)(C)(*2*) amended....22440
567.9 (c)(1) and (3)(i) introductory text revised....33441
567.10 (a) heading, (2) introductory text and (f) revised; (a)(1) removed....33441
567.11 (a) revised; (c) amended....33441

Page

571 Authority citation revised....33442
571.1 (a)(1) amended....14335
571.2 (b), (d)(1) and (e)(4)(ii) amended....14335
571.11 Removed; interim....37084
571.12 Removed....14348
571.14 Removed....12698
571.16 (c)(10) amended....14335
571.19 Removed....26990
571.23 Removed....33442
574.3 (c)(1)(ii) revised....14348
574.4 (f)(1) introductory text revised....14349
574.5 (a)(1) revised....14349
574.6 (b) and (d)(2) revised; (j) added....14349
574.7 (f) removed....14349
574.9 Removed....14349
579.5 Amended....14335
584 Authority citation revised....35458
584.1 (a) and (e) revised....35458
584.2-1 (c)(1) revised....14349
584.2-2 (b) amended....14349
584.5 Removed....35458
584.9 (d) revised....14349
584.10 Removed....35458

Chapter VI—Farm Credit Administration (Parts 600—699)

603 Authority citation revised....32421
603.355 Heading revised; existing text designated as (a) and amended; (b) added....32421
611 Authority citation revised....26992
611.1137 Added (effective date pending)....26992
Regulation at 57 FR 26992 eff. 7-27-92....33104
613 Authority citation revised....13637
613.3045 Regulation at 56 FR 65989 eff. 2-26-92....6553
613.3140 Removed (effective date pending)....13637
Removal at 57 FR 13637 eff. 5-27-92....22157
613.3145 Added (effective date pending)....13637
Regulation at 57 FR 13637 eff. 5-27-92....22157

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

613.3150 Revised 13638
Regulation at 57 FR 13638 eff. 5-27-92 22157
613.3151 Added (effective date pending) 13638
Regulation at 57 FR 13638 eff. 5-27-92 22157
613.3152 Added (effective date pending) 13638
Regulation at 57 FR 13638 eff. 5-27-92 22157
613.3160 (a) revised; (b) introductory text amended (effective date pending) 13638
Regulation at 57 FR 13638 eff. 5-27-92 22157
613.3170 Revised (effective date pending) 13638
Regulation at 57 FR 13638 eff. 5-27-92 22157
613.3175 Added (effective date pending) 13639
Regulation at 57 FR 13639 eff. 5-27-92 22157
614 Authority citation revised 38246
614.4000 (e) and (f) added (effective date pending) 38246
614.4010 (f) and (g) added (effective date pending) 38246
614.4030 (c) added (effective date pending) 38247
614.4040 (d) added (effective date pending) 38247
614.4050 (d) added (effective date pending) 38247
614.4060 Added (effective date pending) 38247
614.4325—614.4337 (Subpart H) Revised (effective date pending) 38248
614.4510 (c) amended (effective date pending) 38250
614.4710 (a)(4) and (b)(2) amended (effective date pending) 38250
615.5210 (d)(2)(i), (ii) and (iii) suspended in part (effective date pending) 38251
618.8030 Regulation at 56 FR 65990 eff. 2-26-92 6553
619 Authority citation revised 38250
619.9195 Revised (effective date pending) 38250
619.9320 Removed (effective date pending) 38250

Chapter VII—National Credit Union Administration (Parts 700—799)

703 Interpretive ruling and policy statement 22157
703.5 (e) stayed 6553
704 Revised 22630
704.1 Existing text designated as (a); new (b) added 28085
704.2 Corrected 28085
704.6 (b)(2)(vi)(A) correctly revised; (d) corrected 28085
704.7 (b)(3) corrected 28085
704.10 (b)(2) corrected 28086
704.11 (i) corrected 28086
704.12 (c)(2) correctly revised; (c)(5) corrected 28086
704 Appendix A corrected 28086
705 Authority citation revised 20742
705.7 (b)(2) revised 20742
722 Authority citation revised 28998
722.2 (g) through (k) redesignated as (h) through (l); new (g) added 28998
722.3 (a)(4)(iv) and (5) revised; (a)(6) added 28998
741.9 (a)(3) and (b)(3) revised 22636
(a)(3) and (b)(3) corrected 28086
747.0 (a) and (b) corrected 523
747.1 (a), (b), (c) introductory text, (1) and (3) corrected 523
747.3 (f)(1) and (g) corrected 523
747.9 (a) corrected 523
747.16 Corrected 523
747.33 (a) corrected 523
747.201 Corrected 523
747.207 Corrected 523
747.208 (a) corrected 523
747.301 Introductory text corrected 523
747.304 Corrected 523
747.305 Corrected 523
747.306 (a) corrected 523
747.401—747.406 (Subpart E) Heading corrected 523
747.401 Corrected 523
747.405 (c) corrected 523
747.606 (c) corrected 523
747.703 (a) corrected 523
747.803 (b)(1)(iv) corrected 523

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 12 Chapter VII—Con. Page

747.901—747.905 (Subpart J) Heading corrected....523
747.901 Corrected....523
747.902 Corrected....523
747.903 (a)(3) corrected....523
747.904 (b)(1) and (2) corrected....523
(d)(2) corrected....524
747.905 (a) corrected....524

Chapter IX—Federal Housing Finance Board (Parts 900—999)

900.30 Revised....6468
900.53 Correctly designated....749
932 Authority citation revised....6190
932.3 Revised....6190
932.18 Corrected....81
932.21 Corrected....81
932.23 Corrected....81
932.55 Removed; interim....2834
Removal at 57 FR 2834 confirmed....11429
932.56 Removed; interim....2834
Removal at 57 FR 2834 confirmed....11429
932.57 Removed; interim....2834
Removal at 57 FR 2834 confirmed....11429
941 Added; interim....2384
Regulation at 57 FR 2384 confirmed....11429
941.6 (c)(3) amended; (c)(2) revised....11429
941.7 (f)(1)(ii) and (2) amended; (d)(1), (4)(i) and (ii) revised....11429
941.8 (a) amended; (d) added....11429
941.10 (b) revised....11429

Chapter XI—Federal Financial Institutions Examination Council (Parts 1100—1199)

1102 Added....10982
1102.20—1102.39 (Subpart B) Added....31650
1102.20 (b) corrected....35004
1102.29 (f)(1)(ii) and (g) corrected....35004
1102.100—1102.110 (Subpart C) Added....36357

Chapter XV—Thrift Depositor Protection Oversight Board (Parts 1500—1599)

Page

Chapter XV Heading revised....4715

Chapter XVI—Resolution Trust Corporation (Parts 1600—1699)

1609 Revised; interim....19501
Policy statement....24937
1615 Added; interim....32882
1617 Revised; interim....35733
1620 Added....32395
1680.1—1680.17 Designated as subpart A; interim....37402
1680.21—1680.34 (Subpart B) Added; interim....37402

Title 12—*Proposed Rules:*

1—199 (Ch. I) 6205, 31336
3 35507
6 29808
8 8424
19 29808
34 ....31594, 36911
200—299 (Ch. II) 31336
202 1405
203 36024
204 8096
206 31974
208 ....6563, 14362, 29226, 31594, 35507
215 6077
220 37109
225 ....6077, 6563, 13362, 28807, 31594, 35507
229 3365
230 ....12735, 22021
250....28809
262....28807
263 29226
300—399 (Ch. III) 8282, 31336
308 29662
325 ....1105, 11005, 29662, 35507
327 ....21617, 21623, 21627, 28810, 29938
330 17866
333 30433
337 ....7669, 11442
362 30435
365 31594
500—599 (Ch. V) 5080
545 12760
552 37112

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

563 ...8732, 24994, 31336, 31594, 33662, 36911, 37112
563b 2061
565 ..... 29826, 31404
567 12761
571 12760
603 8851
607 ..... 19405, 21755, 27006, 31673
611 ..... 23348, 26786
612 26787
613 1882
615 ..... 5294, 7672, 23348, 26788
618 ..... 19405, 21755, 27006, 31673
625 31463
627 23348
700—799 (Ch. VII) 34090
700 ..... 18836, 24395
701 ..... 18837, 20798
702 29050
705 2484
722 2485
741 34091
910 20061
934 ..... 11014, 19556
1102 ..... 10143, 11017
1502 26789
1503 24994
1625 33133

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration (Parts 1—199)

101.3-2 Amended..... 524, 26768, 30392
108.2 Amended..... 11909
108.503-1 (e) revised..... 11909
(c)(1)(iii) revised..... 26770
108.503-2 (b) revised..... 26770
108.503-3 (f) introductory text amended; (f)(1) revised..... 26770
108.503-7 (b)(1) through (b)(4) redesignated as (b)(2) through (b)(5); new (b)(1) added; new (b)(3) revised..... 26770
108.503-8 (a)(3) amended..... 26770
108.503-10 (a) amended..... 26770
108.503-11 (b)(2) amended..... 26770
108.504 (e) amended..... 26770
120.202-1 Amended..... 10984
120.202-4 Revised..... 10984
120.202-5 (e) revised..... 10985
121 Waiver...6290, 14638, 18396, 20962, 27677

Page

121.303 Revised..... 37691
121.402 (d)(1) revised; interim..... 2444
121.601 Table amended...4838, 4840, 18810, 27911
121.1010 (c) amended..... 18810
121.1704 Revised..... 28780
Amended..... 32890
122 Authority citation revised..... 3849
122.8-4 (g) revised..... 6574, 13267
122.61 Added; interim..... 3849
122.61-1 Added; interim..... 3849
122.61-2 Added; interim..... 3849
122.61-3 Added; interim..... 3850
122.61-4 Added; interim..... 3850
122.61-5 Added; interim..... 3850
122.61-6 Added; interim..... 3850
122.61-7 Added; interim..... 3850
122.61-8 Added; interim..... 3851
122.61-9 Added; interim..... 3851
122.61-10 Added; interim..... 3851
122.61-11 Added; interim..... 3851
124.210 (b) amended..... 28780
124.211 (d) amended..... 28780
134.12 (a) amended..... 28780
134.14 (a) revised; (b) amended..... 28780

Chapter III—Economic Development Administration, Department of Commerce (Parts 300—399)

301 Authority citation revised..... 2223
301.50 Revised..... 2223
301.51—301.60 Removed..... 2223
305.45 (a), (b), (c)(4) and (8) revised; interim..... 11674

Title 13—*Proposed Rules:*

108 1688
121 ...541, 6569, 14518, 27906, 28814, 32926, 38452
125 37909

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

1 Technical correction..... 11575

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 14 Chapter I—Con. Page

11 Technical correction.....11575
13 Civil penalty assessment demonstration program; notice of lapse.....34511
21 Special FAA conditions...7, 338, 605, 1221, 2225, 2444, 3516, 8720, 9167, 12867, 13004, 22165, 23525, 31957, 33869, 33872, 34211, 34214, 34512, 35981, 37406, 37876
23 Special FAA conditions...1221, 2225, 2444, 8720, 31957, 35981, 37876
25 Special FAA conditions...7, 338, 605, 13004, 22165, 33869, 33872, 34211, 34214, 34512, 37406
25.251 (a) and (b) revised.....28949
25.305 (e) and (f) added.....28949
25.629 Revised.....28949
25.813 (a) and (c) revised.....19244
(a) introductory text, (c)(1) introductory text and (2)(i) corrected.....29120
29 Special FAA conditions...3516, 9167, 12867, 23525
39 Technical correction.....23126
39.13 ...178, 180—182, 606, 607, 780–782, 784, 785, 787, 789, 791–793, 1075, 1077, 2014, 2016, 2447, 3000, 3001, 3003, 3004, 3006, 3008, 3517, 3518, 3927, 3929, 3931, 3932, 3935, 3936, 4154, 4841, 4843, 4844, 4846–4848, 4850, 4926, 5051, 5370, 5371, 5373, 5374, 5376, 5377, 5379, 5380, 5976, 6069, 6071, 6191, 6667, 7650, 8061—8063, 8258, 8260—8262, 8575, 8576, 8721, 8722, 8724, 8725, 9169—9172, 9382, 9383, 9974, 10127, 10128, 10130, 10132, 10133, 10286, 10416, 10418, 10420—10423, 10802, 10803, 12868, 12870, 13005, 13007, 13009, 13640, 13642, 14794, 15006, 15008, 15009, 15011, 15012, 17851, 17852, 17854, 18397, 19080, 19082, 19250, 19376, 19530–19533, 19798, 19800—19802, 20199, 20743, 20745, 21208, 21727, 21728, 21730, 22427, 23050, 23052, 23054, 23136, 23526, 23528—23531, 24357, 24939—24942, 27247, 27149, 27152—27154, 27156, 27158, 27355, 28458, 28597—28599, 28601, 28603, 28604, 29196, 29198, 29199, 29201, 29202, 29786, 30111, 30114, 30393, 30394, 31097, 31099, 31101—31104, 31433—31436, 31438, 31440—31442, 31444, 31658, 31960, 33105, 33107, 33109, 34066, 34067, 34069, 34070, 34072, 34073, 34216—34220, 35983, 36892, 36894, 36895, 36897, 36899—36901, 37409, 37692, 37874, 37875, 38252, 38254, 38255, 38257, 38259—38261, 38263—38267, 38269, 38271, 38431, 38433, 38761
Corrected...2639, 8839, 9155, 10985, 10986, 11138, 12963, 14751, 30534
Technical correction.....23126
45 Technical correction.....11575
61 Technical correction.....11575
65 Technical correction.....11575
71 Technical corrections...11575, 20572
71.1 Revised; effective to 9-15-93.....9642
71.1 ...10804, 10986, 11575, 11576, 11675, 12872, 14476, 14477, 19083, 19251, 19376, 19804, 19805, 20401, 20746, 22643, 24358, 26771, 27159, 27911, 28459—28461, 28999, 30115, 30637, 30822, 31961, 31962, 32722, 32890, 33110, 33872, 33873, 34075, 35984, 36601, 37410, 37878, 37879, 38434—38437, 39015
Regulation at 56 FR 55031 corrected.....20044
Amended.....32890
Regulation at 57 FR 24357 corrected.....33873
Revised eff. 10-15-92; introductory text revised eff. 9-16-93.....39015
71.77 (b)(1) corrected.....3090
71.163 12872
71.181 Regulation at 56 FR 64478 effective date corrected.....10987
71.203 341
71.207 341
71.401 169
71.501 170
73.25 .....8840, 19251, 19252
73.32 22427

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

73.63 26771
75 Technical correction..... 11575
75.100 Corrected..... 341
91 Technical correction..... 11575
93.213 (a)(5) added..... 37314
93.221 (a)(1) amended; (a)(5) revised..... 37314
93.223 (b), (c)(3) and (f) revised..... 37314
93.225 (c), (e), (g) and (h) revised..... 37314
93.227 (a), (b), (d) and (g) revised..... 37315
93.229 Removed..... 37315
97.21—97.35 34222
SFAR No. 65 added..... 14473
SFAR No. 50-2 amended..... 26766
SFAR No. 66 added..... 28031
SFAR No. 62 amended..... 30822
91.25 Effective date corrected..... 328
91.609 (b) added..... 19353
91.875 OMB number..... 5977
93 Technical correction..... 11575
95 ..... 6193, 24359, 36362
97.21—97.35 ...1078, 1081, 1223, 1224, 4360, 4362, 5978, 5981, 6469, 6474, 8398, 8401, 9661, 9663, 11677, 11679, 14478, 14480, 18811, 18813, 21594, 21596, 24182, 24183, 24359, 26772, 29000, 29443, 29444, 32723, 32725, 34222, 34513, 35985, 35987, 38272, 38274
101 Technical correction..... 11575
103 Technical correction..... 11575
105 Technical correction..... 11575
121 Technical correction..... 11575
SFAR No. 38-2 amended..... 23923
121.310 (f)(3)(ii) revised; (f)(3)(iii), (iv) and (v) added..... 19244
(f)(3)(ii), (iv) and (v) corrected..... 29120
121 Appendix I amended..... 31277
125 SFAR No. 38-2 amended..... 23923
127 Technical correction..... 11575
SFAR No. 38-2 amended..... 23923
129 SFAR No. 38-2 amended..... 23923
135 Technical correction..... 11575
SFAR No. 38-2 amended..... 23923
SFAR No. 50-2 amended..... 26766
135.153 Revised..... 9951
135.177 (a)(4) removed..... 19245
135.178 Added..... 19245
(b)(1) introductory text and (c)(1) corrected..... 29120

Page

(f)(3) corrected..... 34682
137 Technical correction..... 11575
139 Technical correction..... 11575, 23126
139.311 (a)(3) compliance date stayed..... 15163
(f) revised..... 15164
147.5 (a)(2) and (3) revised..... 28959
147.15 (a) through (d), (f) introductory text, (g) and (h) revised..... 28959
147.17 (a)(2) revised..... 28959
147.19 Revised..... 28959
147.21 (b) introductory text, (c) and (d)(3) revised; (e) removed..... 28959
147.23 Revised..... 28959
147.31 (b), (c)(1)(iv), (3) and (e) revised; (c)(4) added..... 28959
147.35 (a) revised..... 28959
147.36 Revised..... 28959
147.38 (a) revised..... 28960
147 Appendixes A, B, and C amended..... 28960
Appendix D amended..... 28961
171 Technical correction..... 11575
171.271 (e) corrected..... 3090

Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

201 Revised..... 38765
202 Removed..... 38766
204 Revised..... 38766
225.10 Revised..... 22646
382 Exemption..... 12872
291 Authority citation revised..... 38770
291.10 (Subpart B) Revised..... 38770
291.20 Amended..... 38770
291.23 (b) amended..... 38770
291.24 Amended..... 38770
291.34 Amended..... 38770
291.42 (a)(2) amended..... 38770
291.50 Amended..... 38770
302 Authority citation revised..... 38770
302.1701 (d) added..... 38770

TITLE 14

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

Page

1203b Added....4926
1212 Revised....4928
1214.100—1214.119 (Subpart 1214.1) Revised; interim....4545
1215 Appendix A revised....20747

Title 14—*Proposed Rules:*

1—199 (Ch. I) ...236, 383, 4744, 6570, 7893, 10836, 11921, 18118, 19407, 19556, 20145, 23165, 29052, 35888
1 35888
21 ...9513, 11691, 11693, 12242, 13058, 13061, 23165, 28142, 31986, 34270, 36027, 36029, 36375
23 .....9513, 11691, 11693, 12242, 23165
25 ....11693, 13058, 13061, 34270, 36375
27 36027
29 ....31986, 36029
36 28142
39 ...18, 19, 21, 237, 649, 650, 652, 654—656, 855, 857, 1120, 1122, 1124, 1126, 1229, 1230, 1690, 1692—1694, 1696, 1697, 2232, 2233, 2486, 2488, 2489, 2491, 2492, 2494, 2692, 2693, 2695, 2697, 2857, 3033, 3966, 5081—5085, 5088, 5089, 5091, 5093, 5094, 5096, 5098, 5099, 6551, 6690, 7328, 7330—7332, 7334, 7335, 7338, 7559, 7560, 7562, 7673, 7676, 7679, 7681, 7682, 7684, 7894, 7895, 8585, 8734, 9077, 9078, 9215, 9392, 9394, 10301, 10443, 10617, 10618, 10743, 10745, 10747, 10836, 10838, 10840, 10844, 11023, 11352, 11589, 11696, 11697, 11921, 11922, 11924, 11926, 11927, 12467, 12888, 13061, 13062, 13325, 13669, 13671, 14366, 14368, 14518, 14627, 14751, 14799—14801, 15036, 15258—15260, 15263, 18119, 18840, 18841, 18443, 18445, 18847, 18849, 19265, 19266, 20063, 20213, 20800, 21219, 21911, 22443, 22445, 23168, 23169, 23549, 23550, 23552, 23553, 23966, 23968, 23969, 23971—23973, 23975, 23976, 23978, 24200, 24201, 24395, 24401, 24407, 26629, 26631, 26797, 26798, 26800, 27191, 27192, 27194, 27195, 27197, 27199, 27200, 27712, 27953, 27955, 29120, 29450, 29451, 29453, 29681, 29683, 29684, 29844, 29846, 29847, 29849, 30173, 30174, 30176, 30686, 30687, 30689, 30690, 30693, 30695, 30697, 30698, 30700, 31341, 31754, 31989—31990, 31992, 32744, 32746, 32747, 33460, 36439, 36614, 36917, 36918, 36926, 36928, 37118, 37480—37482, 37483, 37485, 37486, 37488, 37738, 37914, 37915, 38623, 38625—38627, 38629, 38631, 38632, 38784, 38785, 38788, 38789, 38791, 38793, 38795, 38796, 38798, 38799, 38801, 38802, 39371, 39372
61 ....21362, 32680, 35888
71 ...4168, 4589, 10303—10306, 10841, 10843, 10846—10848, 11352, 11698—11701, 11797, 11929, 13672, 14520—14523, 14670, 14751, 15264, 15265, 18120, 18954, 19408, 19821, 20064, 20067, 20215—20219, 20433, 20572, 20801, 21633, 21913, 22022, 22186, 22672, 23126, 23257, 24202, 24412, 24413, 28469, 29454, 29455, 29686, 29687, 30178, 30179, 30702, 30932, 31993, 32749, 33906, 33908, 34271, 34530, 34531, 34809, 36031, 36378, 36616, 37489—37492, 38456, 38634, 38724, 39156, 39157
73 ....12889, 19409, 20066, 37493
91 ...4352, 8830, 21362, 23038, 35888, 38724
107 ....5352, 8834, 12396
108 ....5352, 8834, 12396
121 ....21362, 32846, 35888, 38718
125 35888
135 ....4352, 35888
141 35888
142 35888
149 21362
153 21362
154 21362
170 3830

Page

199 21362
200—399 (Ch. II) 4744, 11921
200 3366
203 3366
205 3366
206 3366
228 21362
231 3366
232 3366
235 ....3366, 21362
255 19821
263 3366
270 21362
288 3366
292 ....3366, 21362
294 3366
296 3366
297 3366
298 3366
302 3366
310a 21362
320 21362
326 21362
372 3366
380 3366
382 23555
384 ....3366, 21362
387 ....3366, 21362
399 3366
400—499 (Ch. III) 4744

TITLE 15—COMMERCE AND FOREIGN TRADE

Subtitle A—Office of the Secretary of Commerce (Parts 0—29)

4.8 (b), (c), (e) and (g) amended....28781
4 Appendix C amended....28781
6 Removed....30116
29b.16 (b)(2)(i) and (ii) revised; (c)(6) redesignated as (c)(7) and republished; (b)(2)(iii) and new (c)(6) added; interim....4716
29b.21 (a)(1) and (2) revised; (a)(3) and (4) added; interim....4716

Chapter IV—Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)

400.45 (a) corrected....2319

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

Page

768 Authority citation revised....4555
768.1 (a)(2)(i) amended....4556
768.2 (a)(1) and (9)(i) amended....4556
769.6 (b)(4) amended....4557
770 Authority citation revised....8, 4555
770.1 (b)(1) and (4) amended....4556
770.2 Amended....4556, 4557
770.3 (a)(1) revised....4557
770.6 (a)(2)(i) amended....4556
770.7 (c)(2) amended....4556, 4557
770.9 Amended....4556, 4557
770.10 (f)(2) amended....4556
(f)(2) and (3) amended....4557
770.14 (a)(4) revised....4558
(a) introductory text and (3)(ii) amended....19334, 19336
770 Supplement No. 1 amended....8, 11577, 19806
Supplement No.2 amended....4558
771 Authority citation revised....4555
771.2 (b)(2)(ii) amended....4556
(c) introductory text and (i) amended....4557
(c)(11) revised; (c)(12) removed....4558
(c)(13)(i)(B) revised; interim....26774
771.3 (a) and (b) amended....4556
771.4 (a)(3) amended....4556
771.5 (a), (b)(2), (c)(1)(i), (3) and (e) amended....4556
(a)(1) revised; (a)(2) removed; (a)(3) redesignated as (a)(2); new (a)(2)(i) and (c)(1)(i) amended; (c)(3) *Example* and (d) revised....4558
771.6 (a) amended....4556, 4558
771.14 (b) revised....19334
(b) amended....19336
771.15 (c)(3) amended....4556
771.16 (a) amended....4556
Introductory text amended....4558
771.18 (b)(1)(i) amended....4556, 4557
771.19 (a), (b)(1)(i) and (2)(i) revised; (c) redesignated as (d); new (c) added....30900
771.22 (b)(8)(ii) amended....4557

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 15 Chapter VII—Con. Page

(c)(1)(ii) introductory text amended....4456, 4557
(c)(2)(ii) and (iii) amended; (c)(2)(iv) removed....4558
771.23 (c) amended....4556
(b) and (c) revised....4558
771.24 Removed....4559
771.25 Heading, (a), (c) and (f)(1) revised; (d) introductory text amended....4559
(b) and (f)(2) amended....19335, 19336
771.27 Added....31659
772 Authority citation revised....4555
772.1 (f) amended....4557
772.4 (e) amended....4556
(a)(2)(iv) added; (e) revised....4559
772.7 (b) amended....4557
772.8 (d)(2) amended....4557
772.9 (c)(1) and (2) amended....4557
772.11 (f)(9) amended....4556
(d)(2) and (e)(6) revised....4559
772 Supplement No. 1 amended....4556, 4559
773 Authority citation revised....4555
773.1 (e) amended....4557
(a)(1) revised....4559
773.2 (b)(6), (c)(2)(iv)(B) and (f)(1) amended....4556
(a)(1), (b), (c)(2)(iv)(B) and (D) revised....4560
773.3 (b)(1)(iv) and (i)(2)(i) amended....4556
(b), (e)(1)(iii) and (2)(v) revised; (d)(3)(ii)(E)(*3*)(*i*), (e)(1)(ix) concluding text and (x) through (xiii) amended; (d)(3)(ii)(E)(*3*)(*iii*) removed; (e)(1)(xiv) and (xv) added....4560
(a)(1)(ii) revised; interim....18817
773.5 (c) amended....4556, 4557
773.7 (b)(5), (d)(1)(iv)(B)(*4*), (*6*), (*8*), (g)(4), (i)(4), (k) introductory text, (1) and concluding text amended....4556
(b) and (d)(1)(iv)(B)(5) revised....4560
773 Supplement No. 1 and No. 4 revised....4561
Supplement No. 5 amended....4556, 4557
Supplement No. 1 amended....4557
Supplement No. 1 amended; interim....18817
Supplement No. 8 amended....19335
774 Authority citation revised....4555
774.2 (j) amended....4556
(k)(1)(ii) amended....4557
(a)(1) amended....4561
(i) revised; (k)(2) amended; interim....18818
(i)(1), (j), (k) introductory text and (2) amended....19335, 19336
(m) added; interim....20965
(a)(1) amended....30900
774.3 (d)(1)(i) revised....4561
(d) removed; interim....18818
774 Supplement No. 1 amended....4556, 4561
775 Authority citation revised....4555
775.1 (b) table amended....4556, 4561, 19336
775.2 (b)(2) and (e)(2) amended....4556
(e)(2) and (j)(3) amended....4562
775.3 (a)(1), (d)(1), (f)(3), (h)(2) and (i)(1)(i) amended....4556
(g)(3)(i) and (ii) amended....4562
(b) amended....19336
775.5 (a)(3) amended....4562
775.6 (a) and (c)(1) amended....4556
(a) amended....4562
775.7 (a)(1) introductory text and (b)(1) amended....4556
(a)(3) amended....4562
775.8 (a) and (b)(1) amended....4556
(a), (b)(1) and (2) amended....4562
775.9 (c) amended....4556, 4562
775.10 (b)(1)(i), (ii), (b)(2)(i) and (3) amended....4556
775 Supplement No. 1 amended....19336
776 Authority citation amended....4556
776.6 Revised....4562
776.7 Removed....4562
776.8 (a)(2) and (a) concluding text amended....4556
Footnote 2 redesignated as footnote 1; (a)(1) revised....4562
776.9 (b)(4)(ii) amended....4556
776.10 Revised....4562
(a)(1) amended; interim....20965

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

776.11 (a)(2) amended....4556
Removed....4563
Added; interim....20965
776.12 (e)(2)(v) and (vi) amended....4556
(a)(1)(ii) and (b)(2) amended; (b)(4) and (5) revised....4563
776.14 (a) amended....4563
776.16 (a) amended....4556, 4557
776.17 Revised....4563
776.18 Added....4563
776.20 Removed....4564
777 Authority citation revised....4556
777.6 (e)(4) amended....4556
778 Authority citation revised....8
Authority citation revised....4555
778.2 (a) introductory text and (2) amended....4556
778.7 (c)(1) introductory text and (d)(3)(i) amended....4557
(a)(1) revised; (a)(2) removed; (a)(3) redesignated as (a)(2)....4564
(c)(1)(ii) revised; interim....26774
778.8 (a)(2) amended....4556
(a)(1) introductory, (i), (ii), (2), (4), (5)(iv)(A) introductory text, (5)(v), (c)(1), (d)(3)(iii), (viii), (xi) and (4) amended....4557
Heading, (a)(3) and (d)(3)(xii) revised....4564
778.9 (c) amended....4557
(a)(1) and (b)(1) revised; interim....26774
778 Supplement No. 5 amended....8
Supplement No. 2 amended....4564
Supplement No. 6 revised; interim....26774
779 Authority citation revised....4555
779.1 Heading amended; (a) revised; (d) added....4564
Supplement 1 amended....31311
779.2 Introductory text republished in part; footnotes 7 and 8 revised....4564
Supplement No. 1 amended....31312
779.3 Note revised; OMB number....4564
779.4 (b), (e) and (f) revised; (c) and (d) removed; (g), (h) and (i) removed; (j) redesignated as (g)....4564
779.5 (a)(2) and (e)(2) revised; (b) and (e)(1)(vii) amended; (e)(3) removed....4566
779.8 (a)(3) amended; (b)(2) removed; (b)(3) and (4) redesignated as (b)(2) and (3); new (b)(2) introductory text, (i) and (3) revised....4566
(b)(2) revised; interim....18819
779.9 Introductory text amended....4567
779 Supplement No. 2 amended....4567
Supplement No. 3 and No. 4 removed....4567
782.2 Heading revised; (a)(1) amended....9
785 Authority citation revised....8
Authority citation revised....4555
785.1 (a) amended....4557, 31660
Heading amended....11577
785.2 Heading and (c) revised....4567
Heading revised; (a)(1) amended; (d) added....11577
(a)(1) and (c) amended....19806
785.4 Heading, (a), (d) and (e) revised; (g)(1)(ii) amended....4567
785.6 (b) amended....4556
(a) revised....4571
785.7 (c) amended....4557
(d) amended....4571
785 Supplement No. 1 removed....4571
786 Authority citation revised....4555
786.3 (i)(2)(i), (j)(1) and (2) amended....4556
(o) amended....4557
786.6 (a)(1)(ii) and (c)(2) revised....4571
786.7 Introductory text, (e)(1) introductory text and (2) introductory text amended....4556
(a), (b), introductory text, (c)(1) introductory text, (e)(1) introductory text, (2) introductory text and (3) introductory text amended....4557
786.9 (d) amended....4557
787.14 (a)(1) and (2) amended....4557
790 Authority citation revised....4555

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

TITLE 15 Chapter VII—Con. Page

790.1 (b)(1)(i) amended....4556
790.6 Amended....4556, 4572
791 Authority citation revised....4555
791.1 (d) amended....4556
799 Authority citation revised....4555, 18820
799.1 (d)(1)(i) revised....4572
Supplement No. 1, Category 1 amended (ECCN 1C60C, 1D60C, 1E60C, 1E61B, 1E70E)....4572
Supplement No. 1, Category 1 amended; interim (ECCN 1B01A, 1B18A, 1B19A, 1C18A, 1C19A)....18820
Supplement No. 1, Category 1 amended; interim (ECCN 1B28B)....26994
Supplement No. 1, Category 1 amended; interim (ECCN 1B70E)....31311
Supplement No. 1, Category 1 amended; interim (ECCN 1C1B, 1E60C, 1E61B)....31312
Supplement No. 1, Category 2 amended (ECCN 2B85F)....4572
Supplement No. 1, Category 2 amended; interim (ECCN 2A19A, 2B05A, 2B18A)....18820
Supplement No. 1, Category 3 amended (ECCN 3A93F)....4573
Supplement No. 1, Category 3 amended; interim (ECCN 3B01A)....18820
Supplement No. 1, Category 4 amended; interim (ECCN 4A01A)....18820
Supplement No. 1, Category 6 amended; interim (ECCN 6A01A, 6A02A, 6A03A, 6A18A)....18820
Supplement No. 1, Category 8 amended; interim (ECCN 8A01A, 8A02A, 8A18A)....18820
Supplement No. 1, Category 9 amended (ECCN 9A91F)....4573
Supplement No. 1, Category 9 amended; interim (ECCN 9B01A, 9B06A, 9B26B)....18820
Supplement No. 1, Category 9 amended; interim (ECCN 9B07A)....18822

Page

Supplement No. 1, Category 9 amended; interim (ECCN 9A23B)....26994
Supplement No. 1, Category 9 amended; interim (ECCN 9B07A, 9B23B, 9B24B, 9B27B, 9D24B, 9E21B)....26995
Supplement No. 1, Category 0 amended; interim (ECCN 0A18A)....18820
799.2 Supplement No. 1 amended....4556, 4573

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

903 Revised....35749
906 Removed....31445
907 Removed....31445
928 Authority citation revised....31113
928.1 Revised....31113
928.2 (a), (c), (d) and (g) revised....31113
928.3 Heading, (a), (b)(7), (c)(1)(ii), (3) introductory text and (iii) revised; (b)(8) and (9) added....31114
928.4 (a), (b)(2) and (3) revised....31114
928.5 (a), (b)(1), (2)(i) and (iii) revised....31114
932 Revised....31116
945 Removed....31660

Chapter XII—United States Travel and Tourism Administration, Department of Commerce (Parts 1200—1299)

1201 Removed....4156

Title 15—*Proposed Rules:*

200—299 (Ch. II) ...10620, 18121, 28647
280 37032
303 ....384, 24414
799 36929
801 38635
900—999 (Ch. IX) ...8964, 14524, 23067
921 31926

CHANGES JANUARY 2, 1992 THROUGH AUGUST 31, 1992

Page

922 31150
1150 2065

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

4.7 (c)(3) revised 10805
4.8 Revised 10806
4.9 (a) introductory text redesignated as (a)(3) and amended; (a)(2) revised; (a)(4) added 10805
4.10 (a)(5) revised; (a)(11) added 10807
4.11 (a)(1)(i)(C), (D), (E), (iii)(A), (B), (C), (iv)(A), (B), (C), (2)(i)(A) and (ii)(B) revised; (d) amended 10807
4.13 (e), (f), (h), (i)(1), (j) and (k) revised 10808
260 Added 36363
305 Energy efficiency ranges 11680, 36902
305.9 (a) revised 6072
456 Revised 18822
600 Appendix amended 4935

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

1115 Authority citation revised 34227
1115.2 (b) and (c) revised 34227
1115.3 (c) revised 34227
1115.5 Added 34228
1115.6 Added 34228

Page

1115.7 Added 34229
1115.10 (a) and (b) amended; (c) and (d) redesignated as (e) and (f); new (c) and (d) added 34229
1115.12 (c) through (f) redesignated as (d) through (g); new (c) added; (a), (b) and new (f) revised 34229
1115.13 (a) and (d)(6) amended; (b), (c) introductory text, (c)(3), (d) introductory text, (4), (5), (10) and (11) revised 34229
1115.14 (c) amended; (e) revised 34230
1115 Appendix added 34230
1116 Added 34239
1500.18 (a)(16) added 27915
1500.272 (c) and (d) revised 28605
1700.14 (a) introductory text republished; (a)(20) added 27920

Title 16—*Proposed Rules:*

19 ..... 24998, 34532
23 ..... 24998, 34532
245 ..... 24998, 34532
433 28814
453 34532
1116 34272
1145 36929
1204 31467
1205 ..... 3147, 31155
1210 36932
1211 9395
1303 18418
1500 7686
1700 34274

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

Page

1 Fee schedule....1372
Authority citation revised....23143
1.10 (j)(3) and (4) revised....23143
1.17 (h)(3)(vi) revised....20637
1.41 (e) revised....20637
(o) through (t) added....27924
1.41a (a)(5) revised....27925
1.43 Revised....20637
1.57 (a)(1) revised....23143
1.62 Revised....23143
3.1 (a)(3), (b) and (c) revised; (d), (e) and (f) added....23144
3.10 Heading, (a), (b) and (d) revised....23144
3.11 (b) revised; (d) added....23145
3.12 Heading, (a), (b), (c) introductory text, (d)(1) introductory text, (iv), (v), (2), (f) and (h) revised; (d)(4) and (5) removed; (i) and (j) added....23145
3.13 Removed....23148
3.14 Removed....23148
3.15 Removed....23148
3.16 Removed....23148
3.17 Removed....23148
3.18 Removed....23148
3.20 Removed....23148
3.21 (c) and (d) added....23148
3.22 Introductory text, (a) and (c) revised....23148
3.30 Revised....23148
3.32 (a), (c), (e), (g) and (h) revised....23149
3.33 (a) introductory text, (e) and (f) introductory text revised....23150
3.40 (c) revised....23151
3.42 (a) revised....23151
3.44 (a)(3) and (5) revised....23151
3.50 (a) and (b)(1) revised....23151
3.51 (a) introductory text and (b) revised....23151
3.52 Removed....23151
3.53 Removed....23151
3.54 Removed....23151

Page

3.55 (a) introductory text, (3), (b), (e) and (f) revised; (g) through (k) removed....23151
3.56 Removed....23152
3.60 Revised....23152
3.61 Revised....23154
3.62 Removed....23154
3.63 Revised....23154
3.64 Added....23154
3.70 (a) and (c) revised....23155
3.75 (c) revised....23155
4.7 Added....34861
4.8 Added....34865
5.2 (d) introductory text revised....20637
5.3 Removed....20637
7.100—7.101 (Subpart B) removed....20637
7.200 Removed....20637
12.2 (w) removed....20637
(d)(4) removed; (d)(1), (h), (i)(1), (p) and (r) removed....20637
12.5 (a) amended....20638
12.6 (a) amended....20638
12.8 (a) and (b) amended....20638
12.10 (a)(3) and (c) amended....20638
12.22 (b) revised....20638
12.301 Removed....20637
12.302 Removed....20637
12.303 Introductory text and concluding text revised....20638
12.304 (d) removed....20637
12.408 (a)(2) and (3) amended....20638
15.03 Revised....20403
15.04 Removed....20638
20 Removed....20638
30 Order....36369
30 Appendix B amended....10988, 38439
32 Order....36369
32.2 Revised....27926
140.2 (a) revised....29203
140.61 Removed....20638
140.72 (a) amended....20638
140.73 (a) introductory text and (b) amended....20638
140.77 (a), (b) and (c) amended....20638
140.81 Removed....20638
140.96 (b) removed....20638
140.97 Added....12874
Effective date corrected....20572
145.6 (d) revised....29203
145 Appendix A amended....29203
Appendix A corrected....31563

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

TITLE 17 Chapter I—Con. Page

149.110 Removed....20638

Chapter II—Securities and Exchange Commission (Parts 200—399)

200.30-1 (c) revised....36449
200.30-6 (b) revised....36449
202 Authority citation revised....18216
202.3 (a) amended....18216
202.3a Effective date extended through 9-1-93....39359
210 Nomenclature change....36501
228 Added....36449
229 Nomenclature change....36501
229.801 (g) added....36466
229.802 (g) added....36468
230 Authority citation revised....18043, 18216
Technical correction....29119
Nomenclature change....36501
230.174 (g) added....18043
230.175 (b)(1)(i) and (2)(i) amended....36468
230.251—230.263 Undesignated center heading and text revised....36468
230.405 Amended....36472
230.419 Added....18043
230.481 (b)(2) amended....36473
230.499 Revised....18216
230.502 (b)(1), note, (c) introductory text, (d) introductory text and concluding text amended....36473
230.504 Redesignated as 230.504a; new 230.504 added....36473
230.504a Redesignated from 230.504; heading revised....36473
230.505 (b)(2)(iii) introductory text, (A) and (B) revised....36473
230.508 (a)(2) revised....36473
239 Nomenclature change....36501
239.10 Added....36473
239.12 Form S-2 amended....36475
239.13 Form S-3 amended....36475
239.16b Form S-8 amended....36475
239.25 Form S-4 amended....36475
239.28 Removed....36473
239.36 Amended....37084
239.42 Heading and (a) revised; (d), (e) and Form F-X amended; (f) added....36475
239.62 Revised....18216
239.63 Revised....18218
239.64 Revised....18218
239.90 Revised; Form 1-A revised....36476
239.91 Revised; Form 2-A revised....36476
239.92 Removed....36473
239.93 Removed....36473
239.94 Removed....36473
239.95 Removed....36473
239.96 Removed....36473
240 Authority citation revised....18218
Phase-in period extended....28781
Technical correction....29119
Authority citation amended....32168
Nomenclature change....36501
240.3a51-1 Added....18032
240.3b-6 (b)(1)(i) and (2)(i) amended....36494
240.12b-2 Amended....36494
240.12b-37 Revised....18218
240.13f-2(T) Revised....18227
240.14a-3 (b)(5)(ii) amended; (b) note added....36495
240.14a-101 Amended....36495
240.14c-101 Note amended....36495
240.15g-1 Added....18032
240.15g-2 Added....18033
240.15g-3 Added....18033
240.15g-4 Added....18034
240.15g-5 Added....18034
240.15g-6 Added....18034
240.15g-8 Added....18045
240.15g-100 Added....18035
Amended....31446
240.17h-1T Added....32168
240.17h-2T Added....32170
249 Nomenclature change....36501
249.210b Added....36495
249.244 Revised....18219
249.308 Form 8-K amended....36501
249.308b Added....36498
249.310b Added....36496
249.328T Added....32171
249.445 Revised....18219
249.446 Revised....18219
249.501 Revised....34032
250 Authority citation revised....31122
250.52 Revised....31122
250.111 Revised....18232
259.602 Revised....18219
259.603 Revised....18219
260 Authority citation revised....18220

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

Page

Nomenclature change.....36501
260.0-12 Revised.....18220
260.4a-1 Revised.....36501
260.4a-2 Redesignated as 260.4a-3; new 240.4a-2 added.....36501
260.4a-3 Redesignated from 260.4a-2 and amended.....36501
260.4d-9 (a) introductory text amended.....36501
260.10a-5 (a) amended.....36501
269 Authority citation revised.....18221
269.6 Revised.....18220
269.7 Revised.....18220
269.8 Revised.....18220
270.0-11 Revised.....18228
274.401 Revised.....18221
274.402 Revised.....18221
274.403 Revised.....18221

Title 17—*Proposed Rules:*

1 .....26801, 34533
17 25007
19 27713
150 .....27202, 31674
200—399 (Ch. II) 18421
200 .....35070, 35202, 35430, 38352
201 .....35070, 38352
202 .....35070, 35430, 35442, 38352
210 .....35070, 38352
228 36502
229 ...29582, 31156, 35070, 35202, 38352
230 ...32458, 32461, 35070, 35202, 36502, 38352
232 .....35070, 38352
239 ...32461, 34701, 35070, 35202, 36502, 38352
240 ...18046, 24415, 26891, 29564, 29582, 32461, 34048, 34701, 35070, 35202, 36502, 38352
249 ...29564, 32461, 34048, 35070, 35202, 36502, 38352
250 .....12766, 31156, 35431
259 35431
260 .....35070, 35442, 36502, 38352
269 .....35070, 38352
270 .....23980, 34701, 34726, 35202
274 .....34701, 35202

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

Page

2 Authority citation revised.....21733
2.1 (a)(1)(ii)(B), (C), (E) and (ix) removed.....21733
2.5 Removed.....21733
2.10 Removed.....21733
2.11 Removed.....21733
2.53 Removed.....21893
2.56 Removed.....21893
2.56a Removed.....21893
2.56b Removed.....21893
2.61 Removed.....21893
2.63 Removed.....21893
2.66 Removed.....21893
2.70 Removed.....21893
2.75 Removed.....21893
2.77 Removed.....21893
2.79 Removed.....21893
2.90 Removed.....21893
2.90a Removed.....21893
2.90b Removed.....21893
2.91 Removed.....21893
4 Authority citation revised.....21737
4.32 (b)(1) and (2) revised.....21737
4.34 (h) added.....21737
4.41 (g)(4) revised.....21737
4.51 (g)(3) revised.....21737
8 Authority citation revised.....21737
8.11 (a)(2) and (c) revised.....21737
16 Authority citation revised.....21738
16.18 (d) amended.....21738
24 Authority citation revised.....21738
24.1 Amended.....21738
35 Authority citation revised.....21734
35.1 (d)(2) and (3) amended.....21734
35.7 Amended.....21734
35.8 Amended.....21734
35.9 Amended.....21734
35.18 Amended.....21734
35.20 Removed.....21734
35.27 Removed.....21734
50 Removed.....21734
101 13064
103 Removed.....21738
131 Authority citation revised.....21734
131.20 Amended.....21734
131.51 Amended.....21734

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

TITLE 18 Chapter I—Con. Page

131.52 Amended 21734
131.53 Amended 21734
131.60 Removed 21734
141 Authority citation revised 21738
141.15 Added 21738
141.100 Removed; new 141.100 redesignated from 141.200 21734
141.200 Redesignated as 141.100 21734
152 Heading and authority citation revised 32894
152.1 Heading revised; existing text designated as (a); (b) added 32894
154 Authority citation revised 21893
154.81—154.86 Undesignated center heading removed 21893
154.81 Removed 21893
154.82 Removed 21893
154.83 Removed 21893
154.84 Removed 21893
154.85 Removed 21893
154.86 Removed 21893
155 Removed 21893
157 Authority citation removed 21893
Rehearing denied 29631
157.7 (b) through (h) removed 21893
157.42 Removed 21894
159 Removed 21894
160 Removed 21894
260 Authority citation revised 21894
260.100 Removed 21894
271 Authority citation revised 13018, 34682
Rehearing 31123
271.101 (a) Table I and Table II amended 19252, 34682
271.102 (c) Table III amended 19253, 34683
271.703 (c)(2)(i)(B) revised 13018
281 Authority citation revised 21894
281.101—281.111 (Subpart A) Removed 21894
284 Authority citation revised 36217
Order on rehearing, reconsideration, and clarification 38590
284.1 (a) revised; (c) added 13315
284.8 (a)(1) and (d) revised; (a)(4) and (b)(2) through (5) added; (b) amended 13315
284.9 (a)(1) revised; (b) amended; (b)(2) through (5) added 13315
284.12 Amended 13315
284.14 Added 13315
(b)(3)(iii) redesignated as (b)(3)(v); new (b)(3)(iii) and (iv) added; (e) revised 36217
284.106 (a) introductory text, (c) introductory text and (d) introductory text amended; (g) added 13317
284.126 (g) added 13317
284.221 (d) revised 13317
(d)(2) introductory text and (ii) amended 36217
284.223 (d)(1) introductory text, (3) introductory text and (4) introductory text amended; (d)(5) added 13318
284.241—284.243 (Subpart H) Added 13318
284.242 Amended 36217
284.243 (c) and (d) revised; (h) added 36217
284.281—284.288 (Subpart J) Added 13318
284.282 (d) added 36218
284.284 (e) added 36218
292 Authority citation revised 21734
292.203 (c)(1) amended; (c)(2) removed 21734
292.401 Removed; new 292.401 redesignated from 292.402 21734
292.402 Redesignated as 292.401; new 292.402 redesignated from 292.403 21734
292.403 Redesignated as 292.402 21734
300 Authority citation revised 21734
300.10 (d)(2), (4), (f)(2)(i) and (vi) removed; (d)(3), (5), (6) and (f)(2)(ii) through (v) redesignated as (d)(2) through (4) and (f)(2)(i) through (iv) 21734
375 Authority citation revised 21894
375.307 (a)(13) removed 21894

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

Page

381 Authority citation revised 15225
381.201 Amended 15225
381.202 Amended 15225
381.203 Amended 15225
381.204 (a) and (b) amended 15225
381.205 (a)(1) through (4) and (b)(1) through (4) amended 15225
381.207 (b) amended 15225
381.208 (a) amended 15225
381.209 (b) amended 15225
381.301 Amended 15225
381.302 (a) amended 15225
381.303 (a) amended 15225
381.305 (a) amended 15226
381.401 Amended 15226
381.403 Amended 15226
381.404 Amended 15226
381.502 (c)(2)(i), (ii), (d)(2)(i), (ii), (e)(2)(i), (ii), (f)(2)(i) and (ii) amended 15226
381.505 (a) amended 15226
381.507 Amended 15226
381.508 Amended 15226
381.509 Amended 15226
381.510 Amended 15226
381.601 Amended 15226
385 Authority citation revised 21734
385.602 (c)(1)(iv) removed 21734

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

1301.3 Added 23532
1301.12 (f) revised 33634
1301.19 (a) introductory text revised 33634

Title 18—*Proposed Rules:*

1—399 (Ch. I) 17867
2 35525
33 ..... 23171, 27511
35 ..... 23171, 27511
101 13064
154 13673
157 13673
201 13673
284 ..... 13673, 26803, 35525, 35766
285 26803
290 ..... 23171, 27511

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

Page

4 Authority citation amended 28945, 35751
4.1 (b) revised 53751
4.7 (b) amended; (d)(3) revised 35751
4.8 Revised 35751
4.10 Amended 35751
4.13 Footnote 25 removed; (a) amended 35751
4.23 Amended 24943
4.30 (a) and (d) revised 35751
4.69 Revised 23945
4.81 (d) and (e) amended 35752
4.85 (b) amended; (d) revised 35752
4.87 (c) amended 35752
4.93 (b)(1) and (2) amended 13019, 29634, 33274
4.94 (b) amended 29633
10.59 (f) amended 30639
18.11 (h) revised 38275
18.20 (a) amended 38275
19 Authority citation revised 37696
19.1 (a)(9) added 37696
19.2 (b)(1) designation, (2) designation, (3) designation and (d) removed; (b) introductory text amended; new (b)(1), (2) and (3) added; (c) re-
19.3 (e)(9) added 37697
19.2 (e)(9) added 37697
19.5 Removed 37697
19.6 Heading and (d) revised 37697
19.9 (c) amended 24944
19.11 (c) amended; (d) revised; (h) added 37698
19.12 (a)(2) and (4) revised; (a)(3) amended; (a)(8) added 37698
19.35—19.39 Undesignated center heading added 37698
19.35 Added 37698
19.36 Added 37699
19.37 Added 37700
19.38 Added 37700
19.39 Added 37700
24.1 (b) introductory text revised 26775
(e) added 35459
101.3 (b) amended 15013
113.63 (c)(5) added 37701

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

TITLE 19 Chapter I—Con. Page

122.92 Heading and (b)(1) revised; (a)(1) amended; (a)(3) added 38275
123.4 (b) amended 24944
133 Court order 28605
141 Authority citation amended 27160
141.1 (c) revised 27160
141.68 (f) and (h) amended 24944
(h) corrected 28012
141.102 Heading revised 10989
143.23 Introductory text amended 24944
143.24 Heading revised; text amended 24944
143.25 Amended 24944
144.37 (h) added 37701
145.4 (c) amended 24944
145.12 (b)(1), (c) and (e)(1) amended 24944
(b)(1) corrected 28012
145.51 (a)(5) revised 37702
148.12 (c) amended 24944
148.27 Amended 24944
151.12 Removed 10989
162 Authority citation amended 30640
Technical correction 31754
162.46 (d)(1) redesignated as (d); (d)(2) removed 30640
162.48 Heading revised; existing text redesignated as (a) and amended; (b) added 30640
207.90 Revised 34825
207.91 Revised 34825
207.93 Revised 34825
207.94 Revised 34827
207.101 Revised 34828
207.102 (a)(1) introductory text, (2) introductory text, (c), (d), (e) and (g) revised 34828
207.103 (a)(1), (2), (4), (5) and (d) revised 34828
207.105 Revised 34829
207.106 (a) amended; (b), (c), (d) and (e) revised 34829
207.107 (a)(1) and (d) revised 34829
207.108 Revised 34829
207.109 Revised 34829
207.110 (a) amended 34829
207.111 Introductory text revised 34829
207.112 (a) and (b) revised 34830
207.113 (a)(1) revised 34830
207.114 (a) through (c) revised 34830
207.115 (a)(2), (3)(ii), and (4) revised 34830
207.116 Revised 34830
207.117 Amended 34830
207.118 Revised 34830
207.119 Revised 34830
207.120 Revised 34830
353.31 (a)(1) introductory text, (b)(4) and (g) introductory text revised; interim 30902
353.32 (a)(2) and (b) introductory text revised; (a)(3) and (b)(3) added; interim 30903
355.31 (a)(1), (b)(4) and (g) introductory text revised; interim 30903
355.32 (a)(2) and (b) introductory text revised; (a)(3) and (b)(3) added; interim 30903

Title 19—*Proposed Rules:*

10 ..... 33909, 37591
101 ..... 26805, 26806, 31677, 33461, 33462, 34809, 35530
102 33462
133 30703
142 33463
146 35530
151 37917
175 ..... 21914, 39158

TITLE 20—EMPLOYEES' BENEFITS

Chapter I—Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

10.304 (b) revised 15227
10.311 Revised 35755

Chapter III—Social Security Administration, Department of Health and Human Services (Parts 400—499)

404 Technical correction 24308
404.110 (d)(1) revised 23156
404.111 (c) amended; (d) added 23157
404.213 (d)(1) introductory text and (e)(5) revised 22429
404.241 (a) revised; (c)(1)(v) and (vi) added 23157

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

Page

404.301—404.395 (Subpart D) Authority citation revised...21598, 30119
404.315 (d) revised.....30119
404.335 (b)(2), (3) and (c)(2) amended; (c) introductory text and (1) revised; (b)(4) and (c)(3) added.....30119
404.336 (b)(2), (3) and (c)(2) amended; (c) introductory text and (1) revised; (b)(4) and (c)(3) added.....30119
404.381 (a) revised.....21598
404.822 (e)(5) revised.....21600
404.900—404.999d (Subpart J) Authority citation revised.....23056
404.903 (q) added.....23057
404.1501—404.1599 (Subpart P) Authority citation revised.....30126
404.1501 (i) revised.....30120
404.1505 (a) and (b) amended.....30120
404.1511 Revised.....30120
404.1520a (c)(3) revised.....30120
404.1560 (a) revised.....30120
404.1577 Revised.....30120
404.1578 Revised.....30121
404.1579 (a) redesignated in part as (a)(2) and amended; (a)(1) added.....30121
404.1594 (a) revised.....30121
404.1501—404.1599 (Subpart P) Appendix 1 amended...23946, 23947, 24187, 30121
404.2040a Added.....23057
404 Appendix IV amended.....22429
416.640a Added.....23057
(g)(4) corrected.....27091
416.1201 (a)(3) revised.....35461
416.1403 (a)(11) added.....23058

Chapter IV—Employees' Compensation Appeals Board, Department of Labor (Parts 500—599

506 Technical correction.....32895

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

655 Regulations at 56 FR 24648, 57 FR 182, 57 FR 10989 and 57 FR 29203 effective date extended through 09-08-92.....30640

Page

655.0 Regulations at 56 FR 24667 and 57 FR 183 effective date extended through 6-30-92.....10989
Regulations at 56 FR 24667, 57 FR 183 and 57 FR 10989 effective date extended through 7-10-92.....29204
655.000 Regulations at 56 FR 24667 and 57 FR 183 effective date extended through 6-30-92.....10989
Regulations at 56 FR 24667, 57 FR 183 and 57 FR 10989 effective date extended through 7-10-92.....29204
655.500—655.550 (Subpart F) Regulations at 56 FR 24654, 56 FR 24667 and 57 FR 183 effective date extended through 6-30-92.....10989
Regulations at 56 FR 24654, 56 FR 24667, 57 FR 183 and 57 FR 10989 effective date extended through 7-10-92.....29204
655.600—655.675 (Subpart G) Regulations at 56 FR 24654, 56 FR 24667 and 57 FR 183 extended through 6-30-92.....10989
Regulations at 56 FR 24654, 56 FR 24667, 57 FR 183 and 57 FR 10989 extended through 7-10-92.....29204

Title 20—*Proposed Rules:*

404 32926
416 .....22187, 29244, 32926, 33137
660 14803

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

2.125 (h)(2) introductory text revised.....17980
3 Meeting.....24544
5 Authority citation revised.....18823
5.10 (a)(34) added.....28462
5.20 (f) redesignated as (g); new (f) added.....12875
5.38 Added.....18823
5.80 (c)(1) and (2)(i) amended....17980

TITLE 21 Chapter I—Con. Page

10.30 (e)(2) introductory text amended; (e)(4) added....17980
10.45 (d) introductory text revised....17980
14.100 (c)(15) heading and (ii) revised....14350
(a) revised....35461
73.1 (a)(3) table amended....32175
81.1 Regulation at 57 FR 10616 effective date corrected....11797
155 Technical correction....37591
155.120 (a)(3)(xiii) and (a)(3)(xiv) redesignated as (a)(3)(xiv) and (a)(3)(xv); new (a)(3)(xiii) added; (b)(2)(i) revised....34245
169 Technical correction....37591
169.140 (a) and (e) revised....34246
172.225 Revised....12711
172.270 Added....12711
176.170 Regulation at 57 FR 10616 effective date corrected....11797
(b)(2) table amended....20200
(a)(5) table amended....23949, 34867
176.210 (d)(3) amended....31313
177.1520 Regulation at 57 FR 10616 effective date corrected....11797
177.1312 Added....32422
178 Technical correction....37867
178.1010 (b)(39) and (c)(34) added....11682
178.1005 (e)(1) table amended....32423
178.1010 (b)(40) and (c)(35) added....35463
178.2010 (b) table amended....10992, 18081
178.3690 (a) revised; (b)(1) amended....18082
178.3910 (a)(2) table amended....23952
184.1505 Regulation at 57 FR 10616 effective date corrected....11797
310.305 (a) revised; (b)(2), (c)(4) and (d)(1) amended....17980
310.537 Added....29173
312 Technical correction....19458
312.34 (a) amended....13248
312.35 (a) amended....13249
312.42 (b)(3)(iii) and (4) added....13249
312.44 (b)(1)(xi) added; (b)(2)(i) revised....13249
314.1 (a)(1) and (2) amended....17981
314.3 (b) revised....17981
314.50 (a)(2) and (c)(1) amended; (g)(3) added....17982
314.54 Added....17982
314.55 Removed....17983
314.56 Removed....17983
314.60 Existing text designated as (a) and amended; (b) added....17983
314.70 (e) added....17983
314.71 (b) amended....17983
314.80 (a), (c)(1)(ii) and (d)(1) amended; (b) revised....17983
314.81 (b)(3)(iii) added....17983
314.92—314.99 (Subpart C) Added....17983
314.94 (a)(9)(iii) corrected....29353
314.100—314.170 (Subpart C) Redesignated as subpart D....17983
Heading revised....17987
314.100 Revised....17987
314.101 Revised....17987
(d)(3) and (4) corrected....29353
314.102 Revised....17988
(b) corrected....29353
314.103 (a) revised; (b) and (c)(2) amended....17989
314.104 Revised....17989
314.105 Revised....17989
314.110 Revised....17989
314.120 Revised....17990
314.122 Added....17990
(b) corrected....29353
314.125 Heading, (a) introductory text, (b) introductory text, (7), (9), (10), (12), (14), (15), (16) and (17) revised; (b)(18) added....17991
314.127 Added....17991
(a)(3)(iii)(A)(*1*) corrected....29353
314.150 Revised....17993
314.151 Added....17994
314.152 Revised....17994
314.153 Added....17995
314.160 Revised....17995
314.161 Added....17995
314.162 Added....17996
314.200—314.235 (Subpart D) Redesignated as subpart E....17983
314.200 (a) introductory text, (b)(1) and (c)(3) revised; (c)(1) and (g)(1) amended....17996

Page

314.300 (Subpart E) Redesignated as subpart F....17983
314.410—314.445 (Subpart F) Redesignated as subpart G....17983
314.430 Heading, (a) through (d), (e) introductory text, (f)(5), (6) and (g) introductory text revised....17996
314.440 Heading, (a) introductory text, (1) and (2) revised....17997
320.1 (a) and (e) revised....17997
320.21—320.32 (Subpart B) Heading revised....17998
320.21 Revised....17998
320.22 Revised....17998
320.23 Revised....17999
320.24 Revised....17999
(b)(4) corrected....29354
320.30 Revised....18000
320.31 Revised....18000
320.32 Redesignated as 320.38; new 320.32 redesignated from 320.51 and revised....18000
320.33 Redesignated from 320.52; heading and introductory text revised....18001
320.34 Redesignated from 320.55....18001
320.35 Redesignated from 320.56....18001
320.36 Redesignated from 320.62....18001
320.38 Redesignated from 320.32....18000
320.50 Removed....18000
320.51 Redesignated as 320.32....18000
320.52 Redesignated as 320.33....18001
320.53 Removed....18001
320.54 Removed....18001
320.55 Redesignated as 320.34....18001
320.56 Redesignated as 320.35....18001
320.57 Removed....18001
320.58 Removed....18001
320.59 Removed....18001
320.60 Removed....18001
320.61 Removed....18001
320.62 Redesignated as 320.36....18001
341.78 (b) amended; (c)(1) and (2) redesignated as (c)(2) and (1); new (c)(2) revised; (c)(3) added....29177
348 Added; eff. 6-19-93....27656
433.1 (d)(2) amended....18001
510 Technical correction....21854
510.600 (c)(1) table and (2) table amended....11683, 12711, 26995, 30641, 31313, 32175, 35988, 38442
520 Heading revised....37319
520.88 Added....37319
520.88a Added....37319
520.88b Added....37319
520.88c Added....37319
520.88d Added....37319
520.88e Added....37320
520.88f Added....37320
520.88g Added....37320
520.88h Added....37320
520.90 Added....37321
520.90a Added....37321
520.90b Added....37321
520.90c Added....37321
520.90d Added....37321
520.90e Added....37322
520.90f Added....37322
520.154 Added....37322
520.154a Added....37322
520.154b Added....37322
520.154c Added....37322
520.390 Added....37323
520.390a Added....37323
520.390b Added....37323
520.390c Added....37323
520.445 Added....37323
520.445a Added....37323
520.445b Added....37324
520.445c Added....37325
520.580 (b)(1) amended....35989
520.608 Added....37325
520.1130 Added....37325
520.1130a Added....37325
520.1130b Added....37326
520.1130c Added....37326
520.1484 Added....19085
(b) revised....26604
520.1696 Added....37326
520.1696a Added....37326
520.1696b Added....37326
520.1696c Added....37326
520.1696d Added....37327
520.2158 Added....37327
520.2158a Added....37327
520.2158b Added....37327
520.2158c Added....37327

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

TITLE 21 Chapter I—Con. Page

520.2220a (b) amended....32176
520.2345 Added....37327
520.2345a Added....37327
520.2345b Added....37327
520.2345c Added....37328
520.2345d Added....37328
520.2345e Added....37329
520.2345f Added....37329
520.2345g Added....37329
520.2345h Added....37329
522 Heading revised....37330
522.88 Added....37330
522.90 Added....37330
522.90a Added....37330
522.90b Added....37331
522.90c Added....37331
522.390 Added....37331
522.650 Added....37331
522.1696 Added....37332
522.1696a Added....37332
522.1696b Added....37332
522.1696c Added....37333
522.2100 (a)(1) amended....21209
522.2471 Added....12712
524 Heading revised....37333
524.154 Added....37333
524.155 Added....37333
524.390 Added....37333
524.390a Added....37333
524.390b Added....37333
524.390c Added....37334
524.390d Added....37334
524.1005 (b)(1) amended....31314
526 Heading revised....37334
526.88 Added....37334
526.464 Added....37334
526.464a Added....37334
526.464b Added....37334
526.464c Added....37335
526.464d Added....37335
526.1130 Added....37335
526.1696 Added....37335
526.1696a Added....37335
526.1696b Added....37336
526.1696c Added....37336
526.1696d Added....37336
529 Heading revised....37336
529.2464 Added....37336
536 Removed....37336
539 Removed....37336
540 Removed....37336
540.274b (c)(3)(iv)(c) amended....32896
544 Removed....37336
546 Removed....37336

Page

546.180d (c)(6)(iv)(*d*)(*3*) amended....12711
(c)(6)(i)(*a*)(*3*), (*b*)(*3*), (ii)(*d*), (iii)(*a*)(*3*), (*b*)(*3*), (*c*)(*3*), (iv)(*a*)(*3*) and (*b*)(*3*) amended....26996
548 Removed....37336
555 Removed....37336
556.308 Amended....21209
556.735 Added....12712
558 Technical correction....21854
558.4 (d) amended....38442
558.15 (g)(1) table and (2) table corrected....14639
558.55 (d)(2) table corrected; CFR correction....12712
558.76 (d)(3)(xiii) revised....32176
558.95 (a)(2) amended....23059
558.235 Added....38442
558.258 (a) and (c)(1)(i) revised; (c)(1)(ii) and (iii) redesignated as (c)(1)(i)(A) and (B); new (c)(1)(ii) through (v) added....34516
558.274 (a)(2), (4) and (c)(1) table amended....37410
558.325 (c)(4)(ii) added....34517
558.335 (f)(3)(ii)(*a*) revised; (f)(3)(ix) added....11683
558.355 (b)(7) and (14) revised....23953
558.363 (c)(1)(vi) added....32176
558.625 (b)(51) removed....23059
(b)(3) added....37410
558.630 (b)(10) amended....37410
573 Hearing....28606
Hearing denied....33244
573.870 (a) table amended....24187
606.60 (c) amended....11263
(c) corrected....12862
807.3 (n) through (q) added; interim....18066
Regulation at 57 FR 18066 stayed....23059
807.87 (h) redesignated as (k); new (h), (i) and (j) added; interim....18066
Regulation at 57 FR 18066 stayed....23059
(i)(2) corrected....29354
807.92 Added; interim....18066
Regulation at 57 FR 18066 stayed....23059
807.93 Added; interim....18067

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

Page

Regulation at 57 FR 18067 stayed 23059
807.94 Added; interim 18067
Regulation at 57 FR 18067 stayed 23059
807.95 (c)(3) removed; (d) redesignated as (e); new (d) added; interim 18067
Regulation at 57 FR 18067 stayed 23059
812 Extension of applicability 12875, 29001
821 Added 22967
1220.40 (a) revised 38771

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1308.11 (g)(3) added 18825
1308.12 (b)(1) introductory text revised 31126
1308.24 Regulation at 57 FR 5818 confirmed 36371
1308.26 Table revised; interim 19534
Regulation at 57 FR 19534 confirmed 36371
1308.32 Introductory text revised 23301
1308.34 Table revised 32423

Title 21—*Proposed Rules:*

1—1299 (Ch. I) 22447, 32185, 33283, 33915
5 ..... 11277, 19410, 29119, 32750
10 21044
12 21044
16 21044
20 ..... 11277, 19410, 21044, 28647, 29119, 32750, 36617
100 ..... 11277, 19410, 29119
101 ..... 11277, 12773, 19410, 29119, 32058, 32750, 32751, 37190
105 ..... 11277, 19410, 29119
130 ..... 11277, 19410, 29119
131 ..... 32470, 38095
146 23555
163 ..... 23989, 28011
166 33916
182 37738
184 37738
226 21044
310 38568
314 ..... 13234, 27202, 30802
334 23174

Page

341 ..... 27658—27666, 33663, 34733—34735
355 ..... 19823, 21332
356 ..... 20434, 28555, 30534
500 21044
510 21044
511 21044
514 21044
601 ..... 13234, 19410, 27202, 30802
821 ..... 12376, 20656, 22971, 31754
880 27397
890 27397
1301 ..... 15037, 33465, 36439
1304 ..... 15037, 33465, 36439
1308 ..... 11447, 32937
1400-1499 (Ch. III) 31160

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

41 Authority citation revised 31447
41.11 (b)(1) revised 31448
41.12 Revised 31448
41.53 Revised 31449
41.54 Revised 31449
41.55 Revised 31450
41.56 Revised 31450
41.57 Revised 31450
43 Authrity citation revised 28980
43.12 (d) added 28980
43.13 Revised 28981
43.14 Revised 28981
43.15 Revised 28982
43.17 Revised 28982
121 Revised 15230
121.1 Amended; interim 32148
172 Added 32896

Chapter II—Agency For International Development, International Development Cooperation Agency (Parts 200—299)

211 Revised 19766
215 Revised 38277

Chapter XI—International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

1101 Revised 24945

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

TITLE 22

Page

Title 22—*Proposed Rules:*

43 15266
51 39159
120 ..... 19666, 27715
121 ..... 12774, 14671
122 ..... 19666, 27715
123 ..... 19666, 27715
124 ..... 19666, 27715
125 ..... 19666, 27715
126 ..... 19666, 27715
127 ..... 19666, 27715
130 ..... 19666, 27715
172 20656
1101 14674

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

771.135 (n)(i), (ii) and (iii) redesignated as (n)(1), (2) and (3) 12411

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

1212 Added 35999

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1313 Revised; interim 29011

Title 23—*Proposed Rules:*

1-999 (Ch. I) 17868, 21915, 23460
1 21362
12 21362
17 21362
140 ..... 21362, 31467
470 21362
490 21362
642 21362
650 ..... 21362, 29689
655 21362
661 21362
666 21362
750 ..... 19823, 21152, 31470, 34168

Page

770 21362
920 21362
922 21362

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

0 Authority citation revised 28783
0.735-101 Revised 28783
0.735-102 Revised 28783
0.735-104 Revised 28783
4 Authority citation revised 34248
4.5 Amended 34248
4.10 (a) revised 34249
4.100 (b) revised 34249
20 Authority citation revised 20201
20.3 (a) revised 20201
20.10 Amended 20201
25 Revised 31051
Regulation on 57 FR 31051 effective date corrected 31754
25.2 Corrected 37085
25.3 Corrected 37085
25.4 (b) corrected 37085
25.5 (b), (c)(3) and (d)(3)(i) corrected 37085
25.9 (cc) corrected 37085
25.13 Corrected 37085
44 Heading and authority citation revised 33254
44.3 (c) amended 33254
44.6 (a) revised; (b) amended 33254
45 Added 33254
50 Authority citation revised 12036, 32110
50.3 (i) added; interim 32110
50.17 (i) redesignated as (j); new (i) added; interim 32110
50.19 Added; interim 32110
50.20 (n) revised; interim 12036
(o) revised; interim 32110
70 Added; interim 14756
85 Authority citation revised 33255
85.26 (b)(1) and (2) amended 33255
0—99 (Subtitle A) Appendix A amended; interim 14758

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

Page

103 Authority citation revised....18398
103.200 (a) introductory text and (3) revised....39116
103.400 (a)(1) and (2)(ii) revised....18398

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200 Authority citation revised....27927
200.926d OMB number....27927
201 High-cost limits....12715
201.55 (a)(1) revised....30395
202 Authority citation revised....31056
202.8 (a) introductory text, (b)(1), (c) and (d) revised....31056
Regulation at 57 FR 31056 effective date corrected....31754
(d) corrected....37085
203 High-cost limits....12715
Authority citation revised....15211, 27927
203.18 (c) revised....15211
203.52 OMB number....27927
203.259 (a) revised....15211
203.270 (c) revised....15211
203.284 Undesignated center heading and section revised....15211
203.550 OMB number....27927
204 Authority citation revised....15212
204.260 Revised....15212
204.270—204.275 Undesignated center heading revised....15212
204.271 (a) revised....15212
204.276 Undesignated center heading and section revised....15213
207 Authority citation revised....33255, 33849
207.19 (f)(6) added....33255
207.24a Added....33849

Page

213 Authority citation revised....33255
213.30 (h) redesignated as (i); new (h) added....33255
213.41 Added....33850
215 Authority citation revised....33850
215.16 Added....33850
219 Authority citation revised....12036
Revised....32405
219.325 (b) introductory text and (3) introductory text revised; (b)(5) added; interim....12036
220 Authority citation revised....33850
220.506a Added....33850
221 Authority citation revised....12036, 33255, 33850
221.524 (e) revised; interim....12036
221.530 (f) added....33255
221.538 (b)(2) revised; interim....14758
221.545a Added....33850
231 Authority citation revised....33850
231.8 (b)(2) revised; interim....14758
231.15 Added....33850
232 Authority citation revised....33255, 33850
232.45 (c) added....33255
232.70 Revised; interim....14758
232.73 Revised; interim....14758
232.591 Added....33850
234 High-cost limits....12715
Authority citation revised....27927, 33850
234.64 OMB number....27927
234.521 Added....33851
236 Authority citation revised....12036
236.55 (b) revised; interim....12036
236.60 Revised; interim....12036
236.85 Added....33851
236.901 (Subpart E) Revised....33256
241 Authority citation revised....12036
241.166 Added; interim....12036
241.251 (a) heading and (c) added; interim....12037
241.1000—241.1120 (Subpart E) Revised; interim....12037
241.1200—241.1250 (Subpart F) Revised; interim....12040

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

TITLE 24 Chapter II—Con. Page

242 Authority citation revised....33256
242.67 (b) revised; interim....14758
242.79 Existing text designated as (a); (b) added....33256
242.87a Added....33851
248 Authority citation revised....12041
248.1—248.7 (Subpart A); interim....12041
248.101—248.183 (Subpart B) Added; interim....12042
248.201—248.261 (Subpart B) Redesignated as subpart C; interim....12041
Heading revised; interim....12060
248.213 (b)(9) redesignated as (b)(10); new (b)(9) added; interim....12060
248.221 (c) and (d) added; interim....12060
248.233 (f) added; interim....12060
248.234 (c) redesignated as (d); new (c) added; interim....12060
248.235 Removed; interim....12060
248.300—248.319 (Subpart D) Added; interim....12060
277.12 Added....33256
280 Authority citation revised....33256
280.207 (h) amended....33256

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

570 Authority citation revised....27119
570.200 (f)(1)(ii) revised; interim....27119
570.201 (e) revised; (n) added; interim....27119
570.496 (c) revised; interim....14759
570.500 (a)(1)(v) revised; (c) amended; (a)(3) added; interim....27120
570.501 (b) amended; interim....27120
570.502 (b) introductory text and (4) revised....33256
570.503 (b)(8) introductory text amended; (b)(8)(ii) revised; interim....27120
570.603 Revised; interim....14759
570.610 Amended....33256
570.611 (b) revised; interim....27120
571 Revised; interim....11837
571.301 (a)(1) correctly revised; interim....20970
574 Added; interim....32111
575 Authority citation revised....33256
575.59 (h) amended....33256
576 Authority citation revised....33256
576.51 (b)(2)(i)corrected....11430
576.79 (i) amended....33256
577 Authority citation revised....33256
577.335 (g) amended....33256
578 Authority citation revised....33256
578.335 (g) amended....33256
579 Authority citation revised....33256
579.325 (g) amended....33256

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public adn Indian Housing Programs) (Parts 700—799)

750.3 Regulation at 56 FR 27111 corrected....11263
750.5 Regulation at 56 FR 27111 corrected....11263

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

880 Authority citation revised....33256, 33851
880.207 (g) added....33851
880.210 (d) revised; interim....14759
880.211 Existing text designated as (a); (b) added....33256
881 Authority citation revised....33257, 33851
881.207 (g) added....33851

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

Page

881.210 (d) revised; interim.....14759
881.211 Existing text designated as (a); (b) added.....33257
882 Authority citation revised.....33851
882.109 (r) added.....33851
882.407 (c)(6) revised; interim.....14759
882.713 (c)(7) revised; interim.....14759
882.804 (c)(1) revised; interim.....14760
883 Authority citation revised.....33257, 33851
883.310 (c) added.....33851
883.312 (d) revised; interim.....14760
883.313 Existing text designated as (a); (b) added.....33257
884 Authority citation revised.....33257, 33852
884.110 (d) added.....33852
884.113 (d) revised; interim.....14760
884.124 Existing text designated as (a); (b) added.....33257
884.207 (b)(5) revised; interim.....14760
885 Authority citation revised.....33257, 33852
885.10 Added.....33257
885.429 Added.....33852
885.717 (d) added.....33852
885.740 (d)(1)(i) and (ii) revised; interim.....14760
886 Authority citation revised.....33257, 33852
886.113 (m) redesignated as (n); new (m) added.....33852
886.131 Existing text designated as (a); (b) added.....33257
886.307 (p) added.....33852
886.313 (c)(2) revised; interim.....14760
886.336 Existing text designated as (a); (b) added.....33257
887 Authority citation revised.....33852
887.251 (m) added.....33852
889 Authority citation revised.....33853, 36339
889.265 (d) revised; interim.....14760
(g) added.....33853
889.400—889.430 (Subpart D) Revised; interim.....36339
889.500—889.530 (Subpart E) Added; interim.....36342
890 Authority citation revised.....33853, 36331
890.260 (d)(1) and (2) revised; interim.....14761
(h) added.....33853

Page

890.400—890.430 (Subpart D) Revised; interim.....36331
890.500—890.530 (Subpart E) Added; interim.....36334

Chapter IX—Office of Assistant for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

901 Regulation at 57 FR 2188 comment time extended.....23953
905 Revised.....28250
Authority citation revised.....33853
905.120 (c)(1) and (2) revised; interim.....14761
905.346 Added.....33853
905.440 (e)(1) correctly designated.....37085
905.602 (d) added.....28785
905.627 (b) revised.....28785
905.639 (c) correctly revised.....15014
905.963 Heading corrected.....37085
905.1001—905.1021 (Subpart O) Regulation at 56 FR 47860 effective date extended through 1-20-93.....31962
906 Regulation at 56 FR 47866 effective date extended through 1-20-93.....31962
941.208 (d) revised; interim.....14761
961.40 (a)(2) introductory text revised; (a)(2)(iii) added; interim.....14761
963 Added.....20189
965 Authority citation revised.....33853
965.101 (d) amended.....28358
965.302 Revised.....28358
965.401 Amended.....28358
965.471 Revised.....28358
965.472 Amended.....28358
965.701 Revised.....28358
965.800—965.805 (Subpart I) Added.....33853
968.102 (d) added.....28785
968.110 (e)(1), (2) and (f) revised; interim.....14761
968.225 (b) revised.....28785

Title 24—*Proposed Rules:*

50 13592
55 13592
92 34640

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

TITLE 24—Con.

Page

200 13592
203 ..... 13592, 24424
204 ..... 13592, 24424
207 37119
213 37119
220 37119
221 37119
231 37119
232 37119
234 37119
242 37119
244 37119
290 34834
812 12686
882 12686
886 34834
887 12686
888 18684
905 27716
912 12686
990 ..... 11448, 27716
2003 38804

TITLE 25—INDIANS

Chapter III—National Indian Gaming Commission (Parts 500—599)

502 Added..... 12392
Effective date corrected..... 20145

Chapter IV—Office of Navajo and Hopi Indian Relocation (Parts 700—799)

700.709 (d) revised..... 24363

Title 25—*Proposed Rules:*

515 ..... 30346, 30353, 34809
519 ..... 30346, 34349
522 ..... 30346, 34349
523 ..... 30346, 34349
524 ..... 30346, 34349
531 37656
533 37656
535 37656
537 37656
539 37656
556 ..... 30346, 34349
558 ..... 30346, 34349
571 ..... 30584, 34809
575 30584
577 ..... 30584, 34809

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—702)

Page

1 Authority citation amended...10994, 12210, 12419, 13022, 14795, 15241, 19255, 20748, 20977, 22649, 24749, 36002, 38282, 38596
Technical correction...21152, 21855, 21894, 31754
1.42-4 Added..... 24749
1.58-9 Added..... 19255
(c)(3)(iii)(A)(*3*)(*iii*), (d) *Example* 1, *Example* 2 and (e)(2)(i) corrected..... 24848
1.58-9T Removed..... 19262
1.61-3 (a) amended..... 12419
1.79-3 (d)(2) revised..... 33635
1.79-3T Removed..... 33635
1.103-13 (f) removed..... 20977
1.103-14 (e) removed..... 20977
1.103-15 (c) revised..... 20977
1.103-18 (a), (c)(2)(B), (d), (f)(2)(i), (ii), (g)(3)(ii) and (3)(iv) corrected; (k)(2)(i) correctly designated..... 13027
(l)(2)(i) corrected; (l)(3) correctly added..... 13028
(c)(1)(iii) corrected..... 26891
(c)(2)(ii)(B) corrected..... 28611, 36001
1.148-0 Added..... 20977
1.148-0T Removed..... 20977
1.148-1 Added..... 20982
1.148-1T Removed..... 20977
1.148-2 Added..... 20984
1.148-2T Removed..... 20977
1.148-3 Added..... 20987
1.148-3T Removed..... 20977
1.148-4 Added..... 21005
1.148-4T Removed..... 20977
1.148-5 Added..... 21011
1.148-5T Removed..... 20977
1.148-6 Added..... 21012
1.148-6T Removed..... 20977
1.148-7 Added..... 21020
1.148-7T Removed..... 20977
1.148-8 Added..... 21020
1.148-8T Removed..... 20977
1.148-9 Added..... 21024
1.148-9T Removed..... 20977
1.148-10 (c) through (i) added..... 21024

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

Page

1.148-10T Removed 20977
1.148-11 Added 21025
1.148-12T Added 21030
1.148-13T Added 21031
1.149(d)-1 Added 21031
1.149(e)-1 Added 36002
1.149(e)-1T Removed 36002
1.150-0 Added 21031
1.150-1 (g) corrected; (h)(1) correctly designated 13028
(a) through (e) revised 21031
1.263(a)-1 (b) amended 12419
1.263A-1T (a)(5)(i) revised 12419
1.355-2 (d)(3)(iv) amended 28463
1.382-2 (a)(3)(ii) *Example* 2 and *Example* 3 corrected 24188
1.382-2T (h)(4)(x)(J) added 12210
1.382-2T (j)(2)(iii)(A) amended 38282
1.382-3 (e) and (o) added 12210
1.382-4 Added 38282
1.383-0—1.383-2 CFR correction 39359
1.383-2 (c)orrectly designated from 1.383-2T; CFR correction 39359
1.383-2T Correctly designated as 1.383-2; CFR correction 39359
1.446-1 (c)(1)(ii) revised 12419
1.451-3 (a)(8) added 12420
1.451-6 (a)(1) revised 38595
1.451-6T Removed 38595
1.458-1 Added 38596
1.458-2 Redesignated from 1.458-10 38599
1.485-10 Redesignated as 1.458-2 38599
1.461-0 Added 12420
1.461-1 (a)(2) and (3) revised 12420
1.461-2 Heading and (g) revised; (f) and (h) removed 12421
1.461-3T Redesignated as 1.461-7T 12421
1.461-4 Added 12421
1.461-5 Added 12427
1.461-6 Added 12428
1.461-7T Redesignated from 1.461-3T 12421
1.461(h)-4T Removed 12421
1.469-0 Added 20748
1.469-0T Removed 20748
1.469-1 Added 20750
(f)(4)(iii) *Example* 6 corrected 28612

Page

1.469-1T (d)(2), (e)(2), (3)(iii), (vi)(D), (E), (4)(iv), (5), (f)(4), (g)(4)(ii)(C), and (h)(4) revised 20753
1.469-2 Added 20754
1.469-2T (c)(2)(iii), (iv), (6)(i), (ii), (iii), (iv) *Example* 1, *Example* 2, (d)(2)(ix), (5)(iii)(A), (6)(v)(E), (8), (e)(2)(ii), (iii), (3)(iii)(B), (f)(5)(i), (6), (9)(iii), (iv) and (10) revised 20758
1.469-3 Added 20758
1.469-3T (e) and (f) revised 20758
1.469-5 Added 20758
1.469-5T (f)(1), (h)(3), (j) and (k) *Example* 5 revised 20759
1.469-6T Removed 20759
1.469-7T Removed 20759
1.469-8T Removed 20759
1.469-9T Removed 20759
1.469-10T Removed 20759
1.469-11 Added 20759
1.469-11T Removed 20759
1.509(a)-3 (a)(3)(i) amended 33443
1.512(b)-1 (a) revised 33443
1.597-8T Added 14795
1.704-1 (b)(2)(ii)(*d*)(6) corrected; (b)(2)(iv)(*r*) amended 11430
1.704-2 (f)(3), (h)(1), (4), (l)(1)(ii) and (m) *Example* 4 corrected 11430
(b)(4), (c), (e)(3), (f)(7) *Example* 1, *Example* 2 and (i)(4) corrected 28611
(a), (d)(4)(ii), (f)(7), (g)(1)(ii), (l)(1)(iii)(A) and (m) *Example* 1 and *Example* 3 corrected 37189
1.861-10 Added 13022
(e)(3)(ii), (iii)(A), (6) and (11) *Example* corrected 28012
1.871-2 (c) added 15241
1.871-9 Amended 15241
1.904-0 Revised 20642
1.904-4 (c)(8) removed; (c)(9) redesignated as (c)(8); (b)(1)(i), (2)(i), (iv), *Example*, (c)(1), (2)(ii), (7)(ii), (iii), new (c)(8), (e)(3)(i) and (iii) amended; (c)(4) introductory text, (5)(ii), (iii), (6)(ii), (e)(1) and (2)(i)(V) revised; (c)(5)(iv) added; (e)(3)(iii)(A) designation removed;

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

TITLE 26 Chapter I—Con. Page

(e)(3)(iii)(B) redesignated as (e)(3)(iv)....20644

(h)(3)(iv) and (v) redesignated as (h)(4) and (5), new (h)(5)(A), (B) and (C) redesignated as (h)(5)(i), (ii) and (iii); (e)(3)(iv), (f), (g)(1), (2)(ii)(A), (iv), new (h)(5)(i) and (ii) amended; (e)(5)(i), (ii), (g)(3)(i), (h)(3)(iv), (5)(iii) *Example* 2, *Example* 4 and (l) added; (h)(2), (3) introductory text, (i), (ii), (iii), new (h)(4) introductory text, *Example* 1, *Example* 2, *Example* 3, (5)(iii) introductory text, *Example* 1 and (k) revised....20645

1.904-5 (a) introductory text, (3), (b), (c)(1)(i), (ii), (2)(iii)(A) and (2)(iv) amended; (c)(2)(i), (ii) introductory text, (ii)(B), (D) and (E) revised....20648

(c)(3), (4)(ii), (d)(2), (3), *Example* 1, *Example* 2, (e)(1), (f)(1), (2), (i)(1), (l), (m)(2) and (3) *Example* 4 amended; (c)(4)(iii) *Example* 1, (d)(1), (f)(3), (g), (h)(3), (i)(3), (j), (k)(1) and (m)(7) revised; (f)(2) redesignated in part as (f)(2)(i) and amended; (f)(2)(ii) and (i)(4) added....20649

1.904-6 Heading, (a) heading, (2) and (b)(2)(i) revised; (a)(1)(ii), (b)(1) and (c) amended; (a)(1)(iv) added....20652

1.904-7 (a) revised; (c) and (d) amended....20653

1.904(b)-3 (f) amended....15241

1.953-2 (d) amended....15241

1.1291-0T Revised (temporary)....10994

1.1291-9T Added (temporary)....10994

(e) corrected....28463

1.1291-10T (b)(2), (d)(2)(vii) and (e) revised; (b)(4) and (f) added (temporary)....10996

(b)(2)(ii) corrected....28463

1.1295-1T Removed (temporary)....10996

1.1303-1 (b) amended....15241

Page

1.1361-0—1.1375-1A Undesignated center heading added....22649

1.1361-0 Redesignated from 1.1360-0A; nomenclature change....22649

1.1361-0A Redesignated as 1.1360-0....22649

1.1361-1 Added....22649

(b)(1), (6), (l)(4)(v) *Example* 2 and (l)(7) corrected....28613

1.1374-1 Redesignated from 1.1374-1A; (b)(2) and (d)(2) amended....22653

1.1374-1A Redesignated as 1.1374-1....22653

1.1375-1 Redesignated from 1.1375-1A; (b)(1)(ii) and (c)(2) concluding text amended....22653

1.1375-1A Redesignated as 1.1375-1....22653

1.1441-5 (d) amended....15241

1.1501-13T (o)(1)(i) corrected....21152

1.6013-6 (a)(2)(ii) amended....15241

5f.103-3 (a) amended....36003

25.2701-1 (b)(2)(i)(C) introductory text, (*2*), (ii) introductory text, (E), (c)(3) and (4) corrected....11264

25.2701-3 (b)(1) and (2) correctly added; (b)(3), (4)(ii)(A), (iv), (5)(i), (d) *Example* 1, *Example* 2, *Example* 4 and *Example* 5 corrected....11265

25.2702-5 (c)(8)(ii)(C)(*2*)(*i*) and (*ii*) correctly added; (c)(8)(ii)(*3*) corrected; (c)(8)(ii)(*2*)(*iii*) removed....11265

25.2704-2 (b) corrected....11265

25.2704-3 Corrected....11265

31 Authority citation amended....13031, 15241

31.3121(b)(19)-1 (a)(1) amended....15241

31.3306(c)(18)-1 (a)(1) amended....15241

31.3402(f)(1)-1 OMB number....15241

31.3406-0 Added....13031

31.3406(d)-5 Added....13031

35a Authority citation amended....13055

35a.3406-1 Removed....13035

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

Page

43.0-1 Redesignated from 43.0-1T; heading amended..... 33636
43.0-1T Redesignated as 43.0-1..... 33636
43.4471-1 Redesignated from 43.4471-1T; heading amended..... 33636
43.4471-1T Redesignated as 43.4471-1..... 33636
43.4472-1 Added..... 33636
48 Authority citation amended..... 32428
48.4081-0 Added..... 32429
48.4081-1 Added..... 32429
48.4081-2 Added..... 32430
48.4081-3 Added..... 32431
48.4081-4 Added..... 32432
(b) introductory text and (e)(3) corrected..... 39421
48.4081-5 Added..... 32433
(a) corrected..... 39422
48.4081-6 Added..... 32433
(b)(2)(i), (f)(4) *Example* 2, (g)(1)(ii) and (2)(iii) corrected..... 39422
48.4081-7 Added..... 32436
48.4081-8 Added..... 32437
48.4081-9 Added..... 32437
48.4082-1 Removed..... 32428
48.4083-1 Removed..... 32428
48.4083-2 Removed..... 32428
48.4084 Removed..... 32428
48.4084-1 Removed..... 32429
48.9000-0 Removed..... 32429
53 Authority citation revised..... 33444
53.4940-1 (d)(1) amended..... 33444
301 Authority citation amended..... 15017, 15241
Technical correction..... 21855, 22167
301.6402-6 Added..... 13038
(a)(2)(ii), (b)(1)(i), (2), (j) and (m) corrected..... 36691
301.6501(c)-1 (e)(3) corrected..... 11265
301.6724-1 (f)(1)(ii), (3), (g) and (h)(2)(i) amended; (f)(2) revised..... 13035
301.7216-2 (o) amended..... 37086
301.7514-1 (a)(2)(ii) and (5)(ii) amended; (a)(2)(iii) through (vi) and (7) added; (a)(3) and (6) revised..... 15015
301.7624-1 Redesignated from 301.7624-1T; heading amended..... 15017
301.7624-1T Redesignated as 301.7624-1..... 15017

Page

301.7701-10 Amended..... 15241
301.7701(b)-0 Added..... 15241
301.7701(b)-1 Added..... 15242
(e) *Example* 3 corrected..... 28612
(e) *Example* 1 corrected..... 37190
301.7701(b)-2 Added..... 15244
(f)(3) corrected..... 28612
(f)(1) through (4) and (6) corrected..... 37190
301.7701(b)-3 Added..... 15245
(b)(6) corrected..... 28612
(c)(2) corrected..... 37190
301.7701(b)-4 Added..... 15247
(d) *Example* 5 corrected..... 28612
301.7701(b)-5 Added..... 15250
301.7701(b)-6 Added..... 15250
(b) *Example* 1 corrected..... 28612
301.7701(b)-7 Added..... 15251
(e) *Example* 3 corrected..... 28612
301.7701(b)-8 Added..... 15252
(b)(2) introductory text corrected..... 28612
(b)(2)(ii) corrected..... 37190
301.7701(b)-9 Added..... 15253
601.501 (a) and (b)(4) amended..... 27356
601.502 Introductory text, (i), (ii), (a) and (b) redesignated as (a) introductory text, (1), (2), (b) and (c); (a)(2) and (c)(4) amended..... 27356
601.503 (b)(1) amended..... 27356
601.504 (b)(2)(i) amended..... 27356
601.505 (b)(2)(ii) and (iii) amended..... 27356
602 Technical correction... 21152, 21894
602.101 (c) table amended (OMB numbers)... 10996, 11266, 12211, 13035, 15253, 19262, 21032, 32438, 36004, 38283, 38599
(c) table corrected (OMB numbers)..... 27511

Title 26—*Proposed Rules:*

1—799 (Ch. I)..... 11277
1 ...11024, 12244, 13066, 13676, 13680, 14369, 14371, 14803, 14804, 15038, 19556, 20660, 20802, 20805, 21044, 21152, 23176, 23356, 24426, 27401, 27716, 28470, 28907, 29246, 29851, 30451, 31344, 33467, 33663,

CHANGES APRIL 1, 1992 THROUGH AUGUST 31, 1992

TITLE 26—Con. on. Page

34092, 34736, 34740, 34886, 35536, 37495, 39374, 39379
5h 34736, 34740
31 ..... 21045—21051
40 13067
49 ..... 13067, 33918
301 ...14804, 15272, 19828, 19831, 20805, 22189, 22194, 23356, 28470, 29248, 32472, 32473, 36031, 38457, 38959, 39379
602 ..... 11024, 39379

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

4.35 (e) added 33114
4.35a (e) corrected 37591
4.35a Added 33114
5.22 (i) revised; eff. 7-30-92 29020
5.47a (a) revised 31128
9.139 Added 20764
9.141 Added 20761
19.988 Revised 32178
47 Authority citation revised 29787
47.43 (a) revised 29787
47.52 (a) and (c) revised 24189
179 Authority citation revised 29787
179.111 (a) amended 29787

Title 27—*Proposed Rules:*

4 .....19267, 23357, 27401, 29456, 33139
9 .....14681, 23559, 27401, 33139
17 39536
19 39536
20 ..... 27956, 29763
24 ..... 23357, 33467
70 39536
170 39536
194 39536
197 39536
250 39536

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

Page

0.1 Amended 32439
0.26 (Subpart O) Revised 32438
0.96 Revised 38772
0.157 Added 31314
0.160—0.172 (Subpart Y) Appendix amended 30396
20 Authority citation revised 31318
20.32 (a) and (b) amended 31318
40 Authority citation revised 38773
44.301 Regulation at 56 FR 40249 corrected 30397

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

524.11 (a) amended 34662
571 Authority citation revised 34663
571.40—571.41 (Subpart E) Heading revised 34663
571.41 (c)(1) and (2) revised 34663

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

5.5 (a)(4)(iv) removed 28776
20 Authority citation revised; nomenclature change 31450

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

506 Regulations at 56 FR 24654, 56 FR 24667, 57 FR 183 and 57 FR 10989 effective date extended through 7-10-92 29204
507 Regulations at 56 FR 24648, 57 FR 182, 57 FR 10989 and 57 FR 29203 effective date extended through 09-08-92 30640
541 Authority citation revised 37677
541.5d Revised 37677

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

Page

1425 Authority citation revised 30399
1425.2 Revised 30399

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1910.19 (i) revised 35666
1910.119 (f), (h), (j) and (l) eff. 8-27-92 38600
1910.1000 (a)(3) and table Z-1-A amended 29205
Table Z-3 amended 29206
1910.1030 (d)(2)(vii)(A), (B), (g)(1)(i)(D), (2)(vii)(A), (h)(1)(iii)(B), (3)(ii) and (i)(2) correctly added; (g)(1)(i)(B), (C), (ii)(A) and (B) corrected 29206
1910.1050 Added 35666
1910.1450 Appendix B amended 29204
1910.1500 Amended 29204
1926.60 Added 35681

Chapter XXVI—Pension and Welfare Benefits Administration, Department of Labor (Parts 2600—2699)

2610 Appendixes A and B amended 31319
2619 Authority citation revised 36602
2619 Appendix B amended 31320, 36602
2622 Appendix A amended 31319
Appendix B amended 31320
2644 Appendix A amended 31321
2676.15 (c) table amended 31322, 36603

Title 29—*Proposed Rules:*

42 32939
470 33403
541 37678
1910 ..... 34192, 36964, 37126, 37591
1915 ..... 36964, 37126
1917 37126
1918 37126

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

TITLE 29—Con. Page

1926 .....34656, 36964, 37126
1928 37126

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

70.2 Regulation at 57 FR 20913 effective date delayed to 11-16-92.....34683
70.208 Regulation at 57 FR 20913 effective date delayed to 11-16-92.....34683
75.2 Regulation at 57 FR 20913 effective date delayed to 11-16-92.....34683
75.300—75.389 (Subpart D) Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.370 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.380 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.381 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.382 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.383 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.385 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.386 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.388 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.1103—4 Regulation at 57 FR 20928 effective date delayed to 11-16-92.....34683
75.1103—7 Regulation at 57 FR 20929 effective date delayed to 11-16-92.....34683
75.1701 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683

Page

75.1704 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.1704—1 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.1704—2 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.1705 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.1706 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.1707 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.1721 Regulation at 57 FR 20929 effective date delayed to 11-16-92.....34683
75.1801 Removal at 57 FR 20929 effective date delayed to 11-16-92.....34683
75.1802 Removal at 57 FR 20929 effective date delayed to 11-16-92.....34683
75.1803 Removal at 57 FR 20929 effective date delayed to 11-16-92.....34683
75.1804 Removal at 57 FR 20929 effective date delayed to 11-16-92.....34683
75.1805 Removal at 57 FR 20929 effective date delayed to 11-16-92.....34683

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

861.101 Suspended.....33875
902.15 (c) added.....37422
902.16 Added.....37423
904.10 Revised.....37429
904.15 (k) added.....37430
916.15 (m) added.....37435
917.15 (kk) added.....37093
926.15 (j) added.....37446
926.16 (a) removed; (e) added.....37446
934.10 (b) revised; (c) removed.....37706
934.15 (p) added.....37710
934.20 Revised.....33116

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

Page

934.25 Revised 33116
935.12 Removed 33123
935.15 (ddd) added 33123
(fff) added 37096
(eee) added 37100
935.16 (c) removed 33123
943.10 Revised 37458
943.15 (h) added 37458
943.16 (a) removed; (k) through (q) added 37458
943.20 Revised 37461
943.25 Added 37461
944.15 (t) added 37465
944.20 Revised 37465
944.25 Added 37465
946.15 (ff) added 29792
950.15 (m) added 30131
950.16 (o), (p) and (q) added 30131

Title 30—*Proposed Rules:*

18 39036
48 ..... 29853, 38289
75 ..... 29853, 38289, 39041
77 ..... 29853, 38289
202 31471
250 ..... 36032, 39421
718 35960
720 35960
901 37497
902 33664
913 37127
914 ..... 31161, 31162, 33665, 37498
916 37132
920 ..... 37133, 37134
935 ..... 31163, 33139, 37136, 37138
938 ..... 33666, 33668

TITLE 31—MONEY AND FINANCE: TREASURY

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

312 Note amended 34684
317.2 (a) amended 34684
357.21 (c) amended; (f) added 38774
357.26 (b)(1)(vii), (viii), (4), (5), (6), (d) and (e) removed; (f) redesignated as (d); (b)(2) and (3) revised 38774

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

Page

550 Appendix A revised 29425
Appendix B revised 29427

Title 31—*Proposed Rules:*

210 34650
257 37139
357 33470

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (1—399)

165a Added; interim 29620
169a Authority citation and footnote 1 revised; footnote 8 removed; footnotes 5 through 7 redesignated as footnotes 6 through 8 29207
169a.2 Revised 29207
169a.3 Amended 29207
169.4a Revised 29207
169a.8 (c) revised; heading and (a) amended 29208
169a.9 (a) introductory text, (1) introductory text and (i) revised; (a)(1)(ii), (iv), (2)(i)(A), (B) and (D) amended 29208
169a.10 Revised 29208
169a.11 Amended 29208
169a.13 Revised 29208
169a.15 (a), (b), (c)(3), (d)(1), (2)(ii)(A), (iii) and (4)(i)(E) revised; (d)(2)(i), (v), (3)(viii), (4)(i)(C), (F), (H), (ii)(A), (D)(2), (3) and (E) introductory text amended 29209
169a.16 (a) and (b) amended 29210
169a.17 (a), (d) and (g)(1) revised; (l) added 29210
169a.18 (b) revised 29210
169a.21 (a), (b) heading, (c) introductory text, (1), (2), (5), (6) and (7) amended; (c)(3) revised 29210
169a.22 Revised 29210
169a Appendixes A and B amended 29210
Appendix B amended 29211

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

TITLE 32 Chapter I—Con. Page

Appendix C revised; Appendix D amended....29212
Appendix E removed....29218
191.1 (a) and (c) amended....35755
191.3 Amended....35755
191.4 (b), (c), (e) and (f) amended....35756
191.5 (a)(6), (11), (14), (b)(2), (5), (9), (10) and (13) amended....35756
191.6 (b)(2), (3), (5), (9), (10), (12), (13), (14) and (15) amended....35756
191.8 (a) amended....35756
191.9 (b)(2) and (3) amended....35756
290 Appendix B amended....30904
292 Revised....38775
321.2 (c) revised....33124
321.4 (b) revised....33124
321.14 (b), (d), (e) and (f) revised; (c) and (g) added....33124
385 Revised....32178

Chapter V—Department of the Army (Parts 400—699)

505 Authority citation revised....33126
505.5 (d) revised; (e) amended....33126

Chapter VI—Department of the Navy (Parts 700—799)

701.119 (i) introductory text revised; (i)(1) amended....37100
706.2 Table Four amended...31451, 31452
Table Five amended...28463, 31452, 35464, 35465

Title 32—*Proposed Rules:*

165 29619
516 31852
701 33285

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

81 Appendix A amended....29219
95.055 Revised....33261
100 Temporary regulations list....30644
100.T01-103 Added (temporary)....38607
100.35T01-057 Added (temporary)....38284
100.35T01-079 Added (temporary)....30642
100.35-T0205 Added (temporary)....39359
100.35-T0207 Added (temporary)....39117
100.35-T0213 Added (temporary)....39116
100.35-T0822 Added (temporary)....37711
100.35-T0916 Added (temporary)....34075
100.35-T0913 Added (temporary)....30644
100.35-T0919 Added (temporary)....39118
100.103 (b) revised (temporary)....30403
100.501 Implementation (temporary)....30643
100.502 Implementation (temporary)....33444
100.504 Implementation (temporary)....30643
100.511 Implementation (temporary)....33444
100.513 Implementation (temporary)....33445
117 Temporary regulations....38778
117.261 (hh) revised....30647
(r) added....37882
117.287 (d)(3) redesignated as (d)(4); new (d)(3) added....39360
117.359 Revised....37880
117.373 Revised....37880
117.385 Revised....38608
117.403 Revised....37880
117.407 Revised....37880
117.491 Revised....37880
117.680 Added....38609
117.684 Revised....37880
117.591 Revised....30405
117.488 Revised....34868
117.700 Revised....37880
117.897 (a)(1)(ii) suspended; (a)(5) added; eff. 9-13-92 through 11-11-92....39119
117.904 Revised....37880
117.937 Revised....37880
117.981 Revised....37880
117.1035 Revised....37712

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

Page

117.1049 (d) removed; (a) and (c) revised (temporary)....37881
117.1099 Revised....37880
117.1103 Revised....37880
117 Appendix A amended....30405
135 Authority citation revised....36316
135.301—135.319 (Subpart D) Heading revised; interim....36316
135.301 Removed; interim....36316
135.303 (a)(1) and (2) removed; (a) designation and (a)(3) designation removed; interim....36316
135.305—135.307 Undesignated center heading removed; interim....36316
135.309—135.311 Undesignated center heading removed; interim....36316
135.309 Removed; interim....36316
135.311 Removed; interim....36316
135.313—135.319 Undesignated center heading removed; interim....36316
135.313 Removed; interim....36316
135.315 Removed; interim....36316
135.317 Removed; interim....36316
135.319 Removed; interim....36316
136 Revised; interim....36316
137.501—137.513 (Subpart F) Removed; interim....36322
151.04 (c) revised....33261
155.390 Removed; interim....36238
157 Authority citation revised....36238
157.01 Revised; interim....36238
157.03 (k), (n) and (aa) revised; (ii) through (oo) added; interim....36238
157.08 Introductory text removed; (b) through (i) redesignated as (f) through (m); Note, new (b) through (e) and (n) added; (a), new (f), (g) and (h) revised; interim....36239
157.10 Heading and (d) revised; interim....36239
157.10d Added; interim....36239
157.11 (g) added; interim....36244
157.24 Introductory text and (c) revised; interim....36244
157.25 Heading revised; (a) and (b) redesignated as (b) and (c); new (a) added; interim....36244

Page

157.28 Introductory text revised; interim....36244
157 Appendix A amended; interim....36245
Appendix G added; interim....36245
161 Authority citation revised....31662
161.109 Added....31662
161.376 (a)(5) added....31663
165 Temporary regulations list....30644
165.111 Added....30407
165.T01-056 Added (temporary)....35467
165.T01-070 Added (temporary)....30651
165.T01-083 Added (temporary)....31323
165.T01-085 Added (temporary)....30650
165.T01-096 Added (temporary)....35466, 39362
165.T01-109 Added (temporary)....39121
165.T02013 Added (temporary)....31664
165.T05-12 Added (temporary)....31453
165.T0549 Added (temporary)....35757
165.T551 Added (temporary)....33637

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

222 Authority citation added; sectional authority citations removed....35757
222.7 (g)(2) revised....35757

Chapter IV—Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

402.3 (b)(10) added....30905
402.9 (f) through (i) added....30905

Title 33—*Proposed Rules:*

100 30704
110 31471
117 ...30451, 30704, 33286, 37918, 37920, 38638, 39381
154 37920

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

TITLE 33—Con. Page

155 ..... 29354, 33287
165 ..... 31472, 34741, 36034
168 30058
179 36034
334 32474

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

8 Added 34646
8.3 OMB number pending 34647
74 Authority citation revised; sectional authority citations amended 30335
74.3 Amended (effective date pending) 30335
74.47 Revised (effective date pending) 30335
74.73 Heading, (a) and (b) revised (effective date pending) 30335
74.74 (a), (c) and (d) revised (effective date pending) 30335
74.75 (a) revised; (b) redesignated as (c); new (b) added (OMB number pending) 30336
74.76 (c) amended (effective date pending) 30336
74.91 Amended (effective date pending) 30336
74.93 Revised (effective date pending) 30336
74.94 Removed (effective date pending) 30336
74.96 Revised (effective date pending) 30336
74.144 Amended (effective date pending) 30336
74.171 Added (effective date pending) 30336
74.172 Removed (effective date pending) 30336
74.173 Removed (effective date pending) 30336
74.174 Removed (effective date pending) 30336
74.175 Revised (effective date pending) 30336
74 Appendixes D and E removed (effective date pending) 30336

Page

75 Authority citation revised; sectional authority citations amended 30336
75.1 (b) amended; (effective date pending) 30336
75.3 Removed (effective date pending) 30336
75.4 (a) introductory text and (1) revised (effective date pending) 30336
75.60—75.62 Undesignated center heading added (effective date pending) 30337
75.60 Added (effective date pending) 30337
75.61 Added (effective date pending) 30337
75.62 Added (effective date pending) 30337
75.105 (c)(2)(i) and (3) revised (effective date pending) 30337
75.107 Removed (effective date pending) 30337
75.108 Removed (effective date pending) 30337
75.110 Removed (effective date pending) 30337
75.111 Removed (effective date pending) 30337
75.113 Removed (effective date pending) 30337
75.114 Removed (effective date pending) 30337
75.115 Removed (effective date pending) 30337
75.116 Removed (effective date pending) 30337
75.118 Note removed (effective date pending) 30337
75.130—75.134 Undesignated center heading removed (effective date pending) 30338
75.130 Removed (effective date pending) 30338
75.131 Removed (effective date pending) 30338
75.132 Removed (effective date pending) 30338
75.133 Removed (effective date pending) 30338
75.134 Removed (effective date pending) 30338
75.150—75.154 Undesignated center heading removed (effective date pending) 30338

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

Page

75.150 Removed (effective date pending)....30338
75.151 Removed (effective date pending)....30338
75.152 Removed (effective date pending)....30338
75.153 Removed (effective date pending)....30338
75.154 Removed (effective date pending)....30338
75.155 Revised (effective date pending)....30338
75.160 Removed (effective date pending)....30338
75.200 Heading revised, (b)(4) and (5) added (effective date pending)....30338
75.216 Revised (effective date pending)....30338
75.218 Revised (effective date pending)....30338
75.233 Revised (effective date pending)....30338
75.234 Revised (effective date pending)....30338
75.235 (b) revised (effective date pending)....30338
75.253 (a)(2) revised; (d) redesignated as (e); new (d) added (effective date pending)....30338
75.261 Revised; (OMB number pending)....30338
75.262 Added (effective date pending)....30339
75.510 Removed (effective date pending)....30339
75.518 Removed (effective date pending)....30339
75.534 Introductory test and (a) revised (effective date pending)....30339
75.560 (a) revised (effective date pending)....30339
75.563 Revised (effective date pending)....30339
75.580—75.581 Undesignated center heading removed (effective date pending)....30339
75.580 (a) designation and (b) through (d) removed (effective date pending)....30339
75.581 Removed (effective date pending)....30339
75.590 (c) revised (effective date pending)....30339

Page

75.608 Revised (effective date pending)....30339
75.616 Revised (effective date pending)....30339
75.617 Added (effective date pending)....30339
75.621 Amended; authority citation and cross-reference revised....30339
75.622 Revised (effective date pending)....30339
75.625—75.626 Cross-reference revised (effective date pending)....30339
75.625 Removed (effective date pending)....30339
75.626 (a) paragraph designation and (b) removed (effective date pending)....30339
75.681 Cross-reference amended (effective date pending)....30339
75.684 Removed (effective date pending)....30340
75.690 Removed (effective date pending)....30340
75.707 (h) table amended (effective date pending)....30340
75.720 Revised (OMB number pending)....30340
75.740 Heading and authority citation revised; existing text designated as (a); (b) added (effective date pending)....30340
75.750—75.755 Undesignated center heading removed (effective date pending)....30340
75.750 Removed (effective date pending)....30340
75.751 Removed (effective date pending)....30340
75.752 Removed (effective date pending)....30340
75.753 Removed (effective date pending)....30340
75.754 Removed (effective date pending)....30340
75.755 Removed (effective date pending)....30340
76 Authority citation revised....30340
76.3 Removed (effective date pending)....30340
76.102 Revised (effective date pending)....30340

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

TITLE 34 Subtitle A—Con. Page

76.125 (a) amended; (c) and authority citation revised (effective date pending)..... 30341
76.136 Amended (effective date pending)..... 30341
76.305 Removed (effective date pending)..... 30341
76.401 (a) revised (effective date pending)..... 30341
76.560 Removed (effective date pending)..... 30341
76.580—76.581 Undesignated center heading removed..... 30341
76.580 (a) designation and (b) through (d) removed (effective date pending)..... 30341
76.581 Removed (effective date pending)..... 30341
76.591 Amended (effective date pending)..... 30341
76.600 Amended (effective date pending)..... 30341
76.681 Heading revised; cross reference added (effective date pending)..... 30341
76.684 Removed (effective date pending)..... 30341
76.690 Removed (effective date pending)..... 30341
76.707 (h) table amended (effective date pending)..... 30341
76.720 Revised (OMB number pending)..... 30341
76.740 Heading and authority citation revised; existing text designated as (a); (b) added (effective date pending)..... 30342
76.770 Revised (effective date pending)..... 30342
76.771 Removed (effective date pending)..... 30342
76.772 Removed (effective date pending)..... 30342
76.780—76.783 Center heading removed (effective date pending)..... 30342
76.780 Removed (effective date pending)..... 30342
76.781 Removed (effective date pending)..... 30342
76.782 Removed (effective date pending)..... 30342
76.783 (b) amended (effective date pending)..... 30342
76.901 Revised (effective date pending)..... 30342
77.1 (c) amended (effective date pending)..... 30342

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

200.6 (c) amended (effective date pending)..... 39067
200.20 (a)(10)(i)(B) revised; (a)(10)(i)(D) amended; (a)(10)(i)(F) added (effective date pending)..... 39067
200.31 (b)(1) and (2) revised; (c)(6) and (d) added; OMB number (effective date pending)..... 39067
200.34 (a)(4) added (effective date pending)..... 39067
200.35 (a)(3) redesignated as (a)(4); new (a)(3) added (effective date pending)..... 39067
237 (a)(4) and (b) amended; (c) added (effective date pending)..... 30342
237.7 (a) revised (effective date pending)..... 30342
263 Authority citation revised..... 30342
263.2 (c) added (effective date pending)..... 30342
263.9 Added (effective date pending)..... 30342

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

300.230 (b) introductory text amended; (b)(1) designation; (b)(2) and comment removed; (b)(1)(i) and (ii) redesignated as new (b)(1) and (2); new (b)(2) amended..... 37654
300.670—300.672 Undesignated center heading added (effective date pending)..... 30342
300.670 Added (effective date pending)..... 30343
300.671 Added (effective date pending)..... 30343

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

Page

300.672 Added (effective date pending)....30343
303.124 (b) introductory text amended; (b)(1) designation; (b)(2) and note removed; (b)(1)(i) and (ii) redesignated as new (b)(1) and (2); new (b)(2) amended....37654
356 Authority citation revised....30343
356.2 (d) added (effective date pending)....30343
356.3 (b) and (c)(2) amended; (d) added (effective date pending)....30343

Chapter IV—Office of Vocational and Adult Education, Department of Education (Parts 400—499)

400 Revised (effective date pending)....36724
401 Revised (effective date pending)....36730
402 Added (effective date pending)....36733
403 Added (effective date pending)....36735
405 Added (effective date pending)....36761
406 Added (effective date pending)....36763
407 Revised (effective date pending)....36765
408 Revised (effective date pending)....36767
409 Redesignated as 429 (effective date pending)....36724, 36771
Added....36771
410 Revised (effective date pending)....36773
411 Revised (effective date pending)....36776
412 Revised (effective date pending)....36778
413 Added (effective date pending)....36780
414 Revised (effective date pending)....36782
415 Revised (effective date pending)....36784
416 Revised (effective date pending)....36786
417 Revised (effective date pending)....36788

Page

418 Added (effective date pending)....36791
419 Added (effective date pending)....36794
421 Added (effective date pending)....36796
422 Added (effective date pending)....36797
423 Added (effective date pending)....36799
424 Added (effective date pending)....36801
425 Added (effective date pending)....36803
426 Added (effective date pending)....36805
427 Added (effective date pending)....36810
428 Added (effective date pending)....36812
429 Redesignated from 409 (effective date pending)....36724, 36771

Chapter V—Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)

562 Authority citation revised....30343
562.2 (b)(1)(iii) and (2) amended; (b)(3) added (effective date pending)....30343
562.3 (c) added (effective date pending)....30343

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

630 Authority citation revised....30343
630.11 Introductory text amended (effective date pending)....30343
630.22 Added (effective date pending)....30343
630.23 Added (effective date pending)....30343
653.2 (c) added (effective date pending)....30343
563.3 (b) amended (effective date pending)....30343
654.2 (c) added (effective date pending)....30344

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

TITLE 34 Chapter VI—Con. Page

654.4 (a) amended (effective date pending)..... 30344
668.56 (a) introductory text and (c) revised 39089
668.57 (c)(1) introductory text and (d)(1) introductory text revised 39089
668.58 (a)(1)(i) revised 39089
668.59 (a)(3)(ii) and (c)(2)(ii) revised 39089
668.61 (b) revised 39089
674.1 (b)(1) revised (effective date pending)..... 32344
674.2 (b) amended (effective date pending)..... 32344
674.8 (a) introductory text and (3) revised (effective date pending)..... 32344
674.18 (b)(4) amended (effective date pending)..... 32345
674.19 (e)(2)(i) revised (effective date pending)..... 32345
674.31 (b)(2)(i)(B), (3) and (5)(iii)(A) revised (effective date pending)..... 32345
674.32 (a)(2)(ii) and authority citation revised (effective date pending)..... 32345
674.33 (a)(1) and (3)(iii) revised (effective date pending)..... 32345
674.34 (b)(1), (c)(3), (4), (5), (d)(3) introductory text, (4) introductory text, (iii) and (e)(2) revised (effective date pending)..... 32345
674.35 (b)(1), (c) introductory text, (3), (4) and (g) revised (effective date pending)..... 32345
674.36 (b)(1), (c)(3) and (d) revised (effective date pending)..... 32345
674.38 (a)(1) revised (effective date pending)..... 32346
674.42 (a)(2)(x) added; (b)(1)(i) revised (effective date pending)..... 32346
674.43 (a) introductory text and (b)(3) introductory text revised (effective date pending)..... 32346
674.45 (c)(1) introductory text, (i) and (ii)(B) revised; (c)(1)(iii) added (effective date pending)..... 32346
674.47 (a)(2) revised (effective date pending)..... 32346
674.49 (c)(1), (2), (3), (e)(4)(i), (f) introductory text, (2) introductory text, (ii)(A), (f)(3), (h)(1)(i) and (ii) revised (effective date pending)..... 32346
674.50 (a)(6) amended (effective date pending)..... 32347
674.52 (d) revised (effective date pending)..... 32347
674.57 (a)(2) amended (effective date pending)..... 32347
674 Appendix A revised (effective date pending)..... 32347
Appendix B revised (effective date pending)..... 32349
Appendix C revised (effective date pending)..... 32351
Appendix D revised (effective date pending)..... 32354
675 Authority citation revised..... 32356
675.2 (b) amended..... 32356
675.16 (b)(1) and (3) amended (effective date pending)..... 32356
675.18 (a)(4) amended (effective date pending)..... 32356
675.22 (b)(6) amended (effective date pending)..... 32356
675.23 (b)(2)(ii) amended (effective date pending)..... 32356
675.26 (a)(1) introductory text, (ii) nd (2) revised (effective date pending)..... 32356
675.28 (a), (b)(2) and (c)(2)(ii) revised (effective date pending)..... 32356
675.34 (a)(2) revised (effective date pending)..... 32357
676.2 (b) amended (effective date pending)..... 32357
676.3 (b) amended (effective date pending)..... 32357
676.16 (f) amended (effective date pending)..... 32357
676.18 (a)(3) amended (effective date pending)..... 32357

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

762.2 (d) added (effective date pending)..... 30344
762.4 Existing text designated as (a); (b) added (effective date pending)..... 30344

Title 34—*Proposed Rules:*

76 38740
80 38740
99 35964
280 ..... 36324, 38740
316 34620
318 34620
319 34620
366 ..... 30866, 36617
555 34488
600—699 (Ch. VI) 38639
668 30826

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

TITLE 35—PANAMA CANAL

Title 35—*Proposed Rules:*

133 32187
133.1 Revised..... 37066

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

7.96 (l) redesignated as (m); new (l) added..... 29797

Chapter III—Corps of Engineers, Department of the Army (Parts 300—399)

327.30 Appendix C amended..... 29220

Title 36—*Proposed Rules:*

251 36618

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1.12 (a) and (d) revised..... 29641
1.16 (a) through (d), (f) through (j) and note revised..... 38194
1.17 (i)(1) revised..... 29642, 32439
(b) through (g), (j) and (m) through (o) revised..... 38194
1.18 (a), (b) and (c) revised..... 38195
1.19 (b)(4), (f) and (h) revised..... 38195
1.20 (a), (c), (e), (f), (g) and (i) revised..... 38195
1.21 (a)(1), (5), (6), (b)(2), (3), (e) and (i) revised; (p) added..... 38195
1.26 (a) and (c) revised..... 38195
1.32 Removed..... 29642
1.46 Revised..... 29642
1.104 (e) revised..... 29642
1.331—1.335 Undesignated center heading revised..... 29642
1.331 Removed..... 29642
1.332 Removed..... 29642
1.333 Removed..... 29642
1.334 Removed..... 29642
1.455 (a) revised..... 38195
1.482 (a) introductory text, (1) and (2)(ii) revised..... 38196
1.492 (a)(1), (2), (3), (5) and (b) through (d) revised..... 38196
2.6 (a)(1) and (b)(7) revised; (a)(19) added..... 38196
2.87 Revised..... 38196
2.185—2.187 Undesignated center heading removed..... 29642
2.185 Removed..... 29642
2.186 Removed..... 29642
2.187 Removed..... 29642
3 Added..... 29642

Title 37—*Proposed Rules:*

1 ..... 29248, 31344, 36034, 38640
2 38640
3 38640
10 ..... 29248, 36034

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

[EDITORIAL NOTE: The revision date for the 1992 edition of title 38 will be delayed until September 1, 1992. The 1992 revision will include amendments promulgated during the period of July 1, 1991 through September 1, 1992. For the convenience of the user, this LSA contains all amendments promulgated since the July 1, 1991 revision.]

Chapter I—Department of Veterans Affairs (Parts 0—99)

0 Nomenclature change..... 31006
1 Nomenclature change..... 31006, 31007
Authority citation revised..... 33877
Regulation at 57 FR 31007 corrected..... 38609
1.519 (e) amended..... 59218
1.554a Added..... 2229

NOTE: Boldface page numbers in title 38 indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

TITLE 38 Chapter I—Con. Page

1.964 (e) revised 33875
2 Nomenclature change 31007
Regulation at 57 FR 31007 corrected 38609
3 Nomenclature change ..... 31007—31012
Technical correction 36439
Regulation at 57 FR 31010 corrected 38610
3.1—3.1009 (Subpart A) Authority citation revised 65846, 65849, 65851, 65853
Authority citation revised 8268, 10425
3.2 (i) added 57986
3.3 (a)(3) amended 57986
3.5 (b)(3) correctly added; CFR correction 34517
3.7 (x) authority citation revised; (x)(20) and (21) added 65848
3.17 Amended 57986
3.30 Heading, introductory text, (a) heading, (b) heading, (c) heading and (d) heading revised; (e) redesignated as (f); new (e) added 10425
3.54 (a)(3)(viii) added; (a)(3) authority citation revised 57986
3.55 (b) through (e) and cross reference revised 10426
3.104 (a) amended 65846
Technical correction 2320
3.105 (a) amended 65846
Technical correction 2320
3.215 Revised 10426
3.216 Added 8268
Amended 27935
3.272 (k) introductory text amended 65847
3.309 (d)(3) and (4)(i) revised 10426
3.311a (d) removed; heading, (c) and authority citation revised 51653
(c)(1) amended; (d) added; authority citation revised 52474
3.316 Added 33877
3.342 (c)(1) and (2) amended; (c)(3) added 65851
3.343 (d) removed 10426
3.400 (u)(3), (4), (v)(3), (4) and (w) revised 10426
3.454 (b)(1), (2), (c) and (d) amended 65850
(b)(3) added 65851
(b)(3) corrected 7847
3.500 (q) amended 65847
(w) added 8268
3.501 (i)(1) and (2) revised; (i)(3) and (4) redesignated as (i)(6) and (7); new (i)(3), (4) and (5) added 65849
(n) added 65853
3.551 (b) heading revised; (b) redesignated as (b)(1); (d), (f) and (g) redesignated as (f), (g) and (h); (b)(2), (3) and new (d) added; (e) and (h)(1) introductory text revised 65849
(c)(2), (4), (6) and (7) removed; (c)(3) and (5) redesignated as (c)(2) and (3); (a), (b)(1), (c) introductory text, (1), new (c)(2), (3), (h)(2) and (3) amended 65850
(h) correctly redesignated as (i) 8578
3.850—3.857 Undesignated center heading revised 65853
3.853 Added 65853
3.951 Existing text designated as (b); (a) and authority citation added 10426
3.1600—3.1612 (Subpart B) Authority citation revised 29025
3.1610 Revised 29025
3.1612 (b)(3), (c), (e)(1) and (2)(i) revised; (e)(2)(iii) and (3) redesignated as (e)(3) and (4) 65851
4 Technical correction 11352
Nomenclature change 31012
Regulation at 57 FR 31012 corrected 38610
4.17 Introductory text amended; authority citation added 57985
4.73 Table amended 51653
4.84a Table revised 24364
4.88a Table amended 10136
4.104 Table amended 51653
4.124a Table amended; authority citation added 51653
Table revised 24364
6 Nomenclature change 31012
Regulation at 57 FR 31013 corrected 38610
8 Authority citation revised 57492
Nomenclature change 31013, 31014
Regulation at 57 FR 31013 corrected 38610

NOTE: Boldface page numbers in title 38 indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

Page

8.5 Amended; authority citation added....57492
8a Nomenclature change....38610
9 Nomenclature change....31014
9.2 (a) and (b) amended....11910
9.3 (e) revised....11910
9.4 Revised....11910
9.24 (a)(1) and (2) amended....11910
10 Nomenclature change....31014
11 Nomenclature change....31014
12 Nomenclature change....31014
13 Authority citation revised....65853
Nomenclature change....31014
Regulation at 57 FR 31014 corrected....38610
13.109 Heading, (d)(5) and authority citation revised....65853
14 Authority citation revised....4104, 33878
Nomenclature change....31015
14.628 Authority citation and (a)(2) introductory text revised....33878
14.634 Removed; new 14.634 redesignated from 14.636; amended; authority citation added....4104
14.635 Removed; new 14.635 redesignated from 14.637; amended....4104
14.636 Redesignated as 14.634....4104
14.637 Redesignated as 14.635....4104
16 Nomenclature change....31015
17 Nomenclature change....31015, 31018
Regulation at 57 FR 31017 corrected....38610
17.100 Introductory text, (e), (h), (i) and (m) removed; (a) through (d), (f), (g), (j), (k) and (l) redesignated as (f) through (n); new (a) through (e) added; new (h), (k)(1) and (2) amended....52475
17.101 Redesignated as 17.102; new 17.101 added....52475
17.102 Redesignated as 17.103; new 17.102 redesignated from 17.101....52475
17.103 Redesignated from 17.102....52475
17.123 (b)(1)(i)(A) revised....4367
18 Nomenclature change....31018

Page

Regulation at 57 FR 31018 corrected....38610
18a Nomenclature change....31018
18b Nomenclature change....31018
19 Revised....4104
20 Added....4109
20.102 (d) corrected....20055
(d) amended; interim....38443
20.609 (h)(3)(i), (4) and (i) amended; interim....38443
20.610 (d) amended; interim....38443
21.1—21.430 (Subpart A) Nomenclature change....31019
Regulation at 57 FR 31019....38610
21.1020—21.1045 (Subpart B) Nomenclature change....31021, 31022
Regulation at 57 FR 31021 corrected....38611
21.3020—21.3333 (Subpart C) Nomenclature change....31022
Regulation at 57 FR 31022 corrected....38611
21.3022 (g) and (h) revised; (i) added....29798
21.3045 (g) authority citation, (7) and (8) revised; (g)(9) added....29799
21.3046 (d)(4)(ii) revised....29799
21.3145 Undesignated center heading and section added....29799
21.3333 (a), (b) authority citation and (1) revised....29799
21.4001—21.4280 (Subpart D) Authority citation revised....29027, 29800
Nomenclature change....31022, 31025
Regulations at 57 FR 31022 and 31025 corrected....38611
21.4020 (a)(6), (7) and authority citation revised; (a)(8) added....29800
21.4022 (a)(7) through (9) and authority citation revised....29800
21.4135 (g) revised....29800
(s) revised; eff. 8-1-93....24367
21.4136 (e) introductory text revised; (e) authority citation added....29800
21.4137 (a) revised....29800
21.4138 (e) revised; eff. 8-1-93....24367
21.4154 (b)(3) corrected....28087
(b)(3) revised....28087
21.4200 (g)(1), (2) and authority citation revised....29800

NOTE: Boldface page numbers in title 38 indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

TITLE 38 Chapter I—Con. Page

21.4201 (e)(3)(ii)(B) and (C) revised; (e)(3)(ii)(D), (E) and (e) authority citation added....29800
21.4203 (h) introductory text and (2) revised....29801
21.4204 (a) revised; OMB number; eff. 8-1-93....24367
21.4205 Introductory text, (a), (b) introductory text and (c)(1)(i) through (iv) revised; (c)(1) authority citation added....29801
21.4234 (d)(4) revised....29027
21.4251 (a)(6)(iii) revised....29801
21.4263 (c) removed; (d) through (l) redesignated as (c) through (k); heading, (a), (b), new (c) introductory text, (d)(3), (d) authority citation, (e), (f), (g)(3)(vi)(A) through (F), (g) authority citation, (h), (i) introductory text, (3), (4) and (j) revised; new (i)(5) removed....29801
21.4270 (a) footnote 1 and authority citation, (b) heading, (1)(ii), (2) through (5) and authority citation revised; (b)(6) and (7) added....29804
(b)(6) corrected....35628
21.4277 Heading revised; (c) added....29804
21.4278 (a) revised....29804
21.4300—21.4307 (Subpart E) Nomenclature change....31025
21.4500—21.4507 (Subpart F) Nomenclature change....31025, 31026
21.4600—21.4646 (Subpart F-1) Nomenclature change....31026
21.4700—21.4705 (Subpart F-2) Added; interim....14489
21.5001—21.5300 (Subpart G) Nomenclature change....31026, 31029
21.5021 (u)(2) revised; (w) added....38614
21.5022 (a) amended; (a)(1) through (6) added; authority citation revised....38614
21.5040 (g) introductory text revised; (h) added....38614
21.5041 (a) revised....38614
21.5065 (c) added....38614
21.5130 (e) removed; eff. 8-1-93....38612
21.5131 Revised; eff. 8-1-93....38612
21.5133 Added; eff. 8-1-93....38612
21.5138 (b)(13) revised....38614
21.5145 Heading, (a), (d), and (f) revised....38615
21.5200 (e) revised; eff. 8-1-93....38613
21.5701—21.5901 (Subpart H) Nomenclature change....31027
21.5820 (b) introductory text, (b)(1)(ii)(A), (B), (C), (2)(ii)(A), (B) and (C) amended....44008
21.5822 (b)(1)(i), (ii), (2)(i) and (ii) amended....44008
21.6001—21.6420 (Subpart I) Nomenclature change....31027, 31028
21.6005 (j) correctly designated....28086
21.6501—21.5423 (Subpart J) Nomenclature change....31028
21.7000—21.7310 (Subpart K) Authority citation revised....29027
Nomenclature change....31028—31030
21.7020 (b)(25)(i)(E), (F) and (26)(ii) revised; (b)(25)(i)(G) added....15023
21.7042 (a)(3), (b)(2) and (e)(2)(iii) revised....15023
(a)(4), (a) authority citation, (c)(4) and (c) authority citation revised....29026
21.7044 (a)(5) and (a) authority citation revised....29026
21.7050 (a) and (b) revised....15024
21.7076 (b)(1) corrected....31332
(a) and (b)(1) introductory text revised; (b)(9) added....15024
21.7114 Revised....29027
21.7120 (c) revised....15024
21.7135 (e)(5) added; (l) and (q) revised....15024
21.7136 (a), (b)(1), (2) and (3) introductory text revised; interim....11911
21.7137 (a) and (c)(2) revised; interim....11911
21.7138 Corrected....31332
21.7139 (a) introductory text revised....15025
21.7140 (d) correctly designated as (f)....31332
(c)(1)(iii) revised....15025
21.7142 (a)(5) and (6) revised; (a)(7) added; (a) authority citation revised....15025

NOTE: Boldface page numbers in title 38 indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

Page

21.7145 Heading, (a), (d) and (f) revised 15025
21.7153 (c) revised; (d) added 15025
21.7154 (b)(1)(ii) revised; (b)(1)(iii) added 15026
(a)(2)(ii), (iii) and authority citation revised; eff. 7-9-92 24368
21.7156 (a)(2) revised 15026
21.7172 (a)(1) and (2) revised; (a) authority citation added 15026
21.7220 (c) added 15026
21.7222 (b) revised 15026
21.7280 (b)(3)(ii) revised 15026
21.7500—21.7810 (Subpart L) Nomenclature change 31030, 31031
36 Nomenclature change 31031, 31032
Authority citation amended 37713
36.4212 Nomenclature change; (a)(1), (2) and (3) amended 29900, 40792, 48736, 67196
Nomenclature change; (a)(1), (2) and (3) amended 7656, 31324, 37713
36.4225 Added 40559
(d) and (e) added 828
36.4226 Added 40560
36.4311 Nomenclature change; (a), (b) and (c) amended 29900, 40792, 48736, 67196
Nomenclature change; (a), (b), and (c) amended 7656, 31324, 37713
36.4348 Added 40561
(d) and (e) added 829
36.4349 Added 40562
36.4503 (a) amended 29900, 40793, 48736, 67197
(a) amended 7656, 31324, 37713
39 Nomenclature change 31032
41 Nomenclature change 31032
43 Nomenclature change 31033
44 Nomenclature change 31033
45 Nomenclature change 31033
46 Added 55462

Title 38—*Proposed Rules:*

1 ..... 1440, 3035, 3975, 15046
3 ..... 30893, 40661
..... 1442, 1699, 2236, 10449, 10853, 24446, 29052, 30707, 34536, 38095
4 ..... 37053, 61216, 65874
..... 10450
..... 40661
13 8852
14 33471
17 33473
19 4131
20 4131
21 ..... 46140, 49735, 51663, 51861, 60078
..... 865, 9081, 15047, 24447, 26632, 33473, 33474, 38458
36 13068

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

20 IMM amended; incorporation by reference 30654
111 DMM amended; incorporation by reference 30780, 32899
111.3 (e) amended 37884
232 Authority citation revised 36903
232.1 (k)(1), (2) and (3) redesignated as (k)(3), (4) and (5); new (k)(1) and (2) added 36903
(b)(2) redesignated as (b)(3); new (b)(2) added 38443
233.7 (j)(2) and (4) revised 32726
601.105 Table amended 31129

Title 39—*Proposed Rules:*

111 ..... 32188, 32475
3001 ..... 31346, 39160

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

51 Authority citation revised 32334
51.165 (a)(1)(xii)(D) revised; (a)(1)(v)(C)(*8*), (*9*), (xii)(E) and (xx) through (xxv added 32334
51.166 (b)(21)(iv) revised; (b)(2)(iii)(*h*) through (*k*), (21)(v) and (30) through (37) added 32335
52 Authority citation revised 32336
52.21 (b)(21)(iv) revised; (b)(2)(iii)(*h*) through (*k*), (21)(v) and (31) through (38) added 32336
52.24 (f)(13)(iv) revised; (f)(5)(iii)(*h*), (*i*), (13)(v) and (19) through (24) added 32337

NOTE: Boldface page numbers in title 38 indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

TITLE 40 Chapter I—Con. Page

52.220 (c)(183)(i)(B)(*2*), (184)(i)(B)(*2*), (C)(*1*), (185)(i)(A)(*3*) and (C)(*2*) amended 35759
52.320 Regulation at 57 FR 28617 withdrawn 36004
52.470 (c)(27) added 34251
52.472 (d) added 34251
52.720 (c)(90) added 37104
52.741 (z)(5) added 38616
52.1270 (c)(22) added 34252
52.1520 (c)(45) added 36605
52.1525 Table revised 36605
52.1526 Removed 36607
52.1527 (b) revised 36607
52.1530 Removed 36607
52.1970 (c)(89) added 37467
(c)(94) added 37468
(c)(93) added 37469
(c)(95) added 37471
(c)(65) revised 37474
52.1977 Revised 37471
52.2420 (c)(97) removed 35760
60 Authority delegation notices 29649
Authority citation revised 32338
60.2 Amended 32338
60.14 (h) through (l) added 32339
60.17 (a)(31) amended; (a)(62) added 30656
60 Appendix A amended 30656
61 Authority delegation notices 29649
70 Added 32295
82 Authority citation revised 31260
82.1—82.20 Designated as subpart A 31261
82.1—82.13 Designated as subpart A and revised 33787
82.14 Removed 33787
82.20 Removed 33787
82.1—82.20 (Subpart A) Appendixes A through E redesignated from appendixes A through E to part 82 31261
82.30—82.42 (Subpart B) Added 31261
82 Appendixes A, B, C and E redesignated as appendixes A, B, C and E to subpart A and revised; appendix D redesignated as appendix D to subpart A 33787
86 Authority citation revised 30055

Page
86.091-28 (e) added 31897
86.094-2 Amended 31897
86.094-7 (h) revised; OMB number 31897
86.094-8 (b) through (h) revised; (k) added 31898
86.094-9 (k) added 31899
86.094-16 Added 31900
86.094-21 (a) through (b)(1) and (b)(5)(i)(C) through (b)(7) revised; (g) added 31900
86.094-22 Added 31902
86.094-24 Added 31903
86.094-35 (a) introductory text through (a)(1)(iii)(E), (a)(2)(iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b), (d)(2) through (h) revised; (a)(1)(iii)(k) added 31907
86.095-24 (a) through (b)(1)(iv), (b)(2) through (h) revised; (b)(1)(xi) added 31909
86.095-35 (a) introductory text through (a)(1)(iii)(E), (a)(2)(iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b) and (d)(2) through (h) revised; (a)(1)(iii)(L) and (a)(2)(iii)(K) added 31913
86.096-8 (b) through (h) revised; (k) added 31915
86.097-7 (k) added 31916
86.201-94—86.246-94 (Subpart C) Added 31916
86.608-90 (a) introductory text and (1) revised; (a)(3) added 31921
86.701-94 Revised 31922
86.708-94 (b) revised 31922
86.709-94 (b) revised 31922
86.709-99 (b) revised 31922
86.901-93—86.911-93 (Subpart J) Added 30055
86.1005-90 (a)(1)(ii) amended; (a)(1)(iii) and (a)(2)(vi)(c) revised 31922
86.1008-90 (a)(2) revised; (a)(5) added 31922
86.1009-84 (a) and (c)(1) revised 31923
86.1015 Correctly designated 30657
91.215 (a) revised 34618
122.44 (d)(1)(vi)(B) revised 33049

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

Page

123.46 (a) revised 33049
124.78 Correctly designated 30657
130.7 (d)(1) redesignated in part as (d)(2); (b) revised; (c)(1) introductory text, (ii), (2), (d) introductory text, (1), (2) and (e) amended 33049
130.8 (b)(5) added 33050
130.10 (b)(2) and (d)(3) revised 33050
141.2 Amended 31838
141.6 (h) added 31838
141.12 Table amended 31838
141.23 (k)(4) and (5) redesignated as (k)(5) and (6); (a)(4) introductory text, (a)(4)(i) introductory text, Table, (c) introductory text, (1), (i)(1), new (k)(5) and (6) revised; (a)(4)(iii) and new (k)(4) added 31838
141.24 (f) introductory text, (4), (5), (7), (10), (11), introductory text, (12), (14) introductory text, (15) introductory text, (16) introductory text, (17), (18), (h)(10), (12)(ii), (iii), (iv), (vi), (vii), (viii), (18) and (19)(i)(B) revised; (h)(12)(ix) through (xiv) added 31841
141.32 (e)(53) through (75) added 31843
141.40 (e) through (h), (n)(11) and (12) revised; eff. 1-17-94 31845
141.50 (a)(19) through (23) added; (b) table amended; effective in part 8-17-92 and 1-17-94 31846
141.51 (b) table amended; eff. 1-17-94 31846
141.60 (a)(3) and (b)(3) added 31846
141.61 (a)(19), (20), (21) and (c)(19) through (33) added; (b) and (c) introductory text revised; effective in part 8-17-92 and 1-17-94 31846
141.62 (b) introductory text and (c) revised; (b)(11) through (b)(15) added; eff. 1-17-94 31847
141.89 (a) table amended 31847
142.16 (e) introductory text and (2) revised; eff. 1-17-94 31847
142.62 (a) and (b) revised; eff. 1-17-94 31848
147.2650 Revised 33446
147.2651 Revised 33447
148.1 (d) revised 31963
148.17 Added 37263
Regulation at 57 FR 37263 effective date corrected 39275
156.10 Designated as subpart A; (i)(2)(viii) revised 38146
156.200—156.212 (Subpart K) Added 38146
164.2 (k) through (r) correctly redesignated as (l) through (s) 30657
170 Revised 38151
180.33 Revised 34518
180.103 (a) table and (b) table amended 36005
180.142 (k) added 37475
180.298 (c) table amended 31325
180.333 Removed 30132
180.381 (a) table and (b) table amended 34518
180.415 (a) table revised 31454
180.438 (a) table amended 32440
185 Authority citation revised 36006
185.1310 (b) added 32441
185.3625 Added 36006
260.10 Amended 37263, 38564
Regulation at 57 FR 37263 effective date corrected 39275
260.20 (a) amended 38565
261.2 (c)(2)(iv) revised 38564
261.3 (a)(2)(iii) and (c)(2)(ii)(C) revised; (f) added 37263
Regulation at 57 FR 37263 effective date corrected 39275
261.4 (b)(15) correctly revised 29220
(b)(6)(ii) introductory text and (9) revised 30658
(a)(10) revised 37305
261.32 Amended 37305
261 Appendix VII amended 37305
Appendix IX amended 37885, 37888
262.34 (a)(1)(iii) introductory text amended; (a)(1)(iii)(B) and (a)(1) concluding text revised; (a)(1)(iv) added; (a)(2) removed 37264
264.1 (g)(2) revised 38564
264.110 (b)(1), (2) and (3) amended; (b)(4) added 37264
264.111 (c) revised 37265

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

TITLE 40 Chapter I—Con. Page

264.112 (a)(2) revised....37265
264.140 (b)(1), (2) and (3) amended; (b)(4) added....37265
264.142 (a) introductory text revised....37265
264.1100—264.1102 (Subpart DD) Added....37265
265.1 (c)(6) revised....38564
265.110 (b)(1), (2) and (3) amended; (b)(4) added....37267
265.111 (c) revised....37267
265.112 (d)(4) amended....37267
265.140 (b) revised....37267
265.142 (a) introductory text revised....37267
265.221 (h) added....37267
265.301 (d)(1) revised....30658
265.1100—265.1102 (Subpart DD) Added....37268
266.100 (a) and (f) introductory text amended....38564
266.101 (c)(1) amended; (c)(2) revised....38564
266.103 (b)(2)(ii) introductory text, (iii), (3)(ii)(B), (v), (c)(1) introductory text, (ii)(A), (C), (iii), (vi), (5) and (7)(ii)(B) revised....38564
266.104 (f)(1) revised....38565
266.106 (b)(7) introductory text, (d)(1) and (5) revised; (d)(3) amended....38565
266.107 (a) revised....38566
266.108 (c) amended....38566
266.112 (b)(2)(i) revised....38566
266 Appendix IX amended....38566
268.2 (g) revised; (h) added....37270
Regulation at 57 FR 37270 effective date corrected....39275
268.5 (h)(2)(ii) amended; (h)(2)(iv) revised; (h)(2)(v) redesignated as (h)(2)(vi); new (h)(2)(v) added....37270
Regulation at 57 FR 37270 effective date corrected....39275
268.7 (a)(1)(iii), (iv), (2) introductory text, (3) (iv), (v), (4) introductory text, (b)(4) introductory and (5) introductory text revised; (a)(1)(v), (3)(vi) and (d) added....37270
Regulation at 57 FR 37270 effective date corrected....39275
268.9 (d) revised....37271
Regulation at 57 FR 37271 effective date corrected....39275
268.14 Added....37271
268.36 Added....37271
Regulation at 57 FR 37271 effective date corrected....39275
268.40 (b) revised; (d) added....37272
Regulation at 57 FR 37272 effective date corrected....39275
268.41 (a) introductory text revised; (a) Table CCWE amended; (c) added....37272
Regulation at 57 FR 37272 effective date corrected....39275
268.42 (a) Table 2 amended; (b) and (d) revised....37273
Regulation at 57 FR 37273 effective date corrected....39275
268.43 (a) Table CCW amended....37274
Regulation at 57 FR 37274 effective date corrected....39275
268.45 Added....37277
Regulation at 57 FR 37277 effective date corrected....39275
268.46 Added....37280
Regulation at 57 FR 37280 effective date corrected....39275
268.50 (a)(1) and (2) introductory text revised....37281
Regulation at 57 FR 37281 effective date corrected....39275
268 Appendix II revised....37281
270.13 (n) added....37281
270.14 (b)(2) revised....37281
Regulation at 57 FR 37281 effective date corrected....39275
270.42 (e)(3)(ii)(B) revised; Appendix I amended....37281
Regulation at 57 FR 37281 effective date corrected....39275
270.72 (b)(6) revised....37282
Regulation at 57 FR 37282 effective date corrected....39275
271 State hazardous waste management program authorizations...29446, 30905, 32726, 33638
271.1 (j) Tables 1 and 2 amended....37282
(j) Table 1 amended....37306
Regulation at 57 FR 37282 effective date corrected....39275

NOTE: Boldface page numbers in title 38 indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH AUGUST 31, 1992

Page

281 State underground storage tank program authorizations....34519
302.4 Table amended....37306
372 Technical correction....37888
712.30 Regulation at 57 FR 29034 effective date corrected....30771
716.120 Regulation at 57 FR 29034 effective date corrected....30771
721.805 Added....31330
721.1120 Added....31330
721.2568 Removed....34253
721.3120 Added....31968
721.3180 Added....32446
721.3340 Added....31968
721.4000 Added....31968
721.5250 Added....31968
721.5525 Added....31969
721.6060 Added....31969
721.6820 Added....31969
721.7240 Added....31969
721.9570 Added....31970

Title 40—*Proposed Rules:*

1-799 (Ch. I) 30708, 31473
25 31164
40 31058
50 35542
51 ....33287, 33314
52 ....31477, 31678, 32191, 33314, 35769, 35771, 36040, 37743, 38641, 38650
72 29940
73 29940
80 ....31165, 37744, 38651
85 33141
86 33141
122 ....32475, 35774
123 33051
170 ....38167, 38175
180 ....30180, 30454, 31164, 31346, 31479, 32753, 33475, 33477, 34537, 36042, 36044, 36046
185 32753
186 32753
260 31164
261 ....31164, 36866, 37921, 37927
262 31164
264 31164
268 ....31164, 35940
271 35940
300 ....30452, 34742, 38289
308 34742
721 ....34281—34283, 37499

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 50—Public Contracts, Department of Labor (Parts 50-1—50-999)

50-201.101 (a)(2)(xii) added....31571

Chapter 101—Federal Property Management Regulations (101-1—101-99)

101-14 Removed....37714
101-42 Added....39121
101-43.000 Revised....39135
101-43.001-3 Removed....39135
101-43.001-22 Removed....39135
101-43.305 Revised....39135
101-43.307-2 Revised....39136
101-43.307-8 Removed....39136
101-43.307-11 Removed....39136
101-43.311-4 Added....39136
101-44.000 Revised....39136
101-44.108-1 Revised....39136
101-44.108-4 Removed....39136
101-44.108-8 Removed....39136
101-44.108-10 Removed....39136
101-44.700 (b) revised....39136
101-44.702-3 Revised....39136
101-45.000 Revised....39137
101-45.001-3 Removed....39137
101-45.303-3 (c) revised; (d) added....32446
101-45.304-6 Revised....29805
101-45.309-2 Revised....39137
101-45.309-4 Removed....39137
101-45.309-6 Removed....39137
101-45.309-7 Removed....39137
101-45.309-11 Removed....39137
101-45.309-13 Added....34253
101-45.900 Revised....39137
101-45.903 Removed....39137
101-45.4809 Removed....39137
101-45.4901-97 Revised....32447
101-45.4901-97A Removed....32447
101-46.000 Revised....39137
101-46.202 (b)(6) revised; (b)(7) added....39137
101-48.000 Revised....39137
101-49.108 Revised....39137

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

Page

5 Nomenclature change....2480
Appendix C amended....2477
Appendixes A and B amended....2480
59 CFR correction....13046
60 Authority citation revised....28793
Technical correction....30534
60.1 (a) amended....28793
60.5 (a) revised....28793
60.7 (a)(2) and (c)(2) revised; OMB numbers....28794
60.8 (a)(1), (2), (4), (5), (9), (11), (b)(2) and (3) revised; (a)(12) added; OMB number....28794
60.10 (a)(1) and (b)(2) amended....28794
60.11 (a)(1)(ii) and (b)(1) amended; (b) introductory text, (2), (e), (f)(1), (2), (4) and (5) amended; OMB numbers....28794
60.12 (c) revised; OMB numbers....28795
60.13 (b) and (c) revised....28795
60.14 OMB numbers....28795
60.15 (a) and (b) amended....28795
60.18 Introductory text and (a) revised; OMB number....28795
60.19 Amended....28795
60.20 (a) and (c) amended....28795
60.21 (b) amended; OMB number....28795
60.30—60.43 (Subpart D) Heading amended....28795
60.30 Heading, (a), (b)(3), (4) and (c) revised; (b)(5) and (d) added....28795
60.31 Heading, (a) and (b)(1) revised; (c) amended; OMB numbers....28796
60.32 (a)(2) and (c)(3) revised; OMB number....28796
60.33 OMB numbers....28796
60.34 (a), (b)(1), (3), (c) and (d) revised; OMB numbers....28796
60.35 Introductory text, (a)(1), (b), (c) introductory text, (3), (d), (e) and (f) revised; (a)(2) amended; OMB numbers....28796
60.36 Revised....28797
60.37 Revised....28797
60.38 Introductory text revised; (a) amended; OMB numbers....28797
60.39 (b)(3) revised; OMB numbers....28797
60.40 (a) introductory text, (2), (b), (c) introductory text, (1)(i), (c)(1)(iii) introductory text, (2) and (3) revised; OMB numbers....28797
60.41 (a) and (b) amended; (c)(2), (d) and (e)(2) revised....28798
60.42 Heading, (a)(1) introductory text, (2), (3), (4) and (b) through (e) revised; OMB numbers....28798
60.43 Heading, (a) and (c) revised....28799
60.50 (a)(1) concluding text revised....28799
60.51 (f)(1) amended; OMB numbers....28799
60.53 Heading revised; OMB number....28799
60.54 OMB number....28799
60.56 OMB number....28799
60.57 Revised....28799
60.60 (a) revised....28799
60.61 (a)(2) revised; OMB number....28799
62.71—62.76 (Subpart D) Revised....56597
100—110 (Subchapter J) Heading correctly revised....32447
100 Added....28099
Corrected....32447
110 (Subchapter J) Added....51808
110.103 Corrected....59332
110.101—110.103 (Subpart A) Appendix corrected....59218, 59332
124.708 (c) added....8272

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

400.200 Amended....24975
400.203 Amended; interim....29155

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 42 Chapter IV—Con. Page

403.500—403.508 (Subpart E) Added; interim 38618
405.301—405.380 (Subpart C) Heading and authority citation revised 19092
405.380 Undesignated center heading and section added 19092
405.480 (a) introductory text republished; (a)(2) revised 33896
405.501—405.580 (Subpart E) Authority citation revised 59621
Authority citation revised 24975
Heading and authority citation revised 33896
405.501 (b) revised 24975
(a) revised; (d) redesignated as (e); new (d) added 33896
405.502 (f)(1) revised 59621
(f)(4) revised 24975
(a) introductory text republished; (a)(9) revised 36013
405.505 Revised 27305
405.509 (c) added 59621
405.517 Added 59621
405.521 Revised 59621
405.522 Revised 59622
405.523 Revised 59622
405.524 Revised 59622
405.530 Removed 59622
405.531 Removed 59622
405.532 Removed 59622
405.533 Removed 59622
405.550—405.580 Undesignated center heading removed; sections designated as subpart F and revised 59622
405.553 Removed 59622
405.555 Removed 59622
405.556 (d) added 36014
405.557 Removed 59622
405.801—405.874 (Subpart H) Authority citation revised 27305
405.874 Added 27305
405.2100—405.2184 (Subpart U) Authority citation revised 7134
405.2163 (b) revised 7134
405.2171 (d) revised 7134
405.2401—405.2472 (Subpart X) Heading and authority citation revised 24975
405.2401 (a) revised; (b) amended 24975
405.2410 Revised 24976
405.2418 Redesignated as 405.2460 24976
405.2425 Redesignated as 405.2462 24976
405.2426 Redesignated as 405.2464 24976
405.2427 Redesignated as 405.2466 24976
405.2428 Redesignated as 405.2468 24977
405.2429 Redesignated as 405.2470 24977
405.2430—405.2452 Undesignated center heading and sections added 24978
405.2430 Redesignated as 405.2472 24978
405.2460—405.2472 Undesignated center heading added 24980
405.2460 Redesignated from 405.2418 and revised 24976
405.2462 Redesignated from 405.2425 and revised 24976
405.2464 Redesignated from 405.2426 and revised 24976
405.2466 Redesignated from 405.2427 and revised 24976
405.2468 Redesignated from 405.2428; (a), (b) and (d) revised 24977
405.2470 Redesignated from 405.2429 and revised 24977
405.2472 Redesignated from 405.2430; Introductory text republished; (a) revised 24978
406.12 Corrected 50058
406.20 (c) corrected 50058
406.21 (a) revised; (f) added 36014
406.23 Redesignated as 406.33 36014
406.32 (b) revised 36014
406.33 Redesignated from 406.23; (a) introductory text revised; (a)(4) added 36014
407.2 Revised 24980
407.40 (b) corrected 50058
409.40 Introductory text republished; (e) revised 36014
409.97 (a)(3) amended 36014
410 Authority citation revised 7134, 24981
410.3 (a)(1) revised 24981
410.5 Introductory text revised; (d) added 7134
(b) revised 24981
410.10 (s) added 24981

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

Introductory text republished; (t) added 33896
410.12 (a) introductory text and (2) revised 33986
410.32 (b) introductory text republished; (b)(2) and (5) revised 7135
(b) introductory text republished; (b)(6) added 24981
410.36 Introductory text republished; (b) revised 36014
410.69 Added 33896
410.150 (b)(8) revised 24981
410.152 (f), (h) and (j) heading revised 24981
410.160 (b) revised 24981
410.165 (a) revised 24981
411 Authority citation revised 61381
411.1 (a) revised; interim 61381
411.15 Introductory text and (m)(1) republished; (m)(2) revised 33897
Introductory text republished; (b) revised; (n) added 36015
411.60 (b) amended 36015
411.62 Revised 36015
411.350—411.361 (Subpart J) Added; interim 61381
412.1 (a) revised 33897
412.2 (d) introductory text republished; (d)(5) revised 33897
412.71 (b) introductory text republished; (b)(8) revised 33897
412.80 (a)(1)(ii)(B) amended 3016
412.113 (a)(3) amended 3016
(c) revised 33897
(a)(2)(i) republished; (a)(2)(i)(B), (C) and (D) revised 36016
412.116 (b)(3)(ii)(B) and (C) amended 3016
412.278 (f)(1) corrected; (f)(3) correctly designated as (f)(4); (f)(3) added; CFR correction 13046
412.302 (a), (c)(1)(i)(D), (v), (d)(2) and (3) amended 3016
412.308 (c)(4)(ii) amended 3016
412.320 (a) redesignated in part as (a)(1) and (2); (a) introductory text, (1), (2) and (b)(1) amended 3016
412.324 (b)(2) and (3) amended 3016
412.328 (c)(1) and (f)(1)(iii) amended 3016
(f)(3)(iii) amended 3017
412.336 (c)(1) amended 3017
412.344 (d)(1) and (2) amended 3017
412.348 (b)(1)(ii) amended 3017
413 Authority citation revised 54545, 59219
413.1 (b) amended; (f) added 33898
413.40 (g)(1) corrected 59219
413.80 (a) revised; (h) added 33898
413.114 Regulation at 54 FR 37274 confirmed; (a), (c) and (d) nomenclature change; (b) revised; (d)(1)(i) amended 54545
413.118 (d)(3) redesignated as (d)(4); (d)(2) and new (d)(4) introductory text revised; new (d)(3) added 36017
413.122 (b)(4) added 36017
413.124 Added 36017
413.130 (a)(3), (10) and (f) amended 3017
(j) added 36017
413.134 (f)(2)(iii)(D) amended 3017
413.170 Heading revised; (c)(7) added 59624
414 Authority citation revised 50823
Heading revised 65998
414.224 Added 65998
414.230 (Subpart D) Added 50823
414.450—414.453 (Subpart H) added 33898
415 Added 59624
416 Authority citation revised 7135
416.42 (b) revised 33899
416.49 Revised 7135
416.61 (a)(8) added; (b) amended 33899
417 Authority citation revised 46509
Authority citation revised 7135, 8201, 24981
417.1—417.2 (Subpart A) Heading added 51985
417.1 Redesignated from 417.100; introductory text revised 51985
417.2 Added 51985

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 42 Chapter IV—Con. Page

417.100—417.180 (Subpart A) Heading removed....51985
417.100—417.109 Undesignated center heading removed....51985
Designated as subpart B....51985
417.100 Redesignated as 417.1; introductory text revised....51985
417.107 (i) revised....7135
417.110—417.119 Undesignated center heading removed; redesignated as 417.910 through 417.919....51985
417.120—417.126 Undesignated center heading removed; redesignated as 417.920 through 417.926....51985
417.130—417.137 Undesignated center heading removed; redesignated as 417.930 through 417.937....51985
417.140—417.144 Undesignated center heading removed; designated as subpart D....51985
417.150—417.159 Undesignated center heading removed....51985
Designated as subpart E....51986
417.160—417.166 Undesignated center heading removed....51985
Designated as subpart F....51986
417.170—417.180 Undesignated center heading and sections removed....51985
417.201—417.292 (Subpart B) Heading and sections removed....51985
417.228—417.239 Undesignated center heading removed....51985
417.240—417.247 Undesignated center heading removed....51985
417.249—417.292 Undesignated center heading removed....51985
417.400—417.694 (Subpart C) Heading removed....51985
417.400—417.418 Designated as subpart J....51986
417.401 Introductory text amended....51986
417.404—417.418 Undesignated center heading removed....51985
417.416 (d)(1) revised....24981
417.420—417.460 Undesignated center heading removed....51985
Designated as subpart K....51986
417.436 (a) introductory text republished; (a)(6) redesignated as (a)(7); (a)(5) and new (a)(7) revised; new (a)(6) and (d) added; interim....8201
417.470—417.494 Undesignated center heading removed....51985
Designated as subpart L....51986
417.472 (f) redesigned as (g); new (f) added; interim....8202
417.520—417.523 Undesignated center heading removed....51985
Designated as subpart M....51986
417.524—417.528 Undesignated center heading removed....51985
Designated as subpart N....51986
417.530—417.576 Undesignated center heading removed....51985
Designated as subpart O....51986
417.580—417.598 Undesignated center heading removed....51985
Designated as subpart P....51986
417.600—417.638 Undesignated center heading removed....51985
Designated as subpart Q....51986
417.640—417.694 Undesignated center heading removed....51985
Designated as subpart R....51986
417.800—417.810 (Subpart D) Heading removed....51985
Redesignated as subpart U....51986
417.800 (b) revised....7135
417.801 (b) introductory text republished; (b)(5) redesignated as (b)(6); (b)(4) and new (b)(6) revised; (b)(5) added; interim....8202
417.910—417.919 Redesignated from 417.110 through 417.119....51985
417.910—417.937 Designated as subpart V....51986
417.920—417.926 Redesignated from 417.120 through 417.126....51985
417.930—417.937 Redesignated from 417.130 through 417.137....51985
418 Authority citation revised....7135
418.1 (c) revised....36017
418.21 (a) revised....36017
418.22 (a)(1) revised....36017
418.92 Revised....7135
420 Authority citation revised....24982, 27306

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

420.200—420.206 (Subpart C) Heading revised 27306
420.200 Revised 27306
420.201 Amended 24982, 27306
Corrected 35760
420.204 Revised 27306
420.205 Revised 27306
420.206 (a) introductory text republished; (a)(1), (3), (b)(2), (3) and (c) revised 27306
421 Authority citation revised 27307
421.1 (a) revised 27307
421.200 Introductory text revised 27307
421.202 Introductory text and (c) revised 27307
421.210 Added 27307
424.1 (c) revised 24982
424.40 (c)(3) revised 24982
424.57 Added 27308
431 Response to comments 65853
431.20 Added; interim 8202
431.107 (a) revised; (b) introductory text republished; (b)(2) and (3) revised; (b)(4) added; interim 8202
431.635 Added 28103
433 Authority citation revised 56139
433.45 Revised 56139
Regulation at 56 FR 56139 withdrawn 64195
433.123 Revised; eff. 10-26-92 38782
434.28 Added; interim 8202
435.3 Amended; interim 29155
435.217 Revised; interim 29155
435.726 (b) revised; interim 29155
435.735 (b) revised; interim 29155
436.2 Amended; interim 29155
436.217 Revised; interim 29155
440.1 Revised; interim 29155
440.30 Introductory text republished; (a) and (c) revised 7135
440.181 Added; interim 29156
440.250 (k) revised; interim 29156
441.350—441.365 (Subpart H) Added; interim 29156
441.351 OMB number pending 29156
441.352 OMB number pending 29156
441.353 OMB number pending 29156
441.356 OMB number pending 29156
441.365 OMB number pending 29156
482 Authority citation revised 7136, 33899
482.27 Revised 7136
482.53 (b)(3) revised 7136
482.52 (a) introductory text, (a)(4) and (5) revised 33900
482.57 (b)(2) revised 7136
482.66 Regulation at 54 FR 37275 confirmed; introductory text, (a) introductory text, (6) introductory text and (7) introductory text republished; (a)(4), (6)(i), (7)(i) and (b) revised 54546
483 Authority citation revised 54546
Authority citation revised 7136
Authority citation revised 8202
483.10 Introductory text republished; (b)(4) revised; (b)(8), (9) and (10) redesignated as (b)(9), (10) and (11) and revised; new (b)(8) added; interim 8202
483.75 Heading and (j) revised 7136
483.80 Removed 54546
483.150 (a) corrected 59331
483.156 Correctly designated 59331
483.460 (n) revised 7136
484 Authority citation revised 7136
Authority citation revised 8203
484.10 Introductory text republished; (c)(2) revised; interim 8203
484.14 (g) and (i)(2)(i) corrected 51334
(j) added 7136
484.36 (a)(2)(i)(F) and (G)(*1*) corrected 51334
485 Authority citation revised 7137
485.58 (g) added 7137
485.304 Introductory text republished; (q) added 7137
488 Authority citation revised 7137, 24982, 34012
488.1 Amended 24982
488.52 Removed 7137

NOTE: Boldface page numbers indicate 1992 changes.

TITLE 42 Chapter IV—Con. Page
488.201—488.211 (Subpart D) Added....34012
489 Heading revised....8203
489.10 (b) redesignated as (c) and revised; new (b) added; interim....8204
489.20 Introductory text republished; (d) revised....33900
Introductory text republished; (k) added....36017
489.31 (a)(1) amended....36018
489.100—489.104 (Subpart I) Added; interim....8203
491 Authority citation revised....7137
491.1—491.11 (Subpart A) Heading revised....24982
491.1 Revised....24982
491.2 Amended....24982
491.4 Revised....24982
491.5 (a) revised....24982
491.6 Revised....24983
491.7 Revised....24983
491.8 Revised....24983
491.9 (c)(2) and (d)(1)(iii) revised; (d)(1) introductory text republished....7137
Revised....24983
491.10 (a) and (b) revised....24984
491.11 Revised....24984
493 Authority citation revised....7137
493.1—493.25 (Subpart A) Revised....7139
493.2 Amended....7136, 34013
Corrected....35761
493.35—493.39 (Subpart B) Added....7142
493.43—493.51 (Subpart C) Added....7143
493.55—493.63 (Subpart D Added....7144
493.501—493.521 (Subpart E) Added....34014
493.602—493.649 (Subpart F) Added....7213
493.602—493.634 Text removed....7139
493.633 (b) corrected....31664
493.639 (b) corrected....31664
493.701 (Subpart G) Removed....7139
493.801—493.865 (Subpart H) Revised....7146
493.901—493.959 (Subpart I) Revised....7151
493.1101—493.1111 (Subpart J) Revised....7162
493.1201—493.1285 (Subpart K) Revised....7163
493.1401—493.1495 (Subpart L) Redesignated as subpart M and revised....7172
493.1501 (Subpart M) Redesignated as 493.1701 (Subpart P)....7172
493.1601 (Subpart N) Redesignated as 493-1775 (Subpart Q)....7172
493.1701—493.1721 (Subpart P) Revised....7183
493.1701—493.1710 (Subpart O) Removed....7172
493.1775—493.1780 (Subpart Q) Revised....7184
493.1800—493.1850 (Subpart R) Added....7237
493.1804 (c)(1) corrected....35761
493.1809 Corrected....35761
493.1826 (a)(1)(ii) corrected....35761
493.1834 (b) corrected....35761
493.1844 (c)(1) corrected....35761
493.2001 (Subpart T) Added....7185
494 Authority citation revised....7185
494.51 Revised....7185
498 Authority citation revised....8204, 24984
498.2 Amended....24984
498.3 (b) introductory text republished; (b)(11) added; interim....8204
(b)(7) revised....24984
(d)(11) and (12) added....34021

Chapter V—Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

1000 Authority citation revised....3329
1000.10 Amended....3329
1000.20 Amended....3330
1001 Revised....3330
1001.301 (a) and (b)(1)(i) correctly revised....9669
1001.1601 (a)(1) correctly revised....9669

NOTE: Boldface page numbers indicate 1992 changes.

Page
1002 Revised....3343
1003 Authority citation revised....3345
1003.100 Revised....3345
1003.101 Amended....3345
1003.102 Revised....3345
(b)(2) correctly revised....9670
1003.103 Revised....3346
1003.105 Revised....3346
1003.106 Revised....3347
1003.107 Revised....3348
1003.109 Revised....3348
1003.110 Amended....3348
1003.111 Removed....3348
1003.112 Removed....3348
1003.113 Removed....3348
1003.114 Revised....3348
1003.115—1003.125 Removed....3348
1003.127 Revised....3348
1003.128 (a) and (d) revised....3349
1003.129 Revised....3349
1003.130 Removed....3349
1003.131 Removed....3349
1003.132 Revised....3349
1003.133 (a) amended....3349
1003.134 Added....3349
1003.135 Added....3349
1004 Authority citation revised....3349
1004.30 (b) and (c) introductory text revised....3349
1004.40 Revised....3349
1004.50 (b) and (c)(1) revised....3349
1004.60 (c) added....3349
1004.90 (d)(7) revised....3350
1004.100 (g) removed....3350
1004.110 Revised....3350
1004.120 Revised....3350
1004.130 Revised....3350
1005 Added....3351
1006 Added....3354
1007 Added....3355

Title 42—*Proposed Rules:*

36 ....51189, 56691
52c 37745
52e 37502
100 36878
400 ....55382, 56612
409 ....50542, 55382
410 55382
411 55382
....8588
412 55382
....23618, 30301
413 ....50834, 55382, 59240, 59979
....23618, 30301
....4516
418 56612
420 56612
421 55382
424 39278
431 36968
435 36968
436 ....55382, 66392
440 4516
....66392
441 4516
....39278
442 ....56141, 64228
447 4516
482 ....4516, 8961
483 55382
485 55382
488 ....4516, 39278
....55382
489 39278
....4177
799 ....

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

4.200—4.357 (Subpart D) Authority citation revised....61383
4.350—4.357 Undesignated center heading added....61383
4.350 Added....61384
(c)(6) corrected....65782
4.351 Added....61384
(b)(1), (2)(ii) and (4) corrected....65782
(b)(4) corrected....8319
4.352 Added....61384
(b)(2) corrected....65782
4.353 Added....61385
4.354 Added....61385
4.355 Added....61385
4.356 Added....61385
4.357 Added....61386
20 Appendix X availability....10293

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

2740 Authority citation revised....32732

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 43 Chapter II—Con. Page

2740.0—3 (c) added....32732
2740.0—5 (c) (f) and (g) added....32732
2740.0—6 (a) amended....32732
2740.0—7 (d) added....32732
2740.0—9 Added....32732
2741.5 (i) removed; (j) redesignated as (i)....32733
2743.1—2743.4 (Subpart 2743) Added....32733
3100 Authority citation revised....35973
3100.0-9 Added....35973
3103.4-1 (c) and (d) redesignated as (b)(3) and (e); (b)(1) revised; new (c) and (d) added....35973
3150 Authority citation revised....9012
3150.2 Added; interim; effective to 12-31-92....9012
3160 Technical correction....2039, 3136, 5211
Authority citation revised....3024
Notes 1 and 2 removed....3024
3160.0-9 Added....3024
3162.7-4 Interpretation....63661
3164.1 (b) table amended....3025
3165.4 (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added; interim; effective to 12-31-92....9013
3260 Authority citation revised....29651
3266.1 Revised....29651
4700 Authority citation revised....29654
4700.0-9 Added....29654
4770.3 (c) added....29654
5463.1 Regulation at 56 FR 33832 confirmed....37477
5463.2 Regulation at 56 FR 33832 confirmed....37477
5473.1 Revised....37477
5473.4 Revised....37477
5473.4—1 (a) revised....37477

Public Land Orders

547 Revoked in part by PLO 6942....38782
829 Revoked in part by PLO 6940....35468
1176 Revoked in part by PLO 6923....5987
1537 Revoked by PLO 6899....55827
1722 Revoked by PLO 6899....55827
1825 Revoked in part by PLO 6919....2841
2051 Revoked in part by PLO 6933....27000
4249 Revoked in part by PLO 6901....56321
4522 Amended by PLO 6926....19092
Revoked in part by PLO 6934....28637
4747 Amended by PLO 6902....56322
5150 Amended by PLO 6932....24985
Corrected by PLO 6937....32180
5187 Revoked in part by PLO 6900....55828
Revoked in part by PLO 6942....38782
5554 Revoked in part by PLO 6938....34520
6649 Extended by PLO 6935....28638
6831 *See* PLO 6883 corrected....50059
6849 Corrected by PLO 6907....57806
6883....50058
Corrected....60929
6884....49847
Corrected....56275
6885 Corrected....50059
6886....50661
6887....50824
6888....50661
Corrected....66602
6889....51177
6890....51334
Corrected....58122
6891....51986
6892....52210
6893....52210
6894....52211
Corrected....2842
6895....52212
6896....52477
6897....54896
6898....55827
6899....55826
6900....55828
6901....56321
6902....56322
6903....56936
6904....56936
6905....57805
6906....57806
6907....57806
6908....57806
6909....57807
6910....59219
6911....60927
6912....60928
6913....60928

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

6914 60929
6915 60929
Corrected 3674
6916 64713
Corrected 2951
6917 66602
6918 66602
6919 2841
Corrected 5211
Corrected by PLO 6927 21613
6920 2842
6921 4144
6922 4856
6923 5987
6924 6560
6925 10426
6926 ..... 6926, 19092
6927 21613
6928 22659
6929 24191
6930 26607
6931 26607
6932 24985
Corrected 28555, 31404, 35627
Corrected by PLO 6937 32180
6933 27000
6934 28637
6935 28638
6936 32180
6937 32180
6938 34520
6939 35467
6940 35468
6941 34685
6942 38782

Title 43—*Proposed Rules:*

4 ..... 55157, 55263, 58330
12 34755
37 1344
2090 49962
2200 49962
2300 59914
2740 61104
3100 8605
3150 9010
3160 ..... 9010, 32756
3180 4177
3260 59240
3610 3092
3800 ..... 54815, 66614
5400 37936
5460 37936
5470 37936

NOTE: Boldface page numbers indicate 1992 changes.

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

Page

59 Authority citation revised 19540
59.1 Amended 19540
59.4 (c) amended 19540
59.24 (b) introductory text and (3) amended 19540
61 Authority citation revised 19540
61.5 (d) redesignated in part as (d)(1) and (3); (d) (1) revised; new (d)(2) added 19541
61.15 Removed 19541
61.16 Amended 19541
61 Appendixes A(1) and (2) amended 19541
62 Authority citation revised 19541
62.6 (a)(1) and (2) revised 19541
64 Authority citation revised 11688
64.6 Table amended ... 55467-55469, 58314, 60066, 65005
Table amended ... 357, 359, 2683, 3556, 9504, 10832, 11688, 18831, 18833, 18834, 22438, 23159, 27001, 27003, 34686, 34688, 37715
65 Authority citation revised ... 19380, 29038
65.4 Table amended; interim 51336
Table amended 51338
Table amended ... 360, 9057, 19380, 27357, 27359, 32900, 37716, 37717
Table amended; interim ... 362, 9056, 19382, 32901
(c) added 29038
67 Flood elevation determinations 51339, 67001
Flood elevation determinations ... 526, 9059, 9212, 19542, 27361, 32735, 37719
Authority citation revised 19542
71 Heading and authority citation revised 22661
71.1 Amended 22661
71.2 (b) through (d) revised; (e) through (k) added 22661
71.3 Revised 22662
71.4 (a), (b), (c) introductory text and (d) introductory text revised; (e) through (h) added 22662
72 Revised 29038
75 Authority citation revised 19542

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 44 Chapter I—Con. Page

75.14 Amended....19542
80.310 Revised....19552
81 Authority citation revised....11267
81.1 (b)(1) revised....11267
83.25 (e) revised....26776
206.250—206.253 (Subpart I) Revised....64560
353 User fees....10834
361 Revised....34869

Title 44—*Proposed Rules:*

59 33669
61 33669
65 ....50838, 51358
67 ....51362, 55478, 65037
...2864, 3603, 5510, 9082, 19558, 27406, 32939, 37747
72 ....50838, 51358
81 65037
....32192
83 ....58019, 66824
206 ....18441, 18442, 29854
362 30455
1035 25007

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services, General Administration (Parts 1—199)

3.5 Revised....1874
3.42 (g) added....1874
96 Authority citation revised....1977
96.50 (d) amended; interim....1977
96.81 Revised; interim....1977
96.83 Added; interim....1977
96.84 Revised; interim....1978
96.86 Revised; interim....1978
96.87 Revised; interim....1978
98 Revised....34413
99 Revised....34428

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

Chapter II Heading revised....30157
201 Authority citation revised....30424
201.1 (g) and (h) revised....30425
204 Authority citation revised....30425
204.3 Added....30425
205 Authority citation revised....66375
Authority citation revised....30425
205.10 (a)(4)(ii)(K) added....30425
205.50 Regulations at 49 FR 35599 and 54 FR 42243 confirmed; (a)(2)(v) revised....30157
205.56 (b) revised; interim....66375
205.58 (a) and (b)(4) revised; interim....66375
206 Authority citation revised; sectional authority citations removed....30157
206.10 Regulation at 49 FR 35599 confirmed; (a)(1)(ii) and (b)(2) revised; (b)(5) added....30157
232 Authority citation revised....30157, 30425
232.2 (a) revised....30425
232.20 Regulations at 49 FR 35599 and 54 FR 42243 confirmed; (a) and (b)(2) revised....30157
233 Authority citation revised....64203
Authority citation revised....30158
233.10 (b)(2)(ii)(*b*) revised....30158
233.20 (a)(1)(ii), (3)(vi) and (x) revised....64203
(a)(3)(i)(B)(*4*), (5), (ii)(F), (xiv)(A), (xviii), (xx), (7)(ii), (11)(i)(D), (ii)(B) and (14) revised; (a)(1)(iii), (iv), (v), (3)(iv)(A) through (G) and (11)(i)(E) added....30158
(a)(3)(iv)(E), (3)(xiii), (11)(i)(B) through (D), (ii)(B) and (13)(i)(A) revised; (a)(6)(ix) removed; (a)(11)(viii) added....30425
233.31 Regulation at 49 FR 35602 confirmed....30157
(b)(5) revised....30160
233.35 Regulation at 49 FR 35602 confirmed....30157
233.36 Regulation at 49 FR 35602 confirmed....30157
(a) introductory text and (3) revised....30160
233.38 Regulation at 49 FR 35602 confirmed....30157

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

233.51 Regulation at 49 FR 35602 confirmed....30157
Introductory text revised....30160
233.52 Regulation at 49 FR 35602 confirmed....30157
233.53 (a) and (c)(4) introductory text revised....64204
233.90 Regulation at 54 FR 42243 confirmed....30157
233.100 Regulation at 54 FR 42244 confirmed....30157
(d) added....30426
233.101 Added....30426
233.107 Added....30428
234 Authority citation revised....30160
234.60 (a)(13) revised....30160
235 Authority citation revised....64204
235.112 Added....64204
(b)(2) corrected....1204
235.113 Added....64205
(b)(3)(ii)(G) and (I) corrected....5048
237 Authority citation revised; sectional authority citations removed....30160
237.50 (b) revised....30161
255.4 (c)(2) revised....34459
257 Added....34459

Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (300—399)

Chapter III—Heading revised....30681
301 Authority citation revised....30429
301.1 Amended....30429
302.54 Revised....30681
302.70 (a)(8) and (d)(1) revised; (a)(10) added; (d)(2) amended....30681
303.3 (b)(6) removed....28110
(b)(6) correctly removed....29763, 31235
303.4 (c) revised....30681
303.7 (b)(2) revised....30681
303.8 Added....30681
303.70 (e) revised....28110
303.100 Revised....30682

Chapter IV—Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services (Parts 400—499)

Page

Chapter IV Heading revised....1115
400.2 Amended....1115
400.60 (b) amended....1115
400.100 (b) amended....1115
400.203 (b) amended....1115
400.204 (b) amended....1115
400.209 (b) amended....1115
402.31 (b) redesignated in part as (b)(1) and (2); new (b)(1) revised; new (b)(2) amended....19386
402.41 (d) introductory text correctly revised....49707
402.43 (a) and (b) amended....19386
402.51 (e)(1) amended; (e)(4) added; OMB number....19386

Chapter VI—National Science Foundation (Parts 600—699)

650 Revised....18053

Chapter VIII—Office of Personnel Management (Parts 800—899)

801 Appendix A amended....32448, 36018

Chapter X—Office of Community Services, Family Support Administration, Department of Health and Human Services (Parts 1010—1080)

Chapter X Heading revised....27946
1080 Authority citation revised....27946
1080.4 (b), (c) and (d) redesignated as (c), (d) and (e); new (b), (f) and (g) added....27946
1080.5 (b)(2) removed; (b)(3) through (7) redesignated as (b)(2) through (6); (b)(1) introductory text revised, new (b)(3), (5) and (6) revised; new (b)(7) added; OMB number....27946
1080.6 (a) revised; (c) amended....27946

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 45 Chapter X—Con. Page
1080.8 Revised 27946

Chapter XI—National Foundation on the Arts and the Humanities (Parts 1100—1199)

1160 Revised 49848
1160.4 (e) introductory text corrected 51842
1180.8 Added 36905
1180.9 Revised 36905
1180.15 Revised 36905
1180.16 Revised 36905
1180.20 (b)(3) revised 36905

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1355 Authority citation revised 30429
1355.20 Amended 30429

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1611 Appendix A revised 8578

Chapter XX—Commission on the Bicentennial of the United States Constitutions (2000—2099)

Chapter XX Removed 29041

Chapter XXIV—James Madison Memorial Fellowship Foundation (Part 2400—2499)

Chapter XXIV Established 7322

Chapter XXV—Commission on National and Community Service (2500—2599)

Chapter XXV Established 5299

Title 45—*Proposed Rules:*

5b 25004
96 31682
301 58205
303 58205
641 7355
670 33918
671 33918
672 33918
708 26634
1150 6303
1155 6206
1180 6208
1224 35775
1303 3394
1607 33697
1609 33698
1610 33698
1611 33698
1612 33699
1626 33699
2017 55416
2301 55416
2490 55416
2500–2506 (Ch. XXV) 57404

NOTE: Boldface page numbers indicate 1992 changes.

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

10.504 Correctly added 7326
16.205 Revised 60930
16.207 (b) revised 31275
28.30 (a) corrected 49822
28.110 Table corrected 49822
Table revised; interim 34189
28.115 Table corrected 49822
28.120 (h)(2) corrected 49822
28.135 (a) and table corrected 49822
28.140 Table corrected 49822
28.375 (c)(6) corrected 49822
28.380 (b) corrected 49822
28.385 (b) corrected 49822
28.410 Heading corrected 49822
28.500 (b) revised 364
28.580 (a) revised 364
30 Note revised; interim 36246
30.01–5 Note added; interim 36246
30.25–1 Table amended 52134
30.25–3 Correctly added 65006
32.60–1—32.60–45 (Subpart 32.60) Note added; interim 36246
32.95–1 (Subpart 32.95) Added; interim 36246
44 Exemption 22663
45 Exemption 22663
67.13–3 (c) through (g) redesignated as (d) through (h); (b) revised; new (c) added 51654
67.13–7 (b) revised 51655
67 Appendix D revised 51655
68 Authoity citation revised 7642

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

68.05-1—68.05-13 (Subpart 68.05) Added 7642
70.05-30 Heading revised; note added; interim 36246
70.05-35 Heading revised; note added; interim 36246
151.05 Corrected 65006
151.05-1 Table amended 52135
151.50-60 Revised 52135
Correctly revised 65006
153 Table amended 52135
153.1060 Revised 52135
Correctly revised 65006
153 Table 1 corrected 65006
170 Stability criteria 11267
172.060 Revised; interim 36246
189.55-1 (b) corrected 50754
197.501—197.580 (Subpart C) Added 52135
197.501 (c) correctly added 65006
197.540 (b) corrected 65006
197.560 (b)(1) and (2)(i) corrected 65006

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

221 Revised 23478
249 Clarification 14358
272 Authority citation revised 34690
272.23 (d) removed; (e) through (t) redesignated as (d) through (s) 34690
272.42 Revised 34690
298 Authority citation revised 34691
298.14 (b)(3) amended; (b)(4) removed 34691
327 Revised 50275
381 Authority citation revised 13047
381.3 (a) and (c) amended 13047
381.5 Amended 13047
381.6 (b) amended 13047
382.2 (c)(2) and (d) amended 57808
383 Revised 21036
Authority citation correctly revised 24191

Chapter III—Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)

401.405 Revised 23957
401.410 Revised 23958
401.420 Revised 23958
401.428 Revised 23958

Chapter IV—Federal Maritime Commission (Parts 500—599)

502.92 Regulation at 57 FR 3026 confirmed 9984
502.92 (c) revised; interim 3026
504.4 (a)(3) added 50662
510—540 (Subchapter B) Heading revised 61166
514 Added 61166
Revised; interim 36271
515 Authority citation revised 4582
515.0 Added; interim 36311
515.3 Existing text designated as (a); (b) and (c) 4582
520 Removed 35762
550.0 (d) added; interim 36311
550.1 (e) added 50827
(e) correctly revised 54797
(b) revised; (f) added 60932
(b) revised; (c) through (f) removed 65999
(a)(9) removed 34077
(a)(9) added 35762
550.5 (b)(8)(xiv)(A) introductory text revised 34077
550.8 Removed 34077
550.12 (c) removed 34077
560.308 Added 4582
572.310 Added 4583
580.0 (d) added; interim 36311
580.1 (c)(9) added 35763
580.5 (d)(24) and (25) revised 51995
Clarification 3950
580.12 (c) removed 3677
581.0 Added; interim 36311
581.3 (e) republished 51996
Clarification 3950
581.4 (a)(3) republished 51996
Clarification 3950
581.11 Revised 51996
Clarification 3950
583 Revised 51993
Clarification 3950
583.3 (c) corrected 56323
586.2 Removed 65857

Title 46—*Proposed Rules:*

1-199 (Ch. I) 4744
2 ..... 65786, 66765

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 46—Con.

Page

.....10149
10 65786
12 65786
15 65206
25 56180
31 56284,
.....1243
32 56284
.....1243
35 56284,
.....514, 1243, 12378
67 .....10544, 21546
70 11058
72 11058
154a 21546
174 32624
200-399 (Ch. II) 4744
237 21362
250 21362
262 21362
278 21362
279 21362
292 21362
294 21362
310 21362
316 21362
318 21362
319 21362
320 21362
321 21362
322 21362
323 21362
333 21362
334 21362
381 8287
401 .....63911, 64839
500-599 (Ch. IV) 4744, 12286
502 .....2702, 26809
510 .....23563, 24004
514 .....55860, 66006,
.....18122
515 24569
520 23564
525 24006
530 24006
540 19097
550 50824
.....23564, 23566, 25005, 26809
552 .....57298, 66827
.....11703, 25005
553 25005
555 25005
560 .....19583, 24569, 24571
571 38807
572 ...14551, 24569, 24571, 26637, 28011,
31481

Page

580 ...19583, 23368, 23563, 23564, 23566,
26637, 27413
581 ...18855, 19102, 24220, 26637, 27008,
27413
582 23563
583 27413
586 56487
.....2070, 6210, 29259, 30182

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

Chapter I Memorandum Opinion and Order.....6481
Order.....33275
0.231 (h) revised.....38444
0.241 (a)(8) revised.....18088
0.243 Removed.....18088
0.251 (f)(12) revised.....19387
0.283 (c)(3) revised.....18088
0.291 (h) revised.....8579
(f) revised.....18088
(f) correctly revised.....22181
0.311 (d) revised.....18088
0.331 (a)(9) revised.....18089
0.401 (a)(3)(i) revised.....64714
0.418 Revised.....64714
0.482 Amended.....64714
0.491 Revised.....64714
1 Authority citation revised.....57598
Authority citation revised.....187
Order.....3133
Policy statements.....56937
Policy statements.....24986
1.18 Added.....51178
Existing text designated as (a); (b) added.....32180
1.23 (a) revised.....38285
1.24 (b) revised; (c) added.....38285
1.80 (h) revised.....23161
1.115 (e)(1) amended.....19387
1.402 Revised.....7882
1.403 Revised.....7882
1.790 Revised.....8579
1.823 (b)(3) added.....58506
1.824 Heading, (a) and (b) revised.....57815
1.912 (a), (b)(1) and (e) amended; (b)(3) and (d) revised.....64714
1.922 Table amended.....64715
1.926 (a)(2) revised.....64715
(c) added.....65858
(a)(1) revised.....8274

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

1.931 (a) amended 64715
1.951 (a) revised; (c) removed; (d) redesignated as (c) 8274
1.952 (b) amended 8274
1.962 (g) amended 64715
1.972 (a)(1) amended; (c) revised 8274
1.1101—1.1117 (Subpart G) Authority citation removed 57598
1.1102 Amended 56602, 63662, 64715, 65858
Amended 8275
1.1104 Amended 23160
1.1105 Amended 57598, 63663
Amended 23161
1.1111 (b) and (c) introductory text through (5) redesignated as (a)(6) and (b) introductory text through (5); new (b) introductory text, (3) and (4) amended; new (c) added 56602
1.1112 (g) added 56602
1.2001—1.2003 (Subpart P) Added 187
2 Authority citation revised 38286
2.106 Table amended 51656
Footnote NG47 revised 57815
Table amended (effective date pending) 64855
Table amended; Footnote US317 added 8275
Regulation at 56 FR 64855 eff. 4-19-92 11689
2.948 (b)(8) revised 24990
2.1201 Regulation at 56 FR 26619 comment period extended to 10-24-91 51178
(c) added 38286
2.1202 Regulation at 56 FR 26619 comment period extended to 10-24-91 51178
2.1203 Regulation at 56 FR 26619 comment period extended to 10-24-91 51178
2.1204 Regulation at 56 FR 26619 comment period extended to 10-24-91 51178
(a)(3) and (4) revised 38286
2.1205 Regulation at 56 FR 26619 comment period extended to 10-24-91 51178
2.1207 Regulation at 56 FR 26620 comment period extended to 10-24-91 51178

Page

2.1209 Regulation at 56 FR 26620 comment period extended to 10-24-91 51178
2.1211 Regulation at 56 FR 26620 comment period extended to 10-24-91 51178
2.1213 Regulation at 56 FR 26620 comment period extended to 10-24-91 51178
2.1215 Regulation at 56 FR 26620 comment period extended to 10-24-91 51178
2.1219 Regulation at 56 FR 26620 comment period extended to 10-24-91 51178
5.207 Revised 7882
13.2 (b)(7) added 9065
13.5 (d) added 56602
13.21 (a)(7) added 9065
13.22 (b)(6) added 9065
15 Reconsideration petition 57823
15.3 (f) amended 33448
15.31 (a) revised 24990
(h) amended 33448
15.107 (c) revised 33448
15.115 (b)(3) revised 33448
15.119 (a) note added; (f)(1))(iii) and (3)(ii) removed; (f)(1)(iv) through (xi) and (3)(ii) through (v) redesignated as (f)(1)(iii) through (x) and (3)(i) through (iv) (d), (i)(4) and (5) table amended, (e)(1)(i), (ii), (f) introductory text, (1)(iii), (x), (2)(i), (ii), (iii), (3)(iii), (h)(i) introductory text, (l) and (n)(6) revised 19094
15.205 (a) revised 13048
15.207 (b) revised 33448
15.237 Heading revised 13048
21.11 (a), (d) and (f) revised 57815
21.23 (a) and (b) amended 57816
21.30 (a)(4) amended 57816
21.33 (a) revised 57816
21.101 (a) table footnote 6 revised 57816
21.107 (b) table footnote 1 revised 57816
21.307 (a), (b) introductory text, (4), (c)(1) introductory text, (i) introductory text, (B), (2)(i)(A), (G), (ii)(A), (iii)(A), (d)(1)(ii), (e)(1) introductory text through

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 47 Chapter I—Con. Page

(iv), (2), (f)(1) and (2)(i) revised....57816
21.900 Amended....57817
21.901 (d)(1) removed....57598
(a) amended; (b)(4) and (5) revised; (b)(6) and (f) added....57817
21.902 (f)(2) revised; (i) and (j) redesignated as (j) and (k); new (i) added....57598
(f)(2), (i)(2)(i), (ii), (6)(i), (iii)(A) through (E) and (iv) amended; (i)(1) revised....57818
(i)(1) revised....65191
21.905 (c) amended....57818
21.908 (b) amended....57818
21.909 (c) added....57818
21.912 (a) and (c) amended; (d) through (g) added....57818
21.913 (g) added....57599
21.914 Amended....57819
22 Unserved areas applications filing deadlines waived....829
Interpretation....28466
Unserved areas applications filing deadlines delayed....34077
22.2 Amended....58506
Amended....831
22.6 (b)(3) removed; (b)(2) and (d)(3) added....58506
(b)(2)(ii) removed....13648
22.9 (d)(7)(ii) revised; (d)(7)(iii) added....13648
22.13 (a)(1)(iv) added....58506
22.23 (c)(3) revised....13648
22.27 (b)(2) revised....63663
22.28 (a) and (b) introductory text revised....3027
22.29 (a) introductory text revised....3028
22.31 (a)(1)(ii) and (b)(2)(iii) added; (f) revised....58506
(j) added....3028
22.32 (e)(5) revised; (e)(6) added....3028
22.33 (b)(3) added....58507
22.40 (b) revised....3028
22.43 (c)(1) and (2) revised; (c)(4)(i) added....58507
(c)(1) introductory text amended; (d)(1)(vi), (vii) and (viii) removed; (d)(3)(vi) revised....13648
22.117 (b)(1) amended....13648
22.501 (j) introductory text, (7)(i) and (k)(4) amended....37105

Page

22.902 (b) introductory text revised; (b)(3), (4), (5), (d)(4) and (5) added....58507
(b)(4)(ii) introductory text, (b)(4)(ii)(B)(3) and (d)(4) amended....13648
22.903 (a)(1)(i), (ii) and (j) added....58508
Revised....13648
22.904 Revised....831
22.911 (a)(1) added....831
22.912 (c) added....831
22.913 Heading, (a) introductory text and (d) revised....13649
22.914 Revised....27705
22.916 (c) revised....58509
22.917 (b)(2) correctly added....58315
(b)(2) removed; (a)(1) introductory text revised; (f) added....58509
(g) added....3028
22.918 (c) redesignated as (d); new (c) added....58509
(c)(2) amended....13649
22.920 (c) added....58510
22.921 Revised....58510
22.923 Heading, (a) introductory text and (c) introductory text revised; (a)(1) and (c)(1) amended....13649
22.924 Added....58510
(b)(1) and (b)(2) amended....13649
(b)(3) amended; (c)(3) revised....13650
22.925 Added....58511
Revised....13650
22.926 Added....58511
Revised....13650
22.930 (d) amended....831
(d) revised....13650
22.940 Added....3029
22.941 Added....3029
22.942 Added....3029
22.943 Added....3030
22.944 Added....3030
22.945 Added....3031
25 Decision and remand....1227
25.114 (c)(24) revised....14798
25.134 Added....66001
25.252 (c) Table 1 amended....21214
43 Authority citation revised....9671
Filing manual revision....34520
43.41 Added....9671
43.51 Technical correction....5510
43.61 Revised....8580

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

61 Memorandum opinion and order....66602
Memorandum opinion and order....20206
61.3 (m) through (jj) redesignated as (n) through (kk); new (m) added....55239
61.33 (f) redesignated as (f)(1); (f)(2) added....55239
61.38 (a) amended....55239
61.41 (c) introductory text and (d) introductory text amended....55239
61.42 (b)(3) and (c) revised....55239
61.47 (h) amended....55239
61.48 (b) redesignated as (1); (b)(2) added....55239
61.49 (g)(1) revised; eff. 11-18-92....37730
61.55 Added....55239
61.58 (c)(6) redesignated as (c)(7) and revised; new (c)(6) added....55239
63 Interpretive rulings....65445
Heading and authority citation revised....7884
63.01 (k)(5) added....647
Technical correction....5510
63.30—63.90 Undesignated center heading revised....7884
63.100 Added....7884
64 Memorandum opinion and order....2842
Authority citation revised...4740, 21040
Petition denied....5391
Order....37106
64.704 (c) and (d) compliance dates temporarily stayed....10998
(c)(6) and (d) revised....34260
64.709 Added....56165
64.710 Added....56165
64.711 Added....56165
64.712 Added....56165
64.713 Added....56165
64.714 Added....56166
64.715 Added....56166
64.716 Added....56166
64.903 Added....4375
64.904 Added....4376
64.1100 (Subpart K) Added....4740
64.1301 (Subpart M) Added....21040
65 Reconsideration order adoption....65192
68 Reconsideration petition....57823
Authority citation revised....27183

Page

68.4 (a)(2) revised....27183
68.112 (b)(1), (3) and (c) revised; (b)(5) added....27183
68.318 (c)(2) added....56166
69 Report and order....51656
Memorandum opinion and order....4856
69.4 (b)(8) added....24380
69.120 Added....24380
69.210 Added....51844
69.305 (c) redesignated as (d) and revised; new (c) added....24380
69.306 (c) revised....24380
69.307 Existing text designated as (b) and revised; new (a) added....24380
73 Technical correction....50419
Petition denied in part....3952
Policy statement....8849
Policy decision....21744
Order on reconsideration....27367
73.14 Amended (effective date pending)....64856
Regulation at 56 FR 64856 eff. 4-19-92....11689
73.21 Revised (effective date pending)....64856
Regulation at 56 FR 64856 eff. 4-19-92....11689
73.22 Removed (effective date pending)....64856
Regulation at 56 FR 64856 eff. 4-19-92....11689
73.23 Redesignated from 73.3570 and revised (effective date pending)....64856
Regulation at 56 FR 64856 eff. 4-19-92....11689
73.24 (b) Note and (i) removed; (j) and (k) redesignated as (i) and (j); (e), (h) and new (i) revised (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.25 (a)(1), (2) introductory text, (i), (ii) and (iii) removed; heading, (a), (b) and (c) revised (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.26 Revised (effective date pending)....64857

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 47 Chapter I—Con. Page

Regulation at 56 FR 64857 eff. 4-19-92....11689
73.27 Revised (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.28 (a) removed; (b) and (c) redesiganted as (a) and (b); new (a) revised (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.29 Revised (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.30 Added (effective date pending)....64857
Regulation at 56 FR 64857 eff. 4-19-92....11689
73.35 Added (effective date pending)....64858
Regulation at 56 FR 64858 eff. 4-19-92....11689
73.37 Revised (effective date pending)....64858
Regulation at 56 FR 64858 eff. 4-19-92....11689
73.53 (b)(1) revised; (c) Note added (effective date pending)....64859
Regulation at 56 FR 64859 eff. 4-19-92....11689
73.68 (d)(3) revised (effective date pending)....64859
Regulation at 56 FR 64859 eff. 4-19-92....11689
73.69 (d)(4) revised (effective date pending)....64859
Regulation at 56 FR 64859 eff. 4-19-92....11689
73.72 (a) revised (effective date pending)....64859
Regulation at 56 FR 64859 eff. 4-19-92....11689
73.88 Note added (effective date pending)....64859
Regulation at 56 FR 64859 eff. 4-19-92....11689
73.99 Revised (effective date pending)....64860
Regulation at 56 FR 64860 eff. 4-19-92....11689
73.150 (a) introductory text, (b)(1) introductory text, (2), (3), (5)(iv), (v) and (6)(vii) revised; (b)(1)(i) amended (effective date pending)....64861
Regulation at 56 FR 64861 eff. 4-19-92....11689
73.151 (b) added (effective date pending)....64862
Regulation at 56 FR 64862 eff. 4-19-92....11689
73.152 (c)(2)(iv) added (effective date pending)....64863
Regulation at 56 FR 64863 eff. 4-19-92....11689
73.153 Amended (effective date pending)....64862
Regulation at 56 FR 64862 eff. 4-19-92....11689
73.182 Revised (effective date pending)....64862
Regulation at 56 FR 64862 eff. 4-19-92....11689
73.183 (a) note added; (b) removed; (c) through (f) redesignated as (b) through (e); new (c) and (e) revised (effective date pending)....64866
Regulation at 56 FR 64866 eff. 4-19-92....11689
73.184 (a) and (b) note revised; (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e) and revised (effective date pending)....64866
Regulation at 56 FR 64866 eff. 4-19-92....11689
73.185 (c), (i) and (j) removed; (d), (e), (h) and (k) redesignated as (c), (d), (e) and (f); (b), new (c), (d), (e), (f) introductory text and (f)(2) revised (effective date pending)....64867
Regulation at 56 FR 64867 eff. 4-19-92....11689
73.187 (a) and (b) revised (effective date pending)....64868
Regulation at 56 FR 64868 eff. 4-19-92....11689
73.189 (b)(2)(i), (ii), (iii), (3) and (6) revised (effective date pending)....64868
Regulation at 56 FR 64868 eff. 4-19-92....11689

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

73.190 (a), (b), (c), (e), Figure 7 and Figure 8 revised (effective date pending)..... 64869
Regulation at 56 FR 64869 eff. 4-19-92..... 11689
73.202 (b) table amended...50277, 50278, 50519, 50520, 50827, 50828, 51658, 51659, 51844, 51845, 52478, 54546-54548, 55633, 55828, 55829, 56166-56169, 56472, 56473, 56603, 56939, 56940, 57294, 58315, 58512, 58513, 58862, 60932, 60933, 61168, 61169, 63663, 63664, 64209, 64211, 65194, 65195, 65860, 66789, 66790
(b) table amended...189, 831, 1650—1652, 2481, 2844, 3134-3137, 3951, 3952, 4163, 4857, 5381-5394, 5861, 5862, 6075, 6076, 6203, 6482, 6561, 6688, 7660, 7661, 7885, 7886, 8421, 8422, 8580, 8581, 8726, 8727, 9504, 10294, 10427-10429, 10741, 10742, 10999, 11432, 12734, 13324, 14491, 14646, 17856, 17857, 19095, 19809, 19810, 19811, 20771, 21040, 21352, 21353, 21354, 21896, 22438—22441, 23162, 24554, 27368, 27369, 28111, 28112, 29654, 29655, 29805, 29806, 31665, 31666, 31970, 31971, 33449, 33450, 34078, 34263, 34264, 36020, 36021, 36906, 38286
(b) table amended; eff. 10-8-92..... 39362—39364
(b) table amended; eff. 10-9-92..... 39363
Regulation at 57 FR 11432 corrected..... 12465
73.207 Regulation at 54 FR 9802 eff. 6-26-89..... 56938
(a) revised..... 57293
73.208 Regulation at 54 FR 9806 eff. 6-26-89..... 56938
(a)(1) revised; (b)(2), (3) and (4) redesignated as (b)(3), (4) and (5); (a)(3) and new (b)(2) added..... 36020
73.209 Regulation at 54 FR 9802 eff. 6-26-89..... 56938
73.215 Regulation at 54 FR 9802 eff. 6-26-89..... 56938
(a)(2) and (e) revised; (a)(4) added..... 57294
73.311 Regulation at 54 FR 9804 eff. 6-26-89..... 56938

Page

73.316 Regulation at 54 FR 9804 eff. 6-26-89..... 56938
(b) and (c)(8) revised..... 57294
73.606 (b) table amended...49707, 64211
(b) table amended...4857, 7885, 11000, 34692
(b) table amended; eff. 10-8-92..... 39364
73.614 (b)(1) amended..... 49707
73.659 (a)(3) revised..... 64209
73.660 (a) revised..... 64209
73.662 (c), (e) and (h) revised..... 64209
73.667 (a) amended..... 49707
73.681 Amended..... 49707
73.1030 (b) table revised (effective date pending)..... 64872
Regulation at 56 FR 64872 eff. 4-19-92..... 11689
73.1125 Note added (effective date pending)..... 64872
Regulation at 56 FR 64872 eff. 4-19-92..... 11689
73.1150 (c) added (effective date pending)..... 64872
Regulation at 56 FR 64872 eff. 4-19-92..... 11689
73.1201 (c)(2) revised (effective date pending)..... 64872
Regulation at 56 FR 64872 eff. 4-19-92..... 11689
73.1212 (a)(2)(i) amended..... 210
(a)(2)(i) and (ii)..... 8279
73.1217 Added..... 28640
73.1570 (b)(1)(ii) revised (effective date pending)..... 64872
Regulation at 56 FR 64872 eff. 4-19-92..... 11689
73.1650 (b)(2) introductory text revised; (b)(2)(i) and (ii) added (effective date pending)..... 64872
Regulation at 56 FR 64872 eff. 4-19-92..... 11689
73.1665 Note added (effective date pending)..... 64872
Regulation at 56 FR 64872 eff. 4-19-92..... 11689
73.1705 (c) revised (effective date pending)..... 64872
Regulation at 56 FR 64872 eff. 4-19-92..... 11689
73.1725 Revised (effective date pending)..... 64872

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 47 Chapter I—Con. Page

Regulation at 56 FR 64872 eff. 4-19-92 11689
73.1740 (a)(1)(i) revised (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.1940 Revised 208, 27708
73.1941 Added 208
73.1942 Added 209
Heading, (a)(1)(i), (xii), (2) and (b) introductory text revised; (a)(1)(vii) removed 27709
73.1943 Added 210
73.1944 Added 210
73.3516 (a) revised (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.3517 (c), (d), Note 1 and Note 2 added (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.3522 (a)(6) amended 34878
73.3526 (a)(11) amended 64209
(a)(12) added 18091
Regulation at 57 FR 18091 effective date deferred 35763, 37888
73.3550 (i) revised (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
73.3555 Note 4 revised; Note 8, Note 9 and Note 10 added (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
(a) through (e) and Note 4 revised 18091
Regulation at 57 FR 18091 effective date deferred 35763, 37888
73.3556 Added 18093
Regulation at 57 FR 18093 effective date deferred 35763, 37888
73.3564 (e) added (effective date pending) 64873
Regulation at 56 FR 64873 eff. 4-19-92 11689
(a) revised 34878
73.3570 Redesignated as 73.23 and revised (effective date pending) 64856
Regulation at 56 FR 64856 eff. 4-19-92 11689

Page

73.3571 (a)(3) added; (d)(1) and (e) removed; (d)(2), (3), (4), (f) through (i), (j)(1) through (4), (k) and (l) redesiganted as (d)(1), (2), (3), (e) through (h), (i)(1) through (4), (j) and (k); (a) introductory text, (1), new (d)(1), (2), (3), (f), (h) and (i)(1) revised (effective date pending) 64874
73.3580 (d)(4)(i)(A) and (ii)(A) redesignated as (d)(4)(i)(B) and (ii)(B); (d)(1) and (g)(1)(ii)(G) revised; (d)(4)(i)(A), (B)(4), (ii)(A), (B)(4) and (g)(1)(ii)(H) added; (g) introductory text and (h) amended 14647
Regulation at 56 FR 64874 eff. 4-19-92 11689
73.3598 (c) added (effective date pending) 64874
Regulation at 56 FR 64874 eff. 4-19-92 11689
73.3616 (d) revised; (e) added 18093
Regulation at 57 FR 18093 Effective date deferred 35763
73.4160 Removed (effective date pending) 64874
Removal at 56 FR 64874 eff. 4-19-92 11689
73.4255 Revised (effective date pending) 64874
Regulation at 56 FR 64874 eff. 4-19-92 11689
74 Policy decision 21744
74.641 (a)(1) table amended; (b) introductory text revised 50663
74.902 (h) revised; (i) and (j) added 57819
74.903 (a)(2) revised; (b)(5), (d) and (e) added 57600
74.931 (e) revised 57600
(a) revised; (h), (i) and (j) added 57819
(h), (i) and (j) revised; (k) added 65191
74.932 (a) introductory text and (b) revised 57819
74.985 Revised 57601

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

74.986 Added 57820
74.990 Added 57820
74.991 Added 57821
74.992 Added 57821
74.1204 (g) amended 56170
74.1235 (c)(1) and (2) added 56170
76 Policy statement 8849
Policy decision 21744
76.7 (e) amended 35472
76.5 (jj) added 11001
76.33 Regulation at 56 FR 33391 eff. 10-25-91 52479
76.53 Amended 49707
76.54 Regulation at 56 FR 33392 eff. 10-25-91 52479
76.63 Added 35472
76.205 Revised 210
76.206 Added 210
Heading, (a)(1)(i), (xii); (2) and (b) introductory text revised; (a)(1)(vii) removed 27709
76.207 Added 212
76.221 (a) amended 212
(a) amended 8279
76.305 (a) and (c) revised 11001
76.501 Revised 35472
76.601 Revised 11001
76.605 (a), (b) and Note (1) revised; Note (2) redesignated as Note (3); new Note (2) added 11002
76.606 Added 11003
76.607 Added 11004
76.609 (d)(2), (g), (h)(2) and (i) revised; (e) and (h) introductory text amended; (j) added 11004
78.13 (e) added 57601
78.105 (a)(1) table amended; (b) introductory text revised 50664
80.5 Amended 26778
80.19 Table amended 64715
80.23 Introductory text amended; (c) removed; (d) and (e) redesignated as (c) and (d) 26778
80.59 (c) revised 64715
80.141 (d) added 57988
80.203 (g) amended 57496
(c) revised 57988
(m) added 8727
80.207 (d) footnote 2 revised 26778
80.209 (a) revised 26778
80.310 Revised 19552
80.369 (e)(4) added 19552
80.371 (c) table amended 26779

Page

80.373 (f) table amended 19552
(f) introductory text revised; tables amended 26779
80.375 (a) amended 26779
80.377 Amended 26779
80.385 (a)(2) revised 26780
80.802 (a)(2) revised 26779
80.905 (a)(2) and (3) revised; (a)(4) added 34262
80.909 (b) revised 34262
80.1065—80.1135 (Subpart W) Added 9065
87.21 (b) table amended 64715
87.25 Note removed 64715
87.173 (b) table amended 51656
90 Technical correction 27184
Order 32450
Authority citation revised 34693
90.17 (b) table amended (effective date pending) 64874
Regulation at 56 FR 64874 eff. 4-19-92 11689
(c)(10) revised 24991
90.19 (e)(15) revised 24991
90.21 (c)(6) revised 24991
(b) table amended; (c)(18) added 26608
90.23 (c)(7) revised 24991
90.25 (c)(13) revised 24991
90.53 (b)(12) revised 24991
90.63 (d)(14) revised 24991
90.65 (c)(27) revised 24991
90.67 (c)(17) revised 24991
90.69 Heading and (a) revised 19811
90.71 (b) table amended; (c)(11) added 24991
90.73 (d)(18) revised 24991
90.79 (d)(12) revised 24991
90.81 (d)(3) revised 24991
90.89 (c)(9) revised 24991
90.91 (c)(9) revised 24991
90.93 (c)(3) revised 24991
90.95 (d)(7) revised 24991
90.119 (a)(5) added; (e)(1) and (h) revised 65858
90.127 (b) amended 65858
90.149 (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added 65858
90.155 (a) revised; (c) added 65859
90.157 (a) revised; (b) removed; (c) redesignated as (b) 65859
90.173 (k) added 65859
(j) amended 24992

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 47 Chapter I—Con. Page

90.175 Introductory text revised; (f)(15) added....65859
(a) amended....24992
90.176 (c) added....24992
90.209 (b)(6) revised....8423
90.213 (a) table amended....24192
90.235 (l) added....34693
90.242 (a) introductory text and (2)(ii) revised; (a)(2)(i) amended (effective date pending)....64874
Regulation at 56 FR 64874 eff. 4-19-92....11689
90.261 Revised....24992
90.317 Added....34693
90.555 (b) table amended....26608
90.611 (d) revised....65859
90.631 (f) amended....65860
(b) revised; (i) added....37731
90.633 (d) revised....65860
90.637 (c) revised; (d) added....34693
90.709 (a)(4) added; eff. 10-20-92....32449
90.713 (a) and (b) revised; eff. 10-20-92....32449
90.719 Note revised; eff. 10-20-92....32450
90.725 (a) introductory text, (d) introductory text and (h) introductory text revised; eff. 10-20-92....32450
90.733 (d) revised; eff. 10-20-92....32450
94 Technical correction....66001
94.9 (b)(2) revised....64716
94.25 (k) revised....63663
94.61 Table amended....57822
94.63 (a) revised....57822
94.65 (f) revised....57822
94.67 Table amended....57822
94.71 Table amended....57822
94.73 Table amended....57822
94.75 Table amended....57822
94.92 Table amended....57822
94.95 Removed....57822
95.1 (c) added....8275
95.418 (d) added....22442
95.801—95.863 (Subpart F) Added....8275
95.805 (d) revised....36373
95.811 (b) revised....36373
95.815 (b) revised....36373
95.859 Revised....36373
95.861 (c) revised....36374
97.3 (a)(8) revised; (a)(37) through (41) redesignated as (a)(38), (40), (42), (43) and (44); new (a)(37), (39) and (41) added....56171
97.111 (b)(3) revised; (b)(7) added....56171
97.113 (b)(2) revised....56171
97.201 (d) revised....56171
97.207 (f) revised....56171
(a) revised....32736
97.211 Heading revised....56171
97.213 Heading and introductory text revised....56171
97.215 Heading revised....56171
97.216 Added....56172
97.301 Technical correction....51762
(a) table amended; eff. 10-20-92....32450
97.303 Technical correction....51762
97.309 (a) revised....56172
97.505 (a)(5)(i) revised....21041

Title 47—*Proposed Rules:*

0—199 (Ch. I) 57300, 58863, 65721
....6487, 18857, 24574, 33163, 35776
0 21052
1 ...9528, 14683, 18444, 20238, 21226, 24006, 24205, 33700, 36047
2 ....52496, 55484, 56611
... 5993, 6695, 12792, 24006, 37755, 38459
15 ....36049, 37755, 37939, 38459
18 10453
21 ....24006, 34889
22 ....52496, 58529
....29260, 30189, 34889
23 34889
25 ....18444, 34889, 37940, 37941
34 33700
35 33700
43 ....3038, 33700
61 52496
63 65464
....3038, 4391
64 ....18444, 22681, 26642
65 31994
68 18445
69 ....51666, 51869, 52496, 57301
....24459, 31994
73 ...50303, 50304, 50547—50550, 50842, 50843, 51667, 51870, 52497, 55648, 55649, 55861, 55862, 56181, 56182, 46489, 46490, 57302, 57606, 57608, 57871, 58207, 58530, 58531, 58864, 60080, 60956, 60957,

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

61220, 63704, 64228, 64229, 65206, 65207, 65721, 65875, 66006, 66827

...242, 866—868, 2703, 2883, 2884, 3158, 3159, 3981, 4179, 4180, 4859, 5412, 5413, 5870, 6083, 6084, 6210, 7704, 7902, 8430, 9530, 9680, 9996, 9997, 10327, 10454, 10749, 10750, 11058, 11458, 11459, 12793, 12794, 13328, 14553—14555, 14683, 14684, 14686—14688, 17870, 19105, 19836, 19837, 20805, 20806, 21055, 21056, 21368, 21369, 21755, 21761, 21919, 21920, 23188, 23567, 24577, 27415, 27416, 28162, 28163, 28167, 29691, 29855, 31691, 31692, 31996, 32499, 33478, 34092, 34284, 34285, 36047, 36050, 36051, 36971, 38291, 38292, 38652, 39382—39384

74 52496
..... 4592, 21755, 36378

76 56339
..... 868, 6792

80 ..... 56955, 57501,
..... 11704, 38292

87 26812

90 ..... 49875, 52496, 56611, 63472
..... 4180, 6570, 8854, 20069, 20070, 33700

94 34093

97 ..... 30456, 34285, 37758

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular (FAC) 90-9 67126
Federal Acquisition Circular (FAC) 90-10 67412
Summary presentation 20372
5.207 (b)(4) amended 67128
5.303 (a) amended 67128
7.305 (c) amended 55372
8.401 (b) revised 55372
8.702 (a) amended 67129
8.705-2 Amended 67136
8.705-4 (a) amended 67136
9.104-1 (e) revised 55374
9.104-3 (c) revised 55378
9.107 Added 67129
9.406-1 (a) revised 67129
9.407-1 (b) redesignated as (b)(1); (b)(2) added 67130

Page

9.502 (d) revised 55377
9.504 (e) amended 55377
9.505 (b)(1) and (2) revised 55377
9.505-4 (a) revised 55377
9.507-1 (d) added 55377
10.001 Amended; interim 67131
10.002 (d) redesignated as (e) and amended; interim 67131
10.006 (a) revised; interim 67131
14.201-7 (a), (b)(1) and (c)(1) amended; interim 67413
15.804-2 (a) revised; interim 67413
15.804-3 (c)(7) and (i) amended; (e) introductory text revised; interim 67414
15.804-4 (h) amended; interim 67414
15.804-6 Heading and (a) revised; (b)(2) Table 15-2 amended; interim 67414
15.805-3 (d) amended 39586
15.806-1 (b) amended; interim 67414
15.806-2 (a)(2) amended; interim 67414
15.808 (a)(6) and (7) amended; interim 67414
15.812-1 (a) amended 39587
19.202-1 (e) added 67132
19.402 (c)(2) through (5) redesignated as (c)(3) through (6); new (c)(2) added 67132
19.804-3 (c)(2) amended 55380
19.808-1 (b) amended 55378
22.102-1 Introductory text revised 55374
22.102-2 (c) added 55374
22.1003-5 (k) amended 67136
22.1500—22.1509 (Subpart 22.15) Added; interim 20373
23.301 Revised 55374
23.302 Heading, (b) and (c) revised; (d) and (e) added 55374
23.303 Revised 55374
23.601—23.602 (Subpart 23.6) Added 55374
25.108 (d)(1) amended 67133
25.109 (a) and (d) revised 55379
25.201 Amended; interim 20375
25.701 Removed 20376
25.702 (a)(3) amended; (b) removed; (c) redesignated as (b) 20376
25.703 (a) paragraph designation and (b) removed 20376

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 48 Chapter 1—Con. Page

25.1000—25.1005 (Subpart 25.10) Removed 67416
26.103 (b) amended 20377
30 Revised 39587
31.101 Amended 67133
31.201-2 (b) amended 39590
31.203 (e) amended 39590
31.205-6 (f)(2), (3)(i)(A), (B), (ii), (iii) and (5)(i) amended 39590
(k)(2) and (3) amended; (j)(3)(i) introductory text removed 39591
31.205-10 (a)(1)(ii), (2)(i), (b)(1)(ii) and (2)(i)(A) amended 39591
31.205-11 (b) and (m) amended 39591
31.205-18 (b) introductory text, (1), (2) and (c)(1)(i) amended 39591
31.205-19 (a) introductory text, (3)(i) and (c) amended 39591
31.205-24 (b) amended 39591
31.205-38 (e) amended 39591
31.205-46 (a)(2)(i) and (6) concluding text amended 20377
33.103 (b)(1) amended 67136
33.201 Amended; interim 67417
33.202 Revised 67417
33.204 Revised; interim 67417
33.207 (a) introductory text revised; interim 67417
33.214 Redesignated as 33.215; new 33.214 added; interim 67417
33.215 Redesignated from 33.214; interim 67417
36.513 Existing text designated as (a); (b) and (c) added 55375
37.112 Added 55380
38.201 (b) amended 55372
42.1205 (a)(3) revised 67134
45.608-8 (b) amended 67136
49.101 (f) added 67134
49.105-2 Revised 67134
49.110 Heading and (a) revised 67135
50.203 (b)(4) revised 67135
51.103 (b) amended 55372
52.202-1 Amended 67137
52.203-4 Amended 67137
52.207-3 Amended 55372
52.209-7 Amended 55377
52.209-8 Amended 55377
52.214-17 Amended 55380
52.214-27 Amended; interim 67415
52.214-28 Amended; interim 67415
52.215-23 Amended; interim 67415
52.215-24 Amended; interim 67415
52.215-25 Amended; interim 67415
52.215-39 Amended 67137
52.222-18 Added; interim 20374
52.223-3 Revised 55375
52.223-7 Added 55375
52.225-5 Amended; interim 20375
52.225-11 Revised 20376
52.225-12 Removed 67416
52.225-13 Removed 67416
52.228-11 (b)(1) amended 67137
52.230-1 Revised 39591
52.230-2 Revised 39592
52.230-3 Revised 39592
52.230-4 Revised 39593
52.230-5 Revised 39593
52.230-6 Removed 39591
52.233-1 Amended; interim 67417
52.236-7 Amended 55376
52.236-13 Revised 55376
52.246-4 Amended 67136
53.203 (b) amended 67137
(b) amended 20377

Chapter 2—Department of Defense (Parts 200—299)

[EDITORIAL NOTE: The revision date for the 1991 edition of title 48, chapter 2, was delayed until December 31, 1991. The 1991 revision includes amendments promulgated during the period of October 1, 1990 through December 31, 1991. For amendments promulgated during that period, see the December, 1991 LSA.]

201—251 CFR correction 13048
201.603-2 Added 14990
203.7100—203.7108 (Subpart 203.71) Added 14990
204.402 Revised; interim 14992
204.404-70 Revised 14992
206.302-1 (a)(2)(i) introductory text revised 14992
206.302-5 (c)(ii) amended 14992
209.406-1 Revised 14992
209.406-4 Removed 14992
211.7003-1 (b)(4) amended; interim 4741
211.7004-1 (l)(3)(ii) amended; (p)(2) introductory text, (i), (ii) and (iii) revised; interim 4741

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

211.7004-6 (a)(3) amended; interim 4741
211.7005 Revised; interim 4741
215.605 (c)(ii)(A)(*1*) and (B)(*2*) amended 14992
215.804-1 Removed 14992
217.103-1 (a)(iii), (b)(ii) heading, (A), (iv)(B), (C), (D), (vi)(A)(*1*), (B) and (vii) revised 14992
219.808 Added; interim 38287
219.808-1 Added; interim 38287
219.811 Added; interim 38287
219.811-1 Added; interim 38287
219.811-3 Added; interim 38287
222.7000 (a) amended 14993
223.570—223.570-4 (Subpart 223.5) Revised; interim 32737
223.7001—223.7002 (Subpart 223.70) Added; interim 14993
225.770 Added; interim 29042
225.770-1 Added; interim 29042
225.770-2 Added; interim 29042
225.770-3 Added; interim 29042
225.770-4 Added; interim 29042
225.7002-1 (a) introductory text revised 14993
225.7004 Revised; interim 14993
225.7004-1 (a) table amended; (b) redesignated as (c); new (b) added 14993
225.7004-2 Heading, (a) and (b)(2)(i) revised; (b)(3) added 14993
225.7004-3 Revised 14993
225.7004-5 Revised 14993
225.7012-1 (a) introductory text revised 14994
225.7012-4 (a)(1) revised 14994
225.7014-1 Revised; interim 14994
225.7014-2 Revised; interim 14994
225.7014-3 Revised; interim 14994
225.7016 Regulation at 56 FR 67215 confirmed 14990
225.7016-1 Regulation at 56 FR 67215 confirmed 14990
225.7016-2 Regulation at 56 FR 67215 confirmed 14990
225.7016-3 Regulation at 56 FR 67215 confirmed 14990
225.7016-4 Regulation at 56 FR 67215 confirmed 14990
225.7016-5 Regulation at 56 FR 67215 confirmed 14990
225.7017 Added; interim 14994
225.7017-1 Added; interim 14994

Page

225.7017-2 Added; interim 14994
225.7017-3 Added; interim 14994
225.7017-4 Added; interim 14994
232.111 Added; interim 3358
232.111-70 Added; interim 3358
232.173 Added; interim 3359
232.173-1 Added; interim 3359
232.173-2 Added; interim 3359
232.173-3 Added; interim 3359
232.173-4 Added; interim 3359
232.173-5 Added; interim 3359
235.002 Revised 14994
235.006 (b)(1)(C)(*1*)(*iii*) revised 14994
235.017 Added 14994
237.106 (2) revised 14994
237.170-2 (b) amended 14995
237.170-3 Amended 14995
239.7500—239.7501-2 (Subpart 239.75) Added; interim 14995
245.302-7 Added 14995
249.402-4 Added; interim 534
Removed 6076
252.203-7003 Added 14995
252.204-7000 Amended 14996
252.204-7003 Added; interim 14996
252.211-7005 Removal at 56 FR 67221 confirmed 14990
252.211-7021 (b)(1), (2) and (3) amended; interim 4743
252.219-7007 Added; interim 38287
252.223-7004 Revised; interim 32737
252.223-7005 Added; interim 14996
252.225-703 Added; interim 29042
252.225-7016 Removed; interim 14996
252.225-7017 Revised; interim 14996
252.225-7023 Amended; interim 14996
252.225-7029 Regulation at 56 FR 67221 confirmed 14989
252.225-7030 Added; interim 14996
252.232-7006 Added; interim 3359
252.237-7019 Regulation at 56 FR 67222 confirmed 14990
(a)(1) and (b) revised 14996

Chapter 3—Department of Health and Human Services (Parts 300—399)

305.303 (a) amended 11689

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 48 Chapter 3—Con. Page

306.301-1 (g)(1) and (2) amended 11689
306.302-1 (b)(4)(i) designation removed; (b)(4)(ii) redesignated as (c) and amended 11689
313.105 Revised 11689
315.407 (h) and (i) redesignated as (g) and (n) 11690
319.201-70 (d)(3) amended 11690
319.501 Revised 11690
319.505 Amended 11690
319.705-3 Amended 11690
319.705-4 (c) removed 11690
328 Added 58316
332.702 (a) revised 35473
333.103 (a)(4) amended 35473
352.228-7 Added 58316
352.228-70 Removed 58317
352.270-6 Regulation at 56 FR 33882 confirmed; (a) amended 54797
Corrected 57602

Chapter 5—General Services Administration (Parts 500—599)

501.103 (b) revised 37889
501.105 Revised (OMB numbers) 64213
Revised (OMB numbers) 14648
501.170-1 Revised 14649
501.603-70 (h)(1)(ii) and (v) revised 14649
502.101 Revised 9213
503.104-10 (a) and (b) revised 37889
503.404 (a) revised 37889
505.101 (c)(2) revised 37889
505.203 (b) revised 37890
509.405 Revised 51660
513.505-2 Revised 7555
513.7001 (a), (b)(1) and (g) revised 26609
514.406-3 Revised 14649
515.804-3 Temporary Reg. AC-92-1 added 5864
515.804-70 Temporary Reg. AC-92-1 added 5864
519.202-5 Revised 37890
519.304 Revised 37890
519.704 (c)(2) revised 59220
519.705-2 Revised 64213
519.705-4 (a) revised 59220
(a)(5) revised 64214
519.706-70 (f)(2)(iii) revised 64214
519.708 Revised 64214
(a) revised 37890
522.000 Added 7555
522.001 Added 7555
522.101-1 Revised 7556
522.101-3 Added 7556
522.103-5 Added 7556
522.406-13 Revised 7556
522.807 Revised 7556
522.1001 Removed 7556
522.1003-4 Revised 7556
522.1003-7 Revised 7556
522.1006 (b) and (c) revised 22666
522.1013 Added 7556
522.1014 Added 7556
522.1021 Revised 7556
522.1303 Revised 7556
522.1403 Revised 7556
525 Temporary Reg. AC-90-2, Supp. 1 added 52479
525.402 (a) revised 648
532.502-3 Removed 14649
532.908 (c) revised 37890
538.203-70 Temporary Reg. AC-92-1 added 5867
552 Temporary Reg. AC-90-2, Supp. 1 added 52479
Temporary Reg. AC-91-2; Supp. 1 added 21041
552.219-72 Introductory text revised 64214
552.219-73 Added 64214
552.222-43 Revised 22666
552.223-72 Amended 14649
552.232-73 Revised 37890
552.232-74 Removed 14649
552.238-70 Amended 51660
552.242-70 Revised 26609
552.270-3 Revised 23163
552.270-6 Revised 37890
552.270-10 Revised 37890
552.270-11 Revised 37891
552.270-12 Revised 37891
552.270-13 Revised 37891
552.270-14 Revised 37891
552.270-15 Revised 37891
552.270-16 Revised 37891
552.270-17 Revised 37891
552.270-18 Revised 37892
552.270-20 Revised 37892
552.270-21 Revised 37892
552.270-22 Revised 37892
552.270-24 Revised 37892
552.270-26 Revised 37893
552.270-27 Revised 37893
552.270-28 Revised 37893
552.270-29 Removed 37893

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

	Page
552.270-30 Revised	37893
552.270-31 Added	37893
552.270-32 Added	37893
552.270-33 Added	37893
552.270-34 Added	37894
552.270-35 Added	37894
552.270-36 Added	37894
552.270-37 Added	37894
552.270-38 Added	37894
552.270-39 Added	37894
552.270-40 Added	37894
570.201—570.210 (Subpart 570.2) Heading revised	37895
570.202 (a) revised	37895
570.203 (a)(5), (8) and (9) revised; (a)(10) added	37895
570.204 (c)(3) revised	37895
570.206 (b) revised	37895
570.208-1 (b) revised	37896
570.208-3 (b)(5) added	37896
570.208-5 Revised	37896
570.301—570.304-6 (Subpart 570.3) Heading revised	37896
570.301 Revised	37896
570.302 Revised	37896
570.303 Revised	37896
570.304 Revised	37896
570.304-1 (b) revised	37896
570.304-2 Revised	37896
570.304-3 Revised	37896
570.304-4 Revised	37896
570.304-5 Revised	37897
570.502 (a), (b)(1) and (3)(i) revised	37897
570.503 (b) and (c) revised	37897
570.504 (a) revised	37897
570.602-2 (f)(3) revised	37897
570.701-1 Revised	37897
570.701-2 Revised	37897
570.701-3 Revised	37897
570.701-4 Revised	37898
570.701-5 Revised	37898
570.701-6 Revised	37898
570.702-1 Revised	37898
570.702-1 Temp. Reg. AC-91-1, Supp. 1 added	4939
570.702-2 Revised	37898
570.702-2 Temp. Reg. AC-91-1, Supp. 1 added	4939
570.702-3 Revised	37898
570.702-4 Revised	37898
570.702-5 Removed	37898
570.702-5 Temp. Reg. AC-91-1, Supp. 1 added	4939
570.702-6 Revised	37898
570.702-7 Revised	37898
570.702-8 Revised	37898
570.702-9 Revised	37898
570.702-10 Revised	37898
570.702-11 Revised	37898
570.702-11 Temp. Reg. AC-91-1, Supp. 1 added	4939
570.702-12 Revised	37898
570.702-14 Revised	37898
570.702-14 Temp. Reg. AC-91-1, Supp. 1 added	4939
570.702-15 Revised	37899
570.702-15 Temp. Reg. AC-91-1, Supp. 1 added	4939
570.702-16 Revised	37899
570.702-17 Removed	37899
570.702-17 Temp. Reg. AC-91-1, Supp. 1 added	4939
570.702-18 Revised	37899
570.702-18 Temp. Reg. AC-91-1, Supp. 1 added	4939
570.702-19 Revised	37899
570.702-19 Temp. Reg. AC-91-1, Supp. 1 added	4939
570.702-20 Removed	37899
570.702-21 Revised	37899
570.702-21 Temp. Reg. AC-91-1, Supp. 1 added	4939
570.702-22 Added	37899
570.702-23 Added	37899
570.702-23 Added	37899
570.702-24 Added	37899
570.702-25 Added	37899
570.702-26 Added	37899
570.702-27 Added	37899
570.702-28 Added	37899
570.702-29 Added	37899
570.702-30 Added	37900
570.702-31 Added	37900
570.801 Revised	37900
570.802 Revised	37900

Chapter 7—Agency for International Development (Parts 700—799)

701.105 (b) amended	67224
(a) revised (OMB numbers)	5235
701.372 (b) amended	67224
701.376-4 Amended	67224
701.470 (a)(2) amended	67224
701.601 (b)(3) amended	67224
702.170-3 (a) amended	67224
702.170-10 (a)(1)(ii) amended	67224
702.170-13 (a)(1), (2) and (b) amended	67224

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 48 Chapter 7—Con. Page

705.202 Regulation at 56 FR 27208 confirmed 52212
(b) revised 5235
705.207 Regulation at 56 FR 27208 confirmed 52212
706.302-5 Regulation at 56 FR 27208 confirmed 52212
706.302-70 (b)(2) amended 5235
706.302-71 Regulation at 56 FR 27208 confirmed 52212
706.501 Amended 67224
710 Added 23321
715.504 (a) amended 67224
719.270 (k) amended 67224
719.272 Regulation at 56 FR 27208 confirmed 52212
726.000 Regulation at 56 FR 27209 confirmed 52212
726.101 Regulation at 56 FR 27209 confirmed 52212
726.102 Regulation at 56 FR 27209 confirmed 52212
726.104 Regulation at 56 FR 27209 confirmed 52212
726.201 Regulation at 56 FR 27209 confirmed 52212
726.301 Regulation at 56 FR 27209 confirmed 52212
(a) amended 52213
728.105-1 (b) amended 67224
728.305-70 (a) revised 67224
731.205-6 Revised 5235
731.205-46 Revised 5236
731.205-70 Added 5236
731.371 Revised 5236
731.372 Added 5236
731.373 Added 5236
731.770 (a) amended 67225
731.772 Revised 5236
731.774 Added 5236
732 Revised 67225
737.206 (c)(2)(ii) amended 67225
737.270 (a) amended 67225
749.111-71 (a)(1), (2)(i) and (ii) amended 5236
750.7109-1 Amended 67225
750.7110-1 Amended 67225
750.7110-2 Amended 67225
750.7110-3 Amended 67225
752.200 Amended 5236
752.210-70 Added 23321
752.226-1 Regulation at 56 FR 27209 confirmed 52212
752.226-2 Regulation at 56 FR 27210 confirmed 52212
752.228-3 (b) revised 67226
752.232-70 (a), (b) and (d) amended 67226
752.7000 Amended 5237
752.7004 (b)(4) amended 67226
752.7005 Removed 23321
752.7015 Amended 5237
752.7026 (b)(3) amended 67226
752.7034 Added 5237
752.7035 Added 5237
753.107 Amended 67226
Chapter 7 Appendix H amended 67226

Chapter 9—Department of Energy (Parts 900—999)

909.104-1 (h) added; interim 32675
923.570—923.570-3 (Subpart 923.5) Added; interim 32676
950.7000—950.7011 (Subpart 950.70) Heading amended 57827
950.7000 Amended 57827
950.7001 Revised 57827
950.7002 Amended 57827
950.7003 Revised 57828
950.7004 Removed 57828
950.7005 Removed 57828
950.7006 Revised 57828
950.7007 Removed 57828
950.7008 Removed 57828
950.7009 Amended 57828
950.7010 Revised 57828
950.7011 Redesignated as 950.7101 57828
950.7101 (Subpart 950.71) Heading added 57828
950.7101 Redesignated from 950.7011 57828
952.250-70 Revised 57828
952.250-71 Removed 57830
952.250-72 Removed 57830
970.0901 Added 65448
970.2305 Added; interim 32676
970.2305-1 Added; interim 32676
970.2305-2 Added; interim 32676
970.2305-3 Added; interim 32676
970.2305-4 Added; interim 32676
970.2305-5 Added; interim 32677
970.2870 Revised 57830
970.5204-7 Removed 57830
970.5204-8 Heading amended 57830
970.5204-20 Added 65448
970.5204-57 Added; interim 32677
970.5204-58 Added; interim 32677

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

Page

1602.170-9 Amended; interim....14359
1609 Added; interim....14359
1631.205-41 Added....57496
1632.170 Revised; interim....14360
1632.171 Revised; interim....14360
1632.172 Revised; interim....14360
1649.002-70 Revised....19387
1652.216-71 (b)(2)(ii) amended; (b)(2)(iv)(B) revised....57497
Amended; interim....14360
1652.232-70 Heading and introductory text revised; interim....14360
1652.232-71 Heading and introductory text revised; amended; interim....14361
1652.249-70 Amended....19388

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.104-370 (e) corrected....56691
1801.370 (a)(1)(i), (ii) and (b) amended....832
1804.470-3 Existing text designated as (a); (b) added....30909
1804.470-4 Existing text designated as (a) and amended; (b) added....30909
1804.677 Added....3137
1804.677-1 Added....3137
1804.677-2 Added....3137
1804.677-3 Added....3137
1804.677-4 Added....3137
1804.677-5 Added....3138
1804.677-6 Added....3138
1806.202-70 (a)(2)(i) and (3) amended....832
1806.302-770 (a) and (c) amended....832
1806.304 (c) amended....832
1807.7204 Amended....832
1807.7206 Amended....832
1809.104-70 Added; interim....8280
1812.104-70 (d) amended....832
1815.808 (b) amended....832
1815.872 (c)(1) and (2) corrected....56691
1815.970 (e) amended....832
1815.970-2 (d) amended....832
1816 Revised....832
1816.603-2 Correctly designated....4912
1823.302 Heading revised; introductory text amended....836
1823.303-70 Amended....836
1823.370 Amended....836
1823.7002 (c) amended....836
1825.102 Corrected....52213
1825.901 (Subpart 1825.9) Revised....836
1830.7001—1830.7002-2 (Subpart 1830.70) Revised....836
1831 Revised....837
1832.402—1832.412 (Subpart 1832.4) Revised....838
1832.501-1 Added; interim....63877
1832.503-4 Added; interim....63877
1832.702—1832.705-270 (Subpart 1832.7) Revised....839
1832.903—1832.970 (Subpart 1832.9) Revised....839
1834 Revised; interim....30910
1842.202 (c) revised....839
1842.202-70 (f) added....840
1842.705-70 (b) and (c) revised....840
1842.801 (Subpart 1842.8) Revised....840
1842.1008 Amended....840
1842.7101 (Subpart 1842.71) Added....840
1844.102 Revised....841
1844.102-70 Revised....841
1844.102-71 Heading and (a) amended....841
1844.302-70 Revised....841
1844.302-71 Revised....842
1844.304-70 Added....842
1844.305 Added....842
1844.307-70 Added....842
1852.204-76 Amended....30909
1852.204-77 Added....30909
1852.204-78 Added....30909
1852.216-72 Revised....842
1852.216-73 Revised....842
1852.216-74 Revised....842
1852.216-76 Revised....843
1852.216-79 Revised....843
1852.216-80 Revised....843
1852.216-82 Revised....843
1852.216-83 Revised....844
1852.216-84 Revised....844
1852.216-85 Revised....844

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 48 Chapter 18—Con. Page

1852.216-86 Revised..... 844
1852.216-87 Revised..... 844
1852.219-76 (a) corrected..... 56691
1852.231-70 Redesignated from 1852.232-80 and revised..... 844
1852.232-12 Redesignated from 1852.232-76 and revised..... 844
1852.232-70 Added; interim..... 63877
1852.232-75 Removed..... 844
1852.232-76 Redesignated as 1852.232-12 and revised..... 844
1852.232-80 Redesignated as 1852.231-70 and revised..... 844
1853.204-70 Heading revised; (o) added..... 3139
1853.215-2 Revised..... 844
1853.242-70 (b) amended..... 844
1870.303 Appendix I amended..... 3139

Chapter 20—Nuclear Regulatory Commission (2000—2099)

Chapter 20 Established..... 29221

Chapter 25—National Science Foundation (Parts 2500—2599)

2509 (Subchapter) Added..... 34881
2527.7001 Revised..... 34882
2527.7002 Revised..... 34882

Chapter 28—Department of Justice (Parts 2800—2899)

2801.270—2801.270-4 (Subpart 2801.2) added..... 24555
2803.101-3—2803.104-12 (Subpart 2803.1) Revised..... 24556
2804.601 (b) revised..... 24557
2804.7000 (Subpart 2804.70) Added..... 24557
2805.2 Added..... 24557
2805.302-70 (Subpart 2805.3) Added..... 24557
2806.303-2 Added..... 24557
2806.304 Added..... 24557
2807.103 Revised..... 24558
2810.001 Added..... 24558
2810.002 Added..... 24558
2813.7001—2813.7002 (Subpart 2813.70) Added..... 24558
2817.200 (Subpart 2817.2) Added..... 24559
2833.105-70 (Subpart 2833.1) Added..... 24559
2834.002-70 (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e)..... 24559

Chapter 52—Department of the Navy Acquisition Regulations (Parts 5200—5299)

5243 Added; interim..... 63672
5252 Authority citation revised..... 63675
5252.243-9000 Added; interim..... 63675
5252.243-9001 Added; interim..... 63675

Chapter 99—Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

9900 Added..... 14153
9903—9904 (Subchapter B) Added..... 14153
9903.201-1 (b)(12) corrected..... 34167
9903.201-3 (d) corrected..... 34079
9903.201-4 (a), (c) and (d) corrected..... 34079
Corrected..... 34167
9903.202-1 (c) and (e) corrected..... 34167
9903.202-9 Corrected..... 34079
9903.307 Corrected..... 34167
9904.401-63 Correctly designated..... 34167
9904.403-62 Correctly removed..... 34081
9904.405-60 (a), (d) and (e) corrected..... 34167
9904.406-40 (b) corrected..... 34167
9904.407-60 (f)(3) corrected..... 34167
9904.408-60 (a)(2), (b) and (e)(2) corrected..... 34167
9904.409-50 (e)(4) corrected..... 34167
9904.410 Appendix A corrected..... 34081
9904.410-63 Correctly designated..... 34167
9904.411-20 (a) corrected..... 34167
9904.413-60 (b) and (c)(4) corrected..... 34167
9904.414 Appendix B corrected..... 34081
Appendixes A and B corrected..... 34167

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

9904.415-50 (e)(7)(ii) corrected 34167
9904.416-50 (a)(1) corrected 34168
9904.417-60 (a) corrected 34081

Title 48—*Proposed Rules:*

5 33702
7 33702
10 33702
15 57182
..... 33702
16 33702
17 33702
19 2820
21 24704
23 58296
31 ..... 4181, 11550, 22204, 32768
35 64922
37 33702
42 11550
44 33702
45 2818
46 33702
51 22204
52 ..... 58296, 64922
..... 2820, 22204, 32768, 33702
213 26814
215 55264
223 32769
225 52597
..... 11059, 21854
228 29269
231 ..... 11059, 21854
232 29269
242 ..... 11059, 21854
246 50693
252 ..... 50693, 53497, 55264
..... 29269, 32769
270 55264
400—499 (Ch. 4) 6483
500—599 (Ch. 5) 12286
503 50073
505 8854
509 10454
515 56956
..... 8854
516 8854
517 8856
538 56956
..... 8856
552 50073
..... 8854, 8856
803 37759
852 37759
935 56621

NOTE: Boldface page numbers indicate 1992 changes.

Page

1039 11929
1200—1299 (Ch. 12) 4744
1512 8612
1516 8612
1552 8612
1804 58865
1819 34094
1832 30933
1852 ..... 30933, 34094
1870 58865
2000—2099 (Ch. 20) 37140
2401 24334
2402 24334
2403 24334
2405 24334
2406 24334
2409 24334
2413 24334
2414 24334
2415 24334
2416 24334
2419 24334
2425 24334
2426 24334
2428 24334
2432 24334
2433 24334
2436 24334
2437 24334
2446 24334
2453 25334
2900—2999 (Ch. 29) 6301
5149 18445
5152 18445
5300—5399 (Ch. 53) 1710
5415 36051
5446 66008
..... 8740, 37142
5452 66008
..... 8740, 36051, 37142
9903 23189
9905 23189

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1 Technical correction 10062
1.44 (o)(6) and (p) removed 8582
1.45 (a)(8) revised 27947
1.46 (l), (m), (z) and (ll) revised 8582
1.53 (k) added 8582
1.59 (c)(5) revised 27947

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 49 Subtitle A—Con. Page

1.66 (a) revised; nomenclature change....59893
(y) added....8582
1.67 Nomenclature change....59893
23 Authority citation revised....18410
23.89—23.111 (Subpart F) Added....18411
24 Authority citation revised....33266
24.103 (d) redesignated in part as (d)(1); (d)(2) added; eff. 12-31-92....33266
37.13 Revised....64215
71.5 (b) revised....52003

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

[EDITORIAL NOTE: The revision date for the 1991 edition of title 49, chapter 1, was delayed until December 31, 1991. The 1991 revision includes amendments promulgated during the period of October 1, 1990 through December 31, 1991. For amendments promulgated during that period, see the December, 1991 LSA.]

107 Authority citation revised....20428, 30630, 37902
107.201 (a) and (c) revised....20428
107.202 (d) added....20428
107.203 (a) revised....20428
107.205 (a) revised....20428
107.209 (c) revised....20428
107.211 Revised....20428
107.215 (a) introductory text revised....20428
107.217 (a) and (c) revised....20429
107.221 (c) revised....20429
107.223 Removed; new 107.223 redesignated from 107.225 and revised....20429
107.225 Redesignated as 107.223....20429
107.503 (b)(1) and (c) amended....365
107.601—107.620 (Subpart G) Added....30630
Clarification....33416
107.601 Introductory text amended; (d) and (e) revised....37902
107.620 (b) revised....37902
171 Authority citation revised....37902
171.2 (a) and (b) revised....30631
Clarification....33416
(b) amended....37902
171.6 (b)(2) table amended (OMB numbers)....1877
171.8 Amended....20952
172 Heading revised....20952
172.101 Table amended....1878
172.700—172.704 (Subpart H) Added....20952
172.702 Heading revised; (d) correctly added....22182
173.1 (b) revised....20953
173.166 Added....1878
174.7 Revised....20953
175.20 Revised....20953
176.13 Revised....20954
177.800 Revised....20954
177.816 Revised....20954
177.825 (d) revised....20954
180.413 (a) introductory text amended....365
199 Authority citation revised....31280
199.1 (d) revised....31280
Technical correction....33392

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

209.337 Added (OMB numbers)....66791
212 Authority citation revised....28115
212.3 (d)(5) and (6) revised; (e) redesignated as (g); (d)(7), new (e) and (f) added....28115
212.101 (b)(1) and (c) revised....28115
212.105 (e)(1)(i) revised....28115
212.109 Revised....28115
212.201 (d)(5) and (f) revised....28115
212.227 Redesignated as 212.231; new 212.227 added....28115
212.229 Added....28116
212.231 Redesignated from 212.227....28115
214 Added....28127
Regulation at 57 FR 28127 effective date corrected....29561
Regulations at 57 FR 28127 and 29561 effective date delayed to 8-24-92....30429
219.3 (c) revised....31279
229 Authority citation revised....66792

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

230 Authority citation revised 66792
231 Authority citation revised 66792
232 Authority citation revised 66792
234 Regulation at 56 FR 33738 effective date revised to 1-1-92 61169
240 Meetings 55240
245 Meetings 59893
Revised 30602

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

383 Waivers 13650, 31457
383.23 (b) amended 31457
385 Authority citation revised 51344
385.12 Revised 51344
390.5 Amended 33278, 33646
390.21 (a) revised 3142
390.23 Revised 33647
390.25 Added 33647
391 Waivers 10295, 31458
391.43 (a)(1) revised; (c) through (f) redesignated as (d) through (g); new (c) added; newly redesignated (d) through (g) amended 33278
391.83 (c) revised 31278
395.1 Added 33647
395.2 Revised 33648
395.3 Revised 33649
395.7 Removed 33649
395.8 (k)(2) and (l) removed; (k)(3) redesignated as (k)(2) 33649
395.10 Removed 33649
395.11 Removed 33649
395.12 Removed 33649

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

501.8 (g)(3) added 22442
509.2 Revised (OMB numbers) 21214
544 Appendixes A, B and C revised 23538
556.4 (b) added 66376
571 Technical correction 56016

Page

Petition denied 3556
571.3 (b) amended 63681
571.21 Amended; eff. 9-8-92 50670
571.101 Amended 51848
571.106 Amended; eff. 11-6-91 50521
571.108 Amended 56942
Amended 32740
571.111 Amended 58516
571.114 Amended; effective in part 9-1-92 and 9-1-93 2043
Technical correction 4086
571.118 Amended 23963
Corrected 28012
571.121 Amended 30917, 37905
571.123 Amended 61387
571.205 Amended 1654, 13656, 30164
Corrected 31563
571.208 Amended; eff. 12-14-92 26617
571.209 Amended 56325
571.210 Amended 63681, 63685
Amended; eff. 9-1-93 32904
571.214 Figure 2 revised 21615
Amended; eff. 9-1-93 ..... 30921, 30922
572 Petition denied 3556
572.4 (c) revised 57836
572.70—572.78 (Subpart I) Added 57836
572.73 Correctly designated 4086
575.104 (e)(1)(iv) revised 57989
586.1 Revised; eff. 9-1-93 30922
586.2 Revised; eff. 9-1-93 30922
586.3 Revised; eff. 9-1-93 30922
586.4 (b) revised; eff. 9-1-93 30923
586.5 Heading revised; eff. 9-1-93 30923
586.6 OMB number 21616
Heading revised; eff. 9-1-93 30923
586.7 Redesignated as 586.9; new 586.7 added; eff. 9-1-93 30923
586.8 Added; eff. 9-1-93 30923
586.9 Redesignated from 586.7 and revised; eff. 9-1-93 30923
587 Petition denied 3556
587.6 (b) introductory text, (1), (3), (5), (7) and (c) revised; (b)(8) added 7558
591.5 (j) revised 2047
591.6 (g) revised 2047
(g)(1) amended 29043
591.7 (b) revised 2047
(c) and (d) added 2048

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 49

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

Page

Chapter VI Nomenclature change 13657
Policy statements 30880, 39328
639 Added 51794
663 Dispostition of inquiries 10834
665 Added; interim 33397

Chapter VIII—National Transportation Safety Board (Parts 800—899)

821.7 (a) and (b) revised 56172
821.10 Revised 56172

Chapter X—Interstate Commerce Commission(Parts 1000—1399)

Chapter X Policy Statement 19812
1001.1 (a) revised 24381
1001.3 Redesignated as 1001.4; new 1001.3 added 24381
1001.4 Redesignated as 1001.5; new 1001.4 redesignated from 1001.3 24381
1001.5 Redesignated as 1001.6; new 1001.5 redesignated from 1001.4 24381
1001.6 Redesignated from 1001.5 24381
1004.1 Removed 38444
1011 Petition denied 67002
1011.8 (c)(3) amended 13049
1020 Removed 39364
1033 Revised 66793
1039 Authority citation revised 11913
1039.22 Added 11913
1053 Removed 21616
1057.12 (c)(4) added 32905
1063 Authority citation revised 35764, 35764
1063.8 Revised 35764, 35764
1105.5 Concluding text corrected 49821
1105.7 (e)(3)(i) corrected 49821
1105.10 (a)(5) corrected 49821
1105.12 Appendix corrected 49821
1109 Added 32451
1109.2 Corrected 25628
1118 Heading revised 9213
1118.1 Revised 9213
1118.4 (d) revised 9213

Page

1121.4 (g) revised 5237
1145.1 Revised 58318
1145.2 Revised 58318
1145.3 Redesignated as 1145.4 and revised; new 1145.3 added 58318
1145.4 Redesignated as 1145.5 and revised; new 1145.4 redesignated from 1145.3 and revised 58318
(e) corrected 61096
1145.5 Redesignated as 1145.6; new 1145.5 redesignated from 1145.4 58318
Revised 58319
1145.6 Redesignated as 1145.7; new 1145.6 redesignated from 1145.5 58318
(c) revised 58320
1145.7 Redesignated as 1145.8; new 1145.7 redesignated from 1145.6 58318
Revised 58320
1145.8 Redesignated from 1145.7 58318
1152 Authority citation corrected 49821
1152.2 (m) revised 61387
1152.25 (a)(2)(iv) and (c)(1) amended 13049
1152.28 (a)(3) added; (b) amended 13049
1152.31 (a)(1) revised 61387
1152.50 (a)(2) amended 13049
1152.52 (n) revised 61387
1160 Petition denied 67002
1180.6 (a)(8) revised; (a)(9) removed 28641
1181 Petition denied 67002
1186 Petition denied 67002
1201 Amended 27185
Corrected 31754
1313.7 (d) redesignated as (e); new (d) added; heading and new (e)(1) revised 58320
1332.2 Added 23539
1332.3 Revised 23539

Title 49—*Proposed Rules:*

1—99 (Subtitle A) 4744
6 23460
9 9224
24 33164
71 29270

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

81 21362
100—199 (Ch. I) 4744
101 21362
107 ..... 51294, 56962
110 7474
171 ..... 51294, 56962
..... 3854, 6696, 36694
172 ..... 3854, 6696, 24532, 34542, 36694
173 ..... 3854, 6696, 36694
174 ..... 3854, 6696
175 1891
176 ..... 3854, 6696
178 36694
180 36694
192 54816
..... 37572
198 7705
200—299 (Ch. II) 4744
225 52241
..... 34756
234 28819
..... 36054
245 52498
..... 6571
300—399 (Ch. III) 4744, 21362, 37392
350 50305
..... 13572
355 13572
383 9100
390 ..... 2885, 33712
391 ..... 6793, 21362, 23370
392 ..... 2885, 21362, 37504
394 33712
395 37504
396 50305
..... 13572, 21362, 29457
397 ..... 39522, 39533
398 21362
400—499 (Ch. IV) 4744
500—599 (Ch. V) 4744
527 21362
533 ..... 50694, 58020
541 ..... 56339, 65876
544 51871
552 56343
..... 29459, 31348
564 ..... 52242, 65038
567 61392
..... 3983
568 61392
..... 3983
571 ...52242, 52499, 55266, 55650, 58662, 63473, 63474, 63914, 63921, 64733, 65038, 65541, 66395, 67038, 67042

Page

...242, 252, 870, 2496, 4594, 6579, 7712, 10327, 10855, 12286, 12289, 12794, 18859, 21362, 22682, 22687, 24207, 30189, 32942, 34539, 38462, 38654
572 ..... 63922, 67042
..... 12794
575 6579
582 56963
590 21362
591 2071
600—699 (Ch. VI) 4744, 21915, 23460
603 21362
623 21362
635 21362
659 ..... 24768, 28572
670 21362
1000—1399 (Ch X) ... 14688, 20442, 33166
1001 8858
..... 11652
1002 35557
1003 ..... 22204, 37761
1004 ..... 22205, 23072, 28825
1020 21920
1023 ..... 20072, 23372, 27009
1033 ..... 6697, 10328
1035 67269
..... 5123, 10151, 13688, 20442, 25007
1037 31488
1039 ...6697, 9997, 10328, 11929, 27961, 30709, 31489, 33478, 34890, 37763, 37941
1048 8430
1057 ..... 2512, 24008, 24009
1063 56490
1109 64737
1141 ..... 4594, 8108, 34891
1152 58868
1160 37761
1162 37761
1166 37761
1180 ..... 31165, 31693, 34891, 35559, 39385
1201 38810
1207 ..... 33314, 36972
1244 2888
1249 ..... 33314, 36972
1262 38810
1313 9997
1321 23568
1332 5413

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

Page

14 Authority citation revised.....27108
14.12 (i) and (j) amended; (k) added.....21355
14.101—14.172 (Subject J) Revised.....27108
16 Authority citation revised.....56942
Embargo.....17857
16.13 (a)(1) revised.....56942
17.11 (h) table amended; interim.....54957, 54967, 56333
(h) table amended.....64723
(h) table amended...212, 594, 1834, 13661, 14790, 21569, 27858
17.12 (h) table amended 49853, 55785, 57849, 60937, 60940, 61182
(h) table amended...1403, 14653, 14785, 19819, 20588, 20592, 20595, 20787, 21574, 24199, 27863, 27867, 30168
(h) table corrected.....28011
(h) table amended; eff. 1-1-93.....28024
17.40 (i) amended.....594
(j) added; eff. 1-1-93.....28024
(e) revised.....35486
(b)(1)(i)(E) removed.....37478
17.95 (b) amended.....1834
17.108 (a)(4) through (7) added; map revised.....5990
20 Frameworks.....38202
Seasonal hunting adjustments 39074
23 Authority citation revised.....21898
23.23 (a) amended; (f) revised.....49709
(f) table amended.....50060
(f) table amended.....33452
23.57 (a) and (b)(1) revised.....21899
25.23 Added.....66795
32.2 (j) added.....66795
32.11 Amended.....58182
32.12 (f)(11) through (16), (aa) introductory text, (aa)(1) through (7) and (dd)(5) redesignated as (ff)(12) through (17) (aa)(1) introductory text, (i) through (vii) and (dd)(6); new (f)(11), (aa) introductory text and (dd)(5) added; (aa)(1) introductory text amended.....58182
(f)(3), (i)(4), (p)(2), (4)(iii), (5), (s)(2), (u)(1), (y)(2) heading, (i), (ii), (hh)(4)(i), (10)(ii), (11)(ii), (jj)(2), (qq)(4)(ii), (v), (7)(i) and (iii) revised; (h)(10)(v), (11)(viii) and (qq)(4)(viii) added.....66795
32.21 Amended.....58183
32.22 (v)(2) through (7) redesignated as (v)(3) through (8); new (v)(2) and (cc)(3) added.....58183
(e)(2), (4)(i), (10)(i), (p), (q)(2), (v)(1), (dd)(1), (ff)(1)(i), (iii), (6)(ii), (iv), (8)(ii), (hh)(2), (jj)(4), (nn)(3) and (5)(ii) revised; (q)(5)(iv) added.....66796
32.31 Amended.....58183
32.32 (k) through (uu) redesignated as (l) through (vv); new (u)(3)(1) and (z)(2) through (7) redesignated as (u)(3)(i) and (z)(3) through (8); new (k), (z)(2) and (hh)(6) added.....58183
(s)(2), (6), (t), (z)(1), (ii)(1), (mm)(2), (pp)(1)(iii) through (ix), (ss)(4)(iv) and (tt)(3)(ii) revised; (s)(5)(iii) and (iv) added.....66796
32.41 (Subpart D) Removed.....66797
33.2 (f) removed.....66797
33.4 Amended.....58183
33.22 (a) through (j) redesignated as (b) through (k); new (a) added.....58183
88.28 (d) added.....58183
100 Regulation at 55 FR 27121 effective date extended to 6-30-92.....351
Authority citation revised...22535, 22964
100.1—100.9 (Subpart A) Revised.....22951, 22964
100.10—100.20 (Subpart B) Revised.....22953, 22964
100.15 (c) amended.....351
100.22—100.24 (Subpart C) Revised.....22957, 22964
100.25—100.27 (Subpart D) Revised.....22535

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

204.1 (b) table amended (OMB numbers)....50063, 65016
215 Final harvest standards....34081
215.32 (f)(2) removed; (f)(1) redesignated as (f); (c)(1) revised....33902
216 Embargo....17857
216.3 Amended....50676
216.24 (e)(5)(iv), (v) introductory text, (F), and (viii) revised....50677
Regulation at 56 FR 47423 eff. 11-1-91....50278
Regulations at 56 FR 47423 and 50278 effective date delayed to 12-1-91....56603
Regulations as 56 FR 47423, 50278 and 56603 effective date delayed to 5-1-92....67226
(e)(5)(xiii) correctly designated....3142
217.12 Amended; interim; eff. 7-24-92 through 8-31-92....33455
222.23 (a) amended....58624
227 Technical correction....23458
227.4 (g) and (h) added....14662
227.12 (a)(3) Table 1 amended....58184
227.21 Revised....14663
227.72 (e)(1) amended....14663
(e)(2)(i) and (3)(ii) suspended; (e)(2)(v), (3)(v), (6)(vi), (vii), (viii) and (e)(8) added; interim; eff. 7-24-92 through 8-31-92 (OMB number pending)....33455
(e)(8)(i) revised; interim....36907
247.4 Regulation at 56 FR 47424 eff. 11-1-91....50278
Regulations at 56 FR 47424 and 50278 effective date delayed to 12-1-91....56603
Regulations at 56 FR 47424, 50278 and 56603 effective date delayed to 5-1-92....67226
260 Inspection service program....33456
260.71 Removed....30924

Page

265.101—265.107 (Subpart A) Revised....55092
285 Temporary regulations....55095
Permits....54797
Temporary regulations....11913, 28131, 29655, 29656
285.1 (c) amended....32923
285.2 Amended....372, 32920
285.3 (b) and (f) revised; (g) added....372
(f) revised; (h) added....32920
285.5 (c) amended....32923
285.20 (a)(1)(i) removed; (a)(1)(ii) through (iv) redesignated as (a)(1)(i) through (iii); new (a)(1)(i), (ii), (b)(1) and (3) revised....32920
285.21 (e) and (k) revised....50063
(e) correctly designated....56544, 61096
(c) revised....372
(a) and (b) revised....32920
285.22 Revised....32920
285.23 (f)(1), (2) and (g) revised....372
Revised....32921
285.24 (c) revised....8730
Revised....32921
285.25 (c) revised....373
(b) amended....32923
285.26 Revised....373
Table revised....32922
285.28 (a) revised....373
285.29 (a), (b) and (e) revised; OMB number....373
(a) revised....32922
285.30 (c)(2) and (d) revised....374
(c)(1) and (d) revised....32922
285.31 (a)(1), (2), (5), (10) and (15) revised; (a)(30) through (33) and (c) added....374
(a)(10), (17), (18), (26) and (28) revised; (a)(34) through (38) added....32922
285 Figure 1 added....374
298 Added (effective date pending)....58185
Regulation at 56 FR 58185 effective 12-17-91....66001
299 Revised; interim....33650
299.5 OMB number pending....33650

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 50

Chapter III—International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)

Page

301 Revised....12879
301.19 (e) revised; (f) removed....57295
371 Inseason orders....2054
380.23 Revised....13051
380.24 Revised....13051
380.26 Revised....13052
380.27 Revised....13052
380.29 Revised....13052

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

600—699 (Chapter VI) Policy guidelines for emergency rules....375
601.32 Amended....379
601.33 (c), (e) and (h) revised....379
601.39 (a) revised....380
605.15 (b)(2) through (4) redesignated as (b)(3) through (5); new (b)(2) added....380
605.23 (d) introductory text revised; (d)(2) redesignated as (d)(3); new (d)(2) added....380
605.24 (a)(2) amended; (a)(3)(i), (5)(i) introductory text, (ii), and (7)(i) revised; (a)(3)(v) added....380
611 Reassessment....56603
Specifications....1654, 2844, 3952
611.22 (a) and (c) amended; (b)(1) revised....27370
611.50 (b)(2) revised; (b)(4) Table 1 removed....535
620.7 (i) added; interim emergency effective to 5-12-92....5079
(i) corrected....9076
Regulation at 57 FR 5079 effective date extended through 8-10-92....20788
625 Technical correction....4248
625.4 (m) added; interim emergency; effective to 3-5-92....63690
Regulation at 56 FR 63690 effective date extended through 3-5-92....213
Technical correction....6297

Page

Regulations at 56 FR 63690 and 57 FR 213 effective date extended through 6-3-92....8582
625.5 Heading revised; text added; interim emergency; effective to 3-5-92....63690
Regulation at 56 FR 63690 effective date extended through 3-5-92....213
Technical correction....6297
Regulations at 56 FR 63690 and 57 FR 213 effective date extended through 6-3-92....8582
625.7 (a)(1), (2), (b)(4) and (5) suspended; (a)(3) through (8) and (b)(6) through (9) added; interim emergency; effective to 3-5-92....63690
Regulation at 56 FR 63690 effective date extended through 3-5-92....213
Technical correction....6297
Regulations at 56 FR 63690 and 57 FR 213 effective date extended through 6-3-92....8582
625.24 Added; interim emergency; effective to 3-5-92....63691
(b) corrected....66603
Regulations at 56 FR 63691 and 66603 effective date extended through 3-5-92....213
Technical correction....6297
Regulations at 56 FR 63690, 66603 and 57 FR 213 effective date extended through 6-3-92....8582
625.26 Added; interim emergency; effective to 3-5-92....63691
Regulation at 56 FR 63691 effective date extended through 3-5-92....213
(c)(1), (2), (d), (e) and (f)(1) corrected....66603
Regulations at 56 FR 63691 and 57 FR 213 effective date extended through 6-3-92....8582
630 Authority citation revised....65016
Temporary regulations....14361, 29447, 32452, 33458
630.1 Revised....65016
630.2 Amended....65016
630.3 Revised....59222
630.4 (c) revised....59222
Revised....65016

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

630.5 Revised 65017
630.7 Revised 65018
(s), (t) and (u) amended 34265
630.10 Added 65018
630.20—630.26 (Subpart B) Revised 65019
630.24 (i) added eff. 8-4-92 through 12-31-92; (b)(1) and (c) revised 34266
630.25 (a)(1) and (b) amended; (d) revised 34266
630.40 (Subpart C) Added 65021
641 Temporary regulations 6561
641.2 Amended 11915
641.4 (b)(4) removed; heading, (a)(3), (c) through (f), (i) and (k) revised; (b)(4) removed 58651
(a)(2) and (b)(2)(xi) revised; (g) amended; (l) added; effective to 5-7-95 11916
641.24 (a)(2)(iv) revised; (a)(4) and (5) added 11916
641.25 (c) suspended; (e) added; effective to 12-31-91 58188
(b) and (c) revised 11916, 21752
641.28 Redesignated as 641.29; new 641.28 added 11916
641.29 Redesignated from 641.28 11916
Added; eff. 4-3-92 through 5-14-92 11918
642 Temporary regulations 49853, 66001
Temporary regulations 1662, 4376
642.4 Revised; interim 11583
(b)(2)(v) revised 27005
642.5 (b) introductory text amended; interim 11585
642.7 (f) and (v) amended; interim 11585
646 Temporary regulations 52479
646.2 Amended 56022
Corrected 59970
Revised; interim 11583
646.4 Revised 56022
(d) corrected 59970
Revised 7888
(a)(1)(iii) corrected; (d) correctly designated 11137
646.5 Figure 1 redesignated as Figure 2 to part 646; revised 56023
(a) and (c) revised 7890
646.6 Revised 56024
(a) introductory text revised 7890
646.7 Revised 56024
Revised 7890
(kk) corrected 28907
(w) and (x) revised 33128
(nn) added; emergency interim; effective through 11-30-92 39366
646.10 Added 7891
(a)(2) corrected 11137
646.21 (a), (b) and (d) revised; (f) through (i) added 56025
(d) revised 7892
(g) amended; (h) and (i) revised 33128
646.22 Figure 2 redesignated as figure 3 to part 646; (c) redesignated as (e); (b) revised; new (c), (d), (f) and (g) added 56026
646.23 Revised 56026
(e) and (f) corrected 59970
646.24 (b) revised 56027
646.25 Revised 56027
646.26 (a)(1) removed; (a)(2) through (22) redesignated as (a)(1) through (21); (c)(1) introductory text, (ii), (2) and (3) amended; (c)(4) added 56027
646.28 Added; emergency interim; effective through 11-30-92 39366
646 Figure 2 redesignated from 646.5 figure 1 56023
Figure 3 redesignated from 646.22 figure 2 56026
Figure 1 added 56027
649 Specifications 30684
649.20 (b) revised 215
649.21 (c)(1) and (2) revised; (c)(3) added 215
650 Temporary regulations 4377, 21752
651 Temporary regulations 20789
651.20 (f)(1)(iii) regulation at 56 FR 24727 confirmed 50663
652 Temporary regulations 61182, 61183
Temporary regulations 844
Fishing quotas 3725
655 Temporary regulations 32923
655.22 (a), (b), (c) and (d) revised; (f) redesignated as (g); new (f) added 536
656.2 Amended 19096

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 50 Chapter VI—Con. Page

657.2 Amended 5238
658 Temporary regulations 66604
Temporary regulations 29447
661 Inseason adjustments ... 51660, 51661, 55634
Temporary regulations ... 51662, 55634
Inseason adjustments ... 31666, 32924, 34085, 34883, 35764, 36021, 37906
Temporary regulations ... 32741, 33128, 33279, 34884, 36607, 36608
Appendix amended 19404
663 Restrictions 49727
Reassessment 56603
Temporary regulations ... 58321, 64723
Specifications 1654
Temporary regulations ... 10429, 21041, 32181
Restrictions 14666, 23065, 34266
Regulation at 57 FR 32181 effective date corrected 35765
663.7 (n) and (o) added; interim emergency; eff. 4-15-92 to 7-16-92 13665
(p) added 20060
(p) corrected 22021
663.22 (b)(2) through (5) revised; (b)(7) removed 12212
(b)(2) removed 23065
(b)(2) corrected 28907
663.23 (b)(4) added; interim emergency effective to 1-2-92 50065
(b)(3) revised 2853
(b)(2) revised; interim emergency; eff. 3-27-92 through 7-1-92 11272
(b)(5) added; interim emergency; eff. 4-15-92 to 7-16-92 13665
(b)(4) added; interim emergency; eff. 4-16-92 through 7-21-92 14665
(b)(1) revised 20060
Regulation at 57 FR 14665 effective date extended through 10-19-92 32924
663 Appendix amended 20060
Appendix A corrected 22021
672 Technical correction ... 50157, 56116, 56943
Temporary regulations ... 51179, 51848, 52213, 55096
Recordkeeping and reporting requirements 50279
Temporary regulations ... 2854, 3142, 3960, 4939, 6562, 8280, 8583, 8849, 10142, 10297, 11274, 11433, 11918, 18835, 19552, 21215, 22182, 23163, 23344, 23965, 24381, 24559, 24992, 26781, 27709, 27710, 29222, 29223, 29806, 30685, 30924, 31331, 31971, 32453, 32924, 33902, 35489, 35765, 37478
Specifications 2844, 30168
Recordkeeping and reporting requirements 2853, 6688
Technical correction 20325, 35004
Fishery management measures 29223
Prohibition of retention 34884
672.1 (d) revised 33281
672.2 Regulation at 56 FR 38349 effective date extended through 12-31-91; interim 57989
Amended ... 2686, 10432, 23344, 33281, 33904, 37908
Regulation at 57 FR 33904 withdrawn; amended 35488
672.4 (j) added 33904
Regulation at 57 FR 33904 withdrawn; (j) added 35488
672.5 (b)(3)(ii)(A)(*11*) and (c)(2)(iii)(I) amended; (c)(3)(ii)(F) revised 10432
672.6 Added 10432
672.7 (g) added 23344
(h) and (i) added 33904, 35489
Regulation at 57 FR 33904 withdrawn 35488
672.20 Regulation at 56 FR 38349 effective date extended through 12-31-91; interim 57989
(a)(2)(iv), (h)(2) and (i)(4) revised 2686
(a)(1), (c)(2) and (3) amended; (c)(6), (d)(1)(i), (e)(4) and (g)(1)(i) revised; (g)(3) redesignated as (g)(4); new (g)(3) added; Table 1 removed 10434
(f)(1)(i), (g)(4) and (h)(2) suspended; (f)(1)(vi), (g)(5), (6), (7) and (h)(3) added; interim emergency eff. 3-30-92 through 7-2-92 11439
(g)(3), (4), (5) and (6) correctly designated as (g)(4), (5), (6) and (7); (g)(7) corrected 14667
(g)(5) revised; interim; eff. 5-20-92 through 7-2-92 21356

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

(c)(1)(i) and (ii) redesignated as (c)(1)(i)(A) and (B); (a)(2)(v), (c)(1)(i) heading and (c)(1)(ii) added; (c)(2) revised....23344
(f)(1)(ii), (2)(i), (g)(1) and (2) revised; (g)(3) removed; (g)(4) redesignated as (g)(3)....33282
672.23 (d) added; interim emergency....50282
(d) removed....54798
(d) added....382
(d) removed....2686
(d) corrected....4085
(d) added; interim emergency; eff. 3-30-92 through 5-31-92....11274
(a) suspended; (e) and (f) added; interim emergency eff. 3-30-92 through 7-2-92....11439
672.24 (e) added....2686
(a)(2) revised....10434
(e)(2) corrected....15031
(f)(1)(ii) and (2)(ii) Technical correction....20325
(c)(1) and (2) revised; (c)(4) added....37908
675 Temporary regulations...52214, 55097
Temporary regulations...2854, 3142, 5238, 6203, 6688, 8583, 8584, 10142, 12213, 14667, 18093, 20207, 20655, 23347, 24381, 24560, 29656, 29806, 29807, 30924, 31129, 33904, 35489, 37731, 39138
Apportionment....215, 27185, 32925
Inseason adjustments....2688
Recordkeeping and reporting requirements....2856, 19819
Specifications....3952
Inseason adjustments; correction....8850, 9598
Technical correction....20325
Fishery management measures....29223, 39137, 39138
675.2 Amended...10434, 23345, 33904, 35489, 37908
Regulation at 57 FR 33904 withdrawn....35488
675.4 (j) added....33904, 35489
Regulation at 57 FR 33904 withdrawn....35488
675.5 (b)(3)(ii)(A)(*11*) introductory text and (c)(2)(iii)(I) amended; (c)(3)(ii)(F) revised....10434
675.6 Added....10435
675.7 (h) added....23346
(i) and (j) added....33904, 35489
Regulation at 57 FR 33904 withdrawn....35488
675.20 (a)(1) amended; (h)(3)(iii) revised; Table 1 removed....10435
(h)(1), (6) and (i)(2) suspended; (h)(7), (8) and (i)(3) added; interim emergency eff. 3-30-92 through 7-2-92....11440
(a)(2)(iii), (3)(i), (ii) and (iii) added....23346
675.21 (a)(5), (b), (c), (d), (e) and (f) suspended; (a)(7), (g), (h), (i) and (j) added; interim emergency eff. 3-30-92 through 7-2-92....11440
(h)(1) and (2) revised; interim; eff. 5-20-92 through 7-2-92....21356
675.22 (f) revised....10435
(g) added....23346
675.23 (d) added....382
(d) removed....2687
(d) corrected....4085
675.24 (f) added....2687
(c)(1)(i) and (f)(1) heading revised....10435
(f)(1)(ii) and (2)(ii) corrected....15031
(c)(2)(ii) corrected....15032
(c)(2)(iii) added; interim emergency eff. 5-21-92 through 8-25-92....22185
(c)(3) added....37908
675.26 (a)(2)(ii)(A), (B), (b) and (d)(3) suspended; (a)(2)(ii)(C), (D), (d)(4) and (e) added; interim emergency eff. 5-21-92 through 8-25-92....22185
675 Figure 2 revised....10536
680.2 Amended....59895
680.4 (b) and (d) through (h) revised....59895
681 Interim final quota....21752
681.2 Amended....10438
681.4 (a)(1), (b) and (d) through (h) revised....10439
681.5 (b)(2)(ix) redesignated as (b)(2)(x); (c)(3)(iii) and (iv)

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

TITLE 50 Chapter VI—Con. Page

revised; new (b)(2)(ix), (c)(3)(v) and (d) added 10439
681.6 (a), (b) and (c) amended 10439
681.7 (b)(1), (c)(1)(i), (ii), (2), (3) and (4) revised; (b)(7) through (13) added 10439
681.24 (e) through (g) added 10440
681.29 Added 10440
681.30 Redesignated as 681.40; new 681.30 added 10440
681.31 Redesignated as 681.41 10440
Added 10441
681.32 Redesignated as 681.42 10440
Added 10442
681.33 Redesignated as 681.43 10440
681.34 Redesignated as 681.44 10440
681.35 Redesignated as 681.45 10440
681.40 Redesignated from 681.30 10440
681.41 Redesignated from 681.31 10440
681.42 Redesignated from 681.32 10440
681.43 Redesignated from 681.33 10440
681.44 Redesignated from 681.34 10440
681.45 Redesignated from 681.35 10440
683.23 Revised 36908
685 Technical correction 10062
685.2 Amended; effective to 4-22-94 51852
Amended 52217
Amended 7664
685.5 (l) removed; (m) and (n) redesignated as (l) and (m); new (n) through (q) added; effective to 4-22-94 51852
(u) revised; emergency interim; effective to 12-16-91 59897
(r) and (s) added 52217
(t) added 7664
685.11 Heading, (a), (b) and (c) revised 52217
685.14 Added 52217
685.15 Added; effective to 4-22-94 (OMB number pending) 51852

Page
OMB number 58516
(c)(6) corrected 63550
685.16 Added; effective to 4-22-94 51853
685.17 Added; efffective to 4-22-94 51853
685.18 Added; emergency interim; effective to 12-16-91 59897
685.24 Added 7664
685.25 Added 7664

Title 50—*Proposed Rules:*

1—199 (Ch. I) 51868, 65964
12 57872
13 57872
14 ..... 57502, 57872
..... 30457
16 29856
17 ...50075, 50550, 50701, 51668, 5200, 52503, 52506, 55107, 55266, 55487, 55862, 56344, 56491, 56882, 57503, 58020, 58026, 58332, 58339, 58348, 58664, 58804, 58869, 59917, 60957, 63705, 64229, 65207, 65209, 65877, 66614, 67046, 68400, ...35, 544—548, 596, 658, 659, 1246, 1443, 2075, 2239, 2241, 3604, 4745, 4747, 4912, 5511, 5871, 9680, 9681, 11459, 14372, 14374, 14378, 14556, 14689, 19585, 19837, 19844, 19852, 19856, 20073, 20325, 20806, 21369, 21374, 21377, 21381, 21921, 21925, 21929, 21933, 22453, 24220—24222, 25007, 27203, 28167, 27962, 28167, 28474, 28825, 30191, 31166, 33478, 34095, 34100, 34892, 36380, 37507, 37513, 37515, 37941, 39173
20 57872
...19863, 19865, 24736, 27672, 30884, 35446, 38215
21 57872
23 ..... 262, 7713, 7719, 20443, 28825
80 50844
100 ..... 63702, 64404
..... 3676
200-299 (Ch. II) 64234
215 22450
216 ..... 27010, 27207, 34101
217 ...18446, 22453, 27962, 30196, 30709, 31168
218 34101
222 58869
..... 2247, 3040, 27416, 30709, 34101

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1991 THROUGH AUGUST 31, 1992

Page

226 ..... **36626**
625 ..... **34101**
227 ..... **18446, 22453, 27416, 30196, 30709**
228 ..... **20667**
251 50305
285 ..... **17872, 18122**
301 ..... **390**
400—499 (Ch. IV) 51868, 65964
424 ..... **21056**
600—699 (Ch. VI) 58214
603 ..... **30458**
611 ...50084, 58531, 58666, 59920, 64002, 65782
...**1250, 24222, 29692, 29856, 32952, 33716, 35627**
625 ..... **19874, 24012, 24577, 34107, 36055**
630 ..... 51367, 54819
..... **21761**
640 ..... **32956**
641 ..... 51367, 59922, 67571
..... **5994**
642 ..... **33924, 36972, 38810**
646 ..... 50551, 57302
..... **19874, 20668**
649 51191
650 ..... **1721**
651 ..... **24013**
652 ..... 51368, 58537
653 ..... **23199, 26814**
655 ..... **6699**
658 50844
662 ..... **38657**
663 ..... 50084, 59241
..... **24589, 30534, 32499, 34757**
672 ...51669, 56355, 56623, 58214, 58666, 59922, 63487, 64002, 64288, 64738, 66009,
..... **2814, 11930, 17879, 22695, 27725**
675 ...51669, 56355, 56623, 58214, 58531, 59922, 63487, 64738, 65782, 66009
..... **2247, 2814, 17879, 22695, 24014**
678 ..... **1250, 24222, 29856**
681 ..... 58029, 65209
683 ..... **26816**
685 ..... 55651, 55652, 60961
.... **28692, 29692, 32952, 33716, 33926, 35627**

NOTE: Boldface page numbers indicate 1992 changes.

Additions to Table I, August 1992

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being added to Table I as a result of authority citations carried in the **Federal Register** during January through August 1992. Recent legislation is carried by public law number.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1992. Additions during 1991 are in the December 1991 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

U.S. Code:	CFR
2 U.S.C.	
437d	11 Part 200
438	11 Part 200
5 U.S.C.	
102	32 Part 626
504	5 Part 2610
533	5 Part 531
552	12 Part 1615
	13 Part 301
	24 Part 2002
	34 Part 8
552a	32 Parts 316, 320, 505, 603
553	11 Part 200
	13 Part 301
	49 Part 1109
559	49 Part 1109
581	29 Part 1425
582	49 Part 1109
883a	46 Part 515
1008	14 Part 201
1104	5 Part 890
1302	7 Part 772
1302	42 Part 417
1395l	42 Part 417
1395cc	42 Parts 417, 498
1715	46 Part 515
1744	5 Part 890
3301	5 Part 772
3302	5 Part 772
4111	41 Part 304-1
5307	5 Parts 530, 531
5335	5 Part 531
5401—5410 (Ch. 54)	5 Part 531
5514	22 Part 1007
5547	5 Part 550
7202	5 Part 842
7301	5 Part 772
	29 Part 100
7701	5 Parts 831, 841, 842, 846, 870, 890
8345	5 Part 838
8347	5 Part 838
8456	5 Part 213
8461	5 Part 838
8467	5 Part 838
8913	48 Part 1609
5 U.S.C. Appendix	
App.	5 Parts 735, 2610, 2634, 2635, 2638
1-15	50 Part 100
3	12 Part 603
301	22 Part 172
402	5 Part 2636
404	5 Part 2636
7 U.S.C.	
4a	17 Part 1
7b	17 Part 1
15b	7 Part 28
16a	17 Part 1
71 et seq.	7 Part 810
136	40 Part 22
138a	21 Part 5
901 et seq.	7 Part 1700
901—950	7 Part 1710
1209	7 Part 1209
1421 et seq.	7 Part 1425
1989	7 Parts 1925, 1944
4201 note	7 Part 1980
6001 et seq.	7 Part 1211
6101 et seq.	7 Part 1209
6201 et seq.	7 Part 1212
8 U.S.C.	
1101	8 Part 270
	22 Parts 41, 43
1101 note	22 Part 43
1103	8 Part 270
1153	22 Part 43
1186a	8 Part 242
1202	22 Part 172
1251	8 Part 242
1252 note	8 Parts 3, 103, 242
1252b	8 Parts 3, 103, 242, 292
1254	8 Part 242
1324c	8 Part 270
1356	8 Part 103
1362	8 Part 242

	CFR
10 U.S.C.	
21	32 Part 626
111	32 Part 626
113	32 Parts 28, 33, 725
136	32 Part 102
139	32 Part 155
151—158	32 Part 626
301	32 Parts 340, 355
507	19 Part 141
939	32 Parts 750 751,756, 757
5013	32 Parts 750 751, 756, 757
5148	32 Part 756
7420	15 Parts 770, 771, 772, 774, 786, 790, 799
7430	15 Parts 770, 771, 772, 774, 786, 790, 799
12 U.S.C.	
93a	12 Part 4
375a	12 Parts 225, 337
375b	12 Part 337
552	12 Part 516
559	12 Part 516
1422b	12 Part 941
1431	12 Part 941
1441a	12 Parts 1615, 1620
1462a	12 Part 516
1463—1464	12 Part 516
1701q	24 Part 70
1707	24 Part 234
1708	24 Part 25
1709	24 Parts 25, 202
1715 et seq	24 Part 248
1715b	24 Part 202
1715l	24 Part 221
1715u	24 Part 203
1734(f)-14	24 Part 25
1751	24 Part 202
1766	12 Part 705
1817 note	12 Part 304
1818	12 Part 323
1819	12 Part 323
1821	12 Part 337
1828 note	12 Part 325
1831	12 Part 225
1831f-1	12 Part 337
1833e	12 Part 361
2279aa-5	12 Part 611
3015	12 Part 265
3105	12 Part 263
3107	12 Part 263
3109	12 Part 265
3331 et seq	12 Parts 323, 564
3331	12 Part 34
3332	12 Part 1102
3335	12 Part 1102
3339	12 Part 722
3347	12 Part 1102
3348	12 Part 564
3808	12 Part 563
15 U.S.C.	
41—58	17 Part 260
77c	17 Part 230
77d	17 Part 230
77e	17 Parts 228, 230
77f	17 Part 228
77g	17 Part 228
77j	17 Parts 228, 230
77k	17 Part 228
77s	17 Part 228
77aa	17 Part 228
77ddd	17 Part 228
77eee	17 Parts 228, 240
77ggg	17 Parts 228, 240
77hhh	17 Part 228
77jjj	17 Part 228
77nnn	17 Parts 228, 240
77sss	17 Part 228
78i	17 Part 240
78l	17 Part 228
78m	17 Part 228
78n	17 Part 228
78o	17 Part 228
78q	17 Part 240
78w	17 Part 228
78ll	17 Parts 202, 230, 260
80a-8	17 Part 228
80a-23	17 Part 240
80a-29	17 Part 228
80a-30	17 Part 228
80a-37	17 Part 228
80b-3	17 Part 240
80b-4	17 Part 240
80b-11	17 Parts 228, 240
714b	7 Part 720
714c	7 Part 720
1123	37 Part 3
1691 et seq	12 Part 613
2055	16 Part 1116
2084	16 Parts 1115, 1116
3301—3432	18 Part 2
3621	21158 Part 570
3622	21158 Part 570
3624	21158 Part 570
16 U.S.C.	
3	36 Part 242 50 Part 100
668dd	36 Part 242 50 Part 100
705	50 Part 14
791—828r	18 Part 375
791a—825r	18 Part 24
1456	15 Part 932
1458	15 Part 928
2601—2645	18 Parts 281, 375
3101—3126	50 Part 100

16 U.S.C.—Con.	CFR
3801	7 Part 703
7101—7352	18 Part 24
17 U.S.C.	
111	37 Part 201
116	37 Part 201
119	37 Part 310
408	37 Part 201
409	37 Part 201
410	37 Part 201
18 U.S.C.	
2257	28 Part 75
2510 et seq	15 Parts 768, 770—779, 785, 786, 790, 791, 799
3551—3586	36 Part 242 50 Part 100
3622	28 Part 570
5031—5042	28 Part 571
19 U.S.C.	
1490	19 Part 4
1608	19 Part 162
1612	19 Part 162
1613b	19 Part 162
20 U.S.C.	
1125a	34 Part 671
1201 et seq	34 Parts 460, 461
1207a	34 Part 471
1208aa	34 Part 464
1211	34 Parts 472, 473
1211a	34 Parts 462, 463, 474
1211-2	34 Parts 489, 490
1213	34 Part 475
1213a	34 Part 476
1213b	34 Part 477
2301 et seq	34 Part 403
2313	34 Parts 401, 402
2394—2394e	34 Part 405, 406
2396	34 Part 408
2396m	34 Part 409
2404	34 Part 413
2414	34 Part 418, 419
2415	34 Part 491
2416	34 Part 421
2417	34 Part 422
2418	34 Part 423
2419	39 Part 424
2420	34 Part 425
2420a	34 Part 426
2395—2395e	34 Part 407
2397-2397h	34 Part 410
2401	34 Part 411
2402	34 Parts 411, 412
2412	34 Part 414
2413	34 Part 415
2414	34 Parts 416, 417
2441	34 Parts 408, 409, 427, 428, 429
3061—3068	34 Part 791
3221—3282	34 Part 562

20 U.S.C.—Con.	CFR
3474	20 Part 404 34 Part 8
4501 et seq	45 Part 2400
5381	34 Part 652
5386	34 Part 652
5031—5039	34 Part 722
5505	40 Part 47
21 U.S.C.	
136	9 Part 130
136a	9 Part 130 7 Part 319
321	21 Part 348
331	21 Part 21
346a	40 Part 185
351	21 Parts 21, 348
352	21 Parts 21, 348
353	21 Part 348
355	21 Part 348
360	21 Parts 21, 348
360e	21 Part 21
360h	21 Part 21
360i	21 Part 21
371	21 Parts 21, 348
374	21 Part 21
853a	47 Part 1
22 U.S.C.	
262m-7	31 Part 26
290f	22 Part 1007
2381	48 Part 710
2658	22 Part 172
2664	22 Part 172
3201 et seq	15 Parts 768, 772, 773, 774, 775, 776, 777, 779, 785, 786, 790, 791, 799
3201	15 Parts 770, 778
3926	22 Part 172
4060	5 Part 890
4069c	5 Part 890
25 U.S.C.	
398—398c	43 Part 3160
2701 et seq	25 Part 502
26 U.S.C.	
61	26 Part 1
304	26 Part 1
458	26 Part 1
597	26 Part 1
832	26 Part 1
988	26 Part 1
1043	5 Part 2634
1291	26 Part 1
1361	26 Part 1
4082	26 Part 48
7701	26 Part 31, 301
29 U.S.C.	
206	29 Part 1614
633a	29 Part 1614
791	29 Part 1614

29 U.S.C.—Con.	CFR
794a	29 Part 1614
30 U.S.C.	
183 et seq	43 Part 3160
185	15 Parts 770, 771, 772, 774, 786, 790, 799
31 U.S.C.	
321	31 Part 26
1352	32 Part 28
483a	12 Part 1615
3103	31 Part 342
3105	31 Parts 316, 332
9701	32 Part 165 40 Part 86
33 U.S.C.	
1319	40 Part 22
2701—2719	33 Part 135
2713	33 Part 136
2714	33 Part 136
2734	33 Part 161
35 U.S.C.	
6	37 Part 3
200—212	45 Part 650
38 U.S.C.	
224	28 Part 14
501	38 Parts 3, 14, 19, 20, 21
510	38 Part 36
2302—2308	38 Part 3
4211—4212	41 Part 60-250
5901—5905	38 Part 14
5902	38 Part 14
40 U.S.C.	
486	41 Parts 101-42, 301-1 48 Part 1609
41 U.S.C.	
418	48 Part 20
422	48 Parts 9900, 9903, 9904
701 *et seq*	10 Part 707 32 Part 25
42 U.S.C.	
216	32 Part 626
263a	42 Parts 405, 488
294—294l-1	42 Part 60
300e	42 Parts 417, 419
300aa-1	21 Part 5
300aa-15	42 Part 100
301	45 Parts 233, 410, 416, 418, 482, 485, 488, 491
405	42 Parts 1005, 1006
602	45 Parts 204, 233, 234, 257
603	45 Parts 234, 257
606	45 Parts 233, 234
607	45 Part 233
1202	45 Part 233
1301	45 Parts 201, 301, 1355
1302	42 Parts 257, 417, 1005, 1006
1316	45 Part 201
1320a-7a	42 Parts 1005, 1006
1320b-6	42 Part 482
1320c-5	42 Part 1005

42 U.S.C.—Con.	CFR
1352	45 Part 233
1382	45 Part 233
1395b-4	42 Part 403
1395d	42 Part 418
1395e	42 Part 418
1395f	42 Part 418
1395j—1395v	42 Part 405
1395k	42 Part 403
1395l	42 Parts 405, 417, 420
1395m	42 Parts 410, 421
1395x	42 Parts 418, 420, 498
1395cc	42 Parts 405, 417, 484, 498, 1001
1395hh	42 Part 405
1395uu	42 Part 421
1396	42 Part 1002
1396b	42 Part 1007
1437	24 Parts 70, 990, 963
1437c	24 Part 905
1437d	24 Parts 901, 905
1437dd	24Part 905
1480	7 Parts 1925, 1945, 1962
1870	48 Part 2509
1997e	28 Part 40
2000e-16	29 Part 1614
2012	10 Part 707
2013	10 Part 707
2021b *et seq*	10 Part 2
2021b	10 Part 171
2051	10 Part 707
2061	10 Part 707
2139a	15 Parts 768, 770, 771, 772, 773, 774, 775, 776, 777, 779, 786, 785, 790, 791, 799
2165	10 Part 707
2201	10 Part 708 48 Part 20
2201b	10 Part 707
2201l	10 Part 707
2201p	10 Part 707
2210 note	28 Part 79
2243	10 Parts 2, 40, 51, 70, 110, 140, 150
2456a	14 Part 1203b
3535	24 Parts 45, 70, 200 221, 571, 901, 963
3601	12 Part 613
3711 *et seq*	28 Part 20 48 Part 20
4001 *et seq*	44 Part 71
4028	44 Part 71
4321 *et seq*	43 Part 3160
4601 *et seq*	49 Part 24
5310	24 Part 70
5814	10 Parts 707, 708
5815	10 Parts 707, 708
5841	48 Part 20
5842	10 Part 70

42 U.S.C.—Con.	CFR
5851	10 Part 40
6212	15 Parts 771, 772, 774, 786, 790, 799
6936	40 Part 265
6991	40 Part 22
7101—7352	18 Parts 24, 284, 821
7251	10 Parts 707, 708
7254—7256	10 Parts 707, 708
7254	10 Part 1021
7256	10 Part 707
7401 *et. seq.*	40 Part 70
7401—7671q	40 Part 52
7401—7642	40 Part 52
7411	40 Part 51
7413	40 Part 22
7414	40 Part 82
7491	40 Part 51
7524	40 Part 22
7547	40 Part 22
7552	40 Part 86
7601	40 Part 82
7602	40 Part 51
7607	40 Part 22
9609	40 Part 22
9822 note	12 Part 705
10198	10 Part 72
11361	24 Part 882
11376	24 Part 575
12117	29 Part 1641 41 Part 60-742
12501	45 Parts 2500–2506
12901-12912	24 Part 574 42 Part 100
43 U.S.C.	
1354	15 Parts 770, 771, 772, 786, 799
6212	15 Part 770
44 U.S.C	
3506	32 Part 350
45 U.S.C.	
362	20 Part 259
431	49 Part 214
438	49 Part 214
46 U.S.C.	
466	15 Part 770
466c	15 Parts 771, 772, 786, 790, 799
883a	19 Part 4
2103	46 Part 68
10301	19 Part 4
10302	19 Part 4
10314	19 Part 4
10315	19 Part 4
12106	46 Part 68
1241e-0	46 Part 381
46 U.S.C. Appendix	
1114	46 Part 381
1122	46 Part 381

46 U.S.C. Appendix—Con.	CFR
1195	46 Part 221
1241	46 Part 381
47 U.S.C.	
151	47 Part 63
155	47 Part 68
201—205	47 Part 63
201–4	47 Part 64
218	47 Part 63
225	47 Part 64
226	47 Part 64
227	47 Part 64
522	47 Part 68
2103	47 Part 68
12106	47 Part 68
49 U.S.C.	
1302	14 Part 302 49 Part 383
1377	14 Part 201
1389	14 Part 201
1751	7 Part 246
10723	49 Part 1063
10761	49 Part 1039
11902—11904	49 Part 1039
49 U.S.C. Appendix	
1601 et seq	49 Part 665
1601 note	49 Part 23
1608	49 Part 665
1804	49 Part 107
1805	49 Part 107
1815	49 Parts 107, 171
2219	49 Part 23
12701 *et seq.*	49 Part 383
50 U.S.C.	
1431	32 Part 626
1701 et seq	15 Parts 777, 786, 791 31 Part 580
U.S. Statutes at Large:	
48 Stat.	
1070–71	47 Part 64
63 Stat.	
390	41 Part 101-42
85 Stat.	
164	33 Part 26
88 Stat.	
1242	48 Part 20
89 Stat.	
579	45 Part 233
95 Stat.	
843	45 Part 233
96 Stat.	
324	45 Part 233
100 Stat.	
2916	45 Part 233
3190	5 Part 890
3359	45 Parts 206, 233
101 Stat.	
697	42 Part 1001

101 Stat.—Con.	CFR
1568	12 Part 611, 614
1638	12 Part 611
1639	12 Part 614
3131	5 Part 890
104 Stat.	
523	33 Part 26
1388-335	5 Part 531
1388-336	5 Parts 531, 536
1462	5 Part 575
1466	5 Parts 530, 531, 550, 575
1469	5 Part 550
1516	32 Parts 626, 627
2064	22 Part 193
2399	40 Parts 51, 52, 60
5027	22 Part 41
105 Stat.	
661	22 Part 51
820	22 Part 51
1234	31 Part 555
2208	33 Part 26
2236	12 Parts 215, 225
Public Laws:	
98-511	34 Part 471
98-524	34 Part 491
100-654	5 Part 890
100-690	32 Part 25
101-12	5 Part 772
101-513	5 Part 890
101-516	23 Part 1212
101-624	7 Parts 1477, 1478
101-625	24 Part 901
102-140	13 Part 122
102-143	23 Part 1212
102-229	7 Parts 1477, 1478

	CFR
Executive Orders:	
10577	29 Part 1614
11222	29 Part 1614
11476	32 Parts 750, 751, 756, 757
11478	29 Part 1614
11912	15 Parts 770, 771, 772, 774, 786, 790, 799
12002	15 Parts 768, 771, 773, 775, 776, 777, 778, 779, 785, 790, 791
12058	15 Parts 768, 770, 771, 773, 775, 776, 777, 778, 779, 785, 790, 791
12106	29 Part 1614
12107	22 Part 1007
12163	48 Part 710
12214	15 Parts 771, 773, 775, 785, 790, 791
12333	32 Part 355
12356	32 Part 350
12600	5 Part 294
12674	5 Parts 735, 2638 24Part 0
12730	15 Part 790
12731	5 Parts 735, 2634, 2638
12735	15 Parts 768, 773, 775, 777, 785, 790, 791
12777	33 Parts 135, 136
12779	31 Part 580
12787	32 Part 340
Reorganization Plans	
1978 Plan No. 1	29 Part 1614

Removals from Table I, August 1992

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being removed from Table I as a result of documents published in the **Federal Register** during January through August 1992.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1992. Removals during 1991 are in the December 1991 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

U.S. Code:	CFR
2 U.S.C.	
441i	11 Part 110
5 U.S.C.	
133z–15 note	15 Part 907
504	32 Part 155
551.et seq	14 Part 302
552	4 Part 303
	45 Parts 2000, 2001, 2002, 2005
552a	32 Parts 287a, 295c
552a note	45 Part 205
553	46 Part 520
	49 Part 1053
559	49 Part 1053
1104	5 Part 890
5307	5Part 531
5701—5709	41 Part 304–1
7701	5 Parts 531, 890
8337	5 Part 831
8343a	5 Part 831
8345	5 Part 831
8457	5 Part 213
5 U.S.C. Appendix	
I	44 Part 361
III	5 Parts 2634, 2635, 2638
IV	5 Parts 2634, 2635, 2638
7 U.S.C.	
7	17 Part 20
12a	17 Part 20
75a	7 Part 810
76	7 Part 810
105dd	7 Part 302
136i	40 Part 22
136m	40 Part 22
150ee—150ff	7 Part 302
161—162	7 Part 302
164—167	7 Part 302
263a	42 Parts 417, 483, 484
263b–263n	Part 14
516	7 Part 34
901—950	7 Part 1700
1153	7 Part 718
1314	7 Part 718
1375	7 Part 718
1375	7 Part 720
1421	7 Part 720
1441	7 Part 720
7 U.S.C.—Con.	CFR
1444	7 Part 720
1445b–1	7 Part 720
1705	22 Part 211
1721	22 Part 211
1722	22 Part 211
1723	22 Part 211
1989	7 Parts 1863, 1866
3507	7 Part 720
8 U.S.C.	
1153 note	22 Parts 41, 43
1187	22 Part 41
1301	42 Part 417
1392	17 Part 20
1356	8 Part 103
10 U.S.C.	
78	12 Part 263
113	32 Parts 278, 282
125	32 Part 174
131	32 Part 626
133	32 Parts 174, 208
2301—2314	32 Part 591
2733	32 Parts 750, 751
3012	32 Part 591
5013	32 Part 750
5031	32 Parts 750, 751, 757
7430	15 Part 799
8012	32 Part 860
12 U.S.C.	
1 *et seq*	12 Part 4
375a	12 Part 337
375b	12 Part 337
1395	42 Part 417
1464	12 Part 325
1715	24 Parts 204, 221
1715l note	24 Part 248
1715z–11	24 Part 200
1821	12 Part 337
1831i	12 Part 225
2221	12 Part 611
2243	12 Part 603
2252	12 Part 603
3331–51	12 Part 323
3535	24 Part 200

	CFR
15 U.S.C.	
77c	17 Part 230
77d	17 Part 230
77e	17 Part 230
77f	17 Part 240
77h	17 Part 240
77s	17 Part 260
77t	17 Part 260
77ddd	17 Part 260
77hhh	17 Part 260
78d-1	17 Part 260
78w	17 Part 260
79g	17 Part 250
79l	17 Part 250
79t	17 Part 260
80a-37	17 Part 260
77nnn	17 Part 269
313	15 Parts 906, 945
717 et seq	18 Part 281
717—717w	18 Part 159
717i	18 Part 155
717o	18 Part 155
751 et seq	10 Part 220
761 et seq	10 Part 490
764	10 Part 445
766	10 Part 445
772	10 Part 445
787 et seq	10 Part 220
791	17 Part 250
7170	18 Parts 50, 160
16 U.S.C.	
263b—263n	21 Part 14
460d	33 Part 222
551	50 Part 100
590	7 Part 720
668dd et seq	36 Part 242 50 Part 100
668dd—ee	43 Part 3100
825c	18 Part 160
825h	18 Part 160
551	50 Part 100
704	50 Part 14
791a—825r	18 Part 37
791—828c	18 Part 375
796	18 Part 103
797	18 Part 103
816	18 Part 24
817	18 Parts, 24, 42
825	18 Part 103
825c	18 Parts 50, 103, 160
825g	18 Part 103
825h	18 Parts 24, 50, 103, 160
1311	7 Part 720
1506	7 Part 720
2103	7 Part 720
2205	7 Part 720
2601 et seq	18 Part 375
2601—2645	18 Part 385

16 U.S.C.—Con.	CFR
3101 et seq	36 Part 242 43 Part 3100 50 Part 100
4223—4244	50 Part 14
18 U.S.C.	
7	36 Part 242 50 Part 100
926	27 Parts 47, 179
3559	36 Part 242 50 Part 100
3571	36 Part 242 50 Part 100
20 U.S.C.	
1135	34 Part 630
1135a-2	34 Part 630
1135e—1135e-1	34 Part 630
1201 et seq	34 Part 425, 426
1207a	34 Part 431
1211	34 Part 432
1211a	34 Parts 433, 434, 435
1213	34 Part 436
1213a	34 Part 437
1213b	34 Part 438
1444	34 Part 324
2301 et seq	34 Part 401
2313	34 Part 410
2401	34 Part 416
2402	34 Part 416
2404	34 Part 417
2411	34 Part 414
2415	34 Part 411
2417	34 Part 415
2441	34 Parts 407, 408, 409
3281—3341	34 Part 562
21 U.S.C.	
357	21 Parts 536, 539, 540
360b	21 Parts 536, 539, 540, 544, 546, 548, 555
22 U.S.C.	
287c	31 Part 530
501	15 Part 906
2778	27 Part 179
4050	5 Part 890
4069c	5 Part 890
5001 et seq	15 Parts 768, 773, 775, 786
25 U.S.C.	
398—398e	43 Part 3160
2623	34 Part 263
26 U.S.C.	
1043	5 Part 2634
6091	27 Part 179
6511	27 Part 179
6676	27 Part 179
6805	27 Part 179
30 U.S.C.	
181 et seq	43 Part 3160
301-306	43 Part 3100

	CFR
31 U.S.C.	
240—243	32 Part 756
483a	43 Part 3100
711	4 Part 22
753	31 Part 342
754b	31 Part 342
757c	31 Parts 316, 332
1352	32 Part 282
1353	41 Part 304-1
3529	4 Part 22
3701—3721	32 Parts 750, 751, 753, 757
3720A	20 Part 404
9701	18 Part 159
33 U.S.C.	
540	33 Part 222
709	33 Part 222
883d—883f	15 Part 906
884	15 Part 906
1361	40 Part 22
35 U.S.C.	
200 et seq	45 Part 650
38 U.S.C.	
210	38 Part 14
223	28 Part 14
2011—2012	41 Part 60-250
3401—3405	38 Parts 14, 19
5901—5905	38 Part 14
40 U.S.C.	
471 et seq	43 Part 3100
486	41 Part 101-14
40 U.S.C. Appendix	
401	7 Part 720
41 U.S.C.	
506	10 Part 417
701 et seq	32 Part 280 45 Part 2016
42 U.S.C.	
216	42 Part 417
263a	42 Parts 410, 417, 482, 483, 484, 488, 493
263b—263n	21 Part 5
294—294l	42 Part 60
300e	42 Part 417
300e—300e-17	42 Part 417
300g-3	40 Part 22
300aa-1—300ff	21 Part 5
1301	42 Part 417
1395	42 Part 417
1395c—1395f	42 Part 418
1395g	42 Part 418
1395m	42 Part 410

42 U.S.C.—Con.	CFR
1395x—1395cc	42 Part 418
1395cc	42 Parts 417, 420, 498
1395hh	42 Part 488
1437g	24 Part 990
1480	7 Parts 1863, 1866
1997	28 Part 40
2021b	10 Part 171
2139	10 Part 110
2234	10 Part 70
2301	34 Part 401
2301 et seq	34 Part 401
2313	34 Part 410
2401	34 Part 416
2402	34 Part 416
2404	34 Part 417
2411	34 Part 412
2413	34 Part 414
2415	34 Part 411
2417	34 Part 415
2441	34 Part 407
2651-53	32 Part 757
3543	24 Part 200
3544	24 Part 200
3535	24 Parts 50, 571
4013	44 Part 71
4331 et seq	43 Part 3160
4332	24 Part 50
4601	49 Part 24
4601 note	49 Part 24
6201 et seq	10 Parts 220, 490
6341—6346	10 Part 445
7101 et seq	10 Parts 220, 456, 490, 1001
7101—7352	18 Parts 37, 284
7102—7352	18 Part 159
7112	10 Part 595
7151	10 Part 445
7158	10 Part 445
7178	18 Part 375
7191	10 Part 595
7254	10 Part 595
7401—7671q	40 Part 52
7401—7642	40 Part 52
7407	40 Part 51
8101 et seq	12 Part 932
8211 et seq	10 Part 456
9205	10 Part 417
43 U.S.C.	
1334	18 Part 159
1701 et seq	43 Part 3100
1811 et seq	33 Part 136

43 U.S.C.—Con.	CFR
1811-1824	33 Part 135
6212	15 Part 770
44 U.S.C.	
3504	27 Part 47
45 U.S.C.	
228j	20 Part 259
446	15 Part 777
46 U.S.C.	
1114	46 Part 381
1122	46 Part 381
1241	46 Part 381
1279b	46 Part 298
46 U.S.C. Appendix	
401	7 Part 720
804	46 Part 520
817	46 Part 520
841	46 Part 520
844	46 Part 520
1716	46 Part 520
47 U.S.C.	
158	47 Part 1
201	47 Part 64
214	47 Part 63
225	47 Part 64
49 U.S.C.	
304	49 Part 1020
320	49 Part 1020
1302	14 Part 202
1323	14 Part 302
1324	14 Part 202
1368	14 Part 202
1371	14 Part 202
1372	14 Part 202
1373	14 Part 202
1377	14 Part 202
3102	49 Part 383
10321	49 Part 1053
49 U.S.C. Appendix	
2040	49 Part 199
2505	49 Part 383
50 U.S.C.	
98c	41 Part 101-14
98e	41 Part 101-14
1512	32 Part 626
1514	32 Part 626
1702	15 Part 791
1704	15 Part 791
50 U.S.C. Appendix	
2154	41 Part 101-14
2168	4 Parts 301—305, 331, 332, 351, 400—418, 420
2401 et seq	15 Parts 786, 799
U.S. Statutes at Large:	
48 Stat.	
1066	47 Part 64
1070	47 Part 64
49 Stat.	
647	20 Part 404
	45 Part 201
63 Stat.	
390	41 Part 101-14
66 Stat.	
173	8 Part 251
182	8 Part 251
195	8 Part 251
219	8 Part 251
220	8 Part 251
68 Stat.	
454	22 Part 211
72 Stat.	
737	14 Part 1302
742	14 Part 302
743	14 Parts 201, 204, 302
754	14 Parts 201, 204, 302
757	14 Parts 201, 302
758	14 Parts 201, 302
760	14 Part 302
763	14 Part 302
766	14 Part 204
769	14 Part 201
770	14 Part 302
771	14 Part 201
783	14 Part 302
788	14 Part 302
794	14 Part 302
76 Stat.	
394	17 Part 202
79 Stat.	
1127	15 Part 6
84 Stat.	
772	14 Part 302
86 Stat.	
1280	15 Part 932
90 Stat.	
1013	15 Part 932
92 Stat.	
1732	14 Part 204
3350	18 Part 281
94 Stat.	
611 et seq	10 Part 456
97 Stat.	
35	43 Part 3100
	45 Parts 719
719	45 Parts 2001, 2002
100 Stat.	
1890	18 Part 381
3063	45 Parts 2001, 2002
3190	5 Part 890
3207	45 Part 2005
101 Stat.	
1331	8 Part 245a
1744	5 Part 890
3131	5 Part 890

	CFR
103 Stat.	
511	12 Part 34
104 Stat.	
1388	49 Part 245
1388-336	5 Part 531
5027	22 Part 41
5089	37 Part 201
5131-31	37 Part 201
Public Laws:	
93-400	32 Part 169a
95-87	10 Part 320
95.91	10 Part 320
95-369	31 Part 123
95-454	5 Part 213
95-521	5 Part 735
95-617	10 Part 320 18 Part 281
97-35	43 Part 3100
98-101	45 Parts 2001, 2002, 2015
98-150	5 Part 735
99-58	15 Part 777
99-64	15 Part 777
99-194	45 Part 2015
99-251	5 Part 831
99-412	10 Part 456
100-93	42 Part 1001
100-180	15 Part 777
100-203	5 Part 831 7 Part 1700
100-204	8 Part 245a
100-233	12 Part 611
100-418	15 Parts 777, 790, 791
100-449	15 Part 777
100-654	5 Part 890
100-690	32 Part 280 45 Part 2016
101-73	12 Parts 772, 1609
101-144	12 Part 705
101-147	7 Part 246
Public Laws—Con.	CFR
101-508	5 Part 831
101-510	32 Parts 626, 627
101-513	5 Part 870 22 Part 193
Presidential Documents:	
Executive Orders:	
10480	41 Part 101-14
10485	18 Part 159
11228	5 Part 831
11246	31 Part 12
11281	31 Part 520
11322	31 Part 530
11419	31 Part 530
11514	14 Part 302 24 Part 50
11717	15 Part 6
11790	10 Parts 220, 445, 490
11912	10 Part 490
11991	24 Part 50
12009	10 Parts 220, 445, 490, 595, 1001 18 Parts 2, 4, 8, 16, 35, 152, 154, 157, 159, 260, 271, 281, 292, 300, 375, 381, 385, 821
12123	33 Part 135
12127	44 Part 71
12155	41 Part 101-14
12525	15 Parts 777, 790, 791
12532	15 Parts 768, 773, 775, 786, 799
12543	15 Part 790
12549	42 Part 2016
12571	15 Parts 768, 772, 773, 774, 775, 786, 799
Reorganization Plans:	
1965 Plan No. 2	15 Part 907
1970 Plan No. 3	14 Part 202 40 Part 180

1991

56 FR Page	
29889-30306	July 1
30307-30482	2
30483-30678	3
30679-30856	5
30857-31042	8
31043-31304	9
31305-31532	10
31533-31854	11
31855-32060	12
32061-32318	15
32319-32498	16
32499-32950	17
32951-33188	18
33189-33366	19
33367-33702	22
33703-33838	23
33839-34002	24
34003-34140	25
34141-35798	26
35799-35996	29
35997-36078	30
36079-36722	31
36723-36996	Aug. 1
36997-37138	2
37139-37266	5
37267-37452	6
37453-37640	7
37641-37820	8
37821-38070	9
38071-38318	12
38319-40218	13
40219-40480	14
40481-40742	15
40743-41054	16
41055-41280	19
41281-41430	20
41431-41620	21
41621-41746	22
41747-41918	23
41919-42220	26
42221-42522	27
42523-42676	28
42677-42918	29
42919-43546	30
43547-43688	Sep. 3
43689-43860	4
43861-43994	5
43995-45880	6
45881-46106	9
46107-46220	10
46221-46364	11
46365-46522	12
46523-46718	13
46719-46976	16
46977-47122	17
47123-47350	18
47351-47670	19
47671-47898	20
47899-48094	23
48095-48414	24
48415-48722	25
48723-49130	26
49131-49386	27
49387-49660	30
49661-49836	Oct. 1
49837-50028	2
50029-50234	3
50235-50472	4
50473-50642	7
50643-50808	8
50809-51144	9
51145-51316	10
51317-51630	11
51631-51822	15
51823-51964	16
51965-52186	17
52187-52442	18
52443-54528	21
54529-54770	22
54771-55050	23
55051-55194	24
55195-55436	25
55437-55594	28
55595-55794	29
55795-55976	30
55977-56144	31
56145-56288	Nov. 1
56289-56460	4
56461-56566	5
56567-56918	6
56919-57230	7
57231-57480	8
57481-57572	12
57573-57792	13
57793-57968	14
57969-58172	15
58173-58298	18
58299-58490	19
58491-58634	20
58635-58840	21
58841-59204	22
59205-59848	25
59849-60044	26
60045-60892	27
60893-61108	29
61109-61346	Dec. 2
61347-63398	3
63399-63626	4
63627-63860	5
63861-64184	6
64185-64468	9
64469-64550	10
64551-64700	11
64701-64938	12
64939-65170	13
65171-65414	16

65415-65676	17
65677-65796	18
65797-65978	19
65979-66338	20
66339-66556	23
66557-66778	24
66779-66952	26
66953-67138	27
67139-67466	30
67467-67716	31

1992

57 FR Page	
1-172	Jan. 2
173-328	3
329-516	6
517-600	7
601-754	8
755-1068	9
1069-1210	10
1211-1364	13
1365-1634	14
1635-1856	15
1857-2006	16
2007-2212	17
2213-2430	21
2431-2672	22
2673-2822	23
2823-2978	24
2979-3110	27
3111-3270	28
3271-3514	29
3515-3706	30
3707-3908	31
3909-4146	Feb. 3
4147-4356	4
4357-4542	5
4543-4690	6
4691-4834	7
4835-4924	10
4925-5050	11
5051-5226	12
5227-5364	13
5365-5786	14
5787-5972	18
5973-6066	19
6067-6180	20
6181-6284	21
6285-6456	24
6457-6552	25
6553-6662	26
6663-6788	27
6789-7314	28
7315-7530	Mar. 2
7531-7644	3
7645-7874	4
7875-8058	5
8059-8256	6
8257-8396	9
8397-8568	10
8569-8718	11
8719-8834	12
8835-9040	13
9041-9166	16
9167-9380	17
9381-9500	18
9501-9648	19
9649-9972	20
9973-10118	23
10119-10280	24
10281-10414	25
10415-10608	26
10609-10736	27
10737-10800	30
10801-10972	31
10973-11260	Apr. 1
11261-11424	2
11425-11552	3
11553-11670	6
11671-11904	7
11905-12176	8
12177-12402	9
12403-12694	10
12695-12862	13
12863-12988	14
12989-13266	15
13267-13622	16
13623-14320	17
14320-14474	20
14475-14636	21
14637-14790	22
14791-15000	23
15001-15216	24
15217-17844	27
17845-18078	28
18079-18386	29
18387-18796	30
18797-19062	May 1
19063-19248	4
19249-19362	5
19363-19514	6
19515-19790	7
19791-20024	8
20025-20190	11
20191-20394	12
20395-20626	13
20627-20734	14
20735-20954	15
20955-21186	18
21187-21346	19
21347-21586	20
21587-21720	21
21721-21888	22
21889-22156	26
22157-22408	27
22409-22642	28
22643-23042	29
23043-23134	June 1

28135-23300	2
23301-23522	3
23523-23924	4
23925-24178	5
24179-24344	8
24345-24538	9
24539-24748	10
24749-24934	11
24935-26602	12
26603-26766	15
26767-26920	16
26921-27140	17
27141-27344	18
27345-27676	19
27677-27888	22
27889-28032	23
28033-28456	24
28457-28582	25
28583-28776	26
28777-28996	29
28997-29180	30
29181-29428	July 1
29429-29628	2
29629-29782	6
29783-30098	7
30099-30378	8
30379-30634	9
30635-30896	10
30897-31088	13
31089-31302	14
31303-31428	15
31429-31628	16
31629-31946	17
31947-32148	20
32149-32412	21
32413-32684	22
32685-32878	23
32879-33096	24
33097-33266	27
33267-33424	28
33425-33622	29
33623-33856	30
33857-34060	31
34061-34200	Aug. 3
34201-34494	4
34495-34664	5
34665-34850	6
34851-35454	7
35455-35744	10
35745-35980	11
35981-36350	12
36351-36586	13
36587-36886	14
36887-37078	17
37079-37392	18
37393-37682	19
37683-37868	20
37869-38236	21
38237-38402	24
38403-38576	25
38577-38742	26
38743-39096	27
39097-39350	28
39351-39596	31

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10-1-92
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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 57, No. 191

Thursday, October 1, 1992

ACTION
RULES
Privacy Act; implementation, 45325
NOTICES
Agency information collection activities under OMB review, 45370

Administrative Conference of the United States
NOTICES
Meetings:
Governmental Processes Committee, 45370

African Development Foundation
NOTICES
Meetings; Sunshine Act, 45421

Agriculture Department
See Commodity Credit Corporation
NOTICES
Agency information collection activities under OMB review, 45371
Immigration and Nationality Act (Section 210A); replenishment agricultural workers; shortage number determination, 45370

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol, tobacco, and other excise taxes:
Taxpaid distilled spirits used in manufacturing products unfit for beverage use, 45357

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Hospital Association of Greater Des Moines et al., 45401

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Commerce Department
See National Oceanic and Atmospheric Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 45371

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Uruguay, 45372
Special access and special regime programs; participation denial:
F.M. Industries et al., 45373

Commodity Credit Corporation
RULES
Export programs:
Dairy export incentive program, 45262

Copyright Office, Library of Congress
RULES
Claims registration:
Architectural works, 45307

Defense Department
RULES
Acquisition regulations:
Miscellaneous amendments
Correction, 45422
Federal Acquisition Regulation (FAR):
Compact disc-read only memory (CD-ROM) availability
Correction, 45422
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 45374

Education Department
NOTICES
Agency information collection activities under OMB review, 45374
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—
Educational personnel training program, 45375
Strengthening institutions and endowment challenge programs, 45376
Meetings:
National Assessment Governing Board, 45377

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Early site permit demonstration program; siting conference, 45389
Natural gas exportation and importation:
American Hunter Exploration Ltd., 45388
Mercado Gas Services, Inc., 45388

Environmental Protection Agency
RULES
Grants, State and local assistance:
National priorities sites list (Superfund program); technical assistance grants to groups, 45311
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
Dry cleaning facilities; perchloroethylene (PCE) emissions, 45363
Air quality implementation plans; approval and promulgation; various States:
California, 45358, 45360
NOTICES
Agency information collection activities under OMB review, 45389
Meetings:
Toxic Substances Control Act confidential business information claims policies and regulations, 45389

Executive Office of the President
See National Drug Control Policy Office

See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 45421

Federal Deposit Insurance Corporation
RULES
Assessments:
Bank Insurance Fund (BIF) recapitalization, 45263

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Northeast Utilities Service Co. et al., 45377
Hydroelectric applications, 45379
Natural gas certificate filings:
United Gas Pipe Line Co. et al., 45385
Applications, hearings, determinations, etc.:
Central Vermont Public Service Corp., 45386
Columbia Gas Transmission Corp., 45386
Entergy Power, Inc., 45386
Equitrans, Inc., 45386
Panhandle Eastern Pipe Line Co., 45387
Pelican Interstate Gas System, 45387
Riverside Pipeline Co., L.P., 45387
Southern Natural Gas Co., 45388
West Texas Utilities Co., 45388

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Walworth County, WI, 45415

Federal Housing Finance Board
PROPOSED RULES
Federal home loan bank system:
Secured loans (advances), 45338

Federal Maritime Commission
NOTICES
Agreements filed, etc., 45390

Federal Railroad Administration
RULES
Railroad workplace safety:
Bridge worker safety standards, 45326

Fish and Wildlife Service
RULES
Endangered and threatened species:
Marbled murrelet, 45328
NOTICES
Endangered and threatened species permit applications, 45396

Food and Drug Administration
RULES
Human drugs:
Category II and III active ingredients (OTC); final monograph, 45295
Organization, functions, and authority delegations:
Orphan Products Development Office, Director, 45294
NOTICES
Human drugs:
Antazoline in fixed combination with naphazoline for ophthalmic use; drug efficacy study implementation; final evaluation, 45391

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Compact disc-read only memory (CD-ROM) availability Correction, 45422
NOTICES
Committees; establishment, renewal, termination, etc.:
African Burial Ground Steering Committee, 45391
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 45374

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Public Health Service
NOTICES
Catalog of Federal Domestic Assistance (CFDA) program number series changes; Administration for Children and Families et al., 45391

Health Care Financing Administration
NOTICES
Medicare:
Ambulatory surgical centers; covered surgical procedures; payment rates update, 45544

Health Resources and Services Administration
See Public Health Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Trauma Care Systems Advisory Council, 45392

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Fair market rent schedules for rental certificate, loan management and property disposition, moderate rehabilitation and housing voucher programs, 45468

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Trade Commission
NOTICES
Import investigations:
Static random access memories, components, and products containing same, 45397

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Eastern Shore Railroad, Inc., 45398
Union Pacific Railroad Co., 45399
Railroad services abandonment:
Wheeling & Lake Erie Railway Co., 45399

Justice Department
See Antitrust Division
NOTICES
Agency information collection activities under OMB review, 45399

Pollution control; consent judgments:
Bunnell, FL, et al., 45400
Escambia Treating Co., 45400
Insilco Corp., 45400
McGraw-Edison et al., 45401

Labor Department
See Occupational Safety and Health Administration
NOTICES
Immigration and Nationality Act (Section 210A); replenishment agricultural workers; shortage number determination, 45370

Land Management Bureau
RULES
Public land orders:
Idaho, 45324
New Mexico, 45322
Oregon, 45321
NOTICES
Closure of public lands:
California, 45393
Meetings:
Iditarod National Historic Trail Advisory Council, 45393
Opening of public lands:
Oregon, 45393
Realty actions; sales, leases, etc.:
Washington, 45394
Resource management plans, etc.:
Cascade Resource Area, ID, 45394
Survey plat filings:
New Mexico, 45395
Withdrawal and reservation of lands:
Colorado, 45395, 45396

Library of Congress
See Copyright Office, Library of Congress
NOTICES
Meetings:
American Folklife Center Board of Trustees, 45406

Maritime Administration
NOTICES
Mortgagees and trustees; applicants approval, disapproval, etc.:
Chemical Trust Co. of California, 45416

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Compact disc-read only memory (CD-ROM) availability Correction, 45422
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 45374

National Drug Control Policy Office
PROPOSED RULES
Freedom of Information Act; implementation, 45353

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Opera-Musical Theater Advisory Panel, 45407

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Child restraint systems—
Occupant excursion and seat inversion limits; correction, 45422
Lamps, reflective devices, and associated equipment—
Center high-mounted stop lamps (multipurpose passenger vehicles, trucks, and buses), 45327
NOTICES
Intermodal Surface Transportation Efficiency Act of 1991; informal implementation guidance; Federal Highway Administration electronic access, 45416
Motor vehicle defect proceedings; petitions, etc.:
Gibbons, Karin I., 45417
Motor vehicle safety standards; exemption petitions, etc.:
Autokraft Ltd., 45416

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Pacific Fishery Management Council, 45372

National Park Service
NOTICES
Meetings:
Niobrara Scenic River Advisory Commission, 45397
Sudbury, Assabet, and Concord Rivers Study Committee, 45397

National Science Foundation
NOTICES
Meetings:
Astronomical Sciences Advisory Committee, 45407
Cross-Disciplinary Activities Special Emphasis Panel, 45407
Neuroscience Advisory Panel, 45407
Physics Advisory Committee, 45408

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Rio Algom Mining Corp., 45410
Union Pacific Resources-Minerals, 45410
Meetings:
Reactor Safeguards Advisory Committee, 45408

Occupational Safety and Health Administration
NOTICES
State plans; standards approval, etc.:
Utah, 45406

Personnel Management Office
RULES
Absence and leave:
Voluntary leave bank and leave transfer programs, 45261

Presidential Documents
ADMINISTRATIVE ORDERS
Haiti; continuation of state of emergency with U.S. (Notice of September 30, 1992), 45557

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration

NOTICES
Clinical Laboratories Improvement Act:
Laboratory text systems, assays, and examinations, specific list; categorization by complexity; correction, 45392

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 45410, 45411

Research and Special Programs Administration
RULES
Hazardous materials:
Performance-oriented packaging standards—
Classification, hazard communication, packaging and handling requirements based on United Nations standards and agency initiative, 45446
Infectious substances, including regulated medical waste, 45442
NOTICES
Hazardous materials:
Inconsistency rulings, etc.—
State, local government, and Indian tribe requirements; subject-matter index and table, 45424
Meetings:
International standards on transport of dangerous goods by air, 45418

Securities and Exchange Commission
RULES
Rules and forms; amendments, 45287
NOTICES
Applications, hearings, determinations, etc.:
Carnegie-Cappiello Trust, 45411
Phoenix Edge Series Fund et al., 45412

State Department
NOTICES
Meetings:
International Telegraph and Telephone Consultative Committee, 45415

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky, 45295

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
NOTICES
Agency information collection activities under OMB review, 45418, 45419

Veterans Affairs Department
NOTICES
Committees; establishment, renewal, termination, etc.:
Geriatrics and Gerontology Advisory Committee, 45419
Privacy Act:
Systems of records, 45419

Separate Parts In This Issue

Part II
Department of Transportation, Research and Special Programs Administration, 45424

Part III
Department of Transportation, Research and Special Programs Administration, 45442

Part IV
Department of Transportation, Research and Special Programs Administration, 45446

Part V
Department of Housing and Urban Development, 45468

Part VI
Department of Health and Human Services, Health Care Finance Administration, 45544

Part VII
The President, 45557

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

12775 (Continued by Notice of September 30, 1992)..... 45557

12779 (Continued by Notice of September 30, 1992)..... 45557

Administrative Orders:

Notices:

September 30, 1992..... 45557

5 CFR

630..... 45261

7 CFR

1494..... 45262

12 CFR

327..... 45263

Proposed Rules:

935..... 45338

940..... 45338

17 CFR

210..... 45287

240..... 45287

249..... 45287

259..... 45287

274..... 45287

21 CFR

5..... 45294

310..... 45310

Proposed Rules:

1401..... 45353

24 CFR

888..... 45468

27 CFR

Proposed Rules:

17..... 45357

19..... 45357

70..... 45357

170..... 45357

194..... 45357

197..... 45357

250..... 45357

30 CFR

917..... 45295

37 CFR

202..... 45307

40 CFR

35..... 45311

Proposed Rules:

52 (2 documents)..... 45358, 45360

63..... 45363

43 CFR

Public Land Orders:

1567 (Revoked in part by PLO 6948)..... 45325

5712 (Revoked by PLO 6946)..... 45322

6944..... 45321

6946..... 45322

6948..... 45324

45 CFR

1224..... 45325

48 CFR

30..... 45422

202..... 45422

204..... 45422

208..... 45422

210..... 45422

214..... 45326

215..... 45422

216..... 45422

219..... 45422

223..... 45422

225..... 45422

226..... 45422

227..... 45422

228..... 45422

231..... 45422

232..... 45422

236..... 45422

237..... 45422

239..... 45422

242..... 45422

245..... 45422

252..... 45422

253..... 45422

49 CFR

107..... 45446

171 (2 documents)..... 45442, 45446

172..... 45446

173..... 45446

174..... 45446

176..... 45446

177..... 45446

178..... 45446

179..... 45446

180..... 45446

214..... 45446

571 (2 documents)..... 45327, 45422

50 CFR

17..... 45328

VOL
57
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Rules and Regulations

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206-AE53

Absence and Leave; Voluntary Leave Transfer and Voluntary Leave Bank Programs

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that amend the use of annual leave by leave recipients under the voluntary leave transfer or leave bank programs. The regulations provide that donated annual leave used by a leave recipient under the voluntary leave transfer program or annual leave received from a leave bank under the voluntary leave bank program may be used only for the purpose of the medical emergency for which the leave recipient was approved. In addition, the regulations permit an employee's leave bank membership to transfer to another leave bank within the same agency. This eliminates the need for employees who move to another position within their employing agency to make an additional contribution to a leave bank for the year in which the move occurs.

EFFECTIVE DATE: November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Lee Kara, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Public Law 100-566, the "Federal Employees Leave Sharing Act of 1988," directed OPM to establish by regulation a 5-year experimental voluntary leave transfer and leave bank program. OPM published final regulations governing these programs on December 28, 1989, in the **Federal Register** (54 FR 53303). On November 27, 1991, OPM published proposed regulations in the **Federal Register** (56 FR 60075) to make clear that annual leave under this program may be used only for the purpose of the medical emergency for which the leave recipient was approved and to permit an employee's leave bank membership to transfer to another leave bank within the same agency. The original 30-day public comment period was extended administratively on March 24, 1992, for an additional 30 days because Federal Personnel Manual Bulletin 630-64, which notified agencies of the proposed regulations, did not reach agencies in a timely manner. The additional 30-day comment period ended on April 24, 1992.

OPM received a total of 10 comments from Federal agencies and departments. All of the comments from Federal agencies and departments expressed general support for the proposed changes. However, one agency expressed concern about additional recordkeeping and tracking requirements resulting from the proposed change to require that annual leave received by leave recipients be used only for the purpose of the medical emergency for which the leave recipient was approved. We do not believe the proposed change poses a serious administrative problem for agencies. Indeed, many agencies have indicated that the proposed change was already incorporated into their programs.

Two other concerns were expressed. One agency suggested changing "the" medical emergency to "a" medical emergency in 5 CFR 630.909(a) and 630.1009(a). The agency believes this change would cover situations that involve contiguous emergencies of an approved leave recipient. OPM agrees, and the final regulations have been revised accordingly.

Finally, one agency suggested that OPM revise the definitions of "medical emergency" in 5 CFR 630.902 and 630.1002 to include "normal" maternity situations. The agency believes this change would assure uniform treatment of employees by all agencies. While we do not believe it would be appropriate to make such a change at this time, we plan to comment on this suggestion in our final report to Congress on the 5-year experimental leave transfer/leave bank program, which will be submitted by April 30, 1993.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management
Douglas A. Brook,
Acting Director.

Accordingly, OPM amends part 630 of title 5, Code of Federal Regulations, as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as set forth below:

Authority: 5 U.S.C. 6311; section 630.303 also issued under 5 U.S.C. 6133(a); section 630.501 and subpart F also issued under E.O. 11228; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issue under 5 U.S.C. 6332 and Public Law 100-566; subpart J also issued under 5 U.S.C. 6362 and Public Law 100-566; subpart K also issued under Public Law 102-25.

2. In § 630.909, paragraph (a) is revised to read as follows:

§ 630.909 Use of transferred annual leave.

(a) A leave recipient may use annual leave transferred to his or her annual leave account under § 630.906 of this part only for the purpose of a medical emergency for which the leave recipient was approved.

* * * * *

3. In § 630.1004, paragraph (h) is amended by removing the word "or" at the end of paragraph (h)(1), removing the period at the end of paragraph (h)(2) and substituting ", or" in its place, and adding a new paragraph (h)(3) to read as follows:

§ 630.1004 Application to become a leave contributor and leave bank member.

* * * * *

(h) * * *

(3) Eliminate the requirement for a minimum contribution under paragraph (g) of this section when a leave bank member transfers within his or her

employing agency to an organization covered by a different leave bank.

* * * * *

4. In § 630.1009, paragraph (a) is revised to read as follows:

§ 630.1009 Use of annual leave withdrawn from a leave bank.

(a) A leave recipient may use annual leave withdrawn from a leave bank only for the purpose of a medical emergency for which the leave recipient was approved.

* * * * *

[FR Doc. 92-23773 Filed 9-30-92; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1494

Export Bonus Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this final rule which establishes program operations regulations governing the payment of bonuses in connection with the export of dairy products under the Dairy Export Incentive Program (DEIP). This final rule is intended to simplify the administration of the DEIP, enhance clarity, eliminate duplication, and facilitate the use of the regulations.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, USDA, FAS, room 4503-S, 1400 Independence Avenue, SW., Washington, DC, 20250-1000, telephone (202) 720-6211.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and had been designated as "nonmajor." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The paperwork requirements which would be imposed by this final rule were contained in the interim rule and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The OMB assigned number for those requirements is OMB No. 0551-0029. The public reporting burden imposed by this rule is estimated to average 26 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the response. Send comments regarding this burden estimate or any other aspects of the paperwork requirements, including suggestions for reducing the burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0551-0029), Washington, DC 20503.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, the administrative appeal procedures established in 7 CFR 1494.901 must be exhausted.

Background

In the **Federal Register** of June 7, 1991 (56 FR 26323), CCC published an interim rule which established program operations regulations for the DEIP in 7 CFR part 1494, subpart D. This interim rule also published as regulations the criteria considered in evaluating and approving proposals for country and commodity initiatives under the EEP and the DEIP. The criteria for the EEP and the DEIP, as set forth in this interim rule, are found in subparts A and C, respectively, of 7 CFR part 1494. Program operations regulations for the EEP have already been codified in subpart B and published as a final rule on June 3, 1991 (56 FR 25005).

In the **Federal Register** of June 19, 1991 (56 FR 28037), CCC suspended the effective date for subpart D from June 7, 1991 to July 3, 1991. The suspension of subpart D allowed CCC time to re-qualify exporters for program participation before it implemented the new program operations regulations. In addition, subpart D was based upon the EEP operations regulations in subpart B, which were published in the **Federal Register** as a final rule on June 3, 1991 but did not become effective until July 3, 1991.

By the issuance of this final rule, CCC is acting only to finalize the portions of the interim rule published on June 7, 1991 which change the authority citation for 7 CFR part 1494 and add subpart D. Subparts A and C remain interim rules. CCC will issue a final rule with respect to subparts A and C in the future.

The DEIP is administered by the Foreign Agricultural Service (FAS), on behalf of CCC. Like the EEP, the DEIP had been administered through the issuance of "Announcements" and "Invitations for Offers" (Invitations). It has been determined that the DEIP shall be operated in a manner consistent with the published regulations for the EEP. Therefore, § 1494.1200 provides that, except as otherwise stated in subpart D, the program operations regulations set forth in subpart B for the EEP will also apply to the DEIP.

Three provisions relating specifically to the DEIP were set forth in §§ 1494.1201, 1494.1202, and 1494.1203 of the interim rule. Section 1494.1201 contained a definition of "eligible commodity" for the purposes of the DEIP which superseded the definition in § 1494.201(p). Upon further review, it has been determined that the definition of "eligible commodity in § 1494.201(p) is appropriate for the DEIP as well as for the EEP. CCC will specify in each DEIP Invitation the particular dairy product which will be the eligible commodity for the purposes of such Invitation. Because § 1494.1201 of the interim rule was unnecessary, it has been removed in the final rule.

Section 1494.1202 of the interim rule was included as the result of section 153 of the Food Security Act of 1985, as amended, which provides that, if CCC certificates furnished to an exporter as a bonus under the DEIP are exchanged for CCC-owned dairy products, regulations issued by the Secretary of Agriculture shall ensure that the exporter must sell for export such dairy products or an equal quantity of other dairy products. It

is not expected that CCC will make dairy products available to be exchanged for CCC certificates in the foreseeable future. Therefore, § 1494.1202 of the interim rule was unnecessary and it has been removed in the final rule.

Section 1494.1203 of the interim rule dealt with the Paperwork Reduction Act as it pertains to the DEIP. This section has been re-numbered as § 1494.1201 in the final rule.

FAS will continue to maintain the system of issuing Invitations for targeted countries under the DEIP. Any terms or conditions applicable to a particular DEIP Invitation, beyond those terms and conditions set forth in subparts B or D of part 1494, will be specifically provided for in such Invitation.

Comments on the interim rule which established the DEIP operations regulations were to be submitted by August 6, 1991. However, no comments pertaining to the DEIP operations regulations in Subpart D were received. Therefore, CCC has determined to make no significant changes to the DEIP operations regulations and is publishing subpart D of 7 CFR part 1494 as a final rule.

List of Subjects in 7 CFR Part 1494

Administrative practice and procedure, Agricultural commodities, Exports, Reporting and recordkeeping requirements.

Accordingly, part 1494 of 7 CFR chapter XIV, is amended as follows:

Subpart B—Export Enhancement Program Operations

1. Subpart D is revised to read as follows:

Subpart D—Dairy Export Incentive Program Operations

Sec.
1494.1200 Program operations.
1494.1201 Paperwork Reduction Act.

Subpart D—Dairy Export Incentive Program Operations

Authority: 15 U.S.C. 713a–14, 714c.

§ 1494.1200 Program Operations.

This subpart contains the regulations governing the operation of the Dairy Export Incentive Program (DEIP) of the Commodity Credit Corporation (CCC). Under the DEIP, CCC facilitates the export of U.S. dairy products by paying bonuses to exporters which export U.S. dairy products to targeted markets in accordance with the terms and conditions of an Agreement entered into between the exporter and CCC. Except as otherwise provided in this subpart, the program operations provisions of subpart B of this part, relating to the Export Enhancement Program, will also apply to the DEIP. Any terms or conditions applicable to a particular Invitation for Offers (Invitation) under the DEIP, beyond those terms or conditions set forth in this subpart or subpart B of this part, will be specifically provided for in such Invitation.

§ 1494.1201 Paperwork Reduction Act.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control No. 0551–0029.

Signed this 25th day of Sept., 1992 at Washington, DC.

Christopher E. Goldthwait,

Acting General Sales Manager, Foreign Agricultural Service and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 92–23791 Filed 9–30–92; 8:45 am]

BILLING CODE 3410–10–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AA37, 3064–AA96, 3064–AB14

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is amending its regulations on assessments to: Adopt a recapitalization schedule for the Bank Insurance Fund (BIF); increase the deposit insurance assessment rate for certain members of the BIF during the first semiannual period of calendar year 1993 and thereafter; increase the deposit insurance assessment rate for certain members of the Savings Association Insurance Fund (SAIF) during the first semiannual period of 1993 and thereafter; and adopt a transitional risk-based deposit insurance assessment system. The intended purposes of this final rule are to establish a schedule according to which the BIF will be recapitalized within 15 years, to increase the assessment rates for certain BIF and SAIF members, respectively, to recapitalize the BIF and SAIF within the respective time frames prescribed by the applicable provisions of the Federal Deposit Insurance Act (FDI Act), and to provide for a transition from a uniform rate to a risk-based insurance assessment system.

DATES: *Effective date:* The final rule is effective November 2, 1992.

Applicability dates: The respective assessment rate increases for BIF and SAIF members, as well as the risk-based assessment system, will apply to assessments that become due in the first semiannual period of 1993 and thereafter.

FOR FURTHER INFORMATION CONTACT: William R. Watson, Director, Division of Research and Statistics, (202) 898–3946, Jennifer L. Eccles, Senior Financial Analyst, Division of Research and Statistics, (202) 898–8537; on the risk-based assessment system: George French, Chief, Financial Markets Section, Division of Research and Statistics, (202) 898–3929, or William Farrell, Chief, Receipts Section, Division of Accounting and Corporate Services, (703) 516–5546; on legal issues involving the BIF recapitalization schedule and the transitional risk-based assessment system, Martha L. Coulter, Counsel, Legal Division, (202) 898–7348; on legal issues involving the BIF and SAIF rate increases, Joseph A. DiNuzzo, Senior Attorney, Legal Division, (202) 898–7349. The address for all these individuals is: Federal Deposit Insurance Corporation, 550—17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in any of the four components of the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It will not impose burdens on depository institutions of any size and will not have the type of economic impact addressed by the Act. Moreover, to the extent the final rule relates to the assessment rates to be paid by BIF and SAIF member institutions, the Act does not apply to a rule of particular applicability relating to rates, wages, corporate or financial

structures or reorganizations thereof. *Id.* at 601(2).

Particularly, in connection with the transitional risk-based assessment system, the assessment obligations that will result from the system will be determined by an institution's deposit base and the risk posed to the FDIC. The first element as a matter of course fulfills the primary purpose of the Regulatory Flexibility Act, which is to make sure that agencies' rules do not impose disproportionate burdens on small businesses. The second element—the risk posed to the deposit insurance fund of which the institution is a member—is clearly one intended by Congress, as evidenced by the mandate in the FDIC Improvement Act of 1991 for implementation of a risk-based assessment system.

Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis (*Id.* at 603 & 604) are not applicable here.

The Final Rule

Background

On May 21, 1992, the Board published separately in the **Federal Register** proposed amendments to part 327 of the FDIC's regulations (12 CFR part 327) (part 327) to: (1) Increase the deposit assessment rate to be paid by BIF members from 0.23 percent to 0.28 percent starting with the first semiannual period of 1993 and thereafter (57 FR 21623 (1992)); (2) increase the SAIF deposit assessment rate to be paid by SAIF members from 0.23 percent to 0.28 percent starting with the first semiannual period of 1993 and thereafter (*Id.* at 21627); and (3) provide for a transitional assessment system under which BIF and SAIF member institutions would, beginning in January 1993, pay assessments at rates based on certain risk-related factors. (*Id.* at 21617). The comment period on the SAIF assessment rate increase and transitional risk-based assessment proposals ended on July 20, 1992. Because of an extension in the comment period provided for the BIF assessment rate increase proposal (57 FR 28810, June 29, 1992), the comment period for that proposal ended on August 13, 1992.

On June 29, 1992, the Board published in the **Federal Register** a proposed schedule according to which the BIF designated reserve ratio of 1.25 percent would be achieved within the statutory period of 15 years. 57 FR 28810. The comment period on that proposal also ended on August 13, 1992.

Explanation of the Final Rule; Approach Taken by the Board

The approach used by the Board in taking final action on the four proposed rules was to amend part 327 by adopting a BIF recapitalization schedule and a transitional risk-based assessment system. The amendments to part 327 implementing the transitional risk-based assessment system include risk-based assessment schedules reflecting increased rates for certain BIF and SAIF members, respectively. The Board's approach entailed selecting and implementing a transitional risk-based assessment schedule for each fund (as described below), instead of a target average assessment rate, as had been proposed. The actual assessment rate applicable to each institution will depend on the risk assessment classification assigned to that institution by the FDIC and reflected in the assessment rate schedules adopted by the Board for BIF and SAIF members.

The Board's goal in considering the four assessment-related proposals was to adopt a final rule that is fair and easily understood, that is not unduly burdensome to weak institutions, that maintains adequate revenue to recapitalize the funds, and that increases the financial incentive for insured institutions to maintain safety and soundness. The consolidated approach, therefore, incorporates all of the features and achieves all of the goals of the previous four proposals. It also draws upon the public comments received on the four individual proposals.

Primarily, the final rule seeks to strengthen both the BIF and the SAIF by recapitalizing each fund to the designated reserve ratio within 15 years. While the final rule will raise assessment rates for some institutions, the transitional risk-based assessment system is intended to make the deposit insurance system fairer to well-run institutions and encourage weaker institutions to improve their condition. Thus, the rule promotes safety and soundness in the banking and thrift industries.

Under a risk-based assessment system, changing conditions in the banking and thrift industries and in individual institutions will result in shifts among the rate cells of the assessment schedules. Over time, the result will be a variation in assessment revenue. For example, in the first two quarters of calendar year 1992, insured institutions have generally improved their capital ratios; under a risk-based assessment system, these improvements would have caused a migration away from higher-rate cells in the rate schedule to lower rate cells. As a result, revenues anticipated under the originally proposed schedule would have been less than the revenue anticipated using year-end 1991 data. To the extent insured institutions have increased capital and retained earnings, the risk of loss to the deposit insurance funds is reduced and it is consistent with the concept of risk-based premiums that somewhat less assessment revenue be collected. Because the assessment rate applicable to any institution will be determined by the risk-based assessment amendments and because of shifts in rate cells over time, the Board decided that it was unnecessary and confusing to issue separate regulations providing industry average assessment rates.

While assessment revenue will vary over time, it should remain consistent with the BIF recapitalization schedule and the projected recapitalization of SAIF within a reasonable period of time. As noted in the preceding example, when banking and thrift industry conditions improve, banks and thrifts will shift toward the lower-paying end of the assessment schedule, thereby generating less assessment revenue to the BIF and SAIF. Concurrently, improved conditions lower the exposure of the funds, thereby requiring a lower outflow of fund resources. The reverse is true when conditions deteriorate: Institutions pay higher assessment rates as they move into higher-paying cells, thereby supporting the greater needs of the fund. The Board will monitor and reevaluate the assessment rates and assessment revenues at six-month intervals while measuring the progress of recapitalization of both insurance funds. The Board intends to review assessment rates for BIF and SAIF members in November of this year.

As discussed below, under the transitional risk-based assessment system, the FDIC will place each insured institution in one of nine assessment risk categories based on certain capital and supervisory measures. While the proposed rule provided for a spread of six basis points between the highest and lowest rates, most of the comment letters argued for a wider premium spread. Upon consideration of this overwhelming preference, the final rule includes a spread between the highest and the lowest premiums of eight basis points. While this spread does not adequately reflect the difference in risk to the FDIC between the weakest and strongest institutions, the Board is concerned that a larger spread could create sufficient disruption and hardship

to weak institutions as to be inconsistent with the spirit of a transition rule. A wider spread may be recommended with the permanent risk-based assessment system.

Also, as discussed below, the Board is adopting a revised BIF recapitalization schedule which has been amended to incorporate mid-year BIF results and to adjust the timing of failed bank losses over the 15-year period.

Based on the applicable statutory requirements and the analyses discussed below, and in consideration of the comments received on the respective proposals, the Board is issuing this final rule.

The following is a discussion of the four separate proposals, including a discussion of the specific background of each proposal, the comments received on the proposal, and the Board's action with respect to each.

Subpart A. The BIF Recapitalization Schedule

I. The Proposed Rule

Section 7(b)(1)(C)(ii) of the FDI Act (12 U.S.C. 1817(b)(1)(C)(ii)), as amended by section 104 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2239) (FDIC Improvement act) provides:

> If the reserve ratio of the Bank Insurance Fund is less than the designated reserve ratio, the FDIC Board of Directors shall set the semiannual assessment rates—that are sufficient to increase the reserve ratio to the designated reserve ratio not later than one year after such rates are set; or in accordance with a BIF recapitalization schedule promulgated by the FDIC.

Under section 7(b)(1)(B) of the FDI Act, the BIF designated reserve ratio is 1.25 percent. BIF's actual reserve ratio (based on a mid-year 1992 fund balance of approximately negative $5.5 billion) is approximately negative 0.28 percent. Because of the extent of the difference between BIF's current reserve ratio and the designated reserve ratio, the Board determined that it would be infeasible to set an assessment rate sufficient to increase the reserve ratio from its current level to 1.25 percent within one year. Thus, pursuant to clause (II) of section 7(b)(1)(C)(ii), the Board proposed a BIF recapitalization schedule "in accordance with" which to determine semiannual assessment rates for BIF member institutions. As noted above, the Board's proposed rule was published in the **Federal Register** on June 29, 1992.

Section 7(b)(1)(C)(iii) of the FDI Act, as also amended by section 104 of the FDIC Improvement Act, requires that the BIF recapitalization schedule promulgated by the Board specify, at semiannual intervals, target reserve ratios for the Bank Insurance Fund, culminating in a reserve ratio that is equal to the designated reserve ratio no later than 15 years after the date on which the schedule becomes effective.

The recapitalization schedule proposed by the Board was designed to achieve the designated reserve ratio by the end of a 15-year period that began at year-end 1991.

Public comment on the proposed recapitalization schedule was invited for a 45-day period ending August 13, 1992. Also ending the same day was the 84-day comment period for the Board's proposal to increase the BIF assessment rate to 28 basis points per annum effective January 1, 1993. (The original 60-day comment period for the proposed rate increase was extended to provide for an overlap with the comment period for the proposed recapitalization schedule. 57 FR 28810, June 29, 1992. In proposing the rate increase, the Board relied on the same assumptions and underlying date on which the proposed recapitalization schedule was based. Because the assessment rates in effect in the early part of the period covered by the recapitalization schedule would necessarily play an important role in the revenue projections to be used in developing the schedule, it was determined that the Board should address the rate issue before completing the proposed recapitalization schedule.

As described in some detail in the **Federal Register** notice addressing the proposed recapitalization schedule, the proposal was based on a set of financial assumptions regarding the three primary factors affecting the long-term condition of the BIF: The number and size of future bank failures, the costs of resolving these failures, and the amount of assessment income received from BIF member institutions. Because future economic conditions impacting these factors cannot be predicted with certainty, for each factor the FDIC assumed values ranging from reasonably optimistic to reasonably pessimistic. Various scenarios representing a combination of values across the range were examined for each of the factors, and each scenario was assigned a probability based on the combination of the respective probabilities estimated for each of the values individually. Applying the proposed assessment rate of 28 basis points as of January 1, 1993, composite projections were derived from the various scenarios and probabilities. The proposed recapitalization schedule, which showed a positive reserve ratio beginning in the year 2000, was developed from these projections.

The Board has now adopted a recapitalization schedule which has been amended to incorporate mid-year BIF results and to adjust the timing of failed bank assets over the 15-year period. The Board has also adopted increased assessment rates for certain BIF members as indicated in the assessment rate schedule provided as part of the transitional risk-based deposit assessment system, under which institutions posing a greater risk of loss to the BIF or to the SAIF will pay deposit premiums at a higher rate than will lower-risk institutions. However, because this new system is designed to produce assessment revenue in line with the fund's needs, the recapitalization schedule is consistent with this new assessment system. The revised assumptions underlying the recapitalization schedule are listed below in Table 1.

TABLE 1.—BIF RECAPITALIZATION SCHEDULE ASSUMPTIONS

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Assumptions:															
Deposit and Asset Growth	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
FDIC Opportunity Rate	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%
Failed Bank Assets ($B)	37	76	68	52	35	31	26	25	25	20	20	20	21	21	22
Loss Ratio	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%
Bank Industry Assets ($B)	3,526	3,625	3,726	3,831	3,938	4,048	4,162	4,278	4,398	4,521	4,648	4,778	4,912	5,049	5,190
Insured deposits ($B)	2,048	2,105	2,164	2,225	2,287	2,351	2,417	2,485	2,554	2,626	2,700	2,775	2,853	2,933	3,015
Assessment Base ($B)	2,560	2,632	2,706	2,781	2,859	2,939	3,022	3,108	3,193	3,283	3,374	3,469	3,566	3,666	3,769
Assessment Rate (bp)	23.0	25.4	25.4	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9

TABLE 1.—BIF RECAPITALIZATION SCHEDULE ASSUMPTIONS—Continued

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Assessments ($B)	5.8	6.6	6.7	7.1	7.3	7.5	7.7	7.9	8.1	8.3	8.6	8.8	9.0	9.3	9.6
Net Income ($B)	(0.6)	(2.8)	(1.1)	(0.3)	0.6	1.9	2.7	3.1	4.3	4.9	5.4	5.9	6.4	7.0	7.6
Fund ($B)	(7.6)	(10.4)	(11.5)	(11.8)	(11.2)	(9.4)	(6.7)	(3.5)	0.8	5.7	11.1	17.0	23.4	30.4	38.0
Ratio	−0.37%	−0.50%	−0.53%	−0.53%	−0.49%	−0.40%	−0.28%	−0.14%	0.03%	0.22%	0.41%	0.61%	0.82%	1.04%	1.25%

II. Discussion of Comments Received

The FDIC received 15 letters commenting on the proposed BIF recapitalization schedule, 10 of which were submitted by bankers and 5 by trade groups. Two of the bankers and one trade group commenting on the proposed recapitalization schedule expressly favored the proposal, citing the need to ensure the financial stability of the BIF. Eight commenters implicitly rejected the proposal. Five commenters questioned the FDIC's assumptions underlying the schedule. One banker commented that the assumptions were not the same as those of a major trade association, which, according to the trade association, demonstrated that the designated reserve ratio could be achieved within 15 years at the present 23 basis point assessment rate. Several bankers and trade groups suggested that the FDIC's projections for the failure of BIF member institutions were too high, especially given the recent performance of the banking industry, and furthermore that the large reserve set aside for the BIF in 1991 was more than sufficient to handle a more realistic set of failure projections.

The Board agrees that recent economic conditions have contributed to improvements in banking industry profitability, especially net interest margins. However, it is not clear how long these conditions will be sustained. Moreover, weakness in real estate markets could lead to additional failures beyond those consistent with the most conservative public forecasts.

As indicated in its proposal, the Board is well aware of the uncertainty regarding future economic conditions and their impact on the long-term condition of the BIF. To deal with this uncertainty, FDIC staff utilized a range of values for each of the major factors affecting the fund, including the size and number of future failures. For each factor, values ranged from optimistic to pessimistic. Given these assumptions, the FDIC staff projected the BIF over 15 years and determined that an increase in assessment revenue was needed to cover expenses and to recapitalize the fund within 15 years.

In its proposal, the Board clearly recognized that "[f]uture insurance losses or other conditions affecting the BIF may turn out differently than assumed for purposes of developing the proposed schedule." 57 FR 28813, June 29, 1992. For this reason, the Board further indicated that once a recapitalization schedule was adopted, it "plans to monitor relevant developments and, if circumstances warrant, to consider revision of the schedule, or assessment rate adjustments, based on such developments." *Id.* The Board reiterates this intent.

Two bankers and 4 trade groups also commented that the assessment rate increase would have a negative impact on the banking industry. It was suggested that the higher premiums would lower earnings, thereby decreasing a bank's ability to fund loans. Combined with the added expenses associated with other new regulations, the bankers believed that it would be harder to compete with non-insured institutions, and that banks in a weaker capital position would be more likely to fail.

As discussed below in connection with the BIF assessment rate increase, the FDIC staff performed an analysis of the impact of such an increase on bank capital and earnings. While the Board is concerned about the need to recapitalize the BIF without unduly burdening the industry, it believes that the impact analysis demonstrates that the schedule adopted will not result in an undue burden. Furthermore, the Board believes that the banking industry will continue to compete successfully against non-insured financial institutions by virtue of the fact that deposit insurance is valued by consumers.

Several alternatives to the proposed recapitalization schedule were suggested by commenters. One banker recommended that the BIF be recapitalized immediately through a one-time special assessment, rather than over the proposed 15-year period. As indicated in the proposal, the Board believes that, while it does have the authority under section 7(b) of the FDI Act to set the assessment rate high enough to recapitalize the BIF within one year, the difference between the current negative reserve ratio and the required 1.25 percent is so substantial that immediate recapitalization is not a feasible alternative. 57 FR 28811, June 29, 1992. The Board is concerned that such action would potentially have a significantly adverse effect on the banking industry.

Finally, one trade group recommended that the recapitalization schedule begin in 1993 with a 23 basis point assessment rate due to questions surrounding projection assumptions and the potential negative side effects of a rate increase. However, the Board has determined that an increase in assessment revenue is necessary in order to bring current revenues in line with current expenses and to begin the statutorily mandated recapitalization of BIF.

Subpart B. The BIF Member Assessment Rate Increase

I. Increase in the BIF Member Assessment Rate

As noted above, on May 21, 1992, the Board published in the **Federal Register** a proposed amendment to part 327 of the FDIC's regulations to increase the deposit assessment rate to be paid by BIF members from 0.23 percent to 0.28 percent starting with the first semiannual period of 1993 and thereafter. The comment period on the proposed rule ended on August 13, 1992.

As noted above, the Board now is increasing the BIF-member assessment rate from a uniform rate of 0.23 percent to the rates indicated in the transitional risk-based assessment schedule provided and discussed below. As explained below, the actual assessment rate to be paid by each BIF member will be based on the institution's assessment risk classification. The new rates will apply to assessments that become due in the first semiannual period of 1993 and thereafter.

As required by section 7(b) of the FDI Act (12 U.S.C. 1817(b)(1)(C)(ii)(II)) the BIF member assessment rate increase imposed by the final rule is being set in accordance with the BIF recapitalization schedule discussed above.

II. Statutory Provisions and Economic Analyses

A. Designated Reserve Ratio

Section 7(b) of the FDI Act (12 U.S.C. 1817(b)), as implemented by part 327, requires that all FDIC-insured depository institutions pay to the FDIC semiannual assessments based on the types and dollar amounts of deposits held at such institutions.

Section 7(b) of the FDA Act states, in relevant part, that if the reserve ratio of the Bank Insurance Fund is less than the designated reserve ratio, the FDIC Board of Directors shall set the semiannual assessment rates that are sufficient to increase the reserve ratio to the designated reserve ratio not later than one year after such rates are set; or in accordance with a BIF recapitalization schedule promulgated by the FDIC. *Id.* at 1817(b)(1)(C).

Section 7(b)(1)(B) of the FDI Act sets the BIF designated reserve ratio at 1.25 percent (Designated Reserve Ratio) *Id.* at 1817(b)(1)(B).

The BIF's reserve ratio (Actual Reserve Ratio) at mid-year 1992 was substantially below the 1.25 percent Designated Reserve Ratio. Because of the negative impact on the banking industry, it would be infeasible and undesirable to increase the assessment rate to achieve the Designated Reserve Ratio within one year. Thus, as required by section 7(b), the Board is hereby increasing the BIF assessment rate in accordance with the BIF recapitalization schedule discussed above.

B. Need for the Increase

As noted above, the Designated Reserve Ratio is currently set by statute at 1.25 percent, to be achieved within a fifteen-year period. *Id.* at 1817(b)(1)(B). The Actual Reserve Ratio is substantially below that level. The Actual Reserve Ratio has not approached 1.25 percent since 1981, when it was 1.24 percent. The BIF's balance peaked in 1987 at $18.3 billion, but even at that time was only 1.10 percent of insured deposits. Since 1987, the Actual Reserve Ratio has continued to decline, falling to 0.21 percent at year-end 1990 (when the BIF balance was $4.4 billion). Both the BIF reserve ratio and the BIF balance were significantly below zero at mid-year 1992.

The long-term condition of the BIF depends directly on the amount of assessment income provided by BIF members, the number and size of future bank failures and the costs of resolving failures. The level of failed bank assets combined with the assumed resolution cost rate determines insurance losses over the prescribed fifteen-year period in which to achieve the Designated Reserve Ratio. Furthermore, growth assumptions affect the analysis in three ways: Through BIF revenue, which increases for a given assessment rate as the assessment base grows; through failed bank assets, which are assumed to grow with industry assets; and by increasing the fund balance necessary to achieve the Designated Reserve Ratio as insured deposits grow.

Given a set of assumptions about these factors, it is relatively straightforward to project the BIF's balance over a fifteen-year period. However, analysis based on a single set of assumptions ignores the considerable uncertainty surrounding these factors. To deal with this uncertainty, the FDIC staff examined a range of values for failed bank assets, resolution costs, and industry growth, ranging from optimistic to pessimistic values. Each value was assigned a probability based on historical relationships and the informed judgment of staff, rather than on explicit statistical techniques applied to selective historical data.

The staff projected the BIF reserve ratio over a fifteen-year period under numerous scenarios, each scenario representing a combination of the values for each of the factors with a probability based on the combination of probabilities for each of the factors. As a result, it was possible to identify the scenarios under which the BIF would reach the Designated Reserve Ratio of 1.25 percent of insured deposits within the prescribed fifteen years. Furthermore, by adding the probabilities assigned to each scenario, it was possible to calculate the subjective probability that, for a given assessment level, the fund would meet the Designated Reserve Ratio within fifteen years.

More detail regarding this analysis is provided in the **Federal Register** notice on the proposed BIF capitalization schedule published on June 29, 1992; however, the analysis suggested that an increased assessment rate was necessary for recapitalizing the fund.

Accordingly, consistent with the assumptions underlying the BIF recapitalization schedule, the Board is raising the BIF assessment rate for the first semiannual period of 1993 and thereafter from a uniform rate of 0.23 percent to the rates provided in the transitional risk-based assessment schedule. The increase in assessment revenue is needed as part of an overall effort to bring the Actual Reserve Ratio up to the statutorily required Designated Reserve Ratio of 1.25% within fifteen years. Because of the inherent uncertainties involved in determining the appropriate assessment rate, the Board anticipates that it will reconsider the adequacy and appropriateness of the BIF assessment rate as conditions warrant.

Many of the comment letters received questioned the FDIC's assumptions given the recent improvement in banking industry profitability. While earnings results so far this year represent significant gains over recent years, it is debatable whether these short-term trends should form the basis for longer-term projections such as those used in the schedule for recapitalizing the BIF. Much of the improvement that has occurred has stemmed from favorable interest rate conditions that may not persist. Despite some encouraging signs of easing asset-quality problems, the industry remains burdened by a large inventory of nonperforming assets, and some key borrowing sectors (particularly commercial real estate) remain economically distressed. Banks on the FDIC's "Problem List" continue to comprise a historically large share of the industry.

Commerical bank earnings have shown considerable improvement in the twelve months ended June 30. One of the main factors contributing to the improvement has been the favorable interest rate conditions that have prevailed during that period. The decline in interest rates has produced wider spreads between the rates banks earn on their assets and the rates they pay for their liabilities. Low interest rates have also increased the market values of fixed-rate assets and allowed banks to realize some of these gains through sales of investment securities. Together, the wider margins and increased contributions of securities gains have produced 75 percent of the $5.5-billion year-to-year improvement in industry net income.

It is likely that the favorable interest rate conditions have also provided a temporary boost to noninterest income and have limited increases in noninterest expense; therefore, most of the recent net income gain can be traced to interest rate conditions. However, the interest rate conditions that have made these improvements possible are unprecedented in recent years, and will not persist indefinitely. This suggests that much of the recent rise in profitability may prove to be temporary, absent more fundamental improvements in asset quality and lending growth. Furthermore, the wide spread between long- and short-term interest rates have prompted a shift in bank balance sheets that could lead to narrower-than-usual

margins in the event of a sharp rise in interest rates.

At commercial and BIF-insured savings banks, noncurrent loans and other real estate owned as a percent of total assets have declined for four consecutive quarters, but the current proportion (3.68 percent at June 30, 1992) is still significantly above the levels preceding December 1990. The proportion remains high in spite of the volume of troubled assets that have been removed from the industry by the resolutions of failed commercial and savings banks, which have averaged more than 150 per year since the beginning of 1984.

For example, the 66 banks that failed during the first six months of 1992 reported troubled assets of about $2 billion. On a regional basis, the proportion of troubled assets at banks in the West has worsened over the past two years, from 2.31 percent in June 1990 to 3.65 percent in June 1992. In the Northeast, where troubled assets have improved recently, the proportion (4.19 percent) still exceeds all other regions.

Reserve coverage was 73 cents for each dollar of noncurrent loans at June 30, 1992 for commercial and BIF-insured savings banks. However, the Northeast (at 62 cents) and the West (75 cents) are the only regions below 94 cents. These two regions also have the highest proportions of noncurrent loans among the six regions: 5.06 percent for the Northeast and 3.93 percent for the West, the only regions above 2.50 percent.

Troubled real estate asset ratios—noncurrent real estate loans and other real estate owned (OREO) as a percent of total real estate loans plus OREO—at commercial banks have exceeded 7 percent nationally since December 1990.

Recent improvement in the Southwest has been offset by deterioration in the West, and the Northeast (currently 11.76 percent) has remained above the 10 percent level since late 1990.

Total assets of institutions on the FDIC's "Problem List" remain at near-record levels. While problem bank assets have declined this year (to $567.5 billion at the end of June, down from $610 billion at the end of 1991), they remain well above the levels of recent years. As of June 30, 1992, fifteen percent of the assets held by BIF-insured institutions were in "problem" banks. Problem bank assets remain at high levels despite the resolution of more than 1,200 institutions with more than $200 billion in assets since 1984, when assets of "problem" banks comprised 8.5 percent of the industry's assets.

There is considerable uncertainty regarding the health of commercial banks in the Western United States. As of March 31, 1992 the West had the second highest percentage of assets held by banks rated either a CAMEL "4" or "5" (19 percent), after the Northeast (27 percent). The percentage of assets held by banks rated CAMEL "3" has shown the first twelve-month decline since the end of 1988. In the West, however, the percentage of assets held by "3"-rated banks has increased dramatically—from 8 percent as of June 1988 to 47 percent as of March 31, 1992. Over the same period, the percentage of assets held by banks in the West rated CAMEL "4" or "5" has grown from 6 percent to 19 percent. If the economy in the Western states does not improve, the number and assets of "problem" banks are likely to continue to increase, especially in California.

The preceding discussion suggests that it would be premature to conclude that there has been a significant and permanent reduction in risks to the insurance funds. While forecasts are uncertain, recapitalization of the funds requires first that current revenues cover current expenses, and second that additional funds be set aside for recapitalization. In order to accomplish these tasks, an increase in assessment revenue is necessary.

C. Impact on Bank Capital and Earnings

1. In general.

Increases in deposit insurance assessment rates add to insured banks' operating costs. These cost increases will have a measurable effect upon banks' profitability and capitalization. Increases in deposit insurance assessment expenses do not, however, necessarily lead to equally proportionate declines in bank profits. There are at least two factors which can reduce the adverse impact of increased assessments upon banks' profits and capital.

First, some portion of the assessment increase may be passed on to customers in the form of higher borrowing rates, increased service fees, and lower deposit rates. The extent of cost sharing will be dependent upon the level of competition faced by banks. Banks facing little competition should be able to pass a larger portion of the increase in assessment costs on to customers than would banks facing greater competition. Under a risk-related assessment system, banks paying higher risk-related rates may face competition from banks paying lower risk-related rates, as well as from non-insured competitors. Such competition may reduce the ability of banks paying the higher risk-related rates to pass on costs to customers. For the purposes of this analysis, it was assumed that banks would not pass on any of the assessment increase to customers.

Second, deposit insurance assessments are a tax-deductible operating expense for banks. Therefore, the increase in assessment expenses can be used to lower taxable income, thereby reducing the effective after-tax cost of BIF assessments.[1]

The impact of the indicated assessment increase upon banks' book capital is also dependent upon assumptions about dividend policies and new capital issues. If banks maintain dividend levels, despite the increase in operating costs, book capital will decline by the full amount of the after-tax cost of the assessment borne by banks (assuming no new capital issues). That is to say, if dividends are not reduced, then increased operating costs will be reflected in lower retained earnings. For these projections, it was assumed that banks' dividend rates remained unchanged from those reported in December 1991. However, if a bank's projected equity capital was 4 percent or less, the bank was assumed to retain all earnings. It was further assumed that the only source of new capital would be additions to retained earnings.

The FDIC staff used two approaches to assess the impact of the increased deposit insurance assessment rate upon BIF-insured banks. The first approach was to project bank earnings and capital through 1996. Such projections make it possible to consider the impact of increased assessment costs in light of individual banks' projected earnings, asset quality, and tax status. Short-term projections, however, will not capture the full impact such cost increases may have upon the banking industry. In order to address this shortcoming, a second analysis was done which looked at the potential long-term implications of reductions in bank profitability.

The long-term profitability analysis revealed a number of banks which had large estimated changes in return on equity due to the rate increase. This occurred because at any point there are a number of banks earning near zero profits (or very small losses). In these situations, moderate increases in the

[1] In the event a bank is incurring losses before assessment costs, the additional assessment expense may be used to offset prior-period or future income (loss carry back or loss carry forward), thereby reducing taxes. For simplicity, this analysis assumed no loss carry forward nor loss carry back. This assumption results in a more conservative estimate of the tax benefits from higher assessments. In addition, the average tax rate paid by a bank in 1991 was assumed to apply in future periods for the purposes of projecting bank profits.

assessment rate (for example, 0.05 percent) will result in large percentage changes in profitability.[2] It is reasonable to expect, however, that banks earning near zero returns on equity will, in time, either fail or move toward higher levels of profitability. For these reasons, one should focus on the impact on the majority of banks' profitability when analyzing Table 2 (below).

2. Projected Capital and Earnings: Short-term Impact

FDIC staff estimated the impact of increasing the average assessment rate from the existing uniform rate of 0.23 percent to the rates in the transitional risk-based assessment schedule, beginning with the first assessment period in 1993. The projections indicate that the impact upon industry capital will be small.

Tangible equity capitalization of BIF-insured banks as of December 31, 1991 was approximately $232 billion.[3] FDIC staff estimates that year-end 1996 industry tangible equity capitalization would be nearly $275.7 billion if the 0.23 percent rate remained in place, and would drop by about $1,536 million—to approximately $274.1 billion—when the uniform rate is raised to the rates in the transitional risk-based assessment schedule. Under the rates in the transitional risk-based assessment schedule the $2,801 million in increased assessment costs projected over 1993 through 1996 resulted in a $1,536 million decline in capital and a $637 million total reduction in dividends. The remaining portion of the assessment costs were offset by the tax benefit of deducting assessment expenses from taxable income.

Equally important to these overall reductions in industry capital is the distribution of these reductions across banks. Projections of individual banks' tangible capitalization through 1996 indicated a small increase in the number of poorly capitalized banks under the proposed assessment rates. During 1996, the rates in the transitional risk-based assessment schedule were projected to raise the number of poorly capitalized banks—those with less than 3 percent tangible capital—by 25 banks (with average tangible assets of $288 million).

3. Long-term Changes in Profitability

If higher assessments result in a long-term reduction in bank profitability, capital will flow out of the banking industry, by way of lower retained earnings and a reduction in new stock offerings. If the flight of capital is substantial, it would result in shrinkage of the industry and have implications for credit availability.

In order to assess the impact of higher assessments upon bank profitability, estimates were made of the changes in returns on the book value of equity capital which might result under the rates in the transitional risk-based assessment schedule. Specifically, banks' 1991 returns on book value equity capital were adjusted to reflect the increase in operating costs (after-taxes) which might result from increased assessment rates. These adjustments assumed that banks would bear the full after-tax cost of the assessment increase.

The analysis indicates that an increase in the BIF assessment rate to the rates in the transitional risk-based assessment schedule will reduce bank profitability slightly. Estimates presented in Table 2 (below) show that approximately 84 percent of BIF-insured banks, with 65.2 percent of industry assets, experienced a 0 to 5 percent reduction in their return on equity. In addition, 7.4 percent of BIF-insured banks with 15 percent of industry assets were estimated to incur a 5 to 10 percent reduction in return on equity. The median percentage change in return on equity was −1.23 percent.

While it is difficult to estimate the final impact upon industry capital, a moderate amount of industry shrinkage (relative to a situation without higher assessments) may result. Consolidation in the banking industry can occur, however, without increased bank failures. Indeed, the results of this analysis indicate that the impact of the assessment rate increase upon bank earnings and capital will not be so severe as to result in a substantial increase in bank failures.

TABLE 2.—PERCENTAGE CHANGES IN RETURN ON EQUITY, BASED UPON THE TRANSITIONAL RISK-BASED ASSESSMENT SCHEDULE

[BIF-Insured Banks, $ Millions]

Percentage change in ROE[1]	Number	Assets
Below −50	192	$204,018
−25 to −50	204	78,724
−15 to −25	277	296,818
−10 to −15	346	133,675
−5 to −10	910	545,056
0 to −5	10,322	2,371,525
Missing data	37	4,495
All	12,288	$3,634,312

[1] The percentage change in ROE was defined as the adjusted ROE minus the original ROE, divided by the original ROE; (ROE'-ROE) /ROE.

III. Comments

A. Overview

The FDIC received 176 letters regarding the proposed increase in the BIF-member assessment rate. Thirteen of the letters were from banking industry trade groups, 1 was from an individual, and 162 were from financial institutions.

Seventeen of the letters favored the assessment rate increase. Of this total, 13 letters were from bankers, 3 from trade groups and 1 from an individual. Most of those favoring the increase cited the need to replenish the BIF in order to restore depositor confidence in the insurance system. Five bankers and 1 trade group favored the increase if it were necessary to keep the fund healthy.

One-hundred eight of the letters received expressly opposed the premium increase. Five of these letters came from industry trade groups; the rest were from bankers. Approximately 25 percent of those opposing the increase opposed the rate increase in general, arguing that it was unfair. Most of those citing a reason to oppose the increase doubted that the facts supported the need for an increase; instead, they believed that the 1.25 percent Designated Reserve Ratio could be achieved within 15 years at the current rate of 0.23 percent. Several bankers commented that although they recognized the importance of maintaining the fund, they opposed raising the assessment rate further in light of the current recession and other recent increases in the assessment rate. Others believed that the increase would have a serious negative effect on the banking industry.

[2] To see this, consider the example of a bank with 5 percent equity capital and a 1 percent return on equity. In addition, assume that the bank had an average tax rate of 25 percent and had assessable deposits equal to 80 percent of bank assets. In this situation, a 5 basis point increase in the assessment rate would result in a 60 percent reduction in return on equity.

[3] This excludes 15 federal savings banks and 128 commercial and mutual savings banks with combined tangible capital of about $2.1 billion at year-end 1991. The 15 federal savings banks were excluded because of differences between bank and thrift financial reports. The 128 commercial banks were excluded from the analysis due to incomplete financial information. Tangible capital was defined as total equity capital minus all intangible assets.

B. Major Issues Raised

1. Need for the Increase

Eighty bankers and 9 trade groups questioned the assumptions used by the FDIC in analyzing the need for an assessment rate increase. Comments ranged from questioning the use of specific assumptions to suggesting that FDIC assumptions were "politically inspired." Two bankers suggested that the assumptions were overall too conservative. As shown above, the FDIC staff utilized a range of assumptions for each factor which influences the long-term condition of the BIF specifically because the future cannot be predicted with accuracy. The assumptions were based on historical statistics, publicly available forecasts, and informed judgments. The FDIC acknowledges, as others must, that assumptions regarding the future are fraught with uncertainty. What is certain, however, is that for every year since 1983 the FDIC failed to take in assessment revenue sufficient to cover insurance losses. Recapitalization will not begin until this is reversed.

Most of the bankers who questioned the FDCI's assumptions argued that recapitalizing the BIF within 15 years should be achievable at a 0.23 percent assessment rate given the recent improvement in banking industry profitability. While the Board is encouraged by the recent improvements in the banking industry much of the improvement has been the direct result of the current interest rate environment, and that changing economic factors could reverse this trend. As discussed above, the industry remains burdened by a large inventory of nonperforming assets, and some key borrowing sectors remain economically distressed. Furthermore, the Board feels that it would be inappropriate for the resurgence in bank earnings to be accompanied by the continued deterioration of the insurance fund which would result if assessment revenue continues to fall short of insurance losses.

With respect to future insurance losses, 38 bankers and 4 trade groups specifically questioned the failure projections used in the FDIC's analysis. One trade group specifically questioned the long-term failed bank assumptions used, believing that the FDIC might have considered thrift loss data for its range of values. As noted above, long-term failed bank asset assumptions are based on the experience post-deregulation, and are not based on lower experiences of the earlier period. The Board does not believe that it would be prudent to be overly optimistic about continued improvements in the banking industry. As a result, analytical assumptions for the rate increase incorporated both optimistic and pessimistic values. As noted above in Table 1, however, the timing of failed bank assets over the next six years has been adjusted to reflect recent favorable market conditions which have delayed the failure of certain institutions.

A related point involved the Board's decision to reserve over $15 billion for estimated losses to the BIF in 1991. Consequently, while the BIF ended 1991 in a deficit position, the fund was not in a negative cash position. Given this level of reserves, 5 bankers believed that a rate of 0.23 percent would be sufficient to recapitalize the BIF within 15 years. The FDIC's analysis included the 1991 reserves in projecting the BIF balance over 15 years. Similarly, several letters noted that the FDIC Improvement Act increased the FDIC's borrowing authority from the Treasury. This cash flow consideration was factored into the analysis as well.

Three trade groups and 1 banker questioned that 17 percent weighted average loss ratio used in the FDIC's projections. This value approximates the fund's loss experience since the mid-1980's. A lower value, 14 percent, was included to reflect continued success in lowering resolution costs, but a higher value, 20 percent, also was included to incorporate potential negative factors. While certain provisions of the FDIC Improvement Act may result in lower future losses to the fund, the Board believes it would not be prudent to weigh these positive expectations too heavily before results are available.

A related issue was the question of whether the assessment rate should be increased now, given that the recapitalization period is 15 years. As discussed above, the results of the analysis indicated that an increase in the BIF assessment rate is necessary now to attain the Designated Reserve Ratio within the prescribed period. Two bankers believed that the 1.25 percent ratio was arbitrary and meaningless, as was the 15-year period. However, the Designated Reserve Ratio and the term of the recapitalization period are both prescribed by statute and cannot be changed without additional legislation.

As noted above in the analysis of the need for the assessment rate increase, there is considerable uncertainty surrounding each of the assumptions used in the FDIC's analysis. Future conditions affecting the BIF may turn out differently than assumed. For this reason, the Board plans to monitor relevant developments and to consider revising the BIF member assessment rate as conditions warrant.

2. Negative Effects of the Increase on the Industry

Of the 125 letters citing the negative effects of the increase on the industry, most noted that a rate increase will decrease individual bank and overall banking industry profitability. Declining profitability could hinder internal capital generation, and limit the ability of institutions to raise capital in the market. Specifically, 11 bankers and 1 trade group extended this thought to add that this potential impact would most affect those institutions least able to handle the added expense; those banks already in weak financial condition.

As discussed in the proposed rule, the FDIC analyzed the impact of a rate increase, and found that the number of poorly capitalized banks—those with tangible capital ratios below 3 percent—increased by 25 by year-end 1996. Furthermore, most banks experienced less than a 5 percent decline in return on equity as a result of the rates in the transitional risk-based assessment schedule. While the Board is concerned about the need to recapitalize the BIF without unduly burdening the industry, it believes that this impact analysis demonstrates that the banking industry can tolerate an increase of this magnitude. If current economic and profitability trends continue, the impact of this increase on the industry could be lower than projected.

Twenty-three bankers and 4 trade groups noted that premium increases are passed on to consumers in the form of lower deposit rates or higher borrowing costs. Such a cost transfer, to the extent allowed by competitive factors, would lower the impact on individual bank profitability. Competition may not allow the rates to be passed along to consumers, however. Non-competitive rates, it is feared, would cause depositors to flee commercial banks. Therefore, many bankers and 5 trade groups feared that an increase in the deposit premium rate would further decrease the ability of commercial banks to compete against non-insured financial institutions.

Financial institutions compete on a number of factors, including rate and services offered. While it seems that the recent interest rate environment may have caused some depositors to withdraw funds from commercial banks in search of higher-yielding investments, this may not be a long-term disintermediation. Each depositor will decide where to place funds based on individual preferences for product

features. Insured depository institutions pay an insurance premium for the privilege of offering depositors a federal guarantee behind their deposits. Federal deposit insurance is a feature that is valued by depositors when choosing to place funds with an insured depository institution.

Several bankers and 1 trade group extended the disintermediation argument by noting that an outflow of deposits could limit a bank's ability to fund loans. Similarly, a number of bankers suggested that lower profitability could hinder loan-making. Such a result, it was argued by 62 bankers and 8 trade groups, would be counterproductive to stimulating the economy. While these are all potential effects of the rate increase, the Board believes that the rate increase is not likely to have a significant effect on bank lending activities.

A related issue raised by a banker concerning the ability to compete was the fact that larger banks have a greater variety of funding sources than smaller banks. As a result of this difference in liability structure, smaller banks pay a higher effective assessment rate than larger banks. It was argued that this was an unfair competitive advantage for larger banks. However, other funding sources are not necessarily less expensive for a bank than core deposits, regardless of insurance premiums. (A related issue, discussed below with other proposed alternatives, is whether to broaden the assessment base, and thereby eliminate this issue.)

Finally, 20 bankers and 2 trade groups commented that the assessment rate increase will be an additional regulatory burden on banks. The Board is sensitive to the fact that the FDIC Improvement Act has created additional regulations for bankers, and that each new regulation leads to increased compliance costs. However, the Board is required by statute to recapitalize the BIF within 15 years, and as part of this recapitalization it is deemed necessary now to increase the BIF-member assessment rate.

C. Other Issues

Another issue raised by numerous bankers concerned the fact that a uniform assessment rate resulted in a subsidization of weaker institutions by healthy, well-capitalized banks. In particular, bankers in certain states felt that they had been subsidizing weak institutions in other regions of the country. The Board is aware of this historical inequity. The FDIC Improvement Act requires the FDIC to establish and implement a permanent risk-related premium system no later than January 1, 1994. The Board believes that the implementation of the transitional risk-based assessment system will begin to diminish the subsidization problem.

Nine bankers and 2 trade groups believed it was unfair for commercial banks to subsidize the failures of savings banks. One trade group argued that the premium increase was not necessary, that savings bank losses represent "a disproportionate drain on the BIF," and these losses "should not be used as a justification for continued increases in BIF premiums." In recent years, losses from bank failures have been concentrated geographically, and the FDIC has covered the losses of agriculture banks in the Farm Belt and energy banks in the Southwest. The recent real estate related problems of the Northeast have further strained the resources of BIF. The BIF peaked in 1987 and its balance has declined since then to a deficit at year-end 1991 as a result of these combined losses. The purpose of insurance is to pool risk, and there will be times when losses are concentrated in one banking sector, as illustrated above. The need for the BIF rate increase is related to the statutory requirement that the fund be recapitalized within 15 years, and is not the result of a loss in only one sector of the banking industry.

Separately, 3 bankers argued that commercial banks should not pay for the past mistakes of savings associations. In addition, 2 trade groups believed it was important to keep BIF-member assessment rates equal to SAIF-member assessment rates in order to preserve a "healthy balance" among financial institutions with different federal insurers. Thrifts are insured by the Savings Association Insurance Fund (SAIF), which derives its assessment revenue from thrifts and not commercial banks. Commercial banks are not paying for savings association losses via deposit premiums into the BIF. The savings-and-loan problem had no bearing on the Board's decision to increase BIF-member rates. Also, it is essential to note that section 7(b)(1)(A) of the FDI Act (*Id.* at 1817(b)(1)(A)) is entitled "Rate For Each Fund To Be Set Independently" and states that "[t]he [FDIC] shall fix the assessment rate of Bank Insurance Fund members independently from the assessment rate for Savings Association Insurance Fund members." Thus, the Board is statutorily required to set the SAIF and BIF assessment rates independently of each other and may not consider parity factors in establishing the respective rates.

Several bankers commented that one reason the BIF was in a deficit position was because of the "too-big-to-fail" policy. As noted above, the banking industry has sustained significant losses over the past decade because of economic and banking difficulties in different regions of the United States. The magnitude of those losses has depleted the BIF. Section 141 of the FDIC Improvement Act provides that the FDIC may not take any action, directly or indirectly, after January 1, 1995, with respect to any insured institution that would have the effect of increasing losses to any insurance fund by protecting depositors for more than the insured portion of deposits or creditors other than depositors. This provision was intended to prevent continuation of the so-called "too-big-to-fail" treatment of depository institutions.

D. Alternatives Proposed

Eleven bankers and 2 trade groups suggested that the assessment rate be broadened, particularly to include foreign deposits. Smaller banks and one regional bank commented that larger money center banks are in effect subsidized because they pay a lower effective assessment rate due to their different liability structure. Conversely, a large bank argued that it was unduly penalized by having to pay a premium on certain uninsured deposits. The deposit insurance assessment base is currently prescribed by section 7(b) of the FDI Act (12 U.S.C. 1817(b) (4), (5) and (6)). The Board believes that the nature and scope of the assessment base should be reviewed, but currently does not have the authority to change the statutorily required components of that base. As provided for in section 302(a) of the FDIC Improvement Act, however, upon the establishment of a permanent risk-based assessment system (which must be in place no later than January 1, 1994), section 7(b) of the FDI Act will be amended to exclude a statutorily prescribed assessment base. Thus, at that time the Board will be authorized to establish an assessment base different from that currently found in section 7(b) of the FDI Act.

Also, section 312 of the FDIC Improvement Act provides, in general, that the FDIC (among other federal entities) may not make any payment or provide any assistance in connection with any insured depository institution which would have the effect of satisfying any claim against the institution for obligations of foreign deposits.

Thirty-three bankers and 3 trade groups recommended that the BIF

assessment increase be delayed or raised to either 0.26 percent or 0.27 percent, rather than 0.28 percent. The delay was suggested in order to await the results of the risk-related premium system and/or an economic recovery. Section 7(b) of the FDI Act requires that the Board recapitalized the BIF within 15 years. In order to meet that statutory obligation, the Board believes that an increase in the BIF assessment rate cannot be delayed. The increased rate was chosen for reasons detailed above, and as mentioned above, the Board will continue to monitor developments and propose changes to the assessment rate (including decreases) as appropriate.

Several bankers offered suggestions on improving the current insurance system. Two bankers were concerned about the level of insurance coverage. One was concerned that the level not be lowered, while the other specifically recommended that the ceiling on coverage be lifted. Several bankers debated the mandatory nature of deposit insurance. While one banker recommended that depositors should be able to purchase insurance to the extent desired by the individual, another banker thought that deposit insurance should be eliminated. Finally, one banker suggested that deposit insurance be privatized in order to eliminate the regulatory burden. Any changes to the deposit insurance system would require amendments to the insurance-related provisions of the FDI Act. However, the FDIC Improvement Act mandates that the FDIC undertake several studies, including an analysis of private reinsurance, to determine, if the present deposit insurance system can be modified and improved.

One banker suggested that the line of credit with the Treasury established by the FDIC Improvement Act be restricted solely to use by the BIF, thereby eliminating the line of credit for the SAIF. Section 14(a) of the FDI Act (12 U.S.C. 1824(a)), as amended by the FDIC Improvement Act, provides the FDIC with a $30 billion line of credit with the United States Treasury. Section 14(a) specifies that this credit is available for "insurance purposes" and the FDIC may employ any such funds for purposes of the BIF or the SAIF. Any amendments to section 14(a) must be made by the Congress.

One final recommendation involved moving deposit reserves held by the Federal Reserve into the BIF. Such resources are not statutorily authorized as a funding resource for the BIF. Legislation would be required to use Federal Reserve deposit reserves for BIF purposes.

Subpart C. The SAIF Member Assessment Rate Increase

I. Increase in the SAIF Member Assessment Rate

On May 21, 1992, the Board published in the **Federal Register** a proposed amendment to part 327 to increase the deposit assessment rate to be paid by SAIF members from 0.23 percent to 0.28 percent starting with the first semiannual period of 1993 and thereafter. In the proposed rule the Board considered the factors required to be considered by section 7(b) of the FDI Act in connection with such an increase in the SAIF assessment rate; those are, SAIF's expected operating expenses, case resolution expenditures and income, the effect of the assessment rate on SAIF members' earnings and capital, and such other factors as the Board deems appropriate. 12 U.S.C. 1817(b)(1)(D)(ii). The Board also noted the requirement that the reserve ratio for the SAIF be increased to the "designated reserve ratio" of 1.25 percent of estimated insured deposits "within a reasonable period of time." Id. at 1817(b)(1)(D)(i). The comment period on the proposed rule ended on July 20, 1992.

As noted above, the Board is increasing the SAIF-member assessment rate to the rates provided in the transitional risk-based assessment schedule provided and discussed below. As explained below, the assessment rate to be paid by each SAIF member will be based on the institution's assessment risk classification. The new rates will apply to assessments that become due in the first semiannual period of 1993 and thereafter.

II. Statutory Provisions and Economic Analyses

As noted above, under section 7(b) of the FDI Act the Board is required to consider the following factors in setting the SAIF assessment rate: The SAIF's expected operating expenses, case resolution expenditures, and income; the effect of the assessment rate on SAIF members' earnings and capital; and such other factors as the Board deems appropriate. 12 U.S.C. 1817(b)(1)(D)(ii). The following is a discussion of those factors.

A. Designated Reserve Ratio

Section 7(b) of the FDI Act (12 U.S.C. 1817(b)), as implemented by part 327, requires that all FDIC-insured depository institutions pay to the FDIC semiannual assessments based on the types and dollar amounts of deposits held at such institutions.

Section 7(b) also states that the assessment rate for Savings Association Insurance Fund members shall be the greater of 0.15 percent or such rate as the FDIC Board of Directors, in its sole discretion, determines to be appropriate—to maintain the reserve ratio at the designated reserve ratio; or if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time. *Id.* at 1817(b)(1)(D)(i).

In addition, section 7(b)(1)(D)(iv) of the FDI Act provides that from January 1, 1991, through December 31, 1993, the assessment rate shall be less than 0.23 percent. *Id.* at 1817(b)(1)(D)(iv).

The SAIF's designated reserve ratio (Designated Reserve Ratio) is 1.25 percent of estimated insured desposits. *Id.* at 1817(b)(1)(B). SAIF's current reserve ratio (Actual Reserve Ratio) is approximately zero. In accordance with the following discussion, the Board is increasing the SAIF member assessment rate from a uniform rate of 0.23 percent to the rates provided in the transitional risk-based assessment schedule discussed and provided below.

B. Need for the Increase

An noted above, the Designated Reserve Ratio is currently set by statute at 1.25 percent of estimated insured deposits. The Actual Reserve Ratio is significantly below that level. As noted above, section 7(b) requires that the SAIF reserve ratio be increased to equal the Designated Reserve Ratio within a reasonable period of time.

Under section 21 of the Federal Home Loan Bank (FHLB) Act, the Financing Corporation (FICO) has a claim of SAIF assessment income to fund the interest payments on bonds issued by FICO. 12 U.S.C. 1441(f).[4] At present, satisfying this claim requires approximately 40 percent of the FDIC's SAIF assessment income.

Section 11A(b) of the FDI Act (*Id.* at 1821a(b)) requires that, "to the extent funds are needed", the sources of funds for the FSLIC Resolution Fund (FRF)

[4] FICO was established by the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552 (1987)) (CEBA) for the purpose of providing funds to the FSLIC Resolution Fund. Assessments on SAIF members is one source of funding for certain of FICO's financial obligations. See section 21 of the FHLB Act. (12 U.S.C. 1441). Section 7(b)(1)(E) of the FDI Act (12 U.S.C. 1817(b)(1)(E)) states that notwithstanding any other provision of this paragraph, amounts assessed by the Financing Corporation and the Funding Corporation under sections 21 and 21B of the Federal Home Loan Bank Act against SAIF members, shall be subtracted from the amounts authorized to be assessed by the Corporation under this paragraph.

shall, during the period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, 103 Stat. 183 (FIRREA), on December 31, 1992,[5] include amounts assessed against SAIF members by the FDIC pursuant to section 7 of the FDI Act that are not required by FICO or the Resolution Funding Corporation.[6] *Id.* at 1821a(b).

Through 1992, FICO and FRF will continue to claim all SAIF assessment income, except assessments paid on SAIF deposits by banks that have engaged in a transaction under section 5(d)(3) of the FDI Act (*Id.* at 1815(d)(3)) (Section 5(d)(3) Banks). Consequently, the only assessment income to be added to SAIF prior to the beginning of 1993 will be the assessments paid by Section 5(d)(3) Banks on approximately $60 billion in SAIF deposits. At that time, SAIF will need approximately $9.5 billion to meet the Designated Reserve Ratio, given an estimated insured deposit base of $760 billion as of year-end 1991.

In order to examine the issue of recapitalization over a period of time, staff developed projections for the SAIF balance based solely on assessments from SAIF-member institutions. As discussed below in response to comments received on this issue, although certain Treasury payments are mandated by statute to supplement the SAIF, the Board believes that Congress imposed such conditional obligations on the Treasury (and thus, the taxpayer) in order to provide a back-up in the event that the SAIF-insured industry was incapable of fulfilling its obligation to recapitalize the SAIF. Furthermore, appropriations for these supplemental funds have yet to be made, and the likelihood and timing of such appropriations are uncertain, particularly given that funding for continued operations of the Resolution Trust Corporation (RTC) is currently uncertain. Consequently, staff projections are based solely on contributions from the thrift industry, and do not consider potential Treasury contributions.

The length of time necessary for SAIF to reach the Designated Reserve Ratio depends on the performance of the thrift industry, which is uncertain for several reasons. First, despite recent improvements in aggregate thrift industry profitability, there is evidence that the industry is becoming increasingly bipolar with respect to capital adequacy. Second, the recovery of real estate markets nationwide will affect the number and timing of future thrift failures. Third, there is uncertainty surrounding the long-term competitive ability of thrifts. Finally, it is not clear what the state of the thrift industry will be once SAIF resumes resolution responsibility on October 1, 1993.[7]

The long-term condition of the SAIF depends directly on the number, size and timing of future thrift failures, the costs of resolving failures, and the amount of assessment income provided by thrifts. Given a set of assumptions about these factors, it is relatively straightforward to project the SAIF over a multi-year period. However, analysis based on a single set of assumptions ignores the considerable uncertainty surrounding these factors.

To deal with this uncertainty, the FDIC staff examined a range of values for failed thrift assets, resolution costs, total failed thrift assets resolved by the RTC (as opposed to SAIF), and deposit growth. For each of these factors, the assumptions range from what was considered to be reasonably optimistic to reasonably pessimistic values. For each value, the staff assigned a probability based on historical relationships and the informed judgment of staff rather than on explicit statistical techniques applied to historical data. The assumptions and probabilities for each factor are summarized below in Table 3.

For analytical purposes, staff projected the SAIF over a fifteen-year period under numerous scenarios. As discussed below in response to comments received on this issue, the Board believes 15 years is an appropriate time frame in which to analyze and project a SAIF recapitalization to 1.25 percent. As discussed below, under section 7(b) of the FDI Act, the Board has the combined obligations to achieve a designated reserve ratio of 1.25 percent for the SAIF within a reasonable period and to consider the statutory factors (of section 7(b) of the FDI Act) in establishing the SAIF rate, particularly the impact of the assessment rate on SAIF members. The Board believes that any significantly shorter period for achieving the designated reserve ratio would require a higher assessment rate, thereby imposing an immediate additional cost on the industry. Conversely, any period significantly longer than 15 years would delay, unnecessarily, the recapitalization of the SAIF. Thus, in line with the discretion specifically afforded to the Board under section 7(b) of the FDI Act, the Board deems 15 years to be a reasonable period of time to achieve the designated reserve ratio for the SAIF.

Each scenario chosen by the staff for purposes of this analysis represented a combination of the values for each of the factors and was assigned a probability based on the combination of probabilities for each of the factors. Staff performed this exercise for different assessment rates ranging from 23 to 35 basis points over the next 15 years.

TABLE 3.—ASSUMPTIONS FOR SAIF PROJECTIONS

[I. Failed Thrift Assets, Billions of Dollars (1992–1995)]

1992	1993	1994	1995	Total	Probability (percent)
25	15	5	5	50	15
50	35	10	5	100	20
50	50	30	20	150	30
60	60	50	30	200	20
70	70	60	50	250	15

(Assumes that SAIF assumes resolution responsibility on October 1, 1993.)

[II. Failed Thrift Assets (1996–2006)]

Percent of Total Assets	Probability (percent)
0.2	30
0.4	45
0.6	18
0.9	5
1.2	2

[III. Ratio of Resolution Costs to Failed Thrift Assets]

Ratio (percent)	Probability (percent)
14	25
17	50

[5] This date was extended from December 31, 1991 to December 31, 1992 by section 202 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, Public Law 102–233, 105 Stat. 1761.

[6] Section 21B(e)(7) of the FHLB Act requires that SAIF assessment income be used, if necessary, to fund REFCORP's "principal fund." *Id.* at 1441b(e)(7). Because REFCORP's principal fund is fully funded, SAIF assessment income is no longer required for REFCORP purposes.

[7] As amended by section 103 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (Pub. L. 102–233, 105 Stat. 1761), section 21A(b)(3) of the FHLB Act (*Id.* at 1441a(b)(3) requires, in relevant part, that the Resolution Trust Corporation resolve savings associations (including those insured by the FSLIC prior to the date of enactment of FIRREA) for which a conservator or receiver is appointed after December 31, 1988 and before October 1, 1993. In general, the SAIF will be responsible for savings association failures that occur on or after October 1, 1993.

[III. Ratio of Resolution Costs to Failed Thrift Assets]

Ratio (percent)	Probability (percent)
20	25

[IV. Deposit Growth]

Rate (percent)	Probability (percent)
6	40
2	40
−2	20

The analysis identified the scenarios under which the SAIF would reach the designated ratio of 1.25 percent of insured deposits by year-end 2006. By adding the probabilities assigned to each scenario, staff calculated the subjective probability that the fund would meet the designated ratio for a given assessment level within 15 years, and determined that additional revenue was required to recapitalize the fund.

Thus, in essence, there are two reasons for increasing the SAIF member assessment rate. First, under reasonable assumptions, a 0.23 percent assessment rate has an unlikely probability of achieving a 1.25 percent reserve ratio within 15 years. The Board believes that this is not consistent with the statutory requirement to achieve the Designated Reserve Ratio "within a reasonable period of time." Second, given the uncertainty regarding the industry, it is prudent to ensure that SAIF grows toward its Designated Reserve Ratio as soon as reasonably possible, subject to the statutory considerations discussed above. In order to do so, the Board is increasing the assessment rate from a uniform rate of 0.23 percent to the rates provided in the transitional risk-based assessment schedule starting with the first semiannual period of 1993. Based on the FDIC's analysis, with these assessment rates there will be a sufficient likelihood of reaching the Designated Reserve Ratio within 15 years. In light of the aforesaid uncertainties, however, the Board anticipates that it will reconsider the adequacy and appropriateness of the SAIF assessment rate as conditions warrant.

In particular, the Board has reexamined the issue of an assessment rate increase given recent trends in thrift industry profitability. While earnings results so far this year represent significant gains over recent years, it is debatable whether these short-term trends should form the basis for longer-term projections. Much of the improvement that has occurred has stemmed from favorable interest rate conditions that may not persist.

Consequently, it would be premature to conclude that there has been a significant and permanent reduction in risks to the SAIF. While forecasts are uncertain, recapitalization of the SAIF requires first that current revenues cover current expenses (and while the SAIF is not responsible for thrift resolutions until October 1, 1993, revenues to cover such projected expenses will be limited), and second that additional funds be set aside for recapitalization. In order to accomplish these tasks, an increase in the assessment rate is necessary.

C. Impact on Industry Capital and Earnings

1. In General

Increases in deposit insurance assessment rates necessarily add to insured thrifts' operating costs. These cost increases will have a measurable effect upon thrifts' profitability and capitalization; however, there are at least two factors which can reduce the adverse impact of increased assessments.

First, some portion of the assessment increase may be passed along to customers in the form of higher borrowing rates, increased service fees, and lower deposit rates. The extent of cost sharing will be dependent upon the level of competition faced by thrifts; those facing little competition should be able to pass a larger portion of the increase in assessment costs on to customers than would thrifts facing greater competition. Under a risk-based structure, thrifts face enhanced intra-industry competition.

Institutions paying higher premiums face additional competition from other institutions paying lower premiums, further reducing the thrifts' ability to pass on costs to customers. For the purposes of this analysis, however, it was assumed that thrifts would not pass on any of the assessment increase to customers.

Second, deposit insurance assessments are a tax-deductible operating expense for thrifts. Therefore, the increase in assessment expenses can be used to lower taxable income, thereby reducing the effective after-tax cost of SAIF assessments.[8]

[8] In the event a thrift is incurring losses before assessment costs, the additional assessment expense may be used to offset prior-period or future income (loss carry back or loss carry forward), thereby reducing taxes. For simplicity, this analysis assumed no loss carry forward nor loss carry back. This assumption results in a more conservative estimate of the tax benefits from higher assessments. In addition, the average tax rate paid by a thrift in 1991 was assumed to apply in future periods for the purposes of projecting thrift profits.

The impact of the assessment increase upon thrifts' book capital will also depend upon assumptions about dividend policies and new capital issues. If thrifts maintain dividend levels despite the increase in operating costs, book capital will decline by the full amount of the after-tax cost of the assessment borne by thrifts (assuming no new capital issues). That is to say, if dividends are not reduced, increased operating costs will be reflected in lower retained earnings.

For the projections presented here, it is assumed that the thrifts' average dividend rates remained unchanged from those reported for calendar year 1991.[9] However, if a thrift's projected post-dividend tangible capital was 2 percent or less, the thrift was assumed to pay dividends up to an amount that would allow it to remain at 2 percent tangible capital. Dividends were not included in the projections unless post-dividend capitalization was greater than 2 percent.

To provide meaningful results from an impact analysis, the FDIC analyzed the effect of the insurance assessment increase on the institutions that will compose the thrift industry following the completion of the RTC's mandated resolution responsibilities. To accomplish this, the projections estimated the reduction in net income and capital for a "core group" of 1,897 thrifts holding $721 billion in assets. These institutions were identified using the OTS Regulatory Monitoring System (ROMS) and supervisory evaluations.[10]

The FDIC staff used two approaches to assess the impact of the increase in deposit insurance assessment rate on SAIF-insured thrifts. The first approach was to project thrift earnings and capital through 1995 under two deposit insurance assessment rates: The present rate of 0.23 percent and the other based on the rates in the transitional risk-based assessment schedule starting in January 1993.

[9] For institutions paying more than 100 percent of 1991 net income in dividends the average rate was set to 98 percent of net income for the purpose of the projections.

[10] This core group is an estimate of the institutions that will not be placed into conservatorship or otherwise be resolved before October 1, 1993, the statutory deadline for the RTC's acceptance of failed savings associations. The core group is composed of SAIF-insured thrifts that are not in one of the following categories: Conservatorship, insolvent, ROMS–IV, ROMS–III: Critically Undercapitalized or Potentially Critically Undercapitalized or lowest composite supervisory rating.

Such projections make it possible to consider the impact of increased assessment costs in light of individual thrifts' projected earnings and tax status. Short-term projections, however, will not capture the full impact such cost increases may have upon the thrift industry. To address this shortcoming, a second analysis was performed that analyzed the potential long-term implications of reductions in thrift profitability, which involved an analysis of changes in return on equity.

If investors felt the reductions in profitability were long term, several results can be anticipated. First, stock market prices on thrift equity would fall as investors revise estimates of anticipated earnings. Consequently, any thrift/thrift holding company attempting to raise capital through new issues could receive less in invested capital. Assuming no other significant changes in thrift earnings or risk, share prices would have to fall in proportion to the decline in returns in order to maintain market value based profit rates (returns on market value of equity). Second, shareholders might also have less incentive to reinvest capital within the thrift, given the reduced profitability. Reduced retention rates will result in less growth in book capital over time, compared to an economy without higher SAIF assessment rates.

While it is difficult to estimate the final impact upon industry capital, a moderate amount of industry shrinkage due to a flight of capital (relative to a situation without higher assessments) may result, and credit availability may be impacted. Consolidation in the thrift industry can occur, however, without increased thrift failures. Indeed, the results from the analysis discussed below indicate that the impact of the assessment rate increase upon the core group of thrifts' earnings and capital will not result in a substantial increase in thrift failures.

In interpreting the results of the long-term impact analysis, one point must be noted. The staff's long-term profitability analysis revealed a number of thrifts which had large estimated changes in return on equity due to the assessment increase. This occurred because at any point there are a number of thrifts earning near zero profits (or very small losses). In these situations, moderate increases in the assessment rate (for example, 5 to 7 basis points) will result in large percentage changes in profitability.[11] It is reasonable to expect, however, that thrifts earning near zero returns on equity will, in time, either fail or more toward higher levels of profitability. For these reasons, one should focus on the impact on the majority of thrifts' profitability when analyzing Table 4 (below).

2. Projected Capital and Earnings: Short-term Impact

For purposes of this analysis, FDIC staff developed short-term projections on "core group" thrift earnings and capital between 1992 and 1995 under the assumptions concerning cost-sharing, tax deductibility and dividend rates described above. The analysis used 1991 data on net income, dividends and tax rates as the basis for these projections. To test the sensitivity of the results from the projection analysis to the use of 1991 as the benchmark for thrift industry returns, the staff repeated the analysis using 1990 data on the same institutions.[12]

The tangible capitalization of all SAIF-insured thrifts as of December 31, 1991 was approximately $38.7 billion.[13] FDIC staff estimates that by year-end 1995 the core thrift industry tangible capitalization will be just over $55.3 billion if the 0.23 percent rate remains in place. The FDIC staff estimates that under the rates in the transitional risk-based assessment schedule industry tangible capitalization will fall to approximately $55.0 billion, representing a 0.5 percent reduction. Under this scenario, core industry net income will fall over the period by $0.36 billion, approximately 2.0 percent of the pre-increase net income of $18.0 billion.

Under the rates in the transitional risk-based assessment schedule the FDIC staff projects the number of thinly capitalized core thrifts (defined as those with less than 2 percent tangible capital) to increase by 2 institutions through 1995. The number of core thrifts holding more than 3 percent tangible capital is projected to decrease by 3 institutions.

3. Sensitivity of the Earnings and Capital Projections to 1991 Return Data

As indicated above, there was considerable improvement in the return on average assets (ROAA) for the SAIF-insured thrift industry between 1990 and 1991. This improvement may be attributable to various factors, including the advantageous interest rate environment, the resolution of marginally solvent competitors and increased capital levels for the industry.[14]

To test the sensitivity of the thrift industry's 1991 ROAA results to reduced thrift operating margins, staff repeated the projections using the ROAAs for the core thrifts in 1990. Using 1990 ROAA as the benchmark return, FDIC staff estimates that by year-end 1995 the core thrift industry tangible capitalization will decline to approximately $50.4 billion under the rates in the transitional risk-based assessment schedule. This would reduce core industry capital by approximately 0.6 percent. Under this scenario, core thrift industry net income will fall over the period by $0.38 billion, approximately 3.1 percent of the pre-increase net income of $12.4 billion.

By the end of 1995, under the rates in the transitional risk-based assessment schedule the number of thinly capitalized core thrifts is projected to increase by 4 institutions. The number of core thrifts with more than 3 percent tangible capital is projected to decrease by 9 institutions.

4. Long-term Changes in Profitability

In order to assess the long-term impact of higher assessments on thrift profitability, estimates were made of the changes in returns on the book value of equity capital which might result under the rates in the transitional risk-based assessment schedule. Specifically, thrifts' 1991 returns on book value equity capital were adjusted to reflect the increase in operating costs (after-taxes) which might result from increased assessment rates.[15]

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[11] To see this, consider the example of a thrift with a 5 percent equity capital and a 1 percent return on equity. In addition, assume that the thrift had an average tax rate of 25 percent and had assessable deposits equal to 60 percent of thrift assets. In this situation, a 7 basis point increase in the assessment rate would result in an 84 percent reduction in return on equity.

[12] For this core group of thrifts, the post-tax return on average assets (ROAA) was approximately 33 percent greater in 1991 than it was in 1990. On average, the institutions with the lowest capital-to-asset ratios showed the greater increase in ROAA over this time period.

[13] Tangible capital is reported on a consolidated basis. The number includes RTC conservatorship ROAA.

[14] Another factor that may influence ROAA is any deviation from a normal level of reserving for loan losses. However, the ratio of average loan loss provisions on interest bearing assets to assets did not change significantly between 1990 and 1991 for most core institutions.

[15] A simple expression can be derived to show how these factors will affect profitability.

(1) ROA' = [ROA—(Rate Increase)×(Assessment Base/Assets)×(1—T)]

where ROA' = adjusted return on assets, reflecting an increased assessment rate

ROA = thrift's original return on assets (net income/assets)

Rate Increase = new assessment rate—old assessment rate

T = thrift's average tax rate

The resulting impact on the return on equity will vary with thrifts' financial leverage.

(2) ROE' = [(ROA') × (assets/equity)]

Equation two states that the adjusted return on equity (ROE') is the product of the adjusted return

Continued

Using 1991 return on equity (ROE) as the benchmark, moving from the current assessment rate of 0.23 to the rates in the transitional risk-based assessment schedule is expected to lower the average institution's ROE by less than 5 percent. A total of 1,516 thrifts holding $560 billion in assets would have their ROEs reduced by less than 5 percent. An additional 181 institutions with $73 billion in assets would suffer a reduction in ROE of between 5 and 10 percent. The remaining 200 institutions with $87 billion in assets would have their ROE reduced by more than 10 percent. These results are presented in Table 4.

TABLE 4.—PERCENTAGE CHANGES IN RETURN ON EQUITY ASSOCIATED WITH THE RATES IN THE TRANSITIONAL RISK-BASED ASSESSMENT SCHEDULE

[SAIF-insured Thrifts, $ Millions]

Percentage change in ROE [1]	No.	Assets
Below −50 [2]	31	$6,583
−25 to −50 [2]	35	14,070
−15 to −25	50	20,505
−10 to −15	84	46,410
−5 to −10	181	73,367
0 to −5	1,516	560,134
All	1,897	721,069

[1] The percentage change in ROE was defined as the adjusted ROE minus the original ROE, divided by the absolute value of the original ROE; (ROE'-ROE)/abs(ROE).

[2] As noted above, thrifts with near zero earnings will experience a large percentage change in return on equity.

[3] *Id.*

III. Comments

A. Overview

The FDIC received 15 comments on the proposed rule, 7 from savings associations and 8 from industry trade groups. Four of the trade groups expressed support for the proposed increase. Two cited the need to maintain an adequately funded insurance system in order to ensure public confidence in the system. One group cited the need to recapitalize the SAIF within a reasonable period of time, as required statutorily. None of the thrifts supported the increase.

Five of the letters received opposed the assessment rate increase. Of this total, there were 3 savings associations and 2 trade groups. One of the thrift executives noted that while he opposed the increase he thought the logic behind the proposal was understandable.

B. Major Issues Raised

1. Need for the Increase

Based on the case presented in the proposed rule, 3 trade groups and 5 thrifts questioned the need for an assessment rate increase. The assumptions used by the FDIC staff were debated in these comment letters. One trade group noted that the FDIC assumptions were overall too conservative. One thrift asked where SAIF premiums had gone since the fund's inception. As noted in the proposed rule and as discussed above, as required by statute, since the creation of the SAIF in August 1989, with minor exception, all SAIF assessment revenue has been diverted to the FRF, the FICO, and the REFCORP.

Beginning January 1, 1993, SAIF assessment revenue will remain in the SAIF, except for the claims on that revenue required to fund the interest payments on bonds issued by the FICO. Given current projections, satisfying such interest payments will require approximately 35 percent of the SAIF's assessment income. Growth in assessment income is not projected to be sufficient to lower this burden significantly over the next few years.

In questioning the short-term failure projections used by the FDIC staff in determining the need for increasing the SAIF assessment rate, two thrifts noted that the thrift industry continues to improve, while another echoed this comment and added that provisions in recent legislation (*i.e.*, The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and the FDIC Improvement Act should result in lower projected failures. Given these improvements, and given the continued clean-up of the thrift industry by the Office of Thrift Supervision (OTS), it was argued that the SAIF should inherit a "clean" industry.

The Board acknowledges the improvements noted above and is hopeful that provisions in the applicable federal statutes will help mitigate the anticipated financial obligations of the SAIF. However, as discussed above, recent improvements in thrift industry profitability have been facilitated by lower interest rates which have increased thrift net interest margins. Changing economic conditions could mitigate this effect, slow the recovery of the thrift industry, and lead to additional thrift failures.

As noted in the proposed rule and above, while the FDIC cannot predict accurately the level of thrift failures, the only certainty in the future is that there will continue to be thrift failures, which eventually will be funded by the SAIF. As a result, the FDIC analysis utilized a variety of short-term and long-term thrift failure projections, ranging from a relatively "clean" industry by the time SAIF assumes resolution responsibility in October 1993 to a depressed scenario in which a larger number of thrifts require SAIF resolution. Thus, the failure projections used by the FDIC in the proposed rule (and above) included the positive factors mentioned in these comment letters, but also allow for the recurrence of negative factors.

A related question concerned inclusion of projected 1992 thrift failures in the FDIC's analysis, when the SAIF does not assume resolution responsibility until late in 1993. Thrift failures for 1992 were included in the FDIC's analysis in order to provide a benchmark for future failure projections. They were not used to support the need for an increase in the SAIF assessment rate.

The resolution costs assumed in the analysis also were questioned. Three resolution costs were used in the FDIC's analysis: 14, 17, and 20 percent. The lowest value reflects lower resolution costs associated with the OTS's Accelerated Resolution Program. The middle value approximates the expected future experience, given current trends. The high value reflects the experience of many resolutions post-FIRREA and assumes a continued downturn in economic conditions. The Board believes that these varied assumptions provide a reasonable basis on which to analyze future resolution costs.

One trade group disagreed with the statement that the long-term condition of the SAIF depends on the "number, size and timing of future thrift failures," but depends instead on the "number and size of future surviving institutions." The SAIF depends on future thrift failures in that losses from such failures will be deducted from the fund's balance. However, the trade group is correct in stating that the SAIF depends on survivor institutions, because assessment revenue is derived from this source. Hence, FDIC projections incorporated assumptions regarding growth in the assessment base.

One trade group questioned the 15-year recapitalization period used by the FDIC in determining the current need for an assessment rate increase. The letter specifically asked: "Where is the statutory phase-in language for SAIF-

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on assets (ROA) and the equity multiplier (assets/equity).

Data on individual thrifts' 1991 average tax rates were used to adjust for the tax deductibility of assessments. In the event a thrift incurred losses in 1991 and/or received a tax credit, its tax rate was set to zero. although thrifts' earnings and hence capitalization will be reduced with higher assessments, for the purposes of this analysis, the adjusted ROEs were estimated using year-end 1991 assets-to-equity ratios in equation 2.

insured institutions?" It also inquired whether the Congress provided "additional flexibility for FDIC–SAIF premiums?" As noted above, section 7(b)(1)(D)(i) of the FDI Act (12 U.S.C. 1817(b)(1)(D)(i)) states that the assessment rate for SAIF members shall be such rate as the Board of Directors, in its sole discretion, determines to be appropriate—to increase the reserve ratio to the designated reserve ratio of 1.25 percent of estimated insured deposits within a reasonable period of time.

This provision of the FDI Act expressly authorizes the Board to use its sole discretion to determine the SAIF assessment rate in order to increase the SAIF reserve ratio to the designated reserve ratio within a reasonable period of time.

Section 7(b)(1)(D)(ii) of the FDI Act (12 U.S.C. 1817(b)(1)(D)(ii)) requires, however, that the Board consider certain factors in setting the SAIF assessment rate: the SAIF's expected operating expenses, case resolution expenditures, and income; the effect of the assessment rate on SAIF members' earnings and capital; and such other factors as the Board deems appropriate. Within these parameters the Board has significant flexibility in establishing the SAIF assessment rate. Based on its combined obligations to increase the SAIF reserve ratio to the designated reserve ratio within a reasonable period of time and to consider the above-noted statutory factors when establishing the SAIF member assessment rate, the Board believes that it is reasonable to use a 15-year period to project and achieve the designated reserve ratio of 1.25 percent. The assumptions and analyses for the projected achievement of the designated reserve ratio were discussed in the proposed rule and also are discussed above.

In a related comment letter, one thrift questioned the need for a 1.25 percent reserve ratio in a healthy industry. As noted above, in section 7(b)(1)(B)(ii) of the FDI Act (12 U.S.C. 1817(b)(1)(B)(ii)) Congress established the designated reserve ratio of 1.25 percent of estimated insured deposits.

Finally, 2 trade groups asked why the FDIC had not "demanded" the supplemental Treasury funding mandated by FIRREA. Section 11(a)(6)(E) of the FDI Act (12 U.S.C. 1821(a)(6)(E)) states that the Secretary of the Treasury shall pay to the SAIF, for each of the fiscal years 1993 through 2000, the amount, if any, by which $2,000,000,000 exceeds the amount deposited in such Fund (during such fiscal year). Section 11(a)(6)(F) of the FDI Act (*Id.* at 1821(a)(6)(F)) states that the Secretary of the Treasury shall pay to the Savings Association Insurance Fund, for each fiscal year from 1991 through 1999 any additional amount which may be necessary, as determined by the FDIC and the Secretary of the Treasury to ensure that such Fund has the minimum net worth referred to in the table provided as part of this subparagraph of the FDI Act.

Thus, under the FDI Act the Treasury is required to make available to the FDIC funds to supplement SAIF in two ways: first, as revenue supplements to SAIF annual assessments (net of FICO contributions) to ensure annual revenues of $2 billion for each of the fiscal years 1993 through 2000; and second, as payments to maintain the net worth of the SAIF according to the schedule in section 11(a) of the FDI Act. Also, section 11(a)(6)(J) of the FDI Act (*Id.* at 1821(a)(6)(J)), states that there are authorized to be appropriated to the Secretary of the Treasury, such sums as may be necessary to carry out the provisions of this paragraph 11(a)(6) of the FDI Act; however, section 11(a)(6)(J) also limits the Treasury net worth payments to $2 billion in each of the fiscal years 1992 and 1993 and to a cumulative total of $16 billion for fiscal years 1992 through 2000.

As stated in the proposed rule and discussed above, the Board believes that the Treasury funding requirements for the SAIF in section 11(a)(6) of the FDI Act are conditional upon the inability of SAIF members to pay sufficient assessments to fund the SAIF. In other words, Congress imposed these conditional funding obligations on the Treasury (and thus, the United States taxpayers) in order to provide a back-up if the SAIF-insured industry is incapable of fulfilling its obligation to recapitalize the SAIF. Section 11(a)(6)(E) of the FDI Act states that the supplemental payments must be made in an amount "if any" by which net assessments do not equal $2 billion. Likewise, section 11(a)(6)(F) of the FDI Act defines the minimum net worth maintenance funding amount as "any additional amount which may be necessary." The Board believes that this specific language in section 11(a)(6) supports the conclusion that the Treasury's funding obligations are contingent upon the amount of funding available through assessments paid by SAIF members.

As discussed above, the Board is obligated to establish SAIF assessment rates based on the requirement to achieve a designated reserve ratio within a reasonable period of time and in consideration of the factors enumerated in section 7(b) of the FDI Act, including the ability of the SAIF industry to pay the established assessment rate.

2. Negative Effects of the Increase on the Industry and Individual Thrifts

A majority of the letters received commented on the potential impact of the proposed increase on the thrift industry. Several letters suggested that the current 23 basis point assessment rate was already too burdensome for thrifts. One thrift noted that the rate should not be increased during a recession. Two trade groups suggested that the increase may hinder the lending ability of the thrift industry.

Most letters addressed the impact of an increase on thrift industry profitability, and several thrifts projected the impact on their financial statements. Earnings will be impacted, which is turn affects capital and dividend policies. A reduction in profitability and dividends could impact the ability to raise capital. Furthermore, one thrift suggested that more thrifts would fail as a result of the increased assessment rate.

The Board has considered the implications of these potential effects. As discussed in the proposed rule, the FDIC staff projected the impact of increased assessment rates on industry capital and earnings and found that an increase to the rates in the transitional risk-based assessment schedule will raise the number of thinly capitalized institutions (under 2 percent tangible capital) by 2 thrifts through 1995. These results also found that the increase will lower the average institution's return on equity by less than 5 percent. Given continued improvement in thrift industry profitability, the actual impact of the rate increase could be lower. Thus, the Board believes that the proposed rate increase will not place an undue burden on the thrift industry.

In addition to noting the possibility of reduced industry profitability, several letters commented on the competitive impact of the proposed increase. One trade group commented that the overall increase in regulatory burden puts thrifts at a competitive disadvantage. It was generally felt that the added expense from the premium increase would further erode the thrift industry's competitive position with non-insured financial institutions such as money market funds. One thrift suggested that 28 basis points approximates the total operating costs of an efficient mutual fund. Also, several letters stated that the additional costs associated with the increase could not be passed along to consumers due to competition from non-insured funds.

While it is likely that the rate increase will not be passed along to consumers in competitive markets, insured depository institutions offer a product that non-insured funds cannot offer: A federal guarantee behind depositors' money. Each investor will decide where to place funds based on individual preferences concerning factors such as the interest rate offered, additional services provided by the financial institution, and other features of the investment product, including deposit insurance. Insured depository institutions will continue to compete based on all features of their products.

C. Other Issues

One thrift and one trade group argued that banks have a competitive advantage over thrifts in the form of a lower effective assessment rate. This rate advantage exists because banks typically have a different liability structure, relying less on assessable deposits than thrifts. For this reason, three trade groups argued that the assessment rate for SAIF members should be no higher than the assessment rate for BIF members. A different liability structure does not necessarily put thrifts at a competitive disadvantage. Other funding sources are not always less costly for financial institutions than core deposits inclusive of premium expense. (A related issue, discussed below, is whether to broaden the assessment base and therefore eliminate this issue.)

In the same vein, two thrifts requested that the Board ensure that the decision to increase the SAIF premium be determined independent of the need to recapitalize the BIF. Conversely, a bank trade group argued that thrifts should pay at least as much as BIF members, because of the extensive use of taxpayers funds in covering thrift insurance losses.

In response to these comments on correlating the SAIF assessment rate with the assessment rate paid by BIF members, it is essential to note that section 7(b)(1)(A) of the FDI Act (*Id.* at 1817(b)(1)(A)) is entitled "Rate For Each Fund To Be Set Independently" and states that the FDIC shall fix the assessment rate of Bank Insurance Fund members independently from the assessment rate for Savings Association Insurance Fund members. Thus, the Board is statutorily required to set the SAIF and BIF assessment rates independently of each other and may not consider parity factors in establishing the respective rates. The SAIF and BIF assessment rates must each be set based on the respective applicable statutory requirements.

Finally, 2 thrifts asked to see a plan outlining the cost and timetable for cleaning up failed thrifts and banks. Recent legislation has provided the federal depository institution regulatory agencies with enhanced powers to facilitate the early closure of seriously weakened institutions. Resolution teams are in place, and have internal timetables. However, such confidential information is not available publicly. The costs of clean-up activities are made available to the public after resolution transactions have occurred.

D. Alternatives Proposed

The majority of letters received suggested that the assessment base be expanded to include all deposits, including foreign deposits. It was also recommended that the assessment base include off-balance sheet items and all liabilities. The reasoning behind these suggestions was that some commercial banks sustain a lower effective assessment rate because of their different liabilities structure, as discussed above. It was also suggested that by assessing all deposits the competitive advantage of institutions that are "too big to fail" would be eliminated.

The assessment base is currently prescribed by section 7(b) of the FDI Act (*Id.* at 1817(b) (4), (5) & (6)). The Board believes that the nature and scope of the assessment base should be reviewed, but currently does not have the authority to change the statutorily required components of that base. As provided for in section 302(a) of the FDIC Improvement Act of 1991, however, upon the establishment of a permanent risk-based assessment system (which must be in place no later than January 1, 1994) section 7(b) of the FDI Act will be amended to exclude a statutorily prescribed assessment base. Thus, at that time the Board will be authorized to establish an assessment base different from that currently found in section 7(b) of the FDI Act.

Also, section 141 of the FDIC Improvement Act provides that beginning January 1, 1995, the FDIC may not take any action, directly or indirectly, with respect to any insured institution that would have the effect of increasing losses to any insurance fund by protecting depositors for more than the insured portion of deposits or creditors other than depositors. This provision was intended to prevent the so-called too-big-to-fail treatment of depository institutions.

In addition, section 312 of the FDIC Improvement Act provides, in general, that the FDIC (among other federal entities) may not make any payment or provide any assistance in connection with any insured depository institution which would have the effect of satisfying any claim against the institution for obligations of foreign deposits.

Another issue raised was the extra burden shouldered by SAIF members with respect to Federal Home Loan Bank (FHLB) payments to the REFCORP. It was argued that this payment creates a competitive disadvantage for thrifts against non-FHLB member commercial banks. However, membership in the FHLB system does offer certain competitive advantages not available to non-members, such as access to long-term funding at relatively attractive rates. When the Board considered the impact of the assessment increase on overall thrift industry earnings, the Board recognized the effects of the FHLB payments. While the Board was cognizant of the need to prevent an undue burden on the industry, the assessment rate proposed was chosen in order to recapitalize the SAIF, and therefore is independent of the FHLB payments.

One thrift suggested that each thrift contribute what would amount to 1.25 percent of its deposits. Payments would be made monthly over five years. Monthly assessments would require a change in legislation. Furthermore, because the fund balance changes with time to reflect outflows due to insurance losses, 1.25 percent of thrift industry insured deposits today may not be sufficient to keep the SAIF in compliance with the designated reserve ratio five years from now.

One trade group recommended that since it questioned the FDIC staff assumptions, it would be wise to wait before raising premiums further. Statutorily, the Board is required to set premium rates in order to maintain the 1.25 percent ratio or increase the fund to this ratio within a reasonable amount of time. To be prudent in setting the SAIF on a path toward recapitalization (and, therefore, to comply with section 7(b) of the FDI Act), the Board is raising the SAIF-member assessment rate from a uniform rate of 0.23 percent to the rates listed in the transitional risk-based assessment schedule.

Subpart D. Transitional Risk-Based Assessment System

I. Statutory Background

As noted above, section 7(b) currently provides for a single, uniform assessment rate established by the FDIC for all BIF member institutions and a single, uniform rate for all institutions

that are members of the SAIF.[16] The assessment rate now in effect for members of both BIF and SAIF is 0.23 percent per annum.

Section 302(a) of the FDIC Improvement Act requires that the FDIC Board establish, by regulation, a risk-based assessment system. Section 302 of the FDIC Improvement Act also requires that regulations establishing the risk-based assessment system be published by the FDIC no later than December 31, 1992, promulgated no later than July 1, 1993, and become effective no later than January 1, 1994. Sections 302(c) and (g).

In addition to the risk-based assessment regulations required by section 302(a) of the FDIC Improvement Act, section 302(f) of that statute authorizes the FDIC to promulgate regulations governing the transition from the assessment system in effect on the date of enactment of the statute to the assessment system required under section 302(a) of the statute. Pursuant to its authority under section 302(f), the FDIC proposed regulations providing for a transitional assessment system. As noted above, that proposal was published in the **Federal Register** on May 21, 1992, for a 60-day public comment period ending July 20, 1992.

The transitional system was proposed as a preliminary step toward the risk-based system the Board is required to implement by January 1, 1994 (hereinafter referred to as the "permanent" risk-based assessment system). As proposed, the transitional system would become effective January 1, 1993, and remain in effect until implementation of the permanent risk-based assessment system one year later. Under this approach, the FDIC and other interested parties would have an opportunity to evaluate the impact and effectiveness of the various components of the transitional system prior to the statutory deadlines for finalizing and implementing the permanent risk-based assessment system.

II. Description of the Proposed Transitional System

Under the transitional system as proposed by the Board, the rate at which FDIC-insured institutions—both BIF and SAIF member institutions—would pay assessments and would be determined on the basis of capital and supervisory measures. For the capital measure, institutions would be assigned to one of three capital groups—"well capitalized", "adequately capitalized", or "less than adequately capitalized". The first two groups would be defined by application of the capital-ratio standards (consisting of total risk-based, Tier 1 risk-based, and leverage capital ratios) proposed for prompt corrective action (PCA) purposes under section 131 of the FDIC Improvement Act. The third group would consist of those institutions not qualifying for one of the first two groups.[17]

On July 6, 1992, the Board issued its proposed PCA regulation which included definitions of the capital categories for PCA purposes. 57 FR 29663. Based on those definitions (which were, pursuant to the Board's transitional risk-based assessment proposal, automatically incorporated into that proposal) the capital categories for transitional risk-based assessment purposes would be as follows:[18]

1. *Well Capitalized.* Total risk-based ratio, 10.0 percent or greater; AND Tier 1 risk-based ratio, 6.0 percent or greater; AND Tier 1 leverage ratio, 5.0 percent or greater.

2. *Adequately Capitalized.* Institutions that do not meet the standards for well capitalized but which do meet the following standards: Total risk-based ratio, 8.0 percent or greater; AND Tier 1 risk-based ratio, 4.0 percent or greater; AND Tier 1 leverage ratio, 4.0 percent or greater.

3. *Less Than Adequately Capitalized.* Total risk-based ratio, less than 8.0 percent; OR Tier 1 risk-based ratio, less than 4.0 percent; OR Tier 1 Leverage ratio, less than 4.0 percent.

Within each capital group, institutions would be assigned to one of three supervisory subgroups—"healthy", "supervisory concern", or "substantial supervisory concern". "Healthy" institutions would be those that are financially sound with only a few minor weaknesses. Institutions raising "supervisory concern" would be those with weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk to the BIF or SAIF. Institutions raising "substantial supervisory concern" would be those that pose a substantial probability of loss to the BIF or SAIF unless effective corrective action is taken. The proposal indicated that the FDIC would assign institutions to supervisory subgroups on the basis of supervisory evaluations provided by the institutions's primary federal supervisor and, if applicable, state supervisor, and such other information as the FDIC determines to be relevant to the institution's financial condition and the risk posed to the BIF or SAIF, including such information as call report data and analysis and debt ratings.

Under the proposal, there would be nine combinations of groups and subgroups (or assessment risk classifications), to which varying assessment rates would be applicable. The rates were expressed in the proposal in terms of deviations from an "average" rate (that is, the rate achieved by dividing total assessment income by the total assessment base), which is essentially the conceptual equivalent of what is now the uniform rate. Under the proposed schedule, set out below, institutions qualifying as both "well capitalized" and "healthy" would pay assessments at a rate 3 basis points below the "average" rate, while institutions falling into the "less than adequately capitalized" group and the "substantial supervisory concern" subgroup would pay 3 basis points above the "average" rate.

PROPOSED RISK-RELATED ASSESSMENT SCHEDULE

	Healthy	Supervisory concern	Substantial supervisory concern
Well Capitalized	a−3	a	a+2
Adequately Capitalized	a	a+2	a+2
Less than Adequately Capitalized	a+2	a+2	a+3

For the transitional risk-based assessment system, the Board proposed that the FDIC provide each institution notice of its assessment risk classification and rate for the next semiannual assessment period no later than one month before the beginning of that period. Thus, for the semiannual

[16] At present, section 7(b)(1)(D) of the FDI Act imposes on SAIF members an assessment rate of not less than 0.23 percent. However, the FDIC is authorized to increase the rate beyond this level.

[17] The use of the terms "well capitalized" and "adequately capitalized" for risk-based premium purposes are not intended as, and should not be viewed as implying, an endorsement by the FDIC of an institution's safety and soundness. There may be institutions that meet the standards for inclusion in these capital categories that are not operating in a safe and sound manner.

[18] These assessment definitions reflect only the capital-ratio standards from the proposed PCA definitions, which include other elements as well. In particular, the proposed PCA definitions include a condition that in order to be considered "well capitalized", an institution cannot be subject to any order or final capital directive to meet and maintain a specific capital level. Similarly, under the proposed PCA definitions, CAMEL-1 rated institutions not experiencing or anticipating significant growth are permitted to have a leverage capital ratio as low as 3.0 percent and, potentially, still qualify as "adequately capitalized". These elements are not incorporated in the definitions of the capital groups for risk-based assessment purposes. In the risk-based assessment context, these elements are more appropriately considered with regard to supervisory subgroup determinations.

period beginning January 1, 1993, notice would be given no later than December 1, 1992. The institution would be assigned to a capital group based on data reported in its Report of Income and Condition as of the preceding June 30 (for the assessment notice due December 1) or December 31 (for the notice due June 1) or in the Thrift Financial Report with the closest date to June 30 or December 31 that includes the relevant capital data.

The proposal contemplated an informal process by which an institution disagreeing with the assessment risk classification assigned to it by the FDIC could seek review of that classification. The contemplated procedure involved review, first at the FDIC regional level and then (if the dispute remained unresolved) at the headquarters level, within the FDIC's Division of Supervision, at least to the extent the matters in dispute involved FDIC determinations rather than determinations of the institution's primary regulator(s). Until the completion of any review, the institution would be expected to make timely assessment payment at the rate assigned, with any adjustments to be made once the review process was completed.

It was similarly proposed that, in the event an institution did not receive notice of its assessment risk classification by the first day of the assessment period, its premium would be payable at the "average" rate and any necessary adjustment would be made after notice of the institution's assessment risk classification was provided by the FDIC.

The proposal also stated that the Board was considering the imposition of broad restrictions on the disclosure of information pertaining to an institution's assessment risk classification, and required bridge banks and institutions in FDIC or Resolution Trust Corporation conservatorships to pay the "average" assessment rate.

In addition to providing for a transitional risk-based assessment system, the proposal included other, unrelated amendments to the FDIC assessment regulations. These revisions would update subpart D of part 327 to conform it to the "Oakar" provisions of section 501 of the FDIC Improvement Act, and update § 327.7 of the regulations to conform it to current Treasury Department value-of-funds policies.

The public comment period for the proposal has expired and the comments have been reviewed and analyzed. Taking into account these comments and other relevant considerations, the Board has decided to adopt the proposal largely unchanged except for a two basis-point increase in the rate spread and a revision of the review process. The comments received and the FDIC's responses are summarized below.

III. Discussion of Comments Received

The FDIC received 209 letters commenting on the proposal. Among the commenters were 133 banks, 25 thrift institutions, 23 depository institution holding companies, and 22 associations. Other commenters included state banking regulators, individuals, and law firms.

The principal issues raised in the comment letters fell into the following broad categories: The risk measures to be used; the risk classifications; the rate schedule; timing issues; disclosure restrictions; and the review process.

Each of these subjects is addressed below, together with other relevant issues.

A. Risk Measures

In its proposal, the FDIC requested comment regarding the use of capital and supervisory factors as risk measures, and on the specific measures proposed, including comment on whether premium rates should be based on solely objective factors instead of, or in addition to, the proposed capital ratios and supervisory evaluations.

A large number of commenters addressed this topic. Most of this group agreed with the use of capital to measure risk. Although many suggested other indicators—such as asset quality, earnings, asset concentration, interest rate risk, credit risk, and excessive growth—to be used in lieu of or in addition to capital ratios, no clear preference for any particular non-capital indicators emerged. The primary supervisory factors identified in the letters were CAMEL or MACRO ratings and examination reports.

A number of letters commented on whether premium rates should be based on solely objective factors. The appropriate balance between objective and subjective standards was an issue addressed by 124 commenters. Of these, 74 favored some combination of the two elements, including 20 that suggested greater emphasis on objective factors and four that preferred more emphasis on subjective factors. The remaining 51 of the 74 commenters seemed satisfied with the balance reflected in the proposal. Out of the universe of 124 commenters addressing this topic, 49 stated a preference for objective measures exclusively. The primary reason indicated for preferring a combination of objective and subjective factors was that neither one alone could be relied upon to present a full picture of the institution's condition.

A majority of commenters recommended greater reliance on objective factors. Among this group, the principal concerns expressed regarding the use of subjective measures included perceived inconsistencies among examiners; the need for clear, well-defined standards to which institutions can respond in order to reduce their premiums; the increased tension that could develop between examiners and institutions; the perception that examiners are slow to upgrade their evaluations of troubled institutions on the mend; and the relative infrequency of examinations. A number of commenters noted that if assessment rates were based on objective factors alone, the need for an appeals procedure and disclosure restrictions would be reduced or eliminated.

Among those commenters recommending a secondary role for subjective measures, a few offered specific suggestions regarding an appropriate balance. For example, several letters urging that risk classifications be determined primarily on objective measures further recommended that supervisory evaluations be taken into account only for institutions of supervisory concern. In another vein, several commenters argued that both the proposed capital and supervisory measures are lagging indicators, and recommended use of leading indicators such as asset quality, concentration, and interest rate risk.

The Board appreciates that the use of supervisory factors as a measure or risk has certain aspects. The Board also appreciates that there are negative aspects to the use of objective factors. Like a number of the commenters addressing this matter, the Board believes that a combination of the two elements is a better approach than the use of either objective or subjective measures alone.

The Board continues to believe that the ongoing supervisory monitoring process, which encompasses a variety of formal and informal contacts with insured institutions, produces more and better information concerning an institution's risk exposure than can be obtained solely from financial reports. A risk measurement system that relies solely on data stated in bank Reports of Income and Condition or Thrift Financial Reports (collectively referred to hereinafter as "financial reports") would in many cases not adequately capture important risk factors, such as loan underwriting standards,

management quality, or other operational elements that can substantially affect the FDIC's risk exposure. Accordingly, the Board believes that a risk-based insurance system in which supervisory factors play an important role is likely to lead to less inequity in the pricing of risk than one based exclusively, or almost exclusively, on reported financial data.

At the same time, the Board recognizes the value of more objective measures. As noted by some of the commenters, a desirable attribute of a risk-based premium system is to give weak institutions an immediate financial reward for improving their condition, as reflected by a quantitative, well-defined indicator. Such an immediate, financial reward is provided by a system that bases premiums in part on the institutions' capital ratios as derived from data on their financial reports; by meeting specific capital-ratio standards, weak institutions will be able to reduce their deposit insurance premiums. Greater capital increases the cushion against loss, both for the institution and for the FDIC, and increases the owners' stake in a sound operation. Thus, the Board continues to believe that capital ratios should play an important role in a risk-based premium system.

Accordingly, the Board has adopted, without revision, the risk measures used for the proposed system.

B. Risk Classifications

In its proposal, the FDIC invited comment regarding the definitions to be used for the respective assessment risk groups and subgroups included in the proposal, and on whether a separate category should be added for institutions posing minimal risk to the deposit insurance funds. With regard to the latter issue, comment was requested as to how such a category should be defined, including comment regarding the use of ratings assigned to an institution's debt by nationally recognized private firms and on any additional role appropriately played by capital ratios.

There was virtually no comment directly addressing the definitions proposed for the various assessment risk classifications. One comment letter expressed concern that there were gaps between the definitions of the three supervisory subgroups; another noted that other pending or upcoming regulatory proposals could alter an institution's capital position and that the capital definitions finally adopted could affect bankers' views of the proposed assessment system.

The Board has decided to adopt the definitions stated in the proposal.[19] However, it has also decided to redesignate as "undercapitalized" the capital group titled "less than adequately capitalized" under the proposed system. This change is intended to make the nomenclature for the risk-based insurance system more closely coincide with the capital categories for PCA purposes under the FDIC Improvement Act. In addition, the Board has decided to rename as subgroups "A", "B", and "C" the supervisory categories previously denoted respectively as "healthy", "supervisory concern", and "substantial supervisory concern". This change should simplify both oral and written references to these categories.

On September 15, 1992 (the same date on which the Board adopted this final rule), the Board adopted the final PCA rule. As indicated above in the description of the transitional risk-based assessment proposal, the PCA capital-ratio standards for "well capitalized" and "adequately capitalized" have been incorporated into this final rule on the transitional risk-based assessment system.

In addition to drawing upon capital-ratio standards and nomenclature from the PCA provisions, the Board is also incorporating into the final risk-based assessment rule a provision from the PCA regulation prohibiting the use of PCA capital-category assignments for non-PCA purposes. The primary purpose of the PCA provision is to prohibit an institution's use of its PCA capital-category assignment for advertising or other promotional purposes. The reason for the prohibition is that this information alone, when used out of context, can be easily misunderstood. For example, a prospective depositor might interpret an institution's advertisement that it is considered "well capitalized" by the FDIC as an endorsement by the FDIC of the soundness of the institution. The same risk arises with regard to capital categories assigned by the FDIC for risk-based assessment purposes.

In contrast to the definitions of the various risk classifications, the question concerning the addition of a minimal-risk category received a significant level of attention. Of the 32 commenters addressing the issue, 30 generally indicated agreement with the creation of such a category, and most opined that it should be defined in terms of capital. It was suggested by one commenter that an "extremely well capitalized" group could be established, defined in terms of capital in excess of a two percent differential above the "well capitalized" levels. Another commenter suggested defining the minimal risk group as those institutions with ten percent leverage capital and 20 percent risk-based capital.

Among those who thought a minimal-risk category should be established, seven indicated that private debt ratings could appropriately play a role in its definition, either as the sole defining factor or in conjunction with a capital threshold. Details regarding the role to be played by private debt ratings were generally not provided.

The possible use of private debt ratings as a risk factor generated a number of negative responses. A concern noted by several commenters was that such ratings are available for relatively few FDIC-insured institutions. Other concerns expressed by commenters included the incompatibility of the incentives of, and the information bases available to, the FDIC and private rating firms. Inconsistencies in the purposes of private debt ratings and federal deposit insurance were also noted. However, one commenter suggested that the value of private debt ratings was that they provide an alternative view to that of the institution's regulators.

In short, the commenters addressing this issue exhibited a clear preference for establishing a category of minimal-risk institutions based on capital measures.

While the Board recognizes the merits of this view, it believes that the establishment of such a category is more appropriately considered in connection with the permanent risk-based assessment system to be proposed by the FDIC in the near future, rather than as an element of the transitional system. Establishing a lower premium for minimal-risk institutions would require increasing premiums for riskier institutions in order to maintain adequate revenue. The Board believes such an increase could have an unduly harsh effect on weak institutions, especially in connection with the wider range of rates the Board has decided to adopt for the assessment rate schedule, as discussed below.

In light of the many negative comments concerning the use of debt ratings as a measure for defining a minimal-risk category, the Board has also decided to eliminate debt ratings as a factor to be considered in determining supervisory subgroup assignments.

[19] For purposes of assigning capital categories, risk-based ratios will be estimated by the FDIC using the method agreed upon by the Federal Financial Institutions Examination Council.

C. The Rate Schedule

In its proposal, the Board invited comment on the risk-related rate schedule, including the degree of rate gradations among the assessment risk classifications. A large portion of the comment letters received addressed the proposed six basis-point rate spread.

Of the 95 commenters that addressed the rate spread, 89 indicated that the proposed spread was too narrow—that is, that the rate differences across the various classifications are an insufficient reflection of the differences in the level of risk. It was suggested that the proposed rate spread did not provide sufficient incentives, that the differences between various classifications should be widened, or that the number of classifications should be reduced.

A variety of suggestions for widening the schedule were offered. For example, widening the schedule at both ends, by lowering the rate for the lowest risk classification and raising it for the highest risk classification, was suggested. Specific rate spreads varying from a 10 basis-point range to a 20 basis-point range were mentioned, and a number of letters suggested that the rate paid by the lowest-risk institutions should not be increased above 23 basis points or should be reduced. Several commenters suggested that the spread should be widened over time, indicating that this could be accomplished in the permanent risk-based assessment system.

The possibility of incorporating annual or semi-annual incremental increases, or "ratcheting", of premium rates for high risk institutions that do not improve their condition over time was the subject of several comments. In general, those commenting were not in favor of ratcheting. It was suggested that establishing wider spreads in the rate schedule would be a viable alternative.

Upon consideration of the overwhelming preference of commenters for a wider spread between the rates paid by the weakest and the strongest institutions, the Board has decided to increase from six to eight basis points the difference between the highest and lowest premium rates. While the Board recognizes that an eight basis-point spread does not adequately reflect the difference in risk to the FDIC between the weakest and strongest institutions, it believes that a relatively modest rate spread is appropriate at this time. Widening the spread beyond eight basis points while still maintaining adequate assessment revenue would require that the highest premium rates be very high indeed. The Board is concerned that imposing even greater rate increases for weaker institutions could, at this early stage in the development of a risk-based assessment system, cause a degree of disruption and hardship for such institutions that is inconsistent with the spirit of a transitional system. The Board anticipates that it will give serious consideration to wider increments between insurance categories, as well as ratcheting of premium rates for high-risk institutions that do not improve their condition, when it addresses a proposal for a permanent risk-based assessment system later this year.

In addition to increasing the spread between the highest and lowest premium rates, the Board has decided to adopt a rate schedule that expresses rates in terms of an actual number of basis points, rather than in deviations from an "average" rate. The shifting distribution of institutions among the various cells in the schedule (due to changes in their condition and, thus, assessment risk classifications) would tend to make a schedule stated in terms of an "average" rate internally inconsistent; it could yield in one assessment period the amount of income that would have been derived from the "average" rate, but yield a different amount in another period.

The final schedule adopted by the Board separately for both BIF and SAIF members, expressed in terms of actual basis points, is set out below.

FINAL SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
Well Capitalized	23	26	29
Adequately Capitalized	26	29	30
Undercapitalized	29	30	31

D. Timing Issues

1. Timing of Implementation of the Proposed System

Under the proposal, the transitional risk-based assessment system would take effect for the assessment period beginning January 1, 1993. The proposal requested comment as to whether the system should be put into place at a different time or, alternatively, not be implemented at all and action deferred until implementation of the permanent system.

Responses on this topic were received from 92 commenters. Of this number, 73 favored proceeding with the transitional system on the timetable proposed. Among the remaining responses, a few commenters suggested that the intervening time be spent in more thorough planning or to undertake a "dry run" in the form of a "hands-on simulation" without assessments actually being affected. Others suggested a six-month delay until July 1993.

The Board agrees with the majority of the commenters addressing the issue that a transitional system should be implemented and that it should be effective for the assessment period beginning January 1, 1993. The Board believes that there are significant benefits to be realized from having a preliminary, operational system in place while the elements of the permanent system are under consideration. One benefit which the commenters addressing the issue seem very clearly to realize, and endorse, is that the current high levels of deposit insurance premiums make desirable the timely implementation of an assessment system, even a preliminary system, with risk-related pricing.

2. Date of Determination of Risk Classification

Under the proposal, a bank's capital group would be determined on the basis of data reported in its Report of Income and Condition as of June 30 (for the assessment period beginning the next January) or December 31 (for the assessment period beginning the next July), and, for thrifts, the Thrift Financial Report data as of the date closest to June 30 or December 1 that includes the necessary capital data. Comment was requested regarding these dates and on the possibility of having a general cut-off date for all information to be considered in assigning assessment risk classifications.

Of the 21 commenters addressing these issues, 16 opined that the cut-off dates for the capital data are too early. Among these commenters, the consensus view appeared to be that the capital cut-off dates should be moved up one quarter, to September 30 and March 31, respectively. The desirability of using capital information that is as timely as possible was the principal argument cited for using later financial reports. Another argument was that if June 30, 1992, data were the basis for the capital group assignments applicable to the semiannual assessment period beginning January 1, 1993, then institutions would not have had a meaningful opportunity before June 30, 1992, to increase capital in order to reduce insurance premiums for that first assessment period.

There was less of a consensus on a general cut-off date for new information

to be considered in assigning assessment risk classifications. However, a general preference for the use of the most recent data possible was indicated.

The reasons cited in the proposal for the relatively early cut-off dates for capital data were the time needed for receiving, processing, editing, and analyzing the requisite data, and the importance of providing institutions with reasonable notice of their assessment risk classifications. Indeed, some commenters suggested that such notice should be provided earlier than proposed, in one instance up to three months before the beginning of the semiannual assessment period.

The Board is mindful that the proposed dates may present problems in some instances. This is particularly the case for institutions whose capital position will have substantially improved between July 1 and September 30 of 1992, since their capital group will be determined on the basis of June 30, 1992, data.

However, the timing constraints affecting the cut-off dates have not changed and, after consideration of the comments received, the Board continues to believe that its proposed cut-off dates reflect a reasonable balance between the desirability of considering the most recent information, properly edited and analyzed, and the importance of providing timely assessment notices. The decision to use June 30, 1992, capital data for the assessment period beginning January 1, 1993, should have no impact on the majority of institutions, which are expected to qualify for the lowest assessment rate, nor should it affect most other institutions.

E. Review Process

Another matter on which the Board requested comment involved a process by which institutions disagreeing with their assessment risk classification assignment might request review of the classification. The proposal indicated that the FDIC was contemplating an informal procedure under which institutions could first seek FDIC review at the regional level and then, provided certain standards were satisfied, by the Division of Supervision in Washington, DC.

Many of the 40 comment letters that addressed the review process outlined in the proposal expressed some concern regarding the impartiality of a review undertaken by the same offices responsible for determining the institutions' assessment risk classification assignments, with whether there would be consistency in the review process, or with the proposed standards for review at the national level. In contrast, some commenters approved of the process described or questioned whether a review procedure was needed. A number of commenters suggested that bankers or some other "independent" person(s) be involved in reviewing disputed assessment classification assignments.

In response to the comments received, the Board has decided to revise the procedure outlined in the proposal. Under the final rule, institutions disagreeing with their assessment risk classification assignment may submit a request for review of their classification directly to the FDIC Division of Supervision in Washington, DC. Requests for review must be submitted in writing within 30 days of the date of the notice informing the institution of its assessment risk classification. A request for review may include a request for an informal hearing. Institutions submitting timely requests for review will be informed in writing by the FDIC of its decision on the review.

A statement describing the review procedures will be provided by the FDIC to each institution along with its assessment risk classification notice. Also provided with the notice will be an outline of the FDIC's procedure for determination of assessment risk classifications.

The Board notes that the review process is not intended to address an institution's disagreement with the supervisory evaluations provided by its primary federal regulator. Any such disagreement should be taken up with the primary federal regulator under the appropriate procedure for reviewing such evaluations.

F. Disclosure Restrictions

In its proposal, the Board noted that because of the sensitive nature of the supervisory information underlying an institution's assessment risk classification, the Board was considering the imposition of broad restrictions on the disclosure of such information. 57 FR 21620, May 21, 1992. However, in order to avoid unnecessary regulation, the Board sought comment as to the nature and extent of appropriate disclosure restrictions, including what exemptions should be permitted.

The topic was addressed by 67 letters. Eight commenters opined that public disclosure of an institution's risk classification or premium rate was acceptable. However, the overwhelming majority of those commenting on the issue expressed the opposite view. Fifty-nine of the 67 letters indicated that confidentiality regarding risk classifications and rates should be maintained. Even so, a number of commenters expressed concern regarding the likelihood of success in attempting to keep the information confidential. Twenty of the 59 commenters who were against disclosure argued for reduced reliance on supervisory factors in determining assessment risk classifications. Only a couple of commenters offered somewhat specific suggestions regarding possible exemptions from broad disclosure restrictions.

The Board acknowledges the concerns raised in the comments regarding confidentiality and recognizes the possibility of third parties undermining such confidentiality through efforts to determine institutions' assessment risk classifications. At least for purposes of the transitional system, the Board has decided that the imposition of broad restrictions on disclosure of an institution's supervisory subgroup assignment is an appropriate course of action. However, the Board expects to consider this matter further in connection with the permanent risk-based assessment system.

Thus, with regard to the transitional system, the Board has determined that the supervisory subgroup to which an institution is assigned for assessment rate purposes is confidential information and falls within the scope of section 309.5(c)(8) of the FDIC's regulations, 12 CFR 309.5(c)(8), which generally exempts from public disclosure:

> [r]ecords contained in or related to examination, operating, or condition reports by or on behalf of, or for the use of, the FDIC or any agency responsible for the regulation or supervision of financial institutions.

As exempt information under this provision, such information would also be subject to the provisions of 12 CFR 309.6, which, except in certain specified circumstances, prohibits disclosure of the information not only by the FDIC but also by any entity to whom the information is made available, including an FDIC-insured institution or any director, officer, employee, or agent thereof.

G. Other Issues

1. Payment of "Average" Rate When Assessment Notice Not Received, and Payment of Assigned Rate Pending Appeal

Under the proposal, institutions that have not received assessment notices would be required to pay the "average" assessment rate until they receive notice of their assigned rate. Similarly, institutions seeking review of their classification assignments would be

required to pay the assigned rate until the review is completed and a determination made that the institution is eligible for a lower rate. Several commenters addressed at least one of these elements, in large part questioning the fairness of requiring institutions initially to pay what might be a higher rate, rather than permitting them to pay the lower rate first and, if necessary, make additional payment later.

Also included in the proposal was the provision that in the situations cited above, if it were determined that the institution was in fact eligible for a lower rate, the amount of overpayment would be returned by the FDIC with interest. In the Board's view, this provision substantially mitigates any unfairness that might be associated with the requirement for initial payment of a higher rate.

Accordingly, as to these matters, the Board has decided to adopt the relevant provisions of the rule as they were initially proposed, except with regard to the use of the term "average" rate. In lieu of that term, the final rule identifies the relevant rate as the rate applicable to institutions classified as adequately capitalized "A" institutions. Under the proposal, the rate applicable to such institutions was in fact the "average" rate; thus, the change in terminology does not reflect any change in the Board's approach regarding payment of assessments by institutions that have not received timely assessment notices. Instead, it reflects the Board's decision to adopt an assessment rate schedule stated in terms of specified rates rather than in terms of deviations from an "average" rate.

2. Treatment of Bridge Banks and Conservatorships

Under the Board's proposal, bridge banks (banks provided for in section 11(n) of the FDI Act, 12 U.S.C. 1821(n)) and insured institutions in FDIC or Resolution Trust Corporation (RTC) conservatorships would be required to pay the "average" assessment rate. Comments were requested on this proposed treatment of such institutions.

Seven of the 209 comment letters addressed this issue. Six of these felt that these institutions should be charged the highest assessment rate. One commenter suggested that these institutions be required to pay assessments at the last rate charged before government intervention.

While the Board recognizes that these government-controlled institutions compete for deposits with private sector firms, competitive equity considerations do not fully warrant that they pay the highest premium. Government-controlled institutions are not expected to incur any new losses arising from loans made during the period of such control. Indeed, on this account, it could be argued that they should pay the lowest premium applicable to insured institutions. In addition, resolutions of institutions under RTC conservatorship are financed by taxpayers. For the insurance funds to charge the highest premium rate to taxpayer-supported institutions would seem to the Board to be inappropriate.

Accordingly, the Board adopts the approach reflected in the proposed rule. However, as discussed above, the final rule identifies the relevant rate in terms of the rate applicable to adequately capitalized "A" institutions rather than in terms of an "average" rate.

3. Treatment of Banks in a Multi-Bank Holding Company

An issue raised by several commenters concerned the application of a single rate to all banks within a multi-bank holding company, based on consolidated holding company data. Some commenters cited the cross-guarantee provisions of the FIRREA in support of this position, arguing that because of these provisions the consolidated holding company is the most appropriate unit of analysis for measuring the FDIC's risk exposure.

This approach has certain appealing features. In order to implement this suggestion, however, the FDIC would have to become involved in evaluating the strength of holding companies. This would involve a considerable philosophical departure from the FDIC's traditional role of monitoring and insuring individual institutions. In addition, there are concerns about the practical aspects of applying a lower premium based on a holding company's obligation instead of its actual performance. If a holding company is in fact strong, then that strength should be reflected in the balance sheets and condition of its subsidiary institutions. For these reasons, the Board declines to act on the suggestion at this time, but may revisit the issue in the context of the permanent risk-based assessment system.

4. Differentiation by Size

In its proposal, the Board requested comment as to whether separate risk-related systems based on size distinctions should be established under section 302(e) of the FDIC Improvement Act with regard to the permanent risk-based assessment system, as expressly authorized by that statute. Twenty-two commenters addressed this issue. Of these, 12 indicated that separate systems based on size were not appropriate. Of the 10 commenters indicating that separate systems should be created, 9 suggested using size differences and one suggested a separate system for rural institutions. The establishment of separate systems based on affiliation in a holding company was also suggested.

At this time, the Board is not convinced of the need to establish separate systems based on size. It is not clear why two institutions with the same capital ratios and the same supervisory evaluations should pay potentially different premium rates solely because of their respective sizes.

5. Redefinition of the Assessment Base

A number of commenters made suggestions regarding the assessment base upon which BIF and SAIF assessment payments are calculated. This issue also was raised in connection with the proposed increase in the BIF member assessment rate and is addressed above.

6. Other Proposed Amendments

In its proposed amendments to the assessments regulations, the Board included revisions unrelated to the transitional risk-based assessment system. These revisions would update § 327.7 and subpart D of part 327 of the regulations.

No comment was received on these changes. Accordingly, the Board has adopted the relevant amendments as proposed, with the exception of a technical change in § 327.32(b)(1)(i) to further clarify that the transitional risk-based assessment system applies with respect to "Oakar" institutions.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Financing Corporation, Savings associations.

For the reasons set forth in the preamble, part 327 of chapter III of title 12 of the Code of Federal Regulations is amended to read as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

2. Section 327.3 is amended by adding paragraphs (d), (e), (f), (g) and (h) to read as follows:

§ 327.3 Payment of semiannual assessments.

* * * * *

(d) *Annual assessment rate*—(1) *Assessment risk classification.* For the

purpose of determining the annual assessment rate for BIF members under § 327.13(c) and the annual assessment rate for SAIF members under § 327.23(d), each insured institution will be assigned an "assessment risk classification". By the first day of the month preceding each semiannual period, each institution will be provided notice of its assessment risk classification for that period. Each institution's assessment risk classification, which will be composed of a group and a subgroup assignment, will be based on the following capital factors and supervisory evaluations:

(i) *Capital factors.* Institutions will be assigned to one of the following three capital groups on the basis of data reported in the institution's Report of Income and Condition, or Thrift Financial Report containing the necessary capital data, for the report date that is closest to the last day of the seventh month preceding the current semiannual period.

(A) *Well capitalized.* For assessment risk classification purposes, the short-form designation for well-capitalized institutions is "1".

(*1*) Except as provided in paragraph (d)(1)(i)(A) (*2*) of this section, this group consists of institutions satisfying each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 percent or greater.

(*2*) For purposes of assessment risk classification, an insured branch of a foreign bank shall be deemed to be well capitalized if the insured branch maintains the pledge of assets required under 12 CFR 346.19, and the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(B) *Adequately capitalized.* For assessment risk classification purposes, the short-form designation for adequately capitalized institutions is "2".

(*1*) Except as provided in (d)(1)(i)(B)(*2*) of this section, this group consists of institutions that do not satisfy the standards of "well capitalized" under this paragraph but which satisfy each of the following capital ratio standards: Total risk-based ratio, 8.0 percent or greater; Tier 1 risk-based ratio, 4.0 percent or greater; and Tier 1 Leverage ratio, 4.0 percent or greater.

(*2*) For purposes of assessment risk classification, an insured branch of a foreign bank shall be deemed to be adequately capitalized if the insured branch:

(*i*) Maintains the pledge of assets required under 12 CFR 346.19;

(*ii*) Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(*iii*) Does not meet the definition of a well capitalized insured branch of a foreign bank.

(C) *Undercapitalized.* For assessment risk classification purposes, the short-form designation for this group is "3". This group consists of institutions that do not qualify as either "well capitalized" or "adequately capitalized" under paragraphs (d)(1)(i) (A) and (B) of this section.

(ii) *Supervisory evaluations.* Within its capital group, each institution will be assigned to one of three subgroups on the basis of supervisory evaluations by the institution's primary federal supervisor and, if applicable, state supervisor; and such other information as the Corporation determines to be relevant to the institution's financial condition and the risk posed to the BIF or SAIF. The three supervisory subgroups are:

(A) *Subgroup "A".* This subgroup consists of financially sound institutions with only a few minor weaknesses;

(B) *Subgroup "B".* This subgroup consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the BIF or SAIF; and

(C) *Subgroup "C".* This subgroup consists of institutions that pose a substantial probability of loss to the BIF or SAIF unless effective corrective action is taken.

(2) *Classification notice not provided; applicable assessment rate.* Any institution to which notice of its assessment risk classification for the current semiannual period is not provided by the first day of the period shall preliminarily compute its assessment based on the rate applicable to the classification designated "2A" in the rate schedule set forth in § 327.13(c)(2), if the institution is a BIF member, or the schedule in § 327.23(d)(2), if the institution is a SAIF member. If such institution is subsequently assigned for that period an assessment risk classification other than that designated in the schedule as "2A", any excess assessment paid by the institution pursuant to the preceding sentence shall promptly be refunded by the Corporation, with interest, and any additional assessment owed shall promptly be paid by the institution, with interest. Interest payable under this paragraph shall be at the rate provided for in § 327.7(b).

(e) *Classification for certain types of institutions.* The annual assessment rate applicable to institutions that are bridge banks under 12 U.S.C. 1821(n) and to institutions for which either the Corporation or the Resolution Trust Corporation has been appointed conservator shall in all cases be the rate applicable to the classification designated as "2A" in the schedules set forth in §§ 327.13(c)(2) and 327.23(d)(2).

(f) *Requests for review.* An institution may submit a written request for review of its assessment risk classification. Any such request must be submitted within 30 days of the date of the assessment risk classification notice provided by the Corporation pursuant to paragraph (d)(1) of this section. The request shall be submitted to the Corporation's Director of the Division of Supervision in Washington, DC, and shall include documentation sufficient to support the reclassification sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for additional information. A request for review may include a request for an informal hearing. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Notice of the procedures applicable to reviews and hearings will be included with the assessment risk classification notice to be provided pursuant to paragraph (d)(1) of this section.

(g) *Limited use of assessment risk classification.* The assignment of a particular assessment risk classification to a depository institution under this part 327 is for purposes of implementing and operating a transitional risk-based assessment system. Unless permitted by the Corporation or otherwise required by law, no institution may state in any advertisement or promotional material the assessment risk classification assigned to it pursuant to this part.

(h) *Disclosure restrictions.* The supervisory subgroup to which an institution is assigned by the Corporation pursuant to paragraph (d)(1) of this section is deemed to be exempt information within the scope of § 309.5(c)(8) of this chapter and, accordingly, is governed by the disclosure restrictions set out at § 309.6 of this chapter.

3. Section 327.7 is amended by revising paragraphs (a)(1)(ii)(A), (a)(2), (b)(1), and (b)(2) to read as follows:

§ 327.7 Payment of interest on delinquent assessment payments and assessment overpayments.

(a) * * *

(1) * * *

(ii) * * *

(A) In the case of an assessment to be paid by the bank, the assessment is postmarked after the time for payment specified in § 327.13;

* * * * *

(2) *Payment by Corporation.* The Corporation will pay interest to an insured depository institution for any timely overpayment of an assessment from the time the assessment payment is due, as specified in § 327.13 or § 327.22, to the date of disbursement by the Corporation of the overpayment amount.

(b) * * *

(1) *Current year.* The rate as determined by the most recent, published TFRM rate.

(2) *Prior years.* The interest will be calculated based on the rate issued under the TFRM for each applicable period and compounded annually. For the initial year, the rate will be applied to the gross amount of the underpayment or overpayment. For each additional year or portion thereof, the rate will be applied to the net amount of the underpayment or overpayment after that amount has been reduced by the assessment credit, if any, for the year.

4. Section 327.13 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 327.13 Payment of assessment.

* * * * *

(c) *Assessment rate; rate schedule.* (1) The annual assessment rate for each BIF member shall be, for the semiannual periods of calendar year 1992, 0.23 percent; and

(2) Subject to § 327.3(e), the annual assessment rate for each BIF member, shall be, for the first semiannual period of calendar year 1993 and for subsequent semiannual periods, the rate designated in the following rate schedule applicable to the assessment risk classification assigned by the Corporation under § 327.3(d)(1) to that BIF member. (The schedule utilizes the group and subgroup designations specified in § 327.3(d)(1).)

SCHEDULE

Capital Group	Supervisory Subgroup		
	A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

(d) *Recapitalization schedule.* The following schedule, which begins with the semiannual assessment period ending December 31, 1991, indicates the stages by which the Corporation seeks to achieve the BIF designated reserve ratio of 1.25 percent by the end of the year 2006:

Semi-annual period	Target reserve ratio (percent)
1991.2	−0.36
1992.1	−0.28
1992.2	−0.37
1993.1	−0.44
1993.2	−0.50
1994.1	−0.52
1994.2	−0.53
1995.1	−0.53
1995.2	−0.53
1996.1	−0.51
1996.2	−0.49
1997.1	−0.45
1997.2	−0.40
1998.1	−0.34
1998.2	−0.28
1999.1	−0.21
1999.2	−0.14
2000.1	−0.06
2000.2	0.03
2001.1	0.13
2001.2	0.22
2002.1	0.32
2002.2	0.41
2003.1	0.51
2003.2	0.61
2004.1	0.72
2004.2	0.82
2005.1	0.93
2005.2	1.04
2006.1	1.15
2006.2	1.25

5. Section 327.23(d) is revised to read as follows:

§ 327.23 Manner of payment.

* * * * *

(d) *Assessment rate; rate schedule.* (1) The annual assessment rate for each SAIF member shall be, for the semiannual periods of calendar year 1992, 0.23 percent; and

(2) Subject to § 327.3(e), the annual assessment rate for each SAIF member shall be, for the first semiannual period of calendar year 1993, and for subsequent semiannual periods, the rate designated in the following schedule applicable to the assessment risk classification assigned by the Corporation under § 327.3(d)(1) to that SAIF member. (The schedule utilizes the group and subgroup designations specified in § 327.3(d)(1).)

SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

6. Subpart D of Part 327 is revised to read as follows:

Subpart D—Insured Depository Institutions Participating in Section 5(d)(3) Transactions

Sec.

327.31 Scope.

327.32 Computation and payment of assessment.

327.33 Form of certified statement..

Subpart D—Insured Depository Institutions Participating in Section 5(d)(3) Transactions

§ 327.31 Scope.

(a) *Affected institutions.* This subpart D applies to any insured depository institution that:

(1) Is either a BIF or SAIF member; and

(2) Is the assuming, surviving, or resulting institution in a transaction undertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act.

(b) *Duration.* This subpart D shall cease to apply to an insured depository institution if:

(1) On or after August 9, 1994, the Corporation approves an application by an insured depository institution to treat the transaction described in paragraph (a) of this section as a conversion transaction; and

(2) The insured depository institution pays the amount of any exit and entrance fee assessed by the Corporation with respect to such transaction.

§ 327.32 Computation and payment of assessment.

(a) *Responsibility for computation.* Each insured depository institution subject to this subpart D shall compute its own assessment.

(b) *Rate of assessment*—(1) *BIF and SAIF member rates.* (i) Except as provided in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, and consistent with the provisions of § 327.3 of this part, the assessment to be paid by a BIF member subject to this subpart D shall be computed at the rate applicable to BIF members and the assessment to be paid by a SAIF member subject to this subpart D shall be computed at the rate applicable to SAIF members.

(ii) Such applicable rate shall be applied to the insured depository

institution's assessment base less that portion of the assessment base which is equal to the institution's adjusted attributable deposit amount.

(2) *Rate applicable to the adjusted attributable deposit amount.* (i) Notwithstanding paragraph (b)(1)(i) of this section, that portion of the assessment base of any acquiring, assuming, or resulting institution that is a BIF member which is equal to the adjusted attributable deposit amount of such institution shall:

(A) Be subject to assessment at the assessment rate applicable to SAIF members pursuant to subpart C of this part; and

(B) Not be taken into account in computing the amount of any assessment to be allocated to BIF.

(ii) Notwithstanding paragraph (b)(1)(i) of this section, that portion of the assessment base of any acquiring, assuming, or resulting institution that is a SAIF member which is equal to the adjusted attributable deposit amount of such institution shall:

(A) Be subject to assessment at the assessment rate applicable to BIF members pursuant to subpart B of this part; and

(B) Not be taken into account in computing the amount of any assessment to be allocated to SAIF.

(3) *Adjusted attributable deposit amount.* An insured depository institution's "adjusted attributable deposit amount" for any semiannual period is equal to the sum of:

(i) The amount of any deposits acquired by the institution in connection with the transaction (as determined at the time of such transaction) described in § 327.31(a);

(ii) The total of the amounts determined under paragraph (b)(3)(iii) of this section for semiannual periods preceding the semiannual period for which the determination is being made under this section; and

(iii) The amount by which the sum of the amounts described in paragraphs (b)(3)(i) and (b)(3)(ii) of this section would have increased during the preceding semiannual period (other than any semiannual period beginning before the date of such transaction) if such increase occurred at a rate equal to the annual rate of growth of deposits of the acquiring, assuming, or resulting depository institution minus the amount of any deposits acquired through the acquisition, in whole or in part, of another insured depository institution.

(4) *Deposits acquired by the institution.* As used in paragraph (b)(3)(i) of this section, the term "deposits acquired by the institution" means all deposits that are held in the institution acquired by such institution on the date of such transaction; provided, that if the Corporation or the Resolution Trust Corporation (RTC) has been appointed as conservator or receiver for the acquired institution, such term:

(i) Does not include any deposit held in the acquired institution on the date of such transaction which the acquired institution has obtained, directly or indirectly, by or through any deposit broker;

(ii) Does not include that part of any remaining deposit held in the acquired institution on the date of such transaction that is in excess of $80,000; and

(iii) Is limited to 80 per centum of the remaining portion of the aggregate of the deposits specified in paragraph (b)(4)(ii) of this section.

(5) *Deposit broker.* As used in paragraph (b)(4) of this section, the term "deposit broker" has the meaning specified in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f).

(c) *Procedures for computation and payment.* An insured depository institution subject to this subpart D shall follow the payment procedure that is set forth in subpart B of this part.

§ 327.33 Form of certified statement.

The certified statement to be filed by an insured depository institution subject to this subpart D shall be in the form prescribed by the Corporation.

By order of the Board of Directors.

Dated at Washington, DC, this 15th day of September, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-23514 Filed 9-30-92; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 240, 249, 259 and 274

[Release Nos. 33-6958A; 34-31197A; 35-25833A; IC-18960A; FR-40A; File No. S7-4-89]

Amendments to Rules and Forms

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces amendments to various rules and forms under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940. These amendments are being adopted to conform such rules and forms to recently adopted accounting standards.

EFFECTIVE DATE: November 2, 1992.

Registrants, however, are permitted to comply immediately after publication of this Release in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John W. Albert, Office of the Chief Accountant (202-272-2130), or Robert Bayless or Teresa Iannaconi, Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting amendments to Rules 3-02,[1] 3-03,[2] 3-09,[3] 3-12,[4] 3-18,[5] 3-19,[6] 3-21,[7] 4-08,[8] 4-10,[9] 7-04,[10] 10-01,[11] 12-04,[12] and 12-16 [13] of Regulation S-X (S-X) [14] and revisions to Schedules 13E-3 [15] and 13E-4,[16] Rule 14a-3(b)(1),[17] and Forms X-17A-5,[18] 20-F,[19] and 10-K [20] under the Securities Exchange Act of 1934 (Exchange Act), Form U5S [21] under the Public Utility Holding Company Act of 1935 (Utility Act), and Form N-4 [22] under the Investment Company Act of 1940 (Investment Company Act).

I. Executive Summary

At the request of the Office of the Federal Register, the Commission has made certain revisions to this release. Accordingly, the copy issued by the Commission on September 17, 1992 should not be relied upon. The Commission historically has looked to the private sector standard setting bodies designated by the accounting profession to establish and improve accounting principles, subject to Commission oversight.[23] The

[1] 17 CFR 210.3-02.
[2] 17 CFR 210.3-03.
[3] 17 CFR 210.3-09.
[4] 17 CFR 210.3-12.
[5] 17 CFR 210.3-18.
[6] 17 CFR 210.3-19.
[7] 17 CFR 210.3-21.
[8] 17 CFR 210.4-08.
[9] 17 CFR 210.4-10.
[10] 17 CFR 210.7-04.
[11] 17 CFR 210.10-01.
[12] 17 CFR 210.12-04.
[13] 17 CFR 210.12-16.
[14] 17 CFR 210.
[15] 17 CFR 240.13e-100.
[16] 17 CFR 240.13e-101.
[17] 17 CFR 240.14a-3(b)(1).
[18] 17 CFR 240.17a-5.
[19] 17 CFR 249.220f.
[20] 17 CFR 249.310.
[21] 17 CFR 259.5a.
[22] 17 CFR 274.11c.
[23] See Accounting Series Release No. 150 (December 20, 1973) [39 FR 1260].

Commission's rules require compliance with generally accepted accounting principles (GAAP), and the requirements of the Commission's rules and forms generally are used to interpret, supplement, or expand upon the basic GAAP requirements. The purpose of these amendments is to eliminate duplicative and obsolete disclosures and to conform reporting requirements as necessary to achieve consistency between the Commission's rules and forms and existing accounting principles.[24]

The following chart summarizes the significant amendments and provides the rationale for such changes.

Summary of Amendments

The table that follows is presented as a guide to assist the reader in understanding the amendments by presenting a brief description of the changes together with an explanation of the rationale for each change. This table should be used as a supplement to the discussion provided in later sections of this release. As used in this table, SFAS refers to Statements of Financial Accounting Standards issued by the Financial Accounting Standards Board (FASB).

Topic	Amendment	Rationale
Cash Flows/SFAS 95 as amended by SFAS 102 & 104.	Amend S–X, Rule 10–01 to permit the statement of cash flows to be provided in abbreviated form for interim reporting.	This is consistent with the previous requirement that permitted the statement of changes in financial position to be provided in abbreviated form for interim reporting.
	Amend S–X, Rule 3–19, and Items 17 and 18 of Form 20–F for foreign private issuers to substitute a requirement to present a statement of cash flows, or disclosure which is substantially similar, for the previous requirement to provide a statement of changes in financial position.	This conforms the requirements for foreign private issuers to reflect the adoption of SFAS 95.
	Amend various rules in Regulation S–X and forms filed under the Securities Act, Exchange Act, Utility Act, and Investment Company Act to revise references to "changes in financial position" and "funds flow" to refer to "cash flows."	To update technical references to be consistent with SFAS 95.
	Amend S–X, Rule 3–18, and Investment Company Act Form N–4 to require registered investment companies to provide a statement of cash flows in filings with the Commission whenever necessary to comply with GAAP.	SFAS 95, as amended by SFAS 102, requires certain investment companies to present a statement of cash flows as a component of a set of basic financial statements.
Income Taxes/SFAS 109	For companies which have adopted SFAS 109, amend S–X, Rule 4–08(h), as follows:	
	(1) delete requirement to disclose the net effects on income tax expense of significant timing differences, and	(1) A separate rule is unnecessary since paragraph 43 of SFAS 109 requires disclosure of the tax effects of principal temporary differences.
	(2) delete reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income (loss) before tax by the applicable statutory Federal income tax rate, and	(2) A separate rule is unnecessary since paragraph 47 of SFAS 109 requires a reconciliation that is similar to the reconciliation currently required by 4–08(h).
	(3) amend paragraph (j) of S–X, Rule 4–10, which applies to registrants engaged in oil and gas producing activities, to revise references to the "deferred method" of accounting for income taxes and to delete the reference to accounting for excess statutory depletion.	(3) The guidance on accounting for tax effects of excess statutory depletion is deleted since it would be either (1) redundant of the existing requirements under GAAP for applying the deferred method of income tax allocation or (2) not applicable once SFAS 109 is adopted.
Premium and other Consideration and Realized Investment Gains and Losses of Insurance Companies/FAS 97.	Amend S–X, Rule7–04, to: (a) reflect net realized investment gains and losses on a pretax basis as a separate line item and a component of pretax income from continuing operations rather than inclusion on a net of tax basis below income from operations and	(a) Conform S–X classification of realized gains and losses to classification requirements adopted in SFAS 97.
	(b) require disclosure of the manner in which investment income and realized gains and losses allocable to policyholders and separate accounts are reported in the financial statements; disclose the quantified effects of such reporting on financial statements.	(b) Accounting practices differ and therefore disclosure should enhance comparability of registrants' financial statements.
Oil and Gas Disclosure Requirements/SFAS 69	Delete paragraph (k) of S–X, Rule 4–10, since the phase-in period, during which optional application of SFAS 69 was permitted for certain prior periods, has expired.	Amendment deletes rules no longer necessary.
Accounting for the Effects of Certain Types of Regulation/ SFAS 71.	Delete paragraph (j) of S–X, Rule 4–08, that requires rate regulated enterprises which are not required to account for capital leases in accordance with SFAS 13, *Accounting for Leases*, to disclose certain balance sheet and income statement information with respect to such leases.	SFAS 71 requires rate regulated enterprises to reflect the application of the provisions of SFAS 13 in all financial statements issued for years beginning after December 15, 1986. The amendment deletes the rule which is no longer necessary.

[24] The Commission also notes that although its mandatory peer review proposal, published in Securities Act Release No. 6695 (April 1, 198?; [52 FR 11665], is being withdrawn, it continues to believe that the peer review process contributes significantly to improving the quality control systems of accounting firms auditing Commission registrants and enhances the consistency and quality of practice before the Commission. The Commission, therefore, encourages accounting firms practicing before the Commission who have not joined a peer review program to do so, and the staff will continue to monitor enrollment in and the peer review activities of the SEC Practice Section (SECPS) of the American Institute of Certified Public Accountant's Division of CPA Firms with a view to whether there is need for a direct Commission requirement.

Topic	Amendment	Rationale
Computer Software Development Costs/ SFAS 86.....	Delete S–X, Rule 3–21, which specifies the accounting to be followed with respect to capitalization of costs of internal development of computer software to be sold, leased, or otherwise marketed to others.	SFAS 86 addresses the accounting issue to which Rule 3–21 relates. Therefore, the amendment deletes the rule which is no longer necessary.

II. Proposing Release

On February 17, 1989, the Commission proposed for public comment the amendments discussed herein.[25] The Commission received 46 comment letters on the proposed amendments. The majority of letters (38) were received from representatives of industry. Letters were also received from five accounting firms and one accounting association, a law firm, and an individual. Commentators generally expressed support for the Commission's objective of conforming its rules with the requirements of GAAP; however, many commentators also expressed reservations about certain of the proposed amendments which would call for financial reporting disclosures that exceed those required under GAAP. Comments are summarized in the relevant sections of this release.

III. Statement of Cash Flows

In November 1987 the FASB issued SFAS 95, Statement of Cash Flows. SFAS 95 requires presentation of a statement of cash flows as a component of a set of basic financial statements and supersedes the previous requirement to present a statement of changes in financial position.

A. Interim Reporting

1. Abbreviated Format of Statement

Rule 10–01 of S–X is being amended as proposed to permit the use of an abbreviated form of the statement of cash flows for interim financial statements. This is consistent with the previous rule which permitted the use of an abbreviated form of the statement of changes in financial position.

Several commentators questioned the use of cash flows from operations as the criterion to trigger disclosure of cash flows from investing and financing activities. The amended rule requires such disclosure when individual types of cash flows exceed 10% of average net cash flows from operating activities for the most recent three years. Several commentators suggested use of beginning cash balances rather than the average cash flows from operating activities as the measurement criterion for disclosure of significant investing and financing activities. However, as one commentator noted, many companies do not maintain significant cash balances and any percentage test applied to cash balances could result in excessively detailed disclosure. Therefore, the amended rule is based on average operating cash flows as the appropriate measure of significance for this disclosure.

2. Disclosure of Cash Interest and Taxes Paid

The proposing release would have required that cash payments for interest and income taxes be separately disclosed in the abbreviated statement or in a footnote thereto since such information was believed to be valuable for financial statement analysis.

Opponents of this aspect of the proposed rules cited the cost and time burden required to develop the data on an interim basis. Some commentators specifically noted the difficulties that would be encountered by multinational companies where data collection on a worldwide basis and the effects of exchange rates and foreign currency hedging transactions may compound the difficulty of developing these data for interim disclosure.

Respondents argued that these data would not be particularly meaningful outside of the context of a full cash flow statement. Specifically they pointed out that disclosures about significant cash payments for interest and taxes are intended to provide comparability between cash flow statements prepared under the direct and indirect methods, and that comparability is not a factor within the interim reporting rules which do not distinguish between use of the direct versus indirect methods of reporting. It was also argued that as incremental information, such a requirement would be inconsistent with the concept of an abbreviated statement.

The rules as adopted do not require interim cash flow statements to include separate disclosure of the amounts of cash interest and taxes paid.

B. Foreign Private Issuers

The Commission is amending Regulation S–X, Rule 3–19, and Items 17 and 18 of Form 20–F[26] (which contains the general financial statement requirements applicable to foreign private issuers) to adopt a requirement to provide a statement of cash flows or substantially similar information as a component of the financial statements included in filings with the Commission in place of the previous requirement to provide a statement of changes in financial position.

The Commission's requirements provide that, while foreign issuers' financial statements may be prepared according to a comprehensive body of accounting principles other than those generally accepted in the United States, they must disclose an informational content substantially similar to financial statements that comply with United States GAAP.

Thus, the amendment requires that financial statements that are prepared in accordance with a comprehensive body of principles that does not require a statement of cash or funds flow must include a statement of cash flows that complies with the requirements of SFAS 95. If the financial statements are prepared in accordance with a body of principles that requires a cash or funds flow statement in a format that differs from the U.S. required statement, the amendment permits presentation of substantially similar information in financial statement or footnote form.

Of the respondents who commented on this proposal, a substantial majority supported the proposed amendments citing among other reasons the desirability of maintaining a "level playing field" in terms of financial reporting requirements for U.S. and foreign registrants. Opposing commentators cited the potential time and cost burden for some foreign registrants, specifically addressing the hardship of applying the SFAS 95 cash flow reporting requirements to certain foreign depository financial institutions.[27] Respondents also

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[25] Release 33–6818; File No. 57–4–89 (February 17, 1989) [54 FR 8202].

[26] Form 20–F (17 CFR 249.220f) is both the registration form and the annual report form which may be filed by foreign private issuers pursuant to the requirements of the Exchange Act.

[27] In December 1989 the FASB issued SFAS 104 which amends SFAS 95 to expand the circumstances under which depository financial

Continued

detailed differences in the manner of operations of British versus U.S. depository financial institutions which compound the hardship of strict compliance with the SFAS 95 cash flow reporting requirements. However, the subsequent amendment of the U.S. cash flow standard and the recent adoption of a new U.K. standard have substantially eliminated this hardship.[28]

Both proponents and opponents recommended that flexibility be allowed in the adoption and implementation of any cash flow reporting requirement.

The Commission believes that the disclosures prescribed by SFAS 95 are useful,[29] and it is appropriate to adopt this amendment, which will continue the Commission's existing requirement that foreign issuers should provide basic financial statements that reflect information that is substantially similar to that which is required by U.S. GAAP. As adopted, the Commission's requirement for cash flow reporting by foreign private issuers is flexible in that it permits presentation of the cash flow information in alternative formats in circumstances where a registrant's home country has a cash flow or funds flow reporting requirement that differs from the U.S. requirement. Further, the Commission emphasizes that, as with other accounting issues, the Commission's staff is willing to work with individual foreign registrants to resolve any unusual difficulty or burden imposed by the Commission's rules.

C. Other Technical Amendments

Many of the amendments being adopted are "housekeeping" matters, which result from the issuance of SFAS 95. All rules and forms that contain references to the previously required statement of changes in financial position are being amended to refer to the newly adopted statement of cash flows.

SFAS 95, as amended by SFAS 102, requires certain investment companies to include a statement of cash flows as a component of a set of basic financial statements. Rule 3–18 is being amended to adopt a requirement that investment companies provide a cash flow statement as a component of a set of basic financial statements to the extent required by GAAP.

The proposing release requested comments on whether the Commission should expand the summary financial information requirements in Rule 1–02(aa) of Regulation S–X to include summary cash flow data. Commentators did not express support for inclusion of cash flow data because such information was not deemed useful or relevant in all circumstances under which the data prescribed by Rule 1–02(aa) are required. A requirement that these data be routinely provided is not being adopted.

IV. Reporting on Income Taxes

SFAS 96, Accounting for Income Taxes, established financial accounting and reporting standards for the effects of income taxes on reporting entities.[30] Subsequent to the rule proposal and attendant public comment, the FASB initiated a project to amend SFAS 96 with a standard that would, among other things, revise the criteria by which deferred tax assets are recognized and measured. In February 1992, the FASB issued SFAS 109 which is effective for fiscal years beginning after December 15, 1992. Similar to the standard it amends, SFAS 109 assumes an asset and liability approach to accounting and reporting for income taxes. Rule 4–08(h) of Regulation S–X contains the Commission's income tax disclosure requirements. Some of the disclosure requirements of Rule 4–08(h) were adopted by SFAS 109 in either the original or a modified form. Rule 4–08(h) is being amended to delete those requirements that are now duplicated for registrants complying with SFAS 109. Other income tax accounting requirements are discussed below.

A. Disclosures Relating to Significant Temporary Differences

SFAS No. 109 requires disclosure of the tax effects of the principal temporary differences that give rise to deferred tax assets and liabilities. This represents a change from the approach initially taken in SFAS 96 under which companies would be required to disclose only the nature of the temporary differences that give rise to deferred tax assets and liabilities. The proposing release focused on the lack of quantified disclosure requirements under SFAS 96. Rules were proposed to require disclosure of the amount of each significant component of deferred tax assets and liabilities based on the view that quantified disclosure would be meaningful to financial statements users in assessing the potential timing and degree of management control over the reversal of timing differences.

A separate rule is no longer considered necessary as a result of the adoption of quantified disclosures under SFAS 109.

B. Other Technical Amendment

Rule 4–10(j) of Regulation S–X, captioned Income taxes, requires registrants engaged in oil and gas producing activities to apply comprehensive interperiod tax allocation by the deferred method. Reference to the deferred method of income tax allocation is being deleted in recognition of the change to the liability method required under SFAS 109. Also, the existing guidance on the income tax accounting treatment of excess statutory depletion is being deleted since it would be either (1) Redundant of the existing requirements under GAAP for applying the deferred method of income tax allocation or (2) not applicable once SFAS 109 is adopted. The rule is revised to refer to the requirements of GAAP generally since registrants that have not already voluntarily adopted SFAS 109 presently have the option of continuing to apply the deferred method until the effective date of SFAS 109.

V. Loan Origination Fees

In December 1986, the FASB issued SFAS 91, Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases. Rule 9–03 of Regulation S–X, which governs the form and content of balance sheets of bank holding companies, currently requires presentation of the total loan portfolio balance with separate disclosure of related loan loss allowances and unearned income. The Commission proposed an amendment of

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institutions' cash flows from deposit and lending activities may be presented on a net, rather than gross, basis. This amendment will reduce but not eliminate some of the cash flow reporting burdens of depository financial institutions.

[28] In September 1991 the recently created Accounting Standards Board of the United Kingdom published Financial Reporting Standard 1, *Cash Flow Statements*. The staff has indicated to U.K. registrants that the U.K. statement (with a few incremental disclosures) substantially satisfies the cash flow statement requirement in filings with the Commission. Additionally, FASB issued a new standard that modified the U.S. cash flow statement requirement to permit disclosures of certain cash flow items on a net basis. This revision largely addresses the concern expressed by U.K. commentators.

[29] The Commission notes that cash flows may be particularly useful in assessing the relative performance of foreign and U.S. issuers since, unlike the other statements, this information is not dependent on the differing accounting rules followed in preparing the balance sheet and income statements. Further, the Commission also notes that the International Accounting Standards Committee issued an exposure draft dated July, 1991 that would require a cash flow statement. The existing IASC standard calls for a statement of changes in financial position on either a funds or cash flow basis.

[30] In December 1989, FASB issued SFAS 103 which amends SFAS 96 to defer the effective date of that statement to fiscal years beginning after December 15, 1991. The effective date was later deferred until fiscal years beginning after December 15, 1992 in recognition of the imminent adoption of a revised accounting standard.

Rule 9–03.7 to require disclosure in the balance sheet of the net unamortized deferred loan origination fees and costs.

A majority of commentators opposed the proposal. The principal reasons cited for opposition were (1) That the balance sheet disclosure exceeds the requirements of GAAP since SFAS 91 addresses only the accounting and not the financial statement display of loan origination fees and (2) that the separate information would not necessarily be relevant or useful to financial statement users and the amount of such deferred loans and fees would be included in unearned income which is required by S–X, Rule 9–03.7, to be separately disclosed if material.

The Commission finds merit in certain of these arguments. The amended rules do not include the requirement for separate disclosure of net unamortized deferred loan fees and costs.

VI. Accounting and Reporting by Insurance Companies

In December 1987 the FASB issued SFAS 97, Accounting and Reporting by Insurance Enterprises for Certain Long Duration Contracts and for Realized Gains and Losses from the Sale of Investments. Article 7 of S–X governs the form and content of financial statements of insurance enterprises.

A. Realized Gains and Losses

SFAS 97 requires that, consistent with all other industries, net realized investment gains and losses be included in the determination of income from operations rather than being presented below operating earnings and shown net of applicable income taxes in the income statement. Consistent with this standard, the Commission is amending Rule 7–04 of Regulation S–X to present net realized gains and losses on a pretax basis in the computation of income or loss from continuing operations. A majority of commentators objected to separate income statement line item presentation. Some objected to the proposed requirement that separate line item presentation would be required regardless of size.

The requirement to disclose net realized gains and losses "regardless of size" is consistent with the language for the similar requirement for bank holding companies at Rule 9–04.13 of S–X. The net amount of realized gains and losses, together with other required information concerning investing activities, provides meaningful information to financial statement users.[31] The utility of the information is not diminished because the amounts of gains versus losses happen to offset in a particular period and therefore the net amount becomes small in relation to some other measure of performance. Consequently, the amendment is being adopted as proposed.

B. Gains and Losses Allocable to Policyholders and Separate Accounts

It is the Commission's understanding that there is diversity in practice among insurance companies with respect to inclusion of investment income and realized gains and losses allocable to policyholders and separate accounts together with other investment income and realized gains and losses reported in the financial statements.[32] The Commission is amending its rules to require disclosure of an insurance enterprise's policies with respect to the manner in which the financial statements report or include investment income and realized gains and losses allocable to separate accounts and policyholders together with disclosure of the amounts of such allocable investment income and realized gains and losses included in the financial statements. This amendment is being adopted to enable users of financial statements to identify income, gains, and losses that accrue to the benefit of shareholders as compared to the benefit of policyholders and separate accounts and to facilitate comparability of financial statements.

Certain commentators objected to the proposal on the basis that this is only one area in which there is diversity in practice among insurance companies and suggested that this should be referred to the private sector for deliberation. While Commission policy supports having the private sector consider the establishment of standards, the Commission cannot ignore dealing with divergent accounting practices when they are identified. Further, the Commission has been encouraged by the favorable response from registrants in the insurance industry to go forward with this amendment. Therefore, this amendment, as modified to clarify the disclosure to be provided, is being adopted.

C. Other Consideration

SFAS 97 addresses accounting for other consideration earned by insurance enterprises, including administrative and surrender charges on investment contracts such as universal life policies. The proposing release included a proposal to amend Rule 7–04 to include a new revenue caption, "Other Consideration."

Respondents to this proposal were evenly divided with supportive commentators suggesting that a different descriptive title be adopted. Opponents generally observed that the disclosure would not be meaningful or necessary and exceeds the requirements of GAAP. It was also observed that if this "other consideration" is not otherwise separately disclosed but is included in "other income" it, nevertheless, would be required to be presented separately pursuant to the requirements of S–X, Rule 7–04.3 (Rule 7–04.4 as amended), if it exceeds five percent of total revenue.

The Commission is persuaded by these comments that these sources of revenue may be included in "other income" with separate disclosure left to the discretion of registrants subject to the requirement for separate disclosure where such amounts exceed five percent of total revenue. Therefore, the proposed amendment is not being adopted.

VII. Oil and Gas Disclosure Requirements

The Commission is deleting Rule 4–10(k) of S–X which requires supplemental disclosures of oil and gas producing activities which are substantially similar to disclosure requirements which are contained in SFAS 69, Disclosures about Oil and Gas Producing Activities. This rule is no longer necessary because the transition period for the application of comparable rules under SFAS 69 has expire.[33] As a

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[31] S–X, Rule 7–04.3 (as amended), and, previously, Rule 7–04.12 contain a requirement that the caption for realized gains or losses must be referenced to a footnote that provides an analysis of realized and unrealized gains and losses for each period for which an income statement is provided.

[32] A separate account is defined in section 2(a)(37) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(37), and in paragraphs 53 and 54 of SFAS 60, Accounting and Reporting by Insurance Enterprises. Although the assets of a separate account are the legal assets of the insurance company, the investment income and realized gains and losses from such assets accrue to the benefit of the separate account. Some insurance companies report the investment income and realized gains and losses on separate account assets together with the general operating accounts of the insurance enterprise and include the allocation of the separate account benefits with other insurance claims accruals. Other companies "net" the allocation against the investment income and realized gains and losses resulting in exclusion of separate account activities from the income statement of the insurance company.

[33] When SFAS 69 was adopted in 1982, it was made effective for years beginning on or after December 15, 1982 with earlier application encouraged but not required. The Commission's rules were amended in 1983 to indicate that the requirements of Rule 4–10(k) would not apply to fiscal years beginning on or after December 15, 1982, thus ensuring that supplemental disclosure requirements under Rule 4–10(k) would phase out as SFAS 69 requirements phased in.

result of the deletion of Rule 4–10(k), Rule 4–10(i)(4) (which currently refers to Rule 4–10(k)(6)) is also being amended to incorporate directly the language previously referenced. This is a change from the proposal to cross reference to certain related provisions of SFAS 69, which certain commentators argued could have the unintended effect of changing the method of applying the full cost ceiling test.[34]

Rule 4–10(i)(4) as presently being amended includes the current requirement to consider the tax effects of differences in bases of unproved properties, referred to in subparagraph (D) of existing Rule 4–10(i)(4). The provisions of subparagraph (D) were inadvertently omitted from the proposed rule printed in the Federal Register.

VIII. Other Technical Amendments

The Commission is adopting other technical amendments in response to public comment that certain other rules are no longer operative due to actions taken by the FASB. These amended rules include:

A. Rule 3–21 of Regulation S–X captioned, Special Provisions as to Financial Statements of Companies Engaged in Marketing Computer Software. This rule is supplemented by a note indicating that its requirements shall not apply to financial statements that reflect the adoption of a FASB pronouncement that provides guidance in this area. This rule is being deleted since SFAS 86, Accounting for the Costs of Computer Software to be Sold, Leased or Otherwise Marketed, is applicable to fiscal years beginning after December 15, 1985.

B. Rule 4–08(j) of Regulation S–X captioned, Leased assets and lease commitments of regulated enterprises subject to the rate-making process. This rule requires expanded lease-related disclosures in the financial statements of certain rate regulated registrants that are not required to follow the provisions of SFAS 13, Accounting for Leases. Consistent with the provisions of SFAS 71, Accounting for the Effects of Certain Types of Regulation, rate regulated registrants are no longer exempt from the provisions of SFAS 13. Therefore, the rule is being deleted since it is no longer necessary.

[34] One commentator indicated that a literal application of SFAS 60 would effectively eliminate use of the so-called "short-cut" method of calculating income taxes, presently permitted under Topic 12–D–1 of the staff accounting bulletin series.

Certain Findings

Section 23(a)(2) of the Securities Exchange Act ("the Act") [35] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purpose of the Act. The Commission has considered the amendments and additions to Regulation S–X, Forms 10–K, X–17A–5, 20–F, Schedules 13E–3 and 13E–4, and Rule 14a–3, in light of the standard cited in Section 23(a)(2) and believes that adoption of these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission previously certified that the proposed amendments will not have a significant impact on a substantial number of small entities. No comments were received on this certification.

List of Subjects in 17 CFR Parts 210, 240, 249, 259 and 274

Accounting, Reporting and Recordkeeping Requirements, Securities, Utilities, Investment Companies.

Text of Amended Rules

In accordance with the foregoing, title 17, chapter II, of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78o, 78w(a), 79e(a) (b), 79n, 79t, 80a–8, 80a–20, 80a–29, 80a–30, 80a–37, unless otherwise noted.

§ 210.3–01 [Amended]

2. The first paragraph of the introductory note preceding § 210.3–01 is amended by revising the phrase "changes in financial position" to read "cash flows".

[35] 15 U.S.C. 78w(a)(2).

§§ 210.3–02, 210.3–03, 210.3–09 and 210.3–12 [Amended]

3. By amending the following sections to revise the phrase "changes in financial position" to read "cash flows".

§ 210.3–02 (a) and (b)
§ 210.3–03(b)(2) (2 places)
§ 210.3–09(c)
§ 210.3–12(a)

4. By amending § 210.3–18 to redesignate paragraph (a)(3) as (a)(4) and by adding new paragraph (a)(3) and by revising paragraph (b) to read as follows:

§ 210.3–18 Special provisions as to registered management investment companies and companies required to be registered as management investment companies.

(a) * * *

(3) An audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles. (Further references in this rule to the requirement for such statement are likewise applicable only to the extent that they are consistent with the requirements of generally accepted accounting principles.)

* * * * *

(b) If the filing is made within 60 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheet or statement of assets and liabilities may be as of the end of the preceding fiscal year and the filing shall include an additional balance sheet or statement of assets and liabilities as of an interim date within 245 days of the date of filing. In addition, the statements of operations and cash flows (if required by generally accepted accounting principles) shall be provided for the preceding fiscal year and the statement of changes in net assets shall be provided for the two preceding fiscal years and each of the statements shall be provided for the interim period between the end of the preceding fiscal year and the date of the most recent balance sheet or statement of assets and liabilities being filed. Financial statements for the corresponding period of the preceding fiscal year need not be provided.

* * * * *

§ 210.3–18 [Amended]

5. By amending § 210.3–18(c) to revise the phrase "statements of operations and changes in net assets" to read "statements of operations, cash flows, and changes in net assets".

§ 210.3–19 [Amended]

6. By amending § 210.3–19 (a)(2) and (d) to revise the phrase "changes in financial position" to read "cash flows".

§ 210.3–21 [Removed]

7. By removing § 210.3–21.

8. By amending § 210.4–08 to add paragraph (h)(3) to read as follows:

§ 210.4–08 General notes to financial statements.

* * * * *

(h) * * *

(3) Paragraphs (h) (1) and (2) of this section shall be applied in the following manner to financial statements which reflect the adoption of Statement of Financial Accounting Standards 109, Accounting for Income Taxes.

(i) The disclosures required by paragraph (h)(1)(ii) of this section and by the parenthetical instruction at the end of paragraph (h)(1) of this section and by the introductory sentence of paragraph (h)(2) of this section shall not apply.

(ii) The instructional note between paragraphs (h) (1) and (2) of this section and the balance of the requirements of paragraphs (h) (1) and (2) of this section shall continue to apply.

9. By removing and reserving paragraph (j) of § 210.4–08.

10. By amending § 210.4–08(k)(1) to revise the phrase "changes in financial position" to read "cash flows".

11. By revising paragraph (i)(4)(i) of § 210.4–10 to read as follows:

§ 210.4–10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

* * * * *

(i) *Application of the full cost method of accounting.*

* * * * *

(4) *Limitation on capitalized costs.* (i) For each cost center, capitalized costs, less accumulated amortization and related deferred income taxes, shall not exceed an amount (the cost center ceiling) equal to the sum of:

(A) The present value of estimated future net revenues computed by applying current prices of oil and gas reserves (with consideration of price changes only to the extent provided by contractual arrangements) to estimated future production of proved oil and gas reserves as of the date of the latest balance sheet presented, less estimated future expenditures (based on current costs) to be incurred in developing and producing the proved reserves computed using a discount factor of ten percent and assuming continuation of existing economic conditions; plus

(B) the cost of properties not being amortized pursuant to paragraph (i)(3)(ii) of this section; plus

(C) the lower of cost or estimated fair value of unproven properties included in the costs being amortized; less

(D) income tax effects related to differences between the book and tax basis of the properties referred to in paragraphs (i)(4)(i)(B) and (C) of this section.

* * * * *

12. By amending paragraph (j) of § 210.4–10 to revise in the first sentence the phrase "income tax allocation by the deferred method" to read "income tax allocation by a method which complies with generally accepted accounting principles", and removing the second sentence of the paragraph.

13. By removing paragraph (k) of § 210.4–10.

14. By amending § 210.7–04 by removing paragraph 12 and by redesignating paragraphs 3 through 11 as paragraphs 4 through 12 and by adding paragraph 3 to read as follows:

§ 210.7–04 Income statements.

* * * * *

3. *Realized investment gains and losses.* Disclose the following amounts:

(a) Net realized investment gains and losses, which shall be shown separately regardless of size.

(b) Indicate in a footnote the registrant's policy with respect to whether investment income and realized gains and losses allocable to policyholders and separate accounts are included in the investment income and realized gain and loss amounts reported in the income statement. If the income statement includes investment income and realized gains and losses allocable to policyholders and separate accounts, indicate the amounts of such allocable investment income and realized gains and losses and the manner in which the insurance enterprise's obligation with respect to allocation of such investment income and realized gains and losses is otherwise accounted for in the financial statements.

(c) The method followed in determining the cost of investments sold (e.g., "average cost," "first-in, first-out," or "identified certificate") shall be disclosed.

(d) For each period for which an income statement is filed, include in a note an analysis of realized and unrealized investment gains and losses on fixed maturities and equity securities. For each period, state separately for fixed maturities [see § 210.7–03.1(a)] and for equity securities [see § 210.7–03.1(b)] the following amounts:

(1) Realized investment gains and losses, and

(2) The change during the period in the difference between value and cost.

The change in the difference between value and cost shall be given for both categories of investments even though they may be shown on the related balance sheet on a basis other than value.

* * * * *

15. By amending § 210.7–04 by revising newly redesignated paragraphs 11 and 12 to read as follows:

§ 210.7–04 Income statements.

* * * * *

11. *Equity in earnings of unconsolidated subsidiaries and 50% or less owned persons.* State, parenthetically or in a note, the amount of dividends received from such persons. If justified by the circumstances, this item may be presented in a different position and a different manner. (See § 210.4–01(a).)

12. *Income or loss from continuing operations.*

* * * * *

16. By revising § 210.10–01(a)(4) to read as follows:

§ 210.10–01 Interim financial statements.

(a) * * *

(4) The statement of cash flows may be abbreviated starting with a single figure of net cash flows from operating activities and showing cash changes from investing and financing activities individually only when they exceed 10% of the average of net cash flows from operating activities for the most recent three years. Notwithstanding this test, § 210.4–02 applies and *de minimis* amounts therefore need not be shown separately.

* * * * *

17. By amending § 210.10–01(c) (3) and (4) to revise the phrase "changes in financial position" to read "cash flows".

§ 210.12–04 [Amended]

18. By amending § 210.12–04(a) to revise the phrase "changes in financial position" to read "cash flows".

§ 210.12–16 [Amended]

19. By amending § 210.12–16 to revise the "Segment" heading under column H of the schedule to read "Benefits, claims, losses, and settlement expenses (caption 5)" and to revise footnote 4 to the schedule to read, "The total of columns I and J should agree with the amount shown for income-statement caption 7".

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

20. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

§§ 240.13e–100, 240.13e–101, 240.14a–3 and 240.17a–5 [Amended]

21. By amending the following sections by revising the phrase "changes in financial position" to read "cash flows".

§ 240.13e–100 Item 14(a)(2)
§ 240.13e–101 Item 7(a)(2)
§ 240.14a–3(b)(1)
§ 240.17a–5(g)(1)

§ 240.17a–5 [Amended]

22. By amending § 240.17a–5 by revising the phrase "Changes in Financial Position" to read "Cash Flows".

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

23. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

24. By amending Form 20–F (referenced in § 249.220f) Item 17(c) to redesignate paragraph (2) as paragraph (3) and Item 18(c) to redesignate paragraphs (2) and (3) as paragraphs (3) and (4) and by adding new Items 17(c)(2) and 18(c)(2) both to read as follows:

§ 249.220f Form 20–F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

Form 20–F

* * * * *

(c) * * *

(2) If financial statements are prepared under a comprehensive body of accounting principles that does not include a requirement for a statement of changes in financial position or a statement of cash or funds flow, the basic financial statements shall include a statement of cash flows which meets the requirements of U.S. generally accepted accounting principles. If the financial statements are prepared under a comprehensive body of accounting principles that includes a requirement for a statement of cash or funds flow that differs from the requirements under U.S. generally accepted accounting principles, cash flow information that is substantially similar to the requirements under U.S. generally accepted accounting principles may be presented in a separate statement of cash flows or in a footnote.

§ 249.310 [Amended]

25. By amending Form 10–K (referenced in § 249.310) Item 8(a)(2) to revise the phrase "changes in financial condition" to read "cash flows".

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

26. The authority citation for part 259 is revised to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

§ 259.5s [Amended]

27. By amending Form U5S (referenced in § 259.5s) ITEM 9 to revise the phrase "changes in financial position" to read "cash flows".

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

28. The authority citation for part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.*, unless otherwise noted:

* * * * *

29. By amending Form N–4 (referenced in § 274.11c) to revise Item 23(a)(iii) and add new Item 23(a)(iv) to read as follows:

§ 274.11c Form N–4, registration statement of separate accounts organized as unit investment trusts.

Form N–4

* * * * *

Item 23. Financial Statements

(a) * * *

(iii) An audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles.

(iv) Audited statements of changes in net assets conforming to the requirements of Rule 6–09 of Regulation S–X [17 CFR 210.6–09] for the two most recent fiscal years.

* * * * *

Dated: September 24, 1992.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–23834 Filed 9–30–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Office of Orphan Products Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to general redelegations of authority from the Commissioner of Food and Drugs to add the Director, Office of Orphan Products Development, to those FDA officials already authorized to establish research, investigation, and testing programs and health information and health promotion programs, which relate to assigned functions, and to approve grants for these same areas.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations in § 5.25 *Research, investigation, and testing programs and health information and health promotion programs* (21 CFR 5.25) to add the Director, Office of Orphan Products Development, to those FDA officials already authorized to approve grants for research, investigation, and testing programs and health information and health promotion programs under sections 301, 307, 311, 1701, 1702, 1703, and 1704 of the Public Health Service Act. Redelegation of this authority will aid the Office of Orphan Products Development, in carrying out its responsibilities more efficiently. Accordingly, FDA is adding § 5.25(a)(7) as set forth below.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and

Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.25 is amended by adding new paragraph (a)(7) to read as follows:

§ 5.25 Research, investigation, and testing programs and health information and health promotion programs.

(a) * * *

(7) The Director, Office of Orphan Products Development.

* * * * *

Dated: September 23, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–23746 Filed 9–30–92; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 310

[Docket No. 89N–0525]

Status of Certain Over-the-Counter Drug Category II and III Active Ingredients; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations regarding the status of certain over-the-counter (OTC) drug Category II and III active ingredients. This final rule makes a nonsubstantive correction to the final regulations that were published in the **Federal Register** of November 7, 1990 (55 FR 46914). That final rule listed the name of an active ingredient incorrectly. This document corrects that error and provides clarification of the final rule for certain OTC drug products.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: This document amends the final rule concerning drug products containing certain active ingredients offered OTC for certain uses in 21 CFR part 310 (as set forth in the **Federal Register** of November 7, 1990 (55 FR 46914)). That final rule listed an active ingredient incorrectly. This final rule corrects that error in the regulations. As noted above, this amendment institutes a change that is nonsubstantive in nature. Because the amendment is not controversial and because, when effective, it provides clarification of a final rule for OTC drug products, FDA finds that the usual notice and comment procedures and delayed effective date are unnecessary.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

§ 310.545 [Amended]

2. Section 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is amended in paragraph (a)(3) by removing the entry "Carboxymethylcellulose" and adding in its place the entry "Carboxymethylcellulose sodium".

Dated: September 23, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–23848 Filed 9–30–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program; Definitions; Exemption for Coal Extraction Incidental to Extraction of Other Minerals; Coal Exploration; Kentucky Bond Pool; Backfilling and Grading; and Postmining Land Use

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with exceptions, of a proposed program amendment to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed modifications to a number of Kentucky rules in various subject areas for the purpose of maintaining consistency with revised Federal requirements, clarifying ambiguities, improving operational efficiency and implementing the additional flexibility afforded by Federal regulatory revisions.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of Amendments

By letter dated June 28, 1991 (Administrative Record Number KY–1059), Kentucky submitted a proposed program amendment modifying 19 regulations and incorporating two Technical Reclamation Memorandum (No. 19 and No. 20).

OSM announced receipt of the proposed amendment in the July 22, 1991, **Federal Register** (56 FR 33398), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on August 21, 1991.

By letter dated November 11, 1991 (Administrative Record Number KY–1079, Kentucky resubmitted that portion

of the June 28, 1991, submission dealing with general permitting provisions at 405 KAR 8:010. OSM has separated the November 11, 1991, resubmission from Kentucky's original amendment dated June 28, 1991, and will process the resubmittal separately in a future **Federal Register** notice.

By letter dated December 31, 1991 (Administrative Record Number KY–1095), Kentucky submitted a proposed program amendment which revises the manner in which definitions of terms are reflected in Kentucky's regulatory program. The amendment deletes 405 KAR 7:020 which currently contains most of the definitions relevant to Kentucky's program, and adds new definition sections at the beginning of each Chapter of the Kentucky regulations, as follows: 405 KAR 7:001 definitions for 405 KAR chapter 7, 405 KAR 8:001 definitions for 405 KAR chapter 8, 405 KAR 10:001 definitions for 405 KAR chapter 10, 405 KAR 12:001 definitions for 405 KAR chapter 12, 405 KAR 16:001 definitions for 405 KAR chapter 16, 405 KAR 18:001 definitions for 405 KAR chapter 18, 405 KAR 20:001 definitions for 405 KAR chapter 20, and 405 KAR 24:001 definitions for 405 KAR chapter 24. The proposed amendment includes those changes to terms or additions of new terms that were part of the proposed program amendment (Administrative Record Number KY–1059) submitted on June 28, 1991. In addition, the proposed amendment deletes the definitions of several terms which are not used within Kentucky's program, and modifies several definitions by replacing the current definitions in the Kentucky Administrative Regulations with reference to definitions in Kentucky's Revised Statute.

OSM announced receipt of the December 31, 1991, submission in the January 30, 1992, **Federal Register** (57 FR 3601), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed period closed on March 2, 1992.

By letter dated April 1, 1992 (Administrative Record Number KY–1124), Kentucky submitted modifications to the December 31, 1991, submission discussed above. The modifications represent changes to specific definitions made as a result of Kentucky's formal promulgation process under Kentucky's Revised Statute chapter 13A.

OSM announced receipt of the April 1, 1992, resubmission in the May 21, 1992, future **Federal Register** (57 FR 21637), and in the same notice, reopened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on June 5, 1992.

By letter dated January 22, 1992 (Administrative Record Number KY–1107), Kentucky submitted a proposed program amendment which modified 13 of the 19 regulations included in the State's June 28, 1991 submission. This resubmission incorporated changes made to the proposed regulations during the State promulgation process. Also included in the resubmission were two publications entitled "Kentucky Agricultural Statistics 1989–1990" and "Kentucky Agricultural Statistics 1990–1991", which were incorporated by reference in 405 KAR 16:200.

OSM announced receipt of the January 22, 1992, submission in the April 13, 1992, **Federal Register** (57 FR 12775) and in the same notice, reopened the comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 13, 1992. The sections of the Kentucky Administration Regulations (KAR) included in the January 22, 1992, resubmission are: 405 KAR 7:015 Documents incorporated by reference; 405 KAR 7:030 Applicability; 405 KAR 7:035 Exemption for coal extraction incidental to extraction of other minerals; 405 KAR 7:080 Small Operator Assistance; 405 KAR 8:020 Coal exploration; 405 KAR 10:200 Kentucky bond pool; 405 KAR 16:190 and 405 KAR 18:190 Backfilling and grading; 405 KAR 16:200 and 405 KAR 18:200 Revegetation; 405 KAR 16:210 and 405 KAR 18:220 Postmining land use capability; and 405 KAR 20:010 Coal Exploration.

By letter dated March 13, 1992 (Administrative Record Number KY–1119), Kentucky resubmitted that portion of the June 28, 1991, submission dealing with fish and wildlife resources regulations at 405 KAR 8:030, 8:040, 16:180 and 18:180. OSM has separated the March 13, 1992, resubmittal from Kentucky's original amendment dated June 28, 1991, and will process the resubmittal separately in a future **Federal Register** notice.

The January 22, 1992, submittal included reference to 405 KAR 7:080 which deals with Kentucky's Small Operator Assistance Program. Kentucky had previously resubmitted that regulation on December 5, 1991 (Administrative Record Number KY–1085). The December 5, 1991, resubmittal was open for public review and comment on December 31, 1991 (56 FR 67558). The public comment period closed on January 15, 1992, and a final rule was published on April 15, 1992 (57 FR 13043), approving the amendment to 405 KAR 7:080. As approved on April 15, 1992, the rules in 405 KAR 7:080, submitted on December 5, 1991, are identical to the rules in the January 22, 1992, resubmission. Therefore, no further discussion of 405 KAR 7:080 is required. In addition, 405 KAR 16:200 and 405 KAR 18:200, which deal with revegetation, are being separated from Kentucky's January 22, 1992, resubmission, along with the two publications regarding Kentucky's agricultural statistics referred to above, and will be considered separately by OSM in a future **Federal Register** notice.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Kentucky program.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Kentucky's Regulations that are Substantively Identical to the Corresponding Federal Regulations

State regulations (405 KAR)	Subject	Federal counterpart (30 CFR)
7:030 sec. 3(1)(d).	Applicability	700.11(a)(4).
7:035 sec. 1.	Incidental Coal Extraction.	702.5 (Except for definition of terms).
7:035 sec. 2.	Incidental Coal Extraction.	702.11.
7:035 sec. 3.	Incidental Coal Extraction.	702.12.
7:035 sec. 4.	Incidental Coal Extraction.	702.13.
7:035 sec. 5.	Incidental Coal Extraction.	702.14.
7:035 sec. 6.	Incidental Coal Extraction.	702.15.
7:035 sec. 7.	Incidental Coal Extraction.	702.16.
7:035 sec. 8.	Incidental Coal Extraction.	702.17.
7:035 sec. 9.	Incidental Coal Extraction.	702.18.
8:020 sec. 1(2)(c).	Coal Exploration	772.11(b)(3).
8:020 sec. 4.	Coal Exploration	772.14.
16:210 sec. 1 (1) thru (1)(b).	Postmining Land Use Capability.	816.133(a).
18.220 sec. 1 (1) thru (1)(b).	Postmining Land Use Capability.	817.133(a).
20:010 sec. 4.	Coal Exploration	772.14(a).

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that the proposed rules are no less effective than the Federal rules.

B. Revisions to Kentucky's Regulations that are not Substantively Identical to the Corresponding Federal Regulations

1. 405 KAR 7:021 Repeal of 405 KAR 7:020

Kentucky proposes to add 7:021 section 1 which repeals 7:020—Definitions and abbreviations, that defines certain terms used in 405 KAR chapters 7–24. As explained by Kentucky in the Necessity and Function section of 7:021, "405 KAR 7:020 is no longer necessary because a new administrative regulation is being promulgated in each chapter of 405 KAR chapter 7–24 that will contain the definitions for the chapter". The new administrative regulations being added by Kentucky to replace 7:020 are:

405 KAR 7:001—Definitions of terms used in chapter 7
405 KAR 8:001—Definitions of terms used in chapter 8
405 KAR 10:001—Definitions of terms used in chapter 10
405 KAR 12:001—Definitions of terms used in chapter 12
405 KAR 16:001—Definitions of terms used in chapter 16
405 KAR 18:001—Definitions of terms used in chapter 18
405 KAR 20:001—Definitions of terms used in chapter 20
405 KAR 24:001—Definitions of terms used in chapter 24

To the extent that Kentucky's proposal simply involves relocating existing definitions from 405 KAR 7:020 or other regulations to the appropriate new administrative regulation listed above, the Director finds that the proposal is not inconsistent with the requirements of SMCRA and the Federal regulations.

In addition to relocating definitions, Kentucky proposes to add new definitions; revise, modify or delete existing definitions; and delete certain existing definitions and replace them with a reference to previously approved definitions in Kentucky's Revised Statutes (KRS). These additional proposals are discussed below.

(a) Proposed new definitions. (1) Kentucky proposes to add at 405 KAR 7:001, definitions for "cumulative measurement period", "cumulative production", "cumulative revenue", "mining area", and "other mineral". "Other mineral" is also defined in 405 KAR 8:001. A portion of the definition of "cumulative measurement period", concerning criteria for determining the beginning of the period, is contained in 405 KAR 7:035 section 1. As noted in Finding "A" above, this portion of the rule is substantively identical to the Federal rule at 30 CFR 702.5. Each of these terms is used in proposed 405 KAR 7:035 which deals with the exemption for coal extraction incidental to the extraction of other minerals. The Director has determined that these definitions for "cumulative production", "cumulative revenue", "mining area", and "other mineral" are substantively identical to the Federal definitions at 30 CFR 702.5, and are, therefore, no less effective than the Federal counterparts.

(2) Kentucky proposes to add at 405 KAR 7:001 a definition of the term "knowingly". As proposed, the term means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS chapter 350, 405 KAR chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS chapter 350, or 405 KAR Chapters 7 through 24. The Director finds that the proposed definition is substantively identical to, and no less effective than, the Federal definition at 30 CFR 846.5.

(3) Kentucky proposes to add at 405 KAR 7:001 a definition of "small operator", as used in the Small Operator Assistance Program (SOAP) regulations at 405 KAR 7:080, to mean an operator whose combined actual and attributed production of coal does not exceed 300,000 tons during any period of twelve (12) consecutive months. While there is no specific Federal definition of small operator, the proposal is consistent with the eligibility criteria for participation in Kentucky's SOAP as approved by the Director on April 15, 1992 (57 FR 13043), and with the Federal eligibility requirements contained in the Federal rule at 30 CFR 795.6.

(4) Kentucky proposes to delete the definition of "willful violation", formerly at 405 KAR 7:020, and add a new definition of "willfully and willful violation" at 405 KAR 7:001, 8:001 and 10:001. As proposed, the term means that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS chapter 350, 405 KAR chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS chapter 350, or 405 KAR chapters 7 through 24. The Federal regulations provide separate definitions for "willfully" at 30 CFR 846.5, and "willful violation" at 30 CFR 701.5 and 843.5. Unlike the Federal definition of "willful violation", Kentucky's proposed combined definition does not stipulate that the person who committed the act or omission must have intended the result that actually occurs. However, since Kentucky's proposed definition includes all intentional acts and omissions, it will necessarily include all acts and omissions specified in the Federal definitions. Because Kentucky's proposed combined definition will result in sanctions and penalties no less stringent that those resulting from the separate Federal definitions, the Director finds that the proposal is no less effective than the Federal regulations.

(5) Kentucky proposes to replace the definition of the term "fish and wildlife habitat" found at 405 KAR 7:020, with a definition of the term "fish and wildlife land use" which is being added at 405 KAR 16:001 and 18:001. As proposed, "fish and wildlife land use", as used in 405 KAR 16:210 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not. The Federal definition, set forth at 30 CFR 701.5 as part of the definition of "land use", provides that "fish and wildlife habitat" means "(L) and dedicated wholly or partially to the production, protection, or management of species of fish or wildlife". While Kentucky's proposed definition is similar to the Federal definition, the Federal definition contains no provisions allowing a fish and wildlife land use without active management. However, this language is consistent with the preamble to the revised Federal definition, which states that "OSM agrees that the management activities practiced on the land normally are an accurate reflection of the land's use. In general, as the intensity of the management increases, the land use becomes more well defined. However, in some instances, a specific use can be identified without active management" (48 FR 39893, September 1, 1983). Therefore, the Director finds that the proposed definition is not inconsistent

with the requirements of SMCRA and the Federal regulations.

(6) Kentucky proposes to add a definition of "ground cover" at 405 KAR 8:001, 16:001 and 18:001. As proposed, the term means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement. The Director has determined that the proposed definition is substantively identical to and, therefore, no less effective than, the Federal definition at 30 CFR 701.5.

(7) Kentucky proposes to add a definition of "growing season" at 405 KAR 8:001, 16:001, 18:001 and 24:001. As proposed, growing season means the period during a one (1)-year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. Kentucky identifies this period as normally extending from mid-April to mid-October. While there is no direct Federal counterpart, the Director finds that the definition adds clarity to Kentucky's program and will not render that program inconsistent with the requirements of SMCRA and the Federal regulations.

(8) Kentucky proposes to add a definition of "higher or better uses" at 405 KAR 16:001 and 18:001. As proposed, the term means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses. The proposed definition is substantively identical to the Federal definition at 30 CFR 701.5. Therefore, the Director finds the proposal no less effective than its Federal counterpart.

(9) Kentucky proposes to add a definition of the term "valuable environmental resources" at 405 KAR 16:001 and 18:001. As proposed, the term means:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar state statutes; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and Federal agencies with responsibilities for fish and wildlife.

The defined term, for which there is no Federal definition, is used in 405 KAR chapters 16 and 18. Both of those regulation chapters are the subject of a separate proposed program amendment which is currently under review by OSM. Therefore, the Director is deferring final action on the proposed definition pending action by OSM on the proposed changes to 405 KAR chapters 16 and 18.

(10) Kentucky proposes to add definitions of the acronyms "RAM" and "TRM", to mean Reclamation Advisory Memorandum and Technical Reclamation Memorandum, respectively. "RAM" is proposed to be added to 405 KAR 16:001, 18:001, 20:001 and 24:001. "TRM" is proposed to be added to 405 KAR 8:001, 16:001 and 18:001. While there are no Federal counterparts, the Director finds that the proposals will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

(b) Proposed revisions, modifications and deletions. (1) Kentucky proposes to revise the definitions of "forestland" contained in 405 KAR 8:001, 16:001 and 18:001, "industrial/commercial lands" contained in 405 KAR 16:001, 18:001 and 20:001, "pastureland" contained in 405 KAR 8:001, 16:001 and 18:001, "cropland" contained in 405 KAR 8:001, 10:001, 16:001, 18:001 and 20:001, and "residential land" contained in 405 KAR 8:001, 16:001, 18:001 and 20:001, by deleting reference to land used for support facilities and other facilities which directly relate to specific land use. The reference proposed for deletion is not part of the Federal definitions of these specific land uses as set forth in 30 CFR 701.5. The Director finds that the proposed deletions will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations since the definitions, after the deletions, are substantively identical to their Federal counterparts.

In addition, Kentucky proposes to further revise the definition of "Industrial/commercial land" by deleting reference to commercial agricultural activities including pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants for sale or resale. Kentucky made this proposal in response to a 30 CFR part 732 notice from OSM dated February 8, 1990 (Administrative Record Number KY-967). In that notice, OSM found that the inclusion of commercial agricultural activities in the definition of "industrial/commercial land" renders the definition less effective than the Federal rules and less stringent than SMCRA. Therefore, the Director finds that the proposed definition is now no less effective than its Federal counterpart as set forth at 30 CFR 701.5.

(2) Kentucky proposes to revise the definition of "land use" at 405 KAR 7:001, 8:001, 10:001, 16:001, 18:001 and 20:001, by including reference to land used for support facilities that are an integral part of the specific land use. This addition is consistent with the Federal definition of "land use" set forth at 30 CFR 701.5. In addition, Kentucky proposes to add to the definition a statement that "(I)n some instances, a specific use can be identified without active management". While this statement is not part of the Federal definition, the language is consistent with the preamble to the Federal definition, which states that "OSM agrees that the management activities practiced on the land normally are an accurate reflection of the land's use. In general, as the intensity of the management increases, the land use becomes more well defined. However, in some instances, a specific use can be identified without active management" (48 FR 39893, September 1, 1983). Therefore, the Director finds that the proposed definition is no less effective than its Federal counterpart.

(3) Kentucky proposes to revise the definition of the term "incidental boundary revision" at 405 KAR 8:001 by deleting references to limitations to be applied in determining whether or not extensions for new areas will be considered incidental boundary revisions, and the reference to limitations on cumulative acreage added by successive revisions. These limitations being proposed for deletion by Kentucky are included in a separate proposed amendment (Administrative Record Number KY-1123) dealing with 405 KAR 8:010, General Provisions for Permits. That amendment is currently under review by OSM. There is no Federal definition of the term. With the understanding that limitations on incidental boundary revisions are the subject of another pending program amendment, the Director has determined that the proposed deletions will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

(4) Kentucky proposes to revise the definition of "previously mined area" at 405 KAR 8:001, 16:001 and 18:001 by adding reference to coal mining operations conducted prior to August 3, 1977, where the land has not been reclaimed, and where there is no continuing responsibility to reclaim to the standards set by Kentucky's program. The Director has determined that the new language proposed to be added does not change the meaning of the term "previously mined area", but rather provides more specificity to the definition. In addition, the proposed language brings Kentucky's definition of

"previously mined area" into compliance with Judge Flannery's decision of February 12, 1990. *National Wildlife Federation* v. *Lujan 733* F. Supp. *419, 438* (D.D.C. 1990). In that decision, Judge Flannery ruled that a "previously mined area" must be an area mined before August 3, 1977, the effective date of SMCRA, and not reclaimed to the standards of SMCRA. Therefore, the Director finds that the proposal is no less effective than its Federal counterpart at 30 CFR 701.5.

(5) Kentucky proposes to revise the definition of "public park" at 405 KAR 8:001 and 24:001 by emphasizing that the subject area has been designated primarily for public recreational use. As revised, the definition is substantively identical to the Federal definition at 30 CFR 761.5. Therefore, the Director finds that the proposal is no less effective than its Federal counterpart.

(6) Kentucky proposes to revise the definition of "substantially disturb" at 405 KAR 8:001 and 20:001, for purposes of coal exploration, by changing the coal production threshold from "more than 250 tons" to "more than 25 tons". The Federal definition, at 30 CFR 701.5, retains the larger threshold. The proposed revision in consistent with OSM's earlier approval of Kentucky legislation that changed the tonnage limitation in connection with coal exploration as set forth in 405 KAR 8:020 (56 FR 4721, February 6, 1991). Therefore, the Director finds that the proposal is no less effective than the Federal definition.

(7) Kentucky proposes to delete the definitions of "date of primacy", "federal land program", "grazingland", "half-shrub", and "recurrence interval"; as well as the definitions of the following acronyms, "ac"—acre, "l"—liter, "mg"—milligram, "NPDES"—National Pollution Discharge Elimination System, and "USDI"—United States Department of the Interior. Kentucky proposes to delete these definitions and abbreviations, since the specific terms and acronyms are not used within Kentucky's regulations. Among the terms, only "grazingland", "half-shrub" and "recurrence interval" are defined in the Federal regulations, all at 30 CFR 701.5. However, grazingland is not an alternative post-mining land use in Kentucky; shrubs, rather than half-shrubs, are used in Kentucky to measure stocking success; and "recurrence interval", referring to the frequency of a precipitation event, is merely a descriptive term not necessary because the terms for precipitation events, such as "10 year, 24 hour" or "100 year, 24 hour", already describe the event's frequency. The Director finds that the proposed deletions will not render Kentucky's rules inconsistent with the requirements of SMCRA and the Federal regulations.

(c) Definitions replaced by reference to Kentucky Revised Statute. (1) Kentucky proposes to replace the definitions of eleven terms contained in Kentucky's Administrative Regulations (KAR) with references to the definitions of those terms as set forth in Kentucky Revised Statute (KRS) 350.010 and 350.450(4)(c).

—The regulatory definitions of "cabinet", "operator", "reclamation", "secretary", and "surface coal mining and reclamation operations" at 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, are substantively identical to the statutory definitions. ("Secretary" is not defined in 405 KAR 16:001 and 18:001). Therefore, the Director finds that the proposal to replace the regulatory definitions with references to the definitions contained in the KRS will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

—The regulatory definition of "operations" refers to surface coal mining and reclamation operations (Emphasis added), while Kentucky's statutory definition refers only to surface coal mining operations. A reading of the definition itself, reveals that it references only activities directly related to the extraction of coal and not to any reclamation activities. There is no Federal definition of "operations". The Director finds that the references to the statutory definition of "operations" at 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, relating only to coal extraction activities and not to reclamation activities, will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

—The definition of "surface coal mining operations" at KRS 350.010(1) was approved by the Director on February 6, 1991 (56 FR 4721). At that time, the Director noted that the regulatory definition was inconsistent with the amended statutory language and the statutory language was controlling. Thus, the proposal to replace the regulatory definition at 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001 with a reference to the statutory definition is consistent with the prior approval. Therefore, the Director finds that the proposal will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

—The statutory definition of "overburden", in addition to containing the language of the regulatory definition, expands its coverage to include the material after removal from its natural state in the process of surface coal mining. This additional data provides specificity without changing the meaning of the term. Therefore, the Director finds that the proposal to reference the statutory definition of "overburden" at 405 KAR 7:001, 8:001, 16:001, 18:001, 20:001 and 24:001 will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

—The definition of "person" currently set forth at 405 KAR 7:020 contains a reference to governmental agencies, units or instrumentalities and publicly owned utilities or corporations of governmental units. The Federal definition at 30 CFR 700.5 contains the same reference. Kentucky's statutory definition does not contain such reference. By letter dated July 20, 1992 (Administrative Record Number KY-1169), Kentucky stated that they propose to revise the statutory definition in a program amendment to be submitted to OSM in the near future, by adding a reference to KRS 446.010(26) which provides that the term "person" may extend and be applied to the "bodies-politic". Therefore, the Director is deferring action on the proposal to replace the current regulatory definition of "person" with a reference to the statutory definition until the proposed program amendment discussed above, is submitted and approved by OSM.

—The regulatory definition of "approximate original contour" contains references to other sections of Kentucky's regulations dealing with requirements for impoundments, postmining rehabilitation of impoundments, and postmining land use. This is consistent with the Federal definition at 30 CFR 701.5. Kentucky's statutory definition does not contain similar references. By letter dated July 20, 1992 (Administrative Record Number KY-1169), Kentucky responded to an inquiry dated April 1, 1992, from OSM (Administrative Record Number KY-1122) regarding the failure to include the references in the statutory definition. Kentucky pointed out that the statutory definition is consistent with the definition contained in

section 701 of SMCRA, and contains a reference to KRS 350.455 which is the counterpart to section 515(b)(8) of SMCRA, regarding permanent impoundments. Kentucky stated that inclusion of the references in the statutory definition would be redundant, as it is in the current Federal definition, since the specific requirements by their own terms apply to impoundments, and need not be included in the definition in order to preserve their applicability. The Director finds that the proposal to reference the statutory definition of "approximate original contour", as clarified by Kentucky, will not render the program inconsistent with the requirements of SMCRA and the Federal regulations.

—Kentucky proposes to add at 405 KAR 8:001, the term "small operator", as the term is used in 405 KAR 8:030 and 8:040 sections 3(5). The proposal consists of a reference to the definition found at KRS 350.450(4)(c). Kentucky's rules at 405 KAR 8:030 and 8:040 section 3(5) currently contain the same reference to the statutory definition. In a separate program amendment currently under review by OSM, Kentucky is proposing to delete the references contained in section 8:030 and 8:040. The Director finds that the proposed addition at 405 KAR 8:001, while duplicative of the information at 8:030 and 8:040 will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

2. 405 KAR 7:030 Applicability

a. Kentucky proposes to transfer from section 3(1) to section 3(2) the provision which allows the cabinet to make a written determination, based on a request from any person who intends to extract coal, whether the operation is exempt from title 405 chapters 7 through 24. In addition, Kentucky proposes to revise this provision and section 3(3) by limiting these provisions to extraction of coal pursuant to section 3(1)(a), (b) and (c), thereby excluding 3(1)(d) dealing with the extraction of coal incidental to extraction of other minerals. However, the incidental coal extraction exemption is subject to the provisions of 405 KAR 7:035. Therefore, the Director finds that the proposals are not inconsistent with the federal exemption provisions set forth at 30 CFR 700.11.

b. Kentucky proposes to revise section 3(1) (a) and (b) by (a) restricting the exemption for landowners who extract coal for his or her own noncommercial use to fifty (50) tons or less within twelve (12) successive calendar months, and (b) modifying the exemption for extraction of or the intent to extract coal by any person within twelve (12) successive calendar months to twenty-five tons or less rather than the current 250 tons or less. The Federal regulations at 30 CFR 700.11 (a)(1) and (2), in providing exemptions from chapter VII, place no limitation on the amount of coal extracted by a landowner for his or her own noncommercial use, and place a maximum limitation of 250 tons for a person conducting a surface coal mining and reclamation operation. This change is consistent with the legislation approved by OSM on February 6, 1991 (56 FR 4721). Therefore, the Director finds the proposals no less effective than 30 CFR 700.11(a) (1) and (2).

3. 405 KAR 8:020 Coal Exploration

a. Kentucky proposes to revise sections 1, 1(1), 2 and 2(1) by modifying the production levels from 250 tons or less to 25 tons or less for which a written notice of intent to explore is required; and from more than 250 tons to more than 25 tons for which application and written approval of the cabinet is required. The Federal regulations at 30 CFR 772.11(a) and 772.12(a) provide for a production threshold of 250 tons, similar to that provided for in the State rules before this proposed revision. The proposed rules do not expand the Federal limitations and are consistent with OSM's earlier approval of Kentucky legislation that changed the tonnage limitation (56 FR 4721). Therefore, the Director finds the proposals to be no less effective than the Federal counterparts.

b. Kentucky proposes to revise section 2(2)(g) to require the submission of justification for the necessity to remove more than 25 tons of coal during exploration, rather than the current threshold of 250 tons. The Federal rule at 30 CFR 772.12(b)(7) requires a statement of why extraction of more than 250 tons of coal is necessary for exploration. Since the proposed rule does not expand the Federal limitations and is consistent with an earlier approval, the Director finds the proposal to be no less effective than the Federal counterpart.

4. 405 KAR 16:210/18:220 Postmining Land Use Capability

a. Kentucky proposes to revise section 2 by deleting paragraphs (1), (2) and (3) which deal with postmining land uses for lands which were previously unmined, previously mined, or improperly managed. In lieu thereof, Kentucky proposes to add paragraphs (1), (2), (3), (4), (5) and (6) which provide as follows:

(1) For lands not previously mined, the postmining land use shall be compared to those uses which the land previously supported. This rule, while similar to the Federal rule at 30 CFR 816.133(b), fails to provide that a postmining land use must be compared to premined land which was properly managed, as set forth in the cited Federal rule. In the preamble to the Federal rule, a commenter objected to the phrase "and has been properly managed." OSM rejected the comment because "[t]he Act's legislative history makes clear that Congress did not intend for the postmining land use of land which had been improperly managed to be limited to its most recent premining use. Congress intended for the postmining use of land to be based on its 'potential utility' for a number of uses before mining, not some low use which may have resulted from mismanagement. (S. Rept. 95–128, 95th Cong., 1st Sess. 76–77 (1977))." 44 FR 14902, 15243 (March 13, 1979). Kentucky's rule allows for the possibility of land being returned to a condition that is below its potential, which is not what Congress intended. Thus, to the extent that the proposed rule fails to require a comparison to a premining land use that was properly managed, the Director finds the amendment less effective than the Federal rules, and he is requiring Kentucky to amend its program accordingly.

The proposal further provides that premining land use shall be based on prevalent or dominant use, vegetative types, and features present at that area. It also provides that more than one land use can exist within a proposed permit boundary. There are no Federal counterparts for these provisions. A commenter to the Federal rule believed that 816.133 "tended to de-emphasize the multiple use concept of land restoration." *Id.* OSM responded to the comment by stating that multiple land uses are not prohibited by SMCRA or the regulations. Congress also recognized "that the postmining condition be consistent with the surrounding landscape." *Id.* at 15242. Thus, these Kentucky provisions are not inconsistent with the postmining land use provisions of 30 CFR 816/817.133.

(2) For lands previously mined, and not reclaimed in compliance with appropriate State regulations, the postmining land use shall be judged based on the use that existed prior to any mining or, if that is not possible because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is comparable with surrounding areas and does not require the disturbance of

areas previously unaffected by mining. This proposed language is substantively identical to that found in the corresponding Federal rule at 30 CFR 816/817.133(b). Therefore, the Director finds the proposal to be no less effective than the Federal counterpart.

(3) Prime farmland historically used for cropland, and not exempted by 405 KAR 8:050 section 5, shall have a cropland postmining land use. There is no direct Federal counterpart. However, the definition of prime farmland at 30 CFR 701.5 defines such term as those lands that "have historically been used for cropland." Kentucky's proposed postmining land use for prime farmland is consistent with this definition and can be approved.

(4) "Undeveloped land or no current use or land management", shall not be designated a postmining land use. If such land category was the premining land use, and it is consistent with sections 2(2) and 3, forestland may be the designated postmining land use without compliance with procedures and criteria for an alternative postmining land use where trees were dominant on the land prior to mining. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use. While there is no direct Federal counterpart, under the conditions found in Kentucky, undeveloped land will always revert naturally to either woodland or fish and wildlife habitat. Since the required findings and approval criteria for designation of an alternative postmining land use all relate to the feasibility, legality and environmental impacts of the proposed use, there is little reason to apply these requirements when the land has no current or historical use and the proposed postmining use is the one which would eventually be achieved anyway through the natural process of ecological succession.

Under these conditions, there is effectively no real change in land use, and, as explained in the preamble to the definition of "land use" in 30 CFR 701.5 (44 FR 14933, March 13, 1979), alternative land use approval criteria and procedures do not apply. In addition, revegetation success standards for forestland or fish and wildlife habitat would be no less stringent than those for undeveloped land. Therefore, the Director finds that the proposed rule is not inconsistent with SMCRA and the Federal regulations.

(5) For permits issued after the effective date of this amendment, portions of the area affected by surface operations and facilities with slopes greater than twenty (20) percent (11.3 degrees) shall not be designated as cropland, including hay production. There is no direct Federal counterpart. However, as provided for at 30 CFR 816/817.133(c)(1), there must be a reasonable likelihood for achieving the proposed use; and, pursuant to 30 CFR 816/817.133(c)(3)(i) the proposed use must not be impractical or unreasonable. Inasmuch as the cropland designation for land with slopes greater than twenty percent would be neither practical nor have a reasonable likelihood of success, the Director finds that the proposal is not inconsistent with the general provisions of 30 CFR 816/817.133.

(6) Steep slope operations with variance from approximate original contour shall comply with the requirements of 405 KAR 20:060 section 3(2), and mountaintop removal operations shall comply with 405 KAR 8:050 section 4(3). The requirements of 20:060 section 3(2) and 8:050 section 4(3), set forth the criteria for postmining land uses. Therefore, the Director finds that the proposal is not inconsistent with SMCRA and the Federal regulations.

b. Kentucky proposes to revise section 4 to provide that higher or better alternative postmining land uses may be approved if (1) there is a reasonable likelihood that the land use will be achieved, (2) the use will not be impractical or unreasonable, (3) the landowner or land management agency having jurisdiction had been consulted, (4) the proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability, (5) the proposed use will not involve unreasonable delays in implementation, and (6) the proposed use will not cause or contribute to violation of federal, state, or local law. As revised, section 4 is substantively identical to the Federal rule at 30 CFR 816/817.133(c). Therefore, the Director finds the proposed rule to be no less effective than the Federal counterpart.

In revising section 4, Kentucky deleted old subparagraphs (1)(b) and (1)(c) and paragraphs (2), (3), (4), (5), (6), (7), (8) and (9) (a), (b) and (c). There are no direct Federal counterparts for these deletions and, since section 4 as revised is substantively identical to the corresponding Federal rule, as discussed above, the Director finds that these deletions will not render Kentucky's rules inconsistent with the requirements of SMCRA and the Federal regulations.

5. 405 KAR 20:010 Coal Exploration

Kentucky proposes to revise section 2 by decreasing the coal production threshold from more than 250 tons to more than 25 tons consistent with OSM's earlier approval of Kentucky legislation that changed the tonnage limitation (56 FR 4721, February 6, 1991). Thus, the Director finds the proposal to be no less effective than SMCRA and the Federal regulations at 30 CFR 815.13.

C. Revisions to Kentucky's Regulations with no Corresponding Federal Regulations

1. 405 KAR 7:015 Documents Incorporated by Reference

a. Kentucky proposes to revise section 2 by deleting the reference to Technical Reclamation Memorandum (TRM) #9, "Revegetation Standards for Success", dated February 1, 1983, which will be replaced by TRM #19, "Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands", dated June 28, 1991. TRM #19 is currently being reviewed by OSM as part of a separate Kentucky program amendment (Administrative Record Number KY–1107) as that amendment deals with Kentucky's revegetation regulations at 405 KAR 16:200 and 18:200. Therefore, the Director is deferring action on the revision to 405 KAR 7:015 section 2 pending final action on the amendment to 16:200 and 18:200.

b. Kentucky proposes to revise section 4 by deleting, in section 4(6) and 4(7), the reference to publications entitled "Environmental Criteria for Electric Transmission Lines" and "Protection of Bald and Golden Eagles from Powerlines", neither of which is referred to in the corresponding Federal regulations. The Director finds that the proposed deletions will not render Kentucky's program less effective than the Federal regulations.

2. 405 KAR 7:030 Applicability

Kentucky proposes to revise section 3 by adding subsection (4) which provides a cross-reference to 405 KAR 7:035 for exemptions granted under 405 KAR 7:030 section 3(1)(d) regarding the extraction of coal incidental to the extraction of other minerals. While there is no direct Federal counterpart, the Director finds that this proposal provides clarity to the Kentucky rules that incidental coal extraction operations must meet the requirements of 405 KAR 7:035 and is consistent with the Federal regulations.

3. 405 KAR 8:020 Coal Exploration

Kentucky proposes to revise section 2(4)(c)5 by decreasing the production threshold from 250 tons of coal to 25 tons where the cabinet must find that the coal removal is justified, before

approving an application for coal exploration operations. There is no direct Federal counterpart for this proposal. However, 30 CFR 772.12(b)(7) requires an applicant to explain why coal extraction over 250 tons is justified. Thus, it is logical that the cabinet find such justification before approval of a permit. Therefore, the Director finds that it is not inconsistent with the Federal requirements for decisions on applications for coal exploration as set forth at 30 CFR 772.12(b)(7) and 772.12(d).

4. 405 KAR 10:200 Kentucky Bond Pool

a. Kentucky proposes to add a new section 2 which incorporates by reference two forms currently required to be filed by bond pool applicants. The proposal also identifies the location where copies of the forms may be obtained or reviewed. While there is no direct Federal counterpart, the proposal adds clarity and specificity to the bond pool application process, and the Director finds that the proposal will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

b. Kentucky proposes to revise section 4(2) and section 9(4)(a) by deleting reference to the incorporation of the bond pool application form. However, the addition of the particular reference at sections 4(2) and 9(4)(a) was never formally submitted to OSM for consideration as a program amendment. Therefore, there is no necessity for the Director to act on the proposed deletion. In addition, the subject references, if formally added to the Kentucky program would be redundant in view of the addition of the new section 2 discussed in Finding C.4.a. above.

c. Kentucky proposes to revise section 4(4) by adding a provision for the payment of the bond pool application fee by cash, as well as by certified or cashier check or money order as currently set forth in that section. While there is no direct Federal counterpart, the Director finds that the proposal will not render the State program inconsistent with the requirements of SMCRA and the Federal regulations.

d. Kentucky proposes to revise section 5(3) to change references from "violation or cessation order", to "notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance", and additional references from "violation" or "cessation order" to "notice" or "order", respectively. These changes are being made in order to be consistent with the terminology at 405 KAR 12:020. While there is no direct Federal counterpart, the Director finds that the proposal provides clarity to Kentucky's rules and is not inconsistent with the requirements of SMCRA and the Federal regulations.

e. Kentucky proposes to revise section 6(1) by adding reference to "members" of the bond pool to the current reference to bond pool applicants. In addition, Kentucky is adding specific reference to summaries or analyses for which the applicants or members request confidentiality. While there is no direct Federal counterpart, the Director finds that the proposal adds clarity and specificity to Kentucky's program, and is not inconsistent with the requirements of SMCRA and the Federal regulations.

f. Kentucky proposes to revise sections 6(2), 7(1) and 7(2) which deal with determination of financial standing and reclamation compliance records, by expanding coverage of those sections to current members. The sections currently cover bond pool applicants only. While there is no direct Federal counterparts, the proposals add clarity to Kentucky's bond pool rules by emphasizing that the specific provisions apply to members as well as applicants. Therefore, the Director finds the proposals to be not inconsistent with SMCRA and the Federal regulations.

g. Kentucky proposes to revise sections 7(1)(d) and 7(2)(d) by deleting the term "willful" from the discussion of pattern of violations, in determining an applicant or member's reclamation compliance record. While there is no direct Federal counterpart, the Director finds that the proposed deletion will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

h. Kentucky proposes to revise sections 7(1)(e) and 7(1)(f) to change references from "cessation orders and failure-to-abate cessation orders" to "orders for cessation and immediate compliance", in order to be consistent with terminology at 405 KAR 12:020. While there is no direct Federal counterpart, the Director finds that the proposal provides clarity to Kentucky's rules and is not inconsistent with the requirements of SMCRA and the Federal regulations.

i. Kentucky proposes to revise sections 7(1)(j) and 7(2)(i) to provide that in making determinations in regard to reclamation compliance records, the bond pool commission may take into account not only the performance of the applicant or member, but that of each person who owns or controls, is owned or controlled by, or is under common ownership and control with the applicant or member. While there is no direct Federal counterpart, the proposal gives the commission additional sources of information which may be used in order to more accurately evaluate the qualifications of an applicant or member, and is consistent with Federal rules dealing with the issue of ownership and control. The Director finds that the proposal will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

j. Kentucky proposes to revise section 7(2)(e) to change references from "cessation order(s)" to "orders for cessation and immediate compliance" and "order", to be consistent with the terminology at 405 KAR 12:020. While there is no direct Federal counterpart, the Director finds that the proposal provides clarity to Kentucky's rules and is not inconsistent with the requirements of SMCRA and the Federal regulations.

5. 405 KAR 16:210/18:220 Postmining Land Use Capability

Kentucky proposes to revise section 3, dealing with historical land use, by deleting reference to the determination of minimum acceptable postmining land use capability. There is no direct Federal counterpart to Kentucky's historical land use rule, and the Director finds that the proposed deletion will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

6. 405 KAR 20:010 Coal Exploration

Kentucky proposes to revise section 3 by adding a provision that whenever section 3 refers to performance standards in 405 KAR chapter 16 which cross-reference general permitting requirements in 405 KAR chapter 8, those permitting requirements shall only apply to the extent set forth in 405 KAR 8:020 and 20:010. There is no direct Federal counterpart for this proposal. However, the Director finds that the proposal, which may exclude general permitting requirements for coal exploration activities, is not inconsistent with the requirements of SMCRA and the Federal regulations because the permitting requirements for coal exploration are specifically required by 405 KAR 8:020 and 20:010.

IV. Summary and Disposition of Comment

Public Comments

The public comment periods and opportunities to request a public hearing were announced as follows: (1) For the submission dated June 28, 1991 (Administrative Record Number KY-1059), in the July 22, 1991, **Federal Register** (56 FR 33398); (2) For the submission dated December 31, 1991 (Administrative Record Number KY-

1095), in the January 30, 1992, Federal Register (57 FR 3601); (3) For the submission dated January 22, 1992 (Administrative Record Number KY-1107), in the April 13, 1992, Federal Register (57 FR 12775); and (4) For the submission dated April 1, 1992 (Administrative Record Number KY-1124), in the May 21, 1992, Federal Register (57 FR 21637). The public comment periods closed on August 21, 1991, March 2, 1992, May 13, 1992, and June 5, 1992, respectively. No one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

Kentucky Resources Council Comments

The Kentucky Resources Council (KRC) filed comments, regarding the specific regulations covered by this final rule, on August 22, 1991 (Administrative Record Number KY-1074), April 14, 1992 (Administrative Record Number KY-1129), and May 19, 1992 (Administrative Record Number KY-1153). Following is a discussion of those comments.

General

KRC objected to the manner in which OSM's Lexington Field Office reviews and comments upon State program changes. KRC objected to what it perceives as pre-approval by the field office in advance of the public comment period. However, the field office is not approving the changes but, as an integral part of OSM, it is reviewing the submission in order to assist the Director in his final decision. The Director finds nothing inappropriate in the current procedures for processing State program amendments and wishes to stress that the field offices are not approving program amendments, either formally or informally. The Director finds no basis for changing current procedures for processing State program amendments.

Definitions

KRC raised concerns regarding specific definitions in Kentucky's program. Those concerns are summarized as follows:

—KRC feels that the definition of "approximate original contour (AOC)" is inconsistent with 30 CFR 701.5 to the extent that it fails to include a reference to the elimination of coal refuse piles. A review of Kentucky's approved statutory and regulatory definitions of AOC discloses that neither contains such reference. In a letter dated July 20, 1992 (Administrative Record Number KY-1169), Kentucky pointed out that in its initial submittal to OSM for approval of its permanent program, OSM questioned the definition of AOC. At that time, Kentucky responded that "the Ky. definition of AOC is not less stringent than the federal definition simply because the elimination of coal refuse piles is not explicitly mentioned in the Ky. definition. The Act's definition of AOC, like the Ky. regulatory definition, does not contain a specific reference to removal of coal refuse piles. Nonetheless, OSM obviously interprets the language of the Act to require removal of coal refuse piles as necessary to achieve AOC, or otherwise the specific reference to coal refuse piles in the federal regulations would be unauthorized. Thus the Ky. regulations should properly be construed as requiring removal of coal refuse piles (as opposed to properly constructed coal refuse disposal areas, which cannot be eliminated) as necessary to achieve AOC". As a result of that clarification, OSM approved the definition (45 FR 69947, October 22, 1980). The Director feels that no facts have been presented to cause OSM to reverse that approval.

—KRC requested clarification of the definition of "forest land". KRC felt it was not clear whether all lands that support forest cover would be treated as forest land, or if unmanaged (i.e., non-commercial) forests would be treated as undeveloped land. In its Statement of Consideration (Administrative Record Number KY-1107), prepared in response to public comments, Kentucky pointed out that "(I)f an area is in forest, just because it is not being managed does not mean that it can be treated as undeveloped land. * * *, if the land is *used* for the long term production of wood, it is forest land whether it is managed or not". The Director believes that the clarification provided by Kentucky should resolve KRC's concerns and no further action is required. In any event, as noted in Finding B.1.(b)(1), the state's definition of "forest land", as proposed, is substantively identical to the Federal definition.

—KRC expressed its concern over the deletion of the word "live" from the definition of ground cover. The term was apparently used in an earlier draft of the definition. However, the proposed definition, as submitted to OSM for approval, never contained the term, nor does the Federal definition. It would appear that no further action is required. As noted in Finding B.1.(a)(6), the Kentucky definition of "ground cover", as proposed, is substantively identical to the Federal definition.

—KRC feels that Kentucky should be required to explain its proposed deletion of the definition of "half-shrub" since the Federal regulations still contain such a definition. However, the term is not used in either the Federal regulations or in Kentucky's program. Therefore, there is no need for Kentucky to retain the definition.

—KRC correctly pointed out that the definition of "higher or better uses", as originally proposed by Kentucky, referred to "premining land use", rather than "premining land uses" as expressed in the Federal definition. Kentucky corrected this discrepancy in its December 31, 1991, resubmission.

—KRC pointed out that the definition of "historically used for cropland" was omitted from Kentucky's submittal dated December 31, 1991. However, the definition, which was inadvertently omitted from the December 31, 1991, submission, was reflected in the April 1, 1992, submission, and, in fact, was never proposed for deletion from Kentucky's regulations.

—In connection with the definition of "knowingly", KRC pointed out an apparent inconsistency in 405 KAR 7:090 section 11(4) as to whether the cabinet must consider all enforcement orders. However, 7:090 section 11(4) is not part of the program amendments under review. Therefore, no action is being taken regarding this comment.

—KRC questioned the use of the term "functions" in the definition of "land use". KRC felt that the use of the term invites further designation of land for postmining land uses that are minimum management and minimum utility land uses. KRC stated that the use of the term, as well as the deletion of the phrase "rather than the vegetation or cover of the land", indicated that Kentucky intends to approve as land uses the mere establishment of vegetation and cover. KRC also filed its comments with Kentucky on this matter, and the Commonwealth responded that "(T)he cabinet agrees with the thrust of the comment that land use establishment is more than mere establishment of vegetation. The performance standards on postmining land use capability remain applicable and no change in this definition is necessary". The Director agrees that no change is needed based on the clarification provided by Kentucky.

—KRC has requested clarification of the definition of "fish and wildlife land use". The Director has reviewed the

definition, as proposed, including the question of active management, as discussed in Finding B.1.(a)(5), and has determined that it is not inconsistent with the requirements of SMCRA and the Federal regulations.

—KRC expressed its opinion that the definition of "previously mined area" appears to conform to the decision of the District Court in *National Wildlife Federation v. Lujan*, Civ. Nos. 87–2051, 1814, 2788 (D.D.C. February 12, 1990).

—KRC questioned the use of the statutory definition of "operator" because it lacks a reference to removal of coal from refuse piles, and because the definition of "surface coal mining operations" no longer contains a reference to removal of coal from refuse piles. However, as noted in Finding B.1.(c), the previously approved statutory definition is substantively identical to the regulatory definition, in Kentucky's currently approved program.

—KRC pointed out that the statutory definition of "overburden" is different than the Federal definition. As discussed in the Director's Findings section at B.1.(c) herein, the Director noted the difference but determined that it does not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

—KRC noted that the statutory definition of "person" failed to include agencies as persons. As pointed out in the Director's Findings section herein, Kentucky has acknowledged the discrepancy and the Director is deferring final action on the definition.

—KRC expressed concern with the use of the statutory definition of "reclamation" since it failed to require restoration as one of the activities constituting reclamation. The regulatory definition which is being replaced, does refer to restoration of affected areas. The statutory definition does, however, require the "reconditioning of the area affected by surface coal mining operations." To "recondition" an area, according to Webster's Third New International Dictionary (1981), means "to *restore*" the area "to a good condition". (Emphasis added). Because the terms "reconditioning" and "restoration" are synonymous, the word "restoration" is not needed in the definition.

—KRC expressed its opinion that the statutory definition of "surface coal mining operations" is unclear with respect to the regulation of the aquatic operations associated with coal dredging from rivers and streams. However, this definition was previously reviewed and approved by the Director (56 FR 4721, February 6, 1991).

—KRC expressed concern regarding the merging of the two Federal definitions of "willfully" and "willful violation" into one definition in Kentucky's program. KRC feels that this merger appears to unduly restrict the instances in which civil penalty points for a willful violation will be assessed. Also, the KRC was concerned that the definition fails to include violations of the Secretary's regulations as actionable. As pointed out by Kentucky in its Statement of Consideration dated September 13, 1991, "[T]he definition encompasses violations of SMCRA and thereby encompasses violations of the federal regulations, and encompasses all enforcement orders and notices". As discussed in the Director's Findings section of this notice at B.1.(a)(4), the Director has considered these concerns and determined that Kentucky's proposed combined definition will result in sanctions and penalties no less stringent than those resulting from the separate Federal definitions.

—KRC expressed its opinion that the definition of "valuable environmental resources" being added at 405 KAR 16:001 and 18:001 is less effective in protecting environmental resources than is the federal regulation. As discussed in Finding B.1.(a)(9) herein, the Director is deferring final action on the proposed definition of "valuable environmental resources" pending final action on Kentucky's proposed changes to 405 KAR chapters 16 and 18. Therefore, KRC comments will be addressed at that time.

—KRC stated its opinion that OSM must obtain clarification from Kentucky, by way of legal opinion, that the proposed changes, in revising Kentucky's regulations to conform to the drafting requirements of KRS chapter 13A, do not curtail Kentucky's regulatory jurisdiction over surface coal mining operations, and do not diminish Kentucky's ability to implement the approved program. However, KRC has failed to cite any specific instances where Kentucky's jurisdiction or ability to implement the approved program have been jeopardized. OSM has reviewed Kentucky's submission in detail and finds no basis for seeking further clarification from Kentucky other than any already sought and obtained regarding specific definitions.

405 KAR 7:030

KRC stated that 405 KAR 7:030 section 3(2) fails to provide for public notice and comment consistent with 30 CFR 702.11(d), and further, that a cross-reference to 405 KAR 7:035 section 2(4) should be provided. It is not necessary for Kentucky to repeat in 405 KAR 7:030 section 3(2), the general requirements of public notice and comments of 30 CFR 700.11(c) for incidental coal extraction operations, when Kentucky has already provided for public notice and comment that is substantively identical to 30 CFR 702.11(d) at 405 KAR 7:035 section 2(4). In addition, Kentucky has made it clear in 405 KAR 7:030 section 3 (1)(c) and (4), through cross referencing, that incidental coal extraction operations must meet all the requirements of 405 KAR 7:035, which includes public comment. Therefore, the Director has determined that no change to the Kentucky regulations are required.

405 KAR 7:035

KRC indicated that 405 KAR 7:035 section 5(1)(b), which refers to coal produced from one or more seams, could be misconstrued to suggest that each seam could be considered separately in computing tonnage. Kentucky considered KRC's concerns and, in its Statement of Consideration (Administrative Record Number KY–1107), Kentucky stated that "Section 5(1)(a) is clear that tonnages are computed based on coal extracted from the 'mining area'. If a mining area has more than one coal seam, then all the tonnage from the different seams must be treated as a single unit". The Director has determined that 405 KAR 7:035 section 5(1)(b), as clarified by Kentucky in its Statement of Consideration, is substantively identical to 30 CFR 702.14(a)(2) and, therefore, no changes will be required.

Finally, the KRC expressed concern that the language of 405 KAR 7:035 section 8(2) would create ambiguity where Kentucky used the phrase "does meet the criteria for exemption", as opposed to the Federal rule at 30 CFR 702.17(b) which states that the mining area in question "should continue to be exempt". In response to KRC's concerns, Kentucky revised the language of the rule in the January 22, 1992, resubmissions to read "did meet and will continue to meet the criteria for exemption". In a letter to OSM dated May 11, 1992, KRC expressed its satisfaction with the revised language.

Kentucky Coal Association Comments

By letter dated August 29, 1991 (Administrative Record Number KY–1084), to the Kentucky Department for Surface Mining, the Kentucky Coal Association (KCA) filed comments

regarding the proposed program amendments submitted by Kentucky on June 28, 1991. The following discussion regarding KCA's comments relates only to those provisions of the June 28, 1991, submission covered by this final rule.

KCA felt that all documents incorporated by reference should be listed in one central place, instead of being scattered throughout Kentucky's regulations. Kentucky's choice in placing its incorporations by reference within each particular section is reasonable. This allows someone, when reading a certain section, to know if that section contains any documents that are incorporated by reference.

KCA stated that the definition of "growing season" should be distinguished from the definition of "seeding season". However, no basis for this position was given. Therefore, absent a showing that there is a need for distinguishing between the terms, no action is required.

KCA stated that the cabinet should be obligated to respond within five (5) working days to the written notice of intention to explore filed pursuant to 405 KAR 8:020 section 1(1). Kentucky's regulation does not provide for any time frame within which to respond to a written notice. This is consistent with the Federal rule at 30 CFR 772.11. Therefore, Kentucky's rule is no less effective than the Federal rule. KCA also pointed out that Federal regulations require a written notice of intention to explore when less than 250 tons of coal is involved. However, Kentucky's threshold of less than 25 tons is consistent with OSM's earlier approval of Kentucky legislation that changed the tonnage limitation (56 FR 4721, February 6, 1991). Therefore, no change to Kentucky's rules are required.

KCA requested that the operator be afforded the flexibility, by regulation and without being issued a violation, to revise the exploration map and his plan, which are required by 405 KAR 8:020 section 1(2)(c), after site work has begun. There is nothing in the Kentucky program to preclude revisions, if necessary. However, the Federal regulations at 30 CFR 772.11(b)(3) require such information at the time of permitting. As stated earlier, 405 KAR 8:020 section 1(2)(c) is substantively identical to 772.11(b)(3).

KCA requested revision to, and clarification of, 405 KAR 20:010 sections 3(3)(b) and 3(9), relating to new roads and removal of facilities and equipment in the exploration area. However, no revisions to these rules have been proposed by Kentucky. Therefore, they are not part of the amendment on which comments have been requested.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various government agencies with an actual or potential interest in the Kentucky program. The Kentucky Heritage Council, the Soil Conservation Service, Tennessee Valley Authority, Bureau of Land Management, Mine Safety and Health Administration and the U.S. Forest Service generally considered the amendment to be acceptable or submitted an acknowledgement with no comment.

In a letter dated May 5, 1992 (Administrative Record Number KY-1149), the U.S. Bureau of Mines (BOM) raised a question regarding the definition of "coal exploration". In particular, BOM pointed out that the phrase "or may cause any appreciable effect upon the land, * * * appears to leave open to speculation what "appreciable effect" may or may not constitute. However, the subject definition is not being revised by Kentucky in the amendments subject to this notice, and is a part of Kentucky's approved program. Therefore, the Director feels that no revisions are necessary at this time.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment as submitted by Kentucky on June 28, 1991, and as modified and resubmitted on December 31, 1991, January 22, 1992, and April 1, 1992, with the exception of the issues discussed in Finding B.4.a.(1) above. In addition, the Director is deferring final action on the definitions of the terms "person" and "valuable environmental resources", and on the deletion of the reference to TRM #9, "Revegetation Standards for Success" in 405 KAR 7:015 section 2(2).

The Federal regulations at 30 CFR 917 codifying decisions concerning the Kentucky program are being amended to implement this decision. The Director is approving these proposed rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et. seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Kentucky program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of only such provisions.

VI. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by

OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulation.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 28, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 917.15, is amended by adding a new paragraph (ll) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(ll) The following amendments submitted to OSM on June 28, 1991, and resubmitted on December 31, 1991, January 22, 1992, and April 1, 1992, are approved effective October 1, 1992 with the exceptions identified herein. In addition, the proposed revision to 405 KAR 7:015 section 2 is being deferred. The amendments consist of the following modifications to the Kentucky program:

Revisions of the following provisions of the Kentucky Administrative Regulations (KAR):

7:001 section 1
Definitions for 405 KAR chapter 7 (except that final action on the definition of "person" is deferred)

7:015 section 4 (6) & (7)
Documents incorporated by reference; Documents referred to within these regulations

7:021 section 1
Repeal of 405 KAR 7:020 (except for the repeal of the regulatory definition of "person")

7:030 section 3 (1), (2), (3) and (4)
Applicability; Exemptions

7:035 section 1
Exemption for coal extraction incidental to the extraction of other minerals; Measurement and reporting period

7:035 section 2
Exemption for coal extraction incidental to the extraction of other minerals; Application requirements and procedures

7:035 section 3
Exemption for coal extraction incidental to the extraction of other minerals; Contents of application for exemption

7:035 section 4
Exemption for coal extraction incidental to the extraction of other minerals; Public availability of information

7:035 section 5
Exemption for coal extraction incidental to the extraction of other minerals; Requirements for exemption

7:035 section 6
Exemption for coal extraction incidental to the extraction of other minerals; Conditions of exemption and right of inspection and entry

7:035 section 7
Exemption for coal extraction incidental to the extraction of other minerals; Stockpiling of minerals

7:035 section 8
Exemption for coal extraction incidental to the extraction of other minerals; Revocation and enforcement

7:035 section 9
Exemption for coal extraction incidental to the extraction of other minerals; Reporting requirements

8:001 section 1
Definitions for 405 KAR chapter 8 (except that final action on the definition of "person" is deferred)

8:020 section 1,1(1) & 1(2)(c)
Coal exploration; Exploration in an area not designated unsuitable for mining and removing twenty-five tons or less of coal

8:020 section 2, 2(1), 2(2)(g) & 4(c)(5)
Coal exploration; Exploration removing more than twenty-five tons of coal and exploration in an area designated unsuitable for mining, regardless of tonnage

8:020 section 4
Coal exploration; commercial use or sale

10:001 section 1
Definitions for 405 KAR chapter 10 (except that final action on the definition of "person" is deferred)

10:200 section 1
Kentucky bond pool; Deletion of definitions

10:200 section 2
Kentucky bond pool; Forms

10:200 section 4(4)
Kentucky bond pool; Application for membership

10:200 section 5(3)
Kentucky bond pool; Review of Application

10:200 section 6 (1) & (2)
Kentucky bond pool; Determination of financial standing

10:200 section 7(1), (1)(d), (1)(e), (1)(f) & (1)(j)
Kentucky bond pool; Determination of reclamation compliance record

10:200 section 7(2), 7(2)(d), 7(2)(e) & 7(2)(i)
Kentucky bond pool; Determination of reclamation compliance record

12:001 section 1
Definitions for 405 KAR chapter 12 (except that final action on the definition of "person" is deferred)

16:001 section 1
Definitions for 405 KAR chapter 16 (except that final action on the definitions of "person" and "valuable environmental resources"

are deferred)
16:190 section 7(2)
Backfilling and grading; Deletion of definitions
16:210 section 1(1)
Postmining land use capability; General
16:210 section 2
Postmining land use capability; Premining and postmining land use (except to the extent that section 2(1) fails to provide that lands not previously mined were properly managed)
16:210 section 3
Postmining land use capability; Historic land use
16:210 section 4
Postmining land use capability; Alternative postmining land use
18:001 section 1
Definitions for 405 KAR chapter 18 (except that final action on the definitions of "person" and "valuable environmental resources" are deferred)
18:190 section 5(2)
Backfilling and grading; Deletion of definitions
18:220 section 1(1)
Postmining land use capability; General
18:220 section 2
Postmining land use capability; Premining and postmining land use (except to the extent that section 2(1) fails to provide that lands not previously mined were properly managed)
18:220 section 3
Postmining land use capability; Historic land use
18:220 section 4
Postmining land use capability; Alternative postmining land use
20:001 section 1
Definitions for 405 KAR chapter 20 (except that final action on the definition of "person" is deferred)
20:010 section 2
Coal exploration; Required documents
20:010 section 3
Coal exploration; Performance standards for coal exploration
20:010 section 4
Coal exploration; Requirements for a permit
24:001 section 1
Definitions for 405 KAR chapter 24 (except that final action on the definition of "person" is deferred)

2. In § 917.16, paragraph (g) is added to read as follows:

§ 917.16 Required program amendments.

* * * * *

(g) By April 1, 1993, Kentucky shall submit proposed revisions to its regulations at 405 KAR 16:210/18:220 Section 2(1) to provide that in determining premining uses of land not previously mined, the land must have been properly managed.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 91-5A]

Registration of Claims to Copyright; Architectural Works

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: The Copyright Office of the Library of Congress is issuing final regulations governing the registration and deposit of architectural works. The Judicial Improvements Act of 1990 amended the Copyright Act of 1976 and established "architectural works" as a new category of copyrightable subject matter. These new regulations establish the registration procedures for this new category of authorship, and determine the nature of the required deposit for registration and mandatory deposit.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, (202) 707-8380.

SUPPLEMENTARY INFORMATION: On December 1, 1990, the President signed into law the Judicial Improvements Act of 1990, Public Law 101-650, which contained provisions modifying portions of the federal copyright law, the Copyright Act of 1976. One of the most significant amendments established "architectural works" as copyrightable subject matter. The amendment defined "architectural work" as "the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features."

The issue of protecting architectural works became a prominent copyright concern as a result of United States adherence to the Berne Convention, which was effective on March 1, 1989. Article 2(1) of the Berne Convention requires member countries to provide copyright for "works of architecture," that is, for the original design of buildings. The U.S. copyright law before December 1990 provided protection for "diagrams, models, and technical drawings, including architectural plans" as a species of protected "pictorial, graphic, and sculptural work." However, no federal copyright protection was provided for original designs of buildings. In 1989, the Copyright Office conducted a study of issues relating to works of architecture and concluded that the U.S. law was deficient in its protection of architectural works. The amendment passed in December of 1990 cures that deficiency.

The Copyright Office published instructions regarding registration procedures in Circular 41. On September 24, 1991, the Copyright Office published proposed regulations embodying the written registration practices which were in place and proposing some unique deposit provisions. (56 FR 48137).

1. Proposed Regulation

The proposed regulation on architectural works covered issues unique to this new category of authorship. Issues addressed in the proposed regulation included subject matter of protection and exclusions thereto; the application form; the concept of publication; the relationship with technical drawings; and deposit procedures.

In defining subject matter of protection, the proposed regulations drew upon the statute and legislative history. The term "building" was defined as habitable structures, and structures used by human beings. Stipulated as exclusions from protection were structures other than buildings; individual standard features of buildings; and building designs published or constructed before December 1, 1990.

The Office's proposed regulation designated Form VA as the appropriate form for registering building designs, and information concerning construction of the building, if any, was required to be disclosed at the title line of the application. Where dual copyright claims existed in the technical drawings and the architectural work depicted in the drawings, the claims were required to be registered separately.

On the issue of publication, the proposed regulation took the position that publication of the architectural plans also published the architectural work embodied in the plans. The definition provided in the proposed regulation was based on the definition of publication in the statute, and further provided that construction was not publication.

According to the proposed regulation, deposit for copyright registration would consist of drawings or plans, and, if the building has been constructed, photographs. The proposed regulation also specified certain preferences regarding the archival quality of the deposit. This archival preference also applied to published architectural works subject to mandatory deposit for the benefit of the Library of Congress under section 407 of the Copyright Act.

2. Comment Letters

Only three persons or entities submitted comment letters on the proposed regulation. They were Professor William Fryer of the University of Baltimore School of Law; the American Institute of Architects; and Committee 304 (Pictorial, Graphic, Sculptural and Choreographic Works) of the Patent, Trademark, and Copyright Section of the American Bar Association. This latter Comment apparently presents the views in summary form of 12 of the 36 members of the Committee. These comments are summarized as follows:

Comment Number 1: Professor Fryer asserts that the proposed regulation does not fully implement the Berne Convention due to its limitation to habitable structures and structures used by human beings. Professor Fryer notes: "There is no generally accepted Berne practice that removes 'inhabitable structures' from protection or requires that a structure be 'used by human beings' to be protected. These limitations remove from protection a wide range of structures that are architectural works."

Comment Number 2: The American Institute of Architects (AIA) requested two modifications in the proposed regulation. First, it argued for adoption of a new form specifically tailored to registering architectural works. Second, it asserted that the definition of publication was confusing, and asked that it be made clear that the filing of plans with public agencies did not constitute publication.

Comment Number 3: Twelve members of ABA Committee 304 expressed views on a wide range of issues. Some suggestions were made by one person. Divided opinions were expressed on some points. Some members criticized the proposed definition of a building on the following grounds:

(a) It was unclear whether the phrase "that are used by human beings" modified the term "habitable structures."

(b) The definition might wrongfully include tents and mobile homes.

(c) The list of examples should include museums.

(d) The definition should be expanded to cover creative designs, such as bird houses, dog houses, and zoo enclosures.

The exclusion for "certain functional structures" was criticized as indefinite and ambiguous. The Committee asserted "bridges" should not be excluded. Furthermore, the regulation should make clear that the exclusion for unregistrable matter does not affect the separate pictorial, graphic, or sculptural work that might be attached to the building.

The Committee asked why publication of the blueprints also published the architectural work, but publication of the architectural work would not necessarily publish the blueprints. They urged that the definition be modified to make it clear that distribution of plans to the limited number of people who are necessarily involved in the construction project did not publish the architectural work.

3. Final Regulations

a. Subject Matter of Protection

The primary criticism of the proposed regulation was that it took an overly restrictive view of the subject matter of protection. The standards proposed by the Copyright Office were largely based on the legislative history, which excludes structures other than buildings.

Protection for architectural works was originally proposed to cover "a building or other three-dimensional structure * * *". The hearings on the legislative proposal to recognize copyright in architectural works debated this broader proposal. Commentators are clearly correct in their assertions that proponents of protection in the legislative hearings offered broad visions of what should be protected.

On the other hand, state highway commissions objected that overbroad protection could result in higher construction costs in the nation's highway system. The House Subcommittee responded to these objections by deleting the reference to "three-dimensional structure" from the legislation. The House Subcommittee explained its action in the following words:

> The Subcommittee made a second amendment in the definition of architectural work: the deletion of the phrase "or three-dimensional structure." This phrase was included in H.R. 3990 to cover cases where architectural works (sic: are) embodied in innovative structures that defy easy classification. Unfortunately, the phrase also could be interpreted as covering interstate highway bridges, cloverleafs, canals, dams, and pedestrian walkways. The Subcommittee examined protection for these works, some of which form important elements of this nation's transportation system, and determined that copyright protection is not necessary to stimulate creativity or prohibit unauthorized reproduction.
>
> The sole purpose of legislating at this time is to place the United States unequivocally in compliance with its Berne Convention obligations. Protection for bridges and related nonhabitable three-dimensional structures is not required by the Berne Convention. Accordingly, the question of copyright protection for these works can be deferred to another day. As a consequence, the phrase "or other three-dimensional structures" was deleted from the definition of architectural work and from all other places in the bill.
>
> This deletion, though, raises more sharply the question of what is meant by the term "building." Obviously, the term encompassed habitable structures such as houses and office buildings. It also covers structures that are used, but not inhabited, by human beings, such as churches, pergolas, gazebos, and garden pavilions.
>
> (H.R. Rep. No. 735, 101st Cong. 2d Sess. 19-20 (1990)).

The Copyright Office agrees with the conclusions of the House Subcommittee that protection limited to buildings satisfies our Berne Convention obligations. In the legislative deliberations concerning whether to join the Berne Convention, international experts took the position that the sufficiency of U.S. law in respect to all Berne obligations was a matter for the United States to determine. (*See* discussion of W.I.P.O. Roundtable in Geneva, in H.R. Rep. No. 609, 100th Cong. 2d Sess. 36 (1988)). The study on architectural works conducted by the Copyright Office, moreover, confirms the many differences in approach among Berne member states in addressing protection of architectural works. Our study confirms an absence of uniform standards of protection for architectural works under the Berne Convention.

After careful reconsideration the Copyright Office finds the proposed regulation accurately implemented the policies expressed by legislative history However, in order to provide further clarification on the important matter of subject matter of protection, the Copyright Office has adopted a number of changes. With respect to the definition of "building," four changes are made in the final regulations. First, a provision is added that the term "building" applies to structures "that are intended to be both permanent and stationary." Second, a clarification is provided that the listing of examples in §202.11(b)(2) is not all inclusive. Third, the suggestion of the ABA Committee 304 that "museums" be added is adopted. Fourth, we have clarified that

the term "humanly" qualifies the phrase "habitable structures."

Three modifications have been made to works excluded in §202.11(d). First, reference to "certain functional structures" in §202.11(d)(1) is deleted and in its place is substituted "structures other then buildings." Second, the list of examples of structures other than buildings is expanded to specify the exclusion of "tents, recreational vehicles, mobile homes, and boats." Third, in the exclusion for standard features, the Copyright Office has added: "standard configuration of spaces."

The Copyright Office believes Congress intended to limit protection of architectural works to humanly habitable structures or other similar structures used by human beings. The Office has no doubt that this subject matter qualification is consistent with the Berne Convention obligations, based upon its June 1988 Report "Copyright in Works of Architecture."

b. Registration Limited to Single Work

The proposed regulation made no proposal regarding the one registration per work rule. The Copyright Office intended to apply the established principle found in 37 CFR 202.3 (b)(7). Since the proposed regulation has been pending, however, a number of applicants have attempted to register groups of architectural works on a single application form. The Copyright Office finds that accepting such group registrations would lead to confusion over the nature of copyrightable authorship that is being registered. For this reason, the Copyright Office limits registration to a single work. To avoid any uncertainty, the Office adds a specific provision confirming that a single application may cover only a single architectural work. Additionally, the Copyright Office also clarifies the concept of a single work in the case of tract housing at 37 CFR 202.11 (c)(2).

c. Publication

The proposed regulation based its definition of publication on the Copyright Act. The definition drew upon two statutory provisions: the definition of "publication" in section 101 of the Copyright Act, and the definition of "architectural work" which provides that the building design may be embodied in architectural plans or drawings.

The American Institute of Architects ("AIA") criticized the proposed definition on the grounds that it implied that limited distribution of plans to public agencies and subcontractors for purpose of construction constituted publication. The AIA believed this impression was created by the second sentence of the definition ("(t)he offering to distribute copies to a group of persons for purposes of further distribution or public display also constitutes publication"), which is taken nearly verbatim from the Copyright Act's definition of "publication." AIA contended that the majority of cases hold that filing plans with public agencies and limited distribution to subcontractors does not constitute publication.

The AIA position appears consistent with the majority line of the cases on this issue. The Copyright Office had and has no intention of mandating that filing plans with public agencies generally constitutes publication.

The Copyright Office is hesitant, however, to establish a judgmental policy on the extent of distribution necessary to constitute publication. For years, applicants registered architectural plans with the Copyright Office. Many of these applicants have chosen to designate their plans as published on the basis of public filing dates, and/or distribution to subcontractors. The Copyright Office has a natural reluctance to establish a policy that inflexibly mandates a public filing can never be considered a publication of the work.

As an alternative, the Copyright Office has chosen to delete the second sentence of the proposed definition of publication, even though the language is taken nearly verbatim from 17 U.S.C. 101. The purpose of the definition of publication in the regulations of the Copyright Office is to clarify matters that are capable of definitive policies. The applicant has special knowledge about the extent to which a set of plans has been distributed. The Copyright Office prefers a flexible policy, which allows the claimant to consider his or her work has been published on the basis of public filings. The Office does not, of course, take the position that a public filing always or generally constitutes publication of the work.

d. Application Forms

The American Institute of Architects endorsed the establishment of a separate registration form dedicated exclusively to registering architectural works.

The Copyright Office gave careful consideration to the proposal for a unique form. While the Copyright Office does not foreclose the possibility of creating such a form in the future, currently annual registrations of architectural works run to about 2,000. Moreover, the Examining Division has not experienced any undue difficulty in dealing with registration on Form VA. Due to the relatively low number of registrations and the lack of recurring problems, the Copyright Office has decided not to adopt a new form at this time. The Office will continue to monitor its experience with the use of Form VA to register architectural works.

4. Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (5 U.S.C. 55 et seq and 5 U.S.C. 701 et seq). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small business.

List of Subjects in 37 CFR Part 202

Copyright, Copyright registration, Architectural works.

Final Rules

In consideration of the foregoing, 37 CFR part 202 is amended in the manner set forth below.

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C 702; §§202.19, 202.20 and 202.21 are also issued under 17 U.S.C. 407 and 408.

2. New § 202.11 is added to read as follows:

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[1]The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act of 1976 (i.e. "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

community affected by a release or threatened release at a facility listed on the NPL or proposed for listing under the National Contingency Plan (NCP) and where a response action has begun.

Where there are competing applicants, the Agency will continue to evaluate them as provided under § 35.4035.

B. Procurement (§ 35.4066)

In response to concerns over potential Conflict of Interest (COI), EPA believes that any person involved in writing up the specifications should be considered ineligible to compete for either the Technical Advisor or the Grant Administrator position. This action is consistent with OMB Circular A–110. However, this ineligibility does not apply to a person, firm involved in preparation of the TAG application.

In response to continued public comments and as recommended by the Administrator's Superfund Management Review (SMR), the procurement procedures contained in the TAG Program have been streamlined. One of the most often cited criticisms of the procurement process was that grant recipients were required to follow standard Federal procurement procedures rather than TAG-specific requirements more appropriate for the TAG Program's unique circumstances. In direct response to these comments, EPA developed streamlined procedures to encourage public participation in the TAG Program.

The new procurement procedures contained in today's regulation are simplified, while continuing to allow for adequate control over procurements under the grant. These procedures have been divided by dollar value: $1,000 or less, over $1,000 and less than $25,000, $25,000 to $50,000, and over $50,000. For procurements falling into the category of over $50,000, the grantee must follow the procurement rules in 40 CFR part 33.

In response to comments concerning the complexity of the TAG procurement process and to simplify procurement requirements, recipients will not have to go through the process of certifying or not certifying their procurement systems. Instead, we are providing the rules with which all recipients must comply.

C. Administrative Cap (§ 35.4085)

After several years of experience and careful review and consideration of public comments, the Agency has concluded that establishing a cap on administrative services costs at 20 percent, which is equivalent to the 20 percent matching funds requirement, allows local groups applying for TAGs to fulfill the 20 percent matching funds requirement with an "in-kind" administrative services match or with cash matching funds, and at the same time ensures that grant funds will be used primarily to obtain technical assistance and disseminate information.

A recurrent comment has been that recipient groups find the administration of the TAG difficult. This was also one of the major perceptions of the TAG Program to come out of the Superfund Management Review report. Reinstating the administrative services cap, raising it to 20 percent, and allowing the grant recipients to hire an individual(s) specifically for the purpose of administering the grant will alleviate the administrative difficulty for most groups. § 35.4085(d) has been revised to contain language on the administrative cap. It has been the Agency's stated policy that an acceptable range for administrative costs is between 10–20% of the total project costs. This change codifies that policy.

EPA will continue to encourage the use of volunteer services to manage the grant, but in cases where this is not feasible, grantees now have the option of hiring a grant administrator.

The Agency believes that the language formerly contained in § 35.4085(d) of the amended Interim Final Rule is covered adequately in § 35.4085(b), and the regulation has been revised accordingly. Section 35.4085(b) also contains language formerly found in § 35.4090(a).

D. Waivers to the $50,000 Grant Limit (§ 35.4090(a))

Commentors stated that Superfund sites are often complex and generate large quantities of technical information. At sites such as these, the $50,000 grant was often inadequate and commentors believe waivers to the $50,000 limit should be allowed in circumstances other than just in the case of application(s) for multiple sites.

EPA agrees. Due to unusually complex circumstances, large volumes of technical information are generated at some Superfund sites. TAG recipients may request that all or part of this information be interpreted for the affected community by the Technical Advisor. Therefore, it is reasonable to expect that more time will be required by the Technical Advisor to review documents associated with a complicated site than for an "average" Superfund site and that additional funds may be necessary.

The rule therefore provides for waivers at sites that are unusually complex. EPA has developed criteria by which to identify sites where additional funding may be required. The Agency has based these criteria on Program experience and believes they provide a reasonable basis for making a decision.

These criteria also will be applicable at mega-sites, which are, by definition, extraordinarily large and complex. To date, there has been very little in the way of actual TAG experience at mega-sites.

In determining whether a site is sufficiently complex to warrant additional funding, the Agency will consider whether three or more of the following are present:

1. An RI/FS costing in excess of $2 million;
2. Treatability studies or evaluation of new and innovative technologies are required at a site, as specified in the Record of Decision;
3. Reopening of the Record of Decision;
4. The site health assessment results in an epidemiological study;
5. Designation of one or more additional operable units after award of the TAG;
6. A post—TAG award legislative or regulatory change results in the generation of new site documentation or information;
7. A cleanup extending beyond eight years from initiation of the RI/FS through completion of construction;
8. Significant public concern, where large groups of people at a site require many meetings, copies, etc.;
9. Any other factor that, in the judgment of Regional officials, indicates that the site is unusually complex.

EPA also will consider the recipient's past performance, including determining whether administrative requirements have been met satisfactorily and that costs incurred under the previous award are allowable and reasonable.

The regulation published today has been changed accordingly and § 35.4090 has been revised to include in paragraph (a) language formerly contained in § 35.4085(b). A new paragraph has been added (§ 35.4090(a)(2)) to address unusually complex sites.

E. Waivers to the 20 percent Match (§ 35.4090 (b) through (d))

A commentor believes that waivers should be available to local groups through the entire Superfund cleanup process.

The Agency continues to believe that the purpose of these grant funds is to provide technical assistance that will aid community involvement in the study and decision-making processes leading to selection of site cleanup methods. Although citizen involvement can and

should continue during design and remedial action, once the Record of Decision has been signed, the decision has been made on how the cleanup for that operable unit will occur. The statute, CERCLA section 117(e), prohibits EPA from granting waivers to the required 20 percent match once the Record of Decision has been issued.

F. Other Issues

Definitions (§ 35.4010)

EPA is broadening the definition of the term "affected" individuals to include the phrase "whose health is or may be endangered by release of hazardous substances at the facility, or whose economic interests are directly threatened or harmed." The addition of new language incorporates the possibility that health effects of hazardous substances may arise from different sources, including, but not limited to contaminated air, soil and water sources.

A definition of waiver has been added to clarify these requirements. Deviations and waivers are distinct processes and should not be construed to refer to the same thing. EPA can grant waivers or excuse recipients from following certain anticipated regulatory or administrative requirements if:

1. The authority to issue a waiver is provided in the regulation itself, and

2. The Agency believes sufficient justification exists to approve such action.

The authority to issue a waiver is found at the Award Official level. Deviations, or exemptions from certain provisions of existing regulations, may be necessary in some unforeseen instances. The Director, Grants Administration Division, has been delegated the authority to approve deviations. The Agency does not have the authority to deviate from statutory or executive order requirements.

In addition, EPA feels clarification of several other definitions is necessary (i.e., application, award official, contract, contractor, grant agreement, operable unit, start of response action).

Cost Principles (§ 35.4013)

The TAG Program is like any other Federal grant, in that certain established requirements must be followed to ensure the proper administration of grant funds. The Cost Principle requirements, contained in OMB Circular A-122, state that all costs must be "reasonable, allowable and allocable" under the Program. Therefore, this section has been added, stating the applicability of these requirements.

Services in Lieu of Cash (§ 35.4015)

A commentor recommended that EPA eliminate from the final rule the States' ability to hire Technical Advisors and provide those services to a recipient group in lieu of a grant to the group.

EPA believes that the current regulation does not present a problem. Under § 35.4015(d)(2) such services will be provided by the State only with the agreement of the recipient group. Such assistance by the State can save time and expense for the group and in no way is intended to limit the access of affected individuals to independent expertise.

In addition, the title of § 35.4015 has been changed to "State Administration of the Program" to reflect its subject more accurately.

Incorporation (§ 35.4020 (b) and (c))

One commentor agrees with EPA's decision not to require groups to re-incorporate. However, the commentor disagrees with, and sees no justification for, EPA applying this provision only to incorporated groups that have a history of substantial involvement at the site. The commentor felt that there may be many other groups who are qualified and should receive grants even though they do not have a substantial history of involvement with the site.

In response to the comment that there are other groups who are qualified and should receive grants even though they do not have a substantial history of involvement with the site, EPA agrees and may award a TAG to such qualified groups, provided that they are incorporated. Moreover, what is at issue here is the requirement to reincorporate to receive a grant, not the ability to receive a grant.

Ineligible Applicants (§ 35.4030)

A commentor asserted that § 35.4030(b) does not prevent "front groups" from applying to the TAG Program.

In response to this comment, EPA has modified § 35.4030 (a) and (b) to identify PRP "front groups" early in the process. The interim final rule essentially treats all ineligible entities identically. The Agency's experience with the TAG Program demonstrates, however, that PRP involvement in the receipt of a grant raises unique problems not raised by the involvement of other ineligible entities. This follows from the fact that the TAG Program's purpose is to enable groups of individuals to obtain independent technical advice. Under Superfund a PRP, by definition, is potentially subject to liability for all response costs at a site; this would appear to give a PRP a financial interest in the cost of the remedy selected. EPA believes that there is inherent tension between this and the purpose of the TAG Program, providing objective, disinterested information. This makes it appropriate to distinguish between PRPs and other ineligible entities with regard to participation in, and support provided to, a TAG recipient.

In considering whether a group is impermissibly linked to a PRP so as to be ineligible for a grant, EPA must consider, among other things, the extent of PRP participation in the group and whether, and the extent to which, the PRP established or sustained the group. Thus, for example, where a PRP paid any person for participating in a group or for providing services which contributed to establishing and sustaining the group, the group would be ineligible; such a person would necessarily have been participating in the group because of a connection to a PRP rather than as an affected individual. Under 40 CFR 35.4030(a)(1), a group with such a member would therefore be ineligible for a grant. However, the mere fact that a group member was employed by a PRP would clearly not preclude eligibility. A recipient group might not be precluded from including even an executive or director of a PRP. However, where a group included an individual owning a significant or controlling interest in a PRP, there might be an eligibility problem unless it could be determined that such a member could, in fact, participate in the group in the capacity of an "affected individual" as distinct from its capacity as a PRP.

A related issue is the extent to which a group can receive support from an ineligible entity. Because of the special problems raised by PRP involvement with a group, the acceptance of any assistance (e.g., cash or goods) with conditions attached which might, in the judgment of the award official, limit the group's ability to represent the interest of affected individuals, or of any donation of services by a PRP would render a group ineligible. The standard for other ineligible entities, whether governments or other institutions, is whether the group has been "established or presently sustained" by an ineligible entity. The regulation has been modified to clarify that this applies where a group is established or sustained by any ineligible entity, whether or not that entity is governmental. It has also been modified to clarify that the prohibition against participation of an ineligible entity continues even after a group is awarded a grant. Finally, the regulation

uses the term "sustained" rather than "supported" to clarify that any support must be substantial.

A second issue is the extent to which a recipient group must have an identity separate and distinct from that of an ineligible group. EPA believes that where a second group has its origins in an ineligible group, special care is necessary to ensure a separate identity. The separation must be both formal (with separate incorporation, officers, finances, and membership) and substantive. A new group is not substantially identical to an older, ineligible group where there is a reasonable basis for asserting that the two have separate and distinct identities.

Evaluation Criteria (§ 35.4035)

EPA has established certain criteria by which to evaluate TAG applicants. This section now includes instructions for both sole and multiple applicants. EPA is not changing any criteria, only revising the evaluation method. EPA believes certain of these criteria to be essential and that any group scoring zero on one or more of these should be disqualified. Thus, an applicant group must score above zero on criteria 2 (representation of affected community), 3 (services to be performed by the Technical Advisor), and 4 (communication plan). In addition, the applicant must meet either criterion 1 and/or 5. The Agency believes this evaluation method will assist the Regions in identifying qualified applicants.

Since publication of the Amendments to the interim final rule (December 1, 1989), the required EPA grant form has changed from EPA Form 5700–33 to SF–424, and the regulation has been changed to reflect this.

Notification Process (§ 35.4040)

According to standard TAG application procedures, the first step for the community group is to submit a Letter of Intent (LOI) indicating the intention of applying for a TAG award. The LOI serves to document the number of interested groups and aids in tracking the applicants through the process. However, it has occasionally been the case that an applicant group has submitted an application without having submitted an LOI. In this instance, EPA believes that the group's application should fulfill the LOI requirement, thus initiating the 30–day notification process. However, EPA will not begin processing the application until the end of the 30-day period in order to notify other potentially interested groups. The Agency today is revising § 35.4040 (b)(2) to emphasize the importance of public outreach by making the public notice a requirement of the TAG Program.

Application Process (§ 35.4045)

Commentors raised concerns with the application process, stating that it is complex and cumbersome, both in terms of time and procedures. According to one commentor, the level of detail required in the Scope of Work and Budget application portions (Section IV) is unnecessary. To assist in streamlining the process, a recommendation was made to simplify the application forms and the Citizen's Guidance Manual. To address the application complexity issue, a commentor recommended that grants be awarded with the condition that the recipient submit a general scope of work and explanation of how the grant funds will be spent with the application. The detailed scope of work and budget would then be submitted after receiving the grant and hiring a Technical Advisor.

In response to this and similar comments relating to the complexity of the program, EPA has made an effort to simplify the entire application process. The regulation has been amended to delete the detailed requirements related to application submittal formerly contained in § 35.4045(a). Also deleted was paragraph (c) of the same section, concerning instructions for filing an application, instructions which, EPA believes are adequately explained in guidance. EPA has streamlined the application process, revised the Superfund Technical Assistance Grant (TAG) Handbook, and routinely holds workshops on TAG for community groups. Therefore, EPA believes the application process is much less cumbersome than when the comments were received.

Grant Availability (§ 35.4050)

A commentor stated that EPA should accept TAG applications from the time a site is proposed for or listed on the NPL. EPA agrees with this comment and will accept applications any time after the site has been listed. However, in § 35.4050, EPA states that grants will not be awarded before the start of the response action. Until such time as a response action is scheduled or underway, there are no site activities generating information for interpretation.

Ineligible Activities (§ 35.4055 (a) through (h))

A commentor stated that travel to site-related meetings held by EPA outside the site community should be an eligible activity.

After considering the comment and the intent of § 35.4055, EPA does not believe this change in the regulation is merited because TAG funds should be spent primarily in the interpretation and dissemination of technical data related to a site. EPA believes that the primary purpose of the grant is to assist affected individuals in obtaining technical assistance and not to fund ancillary activities of the grant recipient such as travel expenditures, which detract from or inhibit the recipient's ability to pay for skilled Technical Advisors.

Many requests have been made by community groups stating that EPA should allow TAG funds to be used to cover the costs of epidemiological or health studies, such as blood or urine testing. However, while EPA recognizes the public concern over issues such as these, such testing is prohibited under § 35.4055(h) of the regulation. This section has been renumbered and clarifying language added to the regulation to reflect EPA's belief that the intent of CERCLA section 117(e) is to use TAG funds for the interpretation of data and not the generation of new data.

It has been requested that TAG funds be allowed to pay for Health and Safety Training for the Technical Advisor (TA). This training is required for site access, access that would then be used to promote the TA's understanding of and access to the Superfund site, and, ultimately, assist in the interpretation of data for the community group. Superfund sites are inherently complex and involve special health and safety issues. Specialized training relating specifically to Superfund sites is not training that a TA, under normal circumstances, could be expected to have previously obtained. Therefore, EPA believes that the costs of Health and Safety training for a TA, if required specifically to allow access to the Superfund site, should be considered as an eligible activity and has changed the regulation to make this cost allowable under the TAG award.

Contract Review (§ 35.4067)

A commentor recommended that at the end of the procurement section, to ensure EPA review is completed in a timely fashion, EPA should add the statement "EPA will respond with written comments to the recipient within 14 days of receiving the contract, or notify the recipient in writing within 14 days that the contract has been approved." Another commentor stated that in many cases, EPA Regions have used the procedure of reviewing proposed contracts to demand the review of other things the commentor

feels to be inappropriate (i.e., conflict of interest and grantee's procurement process). Again, this commentor recommends a two-week review period and that EPA state specific objections to the proposed contracts, in writing, with specific reference to regulations being violated.

EPA recognizes and understands the merit of the comment and believes the purpose of EPA review of documents is intended to protect the grantees. In addition, EPA will make every effort to review contracts in a timely manner. However, in regard to establishing a time limit for review of applications by EPA, the Agency believes that this should remain as guidance and should not be included in the regulation.

Based on TAG Program experience since promulgation of the amended interim final rule, the Agency today is requiring that each applicant provide EPA with the opportunity to review the contract before it is awarded or amended only for contracts over $1,000.

Please note that this section, formerly § 35.4095, has been moved for clarity and renumbered as § 35.4087.

Pre-Award Costs (§ 35.4075)

A commentor stated that EPA should allow the costs of preparing the grant application.

EPA disagrees. The cost of applying for a grant is a pre-award cost and is not allowable for funding under any EPA grant program.

Audits (§ 35.4105)

Because TAGs are cost recoverable, the records retention period for the Superfund Program is ten years from the termination or the end of contract.

Previously, single audit requirements only applied to State and local governments. With the promulgation of OMB Circular A–133, the single audit requirements now apply to TAG recipients as well, and paragraph (c) has been added.

Contractor Liability

A commentor expressed concern over the liability of contractors. The statement was made that "Contractors to TAG Grantees are being required by some EPA Regions to accept an unreasonable risk of liability. The way the program is currently set up, it prevents firms from protecting themselves, it is unfair to small businesses. EPA's own Superfund contractors are protected from suits and many times indemnified against suits by 3rd parties, and the TAG budget is insufficient to handle issues with liability." Section 119 of CERCLA provides EPA with discretionary authority to indemnify persons engaged in CERCLA response activities. Consultants hired by recipients of TAGs are not within the definition of those who can be indemnified by EPA. Therefore, EPA does not believe that indemnification is available.

Consistency

Commentors asserted that inconsistencies exist between Regional Offices in the grant decision-making process and in their review of proposed technical assistance contracts. Commentors recommended centralizing the program in EPA Headquarters, with a few personnel devoted to TAGs on a full-time basis.

EPA disagrees. EPA recognizes the diversity and uniqueness of individual Superfund sites and believes that centralizing the management of the program not only would reduce its accessibility by groups seeking information and assistance but also would reduce EPA's flexibility in addressing unique site features and situations.

Technical Assistance Grant Implementation

A commentor indicated that EPA needs to increase public outreach to citizens affected by Superfund sites. It provided two recommendations to facilitate the implementation of the TAG Program:

(1) Development of guidance for affected individuals on hiring Technical Advisors, liability issues, record keeping, audit procedures, etc.;

(2) development of materials by the Regional EPA Offices to address regional variations in TAG implementation.

EPA recognizes the importance of public outreach and has adopted a decentralized structure to retain maximum contact with communities affected by Superfund sites. EPA has developed guidance materials such as those recommended by the commentor. The Superfund Technical Assistance Grants (TAG) Handbook serves as guidance for community groups. EPA has held training and issued guidance for Regional staff in an attempt to ensure consistency, while still allowing for unique site features, in the implementation of the TAG Program.

Corrections and Clarifications

Minor changes were made to the regulation to correct errors in the amended interim final rule and/or to clarify language in the regulation.

III. Existing Grants

TAG recipients receiving a TAG under previous regulations may request having their grant administered under the final regulation. Groups wishing to do so must seek amendments to their grant from the Award Official. However, any funds spent prior to this final rule are subject to the previous regulation. Amendments to current grants will apply only to future work.

IV. Regulatory Analysis

A. Regulatory Impact Analysis

Executive Order No. 12291 requires that regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget (OMB). According to Executive Order No. 12291, "major" rules are regulations that are likely to result in:

1. An annual adverse (cost) effect on the economy of $100 million or more; or

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government, or geographical regions; or

3. Significant adverse effects on the competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The final rule for the TAG Program is a "non-major" rule. The final rule will have no significant annual adverse effect on the economy of $100 million or more; or a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that Agencies evaluate the effects of a rule for three types of small entities:

1. Small businesses (as defined in the Small Business Administration regulations);

2. Small organizations (independently owned, nondominant in their field, non-profit); and

3. Small government jurisdictions (serving communities of less than 5,000 people).

EPA has consistently considered the interests of small entities in designing and implementing the TAG Program and continues to encourage their participation.

Since today's rule is not expected to have a significant impact on small

entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, U.S.C. 3501 *et seq.* and have been assigned OMB control number 2030–0020 for activities involving the grant application process.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC, 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, marked "Attention Desk Officer for EPA."

List of Subjects in 40 CFR Part 35

Air pollution control, Grant programs environmental protection, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 7, 1992.

F. Henry Habicht II

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by revising part 35, subpart M (§§ 35.4000 through 35.4130) to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

* * * * *

Subpart M—Grants for Technical Assistance

Sec.

35.4000 Authority.
35.4005 Purpose and availability of referenced material.
35.4010 Definitions.
35.4013 Cost principles.
35.4015 State administration of the program.
35.4020 Responsibility requirements.
35.4025 Eligible applicants.
35.4030 Ineligible applicants.
35.4035 Evaluation criteria.
35.4040 Notification process.
35.4045 Submission of application.
35.4050 Timing of award.
35.4055 Ineligible activities.
35.4060 Eligible activities.
35.4065 Technical advisor's qualifications.
35.4066 Procurement.
35.4067 Contract review.
35.4070 Sanctions.
35.4075 Pre-award costs.
35.4080 Method of payment.
35.4085 Grant limitations.
35.4090 Waivers.
35.4100 Disputes.
35.4105 Record retention and audits.
35.4110 Reports.
35.4115 Availability of information.
35.4120 Budget period.
35.4125 Federal facilities.
35.4130 Conflict of interest and disclosure requirements.

Subpart M—Grants for Technical Assistance

Authority: 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. P. 193.

§ 35.4000 Authority.

This subpart is issued under section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e).

§ 35.4005 Purpose and availability of referenced material.

(a) This subpart codifies policies and procedures for Technical Assistance Grants (TAGs) awarded by EPA to groups of individuals. This subpart establishes the procedures for accepting and evaluating applications, and for awarding and managing TAGs. These provisions supplement the EPA general assistance regulations 40 CFR part 30 and 40 CFR part 33 and are applicable to all applicants/recipients of TAGs.

(b) Any reference to documents made in this subpart necessary to apply for a TAG (i.e., OMB Circulars and EPA forms SF-424, 269, 270) are available through EPA Headquarters and Regional Offices listed in 40 CFR 1.7.

§ 35.4010 Definitions.

As used in this subpart, the following words and terms shall have the meaning set forth below:

Affected means subject to an actual or potential health, economic or environmental threat arising from a release or a threatened release at a facility listed on the National Priorities List (NPL) or proposed for listing under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) where a response action under CERCLA has begun. Examples of affected parties include individuals who live in areas adjacent to NPL facilities whose health is or may be endangered by releases of hazardous substances at the facility, or whose economic interests are directly threatened or harmed.

Applicant means any group of individuals that files an application for a TAG.

Application means a completed formal written request for a TAG that is submitted to a State or the EPA on EPA form SF–424, Application for Federal Assistance (Non-construction Programs).

Award means the TAG agreement signed by both EPA and the recipient.

Award Official means the EPA official delegated the authority to sign grant agreements.

Budget means the financial plan for the spending of all Federal and matching funds (including in-kind contributions) for a TAG project as proposed by the applicant, and negotiated with and approved by the Award Official.

Budget period means the length of time specified in a grant agreement during which the recipient may spend or obligate Federal funds. The budget period may not exceed three (3) years. A TAG project period may be comprised of several budget periods.

Cash contribution means actual non-Federal dollars, or Federal dollars if expressly authorized by statute to do so, that a recipient spends for goods and services and real or personal property used to satisfy the matching funds requirement.

Contract means a written agreement between the recipient and another party (other than a public agency) for services or supplies necessary to complete the TAG project. Contracts include contracts and subcontracts for personal and professional services or supplies necessary to complete the TAG project, and agreements with consultants, and purchase orders.

Contractor means any party (e.g., Technical Advisor) to whom a recipient awards a contract.

EPA means the Environmental Protection Agency. Where a State administers the TAG Program, the term "EPA" may mean a State agency.

Federal facility means a facility that is owned or operated by a department, agency, or instrumentality of the United States.

Grant agreement means the legal document that transfers money, or anything of value, to a recipient to accomplish the purpose of the TAG project. It specifies budget and project periods, the Federal budget share of eligible project costs, a description of

the work to be accomplished, and any terms and conditions.

In-kind contribution means the value of a non-cash contribution used to meet a recipient's matching funds requirement in accordance with 40 CFR 30.307(b). An in-kind contribution may consist of charges for equipment or the value of goods and services necessary to and directly benefiting the EPA-funded project.

Matching funds means the portion of allowable project costs that a recipient contributes toward completing the TAG project using non-Federal funds or Federal funds if expressly authorized by statute. The match may include in-kind as well as cash contributions.

Operable unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems.

Potentially Responsible Party (PRP) means any individual(s) or company(ies) (such as owners, operators, transporters or generators) potentially responsible under sections 106 or 107 of CERCLA for the contamination problems at a Superfund site.

Recipient means any group of individuals that has been awarded a TAG.

Recipient's project manager means the person legally authorized to obligate the organization to the terms and conditions of EPA's regulations and the grant agreement, and designated by the recipient to serve as its principal contact with EPA.

Response action means all activities undertaken to address the problems created by hazardous substances at a National Priorities List site.

Start of response action means the point in time when there is a guarantee or set-aside of funding either by EPA, other Federal agencies, States, or PRPs in order to begin response activities at a site.

Waiver means excusing recipients from following certain anticipated regulatory or administrative requirements if; the authority to issue a waiver is provided in the regulation itself; and the Agency believes sufficient justification exists to approve such action. The Award Official has the authority to issue a waiver. Deviation means an exemption from certain provisions of existing regulations, which may be necessary in some unforeseen instances. The Director, Grants Administration Division, is authorized under 40 CFR 30.1001(b) to approve deviations from the requirements of regulations (except for those that implement statutory or executive order requirements) when such situations warrant special consideration.

§ 35.4013 Cost principles.

(a) Recipients and non-profit contractors must comply with the cost principles in OMB Circular A-122.

(b) Profit-making contractors and subcontractors must comply with the cost principles in the Federal Acquisition Regulation (48 CFR part 31).

§ 35.4015 State administration of the program.

(a) Effective October 1, 1992, the Agency will accept applications for and award TAGs in consultation with the States.

(b) The TAG Program will be available at an NPL site where a State response action is scheduled to begin or is underway and a CERCLA-funded cooperative or other written agreement exists between the Agency and the State.

(c) States wishing to administer the TAG Program must inform the appropriate EPA Regional administrator. If a State elects to administer the program, it must do so in conformity with this subpart. Where States administer the program, EPA will have an oversight role.

(d) A State that chooses to administer the TAG Program will receive technical assistance funds plus administrative costs from the Agency under a cooperative agreement. A State will receive $10,000 for administrative costs for the first TAG. For each subsequent TAG, the State will receive an amount equal to eight (8) percent of the TAG. Using the criteria established under this subpart, the State may select a qualified recipient and provide assistance in either of two ways:

(1) A State will pass through technical assistance funds to a recipient group by way of a subgrant, and reimburse the recipient group for its expenditures as provided at § 35.4080. A State that elects this option is also responsible for monitoring the subgrant to ensure that recipients comply with its terms and with 40 CFR parts 30 and 33; or

(2) If a recipient group agrees, a State will use TAG funds to obtain the services of a Technical Advisor and provide those services to a grant recipient in lieu of cash. The recipient group may work closely with the State in advertising, reviewing bids and recommending a Technical Advisor, and managing the Technical Advisor. The State will make the final selection of the technical advisor. A State that elects this option becomes directly responsible for awarding the technical assistance contracts, submitting financial and progress reports, and for disbursing all TAG funds in compliance with applicable EPA regulations and requirements.

§ 35.4020 Responsibility requirements.

(a) An applicant must meet the minimum administrative and management capability requirements 40 CFR 30.301. Thus each applicant must demonstrate that it has established reliable procedures or has plans for establishing reliable procedures for record-keeping and financial accountability related to the management of the TAG. These procedures must be in effect before the recipient incurs any costs. If EPA concludes that the applicant is not capable of meeting the responsibility requirements, the application will be rejected.

(b) Each recipient of a TAG must be incorporated as a non-profit organization for the purpose of addressing the Superfund site for which the grant is provided in order to receive a grant, except as provided in paragraph (c) of this section. At the time of award, a recipient must either be incorporated or must demonstrate to EPA that the group has filed the necessary documents for incorporation with the appropriate State agency. No later than the time of the first request for reimbursement for costs incurred, a recipient must submit proof to EPA that the group has been incorporated by the State.

(c) Unless a consolidation agreement makes site-specific incorporation necessary, a previously incorporated group that includes all the individuals and groups that joined in applying for the TAG shall not be required to reincorporate for the specific purpose of representing affected individuals at the site provided that the group can demonstrate that it has a substantial history of involvement at the site.

§ 35.4025 Eligible applicants.

Eligible applicants, except as provided in § 35.4030, are any group of individuals that may be affected by a release or a threatened release at any facility that is listed on the NPL or is proposed for listing under the NCP and at which a response action has begun.

§ 35.4030 Ineligible applicants.

(a) Potentially responsible parties (PRPs) are ineligible to receive or be represented in groups receiving or using TAGs.

(1) No group established or sustained by a PRP shall be eligible for a TAG.

(2) No group that receives services provided by or paid for by a PRP shall be eligible for a TAG.

(3) For an applicant to obtain a grant it must establish an identity separate from that of an entity that is ineligible under § 35.4030 (a)(1) or (2) by making a reasonable demonstration of independence from the ineligible entity. Such a demonstration requires, at a minimum, a showing that the applicant has a formal legal identity (e.g., officers) and a substantive existence, including finances, separate and distinct from that of the ineligible entity.

(b) The following groups and organizations are also ineligible to receive or be represented in groups receiving or using TAGs.

(1) Corporations that are not incorporated for the specific purpose of representing affected individuals at the site except as provided in § 35.4020(c);

(2) Academic institutions;

(3) Political subdivisions (e.g., townships and municipalities); and

(4) Groups established or presently sustained by ineligible entities under § 35.4030 (b) through (c) (including emergency planning committees and citizen advisory boards who may be precluded from acting independently).

(c) This section shall not preclude any individual affected by a Superfund site from participating in a recipient group in his or her capacity as an individual. However, an individual whose financial involvement in a PRP (as other than an employee or contractor) is determined by the Award Official to be sufficiently substantial may be precluded from participation in a recipient group in any capacity.

§ 35.4035 Evaluation criteria.

(a) EPA will award a TAG only after it has determined that all eligibility and responsibility requirements listed in §§ 35.4020, 35.4025, and 35.4030 are met, and after review of the applicant's qualifications in the narrative section of the grant application. Each applicant will be required to provide information on how it meets the eligibility criteria in the grant application. The "Applicant Qualifications" section is Part IV of SF–424.

(b) Sole Applicant. After the Letter of Intent process (see § 35.4040), if there is still only one group, the evaluation process will consist of the Agency ensuring that the applicant meets the criteria stated in § 35.4035(c) in addition to the administrative and management capability requirements, and can demonstrate that it is representative of the community affected by a release or a threatened release at a facility that is listed on the NPL or is proposed for listing under the NCP and where a response action has begun, as demonstrated by fulfillment of the criteria in § 35.4035(c). Once these requirements have been met by the sole applicant, the Agency may award a TAG.

(c) Multiple Applicants. Where there are competing applicants EPA will evaluate the strengths and weaknesses of each applicant. EPA will rank each applicant relative to other applicants. Each criterion is assigned a weight showing its relative importance. EPA will rank each applicant by utilizing criteria described below. In order to qualify, applicants must meet criterion 1 and/or 5 and not score zero on criteria 2, 3, or 4.

(1) The presence of an actual or potential health threat posed to group members by the site (this criterion can be met by establishing a demonstrable threat to members' health or a reasonable belief that the site poses a substantial threat to their health) (30 points);

(2) The applicant best represents groups and individuals affected by the site (20 points);

(3) The identification of how the group plans to use the services of a Technical Advisor throughout the Superfund response action (20 points);

(4) The demonstrated intention and ability of the applicant to inform others in the community of the information provided by the Technical Advisor (20 points); and

(5) The presence of an actual or potential economic threat or threat of an impaired use or enjoyment of the environment to group members that is caused by the site (this criterion can be met by establishing a demonstrable economic or environmental threat to group members or a reasonable belief that the site poses a substantial economic or environmental threat) (10 points).

§ 35.4040 Notification process.

(a) Groups wishing to apply for a TAG should first submit a Letter of Intent (LOI) to EPA. EPA will respond in writing to an LOI. A grant application submitted by a community group without having first submitted an LOI will fulfill the LOI requirement, thus initiating the notification process.

(b) Upon receipt of the first LOI, EPA will undertake certain activities depending on the schedule for work at the site:

(1) If commencement of the remedial investigation or a removal action is not underway or scheduled to begin, EPA will advise the group in writing that grant applications for the site are not yet being accepted. EPA may informally notify other interested groups that it has received an LOI; or

(2) If a response action is already underway or scheduled to begin, EPA may conduct mailings and/or meetings, in addition to the required public notice, to provide formal notice to other interested parties that a grant for the site soon may be awarded. These formal notification activities will generally be conducted far enough in advance of the start of the response action to allow time for groups to consolidate, apply for and receive a grant award, and procure a Technical Advisor before work commences at the site.

(c) Other potential applicants will have 30 days to contact the original applicant to form a coalition. If the community groups are unable to form a coalition, they must notify EPA within the 30 days. EPA will then accept separate applications from all interested groups for an additional 30-day period. EPA may consider written requests for extensions of this time. If there is a qualified applicant, a grant will be awarded from among the competing applications based on the evaluation criteria described in § 35.4035. The schedule for response activities at a site will not be affected by the TAG application process.

§ 35.4045 Submission of application.

(a) After meeting the LOI requirement, the applicant must then submit a TAG application on SF–424.

(b) An applicant must submit a budget clearly showing the proposed expenditure of funds, how it will provide the cash and/or in-kind contributions to meet the "match" requirement, and how the funds and other resources, including the "match" will be used to complete the TAG project. As part of the application process, the applicant must submit the following certifications:

(1) Drug-Free Workplace,

(2) Debarment, Suspension, and Other Responsibility Matters, and

(3) Anti-Lobbying (if the grant is $100,000 or more).

§ 35.4050 Timing of award.

An award of a TAG will be made no earlier than the start of the response action. Grants to qualified applicants could be delayed depending upon the availability of funds for the Superfund program.

§ 35.4055 Ineligible activities.

The following activities are ineligible for assistance under this program:

(a) Litigation or underwriting legal actions such as paying for attorney fees or paying for the time of the Technical Advisor to assist an attorney in preparing a legal action or preparing for

and serving as an expert witness at any legal proceeding regarding or affecting the site;

(b) Political activity and lobbying in accordance with OMB Circular A–122;

(c) Other activities inconsistent with the cost principles stated in OMB Circular A–122, "Cost Principles for Non–Profit Organizations";

(d) Tuition or other expenses for recipient group members or Technical Advisors to attend training, seminars or courses, except for required Health and Safety training for the Technical Advisor to allow access to the local Superfund site, provided written permission is obtained in advance from the Regional EPA Office. Training may be approved for one time only at an amount not to exceed $1,000.00;

(e) Any activities or expenditures for recipient group members' travel;

(f) Generation of new primary data such as well drilling and testing, including split sampling;

(g) Reopening final Agency decisions such as the Records of Decision or conducting disputes with the Agency in accordance with its dispute resolution procedures set forth at 40 CFR part 30, subpart L; and

(h) Epidemiological or health studies, such as blood or urine testing.

§ 35.4060 Eligible activities.

TAGs may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or a significant removal action at a facility that is listed on the NPL or proposed for listing and at which a response action has begun. TAGs shall be used to fund activities that will contribute to the public's ability to participate in the decision-making process by improving the public's understanding of overall conditions and activities.

§ 35.4065 Technical advisor's qualifications.

(a) A Technical Advisor must possess the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues;

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering); and

(3) Ability to translate technical information into terms understandable to lay persons.

(b) A Technical Advisor should possess the following credentials:

(1) Experience working on hazardous or toxic waste problems;

(2) Experience in making technical presentations;

(3) Demonstrated writing skills; and

(4) Previous experience working with affected individuals or community groups or other groups of individuals.

§ 35.4066 Procurement.

(a) *Competition.* (1) The recipient must provide maximum open and free competition.

(2) Recipients must not unduly restrict or eliminate competition.

(3) The individual(s) developing the specifications will be excluded from competition for the Technical Advisor and/or Grant Administrator position.

(b) *Documentation.* Recipients must document all procurement activities with written records that furnish reasons for decisions.

(c) *Cost.* (1) The recipient must determine that all costs are reasonable.

(2) The recipient must conduct a cost analysis of all contracts over $25,000 and all change orders regardless of dollar value.

(d) *Debarment.* Recipients and contractors must not make any contract at any time to anyone who is on the "List of Parties Excluded from Federal Procurement or Nonprocurement Programs."

(e) *Recipient responsibility.* (1) The recipient is responsible for the settlement and satisfactory completion of all contractual and administrative issues arising out of contracts entered into under a grant.

(2) The recipient must ensure that the contractor(s) perform in accordance with the terms and conditions of the contract.

(f) *Responsible contractors.* The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract.

(g) *Disadvantaged business enterprises.* The recipient shall comply with the "Small, Minority, Women's, and Labor Surplus Area Business" requirements in § 33.240.

(h) *Illegal contracts.* Recipients may not award cost-plus-percentage-of-cost or percentage-of-construction-cost contracts.

(i) *Contract provisions.* The recipient must include the following provisions in each contract:

(1) Statement of work;

(2) Schedule for performance;

(3) Due dates for deliverables;

(4) Total cost of the contract;

(5) Payment provisions; and

(6) The following clauses from 40 CFR 33.1030, "Model contract clauses":

(i) Supersession;

(ii) Privity of Contract;

(iii) Termination;

(iv) Remedies;

(v) Audit, Access to Records;

(vi) Covenant Against Contingent Fees;

(vii) Gratuities;

(viii) Responsibility of the Contractor; and

(ix) Final Payment.

(j) *Subcontracting.* A contractor must comply with the following provisions in its award of subcontracts (these requirements do not apply to subcontractors for the supply of materials to produce equipment, materials, and subcontracts for catalog, off-the-shelf, or manufactured items.):

(1) Section 35.4066(b) Documentation;

(2) Section 35.4066(c) Cost;

(3) Section 35.4066(d) Debarment;

(4) Section 35.4066(f) Responsible contractor;

(5) Section 35.4066(g) Disadvantaged business enterprises;

(6) Section 35.4066(i) Illegal contracts; and

(7) Section 35.4066(j) Contract provisions.

(k) *Bid protests.* The recipient must establish a procedure for resolving protests which complies with the provisions of 40 CFR part 33, Subpart G— Protests.

(l) *Competitive procurements.* Recipients shall not divide any procurements into smaller parts to get under any dollar limit.

(1) If the aggregate amount of the purchase is $1,000 or less, the recipient may make the purchase as long as the recipient determines that the price is reasonable. No oral or written solicitations are necessary.

(2) If the aggregate amount of the proposed contract is over $1,000 but less than $25,000, the recipient must obtain and document oral or written price quotations from two or more qualified sources.

(3) If the aggregate amount of the proposed contract is $25,000 to $50,000, the recipient must:

(i) Solicit written bids from three or more sources who are willing and able to do the work;

(ii) Provide potential sources the scope of the work to be performed and the criteria the recipient will use to evaluate bids;

(iii) Objectively evaluate all bids submitted; and

(iv) Notify all unsuccessful bidders.

(4) If the aggregate amount of the proposed contract is greater than

$50,000, the recipient must follow the procurement rules in 40 CFR part 33.

(m) *Non-competitive procurements.* If an adequate number of potential sources cannot be identified, the recipient may request written authority from the EPA Award Official to award a contract to a sole bidder.

§ 35.4067 Contract review.

Each applicant must inform EPA of any proposed contract over $1000 and must provide EPA the opportunity to review the contract before it is awarded or amended.

§ 35.4070 Sanctions.

If EPA determines that the recipient has failed to comply with any terms of the grant agreement, EPA will initiate an appropriate measure as set forth at 40 CFR part 30, subpart I.

§ 35.4075 Pre-award costs.

(a) Grant funds may not be used to pay costs incurred prior to award of the TAG, except as provided in paragraph (b) of this section.

(b) Necessary and reasonable costs of incorporation, if incurred for the sole purpose of complying with this subpart, will be eligible pre-award costs and may be charged to the TAG or count toward the matching funds requirement described in § 35.4085(a)(2).

§ 35.4080 Method of payment.

All grant recipients shall be reimbursed for grant-related eligible, allocable, allowable, and reasonable costs up to the amount of the TAG which have been incurred and which the recipients are currently and legally obligated to pay. Recipients may submit monthly or quarterly requests for reimbursement to the Agency on SF–270—Request for Advance or Reimbursement, or the appropriate State form if the State is administering the TAG Program. Costs incurred greater than $500 may be submitted monthly.

§ 35.4085 Grant limitations.

TAGs will be awarded subject to the following limitations:

(a) The recipient must contribute 20 percent of the total costs of the TAG project, except as provided in § 35.4090(b).

(1) Absent specific statutory authority, no Federal funds may be included in the matching share.

(2) To meet the matching funds requirement, the recipient may use cash and/or in-kind contributions.

(b) The TAG award will not initially exceed $50,000 for a single recipient, except in the case of a single application covering multiple sites.

(c) Not more than one TAG may be awarded for any site.

(d) Administrative costs of the grant may not exceed 20 percent of project costs. Administrative costs may include, but are not limited to, paying an individual(s) to administer the grant.

§ 35.4090 Waivers.

(a) Waivers of the $50,000 per recipient limit may be granted under either or both of the following circumstances:

(1) *Multiple sites.* In order to reduce the administrative burden to a recipient group where there are several eligible sites geographically close to each other, the limitation that a single recipient may not receive more than $50,000 may be waived by the Agency (e.g., 3 sites x $50,000 = grant of $150,000).

(2) *Complex sites.* The Award Official may waive the $50,000 per recipient limit if the recipient group demonstrates that the site is especially complex and that the following criteria have been met:

(i) Site(s) characteristics indicate that due to the nature or volume of the site-related information for review, additional funds are necessary;

(ii) The recipient's management of any previous TAG award(s) was satisfactory and that costs incurred under the previous award are allowable and reasonable; and

(iii) No recipient group may receive more than $100,000 in TAG awards for any one site.

(b) Waivers of the Matching Funds Requirement. The Award Official may waive all or part of the recipient's matching funds requirement only after establishing that:

(1) There is a need for a waiver because providing the "match" would constitute an unusual financial hardship;

(2) A good faith effort at raising the "match," including obtaining in kind services, has failed; and

(3) The waiver is necessary to facilitate public participation in the selection of remedial action at the facility.

(c) Where a TAG recipient subsequently obtains a waiver of the matching funds requirement, the grant agreement must be amended. (See 40 CFR part 30, subpart G.)

(d) No waivers of the matching funds requirement will be granted by the Agency once the Record of Decision has been issued at the last operable unit at the site.

§ 35.4100 Disputes.

(a) If the Agency administers the TAG Program, the Agency shall review disputes between Agency officials and the applicant or recipient in accordance with its dispute resolution procedures set forth at 40 CFR part 30, subpart L.

(b) If the State administers the TAG Program, any applicant or recipient who has been adversely affected by a State's action or omission may request Agency review of such action or omission, but must first submit a petition for review to the State agency that made the initial decision. The State must provide, in writing, normally within 45 days of the date it receives the petition, the basis for its decision regarding the disputed action or omission. The final State decision must be labeled as such and, if adverse to the applicant or recipient, must include notice of the right to request Agency review of the State decision under this section. A State's failure to address the disputed action or omission in a timely fashion, or in writing, will not preclude Agency review.

(1) Requests for Agency review must include:

(i) A copy of any written State decision;

(ii) A statement of the amount in dispute;

(iii) A description of the issues involved; and

(iv) A concise statement of the objections to the State decision.

(2) The request must be filed by registered mail, return receipt requested, within 30 days of the date of the State decision or within a reasonable time if the State fails to respond in writing to the request for review.

(c) The Agency shall determine whether the State's review is comparable to a Dispute Decision Official's (DDO) review pursuant to 40 CFR part 30, subpart L. If the State's review is comparable, the Regional Administrator will conduct the Agency's review of the State's decision. If the State's review is not comparable, an Agency DDO will review the State's decision and issue a written decision. If the Agency DDO issues a decision, the applicant or recipient may request a Regional Administrator's review of the decision. The applicant or recipient may request an EPA Assistant Administrator review of a Regional Administrator's decision pursuant to subpart L.

§ 35.4105 Record retention and audits.

(a) *Records and audit-recipient.*(1) Each recipient shall keep and preserve full written financial records accurately disclosing the amount and the disposition of any funds, whether in cash or in-kind, applied to the TAG project, and shall comply with the terms and conditions of the grant agreement.

(2) Such records shall be retained for ten (10) years from the date of the final Financial Status Report, or until any audit, litigation, cost–recovery, and/or any disputes initiated before the end of the 10-year retention period are settled, whichever is longer. A recipient must obtain EPA's prior written approval to destroy records after the record retention period.

(3) Recipients must comply with OMB Circular A–133 "Audits of Institutions of Higher Education and Other Non-profit Organizations," for all grants over $25,000.

(b) *Records and audit-contractor(s).*(1) The recipient shall require its contractor(s) to keep and preserve detailed records in connection with the contract, reflecting acquisitions, work progress, reports, expenditures, and commitments and indicating their relationship to established costs and schedules.

(2) Contractors must retain records for a period of 10 years after the termination or end of the contract.

(Approved by the Office of Management and Budget under control number 2030–0020)

§ 35.4110 Reports.

(a) *Progress reports.* Each recipient shall submit quarterly progress reports to EPA for the TAG project 45 days after the end of each calendar quarter. Progress reports shall fully describe in chart or narrative format the progress achieved in relationship to the approved schedule, budget, and the TAG project milestones. Special problems encountered must be explained.

(b) *Financial status report.* Each recipient shall submit to EPA a financial status report annually, within 90 days after the anniversary date of the start of the TAG project, and within 90 days after the end of the grant budget period and project. A recipient shall submit to the EPA a financial status report on SF–269 or on the appropriate State form if the State is administering the TAG Program.

(c) *Final report.* Each recipient shall submit to EPA a draft of the final report for review no later than 90 days prior to the end of the TAG project and a final report within 90 days of the end of the project. The report shall document TAG project activities over the entire period of grant support and shall describe the recipient's achievements with respect to stated TAG project purposes and objectives.

(Approved by the Office of Management and Budget under control number 2030–0020)

§ 35.4115 Availability of information.

Each recipient shall ensure that all final written products developed by a contractor for the recipient under its grant are disseminated by providing copies of such documents to EPA for the local Superfund information repository(ies).

§ 35.4120 Budget period.

The budget period may not exceed three years. A TAG project period may be comprised of more than one three-year budget period.

§ 35.4125 Federal facilities.

EPA will use the criteria found in § 35.4025 in evaluating the eligibility of any group of individuals who may be affected by a release or a threatened release at a Federal facility for a TAG under this subpart.

§ 35.4130 Conflict of interest and disclosure requirements.

(a) The recipient shall require each prospective contractor on any contract to provide, with its bid or proposal:

(1) Information on its financial and business relationship with all PRPs at the site, and with their parent companies, subsidiaries, affiliates, subcontractors, contractors, and current clients or attorneys and agents. This disclosure requirement encompasses past and anticipated financial and business relationships, including services related to any proposed or pending litigation, with such parties;

(2) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and

(3) A statement that it shall disclose immediately any such information discovered after submission of its bid or after award. The recipient shall evaluate such information and shall exclude any prospective contractor if the recipient determines the prospective contractor's conflict of interest is significant and cannot be avoided or otherwise resolved.

(b) Contractors and subcontractors may not be Technical Advisors to recipient groups at the same NPL site for which they are doing work for the Federal or State government or any other entity.

[FR Doc. 92–23801 Filed 9–30–92; 8:45 am]

Billing Code 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6944

[OR–943–4214–10; GP2–298; OR–47552]

Withdrawal of National Forest System Land for Granite Chinese Walls Historic Site; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 43.75 acres of National Forest System land in the Whitman National Forest from mining for a period of 20 years for protection of the Granite Chinese Walls Historic Site. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect a cultural and historical resource site:

Willamette Meridian

Whitman National Forest

T. 8 S., R. 35½E.,
Sec. 34, SE¼SW¼NW¼NW¼, SW¼SE¼NW¼NW¼, W½SE¼SE¼NW¼NW¼, W½E½E½SW¼NW¼, W½E½SW¼NW¼, E½W½SW¼NW¼, W½E½NE¼NW¼SW¼, W½NE¼NW¼SW¼, and E½NW¼NW¼SW¼.

The area described contains 43.75 acres in Grant County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal

Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), the Secretary determines that the withdrawal shall be extended.

Dated: August 21, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-23787 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-33-M

43 CFR Public Land Order 6946

[NM-930-4214-10; NMNM 31869]

Revocation of Public Land Order No. 5721; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a public land order which withdrew approximately 67,000.00 acres of public lands for use in an exchange between the Bureau of Land Management and the Navajo Indian Tribe. Of the lands withdrawn, 57,509.41 acres were patented to the Navajo Tribe of Indians. The remaining lands are no longer needed for the purpose for which they were withdrawn. This action will open 8,477.19 acres of the remaining lands to surface entry and mining, while 330.49 acres in an overlapping withdrawal will remain closed to surface entry, mining, and oil and gas leasing. Of the lands patented to the Navajo Tribe of Indians, 56,709.41 acres, containing federally reserved minerals will be opened to mining. All of the lands, with the exception of the 330.49 acres within the overlapping withdrawal, and 800 acres of lands with no federally reserved mineral interest, have been and remain open to mineral leasing.

EFFECTIVE DATE: November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502-7115, 505-438-7400.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 5721, which withdrew public lands for use by the Navajo Tribe of Indians in an exchange between the Tribe and the Bureau of Land Management, is hereby revoked in its entirety:

(a) The following described public lands that were not exchanged will return to the administration of the Bureau of Land Management, and will be open to surface entry and mining:

New Mexico Principal Meridian

T. 18 N., R. 3 W.,
  sec. 16, NE¼.
T. 20 N., R. 4 W.,
  sec. 18, N½NE¼, SW¼NE¼, N½SE¼NE¼, W½SW¼SE¼NE¼, and N½SE¼SE¼NE¼;
  sec. 27, SW¼;
  sec. 34, SE¼.
T. 19 N., R. 5 W.,
  sec. 14, NE¼;
T. 20 N., R. 5 W.,
  sec. 4, SW¼;
  sec. 8, NE¼;
  sec. 15, N½SE¼, SW¼SE¼, N½SE¼SE¼, and N½S½SE¼SE¼.
T. 17 N., R. 6 W.,
  sec. 22, NW¼;
  sec. 25, SE¼.
T. 20 N., R. 6 W.,
T. 19 N., R. 7 W.,
  sec. 6, S½NE¼;
  sec. 7, lots 3 and 4, and E½SW¼;
  sec. 8, NW¼;
  sec. 12, lots 1 and 2, and W½NE¼.
T. 20 N., R. 8 W.,
  sec. 10, W½W½NW¼SE¼, W½NW¼SW¼SE¼, and SW¼SW¼SE¼.
T. 23 N., R. 8 W.,
  sec. 22, SE¼.
T. 22 N., R. 9 W.,
  sec. 9, NE¼;
T. 25 N., R. 9 W.,
  sec. 10, NW¼;
  sec. 23, NW¼.
T. 22 N., R. 10 W.,
  sec. 16, N½ and SW¼.
T. 23 N., R. 10 W.,
  sec. 6, lots 3, 4, and 5, and SE¼NW¼;
  sec. 8, SE¼;
  sec. 10, E½.
T. 25 N., R. 10 W.,
  sec. 5, SE¼;
  sec. 35, NE¼.
T. 15 N., R. 11 W.,
  sec. 6, lots 3, 4, and 5, SE¼NW¼, and SE¼;
T. 16 N., R. 11 W.,
  sec. 22, NE¼ and SW¼.
T. 23 N., R. 11 W.,
  sec. 14, E½NE¼.
T. 25 N., R. 11 W.,
  sec. 7, lots 1 and 2, NE¼ and E½NW¼,
  sec. 31, lots 1 to 4, inclusive, and E½W½.
T. 26 N., R. 11 W.,
  sec. 25, SE¼.
T. 28 N., R. 11 W.,
  sec. 8, lots 3 and 4, and S½SW¼.
T. 13 N., R. 12 W.,
  sec. 10, SW¼;
  sec. 14, NW¼ and SE¼;
  sec. 22, NW¼;
  sec. 24, NW¼.
T. 16 N., R. 12 W.,
  sec. 26, SE¼.
T. 25 N., R. 12 W.,
  sec. 34, NW¼.
T. 14 N., R. 13 W.,
  sec. 20, E½SE¼.
T. 23 N., R. 13 W.,
  sec. 13, SE¼;
  sec. 28, SW¼.
T. 28 N., R. 13 W.,
  sec. 7, lots 1 to 5, inclusive.
T. 29 N., R. 13 W.,
  sec. 19, lots 16, 21, 22, and 23.
T. 16 N., R. 16 W.,
  sec. 26, SW¼.
T. 14 N., R. 18 W.,
  sec. 24, SW¼.
T. 15 N., R. 20 W.,
  sec. 16, SE¼SE¼;
  sec. 19, lots 3 and 4, and E½SW¼.
T. 16 N., R. 21 W.,
  sec. 10, lots 5 to 8, inclusive.

The areas described aggregate 8,477.19 acres in Sandoval, McKinley, and San Juan Counties.

(b) The following described land is within an overlapping withdrawal, Public Law 98-603, and thus remains withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws:

New Mexico Principal Meridian

T. 24 N., R. 11 W.,
  sec. 7, SE¼.
T. 25 N., R. 11 W.,
  sec. 34, lot 5.
T. 23 N., R. 13 W.,
  sec. 3, SE¼.

The areas described aggregate 330.49 acres in San Juan County.

(c) The surface estate of the following described lands has been patented to the Navajo Tribe of Indians, with the minerals reserved to the United States. The federally reserved mineral interests will be opened to location and entry under the United States mining laws:

New Mexico Principal Meridian

T. 18 N., R. 3 W.,
  sec. 4, lots 3 and 4, and S½NW¼;
  sec. 5, SW¼;
  sec. 7, E½;
  sec. 8, N½, N½SW¼, N½SW¼SW¼, SW¼SW¼SW¼, and E½SE¼SW¼SW¼;
  sec. 16, SW¼;
  sec. 18, lots 3 and 4, E½SW¼, and SE¼;
  sec. 20, SW¼;
  sec. 21, NW¼.
T. 17 N., R. 4 W.,
  sec. 3, SW¼;
  sec. 5, lots 3 and 4, and S½NW¼;
  sec. 7, SE¼;
  sec. 11, NW¼;
  sec. 18, SE¼;
  sec. 19, NE¼;
  sec. 20, W½.
T. 18 N., R. 4 W.,
  sec. 7, lots 1 and 2, E½NW¼, and SE¼;
  sec. 15, NW¼;
  sec. 18, E½NE¼, N½NW¼NE¼, SW¼NW¼NE¼, W½SE¼NW¼NE¼, and SW¼NE¼;
  sec. 19, SE¼;
  sec. 20, NE¼;
  sec. 27, N½;
  sec. 29, N½;
  sec. 35, SE¼.
T. 19 N., R. 4 W.,
  sec. 20, NE¼;
  sec. 21, NW¼;
  sec. 23, SW¼;
  sec. 24, SW¼;
  sec. 25, SE¼;
  sec. 26, NW¼;

sec. 27, SW¼;
sec. 28, NW¼ and SE¼;
sec. 31, lots 3 and 4, and E½SW¼;
sec. 34, SW¼.
T. 20 N., R. 4 W.,
sec. 6, lots 1 and 2, S½NE¼, and SE¼;
sec. 8, NW¼ and SE¼;
sec. 18, SE¼;
sec. 19, lots 1 and 2, and E½NW¼;
sec. 28, NE¼;
sec. 34, NE¼.
T. 17 N., R. 5 W.,
sec. 4, SE¼;
sec. 6, lots 1 and 2, and S½NE¼;
sec. 24, SW¼.
T. 18 N., R. 5 W.,
sec. 1, lots 1 and 2, and S½NE¼;
sec. 3, lots 3 and 4, S½NW¼, and S½;
sec. 10, SE¼;
sec. 12, NE¼;
sec. 15, SE¼;
sec. 22, NE¼.
T. 19 N., R. 5 W.,
sec. 11, SE¼;
sec. 20, NE¼;
sec. 21, NW¼;
sec. 22, SE¼;
sec. 25, SW¼;
sec. 26, NW¼;
sec. 28, NW¼ and S½;
sec. 34, NW¼.
T. 20 N., R. 5 W.,
sec. 8, SW¼;
sec. 10, SE¼;
sec. 14, SE¼.
T. 21 N., R. 5 W.,
sec. 2, lots 1 to 4, inclusive, S½N½, and SE¼;
sec. 3, lots 1 to 4, inclusive, S½N½, and SW¼;
sec. 4, lots 3 and 4, S½NW¼, and S½;
sec. 5, lots 3 and 4, and S½NW¼;
sec. 6, lots 1 and 2, and S½NE¼;
sec. 7, lots 1 to 4, inclusive, NE¼, E½NW¼, E½SW¼, and SE¼;
sec. 8, NW¼;
sec. 16, E½;
sec. 21, E½.
T. 17 N., R. 6 W.,
sec. 15, E½ and SW¼;
sec. 21, NE¼;
sec. 23, NE¼;
sec. 28, SE¼;
sec. 33, NE¼.
T. 18 N., R. 6 W.,
sec. 20, NE¼;
sec. 26, NE¼.
T. 20 N., R. 6 W.,
sec. 15, NE¼.
T. 21 N., R. 6 W.,
sec. 5, lots 1 to 4, inclusive, and S½N½;
sec. 6, lots 6 and 7, and E½SW¼;
sec. 24, W½;
sec. 31, lots 3 and 4, and E½SW¼.
T. 22 N., R. 6 W.,
sec. 4, SE¼;
sec. 5, SW¼;
sec. 6, lots 6 and 7, and E½SW¼;
sec. 7, lot 3 and 4, and E½SW¼;
sec. 8, E½ and NW¼;
sec. 9, N½ and SW¼;
sec. 10, NW¼;
sec. 15, SE¼;
sec. 22, NE¼NE¼;
sec. 23, E½;
sec. 24, NW¼;
sec. 25, W½;
sec. 26, E½ and SW¼;
sec. 29, E½;
sec. 32, E½ and SW¼;
sec. 34, NE¼;
sec. 35, E½;
sec. 36, N½ and SE¼.
T. 18 N., R. 7 W.,
sec. 14, SW¼.
T. 19 N., R. 7 W.,
sec. 1, lot 5;
sec. 6, lots 1 and 2.
T. 21 N., R. 7 W.,
sec. 1, S½;
sec. 2, lots 1 and 2, and S½NE¼;
sec. 10, NE¼;
sec. 11, E½;
sec. 14, SE¼;
sec. 18, SE¼;
sec. 22, SE¼;
sec. 28, W½;
sec. 36, SW¼.
T. 22 N., R. 7 W.,
sec. 7, lots 1 and 2, NE¼, and E½NW¼;
sec. 10, NE¼;
sec. 13, SW¼;
sec. 24, SE¼;
sec. 25, SE¼;
sec. 26, SW¼;
sec. 34, SE¼.
T. 23 N., R. 7 W.,
sec. 6, lots 3 to 7, inclusive, SE¼NW¼, E½SW¼, and SE¼;
sec. 7, NE¼;
sec. 35, NE¼.
T. 24 N., R. 7 W.,
sec. 30, lots 3 and 4, and E½SW¼.
T. 20 N., R. 8 W.,
sec. 10, E½SE¼, E½W½SE¼, E½W½NW¼SE¼, and E½NW¼SW¼SE¼.
T. 21 N., R. 8 W.,
sec. 13, NW¼;
sec. 14, SE¼.
T. 22 N., R. 8 W.,
sec. 5, SW¼;
sec. 6, lots 3, 4, and 5, and SE¼NW¼;
sec. 7, lots 3 and 4, and E½SW¼;
sec. 9, SW¼;
sec. 17, N½ and SE¼;
sec. 18, lots 3 and 4, E½SW¼, and SE¼;
sec. 21, NW¼;
sec. 32, SE¼.
T. 23 N., R. 8 W.,
sec. 1, SW¼;
sec. 2, lots 3 and 4, and S½NW¼;
sec. 17, E½;
sec. 21, NE¼;
sec. 23, SW¼;
sec. 26, NW¼;
sec. 27, N½;
sec. 30, lots 1 to 4, inclusive, NE¼, and E½W½;
sec. 31, SE¼;
sec. 34, SW¼.
T. 24 N., R. 8 W.,
sec. 6, lot 6 and NE¼SW¼;
sec. 7, lots 3 and 4, and E½SW¼;
sec. 19, NE¼;
sec. 21, E½;
sec. 29, NW¼;
sec. 35, SE¼.
T. 25 N., R. 8 W.,
sec. 4, SW¼;
sec. 6, lots 8 to 11, inclusive.
T. 22 N., R. 9 W.,
sec. 3, lots 1 to 4, inclusive, and S½N½;
sec. 13, SW¼;
sec. 14, SW¼.
T. 23 N., R. 9 W.,
sec. 1, SE¼;
sec. 15, NW¼;
sec. 27, NE¼;
sec. 34, SW¼;
sec. 35, SE¼.
T. 24 N., R. 9 W.,
sec. 3, lots 3 and 4, S½NW¼, and SW¼;
sec. 4, lots 1 and 2, S½NE¼, and SE¼;
sec. 9, SW¼;
sec. 14, W½;
sec. 15, NE¼;
sec. 22, E½;
sec. 23, NW¼;
sec. 25, NW¼;
sec. 26, SE¼;
sec. 27, NW¼.
T. 25 N., R. 9 W.,
sec. 7, N½SE¼and SW¼SE¼;
sec. 8, NW¼;
sec. 13, N½;
sec. 18, lots 1 to 4, inclusive, NE¼, and E½W½;
sec. 33, SE¼.
T. 27 N., R. 9 W.,
sec. 11, N½;
sec. 15, NE¼.
T. 28 N., R. 9 W.,
sec. 24, NE¼;
sec. 36, NW¼.
T. 16 N., R. 10 W.,
sec. 6, SE¼;
sec. 18, NE¼.
T. 23 N., R. 10 W.,
sec. 8, SW¼;
sec. 11, NW¼;
sec. 13, NE¼;
sec. 24, SE¼;
sec. 27, NE¼.
T. 24 N., R. 10 W.,
sec. 4, SW¼;
sec. 8, SE¼;
sec. 10, E½;
sec. 11, SE¼;
sec. 17, NE¼;
sec. 18, NE¼;
sec. 21, SW¼;
sec. 23, SW¼;
sec. 30, SE¼;
sec. 33, SE¼;
sec. 36, NW¼.
T. 25 N., R. 10 W.,
sec. 6, lots 1 and 2, and S½NE¼;
sec. 7, NE¼;
sec. 10, SW¼;
sec. 14, NW¼;
sec. 25, NW¼;
sec. 29, W½;
sec. 34, NW¼.
T. 15 N., R. 11 W.,
sec. 8, NW¼;
sec. 26, SE¼.
T. 16 N., R. 11 W.,
sec. 14, SW¼.
T. 24 N., R. 11 W.,
sec. 14, SE¼;
sec. 15, SE¼;
sec. 24, E½;
sec. 26, N½.
T. 25 N., R. 11 W.,
sec. 1, lots 3 and 4, and S½NW¼;
sec. 2, lots 1 and 2, and SW¼NE¼;
sec. 8, NW¼;

sec. 9, SW¼;
sec. 11, SE¼;
sec. 14, SE¼;
sec. 19, lots 1 and 2, and E½NW¼;
sec. 20, W½;
sec. 30, E½;
sec. 31, NE¼;
sec. 34, lots 1 to 4, inclusive.
T. 26 N., R. 11 W.,
sec. 23, SW¼.
T. 15 N., R. 12 W.,
sec. 36, SE¼.
T. 16 N., R. 12 W.,
sec. 8, NE¼.
T. 18 N., R. 12 W.,
sec. 20, N½ and SW¼.
T. 25 N., R. 12 W.,
sec. 12, S½;
sec. 13, NW¼ and S½;
sec. 14, SE¼;
sec. 23, NE¼;
sec. 25, SE¼;
sec. 26, SE¼;
sec. 28, NW¼;
sec. 35, W½;
sec. 36, SW¼.
T. 14 N., R. 13 W.,
sec. 20, NW¼ and S½SW¼SE¼.
T. 19 N., R. 13 W.,
sec. 18, NE¼.
T. 29 N., R. 13 W.,
sec. 19, lots 14 and 15;
sec. 28, E½SW¼SW¼ and W½SE¼SW¼.
T. 14 N., R. 14 W.,
sec. 14, NE¼.
T. 16 N., R. 14 W.,
sec. 20, S½.
T. 15 N., R. 15 W.,
sec. 2, lots 1 to 4, inclusive, and S½N½.
T. 16 N., R. 15 W.,
sec. 8, NE¼ and N½S½;
sec. 14, SE¼;
sec. 22, N½SW¼, SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼, and SE¼;
sec. 24, SE¼.
T. 16 N., R. 16 W.,
sec. 18, lot 1, NE¼NW¼, and SE¼;
sec. 20, N½;
sec. 28, NE¼.
T. 14 N., R. 17 W.,
sec. 30, NE¼.
T. 15 N., R. 17 W.,
sec. 6, lots 1 to 5, inclusive, S½NE¼, and SE¼NW¼;
sec. 28, NE¼.
T. 16 N., R. 17 W.,
sec. 14, NE¼.
T. 14 N., R. 18 W.,
sec. 4, SE¼;
sec. 26, E½;
sec. 32, S½.
T. 13 N., R. 19 W.,
sec. 8, NW¼;
sec. 12, S½.
T. 14 N., R. 19 W.,
sec. 8, N½;
sec. 26, NW¼.
T. 15 N., R. 19 W.,
sec. 18, lots 1 and 2, and E½NW¼.
T. 11 N., R. 20 W.,
sec. 2, lots 1 to 4, inclusive, S½N½, and N½SE¼.
T. 12 N., R. 20 W.,
sec. 26, S½.
T. 15 N., R. 20 W.,
sec. 12, E½;
sec. 18, lots 3 and 4, and E½SW¼;
sec. 20, E½;
sec. 22, SW¼;
sec. 26, NW¼.

The areas described aggregate 50,709.41 acres in Sandoval, McKinley, San Juan, and Rio Arriba Counties.

(d) The surface estate of the following described lands was patented to the Navajo Tribe of Indians. The minerals are not federally owned and will not be opened to location and entry:

New Mexico Principal Meridian

T. 17 N., R. 4 W.,
sec. 2, S½.
T. 17 N., R. 6 W.,
sec. 16, SE¼.
T. 18 N., R. 7 W.,
sec. 16, NE¼.
T. 25 N., R. 11 W.,
sec. 32, SE¼.

The areas described aggregate 800 acres in Sandoval, McKinley, and San Juan Counties.

2. All of the lands, with the exception of the lands described in paragraphs 1(b) and 1(d), have been and remain open to mineral leasing.

3. At 9 a.m. on November 2, 1992, the lands described in paragraph 1(a) will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on November 2, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on November 2, 1992, the lands described in paragraphs 1(a) and 1(c) will be opened to location and entry under the United States mining laws subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 21, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-23788 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-FB-M

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43 CFR Public Land Order 6848

[ID-943-4214-10; IDI-15709A; IDI-0586401]

Partial Revocation of Secretarial Order Dated January 29, 1927, Which Established Powersite Classification No. 166, and Public Land Order No. 1567, Which Established the Forest Service Recreation Area Roadside Zone; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes one Secretarial Order and one Public Land Order insofar as they affect 0.21 acre of National Forest System land withdrawn for the Bureau of Land Management's Powersite Classification No. 166, and a Forest Service Recreation Area Roadside Zone. The land is no longer needed for these purposes, and the revocation is needed to permit disposal of the land through land exchange. This action will open 0.21 acre to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-384-3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated January 29, 1927, which established Powersite Classification No. 166, and Public Land Order No. 1567, which established Forest Service Recreation Area Roadside Zones, are hereby revoked insofar as they affect the following described land:

A parcel of land situated in lot 7, Section 4, T. 32 N., R. 6 E., Boise Meridian. Being more particularly described as follows:

Commencing at the NW corner of said lot 7; thence along the West line of lot 7, S. 01°11' E., 645.40 feet to the North right-of-way line of U.S. Highway 12 and the true point of beginning; thence S. 73°45' E., 117.10 feet along the North right-of-way line of U.S. Highway 12; thence leaving said right-of-way line N. 41°25' E., 57.40 feet; thence N. 66°05' W., 167.70 feet; thence S. 01°11' E., 80.90 feet to the point of beginning.

The area described contains 0.21 acre in Idaho County.

2. At 9 a.m. on November 2, 1992, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 21, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-23775 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-GG-M

ACTION

45 CFR Part 1224

Implementation of the Privacy Act of 1974

AGENCY: ACTION.

ACTION: Final rule.

SUMMARY: On August 11, 1992, ACTION published for notice and comment a proposed rule to exempt a system of records from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a ("Privacy Act"), to the extent that the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for law enforcement purposes. The system of records to be exempted contains the investigative files of the Office of the Inspector General. (See 57 FR 35775.) ACTION did not receive any comments on the proposed rule. Therefore, ACTION has exempted this system of records from certain provisions of the Privacy Act.

EFFECTIVE DATE: November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas C. Buchanan, Counsel to the Inspector General, ACTION, at (202) 606-4804; or Edward F. Carey, Privacy Act Officer, at (202) 606-5242.

SUPPLEMENTARY INFORMATION: On December 31, 1991, ACTION published a "Notice of Systems of Records" in the **Federal Register** (56 FR 67576). Included in this notice is system number "ACTION-15," the Office of the Inspector General Investigative Files. This system contains investigatory material pertaining to the enforcement of criminal laws and compiled for law enforcement purposes.

ACTION has now exempted this system of records from specified provisions of the Privacy Act. Section (j)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt any system of records within the agency from any part of section 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), if the system of records is—

maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws * * * and which consists of (A) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

Section (k)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt any system of records within the agency from sections 552a (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f), if the system of records is "investigatory material compiled for law enforcement purposes."

If a system of records is not exempted from these sections, the Privacy Act generally requires the agency to: Account for disclosures; permit individuals access to their records; permit individuals to request amendment to their records; collect information directly from the subject individual; publish information in the **Federal Register** about access to records; and promulgate rules that establish procedures for notice and disclosure of records. The exemptions that may be asserted with respect to investigatory systems of records permit an agency to protect information when disclosure would interfere with the conduct of the agency's investigations.

The Office of the Inspector General Investigative Files contain information of the type described in the above mentioned exemptions to the Privacy Act. The Inspector General Act of 1978, as amended, 5 U.S.C. app. 3, authorizes the Inspector General of ACTION to conduct investigations to detect fraud and abuse in the programs and operations of ACTION and to assist in the prosecution of participants in such fraud or abuse. The Office of the Inspector General of ACTION maintains information in this system of records pursuant to its law enforcement and criminal investigation functions. Exemptions under section 552a (j)(2) and (k)(2) are necessary to maintain the integrity and confidentiality of the investigative files and to protect individuals from harm. Disclosure of information in these investigatory files or disclosure of the identity of confidential sources would seriously undermine the effectiveness of the Inspector General's investigations. Knowledge of such investigations also could enable subjects of the investigation to take action to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to intimidation of, or harm to, informants, witnesses, investigative personnel, or their families. The imposition of certain restrictions on the manner in which information is collected, verified, or retained could significantly impede the effectiveness of the investigations of the Office of the Inspector General and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

Section 1224.1-14 of the ACTION regulations (45 CFR part 1224) previously was promulgated to exempt various investigatory records from certain requirements of the Privacy Act. In connection with the establishment of the system of records containing the Office of the Inspector General Investigative Files, ACTION has amended part 1224 by adding a new section, 45 CFR 1224.1-19, Inspector General Exemptions, pursuant to section 552a (j)(2) and (k)(2) of the Privacy Act.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Director of ACTION certifies that the amendments to part 1224 will not have a significant impact on a substantial number of small entities. The

Director further finds that the proposed rule is not a "major rule" under Executive Order No. 12291 since it will not have an annual effect on the economy of $100 million or more.

List of Subjects in 45 CFR Part 1224

Privacy, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, chapter XII, subtitle B, title 45, Code of Federal Regulations, is amended as follows:

PART 1224—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for part 1224 continues to read as follows:

Authority: Public Law 93–579, 5 U.S.C. 552a.

2. Section 1224.1–19 is added to read as follows:

§ 1224.1–19 Inspector General exemptions.

Pursuant to sections (j) and (k) of the Privacy Act of 1974, ACTION has promulgated the following exemptions to specified provisions of the Privacy Act:

(a) Pursuant to, and limited by, 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), and 45 CFR 1224.1–12, 1224.1–13, 1224.1–15, 1224.1–16, 1224.1–17, and 1224.1–18, insofar as the system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to, and limited by, 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), and 45 CFR 1224.1–12, 1224.1–13, 1224.1–15, 1224.1–16, 1224.1–17, and 1224.1–18, insofar as it contains investigatory materials compiled for law enforcement purposes.

Dated: September 24, 1992.

Jane A. Kenny,

Director, ACTION.

[FR Doc. 92–23770 Filed 9–30–92; 8:45 am]

BILLING CODE 6050–28

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[FRA Docket No. ROS–2, Notice No. 3]

RIN 2130–AA48

Bridge Worker Safety Rules

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Suspension of sections on fall protection.

SUMMARY: On June 24, 1992, FRA published regulations on safety standards for the protection of those who work on railroad bridges (49 CFR part 214). On July 2, 1992 (57 FR 25561), the effective date was corrected to July 24, 1992, and on July 9, 1992 (57 FR 30429) FRA changed the effective date to August 24, 1992. FRA is suspending 49 CFR 214.103 and 49 CFR 214.105 until November 24, 1992. The effective date of all other sections of 49 CFR part 214 remains August 24, 1992.

EFFECTIVE DATES: Part 214, which was published at 57 FR 28116, was effective on August 24, 1992. Effective September 28, 1992, 49 CFR 214.103 and 214.105 are suspended until November 24, 1992.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Edward R. English, Director, Office of Safety Enforcement, Office of Safety, FRA, 400 Seventh Street, SW., Washington DC 20590 (Telephone: 202–366–9252), or Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (Telephone: 202–366–0443).

SUPPLEMENTARY INFORMATION: On August 12, 1992, the Association of American Railroads (AAR) filed a Petition for an Extension of Time of the Effective Date of the Bridge Worker Safety Rules, 49 CFR part 214. In that Petition, the AAR states that an extension of the effective date for implementation of the bridge worker standards from August 24, 1992 to January 1, 1993 is necessary in order to provide the railroads sufficient time to purchase fall protection equipment and train employees on its use. The AAR states that the bridge standards promulgated by the Federal Railroad Administration (FRA) on June 24, 1992 (57 FR 28116) require the use of fall protection in situations where equipment was not used previously, and that the new equipment could not be furnished by suppliers prior to the effective date or with sufficient time to allow for necessary training of employees. In support of this, the AAR submitted affidavits from the Atchison, Topeka & Santa Fe Railway Company and Burlington Northern Railroad.

AAR's Petition requests a delay in the effective date for all sections of the Bridge Worker Safety Rule, but the evidence supplied concerning unavailability of equipment and training time relate only to those sections involving fall protection, 49 CFR 214.103 and 214.105. Therefore, the request to delay the effective date of the entire rule is denied. Sections 214.1 through 214.101 and sections 214.107 through 214.117 remain in effect as of August 24, 1992.

Based on information received from the AAR, however, FRA has determined that in the interest of employee safety the sections of the rule that relate specifically to fall protection, §§ 214.103 and 214.105, must be suspended. This suspension is provided so that the railroads can complete a comprehensive acquisition, implementation, and training program that will meet the requirements of the rule, and ultimately ensure a safe workplace for bridge workers. Class 1 railroads such as CSX Transportation, Inc., Union Pacific Railroad company, and Southern Pacific Transportation Company were fully prepared to meet all requirements of the rule on its effective date, August 24, 1992. In addition, many Class 2 and 3 railroads were in compliance on that date. However the AAR has submitted information indicating that many Class 1 railroads, including Burlington Northern Railroad, Consolidated Rail Corporation, Norfolk Southern Railway Company, Atchison, Topeka & Santa Fe Railway Company, and Illinois Central Railroad Company have been unable to acquire a sufficient number of body harnesses and lifeline systems to fully equip their track employees who perform work on railroad bridges.

In addition, the AAR states that the railroads have not had ample time to complete a training program for bridge and track employees on proper use of the new equipment. While FRA believes that a diligent effort by all railroads to meet the requirements of the new rule would have resulted in a suitable supply of complying fall protection devices, the sixty days that elapsed between publication and implementation of the rule now appears to have been an insufficient amount of time to train adequately the track and bridge workers who must use the required equipment. In particular, many track employees will be using fall protection systems for the

first time, and must be provided a comprehensive training program to ensure their safety. Therefore, this suspension is granted so that all railroads complete such a program for their employees. Although sections 214.103 and 214.105 are suspended until November 24, 1992, FRA intends to actively monitor the railroads' progress toward full compliance with the requirements of 49 CFR part 214 during this acquisition, implementation, and training period.

Finally, because regulations promulgated by the Occupational Safety and Health Administration (OSHA) applied to railroad bridge workers until the effective date of FRA's new bridge worker standards, OSHA's standards that address fall protection systems specifically shall now remain in effect until November 24, 1992.

Due to potential employee safety hazards and the need for a prompt response to the AAR's Petition to Extend Time, FRA has determined that notice and comment on this issue would be impractical, unnecessary, and contrary to the public interest. The parties directly affected by the extension, the railroad industry and the Brotherhood of Maintenance-of-Way Employees, have been apprised of the request and given an opportunity to comment.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This change to the final rule has been evaluated in accordance with existing policies and procedures and is considered to be nonmajor under Executive Order 12291. However, it is considered to be significant under DOT policies and procedures (44 FR 11304) because it is part of a substantial regulatory program.

The suspension relates to only two sections of the final rule, and those sections, governed by the regulations of the Occupational Safety and Health Administration (OSHA) prior to issuance of FRA's bridge worker standards, will continue to be governed by OSHA until the new effective date. Therefore, there are no new costs associated with this suspension.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This suspension of two sections of the final rule results in a continuation of authority of the existing OSHA regulations, and will have no new direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no paperwork requirements associated with this suspension.

Environmental Impact

FRA has evaluated this suspension in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This suspension meets criteria establishing this as a nonmajor action for environmental purposes.

Federalism Implications

This suspension will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Therefore, effective September 28, 1992, 49 CFR 214.103 and 214.105 are suspended until November 24, 1992.

Issued this 28th day of September 1992.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 92-23880 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-2; Notice 13]

RIN 2127-AD35

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Change of effective date for adding previously adopted amendments to the Code of Federal Regulations (CFR).

SUMMARY: This document changes the date when amendments to Standard No. 108 published on April 19, 1991, will be added to the text of that standard as it appears in the CFR, from September 1, 1993, to October 1, 1992. There is no substantive effect of this change as the paragraphs containing substantive requirements for center high-mounted stop lamps (CHMSL) on vehicles other than passenger cars retain the originally stated date of September 1, 1993, for mandatory compliance with the CHMSL requirements. The change has the effect of making immediately effective the redesignation of certain paragraphs of the standard. This action is taken pursuant to a comment submitted in an unrelated rulemaking.

EFFECTIVE DATE: The effective date of the amendment to 49 CFR part 571 published in FR Doc 91-9220 on April 19, 1991 (56 FR 16105) is changed from September 1, 1993, to October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202-366-6436).

SUPPLEMENTARY INFORMATION: This notice resolves a conflict that has arisen between a final rule amending Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, and a notice of proposed rulemaking (NPRM).

On April 19, 1991, NHTSA issued a final rule (56 FR 16020) that had the following effects. Paragraph S5.1.1.27 was revised to require motor vehicles other than passenger cars "manufactured on and after September 1, 1993" to be equipped with high-mounted stop lamps. Paragraphs S5.1.1.28, S5.1.1.29, S5.1.1.30 and S5.1.1.31 were redesignated respectively as paragraphs S5.1.1.29, S5.1.1.30, S5.1.1.31, and S5.1.1.32. New paragraph S5.1.1.28 was added to permit vehicles other than passenger cars "manufactured between September 1, 1992, and September 1, 1993" to be voluntarily equipped in accordance with S5.1.1.27 and S5.3.1.8, also revised by the final rule. Finally, Tables III and IV were revised to reflect the applicability and location requirements for center high-mounted stop lamps on vehicles other than passenger cars. The notice gave the overall effective date of the final rule as September 1, 1993. The amendments were published at pages 320-21, following the current text of Standard No. 108, in "Title 49 Code of Federal Regulations parts 400 to 999 Revised as of October 1, 1991."

On July 8, 1992, NHTSA published a notice of proposed rulemaking (NPRM) (57 FR 30189) regarding the marking of sealed beam headlamps which also proposed to transfer paragraphs of S5.1.1 relating to replacement equipment to paragraph S5.7 *Replacement*

Equipment. Under the NPRM, redesignation of many of the remaining paragraphs of S5.1.1 was also proposed. However, the proposal was made with reference to Standard No. 108 as it remains in effect until September 1, 1993, and did not take into account the amendments which become effective that day. Ford Motor Company, in commenting on the NPRM, related it to the standard as amended by the April 1991 notice, instead of the standard as it currently appears in the CFR, and found certain apparent errors and inconsistencies.

In formulating the final rule on the NPRM, NHTSA is faced with two choices. The first is based on the standard as it currently appears in the CFR. If the agency took this approach, it would issue the final rule with the redesignations as proposed in July 1992, (which would only be in effect until September 1, 1993), relating Ford's comments to the extent possible. At the same time, the agency would amend the redesignations that are scheduled to become effective on September 1, 1993. The second choice is based on the standard as amended by the April 1991 final rule. Under this approach, the agency would accelerate the 1993 effective date for adding the 1991 amendments to the CFR so that the final rule on headlamp markings can adopt a definitive redesignation of paragraphs without further amendments. The agency has chosen this alternative course.

Accelerating the effective date for adding the April 1991 amendments to the CFR results in no substantive burden. No compliance date or text is changed. The mandatory CHMSL provisions of paragraph S5.1.1.27, by their own terms, will still not come into effect for vehicles other than passenger cars until September 1, 1993. The optional CHMSL compliance provisions in Paragraph S5.1.1.28, by their own terms, are still effective only between September 1, 1992, and September 1, 1993. There is no substantive reason why the redesignation of paragraphs of S5.1.1, and the changes to Tables III and IV cannot be made effective immediately. NHTSA also notes that such an amendment with an effective date of October 1, 1992 for adding the amendments to the text of the standard in the CFR, will allow publication of the most current version of Standard No. 108 in the next volume of 49 CFR parts 400–999 revised as of October 1, 1992. The clarity that this will afford is in the public interest.

Accordingly, for the reasons stated above, NHTSA finds that prior notice and an opportunity for comment are not required for this change, and that an effective date of October 1, 1992 for adding the amendments to 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, published on April 19, 1991, to the CFR is in the public interest. The effective date for adding the amendments of April 19, 1991, to the CFR is changed from September 1, 1993, to October 1, 1992.

Authority: 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.50.

Issued on: September 28, 1992.

Marion C. Blakey,

Administrator.

[FR Doc. 92–23872 Filed 9–29–92; 9:11 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Washington, Oregon, and California Population of the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Washington, Oregon, and California population of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.). The marbled murrelet is threatened by the loss and modification of nesting habitat (older forests) primarily due to commercial timber harvesting. It is also threatened from mortality associated with current gill-net fishing operations off the Washington coast and the effects of oil spills. This rule extends the Act's protection to the marbled murrelet in Washington, Oregon, and California. Pursuant to an order of the United States District Court, Western District of Washington at Seattle, dated September 15, 1992, this listing takes effect immediately.

EFFECTIVE DATE: September 28, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Portland Field Office, 2600 SE. 98th Avenue, suite 100, Portland, Oregon 97266.

FOR FURTHER INFORMATION CONTACT: Mr. Russell D. Peterson, Field Supervisor, at the above address (503/231–6179).

SUPPLEMENTARY INFORMATION:

Background

Biological Considerations

The marbled murrelet (*Brachyramphus marmoratus*) is a small seabird of the Alcidae family. It was first described in 1789 by Gmelin as *Colymbus marmoratus*, but in 1837 Brandt placed it under the genus *Brachyramphus* (American Ornithologists' Union 1983). The North American subspecies (*B. m. marmoratus*) ranges from the Aleutian Archipelago in Alaska, eastward to Cook Inlet, Kodiak Island, Kenai Peninsula, and Prince William Sound, southward coastally throughout the Alexander Archipelago of Alaska, and through British Columbia, Washington, Oregon, to central California. Some wintering birds are found in southern California. A separate subspecies (*B. m. perdix*) is present in Asia.

Marbled murrelets feed primarily on fish and invertebrates in near-shore marine waters. The majority of marbled murrelets are found within or adjacent to the marine environment, although there have been detections of marbled murrelets on rivers and inland lakes (Carter and Sealy 1986). Marbled murrelets spend the majority of their lives on the ocean, and come inland to nest, although they visit some inland stands during all months of the year. Marbled murrelets have been recorded up to 80 kilometers (50 miles) inland in Washington (Hamer and Cummins 1991), 56 kilometers (35 miles) inland in Oregon (Nelson 1990), 37 kilometers (22 miles) inland in northern California (Carter and Erickson 1988, Paton and Ralph 1990), and 18 kilometers (11 miles) inland in central California (Paton and Ralph 1990). However, marbled murrelets are not evenly distributed from the coast to the maximum inland distances, with higher detections being recorded closer to the coast. Hamer and Cummins (1991) found that over 90 percent of all observations were within 60 kilometers (37 miles) of the coast in the northern Washington Cascades. In Oregon, marbled murrelets are observed most often within 20 kilometers (12 miles) of the ocean (Nelson 1990).

Marbled murrelets are semi-colonial in their nesting habits, and simultaneous detections of more than one bird are frequently made at inland sites. Nesting marbled murrelets are often aggregated; for example, two nests discovered in

Washington in 1990 were located only 46 meters (150 feet) apart (Hamer and Cummins 1990).

Marbled murrelets do not reach sexual maturity until their second year. Like other alcids, adult marbled murrelets produce 1 egg per nest. Alcids typically have a variable (not all adults may nest every year) reproductive rate, and marbled murrelets exhibit this same trend. Adult/juvenile ratios from counts along the central Oregon coast indicated a recruitment rate of less than 2 percent per year over the past 4 years (1988–1991) (Nelson, *in litt.*, 1992).

Adult marbled murrelets lay one egg on the limb of an old-growth conifer tree. Nesting occurs over an extended period from mid-April to late September (Carter and Sealy 1987). Incubation lasts about 30 days and fledging takes another 28 days (Hirsch *et al.* 1981, Simons 1980). Both sexes incubate the egg in alternating 24-hour shifts (Simons 1980, Singer *et al.* 1991). Flights by adults are made from ocean feeding areas to inland nest sites most often at dusk and dawn (Hamer and Cummins 1991). The adults feed the chick at least once per day, carrying one fish at a time (Carter and Sealy 1987; Hamer and Cummins 1991; Singer *et al.* 1992; Nelson, OR Coop. Wildl. Res. Unit, pers. comm., 1992). The young are altricial, and remain in the nest longer than young of most other alcids. Before leaving the nest, the young molt into a distinctive juvenile plumage. Fledglings appear to fly directly from the nest to the sea, rather than exploring the forest environment first (Hamer and Cummins 1991).

In California, Oregon, and Washington marbled murrelets use older forest stands near the coastline for nesting. These forests are generally characterized by large trees (> 80 centimeters (32 inches) dbh), multi-storied stand, and a moderate to high canopy closure. In certain parts of the range, marbled murrelets are also known to use mature forests with an old-growth component. Trees must have large branches or deformities for nest platforms (Binford *et al.* 1975; Carter and Sealy 1987; Hamer and Cummins 1990, 1991; Singer *et al.* 1991, 1992; Nelson, *in litt.*, 1991). Marbled murrelets tend to nest in the oldest trees in the stand.

Twenty-three tree nests have been located in North America; five in Washington, seven in Oregon, four in California, two in British Columbia, and five in Alaska (Binford *et al.* 1975; Quinlan and Hughes 1990; Hamer and Cummins 1990, 1991; Kuletz 1991; Singer *et al.* 1991, 1992; Nelson *et al.*, unpubl. data). All 16 of the nests found in Washington, Oregon, and California were located in old-growth trees that ranged in diameter at breast height (dbh) from 88 centimeters (35 inches) to 533 centimeters (210 inches) with a mean of 203 centimeters (80 inches). Nests were located high above ground and usually had good overhead protection; such locations would allow easy access to the exterior of the forest. Nest sites were located in stands dominated by Douglas-fir (*Pseudotsuga menziesii*) in Oregon and Washington, and in old-growth redwood (*Sequoia sempervirens*) stands in California. Nests were mostly placed in older Douglas-fir trees within these stands.

It is difficult to locate individual nests for a species that may only show activity near its nest one time per day, and may do so under low light conditions. Therefore, occupied sites or suitable habitat become the most important parameters to consider when evaluating its status. Active nests, egg shell fragments or young found on the forest floor, birds seen flying through the forest beneath the canopy, birds seen landing, or birds heard calling from a stationary perch are all strong indicators of occupied habitat. Biologists have documented 154 occupied sites in the Oregon Coast Ranges, all in old-growth forests or mature forest stands with an old-growth component.

Marbled murrelets more commonly occupy old-growth forests compared to mixed-age and young forests in California, Oregon, and Washington. In California, the species is restricted to old-growth redwood forests in Del Norte, Humboldt, San Mateo, and Santa Cruz Counties (Paton and Ralph 1988). In surveys of mature and second-growth forests of California, marbled murrelets were only found in these forests where there was nearby old-growth, or where residual older trees remained; murrelets were absent from 80 percent of the second-growth forests examined (Ralph *et al.* 1990). In northwest Washington, marbled murrelets are mostly found at old-growth/mature sites (Hamer and Cummins 1990). In Oregon, marbled murrelets occupy stands dominated by larger trees (averaging greater than or equal to 82 centimeters (32 inches) dbh) more often (statistically significant) than those dominated by smaller trees (Nelson 1990).

Stand size is also an important factor for marbled murrelets. These birds more commonly occupy larger stands (greater than 202 hectares (500 acres)) than smaller stands (less than 40 hectares (100 acres)) in California; marbled murrelets are usually absent from stands less than 24 hectares (60 acres) in size (Paton and Ralph 1988, Ralph *et al.* 1990). Marbled murrelets generally do not occur in isolated stands of coastal old-growth forest in California (CDFG, *in litt.*, 1992). In Washington, marbled murrelets are found more often when the percent of available old-growth/mature forests makes up over 30 percent of the landscape. Similarly, fewer murrelets are found when clearcut/meadow areas make up more than 25 percent of the landscape (Hamer and Cummins 1990). Nelson (1990) found that a statistically significant lower number of detections were noted in the highly fragmented Oregon Coast Range, compared to detection rates documented by Paton and Ralph (1988) in a less fragmented area in northern California.

Concentrations of marbled murrelets offshore are almost always adjacent to older forests on-shore. Nelson (1990) and Ralph *et al.* (1990) found marbled murrelets were absent offshore where on-shore older forests were absent. Large geographic gaps in offshore marbled murrelet numbers occur in areas such as that between central and northern California (a distance of 480 kilometers (300 miles)), and between Tillamook County, Oregon, and the Olympic Peninsula (a distance of about 190 kilometers (120 miles)), where nearly all older forest has been removed near the coast. Small rafts of marbled murrelets may be found associated with remaining insolated stands of older forests (e.g., the Nemah site). Historically, records for California indicate that marbled murrelets were found "regularly" and were "plentiful" along the coast from Monterey County north to the Oregon border (Grinnell and Miller 1944; Paton and Ralph 1988). Historical records of marbled murrelets also showed significant numbers during the nesting season near the mouth of the Columbia River in Clatsop County, Oregon. Marbled murrelets are rarely found in this area, where extensive harvesting of older forests has also occurred (Nelson *et al.*, in press).

Population size for marbled murrelets is most accurately estimated by counting the numbers of birds observed in the marine environment. Washington's breeding population is estimated to be a maximum of 5,000 birds (Speich *et al.*, in press). The current population estimates for Oregon and California are fewer than 1,000 pairs (Nelson *et al.*, in press), and about 2,000 birds (Carter *et al.* 1990), respectively. By extrapolating from known population numbers in relation to the remaining available nesting habitat, it has been estimated that 60,000 marbled murrelets may have been found historically along the coast of California (Larsen 1991).

The principal factor affecting the marbled murrelet in the three-state area, and the main cause of population decline has been the loss of older forests and associated nest sites. Older forests have declined throughout the range of the marbled murrelet as a result of commercial timber harvest, with additional losses from natural causes such as fire and windthrow. Most suitable nesting habitat (old-growth and mature forests) on private lands within the range of the subspecies in Washington, Oregon, and California has been eliminated by timber harvest (Green 1985; Norse 1988; Thomas *et al.* 1990). Remaining tracts of potentially suitable habitat on private lands throughout the range are subject to continuing timber harvest operations (see Factor A). Mortality associated with oil spills and gill-net fisheries (in Washington) are lesser threats adversely affecting the marbled murrelet.

Distinct Population Segment

The Act defines "species" to include any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532 (6)). As discussed under Factor D in the Summary of Factors Affecting the Species section of this rule, existing legal mechanisms are not adequate to protect the marbled murrelet in California, Oregon, and Washington. The three states encompass roughly one-third of the geographic area occupied by this subspecies, comprising a significant portion of its range. The amount of nesting habitat has undergone a tremendous decline since the late 1800s (most of which has taken place during the last 20 to 30 years), especially in the coastal areas of all three states.

At the time of proposing to list the marbled murrelet in Washington, Oregon, and California, the Service considered the murrelets in these States to constitute a distinct population segment comprising a significant portion of the eastern Pacific subspecies of the marbled murrelet. While the Service continues to believe that existing legal protection is not adequate to ensure survival of murrelets in the three-state area, some question remains whether the population listed in this rule qualifies for protection under the Act's definition of "species."

Compliance with a court order required a final decision on listing to be made at this time. Based on the information now available to the Service, the only supportable decision that can be reached within the limit imposed by the court is to list the population as proposed. Nevertheless, the Service intends to reexamine the basis of recognizing this population of murrelets as a "species" under the Act. Within 90 days, the Service will announce the results of this examination and at that time may propose a regulatory change that would alter the listing of the murrelet as a threatened species.

Previous Federal Actions

The National Audubon Society submitted a petition to the Service on January 15, 1988, the list the Washington, Oregon, California population of the marbled murrelet as a threatened species. Section 4(b)(3)(A) of the Act requires that, to the maximum extent practicable, within 90 days of receipt of a petition to list, delist, or reclassify a species, a finding be made as to whether substantial information has been presented indicating that the requested action may be warranted. The 90-day finding stating that the petition had presented substantial information to indicate that the requested action may be warranted was published in the **Federal Register** on October 17, 1988 (53 FR 40479). Because of the increased research efforts and the amount of new data available, the status review period was reopened, with the concurrence of the petitioners, from March 5, 1990 through May 31, 1990 (55 FR 4913).

The marbled murrelet has been included in the Service's Notice of Review for vertebrate wildlife as a category 2 candidate species for listing since 1989 (54 FR 554). A category 2 candidate is one for which information contained in Service files indicates that preparation of a proposal to list the species is possibly appropriate but additional data is needed to support a listing proposal. The best available scientific and commercial data were analyzed and evaluated as a result of the status review mentioned above. The review included the pertinent data available from both published and unpublished sources. Unpublished sources included solicited progress and final reports, file data, meeting notes, letters, and personal contact with agencies, organizations, and individuals. These data elevated the marbled murrelet to category 1 candidate status and contributed to the information on which the decision to propose this species for listing was based. A category 1 candidate is one for which the Service has sufficient data in its possession to support a listing proposal. On June 20, 1991, the Service published a proposal to list the marbled murrelet as a threatened species in Washington, Oregon, and California (56 FR 28362). This proposed rule constituted the 12-month finding that the petitioned action was warranted, in accordance with section 4(b)(3)(B) of the Act.

On January 30, 1992, the Service published a notice in the **Federal Register** (57 FR 3804) that reopened the comment period on the proposed listing for 30 days. This action was taken to gather the most updated information on the marbled murrelet. Having considered all the information presented during the comment periods, the Service now determines the marbled murrelet in Washington, Oregon, and California to be a threatened species.

Summary of Comments and Recommendations

In the June 20, 1991, proposed rule (56 FR 28362) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final decision. The comment period originally closed September 18, 1991. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. No requests for public hearings were received. On January 30, 1992, the Service published in the **Federal Register** (57 FR 3804) a notice that reopened the comment period for 30 days to solicit additional biological information on the status of the marbled murrelet.

During the comment periods, totaling 120 days, 52 letters on the proposal were received. Five additional comments were received shortly after the official comment period closing dates. Of the 57 comments received, 30 (53 percent) supported the proposal, 8 (14 percent) opposed the proposal, and 19 (33 percent) were neutral. Opposing comments were received from various companies and organizations that are directly or indirectly related to the timber industry, and from individuals who rely on a timber-supported economy. The California Department of Fish and Game (CDFG) and Oregon Department of Fish and Wildlife (ODFW) submitted biological information on the status of the marbled murrelet and supported Federal listing. The Washington Department of Wildlife submitted biological information, but did not state a position on the proposed listing. The Forest Service, Bureau of Land Management (Bureau), and U.S. Department of the Navy presented biological information on the murrelet but did not state positions on the proposed Federal listing. Some of the

commenters submitted additional data that has been incorporated into this rule.

Written comments obtained during the comment periods are combined in the following discussion. Opposing comments and other comments questioning the rule can be placed in a number of general groups, organized around specific issues. These categories of comment, and the Service's response to each are listed below.

Issue 1. Current Regulatory Mechanisms

Comment: Some commenters disagreed with the conclusion that adequate regulatory protection does not exist for the marbled murrelet in California. They stated that the majority of known marbled murrelet habitat in California is located in State or National Parks that is protected from timber harvesting. In addition, the small but significant amount of murrelet habitat found on private timberlands in California is adequately protected through the evaluation and review process conducted by the California Board of Forestry (Board). California environmental statutes provide sufficient protection for the bird in that state.

Another commenter stated that the Service failed to assess the degree to which current regulatory mechanisms will maintain a viable sub-population of marbled murrelets and that land allocations and projected forest conditions described in the Final Forest Service Land Management Plans (Forest Plans) were not analyzed. Through wilderness, critical habitat for the northern spotted owl (*Strix occidentalis caurina*), and other non-timber harvest "set asides," final Forest Plans in Oregon and Washington have left only 18 percent of the original land base that was primarily available for timber production.

Service Response: The Service considered all the existing applicable regulatory mechanisms that deal with timber harvest and marbled murrelets on private, State, and Federal lands in California, Oregon, and Washington. These issues are discussed in the Summary of Factors section, Factor D. The Service concludes that existing management plans pertaining to timber harvest and marbled murrelets are inadequate to ensure the survival of the species. The management direction for the northern spotted owl, in many cases, will not adequately provide for marbled murrelets (see Factor D). Furthermore, Forest Plans are flexible and could be altered in the future, and thus protection afforded to marbled murrelets may be temporary.

Comment: The Siuslaw National Forest's Land and Resource Plan provided adequate protection for the marbled murrelet because the age class inventory of acres that marbled murrelets can utilize increases over time.

Service Response: The Siuslaw National Forest is highly fragmented at present; and it is only a small part of the marbled murrelet's range. The Siuslaw National Forest Plan (USDA 1990) estimates only 6 percent (13,680 hectares (33,800 acres)) of the forested land base remains as older forest. Of this total, 32 percent (4,330 hectares (10,700 acres)) is non-reserved. The Forest Plan estimates that 1,200 hectares (3,000 acres) of the non-reserved old-growth will be harvested during the next 10 years and the remaining within the next 50 years (p. III–3). The Service will continue to work with the Siuslaw National Forest to evaluate the value of the forest for marbled murrelets and encourage actions that are of benefit to the species.

Issue 2. Insufficiency of Scientific Data

Habitat Association

Comment: Several commenters thought that too few nests had been discovered to date to be able to make the assumption that nesting habitat consisted of old-growth and mature forests, and the small set of marbled murrelet nest sites did not provide substantive evidence (with a statistically valid sample size) that the marbled murrelet prefers late stage vegetation in the Pacific States.

Service Response: The Act requires the Service to base its decision upon the best scientific information available. As discussed in the Background section of this rule, nests sites comprise a small part of the information the Service has used to determine habitat preferences and use. A larger sample size of nests would be helpful in providing a more detailed description of nesting habitat and nest site selection. Surveys have been conducted in forests of all age classes; and marbled murrelets do not occupy stands lacking old-growth characteristics. Furthermore, 8 of 10 downy young and 20 of 31 fledglings from throughout the range were located in old-growth coniferous forests, with the remainder being adjacent or near to old-growth forests (Carter and Sealy 1987). Since the publication of the proposed rule, the number of known nests has more than doubled; all nests have been in old-growth trees.

Comment: One commenter stated that surveys in forests in California, Oregon, and Washington suggest, but do not verify, that marbled murrelets require larger areas of old-growth or mature forests for nesting. Also, statements indicating that fragmentation has a negative impact on nesting are not backed by sufficient scientific data.

Service Response: The Service's conclusions regarding the murrelet's preference for old growth, and vulnerability, are based upon numerous studies comparing the findings of marbled murrelets in various stand age classes, sizes, and structure. All studies show a strong affinity/dependence on larger older forest stands. A statistically significant higher rate of marbled murrelet detections has been observed in old-growth forests compared to mixed-age and young forests in California, Oregon, and Washington.

In a few instances murrelets have been found in mature stands, but always in close association with residual older trees. These stands had recovered naturally following a natural disaster. The structural characteristics of the surrounding stand, size and configuration of the timber stand, existing condition of adjacent timber stands, distance to and abundance of a prey source, and density of and vulnerability to predators are all very likely important aspects of marbled murrelet nesting habitat. The marbled murrelet's semi-colonial social structure may dictate some nest site characteristics as well.

Comment: Some commenters stated that attempts to correlate general observations of marbled murrelets along coastlines or bodies of water with adjacent mainland old-growth must not be misconstrued as a cause-and-effect relationship. These aggregations could be the resultant effect of historical groupings, prey base availability, or coastline features such as estuarine environments or topographical features that offer protection from prevailing winds, rather than necessarily being "old growth" driven. Furthermore, the conclusion that widespread timber harvesting may have caused dramatic declines in marbled murrelet populations cannot be considered unequivocal because past populations may have been limited by food availability and/or winter mortality rather than availability of nesting habitat. In addition since we do not know how breeding marbled murrelets were distributed over the forest landscape historically, we cannot know if they are different today.

Service Response: The Service determines species to be endangered or threatened using the best scientific information as the basis for such decisions. The Service agrees that prey

availability probably influences the offshore distribution of marbled murrelets; however, murrelets are absent from some areas where prey species are abundant. Therefore, the absence of marbled murrelets offshore from most areas where older forests have been extensively depleted strongly suggests that offshore abundance of marbled murrelets is correlated with adjacent mainland mature and old-growth forests, particularly given historical accounts of birds located in these areas prior to extensive logging. As discussed in the Background section of this rule, current research has shown that marbled murrelets are strongly associated with older forest habitat.

Comment: Although the density of nesting pairs may be low in managed forests, the vast acreage involved possible could include a considerable number of marbled murrelets.

Service Response: As discussed in the Background section of this rule, current research has shown that marbled murrelets are strongly associated with older forest habitat. Second-growth forests lack marbled murrelets except in those rare instances where residual old-growth trees remain.

Comment: One commenter stated that although the conclusion that marbled murrelets are linked to old-growth and mature forests for nesting is supported by field observations, it is unknown if the forest as a whole promotes successful nesting or if structural conditions found within such forests determine use of forests. Two examples suggested that required nesting structures may not necessarily include extensive old-growth or mature forest. One such example was the area along the Nemah River near Willapa Bay, Washington. Although it is not known conclusively if marbled murrelets nest in the area, birds are consistently observed there during the nesting season. The commenter stated that this area was selectively harvested about 50 years ago, and now consists largely of remnant old-growth trees (Sitka spruce, 366 centimeters (144 inches) dbh; western red cedar, 427 centimeters (168 inches) dbh; in a forest area now largely composed of about 60 year-old trees. A second example presented was the Brandy Bar study area reported by Varoujean *et al.* (1989) from coastal Oregon; however, no descriptive information was provided for this site.

Service Response: The Service obtained information on the Nemah River site, an isolated stand in southwest Washington, from Washington Department of Wildlife personnel who have been conducting surveys for marbled murrelets in the area (Hamer, Wash. Dept. Wildl., pers. comm., 1992). The Nemah site is an unmanaged stand that naturally regenerated after fire and windthrow. The majority of trees in the stand are approximately 70 years old and grew back naturally after severe windstorms that occurred during 1921. Remnant old-growth trees are scattered throughout the stand. Although no nests have been discovered to date, high numbers of detections indicate occupancy. The Brandy Bar site in coastal Oregon is also a naturally regenerated stand. The majority of trees in the stand, which are approximately 80 years old, grew back naturally after fire. Similar to the Nemah stand, large remnant old-growth trees are scattered throughout the site. These observations are consistent with the information on habitat preference presented in the Background section of this rule.

Life History Information

Comment: Some commenters questioned life history parameters presented and indicated that a sample size of so few nests was insufficient to draw such conclusions. Such issues included the number of eggs laid per nest and the semi-colonial behavior of the bird.

Service Response: The Service has continued to collect information on the marbled murrelet in the three-state area. We have information from twice as many nests as were known at the time of the proposal. New observations continue to indicate that marbled murrelets lay one egg per nest and are semi-colonial in nesting areas. None of the commenters provided data or observations that refuted statements regarding the life history strategy of marbled murrelets.

Population Estimates and Trends

Comment: One commenter stated that the Service should clearly define the threshold, such as population level, for a species such as the marbled murrelet to be delineated as threatened. Without supplying a minimum population threshold level it considers viable, the Service has no way to determine that sufficient habitat is not available.

Service Response: The Act does not establish such thresholds, nor does it require the Service to set thresholds. The Service has information indicating that the marbled murrelet population has undergone a decline, and that the primary cause of that decline, loss of nesting habitat, is likely to continue. Lesser threats of oil spills, gill-net fisheries, and predation also contribute to the decline and are likely to continue.

Comment: One commenter stated that surveys that have occurred were concentrated in older forests, thereby biasing the data in favor of the dependence of marbled murrelets on older forests. The commenter stated that population trends cannot be established using such data. The Service assumed that populations have declined but lacks demographic studies upon which to verify this trend. The Service lacks historical population data to compare to current population levels.

Service Response: Many studies have surveyed a variety of forest age classes to avoid any survey bias towards older forests. The anecdotal historical information suggests a precipitous decline in total numbers (from an estimated 60,000 birds in California to 9,000 for the three-state area). Although demographic information could contribute to our understanding of the decline, it is not needed to validate the trend.

Issue 3. Decision is Political, Not Biological

Comment: One commenter stated that the decision process was being driven by politics and threatened legal pressure from the Sierra Club, National Wildlife Federation, etc. and was not based on facts.

Service Response: The Service bases its decisions on the listing of species solely upon biological information, as required by the Act.

Issue 4. Critical Habitat

Comment: One commenter asked why, if old-growth and mature forests are critical for the viability of the marbled murrelet, didn't the Service list all old-growth and mature forests within the range of the species as critical habitat according to section 4(a)(3) of the Act during the rule development. Another commenter stated that due to the strong commitment of the private timberland owners in California, the vast quantity of public land presently being managed for the murrelet, and the legally protected status of the species in California, they did not feel it was necessary or prudent to designate critical habitat in California. Several commenters urged designating critical habitat for the marbled murrelet at the time of listing.

Service Response: During the comment periods on the proposed listing, the Service sought additional agency and public input on critical habitat, along with information on biological status and threats to the species. The Service must also take into consideration the economic impacts of

specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)). The Service will continue to analyze information and will propose critical habitat to the maximum extent prudent and determinable, within the timeframes specified in the Act. The Service's process in determining critical habitat for the marbled murrelet is discussed in more detail in the Critical Habitat section of this rule.

Issue 5. Alternate Listing Status Recommended

Comment: ODFW recommended that it may be more appropriate to list the marbled murrelet as endangered in California and Oregon and threatened in Washington.

Service Response: After a thorough status review, the Service proposed threatened status for the population. Although the status of the murrelet is not uniform throughout its range in Washington, Oregon, and California, the overall picture presented is one of a threatened species. Recovery planning will consider the status of the marbled murrelet within the individual states and smaller sub-regions.

Comment: One commenter suggested that the species should be considered for listing as threatened in Alaska as well. They presented data on logging practices in southeast Alaska, in particular, on the Tongass National Forest. They also expressed concern for the marbled murrelet population in Prince William Sound that experienced high losses as a result of the Exxon Valdez oil spill and is also subject to pressures from logging of adjacent private old-growth forests. They suggested that the marbled murrelet should be listed as threatened in Alaska until it could be demonstrated conclusively that planning for logging (including accurate forest inventories), had fail-safe provisions to assure that marbled murrelet nesting habitat would not be significantly diminished.

Service Response: This rule presents the final determination that the proposal (56 FR 28362) to list the marbled murrelet in Washington, Oregon, and California as a threatened species is warranted. Alaska was not included in the proposed rule; therefore, it cannot be included in this final rule for listing. The Service will continue to evaluate the status of the marbled murrelet and its habitat in Alaska.

Issue 6. National Environmental Policy Act

Comment: One commenter stated that the Service should prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), on this rule. A decision to list the marbled murrelet is a major Federal action significantly affecting the quality of the human environment that must be accompanied by an EIS under NEPA.

Service Response: The Service has determined that preparation of an EIS is not required in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended (see National Environmental Policy Act section of this rule). The Service's reasons for this determination were published in the **Federal Register** (see 48 FR 49244).

Issue 7: Distinct Population Segment

Comment: The Service failed to explain how it determined the marbled murrelet in California, Oregon, and Washington to be a "distinct population segment". The commenter questioned the significance of the area selected.

Service Response: This issue is discussed in the Distinct Population Segment section of this rule. In summary, no comments were received indicating that the marbled murrelet in Washington, Oregon, and California is more widespread, more common, or under lesser threats than indicated by previous analyses.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Washington, Oregon, and California population of the marbled murrelet should be classified as a threatened species. Procedures found in section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Washington, Oregon, and California population of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Current estimates of 1.4 million hectares (3.4 million acres) of old-growth forest throughout western Oregon and Washington represent a reduction of approximately 82.5 percent from prelogging levels (Booth 1991). Old-growth forests in the Douglas-fir/mixed conifer region of northwestern California have undergone a reduction of about 45 to 80 percent since the mid-1800's (Laudenslayer 1985, California Department of Forestry and Fire Protection 1988). Estimates of the amount of reduction of coastal old-growth redwood forests in California (all formerly marbled murrelet habitat) range from approximately 85 to 96 percent (Green 1985, Fox 1988, Larsen 1991). The marbled murrelet occurs along the coastline, occupying only a small fraction of area that was formerly dominated by older forests, and a small fraction of the area that still contains older forests.

In addition, reduction of the remaining older forest has not been evenly distributed over western Oregon, Washington, and northwestern California. Harvest has been concentrated at the lower elevations and within the Coast Ranges (Thomas *et al.* 1990), generally corresponding with the range of the marbled murrelet. Reduction of these older forests is largely attributable to timber harvesting and land conversion practices, although natural perturbations, such as forest fires and windthrow, have caused considerable losses as well.

The geographic distribution of the marbled murrelet along the west coast of North America is discontinuous. The gap in the present distribution in the southern portion of the range in California was apparently the result of extensive clearcutting of forests in the earlier half of this century that eliminated most nesting habitat (Paton and Ralph 1988, Carter and Erickson 1988). Other local breeding populations, especially between the Olympic Peninsula in Washington and Tillamook County in Oregon, were very likely eliminated through loss of their nesting habitat (Nelson, pers. comm., 1991).

Some of the old-growth areas that have been lost through natural perturbations such as forest fire and windthrow still provide habitat suitable for marbled murrelets. Mature forests, naturally regenerated from such perturbations, that retain scattered old-growth trees and a diversity of structure are sometimes occupied and used for nesting, but less commonly than large stands of old growth forests. That is particularly true in coastal Oregon where there has been extensive fire history. No occupied sites have been located in young stands or clear-cuts, or young/mature mixed forests that lack remnant old-growth trees (Nelson, pers. comm., 1992). Mature second-growth does not support breeding when it occurs isolated from older forest or residual (fragmented) older forest stands (Larsen 1991).

Forests generally require approximately 200 years to develop old-growth characteristics. The older trees within these stands have large horizontal limbs used by nesting murrelets. However, forests in Washington, Oregon, and northern California have been subjected to, and are proposed for, intensive management with average cutting rotations of 70 to 120 years to produce wood at a non-declining rate (USDI 1984, USDA 1988). Cutting rotations of 40 to 50 years are used for some private lands. Current preferred timber harvest strategies on Federal lands and some private lands emphasize dispersed clearcut patches for even-aged management as the pattern of harvest. Although recently both the Forest Service and the Bureau announced that their respective agencies intend to de-emphasize clearcutting in their future timber sale planning efforts, alternate methods of timber harvest vary greatly in terms of how they will modify marbled murrelet habitat. For example, timber harvest methods such as the shelterwood and seed tree methods, in addition to "new forestry" techniques, remove a varying amount of trees from a particular area. Although the remaining trees and habitat components left by these alternate harvest methods may help decrease the amount of time it would take an area to again become suitable habitat for marbled murrelets, the harvest methods would not provide suitable habitat over the short-term. Thus, public forest lands that are intensively managed for timber production (cutting rotations of 70 to 120 years) are, in general, not allowed to develop old-growth characteristics. As a result of this short rotation age and the continued harvest of old-growth and mature forests, loss and fragmentation of remaining suitable nesting habitat for marbled murrelets will continue throughout the forested range of the subspecies under current management practices, except in reserved areas.

Most remaining nesting habitat within the petitioned states is on Federal and State owned lands, as most nesting habitat on private lands has been eliminated. Under current forest management practices, logging of the remaining older forests is likely to continue, except in areas with mandated protection. In Oregon, 8 of 154 forest stands in which marbled murrelets are found, have been eliminated or greatly modified by logging practices. Additionally, 10 or more stands with occupied sites are likely to be modified or eliminated due to timber harvest in 1992 (Nelson, *in litt.*, 1992).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Not known to be applicable.

C. Disease or Predation

Predation is an additional threat to the continued existence of the marbled murrelet. Of the 23 tree nests located, 8 were successful, 13 failed (10 from predation, 2 from human interference, and 1 from edge effects (wind blew the chick out of the nest)), and the status of the remaining 2 was indeterminable (Nelson, *in litt.*, 1992). Great horned owls (*Bubo virginianus*), Stellar's jays (*Cyanocitta stelleri*), common ravens (*Corvus corax*), peregrine falcons (*Falco peregrinus*), and sharp-shinned hawks (*Accipiter striatus*) are known predators. Additional suspected predators include gray jays (*Perisoreus canadensis*) and common crows (*Corvus brachyrhynchos*). Predation at 10 of 23 (43 percent) nests is high and could have a substantial effect on the viability of this species. There is a substantial amount of information on the effects of forest fragmentation on depredation of bird nests by corvids (jays, ravens, crows). Corvid predation on nests (eggs and chicks) increases with the fragmentation of older-aged forests (Yahner and Scott 1988), and avian nesting success is lower in small forest fragments than larger intact forests because of predation and decreased fecundity (Ambuel and Temple 1983, Andren *et al.* 1985, Wilcove 1985, Temple and Cary 1988).

D. Inadequacy of Existing Regulatory Mechanisms

Marbled murrelets are protected from "take" by the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*). The marbled murrelet is identified as Sensitive by the Forest Service and the Bureau. The States of California, Oregon, and Washington have legislative mandates and acts specific to listing and protecting species determined to be endangered or threatened.

The marbled murrelet was listed as endangered within the State of California by the CDFG. Under provisions of the California Endangered Species Act, the California Department of Forestry (CDF) must consult with CDFG if a proposed timber harvest plan for private or State lands has the potential to adversely affect the marbled murrelet or its habitat. However, most of the marbled murrelet habitat in California is Federally controlled (National Parks and Forest Service) and does not fall under the protection of the State Act. In addition, the State Act does not require that a recovery plan be developed, in contrast to a federally listed threatened or endangered species. The CDF, responsible for regulating the harvest of commercial timber from private and State timberlands in California, adopted emergency rules to protect the marbled murrelet that became effective on June 28, 1991. These emergency rules required surveys for marbled murrelets in potential habitat and required feasible mitigation to reduce or avoid a significant adverse impact on the species in known activity areas. These emergency rules expired on March 2, 1992. Proposed permanent rules promote consistency and conformity with the State Act which prohibits "take" of an endangered species. The specific protections under the State Act extended to habitat protection for the marbled murrelet are unclear at this time.

In Oregon, the marbled murrelet is classified as Sensitive by the ODFW, which provides no mandated protection. The Oregon Board of Forestry is currently reviewing a proposal, submitted by the Portland Audubon Society in late November 1991, to list the marbled murrelet as a species that uses sensitive nesting sites. Until final rules are adopted, timber harvests within known marbled murrelet sites on State-owned forest land are being examined on a case-by-case basis. Although affording some protection to known occupied sites, the proposed rules would not require surveys in potential marbled murrelet habitat prior to conducting activities that could impact the habitat.

In Washington, the marbled murrelet is also listed as Sensitive by the WDW. Under its State Forest Practices Act, the Washington Department of Natural Resources (WDNR) is responsible for regulating harvesting of commercial timber from private and State DNR managed timberlands in Washington. The WDW does provide management recommendations to WDNR on proposed harvests within known marbled murrelet areas; however, WDNR has no rules that provide legally mandated protection for the marbled murrelet.

The National Forest Management Act of 1976 and its implementing regulations require the Forest Service to manage National Forests to provide sufficient habitat to maintain viable populations of native vertebrate species, such as the marbled murrelet. These regulations define a viable population as one which "* * * has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well

distributed in the planning area" (36 CFR 219.19).

A system of Habitat Conservation Areas (HCAs) was developed as part of a conservation strategy for the northern spotted owl (Thomas *et al.* 1990). These areas have been recommended as "no harvest" areas. Currently neither the Forest Service nor the Bureau are harvesting timber in these areas. However, neither agency has made a final decision on the long term management of these areas. Some portions of these HCAs occur within the range of the marbled murrelet in all three states. The HCA's were designed to support a pair target of northern spotted owls in the future, and may not currently support sufficient habitat for the target number of owls.

These HCAs were modified to produce the Designated Conservation Areas (DCAs) in the draft recovery plan for the northern spotted owl. The DCA lines are only recommendations. Final decisions on HCA or DCA lines will be determined by the individual agency's land management planning process.

Category 4 HCAs are a maximum of 32 hectares (80 acres) in size, and may not be large enough to support reproductively successful marbled murrelets. In addition, sites on the edge of protected areas may experience the adverse effects of forest fragmentation.

On January 15, 1992, the Service finalized designation of 2.8 million hectares (6.88 million acres) as critical habitat for the northern spotted owl in Washington, Oregon, and California (57 FR 1796). These critical habitat areas include most of the HCAs and add areas around and between them. Acres in spotted owl critical habitat, in addition to HCAs and other protected land allocations, equal approximately 78 percent of the suitable marbled murrelet habitat managed by the Forest Service on the Mount Baker-Snoqualmie, Olympic, Siuslaw, and Siskiyou National Forests (Gunderson, Forest Service, pers. comm., 1992), examining areas up to 80 kilometers (50 miles) inland.

In Washington, Oregon, and California, the HCAs, plus other protected areas (primarily managed for northern spotted owls), encompass approximately 67 percent of the suitable marbled murrelet habitat managed by the Forest Service (Gunderson, pers. comm., 1992). However, about 29 percent of the known occupied sites within the four Forests are located within Forest Plan allocations where timber harvest will occur. These estimates used 50 miles inland as the boundary of marbled murrelet occurrence; however, in the northern Washington Cascades on the Mount Baker-Snoqualmie National Forest, over 90 percent of all inland observations have been within 60 kilometers (37 miles) of the coast (Hamer and Cummins 1991). In Oregon, the majority of detections and number of marbled murrelets occur within 40 kilometers (25 miles) of the coast (Nelson, pers. comm.). The Service concludes that although the marbled murrelet will be afforded some amount of incidental protection through the management of HCAs for the northern spotted owl, this protection is not adequate.

Although these critical habitat areas and other designations for the northern spotted owl may provide some incidental protection for the marbled murrelet, such areas do not provide adequate protection for marbled murrelets. For example, critical habitat designation for the owl does not necessarily preclude timber harvest or other project activities from occurring within critical habitat boundaries. Northern spotted owls use various age classes and structures of forest habitat, and critical habitat boundaries encompass all types of habitat used by spotted owls. Spotted owls use forests for nesting, roosting, foraging, and dispersal. Although nesting habitat for spotted owls and marbled murrelets may be somewhat similar, spotted owls can use younger stands for activities such as foraging and dispersal. Marbled murrelets use older forests solely for nesting purposes. Roosting and foraging take place in the marine environment. Federal agencies are required to consult with the Service on any actions they authorize, fund, or carry out that may affect spotted owl critical habitat. Habitat requirements and impacts specific to marbled murrelets are not addressed during consultation on spotted owl critical habitat. The results of such consultations may provide for owl dispersal or foraging habitat, or other forest structures that are not used by marbled murrelets. Moreover, spotted owls may be more adaptable in their nest site selection than are marbled murrelets. For example, in approximately 7 percent of the range of the northern spotted owl (i.e., northern California), owls use comparatively young second-growth redwood forests, whereas marbled murrelets do not (probably because redwoods do not provide the large horizontal limbs needed by marbled murrelets for nesting). Spotted owls use some second-growth forests where inefficient logging practices left remnant patches of older trees. Marbled murrelets are known to use some second-growth forests that recovered following natural disasters, but only where residual old-growth trees remained. Forests may recover more rapidly from natural disasters (e.g., windthrow, fire) because fallen trees decay and nutrients are returned to the soil, and more older trees may be spared.

In California, only about 28,300 hectares (70,000 acres) (3.5 percent) of the original old-growth coastal coniferous forest remains (Larsen 1991). Of these remaining hectares, 24,300 (60,000 acres) are in State or Federal parks, where logging is precluded. The remaining 4,000 hectares (10,000 acres) are under private ownership as commercial timberland and are eligible for harvest. Marbled murrelets would not be adequately preserved by depending solely on remaining old-growth coastal coniferous forest maintained on parkland (Larsen 1991). In a park situation where human food and garbage are readily available, the population levels of corvids are unnaturally high and may lead to increased nest predation. Tree cutting and the removal of large horizontal branches and snags through safety pruning operations in picnic areas and campgrounds may also adversely affect the marbled murrelet (Singer, *in litt.*, 1991).

E. Other Natural or Man-made Factors Affecting its Continued Existence

Mortality from gill-net fishing and oil spills has had a negative impact on the marbled murrelet. Although California and Oregon no longer allow gill-net operations, gill-net fishing is an annual occurrence in Washington. For example, about 1,200 gill-net licenses are issued each year in Washington (Marshall 1988). Gill-net fisheries occur in areas of marbled murrelet concentrations in Washington, but the mortality rate is unknown. One study conducted in British Columbia along Vancouver Island documented gill-netting as responsible for killing approximately 8 percent of the potential fall population of marbled murrelets (Carter and Sealy 1984). In a 1990 study of incidental take in the Prince William Sound salmon gill-net fishery, marbled murrelets were the most frequently caught seabird (Kuletz 1992). By extrapolation, an estimated 1,200 (95 percent CI–702–1,764) murrelets, or 1.4 percent of the Prince William Sound population, were taken. These studies suggest that the gill-net fishery in Washington may negatively affect marbled murrelet numbers there.

Marbled murrelets have a high susceptibility to mortality from oil spills because they tend to spend most of their time swimming on the sea surface and

feeding in local concentrations close to shore. In a paper presented at the 1975 Symposium on Conservation of Marine Birds of North America, the marbled murrelet was given one of the highest oil spill vulnerability ratings of any Northeast Pacific seabird (King and Sanger 1979). Oil spills are chance events but, depending on the location, extent, and season of spill, could have significant adverse effects on local or regional populations of marbled murrelets. The *Exxon Valdez* oil spill of 1989 occurred in Prince William Sound, Alaska, and adversely affected local populations of marbled murrelets (Piatt *et al.* 1990). The number of carcasses recovered after the spill was from 612 to 642. Identified *Brachyramphus* murrelets, most of which were probably marbled murrelets, represented 11.6 percent of the Prince William Sound carcasses recovered. At the time of the spill, marbled murrelets were estimated to be 6.3 percent of the seabirds present in Prince William Sound and, thus, proportionally more murrelets were killed than were at risk (Piatt *et al.* 1990, Kuletz 1992). For the three-state area of this proposed rule, Puget Sound in Washington is a special concern.

Marbled murrelets are found both during the nesting season and during winter within areas affected by oil shipments. If approved, proposed oil exploration, possibly leading to production and increased movement of oil along the near-shore marine environment in Washington, Oregon, and California would increase the degree of threat from oil spills. Oiled marbled murrelets have been reported in several Washington oil spills, including the *Seagate* oil spill of 1956, the *Arco Anchorage* oil spill of 1985, the *Nestucca* oil spill of 1988, and the *Teenyo Maru* oil spill of 1991 (Leschner and Cummins 1990; Momot, U.S. Fish and Wildl. Serv., pers. comm., 1992). Several instances of marbled murrelet mortality due to oil spills have been documented in California as well (Carter and Erickson 1988, Carter *et al.* 1990). Oil spills are random events that would adversely affect marbled murrelets in the local area of the spill. Because the populations in Oregon, Washington, and California are small and locally concentrated, oil spills could result in local extirpations.

The marbled murrelet's reproductive strategy offers little opportunity for the population to rapidly increase in number. Murrelets probably do not reproduce every year, and pairs only lay one egg in a nest. Such a low reproductive rate would not yield a rapidly increasing population or one that can easily recover once numbers have been depleted.

The Service has carefully assessed the best scientific and commercial data available and concluded that the marbled murrelet in California, Oregon, and Washington is threatened due to loss of mature and old-growth forests that provide suitable nesting habitat. Secondary threats include gill-net fisheries in Washington, predation, and oil spills. The species' intrinsically low reproductive rate makes it unlikely that it will rapidly increase in number. The degree of threat facing the marbled murrelet does not suggest that extinction is imminent, but continued loss of nesting habitat throughout the forested portion of its range, indicates the species is likely to become endangered within the foreseeable future throughout a significant portion of its range. Under these circumstances, listing as threatened is appropriate.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat is defined as the specific areas within the geographical area currently occupied by a species on which are found the physical or biological features essential to the conservation of the species and that may require special management considerations or protection (16 U.S.C. 1532(5); 50 CFR 424.02(d)). Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)).

When prompt listing of a species is essential to its conservation, but sufficient information to perform required analyses of the impacts of a critical habitat designation is lacking, the Service may go forward with a final listing decision without designating critical habitat. A critical habitat determination, to the maximum extent prudent, must then be completed not later than 1 year after the listing. The Service is continuing to gather information to be used in these analyses, and to evaluate the benefits (if any) of designating critical habitat for this species.

The Service currently lacks sufficient information to perform required analyses of the impacts of a critical habitat designation for the marbled murrelet. The Service must evaluate several aspects of a critical habitat designation for the marbled murrelet. The marbled murrelet nests in older forests, but roosts and forages in the marine environment. The Service must determine whether or not designation of critical habitat in the marine environment is prudent. The Service must also carefully study all known occupied sites and other suitable areas, in order to determine which physical or biological features are in fact essential to the conservation of the murrelet. Ongoing studies will help refine the Service's knowledge of the marbled murrelet's association with timber stands of varying size and structure, and of the surrounding landscape conditions.

In addition, in order to analyze the economic impacts of a critical habitat designation, the Service must obtain information about the costs of such a designation over and above costs associated with listing. The Service must have information on the costs associated with a designation of critical habitat in the marine environment. Such information would include the possible increased costs associated with oil spill contingency plans, changing oil tanker routes, and a possible alteration of fishery practices. Such information will be gathered by coordinating with appropriate Federal agencies. The restrictions on timber harvest for a critical habitat designation for the marbled murrelet would be different from those associated with critical habitat for the northern spotted owl. The costs associated with timber harvest reductions in critical habitat for the murrelet would be different from those associated with critical habitat for the owl.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing

this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Regulations governing these consultations are found at 50 CFR 402.14.

The Forest Service and Bureau have active timber sale programs in Washington, Oregon, and California, whereby private timber companies bid for timber on Federal land. A substantial portion of these timber sales occur in older forests. The Forest Service and Bureau would review and assess the potential impacts of these timber sales on the murrelet, and would be required to consult with the Service on these sales to ensure compliance pursuant to section 7 of the Act. Other Federal agencies that are likely to have projects that may affect the marbled murrelet include the Bureau of Indian Affairs (timber harvest) and the Army Corps of Engineers (waste disposal and dredging/fill operations).

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States, to take (defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these activities), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any threatened species not covered by a special rule. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing threatened species permits are provided in 50 CFR 17.32. Unless otherwise provided by special rule, such permits are available for scientific purposes, to enhance the propagation or survival of the species, for economic hardship, zoological exhibition, educational purposes, special purposes consistent with the Act, and/or for incidental take in connection with otherwise lawful activities. Information on permits to take federally listed species may be obtained by writing to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104, FAX 703/358–2281)

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, U.S. Fish and Wildlife Service, Portland Field Office, 2600 S.E. 98th Avenue, suite 100, Portland, Oregon 97266.

Authors

The primary authors of this rule are Janet L. Stein and Gary S. Miller, U.S. Fish and Wildlife Service, Portland Field Office (see **ADDRESSES** section); telephone 503/231–6179.

List of Subjects in 50 CFR Part 17

Endangered and threatened Species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[Amended]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		
BIRDS							
*	*	*	*	*	*		
Murrelet, marbled	*Brachyramphus marmoratus marmoratus.*	U.S.A. (CA, OR, WA, AK); Canada (British Columbia).	WA, OR, CA	T	479	NA	NA
*	*	*	*	*	*		

Uated: September 17, 1992.

Jay L. Gerst,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–23804 Filed 9–28–92; 12:00 pm]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 935 and 940

[No. 92-727]

Advances

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Board) is proposing to amend its regulations to establish revised and new requirements governing secured loans (called advances) made by the Federal Home Loan Banks (Banks). The proposed rule modifies or renews existing regulations and implements provisions in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), which amended the Federal Home Loan Bank Act of 1932 (Act). The proposed rule also transfers the Board's Statements of Policy on advances from one regulatory part to another, as discussed in the **SUPPLEMENTARY INFORMATION:** Section.

DATES: Comments must be submitted in writing to the Board by November 30, 1992.

ADDRESSES: Written comments may be mailed to: Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Christine M. Freidel, Financial Analyst, (202) 408–2976; Thomas D. Sheehan, Assistant Director, District Banks Directorate, (202) 408–2870; James H. Gray, Jr., Associate General Counsel, (202) 408–2552; Sharon B. Like, Attorney-Advisor, (202) 408–2930; Charles J. Szlenker, Attorney-Advisor, (202) 408–2554, Office of Legal and External Affairs; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Home Loan Bank System (System) is comprised of 12 District Banks. Each Bank is federally chartered, wholly owned by its members and managed by a board of directors that sets policies pursuant to regulations and guidelines established by the Board. The Banks act as intermediaries in the capital markets, raising funds on favorable terms and passing the proceeds on to member institutions in the form of advances. Advances are required to be fully secured, primarily by residential mortgage collateral, see 12 U.S.C. 1430(a), and are made available over a range of maturities. The Board is responsible for supervising the Banks, and ensuring that the Banks: (1) Remain adequately capitalized and able to raise funds in the capital markets; (2) operate in a safe and sound manner; and (3) carry out their housing finance mission. See 12 U.S.C. 1422a(a)(3).

All savings institutions insured by the Savings Association Insurance Fund (SAIF) of the Federal Deposit Insurance Corporation (FDIC) are members of the System, as are many savings banks insured by the FDIC's Bank Insurance Fund, and a limited number of insurance companies. With he passage of FIRREA, membership in the System also was opened to federally insured commercial banks and credit unions that make long-term home mortgage loans and that have at least 10 percent of their total assets in residential mortgage loans. See 12 U.S.C. 1424(a).

Each member is required to hold stock in its Bank based upon the level of the member's mortgage-related assets and outstanding advances. See 12 U.S.C. 1426. Bank stock pays dividends, is not publicly traded, and is redeemable at par. See *id.*

II. Analysis of Proposed Rulemaking

Subpart A—Advances to Members

A. Primary Credit Mission of the Banks

Section 935.2 of the proposed rule sets forth the primary credit mission of the Banks, which is to enhance the availability of residential mortgage credit by providing a readily available, economical and affordable source of funds in the form of advances to their member institutions. In order to carry out this mission, the Banks shall offer competitively priced advance products and programs that satisfy their members' credit needs. Limitations on advances, beyond those specifically prescribed by statute, regulation, policy or other requirements of the Board, shall be those that protect the financial integrity of a Bank and accommodate the practical constraints associated with a Bank's ability to raise funds.

B. Bank Advances Policies and Application for Advances

Section 935.3 of the proposed rule continues the requirement in the Board's current regulation that each Bank's board of directors adopt, and review at least semiannually, a policy on extending advances to members of that Bank. Each Bank's policy shall be consistent with the requirements of the Act, 12 U.S.C. 1421 *et seq.*, this part, and general guidelines established by the Board, as reflected in its resolutions, orders, or manuals. A Bank's board of directors may designate officers authorized to extend or deny credit, or take other actions consistent with the Bank's advances policy. Exceptions to a Bank's policy must receive the approval of its board of directors, a committee thereof, or officers specifically authorized by the board of directors to approve exceptions. Such exceptions to Bank policy must comply with the Act, this part, and policies and guidelines of the Board.

Section 935.4 of the proposed rule requires the Banks to enter into advances and security agreements with their members that govern the terms and conditions under which credit will be extended. Section 935.4(a) permits a Bank to accept oral or written applications for advances from its members. Section 935.4(b) specifies that a Bank shall require any member applying for an advance to enter into a primary and unconditional obligation to repay such advance and all other indebtedness to the Bank: Section 935.4(c)(1) provides that a Bank shall make only fully secured advances to its members. Section 935.4(c)(2) provides that a Bank shall execute a written security agreement with each borrowing member that gives the Bank a perfectible security interest in the collateral pledged to secure the advances. In practice, the advances and security agreements may be consolidated in one document. Such document may also constitute a master

agreement covering all outstanding advances by a Bank to a member.

Section 935.4(d) of the proposed rule requires a Bank's board of directors, or a delegated committee thereof, to approve the Bank's advances application forms, advances agreements, and security agreements. A Bank's board is not required to approve each revision to an already approved form, it the resulting document is substantially the same as the previously approved form. The Act requires that the form for the advance application, as well as the form of the document evidencing a member's obligation to repay outstanding advances, be approved by the Board, 12 U.S.C. 1429, 1430(d). The proposed rule deems the forms to be approved by the Board, if the terms of the documents comply with the prescribed requirements of this part. The Banks are required to provide the Board with copies of their standard advances and security agreements, as well as any substantive revisions thereto.

C. Limitations on Access to Advances

Section 935.5(a) of the proposed rule implements 12 U.S.C. 1429 by authorizing the Banks, in their discretion, to limit or deny a member's application for an advance, or to approve it on such additional terms as the Bank may prescribe, subject to the Act, this part, and Board policy guidelines. Advances may be limited or denied if, in the Bank's judgment, a member is engaged or has engaged in any unsafe or unsound business practices, has inadequate capital, is sustaining operating losses, has financial or managerial deficiencies that bear upon the member's creditworthiness, or has any other deficiencies as determined by the Bank.

Section 935.5(b) of the proposed rule sets forth new requirements for Bank lending to certain capital deficient members. These requirements were adopted in part as Board policy in April, 1992 (see Board Resolution No. 92–277.1). The Board today proposes to revise and incorporate these guidelines into its advances regulation, and specifically requests comment on all aspects of the new requirements.

Prior to the adoption of the policy guidelines, there were no Board-mandated restrictions on a Bank's ability to lend to an insolvent member. Although the secured nature of advances protects the Banks from credit risk, the Board is concerned that, by making advances available to certain capital deficient members, a Bank may inadvertently be acting contrary to the wishes of a member's primary Federal regulator. Section 935.5(b)(1) of the proposed rule, therefore, restricts a Bank from making a new advance to a member that does not have positive tangible capital, unless the member's appropriate Federal banking agency or insurer requests in writing that funding be made available to such member, and the Bank determines in its discretion that it may safely make such advance to the member.

Section 935.1 of the proposed rule defines "tangible capital" as capital, calculated according to Generally Accepted Accounting Principles (GAAP), less intangible assets, as reported in a savings association member's Thrift Financial Report (TFR), or a commercial or savings bank member's Report of Condition and Income (Call Report). GAAP capital currently is reported as "equity" capital on the Call Report and TFR. For credit unions and insurance company members, the level of tangible capital will be determined by the Bank, consistent with the parameters used for savings association and commercial bank members.

In defining tangible capital, the Board is proposing a standard that is consistent with the approach suggested by the FDIC in its proposed rulemaking on prompt corrective action. See 57 FR 29662 (July 6, 1992). The prompt corrective action procedures provide a framework for determining supervisory action. The FDIC has proposed to implement prompt corrective action procedures based on an institution's level of Tier 1 capital or core capital. GAAP capital less intangible assets results in a definition of tangible capital that is similar to Tier 1 or core capital, as defined by the Federal banking regulators. See *e.g.*, 12 CFR part 3, appendix A, section 2(a) (Office of the Comptroller of the Currency); 12 CFR part 208, appendix A, II.A.1 (Federal Reserve Board); 12 CFR 325.(m) (FDIC); 12 CFR 567.5(a) (Office of Thrift Supervision (OTS)).

The proposed definition will allow the Banks to easily verify most federally insured depository institution members' capital positions, using information from members' TFRs, Call Reports or financial statements, since these documents are reviewed at the time of application for an advance. Each Bank will determine the level of tangible capital held by credit union and insurance company members, since regulatory capital for these members is more variable and includes certain insurance and reserve accounts that may not be appropriate to the definition of tangible capital.

The Board realizes that placing restrictions on advances to members without positive tangible capital could cause liquidity problems for these members. Therefore, proposed § 935.5(b)(2) permits renewals of existing advances to these members for periods of up to 30 days, if the Bank determines that such renewals can be safely made. Such renewals may be extended for successive 30-day terms if the Bank determines that it may safely make such extensions to the member. The renewal authority should provide the member with time to identify alternative sources of funds that can be used to repay maturing advances and fund ongoing operations. Renewals may be for periods longer than 30 days if requested by the member's appropriate regulator or insurer and agreed to by the Bank.

Section 935.5(c) of the proposed rule provides that, in the case of members that are not federally insured depository institutions, the provisions in § 935.5(b) may be implemented upon a written request from the member's state regulator.

Section 935.5(d) of the proposed rule requires each Bank to provide the Board with a monthly report of outstanding Bank advances and commitments to all members. It also directs the Banks, upon written request from a member's appropriate Federal banking agency, insurer or state regulator, to provide to such entity information on advances and commitments outstanding to the member.

The proposed rule does not include an existing Board policy provision that directs each Bank to honor written requests from a member's regulator or insurer to limit or deny a tangibly solvent member's access to advances. This provision has been removed in acknowledgment of the sufficiency of current mechanisms available to the members' regulators for denying an institution's access to outside funding.

Section 935.5(e) of the proposed rule requires that the written advances agreement required by § 935.4(b)(2) of the proposed rule shall stipulate that a Bank shall not fund commitments for advances previously made to members whose access to advances has subsequently been restricted pursuant to § 935.5(b).

In proposing the above restrictions on advances, the Board recognizes the authority and responsibility of the regulators and the insurer to supervise and regulate member activities. The restrictions are designed solely to ensure that the Banks do not unintentionally undermine regulatory intent. The Board specifically requests comment on all aspects of this proposal

to restrict access to advances by members without positive tangible capital.

D. Terms and Conditions for Advances

Section 935.6(a) of the proposed rule continues the Board's regulatory requirement that the Banks offer advances with maturities of up to ten years. The proposed rule also authorizes each Bank to offer advances with maturities of any length, consistent with the safe and sound operation of the Bank. This is consistent with the Board's recently promulgated interim final rule, see 57 FR 42,888 (Sept. 17, 1992), eliminating an earlier Board regulatory requirement that advance maturities not exceed 20 years.

The requirement that the Banks offer advances with maturities of up to ten years is designed to ensure that a sufficient variety of advance maturities is available to assist members in their asset/liability management. Members frequently hedge against interest rate movements by funding their long-term home mortgage loans, which generally have an average life between five and ten years, with matching term Bank advances. Long-term advances provide an important funding source for non-conforming loans for which the secondary market has not been a viable financing alternative.

The Board's recent rulemaking that allows the Banks to offer advances with maturities greater than 20 years facilitates the Bank's support of affordable housing finance. Some participants in the Affordable Housing Program (AHP), see 12 U.S.C. 1430(j), had requested AHP loans from Bank members with maturities greater than 20 years in order to lock in financing over the life of a project. However, members were often understandably reluctant to provide such long-term financing without matched funding. The availability of Bank advances with maturities greater than 20 years enables members to match fund such projects and avoid interest rate risk exposure.

Although offering longer-term funding could expose the Banks to additional interest rate risk, their ability to raise long-term debt, the availability of hedging options, and the Bank's expertise in asset/liability management will allow them to offer advances with a broad range of maturities without undue financial risk. The Banks will offer such funding only to the extent they are able to control their own interest rate risk exposure.

Section 935.6(b)(1) of the proposed rule eliminates a current Board policy requirement that the Banks generally price advances within a prescribed schedule of minimum and maximum mark-ups over their cost of issuing consolidated obligations (COs). Each Bank would instead be required to price advances taking into account its marginal cost of raising matching maturity funds in the marketplace, as well as any administrative and operating costs associated with making the advances. Advances offered through a Bank's AHP are exempt from this requirement. See 12 U.S.C. 1430(j).

Under the Board's current policy pricing schedule, the Banks are required to price advances within a specified range above their estimated cost of issuing COs. A required minimum mark-up of 20 basis points over the cost of COs applies across the maturity spectrum. The maximum permissible mark-up on advances declines from a high of 120 basis points over the cost of COs for advances with maturities greater than six months and less than or equal to one year, to a low of 60 basis points over the cost of COs for advances with maturities greater than nine years.

At the time the pricing schedule was established, COs dominated Bank funding. However, while COs remain the Banks' primary funding source, member deposits now comprise about 24 percent of the System's liabilities. Since deposits can be a lower cost funding alternative for short-term advances, a Bank's overall short-term cost of funds may at times be lower than its cost of issuing COs. By removing the minimum mark-up, the Board is encouraging the Banks' efforts to provide attractively priced funding to their members.

Moreover, the minimum and maximum mark-ups have not met their intended policy objectives. The intent of the 20 basis point minimum mark-up was to preclude the Banks from pricing advances below their total cost of funding the advances. When the pricing schedule was established, individual Bank operating expenses, as a percentage of assets, ranged from ten to 18 basis points. The Banks have subsequently introduced operating efficiencies that have significantly reduced the cost of their operations.

Rather than continuing to use a pricing schedule based on static expense figures, which may or may not be accurate over time, § 935.6(b)(1) of the proposed rule provides each Bank with the discretion to determine the appropriate minimum mark-up on advances based upon its current administrative and operating costs. This flexibility should enhance the Banks' regional competitiveness, since the minimum mark-up on advances will reflect an individual Bank's, rather than the System's, administrative costs.

The current maximum mark-up, which declines as advance maturities increase, was principally intended to encourage long-term lending for housing finance purposes, as well as to ensure a supply of longer-term funds at a reasonable cost to assist members in their asset-liability management. However, over the past several years the maximum mark-up has not been a binding constraint. Banks generally have priced advances will below the pricing ceiling and at relatively constant margins across the maturity spectrum.

Since the current Board policy has not significantly influenced pricing behavior, and there is no indication that the Banks are applying relatively higher mark-ups for longer-term advances, the proposed rule eliminates the maximum mark-up as well. The Board believes that the Banks will continue to price short- and long-term advances competitively absent an explicit pricing schedule. In addition, pricing flexibility allows the Banks to include hedging costs when pricing advances, particularly when market constraints inhibit their ability to match fund advances.

Section 935.6(b)(2)(i) of the proposed rule authorizes the Banks to extend credit to individual borrowers on varying terms, based upon the amount of credit risk associated with lending to a particular borrower or other reasonable criteria, provided the criteria apply equally to all members.

Section 7(j) of the Act requires that each Bank's board of directors administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against a member borrower. See 12 U.S.C. 1427(j). Section 9 of the Act gives the Banks broad authority to determine the terms of an advance, subject to statutory and regulatory requirements. Specifically, it provides that a Bank may at its discretion deny any such application for an advance, or, subject to the approval of the Board, may grant it *on such conditions as the Bank may prescribe.* 12 U.S.C. 1429 (emphasis added).

The Board has concluded that the extension of credit on differing terms to Bank members based on the member's creditworthiness, or other reasonable criteria applied equally to all members, does not constitute "discrimination" under section 7(j) of the Act. Such a practice is consistent with the Banks' broad discretion to make advances under section 9 of the Act. It also is consistent with a Federal district court ruling in 1983 that sections 9 and 7(j) of the Act, when read together, confer upon the Banks plenary discretion in the

exercise of their lending authority. See *Fidelity Financial Corp. v. Federal Home Loan Bank of San Francisco*, 589 F. Supp. 885, 897 (N.D. Cal. 1983) *aff'd*, 792 F.2d 432 (9th Cir. 1986), *cert. denied*, 479 U.S. 1064 (1987).

Furthermore, risk-based pricing of advances should enhance the fairness of the Banks' credit programs, since terms on advances and other Bank credit products to more creditworthy members should be more favorable than those to members posing a greater credit risk to a Bank. Risk-based pricing will allow the Banks to offer competitive rates to their more creditworthy members, thereby enabling the Banks to better carry out their housing finance mission. It also will compensate the Banks for bearing any increased credit exposure associated with lending to higher risk members.

Differential pricing of advances based upon criteria other than credit risk also would be allowed, subject to the application of consistent standards to all borrowing members. For example, certain Banks have offered "volume discounts" to members who finance a certain percentage of their total assets with Bank advances. Section 935.6(b)(2)(ii) of the proposed rule requires each Bank to establish written standards and criteria for differential pricing and to apply such standards and criteria consistently and without discrimination to all borrowers.

Section 10(i) of the Act, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183 (August 9, 1989), requires each Bank to establish a Community Investment Program (CIP) to provide funding for members to undertake community-oriented mortgage lending. See 12 U.S.C. 1430(i). "Community-oriented mortgage lending" is defined in section 10(i) to include loans to finance the purchase and rehabilitation of housing for low- and moderate-income families, and commercial and economic development activities benefiting low- and moderate-income families or activities located in low- and moderate-income neighborhoods. *Id.*

The Act requires that the Banks price CIP advances at the cost of consolidated Bank obligations of comparable maturities, taking into account reasonable administrative costs. *Id.* However, as noted previously, the Banks' overall short-term funding costs can at times be lower than their cost of issuing COs. Section 935.7 of the proposed rule, therefore, directs the Banks to price CIP advances as provided in proposed § 935.6, except that the cost of such CIP advances shall not exceed the Bank's cost of issuing COs of comparable maturity, taking into account reasonable administrative costs.

E. Fees

The Banks currently are required by Board policy to charge prepayment fees that make them financially indifferent to a borrower's decision to prepay advances. These fees are designed to protect the Banks from interest rate risk and can be considered the price of the member's option to prepay. Since many advances are match funded and prepayments occur when interest rates fall, the Banks can suffer losses if the principal portion of the prepaid advances must be invested in lower yielding assets which continue to be funded by higher cost debt.

Under current Board policy, prepayment fees must equal 90 to 110 percent of the present value of the lost cash flow to the Bank, based upon the difference between the contract rate on the prepaid advance and the rate for a new advance of the same remaining maturity. The discount rate for calculating the present value is the current offering rate for a new advance with the same remaining maturity.

Although prepayment fees theoretically are designed to insulate the Banks from interest rate risk, the current prepayment fee structure may not adequately compensate a Bank for the loss in future cash flows due to an advance prepayment. The discount rate used in the calculation assumes that the Bank can replace the prepaid advance with a new advance. However, in the current operating environment, such opportunities have not always been readily available. The Bank is then forced to invest the prepaid principal and fees in lower-yielding assets, generally at a reduced, and sometimes even a negative, spread or to retire the underlying debt, possibly at a loss.

Therefore, § 935.8(a)(1) of the proposed rule continues the requirement that the Banks charge prepayment fees, but authorizes each Bank to determine the cost of the prepayment option. The fee shall sufficiently compensate the Bank for providing a prepayment option on an advance, and act to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

Under proposed § 935.8(a)(2), prepayment fees are not required for advances with terms to maturity or repricing periods of six months or less, for advances funded by callable debt, or for advances which are otherwise appropriately hedged so that the Bank is financially indifferent to their prepayment. Proposed § 935.8(a)(3) provides that a prepayment fee may be waived only by a Bank's board of directors, a designated committee of the board of directors, or officers specifically authorized by the board, and only if such waiver will not result in an economic loss to the Bank. Any such waiver must subsequently be ratified by the board of directors. The Board specifically requests comment on the proposed change to the prepayment fee requirements.

Section 935.8(b) of the proposed rule eliminates a current Board policy requirement that the Banks charge commitment fees, and provides each Bank with the discretion to charge such fees. Section 935.8(c) authorizes a Bank to charge other fees as it deems necessary and appropriate.

F. Eligible Collateral

Section 10(a) of the Act requires a Bank to obtain and thereafter maintain a security interest in specific types of eligible collateral at the time of origination or renewal of an advance. See 12 U.S.C. 1430(a). Prior to FIRREA, a Bank could accept without limit any collateral that had a readily ascertainable value and in which the Bank could perfect a security interest. See 12 CFR 525.7(b)(4)(1989) (superseded).

In accordance with the requirements imposed by FIRREA in section 10(a) of the Act, § 935.9(a) of the proposed rule specifies four categories of eligible collateral:

(1)(i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent; or

(ii) Whole mortgage pass-through securities as defined in § 935.1 of this part.

(2) Securities issued, insured or guaranteed by the United States Government, or any agency thereof, including without limitation mortgage-backed securities as defined in § 935.1 of this part, issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.

(3) Deposits in a Bank.

(4)(i) Except as provided in paragraph (a)(4)(iii) of this section, other real estate-related collateral acceptable to the Bank, if:

(A) Such collateral has a readily ascertainable value; and;

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Non-agency mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans or lines of credit;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not permit the aggregate amount of outstanding advances to any one member, secured by such other real estate-related collateral, to exceed 30 percent of such member's capital, as calculated according to GAAP, at the time the advance is issued or renewed.

Bank in its discretion may further restrict the types of collateral it will accept based upon the creditworthiness and operations of the borrower, the quality of collateral, or other reasonable criteria.

Section 10(a)(1) of the Act provides that eligible mortgage loans under category (1) must be on "improved residential real property." See 12 U.S.C. 1430(a)(1). Section 935.1 of the proposed rule defines "residential real property" as: One-to-four family property; multifamily property; real property to be improved or in the process of being improved by the construction of dwelling units; or combination business or farm property, where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property. (In such cases, 100 percent of the appraised value of the combined property could be used to secure an advance.) The term "residential real property" does not include "nonresidential real property" as defined in § 935.1 of the proposed rule. "Improved residential real property" is defined as residential real property, excluding real property to be improved, or in the process of being improved, by the construction of dwelling units. The Board specifically requests comment on these definitions.

A "whole mortgage pass-through security" is narrowly defined in the proposed rule so that under category (1)(ii), only privately issued mortgage pass-through securities that represent ownership of all of the fully disbursed, whole first mortgages in an underlying pool under category (1)(i), may be pledged as collateral. Other privately issued mortgage-backed securities, including privately issued mortgage debt securities, that do not meet this requirement may qualify as collateral under category (4), see 12 U.S.C. 1430(a)(4) (other real estate-related collateral).

The Board also is considering at least two other alternative approaches that would significantly broaden the collateral eligible under category (1)(ii). First, the Board is considering the possibility that the final rule will broaden category (1)(ii) to permit the acceptance of any privately issued mortgage pass-through security that represents an equity interest in a *pro rata* share of the principal and interest payments from the underlying fully disbursed, whole first mortgage loans, including mortgage pass-though securities that do not represent ownership of the entire pool of underlying fully disbursed, whole first mortgage loans.

Second, the Board is considering the possibility that the final rule will broaden category (1)(ii) to permit the acceptance of any privately issued mortgage-backed security that represents a *pro rata* share of principal and interest payments from an underlying pool of fully disbursed, whole first mortgage loans. This second alternative would include treating collateralized mortgage obligations or other mortgage debt securities as eligible collateral under category (1)(ii).

The approach taken in the proposed rule is based on the most conservative interpretation of the phrase "securities representing a whole interest in * * * mortgages." *Id.* This interpretation is consistent with the Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 427–28 (1989) reprinted in 1989 U.S. Code Cong. & Admin. News 432, 466–67 (FIRREA Conference Report). The FIRREA Conference Report states that the collateral requirements in 12 U.S.C. 1430(a), imposed by FIRREA, were intended to enable the Banks to continue to accept privately issued mortgage-backed securities as collateral. The approach taken in the proposed rule is consistent with the FIRREA Conference Report because some privately issued mortgage pass-through securities may continue to be eligible under category (1)(ii).

The FIRREA Conference Report also indicates that the Bank collateral requirements imposed by FIRREA,

> preclude[ ] acceptance of interest payments or the principal payments on such loans, (iii) any security representing a subordinated interest in mortgage loans, or (iii) any security that represents an interest in a residual or other high risk mortgage derivative product.

Id. The proposed rule, as well as the alternative positions under consideration, would preclude these classes of securities identified in the FIRREA Conference Report from qualifying as acceptable collateral for advances, except under category (4). Accordingly, the Finance Board believes that the approach taken in the proposed rule, as well as the two alternatives under consideration, are consistent with the requirements of the Act and the legislative history as expressed in the Conference Report.

The Board is seriously considering broadening its interpretation of "whole interest" to include privately issued mortgage pass-through securities representing a *pro rata* share of principal and interest payments from the underlying mortgage loans (the first alternative above), because virtually all securities representing an interest in mortgages do not represent ownership of all of the mortgages in the underlying pool. They represent a share of the beneficial interest in the underlying pool of mortgages.

Furthermore, by specifically excluding principal only and interest only "stripped" securities, the FIRREA Conference Report can be interpreted to allow the Banks to accept privately issued securities as qualifying collateral under category (1)(ii), provided they represent a *pro rata* share of the principal and interest payments from the underlying mortgage loans. *Id.*

The second alternative, pursuant to which the Board would include in category (1)(ii) all privately issued mortgage-backed securities, including the lower risk tranches of privately issued collateralized mortgage obligations, would allow the Banks maximum flexibility to treat mortgage-related securities as eligible collateral under category (1)(ii), while still precluding acceptance of certain high risk securities specifically identified in the FIRREA Conference Report language quoted above.

The Board specifically requests comment on its interpretation of the phrase "securities representing a whole interest" in section 10(a)(1) of the Act, as well as the approach taken in the proposed rule, and the two alternatives under consideration.

Section 10(a)(2) of the Act authorizes the Banks to accept, without limitation, all types of securities issued, insured, or guaranteed by the United States government, or any agency thereof. See 12 U.S.C. 1430(a)(2). Eligible securities include, but are not limited to, those issued by the FHLMC, the FNMA, and the GNMA. Section 935.9(a)(2) of the proposed rule implements section 10(a)(2), and allows a Bank to accept as collateral stripped, residual and other high risk securities that are issued, insured or guaranteed by the United States government or one of its agencies.

Although the Board's Financial Management Policy (see Board Resolution No. 91–214, dated June 25, 1991), prohibits Bank investment in such securities due to the interest rate risk associated with holding these instruments, the Board believes that, for

collateral purposes, the Banks can protect themselves by adequately discounting the securities. It is expected that a Bank accepting such securities as collateral will have established systems in place to accurately value the collateral and will establish appropriate loan-to-value rations.

Securities issued by the former Federal Savings and Loan Insurance Corporation (FSLIC) are considered eligible collateral under category (2). The Board has concluded that not only should FSLIC notes be considered securities issued by an agency of the United States government, but also that FIRREA, in transferring liability for the notes to the FSLIC Resolution Fund and making the United States Treasury ultimately responsible for their repayment, has effectively bestowed the full faith and credit of the United States on the FSLIC notes. As of August 31, 1992, there were only $156 million in outstanding Bank advances secured by FSLIC notes, which is less than one percent of the System's total outstanding advances.

Mortgage-backed securities packaged by the Resolution Trust Corporation (RTC) are not issued, insured or guaranteed by the RTC in its corporate or agency capacity, and therefore are not eligible collateral under category (2). However, such securities may qualify as category (1)(ii) or category (4) collateral.

The Board interprets the inclusive "other real estate-related collateral" language of category (4), in conjunction with the 30 percent of capital limitation, to mean that category (4) permits limited amounts of mortgage-related collateral otherwise ineligible under category (1). For example, the following types of collateral may be considered eligible under category (4): Privately-issued mortgage-backed securities not otherwise eligible under category (1)(ii); second mortgage loans, including home equity loans; commercial real estate loans; and mortgage loan participations. This list is not intended to be exclusive.

Sectin 935.9(a)(4) of the proposed rule interprets category (4) broadly to include any other real estate-related collateral acceptable to the Bank, if such collateral has a readily ascertainable value and the Bank can perfect a security interest in such collateral. See 12 U.S.C. 1430(a)(4). Each Bank will determine the particular types of other real estate-related collateral acceptable to that Bank, consistent with the regulatory definition of eligible collateral, and will apprise its members accordingly. However, a member's use of category (4) collateral to secure advances is limited to 30 percent of its capital, calculated according to GAAP, at the time the advance is issued or renewed.

Proposed § 935.9(c) implements section 10(a)(5) of the Act by authorizing each Bank to require a member to pledge additional collateral to protect the Bank's secured position on outstanding advances, even though such collateral may not constitute "eligible collateral" under proposed § 935.9(a). See 12 U.S.C. 1430(a)(5). Section 935.9(d) of the proposed rule implements section 10(c) of the Act by providing that a Bank shall automatically have a lien upon, and shall hold, the Bank capital stock owned by a member as further collateral security for all indebtedness of the member to the Bank. See 12 U.S.C. 1430(c).

Section 935.9(e) of the proposed rule implements section 10(b) of the Act by prohibiting a Bank from accepting as collateral for an advance a home mortgage loan otherwise eligible as collateral for an advance, if any director, officer, employee, attorney or agent of the Bank or of the borrowing member is personally liable thereon, unless the board of directors of the Bank has specifically approved such acceptance by formal resolution, and the Board, or its designee, has endorsed such resolution. See 12 U.S.C. 1430(b).

G. Maintenance of Bank Security Interest in Pledged Collateral

Section 935.10 of the proposed rule implements section 10(f) of the Act (sometimes referred to as the "superlien" provision), by providing that, notwithstanding any other provision of law, the Banks have a priority interest in collateral pledged by a member ahead of other lien creditors, including a receiver or conservator, but not including bona fide purchasers for value of such collateral or creditors with a perfected security interest in the collateral under applicable state law. See 12 U.S.C. 1430(f).

This provision was added to the Act by the Competitive Equality Banking Act of 1987, Public Law 100–86, 101 Stat. 575, section 306(d) (1987). Congress, in establishing the Bank's senior creditor status, stated that the provision "recognizes the special position of the [Banks] * * *" as lenders to the home finance industry. H. Rep. No. 261, 100th Cong., 1st Sess. 163 (1987). The FDIC has adopted a regulation recognizing the special status of the Banks where the borrower of a Bank is in receivership. See 12 CFR 360.1.

Proposed § 935.11(a)(1) provides that a Bank may allow a borrowing member that is a depository institution to retain documents evidencing collateral pledged to the Bank, provided the member executes an agreement with the Bank to hold the collateral solely for the benefit of the Bank and subject to the Bank's direction and control.

A Bank's ability to perfect its security interest in collateral pledged by non-depository institution members, such as insurance companies, is dependent on state law to a greater extent than is the Bank's ability to perfect its security interest in collateral pledged by depository institutions. Proposed § 935.11(a)(2) requires a Bank to take any steps necessary to ensure that its security interest in all collateral pledged by non-depository institutions for an advance is as secured as its security interest in collateral pledged by depository institutions.

Section 935.11(a)(3) of the proposed rule provides that a Bank may at any time perfect its security interest in pledged collateral securing an advance to a member. This may include requiring a member to segregate pledged collateral, or to physically deliver collateral to the Bank or to a designated third party custodian operating on behalf of the Bank.

Proposed § 935.11(b) requires the Banks to regularly verify that collateral pledged to secure advances exists. A Bank shall establish written collateral verification procedures, with standards similar to those established by the Auditing Standards Board of the American Institute of Certified Public Accountants, for verifying the existence of collateral.

Under proposed § 935.12, each Bank is required to determine the value of the collateral securing its advances, according to established written valuation procedures. The valuation procedures used to determine the value of collateral shall be applied consistently and fairly to all borrowers. A Bank may require a member to obtain an appraisal to ascertain the value of collateral pledged to the Bank.

H. Restrictions on Advances to Members That are not Qualified Thrift Lenders (QTLs)

While FIRREA opened membership in the System to federally insured commercial banks and credit unions, it imposed further restrictions on borrowing by members that do not hold a certain level of housing-related assets, as specified in the Qualified Thrift Lender test (QTL test). See 12 U.S.C. 1430(e)(1). Section 935.13 of the proposed rule implements these new restrictions.

The QTL test, as defined in section 10(m) of the Home Owners' Loan Act (HOLA), as amended, 12 U.S.C.

1467a(m), requires that savings associations maintain at least 65 percent of their assets in "qualified thrift investments" (QTI).[1]

Section 10(e) of the Act, as amended by FIRREA, 12 U.S.C. 1430(e), permits members that are not QTLs to borrow from the Banks under the following conditions: (1) Non-QTLs may only use advances for housing finance purposes; (2) each Bank's aggregate amount of advances to non-QTL members shall not exceed 30 percent of the Bank's total advances; and (3) a Bank must grant priority for advances to QTL borrowers over non-QTL borrowers. *Id.* at 1430(e)(1), (2). In addition, a non-QTL borrower must hold Bank stock at the time it receives an advance in an amount equal to at least five percent of the borrower's total advances, divided by its actual thrift investment percentage (ATIP). See *id.* at 1430(e)(1).

The ATIP, used to determine compliance with the QTL test, is a ratio whose numerator is QTI and whose denominator is "portfolio assets." "Portfolio assets" is statutorily defined as total assets, less goodwill and other intangible assets, the value of an institution's business property, and a limited amount of liquid assets. See 12 U.S.C. 1467a(m)(4)(A), (B); 12 CFR 563.51(a), (e).

These limitations do not apply to: (1) A savings bank, as defined in section 3(g) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1813(g); (2) a Federal savings association in existence as such on August 9, 1989 that (i) was chartered as a savings bank or cooperative bank prior to October 15, 1982 under state law, or (ii) that acquired its principal assets from an institution that was chartered prior to October 15, 1982 as a savings bank or cooperative bank under state law.

Section 10(m) of the HOLA further restricts non-QTL savings associations' access to Bank advances. Savings associations that fail the QTL test may not take down new Bank advances. See 12 U.S.C. 1467a(m)(3)(B)(i)(III). In addition, if such a savings association fails to regain its QTL status within three years, it must repay all outstanding Bank advances. See 12 U.S.C. 1467a(m)(3)(B)(ii)(II).

[1] QTI assets are divided into two "baskets," one available in unlimited amounts and the other limited to an amount equal to 20 percent of a savings association's portfolio assets. (See following discussion in text.) The unlimited basket contains housing-related assets (mortgage loans, home equity loans, and mortgage-backed securities, as well as certain government agency obligations); the 20 percent basket contains consumer loans and assets associated with community lending. See 12 U.S.C. 1467a(m)(4)(C); 12 CFR 563.51(f).

Since the QTL test, as defined in the HOLA, has application only to savings associations, the requirements in section 10(e) of the Act arguably may be interpreted as applying only to non-QTL savings association members. However, the HOLA specifically prohibits non-QTL savings associations from borrowing advances, making the section 10(e) restrictions, which merely limit advances access, irrelevant for these institutions. It seems unlikely that Congress would create special restrictions on access to advances only for a class of members that, for separate reasons, are not eligible to borrow from a Bank.

In addition, the fact that Congress specifically exempted state-chartered savings banks from section 10(e), but not commercial banks, credit unions or insurance companies, suggests that the requirement was intended to have broader application than just to savings associations. It seems clear, therefore, that Congress used the QTL test to determine access to advances because the test provides a benchmark for measuring a member's commitment to housing finance. The section 10(e) restrictions therefore are being interpreted to have application to all non-QTL System members which are eligible to borrow.

The OTS is responsible for monitoring savings associations' compliance with the QTL test, and for enforcing penalties applicable to institutions that fail the test. See 12 U.S.C. 1467a(m), 1813(q). Therefore, unless otherwise informed by the OTS, a Bank may assume that a member savings association is a QTL. Section 935.13(a) of the proposed rule provides that upon receipt of written notification from the OTS that a savings association member has been designated by the OTS as a non-QTL and is subject to the restrictions on advances applicable to non-QTL savings associations, a Bank shall not extend any new advances or renew existing advances to such member. Proposed § 935.13(b) provides that, upon receipt of written notification from the OTS that all advances held by a non-QTL savings association must be repaid because the association has not requalified as a QTL member within the three-year period, the Bank, in conjunction with the member, shall develop a schedule for the prompt and prudent repayment of all outstanding advances. The schedule shall be consistent with the Bank's and the member's safe and sound operations and shall be forwarded promptly by the Bank to the OTS and the Board.

Proposed § 935.13(c) implements the statutory restrictions on advances to non-QTL members other than savings associations. The Act requires that non-QTL borrowers use advances only for "housing finance" purposes. See 12 U.S.C. 1430(e)(1). ("Housing finance" is defined as "residential housing finance" for the purposes of this part 935). However, the fungibility of money makes it very difficult and costly to track the actual use of an advance. Therefore, § 935.13(c)(1)(i) of the proposed rule ties on non-QTL member's ability to borrow advances to its level of "residential housing finance assets," as determined pursuant to proposed § 935.13(c)(2). The Board believes that a member's level of residential housing finance assets is a reasonable and measurable indicator of a non-QTL borrower's commitment to housing finance and its use of Bank advances for the purpose.

Section 935.1 of the proposed rule defines "residential housing finance assets" as loans secured by residential real property; securities representing an ownership interest in, or collateralized by, loans secured by residential real property; participations in such loans; loans financed by CIP advances; or any loan or investment that the Board, in its discretion, otherwise determines is a residential housing finance asset. This definition includes home equity loans.

The definitions of residential housing finance assets in proposed § 935.1 includes all loans funded by CIP advances, although some of these loans may be for community and economic development projects and thus may be nonresidential. Section 10(i) of the Act specifically includes the financing of commercial and economic activities that benefit low- and moderate-income families and neighborhoods in the definition of community-oriented mortgage lending. See 12 U.S.C. 1430(i). The Board believes that this definition indicates that all loans funded under the CIP should be included in the definition of residential housing finance assets. Otherwise, the Banks could not provide CIP advances to a non-QTL, non-savings association member, or long-term CIP advances to any member, if the advances funded community and economic development projects. (The Act, as amended, requires that long-term advances only be used for purposes of funding residential housing finance, 12 U.S.C. 1430(a). See Section I below.) The Board specifically requests comments on the inclusion of CIP loans in its definition of residential housing finance assets.

Section 935.13(c)(l)(ii) of the proposed rule implements section 10(e)(1) of the Act by providing that a Bank shall

require a non-QTL non-savings association member to hold stock in its Bank at the time it receives an advance in an amount equal to at least five percent of the outstanding principal amount of the member's total advances, divided by the member's ATIP. The ATIP shall be calculated pursuant to proposed § 935.13(c)(3). See 12 U.S.C. 1430 (e)(1).

Proposed § 935.13(c)(1)(iii) implements sections 10(e)(2) of the Act by providing that a Bank may not extend an advance to a non-QTL non-savings association member if the advance would cause the Bank's aggregate amount of outstanding advances to non-QTL non-savings associations members to exceed 30 percent of the Bank's total outstanding advances. See 12 U.S.C. 1430(e)(2). In the event that a Bank's level of outstanding advances to QTL members declines such that existing non-QTL advances exceed 30 percent of total advances, the Bank will not be required to call any outstanding non-QTL advances in order to comply with the requirement.

Section 935.13(c)(2) of the proposed rule provides that prior to granting a non-QTL non-savings association member's request for an advance, a Bank shall determine that the principal amount of outstanding advances to the members does not exceed the total book value of the member's residential housing finance assets, as indicated on the most recent Call Report or financial statement made available by the member.

The Board believes that the proposed compliance monitoring mechanism for residential housing finance assets is an operationally feasible method for implementing the statutory requirement in 12 U.S.C. 1430(e)(1)(B), and is consistent with the legislative intent of FIRREA. The Board specifically requests comments on any alternative methods for verifying that advances are used for housing finance purposes.

Under proposed § 935.13(c)(3), the Banks are responsible for monitoring the ATIP of non-savings association members in order to determine their required capital stock holdings to support outstanding advances. The proposed rule requires a Bank to calculate a non-savings association member's ATIP annually, between January 1 and April 15, based upon financial data as of December 31 of the prior year. The Bank will use this calculation to determine the member's stock purchase requirement for the remainder of the current calendar year and until such time as the next annual calculation is performed. The Board specifically requests comment on this proposal for monitoring the ATIP of non-savings association members.

Section 935.13(c)(4) of the proposed rule provides that the requirements of paragraphs (c)(1), (2) and (3) of this section do not apply to certain state-chartered savings banks and Federal savings associations. Applications for AHP and CIP advances are exempt from the requirements of paragraph (c)(2). The Board is permitting this exemption because, as part of the AHP and CIP advance application process, members supply documentation which certifies that the funds will be used for residential housing finance purposes.

Proposed § 935.13(d) provides that if a Bank is unable to meet its members' aggregate demand for advances, the Bank shall give priority to the demands of its QTL members, taking into consideration the member's creditworthiness, the effect of making such advances on the Bank's financial integrity, the availability of compatible funding, and any other factors that the Bank determines to be relevant. The requirements of paragraph (d) do not apply to special, or otherwise limited, advance offerings by a Bank, which may be offered on a first come, first served basis. This section of the proposed rule implements section 10(e)(2) of the Act. See 12 U.S.C. 1430(e)(2).

Section 935.13(e) of the proposed rule requires that the written advances agreement required by § 935.4(b)(2) of this part stipulate that a Bank shall not fund commitments for advances made to then-QTL savings association members whose access to advances is subsequently restricted pursuant to paragraph (a) of this section, or to then-QTL members other than savings associations whose access to advances is restricted pursuant to paragraph (c) of this section.

I. Limitations on Long-Term Advances

Section 10(a) of the Act, as amended by FIRREA, provides that all *long-term* advances shall only be made for the purpose of providing funds for *residential housing finance*. 12 U.S.C. 1430(a) (emphasis added). Section 935.1 of the proposed rule defines a "long-term advance" as an advance with an original term to maturity greater than five years. Although there is no explicit definition of long-term advance in the Act, this proposed definition is consistent with the historic System definition of long-term, and with the definition of "long-term advances" provided in the Community Support Regulation promulgated by the Board. See 56 F.R. 58639, 58647 (Nov. 21, 1991).

The designation of five years or less as short-term and greater than five years as long-term derives in part from section 11(g) of the Act, see 12 U.S.C. 1431(g). That section requires that each Bank maintain investments in an amount equal to current member deposits, and includes advances with maturities of up to five years in the list of investments eligible to fulfill this liquidity requirement. In addition to this statutory foundation, the housing finance mission of the Banks points to a definition that exceeds five years, since as noted earlier, residential mortgage loans, which long-term advances are designed to finance, generally have an average life greater than five years.

Section 935.14(a) of the proposed rule implements section 10(a) of the Act by requiring that the Banks make long-term advances only for the purpose of enabling a member to fund or purchase new or existing residential housing finance assets. The Board intends to require that the Banks monitor the use of long-term advances for this purpose by using the same method proposed for monitoring advances to non-QTL borrowers.

Specifically, § 935.14(b)(1) of the proposed rule provides that, before funding an advance with a maturity greater than five years, a Bank shall determine that the borrowing member's level of outstanding advances with original maturities greater than five years does not exceed the total book value of the member's residential housing finance assets. The bank shall use the member's most recent TFR, Call Report or other financial statement to determine the total book value of the member's residential housing finance assets.

Applications for AHP and CIP advances are exempt from this requirement. As noted above, the definition of residential housing finance assets includes loans funded with CIP advances, which means that long-term CIP advances also may fund community and economic development projects.

J. Capital Stock Requirements and Redemption of Excess Stock

The Act sets forth two minimum stockholding requirements for System members (minimum subscription requirements). See 12 U.S.C. 1426(b)(1), (4); 1430(e)(3). The first minimum stock subscription requirement provides that each member shall purchase Bank capital stock in an amount equal to one percent of the aggregate unpaid principal of its home mortgage loans, home-purchase contracts and similar obligations, but not less than $500. See 12 U.S.C. 1426(b)(1), (4).

The second minimum subscription requirement provides that each member shall purchase and maintain stock, pursuant to the one percent requirement, as if at least 30 percent of its assets consisted of home mortgage loans (*i.e.*, the minimum purchase requirement equals .3 percent of a member's total assets). This provision only has application to members that have less than 30 percent of their assets in home mortgage loans. For these institutions, the .3 percent of total assets requirement is greater than the one percent of aggregate unpaid loan principal requirement. See 12 U.S.C. 1430(e)(3). These statutory minimum subscription requirements will be addressed more fully in a future Board rulemaking on Bank membership requirements.

In addition to the minimum subscription requirements, the Act specifies two stock purchase requirements based on advance levels (the advances-to-stock requirements). These requirements are implemented in proposed § 935.15(a). All members must hold stock in an amount equal to at least five percent of outstanding advances (*i.e.*, the aggregate amount of advances to a member may not exceed 20 times the amount paid in by such member for capital stock in the Bank). In addition, non-QTL non-savings association members applying for an advance must hold capital stock in the Bank at the time the advance is received in an amount equal to at least five percent of the member's total advances, divided by the member's ATIP. See 12 U.S.C. 1430(c), (e)(1), and proposed § 935.13(c)(1)(ii) discussed *supra*. A member's Bank stockholdings must be at least equal to the greater of its minimum subscription requirement for membership or its respective advances-to-stock requirement.

The Act authorizes the Banks to redeem stock in excess of the minimum requirements at a member's request. See 12 U.S.C. 1426(b)(1). The Banks annually recalculate a member's minimum subscription requirement, and members holding stock in excess of the recalculated amount may request that the Bank redeem the excess stock. *Id.* The Act also authorizes the Banks to unilaterally redeem stock upon the termination of a stockholder's membership in the System if the terminated member has no outstanding indebtedness to the Bank. See *id.* at 1426(e). The Act does not specifically address the issue of whether a Bank has the authority to redeem Bank stock held by a member in excess of the advances-to-stock requirements. In practice, the Banks redeem stock, at the request of a member, in excess of its advances-to-stock requirement throughout the year as advances are repaid, as long as the minimum subscription is maintained.

Section 935.15(b) of the proposed rule provides that a Bank, after providing 15 calendar days advance written notice to a member, may unilaterally redeem the portion of a member's stockholdings in excess of its advances-to-stock requirement, as long as the member's minimum subscription requirement is maintained. The Board believes that this express authority is a reasonable interpretation of the Act, and will aid the Banks in managing their equity levels as part of their financial planning. The 15-day advance notice requirement is designed to allow each member an opportunity to identify alternative investments for the amount received from redemption of the stock.

K. Advance Participations and Intradistrict Transfers of Advances

Section 10(d) of the Act requires Board approval for the participation or sale of advances to other Banks. Section 935.16 of the proposed rule incorporates existing Board policy which provides that, subject to the approval of the boards of directors of the relevant Banks and consistent with Board policy, a Bank may allow any other Bank to purchase a participation interest in any advance, together with an appropriate assignment of the underlying security therefor. See 12 U.S.C. 1430(d). Participation agreements already in place are deemed to meet the requirements of this part, and will not require further approval by the Bank's board or the Board.

Proposed § 935.17 provides that a Bank may allow one of its members to assume advances outstanding to another of its members, provided the assumption conforms to the requirements in this part 935 for the issuance of a new advance. A Bank may charge an appropriate fee for processing the transfer.

L. Special Advances to Savings Associations

Section 935.18(a) of the proposed rule implements section 10(h) of the Act by providing that, upon receipt of a written request from the Director of the OTS, the Banks may extend short-term advances to troubled but solvent member savings associations having reasonable and demonstrable prospects of returning to a satisfactory financial condition. See 12 U.S.C. 1430(h). Proposed § 935.18(b), consistent with section 10(h) of the Act, provides that any advance made pursuant to this section shall be at the interest rate applicable to short-term advances of similar type and maturity made available to members that do not pose such a supervisory concern and shall be subject to the same collateral requirements applicable to other advances. The requirements of the Act, therefore, preclude risk-based pricing of advances made available under this section. The statutory provision regarding these liquidity advances specifies that extending such advances is not mandatory. See 12 U.S.C. 1430(h). The Board expects that a Bank will consider the effect on its own financial integrity of agreeing to make such advances.

M. Liquidation of Advances Upon Termination of Membership

Section 935.19 of the proposed rule implements section 6(e) of the Act by specifying that if an institution's membership in a Bank is terminated, the indebtedness of such institution to the Bank shall be liquidated in an orderly manner, as determined by the Bank. See 12 U.S.C. 1426(e). Such liquidation shall be deemed a prepayment of any such indebtedness and subject to any applicable prepayment fees. A Bank shall not be required to call any such indebtedness prior to maturity if doing so would be inconsistent with the Bank's safe and sound operation.

Subpart B—Advances to Nonmembers

A. Scope

Section 935.20 of the proposed rule provides that advances to nonmembers shall be subject to the provisions in subpart A of this part 935, except as otherwise provided in §§ 935.21 and 935.22 of subpart B of this part 935. This requirement is designed to ensure that nonmember advance programs operate within the same regulatory framework as member advance programs and without special benefits to nonmembers.

B. Advances to SAIF

Section 935.21(a) of the proposed rule implements section 11(k) of the Act, providing that upon receipt of a written request from the FDIC, a Bank may make advances to the FDIC for the use of the SAIF. Pursuant to proposed § 935.21(b), such an advance shall: (1) Bear a rate of interest not less than the Bank's marginal cost of funds, taking into account the maturities involved and reasonable administrative costs; (2) be for a maturity acceptable to the Bank; (3) be subject to any prepayment, commitment or other appropriate fees; and (4) be adequately secured by collateral acceptable to the Bank. See 12 U.S.C. 1431(k).

C. Advances to Nonmember Mortgagees

Under Section 10b of the Act, a Bank may make advances to nonmembers that are approved mortgagees under title II of the National Housing Act (NHA) (12 U.S.C. 1707 *et seq.*). See 12 U.S.C. 1430b. The administration of title II of the NHA is the responsibility of the Federal Housing Administration (FHA), a unit of the Department of Housing and Urban Development (HUD). Approved mortgagees have HUD authorization to buy and sell FHA-insured mortgages.

The Board has approved a program permitting the Dallas Bank to lend up to $2 million over a period of two years to the New Mexico Mortgage Finance Authority to promote the availability of affordable housing in that state. Similar programs are being considered by other Banks. The Board believes that these programs are in keeping with the System's mission to provide housing finance for low- and very low-income families. The proposed rule revises the Board's current regulation to include specific criteria for nonmember mortgagee eligibility for advances, and requirements governing Bank advances to such entities.

Section 935.22(a) of the proposed rule authorizes a Bank, subject to the Act and subpart B of this part 935, to make advances to an entity that is not a member of a Bank, if the entity qualifies as a nonmember mortgagee pursuant to section 10b of the Act and proposed § 935.22(b).

Proposed § 935.22(b) contains the four statutory conditions that a nonmember mortgagee must meet in order to borrow from a Bank:

(1) The mortgagee must be chartered under law and have succession. A corporation, or other entity that has rights, characteristics and powers under applicable law similar to those granted a corporation, or a government agency, meet this requirement;

(2) The mortgagee must be subject, pursuant to statute or regulation, to the inspection, supervision and oversight of a Federal, state or local government agency;

(3) The mortgagee must lend its own funds as its principal activity in the mortgage field; and

(4) The mortgagee must be approved by HUD as a "mortgagee" pursuant to HUD's regulations (24 CFR part 203), under title II of the NHA (12 U.S.C. 1707—1715z–20).

Pursuant to the Act, advances made under this section are not subject to certain other provisions of the Act, *e.g.*, member stock purchase and collateral requirements. See 12 U.S.C. 1430b. However, as noted above, where appropriate, the proposed rule makes the regulatory requirements that are applicable to the Banks' member advances programs also applicable to their nonmember advances programs, except as specifically provided in this proposed § 935.22. The Banks are expected to apply to nonmember mortgagees the same advance application requirements, credit underwriting standards, collateral safekeeping requirements, restrictions on lending to institutions without positive tangible capital, advance maturity requirements, prepayment fees, and other regulatory requirements applicable to members under subpart A of this part 935.

Section 935.22(c) of the proposed rule provides that prior to establishing a program to lend to nonmember mortgagees, each Bank shall adopt a policy on advances to nonmember mortgagees consistent with the requirements of the Act, part 935 of the Board's regulations, and general guidelines of the Board.

Section 935.22(d)(1)(i) of the proposed rule requires the Banks to price advances to nonmember mortgagees to cover the funding, operating and administrative costs associated with making such advances. The pricing may reflect the credit risk associated with lending to the nonmember mortgagee, or other reasonable differential pricing criteria, provided that the terms for differential pricing are applied equally to all nonmember mortgagee borrowers.

In addition, proposed § 935.22(d)(ii) provides that the pricing of advances shall compensate the Bank for the absence of a capital investment by the nonmember mortgagee in the Bank. A Bank may implement this provision by requiring that the nonmember mortgagee hold a compensating balance in a deposit account with the Bank. Proposed § 935.22(d)(2) provides that, in accordance with section 10b of the Act, the principal amount of any advance made to a nonmember mortgagee may not exceed 90 percent of the unpaid principal of the collateral pledged as security.

Proposed § 935.22(e)(1) implements the Act by providing that nonmember mortgagee advances may be collateralized with FHA-insured mortgages. See 12 U.S.C. 1430b. Section 935.22(e)(2) of the proposed rule permits a Bank to additionally accept as collateral, securities representing a *pro rata* share of the principal and interest payments due on a pool of FHA-insured mortgage loans (GNMAs), provided that a Bank shall require a nonmember mortgagee to provide evidence that the securities are backed solely by FHA-insured mortgages.

Section 935.22(f)(1) of the proposed rule provides that a Bank shall require a nonmember mortgagee applying for an advance to agree in writing to inform the Bank promptly of any change in its status as a nonmember mortgagee. The Bank will not be required to call outstanding advances to a nonmember that loses its HUD-approved mortgagee status or otherwise ceases to fulfill the eligibility qualifications for a nonmember mortgagee under proposed § 935.22(b). However, pursuant to proposed § 935.22(f)(2), it may not extend a new advance or renew an existing advance to the nonmember until the Bank is satisfied that the entity again fulfills the requirements for a nonmember mortgagee provided herein.

Under proposed § 935.22(g), a Bank may, from time to time, require a nonmember mortgagee borrower to provide evidence that it continues to satisfy all of the qualifications and requirements contained in this section. The Board specifically requests comment on all aspects of the proposed nonmember mortgagee requirements.

Board Statements of Policy and Former Federal Home Loan Bank Board Policy on Advances

The proposed rule would incorporate the Statements of Policy on advances currently contained in 12 CFR part 940 to the extent the Board deems appropriate. The proposed rule would remove and reserve part 940. The proposed rule also is intended to supersede the former Federal Home Bank Board's policy on advances, adopted by minute entry on July 6, 1988. This minute entry was not published in the **Federal Register**.

Regulatory Flexibility Act

The proposed rule largely implements statutory requirements applicable to all System members, regardless of their size. The Board is not at liberty to make adjustments to those statutory requirements to accommodate small entities. The Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities. The only significant requirement added by the Board is limits on advances to members without positive tangible capital. The Board has written the proposed rule specifically so that in many cases members can meet the requirements of the proposed rule by providing copies of reports already generated for other purposes. For these reasons, it is certified, pursuant to section 605(b) of the Regulatory

Flexibility Act, 5 U.S.C. 605b, that this proposed rule, as promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 935

Advances, credit, Federal home loan banks.

12 CFR Part 940

Advances, Federal home loan banks.

The Finance Board hereby proposes to amend chapter IX, title 12, Code of Federal Regulations, as follows:

1. Part 935 is revised to read as follows:

PART 935—ADVANCES

Subpart A—Advances to Members

Sec.

935.1 Definitions.
935.2 Bank credit mission.
935.3 Bank advances policy.
935.4 Authorization and application for advances; obligation to repay advances.
935.5 Limitations on access to advances.
935.6 Terms and conditions for advances.
935.7 Interest rates on Community Investment Program advances.
935.8 Fees.
935.9 Collateral.
935.10 Banks as secured creditors.
935.11 Pledged collateral; verification.
935.12 Collateral valuation; appraisals.
935.13 Restrictions on advances to members that are not Qualified Thrift Lenders.
935.14 Limitations on long-term advances.
935.15 Capital stock requirements; unilateral redemption of excess stock.
935.16 Advance participations.
935.17 Intradistrict transfer of advances.
935.18 Special liquidity advances to savings associations.
935.19 Liquidation of advances upon termination of membership.

Subpart B—Advances to Nonmembers

935.20 Scope.
935.21 Advances to the Savings Association insurance Fund.
935.22 Advances to nonmember mortgagees.

Authority: 12 U.S.C. 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

Subpart A—Advances to Members

§ 935.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Actual thrift investment percentage or *ATIP* means generally the percentage of a member's assets actually invested in, or held as, qualified thrift investments, as defined more specifically in section 10(m)(4) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)) and in the implementing regulations of the OTS at 12 CFR 563.51. The ATIP will be calculated and used for purposes of this part for all members of the Banks, whether or not they are savings associations.

Advance means a loan from a Bank pursuant to the Act that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act.

Affordable Housing Program or *AHP* means the program described in section 10(j) of the Act (12 U.S.C. 1430(j)) and part 960 of the Board's regulations.

Appropriate Federal banking agency. The term "appropriate Federal banking agency" has the same meaning as used in 12 U.S.C. 1813(q) and for federally insured credit unions shall mean the National Credit Union Administration.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Board means the Federal Housing Finance Board established under the authority of the Act, its governing Board of Directors, or an official duly authorized to act on its behalf.

Combination business or farm property means real property for which the total appraised value is attributable to residential, and business or farm uses.

Community Investment Program or *CIP* means the program(s) described in section 10(i) of the Act (12 U.S.C. 1430(i)).

Depository institution means a bank or savings association, as defined in 12 U.S.C. 1813, or a credit union, as defined in 12 U.S.C. 1752.

Dwelling unit means a single, unified combination of rooms designed for residential use by one household.

FDIC means the Federal Deposit Insurance Corporation.

GAAP means Generally Accepted Accounting Principles.

HUD means the Department of Housing and Urban Development.

Improved residential real property means residential real property excluding real property to be improved, or in the process of being improved, by the construction of dwelling units.

Insurer means:

(1) the FDIC for banks and savings associations; or

(2) the National Credit Union Share Insurance Fund for credit unions.

Long-term advance means, for the purposes of this part, an advance with an original term to maturity greater than five years.

Manufactured housing means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Member means an institution that has been admitted to membership in a Bank and, [pursuant to the requirements of § 933.7 of this chapter], has purchased capital stock in the Bank.

Mortgage-backed security means, for purposes of this part, an equity security representing an ownership interest in a pool of fully disbursed, whole mortgage loans on improved residential property or a collateralized mortgage obligation, mortgage-backed bond or other debt security backed entirely by fully disbursed, whole first mortgage loans on improved residential real property.

Multifamily property means:

(1) Real property containing five or more dwelling units; or

(2) Real property containing five or more dwelling units with commercial units combined, provided the property is primarily residential.

Nonresidential real property means real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, nursing homes, educational and charitable institutions, dormitories, clubs, lodges, association buildings, "homes" for elderly persons, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Board in its discretion.

OCC means The Office of the Comptroller of the Currency within the United States Department of the Treasury.

One-to-four family property means any of the following:

(1) Real property containing:

(i) One-to-four dwelling units; or

(ii) More than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including rowhouses, townhouses or similar types of property;

(2) Manufactured housing if:

(i) Applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property; and

(ii) The loan to purchase the manufactured housing is secured by such manufactured housing as evidenced by a mortgage or other lien on real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to

the number of total dwelling units therein; or

(4) Real property containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

OTS means the Office of Thrift Supervision.

Qualified Thrift Lender or *QTL* means the term defined in section 10(m)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(1)) and in the implementing regulations of the OTS (12 CFR 563.50). A non-savings association member which otherwise meets the QTL test will be treated as a QTL for purposes of this part.

Qualified Thrift Lender test or *QTL test* means the formula described generally in section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)) and in the implementing regulations of the OTS (12 CFR 563.50). The QTL test will be applied to all members of a Bank for purposes of this part.

Residential housing finance assets means any of the following:

(1) Loans secured by residential real property;

(2) Mortgage-backed securities;

(3) Participations in loans secured by residential real property;

(4) Loans financed by CIP advances; or

(5) Any loans or investments which the Board, in its discretion, otherwise determines to be residential housing finance assets.

Residential real property means any of the following:

(1) One-to-four family property;

(2) Multifamily property;

(3) Real property to be improved by the construction of dwelling units;

(4) Real property in the process of being improved by the construction of dwelling units;

(5) Combination business or farm property, provided that at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property;

(6) The term does not include nonresidential real property as defined in this section.

Savings association means a savings association as defined in section 3(b) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(b)).

State means a state of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

State regulator means a state insurance commissioner or state regulatory entity with primary responsibility for supervising a member that is not a federally insured depository institution.

Tangible capital means:

(1) Capital, calculated according to GAAP, less "intangible assets" as reported in the member's Thrift Financial Report for members whose primary Federal regulatory is the OTS, or as reported in the Report of Condition and Income for members whose primary Federal regulator is the FDIC, the OCC or the Board of Governors of the Federal Reserve System; or

(2) Capital calculated according to GAAP, less intangible assets, as defined by a Bank for members which are not regulated by the OTS, the FDIC, the OCC, or the Board of Governors of the Federal Reserve System.

Whole mortgage pass-through security means, for purposes of this part, a security representing the entirety of the beneficial interest in a pool of fully disbursed, whole first mortgage loans on improved residential real property.

§ 935.2 Bank credit mission.

(a) The primary credit mission of the Banks shall be to enhance the availability of residential mortgage credit.

(b) Each Bank shall fulfill its primary credit mission by:

(1) Providing a readily available, economical and affordable source of funds in the form of advances to its members; and

(2) Offering such advances products or programs that satisfy the credit needs of its members.

(c) Notwithstanding paragraph (b) of this section, each Bank shall place such limitations on the making of advances to its members as shall:

(1) Be specifically prescribed by statute, regulation or policy;

(2) Protect the financial integrity of such Bank and accommodate the practical constraints associated with the Bank's ability to raise funds; or

(3) Be required by the Board.

§ 935.3 Bank advances policy.

(a) Each Bank's board of directors shall adopt, and review at least semiannually, a policy on advances to members consistent with the requirements of the Act, this part, and the general guidelines of the Board, as reflected in its resolutions, orders or manuals.

(b) A Bank's board of directors may designate officers authorized to extend or deny credit and take other action consistent with the Bank's advances policy.

(c) A Bank may make exceptions to its advances policy only with the approval of its board of directors, a committee thereof, or officers specifically authorized by the board of directors to approve such exceptions, provided that any such exceptions shall comply with the Act, this part and Board policies and guidelines.

(d) A Bank's board of directors shall:

(1) Require the officers designated pursuant to paragraph (b) of this section to report promptly to it, or a designated committee of the board, all actions taken under this section; and

(2) Review such actions for compliance with this section.

§ 935.4 Authorization and application for advances; obligation to repay advances.

(a) *Application for advances.* A Bank may accept oral or written applications for advances from its members.

(b) *Obligation to repay advances.* (1) A Bank shall require any member applying for an advance to enter into a primary and unconditional obligation to repay such advance and all other indebtedness to the Bank, together with interest and any unpaid costs and expenses in connection therewith, according to the terms under which such advance or other indebtedness was made.

(2) Such obligations shall be evidenced by a written advances agreement that shall be reviewed by the Bank's legal counsel to ensure such agreement is in compliance with applicable law.

(c) *Secured advances.* (1) Each Bank shall make only fully secured advances to its members as set forth in the Act, the provisions of this part and policies established by the Board.

(2) The Bank shall execute a written security agreement with each borrowing member which establishes the Bank's security interest in collateral securing advances.

(3) Such written security agreement shall, at a a minimum, describe the type of collateral securing the advances and give the Bank a perfectible security interest in the collateral.

(d) *Approval*—(1) *By the Bank's board of directors.* Applications for advances, advances agreements and security agreements shall be in substantially such form as approved by the Bank's board of directors, or a committee thereof specifically authorized by the board of directors to approve such forms.

(2) *By the Board.* Each Bank's forms for all advances applications, advances agreements and security agreements are deemed approved by the Board if such forms are consistent with the requirements of this part. Each Bank shall provide copies of its current forms for all advances agreements and security agreements, and any

substantive revisions thereto, to the Board.

§ 935.5 Limitations on access to advances.

(a) *Credit underwriting.* A Bank, in its discretion, may:

(1) Limit or deny a member's application for an advance if, in the Bank's judgment, such member:

(i) Is engaging or has engaged in any unsafe or unsound business practices;

(ii) Has inadequate capital;

(iii) Is sustaining operating losses;

(iv) Has financial or managerial deficiencies, as determined by the Bank, that bear upon the member's creditworthiness; or

(v) Has any other deficiencies, as determined by the Bank; or

(2) Approve a member's application for an advance subject to such additional terms as the Bank may prescribe, pursuant to the provisions of the Act, this part and any policy guidelines of the Board.

(b) *Advances to members without positive tangible capital*—(1) *New Advances.* A Bank shall not make a new advance available to a member without positive tangible capital unless:

(i) The member's appropriate Federal banking agency or insurer requests in writing that the Bank make such advance; and

(ii) The Bank determines in its discretion that it may safely make such advance to the member. The Bank shall promptly inform the Board of any such request.

(2) *Renewal of maturing advances.* (i) A Bank may renew an existing advance to a member without positive tangible capital for successive terms of up to 30 days each if the Bank determines that it may safely make such renewals to the member.

(ii) A Bank may renew an existing advance to a member without positive tangible capital for a term greater than 30 days at the written request of the appropriate Federal banking agency or insurer, if the Bank determines that it may safely make such renewal.

(c) *Members without Federal regulators.* The provisions of paragraph (b) of this section, in the case of members that are not federally insured depository institutions, may be implemented upon written request to the Bank from the member's state regulator.

(d) *Reporting.* (1) Each Bank shall provide the Board with a monthly report of the Bank's advances and commitments outstanding to each of its members.

(2) Such monthly report shall be in a format or on a form prescribed by the Board.

(3) Each Bank shall, upon written request from a member's appropriate Federal banking agency, insurer or state regulator, provide to such entity information on advances and commitments outstanding to the member.

(e) *Advance commitments.* The written advances agreement required by § 935.4(b)(2) of this part shall stipulate that the Bank shall not fund commitments for advances previously made to members whose access to advances is restricted pursuant to this section.

§ 935.6 Terms and conditions for advances.

(a) *Advance maturities.* Each Bank shall offer advances with maturities of up to ten years, and may offer advances with longer maturities consistent with the safe and sound operation of the Bank.

(b) *Advance pricing*—(1) *General.* Each Bank shall price its advances to members taking into account the following factors:

(i) The marginal cost to the Bank of raising matching maturity funds in the marketplace; and

(ii) The administrative and operating costs associated with making such advances to members.

(2) *Differential pricing.* (i) Each Bank may, in pricing its advances, distinguish among members based upon its assessment of:

(A) The credit risk to the Bank of lending to any particular member; or

(B) Other reasonable criteria that may be applied equally to all members.

(ii) Each Bank shall establish written standards and criteria for such differential pricing and shall apply such standards and criteria consistently and without discrimination to all members applying for advances.

(3) *Affordable Housing Program Advances.* The advance pricing policies and procedures contained in paragraph (b)(1) of this section shall not apply in the case of a Bank's AHP advances made pursuant to part 960 of this chapter.

(c) *Authorization for pricing advances.* (1) A Bank's board of directors, a committee thereof, or the Bank's president, if so authorized by the Bank's board of directors, shall set the rates of interest on advances consistent with paragraph (b) of this section.

(2) A Bank president authorized to set interest rates on advances pursuant to this paragraph (c) may delegate any part of such authority to any officer or employee of Bank.

§ 935.7 Interest rates on Community Investment Program advances.

Each Bank shall price its CIP advances as provided in § 935.6 of this part, provided that the cost of such CIP advances shall not exceed the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs.

§ 935.8 Fees.

(a) *Prepayment fees.* (1) Each Bank shall establish and charge a prepayment fee which sufficiently compensates the Bank for providing a prepayment option on an advance, and which acts to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

(2) Prepayment fees are not required for:

(i) Advances with terms to maturity or repricing periods of six months or less;

(ii) Advances funded by callable debt; or

(iii) Advances which are otherwise appropriately hedged so that the Bank is financially indifferent to their prepayment.

(3) The board of directors of each Bank, a designated committee thereof, or officers specifically authorized by the board of directors, may waive a prepayment fee only if such waiver will not result in an economic loss to the Bank. Any such waiver must subsequently be ratified by the board of directors.

(b) *Commitment fees.* Each Bank is authorized to charge a fee for the Bank's commitment to fund an advance.

(c) *Other fees.* Each Bank is authorized to charge other fees as it deems necessary and appropriate.

§ 935.9 Collateral.

(a) *Eligible security for advances.* At the time of origination or renewal of an advance, each Bank shall obtain, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

(1) *Mortgage loans and privately issued securities.* (i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent; or

(ii) Whole mortgage pass-through securities as defined in § 935.1 of this part.

(2) *Agency securities.* Securities issued, insured or guaranteed by the United States Government, or any agency thereof, including without limitation mortgage-backed securities.

as defined in § 935.1 of this part, issued or guaranteed by:

(i) the Federal Home Loan Mortgage Corporation;

(ii) the Federal National Mortgage Association; or

(iii) the Government National Mortgage Association.

(3) *Deposits.* Deposits in a Bank.

(4) *Other collateral.* (i) Except as provided in paragraph (a)(4)(iii) of this section, other real estate-related collateral acceptable to the Bank if:

(A) Such collateral has a readily ascertainable value; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Non-agency mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not permit the aggregate amount of outstanding advances to any one member, secured by such other real estate-related collateral, to exceed 30 percent of such member's capital, as calculated according to GAAP, at the time the advance is issued or renewed.

(b) *Bank restrictions on eligible collateral.* A Bank at its discretion may further restrict the types of eligible collateral acceptable to the Bank as security for an advance, based upon the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria.

(c) *Additional collateral.* The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraph (a) of this section or section 10 of the Act (12 U.S.C. 1430).

(d) *Bank stock as collateral.* (1) Pursuant to section 10(c) of the Act (12 U.S.C. 1430(c)), a Bank shall have a lien upon, and shall hold, the stock of a member in the Bank as further collateral security for all indebtedness of the member to the Bank.

(2) The written security agreement used by the Bank shall provide that the borrowing member's Bank stock is assigned as additional security by the member to the Bank.

(3) The security interest of the Bank in such member's Bank stock shall be entitled to the priority provided for in section 10(f) of the Act (12 U.S.C. 1430(f)).

(e) *Collateral security requiring formal approval.* No home mortgage loan otherwise eligible to be accepted as collateral for an advance by a Bank under this section shall be accepted as collateral for an advance if any director, officer, employee, attorney or agent of the Bank or of the borrowing member is personally liable thereon, unless the board of directors of the Bank has specifically approved such acceptance by formal resolution, and the Board or its designee has endorsed such resolution.

§ 935.10 Banks as secured creditors.

(a) Except as provided in paragraph (b) of this section, notwithstanding any other provision of law, any security interest granted to a Bank by a member, or by an affiliate of such member, shall be entitled to priority over the claims and rights of any party, including any receiver, conservator, trustee or similar party having rights of a lien creditor, to such collateral.

(b) A Bank's security interest as described in paragraph (a) of this section shall not be entitled to priority over the claims and rights of a party that:

(1) Would be entitled to priority under otherwise applicable law; and

(2) Is an actual bona fide purchaser for value of such collateral or is an actual secured party whose security interest in such collateral is perfected in accordance with applicable state law.

§ 935.11 Pledged collateral; verification.

(a) *Collateral safekeeping.* (1) A Bank may permit a member that is a depository institution to retain documents evidencing collateral pledged to the Bank, provided that the Bank and such member have executed a written security agreement pursuant to § 935.4(c) of this part whereby such collateral is retained solely for the Bank's benefit and subject to the Bank's control and direction.

(2) A Bank shall take any steps necessary to ensure that its security interest in all collateral pledged by non-depository institutions for an advance is as secured as its security interest in collateral pledged by depository institutions.

(3) A Bank may at any time perfect its security interest in collateral securing an advance to a member.

(b) *Collateral verification.* Each Bank shall establish written procedures, with standards similar to those established by the Auditing Standards Board of the American Institute of Certified Public Accountants, for verifying the existence of collateral securing the Bank's advances, and shall regularly verifying the existence of the collateral securing its advances in accordance with such procedures.

§ 935.12 Collateral valuation; appraisals.

(a) Each Bank shall establish written procedures for determining the value of the collateral securing the Bank's advances, and shall determine the value of such collateral in accordance with such procedures.

(b) Each Bank shall apply the valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.

(c) A Bank may require a member to obtain an appraisal of any item of collateral, and to perform such other investigations of collateral as the Bank deems necessary and proper.

§ 935.13 Restrictions on advances to members that are not qualified thrift lenders.

(a) *Restrictions on advances to non-QTL savings associations.* A Bank shall not make a new advance or renew an existing advance to a savings association member after receiving written notification from the OTS that such savings association has been designated as a non-QTL and that the restrictions on advances that apply to non-QTLs should be enforced.

(b) *Repayment of advances by non-QTL savings associations.* (1) Upon receipt of written notification from the OTS that all advances held by a savings association must be repaid because the association has not requalified as a QTL member, the Bank, in conjunction with the non-QTL savings association member, shall develop a schedule for the prompt and prudent repayment of outstanding advances by that member, consistent with the member's and the Bank's safe and sound operations.

(2) Notice of the agreed upon schedule referred to in paragraph (b)(1) of this section shall be provided promptly by the Bank to the OTS and the Board.

(c) *Restrictions on advances to non-QTL members other than savings associations.* (1) Except as provided in paragraphs (c)(4) and (c)(5) of this section, a Bank may make or renew an advance to a non-QTL member that is not a savings association only under the following conditions:

(i) Non-QTL members of a Bank that are not savings associations may only receive advances for the purpose of funding or purchasing new or existing

residential housing finance assets, as determined pursuant to paragraph (c)(2) of this section;

(ii) The member holds Bank stock at the time it receives the advance in an amount equal to at least five percent of the outstanding principal amount of the member's total advances, divided by such member's ATIP, calculated pursuant to paragraph (c)(3) of this section; and

(iii) The aggregate amount of a Bank's advances to non-QTL non-savings association members shall not exceed 30 percent of the amount of the Bank's total outstanding advances, at the time such advances are made or renewed.

(2) Prior to approving an application for an advance, a Bank shall determine that the principal amount of all advances outstanding to the non-QTL non-savings association member at the time the advance is requested does not exceed the total book value of residential housing finance assets held by such member, which shall be determined using the member's most recent Report of Condition and Income or financial statement made available by the member.

(3) The Bank shall calculate each non-QTL non-savings association member's ATIP annually, between January 1 and April 15, based upon financial data as of December 31 of the prior calendar year.

(4) The requirements of paragraphs (c)(1), (2) and (3) of this section shall not apply to:

(i) A savings bank, as defined in section 3(g) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(g)); or

(ii) A Federal savings association in existence as such on August 9, 1989 that:

(A) Was a state chartered savings bank or cooperative bank before October 15, 1982; or

(B) Acquired its principal assets from an institution that was a state chartered savings bank or cooperative bank before October 15, 1982.

(5) The requirements of paragraph (c)(2) of this section shall not apply to applications from members for AHP or CIP advances.

(d) *Priority for QTL members.* (1) Except as provided in paragraph (d)(3) of this section, if a Bank is unable to meet the aggregate advance demand of all of its members, the Bank shall give priority to applications for advances from its QTL members, subject to the following considerations:

(i) The effect of making the advances on the financial integrity of the Bank;

(ii) The member's creditworthiness;

(iii) The availability of funding with maturities compatible with advance applications; and

(iv) Any other factors that the Bank determines to be relevant.

(2) The institutions identified in paragraph (c)(4) of this section shall be treated as QTLs for purposes of this paragraph.

(3) The requirements of paragraphs (d)(1) and (2) of this section shall not apply to a Bank's special, or otherwise limited, advance offerings.

(e) *Advance commitments.* The written advance agreement required by § 935.4(b)(2) of this part shall stipulate that the Bank shall not fund commitments for advances previously made to members whose access to advances is restricted pursuant to paragraph (a) or (c) of this section.

§ 935.14 Limitations on long-term advances.

(a) A Bank shall make long-term advances only for the purpose of enabling a member to fund or purchase new or existing residential housing finance assets.

(b)(1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the member's most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member.

(2) Applications for AHP and CIP advances are exempt from the requirements of this section.

§ 935.15 Capital stock requirements; unilateral redemption of excess stock.

(a) *Capital stock requirement for advances.* (1) At no time shall the aggregate amount of outstanding advances made by a Bank to a member exceed 20 times the amount paid in by such member for capital stock in the Bank.

(2) A non-QTL non-savings association member shall hold stock in the Bank at the time it receives an advance in an amount equal to at least the amount of stock required to be held pursuant to § 935.13(c)(1)(ii) of this part.

(b) *Unilateral redemption of excess stock.* A Bank, after providing 15 calendar days' advance written notice to a member, may unilaterally redeem that amount of the member's Bank stock that exceeds the stock requirements set forth in paragraph (a) of this section provided the minimum amount required in section 6(b)(1) of the Act is maintained.

§ 935.16 Advance participations.

A Bank may allow any other Bank to purchase a participation interest in any advance, and any other Bank may accept a participation interest therein, together with an appropriate assignment of security therefor, subject to the approval of the boards of directors of the relevant Banks and consistent with Board policy.

§ 935.17 Intradistrict transfer of advances.

A Bank may allow one of its members to assume an advance obligation of another of its members, provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

§ 935.18 Special liquidity advances to savings associations.

(a) *Eligible institutions.* (1) A Bank, upon receipt of a written request from the Director of the OTS, may make short-term advances to a member savings association.

(2) Such request must certify that the member:

(i) Is solvent but presents a supervisory concern to the OTS because of the member's financial condition; and

(ii) Has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

(b) *Terms and conditions.* Advances made by a Bank to a member savings association under this section shall:

(1) Be subject to all applicable collateral requirements of the Bank, this part and section 10(a) of the Act (12 U.S.C. 1430(a)); and

(2) Be at the interest rate applicable to advances of similar type and maturity that are made available to other members that do not pose such a supervisory concern.

§ 935.19 Liquidation of advances upon termination of membership.

If an institution's membership in a Bank is terminated, the Bank shall determine an orderly schedule for liquidating any indebtedness of such member of the Bank; provided that this section shall not require a Bank to call any such indebtedness prior to maturity of the advance, if so doing would be inconsistent with the Bank's safe and sound operation. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment.

Subpart B—Advances to Nonmembers

§ 935.20 Scope.

The requirements of subpart A of this part apply to this subpart, except as otherwise provided in §§ 935.21 and 935.22 of this subpart.

§ 935.21 Advances to the Savings Association Insurance Fund.

(a) A Bank may, upon receipt of a written request from the FDIC, make advances to the FDIC for the use of the Savings Association Insurance Fund. The Bank shall provide a copy of such request to the Board.

(b) Such advances shall:

(1) Bear a rate of interest not less than the Bank's marginal cost of funds, taking into account the maturities involved and reasonable administrative costs;

(2) Be for a maturity acceptable to the Bank;

(3) Be subject to any prepayment, commitment or other appropriate fees of the Bank; and

(4) Be adequately secured by collateral acceptable to the Bank.

§ 935.22 Advances to nonmember mortgagees.

(a) *Authority.* Subject to the provisions of the Act and this part, a Bank may make advances to an entity that is not a member of a Bank, if the entity qualifies as a nonmember mortgagee pursuant to section 10b of the Act (12 U.S.C. 143b) and paragraph (b) of this section.

(b) *Qualified nonmember mortgagee.* To qualify for an advance as a nonmember mortgagee, an entity must meet the following requirement:

(1) *Charter.* It must be chartered under law and have succession. A corporation, another entity that has rights, characteristics and powers under applicable law similar to those granted a corporation, or a government agency, meets this requirement;

(2) *Examination.* It must be subject, pursuant to statute or regulation, to the inspection, supervision and oversight of a Federal, state, or local government agency;

(3) *Lending activity.* (i) The entity's principal activity in the mortgage field must consist of lending its own funds, which may include appropriated funds in the case of a Federal, state or local government agency;

(ii) An entity meets the requirement in paragraph (b)(3)(i) of this section, notwithstanding that the majority of its total operations are unrelated to mortgage lending, if the majority of its mortgage activity conforms to this requirement;

(iii) An entity that acts principally as a broker for others making mortgage loans, or makes mortgage loans for the account of others, does not meet the requirement in paragraph (b)(3)(i) of this section; and

(4) *HUD approval.* The entity must be approved by the Department of Housing and Urban Development (HUD) as a "mortgagee" pursuant to HUD regulations (24 CFR part 203), under title II of the National Housing Act (12 U.S.C. 1707—1715z–20).

(c) *Bank advance policy for nonmember mortgagees.* Prior to establishing a program to lend to nonmember mortgagees, a Bank's board of directors shall adopt a policy on advances to nonmember mortgagees consistent with the requirements of the Act, this part, and general guidelines of the Board, as reflected in its resolutions, orders or manuals. Such policy shall be reviewed by the Bank's board of directors at least semiannually.

(d) *Terms and conditions*—(1) *Advance pricing*—(i) *Costs.* Each Bank making an advance to a nonmember mortgagee shall price the advance so as to cover the funding, operating and administrative costs associated with making the advance. The price of the advance may reflect the credit risk or other reasonable differential pricing criteria associated with lending to the nonmember mortgagee, provided that the criteria are applied equally to all nonmember mortgagee borrowers.

(ii) *Capital investment.* The price of the advance shall compensate the Bank for the lack of a capital stock investment by the nonmember mortgagee in the Bank. This requirement may be satisfied by requiring the nonmember mortgagee to maintain a compensating deposit balance with the Bank.

(2) *Limitation on advances.* The principal amount of any advance made to a nonmember mortgagee may not exceed 90 percent of the unpaid principal of the mortgage loans or securities described in paragraph (e) of this section that are pledged as security for the advance.

(e) *Collateral.* A Bank may grant an advance to a nonmember mortgagee pursuant to this section only on the security of the following collateral:

(1) Mortgage loans insured by the Federal Housing Administration of the Department of Housing and Urban Development, pursuant to title II of the National Housing Act (12 U.S.C. 1707—1715z–20); or

(2) Securities representing a *pro rata* share of the principal and interest payments due on a pool of mortgage loans, all of which mortgage loans meet the requirements of paragraph (e)(1) of this section. A Bank shall require a nonmember mortgagee using collateral as described in this paragraph (e)(2) to provide evidence that such securities are backed solely by mortgages of the type described in paragraph (e)(1) of this section.

(f) *Loss of nonmember mortgagee eligibility.* (1) A Bank shall require each nonmember mortgagee that applies for an advance under this section to agree in writing to inform the Bank promptly of any change in its status as a nonmember mortgagee.

(2) If a nonmember mortgagee borrower ceases to fulfill the eligibility requirements for a nonmember mortgagee pursuant to paragraph (b) of this section, a Bank may not extend a new advance or renew an existing advance to such entity, until the Bank is satisfied that the entity again fulfills the requirements for a nonmember mortgagee contained in this section.

(g) *Verification of nonmember mortgagee requirements.* A Bank may, from time to time, require a nonmember mortgagee borrower to provide evidence that such institution continues to satisfy all of the qualifications and requirements contained in this section.

PART 940—[REMOVED]

2. Part 940 is removed and reserved.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92–23792 Filed 9–30–92; 8:45 am]

BILLING CODE 6725–1–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Part 1401

Proposed Rule Regarding Public Availability of Information

AGENCY: Office of National Drug Control Policy.

ACTION: Proposed rule and request for comments.

SUMMARY: The Freedom of Information Act (FOIA) requires every Federal agency to make available to the public official documents and other records upon request, unless the material requested falls under one of several limited exceptions. FOIA also requires agencies to publish rules stating the time, place, fees, and procedures to apply in making records available to any person upon request. Further, Section 1803 of the Freedom of Information Reform Act of 1986 requires each agency to establish a system for recovering costs associated with

responding to requests for information under FOIA. The Office of Management and Budget (OMB) has issued guidelines that set standard government-wide definitions for assessing and collecting FOIA fees (OMB Fee Guidelines).

This proposed rule describes the procedures to be followed in submitting a FOIA request to the Office of National Drug Control Policy (ONDCP) and the procedures that ONDCP will use in responding to such requests. Included are provisions for assessing and collecting fees from FOIA requesters in accordance with the OMB Fee Guidelines.

DATES: Comments must be received on or before November 30, 1992.

ADDRESSES: Written comments should be sent to the Office of the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500.

FOR FURTHER INFORMATION CONTACT: Paul Cellupica, Office of the General Counsel, Office of National Drug Control Policy, Washington, DC 20500, (202) 467–9840.

SUPPLEMENTARY INFORMATION: The Office of National Drug Control Policy was created by the Anti-Drug Abuse Act of 1988, Public Law 100–690, 21 U.S.C. 1501 *et seq.*, and was charged with the development and coordination of national policy toward illegal drugs.

List of Subjects in 21 CFR Part 1401

Archives and records, Freedom of information, Records.

For the reasons set out in the preamble, title 21, chapter III of the Code of Federal Regulations as proposed to be established at 57 FR 31160, July 14, 1992, is proposed to be amended by establishing a new part 1401 to read as follows:

CHAPTER III—OFFICE OF NATIONAL DRUG CONTROL POLICY

PART 1401—PUBLIC AVAILABILITY OF INFORMATION

Sec.

1401.1 Purpose.
1401.2 The Office of National Drug Control Policy—Organization and functions.
1401.3 Definitions.
1401.4 Records of other agencies.
1401.5 How to request records—form and content.
1401.6 Initial determination.
1401.7 Prompt response.
1401.8 Responses—form and content.
1401.9 Appeal procedures.
1401.10 Fee schedule.
1401.11 Payment of fees.
1401.12 Waiver of fees.
1401.13 Aggregation of requests.
1401.14 Records that are exempt from disclosure.
1401.15 Deletion of exempted information.

Authority: 5 U.S.C. 552, as amended.

§ 1401.1 Purpose.

The purpose of this part is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act (FOIA), 5 U.S.C 552, as amended.

§ 1401.2 The Office of National Drug Control Policy—organization and functions.

(a) The Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988, 21 U.S.C. 1501 *et seq.* The mission of ONDCP is to coordinate the anti-drug efforts of the various agencies and departments of the Federal government, to consult with States and localities and assist their anti-drug efforts, and to annually promulgate the National Drug Control Strategy. ONDCP is headed by the Director of National Drug Control Policy. The Director is assisted by a Deputy Director for Supply Reduction, a Deputy Director for Demand Reduction, and an Associate Director for State and Local Affairs.

(b) ONDCP has an Office of Public Affairs that is responsible for providing information to the press and to the general public. If members of the public have general questions about ONDCP that can be answered by telephone, they may call the Office of Public Affairs at (202) 467–9890. This number should not be used to make FOIA requests. All oral requests for information under FOIA will be rejected.

§ 1401.3 Definitions.

As used in this part, the following definitions shall apply:

(a) *Commercial-use request* means a request from or on behalf of one who seeks information for a cause or purpose that furthers the commercial, trade or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a requester properly belongs in this category, ONDCP will consider how the requester intends to use the documents.

(b) *Direct costs* means those expenditures that ONDCP actually incur in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) *Duplication* means the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation. ONDCP will provide a copy of the material in a form that is usable by the requester unless it is administratively burdensome to do so.

(d) *Educational institution* means preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(e) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced above, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(f) *Records* and/or *information* means all books, papers, manuals, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by ONDCP and preserved or appropriate for preservation by ONDCP as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the information value of the data in them, but does not include books, magazines or other material acquired solely for library purposes and through other sources, and does not include analyses, computations, or compilations of information not extant at the time of the request. The term "records" does not include objects or articles such as structures, furniture, paintings, sculptures, three-dimensional models, vehicles, and equipment.

(g) *Representative of the news media* means any person actively gathering news for a entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") that make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as working for a news organization if

they can demonstrate a reasonable basis for expecting publication through that organization, even though not actually employed by it.

(h) *Request* means a letter or other written communication seeking records or information under FOIA.

(i) *Review* means the process of examining documents located in response to a commercial-use request to determine if that document or any portion of that document is permitted to be withheld. It also includes processing any document for disclosure (i.e., doing all that is necessary to excise those portions of the document not subject to disclosure under FOIA and otherwise preparing them for release). Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(j) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches should be performed in the most efficient and least expensive manner so as to minimize costs for both ONDCP and the requester; for example, line-by-line searches should not be undertaken when it would be more efficient to duplicate the entire document. Searches should be distinguished from "review" of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

§ 1401.4 Records of other agencies.

Requests for records that originated in another agency and are in the custody of ONDCP shall be referred to the originating agency for processing, and the person submitting the request shall be so notified. Any decision made by the originating agency with respect to such records will be honored by ONDCP.

§ 1401.5 How to request records—form and content.

(a) Requests for records under FOIA must be submitted in writing, addressed to: Office of the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500. The words "FOIA REQUEST" or "REQUEST FOR RECORDS" must be clearly marked on both the letter and the envelope. If the request is not so marked and addressed, the 10-day time limit imposed by § 1401.7 of this part shall not begin to run until the request has been received by the Office of the General Counsel and identified as a FOIA request. Due to security requirements, FOIA requests may not be delivered in person.

(b) Any ONDCP employee who receives a request shall promptly forward it to the Office of the General Counsel. Any ONDCP employee who receives an oral request made under the FOIA shall inform the person making the request of the provisions of this part requiring a written request.

(c) Each request must reasonably describe the record(s) sought, including when known: The specific event or action to which the request refers, if any; the name of the agency, office, organization or person that originated the record; the date or time period to which the request refers; the subject matter of the records requested; the type of document requested; the location of the record(s) requested; and any other pertinent information that would assist in promptly locating the record(s).

(d) When a request is not considered reasonably descriptive, or requires the production of voluminous records, or places an extraordinary burden on ONDCP, seriously interfering with its normal functioning to the detriment of the business of the Government, ONDCP may require the person or agent making the FOIA request to confer with an ONDCP representative in order to attempt to verify, and, if possible, narrow the scope of the request.

(e) Upon initial receipt of a request, the Office of the General Counsel shall determine which official or officials within ONDCP shall have the primary responsibility for collecting and reviewing the requested information and drafting a proposed response.

§ 1401.6 Initial determination.

The General Counsel or his or her designee shall have the authority to approve or deny requests received pursuant to these regulations. The decision of the General Counsel shall be final, subject only to administrative review as provided in § 1401.9.

§ 1401.7 Prompt response.

(a) The General Counsel or his or her designee shall either approve or deny a request for records within 10 working days (excluding Saturday, Sundays and Federal holidays) after receipt of the request unless additional time is required for one of the following reasons:

(1) It is necessary to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(2) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of ONDCP that have a substantial interest in the subject matter of the request.

(b) When additional time is required for one of the reasons stated in paragraph (a) of this section, the General Counsel or his or her designee shall acknowledge receipt of the request within the 10 working day period and include a brief explanation of the reason for delay, indicating the date by which a determination will be forthcoming. An extended deadline adopted for one of the reasons set forth above may not exceed 10 additional working days.

§ 1401.8 Responses—form and content.

(a) When a requested record has been identified and is available, the General Counsel or his or her designee shall notify the person making the request as to where and when the record will be available for inspection or the copies will be available. The notification shall also advise the person making the request of any fees assessed under § 1401.10 of this part.

(b) A denial or partial denial of a request for a record shall be in writing signed by the General Counsel or his or her designee and shall include:

(1) The name and title of the person making the determination;

(2) Either a reference to the specific exemption under FOIA authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed by § 1401.7, and that the denial will be reconsidered as soon as the search or examination is complete; and

(3) A statement that the denial may be appealed to the Director within 30 days of its receipt by the requester.

(c) If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the person making the request shall be so notified and the legal authority for disposition shall be cited.

§ 1401.9 Appeal procedures.

(a) When the General Counsel or his or her designee denies a request for records in whole or in part, the person making the request may, within 30 days of receipt of the notice of denial, appeal the denial to the Director of ONDCP. The appeal must be in writing, addressed to the Director, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500. The envelope should be clearly

labeled as a "Freedom of Information Act Appeal."

(b) The Director will act upon the appeal within 20 working days of its receipt. The Director may extend the 20-day period of time by any number of working days which could have been used by the General Counsel or his or her designee under § 1401.7 but which were not used in making the initial determination. The Director's action on an appeal shall be in writing and signed.

(c) If the decision is in favor of the requester, the Director shall order records promptly made available to the requester.

(d) A denial in whole or in part of a request on appeal shall set forth a brief explanation of the reasons for the decision, and shall inform the requester of his or her right to seek judicial review of the denial and ruling on appeal as provided in 5 U.S.C. 552(a)(4).

(e) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Director.

§ 1401.10 Fee schedule.

(a) There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. FOIA prescribes different levels of fees for each of these categories.

(1) *Commercial use requesters.* When a request for records is made for commercial use, charges will be assessed to cover all the costs of searching for, reviewing for release, and duplicating the records sought.

(2) *Educational and non-commercial scientific institutions.* When a request for records is made by an educational or a non-commercial scientific institution in furtherance of scholarly or scientific research, charges will be assessed to cover the cost of duplication alone, excluding charges for duplication of the first 100 pages.

(3) *Requests by representatives of the news media.* When a request for records is made by a representative of the news media for the purpose of news dissemination, charges will be assessed to cover the cost of duplication alone, excluding charges for duplication of the first 100 pages.

All other requests. When a request for records is made by a requester who does not fit into any of the preceding categories, charges will be assessed to cover the costs of searching for and duplicating the records sought, excluding charges for the first two hours of search time and the duplication of the first 100 pages. Moreover, requests from individuals for records about themselves will be treated under the Privacy Act of 1974, 5 U.S.C. 552a, which permits the assessment of fees for duplication costs only, regardless of the requester's characterization of the search.

(b) Fees for searches, review of records and duplication of records are charged as follows:

(1) *Search for records.* The charge for a manual search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the search plus 16 percent of that rate. The charge for a computer search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the search, plus 16 percent of that rate, plus the direct cost of the operation of the computer for that portion of time attributable to the search.

(2) *Review of records.* Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges will be assessed only for the initial review; i.e., the review undertaken the first time ONDCP analyzes the applicability of a specific exemption to a particular record or portion of a record. Charges will not be assessed for review at the administrative appeal level of the exemption(s) already applied. The cost for review will be calculated based on the salary of the category of the employee who actually performed the review plus 16 percent of that rate.

(3) *Duplication of records.* Copies made by routine photostatic copying shall be charged at the rate of $0.15 per page. If copies need to be made by other methods, the direct costs of such copies will be charged to the requester, as determined by the General Counsel.

(4) *Unsuccessful searches.* Requesters may be charged for unsuccessful or unproductive searches or for searches when records located are determined to be exempt from disclosure.

(5) *Other charges.* ONDCP will recover the direct costs of providing special services such as certifying that records are true copies, and sending records by special methods such as express mail.

(c) No fee will be charged by ONDCP when the routine costs of collecting and processing the fee equal to or exceed the amount of the fee. For purposes of this section, the routine costs of collecting and processing a fee chargeable under FOIA are estimated to be $15.00 for each FOIA request.

§ 1401.11 Payment of fees.

(a) The requester must agree to pay all fees that are chargeable under this section prior to issuance of the requested copies.

(b) Payment of fees shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasurer of the United States and mailed to the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500.

(c) If it is anticipated that the fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance his willingness to pay such fees, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will exceed $250.00, an advance deposit may be required. The notice or request for an advance deposit shall extend to the requester an offer to consult with ONDCP personnel in order to reformulate the request in a manner which will reduce the fees. A reformulated request shall be considered a new request, thus beginning a new 10 workday period for responding to the request.

(d) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), ONDCP may require the requester to demonstrate that he or she has, in fact, paid any outstanding fees from past requests, and to make an advance payment of the full amount of the estimated fee for the present request before ONDCP responds to that request.

(e) Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be assessed at the rate prescribed in 31 U.S.C. 3717, and shall accrue from the date of the billing. The fact that a fee has been received by ONDCP, even if not processed, will suffice to stay the accrual of interest.

(f) To encourage the repayment of delinquent fees, ONDCP shall use the procedures described in the Debt Collection Act of 1982, 31 U.S.C. 3716–3719, including the use of collection agencies and disclosure to consumer reporting agencies.

§ 1401.12 Waiver of fees.

(a) Records shall be furnished without charge, or at a reduced charge, upon a determination by the General Counsel of ONDCP that: (1) Waiver or reduction of the fees is in the public interest because release of the requested information is likely to contribute significantly to public understanding of the operations or activities of ONDCP and is not primarily in the commercial interest of the requestor; or (2) Assessment of fees is not feasible.

(b) Upon written request, a written explanation will be provided as to why a request for waiver or reduction of FOIA fees was not granted.

(c) There is no right to an administrative appeal from a decision not to waive or reduce fees.

§ 1401.13 Aggregation of requests.

(a) When the General Counsel reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, such requests may be aggregated and fees may be charged accordingly.

(b) In determining whether a series of requests shall be aggregated, the General Counsel will consider two factors: Whether the requests concern a single subject or two or more closely related subjects; and whether the requests were all made within a 30-day period. If a series of requests is made by multiple requesters, the General Counsel will also consider whether there is substantial evidence to support the conclusion that the requesters are acting in concert.

§ 1401.14 Records that are exempt from disclosure.

(a) Records described in 5 U.S.C. 552(b) are exempt from disclosure under FOIA. These include the following categories of records:

(1) Records that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of an agency;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Records of trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (i) Could reasonably be expected to interfere with enforcement proceedings, (ii) Would deprive a person of a right to a fair trial or an impartial adjudication, (iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) Could reasonably be expected to disclose the identity of a confidential source including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines or law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) Could reasonably be expected to endanger the life or physical safety of any individual.

§ 1401.15 Deletion of exempted information.

When requested records contain matters that are exempted under 5 U.S.C. 552(b), but such exempted matters are reasonably segregable from the remainder of the records, the records shall be disclosed by ONDCP with the necessary deletions. ONDCP shall attach to each such record a written justification for making the deletion or deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

Bob Martinez,

Director.

[FR Doc. 92-23786 Filed 9-30-92; 8:45 am]

BILLING CODE 3180-02-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 17, 19, 70, 170, 194, 197, 250

[Notice No. 758; Re Notice No. 748; 73R-24P]

Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period for Notice No. 748, a notice of proposed rulemaking (NPRM) published in the Federal Register on August 31, 1992 (57 FR 39536). Notice No. 748 concerned taxpaid distilled spirits used to manufacture nonbeverage products. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the difficult and complex issues addressed in the NPRM.

DATES: Comments must be filed on or before October 30, 1992.

ADDRESSES: Send written comments to: Chief, Distilled Spirits and Tabacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221; ATTN: Notice No. 758.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon Distrilled Spirits and Tabacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

On August 31, 1992, ATF published Notice No. 748 in the Federal Register (57 FR 39536). Notice No. 748 proposed to amend and recodify the regulations currently in 27 CFR part 197 (Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products). The recodified regulations would be designated as 27 CFR part 17. In conjunction with the recodification, a number of amendments to the drawback regulations were proposed. The regulations currently in 27 CFR part 170, Subpart U (Manufacture and Sale of Certain Compounds, Preparations, and Products Containing Alcohol) would be distributed between part 19 and the new part 17. Conforming changes were proposed in 27 CFR parts 70, 194, and 250.

Significant proposed changes from current regulations include the following: Allowing manufacturers of nonbeverage products the option of filing claims for credit, if they are also proprietors of distilled spirits plants; simplifying the requirements for supporting data filed with drawback claims; and adding a section to provide for alternate methods of procedures when approved by the ATF Director. The proposed new regulations reflect the holdings of 19 published rulings and one published procedure. For complete details of the proposals, Notice No. 748 should be consulted.

A comment period of just 30 days was provided by Notice No. 748. Primarily this was due to the fact that most of the proposals had been previously aired for public comment by Notice No. 634 (52 FR 28286, July 29, 1987). Notice No. 634 provided a 90-day comment period. Further comments concerning Notice No. 634 were accepted during an additional period of 30 days under Notice No. 649 (52 FR 46628). In total, only four public comments were received.

Request for Extension of Comment Period

The comment period for Notice No. 748 was scheduled to close on September 30, 1992. On September 14, 1992, a request was filed with ATF for an extension of the comment period. This request was submitted by the Distilled Spirits Council of the United States, Inc., a national trade association representing the suppliers of over 80% of the distilled spirits sold in the United States. An extension of an additional 90 days was requested, due to the complexity of the issues raised in Notice No. 748.

In consideration of this request, ATF will grant an extension of the comment period. However, since most of the same issues have previously been aired for public comment during a sufficient length of time, ATF has determined that an extension of an additional 30 days is appropriate. Therefore, the comment period for Notice No. 748 will be extended until October 30, 1992. Drafting Information.

The principal drafter of this document is Steven C. Simon of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance: This notice is issued under the authority of 26 U.S.C. 7805.

Signed: September 23, 1992.

Stephen E. Higgins,

Director.

[FR Doc. 92-23755 Filed 9-30-92; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-11-7-5589; FRL-4512-6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Santa Barbara County Air Pollution Control District, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Santa Barbara County Air Pollution Control District (SBCAPCD) on February 20, 1990 and the San Diego County Air Pollution Control District (SDCAPCD) on May 21, 1991. The California Air Resources Board (ARB) submitted the SBCAPCD revision to EPA on December 31, 1990 and the SDCAPCD revision on May 30, 1991. The revisions concern SBCAPCD Rule 323, Architectural Coatings, which controls the emission of volatile organic compounds (VOCs) from architectural coatings and SDCAPCD Rule 67.16, Graphic Arts, which regulates the emission of VOCs from graphic arts operations. EPA has evaluated the revisions to SDCAPCD Rule 323 and SBCAPCD Rule 67.16 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under sections 110(k)(3) and 301(a) of the CAA because the rules do not meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section II (A-5-3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

Santa Barbara County Air Pollution Control District, 26 Castillian Drive, B-23, Goleta, CA 93117

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1095

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section II (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1195, FAX: 744-1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included Santa Barbara County and the San Diego Area. 43 FR 8964; 40 CFR 81.305. Because Santa Barbara County and the San Diego Area were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238, 52.222. Santa Barbara County and the San Diego Area did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that SBCAPCD and the SDCAPCD portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to preamended section 172(b) as interpreted in EPA's pre-amendment guidance.[1] EPA's SIP-Call used that

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulations Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register

Continued

guidance to indicate the necessary corrections for specific nonattainment areas. Santa Barbara County is classified as moderate and San Diego County is classified as severe [2]; therefore, these two area are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on December 31, 1990 and May 30, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for SBCAPCD Rule 323 and SDCAPCD Rule 67.16. These submitted rules were found to be complete on February 28, 1991 and July 10, 1991 respectively pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR Part 51, Appendix V,[3] and are being proposed for limited approval and limited disapproval.

SBCAPCD Rule 323 controls the emission of VOCs from architectural coatings [4] and SDCAPCD Rule 67.16 controls the emission of VOCs from graphic arts operations. VOCs contribute to the production of ground level ozone and smog. SBCAPCD's revised Rule 323 was originally adopted as part of SBCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. SBCAPCD's revision of Rule 323 and SDCAPCD's new Rule 67.16 have been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SBCAPCD Rule 323 and SDCAPCD Rule 67.16.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among the provisions of the CAA is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the preamended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SDCAPCD Rule 67.16 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources Volume VII: Graphic Arts—Rotogravure and Flexography," EPA document # EPA–450/2–78–033. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. For some source categories, such as architectural coatings, EPA has not published a CTG[5].

While the EPA has not developed a CTG for architectural coatings at this time, on May 12, 1989, the ARB approved a suggested control measure (SCM) for the architectural coatings category. The SCM was developed by the California Technical Review Group (TRG)[6] in cooperation with the paints and coatings industry and was intended to serve as a model architectural coatings rule for ozone nonattainment areas (e.g., the SBCAPCD) in California. The SCM built upon previous architectural coating model rules adopted by ARB in 1977 and 1986. EPA supported the ARB's adoption of the SCM as demonstrating progress toward attainment of the NAAQA for ozone and representing standards which are technically and economically feasible. SBCAPCD Rule 323 is modeled after the SCM.

SBCAPCD Rule 323, Architectural Coatings, controls emissions of VOCs from the use of architectural coatings within the district. SDCAPCD Rule 67.16 is a new rule which was adopted to control the emission of VOCs from the operation of all continuous web or single sheet fed graphic arts printing, processing, laminating or drying operations within the district.

EPA has evaluated SBCAPCD Rule 323 and SDCAPCD Rule 67.16 for consistency with the CAA, EPA regulations, and EPA policy and has found that these submitted rules serve to strengthen the SIP. SBCAPCD Rule 323 will achieve VOC reductions from: amended definitions and additional administrative requirements; new emission limits for previously exempt speciality coatings; and revised emission limits for several specialty coating categories. The revisions include:

- Approximately thirty new or revised definitions which further clarify the applicable coating categories and delete non-substantive verbiage;
- New VOC content limits for approximately eighteen specialty categories through consolidation with other categories; and
- The elimination of one and addition of eight administrative requirements.

For a detailed description of the revision, readers should contact the individual listed previously in the notice. In summary, the revisions strengthen the limits in and improve the enforceability of the current SIP rule.

- SDCAPCD Rule 67.16 will achieve VOC reductions by:
- Setting emission limits for sources previously unregulated and the option of using control equipment in lieu of compliant materials;
- Adding cleanup requirements;
- Requiring daily recordkeeping of the type and amount of graphic arts material used; and
- Adding test methods to determine compliance.

Furthermore, the addition of the more stringent limits in SBCAPCD Rule 323

Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] Santa Barbara County and the San Diego Area retained their designation and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act to be codified at 40 CFR part 51, appendix V. See 56 FR 42216 (August 26, 1991).

[4] Architectural coatings include but are not limited to: Ordinary house and trim paints, lacquers, varnishes, concrete curing compounds, industrial maintenance coatings, stains, primers, sealers, undercoaters, roof coatings, traffic coatings, and water sealers.

[5] EPA has not developed a Control Technique Guideline (CTG) for architectural coatings. As required under section 183(e) of the CAA, EPA is investigating the development of a CTG or regulations for consumer and commercial products which will include paints, coatings, and solvents (e.g. architectural coatings).

[6] The TRG is a statewide regulatory work group comprised of representatives from the Air Resources Board, various California air pollution control districts, and the federal Environmental Protection Agency. In California, the TRG has been instrumental in assisting the ARB and various air pollution control districts with the development of control strategies which represent RACT for a variety of pollutants, including various VOC categories. On May 24, 1989, the TRG approved the Suggested Control Measure adopted by ARB making it the "Air Resources Board—California Air Pollution Control Officers Association Suggested Control Measure for Architectural Coatings".

and SDCAPCD Rule 67.16 should lead to more emission reductions.

Although the approval of SBCAPCD Rule 323 and SDCAPCD Rule 67.16 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirements of Part D of the CAA.

SBCAPCD Rule 323 contains the following deficiencies: (1) Allowance for "equivalent" compliance test methods without EPA review and approval; and (2) a lack of VOC definition in the rule. (SBCAPCD's Rule 102—Definitions has not been approved into the SIP; if approved, the lack of a VOC definition in Rule 323 would no longer be a deficiency). A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rule 323, which is available from the U.S. EPA, Region 9 office. SDCAPCD Rule 67.16 contains one deficiency. This deficiency allows the use of a test method (Bay Area Air Quality Management District Test Method 30) for measurement of VOC content in non-heatset inks that has been found by EPA to be unacceptable for this intended use. A detailed discussion of this deficiency can be found in the Technical Support Document for Rule 67.16, which is available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and Part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SBCAPCD submitted Rule 323 and SDCAPCD submitted Rule 67.16 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301, and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301, and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 18, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23874 Filed 9–30–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[CA–12–4–5560; FRL–4515–9]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; Placer, San Diego and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) adopted by the Placer County Air Pollution Control District (APCD) on September 25, 1990, the San Joaquin Valley Unified APCD on September 19, 1991, and the San Diego County APCD on October 16, 1990. The California Air Resources Board (CARB) submitted the Placer County APCD revisions to EPA on April 5 and May 30, 1991. CARB submitted the San Diego

County APCD and the San Joaquin Valley Unified APCD revisions to EPA on April 5, 1991 and January 28, 1992, respectively. The revisions concern the adoption of four rules: Placer County Rule 213, Gasoline Transfer into Stationary Storage Containers, Placer County Rule 215, Transfer of Gasoline into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities, San Joaquin Valley Unified Rule 463.2, Storage of Organic Liquids, and San Diego County Rule 61.4, Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks. These rules control the emission of volatile organic compounds (VOCs) from the transfer of organic liquids, primarily gasoline, to storage, cargo and fuel tanks. EPA has evaluated each of these rules and is proposing to approve them under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Comments may be mailed to: Esther J. Hill, Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814
Placer County Air Pollution Control District, 11464 B. Avenue, Auburn, CA 95603
San Joaquin Valley Unified Air Pollution Control District, 2314 Mariposa Street, Fresno, CA 93721
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Sacramento Metro Area (which includes Placer County with the exception of those areas in the County included in the Lake Tahoe Air Basin),[1] the San Joaquin Valley Area, and the San Diego Area. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[2] 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified APCD was formed. This District has authority over the San Joaquin Valley Air Basin which includes Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare Counties, and over a portion of Kern County. The Kern County APCD has authority over the remainder of Kern County which lies in the Southeast Desert Air Basin.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in EPA's pre-amendment guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Placer County (excluding the Tahoe Basin) and the San Joaquin Valley Area APCDs are classified as serious and the San Diego Area is classified as severe; therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.[4]

The State of California submitted many revised RACT rules for incorporation into its SIP on April 5, 1991 and January 28, 1992, including the rules being acted on in this notice. This notice addresses EPA's proposed action for Placer County Rules 213, Gasoline Transfer into Stationary Storage Containers and 215, Transfer of Gasoline into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities; San Joaquin Valley Unified Rule 463.2, Storage of Organic Liquids; and San Diego County Rule 61.4, Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks. The rules submitted on April 5, 1991 were found to be complete on May 21, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51 appendix V.[5] The rule submitted on January 28, 1992 was found to be complete on April 3, 1992 pursuant to EPA's completeness criteria adopted August 26, 1991 (see footnote 5). All four rules are being proposed for approval into the SIP.

Each of these rules controls VOC emissions from organic liquids. Placer County Rules 213 and 215 control emissions from the transfer of gasoline to storage and cargo tanks, respectively. San Joanquin Valley Rule 463.2 controls emissions from storage tanks primarily through engineering requirements. San Diego County Rule 61.4 controls vapors displaced from vehicle fuel tanks at service stations by transferring them back into the storage tank (commonly called Stage II vapor control). VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA

[1] On November 6, 1991, the two Placer County nonattainment areas, which were part of the Sacramento Air Quality Maintenance Area (AQMA) and Mountain Counties Air Basin non-AQMA, were combined and redefined as part of the Sacramento Metro Area (55 FR 56694).

[2] This extension applied to Fresno, San Joaquin and Stanislaus Counties which, at the time of the extension, were three of the eight counties comprising the San Joaquin Valley Air Basin. This extension was not requested for Kern, Kings, Madera, Merced and Tulare Counties, which are the remaining five counties in the Basin. Thus, the attainment date for these five latter counties remained December 31, 1982.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The Placer County nonattainment area and both the San Joaquin Valley and San Diego Areas retained their designation and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[5] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991) to be codified at 40 CFR part 51, appendix V.

requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among the provisions of the CAA is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepare a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to the Placer County Rule 213 are "Control of Volatile Organic Compounds from Bulk Gasoline Plants", EPA Document 450/2–77–035, and "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems", EPA Document 450/2–78–051. The CTG applicable to Placer County Rule 215 is "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals", EPA Document 450/2–77–026. The CTGs applicable to San Joaquin Valley Rule 463.2 are "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks", EPA Document 450/2–48–047, and "Control of Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks", EPA Document 450/2–77–036. There is no CTG applicable to San Diego County's Rule 61.4 which deals with Stage II vapor controls. However, a document entitled "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volumes I and II", EPA Documents 450/3–91–022a and –022b, is available for guidance. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 3. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The Placer County APCD submitted Rule 213, Gasoline Transfer into Stationary Storage Containers, and submitted Rule 215, Transfer of Gasoline into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities, include the following significant changes from the current SIP rules:

- Air Pollution Control Officer (APCO) discretion to allow the use of alternative control systems has been deleted from both rules.
- Test methods for determining compliance with the rules' standards have been added.
- Recordkeeping provisions requiring daily throughput logs have been added to both rules.
- Definitions of relevant terms have been expanded.

The San Joaquin Valley Unified APCD submitted Rule 463.2, Organic Liquid Storage, includes the following significant changes from the eight existing country SIP rules which this rule will replace:

- Specific limits for the gap (space) between the floating roof seal and the tank wall have been set for the whole District. Three of the eight counties did not have gap specifications in their SIP rules. In some cases, these limits are more stringent than those in several of the individual county SIP rules which have gap limits. Also, gap limits for secondary toroid seals are now specified.
- APCO discretion to allow the use of any control equipment other than that specified in the rule has been deleted.
- A provision has been added that new seal designs may be approved by the APCO if EPA approves the designs and publish the approval pursuant to 40 CFR 60.114(b).
- Recordkeeping provisions providing tank contents and storage temperature data have been added which were not a part of three of the existing SIP rules.
- Test methods to determine compliance have been added which were not a part of three of the SIP rules. Also, the test methods have been expanded and clarified from those methods in SIP rules that had test methods.

The San Diego County APCD submitted Rule 61.4, Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks, includes the following significant changes from the current SIP:

- Recordkeeping provisions for throughput by facilities claiming throughput exemptions have been added.
- CARB certification procedures have been added which helps to insure that the equipment has a 95% vapor control efficiency.
- Provisions have been added that make it a violation to operate altered or damaged equipment.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, Placer County's Rules 213 and 215, San Joaquin Valley Unified's Rule 463.2, and San Diego County's Rule 61.4 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On

January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 22, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23863 Filed 9–30–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 63

[FRL–4516–2]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Emissions From Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of new information on control of perchloroethylene (PCE) emissions during clothing transfer at dry cleaning facilities which use transfer dry cleaning machines.

SUMMARY: National emission standards for hazardous air pollutants (NESHAP) for PCE dry cleaning facilities were proposed in the **Federal Register** on December 9, 1991 (56 FR 64382). This notice announces the availability of new information on control of PCE emissions during clothing transfer at dry cleaning facilities which use transfer machines. This notice solicits public review of this information and public comment on the use of this information in developing NESHAP limiting PCE emissions from dry cleaning facilities.

DATES: *Comments:* Written comments must be received on or before November 2, 1992.

Public Meeting: If anyone requests a public meeting by October 11, 1992 a public meeting will be held on October 16, 1992. This meeting will begin at 9 a.m., and it will be held at the EPA Environmental Research Center Annex Auditorium, located at Alexander Drive and Highway 54 in Research Triangle Park, North Carolina. Persons interested in attending the public meeting should call Ms. Julia Stevens at (919) 541–5578 to verify that a public meeting will be held.

Request to Speak at Public Meeting: Persons wishing to make oral statements at this public meeting must contact Ms. Julia Stevens at (919) 541–5578 by October 11, 1992.

ADDRESSES: *Comments:* Written comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), Attention Docket Number A–88–11, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket: A special docket category, Docket Number A–88–11, Category IV–M, containing new information on control of PCE emissions during clothing transfer from dry cleaning facilities using transfer machines is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, at the address above. A reasonable fee may be charged for copying. Anyone wishing to have a copy of the contents of this docket category mailed to them should contact Mr. George Smith at (919) 541–1549.

FOR FURTHER INFORMATION CONTACT: Mr. George Smith at (919) 541–1549 or Mr. Fred Porter at (919) 541–5251, Standards Development Branch (MD–13), U.S. EPA, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION: The information presented in this notice is organized as follows:

I. Introduction.
II. Background.
III. Emissions of PCE During Clothing Transfer.
IV. Control of Emissions During Clothing Transfer.
  A. Hamper Enclosures.
  B. Room Enclosures.
  C. Replacement with Dry-to-Dry Machines.
  D. Emission Control Performance.
V. Preliminary Economic Impact Assessment.
  A. Projected Economic Impacts at Proposal.
  B. Preliminary Assessment of Economic Impacts.
  C. Concerns with Preliminary Assessment.
VI. New Transfer Machines.
VII. Reclaimers.
VIII. Public Meeting.

I. Introduction

On December 9, 1991, NESHAP limiting PCE emissions from new and existing dry cleaning facilities were proposed in the **Federal Register** (56 FR 64382). The reader is referred to the December 9, 1991 **Federal Register** notice for the detailed requirements included in the proposed NESHAP.

To summarize briefly, however, the NESHAP proposed to subcategorize the source category of PCE dry cleaning facilities into two subcategories: Those using transfer machines and those using dry-to-dry machines. In addition, the NESHAP proposed to exempt from all regulatory requirements, except the notification requirements, existing transfer machines which consume less than 1,100 liters per year (300 gallons per year) of PCE and existing dry-to-dry machines which consume less than 830 liters per year (220 gallons per year) of PCE.

Basically, the NESHAP proposed that all owners and operators of transfer and dry-to-dry machines consuming more than the amounts of PCE noted above install and operate carbon absorbers, refrigerated condensers, or equivalent equipment on the vents from these dry cleaning machines. In addition, the NESHAP also proposed that these owners and operators follow pollution prevention practices, such as good operation and maintenance, to prevent liquid or vapor leaks of PCE from dry cleaning equipment. As discussed below, however, the NESHAP proposed no requirements to limit emissions of PCE form clothing transfer at dry cleaning facilities using transfer machines.

This notice summarizes information regarding control of PCE emissions during clothing transfer at dry cleaning facilities using transfer machines which the EPA was unaware of at the time of proposal of the NESHAP. It also summarizes information the EPA was unaware of at proposal of the NESHAP concerning the likelihood that dry cleaning facilities might purchase and install new transfer machines, as well as the use of a piece of dry cleaning equipment referred to within the dry cleaning industry as a "reclaimer."

This notice solicits public comment on this information. It also solicits public comment on what, if any, requirements should be incorporated into final NESHAP at promulgation to limit emissions of PCE from clothing transfer at dry cleaning facilities using transfer machines. In addition, this notice solicits public comment on what, if any, requirements should be incorporated into the final NESHAP at promulgation limiting PCE emissions from new transfer machines (if any new machines of this type are installed) and what, if any, requirements should be included in the final NESHAP at promulgation limiting PCE emissions from reclaimers. This notice does not reopen the public comment period on the proposed NESHAP; only public comments pertaining to the specific issues mentioned in this notice will be reviewed and considered by the EPA in

developing the final NESHAP for promulgation.

II. Background

Under Title III of the 1990 CAA, NESHAP limiting PCE emissions from major source dry cleaning facilities (that is, those which emit or have the potential to emit more than 10 tons per year of PCE) must reflect maximum achievable control technology (MACT). For new major source dry cleaning facilities, MACT can be no less stringent than the level of emission control currently achieved at the best performing similar source. Thus, it would appear that the final NESHAP promulgated for new major source dry cleaning facilities which use transfer machines must include requirements requiring use of the technologies outlined below (or equivalent technologies) for control of PCE emissions during clothing transfer. Specific public comment is solicited on whether the emission control achieved by the technologies outlined below controlling PCE emissions during clothing transfer must be or should be considered MACT for new major source dry cleaning facilities which use transfer machines.

For existing major source dry cleaning facilities, MACT can be no less stringent than the level of emission control currently achieved at the best performing 12 percent of similar sources. Far fewer than 12 percent of existing major source dry cleaning facilities which use transfer machines use any of the technologies outlined below for control of PCE emissions during clothing transfer. MACT must, however, also reflect the maximum degree of emission control which the Administrator determines is achievable, considering the costs and any non-air quality health and environmental and energy impacts associated with this emission control. Specific public comment, therefore, is solicited on whether the emission control achieved by the technologies outlined below for controlling PCE emissions during clothing transfer should be considered MACT for existing major source dry cleaning facilities which use transfer machines (that is, achievable considering the costs and other impacts associated with the use of these technologies). If these technologies are considered MACT for existing major source dry cleaning facilities using transfer machines, the final NESHAP promulgated would include requirements requiring the use of these technologies (or equivalent technologies) at existing major source dry cleaning facilities using transfer machines.

Only a small percentage of dry cleaning facilities, however, are considered major sources. Most dry cleaning facilities are considered area sources (that is, they emit less than 10 tons per year of PCE). Under Title III of the 1990 CAA Amendments, NESHAP for new and existing area sources may reflect MACT or they may reflect generally available control technology (GACT). The December 9, 1991 Federal Register notice proposed that NESHAP for both new and existing area source dry cleaning facilities reflect GACT and the reader is referred to that Federal Register notice for further detail. This notice is not reopening for public comment this proposed action to base NESHAP for area source dry cleaning facilities on GACT.

GACT is the maximum degree of emission control the Administrator determines is reasonable, considering the costs and other impacts associated with this emission control. GACT may or may not be as stringent as MACT. In addition, as with MACT, GACT may be different for new area sources than for existing area sources.

Specific public comment is solicited on whether the technologies outlined below should be considered generally available (that is, GACT) for controlling PCE emissions during clothing transfer at new and/or existing area source dry cleaning facilities using transfer machines. In other words, should use of these technologies be considered reasonable in light of the costs and other impacts associated with their use, and should the final NESHAP promulgated include requirements requiring the use of these technologies (or equivalent technologies) at new and/or existing area source dry cleaning facilities using transfer machines.

The new information outlined below on control of PCE emissions during clothing transfer at dry cleaning facilities using transfer machines has been included in Docket A–88–11 in Docket Category IV–M. Docket Category IV–M is available as an information packet. This information packet was mailed to all those who commented on the December 9, 1991 proposed NESHAP. Anyone else who wishes to receive the information packet will be sent a copy (see **ADDRESSES**).

III. Emissions of PCE During Clothing Transfer

There are two types of dry cleaning machines: Transfer machines and dry-to-dry machines. A transfer machine consists of two pieces of equipment: A washer and a dryer. At the conclusion of the washing cycle, clothing is manually transferred from the washer to the dryer. Since this clothing is damp with PCE, this step is a significant source of PCE emissions at dry cleaning facilities using transfer machines.

A dry-to-dry machine consists of a single piece of equipment which serves as both a washer and a dryer. As a result, there is no clothing transfer step at facilities using dry-to-dry machines. Since the clothing transfer step is eliminated, there are no PCE emissions during clothing transfer.

The table below illustrates the significance of PCE emissions during clothing transfer in comparison to overall PCE emissions at both transfer and dry-to-dry machines.

EMISSION FACTORS FOR DRY CLEANING MACHINES

[Pounds of PCE Per 100 Pounds of Clothes]

Source	Transfer	Dry-to-Dry
Machine vent	4.0	3.1
Clothing transfer	2.5	0
Equipment leaks	2.5	2.5
Total	9.0	5.6

Nearly a third of all PCE emissions from transfer machines are created during clothing transfer. Overall, transfer machines emit almost twice the PCE emissions that dry-to-dry machines do.

IV. Control of Emissions During Clothing Transfer

At the time of the December 9, 1991 proposal of NESHAP to limit PCE emissions from dry cleaning facilities, the EPA was unaware of any technologies for controlling PCE emissions during clothing transfer at facilities using transfer machines. Public comments submitted in response to the proposal, however, as well as additional information gathered by EPA in response to these public comments, indicate there are several technologies which have been developed recently to control these emissions.

These technologies are termed transfer enclosures for the purpose of further discussion. A transfer enclosure captures or collects PCE emissions during clothing transfer at dry cleaning facilities using transfer machines. Transfer enclosures have been subclassified into two types: Hamper enclosures and room enclosures.

In addition to the use of transfer enclosures, another approach to control PCE emissions during clothing transfer is to replace the transfer machine with a dry-to-dry machine. This approach eliminates the need for clothing transfer,

thus eliminating PCE emissions from this step.

As mentioned earlier, in response to public comments submitted on the December 9, 1991 proposed NESHAP, EPA has attempted to gather all available information on various technologies for capturing and controlling PCE emissions during clothing transfer at dry cleaning facilities using transfer machines. This notice summarizes the results of these efforts and EPA believes all available information has been collected. There may, however, remain other technologies the EPA is unaware of for controlling PCE emissions during clothing transfer at dry cleaning facilities using transfer machines and, as a result, this notice solicits information on any other technologies that may be in use for this purpose.

A. Hamper Enclosures

Clothing is transferred from the washer to the dryer at dry cleaning facilities using tranfer machines in a clothing hamper. A hamper enclosure basically consists of a hood or canopy that effectively encloses the clothing hamper and the open door of the washer when clothing is removed from the washer and placed in the clothing hamper. The same or a different hood or canopy is used to effectively enclose the clothing is transferred from the hamper to the dryer. In addition, the clothing hamper is covered or enclosed when it is wheeled from the washer to the dryer, as well as when it is not in use, to prevent escape of PCE vapors from the hamper.

Hamper enclosures are constructed of a material impervious to PCE vapors, typically clear plastic. The use of clear plastic permits the operator to see into the enclosure. Openings or slits in the hamper enclosure provide access, allowing one to reach into the enclosure provide access, allowing one to reach into the enclosure, open the door of the washer or dryer, transfer clothing to or from the hamper, and then close the door of the washer or dryer. Sleeves and gloves may be attached to these openings or slits, so that when one reaches into the enclosure, their arms and hands are covered.

If the hamper enclosure has openings through which PCE vapors could escape during clothing transfer, fans are used to draw room air into the enclosure to prevent PCE vapors from escaping. Captured PCE vapors are routed to a control device for control. If the hamper enclosure has no openings through which PCE vapors could escape, fans are not necessary.

Hamper enclosures currently sell for about $3,000. Operation and maintenance costs are reported to be negligible, and in some cases, particularly for larger dry cleaning facilities, the use of hamper enclosures are reported to "pay for themselves" through the savings generated as a result of additional PCE solvent recovery.

B. Room Enclosures

A room enclosure, as the name implies, basically consists of a room built to enclose the transfer machine—both the washer and the dryer. The enclosure is constructed of a frame covered by a material impervious to PCE vapors. The frame is typically metal, but could be constructed of other materials, and the material covering the frame is typically clear plastic. A fan is turned on to draw air from outside the room enclosure through louvered door opening(s) in the enclosure during clothing transfer to collect PCE vapors. The PCE vapors collected during clothing transfer are routed to a control device for control.

The louvered door opening(s) in the room enclosure typically consist of strips of plastic hanging from the top of the door openings to the floor. These strips of plastic are moved aside to permit entry to or exit from the room enclosure.

Room enclosures currently sell for about $10,000–$12,000. Operation and maintenance costs are reported to be negligible.

C. Replacement by Dry-to-Dry machines

Each of the technologies mentioned above are used with a transfer machine to control PCE emissions during clothing transfer. Another approach to control PCE emissions from clothing transfer is to replace the transfer machine with a dry-to-dry machine. Dry-to-dry machines perform both the washing cycle and the drying cycle in the same machine. The use of a dry-to-dry machine, therefore, eliminates the clothing transfer step. As a result, this eliminates PCE emissions from clothing transfer.

A new dry-to-dry machine can cost as much as $25,000 or more depending on the size of machine purchased. In addition to the cost of purchasing a new dry-to-dry machine, however, there would be additional costs associated with the removal of the existing transfer machine, since many dry cleaning facilities would probably have to remove the existing transfer machine to make space for a new replacement dry-to-dry machine.

D. Emission Control Performance

Information on the emission control performance of transfer enclosures is limited. Transfer enclosures have been developed relatively recently, and only a small number of dry cleaning facilities currently use them. Based on observation during visits to sites using transfer enclosures and the use of "engineering judgment," the hamper enclosure is considered to be about 75 percent effective in reducing PCE emissions during clothing transfer at dry cleaning facilities using transfer machines. The room enclosure is considered to be about 95 percent effective. In comparison, replacement of an existing transfer machine with a new dry-to-dry machine is 100 percent effective since the clothing transfer step is eliminated.

V. Preliminary Economic Impact Assessment

As discussed in the December 9, 1991 **Federal Register** notice proposing NESHAP for dry cleaning facilities using PCE, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that special consideration be given during the development of regulations to the potential impacts of regulation on small business entities. Dry cleaning firms are generally small businesses and a large portion of these businesses are family-owned and operated. Many of these businesses are characterized by limited cash flows, marginal profitability and, as a result, do not have ready access to large amounts of capital for investment in the business. Thus, the economic impact analysis undertaken to support the proposed NESHAP focused on the potential impact of the NESHAP on small dry cleaning facilities.

A. Projected Economic Impacts at Proposal

The reader is referred to the December 9, 1991 **Federal Register** notice for a full discussion of the economic impact analysis undertaken to support the proposed NESHAP. Two significant potential impacts examined in the analysis were the number of firms projected to experience difficulty raising capital to purchase the emission control equipment required by the NESHAP and the number of projected closures that might occur as a result of adopting the NESHAP. To summarize briefly, the analysis projected that some 670 facilities could experience difficulty raising the capital necessary to comply with the proposed NESHAP and some 30 facilities could close as a result of adopting the proposed NESHAP.

The proposed NESHAP included an exemption from the major requirements of the NESHAP for facilities with gross annual revenues of less than $100,000. (This exemption was expressed in terms of an annual PCE consumption level.) If the exemption level was lowered to only exempt facilities with gross annual revenues of less than $50,000, some 360 additional facilities could experience difficulty raising the capital necessary to comply and some 150 additional facilities could close. As a result, the total number of facilities that might experience difficulty raising the capital necessary to comply with the NESHAP could increase from about 670 to about 1,030, and the total number of facilities that might close could increase from about 30 to about 180.

If the exemption level was lowered to only exempt facilities with annual gross revenues of less than $25,000, some further 1,260 additional facilities could experience difficulties raising the capital necessary to comply and some further 280 additional facilities could close. As a result, the total number of facilities that might experience difficulties raising the capital necessary to comply with the NESHAP could increase from about 670 to about 2,290, and the total number of facilities that might close could increase from about 30 to about 460.

B. Preliminary Assessment of Economic Impacts

To examine the potential economic impacts that might be associated with including requirements to limit PCE emissions from clothing transfer in the final NESHAP adopted at promulgation, a preliminary assessment of these impacts was undertaken. This preliminary assessment employed the same analytic methodology as that used in the economic analysis undertaken to support the proposed NESHAP. Due to a number of concerns, however, which are discussed further below, this preliminary assessment is considered limited in scope.

The major limitation is the assumption that all dry cleaning facilities with transfer machines could purchase and install a hamper enclosure at a cost of $3,000 to limit PCE emissions from clothing transfer. The EPA has a number of concerns with this assumption (as discussed below), but given the time and difficulty associated with developing a more sophisticated methodology that might model a "monopolistic market" environment, EPA chose to use this assumption to examine the potential economic impacts under what might be termed a "best case" scenario.

The complete preliminary economic impact assessment is included in docket category IV–M. To briefly summarize the projected impacts, however, the preliminary assessment projects that if requirements based on the use of hamper enclosures (or equivalent equipment) were included in the proposed NESHAP to limit PCE emissions from clothing transfer, some 490 additional dry cleaning facilities might experience difficulty raising the capital necessary to comply with the NESHAP and some additional 5 facilities might close. Thus, including such requirements in the proposed NESHAP could increase the number of firms projected to experience difficulty raising the capital necessary to comply with the NESHAP from about 670 to about 1,160. The projected number of facilities that might close could increase from about 30 to about 35.

As mentioned, the proposed NESHAP include an exemption from the major requirements of the NESHAP for dry cleaning facilities with annual gross revenues of less than $100,000. The projections cited above also assume this exemption level would apply to requirements to limit PCE emissions from clothing transfer. If the exemption level for the requirements to control PCE emissions from clothing transfer was lowered to exempt only facilities with annual gross revenues of less than $50,000 (but the $100,000 exemption level still applied to all other major requirements of the NESHAP), some 310 additional facilities could experience difficulties raising the capital necessary to comply and some 130 additional facilities might close. Thus, the total projected number of facilities that might experience difficulty raising the capital necessary to comply with the NESHAP could increase from about 670 to about 1,470 and the total number of facilities that might close could increase from about 30 to about 165.

Finally, if the exemption level for requirements to control PCE emissions from clothing transfer was lowered to only exempt facilities with annual gross revenues of less than $25,000, the preliminary assessment projects some further 300 additional facilities could experience difficulties raising the capital necessary to comply and some further 130 additional facilities might close. Thus, the total projected number of facilities that might experience difficulties raising the capital necessary to comply with the NESHAP could increase from about 670 to about 1,770 and the total number of facilities that might close could increase from about 30 to about 295.

The magnitude of these potential impacts associated with including requirements in the NESHAP to limit PCE emissions from clothing transfer is considered quite significant. As discussed in the December 9, 1991 **Federal Register** notice proposing the NESHAP for PCE dry cleaning facilities, the costs of the emission control equipment necessary to comply with the proposed NESHAP were estimated to be in the range of $6,000 to $8,000. As mentioned above, the preliminary assessment assumes the equipment necessary to control PCE emissions from clothing transfer at dry cleaning facilities using transfer machines would cost about $3,000. Thus, the magnitude of these potential impacts projected by the preliminary assessment is not surprising.

C. Concerns With Preliminary Assessment

As mentioned earlier, the EPA believes this preliminary assessment of potential economic impacts associated with requirements to limit PCE emissions from clothing transfer at dry cleaning facilities using transfer machines is limited in scope. As a result, the projected impacts cited above are viewed as a "best case" scenario. A more sophisticated analysis would probably indicate the potential impacts would be much more severe.

The basic reason stems from the critical assumption in the preliminary assessment that requirements to limit PCE emissions from clothing transfer would be based on the use of hamper enclosures and that dry cleaning facilities using transfer machines would experience costs of only $3,000 to purchase and install a hamper enclosure (or equivalent equipment). It seems highly questionable that the actual costs dry cleaning facilities would experience to obtain this technology would remain as low as $3,000. It seems more likely the actual costs would increase, perhaps substantially, above $3,000 due to the demand created within the dry cleaning industry for this technology by including such requirements in the NESHAP.

Currently, there is only one vendor actively selling hamper enclosures and this vendor has obtained patents on his device. This vendor has sold about 20 hamper enclosures. A second vendor has sold hamper enclosures in the past of a somewhat different design than that of the first vendor's. This second vendor no longer does so, however, due to a patent dispute with the first vendor. A third vendor has designed a hamper enclosure, also of a somewhat different design than that of the fist vendor's, and has experimented with its use. However, this third vendor appears reluctant to pursue sales at this point.

Including requirements in the NESHAP to control PCE emissions during clothing transfer, based on the use of hamper enclosures (or equivalent equipment), therefore, could give rise to a monopoly market for hamper enclosures. In this environment, the cost of a hamper enclosure would likely increase to that of alternatives—such as the room enclosure.

This alternative, however, is also currently offered only by a single vendor and this vendor has obtained patents on his device. A second vendor has built several custom designed room enclosures which appear quite effective in capturing PCE vapors from clothing transfer. To date, however, the room enclosures built by this second vendor have not included a control device to control the PCE vapors collected by the room enclosure; the collected PCE vapors are merely collected and released to the atmosphere outside the dry cleaning facility.

Consequently, even if requirements included in the NESHAP to limit PCE emissions from clothing transfer were based on the use of hamper enclosures (or equivalent equipment), the actual costs experienced by dry cleaning facilities to comply with these requirements could increase substantially beyond the $3,000 cost assumed in the preliminary assessment. Eventually other approaches for controlling PCE emissions from clothing transfer would be developed, which would ultimately serve to limit increases in the costs of transfer enclosures. At this point, however, it is very difficult to determine what the actual costs would be of regulatory requirements to control PCE emissions from clothing transfer.

In addition to these concerns regarding the actual costs of transfer enclosures, concerns also exist regarding the ability of the vendor or vendors of these transfer enclosures to supply a large market. Under Title III of the CAA Amendments, all sources for which NESHAP are developed must be in compliance with these NESHAP within three years following adoption or promulgation of the NESHAP.

Currently, about half of the estimated 30,000 commercial dry cleaning facilities are believed to operate with annual gross revenues of more than $100,000. About a third of these facilities are believed to use transfer machines. Thus, including requirements to control PCE emissions from clothing transfer in the final NESHAP adopted at promulgation would create a demand for as many as 5,000, or possibly more, transfer enclosures.

The vendor of the hamper enclosure has only sold about 20 hamper enclosures. The vendor of the room enclosure has only sold some 5 room enclosures. While this does not mean these vendors could not supply several thousand transfer enclosures within three years, it does raise concerns about their ability to adequately supply the potential market.

This in turn, raises concerns about the fate of existing dry cleaning facilities using transfer machines, if the NESHAP required control of PCE emissions during clothing transfer. Many facilities that could afford to purchase transfer enclosures and who tried to purchase enclosures might be unable to obtain and install them within the three year time frame provided by the Act. This would require the EPA to take enforcement action against these dry cleaning facilities and this, quite possibly, could result in a substantial number of closures.

As mentioned earlier, another approach to limit PCE emissions from clothing transfer at dry cleaning facilities using transfer machines is to replace the transfer machines with dry-to-dry machines. The costs of a new dry-to-dry machine, however, can be as much as $25,000 or more. As a result the potential impacts associated with including requirements in the NESHAP which effectively required replacement of existing transfer machines with new dry-to-dry machines would be much more severe than the potential impacts cited above. Consequently, the EPA is inclined to conclude that control of PCE emissions from clothing transfer through replacement of existing transfer machines with new dry-to-dry machines at existing major source dry cleaning facilities using transfer machines is not achievable within the meaning of the Act. Similarly, the EPA is inclined to conclude this is also not generally available (within the meaning of the Act) at existing area source dry cleaning facilities using transfer machines.

In light of the magnitude of the potential impacts projected by the preliminary assessment, as well as the concerns outlined above which lead the EPA to believe these impacts could be much greater, the EPA is inclined to conclude that control of PCE emissions from clothing transfer at existing major source dry cleaning facilities using transfer machines is not achievable within the meaning of the Act. In addition, the EPA is also inclined to conclude that control of PCE emissions from clothing transfer at existing area source dry cleaning facilities using transfer machines is not generally available within the meaning of the Act.

As mentioned above, this notice solicits public comment on whether control of PCE emissions during clothing transfer is achievable (within the meaning of the Act) for existing major source day cleaning facilities and/or generally available for existing area source dry cleaning facilities using transfer machines. This judgment must take into consideration the potential impacts and concerns outlined above. Specific comment on the potential impacts and concerns outlined above is solicited. In addition, if control of PCE emissions from clothing transfer is considered achievable and/or generally available, specific comment is solicited on whether the NESHAP should include requirements based on the use of hamper enclosures, room enclosures, replacement of transfer machines by new dry-to-dry machines, or some other approach.

VI. New Transfer Machines

At the time of proposal of the December 9, 1991 NESHAP for PCE dry cleaning facilities, the EPA believed that no new transfer machines had been sold in recent years and that no new transfer machines would be sold in the future. All new dry cleaning machines were expected to be dry-to-dry machines, mainly because of the problems arising from occupational exposure to PCE emissions that may occur during clothing transfer at dry cleaning facilities using transfer machines.

The permissible exposure limit (PEL) for PCE of 25 parts per million (ppm), which the Occupational Safety and Health Administration (OSHA) had adopted, was felt to be a major driving force from transfer machines to dry-to-dry machines. In fact, EPA believed that transfer machines would not be able to meet this OHSA PEL.

Public comment has stated otherwise, however, claiming that maybe half of the existing dry cleaning facilities using transfer machines currently are able to meet the 25 ppm PEL for PCE. Also, the Eleventh Circuit Appeals Court recently remanded the 25 ppm PEL to the OSHA for reconsideration. This action may have the effect of lessening the movement from transfer machines to dry-to-dry machines in the dry cleaning industry.

Public comment has also stated that manufacturers of petroleum solvent transfer machines could sell these machines for use as new PCE transfer machines. Thus, new PCE transfer machines could easily and quickly be offered for sale in response to a demand for such machines. Transfer machines are claimed to be less costly and more productive than dry-to-dry machines, and this could lead to a resurgence in

their use. Accordingly, this notice solicits public comment on the likely market for new transfer machines under the proposed NESHAP.

In addition, this notice also solicits public comment on what requirements, if any, should be included in the final NESHAP promulgated for new PCE transfer machines. Such requirements could require control of PCE emissions from only the washer and dryer vents, could require control of PCE emissions from the washer and dryer vents and during clothing transfer, or could require all new dry cleaning machines to limit PCE emissions to the levels that can be achieved through the use of new dry-to-dry machines. This last approach could effectively preclude the use of new transfer machines.

As mentioned earlier, MACT for new major source dry cleaning facilities must be no less stringent than the level of emission control achieved by the best similar source. As a result, it would appear that the final NESHAP adopted at promulgation must include requirements based on the use of room enclosures (or equivalent equipment) to limit PCE emissions from clothing transfer at new major source dry cleaning facilities using new transfer machines. The EPA, therefore, is inclined to conclude that control of PCE emissions from clothing transfer based on the use of room enclosures (or equivalent equipment) at new major source dry cleaning facilities using new transfer machines is achievable within the meaning of the Act.

On the other hand, EPA is inclined to conclude that control of PCE emissions from clothing transfer based on the use of new dry-to-dry machines (or equivalent equipment) at new major source dry cleaning facilities using new transfer machines is not achievable within the meaning of the Act. The additional control of PCE emissions achieved through the use of a new dry-to-dry machine over the use of a room enclosure appears marginal, particularly in comparison with the increased costs of a new dry-to-dry machine over a room enclosure. The incremental cost effectiveness of emission control, for example, is about $17,000 per ton of PCE.

Specific public comment is solicited on EPA's inclination to conclude that requirements in the NESHAP based on the use of room enclosures to limit PCE emissions from clothing transfer at new major source dry cleaning facilities that use new transfer machines are achievable within the meaning of the Act. In addition, specific public comment is solicited on EPA's inclination to conclude that requirements based on the use of new dry-to-dry machines are not achievable within the meaning of the Act.

With regard to new area source dry cleaning facilities that use new transfer machines, the EPA is included to conclude that requirements based on the use of hamper enclosures (or equivalent equipment) to limit PCE emissions from clothing transfer are generally available within the meaning of the Act. On the other hand, requirements to limit PCE emissions from clothing transfer based on the use of room enclosures (or equivalent equipment), as well as new dry-to-dry machines (or equivalent equipment) are not generally available within the meaning of the Act.

The additional control of PCE emissions achieved through the use of a hamper enclosure appears quite reasonable compared to the costs of a hamper enclosure. The incremental cost effectiveness of emission control, for example, is about $700 per ton of PCE.

The additional control of PCE emissions achieved through the use of a room enclosure over the use of a hamper enclosure appears marginal, particularly in comparison with the increased cost of a room enclosure over a hamper enclosure. The incremental cost effectiveness of emission control, for example, is about $9,000 per ton of PCE. It is the same with the use of a new dry-to-dry machine.

Specific public comment is solicited on EPA's inclination to conclude that requirements in the NESHAP based on the use of hamper enclosures to limit PCE emissions from clothing transfer at new area source dry cleaning facilities that use new transfer machines are achievable within the meaning of the Act. In addition, specific public comment is solicited on EPA's inclination to conclude that requirements based on the use of room enclosures or new dry-to-dry machines are not achievable within the meaning of the Act.

With regard to requirements based on the use of hamper enclosures (or equivalent equipment), it seems reasonable to assume that few, if any, owners/operators, or for that matter, potential new entrants into the dry cleaning industry, with ready access to sufficient capital to purchase a new transfer machine, would experience difficulty raising the additional capital necessary to purchase a hamper enclosure (or equivalent equipment). It also seems reasonable to assume that few, if any, owners/operators, or for that matter potential new entrants into the dry cleaning industry, would find that the additional capital requirements associated with purchasing a hamper enclosure would adversely alter the potential profitability of purchasing a new transfer machine enough to deter this decision.

VI. Reclaimers

EPA was also unaware at proposal of a piece of dry cleaning equipment referred to within the industry as a reclaimer. It appears that reclaimers are being sold for use with dry-to-dry machines. Used with a reclaimer, a dry-to-dry machine is operated in a manner similar to that of a washer in a transfer machine. Clothing is washed in the dry-to-dry machine and then transferred to the reclaimer for drying. The use of a reclaimer is said to increase the capacity of a dry cleaning facility which uses a dry-to-dry machine.

Although no new transfer machines may have been sold in recent years, a number of reclaimers have been sold. Buying a reclaimer is less expensive than buying a new dry-to-dry machine, and thus buying a reclaimer offers a less expensive means of increasing a dry cleaner's capacity than the purchase of another dry-to-dry machine.

This notice solicits information on the number of reclaimers presently being used within the dry cleaning industry and on potential future sales of reclaimers.

The EPA believes the use of a reclaimer essentially converts a dry-to-dry machine into a transfer machine. As a result, the EPA believes existing dry-to-dry machine which are operated in conjunction with a reclaimer should be considered as transfer machines—not dry-to-dry machines—under the NESHAP. Also, the EPA believes that adding a new reclaimer to an existing dry-to-dry machine should result in that machine (both the dry-to-dry machine and the reclaimer) being considered a new transfer machine under the NESHAP. This notice, therefore, solicits public comment on this approach to the use of reclaimers under the NESHAP.

VIII. Public Meeting

Written comments should be submitted to the docket at the address provided under **ADDRESSES** above and by the date provided under **DATES** above. As mentioned above, in addition to requesting written comments, the EPA has also scheduled a public meeting to solicit oral comments. This public meeting does not constitute a public hearing for purposes of section 307(d)(5) of the CAA Amendments of 1990. A public hearing was scheduled to be held on January 8, 1992 in Research Triangle Park, North Carolina, following proposal of the NESHAP on December 9, 1991. No

one requested to speak at this public hearing, so no public hearing was held. Since the opportunity for a public hearing has been provided, the public comment period will not remain open for thirty days following the public meeting. Nevertheless, some parties may want to provide additional written comments in response to what is said at the meeting (if one is held) and, as a result, the comment period will remain open for fifteen days following the public meeting. The time, date, and location of the public meeting are provided under **ADDRESSEES** above. The EPA recognizes that the brief period provided for public comment is shorter than normal. However, the EPA is bound by a Consent Decree with the U.S. District Court for the District of Oregon to promulgate the NESHAP for PCE dry cleaning facilities. This requires that public review and comment of the information presented in this notice be done as rapidly as possible, and will not allow for a longer comment period. It should be noted that the focus of the public comments requested is narrow, and the EPA believes the material in Category IV–M of Docket A–88–11 can be adequately reviewed within this time period. In addition, as mentioned earlier, the comment period on other issues is not being reopened; only comments pertaining to the specific issues mentioned in this notice will be accepted.

Dated: September 9, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–23873 Filed 9–30–92; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection

AGENCY: ACTION, the Federal Domestic Volunteer Agency.

ACTION: Information collection submitted to the Office of Management and Budget (OMB) for review.

SUMMARY: The following form has been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. chapter 35). This entry is not subject to 44 U.S.C. 3504(h). Copies of the submission(s) may be obtained from the ACTION Clearance Officer.

DATES: OMB and ACTION will consider comments received within 60 days from the date of this publication. Send comments to both:

Janet Smith, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 20525, Tel: (202) 606–5245

Steve Semenuk, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503

Title of Form: Vista Pre-Application Inquiry.

ACTION Forms No.(s): A–1024.

Need and Use: This document is used by the ACTION State Program Offices to ascertain qualifications of potential VISTA sponsors.

Type of Request: Pre-Application Inquiry.

Respondent's Obligation to Reply: Optional—determined by State Program Office.

Description of Respondents: Public agencies and private non-profits, including small, grass-roots organizations.

Frequency of Collection: Once, as determined by State Office.

Estimated Number of Annual Responses: 200.

Average Burden Hours per Response: 1¼.

Estimated Annual Reporting or Disclosure Burden: 250 hours.

Dated: September 24, 1992.

Jane A. Kenny,

Director, ACTION.

[FR Doc. 92–23769 Filed 9–30–92; 8:45 am]

BILLING CODE 6050–28–M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Government Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States. The meeting will be held at 2 p.m., on Thursday, October 22, 1992, at the Administrative Conference of the United States, suite 500, 2120 L Street, NW., Washington, DC (Library, 5th Floor).

The Committee will meet to discuss a study by Professor Ronald F. Wright, Wake Forest University School of Law, on right to counsel issues arising in agency proceedings.

For further information concerning this meeting, contact Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC (Telephone: 202–254–7020).

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available upon request.

Dated: September 25, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92–23841 Filed 9–30–92; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

DEPARTMENT OF LABOR

Immigration and Nationality Act (Section 210A); Seasonal Agricultural Services Worker Shortage Determination

AGENCIES: Office of the Secretary, United States Department of Agriculture; Office of the Secretary, United States Department of Labor.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Secretaries of Agriculture and Labor (the Secretaries) have determined jointly that the number of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under section 210A of the Immigration and Nationality Act (INA), to meet a shortage of workers to perform seasonal agricultural services (SAS), during fiscal year (FY) 1993, is zero.

Notice is also given that the Secretaries have calculated jointly the annual numerical limitation on the number of such aliens who should be admitted or who should otherwise acquire the status of aliens lawfully admitted for temporary residence, under section 210A of the INA. The annual numerical limitation for FY 1993 is 506,883. This number represents the upper limit on the number of aliens who may be authorized for admission or adjustment of status.

The actual number of aliens to be admitted or whose status is to be adjusted for FY 1993 is the zero "shortage number" announced above.

DATES: This notice is effective during the period October 1, 1992, through September 30, 1993, unless superseded by a subsequent notice.

FOR FURTHER INFORMATION CONTACT: Mr. Gary B. Reed, DOL; telephone (202) 523–6007, or Mr. Al French, USDA; telephone (202) 720–4737.

SUPPLEMENTARY INFORMATION: Section 303 of the Immigration Reform and Control Act of 1986 added section 210A to the Immigration and Nationality Act (INA). Section 210A of the INA requires that before the beginning of each FY, starting with FY 1990 and ending with

FY 1993, the Secretaries determine jointly, according to a specific statutory formula, the number of additional aliens (if any) who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence to meet a shortage of workers to perform SAS. These aliens are known as replenishment agricultural workers (RAWs) and the number of such workers to be admitted in each FY is known as the "shortage number." The INA further provides that the Attorney General shall provide for the admission of a number of RAWs equal to the shortage number, or, if less, a number of RAWs equal to the annual numerical limitation which is established by a statutory formula contained in section 210A(b) of the INA. The Secretaries make the calculation of the annual numerical limitation concurrently with their determination of the shortage number. Regulations regarding the procedure used in the determination of the shortage number and calculation of the annual numerical limitation have been promulgated jointly by the Secretaries. Identical versions of the regulations were published in the **Federal Register** on January 2, 1990 (55 FR 106), and are located at 7 CFR part 1e and 29 CFR part 503. Criteria for admission as a RAW are established by the Immigration and Naturalization Service (INS) in regulations located at 8 CFR part 210a.

Because the INS was unable to complete adjudication of all special agricultural worker (SAW) applications by the end of FY 1992, the Secretaries will recalculate the annual numerical limitation prior to the end of each fiscal quarter. This will be done each time by including all those aliens who have been finally adjudicated as SAWs subsequent to any earlier determination of the annual numerical limitation, and by adjusting the number of SAWs who worked in SAS to take into account the increase in the number of reportable workers who obtained SAW status. These quarterly recalculation will continue until the Secretaries are advised by INS and the Director of the Bureau of the Census (the Director) that all applications for SAW status have been finally adjudicated. Thereafter, the annual numerical limitation will be calculated annually for the entire FY.

In recognition of the uncertainties associated with agricultural production, section 210A(a)(7) of the INA contains emergency procedures for adjusting the shortage number. The procedures through which a group or association representing employers or potential employers of individuals who perform SAS may request an increase in the shortage number are set forth in 7 CFR 1e.20 and 29 CFR 503.20. Until the Secretaries are advised by INS and the Director that all applicants for SAW status have been finally adjudicated, if an emergency increase in the shortage number is granted pursuant to 7 CFR 1e.20 and 29 CFR 503.20, but additional RAWs would otherwise be barred from entry due to the annual numerical limitation, the Secretaries will recalculate the annual numerical limitation based upon the most recent data available from INS and the Director.

Authority: 8 U.S.C. 1161.

Done at Washington, DC, this 25th day of September 1992.

Daniel A. Sumner,

Assistant Secretary for Economics, U.S. Department of Agriculture.

Done at Washington, DC, this 24th day of September 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-23790 Filed 9-30-92; 8:45 am]

BILLING CODES 3410-01-M, 4510-23-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 25, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

Revision

- Animal and Health Inspection Service

Animal Welfare
APHIS 7001, 7002, 7003, 7006, 7006A, 7009, 7011, 7019, 7020, 7023, VS 18-1A, 18-5
Recordkeeping; On occasion; Weekly; Semi-annually; Annually State or local governments; Businesses or other for-profit; Nonprofit institutions; Small businesses or organizations; 72,773 responses; 237,382 hours
Jerry Depoyster 301 436-7586

Extension

- Agricultural Marketing Service

Dried Prunes Produced in California—Marketing Order No. 993
Recordkeeping; On occasion; Monthly; Annually Farms; Businesses or other for-profit; Small Businesses or organizations; 2,182 responses; 552 hours
Mark Hessel (202) 720-3923

New Collection

Food and Nutrition Service
State Automated Systems Study
One-time only
State or local governments; 5,457 responses; 2,651 hours
Martha A. Mayes (703) 305-2147

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 92-23789 Filed 9-30-92; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

Performance Review Board; Membership

This notice announces membership of the Departmental Performance Review Board (PRB) in the Department of Commerce. The purpose of the Departmental PRB is to review the performance appraisals of appointing authorities and their immediate deputies who are in the SES, and SES members whose ratings are initially prepared by their respective appointing authorities.

These Departmental PRB members are appointed for a two year term. The list of members is as follows:

Organization/member/type of appointment	Term expiration
Office of the Secretary (Immediate Office):	
Mary Ann Fish, Deputy Assistant Secretary for White House Liaison (NC)	11/94
General Counsel:	
Lynn S. West, Deputy General Counsel (NC)	11/94

Organization/member/type of appointment	Term expiration
Barbara S. Fredericks, Assistant General Counsel for Administration (C)	11/94
Chief Financial Officer and Assistant Secretary for Administration:	
Otto J. Wolff, Deputy Assistant Secretary (NC)	11/94
Mark E. Brown, Director, Office of Budget (C)	11/94
Minority Business Development Agency:	
William H. Bailey, Deputy Director (NC)	11/93
Bharat K. Bhargava, Assistant Director for Operations (NC)	11/93
Economics and Statistics Administration:	
Susanne H. Howard, Deputy Under Secretary (NC)	11/94
Allan H. Young, Chief Statistician, Bureau of Economic Analysis (C)	11/94
O. Bryant Benton, Associate Director for Field Operations, Bureau of the Census (C)	11/94
Harry A. Scarr, Deputy Assistant Secretary for Statistical Affairs (C)	11/94
Frederick T. Knickerbocker, Executive Director (C)	11/94
Technology Administration:	
Lyle H. Schwartz, Director, Materials Science and Engineering Laboratory (NIST) (C)	11/93
Guy W. Chamberlin, Director of Administration (NIST) (C)	11/93
George A. Sinnott, Director for International and Academic Affairs (NIST) (C)	11/94
Lura J. Powell, Chief, Biotechnology Division (NIST) (C)	11/93
John C. Williams, Director, Office of Technology Policy (C)	11/94
National Telecommunications and Information Administration:	
Charles M. Rush, Chief Scientist (C)	11/93
William F. Maher, Jr., Associate Administrator, Office of Policy Analysis and Development (C)	11/93
Economic Development Administration:	
Richard S. Seline, Deputy Assistant Secretary for Program Support (NC)	11/94
John E. Corrigan, Atlantic Regional Director (C)	11/94
International Trade Administration:	
Augustine D. Tantillo, Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods (NC)	11/93
Peter A Cashman, Director, Office of the Pacific Basin (C)	11/93
George Muller, Director, Office of Export Trading Company Affairs (C)	11/93
Francis J. Sailer, Deputy Assistant Secretary for Investigations, Import Administration (NC)	11/94
Lawrence B. Ryan, Deputy Assistant Secretary for Technology and Aerospace Industries (NC)	11/94
Holly A. Kuga, Director, Office of Agreements Compliance (C)	11/93
Roland L. McDonald, Director, Office of Antidumping Compliance (C)	11/93
Christina M. Bolton, Deputy Assistant Secretary for Basic Industries (NC)	11/93
National Oceanic and Atmospheric Administration:	
Thomas N. Pyke, Assistant Administrator for National Environmental Satellite, Data and Information Services (C)	11/93
James W. Brennan, Deputy General Counsel for Atmospheric and Ocean Research and Services (C)	11/93
Ronald D. McPherson, Director, National Meteorological Center (C)	11/93
Thomas A. Campbell, General Counsel (NC)	11/93
Carmen J. Blondin, Deputy Assistant Secretary for International Interests (C)	11/93
Alan R. Thomas, Deputy Assistant Administrator for Oceanic and Atmospheric Research (C)	11/93
Richard A. Edwards, Deputy Assistant Secretary (NC)	11/93
William W. Fox, Jr., Assistant Administrator for National Marine Fisheries Service (NC)	11/93
Patent and Trademark Office:	
Stephen G. Kunin, Deputy Assistant Commissioner for Patents (C)	11/93
boyd L. Alexander, Deputy Assistant Commissioner for Information Systems (C)	11/93
Bureau of Export Administration:	
John A. Richards, Deputy Assistant Secretary for Industrial Resources Administration (C)	11/93
James LeMunyon, Deputy Assistant Secretary for Export Administration (NC)	11/93
William V. Skidmore, Director, Office of Antiboycott Compliance (C)	11/93

Persons desiring further information about the Departmental PRB or its membership may contact Mr. Thomas J. Lambiase, Executive Secretary to the Departmental PRB, Office of Human Resources Management, Herbert C. Hoover Building, Room 5102, Washington, DC 20230 (202) 377–3453.

Dated: September 24, 1992.

Thomas J. Lambiase,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 92–23780 Filed 9–30–92; 8:45 am]

BILLING CODE 3510-BS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a public meeting on October 13–15, 1992. The meeting will begin on October 13 at 1 p.m. and adjourn on October 15 at 4:30 p.m. The GMT will meet in the Conference Room of the Pacific States Marine Fisheries Commission in the Oregon Department of Fish and Wildlife (ODFW) building, 2501 SW First Avenue, suite 200, Portland, Oregon, on October 13 and on October 15. On October 14 *ONLY*, beginning at 8 a.m., the meeting site will be moved to the Multnomah Falls Room at the Red Lion Hotel-Portland Downtown, 310 SW Lincoln Street, Portland, OR.

The GMT will: (1) Prepare the annual Stock Assessment and Fishery Evaluation document and final recommendations for 1993 groundfish harvest levels; (2) discuss environmental and socio-economic analyses of proposed Pacific whiting and salmon bycatch measures; and (3) review the individual quota proposal under Council consideration. Other issues of importance to the West Coast groundfish industry may also be discussed. The GMT will prepare recommendations on these issues for presentation to the Council at its upcoming meeting on November 17–20 in Seattle, WA.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: September 25, 1992.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–23826 Filed 9–30–92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

September 25, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International

Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In exchange of notes dated July 27, 1992 and August 18, 1992, the Governments of the United States and Uruguay agreed to extend their current bilateral agreement through June 30, 1993.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period July 1, 1992 through June 30, 1993.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 25, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991, pursuant to the Bilateral Cotton and Wool Textile Agreement, effected by exchange of notes dated December 30, 1983 and January 23, 1984, as amended and extended, between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 2, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on July 1, 1992 and extending through June 30, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
334	104,155 dozen.
335	89,661 dozen.
410	2,713,607 square meters of which not more than 1,550,634 square meters shall be in Category 410–A [2] and not more than 2,498,242 square meters shall be in Category 410–B [3]
433	16,203 dozen.
434	24,173 dozen.
435	48,820 dozen.
442	34,535 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1992.

[2] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[3] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

Imports charged to these category limits for the period July 1, 1991 through June 30, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Uruguay.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–23803 Filed 9–30–92; 8:45 am]

BILLING CODE 3510–DR–F

Denial of Participation in the Special Access and Special Regime Programs

September 25, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access and Special Regime Programs.

EFFECTIVE DATE: November 1, 1992.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that F.M. Industries and F. C. Industries are in violation of the requirements set forth for participation in the Special Access and Special Regime Programs.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on November 1, 1992, to deny F.M. Industries and F. C. Industries the right to participate in the Special Access and Special Regime Programs, for a period of three months, from November 1, 1992 through January 31, 1993.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988;

and 54 FR 50425, published on December 6, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 25, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that F.M. Industries and F.C. Industries are in violation of the requirements for participation in the Special Access and Special Regime Programs.

Effective on November 1, 1992, you are directed to prohibit F.M. Industries and F.C. Industries from further participation in the Special Access and Special Regime Programs, for a period of three months, from November 1, 1992 through January 31, 1993. Goods accompanied by Form ITA–370P which are presented to U.S. Customs for entry under the Special Access and Special Regime Programs will no longer be accepted. In addition, for the period November 1, 1992 through January 31, 1993, you are directed not to sign ITA–370P forms for export of U.S.-formed and cut fabric for F.M. Industries and F.C. Industries.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–23802 Filed 9–30–92; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0018]

OMB Clearance Request for Certification of Independent Price Determination and Parent Company and Identifying Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for a approval of a previously approved OMB clearance (9000–0018).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for approval of a previously approved information collection requirement concerning Certification of Independent Price Determination and Parent Company and Identifying Data.

DATES: Comments may be submitted on or before November 2, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 510–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (*e.g.*, collusive bidding, identical bids, uniform estimating systems, etc.) to the Attorney General.

As a first step in assuring that Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *64,250;* responses per respondent, *20;* total annual responses, *1,285,000;* preparation hours per response, *.02;* and total response burden hours, *25,700.*

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data, in all correspondence.

Dated: September 25, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–23794 Filed 9–30–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 21, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: September 25, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Existing.

Title: Application for Grants under the Women's Educational Equity Act (WEEA) Program

Frequency: Annually.

Affected Public: Individuals or households; state or local governments; non-profit institutions.

Reporting Burden:

Responses: 400.

Burden Hours: 6,400.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form will be used by State educational agencies to apply for funding under the Women's Educational Equity Act (WEEA) Program. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision.

Title: Free Application for Federal Student Aid.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting Burden:

Responses: 7,924,954.

Burden Hours: 8,823,464.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: The information is used to calculate the Pell Grant Index (PGI) for the distribution of Pell Grants and the Family Contribution (FC) used by financial aid administrators to determine the amount of a student's SEOG, College Work-Study, Perkins Loan, and Stafford Loan. The PGI is governed by Section 411 and the FC by Part F of the Higher Education Act of 1965, as amended.

Office of Postsecondary Education

Type of Review: Revision.

Title: Student Aid Report (SAR).

Frequency: Annually.

Affected Public: Individuals or households; non-profit institutions, business or other for-profit.

Reporting Burden:

Responses: 13,103,260.

Burden Hours: 2,331,273.

Recordkeeping Burden:

Recordkeepers: 7,300.

Burden Hours: 599,486.

Abstract: The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial aid. The forms are submitted by the applicants to the participating institution of their choice. The institution submits part 3 of the SAR to the Department to receive funds for the applicant.

[FR Doc. 92-23768 Filed 9-30-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84-195P]

Bilingual Education: Educational Personnel Training Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide assistance to meet the need for additional or better trained educational personnel for programs for limited English proficient (LEP) persons.

Eligible Applicants: Institutions of higher education.

Deadline for Transmittal of Applications: January 27, 1993.

Deadline for Intergovernmental Review: March 29, 1993

Applications Available: October 23, 1992.

Available Funds: $2.5 million.

Estimated Range of Awards: $65,000–$190,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 561.

Priority: The Priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 561.31.

In addition to the maximum of 100 points awarded under 34 CFR 561.31, the program regulations in 34 CFR 561.32(b) provide that the Secretary distributes 10 additional points among the factors listed in 34 CFR 561.32(a). For this completion the Secretary distributes the 10 additional points as follows:

(1) Job placement and development (34 CFR 561.32(a)(1))—1 point.

(2) Evidence of prior participant's success in serving LEP children in accordance with the needs identified in the prior project (34 CFR 561.32(a)(2))—1 point.

(3) Evidence of demonstrated capacity and cost effectiveness as described in 34 CFR 561.31(d) and (f) (34 CFR 561.32(a)(3))—8 points.

For Applications or Information Contact: Cynthia J. Ryan, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Switzer Building, Washington DC 20202–6642. Telephone: (202) 205–8722. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3321.

Dated: September 23, 1992.

Nguyen Ngoc-Bich,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 92-23774 Filed 9-30-92; 8:45 am]

BILLING CODE 4000-01-M

Bilingual Education: Educational Personnel Training Program; Final Priority for Fiscal Year 1993

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year 1993.

SUMMARY: The Secretary announces an absolute priority for the fiscal year (FY) 1993 competition under the Bilingual Education: Educational Personnel Training (EPT) Program. The Secretary takes this action to focus Federal financial assistance on an identified national need. The priority is intended to assist institutions of higher education (IHEs) to meet the need for additional or better trained teachers of limited English proficient (LEP) students in mathematics and science.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Cynthia J. Ryan, U.S. Department of Education, 400 Maryland Avenue SW., room 5086, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8842. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Awards under the EPT Program are made to IHEs to prepare additional or better trained educational personnel for programs for limited English proficient students. The authority for the EPT Program is section 7041 of the Bilingual Education Act (20 U.S.C. 3321).

The Secretary announces an absolute priority for the FY 1993 competition under the EPT Program to assist IHEs in preparing teachers to meet the needs of LEP students in mathematics and

science. This competition supports the President's AMERICA 2000 strategy for helping the Nation move itself toward the National Education Goals, particularly Goal 3 and Goal 4. Goal 3 calls for all students to demonstrate competency in challenging subject matter, including mathematics and science. Goal 4 calls for American students to be first in the world in science and mathematics achievement by the year 2000. Under this priority, all EPT funds that are not committed to continuing projects will be reserved for projects that prepare teachers to help LEP students achieve competence in mathematics and science.

On June 17, 1992, the Secretary published a notice of proposed priority for this program in the **Federal Register** (57 FR 27036).

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under this competition is published in this issue of the **Federal Register.**

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, three parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Each commenter expressed concern that the proposed priority did not specify options for the types of certification that would be allowable under this priority. Two of the commenters believed the proposed priority would exclude programs that train teachers to be certified in bilingual education or English-as-a-second-language (ESL). The third commenter believed the priority would exclude certification in mathematics and science.

Also, one commenter expressed the concern that the proposed priority appeared to limit participation to bilingual education and ESL teachers. This commenter was concerned that limiting participation in the program to bilingual education and ESL teachers would exclude the participation of mathematics and science teachers who need training in providing instruction to LEP students.

Discussion: The Bilingual Education Act requires that preservice and inservice training under the EPT Program assist educational personnel in meeting State and local certification requirements.

The Act, however, does not specify the program areas in which participants may need to obtain certification so that they may meet the instructional needs of the LEP students they will be serving. The purpose of the priority is to assist IHEs to meet the need for additional and better trained teachers of LEP students. The Secretary does not intend for the priority in this notice to limit certification options. Moreover, the Secretary does not intend for the priority to limit participation in training programs to bilingual education and ESL teachers, but rather intends that applications submitted under the priority allow for the participation of any teacher of LEP children in need of this training.

Changes: The Secretary has reworded the priority to clarify the types of certification and participants that will be allowable in applications funded under this priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Training to prepare teachers to instruct limited English proficient children in one or both of the following core curriculum areas: mathematics or science. The training must be designed to assist participants in meeting State and local certification requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 500 and 561.

Program Authority: 20 U.S.C. 3321.

(Catalog of Federal Domestic Assistance Number 84.195P Bilingual Education: Educational Personnel Training Program)

Dated: September 11, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-23786 Filed 9-30-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1993 for the Strengthening Institutions Program and the Endowment Challenge Grant Program

Purpose: Institutions of higher education must meet specific statutory and regulatory requirements to be designated eligible to receive funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

Deadline for Transmittal of Applications: November 30, 1992.

Applications Available: October 16, 1992.

Eligibility Information: Under section 312 of the Higher Education Act of 1965, as amended (HEA), an institution of higher education qualifies as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs if, among other requirements, it has a high enrollment of needy students, *and* its educational and general (E&G) expenditures are low per full-time equivalent (FTE) undergraduate student, in comparison with the average E&G expenditures per FTE student of institutions that offer similar instruction.The complete eligibility requirements are found in 34 CFR 607.2 through 607.5 of the Strengthening Institutions Program regulations.

As a result of amendments made to the statute relating to institutional eligibility requirements, an institution may qualify as an eligible institution if it is fully accredited by a nationally recognized accrediting agency and is legally authorized by the State in which it is located to be a junior or community college or to provide a bachelors degree program. Such an institution no longer has to satisfy those requirements for five years before being eligible to receive funds.

Enrollment of Needy Students: Under 34 CFR 607.3(a), an institution is considered to have a high enrollment of needy students if—

(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work Study, or Perkins Loan Program; or (2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell

Grants at comparable institutions that offer similar instruction. To qualify under the second criterion, an applicant's Pell grant percentage must be more than the median for its category provided on the table in this notice.

E&G Expenditures Per FTE Students: An applicant should compare its average E&G expenditure/FTE student to the average E&G expenditure/FTE student for its category of institution contained in the table in this notice. If the applicant's average E&G expenditure for the 1990–91 base year is less than the average for its category, the applicant meets this eligibility requirement.

The applicant's E&G expenditures are the total amount expended by the institution during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Pell Grant percentages and the average E&G expenditures per FTE student for the 1990–91 base year.

	Median Pell Grant percentage	Average E&G per FTE student
2-year public institutions	37.0	$6,225
2-year non-profit private institutions	43.0	11,565
4-year public institutions	32.0	10,928
4-year non-profit private institutions	30.0	14,350

Waiver Information: Applicants unable to meet the high needy student enrollment requirement and/or the low E&G expenditure requirement may apply to the Secretary for waiver of these requirements under various options described in 34 CFR 607.3(b) and 34 CFR 607.4 (c) and (d), respectively.

For the purpose of 34 CFR 607.3(b)(2), under which an applicant must demonstrate that at least 30 percent of the students it served in base year 1990–91 were from low-income families, "low-income" is defined as an amount that does not exceed 150 percent of the amount equal to the poverty level as established by the U.S. Bureau of the Census. The following table sets forth the low-income levels for various sizes of families.

For the purposes of this waiver provision, low-income families are identified according to the following:

FISCAL YEAR 1991 ANNUAL LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia, and outlying jurisdictions	Alaska	Hawaii
1	$9,930	$12,435	$11,415
2	13,320	16,665	15,315
3	16,710	20,895	19,215
4	20,100	25,125	23,115
5	23,490	29,355	27,015
6	26,880	33,585	30,915
7	30,270	37,815	34,815
8	33,660	42,045	38,715

For family units with more than eight members, add the following amount for each additional family member: $3,390 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $4,230 for Alaska; and $3,900 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. These levels were published by the U.S. Department of Health and Human Services in the **Federal Register** of February 20, 1991, Volume 56, Number 34, Pages 5859–6861.

In reference to the waiver option specified in section 607.3(b)(4) of the regulation, information about "metropolitan statistical areas" may be obtained by writing: National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, or calling (703) 487–4650. The title of the document is Metropolitan Statistical Areas, 1989 #PB89–192546. There is a charge for this publication. *Applicable Regulations:* Regulations applicable to the eligibility process include: (a) The Strengthening Institutions Program Regulations, 34 CFR part 607; (b) the Endowment Challenge Grant Program Regulations, 34 CFR part 628; and (c) the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 82, 85, and 86.

For Applications or Information Contact: Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 400 Maryland Avenue, SW., room 3042, ROB#3, Washington, DC 20202–5335, Telephone: (202) 708–8839. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Services at 1–800–877–8339 (in the Washington, DC, (202) area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1057 and 1065a.

Dated: September 24, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–23767 Filed 9–30–92; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Amendment to notice.

SUMMARY: Notice is hereby given of an amendment to the notice of the teleconference meeting of the full Board scheduled for September 29, 1992, at 800 North Capitol Street NW., suite 825, Washington, DC, as published at 57 FR 38301, August 24, 1992. The teleconference meeting will include the Executive Committee and the Achievement Levels Committee at 11 a.m.

Dated: September 25, 1992.

Roy Truby,

Executive Director.

[FR Doc. 92–23800 Filed 9–30–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92–730–000, et al.]

Northeast Utilities Service Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Co.

[Docket No. ER92–730–000]

September 23, 1992.

Take notice that on September 17, 1992, Northeast Utilities Service Company tendered for filing additional information requested by Commission staff in the above-referenced docket.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

United Illuminating Co.

[Docket No. ER92–453–001]

September 23, 1992.

Take notice that on September 17, 1992, United Illuminating Company

tendered for filing its Refund Report in the above-referenced docket.

Comment date: October 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

Entergy Power, Inc.

[Docket No. ER92-843-000]

September 23, 1992.

Take notice that Entergy Power, Inc. (EPI) on September 18, 1992 tendered for filing an Interchange Agreement with Associated Electric Cooperative, Inc.

EPI requests an effective date for the Interchange Agreement that is sixty (60) days after the date of filing, in accordance with § 35.11 of the Commission's regulations.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Commonwealth Edison Co. of Indiana, Inc.

[Docket No. ER92-845-000]

September 23, 1992.

Take notice that on September 18, 1992, Commonwealth Edison Company of Indiana, Inc. (Edison Indiana) tendered for filing a letter agreement, dated August 26, 1992 (Letter Agreement), between Edison Indiana and its parent, Commonwealth Edison Company (Edison). The Letter Agreement modifies certain provisions of the Electric Service Agreement, dated July 1, 1941, as amended, and the Transmission Service Agreement, dated May 1, 1958, as amended between Edison Indiana and Edison. Edison Indiana seeks an effective date of January 1, 1993 and, accordingly, seeks waiver of the Commission's notice requirements. Edison Indiana proposes to lower the return on common equity to 11.47 percent pursuant to a contractual obligation in the agreements on file with the Commission. Edison Indiana and Edison have agreed that 11.47 percent shall be a fixed rate of return, subject to change under sections 205 and 206 of the Federal Power Act and have agreed to a revised capital structure resulting in lower rates to be charged to edison by Edison Indiana.

Copies of this filing were served upon the Illinois Commerce Commission and Edison.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Idaho Power Co.

[Docket No. ER92-851-000]

September 23, 1992.

Take notice that on September 15, 1992, Idaho Power Company (Idaho) tendered for filing a letter and attachments regarding amendment of its request for a temporary rate increase for the following wholesale contracts:

1. Idaho Power-Sierra Pacific Company Agreement for a supply of Energy & Power, dated March 10, 1960, FERC Rate Schedule No. 30.
2. The City of Weiser-Idaho Power Company Agreement for Supply of Power, dated April 4, 1963, FERC Rate Schedule No. 42;
3. Idaho Power-Utah Associated Municipal Power Systems Agreement for Supply of Power & Energy, dated February 10, 1988, FERC Rate Schedule No. 74.
4. Idaho Power Company-Washington City, Utah, Agreement for Supply of Power & Energy, dated July 6, 1987, FERC Rate Schedule No. 74.

The amendment requests a change in the effective dates during which the temporary increase would be effective.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Commonwealth Electric Co.

[Docket No. ER92-354-000]

September 23, 1992.

Take notice that on September 11, 1992, Commonwealth Electric Company tendered for filing additional information requested by Commission staff in the above-referenced docket.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Northern States Power Company

[Docket No. ER92-852-000]

September 23, 1992.

Take notice that on September 15, 1992, Northern States Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Arizona Public Service Company

[Docket No. ER92-844-000]

September 23, 1992.

Take notice that on September 18, 1992, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Wholesale Power Agreement between APS and the Town of Wickenburg (Wickenburg) (APS-FERC Rate Schedule No. 74) and revised Exhibit A to the Transmission Service Agreement between APS and Wickenburg (APS-FERC Rate Schedule No. 170) collectively Exhibits and Agreements). The Exhibits list ranges of Maximum and Contract Demands applicable under the Agreements.

No change from the currently effective rate or revenue levels is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on Wickenburg and the Arizona Corporation Commission.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Minnesota Power & Light Co.

[Docket No. ER92-805-000]

September 23, 1992.

Take notice that on September 17, 1992, Minnesota Power & Light Company (Minnesota Power) tendered for filing an Amended Notice of Cancellation for replacement capacity and energy service to Wisconsin Public Power, Inc. SYSTEM (WPPI) under the Boswell 4 Operation, Ownership and Power Sales Agreement, Rate Schedule FERC No. 158, in accordance with Amendment No. 1 to that Agreement.

Minnesota Power requests an effective date of September 1, 1992, and requests waiver of the notice provisions of § 35.25 of the Commission's regulations.

Copies of this filing have been served on WPPI, the Minnesota Public Utilities Commission and the Wisconsin Public Service Commission.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Pennsylvania Power & Light

[Docket No. ER92-687-001]

September 23, 1992.

Take notice that on September 21, 1992, Pennsylvania Power & Light Company tendered for filing its Refund Report in the above-referenced docket.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Idaho Power Co.

[Docket No. ER92-408-000]

September 23, 1992.

Take notice that on September 1, 1992, Idaho Power Company (Idaho) tendered for filing an exhibit regarding Idaho's wholesale sale to the Oregon Trail Electric Consumers Cooperative.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

MDU Resources Group, Inc.

[Docket No. ER92-60-000]

September 24, 1992.

Take notice that on September 21, 1992, MDU Resources Group, Inc. filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $50 million of short-term indebtedness on or before December 31, 1994, with a final maturity date no later than December 31, 1995.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23835 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2113-022, et al.]

Hydroelectric Applications [Wisconsin Valley Improvement Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* New License.

b. *Project No.:* 2113-022.

c. *Date Filed:* July 30, 1991.

d. *Applicant:* Wisconsin Valley Improvement Company.

e. *Name of Project:* Wisconsin Valley.

f. *Location:* On the Wisconsin River and its tributaries, Vilas, Oneida, Forest, Marathon, and Lincoln Counties, Wisconsin, and Gogebic County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Robert W. Gall, Wisconsin Valley Improvement Company, 2301 North Third Street, Wausau, WI 54401, (715) 848-2976.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Deadline Date:* November 6, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E.

l. *Description of Project:* The project as licensed consists of 21 separate existing dam and storage reservoir developments (none of which contain any hydropower facilities) located in the Wisconsin River Basin. Two of the developments are located on the main stem of the Wisconsin River; the remaining developments are located on tributary rivers and streams. The 21 project developments are described as follows:

Lac Vieux Desert Development

The Lac Vieux Desert Development is an improved natural-lake reservoir, located on the Wisconsin River main stem at river mile 420.1 in Vilas County, Wisconsin and Gogebic County, Michigan. The development consists of: (1) A reinforced concrete gated dam 27 feet long, 10 feet wide, and 8.5 feet high, with upstream and downstream wingwalls, each about 9 feet long; (2) one tainter gate in the dam, 12 feet wide and 4 feet high; (3) one stop log bay in the dam, 4 feet wide and 7 feet high; and (4) a reservoir with a surface area of 4,247 acres and gross storage of 2,140 million cubic feet (mcf) at the maximum water level of 1,681.53 feet NGVD. The reservoir has usable storage of 398 mcf with a drawdown of 2.17 feet.

Twin Lakes Development

The Twin Lakes Development is an improved natural-lake reservoir, located on the Twin River 2.1 miles upstream from Pioneer Lake in Vilas County, Wisconsin. Pioneer Lake feeds Pioneer Creek which flows for 9.9 miles to join the Wisconsin at river mile 401.1. The development consists of: (1) A reinforced concrete gated dam 21.5 feet long, 17 feet wide and 9.5 feet high, with upstream wingwalls about 6 feet long, and downstream wingwalls about 26 feet long; (2) one tainter gate in the dam, 10 feet wide and 4.33 feet high; (3) one stop log bay in the dam, 4 feet wide and 8 feet high; (4) a right abutment dike about 60 feet long and 10 feet high, and a left abutment dike about 75 feet long and 10 feet high; and (5) a reservoir with a surface area of 3,535 acres and gross storage of 4,074 mcf at the maximum water level of 1,682.57 feet NGVD. The reservoir has usable storage of 301 mcf with a drawdown of 2.00 feet.

Buckatahpon Development

The Buckatahpon Development is an improved natural-lake reservoir, located on Buckatahpon Creek 1.4 miles upstream from its confluence with the Wisconsin at river mile 396.9 in Vilas County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 15 feet long, 27 feet wide, and 7.5 feet high, with upstream and downstream wingwalls, each about 9 feet long; (2) one tainter gate in the dam, 6 feet wide and 3.83 feet high; (3) one stop log bay in the dam, 5 feet wide and 5 feet high; (4) a right abutment dike about 100 feet long and 7.4 feet high, and a left abutment dike about 80 feet long and 7.4 feet high; and (5) a reservoir with a surface area of 922 acres and gross storage of 597 mcf at the maximum water level of 1,641.52 feet NGVD. The reservoir has usable storage of 120 mcf with a drawdown of 3.17 feet.

Long-on-Deerskin Development

The Long-on-Deerskin Development is an improved natural-lake reservoir, located on the Deerskin River 18 miles upstream from its confluence with the Wisconsin at river mile 378.8 in Vilas County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 18 feet long, 15 feet wide, and 9.5 feet high with upstream and downstream wingwalls, each about 9 feet long; (2) one tainter gate in the dam, 8 feet wide and 5 feet high; (3) one stop log bay in the dam, 4 feet wide and 7 feet high; (4) a right abutment dike about 35 feet long and 8.4 feet high, and a left abutment dike about 30 feet long and 8.4 feet high; and (5) a reservoir with a surface area of 2,353 acres and gross storage of 2,651 mcf at the maximum water level of 1,698.43 feet NGVD. The reservoir has usable storage of 255 mcf with a drawdown of 2.59 feet.

Little Deerskin Development

The Little Deerskin Development is an improved natural-lake reservoir, located on the Little Deerskin River 3 miles upstream from its confluence with the Deerskin River in Vilas County, Wisconsin. The development consists of: (1) A steel gated spillway structure 4 feet long, 6 wide, and 4 feet high, with upstream and downstream wingwalls, each about 4 feet long; (2) one 4-foot-wide by 2-foot-wide lift gate within the structure; (3) a right abutment dike about 40 feet long and 4 feet high, and a left abutment dike about the same size; (4) a reservoir with a surface area of 313 acres and gross storage of 82 mcf at the maximum water level of 1,642.16 feet NGVD. The reservoir has usable storage of 23 mcf with a drawdown of 1.67 feet.

Seven Mile Development

The Seven Mile Development is an improved natural-lake reservoir, located on Seven Mile Creek 2.6 miles upstream from the head of Nine Mile Reservoir in Oneida and Forest Counties, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 22 feet long, 30 feet wide, and 9.5 feet high, with downstream wingwalls about 16 feet long; (2) one tainter gate in the dam, 8 feet wide and 4.83 feet high; (3) one stop log bay in the dam, 6 feet wide and 8 feet high; (4) a right abutment dike about 150 feet long and 9.7 feet high, and a left abutment dike about 110 feet long and 9.7 feet high; and (5) a reservoir with a surface area of 518 acres and gross storage of 147 mcf at the maximum water level of 1,650.14 feet NGVD. The reservoir has usable storage of 85 mcf with a drawdown of 4.33 feet.

Lower Nine Mile Development

The Lower Nine Mile Development is an improved natural-lake reservoir, located on Nine Mile Creek 1.1. miles upstream from the head of Burnt Rollways Reservoir in Oneida County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 26 feet long, 30 feet wide, and 12 feet high, with upstream wingwalls about 16 feet long; (2) two tainter gates in the dam, each 6 feet wide and 6 feet high; (3) one stop log bay in the dam, 3.75 feet wide and 6 feet high; (4) a right abutment dike about 60 feet long and 12.9 feet high, and a left abutment dike about 100 feet long and 12.9 feet high; and (5) a reservoir with a surface area of 841 acres and gross storage of 114 mcf at the maximum water level of 1,643.76 feet NGVD. The reservoir has usable storage of 104 mcf with a drawdown of 4.58 feet.

Burnt Rollways Development

The Burnt Rollways Development is an improved multiple natural-lake and channel reservoir, located on the Eagle River near its confluence with the Wisconsin River in Oneida County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 47 feet long, 55 feet wide, and 16 feet high, with upstream wingwalls about 20 feet long; (2) two dissimilar tainter gates in the dam, one 16 feet wide by 4.25 feet high, and a second 10 feet wide by 12 feet high; (3) a right abutment dike about 100 feet long and 14.4 feet high, and a left abutment dike about 150 feet long and 17.9 feet high; (4) a boat launching structure consisting of a trestle supported rail track about 105 feet long, mounted with an electrically operated rolling gantry hoist, over the right abutment dike; and (5) a reservoir with a surface area of 7,620 acres and gross storage of 4,525 mcf at the maximum normal water level of 1,625.71 feet NGVD. The reservoir has usable storage in summer of 479 mcf with a drawdown of 1.5 feet, and in winter, 852 mcf with a drawdown of 2.75 feet.

Sugar Camp Development

The Sugar Camp Development is an improved multiple natural-lake and channel reservoir, located on Sugar Camp Creek near its confluence with the Wisconsin River in Oneida County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 12 feet long, 15 feet wide, and 9.5 feet high, with upstream and downstream wingwalls about 13 feet long; (2) one tainter gate in the dam, 8 feet wide by 7 feet high; (3) a right abutment dike about 260 feet long and 9.5 feet high; and a left abutment dike about 20 feet long and 9.5 feet high; and (4) a reservoir with a maximum surface area of 1,857 acres and gross storage of 1,120 mcf at the maximum winter water level of 1,597.82 feet NGVD. The reservoir has usable storage in summer of 155 mcf with a drawdown of 2.0 feet, and in winter, 411 mcf with a drawdown of 5.5. feet.

Little St. Germain Development

The Little St. Germain Development is an improved natural-lake reservoir, located on the Little St. Germain River about 1.1 miles upstream from its confluence with the Wisconsin River in Vilas County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 14 feet long, 15 feet wide, and 8.5 feet high, with upstream wingwalls about 10 feet long; (2) one vertical lift gate in the dam, 5 feet wide by 5.17 feet high; (3) a right abutment dike about 50 feet long and 7 feet high; and a left abutment dike about 40 feet long and 7 feet high; and (4) a reservoir with a surface area of 1,008 acres and gross storage of 495 mcf at the maximum water level of 1,613.88 NGVD. The reservoir has usable storage of 77 mcf with a drawdown of 1.83 feet.

Big St. Germain Development

The Big St. Germain Development is an improved natural-lake reservoir, located on the St. Germain River in Vilas County near St. Germain, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 27 feet long, 22 feet wide, and 7 feet high; (2) two similar vertical lift gates in the dam, each 7 feet wide by 4.17 feet high, and one smaller vertical lift gate in the dam, 5 feet wide by 4.17 feet high; (3) a right abutment dike about 55 feet long and 7 high, and a left abutment dike about 35 feet long and 7 feet high; (4) a reservoir with a surface area of 1,853 acres and gross storage of 1,501 mcf at the maximum water level of 1,591.16 feet NGVD. The reservoir has usable storage in summer of 94 mcf with a drawdown of 1.33 feet, and in winter, 210 mcf with a drawdown of 3.0 feet.

Pickerel Development

The Pickerel Development is an improved natural lake reservoir, located on the St. Germain River near its confluence with the Wisconsin River in Oneida County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 32 feet long, 30 feet wide, and 20.5 feet high, called Pickerel Control Dam, with upstream and downstream wingwalls about 32 feet long; (2) one tainter gate in the dam, 10 feet wide by 16 feet high; (3) a right abutment dike about 70 feet long and 18.5 feet high, and a left abutment dike about 80 feet long and 18.5 feet high; (4) a second reinforced concrete gated dam 20 feet long, 37 feet wide, and 12 feet high, called Pickerel Canal Dam, with upstream and downstream wingwalls about 20 feet long; (5) one tainter gate in the dam, 22 feet wide by 3 feet high; (6) a reservoir with a surface area of 786 acres and gross storage of 315 mcf at the maximum water level of 1,590.34 feet NGVD. The reservoir has usable storage in summer of 33 mcf with a drawdown of 1.0 foot, and in winter, 227 mcf with a drawdown of 9.0 feet.

Rainbow Development

The Rainbow Development is a man-made reservoir, located on the Wisconsin River main stem at river mile 365.2 in Oneida County near Lake Tomahawk, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 128 feet long, 32 feet wide, and 38.5 feet high, with upstream wingwalls about 68 feet long, and downstream wingwalls about 55 feet long; (2) three tainter gates each 20 feet wide by 21 feet high, and two tainter gates each 10 feet wide by 28 feet high, all within the dam; (3) a right abutment dike about 1,000 feet long and 32 feet high; (4) Sawyer dike located about 3,000 feet east of the gated dam, about 800 feet long and 20 feet high; (5) Highway E dike located about 1,000 feet west of the spillway and joining the right abutment dike, about 1,050 feet long and 24 feet high; (6) Jim Hall dike located about 1.5 miles north of the spillway, about 1,550 feet long and 22 feet high; (7) Highway J dike located about 2.5 miles north of the dam, about 500 feet long and 3 feet high; (8) a reservoir with a surface area of 4,165 acres and gross storage of 2,004 mcf at

the maximum water level of 1,507.05 feet NGVD. The reservoir has usable storage of 1,987 mcf with a drawdown of 22 feet.

North Pelican Development

The North Pelican Development is an improved natural-lake reservoir located on the north branch of the Pelican River in Oneida County near Rhinelander, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 32 feet long, 29 feet wide, and 10.5 feet high, with upstream wingwalls about 16 feet long; (2) three vertical lift gates in the dam, each 6.5 feet wide by 4.0 feet high; (3) a right abutment dike about 30 feet long and 10.5 feet high, and a left abutment dike about 170 feet long and 10.5 feet high; (4) a reservoir with a surface area of 1,295 acres and gross storage of 379 mcf at the maximum water level of 1,569.60 feet NGVD. The reservoir has usable storage of 151 mcf with a drawdown of 3.0 feet.

South Pelican Development

The South Pelican Development is an improved natural-lake reservoir located on the main branch of the Pelican River in Oneida County near Pelican Lake, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 29 feet long, 24 feet wide, and 8 feet high, with upstream wingwalls about 10 feet long; (2) two vertical lift gates in the dam, each 5 feet wide by 3 feet high, and two stop log bays, each 5 feet wide by 1 foot high; (3) a right abutment dike about 20 feet long and 6 feet high, and a left abutment dike about 500 feet long and 6 feet high; (4) a reservoir with a surface area of 3,094 acres and gross storage of 2,175 mcf at the maximum water level of 1,591.96 feet NGVD. The reservoir has usable storage of 308 mcf with a drawdown of 2.0 feet.

Minocqua Development

The Minocqua Development is an improved natural-lake reservoir, located at the headwaters of the Tomahawk River in Oneida County near Minocqua, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 35 feet long, 30 feet wide, and 8.75 feet high; (2) two tainter gates in the dam, each 8 feet wide by 4.5 feet high; (3) one overflow bay in the dam, 8 feet wide by 4 feet high; (4) a right abutment dike about 100 feet long and 8 feet high, and a left abutment dike about 150 feet long and 8 feet high; (5) a reservoir with a surface area of 6,068 acres and gross storage of 7,243 mcf at the maximum water level of 1,585.05 feet NGVD. The reservoir has usable storage of 800 mcf with a drawdown of 2.77 feet.

Squirrel Development

The Squirrel Development is an improved natural-lake reservoir, located on the Squirrel River about 13.2 miles upstream from its confluence with the Tomahawk River in Oneida County, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 15 feet long, 21 feet wide, and 6.8 feet high, with upstream wingwalls about 10 feet long; (2) one vertical lift gate in the dam, 5 feet wide by 4.5 feet high; (3) one stop log bay in the dam, 5 feet wide by 4.5 feet high; (4) a left abutment dike about 65 feet long and 7.3 feet high; (5) a reservoir with a surface area of 1,505 acres and gross storage of 1,008 mcf at the maximum water level of 1,584.93 feet NGVD. The reservoir has usable storage of 149 mcf with a drawdown of 2.42 feet.

Willow Development

The Willow Development is a man-made reservoir, located on the Tomahawk River in Oneida County near Hazelhurst, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 72 feet long, 29 feet high, and 34.5 feet high, with upstream wingwalls about 33 feet long and downstream wingwalls about 50 feet long; (2) one central tainter gate in the dam, 20 feet wide by 12.5 feet high, and two flanking tainter gates in the dam, each 10 feet wide by 23.5 feet high; (3) a right abutment dike about 300 feet long and 30.5 feet high, and a left abutment dike about 700 feet long and 30.5 feet high; (4) Doberstein dike, located about 2,000 feet south of the gated dam, measuring about 1,400 feet in length and 18 feet in height; (5) the South dike, located about one mile south of the gated dam, measuring about 3,500 feet in length and 11 feet in height; and (6) a reservoir with a surface area of 6,392 acres and gross storage of 2,924 mcf at the maximum water level of 1,529.35 feet NGVD. The reservoir has usable storage of 2,809 mcf with a drawdown of 18.5 feet.

Rice Development

The Rice Development is a man-made reservoir, located on the Tomahawk River in Lincoln and Oneida Counties near Tomahawk, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 97 feet long, 34 feet wide, and 19 feet high, with upstream wingwalls about 32 feet long and downstream wingwalls about 42 feet long; (2) two tainter gates in the dam, each 20 feet wide by 15 feet high; (3) one timber needle bay in the dam, 20 feet wide by 17.7 feet high; (4) a right abutment dike about 900 feet long and 22 feet high, and a left abutment dike about 500 feet long and 22 feet high; (5) the West dike, located about 4,000 feet northwest of the gated dam, measuring about 1,550 in length and 10 feet in height; and (6) a reservoir with a surface area of 4,111 acres and gross storage of 1,922 mcf at the maximum water level of 1,463.25 feet NGVD. The reservoir has usable storage of 1,698 mcf with a drawdown of 13.25 feet.

Spirit Development

The Spirit Development is a man-made reservoir, located on the Spirit River near its confluence with the Wisconsin River at river mile 313.5 in Lincoln County near Tomahawk, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 60 feet long, 35 feet wide, and 26 feet high, with upstream wingwalls about 36 feet long and downstream wingwalls about 24 feet long; (2) two tainter gates in the dam, each 20 feet wide by 19 feet high; (3) a right abutment dike about 1,140 feet long and 26 feet high, and a left abutment dike about 1,330 feet long and 26 feet high; and (4) a reservoir with a surface area of 1,698 acres and gross storage of 672 mcf at the maximum water level of 1,437.88 feet NGVD. The reservoir has usable storage of 666 mcf with a drawdown of 17.0 feet.

Eau Pleine Development

The Eau Pleine Development is a man-made reservoir, located on the Big Eau Pleine River near its confluence with the Wisconsin River at river mile 237.6 in Marathon County near Mosinee, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 149 feet long, 30 feet wide, and 45 feet high, with upstream wingwalls about 90 feet long and downstream wingwalls about 54 feet long; (2) three tainter gates in the dam, each 26 feet wide by 15.5 feet high; (3) one sluice gate in the dam, 10 feet wide by 6 feet high; (4) a right abutment dike about 4,450 feet long and 45 feet high, and a left abutment dike about 4,000 feet long and 45 feet high; and (4) a reservoir with a surface area of 6,677 acres and gross storage of 4,275 mcf at the maximum water level of 1,145.43 feet NGVD. The reservoir has usable storage of 4,170 mcf with a drawdown of 27.43 feet.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all existing project facilities.

The existing project would also be subject to Federal takeover under

concrete vertical shaft connecting the upper reservoir to a horizontal tunnel; (3) the 2,400-foot-long, 14-foot-diameter horizontal tunnel connecting the vertical shaft to a penstock; (4) the 4,000-foot-long, 14-foot-diameter penstock connecting the horizontal tunnel to a powerhouse; (5) the powerhouse containing two generating units with a total installed capacity of 200 MW; (6) two 450-foot-long, 10-foot-diameter tailrace pipes connecting the powerhouse to a lower reservoir; (7) a 78-foot-high dam and 31.65-acre lower reservoir; (8) a 5,300-foot-long transmission line; and (9) appurtenant facilities. Water for the project will be conveyed to the site via pipeline from an unidentified source.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission on or before November 3, 1992 and must serve a copy of the request on the applicant.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the completing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions. When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of

copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: September 28, 1992. Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23814 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-697-000, et al.]

United Gas Pipe Line Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP92-697-000]

September 23, 1992.

Take notice that on September 11, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-697-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of its transmission pipeline facilities which were certificated in Docket No. CP71-89,[1] all as more fully set forth in the application on file with the Commission and open to public inspection.

United proposes to abandon by sale to Pipeline Equities (Equities) [2] the portion of its 16-inch natural gas transmission line (Index 39) extending between its Refugio and Edna compressor stations, together with two contiguous gas supply lateral lines (Index 39-2 and Index 39-3), and related valves and appurtenances. United describes the pipeline facilities as being low pressure facilities (approximately 300 psig), constructed in 1930, approximately 60 miles in total length, and located in Jackson, Victoria, and Refugio Counties, Texas. It is stated that the facilities would be sold for $376,336.79, which corresponds to their salvage value.

United explains that it is not economical to operate the facilities since gas production in the nearby fields has drastically diminished over the years, and estimates that the abandonment would reduce United's maintenance costs by approximately $200,000 per year. United advises that Equities would not be operating the facilities as "regulated" jurisdictional facilities. United states that the 12 farm tap customers, which would be affected by this proposal, have consented to have their service taps relocated to United's parallel Index 129 pipeline, and that it has filed in Docket No. CP92-644-000 for such authorization. United further states that there is one active gas purchase contract associated with this abandonment, and United has agreed to reconnect that producer to index 129 at no cost to the producer.

Comment date: October 14, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Co.

[Docket No. CP92-705-000]

September 24, 1992.

Take notice that on September 15, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed an application with the Commission in Docket No. CP92-705-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a firm sales service to Michigan Gas Utilities Company (MGU), an existing jurisdictional sales customer, under Trunkline's FERC Rate Schedule P-2, all as more fully set forth in the request which is open to the public for inspection.

Trunkline proposes to abandon, at MGU's request, a firm sales service under Trunkline's Rate Schedule P-2 of up to 7,650 Mcf per day of natural gas. Trunkline requests authority to abandon its Rate Schedule P-2 firm sales service to MGU effective the date of any order issued in this proceeding. No facilities would be abandoned in this proposal.

Comment date: October 15, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Co.

[Docket No. CP92-711-000]

September 24, 1992.

Take notice that on September 17, 1992, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-711-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain gathering facilities by sale, to abandon and assign gas purchases along the gathering facilities and to abandon and assign two domestic sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williams requests authorization to abandon, by sale to Sun Operating Limited Partnership by Oryx Energy Company (Oryx), its portion of the Wakita/Clyde gathering system located in Grant and Alfalfa Counties, Oklahoma, consisting of approximately 70.4 miles of various size pipeline and associated meters and meter runs. The sale price is $430,000 it is stated. Williams also proposes to abandon and assign to Oryx its purchases of Natural Gas Act gas along the facilities and two domestic sales made from the facilities. Williams asserts that no compressors, compressor stations or mainline facilities will be sold.

Comment date: October 15, 1992, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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[1] *See* 50 FPC 181 (1973), 9 FERC ¶62,062 (1979).

[2] David Howell is a sole proprietorship d/b/a Pipeline Equities.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23836 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-807-000]

Central Vermont Public Service Corp.; Filing

September 25, 1992.

Take notice that on September 14, 1992, Central Vermont Public Service Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23776 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC92-14-000]

Columbia Gas Transmission Corp; Tariff Sheet Filings

September 25, 1992.

Take notice that Columbia Gas Transmission (Columbia), 1700 MacCorkle Ave. S.E., P.O. Box 1273, Charleston, WV 25325-1273, has filed its revised tariff sheets to become effective November 1, 1992, pursuant to Section 281.204(b)(2) of the Commission's Regulations, which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

Columbia filed to revise the following sheets to become effective November 1, 1992:

(a) Third Revised Sheet Nos. 270-274
(b) Second Revised Sheet No. 275
(c) Third Revised Sheet Nos. 276-305
(d) Second Revised Sheet No. 306
(e) First Revised Sheet Nos. 307-310

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, on or before October 18, 1992, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23855 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-674-000]

Entergy Power, Inc.; Filing

September 25, 1992.

Take notice that on September 1, 1992, Entergy Power, Inc. tendered for filing in this docket further information regarding its earlier filing of a letter agreement between Energy Power, Inc. and the Tennessee Valley Authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23777 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-691-000]

Entergy Power, Inc.; Filing

September 25, 1992.

Take notice that on September 1, 1992, Energy Power, Inc. tendered for filing further information regarding its earlier filing of an agreement with the Tennessee Valley Authority in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23853 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-15-000]

Equitrans, Inc.; Conference

September 25, 1992.

Take notice that on October 8, 1992, a conference will be convened in the above-captioned docket to discuss Equitrans, Inc.'s summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Betsy Carr at (202) 208-1240 or Leonard Burton at (202) 208-2085.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23838 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-5-28-002 TM92-4-28-002]

Panhandle Eastern Pipe Line Co.; Compliance Filing

September 25, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on September 14, 1992, in compliance with the Commission's August 28, 1992 letter order, submitted additional information in support of its filing.

Panhandle states that on August 28, the Commission issued a letter order accepting for filing and suspending the tariff sheets filed by Panhandle subject to refund and conditions, and directed Panhandle to file with 15 days of issuance of this order additional information in support of the filing.

Panhandle states that in compliance with the Commission's directive it has filed the filing:

1. The basis for the Trunkline Gas Company transportation rates reflected in Rate Schedules T-14, T-39, T-40, TE-8 and T-54.

2. An explanation of the Demand billing determinants used for customers served under Rate Schedules SSS-1, SSS-2, and SSS-3.

3. Workpapers to support the rate adjustments pursuant to the TCA tariff provisions.

Panhandle requests that the submittal be accepted as in satisfactory compliance with the Commission's directives in the letter order dated August 29, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23850 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-233-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

September 25, 1992.

Take notice that on September 23, 1992, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following tariff sheets listed on appendix A to the filing, to its FERC Gas Tariff, Original Volume No. 1 in compliance with the Commission's May 28, 1992 order in Docket No. CP92-462-000. Panhandle proposes that the tariff sheets be made effective November 1, 1992.

Panhandle states that the tariff sheets are being submitted to provide for a open-access storage service. The Commission stated in the aforementioned order that the proposed storage service was consistent with the goals of Order No. 636 and that Panhandle may provide the requested storage service under part 284 of the Regulations by filing revised tariff sheets that provide for such service. The Commission expressly stated that Panhandle may implement the storage service "in advance of its required filing in full compliance with Order No. 636" and that such a filing "will benefit all market participants."

Panhandle states that copies of the filing have been served upon Panhandle's jurisdictional customers, interested state regulatory commissions and parties in the Docket No. CP92-462-000 proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23851 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-72-000]

Pelican Interstate Gas System; Proposed Change in FERC Gas Tariff

September 25, 1992.

Take notice that on September 23, 1992, Pelican Interstate Gas System (Pelican) tendered for filing Sixth Revised Sheet No. 2A and Fifth Revised Sheet No. 2B to be a part of its FERC Gas Tariff, with a proposed effective date of October 1, 1992.

Pelican states that the proposed tariff sheets provides a revised Annual Charges Adjustment (ACA) that the Federal Energy Regulatory Commission ("Commission") assesses Pelican under § 382.103 of the Commission's Regulations. Pelican states that the Commission has specified that ACA unit charge of $.0023/Mcf to be applied to rates in 1993 for recovery of 1992 annual charges.

Pelican states that copies of the filing has been mailed to Pelican's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before October 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23837 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-48-000]

Riverside Pipeline Co., L.P.; Prefiling Conference

September 25, 1992.

Take notice that on Thursday, October 8, 1992, at 10:00 a.m., a conference will be convened in the above-captioned docket to discuss Riverside Pipeline's summary of its proposed plan for implementation of Order No. 636. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

All parties are invited to attend. Attendance at the conference, however,

will not confer party status. For additional information, interested parties may call Arnold H. Meltz at (202) 208–2161 or Thomas E. Gooding at (202) 208–0831.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23853 Filed 9–30–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC92–10–000]

Southern Natural Gas Co.; Petition for Waiver

September 25, 1992.

Take notice that on September 14, 1992, Southern Natural Gas Company, (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, tendered for filing a Petition For Waiver of certain provisions of the Stipulation and Agreement dated December 30, 1981 in Docket No. TC81–64–000.

By order dated March 18, 1982, the Commission approved the aforementioned Stipulation and Agreement, which established the procedures to be followed in updating the Priority 2.1 Essential Agricultural Use (EAU) requirements of Southern's resale and direct sale customers. One provision of the Stipulation and Agreement requires Southern to resurvey triennially its customers' EAU requirements in order to update its Index of Requirements to reflect any changes in their EAU requirements. By letter order dated November 8, 1991, the Commission authorized Southern to postpone its triennial review of the EAU requirements until September 15, 1992.

In the petition, Southern requests authorization from the Commission to extend the time for filing its triennial EAU survey until November 1, 1992 and that such update be made effective December 1, 1992. Southern submits that there is good cause to waive the triennial survey requirement until November 1, 1992, because Southern and its customers are in the process of negotiating the terms under which Southern will provide service to its customers pursuant to Order No. 636 and it would be burdensome at this time for Southern's customers to resurvey their customers for EAU requirements. Southern has consulted its customers on its Data Verification Committee and they have agreed that Southern should ask for a waiver of the triennial filing requirement until November 1, 1992 with an effective date of December 1, 1992.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or a Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such Motions or Protests should be filed on or before October 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23852 Filed 9–30–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–588–000]

West Texas Utilities Co.; Filing

September 25, 1992.

Take notice that on September 22, 1992, West Texas Utilities Company (WTU) tendered executed copies of the First Amendment to the Interconnection and Interchange Agreement (Agreement) between WTU and Lower Colorado River Authority (LCRA) and a related letter agreement. Unexecuted copies were originally filed September 4, 1992.

Copies of the filing were served upon LCRA and the Public Utility Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23778 Filed 9–30–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–27–NG]

American Hunter Exploration Ltd.; Order Granite Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting American Hunter Exploration Ltd. blanket authorization to import from Canada up to 300 Bcf of natural gas over a two-year term, beginning on the date of first delivery after October 5, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–23870 Filed 9–30–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–85–NG]

Mercado Gas Services, Inc.; Order Granting Blanket Authorization to Export Natural Gas to Mexico and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: This Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Mercado Gas Services, Inc. blanket authorization to export up to 43.8 Bcf of natural gas to Mexico and other countries over a two-year term beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-23871 Filed 9-30-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Nuclear Energy

Early Site Permit (ESP) Demonstration Program—Siting Conference

AGENCY: Office of Nuclear Energy, U.S. Department of Energy.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Early Site Permit Demonstration Program (ESPDP) will conduct a Siting Conference on October 14, 1992. The purpose of the meeting is to present to U.S. utilities, other potentially qualifying ESP holders, and the interested public, results and status to date. These will include discussions of ESPDP progress and other activities supporting the demonstration of the ESP process.

DATES: The conference will be held on Wednesday, October 14, 1992, from 8 a.m. to 5 p.m.

ADDRESSES: The conference will be held at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 979-6800.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Pasedag, U.S. Department of Energy, (301) 903-3628.

Registration is required for attending the conference. To preregister, please contact Southern Electric International at (205) 868-5711. Registration is also available the day of the conference beginning at 7:15 a.m. Registration the day of the conference is on a space available basis. The meeting is open to the public.

William H. Young,

Assistant Secretary for Nuclear Energy.

[FR Doc. 92-23869 Filed 9-30-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4515-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at (202) 260-2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1050.04; Standards of Performance for New Stationary Sources Storage Vessels for Petroleum Liquids -- Subpart KA; was approved 05/29/92; OMB No. 2060-0121; expires 05/31/95.

EPA ICR No. 1537.02; Human Activity Pattern Survey; was approved 07/24/92; OMB No. 2080-0045; expires 07/31/95.

EPA ICR No. 1618.01; Request for Cement Kiln Dust Waste Characterization; was approved 07/29/92; OMB No. 2050-0123; expires 07/31/95.

EPA ICR No. 1615.01; Clean Air Act Rule Effectiveness Study; Regulation Compliance Survey -- CAA Section 114; was approved 08/10/92; OMB No. 2060-0241; expires 04/30/94.

EPA ICR No. 0226.09; Application for NPDES Discharge Permit and the Sewage Sludge Management Permit; was approved 08/17/92; OMB No. 2040-0086; expires 08/31/95.

EPA ICR No. 1230.06; New Source Review and Prevention of Significant Deterioration Permitting Programs -- Information Requirements; was approved 08/18/92; OMB No. 2060-0003; expires 08/31/95.

EPA ICR No. 0661.04; NSPS for Asphalt Processing and Asphalt Roofing Manufacturing, Information Requirements -- Subpart UU; was approved 08/18/92; OMB No. 2060-0002; expires 08/31/95.

EPA ICR No. 0657.04; NSPS for Graphic Arts Industry (Subpart QQ) - Information Requirements; was approved 08/18/92; OMB No. 2060-0105; expires 08/31/95.

EPA ICR No. 1284.03; New Source Performance Standards for Polymeric Coating of Supporting Substrates; was approved 08/20/92; OMB No. 2060-0181; expires 08/31/95.

EPA ICR No. 0029.05; NPDES Modification and Variance Requests; was approved 08/27/92; OMB No. 2040-0068; expires 08/31/95.

EPA ICR No. 0801.09; Requirements for Generators, Transporters, and Disposers Under the RCRA Hazardous Waste Manifest System; was approved 09/02/92; OMB No. 2050-0039; expires 09/30/94.

Conditional Approval

EPA ICR No. 1616.01; Total Quality Management (TQM) Studies; OMB No. 2010-0023; expires 07/31/95. This collection of information received a conditional approval from OMB. For a copy of the notice containing the conditions, please call Sandy Farmer on (202) 260-2740.

OMB Extensions of Expiration Dates

EPA ICR No. 0262; RCRA Hazardous Waste Permit Application and Modification, Part A; OMB No. 2050-0034; expiration date extended to 12/31/92.

EPA ICR No. 1571; General Hazardous Waste Facility Standards; OMB No. 2050-0120; expiration date extended to 12/31/92.

EPA ICR No. 1573; Part B Permit Application, Permit Modifications and Special Permits; OMB No. 2050-0009; expiration date extended to 12/31/92.

EPA ICR No. 0261; Notification of Hazardous Waste Activity; OMB No. 2050-0028; expiration date extended to 12/31/92.

Dated: September 24, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-23880 Filed 9-30-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-00125; FRL-4167-3]

Toxic Substances Control Act Confidential Business Information Claims Policies and Regulations; Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that a public meeting is scheduled to elicit public comments on Toxic Substances Control Act (TSCA) Confidential Business Information (CBI) policies and on a study commissioned by EPA which examined the influence of CBI requirements on TSCA implementation. Interested persons will be given the opportunity to comment on these policies, the recently completed study, and provide suggestions for proposals for future actions in this area.

DATES: The public meeting will occur on October 14, 1992, from 9:30 a.m. to 12:30 p.m. Persons wishing to attend the meeting should contact the party listed under FOR FURTHER INFORMATION CONTACT before October 7, 1992.

ADDRESSES: The public meeting will be held at: Washington Vista Hotel, 1400 M St., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Scott M. Sherlock, Information Management Division (TS–793), Environmental Protection Agency, 401 M St., SW., Rm. E–118, Washington, DC 20460, Telephone: (202) 260–1536, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In early September 1992, EPA released a commissioned study titled "Influence of CBI Requirements on TSCA CBI." This study was commissioned as part of an EPA initiative to improve TSCA's utilization as a toxics information dissemination statute. The study provided an depth analysis of CBI claims, submitter procedures for making such claims, Agency review and challenges of claims, and effects of improper claims on EPA's toxics information mission.

Using this study as a first step, EPA is reviewing CBI claims procedures to establish a more effective way to provide the required protections to business confidential information and also to further TSCA's usefulness as a toxics information dissemination statute. The Agency in this public meeting is seeking public comment on TSCA confidential business information handling policies, TSCA information dissemination policies, and soliciting perspectives and suggestions for the next steps to be undertaken to make the TSCA confidential business information dissemination systems more effective.

Persons wishing to attend the meeting should contact Scott Sherlock at (202) 260–1536 in order to preregister. Members of the public will be granted the opportunity to make oral comments at the meeting. Individual comments will be limited to 5 minutes. Written comments are invited and should be directed to Scott Sherlock at the address listed under FOR FURTHER INFORMATION CONTACT.

Dated: September 24, 1992.

Linda A. Travers,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–23858 Filed 9–30–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Elizabeth River Terminals, Inc., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.6 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult these sections before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224–008435–001.

Title: Terminal Operators Conference of Hampton Roads.

Parties:

Elizabeth River Terminals, Inc.
Lambert's Point Docks, Inc.
Virginia International Terminals, Inc.
Virginia Ports Authority.

Filing Party: H. Robert Jones, Chairman, Virginia Port Authority, 600 World Trade Center, Norfolk, VA 23510.

Synopsis: The subject modification would restate and update the Agreement by acknowledging its effectiveness under the Shipping Act of 1984, expand its geographic scope, change its name, and make administrative changes within the voting provision.

Agreement No: 207–011381–001.

Title: United Yacht Transport Joint Service Agreement.

Parties:

Dock-Express Shipping B.V.
Wijsmuller Transport Holding B.V.

Filing Party: Edward Schmeltzer, Esq., Schmeltzer, Aptaker & Shepard, P.C. 2600 Virginia Avenue, NW., Washington, DC 20037–1905.

Synopsis: The proposed amendment adds Alaska and Hawaii to the U.S. port areas served, expands the Agreement's authority to include U.S. domestic service for the carriage of yachts between the U.S. Virgin Islands and other U.S. ports, and provides for the carriage of watercraft other than yachts between Mediterranean ports, Florida, and the U.S. Virgin Islands.

Dated: September 25, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–23761 Filed 9–30–92; 8:45 am]

BILLING CODE 6730–01–M

The Port of Oakland et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003914–007.

Title: Port of Oakland/Sea-Land Service, Inc., Marine Terminal Agreement.

Parties:

The Port of Oakland ("Port")
Sea-Land Service, Inc ("Sea-Land").

Synopsis: The Agreement provides for certain container yard repair improvements to be performed by Sea-Land at the Port. It also provides for reimbursement by the Port to Sea-Land of a portion of the cost for container yard improvement.

Agreement No.: 224–200294–005.

Title: Georgia Ports Authority/ Japanese Three Lines Terminal Agreement.

Parties:

Georgia Ports Authority
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha.

Synopsis: The amendment revised the Agreement's rate schedule.

Agreement No.: 212–011213–029.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Nordana Line A/S
Sea-Land Service, Inc.

Synopsis: The proposed amendment will reduce the amount of the security

required to be deposited by each member to a flat rate of $30,000.

Agreement No.: 207–011386.

Title: NGPL—Joint Service Agreement.

Parties:

The China Navigation Co. Ltd.
Mitsui O.S.K. Lines Ltd.

Synopsis: The proposed Agreement will permit the parties to establish a joint service in the trade between Papua, New Guinea, the Solomon Islands, and other Asian ports (with transshipment in the Far East) and the United States, Puerto Rico, Northern Marianas Islands, and all of the United States territories and possessions. It will also permit the parties to fix or regulate rates, charges, practices and conditions for carriage of cargo in the service and consult and agree on sailing schedules, service frequencies, ports to be served and port rotations, issue a single bill of lading and share revenue and expenses.

Dated: September 25, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–23759 Filed 9–30–92; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Establishment of Committee

Establishment of Advisory Committee

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and advises of the establishment by the General Services Administration of the Steering Committee for the African Burial Ground, New York, NY. The Administrator of General Services has determined that establishment of this committee is in the public interest.

Designation

Steering Committee for the African Burial Ground, New York, NY.

Purpose.

The committee will advise the Administrator of General Services and the Congress in determining the present and future activities affecting the pavilion portion of the Federal construction site known as the "Negro Burial Ground" on Duane and Elk Streets, New York City, including, but not limited to: (1) The review of proposals regarding the human remains on the pavilion site; (2) the analysis, curation, and reinterment of remains exhumed from the "Negro Burial Ground"; and (3) the construction of a memorial or other improvement on the pavilion site. The committee will also advise the Administrator regarding activities in the tower site relating to exhibits, the interpretive display, and artwork to the extent that construction of the tower will not be impeded.

Contact for Information

For additional information, contact: William J. Diamond, Regional Administrator, General Services Administration, Region 2, 26 Federal Plaza, New York, NY 10278, Telephone: (212) 264–2600.

Dated: September 23, 1992.

Richard G. Austin,

Administrator.

[FR Doc. 92–23779 Filed 9–30–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Change in Numbering of Department of Health and Human Services (HHS) Programs in the Catalog of Federal Domestic Assistance (CFDA)

Effective October 1, 1992, the Program Number series will change for the following CFDA Programs for ACF (FSA) and AoA:

ADMINISTRATION FOR CHILDREN AND FAMILIES

Old	New
Family Support Administration	
93.020	93.560
93.021	93.561
93.022	93.562
93.023	93.563
93.024	93.564
93.025	93.565
93.026	93.566
93.027	93.567
93.028	93.568
93.031	93.569
93.032	93.570
93.033	93.571
93.034	93.572
93.035	93.573
93.036	93.574
93.037	93.575
93.038	93.576
93.039	93.577
93.040	93.578
Administration on Aging	
93.552	93.041
93.553	93.042
93.555	93.043
93.633	93.044
93.635	93.045
93.641	93.046
93.655	93.047

ADMINISTRATION FOR CHILDREN AND FAMILIES—Continued

Old	New
93.668	93.048

Dated: September 23, 1992.

William J. Topolewski,

Acting Deputy Assistant Secretary, Finance.

[FR Doc. 92–23830 Filed 9–30–92; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 78N–0050, formerly FDC–D–634; DESI 607]

Antazoline in Fixed Combination With Naphazoline for Human Ophthalmic Use; Drug Efficacy Study Implementation; Final Evaluation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its final evaluation, under the Drug Efficacy Study Implementation (DESI) program, of Vasocon-A, which contains 0.5 percent antazoline phosphate and 0.05 percent naphazoline hydrochloride. Vasocon-A is safe and effective for the relief of signs and symptoms of allergic conjunctivitis, and lacking substantial evidence of effectiveness for all other previously labeled indications. Vasocon-A is manufactured by IOLAB Pharmaceuticals, Inc. (IOLAB), 500 IOLAB Dr., Claremont, CA 91711.

ADDRESSES: Requests for information concerning the notice should be identified with the reference number DESI 607 and directed to the attention of the Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8063.

FOR FURTHER INFORMATION CONTACT: Harry T. Schiller, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 14, 1971 (36 FR 19987), FDA announced that it had completed its evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group (NAS–NRC), on Antistine Phosphate Ophthalmic Solution containing antazoline phosphate (new

drug application (NDA) 6-456). Based on this evaluation, FDA found that antazoline phosphate for ophthalmic use, alone or in combination with other ingredients, was possibly effective for the relief of ocular irritation and/or congestion, or for the treatment of allergic, inflammatory, or infectious ocular conditions. Although manufacturers of affected products were given time to submit substantial evidence of effectiveness for the possibly effective indications, no data were submitted.

Subsequently, in a notice published in the **Federal Register** of June 21, 1973 (38 FR 16257), FDA reclassified the possibly effective indications for Antistine Phosphate Ophthalmic Solution to lacking substantial evidence of effectiveness, proposed to withdraw approval of NDA 6-456, and offered an opportunity for a hearing on the proposal. The notice also announced that all identical, related, and similar drug products not subject to approved NDA's were covered by the NDA reviewed and by FDA's effectiveness conclusions (21 CFR 310.6; previously 21 CFR 130.40). The notice further offered the manufacturers and distributors of these products an opportunity for a hearing concerning FDA's conclusions.

In response to the 1973 notice, Smith, Miller, and Patch, Inc., a subsidiary of Cooper Laboratories, Inc., filed a hearing request for Vasocon-A, containing 0.5 percent antazoline phosphate and 0.05 percent naphazoline hydrochloride. At that time, Vasocon-A was an unapproved combination drug product related to Antistine Phosphate Ophthalmic Solution.

No other manufacturers or distributors requested a hearing. Consequently, in a notice published in the **Federal Register** of January 21, 1974 (39 FR 2392), FDA withdrew approval of NDA 6-456. This withdrawal of approval also covered all identical, related, and similar drug products not the subjects of approved NDA's, except Vasocon-A. The agency announced that it was unlawful to ship in interstate commerce Antistine Phosphate Ophthalmic Solution and all identical, related, and similar drug products not the subjects of approved NDA's, except for Vasocon-A. The agency permitted the continued marketing of Vasocon-A pending a ruling on the hearing request.

Subsequently, Cooper Laboratories, Inc., sold its rights to Vasocon-A to IOLAB, which submitted an NDA for the drug (NDA 18-746). FDA approved Vasocon-A on April 30, 1990, for the relief of signs and symptoms of allergic conjunctivitis. On January 31, 1992, IOLAB withdrew its hearing request.

Therefore, the Director of the Center for Drug Evaluation and Research finds Vasocon-A as lacking substantial evidence of effectiveness for all other indications except for those previously approved by the agency.

As previously announced, drug products containing antazoline in combination with naphazoline are regarded as new drugs (21 U.S.C. 321(p)). An approved NDA is a requirement for marketing such products. Marketing of such products without an approved NDA will subject those products, and those persons who cause the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 201(p), 502, 505 (21 U.S.C. 321(n), 321(p), 352, 355)) and under the authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.70 and 5.82).

Dated: September 17, 1992.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 92-23747 Filed 9-30-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Advisory Council on Trauma Care Systems; Establishment

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. appendix 2), the Secretary, Department of Health and Human Services announces the establishment of the following advisory council.

Designation: Advisory Council on Trauma Care Systems.

Purpose: The Advisory Council on Trauma Care Systems shall advise and make recommendations to the Secretary, the Assistant Secretary for Health, and the Administrator, Health Resources and Services Administration by: (1) Periodically conducting assessments of the needs in the United States with respect to trauma care and the extent to which the States are responding to such needs, including special consideration of the unique needs of rural areas; (2) submitting the findings made as a result of such assessments; and (3) advising with respect to activities carried out under Title XII, including the development of a model trauma care plan.

Structure: The Council consists of 12 appropriately qualified representatives of the public who are not officers or employees of the United States and are appointed by the Secretary. Of such members: 3 will be individuals experienced or specially trained in trauma surgery (including a critical care nurse); 3 will be individuals experienced or specially trained in emergency medicine (including a nurse who is specially trained in emergency medicine); 1 will be an individual experienced or specially trained in the care of injured children; 1 will be an individual experienced or specially trained in physical medicine and rehabilitation; and 4 will be individuals experienced or specially trained in the development, administration or financing of trauma care systems.

Authority for this Council is continuing until otherwise provided by law.

Dated: September 25, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92-23832 Filed 9-30-92; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Deletion of Text From Previously Published Notice

AGENCY: Public Health Service, HHS.

ACTION: Deletion.

On September 2, 1992, we published a notice in the **Federal Register** entitled "Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity" (57 FR 40258-40296). At the bottom of column 1 on page 40293 and running to the end of the document, the notice contained text under a subheading reading "Corrections to the Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity Published as a notice in the **Federal Register** on February 28, 1992." The subheading and the entirety of such text is hereby deleted.

Corrections to the categorization of tests may be published in future **Federal Register** Notices. These corrections will be made based on analysis of comments and additional information that may become available.

Dated: September 24, 1992.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 92-23752 Filed 9-30-92; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management,

[CA-050-93-4333-13]

Closure of Public Lands in Lake County, CA

AGENCY: Bureau of Land Management Interior.

ACTION: Permanent Closure Order of Public Lands in Lake County, California.

SUMMARY: Notice is hereby given related to the permanent closure of Bureau of Land Management (BLM) administered lands to public use from the hours of 10 p.m. to 5 a.m. in accordance with regulations contained in 43 CFR subpart 8364.1(a) and known as Soda Bay Island Baths, located in T13N, R8W, within section 6 in Lake County containing 1 acre more or less in three closely spaced islands. This closure shall not apply to peace officers, firefighters, or any other emergency service personnel while in the performance of their duties. Exemption to this closure may be granted to groups or individuals by permit from BLM.

DATE: This Closure Order is effective October 1, 1992.

SUPPLEMENTARY INFORMATION: The three small rocky islands were used by the Indians and later developed as a health resort by the white man in the early 1900's. A boardwalk connected the baths to a health resort located on the mainland. In the 1940's the resort burned and was not rebuilt. The islands were claimed as government property and are now managed by the Bureau of Land Management. Today local merchants advertise the presence of the hot water baths to attract tourists to the area. As a result their has been an increase in visitor use on the islands over the past several years. The nocturnal closure is necessary because of the increase nocturnal disturbance caused to wildlife and residents living nearby. Local residents complain about increase occurrences of vandalism, excessive public drinking, and lewd and lascivious behavior which occur on the islands after dark. The Bureau of Land Mangement will continue to manage the area for daylight recreational activities and as a historic site. The area will be posted "Day Use Only", Closed 10 p.m. to 5 a.m.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Ukiah, California office at (707) 462-3873.

Scott C. Adams,

Clear Lake Resource Area Manager.

[FR Doc. 92-23819 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-40-M

Iditarod National Historic Trail Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Iditarod National Historic Trail Advisory Council will be held in Nome, Alaska from 9 a.m. to 5 p.m. on October 27, 1992. The meeting is open to the public and public comment will be taken from 1:30-2 p.m. Field trip(s) of the Iditarod National Historic Trail are scheduled.

DATES: October 26-28, 1992.

ADDRESSES: Nome City Hall, 61 Hunter Way, Nome, Alaska 99762.

FOR FURTHER INFORMATION CONTACT: Mike Zaidlicz, Iditarod Trail Coordinator, Anchorage District Office, 6881 Abbott Loop, Anchorage, AK 99507, (907) 267-1307.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introductions and opening remarks
2. Iditarod Trail field trip(s)
3. Review/approval of previous meeting's minutes
4. Trail marking & shelter cabins
5. Lands/Cultural Issues
6. Implementation plan
8. Interpretive plan

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 92-23744 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-JA-M

[OR-943-4212-13; GP2-457; OR-45050]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 653.18 acres of public land out of Federal ownership. This action will also open 4,258.18 acres of reconveyed lands to surface entry, and 3,202.18 acres to mining and mineral leasing. Of the balance, the minerals in 800 acres have been and continue to be open to mining and mineral leasing, and the minerals in 256 acres not in Federal ownership.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976; 43 U.S.C. 1716, a patent has been issued transferring 653.18 acres in Deschutes County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 5 S., R. 19 E.,
- Sec. 5, those portions of the SE¼SW¼ and SE¼ lying west of John Day River;
- Sec. 8, those portions of the E½NW¼, SW¼NW¼, NE¼SW¼, and SE¼ lying west of the John Day River;
- Sec. 15, N½, SW¼, N½SE¼, and SE¼SE¼;
- Sec. 16, W½SW¼, SE¼, and that portion of the N½ lying east of the John Dary River;
- Sec. 22, N½, N½SW¼, and SE¼;
- Sec. 27, W½NE¼, N½NW¼, and SE¼NW¼.

T. 10 S., R. 19, E.,
- Sec. 13, S½S½;
- Sec. 24.

T. 10 S., R. 20 E.,
- Sec. 18, lot 4, N½NE¼, SE¼NE¼, E½SW¼, and SE¼;
- Sec. 19, lots 1, 2, 3, and 4, E½, and E½W½;
- Sec. 30, lots 1 and 2, NE¼, and E½NW¼.

The areas described aggregate approximately 4,258.18 acres in Gilliam, Jefferson, Sherman, and Wheeler Counties, Oregon.

3. The minerals in Secs. 13 and 24, T. 10 S., R. 19 E., are in Federal ownership and have been and remain open to mining and mineral leasing.

4. The minerals in Secs. 5 and 8, T. 5 S., R. 19 E., are not in Federal ownership and will not be open to mining and mineral leasing.

5. At 8:30 a.m., on November 6, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on November 6, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

6. At 8:30 a.m., on November 6, 1992, the lands described in paragraph 2, except as provided in paragraphs 3 and 4, will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by

State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

7. At 8:30 a.m., on November 6, 1992, the lands described in paragraph 2, except as provided in paragraphs 3 and 4, will be opened to applications and offers under the mineral leasing laws.

Dated: September 22, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-23821 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-130-02-4212-13: GP-461); WAOR 48464]

Exchange of Public Lands in Ferry, Lincoln and Stevens Counties, WA; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Exchange of Public Lands in Ferry, Lincoln and Stevens Counties, Washington.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian:

T. 40 N., R. 32 E.,
T. 36 N., R. 33 E.,
  Sec. 22, W½NE¼;
  Sec. 12, S½SE¼;
  Sec. 13, E½NE¼; NE¼SE¼;
  Sec. 23, NE¼NE¼; SE¼;
  Sec. 24, NW¼NW¼;
T. 38 N., R. 33 E.,
  Sec. 11, Lots 10 & 11;
  Sec. 12, NW¼NW¼;
  Sec. 35, W½NW¼;
T. 39 N., R. 33 E.,
T. 40 N., R. 33 E.,
  Sec. 13 Lot 6;
  Sec. 13 Lot 14;
  Sec. 24, NW¼SE¼;
T. 39 N., R. 34 E.,
  Sec. 2, W½SW¼, SW¼SE¼;
  Sec. 11, N½NE¼;
  Sec. 12, NW¼NW¼;
  Sec. 33 Lot 1;
T. 33 N., R. 38 E.,
T. 38 N., R. 38 E.,
  Sec. 26, SE¼NE¼;
T. 39 N., R. 38 E.,
  Sec. 3, W½SW¼
  Sec. 10 NW¼
T. 37 N., R. 39 E.,
  Sec. 20, SW¼SW¼;
  Sec. 29 Lot 2, NW¼NW¼;
  Sec. 30 NE¼SE¼;
T. 38 N., R. 39 E.,
  Sec. 18, Lots 1, 10 & 15;
  Sec. 19, Lot 2 & 14;
  Sec. 30 Lot 3;
T. 39 N., R. 39 E.,
T. 40 N., R. 39 E.,
  Sec. 2 Lot 4;
  Sec. 4, Lot 6, S½NW¼;
  Sec. 17, NE¼;
T. 28 N., R. 40 E.,
  Sec. 10 SW¼NE¼;
  Sec. 24, NE¼NE¼;
  Sec. 30, Lot 1;
T. 38 N., R. 40 E.,
T. 40 N., R. 40 E.,
  Sec. 1 Lot 7, S½NE¼, N½SE¼;
  Sec. 2 Lot 6;
  Sec. 3, Lots 5, 6, 7, & 8, SE¼NW¼, NE¼SW¼;
  Sec. 4 Lot 5;
  Sec. 6 Lots 8 & 9, SE¼SE¼;
  Sec. 8, N½NW¼;
  Sec. 20 Lot 5;
  Sec. 25 Lot 5;
T. 31 N., R. 41 E.,
T. 38 N., R. 41 E.,
  Sec. 20 Lot 2, M.S. #'s 1196, 1197, & 1198;
T. 39½ N., R. 41 E.,
  Sec. 6, SW¼SE¼;
  Sec. 7, NE¼NE¼;
  Sec. 33 Lots 1–4;
  Sec. 34, Lots 1–4;
2. 40 N., R. 41 E.,
  Sec. 1, Lots 9 & 10;
  Sec. 2, Lot 9;
  Sec. 10, E½;
  Sec. 11, NW¼, NW¼SW¼;
  Sec. 32, Lot 12;
T. 31 N., R. 42 E.,

Aggregating 3,208 acres, more or less in Ferry and Stevens Counties, WA.

In exchange for all or part of these lands, the Federal Government will acquire offered private lands within the Upper Crab Creek Management Area of Lincoln County, Washington. The lands proposed for acquisition will primarily be located along the Crab Creek and Lake Creek watersheds. A detailed legal description of the property will be published as specific parcels of the proposal are identified.

The Bureau of Land Management has grouped the exchange of these public and private lands into priorities based on the opportunity to exchange individual properties and through land-use planning. Completion of the total exchange of these lands is expected to occur in several stages. The value of the lands to be exchanged in each stage will be approximately equal. The proponent may be required to make payments to equalize the values of the lands at the conclusion of the exchange.

The purpose to the land exchange is to facilitate resource management opportunities in eastern Washington as identified in the Spokane District's Resource Management Plan. The exchange will reduce the number of widely scattered parcels of public land that are difficult and uneconomic to manage, and acquire private property adjacent to existing public ownership in Lincoln County. The private lands being offered have important values for recreation, fish and wildlife habitat, riparian and watershed management.

The exchange is subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. All other valid existing rights, including, but not limited to, any right-or-way, permit, or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

Detailed information concerning the exchange, is available for review at the Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

For a period of 45 days, interested parties may submit comments to the Spokane District Manager at the above address. Any adverse comments will be reviewed by the State Director. In absence of any adverse comments, this realty action will become a final determination of the Department of the Interior

Date of Issue: September 23, 1992.

Joseph K. Buesing,

District Manager.

[FR Doc. 92-23745 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-33-M

[ID-010-03-4350-08]

Resource Management Plan Amendment, Cascade Resource Area, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Proposed Resource Management Plan Amendment; and proposed Area of Critical Environmental Concern Designations and Federal Land Transfer.

SUMMARY: Pursuant to the BLM Planning Regulations (43 CFR part 1600) and the National Environmental Policy Act (NEPA, section 102(2)(C)) the Boise District, BLM has prepared a proposed amendment to the Cascade Resource Management Plan to designate six sites

within the Cascade Resource Area as Areas of Critical Environmental Concern (ACECs), and to consider transfer of four parcels of land from federal ownership. The proposed plan amendment is now available for a 30-day protest period under provisions in the BLM Planning regulations found at 43 CFR 1610.5–2.

DATES: The 30-day protest period for the proposed plan amendment will begin on September 28, 1992 and close on October 28, 1992. Written protests to the Director must be received or postmarked no later than the closing date.

ADDRESSES: Protests must be sent to the Director at the following address: Director (760), Department of the Interior, Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240. Any protest should include: (1) Name, address, telephone number and interest of protesting party, (2) identification of the issue being protested, (3) a statement on the parts of the plan being protested, (4) a copy of all documents addressing the issue that were submitted during the planning process, and (5) a concise statement why the State Director's decision is believed to be wrong.

FOR FURTHER INFORMATION CONTACT: John Fend, Cascade Area Manager or Fred Minckler, Environmental Specialist at the Bureau of Land Management, 3884 Development Avenue, Boise, ID 83705 Telephone (208) 384–3300.

SUPPLEMENTARY INFORMATION: The Cascade Resource Management Plan (RMP) is a land use plan for public lands within the Cascade Resource Area administered by BLM in southwest Idaho. The Boise District has prepared a proposed amendment to that plan which addresses special management actions and designation of six sites ranging in size from 40 acres to 1,250 acres as ACECs to protect *Allium aaseae* (Aase'e onion), an onion species being considered by the U.S. Fish and Wildlife Service for listing as threatened or endangered. The six sites are: Cartwright Canyon, 400 acres; Hulls Gulch, 120 acres; Sand-capped Knob, 40 acres; Sand Hollow, 1,250 acres; Willow Creek, 1,060 acres and Woods Gulch, 40 acres. Resource use limitations proposed for these areas address: livestock grazing; motorized vehicle use; rights-of-way; mineral leasing, locations and disposal; water developments and fire suppression and rehabilitation.

The proposed amendment also considers transfer of four parcels of public land form federal ownership. Two small parcels, 0.07 and 1.25 acres, would be transferred from federal ownership by direct sale, and two other parcels, 440 and 20.65 acres, would be transferred through private exchanges.

Review of the environmental assessment (EA) prepared on the Proposed Amendment has resulted in a finding that no significant impact on the human environment would result from implementing the proposal and that an environmental impact statement (EIS) need not be prepared.

Dated: September 23, 1992.

David Brunner,

District Manager.

[FR Doc. 92–23820 Filed 9–30–92; 8:45 am]

BILLING CODE 4310–GG–M

[NM–940–02–4730–12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico on October 31, 1992.

New Mexico Principal Meridian, New Mexico

T. 5 S., R. 1 E., Accepted September 16, 1992, for Group 898 NM.
T. 5 S., R. 15 W., Accepted September 16, 1992, for Group 863 NM.
T. 11 S., R. 10 E., Accepted September 22, 1992, for Group 730 NM.
Tps. 12 & 13 S., R. 10 E., Accepted September 22, 1992, for Group 730 NM.
Second Standard Parallel S. through R. 11 E., Accepted September 22, 1992, for Group 730 NM.

Indian Meridian, Oklahoma

T. 24 N., R. 6 E., Accepted September 16, 1992, for Group 65 OK.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–7115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: September 23, 1992.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 92–23822 Filed 9–30–92; 8:45 am]

BILLING CODE 4310–FB–M

[CO–930–4214–10; COC–39308]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw an additional 1,870.48 acres of National Forest System land adjacent to an existing withdrawal near Keystone, Colorado, to protect recreational facilities and high resource values at the Keystone Ski Area. This proposed action will withdraw the entire 6,442 acres of National Forest System land for 20 years. This notice closes the 1,870.48 acres to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing and to such forms of disposition as may by law be made of National Forest System lands.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before December 30, 1992.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Bob Barbour, 303/239–3708.

SUPPLEMENTARY INFORMATION: On September 9, 1992, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws:

Sixth Principal Meridian

Arapaho National Forest

T. 5 S., R. 76 W.,
Sec. 19, lots 55, 58 and NE¼NW¼NW¼;
Sec. 20, lot 46 and W½SW¼;
Sec. 29, W½E½SW¼, W½NW¼
exclusive of patented land, and

W½E½NW¼ exclusive of patented land;
Sec. 32, W½NE¼NW¼, SW¼NW¼, and W½SW¼;
T. 5 S., R. 77 W.,
Sec. 24, lots 13, 15, and 17, and E½SW¼;
Sec. 25, SE¼NW¼, E½NE¼SW¼, and SW¼SE¼;
Sec. 36, NE¼NE¼, NE¼SE¼, and E½NW¼SE¼;
T. 6 S., R. 76 W.,
Sec. 5, S½;
Sec. 6, lots 2, 7, and 10;
Sec. 7, SW¼SE¼ and SE¼SW¼;
Sec. 8, N½ and N½N½SW¼;
T. 6 S., R. 77 W.,
Sec. 2, SE¼NE¼;
Sec. 12, S½SE¼, SW¼NW¼, and NE¼SW¼.

The area described aggregates approximately 1,870.48 acres in Summit County.

The purpose of this withdrawal is to protect existing recreational facilities and high resource values at the Keystone Ski Area. If approved, the final order will incorporate the existing withdrawal made by Public Land Order No. 6625 with this land and withdraw a total of 6,442.01 acres of National Forest System land for 20 years.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the Colorado State Director.

A public meeting will be scheduled and held on this proposed action as required by regulation and will be conducted in accordance with the Bureau of Land Management Manual, section 2351.16B. A notice of the date, time and place of the meeting will be published in the **Federal Register** at least 30 days prior to the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period two years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Dated: September 25, 1992.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 92-23823 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-JB-M

[CO-930-4214-10; C-43908]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 280 acres of National Forest System land and add it to the existing withdrawal for protection of facilities at the Breckenridge Ski Area near Breckenridge, Colorado. This proposal would amend Public Land Order No. 6684 to include this land for the duration of that withdrawal. This order will close this land to location and entry under the mining laws for up to two years. The land has been and remains open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing. This notice also cancels the existing application for expansion of Public Land Order No. 6684, appearing as **Federal Register** Document No. 90-19574.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before December 30, 1992.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Bob Barbour, 303-239-3708.

SUPPLEMENTARY INFORMATION: On September 9, 1992, the Department of Agriculture, Forest Service, filed an application to amend their existing withdrawal for the Breckenridge Ski Area, to include the following described land:

Sixth Principal Meridian

Arapaho National Forest

T. 6 S., R. 78 W.,
Sec. 34, Nominal W½W½; (Protraction Diagram No. 9, accepted 4/26/1985)
T. 7 S., R. 78 W.,
Sec. 3, Nominal N½NW¼ and N½S½N W¼. (Protraction Diagram No. 45, accepted 8/20/1986)

The area described contains approximately 280.00 acres in Summit County. The purpose of this amendment is to protect additional facilities at the Breckenridge Ski Area. This would add the 280 acres to the existing withdrawal made by Public Land Order 6684 for a total of 1,720 acres. The entire withdrawal will expire June 14, 2038.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or obligations in connection with this proposal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with the Bureau of Land Management Manual, § 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period two years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage this land.

Dated: September 25, 1992.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 92-23831 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-722075

Applicant: The Hawthorn Corporation, Grayslake, IL.

The applicant requests amendment of an existing permit to export and re-import five male and eight female captive-born tigers (*Panthera tigris*) for enhancement of survival through educational exhibitions.

PRT-766841

Applicant: The Great American Circus, Sarasota, FL.

The applicant requests a permit to purchase in interstate commerce two female Asian elephants (*Elephas maximus*) from Gary Johnson, Perris, CA, for the purpose of enhancement of survival of the species through education.

PRT-770623

Applicant: International Ctr. for Gibbon Studies, Santa Clarita, CA.

The applicant requests a permit to import 1 male Hooloch gibbon (*Hylobates hooloch leuconedys*) taken from the wild in 1978, one male captive-bred moloch gibbon (*Hylobates moloch*),

and one female captive-bred light-cheeked gibbon (*Hylobates concolor leucogenys*) for captive-breeding.

PRT-772084

Applicant: Sunrise Nursery, Leander, TX.

The applicant requests a permit to sell in interstate commerce artificially propagated endangered & threatened cactus species to enhance the propagation & survival of the species. Species include Tobusch fishhook (*Ancistrocactus tobuschii*), Nellie cory (*Coryphantha minima*), Bunched cory (*C. ramillosa*), Cochise pincushion (*C. robbinsorum*), Lee pincushion (*C. sneedii* var. *leei*), Sneed pincushion (*C. sneedii* var. *sneedii*), Chisos Mountain hedgehog (*Echinocereus chisosensis* var. *chisosensis*), kuenzler hedgehog (*E. fendleri* var. *kuenzleri*), Lloyd's hedgehog (*E. lloydii*), Black lace (*E. reichenbachii* var. *albertii*), and Davis' green pitaya (*E. viridiflorus* var. *davisii*).

PRT-770846

Applicant: Paul C. Kao, Northridge, CA.

The applicant requests a permit to import two male Palawan peacock pheasant (*Syrmaticus mikado*) from Hong Kong Zoo, Hong Kong, for enhancement of propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 25, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–23753 Filed 9–30–92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Niobrara Scenic River Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Niobrara Scenic River Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

The Commission was established pursuant to Public Law 102–50, section 5. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters pertaining to the development of a management plan, and on the management and operation of the 40-mile and 30-mile segments of the Niobrara River designated by section 2 of Public Law 102–50 which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.

Meeting Date and Time: October 2, 1992, 1:30 p.m.

Address: City Hall Council Chambers, Ainsworth, Nebraska.

Agenda:

1. Responsibilities of Federal Advisory Commissions
2. Administrative procedures
3. Need for standard operating procedures and/or bylaws
4. Public participation in meetings
5. Proposed agenda, date of the next Commission meeting

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chairman at the beginning of the meeting. In order to accomplish the agenda for the meeting the Chairman may want to limit or schedule public presentations.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, (402) 336–3970.

Dated: August 13, 1992.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 92–23861 Filed 9–30–92; 8:45 am]

BILLING CODE 4310-70-M

Sudbury, Assabet and Concord Rivers Study Committee Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. I s 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, October 22, 1992.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5(a) (110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will convene at 7:30 p.m. in the Sudbury Town Hall Sudbury, Massachusetts (Sudbury Town Hall is located on the north side of Route 27, east of the intersection of Route 27 and Concord Road. From the east, take Route 27 west from Route 20 in Wayland. Town Hall is on the right approximately 1.5 mile past the causeway over the Sudbury River. From the north, take Concord Road or Pantry Brook Road south off Route 117. Turn left at Route 27. Town Hall is on the left just past the intersection).

Agenda

I. Welcome, introductions, and comments—Bill Sullivan
II. Approval of minutes from 9/17 meeting
III. Subcommittee Reports—Subcommittee Chairs
  A. River Conservation Planning Subcommittee
  B. Instream Flow Study Subcommittee
  C. Public Participation Subcommittee
IV. Discussion—Issues of Local Concern
V. Opportunity for public comment
VI. Other Business
  A. Next meeting dates and locations

Dated: August 21, 1992.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 92–23862 Filed 9–30–92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–341]

Certain Static Random Access Memories, Components Thereof and Products Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 27, 1992, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of SGS-Thomson Microelectronics, Inc., 1310 Electronics

Drive, Carrollton, Texas 75006. Letters supplementing the complaint were filed on September 1, September 4, September 15 and September 16, 1992. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain static random access memories, component thereof and products containing same, by reason of alleged infringement of claims 1 and 4 of U.S. Letters Patent 4,125,854 and claims 1, 2, 3, 6, 7, 8, 11, 12, 15, and 17 of U.S. Letters Patent 4,251,876, and that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 24, 1992, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain static random access memories, components thereof or products containing same by reason of alleged infringement of claim 1 or 4 of U.S. Letters Patent 4,125,854, or claims 1, 2, 3, 6, 7, 8, 11, 12, 15, or 17 of U.S. Letters Patent 4,251,876, and whether an industry exists in the United States or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—SGS-Thomson Microelectronics, Inc., 1310 Electronics Drive, Carrollton, Texas 75006.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Micro-Comp Industries, 3350 Scott Boulevard, Building No. 57, Santa Clara, California 95054; United States Microelectronics Corp., 3 Industrial East 3rd Road, Science-Based Industrial Park, Hsinchu, Taiwan 30077.

(c) Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401J, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: September 25, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-23754 Filed 9-30-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32152]

Eastern Shore Railroad, Inc.—Trackage Rights Exemption—Norfolk and Western Railway Co.

Norfolk and Western Railway Company (NW) has agreed to grant overhead trackage rights to Eastern Shore Railroad, Inc. (ES) over that part of an NW line at Norfolk, VA, lying between a junction with Norfolk Southern Railway at or near milepost A 1.3 and an interchange track owned by NW at Portlock Yard at or near milepost 2.5, a distance of approximately 4.2 miles. ES will use these trackage rights to reach a point of interchange in Norfolk with NW to facilitate the through movement of loaded and empty freight cars over ES and NW. The proposed trackage rights will be effective on a date mutually agreed upon by the parties, but not before October 6, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert C. Oliver, Esq., P.O. Box 818, Eastville, VA 23347.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry, Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: September 24, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23846 Filed 9-30-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32153]

Union Pacific Railroad Company—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Co.

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (Union Pacific) over a 10.4-mile segment of Santa Fe's line, between Pittsburg (milepost 1154.10) and Port Chicago (milepost 1164.50), in Contra Costa County, CA. The trackage rights will be used in connection with existing trackage rights that Union Pacific holds over Santa Fe's line of railroad between Pittsburg and Stockton, CA. The trackage rights transaction will be consummated on or after September 18, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, 1416 Dodge Street, room 830, Omaha, NE 68179.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: September 24, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23847 Filed 9-30-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-227 (Sub-No. 2X)]

The Wheeling & Lake Erie Railway Co.; Abandonment Exemption; In Stark, Wayne, and Medina Counties, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by the Wheeling & Lake Erie Railway Company (WLE) of its line of railroad between Milepost 133.0 at Brewster, OH, and Milepost 93.6 at Spencer, OH, including the 1.3-mile Massillon Branch between Milepost 0.0 at Orrville Jct., and Milepost 1.3 at Orrville, OH, a total distance of approximately 40.7 miles in Stark, Wayne, and Medina Counties, OH. We will grant the petition subject to the standard employee protective conditions and certain environmental conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 31, 1992. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by October 11, 1992. Petitions to stay must be filed by October 16, 1992. Petitions to reopen must be filed by October 26, 1992. Requests for public use conditions must be filed by October 21, 1992.

ADDRESSES: Send pleadings, referring to Docket No. AB-227 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Thomas J. Healey, Two Illinois Center, 233 North Michigan Avenue, Suite 2400, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610; [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: September 29, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23845 Filed 9-30-92; 8:45 am]

BILLING CODE 7035-01-M

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Petition for Alien Relative.

(2) I-130. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. The I-130 information is used to determine eligibility of petitioner and beneficiary for immediate relative status and admission to the U.S.

(5) 825,000 annual responses at .5 hours per response.

(6) 412,500 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

NW., Washington, DC 20001, (telephone: (202) 307–0467)).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court for the Southern District of Iowa Central Division

United States of America, Plaintiff, v. *Hospital Association of Greater Des Moines, Inc.; Broadlawns Medical Center; Des Moines General Hospital Company; Iowa Lutheran Hospital; Iowa Methodist Medical Center; Mercy Hospital Medical Center, Des Moines, Iowa*, Defendants.

Civil Action No. 4–92–70648.

Filed: 9/22/92. Judge Vietor.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

2. In the event plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: September 22, 1992.

For the Plaintiff:

Charles A. James,

Acting Assistant Attorney General.

J. Mark Gidley,

Deputy Assistant Attorney General.

Constance K. Robinson,

Robert E. Bloch,

Gail Kursh,

Nancy M. Goodman,

Karen L. Gable,

John B. Arnett, Sr.,

Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Washington, DC 20002, (202) 307–0789.

For the Defendants:

Thomas H. Burke,

Counsel for Hospital Association of Greater Des Moines, Inc.

Edgar F. Hansell,

Counsel for Iowa Lutheran Hospital.

Norene D. Jacobs,

Counsel for Broadlawns Medical Center.

Mark McCormick,

Counsel for Iowa Methodist Medical Center.

Eugene E. Olson,

Counsel for Des Moines General Hospital Company.

John D. Shors,

Counsel for Mercy Hospital Medical Center, Des Moines, Iowa.

United States District Court for the Southern District of Iowa, Central Division

Final Judgment

United States of America, Plaintiff v. *Hospital Association of Greater Des Moines, Inc.; Broadlawns Medical Center; Des Moines General Hospital Company; Iowa Lutheran Hospital; Iowa Methodist Medical Center, Mercy Hospital Medical Center, Des Moines, Iowa*, Defendants.

Civil Action No. 4–92–70648, Judge Vietor.

Filed: 9/22/92

Plaintiff, United States of America, having filed its Complaint on September 22, 1992, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed:

I.

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against each defendant under section 1 of the Sherman Act, 15 U.S.C. 1.

II.

This Final Judgment applies to each defendant and to each of their officers, directors, agents, employees, successors, and assigns and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

III.

As used in this Final Judgment:

(A) "Des Moines area" means Polk County, Iowa.

(B) "Management Employee" means any employee who supervises the preparation of or approves any price, charge, or discount schedule; any wage, salary, or employee benefit schedule; any budget or financial plan; any marketing or advertising plan; any long range or strategic plan; or any plan to acquire materials, equipment, or services. This definition includes but is not limited to the chief executive officer and/or administrator, the chief financial officer, vice presidents and/or assistant administrators, and the individuals who head the divisions or departments responsible for human resources, materials management, strategic and financial planning, marketing, public relations, and advertising.

IV.

Each defendant is enjoined and restrained from entering into, directly or indirectly, any contract, agreement, understanding, arrangement, plan, program, or course of action with any other hospital in the Des Moines area or any Des Moines area hospital association to limit or regulate the types or amounts of advertising by any hospital in the Des Moines area.

V.

Nothing in this Final Judgment shall prohibit any defendant from advocating, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961) and its progeny, legislation, regulatory actions, or governmental policies or actions, relating to the practices identified in Section IV above.

VI.

Each defendant is ordered to maintain an antitrust compliance program which shall include:

(A) Distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to all directors, officers, and management employees;

(B) Notifying, within 60 days from the entry of this Final Judgment, all directors, officers, and management employees that the defendant will not be bound by the Hospital Association of Greater Des Moines Guidelines on Advertising, dated October 26, 1989;

(C) Distributing in a timely manner a copy of this Final Judgment to any person who succeeds to a position as director, officer, or management employee;

(D) Holding a briefing annually for all directors, officers, and management employees on (1) the meaning and requirements of this Final Judgment including the consequences of non-compliance with this Final Judgment; and (2) the application of the antitrust laws to the defendant's activities including potential antitrust concerns raised by hospitals (a) engaging in agreements or arrangements to allocate services, equipment or facilities or any other joint activities, and (b) exchanging competitive information such as contemplated or expected changes in prices or employees' salaries or benefits; and

(E) Maintaining for inspection by plaintiff a record of the directors, officers, and management employees who attend each annual briefing.

VII.

(A) Within 75 days after the entry of this Final Judgment, each defendant shall certify to the plaintiff whether it has made the distribution of this Final Judgment and the notification in accordance with Section VI above.

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall certify annually to the Court and the plaintiff whether that defendant has complied with the provisions of Section VI above.

VIII.

(A) For the sole purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, be permitted:

(1) Access during office hours of such defendant to inspect and copy all records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees or agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to any defendant, such defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX.

Jurisdiction is retained by this Court to enable any of the parties to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the enforcement, modification, or termination of any of its provisions, and for the punishment of any violation hereof.

X.

This Final Judgment shall expire ten (10) years from the date of entry.

XI.

Entry of this Final Judgment is in the public interest.

Dated: _____.

United States District Judge.

Competitive Impact Statement

United States District Court for the Southern District of Iowa, Central Division

United States of America, Plaintiff v. *Hospital Association of Greater Des Moines, Inc.; Broadlawns Medical Center; Des Moines General Hospital Company; Iowa Lutheran Hospital; Iowa Methodist Medical Center; Mercy Hospital Medical Center, Des Moines, Iowa*, Defendants.

Civil Action No. 4–92–70648, Judge Vietor.

Filed: 9/22/92.

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

Nature and Purpose of the Proceeding

On September 22, 1992, the United States filed a civil antitrust complaint alleging that defendants named above conspired unreasonably to restrain competition among themselves, by agreeing to limit the types and amounts of advertising in which they would engage, in violation of section 1 of the Sherman Act, 15 U.S.C. 1. This conspiracy diminished competition between these hospitals for patients, physician referrals, and third-party contracts, and deprived patients, physicians, and third-party payers of information necessary for them to make informed choices on the selection of hospitals and of the benefits of free and open competition in the sale of hospital services.

The Complaint alleges that, beginning at least as early as October 26, 1989, and continuing until the date of the Complaint, defendants violated the Sherman Act by agreeing that each hospital could limit its advertising expenditures to ⅓ of 1% of its respective previous year's operating expenses, and would refrain from engaging in certain types of competitive advertising about the quality of services provided by its hospital. Specifically, each hospital agreed to refrain from engaging in advertising that included quality comparisons or that would be considered image building or self-aggrandizement. This agreement was set out in a document entitled "Guidelines on Advertising" which was adopted by the defendants on October 26, 1989. The Complaint further alleges that defendants agreed that each hospital would establish and adhere to an internal operating policy in conformance with the guidelines' provisions limiting advertising expenditures and restricting the use of certain types of competitive advertising.

The relief sought in the Complaint is to enjoin defendants for a period of 10 years from continuing or renewing their agreement or from engaging in any other agreement or arrangement having a similar purpose or effect. The Complaint also seeks to require defendants to institute a compliance program to ensure that defendants do not enter into or participate in any plan, program, or other arrangement having the purpose or effect of unreasonably restraining competition among the hospitals in Polk County.

Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which

may be required to interpret, enforce, or modify the judgment, or to punish violations of any of its provisions.

II.

Description of the Practices Involved in the Alleged Violation

At trial, the Government would have contended the following:

1. Hospital Association of Greater Des Moines, Inc., ("HAGDM") was incorporated in 1976 and is a trade association for general and specialty hospitals located in Polk County, Iowa. HAGDM is a nonprofit corporation located in Des Moines, Iowa, whose current membership includes six of the seven acute-care hospitals located in Polk County, including the other defendants named herein and the Department of Veterans Affairs Medical Center in Des Moines.

2. Broadlawns Medical Center ("Broadlawns") is a 214-bed, county public hospital located in the downtown section of Des Moines, Iowa. Broadlawns is a member of HAGDM and its Chief Executive Officer ("CEO") serves as a director of HAGDM.

3. Des Moines General Hospital Company ("DMGHC") is a nonprofit corporation that operates Des Moines General Hospital ("DMGH"). DMGH is a 150-bed, acute-care, osteopathic hospital located in Des Moines, Iowa. DMGH is currently managed by Quorum Health Resources, Inc., which is located in Nashville, Tennessee. The management agreement with Quorum Health Resources is scheduled to expire in 1993. DMGH is a member of HAGDM and its COO serves as a director of HAGDM.

4. Iowa Lutheran Hospital ("ILH") is a 333-bed, acute-care, nonprofit hospital corporation located in Des Moines, Iowa. Fairview Hospital & Healthcare Services, Inc., which is located in Minneapolis, Minnesota, is the sole member of ILH. ILH is a member of HAGDM and its CEO serves as a director of HAGDM.

5. Iowa Methodist Medical Center ("IMMC") is a 680-bed, acute-care, nonprofit hospital corporation located in Des Moines, Iowa. Iowa Methodist Health System, Inc., which is located in Des Moines, Iowa, is the sole member of IMMC. IMMC is a member of HAGDM and its CEO serves as a director of HAGDM.

6. Mercy Hospital Medical Center ("Mercy") is a 520-bed, acute-care, nonprofit hospital corporation located in Des Moines, Iowa. Mercy Health Center of Central Iowa, Inc. which is located in Des Moines, Iowa, is the sole member of Mercy. Mercy is a member of HAGDM and its CEO serves as a director of HAGDM.

7. The five above-named hospitals [hereinafter referred to as defendant hospitals] are or operate general acute-care hospitals in Polk County, Iowa, that provide a variety of services in connection with the diagnoses, care, and treatment of patients. These defendant hospitals compete with each other for patients residing in Polk County and nearby areas. With the exception of one small hospital and the Department of Veterans Affairs Medical Center, the defendant hospitals are or operate the only general acute-care hospitals in Polk County.

8. General acute-care hospitals, including defendant hospitals, compete for patients on the basis of price, quality, and services. Such hospitals endeavor to increase admissions by attempting to influence patients in their choice of facility, by trying to persuade physicians to refer patients to their facility, and by contracting with third-party payers who can influence hospital utilization of their enrollees. General acute-care hospitals strive to increase admissions, in part, by using advertising to inform patients, physicians, and third-party payers about the price, quality, and range of services offered by their hospital.

9. Consumers of inpatient hospital services often have limited information about hospitals and, therefore, rely in part on advertising to learn about the quality, price, and range of services offered by hospitals in their geographic area. Hospital advertising is increasingly being used to provide this information in a format that consumers can understand. When information is made available to consumers, they can more easily select, or assist their physician in selecting, the hospital that best meets their needs. Hospitals are thereby encouraged to compete to provide the types and quality of services that consumers and physicians desire at a reasonable price.

10. Beginning at least as early as October 26, 1989, defendants have combined and conspired to restrain competition in violation of section 1 of the Sherman Act. The combination and conspiracy consists of a continuing agreement, understanding, and concert of action among defendants whereby each defendant hospital is to limit the types and amount of advertising in which it engages, thus diminishing competition between the defendant hospitals for patients, physician referrals, and third-party contracts. On October 26, 1989, the defendant hospital adopted the "Guidelines on Advertising," a document prepared under the auspices of HAGDM. In adopting these guidelines, defendant hospitals agreed to limit their advertising expenditures ⅛ of 1% of their respective previous year's operating expenses, and to refrain from engaging in certain types of competitive advertising, including quality comparisons, claims of prominence, image building, or self-aggrandizement.

11. In furtherance of this combination and conspiracy, defendants also agreed that each defendant hospital would establish and adhere to an internal operating policy limiting its advertising expenditures and restraining it from engaging in those types of advertising prohibited by the agreement. The actions of defendants far exceeded any reasonable limited undertaking to restrain false and deceptive advertising.

12. This combination and conspiracy had the effect of unreasonably restraining price and quality competition among defendant hospitals for the sale of hospital services to patients and third-party payers, and for physician referrals. The combination and conspiracy deprived patients, physicians, and third-party payers in Polk County of information needed by them to make informed choices on the selection of hospitals and of the benefits of free and open competition in the sale of hospital services.

III.

Explanation of the Proposed Final Judgment

The United States and defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law.

Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that such entry is in the public interest. Section XI of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that defendant hospitals reach independent decisions regarding the amount each defendant hospital expends to advertise its hospital services and the types of such advertising each defendant utilizes, and that defendant HAGDM does not act as a conduit to encourage joint agreements on advertising.

A. Prohibitions and Obligations

Under Section IV of the proposed Final Judgment, each defendant is enjoined and restrained from entering into, directly or indirectly, any contract, agreement, understanding, arrangement, plan, program, or course of action with any hospital in the Des Moines area or any Des Moines area hospital association to limit or regulate the types or amounts of advertising by any hospital in the Des Moines area. The "Des Moines area" is defined in Section III as Polk County, Iowa.

Section V provides that nothing in the Final Judgment prohibits any defendant from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency, legislative body, or other governmental agency concerning legislation, regulatory actions, or governmental policies or actions relating to advertising by hospitals.

Section VI requires each defendant to maintain an antitrust compliance program. Section VI provides that this program at a minimum shall include: (A) Distributing, within 60 days from the entry of the Final Judgment, a copy of the Final Judgment to all directors, officers, and management employees; (B) notifying, within 60 days from the entry of the Final Judgment, all directors, officers, and management employees that the defendant will not be bound by HAGDM's "Guidelines on Advertising," dated October 28, 1989; (C) distributing in a timely manner a copy of the Final Judgment to any person who succeeds to a position as director, officer, or management employee; (D) holding a briefing annually for all directors, officers, and management employees on certain topics related to the Final Judgment and the antitrust laws; and (E) maintaining for inspection by plaintiff a record of the directors, officers, and management employees who attend each annual briefing. The annual briefing will be held to educate them on (1) the meaning and requirements of the Final Judgment including the consequences of noncompliance with the Final Judgment and (2) the application of the antitrust laws to the defendnt's activities including potential antitrust concerns raised by hospitals (a) engaging in agreements or arrangements to allocate services, equipment, or facilities or any other joint activities, and (b) exchanging of competitive information such as contemplated or expected changes in prices or employees' salaries or benefits. "Management employee," as defined in Section III, includes any employee who supervises the preparation of or approves any price, rate, or discount schedule; any wage, salary, or employee benefit schedule; any budget or financial plan; any marketing or advertising plan; any long range or strategic plan; or any plan to acquire materials, equipment, or services.

Section VII requires various certifications of defendants. Section VII(A) requires each defendant to certify to plaintiff within 75 days after the entry of the Final Judgment whether defendant has made the distribution and notification required by Section VI of the Final Judgment. Section VII(B) requires each defendant to certify to plaintiff annually for 10 years after the entry of the Final Judgment whether defendant has complied with the provisions of Section VI of the Final Judgment.

Section VIII(A) provides that an authorized representative of the Department of Justice may visit defendants' offices, after providing reasonable notice, to review their records and to conduct interviews regarding any matters contained in the Final Judgment. Defendants may also be required to submit written reports, under oath, pertaining to the Final Judgment.

b. Scope of the Proposed Final Judgment

Section II of the Final Judgment provides that the Final Judgment shall apply to each defendant and to each of its officers, directors, agents, employees, successors, and assigns and to all other persons in active concert or participation with any of them who receive actual notice of the Final Judgment by personal service or otherwise.

Section X of the proposed Final Judgment provides that the Final Judgment shall remain in effect for 10 years.

C. Effect of the Proposed Judgment on Competition

The relief in the proposed Final Judgment is designed to ensure that each defendant hospital, using its independent judgment, decides unilaterally the amount it expends on advertising and the types of advertising it utilizes, and that neither HAGDM nor the defendant hospitals undertake any collective activity or arrangement to limit or regulate such advertising. It is also designed to ensure that patients, physicians, and third-party payers have the opportunity to receive information necessary for them to make informed choices on the selection of hospitals and to benefit from lower prices or increased quality that would result from competition among the hospitals.

The Department of Justice believes that the proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged agreement.

IV.

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair not assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against defendants in this matter.

V.

Procedures Available for Modification of the Proposed Judgment

As provided in section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), any person believing that the proposed Final Judgment should be modified by submit written comments to Robert E. Bloch, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., room 9903, Judiciary Center Building, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. Section IX of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI.

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgment provides the relief that

the United States sought in its Complaint.

VII.

Determinative Materials and Documents

No materials and documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment.

Respectfully submitted,

Nancy M. Goodman,
Karen L. Gable,
John B. Arnett, Sr.,
Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Washington, DC 20001. Telephone: (202) 307–0798.

[FR Doc. 92–23816 Filed 9–30–92; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Utah State Standards; Approval

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902.

On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah State Plan and the adoption of subpart E to part 1952 containing the decision. Utah was granted final approval on section 18(e) of the Act on July 16, 1985. By law (Section 63–46a–16 Utah Code), the Utah Administrative Rulemaking Procedure is the authorized compilation of the administrative law of Utah and "shall be received in all the courts, and by all the judges, public officers, commissioners, and departments of the State government as evidence of the administrative law of the State of Utah * * *." The Utah Occupational Safety and Health Division revised its Administrative Rulemaking Act (chapter 46a, title 63, Utah annotated, 1953) which became effective on April 29, 1985. On May 6, 1985, a State Plan Supplement was submitted to the Occupational Safety and Health Administration (OSHA) for approval and publication in the **Federal Register** of Utah's revised Administrative Rulemaking Act. The plan supplement was published in the **Federal Register** (53 FR 43688) on October 28, 1988. The supplement provides for adoption of Federal standards by reference through the publication of standards in the Utah State Digest. Utah now adopts Federal OSHA standards by reference using the OSHA numbering system.

Following the publication date, the agency shall allow at least 30 days for public comment on the rule. During the public comment period the agency may hold a hearing on the rule. Except as provided in statutes 63–46a–6 and 63–46a–7, a proposed rule becomes effective on any date specified by the agency which is no fewer than 30 nor more than 90 days after the publication date. The agency shall provide written notification of the rule's effective date to the office. Notice of the effective date shall be published in the next issue of the bulletin.

OSHA regulations (29 CFR 153.22 and .23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State Standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the State prior to Federal review and approval.

The State submitted statements along with copies of the Utah States Digest, to verify the adoption of standards by reference from the Code of Federal Regulations. The Industrial Commission of Utah, Occupational Safety and Health Division adopted by reference on May 6, 1992, the Federal Standard, Process Safety Management of Highly Hazardous Chemicals, Explosives and Blasting Agents; Final Rule of 29 CFR 1910 as published in 57 FR 6856. The effective date of the State Rule was June 1, 1992.

Decision

The statement of incorporation of the aforementioned Federal Standard by reference has been printed in the Utah Administrative Code. The code contains the statement of the incorporation of Federal Standards by reference as compiled by the Occupational Safety and Health Division of the Industrial Commission of Utah. Copies of the Utah Administrative Code have been reviewed and verified at the Regional Office. OSHA has determined that the Federal Standards incorporated by reference from 29 CFR 1910 and 29 CFR 1926 are identical to Federal Standards with no differences and therefore approves the Utah Standards.

Location of Supplement for Inspection and Copying

A copy of the standards along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576 Federal Office Building 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 East 300 South, Salt Lake City, Utah 84151; and the Director, Federal-State Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2 (c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law which include public comment, and further public participation would be repetitious. This decision is effective October 1, 1992.

Authority: Sec. 18, Public Law 91–596, 84 Stat. 1608 [29 U.S.C. 667]. Signed at Denver, Colorado this 2nd day of September, 1992.

Byron R. Chadwick,

Regional Administrator, VIII.

[FR Doc. 92–23805 Filed 9–30–92; 8:45 am]
BILLING CODE 4510–26–M

LIBRARY OF CONGRESS

American Folklife Center; Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the

Center. Notice of this meeting is required in accordance with Public Law 94–463.

DATES: Saturday, October 10, 1992, 9 a.m. to 1 p.m.

ADDRESSES: San Jose Hotel Meeting Room, San Jose, California 95053.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 707–6590.

The American Folklife Center was created by the U.S. Congress with passage of Public Law 94–201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Genter is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Rhoda W. Canter,

Associate Librarian for Management.

[FR Doc. 92–23815 Filed 9–30–92; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Opera-Musicial Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (New American Works: Musical Evaluation Section) to the National Council on the Arts will meet on October 21–23, 1992 from 9 a.m.–5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained form Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: September 25, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–23825 Filed 9–30–92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 22 and 23, 1992 8:30 a.m.—5 p.m.

Place: National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC, room 500D.

Type of Meeting: Open.

Contact Person: Dr. M. Kent Wilson, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9486.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda

Thursday, October 22, 1992

9 am Discussion on Future of NSF
10:30 am Budget and Planning Discussion
1 pm Discussion of Gemini Telescopes Project
2 pm Presentation of U/MA Millimeter Array Project
2:30 pm Discussion of Roles of National Astronomy Centers and University Facilities

Friday, October 23, 1992

8:30 am Budget Discussion
9:30 am Discussion on Size of Astronomy Community—Designers of Instrumentation
10:30 am Infrastructure Discussion
2 pm Meeting with NSF Director

Dated: September 28, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–23875 Filed 9–30–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Cross Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 20, 1992; 8:30 a.m. to 5 p.m.

Place: Latham Hotel, 3000 M Street NW., Washington, DC 20007–3701.

Type of Meeting: Closed.

Contact Person: Forbes Lewis, Program Director, CISE/CDA, room 436, National Science Foundation, 1800 G. St. NW., Washington, DC 20550. Telephone: (202) 357–7349.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Instrumentation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 28, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–23876 Filed 9–30–92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 21–23, 1992; 9 a.m. to 5 p.m.

Place: Vacation Village, Laguna Beach, California.

Type of Meeting: Part-Open.

Contact Person: Dr. Kathie L. Olsen, Program Director, Integrative Biology and Neuroscience, rm. 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7040.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: October 23, 1992; 9:15 a.m. to 11:45 a.m.—To discuss research trends and opportunities in Neuroendocrinology.

Closed session: October 21–22, 1992; 9 a.m. to 5 p.m. and October 23, 11:45 a.m. to 5 p.m.—To review and evaluate Neuroendocrinology proposals as part of the selection process for awards.

Date and Time: November 9–11, 1992; 9 a.m. to 5 p.m.

Place: Room 1243, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Sanya Springfield, Program Director, Integrative Biology and Neuroscience, rm. 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7471.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Neuronal and Glial Mechanisms proposals as part of the selection process for awards.

Date and Time: November 12–14, 1992; 9 a.m. to 5 p.m.

Place: Room 500D, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Part-Open.

Contact Person: Dr. Donald Edwards, Program Director, Integrative Biology and Neuroscience, rm. 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7040.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: November 13, 1992; 2 p.m. to 4 p.m.—To discuss research trends and opportunities in Neural Mechanisms of Behavior and Cognitive, Computational, and Theoretical Neurobiology (CCTN).

Closed session: November 12 and 14, 1992; 9 a.m. to 5 p.m. and November 13, 9 a.m. to 2 p.m. and—To review and evaluate Neural Mechanisms of Behavior and CCTN proposals as part of the selection process for awards.

Date and Time: November 18–20, 1992; 9 a.m. to 5 p.m.

Place: Room 500D, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Part-Open.

Contact Person: Dr. Steven C. McLoon, Program Director, Integrative Biology and Neuroscience, rm. 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7042.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: November 19, 1992; 9:15 a.m. to 11:45 a.m.—To discuss research trends and opportunities in Developmental Neuroscience.

Closed session: November 18 and 20, 1992; 9 a.m. to 5 p.m. and November 19, 11:45 a.m. to 5 p.m.—To review and evaluate Developmental Neuroscience proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 28, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–23877 Filed 9–30–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Physics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 18, 1992, 10 a.m.—5:30 p.m., October 19, 1992, 8:30 a.m.—5:30 p.m., October 20, 1992, 8:30 a.m.—4:30 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW. Washington, DC 20550.

Type of Meeting: Part-Open.

Contact Person: Dr. Robert A. Eisenstein, Director, Division of Physics, room 341, National Science Foundation, 1800 G Street, NW. Washington, DC 20550, (202) 357–7985.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise the National Science Foundation on its programs in physics.

Agenda: Open session.

- Proposed New Directions for NSF
- Public Comment (*)
- FY 1993 Budget
- Physics Program Issues

Closed session: October 19, 1992, 1:30 p.m.—5:30 p.m. To review and evaluate proposals and to formulate recommendations on Division priorities.

Reason for Closing: In the formulation of Division priorities, proposals will be reviewed which include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. Knowledge of the priorities discussed could significantly frustrate the Foundation's implementation of grant proposals. These matters are exempt under 5 U.S.C. 552b(c)(4), (6) and (9)(B) of the Government in the Sunshine Act.

(*) Persons wishing to speak should make arrangements through the Contact Person identified above.

Dated: September 28, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–23878 Filed 9–30–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 8–10, 1992 in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on August 20, 1992.

Thursday, October 8, 1992

8: 30 a.m.—8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest.

8:45 a.m.—9:45 a.m.: Boiling Water Reactor Stability (Open/Closed)—The Committee will hear a report on and discussion of the proposed resolution of boiling water reactor core power oscillations which can occur under certain operating conditions and the impact of an ATWS during such an event. Information may be presented relating to General Electric Company analysis of reactor stability under these conditions. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this matter.

9:45 a.m.—10:45 a.m.: Environmental Qualification of Safety-Grade Digital Computer Protection and Control Systems (Open)—The Committee will hear a briefing on and prepare a report as appropriate regarding the NRC sponsored research program on environmental qualification of safety-grade digital computer protection and control systems.

Representatives of the NRC staff and the Nuclear industry will participate, as appropriate.

10:45 a.m.—11:45 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss a proposed Committee report on NRC staff action with respect to ITAAC for the GE ABWR.

11:45 a.m.—12 Noon: Prioritization of ACRS Reports (Open)—The Committee will discuss priorities for preparation of ACRS reports during this meeting.

1 p.m.—2:30 p.m.: Environmental Qualification of Electric Equipment for License Renewal (Open)—The Committee will review and report on a proposed NRR Branch Technical Position on environmental qualification of electric equipment for license renewal.

Representatives of the staff and the nuclear industry will participate, as appropriate.

2:45 p.m.—4:45 p.m.: Form and Content of a Design Certification Rule (Open)—The Committee will review and comment on SECY–92–287, "Form and Content for a Design Certification Rule."

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

4: 45 p.m.—5:30 p.m.: ACRS Future Activities (Open)—The Committee will discuss the report of the ACRS Planning and Procedures Subcommittee regarding matters proposed for consideration by the full Committee.

5:30 p.m.—6 p.m.:—Reconciliation of ACRS Recommendations (Open)—The Committee will discuss NRC staff responses to ACRS comments and recommendations.

Friday, October 9, 1992

8:30 a.m.—10 a.m.: Maintenance of Nuclear Power Plants (Open)—The Committee will review and comment on a proposed Regulatory Analysis and a draft Regulatory Guide, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," and an associated NUMARC document 93–01, Revision 2A, "Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants."

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

10:15 a.m.—10:45 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss the scope and content of reports to be considered during this meeting.

10:45 a.m.—11:15 a.m.: Training and requalification of Nuclear Power Plant Operators (Open)—The Committee will hear a briefing, discuss, and report as appropriate on results of the NRC pilot simulator examination program and proposed changes to NRC rule (10 CFR part 55) regarding recertification of nuclear power plant operators.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

11:15 a.m.—12:15 p.m.: Use of PRA in the Regulatory Process (Open)—The Committee will hear a briefing by representatives of the NRC Working Group on the status of tasks related to use of PRA in the NRC regulatory process.

1:15 p.m.—3:15 p.m.: Design Acceptance Criteria (Open)—The Committee will review and comment on proposed Design Acceptance Criteria (DAC) in the areas of man/machine interface and control and protection systems.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

3:15 p.m.—4:15 p.m.: Yankee Rowe Nuclear Power Plant (Open)—The Committee will hear a briefing by representatives of the NRC staff regarding lessons learned from the review and evaluation of the Yankee Rowe nuclear plant reactor pressure vessel integrity.

Representatives of the NRC staff and the licensee will participate, as appropriate.

4:15 p.m.—5 p.m.: Subcommittee Activities (Open)—The Committee will discuss the report and recommendations of the ACRS Planning and Procedures Subcommittee regarding conduct of Committee business.

5 p.m.—5:15 p.m.: Election of ACRS Officer (Closed)—The Committee will discuss qualifications of candidates nominated for Member-at-Large of the Planning and Procedures Subcommittee.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5:15 p.m.—6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during this meeting.

Saturday, October 10, 1992

8:30 a.m.—12 Noon: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during this meeting.

1 p.m.—2 p.m.: Appointment of ACRS Members (Closed)—The Committee will discuss qualifications of candidates proposed for appointment as members of the Committee.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

2 p.m.—2:30 p.m.—Miscellaneous (Open)—The Committee will complete discussions of items considered during this meeting and matters which were not completed at previous meetings as time and availability of information permit.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Mr. Raymond F. Fraley, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered in accordance with 5 U.S.C. 552(c)(4) and information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301–492–8049), between 8 a.m. and 4:30 p.m. EST.

Dated: September 25, 1992.
John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 92-23806 Filed 9-30-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 40-8768

Rio Algom Mining Corp.; Final Finding of no Significant Impact Regarding the Termination of a Source Material License of Rio Algom Mining Corp.; O-Sand In Situ Leach Mine Project, Converse County, Wyoming

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administration action is to terminate the source and byproduct material license authorizing Rio Algom Mining Corp. (Rio Algom) to operate the O-Sand uranium ISL research and development (R&D) facility located 12 miles north of Glenrock, Converse County, Wyoming. The Commission has determined an environmental assessment specific to this administrative action is not required.

2. Reasons for Final Finding of No Significant Impact

The R&D project initiated leaching activities in the Q-Sand well field in October 1981. NRC authorized additional mining in the O-Sand well field during July 1984. Rio Algom ceased mining in the Q-Sand and conducted an aquifer restoration demonstration, completed and approved by NRC, in August 1987. Meanwhile, O-Sand mining continued until September 1991, when Rio Algom placed the R&D project on standby status. At this time, Rio Algom is maintaining the site in standby while its commercial mining plant is under construction. Future commercial mining will create new well fields which include the O-Sand pilot well field.

On January 10, 1992, NRC issued a final Environmental Assessment (EA) regarding issuing the commercial license. The EA discussed environmental and radiological monitoring requirements to be implemented for the commercial project. In the meantime, Rio Algom proposed a monitoring and sampling program for the interim period prior to commercial operations. The program was approved by License Amendment No. 4 to the R&D Source Material License SUA-1387. Further, these requirements are included as preoperational conditions in the commercial Source Material License No. SUA-1548.

NRC intends to terminate the R&D license concurrently with review and approval of the commercial financial surety arrangement. Based on the reviews cited above and conditions to be contained in the commercial license, the Commission has determined that no significant impact will result from the proposed administrative action. The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental evaluations.

A. The license has demonstrated that ground-water quality can be stabilized and restored to class-of-use standards determined by the Wyoming Department of Environmental Quality.

B. Remaining and future facilities and operations at the site shall be regulated by the commercial license.

In accordance with 10 CFR 51.34(a), the Director, Uranium Recovery Field Office (URFO), made the determination to issue a final finding of no significant impact in the **Federal Register**. Source Material License SUA-1387 for the Rio Algom O-Sand R&D Project will be terminated upon approval of the commercial surety.

The environmental evaluations setting forth the basis for the finding are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC

Dated at Denver, Colorado, this 22 day of September, 1992.
For the Nuclear Regulatory Commission.
Ramon E. Hall,
Director.
[FR Doc. 92-23808 Filed 9-30-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 40-8452]

Union Pacific Resources-Minerals; Finding of No Significant Impact Regarding Issuance of an Amendment to Source Material License SUA-1310 for the Union Pacific Resources-Minerals, Bear Creek Mill, to Incorporate Reclamation Schedule, Converse County, Wyoming

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of a finding of no significant impact.

1. Proposed Action

The administrative action is issuance of a license amendment to incorporate an enforceable reclamation schedule for the Bear Creek Mill in Converse County, Wyoming.

2. Reasons for Finding of No Significant Impact

The proposed amendment is administrative, incorporating reclamation milestones into the license in accordance with the Memorandum of Understanding (MOU) between the Environmental Protection Agency (EPA) and the NRC which was published in the **Federal Register** on October 25, 1991. The Notice of Intent to Amend Source Material License SUA-1310 for the Bear Creek Mill to incorporate reclamation schedules was published in the **Federal Register** on May 14, 1992. The NRC accepted comments on this proposed licensing action for 45 days. No comments were received. In accordance with 10 CFR 51.22(c)(11), the Commission has determined that no environmental analysis need be performed since no significant impacts will result from the proposed licensing actions.

3. Action

The Commission action is to amend Source Material License SUA-1310 upon publication of this Notice. The action is based on this Finding of No Significant Impact and no comments being received to the Notice of Intent published on May 14, 1992.

This Notice, together with the Notice of Intent to Amend Source Material License SUA-1310, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Denver, Colorado, this 22 day of September 1992
Ramon E. Hall,
Director.
[FR Doc. 92-23807 Filed 9-30-92; 8:45 am]
BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Pay Rate Report.
(2) *Form(s) submitted:* UI–1e.
(3) *OMB Number:* 3220–0097.
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents:* Individuals or households, Businesses or other for-profit.
(8) *Estimated annual number of respondents:* 1,500.
(9) *Total annual responses:* 1,500.
(10) *Average time per response:* .0833 hours
(11) *Total annual reporting hours:* 125
(12) *Collection description:* Under the RUIA, the daily benefit rate for unemployment and sickness benefits depends on the employee's last daily rate of pay. The reports obtain information from the employee and verification from the employer of the claimed rate of pay for use in determining whether an increase in the benefit rate is due.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92–23811 Filed 9–30–92; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Statement Regarding Contributions and Support.
(2) *Form(s) submitted:* G–134.
(3) *OMB Number:* 3220–0099.
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents:* Individuals or households.
(8) *Estimated annual number of respondents:* 400.
(9) *Total annual responses:* 400.
(10) *Average time per response:* .292 hours.
(11) *Total annual reporting hours:* 117.
(12) *Collection description:* Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under section 2 of the Railroad Retirement Act. One-half support is also a condition which may negage the public service pension offset in Tier I for a spouse or widow(er).

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92–23812 Filed 9–30–92; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18972; 811–3862]

Carnegie-Cappiello Trust; Application

September 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Carnegie-Cappiello Trust.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N–8F was filed on September 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 19, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1100 Halle Building, 1228 Euclid Avenue, Cleveland, Ohio 44115–1831.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Barry D. Miller, Special Senior Counsel, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management company organized as an Ohio business trust. On October 4, 1983, applicant (formerly known as Carnegie-Cappiello Growth Trust) filed a registration statement pursuant to section 8(b) of the 1940 Act. On that date, applicant also filed a registration statement pursuant to the Securities Act of 1933, which registered an indefinite number of shares of beneficial ownership. The registration statement became effective on December 9, 1983.

2. On September 25, 1985, applicant amended its registration statement changing its name to Carnegie-Cappiello Trust which consisted of the Growth Series and Total Return Series. The registration of these series became effective on November 30, 1985. On September 25, 1989, applicant amended its registration statement adding the Emerging Growth Series and Diversified High Income Series to the Trust. The registration of these series became effective on November 30, 1989.

3. At a meeting held on March 12, 1992, applicant's board of trustees approved a proposal to reorganize applicant and recommend its approval by applicant's shareholders. Under the proposed reorganization, applicant would transfer its assets to the Fortis Funds (defined below) in return for shares of these funds. Applicant distributed proxy materials relating to the reorganization to its shareholders beginning on approximately April 20, 1992. Copies of such materials were filed with the Commission on April 22, 1992. Shareholders approved the reorganization at a special shareholders meeting held on June 1, 1992.

4. On June 5, 1992, applicant consummated the reorganization pursuant to which all the assets and liabilities of applicant's Diversified High Income Series, Total Return Series, Emerging Growth Series, and Growth Series ("Carnegie Series") were transferred, respectively, to the High Yield Portfolio, Asset Allocation Portfolio, and Capital Appreciation Portfolio of the Fortis Advantage Portfolios, Inc. and Fortis Growth Fund, Inc. (the "Fortis Funds"). In return for its assets, each Carnegie Series received shares of the respective Fortis Fund having a net asset value equal to the value of the assets less the value of the liabilities transferred. Subsequently, each Carnegie Series liquidated and distributed the respective Fortis Fund shares received in the exchange to its shareholders on a *pro rata* basis. No brokerage commissions were incurred in this reorganization.

5. The expenses incurred in connection with the liquidation and dissolution of applicant were borne by the investment adviser to applicant, Carnegie Capital Management Company ("CCMC"). No expenses were incurred by applicant in connection with its liquidation and dissolution.[1]

6. On September 3, 1992, applicant filed Articles of Dissolution with the Secretary of State of Ohio.

7. As of the date of the application, the applicant had no assets, debts or liabilities, and was not a party to any litigation or administrative proceeding.

8. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

[1] Pursuant to a letter dated September 22, 1992, applicant clarified that not only the liquidation expenses, but also the merger costs incurred in connection with the reorganization, have been borne by CCMC and by Fortis Advisers, Inc., investment adviser to the Fortis Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23785 Filed 9-30-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18974; File No. 812-8022]

Phoenix Edge Series Fund et al; Application

September 24, 1992.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Phoenix Edge Series Fund ("Phoenix Fund") and Home Life Equity Fund, Inc. ("Home Equity Fund").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 17(b) for exemption from Section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order permitting the transfer of the assets of Home Equity Fund to the Growth Series of the Phoenix Fund in exchange for shares of the Growth Series.

FILING DATE: The application was filed on July 29, 1992 and amended on September 18, 1992.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on October 19, 1992. Request a hearing in writing, giving the nature of your interest, the reason for your request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the Commission, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Phoenix Edge Series Fund and Home Life Equity Fund, Inc., c/o Phoenix Home Life Mutual Insurance Company, One American Row, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Senior Attorney, at (202) 272-2058, or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Phoenix Fund was organized on February 18, 1986, as a Massachusetts business trust and is registered under the Act on Form N-1A (Registration No. 811-4642) as an open-end, diversified management investment company. The Phoenix Fund is currently comprised of six separate investment series ("Series"). A separate class of shares of beneficial interest is issued in connection with each Series and the Phoenix Fund has registered those shares under the Securities Act of 1933 (the "1933 Act").

2. The Growth Series is a separate, managed investment portfolio of the Phoenix Fund. The primary investment objective of the Growth Series is to achieve intermediate and long-term growth of capital, with income as a secondary consideration. The Growth Series seeks to achieve its primary investment objective by investing principally in common stocks of corporations believed to offer growth potential over both the intermediate and the long-term.

3. To date, the Growth Series of the Phoenix Home has sold shares only to (i) the Phoenix Home Life Variable Accumulation Account (the "VA Account"), a separate account of Phoenix Home Life Mutural Insurance Company ("Phoenix Home") established to fund variable annuity contracts issued by Phoenix Home, and (ii) the Phoenix Home Life Variable Universal Life Account (the "VUL Account"), also a separate account of Phoenix Home established to fund flexible premium variable life insurance policies issued by Phoenix Home. Both the VA Account and the VUL Account are registered under the Act as unit investment trusts.

4. Home Equity Fund is an open-end, diversified management investment company. Home Equity Fund was organized as a Maryland corporation on June 3, 1970 and is registered under the Act (Registration No. 811-2172). Shares of Home Equity Fund are registered under the 1933 Act on Form N-1A.

5. The principal investment objective of Home Equity Fund is the long-term growth of capital through the appreciation of portfolio securities and the reinvestment of capital gains and income, with an equal emphasis on the preservation of capital. Home Equity Fund invests primarily in the equity securities of selected companies.

6. Home Equity Fund currently sells its shares only to Phoenix Home Life Separate Account B ("Separate Account B"), Phoenix Home Life Separate Account C ("Separate Account C") and Phoenix Home Life Separate Account D ("Separate Account D"), each of which is a separate account of Phoenix Home established to receive and invest premiums paid under retirement annuity benefit or other insurance contracts. Separate Account C and Separate Account D are registered under the Act as unit investment trusts.

7. The assets of Separate Account B are derived solely from contributions under "H.R. 10 Plans." Separate Account B is not registered under the Act in reliance on Section 3(c)(11) of the Act. However, the variable contracts offered through Separate Account B are registered under the 1933 Act on Form N–4.

8. Phoenix Home is a mutual insurance company organized under the laws of the state of New York. Phoenix Home is principally engaged in the offering of ordinary and group life and health insurance policies and annuity contracts. Phoenix Home is the depositor of the VA Account, VUL Account, Separate Account C and Separate Account D and is the issuer of the variable life insurance policies and annuity contracts (the "Contracts") offered through the foregoing separate accounts.

9. Phoenix Investment Counsel, Inc. (the "Adviser") serves as investment adviser to Home Equity Fund and each of the Series of the Phoenix Fund under the general supervision of the Board of Directors of Home Equity Fund and the Board of Trustees of the Phoenix Fund, respectively. As compensation for its services as investment adviser to Home Equity Fund, the Adviser is paid a monthly advisory fee, accrued daily, currently at an annual rate of 0.30% of the average daily net asset value of Home Equity Fund. For its services with respect to the Growth Series, the Adviser is entitled to an advisory fee, payable monthly, at an annual rate of 0.5% of the first $500 million, 0.45% of the next $500 million and 0.4% of the excess over $1 billion of the average of the aggregate daily net asset value of the Growth Series.

10. The Trustees of the Phoenix Fund, including a majority of those Trustees who are not "interested persons" of the Phoenix Fund ("disinterested Trustees") and the Board of Directors of Home Equity Fund, including a majority of those Directors who are not "interested persons" of Home Equity Fund ("disinterested Directors"), have unanimously approved an Agreement and Plan of Reorganization and Liquidation (the "Plan").

11. The proposed Plan provides that Home Equity Fund will convey, transfer and deliver to the Growth Series all of the existing assets of Home Equity Fund. In consideration thereof, the Phoenix Fund agrees to cause the Growth Series (a) to assume and pay all of the obligations and liabilities of Home Equity Fund to the extent that they exist on or after the effective time of the reorganization and (b) to deliver to Home Equity Fund full and fractional shares of beneficial interest of the Phoenix Fund representing shares of the Growth Series ("Growth Series Shares") equal to that number of full and fractional Growth Series Shares as determined based on the relative net asset value per share of Home Equity Fund and Growth Series as of the close of the New York Stock Exchange on the last business day immediately preceding the reorganization in accordance with the provisions of section 22(c) of the Act and rule 22c–1 thereunder.

12. The Plan provides that Home Equity Fund will liquidate and distribute pro rata to its shareholders the growth Series Shares received by Home Equity fund pursuant to the reorganization. Simultaneously Home Equity Fund shares held by such shareholders shall be canceled. The Phoenix Fund will register the shares of the Growth Series issued pursuant to this reorganization under the 1933 Act on Form N–14. The aggregate value of Growth Series Shares to be issued under the Plan will exactly equal the aggregate value of Home Equity Fund shares held by Separate Account B, Separate Account C and Separate Account D immediately prior to the reorganization. Further, the aggregate value of outstanding units of interests in such Accounts will not change on the effective date of the reorganization as a result of the share exchange program.

13. Home Equity Fund will submit the proposed reorganization and the related Plan to shareholders for approval at a Special meeting called for that purpose. Two-thirds of the outstanding shares of Home Equity Fund will be required to approve the Plan and the reorganization contemplated therein. Phoenix Home will vote shares attributable to Separate Account C and Separate Account D in accordance with instructions received from Contract owners with Contract value allocated to those Separate Accounts. Home Equity Fund shares held in Separate Account C and Separate Account D for which no voting instructions are received will be voted by the management of Home Equity Fund in proportion to the voting instructions that are received from Contract owners. Shares of the Home Equity Fund held in Separate Account B will be voted by Phoenix Home in direct proportion to the votes of Contract owners with Contract value allocated to Separate Account C and Separate Account D. Separate Account B owns approximately eighty-five percent of the outstanding shares of Home Equity Fund.

14. Phoenix Fund and Home Equity Fund will receive an opinion of tax counsel to the effect that the reognization will qualify as a tax-free reorganization under the Internal Revenue Code of 1986, as amended, and not result in the recognition of any gain or loss to Phoenix Fund/Growth Series or Home Equity Fund, or to any shareholders thereof.

Applicants' Legal Analysis

1. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act, generally, prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

2. Section 2(a)(3) of the Act defines the term "affiliated person", in relevant part, as:

(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; * * *

3. Because Phoenix Home, through Separate Account B, Separate Account C and Separate Account D, owns 100% of the outstanding shares of Home Equity Fund and may itself vote approximately eighty-five percent of the outstanding shares of the Home Equity Fund, it is an affiliate of Home Equity Fund. Because Phoenix Home, through the VA Account and the VUL Account, owns 100% of the outstanding shares of the Phoenix Fund and, therefore, 100% of the outstanding shares of the Growth Series, it is a "5% affiliate" of the Phoenix Fund and Growth Series. Home Equity Fund and the Phoenix Fund/Growth Series are, therefore, affiliated

persons of an affiliated person and transactions between Home Equity Fund and the Phoenix Fund/Growth Series are subject to the prohibition of section 17(a) of the Act. An affiliation between Home Equity Fund and the Phoenix Fund may also arise as a result of the Funds being deemed under "common control" of Phoenix Home since all the voting shares of each of Home Equity Fund and the Phoenix Fund are owned by Phoenix Home. Accordingly, the transfer of assets of Home Equity Fund in exchange for shares of Growth Series may entail the purchase and sale of securities or other property in contravention of section 17(a).

4. Section 17(b) of the Act provides, in pertinent part, that the Commission may grant an order exempting any transaction from the prohibitions of section 17(a) if the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned, and with the general purposes of the Act.

5. Applicants represent that the terms of the proposed reorganization as set forth in the Plan, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also represent that the proposed reorganization of Home Equity Fund and the Growth Series is consistent with the investment policies of Home Equity Fund and the Growth Series as recited in the current registration statements of Home Equity Fund and the Phoenix Fund, other reports filed by Home Equity Fund and the Phoenix Fund under the Act and with the general purposes of the Act.

6. The Board of Trustees of the Phoenix Fund, including a majority of the disinterested Trustees, and the Board of Directors of the Home Equity Fund, including a majority of the disinterested Directors have reviewed and approved the terms of the proposed reorganization as set forth in the Plan, including the consideration to be paid or received by all parties. The Directors of Home Equity Fund also have independently determined that the proposed reorganization, as set forth in the Plan, would be in the best interests of the shareholders of Home Equity Fund and of the Contract owners who have indirectly allocated Contract value through Separate Account C and Separate Account D to Home Equity Fund, and that the consummation of the proposed reorganization will not result in the dilution of the current interests of any such shareholder or Contract owner. The Trustees of Phoenix Fund also have determined that the proposed reorganization, as set forth in the Plan, will be in the best interests of shareholders of the Phoenix Fund/Growth Series and of the Contract owners who have indirectly allocated Contract value through the VA and VUL Accounts to the Phoenix Fund/Growth Series, and that the consummation of the proposed reorganziation will not result in the dilution of the current interests of any such shareholder or Contract owner. Phoenix Home will pay all the direct and indirect expenses of the proposed reorganization, including any brokerage fees relating to transactions resulting from the reorganization.

7. The proposed reorganization will result in an increase in the asset size of Home Equity Fund and the Growth Series. The larger aggregate net assets should enable the combined entities to realize significant benefits associated with economies of scale, increased investment opportunities and enhanced portfolio diversification and liquidity. The Directors and Trustees have considered the relative investment performance of Home Equity Fund and the Growth Series. For the six month period following Home Equity Fund's last fiscal year (September 30, 1991 through March 31, 1992), the Growth Series' total return was 11.99% and the Home Equity Fund's total return was 6.55%. The Directors believe performance and investment flexibility could be enhanced if the assets of Home Equity Fund and the Growth Series are combined.

8. Although the advisory fee applicable to shareholders of Home Equity Fund will increase as a result of the reorganization, the Directors of Home Equity Fund have determined that shareholders and Contract owners with Contract value allocated to Separate Account C and Separate Account D will ultimately benefit from the services of the Adviser. Further, the Directors of Home Equity Fund have determined that Home Equity Fund could not continue to retain the Adviser under the terms of the current Management Agreement or obtain the services of a comparable investment adviser at the rate currently applicable to Home Equity Fund. Moreover, while the Adviser presently bears substantially all expenses of Home Equity Fund, it is possible that, in the future, Home Equity Fund would be required to bear a greater portion or all of its expenses. In such event, the consummation of the reorganization would result in cost savings for Contract owners with Contract value allocated to Separate Account C and Separate Account D by virtue of the economies of scale associated with a larger asset base.

9. The investment objectives and policies of Home Equity Fund and the Growth Series are, in the opinion of the Directors and Trustees, compatible. The principal differences are as follows: (i) Home Equity Fund's investment objective is long-term growth of capital while the Growth Series' objective is intermediate and long-term growth of capital; (ii) not more than 2% of Home Equity Fund's assets can be invested in rights and warrants to purchase common stocks while Growth Series can invest up to 20% of its total assets in such rights and warrants to purchase common stock; (iii) Home Equity Fund is restricted to borrowing money in the aggregate of an amount not exceeding 5% of the value of its assets while the Growth Series can borrow money in an amount equaling up to 50% of the net asset value of the Series; and (iv) the investment restrictions applicable to the Growth Series permit it to engage in a wider range of investment techniques and strategies designed to "hedge" against market risks and enhance income than is permissible under Home Equity Fund's investment restrictions.

The Directors of Home Equity Fund believe that shareholders will be protected and benefited under the investment objectives, policies and restrictions of the Growth Series. The Directors of Home Equity Fund have considered the differences between the investment objectives of Home Equity Fund and the Growth Series and determined that the investment objective of the Growth Series is consistent with the objective of a shareholder seeking growth of capital through an equity portfolio. The Directors concluded that the Growth Series has investment objectives, policies and restrictions comparable to those of Home Equity Fund, and to the extent there are differences, the Directors of Home Equity Fund believe that such differences are of no practical significance and are often advantageous to Home Equity Fund shareholders.

10. Rule 17a–8 under the Act exempts from Section 17(a) of the Act, mergers, consolidations, purchases or sales of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser, common directors and/or common officers. Because Home Equity

Fund and the Growth Series are affiliates of each other for reasons other than having a common investment adviser, they can not rely on Rule 17a–8. However, the Applicants submit that the share exchange phase of the proposed transaction will comply with all of the conditions that Rule 17a–8 of the Act requires for the protection of investment companies and their shareholders. The Applicants agree to the grant of the order requested being specifically conditioned on the Board of Trustees of Phoenix Home and the Board of Directors of Home Equity Fund having made the requisite determinations that the participation of the Growth Series and Home Equity Fund, respectively, in the proposed reorganization is in the best interests of the Growth Series and Home Equity Fund and that such participation will not dilute the interests of shareholders of Growth Series or Home Equity Fund or Contract owners that are or will become indirectly invested in the Growth Series.

11. The Applicants submit that the proposed reorganization is consistent with the general purposes of the Act as stated in the Findings and Declaration of Policy in Section 1 of the Act. The Applicants further submit that the plan does not present any of the conditions or abuses that the Act was designed to mitigate or eliminate. In particular, section 1(b)(6) of the Act states that the national public interest and the interest of investors are adversely affected when investment companies are reorganized without the consent of their security holders. As described above, the Plan must receive the approval of two-thirds of the outstanding shares of Home Equity Fund. Contract owners with Contract value allocated to Separate Account C and Separate Account D will receive a proxy statement containing all material disclosures, including a description of all material aspects of the Plan and a copy thereof. Therefore, the Applicants assert, the proposed reorganization is consistent with the general purposes of the Act.

Conclusion

For the reasons stated above, the Applicants believe that the terms of the proposed reorganization satisfy the standards of section 17(b). Accordingly, the applicants assert that it is appropriate for the Commission to issue an order pursuant to section 17(b) exempting the proposed transaction from the provisions of section 17(a) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–23784 Filed 9–30–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1706]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) National Committee Meeting

The Department of State announces that the United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) National Committee will meet on October 27, 1992 at 9:30 a.m. in room 1207 at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agenda for the meeting will include a debrief of the latest meeting of the World Telecommunications Advisory Council; the report of the joint CCIR/CCITT National Committee meeting, and continue the current work, or to receive reports, of the various sub-committees established by the USNC to prepare the U.S. delegation for the upcoming CCITT Xth Plenary Assembly to be held in Helsinki, March 1993.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should advise the Office of Earl Barbely, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 60 copies of documents to be considered at this meeting. If the document has been mailed, bring only 10 copies.

Dated: September 15, 1992.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 92–23813 Filed 9–30–92; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Walworth Co, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Walworth County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: James Zavoral, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4906, Telephone: (608) 264–5944. Additional information can be obtained through Ms. Carol Cutshall, Director, Office of Environmental Analysis, Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, Wisconsin 53707, Telephone: (608) 266–9626.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve U.S. Highway 12 (USH 12) in Walworth County, Wisconsin. The proposed improvement would involve the construction of a four lane freeway bypass of the City of Whitewater for a distance of about 10 miles.

Improvements to the corridor are considered necessary to provide for the compatibility with the regional function of USH 12, and also to provide for the safety and traffic demand of this highway.

Alternatives under consideration include (1) taking no action; (2) constructing a divided four lane freeway to either the north or south of the city. Incorporated into and studied with each of the building alternatives will be design variations of grade and alignment location.

Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State and local agencies, and to private organizations and citizen groups who have previously

expressed or are known to have an interest in this proposal. A series of public meetings will be held in the City of Whitewater between October 1992 and August 1993. In addition, a public hearing will be held in the Fall of 1994. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment prior to the public hearing. The scoping process will continue through the duration of the project.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. This document is being prepared in conformance with 40 CFR part 1500 and the FHWA regulations. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on: September 21, 1992.

Robert W. Cooper P.E.,

District Engineer, Madison, Wisconsin.

[FR Doc. 92-23810 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Change of Name of Approved Trustee

Notice is hereby given that effective December 31, 1991, by merger of Manufacturers Hanover Corporation with and into Chemical Banking Corporation, under the name of Chemical Banking Corporation, Manufacturers Hanover Trust Company of California, San Francisco, California, changed its name to Chemical Trust Company of California.

Dated: September 28, 1992.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 92-23857 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Intermodal Surface Transportation Efficiency Act of 1991; Electronic Access to Informal Implementation Guidance Via the Federal Highway Administration (FHWA) Electronic Bulletin Board System

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Intermodal Surface Transportation Efficiency Act (ISTEA) enacted several new highway safety provisions that are being administered by the National Highway Traffic Safety Administration (NHTSA). Several new programs have been established and changes have been made in some existing programs. In order to inform the public about these changes, NHTSA has placed a read-only listing on the Federal Highway Administration (FHWA) Electronic Bulletin Board System (FEBBS). This notice announces the availability of this material and instructs the public on how to access it.

ADDITIONAL INFORMATION: NHTSA is making informal ISTEA-related information and guidance available on the FEBBS to assist in the implementation of the Act. Information on the bulletin board is organized into major subject or information areas called "conferences." The information provided in the ISTEA conference of FEBBS shall be considered only as preliminary guidance on the implementation of the ISTEA and is subject to change. Members of the public may now dial into the FEBBS ISTEA information conference using a microcomputer and modem and view informal information on how NHTSA is implementing the provisions of the ISTEA. This read-only facility is especially intended for use by State and local transportation agencies, vehicle manufacturers, special interest groups, and safety advocacy groups. The telephone number for FEBBS is Area Code 202-366-3764. While the system supports 300, 1200 and 2400 baud line speeds, and a variety of terminal types and protocols, setting the modem for 2400 baud, 8 data bits, full duplex and no parity will give optimal performance. Once a connection has been established, a first-time caller will be required to enter <R> to register. Registration will consist of entering the caller's name, location, computer information and finally specification of a password. After registering, callers will view the "Main Menu" for FEBBS. Callers can then enter the main ISTEA conference menu by selecting <Q>uestions and Answers on ISTEA. From this menu, the caller can then access NHTSA's ISTEA conference menu by selecting <N>HTSA. This conference has information related to the agency's efforts to meet the ISTEA provisions.

FOR TECHNICAL ASSISTANCE CONTACT: FHWA Computer Help Desk, HMS 40, room 4401, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1120.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Hoidal, NPP-32, room 5208, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2572. Office hours are from 7:30 a.m. to 4:00 p.m. e.t., Monday through Friday.

Issued on September 25, 1992.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 92-23783 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-50; Notice 1]

Autokraft Limited; Receipt of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Autokraft Limited of Weybridge, Surrey, England, has petitioned for a temporary exemption from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection. The basis of the petition is that compliance would cause it substantial economic hardship.

Notice of receipt of the petition is published in accordance with agency regulations on the subject (49 CFR part 555), and does not represent any judgment of the agency on the merits of the petition.

Petitioner seeks a two-year exemption for its A.C. Mark IV ("MkIV" herein) passenger car. The basis for the petition is that immediate compliance with the automatic restraint requirements of Standard No. 208 will cause the petitioner substantial economic hardship, within the meaning of 49 CFR 555.6(a). petitioner's total motor vehicle production in the 12 months preceding the filing of the petition was 45 units. It projects sales of 50 vehicles per year.

The Autokraft A.C. MkIV, according to petitioner, "is the only Cobra-like vehicle which is produced from original Cobra tooling. The original A.C. Cobras, both 289 and 427 versions, manufactured by A.C. Cars in Thames Ditton, Surety, England, are no longer in production." Further, "Because of public interest, the A.C. Cobra is reported to be the most duplicated vehicle of all time." In August 1991, the petitioner decided to

introduce the MkIV into the American market. In the year since, it has expended approximately 1,200 man hours and 64,000 Pounds Sterling on the project. It has examined both automatic belt systems and air bags in its review of Standard No. 208, and has been unable to identify any automatic belt system that it could install in the MkIV that would allow it to conform to the automatic restraint requirements. It has also examined available air bag systems because designing a proprietary system is cost and time prohibitive.

The modifications required to adapt an existing air bag system to the MkIV are estimated to total in cost $790,000. The components of this cost are modifications to the steering column ($50,000), modifications to the underhood packaging, etc. ($40,000), design and development of a knee bolster system and tooling, and dashboard modifications ($200,000), and all relevant testing costs ($500,000). In order not to duplicate its costs, the petitioner wishes to develop a passenger-side air bag system at the same time, at an estimated additional cost of $300,000. These costs are said to be prohibitive without the sale of vehicles to fund the development program. The two-year period requested will provide time for Autokraft to develop and implement its fully-complying air bag systems, and to generate sufficient income to fund the project. In the interim, the MkIV will be equipped "with a four point belt system on the driver and passenger side of the vehicle." In substantiation of its hardship argument, petitioner submitted its balance sheets and income statements for the past three fiscal years, plus the first six months of 1992. It reports a net loss of 186,318 Pounds Sterling in the first half of 1992 (or $348,415 at a rate of $1.87 to 1 Pound), a net profit of 604,487 Pounds Sterling in 1991 (or $1,130,391 at the same rate), and a cumulative net profit as of June 30, 1992, of 1,073,752 Pounds Sterling (or $2,007,916).

According to the petitioner, a temporary exemption would be in the public interest because it would allow sale of a vehicle that is "the only true alternative" to the original Cobra vehicles, and result "in the establishment of dealer and service networks which would increase stateside employment and generate tax revenues." An exemption would be consistent with the objectives of the National Traffic and Motor Vehicle Safety Act "since they meet all FMVSS and NHTSA standards, except for the passive restraint portion of standard 208 and are equipped with a superior four point seat belt system which ensures the safety of the driver and passenger."

NHTSA wishes to observe that Standard No. 208, through its incorporation by reference of Standard No. 209, specifies requirements for two and three points non-automatic occupant restraint systems, but does not include the four point system that the petitioner installs in the MkIV. Thus, any exemption would be from Standard No. 208 in its entirety, not just paragraph S4.1.4. NHTSA has invited the petitioner to comment on the extent to which its four point system and its installation may otherwise conform to the requirements of Standard No. 208 and Standard No. 209.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 2, 1992.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50, and 501.8.

Issued on September 25, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-23827 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-59-M

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1410a.

Mrs. Karin I. Gibbons petitioned the agency on June 6, 1992 to make a determination that 1988 and 1989 Renault/Eagle Medallions contain safety-related defects. The petition enumerates a number of diverse problems that the petitioner and other owners have reported on these vehicles. As stated in the petition, the principal complaint concerns "premature, repeated brake wear." The petition cites the need for frequent replacement of brake pads and brake shoes on the subject vehicles. It further alleges that accidents have been caused by "repeated brake failure in Renault Eagle/Medallions."

In its consideration of the petition, NHTSA reviewed actions concerning the subject vehicles that were taken by their manufacturer, Chrysler Corporation, as well as consumer complaint information in the agency's files.

Available records indicate that Chrysler issued newsletters or technical service bulletins to its dealers on five separate occasions concerning the servicing and repair of the brake system on the 1988 Medallion. Two of these advised of procedures to diagnose and correct brake noise. The remaining advisories concerned proper rear brake bleeding techniques, the availability of a new front brake pad, and repairs for a broken front brake pad wear sensor warning light wire. Additionally, the company issued a recall notification in March 1988 concerning the replacement of front brake pads to correct a brake noise condition on the 1988 Medallion. This recall was conducted for the purpose of customer satisfaction, and not to correct a safety-related defect.

NHTSA has received a number of complaints from owners of the subject vehicles concerning excessive brake wear and the need for frequent replacement of brake pads and brake shoes. However, the brake wear described in these reports is not likely to cause sudden brake failure, and should produce sufficient noise to alert consumers to the existence of a problem before it creates an adverse impact on safety. NHTSA's files also contain reports of two brake-related accidents for the 1988 model year Medallion, and one for the 1989 model year. None of these accidents were alleged to have resulted in injuries and no failed components were identified in any of the accident reports. Moreover, in each instance the driver complained of brake problems occurring prior to the alleged accident.

Previously, NHTSA received a petition concerning brake problems for the 1988 model year Medallion from Mr. and Mrs. Tim Barnes. That petition was denied on September 17, 1991, based primarily on insufficient numbers of reports of brake failure and insufficient data to indicate the existence of a safety-defect trend. The additional

information submitted by Mrs. Gibbons is not sufficient to cause NHTSA to reach a different decision on her petition.

The remaining problems with 1988 and 1989 model year Medallions cited by the petitioner principally concern customer satisfaction issues. These include excess tire wear, leaking and noisy struts, premature muffler failure, poor engine performance (as evidenced by sputtering, stalling, poor hot idling, rough idling, and hot running), excess speedometer needle fluctuation, acceleration beyond speed set on cruise control, difficulty in moving gear shift lever when vehicle is parked on an incline, heater and air conditioner malfunctions, inoperative interior lights and clock, creaking body structure, and sticking door latches. None of these problems constitute safety-related defects. The only remaining safety issue raised in the petition concerned rear seat belts that at one time were allegedly difficult to unfasten. The petition states that this problem was alleviated by applying a lubricant to the belt buckle.

In consideration of the foregoing, NHTSA has concluded that there is not a reasonable possibility that an order for the notification and remedy of a safety-related defect would be issued at the conclusion of an investigation concerning the problems that the petition has alleged. Under these circumstances, further commitment of agency resources does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 23, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-23765 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods by Air; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise persons that RSPA will conduct a public meeting to exchange views on proposals submitted to the Working Group meeting of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) to be held in Edinburgh, Scotland and October 12-16, 1992.

DATES: October 8, 1992 at 2:30 p.m.

ADDRESSES: Department of Transportation, Nassif Building, room 4432, 400 Seventh Street SW., Washington, DC 20590-0001.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, (202) 366-0656, International Standards Coordinator for Hazardous Materials Safety, RSPA, Department of Transportation Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: This meeting will be held in preparation for the ICAO Dangerous Goods Panel Working Group meeting. The primary purpose of the Working Group meeting will be to discuss proposed amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (the Technical Instructions for the Safe Transport of Dangerous Goods by Air (the Technical Instructions). The Working Group will consider possible amendments to resolve problems encountered with the use of the Technical Instructions, and future amendments to the Technical Instructions on the basis of revisions to the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). The public is invited to attend without prior notification.

Documents

Documents submitted to the working group of the ICAO DGP may be reviewed between the hours of 8:30 a.m. and 5 p.m. in RSPA's Dockets Unit located in room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Copies of documents may be obtained from RSPA for a nominal fee. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an online request form on the HMIX or by contacting RSPA's Dockets Unit (202-366-4453). For more information on the use of the HMIX system, contact the HMIX information center; 1-800-PLANFOR 782-6367); in Illinois 1-800-367-9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council (HMAC), suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; telephone number (202) 728-1460.

Issued in Washington, DC, on September 22, 1992.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 92-23829 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 25, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0091
Form Number: None
Type of Review: Extension
Title: Importers of Merchandise Subject to Actual Use Provision
Description: This part of the regulation provides that certain items may be admitted duty-free such as farming implements, seed, potatoes, etc. providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.
Respondents: Individuals or households, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 12,000
Estimated Burden Hours Per Respondent/ Recordkeeper: 1 hour, 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 13,000 hours
Clearance Officer: Ralph Meyer (202) 927-1552, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 92-23763 Filed 9-30-92; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 25, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550-0041
Form Number: None
Type of Review: Extension
Title: Procedures Monitoring Bank Secrecy Act Compliance
Description: Necessary to enable OTS to determine whether a savings association has implemented a program reasonably designed to assure and monitor compliance with the currency recordkeeping and reporting requirements established by Federal statute and U.S. Department of Treasury regulation
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,100
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: Other (one time only)
Estimated Total Reporting Burden: 4,200 hours
Clearance Officer: Colleen Devine (202) 906-6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW. Washington, DC 20552
OMB reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 92-23764 Filed 9-30-92; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Department of Veterans Affairs' Geriatrics and Gerontology Advisory Committee has been renewed for a 2-year period beginning August 7, 1992, through August 7, 1994.

By direction of the Secretary:

Dated: September 22, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-23771 Filed 9-30-92; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Amendment of System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice; publication of notice of proposed new routine uses.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is considering amending the system of records entitled "Patient Medical Records—VA" (24VA136) which is set forth on page 889 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II, and amended at 55 FR 5112, February 13, 1990; 55 FR 37604, September 12, 1990; 55 FR 42534, October 19, 1990; 56 FR 1054, January 10, 1991; and 57 FR 28003, June 23, 1992.

DATES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine uses to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received before November 2, 1992, will be considered. All written comments received will be available for public inspection only in room 170 of the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 10, 1992. If no comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the routine uses in the system are effective November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Celia Winter, Program Specialist, Medical Administration Service (161B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 535-7658.

SUPPLEMENTARY INFORMATION: Public Law 99-272, The Veterans' Healthcare Amendments of 1986, established an income-based means test for determining eligibility for hospital, nursing home, and outpatient medical care in VA facilities for nonservice-connected veterans. Veterans with incomes in excess of the means test income levels may obtain care in VA facilities if resources and facilities are available and if they agree to pay a copayment to VA. Veterans with incomes in excess of the means test income levels who do not agree to pay copayments to the VA are not eligible for VA medical care and may be treated only on the basis of a humanitarian emergency.

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, authorized VA to use IRS (Internal Revenue Service) and SSA (Social Security Administration) income tax return information to verify incomes for certain nonservice-connected veterans who have applied for VA medical care. Proposed routine use number 39 will permit the disclosure of the individual identifiers for these nonservice-connected veterans to IRS and SSA. Income data will be provided to VA which will be compared with the incomes reported by the veterans and used to verify or determine their eligibility for medical care.

Proposed routine use number 40 will allow VA to release identifying information to SSA including social security numbers of individuals who are receiving benefits under Title 38, United States Code. The information may be released only upon an official written agreement between VA and SSA. The agreement will follow requirements of the Privacy Act of 1974.

This release of information will permit the validation of social security numbers maintained in VA records and facilitate determination and verification of eligibility for medical care.

Proposed routine use number 41 is added at this time to incorporate the VA policy of releasing the patient name and relevant treatment information to the Food and Drug Administration, Department of Health and Human Services, for purposes of reporting adverse drug reactions (ADR's) for quality of care monitoring functions.

Approved: September 22, 1992.
Edward J. Derwinski,
Secretary of Veterans Affairs.

Notice of System of Records

In the system identified as 24VA136, "Patient Medical Records—VA" appearing on page 889 of the Federal Register publication, "Privacy Act Issuances, 1989 Compilation, Volume II" and amended at 55 FR 5112, February 13, 1990; 55 FR 37604, September 12, 1990; 55 FR 41534, October 19, 1990; 56 FR 1054, January 10, 1991; and 57 FR 28003, June 23, 1992, the following routine uses are added:

24VA136

SYSTEM NAME:

Patient Medical Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

39. Identifying information, including social security number, concerning veterans and the dependents of veterans, may be disclosed to other Federal agencies for purposes of conducting computer matches to obtain information to determine or verify eligibility of certain veterans who are receiving VA medical care under Title 38, United States Code.

40. The name and social security number of a veteran, spouse and dependent, and other identifying information as is reasonably necessary may be disclosed to the Social Security Administration, Department of Health and Human Services, for the purpose of conducting a computer match to obtain information to validate the social security numbers maintained in VA records.

41. The patient name and relevant medical record treatment information concerning an adverse drug reaction of a patient may be disclosed to the Food and Drug Administration, Department of Health and Human Services for purposes of quality of care management including detection, treatment, monitoring, reporting, analysis and follow-up actions relating to adverse drug reactions

[FR Doc. 92-23772 Filed 9-30-92; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 4:00–5:00 p.m.

PLACE: Department of State.

DATE: Tuesday, October 6, 1992.

STATUS: Open.

Agenda

1. Selection of next Board meeting date.
2. Delegation of Authority.

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

Gregory Robeson Smith,
President.
[FR Doc. 92–23976 Filed 9–29–92; 2:47 pm]
BILLING CODE 6116–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on September 18, 1992, from 11:55 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was open to the public (limited space available). The matter considered at the meeting was:

Open Session

A. New Business

1. Request from National Bank for Cooperatives to Temporarily Exceed its Lending Limit to One Borrower.

Dated: September 28, 1992.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.
[FR Doc. 92–23913 Filed 9–28–92; 4:50 pm]
BILLING CODE 6705–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 1, 1992, from 10:00 a.m. until such time as the Board concludes its businesses.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

Approval of Minutes

A. New Business

1. Regulations

a. Conservatorship and Receivership (Final);
b. Release of Information (Proposed);

2. Other

a. Proposed Reporting Mechanisms for OSMO;

Closed Session*

A. New Business

1. Enforcement Actions.

Dated: September 28, 1992.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.
[FR Doc. 92–23914 Filed 9–28–92; 4:50 pm]
BILLING CODE 6705–01–M

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Corrections

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 208, 210, 214, 215, 216, 219, 223, 225, 226, 227, 228, 231, 232, 236, 237, 239, 242, 245, 252, 253

[Defense Acquisition Circular (DAC) 91-3]

Acquisition Regulations; Miscellaneous Amendments; Interim Rules

Correction

In rule document 92-21665 beginning on page 42626 in the issue of September 15, 1992, in the first column, under **DATES** in the eighth line, "30 days from publication" should read "October 15, 1992."

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 30

[FAC 90-12; FAR Case 92-18]

Federal Acquisition Regulation; Cost Accounting Standards

Correction

In correction document 92-20667 appearing on page 43495 in the issue of Monday, August 31, 1992, in the second column, "30.602-1" should read "30.602-2" and in amendatory instruction 9., in the second line, "30.602-1" should read "30.602-2".

BILLING CODE 1505-01-D 1

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 27]

RIN 2127-AD45

Child Restraint Systems

Correction

In rule document 92-21717 beginning on page 41423 in the issue of Thursday, September 10, 1992, make the following corrections:

§ 571.213 [Corrected]

1. On page 41427, in the third column, in the paragraph beginning with "S5.1.3", in the fourth line, "application" should read "applicable".

2. On page 41428, in the first column, in the fourth full paragraph, "S.1.1.5" should read "S6.1.1.5".

BILLING CODE 1505-01-D

federal register

Thursday
October 1, 1992

Part II

Department of Transportation

Research and Special Programs Administration

Federal Preemption of State, Local, and Indian Tribe Requirements Under the Hazardous Materials Transportation Act; Notice

DEPARTMENT OF TRANSPORTATION

[Notice No. 92-10]

Federal Preemption of State, Local, and Indian Tribe Requirements Under the Hazardous Materials Transportation Act

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: This Notice publishes a subject-matter index and table summarizing RSPA inconsistency rulings, non-preemption determinations, and a waiver of preemption determination, and all court decisions which discuss preemption issues under the Hazardous Materials Transportation Act (HMTA) (Pub. L. 93-633), 88 Stat. 2156 (1975), as amended by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) (Pub. L. 101-615, 104 Stat. 3244 (1990)), and the Hazardous Materials Regulations (HMR) (49 CFR parts 171-180) issued thereunder. With its passage in 1990, HMTUSA significantly amended HMTA, particularly in the area of Federal preemption of State, local government, and Indian tribe requirements. The publication of this information is intended to facilitate better public understanding and awareness of the judicial and administrative precedents concerning preemption under HMTA. It may be particularly useful to State, local, or tribal officials considering the regulation or restriction of hazardous materials transportation.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001 [Tel. (202) 366-4400].

SUPPLEMENTARY INFORMATION: The HMTA generally preempts "* * * any requirement of a State or political subdivision thereof or Indian tribe" when compliance with both the local regulation and HMR "is not possible", when the local regulation "creates an obstacle to the accomplishment and execution" of the HMTA or the HMR, or when the local regulation concerns one or more of five "covered subjects" and the local regulation is not "substantively the same" and HMTA or HMR. 49 app. U.S.C. 1804(a), 1811(a). The "dual compliance" (or "impossibility") test and the "obstacle" test were the regulatory criteria used by RSPA and the courts even prior to 1990; HMTUSA's passage gave them statutory status.

These express preemption provisions make it evident that Congress did not intend that the HMTA and the HMR completely occupy the field of transportation so as to preclude all State, local, or Indian tribe action. However, Congress did give the Department of Transportation (DOT) the authority to promulgate uniform national standards, and Congress intended, to the extent possible, to make State, local, and Indian tribe action unnecessary. HMR's comprehensiveness severely restricts the scope of historically permissible state, local, and Indian tribe activity.

Section 1804(a)(4) preempts any provision, not otherwise authorized by Federal law, concerning a "covered subject" which is not "substantively the same" as any HMTA or HMR provision. "Covered subjects" are the: (1) Designation, description, and classification of hazardous materials; (2) packing, repacking, handling, labeling, marking, and placarding of hazardous materials; (3) preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents; (4) written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and (5) design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In these five covered subject areas, national uniformity is critical. In those areas, DOT has determined what requirements are necessary for the safe transportation of hazardous materials. Any additional requirements in excess of the Federal requirements would not be "substantively the same" and would be preempted. Therefore, "substantively the same" is defined in the HMR to mean that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted. 49 CFR 107.202, 57 FR 20428 (May 13, 1992).

Section 1804(b)(4) provides that, beginning two years after the issuance of Federal highway routing standards, State and Indian tribe highway routing designations, limitations, and requirements relating to hazardous materials will be preempted unless they meet Federal procedural and substantive requirements. The Federal Highway Administration will issue regulations and preemption determinations on highway routing of hazardous materials. 49 CFR 1.48(ii), 56 FR 31343 (July 10, 1991).

In addition, section 1819 states that, after DOT enacts regulations with regard to motor carrier registration forms for states that register persons who transport hazardous materials by motor vehicle, "no State shall establish, maintain, or enforce any requirement which relates to the subject matter of such regulation unless such requirement is the same as such regulation."

The HMTA also provides that the Secretary of Transportation (Secretary) may waive preemption of a State, local, or Indian tribe regulation, in response to an application that "acknowledges" preemption, upon a determination that the State, local, or Indian tribe requirement: "(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of [the HMTA] or the regulations issued under [the HMTA], and (2) does not unreasonably burden commerce." 49 app. U.S.C. 1811(d).

The Secretary delegated to RSPA the authority to decide applications for a determination of preemption and for a waiver of preemption, except for those concerning highway routing, which were delegated to the Federal Highway Administration. 49 CFR 1.53(b); 56 FR 31343 (July 10, 1991). RSPA's procedures for deciding applications for preemption determinations and waiver of preemption determinations are set forth at 49 CFR 107.201-107.227 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)).

Any person "aggrieved" by RSPA's decision on an application for a preemption determination or waiver may file a petition for reconsideration. 49 CFR 107.223(a). A party to a waiver of preemption proceeding may also seek judicial review of the Secretary's decision "by the appropriate district court of the United States." 49 app. U.S.C. 1811(e).

Prior to HMTUSA, Congress had utilized a more general preemption standard ("inconsistent"). Only the question of statutory preemption under the HMTA was considered in DOT's inconsistency rulings. A court might have found a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under State law, or preemption by the Commerce Clause and the Supremacy Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, RSPA did not make such

determinations in an inconsistency ruling proceeding. It had incorporated into its procedures the dual compliance/impossibility and obstacle tests for determining whether a State or local requirement was consistent with, and thus not preempted by, HMTA. These tests were based upon and supported by U.S. Supreme Court decisions on preemption, including *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); and *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

All of RSPA's inconsistency rulings, its non-preemption determination, and its waiver of preemption determination (including all relevant **Federal Register** citations) are summarized in a detailed table accompanying this Notice; those rulings and determinations also are summarized in the index accompanying this Notice. In contrast to DOT's advisory inconsistency rulings, its preemption determinations and waiver of preemption determinations are legally binding on parties and affected governments unless reversed on judicial review. Court decisions on HMTA preemption issues are legally binding upon parties to those cases and may constitute binding precedents within the geographical area of each court's jurisdiction. Relevant opinions, published and unpublished, are summarized in the index accompanying this Notice.

Issued in Washington, DC on September 23, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Index to Preemption of State and Local Laws and Regulations Under the Hazardous Materials Transportation Act (HMTA)

(49 App. U.S.C. 1801–1819)

The following is an alphabetized subject matter index of issues arising under the preemption provisions of the HMTA. This index summarizes the implementation of the HMTA's preemption provisions by DOT and the courts.

Abbreviations Used in this Document

CFR—Code of Federal Regulations
DOT—U.S. Department of Transportation
FR—**Federal Register**
HM-XXX—Hazardous Materials Regulations Docket of RSPA (e.g., HM-181)
HMR—Hazardous Materials Regulations (49 CFR parts 171–180) issued by DOT under HMTA
HMTA—Hazardous Materials Transportation Act, 49 app. U.S.C. 1801–1819.
HMTUSA—Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101–615
HRCQ—Highway route controlled quantities (of RAM)
IR-XX—Inconsistency Ruling issued by DOT (e.g., IR–18)
IR-XX(A)—Decision on Appeal re Inconsistency Ruling IR–XX (e.g., IR–18(A))
IRA-XX—Inconsistency Ruling Application filed with DOT (e.g., IRA–44)
LNG—Liquified natural gas
LPG—Liquefied petroleum gas
"Nine-pack"—Group of nine inconsistency rulings (*IR–7 through *IR–15) issued by RSPA on 11/27/84 (49 FR 46632 *et seq.*)
NRC—Nuclear Regulatory Commission
OHMS—Office of Hazardous Materials Safety, RSPA
RAM—Radioactive materials
RSPA—Research and Special Programs Administration, DOT

An asterisk (*) denotes a case, IR or other provision involving only RAM.

A cross-hatch (#) denotes a case, IR or other provision involving both RAM and other hazardous materials.

Accident/Incident Reporting Requirements (Also see "covered subjects" discussion on pp. 1–2.)

• Requirements for immediate, oral accident/incident reports for emergency response purposes generally are consistent. IR–2; IR–3; #IR–28; #IR–31; #IR–32; *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983).

• Incident reporting requirements concerning irradiated reactor fuel incidents are inconsistent because of redundancy and possible conflict with NRC rules incorporated into HMR. *IR–8, #IR–28; IR–32. However, such requirements may be consistent where they are clear and not in conflict with the NRC rule (incorporated into the HMR) requiring shippers to arrange with local law enforcement agencies for emergency response. #IR–31.

• Requirements for written accident/incident reports are redundant with Federal requirements, tend to undercut compliance with them, and thus are inconsistent. IR–2; IR–3; IR–3(A); #IR–31. See "covered subjects" discussion on pp. 1–2.

Advance Notice—See "Notice Requirements" and "Delays of Transportation."

Approval Requirements (Also see "Permit Requirements.")

• Transportation approval requirements identical to Federal are consistent. *IR–14; *IR–15.

• Transportation approval requirements different from Federal are inconsistent. *IR–8; *IR–8(A); *IR–10; *IR–11; *IR–12; *IR–13; *IR–15; *IR–15(A); #IR–19; #IR–19(A).

• Transportation approval requirements may not include inconsistent provisions: "A requirement for compliance with an inconsistent provision is itself inconsistent." *IR–8(A), 52 FR 13000, 13006.

• Unfettered discretion to approve or disapprove transportation is inconsistent. *IR–8(A); *IR–15(A); *IR–18; #IR–20.

• "In light of the virtually total occupation of the field of radioactive materials transportation by the HMTA and the HMR, State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations) constitute unauthorized prior restraints on shipments that are presumptively safe based on their compliance with Federal regulations and are inconsistent with the HMTA and the HMR." *IR–15(A), 52 FR 13062, 13063; quoted and followed, #IR–19.

Approvals—See "Exemptions and Approvals."

Bans on Hazardous Materials Transportation—See "Prohibitions of Hazardous Materials Transportation."

Bonding Requirements—See "Insurance or Indemnification Requirements."

Certification Requirements—See "Information/Documentation Requirements", "Packaging Design and Construction Requirements" and "Shipping Paper Requirements."

Civil Penalties—See "Penalties."

Classification of Hazardous Materials—See "covered subjects" discussion on pp. 1–2.

Communication Requirements

• Requirement that motor vehicles carrying LPG or natural gas use two-way radio communications is consistent. IR–2.

• RAM communications requirements which are different from, or authorized to be different from, Federal requirements are inconsistent. *IR–8; *IR–8(A).

• City requirements that vehicles carrying hazardous waste have and monitor CB radio is consistent except as to radioactive materials. #IR–32.

Confidentiality Requirement

• Requirements to keep RAM shipment information confidential which are same as Federal are consistent. *IR–8; *IR–15.

Container Design and Certification Requirements—See "covered subjects" discussion on pp. 1–2 and "Packaging Design and Construction Requirements."

Curfew—See "Time Restrictions."

Definitions—See "Hazard Class and Hazardous Materials Definitions."

Delays of Transportation (Also see "Routing Requirements" and "Time Restrictions.")

• State and local requirements likely to cause unreasonable transportation delays are inconsistent. IR–2; IR–3; IR–3(A); IR–6; IR–16; #IR–19; #IR–19(A); #IR–20; *IR–21; *IR–21(A); IR–22; #IR–28; *IR–30.

• "The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation." IR–2, 44 FR 75566, 75571.

• "The mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possibly permanent, change in traffic patterns." IR–3, 46 FR 18919, 18921, #IR–20; *IR–21(A).

• Local highway routing requirements for hazardous materials through-traffic not based on complete safety analysis and consultations with all affected jurisdictions are inconsistent with § 177.853(a) of the HMR. IR–3; IR–3(A); IR–23.

• "Since safety risks are 'inherent in the transportation of hazardous materials in commerce' [49 U.S.C. 1801], an important aspect of transportation safety is that transit time be minimized. This precept has been incorporated in the HMR at 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR 174.14, which directs rail shipments to be expedited within a stated time frame." IR–6, 49 FR 760, 765; see also *IR–16, 50 FR 20872, 20879; quoted, #IR–19, 52 FR 24404, 24409.

• Acute delays at State border inevitably resulting from State imposing documentary prerequisites upon non-domiciliaries for transport of hazardous materials render those requirements inconsistent with 49 CFR 177.853. #IR–26.

• State fees for hazardous materials transport not causing unnecessary transportation delays are consistent. *IR–17; *IR–17(A); *IR–27; # *New Hampshire Motor Transport Ass'n* v. *Flynn*, 751 F.2d 43 (1st Cir. 1984); **Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• Time-consuming state permitting process with no definite decision date creates possibility of transportation delay and thus is inconsistent. #IR–19, #IR–19(A); *IR–21; *IR–21(A).

• Two-hour advance approval requirement not shown to serve any purpose causes delay and is inconsistent. #IR–20; *IR–21; *IR–21(A).

• City 20-car limitation on unloaded and loaded butane railcars at a site will cause delays and temporary storage elsewhere and thus is inconsistent. *Consolidated Rail Corp.* v. *City of Bayonne*, 724 F. Supp. 320 (D.N.J. 1989). "The obvious conclusion is that the more frequently hazardous material is handled during transportation, the greater the risk of mishap. Accordingly, these [HMR] provisions require that the material reach its destination as quickly as possible, with the least amount of handling and temporary storage." *Ibid.* at 330.

• Additional switching, handling and delays of hazardous materials caused by state requirement for caboose on certain trains carrying hazardous materials create obstacle, and requirement is inconsistent. *Missouri Pacific R.R. Co.* v. *Railroad Commission of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds*, 850 F.2d 264 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 794 (1989).

• State statute providing three days for a permit issuance decision re each RAM shipment is inconsistent. *IR–21; *IR–21(A). Local ordinance requiring 45 days' prenotification of RAM shipments is inconsistent. *IR–30. Prohibition on permit applications more than one day prior to scheduled shipment also is inconsistent. *IR–21; *IR–21(A).

• RAM requirements unnecessarily delaying transportation are inconsistent. *IR–8(A), *IR–18; *IR–18(A); *IR–21; *IR–21(A); #IR–26, *IR–30.

• City tank truck regulations causing delays for cargo transfers, vehicle permit inspections and obtaining specifications, certifications and affidavits, are inconsistent. IR–22.

• City truck regulations, requiring bulk gases to be transported around City unless no practical alternative route exists and the fire commission authorizes trip, promote safety, do not cause "unnecessary delay" under 49 CFR 177.853(a), and thus are consistent. *City of New York* v. *Ritter Transp., Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981), *aff'd, National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982).

• "While states do have a role in effectuating the safe transportation of radioactive materials, it does not follow that they have unfettered discretion to take actions which have the effect of restricting or delaying transportation being conducted in compliance with Federal law." *IR–8(A), 52 FR 13000 at 13003; quoted in #IR–19, 52 FR 24404, 24409.

Designation/Description of Hazardous Materials—See "covered subjects" discussion on pp. 1–2.

Documentation—See "Information/Documentation Requirements."

Drivers' Licenses—See "Information/Documentation Requirements" and "Training Requirements."

Effect of Requirements (Also see "Language of Requirements.")

• "* * * it is the effect, both actual and potential, not the intent of state or local rules which determines their consistency with the HMTA and the HMR." IR–8(A), 52 FR 13000, 13003.

Emergency Response

• "Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and state planning and preparation, when an accident does occur, response is, of necessity, a local responsibility." IR–2, 44 FR 75565, 75568.

• Inadequacy of emergency response capabilities cannot provide basis for prohibiting transportation. *IR–18; *IR–18(A). Thus, non-Federal emergency response-related information requirements, such as a cleanup plan or vehicle equipment failure plan, cannot be used as a prerequisite to hazardous materials transportation. #IR–19; *IR–27; #IR–28. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• "* * * RSPA's emergency response information requirements for hazardous materials transportation, including the loading, unloading, or storage incidental to such transportation exclusively occupy that field. Therefore, state and local requirements not identical to these HMR provisions will cause confusion concerning the nature of such requirements, undermine compliance with the HMR requirements, constitute obstacles to the implementation of these provisions, and thus be inconsistent and preempted." #IR–28.

Emergency Requirements (Also see "Loading and Unloading")

Enforcement and Violations Provisions (Also see "Penalties.")

• Enforcement and violations provisions (such as criminal or civil sanctions, private attorney general

lawsuits, injunctions, cease-and-desist orders, cut-off of city services, etc.) are consistent with HMTA and HMR if used to enforce consistent provisions. *IR–3; #IR–31.

• Enforcement and violations provisions (such as criminal or civil sanctions, private attorney general lawsuits, injunctions, cease-and-desist orders, cut-off of city services, etc.) are inconsistent with HMTA and HMR if used to enforce inconsistent provisions. *IR–18; *IR–18(A); *IR–30; #IR–31.

Equipment Requirements (Also see "covered subjects" discussion on pp. 1–2 and "Packaging Design and Construction Requirements.")

• Cargo containment-related equipment requirements, including those vesting discretionary approval authority in state or local officials, are inconsistent. IR–2; *IR–8; *IR–8(A); *IR–15; IR–22; *Nat'l Paint & Coatings Ass'n. et al.* v. *City of New York,* Index No. CV 84–4525 (ERK) (E.D. N.Y. Oct. 18, 1991).

• "In summary, RSPA, OHMT and their predecessor agencies have established in a series of inconsistency rulings issued during the past decade the principle that the HMR provisions concerning hazardous materials transportation cargo containment systems, equipment, accessories and packagings, and the certification, marking, testing and permitting of same, have fully occupied that regulatory field. Those subjects are the exclusive province of the Federal Government. As a result, state or local requirements concerning those subjects detract from and create confusion concerning the Federal requirements, are inconsistent with the HMTA and the HMR, and, therefore, are preempted under section 112(a) of the HMTA. Similarly, these rulings have demonstrated RSPA's position that permitting systems and information or documentation requirements relating to or containing such requirements likewise are inconsistent with the HMTA and the HMR and, therefore, preempted." IR–22, 52 FR 46574, 46582.

• "Headlights on" requirement is consistent. IR–2; IR–3; #IR–32 (with reasonable notice); *National Tank Truck Carriers, Inc.* v. *Burke,* 535 F. Supp. 509 (D.R.I. 1982), *aff'd,* 698 F.2d 559 (1st Cir. 1983); * *Colorado Pub. Utilities Comm'n* v. *Harmon,* No. 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds,* 951 F.2d 1571 (10th Cir. 1991).

• RAM transportation requirement for mobile telephone equipped with multiple channels is consistent. **Colorado Pub. Utilities Comm'n* v. *Harmon,* No. 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds,* 951 F.2d 1571 (10th Cir. 1991).

• State requirement for caboose on certain trains carrying hazardous materials would cause additional switching, handling and delays of hazardous materials and thus is inconsistent. *Missouri Pacific RR Co.* v. *Railroad Commission of Texas, supra.*

• Requirement for illuminated rear bumper signs conflicts with DOT lighting regulations and would divert attention from DOT placards and thus is inconsistent. IR–2.

• Requirement for frangible shank-type lock on tank trailers carrying LNG or LPG is inconsistent since DOT comprehensively regulates cargo tank containment. IR–2.

• City 20-car limitation on unloaded or loaded butane railcars at a site is inconsistent. *Consolidated Rail Corp.* v. *City of Bayonne,* 724 F. Supp. 320 (D. N.J. 1989).

• "* * * a state or local rule which grants an official discretionary authority to set equipment requirements for carriers engaged in interstate commerce impedes the Congressional purposes of increased safety and regulatory uniformity underlying the HMTA." IR–8(A), 52 FR 13000, 13003.

• Vehicle equipment requirements which might conflict with those provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR parts 390–397, which are incorporated in the HMR only by 49 CFR 177.804, must only meet the "dual compliance" test, not the "obstacle" test. IR–3; 43 FR 4858 (Feb. 6, 1978); *National Paint & Coatings Ass'n, Inc.* v. *City of New York,* No. CV–4525 (ERK) (E.D. N.Y. 1985); 52 FR 18668–9 (May 18, 1987); IR–22. However, those FMCSR requirements specifically incorporated into the HMR by other HMR regulations must meet both tests. IR–22.

• Waiver of preemption denied with regard to tank truck design and capacity requirements for flammable and combustible liquids and gases, because they do not provide an equal level or greater level of protection to the public as the Federal requirements, and they unreasonably burden commerce. In this specific case, there is no evidence that local design requirements and capacity limits increase the level of safety by a sufficient amount to offset an expected reduction in deaths, injuries, and property damage, when larger-capacity trucks allow fewer trips. WPD–1.

Escort Requirements

• RAM transportation front and rear escort requirements identical to DOT/NRC standards are consistent, *IR–14, as are notice requirements facilitating escorts under the DOT/NRC requirements. *IR–17.

• Requirements for additional or special escorts re RAM transportation not required by DOT/NRC regulations are inconsistent, *IR–11; *IR–13; *IR–15(A); *IR–18; *IR–18(A); *IR–21.

• Requirements for carriers to delay for escorts re RAM transportation other than those in NRC standards are inconsistent. *IR–15.

• Escort requirements linked to inconsistent equipment requirements are inconsistent. IR–22; IR–23.

• Temporary restraining order and later a permanent injunction were imposed against State escort requirement for chlorine and oleum shipments, because of the high degree of likelihood that such a requirement would not be upheld upon court review. *Chlorine Institute* v. *California Highway Patrol et al.,* No. CIV–S–92 396 DFL/JFM (E.D. Ca. 1992).

Exemptions and Approvals

• "A state must implicitly or explicitly recognize the validity of OHMT's exemptions and approvals; a state may not establish its own exemptions and approvals program." #IR–31, 55 FR 25572, 25581.

Federal Motor Carrier Safety Regulations (FMCSR)

• 49 CFR parts 390–397 (FMCSR) were not made relevant to HMTA preemption by adoption of 49 CFR 177.804. They are relevant only insofar as specifically incorporated by reference in other HMR provisions. IR–22; IR–23; #IR–32.

Federal Requirements (Also see "Standing.")

• Only conflicts with Federal requirements under the HMTA and the HMR are cognizable in inconsistency proceedings (not Commerce Clause issues or preemption issues under other Federal statutes or regulations), but OHMT may address these HMTA/HMR conflict issues even if not clearly raised in the application. IR–17(A).

• Absence of a Federal regulation addressing the same subject as a challenged state or local requirement is not determinative of the issue of that requirement's consistency. *IR–17(A).

• Requiring compliance with Federal requirements is consistent. IR–3; *IR–7.

• State or local requirements identical to Federal ones are consistent. *IR–8.

• Adequacy of Federal requirements is irrelevant. *IR–8(A).

Fee Requirements

• Fees on hazardous materials transportation must be equitable and used for purposes related to hazardous materials transportation, including enforcement and planning, development

and maintenance of emergency response capability. 49 app. U.S.C. 1811(b).

• Reasonable fees to fund consistent activities are consistent. *IR–17; *IR–17(A); *IR–27; #*New Hampshire Motor Transport Ass'n* v. *Flynn*, 751 F.2d 43 (1st Cir. 1984).

**Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• Fees which are unreasonably high or are related to inconsistent activities are inconsistent. *IR–11; *IR–13; *IR–15; *IR–18(A); #IR–19; *IR–27; *IR–30; #*New Hampshire Motor Transport Ass'n* v. *Flynn, supra.*

• State's $1,000 per cask fee for spent nuclear fuel transportation to fund inspection, enforcement, State escorts and emergency response, not related to inconsistent provisions, and not causing transportation delays or diversions is consistent. *IR–17; *IR–17(A). Similar State RAM shipment fees are consistent. *IR–27.

• State's $25/year or $15/trip fee for hazardous materials transportation to fund transportation and environmental programs and related to a minimal delay licensing system is consistent. #*New Hampshire Motor Transport Ass'n* v. *Flynn, supra.*

• State's $1,000 per shipment fee for spent nuclear fuel transportation apparently to fund inconsistent state monitoring activities is inconsistent. *IR–15. State's RAM permit fee is inconsistent. *IR–27.

• State's $500 annual permit fee and $200 shipment fee for RAM transportation are consistent. **Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• State preliminarily enjoined from depositing the proceeds of a $25 per truck annual hazardous materials transportation license fee and a related $15 single trip fee into the State treasury, and ordered to place these monies in an escrow account pending final disposition of court case challenging validity of the fees under the Commerce clause, because plaintiffs established the likelihood of their success on the merits. *American Trucking Associations et al.* v. *New Hampshire*, No. 89–E–00405–B (Sup. Ct. NH 1989).

• State's hazardous materials license fee of $25 per vehicle or $15 per trip per vehicle found to be a "flat tax", failed Commerce clause "internal consistency" test as required by *Armco* v. *Hardesty* (467 U.S. 644 (1994)), and therefore was an undue burden on interstate commerce. *American Trucking Assn's* v. *Diamond, et al.*, No. CV–90–195 (Sup. Ct. Maine 1990).

• The imposition and use of an "equitable fee" as part of a City's permit and inspection system for purposes related to the transportation of hazardous materials is not preempted. WPD–1.

Findings

• Findings regarding hazardous materials transportation are not "requirements" subject to preemption under the HMTA. *IR–18.

Forms—See "Motor Carrier Registration and Permitting Forms."

Handling of Hazardous Materials—See "covered subjects" discussion on pp. 1–2.

Hazard Class and Hazardous Materials Definitions (Also see "covered subjects" discussion on pp. 1–2.)

• State and local hazard class and hazardous materials definitions differing from those in the HMR and used to regulate hazardous materials transportation are inconsistent because the Federal role is exclusive. *IR–18; *IR–18(A); #IR–19; #IR–19(A); #IR–20; *IR–21; #IR–26; #IR–28; IR–29; *IR–30; #IR–31; #IR–32; *Missouri Pacific R.R. Co.* v. *Railroad Commission of Texas, supra.*

• State and local hazardous materials definitions and classifications which result in regulating the transportation, including loading, unloading or storage incidental thereto, of more, fewer or different hazardous materials than the HMR are obstacles to uniformity in transportation regulation and thus are inconsistent. IR–5; IR–6; #IR–28; IR–29; #IR–31; #IR–32.

• Application of state requirements to selected DOT hazardous materials can contribute to the overall inconsistency of a series of interrelated regulations. #IR–19.

• "The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations." IR–6, 48 FR 760, 764.

• "State government or political subdivisions may not regulate—let along prohibit—the transportation or radioactive or other hazardous materials specifically excepted from regulation under the HMTA or the HMR. The determination of what hazardous materials may or may not be regulated in the transportation field is the essence of DOT's exclusive authority to define and classify hazardous materials." #IR–20, 52 FR 24396, 24401.

• "Radioactive Material" definitions different from HMR definitions are inconsistent. *IR–8; *IR–12, *IR–15; *IR–16; *IR–18; *IR–21; *IR–30; **Northern States Power Co.* v. *Prairie Island Mdewakanton Sioux Indian Community*, Civ. 3–9–783 (D. Minn., Dec. 23, 1991) (enjoining enforcement of ordinance), *appeal docketed* (8th Cir. 1992). But essentially identical definitions are consistent. *IR–18.

• "If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety." *IR–12, 49 FR 46650, 46651.

• City definitions of RAM and flammable materials differed from HMTA definitions and thus were preempted and their use enjoined. *Union Pac. R.R. Co.* v. *City of Las Vegas*, No. LV–85–932 HDM (D. Nev. 1986).

• City definition of "hazardous waste" consisting of ambiguous and subjective standards and including non-HMR materials is inconsistent. #IR–32.

• *Hazard Warning Requirements*—See "Placarding and Other Hazard Warning Requirements."

• *Hazardous Substances and Wastes* (Also see "covered subjects" discussion on pp. 1–2.)

• Dicta in footnotes indicate that State's hazardous substances transportation regulations appeared to be valid under the HMTA because they regulated only transportation from points in Maryland [but decision overlooked RSPA's 1980 amendment of 49 CFR 171.1 applying HMR to intrastate transportation of hazardous substances and wastes]. *Browning-Ferris, Inc.* v. *Anne Arundel County, Maryland*, 292 Md. 136, 438 A.2d 269, 274 (1981).

• City requirement that driver transporting hazardous waste carry a hazardous waste manifest is same as HMR and is consistent. #IR–32.

• City definition of hazardous waste consisting of ambiguous and subjective standards and including non-HMR materials is inconsistent. #IR–32.

• City definition of hazardous gases different from that in HMR does not afford as much protection to the public and unreasonably burdens commerce, and therefore waiver of preemption is denied. WPD–1.

• *Incident Reporting*—See "Accident/Incident Reporting Requirements."

Inconsistency Rulings

• Local government need not obtain an RSPA inconsistency ruling before enforcing a local requirement. *National Tank Truck Carriers, Inc.* v. *Burke*, 608 F.2d 819, 821–2 (1st Cir. 1979); *City of New York* v. *Ritter Transportation, Inc.*, 515 F. Supp. 663, 668 (S.D. N.Y. 1981), *aff'd sub nom. National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982); *Seaboard System R.R., Inc.* v. *Bankester, et al.*, 254 Ga. 455, 330 S.E. 2d 700, 705 (1985). *Contra* (based on doctrine of primary jurisdiction): *Consolidated Rail Corp.* v. *City of Dover*, 450 F. Supp. 966, 974 (D. Del. 1978).

• "Because the DOT authored the HMR, its determination of what constitutes an obstacle to the accomplishment or execution of those regulations is deserving of substantial deference." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352, 359 (9th Cir. 1990).

• DOT improperly issued an FR policy statement which had the effect of determining that Ohio's radioactive materials prenotification requirement was inconsistent with the HMTA—without affording Ohio the protections of the IR regulations. **State of Ohio* v. *U.S. Dept. of Transportation*, No. C81–1394 (N.D. Ohio Oct. 5, 1989).

Incorporation by Reference

• NRC regulations incorporated by reference in HMR provide basis for consistency comparison with state and local requirements. *IR–8(A).

• DOT encourages State adoption or incorporation by reference of the HMR as State law—and enforcement thereof. *IR–17; #IR–19; #IR–31; WPD–1.

• State and local requirements which incorporate by reference specific superseded Federal regulations are inconsistent. *IR–8; *IR–8(A); *IR–18. However, state and local governments may incorporate by reference specific CFR volumes of the HMR for a reasonable time (up to two years) after their publication, although a later-published HMR rule would control over an inconsistent state or local requirement. #IR–19.

• *Indemnification Requirements*—See "Insurance or Indemnification Requirements."

Indian Tribe Requirements

÷ HMTA likely preempts significant portions (if not all) of an Indian tribe ordinance requiring license for transport of "radioactive substances," broadly defining those substances, requiring 180-day advance application and a $1,000 fee, and providing broad discretion to Tribal Council whether to issue or deny the license. **Northern States Power Co.* v. *Prairie Island Mdewakanton Sioux Indian Community*, Civ. 3–91–783 (D. Minn. Dec. 23, 1991) (enjoining enforcement of ordinance), *appeal docketed* (8th Cir. Nos. 92–1240, 92–1476 1992). However, another court has held that Indian tribes are immune from suit in U.S. district court for actions allegedly preempted by the HMTA. **Public Serv. Co. of Colorado* v. *Shoshone-Bannock Tribes* (D. Idaho, No. 91–440–E EJL, Jan. 9, 1992), *appeal docketed* (9th Cir. No. 92–35206 1992].

• *Information/Documentation Requirements* (Also see "covered subjects" discussion at pp. 1–2 and "Shipping Paper Requirements," "Notice Requirements," and "Placarding and Other Warning Requirements.")

• Requirements for information or documentation in excess of Federal requirements create potential delay, constitute an obstacle to execution of the HMTA and the HMR, and thus are inconsistent. IR–2; IR–6; *IR–8; *IR–8(A); *IR–15; *IR–15(A); *IR–18; *IR–18(A); #IR–19; #IR19(A); *IR–21; #IR–26; *IR–27; #IR–28; *IR–30; **Chem-Nuclear Systems, Inc.* v. *City of Missoula*, No. 80–18–M (D. Mont. 1984); #*Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV–N–86–444–BRT (D. Nev. 1988); **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989). There is no *de minimis* exception to the "obstacle" test because thousands of jurisdictions could impose *de minimis* information requirements. *IR–8(A).

• "In summary, the HMTA and HMR provide sufficient information and documentation requirements for the safe transportation of hazardous materials; state and local requirements in excess of them constitute obstacles to implementation of the HMTA and HMR and thus are inconsistent with them." #IR–19, 52 FR 24404 at 24408. Quoted in #IR–28.

• Preliminary injunction was granted against City requirements to have decal and carry copy of permit. *American Trucking Ass'ns, Inc.* v. *City of Boston*, No. 81–628–MA, Fed. Carr. Cas. ¶82,938 (CCH) (D. Mass. 1981).

• Emergency response-related information requirements cannot be used as a prerequisite to hazardous materials transportation. #IR–19; *IR–27.

• State may require, as prerequisite to motor vehicle transport of hazardous materials, a driver's license or documentary evidence of hazardous materials training from its own domiciliaries but not from non-domiciliaries—except, on or after April 1, 1992, from non-domiciliaries not having hazardous materials endorsements on their commercial drivers' licenses. #IR–26; #IR–31; #IR–32.

• "DOT and NRC have determined what information and documentation requirements are needed for the safe transportation of radioactive materials, and state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the HMTA's objectives, and thus are inconsistent." *IR–8(A), 52 FR 13000, 13004; quoted in *IR–27; quoted and applied to non-RAM in #IR–19, 52 FR 24404, 24408; see also *IR–15(A).

• "No matter what the form, any state or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations." IR–2, 44 FR 75566, 75571. Requirements for multiple submissions of same information are inconsistent. *IR–8(A).

• Requirements for RAM transportation route plans or other shipment-specific documentation or information are inconsistent. *IR–21. Also inconsistent are requirements for RAM shipment information on possible alternate routes, proposed means of conveyance, estimated date and time of departure, emergency response or recovery plans, attestations re safety inspections, certification of compliance with laws and regulations (latter being same as required on DOT shipping papers), telephone numbers, inspection reports, state permits, proof of driver training, proof of insurance, and equipment replacement or repair plans. *IR–8(A); *IR–15; *IR–15(A); *IR–27; **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• RAM information requirements identical to NRC's are consistent, but requirement for submission to state of NRC approvals and licenses is inconsistent. *IR–8; *IR–8(A); *IR–15; *IR–15(A).

• Requirement to carry proof of insurance is inconsistent. *IR–27; #IR–32; **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• Mere requirement in permit application of some information required on DOT shipping papers may not require preemption. Dicta in *National Tank Truck Carriers, Inc.* v.

Burke, 535 F. Supp. 509 (D. R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983).

• "The Secretary's regulations contain hundreds of information and documentation requirements, all of which have been established by the Secretary to ensure the health and safety of citizens in every jurisdiction. Congress specifically found that additional documentation and information requirements in one jurisdiction create "unreasonable hazards in other jurisdictions" and could confound "shippers and carriers which attempt to comply with multiple and conflicting regulations." 49 U.S.C. app. 1801. Colorado's regulations clearly exceed the information and documentation requirements set forth in the Secretary of Transportation's regulations governing the transportation of radioactive materials. The enactment of separate information and documentation requirements in even a few of the thousands of local jurisdictions across the country would lead to the multiplicitous regulations Congress sought to avoid by enacting the HMTUSA. Because Colorado's regulation forces transporters of hazardous materials to generate and maintain additional documentation and information, we conclude that it is likely to confound shippers and carriers and to increase the potential for hazards in other jurisdictions. Colorado's regulations simply do not further the Federal purpose of promoting safety through uniformity. Therefore, we hold that NT–8 is preempted. * * * In addition to obstructing Congress' objective that safety be achieved through uniformity, the expense of burdensome documentation and information requirements also is contrary to Congress' intent that regulation of hazardous materials transportation be as cost-effective as possible." **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

Inspection Requirements (Also see "Permit Requirements")

• Inspection requirements relating to Federal and consistent requirements are encouraged by RSPA and are consistent. IR–2; *IR–6; *IR–15; *IR–17; #IR–20; *IR–27; #IR–31; **Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d (10th Cir. 1991).

• Inspection requirements relating to inconsistent requirements are themselves inconsistent. #IR–20; *IR–21; *IR–21(A); *IR–27, *IR–30; #IR–31.

• State may not require carrier to retain inspection report in vehicle. Such an additional documentation requirement could create confusion and increase hazards. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• Annual inspections for tank trucks hauling flammable and combustible liquids and compressed gasses, to determine the vehicles' general safety levels, are not preempted. However, waiver of preemption was denied with respect to inspections to enforce vehicles' conformity to local design requirements (truck size and tank design and capacity). WPD–1.

Insurance or Indemnification Requirements

• Hazardous materials transportation indemnification, bonding or insurance requirements differing from Federal requirements are inconsistent. *IR–10; *IR–11; *IR–15; *IR–15(A); *IR–18; *IR–18(A); #IR–25; #IR–31. (See also *IR–13; *IR–14.) State may not require proof of insurance meeting the Federal requirements. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• The absence of a bonding, insurance, or indemnity requirement in the HMR "is a reflection of OHMT's determination that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR." #IR–25, 54 FR 16308, 16311. "[N]o such requirement is necessary—particularly because 49 CFR 387.7 and 387.9 already require insurance or surety bonds of between $1,000,000 and $5,000,000 for motor carriers transporting hazardous wastes, hazardous substances and other hazardous materials." *Ibid.*

• "The indemnification level established through the HMR, coupled with the indemnification provisions of the Price-Anderson Act (42 U.S.C. 2210), provides the exclusive standard for radioactive materials transportation indemnification. They have totally occupied that field, and any state or local bond, insurance or indemnification requirement not identical to the HMR requirement is an obstacle to the accomplishment of the objectives of the HMTA and the HMR." *IR–15(A), 52 FR 13062, 13063.

• Requirement to carry proof of insurance is inconsistent. #IR–32.

Labeling of Hazardous Materials—See "covered subjects" discussion on pp. 1–2.

Land Use Restrictions

• Regulations which apply only to transportation activities are not types of non-transportation land use restrictions which might be consistent. #IR–19; see IR–16.

Language of Requirements (Also see "Effect of Requirements.")

• Actual language of state and local requirements, rather than later statements of intent, are controlling. *IR–8(A), IR–16, #IR–19(A), unless there is a demonstrated actual practice to the contrary. *IR–17.

Licensing—See "Information/Documentation Requirements."

Loading and Unloading (Also see "covered subjects" discussion on pp. 1–2 and "Smoking limitations".)

• State and local requirements for hazardous materials loading and unloading incidental to transportation (including loading and unloading by consignors and consignees) must be consistent with the HMTA and HMR. Such requirements are inconsistent if they differ from, or add to, the HMR requirements—particularly if they are subjective. #IR–19; #IR–19(A); #IR–28; #*Southern Pac. Transp. Co.*, v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV–N–86–444–BRT (D. Nev. 1988).

• Despite DOT's extensive regulation of loading, unloading, transfer and storage incidental to the transportation of hazardous materials, the Nevada regulations require a carrier to obtain an annual permit prior to engaging in these activities within the state of Nevada. The Nevada regulations, thus, create a separate regulatory regime for these activities, fostering confusion and frustrating Congress' goal of developing a uniform, national scheme of regulation. The resulting confusion is exacerbated by the fact that the Nevada regulations only apply to some of the hazardous materials covered by the HMTA and HMR and not to others." #*Southern Pac. Transp. Co.*, v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352, 358 (9th Cir. July 18, 1990), *reversing* No. CV–N–86–444–BRT (D. Nev. 1988).

• Waiver of preemption was granted as to a local transfer requirement, which restricted the emergency transfer of flammable or combustible liquids from a tank or platform truck to vehicles with Fire Department permits or to those otherwise authorized and when authorized by a Fire Department representative. WPD–1.

• Waiver of preemption was granted for a local requirement that gasoline be discharged by gravity into underground tanks, because such a requirement affords an equal or greater level of protection to the public as the HMR and does not unreasonably burden commerce. However, waiver of

preemption was denied as to other flammable liquids and to the discharge of gasoline into tanks which are not underground. WPD–1.

Marking of Hazardous Materials—See "covered subjects" discussion on pp. 1–2.

Mode or Means of Transportation—See "Prohibitions of Hazardous Materials Transportation."

Monitoring of Shipments (Also see "Inspection Requirements.")

• Monitoring of hazardous materials shipments by state officials in consistent. *IR–17. However, a carrier cannot be required to stop and wait for state officials assigned to monitor shipments. *IR–15.

Motor Carrier Registration and Permitting Forms—See discussion of section 1819 on p. 2.

Non-Regulatory Actions—See "Statements of Intent to Regulate."

Notice Requirements (Also see "Accident/Incident Reporting Requirements", "Delays of Transportation", and "Information/ Documentation Requirements.")

• Advance notice requirements of hazardous materials transportation generally are inconsistent. IR–6; *IR–8(A); *IR–16; #IR–28; *IR–30; #IR–32.

• "Through its rulemaking process and related studies, DOT has determined what prenotification (including information, documentation and certification) requirements are necessary for the safe transportation of radioactive materials. In the process of analyzing rulemaking comments and studies it has commissioned or examined, DOT has determined what prenotification requirements are not necessary. This field has been totally occupied by the HMR. State and local provisions either authorizing less prenotification or requiring greater prenotification than the HMR, therefore, constitute obstacles to the accomplishment and execution of the objectives of the HMTA and the HMR, are inconsistent, and are preempted." *IR–8(A), 52 FR 13000, 13005.

• Local requirements for advance notice of hazardous materials transportation have potential to delay and redirect traffic and thus are inconsistent. IR–6; #IR–32.

• Notice requirements re RAM shipment schedule changes identical to NRC regulations (incorporated by HMR) are consistent. *IR–8.

• Notice requirements re RAM shipment schedule or changes thereto different from NRC regulations (incorporated by HMR) are inconsistent. *IR–14; *IR–15, *IR–16; *IR–18; *IR–18(A); *IR–27; *IR–30; #IR–32; *Chem-Nuclear Systems, Inc. v. City of Missoula, No. 80–18–M (D. Mont. 1984).

• "The State's prenotification requirements differ from, and are more burdensome than, the radioactive materials prenotification requirements in §§ 173.22 and 117.825 of the HMR and 10 CFR 71.97 and 73.97 (NRC regulations incorporated by reference in § 173.22 of the HMR). [Its rule] requires more information about more shipments and thereby creates confusion and undermines the likelihood of proper compliance with the HMR prenotification requirements. Therefore, [it] is inconsistent with the HMR to the extent that it exceeds NRC requirements by requiring greater prenotification concerning non-spent fuel HRCQ radioactive materials shipments." *IR–27, 54 FR 16328, 16331. *Affirmed* in *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• "Congress expressly found that state 'notification' requirements that 'vary from Federal laws and regulations' create 'unreasonable hazards' and pose a 'serious threat to public health and safety.' 49 U.S.C. app. 1801. Colorado's prenotification requirement varies from Federal law, poses a threat to uniformity, and thereby threatens public safety and obstructs the purpose and objective of Congress and the Secretary." *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

"Otherwise Authorized by Federal Law"

• A State requirement is not "otherwise authorized by Federal law"—and thus not preempted under section 1811(a) of the HMTA—merely because it is not preempted by another Federal statute. *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

Operations Suspension/ Requirements—See "Traffic Controls/ Regulations."

Packaging Design and Construction Requirements (Also see "covered subjects" discussion on pp. 1–2.)

• Packaging and cargo containment design, construction, testing, accessories, equipment, certification and permit requirements, including those vesting discretionary authority in state or local officials, are inconsistent. IR–2, *IR–8; *IR–8(A); *IR–18; *IR–18(A); IR–22; *National Paint & Coatings Ass'n, Inc. v. City of New York*, No. CV–4525 (ERK) (E.D. N.Y. 1985).

• "State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations." IR–2, 44 FR 75566 at 75568.

• Hazardous gas container-testing requirements are inconsistent. *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982).

• RAM container testing and certification requirements are inconsistent. *IR–8; *IR–8(A); *IR–15.

• Requirement for frangible shank-type lock on tank trailers carrying LNG or LPG is inconsistent since DOT comprehensively regulates cargo tank containment. IR–2.

• Initially, plaintiffs failed to demonstrate "obstacle" test violations or to obtain summary judgment enjoining city cargo containment system regulations, including requirements that flammable liquid cargo tanks be constructed of steel, not aluminum, and contain compartments and baffles, that flammable liquids not be transported in semi-trailers nor gases or combustible liquids in full trailers, and that trucks be inspected annually and carry a permit evidencing that inspection and imposing capacity limits on tank truck shipments. *National Paint & Coatings Ass'n, Inc. v. City of New York*, No. CV 4525 (ERK) (E.D. N.Y. 1985). However, those requirements were preempted by the packaging "covered subject" provision of HMTUSA. *Ibid.*, Oct. 18, 1991; WPD–1.

Penalties (Also see "Enforcement and Violations Provisions.")

• Penalties (such as fines, imprisonment or civil penalties) for violating consistent state or local rules are consistent unless they are so extreme or arbitrarily applied to reroute or delay shipments; mere differences in amount do not undermine consistency. IR–3; *IR–27, #IR–28.

• Penalties (such as fines, imprisonment or civil penalties) for violating inconsistent state or local rules are themselves inconsistent. *IR–18; *IR–18(A); *IR–27; #IR–28; *IR–30; *Jersey Cent. Power & Light Co. v. Township of Lacey, 772 F.2d 1103 (3d Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986).

• The absence of a "knowingly" requirement for imposition of a civil penalty is inconsistent because it promotes strict or absolute liability.

Packing/Repacking of Hazardous Materials See "covered subjects" discussion on pp. 1–2.

Permit Requirements (Also see "covered subjects" discussion on pp. 1–2, "Approval Requirements", "Fee Requirements", and "Inspection Requirements")

• Permit *per se* is not inconsistent; its consistency depends upon its requirements. IR–2; IR–3; #IR–20; #IR–28; *New Hampshire Motor Transport Ass'n* v. *Flynn*, 751 F.2d 43 (1st Cir. 1984); **Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• State permitting system which prohibits or requires certain transportation activities depending upon whether a permit has been issued (regardless of whether the activity is in compliance with the HMTA), applies to selected hazardous materials, involves extensive information and documentation requirements and contains considerable discretion as to permit issuance, is inconsistent. "Cumulatively, these factors constitute unauthorized prior restraints on shipments of nonradioactive hazardous materials that are presumptively safe based on their compliance with Federal regulations." #IR–19, 52 FR 24404, 24407. Affirmed in #IR–19(A) and #*Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV–N–88–444–BRT (D. Nev. 1988).

• Local permit for hazardous materials storage is inconsistent with respect to storage incidental to transportation because of its burdensome information and documentation requirements, its discretionary nature, and its delay-inducing tendencies. #IR–28.

• Certain over-the-phone permits for transportation of hazardous gases are consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982).

• Permit requirements for each shipment involving application 4 hours to 2 weeks prior to shipment, carrying of permit on vehicle and "an additional piece of paper that supplies the same information as is required to be on the DOT Shipping paper" involve high probability of transportation delay and thus are inconsistent. IR–2.

• Local RAM transportation permit was consistent—prior to DOT's issuance of HM–164 re routing of certain RAM. *IR–1.

• Requirements implementing, inextricably related to, or "fleshing out," inconsistent permitting requirements are themselves inconsistent. *IR–21; *IR–21(A).

• If permit system is consistent, requirements to carry permit and display decal are consistent. IR–3. *But* requirement to display permit decal was held inconsistent. *American Trucking Ass'ns* v. *City of Boston*, C.A. 81–628–MA, Fed. Carr. Cas. ¶82,938 (CCH) (D. Mass. 1981).

• Since HMTA and HMR have almost completely occupied the field of RAM transportation safety, state and local requirements are limited to: (1) Traffic control or restrictions applying to all traffic, (2) designation of preferred routes under 49 CFR 177.825, (3) adoption of Federal or consistent requirements, (4) enforcement of consistent requirements or those for which preemption has been waived, and (5) imposition of reasonable transit fees to finance those enforcement activities and emergency response preparedness. Thus, RAM transportation permits generally are inconsistent. *IR–8; *IR–8(A); *IR–10; *IR–11; *IR–12; *IR–13; *IR–15; IR–18; *IR–18(A); #IR–19; #IR–19(A); #IR–20; *IR–21; *IR–21(A); *IR–27. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• HMTA likely preempts significant portions (if not all) of an Indian tribe ordinance requiring license for transport of "radioactive substances," broadly defining those substances, requiring 180-day advance application and a $1,000 fee, and providing broad discretion to Tribal Council whether to issue or deny the license. **Northern States Power Co.* v. *Prairie Island Mdewakanton Sioux Indian Community*, Civ. 3–91–783 (D. Minn. Dec. 23, 1991) (enjoining enforcement of ordinance), *appeal docketed* (8th Cir. 1992).

• Permit requirement calling for annual inspections to determine trucks' general safety levels is not preempted, but waiver of preemption was denied with regard to the enforcement of preempted local tank truck design and capacity requirements. WPD–1.

Persons Subject to Requirements (Also see "Transportation Subject to Requirements.")

• Definitions of persons subject to state or local requirements which include fewer persons than HMR minimize inconsistency possibilities and are themselves consistent. *IR–18.

Placarding and Other Hazard Warning Requirements (Also see "covered subjects" discussion on pp. 1–2.)

• Placarding and other hazard warning requirements are inconsistent if they are in addition to or different from Federal placarding requirements. IR–2; IR–3; IR–24; *IR–30; *Kappelmann* v. *Delta Air Lines, Inc.*, 539 F.2d 165 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 1061 (1977); *National Tank Truck Carriers Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982). Such requirements are consistent if they do not differ from the HMR. #IR–31; #IR–32.

• "Hazard warning systems are another area where [OHMT] perceives the Federal role to be exclusive. * * * Additional, different requirements imposed by States or localities detract from the DOT systems and may confuse those to whom the DOT systems are meant to impart information." IR–2, 44 FR 75565, 75568.

• Requirement for illuminated rear bumper sign conflicts with DOT lighting regulations, would divert attention from DOT placards and this is inconsistent. IR–2.

• Requirements for placards and identification of products are inconsistent. IR–3; *American Trucking Ass'ns* v. *City of Boston, supra.*

• Requirement to display permit decal is inconsistent. *American Trucking Ass'ns* v. *City of Boston, supra.*

• "It is OHMT's view that the HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements. This is true with respect to requirements applying solely to pickups and deliveries, as well as to requirements applying to through-traffic, because all such non-identical requirements create confusion and undermine the uniform system of hazard communication necessary for the safe transportation of hazardous materials. Transportation viewed as being a mere pickup or delivery by one jurisdiction actually may be just the beginning or end of multi-state transportation through numerous local jurisdictions." IR–24, 53 FR 19848, 19850.

• But plaintiffs, prior to IR–24, failed to obtain summary judgment or make sufficient showing that Federal placarding regulations were intended to occupy field and preempt city hazard warning sign requirements with respect to local deliveries. *National Paint & Coatings Ass'n, Inc.* v. *City of New York*, No. 84–4525 (E.D. N.Y. 1985).

• Waiver of preemption was denied for local requirement mandating color and size of permanent "GASOLINE" lettering on trucks used to transport gasoline. Although not in conflict with the HMR, the requirement would mandate the maintenance of a separate fleet of trucks to transport gasoline and lead to an increase in the number of trips required. Further, the requirement would unreasonably burden commerce while not affording a greater level of public protection. WPD–1.

Prenotification Requirements—See "Notice Requirements."

Prohibitions of Hazardous Materials Transportation (Also see "Permit Requirements.")

• Prohibitions of hazardous materials transportation generally are inconsistent. IR–3; IR–3(A); IR–10; *IR–16; #IR–20.

• Power to ban, rather than to channel or guide, hazardous materials traffic is exclusively Federal. "A unilateral local ban is a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation." IR–3(A), 47 FR 18457, 18458 (Apr. 29, 1982).

• Town order requiring railroad to remove its railcars containing vinyl chloride from Town is inconsistent. *Consolidated Rail Corp.* v. *Hancock*, No. 79–0983–MA (D. Mass. 1979).

• City ban on hazardous materials pickups and deliveries by non-city-permitted vehicles is inconsistent. Likewise inconsistent is a City ban on fueling or stopping of hazardous materials through-traffic. IR–23.

• "A State or local government may not resolve the problem by effectively exporting it to another jurisdiction." *"Nine-Pack" Preamble, citing *Kassel* v. *Consolidated Freightways*, 4 50 U.S. 662 (1981) and IR–3.

• But local prohibition on liquefied gases transportation through city unless no practical alternative route existed is consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982), *aff'g City of New York* v. *Ritter Transportation, Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

• Prohibition of RAM or explosives transportation, including storage incidental thereto, is inconsistent. *IR–16; #IR–20; *IR–30.

• *De Facto* prohibitions are inconsistent. *IR–10.

• Prohibition of RAM transportation which RSPA has excepted from HMR requirements is inconsistent. #IR–20.

• Inadequacy of emergency response capabilities cannot provide basis for prohibiting transportation. *IR–18; *IR–18(A).

• To the extent it prohibits rail, air or water transportation of fireworks, State regulation allowing fireworks delivery by motor vehicle is inconsistent and thus is preempted. *South Dakota Dep't of Public Safety ex rel: Melgaard* v. *Haddenham*, 339 N.W.2d 786 (S.D. 1983).

• Similarly, City requirement that it determine the safest means of transportation constitutes an inconsistent ban on transportation by other modes of transportation. *IR–30. The HMTA does not require or authorize the mandatory selection of a single "safest" mode of transportation. *City of New York* v. *U.S. Department of Transportation*, 715 F.2d 732 (2d Cir. 1983), *cert. denied*, 465 U.S. 1055 (1984); *IR–30.

• But an otherwise consistent requirement is not inconsistent because it applies only to certain modes of transportation. *IR–18.

• County ordinance prohibiting spent fuel or radioactive waste transportation into County for storage on nuclear power plant sites is inconsistent and thus preempted. **Jersey Cent. Power & Light Co.* v. *Township of Lacey*, 772 F.2d 1103 (3d Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986).

Radio Requirements—See "Communications Requirements."

Railroad-Related Requirements

• State or local hazardous materials railroad transportation requirements may be preempted under the Federal Railroad Safety Act (FRSA), 49 U.S.C. app. 434, without consideration of whether they might be consistent under the HMTA. *CSX Transportation, Inc.* v. *City of Tallahoma*, No. 4–87–47 (E.D. Tenn. 1988); *CSX Transportation, Inc.* v. *Public Utilities Comm'n of Ohio*, 701 F. Supp. 608 (D. Ohio 1988), affirmed, 901 F.2d 497 (6th Cir. 1990), *cert. den.* 111 S. Ct. 781 (1991). Court decisions exclusively concerning FRSA preemption are irrelevant to HMTA preemption issues. #IR–31.

• State definition of "train" which results in regulation of transportation specifically exmpted from regulation by the HMR is inconsistent. #IR–31.

Reporting Requirements—See "Accident/Incident Reporting Requirements."

Ripeness of IR Application (Also see "Standing To Apply for IR.")

• Pendency of a judicial proceeding concerning the same issues as are in an IR application does not bar the issuance of an IR but instead increases possible usefulness of an IR. *IR–27; *IR–30.

Routing Requirements (Also see highway routing discussion on p. 2 and "Delays of Transportation," "Prohibitions of Hazardous Materials Transportation" and "Traffic Controls/ Regulations.")

• Without adequate safety justification and appropriate coordination with, and concern for safety of people in, adjoining affected jurisdictions, routing restrictions (including time and weather restrictions) are inconsistent—particularly if they result in increased transit times. *IR–1; IR–2; IR–3; IR–3(A); *IR–10; *IR–11; *IR–14; *IR–16, #IR–20; IR–23; #IR–32.

• Local routing restrictions prohibiting transport of liquefied gases through city except to areas for which no practical interstate or major highway alternative route exists are consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982), *aff'g City of New York* v. *Ritter Transportation, Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

• State preferred route designations for highway route controlled quantity RAM are consistent if in accordance with 49 CFR 177.825(b).

• "* * * the Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the 'field of routing * * * requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation routing * * * requirements other than (1) those identical to Federal requirements or (2) state designated alternate routes under 49 CFR 177.825(b), are likely to be inconsistent and thus preempted under section 112(a) of the HMTA." *IR–8(a), 52 FR 13000, 13003.

• Local routing restrictions re RAM are inconsistent if they prohibit transportation on routes authorized by 49 CFR part 177 or authorized by a state routing agency consistent with that part. *IR–18; *IR–18(A); #IR–20.

• Suspension or regulation of spent nuclear fuel shipments on *non*-Interstate highways (not needed for access to or from Interstate or preferred routes) is consistent. *IR–7.

• Routing restrictions on highway route controlled quantity RAM not in accordance with 49 CFR 177.825(b), which authorizes State (not local) designation of certain preferred routes, are inconsistent. *IR–8(A); *IR–16; *IR–18; *IR–18(A); IR–20; *IR–21; *IR–30; #IR–32; **Jersey Cent. Power Light Co.* v. *State of New Jersey*, No. 84–5883 (D. N.J., Dec. 27, 1984), *appeal dismissed as moot*, 772 F.2d 35 (3d Cir. 1985).

• Routing restrictions re non-highway route controlled quantity RAM required by 49 CFR part 172 to be placarded are inconsistent unless identical to 49 CFR 177.825(a). *IR–18; *IR–18(A); *IR–21; *IR–30; #IR–32.

• Local highway routing restrictions on other types of RAM are inconsistent. *IR–30; #IR–32

• Non-highway routing restrictions on RAM are inconsistent. *IR–30.

• "* * * Congress' dual purposes in enacting the HMTA were: (1) To protect the Nation against the risks inherent in hazardous materials transportation; and (2) to prevent a patchwork of varying and conflicting State and local regulations. Commissioners' Ordinance No. 0–31–80 impedes both purposes. By delaying hazardous materials shipments

and causing traffic to be diverted from established routes, the Ordinance increases exposure to the risks inherent in hazardous materials transportation; and to the extent that the Ordinance results in the diversion of hazardous materials traffic into adjacent jurisdictions, it constitutes a routing requirement adopted without consideration of the safety impacts on other affected jurisdictions. To the extend that the Ordinance creates a precedent for the establishment of independent and uncoordinated local prenotification systems, it contributes to the creation of the regulatory patchwork which Congress intended to preclude." IR–6, 48 FR 760, 766.

• Routing requirements linked to inconsistent equipment requirements are inconsistent. IR–22; IR–23.

Sanctions—See "Enforcement and Violations Provisions" and "Penalties."

Segregation and Separation Requirements—See "Storage Provisions."

Shipping Paper Requirements (Also see "covered subjects" discussion on pp. 1–2 and "Information/Documentation Requirements.")

• "Shipping papers" and "shipping documents" are interchangeable terms. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• Virtually identical shipping paper requirements (to those of the HMR) generally are consistent. #IR–31.

• Additional or different shipping paper requirements generally are inconsistent. IR–4, IR–4(A). State shipping document requirements not substantively the same as HMR are preempted. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• Requirement for red or red-bordered shipping papers for intrastate hazardous materials shipments is an obstacle to uniform national system and thus is inconsistent. IR–4.

• Requirements for certification to state of shipment's compliance with law are redundant, constitute obstacles to HMTA, and thus are inconsistent. *IR–8; *IR–15; *IR–21.

• Requirement to carry State Patrol phone number with shipping papers is not "substantively the same" and is preempted. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

Smoking Limitations

• Local smoking ban in vicinity of motor vehicle carrying flammable or combustible liquids or flammable gases, which is more extensive than the HMR, is not preempted. WPD–1.

Speed Limit—*See* "Traffic Controls/Regulations."

Standing To Apply for IR (Also see "Ripeness of IR Application.")

• OHMS liberally construes its IR application threshold requirements and applies a broad interpretation of the "person affected" standard for requesting IR's, which are intended to resolve HMTA preemption issues expeditiously and inexpensively. *IR–21; #IR–32. Signing of contract to comply with local requirements does not preclude applying for inconsistency ruling. #IR–28.

Statements of Purpose or of Intent To Regulate

• State or local statements of purpose or of intent to regulate are consistent. *IR–9; *IR–12; *IR–15; *IR–18; *IR–30.

State Requirements

• Local requirements for compliance with otherwise consistent state requirements are consistent. IR–3.

Storage Provisions

• State or local prohibition of hazardous materials storage incidental to transportation without a state or local permit at places where, and for times when, the HMR allow such storage is inconsistent. #IR–19; #IR–19(A); #IR–28; #*Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV–N–86–444–BRT (D. Nev. 1988).

• City prohibition of hazardous waste storage is inconsistent as applied to storage incidental to transportation. #IR–32.

• City 20-car limitation on unloaded or loaded butane railcars at a site is inconsistent. *Consolidated Rail Corp.* v. *City of Bayonne*, 724 F. Supp. 320 (D. N.J. 1989).

• "In summary, the HMR contain a comprehensive series of regulations relating to the storage of hazardous materials incidental to transportation by rail. These regulations authorize or prohibit specific types of hazardous materials storage under specified circumstances. Creation by the PSC of a separate regulatory regime for rail transport-related storage of hazardous materials raises the spectre of widespread confusion. The PSC regulations are so open-ended and discretionary that they authorize the PSC to approve storage prohibited by the HMR or prohibit storage authorized by the HMR." #IR–19, 52 FR 24404, 24410.

• "State or local imposition of containment or segregation requirements for the storage of hazardous materials incidental to the transportation thereof different from, or additional to those in, § 177.848(f) of the HMR create confusion concerning such requirements and the likelihood of noncompliance with § 177.848(f)." #IR–28, 55 FR 8894, 8893.

• "Despite DOT's extensive regulation of loading, unloading, transfer and storage incidental to the transportation of hazardous materials, the Nevada regulations require a carrier to obtain an annual permit prior to engaging in these activities within the state of Nevada. The Nevada regulations, thus, create a separate regulatory regime for these activities, fostering confusion and frustrating Congress' goal of developing a uniform, national scheme of regulation. The resulting confusion is exacerbated by the fact that the Nevada regulations only apply to some of the hazardous materials covered by the HMTA and HMR and not to others." #*Southern Pac. Transp. Co.*, v. *Public Serv. Comm'n of Nevada*, 909 F.2d 353 (9th Cir. 1990), *reversing* No. CV–N–86–444–BRT (D. Nev. 1988).

Time Restrictions (Also see "Routing Requirements" and "Delays of Transportation.")

• Time restrictions are a subset of routing restrictions. IR–3. Thus, without adequate safety justification and appropriate coordination with adjoining affected jurisdictions, time restrictions, except as to in-city pickup and deliveries, are inconsistent. IR–3(A); IR–23; #IR–32.

• Statewide prohibition on hazardous materials carriage between 7–9 a.m. and 4–6 p.m. on weekdays resulted in delay and are inconsistent. IR–2; *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D. R.I. 1982) *aff'd*, 698 F.2d 559 (1st Cir. 1983). Also inconsistent is statewide prohibition on RAM transportation other than during non-holiday weekdays from 9 a.m. to 4 p.m. *IR–21.

• Citywide rush-hour curfew (no transport between 6–10 a.m. and 3–7 p.m.) on liquefied gas transportation is consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982), *aff'g City of New York* v. *Ritter Transportation Co.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

• City prohibition of hazardous materials transportation in downtown area between 6 a.m. and 8 p.m. on weekdays is consistent insofar as it applies to in-city pickups and deliveries. IR–3.

• No decision on consistency of 6–10 a.m. and 3–7 p.m. bridge and tunnel

prohibition is possible without information on safety justification, coordination with other jurisdictions, and delays or diversions of hazardous materials. #IR–20.

• Restriction of RAM transportation to May-October period and prohibition of holiday or inclement weather shipments is inconsistent. *IR–14.

• County's assertion of unfettered authority to change dates, routes and times of hazardous materials shipments is inconsistent. *IR–18.

• Time restrictions linked to inconsistent routing requirements are inconsistent. IR–22; IR–23.

• City restriction of hazardous materials through-traffic on weekdays to 10 a.m.–3 p.m. and 7 p.m.–6 a.m. for explosives and "prohibited materials" and to 9 a.m.–4 p.m. and 6 p.m.–7 a.m. for other "hazardous cargo" is inconsistent because not based on adequate safety analysis or preceded by consultations with all affected jurisdictions. IR–23. City prohibition of hazardous waste transportation between 6:30 a.m. and 8:30 a.m. and 2 and 3 p.m. is inconsistent for same reason. #IR–32.

Traffic Controls/Regulations (Also see "Routing Requirements.")

• So long as reasonably administered on a case-by-case basis, the local authority to restrict or suspend operations when road, weather, traffic or other hazardous conditions or circumstances warrant is consistent. IR–3; *IR–15(a); #IR–20; *American Trucking Ass'ns* v. *City of Boston, supra; National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983).

• Local traffic controls are presumed to be valid. #IR–20; IR–23; #IR–32. This includes speed limits. #IR–32.

• "To the extent that nationwide regulations do not adequately address a particular local safety hazard, state and local governments can regulate narrowly for the purpose of eliminating or reducing the hazard." IR–2, 44 FR 75565, 75568.

• Radioactive materials may not be singled out for different types of control than hazardous materials generally, nor may controls conflict with carrier discretion and responsibility provided by the HMR. *IR–15(A).

• Requirement to comply with lawful orders, instructions and directives of authorized bridge personnel is consistent. #IR–20.

• Local "rules of road" restrictions on vehicles carrying hazardous materials are consistent. Thus, requirements for separation distances between moving or parked vehicles carrying hazardous materials which do not create hazards or unreasonable delays are consistent. IR–3; #IR–20; #IR–32.

• Local provision that carriers must use major city thoroughfares and that otherwise Federal motor carrier safety routing rules (49 CFR 397.9(a)) apply is consistent. IR–3. Likewise consistent is a local regulation requiring hazardous materials through-traffic to avoid congested areas so far as practicable and to use highway exits as close as possible to final destination. IR–23.

• Weight restriction applying only to hazardous materials and their containers, not to entire vehicles and contents, is not a *bona fide* traffic control measure and is inconsistent. #IR–20.

• State order prohibiting railroad cars carrying hazardous materials from being cut off in motion, struck by other cars moving under their own momentum or coupled into with unnecessary force is inconsistent and preempted by the HMTA, HMR, and the Federal Railroad Safety Act. *Atchison, Topeka and Santa Fe R.R. Co.* v. *Illinois Commerce Comm'n*, 453 F. Supp. 920 (N.D. Ill. 1977).

• Traffic controls linked to inconsistent equipment requirements are inconsistent. IR–22; IR–23.

Training Requirements

• "[S]tate may impose more stringent training requirements [than HMR] on motor carrier operators so long as those requirements do not directly conflict with the HMR requirements and apply only to individuals domiciled in that state and on or after April 1, 1992 to individuals domiciled in other states who do not have hazardous materials endorsements on their CDL's [commercial drivers' licenses]." #IR–26, 54 FR 16314, 16322. This principle applies to RAM and other hazardous materials. *Ibid.*

• "* * * the Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the field of training requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation * * * training requirements other than * * * those identical to Federal requirements * * * are very likely to be inconsistent and thus preempted under section 112(a) of the HMTA." *IR–8(A), 52 FR 13000, 13003; quoted and relied upon in *IR–27 and **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989). However, see preceding paragraph.

• State requirement for submission of company's driver training program, including provisions for RAM and mountain driving training, as prerequisite to certain RAM transportation is inconsistent. *IR–27; **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

Transportation Subject to Requirements (Also see "Persons Subject to Requirements.")

• Where a specific decision has been made in the HMR that certain transportation in commerce of hazardous materials should not be subject to the general requirements of the HMR, state or local regulation of that transportation is inconsistent with the HMR under the 'obstacle' test * * *" #IR–31, 55 FR 25572, 25581.

Tunnel Restrictions

• Except for RAM, State and local regulations regarding the kind, character or quantity of hazardous material permitted to be carried through any urban vehicular tunnel used for mass transportation are consistent. 49 CFR 177.810. But prohibition on RAM transportation through a tunnel is inconsistent. #IR–20.

Unloading—See "covered subjects" discussion on pp. 1–2 and "Loading and Unloading."

Waiver of Preemption

• Under HMTA prior to amendment by HMTUSA, if non-Federal requirement afforded an equal or greater level of protection to the public than the HMTA or HMR, and the requirement did not unreasonably burden commerce, such requirement was not preempted. Therefore, RSPA was obliged to issue a "non-preemption determination" if those two tests were met. **New York City* v. *U.S. Department of Transportation*, 87 Civ. 1443 (MGC) (S.D.N.Y. 1988).

• After amendment by HMTUSA, DOT has discretion to grant a waiver of preemption where the non-Federal requirement affords an equal or greater level of protection to the public than HMTA or HMR, and the requirement does not unreasonably burden commerce. 49 app. U.S.C. 1811(b); WPD–1.

Weight Restrictions—See "Traffic Controls/Regulations."

INCONSISTENCY RULINGS

Ruling	Applicant	Subject	Disposition	Summary
IR-1	Associated Universities, Inc.	New York City health code restrictions on radioactive materials (RAM).	Public Notice: 8/15/77 (42 FR 41204); Ruling: IR-1, 4/20/78 (43 FR 16954).	City ordinance effectively banning shipment of radioactive materials in or through city was *consistent* with HMTA or HMR—[prior to issuance of Fed. highway routing rule HM-164].
IR-2	R.I. Div. of Public Utilities & Carriers.	R.I. restrictions on transportation of bulk flammable gas by highway.	Public Notice: 3/12/79 (44 FR 13617); Ruling: IR-2, 12/20/79 (44 FR 75566); Appeal Filed: 1/21/78; Perfected 6/24/78; Ruling on Appeal: 10/30/80 (45 FR 71881); Upheld: 535 F. Supp. 508 (D. R.I. 1982) and 698 F.2d 559 (1st Cir. 1983).	State regulations re two-way radio communications, immediate notification to State Police of any accident, use of headlights at all times, vehicle inspections and definitions were *consistent*. But requirements re written notification to state agencies of accidents, illuminated rear bumper signs, frangible shank-type locks on trailers, permit requirements for each shipment and prohibitions on travel in rush hours were *inconsistent*. Affirmed on appeal and in court.
IR-3	Hazardous Materials Advisory Council (HMAC), Mass. Motor Transport Assn., American Trucking Associations, Inc. (ATA).	City of Boston regulations on routing, time of day, and other requirements re hazardous materials transportation.	Public Notice: 3/24/80 (45 FR 19110); Ruling: IR-3, 3/26/81 (46 FR 18918); Appeal filed; 7/10/81; Ruling on Appeal: 4/29/82 (47 FR 18457).	City regulations re immediate reporting of accidents to local officials, requiring use of major roads except for pickups and deliveries, assessing penalties for violations of valid local regulations, requiring use of headlights, specifying separation distances between vehicles and vehicle operating requirements, and adopting Federal and State motor carrier safety regulations were *consistent*. But, City regulations re marking vehicles to identify products, requiring written accident reports, restricting travel during a.m. rush hours, and restricting use of certain streets were *inconsistent*. No decision rendered on undefined permit system. On appeal, written accident reports still found *inconsistent*, but routing restrictions inconsistency finding was rescinded with no conclusion as to their validity.
IR-4	National Tank Truck Carriers, Inc. (NTTC)	Washington State shipping papers requirements.	Public Notice: 11/3/80 (45 FR 72855); Ruling: IR-4, 1/11/82 (47 FR 1231); Appeal filed: 1/28/82; Ruling on Appeal: 8/2/82 (47 FR 33357); Corrected 8/5/82 (47 FR 34074).	State law requiring intrastate shipments of hazardous materials carried by motor vehicles to be accompanied by red or red bordered shipping papers was *inconsistent*.
IR-5	Ritter Transportation Nat'l LP-Gas Assn. Propane Corp. of America & 7 other companies.	New York City Fire Dept. regulations re hazardous gases.	Public Notice: 4/6/81 (46 FR 20662); Ruling: IR-5, 11/18/82 (47 FR 51991).	City regulations re gas under pressure, combustible or flammable gas, combustible mixture and inflammable mixture had definitions different from DOT's and thus were *inconsistent*.
IR-6	General Battery Corp.	City of Covington, KY prenotification ordinance.	Public Notice: 8/26/82 (47 FR 37737); Ruling: IR-6, 1/6/83 (48 FR 760).	City ordinance extending scope of hazardous materials regulated and requiring advance notice of rail, barge and truck transport of dangerous and hazardous materials within city was found *inconsistent*.
IR-7	Nuclear Assurance Corp.	Governor of New York Order suspending shipments of spent fuel.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-7, 11/27/84 (49 FR 46632).	Governor's letter advising company to suspend spent nuclear fuel shipments of 2 non-interstate highway routes was *consistent* because it required compliance with Federal regulations requiring use of Interstate Highway System.
IR-8	Nuclear Assurance Corp.	Michigan regulations re radioactive materials (RAM) transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-8, 11/27/84 (49 FR 46637); Appeal Filed: 12/20/84; Ruling on appeal: 4/20/87 (52 FR 13000); Correction: 6/11/87 (52 FR 22416).	State RAM regulations re confidentiality standards, inspection requirements (relating to valid regulations), incorporation of Federal regulations, and notification of shipment schedule changes (identical to Federal) were *consistent*. But state regulations re RAM definition, application for approval of shipments, application approval criteria (including container testing and certification requirements) different from Federal regulations, written notification of approvals, communications requirements, and notifications of delays and emergency plan implementation were *inconsistent*.
IR-9	Nuclear Assurance Corp.	Governor of Vermont's letters suspending shipments of spent nuclear fuel.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling: IR-9, 11/27/84 (49 FR 46644).	Governor's letter advising that spent nuclear fuel shipments would not be permitted until Federal agencies established a national policy on them was found not to be state "requirement" and thus was not subject to an inconsistency determination.

INCONSISTENCY RULINGS—Continued

Ruling	Applicant	Subject	Disposition	Summary
IR-10	Nuclear Assurance Corp	New York State Thruway Authority regulations re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-10, 11/27/84 (49 FR 46645); Correction: 3/12/85 (50 FR 9939).	Thruway Authority regulation prohibiting RAM transportation except under its procedures, which generally resulted in approval of low-level RAM shipments and disapproval of shipments of highway route controlled quantities of RAM, was *inconsistent*.
IR-11	DOT (Under 49 CFR 107.209(b).	Ogdensburg Bridge and Port Authority regulations re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-11, 11/27/84 (49 FR 46647).	Bridge and Port Authority regulations specifying international bridge crossing times; requiring escort, compensation therefor, and evidence of unquantified "proper" insurance, and incorporating county requirements were *inconsistent* as applied to non highway route controlled RAM quantities. Bridge was not part of Interstate Highway system.
IR-12	DOT (Under 49 CFR 107.209(b)).	St. Lawrence County (N.Y.) law re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling IR-12, 11/27/84 (49 FR 46650.	County law regulating RAM transport on non-Interstate highways, as it applied to non-highway route controlled quantities of RAM, was *consistent* in its non-regulatory and non-obligatory policy statement, but was *inconsistent* in its permit requirements and hazard class definitions (different from Federal).
IR-13	DOT (under 49 CFR 107.209(b)).	Thousand Islands Bridge Authority regulations re hazardous materials (including RAM) transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling IR-13, 11/27/84 (49 FR 46653.	Bridge authority regulations re permit, fee and escort requirements as applied to vehicle carrying highway route controlled quantities of radioactive materials over Interstate Highway System bridge were *inconsistent*.
IR-14	DOT (under 49 CFR 107.209(b)).	Jefferson County (N.Y.) ordinance re RAM highway transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling IR-14, 11/27/84 (49 FR 46656).	County ordinance regulating transportation of highway route controlled quantities of RAM in area including Interstate highway was *consistent* insofar as it contained front and rear escort requirements identical to NRC standards but was *inconsistent* in requiring 24-hour prenotification, limiting transport to May-October period, and prohibiting holiday and inclement weather shipments.
IR-15	DOT (under 49 CFR 107.209(b)).	Vermont regulations re RAM transportation.	Public Notice: 8/4/83 (48 FR 35590); Ruling: IR-15, 11/27/84 (49 FR 46660); Appeal Filed: 12/19/84; Ruling on Appeal: 4/20/87 (52 FR 13062); Correction: 5/15/87 (52 FR 18492)..	State regulations re highway, rail and water transport of irradiated reactor fuel and nuclear waste were *consistent* as to statement of intent, information requirements identical to NRC's, confidentiality standards same as Federal, and inspection requirements (as applied to consistent rules); but were *inconsistent* re application to Federally-regulated highway route controlled quantity radioactive materials, submission of application for shipment approval (including identification, fee and container certification requirements), criteria for approvals, written notice of approval by Vermont, notice requirements for schedule changes and delays, and monitoring of shipments by state officials.
IR-16	Arizona DOT	City of Tucson ordinance re RAM transportation.	Public Notice: 12/12/83 (48 FR 55387); Ruling: IR-16, 5/20/85 (49 FR 20872).	City ordinance establishing different (from Federal) RAM definitions, prohibiting certain transportation within or through City, and requiring prenotification was *inconsistent*.
IR-17	Wisconsin Electric Power Co	Illinois statutory fee on spent nuclear fuel transportation.	Public Notice: 10/30/85 (50 FR 45186); Ruling: IR-17, 6/9/86 (51 FR 20826); Appeal Filed 8/3/86; Public Notice: 9/29/86 (51 FR 34527); Correction: 10/8/86 (51 FR 36125); Ruling on Appeal: 9/25/87 (52 FR 36200); Correction: 11/6/87 (52 FR 37399).	State law imposing fee of $1,000 per cask of spent nuclear fuel transported through state used to fund consistent inspection and emergency response programs was *consistent*.
IR-18	Prince George's County (MD)	Prince George's County (Md.) regulations re RAM transportation.	Public Notice: 10/4/84 (49 FR 39260); Ruling IR-18, 1/2/87 (52 FR 200); Appeal Filed: 1/20/87; Ruling on Appeal: 7/29/88 (53 FR 22850).	County Regulations re RAM transportation were *inconsistent* re statement of intent, findings, essentially identical hazardous materials definitions, penalties, and permit, advance notice, information, time, routing, escort, and bonding requirements.
IR-19	Southern Pacific Transportation Company.	Nevada regulations re railroad-related loading, unloading transfer and storage of RAM, explosives and other hazardous materials.	Public Notice: 11/25/86 (51 FR 42808); Ruling: IR-19, 6/30/87 (52 FR 24404); Correction: 8/7/87 (52 FR 29468); Appeal Filed 7/26/87; Ruling on Appeal: 4/7/88 (53 FR 11600).	State regulations containing burdensome and discretionary permitting system for railroad-related loading, unloading, transfer and storage of hazardous materials were *inconsistent*.

INCONSISTENCY RULINGS—Continued

Ruling	Applicant	Subject	Disposition	Summary
IR-20	Citizens Against Nuclear Trucking (CANT).	Triborough Bridge and Tunnel Authority regulations re RAM and explosives transportation.	Application Amended: 10/8/86; Public Notice: 10/20/86 (51 FR 37248); Correction: 11/5/86 (51 FR 40294); Ruling: IR-20, 6/30/87 (52 FR 24396); Correction: 8/7/87 (52 FR 29468).	Authority regulations effectively prohibiting transportation of most RAM and explosives through tunnels and across bridges were *inconsistent.* Unfettered discretion to ban transportation was *inconsistent.* But traffic controls, inspections, vehicle separation distances, and requirements to comply with lawful orders were *consistent.*
IR-21	Citizens Against Nuclear Trucking (CANT).	Connecticut statute and regulations re RAM Transportation.	Public Notice: 9/29/86 (51 FR 34524); Correction: 10/8/86 (51 FR 36125); Ruling: IR-21, 10/2/87 (52 FR 37072); Appeal Filed 11/2/87; Public Notice: 1/15/88 (53 FR 1089); Ruling on Appeal: 11/11/88 (53 FR 46735).	State statute and regulations re RAM transportation permitting, information documentation, certification, time restriction, routing, escort requirements and related definition were *inconsistent.* OHMT applies a broad interpretation of the "person affected" standing requirement for inconsistency ruling applications.
IR-22	American Trucking Assns., Inc. (ATA) & National Tank Truck Carriers, Inc (NTTC).	New York City Fire Dept. Directives re tank truck carriage of hazardous liquids and gases.	Public Notice: 5/18/87 (52 FR 18668); Ruling: IR-22, 12/8/87 (52 FR 46574); Correction: 12/29/87 (52 FR 49107); Appeal Filed 2/1/88; Public Notice: 2/24/88 (53 FR 5538); Ruling on Appeal: 6/23/89 (54 FR 26698).	City regulations re cargo containment systems, equipment and related areas were *inconsistent* because they involved exclusively Federal areas and caused delays.
IR-23	American Trucking Assns., Inc. (ATA) & National Tank Truck Carriers, Inc. (NTTC).	New York City routing and time restrictions.	Public Notice: 5/18/87 (52 FR 18668); Ruling IR-23, 5/11/88 (53 FR 16840); Appeal Filed 6/20/88; Public Notice: 8/23/88 (53 FR 32184); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	City routing and time restrictions on through-traffic hazardous materials transportation were *inconsistent* because of absence of determination of effect on overall public safety and consultations with other affected jurisdictions.
IR-24	McGill Specialized Carriers, Inc.	City of San Antonio, TX regulations re placarding of small quantities of explosives.	Public Notice: 11/6/87 (52 FR 43016); Ruling: IR-24, 5/31/88 (53 FR 19848).	City regulation adopting vague explosives placarding requirement of 1979 Uniform Fire Code was *inconsistent* because placarding is exclusively Federal area and City regulation required placarding where HMR forbid it.
IR-25	City of Maryland Heights, MO	City of Maryland Heights Ordinance requiring $1,000 bond for each waste-hauling vehicle.	Public Notice: 6/6/88 (53 FR 20736); Ruling: IR-25, 4/21/89 (54 FR 16308); Correction: 5/10/89 (54 FR 20235).	City ordinance requiring a $1,000 bond for highway transportation of hazardous wastes was *inconsistent* insofar as it applied to hazardous materials regulated under the HMTA
IR-26	California Dept. of Motor Vehicles.	California administrative Code regulations re training for highway transportation of hazardous materials.	Public Notice: 11/6/87 (52 FR 43830); Extension: 12/29/87 (52 FR 49107); Ruling: IR-26, 4/21/89 (54 FR 16314); Correction: 5/18/89 (54 FR 21526).	State regulations requiring training for operators of motor vehicles carrying hazardous materials generally were *consistent* with respect to domiciliaries of that state but *inconsistent* with respect to non-domiciliaries. However, after April 1, 1992, they would be *consistent* with respect to non-domiciliaries not having a hazardous material endorsement on their commercial drivers' licenses (CDL's)
IR-27	Department of Energy (DOE)	Colorado law and regulations re RAM transport.	Public Notice: 8/11/88 (54 FR 30418); Ruling: IR-27, 4/21/89 (54 FR 16326); Correction, 5/9/89 (54 FR 20001).	State regulations concerning permits, training, prenotifi- cation, information, documentation, and permit fee requirements for transportation of RAM, as well as civil penalty provisions relating to them, were *inconsistent.* But inspection, civil penalty and shipping fee requirements not related to inconsistent State activities were *consistent*
IR-28	Yellow Freight System, Inc	City of San Jose, CA ordinance re hazardous materials storage.	Public Notice: 10/5/88 (53 FR 39196). Ruling: IR-28, 3/8/90 (54 FR 8884); Appeal Filed: 4/5/90; Public Notice: 6/5/90 (55 FR 22986); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	City ordinance re hazardous materials storage was *inconsistent* as applied to transportation (including storage, loading and unloading incidental thereto) with respect to hazardous materials definition; permitting, information and documentation, storage, loading, unloading and certain incident reporting requirements; and related civil penalty provisions. But most incident reporting requirements and related civil penalty provisions were *inconsistent*
IR-29	Reichhold Limited	Maine statutes and regulations re hazardous materials transportation permit and fee.	Public Notice: 9/12/89 (54 FR 37764); Ruling: IR-29, 3/12/90 (55 FR 9304).	State statutes and regulation re hazardous materials transportation materials transportation permit and fee were *inconsistent* insofar as they were "triggered" but SARA Title III list of hazardous substances instead of HMR's Hazardous Materials Table

INCONSISTENCY RULINGS—Continued

Ruling	Applicant	Subject	Disposition	Summary
IR-30	Department of the Navy	City of Oakland, CA Nuclear Free Zone Act re RAM transport.	Public Notice: 6/27/89 (54 FR 27104); Extension: 9/25/89 (54 FR 39253); Ruling: IR-30, 3/14/90 (55 FR 9876).	City ordinance re RAM Transport was *inconsistent in all respects:* Definitions, 45-day prenotification, routing and mode requirements, placarding, prohibition of transportation and related activities, information requirements, and inspection enforcement and fee provisions
IR-31	State of Louisiana	Louisiana statutes and regulations adopting 49 CFR parts 171-180 with respect to rail carriers and shippers.	Public Notice: 9/27/89 (54 FR 39622); Ruling: IR-31, 6/21/90 (55 FR 25571); Appeal Filed: 7/2/90; Public Notice: 9/6/90 (55 FR 36735); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	State statutes and regulations adopting HMR generally *consistent*. However, the following were *inconsistent*: Different hazardous materials definitions, different definition of "train" insurance requirements, written incident reports, civil penalties for other than "knowing" violations, and penalty and enforcement provisions insofar as related to inconsistent substantive provisions
IR-32	Chemical Waste Transportation Council.	City of Montevallo, AL ordinance re hazardous waste transportation.	Public Notice: 1/23/89 (54 FR 3177); Ruling IR-32, 9/6/90 (55 FR 36736). Appeal Filed 9/27/90. Public Notice: 10/17/91 (56 FR 52154); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	City code re hazardous waste transportation was *consistent* re speed limit, separation distance, "headlights-on," hazardous waste manifest-carriage and placarding requirements; CB radio requirement except relating to radioactive materials; and immediate accident reporting requirement except relating to irradiated reactor fuel. Code was *inconsistent* re hazardous waste definitions; routing, time, weather, prenotification, and liability insurance requirements; CB radio requirement relating to radioactive materials; immediate accident reporting requirement relating to irradiated reactor fuel; and prohibition on transportation-related hazardous waste storage

NON-PREEMPTION DETERMINATIONS

Ruling	Applicant	Subject	Disposition	Summary
N/A	Commonwealth of Mass. on behalf of Town of Framingham.	Massachusetts statute and Town of Framingham by-law restricting storage of vinyl chloride.	Public Notice: 10/5/81; Public Hearing: 12/15/81; Suspended: 4/15/83.	Application for nonpreemption determination cannot be acted upon until inconsistency determination has been made as to provisions at issue.
NPD-1	City of New York	City of New York Health Code provision establishing permit requirements for each shipment into or through City of specified radioactive materials, thereby effectively banning transportation of most radioactive materials.	Public Notice: 1/15/85 (50 FR 2528); Ruling: NPD-1, 9/12/85 (50 FR 37308); Appeal Filed: 10/8/85; Ruling on Appeal: 12/30/86 (51 FR 47182): Reversed and remanded, *City of New York* v. *U.S. Dept. of Transportation*, 87 Civ. 1443 (MGC) (S.D.N.Y. 12/8/88); Public Notices: 3/28/89 (54 FR 12732), Correction: 4/4/89 (54 FR 13606), 7/16/90 (55 FR 28982), 9/15/90 (55 FR 36380); Superseded by WPDA-2: 7/2/92 (57 FR 29556).	Denying City's application, OHMT and RSPA stated that requests for nonpreemption determinations would be considered only if applicant could demonstrate that its inconsistent requirement is necessary, in light of exceptional local circumstances, to assure the adequate level of safety intended by the HMTA. However, Federal district court held that HMTA does not authorize requirement of a threshold showing of exceptional circumstances, reversed the denial of City's application, and remanded to DOT to determine whether application meets the two statutory criteria. RSPA has published notices reopening the docket and inviting public comment to update and supplement the docket.
WPD-1	City of New York	City of New York Fire Dept. Regulations re capacity, construction, etc. of tank trucks transporting flammable and combustible liquids and compressed gases.	Public Notices: 11/15/91 (56 FR 58126) Feb. 27, 1992 (57 FR 6767) 4/8/92 (57 FR 11964); Denial of Temporary Stay of Preemption: 3/23/92 (57 FR 10057); Ruling: WPD-1, 6/2/92 (57 FR 23278).	RSPA has no authority under the HMTA to grant a temporary stay of preemption. Denial of waiver on tank truck design and construction requirements; dismissal of application on compressed gases regulations; grant of waiver on emergency transfer; no preemption on inspection and permit as general safety measures.

[FR Doc. 92-23687 Filed 9-30-92; 8:45 am]
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Thursday
October 1, 1992

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171

Infectious Substances; Correction and Extension of Compliance Date; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM-181; Amendment No. 171-112]

RIN 2137-AA01

Infectious Substances; Correction and Extension of Compliance Date

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correction and extension of compliance date.

SUMMARY: RSPA is revising the transition period applicable to infectious substances, including regulated medical wastes, under a final rule published in the Federal Register on December 20, 1991 (56 FR 66124). The compliance date for classification and hazard communication requirements applicable to infectious substances is delayed from October 1, 1992, to April 1, 1993. The compliance date for packaging requirements for infectious substances, which was inadvertently omitted from the December 20, 1991 final rule, is extended in this document to April 1, 1993. The delay in the compliance date is necessary to provide additional time for RSPA to conclude its evaluation and respond to two petitions for reconsideration and a number of related comments and requests for clarification addressed to infectious substances, particularly regulated medical wastes. RSPA anticipates publication of its response in the near future.

DATES: These amendments are effective on October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Martin, Office of Hazardous Materials Standards, Research and Special Programs Administration, 400 Seventh St., SW., Washington, DC 20590-0001, telephone: (202) 366-4488.

SUPPLEMENTARY INFORMATION: On January 3, 1991, RSPA adopted a final rule under Docket HM-142A (56 FR 197) which: (1) Revised the definition of "etiologic agent," (2) removed the 50 milliliter (ml) exception from regulation for etiologic agents, and (3) clarified quantity limitations for etiologic agents transported aboard aircraft. On December 21, 1990, RSPA issued a final rule under Docket HM-181 (55 FR 52402) which comprehensively revised the Hazardous Materials Regulations (HMR) with respect to hazard communication, classification, and packaging requirements and incorporated the HM-142A provisions with minor changes. A document making editorial and substantive revisions to the December 1990 final rule was published on December 20, 1991 (56 FR 66124) under Docket HM-181. The revisions contained in the latter document were primarily in response to over 250 petitions for reconsideration received on the December 21, 1990 final rule.

Following issuance of the December 1991 rule, RSPA received two petitions for reconsideration and numerous comments and requests for clarification concerning the provisions on infectious substances and regulated medical waste. RSPA is nearing completion of its evaluation of these petitions and comments which address a wide range of issues. RSPA anticipates publication of a document which responds to these petitions in the near future. However, that document will not be ready for publication prior to October 1, 1992, the date on which new requirements for infectious substances, including regulated medical wastes, would become mandatory. Therefore, in this document RSPA is extending the compliance date in 49 CFR 171.14(b), for classification and hazard communication requirements applicable to infectious substances, from October 1, 1992, to April 1, 1993.

RSPA is also correcting an error and extending the compliance date for packaging requirements for infectious substances, from October 1, 1992, to April 1, 1993. The January 3, 1991 rule had an effective date of February 19, 1991, which was extended to September 30, 1991 (56 FR 7312), and extended again to October 1, 1992 (56 FR 49830). Although the preamble language of the December 1991 final rule indicated an October 1, 1992 compliance date for new packaging requirements, this date was inadvertently omitted from the regulatory text of the final rule.

Because the amendments adopted herein correct a certain provision in the HMR, extend the compliance date of certain regulations, and impose no new regulatory burden on any person, notice and public procedure are unnecessary. For these same reasons, these amendments are being made effective without the usual 30-day delay following publication.

Rulemaking Analyses and Notices

Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the December 20, 1991 final rule is significant under the regulatory procedures of the Department of Transportation (44 FR 11034), this document is not significant because it does not impose additional requirements, has the effect of extending a compliance date, and is similar in effect to an extension of effective date. A regulatory evaluation for the December 20, 1991 final rule is available for review in the docket.

Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 on Federalism. It has no substantial direct effect on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among levels of government. Therefore, no Federalism Assessment is required.

Regulatory Flexibility Act

Based on information concerning the size and nature of entities likely to be affected by this rule, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Paperwork Reduction Act

This amendment does not impose information collection or recordkeeping requirements.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN numbers contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1806, 1815, 1818; 49 CFR Part 1.

2. In § 171.14, paragraph (b)(2) is revised; paragraphs (b)(3), (b)(4) and (b)(5) are redesignated as (b)(4), (b)(5)

and (b)(6), respectively; and a new paragraph (b)(3) is added to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(b) * * *

(2) *October 1, 1992.* For materials poisonous by inhalation (see § 173.132 of this subchapter), the hazard communication requirements of part 172 of this subchapter, including placarding requirements of subpart F of part 172, are effective on October 1, 1992.

(3) *April 1, 1993.* For Division 6.2 materials (infectious substances, including regulated medical wastes), all applicable regulatory requirements, including those pertaining to classification (see § 173.134 of this subchapter), hazard communication, and packaging, are effective on April 1, 1993.

* * * * *

Issued in Washington, DC on September 25, 1992, under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator.

[FR Doc. 92-23809 Filed 9-30-92; 8:45 am]

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October 1, 1992

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.

Hazardous Materials Regulations; Editorial and Technical Revisions; Final Rule

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 107, 171, 172, 173, 174, 176, 177, 178, 179, and 180

[Docket Nos. HM-181, HM-189, Amdt. Nos. 107-23, 171-111, 172-123, 173-224, 174-68, 176-30, 177-78, 178-97, 179-45, and 180-3]

Editorial and Technical Revisions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors and makes minor regulatory changes to title 49 of the Code of Federal Regulations (CFR), parts 100–199, revised as of December 31, 1991. The 1991 version contained provisions of a final rule issued on December 21, 1990 and revised on December 20, 1991 which comprehensively amended the Hazardous Materials Regulations (HMR) with respect to hazard communication, classification and packaging requirements. The intended effect of this final rule is to promote accuracy through editorial and technical corrections to the CFR. This rule will not impose any new requirements on persons subject to the HMR.

DATES: *Effective:* October 1, 1992.

Applicability: Because of the transition period provisions in 49 CFR 171.14, the provisions of § 172.101(l)(1)(ii), which allows up to one year after a change in the Hazardous Materials Table (HMT) to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change, do not apply to these amendments.

FOR FURTHER INFORMATION CONTACT: John Gale or Beth Romo, telephone (202) 366–4488, Office of Hazardous Materials Standards, or Charles Hochman, telephone (202) 366–4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

The Research and Special Programs Administration (RSPA) published a final rule on December 21, 1990 [Docket HM–181; 55 FR 52402] which comprehensively revised the Hazardous Materials Regulations (HMR; 49 CFR parts 171 to 180) with respect to hazard communication, classification, and packaging requirements based on the UN Recommendations. A document responding to petitions for reconsideration and containing editorial and substantive revisions to the final rule was published on December 20, 1991 [56 FR 66124]. That document included revisions to a January 3, 1991 final rule under HM–142A and to the 1990 49 CFR parts 106–180, under HM–189.

The 1991 49 CFR parts 100–199 incorporated the revised final rule issued December 20, 1991 as well as all other revisions published prior to December 31, 1991. This document makes editorial and technical corrections to the 1991 49 CFR parts 107–180.

This document does not include revisions to requirements for infectious substances or regulated medical waste. A separate rulemaking is forthcoming which will respond to petitions for reconsideration concerning regulated medical waste and will address other issues concerning infectious substances and regulated medical waste.

These amendments in Docket HM–181 clarify and revise certain provisions of the final rule in response to petitions for reconsideration. These amendments in Docket HM–189 clarify and correct other provisions of the HMR. In both cases, these changes impose no new regulatory burden on any person and provide relief from existing requirements. Notice and public comment are unnecessary and good cause exists to make these amendments effective less than 30 days following publication.

Regulatory Review Comments

In response to the President's January 28, 1992, announcement of a federal regulatory review, DOT published a notice on February 7, 1992 [57 FR 4744] soliciting public comments on the Department's regulatory programs. In response to that notice, RSPA received numerous comments to the HMR as revised under Docket HM–181. All comments to the regulatory review have been considered in preparing this document. Based on the merit of comments received during the regulatory review, RSPA is revising certain provisions of the regulations. These revisions are discussed in detail in the section-by-section review.

Section-by-Section Review

Part 107: Hazardous Materials Program Procedures

Section 107.315. Paragraph (c) is revised and paragraph (d) is added to set forth different procedures for payment of civil penalties, based on the amount of the penalty.

Part 171: General Information, Regulations and Definitions

Section 171.8. The definition for "NRC (non-reusable container)" was inadvertently removed in the final rule. Because a specification DOT 39 cylinder is non-reusable, and because other non-reusable packagings may be authorized in the future, RSPA is reinstating this definition.

The definition for "bulk packaging" is revised to clarify that for solids, the packaging must have a maximum net mass of greater than 400 kg (882 pounds) *and* a maximum capacity greater than 450 L (119 gallons). Therefore, a packaging having a maximum net mass of greater than 882 pounds must also have a maximum capacity greater than 119 gallons to be considered a bulk packaging for solids.

The definition for "non-bulk packaging" is revised to clarify that for liquids, the maximum capacity of the packaging must be less than 450 L (119 gallons) *and* for solids the maximum net mass of the packaging must be less than 400 kg or a maximum capacity of less than 450 L.

In addition, the definition for "oxidizer" is revised to correct a section reference to "§ 173.127" and the second definition of oxidizer is removed.

Section 171.12. Paragraph (b)(7) is revised for clarity.

Section 171.12a. Paragraph (b) is revised to clarify provisions for shipments of hazardous materials transported to or through the United States which have been prepared in accordance with Canadian regulations.

Section 171.14. Paragraphs (a) and (b) are revised to clarify the applicable transition dates for the final rule as revised December 20, 1991 and by this document. Language is added to paragraph (a) clarifying that other rules issued during the transition periods may implement requirements earlier or later than the transition dates.

In paragraph (c)(2), RSPA is permitting the use, for highway transportation only, until October 1, 2001, of pre-October 1991 placards or placards specified in the December 21, 1990 final rule (which contains minor deviations from the placards adopted in the December 20, 1991 rule) in place of the placards adopted in the December 20, 1991 rule. This extended conversion period applies to highway transportation only and does not include intermodal shipments. The extension will minimize the impact of converting to the new placarding system and responds to petitions from motor carriers.

Part 172: Hazardous Materials Table, Special Provisions, Hazardous Materials Communications Requirements and Emergency Response Information Requirements

Section 172.101: The Hazardous Materials Table (The Table). The Table is amended as follows:

a. The entries "Azido hydroxy tetrazole (mercury and silver salts)" and "Dinitroglycoluril" are removed. The entry "Sodium hydrogen sulfate, solid" is removed because the material in its solid state does not meet any hazard class definition.

b. The "Asbestos" entries referencing blue or brown asbestos and white asbestos are removed and a generic "Asbestos" entry is added for domestic transportation only, which will allow the use of either the domestic shipping name or the international shipping name for the transportation of all forms of asbestos in the US.

c. The entry "Acrolein, inhibited" is corrected by removing the "+" in Column (1).

d. The entry "Aerosols, poison, each not exceeding 1 L capacity" is revised by removing Special Provision 3 from Column (7) because the provision is not consistent with the hazard class and only Division 6.1 Packing Group III materials are authorized in aerosols.

e. The entry "Aircraft hydraulic power unit fuel tank (containing a mixture of anhydrous hydrazine and monomethyl hydrazine (M86 fuel)." is revised by removing the "D" in Column (1) and revising the identification number in Column (4) to read "UN 3165" for consistency with international requirements.

f. The entry "Alcoholic beverages" is revised by adding a Packing Group II entry in Column (5). This addition is necessary because many alcoholic beverages fall within the Packing Group II level for Class 3.

g. The entry "Alkali metal alloys" is revised by adding Special Provision B48 in Column (7) to except portable tanks in sodium metal service from hydrostatic testing requirements.

h. The domestic entry "Ammonia anhydrous liquefied or Ammonia solutions" is revised by adding commas to read: "Ammonia, anhydrous, liquefied *or* Ammonia solutions".

i. The entry "Ammonium nitrate, liquid (hot concentrated solution)" is revised by removing Special Provision B17 in Column (7). The purpose of this change is to remove the requirement that bulk packagings must be made from aluminum.

j. The entry "Barium peroxide" is corrected by removing the "2" in Column (8C) and replacing it with "242".

k. The entry "Blue asbestos (Crocidolite) or Brown asbestos (amosite, mysorite)" is revised by adding an "I" in Column (1).

l. In Column (9A), for the entry "Bombs, *with bursing charge*" in Division 1.1F, the spelling of "Forbidden" is corrected.

m. Based on the merit of petitions, Special Provision 19 is added in Column (7) for "Butane *or* Butane mixtures" and "Butylene" to permit the use of the identification number "UN1075" as an alternative to the identification number assigned, as long as the identification number is consistent on package markings, shipping papers and emergency response information.

n. The entries "Carbon dioxide and nitrous oxide mixtures" and "Carbon monoxide" are corrected by revising Column (8C) of each entry to read "314, 315".

o. The entry for "Combustible liquid, n.o.s." is moved to its proper alphabetical sequence.

p. The entries "Corrosive solids, self heating, n.o.s." and "Corrosive solids, which in contact with water emit flammable gases, n.o.s." are revised by removing "241" from Column (8C) and replacing it with "243". This revision is necessary in order to provide packagings that are equivalent to other materials in the same hazard classes.

q. The entry "Diethylaminopropylamine" is revised by removing the "AW" in Column (1) to correspond with § 173.154 for consistency.

r. The entry "Dimethylhydrazine, unsymmetrical" is revised by removing Special Provision B58 and adding Special Provision B74 in Column (7) to provide consistency with requirements imposed on other materials poisonous by inhalation in Hazard Zone B.

s. The entry "Fish meal or Fish scrap stabilized" is editorially revised by changing the proper shipping name to read "Fish meal, stabilized *or* Fish scrap, stabilized" and by removing Special Provision A1 from Column (7).

t. The entry for "Fusee" is moved to its proper alphabetical sequence.

u. The entries "Hydrochloric acid, solution" and "Sulfuric acid" are revised by changing Special Provision B2 to B3 in Column (7) to prohibit the use of DOT 57 portable tanks. Special Provision B2 was amended in the December 20, 1991 revised final rule to permit the use of DOT 57 portable tanks, and Special Provision B3 was added which prohibited the use of these portable tanks. In the revised final rule, for hydrochloric acid and sulfuric acid, Special Provision B3 should have replaced B2 to reflect this prohibition. This is consistent with pre-HM-181 requirements which authorized DOT 57 portable tanks only for cleaning compounds, not hydrochloric acid solutions or sulfuric acid.

v. Special Provision B35 is added in Column (7) for the entry "Hydrogen cyanide, anhydrous, stabilized" to authorize an alternative shipping name "Hydrocyanic acid" to be marked on a tank car.

w. The entry for "Hydrogen peroxide, aqueous solutions", containing between 40% and 60% hydrogen peroxide, is editorially revised by correcting Special Provision "BB53" to read "B53".

x. The entry "Hydroxylamine sulfate" is revised by removing the "AW" in Column (1) to correspond with § 173.154 for consistency.

y. A cross reference "Isobutane or Isobutane mixtures see also Petroleum gases, liquefied" is added to clarify that either name may be used as a proper shipping name. In addition, Special Provision 19 is added in Column (7) for "Isobutane" to permit the use of the identification number "UN1075", as an alternative to the identification number assigned as long as the identification number is consistent on package markings, shipping papers and emergency response information.

z. The entry "Isophoronediamine" is revised by removing the "AW" in Column (1) to correspond with § 173.154 for consistency.

aa. The entry "Lead compounds, soluble, n.o.s." is editorially revised by changing the packing group in Column (5) to read "III" and by revising Column (6) to read "KEEP AWAY FROM FOOD".

bb. The entry "Metal powders, flammable, n.o.s" in Packing Group III is editorially revised to correct the bulk packaging authorization in Column (8C) to read "240".

cc. The entry "Methanol or Methyl alcohol" is editorially revised to correct the bulk packaging authorization in Column (8C) to read "242".

dd. The entry "Methylhydrazine" is editorially revised to correct the non-bulk packaging authorization in Column (8B) to read "226".

ee. The entries "Nitrating acid mixtures with not more than 50 per cent nitric acid" and "Nitrating acid mixtures with 50 per cent or more nitric acid" are revised by adding Special Provision B47 in Column (7).

ff. The entry "PCB see Polychlorinated biphenyls" is revised by removing the "D" in Column 1 and adding "AW" for

non-bulk packagings; and (2) materials corrosive only to steel are not regulated when transported by rail or highway in bulk packagings. These exceptions apply only if the offeror has determined that the packaging is compatible with the lading, as specified in § 173.24(e).

Section 173.156. In the December 20, 1991 revised final rule, RSPA accepted two petitions to allow domestic-only shipments of ORM–D materials unitized in stretch-wrapped floor display stands or wire-bound shrouded pallets to exceed the 30-kg gross weight limit. RSPA did not address the petitioners' request that, based on current industry practices, this exception be broadened to apply to shipments going directly from a manufacturer to a distribution center or retail outlet or returning. Commenters to the regulatory review asked RSPA to revise § 173.156 to remove the 66-pound weight limit on ORM–Ds to allow shipment of display packs without shipping papers. Alternatively, commenters suggested RSPA should remove any limitation on exclusive use by common carrier and allow transportation by highway carrier from any point of origin to any point of destination. RSPA already had removed the weight limit for ORM–D but not limited quantity shipments. RSPA disagrees with petitions requesting that either unitized ORM–D shipments be allowed to be transported by common carrier not under exclusive use or that RSPA waive the 30-kg (66-pound) gross weight limit for limited quantity shipments. RSPA believes safety could be compromised by the intermixing of shipments of this type with LTL traffic normally handled by common carriers. Therefore, RSPA will not permit non-exclusive use by common carrier, nor will it lift the 30-kg (66-pound) weight limit on limited quantity shipments. However, RSPA is broadening points of origin and destination to include manufacturers and return shipments. RSPA is revising paragraph (b) to include these types of activities in the exception for unitized shipments and clarifies that a box would be an acceptable overpack.

Section 173.159. UN standard 1D plywood drums, 1G fiber drums, 1H2 plastic drums, 3H2 plastic jerricans, and 4H2 solid plastic boxes are added as authorized packagings in new paragraphs (b)(3) through (b)(6) to correct an earlier oversight. In addition, the word "articles" is corrected to read "materials" in paragraph (c).

Section 173.183. Paragraph (d) is revised to except methyl bromide from the requirements of § 173.40.

Section 173.211. Paragraph (c) is editorially revised to correct authorizations for 6HA1 and 6HA2 composite packagings.

Section 173.225. Authorization for use of DOT 412 cargo tanks has been added in paragraph (e)(2), and paragraphs (e)(3) and (e)(4) have been restructured to more accurately reflect their applicability.

Section 173.227. The introductory text in paragraph (b) is editorially revised to specify that a 1H1 plastic drum or 6HA1 composite packaging must be further packed in a 1A2 or 1H2 drum.

Section 173.244. The section heading is revised by adding a reference to Division 4.3 (dangerous when wet) materials.

Sections 173.302 and 173.304. Paragraph (a)(5)(iii) in § 173.302 is editorially revised to correct reference to Federal Specification RR–C–901c. In addition, paragraph (h) in § 173.302 and paragraph (g) in § 173.304 are revised to limit conformance with § 173.40 Division 2.3 materials in Hazard Zone A.

Section 173.304. In paragraph (f)(1), references to DOT Specification fiberboard and wooden boxes are removed and replaced with an authorization for use of strong, tight packagings.

Section 173.314. In the December 20, 1991 revised final rule, RSPA amended § 173.24b(a)(3) to apply a five percent outage requirement to all materials poisonous by inhalation. RSPA subsequently has received several inquiries concerning the applicability of the five percent outage requirement for anhydrous ammonia. One company stated that a five percent outage requirement or anhydrous ammonia would be inconsistent with RSPA's earlier position, noting that:

> [t]hroughout the rulemaking proceeding, DOT has clearly stated their intention to improve the hazard communication for anhydrous ammonia with the "Inhalation Hazard" making requirement, not to increase the transportation costs of the product.

RSPA initially proposed classification criteria for poisonous gases in Notice 87–4 (May 5, 1987; 52 FR 16482) which resulted in significant controversy over the proposed reclassification of anhydrous ammonia from a Division 2.2 (non-flammable gas) to a Division 2.3 (poisonous gas) material. Commenters to this proposal stated that the reclassification would impose severe economic constraints and impose unwarranted increased transportation charges and insurance rates. Based on a regulatory analysis, RSPA eventually withdrew its proposal to reclassify anhydrous ammonia and retained the Division 2.2 (non-flammable gas) classification for domestic transportation.

In other previous rules, RSPA has recognized the need for improved packagings for materials posing acute health risks, such as anhydrous ammonia and other materials poisonous by inhalation. Such packaging improvements would include crashworthiness (packaging survivability) in accidents. In addition, RSPA and the Federal Railroad Administration (FRA) consider it necessary to require sufficient outage in tank cars so that, even under extreme but credible scenarios, there will be no release of a hazardous material from the expansion of the lading.

In response to the recent inquiries, RSPA and FRA have calculated the permissible filling limits for anhydrous ammonia under both the pre-HM–181 regulations and the new requirements. Based on these calculations, RSPA is authorizing a two percent outage calculated at the reference temperature of 41°C for insulated tank cars and 46°C for non-insulated tank cars to assure a level of safety commensurate with public interest. For example, the revised requirements in paragraph (c) will allow 4,870 pounds more for an insulated tank car and 4,793 pounds more for a non-insulated tank car for a hypothetical tank capacity of 33,625 gallons loaded in the summer. Prior to publication of the final rule, the basis for the filling limits was developed from limited empirical data. In developing provisions for filling limits in the Docket HM–181 final rule, RSPA considered seasonal factors because of the broad temperature ranges in the United States. For example, in the months of November through March, shippers may load anhydrous ammonia in non-insulated tank cars so that the tanks would become "liquid full" at about 35.5°C (96°F). For this reason, the provisions in revised paragraph (c) will not allow as much anhydrous ammonia in tank cars filled in the winter months as with previously authorized under the pre-HM–181 regulations. RSPA also is changing the filling limits for other Division 2.3 Zone D materials consistent with those limits for anhydrous ammonia.

Recent inquiries did not address the filling limits of anhydrous ammonia in DOT 106 multi-unit-tank cars. Calculations indicate that even at a five percent outage, more anhydrous ammonia is allowed in the multi-unit tank cars under the new requirements than under the pre-HM–181 regulations. Since the pre-HM–181 regulations were unusually restrictive, RSPA and FRA

will not change the reference in Note 21 at this time.

In addition, use of a 109A tank car for ammonia solutions between 35 and 50 percent ammonia by mass is authorized. This authorization was inadvertently omitted in the December 21, 1990, final rule.

Section 173.315. Notes 3, 11, and 16 in paragraph (a) are editorially revised for clarity. Paragraphs (d) and (i)(12) are revised to correct section references.

Section 173.336. The section heading and introductory text are editorially revised to reflect the correct proper shipping names specified in the § 172.101 HMT.

Part 174: Carriage by Rail

Section 174.25. In the § 174.25 Table, the placard endorsement for a Division 1.6 material is changed from "Dangerous" to "None".

Section 174.55. Paragraph (c) is editorially revised to reference new orientation markings.

Section 174.61. Paragraph (c) is revised to reflect a change in the Federal Railroad Administration's approval authority.

Section 174.81. The Segregation Table and paragraph (e)(5) are revised to allow ammonium nitrate fertilizer to be loaded or stored with Division 1.5 (blasting agents) material. In addition, in the revised final rule, an "O" correctly appeared at the intersection of the row entitled "Flammable liquids" and the column entitled "5.1", but the "O" did not appear in the reverse intersection. In this document, the Segregation Table is editorially revised to add an "O" at the intersection of the row entitled "Oxidizers" and the column entitled "3". Paragraph (f) also is corrected to allow the shipment of detonators and high explosives in accordance with § 177.835(g).

Section 174.82. Paragraph (a) is revised to except Division 1.6 (explosive) materials from handling requirements.

Section 174.85. Paragraph (b) is editorially revised to clarify that Class 7 materials also must conform with the train position requirements of paragraph (d).

Part 176: Carriage by Vessel

Section 176.83. The text of paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) is switched to indicate the correct meaning of each pictorial display.

Section 176.600. The phrases "Poison A" and "Poison B" are replaced with UN hazard class terminology.

Part 177: Carriage by Public Highway

Section 177.805. The section is editorially revised by removing the paragraph (a) designation.

Section 177.848. The Segregation Table and paragraph (e)(5) are revised to allow ammonium nitrate fertilizer to be loaded or stored with Division 1.5 (blasting agents) material. In addition, in the revised final rule, an "O" correctly appeared at the intersection of the row entitled "Flammable liquids" and the column entitled "5.1", but the "O" did not appear in the reverse intersection. In this document, the Segregation Table is editorially revised to add an "O" at the intersection of the row entitled "Oxidizers" and the column entitled "3". Paragraph (f) also is corrected to allow the shipment of detonators and high explosives in accordance with § 177.835(g).

Part 178: Specifications for Packagings

Section 178.44–15. Paragraph (a)(2) is reserved.

Section 178.45–7. Paragraph (c)(2) is reserved.

Section 178.270–5. Paragraphs (a), (c), and (d) are corrected by removing the wording "deka newtons" and replacing it with "decanewtons".

Section 178.337–1. A section reference in paragraph (b) is corrected.

Section 178.337–11. A date in paragraph (a)(4)(i)(B) is corrected.

Section 178.345–2. A reference to an ASTM standard in paragraph (a)(2) is corrected.

Section 178.345–11. Paragraph (a) is revised to remove inference that a loading/unloading outlet may not be used for other purposes. Changes are made to paragraph (b)(2) to clarify that the lading is discharged into the cargo tank *through internal piping* situated above the maximum liquid level of the tank. Prior to publication of a June 17, 1991 final rule (Docket HM–183, 56 FR 27877), former § 178.345–11(b)(2) stated that any loading/unloading connection extending beyond the prescribed stop valve which is part of a self-closing system "must be fitted with another stop-valve or other leak-tight closure at the end of such connection" (55 FR 37062, September 7, 1990). In the June 17 final rule, § 178.345–11 was reorganized for clarity and paragraph (b)(2) was revised and redesignated as paragraph (c). Through an oversight, the wording "or other leak-tight closure" was omitted in the revised rule and is corrected herein.

In addition, the phrase "Poison B liquids" is replaced with UN hazard class terminology.

Section 178.507. Paragraph (a) is corrected by removing "ID" and replacing it with "1D".

Section 178.601. In paragraph (h), a reference is corrected to include § 178.504.

Section 178.603. Paragraph (a) has been revised to specify that for other than flat drops, the center of gravity of the test packaging must be vertically over the point of impact. The UN Recommendations, as well as the ICAO Technical Instructions and the IMDG Code, require that the center of gravity be vertically over the point of impact. RSPA had originally specified only that a packaging be dropped "diagonally." However, based on petitions for reconsideration and comments to the amendments and corrections of December 20, 1991, RSPA recognizes that a drop with the center of gravity vertically over the point of impact is the most severe test. To permit drops in other orientations is inconsistent with the international requirements, and could allow certification of packagings which do not provide the desired structural integrity. While RSPA had previously stated a belief that a drop test with the center of gravity over the point of impact would be difficult to achieve, RSPA now believes that such an orientation can be and is being achieved in testing of all types of packagings. In addition, there has been some confusion over the number of samples which must be used for performance of the drop test. The intent of paragraph (a) is to require that six sample drums be drop tested, and five sample boxes be tested, etc. One sample cannot be tested five or six times to meet the requirements of this section. Therefore, the heading of the second column of the table in paragraph (a) has been changed to clarify this requirement.

Section 178.606. The requirement in paragraph (d) for the assessment of a packaging's stacking stability has been misinterpreted. The intent of this provision is that, in instances such as guided load tests where stacking stability cannot be assessed during the stacking test, an additional stacking stability assessment must be performed. This additional stacking stability assessment consists of stacking two identically filled packages on the test packaging, and having them maintain their position for one hour. Since this is part of the actual test procedure, paragraph (c) has been modified to specifically require that the stacking stability assessment procedure be performed whenever a guided load test is used. Reference to this stacking

stability assessment procedure has been removed from paragraph (d). Where the stacking test is performed using actual stacked packages, the stacking stability assessment procedure is not required.

Appendix B to Part 178. In the amendments and corrections published December 20, 1991, the alternative leak test procedure known as the "T-zone" test was added for metal drums. This test procedure is intended to be used only as a production testing method, not as a design qualification test. However, by placing the "T-zone" test in appendix B to part 178 without qualification, RSPA inadvertently authorized this test as an alternative for design qualification as well as production testing. Paragraph (4) of appendix B has been changed to limit the use of the alternative test procedure known as the "T-zone" test to other than design qualification testing.

Part 179: Specifications for Tank Cars

Section 179.101–1. The appropriate footnotes for each minimum plate thickness entry for Class DOT cars are moved to follow each entry to clarify that they are footnotes. In addition, for Class DOT 111A200W cars, the footnote "1" is removed as it is inconsistent with footnote "3", which remains.

Section 179.200. Paragraph (b)(4), which requires tank cars equipped with non-closing pressure relief devices to be marked "NOT FOR FLAMMABLE OR POISONOUS LIQUIDS", is removed as it is inconsistent with the marking requirement in § 173.31(a)(15), which allows certain poisonous liquids in tank cars with a non-closing pressure relief device. Part 179 requires tank cars equipped with non-closing pressure relief devices to have the marking "NOT FOR FLAMMABLE OR POISONOUS LIQUIDS" applied to the tank; whereas, part 173 allows certain poisonous liquids in tank cars with a non-closing pressure relief device. Since this marking applies only to rail transportation, is inconsistent with other modes of transport, and is applied for the sole use of the shipping community, § 179.200–18(b)(4) is removed for regulatory consistency thereby leaving the marking requirement to the private sector if the need arises.

Part 180: Continuing Qualification and Maintenance of Packaging

Section 180.403. A section reference in the definition for "corrosive to the tank/valve" a section reference is corrected.

Section 180.405. A section reference in paragraph (g)(2) is corrected.

Section 180.407. Paragraph (d)(2)(vii) states that, as part of the periodic external visual inspection, a cargo tank motor vehicle must conform to parts 393 and 396 of the Federal Motor Carrier Safety Regulations (FMCSR) and, where appropriate, part 571 of the Federal Motor Vehicle Safety Standards (FMVSS). This provision is redundant with § 177.834 which requires motor carriers and other persons subject to part 177 to comply with the FMCSR. Part 571 of the FMVSS applies to newly manufactured vehicles and not to the continuing qualification of a vehicle. For these reasons, paragraph (d)(2)(vii) is removed and reserved.

Section 180.409. Paragraph (b) is revised to clarify that an employee, who is not a Registered Inspector, may perform hydrostatic or pneumatic pressure tests under certain specified conditions, but external and internal visual inspections must be done by a Registered Inspector.

Section 180.413. In a final rule published on September 7, 1990, at 55 FR 37069, the amendatory language to § 180.413 incorrectly stated that paragraph "(d)(1)(v)" was revised instead of stating "(d)(2)(v)" was revised. The revised text allowing the use of a supplemental specification plate on stretched or rebarrelled cargo tanks appears in the September 7 publication but not in the 1991 edition of the CFR. The CFR contains an editorial note following the section stating that RSPA would publish a document in the Federal Register to clarify the agency's intent. The error is corrected herein.

Section 180.415. Paragraph (b) pertaining the display of periodic test and inspection markings on cargo tank motor vehicles is revised to clarify that the date must be readily identifiable with the applicable test or inspection and to permit other arrangements other than the date followed by the type of test or inspection. In the last sentence in paragraph (c), the wording "constructed to different intervals" is revised to read "constructed to different specifications, which are tested and inspected at different intervals." This wording was inadvertently omitted in a June 17, 1991 final rule (Docket HM–183, 56 FR 27877, also see Federal Register publication dated September 7, 1990, page FR 37062).

Rulemaking Analyses and Notices

A. Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the underlying rule was considered to be "significant" under the regulatory procedures of the Department of Transportation, this document is considered to be "non-significant" because it clarifies and corrects provisions of the final rule and provides consistency. This final rule does not impose additional requirements and, in fact, provides relief in some areas. The net result is that costs imposed under the final rule published in the Federal Register on December 21, 1990 are reduced, but without a reduction in safety [55 FR 52402]. The original regulatory evaluation of the final rule was reexamined but was not modified because the changes made under this rule provide limited relief and thus will result in minimal economic impact on industry.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). The HMTA contains an express preemption provision which RSPA is implementing at the minimum level necessary to achieve the objectives of the statute. Therefore, preparation of a Federalism Assessment is not warranted.

C. Impact on Small Entities

Based on limited information concerning size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory flexibility analysis is available for review in the docket.

D. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the December 21, 1990 final rule, which was approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35.

E. Regulation Identification Number (RIN)

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN numbers contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

This final rule has been reviewed under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and does not require an environmental impact statement.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1802, 1804, 1805, 1808, 1808–1811, 1815; Public Law 89–670, 80 Stat. 933 (49 App. U.S.C. 1653(d), 1655); 49 CFR 1.45 and 1.53 and app. A of 49 CFR part 1.

2. In § 107.315, paragraph (c) is revised and paragraph (d) is added, to read as follows:

§ 107.315 Admission of violations.

* * * * *

(c) Payment of a civil penalty, when the amount of the penalty exceeds $10,000, must be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions on making payments by wire transfer may be obtained from the Salary and Expenses Branch (M–86.2), Accounting Services Division, Office of the Secretary, room 9112, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–5760). A photocopy of the electronic funds transfer receipt should be sent to the Office of the Chief Counsel (DCC–1), RSPA, room 8405, at the same address.

(d) Payment of a civil penalty, when the amount of the penalty is $10,000 or less, must be made either by wire transfer, as set forth in paragraph (c) of this section, or certified check or money order payable to "U.S. Department of Transportation" and submitted to the Salary and Expenses Branch (M–86.2), Accounting Services Division, Office of the Secretary, room 9112, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. A photocopy of that check or money order should be sent to the Office of the Chief Counsel (DCC–1), RSPA, room 8405, at the same address.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

3. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815, 1818; 49 CFR Part 1.

4. In § 171.8, the following definitions are added, revised, or removed, as indicated, in appropriate alphabetical order:

§ 171.8 Definitions and abbreviations.

* * * * *

[Add:]

* * * * *

NRC (non-reusable container) means a packaging (container) whose reuse is restricted in accordance with the provisions of § 173.28 of this subchapter.

* * * * *

[Revise:]

* * * * *

Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

(1) A maximum capacity greater than 450 L (199 gallons) as a receptacle for a liquid;

(2) A maximum net mass greater than 400 kg (882 pounds) and a maximum capacity greater than 450 L (119 gallons) as a receptacle for a solid; or

(3) A water capacity greater than 454 kg (1000 pounds) as a receptacle for a gas as defined in § 173.115 of this subchapter.

* * * * *

Non-bulk packaging means a packaging which has:

(1) A maximum capacity less than 450 L (119 gallons) as a receptacle for a liquid;

(2) A maximum net mass less than 400 kg (882 pounds) and a maximum capacity less than 450 L (119 gallons) as a receptacle for a solid; or

(3) A water capacity greater than 454 kg (1000 pounds) or less as a receptacle for a gas as defined in § 173.115 of this subchapter.

* * * * *

Oxidizer. See § 173.127 of this subchapter.

* * * * *

§ 171.8 [Amended]

5. In addition, in § 171.8, the second definition of "Oxidizer" is removed.

6. In § 171.12, paragraph (b)(7) is revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(7) A Class 1 material must be classed and approved under the procedures in subpart C of part 173 of this subchapter and conform to the requirements of 172.320 and part 178 of this subchapter.

* * * * *

7. In § 171.12a, the first sentence of paragraph (b) introductory text is revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) *Conditions and limitations.* Notwithstanding the requirements of parts 172, 173, and 178 of this subchapter, and subject to the limitations of paragraph (a) of this section, a hazardous material that is classed, marked, labeled, placarded, described on a shipping paper, and packaged in accordance with the Transportation of Dangerous Goods

(TDG) Regulations issued by the Government of Canada may be offered for transportation and transported to or through the United States by motor vehicle or rail car. * * *

* * * * *

8. In § 171.14, the section heading, paragraph (a), the introductory text of paragraph (b), and the introductory text of paragraph (c)(2) preceding the Placard Substitution Table are revised to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

(a) *General.* The transitional provisions of this section are subject to the following conditions and limitations:

(1) *Purpose.* A rule published in the **Federal Register** on December 21, 1990, effective October 1, 1991, resulted in a comprehensive revision of this subchapter based on the UN Recommendations. Final rules published in the **Federal Register** on December 20, 1991, effective October 1, 1991, and on October 1, 1992 in the **Federal Register**, effective October 1, 1992, further revised the December 21, 1990 final rule. The purpose of the provisions of this section is to provide an orderly transition to the new requirements, so as to minimize any burdens associated with them:

(2) *Scope.* Except as provided in paragraph (a)(3) of this section, during a transition period as provided in paragraphs (b) and (c) of this section, a person may elect to comply with either the applicable requirements of this subchapter in effect on September 30, 1991, or the requirements of this subchapter appearing in the December 20, 1990 rule, as revised in final rules published in the **Federal Register** on December 20, 1991, and October 1, 1992.

(3) *Applicability.* Final rules issued subsequent to the December 21, 1990 rule may implement different time requirements than the transitional provisions in this section. When the effective date section or regulatory text of a final rule imposes a compliance date earlier or later than that which would be required under this section, the transition date in this section does not apply.

(b) *Transition dates.* Except as provided in paragraph (a) of this section, the following transition dates apply only to requirements in the December 21, 1990 rule, as revised in the December 20, 1991 and October 1, 1992. final rules:

* * * * *

(c) * * *

(2) *Transitional placarding provisions.* Until October 1, 2001, placards which conform to specifications for placards in effect on September 30, 1991 or placards specified in the December 21, 1990 final rule may be used, for highway transportation only, in place of the placards specified in subpart F of part 172 of this subchapter, in accordance with the following table:

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

9. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, and 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

10. In § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the entry "Acrolein, inhibited", the "+" is removed in Column (1), and, in Column (7), Special Provision "T45" is revised to read "T44".

b. For the entry "Aerosols, *poison, each not exceeding 1 L capacity*", in Column (7), Special Provision "3" is removed.

c. For the entry "Alkali metal alloys, liquid, n.o.s.", in Column (7), Special Provision "B48," is added in appropriate alpha-numeric order.

d. For the second entry for "Ammonia anhydrous liquefied *or* Ammonia solutions" commas are added to read "Ammonia, anhydrous, liquefied *or* Ammonia solutions".

e. For the entry "Ammonium nitrate, liquid *(hot concentrated solution)*, Special Provision "B17," is removed.

f. The first entry for "*Azido hydroxy tetrazole (mercury and silver salts)*" is removed.

g. For the entry "Barium peroxide", in Column (8C), "2" is removed and replaced with "242".

h. For the entry "Blue Asbestor *Crocidolite) or* Brown asbestos *(amosite, mysorite)*", in Column (1), an "I" is added and in Column (2), the words "Blue Asbestos" are revised to read "Blue asbestos".

i. For the first entry for "Bombs, *with bursting charge*," in Division 1.1F, in Column (9A), the word "Forbiden" is revised to read "Forbidden".

j. For the entry "Butane *or* Butane mixtures *see also* Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

k. For the entry "Butylene *see also* Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

l. For the entry "Carbon dioxide and nitrous oxide mixtures", the Column (8C) section reference "244" is revised to read "314, 315".

m. For the entry "Carbon monoxide", the Column (8C) section reference "302" is revised to read "314, 315".

n. For the entry "Combustible liquid, n.o.s.", the entry is amended by moving it to its correct alphabetical sequence following "*Collodion, see* Nitrocellulose *etc.*"

o. For the entry "Corrosive solids, self heating, n.o.s." in Packing Group I, in Column (8C), the section reference "241" is revised to read "243".

p. For the entry "Corrosive solids, which in contact with water emit flammable gases, n.o.s." in Packing Group I, in Column (8C), the section reference "241" is revised to read "243"

q. For the entry "Diethylaminopropylamine", in Column (1), "AW" is removed.

r. For the entry "Dimethylhydrazine, unsymmetrical", in Column (7), Special Provision "B58," is removed and Special Provision "B74," is added in appropriate alpha-numeric order.

s. For the entry "Fusee", the entry is amended by moving it to its correct alphabetical sequence following "Fuse, safety".

t. For the entry "Hexachlorocyclopentadiene", in Column (7), Special Provision "T44" is revised to read "T45".

u. For the entry "Hydrochloric acid, solution", in Column (7), Special Provision "B2" is revised to read "B3".

v. For the entry "Hydrogen cyanide, anhydrous, stabilized", in Column (7), Special Provision "B35," is added in appropriate alpha-numeric order.

w. For the entry "Hydrogen peroxide, aqueous solutions *with more than 40 per cent but not more than 60 per cent hydrogen peroxide (stabilized as necessary)*", in Column (7), Special Provision "BB53" is revised to read "B53".

x. For the entry "Hydroxylamine sulfate", in Column (1), "AW" is removed.

y. For the entry "Isophoronediamine", in Column (1), "AW" is removed.

z. For the entry " Lead compounds, soluble, n.o.s.", the Column (5) packing group reference "II" is revised to read "III" and the Column (6) label "POISON" is revised to read "KEEP AWAY FROM FOOD".

aa. For the entry "Metal powders, flammable, n.o.s." in Packing Group III, in Column (8C), the section reference "140" is revised to read "240".

bb. For the entry "Methanol, *or* Methyl alcohol", in Column (8C), the

section reference "243" is revised to read "242".

cc. For the entry "Methylhydrazine", in Column (8B), the section reference "227" is revised to read "226".

dd. For the entries "Nitrating acid mixtures *with not more than 50 per cent nitric acid*" and "Nitrating acid mixtures *with 50 per cent or more nitric acid*", in Column (7), Special Provision "B47," is added in appropriate alpha-numeric order.

ee. For the entry "PCB *see* Polychlorinated biphenyls", in Column (1), "D" is removed and replaced with "AW".

ff. For the entry "Phosphorus pentasulfide, *free from yellow or white phosphorus*", in Column (8C), the section reference "243" is revised to read "242".

gg. For the entry "Propane *see also* Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

hh. For the entry "Silicon tetrachloride", in Column (7), Special Provision "N41," is removed.

ii. For the entry "Sodium", in Column (7), Special Provisions "B48," and ",T46" are added in appropriate alpha-numeric order and Special Provision "T28," is removed.

jj. For the entry "*Sodium bisulfate, solid or solution, see* Sodium hydrogen sulfate, solid *or* solution", in Column (2), the proper shipping name is revised to read "*Sodium bisulfate, solution, see* Sodium hydrogen sulfate, solution".

kk. For the entry "Substances which in contact with water emit flammable gases, solid n.o.s." in Packing Group III, in Column 8(C) the section reference "242" is revised to read "241" and the proper shipping name in Column (2) is amended by inserting a comma after the word "solid".

ll. For the entry "Sulfuric acid", in Column (7), Special Provision "B2" is revised to read "B3".

mm. For the entry "Sulfuric acid, fuming *less than 30 percent free sulfur trioxide*", in Column (6), the ", POISON" label is removed.

nn. For the entry "Sulfuryl chloride", in Column (7), Special Provision "B32" is revised to read "B30".

oo. For the entry "Tars, liquid *including road asphalt and oils bitumen and cut backs*", in Packing Groups II and III, in Column (7), Special Provision "B13," is added in appropriate alpha-numeric order.

pp. For the entry "Titanium tetrachloride", in Column (7), Special Provision "B77," is added in appropriate alpha-numeric order.

qq. For the entry "(mono-(Trichloro) tetra-(monopotassium dichloro)- penta-s-triazinetrione, dry (*containing over 39% available chlorine*)", in Column (2), the proper shipping name is amended by removing the first parenthesis preceding "mono-(Trichloro)".

rr. For the entry "Vanadium trichloride", in Column (1), "AW" is removed.

11. In addition, the Hazardous Materials Table is amended by removing, adding, or revising, in appropriate alphabetical sequence, the following entries:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo air craft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
	Asbestos, blue or brown, see Blue asbestos *etc.*												
	Asbestos, white, see White asbestos *etc.*												
	Dinitroglycoluril	Forbidden											
W	Fish meal *or* Fish scrap stabilized.	9	UN2216	III	None	A1	155	218	218	No limit	No limit	A	88, 120
	Isobutane *or* Isobutane mixtures.	2.1	UN1969		Flammable gas		306	304	314, 315	Forbidden	150 kg	E	40
	Sodium hydrogen sulfate, solid.	8	UN1821	III	Corrosive		154	213	240	25 kg	100 kg	A	
	White asbestos (chrysotile, antinolite, anthophyllite, tremolite).	9	UN2590	III	Class 9		155	216	240	200 kg	200 kg	A	34, 40
	[ADD]												
D	Asbestos	9	NA2212	III	Class 9		155	216	240	200 kg	200 kg	A	34, 40
W	Fish meal, stabilized *or* Fish scrap, stabilized.	9	UN2216	III	None		155	218	216	No limit	No limit	A	88, 120
	Isobutane *or* Isobutane mixtures *see also* Petroleum gases, liquefied.	2.1	UN1969		Flammable gas	19	306	304	314, 315	Forbbiden	150 kg	E	40
	White asbestos (*chrysotile, actinolite, anthophyllite, tremolite*).	9	UN2590	III	Class 9		155	216	240	200 kg	200 kg	A	34, 40

[REVISED]

Aircraft hydraulic power unit fuel tank *(containing a mixture of anhydrous hydrazine and monomethyl hydrazine) (M86 fuel).*	3		UN3165	I	Flammable liquid, poison, corrosive.		None	172	None	Forbidden	30 L	E	
Alcoholic beverages	3		UN3065	II	Flammable liquid.	B1, T1	150	202	242	5 L	60 L	A	
			NA	III	Flammable liquid.	B1, N11, T1	150	203	242	60 L	220 L	A	
1,2 Propylenediamine.	8		UN2258	II	Corrosive	A3, A6, N34, T8.	None	202	243	1 L	30 L	A	12, 20, 40, 48

§ 172.101, App. [Amended]

12. In the Appendix to § 172.101, in paragraph 2., the reference "§ 172.101(c)(9)" is revised to read "§ 172.101(c)(8)".

13. In § 172.102, the following special provisions are added, revised, or removed as indicated:

a. In paragraph (c)(1), Special Provisions 19 and 21 are added.

b. In paragraph (c)(3), Special Provisions B13, B35, and B47 are added and Special Provisions B14 and B69 are revised.

c. In paragraph (c)(7)(ii), T28 is redesignated as T46 and moved to its proper alpha-numeric order and Special Provisions T28, T39 and T43 are added.

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

19. For domestic transportation only, the identification number "UN1075" may be used in place of the identification number specified in Column (4) of the § 172.101 Table. The identification number used must be consistent on package markings, shipping papers and emergency response information.

* * * * *

21. This material must be stabilized by appropriate means (e.g., addition of chemical inhibitor, purging to remove oxygen) to prevent dangerous polymerization (see § 173.21(f) of this subchapter).

* * * * *

(3) * * *

Code/Special Provisions

B13. A nonspecification cargo tank motor vehicle authorized in § 173.247 of this subchapter must be at least equivalent in design and in construction to a DOT 406 cargo tank or MC 306 cargo tank (if constructed before September 1, 1993), except as follows:

a. Packagings equivalent to MC 306 cargo tanks are excepted from §§ 178.340–10, certification; 178.341–4, vents; and 178.341–5, emergency flow control.

b. Packagings equivalent to DOT 406 cargo tanks are excepted from §§ 178.345–14, marking; 178.345–15, certification; 178.346–10, pressure relief; and 178.346–11, outlets.

c. Packagings are excepted from the design stress limits at elevated temperatures, as described in the ASME Code. However, the design stress limits may not exceed 25 per cent of the stress, as specified in § 178.65–5(b) of this subchapter, for 0 temper at the maximum design temperature of the cargo tank.

B14. Each tank, except a multi-unit tank car tank, must be insulated with at least 100 mm (3.9 inches) of cork or other suitable insulation material of sufficient thickness that the overall thermal conductance at 15.5 °C (60 °F) is not more than 1.533 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. Insulation systems must not promote corrosion to steel when wet. Tank and jacket protective coatings are required. Additionally, all tank car tanks constructed after October 1, 1988 and tanks repaired after October 1, 1993, where the entire jacket is removed during the repair, must have tank and jacket protective coatings. The jacket must be flashed around all openings so as to be weather tight.

* * * * *

B35. Tank cars containing hydrogen cyanide may be alternatively marked "Hydrocyanic acid, liquefied" if otherwise conforming to marking requirements in subpart D of this part.

* * * * *

B47. A safety relief device with a start-to-discharge pressure setting of 310 kPa (45 psig) is permitted.

* * * * *

B69. Dry sodium cyanide or potassium cyanide may be shipped in sift-proof weather-resistant metal covered hopper cars, covered motor vehicles, portable tanks or non-specification bins. Bins must be approved by the Associate Administrator for Hazardous Materials Safety. Flexible intermediate bulk containers (FIBCs) may also be used under conditions approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

(7) * * *

(ii) * * *

Code/Special Provisions

* * * * *

T28. See entry for T26 in the IM Tank Configuration Table in paragraph (c)(70(i) of this section.

* * * * *

T39. See entry for T39 in the IM Tank Configuration Table in paragraph (c)(7)(i0 of this section.

* * * * *

T43. See entry for T43 in the IM Tank Configuration Table in paragraph (c)(7)(i) of this section.

* * * * *

§ 172.102 [Amended]

14. In addition, in § 172.102, the following changes are made:

a. In paragraph (c)(1), in Special Provision 4, the wording "Hazard Zone C" is revised to read "Hazard Zone D".

b. In paragraph (c)(1), in Special Provision 12, the word "comply" is revised to read "conform".

c. In paragraph (c)(1), in Special Provision 28, the word "dihydrated" is revised to read "dehydrated"

d. In paragraph (c)(1), in Special Provision 31, the word "nonhazardous" is revised to read "non-hazardous".

e. In paragraph (c)(3), in Special Provisions B2, B3, B4, and B10, the wording "MC 306" is revised to read "MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306".

f. In paragraph (c)(3), in Special Provision B24, the wording "shall be" is revised to read "must be".

g. In paragraph (c)(3), in Special Provision B26, the last two sentences are revised to read "In addition, the material also must be covered with an inert gas or the container must be filled with water to the tank's capacity. After unloading, the residual material also must be covered with an inert gas or the container must be filled with water to the tank's capacity.".

h. In paragraph (c)(3), in Special Provision B68, the wording "2069 kPa" is revised to read "2,069 kPa".

i. In paragraph (c)(3), in Special Provision B80, the wording "shall have" is revised to read "must have".

j. In paragraph (c)(3), in Special Provision B90, the wording "equivalent or" is revised to read "equivalent to"

§ 172.203 [Amended]

15. In § 172.203, in paragraph (m)(1), the wording "is not disclosed in the shipping name" is revised to read "is not disclosed in the shipping name or class entry".

§ 172.312 [Amended]

16. In § 172.312, in paragraph (a)(2), a second sentence is added at the end of the paragraph to read "Depicting a rectangular border around the arrows is optional.".

§ 172.330 [Amended]

17. In § 172.330, in paragraph (a), the paragraph heading "*Shipping name.*" is revised to read *"Shipping name and identification number."*.

§ 172.405 [Amended]

18. In § 172.405, in paragraph (a) introductory text, the wording "is not required on a label when" is revised to read "is not required on a primary or subsidiary label when".

19. In § 172.422, paragraph (a) is revised to read as follows:

§ 172.422 SPONTANEOUSLY COMBUSTIBLE label.

(a) Except for size and color, the SPONTANEOUSLY COMBUSTIBLE label must be as follows:

BILLING CODE 4910-60-M

BILLING CODE 4910-60-C

* * * * *

20. In § 172.504, the introductory text of paragraph (c) and paragraphs (f)(1) and (f)(4) are revised, and paragraphs (f)(9) and (f)(10) are added to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(c) *Exception for less than 454 kg (1,001 pounds).* Except for bulk packagings and hazardous materials subject to § 172.505, when hazardous materials covered by Table 2 of this section are transported by highway or rail, placards are not required on—

* * * * *

(f) * * * (1) When more than one division placard is required for Class 1 materials on a transport vehicle, rail car, freight container or unit load device, only the placard representing the lowest division number must be displayed.

* * * * *

(4) OXIDIZER placards are not required for Division 5.1 materials on freight containers, unit load devices, transport vehicles or rail cars which also contain Division 1.1 or 1.2 materials and which are placarded with EXPLOSIVES 1.1 or 1.2 placards, as required.

* * * * *

(9) For domestic transportation, a Class 9 placard is not required. A bulk packaging containing a Class 9 material must be marked on each side and each end with the appropriate identification number displayed on an orange panel or a white-square-on-point display configuration are required by subpart D of this part.

(10) For domestic transportation of Division 6.1, PG III materials, a POISON placard may be used in place of a KEEP AWAY FROM FOOD placard.

* * * * *

21. In § 172.505, paragraph (a) is revised to read as follows:

§ 172.505 Placarding for subsidiary hazards.

(a) Each transport vehicle, freight container, portable tank and unit load device that contains a poisonous material subject to the "Poison-Inhalation Hazard" shipping description of § 172.203(m)(3) must be placarded with a POISON or POISON GAS placard, as appropriate, on each side and each end, in addition to any other placard required for that material in § 172.504. Duplication of the POISON or POISON GAS placard is not required.

* * * * *

22. In § 172.510, paragraph (e) is revised to read as follows:

§ 172.510 Special placarding provisions: Rail.

* * * * *

(e) *Chemical ammunition.* Each rail car containing Division 1.1 or 1.2 (explosive) ammunition which also meets the definition of a material poisonous by inhalation (see § 171.8 of this subchapter) must be placarded EXPLOSIVES 1.1 or EXPLOSIVES 1.2 and POISON GAS or POISON.

§ 172.510 [Amended]

23. In addition, in § 172.510, in paragraph (c), in the second sentence, the wording "§ 172.505(c)" is revised to read "§ 172.505".

§ 172.519 [Amended]

24. In § 172.519, in paragraph (b)(3), the wording "For other than Class 7," is revised to read "For other than Class 7 or the OXYGEN placard,".

§ 172.526 [Amended]

25. In § 172.526, in paragraph (a)(4), in the first sentence, "172.540," is added in its appropriate numerical sequence.

26. In § 172.560, paragraph (b) is revised to read as follows:

§ 172.560 CLASS 9 placard.

* * * * *

(b) In addition to conformance with § 172.519, the background on the CLASS 9 placard must be white with seven black vertical stripes on the top half extending from the top of the placard to one inch above the horizontal centerline. The black vertical stripes must be spaced so that, visually, they appear equal in width to the six white spaces between them. The space below the vertical lines must be white with the class number 9 underlined and centered at the bottom.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

27. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§ 173.2 [Amended]

28. In the § 173.2 Table, for the entry "Oxidizer", in the fourth column the entry "§ 173.128" is removed and replaced with "§ 173.127".

§ 173.22 [Amended]

29. In § 173.22, in paragraph (a)(4), the reference "§ 178.2(d)" is revised to read "§ 178.2(c)".

§ 173.23 [Amended]

30. In § 173.23, in paragraph (c), the wording "i.e." is revised to read "e.g.".

§ 173.24a [Amended]

31. In § 173.24a, in paragraph (c)(1)(iii), the wording "Corrosive materials" is revised to read "Corrosive materials (except ORM–D)".

32. § 173.28, a new paragraph (e) is added to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(e) *Non-reusable containers.* A packaging marked as NRC according to the DOT specification or UN standard requirements of part 178 of this subchapter may be reused for the shipment of any material not required by this subchapter to be shipped in a DOT specification or UN standard packaging.

§ 173.31 [Amended]

33. In § 173.31, in paragraph (c), the following changes are made:

a. In Note 1 following Retest Table 1, the wording "Associate Director for HMR" is revised to read "Associate Administrator for Hazardous Materials Safety".

b. In Note n following Retest Table 1, the reference "§ 179.102–11 of this chapter" is revised to read "§ 173.314(i)".

§ 173.32 [Amended]

34. In § 173.32, the following changes are made:

a. In paragraph (a)(1), the words "comply with" are revised to read "conform to".

b. In paragraph (a)(3), the reference "§ 173.300" is revised to read "§ 173.115" and the words "complying with" are revised to read "conforming to".

c. In paragraph (a)(5), the reference "§ 172.101(c)(7)" is revised to read "§ 172.102(c)(7)".

d. In paragraph (c), the reference "(e)(3), (4), and (5)" is revised to read "(e)(3) and (4)".

35. In § 173.32c, a new paragraph (r) is added to read as follows:

§ 173.32c Use of Specification IM portable tanks.

* * * * *

(r) Hazardous materials authorized for transport in a tank fitted with bottom outlets having two serially mounted closures are also authorized for transport in a tank fitted with three serially mounted closures and in tanks fitted with no bottom outlets. Similarly, hazardous materials authorized for transport in tanks fitted with bottom outlets having three serially mounted closures are also authorized for transport in tanks fitted with no bottom outlets.

§ 173.32c [Amended]

36. In addition, in § 173.32c, in paragraph (f), the reference "§ 178.270–11(d)" is corrected to read "§ 178.270–11(d)."

§ 173.33 [Amended]

37. In § 173.33, the following changes are made:

a. In paragraph (c)(1)(iii), the reference "§ 173.119(a)(17)(iii)" is revised to read "Special Provision B33 in § 172.102(c)(3) of this subchapter".

b. In paragraph (c)(5), the wording "Poison B material" is revised to read "Division 6.1 (poisonous liquid) material".

c. In paragraph (e), the wording "Poison B liquid" is revised to read "Division 6.1 (poisonous liquid) material".

§ 173.115 [Amended]

38. In § 173.115, in paragraph (b)(1), the wording "or greater" is added immediately following "280 kPa (41 psia)" and before "at 20 °C".

§ 173.120 [Amended]

39. In § 173.120, in paragraphs (b)(1) and (b)(2), the wording ", except Class 9," is removed both places it appears.

40. In § 173.124, paragraph (a)(3)(ii) is revised to read as follows:

§ 173.124 Class 4 Divisions 4.1, 4.2 and 4.3—Definitions.

(a) * * *

(3) * * *

(ii) Show a burning rate faster than 2.2 mm (0.087 inches) per second when tested in accordance with paragraph 2.c.(2) of appendix E to this part; or

* * * * * *

41. In § 173.133, in paragraph (a)(2)(ii), the introductory text is republished and Figure 1 is revised to read as follows:

§ 173.133 Assignment of packing group and hazard zones for Division 6.1 materials.

(a) * * *

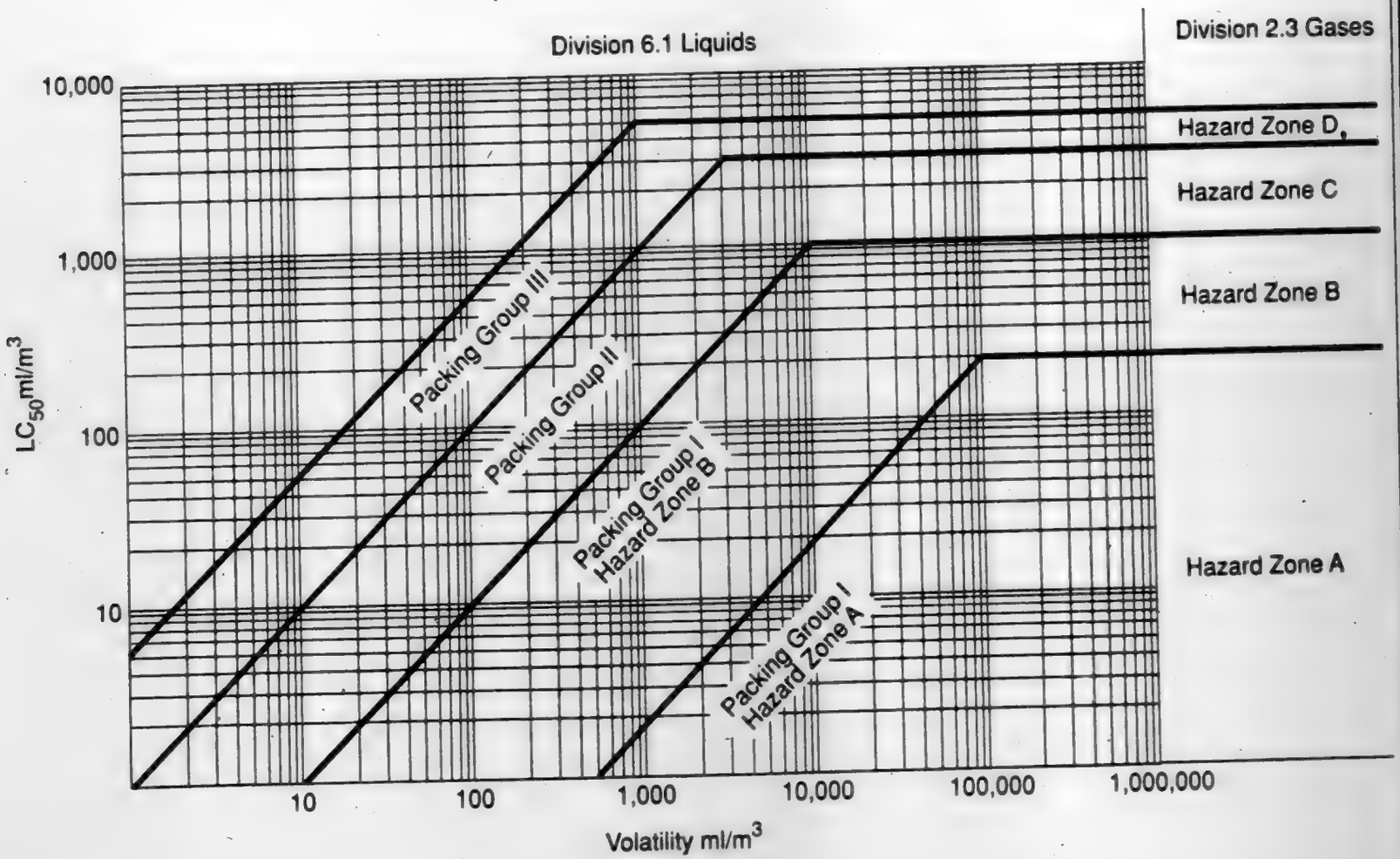
(2) * * *

(ii) These criteria are represented graphically in Figure 1:

BILLING CODE 4910-60-M

Figure 1

Inhalation Toxicity: Packing Group and Hazard Zone Borderlines



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* * * * *

§ 173.133 [Amended]

42. In addition, in § 173.133, the following changes are made:

a. In the paragraph (a)(1) table, in column 4, "<0.5<2" is revised to read to ">0.5<2".

b. In paragraph (a)(2)(i), in column 1 of the table, add "II" and "III", respectively, for the entries in column 2 beginning "V>LC_{50};" and "V>.2LC_{50};", respectively.

43. Section 173.140 is revised to read as follows:

§ 173.140 Class 9—Definitions.

For the purposes of this subchapter, "miscellaneous hazardous material" (Class 9) means a material which presents a hazard during transportation but which does not meet the definition of any other hazard class. This class includes:

(a) Any material which has an anesthetic, noxious or other similar property which could cause extreme annoyance or discomfort to a flight crew member so as to prevent the correct performance of assigned duties; or

(b) Any material which meets the definition in § 171.8 of this subchapter for an elevated temperature material, a hazardous substance or a hazardous waste.

§ 173.150 [Amended]

44. In § 173.150, the following changes are made:

a. In paragraphs (a) and (f), the wording ", except Class 9" is removed.

b. In paragraph (f)(3)(vii), the word "comply" is revised to read "conform".

45. In § 173.154, paragraph (d) is revised to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive materials).

* * * * *

(d) *Materials corrosive to aluminum or steel only.* Except for a hazardous substance or a hazardous waste, a material classed as a Class 8, Packing Group III, material solely because of its corrosive effect—

(1) On aluminum is not subject to any other requirements of this subchapter when transported by motor vehicle or rail car in a packaging constructed of materials that will not react dangerously with or be degraded by the corrosive material; or

(2) On steel is not subject to any other requirements of this subchapter when transported by motor vehicle or rail car in a bulk packaging constructed of materials that will not react dangerously with or be degraded by the corrosive material.

§ 173.156 [Amended]

46. In § 173.156, in paragraph (b), in the second sentence, the wording "unitized in cages, carts or similar overpacks" is revised to read "unitized in cages, carts, boxes or similar overpacks" and the wording "from a distribution center to a retail outlet" is revised to read "from a manufacturer to a distribution center, from a manufacturer or a distribution center to a retail outlet, or return".

47. In § 173.159, new paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) are added to read as follows:

§ 173.159 Batteries, wet.

* * * * *

(b) * * *

(3) 1D plywood drums.

(4) 1G fiber drums.

(5) 1H2 and 3H2 plastic drums and jerricans.

(6) 4H2 plastic boxes.

* * * * *

§ 173.159 [Amended]

48. In addition, in § 173.159, in paragraph (c) introductory text, the word "articles" is revised to read "materials".

§ 173.193 [Amended]

49. In § 173.193, in paragraph (d), the wording", except those containing methyl bromide," is added to immediately follow the word "Cylinders".

§ 173.211 [Amended]

50. In § 173.211, in paragraph (c), for the entry "Plastic receptacle in steel, aluminum, plywood, fiber or plastic drum:" the wording "6HA2" is revised to read "6HA1"; and for the entry "Plastic receptacle in steel, aluminum, wooden, plywood or fiberboard box:" the wording "6HA1" is revised to read "6HA2".

§ 173.225 [Amended]

51. In § 173.225, the following changes are made:

a. In paragraph (e)(2), the wording "MC 310, MC 311 and MC 312 cargo tank motor vehicles" is revised to read "MC 310, MC 311, MC 312 and DOT 412 cargo tank motor vehicles".

b. In paragraph (e)(3), the introductory text and paragraphs (e)(3)(i) through (e)(3)(iii) are redesignated as paragraphs (e)(3)(i) introductory text and (e)(3)(i)(A) through (e)(3)(i)(C), respectively; paragraph (e)(3)(v) is redesignated as new paragraph (e)(3)(ii); and paragraph (e)(3)(iv) is redesignated as paragraph (e)(4).

§ 173.227 [Amended]

52. In § 173.227, in paragraph (b) introductory text, in the first sentence the phrase "or 1H1 drums further packed in a 1A2 or 1H2 drum or a 6HA1 composite" is revised to read "or 1H1 drum or 6HA1 composite further packed in a 1A2 or 1H2 drum".

53. In § 173.244, the section heading is revised to read as follows:

§ 173.244 Bulk packaging for certain pyrophoric liquids (Division 4.2), dangerous when wet (Division 4.3) materials, and poisonous liquids with inhalation hazards (Division 6.1).

* * * * *

54. In § 173.302, paragraph (h) is revised to read as follows:

§ 173.302 Charging of cylinders with non-liquefied compressed gases.

* * * * *

(h) *Poisonous mixtures.* Cylinders containing mixtures meeting Division 2.3 *Hazard Zone A* must conform to the requirements of § 173.40 of this part.

§ 173.302 [Amended]

55. In addition, in § 173.302, in paragraph (a)(5)(iii), the reference "RR-C-901b" is corrected to read "RR-C-901c" each place it appears.

56. In § 173.304, paragraph (g) is revised to read as follows:

§ 173.304 Charging of cylinders with liquefied compressed gas.

* * * * *

(g) *Poisonous mixtures.* Cylinders containing mixtures meeting Division 2.3 *Hazard Zone A* must conform to the requirements of § 173.40 of this part.

§ 173.304 [Amended]

57. In addition, in § 173.304, in paragraph (f)(1), in the second sentence, the wording "packaged in Spec. 12B (§ 178.205 of this subchapter) fiberboard boxes equipped with top and bottom pads which will provide three complete thicknesses of fiberboard on top and bottom of each box, or Spec. 15A, 15B, 15C, 19A, or 19B (§ § 178.168, 178.169, 178.170, 178.190, 178.191 of this subchapter) wooden boxes" is revised to read "packaged in strong, tight packagings".

58. In § 173.314, the introductory text of paragraph (c) is revised to read as follows:

§ 173.314 Requirements for compressed gases in tank car tanks.

* * * * *

(c) *Authorized gases, filling limits for tank cars.* A person may load and offer a tank car containing a compressed gas

for transportation only in accordance with the following table:

* * * * *

§ 173.314 [Amended]

59. In addition, in § 173.314, the following changes are made:

a. In the table in § 173.314(c), for the entry "Ammonia, anhydrous, or ammonia solutions >50 percent ammonia", in Column 2, the first "Note 21" is revised to read "Note 25".

b. In the table in § 173.314(c), for the entry "Ammonia, solutions with >35 percent <50 percent ammonia by mass", Column 3 is amended by adding "109A," immediately after "105A," and before "112A".

c. In the table in § 173.314(c), for the entry "Division 2.3, Hazard Zone D, materials not specifically identified in this table", in Column 2, the first "Note 21" is revised to read "Note 25"; in Column 3, "105J300W, 109A, 112J340W, 112T340W, 114J340W, 114T340W" is revised to read "105A300W, 109A, 112S340W, 114S340W"; and in Column 4, ",24" is added immediately following "15".

d. In the Notes following the § 173.314(c) table, Notes 21 and 22 are revised and Note 25 is added to read as follows:

Notes:

* * * * *

[21] The requirements of § 173.24(b) of this subchapter apply.

[22] The requirements of § 173.245 of this subchapter apply.

* * * * *

[25] The liquefied gas must be loaded so that the outage is at least two percent of the total capacity of the tank at the reference temperature of 46 °C (115 °F) for non-insulated tanks and 41 °C (105 °F) for insulated tanks.

* * * * *

§ 173.315 [Amended]

60. In § 173.315, the following changes are made:

a. In paragraph (a), in the table, in Notes 3, 11, and 16, the words "comply with" are revised to read "conform to".

b. In paragraphs (d) and (i)(12), the reference "paragraph (a)(1)" is revised to read "paragraph (a)".

61. In § 173.336, the section heading and introductory text are revised to read as follows:

§ 173.336 Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied.

Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied, must be packaged in specification cylinders as follows:

* * * * *

PART 174—CARRIAGE BY RAIL

62. The authority citation for part 174 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1806; 49 CFR 1.53(e), 1.53(e), app. A to part 1.

§ 174.25 [Amended]

63. In § 174.25, in the paragraph (a)(2) table, for the entry "Division 1.6", in Column 3, the word "Dangerous" is removed and replaced with "(None)".

§ 174.55 [Amended]

64. In § 174.55, in paragraph (c), the wording "bearing markings 'THIS SIDE UP' or 'THIS END UP' " is revised to read "bearing package orientation markings, as prescribed in § 172.312(a) of this subchapter".

§ 174.61 [Amended]

65. In § 174.61, in paragraph (c), the wording "the Federal Railroad Administrator" is revised to read "the Associate Administrator for Safety, FRA".

66. In § 174.81, the paragraph (f) compatibility table is revised to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(f) * * *

COMPATIBILITY TABLE FOR CLASS 1 (EXPLOSIVE) MATERIALS.

Compatibility group	A	B	C	D	E	F	G	H	J	K	L	N	S
A		X	X	X	X	X	X	X	X	X	X	X	X
B	X		X	4	X	X	X	X	X	X	X	X	4/5
C	X	X		2	2	X	X	X	X	X	X	3	4/5
D	X	4	2		2	X	X	X	X	X	X	3	4/5
E	X	X	2	2		X	X	X	X	X	X	3	4/5
F	X	X	X	X	X		X	X	X	X	X	X	4/5
G	X	X	X	X	X	X		X	X	X	X	X	4/5
H	X	X	X	X	X	X	X		X	X	X	X	4/5
J	X	X	X	X	X	X	X	X		X	X	X	4/5
K	X	X	X	X	X	X	X	X	X		1	X	X
L	X	X	X	X	X	X	X	X	X	X			4/5
N	X	X	3	3	3	X	X	X	X	X	X	4/5	
S	X	4/5	4/5	4/5	4/5	4/5	4/5	4/5	4/5	4/5	X		

* * * * *

§ 174.81 [Amended]

67. In addition, in § 174.81, the following changes are made:

a. In the Segregation Table in paragraph (d), in the column "Notes", for the entry "Very insensitive explosives.", the letter "A" is added.

b. In paragraph (e)(5), the wording "Division 1.1 (Class A explosive) materials" is revised to read "Division 1.1 (Class A explosive) or Division 1.5 (blasting agents) materials."

§ 174.82 [Amended]

68. In § 174.82, in paragraph (a), the wording "Division 1.6," is added immediately after "contain" and before "combustible liquids".

§ 174.85 [Amended]

69. In § 174.85, in paragraph (b), the wording "must comply with train positioning requirements of paragraph (d) of this section and" is added immediately following " 'RADIOACTIVE' ".

PART 176—CARRIAGE BY VESSEL

70. The authority citation for part 176 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806; 49 CFR 1.53, App. A to part 1.

71–72. In § 176.83, in paragraphs (c)(2)(i) (A) and (B), the text preceding the illustrations is revised to read as follows:

§ 176.83 Segregation.

* * * * *

(c) * * *
(2) * * *
(i) * * *

(A) Package containing incompatible goods.

* * * * *

(B) Reference package.

* * * * *

§ 176.600 [Amended]

73. In paragraph (d), the wording "Division 2.3 (Poison A) material" is revised to read "Division 2.3 (poisonous gas) material" and the wording "Division 6.1 (Poison B) material" is revised to read "Division 6.1 (poison) material".

PART 177—CARRIAGE BY PUBLIC HIGHWAY

74. The authority citation for part 177 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

§ 177.805 [Amended]

75. Section 177.805 is amended by removing the paragraph designation (a).

76. In § 177.848, the paragraph (f) compatibility table is revised to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(f) * * *

COMPATIBILITY TABLE FOR CLASS 1 (EXPLOSIVE) MATERIALS.

Compatibility group	A	B	C	D	E	F	G	H	J	K	L	N	S
A		X	X	X	X	X	X	X	X	X	X	X	X
B	X		X	4	X	X	X	X	X	X	X	X	4/5
C	X	X		2	2	X	X	X	X	X	X	3	4/5
D	X	4	2		2	X	X	X	X	X	X	3	4/5
E	X	X	2	2		X	X	X	X	X	X	3	4/5
F	X	X	X	X	X		X	X	X	X	X	X	4/5
G	X	X	X	X	X	X		X	X	X	X	X	4/5
H	X	X	X	X	X	X	X		X	X	X	X	4/5
J	X	X	X	X	X	X	X	X		X	X	X	4/5
K	X	X	X	X	X	X	X	X	X		X	X	4/5
L	X	X	X	X	X	X	X	X	X	X	1	X	X
N	X	X	3	3	3	X	X	X	X	X	X		4/5
S	X	4/5	4/5	4/5	4/5	4/5	4/5	4/5	4/5	4/5	X	4/5	

* * * * *

§ 177.848 [Amended]

77. In addition, in § 177.848, the following changes are made:

a. In the Segregation Table in paragraph (d), in the column "Notes", for the entry "Very insensitive explosives.", the letter "A" is added.

b. In paragraph (e)(5), the wording "Division 1.1 (Class A explosive) materials" is revised to read "Division 1.1 (Class A explosive) or Division 1.5 (blasting agents) materials".

PART 178—SPECIFICATIONS FOR PACKAGINGS

78. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

§ 178.44–15 [Amended]

79. In § 178.44–15, paragraph (a)(2) is added and reserved.

§ 178.45–7 [Amended]

80. In § 178.45–7, paragraph (c)(2) is added and reserved.

§ 178.270–5 [Amended]

81. In § 178.270–5, in paragraph (a), the word "deka-newtons" is revised to read "decanewtons" and in paragraphs (c) and (d), the wording "deka newtons" is revised to read "decanewtons".

§ 178.337–1 [Amended]

82. In § 178.337–1, in paragraph (b), the reference "§ 173.315(a)(1)" is revised to read "§ 173.315(a)".

§ 178.337–11 [Amended]

83. In § 178.337–11, in paragraph (a)(4)(i)(B), the date "May 16, 1973" is revised to read "May 16, 1969".

§ 178.345–2 [Amended]

84. In § 178.345–2, in paragraph (a)(2), the designation "ASTM B–209 Alloy 5654" is revised to read "ASTM B–209 Alloy 5652".

85. In § 178.345–11, in the first sentence in paragraph (a), the word "exclusively" is removed, and paragraphs (b)(2) and (c) are revised to read as follows:

§ 178.345–11 Tank outlets.

* * * * *

(b) * * *

(2) Bottom loading outlets which discharge lading into the cargo tank through fixed internal piping above the maximum liquid level of the tank need not be equipped with a self-closing system.

(c) Any loading/unloading outlet extending beyond an internal self-closing stop-valve, or beyond the innermost external stop-valve which is part of a self-closing system, must be fitted with another stop-valve or other leak-tight closure at the end of such connection.

* * * * *

§ 178.345–11 [Amended]

86. In addition, in § 178.345–11, in paragraph (b)(1)(iii), the wording "Poison B liquids" is revised to read "Division 6.1 (poisonous liquid) materials".

§ 178.507 [Amended]

87. In § 178.507, in paragraph (a), the wording "ID" is revised to read "1D".

§ 178.601 [Amended]

88. In § 178.601, in paragraph (h), the reference "§§ 178.505–178.523" is revised to read "§§ 178.504–178.523".

§ 178.603 [Amended]

89. In § 178.603, in paragraph (a), the following changes are made:

a. In the text preceding the table, a new sentence is added after the first sentence to read "For other than flat drops, the center of gravity of the test packaging must be vertically over the point of impact."

b. In the paragraph (a) table, the heading of the second column is revised to read "No. of tests (samples)".

§ 178.606 [Amended]

90. In § 178.606, the following changes are made:

a. In paragraph (c)(1), three new sentences are added at the end of the paragraph to read "In guided load tests, stacking stability must be assessed after completion of the test by placing two filled packagings of the same type on the test sample. The stacked packages must

maintain their position for one hour. Plastic packagings must be cooled to ambient temperature before this stacking stability assessment."

b. The fourth sentence in paragraph (d) is removed.

Appendix B [Amended]

91. In appendix B to part 178, in the first sentence of paragraph (4), he wording "For drums, the following test may be used:" is revised to read "For other than design qualification testing, the following test may be used for metal drums:"

PART 179—SPECIFICATIONS FOR TANK CARS

92. The authority citation for part 179 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808, 1808; 49 CFR part 1, unless otherwise noted.

§ 179.101–1 [Amended]

93. In § 179.101–1, in paragraph (a), in the second table, for the entry "Minimum plate thickness, inches, shell and heads", in the column "112A200W [2]", footnote 1 is removed.

§ 179.200–18 [Amended]

94. In § 179.200–18, paragraph (b)(4) is removed.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

95. The authority citation for part 180 continues to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR part 1.

§ 180.403 [Amended]

96. In § 180.403, in the definition "Corrosive to the tank/valve", the section reference "§ 173.346" is revised to read "§ 173.136".

§ 180.405 [Amended]

97. In § 180.405, in paragraph (g)(2), the wording "the hydrostatic testing requirements in § 178.354–5(b)" is revised to read "the hydrostatic testing requirements in § 178.345–5(b)".

§ 180.407 [Amended]

98. In § 180.407, paragraph (d)(2)(vii) is removed and reserved and a semicolon is added at the end of (d)(2)(viii) in place of the period.

99. In § 180.409, the introductory text of paragraph (b) is revised to read as follows:

§ 180.409 Minimum qualifications for inspectors and testers.

* * * * *

(b) A motor carrier or cargo tank owner who meets the requirements of paragraph (a) of this section may use an employee who is not a Registered Inspector to perform a portion of the pressure retest required by § 180.407(g). External and internal visual inspections must be accomplished by a Registered Inspector, but the hydrostatic or pneumatic pressure test, as set forth in § 180.407(g)(1)(viii) and (ix), respectively, may be done by an employee who is not a Registered Inspector provided that—

* * * * *

100. In § 180.413, as amended at 55 FR 37069, September 7, 1990, an error was contained in the amendatory language, which incorrectly stated that paragraph (d)(1)(v) was revised. Instead it should have stated that paragraph (d)(2)(v) was revised. Therefore, paragraph (d)(2)(v) is correctly revised to read as follows:

§ 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

* * * * *

(d) * * *

(2) * * *

(v) Change the existing specification plate to reflect the cargo tank as modified, attach a supplemental specification plate noting appropriate changes that have been made to the cargo tank, or remove the existing specification plate and attach a new specification plate to the cargo tank;

* * * * *

101. In § 180.415, the first two sentences of paragraph (b) are removed and three new sentences are added in their place and the last sentence in paragraph (c) is revised to read as follows:

§ 180.415 Test and inspection markings.

* * * * *

(b) Each cargo tank must be durably and legibly marked, in English, with the date (month and year) and the type of test or inspection performed. The date must be readily identifiable with the applicable test or inspection. The marking must be in letters and numbers at least 32 mm (1.25 inches) high, on the tank shell near the specification plate or anywhere on the front head. * * *

(c) * * * For a cargo tank motor vehicle composed of multiple cargo tanks constructed to different specifications, which are tested and inspected at different intervals, the test and inspection markings must appear in the order of the cargo tank's corresponding location, from front to rear.

Issued in Washington, DC on September 17, 1992 under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92–23042 Filed 9–30–92; 8:45 am]

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federal register

Thursday
October 1, 1992

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888

Section 8 Housing Assistance Payments Program, Fair Market Rent Schedules; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N-92-3426; FR-3233-N-02]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher Program

AGENCY: Office of the Secretary, HUD.

ACTION: Final fair market rents.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) periodically, but not less frequently than annually, to be effective on October 1 of each year. The Department published proposed FY 1993 FMRs for the Section 8 Rental Certificate program on April 30, 1992 (57 FR 18684) and solicited public comments. Today's notice announces final FY 1993 FMR schedules for the Section 8 Rental Certificate program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the Section 8 Rental Certificate program (part 882, subpart F); the Section 8 Moderate Rehabilitation program (part 882, subparts D and E); and Section 8 housing assisted under part 886, subparts A and C (Section 8 Loan Management and Property Disposition programs). FMRs are also used to determine payment standard schedules in the Rental Vouchers program.

EFFECTIVE DATE: The FMRs published in this notice are effective on October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Shirley C. Stone, Rental Assistance Division, Office of Elderly and Assisted Housing, telephone (202) 708-0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708-0577. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) (or payment standards based on FMRs in the Housing Voucher Program) established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually, to be effective on October 1 of each year. The FMRs must reflect changes based on the most recent available data, so FMRs will be current for the year in which they apply. The Department's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment, analyzing the public comment, and publishing final FMRs. (See 24 CFR 888.115). On April 30, 1992 (57 FR 18684), the Department proposed FMRs for Section 8 rental certificates for FY 1993. Today's notice contains an analysis and response to public comments and makes appropriate revisions to the proposed FMRs.

The FMRs for 1993 announced in this notice govern the following Section 8 Housing Assistance Payments programs: The Section 8 Rental Certificate program under part 882 (subparts A and B), including space rentals by owners of manufactured homes (subpart F), the Moderate Rehabilitation program under part 882 (subparts D and E), the Section 8 Housing Assistance program for projects with HUD-insured or HUD-held mortgages under part 886 (subpart A), as well as for existing housing under the Section 8 Housing Assistance program for the disposition of HUD-owned projects under part 886 (subpart C). In addition, FMRs are used to establish payment standards for the Rental Voucher program.

Proposed Fair Market Rents

The proposed FY 1993 FMRs published on April 30, 1992 reflected estimated rent levels projected forward to April 1, 1993. The criteria and methodology used by HUD in developing the proposed FMRs appear at 24 CFR part 888, subpart A, and have been in use since 1983.

The criteria used by HUD in developing FMRs are: (1) The 45th percentile rent (that is, the rent below which 45 percent of the standard quality) rental housing units are distributed); (2) rents based on units occupied by recent movers (households who moved within two years before the date of the survey data used in these calculations); and (3) exclusion from the data base of public housing units and recently completed housing (units built within two years of the survey dates). (See 24 CFR 888.113.) The FMRs for manufactured home spaces are based on the 45th percentile rent for manufactured home spaces. (See 24 CFR 888.113(a).)

In establishing the proposed FMRs, HUD used the most accurate data available. In addition to 1980 Census data, data used to compute the FY 1993 FMRs include the Consumer Price Indices (CPI) for rental housing and utilities, post-1980 American Housing Survey (AHS) data, statistically reliable area specific data submitted by public commenters, and data from the Random Digit Dialing (RDD) telephone surveys of HUD Regions and selected FMR areas. (The use of the RDD survey was described in the April 30 notice of proposed FMRs.)

The proposed FY 1993 FMRs published on April 30, 1992 reflected estimated rent levels trended forward to April 1, 1993. As in past years, the FMR estimates are based primarily on decennial Census and American Housing Survey (AHS) data. This year, for the first time, the Department is incorporating the results of Random Digit Dialing (RDD) telephone surveys to update FMRs in areas not covered by CPI metropolitan surveys. It is also using these surveys to revise FMRs for selected areas.

RDD surveys were conducted in 37 individual FMR areas for use in revising local FMRs. Twenty other surveys were conducted to obtain rent updating factors for 1991. These latter surveys were conducted in the metropolitan and nonmetropolitan parts of the 10 HUD Regions not covered by CPI area-specific surveys. The Regional RDD surveys will be repeated each year to determine the annual rent change factors.

The individual FMR areas selected for RDD surveys include 33 areas that had been recommended by the HUD field offices and four areas by an Office of Inspector General audit. The areas recommended by the HUD field offices were areas with suspected FMR problems, most of which were thought to have FMRs that were too high. The areas recommended were reviewed to determine, on the basis of the number of Section 8 program units, that it would be cost effective to conduct an RDD survey. The survey results generally supported the HUD field office concerns. Of the 37 areas surveyed, 29 were subsequently proposed for FMR reductions. Eight areas were proposed for FMR increases, including four with increases larger than the normal inflation adjustment.

Administrative Fees

The FMRs published for effect will be used to calculate the PHA ongoing administrative fee. For a PHA administering a Section 8 program in an area where the two-bedroom FMR has increased, the PHA's administrative fee will be adjusted as of October 1, 1992. For a PHA administering a Section 8 program in an area where the two-bedroom FMR is decreased, the PHA's administrative fee will be adjusted as of the first day of the PHA's fiscal year that begins after October 1, 1992.

Public Comments

In response to the request for public comments on proposed FY 1993 FMRs, HUD received 1989 comments covering 64 FMR areas. This total included over 100 letters from individuals in Massachusetts expressing concerns about the proposed decrease in the FMRs in the Boston and surrounding metropolitan areas.

The Department carefully evaluated all comments, and has modified FMRs where the survey data were acceptable or where deficiencies could be corrected. Based on this evaluation, the FMRs for 13 areas are being increased. The FMRs for one area are being retained at last year's levels at the request of the area's major program sponsor. No rental housing survey data were submitted with the comments for 25 FMR areas. The information submitted for the remaining 24 FMR areas was not adequate to provide a basis for revising the FMRs.

The Department received comments for 24 of the 29 FMR areas recommended for proposed decreases on the basis of RDD surveys. As a result of these comments, the final FMRs for Tucson, AZ, Richland-Kennewick-Pasco, WA, Boston, MA, Salt Lake City, UT, and Mendocino County, CA have been revised.

This year's FMRs also incorporated the results of the 1990 metropolitan AHS surveys covering 8 FMR areas. Two of these areas, Anaheim-Santa Ana, CA and San Antonio, TX, had proposed decreases based on the survey data. Comments were submitted from these areas, but did not provide a sufficient basis for revising the proposed FMRs.

Miami, Florida FMRs: In response to the extensive losses and damage to the housing inventory in Dade County, Florida, caused by Hurricane Andrew, the Department is publishing final FMRs for the Miami PMSA that have been increased 10 percent above the proposed FMRs. This increase recognizes the impact on local rent levels of demand pressures and repair costs directly related to the hurricane. The Department will continue to monitor rent levels in this area in the near future and will respond with adjusted FMRs as necessary.

Several commenters raised questions concerning the reliability of the RDD survey approach. Answers to three of the most frequently asked questions are provided here.

Issue: Several comments expressed concern about the reliability of the RDD survey method and about the small sample sizes used.

Response: This technique has been independently tested and found to be reliable in market areas where extensive Bureau of the Census rental data are available. The RDD survey method produces both an FMR estimate and a measurement of the reliability of this estimate. The statistical reliability of sample survey estimates is primarily dependent on the extent to which the sample used approximates a pure random sample representatively covering all parts of the FMR area. A relatively small ramdon sample (e.g., one or two hundred cases) can provide reliable information about a characteristic for a large population. In contrast, a sample of five or ten thousand cases in a large metropolitan area, would provide little reliable information on a population characteristic if the sample had a significant bias (e.g., contained only relatively new rental units in large apartment complexes). Based on an analysis of surveys conducted to date, a 400 two-bedroom unit sample size generally will provide enough two-bedroom units to permit estimates that have a 95 percent likelihood of being withing 4 percent of the true 45th percentile rent.

Issue: The Department received several comments that contended that a telephone survey of individual units could not make a determination of the quality of these units.

Response: The RDD survey produces a 45th percentile rent estimate that is a very close approximation of what would be produced by a random sample of all renters with telephones. The 45th percentile rent estimates produced by this approach has two biases with respect to its use for setting FMRs. One is the upward bias on survey rent estimates caused by excluding non-telephone households who, as a group, have lower than average incomes and rents. The other is the downward bias on rents from surveying households that live in rental units that do not meet HUD housing quality standards.

Both biases are relatively small in terms of their impacts on 45th percentile rents. Analysis of the size and impact of these biases has been done using Census and American Housing Survey data. This analysis indicates that there is a relationship between units not covered and substandard units. It also showed that the upward bias caused by excluding non-telephone households was almost exactly offset by the downward bias from including substandard units.

The 45th percentile rent for units with telephones is, on average, 2 percent higher than for all units. On average, the inclusion of substandard and public housing units produces a 45th percentile rent estimate that is 2 percent lower than the intended FMR standard. In areas where larger percentages apply, such as the rural South, both percentages are larger but they remain off-setting. Based on this analysis, it has been concluded that the FMRs developed using the RDD survey methodology are representative of rental units that meet HUD's housing quality standards.

Issue: Some comments expressed concern about the way HUD was converting the rents of one-bedroom units to two-bedroom equivalent rents.

Response: One-bedroom units are included in the FMR RDD survey to increase the effective size of the sample, and thereby improve the accuracy of the rent estimates generated. HUD has found that there is a consistent relationship between 45th percentile one- and two-bedroom rents. This means that a more accurate two-bedroom FMR can be obtained with a given sample size by including information on one-bedroom rents. HUD adjusts the one-bedroom rents, however, before combining them with rents for two-bedroom units. One-bedroom rents are increased by the average two-bedroom to one-bedroom ratio to convert them into two-bedroom equivalent rents.

Rental Housing Survey Instrument

The Department continues to announce the availability of a FMR survey it had developed. This survey, which is based on a Random Digit Dialing (RDD) telephone, provides a statistically reliable means for obtaining FMR estimates. The RDD survey technique is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone numbers, and process the responses.

Because of its complexity and the large number of calls required, a survey contractor with specialized knowledge

and equipment is required to conduct one of these surveys. To assist interested parties, the "PHA Guide to Conducting a Fair Market Rent (FMR) Telephone Survey" is available from HUD USER by calling 1–800–245–2691. This guide is intended for local governments or PHAs that believe their FMRs are too high, or too low, and wish to obtain the data needed to revise them. The information contained in the guide provides a full explanation of how to decide whether to use the survey and step-by-step instructions on how to proceed with the contract. Interested PHAs concerned about the accuracy of their FMRs may wish to begin now, since it takes about two to three months to receive the survey results.

The Department recommends the RDD survey as the preferred method for testing FMR accuracy for areas where there is a sufficient number of section 8 units to justify the survey cost of approximately $15,000 to $20,000. HUD intends to use this technique in the future as an improved method for obtaining rent change factors for the metropolitan and nonmetropolitan portions of the ten HUD Regions. RDD surveys will be conducted annually by HUD in selected areas identified as having potential FMR problems.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this notice will not have a significant impact on family formation, maintenance, or well-being. The notice amends Fair Market Rent schedules for various Section 8 assisted housing programs, and does not affect the amount of rent a family receiving rental assistance pays, which is based on a percentage of the family's income.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are amended as follows:

Dated: September 28, 1992.

Jack Kemp,

Secretary.

Section 8 Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. FMRs for Existing Housing (Schedule B) are established for all Metropolitan Statistical Area (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties and county equivalents in the United States, District of Columbia, Puerto Rico, the Virgin Islands, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England states.

b. FMRs for Manufactured Home spaces in the Section 8 Certificate Program (Schedule D) are established for all MSAs, PMSAs, selected nonmetropolitan counties, and the residual nonmetropolitan portion of each State.

c. The current 339 MSAs and PMSAs are those established by the Office of Management and Budget effective in June 1988.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedules B and D are listed alphabetically by MSA–PMSA and nonmetropolitan county within each State.

b. The constituent counties (and New England towns and cities) included in each MSA and PMSA are listed immediately following the listings of the FMR dollar amounts. All of the constituent parts of an MSA that are in more than one State can be identified by consulting listings for each applicable State.

c. Two non-metropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a non-metropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

BILLING CODE 4210-32-M

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A B A M A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anniston, AL MSA	258	312	368	462	517	Calhoun
Birmingham, AL MSA	299	365	428	535	599	Blount, Jefferson, St Clair, Shelby, Walker
Columbus, GA-AL MSA	266	320	380	476	536	Russell
Decatur, AL MSA	263	319	378	472	530	Lawrence, Morgan
Dothan, AL MSA	301	365	429	537	601	Dale, Houston
Florence, AL MSA	271	332	392	488	545	Colbert, Lauderdale
Gadsden, AL MSA	235	288	341	426	477	Etowah
Huntsville, AL MSA	304	368	432	542	608	Madison
Mobile, AL MSA	313	380	447	560	629	Baldwin, Mobile
Montgomery, AL MSA	276	338	397	498	558	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	291	353	417	521	585	Tuscaloosa

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	217	263	311	389	436
Bullock	221	268	316	397	444
Chambers	215	261	308	386	431
Chilton	210	257	304	379	423
Clarke	234	287	340	425	475
Cleburne	215	261	308	386	431
Conecuh	234	287	340	425	475
Covington	217	263	311	389	436
Cullman	262	318	377	471	528
De Kalb	249	301	353	441	497
Fayette	210	257	304	379	423
Geneva	217	263	311	389	436
Hale	210	257	304	379	423
Jackson	249	301	353	441	497
Lee	268	326	386	483	541
Lowndes	221	268	316	397	444
Marengo	234	287	340	425	475
Marshall	230	280	330	410	460
Perry	234	287	340	425	475
Pike	234	286	339	422	473
Sumter	234	287	340	425	475
Tallapoosa	215	261	308	386	431
Wilcox	234	287	340	425	475

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bibb	210	257	304	379	423
Butler	225	273	322	404	452
Cherokee	215	261	308	386	431
Choctan	234	287	340	425	475
Clay	215	261	308	386	431
Coffee	285	344	405	508	568
Coosa	215	261	308	386	431
Crenshaw	221	268	316	397	444
Dallas	234	287	340	425	475
Escambia	199	245	285	357	400
Franklin	210	256	301	377	421
Greene	210	257	304	379	423
Henry	217	263	311	389	436
Lamar	210	257	304	379	423
Limestone	222	270	319	400	448
Macon	234	286	339	422	473
Marion	210	256	301	377	421
Monroe	234	287	340	425	475
Pickens	210	257	304	379	423
Randolph	215	261	308	386	431
Talladega	215	261	308	386	431
Washington	234	287	340	425	475
Winston	210	256	301	377	421

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A S K A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anchorage, AK MSA	459	558	656	820	918	Anchorage

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aleutian I	495	601	707	885	992
Bristol Bay	495	601	707	885	992
Fairbanks No. Star	470	571	695	869	973
Juneau	572	695	890	1057	1184
Ketchikan Gateway	600	728	857	1073	1200
Kodiak Island	665	806	949	1187	1330
Nome	495	601	707	885	992
Pr Wales-Outer Ket	495	601	707	885	992
Skgwy-Ykutt-Angoon	495	601	707	885	992
Valdez-Cordova	625	758	893	1116	1250
Wrangellpetersburg	556	675	794	993	1111

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bethel	495	601	707	885	992
Dillingham	495	601	707	885	992
Haines	495	601	707	885	992
Kenai-Penin	457	555	653	817	916
Kobuk	495	601	707	885	992
Matanuska-Susitna	421	511	601	751	841
North Slope	495	601	707	885	992
Sitka	556	675	794	993	1111
Southeastfairbanks	407	495	582	728	817
Wade Hampton	495	601	707	885	992
Ykn-Koykk	495	601	707	885	992

A R I Z O N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Phoenix, AZ MSA	354	429	505	631	707	Maricopa
Tucson, AZ MSA	343	392	490	612	686	Pima
Yuma, AZ MSA	397	482	570	712	798	Yuma

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Apache	308	375	442	553	620
Coconino	393	476	561	703	788
Graham	314	384	450	565	633
Lapaz	398	484	571	713	800
Nauajo	308	375	442	553	620
Santa Cruz	314	384	450	565	633

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Cochise	314	384	450	565	633
Gila	317	387	458	571	638
Greenlee	314	384	450	565	633
Mohave	398	484	571	713	800
Pinal	317	387	458	571	638
Yavapai	393	476	561	703	788

A R K A N S A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Fayetteville-Springdale, AR MSA	284	344	406	506	568	Washington
Fort Smith, AR-OK MSA	273	333	393	494	553	Crawford, Sebastian
Little Rock-North Little Rock, AR MSA	327	397	467	587	657	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	316	383	451	562	629	Crittenden
Pine Bluff, AR MSA	270	330	390	490	547	Jefferson
Texarkana, TX-Texarkana, AR MSA	271	329	389	489	545	Miller

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A R K A N S A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Arkansas	227	275	325	407	457
Baxter	257	313	371	463	521
Boone	257	313	371	463	521
Calhoun	218	266	312	393	438
Chicot	217	261	309	387	435
Clay	243	295	346	434	487
Cleveland	224	272	321	402	450
Conway	223	270	320	401	447
Cross	228	281	330	408	457
Desha	217	261	309	387	435
Franklin	201	245	289	361	404
Garland	237	291	341	427	480
Greene	243	295	346	434	487
Hotspring	237	291	341	427	480
Independence	253	308	364	455	508
Jackson	253	308	364	455	508
Lafayette	222	266	316	398	445
Lee	228	281	330	408	457
Little River	222	266	316	398	445
Madison	257	313	371	463	521
Mississippi	261	320	376	470	529
Montgomery	237	291	341	427	480
Newton	257	313	371	463	521
Perry	223	270	320	401	447
Pike	237	291	341	427	480
Polk	242	293	344	430	484
Prairie	194	236	281	350	392
St Francis	228	281	330	408	457
Searcy	257	313	371	463	521
Sharp	253	308	364	455	508
Union	218	266	312	393	438
White	253	308	364	455	508
Yell	223	270	320	401	447

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashley	217	261	309	387	435
Benton	266	324	378	466	521
Bradley	217	261	309	387	435
Carroll	257	313	371	463	521
Clark	237	291	341	427	480
Cleburne	253	308	364	455	508
Columbia	218	266	312	393	438
Craighead	285	344	406	506	570
Dallas	218	266	312	393	438
Drew	240	291	343	461	482
Fulton	253	308	364	455	508
Grant	224	272	321	402	450
Hempstead	222	266	316	398	445
Howard	222	266	316	398	445
Izard	253	308	364	455	508
Johnson	223	270	320	401	447
Lawrence	243	295	346	434	487
Lincoln	217	261	309	387	435
Logan	201	245	289	361	404
Marion	257	313	371	463	521
Monroe	194	236	281	350	392
Nevada	222	266	316	398	445
Ouachita	218	263	310	390	438
Phillips	228	281	330	408	457
Poinsett	243	295	346	434	487
Pope	223	270	320	401	447
Randolph	243	295	346	434	487
Scott	201	245	289	361	404
Sevier	222	266	316	398	445
Stone	253	308	364	455	508
Van Buren	253	308	364	455	508
Woodruff	253	308	364	455	508

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C A L I F O R N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anaheim-Santa Ana, CA PMSA	618	751	883	1104	1236	Orange
Bakersfield, CA MSA	432	525	618	772	866	Kern
Chico CA MSA	379	461	543	678	760	Butte
Fresno, CA MSA	394	479	565	705	791	Fresno
Los Angeles-Long Beach, CA PMSA	579	704	829	1036	1161	Los Angeles
Merced, CA MSA	371	451	531	684	776	Merced
Modesto, CA MSA	413	503	595	744	832	Stanislaus
Oakland, CA PMSA	581	706	832	1040	1165	Alameda, Contra Costa
Oxnard-Ventura, CA PMSA	554	674	793	991	1111	Ventura
Redding, CA MSA	394	479	565	705	791	Shasta
Riverside-San Bernardino, CA PMSA	470	555	647	838	943	Riverside, San Bernardino
Sacramento, CA MSA	417	497	595	864	918	El Dorado, Placer, Sacramento, Yolo
Salinas-Seaside-Monterey, CA MSA	473	575	675	847	948	Monterey
San Diego, CA MSA	503	618	725	908	1016	San Diego
San Francisco, CA PMSA	697	845	1002	1247	1397	Marin, San Francisco, San Mateo
San Jose, CA PMSA	643	780	920	1149	1288	Santa Clara
Santa Barbara-Santa Maria-Lompoc, CA MSA	534	649	765	959	1072	Santa Barbara
Santa Cruz, CA PMSA	623	756	893	1116	1249	Santa Cruz
Santa Rosa-Petaluma, CA PMSA	548	665	785	983	1100	Sonoma
Stockton, CA MSA	401	487	573	716	802	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	508	582	685	989	1066	Napa, Solano
Visalia-Tulare-Porterville, CA MSA	367	447	527	764	836	Tulare
Yuba City, CA MSA	324	396	466	614	689	Sutter, Yuba

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alpine	433	526	620	774	868
Calaveras	433	526	620	774	868
Del Norte	395	480	566	706	793
Humboldt	407	495	583	729	819
Inyo	433	526	620	774	868
Lake	395	480	566	706	793
Madera	357	434	510	642	717
Mendocino	427	464	610	763	854
Mono	433	526	620	774	868
Plumas	362	439	518	646	727
San Luis Obispo	490	596	702	878	985
Siskiyou	362	439	518	646	727
Trinity	395	480	566	706	793

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Amador	433	526	620	774	868
Colusa	326	398	469	590	661
Glenn	326	398	469	590	661
Imperial	410	499	588	735	823
Kings	357	434	510	639	717
Lassen	362	439	518	646	727
Mariposa	433	526	620	774	868
Modoc	362	439	518	646	727
Nevada	485	592	695	869	972
San Benito	404	492	620	796	894
Sierra	485	592	695	869	972
Tehama	362	439	518	646	727
Tuolumne	433	526	620	774	868

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

C O L O R A D O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Boulder-Longmont, CO PMSA	421	511	601	752	841	Boulder
Colorado Springs, CO MSA	353	428	504	632	708	El Paso
Denver, CO PMSA	365	443	522	652	730	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	406	494	581	726	815	Larimer
Greeley, CO MSA	352	426	501	630	705	Weld
Pueblo, CO MSA	350	424	499	626	702	Pueblo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alamosa	351	424	500	627	703
Baca	306	368	428	536	602
Chaffee	389	471	555	695	780
Clear Creek	389	471	555	695	780
Costilla	351	424	500	627	703
Custer	389	471	555	695	780
Delores	351	424	500	627	703
Elbert	299	364	428	536	602
Garfield	441	535	632	790	885
Grand	464	561	661	827	927
Hinsdale	464	561	661	827	927
Jackson	464	561	661	827	927
Kit Carson	299	364	428	536	602
La Plata	390	468	552	690	774
Lincoln	306	368	428	536	602
Mesa	441	535	632	790	885
Moffat	441	535	632	790	885
Montrose	464	561	661	827	927
Otero	306	368	428	536	602
Park	389	471	555	695	780
Pitkin	464	561	661	827	927
Rio Blanco	441	535	632	790	885
Routt	464	561	661	827	927
San Juan	351	424	500	627	703
Sedgwick	299	364	428	536	602
Teller	389	471	555	695	780
Yuma	299	364	428	536	602

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Archuleta	351	424	500	627	703
Bent	306	368	428	536	602
Cheyenne	299	364	428	536	602
Conejos	351	424	500	627	703
Crowley	306	368	428	536	602
Delta	464	561	661	827	927
Eagle	464	561	661	827	927
Fremont	389	471	555	695	780
Gilpin	389	471	555	695	780
Gunnison	464	561	661	827	927
Huerfano	351	424	500	627	703
Kiowa	306	368	428	536	602
Lake	389	471	555	695	780
Las Animas	351	424	500	627	703
Logan	299	364	428	536	602
Mineral	351	424	500	627	703
Montezuma	351	424	500	627	703
Morgan	299	364	428	536	602
Ouray	464	561	661	827	927
Phillips	299	364	428	536	602
Prowers	306	368	428	536	602
Rio Grande	351	424	500	627	703
Saguache	351	424	500	627	703
San Miguel	464	561	661	827	927
Summit	464	561	661	827	927
Washington	299	364	428	536	602

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

CONNECTICUT

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Bridgeport-Milford, CT PMSA	510	619	731	912	1024	Fairfield county towns of Bridgeport, Easton, Fairfield Monroe, Shelton, Stratford, Trumbull New Haven county towns of Ansonia, Beacon Falls, Derby Milford, Oxford, Seymour
Bristol, CT PMSA	416	504	594	744	834	Hartford county towns of Bristol, Burlington Litchfield county towns of Plymouth
Danbury, CT PMSA	552	673	791	991	1112	Fairfield county towns of Bethel, Brookfield, Danbury New Fairfield, Newtown, Redding, Ridgefield, Sherman Litchfield county towns of Bridgewater, New Milford
Hartford, CT PMSA	500	609	713	898	1002	Hartford county towns of Avon, Bloomfield, Canton East Granby, East Hartford, East Windsor, Enfield Farmington, Glastonbury, Granby, Hartford, Manchester Marlborough, Newington, Rocky Hill, Simsbury South Windsor, Suffield, West Hartford, Wethersfield Windsor, Windsor Locks Litchfield county towns of Barkhamsted, New Hartford Middlesex county towns of East Haddam New London county towns of Colchester Tolland county towns of Andover, Bolton, Columbia Coventry, Ellington, Hebron, Somers, Stafford, Tolland Vernon, Willington
Middletown, CT PMSA	421	511	604	756	847	Middlesex county towns of Cromwell, Durham, East Hampton Haddam, Middlefield, Middletown, Portland
New Britain, CT PMSA	445	541	637	797	894	Hartford county towns of Berlin, New Britain, Plainville Southington
New Haven-Meriden, CT MSA	539	655	773	968	1082	Middlesex county towns of Clinton, Killingworth New Haven county towns of Bethany, Branford, Cheshire East Haven, Guilford, Hamden, Madison, Meriden New Haven, North Branford, North Haven, Orange Wallingford, West Haven, Woodbridge
New London-Norwich, CT-RI MSA	479	583	684	856	960	New London county towns of Bozrah, East Lyme, Franklin Griswold, Groton, Ledyard, Lisbon, Montville, New London North Stonington, Norwich, Old Lyme, Preston, Salem Sprague, Stonington, Waterford Windham county towns of Canterbury
Norwalk, CT PMSA	588	714	842	1052	1180	Fairfield county towns of Norwalk, Weston, Westport Wilton
Stamford, CT PMSA	709	862	1015	1270	1421	Fairfield county towns of Darien, Greenwich, New Canaan Stamford
Waterbury, CT MSA	434	526	620	775	869	Litchfield county towns of Bethlehem, Thomaston Watertown, Woodbury New Haven county towns of Middlebury, Naugatuck, Prospect Southbury, Waterbury, Wolcott

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

CONNECTICUT continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	413	501	591	740	829	Hartland
Litchfield	458	556	653	819	917	Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent Litchfield, Morris, Norfolk, North Canaan, Roxbury Salisbury, Sharon, Torrington, Warren, Washington Winchester
Middlesex	513	622	732	915	1026	Chester, Deep River, Essex, Old Saybrook, Westbrook
New London	365	445	525	658	738	Lebanon, Lyme, Voluntown
Tolland	496	603	708	888	994	Mansfield, Union
Windham	437	532	627	784	880	Ashford, Brooklyn, Chaplin, Eastford, Hampton, Killingly Plainfield, Pomfret, Putnam, Scotland, Sterling Thompson, Windham, Woodstock

DELAWARE

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Wilmington, DE-NJ-MD PMSA	454	542	646	808	961	New Castle

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Kent	385	467	550	687	770
Sussex	385	467	550	687	770

DIST. OF COLUMBIA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Washington, DC-MD-VA MSA	597	725	854	1067	1195	Washington

FLORIDA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bradenton, FL MSA	380	463	545	682	764	Manatee
Daytona Beach, FL MSA	369	447	526	658	738	Volusia
Fort Lauderdale-Hollywood-Pompano Beach, FL PMSA	472	573	674	843	944	Broward
Fort Myers-Cape Coral, FL MSA	391	474	559	701	786	Lee
Fort Pierce, FL MSA	391	474	559	701	786	Martin, St Lucie
Fort Walton Beach, FL MSA	261	316	373	467	523	Okaloosa
Gainesville, FL MSA	331	403	473	594	663	Alachua, Bradford
Jacksonville, FL MSA	346	420	497	620	696	Clay, Duval, Nassau, St Johns
Lakeland-Winter Haven, FL MSA	311	380	448	560	627	Polk
Melbourne-Titusville-Palm Bay, FL MSA	357	429	506	634	711	Brevard
Miami-Hialeah, FL PMSA	504	611	719	899	1007	Dade
Naples, FL MSA	402	488	574	719	805	Collier

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

F L O R I D A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Ocala, FL MSA	311	402	445	556	622	Marion
Orlando, FL MSA	382	466	548	667	746	Orange, Osceola, Seminole
Panama City, FL MSA	276	338	398	499	557	Bay
Pensacola, FL MSA	309	378	445	556	622	Escambia, Santa Rosa
Sarasota, FL MSA	412	501	591	737	828	Sarasota
Tallahassee, FL MSA	327	396	467	585	654	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	373	453	534	665	747	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton-Delray Beach, FL MSA	400	477	556	680	749	Palm Beach

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	252	304	357	448	504
Charlotte	377	460	540	674	757
Columbia	258	313	368	462	517
Dixie	229	282	332	414	466
Franklin	213	258	303	380	426
Glades	377	460	540	674	757
Hamilton	229	282	332	414	466
Hendry	377	460	540	674	757
Holmes	248	299	353	443	496
Jackson	221	267	315	396	444
Lafayette	229	282	332	414	466
Levy	288	350	411	515	577
Madison	229	282	332	414	466
Okeechobee	269	329	387	485	543
Sumter	288	348	411	515	577
Taylor	229	282	332	414	466
Wakulla	273	332	390	488	548
Washington	248	301	354	445	497

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Calhoun	213	258	303	380	426
Citrus	288	348	411	515	577
De Soto	269	329	387	485	543
Flagler	291	351	414	519	583
Gilchrist	229	282	332	414	466
Gulf	213	258	303	380	426
Hardee	269	329	387	485	543
Highlands	269	329	387	485	543
Indian River	390	473	557	699	783
Jefferson	213	258	303	380	426
Lake	303	368	432	542	609
Liberty	213	258	303	380	426
Monroe	443	537	711	851	924
Putnam	291	351	414	519	583
Suwannee	229	282	332	414	466
Union	229	282	332	414	466
Walton	290	350	413	518	581

G E O R G I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albany, GA MSA	287	346	410	512	574	Dougherty, Lee
Athens, GA MSA	296	360	424	531	595	Clarke, Jackson, Madison, Oconee
Atlanta, GA MSA	405	492	580	725	813	Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, De Kalb Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry Newton, Paulding, Rockdale, Spalding, Walton
Augusta, GA-SC MSA	301	365	424	531	595	Columbia, Mcduffie, Richmond
Chattanooga, TN-GA MSA	320	390	460	575	647	Catoosa, Dade, Walker
Columbus, GA-AL MSA	266	320	380	476	536	Chattahoochee, Columbus

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092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Macon-Warner Robins, GA MSA	297	365	429	536	597	Bibb, Houston, Jones, Peach
Savannah, GA MSA	301	368	432	540	606	Chatham, Effingham

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Appling	247	299	353	441	495
Bacon	230	280	330	413	465
Baldwin	233	286	336	420	471
Barton	250	304	358	448	504
Berrien	245	296	348	437	489
Brantley	230	280	330	413	465
Bryan	285	330	390	488	548
Burke	234	287	337	423	473
Camden	271	330	390	488	548
Carroll	285	343	404	506	565
Chattooga	250	304	358	448	504
Clinch	230	280	330	413	465
Colquitt	236	290	340	426	476
Crawford	199	244	286	357	399
Dawson	224	276	322	400	445
Dodge	238	293	340	427	471
Early	238	293	340	427	476
Elbert	226	275	324	407	456
Evans	247	299	353	441	495
Floyd	250	304	358	448	504
Gilmer	266	324	381	477	536
Glynn	271	330	390	488	548
Grady	238	293	340	427	476
Habersham	249	301	356	445	499
Hancock	238	293	340	427	471
Harris	244	296	343	428	476
Heard	263	320	378	473	530
Jasper	238	293	340	427	471
Jefferson	234	287	337	423	473
Johnson	238	293	340	427	471
Lanier	245	296	348	437	489
Liberty	271	330	390	488	548
Long	271	330	390	488	548
Lumpkin	224	276	322	400	445
Macon	238	293	340	427	476
Meriwether	263	320	378	473	530

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Atkinson	230	280	330	413	465
Baker	238	293	340	427	476
Banks	221	269	317	397	445
Ben Hill	245	296	348	437	489
Bleckley	238	293	340	427	471
Brooks	245	296	348	437	489
Bulloch	247	299	353	441	495
Calhoun	238	293	340	427	476
Candler	247	299	353	441	495
Charlton	238	292	340	419	465
Clay	238	293	340	427	476
Coffee	230	280	330	413	465
Cook	245	296	348	437	489
Crisp	236	290	340	426	476
Decatur	238	293	340	427	476
Dooly	238	293	340	427	476
Echols	245	296	348	437	489
Emanuel	234	287	337	423	473
Fannin	266	324	381	477	536
Franklin	221	269	317	397	445
Glascock	234	287	337	423	473
Gordon	250	304	358	448	504
Greene	224	271	320	401	449
Hall	319	384	457	570	643
Haralson	250	304	358	448	504
Hart	221	269	317	397	445
Irwin	245	296	348	437	489
Jeff Davis	247	299	353	441	495
Jenkins	234	287	337	423	473
Lamar	220	266	315	395	441
Laurens	233	286	336	420	471
Lincoln	234	287	337	423	473
Lowndes	245	296	348	437	489
McIntosh	271	330	390	488	548
Marion	244	296	343	428	476
Miller	238	293	340	427	476

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Mitchell	238	293	340	427	476
Montgomery	244	297	348	430	476
Murray	266	324	381	477	536
Pickens	266	324	381	477	536
Pike	220	266	315	395	441
Pulaski	238	293	340	427	471
Quitman	236	290	340	426	476
Randolph	238	293	340	427	476
Screven	244	297	348	430	476
Stephens	260	319	374	469	522
Sumter	265	325	384	479	539
Taliaferro	234	287	337	423	473
Taylor	238	293	340	427	476
Terrell	238	293	340	427	476
Tift	245	296	348	437	489
Towns	224	276	322	400	445
Troup	269	325	382	476	532
Twiggs	199	244	286	357	399
Upson	220	266	315	395	441
Warren	234	287	337	423	473
Wayne	247	299	353	441	495
Wheeler	238	293	340	427	471
Whitfield	266	324	381	477	536
Wilkes	234	287	337	423	473
Worth	238	293	340	427	476

H A W A I I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Honolulu, HI MSA	643	782	920	1158	1297	Honolulu

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hawaii	505	612	720	903	1010
Maui	596	724	852	1066	1193
Kauai	629	767	901	1127	1262

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Monroe	199	244	286	357	399
Morgan	224	271	320	401	449
Oglethorpe	224	271	320	401	449
Pierce	230	280	330	413	465
Polk	250	306	358	448	504
Putnam	238	293	340	427	471
Rabun	224	276	322	400	445
Schley	244	296	343	428	476
Seminole	238	293	340	427	476
Stewart	244	296	343	428	476
Talbot	236	290	340	426	476
Tattnall	247	299	353	441	495
Telfair	238	293	340	427	471
Thomas	277	337	397	499	558
Toombs	247	299	353	441	495
Treutlen	238	293	340	427	471
Turner	245	296	348	437	489
Union	224	276	322	400	445
Ware	230	280	330	413	465
Washington	238	293	340	427	471
Webster	244	296	343	428	476
White	224	276	322	400	445
Wilcox	238	293	340	427	471
Wilkinson	238	293	340	427	471

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092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I D A H O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Boise City, ID MSA	414	503	594	742	832	Ada

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	321	392	462	576	647
Bear Lake	334	405	478	600	672
Bingham	336	410	478	600	672
Boise	321	392	462	576	647
Bonneville	361	437	517	646	724
Butte	361	437	517	646	724
Canyon	321	392	462	576	647
Cassia	342	415	490	612	688
Clearwater	334	405	478	600	672
Elmore	321	392	462	576	647
Fremont	361	437	517	646	724
Gooding	342	415	490	612	688
Jefferson	361	437	517	646	724
Kootenai	334	405	478	600	672
Lemhi	361	437	517	646	724
Lincoln	342	415	490	612	688
Minidoka	342	415	490	612	688
Oneida	334	405	478	600	672
Payette	321	392	462	576	647
Shoshone	334	405	478	600	672
Twin Falls	342	415	490	612	688
Washington	321	392	462	576	647

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bannock	336	410	478	600	672
Benewah	334	405	478	600	672
Blaine	342	415	490	612	688
Bonner	334	405	478	600	672
Boundary	334	405	478	600	672
Camas	342	415	490	612	688
Caribou	336	410	478	600	672
Clark	361	437	517	646	724
Custer	361	437	517	646	724
Franklin	334	405	478	600	672
Gem	321	392	462	576	647
Idaho	334	405	478	600	672
Jerome	342	415	490	612	688
Latah	334	405	478	600	672
Lewis	334	405	478	600	672
Madison	361	437	517	646	724
Nez Perce	334	405	478	600	672
Owyhee	321	392	462	576	647
Power	336	410	478	600	672
Teton	361	437	517	646	724
Valley	321	392	462	576	647

I L L I N O I S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Aurora-Elgin, IL PMSA	490	598	705	880	989	Kane, Kendall
Bloomington-Normal, IL MSA	343	419	491	614	688	Mclean
Champaign-Urbana-Rantoul, IL MSA	332	403	476	598	668	Champaign
Chicago, IL PMSA	480	591	692	870	974	Cook, Du Page, Mchenry
Davenport-Rock Island-Moline, IA-IL MSA	368	448	528	659	738	Henry, Rock Island
Decatur, IL MSA	332	403	476	598	668	Macon
Joliet, IL PMSA	495	603	713	891	1001	Grundy, Will
Kankakee, IL MSA	329	399	471	590	662	Kankakee
Lake County, IL PMSA	509	618	725	912	1021	Lake
Peoria, IL MSA	387	469	552	692	774	Peoria, Tazewell, Woodford

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I L L I N O I S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rockford, IL MSA	350	427	502	627	702	Boone, Winnebago
St. Louis, MO-IL MSA	351	426	503	628	704	Clinton, Jersey, Madison, Monroe, St Clair
Springfield, IL MSA	351	428	503	629	704	Menard, Sangamon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	259	314	370	464	520
Bond	283	347	408	511	572
Bureau	315	385	454	566	635
Carroll	292	356	421	526	588
Christian	300	363	428	536	601
Clay	267	324	384	479	537
Cranford	267	324	384	479	537
De Kalb	381	463	546	682	763
Douglas	283	347	408	511	572
Edwards	259	314	370	464	520
Fayette	267	324	384	479	537
Franklin	303	366	433	544	608
Gallatin	239	290	344	429	481
Hamilton	259	314	370	464	520
Hardin	239	290	344	429	481
Iroquois	297	360	425	533	597
Jasper	267	324	384	479	537
Jo Daviess	292	356	421	526	588
Knox	308	374	437	550	617
Lawrence	267	324	384	479	537
Livingston	297	360	425	533	597
Mcdonough	283	346	402	502	559
Marion	267	324	384	479	537
Mason	297	357	423	523	582
Mercer	277	337	396	498	559
Morgan	297	357	423	523	582
Ogle	292	356	421	526	588
Piatt	283	347	408	511	572
Pope	239	290	344	429	481
Putnam	315	385	454	566	635
Richland	267	324	384	479	537
Schuyler	259	314	370	464	520
Shelby	300	363	428	536	601
Stephenson	292	356	421	526	588
Vermilion	297	360	425	533	597

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alexander	239	290	344	429	481
Brown	259	314	370	464	520
Calhoun	289	353	417	519	582
Cass	297	357	423	523	582
Clark	283	347	408	511	572
Coles	283	347	408	511	572
Cumberland	283	347	408	511	572
De Witt	283	347	408	511	572
Edgar	283	347	408	511	572
Effingham	267	324	384	479	537
Ford	297	360	425	533	597
Fulton	315	385	454	566	635
Greene	289	353	417	519	582
Hancock	277	337	396	498	559
Henderson	277	337	396	498	559
Jackson	303	366	433	544	608
Jefferson	291	354	422	526	586
Johnson	239	290	344	429	481
La Salle	358	434	512	642	719
Lee	358	434	512	642	719
Logan	297	357	423	523	582
Macoupin	300	363	428	536	601
Marshall	315	385	454	566	635
Massac	239	290	344	429	481
Montgomery	300	363	428	536	601
Moultrie	300	363	428	536	601
Perry	283	347	408	511	572
Pike	259	314	370	464	520
Pulaski	239	290	344	429	481
Randolph	283	347	408	511	572
Saline	239	290	344	429	481
Scott	297	357	423	523	582
Stark	315	385	454	566	635
Union	239	290	344	429	481
Wabash	259	314	370	464	520

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092492

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Warren	283	346	402	502	559
Wayne	259	314	370	464	520
Whiteside	358	434	512	642	719
Washington	283	347	408	511	572
White	259	314	370	464	520
Williamson	303	366	433	544	608

I N D I A N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anderson, IN MSA	284	346	406	510	573	Madison
Bloomington, IN MSA	307	373	440	551	617	Monroe
Cincinnati, OH-KY-IN PMSA	342	415	489	611	684	Dearborn
Elkhart-Goshen, IN MSA	301	364	429	538	603	Elkhart
Evansville-Henderson, IN-KY MSA	315	376	441	553	619	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	315	381	444	557	619	Allen, De Kalb, Whitley
Gary-Hammond, IN PMSA	392	476	561	702	787	Lake, Porter
Indianapolis, IN MSA	355	432	508	635	711	Boone, Hamilton, Hancock, Hendricks, Johnson, Marion Morgan, Shelby
Kokomo, IN MSA	312	382	447	561	629	Howard, Tipton
Lafayette-West Lafayette, IN MSA	331	403	474	592	665	Tippecanoe
Louisville, KY-IN MSA	287	347	408	508	570	Clark, Floyd, Harrison
Muncie, IN MSA	272	328	387	480	538	Delaware
South Bend-Mishawaka, IN MSA	309	374	437	543	605	St Joseph
Terre Haute, IN MSA	280	342	399	497	551	Clay, Vigo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	276	336	391	490	549
Benton	265	323	381	477	534
Brown	312	381	448	563	631
Cass	274	335	394	493	552
Crawford	228	278	327	412	463
Decatur	312	381	448	563	631
Fayette	269	325	381	477	534
Franklin	269	325	381	477	534
Gibson	299	362	426	534	599
Greene	258	312	371	465	519
Huntington	273	334	391	490	549
Jasper	276	337	396	497	556
Jefferson	299	362	426	534	599
Knox	265	319	371	465	519
Lagrange	284	344	405	508	571
Lawrence	287	350	413	517	578
Bartholomew	312	381	448	563	631
Blackford	251	305	359	448	504
Carroll	265	323	381	477	534
Clinton	265	323	381	477	534
Daviess	258	312	371	465	519
Dubois	228	278	327	412	463
Fountain	265	323	381	477	534
Fulton	266	322	379	478	534
Grant	251	305	359	448	504
Henry	251	305	359	448	504
Jackson	312	381	448	563	631
Jay	251	305	359	448	504
Jennings	312	381	448	563	631
Kosciusko	288	349	411	506	566
La Porte	302	367	431	539	606
Marshall	276	337	396	497	556

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I N D I A N A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Martin	258	312	371	465	519
Montgomery	265	323	381	477	534
Noble	283	344	405	508	571
Orange	228	278	327	412	463
Parke	265	323	381	477	534
Pike	299	362	426	534	599
Putnam	300	365	429	536	600
Ripley	299	362	426	534	599
Scott	284	345	408	510	573
Starke	276	337	396	497	556
Sullivan	265	323	381	477	534
Union	269	325	381	477	534
Wabash	257	311	368	463	517
Washington	307	374	440	551	617
Wells	280	337	392	493	549
Miami	274	335	394	493	552
Newton	276	337	396	497	556
Ohio	299	362	426	534	599
Owen	304	370	434	544	610
Perry	228	278	327	412	463
Pulaski	276	337	396	497	556
Randolph	251	305	359	448	504
Rush	265	323	381	477	534
Spencer	228	278	327	412	463
Steuben	283	344	405	508	571
Switzerland	299	362	426	534	599
Vermillion	274	334	389	484	537
Warren	265	323	381	477	534
Wayne	270	326	384	477	534
White	265	323	381	477	534

I O W A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Cedar Rapids, IA MSA	359	433	510	640	719	Linn
Davenport-Rock Island-Moline, IA-IL MSA	368	448	528	659	738	Scott
Des Moines, IA MSA	355	432	509	639	716	Dallas, Polk, Warren
Dubuque, IA MSA	331	400	472	592	662	Dubuque
Iowa City, IA MSA	374	457	537	672	753	Johnson
Omaha, NE-IA MSA	326	395	464	581	655	Pottawattamie
Sioux City, IA-NE MSA	322	392	461	576	647	Woodbury
Waterloo-Cedar Falls, IA MSA	360	434	512	642	721	Black Hawk, Bremer

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	265	324	380	479	534
Allamakee	281	341	403	504	565
Audubon	282	343	406	506	567
Boone	322	390	459	575	645
Buena Vista	277	335	396	494	556
Calhoun	282	343	406	506	567
Cass	290	353	414	519	582
Cerro Gordo	279	339	400	499	560
Chickasaw	281	341	403	504	565
Clay	277	335	396	494	556
Clinton	314	380	451	563	632
Adams	265	324	380	479	534
Appanoose	265	324	380	479	534
Benton	276	334	394	493	553
Buchanan	281	341	403	504	565
Butler	281	341	403	504	565
Carroll	282	343	406	506	567
Cedar	314	380	451	563	632
Cherokee	282	343	406	506	567
Clarke	265	324	380	479	534
Clayton	281	341	403	504	565
Crawford	282	343	406	506	567

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Davis	265	324	380	479	534
Delaware	314	380	451	563	632
Dickinson	277	335	396	494	556
Fayette	281	341	403	504	565
Franklin	279	339	400	499	560
Greene	282	343	406	506	567
Guthrie	282	343	406	506	567
Hancock	279	339	400	499	560
Harrison	290	353	414	519	582
Howard	281	341	403	504	565
Ida	282	343	406	506	567
Jackson	314	380	451	563	632
Jefferson	294	358	420	527	591
Keokuk	277	335	396	494	555
Lee	295	360	423	529	594
Lucas	265	324	380	479	534
Madison	297	363	426	533	598
Marion	297	363	426	533	598
Mills	290	353	414	519	582
Monona	282	343	406	506	567
Montgomery	290	353	414	519	582
O Brien	277	335	396	494	556
Page	290	353	414	519	582
Plymouth	282	343	406	506	567
Poweshiek	293	357	419	525	590
Sac	282	343	406	506	567
Sioux	277	335	396	494	556
Tama	293	357	419	525	590
Union	265	324	380	479	534
Wapello	314	379	450	561	630
Wayne	265	324	380	479	534
Winnebago	279	339	400	499	560
Worth	279	339	400	499	560

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Decatur	265	324	380	479	534
Des Moines	295	360	423	529	594
Emmet	277	335	396	494	556
Floyd	279	339	400	499	560
Fremont	290	353	414	519	582
Grundy	281	341	403	504	565
Hamilton	282	343	406	506	567
Hardin	293	357	419	525	590
Henry	295	360	423	529	594
Humboldt	282	343	406	506	567
Iowa	276	334	394	493	553
Jasper	297	363	426	533	598
Jones	276	334	394	493	553
Kossuth	279	339	400	499	560
Louisa	295	360	423	529	594
Lyon	277	335	396	494	556
Mahaska	265	324	380	479	534
Marshall	293	357	419	525	590
Mitchell	279	339	400	499	560
Monroe	265	324	380	479	534
Muscatine	295	360	423	529	594
Osceola	277	335	396	494	556
Palo Alto	277	335	396	494	556
Pocahontas	282	343	406	506	567
Ringgold	265	324	380	479	534
Shelby	290	353	414	519	582
Story	322	390	459	575	645
Taylor	265	324	380	479	534
Van Buren	265	324	380	479	534
Washington	276	334	394	493	553
Webster	282	343	406	506	567
Winneshiek	281	341	403	504	565
Wright	282	343	406	506	567

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Kansas City, MO-KS MSA	342	416	489	611	685	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	361	438	516	644	724	Douglas
Topeka, KS MSA	327	398	467	588	656	Shawnee
Wichita, KS MSA	348	423	503	627	698	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	224	272	320	400	451
Atchison	258	313	369	463	519
Barton	259	315	372	465	521
Brown	258	313	369	463	519
Chautauqua	224	272	320	400	451
Cheyenne	226	275	323	406	455
Clay	282	344	406	508	567
Coffey	282	344	406	508	567
Cowley	224	272	320	400	451
Decatur	226	275	323	406	455
Doniphan	258	313	369	463	519
Elk	224	272	320	400	451
Ellsworth	280	341	401	504	563
Ford	265	323	380	478	535
Geary	282	344	406	508	567
Graham	226	275	323	406	455
Gray	265	323	380	478	535
Greenwood	282	344	406	508	567
Harper	259	315	372	465	521
Hodgeman	265	323	380	478	535
Jefferson	245	298	352	437	492
Kearny	265	323	380	478	535
Kiowa	259	315	372	465	521
Lane	265	323	380	478	535
Linn	224	272	320	400	451
Lyon	282	344	406	508	567
Marion	282	344	406	508	567
Meade	265	323	380	478	535
Montgomery	237	289	340	426	478
Morton	265	323	380	478	535
Neosho	237	289	340	426	478
Norton	226	275	323	406	455
Osborne	226	275	323	406	455
Pawnee	259	315	372	465	521

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anderson	224	272	320	400	451
Barber	259	315	372	465	521
Bourbon	224	272	320	400	451
Chase	282	344	406	508	567
Cherokee	237	289	340	426	478
Clark	265	323	380	478	535
Cloud	280	341	401	504	563
Comanche	259	315	372	465	521
Crawford	237	289	340	426	478
Dickinson	282	344	406	508	567
Edwards	259	315	372	465	521
Ellis	226	275	323	406	455
Finney	265	323	380	478	535
Franklin	245	297	351	436	490
Gove	226	275	323	406	455
Grant	265	323	380	478	535
Greeley	265	323	380	478	535
Hamilton	265	323	380	478	535
Haskell	265	323	380	478	535
Jackson	258	313	369	463	519
Jewell	280	341	401	504	563
Kingman	259	315	372	465	521
Labette	237	289	340	426	478
Lincoln	280	341	401	504	563
Logan	226	275	323	406	455
Mcpherson	298	362	428	535	598
Marshall	282	344	406	508	567
Mitchell	280	341	401	504	563
Morris	282	344	406	508	567
Nemaha	258	313	369	463	519
Ness	265	323	380	478	535
Osage	245	298	352	437	492
Ottawa	280	341	401	504	563
Phillips	226	275	323	406	455

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Pottawatomie	282	344	406	508	567
Rawlins	226	275	323	406	455
Republic	280	341	401	504	563
Riley	282	344	406	508	567
Rush	259	315	372	465	521
Saline	280	341	401	504	563
Seward	265	323	380	478	535
Sherman	226	275	323	406	455
Stafford	259	315	372	465	521
Stevens	265	323	380	478	535
Thomas	226	275	323	406	455
Wabaunsee	282	344	406	508	567
Washington	280	341	401	504	563
Wilson	224	272	320	400	451
Pratt	259	315	372	465	521
Reno	298	362	428	535	598
Rice	298	362	428	535	598
Rooks	226	275	323	406	455
Russell	226	275	323	406	455
Scott	265	323	380	478	535
Sheridan	226	275	323	406	455
Smith	226	275	323	406	455
Stanton	265	323	380	478	535
Sumner	259	315	372	465	521
Trego	226	275	323	406	455
Wallace	226	275	323	406	455
Wichita	265	323	380	478	535
Woodson	224	272	320	400	451

K E N T U C K Y

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Cincinnati, OH-KY-IN PMSA	342	415	489	611	684	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	297	374	468	569	632	Christian
Evansville-Henderson, IN-KY MSA	315	376	441	563	619	Henderson
Huntington-Ashland, WV-KY-OH MSA	320	389	460	575	647	Boyd, Carter, Greenup
Lexington-Fayette, KY MSA	332	405	474	596	667	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN MSA	287	347	408	508	570	Bullitt, Jefferson, Oldham, Shelby
Owensboro, KY MSA	260	315	373	465	522	Daviess

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	245	297	346	428	478
Anderson	304	371	436	545	611
Barren	259	314	373	464	522
Bell	263	322	379	473	532
Bracken	245	296	348	437	490
Breckinridge	238	293	343	430	480
Caldwell	260	316	376	469	526
Carlisle	250	303	355	446	500
Casey	237	291	342	428	478
Clinton	245	297	346	428	478
Cumberland	245	297	346	428	478
Elliott	224	271	322	403	451
Fleming	245	296	348	437	490
Allen	205	250	294	367	411
Ballard	250	303	355	446	500
Bath	245	296	348	437	490
Boyle	296	357	423	529	593
Breathitt	251	304	357	448	502
Butler	205	250	294	367	411
Calloway	250	303	355	446	500
Carroll	251	305	357	449	502
Clay	224	271	320	401	450
Crittendon	260	316	376	469	526
Edmonson	205	250	294	367	411
Estill	296	357	423	529	593
Floyd	264	323	380	475	534

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Franklin	304	371	436	545	611
Gallatin	251	305	357	449	502
Grant	251	305	357	449	502
Grayson	238	293	343	430	480
Hancock	253	307	363	454	507
Harlan	263	322	379	473	532
Hart	205	250	294	367	411
Hickman	250	303	355	446	500
Jackson	224	271	320	401	450
Knott	251	304	357	448	502
Larue	238	293	343	430	480
Lawrence	224	271	322	403	451
Leslie	251	304	357	448	502
Lewis	245	296	348	437	490
Livingston	225	273	323	404	452
Lyon	225	273	323	404	452
Mccreary	245	297	346	428	478
Madison	296	357	427	529	593
Marion	238	293	343	430	480
Martin	264	323	380	475	534
Meade	270	331	389	488	546
Mercer	304	371	436	545	611
Monroe	205	250	294	367	411
Morgan	245	297	348	437	490
Nelson	238	293	343	430	480
Ohio	253	307	363	454	507
Owsley	251	304	357	448	502
Perry	251	304	357	448	502
Powell	220	266	314	395	444
Robertson	245	296	348	437	490
Rowan	245	296	348	437	490
Simpson	261	318	377	471	528
Taylor	245	297	346	428	478
Trigg	225	273	323	404	452
Union	253	307	363	454	507
Washington	238	293	343	430	480
Webster	253	307	363	454	507
Wolfe	251	304	357	448	502
Fulton	250	303	355	446	500
Garrard	296	357	423	529	593
Graves	250	303	355	446	500
Green	245	297	346	428	478
Hardin	270	331	389	488	546
Harrison	296	359	423	528	592
Henry	223	270	318	400	448
Hopkins	260	316	376	469	526
Johnson	264	323	380	475	534
Knox	260	314	369	462	516
Laurel	224	313	395	410	450
Lee	251	304	357	448	502
Letcher	251	304	357	448	502
Lincoln	296	357	423	529	593
Logan	261	318	377	471	528
Mccracken	260	306	360	446	500
Mclean	253	307	363	454	507
Magoffin	264	323	380	475	534
Marshall	260	306	360	446	500
Mason	245	296	348	437	490
Menifee	245	297	348	437	490
Metcalfe	205	250	294	367	411
Montgomery	245	296	348	437	490
Muhlenberg	260	316	376	469	526
Nicholas	220	266	314	395	444
Owen	251	305	357	449	502
Pendleton	251	305	357	449	502
Pike	264	323	380	475	534
Pulaski	245	297	346	428	478
Rockcastle	224	271	320	401	450
Russell	237	291	342	428	478
Spencer	223	270	318	400	448
Todd	225	273	323	404	452
Trimble	223	270	318	400	448
Warren	261	318	377	471	528
Wayne	245	297	346	428	478
Whitley	263	322	379	473	532

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

L O U I S I A N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Alexandria, LA MSA	280	342	402	503	562	Rapides
Baton Rouge, LA MSA	353	428	504	630	707	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma-Thibodaux, LA MSA	312	379	447	558	626	Lafourche, Terrebonne
Lafayette, LA MSA	353	428	504	630	707	Lafayette, St Martin
Lake Charles, LA MSA	288	350	412	515	576	Calcasieu
Monroe, LA MSA	279	341	400	501	560	Ouachita
New Orleans, LA MSA	316	383	451	564	631	Jefferson, Orleans, St Bernard, St Charles, St John The St Tammany
Shreveport, LA MSA	317	385	457	570	638	Bossier, Caddo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Acadia	237	291	343	427	480
Assumption	206	251	294	369	414
Beauregard	189	231	274	344	383
Caldwell	217	261	309	380	426
Catahoula	234	286	339	423	473
Concordia	234	286	339	423	473
East Carroll	188	230	272	341	379
Evangeline	228	277	325	410	459
Grant	234	286	339	423	473
Iberville	197	241	283	354	398
Jefferson Davis	189	231	274	344	383
Lincoln	246	301	353	441	495
Morehouse	188	230	272	341	379
Plaquemines	347	419	495	619	694
Red River	246	301	353	441	495
Sabine	246	301	353	441	495
St James	206	251	294	369	414
St Mary	282	345	405	505	566
Tensas	188	230	272	341	379
Vermilion	237	291	343	427	480
Washington	223	272	318	401	448
West Carroll	188	230	272	341	379
Winn	234	286	339	423	473

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	189	231	274	344	383
Avoyelles	234	286	339	423	473
Bienville	246	301	353	441	495
Cameron	189	231	274	344	383
Claiborne	246	301	353	441	495
De Soto	246	301	353	441	495
E Feliciana	197	241	283	354	398
Franklin	188	230	272	341	379
Iberia	282	345	405	505	566
Jackson	188	230	272	341	379
La Salle	234	286	339	423	473
Madison	188	230	272	341	379
Natchitoches	246	301	353	441	495
Pointe Coupee	197	241	283	354	398
Richland	188	230	272	341	379
St Helena	197	241	283	354	398
St Landry	228	277	325	410	459
Tangipahoa	223	272	318	401	448
Union	188	230	272	341	379
Vernon	234	286	339	423	473
Webster	214	259	306	381	428
W Feliciana	197	241	283	354	398

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A I N E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Bangor, ME MSA	369	448	528	662	742	Penobscot county towns of Bangor, Brewer, Eddington Glenburn, Hampden, Hermon, Holden, Kenduskeag, Old Town Orono, Orrington, Penobscot Indian I, Veazie Waldo county towns of Winterport
Lewiston-Auburn, ME MSA	388	462	523	585	666	Androscoggin county towns of Auburn, Greene, Lewiston Lisbon, Mechanic Falls, Poland, Sabattus
Portland, ME MSA	454	577	731	819	984	Cumberland county towns of Cape Elizabeth, Cumberland Falmouth, Freeport, Gorham, Gray, North Yarmouth Portland, Raymond, Scarborough, South Portland, Standish Westbrook, Windham, Yarmouth York county towns of Buxton, Hollis, Old Orchard Beach
Portsmouth-Dover-Rochester, NH-ME MSA	488	594	697	874	979	York county towns of Berwick, Eliot, Kittery North Berwick, South Berwick, Wells, York

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	335	396	467	573	634	Durham, Leeds, Livermore, Livermore Falls, Minot, Turner Wales
Aroostook	340	414	488	610	685	
Cumberland	377	459	540	671	747	Baldwin, Bridgton, Brunswick, Casco, Harpswell, Harrison Naples, New Gloucester, Pownal, Sebago
Franklin	355	402	479	566	643	
Hancock	357	425	498	623	695	
Kennebec	357	435	513	643	718	
Knox	345	420	495	621	695	
Lincoln	340	413	487	610	684	
Oxford	355	402	479	566	643	
Penobscot	352	425	495	621	695	Alton, Argyle, Bradford, Bradley, Burlington, Carmel Carroll, Charleston, Chester, Clifton, Corinna, Corinth Dexter, Dixmont, Drew, East Millinocket, Edinburg Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush Greenfield, Howland, Hudson, Kingman, Lagrange Lakeville, Lee, Levant, Lincoln, Lowell, Mattawamkeag Maxfield, Medway, Milford, Millinocket, Mount Chase Newburgh, Newport, North Penobscot, Passadumkeag, Patten Plymouth, Prentiss, Seboeis, Springfield, Stacyville Stetson, Summit, Twombly, Webster, Whitney, Winn Woodville
Piscataquis	293	357	421	531	593	
Sagadahoc	391	526	566	662	776	
Somerset	340	413	487	610	684	
Waldo	345	420	495	621	695	Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom Islesboro, Jackson, Knox, Liberty, Lincolnville, Monroe Montville, Morrill, Northport, Palermo, Prospect Searsmont, Searsport, Stockton Springs, Swanville Thorndike, Troy, Unity, Waldo

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

MAINE continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Washington	345	420	495	621	695	
York	432	508	643	662	803	Acton, Alfred, Arundel, Biddeford, Cornish, Dayton Kennebunk, Kennebunkport, Lebanon, Limerick, Limington Lyman, Newfield, Parsonsfield, Saco, Sanford, Shapleigh Waterboro

MARYLAND

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Baltimore, MD MSA	414	504	593	742	831	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Annes, Baltimore
Columbia, MD	539	654	770	963	1078	Columbia
Cumberland, MD-WV MSA	294	350	411	507	566	Allegany
Hagerstown, MD MSA	329	400	472	591	660	Washington
Washington, DC-MD-VA MSA	597	725	854	1067	1195	Calvert, Charles, Frederick, Montgomery, Prince George'S
Wilmington, DE-NJ-MD PMSA	454	542	646	808	961	Cecil

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Caroline	310	372	437	549	616
Garrett	294	358	422	526	591
St Marys	449	544	634	796	880
Talbot	354	431	507	635	711
Worcester	319	391	456	570	639
Dorchester	317	385	456	570	639
Kent	322	394	464	582	651
Somerset	317	385	456	570	639
Wicomico	378	463	542	678	759

MASSACHUSETTS

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Boston, MA PMSA	566	647	809	1011	1133	Bristol county towns of Mansfield, Norton, Raynham Essex county towns of Lynn, Lynnfield, Nahant, Saugus Middlesex county towns of Acton, Arlington, Ashland, Ayer Bedford, Belmont, Boxborough, Burlington, Cambridge Carlisle, Concord, Everett, Framingham, Groton Holliston, Hopkinton, Hudson, Lexington, Lincoln Littleton, Malden, Marlborough, Maynard, Medford Melrose, Natick, Newton, North Reading, Reading Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury Townsend, Wakefield, Waltham, Watertown, Wayland, Weston Wilmington, Winchester, Woburn Norfolk county towns of Bellingham, Braintree, Brookline Canton, Cohasset, Dedham, Dover, Foxborough, Franklin Holbrook, Medfield, Medway, Millis, Milton, Needham Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton Walpole, Wellesley, Westwood, Weymouth, Wrentham Plymouth county towns of Carver, Duxbury, Hanover, Hanson

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092592

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A S S A C H U S E T T S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
						Hingham, Hull, Kingston, Lakeville, Marshfield Middleborough, Norwell, Pembroke, Plymouth, Plympton Rockland, Scituate
						Suffolk county towns of Boston, Chelsea, Revere, Winthrop
						Worcester county towns of Berlin, Bolton, Harvard Hopedale, Lancaster, Mendon, Milford, Southborough Upton
Brockton, MA PMSA	468	568	668	835	935	Bristol county towns of Easton Norfolk county towns of Avon Plymouth county towns of Abington, Bridgewater, Brockton East Bridgewater, Halifax, West Bridgewater, Whitman
Fall River, MA-RI PMSA	433	517	620	718	792	Bristol county towns of Fall River, Somerset, Swansea Westport
Fitchburg-Leominster, MA MSA	475	573	678	847	950	Middlesex county towns of Ashby Worcester county towns of Ashburnham, Fitchburg Leominster, Lunenburg, Westminster
Lawrence-Haverhill, MA-NH PMSA	452	548	645	806	903	Essex county towns of Amesbury, Andover, Boxford Georgetown, Groveland, Haverhill, Lawrence, Merrimac Methuen, Newbury, Newburyport, North Andover, Salisbury West Newbury
Lowell, MA-NH PMSA	475	577	679	849	951	Middlesex county towns of Billerica, Chelmsford, Dracut Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough Westford
New Bedford, MA MSA	441	496	587	718	792	Bristol county towns of Acushnet, Dartmouth, Fairhaven Freetown, New Bedford Plymouth county towns of Marion, Mattapoisett, Rochester
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA	420	507	598	734	839	Bristol county towns of Attleboro, North Attleborough Rehoboth, Seekonk Norfolk county towns of Plainville Worcester county towns of Blackstone, Millville
Pittsfield, MA MSA	438	531	621	773	872	Berkshire county towns of Cheshire, Dalton, Hinsdale Lanesborough, Lee, Lenox, Pittsfield, Richmond Stockbridge
Salem-Gloucester, MA PMSA	522	634	746	933	1044	Essex county towns of Beverly, Danvers, Essex, Gloucester Hamilton, Ipswich, Manchester, Marblehead, Middleton Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield Wenham
Springfield, MA MSA	414	502	591	739	827	Hampden county towns of Agawam, Chicopee, East Longmeadow Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery Palmer, Russell, Southwick, Springfield, Westfield West Springfield, Wilbraham Hampshire county towns of Belchertown, Easthampton Granby, Huntington, Northampton, Southampton South Hadley
Worcester, MA MSA	454	559	654	823	917	Worcester county towns of Auburn, Barre, Boylston Brookfield, Charlton, Clinton, Douglas, Dudley East Brookfield, Grafton, Holden, Leicester, Millbury

Note The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A S S A C H U S E T T S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
						Northborough, Northbridge, North Brookfield, Oxford Paxton, Princeton, Rutland, Shrewsbury, Spencer Sterling, Sutton, Uxbridge, Webster, Westborough West Boylston, Worcester
NONMETROPOLITAN COUNTIES	**EFF**	**1 BR**	**2 BR**	**3 BR**	**4 BR**	**Towns within non metropolitan counties**
Barnstable	583	719	824	1030	1156	
Berkshire	382	465	547	686	768	Adams, Alford, Becket, Clarksburg, Egremont, Florida Great Barrington, Hancock, Monterey, Mount Washington New Ashford, New Marlborough, North Adams, Otis, Peru Sandisfield, Savoy, Sheffield, Tyringham, Washington West Stockbridge, Williamstown, Windsor
Bristol	423	513	605	727	808	Berkley, Dighton, Taunton
Dukes	583	719	824	1030	1156	
Franklin	444	528	616	776	864	
Hampden	400	486	572	717	804	Blandford, Brimfield, Chester, Granville, Holland Tolland, Wales
Hampshire	521	605	741	892	1036	Amherst, Chesterfield, Cummington, Goshen, Hadley Hatfield, Middlefield, Pelham, Plainfield, Ware Westhampton, Williamsburg, Worthington
Nantucket	583	719	824	1030	1156	
Plymouth	453	549	646	785	906	Wareham
Worcester	423	500	605	741	824	Athol, Gardner, Hardwick, Hubbardston, New Braintree Oakham, Petersham, Phillipston, Royalston, Southbridge Sturbridge, Templeton, Warren, West Brookfield Winchendon

M I C H I G A N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Ann Arbor, MI PMSA	434	528	622	778	872	Washtenaw
Battle Creek, MI MSA	297	361	424	532	597	Calhoun
Benton Harbor, MI MSA	330	402	471	591	662	Berrien
Detroit, MI PMSA	365	444	522	653	731	Lapeer, Livingston, Macomb, Monroe, Oakland, St Clair Wayne
Flint, MI MSA	313	380	450	562	629	Genesee
Grand Rapids, MI MSA	351	431	505	631	713	Kent, Ottawa
Jackson, MI MSA	327	396	467	585	655	Jackson
Kalamazoo, MI MSA	340	410	483	594	662	Kalamazoo
Lansing-East Lansing, MI MSA	358	429	502	625	698	Clinton, Eaton, Ingham
Muskegon, MI MSA	290	352	416	521	584	Muskegon
Saginaw-Bay City-Midland, MI MSA	323	390	458	573	641	Bay, Midland, Saginaw

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I C H I G A N continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcona	257	314	369	463	519
Allegan	297	364	427	534	599
Antrim	323	390	459	576	646
Baraga	263	320	376	471	529
Benzie	323	390	459	576	646
Cass	292	356	418	524	587
Cheboygan	257	314	369	463	519
Clare	282	343	407	506	567
Delta	253	309	365	455	511
Emmet	323	390	459	576	646
Gogebic	263	320	376	471	529
Gratiot	324	392	462	580	648
Houghton	295	360	424	529	637
Ionia	301	365	429	535	599
Iron	263	320	376	471	529
Kalkaska	323	390	459	576	646
Lake	295	361	424	530	595
Lenawee	321	388	457	573	643
Mackinac	253	309	365	455	511
Marquette	323	390	459	576	646
Mecosta	295	361	424	530	595
Missaukee	323	390	459	576	646
Montmorency	257	314	369	463	519
Oceana	287	347	411	516	576
Ontonagon	263	320	376	471	529
Oscoda	257	314	369	463	519
Presque Isle	257	314	369	463	519
St Joseph	300	366	431	539	603
Schoolcraft	253	309	365	455	511
Tuscola	290	354	415	520	583
Wexford	323	390	459	576	646

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alger	253	309	365	455	511
Alpena	257	314	369	463	519
Arenac	282	343	407	506	567
Barry	300	366	431	539	603
Branch	300	366	431	539	603
Charlevoix	323	390	459	576	646
Chippewa	253	309	365	455	511
Crawford	257	314	369	463	519
Dickinson	263	333	393	492	553
Gladwin	282	343	407	506	567
Grand Traverse	323	390	459	576	646
Hillsdale	321	388	457	573	643
Huron	290	354	415	520	583
Iosco	282	343	407	506	567
Isabella	324	392	462	580	648
Keweenaw	263	320	376	471	529
Leelanau	323	390	459	576	646
Luce	253	309	365	455	511
Manistee	323	390	459	576	646
Mason	295	361	424	530	595
Menominee	323	390	459	576	646
Montcalm	297	364	427	534	599
Newaygo	295	361	424	530	595
Ogemaw	282	343	407	506	567
Osceola	295	361	424	530	595
Otsego	257	314	369	463	519
Roscommon	282	343	407	506	567
Sanilac	290	354	415	520	583
Shiawassee	320	387	456	570	641
Van Buren	292	356	418	524	587

M I N N E S O T A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Duluth, MN-WI MSA	331	395	466	585	657	St Louis
Fargo-Moorhead, ND-MN MSA	335	407	478	600	672	Clay
Minneapolis-St. Paul, MN-WI MSA	440	535	630	788	882	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Washington, Wright

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092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I N N E S O T A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rochester, MN MSA	352	427	504	630	705	Olmsted
St. Cloud, MN MSA	334	407	480	602	672	Benton, Sherburne, Stearns

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aitkin	299	364	428	537	602
Beltrami	287	349	412	513	578
Blue Earth	332	403	468	579	640
Carlton	301	366	428	537	602
Chippewa	265	324	382	479	535
Cook	299	364	428	537	602
Crow Wing	281	341	426	529	587
Douglas	297	363	426	535	600
Fillmore	275	334	395	494	552
Goodhue	287	349	409	507	568
Houston	275	334	395	494	552
Itasca	301	366	428	537	602
Kanabec	299	364	428	537	602
Kittson	287	349	412	513	578
Lac Qui Parle	265	324	382	479	535
Lake Of The Woods	287	349	412	513	578
Lincoln	274	330	387	482	536
Mcleod	314	382	449	563	629
Marshall	287	349	412	513	578
Meeker	314	382	449	563	629
Morrison	281	341	401	503	564
Murray	274	330	387	482	536
Nobles	274	330	387	482	536
Otter Tail	297	363	426	535	600
Pine	299	364	428	537	602
Polk	287	349	412	513	578
Red Lake	287	349	412	513	578
Renville	314	382	449	563	629
Rock	274	330	387	482	536
Sibley	312	380	445	556	625
Stevens	297	363	426	535	600
Todd	281	341	401	503	564
Wabasha	287	349	409	507	568
Waseca	283	345	405	507	568
Wilkin	297	363	426	535	600
Yellow Medicine	265	324	382	479	535
Becker	297	363	426	535	600
Big Stone	265	324	382	479	535
Brown	283	345	405	507	568
Cass	281	341	401	503	564
Clearwater	287	349	412	513	578
Cottonwood	265	324	382	479	535
Dodge	269	327	385	482	540
Faribault	283	345	405	507	568
Freeborn	325	395	467	583	654
Grant	297	363	426	535	600
Hubbard	287	349	412	513	578
Jackson	274	330	387	482	536
Kandiyohi	314	382	449	563	629
Koochiching	299	364	428	537	602
Lake	299	364	428	537	602
Le Sueur	312	380	445	556	625
Lyon	274	330	387	482	536
Mahnomen	287	349	412	513	578
Martin	283	345	405	507	568
Mille Lacs	299	364	428	537	602
Mower	275	334	395	494	552
Nicollet	312	380	445	556	625
Norman	287	349	412	513	578
Pennington	287	349	412	513	578
Pipestone	274	330	387	482	536
Pope	297	363	426	535	600
Redwood	265	324	382	479	535
Rice	325	395	467	583	654
Roseau	287	349	412	513	578
Steele	325	395	467	583	654
Swift	265	324	382	479	535
Traverse	297	363	426	535	600
Wadena	281	341	401	503	564
Watonwan	283	345	405	507	568
Winona	300	364	429	603	625

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S I S S I P P I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Biloxi-Gulfport, MS MSA	276	338	398	499	558	Hancock, Harrison
Jackson, MS MSA	352	428	505	633	710	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	316	383	451	562	629	De Soto
Pascagoula, MS MSA	304	368	431	543	610	Jackson

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	244	280	331	439	475
Amite	202	246	288	359	405
Benton	225	274	324	407	456
Calhoun	264	322	380	474	537
Chickasaw	271	322	380	478	534
Claiborne	202	246	288	359	405
Clay	261	305	356	448	502
Copiah	213	259	306	382	428
Forrest	262	319	377	470	528
George	205	250	294	367	411
Grenada	267	325	383	479	537
Humphreys	232	283	335	418	468
Itawamba	250	303	355	446	499
Jefferson	202	246	288	359	405
Jones	264	308	347	395	439
Lafayette	264	322	380	474	534
Lauderdale	260	315	373	467	522
Leake	222	270	320	403	451
Lefiore	264	294	346	451	487
Lowndes	288	356	410	550	572
Marshall	225	274	324	407	456
Montgomery	203	248	290	363	407
Newton	222	270	320	403	451
Oktibbeha	251	305	356	448	502
Pearl River	262	319	377	470	528
Pike	244	280	331	439	475
Prentiss	225	274	324	407	456
Scott	222	270	320	403	451
Simpson	213	259	306	382	428
Stone	262	319	377	470	528
Tallahatchie	246	296	348	435	491
Tippah	225	274	324	407	456
Tunica	246	296	348	435	491
Walthall	202	246	288	359	405

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcorn	243	293	345	430	485
Attala	203	248	290	363	407
Bolivar	232	283	335	418	468
Carroll	203	248	290	363	407
Choctaw	261	305	356	448	502
Clarke	262	318	373	467	522
Coahoma	246	296	348	435	491
Covington	205	250	294	367	411
Franklin	202	246	288	359	405
Greene	205	250	294	367	411
Holmes	203	248	290	363	407
Issaquena	232	283	335	418	468
Jasper	262	318	373	467	522
Jefferson Davis	205	250	294	367	411
Kemper	262	318	373	467	522
Lamar	262	319	377	470	528
Lawrence	202	246	288	359	405
Lee	282	342	401	505	565
Lincoln	202	246	288	359	405
Marion	262	319	377	470	528
Monroe	250	303	355	446	499
Neshoba	222	270	320	403	451
Noxubee	251	305	356	448	502
Panola	246	296	348	435	491
Perry	205	250	294	367	411
Pontotoc	271	322	380	478	534
Quitman	246	296	348	435	491
Sharkey	232	283	335	418	468
Smith	222	270	320	403	451
Sunflower	232	283	335	418	468
Tate	246	296	348	435	491
Tishomigo	225	274	324	407	456
Union	271	322	380	478	534
Warren	296	359	423	532	595

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092492

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Washington	274	332	391	489	547
Webster	261	305	356	448	502
Winston	261	305	356	448	502
Yazoo	296	359	423	532	595
Wayne	205	250	294	367	411
Wilkinson	202	246	288	359	405
Yalobusha	203	248	290	363	407

M I S S O U R I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Columbia, MO MSA	291	353	416	520	583	Boone
Joplin, MO MSA	251	306	360	452	507	Jasper, Newton
Kansas City, MO-KS MSA	342	416	489	611	685	Cass, Clay, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	268	325	383	478	539	Buchanan
St. Louis, MO-IL MSA	351	426	503	628	704	Crawford, Franklin, Jefferson, St Charles, St Louis St. Louis
Springfield, MO MSA	278	341	401	504	561	Christian, Greene

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	250	303	358	450	504
Atchison	236	289	340	425	477
Barry	231	281	333	415	465
Bates	225	273	322	404	454
Bollinger	265	323	379	474	535
Caldwell	236	289	341	425	477
Camden	253	307	362	454	508
Carroll	244	297	350	436	492
Cedar	225	273	322	404	454
Clark	250	303	358	450	504
Cole	278	338	399	499	559
Crawford	242	296	346	434	489
Dallas	231	281	333	415	465
De Kalb	236	289	340	425	477
Douglas	219	267	312	391	439
Gasconade	242	296	346	434	489
Grundy	250	303	358	450	504
Henry	225	273	322	404	454
Holt	236	289	340	425	477
Howell	219	267	312	391	439
Johnson	253	308	380	489	509
Laclede	253	307	362	454	508
Lewis	248	300	354	442	493
Linn	250	303	358	450	504

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Andrew	263	319	376	470	530
Audrain	278	338	399	499	559
Barton	225	273	322	404	454
Benton	225	273	322	404	454
Butler	219	267	317	396	442
Callaway	278	338	399	499	559
Cape Girardeau	265	323	379	474	535
Carter	219	267	317	396	442
Chariton	244	297	350	436	492
Clinton	236	289	340	425	477
Cooper	278	338	399	499	559
Dade	231	281	333	415	465
Daviess	236	289	341	425	477
Dent	242	296	346	434	489
Dunklin	219	267	312	391	439
Gentry	236	289	340	425	477
Harrison	236	289	341	425	477
Hickory	225	273	322	404	454
Howard	278	338	399	499	559
Iron	265	323	379	474	535
Knox	250	303	358	450	504
Lawrence	231	281	333	415	465
Lincoln	242	296	346	434	489
Livingston	250	303	358	450	504

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Mcdonald	231	281	333	415	465
Madison	265	323	379	474	535
Marion	248	300	354	442	493
Miller	253	307	362	454	508
Moniteau	278	338	399	499	559
Montgomery	242	296	346	434	489
New Madrid	219	267	312	391	439
Oregon	219	267	312	391	439
Ozark	219	267	312	391	439
Perry	265	323	379	474	535
Phelps	283	342	404	511	574
Polk	231	281	333	415	465
Putnam	250	303	358	450	504
Randolph	242	296	346	434	489
Ripley	219	267	317	396	442
Ste. Genevieve	265	323	379	474	535
Saline	244	297	350	436	492
Scotland	250	303	358	450	504
Shannon	219	267	312	391	439
Stoddard	219	267	312	391	439
Sullivan	250	303	358	450	504
Texas	219	267	312	391	439
Warren	242	296	346	434	489
Wayne	219	267	317	396	442
Worth	236	289	340	425	477
Macon	242	296	346	434	489
Maries	242	296	346	434	489
Mercer	236	289	341	425	477
Mississippi	219	267	312	391	439
Monroe	242	296	346	434	489
Morgan	253	307	362	454	508
Nodaway	246	289	350	425	477
Osage	278	338	399	499	559
Pemiscot	219	267	312	391	439
Pettis	244	297	350	436	492
Pike	242	296	346	434	489
Pulaski	253	307	362	454	508
Ralls	248	300	354	442	493
Reynolds	219	267	317	396	442
St Clair	225	273	322	404	454
St Francois	265	323	379	474	535
Schuyler	250	303	358	450	504
Scott	265	323	379	474	535
Shelby	242	296	346	434	489
Stone	231	281	333	415	465
Taney	231	281	333	415	465
Vernon	225	273	322	404	454
Washington	242	296	346	434	489
Webster	231	281	333	415	465
Wright	219	267	312	391	439

M O N T A N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Billings, MT MSA	384	467	550	688	771	Yellowstone
Great Falls, MT MSA	340	412	487	610	683	Cascade

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaverhead	339	412	485	607	682
Blaine	316	385	451	566	635
Carbon	318	388	457	572	641
Chouteau	316	385	451	566	635
Daniels	316	385	451	566	635
Deer Lodge	339	412	485	607	682
Fergus	318	388	457	572	641
Big Horn	318	388	457	572	641
Broadwater	339	412	485	607	682
Carter	318	388	457	572	641
Custer	318	388	457	572	641
Dawson	318	388	457	572	641
Fallon	318	388	457	572	641
Flathead	345	421	495	620	695

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

MONTANA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Gallatin	373	460	544	673	758
Glacier	316	385	451	566	635
Granite	339	412	485	607	682
Jefferson	339	412	485	607	682
Lake	345	421	495	620	695
Liberty	316	385	451	566	635
Mccone	318	388	457	572	641
Meagher	339	412	485	607	682
Missoula	345	421	495	620	695
Park	339	412	485	607	682
Phillips	316	385	451	566	635
Powder River	318	388	457	572	641
Prairie	318	388	457	572	641
Richland	318	388	457	572	641
Rosebud	318	388	457	572	641
Sheridan	316	385	451	566	635
Stillwater	318	388	457	572	641
Teton	316	385	451	566	635
Treasure	318	388	457	572	641
Wheatland	318	388	457	572	641
Yl-St-Nt-Pk	339	412	485	607	682

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Garfield	318	388	457	572	641
Golden Valley	318	388	457	572	641
Hill	316	385	451	566	635
Judith Basin	318	388	457	572	641
Lewis And Clark	388	479	564	699	790
Lincoln	345	421	495	620	695
Madison	339	412	485	607	682
Mineral	345	421	495	620	695
Musselshell	318	388	457	572	641
Petroleum	318	388	457	572	641
Pondera	316	385	451	566	635
Powell	339	412	485	607	682
Ravalli	345	421	495	620	695
Roosevelt	316	385	451	566	635
Sanders	345	421	495	620	695
Silver Bow	339	412	485	607	682
Sweet Grass	318	388	457	572	641
Toole	316	385	451	566	635
Valley	316	385	451	566	635
Wibaux	318	388	457	572	641

NEBRASKA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Lincoln, NE MSA	331	402	474	594	665	Lancaster
Omaha, NE-IA MSA	326	395	464	581	655	Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	322	392	461	576	647	Dakota

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	291	355	417	523	585
Arthur	246	299	353	441	493
Blaine	239	290	341	427	481
Box Butte	272	331	390	487	546
Brown	239	290	341	427	481
Burt	260	317	373	468	525
Cass	257	313	368	461	519
Chase	246	299	353	441	493
Cheyenne	239	290	341	427	481
Colfax	260	317	373	468	525

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Antelope	282	343	406	505	568
Banner	239	290	341	427	481
Boone	260	317	373	468	525
Boyd	239	290	341	427	481
Buffalo	291	355	417	523	585
Butler	257	313	368	461	519
Cedar	282	343	406	505	568
Cherry	239	290	341	427	481
Clay	291	355	417	523	585
Cuming	260	317	373	468	525

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Custer	239	290	341	427	481
Dawson	246	299	353	441	493
Dixon	282	343	406	505	568
Dundy	246	299	353	441	493
Franklin	291	355	417	523	585
Furnas	246	299	353	441	493
Garden	239	290	341	427	481
Gosper	246	299	353	441	493
Greeley	239	290	341	427	481
Hamilton	291	355	417	523	585
Hayes	246	299	353	441	493
Holt	243	298	351	436	487
Howard	291	355	417	523	585
Johnson	257	313	368	461	519
Keith	246	299	353	441	493
Kimball	239	290	341	427	481
Lincoln	246	299	353	441	493
Loup	239	290	341	427	481
Madison	282	343	406	505	568
Merrill	239	290	341	427	481
Nemaha	257	313	368	461	519
Otoe	257	313	368	461	519
Perkins	246	299	353	441	493
Pierce	282	343	406	505	568
Polk	257	313	368	461	519
Richardson	257	313	368	461	519
Saline	257	313	368	461	519
Scotts Bluff	278	334	390	484	538
Sheridan	239	290	341	427	481
Sioux	239	290	341	427	481
Thayer	257	313	368	461	519
Thurston	260	317	373	468	525
Wayne	282	343	406	505	568
Wheeler	239	290	341	427	481
Dawes	239	290	341	427	481
Deuel	239	290	341	427	481
Dodge	260	317	373	468	525
Fillmore	257	313	368	461	519
Frontier	246	299	353	441	493
Gage	285	346	408	512	571
Garfield	239	290	341	427	481
Grant	246	299	353	441	493
Hall	291	355	417	523	585
Harlan	291	355	417	523	585
Hitchcock	246	299	353	441	493
Hooker	246	299	353	441	493
Jefferson	257	313	368	461	519
Kearney	291	355	417	523	585
Keya Paha	243	298	351	436	487
Knox	282	343	406	505	568
Logan	246	299	353	441	493
Mcpherson	246	299	353	441	493
Merrick	291	355	417	523	585
Nance	260	317	373	468	525
Nuckolls	291	355	417	523	585
Pawnee	257	313	368	461	519
Phelps	291	355	417	523	585
Platte	260	317	373	468	525
Red Willow	246	299	353	441	493
Rock	243	298	351	436	487
Saunders	257	313	368	461	519
Seward	257	313	368	461	519
Sherman	239	290	341	427	481
Stanton	282	343	406	505	568
Thomas	246	299	353	441	493
Valley	239	290	341	427	481
Webster	291	355	417	523	585
York	257	313	368	461	519

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E V A D A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Las Vegas, NV MSA	481	583	687	862	965	Clark
Reno, NV MSA	403	489	575	719	805	Washoe

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Churchill	423	508	600	749	840
Elko	423	508	600	749	840
Eureka	419	508	600	749	840
Lander	423	508	600	749	840
Lyon	423	508	600	749	840
Nye	419	508	600	749	840
Storey	423	508	600	749	840
Carson City	423	508	600	749	840
Douglas	423	508	600	749	840
Esmeralda	419	508	600	749	840
Humboldt	423	508	600	749	840
Lincoln	419	508	600	749	840
Mineral	423	508	600	749	840
Pershing	423	508	600	749	840
White Pine	419	508	600	749	840

N E W H A M P S H I R E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Lawrence-Haverhill, MA-NH PMSA	452	548	645	806	903	Rockingham county towns of Atkinson, Brentwood, Danville Derry, East Kingston, Hampstead, Kingston, Newton Plaistow, Salem, Sandown, Seabrook, Windham
Lowell, MA-NH PMSA	475	577	679	849	951	Hillsborough county towns of Pelham
Manchester, NH MSA	470	572	673	841	946	Hillsborough county towns of Bedford, Goffstown Manchester Merrimack county towns of Allenstown, Hooksett Rockingham county towns of Auburn, Candia
Nashua, NH PMSA	501	608	715	894	1001	Hillsborough county towns of Amherst, Brookline, Hollis Hudson, Litchfield, Merrimack, Milford, Mont Vernon Nashua, Wilton Rockingham county towns of Londonderry
Portsmouth-Dover-Rochester, NH-ME MSA	488	594	697	874	979	Rockingham county towns of Exeter, Greenland, Hampton New Castle, Newfields, Newington, Newmarket North Hampton, Portsmouth, Rye, Stratham Strafford county towns of Barrington, Dover, Durham Farmington, Lee, Madbury, Milton, Rochester, Rollinsford Somersworth

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	406	491	570	708	793	
Carroll	401	487	573	717	805	
Cheshire	491	595	700	876	981	
Coos	374	455	537	669	751	
Grafton	417	508	599	748	838	
Hillsborough	532	645	760	950	1064	Antrim, Bennington, Deering, Francestown, Greenfield

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Merrimack	524	636	749	936	1049	Greenville, Hancock, Hillsborough, Lyndeborough, Mason New Boston, New Ipswich, Peterborough, Sharon, Temple Weare, Windsor Andover, Boscawen, Bow, Bradford, Canterbury, Chichester Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker Hill, Hopkinton, Loudon, Newbury, New London, Northfield Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster Wilmot
Rockingham	514	625	734	918	1016	Chester, Deerfield, Epping, Fremont, Hampton Falls Kensington, Northwood, Nottingham, Raymond South Hampton
Strafford	455	556	654	820	904	Middleton, New Durham, Strafford
Sullivan	406	491	572	713	802	

NEW JERSEY

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Allentown-Bethlehem-Easton, PA-NJ MSA	380	462	540	681	759	Warren
Atlantic City, NJ MSA	451	552	647	808	909	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	645	783	929	1161	1301	Bergen, Passaic
Jersey City, NJ PMSA	456	555	653	818	915	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	597	726	853	1069	1197	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	537	651	767	959	1076	Monmouth, Ocean
Newark, NJ PMSA	535	650	765	956	1071	Essex, Morris, Sussex, Union
Philadelphia, PA-NJ PMSA	444	538	634	793	889	Burlington, Camden, Gloucester
Trenton, NJ PMSA	543	661	778	974	1090	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	435	530	622	780	874	Cumberland
Wilmington, DE-NJ-MD PMSA	454	542	646	808	961	Salem

NEW MEXICO

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albuquerque, NM MSA	393	479	562	704	789	Bernalillo
Las Cruces, NM MSA	313	379	446	559	627	Dona Ana
Santa Fe, NM MSA	458	557	657	819	919	Los Alamos, Sante Fe

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

NEW MEXICO continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Catron	279	338	400	499	558
Cibola	279	338	400	499	558
Curry	287	350	412	516	577
Eddy	333	405	478	598	669
Guadalupe	287	350	412	516	577
Hidalgo	279	338	400	499	558
Lincoln	303	367	433	541	607
Mckinley	386	470	553	694	776
Otero	303	367	433	541	607
Rio Arriba	258	314	370	462	520
Sandoval	326	399	469	586	657
San Miguel	287	350	412	516	577
Socorro	303	367	433	541	607
Torrance	287	350	412	516	577
Valencia	279	338	400	499	558
Chaves	303	367	433	541	607
Colfax	287	350	412	516	577
De Baca	287	350	412	516	577
Grant	279	338	400	499	558
Harding	287	350	412	516	577
Lea	333	405	478	598	669
Luna	279	338	400	499	558
Mora	287	350	412	516	577
Quay	287	350	412	516	577
Roosevelt	287	350	412	516	577
San Juan	386	470	553	694	776
Sierra	303	367	433	541	607
Taos	310	375	441	553	621
Union	287	350	412	516	577

NEW YORK

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albany-Schenectady-Troy, NY MSA	385	463	547	689	766	Albany, Greene, Montgomery, Rensselaer, Saratoga Schenectady
Binghamton, NY MSA	346	418	494	611	687	Broome, Tioga
Buffalo, NY PMSA	329	401	471	590	660	Erie
Elmira, NY MSA	352	427	503	630	708	Chemung
Glens Falls, NY MSA	363	442	520	649	730	Warren, Washington
Jamestown-Dunkirk, NY MSA	325	397	466	586	653	Chautauqua
Nassau-Suffolk, NY PMSA	635	771	908	1137	1271	Nassau, Suffolk
New York, NY PMSA	477	579	681	854	957	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	570	691	813	1016	1137	Westchester
Niagarafalls, NY PMSA	332	404	476	595	666	Niagara
Orange County, NY PMSA	490	596	700	875	980	Orange
Poughkeepsie, NY MSA	528	642	756	944	1060	Dutchess
Rochester, NY MSA	413	506	596	745	830	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	364	436	511	639	716	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	334	405	477	596	668	Herkimer, Oneida

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E W Y O R K continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allegany	314	373	440	550	618
Cayuga	366	446	525	655	737
Clinton	348	417	490	610	671
Cortland	373	456	538	674	755
Essex	335	405	475	595	669
Fulton	298	364	427	536	598
Hamilton	334	405	475	595	669
Lewis	359	434	512	640	718
St Lawrence	341	413	488	610	682
Schuyler	344	418	493	618	694
Steuben	344	418	493	618	694
Tompkins	373	456	538	674	755
Wyoming	342	413	488	610	682

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Cattaraugus	308	372	440	550	618
Chenango	363	440	517	649	725
Columbia	344	418	493	618	694
Delaware	337	411	483	602	676
Franklin	334	405	475	595	669
Genesee	341	413	488	610	682
Jefferson	372	455	536	670	751
Otsego	337	411	483	602	676
Schoharie	337	411	483	602	676
Seneca	366	446	525	655	737
Sullivan	390	474	558	698	783
Ulster	430	522	616	768	863
Yates	342	415	490	615	685

N O R T H C A R O L I N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Asheville, NC MSA	287	349	412	512	575	Buncombe
Burlington, NC MSA	347	421	497	621	697	Alamance
Charlotte-Gastonia-Rock Hill, NC-SC MSA	319	385	453	566	633	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	294	414	432	559	684	Cumberland
Greensboro--Winston-Salem--High Point, NC MSA	299	366	428	538	603	Davidson, Davie, Forsyth, Guilford, Randolph, Stokes Yadkin
Hickory-Morganton, NC MSA	305	369	437	547	615	Alexander, Burke, Catawba
Jacksonville, NC MSA	270	331	390	490	548	Onslow
Raleigh-Durham, NC MSA	344	418	494	617	691	Durham, Franklin, Orange, Wake
Wilmington, NC MSA	287	349	412	512	575	New Hanover

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	258	311	365	457	501
Ashe	258	311	365	457	501
Beaufort	286	348	410	511	573
Bladen	275	337	396	496	555
Caldwell	280	338	399	502	559
Carteret	267	326	384	483	541
Chatham	343	417	492	615	689
Chowan	275	331	387	480	536
Cleveland	299	363	427	534	598
Craven	295	358	422	532	596
Dare	275	331	387	480	536
Edgecombe	267	326	384	483	541

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anson	260	312	365	458	511
Avery	267	323	380	474	520
Bertie	286	348	410	511	573
Brunswick	259	315	371	466	521
Camden	275	331	387	480	536
Caswell	259	314	370	465	520
Cherokee	222	270	320	403	451
Clay	222	270	320	403	451
Columbus	269	329	388	486	543
Currituck	314	378	433	538	594
Duplin	244	294	346	431	486
Gates	275	331	387	480	536

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N O R T H C A R O L I N A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Graham	222	270	320	403	451
Greene	268	325	381	480	536
Harnett	251	304	356	448	501
Henderson	280	344	405	506	567
Hoke	244	294	346	431	486
Iredell	259	400	467	538	602
Johnston	264	322	380	474	534
Lee	303	374	432	540	607
Mcdowell	270	330	388	487	543
Madison	280	344	405	506	567
Mitchell	267	323	380	474	521
Moore	260	312	365	458	511
Northampton	267	326	384	483	541
Pasquotank	275	331	387	480	536
Perquimans	275	331	387	480	536
Pitt	286	348	410	511	573
Richmond	260	312	365	458	511
Rockingham	259	314	370	465	520
Sampson	251	304	356	448	501
Stanly	270	330	388	486	542
Swain	222	270	320	403	451
Tyrrell	275	331	387	480	536
Warren	249	301	353	444	497
Watauga	368	444	520	651	714
Wilkes	309	371	436	546	598
Yancey	288	347	408	509	560

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Granville	249	301	353	444	497
Halifax	267	326	384	483	541
Haywood	287	349	412	517	580
Hertford	286	348	410	511	573
Hyde	275	331	387	480	536
Jackson	285	345	406	508	569
Jones	267	326	384	483	541
Lenoir	267	326	384	483	541
Macon	280	343	405	506	568
Martin	286	348	410	511	573
Montgomery	260	312	365	458	511
Nash	274	336	395	495	554
Pamlico	267	326	384	483	541
Pender	235	288	391	489	549
Person	249	301	353	444	497
Polk	270	330	388	487	543
Robeson	255	314	364	450	510
Rutherford	270	330	388	487	543
Scotland	230	279	331	413	464
Surry	246	297	349	437	491
Transylvania	280	344	405	506	567
Vance	249	301	353	444	497
Washington	275	331	387	480	536
Wayne	251	304	356	448	501
Wilson	274	336	395	495	554

N O R T H D A K O T A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bismarck, ND MSA	335	407	479	599	672	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	335	407	478	600	672	Cass
Grand Forks, ND MSA	317	385	457	570	638	Grand Forks

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	281	344	407	509	568
Benson	290	352	415	520	585
Bottineau	281	344	407	509	568
Burke	281	344	407	509	568
Dickey	290	352	415	520	585
Dunn	281	344	407	509	568
Emmons	255	309	366	460	512
Golden Valley	281	344	407	509	568
Griggs	290	352	415	520	585
Kidder	255	309	366	460	512
Logan	290	352	415	520	585
McIntosh	290	352	415	520	585
Mclean	255	309	366	460	512
Mountrail	281	344	407	509	568
Oliver	255	309	366	460	512
Pierce	281	344	407	509	568
Ransom	263	318	378	472	528
Richland	263	318	378	472	528
Sargent	263	318	378	472	528
Sioux	255	309	366	460	512
Stark	281	344	407	509	568
Stutsman	290	352	415	520	585
Traill	263	318	378	472	528
Ward	281	344	407	509	568
Williams	281	344	407	509	568

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barnes	290	352	415	520	585
Billings	281	344	407	509	568
Bowman	281	344	407	509	568
Cavalier	290	352	415	520	585
Divide	281	344	407	509	568
Eddy	290	352	415	520	585
Foster	290	352	415	520	585
Grant	255	309	366	460	512
Hettinger	281	344	407	509	568
La Moore	290	352	415	520	585
Mchenry	281	344	407	509	568
Mckenzie	281	344	407	509	568
Mercer	255	309	366	460	512
Nelson	290	352	415	520	585
Pembina	290	352	415	520	585
Ramsey	290	352	415	520	585
Renville	281	344	407	509	568
Rolette	290	352	415	520	585
Sheridan	255	309	366	460	512
Slope	281	344	407	509	568
Steele	263	318	378	472	528
Towner	290	352	415	520	585
Walsh	290	352	415	520	585
Wells	290	352	415	520	585

O H I O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Akron, OH PMSA	333	405	480	600	671	Portage, Summit
Canton, OH MSA	287	348	410	513	578	Carroll, Stark
Cincinnati, OH-KY-IN PMSA	342	415	489	611	684	Clermont, Hamilton, Warren
Cleveland, OH PMSA	353	429	505	632	707	Cuyahoga, Geauga, Lake, Medina
Columbus, OH MSA	327	393	468	584	657	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway Union
Dayton-Springfield, OH MSA	303	370	431	542	602	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	342	419	491	615	689	Butler
Huntington-Ashland, WV-KY-OH MSA	320	389	460	575	647	Lawrence
Lima, OH MSA	304	370	435	546	613	Allen, Auglaize
Lorain-Elyria, OH PMSA	327	400	471	591	662	Lorain
Mansfield, OH MSA	274	337	393	495	552	Richland

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

O H I O continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Parkersburg-Marietta, WV-OH MSA	300	364	428	539	602	Washington
Steubenville-Weirton, OH-WV MSA	307	374	438	550	619	Jefferson
Toledo, OH MSA	348	425	502	626	702	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	302	368	433	542	606	Belmont
Youngstown-Warren, OH MSA	304	370	435	546	613	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	270	326	381	475	536
Ashtabula	319	387	457	574	641
Brown	270	326	381	475	536
Clinton	274	336	395	496	552
Coshocton	247	301	355	440	496
Darke	274	336	395	496	552
Erie	311	378	446	556	626
Gallia	297	362	425	535	598
Hancock	292	355	418	522	587
Harrison	273	334	392	494	550
Highland	270	326	381	475	536
Holmes	289	353	415	519	582
Jackson	266	324	380	475	536
Logan	292	355	418	522	587
Meigs	263	319	376	470	529
Monroe	294	359	422	531	592
Morrow	266	324	380	475	536
Noble	294	359	422	531	592
Paulding	308	374	440	550	618
Pike	266	324	380	475	536
Putnam	297	362	425	535	598
Sandusky	311	378	446	556	626
Seneca	273	334	392	494	550
Tuscarawas	289	353	415	519	582
Vinton	297	362	425	535	598
Williams	308	374	440	550	618

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashland	299	365	428	537	600
Athens	283	347	411	511	575
Champaign	288	350	414	517	580
Columbiana	283	342	405	506	568
Crawford	273	334	392	494	550
Defiance	308	374	440	550	618
Fayette	274	336	395	496	552
Guernsey	291	354	417	521	585
Hardin	292	355	418	522	587
Henry	308	374	440	550	618
Hocking	263	319	376	470	529
Huron	273	334	392	494	550
Knox	266	324	420	525	588
Marion	266	324	380	475	536
Mercer	274	336	395	496	552
Morgan	294	359	422	531	592
Muskingum	274	334	392	494	550
Ottawa	311	378	446	556	626
Perry	263	319	376	470	529
Preble	300	366	429	539	602
Ross	274	336	395	496	552
Scioto	266	324	380	475	536
Shelby	296	359	423	530	592
Van Wert	297	362	425	535	598
Wayne	299	365	428	537	600
Wyandot	273	334	392	494	550

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

O K L A H O M A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Enid, OK MSA	329	402	473	593	684	Garfield
Fort Smith, AR-OK MSA	273	333	393	494	553	Sequoyah
Lawton, OK MSA	284	346	409	509	571	Comanche
Oklahoma City, OK MSA	308	375	440	552	618	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	277	337	396	495	554	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	219	267	313	392	435
Atoka	191	233	276	345	385
Beckham	243	294	347	434	488
Bryan	230	281	330	414	464
Carter	230	281	330	414	464
Choctaw	191	233	276	345	385
Coal	191	233	276	345	385
Craig	278	340	399	499	560
Delaware	217	264	310	387	435
Ellis	248	303	356	444	500
Grady	229	279	327	412	462
Greer	243	294	347	434	488
Harper	248	303	356	444	500
Hughes	223	272	318	401	447
Jefferson	229	279	327	412	462
Kay	288	349	412	515	578
Kiowa	243	294	347	434	488
Le Flore	191	233	276	345	385
Love	230	281	330	414	464
Mcintosh	223	272	318	401	447
Marshall	230	281	330	414	464
Murray	230	281	330	414	464
Noble	288	349	412	515	578
Okfuskee	223	272	318	401	447
Ottawa	278	340	399	499	560
Payne	286	347	408	510	572
Pontotoc	230	281	330	414	464
Roger Mills	243	294	347	434	488
Stephens	229	279	327	412	462
Tillman	229	279	327	412	462
Washita	243	294	347	434	488
Woodward	248	303	356	444	500

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alfalfa	248	303	356	444	500
Beaver	248	303	356	444	500
Blaine	248	303	356	444	500
Caddo	229	279	327	412	462
Cherokee	219	267	313	392	435
Cimarron	248	303	356	444	500
Cotton	229	279	327	412	462
Custer	243	294	347	434	488
Dewey	248	303	356	444	500
Garvin	230	281	330	414	464
Grant	288	349	412	515	578
Harmon	243	294	347	434	488
Haskell	191	233	276	345	385
Jackson	243	294	347	434	488
Johnston	230	281	330	414	464
Kingfisher	288	349	412	515	578
Latimer	191	233	276	345	385
Lincoln	275	334	393	492	551
Mccurtain	244	297	350	426	490
Major	248	303	356	444	500
Mayes	289	350	414	517	580
Muskogee	223	272	318	401	447
Nowata	278	340	399	499	560
Okmulgee	223	272	318	401	447
Pawnee	276	334	393	492	551
Pittsburg	191	233	276	345	385
Pushmataha	191	233	276	345	385
Seminole	228	278	327	407	457
Texas	248	303	356	444	500
Washington	278	340	399	499	560
Woods	248	303	356	444	500

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

OREGON

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Eugene-Springfield, OR MSA	424	516	608	760	851	Lane
Medford, OR MSA	420	512	604	754	846	Jackson
Portland, OR PMSA	358	435	512	676	748	Clackamas, Multnomah, Washington, Yamhill
Salem, OR MSA	394	483	568	710	795	Marion, Polk

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	385	468	552	690	773
Clatsop	375	456	537	671	751
Coos	403	489	577	721	808
Curry	403	489	577	721	808
Douglas	403	489	577	721	808
Grant	385	468	552	690	773
Hood River	408	495	584	733	817
Josephine	403	489	577	721	808
Lake	367	448	527	659	739
Linn	391	477	563	704	787
Morrow	385	468	552	690	773
Tillamook	375	456	537	671	751
Union	385	468	552	690	773
Wasco	408	495	584	733	817

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	391	477	563	704	787
Columbia	375	456	537	671	751
Crook	408	495	584	733	817
Deschutes	408	495	584	733	817
Gilliam	385	468	552	690	773
Harney	367	448	527	659	739
Jefferson	408	495	584	733	817
Klamath	367	448	527	659	739
Lincoln	375	456	537	671	751
Malheur	367	448	527	659	739
Sherman	408	495	584	733	817
Umatilla	385	468	552	690	773
Wallowa	385	468	552	690	773
Wheeler	385	468	552	690	773

PENNSYLVANIA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Allentown-Bethlehem-Easton, PA-NJ MSA	380	462	540	681	759	Carbon, Lehigh, Northampton
Altoona, PA MSA	338	409	484	603	678	Blair
Beaver County, PA PMSA	291	355	418	522	585	Beaver
Erie, PA MSA	388	473	556	698	781	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	403	484	572	714	799	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	328	400	470	587	659	Cambria, Somerset
Lancaster, PA MSA	406	495	581	729	817	Lancaster
Philadelphia, PA-NJ PMSA	444	538	634	793	889	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	318	386	454	568	636	Alleghany, Fayette, Washington, Westmoreland
Reading, PA MSA	380	463	545	681	764	Berks
Scranton--Wilkes-Barre, PA MSA	308	380	444	547	620	Columbia, Lackawanna, Luzerne, Wyoming
Monroe County, PA	400	485	571	714	799	Monroe
Sharon, PA MSA	360	436	516	647	725	Mercer
State College, PA MSA	433	529	623	779	873	Centre
Williamsport, PA MSA	328	400	470	587	659	Lycoming
York, PA MSA	365	446	525	656	735	Adams, York

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Armstrong	377	456	538	675	755
Bradford	312	380	447	559	626
Cameron	316	384	453	568	637
Clearfield	322	393	463	578	648
Crawford	320	386	459	573	643
Forest	308	377	443	553	621
Fulton	303	370	435	546	610
Huntingdon	303	370	435	546	610
Jefferson	322	393	463	578	648
Lawrence	320	386	459	573	643
Mifflin	313	381	458	563	628
Northumberland	337	393	463	578	648
Potter	316	384	453	568	637
Snyder	313	381	448	563	628
Susquehanna	312	380	447	559	626
Union	362	425	524	650	708
Warren	320	386	459	573	643
Bedford	303	370	435	546	610
Butler	375	455	535	672	751
Clarion	308	377	443	553	621
Clinton	316	382	449	563	628
Elk	316	384	453	568	637
Franklin	346	423	495	622	696
Greene	322	393	463	578	648
Indiana	377	456	538	675	755
Juniata	313	381	448	563	628
Mckean	316	384	453	568	637
Montour	322	393	463	578	648
Pike	448	546	641	801	898
Schuylkill	350	410	500	604	658
Sullivan	312	380	447	559	626
Tioga	312	380	447	559	626
Venango	308	377	443	553	621
Wayne	382	465	548	683	767

RHODE ISLAND

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Fall River, MA-RI PMSA	433	517	620	718	792	Newport county towns of Little Compton, Tiverton
New London-Norwich, CT-RI MSA	479	583	684	856	960	Washington county towns of Hopkinton, Westerly
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA	420	507	598	734	839	Providence county towns of Burrillville, Central Falls Cumberland, Lincoln, North Smithfield, Pawtucket Smithfield, Woonsocket
Providence, RI PMSA	457	555	653	818	916	Bristol county towns of Barrington, Bristol, Warren Kent county towns of Coventry, East Greenwich, Warwick West Warwick Newport county towns of Jamestown Providence county towns of Cranston, East Providence Foster, Glocester, Johnston, North Providence Providence, Scituate Washington county towns of Exeter, Narragansett North Kingstown, Richmond, South Kingstown

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

RHODE ISLAND continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Kent	397	482	568	711	798	West Greenwich
Newport	520	630	743	928	1040	Middletown, Newport, Portsmouth
Washington	397	482	568	711	798	Charlestown, New Shoreham

SOUTH CAROLINA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anderson, SC MSA	260	315	371	466	521	Anderson
Augusta, GA-SC MSA	301	365	424	531	595	Aiken
Charleston, SC MSA	320	391	462	575	647	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	319	385	453	566	633	York
Columbia, SC MSA	325	396	467	584	653	Lexington, Richland
Florence, SC MSA	263	319	378	472	530	Florence
Greenville-Spartanburg, SC MSA	283	345	408	508	571	Greenville, Pickens, Spartanburg

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Abbeville	227	276	327	406	450
Bamberg	235	290	341	427	477
Beaufort	294	357	422	528	592
Cherokee	227	275	325	408	460
Chesterfield	226	274	323	406	456
Colleton	294	357	422	528	592
Dillon	226	274	323	406	456
Fairfield	222	270	319	400	448
Greenwood	227	276	327	406	450
Horry	274	335	394	493	553
Kershaw	257	311	366	461	515
Laurens	227	276	327	406	450
Mccormick	222	270	319	400	448
Marlboro	226	274	323	406	456
Oconee	279	343	404	505	566
Saluda	222	270	319	400	448
Union	227	275	325	408	460

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allendale	235	290	341	427	477
Barnwell	235	290	341	427	477
Calhoun	245	297	352	431	483
Chester	227	275	325	408	460
Clarendon	257	311	366	461	515
Darlington	226	274	323	406	456
Edgefield	222	270	319	400	448
Georgetown	274	335	394	493	553
Hampton	294	357	422	528	592
Jasper	294	357	422	528	592
Lancaster	246	300	353	437	489
Lee	257	311	366	461	515
Marion	226	274	323	406	456
Newberry	222	270	319	400	448
Orangeburg	235	290	341	427	477
Sumter	257	311	366	461	515
Williamsburg	274	335	394	493	553

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

S O U T H D A K O T A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rapid City, SD MSA	305	368	428	530	594	Pennington
Sioux Falls, SD MSA	321	391	459	577	645	Minnehaha

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aurora	274	331	387	485	544
Bennett	249	302	356	446	499
Brookings	269	325	379	472	533
Brule	271	329	387	485	544
Butte	296	360	423	531	594
Charles Mix	271	329	387	485	544
Clay	271	329	387	485	544
Corson	249	302	356	446	499
Davison	274	331	387	485	544
Deuel	243	291	347	432	479
Douglas	271	329	387	485	544
Fall River	296	360	423	531	594
Grant	269	325	379	472	533
Haakon	249	302	356	446	499
Hand	274	331	387	481	537
Harding	296	360	423	531	594
Hutchinson	271	329	387	485	544
Jackson	249	302	356	446	499
Jones	249	302	356	446	499
Lake	235	287	337	422	474
Lincoln	274	331	387	485	544
Mccook	235	287	337	422	474
Marshall	261	321	378	474	530
Mellette	249	302	356	446	499
Moody	235	287	337	422	474
Potter	249	302	356	446	499
Sanborn	274	331	387	485	544
Spink	261	321	378	474	530
Sully	249	302	356	446	499
Tripp	249	302	356	446	499
Union	271	329	387	485	544
Yankton	271	329	387	485	544

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beadle	274	331	387	481	537
Bon Homme	271	329	387	485	544
Brown	293	354	415	520	582
Buffalo	249	302	356	446	499
Campbell	249	302	356	446	499
Clark	243	291	347	432	479
Codington	269	325	379	472	533
Custer	296	360	423	531	594
Day	261	321	378	474	530
Dewey	249	302	356	446	499
Edmunds	261	321	378	474	530
Faulk	261	321	378	474	530
Gregory	249	302	356	446	499
Hamlin	243	291	347	432	479
Hanson	274	331	387	485	544
Hughes	325	397	465	582	650
Hyde	249	302	356	446	499
Jerauld	274	331	387	485	544
Kingsbury	235	287	337	422	474
Lawrence	303	360	423	531	594
Lyman	249	302	356	446	499
Mcpherson	261	321	378	474	530
Meade	305	368	428	531	594
Miner	235	287	337	422	474
Perkins	249	302	356	446	499
Roberts	261	321	378	474	530
Shannon	249	302	356	446	499
Stanley	325	397	465	582	650
Todd	249	302	356	446	499
Turner	274	331	387	485	544
Walworth	249	302	356	446	499
Ziebach	249	302	356	446	499

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1 30 times the 4 BR FMR.

092492

TENNESSEE

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Chattanooga, TN-GA MSA	320	390	460	575	647	Hamilton, Marion, Sequatchie
Clarksville-Hopkinsville, TN-KY MSA	297	374	468	569	632	Montgomery
Jackson, TN MSA	292	350	416	519	585	Madison
Johnson City-Kingsport-Bristol, TN-VA MSA	268	327	384	481	540	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	296	360	423	531	595	Anderson, Blount, Grainger, Jefferson, Knox, Sevier Union
Memphis, TN-AR-MS MSA	316	383	451	562	629	Shelby, Tipton
Nashville, TN MSA	351	429	505	631	709	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bedford	252	316	359	448	504
Bledsoe	262	319	377	471	528
Campbell	214	260	309	384	428
Carroll	235	288	340	426	475
Claiborne	214	260	309	384	428
Cocke	237	291	341	428	478
Crockett	243	293	344	432	485
Decatur	258	315	371	465	520
Dyer	243	293	344	432	485
Fentress	235	291	343	428	479
Gibson	243	293	344	432	485
Greene	233	286	335	419	471
Hamblen	249	301	356	445	499
Hardeman	258	315	371	465	520
Haywood	248	310	354	444	497
Henry	235	288	340	426	475
Houston	218	264	312	390	437
Jackson	205	253	299	375	416
Lake	243	293	344	432	485
Lawrence	252	316	359	448	504
Lincoln	285	343	404	506	565
Mcminn	262	319	377	471	528
Macon	235	291	343	428	479
Maury	252	316	359	448	504
Monroe	252	310	363	454	508
Morgan	214	260	309	384	428
Overton	235	291	343	428	479
Pickett	235	291	343	428	479
Putnam	245	296	348	437	489
Roane	252	310	363	454	508

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	235	288	340	426	475
Bradley	262	319	377	471	528
Cannon	235	291	343	428	479
Chester	258	315	371	465	520
Clay	205	253	299	375	416
Coffee	252	316	359	448	504
Cumberland	235	291	343	428	479
De Kalb	235	291	343	428	479
Fayette	248	301	354	444	497
Franklin	285	343	404	506	565
Giles	252	316	359	448	504
Grundy	262	319	377	471	528
Hancock	233	286	335	419	471
Hardin	258	315	371	465	520
Henderson	258	315	371	465	520
Hickman	252	316	359	448	504
Humphreys	218	264	312	390	437
Johnson	227	277	326	409	458
Lauderdale	248	310	354	444	497
Lewis	250	304	358	448	504
Loudon	252	310	363	454	508
Mcnairy	258	315	371	465	520
Marshall	252	316	359	448	504
Meigs	262	319	377	471	528
Moore	252	316	359	448	504
Obion	248	301	344	435	485
Perry	250	304	358	448	504
Polk	262	319	377	471	528
Rhea	262	319	377	471	528
Scott	214	260	309	384	428

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Smith	235	291	343	428	479
Trousdale	235	291	343	428	479
Warren	245	296	348	437	489
Weakley	235	288	340	426	475
Stewart	218	264	312	390	437
Van Buren	245	296	348	437	489
Wayne	250	304	358	448	504
White	245	296	348	437	489

T E X A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Abilene, TX MSA	258	310	365	456	511	Taylor
Amarillo, TX MSA	296	359	424	530	594	Potter, Randall
Austin, TX MSA	380	457	538	673	753	Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	342	414	489	611	683	Hardin, Jefferson, Orange
Brazoria, TX PMSA	369	447	527	659	738	Brazoria
Brownsville-Harlingen, TX MSA	302	367	431	540	605	Cameron
Bryan-College Station, TX MSA	400	489	572	716	804	Brazos
Corpus Christi, TX MSA	349	423	499	625	701	Nueces, San Patricio
Dallas, TX PMSA	398	485	571	713	798	Collin, Dallas, Denton, Ellis, Kaufman, Rockwall
El Paso, TX MSA	324	394	463	579	648	El Paso
Fort Worth-Arlington, TX PMSA	371	451	532	665	745	Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	332	402	474	593	665	Galveston
Houston, TX PMSA	341	414	488	612	685	Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	270	328	386	483	540	Bell, Coryell
Laredo, TX MSA	277	339	397	498	559	Webb
Longview-Marshall, TX MSA	337	409	480	599	673	Gregg, Harrison
Lubbock, TX MSA	250	313	411	521	574	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	301	366	429	538	603	Hidalgo
Midland, TX MSA	385	469	553	693	775	Midland
Odessa, TX MSA	383	467	550	686	770	Ector
San Angelo, TX MSA	271	329	387	484	542	Tom Green
San Antonio, TX MSA	331	402	473	591	662	Bexar, Comal, Guadalupe
Sherman-Denison, TX MSA	295	357	422	528	592	Grayson
Texarkana, TX-Texarkana, AR MSA	271	329	389	489	545	Bowie
Tyler, TX MSA	341	413	488	609	681	Smith
Victoria, TX MSA	415	503	593	744	833	Victoria
Waco, TX MSA	280	337	394	492	547	Mclennan
Wichita Falls, TX MSA	306	372	438	547	614	Wichita

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anderson	254	308	364	455	510
Angelina	296	357	423	530	592
Archer	244	297	349	437	490
Atascosa	260	316	375	470	525
Bailey	246	301	354	440	491
Bastrop	258	313	370	465	521
Bee	281	343	404	502	564
Borden	237	293	344	429	483
Brewster	218	263	309	387	436
Brooks	281	343	404	502	564
Burleson	260	315	373	467	523
Caldwell	258	313	370	465	521
Callahan	252	306	358	450	505
Carson	264	320	378	474	532
Castro	264	320	378	474	532
Cherokee	254	308	364	455	510
Clay	244	297	349	437	490
Coke	227	277	325	409	457
Collingsworth	264	320	378	474	532
Comanche	252	306	358	450	505
Cooke	279	341	402	500	562
Crane	218	263	309	387	436
Crosby	246	301	354	440	491
Dallam	264	320	378	474	532
Deaf Smith	264	320	378	474	532
De Witt	274	335	393	492	552
Dimmit	234	289	340	423	474
Duval	281	343	404	502	564
Edwards	243	297	348	428	476
Falls	223	272	317	402	447
Fayette	258	313	370	465	521
Floyd	246	301	354	440	491
Franklin	249	303	356	445	498
Frio	260	316	375	470	525
Garza	246	301	354	440	491
Glasscock	237	293	344	429	483
Gonzales	274	335	393	492	552
Grimes	260	315	373	467	523
Hall	264	320	378	474	532
Hansford	264	320	378	474	532

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Andrews	218	263	309	387	436
Aransas	281	343	404	502	564
Armstrong	264	320	378	474	532
Austin	301	365	429	538	604
Bandera	260	316	375	470	525
Baylor	244	297	349	437	490
Blanco	237	293	344	429	484
Bosque	223	272	317	402	447
Briscoe	264	320	378	474	532
Brown	246	301	354	440	491
Burnet	237	293	344	429	484
Calhoun	274	335	393	492	552
Camp	232	283	337	418	470
Cass	249	303	356	445	498
Chambers	310	377	444	556	622
Childress	244	297	349	437	490
Cochran	246	301	354	440	491
Coleman	246	301	354	440	491
Colorado	301	365	429	538	604
Concho	227	277	325	409	457
Cottle	244	297	349	437	490
Crockett	227	277	325	409	457
Culberson	218	263	309	387	436
Dawson	237	293	344	429	483
Delta	249	303	356	445	498
Dickens	246	301	354	440	491
Donley	264	320	378	474	532
Eastland	252	306	358	450	505
Erath	252	306	358	450	505
Fannin	279	341	402	500	562
Fisher	252	306	358	450	505
Foard	244	297	349	437	490
Freestone	223	272	317	402	447
Gaines	218	263	309	387	436
Gillespie	260	316	375	470	525
Goliad	274	335	393	492	552
Gray	264	320	378	474	532
Hale	246	301	354	440	491
Hamilton	237	293	344	429	484
Hardeman	244	297	349	437	490

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092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hartley	264	320	378	474	532
Hemphill	264	320	378	474	532
Hill	277	334	390	490	548
Hood	301	365	429	538	604
Houston	263	318	377	473	531
Hudspeth	218	263	309	387	435
Hutchinson	264	320	378	474	532
Jack	244	297	349	437	490
Jasper	281	343	404	502	564
Jim Hogg	266	322	381	480	536
Jones	252	306	358	450	505
Kendall	260	316	375	470	525
Kent	252	306	358	450	505
Kimble	227	277	325	409	457
Kinney	243	297	348	428	476
Knox	246	301	354	440	491
Lamb	246	301	354	440	491
La Salle	234	289	340	423	474
Lee	258	313	370	465	521
Limestone	223	272	317	402	447
Live Oak	281	343	404	502	564
Loving	218	263	309	387	435
Mcculloch	246	301	354	440	491
Madison	268	325	384	483	539
Martin	237	293	344	429	483
Matagorda	301	365	429	538	604
Medina	260	316	375	470	525
Milam	258	313	370	465	521
Mitchell	252	306	358	450	505
Moore	264	320	378	474	532
Motley	246	301	354	440	491
Navarro	223	272	317	402	447
Nolan	252	306	358	450	505
Oldham	264	320	378	474	532
Panola	254	308	364	455	510
Pecos	218	263	309	387	435
Presidio	218	263	309	387	435
Reagan	227	277	325	409	457
Red River	249	303	356	445	498
Refugio	281	343	404	502	564

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Haskell	252	306	358	450	505
Henderson	254	308	364	455	510
Hockley	246	301	354	440	491
Hopkins	249	303	356	445	498
Howard	237	293	344	429	483
Hunt	279	341	402	500	562
Irion	227	277	325	409	457
Jackson	274	335	393	492	552
Jeff Davis	218	263	309	387	436
Jim Wells	281	343	404	502	564
Karnes	215	260	307	384	430
Kenedy	281	343	404	502	564
Kerr	260	316	375	470	525
King	246	301	354	440	491
Kleberg	281	343	404	502	564
Lamar	249	303	356	445	498
Lampasas	237	293	344	429	484
Lavaca	274	335	393	492	552
Leon	268	325	384	483	539
Lipscomb	264	320	378	474	532
Llano	237	293	344	429	484
Lynn	246	301	354	440	491
Mcmullen	281	343	404	502	564
Marion	232	283	337	418	470
Mason	227	277	325	409	457
Maverick	243	297	348	428	476
Menard	227	277	325	409	457
Mills	246	301	354	440	491
Montague	244	297	349	437	490
Morris	249	303	356	445	498
Nacogdoches	296	357	423	530	592
Newton	281	343	404	502	564
Ochiltree	264	320	378	474	532
Palo Pinto	252	306	358	450	505
Parmer	264	320	378	474	532
Polk	296	357	423	530	592
Rains	242	296	346	427	472
Real	243	297	348	428	476
Reeves	218	263	309	387	436
Roberts	264	320	378	474	532

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092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Robertson	260	315	373	467	523
Rusk	254	308	364	455	510
San Augustine	231	283	335	418	468
San Saba	246	301	354	440	491
Scurry	252	306	358	450	505
Shelby	231	283	335	418	468
Somervell	223	272	317	402	447
Stephens	252	306	358	450	505
Stonewall	252	306	358	450	506
Swisher	264	320	378	474	532
Terry	246	301	354	440	491
Titus	249	303	356	445	498
Tyler	268	325	384	483	539
Upton	237	293	344	429	483
Val Verde	243	297	348	428	476
Walker	306	373	440	551	616
Washington	268	325	384	483	539
Wheeler	264	320	378	474	532
Willacy	281	343	404	502	564
Winkler	218	263	309	387	436
Wood	232	283	337	418	470
Young	244	297	349	437	490
Zavala	243	297	348	428	476

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Runnels	246	301	354	440	491
Sabine	231	283	335	418	468
San Jacinto	296	357	423	530	592
Schleicher	227	277	325	409	457
Shackleford	252	306	358	450	505
Sherman	264	320	378	474	532
Starr	231	282	334	415	466
Sterling	227	277	325	409	457
Sutton	227	277	325	409	457
Terrell	218	263	309	387	436
Throckmorton	252	306	358	450	505
Trinity	268	340	401	498	560
Upshur	232	283	337	418	470
Uvalde	243	297	348	428	476
Van Zandt	242	296	346	427	472
Ward	218	263	309	387	436
Wharton	301	365	429	538	604
Wilbarger	244	297	349	437	490
Wilson	215	260	307	384	430
Wise	301	365	429	538	604
Yoakum	246	301	354	440	491
Zapata	231	282	334	415	466

U T A H

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Provo-Orem, UT MSA	323	394	462	579	650	Utah
Salt Lake City-Ogden, UT MSA	300	343	429	538	601	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaver	355	432	509	635	712
Cache	326	396	468	585	657
Daggett	405	492	579	724	811
Emery	405	492	579	724	811
Grand	405	492	579	724	811
Juab	355	432	509	635	712
Millard	355	432	509	635	712
Piute	355	432	509	635	712
San Juan	405	492	579	724	811

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Box Elder	326	396	468	585	657
Carbon	405	492	579	724	811
Duchesne	405	492	579	724	811
Garfield	355	432	509	635	712
Iron	355	432	509	635	712
Kane	355	432	509	635	712
Morgan	405	492	579	724	811
Rich	326	396	468	585	657
Sanpete	355	432	509	635	712

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

U T A H continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sevier	355	432	509	635	712
Tooele	326	396	468	585	657
Wasatch	405	492	579	724	811
Wayne	355	432	509	635	712
Summit	405	492	579	724	811
Uintah	405	492	579	724	811
Washington	388	466	550	687	772

V E R M O N T

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Burlington, VT MSA	479	583	684	856	960	Chittenden county towns of Burlington, Charlotte Colchester, Essex, Hinesburg, Jericho, Milton, Richmond St. George, Shelburne, South Burlington, Williston Winooski Franklin county towns of Georgia Grand Isle county towns of Grand Isle, South Hero

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	381	462	545	680	763	
Bennington	387	476	558	696	784	
Caledonia	325	394	463	580	650	
Chittenden	439	537	631	791	887	Bolton, Buels, Huntington, Underhill, Westford
Essex	325	394	463	580	650	
Franklin	361	439	519	647	726	Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield Fletcher, Franklin, Highgate, Montgomery, Richford St. Albans, St. Albans, Sheldon, Swanton
Grand Isle	325	394	463	580	650	Alburg, Isle La Motte, North Hero
Lamoille	393	477	560	701	785	
Orange	387	472	555	693	777	
Orleans	325	394	463	580	650	
Rutland	421	512	602	752	843	
Washington	387	476	558	696	784	
Windham	407	496	582	729	818	
Windsor	417	505	596	745	835	

V I R G I N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Charlottesville, VA MSA	376	458	539	675	755	Albemarle, Fluvanna, Greene, Charlottesville
Danville, VA MSA	288	349	412	514	576	Pittsylvania, Danville
Johnson City-Kingsport-Bristol, TN-VA MSA	268	327	384	481	540	Scott, Washington, Bristol
Lynchburg, VA MSA	310	385	444	542	622	Amherst, Campbell, Lynchburg
Norfolk-Virginia Beach-Newport News, VA MSA	385	468	550	688	771	Gloucester, James City, York, Chesapeake, Hampton Newport News City, Norfolk, Poquoson, Portsmouth, Suffolk

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Richmond-Petersburg, VA MSA	344	414	482	605	679	Virginia Beach, Williamsburg City Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights, Hopewell, Petersburg, Richmond
Roanoke, VA MSA	302	368	431	541	605	Botetourt, Roanoke, Roanoke, Salem
Washington, DC-MD-VA MSA	597	725	854	1067	1195	Arlington, Fairfax, Loudoun, Prince William, Stafford Alexandria, Fairfax, Falls Church City, Manassas Manassas Park City

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Accomack	283	342	398	492	549
Amelia	249	301	353	444	499
Augusta	300	364	429	537	601
Bedford	258	314	372	464	520
Brunswick	234	285	334	420	470
Buckingham	249	301	353	444	499
Carroll	253	307	361	454	507
Clarke	301	367	430	539	603
Culpeper	312	379	448	559	626
Dickenson	267	311	369	461	515
Fauquier	312	379	448	559	626
Franklin	258	314	372	464	520
Giles	299	363	426	534	598
Greensville	234	285	334	420	470
Henry	301	367	430	538	602
Isle Of Wight	241	296	343	429	470
King George	353	431	507	632	712
Lancaster	271	332	392	491	549
Louisa	316	382	448	559	626
Madison	316	382	448	559	626
Mecklenburg	234	285	334	420	470
Montgomery	364	442	520	654	728
Northampton	283	342	398	492	549
Nottoway	249	301	353	444	499
Page	301	367	430	539	603
Prince Edward	249	301	353	444	499
Rappahannock	312	379	448	559	626
Rockbridge	300	364	429	537	601
Russell	287	348	410	513	576
Smyth	253	307	361	454	507
Spotsylvania	353	431	507	632	712

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	300	364	429	537	601
Appomattox	303	364	426	534	598
Bath	300	364	429	537	601
Bland	253	307	361	454	507
Buchanan	287	348	410	513	576
Caroline	353	431	507	632	712
Charlotte	249	301	353	444	499
Craig	234	285	334	418	469
Cumberland	249	301	353	444	499
Essex	271	332	392	491	549
Floyd	299	363	426	534	598
Frederick	301	367	430	539	603
Grayson	253	307	361	454	507
Halifax	249	301	353	444	499
Highland	300	364	429	537	601
King And Queen	271	332	392	491	549
King William	271	332	392	491	549
Lee	256	311	369	461	515
Lunenburg	249	301	353	444	499
Mathews	271	332	392	491	549
Middlesex	271	332	392	491	549
Nelson	262	318	376	470	527
Northumberland	271	332	392	491	549
Orange	316	382	448	559	626
Patrick	258	314	372	464	520
Pulaski	299	363	426	534	598
Richmond	271	332	392	491	549
Rockingham	300	364	429	537	601
Shenandoah	301	367	430	539	603
Southampton	241	296	343	429	470
Surry	241	296	343	429	470

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sussex	234	285	334	420	470
Warren	301	367	430	539	603
Wise	289	349	412	515	578
Bedford	258	314	372	464	520
Clifton Forge City	300	364	429	537	601
Emporia	234	285	334	420	470
Fredericksburg	418	508	598	748	838
Harrisonburg City	344	417	492	614	687
Martinsville City	301	367	430	538	602
Radford	364	442	520	654	728
Staunton	300	364	429	537	601
Winchester	365	443	522	652	730

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Tazewell	287	348	410	513	576
Westmoreland	271	332	392	491	549
Wythe	273	333	386	478	535
Buena Vista	300	364	429	537	601
Covington	300	364	429	537	601
Franklin	234	285	334	420	470
Galax	253	307	361	454	507
Lexington	300	364	429	537	601
Norton	288	348	411	514	577
South Boston City	249	301	353	444	499
Waynesboro	300	364	429	537	601

W A S H I N G T O N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bellingham, WA MSA	431	526	619	792	870	Whatcom
Bremerton, WA MSA	403	490	576	718	808	Kitsap
Olympia, WA MSA	416	505	595	745	836	Thurston
Richland-Kennewick-Pasco, WA MSA	349	424	499	624	699	Benton, Franklin
Seattle, WA PMSA	441	536	630	813	895	King, Snohomish
Spokane, WA MSA	364	425	501	641	708	Spokane
Tacoma, WA PMSA	373	453	535	713	793	Pierce
Vancouver, WA PMSA	365	444	522	689	767	Clark
Yakima, WA MSA	366	444	523	655	735	Yakima

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	296	361	424	533	597
Chelan	359	435	515	642	721
Columbia	385	467	552	689	773
Douglas	359	435	515	642	721
Garfield	385	467	552	689	773
Grays Harbor	387	470	555	693	779
Jefferson	387	470	555	693	779
Klickitat	360	437	515	646	725
Lincoln	296	361	424	533	597
Okanogan	328	396	469	588	658
Pend Oreille	296	361	424	533	597
Skagit	393	482	566	708	792
Stevens	296	361	424	533	597

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Asotin	385	467	552	689	773
Clallam	387	470	555	693	779
Cowlitz	300	365	429	605	665
Ferry	296	361	424	533	597
Grant	296	361	424	533	597
Island	393	482	566	708	792
Kittitas	328	396	469	588	658
Lewis	360	437	515	646	725
Mason	387	470	555	693	779
Pacific	387	470	555	693	779
San Juan	393	482	566	708	792
Skamania	360	437	515	646	725
Wahkiakum	360	437	515	646	725

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

WASHINGTON continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Walla Walla	385	467	552	689	773
Whitman	385	467	552	689	773

WEST VIRGINIA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Charleston, WV MSA	389	473	558	698	782	Kanawha, Putnam
Cumberland, MD-WV MSA	294	350	411	507	566	Mineral
Huntington-Ashland, WV-KY-OH MSA	320	389	460	575	647	Cabell, Wayne
Parkersburg-Marietta, WV-OH MSA	300	364	428	539	602	Wood
Steubenville-Weirton, OH-WV MSA	307	374	438	550	619	Brooke, Hancock
Wheeling, WV-OH MSA	302	368	433	542	606	Marshall, Ohio

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	278	338	399	500	558
Boone	277	335	396	496	555
Calhoun	321	377	437	569	627
Doddridge	270	331	391	488	547
Gilmer	297	355	432	535	590
Greenbrier	255	310	367	457	513
Hardy	266	325	382	478	537
Jackson	321	377	437	569	627
Lewis	278	338	399	500	558
Logan	267	325	382	478	537
Marion	329	400	470	590	659
Mercer	261	319	377	471	529
Monongalia	329	400	470	590	659
Morgan	281	342	402	502	562
Pendleton	266	325	382	478	537
Pocahontas	255	310	367	457	513
Raleigh	267	321	372	464	521
Ritchie	235	286	335	418	470
Summers	267	321	377	471	529
Tucker	278	338	399	500	558
Upshur	278	338	399	500	558
Wetzel	281	342	403	504	564
Wyoming	267	321	372	464	521

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Berkeley	325	395	465	582	651
Braxton	245	297	348	437	491
Clay	277	335	396	496	555
Fayette	255	310	367	457	513
Grant	266	325	382	478	537
Hampshire	266	325	382	478	537
Harrison	321	377	437	569	627
Jefferson	315	383	451	564	631
Lincoln	267	325	382	478	537
Mcdowell	258	315	371	464	521
Mason	267	325	382	478	537
Mingo	267	325	382	478	537
Monroe	267	321	377	471	529
Nicholas	255	310	367	457	513
Pleasants	235	286	335	418	470
Preston	329	400	470	590	659
Randolph	278	338	399	500	558
Roane	321	377	437	569	627
Taylor	270	331	391	488	547
Tyler	235	286	335	418	470
Webster	255	310	367	457	513
Wirt	235	286	335	418	470

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W I S C O N S I N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Appleton-Oshkosh-Neenah, WI MSA	300	365	432	539	603	Calumet, Outagamie, Winnebago
Duluth, MN-WI MSA	331	395	466	585	657	Douglas
Eau Claire, WI MSA	297	363	429	534	599	Chippewa, Eau Claire
Green Bay, WI MSA	300	365	434	539	603	Brown
Janesville-Beloit, WI MSA	331	404	476	596	668	Rock
Kenosha, WI PMSA	383	467	549	688	770	Kenosha
La Crosse, WI MSA	356	432	508	635	712	La Crosse
Madison, WI MSA	400	467	571	714	799	Dane
Milwaukee, WI PMSA	359	433	513	642	716	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	440	535	630	788	882	St Croix
Racine, WI PMSA	339	412	485	607	681	Racine
Sheboygan, WI MSA	308	372	440	552	619	Sheboygan
Wausau, WI MSA	300	365	432	539	603	Marathon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	304	368	435	546	612
Barron	289	354	415	520	584
Buffalo	278	332	394	491	553
Clark	289	354	415	520	584
Crawford	261	320	374	470	526
Door	274	329	389	480	535
Florence	261	320	374	470	526
Forest	283	344	404	510	567
Green	283	344	402	501	556
Iowa	274	331	392	489	550
Jackson	275	332	394	491	553
Juneau	304	368	435	546	612
Lafayette	274	331	392	489	550
Lincoln	283	344	404	510	567
Marinette	266	322	378	472	526
Menominee	266	325	383	480	536
Oconto	261	320	374	470	526
Pepin	275	332	394	491	553
Polk	289	354	415	520	584
Price	266	325	383	480	536
Rusk	266	325	383	480	536
Sawyer	266	325	383	480	536
Taylor	266	325	383	480	536
Vernon	261	320	374	470	526
Walworth	318	387	454	567	639

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashland	266	325	383	480	536
Bayfield	266	325	383	480	536
Burnett	266	325	383	480	536
Columbia	278	335	397	496	557
Dodge	278	335	397	496	557
Dunn	289	354	415	520	584
Fond Du Lac	327	395	469	559	612
Grant	274	331	392	489	550
Green Lake	297	363	429	535	599
Iron	266	325	383	480	536
Jefferson	318	387	454	567	639
Kewaunee	274	329	389	480	535
Langlade	283	344	404	510	567
Manitowoc	274	329	389	480	535
Marquette	266	325	383	480	536
Monroe	275	332	394	491	553
Oneida	283	344	404	510	567
Pierce	275	332	394	491	553
Portage	304	368	435	546	612
Richland	274	331	392	489	550
Sauk	303	369	435	545	609
Shawano	266	325	383	480	536
Trempealeau	275	332	394	491	553
Vilas	283	344	404	510	567
Washburn	266	325	383	480	536

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092492

W I S C O N S I N continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Waupaca	266	325	383	480	536
Wood	304	368	435	546	612
Waushara	266	325	383	480	536

W Y O M I N G

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Casper, WY MSA	454	551	647	812	910	Natrona
Cheyenne, WY MSA	374	454	537	673	752	Laramie

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Albany	289	357	421	526	584
Campbell	289	357	421	526	584
Converse	289	357	421	526	584
Fremont	289	357	421	526	584
Hot Springs	297	362	428	532	596
Lincoln	289	357	421	526	584
Park	297	362	428	532	596
Sheridan	400	492	579	721	813
Sweetwater	289	357	421	526	584
Uinta	289	357	421	526	584
Weston	297	362	428	532	596
Big Horn	297	362	428	532	596
Carbon	289	357	421	526	584
Crook	289	362	428	532	596
Goshen	289	357	421	526	584
Johnson	289	357	421	526	584
Niobrara	289	357	421	526	584
Platte	289	357	421	526	584
Sublette	289	357	421	526	584
Teton	447	542	638	798	893
Washakie	297	362	428	532	596

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Pacific Isl	639	768	909	1138	1280

P U E R T O R I C O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Aguadilla, PR MSA	225	275	325	405	455	Aguada, Aguadilla, Isabela, Moca
Arecibo, PR MSA	330	400	470	590	660	Arecibo, Camuy, Hatillo, Quebradillas
Caguas, PR PMSA	275	330	390	490	545	Aguas Buenas, Caguas, Cayey, Cidra, Gurabo, San Lorenzo
Mayaguez, PR MSA	225	275	325	405	455	Anasco, Cabo Rojo, Hormigueros, Mayaguez, San German
Ponce, PR MSA	320	390	460	575	645	Juana Diaz, Ponce
San Juan, PR PMSA	320	390	460	575	645	Bayamon, Barceloneta, Canovanas, Carolina, Catano Corozal, Dorado, Fajardo, Florida, Guaynabo, Humacao Juncos, Las Piedras, Loiza, Luquillo, Manati, Naranjito Rio Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto Vega Alta, Vega Baja

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

PUERTO RICO continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adjuntas	215	265	310	390	435
Arroyo	215	265	310	390	435
Ceiba	215	265	310	390	435
Coamo	215	265	310	390	435
Culebra	215	265	310	390	435
Guayama	215	265	310	390	435
Jayuya	215	265	310	390	435
Lares	215	265	310	390	435
Maricao	215	265	310	390	435
Morovis	215	265	310	390	435
Orocovis	215	265	310	390	435
Penuelas	215	265	310	390	435
Sabana Grande	215	265	310	390	435
San Sebastian	215	265	310	390	435
Utuado	215	265	310	390	435
Villalba	215	265	310	390	435
Yauco	215	265	310	390	435

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Charlotte Amalie	485	590	694	867	970
St. Thomas	485	590	694	867	970
Albonito	215	265	310	390	435
Barranquitas	215	265	310	390	435
Ciales	215	265	310	390	435
Comerio	215	265	310	390	435
Guanica	215	265	310	390	435
Gueyanilla	215	265	310	390	435
Lajas	215	265	310	390	435
Las Marias	215	265	310	390	435
Maunabo	215	265	310	390	435
Naguabo	215	265	310	390	435
Patillas	215	265	310	390	435
Rincon	215	265	310	390	435
Salinas	215	265	310	390	435
Santa Isabel	215	265	310	390	435
Vieques	215	265	310	390	435
Yabucoa	215	265	310	390	435

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
St. Croix	432	525	619	773	866

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092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: ALABAMA	72	83
MSA: Anniston, AL	75	85
MSA: Birmingham, AL	108	119
MSA: Columbus, GA-AL	98	108
MSA: Decatur, AL	72	84
MSA: Dothan, AL	70	80
MSA: Florence, AL	85	92
MSA: Gadsden, AL	75	85
MSA: Huntsville, AL	108	119
MSA: Mobile, AL	86	93
MSA: Montgomery, AL	86	92
MSA: Tuscaloosa, AL	101	115
EXCEPTION COUNTY: LIMESTONE	81	89
EXCEPTION COUNTY: MARSHALL	81	89
NON METRO STATE: ALASKA	173	173
MSA: Anchorage, AK	199	199
EXCEPTION COUNTY: KETCHIKAN	173	182
NON METRO STATE: ARIZONA	108	139
MSA: Phoenix, AZ	152	161
MSA: Tucson, AZ	108	152
MSA: Yuma, AZ	108	139
NON METRO STATE: ARKANSAS	39	44
MSA: Fayetteville-Springdale, AR	67	72
MSA: Fort Smith, AR-OK	37	40
MSA: Little Rock-North Little Rock, AR	87	89
MSA: Memphis, TN-AR-MS	100	100
MSA: Pine Bluff, AR	28	31
MSA: Texarkana, TX-Texarkana, AR	118	133
EXCEPTION COUNTY: BENTON	83	85
EXCEPTION COUNTY: LITTLE RIVER	88	99
NON METRO STATE: CALIFORNIA	171	224
PMSA: Anaheim-Santa Ana, CA	418	418
MSA: Bakersfield, CA	160	245
MSA: Chico, CA	171	224
MSA: Fresno, CA	245	277
PMSA: Los Angeles-Long Beach, CA	202	341
MSA: Merced, CA	171	224

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Modesto, CA	256	277
PMSA: Oakland, CA	283	372
PMSA: Oxnard-Ventura, CA	259	393
MSA: Redding, CA	171	224
PMSA: Riverside-San Bernardino, CA	172	281
MSA: Sacramento, CA	197	235
MSA: Salinas-Seaside-Monterey, CA	245	309
MSA: San Diego, CA	314	343
PMSA: San Francisco, CA	304	396
PMSA: San Jose, CA	361	422
MSA: Santa Barbara-Santa Maria-Lompoc, CA	201	309
PMSA: Santa Cruz, CA	264	331
PMSA: Santa Rosa-Petaluma, CA	264	317
MSA: Stockton, CA	256	277
PMSA: Vallejo-Fairfield-Napa, CA	275	314
MSA: Visalia-Tulare-Porterville, CA	171	224
MSA: Yuba City, CA	171	224
EXCEPTION COUNTY: SAN LUIS OBI	235	278
NON METRO STATE: COLORADO	N/A	N/A
PMSA: Boulder-Longmont, CO	221	242
MSA: Colorado Springs, CO	162	182
PMSA: Denver, CO	252	272
MSA: Fort Collins-Loveland, CO	153	172
MSA: Greeley, CO	153	172
MSA: Pueblo, CO	153	172
EXCEPTION COUNTY: ALAMOSA	128	154
EXCEPTION COUNTY: ARCHULETA	154	172
EXCEPTION COUNTY: BACA	128	154
EXCEPTION COUNTY: BENT	128	154
EXCEPTION COUNTY: CHAFFEE	154	172
EXCEPTION COUNTY: CHEYENNE	128	154
EXCEPTION COUNTY: CLEAR CREEK	154	172
EXCEPTION COUNTY: CONEJOS	128	154
EXCEPTION COUNTY: COSTILLA	128	154
EXCEPTION COUNTY: CROWLEY	128	154
EXCEPTION COUNTY: CUSTER	154	172
EXCEPTION COUNTY: DELTA	154	172
EXCEPTION COUNTY: DELORES	154	172
EXCEPTION COUNTY: EAGLE	249	280
EXCEPTION COUNTY: ELBERT	128	154
EXCEPTION COUNTY: FREMONT	154	172
EXCEPTION COUNTY: GARFIELD	249	280
EXCEPTION COUNTY: GILPIN	164	189
EXCEPTION COUNTY: GRAND	154	172

092492

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
	154	172
EXCEPTION COUNTY: GUNNISON	154	172
EXCEPTION COUNTY: HINSDALE	128	154
EXCEPTION COUNTY: HUERFANO	154	172
EXCEPTION COUNTY: JACKSON	128	154
EXCEPTION COUNTY: KIOWA	128	154
EXCEPTION COUNTY: KIT CARSON	154	172
EXCEPTION COUNTY: LAKE	154	172
EXCEPTION COUNTY: LA PLATA	128	154
EXCEPTION COUNTY: LAS ANIMAS	128	154
EXCEPTION COUNTY: LINCOLN	128	154
EXCEPTION COUNTY: LOGAN	154	172
EXCEPTION COUNTY: MESA	128	154
EXCEPTION COUNTY: MINERAL	249	280
EXCEPTION COUNTY: MOFFAT	154	172
EXCEPTION COUNTY: MONTEZUMA	154	172
EXCEPTION COUNTY: MONTROSE	128	154
EXCEPTION COUNTY: MORGAN	128	154
EXCEPTION COUNTY: OTERO	154	172
EXCEPTION COUNTY: OURAY	154	172
EXCEPTION COUNTY: PARK	128	154
EXCEPTION COUNTY: PHILLIPS	249	280
EXCEPTION COUNTY: PITKIN	128	154
EXCEPTION COUNTY: PROWERS	249	280
EXCEPTION COUNTY: RIO BLANCO	128	154
EXCEPTION COUNTY: RIO GRANDE	249	280
EXCEPTION COUNTY: ROUTT	128	154
EXCEPTION COUNTY: SAGUACHE	154	172
EXCEPTION COUNTY: SAN JUAN	154	172
EXCEPTION COUNTY: SAN MIGUEL	128	154
EXCEPTION COUNTY: SEDGWICK	249	280
EXCEPTION COUNTY: SUMMIT	128	154
EXCEPTION COUNTY: TELLER	128	154
EXCEPTION COUNTY: WASHINGTON	128	154
EXCEPTION COUNTY: YUMA	168	168
NON METRO STATE: CONNECTICUT	224	224
PMSA: Bridgeport-Milford, CT	170	170
PMSA: Bristol, CT	171	171
PMSA: Danbury, CT	184	184
PMSA: Hartford, CT	184	184
PMSA: Middletown, CT	184	184
PMSA: New Britain, CT	166	166
MSA: New Haven-Meriden, CT	157	157
MSA: New London-Norwich, CT-RI	210	210
PMSA: Norwalk, CT		

092492

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Stamford, CT	210	210
MSA: Waterbury, CT	170	170
NON METRO STATE: DELAWARE	74	74
PMSA: Wilmington, DE-NJ-MD	153	153
EXCEPTION COUNTY: KENT	160	160
EXCEPTION COUNTY: DE SUSSEX	115	115
NON METRO STATE: DIST. OF COLUMBIA	N/A	N/A
MSA: Washington, DC-MD-VA	209	209
NON METRO STATE: FLORIDA	91	91
MSA: Bradenton, FL	133	133
MSA: Daytona Beach, FL	118	118
PMSA: Fort Lauderdale-Hollywood-Pompano Beach, FL	192	192
MSA: Fort Myers-Cape Coral, FL	124	124
MSA: Fort Pierce, FL	89	89
MSA: Fort Walton Beach, FL	92	92
MSA: Gainesville, FL	92	92
MSA: Jacksonville, FL	85	100
MSA: Lakeland-Winter Haven, FL	92	92
MSA: Melbourne-Titusville-Palm Bay, FL	108	108
PMSA: Miami-Hialeah, FL	151	151
MSA: Naples, FL	92	92
MSA: Ocala, FL	92	92
MSA: Orlando, FL	108	108
MSA: Panama City, FL	92	92
MSA: Pensacola, FL	92	92
MSA: Sarasota, FL	124	124
MSA: Tallahassee, FL	85	85
MSA: Tampa-St. Petersburg-Clearwater, FL	124	124
MSA: West Palm Beach-Boca Raton-Delray Beach, FL	158	158
EXCEPTION COUNTY: BAKER	82	97
EXCEPTION COUNTY: COLUMBIA	91	91
EXCEPTION COUNTY: WAKULLA	82	97
NON METRO STATE: GEORGIA	66	66
MSA: Albany, GA	58	62
MSA: Athens, GA	66	66
MSA: Atlanta, GA	104	112
MSA: Augusta, GA-SC	89	92
MSA: Chattanooga, TN-GA	58	85

092492

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Columbus, GA-AL	98	108
MSA: Macon-Warner Robins, GA	59	65
MSA: Savannah, GA	73	85
EXCEPTION COUNTY: BRYAN	66	66
EXCEPTION COUNTY: TWIGGS	58	64
NON METRO STATE: HAWAII	N/A	N/A
MSA: Honolulu, HI	N/A	N/A
NON METRO STATE: IDAHO	129	129
MSA: Boise City, ID	140	163
NON METRO STATE: ILLINOIS	119	128
PMSA: Aurora-Elgin, IL	249	268
MSA: Bloomington-Normal, IL	134	134
MSA: Champaign-Urbana-Rantoul, IL	109	109
PMSA: Chicago, IL	263	281
MSA: Davenport-Rock Island-Moline, IA-IL	147	155
MSA: Decatur, IL	147	147
PMSA: Joliet, IL	263	281
MSA: Kankakee, IL	106	106
PMSA: Lake County, IL	249	268
MSA: Peoria, IL	201	220
MSA: Rockford, IL	198	210
MSA: St. Louis, MO-IL	107	124
MSA: Springfield, IL	129	137
NON METRO STATE: INDIANA	65	84
MSA: Anderson, IN	72	72
MSA: Bloomington, IN	68	68
PMSA: Cincinnati, OH-KY-IN	130	136
MSA: Elkhart-Goshen, IN	94	94
MSA: Evansville-Henderson, IN-KY	87	92
MSA: Fort Wayne, IN	80	109
PMSA: Gary-Hammond, IN	127	146
MSA: Indianapolis, IN	102	118
MSA: Kokomo, IN	94	107
MSA: Lafayette-West Lafayette, IN	88	130
MSA: Louisville, KY-IN	92	101
MSA: Muncie, IN	69	78
MSA: South Bend-Mishawaka, IN	107	113
MSA: Terre Haute, IN	68	85

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: ADAMS	65	84
EXCEPTION COUNTY: BLACKFORD	73	84
EXCEPTION COUNTY: GIBSON	65	84
EXCEPTION COUNTY: GRANT	73	84
EXCEPTION COUNTY: HENRY	73	84
EXCEPTION COUNTY: JAY	73	84
EXCEPTION COUNTY: MARSHALL	74	84
EXCEPTION COUNTY: RANDOLPH	73	84
EXCEPTION COUNTY: SULLIVAN	66	78
EXCEPTION COUNTY: VERMILLION	66	78
EXCEPTION COUNTY: WAYNE	73	84
EXCEPTION COUNTY: WELLS	65	84
NON METRO STATE: IOWA	101	109
MSA: Cedar Rapids, IA	119	138
MSA: Davenport-Rock Island-Moline, IA-IL	149	156
MSA: Des Moines, IA	127	135
MSA: Dubuque, IA	119	148
MSA: Iowa City, IA	119	135
MSA: Omaha, NE-IA	111	130
MSA: Sioux City, IA-NE	115	115
MSA: Waterloo-Cedar Falls, IA	119	138
NON METRO STATE: KANSAS	89	101
MSA: Kansas City, MO-KS	103	126
MSA: Lawrence, KS	93	106
MSA: Topeka, KS	91	103
MSA: Wichita, KS	106	114
EXCEPTION COUNTY: JEFFERSON	85	98
EXCEPTION COUNTY: OSAGE	85	98
NON METRO STATE: KENTUCKY	79	87
PMSA: Cincinnati, OH-KY-IN	130	136
MSA: Clarksville-Hopkinsville, TN-KY	85	92
MSA: Evansville-Henderson, IN-KY	86	92
MSA: Huntington-Ashland, WV-KY-OH	97	97
MSA: Lexington-Fayette, KY	101	116
MSA: Louisville, KY-IN	92	100
MSA: Owensboro, KY	93	111
NON METRO STATE: LOUISIANA	85	100
MSA: Alexandria, LA	85	100

092492

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Baton Rouge, LA	100	118
MSA: Houma-Thibodaux, LA	84	98
MSA: Lafayette, LA	92	109
MSA: Lake Charles, LA	98	116
MSA: Monroe, LA	85	100
MSA: New Orleans, LA	106	122
MSA: Shreveport, LA	92	109
EXCEPTION COUNTY: GRANT	81	96
EXCEPTION COUNTY: WEBSTER	85	100
NON METRO STATE: MAINE	149	171
MSA: Bangor, ME	150	173
MSA: Lewiston-Auburn, ME	114	114
MSA: Portland, ME	187	214
MSA: Portsmouth-Dover-Rochester, NH-ME	150	173
NON METRO STATE: MARYLAND	135	135
MSA: Baltimore, MD	219	219
MSA: Cumberland, MD-WV	136	136
MSA: Hagerstown, MD	208	208
MSA: Washington, DC-MD-VA	209	209
PMSA: Wilmington, DE-NJ-MD	153	153
EXCEPTION COUNTY: ST MARYS	248	248
NON METRO STATE: MASSACHUSETTS	183	183
PMSA: Boston, MA	176	190
PMSA: Brockton, MA	176	176
PMSA: Fall River, MA-RI	114	114
MSA: Fitchburg-Leominster, MA	136	136
PMSA: Lawrence-Haverhill, MA-NH	167	178
PMSA: Lowell, MA-NH	167	178
MSA: New Bedford, MA	157	157
PMSA: Pawtucket-Woonsocket-Attleboro, RI-MA	156	156
MSA: Pittsfield, MA	171	171
PMSA: Salem-Gloucester, MA	176	190
MSA: Springfield, MA	134	134
MSA: Worcester, MA	117	117
NON METRO STATE: MICHIGAN	128	142
PMSA: Ann Arbor, MI	187	202
MSA: Battle Creek, MI	110	129
MSA: Benton Harbor, MI	129	143

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Detroit, MI	181	196
MSA: Flint, MI	157	157
MSA: Grand Rapids, MI	118	127
MSA: Jackson, MI	129	129
MSA: Kalamazoo, MI	135	139
MSA: Lansing-East Lansing, MI	151	176
MSA: Muskegon, MI	118	120
MSA: Saginaw-Bay City-Midland, MI	137	137
EXCEPTION COUNTY: BARRY	104	122
EXCEPTION COUNTY: IONIA	128	142
EXCEPTION COUNTY: OCEANA	111	113
EXCEPTION COUNTY: SHIAWASSEE	149	149
EXCEPTION COUNTY: VAN BUREN	128	132
NON METRO STATE: MINNESOTA	91	91
MSA: Duluth, MN-WI	94	106
MSA: Fargo-Moorhead, ND-MN	146	165
MSA: Minneapolis-St. Paul, MN-WI	219	233
MSA: Rochester, MN	133	133
MSA: St. Cloud, MN	117	117
EXCEPTION COUNTY: POLK	140	158
NON METRO STATE: MISSISSIPPI	85	101
MSA: Biloxi-Gulfport, MS	100	118
MSA: Jackson, MS	108	133
MSA: Memphis, TN-AR-MS	100	100
MSA: Pascagoula, MS	85	100
EXCEPTION COUNTY: STONE	85	101
NON METRO STATE: MISSOURI	71	78
MSA: Columbia, MO	103	111
MSA: Joplin, MO	72	79
MSA: Kansas City, MO-KS	103	126
MSA: St. Joseph, MO	106	115
MSA: St. Louis, MO-IL	108	125
MSA: Springfield, MO	74	80
EXCEPTION COUNTY: ANDREW	99	106
NON METRO STATE: MONTANA	N/A	N/A
MSA: Billings, MT	192	214
MSA: Great Falls, MT	162	182
EXCEPTION COUNTY: BEAVERHEAD	154	172

092492

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: BIG HORN	154	172
EXCEPTION COUNTY: BLAINE	109	128
EXCEPTION COUNTY: BROADWATER	154	172
EXCEPTION COUNTY: CARBON	154	172
EXCEPTION COUNTY: CARTER	109	128
EXCEPTION COUNTY: CHOUTEAU	109	128
EXCEPTION COUNTY: CUSTER	154	172
EXCEPTION COUNTY: DANIELS	109	128
EXCEPTION COUNTY: DAWSON	154	172
EXCEPTION COUNTY: DEER LODGE	154	172
EXCEPTION COUNTY: FALLON	109	128
EXCEPTION COUNTY: FERGUS	109	128
EXCEPTION COUNTY: FLATHEAD	154	172
EXCEPTION COUNTY: GALLATIN	154	172
EXCEPTION COUNTY: GARFIELD	109	128
EXCEPTION COUNTY: GLACIER	109	128
EXCEPTION COUNTY: GOLDEN VALLE	109	128
EXCEPTION COUNTY: GRANITE	154	172
EXCEPTION COUNTY: HILL	109	128
EXCEPTION COUNTY: JEFFERSON	154	172
EXCEPTION COUNTY: JUDITH BASIN	109	128
EXCEPTION COUNTY: LAKE	154	172
EXCEPTION COUNTY: LEWIS+ CLARK	154	172
EXCEPTION COUNTY: LIBERTY	109	128
EXCEPTION COUNTY: LINCOLN	154	172
EXCEPTION COUNTY: MCCONE	109	128
EXCEPTION COUNTY: MADISON	154	172
EXCEPTION COUNTY: MEAGHER	154	172
EXCEPTION COUNTY: MINERAL	154	172
EXCEPTION COUNTY: MISSOULA	154	172
EXCEPTION COUNTY: MUSSELSHELL	154	172
EXCEPTION COUNTY: PARK	109	128
EXCEPTION COUNTY: PETROLEUM	109	128
EXCEPTION COUNTY: PHILLIPS	109	128
EXCEPTION COUNTY: PONDERA	154	172
EXCEPTION COUNTY: POWDER RIVER	154	172
EXCEPTION COUNTY: POWELL	109	128
EXCEPTION COUNTY: PRAIRIE	154	172
EXCEPTION COUNTY: RAVALLI	109	128
EXCEPTION COUNTY: RICHLAND	109	128
EXCEPTION COUNTY: ROOSEVELT	154	172
EXCEPTION COUNTY: ROSEBUD	154	172
EXCEPTION COUNTY: SANDERS	109	128
EXCEPTION COUNTY: SHERIDAN	154	172
EXCEPTION COUNTY: SILVER BOW	109	128
EXCEPTION COUNTY: STILLWATER		

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: SWEET GRASS	109	128
EXCEPTION COUNTY: TETON	109	128
EXCEPTION COUNTY: TOOLE	109	128
EXCEPTION COUNTY: TREASURE	154	172
EXCEPTION COUNTY: VALLEY	109	128
EXCEPTION COUNTY: WHEATLAND	109	128
EXCEPTION COUNTY: WIBAUX	109	128
EXCEPTION COUNTY: YL-ST-NT-PK	154	172
NON METRO STATE: NEBRASKA	92	113
MSA: Lincoln, NE	128	135
MSA: Omaha, NE-IA	111	130
MSA: Sioux City, IA-NE	115	115
NON METRO STATE: NEVADA	121	139
MSA: Las Vegas, NV	256	285
MSA: Reno, NV	256	285
NON METRO STATE: NEW HAMPSHIRE	134	149
PMSA: Lawrence-Haverhill, MA-NH	167	178
PMSA: Lowell, MA-NH	167	178
MSA: Manchester, NH	154	170
PMSA: Nashua, NH	190	190
MSA: Portsmouth-Dover-Rochester, NH-ME	150	173
NON METRO STATE: NEW JERSEY	142	142
MSA: Allentown-Bethlehem-Easton, PA-NJ	137	137
MSA: Atlantic City, NJ	216	216
PMSA: Bergen-Passaic, NJ	297	299
PMSA: Jersey City, NJ	289	289
PMSA: Middlesex-Somerset-Hunterdon, NJ	339	339
PMSA: Monmouth-Ocean, NJ	259	314
PMSA: Newark, NJ	279	289
PMSA: Philadelphia, PA-NJ	239	239
PMSA: Trenton, NJ	210	210
PMSA: Vineland-Millville-Bridgeton, NJ	185	185
PMSA: Wilmington, DE-NJ-MD	151	151
NON METRO STATE: NEW MEXICO	111	129
MSA: Las Cruces, NM	113	131
MSA: Albuquerque, NM	127	148

092492

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Santa Fe, NM	113	131
EXCEPTION COUNTY: SANDOVAL	119	135
NON METRO STATE: NEW YORK	166	166
MSA: Albany-Schenectady-Troy, NY	204	204
MSA: Binghamton, NY	122	122
PMSA: Buffalo, NY	148	148
MSA: Elmira, NY	130	130
MSA: Glens Falls, NY	164	164
MSA: Jamestown-Dunkirk, NY	165	165
PMSA: Nassau-Suffolk, NY	227	294
PMSA: New York, NY	236	236
PMSA: NiagaraFalls, NY	141	141
PMSA: Orange County, NY	163	163
MSA: Poughkeepsie, NY	311	311
MSA: Rochester, NY	186	186
MSA: Syracuse, NY	150	150
MSA: Utica-Rome, NY	152	152
EXCEPTION COUNTY: WESTCHESTER	279	279
NON METRO STATE: NORTH CAROLINA	59	73
MSA: Asheville, NC	85	100
MSA: Burlington, NC	85	100
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	85	100
MSA: Fayetteville, NC	85	100
MSA: Greensboro--Winston-Salem--High Point, NC	85	100
MSA: Hickory-Morganton, NC	59	73
MSA: Jacksonville, NC	59	73
MSA: Raleigh-Durham, NC	85	100
MSA: Wilmington, NC	85	100
EXCEPTION COUNTY: BRUNSWICK	64	76
EXCEPTION COUNTY: CURRITUCK	101	101
EXCEPTION COUNTY: HAYWOOD	76	76
EXCEPTION COUNTY: MADISON	64	76
NON METRO STATE: NORTH DAKOTA	117	135
MSA: Bismarck, ND	167	184
MSA: Fargo-Moorhead, ND-MN	147	166
MSA: Grand Forks, ND	127	157
NON METRO STATE: OHIO	83	83
PMSA: Akron, OH	124	124

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Canton, OH	90	90
PMSA: Cincinnati, OH-KY-IN	130	136
PMSA: Cleveland, OH	132	132
MSA: Columbus, OH	118	137
MSA: Dayton-Springfield, OH	90	90
PMSA: Hamilton-Middletown, OH	105	108
MSA: Huntington-Ashland, WV-KY-OH	98	98
MSA: Lima, OH	118	118
PMSA: Lorain-Elyria, OH	141	141
MSA: Mansfield, OH	110	110
MSA: Parkersburg-Marietta, WV-OH	98	98
MSA: Steubenville-Weirton, OH-WV	88	88
MSA: Toledo, OH	148	201
MSA: Wheeling, WV-OH	90	90
MSA: Youngstown-Warren, OH	110	110
EXCEPTION COUNTY: CHAMPAIGN	83	83
EXCEPTION COUNTY: OTTAWA	100	134
EXCEPTION COUNTY: PREBLE	83	83
EXCEPTION COUNTY: PUTNAM	83	83
EXCEPTION COUNTY: VAN WERT	83	83
NON METRO STATE: OKLAHOMA	81	88
MSA: Enid, OK	83	89
MSA: Fort Smith, AR-OK	37	40
MSA: Lawton, OK	84	92
MSA: Oklahoma City, OK	86	95
MSA: Tulsa, OK	92	100
EXCEPTION COUNTY: LE FLORE	35	38
EXCEPTION COUNTY: MAYES	81	88
NON METRO STATE: OREGON	165	174
MSA: Eugene-Springfield, OR	194	201
MSA: Medford, OR	165	175
PMSA: Portland, OR	222	246
MSA: Salem, OR	194	201
NON METRO STATE: PENNSYLVANIA	98	98
MSA: Allentown-Bethlehem-Easton, PA-NJ	139	139
MSA: Altoona, PA	128	128
PMSA: Beaver County, PA	98	98
MSA: Erie, PA	128	128
MSA: Harrisburg-Lebanon-Carlisle, PA	146	146
MSA: Johnstown, PA	128	128

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Lancaster, PA	132	132
PMSA: Philadelphia, PA-NJ	241	241
PMSA: Pittsburgh, PA	102	102
MSA: Reading, PA	132	132
MSA: Scranton--Wilkes-Barre, PA	117	117
MSA: Sharon, PA	98	98
MSA: State College, PA	98	98
MSA: Williamsport, PA	98	98
MSA: York, PA	132	132
EXCEPTION COUNTY: MONROE	117	117
EXCEPTION COUNTY: SUSQUEHANNA	98	98
NON METRO STATE: RHODE ISLAND	149	149
PMSA: Fall River, MA-RI	114	114
MSA: New London-Norwich, CT-RI	157	157
PMSA: Pawtucket-Woonsocket-Attleboro, RI-MA	157	157
PMSA: Providence, RI	157	157
NON METRO STATE: SOUTH CAROLINA	66	66
MSA: Anderson, SC	66	66
MSA: Augusta, GA-SC	89	92
MSA: Charleston, SC	85	85
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	85	100
MSA: Columbia, SC	73	85
MSA: Florence, SC	66	66
MSA: Greenville-Spartanburg, SC	73	73
NON METRO STATE: SOUTH DAKOTA	100	117
MSA: Rapid City, SD	100	117
MSA: Sioux Falls, SD	141	158
NON METRO STATE: TENNESSEE	66	66
MSA: Chattanooga, TN-GA	58	85
MSA: Clarksville-Hopkinsville, TN-KY	85	92
MSA: Jackson, TN	66	66
MSA: Johnson City-Kingsport-Bristol, TN-VA	92	92
MSA: Knoxville, TN	73	73
MSA: Memphis, TN-AR-MS	100	100
MSA: Nashville, TN	100	118
NON METRO STATE: TEXAS	70	88

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: TEXAS	70	88
MSA: Abilene, TX	62	69
MSA: Amarillo, TX	116	122
MSA: Austin, TX	106	124
MSA: Beaumont-Port Arthur, TX	109	124
PMSA: Brazoria, TX	116	135
MSA: Brownsville-Harlingen, TX	85	100
MSA: Bryan-College Station, TX	106	118
MSA: Corpus Christi, TX	89	118
PMSA: Dallas, TX	83	107
MSA: El Paso, TX	120	136
PMSA: Fort Worth-Arlington, TX	83	107
PMSA: Galveston-Texas City, TX	112	125
PMSA: Houston, TX	119	139
MSA: Killeen-Temple, TX	109	118
MSA: Laredo, TX	74	92
MSA: Longview-Marshall, TX	100	115
MSA: Lubbock, TX	115	118
MSA: Mc Allen-Edinburg-Mission, TX	98	118
MSA: Midland, TX	118	124
MSA: Odessa, TX	118	124
MSA: San Angelo, TX	100	109
MSA: San Antonio, TX	85	100
MSA: Sherman-Denison, TX	92	109
MSA: Texarkana, TX-Texarkana, AR	118	133
MSA: Tyler, TX	92	97
MSA: Victoria, TX	72	89
MSA: Waco, TX	95	109
MSA: Wichita Falls, TX	66	74
EXCEPTION COUNTY: CALLAHAN	60	66
EXCEPTION COUNTY: CLAY	64	70
EXCEPTION COUNTY: HOOD	70	88
EXCEPTION COUNTY: JONES	60	66
EXCEPTION COUNTY: WISE	70	88
NON METRO STATE: UTAH	N/A	N/A
MSA: Provo-Orem, UT	153	172
MSA: Salt Lake City-Ogden, UT	172	192
EXCEPTION COUNTY: BEAVER	109	128
EXCEPTION COUNTY: BOX ELDER	109	128
EXCEPTION COUNTY: CACHE	109	128
EXCEPTION COUNTY: CARBON	154	172
EXCEPTION COUNTY: DAGGETT	109	128
EXCEPTION COUNTY: DUCHESNE	109	128

092492

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: EMERY	154	172
EXCEPTION COUNTY: GARFIELD	109	128
EXCEPTION COUNTY: GRAND	154	172
EXCEPTION COUNTY: IRON	109	128
EXCEPTION COUNTY: JUAB	109	128
EXCEPTION COUNTY: KANE	109	128
EXCEPTION COUNTY: MILLARD	109	128
EXCEPTION COUNTY: MORGAN	109	128
EXCEPTION COUNTY: PIUTE	109	128
EXCEPTION COUNTY: RICH	109	128
EXCEPTION COUNTY: SAN JUAN	109	128
EXCEPTION COUNTY: SANPETE	109	128
EXCEPTION COUNTY: SEVIER	109	128
EXCEPTION COUNTY: SUMMIT	108	120
EXCEPTION COUNTY: TOOELE	154	172
EXCEPTION COUNTY: UINTAH	109	128
EXCEPTION COUNTY: WASATCH	109	128
EXCEPTION COUNTY: WASHINGTON	109	128
EXCEPTION COUNTY: WAYNE		
NON METRO STATE: VERMONT	139	161
MSA: Burlington, VT	170	194
EXCEPTION COUNTY: CHITTENDEN	169	196
EXCEPTION COUNTY: FRANKLIN	144	166
EXCEPTION COUNTY: GRAND ISLE	158	181
EXCEPTION COUNTY: ORANGE	156	180
EXCEPTION COUNTY: WASHINGTON	172	199
EXCEPTION COUNTY: WINDHAM	207	239
EXCEPTION COUNTY: WINDSOR	223	255
NON METRO STATE: VIRGINIA	96	96
MSA: Charlottesville, VA	96	96
MSA: Danville, VA	96	96
MSA: Johnson City-Kingsport-Bristol, TN-VA	93	93
MSA: Lynchburg, VA	86	86
MSA: Norfolk-Virginia Beach-Newport News, VA	137	137
MSA: Richmond-Petersburg, VA	135	135
MSA: Roanoke, VA	93	93
MSA: Washington, DC-MD-VA	209	209
EXCEPTION COUNTY: APPOMATTOX	83	83
EXCEPTION COUNTY: CRAIG	90	90
NON METRO STATE: WASHINGTON	142	165

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Bellingham, WA	142	184
MSA: Bremerton, WA	142	184
MSA: Olympia, WA	142	184
MSA: Richland-Kennewick-Pasco, WA	194	194
PMSA: Seattle, WA	188	266
MSA: Spokane, WA	156	175
PMSA: Tacoma, WA	168	199
PMSA: Vancouver, WA	207	227
MSA: Yakima, WA	156	164
NON METRO STATE: WEST VIRGINIA	93	93
MSA: Charleston, WV	101	101
MSA: Cumberland, MD-WV	136	136
MSA: Huntington-Ashland, WV-KY-OH	98	98
MSA: Parkersburg-Marietta, WV-OH	98	98
MSA: Steubenville-Weirton, OH-WV	88	88
MSA: Wheeling, WV-OH	90	90
EXCEPTION COUNTY: BERKELEY	133	133
EXCEPTION COUNTY: JEFFERSON	133	133
EXCEPTION COUNTY: MORGAN	133	133
EXCEPTION COUNTY: WIRT	90	90
NON METRO STATE: WISCONSIN	101	109
MSA: Appleton-Oshkosh-Neenah, WI	129	137
MSA: Duluth, MN-WI	94	106
MSA: Eau Claire, WI	120	130
MSA: Green Bay, WI	126	134
MSA: Janesville-Beloit, WI	126	134
PMSA: Kenosha, WI	143	155
MSA: La Crosse, WI	113	124
MSA: Madison, WI	189	200
PMSA: Milwaukee, WI	149	160
MSA: Minneapolis-St. Paul, MN-WI	219	233
PMSA: Racine, WI	141	148
MSA: Sheboygan, WI	102	110
MSA: Wausau, WI	102	110
NON METRO STATE: WYOMING	N/A	N/A
MSA: Casper, WY	258	279
MSA: Cheyenne, WY	153	184
EXCEPTION COUNTY: ALBANY	154	185
EXCEPTION COUNTY: BIG HORN	154	185
EXCEPTION COUNTY: CAMPBELL	258	280

092492

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: CARBON	258	280
EXCEPTION COUNTY: CONVERSE	258	280
EXCEPTION COUNTY: CROOK	154	185
EXCEPTION COUNTY: FREMONT	258	280
EXCEPTION COUNTY: GOSHEN	154	185
EXCEPTION COUNTY: HOT SPRINGS	154	185
EXCEPTION COUNTY: JOHNSON	154	185
EXCEPTION COUNTY: LARAMIE	154	185
EXCEPTION COUNTY: LINCOLN	154	185
EXCEPTION COUNTY: PARK	154	185
EXCEPTION COUNTY: PLATTE	258	280
EXCEPTION COUNTY: SHERIDAN	154	185
EXCEPTION COUNTY: SUBLETTE	258	280
EXCEPTION COUNTY: SWEETWATER	154	185
EXCEPTION COUNTY: TETON	154	185
EXCEPTION COUNTY: UINTA	154	185
EXCEPTION COUNTY: WASHAKIE	154	185
EXCEPTION COUNTY: WESTON		

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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federal register

Thursday
October 1, 1992

Part VI

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Update of Ambulatory Surgical Center Payment Rates; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-760-NC]

RIN 0938-

Medicare Program; Update of Ambulatory Surgical Center Payment Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice implements section 1833(i)(2)(A) of the Social Security Act, which requires that the payment rates for ambulatory surgical center (ASC) services be reviewed and updated annually, and responds to the public comments we received concerning the ASC payment rate update notice with comment published on December 31, 1991 (56 FR 67666), except for those concerning payment amounts for lithotripsy, which will be addressed in another **Federal Register** document.

DATES: *Effective date*: The payment rates contained in this notice are effective for services furnished on or after October 1, 1992.

Comments date: Comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on November 30, 1992.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-760-NC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments submitted by facsimile (FAX) transmission. In commenting, please refer to file code BPD-760-NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

FOR FURTHER INFORMATION CONTACT: Joan Sanow, (410) 966-5723.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare Supplementary Medical Insurance program (Part B) include services furnished in connection with those surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by the Secretary and are performed on an inpatient basis in a hospital but that also can be performed safely on an ambulatory basis in an ambulatory surgical center (ASC) or in a hospital outpatient department. To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and 42 CFR 416.25.

Generally, there are two elements in the total charge for a surgical procedure—a charge for the physician's professional services for performing the procedure and a charge for the facility's services (for example, use of an operating room). Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate for facility services associated with covered surgical procedures. ASC facility services are subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, participating ASCs are paid 80 percent of the prospectively determined rate adjusted for regional wage variations. This rate is intended to represent HCFA's estimate of a fair payment that takes into account the cost incurred by ASCs generally in providing the services that are furnished in connection with performing the procedure. Currently, this rate is a standard overhead amount that does not include physician fees and other medical items and services (for example, durable medical equipment) for which separate payment may be authorized under other provisions of the Medicare program.

We have grouped procedures into nine groups for purposes of ASC payment rates. The ASC facility payment for all procedures in each group is established at a single rate adjusted for geographic variation. The rate is a standard overhead amount that covers the cost of services such as nursing, supplies, equipment, and use of the facility. (For an indepth discussion of the methodology and rate setting procedures, we refer the reader to a document we published on February 8, 1990 on these subjects entitled "Updates of Ambulatory Surgical Center Payment Rates" (55 FR 4577).)

Statutory Provisions

- Under section 1833(i)(3)(A) of the Act, the aggregate payment to hospital outpatient departments for covered ASC procedures is equal to 80 percent of the lesser of the following two amounts:
  - + The amount paid for the same services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges); or
  - + The amount determined under section 1833(i)(3)(B)(i) of the Act based on a blend of the lower of the hospital's reasonable costs or customary charges and the amount that would be paid to a freestanding ASC in the same area for the same procedures.
- Under section 1833(i)(3)(B)(i) of the Act, the blend amount for cost reporting periods is the sum of the hospital cost proportion and the ASC cost proportion.
- Under section 1833(i)(3)(B)(ii) of the Act, the hospital cost proportion and the ASC cost proportion for portions of cost reporting periods beginning on or after January 1, 1991 are 42 and 58 percent, respectively.
- Section 1833(i)(2)(A) of the Act requires the Secretary to review and update standard overhead amounts annually.
- Section 1833(i)(2)(A)(ii) of the Act requires that the ASC facility payment rate result in substantially lower Medicare expenditure than would have been paid in the same procedure was performed on an inpatient basis in a hospital.
- Section 1833(i)(2)(A)(iii) of the Act requires that payment for insertion of an intraocular lens (IOL) include payment that is reasonable and related to the cost of acquiring the class of lens involved.
- Section 4151(c)(3) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (Pub. L. 101-508) froze the allowance for IOLs furnished by an ASC at $200 through December 31, 1992.

Implementation

Since September 7, 1982, when we first implemented the ASC benefit, we have expanded the number of covered procedures from 54 to nearly 2400 as of December 31, 1991 and classified the procedures into nine groups. We started updating rates in 1987 on an annual basis; the latest up-date was effective for services furnished on or after December 31, 1991. In the latest update notice, published December 31, 1991, in addition to adding nearly 900 services to be subject to the ASC payment rates, we established that the annual ASC update

would be concurrent with the annual update of the hospital inpatient wage index (56 FR 67666).

On March 12, 1992, the United States District Court for the District of Columbia issued an order that stayed Medicare Part B payment for extracorporeal shock wave lithotripsy (ESWL) as an ASC service until the Secretary publishes all material information relevant to the setting of the ESWL rate, receives comments, and publishes a subsequent final notice.

II. Provision of the Notice

The purpose of this notice is to (a) state the new rates for the ASC services for which there are ASC payment rates; (b) explain the basis of the new rates; (c) discuss the allowance for IOLs furnished by ASCs and (d) discuss the new survey we are conducting.

a. New Rates

As of October 1, 1992, the ASC facility group rates are:

Group 1—$295
Group 2—$395
Group 3—$453
Group 4—$558
Group 5—$637
Group 6—$800 ($600 + $200)
Group 7—$883
Group 8—$930 ($730 + 200)

(There is no rate for Group 9 as it is only for ESWL services and the court stay prohibits us from paying for these services under the ASC benefit at this time. ESWL payment rates are the subject of a separate **Federal Register** notice.)

b. Basis of Rates

We have based the rates on (1) the CPI–U (Consumer Price Index—All Urban Consumers) projected rate of change and (2) data from a survey conducted in 1986.

1. As in 1987, 1989, 1990 and 1991, the rate of change is based on the consumer price index for all urban consumers, which is a generalized index that reflects prices paid for a representative market basket of goods and services. The CPI–U is based on forecasts by Data Resources, Inc.

For the 12-month period beginning April 1, 1992 (the midpoint of the rate period that began October 1, 1991) and ending March 31, 1993 (the midpoint of the rate period that begins October 1, 1992) the projected rate of change is a 3.5 percent increase.

We will use the hospital inpatient wage index that goes into effect October 1, 1992 to calculate payments to individual ASCs. Appended as Addendum A are the wage index for urban areas, the wage index for rural areas and wage index values for certain counties that are deemed urban and whose wage index is computed as a separate urban area.

Below are two examples of how the applicable wage index value is applied to the portion of the ASC payments rate that is attributable to labor costs (34.45 percent) in order to standardize payment amounts for variation across geographical areas.

Example 1

The following is an example of how the payment is determined for a procedure in Group 4 ($558) for an ASC located in Kalamazoo, Michigan. The appropriate hospital wage index value is 1.1709. The labor-related portion is 34.45 percent and the nonlabor-related portion is 65.55 percent.

Wage Adjusted Rate
= [($558 × .3445) × 1.1709] + ($558 × .6555)
= ($192.23 × 1.1709) + $365.77
= $225.08 + $365.77
= $590.85

The steps set forth in this example are used for calculating payment rates for Groups 1 through 5 and Group 7. These are the groups whose payment rates do not include an allowance for IOLs.

Example 2

The following is an example of how payment is determined for two procedures in Group 8 ($930) performed in an ASC located in Kalamazoo, Michigan. The steps set forth in this example are also used in calculating the payment amount for the procedures in Group 6.

Since the IOL allowance is not subject to the labor adjustment, the $200 allowance must be subtracted from the composite payment rate ($930) before adjusting for labor variation.

Wage Adjusted Rate
= [{($930 − 200) × .3455) × 1.1709] + [(930 − $200) × .6555]
= [($730 × .3445) × 1.1709] + ($730 × .6555)
= ($251.49 × 1.1709) + $478.52
= $294.47 + $478.52
= $772.99

Composite Adjusted Rate
= $772.99 + $200
= $972.99

c. IOL Rates

The allowance for IOLs furnished in a Medicare participating ASC is part of the ASC facility payment rate for services provided in conjunction with four surgical IOL insertion procedures:

- CPT codes 66985 and 66986 in payment group 6; and
- CPT codes 66983 and 66984 in payment group 8.

Groups 6 and 8 include only procedures related to the insertion of IOLs. We are increasing the rate of payment for the services involving the insertion of the lens, but the allowance for the lens itself will remain $200.

We set the IOL allowance at $200 in the final **Federal Register** notice we published on February 8, 1990 (55 FR 4526) that implemented a new ASC payment methodology and paid for IOLs furnished by ASCs as a facility service effective March 12, 1990. We based the amount of the allowance on the findings of an Office of Inspector General report issued in March 1988 entitled "Medicare Certified Ambulatory Surgical Centers, Cataract Surgery Costs and Related Issues."

Congress implicitly ratified the $200 allowance that we established in the February 8, 1990 **Federal Register** by freezing at $200 the amount of payment for an IOL furnished by an ASC effective for the period from November 5, 1990 through December 31, 1992. (See section 4151(c)(3) of OBRA 90).

Since implementation of the IOL payment freeze, preliminary evidence supporting a reduction rather than an increase in the current IOL rate has come to our attention. This information suggests that high quality IOLs can be and are being acquired for considerably less than $200, and in at least one case, below $100. We are collecting additional data, however, before considering any adjustments to IOL rates. Any changes in the IOL allowance will be announced in the **Federal Register** in a notice with public comment period.

d. New Survey

We used the cost, charge and utilization data from a survey we conducted in 1986 to establish the methodology and new rate structure that we implemented March 12, 1990. We mailed the survey to nearly 500 Medicare participating facilities and we audited 97 randomly selected facilities to obtain the data.

We have started a new survey to gather more current cost data. We revised the survey form to enhance and refine the quality of data received from ASCs. We sent survey forms to all Medicare certified ASCs (nearly 1400) in July 1992. A representative sample of randomly selected ASCs will subsequently be surveyed to collect cost data on specific high volume ASC procedures. We will announce any rate changes or rate setting methodology changes based on the survey results in the **Federal Register** through notice and comment procedures.

III. Comments and Responses

On December 31, 1991, we published a notice with comment period to implement ASC rate changes and to update the list of ASC procedures (56 FR 67666). We are responding here to the comments we received concerning that notice that are relevant to the payment rate update.

Comment: One hospital association wrote that HCFA had violated the statute by failing to update ASC rates since July 1, 1990, 18 months prior to the December 31, 1991 update.

Response: We do not agree. The Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) amended the Act to require an annual rather than a periodic update of ASC payment rates. Accordingly, every year since the 1987 statutory deadline for instituting an annual update, HCFA has submitted an ASC update for publication in the Federal Register. The rates announced in this notice incorporate the following previous annual updates:

1986: A new ratesetting methodology including an increase from four to eight payment groups was formulated to reflect the findings of the 1986 Ambulatory Surgical Center Payment Rate Survey (Form HCFA-452).

1988: The eight payment group amounts established in 1988 were increased by 4.86 percent.

1990: The 1988 payment group amounts were increased by 4.21 percent.

1991: The 1990 payment group amounts were increased by 5.1 percent.

We intend to continue to publish updates annually, as required by the last sentence of section 1833(i)(2)(A) of the Act. However, that provision does not preclude us from changing the date of the annual update when justified by program requirements. The October 1 date coincides with the effective date of the annual wage index changes and other PPS changes and thus streamlines the implementation and administration of the provisions for all concerned.

Comment: One hospital association protested that the 1991 increase of 5.1 percent in the ASC facility payment rates was not sufficient to offset the losses resulting from a three month delay in implementation. The commenter wrote that HCFA should either make an additional allowance to offset the delay or make the new rates retroactive to October 1, 1991.

Response: The CPI-U adjustment for inflation that we used is determined on the basis of a four-quarter moving average. Therefore, the quarterly percent change for the period October 1 through December 31, 1991 was taken into account in the overall percent adjustment for an extended rate period that began January 1, 1991 and ended March 31, 1992.

Comment: One hospital association wrote that HCFA should use an index such as the Hospital Market Basket Index instead of the CPI-U to update ASC rates because the CPI-U does not accurately reflect the rate of inflation for items such as labor, medical and administrative supplies, utilities, and professional fees purchased by health care facilities.

Response: We believe that the CPI-U is appropriate for updating ASC rates because it is a more generalized measure of inflation. Although there are certain similarities in surgical costs incurred by ASCs and hospitals, the differences in the overall mix of goods and services outweigh the similarities, and applying the Hospital Market Basket Index would distort ASC payment rates.

Comment: One hospital association encouraged HCFA to undertake as quickly as feasible the new ASC survey and to reevaluate its methodology for analyzing the survey data and establishing the ASC rate structure.

Response: The first part of a new ASC survey was sent to all Medicare certified ASCs in July 1992. It collects charge and utilization data for procedure codes on the list of Medicare covered ASC procedures. The second part of this survey concentrates on costs incurred by ASCs generally in performing selected high volume ASC procedures. We expect 1994 ASC rates to reflect data collected from the new survey. Changes in the ratesetting methodology will be published in the Federal Register in accordance with notice and comment procedures.

Comment: One hospital association encouraged HCFA to continue its collection of data on intraocular lenses (IOLs) and to avoid what it believes to be the flaws and pitfalls in earlier studies.

Response: By the conclusion of the 1992 ASC survey, we expect to have compiled a substantial body of audited data on the actual costs incurred by ASCs in acquiring IOLs. Any subsequent adjustments in the IOL allowance will be published in the Federal Register following the customary notice and comment procedures.

Comment: A hospital association commented that HCFA did not allow adequate lead time for the medical community to evaluate and incorporate the changes resulting from the December 31, 1991 notice, noting that the changes require massive computer systems changes and training of hospital personnel.

Response: Ordinarily, a delay of 30 days in the effective date for notices is provided. However, we waived the 30 day delay because we believed that to further postpone implementation of the ASC payment rates would be contrary to the public interest.

Comment: One hospital association commented that reclassifications granted by the Medicare Geographic Classification Review Board (MGCRB) should be applied to all aspects of hospital payment, and that using different wage indices for different programs creates additional administrative burden on the hospital and an unjustified payment inequity.

Response: Section 1833(i)(3)(A) of the Act stipulates that the aggregate amount for outpatient hospital facility services or rural primary care hospital services furnished in connection with ASC covered procedures be based on, in part, the amount that would be paid if the procedures had been provided in an ambulatory surgical center in the same area. Because ASCs are entities that are distinct and separate from hospitals, there is no mechanism to uniformly match the wage index value of a reclassified hospital with an individual ASC that is located in the same geographic area. Therefore, for the purpose of calculating the ASC proportion defined in section 1833(i)(3)(A) of the Act, a hospital must use the same wage index value that ASCs in the area use even if that hospital uses a reclassified wage index value to determine payments for other services.

Comment: One hospital association asked why we allow hospitals in certain counties that are deemed urban to utilize the reclassified wage value whereas hospitals in other areas cannot use the reclassified wage index value.

Response: The counties listed in the table entitled "Wage Index Values for Counties That Are Deemed Urban—Computed as Separate Urban Areas" published in the December 31, 1991 Federal Register were affected in 1989 by implementation of section 1886(d)(8) of the Act as amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). We applied these exceptions to the application of the Statewide rural wage index to the ASC rate updates of March 12, 1990 and July 1, 1990. We have continued to treat these counties as exceptions in the December 31, 1991 update notice and the current notice in order to be consistent with the precedent established by earlier ASC updates. However, when we re-base the ASC payment rates utilizing the data currently being gathered by survey, we intend to review the method by which the hospital PPS wage index is applied in determining payments to individual ASCs. In the meantime, we emphasize that the values listed in the December 31, 1991 Federal Register table, "Wage Index for Counties That Are Deemed Urban—Computed as Separate Areas," are intended to apply solely to the calculation of facility payment amounts for ASCs located in

the designated counties. Hospitals located in these counties will use the values in this table only to calculate the ASC proportion as defined in section 1833(i)(3)(A)(ii)(II) of the Act.

Comment: One commenter felt that the payment group assignments for vitrectomy procedures CPT codes 67036, 67038, 67039, and 67040 were inadequate and did not comply with the Medicare law and regulations requiring reasonable payment for ASC facility resource costs. This commenter's position was that the data upon which HCFA based payment rates for vitrectomy codes was flawed and that these codes should be assigned to payment group 9.

Response: Similar comments were submitted during the comment period for our proposed notice published in the Federal Register on December 7, 1990 (55 FR 50590); we responded to those comments in the document we published on December 31, 1991 (56 FR 67666). We have nothing to add at this time, but we intend to review payment group classification for all Medicare approved ASC procedures upon completion of the 1992 ASC payment rate survey.

Comment: One commenter asked what the payment rate was for a cataract procedure when an intraocular lens (IOL) is not inserted at the time the procedure is performed, and whether the $200 IOL allowance is paid when the lens is inserted at a later time, subsequent to the cataract removal.

Response: Cataract removal procedures on the list of Medicare covered ASC procedures that do not include insertion of an intraocular lens (IOL) are CPT codes 66830, 66840, 66850, 66852, 66920, 66930, and 66940. The $200 IOL allowance is not included in payment for any of these codes.

The two CPT codes on the list of Medicare covered ASC procedures that involve separate insertion of an IOL, subsequent to cataract extraction, are CPT codes 66985 and 66986. The $200 IOL allowance is included in the total payment amount for each of these two procedures.

Comment: One commenter asked us to define what characterizes an ASC as specializing in IOL insertions.

Response: An ASC, either single specialty or multiple specialty, in which at least half of the procedures performed are IOL insertions, is considered to be an ASC that specializes in IOL insertions.

Comment: One commenter asked us to define what constitutes a multi-specialty ASC.

Response: We consider an ASC that furnishes services involving more than one surgical specialty (e.g., urology, orthopedic, and general surgical procedures) to be a multi-specialty ASC.

We also received several comments on the covered procedures list we published December 31, 1991. We limited our solicitation of comments solely to deletions from the list that were not previously proposed as deletions. None of the comments were directed at these deletions so we are not responding to them here. Comments received on ESWL services will be addressed in a forthcoming Federal Register document on that subject.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice such as this that results in effects meeting one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Actuarial estimates of the cost of updating the ASC rates by 3.5 percent are as follows:

PROJECTED MEDICARE COSTS

[In millions]

FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
$20	$30	$40	$50	$60

Since this notice will not meet the $100 million criterion, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a general notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all ASCs and hospitals are considered to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

It is possible that small rural hospitals may believe the updated rates are inadequate compared to the costs likely to be incurred in performing ASC procedures. While the updated ASC rates do not fully recognize actual cost increases to hospitals, the payment methodology applicable to hospitals for furnishing ASC procedures is based on a blended amount which is determined based on 42 percent of actual hospital costs and 58 percent of ASC payment rates. For the portion of the blended payment amount that is based on a hospital's actual costs, cost increases resulting from inflation are fully recognized.

Under section 1833(i)(3)(A) of the Act, Congress mandated the method of determining payments to hospitals for ASC-approved procedures performed in an outpatient setting. Congress believed some comparability should exist in the amount of payment to hospitals and ASCs for similar procedures. However, Congress recognized that hospitals have certain overhead costs that ASCs do not and allowed for a blending of the payment. Finally, the total impact of these rates would also depend upon the number of Medicare beneficiaries a hospital services and the case-mix variation. For these reasons, we have determined, and the Secretary certifies, that this notice will not have a significant effect on a substantial number of small rural hospitals. Therefore, we have not prepared a small rural hospital impact analysis.

Although we believe an impact analysis on small rural hospitals is not required, this notice could have a significant impact on a substantial number of ASCs. Therefore, we believe that a regulatory flexibility analysis is required for ASCs. In addition, we are voluntarily providing a brief general discussion of the impact this notice may have on hospitals.

1. Impact on ASCs

We are updating the 1991 ASC payment rates, which were published in the Federal Register on December 31, 1991 (56 FR 67666). Although these new rates incorporate the estimated annual rate of change in the CPI-U for the period April 1, 1992 through March 31, 1993 (a 3.5 percent increase), there are other factors affecting the actual payments that ASCs may receive.

First, variations in an ASC's Medicare case mix will affect the size of the ASC's aggregate payment increase. Although the ASC payment rates were uniformly inflated by the CPI–U for the period April 1, 1992 through March 31, 1993, the IOL payment allowance which is currently set at $200 per lens has not been adjusted. (A discussion of our rationale for retaining the $200 IOL allowance is presented in the following paragraphs.) The actual increase in total payments for a multi-specialty ASC will be about 3.2 percent as compared to the 3.5 percent increase in the CPI–U. ASCs that perform a lower than average percentage of procedures involving insertion of an IOL will receive an increase that more closely approximates the increases in the CPI–U, while those that perform a higher than average percentage of IOL insertion procedures may expect a somewhat lower increase in their aggregate payments.

With regard to the IOL payment, we set the IOL allowance at $200 in the final **Federal Register** notice published on February 8, 1990 (55 FR 4528) that implemented a new ASC payment methodology and paid for IOLs furnished by ASCs as a facility service effective March 12, 1990. We based the amount of the allowance on the findings of an Office of Inspector General report issued in March 1988 entitled "Medicare Certified Ambulatory Surgical Centers, Cataract Surgery Costs and Related Issues."

Congress implicitly ratified the $200 IOL allowance that we established in the February 8, 1990 **Federal Register** by freezing at $200 the amount of payment for an IOL furnished by an ASC effective for the period beginning November 5, 1990 through December 31, 1992. (See section 4151(c)(3) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508.)

Since implementation of the IOL payment freeze, preliminary evidence supporting a reduction rather than an increase in the current IOL allowance has come to our attention. This information suggests that high quality IOLs can be and are being acquired by ASCs for considerably less than $200. In its February 1992 report to the Senate and House Committees on the Budget entitled "Reducing the Deficit: Spending and Revenue Options," the Congressional Budget Office points out that if Medicare paid $100 for IOLs furnished at all sites as of January 1, 1993, savings to Medicare would total $1 20 million for FY '93. Any changes in the IOL allowance, however, will be based upon additional data and analysis and will be announced through notice and comment procedures in the **Federal Register**.

A second factor determining the effect of the change in the payment rates is the percentage of total revenue an ASC receives from Medicare. The larger the proportion of revenues an ASC receives from the Medicare program, the greater the impact of the updated rates being implemented by this document. The percentage of revenues derived from the Medicare program depends on the volume and types of services furnished. Since Medicare patients account for at least 60 percent of all cataract cases performed in ASCs, an ASC that performs a high percentage of cataract procedures will probably receive a higher percentage of its payments from Medicare than would an ASC with a case mix comprised largely of noncataract cases. For an ASC that receives a large portion of its revenue from the Medicare program, the changes implemented by this notice will likely have a greater influence on the ASC's operations and management decisions than they will have on an ASC that receives a large portion of revenue from other sources.

In general, however, we expect the changes implemented by this notice to affect ASCs positively by raising the rates upon which payments are based.

2. Impact on Hospitals

For ASC-approved procedures performed in an outpatient setting, hospitals are paid based on the lowest of their aggregate cost, aggregate charges or a blend of 58 percent of the applicable wage-adjusted ASC rate and 42 percent of the hospital specific amount. It should be noted that the weight of the ASC portion of the blended payment amount is offset to a degree when hospital costs, as, for example, in the case of cataract procedures in Groups 6 and 8, are as much as double the ASC rate. Further, while an ASC rate increase is being implemented by this notice, it may not in every instance keep pace with actual hospital cost increases.

Another element that may reduce the effect on hospital outpatient payments of the ASC rate increase is the application of the lowest payment screen in determining payments. Applying the lowest of costs, charges, or a blend can result in some hospitals being paid entirely on the basis of a hospital's costs or charges. In those instances, the increase in the ASC rates will have not effect on hospital payments.

V. Paperwork Reduction Act

This notice does not impose any information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

VII. Waiver of Notice of Proposed Rulemaking

We ordinarily publish a proposed notice and invite prior public comment in the **Federal Register** before publishing a final notice. The proposed notice includes a reference to the legal authority under which it is proposed and the terms and the substance of the proposed notice or a description of the subjects and issues involved. However, this procedure can be waived when an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the notice issued.

In this notice with comment period, we respond to public comments received on a prior notice (56 FR 67668) and announce the annual update of the ASC payment rates.

It would be impracticable, unnecessary and contrary to the public interest to publish a proposed notice and solicit comments before implementing the update. We now time the updates to coincide with the wage index used for PPS and to propose the updates with the wage index used for PPS and to propose the updates without the wage index would be an incomplete proposal and would be of reduced value; the final wage index for PPS is not ready for publication in time to be included in a proposed notice for ASC payment updates. We therefore believe it to be contrary to the public interest to publish a proposed notice and find good cause to waive it.

VIII. Waiver of 30-Day Delay in Effective Date

We ordinarily publish notices such as this subject to a 30-day delay in the

effective date. However, we can waive that delay for good cause when required in the public interest. The provisions of this notice are effective October 1, 1992, to coincide with the PPS update. These provisions will increase payment to ASCs by 3.5 percent (as modified by any changes to the wage indices). To delay the effective date until 30 days after the notice is published would delay the increased payments to the ASCs. Therefore, we find good cause to waive the delay in effective date.

Authority: Sections 1832(a)(2)(F) and 1833(i) (1) and (2) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F) and 13951(i) (1) and (2)); 42 CFR 416.120, 416.125, and 416.130

Catalog of Federal Domestic Assistance Programs No. 93.744, Medicare—Supplementary Medical Insurance Program.

Dated: August 24, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: September 14, 1992.

Louis W. Sullivan,

Secretary.

ADDENDUM—WAGE INDEX FOR URBAN AREAS

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.9425
Taylor, TX	
Aguadilla, PR	0.4566
Aguada, PR	
Aguadilla, PR	
Isabela, PR	
Moca, PR	
Akron, OH	0.8917
Portage, OH	
Summit, OH	
Albany, GA	0.8046
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8953
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0119
Bernalillo, NM	
Alexandria, LA	0.8272
Rapides, LA	
Allentown-Bethlehem-Easton, PA-NJ	0.8945
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9235
Blair, PA	
Amarillo, TX	0.8736
Potter, TX	
Randall, TX	
*Anaheim-Santa Ana, CA	1.1751
Orange, CA	
Anchorage, AK	1.4170
Anchorage, AK	
Anderson, IN	0.9579
Madison, IN	
Anderson, SC	0.7255
Anderson, SC	
Ann Arbor, MI	1.1379
Washtenaw, MI	
Anniston, AL	0.7928
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9219
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.3952
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8735
Buncombe, NC	
Athens, GA	0.7770
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
*Atlanta, GA	0.9592
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0604
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.9397
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9459
Kane, IL	
Kendall, IL	
Austin, TX	0.9595
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0663
Kern, CA	
*Baltimore, MD	1.0151
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9060
Penobscot, ME	
Baton Rouge, LA	0.9065
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9095
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9600
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0160
Beaver, PA	
Bellingham, WA	1.0492
Whatcom, WA	
Benton Harbor, MI	0.8163
Berrien, MI	
*Bergen-Passaic, NJ	0.8370
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9321
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8059
Hancock, MS	
Harrison, MS	
Binghamton, NJ	0.9256
Broome, NY	
Tioga, NY	
Birmingham, AL	0.8766
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.8878
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.7833
Monroe, IN	
Bloomington-Normal, IL	0.8655
McLean, IL	
Boise City, ID	0.9753
Ada, ID	
*Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1804
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0736
Boulder, CO	
Bradenton, FL	0.8727
Manatee, FL	
Brazoria, TX	0.8943
Brazoria, TX	
Bremerton, WA	0.9631
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1900
Fairfield, CT	
Brownsville-Harlingen, TX	0.8597
Cameron, TX	
Bryan-College Station, TX	0.9485
Brazos, TX	
Buffalo, NY	0.8905
Erie, NY	
Burlington, NC	0.7936
Alamance, NC	
Burlington, VT	0.9354
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4586
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8449
Carroll, OH	
Stark, OH	
Casper, WY	0.8887

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Natrona, WY	
Cedar Rapids, IA	0.7528
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8741
Champaign, IL	
Charleston, SC	0.8328
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9688
Kanawha, WV	
Putnam, WV	
*Charlotte-Gastonia-Rock Hill, NC-SC	0.9462
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.9611
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	0.9194
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.7773
Laramie, WY	
*Chicago, IL	1.0513
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0977
Butte, CA	
*Cincinnati, OH-KY-IN	0.9817
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7379
Christian, KY	
Montgomery, TN	
*Cleveland, OH	1.0734
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	0.9812
El Paso, CO	
Columbia, MO	0.9502
Boone, MO	
Columbia, SC	0.8937
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7368
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
*Columbus, OH	0.9669
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Corpus Christi, TX	0.8509
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.8184
Allegeny, MD	
Mineral, WV	
*Dallas, TX	0.9634
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7823
Danville City, VA	
Pittsylvania, VA	
Daveport-Rock Island-Moline, IA-IL	0.8467
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9727
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8903
Volusia, FL	
Decatur, AL	0.7484
Decatur City, AL	
Lawrence, AL	
Morgan, AL	
Decatur, IL	0.8282
Macon, IL	
*Denver, OC	1.0753
Adams, CO	
Arapahoe, CA	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9167
Dallas, IA	
Polk, IA	
Waren, IA	
*Detroit, MI	1.0822
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7566
Dale, AL	
Houston, AL	
Dubuque, IA	0.8371
Dubuque, IA	
Duluth, MN-WI	0.9513
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8484
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8710
El Paso, TX	
Elkhart-Goshen, IN	0.7833
Elkhart, IN	
Elmira, NY	0.8848
Chemung, NY	
Enid, OK	0.8909
Garfield, OK	
Erie, PA	0.9151
Erie, PA	
Eugene-Springfield, OR	1.0159
Lane, OR	
Evansville, IN-KY	0.9423

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	0.9702
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8292
Cumberland, NC	
Fayetteville-Springdale, AR	0.7986
Washington, AR	
Flint, MI	1.1539
Genesee, MI	
Florence, AL	0.7714
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.8425
Florence, SC	
Fort Collins-Loveland, CO	1.0234
Larimer, CO	
*Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0352
Broward, FL	
Fort Myers-Cape Coral, FL	0.9795
Lee, FL	
Fort Pierce, FL	1.1036
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.7928
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8937
Okaloosa, FL	
Fort Wayne, IN	0.8999
Allen, IN	
De Kalb, IN	
Whitley, IN	
*Fort Worth-Arlington, TX	0.9743
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0733
Fresno, CA	
Gadsden, AL	0.8196
Etowah, AL	
Gainesville, FL	0.8795
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	0.9424
Galveston, TX	
Gary-Hammond, IN	0.9592
Lake, IN	
Porter, IN	
Glens Falls, NY	0.9227
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9573
Grand Forks, ND	
Grand Rapids, MI	0.9679
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9987
Cascade, MT	
Greeley, CO	0.9354
Weld, CO	
Green Bay, WI	0.9581
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.9161
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Yadkin, NC	
Greenville-Spartanburg, SC	0.8919
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.9154
Washington, MD	
Hamilton-Middletown, OH	0.9149
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9914
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
*Hartford-Middletown-New Britain-Bristol, CT	1.1905
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.8663
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1575
Honolulu, HI	
Houma-Thibodaux, LA	0.7341
Lafourche, LA	
Terrebonne, LA	
*Houston, TX	0.9931
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9434
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8831
Madison, AL	
*Indianapolis, IN	0.9658
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	0.9524
Johnson, IA	
Jackson, MI	0.8882
Jackson, MI	
Jackson, MS	0.7730
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.8325
Madison, TN	
Jacksonville, FL	0.9047
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7936
Onslow, NC	
Jamestown-Dunkirk, NY	0.8631
Chatauque, NY	
Janesville-Beloit, WI	0.8443
Rock, WI	
Jersey City, NJ	1.0648

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8665
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.8609
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0504
Grundy, IL	
Will, IL	
Joplin, MO	0.7953
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1705
Kalamazoo, MI	
Kankakee, IL	0.8485
Kankakee, IL	
*Kansas City, KS-MO	0.9584
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	0.8851
Kenosha, WI	
Killeen-Temple, TX	1.1290
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8689
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9486
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.8952
LaCrosse, WI	
Lafayette, LA	0.8223
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8619
Tippecanoe, IN	
Lake Charles, LA	0.8371
Calcasieu, LA	
Lake County, IL	0.9404
Lake, IL	
Lakeland-Winter Haven, FL	0.7939
Polk, FL	
Lancaster, PA	0.9274
Lancaster, PA	
Lansing-East Lansing, MI	1.0218
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7275
Webb, TX	
Las Cruces, NM	0.7906
Dona Ana, NM	
Las Vegas, NV	1.0626
Clark, NV	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Lawrence, KS	0.7443
Douglas, KS	
Lawton, OK	0.8384
Comanche, OK	
Lewiston-Auburn, ME	0.8324
Androscoggin, ME	
Lexington-Fayette, KY	0.8443
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.8449
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.8952
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8416
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8686
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.8892
Lorain, OH	
*Los Angeles-Long Beach, CA	1.2352
Los Angeles, CA	
Louisville, KY-IN	0.9086
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8786
Lubbock, TX	
Lynchburg, VA	0.8540
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8800
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0307
Dane, WI	
Manchester-Nashua, NH	1.0128
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8369
Richland, OH	
Mayaguez, PR	0.4769
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7712
Hidalgo, TX	
Medford, OR	1.0041
Jackson, OR	
Melbourne-Titusville, FL	0.8727
Brevard, FL	
Memphis, TN-AR-MS	0.9056
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0310
Merced, CA	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
*Miami-Hialeah, FL	0.9950
Dade, FL	
*Middlesex-Somerset-Hunterdon, NJ	1.0405
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0372
Midland, TX	
*Milwaukee, WI	0.9715
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
*Minneapolis-St. Paul, MN-WI	1.0813
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8241
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1383
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9940
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.7860
Ouachita, LA	
Montgomery, AL	0.7735
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.8427
Delaware, IN	
Muskegon, MI	0.9849
Muskegon, MI	
Naples, FL	1.0320
Collier, FL	
Nashville, TN	0.9393
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
*Nassau-Suffolk, NY	1.2149
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	1.1708
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.2090
New Haven, CT	
New London-Norwich, CT	1.1566
New London, CT	
*New Orleans, LA	0.8985
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
*New York, NY	1.3455
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
*Newark, NJ	1.0734
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8398
Niagara, NY	
*Norfolk-Virginia Beach-Newport News, VA	0.8511
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
*Oakland, CA	1.4128
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8611
Marion, FL	
Odessa, TX	1.0835
Ector, TX	
Oklahoma City, OK	0.9228
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0997
Thurston, WA	
Omaha, NE-IA	0.8985
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.9193
Orange, NY	
*Orlando, FL	0.9617
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8148
Davies, KY	
Oxnard-Ventura, CA	1.1787
Ventura, CA	
Panama City, FL	0.8629
Bay, FL	
Parkersburg-Marietta, WV-OH	0.8536
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8767
Jackson, MS	
Pensacola, FL	0.8620
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.8706
Peoria, IL	
Tazewell, IL	
Woodford, IL	
*Philadelphia, PA-NJ	1.0947
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
*Phoenix, AZ	1.0424
Maricopa, AZ	
Pine Bluff, AR	0.6976
Jefferson, AR	
*Pittsburgh, PA	1.0123
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0778
Berkshire, MA	
Ponce, PR	0.4599
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9253
Cumberland, ME	
Sagadahoc, ME	
York, ME	
*Portland, OR	1.1571
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0042
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0443
Dutchess, NY	
*Providence-Pawtucket-Woonsocket, RI	1.0291
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0226
Utah, UT	
Pueblo, CO	0.8718
Pueblo, CO	
Racine, WI	0.9627
Racine, WI	
Raleigh-Durham, NC	0.9461
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8396
Pennington, SD	
Reading, PA	1.0267
Berks, PA	
Redding, CA	1.0545
Shasta, CA	
Reno, NV	1.1613
Washoe, NV	
Richland-Kennewick, WA	0.9398
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9413
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
*Riverside-San Bernardino, CA	1.1103
Riverside, CA	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
San Bernardino, CA	
Roanoke, VA	0.8281
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, WA	
Rochester, MN	1.1025
Olmsted, MN	
*Rochester, NY	0.9706
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9279
Boone, IL	
Winnebago, IL	
*Sacramento, CA	1.2257
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0479
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.8915
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9410
Buchanan, MO	
*St. Louis, MO–IL	0.9384
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	0.9833
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.3035
Monterey, CA	
*Salt Lake City-Ogden, UT	0.9928
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8136
Tom Green, TX	
*San Antonio, TX	0.8448
Bexar, TX	
Comal, TX	
Guadalupe, TX	
*San Diego, CA	1.1929
San Diego, CA	
*San Francisco, CA	1.4521
Marin, CA	
San Francisco, CA	
San Mateo, CA	
*San Jose, CA	1.4893
Santa Clara, CA	
*San Juan, PR	0.4985
Barceloneta, PR	
Bayoman, PR	
Canovahas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1800
Santa Barbara, CA	
Santa Cruz, CA	1.1814
Santa Cruz, CA	
Santa Fe, NM	0.9158
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2973
Sonoma, CA	
Sarasota, FL	0.9777
Sarasota, FL	
Savannah, GA	0.8324
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	0.8912
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
*Seattle, WA	1.0868
King, WA	
Snohomish, WA	
Sharon, PA	0.8910
Mercer, PA	
Sheboygan, WI	0.8868
Sheboygan, WI	
Sherman-Denison, TX	0.9085
Grayson, TX	
Shreveport, LA	0.9295
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	0.8500
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.8829
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0179
St. Joseph, IN	
Spokane, WA	1.0687
Spokane, WA	
Springfield, IL	0.9292
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8079
Christian, MO	
Greene, MO	
Springfield, MA	0.9614
Hampden, MA	
Hampshire, MA	
State College, PA	0.9897
Centre, PA	
Steubenville-Weirton, OH-WV	0.8708
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1784
San Joaquin, CA	
Syracuse, NY	0.9912
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	0.9631
Pierce, WA	
Tallahassee, FL	0.9216
Gadsden, FL	
Leon, FL	
*Tampa-St. Petersburg-Clearwater, FL	0.9244
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8823
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	0.7903
Miller, AR	
Bowie, TX	
Toledo, OH	0.8710
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9299
Shawnee, KS	
Trenton, NJ	1.0034
Mercer, NJ	
Tucson, AZ	0.9616
Pima, AZ	
Tulsa, OK	0.8573
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.8518
Tuscaloosa, AL	
Tyler, TX	0.9833
Smith, TX	
Utica-Rome, NY	0.8396
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2912
Napa, CA	
Solano, CA	
Vancouver, WA	1.0706
Clark, WA	
Victoria, TX	0.8990
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9645
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0386
Tulare, CA	
Waco, TX	0.7811
McLennan, TX	
*Washington, DC-MD-VA	1.0936
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.8639
Black Hawk, IA	
Bremer, IA	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk.]

Urban area (constituent counties or county equivalents)	Wage index
Wausau, WI	0.9744
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0227
Palm Beach, FL	
Wheeling, WV-OH	0.8923
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	0.9805
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8169
Wichita, TX	
Williamsport, PA	0.8861
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0680
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8708
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	0.9682
Worcester, MA	
Yakima, WA	1.0107
Yakima, WA	
York, PA	0.8609
Adams, PA	
York, PA	
Youngstown-Warren, OH	0.9662
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0159
Sutter, CA	
Yuba, CA	
Yuma, AZ	0.8743
Yuma, AZ	

WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7130
Alaska	1.3492
Arizona	0.8743
Arkansas	0.6976
California	1.0159
Colorado	0.8412
Connecticut	1.1900
Delaware	0.8568
Florida	0.8727
Georgia	0.7770
Hawaii	0.9614
Idaho	0.9101
Illinois	0.7696
Indiana	0.7833
Iowa	0.7526
Kansas	0.7443
Kentucky	0.7790
Louisiana	0.7381
Maine	0.8324
Maryland	0.8058
Massachusetts	1.1706
Michigan	0.8682
Minnesota	0.8305
Mississippi	0.6960
Missouri	0.7246
Montana	0.8251
Nebraska	0.6992
Nevada	0.9698
New Hampshire	0.9543
New Jersey [1]	
New Mexico	0.8317
New York	0.8398
North Carolina	0.7936
North Dakota	0.7715
Ohio	0.8449
Oklahoma	0.7369
Oregon	0.9603
Pennsylvania	0.8609
Puerto Rico	0.4331
Rhode Island [1]	
South Carolina	0.7657
South Dakota	0.7165
Tennessee	0.7337
Texas	0.7592
Utah	0.9040
Vermont	0.9702
Virginia	0.7823
Washington	0.9631
West Virginia	0.8484
Wisconsin	0.8443
Wyoming	0.8453

[1] All counties within the State are classified urban.

WAGE INDEX VALUES FOR COUNTIES THAT ARE DEEMED URBAN-COMPUTED AS SEPARATE URBAN AREAS

County	Urban area	Wage index
Limestone, AL	Huntsville, AL	0.8477
Marshall, AL	Huntsville, AL	0.8477

WAGE INDEX VALUES FOR COUNTIES THAT ARE DEEMED URBAN-COMPUTED AS SEPARATE URBAN AREAS—Continued

County	Urban area	Wage index
Charlotte, FL	Sarasota, FL	0.9442
Indian River, FL	Fort Pierce, FL	1.0256
Christian, IL	Springfield, IL	0.9189
Macoupin, IL	St. Louis, MO-IL	0.9236
Mason, IL	Peoria, IL	0.8706
Clinton, IN	Lafayette, IN	0.8619
Henry, IN	Anderson, IN	0.9679
Owen, IN	Bloomington, IN	0.7833
Jefferson, KS	Topeka, KS	0.9299
Allegan, MI	Grand Rapids, MI	0.9879
Barry, MI	Battle Creek, MI	0.9095
Ionia, MI	Lansing-East Lansing, MI.	1.0041
Lenawee, MI.	Ann Arbor, MI	1.1058
Shiawassee, MI.	Flint, MI	1.1203
Tuscola, MI	Saginaw-Bay City-Midland, MI.	1.0206
Van Buren, MI.	Kalamazoo, MI	1.1189
Clinton, MO	Kansas City, KS-MO	0.9584
Cass, NE	Omaha, NE	0.8965
Currituck, NC.	Norfolk-VA Beach-Newport News, VA.	0.8511
Genesee, NY.	Rochester, NY	0.9560
Columbiana, OH.	Beaver County, PA	0.9447
Morrow, OH	Mansfield, OH	0.8449
Preble, OH	Dayton-Springfield, OH	0.9727
Lawrence, PA	Beaver County, PA	0.9447
Cherokee, SC	Greenville-Spartanburg, SC.	0.8772
Bedford, VA	Roanoke, VA	0.8163
Fredericksburg City, VA.	Washington, DC-MD-VA.	1.0936
Isle of Wight, VA.	Norfolk-VA Beach-Newport News, VA.	0.8511
Spotsylvania, VA.	Washington, DC-MD-VA.	1.0936
Jefferson, WI.	Milwaukee, WI	0.9599
Walworth, WI.	Milwaukee, WI	0.9599
Jefferson, WV.	Washington, DC-MD-VA.	1.0936
Lincoln, WV	Charleston, WV	0.9535

[FR Doc. 92-23920 Filed 9-30-92; 8:45 am]

BILLING CODE 4120-03-M

federal register

Thursday
October 1, 1992

Part VII

The President

Notice of September 30—Continuation of Haitian Emergency

VOL
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Title

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Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

Presidential Documents

Title 3—

The President

Notice of September 30, 1992

Continuation of Haitian Emergency

On October 4, 1991, by Executive Order No. 12775, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the grave events that had occurred in the Republic of Haiti to disrupt the legitimate exercise of power by the democratically elected government of that country. On October 28, 1991, by Executive Order No. 12779, I took additional measures by prohibiting, with certain exceptions, trade between the United States and Haiti. Because the assault on Haiti's democracy represented by the military's forced exile of President Aristide continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, I am continuing the national emergency with respect to Haiti in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)).

This notice shall be published in the **Federal Register** and transmitted to the Congress.

George Bush

THE WHITE HOUSE,
Washington, September 30, 1992.

[FR Doc. 92-24057
Filed 9-30-92, 11:41 am]
Billing code 3195-01-M

Editorial note: For the President's message to Congress on the continuation of the emergency, see issue 40 of the *Weekly Compilation of Presidential Documents*.

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57
SS
1
91
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Index
Public
Corre
Docu
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Code
Index
Printi

Laws
Public
Addit

Presi
Execu
Public
Week

The
Gene

Other
Data
Guide
Legal
Priva
Public
TDD

FEDE

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Reader Aids

Federal Register

Vol. 57, No. 191

Thursday, October 1, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

45261-45558.....1

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

CFR ISSUANCES 1992
January—July 1992 Editions and Projected October, 1992 Editions

This list sets out the CFR issuances for the January—July 1992 editions and projects the publication plans for the **October, 1992** quarter. A projected schedule that will include the **January, 1993** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1991—1992 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1—16—January 1
Titles 17—27—April 1
Titles 28—41—July 1
Titles 42—50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1992 editions:

Title

CFR Index
1–199
200–End

1–2

10 Parts:
0–50
51–199
200–399 (Cover only)
400–499
500–End

3 (Compilation)

11

4

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

5 Parts:
1–699
700–1199
1200–End

13

6 [Reserved]

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

7 Parts:
0–26
27–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1939
1940–1949
1950–1999
2000–End

15 Parts:
0–299
300–799
800–End

8

16 Parts:
0–149
150–999
1000–End

9 Parts:

Titles revised as of April 1, 1992:

Title

17 Parts:
1–199
200–239
240–End

18 Parts:
1–149
150–279
280–399
400–End

19 Parts:
1–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
0–199
200–499
500–699
700–1699
1700–End

25

26 Parts:
1 (§§ 1.0–1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599 (Cover only)
600–End

27 Parts:
1–199
200–End (Cover only)

Titles revised as of July 1, 1992:

Title

28

29 Parts:
0–99
100–499
500–899
900–1899
1900–1910 (§§ 1901.1–1910.999)
1910 (§§ 1910.1000–End)
1911–1925 (Cover only)
1926
1927–End

30 Parts:
1–199
200–699
700–End

31 Parts:
0–199
200–End

32 Parts:
1–189
190–399
400–629
630–699 (Cover only)
700–799
800–End

33 Parts:
1–124*
125–199*
200–End

34 Parts:
1–299
300–399
400–End

35

36 Parts:
1–199
200–End*

37

38 Parts:
0–17 (Revised as of Sept. 1, 1992)
18–End (Revised as of Sept. 1, 1992)

39

40 Parts:
1–51
52*
53–60*
61–80
81–85
86–99*
100–149*
150–189
190–259*
260–299*
300–399
400–424
425–699
700–789

790–End

41 Parts:
Chs. 1–100
Ch. 101*
Chs. 102–200 (Cover only)
Ch. 201–End

Projected October 1, 1992 editions:

Title

42 Parts:
1–399
400–429
430–End

43 Parts:
1–999
1000–3999
4000–End

44

45 Parts:
1–199
200–499
500–1199
1200–End

46 Parts:
1–40
41–69
70–89
90–139
140–155
156–165 (Cover only)
166–199
200–499
500–End

47 Parts:
0–19
20–39
40–69
70–79
80–End

48 Parts:
Ch. 1 (1–51)
Ch. 1 (52–99)
Ch. 2 (201–251)
Ch. 2 (252–299)
Chs. 3–6
Chs. 7–14
Ch. 15–End

49 Parts:
1–99
100–177
178–199
200–399
400–999
1000–1199
1200–End

50 Parts:
1–199
200–599
600–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1992

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
October 1	October 16	November 2	November 16	November 30	December 30
October 2	October 19	November 2	November 16	December 1	December 31
October 5	October 20	November 4	November 19	December 4	January 4
October 6	October 21	November 5	November 20	December 7	January 4
October 7	October 22	November 6	November 23	December 7	January 5
October 8	October 23	November 9	November 23	December 7	January 6
October 9	October 26	November 9	November 23	December 8	January 7
October 13	October 28	November 12	November 27	December 14	January 11
October 14	October 29	November 13	November 30	December 14	January 12
October 15	October 30	November 16	November 30	December 14	January 13
October 16	November 2	November 16	November 30	December 15	January 14
October 19	November 3	November 18	December 3	December 18	January 19
October 20	November 4	November 19	December 4	December 21	January 19
October 21	November 5	November 20	December 7	December 21	January 19
October 22	November 6	November 23	December 7	December 21	January 21
October 23	November 9	November 23	December 7	December 22	January 21
October 26	November 10	November 25	December 10	December 28	January 25
October 27	November 12	November 27	December 11	December 28	January 25
October 28	November 12	November 27	December 14	December 28	January 26
October 29	November 13	November 30	December 14	December 28	January 27
October 30	November 16	November 30	December 14	December 29	January 28

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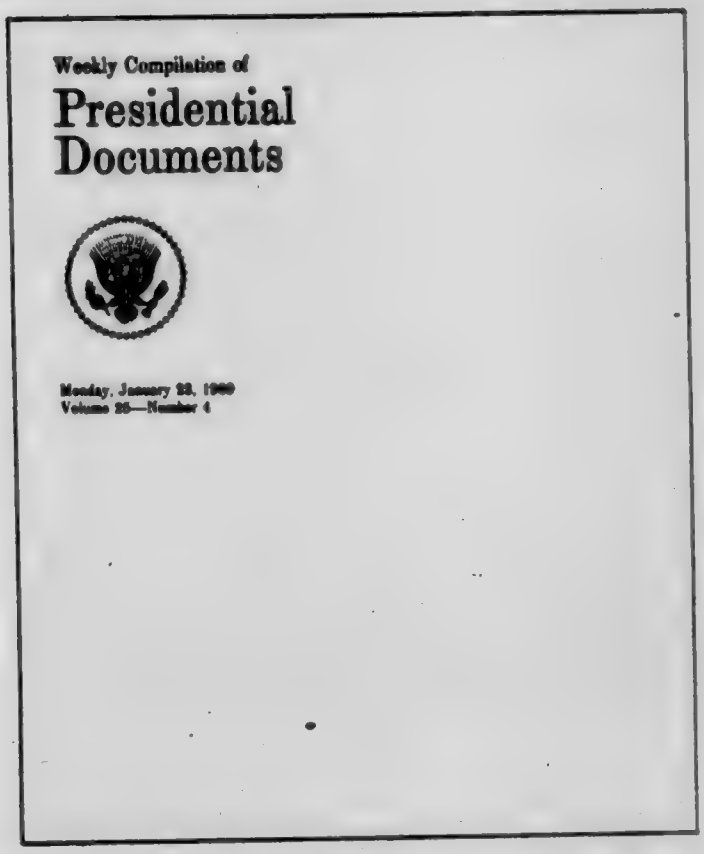
The Weekly Compilation of **Presidential Documents**

Administration of George Bush



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List of CFR Sections Affected

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Contents

Federal Register

Vol. 57, No. 192

Friday, October 2, 1992

Agricultural Marketing Service
See Packers and Stockyards Administration
RULES
Milk marketing orders:
Eastern Colorado, 45564
Nebraska-Western Iowa, 45562, 45563
Nectarines and peaches grown in California, 45559
Potatoes (Irish) grown in—
Colorado, 45560
PROPOSED RULES
Lemons grown in California and Arizona, 45581
Milk marketing orders:
Southwest Plains, 45583

Agriculture Department
See Agricultural Marketing Service
See Food and Nutrition Service
See Forest Service
See Packers and Stockyards Administration
See Soil Conservation Service
NOTICES
Agricultural commodities, overseas donations; types and quantities, 45604

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 45635

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol; viticultural area designations:
Oakville and Rutherford, CA, 45588

Army Department
NOTICES
Meetings:
U.S. Army Reserve Command Independent Commission, 45616
Military traffic management:
CONUS automated rate system (CARTS)
Personal property shipping offices (PPSOs); test sites changes, 45616

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Census Bureau
NOTICES
Meetings:
American Economic Association Advisory Committee et al., 45606

Coast Guard
RULES
Regattas and marine parades:
Tall Stacks 1992; correction, 45570
PROPOSED RULES
Navigation safety regulations and uninspected vessels:
Automatic pilot use; area restrictions and performance requirements, 45667
Pollution:
Ballast water management for vessels entering Great Lakes, 45591
Ports and waterways safety:
Cumberland Sound, GA, et al.; safety and security zone, 45596
Tankers; second officer on bridge, 45664
Unattended machinery spaces; operating requirements, 45662

Commerce Department
See Census Bureau
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 45608, 45609

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bangladesh, 45608
Thailand, 45607

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Coffee, Sugar & Cocoa Exchange, Inc.—
Brazil differential coffee, 45609

Defense Department
See Army Department
NOTICES
Meetings:
Scientific Advisory Group on Effects, 45610
Travel per diem rates, civilian personnel; changes, 45610

Education Department
NOTICES
Administrative Law Judges Office hearings:
Claim compromises—
Maine Education Department, 45616

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 45641

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Floodplain and wetlands protection environmental review determinations; availability, etc.:
Mound Facility, Miamisburg, OH; characterization activities, 45617

Rocky Flats Plant, CO
Characterization activities, 45620
Characterization and remediation studies, 45622
Treatability study, 45624
Natural gas exportation and importation:
Columbus Energy Corp., 45626
Offshore Gas Marketing, Inc., 45627
Orange & Rockland Utilities, Inc., 45627

Environmental Protection Agency
RULES
Hazardous waste program authorizations:
Illinois, 45575
Rhode Island, 45574
PROPOSED RULES
Clean Air Act:
Architectural and Industrial Coatings Negotiated Rulemaking Advisory Committee; establishment and meeting, 45597
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 45597, 45599
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 45628
Weekly receipts, 45629
Meetings:
State-FIFRA Research and Evaluation Group, 45630

Equal Employment Opportunity Commission
RULES
Employer information report (EEO-1); filing deadline extension, 45570

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Iran Air
Stay of final order, 45606

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Boeing, 45584
British Aerospace, 45584
McDonnell Douglas, 45586
Jet routes; correction, 45660
VOR Federal airways; correction, 45660
NOTICES
Exemption petitions; summary and disposition, 45650
Grants and cooperative agreements; availability, etc.:
National Airspace System (NAS) long-term technical needs, 45651
Meetings:
Research, Engineering, and Development Advisory Committee, 45651
Passenger facility charges; applications, etc.:
Grand Forks Mark Andrews Airport, ND; correction, 45660
Twin Falls, ID, et al., 45652

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 45577
Georgia, 45578
North Carolina, 45578
Virginia, 45578, 45579
PROPOSED RULES
Radio stations; table of assignments:
Arkansas et al., 45601

Federal Deposit Insurance Corporation
NOTICES
Peoples State Bank, TX; assistance for merger, 45630

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 45658

Federal Energy Regulatory Commission
NOTICES
Meetings; Sunshine Act, 45658
Applications, hearings, determinations, etc.:
Texas Gas Transmission Corp., 45628
Williams Natural Gas Co., 45628

Federal Maritime Commission
NOTICES
Complaints filed:
Symington, Hugh, et al., 45630
Investigations, hearings, petitions, etc.:
Ariel Maritime Group et al., 45631

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 45658
Applications, hearings, determinations, etc.:
Anderson, Elmer Lamar, et al., 45633
First Commerce Bancorp, Inc., et al., 45633
Norwest Corp., 45634
Random Lake Bancorp, Ltd., et al., 45634

Federal Trade Commission
PROPOSED RULES
Privacy Act; implementation, 45676
NOTICES
Privacy Act:
Systems of records, 45678

Federal Transit Administration
NOTICES
Grants; FTA sections 3 and 9 obligations, 45655

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Cokeville Meadows National Wildlife Refuge, WY, 45640

Food and Nutrition Service
NOTICES
Food distribution program:
Emergency food assistance program; commodities donated to households, soup kitchens, and food banks; availability, 45604

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Wisconsin, 45606

Forest Service
NOTICES
Appeal exemptions; timber sales:
Malheur National Forest, OR, 45605

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration
See Health Resources and Services Administration
See Public Health Service

Health Resources and Services Administration
See Public Health Service
NOTICES
Meetings; advisory committees:
October; correction, 45637

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 45637

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau

Internal Revenue Service
RULES
Income taxes:
Foreign tax credits; income subject to separate limitations Correction, 45660
Tax accounting for bad debts; conclusive presumption, 45568
PROPOSED RULES
Income taxes:
Tax accounting for bad debts; conclusive presumption; cross reference, 45587

International Trade Administration
NOTICES
Antidumping:
Alloy and carbon hot rolled bars, rods, and semifinished products of special bar quality engineered steel, from Brazil; correction, 45660
Carbon steel wire rope from Japan, 45607

Interstate Commerce Commission
PROPOSED RULES
Rail carriers:
Export corn and export soybeans; exemption, 45602
NOTICES
Motor carriers:
Agricultural cooperative transportation filing notices, 45640

Labor Department
See Employment Standards Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Glass Ceiling Commission, 45640

Land Management Bureau
RULES
Public land orders:
New Mexico, 45576
NOTICES
Realty actions; sales, leases, etc.:
Arizona, 45638
Withdrawal and reservation of lands:
Colorado, 45639

Libraries and Information Science, National Commission
See National Commission on Libraries and Information Science

National Commission on Libraries and Information Science
NOTICES
Meetings; Sunshine Act, 45658

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 45643

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 45580
Tuna, Atlantic bluefin fisheries, 45579
PROPOSED RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 45602

Nuclear Regulatory Commission
RULES
Byproduct material; domestic licensing and medical use:
Radiopharmaceuticals; departures for manufacturer's instructions; recordkeeping requirements elimination, 45566
NOTICES
Meetings:
Licensed performance systematic assessment program, 45643
Applications, hearings, determinations, etc.:
Houston Lighting & Power Co. et al., 45643
Tennessee Valley Authority, 45645

Packers and Stockyards Administration
NOTICES
Central filing system; State certifications:
Colorado, 45605

Personnel Management Office
NOTICES
Meetings:
Federal Salary Council, 45646

Postal Service
RULES
International postal rates and fees:
VALUEPOST/CANADA bulk mailing service; establishment, 45570

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration
See Health Resources and Services Administration
NOTICES
Agency information collection activities under OMB review, 45637

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 45658

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Central Valley Project, CA, 45639

Research and Special Programs Administration
NOTICES
Pipeline safety; waiver petitions:
Exxon Pipeline Co., 45655

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 45646
Options Clearing Corp., 45649

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Lower Rapid Creek, SD, 45606

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Midwest Federal Savings & Loan Association of Eastern Iowa, 45656

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Transit Administration
See Research and Special Programs Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Notes, Treasury:
AE–1994 series, 45656
R–1997 series, 45656
Organization, functions, and authority delegations:
Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement), 45656

United States Information Agency
NOTICES
Senior Executive Service:
Performance Review Board; membership, 45656

Separate Parts In This Issue

Part II
Department of Transportation, Coast Guard, 45662

Part III
Federal Trade Commission, 45676

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
916.....45559
917.....45559
948.....45560
1065 (2 documents).....4562, 45563
1137.....45564

Proposed Rules:
910.....45581
1106.....45583

10 CFR
30.....45566
35.....45566

14 CFR

Proposed Rules:
39 (3 documents).....45584–45586
71 (3 documents).....45660

16 CFR

Proposed Rules:
4.....45676

26 CFR
1 (2 documents).....45568, 45660

Proposed Rules:
1.....45587

27 CFR

Proposed Rules:
9.....45588

29 CFR
1602.....45570

33 CFR
100.....45570

Proposed Rules:
151.....45591
164 (3 documents)...45662–45667
165.....45596

39 CFR
20.....45570

40 CFR
271.....45574
272.....45575

Proposed Rules:
Ch. I.....45597
300 (2 documents).....45597, 45599

43 CFR

Public Land Orders:
6949.....45576

46 CFR

Proposed Rules:
35.....45667

47 CFR
73 (6 documents).....45577–45579

Proposed Rules:
73.....45601

49 CFR

Proposed Rules:
1039.....45602

50 CFR
285.....45579
672.....45580

Proposed Rules:
675.....45602

VOL
57
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Rules and Regulations

Federal Register
Vol. 57, No. 192
Friday, October 2, 1992

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV-92-075FR]

1992-93 Fiscal Year Expenses and Assessment Rates for the Marketing Orders Covering Nectarines and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule an interim final rule which authorized expenses and established assessment rates for the 1992–93 fiscal year (March 1–February 28) under Marketing Order Nos. 916 and 917. These expenses and assessment rates are needed by the Nectarine Administrative Committee and Peach Commodity Committee established under these marketing orders to pay their expenses and collect assessments from handlers to pay those expenses. This action will enable these committees to continue to perform their duties and the marketing orders to operate.

EFFECTIVE DATE: November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331, or Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., Suite 102–B, Fresno, California 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order Nos. 916 (7 CFR part 916) regulating the handling of nectarines grown in California, and 917 (7 CFR part 917) regulating the handling of fresh pears and peaches grown in California. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rates specified herein be made applicable to all assessable nectarines and peaches during the 1992–93 fiscal year, beginning March 1, 1992, through February 28, 1993. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 handlers of California peaches and nectarines subject to regulation under Marketing Order Nos. 916 and 917 and about 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the Department, require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of these committees are producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the packages of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The interim final rule was issued on July 8, 1992, and published in the Federal Register (57 FR 31090, July 14, 1992), with

a 30-day comment period ending August 13, 1992. No comments were received.

The Nectarine Administrative Committee (NAC) met May 5, 1992, and unanimously recommended approval of a 1992–93 budget with expenses of $4,106,247 and an assessment rate of $0.1825 per 25-pound package of assessable nectarines handled. The 1992–93 nectarine budget is similar in scope to the one approved for 1991–92. Actual expenses for 1991–92 totaled $3,769,577, while the assessment rate was $0.1825.

The 1992–93 nectarine budget contains $569,940 for marketing order administration and miscellaneous items, $2,192,400 for market development, $125,322 for research, $1,009,085 for inspection, and $222,000 for uncollected assessment accounts. In comparison, actual expenditures for 1991–92 were $484,548 for marketing order administration and miscellaneous items, $2,090,590 for market development, $122,128 for research, $1,009,519 for inspection, and $62,792 for uncollected assessment accounts.

Nectarine marketing order income for 1992–93 is expected to total $4,106,172, with assessment income estimated at $3,348,328, based on projected shipments of 18,347,000 packages of assessable nectarines. Other income includes $484,000 in Foreign Agriculture Service matching promotion program funds, $40,000 in other income including interest, and a $110,000 rebate from the inspection service from last season's inspection payment. The NAC's reserve amounted to $1,273,826 on March 1, 1992, an amount well within the maximum authorized under the marketing order.

The Peach Commodity Committee (PCC) met May 5, 1992, and recommended approval of a 1992–93 budget with expenses of $3,925,512 and an assessment rate of $0.19 per 25-pound package of assessable peaches handled. Eight members voted in favor of the proposed 1992–93 budget, while two members voted "no", because they favored a one-half cent lower assessment rate. The 1992–93 peach budget is similar in scope to the one approved for 1991–92. Actual expenses for 1991–92 totaled $3,626,005, while the assessment rate was $0.19.

The 1992–93 peach budget contains $550,270 for marketing order administration and miscellaneous items, $2,122,000 for market development, $125,322 for research, $913,920 for inspection, and $214,000 for uncollected assessment accounts. In comparison, actual expenditures for 1991–92 were $436,886 for marketing order administration and miscellaneous items, $1,804,531 for market development, $136,321 for research, $1,226,304 for inspection, and $21,963 for uncollected assessment accounts.

Peach marketing order income for 1992–93 is expected to total $4,224,017, with assessment income estimated at $3,404,800, based on projected shipments of 17,900,000 packages of assessable nectarines. Other income includes $484,000 in Foreign Agriculture Service matching promotion program funds, $32,000 in other income including interest, and a $100,000 rebate from the inspection service from last season's inspection payment. The PCC's reserve amounted to $911,156 on March 1, 1992, an amount well within the maximum authorized under the marketing order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (57 FR 31090, July 14, 1992), will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C 601–674.

Note: These sections will not appear in the annual Code of Federal Regulations.

§§ 916.230 and 917.254 [Amended]

2. Accordingly, the interim final rule adding §§ 916.230 and 917.254, which was published in the **Federal Register** (57 FR 31090, July 14, 1992), is adopted as a final rule.

Dated: September 29, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–23960 Filed 10–1–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 948

[Docket No. FV–92–077FR]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 948 for the 1992–93 fiscal period (September 1, 1992, through August 31, 1993). Authorization of this budget enables the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: September 1, 1992, through August 31, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis West, Northwest Marketing Field Office, Green-Wyatt Federal Building, room 369, 1220 SW Third Avenue, Portland, OR 97204, telephone 503–326–2724, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Colorado potatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes handled during the 1992–93 fiscal period, which begins September 1, 1992, through August 31, 1993. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(c)(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 285 producers of Colorado Area II potatoes under this marketing order, and approximately 118 handlers. Small Agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $300,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met May 21, 1992, and unanimously recommended a 1992–93 budget of $57,250, which is $2,970 more than the previous year. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. Increases in expenditures for the 1992–93 fiscal period include $1,275 for manager's salary, $835 for assistant's salary, and $500 for telephone. All promotion and advertising expenses are financed under the State order.

The Committee also unanimously recommended an assessment rate of $0.0036 per hundredweight, which is $0.0004 less than last season's rate. This rate, when applied to anticipated shipments of 13,250,000 hundredweight, will yield $47,700 in assessment income. This, along with $9,540 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1991–92 fiscal period, estimated at $63,781, were within the maximum permitted under the order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on August 4, 1992 (57 FR 34209). That document contained a proposal to add § 948.209 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through August 14, 1992. No comments were filed.

Thus, it is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the program began on September 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Colorado Area II potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is hereby amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 46 Stat. 31; as amended; 7 U.S.C. 601–674.

2. A new § 948.209 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 948.209 Expenses and assessment rate.

Expenses of $57,240 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) are authorized, and an assessment rate of $0.0036 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: September 29, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-23961 Filed 10-1-92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1065

[DA-92-22]

Milk in the Nebraska-Western Iowa Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends certain provisions of the Nebraska-Western Iowa Federal milk marketing order for an indefinite period beginning with the month of September 1992. The suspension continues a suspension which expired August 31, 1992, that reduced the amount of milk that must be transferred from supply plants to pool distributing plants and removed the requirement that a producer's milk be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. Continuation of the suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. This action is necessary to prevent uneconomical and inefficient movements of milk.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of proposed suspension: Issued August 24, 1992; published August 28, 1992 (57 FR 39141).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c (15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 28, 1992 (57 FR 39141) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing this action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for an indefinite period beginning with the month of September 1992, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1065.6, the words "during the month";

In § 1065.7(b)(1), the words "not more than one half of"; and,

In § 1065.13, paragraph (d)(1).

Statement of Consideration

This action suspends certain provisions of the order for an indefinite period beginning with September 1992. The action continues a suspension that reduced the amount of milk that must be transferred from supply plants to pool distributing plants and allowed milk to be diverted to a nonpool plant without being physically received at a pool plant during the month, which expired August 31, 1992.

The order defines a supply plant as a plant from which Grade A milk is shipped to a pool distributing plant. The order provides that to qualify as a pool supply plant, the supply plant must transfer or divert a specified percentage of its receipts of milk to pool distributing plants. The order further provides that a supply plant must ship milk to a distributing plant each month and that not more than one-half of the qualifying shipments may be met through the direct shipment of milk from farms to pool distributing plants. The order also provides that a dairy farmer's milk is not eligible for diversion during a month unless at least one day's production is physically received at a pool plant. The expired suspension removed the requirement that milk be transferred from a supply plant to a distributing plant each month, allowed all direct-shipped milk to count as a qualifying shipment, and removed the requirement that a dairy farmer's milk be physically received at a pool plant each month through August 31, 1992.

A continuation of the action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market. Mid-Am contends that the marketing conditions that led to the last suspension will continue to exist for some time.

Current projections indicate that there will be ample supplies of direct-ship producer milk located in the proximity of the distributing plants to meet the fluid milk needs of the market. Thus, it is impractical to require producer milk located some distance from pool plants to be physically received once during the month, when the milk can more economically be diverted directly to manufacturing plants in the production area. In addition, it is inefficient to require that milk be transferred from supply plants to distributing plants when the fluid milk needs of the market can be supplied by the direct shipment of milk from farms to distributing plants. Absent a continuation of the expired suspension, costly and inefficient movements of milk will have to be made

to maintain pool status of producers who have historically supplied the fluid milk needs of the market.

The suspension was requested for an indefinite period and comments on this action were specifically requested from interested parties. This action will extend the expired suspension issued January 29, 1992, which suspended these provisions from January 1 through August 31, 1992. The continuation of this suspension indefinitely will allow for easier qualification of a supply plant as a pool supply plant. However, certain essential pooling standards would continue in the order.

Due to projections indicating that current marketing conditions will continue to exist for some time, extending the previous suspension for an indefinite period will likely prevent repetitious suspension actions in the future while ensuring efficient movements of milk. No comments were received in opposition to an indefinite suspension.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of supply plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given to interested parties and they were afforded opportunity to file written data, views, or arguments concerning the suspension. No comments in opposition to the action were received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

It is therefore ordered, that the following provisions in title 7, part 1065, §§ 1065.6, 1065.7(b)(1), and 1065.13 of the Nebraska-Western Iowa order, are hereby suspended for an indefinite period beginning with the month of September 1992.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority citation for 7 CFR part 1065 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1065.6 [Suspended in Part]

2. In § 1065.6, the words "during the month" are hereby suspended for an indefinite period beginning with the month of September 1992.

§ 1065.7 [Suspended in Part]

3. In § 1065.7(b)(1), the words "not more than one half of" are hereby suspended for an indefinite period beginning with the month of September 1992.

§ 1065.13 [Suspended in Part]

4. In § 1065.13, paragraph (d)(1) is hereby suspended for an indefinite period beginning with the month of September 1992.

Dated: September 29, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–23956 Filed 10–1–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1065

[DA–92–21]

Milk in the Nebraska-Western Iowa Marketing Area; Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rules.

SUMMARY: This action revises certain provisions of the Nebraska-Western Iowa Federal milk marketing order for an indefinite period beginning with September 1992. Specifically, the action reduces the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool plant status. The shipping standard will be 20 percent in all months. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. The revision is necessary to prevent uneconomical and inefficient movements of milk.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision of Supply Plant Shipping Percentages: Issued August 24, 1992; published August 28, 1992 (57 FR 39140).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This revision has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order, is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674), and the provisions of § 1065.7(b) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (57 FR 39140) concerning a proposed relaxation of the supply plant shipping percentage.

The revision was proposed to be effective for an indefinite period beginning with the month of September 1992. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by September 4, 1992. No opposing comments were received.

Statement of Consideration

This action revises the supply plant shipping percentages set forth in § 1065.7(b) and is applicable to milk marketed on and after September 1, 1992. The revision lowers the shipping percentage for supply plants by either 10 or 20 percentage points, depending on the month, to 20 percent of receipts for an indefinite period. The revision continues the current application of a 20 percent shipping standard for supply plants that expired August 1992.

Pursuant to the provisions of § 1065.7(b)(3) of the Nebraska-Western Iowa milk order, the Director of the Dairy Division may increase or decrease the supply plant shipping percentage as set forth in § 1065.7(b) by up to 20 percentage points during any month. The adjustment can be made to help encourage additional milk shipments or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order.

Under the Nebraska-Western Iowa order, the stated supply plant shipping percentage is 40 percent or more of the total receipts of Grade A milk received from dairy farmers and cooperative associations. A revision signed October 3, 1989 (54 FR 41240), reduced the supply plant shipping percentage by 10 percentage points (from 40 percent to 30 percent of receipts) indefinitely for the months of September through March. A more recent revision, signed January 29, 1992 (57 FR 4150), reduced the shipping standard for just the months of January through August 1992 to 20 percent. This action will set the shipping standard at 20 percent of receipts for an indefinite period for all months, beginning September 1992.

Revision of the supply plant shipping standard was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market. Mid-Am has projected that there will be ample supplies of direct-ship producer milk located in the general area of the Nebraska-Western Iowa distributing plants to meet the fluid needs of such plants. Absent a revision, costly and inefficient movements of milk will have to be made in order to maintain pool status of the milk of its members who have historically supplied the fluid needs of the market.

In view of marketing conditions, the aforementioned provisions of § 1065.7(b) should be relaxed for an indefinite period beginning with the month of September 1992. A reduction of the supply plant shipping percentage will eliminate the need for making uneconomic shipments of milk from supply plants to distributing plants, and will assure that dairy farmers long associated with the fluid milk market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective dates; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this revision. No opposing views were received.

Therefore, good cause exists for making this revision effective, less than 30 days from the date of publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

Title 7 part 1065 is amended as follows:

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority citation for 7 CFR part 1065 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1065.7 [Amended in Part]

Note: This amendment will not be published in the annual Code of Federal Regulations.

2. In the introductory text of § 1065.7(b), the provision "30 percent" is revised to "20 percent" for an indefinite period beginning with the month of September 1992.

Dated: September 29, 1992.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 92-23982 Filed 10-1-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1137

[DA-92-26]

Milk in the Eastern Colorado Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues the suspension of certain provisions of the Eastern Colorado Federal milk order. These provisions have been suspended for the same periods for the previous six years. This action suspends for September 1992 through February 1993, the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February period. The "touch-base" requirement that each member-producer's milk be received at least three times each month at a pool distributing plant to be eligible for diversion is suspended from September 1992 through August 1993. The percentage limits on the amount of milk that a cooperative may divert to surplus milk outlets is also suspended from September 1992 through August 1993. Continuation of this suspension is necessary to insure that dairy farmers who have historically supplied the Eastern Colorado market will continue to have their milk priced under the Eastern Colorado order, thereby receiving the benefits that accrue from pooling. In addition, this suspension is necessary to prevent the uneconomic and inefficient movement of milk under the order.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 24, 1992; published August 28, 1992 (57 FR 39145).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action will also tend to ensure that dairy farmers would continue to have their milk priced under the order and

thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

The final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice of proposed rulemaking was published in the **Federal Register** (57 FR 39145) on August 28, 1992, concerning the proposed suspension for September 1992 through February 1993, limiting the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February period. Notice of proposed suspension, for September 1992 through February 1993, was also given on the "touch-base" requirement that each member-producer's milk be received at least three times each month at a pool distributing plant to be eligible for diversion. In addition, notice of proposed suspension was given in reference to the percentage limits on the amount of milk that a cooperative may divert to surplus milk outlets, for the months of September 1992 through August 1993. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by September 4, 1992. Two written comments were received that discussed the nature of the proposed suspension. The comments included full support of the suspension of rule, as published in the **Federal Register**.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1992 through February 1993:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and the words "of March through August"; and

2. For the months of September 1992 through August 1993:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30% in the months of March, April, May, June, July, and December and 20 percent in other months of", as well as the word "distributing".

Statement of Consideration

This action continues the suspension of segments of the pool plant definition as well as the "touch-base" requirements for the Eastern Colorado order. This action continues the suspension of: (1) For the months of September 1992 through February 1993, the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February period, and (2) the "touch-base" and diversion limitation requirements for the months of September 1992 through August 1993. These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants.

The continuation of the current suspension was requested by Mid-America Dairymen, Inc., a cooperative association that represents a substantial share of the dairy farmers who supply the Eastern Colorado market. Western Dairymen Cooperative, Inc., filed comments supporting the proposed suspension.

The marketing conditions in the Eastern Colorado order that existed when the provisions were previously suspended still continue. During 1991, producer milk was 3.9 percent above 1990 while Class I sales were up 2.1 percent. During the period January through July 1992, producer receipts were 5.6 percent above the same period in 1991 and Class I sales were up 1.3 percent. Current projections indicate that there will be ample supplies of locally produced milk to meet the requirements of Eastern Colorado distributing plants without requiring that each producer's milk be received at least three times each month at a pool distributing plant and without restricting the amount of milk that can be diverted to non-pool plants. Without the suspension action of the pool plant definition, locally produced milk would have to be shipped from the Denver area to surplus handling plants. The suspension of the touch-base provision of the order will not allow additional milk supplies to be pooled, but rather will provide for more efficient disposition of producer milk not needed for fluid requirements of Eastern Colorado distributing plants. By suspending the touch-base provision, producer milk will not be required to be delivered to pool plants for the sole purpose of meeting provisions of the Eastern Colorado order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of supply plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Two comments in support of the suspension were received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

It is therefore ordered, that the following provisions in title 7, part 1137, sections 7(b) and 12(a)(1) of the Eastern Colorado order are hereby suspended beginning September 1, 1992.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR part 1137 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ 1137.7 [Suspended in Part]

2. In § 1137.7(b), for the months of September 1992 through February 1993.

In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and the words "of March through August"; and

§ 1137.12 [Suspended in Part]

3. In § 1137.12(a)(1), for the months of September 1992 through August 1993:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30% in the months of March, April, May, June, July, and December and 20 percent in other months of", as well as the word "distributing".

Dated: September 29, 1992.

L.P. Massaro,

Acting Administrator.

[FR Doc. 92-23958 Filed 10-1-92; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30 and 35

RIN 3150-AE23

Departures From Manufacturer's Instructions; Elimination of Recordkeeping Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to eliminate certain recordkeeping requirements related to the preparation and use of radiopharmaceuticals. Specifically, this rule eliminates recordkeeping requirements related to the justification for and a precise description of the departure, and the number of departures from the Food and Drug Administration (FDA) approved manufacturer's instructions. Both the NRC and the FDA staffs agree that the major trends in departures that may be identified by this recordkeeping are already discernible and collecting additional data is unnecessary.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Samuel Z. Jones, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3738.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1989 (54 FR 38239), the NRC published in the **Federal Register** a notice of receipt of a petition for rulemaking (PRM-35-9) from the American College of Nuclear Physicians (ACNP) and the Society of Nuclear Medicine (SNM). The ACNP and SNM requested, among other things, that the NRC amend its regulations in 10 CFR part 35, "Medical Use of Byproduct Material," to recognize their appropriate practice of medicine and to allow: (1) Departures from the manufacturer's instructions for preparing diagnostic radiopharmaceuticals and (2) the use of radiopharmaceuticals for therapeutic indications and methods of administration not included in the FDA approved package insert.

On August 23, 1990 (55 FR 34513), the NRC published in the **Federal Register** an Interim Final Rule granting the petition, in part, to specifically allow departures from the manufacturer's instructions for preparing diagnostic radiopharmaceuticals using generators and reagent kits for which the FDA has approved a New Drug Application (NDA). The Interim Final Rule also included recordkeeping requirements for the specific nature of the departure, a brief statement of the reasons for the departure, and the number of departures. The Interim Final Rule is effective through August 23, 1993. This action was taken after consulting with the FDA and with the intention that the provision might become permanent after further experience had been gained under the new provision, including an assessment of licensee documentation of departures. The NRC's original intent was to examine this documentation and make it available to the FDA and to consult with the FDA prior to any decision regarding either revision or continuation of the Interim Final Rule or making it permanent. The NRC staff has recently consulted with the FDA staff on the documentation collected to date.

Based on this documentation, the NRC and FDA staffs concluded that the major trends in departures are already clear and that collecting additional data would not be expected to reveal any significant new information. On June 11, 1992 (57 FR 24763), the NRC published a proposed rule in the **Federal Register** that suggested amendments to 10 CFR parts 30 and 35 to eliminate recordkeeping requirements involving the justification for and a precise description of the departure and the number of departures from the FDA approved manufacturer's instructions. The FDA staff had no objection to eliminating these recordkeeping requirements. The issue of whether departures, as set out in the Interim Final Rule, should be allowed on a permanent basis is currently under consideration by the NRC as part of its effort to resolve PRM-35-9.

Public Comments and NRC's Responses

The NRC received nine comment letters in response to the proposed rule. In terms of the types of organizations, there were three comment letters from hospitals and clinics, two from professional associations, and one each from an Agreement State, a pharmacy, a Federal agency, and an individual member of the public. Eight of the letters supported the proposed amendments and one letter opposed the rule.

Brief descriptions of the issues raised in public comment letters and NRC's responses to these issues are presented in the following paragraphs.

1. *Comment.* A commenter suggested that the NRC allow the disposition of records of departures generated under the Interim Final Rule after 3 years (instead of 5 years as specified in the Interim Final Rule) because the records have apparently served their purpose.

Response. The NRC agrees that the records have served their purpose and additional retention of these records is not necessary. This rule eliminates the retention period for these records. Thus, as of the effective date of this rule, licensees are no longer required to keep records of departures carried out under the Interim Final Rule.

2. *Comment.* A commenter suggested the termination of the remainder of the Interim Final Rule in favor of the provisions detailed in the ACNP-SNM Petition (PRM-35-9).

Response. The NRC is currently considering all issues raised in the ACNP-SNM Petition. NRC consideration includes the continuation of departures as set out in the Interim Final Rule. However, at this time the NRC is limiting this rulemaking to the recordkeeping requirements and has determined not to expand this rulemaking to include the termination of the remainder of the Interim Final Rule. That subject, the termination of the remainder of Interim Final Rule, will be covered when the NRC has completed its consideration of the ACNP/SNM petition.

3. *Comment.* A commenter noted a typographical error in the text of § 35.200 of the proposed rule which indicated paragraph (i) instead of paragraph (c).

Response. This typographical error has been corrected.

4. *Comment.* A commenter suggested that if there are no public health and safety issues identified, the authorization to deviate should not expire on August 23, 1993.

Response. The purpose of this rule is to provide relief to licensees concerning the recordkeeping burden related to the requirements in the Interim Final Rule. Therefore, the effective period of this rule was intentionally used to be consistent with the effective period of the Interim Final Rule.

The NRC anticipates that the ACNP–SNM petition (PRM–35–9), including the issues associated with the Interim final Rule, will be resolved prior to August 23, 1993.

5. *Comment.* A commenter opposed this rule. The commenter provided the following rationale:

(a) While reduction of regulatory burden may be a worthy goal, the legislative mandate to protect public health and safety must take precedence over an administrative goal;

(b) The modification in this rule would invite and promote an attitude or climate which resulted in the Three Mile Island accident, and thus, would present a danger to the health and safety of the public; and

(c) The NRC's rationale for this rule contradicts a statement made by the NRC, in a **Federal Register** notice announcing a public workshop (57 FR 27711; June 22, 1992), that some medical use licensees have administered byproduct material to patients who are pregnant or breast-feeding without knowing the patient's pregnancy or breast-feeding status.

Response. With respect to the first point, the elimination of the recordkeeping requirements addressed in this rule will not compromise public health and safety because this rule continues the requirement that departures may only be made by following the directions of an authorized user physician. Therefore, since there is no reduction in the protection of the public health and safety, the NRC continues to meet its legislative mandate. With respect to the second point, licensees must continue to comply with all applicable regulatory requirements and will continue to be subject to the same inspection and enforcement efforts. Therefore, the NRC believes that licensees' attitudes will not be negatively affected by this rule, and thus will not present a danger to the health and safety of the public.

Concerning the statement made in the public workshop notice as related to the rationale for this rule, the NRC views these two regulatory issues as separate matters. The rationale for this rule is to eliminate a regulatory burden that is no longer needed. The NRC has collected data specific to licensees' departures from manufacturer's instructions. The NRC and FDA staffs have concluded that the major trends in departures are already clear and that collecting additional data would not be expected to reveal any significantly new information. This rule is not connected to the issue concerning inadvertent radiation exposures to an embryo, fetus, or breast-feeding infant. In particular, the NRC has not stated that departures from manufacturer's instructions have led to an unintended radiation exposure to an embryo, fetus, or breast-feeding infant. Also, the NRC staff is not aware of any cases involving an unintended radiation exposure to an embryo, fetus, or breast-feeding infant that has been caused by a licensee departing from a manufacturer's instructions. Therefore, the NRC sees no contradiction between the rationale for this rule and the statement made in the public workshop notice.

The issue regarding unintended radiation exposures to an embryo, fetus, or breast-feeding infant from medical use of byproduct material is currently under study by the NRC to determine whether any regulatory action is necessary.

Discussion of the Final Rule Text

Based on public comments and NRC's responses discussed above, no substantive changes to the final rule are necessary. Thus, the text of the final rule remains the same as the text of the proposed rule with the exception that a typographical error in the proposed rule, in § 35.200 paragraph (i), has been correctly identified as paragraph (c).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(ii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act

This final rule eliminates information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The reduction in information collection requirements was approved by the Office of Management and Budget under approval numbers 3150–0010 and 3150–0017.

The public reporting burden for this collection of information is estimated to be reduced by .05 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0010 and 3150–0017), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

In August 1990, the NRC implemented an Interim Final Rule allowing licensees to depart from the manufacturer's instructions for preparing diagnostic radiopharmaceuticals, and to depart from the package insert instructions regarding use of radiopharmaceuticals for therapy, provided that certain conditions were met. One of the conditions was for licensees to maintain records of such departures.

On June 11, 1992, the NRC published in the **Federal Register** a proposed rule that would delete these recordkeeping requirements (57 FR 24763). Nine comment letters were received, eight supported and one opposed this rule.

The only alternative to this action is to continue to keep these records. However, the NRC and FDA staffs have concluded that the major trends in departures are already clear and that collecting additional data would not be expected to reveal any significant new information. Therefore, the NRC believes that these recordkeeping requirements are no longer necessary.

The estimated reduction in annual burden would be approximately 1000 hours for NRC licensees. The NRC concludes that this action is justified due to the net annual savings to NRC licensees and because eliminating these recordkeeping requirements would not affect public health and safety.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect medical use licensees including some private practice physicians. Some of these licensees would be considered small entities under the NRC's size standards (56 FR 56672; November 6, 1991). This rule eliminates recordkeeping requirements that the NRC and FDA staffs agree are no longer necessary.

This action will reduce the regulatory burden on medical use licensees, including some small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required for this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

CFR Part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 30 and 35.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.10, 30.34(b), (c), (f), (g) and (i), 30.41 (a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 30.10 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 30.6, 30.9, 30.34(g), 30.36, 30.50 30.51, 30.52, 30.55, and 30.56(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.34, paragraph (i) is revised to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(i)(1) From August 23, 1990, to August 23, 1993, each licensee eluting generators and processing radioactive material with diagnostic reagent kits for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), may depart from the manufacturer's elution and preparation instructions (for radiopharmaceuticals authorized for use pursuant to 10 CFR 35.200), provided that the licensee follows the directions of an authorized user physician.

(2) The actions authorized in paragraph (i)(1) of this section are permitted in spite of more restrictive language in license conditions.

(3) Nothing in this section relieves the licensee from complying with other applicable NRC, FDA, and other Federal or State regulations.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation for part 35 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.11, 35.13, 35.20(a) and (b), 35.21(a) and (b), 35.22, 35.23, 35.25, 35.27(a), (c) and (d), 35.31(a), 35.32(a), 35.49, 35.50(a)–(d), 35.51(a)–(c), 35.53(a)–(b), 35.59(a)–(c), (e)(1), (g), and (h), 35.60, 35.61, 35.70(a)–(f), 35.75, 35.80(a)–(e), 35.90, 35.92(a), 35.120, 35.200(b) and (c), 35.204(a) and (b), 35.205, 35.220, 35.300, 35.310(a), 35.315, 35.320, 35.400, 35.404(a), 35.406(a) and (c), 35.410(a), 35.415, 35.420, 35.500, 35.520, 35.605, 35.606, 35.610(a) and (b), 35.615, 35.620, 35.630(a) and (b), 35.632(a)–(f), 35.634(a)–(e), 35.636(a) and (b), 35.641(a) and (b), 35.643(a) and (b), 35.645(a) and (b), 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.960, 35.961, 35.970, and 35.971 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27(a) and (c), 35.29(b), 35.32(b)–(f), 35.33(a)–(b), 35.36(b), 35.50(e), 35.51(d), 35.53(c), 35.59(d), (e)(2), (g), and (i), 35.70(g), 35.80(f), 35.92(b), 35.204(c), 35.310(b), 35.315(b), 35.404(b), 35.406(b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(f), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 35.200, paragraph (c) is revised to read as follows:

§ 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.

* * * * *

(c)(1) From August 23, 1990, to August 23, 1993, a licensee may depart from the manufacturer's instructions for eluting generators and preparing reagent kits for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), by following the directions of an authorized user physician.

(2) Nothing in this section relieves the licensee from complying with other applicable NRC, FDA, and other Federal or State regulations.

5. In § 35.300, paragraph (b) is revised to read as follows:

§ 35.300 Use of radiopharmaceuticals for therapy.

* * * * *

(b)(1) From August 23, 1990, to August 23, 1993, a licensee may depart from the package insert instructions regarding indications or method of administration for a radiopharmaceutical for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), provided that the authorized user physician has prepared a written directive as required by § 35.32(a).

(2) Nothing in this section relieves the licensee from complying with other applicable NRC, FDA, and other Federal or State regulations.

Dated at Rockville, Maryland, this 17th day of September 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92–23933 Filed 10–1–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8441]

RIN 1545–AQ95

Bank Bad Debts, Conclusive Presumption

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that clarify the scope of the express determination that is required under § 1.166–2(d)(3) in order for a bank to elect to use a method of accounting that conforms tax accounting for bad debts to regulatory accounting by providing a conclusive presumption of worthlessness for debts charged off for regulatory purposes. The temporary regulations affect banks that have made or intend to make an election under § 1.166–2(d)(3). The text of the

temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

DATES: These temporary regulations are effective October 1, 1992 and apply to taxable years ending on or after December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Bernita L. Thigpen, 202–622–4016 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under § 1.166–2(d)(3), a bank may elect to use a method of accounting that allows the bank to conform its tax accounting for bad debts with its regulatory accounting (the "conformity election"), and thereby deduct for tax purposes those debts that are classified as loss assets and charged off for regulatory purposes. Generally, pursuant to § 1.166–2(d)(3)(iii)(D), the election is effective only if the bank's supervisory authority (as defined in that section) expressly determines that the bank maintains and applies loan review and loss classification standards that are consistent with those standards of the supervisory authority. Pursuant to Rev. Proc. 92–18, 1992–10 I.R.B. 24, the express determination is in the form of a uniform letter that is provided to banks by the supervisory authorities.

To afford the supervisory authorities time to develop and disseminate procedures for issuing express determination letters, § 1.166–2(d)(3)(iii)(E) of the regulations provides a transition rule which allows a bank to make the conformity election prior to its first examination in which it could obtain an express determination letter. If, in the first such examination, the bank does not obtain an express determination letter, pursuant to § 1.166–2(d)(3)(iv), the bank's conformity election is revoked automatically effective beginning with the taxable year of the election.

Explanation of Provisions

The requirement that a bank's supervisory authority expressly determined that the bank maintains and applies loan review and loss classification standards consistent with regulatory standards was intended to ensure that the bank properly identifies, classifies, and charges off debts that become loss assets for regulatory purposes. After the final regulations were published, concerns were raised that a supervisory authority's express determination could be interpreted as exceeding the intended scope of the express determination by, for example, indicating regulatory approval of the adequacy of a bank's general allowances for loan and lease losses notwithstanding the explicit language to the contrary in the express determination letter. To alleviate these concerns, § 1.166–2(d)(3) is being amended to require that a bank's supervisory authority expressly determine that the bank maintains and applies "loan loss classification" standards, rather than "loan review and loss classification standards" that are consistent with regulatory standards. See § 1.166–2T(d)(3)(iii)(D). The revised language does not alter the intended scope of the express determination requirement.

In addition, because the supervisory authorities may have conducted a number of examinations relating to a bank's loan review process after December 31, 1991, and may not have issued express determination letters, under the regulations any examined bank that made the conformity election for the 1991 taxable year may have its election automatically revoked. Accordingly, the transition rules in § 1.166–2(d)(3) are being amended to allow a bank to make the conformity election without an express determination letter until its first examination (involving the loan review process) that is after the date of these amendments. See § 1.166–2T(d)(3)(iii)(E) and (d)(3)(iv)(C)(*2*).

Need for Temporary Regulations

The provisions contained in this Treasury decision are needed immediately to afford banks the benefits of the conformity rules in § 1.166–2(d)(3). The provisions merely clarify what was initially intended by the regulations and, although not substantive in nature, change the content of the express determination that is required for a valid conformity election. In addition, the provisions extend the transitional period to prevent the automatic revocation under § 1.166–2(d)(3)(iv) of any election made by a bank in reliance on the regulations for its 1991 taxable year. Therefore, it is found impracticable and contrary to the public interest to issue this Treasury decision with prior notice under section 553(b) of title 5 of the United States Code.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Bernita L. Thigpen, Office of the Assistant Chief Counsel (Financial Institutions & Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.161–1 Through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.166–2 is amended by revising paragraphs (d)(3)(iii)(D), (d)(3)(iii)(E) and (d)(3)(iv)(C)(*2*) to read as follows:

§ 1.166–2 Evidence of worthlessness.

* * * * *

(d) * * *
(3) * * *
(iii) * * *
(D) [Reserved]. See § 1.166–2T (d)(3)(iii)(D).
(E) [Reserved]. See § 1.166–2T (d)(3)(iii)(E).
(iv) * * *
(C) * * *
(*2*) [Reserved]. See § 1.166–2T (d)(3)(iv)(C)(*2*).

* * * * *

Par. 3. Section 1.166–2T is added to read as follows:

§ 1.166–2T Evidence of worthlessness (temporary).

(a) through (d)(3)(iii)(C) [Reserved].

(d)(3)(iii)(D) *Express determination requirement.* In connection with its most

recent examination involving the bank's loan review process, the bank's supervisory authority must have made an express determination (in accordance with any applicable administrative procedure prescribed hereunder) that the bank maintains and applies loan loss classification standards that are consistent with the regulatory standards of that supervisory authority. For purposes of this paragraph (d)(3)(iii)(D), the supervisory authority of a bank is the "appropriate Federal banking agency" for the bank, as that term is defined in 12 U.S.C. 1813(q) or, in the case of an institution in the Farm Credit System, the Farm Credit Administration.

(E) *Transition period election.* For taxable years ending before completion of the first examination of the bank by its supervisory authority (as defined in paragraph (d)(3)(iii)(D) of this section) that is after October 1, 1992, and that involves the bank's loan review process, the statement or Form 3115 filed by the bank must include a declaration that the bank maintains and applies loan loss classification standards that are consistent with the regulatory standards of that supervisory authority. A bank that makes this declaration is deemed to satisfy the express determination requirement of paragraph (d)(3)(iii)(D) of this section for those years, even though an express determination has not yet been made.

(iv) (A) through (C) (*1*) [Reserved].

(iv)(C)(*2*) *Year of revocation.* If a bank makes the conformity election under the transition rules of paragraph (d)(3)(iii)(E) of this section and does not obtain the express determination in connection with the first examination involving the bank's loan review process that is after October 1, 1992, the election is revoked as of the beginning of the taxable year of the election or, if later, the earliest taxable year for which tax may be assessed. In other cases in which a bank does not obtain an express determination in connection with an examination of its loan review process, the election is revoked as of the beginning of the taxable year that includes the date as of which the supervisory authority conducts the examination even if the examination is completed in the following taxable year.

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: September 24, 1992.

Alan J. Wilensky,

(Deputy) Assistant Secretary of the Treasury.

[FR Doc. 92-23917 Filed 10-1-92; 8:45 am]

BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

Records and Reports; Employer Information Report; Extension of the Filing Deadline

AGENCY: Equal Employment Opportunity Commission.

ACTION: Extension of deadline for filing report.

SUMMARY: Notice is hereby given that the deadline for filing the 1992 Employer Information Report (EEO-1) required by 29 CFR 1602.7 is extended from September 30, 1992 to November 30, 1992. Employment data may be used from any payroll period in the third quarter (July, August, or September) of the current calendar year or for any other period that has been approved by the Commission.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division at (202) 663-4958 (voice) or (202) 708-9300 (TDD).

For the Commission,

Evans J. Kemp, Jr.,

Chairman.

[FR Doc. 92-23849 Filed 10-1-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 92-05]

Special Local Regulations: Tall Stacks 1992 (Ohio River mile 466.0 to mile 474.0); Correction

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: This document corrects the temporary final rule (CGD 92-05), published on Monday, August 31, 1992, (57 FR 39359) concerning the mile markers of the event to take place.

EFFECTIVE DATES: 6 a.m. to 2:30 a.m. on October 13 through October 17 and 6 a.m. to midnight October 18, 1992.

FOR FURTHER INFORMATION CONTACT: Ensign D. R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103-2832. The telephone number is (314) 539-3971, Fax: (314) 539-2685.

SUPPLEMENTARY INFORMATION: As published, the temporary final rule contains errors which requires correction: In the heading and text, the mile markers listed to describe the perimeter of the event are incorrect. The correct mile markers describing the perimeter of the event are the Ohio River from mile 466.0 to mile 474.0.

Correction

The following corrections are made to temporary final rule (CGD 92-05) which was published in the **Federal Register** on August 31, 1992, (57 FR 39359):

1. On page 39359, in the second column, the subject heading, "Special Local Regulations: Tall Stacks 1992 (Ohio River mile 469.0 to mile 471.0)" is corrected to read "Special Local Regulations: Tall Stacks 1992 (Ohio River mile 466.0 to mile 474.0)".

2. On page 39359, in the second column, in the **"SUMMARY"** section, "from mile 469.0 to mile 471.0" is corrected to read "from mile 466.0 to mile 474.0."

3. On page 39359, in the third column, in § 100.35-T0205(a) of the "Regulated Area" section, "mile 469.0 to mile 471.0" is corrected to read "from mile 466.0 to mile 474.0."

Dated: September 22, 1992.

J.J. Lantry,

Captain, U.S. Coast Guard, Acting Commander, Second Coast Guard District.

[FR Doc. 92-23974 Filed 10-1-92; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 20

VALUEPOST/CANADA Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service, after considering the comments submitted in response to its request for comments on its proposal to establish a new service for bulk mailings of certain AO mail to Canada, hereby gives notice that it is implementing the new service as proposed. The name of the new service is VALUEPOST/CANADA.

EFFECTIVE DATE: 12:01 a.m., October 18, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Rainer K. Hengst (202) 268-6095.

SUPPLEMENTARY INFORMATION: On May 11, 1992, the Postal Service published in the **Federal Register** a notice proposing the establishment of a new service for

bulk mailings to Canada of regular printed matter, books and sheet music, publishers' periodicals, and small packets (57 FR 20137).[1] The new service would be available from all U.S. post offices to all destinations in Canada. Mail would be conveyed by surface transportation from the United States to Canada, where it would be entered into the Canadian surface mail system for delivery.

The proposed per-item weight limit for the new service was 2 pounds. Two size-based rate categories were proposed. The letter-size rate category included items whose length was less than or equal to 11½ inches, height was less than or equal to 6⅛ inches, and thickness was less than or equal to ¼ inch. The flat-size rate category included items not fitting into the letter-size rate category whose length was less than or equal to 15 inches, height was less than or equal to 11½ inches, and thickness was less than or equal to ¾ inch. Items exceeding one or more of the flat-size rate category's maximum dimensions would not be eligible for the new service.

The proposed qualifying minimum for the new service varied depending on whether the mailing contained letter-size items, flat-size items, or a combination of both. A mailing containing only letter-size items would be required to weigh at least 50 pounds to qualify for the service. A mailing containing either only flat-size items or both letter-size and flat-size items would be required to weigh at least 100 pounds to qualify.

The proposal required mailers to sort, sack, and label their mail according to 13 Canadian postal code separations. In addition, the proposal required users to separate their mail by rate category (letter-size or flat-size). Within these two separations, users would be further required to sort, sack, and label their mail according to whether it was subject to the per-piece charge or the piece-plus-pound rate. No residual mail would be allowed in a dispatch, and commingling would not be permitted for mail from different rate categories or for mail subject to different postage rates.

The Postal Service received two comments concerning the new service, one from a large volume lettershop and one from an individual who identified himself only by name. The lettershop commenter maintained that the proposed rates would not be attractive to large mailers located near the U.S.-Canadian border, as those mailers could enter their items directly into the Canadian mail system and, thus, take advantage of the various presort discounts offered by Canada Post. This commenter suggested that the Postal Service consider taking the following three steps to reduce the proposed service's effective rates: (1) Making certain of Canada Post's presort discounts available to users of the new service; (2) providing users of the new service with a discount for entering their mail at certain U.S. and Canadian cities located near the U.S.-Canadian border; and (3) providing users of the new service with volume discounts for letter mail.

The individual commenter's remarks focused on two other aspects of the new service. First, he requested that payment of postage be permitted by any method that does not require cancellation of stamps. Second, he requested that the proposed rate structure be modified to allow for a savings for flat-size items weighing one ounce or less.

The Postal Service has concluded that none of the four modifications to the proposed rates requested by the commenters is feasible. The rate structure proposed in the May 11 notice was based on a break-point system, with rates including both per-piece and per-pound elements. The letter-size rate category's break-point would be 1 ounce. For letter-size items weighing 1 ounce or less, the proposed postage was 28 cents per piece. For letter-size items weighing over 1 ounce, the proposed rate was 26 cents per piece plus 40 cents per pound. The flat-size rate category's break-point would be 5 ounces. For flat-size items weighing 5 ounces or less, the proposed postage was 53 cents per piece. For flat-size items weighing over 5 ounces, the proposed rate was 30 cents per piece plus $1.00 per pound.

The proposed rates' discounts from the existing surface AO rates to Canada were premised on cost savings from the extensive worksharing required. The proposed rates also took into account origin-destination mail flows and reflected the overall transportation costs associated with those flows. In addition, the Postal Service sought to establish a relatively simple rate structure accessible to all mailers without regard to location.

At this time, the Postal Service has no means to access worksharing discounts offered by Canada Post. Consequently, the Postal Service is unable to make any of Canada Post's presort discounts available to VALUEPOST/CANADA users. Providing a discount for mail entered at certain U.S. and Canadian cities is similarly impracticable. The Postal Service's not being able to accept mail outside of the United States precludes discounted Canadian entry. The expectation that most VALUEPOST/CANADA mail will originate near the U.S.-Canadian border, together with the Postal Service's desire to establish a relatively simple rate structure, likewise militates against a discount for entry at specific U.S. cities.

The Postal Service believes that volume discounts are also insupportable. The new service was designed as a bulk service with substantial qualifying minimums. The extensive worksharing required of users was intended to minimize the Postal Service's processing and handling costs. The Postal Service would not realize significant additional cost savings if mailings contained more items than required to qualify for the service. As higher volumes would not lower the Postal Service's costs to an appreciable extent, they do not provide the basis for a discount.

The fourth requested rate-related modification concerned the proposed rate for flat-size items weighing one ounce or less. Although the commenter failed to explain his concern, it is likely that he was reacting to the fact that the proposed rate for one-ounce flats (53 cents) was greater than the existing one-ounce surface AO rate to Canada (36 cents for regular printed matter). This situation resulted from the way in which the Postal Service established the proposed rates. The Postal Service disaggregated the costs associated with letter-size pieces from the higher costs associated with flat-size pieces. Consequently, for a small number of weight steps, including one-ounce flats, mailers would have access to more advantageous rates by using the Postal Service's existing services to Canada. However, the Postal Service believes that the proposed rates would provide significant savings to the vast majority of mailers able to qualify and to meet the worksharing requirements.

In light of the foregoing, the Postal Service is implementing the rate structure as proposed. The rates being implemented are shown below.

As mentioned above, the individual commenter also requested that payment of postage be permitted by any method that does not require cancellation of stamps. The May 11 notice required that postage be paid by postage meter for non-identical weight items and by permit imprint or postage meter for identical weight items. The notice also stated that mailers would be permitted to use permit imprint for non-identical weight items if authorized to participate in the postage payment programs

[1] This includes all types of AO mail except matter for the blind.

described in Domestic Mail Manual (DMM) sections 145.7, Manifest Mailing System (MMS); 145.8, Optional Procedure (OP) Mailing System; or 145.9, Alternate Mailing Systems (AMS).

The Postal Service agrees with the commenter that mailers should have as much flexibility as practicable when paying postage. Therefore, in addition to implementing the proposed postage payment methods, the Postal Service will also allow VALUEPOST/CANADA users to precancel adhesive postage stamps when authorized by the Postal Service under the conditions in DMM 143.2.

The Postal Service did not receive comments on any other aspect of the new service. Consequently, with one exception, the mailing conditions being implemented for VALUEPOST/CANADA service are the same as those proposed in the May 11 notice and summarized above. The single change involves the use of Canadian postal codes for items sent in this service. In the interest of improving service quality, the Postal Service is now requiring that mailers include the Canadian postal code in the address on all VALUEPOST/CANADA items. As shown below, the sortation requirements set forth in the May 11 notice have been modified to reflect this change.

In setting international postage rates, the Postal Service must ensure that such rates (1) do not apportion the costs of the service so as to impair the overall value of the service to the users; (2) apportion the costs of all postal operations to all users on a fair and equitable basis; (3) are fair and reasonable; and (4) are not unduly or unreasonably discriminatory or preferential. The VALUEPOST/CANADA rates announced herein satisfy these criteria.

Accordingly, the Postal Service has determined to implement VALUE/CANADA service. This service will begin at 12:01 a.m., on October 18, 1992.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended by incorporating parts 247, 248, and 249 into part 248 and adding a new part 247 as follows:

CHAPTER 2—CONDITIONS FOR MAILING

* * * * *

247 VALUEPOST/CANADA

247.1 General

247.11 Description. This service is a bulk service for regular printed matter, books and sheet music, publishers' periodicals, and small packets. Rates are generally less than the single-piece rates for these classifications. The mailer must sort and prepare mail as described in this part.

247.12 Qualifying Mailings. To qualify, a mailing must consist of at least 50 pounds of letter-size items or at least 100 pounds of flat-size items. Mailings containing both letter-size and flat-size items must weigh at least 100 pounds.

247.13 Addressing. All items must be addressed in accordance with 122 and the Canadian postal code must be included as part of the address. Mailers wishing to order a Canadian Postal Code Directory should write to the following address to obtain an order form:

Canada Post Corporation
Head Sales and Customer Service
Ottawa, Ontario K1A 0B1
Canada

Mailers requiring postal code information on computer tape or information regarding Canadian mailing standards should write to the following address:

Canada Post Corporation
Postal Code Management
Sir Alexander Campbell Building Annex
C Station 321
Ottawa, Ontario K1A 0B1
Canada

or telephone (613) 993–1784. This telephone number is not intended as an information source to obtain the code for a single Canadian address.

247.14 Makeup Requirements. All items must be prepared as required in 244.4 for printed matter, and 284 for small packets.

247.15 Where to Mail. The postmaster will designate the acceptance points for this service. Although there is no drop shipment rate for this service, mailers may be authorized a plant-verified drop shipment postage payment system as provided in DMM 664. Plant loading may be authorized as provided in DMM 254.

247.16 Special Services Not Available. The special services described in IMM Chapter 3 are not available for items mailed using this service.

247.17 Return to Sender. Printed matter is generally not returned to the sender if undeliverable (see 244.23). Return addresses in a country other than the U.S. are not usually permitted (see 122.2). If the mailer wishes to have items returned if undeliverable, the items must be endorsed "Return Requested." Return charges are collected as provided in 781.5.

247.18 Enclosures in Printed Matter Items. Printed matter sent to Canada may contain as an enclosure a card, envelope, or wrapper bearing the printed address of the sender or the sender's agent in either the U.S. or Canada.

247.19 Customer Identification Number. Customers not authorized a permit imprint must be assigned, by their post office, a customer identification number. This number must be 6 digits and must not be the same as any permit number issued by that post office. Use the International Surface Air Lift (add a leading zero) or International Priority Airmail customer ID number if one has been issued to the mailer. This number must be entered on the Form 3651–C.

247.2 Size and Weight Limits

247.21 Size Limits. All items sent in this service must meet the size requirements for either letter-size or flat-size items. Items not meeting either of these requirements may not be mailed using this service. The following size limits apply:

a. Letter-Size

(1) Minimum
Height—3-½"
Length—5-½"
Thickness—.007"

(2) Maximum
Height—6-⅛"
Length—11-½"
Thickness—¼"

b. Flat-Size. Items exceeding at least one of the maximum size limits for letter-size items, but not exceeding the following dimensions, are acceptable at the rate for flat-size items:

Height—11-½"
Length—15"
Thickness—¾"

247.22 Weight Limits. Individual items may not weigh more than 2 pounds.

247.3 Postage

247.31 Rates

Weight	Rate
Letter-size:	
1 ounce or less	28 cents per piece.
Over 1 ounce	28 cents per piece plus 40 cents per pound or fraction of a pound.
Flat-size:	
5 ounces or less	53 cents per piece.
Over 5 ounces	30 cents per piece plus $1.00 per pound or fraction of a pound.

247.32 Postage Payment Methods

247.321 Permit Imprint. Mailers may use permit imprint only with mailings consisting of identical weight pieces. Mailers may be authorized to use permit imprint on mailings of non-identical weight items if authorized specific procedures under one of the special postage payment programs in DMM 145.7, 145.8, or 145.9.

247.322 Postage Meter. Mailings of non-identical weight pieces must bear the appropriate piece rate by postage meter impression. Items in each rate category must be sacked separately and presented by rate category.

247.323 Precancellation by Mailer. Mailers may precancel adhesive postage stamps when authorized by the Postal Service under the conditions in DMM 143.2.

247.324 Mailing Statement. Postage is computed on Form 3651–C, *Statement of Mailing—VALUEPOST/CANADA*, which must be completed for each mailing and must be presented at the time of mailing.

247.4 Preparation Requirements

247.41 Endorsements. All items must bear the endorsement "Printed Matter" or "Small Pocket," as appropriate. Publishers' periodicals mailed in this service may bear the endorsements in 244.21d. If the sender wants undeliverable printed matter returned, the item must be endorsed "Return Requested." All items must also be endorsed "Bulk Rate." For items paid by meter, this endorsement may be in either the ad plate area or the postal inscription (slug) area. If a permit imprint is used, the imprint may include the bulk rate endorsement. See DMM Exhibit 145.41c for examples. The imprint may not contain reference to domestic rates such as carrier route sort, ZIP+4, five-digit ZIP+4, ZIP+4 barcoded, or nonprofit organization.

247.42 Customs Declarations. Items in this service may require the use of either Form 2976, *Customs-Douane C1*, or Form 2976–A, *Customs Declaration*. See 123.1 for information on the use of customs forms.

247.43 Sortation Requirements

247.431 Facing and Bundling. All mail must be bundled according to the Canadian province of destination as shown in Exhibit 247.431. Letter-size and flat-size items must be bundled separately. Items not within the same rate category may not be commingled. For example, letter-size items under and over 1 ounce may not be bundled or sacked together. Bundles should be approximately 4 to 6 inches thick and must be banded around the length and girth. All bundles must bear a facing slip showing the Canadian province of destination and the first letter(s) of the postal code(s) included in the bundle. For example, a bundle containing mail for Manitoba with a postal code beginning with "R" will have the following facing slip.

Exhibit 247.431 shows Canadian provinces and the postal code letters.

247.432 Sacks. Gray disposable international sacks must be used. All bundles must be placed in sacks labeled to the destinations shown in Exhibit 247.431. For example, all bundles for Manitoba must be placed in a sack labeled to Winnipeg MB FWD. Items in different rate categories may not be placed in the same sack. For example, flat-size items weighing under and over 5 ounces must be sacked separately. There is no minimum weight per sack. Sacks may not weigh more than 66 pounds (contents and sack).

247.433 Sack Labels

a. Format. Use blue sack labels completed using the following format:

Line 1: Six digit Canadian postal code (left justified). U.S. routing code (right justified).

Line 2: Destination office in Canada and contents.

Line 3: Mailer, Mailer Location.

Example:

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K0A 9Z0                                  099
OTTAWA ON FWD                            3C
ABC Publishers, Chicago, IL 60601
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b. Obtaining Labels. Instructions for ordering labels are contained in Handbook PO–423, *Requisitioning Labels*. Alternatively, mailers may preprint them. The labels must be blue in color, similar to those used by the Postal Service.

EXHIBIT 247.431.—CANADIAN SORTATION SCHEME

CANADIAN PROVINCE/TERRITORY	CANADIAN POSTAL CODE	SACK LABEL
Newfoundland Nova Scotia	A	B0J 9Z0 044 Halifax NS Fwd Mailer, Mailer Location.
	B	
Prince Edward Is. New Brunswick	C	E0G 9Z0 044 St John NB Fwd Mailer, Mailer Location.
	E	
Quebec	G, H, J	H0A 9Z0 099 Montreal PQ Fwd Mailer, Mailer Location.
Ontario	K	K0A 9Z0 099 Ottawa ON Fwd Mailer, Mailer Location.
Ontario	L, M, P	L4W T20 140 Toronto BMF ON Fwd Mailer, Mailer Location.
Ontario	N	N0L 9Z0 48399 London ON Fwd Mailer, Mailer Location.
Manitoba	R	R0C 9Z0 568 Winnipeg MB Fwd Mailer, Mailer Location.
Saskatchewan	S	S0G 9Z0 568 Regina SK Fwd Mailer, Mailer Location.
Alberta	T0C, T0J, T0K, T0L, T0M, T0S, T1–T4.	T0S 9Z0 568 Calgary AB Fwd Mailer, Mailer Location.
Alberta [1]	All other "T" Codes	T0N 9Z0 568 Edmonton AB Fwd Mailer, Mailer Location.
British Columbia [2]	W	V0T 9Z0 98001 Vancouver BC Fwd.
Northwest Territories [1]	X	T0N 9Z0 568 Edmonton AB Fwd Mailer, Mailer Location.
Yukon Territory [2]	Y	V0T 9Z0 98001 Vancouver BC Fwd Mailer, Mailer Location.

[1] Alberta and Northwest Territories should be combined in the same sack if there is less than 11 pounds to either destination.
[2] British Columbia and Yukon Territory should be combined in the same sack if there is less than 11 pounds to either destination.

A transmittal letter making these changes in the pages of the International Mail Manual will be published and transmitted to subscribers automatically. Meanwhile, these changes will be published in the Postal Bulletin. See 39 CFR 20.3(c). Notice of issuance of the IMM transmittal letter will be published in the Federal Register as provided by 39 CFR 20.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-23909 Filed 10-1-92; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-4516-7]

Rhode Island; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Rhode Island has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Rhode Island's application and has made a decision, subject to public review and comment, that Rhode Island's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Rhode Island's hazardous waste program revision. Rhode Island's application for program revision is available for public review and comment.

DATES: Final authorization for Rhode Island shall be effective December 1, 1992 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Rhode Island's program revision application must be received by the close of business November 2, 1992.

ADDRESSES: Copies of Rhode Island's program revision application are available for inspection and copying, 8:30am–4:00 pm Monday-Friday at the following addresses: Rhode Island Department of Environmental Management, Division of Air & Hazardous Materials, 291 Promenade Street, Providence, Rhode Island 02908-5767, Phone: 401/277-2787; U.S. EPA Region I Library, One Congress Street, 11th Floor, Boston, Massachusetts 02203, Phone: 617/565-3300. Written comments should be sent to Betsy Davis, at the address below.

FOR FURTHER INFORMATION CONTACT: Betsy Davis, MA & RI Waste Regulation Section, U.S. EPA Region I, HRR-CAN3, JFK Federal Building, Boston, Massachusetts 02203, Phone: 617/573-5722.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124 and 270.

B. Rhode Island

Rhode Island initially received final authorization on January 31, 1986 (51 FR 3780, January 30, 1986) to implement its base hazardous waste program. Rhode Island received final authorization for revisions to its program on March 26, 1990 (55 FR 9128, March 12, 1990) and May 5, 1992, (57 FR 8089, March 6, 1992) to implement the program revisions listed in the Federal Register notices published March 12, 1990 and March 6, 1992, respectively. On November 28, 1988, Rhode Island submitted a draft program revision application for federal requirements promulgated on September 9, 1987, April 22, 1988, and from July 1, 1986 to June 30, 1987, except that approval was not requested for revisions which are required as a result of the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA"). Today, Rhode Island is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Rhode Island's application, and has made an immediate final decision that Rhode Island's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the modifications to the Rhode Island program subject to further review based on adverse public comment. The public may submit written comments on EPA's immediate final decision up until November 2, 1992. Copies of Rhode Island's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Rhode Island's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The Rhode Island program revision application is based on changes to State Regulations which were intended to make them equivalent to the analogous Federal Regulations which had been promulgated during the July 1, 1986 to June 30, 1987 period, and September 9, 1987, and April 22, 1988, in 40 CFR parts 260, 261, 264, 265 and 270. These changes did not include any provisions which were required as a result of the Hazardous and Solid Waste Amendments 1984 (HSWA) and radioactive mixed waste. Specific provisions which are included in the Rhode Island program revision authorization made today are listed in Table 1 below.

TABLE 1.—PROVISIONS COVERED BY THIS PROGRAM REVISION AUTHORIZATION

Federal requirement	State authority
Liability Coverage 51 FR 25350-25356, July 11, 1986.	Rules 9.17, 7.01(E).
Standards for Hazardous Waste Storage and Treatment Tank Systems 51 FR 25470-25486, July 14, 1986.	Rules 3.100, 3.25, 5.02, 9.05, 9.12, 9.16, 9.17, 9.19, 8.04(K), 8.04(R), 8.04(V), 7.06(D).
Corrections to Listing of Commercial Chemical Products and Appendix VIII Constituents 51 FR 28296-28310, August 6, 1986.	Rule 3.25.
Revised Manual SW-846; Amended Incorporation by Reference 52 FR 8072-8073, March 16, 1987.	Rule 3.25.
Closure/Post-Closure Care for Interim Status Surface Impoundments 52 FR 8704-8709, March 19, 1987.	Rule 7.01(E).
Definition of Solid Waste Technical Corrections 52 FR 21306-21307, June 5, 1987.	Rule 3.25.

TABLE 1.—PROVISIONS COVERED BY THIS PROGRAM REVISION AUTHORIZATION—Continued

Federal requirement	State authority
Amendments to Part B Information Requirements for Disposal Facilities 52 FR 23447-23450, June 22, 1987 as amended 52 FR 33936, September 9, 1987.	Rule 8.01(G).
Technical Corrections; Identification and Listing of Hazardous Waste 53 FR 13382-13393, April 22, 1988.	Rule 3.25.

Rhode Island agrees to review all state hazardous waste permits which have been issued under state law prior to the effective date of this authorization. Rhode Island agrees to then modify, revoke and reissue, or reissue such permits as necessary to require compliance with the amended state program when the permit expires. The modification, revocation and reissuance, or reissuance will be scheduled in the State Grant Workplan, if necessary.

Rhode Island is not seeking authorization to operate on Indian lands.

C. Decision

I conclude that Rhode Island's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Rhode Island is granted final authorization to operate its hazardous waste program as revised.

Rhode Island now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application and previously approved authorization, subject to the limitations of the HSWA. Rhode Island also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Rhode Island's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 25, 1992.

Patricia L. Meaney,

Acting Regional Administrator.

[FR Doc. 92-23954 Filed 10-1-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 272

[FRL-4125-1]

Hazardous Waste Management Program; Codification of Approved State Hazardous Waste Program for Illinois

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of title 40 of the Code of Federal Regulations (40 CFR part 272) to codify its authorization of State programs and to incorporate by reference those provisions of State statutes and regulations that EPA will enforce under RCRA section 3008. Thus, EPA intends to codify the Illinois authorized State program in 40 CFR part 272. The purpose of this **Federal Register** (FR) is incorporation by reference of EPA's approval of recent revisions to Illinois' program.

DATES: Codification of Illinois' revised authorization hazardous waste program shall be effective December 1, 1992, unless EPA publishes a prior FR action withdrawing this immediate final rule. All comments on Illinois' codification must be received by the close of business November 2, 1992. The incorporation of certain publications listed in the regulations is approved by the Director of the FR as of December 1, 1992.

ADDRESSES: Written comments should be sent to Gary Westefer, Illinois Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 77 West Jackson Boulevard, HRM-7J, Chicago, Illinois 60604, (312) 886-7450, (FTS: 312/886-7450).

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Illinois Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 77 West Jackson Boulevard, HRM-7J, Chicago, Illinois 60604, (312) 886-7450, (FTS: 312/-886-7450).

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1989, and January 31, 1992, EPA published notices in the FR of its decisions to incorporate by reference Illinois' then authorized hazardous waste program (see 54 FR 37649 and 57 FR 3722). Since then, EPA has granted authorization to Illinois for additional revisions to the State hazardous waste program 56 FR 13595 (April 13, 1991). In this notice, EPA is incorporating the currently authorized State hazardous waste program in Illinois.

EPA codifies its approval of State programs in 4 CFR part 272, and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clear notice to the public of the scope of the authorized program in Illinois.

Revisions to Illinois' and other State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. The codification of Illinois' authorized program in subpart 0 of part 272 is intended to enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. For a fuller explanation of EPA's codification of Illinois' authorized hazardous waste program, see 54 FR 37649 (September 12, 1989) and 56 FR 13595 (April 3, 1991).

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to codify the decision

already made to authorize Illinois' program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

William H. Sanders III,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Section 272.700 is amended by revising paragraphs (a) and (b) to read as follows:

§ 272.700 State authorization.

(a) The State of Illinois is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6921 *et seq.* subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA), (Public Law 98–616, November 8, 1984), 42 U.S.C. 6926 (c) and (g). The Federal program for which a State may receive authorization is defined in 40 CFR Part 271. The State's base program and revisions to that program, as administered by the Illinois Environmental Protection Agency, were approved by EPA pursuant to 42 U.S.C. 6926(b) and 40 CFR part 271. EPA's approval of Illinois' base program was effective on January 31, 1986. EPA's approval of revisions to Illinois' base program were effective on March 5, 1988, April 30, 1990 and June 3, 1991.

(b) Illinois is authorized to implement only those HSWA requirements addressed in 40 CFR 272.701 and codified herein.

* * * * *

2. Section 272.701 is amended by revising the introductory text of the section, the heading for paragraph (a), paragraphs (a)(1), (a)(2)(ii) introductory text, (b), (c) and (d) to read as follows:

§ 272.701 State administered program: Final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Illinois has final authorization for the following elements submitted to EPA in Illinois; base program and program revision applications for final authorization and approved by EPA effective on January 31, 1986, March 5, 1988, April 30, 1990 and June 3, 1991.

(a) *State Statutes and Regulations.*

(1) The following Illinois regulations and statutes are incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*:

(i) Illinois Administrative Code, Title 35, Part 702, Sections 702.101–702.104, 702.110–702.187; Part 703, Sections 703.100–703.126, 703.140–703.246; Part 709, Sections 709.102–709.105, 709.201, 709.301, 709.302, 709.401, 709.501–709.603; Part 720, Sections 720.101–720.122, Part 720 Appendix A; Part 721, Sections 721.101–721.133, Part 721 Appendices A, B, C, G, H, I, J, Z; Part 722, Sections 722.110–722.151, Part 722 Appendix A; Part 723, Sections 723.110–723.131; Part 724, Sections 724.101–724.321, 724.326–724.351, 724.354–724.451, Part 724 Appendices A, D, E; Part 725, Sections 725.101–725.248, 725.270–725.530, Part 725 Appendices, A, C, D, E; Part 726, Sections 726.120–726.180; Part 728; and Part 729, Sections 729.100–729.321; (Illinois Administrative Code, January 1, 1985, as amended January 1, 1986, January 1, 1987, and January 1, 1988).

Copies of the Illinois regulations that are incorporated by reference in this paragraph are available from the Secretary of State, Administrative Code Division, 288 Centennial Building, Springfield, Illinois 62756. Copies may be inspected at U.S. EPA headquarters, 401 M Street, SW., Washington, DC, or at the Office of Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

(ii) (Reserved)

(2) * * *

(ii) Illinois Administrative Code, Title 35 Part 700, Sections 700.101–700.504; Part 702 Sections 702.105–702.109; Part 705, Section 705.101–705.212; Part 720, Sections 720.140–720.141; and Title 2, Part 1826, Sections 1826.101–1826.503, Section 1826 Appendices A and B. (Illinois Administrative Code, January 1, 1985, as amended January 1, 1986, January 1, 1987, and January 1, 1988).

* * * * *

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA-Region V and the Illinois Environmental Protection Agency, signed by the EPA Regional Administrator on January 26, 1990, is part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(c) *Statement of Legal Authority.* The Illinois Attorney General's Statements for final authorization signed by the Attorney General of Illinois on June 4, 1985, July 15, 1986, May 26, 1988, and February 23, 1990 are part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(d) *Program Description.* Program Descriptions dated July 26, 1985, August 7, 1986, November 29, 1988, and May 18, 1990, and any other materials submitted as part of, or as supplements to, the original application or revision applications are codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

[FR Doc. 92–23953 Filed 10–1–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6949

[NM–930–4214–10; NMNM 84806]

Withdrawal of National Forest System Land for the Jemez Falls Campground Addition; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 164.60 acres of National Forest System land from mining for 20 years to protect significant improvements associated

with the Forest Service's Jemez Falls Campground Addition. The land has been and remains open to mineral leasing and surface uses authorized by the Forest Service.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office P.O. Box 27115, Santa Fe, New Mexico 87502-7115, 505-438-7594.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Forest Service's capital investments of the Jemez Falls Campground Addition:

New Mexico Principal Meridian

Santa Fe National Forest

T. 18 N., R. 3 E.,
Sec. 3, lots 5, 6, and 7, E½SE¼NW¼, and E½E½SW¼;
Sec. 10, NE¼NE¼NW¼.

The area described contains 164.60 acres in Sandoval County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 21, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-23881 Filed 10-1-92; 8:45 am]

BILLING CODE 4310-FB-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-176; RM-7053; RM-8040]

Radio Broadcasting Services; Columbia and Arnold, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants reconsideration of two petitions for rule making filed by Eric R. Hilding and Clarke Broadcasting and allots Channel 255A to Columbia, California, as that community's first local FM service at North Latitude 38-02-11, West Longitude 120-24-01. This document also allots Channel 240A to Arnold, California, as that community's second local FM service at North Latitude 38-18-03, West Longitude 120-20-06 with a site restriction 5.2 kilometers (3.2 miles) north. See 56 FR 26367, June 7, 1991. With this action, the proceeding is terminated.

EFFECTIVE DATES: November 12, 1992. The window period for filing applications will open on November 13, 1992, and close on December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 90-176, adopted August 31, 1992, and released September 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California is amended by adding Channel 255A, Columbia and by adding Channel 240A at Arnold.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23896 Filed 10-1-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-124; RM-8001]

Radio Broadcasting Services; Dunsmuir, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 261C3 for Channel 261A at Dunsmuir, California, and modifies the permit for Station KRKD (FM) to specify operation on the higher powered channel, as requested by Fatima Response, Inc. See 57 FR 27415, June 19, 1992. Coordinates for Channel 261C3 at Dunsmuir are 41-17-20 and 122-14-25. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 12, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-124, adopted September 3, 1992, and released September 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 261A and adding Channel 261C3 at Dunsmuir.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23893 Filed 10-1-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-138; RM-7040]

Radio Broadcasting Services; Newnan and Peachtree City, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 244A from Newnan, Georgia, and modifies the construction permit of Station WMK](FM) to specify Peachtree City, Georgia, as its community of license, at the request of South Metro Broadcasting Co., Inc. The allotment of Channel 244A to Peachtree City will provide the community with its first local aural transmission service, without depriving Newnan of its aural transmission service, in accordance with § 1.420(i) of the Commission's Rules. See 55 FR 11411, March 28, 1990. Channel 244A can be allotted to Peachtree City in compliance with the Commission's minimum distance separation requirements of the Rules, with a site restriction of 11.8 kilometers (7.3 miles) northwest of the community. The site restriction is necessary to maintain the present short-spacing to Station WKLS(FM), Channel 241C, Atlanta, Georgia. The coordinates for Channel 244A at Peachtree City are North Latitude 33-26-22 and West Longitude 84-42-42. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 12, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-138, adopted August 31, 1992, and released September 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., Suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 244A, Newnan, and adding Channel 244A, Peachtree City.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23898 Filed 10-1-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-237; RM-7744]

Radio Broadcasting Services; Bayboro, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Atlantic Broadcasting, Inc., substitutes Channel 250C3 for Channel 250A at Bayboro, North Carolina, and modifies the license of WKZF (FM) at Bayboro to specify operation on the higher class channel. See 56 FR 41113, August 19, 1991. Channel 250C3 is allotted at Bayboro, North Carolina at coordinates 35-04-47 and 76-37-58, at a site 17.3 kilometers (9.1 miles) southeast of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 12, 1992.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-237, adopted August 31, 1992, and released September 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 250A and adding Channel 250C3 at Bayboro.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23897 Filed 10-1-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-67; RM-7482, RM-7026, RM-7057]

Radio Broadcasting Services; Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg and Fort Lee, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Keymarket of Virginia, Inc., reallots Channel 243B from Williamsburg, Virginia to Fort Lee, Virginia. See 56 FR 41805, August 23, 1991. Channel 243B is allotted at Fort Lee at coordinates 37-20-24 and 77-24-41. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 12, 1992.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-67, adopted August 31, 1992, and released September 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), The Table of FM Allotments under Virginia, is amended by removing Channel 243B, Williamsburg and adding Channel 243B, Fort Lee.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23895 Filed 10-1-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-126; RM-7993]

Radio Broadcasting Services; White Stone, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Windmill Communications, permittee of Station WNDJ-FM, Channel 261A, White Stone, Virginia, substitutes Channel 285A for Channel 261A at White Stone and modifies Station WNDJ-FM's construction permit to specify operation on Channel 285A. See 57 FR 28162, June 24, 1992. Channel 285A can be allotted to White Stone in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 kilometers (4.2 miles) northwest to accommodate Windmill's desired site. The coordinates for Channel 285A at White Stone are 37-42-00 and 76-26-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-126, adopted August 27, 1992, and released September 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia is amended by removing Channel 261A and adding Channel 285A at White Stone.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23892 Filed 10-1-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 910102-1312]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Reopening of the northern longline component of the Incidental Catch category.

SUMMARY: NMFS issues this notice to reopen the fishery for Atlantic bluefin tuna conducted by longline vessels permitted in the Incidental Catch category and operating in the northern part (north of 36°00'N latitude) of the Regulatory Area. Reopening of this fishery is necessary because the total annual quota of 28 metric tons (mt) of Atlantic bluefin tuna allocated to that category for this area, was closed before final rules for 1992 became effective. This closure was based on overages in the southern longline component of the Incidental Catch category. For a biennial quota, the 1992 rules allow for subtracting from, or adding to, a specific component in the following year for any overages and underages from the previous fishing year. The intent of this action is to allow an opportunity for fishermen in the northern longline component of the Incidental Catch category to harvest the quota allocated for this fishery.

EFFECTIVE DATE: The opening is effective 0001 hours local time October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Section 285.22(f)(1) of the regulations provides for an annual quota of 28 mt of Atlantic bluefin tuna to be harvested from the Regulatory Area by longline vessels permitted in the Incidental Catch category and fishing north of 36°00'N latitude. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22.

The Assistant Administrator had determined (prior to implementation of rules specifically for 1992 and beyond that contained provisions for underages and overages by a specific component), based on the reported catch, that the annual quota of Atlantic bluefin tuna for longline vessels fishing in the Regulatory Area would be attained by July 8, 1992. Therefore, based on total landings from the southern and northern components of the fishery, a closure notice was issued on July 6, 1992, to take effect upon July 8, 1992.

Upon further analysis of the landing data after the fishery was closed, the Assistant Administrator has determined that 15.18 mt of the 28 mt quota still exists for the northern component of the Incidental Catch category north of 36°00'N latitude. This notice of reopening is intended to allow an opportunity for the fishermen in that category to take their full allocation.

Classification

This action is taken under 50 CFR part 285 and complies with Executive Order 12291.

Authority: 16 U.S.C. 971 *et seq.*

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: September 28, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-23891 Filed 10-1-92; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in statistical area 61 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the fourth quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), September 28, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The fourth quarterly allowance of pollock TAC for statistical area 61 is 1,353 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv). During the one-day third quarter fishery, 2,977 mt was caught.

The Director of the Alaska Region, NMFS, has determined that any directed fishery for pollock in Statistical area 61 would likely result in exceeding the TAC. Therefore, in accordance with § 672.20(c)(2)(ii), NMFS is establishing a directed fishing allowance for the fourth quarter of 0 mt, is setting aside the remaining 1,353 mt to support bycatch needs in other groundfish fisheries, and is prohibiting directed fishing for pollock in statistical area 61, effective from 12 noon A.l.t., September 28, 1992, through midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 28, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-23886 Filed 9-28-92; 4:21 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 192
Friday, October 2, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Docket No. FV92-910-1]

Lemons Grown in California and Arizona; Proposed Weekly Volume Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the quantities of fresh California-Arizona lemons that may be shipped weekly to domestic markets for the four week period from the week ending October 17 through the week ending November 7, 1992. Comments on the weekly levels of volume regulation must be received by the Department of Agriculture (Department) by 12 Noon Eastern Time and by the Lemon Administrative Committee (Committee) by 12 Noon Pacific Time on the day prior to the Committee meeting associated with the week of regulation being addressed in the comment. A list of the committee meetings, dates and proposed levels of volume regulations can be found under the heading. *Committee Meetings and Dates* Consistent with program objectives, volume regulations for these weeks may be needed to establish and maintain orderly marketing conditions for fresh California-Arizona lemons. The Committee locally administers the marketing order covering lemons grown in California and Arizona.

DATES: Comments on the volume regulation proposed for the week ending October 17 must be received by the Department and the Committee by October 5; for the week ending October 24 by October 13; for the week ending October 31 by October 19; and for the week ending November 7 by October 26.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed weekly levels of volume regulation. Comments must be sent in triplicate to the Docket Clerk, room 2525–S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456, or by faxogram at (202) 720–5698; and to the Lemon Administrative Committee, 25129 The Old Road, suite 304, Newhall, California 91381, or by faxogram at (805) 253–2764. Such comments should reference the docket number, date, and page number of this issue of the **Federal Register**, and the dates of the regulatory week or weeks being addressed. For ease of review, persons submitting comments in excess of five pages may wish to include a one page summary. Such comments will be made available for public inspection in the Office of the Docket Clerk and the Committee office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3670; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to any order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons who are subject to regulation under the marketing order and approximately 2,000 producers of lemons in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona lemons may be classified as small entities.

The Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The order authorizes volume regulations applicable to fresh shipments of California-Arizona lemons to the domestic market, which is defined by the order to include Canada. The marketing order does not limit the volume of export shipments of lemons, lemons consumed by charitable institutions, or lemons utilized in the production of processed lemon products. Exemptions are also provided for lemons used for livestock feed; lemons which are distributed in gift packages; the marketing and distribution of organic lemons to organic or health food wholesalers or retailers; and lemons sold directly by producers to consumers.

The declaration of policy in the Act includes provisions concerning establishment and maintaining such orderly marketing conditions as will protect producer prices and as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona lemons that each handler may handle on a weekly basis may contribute to the Act's objectives of orderly marketing and improving producer's returns.

The Committee may recommend to the Secretary the utilization of weekly volume regulations under the order to effectuate the purposes of the Act. Volume regulations may help to establish and maintain orderly marketing conditions for lemons, and at the same time benefit consumers by maintaining adequate supplies of lemons in the marketplace. Thus, volume regulations can be a valuable tool in achieving the goal of market stabilization for California-Arizona lemons.

Committee recommendations for volume regulations may vary from the established shipping projections in this proposed rule. Factors that may stimulate increased fresh lemon consumption and necessitate a Committee recommendation for volume regulation above the proposed level include: (1) Significant changes in weather patterns in major consuming areas; (2) a regional or national concern for health; or (3) promotional efforts by industry marketing organizations. Factors that could adversely affect lemon demand in the marketplace and necessitate a recommendation for volume regulation at a lower level than that proposed herein include: (1) Significant changes in weather conditions; (2) the size composition of existing supplies; (3) the condition of the fruit; (4) transportation problems; or (5) extreme supply fluctuations created by competitive imports.

Because the Department has determined that volume regulation may be recommended and adopted, it is issuing this proposed rule covering the four week period from the week ending on October 17, 1992, through the week ending on November 1, 1992. Should the Committee recommend, and the Department adopt, regulation for any or all weeks during the four week period, the Department would issue final rules establishing such regulations. Similar proposed rules may be issued and subsequently finalized throughout the season.

The Department invites comments on the proposed weekly levels of volume regulation for the week ending October 17, through the week ending November 7, 1992. The Committee meets on a weekly basis to consider current and prospective marketing conditions and interested persons may orally present their position at such meetings. Interested persons are also invited to submit written comments to the Committee and the Department regarding the proposed levels of regulation for any or all weeks of the four week period specified in this rule. Interested persons who wish to comment in writing must submit copies to both the Department and the Committee. For ease of review, persons submitting comments in excess of five pages may wish to include a one page summary.

Comments proposing alternative levels of shipments, including no regulation, during this four week period should provide as much information as possible in support of the suggested alternatives. Interested persons are also invited to comment on the possible regulatory and informational impact of the proposed volume regulations on small businesses.

The Committee will consider comments received in response to this proposed rule when deliberating on its recommendations for volume regulation. The Department will also consider comments received in its evaluation of Committee recommendations for volume regulation. If warranted, the Department will issue volume regulations on a weekly basis.

Comments on the weekly levels of volume regulation must be received by the Department by 12 Noon Eastern Time and by the Committee by 12 Noon Pacific Time the day prior to the Committee meeting associated with the week of regulation being addressed in the comment.

Following is a list of the Committee's meeting dates, times, and locations, the regulatory week to be addressed at each meeting, and the proposed level of volume regulation for each regulatory week.

Committee Meetings And Dates

1. Committee Meeting Date: October 6, 1992
   Time: 11 a.m.
   Location: 25129 The Old Road, suite 304, Newhall, California 91381
   Regulatory Week to be Addressed: October 11–October 17, 1992
   Proposed Level: 305 cars
2. Committee Meeting Date: October 14, 1992
   Time: 11 a.m.
   Location: Erawan Garden Resort, 76–477 Highway 111, Indian Wells, California 92210
   Regulatory Week to be Addressed: October 18–October 24, 1992
   Proposed Level: 305 cars
3. Committee Meeting Date: October 20, 1992
   Time: 11 a.m.
   Location: 25129 The Old Road, suite 304, Newhall, California 91381
   Regulatory Week to be Addressed: October 25–October 31, 1992
   Proposed Level: 300 cars
4. Committee Meeting Date: October 27, 1992
   Time: 11 a.m.
   Location: 25129 The Old Road, suite 304, Newhall, California 91381
   Regulatory Week to be Addressed: November 1–November 7, 1992
   Proposed Level: 310 cars

Comments received will be analyzed and considered part of the rulemaking process.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is proposed to be amended as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 910.1056 is added to read as follows:

§ 910.1056 Lemon Regulation 758.

The quantity of lemons grown in California and Arizona which may be handled during the period from October 11 through October 17, 1992, is 305,000 cartons.

3. A new § 910.1057 is added to read as follows:

§ 910.1057 Lemon Regulation 757.

The quantity of lemons grown in California and Arizona which may be handled during the period from October 18 through October 24, 1992, is 305,000 cartons.

4. A new § 910.1058 is added to read as follows:

§ 910.1058 Lemon Regulation 758.

The quantity of lemons grown in California and Arizona which may be handled during the period from October 25 through October 31, 1992, is 300,000 cartons.

5. A new § 910.1059 is added to read as follows:

§ 910.1059 Lemon Regulation 759.

The quantity of lemons grown in California and Arizona which may be handled during the period from November 1 through November 7, 1992, is 310,000 cartons.

Dated: September 29, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-23957 Filed 10-1-92 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1106

[DA-92-28]

Milk in the Southwest Plains Marketing Area; Proposed Temporary Revision of a Cooperative's Plant Pooling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites public comment on a proposal to temporarily ease the pooling requirements for a plant operated by a cooperative association for a 24-month period, beginning October 1, 1992. The order currently requires that at least 45 percent of the producer milk marketed by a cooperative association must be delivered to distributing (bottling) plants in order to qualify the cooperative's plant for pooling under the Southwest Plains order. It is proposed that this percentage be reduced from 45 percent to 35 percent. This action was requested in order to prevent the uneconomic movement of milk by cooperative associations that represent producers regularly associated with the market.

DATES: Comments are due no later than October 9, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 720-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accure from such pricing.

This proposed temporary revision of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule. Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1106.7 (c) and (d) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for a 24-month period beginning October 1, 1992.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include October 1992 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

In order for a cooperative association plant that is located in the marketing area or in a county adjacent to the marketing area to be a pool plant, the Southwest Plains order requires that the cooperative must deliver to pool distributing plants a minimum of 45 percent of the total quantity of milk marketed by the cooperative, either during the month or during the 12-month period ending with the immediately preceding month. The order also provides ending with the immediately preceding month. The order also provides authority for the Director of the Dairy Division to increase or decrease this requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments.

Mid-America Dairymen, Inc. (Mid-Am), and Associated Milk Producers, Inc. (AMPI), cooperative associations that represent many of the market's producers, have requested that expedited action be taken to temporarily ease the pooling requirement by decreasing it by 10 percent. The total minimum quantity of its milk supply that a cooperative association would then be required to deliver to distributing plants in order for the plant to maintain pool plant status would be decreased to 35 percent. This temporary revision would be effective for a 24-month period, beginning October, 1992.

Mid-Am and AMPI assert that in eleven of the past nineteen months (January, 1991 through July, 1992), their shipments to distributing plants have failed to meet the 45 percent shipping standard. Though the 12-month average

has met the 45 percent standard (except for the period ending July, 1992), maintaining pool plant status has been marginal and difficult, according to the proponents.

The proponents anticipate that the marketing conditions currently existing will continue through the next two years or longer. Those marketing conditions attributing to the need to reduce the shipping percentage of a cooperative association are increasing producer receipts and reduced sales to distributing plants. Reduced sales to distributing plants can be attributed to two factors: (1) Increased non-member sales and, (2) A significant volume of fluid sales being lost by a Southwest Plains handler to a Texas handler, according to Mid-Am and AMPI.

The proponents anticipate the shipping percentage during many months over the next two years will be significantly below 45 percent shipping requirement, and subsequently that the 12-month shipping percentage average will fall below 45 percent. Mid-Am and AMPI therefore request a reduction of the shipping percentage of § 1106.7(c) from 45 percent to 35 percent pursuant to § 1106.7(d) of the Southwest Plains Milk Marketing Order.

Accordingly, it may be appropriate to reduce the delivery requirement from 45 to 35 percent for a 24-month period, beginning October 1992.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: September 29, 1992.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 92–23059 Filed 10–1–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–117–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes Equipped With Bendix Brakes Fitted With NASCO Rotors Installed in Accordance With Supplemental Type Certificate (STC) SA3948NM

AGENCY: Federal Aviation Administration; DOT.

ACTION: Notice of proposed rulemaking (NPRM), correction.

SUMMARY: This document corrects the closing date for submittal of comments to the above-captioned proposed Airworthiness Directive (AD) that was published in the **Federal Register** on Wednesday, September 23, 1992 (57 FR 43944). A delay in the processing of the document resulted in its publication after the indicated comment deadline had passed. In all other respects, the proposed AD is correct.

DATES: Comments must be received by December 1, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–117–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Gfrerer, Aerospace Engineer, Mechanical/Environmental and Crashworthiness Section, ANM–131L, FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California 90806; telephone (310) 988–5338; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A document proposing the adoption of a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes equipped with Bendix brakes fitted with NASCO rotors installed in accordance with STC SA3948NM, was published in the **Federal Register** on Wednesday, September 23, 1992 (57 FR 43944). This document corrects the closing date for submittal of public comments to December 1, 1992. Since no other portion of the proposal or regulatory information has been changed, the proposed rule is not being republished.

Issued in Renton, Washington, on September 24, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–23038 Filed 10–1–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 39

[Docket No. 92–NM–143–AD]

Airworthiness Directives; British Aerospace Model BAe 125–800A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 125–800A series airplanes. This proposal would require the identification of additional circuit breakers that must be included in smoke drill procedures. This proposal is prompted by a report that additional circuit breakers must be identified in order to ensure that the flight crew disenables them in an emergency. The actions specified by the proposed AD are intended to prevent reduced effectivity of smoke elimination and passenger evacuation procedures.

DATES: Comments must be received by November 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-143-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-143-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion: The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 125-800A series airplanes. The CAA advises that in order to satisfy the smoke drill procedures contained in the FAA-approved Airplane Flight Manual (AFM) for windscreen heat equipment supplied by certain busbars, additional circuit breakers must be identified. Failure to identify these circuit breakers could result in the flight crew failing to disenable the circuit breakers in an emergency, thereby reducing the effectivity of smoke elimination and passenger evacuation procedures.

British Aerospace has issued Service Bulletin 24-288-3284A, dated February 7, 1992, which describes procedures for the identification of additional circuit breakers that must be included in smoke drill procedures. The identification procedure (Modification No. 253284A) involves adding a placard (white indicator label) to the power supply circuit breakers for the left-hand windscreen panel A and the right-hand windscreen panel B heat controls. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require the identification of additional circuit breakers that must be included in smoke drill procedures. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 137 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,535. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation:

(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92-NM-143-AD.

Applicability: All Model BAe 125-800A series airplanes on which Modification No. 253284A has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the crew from failing to disenable all appropriate circuit breakers in an emergency, accomplish the following:

(a) Within 3 months after the effective date of this AD, install Modification No. 253284A by painting the perimeters of the "A SCRN" and "B SCRN" heat control circuit breakers with matte white (non-cellulose) paint, in accordance with British Aerospace Service Bulletin 24-288-3284A, dated February 7, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-23009 Filed 10-1-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-142-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 and DC-9-80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes, that currently requires inspection of the rudder power control valve to determine if a lockwire is installed and, if not installed, adjustment of the retention nut and installation of a lockwire. This action proposes to add airplanes to the applicability statement of the rule and to revise the required measurement for the end cap torque. This proposal is prompted by reports of loss of rudder control on final approach and landing. The actions specified by the proposed AD are intended to prevent loss of rudder control.

DATES: Comments must be received by November 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-142-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Eierman, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-130L, FAA Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5336; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-142-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-142-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion: On August 6, 1991, the FAA issued AD 91-18-03, Amendment 39-8006 (56 FR 41058, August 19, 1991), to require inspection of the rudder power control valve to determine if a lockwire is installed and, if not installed, adjustment of the retention nut and installation of a lockwire. That action was prompted by a report that the rudder pedal could not be depressed during landing rollout. The requirements of that AD are intended to prevent loss of rudder control.

Since the issuance of that AD, there have been additional reports of missing lockwire on other airplane models, which indicate that the problem is more widespread than initially reported. The retention nut lockwire was inadvertently left out during assembly of the rudder power control valve. In addition, the FAA has determined that the end cap torque measurement recommended in McDonnell Douglas Alert Service Bulletin A27-317, dated June 17, 1991, is incorrect.

The FAA has reviewed and approved the following service bulletins:

(1) McDonnell Douglas Alert Service Bulletin A27-327, Revision 1, dated March 9, 1992, which describes procedures to perform a one-time visual inspection of the retention nut on the rudder power control valve slide assembly for proper installation of a lockwire and, if not installed, adjustment of the retention nut and installation of a lockwire. Revision 1 adds Model DC-9 series airplanes to the effectivity listing that were not included in the original issue of this service bulletin.

(2) McDonnell Douglas Alert Service Bulletin A27-317, Revision 2, dated May 22, 1992, which describes procedures for inspecting lockwire installed on the rudder power actuator slide assembly retention nut. Revision 2 corrects the torque requirements for the end cap.

(3) McDonnell Douglas Service Bulletin 27-321, dated May 18, 1992, which describes procedures for modifying the slide assembly of the rudder power control valve. The modification involves replacing lockwire with a locking tab washer on the rudder power control valve located in the aft fuselage at the lower end of the rudder hinge line. This modification adds dual locking capability to the slide adjustment retention nut, which will minimize the possibility of a retention nut not locking.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91-18-03 to add airplanes to the applicability of the rule. This action would require that: (1) Operators who have not previously accomplished the inspection of the retention nut of the rudder power control valve must inspect the retention nut and take corrective action as necessary; and (2) operators who have previously accomplished the inspection must retighten the end nut to the newly specified torque limit. As an alternative to performing the inspection,

operators may modify the slide assembly of the rudder power control valve. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,950 McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, MD–88 airplanes, and C–9 (Military) airplanes of the affected design in the worldwide fleet. (The previously issued AD affected 120 McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes.) The FAA estimates that 1,150 airplanes of U.S. registry would be affected by this proposed AD. (The previously issued AD affected 60 U.S. registered airplanes.) The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed inspection requirement, and approximately 2 work hours per airplane to accomplish the proposed inspection and modification requirements. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be between $63,250 and $126,500. (This is an increase over the total cost of the previously issued AD of between $59,950 and $123,200; however, the cost per airplane remains approximately the same). This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8006 (56 FR 41058, August 19, 1991), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 92–NM–142–AD. Supersedes AD 91–18–03, Amendment 39–8006.

Applicability: Model DC–9 and C–9 (Military) airplanes; as listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992; and Model DC–9–80 series airplanes and Model MD–88 airplanes; as listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–317, Revision 2, dated May 22, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of rudder control, accomplish the following:

(a) For airplanes on which the retention nut on the slide assembly of the rudder power control valve has not been inspected in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, dated December 2, 1991; or McDonnell Douglas MD–80 Alert Service Bulletin A27–317, dated June 17, 1991, or Revision 1, dated January 14, 1992, or Revision 2, dated May 22, 1992: Within 90 days after the effective date of this AD, inspect the retention nut on the rudder power control valve slide assembly to determine if a lockwire is installed, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992; or McDonnell Douglas MD–80 Alert Service Bulletin A27–317, Revision 2, dated May 22, 1992; as applicable.

(1) If a lockwire is installed, no further action is required by this AD.

(2) If a lockwire is not installed, prior to further flight, adjust the retention nut, install a lockwire, and functionally check the rudder power control valve in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992; or McDonnell Douglas MD–80 Alert Service Bulletin A27–317, Revision 2, dated May 22, 1992; as applicable.

(b) For airplanes on which the retention nut on the slide assembly of the rudder power control valve has been inspected prior to the effective date of this AD in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, dated December 2, 1991; or McDonnell Douglas MD–80 Alert Service Bulletin A27–317, dated June 17, 1991, or Revision 1, dated January 14, 1992: Within 90 days after the effective date of this AD, retighten the end cap to the specified torque, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992; or McDonnell Douglas MD–80 Alert Service Bulletin A27–317, Revision 2, dated May 22, 1992; as applicable.

(c) Modification of the rudder power control valve by replacing the lockwire with a locking tab washer, in accordance with McDonnell Douglas Service Bulletin 27–321, dated May 18, 1992, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–23940 Filed 10–1–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–49–92]

RIN 1545–AR02

Bank Bad Debts, Conclusive Presumption

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations to clarify the scope of the express determination that is required under § 1.166–2(d)(3) in order for a bank to elect to use a method of accounting that conforms tax

accounting for bad debts to regulatory accounting. The temporary regulations affect banks that have made or intend to make an election under § 1.166–2(d)(3). The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be received by November 30, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, Attn: CC:CORP:T:R (FI–49–92), room 5228.

FOR FURTHER INFORMATION CONTACT: Bernita L. Thigpen, 202–622–4016 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend § 1.166–2(d)(3) of part 1 of Title 26 of the Code of Federal Regulations (CFR). For the text of the new temporary regulations, see T.D. 8441, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

Special Analysis

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the proposed regulations is Bernita L. Thigpen, Office of the Assistant Chief Counsel (Financial Institutions & Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

Proposal of Regulations

The temporary regulations (T.D. 8441), published in the Rules and Regulations section of this issue of the **Federal Register**, are hereby also proposed as final regulations under section 166 of the Internal Revenue Code of 1986.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–23916 Filed 10–1–92; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 756; Re: Notice Nos. 728, 729 and 738]

RIN 1512–AA07

Oakville and Rutherford Viticultural Areas; Public Hearings

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of public hearings on two proposed rules.

SUMMARY: This notice announces the time and place of public hearings to be held by the Bureau of Alcohol, Tobacco and Firearms concerning the establishment of two viticultural areas in Napa County, California, to be known as "Oakville" and "Rutherford." In Notice Nos. 728 and 729 (56 FR 47039 and 47044), published in the **Federal Register** on September 17, 1991, ATF detailed a proposal for the establishment of these two viticultural areas and requested comments. Due to the extent and controversy of the comments received, ATF published another notice, Notice No. 738 (57 FR 14681), in the **Federal Register** on April 22, 1992, which reopened the comment periods for the proposed Oakville and Rutherford viticultural areas. In consideration of the continued controversy expressed in the comments to Notice No. 738 concerning the boundaries of the two areas, ATF has determined that the public interest would be best served by the holding of public hearings on these matters. The purpose of the hearings is to gather additional information and to receive evidence with respect to the establishment of these viticultural areas, the proposed boundaries, and other possible boundaries.

DATES: The hearing for Rutherford will be held on December 9, 1992, beginning at 9 a.m. The hearing for Oakville will be held on December 10, 1992, beginning at 9 a.m. Persons desiring to make oral comments at the hearings should submit a letter notifying ATF of their intent to comment on or before November 9, 1992.

ADDRESSES: The hearings will be held in the conference room at the Inn at Napa Valley, 1075 California Boulevard, Napa, California 94559.

Letter notifications and written comments are to be submitted to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, Attn: Notice No. 756.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1991, ATF published two notices of proposed rulemaking, Nos. 728 and 729 (56 FR 47039 and 47033), in the **Federal Register**. In the notices, proposals were made for the establishment of two viticultural areas in Napa County, California, to be known as "Oakville" and "Rutherford."

As specified in Notice No. 728, the proposed Oakville viticultural area is located just north of the town of Yountville, and approximately 10 miles northwest of the city of Napa. In very general terms, the proposed Oakville boundary goes as far north as Skellenger Lane, as far east as the 500-foot contour line on the western side of the Vaca Mountain Range, as far west as the 500-foot contour line on the eastern side of the Mayacamas Mountain Range, as far south as approximately one mile northwest of the town of Yountville.

As specified in Notice No. 729, the proposed Rutherford viticultural area is located just south of the city of St. Helena and approximately 12 miles northwest of the city of Napa. In very general terms, the proposed Rutherford boundary goes as far north as Zinfandel Lane, as far east as the 500-foot contour line on the western side of the Vaca Mountain Range, as far west as the 500-foot contour line on the eastern side of

the Mayacamas Mountain Range, and as far south as Skellenger Lane with the exception of one area going approximately .5 mile south of Skellenger Lane.

It is important to note that the proposed southern boundary of Rutherford coincides exactly with the proposed northern boundary of Oakville.

In response to the two notices of proposed rulemaking, ATF received a total of 19 comments. These comments were thoroughly discussed in the reopening notice (Notice No. 738).

The reopening notice was published in the **Federal Register** (57 FR 14681) on April 22, 1992. ATF received 62 comments in response to this reopening notice.

After reviewing these 62 comments, it appears there is controversy concerning the northern, northeastern, northwestern, eastern, and southern boundary of Rutherford, and the southwestern boundary of Oakville.

Twenty-five commenters disagree with the proposed northern boundary of Rutherford. These commenters feel that the Rutherford boundary should extend further north either to Sulphur Creek or to the southern city limits line at St. Helena.

One of the commenters requesting an extension of the northern boundary of the proposed Rutherford viticultural area submitted geographical information in support of his position that there is litter or no difference in the geographical features of the area between Zinfandel Lane and Sulphur Creek as compared to the proposed Rutherford viticultural area. The commenter also requests that the proposed Rutherford viticultural area, including his requested northern extension to Sulphur Creek, be named Rutherford Bench instead of Rutherford.

Ten commenters agree with the proposed northern boundary of Rutherford and state that there is no historical or current evidence which would suggest that the area north of Zinfandel Lane has ever been considered to be within the Rutherford area.

One commenter disagrees with the northeastern boundary of Rutherford. He feels that the northeastern boundary should continue to be the 500-foot contour line (which would include the Spring Valley area) rather than changing to the 380-foot contour line which would exclude the Spring Valley area.

One commenter disagrees with the northwestern boundary of Rutherford. He feels that the Rutherford boundary should be extended along the northern fork of Bale Slough approximately 2,750 feet to a point intersecting the straight line westward extension of the light-duty road known as Inglewood Avenue, then following that line to the west to the 500-foot contour line.

Two commenters disagree with the eastern boundary of Rutherford. These two commenters state that the eastern boundary of Rutherford should be extended beyond the currently proposed 500-foot elevation line to the 1200-foot elevation line to include the area south of Lake Hennessey known as Pritchard Hill.

Five commenters, plus petitions containing the names of 56 additional interested persons within the Napa Valley, disagree with the southern boundary of Rutherford. These commenters and petitioners feel that any boundaries for Rutherford must include Beaulieu Vineyard properties No. 2 and No. 4 which have historically been associated with Beaulieu Vineyard and its Cabernet Sauvignon wines, and which have contributed greatly to the development and consumer recognition of the Rutherford name. These two Beaulieu Vineyard properties are currently within the proposed Oakville viticultural area.

One of the commenters suggests that these two Beaulieu Vineyard properties can be included in the Rutherford area by extending the 500-foot elevation line western boundary at the extreme southwestern corner of the proposed Rutherford viticultural area in a generally southerly direction to its point of intersection with an unnamed creek flowing in a generally easterly direction. Thence along this unnamed creek to its point of intersection with Walnut Lane, thence east along Walnut Lane to Highway 29, thence north on Highway 29 to the originally proposed southern boundary of Rutherford, and thence continuing in the same manner as the originally proposed Rutherford boundary.

This same commenter also submitted geographical information which he feels indicates little or no difference between Beaulieu Vineyard properties No. 2 and No. 4; and between these two vineyard properties and the proposed Rutherford viticultural area.

Six commenters state that they agree with the originally proposed southern boundary of Rutherford and do not feel that it should be changed to include Beaulieu Vineyard properties No. 2 and No. 4. These commenters state that these two vineyard properties are located in the Oakville area. These commenters refer to the information submitted in the original Rutherford and Oakville petitions as evidence for their position.

Sixteen commenters disagree with the proposed southwestern boundary of Oakville. These commenters feel that the southwestern boundary extends too far south into what they feel is Yountville. According to these commenters, the Oakville/Yountville boundary has always been known by the locals to be Dwyer Road to Highway 29, then Yount Mill Road to Rector Creek. These commenters submitted evidence which suggests that one winery and several other businesses located south of Dwyer Road have Yountville addresses and consider themselves to be in the Yountville area. These businesses are currently within the boundaries of the proposed Oakville viticultural area.

Eleven commenters agree with the proposed southwestern boundary of Oakville. These commenters state that they have lived and worked in the area for thirty years or more and that they have never heard of Dwyer Road (Lane) and Yount Mill Road being used as the boundary line between Oakville and Yountville. Some of these commenters submitted historical information in support of their position that Dwyer Road and Yount Mill Road have never been used as the dividing line between Oakville and Yountville.

One commenter states that the Rutherford Bench designation should be expanded to include the entire area delimited by the original petitioners as Rutherford. This commenter states that if his proposal is adopted, the word "Bench" in the appellation should not be required on the wine label. The bottling winery with grapes from this area would be allowed to place either Rutherford or Rutherford Bench on the label. According to this commenter, there is no geographic distinction between the Rutherford and Rutherford Bench areas, including soil, rainfall, heat summation, or geologic formation.

And finally, one commenter states that she objects to an Oakville appellation since she is not convinced that more appellations are needed in the Napa Valley.

Hearings

Based on the information presented in the comments, it is apparent that disagreement exists on a boundary for both the Oakville and Rutherford viticultural areas. Therefore, ATF desires to obtain more information on the establishment of these two viticultural areas, their proposed boundaries, and other possible boundaries.

For these reasons, ATF has determined that public hearings are

necessary and would serve the public interest. The purpose of the hearings is to obtain evidence for the record and to afford interested parties an opportunity to express their views. Evidence obtained and views expressed will be considered in the preparation of any final rules concerning the Oakville and Rutherford viticultural areas.

Participation

Any person desiring to participate in the hearings should notify ATF by submitting a letter specifying which viticultural area hearing they intend to participate in, and the name, address and daytime telephone number of the individual who will prevent oral comments. Any preference a person may have as to the time of day for presentation of comments should also be stated. The letter must be accompanied by an outline which briefly summarizes the topics the commenter will discuss and the information to be presented. Each topic to be discussed should be separately numbered and each numbered topic should specify the information to be presented. Assurance of having the opportunity to be heard is given only to those persons notifying ATF prior to the scheduling cutoff date of November 9, 1992.

Any person unable to attend the hearings or who prefers not to present oral comments may submit written comments before or after the hearing. ATF will accept written comments until December 28, 1992. In written comments, each topic to be discussed should be separately numbered and each numbered topic should specify the factual basis supporting the views, data, or arguments presented. All written comments received will be considered in the development of a decision on this matter.

ATF wants to make it clear that this public hearing is being held for the sole purpose of obtaining information and/or evidence concerning the possible establishment of a Rutherford and/or Oakville viticultural area. ATF is not considering during these hearings the establishment of a Rutherford Bench or an Oakville Bench viticultural area within the currently proposed Rutherford and Oakville viticultural areas. However, since several commenters submitted comments concerning use of the name Rutherford Bench in place of or in addition to the name Rutherford, ATF will accept testimony concerning the best name for the Rutherford area. Nevertheless, ATF wishes to reiterate its position that testimony or information in support of or in opposition to the original proposed Rutherford Bench and/or Oakville Bench petitions is not appropriate during these hearings.

General Information on Hearing Procedures

The hearings will be conducted under the procedural rules contained in 27 CFR 71.41(a)(3) and will be open to the public, subject to the limitations of space. In the event attendance exceeds available seating space, persons scheduled to present oral comments will be given preference in respect to admission. Time limitations make it necessary to limit the length of oral presentations to a maximum of ten (10) minutes. However, this allotted time per commenter may have to be reduced depending on the number of persons wishing to make oral presentations. Commenters will not be permitted to trade their time to obtain a longer presentation period. However, the hearing officer may allow any person additional time after all other commenters have been heard. To the extent that time is available after presentation of oral comments by those who are scheduled to comment, others will be given an opportunity to be heard.

In order to ensure that ATF will have the full benefit of their views even if time constraints limit an oral presentation, persons presenting oral comments are urged to supplement their oral statement with a more complete written statement. A written statement submitted to the hearing officer at the time of presentation of the oral statement will be considered part of the hearing record.

After making an oral presentation, a person should be prepared to answer questions from the hearing panel on not only the topics presented but also on matters relating to any written comments which he or she has submitted. Other persons will not be permitted to question a commenter. However, questions may be submitted, in writing, to the hearing officer who will evaluate their relevance. If the hearing officer determines that elicitation of further discussion would be beneficial, the questions may be presented to a commenter for a response.

Persons will be scheduled, if possible, according to the time preference mentioned in their letter notification to ATF. ATF will confirm by telephone the time a person is scheduled to present oral comments. A letter notification received by ATF prior to the cutoff date ensures that a person will be scheduled to comment. Letter notifications received after the cutoff date and up to one (1) working day preceding the hearing, will be honored to the extent practicable on a first-come-first-serve basis. Any scheduled commenter not present at the hearing when called will lose his or her place in the scheduled order, but will be recalled after all other scheduled commenters have been heard.

ATF will prepare an agenda listing the persons scheduled to comment and copies will be available at the hearing. In addition, copies of the petitions and all received written comments will be available at the hearing for public inspection.

Comments

Any person participating in the hearing or submitting written comments may present such data, views, or arguments as the person so desires. Comments that provide the factual basis supporting the views or suggestions presented will be particularly helpful in developing a reasoned regulatory decision on this matter. However, comments consisting of mere allegations or denials are counterproductive to the rulemaking process.

ATF specifically requests that commenters consider making comments on the following questions:

1. What are the historical and current boundaries (north, south, east, and west) of the areas known as "Oakville" and "Rutherford?"

2. Why, and how, should the boundaries of "Oakville" and "Rutherford," as proposed in Notice Nos. 728 and 729 respectively, be modified?

3. What geographical or climatic features, or evidence of name, or other current or historical evidence, support the extension of the Rutherford area north of Zinfandel Lane into the Sulphur Creek area, or northeast of the 380-foot contour line, along the proposed northeastern boundary of Rutherford, into the Spring Valley area? In addition, what such features or evidence support the extension of the Rutherford area northwest of the currently proposed northwestern boundary of Rutherford to include the northern fork of Bale Slough and continuing along this northern fork approximately 2,750 feet north to a point intersecting the straight line westward extension of the light-duty road known as Inglewood Avenue, then following that line to the west to the 500-foot contour line?

4. What geographical or climatic features, or evidence of name, or other current or historical evidence, support the extension of the southern boundary of the proposed Rutherford viticultural area to include Beaulieu Vineyard properties No. 2 and No. 4, which are

currently within the proposed Oakville viticultural area? In addition, what such features or evidence support the extension of the eastern boundary of the proposed Rutherford viticultural area to include the area south of Lake Hennessey known as Pritchard Hill?

5. What geographical or climatic features, or evidence of name, or other current or historical evidence, support using Dwyer Road and Yount Mill Road as the southwestern boundary of the proposed Oakville viticultural area? Currently, the proposed southwestern boundary extends south of Dwyer Road approximately 1 mile.

6. Is there any additional evidence, other than what is currently in the Oakville and Rutherford petitions, which supports the boundaries of the proposed Oakville and Rutherford viticultural areas as proposed in Notice Nos. 728 and 729 respectively?

7. Is there evidence that the name of the proposed Rutherford viticultural area is locally or nationally known as including the area north of Zinfandel Lane to include the Sulphur Creek area, or northeast of the 380-foot contour line along the northeastern boundary into the Spring Valley area, or south of Skellenger Lane along the southern border to include the Beaulieu Vineyard properties Nos. 2 and 4? In addition, is there evidence that the name of the proposed Rutherford viticultural area is locally or nationally known as including the area northwest of the currently proposed northwestern boundary of Rutherford (as previously described in number 3 above), or east of the proposed eastern boundary of Rutherford to include the area south of Lake Hennessey known as Pritchard Hill?

8. Is there evidence that the name of the proposed Oakville viticultural area is locally or nationally known as including the area approximately 1 mile south of Dwyer Road and Yount Mill Road?

9. What do wineries outside of the proposed Oakville and Rutherford areas consider to be the "Oakville" and "Rutherford" grape growing areas?

10. To what extent have wineries in the "Oakville" and "Rutherford" areas, as proposed in Notice Nos. 728 and 729, as well as those wineries located in the controversial areas, identified themselves as being in either "Oakville" or "Rutherford?"

11. To what extent have grapes grown in the proposed "Oakville" or "Rutherford" areas, or in the previously mentioned controversial areas, been or not been marketed as either "Oakville" or "Rutherford" grapes?

12. Is there any evidence to suggest that the name Rutherford Bench is an appropriate designation of the entire Rutherford area?

Drafting Information

The author of this document is Robert White, Coordinator, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, and Wine.

Authority: This notice of public hearings is issued under the authority of 27 U.S.C. 205.

Approved: September 18, 1992.

Stephen E. Higgins,

Director.

[FR Doc. 92-23701 Filed 10-1-92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 91-066]

RIN 2115-AD80

Ballast Water Management For Vessels Entering the Great Lakes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations to implement the regulatory requirements of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The proposed regulations, if adopted, would require ballast water management practices for each vessel entering the Great Lakes. These requirements, which would replace voluntary guidelines published on March 15, 1991, would prevent the additional introduction of nonindigenous aquatic nuisance species through the ballast water of vessels entering the Great Lakes.

DATES: Comments must be received on or before November 16, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-066), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jonathan C. Burton, Project Manager, Division of Marine Environmental Protection (G-MEP-1), (202) 267-6714.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-066) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES**". If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Jonathan C. Burton, Project Manager, and Ms. Helen Boutrous, project Counsel, Office of Chief Counsel.

Background and Purpose

Historical records suggest that over 100 non-native species have been introduced into the Great Lakes. The introduction of non-native fish and other aquatic organisms through the discharge of ballast water alters the balance of the ecosystem, often to the detriment of the system. In the 1980's alone, ballast water discharges are believed to have been the cause for the introduction of four nuisance species to the Great Lakes: The zebra mussel (Dreissena polymorpha); the European ruffe (Gymnocephalus cernus); the spiny

water-flea (Bythotrophes cederstroemi); and the tube-nosed goby (Proterorhinus marmoratus).

Many vessels take on water as ballast in foreign harbors or in the nearshore waters. These waters are often rich in living organisms. When these vessels arrive in the Great Lakes to take on cargo, they discharge ballast water. Any organisms contained in the water then enter the Great Lakes.

Many of these transplanted species do not survive in this new environment. However, those that do survive quickly adapt and in some instance thrive in their new environment, particularly where there are no natural predators to control their population growth. This uncontrolled population growth can be detrimental to a delicately balanced ecosystem.

The zebra mussel provides a good example of the harmful effects of a newly introduced species. In June 1988, this small bivalve mollusk, native to the Black, Asov, and Caspian Seas in eastern Europe, was discovered on the Canadian side of Lake Saint Clair in the Great Lakes. In July of that year, it was discovered on the United States side in the western basin of Lake Erie. Scientists believe that it was introduced in 1986 in its preadult planktonic phase by the discharge of freshwater ballast of vessels from northern Europe, where it has spread over the last century.

The zebra mussel is a major fouling pest-species: Hundreds of millions can be found on and in pipes, screens, conduits, boat bottoms, floats, buoys, rocks, submerged objects, submerged objects and native animals and plants. As a filter-feeding organism, it removes vast quantities of microscopic organisms from the water, the same organisms that fish larvae and young fish rely upon for their food supply. It also completely covers rocks and other substances normally used by Great lakes fish for laying eggs.

Since its introduction into the Great Lakes, the zebra mussel has reproduced and spread to each of the Great Lakes, the Saint Lawrence River, and the Erie Canal. It now affects intakes to municipal water-filtration and electric-power plants in Michigan, Ohio, and New York. The economic impact on communities affected by its introduction into the Great Lakes may reach $5 billion by the year 2000. Natural range expansion and secondary transfer media will likely lead to its establishment in all connecting waters of the Great Lakes and eventually in many other North American rivers and lakes.

Solutions

Currently, the most practical method of protecting the Great Lakes from foreign organisms that may exist in ballast water appears to be an exchange of ballast water in the open ocean, beyond the continental shelf. Water in the open ocean contains fewer organisms than water collected in harbors or coastal waters. Those organisms that exist in the open ocean are adapted to relatively constant conditions, such as salinity and temperature, and are less likely to survive if introduced into a freshwater system.

In addition to ballast water exchange, there are other possible methods of ballast control. They include discharging ballast water to reception facilities ashore, retaining the ballast water on board, heating or chemically treating ballast water, disinfecting ballast water with ultraviolet light, depriving ballast water of oxygen, coating tanks with biocides, installing filters, and modifying vessel design. However, there is a lack of research and practical experience on the cost, safety, effectiveness, and environmental acceptability of these methods.

International Recognition

The introduction and spread of nonindigenous species by vessels' ballast water has been brought to the attention of the International Maritime Organization (IMO). IMO, the United Nations' specialized agency for maritime affairs, has recognized this issue as an international problem, which requires an international solution. In November 1990, the Marine Environment Protection Committee (MEPC) of IMO formed a working group to consider research information and solutions proposed by member states of IMO and by nongovernmental organizations in developing an international approach to resolving this problem. The working group concluded that the establishment of voluntary guidelines was an appropriate first step in addressing this problem. The group reviewed and modified a draft resolution and guidelines submitted by the Canadian delegation. The group submitted the draft resolution and guidelines to the session of the MEPC held in July 1991, and it was adopted. Those guidelines call for ballast water exchange in the open ocean as a primary method of controlling the introduction of nonindigenous nuisance species.

Canadian Voluntary Guidelines

In May 1989, the Canadian Coast Guard introduced the first voluntary guidelines for controlling ballast water discharges into the Great Lakes. The Canadian Coast Guard developed these guidelines in full consultation with the United States Coast Guard, the Great Lakes Fishery Commission, and representatives of commercial shipping. These guidelines encouraged all vessels transiting the Eastern Canadian Vessel Traffic Service (ECAREG VTS) Zone inbound for the Saint Lawrence Seaway and the Great Lakes to exchange freshwater ballast collected in foreign harbors or near coastal waters for saltwater ballast collected from the open ocean. This exchange was to occur far enough from any coastline such that there would be few organisms of any kind in the new ballast water, which would eventually be discharged into the Great Lakes.

United States Legislation

On November 29, 1990, the United States enacted the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101-646, codified at 16 U.S.C. 4701 *et seq.*) (the Act). The Act required the United States Coast Guard, in consultation with the government of Canada, to issue voluntary guidelines, not later than six months after enactment, to prevent further introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels. Joint United States and Canadian voluntary guidelines, which closely tracked the Canadian guidelines discussed above, went into effect on March 15, 1991 (56 FR 11330). Participation by the commercial shipping industry has been high with an estimated 90 percent rate of voluntary compliance.

The Act also calls for regulations to be issued, in consultation with the Task Force created by the Act, within 24 months of enactment. The Task Force, which includes the Director of the United States Fish and Wildlife Service, the Under Secretary of Commerce for Oceans and Atmosphere, the Administrator of the Environmental Protection Agency, and the Commandant of the United States Coast Guard, has other responsibilities as well, including establishing a program for waters of the United States to prevent introduction and dispersal of aquatic nuisance species.

The Act calls for the regulations to apply to vessels that enter a United States port on the Great Lakes after operating on the waters beyond the Exclusive Economic Zone (EEZ). The Act provides for civil and criminal penalties (16 U.S.C. 4711 (c) and (d)).

Any person who violates the regulations shall be liable for a civil penalty not to exceed $25,000. Each day of a continuing violation would constitute a separate violation. A vessel operated in violation of the regulations would be liable in rem for any civil penalty assessed for that violation. Any person who knowingly violates the regulations would be guilty of a class C felony. A class C felony is punishable by imprisonment of not more than 12 years (18 U.S.C. 3581(b)(3)) and a fine of not more than $250,000 for an individual or not more than $500,000 for an organization (18 U.S.C. 3571(c)(3)).

In accordance with the Act, the Coast Guard proposes the regulations discussed below.

Discussion of Proposed Regulations

General Provisions

This proposal, if adopted, would establish a new subpart C to 33 CFR part 151, implementing ballast water management practices, as required by the Act, to prevent additional introduction and spread of nonindigenous aquatic nuisance species into the Great Lakes through the ballast water of vessels. As stated in proposed § 151.1502, these regulations would apply to all vessels that carry ballast water and are headed for a United States port on the Great Lakes after operating on the waters beyond the EEZ. Proposed § 151.1504 would provide definitions of key terms used in the proposed subpart.

Proposed § 151.1506 would prohibit the master of a vessel subject to the proposed subpart, from operating in the Great Lakes unless the master has certified that he or she has complied with the requirements of the proposed subpart. The Commandant of the Coast Guard has delegated final authority for maritime law enforcement within each district to the District Commander (33 CFR 1.01-1). Therefore, the District Commander would have the authority to enforce this proposed provision. Certification procedures are provided for in proposed § 151.1516 and are discussed below. As provided for in the Act, and in proposed § 151.1508, the District Commander would also have the authority to request the District Director of Customs to withhold or revoke the clearance required by 46 U.S.C. App. 91 for a vessel, the owner or operator of which is not in compliance with the requirements of the proposed subpart.

Ballast Water Management

The master of each vessel subject to the proposed subpart would be required, under proposed § 151.1510, to either exchange the vessel's ballast water beyond the EEZ in an ocean depth of not less than 1.24 miles (2,000 meters) prior to entering a port within the Great Lakes, or use an alternative environmentally sound method of ballast water management. Any alternative method would be required to be submitted to the Captain of the Port (COTP) of the first port the vessel would enter, before entering that port. No alternative methods may be employed unless the COTP, who has been delegated the Commandant's authority to enforce marine environmental protection regulations (33 CFR 1.01–30), approves the alternative method before the vessel enters the port. Only environmentally sound methods that are as effective as ballast water exchange in preventing and controlling the infestations of aquatic nuisance species would be approved. "Environmentally sound methods" are methods, efforts, actions, or programs to prevent introductions or to control infestations of aquatic nuisance species, that minimize adverse impacts to the structure and function of an ecosystem and minimize the adverse effects on non-target organisms and ecosystems and that emphasize integrated pest management techniques and non-chemical measures.

At this time, ballast water exchange is determined to be the most practical method of protecting the Great Lakes from foreign organisms that may exist in ballast water. There is a lack of research and practical experience on the cost, safety, effectiveness, and environmental acceptability of other methods. Since most masters of vessels that would be subject to this proposed subpart are already practicing ballast water exchange, the Coast Guard expects that a high rate of compliance would be achieved. As international efforts and Task Force studies continue, permitting masters of vessels to submit alternative methods of ballast water management would provide the needed flexibility to approve additional ballast water management methods that may eventually be determined to be as effective as ballast water exchange in preventing and controlling additional infestations of nonindigenous species.

Proposed § 151.1510 also would require that sediment from ballast water tanks be disposed of ashore in accordance with local applicable requirements. Additionally, proposed § 151.1510 notifies masters of vessels subject to the proposed requirements that nothing in this proposed subpart would authorize the discharge of oil, noxious liquid substances, or other pollutants in a manner prohibited by United States or international law or regulations, or affects their responsibilities under the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) Further, masters of vessels subject to the proposed subpart, as stated in proposed § 151.1512, would remain responsible for ensuring the safety and stability of the vessel, the safety of the crew and passengers, and for any other existing responsibility.

Proposed § 151.1514 provides for an exemption from the ballast water management requirements if due to weather, equipment failure, or other extraordinary conditions a master is unable to exchange ballast water before entering the territorial waters of the United States. If this happens, the master must request from the COTP of the first United States port the vessel would enter, permission to either retain the vessel's ballast water and refrain from discharging it while in the territorial waters of the United States, or discharge the vessel's ballast water within an area designated by the COTP at the time of the request.

Proposed § 151.1516 includes information reporting and collection requirements which would enable the Coast Guard to monitor compliance with the proposed subpart. The Coast Guard proposes that Snell Lock at Massena, New York be the site for collection of information regarding compliance with the proposed requirements, and for the master's certification of compliance. The Act requires that the master of each vessel certify compliance with the requirements of the Act before that vessel enters a port on the Great Lakes. The last lock under United States jurisdiction before entering a United States port on the Great Lakes is Snell Lock. Therefore, the Coast Guard proposes that Snell Lock would be the appropriate point for the reporting and collection of information, so that the Coast Guard may monitor compliance with, and effectiveness of, the proposed regulations. It would also serve as the point at which the master of a vessel subject to the proposed subpart, would be required to certify that he or she has complied with the requirements of the proposed subpart before entering the Great Lakes.

The master of each vessel subject to the proposed subpart would be required to provide information regarding ballast water management practices, in writing, including the vessel's name, port of registry, and official number or call sign, the name of the vessel's owner(s), whether ballast water is being carried, the location it was taken on, and intended discharge port. This

information is currently collected by the United States and Canada under the joint voluntary guidelines discussed above. The master would be required to provide his signature along with the information, attesting to the accuracy of the information provided. The signature would also serve as the master's certification that he or she has complied with the requirements of the subpart. This information would serve to verify compliance and become part of a statistical base to determine the effectiveness of the program. Because some masters of vessels subject to the proposed subpart may continue to provide Canada with the information requested under their voluntary program, and since local programs may be established in connection with the Task Force, a photocopy of the information required by this proposed subpart, pertaining to the same voyage, prepared for another State, local, or foreign government agency would be accepted by the Coast Guard in order to avoid duplication of information reporting requirements.

Under proposed § 151.1516, Coast Guard officials would be authorized to take samples of vessel's ballast water to test for salinity and the presence of foreign organisms. The testing of ballast water would serve as an additional method of monitoring the effectiveness of, and compliance with, the proposed regulations.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). A draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under "**ADDRESSES**". Entities involved are encouraged to identify themselves and give comments on the potential cost of implementing these proposed regulations.

The Coast Guard estimates that the impact of the proposed regulations on United States flag vessels would be minimal. Due to size constraints, only smaller vessels are able to transit the Saint Lawrence Seaway. These vessels do not engage in foreign voyages which would place them on waters beyond the EEZ. Only vessels that have operated on waters beyond the EEZ and enter a port on the Great Lakes, would be subject to the requirements of the proposed regulations. During the 1990 shipping season, 455 foreign oceangoing vessels entered the Saint Lawrence Seaway. Of these, 198 or 44 percent carried ballast water and would have been subject to the proposed rules. It is not expected that the number of vessels entering the Saint Lawrence Seaway will increase. The number has declined in recent years. The typical ocean carrier bound for the Great Lakes in full ballast condition could have on board from 7,000 to 10,000 tons of ballast water. Including the cost of diesel fuel, power generating costs to operate the pumps to effect an exchange would cost approximately $900.00 per vessel. Manpower costs would not be an appreciable factor since the exchange would be conducted by crew members already employed on the vessel for the voyage. Reporting and record keeping costs would add $35.00 per vessel. The time lost due to decrease in speed necessary to effect a ballast water exchange would be minimal since the ships affected by the proposed rules should be able to effect the exchange while in transit on the high seas. Adding a 10 percent factor for wear and tear, plus 4 percent a year for inflation, the total cost per vessel would be $1,147. Therefore, the estimated cost to foreign vessels for 1993, assuming 200 foreign vessels would be affected at a cost of $1,147 per vessel, would be $229,400. Total costs through the year 2000 are estimated to be $2,113, 744.

The Coast Guard expects that costs to consumers would be minimal. Assuming that all costs would be passed on to the consumer, the cost per ton of foreign cargo on vessels subject to the proposed regulations would increase $.089 per ton in 1993 and $.910 through the year 2000.

Measures to slow or stop the introduction of nonindigenous species into the Great Lakes would be of great benefit. The over 100 non-native species introduced into the Great Lakes in the last 100 years have had a profound effect on the native species and the economic welfare of the Great Lakes area. The economic impact on communities affected by the introduction of the zebra mussel may reach $5 billion by the year 2000. The experience of the zebra mussel infestation makes clear the tremendous cost benefit of implementing regulations to prevent the introduction of nonindigenous nuisance species before they become established in an ecosystem.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard has not identified any United States flag vessels that routinely enter the Great Lakes after operating on waters beyond the EEZ. The costs to foreign flag vessels that would be subject to the proposed regulations would be $1,147 per vessel in 1993. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule which contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection of information requirements in § 151.1516. That section would require that the master of each vessel subject to the proposed subpart, provide information, in written form, to the Lockmaster at the Snell Lock at Messena, New York. Most vessels that would be subject to the subpart are already supplying this information under the joint United States and Canadian voluntary guidelines issued on March 15, 1991. Approximately 200 vessels per year would be subject to the proposed subpart. It is estimated that it would take 30 minutes to complete the proposed reporting and collection information requirements. Since many masters of vessels subject to the proposed subpart would be submitting the information to Canada voluntarily, photocopies of the information for the same voyage would be accepted.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under "**ADDRESSES**."

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications

to warrant preparation of a Federalism Assessment.

The authority to issue regulations requiring ballast water management practices for vessels entering the Great Lakes has been committed to the Coast Guard by the Act. Standardizing the minimum requirements for vessels entering the Great Lakes after operating in waters beyond the EEZ is necessary to effectively prevent further introductions of nonindigenous species. Therefore, if this rule becomes final, the Coast Guard intends it to preempt state and local regulations that are inconsistent with the requirements of this proposed rule. These regulations were developed in consultation with the Task Force which is charged with coordinating action among, and providing technical assistance to, regional, State, and local entities regarding environmentally sound approaches to prevention and control of aquatic nuisance species. Additionally, in accordance with the Act, the Coast Guard has consulted with the Government of Canada throughout the development of the guidelines and regulations in order to develop an effective international program.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary. An Environmental Assessment and a draft Finding of No Significant Impact are available for inspection or copying where indicated under "**ADDRESSES**." The exchange of ballast water in the open ocean would benefit the Great Lakes environment by helping to prevent the further introduction of nonindigenous nuisance species through the ballast water of vessels, which has caused millions of dollars of damage to date. Initial study has concluded that the discharging of vessels' seawater ballast into Great Lakes ports does not constitute a sufficiently high volume of water to change the salinity or temperature levels of the local waters. Species contained in water collected from the open ocean are unlikely to survive a fresh water environment. Therefore, the Coast Guard concluded that the proposed regulations would have no significant impact on the environment. The Coast Guard solicits comments on the potential environmental impact of the proposed requirements.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 151 as follows:

1. The heading for part 151 is revised to read as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

2. Subpart C is added to part 151 to read as follows:

Subpart C—Ballast Water Management for Control of Nonindigenous Species

Sec.

151.1500 Purpose.
151.1502 Applicability.
151.1504 Definitions.
151.1506 Restriction on operation.
151.1508 Revocation of clearance.
151.1510 Ballast water management.
151.1512 Vessel safety.
151.1514 Exemption from ballast water management.
151.1516 Compliance monitoring.

Subpart C—Ballast Water Management for Control of Nonindigenous Species

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

§ 151.1500 Purpose.

The purpose of this subpart is to implement the provisions of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*).

§ 151.1502 Applicability.

This subpart applies to each vessel that carries ballast water, and which after operating on the waters beyond the Exclusive Economic Zone is inbound for the Saint Lawrence River destined for a United States port on the Great Lakes.

§ 151.1504 Definitions.

The following definitions are for terms used in this subpart:

Ballast water means any water and associated sediments used to manipulate the draft, trim, or stability of a vessel.

Captain of the Port (COTP) means the United States Coast Guard officer commanding a COTP zone described in part 3 of this chapter, or that person's authorized representative.

Commandant means the Commandant of the Coast Guard or an authorized representative.

District Commander means the officer of the Coast Guard designated by the Commandant to command a Coast Guard District, as described in part 3 of this chapter or an authorized representative.

Environmentally sound method means methods, efforts, actions, or programs, either to prevent introductions or to control infestations of aquatic nuisance species, that minimize adverse impacts to the structure and function of an ecosystem and minimize adverse effects on non-target organisms and ecosystems and that emphasize integrated pest management techniques and non-chemical measures.

Exclusive Economic Zone (EEZ) means the area established by Presidential Proclamation 5030, dated March 10, 1983 (3 CFR, 1983 Comp., p. 22), which extends from the base line of the territorial sea of the United States seaward 200 miles.

Great Lakes means Lake Ontario, Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels.

Port means a terminal or group of terminals, port authority or other organization, or any place or facility that has been designated as a port by the COTP.

§ 151.1506 Restriction on operation.

No vessel subject to the requirements of this subpart, may be operated in the Great Lakes unless the master of the vessel has certified, in accordance with § 151.1516, that the requirements of this subpart have been met.

§ 151.1508 Revocation of clearance.

A District Commander may request the District Director of Customs to withhold or revoke the clearance required by 46 U.S.C. App. 91 for a vessel subject to this subpart, the owner or operator of which is not in compliance with the requirements of this subpart.

§ 151.1510 Ballast water management.

(a) The master of each vessel subject to this subpart shall employ one of the following ballast water management practices:

(1) Carry out an exchange of ballast water on the waters beyond the EEZ, in an ocean depth of not less than 1.25 miles (2,000 meters), prior to entry into any United States port within the Great Lakes. When a vessel is discharging ballast water, preparatory to an exchange, the pump must be run until it loses suction, thus assuring that the tank

is as empty as practicable before taking on new ballast water.

(2) Use an alternative environmentally sound method of ballast water management. Any alternative method must be submitted to, and approved by, the COTP in charge of the first United States port that the vessel will enter, before the vessel enters the Great Lakes.

(b) Sediment from ballast water tanks of each vessel arriving from a foreign port must be disposed of ashore in accordance with local requirements.

(c) Nothing in this subpart authorizes the discharge of oil or noxious liquid substances (NLSs) in a manner prohibited by United States or international laws or regulations. Ballast water carried in any tank containing a residue of oil, NLSs, or any other pollutant must discharge in accordance with the applicable regulations. Nothing in this subpart affects or supersedes any requirement or prohibitions pertaining to the discharge of ballast water into the waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).

§ 151.1512 Vessel safety.

Nothing in this subpart relieves the master of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

§ 151.1514 Exemption from ballast water management.

The master of any vessel subject of this subpart unable to exchange ballast water before entering the territorial waters of the United States, due to weather, equipment failure, or other extraordinary conditions must request from the COTP of the first United States port that the vessel will enter, permission to—

(a) Retain the vessel's ballast water on board the vessel; or

(b) Discharge the vessel's ballast water within an area designated by the COTP at the time of the request.

§ 151.1516 Compliance monitoring.

(a) The master of each vessel subject to this subpart shall provide the following information, in written form, to the Lockmaster at the Snell Lock at Massena, New York:

(1) The vessel's name, port of registry, and official number or call sign.

(2) The name of the vessel's owner(s).

(3) Whether ballast water is being carried.

(4) The original location and salinity, if known, of ballast water taken on, before an exchange.

(5) The location, date, and time of by ballast water exchange.

(6) If known, the salinity of the ballast water to be discharged into the territorial waters of the United States.

(7) The intended discharge port for ballast water and location for disposal of sediment carried upon entry into the territorial waters of the United States.

(8) The signature of the master attesting to the accuracy of the information provided and certifying compliance with the requirements of this subpart.

(b) A photocopy of a submission of the information, required in paragraph (a) of this section, for the same voyage, to a State, local, or foreign government agency, is acceptable to fulfill this requirement.

(c) Coast guard officials may take samples of the ballast water to assess the compliance with, and the effectiveness of this part.

Dated: September 25, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-23973 Filed 10-1-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD 07-92-86]

Safety/Security Zone: Cumberland Sound, Georgia and St. Marys River Entrance Channel

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to change the boundaries of the permanent safety/security zone and the temporary safety/security zone described in the above referenced Code of Federal Regulation. The proposal reduces the area of the permanent safety/security zone and changes a portion of it to a temporary safety/security zone. The affected area of the safety/security zone is difficult to patrol at low tide and current "signs" are inadequate to warn boaters. This change will open areas for recreational use and reduce patrol requirements without affecting security.

DATES: Comments must be received on or before November 16, 1992.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 2831 Talleyrand Avenue, Jacksonville, FL 32206-3497. The comments and other materials referenced in this notice will be available for inspection and copying at MSO Jacksonville, room 222, 2831 Talleyrand Avenue, Jacksonville, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR G. W. Dunton (904) 232-2648.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice *Docket Number* 07-92-86 and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LCDR G. W. Dunton, Project Officer, and LT Jacqueline M. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

This proposed change reduces the area affected by the permanent safety/security zone. While the temporary area will be increased, it will only be increased by that area that is currently within the permanent zone. This proposal is made pursuant to the request of the Commanding Officer, Naval Submarine Base, Kings Bay due to a reassessment of its threat conditions and patrol missions.

This regulation is issued pursuant to 50 U.S.C. 191, 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The net change in Safety/Security zone coverage is not reduced. The permanent area is reduced and the area removed from the permanent zone is placed into the

temporary Safety/Security zone. Increased recreational use of the affected zone will have a negligible economic impact.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.731 is revised to read as follows:

§ 165.731 Safety/Security Zone: Cumberland Sound, Georgia and St. Marys River Entrance Channel.

(a) *Location.* A permanent safety/security zone is established within the following coordinates, the area enclosed by a line starting at

30° 44'55" N, 081° 29'39" W; thence to
30° 44'55" N, 081° 29'18" W; thence to
30° 46'35" N, 081° 29'18" W; thence to
30° 47'02" N, 081° 29'34" W; thence to
30° 47'21" N, 081° 29'39" W; thence to
30° 48'00" N, 081° 29'42" W; thence to
30° 49'07" N, 081° 29'56" W; thence to
30° 48'54" N, 081° 32'25" W; thence following the land base perimeter boundary to point of origin.

(b) A temporary safety/security zone, when activated by the Captain of the Port, Jacksonville, Florida, encompasses all waters and land from bank to bank within Cumberland Sound and the St. Marys Entrance Channel: the northern extent of this zone starts at the southern tip of Crab Island; lighted buoy number "1" at the mouth of the Amelia River demarks the southern boundary; daymarker number "2" at the mouth of the St. Marys River indicates the western boundary; and the eastern boundary extends out to three (3) nautical miles in the Atlantic Ocean, with the zone also encompassing the waters within 1000 yards of the entrance channel east of the jetties and shall additionally encompass the area enclosed by a line starting at

30° 44'55" N, 081° 29'39" W; thence to
30° 44'55" N, 081° 29'18" W; thence to
30° 46'35" N, 081° 29'18" W; thence to
30° 47'02" N, 081° 29'34" W; thence to
30° 47'21" N, 081° 29'39" W; thence to
30° 48'00" N, 081° 29'42" W; thence to
30° 49'07" N, 081° 29'56" W; thence to
30° 49'55" N, 081° 30'35" W; thence to
30° 50'15" N, 081° 31'08" W; thence to
30° 50'14" N, 081° 31'30" W; thence to
30° 49'58" N, 081° 31'45" W; thence to
30° 49'58" N, 081° 32'03" W; thence to
30° 50'12" N, 081° 32'17" W; thence following the land base perimeter boundary to the point of origin.

(c) *Regulations.* (1) The Captain of the Port, Jacksonville, Florida will activate the temporary safety/security zone described in paragraph (b) of this section by issuing a local broadcast notice to mariners.

(2) All persons and vessels in the vicinity of the safety/security zone shall immediately obey any direction or order of the Captain of the Port, Jacksonville, Florida.

(3) The general regulations governing safety and security zones contained in 33 CFR 165.23 and 165.33 apply. No person or vessel may enter or remain within the designated zones without the permission of the Captain of the Port, Jacksonville, Florida.

(4) This regulation does not apply to persons or vessels operating under the authority of the Untied States Navy nor to authorized law enforcement agencies.

Dated: August 24, 1992.

J.P. Wysocki,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 92–23975 Filed 10–1–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL 4516–8]

Establishment and Open Meeting of the Negotiated Rulemaking Advisory Committee for Architectural and Industrial Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Establishment of FACA Committee and meeting announcement.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). we are giving notice of the establishment of an Advisory Committee to negotiate a rule to control VOC emissions from Architectural and Industrial Maintenance Coatings under section 183(e) of the Clean Air Act, as amended. We are also announcing the Committee's first meeting on October 15 and 16. Its purpose is to finalize and begin work on the issues relevant to this rule. The Committee meeting is open to the public without need for advance registration.

DATES: The October 15 meeting will start at 9 a.m. and end at 5 p.m. The October 16 meeting will start at 8 a.m. and end no later than 2 p.m.

ADDRESSES: The meeting will be the Hyatt Regency Hotel, 151 East Wacker Drive, Chicago, Illinois 60601, (312) 565–1234.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should contact Ellen Ducey, Office of Air Quality Planning and Standards, EPA, (919) 541–5408. Persons needing further information on procedural matters should contact Barbara Stinson, the Committee Co-Chair, at (303) 468–5822.

Dated: August 28, 1992.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 92–24094 Filed 10–1–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 300

[FRL–4514–4]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environment Protection Agency.

ACTION: Notice of intent to delete Rose Park Sludge Pit Site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region VIII announces its intent to delete the Rose Park Sludge Pit Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Utah have determined that all appropriate response actions have been implemented and that no further cleanup by responsible parties is appropriate at this time. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning this site may be submitted on or before November 6, 1992.

ADDRESSES: Comments may be mailed to: Robert L. Duprey, Director, Hazardous Waste Management Division, U.S. Environment Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Comprehensive information on this site including the deletion docket is available at the EPA Region VIII Superfund Records Center or at the Rose Park Sludge Pit Site information repository. This information is available for public inspection and copying. Requests for documents should be directed to the EPA Region VIII Superfund Records Center at the EPA Region VIII office.

The address for the Regional records center is: Superfund Records Center, U.S. Environment Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, Hours: 8 a.m. to 4:30 p.m., Monday through Friday.

The Rose Park Sludge Pit Site information repository is located at: Utah Department of Environmental Quality, Division of Environmental Response and Remediation, 1950 West North Temple, Second Floor, Salt Lake City, Utah 84116–4840, Hours: 8 a.m. to 5 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Introduction.
II. NPL Deletion Criteria.
III. Deletion Procedures.
IV. Basis for Intended Site Deletion.

I. Introduction

The Environment Protection Agency (EPA) Region VIII announces its intent to delete the Rose Park Sludge Pit Site, Salt Lake City, Utah from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Response Trust Fund (Fund). Pursuant to § 300.66(c)(8) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.66(c)(7), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consolation with the State, whether any of the following criteria have been met:

(1) Responsible parties or other persons have implemented all appropriate response actions required; or

(2) All appropriate Fund-financed responses under CERCLA have been implemented and no further cleanup by responsible parties is appropriate; or

(3) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 105(e) of CERCLA states: "Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a 'Site Cleaned Up to Date' on the National Priorities List, the site shall be restored to the National Priorities List without application of the hazard ranking system."

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As is mentioned in Section II of this notice, section 105(e) of CERCLA makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA Region VIII will accept and evaluate public comments before making a final decision to delete a site from the NPL. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

(1) EPA Region VIII and the State of Utah have agreed to conduct five-year reviews at this site. The first five-year review was completed on June 1, 1992.

(2) EPA Region VIII has recommended deletion and has prepared the relevant documents.

(3) The State of Utah is expected to concur with the deletion decision.

(4) Concurrent with the National Notice of Intent to Delete, a local notice has been published in local and community newspapers and has been distributed to appropriate federal, state and local officials and other interested parties.

(5) The Region has made all relevant documents available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion will occur at the Assistant Administrator for the Office of Solid Waste and Emergency Response places a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region VIII.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Rose Park Sludge Pit Site, Salt Lake City, Utah.

The Rose Park Sludge Pit is located in North Salt Lake City, an area where oil refineries and industrial facilities have been located since before 1900. The sludge pit was used as a waste disposal site for acidic sludge wastes from petroleum refining operations. Waste was placed in an unlined pit from the 1930's until 1957.

The site was ranked for the NPL in August, 1982. Rose Park Sludge Pit scored 7.46 based on the surface water and groundwater routes. Due to the threat of public exposure and direct contact, the State of Utah requested that EPA consider Rose Park as the State's top priority site. As a result of this request, the site was listed on the NPL on December 30, 1982.

A series of field investigations were conducted between 1979 and 1981. These investigations found waste sludge

as deep as 20 feet, covering an area of about 5.5 acres. Shallow, unconfined groundwater was found at a depth of 8 to 10 feet. In March, 1981, a responsible party (RP) installed six ground-water monitoring wells and collected soil samples from six borings through the sludge pit and surrounding areas.

On October 29, 1982, EPA, Utah State Department of Health, Salt Lake City Corporation, Salt Lake City/County Health Department and Amoco Oil Company entered into an Intergovernmental Corporate Cooperation Agreement (ICCA) to conduct remedial actions at the site. All remedial actions at the site were conducted under the ICCA and there is not a Record of Decision (ROD) associated with this site.

The remedy consisted of installing additional monitoring wells, constructing a bentonite slurry wall around the pit and capping the pit with a sand layer, fabric membrane, clay layer and a vegetated soil cover. A traffic barrier and signs identifying the containment structure were installed. All required remedial actions were completed by October, 1984. Provisions in the ICCA required Salt Lake City, the property owner, to maintain, supervise and care for the site. The agreement was recorded in the records of Salt Lake County.

The ICCA included a 30 year groundwater monitoring plan to ensure the continued protection of groundwater and to monitor for possible releases of contaminants from the sludge pit. The monitoring plan provides for annual monitoring for indicator parameters as specified in the plan. Due to problems with the original monitoring plan, a new monitoring plan was developed and implemented in 1992. This plan requires the installation of additional monitoring wells and more detailed groundwater sampling and analysis.

Though not required in the ICCA, Amoco Oil Company has committed to conduct the long term monitoring of the site. Amoco and the State of Utah will formalize Amoco's commitment in an agreement prior to the final deletion.

A community relations plan was developed for the site. The ICCA required the parties to hold a public meeting for the purpose of informing the public and Rosewood Park area residents about the remedy and allowing for comments and input. A meeting was held in February, 1983. The community relations plan was updated in 1992 in conjunction with the five-year review to provide for activities related to the review and deletion.

EPA conducted a five-year review of the site in 1992. This review confirmed the remedy remains protective of human health and the environment. Direct contact exposure is prevented by the cap and groundwater is protected from further degradation by the slurry wall. The monitoring data found no contamination related to the sludge pit in the groundwater exceeding MCLs (maximum contaminant levels for drinking water as established by the Safe Drinking Water Act) or health based standards. The next five-year review is scheduled for April, 1997 or earlier if appropriate.

EPA, with concurrence of the State of Utah, has determined that all appropriate responsible party responses under CERCLA at the Rose Park Sludge Pit Site have been implemented, and that no further cleanup by responsible parties is appropriate at this time.

Dated: September 22, 1992.

Jack W. McGraw,

Acting Regional Administrator, USEPA Region VIII.

[FR Doc. 92-23902 Filed 10-1-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 300

[FRL-4515-8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete ARRCOM from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the ARRCOM site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986. EPA and the State of Idaho Department of Health and Welfare (IDHW) have determined that the ARRCOM site poses no significant threat to public health or the environment and, therefore, further remedial measures are not appropriate.

DATES: Comments concerning this site may be submitted on or before November 2, 1992.

ADDRESSES: Comments may be mailed to Fran Allans, U.S. EPA Region 10, 422 W. Washington, Boise Idaho 83702.

Comprehensive information on this site is available through the Region 10 Deletion Docket, which is located at EPA's Region 10 office and is available for viewing by appointment only from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. Appointments for copies of the background information from the Regional public docket should be directed to the EPA Region 10 docket office at the following address: Lynn Williams, United States Environmental Protection Agency, Region 10 Hazardous Waste Division Records Center, 1200 6th Avenue, Seattle, Washington 98101.

The Deletion Docket is also available for viewing at the ARRCOM site information repository at the following location: Rathdrum Library, 1891 Main, Rathdrum, Idaho 83858.

FOR FURTHER INFORMATION CONTACT: Fran Allans, U.S. EPA Region 10, 422 W. Washington, Boise, Idaho 83702. (208) 334-9047.

SUPPLEMENTARY INFORMATION:

I. Introduction.
II. NPL Deletion Criteria.
III. Deletion Procedures.
IV. Basic of Intended Site Deletion.

I. Introduction

The United States Environmental Protection Agency (EPA) Region 10 announces its intent to delete the ARRCOM site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR part 300, and requests comments on this proposed deletion. EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. EPA may delete a site from the NPL if it determines that no further response is required to protect human health and the environment. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site are later found to warrant such actions.

The ARRCOM NPL site is an abandoned waste oil recycling facility located 2.5 miles southwest of the City of Rathdrum, in Kootenai County, Idaho. The property consists of approximately 1.2 acres in the central region of Section 10, Township 51 South, Range 5 West. It is situated in a rural residential neighborhood with an estimated eight residences located within a one-half mile radius to the north, east, and west. One residential property is adjacent to the northern edge of the site. The site is

bounded to the southeast by Highway 53, a Northern Pacific Railroad mainline, and agricultural lands used primarily for growing forage crops. Although there are no surface water bodies on or in the near vicinity of the ARRCOM site, the marshy drainage basin of Lost Creek is located 0.3 mile to the north/northeast. The site is not fenced.

The ARRCOM site is located over the Spokane Valley-Rathdrum Prairie Aquifer, the sole source for public and private drinking water for approximately 350,000 people in Idaho and Washington. Approximately 6,300 of these people live in the primarily rural residential area within three miles of the site.

The site was operated as a waste oil recycling facility from the early 1960s until it was abandoned in 1982. During operation, waste oils were transported by truck to the site, underwent processing, and were sold. Waste oil and recycled oil were stored in 27 tanks and 4 truck tanks. Contamination of the environment occurred as a result of oil spills from the operation and from leaking oil storage tanks. Sludge and waste oils were discarded in at least three disposal pits on the property and were spread on an on-site road.

In August 1982, approximately seven months after the ARRCOM facility was abandoned, EPA conducted a preliminary investigation of the site. During this investigation, a number of oil storage tanks were found to be leaking and in general disrepair. Preliminary sampling of the site indicated the waste oils and soils at the facility were contaminated with high levels of solvents, lead and polychlorinated biphenyls (PCBs), and a potential for groundwater contamination existed. Based on this information, the site was proposed for inclusion on the National Priorities List (NPL) in December 1982 and received a final NPL listing in September 1983.

Because of the exceptionally high levels of contaminants and large volumes of waste oils and sludges, emergency response activities were initiated under EPA's removal program in 1983 to stabilize the site. A three phased removal action was performed at the ARRCOM site in 1983, 1987 and in 1990. The removal actions accomplished the following:

1983: Removal of 9,700 gallons of waste oils from tanks and 137 cubic yards of contaminated soils.

1987: Removal of 13,255 gallons of waste oils and sludges from tanks and disposal pits and 2,000 cubic yards of contaminated soils.

1990: Removal of 1,653 tons of contaminated soils.

During the three phases of the removal action, contaminated soils and sludge disposal pits were excavated to depths ranging from 1 to 20 feet below ground surface at different locations of the site. Soils, waste oils, tanks and buildings were removed and shipped to off-site hazardous waste landfill and incinerator facilities. Surface soil and waste oils were sampled prior to the 1983 removal and before and after the 1987 and 1990 removals.

As part of the 1982 preliminary investigation and the 1987 removal action, residential groundwater wells in the immediate vicinity of the site were sampled. Groundwater monitoring wells were installed at the site in 1987 and samples were collected in 1987, 1989, 1990, and 1992.

In 1991, EPA performed a comprehensive assessment of the site data generated during the preliminary investigation and removal actions and conducted a limited sampling effort to fill important data gaps. This information was used to evaluate the nature and extent of contamination and to assess risks to human health and the environment resulting from contaminants remaining on-site after the removal actions. The data suggest that concentrations of contaminants in soils were significantly reduced during the removals and that low levels of organic and inorganic contaminants remain in the soils below excavated areas at depths ranging from 1 foot to 25 feet below ground surface. Because the frequency of occurrence of the contaminants on a sitewide basis is low, and because the majority of contaminants are located 25 feet below ground surface beneath clean fill, EPA has concluded that the remaining soil contaminants do not pose an unacceptable current or future direct contact risk if left in place.

Samples collected from residential groundwater wells in 1982 and 1987, and the samples from on site monitoring wells collected in 1987, 1989, 1990, and 1992, showed no site-related contaminants of concern in the groundwater. Modelling indicated that only one contaminant of concern, 1,1,2,2-tetrachloroethane, could potentially leach from site soils in the future and eventually reach the groundwater. However, the risk assessment indicated that the potential future groundwater concentration would fall within EPA's acceptable cancer risk range for a future residential land use scenario.

As part of the risk assessment, the potential adverse impacts of soil contaminants on local plants and animals were qualitatively assessed. Potential receptors and exposure scenarios were evaluated and it was determined that because areas with contaminants remaining on-site are at significant depth beneath clean fill, the ARRCOM site does not pose a risk to ecological receptors or habitats.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with § 300.425(e) of the NCP, 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(1) Responsible parties or other persons have implemented all appropriate response actions required;

(2) All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate, or

(3) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

It is EPA's policy that even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of ARRCOM, where hazardous substances are not above health based levels and future access does not require restriction, five-year reviews will not be conducted. However, if new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) EPA Region 10 issued a Record of Decision dated June 30, 1992, which

found that no remedial action is required at the site because, following a number of removals, it no longer presents a significant threat; (2) IDHW has concurred with the proposed deletion decision; (3) a notice has been published in the local newspapers and has been distributed to appropriate federal, state and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete, and (4) all relevant documents have been made available in the local site information repositories.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. The Agency will prepare a Responsiveness Summary if significant public comments are offered.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

Based on the results of the comprehensive assessment of the removal data, and the supplemental sampling and risk assessment, EPA determined that the ARRCOM site does not pose a significant threat to public health or the environment. In the Proposed Plan, issued for the site on May 22, 1992, EPA recommended that no remedial action be taken. The State of Idaho concurred with this recommendation.

CERCLA requirements under Sections 113(k)(2)(B)(i–v) and 117, 42 U.S.C. 9613 and 9617 for public participation include releasing the risk assessment report and the Proposed Plan to the public and providing a public comment period to allow for public participation in the decision-making process. EPA met these requirements by releasing these documents to the public in May 1992. These documents were made available by placing them in the information repository in the Rathdrum Public Library and EPA office in Seattle. Notice of a 30 day public comment period on the Proposed Plan was placed in the Statesman Review newspaper. No comments were received during the 30 day public comment period and on June 30, 1992, EPA issued a No Further Action Record of Decision for the ARRCOM site. The no further action decision does not result in hazardous substances, pollutants, or contaminants remaining at the site above health based levels. Accordingly, EPA will not conduct "five-year reviews" at this site.

As previously stated, one of the three criteria for deletion specifies that EPA may delete a site from the NPL if the "remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate." EPA, with concurrence of IDHW, believes that this criterion for deletion has been met based on the results of the comprehensive assessment of the removal data, and the supplemental sampling and risk assessment. Therefore, EPA is proposing deletion of the ARRCOM site from the NPL. Documents supporting these actions are available at the designated information repositories.

Dated: September 15, 1992.

Dana Rasmussen,

Regional Administrator, Region 10.

[FR Doc. 92–23903 Filed 10–1–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–217, RM–8069]

Radio Broadcasting Services; Camden, East Camden and Stamps, AR; Minden, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Y95 Radio, Inc., licensee of Station KCXY(FM), Channel 237A, Camden, Arkansas, seeking the reallotment of Channel 237A to East Camden, AR, as a Class C1 channel and modification of its license accordingly. Petitioner also requests the substitution of Channel 282A for Channel 238A at Stamps, AR, a vacant allotment for which an application is pending; and the substitution of Channel 239A for Channel 237A at Minden, LA, and modification of the license of Cook Enterprises, Inc. ("Cook") for Station KASO–FM. An Order to Show Cause must be issued to Cook since it has not agreed to the proposed substitution at Minden. Coordinates for Channel 237C1 at East Camden, AR, are 33–30–14 and 92–48–38; for Channel 282A at Stamps, AR, 33–23–20 and 93–37–38; and for Channel 239A at Minden, LA, 32–37–50 and 92–16–56. See **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Comments must be filed on or before November 19, 1992, and reply comments on or before December 4, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark E. Fields, Esq., Law Office of Mark E. Fields, 1825 I Street, NW., Suite 400, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commissioner's Notice of Proposed Rule Making, MM Docket No. 92–217, adopted September 1, 1992, and released September 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Petitioner's modification proposal complies with the provisions of §§ 1.420 (g) and (i) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 237C1 at East Camden, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 63

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23894 Filed 10-1-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 28)]

Rail General Exemption Authority: Export Corn and Export Soybeans

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served July 15, 1992 (57 FR 31489, July 16, 1992), the Commission sought public comment by August 17, 1992, on whether to exempt from regulation the rail transportation of export corn and soybeans. The Commission has concluded, preliminarily, that regulation of rail transport of export corn and export soybeans is not necessary to carry out the rail transportation policy. The proposal is intended to eliminate burdensome regulatory oversight. As discussed more fully in the Supplementary Information section below, the comment due date is being extended to December 15, 1992.

DATES: Comments are due on December 15, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 346 (Sub-No. 28) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610, [TDD for the hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: The comment due date has been extended a number of times in this proceeding. The Commission granted a 30-day extension request filed by the Association of American Railroads by decision served and published July 29, 1992 (57 FR 33478), extending the comment due date to September 16, 1992. By decision served August 31, 1992 (57 FR 39663, September 1, 1992) the comment due date was extended an additional 30 days to October 16, 1992, at the request of a number of parties, including the U.S. Department of Agriculture (USDA), which had sought a 90-day extension. An August 22, 1992 request filed by the National Grain and Feed Association to postpone the comment due date was denied by a decision served September 9, 1992. In a decision served September 29, 1992, the September 9 decision was upheld on appeal.

On September 22, 1992, USDA filed a petition requesting a further 60-day extension of the current comment due date. USDA indicates additional time is needed to collect and provide to the Commission additional data regarding the effect of the proposed exemption on the domestic farm economy. USDA maintains it is important to evaluate fully the proposal's potential impact on specific export promotion programs and activities administered by USDA, including the export enhancement program, the GMS export credit programs and the market promotion program, which all may be affected by the proposed change in transport regulations. USDA also notes it maintains substantial information, both published and unpublished, on grain marketing and transportation that the Commission relied on extensively in drafting the subject proposal and that should be made available for consideration in this proceeding.

As noted above, USDA was one of the parties previously seeking a 90-day extension, but only a 30-day extension was granted. USDA's prior extension request was very general, however, and did not merit the full 90-day extension sought. By contrast, the instant extension request is specific and compelling and will, therefore, be granted.

Decided: September 28, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23967 Filed 10-1-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of amendment to fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted a revised Amendment 18 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area for review by the Secretary of Commerce (Secretary). Comments are requested from the public. Copies of the revised amendment and the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) may be obtained from the Council (see "**ADDRESSES**").

DATES: Comments on the amendment should be submitted on or before October 29, 1992.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802 or delivered to the Federal Building Annex, suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska. Copies of revised Amendment 18 to the FMP and the RIR/IRFA are available on request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, Alaska Region, NMFS at 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that each regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires the Secretary, on receiving the plan or amendment, to immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve revised Amendment 18.

If approved, revised Amendment 18 to the BSAI FMP would:

(1) Allocate the pollock total allowable catch (TAC), after subtraction of the reserve, to inshore and offshore components of the fishery as follows:

35 percent for inshore and 65 percent for offshore in 1993; and

37.5 percent for inshore and 62.5 percent for offshore in 1994 and 1995.

(2) Continue the catcher vessel operational area (CVOA) established within the BSAI area (57 FR 23321, June 3, 1992) for the pollock non-roe (or "B") season (June 1-December 31), within which access to pollock is limited to

catcher vessels and motherships only. The CVOA is located in the Bering Sea subarea south of 56°00′ N. latitude and between 163°00′ and 168°00′ W. longitudes. Catcher/processor vessels in the offshore component would not be allowed to conduct fishing operations for pollock in the CVOA during the "B" season.

If implemented, Amendment 18 would cease to have effect at midnight, Alaska local time, December 31, 1995.

Regulations proposed by the Council to implement these amendments are scheduled to be published within 10 days of this notice.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 28, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-23941 Filed 9-29-92; 3:16 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 192
Friday, October 2, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agricultural Commodities To Be Made Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949 in Fiscal Year 1993

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This Notice sets forth the determination of the Secretary of Agriculture of the types and quantities of agricultural commodities to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1993.

FOR FURTHER INFORMATION CONTACT: Glenn Whiteman, Acting Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 720–3573.

Determination

The kinds and quantities of commodities that shall be made available for donation under section 416(b) of the Agricultural Act of 1949 are as follows:

	Commodity	Quantity (metric tons)
Grain	Wheat (feed quality).	1,800,000
	Corn	381,000
Dairy products	Butter/Butteroil *	80,000

* At least 40,000 metric tons must be butter.

Done at Washington, DC, this 25th day of September 1992.

Charles R. Hilty,

Acting Secretary of Agriculture.

[FR Doc. 92–23909 Filed 10–1–92; 8:45 am]
BILLING CODE 3410–01–M

Food and Nutrition Service

The Emergency Food Assistance Program and Soup Kitchens; Availability of Commodities for Fiscal Year 1993

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces: (1) The surplus and purchased commodities that will be available for donation to households under the Emergency Food Assistance Program (TEFAP); and (2) the commodities that will be available to soup kitchens and food banks. The commodities made available under this notice shall be directed to needy persons, including unemployed and homeless persons.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2660.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Surplus Commodities

Donations of commodities to needy households were initiated in 1981 as part of efforts to reduce stockpiles of government-owned commodities. These donations responded to concern over the costs to taxpayers of storing vast quantities of foods, while at the same time there were persons in need of food assistance. The Emergency Food Assistance Program was codified in Title II of Public Law 98–8, the Emergency Food Assistance Act (EFAA) of 1983, as amended (7 U.S.C. 612c note). Surplus foods made available for distribution under the EFAA are limited to amounts determined by the Secretary to be in excess of the quantities needed to carry out other programs, including Commodity Credit Corporation (CCC) sales obligations and domestic food assistance programs. The Secretary of Agriculture anticipates that the following surplus commodities acquired by the CCC under its price-support activities will be made available in the noted amounts for distribution through TEFAP during Fiscal Year 1993: Butter, 72 million pounds; and cornmeal, 48 million pounds. The actual types and quantities of commodities made available by the Department may differ from the above estimates because of agricultural production, market conditions and the distribution of these donated foods to other domestic outlets.

Purchased Commodities

In recent years, the supply of available surplus commodities has been drastically reduced. These reductions are the result of changes in the agricultural price-support programs which have brought supply and demand into better balance, and accelerated donations and sales. Congress responded to the reduced availability or surplus commodities with section 104 of the Hunger Prevention Act of 1988, Public Law 100–435, which added sections 213 and 214 to the EFAA. Those sections required the Secretary to annually purchase, process, and distribute commodities for household consumption in addition to those surplus commodities otherwise provided under TEFAP. In section 110 of the Hunger Prevention Act, Congress also required the Secretary to purchase, process and distribute commodities for soup kitchens and food banks. USDA purchases commodities for these programs based in part on annual reports completed by State distributing agencies. For soup kitchen and food bank outlets, State agencies have expressed a preference to receive a greater variety of commodities; for TEFAP, State agencies prefer volume to variety.

For Fiscal Year 1993, $120 million has been appropriated for purchasing, processing, and distributing additional commodities for household use. The Department anticipates purchasing for distribution to households through TEFAP during this fiscal year peanut butter, raisins, rice, dry bagged beans, and the following canned foods: peas, green beans, applesauce, orange juice, pork and beef. The amounts of each item purchased will depend on the prices USDA must pay.

For Fiscal Year 1993, $32 million has been appropriated to purchase, process, and distribute commodities for distribution to soup kitchens and food banks. For such outlets, the Department anticipates the purchase of nonfat dry milk, and the following canned foods: Mixed fruit, pineapple, applesauce,

tomato juice, corn, green beans, peas, pork and/or beef, and chicken. The amounts of each item purchased will depend on the prices USDA must pay.

Dated: September 28, 1992.

Phyllis Gault,

Associate Administrator.

[FR Doc. 92-23952 Filed 10-1-92; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Exemption of Genesis New Perspectives Demonstration Timber Sales From Appeal, Malheur National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Genesis new Perspectives Demonstration Timber Sales in the areas of Dixie Mountain on the Malheur National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989 at Vol. 54, No. 13 pages 3342-3370.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Mark A. Boche, Forest Supervisor, Malheur National Forest, 139 NE Dayton Street, John Day, Oregon 97845.

SUPPLEMENTARY INFORMATION: From 1983 to this year an infestation of Western Spruce Budworm have been affecting major portions of the Malheur National Forest. To date, approximately 420,000 acres are affected on the forest. In April 1991, an interdisciplinary team (IDT) surveyed much of the infested area to assess the damage to the resources that had occurred in the Dixie Mountain area. The IDT identified the need to salvage the timber which has died in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 12 inches in diameter at breast height with moderate defect. Rapid drying of insect-killed trees is resulting in cracking or checking, especially of the smaller diameter trees, which will quickly reduce value as sawlogs.

It is also desirable to complete the logging quickly to begin artificial regeneration as soon as possible, establishing new stands more quickly.

The environmental analysis of these actions begun in September 1, 1991. After public meetings, and contacts with individuals and State and Federal agencies, the following major issues were identified: Silvicultural treatments; access management; riparian habitat; soils and watershed values; visual resource; old growth; reintroduction of fire; big game cover; and logging systems and economics.

The Genesis IDT developed five alternatives to analyze, including the No Action Alternative. The effects of these alternatives are disclosed in an Environmental Assessment which was prepared for the proposal. The Proposed Action (Alternative A) would harvest about 2,943 acres of heavily infested land and produce about 13.1 MMBF of timber and 5.1 MMCF of wood fiber.No specified roads will be constructed and less than 1 mile(s) of temporary roads would be constructed. This alternative protects and enhances riparian and aquatic habitat by implementing helicopter yarding of approximately 980 acres to reduce soil and riparian impacts.

Biological evaluations have been completed for all plant, wildlife and fish Proposed, Endangered, Threatened and Sensitive species within both project areas. All Biological Evaluations indicated that projects could proceed as planned.

The sale and accompanying work is designed to accomplish the objectives identified as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale project and the accompanying work, and to prevent delays by appeals, the process according to 36 CFR part 217 is being followed.

Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

This project will not be subject to review under 36 CFR part 217. Upon publication of this notice, the Decision Notice for the Genesis New Perspectives Demonstration Project Timber Sales will be signed by the Forest Supervisor.

Dated: September 24, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-23670 Filed 10-1-92; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Certification of Central Filing System—Colorado

The Statewide central filing system of Colorado is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Kenton Kuhn, President, Central Filing Systems, Inc., for the following farm products produced in that State:

All Livestock
Cattle & Calves
Angora
Beefalo
Buffalo
Chickens
Ducks
Eggs
Elk
Emu
Fish
Fur Animals
Geese
Hogs
Horses
Llamas
Milk
Mules
Ostriches
Pheasants
Quail
Semen
Sheep & Lambs
Turkeys
Wool
All Field Crops
Hay
Barley
Corn
Dry Beans
Flax Seed
Honey
Legumes
Millet
Oats
Popcorn
Potatoes
Rye
Safflower
Seed Crops
Silage
Sorghum Grain
Soybeans
Sugar Beets
Sunflower Seeds
Trees
Triticale
Vetch
Wheat
Apples
Apricots
Cantaloupe
Cherries
Grapes
Honey Dew Melon
Nectarines
Peaches
Pears
Plums
Pumpkins
Strawberries
Raspberries
Muskmelon
Watermelon
Fruit & Vegetables
Artichokes
Asparagus
Broccoli
Cabbage
Carrots
Cauliflower
Celery
Cucumbers
Eggplant
Green Peas
Green Beans
Lettuce
Okra
Onions
Pecans
Peppers
Radishes
Snap Beans
Squash
Sweet Corn
Tomatoes
Turnips
Walnuts

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(e)(3), 51 FR 22785.

Dated: September 28, 1992.

Virgil M. Rosendale,

Administrator, Packers and Stockyards Administration.

[FR Doc. 92- 23910 Filed 10-1-92; 8:45 am]

BILLING CODE 3410-KD-M

Soil Conservation Service

Lower Rapid Creek Water Quality Project

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Lower Rapid Creek Water Quality Hydrologic Unit Area Project in Pennington County, South Dakota.

FOR FURTHER INFORMATION CONTACT: Mr. Ron E. Hendricks, State Conservationist, USDA, Soil Conservation Service, Federal Building, room 203, 200 4th Street, SW., Huron, South Dakota, 57350-2475, telephone (605) 353-1783.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Ron E. Hendricks, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement is not needed for this project.

The project concerns a plan for the protection of cropland, pasture and rangeland and other land using conservation practices; the reduction of seepage from the irrigation delivery and distribution system and the proper utilization of animal wastes in the lower Rapid Creek basin in Pennington County, South Dakota.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI is available to fill single copy requests at the above address. The total Environmental Assessment is on file and may be reviewed by contacting Mr. Ron E. Hendricks, State Conservationist. No administrative action on implementation of the project will be taken until 30 days after the date of this publication in the Federal Register.

Catalog of Federal Domestic Assistance Program No. 10902, Soil and Water Conservation. This program is excluded from coverage under Executive Order 12372.

Dated: August 27, 1992.

Lawrence N. Nieman,

Deputy State Conservationist.

[FR Doc. 92-23833 Filed 10-01-92; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics

Amendment to Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of additional information pertaining to this public meeting. The notice of this meeting was originally published in the **Federal Register** on September 21, 1992 in Notice Document 92-22703 beginning on page 43438. The joint meeting will convene on October 22-23, 1992 at the Bureau of the Census, room 1630, Federal Building 3, Suitland, Maryland.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Phyllis Van Tassel, Committee Liaison Officer, room 2419, Federal Building 3, Suitland, Maryland (301) 763-4056 (TDD).

Dated: September 24, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92-23951 Filed 10-1-92; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket 69-91]

Foreign-Trade Zone 41—Milwaukee, WI; Application for Expansion; Amendment of Application

The pending application of the Foreign-Trade Zone of Wisconsin, Ltd., grantee of FTZ 41, requesting authority to reorganize and expand its zone in Milwaukee, Wisconsin, within the Milwaukee Customs port of entry, (Docket 69-91, filed 10/29/91, 56 FR 57513, 11/12/91), has been amended to retain a site that was to be deleted.

The application initially requested authority to add a new site (Port of Milwaukee complex, 300 acres) to the zone project and to delete existing Sites 1, 3, and 4 from the project. The amendment requests that existing Site 1 not be deleted from the zone project.

The comment period is reopened until November 2, 1992.

The application and amendment material are available for public inspection at the following locations:

U.S. Department of Commerce District Office, 517 East Wisconsin Avenue, room 606, Milwaukee, Wisconsin 53202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., room 3716, Washington, DC 20230

Dated: September 25, 1992.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92-23968 Filed 10-1-92; 8:45 am]

BILLING CODE 3510-DS-M

Bureau of Export Administration

Iran Air: Stay of Final Order

ACTION: Notice.

On August 21, 1992, the Acting Under Secretary for Export Administration, United States Department of Commerce, issued a Final Order in an administrative enforcement proceeding against Iran Air, Mehrabad Airport, Tehran, Iran. 57 FR 39178, August 28, 1992. The Order finds that Iran Air committed a violation of the Export Administration Regulations and imposes as sanctions against Iran Air a civil penalty of $100,000 and a denial of Iran Air's U.S. export privileges for a period of 24 months, 21 months of which will be suspended if the civil penalty is paid within 30 days and provided Iran Air commits no further violations.

Iran Air filed an emergency motion for stay of the Final Order with the U.S. Court of Appeals for the District of Columbia Circuit (Docket No. 92-1389), which entered an order on September 28, 1992, as follows:

Order

Upon consideration of the renewed emergency motion for stay of agency order, the affidavits filed in support thereof, and the opposition thereto, it is

Ordered that the renewed emergency motion for stay be granted. Iran Air has made a substantial case on the merits and has demonstrated the requisite irreparable injury to warrant the issuance of a stay pending appeal. *See Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association* v. *FPC*, 259 F.2d 921 (D.C. Cir. 1958).

Per Curiam

Accordingly, by order of the court, the August 21, 1992, Final Order is stayed pending the court's action on Iran Air's appeal from the Commerce Department's administrative enforcement proceeding that resulted in the imposition of the sanctions.

Dated: September 30, 1992.

Joan M. McEntee,

Acting Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce.

[FR Doc. 92-24149 Filed 10-1-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-588-045]

Carbon Steel Wire Rope From Japan; Intent to Revoke the Antidumping Finding

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on carbon steel wire rope from Japan. Interested parties who object to this revocation must submit their comments in writing not later than October 31, 1992.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Wendy Frankel, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-3793.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1973, the Department of Treasury published an antidumping finding on carbon steel wire rope from Japan (38 FR 28571). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent five consecutive anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Commerce Department's regulations (19 CFR 353.25(d)(4)), the Department is notifying the public of its intent to revoke this antidumping finding.

Opportunity to Object

No later than October 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the following address: U.S. Department of Commerce, Import Administration, Central Records Unit, room B-099, Washington, DC 20230, Attn: Office of Agreements Compliance.

If interested parties do not request an administrative review by October 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by October 31, 1992, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with section 19 CFR 353.25(d) of the Department's regulations.

Dated: September 29, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-24058 Filed 10-1-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

September 25, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6717. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/339 is being increased by the application of special shift. The limit for Categories 638/639 is being decreased to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58559, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 25, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on October 2, 1992, you are directed to amend further the directive dated November 15, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
338/339	1,728,720 dozen.
638/639	1,561,620 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-23922 Filed 10-1-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

September 25, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1148, published on January 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 25, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1992 and extends through January 31, 1993.

Effective on October 2, 1992, you are directed to amend further the directive dated January 7, 1992 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh:

Category	Adjusted twelve-month limit [1]
340/640	2,208,759 dozen.
347/348	1,646,780 dozen.
847	523,738 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-23923 Filed 10-1-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 2, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from a nonprofit agency employing individuals who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the commodities to the Government.

2. The action will result in authorizing a small entity to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities to the Procurement List:

Inking Pad
- 7510-00-231-6531
- 7510-00-526-1740
- 7510-00-526-1742

Nonprofit agency: Cattaraugus County Chapter, NYSARC, Olean, New York.

Cleaning Compound, Rug and Upholstery
- 7930-00-113-1913
- 7930-00-724-9556

Nonprofit agency: The Lighthouse for the Blind, St. Louis, Missouri.

Trousers, Cold Weather
- 8415-01-099-7853
- 8415-01-099-7854
- 8415-01-099-7855
- 8415-01-099-7856
- 8415-01-099-7857
- 8415-01-099-7858
- 8415-01-099-7859
- 8415-01-099-7860
- 8415-01-099-7861
- 8415-01-099-7862

8415-01-100-1977
8415-00-782-2948
8415-00-782-2949
8415-00-782-2950
8415-00-782-2951
8415-00-782-2952
8415-00-782-2953
8415-00-782-2954
8415-00-782-2955
8415-00-782-2956
8415-00-782-2957
8415-00-782-2958
8415-00-782-2959
8415-00-782-2960
8415-00-782-2961

Nonprofit agency: Goodwill Industries of South Florida, Inc., Miami, Florida.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-23970 Filed 10-1-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 2, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from a nonprofit agency employing individuals who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on the current contractor for the commodity.

3. The action will result in authorizing a small entity to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List:

Curtain, Vehicular
2540-00-402-2157

Nonprofit agency: Caddo County Sheltered Workshop and Activities Center, Inc., Anadarko, Oklahoma.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-23971 Filed 10-1-92; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange; Proposed Amendments Relating to the Basis Quality and Quality Price Differentials Applicable to Deliveries for the Brazil Differential Coffee Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Changes.

SUMMARY: The Coffee, Sugar & Cocoa Exchange ("CSCE") has submitted proposed amendments to its Brazil differential coffee futures contract that would: (1) Change the quality of Brazilian coffee that is deliverable at par ("basis type") and; (2) change the price differentials applicable to the delivery of certain specified non-par qualities of Brazilian coffee. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the proposed amendments to the basis type and price differential for the Brazil differential coffee futures contract.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-7303.

SUPPLEMENTARY INFORMATION: The existing terms of the Brazil differential futures contract provide for the delivery of three different qualities of Brazilian coffee: Type 1, Type 2 and Type 3.[1] The contract currently specifies that the basis or par grade of coffee deliverable on the contract is Type 2, while Type 1 is deliverable at a premium of 200 points (2 cents) per pound and Type 3 is deliverable at a discount of 400 points (4 cents) per pound.

Under the proposed amendments, Type 3 coffee would be designated as the basis or par grade. Type 2 coffee would be deliverable a premium of 200 points (2 cents) per pound and Type 1 would be deliverable at a premium of 400 points (4 cents) per pound. Accordingly, in addition to changing the par grade to Type 3, the proposed amendments will have the effect of reducing by 200 points (2 cents) per pound the price differential between Type 2 and Type 3 coffee.

The CSCE intends to make the proposed amendments effective within 30 days following its receipt of notice that the amendments have been approved with respect to all delivery months following the last delivery month in which there is an open position at such time and thereafter for any delivery month with open interest on the effective date whose open interest declines to zero after said date.

According to the CSCE, the proposed amendments are intended to re-align the pricing structure of the contract to more accurately reflect the cash market. The CSCE indicates that Type 3 coffee

[1] Type 1 coffee consists of coffee that meets the Santos 2/3 grade standards; Type 2 coffee meets the Santos 4 grade standards and Type 3 coffee meets the Santos 5 grade standards. All three types must originate in Brazil and meet the other requirements of the contract.

recently has been trading in the cash market at prices that are 100 to 200 points under cash prices for Type 2 coffee.

The Commission specifically is requesting comments regarding the extent to which the proposed revised schedule of quality price differentials falls within the range of commonly observed cash market price differences between the three deliverable types of Brazilian coffee.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the CSCE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 28, 1992.

Gerald Gay,

Director.

[FR Doc. 92–23946 Filed 10–1–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Scientific Advisory Group on Effects (SAGE) Meeting

AGENCY: Defense Nuclear Agency, DoD.

ACTION: Notice of Change in Location of Scientific Advisory Group Meeting.

SUMMARY: The meeting notice for SAGE meeting to be held at Homestead AFB, Florida on October 20–22, 1992, as published in the **Federal Register** on August 27, 1992 (57 FR 38820) is amended to reflect the new location at Sequoia Plaza, Logicon, 2100 Washington Boulevard, Arlington, Virginia. The meeting dates remain unchange.

Dated: September 25, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–23899 Filed 10–1–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary of Defense

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 164. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 164 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: October 1, 1992.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3810–01–M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:						
ADAK 5/	$ 10		$ 34		$ 44	10-01-91
ANAKTUVUK PASS	83		57		140	12-01-90
ANCHORAGE						
05-15--09-15	174		71		245	05-15-92
09-16--05-14	85		62		147	05-01-92
ANIAK	73		36		109	07-01-91
ATQASUK	129		86		215	12-01-90
BARROW	86		73		159	06-01-91
BETHEL						
05-01--09-30	93		83		176	05-01-92
10-01--04-30	80		81		161	02-01-92
BETTLES	65		45		110	12-01-90
CANTWELL	62		46		108	06-01-91
COLD BAY	71		54		125	12-01-90
COLDFOOT	95		59		154	10-01-92
CORDOVA	83		77		160	02-01-92
CRAIG	67		35		102	07-01-91
DILLINGHAM	76		38		114	12-01-90
DUTCH HARBOR-UNALASKA	113		67		180	05-01-92
EIELSON AFB						
05-15--09-15	100		66		166	05-15-92
09-16--05-14	66		63		129	05-01-92
ELMENDORF AFB						
05-15--09-15	174		71		245	05-15-92
09-16--05-14	85		62		147	05-01-92
EMMONAK	60		40		100	06-01-91
FAIRBANKS						
05-15--09-15	100		66		166	05-15-92
09-16--05-14	66		63		129	05-01-92
FALSE PASS	80		37		117	06-01-91
FT. RICHARDSON						
05-15--09-15	174		71		245	05-15-92
09-16--05-14	85		62		147	05-01-92
FT. WAINWRIGHT						
05-15--09-15	100		66		166	05-15-92
09-16--05-14	66		63		129	05-01-92
HOMER						
05-01--09-30	71		60		131	05-01-92
10-01--04-30	57		58		115	01-01-92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
JUNEAU				
05-01--10-01	$ 88	$ 74	$162	05-01-92
10-02--04-30	75	73	148	01-01-92
KATMAI NATIONAL PARK	89	59	148	12-01-90
KENAI-SOLDOTNA				
04-02--09-30	94	68	162	04-02-92
10-01--04-01	69	66	135	01-01-92
KETCHIKAN				
05-14--10-14	77	61	138	05-14-92
10-15--05-13	62	59	121	01-01-92
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	71	61	132	01-01-92
KOTZEBUE	125	72	197	01-01-92
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA	79	44	123	07-01-91
MURPHY DOME				
05-15--09-15	100	66	166	05-15-92
09-16--05-14	66	63	129	05-01-92
NELSON LAGOON	102	39	141	06-01-91
NOATAK	125	72	197	01-01-92
NOME				
05-15--09-15	87	72	159	05-15-92
09-16--05-14	76	71	147	05-01-92
NOORVIK	125	72	197	01-01-92
PETERSBURG	72	64	136	05-01-92
POINT HOPE	99	61	160	12-01-90
POINT LAY	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	64	57	121	12-01-90
SAND POINT	75	36	111	07-01-91
SEWARD				
05-01--09-30	107	53	160	05-01-92
10-01--04-30	61	48	109	01-01-92
SHUNGNAK	125	72	197	01-01-92
SITKA-MT. EDGECOMBE	72	69	141	01-01-92
SKAGWAY				
05-14--10-14	77	61	138	05-14-92
10-15--05-13	62	59	121	01-01-92
SPRUCE CAPE	71	61	132	01-01-92
ST. GEORGE	100	39	139	06-01-91

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+ M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
ST. MARY'S	$ 60	$ 40	$100	12-01-90
ST. PAUL ISLAND	81	34	115	12-01-90
TANANA				
05-15--09-15	87	72	159	05-15-92
09-16--05-14	76	71	147	05-01-92
TOK	66	55	121	01-01-92
UMIAT	97	63	160	12-01-90
UNALAKLEET	58	47	105	12-01-90
VALDEZ				
05-01--09-01	98	53	151	05-01-92
09-02--04-30	84	51	135	01-01-92
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL				
05-14--10-14	77	61	138	05-14-92
10-15--05-13	62	59	121	01-01-92
YAKUTAT	70	40	110	12-01-90
OTHER 3, 4/	63	47	110	07-01-91
AMERICAN SAMOA	85	47	132	12-01-91
GUAM	112	75	187	05-01-92
HAWAII:				
ISLAND OF HAWAII: HILO	65	61	126	06-01-92
ISLAND OF HAWAII: OTHER	80	61	141	06-01-92
ISLAND OF KAUAI	99	55	154	06-01-92
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI	79	64	143	06-01-92
ISLAND OF OAHU	105	55	160	06-01-92
OTHER	59	47	106	12-01-90
JOHNSTON ATOLL 2/	20	20	40	10-01-92
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	45	31	76	12-01-90
SAIPAN	68	47	115	12-01-90
TINIAN	44	24	68	12-01-90
OTHER	20	13	33	12-01-90
PUERTO RICO:				
BAYAMON				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
PUERTO RICO: (CONT'D)				
CAROLINA				
04-16--12-14	$ 93	$ 67	$160	08-01-92
12-15--04-15	116	69	185	12-15-92
FAJARDO (INCLUDING LUQUILLO)				
04-16--12-14	90	57	147	08-01-92
12-15--04-15	134	61	195	12-15-92
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
MAYAGUEZ	85	65	150	08-01-92
PONCE	106	65	171	08-01-92
ROOSEVELT ROADS				
04-16--12-14	90	57	147	08-01-92
12-15--04-15	134	61	195	12-15-92
SABANA SECA				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
OTHER	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.				
05-02--12-15	100	68	168	08-01-92
12-16--05-01	144	73	217	12-16-92
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

FOOTNOTES

1/ Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

3/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $16.25 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. government or contractor quarters.

BILLING CODE 3810-01-C

Dated: September 28, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 92-23900 Filed 10-1-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

U.S. Army Reserve Command Independent Commission Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

Name of Committee: U.S. Army Reserve Command Independent Commission.

Date of Meeting: October 15, 1992.

Place: Pentagon, Secretary of the Army Conference Room, 2E687.

Time: 10-11:30 a.m.

Purpose: The Commission was established to assess the progress and effectiveness of the United States Army Reserve Command since its establishment.

Summary of Agenda: This is the final meeting of the Commission. The Commission will present its final report to the Secretary of the Army.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the matter permitted by the committee. Anyone desiring to appear before the committee should contact the staff for procedures.

Ellis L. Pennington,

LTC, FA, U.S. Army Reserve Command, Independent Commission.

[FR Doc. 92-24029 Filed 10-1-92; 8:45 am]

BILLING CODE 3710-01-M

Change to the Proposed Test PPSO Sites

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) proposes to modify the PPSO test sites as originally published in the Federal Register (FR 28842), Military Traffic Management Command, Directorate of Personal Property, CONUS Automated Rate System (CARTS) Proposed Changes.

DATES: Comments must be received on or before October 5, 1992.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTPP-CD, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet Nemier (703) 756-1190.

SUPPLEMENTARY INFORMATION: The proposed test PPSOs are revised as follows:

Location	No change/change
Camp Pendleton, CA	No change.
Fairchild AFB, WA	New versus MacDill AFB, FL.
Fort Benning, GA	No change.
Fort Riley, KS	No change.
Camp Lejeune, NC	No change.
NAU Scotia, NY	New versus NETC Newport, RI.
NSC Charleston, SC	No change.
JPPSO San Antonio, TX	No change.
NAS Pensacola, FL	New versus NAS Corpus Christi, TX.
Shaw AFB, SC	New versus Hill AFB, UT.
JPPSO Lewis, WA	No change.

These changes are based on factors reviewed by the military service to include installation operational considerations and TOPS automation capabilities.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-24022 Filed 10-1-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[Docket Nos. 91-25-R, et al.]

Office of Administrative Law Judges; Intent To Compromise a Claim; Maine Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise claims against the Maine Department of Education now pending before the Office of Administrative Law Judges (OALJ), Docket Nos. 91-25-R, 91-98-R, and 92-49-R. (20 U.S.C. 1234a(j) (1988)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before November 16, 1992.

ADDRESSES: All comments concerning this notice should be addressed to Jaime Fernandez, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4091, FOB-6, Washington, DC 20202-4013.

FOR FURTHER INFORMATION CONTACT: Jaime Fernandez, Esq. Telephone: (202) 401-3690. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The claims in question arose from audits of the financial affairs and operations of the Maine Department of Education (State) for the fiscal years ending June 30, 1987, June 30, 1988, and June 30, 1989. The audits were performed by the State of Maine Department of Audit to fulfill the requirements of Office of Management and Budget Circular A-128. The audits included an evaluation of the State's internal control systems, including applicable internal administrative controls, used in administering Federal financial assistance programs. Among the systems examined was the State's system of maintaining time distribution records for employees who have multi-program responsibilities. Time distribution records show how an employee's time has been divided among his or her different program responsibilities. During the course of the audits, the auditors discovered that the State maintained no cost allocation plan or any system of time distribution records.

The audit for fiscal year (FY) 1989 also revealed that the State had misspent $5,869 in funds awarded under the Carl D. Perkins Vocational Education Act in that it did not allocate the cost of $5,869 for the installation of carpeting to other programs that had benefited from the expenditure, as required by OMB Circular A-87. Moreover, the State had charged the carpeting costs exclusively to the FY 1989 vocational education grant without demonstrating the allowability of the expenditure to the vocational education grant. Based on these findings, the authorized Department officials issued Program Determination Letters (PDLs) dated March 27, 1991, October 24, 1991, and March 31, 1992, demanding repayment of a total of $213,000 in Federal grant funds.

In failing to maintain time distribution records, the State violated sections 437 and 435(b)(5) of the General Education Provisions Act (GEPA). Section 435(b)(5) of GEPA (20 U.S.C. 1232d(b)(5)) states in relevant part that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program. In addition, the State violated the provisions of 34 CFR 74.61 and 34 CFR part 74, appendix C (OMB Circular A-87), Attachment II, B.10.b., which states in relevant part that salaries and wages of individual employees chargeable to more than one

grant program or other cost objective must be supported by appropriate time distribution records. In failing to support both the allowability and the allocability of the carpeting costs in question to the FY 1989 vocational education grant, the State violated 34 CFR 80.22 and OMB Circular A–87. The State appealed the Department's determination in these matters to the OALJ.

The Department proposes to compromise the full amount of the $213,000 claim or $97,935. In its response to the PDLs, the State gave assurances that it had corrected the systemic deficiencies that resulted in the claim and that the deficiencies will not recur. Future audits will determine whether the remedies instituted by Maine in response to the audit findings are being implemented in accordance with Federal requirements. Given these factors, the percentage of the claim to be repaid, and the risk and cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Jaime Fernandez, Esq., at the address given at the beginning of this notice.

Program Authority: 20 U.S.C. 1234a(f).

Dated: September 28, 1992.

William D. Hansen,

Assistant Secretary for Management and Budget/Chief Financial Officer.

[FR Doc. 92–23918 Filed 10–01–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for Characterization Activities at the Department of Energy's Mound Plant

AGENCY: Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: This Statement of Findings is prepared pursuant to Executive Order 11988 and 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. On March 3, 1992, DOE published a "Notice of Involvement in Floodplain," 57 FR 7740; DOE has determined that some site characterization activities associated with the Mound Plant Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended Remedial Investigation/Feasibility Study (RI/FS) will be conducted within the 100-year Floodplain of the Great Miami River. These activities are required to comply with CERCLA. On the basis of the floodplains assessment for the proposed actions prepared pursuant to 10 CFR part 1022, DOE has determined that there is no practicable alternative to the proposed actions and that the proposed actions have been designed to avoid or minimize impacts on the floodplains.

During evaluation of alternatives and effects of these activities, DOE has determined that some property was inadvertently included in the Special Flood Hazard Area (SFHA) as shown on the National Flood Insurance Program (NFIP) map published by the Federal Emergency Management Agency (FEMA) in 1983. Under 44 CFR part 59, a request for a Letter Of Map Amendment has been filed with FEMA to remove the property from the SFHA and to amend the currently effective NFIP map. The property in question (see figure) is protected from the 100-year flood of the Great Miami River by an engineered levee spur that is part of the primary flood protection system constructed by the Miamisburg Conservancy District (MCD) The request is pending.

DATES: Any comments on the proposed floodplain actions must be received by October 19, 1992.

ADDRESSES: Send comments to: Statement of Findings Comments, Arthur Kleinrath, Dayton Area Office, U.S. Department of Energy, Post Office Box 66, Miamisburg, Ohio 45343, (513) 865–3597. Fax comments to (513) 865–4489.

For further information regarding the proposed action contact Arthur Kleinrath, Dayton Area Office.

For further information on DOE's floodplain/wetland review process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Ave., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The projects that are part of the floodplain action include installation of piezometers and monitoring wells, drilling of soil boreholes, construction of a river stage gauge, and collection of small sediment and soil samples. In one project, piezometers would be installed to monitor ground-water levels in the underlying Buried Valley aquifer and correlate these with levels of river stage to measure the effects of the river on ground-water flow. This equipment would be installed within the levee structures that currently control the extent of the 100-year flood (see figure) and must be installed at the river's edge to perform properly. Except for the river stage gauge, the new installations would not normally be in contact with the river. Use of existing access roads would minimize effects of construction upon the floodplain. The piezometers would be constructed in accordance with requirements specified by the MCD and would be permitted by the MCD. Surface water and sediment samples would also be collected from the Great Miami River and its tributaries, but these collections would be performed with hand or portable sampling devices and will not require any permanent installations or construction activities.

In another project, piezometers, monitoring wells, and soil boreholes would be installed within the plant boundary along the piece of property that has been petitioned to be removed from the SFHA. This project is essential in order to scope and develop remedial actions that may be necessary to clean up a source of contamination and to monitor ground water for possible contaminant migration outside the plant boundary. The piezometer and monitoring well network is designed to monitor water levels and water quality at multiple depths within the Buried Valley aquifer. Surface and subsurface soil and sediment samples would also be collected in and adjacent to the area of possible contamination and within a small controlled stream, an abandoned segment of the Miami-Erie Canal that borders the floodplain. After sample collection, boreholes would be backfilled with impermeable bentonite clay grout to prevent infiltration. Wells and piezometers would be completed according to approved Environmental Protection Agency methods.

Based upon results of the investigations summarized above, other similar activities associated with the RI/FS may occur within the floodplain (see figure). These activities would include the following:

—Additional sampling based on positive findings;
—Additional monitoring well installations; and
—Geophysical surveys.

None of these activities would have an adverse effect on floodplain values.

As part of the RI/FS, an ecological assessment would be performed that includes a phased investigation of terrestrial and aquatic flora and fauna and habitat identification. The ecological assessment would be performed to evaluate threats to the environment, especially sensitive habitats and critical habitats of species protected under the Endangered Species

Act. The first phase of investigation would include an inventory of species. Later phases may require sampling and analysis of tissues to evaluate the potential accumulation of contaminants. As part of the first phase, a complete wetlands delineation will be performed that would require field verification and sampling of hydric soils. This investigation would have minimal effects on either the floodplain or associated wetlands as it typically involves only hand tools and no new construction. The proposed actions are categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the DOE regulations for implementing the National Environmental Policy Act, 10 CFR part 1021, subpart D, appendix B3.1.

After assessment of the proposed actions, DOE has determined that there are no alternatives to the sampling and construction activities summarized. Sampling activities conducted as part of the RI under CERCLA are required to determine the nature and extent of potential contamination. DOE is obligated to conduct these activities under Section 120 of CERCLA and Executive Order 12580. The suspected source area is located on the eastern margin of the Buried Valley aquifer and construction of new piezometers and monitoring wells is essential to establish water quality and potential contaminant migration. Construction of the river stage gauge and the piezometers along the edge of the Great Miami River is essential to establish the effects of the river on the aquifer. Moreover, the piezometers are part of a larger ground-water monitoring network designed to establish ground-water flow in the Buried Valley aquifer on and adjacent to the plant. The alternatives considered were (1) use of exiting wells, (2) alternate well locations, and (3) no action. All of these alternatives were considered and rejected as the current monitoring network is insufficient to determine either the aquifer characteristic required or the extent of contamination.

The proposed actions would not have any adverse effects on floodplain values. The proposed piezometer and monitoring well installations would be performed in accordance with all applicable Federal, State, and district regulations and guidelines. Disturbances to the floodplain would be limited to the movement of drilling equipment during the installation of piezometers or monitoring wells. Existing roads would be used for access. Piezometers and monitoring wells will be completed with sealed and flushmount castings. Any disturbances to the drill site would be restored to previous conditions. No physical topographic features will be altered or created by any of the assessment activities described above. The proposed actions may indirectly benefit the area in the long-term because they would support the removal of contamination and may improve the habitat value and remediate any potential impacts to plants, animals, or residents in the area. DOE has also prepared a separate wetlands assessment; and, based on that assessment, the proposed action will not have an adverse impact on wetlands.

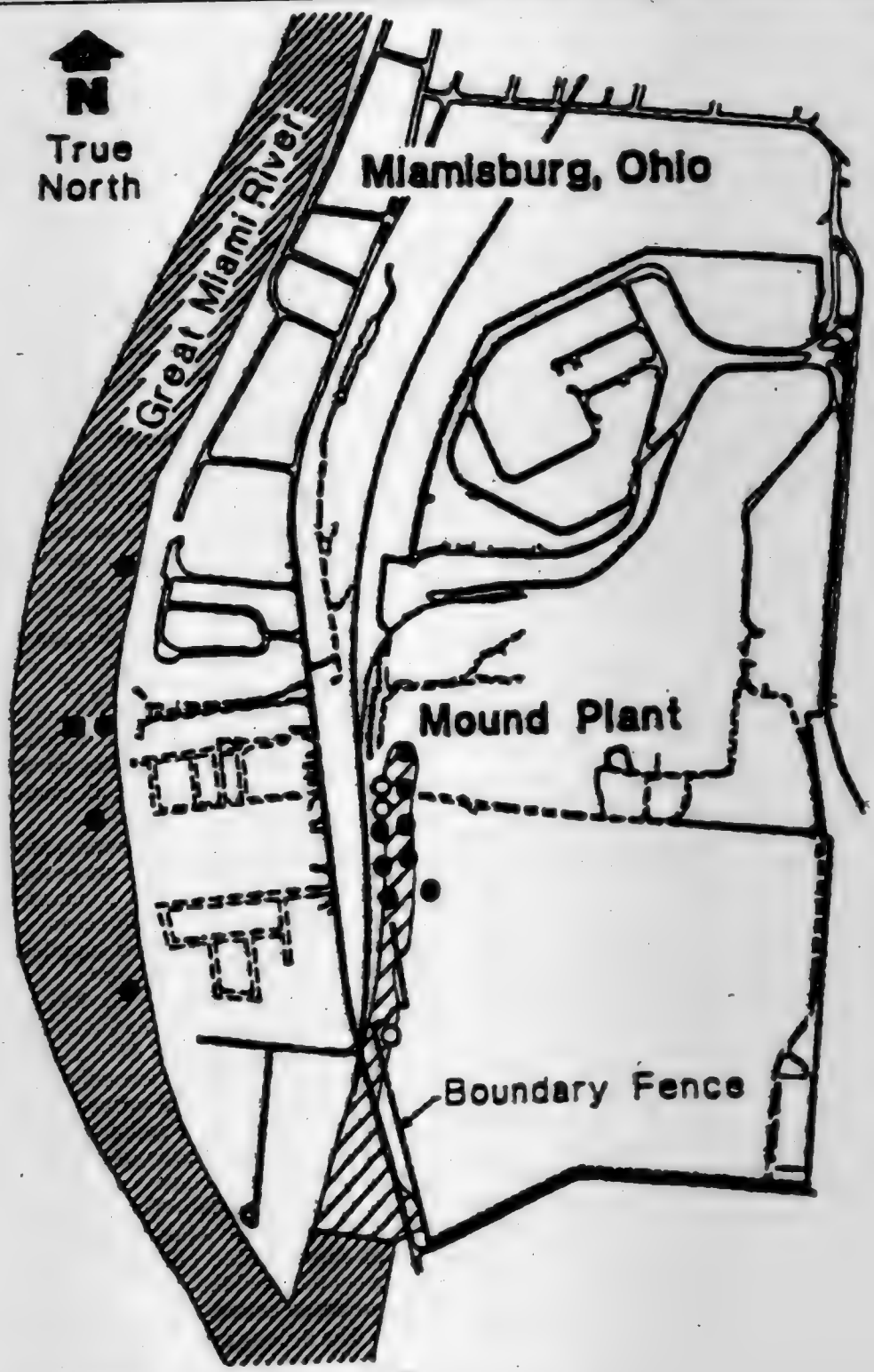
Prior to implementing the proposed floodplain action, DOE will endeavor to allow at least 15 days of public review after publication of the Statement of Findings.

Paul D. Grimm,

Principal Deputy Assistant Secretary fo Environmental Restoration and Waste Management.

Attachment

BILLING CODE 6450-01-M



Legend

FEMA 100-year floodplain

Area requested to be removed from 100-year floodplain

Single or clustered piezometer or well

Soil boring

River stage gauge

[FR Doc. 92-23865 Filed 10-01-92; 8:45 am]

BILLING CODE 6460-01-C

Floodplain Statement of Findings for Site Characterization Activities at Operable Units 1, 2, 5, and 6 at the Rocky Flats Plant Near Golden, CO

AGENCY: Department of Energy (DOE).

ACTION: Statement of findings on floodplain assessment.

SUMMARY: Regulations at 10 CFR part 1022 require DOE to evaluate actions it may take in a floodplain, in order to ensure consideration of protection of the floodplain in decision making. As soon as practicable after a determination that a floodplain may be involved, the regulations require that public notice be published in the **Federal Register**, including a description of the proposed action and its location. DOE proposes to carry out site characterization activities, some of which would be within floodplains, at its Rocky Flats Plant (RFP) north of Golden, Colorado. These activities would be a part of DOE's effort to determine the existence, nature, and extent of any environmental contamination resulting from RFP operations.

DATES: Comments on the proposed action must be received by October 19, 1992.

ADDRESSES: All comments concerning this Statement of Findings or requests for copies of the Floodplain Assessment should be addressed to: Floodplain/Wetland Comments, Beth Brainard, Public Affairs Office, U.S. Department of Energy, Rocky Flats Office, Post Office Box 928, Golden, Colorado 80402–0928, Telephone: (303) 966–5993.

FOR FURTHER INFORMATION: For information on the proposed action, contact the address identified above. For information on floodplain/wetland environmental review requirements contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: DOE proposes to carry out site characterization activities, some of which would be within floodplains at its RFP north of Golden, Colorado. These activities would be part of DOE's effort to determine the existence, nature, and extent of any environmental contamination resulting from RFP operations. The activities would occur in floodplains of Woman Creek, Walnut Creek and their tributaries. The site characterization activities that may be in floodplains consist of locating sampling stations, drilling wells and boreholes, and soil, soil gas, surface water, ground water and stream sediment sampling.

On April 21, 1992, the DOE published a "Notice of Involvement in Floodplains/Wetlands" (57 FR 14567) regarding its intent to undertake site characterization activities in floodplains and wetlands at its RFP north of Golden, Colorado. No comments were received, and DOE prepared an assessment of the impacts of the proposed action on floodplains and wetlands. This Statement of Findings summarizes the results of that assessment for floodplains. The assessment also shows that there would be no effect on wetland values.

Project Description

The site characterization activities covered in this document are those within a floodplain in operable units 1 (881 Hillside), 2 (903 Area), 5 (Woman Creek), and 6 (Walnut Creek). The activities would consist of (1) locating new surface water and sediment sampling stations, (2) drilling new wells and boreholes, (3) soil and soil gas sampling and (4) collecting surface water, ground water, and stream sediment samples. Each of these activities is described below.

Locating new surface water and sediment sampling stations consists of driving a stake in the ground to mark a spot which can be returned to for future sample collection. Virtually all surface water and stream sediment sampling would take place in a floodplain.

Drilling new water sampling wells involves driving a drilling rig to the designated site and drilling a hole, usually within a day. Wells are typically 4-to-6 inches in diameter. Approximately 24 wells would be drilled within a floodplain.

Soil and soil gas sampling would be accomplished by one of the following procedures. One soil sampling method is to collect a small quantity (2 to 3 tablespoons) of surficial soil by hand using a small instrument. The second soil sampling method is using a backhoe to dig pits that are typically 9 feet long, 5 feet wide, and 4 feet deep which are usually dug and backfilled within a day. Soil sampling pits may be located within a floodplain. Soil gas samples are obtained by inserting a collection device into a hand augered borehole, and sampling gases that escape from the soil.

Collection of water or sediment samples consists of driving or walking to a sampling site or well and collecting up to a few pounds of the desired medium by hand. Sampling may be done on a weekly, monthly, quarterly, or irregular basis.

There is no practicable alternative to locating portions of the proposed action in the floodplain. Surface water and stream sediment samples must by their very nature be obtained from within floodplains. Other proposed drilling, soil pit excavation, and sample collection targets would be chosen so that the resulting data present the clearest and most accurate picture of existing contamination conditions to provide a basis of future remediation activities. Characterization activities must occur in areas where contamination is thought to occur.

Alternatives Considered

Sample collection within floodplains is a part of the site characterization program required under the provisions of Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act, and the Interagency Agreement. Both the statutes and the Agreement require cleanup of contaminated sites. This cleanup cannot be reasonably undertaken without field sampling to identify existing conditions. Therefore, the No-Action alternative is dismissed as unreasonable.

Among the highest concerns about contamination at RFP is the possibility of contaminated surface water and/or ground water posing a threat to municipal drinking water supplies. Therefore, sampling water is fundamental to identifying the nature and extent of contamination at RFP. Most surface water at RFP is in a floodplain. Thus it is virtually impossible to sample surface water without being in a floodplain. Similarly, sediments, which are typically in or under bodies of water, can be sampled only in a floodplain. The alternative of not sampling in a floodplain is dismissed as unreasonable, because it would not meet the need that prompted the proposed action.

The drilling program for ground water wells would be carefully designed to identify the characteristics of ground water and aquifers. Some holes are designed to delimit the edge of contaminant plumes, while other holes are needed to better understand the geology and hydrology in certain locations, and still others are needed to identify the contaminants that may exist underground. In each case, locations are carefully chosen to yield the best results by hitting specific targets. Floodplains at RFP can be up to 100- to 200-feet wide. Moving wells to get them out of the floodplain could seriously compromise the characterization program. Wells could be moved out of floodplains where

practicable, but there would still be cases where wells cannot be relocated without undermining the purpose of the characterization project. The alternative of not drilling in a floodplain is dismissed as unreasonable because it would not fulfill the purpose of the site characterization program.

Floodplain Considerations

The activities are consistent with the guidance provided by Section 42 of the Jefferson County, Colorado, zoning regulations. The State of Colorado defers regulation of floodplains to local governments.

Because none of the activities would have a positive or negative effect on the floodplain, few steps are needed to minimize potential harm to or within the floodplain. Travel within floodplains would be restricted to established roads and tracks where they are available.

A map showing the locations of the described activities is available on request from the Rocky Flats Office (see **ADDRESSES**, above).

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

Wetland/Floodplain Assessment for Site Characterization Activities for Operable Units 1, 2, 5, and 6

Introduction

Site characterization activities are to be undertaken by the Department of Energy (DOE) at its Rocky Flats Plant (RFP) north of Golden, Colorado. The activities are to be carried out pursuant to requirements of the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, and as part of DOE's implementation of the Interagency Agreement between DOE, the Environmental Protection Agency, and the Colorado Department of Health. This site characterization involves sampling of soil, soil gas, stream sediments, surface water, and ground water to identify the presence, nature, and extent of contaminants, if any. The site characterization activities covered in this document are those in a floodplain/wetland in operable units 1 (881 Hillside), 2 (903 Area), 5 (Woman Creek), and 6 (Walnut Creek) and those under the site-wide Geologic Characterization Program.

Project Description

The site characterization activities will be in the floodplains/wetlands of Woman Creek, Walnut Creek, and their tributaries. Figures 1 through 14 of the categorical exclusion (RFO/CX025–91) prepared for this project show the location of surface water, sediment, ground water, soil and soil gas sampling sites, including those in floodplains/wetlands. The arrows on Figures 1, 3, and 6 through 11 show 24 sites where drilling may take place in a floodplain. The site characterization activities consist of (1) locating new surface water and sediment sampling stations, (2) drilling new wells, (3) collecting soil sample and soil gas samples, and (4) collecting surface water, ground water, and stream sediment samples. Each of these activities is described below.

Locating new surface water and sediment sampling stations consists of driving a stake in the ground to mark a spot which can be returned to for future sample collection. Virtually all surface water and sediment sampling will be in a floodplain, and most will also be in a wetland. New and existing surface water and sediment sampling sites are shown in the figures, noted by SW-xx and SED-xx respectively.

Drilling new wells involves driving a drilling rig to the designated site and drilling the hole, usually within a day. Wells are typically 4–6 inches in diameter. As the drill bit advances, drill cuttings are brought to the surface and shoveled into 55-gallon drums for analysis of contaminants, storage and ultimate disposal. When drilling is completed, surface evidence of the activity includes downed vegetation around the immediate site and an 8-inch metal pipe sticking 2–3 feet above the ground. Approximately 24 wells will be drilled within a floodplain. It is possible, but unlikely, that some of those could be in wetlands.

Soil and soil gas sampling can be accomplished by the following procedures. One soil sampling method is to collect a small quantity (2 to 3 tablespoons) of surficial soil using a hand-held sampling device. The second soil sampling method is to use a backhoe to dig pits that are typically 9 feet long, 5 feet wide, and 4 feet deep. These pits are generally dug and backfilled within a day. Soil sampling pits may be located within a floodplain but are typically not located in wetland areas. Soil samples will be collected from within some of the square plots shown in Figure 2 of the Categorical Exclusion. Therefore, soil samples taken from these plots have the potential to be taken from that part of the plot within a floodplain. Exact locations of soil sampling sites have not yet been determined. Surficial soil sampling sites may be located anywhere there is soil. Soil gas samples are obtained by dropping a sensing device down a hand augered borehole and sampling the gases released from the soil.

Collection of water or sediment samples consists of driving or walking to a sampling site or well and collecting up to a few pounds of the desired medium.

Floodplain/Wetlands Effects

Activities within floodplains/wetlands are of five types: Staking surface water and stream sediment sampling locations and taking samples; drilling new ground water sampling wells; collecting soil samples by hand; collecting soil samples using a backhoe; and collecting soil gas samples from a shallow auger hole. None of these activities will have a positive or negative, direct or indirect, long-term or short-term effect on the wetlands or floodplains. The activities will not affect lives or property and will not change the existing floodplain values. Activities that take place within wetlands will not have an effect on the survival, quality, or natural and beneficial values of the wetlands.

Alternatives

No-Action Alternative

Sample collection within floodplains and wetlands is part of the site characterization program required under the provisions of CERCLA, RCRA, and the IAG. Both the statutes and the Agreement require cleanup of contaminated sites. This cleanup cannot be reasonably undertaken without field sampling to identify existing conditions. Therefore, the No-Action alternative is dismissed as unreasonable.

No Sampling in Floodplains or Wetlands

Among the highest concerns about contamination at RFP is the possibility of contaminated surface water and/or ground water posing a threat to municipal drinking water supplies. Therefore, sampling water is fundamental to identifying the nature and extent of contamination at RFP. Most surface water at RFP is in a floodplain and also in wetland areas. Thus, it is virtually impossible to sample surface water without being in a floodplain and a wetland. Similarly sediments, which are typically in or under bodies of water, can be sampled only in a floodplain and most often a wetland. This alternative is dismissed as unreasonable because it will not meet the need that prompted the proposed action.

No Drilling in Floodplains or Wetlands

The drilling program for ground water wells will be carefully designed to identify the characteristics of ground water and aquifers. Some holes are designed to delimit the edge of contaminant plumes, while other holes are needed to better understand the geology and hydrology in certain locations, and still others are needed to identify the contaminants that may exist underground. In each case, locations are carefully chosen to yield the best results by hitting specific targets. Because most of the wetlands at RFP tend to be either linear or very small, moving a well a few feet can avoid a wetland without compromising the integrity of the program or affecting the results. Well locations will be moved outside wetlands where possible. There will be cases where a well cannot be relocated or not relocated far enough to avoid a wetland, and, in such cases, the well will be completed in the wetland. The drilling program is expected to result in no adverse impacts to wetlands at RFP. Floodplains at RFP tend to be much larger than wetlands: generally 100- to 200-feet wide. Moving wells to get them out of the floodplain could seriously compromise the characterization program. Wells will be moved out of floodplains where practicable, but there will be cases where wells cannot be relocated without undermining the purpose of the characterization project. This alternative is dismissed as unreasonable because it would not fulfill the purpose of the site characterization program.

[FR Doc. 92-23866 Filed 10-1-92; 8:45 am]
BILLING CODE 6450-01-M

Floodplain Statement of Findings for the Proposed Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation, and Liability Act Characterization and Remediation Studies in Operable Units 3, 4, 7, and 9 at the Rocky Flats Plant, Golden, Colorado

AGENCY: Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: The U.S. Department of Energy (DOE) presents this Statement of Findings of Floodplain Assessment prepared pursuant to Executive Order 11988 and 10 CFR 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. DOE has determined that some activities associated with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) Remedial Investigation/Feasibility Study and the Resource Conservation and Recovery Act of 1976 (RCRA) Facility Investigation/Corrective Measures Study processes for Operable Units 3, 4, 7, and 9 are proposed to be within the 100-year floodplains of North and South Walnut Creeks. On the basis of the Floodplain/Wetlands Assessment for the proposed actions prepared pursuant to 10 CFR 1022, DOE expects that the project would have no positive or negative effects on the floodplain. There is no practicable alternative to the proposed actions, and the proposed actions have been designed to avoid or minimize on the floodplains.

DATES: Comments on the Statement of Findings must be postmarked by October 19, 1992.

ADDRESSES: All comments concerning this Statement of Findings or requests for copies of the Floodplain Assessment should be addressed to: Beth Brainard, Public Affairs Office, U.S. Department of Energy, Rocky Flats Office, Post Office Box 928, Golden, Colorado 80402-0928, Telephone: (303) 966-5993.

FOR FURTHER INFORMATION: For information on the proposed action, contact the address identified above. For information on floodplain/wetland environmental review requirements contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: On May 8, 1992, DOE published (57 FR 19890) a Notice of Floodplain Involvement and opportunity to comment on the proposed action. No comments were received, and DOE proceeded to assess the impacts of the proposed action. No comments were received, and DOE proceeded to assess the impacts of the proposed action during and after its implementation.

The proposed action is to perform site characterization activities for four operable units in floodplains at Rocky Flats Plant north of Golden, Colorado. This work is being undertaken as part of cleanup actions under CERCLA and RCRA. The site characterization activities covered in this document are those within a floodplain in Operable Units 3 (Off-Site Areas), 4 (Solar Evaporation Ponds), 7 (Present Landfill), and 9 (Original Process Waste Lines). The work is described in detail in the work plans for the operable units.

The site characterization involves sampling of soil, sediments, surface water, ground water, air, flora, and fauna to establish the presence and identify the nature and extent of contaminants that have been released to the environment. These characterization activities are briefly described as follows:

Soil Sampling.—Soil samples would be collected by hand either from the upper 3 inches of the ground surface or from sampling pits excavated by backhoe. Soil sample cores would also be obtained from soil boreholes drilled to collect the samples.

Surface Water and Sediment Sampling.—Surface water and sediment samples are proposed to be collected using hand-held instruments from streams, lakes, ditches, and impoundments on the plant site.

Ground Water Sampling.—Ground water samples would be obtained from existing water sampling wells, and new wells drilled to support characterization.

Air Sampling and Meteorological Monitoring.—Meteorological towers and air sampling stations would be installed to track patterns and sample air quality. Portable wind tunnels would be used to test the susceptibility of the lake bed sediments to wind transportation.

Sampling of Flora and Fauna.—Vegetation would be sampled by clipping vegetation to document the plant populations present and provide samples for analysis. Fauna would be sampled by live trapping to establish population numbers and provide tissue samples for analysis.

Some of the activities that constitute the proposed action, including sediment and surface water sampling and the wind tunnel tests, must be undertaken in a floodplain. The locations of other activities are dictated by the scientific needs of the project. Sampling, including drilling wells and boreholes and digging soil sample pits, must take place in locations that would provide the information about contaminant location, direction of movement, terrain, geology, subsurface hydrology, locations of surface water bodies, and other factors.

The no-action alternative, where no characterization within the floodplains occurs, is not viable because Remedial Investigation and RCRA Facility Investigation are required under CERCLA, RCRA, and the Interagency Agreement with the Environmental Protection Agency and the Colorado Department of Health.

The activities are consistent with the guidelines provided by section 42 of the Jefferson County, Colorado, zoning regulations. The State of Colorado defers regulations of floodplains to local governments.

Because the proposed action is not expected to have a positive or negative effect on floodplains, few steps are

needed to minimize potential harm to or within the floodplain. Travel within floodplains during characterization activities would be restricted to established roads and tracks where they are available. Activities would be scheduled to the extent possible to avoid high soil moisture conditions when vehicles might cause excessive damage to the terrain.

Maps showing the locations of the described activities are available on request from the Rocky Flats Office (see **ADDRESSES** above).

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

Floodplain Assessment for Site Characterization Field Work in Operable Units 3, 4, 7, and 9 at the Rocky Flats Plant near Golden, Colorado

The Department of Energy (DOE) proposes a project at the Rocky Flats Plant (RFP), located north of Golden, Colorado, portions of which would take place within 100-year floodplains. The location of RFP is shown in Figure 1. The project is the collection of surface water, ground water, soil, sediment, and air samples to identify the nature and extent of contamination. In addition, field surveys and sampling of terrestrial and aquatic biota would be conducted. The site characterization work would be located in Operable Unit (OU) 3 (Off-Site Areas), OU 4 (Solar Evaporation Ponds), OU 9 (Original Process Waste Lines), and OU 7 (Present Landfill) and would start in 1992. Most of the work is expected to occur during 1992, through some would continue into 1993 and later.

Project Description

OU 3

OU 3 is located on lands adjacent to the RFP site immediately to the east of the Plant's buffer zone as shown in Figure 2. Vertical soil profile trenches, measuring approximately 9 feet long, 5 feet wide and 4 feet deep, would be dug by a backhoe. Exact locations of the trenches have not been determined, but six trenches are proposed in the general locations shown in Figure 3 which could place them in a floodplain. Eleven samples would be collected from various depths in each trench. A trench can usually be dug and backfilled within a day. The soil removed from the trench would be used to backfill it.

Surficial soil samples would be collected within approximately 12 miles of RFP as shown in Figure 4. Surface soil scrapes would be taken with a small, hand-held device which collects 2 to 3 tablespoons of soil from the top one-quarter inch of the ground. Twenty-five soil scrapes would be taken from each of 60 10-acre areas on or adjacent to RFP. Virtually any of the soil scrapes has the potential to be taken from within a floodplain.

Sediment samples would be obtained in OU 3 from the sites indicated in Figure 5. Sediment sampling involves single or repeated visits to sampling stations to collect up to a few pounds of sediments manually. Both new and existing sediment sampling stations would be used. A new sediment sampling station is established by driving a metal fence post into the ground to mark a site which can be returned to in the future. Some of the sediment sampling stations are, or would be, located on streams or ditches while other would be located on the shores or under the waters of ponds, lakes, or reservoirs. Vertical sediment profile samples would be taken from reservoir bottoms by dropping a tube through the water into the sediment. The bottom of the tube closes and up to 3 feet of sediment can be withdrawn for analysis. Sediment grab samples would also be taken from the top 2 to 3 inches of reservoir bottoms. By their nature, all sediment sampling stations and sediment sample collection activities would be in floodplains.

Surface water would be sampled at the locations shown in Figure 6. Surface water sampling involves single or repeated visits to sampling locations to gather up to a few gallons of water. Both new and existing surface water sampling stations would be used. A new surface water sampling station is established by driving a metal fence post into the ground to mark a site which can be returned to in the future. Some of the surface water sampling stations are, or would be, located on streams or ditches while other would be located on the shores or waters of ponds, lakes, or reservoirs. By their nature, virtually all surface water sampling stations and sample collection activities would be in floodplains.

Four new ground water monitoring wells would be drilled within OU 3. Two would be immediately below the dams of both Great Western Reservoir and Standley Lake as shown in Figure 7. These locations are in the floodplains of Walnut and Big Dry Creeks respectively. In well drilling, the advancing drill bit produces cuttings which are shoveled into drums pending analysis for contaminants, storage, treatment, and ultimate disposal. Wells are characteristically on the order of 6 inches in diameter and 15 to 60 feet deep, though some may be deeper. Once the well is in place, a casing is installed to ensure the integrity of the well and enable the well to draw water from the intended depths. When they have served their purpose, the wells would be abandoned in accordance with RFP standard operating procedures (plugging and capping). To collect water samples from ground water monitoring wells, a collection device is lowered into a well where it fills with water. The device is then pulled back to the surface, and the water is poured into another container.

Site characterization work at OU 3 would include establishment and operation of air and meteorological monitoring stations. Three types of air sampling and meteorological monitoring would occur at OU 3. The locations of all three activities are shown in Figure 7. The first activity would be installation of three new, high-volume air samplers. Two of the samplers would be located at Standley Lake while the third would be at a site to be selected in a residential area near the lake. An air sampler is a piece of equipment housed in a stainless steel box approximately 2 feet on each side. Installation of an air sampler involves pouring a concrete pad on which the air sampler is mounted and bringing electric power to the site. The concrete pads and the samplers would be removed when the study is completed. One of the samplers would be located in or near the southwestern floodplain of Standley Lake but in an area unlikely to be inundated by anything other than a large (50 to 100 year) storm event.

The second activity is installation of two new meteorological monitoring stations. Each of the stations consists of a 6-meter tower on a small concrete pad. The towers may be fenced for protection if necessary. Each tower would hold instruments to measure meteorological characteristics and may be supported by guy wires. One of the meteorological towers would be located at a terrestrial site approximately a mile east of the eastern RFP, south of Great Western Reservoir. The second meteorological tower would be co-located with the air sampler that is in or near the southwestern floodplain of Standley Lake.

The third activity in the OU 3 air sampling program is use of small and medium-sized portable wind tunnels to characterize and measure the ability of winds at various speeds to move sediments on the exposed areas of the Standley Lake bed. The wind tunnels would be mounted on a small trailer and have an open-floored test section which would be placed over the surface of the lake bed to be tested. Air would be drawn through the test section at controlled velocities. The air stream would pass through a duct fitted with a filter which would collect particulates raised from the lake bed by the wind. The particulate samples would be sent to a laboratory to identify their volume and constituents. Six tests would be conducted at each of three sites in late summer when soil moisture is generally at its lowest level. Each of the tests would take about 1 day. One site would be on the bed of Standley Lake, the second on the bed of Great Western Reservoir, and the third on an unidentified upland site south of Great Western Reservoir.

Terrestrial and aquatic biota sampling in OU 3 are presented in Figure 8. The samples would be gathered using standard collection techniques such as vegetative clipping, live animal trapping, and field surveys to make population counts. These activities would continue for a year. Flora and fauna samples would be collected from floodplains.

OU 4

The location of OU 4 is shown in Figure 9. Site characterization work at OU 4 would include three types of field work that would take place within floodplains. There are approximately 35 surficial soil sample locations within OU 4 shown in Figure 11. At each location, two 1-meter square areas would be staked out 1 meter apart. Samples would be collected from within each square from a depth of up to 1 inch with either a plug-type collector or a scoop. Three of the surficial soil sample locations are located in the Walnut Creek floodplain.

Borehole drilling in unconsolidated material is the third type of activity that would take place in the North Walnut Creek floodplain at OU 4. Four boreholes would be drilled in the floodplain on the south side of North Walnut Creek at the locations presented in Figure 14. A drill rig would be driven to the site and used to drill the boreholes. Boreholes are characteristically 8 inches in diameter and 15 to 60 feet deep, though some may be deeper. Each borehole can usually be drilled within a day. During drilling, the advancing drill bit produces a core of soil and/or rock, which is preserved for analysis, and drill cuttings which are shoveled into drums pending analysis for contaminants, storage, treatment, and disposal. When drilling is completed, surface evidence of the activity is downed vegetation around the immediate site and a 6-inch pipe extending 2 to 3 feet above the ground. Some boreholes may be completed as wells by installing a well casing and screen. When they have served their purpose, boreholes and wells would be abandoned in accordance with RFP standard operating procedures (plugging and capping).

Finally, samples of flora and fauna would be taken at selected sites in OU 4, some in the floodplain. Representative locations are shown in Figure 15.

OU 9

The location of OU 9 is shown in Figure 16. The OU consists of a system of underground pipelines, shown as dashed lines in the Figure. Field work at OU 9 that would be in a floodplain is limited to flora and fauna sampling and the possibility of some excavation at the extreme eastern end of the OU in the headwaters of South Walnut Creek as indicated in Figure 17. Flora and fauna sampling activities would be the same as those undertaken in OU 3 (shown in Figure 18).

Certain portions of OU 9 extend east of the Protected Area (PA). The high security area of RFP, and may enter the floodplain of Walnut Creek or South Walnut Creek. It is not clear from existing documents whether the pipeline system in this area has already been removed, so field work may be undertaken along the length of the two eastern ends of the lines to determine if they still exist. One of these lines is believed to terminate near South Walnut Creek between the two security fences and may be in the floodplain in that area. The second line may extend along the top of the ridge for a distance of approximately 2,000–2,500 feet east of the PA fence, possibly as far as Pond B–3. If it still exists, a portion of this line could also be in a floodplain. Field work along both lines would consist of backhoe excavations on 200-foot centers approximately 4 feet wide by 10 feet long by up to 11 feet deep to determine how far the pipeline extends. Soil samples would be taken from the excavations where a pipeline is found.

OU 7

OU 7, the Present Landfill is located approximately 1,300 feet north-northwest of the parking lot on the northern edge of the Plant's PA on a ridge above Walnut Creek. The site is shown in Figure 19. Field work at OU 7 during 1992–1993 would be limited to two types of sampling. At the locations indicated by the letter "V" on Figure 19, vegetation and soil samples would be collected. Approximately four of those locations are in or near a floodplain. Soil samples would be collected with a hand held device from the top 2 to 3 inches of the ground. The sites indicated by an "A" are aquatic sites, all of which are in a floodplain. Water, flora, fauna, and sediment samples would be collected at each of these sites. Water and sediment samples would be up to a few quarts of water and a few pounds of sediments and would be collected by hand.

Effects

Because of the non-invasive character and short duration of the floodplain activities of this project, it is expected that the project would have no positive or negative, direct or indirect, or long-term effects on floodplains. Short-term effects would include the crushing or clipping of small areas of vegetation and the disturbance of small areas of soil from the excavation of soil test pits. None of the site characterization activities would have any affect on lives or properly or on the natural and beneficial values of the floodplains.

Alternatives

DOE is required by statute (Comprehensive Environmental Response, Compensation and Liability Act and Resource Conservation and Recovery Act) and by Agreement (Interagency Agreement with the Environmental Protection Agency and the Colorado Department of Health) to clean up contaminated areas at RFP. Cleanup activities cannot be initiated until the sites to be cleaned have been characterized to identify the nature and extent of the contamination and the physical characteristics of the site. The activities that constitute this project are designed to accomplish this end. Developing alternatives to the site characterization must take place in the areas that are thought to be contaminated. Sampling activities have been located outside floodplains to the maximum extent possible. Therefore no alternative to the proposed sampling within floodplains is practicable.

Standard operating procedures that would be employed to avoid impacts to the floodplains during this project are:

1. All vehicles would stay on established roads or tracks to the maximum extent feasible.

2. Activities would be scheduled to the extent possible to avoid high soil moisture condition when vehicles might cause excessive damage to the terrain.

[FR Doc. 92–23867 Filed 10–1–92; 8:45 am]
BILLING CODE 6450–01–M

Floodplain Statement of Findings for the Sitewide Treatability Study Rocky Flats Plant, Golden, Colorado

AGENCY: Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: This is a Statement of Findings prepared pursuant to Executive Order 11988 and 10 CFR Part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. The Site-Wide Treatability Study (the proposed action) would evaluate 10 technologies for cleaning up soil, ground water, and surface water at sites at which hazardous and/or radioactive material has been released to the natural environment at the Rocky Flats Plant (RFP). Some activities associated with this study would occur in floodplains. DOE does not expect any of the activities to have a positive or negative effect on any floodplain.

Doe is presently engaged in a program to clean up each contaminated location under an Interagency Agreement (IAG) with the U.S. Environmental Protection Agency and the Colorado Department of Health. Cleanup actions must be undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA). The purpose of the Site-Wide Treatability Study is to identify treatment technologies that can be applied to cleaning up RFP as specified in the IAG. A Site-Wide Treatability Study is being undertaken to avoid the duplication of performing separate treatability studies for each cleanup action in the IAG.

Sixteen Operable Units (OUs) have been established at RFP. OUs are administrative groupings of individual hazardous substance sites that have been identified at RFP. Each OU will be studied to characterize the nature and extent of contamination present to determine the present risk to the environment and human health. Where those risks are unacceptably high, technologies suitable for remediating the OUs to a level that is acceptable will be identified. The Proposed Action will help DOE identify the most effective, efficient, and appropriate technologies for use at the OUs. Without a comprehensive site-wide study, treatability tests would have to be repeated at each OU, adding significant time and expense to the program without any offsetting benefits.

DATES: Comments on the Statement of Findings must be postmarked by October 19, 1992.

ADDRESSES: All comments concerning this Statement of Findings or requests for copies of the Floodplain/Wetland Assessment should be addressed to: Floodplain/Wetland Comments, Ms. Beth Brainard, Public Affairs Office, U.S.

Department of Energy, Rocky Flats Plant, Post Office Box 928, Golden, CO 80402–0928, Telephone 303–966–5993.

FOR FURTHER INFORMATION CONTACT: For information on the proposed action, contact the address above. For information on floodplain/wetland environmental review requirements contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone 202–586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: On March 30, 1992, DOE published in the Federal Register (57 FR 10754) a Notice of Floodplain/Wetland Involvement an opportunity to comment on the Site-Wide Treatability Study. No comments were received, and DOE proceeded to assess the impacts of the proposed action during and after its implementation. On the basis of the Floodplains/Wetlands Assessment for the proposed activity, prepared pursuant to 10 CFR 1022.12, the DOE has determined that there is no practicable alternative to the proposed alternative and that the proposed activities have been designed to avoid or minimize impacts on the floodplains.

The Proposed Action consists of the laboratory testing of 10 remediation technologies for use on water and soil. The rationale for selection of individual technologies and general methods for performing the Site-Wide Treatability Study are described in the "Final Site-Wide Treatability Study Plan" dated June 3, 1991. Only the portion of the study which would involve floodplains, such as soil and water sampling, is described in this Statement.

The total volume of water samples to be collected is approximately 300 gallons. These water samples will be collected from existing wells and surface water sampling locations. It may be necessary to drill new wells if water samples of adequate size and quality cannot be obtained from the existing wells. All of the surface water sample locations and some of the existing water wells will be located within 100-year floodplains along Woman and Walnut Creeks.

Soil samples may be taken within floodplains. Soil samples will typically be gathered by hand with shovels from the top 10–20 centimeters of soil. A backhoe may be used if the appropriate quality of soil samples cannot be obtained by shovel. Total volume of soil samples to be collected is approximately 1,650 gallons or 30 55-gallon drums.

Alternatives Considered

The No-Action alternative would consist of not performing any treatability tests and, therefore, no sampling. This alternative is not considered acceptable because remediation of a site cannot reasonably be pursued without identifying and testing the technologies to be used to effect the cleanup. In addition, RCRA and CERCLA require the cleanup of contaminated sites, and this alternative would not be consistent with the IAG among DOE, the State of Colorado, and the Environmental Protection Agency to remediate the 16 OUs at RFP. Thus, the No-Action alternative is not acceptable.

Another alternative would have excluded sampling of any kind from the floodplains. Such an alternative would have made the collection of surface water and sediment samples impracticable. Drilling of new wells or boreholes would also have been precluded from the floodplain, thus compromising the integrity of the sampling. This alternative was eliminated as unreasonable.

A third alternative would have allowed all sampling except the drilling of new wells or boreholes since that element would be the most invasive. As in the above alternative, the integrity of the sampling would have been compromised so this alternative was likewise eliminated.

Floodplain Considerations

Acquisition of water samples and conduct of the Site-Wide Treatability Study is anticipated to have no significant effect on floodplains where samples are collected. Samples will be collected from existing sampling locations to the greatest extent possible. It may be necessary to drill additional wells if the existing sampling locations are not able to provide the necessary ground water samples, but this is not expected. The quantities of water to be taken (approximately 300 gallons from different locations at different times) are very small and their withdrawal will not have a measurable effect on water resources. All sample acquisitions will follow RFP procedures.

Hand sample gathering is likely to occur within the floodplains of Woman and/or Walnut Creek. Such sampling will not impact the present or future condition of those floodplains.

The activities are consistent with the guidelines provided by Section 42 of the Jefferson County, Colorado, zoning regulations. The State of Colorado defers regulations of floodplains to local governments.

Maps showing the locations of this proposed work are available from the Rocky Flats Office (see **ADDRESSES**, above.)

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

Floodplain/Wetland Assessment Implementation of the Site-Wide Treatability Study

Introduction

A Site-wide treatability Study is to be undertaken by the Department of Energy (DOE) at its Rocky Flats Plant (RFP) north of Golden, Colorado. This study is being undertaken in support of activities that are being carried out under the requirements of the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, and as part of the implementation of the Interagency Agreement among DOE, the Environmental Protection Agency, and the Colorado Department of Health. The study involves collection of samples of contaminated ground water, surface water, sediments, and soil which will be taken to on- and off-site laboratories. In the laboratories, various technologies will be applied to the samples to test their ability to remove or neutralize the contaminants. All tests will be indoors and will be conducted as small-scale jar/beaker or bench-scale tests.

Project Description

The proposed action is a 3-year program consisting of the laboratory testing of approximately 10 remediation technologies. "Laboratory testing" means that tests will be conducted inside laboratories using quantities of sample material and agents that will fit in laboratory-scale or bench-scale studies, as distinguished from pilot-scale or full-scale studies involving much larger samples, larger equipment, and testing in the field. Pilot- and full-scale studies are not part of the proposed action.

The portion of the proposed action that will occur in floodplains and/or wetlands is the obtaining of samples of surface water and sediments. In addition, some ground water and soil samples may also be taken from within floodplains and/or wetlands.

Water samples will be collected from existing boreholes and surface water sampling locations on Operable Units 1 (881 Hillside Area), 2 (903 Pad Area), 3 (Off-Site Areas), 4 (Solar Evaporation Ponds), 5 (Woman Creek), 6 (Walnut Creek), and/or 7 (Present Landfill) and the South Interceptor Ditch.

It may be necessary to drill new boreholes if samples of adequate size and quality cannot be obtained from existing boreholes. It is possible, but not expected, that up to 10 new boreholes or wells could be drilled, some of which might be in a floodplain or wetland. Drilling a new borehole or well involves driving a drilling rig to the selected site and drilling the hole, usually within a day. Wells are typically 20 to 60 feet deep. As the drill bit advances, drill cuttings are brought to the

surface where they are shoveled into metal drums. The drums of cuttings are either saved as samples to be tested or are stored pending analysis and appropriate disposal. The surface signs of a new well or borehole are downed vegetation in the immediate areas of the hole and a pipe sticking 2 to 3 feet above the ground.

Drilling of wells and boreholes is the most invasive element of the proposed action. It is expected that the necessary soil and ground water samples can be obtained from existing holes; but, if this proves not to be case, additional holes will be drilled. No specific locations have been identified at this time, since the action not expected. If such holes do prove necessary, every effort will be made to site such holes outside of floodplains and wetlands. Because most wetlands at RFP tend to be either linear or very small, moving a well a few feet can avoid a wetland, usually without compromising the integrity of the program or affecting the results. Based on the description of drilling presented above, drilling in wetlands is not expected to have a negative effect on the wetland beyond the temporary downing of vegetation.

Floodplains at RFP tend to be much larger than the wetlands: often 100 to 200 feet wide. Consequently, moving a well out of the floodplain may be more difficult. Wells will be located out of floodplains where practicable, but there may be cases where a well is drilled in a floodplain. Based on the description of drilling presented above, drilling in floodplains is not expected to have a negative affect on the floodplain beyond the temporary downing of vegetation.

Individual samples of surface water are expected to average about 2 liters. Individual ground water samples will be somewhat larger. Total volume of water samples planned to be collected during the study is approximately 1,200 liters. Samples will be taken at various times during the study and from various locations at wells, seeps, and ponds. Appropriate RFP standard operation procedures for obtaining soil samples will be used, regardless of the sample gathering method used.

After collection, all samples will be appropriately packaged and sent to the on- or off-site laboratory where the relevant test is to take place.

None of the activities are expected to have a positive or negative, direct or indirect, long- or short-term effect on any floodplain or wetlands. The activities will not affect lives or property and will not change existing floodplain values. Activities that take place within wetlands will not have any effect on the survival, quality, or natural and beneficial values of the wetlands.

Alternatives

No-Action Alternatives

The No-Action alternative is to not undertake the Site-Wide Treatability Study. Such studies form the basis for identifying techniques for remediating contaminated sites, and failure to undertake such studies is likely to result in failure to identify a workable, or the optimum, remediation technology for use in various conditions. The negative environmental consequences of such a situation are very likely to be far greater than the minimal environmental effects of the proposed action.

No Sampling in Floodplains or Wetlands

Implementation of this alternative would necessarily preclude the gathering of surface water and sediment samples, making impossible the testing of means to clean these two types of environmental media. This alternative is dismissed as unreasonable on this account.

No Drilling in Floodplains or Wetlands

The possible drilling of new wells/boreholes is the most invasive element of the proposed action. The proposed action will minimize the number of new holes drilled and will attempt to locate any new holes outside of wetlands/floodplains. Drilling no new holes in wetlands/floodplains may occur under the proposed action, but committing to drilling no new holes in wetlands/floodplains could compromise the integrity of the study in the unlikely case that the only suitable sample of contaminated media happened to be located in a wetland/floodplain. Such a commitment would accomplish little, anyway, since the effects of drilling in a wetland/floodplain are considered to be negligible and temporary.

[FR Doc. 92-23868 Filed 10-1-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RS92-4-000]

Texas Gas Transmission Corp.; Conference

September 28, 1992.

Take notice that on October 13, 1992, a conference will be convened in the above-captioned docket to discuss Texas Gas Transmission Corporation's summary of its proposed plan for implementation of Order No. 636 and Order No. 636-A.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, in Hearing Room Number One. The conference will begin a 1 p.m. on October 13, 1992. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call Stanley Wolf at (202) 208-0442.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23949 Filed 10-1-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC92-13-000]

Williams Natural Gas Co.; Tariff Sheet Filing

September 28, 1992

Take notice that on September 15, 1992, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed revised tariff sheets to become effective November 1, 1992, pursuant to § 281.204(b)(2) of the Commission's Regulations which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

Pipeline, Docket No. and Tariff Sheets

Williams Natural Gas Company	Second Revised Sheet
TC92-13-000	Nos. 265-269
Filed: September 15, 1992	

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before October 8, 1992, file with the Federal Energy Regulatory Commission, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23950 Filed 10-1-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-67-NG]

Columbus Energy Corp.; Order Granting Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Columbus Energy Corp. blanket authorization to export up to 100 Bcf of

natural gas to Mexico over a two-year term beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–23963 Filed 10–1–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–71–NG]

Offshore Gas Marketing, Inc.; Order Granting Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Offshore Gas Marketing, Inc. a blanket authorization to export up to 150 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 28, 1992

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–23964 Filed 10–1–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–100–NG]

Orange and Rockland Utilities, Inc., Application for Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Orange and Rockland Utilities, Inc. (Orange and Rockland), on July 31, 1992, as supplemented August 24, 1992, for authorization to import up to 25,000 Mcf of natural gas per day from Canada. The gas would be imported from KannGaz Producers, Ltd. (KannGaz), at Niagara Falls, New York, under a gas purchase agreement with an initial term beginning December 1, 1992, and extending to October 31, 2002. The proposed authorization would enable Orange and Rockland, a sales customer of Tennessee Gas Pipeline Company (Tennessee), to import this gas directly from Tennessee's Canadian supplier.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time November 2, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503

SUPPLEMENTARY INFORMATION: Orange and Rockland is a combination electric utility and natural gas distribution company operating in the States of New York and New Jersey with executive offices in Pearl River, New York. The proposed natural gas imports would be used by Orange and Rockland for its system supply for resale to residential, industrial, and commercial end-users, including non-utility electric generators, and for use in Orange and Rockland's own retail electric generation facilities. The imports proposed in this application are volumes Tennessee previously purchased from KannGaz and resold to Orange and Rockland under Tennessee's existing import authorization granted in DOE/FE Opinion and Order No. 195–B. See 1 FE ¶ 70,551 (October 31, 1989). As before, Tennessee would deliver the imported gas from Niagara Falls using its Niagara Spur interconnection with the pipeline system of TransCanada PipeLines Limited (TransCanada). The transportation service to be provided Orange and Rockland would not require any new pipeline facilities.

Orange and Rockland has executed a gas purchase and sales agreement with KannGaz dated June 15, 1992. The maximum daily quantity (MDQ) in the agreement is 25,000 Mcf. Purchases would be arranged on a monthly basis with Orange and Rockland notifying KannGaz by a specified date of the amount it desires to import up to the MDQ. If Orange and Rockland's nominations average less than 80 percent of the MDQ for the winter period of November through March, or 90 percent in the summer, April through October, then it must make a deficiency payment to KannGaz. The deficiency payment is calculated as the difference between the actual nominations and either 80 or 90 percent of the MDQ, as applicable, multiplied by seven percent of the applicable average commodity charge under the contract's pricing provisions. If less than full MDQ is nominated at any time, KannGaz would have the right to use Orange and Rockland's unutilized transportation capacity on TransCanada or NOVA to market such gas itself. In addition to the deficiency payment, if Orange and Rockland on any day nominates less than the monthly nomination estimate in effect on that day, it will be obligated to pay a nomination adjustment fee. That fee would be 4% of the commodity price times the difference in the monthly nomination estimate and the actual nomination.

The price paid by Orange and Rockland for gas purchased from KannGaz would consist of a monthly demand charge, commodity charge, and reservation charge. The demand charge is comprised of the demand charges paid by KannGaz in that month for transportation on NOVA and TransCanada to Niagara Falls. The commodity charge is the product of the amount of gas delivered and 90 percent of the commodity price. The commodity price is the average of the monthly index prices for spot natural gas delivered to ANR Pipeline Company, Texas Eastern Transmission Company, and Tennessee in the State of Louisiana and TransContinental Gas Pipeline Corporation in Texas, as published in *Inside F.E.R.C.'s Gas Market Report.* The reservation charge is equal to the product of 10 percent of the commodity price and the MDQ. Further, the agreement stipulates that the demand charge must be paid by Orange and Rockland each month regardless of the quantity of gas purchased.

Based on the supplemental information filed by Orange and Rockland on August 24, 1992, the commodity and reservation charges that would have been paid if the gas were flowing in August 1992 would have been $1.3095 (U.S) per MMBtu and $0.1455 (U.S.) per MMBtu, respectively.

Any time Orange and Rockland's takes are less than the MDQ and KannGaz is able to sell this gas to a third party at Niagara Falls at a price higher than the monthly commodity price in effect for Orange and Rockland, then such sales would be credited to Orange and Rockland's demand charges. The amount to be credited by KannGaz for each Mcf sold elsewhere is one-half of the difference between the third party sales price and Orange and Rockland's commodity price.

The contract contains a provision for renegotiation every two years with respect to the method to be used for determining the monthly commodity price. If agreement is not reached, binding arbitration could be invoked. Also, there are provisions to ensure that sufficient gas will be available to satisfy the Orange and Rockland commitment.

In support of the application, Orange and Rockland states that the gas proposed to be imported will be priced competitively and the volumes are needed to meet its long-term system demand. In addition, Orange and Rockland asserts that KannGaz has established itself over a number of years as a reliable Canadian supplier.

The decision on Orange and Rockland's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters will be considered in making a public interest determination include need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as they relate to the requested import authorization. Orange and Rockland asserts that this import arrangement is in the public interest. Parties opposing the proposed import arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C., 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any requests to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision to the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party request additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to the notice, in accordance with 10 CFR 590.316.

A copy of Orange and Rockland's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 28, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-23965 Filed 10-1-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4516-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 14, 1992 Through September 18, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-AFS-K53005-AZ Rating LO, Grand Canyon Airport to Maswik Transportation Area, Grand Canyon Village Passenger Rail Service Construction and Operation, Approval and Special Use Permit, Coconino County, AZ.

Summary: EPA expressed a lack of objections with the proposed action but requested that the Final EIS address several issues, including air quality impacts from increased intrapark bus service; any necessary mitigation for impacts to waters of the United States; and plans to discharge stormwater from the airport parking lot.

ERP No. D-AFS-L60096-ID Rating EC2, Moyer Salt Timber Sale, Timber Harvest and Road Construction/ Reconstruction, Implementation, Salmon

National Forest, Cobalt Ranger District, Lemhi County, ID.

Summary: EPA expressed environmental concerns based on the potential for adverse water quality effects. Documentation of consultation requirements of Section 7 of the Endangered Species Act is also needed.

ERP No. D–BLM–K06017–00 Rating EC2, Southwest Intertie Project, Construction and Operation, 500kV Transmission Line from the existing Midpoint substation near Shoshone, ID to a new substation site in the Dry Lake Valley of Las Vegas, NV area to a point near Delta, UT, Permits Approval and COE Section 10 and 404 Permits, several Counties, NV, ID, UT.

Summary: EPA expressed environmental concerns regarding potential project impacts to water quality, wetlands and biodiversity. EPA requested additional information in the Final EIS regarding impact minimization, mitigation, and the monitoring of impacts.

ERP No. D–COE–D01000–VA Rating E02, Norfolk and Western Railway Ground Coal Storage Facility, Construction and Operation, COE 404 Permit, Isle of Wright County, VA.

Summary: EPA expressed objections to the proposed project based on the magnitude of potential impacts of coal dust emissions and periodic waste water discharge to 98 acres of wetlands. In addition, alternatives were not presented in a comparative format and some alternatives were eliminated from further consideration without adequate justification.

ERP No. D–COE–K69007–CA Rating EC2, Arts Park LA Development and Construction, Approval, Lake Balboa Park, Sepulveda Flood Control Basin, San Fernando Valley, City of Los Angeles, Los Angeles County, CA.

Summary: EPA expressed concern that the Draft EIS did not provide adequate information on alternative sites and that, as proposed, the project might be incompatible with applicable floodplain management guidelines. Water quality and noise impacts incident to construction were also of concern. EPA recommended that the Corps reexamine the need for the project and then explore sites for it outside the flood control basin.

ERP No. D–FHW–K40189–CA Rating E02, CA–126 Extension, I–5 to CA–14, Funding and Possible COE Section 404 Permit, City of Santa Clarita, Los Angeles County, CA.

Summary: EPA expressed objections to the acreage of wetlands that could be affected by the proposed build alternatives (54 acres vs. 39 acres) and stated that other less-damaging alternatives may have been prematurely eliminated from detailed analysis. EPA stated that the DEIS did not discuss the No Project Alternative in enough detail to compare the merits of action versus no action, especially with respect to air quality impacts.

ERP No. D–GSA–F81017–MN Rating EC2, Minneapolis Federal Building and U.S. Courthouse Improvement and Expansion or New Construction, Implementation , Hennepin County, MN.

Summary: EPA expressed concerns regarding the Draft EIS indoor air quality and use of appropriate building materials. EPA does not believe that the Draft EIS has addressed removal of existing structures containing asbestos, five underground storage tanks, and an above-ground storage tank.

ERP No. D–UAF–G11021–AR Rating EC2, Eaker Air Force Base Disposal and Reuse, Implementation, Mississippi County, AR.

Summary: EPA recommended that additional information and analysis be provided in the Final EIS on the following areas: the possible need for DPDES Permits for storm water discharges associated with possible industrial activities during reuse activities; pollution prevention activities related to the disposal and reuse plan; relationship of the proposed action to the closure of Blytheville Municipal Airport; and implementation of proposed mitigation measures for each reuse option by reuse recipients.

ERP No. D–UAF–G11022–LA Rating EC2, England Air Force Base Disposal and Reuse, Implementation, Rapides Parish, LA.

Summary: EPA recommended that additional information and analysis be provided in the final EIS on the following areas: the possible need for NPDES Permits for storm water discharges associated with possible industrial activities during reuse activities; pollution prevention activities related to the disposal and reuse plan; relationship of the proposed action to the closure of Alexandria Esler Regional Municipal Airport; and implementation of proposed mitigation measures for each reuse option by reuse recipients

ERP No. D1–FAA–F51037–MI Rating EC2, Detroit Metropolitan Wayne County Airport, Air Traffic Control Noise Abatement Procedures, Permanent Implementation and Completion of the Master Plan Development, Wayne County, MI.

Summary: EPA's concerns will be adequately addressed if satisfactory mitigation as described in the DEIS is subsequently provided, and if appropriate steps are taken as necessary to minimize the project's potential for resulting in neighborhood disruption.

Final EISs

ERP NO. F–BOP–G81005–TX Jefferson County Federal Correctional Complex, Construction and Operation, Site Selection, City of Beaumont, Jefferson County, TX.

Summary: EPA had no objections to the proposed project.

Dated: September 29, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92–23928 Filed 10–1–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4516–4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Availability of Environmental Impact Statements Filed September 21, 1992 Through September 25, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920379, Legislative Draft EIS, AFS, OR, Steamboat Creek Wild and Scenic Suitability Study, Designation, North Umpqua River, Umpqua National Forest, Douglas and Lane Counties, OR, Due: November 16, 1992, Contact : Nancy L. Peckman (503) 498–3532.

EIS No. 920380, Draft EIS, AFS, WA, East Curlew Creek Analysis Area, Harvesting Timber and Road Construction, Portion of Profanity Roadless Area, Colville National Forest, Republic Ranger District, Ferry County, WA, Due: November 23, 1992, Contact: Patricia Egan (509) 775–3305.

EIS No. 920381, Final EIS, BLM, UT, Castlegate Coalbed Methane Gas Production Project, Construction, Operation, Maintenance and Abandonment Approval, Drilling Control, Temporary Use, Federal Antiquities, COE Section 404 and DOT Federal Pipeline Safety and Operations Permits and Right-of-Way Grants, Carbon County, UT, Due: November 02, 1992, Contact: Daryl Trotter (802) 259–2100.

EIS No. 920382, Final EIS, AFS, AK, Alaska Pulp Corporation (APC) Long-Term Timber Sale Contract, Implementation, Southeast Chichagof Project Area, Tongass National Forest, AK, Due: November 02, 1992, Contact: Gary A. Morrison (907) 747–4200.

EIS No. 920383, Final EIS, GSA, DC, Southeast Federal Center

Construction and Consolidation for the housing of the General Services Administration and the Corp of Engineers Headquarters' Offices, Southeastern Quadrant of the Anacostia River, DC, Due: November 02, 1992. Contact: Linda L. Eastman (202) 708–5334.

EIS No. 920384, Draft EIS, FHW, PA, Danville-Riverside Bridge Replacement Project, Construction and Road Construction, across the North Branch of the Susquehanna River, Funding and Section 404 Permit, Appalachian Mountain, Montour and Northumberland Counties, PA, Due: November 23, 1992, Contact: Manuel A. Marks (717) 787–2222.

Dated: September 29, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92–23925 Filed 10–1–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00340; FRL–4167–9]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal will hold a 2–day meeting, beginning on October 8, 1992, and ending on October 9, 1992. This notice announces the location and times for the meeting and sets forth tentative agenda topics.

DATES: The SFIREG Working Committee on Ground Water Protection and Pesticide Disposal will meet on Thursday, October 8, 1992, from 8:30 a.m. to 5 p.m. and on Friday, October 9, 1992, beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESSES: The meeting will be held at: DoubleTree Hotel National Airport - Crystal City, 300 Army-Navy Drive, Arlington, Virginia, (703) 892–4100.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1109, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703) 305–7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee includes the following:

1. Reports from the SFIREG Working Committee Members on State Ground Water Protection Pesticide Disposal projects.
2. Status Report on Ground Water State Management Plans.
3. Briefing on 40 CFR part 165.
4. Update on FIFRA section 19(f).
5. Discussion of Amber Registration.
6. Discussion on the Bulk Containment Policy.
7. Other topics as appropriate.

Dated: September 25, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–23955 Filed 10–1–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination to Provide Assistance

Pursuant to the provisions of section 13(c)(8) of the Federal Deposit Insurance Act (the FDI Act) (12 U.S.C. 1823(c)(8), as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991), notice is hereby given that at its closed meeting held at 10:30 a.m. on September 1, 1992, the Federal Deposit Insurance Corporation's (the Corporation's) Board of Directors determined to provide assistance to The Peoples State Bank, Clyde, Texas (Peoples), in order to facilitate the merger of Freedom Bank, Ranger, Texas (Freedom Bank), with and into Peoples before the appointment of a conservator or receiver for Freedom Bank.

Subject to the least-cost provisions of section 13(c)(4) of the FDI Act (12 U.S.C. 1823(c)(4)), the Corporation, pursuant to section 13(c)(8), determined to provide direct financial assistance after: (1) The Corporation determined that grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless Freedom Bank's capital levels are increased; (2) the Corporation determined that it is unlikely that Freedom Bank can meet all currently applicable capital standards without assistance; (3) based on information currently available to the Corporation, the Corporation determined that Peoples' management, as reconstituted in the course of the transaction, is competent and has complied with applicable laws, rules, and supervisory directives and orders; and (4) based on information currently available to the Corporation, the Corporation determined that Peoples' management, as reconstituted in the course of the transaction, has not engaged in any insider dealing, speculative practice or other abusive activity. The determinations described under (3) and (4) above are based on information that could be obtained in the time available. The determinations shall not prejudice future action if subsequent information indicates that such action is appropriate.

Additional information on this notice can be obtained by contacting Christopher Curtis, Senior Counsel, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429. Telephone: (202) 898–3728.

By direction of the Board of Directors.

Dated this 1st day of September, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–23911 Filed 10–1–92; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 92–47]

Hugh Symington v. Euro Car Transport, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Hugh Symington ("Complainant") against Euro Car Transport, Inc. ("Respondent") was served September 29, 1992. Complainant alleges that Respondent engaged in violations of sections 10(b)(6), (b)(12) and (d)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(b)(6), (b)(12) and (d)(1), by obtaining the funds from Complainant to purchase a car on behalf of Complainant and pay for its transportation and insurance, and failing and refusing to deliver the car or return the funds to Complainant.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by September

29, 1993, and the final decision of the Commission shall be issued by January 27, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 92-23921 Filed 10-1-92; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 89-27]

Martyn Merritt, AMG Services, Inc.; Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984

Order on Remand

This proceeding is on a remand to the Commission from the United States Court of Appeals for the Second Circuit. The proceeding originated as a Commission investigation into possible violations of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701, *et seq.*, by Martyn Merritt ("Merritt") and AMG Services, Inc. ("AMG" or "Ariel"), Oasis Express Line ("Oasis"), Javelin Line ("Javelin"), Trans Africa Line ("Trans Africa"), Coast Container Line ("Coast"), Buccaneer Line ("Buccaneer"), and Union Exportadora Lines ("Union"). Subsequently, the Commission, in its Order Adopting Initial Decision and Remanding In Part, served May 20, 1991, _____ F.M.C. _____, 25 S.R.R. 1495 (1991) ("1991 Order"), found a pattern of persistent and willful activity in violation of sections 10(a)(1) and 10(b)(1) of the 1984 Act, 46 U.S.C. 1709(a)(1) and 1709(b)(1), including unauthorized use of a connecting carrier agreement and the failure of the six carriers (Javelin, Oasis, Trans Africa, Buccaneer, Union and Coast) to charge the rates applicable in filed tariffs on 64 shipments, as well as attempts to conceal these activities. The Commission further found that the activities of all of the corporations involved in these violations were directed and controlled by Martyn Merritt. The Commission assessed civil penalties totalling $1.4 million, ordered Merritt and the corporate respondents to cease and desist from further violations of the 1984 Act, suspended the tariffs of the respondent carriers, and prohibited the filing replacement tariffs by Merritt, the respondent corporations or any agency or successor.

Althouth neither Merritt nor the other respondents had appeared in the proceeding below until after the close of the record, Merritt appealed the Commission's assessment of penalties totalling $395,000 against him individually to the Second Circuit, arguing that the Commission had failed to consider his ability to pay the civil penalties assessed.

The court vacated the penalty on grounds that the Commission had not produced or considered evidence of Merritt's ability to pay the penalties imposed. The court held that the burden of producing evidence of a respondent's ability to pay any penalty assessed is on the agency. The court concluded that "the Commission erred by failing to require production of evidence (in the proceeding before the administrative law judge ("ALJ") going to Merritt's ability to pay a fine and by failing to make specific findings on that issue." However, the court also ruled that the Commission was not obliged to grant a hearing to a respondent who refused to accept service of process and failed to appear or respond to Commission orders until after the close of the record. Specifically, the court directed that:

> (o)n remand, the Commission should make specific findings on Merritt's ability to pay a fine should it decide to reinstate one. Should the Commission decide on remand that a hearing would be helpful, it of course may order one * * *. We express no view on whether the amount of the penalty originally assessed is excessive.

Merritt v. *United States*, 960 F.2d 15, 18-19 (2nd Cir. 1992). The case was remanded to the Commission for further proceedings in accordance with the court's opinion.

Background

Docket No. 89-27 is the second proceeding in which the Commission has found violations by Merritt, his associates, and companies he created and operated. In the first of these proceedings, Docket 84-38, *Ariel Maritime Group, Inc., et al.* ("Docket No. 84-38"), the Commission found violations of section 16, Initial Paragraph, and section 18(b)(3) of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. 815, Initial Paragraph and 817(b)(3) (1982) committed by and through the corporations established and operated by Merritt.[1] The Commission further determined that Merritt was the moving force in this pattern of violations and that he directed and controlled the corporate respondents in conducting and attempting to conceal the unlawful activities. The Commission pierced the corporate veil, finding the corporations to be alter egos of Merritt, or shams created to avoid liability for unlawful acts. *Ariel Maritime Group, Inc., et al, Order Adopting In Part, Reversing In Part, and Supplementing the Initial Decision,* _____ F.M.C. _____, 24 S.R.R. 517 (1987) ("1987 Order"). The Commission directed Merritt and the corporate respondents to cease and desist from violations of the 1984 Act and assessed civil penalties totalling $335,000 against Merritt and the corporate respondents, jointly and severally.[2]

Discussion

Although the court on review of the Commission's decision in Docket No. 89-27 vacated the penalty imposed on Merritt individually, it left standing the findings of violations made by the ALJ in his Initial Decision and adopted by the Commission, both as to Merritt and the corporation.[3] The Commission's findings of violations by Merritt and the corporations, and its imposition of civil penalties on the corporations, were neither appealed nor disturbed on appeal. Thus, the sole issues for determination in this proceeding on remand is the amount of civil penalty against Merritt and Merritt's ability to pay the penalty.

This Commission continues to be of the opinion that civil penalties in an amount suitable to penalize Merritt individually, as well as the corporations created and controlled by him and his associate, are appropriate. Such monetary penalties appear to be the only means within the power of this agency of effectively sanctioning the past violations found in this proceeding and deterring future violations by Merritt and his enterprises. This

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[1] The sections of the 1916 Act dealing with foreign commerce were repealed and replaced by corresponding sections of the Shipping Act of 1984, which prohibited the same acts. Compare the Shipping Act, 1916, section 16, initial paragraph and section 18(b)(3) with, respectively, the 1984 Act, section 10(a)(1) and section 10(b)(1), 46 U.S.C. app. 1709(a)(2) and section 1709(b)(1) (Supp. III, 1985). The 1984 Act, effective June 18, 1984, superseded those provisions of the 1916 Act relating to foreign commerce. 1984 Act, Pub. L. No. 78-237, section 20, 98 Stat. 67, 88.

In Docket No. 89-27 the Commission charged Merritt and the corporations with violations of sections of the 1984 Act which prohibit the same acts, *i.e.*, sections 10(a)(1) and 10(b)(1), 46 U.S.C. app. 1709(a)(1) and 1709(b)(1) (Supp. III, 1985), as were charged and found under the 1916 Act in Docket No. 84-38, sections 16, initial paragraph, and 18(b)(3), 46 (815, initial paragraph and 817(b)(3) (1982).

[2] None of these penalties has been paid, despite entry of an order in 1990 by the U.S. District Court for the Southern District of New York enforcing the Commission's 1987 Order. *United States and Federal Maritime Commission* v. *Martyn G. Merritt, et al.*, No. 88 Civ. 6253 (TPG). Review of the district court's order has recently been sought in the U.S. Court of Appeals for the Second Circuit, No. 92-6123.

[3] The Commission's findings with respect to Merritt's control over the corporations, and their status as alter egos for Merritt also were unaffected on appeal.

proceeding is therefore re-opened and remanded to presiding Chief Administrative Law Judge Norman D. Kline for further hearings limited to the issues discussed above.

In determining the amount of penalties to be imposed, it is expected that the ALJ will give due regard to the gravity and extent of the violations, Merritt's history of prior offenses and individual culpability, as established in the record below, and the Congressional purpose to deter violations by imposing greater civil penalties in the 1984 Act.[4] Any evidence adduced by Merritt should be examined with care in light of Merritt's past business activities and use of corporate assets.

As the Commission noted in the course of the proceeding below, the history of the two proceedings against Merritt before this agency indicates that Merritt has been less than truthful with respect to issues relating not only to his personal involvement in and liability for the violations found, but also as to his ownership and control of the corporations and their assets through which these activities were carried out. See, *e.g.*, 1987 Order, 24 S.R.R. at 522–24, 527–528–31.[5] Merritt's control of these corporations and of their financial dealings, including the corporations' common banking arrangements, was documented in Docket No. 84–38. For example, of the officers and directors of the companies, only Merritt had authority to sign checks and make withdrawals or undertake financial obligations on his sole signature. See 1987 Order, 24 S.R.R. at 522–23.

On remand the ALJ may also give such consideration and weight as he determines to be appropriate to findings of the U.S. District Court for the Southern District of New York in a recent criminal proceeding against Merritt. In the spring of 1991, Merritt was indicted for, and pleaded guilty to, a conspiracy to defraud the U.S. Government, specifically the Agency for International Development, of more than $1 million in connection with a shipment of powdered milk for famine relief in the Sudan. In the course of that proceeding, the district court had occasion to examine information concerning Merritt's past practices, corporate creations, and concealment of assets, including the proceeds of sale of his home.[6] In sentencing Merritt to five years imprisonment, fines and restitution of the proceeds of the fraud, the court made certain findings of fact and conclusions of law. In addition to finding that Merritt had engaged in obstruction of justice prior to indictment, the court concluded that Merritt had attempted to retain the proceeds of his fraud by secreting at least $670,000 in * * *

> * * * accounts controlled by Mrs. Merritt who was her husband's business associate. The paper trail ends with a $670,000 deposit in Bank Worms on the Island of Jersey. * * * (T)he Island of Jersey is also the location of Broadview, which defendant and his wife controlled.

Findings of Fact and Conclusions of Law, at 7, *U.S.A.* v. *Martyn Merritt*, _____ F. Supp. _____ (S.D.N.Y., October 8, 1991), 1991 WL 335511 (S.D.N.Y.). More specifically, the court found "that Mr. Merritt continues to have control over $670,000 of the proceeds, which he is attempting to hide * * *." With respect to Merritt's receipt of the proceeds from the sale of the house, the court stated that:

> In view of the overwhelming evidence presented by the Government that Broadview was in fact a corporation controlled by the Merritts, the Court finds that Mr. Merritt deliberately attempted to mislead the Probation Department concerning Broadview and provided false and fraudulent information to the Probation Department concerning his financial condition by not reflecting the proceeds that Broadview received from the sale of the house.

Id., at 9. It may be proper to give preclusive effect to these findings with respect to assets under the control of Martin Merritt and his "business associate" in the enterprises subject to the Commission's order under the doctrine of collateral estoppel. *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322 (1979); *Commissioner* v. *Sunnen*, 333 U.S. 591, 601–602 (1948); *Yates* v. *United States*, 354 U.S. 298 (1957).

Finally, in considering evidence of Merritt's ability to pay whatever penalties appear appropriate, the ALJ shall also give due regard to the contract law doctrine, relating to damages, that one need not undertake futile acts to prove their inefficacy. This doctrine has been applied to the obligations of common carriers, *Atlantic Coast R. Co.* v. *Geraty*, 166 F. 10, 16 (4th Cir. 1908), and to FMC consideration of arbitration clauses in agreements, *A/S Ivarans Rederi* v. *U.S.*, 938 F. 2d 1365, 1368 (D.C. Cir. 1991) (FMC correct in not deferring to arbitration in determining disputed

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[4] The legislative history of the 1984 Act indicates that Congress meant to enhance the deterrent effect of penalties for activities prohibited under section 10:

> Experience with the penalties imposed by the 1916 Shipping Act led the Committee to conclude that they provided no apparent deterrent to the commission of prohibited acts. Civil penalties of the type and amount available under the current law could be absorbed as part of the cost of doing business * * *. The Committee included in H.R. 1878 sanctions and penalties *designed to deter the commission of prohibited acts.* (Italics supplied).

H.R. Rep. No. 53, (Part. 1), 98th Cong., 1st Sess. 19 (1983). 1984 U.S. Code Cong. and Admin. News 167, 184.

[5] For example, through documents and Merritt's testimony in the first hearing held in Docket No. 84–38, it was represented that the President of Ariel Maritime Group, Inc. was "J.A. Mott." It was shown in the second hearing, however, that "J.A." should have been "J.E." and that "J.E. Mott" was the brother-in-law of Martyn Merritt's wife, Mary Anne Merritt, and had no connection with any of Merritt's companies or the shipping business. Mrs. Merritt's name also appeared as an officer or director on numerous company documents presented in the course of the proceedings, both as Mary Anne Merritt and as Mary Anne Pawlowski, her maiden name. In addition, many of the documents relating to the companies reflected the names of Florence Pawlowski and Florence Wiezen, respectively the married and maiden names of Mary Anne Merritt's mother, who also denied having participated in operation of the companies or the shipping business at any time.

Mrs. Merritt (Mary Ann Pawlowski) and Mrs. Pawlowski (Florence Wiezen) were, nevertheless, listed as the Directors of Charles Klaus & Company, the corporation of which Javelin, Oasis, Trans Africa, Buccaneer and Union were all said to be divisions. Among the evidence relied on by the Commission in Docket No. 84–38 was the testimony of Merritt's former partner, Peter K. Shauer, that Charles Klaus & Company was a company created by them in Hong Kong, and the letter, signed by Merritt, directing the accounting firm in Hong Kong as to the recording and distribution of shares to be made in incorporating Charles Klaus & Company. See, 1987 Order, *supra.*, 24 S.R.R. at 522–523.

All of the carriers were represented by Ariel Maritime Group, Inc. as agent. Ariel Maritime Group, Inc. is the former name of AMG Services, Inc. Merritt testified in Docket No. 84–38 that ASA Development, identified as an English company, was the majority owner of Ariel Maritime Group, Inc. He said that he was unable to enlighten the Commission, however, as to the owners of ASA Development. Nevertheless, in Docket No. 89–27 it was shown that ASA Development Company, created by chartered accountants in the Jersey Islands in 1983, had changed its name to Sterling Maritime, Ltd. on March 5, 1985, six weeks prior to Merritt's testimony in Docket No. 84–38 concerning ownership of Ariel. Sterling Maritime Ltd.'s address is that of the firm of chartered accountants whose partners were shown as incorporators. See 1991 Order, 25 S.R.R. at 1499.

[6] In the district court action to enforce the 1987 Order, Merritt represented that he could not afford to pay the civil penalties. Among the indicia of his inability to pay Merritt cited the fact that he and his wife "live in a modest house in Westchester which we do not own." Affidavit of Martyn C. Merritt In Support of Motion To Dismiss The Complaint, November 9, 1988, at 6. The residence in question was the house occupied by Merritt from 1980 until its sale in 1990, at 87 Broadview Avenue, New Rochelle, New York. However, as the Government showed in its response to the motion, the house was purchased by Martyn and Mary Merritt in December 1980 for $155,000 and transferred to the Broadview Development Company, Ltd. in February, 1982 for $150,000. Further evidence adduced in the criminal fraud case showed that the house sold in 1990 for $520,000. Broadview Development Company, Ltd. is a company registered in the Jersey Islands of Great Britain. The annual reports filed with the Registrar of Companies are signed by Florence Pawlowski, Merritt's mother-in-law, on behalf of the company. The incorporators are the same chartered accountants reflected on the records of the ASA Development Company/Sterling Maritime, Ltd.

meaning of an agreement "when arbitration would be a waste of time"). *See also Port Authority of New York and New Jersey* v. *New York Shipping Association*, 22 S.R.R. 1329, 1343–44 (I.D.), *aff'd*, 23 S.R.R. 21 (1985).

Therefore, it is ordered, That the proceeding in *Martyn Merritt, AMG Services, Inc. d/b/a Ariel Maritime Group and Ariel Maritime, Oasis Express Line, Javelin Line, Trans Africa Line, Coast Container Line, Buccaneer Line, and Union Exportadora Lines—Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984*, Docket No. 89–27, is re-opened and remanded to the Chief Administrative Law Judge for the limited purpose of determining the amount of penalty to be assessed against Martyn Merritt individually and jointly and severally with the corporations, and Martyn Merritt's ability to pay such penalties;

It is further ordered, That such hearing as the Chief Administrative Law Judge determines to be necessary be held in this proceeding, at a date and place to be determined hereafter by the Chief Administrative Law Judge in compliance with rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Chief Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Chief Administrative Law Judge shall be issued by August 31, 1993, and the final decision of the Commission shall be issued by December 31, 1993.

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 92–23884 Filed 10–1–92; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Elmer Lamar Anderson, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 16, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Elmer Lamar Anderson, Swainsboro, Georgia; to acquire an additional 1.36 percent of the voting shares of Swainsboro Bankshares, Inc., Swainsboro, Georgia, for a total of 10.85 percent, and thereby indirectly acquire The Citizens Bank of Swainsboro, Swainsboro, Georgia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. John G. Schmid, Carson, North Dakota; to acquire an additional 9.34 percent of the voting shares of Grant County Bancorporation, Inc., Carson, North Dakota, for a total of 33.20 percent, and thereby indirectly acquire Grant County State Bank, Carson, North Dakota.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Rosa Leong, Los Angeles, California; to acquire an additional 73.15 percent of the voting shares of Wilshire Center Bancorp, Los Angeles, California, for a total of 98.05 percent, and thereby indirectly acquire Wilshire Center Bank, N.A., Los Angeles, California.

Board of Governors of the Federal Reserve System, September 28, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92–23928 Filed 10–1–92; 8:45 am]
BILLING CODE 6210–01–F

First Commerce Bancorp, Inc., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Commerce Bancorp, Inc., Commerce, Georgia; to engage *de novo* through its subsidiary, Bankline

Systems, Inc., Commerce, Georgia, in data processing and transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National Commerce Bancorporation, Memphis, Tennessee; to engage *de novo* through its subsidiary, National Commerce Finance Company, Germantown, Tennessee, in making, acquiring, or servicing consumer loans as a nondepository lender pursuant to § 225.25(b)(1); acting as principal, agent, or broker with respect to the sale of credit life, disability, and involuntary unemployment insurance, directly related to extensions of credit by National Commerce Finance Company, and limited to ensuring the repayment of the outstanding balance due on said extensions of credit pursuant to § 225.25(b)(8)(i)(A) & (B); and acting as agent or broker with respect to the sale of property hazard and casualty insurance, directly related to extensions of credit by National Commerce Finance Company, and limited to ensuring the repayment of the outstanding balance on such extensions of credit in the event of loss or damage to any property used as collateral, and said extensions will not exceed $10,000 or $25,000 if it is to finance the purchase of a residential manufactured home and the credit is secured by said home pursuant to § 225.25(b)(8)(ii)(A) & (B) of the Board's Regulation Y. These activities will be conducted throughout the State of Tennessee and those states which are contiguous to the State of Tennessee.

Board of Governors of the Federal Reserve System, September 28, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23929 Filed 10-1-92; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to merge with Lincoln Financial Corporation, Fort Wayne, Indiana, and thereby indirectly acquire Angola State Bank, Angola, Indiana; Farmers and Merchants Bank, Bluffton, Indiana; First Bank, Rochester, Indiana; The First National Bank in Wabash, Wabash, Indiana; The First State Bank of Decatur, Decatur, Indiana; Harbor Country Banking Company, Three Oaks, Michigan; Lincoln National Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana; The Peoples Bank and Trust Company, Van Wert, Ohio; The Peru Trust Company, Peru, Indiana; First Bank, Rushville, Indiana; Shipshewana State Bank, Shipshewana, Indiana; and State and Savings Bank, Monticello, Indiana.

In connection with this application, Applicant also proposes to acquire Shipshewana Insurance Agency, LaGrange, Indiana, and thereby engage in general insurance agency activities in LaGrange, Indiana, pursuant to § 225.25(b)(8)(vii); Midwest Credit Life Insurance Company, Fort Wayne, Indiana, and thereby engage in underwriting, as insurer and reinsurer, credit life, accident and health insurance pursuant to § 225.25(b)(8)(vii); Norwest Mortgage, Inc., Minneapolis, Minnesota, and thereby engage in consolidating the mortgage banking business of the banking subsidiaries of Lincoln Financial Corporation in existing Norwest Corporation subsidiaries pursuant to § 225.25(b)(1); and acquire through Norwest Investment Services, Inc., Minneapolis, Minnesota, the discount brokerage business of Lincoln National Bank and Trust Company of Fort Wayne pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 28, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23930 Filed 10-1-92; 8:45 am]

BILLING CODE 6210-01-F

Random Lake Bancorp, Limited, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications

must be received not later than October 26, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Random Lake Bancorp, Limited, Random Lake, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Random Lake, Random Lake, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Liberty National Bancorp, Inc., Louisville, Kentucky, and its wholly-owned subsidiary, LNB Acquisition Corp., Louisville, Kentucky; to acquire 100 percent of the voting shares of Financial Dominion of Kentucky Corporation, Radcliff, Kentucky, and thereby indirectly acquire Hardin County Bank and Trust, Inc., Radcliff, Kentucky, and Farmers Deposit Bank of Brandenburg, Brandenburg, Kentucky. In connection with this application, LNB Acquisition Corp. has applied to become a bank holding company.

3. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to merge with Dawson Springs Bancorp, Inc., Maysville, Kentucky, and thereby indirectly acquire Commercial Bank of Dawson, Dawson Springs, Kentucky, and Kentucky State Bank of Scottsville, Scottsville, Kentucky.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Phillips Holdings, Inc., Stuttgart, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Stuttgart, Kansas.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. American Capital Corporation, Katy, Texas; to acquire 90.1 percent of the voting shares of Gulf Coast Bancshares, Inc., Alvin, Texas, and thereby indirectly acquire First National Bank of Alvin, Alvin, Texas.

Board of Governors of the Federal Reserve System, September 28, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23927 Filed 10-1-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, N.W., P.O. Box 770, Attalla, AL 35954-0770, 205-538-0012/800-247-3893.

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615-331-5300.

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800-541-4931/205-263-5745.

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817-282-2257.

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703-802-6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787.

Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-227-2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016.

Bellin Hospital—Toxicology Laboratory, 215 N. Webster Ave., Green Bay, WI 54301, 414-433-7485.

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8900.

California Toxicology Services, 1925 East Dakota Avenue, Suite 206, Fresno, CA 93726, 209-221-5655/800-448-7600.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810.

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310-215-6020.

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500.

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917.

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy. Research Triangle Park, NC 27709, 919-549-8263/800-833-3984.

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263.

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800-876-3652/417-836-3093.

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800-638-1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab).

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535.
Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006.
Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784.
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.
Eagle Forensic Laboratory, Inc., 950 North Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324.
Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516–625–9800.
ElSohly Laboratories, Inc., 1215–1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609.
Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (name change: formerly Alpha Medical Laboratory, Inc.).
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267.
Harris Medical Laboratory, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294.
Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877.
HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–328–4142 (inside MI)/800–225–9414 (outside MI).
Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080.
IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800–967–9766.
Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513–569–2051.
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672.
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961.
Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734.
Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631.
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200.
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515.
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 9176 Independence Avenue, Chatsworth, CA 91311, 818–718–0115/800–331–8670 (outside CA)/800–468–7081 (inside CA) (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories).
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 2356 North Lincoln Avenue, Chicago, IL 60614, 312–880–6900 (name changed: formerly Bio-Analytical Technologies).
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466.
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587.
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199.
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888.
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000.
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191.
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (name changed: formerly Maryland Medical Laboratory, Inc.).
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab).
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC).
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511.
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522.
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100/800–572–3734 (inside VA)/800–336–0391 (outside VA).
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492.
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250.
Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050, (name changed: formerly Nichols Institute).
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361.
Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751.
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134.
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680.
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400.
PDLA, Inc. (Precision), 5 Industrial Park Drive, Oxford, MS 38655, 601–236–5600/800–237–7352.
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352.
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177.
Physicians Reference Laboratory Toxicology Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070.
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600.
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 512–493–3211.
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378.
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400.
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639.
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170.
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811.
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286.
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986.
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788.
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800.
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472.
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520.
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories).
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905.
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories).
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176.
Southgate Medical Services, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/800–362–8913 (inside OH) (name changed: formerly Southgate Medical Laboratory).
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052.
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273.

Toxicology Testing Service, Inc., 5426 N.W., 79th Avenue, Miami, FL 33166, 305–593–2260.

The following laboratories voluntarily withdrew from the National Laboratory Certification Program:

None.

Richard A. Millstein,

Acting Director, National Institute on Drug Abuse.

[FR Doc. 92–23980 Filed 10–1–92; 8:45 am]

BILLING CODE 4160–20–M

Health Resources and Services Administration

Advisory Council; Meeting Correction

In **Federal Register** Document 92–23113 appearing at page 44194 in the issue for Thursday, September 24, 1992, the October 27–29, 1992, meeting of the "Council on Graduate Medical Education" has been changed. The meeting will be on October 28–29, 1992. All other information is correct as it appears.

Dated: September 29, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–23931 Filed 10–1–92; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, September 18, 1992. (Call PHS Reports Clearance Officer on 202–690–7100 for copies of requests)

1. National Donor Research and Education Study—New—This is a mail survey of a random sample of 180,000 blood donors from 5 blood centers participating in the NHLBI "Retrovirus Epidemiology Donor Study" Program. Data will be used to monitor the safety of the U.S. blood supply and facilitate the development, evaluation, and refinement of donor education and recruitment strategies. Respondents: Individuals or households; Number of Respondents: 72,000; Number of Responses Per Respondent: 1; Average Burden Per Response: .3333 hours; Estimated Annual Burden: 24,000 hours.

2. The Feasibility Study for the Household Component of the National Medical Expenditure Survey (NMES): Rounds 2 and 3—New—Rounds 2 and 3 of this methodological study will continue to test methods for enhancing the quality of data on medical care and expenditures, for improving the efficiency of data collection and for assessing the willingness of potential respondents to participate. Respondents: Individuals or households; Number of Respondents: 825; Number of Responses Per Respondent: 2; Average Burden Per Response: 1.37 hours; Estimated Annual Burden: 2,264 hours.

Desk Officer: Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: September 28, 1992.

Melanie Timberlake,

Acting Director, Office of Health Planning and Evaluation.

[FR Doc. 92–23901 Filed 10–1–92; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–2934–N–98]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991); and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a

Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; (These are not toll-free numbers).

Correction: Property Number 619140004, Yunker House, Redwood National Park, Hiouchi, California was inadvertently published as suitable/available. The property is no longer available for homeless assistance use.

Dated: September 25, 1992.

Randall H. Erben,

Acting Assistant Secretary.

Title V, Federal Surplus Property Program Federal Register Report for 10/02/92

Unsuitable Properties

Buildings (by State)

California

5 bungalows
125 South Grand Avenue
Pasadena Co: Los Angeles CA 91105–
Landholding Agency: GSA
Property Number: 549230012
Status: Excess
Reason: Other
Comment: Extensive deterioration

Hawaii

Bldg. 128, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230012
Status: Unutilized
Reason: Secured Area; within 2000 ft. of flammable or explosive material; other
Comment: Extensive Deterioration

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230013
Status: Unutilized
Reason: Secured Area; other
Comment: Extensive Deterioration

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230014
Status: Unutilized
Reason: Secured Area; other
Comment: Extensive Deterioration

South Dakota

Booster Station
Tract #1, Mapleton Township
Co: Minnehaha SD 57101–
Landholding Agency: GSA
Property Number: 549230006
Status: Excess
Reason: Other
Comment: Extensive Deterioration
GSA Number: 7–I–SD–480–A

Land (by State)

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner Co: Morrow OR 77836–
Location: Located up hill from the left abutment of the dam structure.
Landholding Agency: GSA
Property Number: 319011687
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–D–OR–708

[FR Doc. 92–23751 Filed 10–1–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–2–4212–12; AZA 27245]

Arizona; Exchange of Public Lands

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Exchange of Public Lands in Maricopa, Navajo and Apache Counties, Arizona.

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following described public lands and minerals are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C 1716:

Gila and Salt River Meridian, Arizona

T. 5 N., R. 2 E.,
Sec. 31, lots 3 and 4. (Mineral estate only)
T. 8 N., R. 28 E.,
Sec. 17, W½SW¼;
Sec. 18, SE¼SE¼.
T. 8 N., R. 29 E.,
Sec. 10, SE¼SW¼.
T. 12 N., R. 20 E.,
Sec. 6, lots 1 to 3 incl.
T. 13 N., R. 18 E.,
Sec. 12, E½E½.
T. 13 N., R. 23 E.
Sec. 22, NW¼SE¼, SE¼SE¼.
T. 14 N., R. 17 E.,
Sec. 8, SE¼;
Sec. 22, NE¼, N½NW¼, SW¼NW¼, NW¼SW¼, S½S½;
Sec. 24, NE¼.
T. 14 N., R. 19 E.,
Sec. 4, lots 1 to 4 incl., S½N½, S½;
Sec. 10, NE¼, N½SE¼, SE¼SE¼;
Sec. 12, N½;
Sec. 28, SE¼SE¼.
T. 15 N., R. 16 E.,
Sec. 6, lots 1 to 4 incl., lot 8.
Sec. 14, NE¼.
T. 15 N., R. 19 E.,
Sec. 12, lots 1 to 3 incl., N½, SW¼;
Sec. 14, NE¼.
T. 16 N., R. 16 E.,
Sec. 28, all.
T. 16 N., R. 17 E.,
Sec. 6, lots 4 and 5.
T. 17 N., R. 15 E.,
Sec. 22, W½NW¼, NW¼SW¼.
T. 17 N., R. 16 E.,
Sec. 24, lots 1 to 4, incl., W½E½, W½.
T. 17 N., R. 18 E.,
Sec. 4, lots 1 to 4, incl., S½N½, S½.
T. 18 N., R. 16 E.,
Sec. 4, lot 1, SE¼NE¼, E½SE¼.
T. 18 N., R. 24 E.,
Sec. 31, lots 3 and 4, E½SW¼.
Containing 5,811.13 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

This segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: September 25, 1992.
David J. Miller,
Associate District Manager.
[FR Doc. 92-23883 Filed 10-1-92; 8:45 am]
BILLING CODE 4310-33-M

[CO-930-4214-10; COC-54072]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 2,360.78 acres of National Forest System land for 40 years. This withdrawal would protect existing recreational facilities and high resource values at the Purgatory Ski Area near Durango, Colorado. This notice closes this land to location and entry under the mining laws of up to two years. The land remains open to mineral leasing and such forms of disposition as may by law be made of National Forest System land.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before December 31, 1992.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Bob Barbour, 303-239-3708.

SUPPLEMENTARY INFORMATION: On August 24, 1992, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. ch 2):

New Mexico Principal Meridan

San Juan National Forest

T. 39 N., R. 9W.,
Sec. 22, lots 1, 2, 3, 4, S½NW¼ and S½;
Sec. 23, lots 1 through 16, inclusive;
Sec. 24, W½E½NE¼NW¼, W½E½NW¼, and W½NW¼;
Sec. 25, lot 10;

A parcel described by metes and bounds within section 24, beginning at corner No. 1, being the southwest corner of section 24.

T. 39 N., R. 9W.,
From Corner No. 2, by metes and bounds.
S. 89°25' E., 661.98 ft;
N. 1°03'05" W., 65.84 ft;
N. 89°24'28" W., 661.86 ft;
S. 1°00'37' E., 65.84 ft. to corner No. 1, the place of beginning.

A parcel described by metes and bounds within sections 21, 26, 27 and 28: Beginning at corner No. 1, being the ¼-corner of sections 21 and 22,

T. 39 N., R. 9 W.
From Corner No. 1, by metes and bounds.
S.88°50'23" W., 2481.30 ft., on the E-W centerline of section 21;
S. 0°07' W., 1282.19 ft.;
S. 32°10' E., 3131.00 ft.;
S. 68°17' E., 2585.31 ft.;
N. 80°12' E., 2343.21 ft.;
S. 82°04' E., 1723.00 ft.;
S. 60°04' E., 1939.00 ft.;
S. 82°45' E., 2070.00 ft.;
N. 41°04' E., 3350.00 ft.;
N. 0°53' W., 1903.12 ft., to the northeast corner of section 26;
S. 84°27' W. 5782.26 ft., to the northwest corner of section 26;
S. 85°33' W. 5767.74 ft., to the northwest corner of section 27;
N. 0°05' W. 2583.90 ft., to corner No. 1, the place of beginning.

The area described contains approximately 2,360.78 acres in La Plata County.

The purpose of this withdrawal is to protect existing recreational facilities and high resource values at the Purgatory Ski Resort.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with the Bureau of Land Management Manual, section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above; unless the application is denied, or cancelled, or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage this land.

Dated: September 24, 1992.
Robert S. Schmidt,
Chief, Branch of Realty Programs.
[FR Doc. 92-23882 Filed 10-1-92; 8:45 am]
BILLING CODE 4310-JB-M

Bureau of Reclamation

Central Valley Project, California; Scoping Meetings

AGENCY: Bureau of Reclamation (Interior).

ACTION: Notice of scoping meetings.

SUMMARY: On May 12, 1992, the Bureau of Reclamation announced in the **Federal Register** (57 FR 20288) its intent to prepare a draft environmental impact statement (EIS) on interim regulations to implement the Reclamation Reform Act of 1982 in California's Central Valley Project. Public scoping meetings have now been scheduled to obtain public input on the issues and alternatives to be addressed in this EIS.

DATES AND LOCATIONS: The scoping meetings will be held as indicated below:

Session 1: October 19, 1992, at 4 p.m., at the Blue Gum Restaurant, Route 2, Box 171, Willows CA 95988.

Session 2: October 20, 1992, at 1 p.m. at the Bureau of Reclamation, room W-1140, 2800 Cottage Way, Sacramento CA 95825.

Session 3: October 21, 1992, at 9 a.m. at the Merced County Spring Fair, 4th and 5th Streets, Germino Building, Los Banos CA 93635.

Session 4: October 21, 1992, at 4 p.m. at the Holiday Inn Central Plaza, Salon C, 2233 Ventura Street, Fresno CA 93721.

ADDRESSES: The public may also provide written input on information that should be included in the EIS. Comments should be submitted to: J. William McDonald, Assistant Commissioner—Resources Management, Bureau of Reclamation, Attention: D-5613, PO Box 25007, Denver CO 80225. Comments must be submitted on or before November 10, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Shaffer, Mid-Pacific Regional Office, Bureau of Reclamation, 2800 Cottage Way, Sacramento CA 95825; telephone: (916) 978-5487.

SUPPLEMENTARY INFORMATION: The RRA restricts owned acreage that is eligible for delivery of irrigation water from Federal Reclamation projects. For most landowners, the ownership limitation is 960 acres. The RRA also requires the payment of "full cost" for project water delivered to land leased over and above certain acreage thresholds. In most cases, that threshold also is 960 acres.

Other provisions of the RRA address water conservation, payment of full operation and maintenance charges, Reclamation water contract requirements, and declaration of landholdings by irrigators.

On July 26, 1991, the United States District Court for the Eastern District of California granted the Natural Resources Defense Council's (NRDC) partial motion for summary judgment (*NRDC* v. *Duvall, No. Civ. S-88-375 LKK*). The court ruled that the Bureau of Reclamation had not complied with the requirements of the National Environmental Policy Act in preparing an environmental assessment with a "finding of no significant impact" in the

promulgation of its 1987 regulations for the RRA (43 CFR part 426, Rules and Regulations for Projects Governed by Federal Reclamation Law). After a briefing on the issue of relief on March 10, 1992, the court issued an order declaring that:

(1) The issuance of the 1987 Acreage Limitation Rules and Regulations was a major Federal action affecting the quality of the environment, thus requiring the preparation of an environmental impact statement and that not preparing an EIS had violated the Administrative Procedures Act;

(2) Within 30½ months, Reclamation must issue final rules to implement the RRA, including the preparation of an EIS that would apply to all Reclamation projects;

(3) Within 35 months, Reclamation must issue interim rules to implement the RRA in the Central Valley Project, including the preparation of an EIS;

(4) Reclamation must meet a court-ordered schedule of compliance; and

(5) The existing rules will remain in effect until new rules are prepared.

Information materials can be obtained from the contact identified in this notice.

Dated: September 28, 1992.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92-23872 Filed 10-1-92; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Record of Decision on Land Acquisition and Management of Cokeville Meadows National Wildlife Refuge, Lincoln County, WY

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice makes available to the public the Record of Decision (ROD) on the proposed land acquisition and subsequent management of Cokeville Meadows National Wildlife Refuge, located near Cokeville, Lincoln County, Wyoming. The ROD was prepared in accordance with Council on Environmental Quality regulations at 40 CFR 1505.2. The ROD reflects the recommendations of Fish and Wildlife Service staff to the Regional Director, Region 6, for establishment and incorporation of the proposed Cokeville Meadows National Wildlife Refuge as part of the National Wildlife Refuge System. The recommendations by staff were based on the information contained in the Final Environmental Impact Statement which was filed with the Environmental Protection Agency as published in the **Federal Register** on June 26, 1992, at Page 28664. The ROD selects Alternative A, The Optimum Management Alternative, as the best strategy for protection and management of the wildlife resources and habitats along the Bear River for the future. The ROD becomes part of the Decision Document transmitted to the Director, Fish and Wildlife Service. The Decision Document contains technical reports on the project in addition to the Final Environmental Impact Statement. The total document completes the preacquisition planning process for the agency.

DATES: ROD by the Regional Director, Region 6, Fish and Wildlife Service, becomes effective October 2, 1992.

ADDRESSES: Written comments on this Notice should be addressed to: Ralph Morgenweck, Regional Director, Region 6, U.S. Fish and Wildlife Service (RW), P.O. Box 25486, DFC, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: David E. Janes, Wildlife Biologist, U.S. Fish and Wildlife Service (RW), P.O. Box 25486, DFC, Denver, Colorado 80225.

SUPPLEMENTAL INFORMATION: The Record of Decision follows:

This Record of Decision is based on the Proposed Cokeville Meadows National Wildlife Refuge Final Environmental Impact Statement (EIS) dated January 1992. The Record also considers comments received from Federal and State agencies, private organizations, and the public during the public review period. The environmental statement describes four alternatives for acquisition and management of the Cokeville Meadows National Wildlife Refuge, and the effects of implementing each of these alternatives. A No Action alternative reflects the effects of maintaining the current status of the proposal area. The other alternatives reflect the various scenarios of acquisition and management by the Fish and Wildlife Service.

It is my decision to select Alternative A, the Optimum Management Alternative, as described in the Final EIS for the acquisition and management of the Cokeville Meadows National Wildlife Refuge. This alternative provides the best strategy for protection and management of the wildlife resources and habitats along the Bear River for the future.

The Optimum Management Alternative, as the selected alternative, was presented for review in the document titled Proposed Cokeville Meadows National Wildlife Refuge Final Environmental Impact Statement (January 1992). It provided an optimum level of management through a mix of management activities which would require both fee purchase and easement purchases of lands. In acquisition, water rights and mineral rights would also be purchased. All purchases would be negotiated. No condemnation of land would occur. In addition to private lands, State lands and Bureau of Land Management (BLM) lands would be secured for management by the Service. The BLM has been designated as a Cooperating Agency under National Environmental Policy Act (NEPA) guidelines because of future actions within the proposal area that may involve withdrawal of public domain lands currently administered by BLM. Implementation of some of the refuge management aspects of this Record of Decision may require the Service to prepare an analysis of the effects of management actions in accordance with NEPA procedures. If this is found to be necessary, the proposed management actions will be presented to the public as environmental documents, and meetings will be held locally to solicit public comment prior to implementation of the management actions.

Dated: September 18, 1992.

Ralph O. Morgenweck,

Regional Director.

[FR Doc. 92-23884 Filed 10-1-92; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: September 29, 1992.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of

information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1)–(2) MFA Incorporated, 615 Locust Street, Columbia, MO 65201
(3) 615 Locust Street, Columbia, MO 65201
(4) Ann Simpson, 615 Locust Street, Columbia MO 65201

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–23966 Filed 10–1–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission, Appointment of Members

This is to announce the appointment of members to the Glass Ceiling Commission established by title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and in conformance with the Federal Advisory Committee Act (5 U.S.C. app.). Set forth below is a list of Commission members together with their respective appointing authorities.

(1) Honorable Lynn Martin—Chairperson, Secretary of labor (Designated by statute)
(2) Patricia V. Asip, National Manager, Special Segment Marketing, J.C. Penney Company, Inc. (Appointed by the President)
(3) J. Alphonso Brown, Founder, Brown Consulting Groups (Appointed by the President)
(4) Joanne M. Collins, Assistance Vice President, United Missouri Bank of Kansas City (Appointed by the President)
(5) Joanne D'Arcangelo, Independent Consultant, (Appointed by the Majority Leader of the Senate)
(6) Earl G. Graves, Publisher, Black Enterprise Magazine (Appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate)
(7) Beverly A. King, President, King and Wright Consulting, Inc. (Appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate)
(8) Jean Ledwith King, Attorney (Appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate)
(9) Judith L. Lichtman, President, Women's Legal Defense Fund (Appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate)
(10) Honorable Nita M. Lowey, Member of Congress, New York (Appointed by the Majority and Minority Leaders of the House of Representatives)
(11) Honorable Barbara Mikulski, United States Senator, Maryland (Appointed jointly by the Majority and Minority Leaders of the Senate)
(12) Honorable Susan Molinari, Member of Congress, New York (Appointed by the Majority and Minority Leaders of the House of Representatives)
(13) Lynn O'Shea, Vice President/Business Development, Gannett Company, Inc. (Appointed by the Minority Leader of the House of Representatives)
(14) Marilyn Pauly, Executive Vice President, Wichita Trust Div. of Bank IV Kansas (Appointed by the Minority Leader of the Senate)
(15) Delia M. Reyes, President, Adrian Research Group (Appointed by the President)
16) Marion O. Sandler, Founder, World Savings and Golden West Financial Corp. (Appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate)
(17) Honorable John Seymour, United States Senator, California (Appointed jointly by the Majority and Minority Leaders of the Senate)
(18) Maria Contreras Sweet, Vice President of Public Affairs, Seven-Up/Royal Crown Bottling Co. of Southern California (Appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate)
(19) Henry Tang, Vice President, Salomon Brothers (Appointed by the President)
(20) Carol Cox Wait, President, Committee for a Responsible Federal Budget (Appointed by the President)
(21) Judith Wierciak, Director of Special Programs, Anheuser-Busch Companies, Inc. (Appointed by the Majority Leader of the House of Representatives)

The members were selected as representatives of either organizations that represent women and minorities and other related interest groups, or corporate or other business entities which are recognized as leaders on issues relating to equal employment opportunity. These appointments expire on November 20, 1995.

Signed at Washington this 28th day of September, 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–23924 Filed 10–1–92; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency have an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division Of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Vermont:
VT91-7 (October 2, p.All.
1992).
VT91-8 (October 2, p.All.
1992).
VT91-10 (October 2, p.All.
1992).
VT91-11 (October 2, p.All
1992).
VT91-12 (October 2, p.All.
1992).

Volume III

Nevada: NV91-10 (October 5, 1992). p.All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:
FL91-17 (February 22, p.141, p.142.
1991).
North Carolina:
NC91-1 (February 22, p.All.
1991).
NC91-3 (February 22, p.All.
1991).
NC91-12 (February 22, p.All.
1991).
New Jersey:
NJ91-2 (February 22, p.701, p.702.
1991).
NJ91-3 (February 22, p.721, p.722.
1991).
New York:
NY91-2 (February 22, p. 777,pp.780-
1991). 781.
NY91-3 (February 22, pp.797-798.
1991).
NY91-7 (February 22, p.837, pp.838-
1991). 840, pp.842-856c.
NY91-21 (February 22, p.952a, pp.952b-
1991). 952c.
NY91-22 (February 22, p.952i, pp.952j-
1991). 952m
Pennsylvania:
PA91-4 (February 22, p.985, p.988.
1991).
PA91-8 (February 22, p.1007, pp.1008-
1991). 1010.
PA91-10 (February 22, p.1047, p.1048.
1991).
PA-12 (February 22, p.1057, pp.1058-
1991). 1059.
PA91-14 (February 22, p.1083, p.1086.
1991).
PA91-20 (February 22, p.1099, p.1101.
1991).
PA91-23 (February 22, p.1123, pp.1124-
1991). 1126.
Tennessee: TN91-2 (February 22, 1991). p.1195, p.1196.

Volume II

Illinois:
IL91-1 (February 22, p.69, p.79.
1991).
IL91-3 (February 22, p.115, p.117.
1991).
IL91-12 (February 22, p.171, p.173.
1991).
IL91-13 (February 22, p.183, p.186.
1991).
IL92-14 (February 22, p.195, p.198.
1991).
IL91-15 (February 22, p.205, p.208.
1991).
Kansas: KS91-12 (February 22, 1991). p.All.
Michigan: MI91-7 (February 22, 1991). p.All.

Volume III

Alaska: AK91-1 (February 22, 1991). p.All.
Arizona:
AZ91-1 (February 22, p.All.
1991).
AZ91-3 (February 22, p.All.
1991).
California:
CA91-1 (February 22, p.All.
1991).
CA91-2 (February 22, p.All.
1991).
CA91-4 (February 22, p.All.
1991).
Hawaii: HI91-1 (February 22, 1991). p.All.
Montana: MT91-8 (February 22, 1991). p.All.
Nevada:
NV91-1 (February 22, p.299, p.303.
1991).
NV91-4 (February 22, p.345, p.347
1991).
Utah:
UT91-3 (February 22, p.409, p.410.
1991).
UT91-4 (February 22, p.419, p.420.
1991).
UT91-5 (February 22, p.421, p.422.
1991).
UT91-6 (February 22, p.423, p.424.
1991).
UT91-7 (February 22, p.425, p.426.
1991).
UT91-8 (February 22, p.All.
1991).
UT91-10 (February 22, p.435, p.436.
1991).
UT91-11 (February 22, p.437, p.438.
1991).
UT91-13 (February 22, p.All.
1991).
UT91-15 (February 22, p.All.
1991).
UT91-20 (February 22, p.All.
1991).
Washington: WA91-11 p.All.
(February 22, 1991)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing

Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 25th day of September 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92–23739 Filed 10–1–92; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by November 2, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202–682–5434).

FOR FURTHER INFORMATION CONTACT: Ms. Judith O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93 Expansion Arts Program "Capstone Project" Application Guidelines

Frequency of Collection: One-time.

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit arts organizations that apply for funding under the Expansion Arts' Capstone Project initiative. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 60.

Average Burden Hours per Response: 16.

Total Estimated Burden: 960.

Roberta Dunn,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 92–23915 Filed 10–1–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Systematic Assessment of License Performance (SALP)

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed changes to the SALP program; extension of comment period.

SUMMARY: On August 28, 1992, (57 FR 39249) the Nuclear Regulatory Commission (NRC) published its plans to conduct a public meeting to discuss proposed changes to the SALP program on September 29, 1992, and to solicit public comment. The public comment period was to have expired on September 29, 1992. In view of the importance of the proposed changes, the NRC has decided to extend the comment period for an additional ten days to allow interested parties the opportunity to comment on issues discussed at the public meeting on September 29, 1992. The extended comment period now expires on October 9, 1992.

DATES: The comment period has been extended and now expires October 9, 1992. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received before this date.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Cornelius Holden, M/S 10–A–19, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 504–1037.

Dated at Rockville, Maryland this 28th day of September, 1992.

For the Nuclear Regulatory Commission.

Cornelius Holden,

Senior Operations Engineer, Office of Nuclear Reactor Regulation.

[FR Doc. 92–23934 Filed 10–1–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498 and 50–499]

Houston Lighting and Power Co.; City Public Service Board of San Antonio; Central Power and Light Co.; City of Austin, TX; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–76 and NPF–80 issued to Houston Lighting & Power Company, et al., (the licensee) for operation of the South Texas Project, located in Matagorda County, Texas. The original application dated August 30, 1991, was previously published in the **Federal Register** on October 16, 1991 (56 FR 51926). That application was superseded in its entirety by application dated June 2, 1992.

The proposed amendments would change the technical specifications to reflect a change in the actuation logic which would accompany the replacement of the two original toxic gas monitoring channels with three state-of-the-art toxic gas monitoring channels. The actuation logic would be revised to provide a two-out-of-three (⅔) logic for a high toxic gas actuation signal and monitor failure actuation logic, as opposed to the current one-out-of-two (½) and two-out-of-two (⅔) logic respectively. In the June 2, 1992, submittal, the licensee requested approval of an interim technical specification in September 1992 followed by a final technical specification to be effective in February 1993. This would allow adequate time for hardware and procedural changes to

support installation of the third toxic gas monitoring channel during the Unit 1 refueling outage (fall 1992) and Unit 2 refueling outage (spring 1993).

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of a third channel of toxic gas monitoring would not increase the probability of a previously evaluated accident because the toxic gas analyzers have no role in the initiation of an accident. Consequences of a previously evaluated accident would not increase because a third monitor would provide additional redundancy and reliability to the current monitoring system. Therefore, a more credible toxic gas monitoring system would be in place, and the probability or consequences of a accident previously evaluated would not be significantly increased.

(2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change would not require the toxic gas monitoring system to perform any safety function for which it is not already designed or required to perform. Adding a third analyzer to the monitoring system for each Unit would provide additional redundancy in the detection of toxic gas release. For these reasons, the proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The decrease in probability of actuation when required for the high toxic gas actuation signal and increase in probability of spurious actuation for the loss of power/malfunction actuation signal are slight and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 2, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the mater. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to reply in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The

contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated June 2, 1992, which is available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 28th day of September 1992.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Senior Project Manager, Project Directorate IV-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–23935 Filed 10–1–92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of a request by the Tennessee Valley Authority (TVA or the licensee) for an amendment to Facility Operating License Nos. DPR–77 and DPR–79 issued to the licensee for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Soddy Daisy, Tennessee. Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration and Determination and Opportunity for Hearing was published in the **Federal Register** on July 8, 1992 (57 FR 30262) and renoticed on August 5, 1992 (57 FR 34591).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to reflect a restructuring within TVA's Nuclear Power Organization affecting the Independent Safety Engineering manager, change the reference document that contains the facility staff qualification and training requirements, and update Plant Operations Review Committee membership.

The staff has determined that the proposed change to substitute the references to ANSI N18.1–1971, the March 28, 1980 NRC letter, and Regulatory Guide 1.8, with a reference to the TVA Nuclear Quality Assurance Plan in Specification 6.3.1 cannot be granted. Similarly, the proposed substitution of the references to ANSI N18.1–1971 in Specification 6.4.1 with a reference to the TVA Quality Assurance Plan cannot be granted. The licensee was notified of the Commission's denial by letter dated.

By November 2, 1992, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 28, 1992, which was modified by letter dated July 14, 1992, and (2) the Commission's letter to the licensee dated.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the

Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 28th day of September, 1992

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-23936 Filed 10-1-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Cancellation of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the previously scheduled October 5th meeting of the Federal Salary Council is canceled. The next meeting of the Federal Salary Council will be held at the time and place shown below. The agenda for this meeting will be the discussion of issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting will be open.

DATES: The October 5, 1992, meeting is canceled. The next meeting is scheduled for October 28, 1992, beginning at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street, NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415-0001. Telephone number: (202) 606-2838.

For the President's Pay Agent.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-23847 Filed 10-1-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31241; File No. SR-NASD-92-37]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Transaction Reporting Procedures

September 25, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 31, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The purpose of the proposed rule change is to effect various technical changes in the rules governing real-time transaction reporting. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and rule 19b-4 thereunder, to effect various technical changes in the rules governing real-time transaction reporting in Nasdaq/National Market System ("Nasdaq/NMS") securities, Nasdaq Small-Cap securities, and exchange-listed securities. The affected provisions of the NASD rules are contained in Parts XII and XIII of Schedule D, and in Schedule G to the NASD By-Laws. The text of the proposed changes is set forth below; new language is italicized while deleted language is bracketed.

Part XII—Reporting Transactions in NASDAQ National Market System Designated Securities

This part has been adopted pursuant to Article VII of the Corporation's By-Laws and applies to the reporting by all members of transactions in Nasdaq/National Market System securities ("designated securities") through the [Transaction Reporting System] *Automated Confirmation Transaction Service ("ACT").*

* * * * *

Section 1—Definitions

* * * * *

[(b) ["Transaction Reporting System" means the transaction reporting system for the reporting and dissemination of last sale reports in designated securities.] *"Automated Confirmation Transaction Service" or "ACT" is the service that, among other things, accommodates reporting and dissemination of last sale reports in designated securities.*

* * * * *

Section 2—Transaction Reporting

(a) When and How Transactions *are* Reported

(1) Registered Reporting Market Makers shall, [transmit through the Transaction Reporting System] within 90 seconds after execution, *transmit through ACT* last sale reports of transactions in designated securities executed during [the] *normal market* hours. [of the Transaction Reporting System] Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Non-Registered Reporting Members shall, *within 90 seconds after execution, transmit through ACT or the ACT Service Desk (if qualified pursuant to Part IX of Schedule D to the By-Laws), or if ACT is unavailable due to system or transmission failure, by telephone to the Market Operations Department in New York City, last sale reports of transactions in designated securities executed during normal market hours.* [transmit through the Transaction Reporting System, or if such System is unavailable, via Telex, TWX or telephone to the Nasdaq Operations Department in New York City, within 90 seconds after execution, last sale reports of transactions in designated securities executed during the trading hours of the Transaction Reporting System unless all of the following criteria are met:]

[(A) The aggregate number of shares of designated securities which the member executed and is required to report during the trading days does not exceed 1,000 shares; and]

[(B) The total dollar amount of shares of designated securities which the member executed and is required to report during the trading day does not exceed $25,000; and]

[(C) The member's transactions in designated securities have not exceeded the limits of (A) or (B) above on five or more of the previous ten trading days.]

Transactions not reported within 90 seconds after execution shall be designated as late. [If the member has reason to believe its transactions in a given day will exceed the above limits, it shall report all transactions in

designated securities within 90 seconds after execution; in addition, if the member exceeds the above limits at any time during the trading day, it shall immediately report and designate as late any unreported transactions in designated securities executed earlier that day.]

(3) Non-Registered Reporting Members shall report weekly to the *Market* [Nasdaq] Operations Department in New York City, on a form designated by the Board of Governors, last sale reports of transactions in designated securities which are not required *to be reported under paragraph (2) or (4).* [by paragraph (2) to be reported within 90 seconds after execution].

(4) Last sale reports of transactions in designated securities executed between the hours of 4 p.m. and [5:00] *5:15* p.m. Eastern Time shall be transmitted through [the Transaction Reporting System no later than 5 p.m. Eastern Time] *ACT within 90 seconds after execution; trades executed and reported after 4 p.m. Eastern Time shall be designated as ".T" or after hours trades.*

(5) All members shall report weekly to the [Nasdaq] *Market* Operations Department in New York City, on a form designated by the Board of Governors, last sale reports of transactions in designated securities executed outside the hours of 9:30 a.m. and *5:15* [5:00] *p.m. Eastern Time.*

* * * * * *

Part XIII—Reporting Transactions in NASDAQ Small-Cap Securities

This part has been adopted pursuant to Article VII of the Corporation's By-Laws and sets forth the applicable reporting requirements for transactions in Nasdaq *Small-Cap* securities ("designated securities"). [that are not classified as Nasdaq/National Market System securities.] Members shall utilize the Automated Confirmation Transaction Service ("ACT") for transaction reporting.

* * * * *

Section 2—Transaction Reporting

(a) When and How Transactions are Reported

* * * * *

(2) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit through ACT or the ACT service desk (if qualified pursuant to Part IX of Schedule D to the By-Laws), or if ACT is unavailable due to system or transmission failure, by telephone to the Market Operations Department in New York City, last sale reports of transactions in designated securities executed during normal market hours. [unless all of the following criteria are met:]

[(A) The aggregate number of shares of designated securities which the member executed and is required to report during the trading day does not exceed 1,000 shares; and]

[(B) The total dollar amount of shares of designated securities which the member executed and is required to report during the trading day does not exceed $25,000; and]

[(C) The member's transactions in designated securities have not exceeded the limits of (A) or (B) above on five or more of the previous ten trading days.]

Transactions not reported within 90 seconds after execution shall be designated as late. [If the member has reason to believe its transactions in a given day will exceed the above limits, it shall report all transactions in designated securities within 90 seconds after execution; in addition, if the member exceeds the above limits at any time during the trading day, it shall immediately report and designate as late any unreported transactions in designated securities executed earlier that day.]

(3) Non-Registered Reporting members shall report weekly to the [Nasdaq] *Market* Operations Department in New York City, on a form designated by the Board of Governors, last sale reports of transactions in *designated* securities which are not *required to be reported under paragraph (2) or (4).* [required by paragraph (2) to be reported within 90 seconds after execution.]

(4) Last sale reports of transactions in designated securities executed between the hours of 4 p.m. and *5:15* [5:00] p.m. Eastern Time shall be transmitted through [the] ACT [System] within 90 seconds after execution; trades *executed and* reported after [4:10] 4 p.m. Eastern Time shall be designated as ".T" or after hours trades.

(5) All members shall report weekly to the [Nasdaq] *Market* Operations Department in New York City, on a form designated by the Board of Governors, last sale reports of transactions in designated securities executed outside the hours of 9:30 a.m. and *5:15* [5:00] p.m. Eastern Time.

* * * * *

Schedule G

REPORTING TRANSACTIONS IN LISTED SECURITIES

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Section 1—Definitions

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(c) "*Registered* [Designated] Reporting Member" means a member of the Association that is registered as a CQS market maker, pursuant to Part VII of Schedule D of the Association's By-Laws, *in a particular eligible security. A member is a Registered Reporting Market Maker in only those eligible securities for which it has registered as a CQS market maker. A member shall cease being a Registered Reporting Market Maker in an eligible security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of the Corporation.*

* * * * *

(e) "Non-*Registered* [Designated] Reporting Member" means [all] *a* member[s] of the Association *that* [which are] is not a *Registered* [Designated] Reporting Member[s].

(f) "Automated Confirmation Transaction Service" or "ACT" is the service that, among other things, accommodates reporting and dissemination of last sale reports in eligible securities.

Section 2—Transaction Reporting

(a) When and How Transactions *are* Reported

(1) *Registered* [Designated] Reporting Members shall transmit through *ACT*, [the NASDAQ Transaction Reporting system,] within 90 seconds after execution, last sale reports of transactions in eligible securities *executed* during the trading hours of the Consolidated Tape otherwise than on a national securities exchange. *Registered* [Designated] Reporting members shall *also* transmit through [the NASDAQ] Transaction Reporting System.] *ACT*, within 90 seconds after execution, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between 4 p.m. and 5:15 p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Non-*Registered* [Designated] Reporting Members shall, *within 90 seconds after execution,* transmit through ACT or the ACT Service Desk (if qualified pursuant to Part IX of Schedule D to the NASD By-Laws), or if ACT is unavailable due to system or transmission failure by telephone to the Market Operations Department in New York City, [the Transactions Reporting System, or if such System is unavailable, via Telex, TWX or telephone, to the NASDAQ Department in New York City, within 90 seconds after execution,] last sale reports of transactions in

eligible securities executed during the trading hours of the Consolidated Tape otherwise than on a national securities exchange. [unless all of the following criteria are met:]

[(A) The aggregate number of shares of eligible securities which the member executed and is required to report does not exceed 1,000 shares in any one trading day; and]

[(B) The total dollar amount of shares of eligible securities which the member executed and is required to report does not exceed $25,000 in any one trading day; and]

[(C) The member's transaction in eligible securities have not exceeded the limits of (A) or (B) above on five or more of the previous ten trading days.]

Non-*Registered* [Designated] Reporting Members shall [transmit through the NASDAQ Reporting System, or if such System is unavailable, via Telex, TWX or telephone, to the NASDAQ Department in New York City], within 90 seconds after execution, *transmit through ACT or the ACT service desk (if qualified pursuant to Part IX of Schedule D to the By-Laws), or if ACT is unavailable due to system or transmission failure, by telephone to the Market Operations Department in New York City,* last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between the hours of 4 p.m. and 5:15 p.m. Eastern Time. [unless all of the criteria specified in paragraphs (A), (B) and (C) above are met.]

Transactions not reported within 90 seconds after execution shall be designated as late. [If the member has reason to believe its transactions in a given day will exceed the above limits, it shall report all transactions in eligible securities within 90 seconds after execution; in addition, if the member exceeds the above limits at any time during the trading day, it shall immediately report and designate as late any unreported transactions in eligible securities executed earlier that day.]

(3) Non-*Registered* [Designated] Reporting Members shall report weekly to the [Nasdaq] *Market* Operations Department in New York City, on Form T, last sale reports of transactions in eligible securities *that* [which] are not required [by paragraph (2)] to be reported [within 90 seconds after execution] *under paragraph (2).*

* * * * *

(b) Which Party Reports Transactions

* * * * *

(2) In transactions between two *Registered* [Designated] Reporting Members, only the member representing the sell side shall report.

(3) In transactions between a *Registered* [Designated] Reporting Member and Non-*Registered* [Designated] Reporting Member, only the *Registered* [Designated] Reporting Member shall report.

(4) In transactions between [the] Non-*Registered* [Designated] Reporting Member, only the member representing the sell side shall report.

* * * * *

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Through the instant filing, the NASD is seeking the SEC's approval of a series of technical changes to those NASD rules that govern transaction reporting by member firms. Overall, these modifications are intended to make the language of the affected rules more consistent and thereby facilitate compliance by member firms. For example, the amended rules delete outmoded references to reporting systems that have been supplanted by the Automated Confirmation Transaction Service ("ACT") and support facilities offered by the ACT service desk in New York City. Further, the proposed amendments would delete the *de minimis* thresholds for real-time trade reporting in Nasdaq and exchange-listed securities that have existed for many years.[1] This will result in reduced usage of Form T as a reporting vehicle for transactions effected between 9:30 a.m. and 5:15 p.m. Eastern Time. Hence, the NASD will capture additional transaction data electronically, for purposes of public dissemination as well as integration into the regulatory audit trail.

The NASD believes that this proposed rule change is consistent with section 11A(a)(1) and 15A(b)(6) of the Act. More specifically, section 11A(a)(1) articulates the Congressional findings that expanded use of automation is important to ensure broad dissemination of market data (including last sale information), and the efficient operation of the nation's securities markets. Section 15A(b)(6) provides, *inter alia,* that the NASD's rules be designed to prevent fraudulent/manipulative practices, promote just and equitable principles of trade, and facilitate securities transactions. The NASD posits that the proposed amendments to the trade reporting rules are fully consistent with these statutory provisions and that their implementation will enhance market efficiency as well as the NASD's automated surveillance capabilities.

B. Self-Regulatory Organization's Statement on the Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

[1] These thresholds apply exclusively to transactions effected by a member firm that is not a registered market maker in the particular reportable security and that effects transactions in such security with other non-market makers or public customers.

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available, for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 23, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23904 Filed 10-1-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31242; International Series Release No. 462; File No. SR-OCC-92-25]

Self-Regulatory Organization; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Expiration Date of End-of-Month Foreign Currency Options and End-of-Month Cross-Rate Foreign Currency Options.

September 25, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 11, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been primarily prepared by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify the expiration date for certain end-of-month foreign currency options and end-of-month cross-rate foreign currency options (collectively hereinafter referred to as "EMOs") to address the possibility of a lack of liquidity for these instruments during certain holidays celebrated throughout the world.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to conform OCC's expiration date for EMOs traded on the Philadelphia Stock Exchange ("PHLX") to the expiration date proposed in PHLX's File No. SR-PHLX-92-25. On July 21, 1992, the Commission approved a rule change proposed by PHLX which allows PHLX to list foreign currency options and cross-rate foreign currency options with an expiration date that is the Saturday following the last Friday of the expiration month.[2] On July 13, 1992, the Commission approved OCC's corresponding filing which allows OCC to issue, clear, and guarantee EMOs.[3]

As presently defined by both OCC's Rules [4] and PHLX's Rules,[5] the December 1992 series of EMOs will expire on the day after Christmas in 1992, and the December 1993 series will expire on New Year's Day in 1994. The last trading days for these EMOs will be Thursday, December 24, 1992, and Thursday, December 30, 1993, respectively.[6] PHLX notes that the day before the Christmas holiday and the day before the New Year's Day holiday are typically characterized by light trading and relatively low levels of liquidity. As more fully explained in its filing, PHLX believes that these liquidity concerns can be obviated by changing the expiration date of these series of EMOs to the Saturday immediately preceding December 25th. OCC therefore proposes the corresponding change in its Rules.

OCC believes the proposed rule change is consistent with Section 17A of the Act, as amended,[7] because it applies the same systems, procedures, and safeguards to the clearance and settlement of EMOs that are presently used successfully by OCC with all foreign currency and cross-rate foreign currency options. The rule change will therefore facilitate the prompt and accurate clearance and settlement of such options while addressing the liquidity concerns.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants or Other

Written comments were not and are not intended to be solicited with respect to this proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that OCC's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies and, in particular, with the requirements of section 17A(b) (3) (A) and (F).[8] Those sections require that a clearing agency be organized, have the capacity to facilitate, and have rules designed to safeguard securities and funds in its custody or control or for which it is responsible. The Commission believes that the changes embodied in OCC's proposal will better enable OCC to meet this statutory requirement by addressing the possibility of lack of liquidity for certain options during certain holidays celebrated throughout the world.

As discussed above, the day before the Christmas holiday and the day before the New Year's Day holiday historically lack liquidity. PHLX has noted that liquid markets in foreign exchange instruments are negatively impacted on these dates because these holidays are observed worldwide. The liquidity concern is compounded by the fact that the last trading day before the expiration date of these EMO's is the day before the holiday and participants

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 30945 (July 21, 1992), 57 FR 33381 (File No. SR-PHLX-92-13).

[3] Securities Exchange Act Release No. 30919 (July 13, 1992), 57 FR 32036 (File No. SR-OCC-92-16).

[4] OCC By-Laws, Art. XV, section 1(h) and Art. XX, section 1(i).

[5] PHLX Option Rule 1000 (b)21.

[6] PHLX will close on Friday December 31, 1993, in observance of the New Years Day Holiday.

[7] 15 U.S.C. 78q-1.

[8] 15 U.S.C. 78q-1(b) (3) (A) and (F).

generally are active on their last trading day before an expiration date. By changing the expiration date to the Saturday immediately preceding December 25th when the last Friday of the expiration month is either December 25th or December 31st, the liquidity concerns should be addressed because the last trading day before the expiration date will not be the day before a globally celebrated holiday.

OCC has requested that the Commission find good cause for approving this proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register** in order that OCC's proposed rule change may become effective concurrently with PHLX's proposed rule change and in time for PHLX to disclose the modification to the December EMOs month-end expiration prior to the listing of such series on September 28, 1992. OCC believes that even if SR–PHLX–92–25 is approved, PHLX will not be able to list series with the new December expiration date until this proposed rule change has also become effective. The Commission finds good cause for so approving because by granting accelerated approval OCC will be able to avoid issuing EMOs with expiration dates that fall on days with light trading and relatively low levels of liquidity and PHLX will be able to notify in a timely manner its members participants, and customers of the modification to the December EMOs.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–92–25 and should be submitted by October 23, 1992.

V. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and in particular with section 17A of the Act.[9]

It is therefore ordered, under section 19(b)(2) [10] of the Act, that the proposed rule change [File No. SR–OCC–92–25] be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–23905 Filed 10–1–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–92–28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 22, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 24, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 109CE.
Petitioner: Fairchild Aircraft.
Sections of the FAR Affected: 14 CFR 23.201, 23.203, 23.207 and 23.1545.
Description of Relief Sought: To permit type certification of a commuter category airplane with certain stall characteristics and airspeed indicator markings that are appropriate to SA227–CC, SA227–DC, and all subsequent commuter category airplanes approved on Type Certificate A18SW aircraft.

Docket No.: 22441.
Petitioner: United Airlines.
Sections of the FAR Affected: 14 CFR 121.440
Description of Relief Sought: To amend Exemption No. 3451, as amended, to permit United Airline captains to serve as police in command without having passed a line check within the previous 12 months

Docket No.: 26738.
Petitioner: Ramsey County Sheriff's Air Patrol.
Sections of the FAR Affected: 14 CFR 61.118.
Description of Relief Sought: To permit members of the Ramsey County Sheriff's Air Patrol to be reimbursed for fuel, oil, and maintenance costs while performing official duties involving airborne search and rescue, drug surveillance and interdiction, and prisoner transport missions.

Docket No.: 26920.
Petitioner: City of Department of Aviation.
Sections of the FAR Affected: 14 CFR 107.17.

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[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12) (1991).

Description of Relief Sought: To allow City of Chicago, Department of Aviation security officers to bypass terminal checkpoint security screening when responding to emergency situations in sterile airport areas.

Docket No.: 26949.
Petitioner: KaiserAir, Inc.
Sections of the FAR Affected: 14 CFR 135.247(a)(2).
Description of Relief Sought: To consider a Gulfstream 1159 and a Gulfstream IV one type of aircraft for the purpose of allowing any combination of 3 takeoffs and 3 landings in the preceding 90 days in either aircraft to satisfy § 135.247(a)(2).

Docket No.: 26961.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 91.205(b)(11).
Description of Relief Sought: To relieve members of the Regional Airline Association from the requirement to equip multi-engine turboprop airplanes, operated under part 135, with pyrotechnic signaling devices when operated over water beyond power-off gliding distance from shore.

Docket No.: 26964.
Petitioner: L R Services.
Sections of the FAR Affected: 14 CFR 91.191 (a)(5) and 135.165(b)(6) and (b)(7)
Description of Relief Sought: To allow L R Services to operate certain extended overwater flights with only one HF communications system.

Docket No.: 26966.
Petitioner: Airman Flight School, Inc.
Sections of the FAR Affected: 14 CFR 141.65
Description of Relief Sought: To permit Airman Flight School, Inc. to recommend graduates of the school's approved certification courses for flight instructor and airline transport pilot ratings without having taken the FAA written or flight test.

Docket No.: 26967.
Petitioner: Mr. William W. Niendorff.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To allow Mr. Willaim W. Niendorff to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Dispositions of Petitions

Docket No.: 23465.
Petitioner: Everts Air Fuel, Inc.
Sections of the FAR Affected: 14 CFR 91.31(a).
Description of Relief Sought/ Disposition: To amend Exemption No. 4296, as amended, from § 91.31(a) to add Mcdonnell Douglas DC–6 aircraft, registration numbers N351CE, N451CE, and N4390F, to the original listing of exempted aircraft. In addition, to extend the termination date of Exemption No. 4296, as amended, which enables Everts Air Fuel, Inc., to operate its McDonnell Douglas DC–6 aircraft, registration numbers N351CE, N451CE, and N4390F, and its McDonnell Douglas DC–6B aircraft, registration numbers N151 and N251CE, at a 5 percent increased zero fuel and landing weight.
Grant, September 16, 1992, Exemption No. 4296D

Docket No.: 26695.
Petitioner: Comair Aviation Academy.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/ Disposition: To allow Comair Aviation Academy to hold examining authority for flight instructor and airline transport pilot written tests.
Partial Grant, September 21, 1992, Exemption No. 5523

Docket No.: 26746.
Petitioner: Pacific States Aviation Incorporated.
Sections of the FAR Affected: 14 CFR 135.181(a)(1).
Description of Relief Sought/ Disposition: To permit Pacific States Aviation Incorporated and Jet Charter to provide passenger-carrying, on-demand air taxi operations during instrument flight rule and over-the-top conditions in the TBM 700 single-engine turbopropeller airplane.
Denial, September 18, 1992, Exemption No. 5510

Docket No.: 26849.
Petitioner: Captain Scott Ferris.
Sections of the FAR Affected: 14 CFR 61.197(a) and (b).
Description of Relief Sought/ Disposition: To allow Captain Scott Ferris to be exempt from the flight instructor certificate renewal requirements.
Denial, September 16, 1992, Exemption No. 5522

[FR Doc. 92–23942 Filed 10–1–92; 8:45 am]
BILLING CODE 4910–13–M

Deadline Extension for Solicitation of Aviation Research Grants Proposal

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that the deadline for submitting proposals in response to Solicitation 91.1, *Grants for Aviation Research*, which was issued pursuant to Public Law 101–508 and Public Law 101–604, is hereby extended from September 30, 1992 to November 30, 1992. The notice announcing the availability of the Solicitations was originally published at 56 FR 61271.

FOR FURTHER INFORMATION CONTACT: William E. Reilly Jr., Office of Research and Technology Applications, ACL–1 FAA Technical Center, Atlantic City International Airport, NJ 08405. Telephone: (609) 484–4761.

Dated: September 22, 1992.

Gilbert B. Davey, Jr.,

Acting Deputy Director, Federal Aviation Administration, Technical Center.

[FR Doc. 92–23943 Filed 10–1–92; 8:45 am]
BILLING CODE 4910–13–M

Research, Engineering, and Development Advisory Committee; Meeting

Pursuant to section 10(A) (2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Research, Engineering, and Development (R, E&D) Advisory Committee to be held Tuesday, October 27, at 10 a.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the MacCracken Room on the tenth floor.

The agenda for this meeting will include brief updates from the committee on current tasks in the areas of Capacity Technology, Runway Incursions, and Human Factors. In addition, the committee will receive an overview of the FAA R, E&D Program, highlighting the thrusts for the up-coming year, as well as updates on FAA initiatives in the areas of Automation and Satellites.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should contact Ms. Jan Peters, Special Assistant to the Executive Director of the R, E&D Advisory Committee, ASD–6, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3096.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on September 24, 1992.

Martin T. Pozesky,

Executive Director, Research, Engineering, and Development Advisory Committee.

[FR Doc. 92-23987 Filed 10-1-92; 8:45 am]

BILLING CODE 4910-13-M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In August 1992, there were seven applications approved and one supplemental decision.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City and County of Twin Falls, Twin Falls, Idaho.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $270,000.

Earliest Permissible Charge Effective Date: November 1, 1992.

Duration of Authority to Impose: May 1, 1998.

Class of Air Carriers Not Required to Collect PFC's: Part 135 on-demand air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Project Approved to Impose and Use: Construction of terminal building.

Decision Date: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, Federal Aviation Administration, Seattle Airports District Office, 1601 Lind Avenue, SW., suite 205, Renton, Washington 98055-4056, (206) 227-2654.

Public Agency: Port of Seattle, Seattle, Washington.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $28,847,488.

Earliest Permissible Charge Effective Date: November 1, 1992.

Duration of Authority to Impose: January 1, 1994.

Class of Air Carriers Not Required to Collect PFC's: Commercial operators of small aircraft, comprising less than 1 percent of the total enplanements at the airport.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved:

Noise remedy program,
Airfield taxiways,
Runway incursion improvements,
Runway 16L/34R structural overlay and safety area improvements,
Design for the Runway 16R/34L rehabilitation project,
South airport support area planning/environmental impact statement,
Fire response vehicles,
Security improvements,
Satellite transit system improvements.

Decision Date: August 21, 1992.

SUPPLEMENTARY INFORMATION: Mr. Paul Johnson, Federal Aviation Administration, Seattle Airports District Office, 1601 Lind Avenue, SW., suite 205, Renton, Washington 98055-4056, (206) 227-2655.

Public Agency: City of Meridian, Meridian, Mississippi.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $122,500.

Earliest Permissible Charge Effective Date: November 1, 1992.

Duration of Authority to Impose: June 1, 1994.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved:

Medium intensity runway lights on Runway 4/22,
Parallel taxiway lighting along a portion of Runway 4/22,
Fire truck,
Proximity suits,
Construct new taxiway south of the control tower,
Install new automatic gate actuators and gate hangars on four gates,
Overlay T-hangar taxiway and improve drainage,
Seal concrete joints on general aviation parking apron,
Update airport master plan,
Pavement sweeper,
Storm sewer repairs.

Brief Description of Projects Disapproved: Repave Runway 4/22.

Determination: The disapproved amount, $120,000, represents the City's request for PFC revenues to fund the local match of a proposed Airport Improvement Program (AIP) project. The total project cost is $1,200,000. The City requests AIP funding of $1,080,000 of which $1,050,000 is discretionary funding and $30,000 is entitlement funding. The FAA cannot commit to this level of AIP discretionary funding at this time, a critical consideration on an impose and use application.

Decision Date: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Elton E. Jay, FAA Airports District Office, 120 North Hangar Drive, suite B, Jackson, Mississippi, 39208-2306, (601) 965-4628.

Public Agency: Lehigh-Northampton Airport Authority, Allentown, Pennsylvania.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,778,111.

Earliest Permissible Charge Effective Date: November 1, 1992..

Duration of Authority to Impose: April 1, 1995.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements

Brief Description of Project Approved: Expand existing terminal.

Decision Date: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. L.W. Walsh, Federal 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania, 17011, (717) 782-4548.

Public Agency: The Pennsylvania State University and Centre County Airport Authority, State College, Pennsylvania..

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,495,974.

Earliest Permissible Charge Effective Date: November 1, 1992.

Duration of Authority to Impose: July 1, 1997.

Class of Air Carriers not Required to Collect PFC's: Air taxi and charter carriers.

Determination: Approved. The FAA has determined that each proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Project Approved:

Terminal apron expansion,
Land acquisition,
Upgrade and renovate Taxiway B,

Signage update,
Emergency generator,
Obstruction removal and general aviation ramp renovation.

Brief Description of Projects Approved in Part: Terminal expansion—phase I, Terminal expansion—phase II.

Brief Description of Projects Withdrawn:

Stormwater management,
Runway extension,
Runway friction tester,
Runway condition sensors,
Maintenance building and grit storage,
Snow removal equipment—plow,
Aircraft rescue and firefighting vehicle,
Expand Taxiway B,
Recondition existing broom,
Master plan update,
Security control and access improvements,
Automated weather observation systems IV,
Land acquisition,
Snow removal equipment—blower,
Renovate runway lighting,
Terminal building expansion.

Determination: The University and Authority withdrew these projects from its application by letter to the FAA dated August 3, 1992.

Decision Date: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. L.W. Walsh, Federal Aviation Administration, Harrisburg Airports District Office, 3911 Hartzdale Drive, suite 1, Camp Hills, Pennsylvania, 17011, (717) 782–4548.

Public Agency: Great Falls International Airport Authority, Great Falls, Montana.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,010,900.

Earliest Permissible Charge Effective Date: November 1, 1992.

Duration of Authority to Impose: July 1, 2002.

Class of Air Carriers not Required to Collect PFC's: Air taxi and charter carriers operating only as on demand carriers which do not provide regularly scheduled air transportation service.

Determination: Approved. The FAA determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Project Approved to Impose: Airport fire station.

Brief Description of Projects Approved to Impose and Use:

Taxiway between Taxiways Delta and Foxtrot,
Airfield electrical system renovation,
Reconstruct Runway 16/34,
Resurface Runway 3/21,
Erosion control,
Land acquisition: Runway 21 protection zone,
Security access system installation,
Phase 2 of perimeter road,
Master plan update.

Decision Date: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Gabbert, Manager, Montana Airports District Office, Federal Aviation Administration, Helena Regional Airport, FAA Building, room 2, Helena, Montana, 59601, (406) 449–5271.

Public Agency: Lee County Port Authority (LCPA), Fort Myers, Florida.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $257,673,262.

Earliest Permissible Charge Effective Date: November 1, 1992.

Duration of Authority to Impose: June 1, 2015.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. The proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use at Southwest Florida Regional Airport (RSW):

Landside: Modify and expand terminal,
Landside: Midfield terminal planning,
Landside: Professional services,
Land acquisition: Professional services,
Airport support: Master plan update,
Airport support: Noise study.

Brief Description of Projects Approved to Impose Only at RSW:

Landside: Gate and related terminal facilities.

Landside: Commuter terminal facilities,

Airside: Runway 6/24 expansion,

Airside: Terminal ramp expansion,

Airside: Commuter aircraft ramp,

Land acquisition: Airfield and future terminal, phase I.

Brief Description of Project Approved to Impose Only at a Proposed New General Aviation Airport: Land acquisition: Master planning/site selection.

Brief Description of Projects Approved in Part for Concurrent Authority to Impose and Use at RSW:

Airside: Professional services,
Airport support: Airport support equipment,
Airport support: PFC general formulation costs,
Airport support: 2010 "development of regional impact" application,
PFC debt financing costs,
PFC debt service payments.

Brief Description of Projects Disapproved at RSW: Landside: Project work under contract, *Airside:* Project work under contract.

Determination: While the LCPA was asking for PFC revenue to be used to fund only those costs incurred for these projects since November 5, 1990, the FAA has determined that if a notice to proceed or start of physical construction for a proposed PFC project occurred prior to November 5, 1990, the project is not eligible under § 158.3

Airport support: Wastewater treatment and reuse.

Determination: The FAA has determined that this project does not preserve or enhance safety, security, or capacity, mitigate noise impacts or furnish opportunities for enhanced competition between or among carriers.

Airport support: Maintenance building expansion.

Determination: FAA has determined that this project does not meet the criteria included in § 158.15(b).

Airport support: Professional services.

Determination: FAA has determined that this project does not meet the allowable cost criteria in section 158.3.

Airport support: Development impact fees.

Determination: FAA has determined that fees would be used on non-eligible Lee County infrastructure; therefore, this project does not meet the requirements of § 158.15(b).

Brief Description of Project Disapproved at Page Field: Airport support: Professional services.

Determination: The FAA does not view these professional services as a "project" under AIP definitions and are not tied to any development projects approved in this PFC application.

Decision Date: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida, 32827, (305) 420–6582.

PFC Application Supplement Approved

Public Agency: Clark County Department of Aviation, Las Vegas, Nevada.

Application Type: Impose and Use PFC Revenue.

Total Net Approved PFC Revenue in the Supplemental Record of Decision: $189,836,000.

Duration of Authority to Impose: September 1, 2014.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial

operators as previously addressed in the decision dated February 24, 1992.

Brief Description of Projects Approved:

Airport connector—Tunnel portion,
Airport connector—Southern access roadway,
Airport connector—Paradise road portion,
Land acquisition: Airport connector—Southern access roadway right-of-way,

Decision Date: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriquez, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, California, 94010–1303, (415) 876–2805.

Issued in Washington, DC, on September 23, 1992.

Leonard L. Griggs, Jr.,

Assistant Administrator for Airports.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama:					
Huntsville Intl-Carl T. Jones Field, Hunstville	03/06/1992	3	$20,831,051	06/01/1992	11/01/2008
Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995
California:					
Metropolitan Oakland International, Oakland	06/26/1992	3	8,736,000	09/01/1992	09/01/1993
Palm Springs Regional, Palm Springs	06/25/1992	3	44,612,350	10/01/1992	06/01/2019
San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
Denver International (New) Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
Florida:					
Sarasota-Bradenton, Sarasota	06/29/1992	3	38,715,000	08/01/1992	09/01/2005
Georgia:					
Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
Illinois:					
Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
Capital, Springfield	03/27/1992	3	682,306	06/01/1992	05/01/1994
Massachusetts:					
Worcester Municipal, Worcester	07/28/1992	3	2,301,382	09/01/1992	10/01/1997
Maryland:					
Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Minnesota:					
Minneapolis-St Paul International, Minneapolis	03/31/1992	3	23,408,819	06/01/1992	04/01/1993
Mississippi:					
Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
Hattiesburg-Laurel Regional, Laurel-Hattiesburg	04/15/1992	3	119,153	07/01/1992	01/01/1998
Montana:					
Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
New Jersey:					
Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
Nevada:					
McCarran International, Las Vegas	02/24/1992	3	428,054,380	06/01/1992	02/01/2004
New York:					
Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
New York:					
John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
LaGuardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
Ohio:					
Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
Oklahoma:					
Lawton Municipal, Lawton	05/08/1992	2	334,078	08/01/1992	01/01/1996
Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
Oregon:					
Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
Pennsylvania:					
Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
Tennessee:					
Memphis Internaitonal, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
Virginia:					
Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 92-23944 Filed 10-1-92; 8:45 am]
BILLING CODE 4910-13-M

Federal Transit Administration

FTA Sections 3 and 9 Grant Obligations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, signed into law by President George Bush on October 28, 1991, contained a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the Federal Register every 30 days of grants obligated pursuant to sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The Section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The Section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Birmingham-Jefferson County Transit Authority, Birmingham, AL	AL-03-0012-00	$2,899,200	08/03/92
Georgia Dept. of Transportation—Office of Intermodal Programs, Georgia	GA-03-0038-00	265,708	08/03/92
City and County of Honolulu, Honolulu, HI	HI-03-0014-01	20,925,000	08/31/92
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL—Northwestern IN	IL-03-0131-02	18,362,500	08/05/92
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL—Northwestern IN	IL-03-0162-00	16,185,500	08/05/92
City of Chicago, Chicago, IL—Northwestern IN	IL-03-0163-00	17,067,000	08/05/92
Metropolitan Transit Authority of Harris County, Houston, TX	TX-03-0150-00	6,400,000	08/14/92
Metropolitan Transit Authority of Harris County, Houston, TX	TX-03-3500-00	262,500	08/17/92

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
City of Fresno, Fresno, CA	CA-90-X485-00	$1,837,777	08/20/92
Connecticut Department of Transportation, Connecticut	CT-90-X210-00	14,173,600	08/27/92
City of Tyler, Tyler, TX	TX-90-X226-00	181,200	08/27/92
Intercity Transit, Olympia, WA	WA-90-X130-00	1,479,840	08/13/92

Issued on: September 28, 1992.

Brian W. Clymer,

Administrator.

[FR Doc. 92-23879 Filed 10-1-92; 8:45 am]
BILLING CODE 4910-57-M

Research and Special Programs Administration

[Docket No. P-87-7W; Notice 2]

Transportation of Hazardous Liquids By Pipeline; Grant of Waiver, Exxon Pipeline Co.

The Exxon Pipeline Company (Exxon) petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with the hydrostatic test requirements of 49 CFR 195.302 and the record retention requirements of 49 CFR 195.310. The petition pertains to two tie-in segments (totaling 80-feet) in an 18.39 mile pipeline in Harris County, Texas. The 8-inch pipeline transports liquid ethylene, a highly volatile liquid (HVL), between the Shell Deer Park Plant, located south of the Houston Ship Channel, and the Exxon Mont Belvieu Plant, located north of the Houston Ship Channel. Construction of the pipeline was completed in 1969; it was placed in HVL service that same year, and is operated as an interstate pipeline connected to an out-of-state system. The pipeline is owned by Exxon, leased by Shell Chemical Company and operated by Shell Pipe Line Corporation.

In 1987, Exxon discovered that the hydrostatic test records required by § 195.310 were available for all but 0.08 percent of the 18.39 mile pipeline. Records for the 53-foot and 27-foot tie-ins, located just north and south of the Houston Ship Channel, could not be located. Subsequently, Exxon petitioned RSPA for a waiver of the two short tie-in segments from the hydrostatic test and records retention requirements of §§ 195.302 and 195.310.

Accompanying Exxon's petition for waiver was information to support their position that granting a waiver would be in the best interest of pipeline safety. That information, presented in more detail in the RSPA response to Exxon's petition [Notice 1] [56 FR 46461; September 12, 1991], is summarized as:

1. The two segments are to continue operating at low hoop stress.

2. There are no indications of internal or external corrosion in the two segments.

3. The two segments are not near homes or occupied buildings.

4. No known failures have occurred in the two segments.

5. There is a strong probability that the two segments were properly pretested and that those test records cannot be located.

In response to the petition, and the justification contained therein, RSPA stated in Notice 1 (above) that it accepted the argument that the two segments were properly hydrostatically tested and found no need to grant the requested waiver from the hydrostatic testing requirements of § 192.302. Instead RSPA proposed to grant a waiver from compliance with the record retention requirements of § 195.310.

A supporting letter was received from the operator of the 8-inch pipeline at the time of submission of Exxon's request for waiver. Also, RSPA received only one response to Notice 1. That respondent, a gas pipeline company in Houston, Texas, agreed with the RSPA assessment and the proposed granting of the waiver.

In accordance with the foregoing, RSPA, by this order, finds that Exxon's compliance with § 195.310, for the two tie-ins, is unnecessary for the reasons stated in the Notice of Petition for Waiver [Notice 1] [56 FR 46461; September 12, 1991], and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, the Exxon Pipeline Company's petition for waiver from compliance with § 195.310 for the two short tie-in segments is granted.

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

Issued in Washington, DC on September 28, 1992.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety

[FR Doc. 92-23828 Filed 10-1-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 30-92]

Treasury Notes, Series AE-1994

Washington, September 23, 1992.

The Secretary announced on September 22, 1992, that the interest rate on the notes designated Series AE-1994, described in Department Circular—Public Debt Series—No. 30-92 dated September 16, 1992, will be 4 percent. Interest on the notes will be payable at the rate of 4 percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 92-23888 Filed 10-1-92; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series; No. 31-92]

Treasury Notes, Series R-1997

Washington, September 24, 1992.

The Secretary announced on September 23, 1992, that the interest rate on the notes designated Series R-1997, described in Department Circular—Public Debt Series—No. 31-92 dated September 16, 1992, will be 5½ percent. Interest on the notes will be payable at the rate of 5½ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 92-23906 Filed 10-1-92; 8:45am]

BILLING CODE 4810-40-M

Directive

Date: September 25, 1992.

Number: 15-11.

Subject: Approval of Regulations on Viticultural Areas.

1. *Delegation.* This directive authorizes the Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement) to approve regulations concerning the establishment of viticultural areas which are used as appellations of origin in wine labeling and advertising.

2. *Cancellation.* Treasury Directive 15-11, "Approval of Regulations on Viticultural Areas," dated September 29, 1986, is superseded.

3. *Authority.* Treasury Order 101-05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

4. *Office of Primary Interest.* Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-23945 Filed 10-1-92; 8:45 am]

BILLING CODE 3810-25-M

Office of Thrift Supervision

[AC-55; OTS No. 1708]

Midwest Federal Savings and Loan of Eastern Iowa, Burlington, Iowa; Approval of Conversion Application

Notice is hereby given that on September 24, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Midwest Federal Savings and Loan Association of Eastern Iowa, Burlington, Iowa, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: September 28, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-23907 Filed 10-1-92; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATES: The board membership change is effective as of October 2, 1992.

FOR FURTHER INFORMATION CONTACT:

Mr. John S. Welch (Co-Executive Secretary), Chief of Operations Division of Personnel, Office of Personnel, Bureau of Broadcasting, U.S. Information Agency, 330 Independence Avenue, SW., Washington, DC 20547. Telephone (202) 619-7545;

or

Ms. Patricia H. Noble (Co-Executive Secretary), Chief, Domestic Personnel Division, Office of Personnel, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547. Telephone (202) 619-4617.

SUPPLEMENTARY INFORMATION: In accordance with Section 4314(c)(1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95454), the following list supersedes the U.S. Information Agency Notice (56 FR 56688, November 6, 1991).

Chairperson: Associate Director for Management—John Condayan (Presidential Appointee)

Deputy Chairperson: Associate Director for Broadcasting—Chase G. Untermeyer (Presidential Appointee)

Career SES Members: Daniel S. Campbell, Director, Office of Technology, Bureau of Management. Alan L. Heil, Deputy Director of Programs, Bureau of Broadcasting. Ronald Linz, Deputy for Systems Engineering, Bureau of Broadcasting. Steven C. Munson, Director, Office of Policy, Bureau of Broadcasting. Rick A. Ruth, Deputy Chief of Staff, Office of the Director. Stanley M. Silverman, Director, Office of the Comptroller.

Alternate Career SES Members: Eileen K. Binns, Director, Office of Administration, Bureau of Management. Janice H. Brambilla, Director, Office of Personnel, Bureau of Broadcasting.

This supersedes the previous U.S. Information Agency Notice (56 FR 56688, November 6, 1991).

Dated: September 28, 1992.

John Condayan,

Associate Director for Management, U.S. Information Agency.

[FR Doc. 92-23969 Filed 10-1-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 192
Friday October 2, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 28, 1992, 57 FR 44613.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 30, 1992 9:00 a.m.

CHANGE IN THE MEETING: The following Company has been added as Item No. 3 on the Closed Meeting Agenda Scheduled for September 30, 1992:

Item No., Docket No., and Company

(3) *Columbia Gas System, Inc., et al.*

Lois D. Cashell,

Secretary.

[FR Doc. 92-24139 Filed 9-30-92; 3:41 am]

BILLING CODE 6717-02-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: September 28, 1992, 57 FR 44613.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 30, 1992, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Items CAG-2 and CAG-28 on the Agenda scheduled for September 30, 1992:

Item No., Docket No., and Company

CAG-2 RS92-65-000, Kern River Gas Transmission Company
CAG-28 RP92-220-000 and 001, Tennessee Gas Pipeline Company

Lois D. Cashell,

Secretary.

[FR Doc. 92-2414 Filed 91-30-92; 3:41 pm]

BILLING CODE 6717-02-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, October 8, 1992 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor.)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992-36: Senator Kent Conrad
Announcement of Effective Date for Final Rule Regarding Special Fundraising Projects and Other Uses of Candidate Names by Unauthorized Committees
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores R. Hardy,

Administrative Assistant.

[FR Doc. 92-24118 Filed 9-30-92; 3:01 pm]

BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 7, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 30, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-24056 Filed 9-30-92; 2:35 pm]

BILLING CODE 6210-01-M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 8, 1992, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Proposed Debt Collection Plan and Related Issues.
(2) Executive Resources Board.
(3) Medicare Contract and Related Items.
(4) IRS Working Group Options.
(5) Office of Quality and Compliance.
(6) Requirements Document for Medical Evidence Development and Status of Policy.
(7) Meeting with Department of Treasury.
(8) San Francisco Regional Director's Vacancy.
(9) Change-of-Station Moving Expenses (Boise, Idaho and Toledo, Ohio).
(10) Request for Reconsideration of Temporary Quarters and Storage (Virginia Waller-Earl).
(11) Regulations—Part 203, Employees Under the Act.
(12) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.
(13) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: September 29, 1992.

Beatric Ezerski,

Secretary to the Board.

[FR Doc. 92-24119 Filed 9-30-92; 3:02 pm]

BILLING CODE 7905-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME:

November 9, 1992, 1:00 p.m.-5:30 p.m.
November 10, 1992, 9:15 a.m.-2:00 p.m.

PLACE: District of Columbia Public Library, Martin Luther King Memorial Library, 901 G Street, N.W. (Room A-9). Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Executive Director's Report
International Activities Reports
Presentation, Dr. Hardy Franklin, Director M.L. King Memorial Library
AMERICA 2000, Library Partnership
Community Learning and Information Network
Report, Status of Publications:
WHCLIS Final Report
NREN

Library and Information Services for Native Americans
NCLIS Committee Reports
NCLIS FY 1993 Meeting Schedule
Public Comment
Unfinished Business

FOR FURTHER INFORMATION CONTACT:
Barbara Whiteleather, NCLIS, Suite 310, 1111–18th Street, N.W., Washington, D.C. 20036, (202) 254–3100.

Dated: September 28, 1992.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 92–24030 Filed 9–30–92; 10:37 am]

BILLING CODE 7527–01–M

Corrections

Federal Register
Vol. 57, No. 192
Friday, October 2, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-813]

Initiation of Antidumping Duty Investigation; Certain Alloy and Carbon Hot Rolled Bars, Rods and Semifinished Products of Special Bar Quality Engineered Steel From Brazil

Correction

In notice document 92-15738 beginning on page 29703 in the issue of Monday, July 6, 1992, on page 29704, in the first column, in the next to last full paragraph, in the last line, "16 percent" should read "61 percent".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASO-3]

Proposed Alteration of VOR Federal Airways and Revocation of V-515; TN

Correction

In proposed rule document 92-21093 beginning on page 40151 in the issue of Wednesday, September 2, 1992, make the following correction:

§ 71.1 [Corrected]

1. On page 40152, in the second column, under § 71.1, under **V-136 [Revised]**, in the first line, after "INT" insert "Hinch".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ANM-16]

Proposed Establishment and Alteration of Jet Routes

Correction

In proposed rule document 92-21097 beginning on page 40149 in the issue of Wednesday, September 2, 1992, make the following correction:

§ 71.1 [Corrected]

1. On page 40151, in the first column, under § 71.1, under **J-154 [REVISED]**, in the fifth line, "131°T(122°M)" should read "133°T(122°M)"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASO-6]

Proposed Alteration to VOR Federal Airways; TN

Correction

In proposed rule document 92-21099 beginning on page 40154 in the issue of Wednesday, September 2, 1992, make the following correction:

§ 71.1 [Corrected]

1. On page 40156, in the first column, under § 71.1, under **J-91 [Revised]**, in the first line, "252°" should read "242°".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Grand Forks Mark Andrews International Airport, Grand Forks, ND

Correction

In notice document 92-22608 beginning on page 43281 in the issue of Friday, September 18, 1992, on page 43282, in the first column, under **ADDRESSES**, in the sixth line, "200" should read "2000".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8412]

RIN 1545-AM54

Application of Section 904 to Income Subject to Separate Limitations

Correction

In rule document 92-8497 beginning on page 20639 in the issue of Thursday, May 14, 1992, make the following corrections:

1. On page 20640, in the third column, in the second full paragraph, in the seventh line, "§ § 1.861-1T(d)" should read "§ § 1.861-11T(d)".

§ 1.904-4 [Corrected]

2. On page 20645, in the 2d column, in § 1.904-4(c)(1), in the 14th line, after "(10)" insert "of".

BILLING CODE 1505-01-D

federal register

Friday
October 2, 1992

Part II

Department of Transportation

Coast Guard

33 CFR Part 164 and 46 CFR Part 35

Unattended Machinery Spaces: Operating Requirements; Second Officer on the Bridge; and Use of Automatic Pilot: Area Restrictions and Performance Requirements; Proposed Rulemakings

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 91-203]

RIN 2115-AE12

Unattended Machinery Spaces: Operating Requirements

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On April 9, 1992, the Coast Guard published a notice of proposed rulemaking that would have allowed highly automated tank vessels to navigate with unattended machinery spaces in the navigable waters of the United States. This supplemental notice of proposed rulemaking completely revises the April 9 proposal by requiring the machinery spaces of integrated tug/barge combinations and tankers over 1,600 gross tons to be attended when underway in the navigable waters of the United States. Requiring a licensed engineer on watch in the machinery spaces will ensure that faults in the engineering systems will be noticed and addressed without delay. Consequently, this proposed rule should decrease the likelihood of casualties.

DATES: Comments must be received on or before December 1, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-203), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection and copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Paul Jewell, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267-6746, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-203) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES**." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Paul Jewell, Project Manager, and Joan Tilghman, Project Counsel, OPA 90 staff.

Related Rulemakings

This rulemaking is a companion rulemaking to "Second Officer on the Bridge" (CGD 91-222) and "Use of Automatic Pilot: Area Restrictions and Performance Requirements" (CGD 91-204). Those proposed rules are published elsewhere in this issue of the **Federal Register**. If these three proposed rules are adopted, they will be combined in a new section, 33 CFR 164.13 "Navigation underway: Tankers and ITBs." In this rulemaking, proposed paragraph (a) of new § 164.13 defines "tanker" as a self propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces, and "integrated tug barge" or "ITB" as a combination of a pushing vessel and a vessel being pushed ahead which are rigidly connected in a composite unit and are required by rule 24(b) of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) (App. A to 33 CFR part 81) to exhibit the lights prescribed in rule 23 for a "Power Driven Vessel Underway." In this rulemaking (CGD 91-203), proposed paragraph (b) of new § 164.13 requires the machinery spaces of these vessels to be attended when underway in the navigable waters of the United States. In CGD 91-222, proposed paragraph (c), designates all internal waters of the United States as waters where seagoing tankers of 1,600 gross tons or more will be required to navigate with at least two licensed officers on the bridge. In CGD 91-204, proposed paragraphs (d) and (e) of new § 164.13 will establish restrictions and exemptions for the use of auto pilots in U.S. navigable waters.

Background and Purpose

Section 4114(a) of OPA 90 requires the Coast Guard to define the conditions under which, and designate the waters upon which, tank vessels subject to 46 U.S.C. 3703 may operate in U.S. navigable waters with an unattended engine room. A "tank vessel" to which 46 U.S.C. 3703 applies is defined in 46 U.S.C. 2101(39) as—

> A vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—
>
> (A) is a vessel of the United States;
>
> (B) operates on the navigable waters of the United States; or
>
> (C) transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

Section 4114(a) specifies that this rule apply only on the navigable waters of the United States. As defined in 33 U.S.C. 2701, navigable waters are the waters of the United States, including the territorial sea. This definition does not encompass the waters of the Exclusive Economic Zone (EEZ). Further, under 46 U.S.C. 3702 and 3703, foreign vessels on innocent passage on the navigable waters of the United States are exempt from rules issued under section 4114(a).

On April 9, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (57 FR 12378) entitled "Unattended Machinery Spaces: Operating Requirements." In the NPRM the Coast Guard proposed to allow tank vessels with automated vital systems, possessing documents attesting to their suitability for operation with periodically unattended machinery spaces and meeting other conditions, to operate with unattended machinery spaces in the navigable waters of the United States. Almost all of the 159 comments objected to the NPRM. Although a public hearing was requested, one was not held because of the Coast Guard's decision to revise the proposed rule.

Discussion of Comments and Changes

Most of the comments had similar objections to the proposed rule. Generally, the comments stated that engineering systems are subject to the greatest stresses when the vessel is maneuvering in near shore waters, and consequently, these systems are most likely to malfunction when the vessel is maneuvering. An engineering casualty

on a tanker in near shore waters increases the risk that a spill will occur because these waters are generally shallow and congested, giving little time for vessel operators to address an error or emergency before the vessel is endangered. Many comments stated that even highly sophisticated automated systems are not likely to detect all engine faults in sufficient time for the engineer to correct the problem if the engineer is not immediately available to respond to the alarm.

A number of the comments cited occasions of engineering system failures when vessels were maneuvering in near shore waters. These comments noted that serious incidents were averted because the machinery spaces were manned during these incidents and because the engineer could quickly diagnose and correct these failures.

Most comments recommended that a tanker's machinery spaces be manned constantly when the vessel is in the navigable waters of the United States. Many comments expressed concern that the proposed rule would encourage shipping companies to reduce costs by pressuring masters to operate without a licensed engineer in the machinery spaces, resulting in an increased risk of vessel casualties and oil spills.

Several comments stated that tanker masters and chief engineers already ensure that the machinery spaces are manned when the vessel is underway in the navigable waters of the United States. These comments suggested that the Coast Guard codify this practice by requiring a licensed engineer to be on watch when a tanker is underway in the navigable waters of the United States.

After considering these comments, the Coast Guard decided to revise the original proposal. The public response to the NPRM indicates that even tankers certified to operate with periodically unattended machinery spaces normally operate with a licensed engineer monitoring the automated systems in the machinery spaces when the vessel is underway in the navigable waters of the United States. The good safety record of vessels certified to operate with periodically unattended machinery spaces may reflect this practice.

The Coast Guard sees merit in the points made by the comments and has determined that a more conservative approach than proposed in the NPRM would better serve the public interest. Therefore, the Coast Guard is now proposing that integrated tug and tank barge combinations certificated as tankships and tankers of 1,600 gross tons or more have a licensed engineer attending the machinery spaces when the vessel is underway in the navigable waters of the United States out to 3 nautical miles seaward from the territorial sea baseline.

This approach is consistent with International Maritime Organization (IMO) guidance contained in Resolution 2 adopted by the International Conference on Training and Certification of Seafarers, 1978 (Operational Guidance for Engineer Officers in Charge of an Engineering Watch). Paragraph 22 of the Annex to the resolution discusses "Navigation in Congested Waters" and states:

> The engineer officer in charge of the watch should ensure that all machinery involved with the maneuvering of the ship can immediately be placed in manual modes of operation when notified that the ship is in congested waters. * * * Emergency steering and other auxiliary equipment should be ready for immediate operation.

There were only a few comments that agreed with the NPRM, and most of those suggested eliminating the proposed requirement for a licensed engineer to continually attend the machinery spaces if an alarm condition had occurred within the previous 12 hours. The Coast Guard is revising this proposed rule to require that the machinery spaces be continually attended when in the navigable waters of the U.S., irrespective of any previous alarm condition. To permit the machinery spaces to be unattended when there has been a recent alarm condition would be contrary to the present proposal.

One comment recommended that the applicability of the proposed rule be made explicitly clear because a definition of a tank vessel is not included in 33 CFR part 164 where the Coast Guard proposed to codify this rule.

OPA 90 states that this rule should apply to tank vessels subject to 46 U.S.C. 3703. These "tank vessels" include self-propelled ships and barges. However, as a practical matter this rule should not apply to tank barges because tank barges have neither propulsion machinery nor a separate crew. The Coast Guard has also adopted the position that tank vessels that carry oil as a secondary cargo should not be subject to this rule because they do not pose the same threat to the environment as tank vessels designed to carry oil as a primary cargo. The Coast Guard is proposing to narrow the applicability of this rule to tankers of 1,600 gross tons and more and ITBs certificated as a tankship on its Certificate of Inspection. The Coast Guard is proposing that this rule should apply to ITBs certificated as a tankship because ITBs are navigated in the same manner as a tanker and ITBs pose a threat to the environment similar to tankers.

Under 33 CFR part 164, vessels which are less than 1,600 gross tons are excluded from the Navigation Safety regulations of that part. The Coast Guard's position is that it is also appropriate to exempt vessels less than 1,600 gross tons from this rulemaking. These vessels pose less of a safety risk than larger tankers because they have shallow drafts and are more maneuverable than larger tankers. The size and maneuverability of vessels less than 1,600 gross tons allows them to avoid navigational hazards more easily than larger tankers.

The Coast Guard is also proposing that this rule apply when in the navigable waters of the U.S. out to 3 nautical miles seaward from the territorial sea baseline. The Coast Guard is proposing to limit this rule to within 3 nautical miles of the baseline to clearly specify where this rule will apply. Because the U.S. has declared that the territorial sea extends to 12 nautical miles for some purposes and 3 nautical miles for others, the specific language in this proposed rule should resolve any question mariners may have about the waters where the rule applies and limit its application to nearshore waters.

One comment stated that vessels on the St. Lawrence Seaway should not be excluded from this rule.

The St. Lawrence Seaway Authority has already promulgated separated regulations in 33 CFR 401.35 designating certain portions of the St. Lawrence Seaway where propulsion machinery, including the main engine control station, must be attended.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures for Simplification Analysis and Review of Regulations (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a separate full Regulatory Evaluation is unnecessary.

This rule will primarily affect tankers that are certificated to operate with periodically unattended machinery spaces. Tankers and ITBs must comply with this proposed rule only when the vessel is underway in the navigable waters of the United States out to 3 nautical miles seaward from the territorial sea baseline. During the course of a voyage, most tankers spend only a limited time in these waters. The comments received to the original

NPRM indicate the tanker masters already ensure that a licensed engineer is attending the machinery spaces when underway in the navigable waters of the United States. Consequently, their proposed rule would add no costs to the operation of most tankers.

The Coast Guard is aware of only one tanker certificated to operate with periodically unattended machinery spaces that does not leave the navigable waters of the United States. This tanker will be required to keep a licensed engineer on watch in the machinery spaces continually when underway. This tanker is already required by its certificate of inspection to operate with three licensed engineers. Consequently, this tanker already has a sufficient number of licensed engineers to comply with this rule without hiring additional personnel.

Similarly, there are seven U.S. flag ITBs certificated as tankships that may spend more time than tankers in the navigable waters of the U.S. out to 3 nautical miles. These vessels also are required to carry at least three licensed engineers and should be able to comply with this rule without hiring additional personnel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). "Small entities" also include small not-for-profit organizations and small governmental jurisdictions. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rulemaking prohibits the operation of tankers and affected ITBs in the navigable waters of the United States with unattended machinery spaces. It is a well settled principle that regulations concerning manning of commercial vessels in U.S. waters are an exclusive domain of the Coast Guard. Further, standardizing vessel manning requirements is necessary because vessels move from port to port in the national marketplace, and variation of manning requirements would be unreasonably burdensome. Therefore, if this rule becomes final, the Coast Guard intends it to preempt State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary. A preliminary Environmental Assessment is available in the docket for inspection or copying where indicated under "**ADDRESSES**."

This proposal is not expected to result in significant impact of the quality of the human environment, as defined by the National Environmental Policy Act. In evaluating the environmental impact of the proposed action, the following points were considered:

(1) Environmental benefits of requiring a licensed engineer in machinery spaces cannot be quantified in isolation, due to the complementary effects of other OPA 90-related regulatory changes. For example, regulations dealing with improved crew training, manning standards, vessel traffic control, and other OPA 90 initiatives should result in reduced casualties and reduced numbers and volumes of spills;

(2) The proposed action involves the navigable waters of the U.S. and should contribute toward the prevention of spills especially when vessels are maneuvering near shorelines and/or in congested waterways.

List of Subjects in 33 CFR Part 164

Incorporation by reference, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Seamen, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 164 as follows:

PART 164—NAVIGATION SAFETY REGULATIONS

1. The authority citation for part 164 is revised to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502, 8503; sec. 4114(a), Pub. L. 101–380, 104 Stat. 517 (46 U.S.C. 3703 note). Sec. 164.61 also issued under 46 U.S.C. 6101.

2. Section 164.13 is added to read as follows:

§ 164.13 Navigation underway: Tankers and ITBs.

(a) As used in this section—

Integrated tug barge or *ITB* means a combination of a pushing vessel and vessel being pushed ahead which are rigidly connected in a composite unit and are required by rule 24(b) of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) (Appendix A to part 81 of this chapter) to exhibit the lights prescribed in rule 23 for a "Power Driven Vessel Underway."

Tanker means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.

(b) All tankers, and ITBs certificated to operate as a tankship, underway in the navigable waters of the United States out to 3 nautical miles seaward from the territorial sea baseline, must have an adequate engineering watch, including a licensed engineer, physically present in the machinery spaces such that the watch is able to monitor the propulsion system, communicate with the bridge, and implement manual control measures immediately when necessary.

Dated: September 24, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92–23737 Filed 10–1–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 164

[CGD 91–222]

RIN 2115–AE03

Second Officer on the Bridge

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Oil Pollution Act of 1990 (OPA 90) requires the Coast Guard To designate U.S. waters where a second licensed officer must be on the bridge of a coastwise seagoing tanker over 1,600 gross tons. Under the Ports and Waterways Safety Act, the Coast Guard also is proposing to require the second officer on foreign flag tankers over 1,600 gross tons and U.S. registered tankers over 1,600 gross tons. The majority of tanker casualties are a result of personnel error. This rule would increase protection for U.S. shores and

adjacent waters by ensuring that an officer other than the required pilot is available to minimize the risk of casualty in conditions that create a need for navigational care.

DATE: Comments must be received on or before December 1, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–222), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Paul Jewell, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267–6746, between 7 a.m and 3 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–222) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change the proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Paul Jewell, Project Manager, and Joan Tilghman, Project Counsel, OPA 90 Staff.

Related Rulemakings

This rulemaking is a companion rulemaking to "Unattended Machinery Spaces" (CGD 91–203) and "Use of Automatic Pilot: Area Restrictions and Performance Requirements" (CGD 91–204). Those proposed rules are published elsewhere in this issue of the **Federal Register.** If these three proposed rules are adopted, they will be combined in a new section, 33 CFR 164.13 "Navigation underway: Tankers and ITBs." In CGD 91–203, proposed paragraph (a) of new § 164.13 defines "tanker" as a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces, and "integrated tug barge" or "ITB" as a combination of a pushing vessel and a vessel being pushed ahead which are rigidly connected in a composite unit and are required by rule 24(b) of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) (App. A to 33 CFR part 81) to exhibit the lights prescribed in rule 23 for a "Power Driven Vessel Underway." In CGD 91–203, proposed paragraph (b) of new § 164.13 requires the machinery spaces of these vessels to be attended when underway in the navigable waters of the United States. In this rulemaking (CGD 91–222), proposed paragraph (c), designates all internal waters of the United States as waters where seagoing tankers of 1,600 gross tons or more will be required to navigate with at least two licensed officers on the bridge. In CGD 91–204, proposed paragraphs (d) and (e) of new § 164.13 will establish restrictions and exemptions for the use of auto pilots in U.S. navigable waters.

Background and Purpose

To reduce the risk of a casualty, 46 U.S.C. 8502(h), as added by section 4116(b) of OPA 90, directs the Secretary to designate U.S. waters where a second officer must be on the bridge of coastwise seagoing tankers over 1,600 gross tons. Under the statute, the second licensed officer is in addition to a required Federal pilot.

The statutory second officer requirement applies to coastwise seagoing tankers over 1,600 gross tons. "Tanker" is defined in 46 U.S.C. 2101 as a "self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces." Tank barges are not included under section 4116(b) because they are not "self-propelled" vessels.

By framing the second officer requirement as an amendment to 46 U.S.C. 8502, Congress chose not to capture foreign flag tankers or U.S. tankers sailing on registry within the scope of section 4116(b) of OPA 90. This may have been because most States already require those tankers to board a pilot in State pilotage waters. Further, 33 U.S.C. 1228 requires a vessel, while underway in U.S. navigable waters, to have at least one licensed deck officer on the navigation bridge who is capable of clearly understanding English. The effect of these two conditions would seem to be that a foreign flag tanker will have two licensed officers (a State pilot and an English-speaking officer) on the bridge while the vessel is transiting most internal waters of the United States. In practice, however, this may not be the case.

In fifteen States, a foreign flag or U.S. registered vessel is required only to pay a pilotage fee in the States' pilotage waters; there is no requirement that a State pilot actually board the vessel. On the other hand, coastwise seagoing vessels not sailing on register are required to carry a pilot whenever these vessels are in the navigable waters of the U.S.

If coastwise seagoing tankers were the only tankers subject to this second officer rule, differences in State and Federal rules would subject coastwise seagoing tankers to more stringent navigational requirements than foreign flag tankers, U.S. registered tankers, and U.S. tankers operating exclusively on the Great Lakes or on a Lakes, Bays, and Sounds route. More importantly, these disparate requirements mean that the marine environment is subject to a risk of casualty which Congress has found unacceptable for a class of vessels, (i.e., coastwise seagoing tankers), whose officers are more likely to be familiar with the waters being traversed than are the officers of foreign flag tankers or U.S. tankers sailing on registry.

Although the Coast Guard cannot apply a second officer rule to foreign flag tankers and U.S. tankers sailing on registry under 46 U.S.C. 8502, as amended, the Coast Guard is proposing to resolve the disparity under section 12 of the Ports and Waterways Safety Act (33 U.S.C. 1231). Therefore, under the authority of these two provisions, all seagoing tankers of 1,600 gross tons or more, when navigating in the internal waters of the United States, will be required to comply with the rule.

The Coast Guard does not intend to include tankers that operate solely on the Great Lakes or are limited to Lakes, Bays, and Sounds routes. These tankers (presently two on the Great Lakes and three in Long Island Sound) operate repeatedly on the same limited routes, and therefore their licensed deck officers are thoroughly familiar with the

routes they transit. In addition these tankers are small (from 1,698 gross tons to 5,853 gross tons), maneuverable, and have shallow drafts. Because they are small, they carry less cargo than larger ocean going tankers. Consequently, they are able to navigate the internal waters of the U.S. with less risk than the larger coastwise seagoing and international trade tankers. Requiring a second officer on the bridge of these vessels would have minimal impact on their safe operation and, because increased manning would be required whenever the vessels are underway, would have a disproportionate adverse effect on the cost of operating these vessels.

The Coast Guard considered a number of approaches to implement 46 U.S.C. 8502(h) as alternatives to the approach proposed. (To take no action would let stand a status quo which Congress has found unacceptable.) One was to require an officer in addition to the required Federal pilot on all U.S. coastwise seagoing tankers in all U.S. waters. Although this approach creates a single standard which would facilitate both enforcement and compliance, it subjects U.S. coastwise seagoing tankers to more stringent navigational requirements than foreign tankers or U.S. tankers sailing on registry.

Another approach was to delegate to District Commanders the authority to designate those areas in their District where a tanker subject to 46 U.S.C. 8502(h) must have a second officer. This approach recognizes that District Commanders have a special knowledge of ports and the surrounding environments in their district. On the other hand, it also creates a high potential for inconsistency from port to port, complicating both enforcement and compliance.

Discussion of Proposed Amendments

In this rulemaking, new paragraph (c) would designate all internal waters of the United States as waters where seagoing tankers of 1,600 gross tons or more will be required to navigate with at least two licensed officers on the bridge. Because part 164 only applies to vessels of 1,600 gross tons or more, specific language discussing the size applicability is not included in the new section.

Because internal waters are generally congested, shallow, and hazardous, vessels must take an extra measure of caution when navigating these waters. Most mariners and Coast Guard personnel know the location of "internal waters," which are defined in 33 CFR 2.05–20 as the waters shoreward of the territorial sea baseline. Consequently, this proposed rule should cause little or no difficulty for those who must comply with or enforce the rule.

Not only does this proposal recognize that tankers over 1,600 gross tons must navigate in internal U.S. waters with an extra measure of caution; but it also gives mariners a rule that facilitates compliance, decreases the risk of tanker casualties in internal waters, and minimizes inconsistencies in rules governing foreign flag and U.S. tanker navigation safety.

The Coast Guard requests comments on this proposed rule, the merits of each approach presented in this notice, and is particularly interested in comments regarding the waters where this rule should apply.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation is unnecessary.

The overall potential benefit of these proposed rules is that they will provide increased protection from oil spills for U.S. shores and adjacent waters. The National Transportation Safety Board found that the T/V EXXON VALDEZ grounding was caused primarily by an error of the sole licensed deck officer on the navigational bridge. Coast Guard casualty data indicates that in 121 tank ship groundings or collisions which occurred in the internal waters of the U.S. in 1989 and 1990, personnel error was cited as the primary cause. For tankers, the additional precaution of a second licensed officer should reduce the risk of casualties caused by personnel error and, therefore, the occurrence of oil spills.

This approach requires tanker crews to provide increased protection for U.S. shores and adjacent waters. Requiring two licensed officers on the bridge of tankers reduces the likelihood that a serious navigational error will occur or go unnoticed.

The potential costs of these rules depend on the individual tanker's route. If every owner of a coastwise seagoing tanker over 1,600 gross tons finds it necessary to hire two additional third mates to comply with this rule, the approximate total annual cost would be about $12.2 million (worst case). That total cost assumes an annual wage rate for a licensed third mate of $42,000. However, the Coast Guard does not expect that a cost of this magnitude will be required. The actual cost of this rule is expected to be less than $1 million annually.

Tankers must comply with this rule only when the vessel is navigating in the internal waters of the United States. During the course of a voyage, seagoing tankers spend only a limited time in these internal waters—generally less than 4 hours. A review of the general orders issued by most tanker companies and interviews with licensed tanker officers reveal that a second licensed officer is on the bridge when the vessel is transiting most internal waters.

On voyages through Prince William Sound, Puget Sound, and the Chesapeake Bay, a second licensed officer will be required on the bridge for transits which may take up to 8 hours. However, a literature review and interviews with tanker officers indicate that without hiring additional personnel, U.S. tankers that routinely transit those areas sail with a sufficient number of licensed mates to comply with this rule. United States tanker owners may incur some overtime costs, but these costs should be minimal. The number of licensed crew members should be sufficient to avoid most overtime.

Foreign tanker crews already must have an English-speaking licensed deck officer on the bridge when in U.S. waters. When in most State pilotage waters, a foreign tanker also must navigate with a State pilot. Consequently, for foreign flag vessels, this rule may add costs only in internal waters that are not State pilotage waters (most notably the Strait of Juan de Fuca). In all but 15 States, foreign and U.S. registered tankers transiting State pilotage waters are required to carry a State pilot. In those 15 States, a tanker owner or operator must pay all, or a portion, of a pilotage fee irrespective of whether a pilot boards. In practice, virtually all of these tankers actually employ a pilot. Therefore, this rule should result in a minimal increase in costs to foreign and U.S. registered tankers.

The Coast Guard encourages public comment regarding any potential compliance cost which the Coast Guard has not anticipated.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of

the Small Business Act (15 U.S.C. 632). "Small entities" also include small not-for-profit organizations and small governmental jurisdictions. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would require a second licensed officer on the bridge of all seagoing tankers of 1,600 gross tons or more transiting the internal waters of the Unites States, irrespective of the vessel's flag status. Generally, for foreign flag vessels and United States vessels sailing on registry in U.S. internal waters, States set pilotage requirements, and the Federal government may act only when the State has not exercised its authority. Once a State establishes a pilotage requirement for foreign flag and U.S. vessels sailing on registry, any Federal pilotage requirement is terminated. This proposed rule does not alter the State-Federal relationship regarding pilotage requirements, and does not preempt the States authority to establish a requirement for a State pilot under 46 U.S.C. 8501.

For manning requirements other than pilotage, it is a well-settled principle that regulations concerning manning of U.S. commercial vessels are an exclusive domain of the Coast Guard. Further, standardizing vessel manning requirements is necessary because vessels move from port to port in the national marketplace, and variation of manning requirements would unreasonably burden vessel owners and operators. Therefore, if this rule becomes final, the Coast Guard intends it to preempt State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary. An Environmental Assessment (EA) is available in the docket for inspection or copying where indicated under "**ADDRESSES**." The EA discusses the environmental consequences of the proposed actions and alternatives, including a no-action alternative. This proposed action is not expected to result in significant impact on the quality of the human environment, as defined by the National Environmental Policy Act.

List of Subjects in 33 CFR Part 164

Incorporation by reference, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Seamen, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 164 as follows:

PART 164—NAVIGATION SAFETY REGULATIONS

1. The authority citation for part 164 is revised to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502, 8503; sec. 4144(a), Pub. L. 101–380, 104 Stat. 517 (46 U.S.C. 3703 note). Sec. 164.61 also issued under 46 U.S.C. 6101.

2. In § 164.13, paragraph (c) is added to read as follows:

§ 164.13 Navigation underway: Tankers and ITBs.

* * * * *

(c) All tankers, when underway in the internal waters of the United States as defined in § 2.05–20 of this chapter, except those operating with a certificate of inspection endorsed only for Great Lakes service or only for Lakes, Bays, and Sounds service, must navigate with at least two licensed officers on the bridge. One of those licensed officers may be a Federal or State licensed pilot.

Dated: September 24, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92–23736 Filed 10–1–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 164

46 CFR Part 35

[CGD 91–204]

RIN 2115–AE00

Use of Automatic Pilot: Area Restrictions and Performance Requirements

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On January 6, 1992, the Coast Guard published a notice of proposed rulemaking that would have allowed tank vessels to use automatic pilots in certain areas within the navigable waters of the U.S. provided that the automatic pilot met certain standards and that a qualified helmsman was present. This supplemental notice of proposed rulemaking revises the January 6 proposal by changing the applicability provisions, allowing highly sophisticated systems to be used in some areas, and deleting Regulated Navigation Areas from the list of Areas where automatic pilots must not be used. This proposed rule should promote the safe operation of tankers and integrated tug barge combinations in U.S. waters.

DATES: Comments must be received on or before December 1, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–204), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection and copying at room 3406, U.S. Coast Guard Headquarters. A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at room B–615, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Paul Jewell, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267–6746, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–204) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Paul Jewell, Project Manager, and Joan Tilghman, Project Counsel, OPA 90 staff.

Related Rulemakings

This rulemaking is a companion rulemaking to "Second Officer on the Bridge" (CGD 91-222) and "Unattended Machinery Spaces: Operating Requirements" (CGD 91-203). Those proposed rules are published elsewhere in this issue of the Federal Register. If these three proposed rules are adopted, they will be combined in a new section, 33 CFR 164.13 "Navigation underway: Tankers and ITBs." In CGD 91-203, proposed paragraph (a) of new § 164.13 defines "tanker" as a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces, and "integrated tug barge" or "ITB" as a combination of a pushing vessel and a vessel being pushed ahead which are rigidly connected in a composite unit and are required by rule 24(b) of the International Regulations for Preventing Collisons at Sea, 1972 (72 COLREGS) (App. A to 33 CFR part 81) to exhibit the lights prescribed in Rule 23 for a "Power Driven Vessel Underway." In CGD 91-203, proposed paragraph (b) of new § 164.13 requires the machinery spaces of these vessels to be attended when underway in the navigable waters of the United States. In CGD 91-222, proposed paragraph (c), designates all internal waters of the United States as waters where seagoing tankers of 1,600 gross tons or more will be required to navigate with at least two licensed officers on the bridge. In this rulemaking (CGD91-204), proposed paragraphs (d) and (e) of new § 164.13 will establish restrictions and exemptions for the use of auto pilots in U.S. navigable waters.

Regulatory History

On January 6, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) in the Federal Register (57 FR 514) entitled "Use of Automatic Pilot: Area Restrictions and Performance Standards." The Coast Guard received 25 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Section 4114(a) of OPA 90 requires the Coast Guard to define the conditions under which, and designate the waters upon which, tank vessels subject to 46 U.S.C. 3703 may operate in U.S. navigable waters with the automatic pilot (auto pilot) engaged. A "tank vessel" to which 46 U.S.C. 3703 applies is defined in 46 U.S.C. 2101(3) as—

> A vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—
>
> (A) is a vessel of the United States;
>
> (B) operates on the navigable waters of the United States; or
>
> (C) transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

Section 4114(a) specifies that this rule apply only on the navigable waters of the United States. As defined in 33 U.S.C. 2701, navigable waters are the waters of the United States, including the territorial sea. This definition does not encompass the waters of the Exclusive Economic Zone (EEZ). Further, under 46 U.S.C. 3702 and 3703, foreign vessels on innocent passage on the navigable waters of the United States are exempt from rules issued under section 4114(a).

In the NPRM published on January 6, the Coast Guard proposed that an auto pilot could be engaged in all U.S. waters except traffic separation schemes, regulated navigation areas, shipping safety fairways, anchorage areas, vessel traffic service areas, or any area within one-half nautical mile of any U.S. shore; that any auto pilot used must conform with the standards recommended by International Maritime Organization (IMO) Resolution A.342(IX) adopted on November 12, 1975; and that an able seaman or licensed deck officer be at the helm of a tank vessel in all U.S. waters when the auto pilot is engaged.

Discussion of Comments and Changes

A total of 25 comment letters were received. The comments generally addressed the applicability of the rule, the waters where the prohibition on the use of an auto pilot will apply, and integrated navigation systems.

Applicability

One comment indicated that this rulemaking should apply to vessels that carry hazardous material in bulk, because these materials pose a greater threat than oil to public safety and the environment. The comment noted that placing this rule in 46 CFR subchapter D would inadvertently omit vessels carrying non-flammable hazardous material in bulk. The comment stated that 46 CFR subchapter D only applies to vessels carrying combustible or flammable liquids in bulk. Another comment letter noted the same omission and suggested that the Coast Guard also amend 46 CFR 30.01-5 to make it clear that foreign flag vessels fall under the proposed rule.

The Coast Guard proposes that this rule apply to all tankers 1,600 gross tons or more, irrespective of the vessel's flag or specific cargo. To eliminate any confusion about the applicability, the Coast Guard is proposing to include the rule as part of the navigation safety regulations in 33 CFR part 164 and define the vessels to which this rule applies.

Another comment suggested that the Coast Guard define "tank vessels" for this rulemaking to include only "self-propelled tankships greater than 1,600 gross tons." The comment letter stated that this definition would identify clearly the vessels targeted by this rule.

Under 46 CFR 30.10-67, a "tankship" means "any tank vessel propelled by power or sail." OPA 90 states that this rule should apply to tank vessels subject to 46 U.S.C. 3703. These "tank vessels" include self-propelled ships and barges. However, as a practical matter this rule should not apply to tank barges because they are not self propelled and they are not equipped with auto pilots. The Coast Guard has also adopted the position that tank vessels that carry oil as a secondary cargo should not be subject to this rule because they do not pose the same threat to the environment as tank vessels designed to carry oil as a primary cargo. The rule should more appropriately apply to "tankers" defined as "a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces." Therefore, the Coast Guard has added a provision in this supplemental notice to identify clearly the type of vessel subject to the proposed rule.

Under 33 CFR part 164, vessels that are less than 1,600 gross tons are excluded from the Navigation Safety regulations of that part. The Coast Guard's position is that it is also appropriate to exclude tankers less than 1,600 gross tons from this rulemaking. These vessels pose less of a safety risk than larger tankers because they have shallow drafts and are more

maneuverable than larger tankers. The size and maneuverability of vessels less than 1,600 gross tons allows them to avoid navigational hazards more easily than larger tankers.

One comment insisted that the Coast Guard had incorrectly interpreted section 4114(a) by failing to include vessels towing tank barges in the proposed rule. The comment stated that the rule should apply to these vessels because tank barges have the same potential to harm the environment as do other tank vessels. Another comment stated that the Coast Guard should specifically exempt vessels towing tank barges, because a vessel on auto pilot while towing a barge greatly reduces the risk of casualty. This comment stated that the auto pilot can maintain a straighter course than a helmsman, reducing the side-to-side movement of the two and giving the operator of the towing vessel better control of the tank barge.

The Coast Guard considered these comments and is proposing that this rule should also apply to towing vessels only when they are part of an integrated tug/barge (ITB) certificated as a tankship. An operator navigates these ITBs in the same manner as a tanker, and ITBs pose a threat to the environment similar to tankers.

The Coast Guard does not agree that this rule should extend to all towing vessels. External forces affect a towing vessel and its tow differently than they affect a tankship. Using an auto pilot may give the towing vessel operator better control of a barge.

Two comment letters suggested that this rule should apply to all vessels because any vessel using an auto pilot may be in an accident and may discharge oil into the water. The Coast Guard does not agree. OPA 90 specifies that this rule should apply only to tank vessels, and the Coast Guard has no casualty or other data that support extending the applicability to all other vessels. In fact, Coast Guard casualty data indicate that most vessel casualties result from personnel error rather than mechanical error. Using an auto pilot does not relieve the mariner of the duty to exercise navigational caution.

One comment did not agree that foreign vessels on innocent passage should be exempt from this rule. This comment stated that foreign vessels face the same navigational hazards as U.S. vessels and, therefore, should be subject to the same rules.

Section 4114(a) applies only to a vessel subject to 46 U.S.C. 3703. A foreign vessel on innocent passage is not subject to 46 U.S.C. 3703. A foreign vessel is on "innocent passage" when it passes through another country's waters engaging only in activities having a direct bearing on passage. A foreign tanker entering U.S. waters to transfer "oil or hazardous material in a port or place subject to the jurisdiction of the United States" is not on innocent passage and, therefore, is subject to this rule.

Two comments understood the proposed rule to mean that the licensed deck officer navigating the tanker must be different from any licensed deck officer who may steer the vessel. These comments suggested that the Coast Guard revise the proposed rule to exempt tankers that normally operate with the licensed deck officer of the watch at the helm rather than a separate helmsman steering the vessel. The bridge configuration on these tankers is apparently similar to a towing vessel, which has only one steering station in the pilothouse. On vessels with this configuration, the licensed deck officer of the watch must steer, direct, and control the movement of the vessel. The comment letters stated that exempting these vessels from the rule is safer because allowing the licensed deck officer of the watch to steer reduces the likelihood that helm commands will be misunderstood. Further, if the rule is applied to tankers without a helmsman required by the Certificate of Inspection, operating costs for the owners of these tankers would increase because the owners would have to hire additional personnel to serve as dedicated helmsmen to comply with the rule. Consequently, the costs of imposing such a requirement would outweigh the benefits because the safety record of those kinds of tankers demonstrate that hiring additional personnel as helmsmen would be an unnecessary burden.

The Coast Guard does not intend to prohibit the licensed deck offficer of the watch from steering a tanker when necessary. A licensed deck officer often steers a vessel when the vessel is docking or passing in a restricted channel. The intent of the proposed provision was to require a qualified individual to be at the helm in U.S. waters in case an immediate course change is required. Rather than exempting vessels that operate with the licensed deck officer of the watch as the helmsman, we have reorganized the section of the proposed rule requiring a qualified individual to be at the helm to clarify who is allowed to steer the vessel.

Although the Coast Guard recognizes the need for the licensed deck officer of the watch to steer a tanker on occasion, the Coast Guard is concerned that continuous manual steering by the licensed deck officer of the watch may detract the licensed officer from other duties associated with safe navigation. In a separate rulemaking (CGD 91-222) to implement another provision of OPA 90, the Coast Guard is designating waters where a second licensed officer must be on the bridge of certain tankers to assist with navigating. Having two licensed deck officers on the bridge will ensure that when one officer is manually steering, another licensed deck officer will be available to assist with the navigation of the tanker.

One comment requested that the Coast Guard specifically state that "oil spill response vessels" (OSRVs) are excluded from the definition of "tank vessels." The comment rationalized that although OSRVs are constructed to carry oil, the oil carried is not cargo but incidental to an oil spill recovery operation. Consequently, these vessels are not "vessels * * * constructed or adapted to carry oil in bulk as cargo."

This rulemaking does not apply to OSRVs. The Coast Guard is proposing to limit this rule only to ITBs certificated as tankships and tankers 1,600 gross tons or more.

Waters Where Use of an Auto Pilot is Prohibited.

Two comments stated it is inappropriate to include Regulated Navigation Areas (RNAs) as areas where the auto pilot should be disengaged. The comments pointed out that there may not be a navigational circumstance in an RNA that would warrant the restriction on the use of the auto pilot, and the comments cited RNAs restricting navigation near ice bridges as an example of an RNA where application of the restriction would be unjustified.

The Coast Guard agrees that auto pilot restrictions may not be suitable in many RNAs. Consequently, the Coast Guard has deleted RNAs as areas where the use of auto pilots is restricted.

Six comments suggested that allowing tankers to navigate on auto pilot as close as one-half mile off shore was too permissive, with most of these comments suggesting that 3 miles was a more reasonable standard. Generally, these comments indicated that any tanker within one-half mile of shore would be unable to respond to an auto pilot failure in a timely manner.

Prohibiting the use of auto pilots within 3 miles of shore effectively prohibits the use of an auto pilot in most U.S. waters and is unwarranted. The Coast Guard has determined that this restriction is unnecessarily burdensome. An auto pilot, used in the proper

situations and with reasonable monitoring by the licensed deck officer of the watch, is a valuable navigation safety tool. However, there are areas where tankers should refrain from using an auto pilot, because rapid helm response may be necessary. The Coast Guard has identified these areas in the supplemental notice and included any area one-half mile from shore.

One comment suggested that the Coast Guard prohibit engaging an auto pilot within 3 miles of any shore, shoal, reef, or other navigational obstacle. The navigable waters of the U.S. only extend to 3 nautical miles from the territorial sea baseline. The Coast Guard cannot extend the applicability of this rule beyond these waters under section 4114(a) of OPA 90.

Another comment stated that setting operating restrictions based on "distance-from-shore criteria" was inappropriate because channel width, limiting draft, and other tanker maneuvering restrictions are more important.

The Coast Guard's intent in including the one-half mile from shore restriction was to ensure that tankers not operate in narrow rivers and confined ports while on auto pilot. A rule basing operating conditions on the draft of a vessel, channel width, and other maneuvering restrictions would make both compliance and enforcement difficult. Such a rule would be subject to continual variation and individual interpretation depending on vessel characteristics, tidal fluctuations, the natural shifting of channels, and other factors. The supplemental notice as constructed should ensure national consistency. The Coast Guard would be unable to maintain this consistency if it based operating restrictions on the factors suggested in the comment letter.

Integrated Navigation Systems

Six comments objected to the proposed rule stating that the approach proposed by the Coast Guard would increase the risk of casualty for tankers underway. Most of these comments noted that a modern auto pilot that is part of an integrated navigation system is far more capable and reliable than the older auto pilots described in the IMO standards. These comments gave a variety of reasons why operation with an auto pilot, particularly one that is part of an integrated navigation system, is far safer than operation with a helmsman and should be unregulated.

First, helmsmen are demonstrably more prone to error than are modern auto pilots. Second, restricting the use of auto pilots hinders the rapid technological development of integrated navigation systems. In low visibility, auto pilots integrated with electronic charts and positioning systems can take a vessel through complex waterways more easily and safely than the deck watch officer and helmsman combination.

Third, using an auto pilot greatly reduces the opportunity for misunderstood commands between the deck officer of the watch and the helmsman and, consequently, aids the vessel's safer operation. Fourth, integrated navigation systems are better than manual vessel control for track-keeping accuracy and are more precise than manual steering in turning a vessel.

One comment stated that one European country requires vessels to use a certain type of automatic steering device when the vessel is transiting the Rhine River in fog.

The Coast Guard recognizes that integrated navigation systems may improve navigation safety. These modern devices have accuracies and capabilities that were unavailable in 1974 when the IMO developed Resolution A.342[IX], "Recommendations on Performance Standards for Automatic Pilots." Currently, the Coast Guard and the Maritime Administration are studying and testing these advanced systems. There is evidence that integrated navigation systems may be superior to helmsmen in many situations because these advanced systems are significantly less prone to mechanical malfunctions than helmsmen are prone to error. However, the Coast Guard also recognizes that although a modern auto pilot can maintain a straighter course than a helmsman and may be more dependable over longer distances, those advantages do not necessarily improve navigation safety in all situations. Despite how well an auto pilot can perform, it cannot anticipate an emergency situation or cope with a dilemma.

In the interest of reducing the risk of casualties involving tankers, the Coast Guard wants to encourage the use and further development of these systems. Consequently, the Coast Guard is proposing to exempt any tanker or ITB from some of the area restrictions in this supplemental notice if that tanker or ITB is equipped with an auto pilot that meets certain performance standards. To be exempt from some of the area restrictions, the tanker master must be able to provide, upon request, documentation that the vessel's integrated navigation system can maintain trackline steering with a cross track error of less than 10 meters; can provide accurate position data within 20 meters; and has an immediate override control. While any tanker is transiting the navigable waters of the United States with the integrated navigation system engaged, the Coast Guard will require that a qualified individual be available immediately to override the system and to take manual control of the vessel. This exemption will apply only to tankers in those portions of traffic separation schemes and shipping safety fairways that are in the navigable waters of the United States. Tankers in anchorage grounds or within one-half mile of any U.S. shore must be under manual control.

Other Comments

One comment stated that the Coast Guard cannot enforce this rule unless there is some way for an enforcement officer to observe compliance while that vessel is underway. The comment suggested that the Coast Guard require a vessel to have a bright flashing light immediately below the steaming light when the auto pilot is engaged.

The Coast Guard notes that mariners and tanker owners expose themselves to significant enforcement consequences and liability if a casualty investigation reveals that the vessel was operating in violation of this or any other rule. This potential exposure should provide ample incentive for mariners and tanker owners to comply with the rule. Further, installing a light would violate international agreements on vessel lighting, and it may actually increase the risk of vessel casualties because mariners expect a flashing light to indicate an aid to navigation. Therefore, such a light installed on a ship most likely would cause confusion.

The same comment also stated that the Coast Guard should require locating auto pilot controls where a helmsman can quickly disengage the auto pilot without leaving the helm or relying on another crewmember.

The IMO resolution on the performance standards for auto pilots, which the Coast Guard is incorporating by reference in the supplemental notice, states that "change-over controls should be located close to each other in the immediate vicinity of the main steering position." The Coast Guard's position is that any further regulation of the location of these controls is unnecessary.

One comment expressed the thought that the Coast Guard was requiring a tug escort for vessels operating with the auto pilot engaged. There is nothing in the proposed rule that requires a tanker with the auto pilot engaged to have a towing vessel escort. The Coast Guard

is developing towing escort regulations separately. (See "Escort Vessels for Certain Oil Tankers" NPRM (CGD 91–202), 57 FR 30058, July 7, 1992.) In the auto pilot NPRM, the Coast Guard did state that after designating areas where tankships must have towing vessel escorts, it may restrict the use of auto pilots on those tankships in the designated areas.

One comment letter noted that the conditions under which the auto pilot may be used are not specified in the proposed rule. This comment letter further questioned if the Coast Guard interprets 46 U.S.C. 8702(d) as prohibiting the use of auto pilot under certain conditions.

Previously, 46 CFR 35.20–45 required a tankship master to ensure that, when a vessel crewmember engaged an auto pilot in conditions of restricted visibility, high traffic density, or other hazardous navigational situations, it was possible to establish immediate control of the steering; a competent person was ready to take over the helm; and the changeover from one steering mode to the other was made under the supervision of the licensed deck officer of the watch. This supplemental notice requires more stringent precautions (i.e., a qualified helmsman is always at the helm, the auto pilot conforms to IMO standards, and the auto pilot is allowed to be used only in certain areas) under all conditions while the vessel is in the navigable waters of the United States.

The Coast Guard does not interpret 46 U.S.C. 8702(d) to prohibit the use of an auto pilot. Specifically, 46 U.S.C. 8702(d) states that "an individual having a rating of less than able seaman may not be permitted at the wheel in ports, harbors, and other waters subject to congested vessel traffic, or under conditions of reduced visibility, adverse weather, or other hazardous circumstances." This section prevents a trainee from steering a vessel during certain conditions and does not address or prohibit the use of an auto pilot under those conditions.

Two comments expressed opinions regarding what it means for an able seaman or licensed deck officer to be "present at the helm" in the context of the proposed rule. One of those comments stated that the qualified helmsman should be physically at the helm to change from automatic to manual steering in the shortest possible time. This comment noted that the Coast Guard should discourage the practice of having the helmsman engaged elsewhere on the vessel and reporting to the bridge only when summoned. The second comment noted that a requirement for off-course alarms eliminates any need to have a helmsman physically at the helm and that the qualified helmsman should simply be in proximity to the helm at all times.

One of the purposes of this supplemental notice is to ensure that tankers and ITBs have a qualified individual immediately present to take manual control of the steering in an emergency. The Coast Guard agrees that a helmsman or licensed deck officer should be at the helm while a tanker or ITB is operating in the navigable waters of the United States. Having a qualified individual "in proximity of the helm" is ambiguous and may allow a liberal interpretation, which would defeat the purpose of the proposed rule. The Coast Guard has determined that to be "present at the helm," someone must be available immediately to override an auto pilot system while an auto pilot is used in the navigable waters of the United States.

The final comment objected to prohibiting the use of the auto pilot in traffic separation schemes and shipping safety fairways because many of these areas are many hours from the nearest port, and requiring manual steering in these areas will increase the fatigue of tanker crew members. This comment also expressed concerns that had been raised in other comments.

The supplemental notice applies only to tankers and ITBs in the navigable waters of the United States out to 3 nautical miles from the territorial sea baseline. The Coast Guard is proposing to limit the rule to within 3 nautical miles of the baseline to clearly specify where the rule will apply. Because the U.S. has declared that the territorial sea extends to 12 nautical miles for some purposes and 3 nautical miles for others, the specific language in this supplemental notice should resolve any question mariners may have about the waters where the proposed rule applies. Many traffic separation schemes and shipping safety fairways are not within the navigable waters of the United States. This supplemental notice does not prohibit tankers or ITBs from engaging the auto pilot when in traffic separation schemes or shipping safety fairways that are beyond the navigable waters of the United States.

The NPRM referred to "traffic separation schemes specified in 33 CFR part 167." There are also traffic separation schemes specified in 33 CFR part 161 that are part of Vessel Traffic Service (VTS) areas. The NPRM proposed to prohibit the use of auto pilots in the VTS areas, but it did not specifically refer to the traffic separation schemes in 33 CFR part 161. To clarify that auto pilots may not be used in traffic separation schemes, the wording has been amended to include those parts of all traffic separation schemes in 33 CFR subchapter P (parts 160–167) which are in the navigable waters of the United States. The reference to Vessel Traffic Service areas will be deleted to eliminate duplication and confusion.

Incorporation by Reference

The following material would be incorporated by reference in § 164.03: IMO Resolution A.342(IX), Recommendation on Performance Standards for Automatic Pilots, adopted November 12, 1975. Copies of the material are available for inspection where indicated under "**ADDRESSES**." Copies of the material are available at the addresses in § 164.03.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

The Coast Guard has determined that this proposal is not major under Executive Order 12291. This proposal is not significant under the Department of Transportation Regulatory Policies and Procedures for Simplification Analysis and Review of Regulations (Order 2100.5) because its cost is expected to be minimal and it does not meet any of the criteria listed in paragraph 6(a)(2) of the Order. There will be no cost to vessel owners in complying with this rule because the proposal is permissive. Rather than requiring or prohibiting the use of auto pilot technology, the Coast Guard informs vessel owners or operators who choose this technology when their crews may employ it. The proposal neither requires equipment nor increases crew size. Consequently, this proposal will not result in annual costs of $100 million; will have no significant adverse effects on competition, employment, or other aspects of the economy; and will not result in a major increase in costs and prices.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). "Small entities" also include small not-

for-profit organizations and small governmental jurisdictions. Because there are no new costs associated with implementing this rule, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Section 4114(a) of OPA 90 requires the Secretary to do a rulemaking to define the conditions under which, and designate the waters upon which, subject tank vessels can operate in the navigable waters of the U.S. with an auto pilot. A State regulation more permissive of more restrictive would conflict with the Federal requirements. Further, because vessels move from port to port in the national marketplace, a variation of auto pilot operating requirements would unreasonably burden vessel owners and operators. Therefore, if this rule becomes final, the Coast Guard intends it to preempt State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary. A preliminary Environmental Assessment is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

This proposal is not expected to result in significant impact of the quality of the human environment, as defined by the National Environmental Policy Act. In evaluating the environmental impact of the proposed action, the following points were considered:

(1) Environmental benefits of regulating the use of auto pilots cannot be quantified in isolation, due to the complementary effects of other OPA 90-related regulatory changes. For example, regulations dealing with improved crew training, manning standards, vessel traffic control, and other OPA 90 initiatives should result in reduced casualties and reduced numbers and volumes of spills;

(2) The proposed action involves the navigable waters of the U.S. and should contribute toward the prevention of spills especially when vessels are maneuvering near shorelines and/or in congested waterways.

List of Subjects

33 CFR Part 164

Incorporation by reference, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Seamen, Security measures, Waterways.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 164 and 46 CFR part 35 as follows:

TITLE 33 CFR—[AMENDED]

PART 164—NAVIGATION SAFETY REGULATIONS

1. The authority citation for part 164 is revised to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502, 8503; sec. 4114(a), Pub. L. 101–380, 104 Stat. 517 (46 U.S.C. 3703 note). Sec. 164.61 also issued under 46 U.S.C. 6101.

2. Section 164.03 is revised to read as follows:

§ 164.03 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Marine Environmental Protection Division (G-MEP), room 2100, 2100 Second Street, SW., Washington, DC, 20593–0001 and is available from the sources identified in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

Radio Technical Commission for Maritime Services (RTCM)

P.O. Box 19087, Washington, DC 20036

Paper 12–78/DO–100, Minimum Performance Standards, Loran C Receiving Equipment, 12/20/77.....164.41

International Maritime Organization (IMO)

4 Albert Embankment, London SE1 7SR, U.K.

IMO Resolution A.342(IX), Recommendation on Performance Standards for Automatic Pilots, adopted November 12, 1975.....164.13

3. In § 164.13, paragraphs (d) and (e) are added to read as follows:

§ 164.13 Navigation underway: Tankers and ITBs.

* * * * *

(d) Except as provided in paragraph (e) of this section, a tanker of ITB certificated as a tankship, when underway in the navigable waters of the United States out to 3 nautical miles seaward from the territorial sea baseline, may engage the automatic pilot only if all of the following conditions exist:

(1) The operation and performance of the automatic pilot conforms with the standards recommended by the IMO in Resolution A.342(IX).

(2) A qualified helmsman is present at the helm and prepared at all times to assume manual control.

(3) The vessel is not operating in any of the following—

(i) The areas of the traffic separation schemes specified in subchapter P of this chapter (parts 160–167);

(ii) Those portions of a shipping safety fairway specified in part 166 of this chapter.

(iii) An anchorage ground specified in part 110 of this chapter; or

(iv) An area within one-half nautical mile of any U.S. shore.

(e) A tanker or ITB certificated as a tankship equipped with an integrated navigation system, and complying with paragraph (d)(2) of this section, may engage that system while in the areas described in paragraph (d)(3) (i) or (ii) of this section. The master must be able to provide, upon request, documentation showing that the integrated navigation system—

(1) Can maintain a predetermined trackline with a cross track error of less than 10 meters 95 percent of the time;

(2) Provides continuous position data accurate to within 20 meters 95 percent of the time; and

(3) Has an immediate override control.

TITLE 46 CFR—[AMENDED]

PART 35—OPERATIONS

4. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 35.20–45 [Removed]

5. Section 35.20–45 is removed.

Dated: September 24, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92–23760 Filed 10–1–92; 8:45 am]

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October 2, 1992

Part III

Federal Trade Commission

16 CFR Part 4

Privacy Act; New Exempt System of Records; Proposed Rule; Privacy Act of 1974; Publication of Systems of Records and Proposed New Routine Uses; Notice

FEDERAL TRADE COMMISSION

16 CFR Part 4

Privacy Act; New Exempt Systems of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed Rule with request for Comments.

SUMMARY: The Federal Trade Commission proposes to amend its Privacy Act exemption rule, Rule 4.13(m), 16 CFR 4.13(m), by adding eight systems as exempt systems and deleting two systems no longer maintained by the Commission. The systems of records are exempt from certain Privacy Act provisions due to the investigatory nature of the records. This proposed rule amendment is required in order to invoke the relevant exemptions. The exemptions will relieve the Commission of certain restrictions, and, thereby, help ensure that the Commission may efficiently and effectively perform investigations and other authorized duties and activities.

EFFECTIVE DATE: Comments must be received on or before November 2, 1992. The proposed rule amendment will become effective upon its final publication in the **Federal Register**.

ADDRESSES: Forward, comments to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Comments will be placed on the public record of the Commission and made available for public inspection during regular Commission business hours.

FOR FURTHER INFORMATION CONTACT: Keith Golden, Information Management and Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2410.

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, the FTC is publishing a proposed system notice to establish new systems or records, delete obsolete systems of records, and revise existing systems of records under the Privacy Act, 5 U.S.C. 552a, as amended. The following proposed amendment of FTC Rule of Practice 4.13(m), 16 CFR 4.13(m), is necessary to exempt some of those systems of records from certain provisions of the Act. Those provisions require, among other things, that the agency provide notice when collecting information, account for certain disclosures, permit individuals access to their records, and allow them to request that the records be amended. Those provisions would interfere with the conduct of Commission law enforcement activities if applied to the Commission's maintenance of the proposed systems of records.

A. Currently Identified Exempt Systems

The FTC had previously determined that several systems of records were exempt from those provisions of the Privacy Act. Those systems are identified in Rule 4.13(m), 16 CFR 4.13(m). The Commission has now determined that two of those systems are no longer maintained and, therefore, reference to them in Rule 4.13(m) is unnecessary. Those systems are "Litigation Information Management Systems for Investigations, Rulemaking, and Adjudicatory Proceedings—FTC" and "Preliminary Investigation Files—FTC." The FTC has further determined that systems "Investigational, Legal, and Public Records—FTC," "Disciplinary Action Investigatory File—FTC," and "Inspector General Investigative Files—FTC," which were also previously designated as exempt, should retain that designation.

B. New Exempt Systems

This proposal identifies eight other systems as exempt from the provisions of the Privacy Act. Seven of those systems are exempt under the provisions of Section (k)(2), and the remaining one is exempt under the provisions of Section (k)(5).

(1) Section (k)(2)

The seven systems the FTC proposes to make exempt are: "Clearance to Participate Applications and the Commission's Responses Thereto, and Related Documents—FTC," "Management Information System—FTC," "Office of the Secretary Control and Reporting System—FTC," "Stenographic Reporting Service Request System—FTC," "Freedom of Information Act Requests and Appeals—FTC," "Privacy Act Requests and Appeals—FTC," and "Information Retrieval and Indexing System—FTC."

Section (k)(2), 5 U.S.C. 552a(k)(2), exempts a system of records consisting of "investigatory materials compiled for law enforcement purposes," where such materials are not within the scope of the (j)(2) exemption pertaining to criminal law enforcement. The records maintained in those systems of records are investigatory records as described in Section (k)(2) of the Privacy Act. Information contained in those records relates to non-criminal law enforcement matters, such as information pertaining to the investigation of civil, administrative, or regulatory violations and similar wrongdoing.

Access by subject individuals, among others, to those systems of records, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of the law enforcement activities. When the investigations are in the "nonpublic" stage, knowledge of such investigations could enable individuals to take action to prevent detection of unlawful activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or other interference with, informants, witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified or retained would significantly impede the effectiveness of the investigatory activities and, in addition, could preclude the apprehension and successful prosecution or discipline of persons engaged in illegal activity.

(2) Section (k)(5)

A system may be designated as exempt under Section (k)(5) if the records are compiled to determine suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only where disclosure would reveal the identity of a confidential source of information. 5 U.S.C. 552a(k)(5). The "Personnel Security File—FTC" contains such information, and the Commission proposes that that system of records be designated as exempt under that provision.

For these reasons, the FTC proposes to exempt the proposed systems of records under exemptions (k)(2) or (k)(5) of the Privacy Act by amending 16 CFR 4.13(m), in which the FTC specifies its systems of records that are exempt under the Privacy Act.

(3) Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), the FTC certifies that the proposed rule amendment will not, if adopted, have a significant impact on a substantial number of small entities, because the Privacy Act applies only to "individuals," and individuals are not "small entities" within the meaning of the Regulatory Flexibility Act.

(4) Executive Order No. 12291

The Commission further certifies that the rule amendment has been reviewed under Executive Order No. 12291, and has been determined not to be a "major rule," since it will not have an annual effect on the economy of $100 million or more, result in major cost increases or prices, or have significant adverse effects on competition or otherwise.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information, Privacy, Sunshine Act.

In consideration of the foregoing, the FTC proposes to amend title 16, chapter I, subchapter A of the Code of Federal Regulations, as follows:

PART 4—MISCELLANEOUS RULES

1. The authority for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.13 is amended by revising paragraph (m) to read as follows:

§ 4.13 Privacy Act Rules.

* * * * *

(m) *Specific exemptions.* (1) Pursuant to 5 U.S.C. 552a(j)(2), investigatory materials maintained by an agency component in connection with any activity relating to criminal law enforcement in the following systems of records are exempt from all subsections of 5 U.S.C. 552a, except (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(j)(2):

Office of Inspector General Investigative Files—FTC

(2) Pursuant to 5 U.S.C. 552a(k)(2), investigatory materials compiled for law enforcement purposes in the following systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a, and from the provisions of this section, except as otherwise provided in 552a(k)(2):

Investigational, Legal, and Public Records—FTC
Disciplinary Action Investigatory Files—FTC
Clearance to Participate Applications and the Commission's Responses Thereto, and Related Documents—FTC
Management Information System—FTC
Office of the Secretary Control and Reporting System—FTC
Office of Inspector General Investigative Files—FTC
Stenographic Reporting Service Requests—FTC
Freedom of Information Act Requests and Appeals—FTC
Privacy Act Requests and Appeals—FTC
Information Retrieval and Indexing System—FTC

(3) Pursuant to 5 U.S.C. 552a(k)(5), investigatory materials compiled to determine suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only where disclosure would reveal the identity of a confidential source of information, in the following systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a, and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(k)(5):

Personnel Security File—FTC

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-23612 Filed 10-1-92; 8:45 am]

BILLING CODE 6750-01

FEDERAL TRADE COMMISSION

Privacy Act of 1974; Publication of Systems of Records and Proposed New Routine Uses

AGENCY: Federal Trade Commission (FTC).

ACTION: Advance notice with request for comments; publication of proposed system notice for new systems, altered systems, and deleted systems.

SUMMARY: The Federal Trade Commission is proposing to revise its Privacy Act Systems of Records Notice, which was last published in complete form in 1982. This proposal provides an up-to-date, complete text of the Commission's notices of its system of records; proposes the establishment of fourteen new systems of records; and proposes new routine uses for all of the Commission's systems. The revisions also reflect system name changes, number redesignation, and other editorial changes. The publication of this proposed systems notice is one of the steps required to establish new and revise existing systems of records. The addition of the new systems and revisions to the existing systems will permit the FTC to accomplish its law enforcement, managerial, and other responsibilities more efficiently and effectively.

Reports required under Section (o) of the Privacy Act, 5 U.S.C. 552a(o), have been submitted to both Houses of Congress and to the Office of Management and Budget.

DATES: Comments must be received on or before November 2, 1992. Unless changes are made in response to comments received from the public, this action is effective upon final publication of the amendment of FTC Rule of Practice 4.13(m); the amendment is set forth in proposed form elsewhere in today's issue of the **Federal Register**.

ADDRESSES: Forward comments to the Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580. Comments will be placed on the public record and made available for inspection during regular Commission business hours.

FOR FURTHER INFORMATION CONTACT: Keith Golden, Information Management and Dissemination Division, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580 (202–326–2410).

SUPPLEMENTARY INFORMATION: The Federal Trade Commission last published a complete listing of systems notice on July 28, 1982. 47 FR 32822 (1982). The Commission now proposes a new notice that: (1) Reorganizes the notice to present the information to the public in a structure that is easier to understand and use; (2) consolidates systems that are no longer maintained separately; (3) deletes obsolete systems; (4) adds new systems that were not previously identified; (5) revises and updates the descriptions of existing systems; and (6) makes appropriate systems exempt from the Act's disclosure requirements. As a result of these changes, the Commission's proposed notice contains 36 separate systems of records.

I. Reorganization of the Systems Notice

When the Commission first published its system notice, the individual systems were assigned numbers based upon placement of the systems within an alphabetical listing of the titles of the systems. However, over the life of the notice, systems have been added, deleted, and renamed. As a result, it may be difficult for the public to locate systems that may contain records to which they may have access. The Commission addressed that issue in the 1982 notice by including an index of the systems. The Commission has now reorganized the notice and collected systems into seven major groups, each of which contains systems that are similar in subject matter and content. Those seven groups of systems contain the following categories of records: Law Enforcement; Personnel; Financial; Correspondence, Access Request; Mailing List; and Miscellaneous. The systems also have been renumbered using a two-part numbering system that will allow systems to be added or renamed within each group in the future.

II. Consolidation of Systems of Records

Since 1982 records storage and maintenance procedures related to several systems have changed and now those systems are not truly separate collections of records. Several existing systems related to the Commission's law enforcement records, personnel records, correspondence records, and mailing lists have been consolidated where the structure and content of the systems are compatible.

A. Law Enforcement Records

The Commission no longer maintains separate records for four categories of records. All records in "33-Preliminary Investigatory Files," and "53-Medical Participation in Control of Certain Open-Panel Medical Prepayment Plans Mailing List" have either been destroyed in keeping with our records disposition schedules or incorporated into other law enforcement files that are part of the primary law enforcement system of records. Two other systems, "18-Consumer Redress Lists-Enforcement Division" and "19-Correspondence with Enforcement Division—BCP Concerning Parties Subject to Commission Orders," are both directly related to the primary law enforcement system of records, and the records in those systems cannot be retrieved without first identifying the matter number associated with the records of the primary system. Therefore, all of those law enforcement records are now covered by the primary law enforcement system of records, "I-1 Investigational, Legal, and Public Records–FTC."

B. Personnel Records

Two systems, "9-Consultant Files-Division of Advertising Practices—BCP" and "30-Consultant Files—BC," were maintained by individual organizations within the Commission. Those systems contained only copies of records related to consultants. The original records are located in the "General Personnel Records" system. Since no unique records are maintained outside of that primary system, all of the duplicate records in those two systems of records are truly part of system "II-2 Unofficial Personnel Records–FTC," which is designed to cover such unofficial records maintained by individual Commission organizations.

C. Correspondence Records

All of the Commission's organizations that had separate systems of records containing consumer complaint and other correspondence now use a centralized automated information system to record the receipt and handling of those letters. Therefore, the ten separate systems containing consumer correspondence that were identified in 1982 have been consolidated into one system. Records in systems 2, 7, 8, 10, 11, 12, 13, 14, 16, and 25 are now covered by system "IV-1, Correspondence Control System–FTC."

D. Mailing Lists

Five separate systems containing lists of parties who receive information from the Commission have been combined. All of the records in those systems are similar and are used to inform the public of Commission proposals and actions. Therefore, they are effectively one system rather than separate, individual systems. The "mailing list" systems, which include "17-Consumer Mailing List-Los Angeles Regional Office," "34-Public Contact Report System-Atlanta

Regional Office," "35-Public Information Mailing List" "36-Public Information Mailing List-Boston Regional Office," and "55-Consumer Education Mailing List—BCP," are all now represented by system "VI–1 Mailing Lists—FTC."

III. Deletion of Obsolete Systems of Records

Records that were covered by four systems of records are no longer maintained and those systems have been deleted from the new notice. The four systems that have been deleted include: "15-Application for Reimbursement for Participation in Rulemaking Proceedings," "24-Financial Statements of Commissioners Elect," "27-Assignment Control System-BCP," "37-Individual Claims Submitted Pursuant to Consent Agreement in *Bachman* v. *Miller*, CA No. 76–0079 (D.D.C. 1976)."

IV. Addition of New Systems of Records

Fourteen systems of records, which are briefly described below, are being added to the Commission's systems notice. Each of those systems contains routine uses based on the reasons for which the records are collected and maintained. The precise characteristics and routine uses are outlined in the complete system notice.

The systems that are being added include:

A. I–5 Management Information System

The Management Information System is an automated information system containing summary records identifying the plans, accomplishments, and actions taken related to the law enforcement and administrative work of the agency. Parties covered by the system are individuals, when not acting in a business capacity, who participate in those proceedings and individuals who, at the time the records are added to the system, are Commission employees. The records are primarily used by FTC employees and managers to make workload and budget determinations and personnel related evaluations; used by FTC staff in all types of proceedings involving the Commission; made available to other law enforcement agencies for official use; and some information in the system is made available to the public. This system is exempt from the disclosure provisions of the Privacy Act under Section (k)(2).

B. I–6 Office of the Secretary Control and Reporting System—FTC

This is an automated information system that supplements the records contained in system "I–1 Management Information System—FTC." However, the records in this system relate to issues and matters that are actually presented to the Commissioners for review or information. The records in the system and the routine uses of those records are similar to the Management Information System. The system is also exempt from the disclosure and reporting requirements under Section (k)(2) of the Privacy Act.

C. I–8 Stenographic Reporting Services Requests

Individuals who, at the time the records are added to the system, are Commission employees and who request stenographic reporting services and individuals who are deposed or provide testimony at hearings are covered by this system. The records are used to identify and track the expenditure of funds of stenographic reporting services. Since virtually all of the records relate directly to law enforcement activities of the Commission, this system is exempt from disclosure and reporting requirements under Section (k)(2) of the Privacy Act.

D. II–3 Worker's Compensation

Commission employees who sustain work related injuries or occupational diseases are covered by this system, when they file under the Worker's Compensation program. Records describing the application, circumstances surrounding the application, and outcome of the matter are contained in the system. The records are primarily used to respond to inquiries about compensation claims from the Department of Labor, supervisors, and employees.

E. II–10 Employee Medical File

Medical reports, opinions, evaluation and treatment information, and records resulting from testing for use of illegal drugs may be contained in this system of records. Those records relate to individuals who, at the time the records are added to the system, are Commission employees. The records are used to assist other agencies when necessary to adjudicate a claim under a retirement, insurance, or health benefit program; to comply with laws governing reporting of communicable diseases; and other related uses.

F. II–11 Personnel Security File

These records are maintained to document personnel security investigations. The records in the system, which cover individuals who, at the time the records are added to the system, are Commission employees, include reports, position sensitivity designation files, and related records. The records are used primarily to assist other agencies conducting a security or suitability investigation. This system is exempt from the disclosure provisions of the Privacy Act under section (k)(5).

G. II–12 Training Reservation System

The records in this system are collected to assist the Commission in designing and offering appropriate training to Commission employees and to record the training sessions attended by individual employees. The individuals covered by the system include individuals who, at the time the records are added to the system, are Commission employees.

H. V–3 Public Information Requests System

This automated information system is used to respond to requests from members of the public for copies of publications and documents that the Commission has previously made available for public dissemination. The system records the identity of the requester, the publication(s) provided, and the identity of the staff person who filled the request.

I. VII–3 Computer System User Identification

This is an administrative collection of records used to monitor and manage the use of Commission computer systems. The individuals covered include individuals who, at the time the records are added to the system, are Commission employees and others who use the Commission's central computer facilities. The records contained in the system include the information systems to which the person has access, the systems and services used, amount of time spent using each system or function, number of usage sessions, and cost of such usage. The records are used by managers to plan for and operate automated systems efficiently, control costs of information system usage, prepare budget requests, and identify and conduct training programs.

J. VII–4 Standard Name System

This is an automated information system with the sole purpose of coding the identity of parties who interact with the Commission. The coded identity, rather than the party's complete name, is then recorded in the Commission's other automated information systems. The parties covered by the system are individuals, when not acting in a business capacity, who interact with the Commission.

K. VII–5 Property Management System

This is an automated information system used to control physical property of the Federal Trade Commission. The records relate to individuals who, at the time the records are added to the system, are Commission employees and include such information as identification of property assigned to the individual and information related to the use and maintenance of that equipment.

L. VII–6 Information Retrieval and Indexing System

This information system is used as a basic research tool by Commission staff, and to a limited extent by the public. Information about certain individual documents collected by, generated by, or submitted to the Commission are recorded in an automated system and copies of those documents may be stored on paper, microfiche, or in an electronic or optical medium. The records are indexed by the author of each document and those authors are the individuals covered by this system. In addition, those documents stored in an electronic medium are retrievable by the use of any word, including an individual's name that is found in the text of the document. When the original document has been made part of the public record of the Commission, the copy that is available through this system may be provided to the public. However, the nonpublic documents usually relate to law enforcement matters. Therefore, the system is exempt under the provisions of Privacy Act Section (k)(2).

M. VII–7 Service Order System

Requests for assistance and service related to the Commission's hardware and software, as well as the resolution of those requests, are recorded in this automated information system. The records are used to monitor the quality of service provided and the maintenance records of equipment. The individuals covered by the system include individuals who, at the time the records are added to the system, are Commission employees.

N. VII–8 Service Call System

The records in this automated information system indicate the requests for building maintenance and other administrative support services and the resolution of those requests. The records provide information to Commission management indicating the volume of such requests and the quality of the service provided. The individuals covered by the system include individuals who, at the time the records are added to the system, are Commission employees.

V. Revisions to Existing Systems of Records

The Commission has identified several additional routine uses that are applicable to each of its existing systems of records. The Commission may have need to refer documents to the Department of Justice when the Commission or an employee of the Commission is party to litigation and use of the records by the Department of Justice is necessary to the successful conduct of that litigation. Similarly, the Commission may need or be required to submit records to a court in relation to litigation or may be required to turn over records to a grand jury in response to a valid order of a court. In addition, it may be necessary to disclose records to the National Archives and Records Administration for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. The fifth routine use is disclosure to the Office of Management and budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19. A record, which is primarily part of one of the Commission's systems of records, may be incorporated into the file related to a discrimination complaint. A routine use for that incorporation and for the routine uses associated with the discrimination complaint system of records is needed. Finally, records in a system may be used in a proceeding designed to collect debts owed to the Government and disclosure to a debt collection contractor for that purpose may be appropriate. These routine uses reflect routine administrative, law enforcement, and recordkeeping requirements that other agencies have recognized as necessary to effective operation of the agency. Since each of those routine uses applies to each of the Commission's systems of records, the Commission has determined to reduce the repetitive restatement of those uses in the description of each system. Appendix I of this notice lists in detail the routine uses that apply to all of the systems, and each individual system refers to that appendix.

In addition to those routine uses, on individual systems the Commission has added categories of records and individuals covered by the systems and additional routine uses, where appropriate. Each of those revisions to existing systems is briefly outlined below and precisely described in the system notice.

A. I–1 Investigational, Legal, and Public Records—FTC

(Previously System Number 28)

Individuals who may receive redress as a result of a proceeding with records contained in the system have been added to the categories of individuals covered by the system. The record retention description has been modified to indicate documents may be returned to the submitter or destroyed upon closing of the matter.

B. I–4 Clearance To Participate Applications and the Commission's Responses Thereto—FTC

(Previously System Number 46 Applications for Clearance to Participate, Responses Thereto, and Related Documents)

Documents collected and generated during the course of considering the applications have been added to the categories of records covered by the system. Routine uses have been added to reflect that the application and the Commission's response may be made part of the Commission's public record. However, because some of the applications relate to participation in law enforcement matters, the system has been designated as exempt under Privacy Act Section (k)(2).

C. II–1 General Personnel Records—FTC

(Previously System Number 23 Applicant Files and General Personnel Records [Official Personnel Folder and Records Related Thereto]; Duplicate Personnel Files and Automated Records—FTC)

The following routine uses of the records in this system have been added: (1) Disclosure to educational institutions on appointment of a recent graduate to a position in the federal service; (2) disclosure to a federal, state, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs; (3) consideration of recognition of employees through quality step increases, incentive awards, and other honors and publication of those granted; (4) disclosure to a person responsible for the care of an individual who is mentally incompetent or under other legal disability, to the extent necessary to assure payment of benefits to which the individual is entitled; and (5) disclosure of the home address or other relevant information on individuals who, it is reasonably believed, might have contracted an illness, been

exposed to, or suffered from a health hazard while employed in the federal work force.

D. II–2 Unofficial Personnel Records—FTC

(Previously System Number 41)

Individuals who, at the time the records are added to the system, are consultants, contractors, and job applicants have been added to the individuals covered by this system because agency supervisors and managers retain records related to the performance of those consultants and contractors and retain records about applicants during the interview, evaluation, and selection process.

E. II–4 Counseling Records—FTC

(Previous System Number 21)

The description of the records contained in this system has been revised to reflect that it now includes records related to "labor relations" issues. Routine uses have been added to indicate that the records may be referred to the labor organization representing Commission employees and to the Federal Labor Relations Authority.

F. II–7 Statement of Employment and Financial Interest—FTC

(Previously System Number 40)

A routine use has been added to reflect that records may be released to others to obtain information in an investigation.

G. III–3 Financial Management System—FTC

(Previous System Number 23)

The category of individuals covered by the system has been revised to include non-FTC employees who are reimbursed for expenses. This system was previously identified as exempt under the provisions of Section (k)(2). However, the Commission has determined to withdraw that exemption.

H. IV–1 Correspondence Control System—FTC

(Previous System Number 02)

The only other substantive change to this system is the addition of a routine use indicating that records from this system may be incorporated into the Commission's primary investigatory system of records, "I–1 Investigational, Legal, and Public Records—FTC."

I. V–1 Freedom of Information Act Requests and Appeals From Other Than Government Agencies and the Commission's Response, Thereto—FTC

(Previously System Number 49)

Documents generated or collected to respond to the request have been added to the categories of records covered by the system. Because the records that are collected and generated during the consideration given to the request often relate to the law enforcement programs of the Commission, the system has been designated as exempt under Privacy Act Section (k)(2).

J. V–2 Privacy Act Requests and Appeals—FTC

(Previously System Number 51)

The categories of records covered by the system have been revised to include documents generated or collected to respond to the request. Also, because the records that are collected and generated during the consideration given to the request usually relate to the law enforcement programs of the Commission, the system has been designated as exempt under Section (k)(2).

VI. Exemption of Systems of Records From Provisions of the Privacy Act

The Commission proposes that a total of eleven active systems be designated as exempt from the disclosure and reporting requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of the Privacy Act. On September 30, 1990, the Commission implemented a proposal to exempt the records contained in system "I–7 Office of Inspector General Investigative Files" from certain provisions of the Privacy Act under subsections (j)(2) and (k)(2). This proposal restates that determination. The Commission now proposes that, consistent with subsections (k)(2) or (k)(5) the other ten systems be designated as exempt to protect the relevant law enforcement information or the identities of confidential sources from disclosure.

A. Systems Previously Designated as Exempt Under Subsection (k)(2)

Of those eleven systems of records, three have previously been designated as exempt by the Commission under the provisions of subsection (k)(2). Those include: "I–1 Investigational, Legal, and Public Records," and "I–2 Disciplinary Action Investigatory Files," and "I–7 Office of Inspector General Investigative Files." The Commission has reconfirmed that the systems meet the criteria of that subsection because they were compiled for law enforcement purposes.

B. Systems Not Previously Designated as Exempt Under Subsection (k)(2)

The Commission now proposes that seven additional systems be designated as exempt systems under the provisions of subsection (k)(2). Four of those systems, "I–4 Clearance to Participate Applications Responses Thereto, and Related Documents," "I–5 Management Information System," "I–6 Office of the Secretary Control and Reporting System," and "I–8 Stenographic Reporting Service Requests," are compiled solely for law enforcement purposes. The first two of those systems contain some records that are placed on the Commission's public record.

Three other systems, "V–1 Freedom of Information Act Requests and Appeals," "V–2 Privacy Act Requests and Appeals," and "VII–6 Information Retrieval and Indexing System," actually contain, in addition to records created solely for the purpose for which the systems were compiled, copies of records or descriptions of records that were extracted and re-compiled from law enforcement records contained in systems of records that are designated as exempt under subsection (k)(2). In addition, some records from the first and third of those systems are also routinely placed on the Commission's public record.

The Commission has considered several options for these systems of records and determined that to protect sensitive law enforcement records, to avoid costly maintenance of similar and in some instances partially duplicate records, and to provide the public with as much access to records as possible, only those records in these systems of records that were actually "re-compiled" from or reflect information contained in other systems of records that are properly designated as exempt under the provisions of the statute will be covered by the exemption claimed under subsection (k)(2). The statements describing the exemption of individual systems of records found later in this notice convey the Commission's determination.

C. System Not Previously Designated Exempt Under Subsection (k)(5)

One new system, "II–11 Personnel Security Files," contains information related to the suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. A system of records, where disclosure would reveal the identity of a

confidential source of information, may be designated as exempt under subsection (k)(5). 5 U.S.C. 552a(k)(5). Therefore, the Commission proposes that system II-11 be designated as exempt under that provision.

D. Withdrawal of Exempt Designation

One system identified as exempt in the 1982 notice has been redefined as not exempt. The description of the Financial Management System—FTC, which was listed in the 1982 notice as system 23 and is now identified as system III-3, indicates that it was exempt from the disclosure requirements of the Privacy Act by Section (k)(2). The Commission has determined that the records that are retrieved by using an individual's name or identifier do not meet the criteria of Section (k)(2) and proposes, therefore, to remove the "exempt" designation from the system notice.

VII. Cross Reference to the 1982 Systems Notice

To assist in the review of this proposal and comparison to the 1982 notice, the following listing identifies the old numbering system, the old system name, and the action proposed.

System No.	System name	Action
01	Biographies of Commissioners and Key Staff Members	Renumbered as II-8.
02	Correspondence Control System	Renumbered as IV-1.
03		Previously Deleted.
04	Claimants under Federal Tort Claims Act and Military Personnel and Civilian Employees Claims Act	Renumbered as II-9.
05		Previously Deleted.
06		Previously Deleted.
07	Congressional Correspondence Coordination Unit Records	Consolidated with IV-1.
08	Congressional Inquiry Files—DARO	Consolidated with IV-1.
09	Consultant Files—Division of Advertising Practices—BCP	Consolidated with II-2.
10	Consumer and Industry Correspondence Files—Division of Credit Practices—BCP	Consolidated with IV-1.
11	Consumer Complaint Files—ARO	Consolidated with IV-1.
12	Consumer Complaint Files—DARO	Consolidated with IV-1.
13	Consumer Complaint Files—Division of Marketing Practices—BCP	Consolidated with IV-1.
14	Consumer Complaint Files—LARO	Deleted—no longer maintained.
15	Application for Reimbursement for Participation in Rulemaking Proceedings	Consolidated with IV-1.
16	Consumer Complaint Files—SERO	Consolidated with VI-1.
17	Consumer Mailing List—LARO	Consolidated with I-1.
18	Consumer Redress Lists—Enforcement Division—BCP	Consolidated with I-1.
19	Correspondence with Enforcement Division—BCP Concerning Parties Subject to Commission Orders	Renumbered as VII-2.
20	Employee Locator System	Renumbered as II-4.
21	Counseling Records	Renumbered as I-2.
22	Disciplinary Action Investigatory Files	Renumbered as III-3.
23	Financial Management System	Deleted—No longer maintained.
24	Financial Statements of Commissioners Elect	Consolidated with IV-1.
25	General Correspondence Records	Renumbered as II-1.
26	Applicant Files and General Personnel Records [Official Personnel Folder and Records related thereto]; Duplicate Personnel files and Automated, Records.	Deleted—No longer maintained.
27	Assignment Control System—BCP	Renumbered as I-1.
28	Investigational, Legal, and Public Records	Previously Deleted.
29		Consolidated with II-2.
30	Consultant Files—BC	Renumbered as III-1.
31	Payroll Processing System	Renumbered as III-2.
32	Payroll—Retirement Records	Consolidated with I-1.
33	Preliminary Investigatory Files	Consolidated with VI-1.
34	Public Contact Report System—ARO	Consolidated with VI-1.
35	Public Information Mailing List	Consolidated with VI-1.
36	Public Information Mailing List—BRO	Deleted—Retention requirements of court order expire 11/89.
37	Individual Claims Submitted Pursuant to Consent Agreement in Bachman v. Miller	Previously Deleted.
38		Renumbered as I-3.
39	Staff Advisory Opinion Records	Renumbered as II-7.
40	Statement of Employment and Financial Interest	Renumbered as II-2.
41	Unofficial Personnel Records	Previously Deleted.
42		Previously Deleted.
43		Previously Deleted.
44		Renumbered as VII-1.
45	Automated Serials Routing System	Renumbered as I-4.
46	Clearance to Participate Applications and the Commission's Responses Thereto	Previously Deleted.
47		Previously Deleted.
48		Renumbered as V-1.
49	Freedom of Information Act Requests and Appeals from Other Than Government Agencies and the Commission's Responses Thereto.	Previously Deleted.
50		Renumbered as V-2.
51	Privacy Act Requests and Appeals	Renumbered as II-5.
52	Equal Employment Opportunity Statistical Reporting System	Deleted—no longer maintained.
53	Medical Participation in Control of Certain Open-Panel Medical Prepayment Plans Mailing List	Renumbered as II-6.
54	Discrimination Complaint System	Consolidated with VI-1.
55	Consumer Education Mailing List—BCP	

Accordingly, the Federal Trade Commission proposes the following systems of records be identified as the complete and current notice required by the Privacy Act.

Table of Contents

System Number and System Name

I. Law Enforcement Systems of Records

I–1—Investigational, Legal, and Public Records—FTC.
I–2—Disciplinary Action Investigatory Files—FTC.
I–3—Requests for Staff Opinion and Responses Thereto—FTC.
I–4—Clearance to Participate Applications and the Commission's Responses Thereto, and Related Documents—FTC.
I–5—Management Information System—FTC.
I–6—Office of the Secretary Control and Reporting System—FTC.
I–7—Office of Inspector General Investigative Files—FTC.
I–8—Stenographic Reporting Services Request System—FTC.

II. Federal Trade Commission Personnel Systems of Records

II–1—General Personnel Records—FTC.
II–2—Unofficial Personnel Records—FTC.
II–3—Worker's Compensation—FTC.
II–4—Counseling Records—FTC.
II–5—Equal Employment Opportunity Statistical Reporting System—FTC.
II–6—Discrimination Complaint System—FTC.
II–7—Statement of Employment and Financial Interests—FTC.
II–8—Biographies of Commissioners and Key Staff Members—FTC.
II–9—Claimants Under Federal Tort Claims Act and Military Personnel and Civilian Employees' Claims Act—FTC.
II–10—Employee Medical File—FTC.
II–11—Personnel Security File—FTC.
II–12—Training Reservation System—FTC.

III. Federal Trade Commission Financial Systems of Records

III–1—Payroll Processing System—FTC.
III–2—Payroll-Retirement Records—FTC.
111–3—Financial Management System—FTC.

IV. Correspondence Systems of Records

IV–1—Correspondence Control System—FTC.

V. Access Requests

V–1—Freedom of Information Act Requests and Appeals—FTC.
V–2—Privacy Act Requests and Appeals—FTC.
V–3—Public Information Requests System—FTC.

VI. Mailing List Systems of Records

VI–1—Mailing Lists—FTC.

VII. Miscellaneous Systems of Records

VII–1—Automated Serials Routing System—FTC.
VII–2—Employee Locator System—FTC.
VII–3—Computer Systems User Identification—FTC.
VII–4—Standard Name System—FTC.
VII–5—Property Management System—FTC.
VII–6—Information Retrieval and Indexing System—FTC.
VII–7—Service Order System—FTC.
VII–8—Service Call System—FTC.

I. Law Enforcement Systems of Records

FTC–I–1

SYSTEM NAME:

Investigational, Legal, and Public Records—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Regional Offices:

Atlanta Regional Office, 1718 Peachtree Street, NW., Room 1000, Atlanta, Georgia 30367.

Boston Regional Office, 10 Causeway Street, Room 1184, Boston, Massachusetts 02222–1073.

Chicago Regional Office, 55 East Monroe Street, Suite 1437, Chicago, Illinois 60603.

Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, Ohio 44114.

Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, Texas 75201.

Denver Regional Office, 1405 Curtis Street, Suite 2900, Denver, Colorado 80202–2393.

Los Angeles Regional Office, 11000 Wilshire Boulevard, Suite 13209, Los Angeles, California 90024.

New York Regional Office, 150 William Street, Suite 1300, New York, New York 10038.

San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, California 94103.

Seattle Regional Office, 2806 Federal Building, 915 Second Avenue, Seattle, Washington 98174.

Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in Commission investigations, rulemaking, advisory, and law enforcement proceedings; parties requesting formal advisory opinions; and consumers who have received redress or who are entitled to redress pursuant to Commission or court orders. (Businesses, proprietorships, or corporations are not covered by this system.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, employment status, age, date of birth, financial information, credit information, personal history, and records collected and generated during the investigation, which may include correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation, and accompanying exhibits; documents records or copies obtained during the investigation; interview notes, investigative notes, staff working papers, draft materials, and other documents and records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to any of the following: investigation files; docketed and consent matters; rulemaking proceedings; assurances of voluntary compliance; advisory opinions; but is limited to those files from which information is retrieved by the name of an individual or other identifying particular assigned to the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act; Executive Order 10450.

PURPOSE(S):

To conduct the law enforcement, rulemaking, and advisory responsibilities of the Federal Trade Commission; to make determinations based upon the results of those matters; to report results of investigations to other agencies and authorities for their use in evaluating their programs and imposition of criminal, civil, or administrative sanctions; to report the results of investigations to other agencies or other regulatory bodies for any action deemed appropriate; to make appropriate portions of the records of those matters available to the public; and to maintain records of Commission activities related to those matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Made available or referred to federal, state, or local government authorities for investigation, possible criminal prosecution, civil action, regulatory order, or other law enforcement purpose;

(2) Referral to experts or consultants when considered appropriate by Commission staff to assist in the conduct of the matters;

(3) Used by Commission personnel with recordkeeping, managerial, and budgeting responsibilities for information management purposes; and

(4) Individual records that are of historical value may also be incorporated into System VII–6, Information Retrieval and Indexing System.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

May be maintained on standard legal-size and letter-size paper; magnetic tapes and disks; microfilm and microfiche; or optical storage media.

RETRIEVABILITY:

Indexed by respondent's, participant's, or FTC staff member's name; company name; industry investigation title; and FTC matter number.

SAFEGUARDS:

Certain records available to the public. Access to nonpublic records restricted to agency personnel whose responsibilities require access. Hardcopy records maintained in lockable rooms and access to automated records controlled "user id" and password combination.

RETENTION AND DISPOSAL:

Records not needed for historical purposes destroyed or returned to submitter at conclusion of the matter. Other records retained at FTC office for 5 years after conclusion of matter, after which transferred for storage to appropriate National Archives and Records Administration or Federal Records Center. Investigatory files, except history portions, destroyed after 5 years.

SYSTEM MANAGER AND ADDRESSES:

Supervisor, Records Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual respondent(s) or proposed respondent(s), company records, complainants, informants, witnesses, participants, and FTC employees.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records contained in this system that have been placed on the FTC Public Record are available upon request. However, pursuant to 5 U.S.C. 552a(k)(2), records in this system that are not on the Public Record are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a, and the corresponding provisions of 16 CFR 4.13. See FTC Rules of Practice § 4.13(m), 16 CFR 4.13(m), as amended.

FTC–I–2

SYSTEM NAME:

Disciplinary Action Investigatory Files—FTC.

SECURITY CLASSIFICATION:

Not applicable

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FTC personnel, counsel for parties in investigative or adjudicative proceedings, and others participating in FTC matters who may be subject to investigation for possible improper or unethical conduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, employment status, age, date of birth, financial information, credit information, personal history, and records collected and generated during the investigation, which may include correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation, and accompanying exhibits; documents records or copies obtained during the investigation; interview notes, investigative notes, staff working papers, draft materials, and other documents and records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to alleged violations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act; Executive Order No. 10450.

PURPOSE(S):

To conduct disciplinary action investigations; to make determinations based upon the results of the investigations; to report results of investigations to other agencies and authorities for their use in evaluating their programs and imposition of criminal, civil, or administrative sanctions; to report the results of investigations to other agencies or other regulatory bodies for any action deemed appropriate; and to maintain records related to those matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Used to determine whether disciplinary action, including suspension or disbarment from practice before the Commission, is warranted;

(2) May be transferred to the Office of Personnel Management, to a court, or a bar association; and

(3) Used by personnel of other agencies, court, or bar association to whom matter is referred.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

May be maintained on standard legal-size and letter-size paper; on microfilm or microfiche; or on optical storage media.

RETRIEVABILITY:

Indexed by individual's name, company name, industry investigation title, file or docket number.

SAFEGUARDS:

Access restricted to employees whose official duties require access. Hardcopy records maintained in lockable cabinets.

RETENTION AND DISPOSAL:

Retained at FTC office for 5 years after conclusion of matter, after which transferred for storage to appropriate National Archives and Records

Administration and Federal Records Center.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Records Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, complainants, informants, witnesses, and Commission personnel having knowledge or providing analysis of matter.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

FTC–I–3

SYSTEM NAME:

Requests for Staff Opinion and Responses Thereto—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for advisory opinions under § 1.1(b) of the Commission's Rules of Practice, 16 CFR 1.1(b).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of requester; business information; proposed courses of business action; Commission responses to requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To maintain records of requests for informal advice and Commission staff responses; to use those records in relation to subsequent requests for informal advice; and to make that information available to the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Used to provide staff advice that is responsive to a request from a member of the public;

(2) Used to maintain records of advice given for use of the staff for preparation of future Commission opinions and to coordinate and assure consistency of position;

(3) Used as a possible referral to appropriate federal or state agencies for advice or where law enforcement action may be warranted;

(4) Individual records that are of historical value may also be incorporated into System VII–6, Information Retrieval Indexing System; and

(5) Information may be made part of the public record of the Commission and made available to the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

May be maintained on standard legal-size and letter-size paper; magnetic disks and tapes; microfilm and microfiche; or optical storage media.

RETRIEVABILITY:

Indexed by name of requesting party.

SAFEGUARDS:

Available to the public and all agency staff. Maintained in lockable office.

RETENTION AND DISPOSAL:

Maintained from June 1962; no present disposal program.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Records Branch, Information Management & Dissemination Division, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual proprietorship, corporation, or other business organization, or counsel seeking or receiving a staff advisory opinion and FTC employees.

FTC–I–4

SYSTEM NAME:

Clearance to Participate Applications and the Commission's Responses Thereto, and Related Documents—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former members or employees of the Commission who request authorization to appear or participate in a proceeding or investigation, formal or informal, which was pending in any manner in the Commission during that individual's tenure at the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address; and current employment status of the requesting individual, as well as the nature of any connection with the proceeding or investigation for which clearance is sought during service with the Commission; letters responding to those requests indicating the determination of the Commission and outlining reasons for any denial or restriction; internal Commission memoranda evaluating the request and discussing the status of any relevant pending matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To evaluate applications; to make determinations in response to those applications; to maintain records of consideration given to applications requesting authorization to appear in Commission proceedings; and to ensure no conflict of interest between former members or employees of the Commission and active proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant

to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Individual records that are of historical value may also be incorporated into System VII–6, Information Retrieval and Indexing System; and

(2) Application and response letters may be made part of the public record of the Commission and made available to the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

May be maintained on standard legal-size and letter-size paper; magnetic tapes and disks; microfilm and microfiche; or optical storage media.

RETRIEVABILITY:

Indexed by name of the applicant and by the name of the investigation or proceeding.

SAFEGUARDS:

Maintained in lockable offices. Applications and responses available to the public and all agency staff. Other records restricted to employees whose official duties require access.

RETENTION AND DISPOSAL:

Applications and responses maintained from January 1969; no present disposal schedule.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Records Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Assistant General Counsel for Legal Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and Commission staff who prepare the memoranda and response to request.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records contained in this system that have been placed on the FTC Public Record are available upon request. However, pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

FTC–I–5

SYSTEM NAME:

Management Information System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees; participants in Commission investigations, rulemaking, advisory, and law enforcement proceedings; and parties requesting formal advisory opinions. (Businesses, proprietorships, or corporations are not covered by this system.)

CATEGORIES OF RECORDS IN THE SYSTEM:

For records about individuals who, at the time the records are added to the system, are Commission employees: Name; employee identification number; organization name and code; employee time spent on work activities and type of activities engaged in; and specific responsibilities and assignments on individual matters. For others: records related to investigatory, rulemaking, and advisory opinion proceedings, including name and associated matter number; matter status; alleged or potential law violation; and goods or services associated with the proceeding. The records also include plans for conducting the proceeding and actions taken during the proceeding.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To maintain records of employee work and Commission law enforcement activities; to make workload and budget determinations and personnel related evaluations; to assist in investigative and adjudicative proceedings, enforcement actions, civil penalty proceedings, consideration of compliance reports, issuance of cease and desist orders, and advisory opinions; to refer to experts and consultants when considered appropriate by Commission staff; and to use those records to properly manage Commission resources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Made available or referred to federal, state, or local government authorities for investigation, possible criminal prosecution, civil action, regulatory order or other law enforcement purpose; and

(2) If the proceeding about which the record relates is public in nature, records may be made part of the public record of the Commission and made available to the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

May be maintained on standard legal-size and letter-size paper; magnetic tapes and disks; microfilm and microfiche; or optical storage media.

RETRIEVABILITY:

Indexed by individual's name, employee identification number, matter number, respondent's or correspondent's name, company name, industry investigation title, and FTC matter number.

SAFEGUARDS:

Certain records available to the public. Access to other records restricted to agency personnel whose responsibilities require access. Access to computerized records controlled by "user id" and password combination.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Director, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and Commission staff associated with the matter.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records contained in this system that have been placed on the FTC Public Record are available upon request. However, pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

FTC–I–6

SYSTEM NAME:

Office of the Secretary Control and Reporting System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commissioners or Commission employees; participants in Commission investigations and law enforcement proceedings; and parties requesting formal advisory opinions. (Businesses, proprietorships, or corporations are not covered by this system.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of assignments; votes; circulations; and statements of individual Commissioners on issues before the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To process and control assignments made to individual Commissioners; to coordinate the consideration and votes on appropriate issues; to assist Commissioners and staff in investigative, adjudicative and rulemaking proceedings, enforcement actions, civil penalty proceedings, consideration of compliance reports, issuance of complaints, negotiation of consent orders, issuance of cease and desist orders, advisory opinions, and other matters before the Commission; and to retain records of the matters before the Commission, the Commission's deliberations and decisions concerning those matters, and related documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records and information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

May be maintained on standard legal-size and letter-size paper; magnetic tapes and disks; microfilm and microfiche; or optical storage media.

RETRIEVABILITY:

Indexed by Commissioner or staff name, employee identification number, FTC matter number, respondent's name, company name, and industry investigation title.

SAFEGUARDS:

Access to records restricted to agency personnel whose responsibilities require access. Access to computerized records controlled by "user id" and password combination.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Commission staff associated with the matter.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

FTC–I–7

SYSTEM NAME:

Office of Inspector General Investigative Files—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of OIG investigations relating to the programs and operations of the Federal Trade Commission. Subject individuals include, but are not limited to, current and former Commission employees; agents or employees of contractors or subcontractors, as well as contractors and subcontractors in their personal capacity, where applicable; and other individuals whose actions affect the Commission, its programs or operations. (Businesses, proprietorships, or corporations are not covered by this system.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation, and accompanying exhibits; documents, records, or copies obtained during the investigation; interview notes, investigative notes, staff working papers, draft materials, and other documents and records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act Amendments of 1988, Pub. L. No. 100–504, amending the Inspector General Act of 1978, Pub. L. No. 95–452, 5 U.S.C. app.

PURPOSE(S):

To document the conduct and outcome of investigations; to report results of investigations to other components of the Commission or other agencies and authorities for their use in evaluating their programs and imposition of criminal, civil, or administrative sanctions; to report the

results of investigations to other agencies or other regulatory bodies for any action deemed appropriate, and for retaining sufficient information to fulfill reporting requirements; and to maintain records related to the activities of the Office of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Disclosed to agencies, offices, or establishments of the executive, legislative, or judicial branches of the federal or state government

(a) Where such agency, office, or establishment has an interest in the individual for employment purposes, including a security clearance or determination as to access to classified information, and needs to evaluate the individual's qualifications, suitability, and loyalty to the United States Government, or

(b) Where such agency, office, or establishment conducts an investigation of the individual for the purposes of granting a security clearance, or for making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or

(c) Where the records or information in those records are relevant and necessary to a decision with regard to the hiring or retention of an employee or disciplinary or other administrative action concerning an employee, or

(d) Where disclosure is requested in connection with the award of a contract or other determination relating to a government procurement, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter, including, but not limited to, disclosure to any Federal agency responsible for considering suspension or debarment actions where such record would be germane to a determination of the propriety or necessity of such action, or disclosure to the United States General Accounting Office, the General Services Administration Board of Contract Appeals, or any other Federal contract board of appeals in cases relating to an agency procurement;

(2) Disclosed to the Office of Personnel Management, the Office of Government Ethics, the Merit Systems Protection Board, the Office of the Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority or its General Counsel, of records or portions thereof relevant and necessary to carrying out their authorized functions, such as, but not limited to, rendering advice requested by the OIG, investigations of alleged or prohibited personnel practices (including unfair labor or discriminatory practices), appeals before official agencies, offices, panels or boards, and authorized studies or review of civil service or merit systems or affirmative action programs;

(3) Disclosed to independent auditors or other private firms with which the Office of the Inspector General has contracted to carry out an independent audit or investigation, or to analyze, collate, aggregate or otherwise refine data collected in the system of records, subject to the requirement that such contractors shall maintain Privacy Act safeguards with respect to such records; and

(4) Disclosed to a direct recipient of federal funds such as a contractor, where such record reflects serious inadequacies with a recipient's personnel and disclosure of the record is for purposes of permitting a recipient to take corrective action beneficial to the Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Investigative Files consist of paper records maintained in file folders and data maintained on computer diskettes. The folders and diskettes are stored in file cabinets in the OIG.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in lockable rooms. Access is restricted to individuals whose duties require access to the records. File cabinets and rooms are locked during non-duty hours.

RETENTION AND DISPOSAL:

The OIG Investigative Files are kept indefinitely.

SYSTEM MANAGER AND ADDRESS:

Inspector General, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Employees or other individuals on whom the record is maintained, non-target witnesses, Commission and non-Commission records to the extent necessary to carry out OIG investigations authorized by 5 U.S.C. app.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), records in this system are exempt from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and corresponding provisions of 16 CFR 4.13, to the extent the system of records relates in any way to the enforcement of criminal laws.

Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), and the corresponding provisions of 16 CFR 4.13, to the extent the system of records consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

FTC–I–8

SYSTEM NAME:

Stenographic Reporting Services Request System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees and who request stenographic reporting services or who are responsible for hearings in which stenographic reporting services are used; individuals who are deposed or provide testimony at hearings in which stenographic reporting services are used. (Businesses, proprietorships, or corporations are not covered by this system.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and sometimes address of individual who is deposed or provides testimony in FTC proceedings; name of staff requesting and/or responsible for the hearing; information indicating the time and place of the hearing; information identifying the matter to which the hearing relates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To communicate information to stenographic reporting service contractors to schedule and provide stenographic reporting services; to maintain records of the planned and actual expenditures of FTC funds for stenographic reporting services; to identify individuals who are deposed or provide testimony in FTC proceedings; to identify individuals who request reporting service assistance; and to identify, for agency managers to ensure that stenographic services are used properly, the use of various levels of stenographic service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) When hearing is a matter of public record, information identifying the individual being deposed or providing testimony is made part of the public record of the proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

May be maintained on standard legal-size and letter-size paper; magnetic tapes and disks; microfilm and microfiche; or optical storage media.

RETRIEVABILITY:

Records retrievable by name of individual being deposed or providing testimony, name of individual requesting stenographic services, or name of individual responsible for hearing in which stenographic services are required.

SAFEGUARDS:

Certain records available to the public. Access to other records restricted to agency personnel whose responsibilities require access. Access to automated records controlled by "user id" and password combination.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Records Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and Commission staff associated with the matter.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records contained in this system that have been placed on the FTC Public Record are available upon request. However, pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

II. Personnel Systems of Records

FTC–II–1

SYSTEM NAME:

General Personnel Records—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Trade Commission employees and applicants for vacancies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each category of record may include identifying information such as name(s), date of birth, home residence, mailing address, social security number, and home telephone. This system includes, but is not limited to, the contents of the Official Personnel Folder as specified in Federal Personnel Manual Supplement 293–31. (Copies of Official Personnel Records maintained by other Commission offices are considered part of FTC–II–2, Unofficial Personnel Records—FTC.) Records in this system include:

a. Records reflecting work experience, educational level achieved, specialized education or training obtained outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about: Past and present positions held; grades; salaries; and duty station locations; commendations, awards, or other data reflecting special recognition of an employee's performance; and notices of all personnel actions such as: Appointments, transfers, reassignments, details, promotions, demotions, reductions in force, resignations, separations, suspensions, approval of disability retirement applications, retirement and removals.

c. Records relating to enrollment or declination of enrollment in the Federal Employees Group Life Insurance Program and federally-sponsored health benefit programs, as well as forms showing designation of beneficiary.

d. Records of a medical nature, including records compiled during an agency initiated fitness-for-duty examination or request for approval of disability retirement. Such medical records are to be retained in separate envelopes from the OPF and include records of medical examination that are to remain as a long-term record in the OPF (see "Retention and Disposal" section).

e. Records relating to an Intergovernmental Personnel Act assignment or Federal-private exchange program.

f. Records relating to participation in the Federal Executive or SES Candidate Development Program.

g. Records relating to Government-sponsored training or participation in the agency's Upward Mobility Program or other personnel programs designed to broaden an employee's work experiences and for purposes of advancement (e.g., an administrative intern program).

h. Records connected with the Senior Executive Service (SES), for use in making studies and analyses of the SES, preparing reports, and in making decisions affecting incumbents of these positions, e.g., relating to sabbatical leave programs, training, reassignments, and details, that are perhaps unique to

the SES and which may or may not be filed in the employee's Official Personnel Folder. These records may also serve as basis for reports submitted to OMB's Executive Personnel and Management Development Group for purposes of implementing the Office's oversight responsibilities concerning the SES.

i. Records on an employee's activities on behalf of the recognized labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

j. Records that are performance-related, including: Appraisal forms and supporting documentation; recommendations for personnel actions; Performance Review Board or Executive Resource Board records; forms and supporting documentation issued in connection with removal actions; letters of commendation; and documents certifying satisfactory completion of probationary periods or recommendations for within grade or merit pay actions. Conduct-related records, such as reprimands, admonishments, cautions, or warnings and supporting documentation are also part of this system.

k. To the extent that the records listed here are also maintained in the agency automated personnel or microform records system, those versions of the above records are considered to be covered by this system notice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. 1302, 2951, 3372, 4118, 8347 and Executive Orders 9397, 9830, and 12107.

PURPOSE(S):

The Official Personnel Folder (OPF) and other general personnel records are the official repository of the records, reports of personnel actions, and the documents required in connection with those actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long term records in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

The OPF is maintained for the period of the employee's service in the Commission and is then transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing Federal agency. Other records are either retained at the agency for various lengths of time in accordance with General Services Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses including: Screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and for other information needed in providing personnel services. These records and their automated or microformed equivalents may also be used to locate individuals for personnel research.

Temporary documents on the left side of the OPF may lead (or have led) to a formal action, but do not constitute a record of it, nor make a substantial contribution to the employee's long term record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Performance Related Uses

(a) To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested); where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit;

(b) To disclose to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract; the issuance of a license, grant, or other benefit by the requesting agency; or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter;

(c) By the agency or by OPM to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference;

(d) To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained;

(e) To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law;

(f) To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978;

(g) To disclose to prospective non-Federal employers, the following information about a specifically identified current or former Federal employee:

(i) Tenure of employment;

(ii) Civil service status;

(iii) Length of service in the agency and the Government; and

(iv) When separated, the date and nature of action as shown on the Notification of Personnel Action, Standard Form 50 (or authorized exception);

(h) To consider employees for recognition through quality step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition;

(i) To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors;

(j) To disclose information to any member of the agency' s Performance Review Board or other board or panel (e.g.) one convened to select or review nominees for awards of merit pay increases), when the member is not an official of the employing agency; information would then be used for the purposes of approving or recommending selection of candidates for executive development of SES candidate programs, issuing a performance appraisal rating, issuing performance awards, nominating for Meritorious and Distinguished Executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance;

(k) By agency officials for purposes of review in connection with appointments, transfers, promotions, reassignments, adverse actions, disciplinary actions, and determination of qualification of an individual;

(l) By the Office of Personnel Management for purposes of making a decision when a Federal employee or former Federal employee is questioning the validity of a specific document in an individual's record; and

(m) As a data source for management information for promotion of summary descriptive statistics and analytical studies in support of the related personnel management functions of human resource studies; may also be utilized to locate specific individuals for personnel research or other personnel management functions;

(2) Training/Education Related Uses

(a) To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes; and

(b) To disclose information to educational institutions on appointment of a recent graduate to a position in the Federal service, and to provide college and university officials with information about their students working under the Cooperative Education Volunteer Service, or other similar programs where necessary to a student's obtaining credit for the experience gained;

(3) Retirement/Insurance/Health Benefits Related Uses

(a) To disclose information to: the Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, Federal agencies that have special civilian employee retirement programs; or a national, State, county, municipal, or other publicly recognized charitable or income security administration agency (e.g., State unemployment compensation agencies) where necessary to adjudicate a claim under the retirement, insurance or health benefits programs of the Office of Personnel Management or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs;

(b) To disclose to the Office of Federal Employees Group Life Insurance information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance;

(c) To disclose to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts;

(d) When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled;

(e) To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under:

(i) Fitness-for-duty examination procedures; or

(ii) Agency-filed disability retirement procedures;

(f) To disclose to a requesting agency, organization, or individual the home address and other relevant information concerning those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while employed in the Federal work force; and

(g) To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, and the United States Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of 5 U.S.C. 5532;

(4) Labor Relations Related Uses

(a) To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised and matters before the Federal Service Impasses Panel; and

(b) To disclose information to officials of labor organizations recognized under 5 U.S.C. 71 *et. seq.* when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(5) Miscellaneous Uses

(a) To disclose information to the Federal Acquisition Institute (FAI) about Federal employees in procurement occupations and other occupations whose incumbents spend the predominant amount of their work hours on procurement tasks; provided that the FAI shall only use the data for such purposes and under such conditions as prescribed by the notice of the Federal Acquisition Personnel Information System as published in the **Federal Register** on February 7, 1980 (45 FR 8399 (1980));

(b) To provide data to OPM for inclusion in the automated Center Personnel Data File;

(c) Disclosed for any routine use noted in the Office of Personnel Management Privacy Act Notice for this system of records. See 47 FR 16489 (1982), as amended by 50 FR 15253 (1985);

(d) To disclose information to a Federal, state, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs; and

(e) To locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of

data included in the study may be structured in such a way as to make the data individually identifiable by inference.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

May be maintained on standard legal-size and letter-size paper; magnetic disks and tape, and punched cards.

RETRIEVABILITY:

Records are indexed by various combinations of individual's name, birth date, social security number, or employee identification number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms with access limited to those whose official duties require access. Access to automated files restricted by password to those whose official duties require access.

RETENTION AND DISPOSAL:

Long-term Records. The Official Personnel Folder (OPF) is retained by the Commission as long as the individual is employed with the Commission. Medical records are kept separately from the OPF while the individual is employed by the Commission. When the individual transfers to any Federal agency or to another appointing office, the OPF, with the long-term medical records inserted in a separate envelope, is sent to that agency or office. Other medical records covered by this system; i.e., fitness-for-duty examinations, are considered temporary in nature. Such records, when not submitted to the Office of Personnel Management for retention in a disability retirement file (or submitted, but the Office of Personnel Management does not approve retirement), shall be destroyed no later than 6 months after closing action on the case or sooner at the discretion of the Commission.

Within 90 days after the individual separates from the Federal service, the OPF is sent to the National Personnel Records Center for long-term storage. In the case of administrative need, a retired employee, or an employee who dies in service, the OPF is sent to the Records Center within 120 days.

Destruction of the OPF is in accordance with General Records Schedule (GRS) 1.

Other Records. These records are retained for varying periods of time. Generally they are maintained for a minimum of 1 year or until the employee transfers or separates.

Records contained on computer processible media within the Commission's automated personnel records may be retained indefinitely as a basis for longitudinal work history statistical studies. After the disposition date in GRS–1, such records may not be used in making decisions concerning employees.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Personnel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual to whom the record applies and agency employees.

FTC–II–2

SYSTEM NAME:

Unofficial Personnel Records—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Regional Offices:

Atlanta Regional Office, 1718 Peachtree Street, NW., Room 1000, Atlanta, Georgia 30367.

Boston Regional Office, 10 Causeway Street, Room 1184, Boston, Massachusetts 02222–1073.

Chicago Regional Office, 55 East Monroe Street, Suite 1437, Chicago, Illinois 60603.

Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, Ohio 44114.

Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, Texas 75201.

Denver Regional Office, 1405 Curtis Street, Suite 2900, Denver, Colorado 80202–2393.

Los Angeles Regional Office, 11000 Wilshire Boulevard, Suite 13209, Los Angeles, California 90024.

New York Regional Office, 150 William Street, Suite 1300, New York, New York 10038.

San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, California 94103.

Seattle Regional Office, 2806 Federal Building, 915 Second Avenue, Seattle, Washington 98174.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees, consultants, contractors, or applicants for vacancies.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records contains information or documents about the educational background, employment, and work history of individuals. The types of records maintained vary with each supervisor and Commission unit. Each supervisor may maintain some or all of the following records: Written notes or memoranda on employee conduct and performance (i.e., employee evaluation, employee forms, leave records, work assignments, or disciplinary problems), work schedule, and records related to consideration given to applicants for positions with the FTC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. 4301–4308; 6101–6106; 6301–6326; 7301–7352; and 7501–7533.

PURPOSE(S):

To assist Commission managers in making work assignment, evaluation, and other types of decisions related to the employees of the Federal Trade Commission; to assist in evaluating performance, preparing promotion and award recommendations, preparing informal or formal disciplinary actions, approving leave, coordinating schedules, and preparing news releases; to assist supervisors in the interviewing, evaluation, and selection process when filling position vacancies; and to maintain records of those considerations and actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Records identifying the individual's work schedule may be made available to other agency staff and the public; and

(2) Referral to the Office of Personnel Management concerning pay benefits, retirement deductions, and other information necessary for OPM to carry

out its government-wide personnel management functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on magnetic diskettes.

RETRIEVABILITY:

Indexed by individual's name.

SAFEGUARDS:

Access to these records is limited to those whose official duties require such access. Maintained in lockable rooms or cabinets.

RETENTION AND DISPOSAL:

Records are destroyed when no longer relevant to the purpose for which they were compiled and maintained. Generally, records are destroyed when the employee no longer works in the bureau or office that compiled and maintained the information.

SYSTEM MANAGERS AND ADDRESS:

Employee's Supervisors, Federal Trade Commission, (Same address as System Location).

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom record pertains; individual's supervisors; other interested parties.

FTC–II–3

SYSTEM NAME:

Worker's Compensation—FTC.

SECURITY CLASSIFICATION:

Not applicable

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees and who sustain work related injuries or occupational diseases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, Social Security numbers, medical reports, accident and occupational disease reporting forms, correspondence, and medical bills.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Employees Compensation Act.

PURPOSE(S):

To consider applications, from employees who allegedly sustain work related injuries, for compensation and to maintain records concerning those applications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Responding to queries from Department of Labor, Office of Workers Compensation Programs, supervisors and employees about compensation claims.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Indexed by individual's name.

SAFEGUARDS:

Access is restricted to agency personnel who require access. Maintained in lockable rooms.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Personnel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual to whom record applies, supervisors, physicians, Department of Labor, Office of Workers Compensation programs, managers, and witnesses.

FTC–II–4

SYSTEM NAME:

Counseling Records—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Federal Trade Commission who seek counseling assistance through the Division of Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Counseling notes and Individual Development Plans related to Upward Mobility, Professional Training, Executive Development, and Employee Relations matters. Letters from creditors about debts owed by current employees and copies of employee responses. Records concerning time and expenses of employee involved in activities on behalf of labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4101 *et seq.*; Executive Orders 9830, 11348, and 11478; Equal Opportunity Act of 1972.

PURPOSE(S):

To provide counseling to Commission employees and to maintain records of those activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Upward Mobility, Professional Training and Executive Development—used by program director or others whose official duties require such information to assist in providing effective counseling to employees; to provide a record of employee goals and objectives and classes needed to attain those objectives; and to maintain a record of courses taken;

(2) Employee Relations and Debt—used by Employee Relations Specialist or others whose official duties require

such information. Information provides a record of counseling provided and resolution of problem(s). If the problem results in a disciplinary action, information in file may become part of an official record;

(3) Labor Relations—Used by Labor Relations Specialist and others whose official duties require such information. Provides a record of official time used and travel and per diem money spent while attending to union business. Information disclosed to officials of labor organizations recognized under 5 U.S.C. 7101 *et seq.* when relevant and necessary to their duties as exclusive representative;

(4) Information disclosed to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised and matters before the Federal Service Impasses Panel; and

(5) All Records—Referral to the Office of Personnel Management concerning pay, benefits, retirement deductions, and other information necessary for the Commission to carry out its government-wide personnel management functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Indexed by individual's name.

SAFEGUARDS:

Records are stored in lockable metal file cabinets. Access to these records is limited to those persons whose duties require such access.

RETENTION AND DISPOSAL:

Records are destroyed after completion of the program (Upward Mobility, Professional Executive Development Programs) or after employee's separation from the agency (Employee Relations and Debt Counseling).

SYSTEM MANAGER AND ADDRESS:

Director, Division of Personnel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the records pertain, supervisors, program managers, counselor.

FTC–II–5

SYSTEM NAME:

Equal Employment Opportunity Statistical Reporting System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Coded minority group designations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1301, 3301, 7201, 7204, and Executive Order 10577.

PURPOSE(S):

To maintain statistical information related to employment opportunities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Used by the Equal Employment Opportunity Director in composite statistical form only, for analyses and reports within the Commission and to the Congress, Office of Management and Budget, Equal Employment Opportunity Commission, and Office of Personnel Management as required by law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on magnetic disks and tape.

RETRIEVABILITY:

Indexed by name of individual, name of group, or by cross-reference to title and grade information contained in FTC System II–1, General Personnel Records (Official Personnel Folder and Records Related Thereto).

SAFEGUARDS:

Computerized records controlled by password and access may be obtained only by written authorization of the Equal Employment Opportunity Director.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Director, Equal Employment Opportunity Office, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Self-identification or visual identification of each employee by Division of Personnel staff and administrative officer in each Regional Office.

FTC–II–6

SYSTEM NAME:

Discrimination Complaint System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints, affidavits, supporting documents, memoranda and notes relevant to precomplaint and complaint investigations and matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 717 of Title VII of the Civil Rights Act of 1964, as amended, and 29 CFR part 1613.

PURPOSE(S):

To assist in the consideration given to reviews of potential or alleged violations of equal employment opportunity statutes and regulations and to maintain records on precomplaint and

complaint matters relating to those issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Used to resolve issues related to alleged discrimination because of race, national origin, religion, sex, age, and physical or mental handicap related to equal employment opportunity matters; and

(2) Used to make reports to Office of Management and Budget, Merit Systems Protection Board, and Equal Employment Opportunity Commission.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in letter-size file folders.

RETRIEVABILITY:

Indexed by name of the complainant.

SAFEGUARDS:

Maintained in lockable cabinets and access restricted to Commission's EEO staff and parties concerned in any related proceeding.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Director, Equal Employment Opportunity Office, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained, affiants, and EEO staff.

FTC–II–7

SYSTEM NAME:

Statement of Employment and Financial Interests—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees required by FTC regulations to file statements of employment and financial interests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; organization; statement of personal and family holdings and other interests in business enterprises and real property; listings of creditors and outside employment; opinions of counsel; and other information related to conflict of interest disclosures and determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222 and 5 CFR part 735.

PURPOSE(S):

To meet the requirements of Executive Order 11222 on the filing of employment and financial interest statements; and to assist senior Commission employees and members of the General Counsel's Office to review statements of employment and financial interests to ascertain whether a conflict of interest or apparent conflict of interest exists and, if so, to ensure that appropriate action is taken to remove conflict.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Disclosed to a source when necessary to obtain information relevant to a conflict of interest investigation or determination.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in lockable file cabinet. Access restricted to those agency personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Assistant General Counsel for Legal Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained.

FTC–II–8

SYSTEM NAME:

Biographies of Commissioners and Key Staff Members—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Commissioners and key FTC staff members.

CATEGORIES OF RECORDS IN THE SYSTEM:

These reports contain some or all of the following: name, biographical data such as education and employment, photograph and news release related to the individual's appointment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To maintain records for the public outlining the biographies of Commissioners and key Commission staff members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified

either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Used by Office of Public Affairs staff members as resource material for (a) writing news releases; (b) FTC publications; and (c) filling requests for information from members of the public; and

(2) Individual records that are of historical value may also be incorporated into System VII–6, Information Retrieval and Indexing System.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Indexed by individual's name.

SAFEGUARDS:

Available to the public. Maintained in lockable file cabinets.

RETENTION AND DISPOSAL:

Upon or shortly after departure from the Commission, records are destroyed or returned to the individual.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Public Affairs, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained.

FTC–II–9

SYSTEM NAME:

Claimants Under Federal Tort Claims Act and Military Personnel and Civilian Employees' Claims Act—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have claimed reimbursement from FTC under Federal Tort Claims Act and Military Personnel and Civilian Employees' Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information relating to incidents in which the FTC may be liable for property damage, loss, or personal injuries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act; Military Personnel and Civilian Employees' Claims Act.

PURPOSE(S):

To consider claims made under the statutes; to investigate those claims; to determine appropriate responses to those claims; and to maintain records outlining all considerations and actions related to those claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Referred to Department of Justice, GSA, or other federal agency when the matter comes within the jurisdiction of such agency; and

(2) Used in discussions and correspondence with insurance companies, with other persons or entities that may be liable, with potential witnesses or others having knowledge of the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Indexed by individual's name.

SAFEGUARDS:

The files are stored in lockable file cabinets. Access restricted to those agency personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

The records are retained for 10 years after the matter has been resolved, then destroyed.

SYSTEM MANAGER AND ADDRESS:

Assistant General Counsel for Legal Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the record pertains (claimant); FTC employee involved in incident; other FTC employees or other persons having knowledge of the circumstances; official police report (if any); and insurance company representing claimant (if any).

FTC–II–10

SYSTEM NAME:

Employee Medical File—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, medical reports, opinions, evaluations and treatment information, and records resulting from the testing of the employee for use of illegal drugs under Executive Order 12564.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12196 and 12564.

PURPOSE(S):

To maintain records concerning employee job-related medical treatment.

To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual. To provide a record of communications among members of the health care team who contribute to the patient's care. To provide a legal document describing the health care administered and any exposure incident.

To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to OSHA and actions taken by the agency or by the Commission.

To ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Used to disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, or a national, state, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program;

(2) Used to disclose information to a Federal, state, or local agency to the extent necessary to comply with laws governing reporting of communicable diseases;

(3) Used to disclose information to officials of the Merit Systems Protection Board including the Office of Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties;

(4) Used to disclose information to health insurance carriers contracting with the Office of Personnel Management to provide health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits. To disclose information to the Office of Federal Employees Group Life Insurance that is relevant and necessary to adjudicate claims;

(5) Used to disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under:

(a) Medical evaluation (formerly Fitness for Duty) examinations procedures, or

(b) Agency-filed disability retirement procedures; and

(6) Used to disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal work force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Indexed by individual's name.

SAFEGUARDS:

Maintained in lockable rooms and cabinets. Access restricted to those agency personnel who require access.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Personnel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the records are maintained, treating physicians, staff of medical facilities, witness statements, and others.

FTC-II-11

SYSTEM NAME:

Personnel Security File—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees on whom Office of Personnel Management security investigations have been conducted.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, security investigation reports, adjudication files, card files, and position sensitivity designation files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450.

PURPOSE(S):

To conduct personnel security investigations; to make determinations required based upon the results of those investigations; and to maintain records of the investigations and determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Used to disclose to an agency in the executive, legislative, or judicial branch, in response to its request, information on the issuance of a security clearance or the conducting of a security or suitability investigation on individuals who, at the time the records are added to the system, were Commission employees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders and on file cards.

RETRIEVABILITY:

Indexed by individual's name.

SAFEGUARDS:

Maintained in combination locked safe and lockable metal file cabinets, in locked rooms. Access is restricted to Personnel Security staff. Investigation reports may be reviewed by an agency official (who has been subject to a favorable background investigation) on a strict need-to-know basis.

RETENTION AND DISPOSAL:

Investigation reports are retained for 15 years or until an employee separates from the agency. Records of adjudicative actions are maintained for two years.

SYSTEM MANAGER AND ADDRESS:

Security Officer, Division of Personnel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Office of Personnel Management Security Investigations Index, FBI Headquarters investigative files, fingerprint index of arrest records, Defense Central Index of Investigations, previous employers, references identified by record subject individual, school registrars, and responsive law enforcement agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 15 CFR 4.13(m).

FTC–II–12

SYSTEM NAME:

Training Reservation System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees who registered to attend training courses offered by the Commission's Information Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee identification number, course number, course title, course date and time, and attendance indicator.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To provide information to agency managers necessary to indicate the training that has been requested and provided to individual employees; to determine course offerings and frequency; and to manage the training program administered by the Information Center.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on computer disk and tape.

RETRIEVABILITY:

Indexed by employee identification number.

SAFEGUARDS:

Access to computerized records controlled by "user id" and password combination and restricted to staff whose duties require access.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Library, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained and Information Center staff responsible for the training program.

III. Financial Systems of Records

FTC–III–1

SYSTEM NAME:

Payroll Processing System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

General Services Administration, 1500 E. Bannister Road, Kansas City, Missouri 64131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

All payroll information on individual FTC employees, including basic employment information, pay and deduction information, and leave and tax information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1301.

PURPOSE(S):

To pay and compensate FTC employees properly in accordance with applicable laws and regulations and to maintain records of those payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Records identifying the work schedule of an individual may be made available to other staff and the public;

(2) Referral of unemployment compensation information to state and local unemployment compensation boards; and

(3) Referral of information to the Office of Personnel Management (OPM) concerning pay, benefits, retirement deductions, and other information necessary for OPM to carry out its government-wide personnel management functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in comprehensive payroll file folders at the system location in Washington, DC, and on computer disk and tape at the General Services Administration.

RETRIEVABILITY:

Indexed by social security number.

SAFEGUARDS:

Hardcopy records maintained in lockable rooms and access to computerized records controlled by "user id" and password combination. Access restricted to those agency personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Records are retained according to National Archives and Records Administration schedule of retention and disposal.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Budget and Finance, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Pay forms completed by individual about whom the records are maintained; agency personnel records.

FTC–III–2

SYSTEM NAME:

Payroll—Retirement Records—FTC.

SECURITY CLASSIFICATION:

Not applicable

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

General Services Administration, 1500 E. Bannister Road, Kansas City, Missouri 64131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FTC employees who qualify for federal retirement benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll information relating to retirement benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5301, 5501, 6101, 6301, and 8301.

PURPOSE(S):

To maintain and process payroll information relating to retirement benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Used to calculate retirement benefits;

(2) Referred to Office of Personnel Management (OPM) upon retirement or resignation from federal service and answering employee inquiries regarding their retirement contributions while with the agency; and

(3) Referred to OPM concerning pay, benefits, retirement deductions, and other information, for OPM to carry out its government personnel management functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on computer tape at the General Services Administration or at the FTC on individual cards for those not included in the regular payroll system.

RETRIEVABILITY:

Indexed by social security number.

SAFEGUARDS:

Hardcopy records maintained in lockable rooms and access to computerized records controlled by "user ID" and password combination. Access restricted to those agency personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Records are held for length of service of employee while at FTC. Information forwarded to next employing agency or OPM upon separation from FTC.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Budget and Finance, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Payroll system; agency personnel and payroll records.

FTC–III–3

SYSTEM NAME:

Financial Management System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Division of Budget and Finance, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FTC employees and others who travel or otherwise might be involved in situations in which they would receive payment or reimbursement from the FTC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home and work address, employee identification number, social security number, personal credit card number on supporting receipts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701 *et seq.*

PURPOSE(S):

To maintain financial records concerning payment or reimbursement of expenses. These records are necessary to support and document expenses incurred in the performance of official agency duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Used in financial reports of the FTC.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on magnetic disks and tape.

RETRIEVABILITY:

Indexed by individual's name and employee identification number.

SAFEGUARDS:

Hardcopy records maintained in lockable cabinets and access to computerized records controlled by "user ID" and password combination. Access restricted to those agency personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Records are retained per National Archives and Records Administration schedule of retention and disposal.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Budget and Finance, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained.

IV. Correspondence Systems of Records

FTC–IV–1

SYSTEM NAME:

Correspondence Control System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Regional Offices:

Atlanta Regional Office, 1718 Peachtree Street, NW., Room 1000, Atlanta, Georgia 30367.

Boston Regional Office, 10 Causeway Street, Room 1184, Boston, Massachusetts 02222–1073.

Chicago Regional Office, 55 East Monroe Street, Suite 1437, Chicago, Illinois 60603.

Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, Ohio 44114.

Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, Texas 75201.

Denver Regional Office, 1405 Curtis Street, Suite 2900, Denver, Colorado 80202–2393.

Los Angeles Regional Office, 11000 Wilshire Boulevard, Suite 13209, Los Angeles, California 90024.

New York Regional Office, 150 William Street, Suite 1300, New York, New York 10038.

San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, California 94103.

Seattle Regional Office, 915 Second Avenue, 2806 Federal Building, Seattle, Washington 98174.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who communicate with the Commission to complain about the business practices of a company or individual or request assistance in resolving a problem; individuals who, at the time the records are added to the system, are Commission employees assigned to process or respond to correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of the individual who communicates with the Commission. The individual's letter and supporting documents (sometimes including social security and credit card numbers and other personal information). Information extracted from those letters and supporting documents. Name and employee identification number of staff member assigned to process or respond to letter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To maintain records of complaints and inquiries to enable the Commission to track and respond to correspondence; to identify consumer problems and issues that may lead to law enforcement investigations and litigations; to be incorporated into law enforcement investigations and litigations (when used in connection with law enforcement activities, also becomes part of System I–1, Investigational, Legal and Public Records); and to be abstracted to provide statistical data on the number and types of correspondence received by the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) May be referred to person, partnership, or corporation complained about or made available or referred to federal, state, or local government authorities for law enforcement purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders and on magnetic disks and tape.

RETRIEVABILITY:

Indexed by consumer's name, correspondence number, company complained about, FTC office receiving complaint, name of staff member assigned to the correspondence.

SAFEGUARDS:

Hardcopy records maintained in lockable rooms and cabinets and access to computerized records controlled by "user id" and password combination. Access restricted to those agency personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Letters retained for minimum of one year; automated information retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Information Management Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom record is maintained and agency staff assigned to handle the correspondence.

V. Access Requests

FTC–V–1

SYSTEM NAME:

Freedom of Information Act Requests and Appeals—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing requests for access to information under the Freedom of Information Act (FOIA); individuals who, at the time the records are added to the system, are Commission employees assigned to consider the requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters to and from the requesting party and agency documents generated or collected during the consideration of the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act; Freedom of Information Act.

PURPOSE(S):

To consider requests for access to records under the Freedom of Information Act; to determine the status of requested records; to respond to the requests; to incorporate historically valuable records into System VII–6, Information Retrieval and Indexing System; and to maintain records outlining the consideration given to the requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Request and appeal letters, and agency letters responding thereto, are available to the public for inspection and copying.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Copies of request and appeal letters, and agency responses thereto, are stored in binders that are available to the public. Original request letters, appeal letters (if any), agency responses, and related internal memoranda, are stored in folders and on microforms in lockable file cabinets. Automated data stored on magnetic disks and tape.

RETRIEVABILITY:

Indexed by name of requesting party and subject matter of request.

SAFEGUARDS:

Requests, appeals, and responses available to the public. Nonpublic, hardcopy records maintained in lockable file cabinets and access to computerized records, controlled by "user id" and password combination. Access restricted to personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Records retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Supervisor, FOIA/PA and Correspondence Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Assistant General Counsel for Legal Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained and agency staff assigned to consider the access request.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records contained in this system that have been placed on the FTC Public Record are available upon request. However, pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

FTC-V-2

SYSTEM NAME:

Privacy Act Requests and Appeals—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing requests for access to, correction of, or an accounting of disclosures of personal information contained in system of records maintained by the Commission, pursuant to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters to and from the requesting party and agency documents generated or collected during the consideration of the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act; Privacy Act.

PURPOSE(S):

To consider requests for access to records under the Privacy Act; to determine the status of requested records; to respond to the requests; and to maintain records outlining the consideration given to the requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records and information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Indexed by name of requesting party.

SAFEGUARDS:

Maintained in lockable offices and in lockable cabinets. Access restricted to those agency personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Records are maintained according to retention schedules of the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Supervisor, FOIA/PA and Correspondence Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Director, Division of Personnel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Assistant General Counsel for Legal Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom record is maintained and agency staff assigned to consider the request.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

FTC-V-3

SYSTEM NAME:

Public Information Requests System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request copies of records that are part of the public record of the FTC; Individuals who, at the time the records are added to the system, are Commission employees assigned to respond to those requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and business affiliation, if available, of the individual requesting copies of public records; information identifying the records requested and the quantity provided; employee identification number associated with the staff member assigned to respond to the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To respond to requests for copies of public records of the FTC; to maintain records of the handling of those requests; to provide information necessary to maintain an appropriate inventory of publications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records and information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on magnetic disks or tape.

RETRIEVABILITY:

Records retrieved by the name or address of the individual requesting copies of public records and by the employee identification number of the staff member responsible for handling the request.

SAFEGUARDS:

Access to computerized records controlled by "user id" and password combination; access restricted to personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Records retained for up to one year after request is completed.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Records Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Name, address, and business affiliation provided by subject individual; employee identification number provided by assigned staff member.

VI. Mailing List Systems of Records

FTC-VI-1

SYSTEM NAME:

Mailing Lists—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Regional Offices:

Atlanta Regional Office, 1718 Peachtree Street, NW., Room 1000, Atlanta, Georgia 30367.

Boston Regional Office, 10 Causeway Street, Room 1184, Boston, Massachusetts 02222–1073.

Chicago Regional Office, 55 East Monroe Street, Suite 1437, Chicago, Illinois 60603.

Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, Ohio 44114.

Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, Texas 75201.

Denver Regional Office, 1405 Curtis Street, Suite 2900, Denver, Colorado 80202–2393.

Los Angeles Regional Office, 11000 Wilshire Boulevard, Suite 13209, Los Angeles, California 90024.

New York Regional Office, 150 William Street, Suite 1300, New York, New York 10038.

San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, California 94103.

Seattle Regional Office, 2806 Federal Building, 915 Second Avenue, Seattle, Washington 98174.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have indicated an interest in receiving FTC materials or who are participants in matters under consideration at the FTC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains some or all of the following: name, title, company or organization, and mailing address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To assist the Commission in the distribution of documents and information to individuals who request such materials and to individuals who are served official documents during the course of a Commission proceeding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on magnetic disks and tapes.

RETRIEVABILITY:

Indexed by individual's name.

SAFEGUARDS:

Access to records restricted by "user id" and password combination and limited to staff whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained until individual requests deletion or distribution of records from the associated matter is not anticipated.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Information Management Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individuals requesting Commission documents and information and staff members involved in Commission proceedings.

VII. Miscellaneous Systems of Records

FTC-VII-1

SYSTEM NAME:

Automated Serials Routing System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Readers of FTC Library periodicals listed in the routing system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and office location of the reader, employee identification number, and the name and number of the periodical.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To manage the routing of serials among FTC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on magnetic disks and tape.

RETRIEVABILITY:

Indexed by periodical number and employee identification number.

SAFEGUARDS:

Access to computerized records controlled by "user id" and password combination and restricted to staff whose duties require access

RETENTION AND DISPOSAL:

Record maintained as long as reader wishes to be on the routing system.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Library, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained.

FTC-VII-2

SYSTEM NAME:

Employee Locator System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current FTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employee identification number, building code, office room number, office telephone, mail drop code, electronic mail user identification, and default printer designation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To maintain records that will assist in locating and communicating with FTC employees; to identify mail locator listings used by mail room personnel; and to identify, in other Commission automated information systems, Commission staff names and locations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of this notice, records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Used to produce the FTC Directory which is used by all agency personnel and made available to the public; and

(2) Used to provide employee locator information to the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All data stored on magnetic disks and tape; FTC Directory printed and distributed to staff and the public.

RETRIEVABILITY:

Indexed by individual's name or employee identification number.

SAFEGUARDS:

Certain information is available to the public. Access to other information restricted to agency personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Information is continuously updated; data is erased from the system after the individual is no longer employed by the Commission.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Information Management Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained; administrative officers.

FTC-VII-3

SYSTEM NAME:

Computer Systems User Identification—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees and others with access to FTC computer systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; employee identification number; organization; systems to which individual has access; systems and services used; amount of time spent using each system; number of usage sessions; cost of some usage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To monitor and control costs of usage of computer systems; to prepare budget requests for automated services; to identify the need for and to conduct training programs; to monitor security on computer systems; and to add and delete users.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records stored on magnetic disks and tape; paper records stored in lockable file cabinets.

RETRIEVABILITY:

Indexed by individual's name; employee identification number; and organization code.

SAFEGUARDS:

Access to computerized records controlled by "user id" and password combination. Access to all records restricted to agency personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Computer records are retained indefinitely; summary annual paper reports are retained indefinitely and other paper reports are retained for one year.

SYSTEM MANAGER AND ADDRESS:

Director, Automated Systems Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Supervisor, Information Management Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom record is maintained; internal and external information systems that record usage.

FTC-VII-4

SYSTEM NAME:

Standard Name System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who interact with the Commission, including: participants in Commission investigations, rulemaking, advisory, and law enforcement proceedings; parties requesting formal advisory opinions; consumers who received redress or who are entitled to redress pursuant to Commission or court orders; parties about whom complaints or inquiries are received; and other parties with whom the Commission interacts. (Businesses, proprietorships, or corporations are not covered by this Privacy Act System of Records.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual and associated code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To standardize presentation of names found in Commission information systems; and to determine codes that are to be recorded in other agency information systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on magnetic disks and tape and on microfiche.

RETRIEVABILITY:

Indexed by individual's name and identification number.

SAFEGUARDS:

Access to view or add records available to all users of FTC automated information systems. Access to change records limited to agency personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Records retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Information Management Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Agency staff and members of the public.

FTC-VII-5

SYSTEM NAME:

Property Management System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees assigned responsibility for Commission physical resources.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual employee; employee identification number; property item assigned to individual; equipment maintenance information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To maintain and control physical resources; to conduct routine and periodic maintenance on equipment; and to maintain and confirm an inventory of physical resources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records stored on magnetic disks and tape; paper records stored in lockable file cabinets.

RETRIEVABILITY:

Indexed by employee name, employee identification number, and assigned organization.

SAFEGUARDS:

Access to automated records controlled by password. Access restricted to agency personnel whose responsibilities require access.

RETENTION AND DISPOSAL:

Records are retained for the life of the physical resource.

SYSTEM MANAGER AND ADDRESS:

Chief, Office Systems Branch, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual responsible for the equipment and staff responsible for maintaining the equipment.

FTC–VII–6

SYSTEM NAME:

Information Retrieval and Indexing System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including those who at the time the records are added to the system are Commission employees and others, who have written documents contained in Commission files.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of author and documents written by that individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To provide staff with access to individual documents that are needed for legal and economic research activities of the Commission and to provide the public with access to individual documents outlining the actions and considerations of the Commission, individual Commissioners, and the staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on magnetic disks and tape and on microfiche.

RETRIEVABILITY:

Indexed by author of the document.

SAFEGUARDS:

Access to nonpublic documents restricted, through the use of "user id" and password combination, to agency personnel whose responsibilities require access. Access to other documents available to the public.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Supervisor, Information Management Branch, Information Management & Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

FTC employees and others who submit documents to the Commission.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records contained in this system that have been placed on the FTC Public Record are available upon request. However, pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

FTC–VII–7

SYSTEM NAME:

Service Order System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees who requested service related to the automated information equipment and systems available to the staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include employee name, organization code, telephone number, date of reported problem, nature of problem, and action taken to resolve problem.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To record the receipt of requests for service and the actions taken to resolve those requests; to provide agency management with information identifying trends in questions and problems for use in managing the Commission's hardware and software resources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On computer disk and tape.

RETRIEVABILITY:

Indexed by employee name and tracking number assigned to each service request.

SAFEGUARDS:

Access to computerize records controlled by "user id" and password combination and restricted to staff whose duties require access.

RETENTION AND DISPOSAL:

Records are retained indefinitely

SYSTEM MANAGER AND ADDRESS:

Director, Automated Systems Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained and staff who responded to the request for service.

FTC-VII-8

SYSTEM NAME:

Service Call System—FTC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are Commission employees who requested service related to building maintenance and administrative support services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include employee name, organization code, telephone number, date of reported problem, nature of problem, and action taken to resolve problem.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act.

PURPOSE(S):

To record the receipt of requests for service and the actions taken to resolve those requests; to provide agency management with information identifying trends in questions and problems for use in managing the Commission's physical resources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as described in Appendix I of this notice, provided that no routine use specified therein shall be construed to limit or waive any other routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on magnetic disks and tape.

RETRIEVABILITY:

Indexed by employee name and tracking number assigned to each service request.

SAFEGUARDS:

Access to computerized records controlled by "user id" and password combination and restricted to staff whose duties require access.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Procurement and General Services, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURE; AND CONTESTING RECORD PROCEDURE:

See Appendix II.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained and staff who responded to the request for service.

Appendix I

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the routine uses specifically described in each system of records notice, records or information in the systems of records maintained by the Federal Trade Commission may be disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified herein shall be construed to limit or waive any other routine use specified either herein or in the text of the individual system of records notice:

(1) If the record has been appropriately incorporated into the records maintained in FTC System of Records II–6, Discrimination Complaint System—FTC, the record may be disclosed under the routine uses associated with that system;

(2) May be disclosed to the National Archives and Records Administration for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

(3) May be disclosed to other agencies, offices, establishments, and authorities, whether federal, state, local, foreign, or self-regulatory (including, but not limited to organizations such as professional associations or licensing boards), authorized or with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record of information by itself or in connection with other records or information:

(a) Indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, or

(b) Indicates a violation or potential violation of a professional, licensing, or similar regulation, rule, or order, or otherwise reflects on the qualifications or fitness of an individual who is licensed or seeking to be licensed;

(4) May be disclosed to any source, private or governmental, to the extent necessary to secure from such source information relevant to and sought in furtherance of a legitimate investigation or audit;

(5) May be disclosed to any authorized agency component of the Federal Trade Commission, Department of Justice, or other law enforcement authorities, and for disclosure by such parties:

(a) To the extent relevant and necessary in connection with litigation in proceedings before a court or other adjudicative body, where (i) the United States is a party to or has an interest in the litigation, including where the agency, or an agency component, or an agency official or employee in his or her official capacity, or an individual agency official or employee whom the Department of Justice has agreed to represent, is or may likely become a party, and (ii) the litigation is likely to affect the agency or any component thereof; or

(b) To obtain advice, including advice concerning the accessibility of a record or information under the Privacy Act or the Freedom of Information Act;

(6) May be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the subject individual, but only to the extent that the record would be legally accessible to that individual;

(7) May be disclosed to debt collection contractors for the purpose of collecting debts owed to the government, as authorized under the Debt Collection Act of 1982, 31 U.S.C. 3718, and subject to applicable Privacy Act safeguards;

(8) May be disclosed to a grand jury agent pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court; and

(9) May be disclosed to the Office of Management and Budget (OMB) for the purpose of obtaining advice regarding agency obligations under the Privacy Act, or in connection with the review of private relief legislation pursuant to OMB Circular A–19.

Appendix II

Under the provisions of 5 U.S.C. 552a(d) an individual may request notification as to whether a system of records contains records retrieved using his or her personal identifier, may request access to records in a system of records, and may contest the accuracy or completeness of records. Each of those actions may be initiated by the individual by mailing or delivering a written request bearing the individual's name, return address, and signature, addressed as follows:

Privacy Act Request

Deputy Executive Director for Planning and Information, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92–23613 Filed 10–1–92; 8:45 am]

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VOL
57
SS
1
92
OC
2
992
UMI

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Guid
Lega
Priv
Pub
TDD

FED

4526
4555

Reader Aids

Federal Register

Vol. 57, No. 192

Friday, October 2, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

45261–45558.....1
45559–45708.....2

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12775 (Continued by Notice of September 30, 1992).....45557
12779 (Continued by Notice of September 30, 1992).....45557
Administrative Orders:
Notices:
September 30, 1992.....45557

5 CFR

630.....45261

7 CFR

916.....45559
917.....45559
948.....45560
1065.....45562, 45563
1137.....45564
1494.....45262
Proposed Rules:
910.....45581
1106.....45583

10 CFR

30.....45566
35.....45566

12 CFR

327.....45263
Proposed Rules:
935.....45338
940.....45338

14 CFR

Proposed Rules:
39.....45584–45586
71.....45660

16 CFR

Proposed Rules:
4.....45676

17 CFR

210.....45287
240.....45287
249.....45287
259.....45287
274.....45287

21 CFR

5.....45294
310.....45310
Proposed Rules:
1401.....45353

24 CFR

888.....45468

26 CFR

1.....45568, 45660
Proposed Rules:
1.....45587

27 CFR

Proposed Rules:
9.....45588
17.....45357
19.....45357
70.....45357
170.....45357
194.....45357
197.....45357
250.....45357

29 CFR

1602.....45570

30 CFR

917.....45295

33 CFR

100.....45570
Proposed Rules:
151.....45591
164.....45662–45667
165.....45596

37 CFR

202.....45307

39 CFR

20.....45570

40 CFR

35.....45311
271.....45514
272.....45575
Proposed Rules:
Ch. I.....45597
52.....45358, 45360
63.....45363
300.....45597, 45599

43 CFR

Public Land Orders:
1567 (Revoked in part by PLO 6948).....45325
5712 (Revoked by PLO 6946).....45322
6944.....45321
6946.....45322
6948.....45324
6949.....45576

45 CFR

1224.....45325

46 CFR

Proposed Rules:
35.....45687

47 CFR

73.....45577–45579

Proposed Rules:
73.....45601

48 CFR

30.....45422
202.....45422
204.....45422
206.....45422
210.....45422
214.....45326
215.....45422
216.....45422
219.....45422
223.....45422
225.....45422
226.....45422
227.....45422
228.....45422
231.....45422
232.....45422
236.....45422
237.....45422
239.....45422
242.....45422
245.....45422
252.....45422
253.....45422

49 CFR

107.....45446
171.....45442, 45446
172.....45446
173.....45446
174.....45446
176.....45446
177.....45446
178.....45446
179.....45446
180.....45446
214.....45446
571.....45327, 45422

Proposed Rules:
1039.....45602

50 CFR

17.....45328
285.....45579
672.....45580

Proposed Rules:
675.....45602

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

S. 680/P.L. 102–372

Tourism Policy and Export Promotion Act of 1992. (Sept. 30, 1992; 106 Stat. 1170; 14 pages) Price: $1.00

S.J. Res. 337/P.L. 102–373

Designating September 18, 1992, as "National POW/MIA Recognition Day", and authorizing display of the National League of Families POW/MIA flag. (Sept. 30, 1992; 106 Stat. 1184; 2 pages) Price: $1.00

Last List September 30, 1992

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Vol. 57 No. 193
Pages 45709-45972

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Problems with Federal agency subscriptions	523-5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 57, No. 193
Monday, October 5, 1992

Agricultural Marketing Service
PROPOSED RULES
Fruits; import regulations:
Grapefruit, 45754

Agriculture Department
See Agricultural Marketing Service
See Farmers Home Administration
See Forest Service

Army Department
See Engineers Corps
NOTICES
Meetings:
Coastal Engineering Research Board, 45772

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Senior Executive Service:
Performance Review Board; membership, 45765

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
India, 45770
Export visa requirements; certification, waivers, etc.:
Brazil, 45771

Comptroller of the Currency
PROPOSED RULES
Investment securities, 45756

Customs Service
PROPOSED RULES
Articles conditionally free, subject to a reduced rate, etc.:
United States-Israel Free Trade Area Agreement; duty preference provisions implementation, 45758

Defense Department
See Army Department
See Defense Logistics Agency
See Engineers Corps
RULES
Federal Acquisition Regulation (FAR):
Cost accounting standards
Correction, 45878
NOTICES
Agency information collection activities under OMB review, 45771, 45772

Defense Logistics Agency
PROPOSED RULES
Acquisition regulations:
Contracts—
Vendor rating system; withdrawn, 45759

Employment and Training Administration
NOTICES
Adjustment assistance:
Brown Shoe Co., 45823
Centra Leather Goods et al., 45823
Cold Spring Granite Co., 45824
Manchester Steel Co. et al., 45824
Signetics Co., 45825
Sunstrand ATG, 45825
Tobin-Hamilton Co., Inc., 45825
Emergency unemployment compensation program:
Extended benefit periods; changes, 45826

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Environmental statements; availability, etc.:
Idaho National Engineering Laboratory, ID; environmental restoration and waste management activities, 45773
Grant and cooperative agreement awards:
Central State University, 45778
Char-Fuel Associates, Ltd., 45778
Langston University, 45778
Prairie View A&M University, 45779
Natural gas exportation and importation:
Great Falls Gas Co., 45780
Intalco Aluminum Corp., 45781

Engineers Corps
NOTICES
Regulatory guidance letters, 45773

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 45715
Hazardous waste program authorizations:
Arkansas, 45721, 45722
New Mexico, 45717
Texas, 45719
NOTICES
Air programs; fuel and fuel additives waivers:
Lubrizol Corp., 45790
Clean Air Act:
Confidential business information and data transfer to contractors, 45791
Meetings:
Ozone Transport Commission, 45791
Water pollution control:
Clean Water Act—
Class I and II administrative penalty assessments, 45792

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Meetings:
Materials Processing Technical Advisory Committee, 45765

Farmers Home Administration
RULES
Program regulations:
Business and industrial loan program, 45968

Federal Aviation Administration
NOTICES
Passenger facility charges; applications, etc.:
Valdosta Regional Airport, GA; correction, 45878

Federal Communications Commission
RULES
Radio services, special:
Aviation services—
Aircraft earth stations, 45748
Private land mobile services—
Special emergency paging for patients; eligibility rules, 45751
Reporting and recordkeeping requirements, 45747
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 45792

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 45877

Federal Election Commission
NOTICES
Special elections; filing dates:
New York, 45793
North Carolina, 45792

Federal Emergency Management Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Individual and family programs, and public assistance program; amounts adjustments, 45794

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Niagara Mohawk Power Corp., 45779
Applications, hearings, determinations, etc.:
Frontier Gas Storage Co., 45779
Texas Sea Rim Pipeline, Inc., 45780

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 45794
Applications, hearings, determinations, etc.:
Elinor M. Garner Family Trust, 45810
First Virginia Banks, Inc., 45810
Fleet Financial Group, Inc., 45810
Pioneer Bankcorp et al., 45811

Federal Transit Administration
NOTICES
Environmental statements; availability, etc.:
Greenbush Line Corridor, MA, 45864

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Bruneau Hot Springs snail, 45762
Findings on petitions, etc., 45761
NOTICES
Endangered and threatened species:
Recovery plans—
White River spinedace, 45818

Food and Drug Administration
NOTICES
Medical devices; premarket approval:
McGhan Intrashiel, UHP, and Bicell Fixed Volume Prostheses and Variable Volume Prostheses, 45811
Mentor Becker Expander/Mammary Prosthesis Smooth or Siltex Textured Surface, 45813
Mentor Combination Gel-Saline Mammary Prothesis Smooth or Siltex Textured Surface, 45812
Mentor Low Bleed Gel-Filled Mammary Prosthesis Smooth or Siltex Textured, 45812

Forest Service
NOTICES
Boundary establishment, descriptions, etc.:
Athens Purchase Unit, OH; correction, 45765

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Cost accounting standards
Correction, 45878

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service
See Social Security Administration

Health Care Financing Administration
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Maryland, 45814

Health Resources and Services Administration
See Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Area health education centers program, 45815

Indian Affairs Bureau
NOTICES
Environmental statements; availability, etc.:
Navajo Indian Reservation, AZ and NM, 45956
Rosebud Sioux Indian Reservation, SD, 45958

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Excise taxes:
Transportation by water
Correction, 45713
Income taxes:
Arbitrage restrictions—
Tax-exempt bonds; correction, 45878
Corporate net operating loss carryforwards; limitations, 45711

Returned magazines, paperbacks or records; accounting method
Correction, 45879
PROPOSED RULES
Procedure and administration:
Federal Crop Insurance Act; policyholders and reinsured companies employer identification number FCIC requirement
Correction, 45759

International Trade Administration
NOTICES
Antidumping:
Helical spring lock washers from China et al., 45765
Large power transformers from Japan, 45767
Provisional measures deposit cap; policy change, 45769
Synthetic methionine from Japan, 45770

International Trade Commission
NOTICES
Import investigations:
Microcomputer memory controllers, components, and products containing same, 45819

Interstate Commerce Commission
RULES
Motor carriers:
Single State insurance registration system
Effective date stay, 45751

Labor Department
See Employment and Training Administration
See Labor Statistics Bureau
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities under OMB review, 45819

Labor Statistics Bureau
NOTICES
Meetings:
Business Research Advisory Council, 45822

Land Management Bureau
RULES
Public land orders:
New Mexico, 45725
NOTICES
Meetings:
Albuquerque District Advisory Council, 45817
Realty actions; sales, leases, etc.:
Nevada; correction, 45878

Legal Services Corporation
NOTICES
Grant and cooperative agreement awards:
Legal Services of Eastern Missouri, Inc., 45837
Grants and cooperative agreements; availability, etc.:
Tri-Parish area, LA; civil legal services, 45838

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Cost accounting standards
Correction, 45876
NOTICES
Meetings:
Advisory Council task forces, 45838
Space Science and Applications Advisory Committee, 45838

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Side turn signal lamps on trailers over 45 feet in length; petition denied, 45760
Tire selection and rims for vehicles other than passenger cars; labeling; petition denied, 45759
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Blue Bird Body Co., 45863
Bridgestone/Firestone, Inc., 45865
Chrysler Corp., 45865
General Motors Corp., 45866
Michelin Tire Corp., 45867
Mitsubishi Motors America, 45868
PACCAR Inc., 45868
Uniroyal Goodrich Tire Co., 45869

National Institutes of Health
NOTICES
Meetings:
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 45817

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Ocean salmon off coasts of Washington, Oregon, and California, 45751

National Science Foundation
NOTICES
Agency information collection activities under OMB review, 45839
Antarctic Conservation Act of 1978; permit applications, etc., 45839

Nuclear Regulatory Commission
NOTICES
Abnormal occurrence reports:
Quarterly reports to Congress, 45839
Meetings; Sunshine Act, 45877

Patent and Trademark Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Patents Advisory Committee, 45770

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Detroit Diesel Remanufacturing-West, Inc., et al., 45826
Holiday Inns, Inc., et al., 45832

Pension Benefit Guaranty Corporation
RULES
Responsibility and ethical conduct of employees:
Appearances in certain proceedings, 45713

Personnel Management Office
PROPOSED RULES
Federal claims collection; tax refund offset, 45753

Postal Service
RULES
Domestic Mail Manual:
Zip+4 and Zip+4 barcoded rate mailings; preparation requirements, 45882

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Commission on Management of the Agency for International Development, President's; term extension (EO 12815), 45709
PROCLAMATIONS
Special observances:
Columbus Day (Proc. 6484), 45965
Mental Illness Awareness Week (Proc. 6482), 45961
School Lunch Week, National (Proc. 6483), 45963

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
RULES
Grants:
Teaching facilities construction, educational improvements, scholarships, and student loans, 45725
NOTICES
Organization, functions, and authority delegations:
Indian Health Service, Director, 45817

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 45844
Chicago Board Options Exchange, Inc., 45849
Philadelphia Stock Exchange, Inc., 45854
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 45853
Philadelphia Stock Exchange, Inc., 45853
Applications, hearings, determinations, etc.:
Capstead Securities Corp. VI, 45855
Chubb Separate Account B of Chubb Life Insurance Co. of America, 45859
ML Venture Partners II, L.P., et al., 45859
Prudential California Municipal Fund et al., 45861
Public utility holding company filings, 45862

Social Security Administration
RULES
Social security benefits:
Appendices, tables, and lists update
Correction, 45878

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 45818, 45819

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
PROPOSED RULES
Savings associations:
Capital—
Concentration risk and risk of nontraditional activities, 45757

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Customs Service
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 45869, 45870
Notes, Treasury:
H-1999 series, 45871
Organization, functions, and authority delegations:
Assistant Secretary (Management), 45870

United States Information Agency
NOTICES
Meetings:
English Teaching Advisory Panel, 45874

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 45874, 45875
Meetings:
Cooperative Studies Evaluation Committee, 45875

Western Area Power Administration
NOTICES
Power marketing plans, etc.:
Central Valley Project, CA, 45782

Separate Parts In This Issue

Part II
Postal Service, 45882

Part III
Department of the Interior, Bureau of Indian Affairs, 45956

Part IV
Department of the Interior, Bureau of Indian Affairs, 45958

Part V
The President, 45961

Part VI
Department of Agriculture, Farmers Home Administration, 45968

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
6482.....45961
6483.....45963
6484.....45965
Executive Orders:
12815.....45709

5 CFR

Proposed Rules:
835.....45753

7 CFR
1980.....45968

Proposed Rules:
944.....45754

12 CFR

Proposed Rules:
1.....45756
567.....45757

19 CFR

Proposed Rules:
10.....45758

20 CFR
404.....45878

26 CFR
1 (3 documents).....45711, 45878
43.....45713
602.....45711

Proposed Rules:
301.....45759

29 CFR
2602.....45713

39 CFR
111.....45882

40 CFR
52.....45715
271 (4 documents).....45717–45722

42 CFR
57.....45725

43 CFR

Public Land Orders:
6950.....45725

47 CFR
0.....45747
87.....45748
90.....45751

48 CFR
52.....45878

Proposed Rules:
5415.....45759
5452.....45759

49 CFR
1023.....45751

Proposed Rules:
552.....45759
571.....45760

50 CFR
661.....45751

Proposed Rules:
17 (2 documents).....45761, 45762

VOL
57
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Federal
Vol. 57
Monday

Title

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Federal Register
Vol. 57, No. 193
Monday, October 5, 1992

Presidential Documents

Title 3—

The President

Executive Order 12815 of September 30, 1992

Extending the President's Commission on Management of the Agency for International Development (AID) Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), and in order to extend the President's Commission on Management of the Agency for International Development (AID) Programs, it is hereby ordered that section 4(b) of Executive Order No. 12813 of August 4, 1992, is amended by deleting "September 30, 1992" and inserting in lieu thereof "December 31, 1992."

George Bush

THE WHITE HOUSE,
September 30, 1992.

[FR Doc. 92-24290
Filed 10-1-92; 4:23 pm]
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Rules and Regulations

Federal Register
Vol. 57, No. 193
Monday, October 5, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8440]

RIN 1545-AN76

Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document amends the regulations under section 382 of the Internal Revenue Code to except from the option attribution rules included in those regulations options designated by the Internal Revenue Service in the Internal Revenue Bulletin. This amendment gives the Treasury Department greater flexibility in providing additional exceptions to those rules. This document also provides a skeletal outline for future final regulations under section 382.

EFFECTIVE DATES: This regulation is effective October 5, 1992 except that § 1.382–4(b)(2)(ii) is effective as of December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:1) or telephone 202–622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 382 limits the amount of income earned by a corporation after an "ownership change" that can be offset by losses incurred prior to the ownership change. Sections 1.382–1T and 1.382–2T of the temporary regulations provide guidance regarding the definition of "ownership change." See 52 FR 29863 (August 11, 1987). The temporary regulations include option attribution rules that, subject to certain exceptions, treat options as exercised if the deemed exercise results in an ownership change.

In 1989, the temporary regulations were amended to except from the option attribution rules any options designated by the Internal Revenue Service in the Internal Revenue Bulletin. See 54 FR 52935 (December 26, 1989). At that time, the Service proposed that that same provision be included in the final section 382 regulations, when issued. See 54 FR 52955 (December 26, 1989). No hearing was requested and no comments were received regarding the amendment. The amendment is subject to section 7805(e)(2) (as amended by the Technical and Miscellaneous Revenue Act of 1988), which provides that temporary regulations issued after November 20, 1988, expire within 3 years after their issuance.

Explanation of Provisions

This document adopts as a final regulation the provision described above without substantive change. The provision thus excepts from the section 382 option attribution rules any options designated by the Service in the Internal Revenue Bulletin.

The Service is considering a more general revision of the section 382 option attribution rules. Therefore, this document does not adopt as final regulations any of the other option attribution rules provided in the temporary regulations.

This document also provides a skeletal outline for future final regulations under section 382 and, in so doing, redesignates several provisions of the existing final regulations under section 382.

Special Analyses

It has been determined that these regulations are not major regulations as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code (as in effect December, 1989), the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Keith E. Stanley, Office of the Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.381(a)–1 through 1.383–3

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by removing the current citations for §§ 1.382–2 and 1.382–3 and by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Section 1.382–2 also issued under 26 U.S.C. 382(k)(1), 26 U.S.C. 382(m), and 26 U.S.C. 383. Section 1.382–3 also issued under 26 U.S.C. 382(m). Section 1.382–4 also issued under 26 U.S.C. 382(1)(3) and 382(m). Section 1.382–9 also issued under 26 U.S.C. 382(1)(3)(A) and 382(m). * * *

§ 1.382–1 [Removed]

Par. 2. Section 1.382–1 is removed.

§ 1.382–1T [Redesignated as § 1.382–1]

Par. 3. Section 1.382–1T is redesignated as § 1.382–1 and amended by:

1. Revising the section heading.
2. Revising the introductory text.
3. Adding a section heading in the table of contents for § 1.382–2T

immediately following the introductory text; and amending the table of contents entries in the newly designated § 1.382–2T by adding (h)(4)(x) (I) through (Z).

4. Adding entries for §§ 1.382–1T, 1.382–2, and 1.382–3 through 1.382–11 to the table of contents.

5. The revisions and additions read as follows:

§ 1.382–1 Table of contents.

This section lists the captions that appear in the regulations for §§ 1.382–1T, 1.382–2, 1.382–2T, and 1.382–3 through 1.382–11.

§ 1.382–1T [Reserved].

§ 1.382–2 General rules for ownership change.

(a) Certain definitions for purposes of sections 382 and 383 and the regulations thereunder.
(1) Loss corporation.
(i) In general.
(ii) Distributor of transferor loss corporation in a transaction under section 381.
(iii) Separate accounting required for losses and credits of an acquiring corporation and a distributor or transferor loss corporation.
(2) Pre-change loss.
(b) [Reserved].

§ 1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(h) * * *
(4) * * *
(x) * * *
(I) [Reserved].
(J) Title 11 of similar case.
(K) through (Y) [Reserved].
(Z) Options designated in the Internal Revenue Bulletin.

* * * * *

§ 1.382–3 Definitions and rules relating to a 5-percent shareholder.

(a) Definitions.
(1) Entity.
(i) In general.
(ii) Examples.
(iii) Effective date.
(A) In general
(B) Special rule.
(C) Example.
(2) [Reserved].
(b) through (j) [Reserved].
(k) Special rules for certain regulated investment companies.
(1) In general.
(2) Effective date.
(i) General rule.
(ii) Election to apply prospectively.

§ 1.382–4 Constructive ownership of stock.

(a) [Reserved].
(b) Option attribution.
(1) [Reserved].
(2) Options not subject to attribution.
(i) [Reserved].
(ii) Options designated in the Internal Revenue Bulletin.

§ 1.382–5 Section 382 limitation. [Reserved].

§ 1.382–6 Special rules for change year. [Reserved].

§ 1.382–7 Built-in gains and losses. [Reserved].

§ 1.382–8 Controlled groups. [Reserved].

§ 1.382–9 Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.

(a) Introduction.
(b) Application of section 382(1)(5).
(c)—(d) [Reserved].
(e) Option attribution for purposes of determining stock ownership under section 382(1)(5)(A)(ii).
(1) In general.
(2) Special rules.
(i) Lapse or forfeiture of options deemed exercised.
(ii) Actual exercise of options not deemed exercised.
(iii) Amended returns.
(3) Examples.
(4) Effective dates.
(i) In general.
(ii) Special rule for interest or dividends.
(f) through (l) [Reserved].
(m) Continuity of business requirement.
(1) Under section 382(1)(5).
(2) [Reserved].
(n) [Reserved].
(o) Options not subject to attribution.

§ 1.382–10 [Reserved].

§ 1.382–11 Effective dates. [Reserved].

§ 1.3821T [Added]

Par. 4. Section 1.382–1T is added and reserved.

Par. 5. The heading for § 1.382–2 is revised to read as follows:

§ 1.382–2 General rules for ownership change.

Par. 6. Section 1.382–2T is amended as follows:

1. Paragraph (f)(7) is amended by removing the language "§ 1.382–(a)(3)" and adding "§ 1.382–3(a)(1)" in its place.

2. *Example 5* of paragraph (g)(4) is amended by removing the language "§ 1.382–2(a)(3)(ii)" and adding "§ 1.382–3(a)(1)(ii)" in its place.

3. Paragraph (h)(4)(x)(J) is amended by removing the language "§ 1.382–3(o)" and adding "§ 1.382–9(o)" in its place.

4. By revising paragraph (h)(4)(x)(Z) to read as set forth below.

5. Paragraph (j)(2)(iii)(A) is amended by removing the language "§ 1.382–4(k)(1)" and adding "§ 1.382–3(k)(1)" in its place.

6. The revised provision reads as follows:

§ 1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(h) * * *
(4) * * *
(x) * * *
(Z) *Options designated in the Internal Revenue Bulletin.* See § 1.382–4(b)(2)(ii) for Internal Revenue Service authority to designate in the Internal Revenue Bulletin exceptions from the operation of paragraph (h)(4)(i) of this section.

* * * * *

§ 1.382–3 [Redesignated as § 1.382–9]

Par. 7. Section 1.382–3 is redesignated as § 1.382–9.

§ 1.382–4 [Redesignated as § 1.382–3]

Par. 8. Section 1.382–4 is redesignated as § 1.382–3.

§ 1.382–3 [Amended]

Par. 9. Newly designated § 1.382–3 is amended as follows:

1. The paragraph heading for (a) is added to read as set forth below.

2. Section 1.382–2, paragraph (a)(3), is redesignated as paragraph (a)(1) of § 1.382–3.

3. Paragraph (a)(1), as newly designated, is amended as set forth in the list below. For each location indicated in the left column, remove the language indicated in the middle column, and add the language indicated in the right column:

Paragraph	Remove	Add
(a)(1)(ii), introductory text.	(a)(3)(i)	(a)(1)(i)
(a)(1)(ii), *Example 2* (ii), first sentence.	(a)(3)(ii)	(a)(1)(i)
(a)(1)(ii), *Example 2* (ii), first sentence.	(a)(3)(i)	(a)(1)(i)
(a)(1)(ii), *Example 3* (ii), first sentence.	(a)(3)(i)	(a)(1)(i)
(a)(1)(iii)(A), first sentence.	(a)(3)(i)	(a)(1)(i)
(a)(1)(iii)(A), first sentence.	(a)(3)(ii)	(a)(1)(ii)
(a)(1)(iii)(B), first sentence.	(a)(3)(i)	(a)(1)(i)
(a)(1)(iii)(B), first sentence.	Examples 1, 2, and 3 of this section.	Examples 1, 2, and 3 of paragraph (a)(1)(ii) of this section
(a)(1)(iii)(C), first sentence.	(a)(3)(iii)	(a)(1)(iii)

4. Paragraph (a)(2) is added and reserved.

5. Paragraph (k)(2)(ii) is amended by removing "§ 1.382–4(k)(1)" and adding "§ 1.382–3(k)(1)" in its place.

6. The added, revised, and reserved provisions read as follows:

§ 1.382–3 Definitions and rules relating to a 5-percent shareholder.

(a) *Definitions.* * * *
(2) [Reserved].

(b) through (j) [Reserved].

* * * * *

Par. 10. New §§ 1.382–4 through 1.382–8 are added; the third and fourth sentences of § 1.382–9(o)(2), as newly designated, are revised; § 1.382–10 is added and reserved; and § 1.382–11 is added to read as follows:

§ 1.382–4 Constructive ownership of stock.

(a) [Reserved].

(b) *Option attribution.* (1) [Reserved].

(2) *Options not subject to attribution.* Section 1.382–2T(h)(4)(i) shall not apply to—

(i) [Reserved].

(ii) *Options designated in the Internal Revenue Bulletin.* Any option designated by the Internal Revenue Service in the Internal Revenue Bulletin as being excepted from the operation of § 1.382–2T(h)(4)(i).

§ 1.382–5 Section 382 limitation. [Reserved].

§ 1.382–6 Special rules for change year. [Reserved].

§ 1.382–7 Built-in gains and losses. [Reserved].

§ 1.382–8 Controlled groups. [Reserved].

§ 1.382–9 Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.

* * * * *

(o) * * *

(2) * * * A loss corporation may elect to apply this paragraph (o) to any testing date occurring before September 5, 1990, by filing a statement substantially similar to the following with its income tax return: "THIS IS AN ELECTION TO APPLY § 1.382–3(o) (OR § 1.382–9(o) AFTER REDESIGNATION) FOR TESTING DATES PRIOR TO SEPTEMBER 5, 1990, TO OPTIONS CREATED BY OR UNDER A PLAN OF REORGANIZATION CONFIRMED IN A TITLE 11 OR SIMILAR CASE." A loss corporation may elect to not apply this paragraph (o) to testing dates occurring on or after September 5, 1990, to April 8, 1992, by filing a statement substantially similar to the following with its income tax return: "THIS IS AN ELECTION TO NOT APPLY § 1.382–3(o) (OR § 1.382–9(o) AFTER REDESIGNATION) FOR TESTING DATES OCCURRING ON OR AFTER SEPTEMBER 5, 1990, TO APRIL 8, 1992, TO OPTIONS CREATED BY OR UNDER A PLAN OF REORGANIZATION CONFIRMED IN A TITLE 11 OR SIMILAR CASE." * * *

§ 1.382–10 [Reserved]

§ 1.382–11 [Reserved]

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 12. Section 602.101(c) is amended by removing the entries for sections 1.382–3 and 1.382–4 and adding the following entries in the table:

"Section 1.382–3.....1545–1281
Section 1.382–9.....1545–1260".

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: September 1, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–23731 Filed 10–2–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 43

[T.D. 8422]

RIN 1545–A041; 1545–AP03

Final Regulations Regarding the Tax on Transportation by Water; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8422), which were published Thursday, July 30, 1992 (57 FR 33635). The regulations implement the tax on transportation of passengers on covered voyages by certain vessels under sections 4471 and 4472 of the Internal Revenue Code (the Code) as enacted by section 7504 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106, 2362).

EFFECTIVE DATE: July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Edward B. Madden, Jr. (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide taxpayers with rules and definitions for complying with the tax imposed by section 4471 of the Code.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8422), which were the subject of FR Doc. 92–17830, is corrected as follows:

§ 43.4472–1 [Corrected]

Paragraph. 1. On page 33637, column one, in § 43.4472–1, paragraph (f)(2), lines 3 and 4, the language "her owners. A person is engaged in the business of the vessel or her owners if" is corrected to read "its owners. A person is engaged in the business of the vessel or its owners if".

Par. 2. On page 33637, column one, in § 43.4472–1, paragraph (f)(2), line 8, the language "on behalf of the vessel or her owners" is corrected to read "on behalf of the vessel or its owners".

Par. 3. On page 33637, column one, in § 43.4472–1, paragraph (f)(2), line 15, the language "though the vessel or her owners may" is corrected to read "though the vessel or its owners may".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–24109 Filed 10–2–92; 8:45 am]

BILLING CODE 4830–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2602

Appearances in Certain Proceedings

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule prescribes procedures for Pension Benefit Guaranty Corporation ("PBGC") employees who are served with compulsory process or are otherwise requested to appear in proceedings in which the PBGC is not a party. It generally provides that, unless authorized by the General Counsel (or his or her designee), current and former PBGC employees may not give testimony relating to their official duties in judicial, administrative, state and local legislative, or other proceedings. The rule provides for the orderly and efficient handling of requests and is designed to assure the agency's impartiality in such proceedings.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: David W. Kemps, Attorney, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K

Street, NW., Washington, DC 20006; 202–778–8888 (202–778–1958 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1301 *et seq.* Through the PBGC's role in the administration of ERISA, it increasingly has become involved in complex legal proceedings and negotiations relating to companies that maintain defined benefit pension plans. Companies about which the PBGC has acquired information also desire to utilize the expertise of PBGC employees in their litigation. As a consequence, parties involved in litigation with companies, about which the PBGC has acquired information, desire to utilize the information obtained by the PBGC as part of their litigation strategy, and in proceedings in which the PBGC is not a party, PBGC employees have been subpoenaed to provide information and/or opinions based upon knowledge and experience gained through performance of their official duties.

The PBGC, as an agency of the United States government, occupies a position of public trust. As such, it must effectively serve the public while seeking to conserve agency resources. To accomplish its mandate while maintaining its impartiality, the PBGC has concluded that it should amend its regulations to include procedures for responding to demands and requests for appearances by its employees in proceedings in which the PBGC is not a party. By centralizing the decisionmaking process for such requests and demands, the agency will ensure consistency while minimizing the disruption of official agency business.

The federal courts have recognized that federal agencies have legitimate policy reasons for restricting compliance with subpoenas served on their employees. *See, e.g., United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951). Such limitations on subpoena enforcement serve to conserve limited government resources, provide for a uniform centralized decisionmaking process, and minimize government involvement in controversial matters unrelated to government business. *See, e.g., Boron Oil Co.* v. *Downie*, 873 F.2d 67 (4th Cir. 1989); *Wade* v. *Singer Co.*, 130 FR 89 (N.D. Ill. 1990). The federal courts also have refused to enforce state court orders on jurisdictional grounds. *See Giza* v. *Secretary of HEW*, 628 F.2d 748 (1st Cir. 1980); *Reynolds Metals Company* v. *Crowther*, 572 F.Supp 288 (D. Mass. 1982).

This rule amends the PBGC's regulations by adding several new sections as subpart B of part 2602 (29 CFR Part 2602). (Existing provisions of part 2602 are being designated as subpart A.) The rules and procedures in subpart B are to be followed if the requested appearance in a proceeding, in which the PBGC is not a party, arises out of or relates to employment with PBGC (§ 2602.41(a)). Subpart B applies with respect to judicial, administrative, legislative, and other proceedings (§ 2602.41(b)), including any proceeding before a federal, state, or local court or agency, a state or local legislature, or any other authority responsible for administering regulatory requirements or adjudicating disputes or controversies (*e.g.*, arbitration of disputes involving multiemployer plans under ERISA section 4221 (29 U.S.C. 1401)) (§ 2602.42).

Section 2602.43 prohibits both current and former PBGC employees from appearing in proceedings to which Subpart B applies unless authorized as provided therein. An employee who testifies or produces material in violation of this subpart is subject to disciplinary action (§ 2602.46).

Section 2602.44 requires that PBGC employees and former employees, when requested or served with compulsory process to appear, promptly notify the General Counsel (paragraph (a)). The General Counsel or his or her designee will authorize an appearance by an employee or former employee if and to the extent he or she determines that such appearance is in the interest of the PBGC (paragraph (b)). If, in response to valid compulsory process, the General Counsel or his or her designee has not authorized an appearance by the return date, the employee or former employee must respectfully decline to provide any testimony or produce any documents or other material and, when the demand is under consideration, request a stay pending instructions from the General Counsel or his or her designee (paragraph (c)). A PBGC attorney will accompany him or her in all such situations.

The Freedom of Information Act, as amended, (5 U.S.C. 552) requires agencies to provide nonexempt documents in response to written requests. Accordingly, if the General Counsel or his or her designee concludes that compulsory process is essentially a request for PBGC record information, it will be treated as a request under the Freedom of Information Act, in accordance with Part 2603 of the PBGC's regulations, except to the extent that the Privacy Act of 1974, as amended, and Part 2607 of this subchapter govern disclosure of a record maintained on an individual.

Finally, if the PBGC is asked to provide authenticated copies of official records for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure, the agency will grant the request for records that are to be disclosed pursuant to this subpart or Part 2603 of the regulations (§ 2602.45). Appropriate fees will be charged, in accordance with the fee schedule in § 2603.52 of the regulations.

This rule relates to internal PBGC management. As such, notice of proposed ruelmaking and opportunity for comment are not required, and the rule's effective date may be the date of publication in the Federal Register. (5 U.S.C. 553 (a) and (b)).

List of Subjects in 29 CFR Part 2602

Conflict of Interests, Government Employees, Penalties, Political Activities (Government Employees), Production and Disclosure of Information, Testimony.

For the reasons set forth above, 29 CFR Part 2602 is amended as follows:

PART 2602—ETHICAL CONDUCT OF EMPLOYEES; APPEARANCES IN CERTAIN PROCEEDINGS

1. The authority citation for part 2602 is revised to read as follows:

Authority: 29 U.S.C. 1302(b); E.O. 11222, 30 FR 6469, 3 CFR 1964–65, Comp., p. 306; 5 CFR 735.104.

2. Part 2602 is amended by revising the heading as set forth above; by designating §§ 2602.1 through 2602.32 as Subpart A; by removing the words "this part" and "this part" each time they appear in Subpart A and adding, in their place, the words "this subpart" and "this subpart", respectively; by adding "Subpart A of" before "Part" in the heading of Appendix A; and by adding a subpart heading above the undesignated centerhead "GENERAL" immediately preceding § 2602.1 to read as follows:

Subpart A—Ethical Conduct of Employees.

3. Part 2602 is further amended by adding new subpart B to read as follows:

Subpart B—Appearances in Certain Proceedings

Sec.

2602.41 Purpose and scope.
2602.42 Definitions.
2602.43 General.
2602.44 Appearances by PBGC employees.
2602.45 Requests for authenticated copies of PBGC documents.
2602.46 Penalty.

§ 2602.41 Purpose and scope.

(a) *Purpose.* This subpart sets forth the rules and procedures to be followed when a PBGC employee or former employee is requested or served with compulsory process to appear as a witness or produce documents in a proceeding in which the PBGC is not a party, if such appearance arises out of, or is related to, his or her employment with the PBGC. It provides a centralized decisionmaking mechanism for responding to such requests and compulsory process.

(b) *Scope.*

(1) This subpart applies when, in a judicial, administrative, legislative, or other proceeding, a PBGC employee or former employee is requested or served with compulsory process to provide testimony concerning information acquired in the course of performing official duties or because of official status and/or to produce material acquired in the course of performing official duties or contained in PBGC files.

(2) This subpart does not apply to:

(i) Proceedings in which the PBGC is a party;

(ii) Congressional requests or subpoenas for testimony or documents; or

(iii) Appearances by PBGC employees in proceedings that do not arise out of, or relate to, their employment with PBGC (*e.g.*, outside activities that are engaged in consistent with the requirements of Subpart A of this part).

§ 2602.42 Definitions.

Appearance means testimony or production of documents or other material, including an affidavit, deposition, interrogatory, declaration, or other required written submission.

Compulsory Process means any subpoena, order, or other demand of a court or other authority (*e.g.*, an administrative agency or a state or local legislative body) for the appearance of a PBGC employee or former employee.

Employee means any officer or employee of the PBGC, including a special government employee.

PBGC means the Pension Benefit Guaranty Corporation.

Proceeding means any proceeding before any federal, state, or local court; federal, state, or local agency; state or local legislature; or other authority responsible for administering regulatory requirements or adjudicating disputes or controversies, including arbitration, mediation, and other similar proceedings.

Special government employee means an employee of the PBGC who is retained, designated, appointed or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis (18 U.S.C. 202).

§ 2602.43 General.

No PBGC employee or former employee may appear in any proceeding to which this subpart applies to testify and/or produce documents or other material unless authorized under this subpart.

§ 2602.44 Appearances by PBGC employees.

(a) Whenever a PBGC employee or former employee is requested or served with compulsory process to appear in a proceeding to which this subpart applies, he or she will promptly notify the general Counsel.

(b) The General Counsel or his or her designee will authorize an appearance by a PBGC employee or former employee if, and to the extent, he or she determines that such appearance is in the interest of the PBGC.

(1) In determining whether an appearance is in the interest of the PBGC, the General Counsel or his or her designee will consider relevant factors, including:

(i) What, if any, objective of the PBGC (and, where relevant, any federal agency, if the United States is a party) would be promoted by the appearance;

(ii) Whether the appearance would unnecessarily interfere with the employee's official duties;

(iii) Whether the appearance would result in the appearance of improperly favoring one litigant over another; and

(iv) Whether the appearance is appropriate under applicable substantive and procedural rules.

(2) If the General Counsel or his or her designee concludes that compulsory process is essentially a request for PBGC record information, it will be treated as a request under the Freedom of Information Act, as amended, in accordance with Part 2603 of this subchapter, except to the extent that the Privacy Act of 1974, as amended, and part 2607 of this subchapter govern disclosure of a record maintained on an individual.

(c) If, in response to compulsory process in a proceeding to which this subpart applies, the General Counsel or his or her designee has not authorized an appearance by the return date, the employee or former employee shall appear at the stated time and place (unless advised by the General Counsel or his or her designee that process either was not validly issued or served or has been withdrawn), accompanied by a PBGC attorney, produce a copy of this subpart of the regulations, and respectfully decline to provide any testimony or produce any documents or other material. When the demand is under consideration, the employee shall respectfully request that the court or other authority stay the demand pending the employee's receipt of instructions from the General Counsel.

§ 2602.45 Requests for authenticated copies of PBGC records.

The PBGC will grant requests for authenticated copies of PBGC records, for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure, for records that are to be disclosed pursuant to this subpart or part 2603 of this subchapter. Appropriate fees will be charged for providing authenticated copies of PBGC records, in accordance with subpart B of part 2603 of this subchapter.

§ 2602.46 Penalty.

A PBGC employee who testifies or produces documents or other material in violation of a provision of this subpart of the regulations shall be subject to disciplinary action.

Issued in Washington, DC this 30th day of September, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-24102 Filed 10-2-92; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH18-1-5386, OH25-1-5392, OH26-1-5393; FRL-4517-1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces final disapproval of four source specific revision requests to the ozone portion of the Ohio State Implementation Plan (SIP) for: Ford Motor Company, Cleveland Engine Plant I (Ford Motor); Tyler Elevator Products, Inc. (Tyler); Defense Logistics Agency Fuel Support Point (DLA); and Roton Corporation

(Roton). The Ohio Environmental Protection Agency (OEPA) submitted these SIP revision requests for the ozone portion of the SIP. These revisions would exempt these sources from existing SIP-approved RACT rules for ozone. By this notice, USEPA is disapproving the SIP revision requests because the State did not identify how the revisions would not interfere with attainment of the ozone National Ambient Air Quality Standards (NAAQS) or with reasonable further progress (RFP) toward that standard. In addition, the State did not provide for equivalent emission reductions to compensate from the relaxed emission limitations proposed by the State's submittals.

DATES: This final rulemaking becomes effective December 4, 1992, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of these SIP revision requests and USEPA's analysis are available at the following location for review: (It is recommended that you telephone Richard Schleyer, at (312) 353–5089, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air Enforcement Branch (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be addressed to: William MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5089.

SUPPLEMENTARY INFORMATION:

I. Background

The OEPA submitted the following revision requests to the ozone portion of its SIP:

(1) Ford Motor

On June 23, 1983, OEPA submitted a revision request to the ozone portion of the Ohio SIP for Ford Motor. The revision consists of a variance for three miscellaneous metal parts/products coating lines (K001–K003) at Ford Motor, which is located in Cuyahoga County. The variance would exempt Ford Motor from the emission limit requirements contained in OAC Rule 3745–21–09(U) and from the final compliance date requirements contained in OAC Rule 3745–21–04(C)(28) until July 1, 1983.

Under the existing federally approved SIP, each miscellaneous metal parts/products line (K001–003) at Ford Motor is subject to the control requirements contained in OAC Rule 3745–21–09(U)(1) (3.5 pounds of VOC per gallon of coating, excluding water) and OAC Rule 3745–21–04(C)(28) (final compliance by December 31, 1982). On October 31, 1980 (45 FR 72122) and June 29, 1982 (47 FR 28097), USEPA approved OAC Rule 3745–21–09(U) and OAC Rule 3745–21–04(C) as part of the SIP as meeting the reasonably available control technology (RACT) requirements of part D of the Clean Air Act.

(2) Tyler

On May 25, 1983, OEPA submitted a revision request to the ozone portion of the Ohio SIP for Tyler. The revision consists of a variance for two miscellaneous metal primer/finish coating lines (K001–K002) located in Cuyahoga County. The variance would exempt Tyler from the emission limit requirements contained in OAC Rule 3745–21–09(U) and from the final compliance date requirements contained in OAC rule 3745–21–04(C)(28) until June 30, 1983 for K001, and until December 31, 1983 for K002.

Under the existing federally approved SIP, each miscellaneous metal parts primer/finish coating lines (K001–K002) at Tyler is subject to the control requirements contained in OAC Rule 3745–21–09(U)(1) (3.0 pounds of VOC per gallon of coating) and OAC Rule 3745–21–04(C)(28) (final compliance by December 31, 1982). On October 31, 1980 (45 FR 72122) and June 29, 1982 (47 FR 28097), USEPA approved OAC Rule 3745–21–09(U) and OAC Rule 3745–21–04(C) as part of the SIP as meeting the RACT requirements of part D of the Clean Air Act.

(3) DLA

On January 6, 1986, OEPA submitted a revision request to the ozone portion of the Ohio SIP for DLA. The revision consists of a variance for two rail car loading racks, Numbers 1 and 2, located in Hamilton County. The variance would exempt DLA from the emission limit requirements contained in OAC Rule 3745–21–07(E).

Under the existing federally approved SIP, each rail car loading rack at DLA is subject to the control requirements contained in OAC Rule 3745–21–07(E). On October 31, 1980 (45 FR 72122) and June 29, 1982 (47 FR 28097), USEPA approved OAC Rule 3745–21–09(E) as part of the SIP as meeting the RACT requirements of part D of the Clean Air Act.

(4) Roton

On June 13, 1989, OEPA submitted a revision request to the ozone portion of the Ohio SIP for Roton. The revision consists of a variance for a vinyl coating line located in Medina County. The variance would exempt Roton from the emission limit requirements contained in OAC Rule 3745–21–09(H) and the final compliance date requirements contained in OAC Rule 3745–21–04(C)(7).

Under the existing federally approved SIP, each vinyl coating line is subject to the control requirements contained in OAC Rule 3745–21–09(H) (4.8 pounds VOC per gallon of coating, excluding water) and OAC Rule 3745–21–04(C)(7) (final compliance date by April 1, 1982). On October 31, 1980 (45 FR 72122) and June 29, 1982 (47 FR 28097), USEPA approved OAC Rule 3745–21–09(H) and OAC Rule 3745–21–04(C) as part of the SIP as meeting the RACT requirements of Part D of the Clean Air Act.

Ford Motor and Tyler are located in Cuyahoga County; DLA is located in Hamilton County; and Roton, is located in Medina County. These three counties were designated as nonattainment areas under the pre-amended Act.[1] Medina County was subsequently redesignated as an attainment area for ozone on June 12, 1984 Federal Register (49 FR 24124). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Pursuant to the amended Clean Air Act, Cuyahoga and Hamilton Counties retained their designations as nonattainment and were classified by operation of law as moderate ozone nonattainment areas. Medina County was redesignated as nonattainment and classified as a moderate ozone nonattainment area on January 6, 1992 pursuant to a Federal Register notice published November 6, 1991 (56 FR 56694) to be codified at 40 CFR 81.336.

II. Compliance with the Clean Air Act, as Amended

These revision requests to the ozone portion of the Ohio SIP have been reviewed for conformance with the provisions of the amended Clean Air Act. USEPA has determined that Ohio has not provided a revision request that demonstrates that the revisions will not interfere with attainment and RFP. Section 110(1) prohibits USEPA from

[1] As published in the March 13, 1978 Federal Register (43 FR 8962), and in the October 5, 1978 Federal Register (43 FR 4 5993).

approving a revision request unless USEPA is assured that the revision will not interfere with attainment, RFP, or any other requirements of the Act. In addition, the State has not provided for equivalent reductions to compensate for the relaxation that the State request proposes. Since the State is providing that these four sources will not be subject to existing RACT requirements, the State is relaxing the RACT limits and providing for increased emissions of ozone precursors. Section 193 of the Clear Air Act provides:

> No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the CAAA of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

For nonattainment areas, the State must demonstrate that the SIP revision provides for offsetting emission reductions. These revision requests contain no plans for emission offsets or equivalent emission reductions. Therefore, no relaxation from the SIP requirements can be approved.

Final Action

USEPA is disapproving, in final, these four SIP revision requests because: (1) The State did not demonstrate that the relaxations from the emission limit requirements contained in OAC Rule(s) 3745-21-09(U), 3745-21-09(H), and 3745-21-07(E) will not interfere with the attainment and maintenance of the ozone standard; (2) RFP toward attainment has not been demonstrated; and (3) a relaxation of SIP requirements, in ozone nonattainment areas, is prohibited by the CAAA of 1990 without offsetting emission reductions.

Because USEPA considers today's action as noncontroversial and routine, we are approving it without prior proposal. The action will become effective on December 4, 1992. However, if we receive notice by November 4, 1992 that someone wishes to submit adverse or critical comments, then USEPA will publish: (1) a notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 4, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 10, 1992.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 92–24095 Filed 10–2–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 271

[FRL–4517–6]

New Mexico; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of New Mexico has applied for final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State of New Mexico's application and has made a decision, subject to public review and comment, that New Mexico hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve New Mexico's hazardous waste program revisions, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. New Mexico's application for program revision is available for public review and comment.

DATES: This final authorization for the State of New Mexico shall be effective on December 4, 1992 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on New Mexico's program revision application must be received by the close of business on November 4, 1992.

ADDRESSES: Copies of the New Mexico's program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: New Mexico Environment Department, 525 Camino De Los Marquez Place, Suite 4, Santa Fe, New Mexico, 87502, phone (505) 827–4306, or the U.S. EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 655–6444. Written comments, referring to Docket Number NM–92–1, should be sent to Janie Hernandez, New Mexico Authorization Lead, Grants and

Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655–8533.

FOR FURTHER INFORMATION CONTACT: Janie Hernandez, Grants and Authorization Section, RCRA programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124, and 270.

B. New Mexico

New Mexico initially received final authorization on January 25, 1985, (See 50 FR 1515) to implement its base hazardous waste management program. New Mexico received authorization for revision to its program on April 10, 1990, (See 55 FR 4604), and July 25, 1990, (See 55 FR 28397). On July 23, 1992, New Mexico submitted a final complete program revision application for additional program approvals. Today, New Mexico is seeking approval of its program revision in accordance with § 271.21(b)(3).

EPA has reviewed the State of New Mexico's application, and has made an immediate final decision that New Mexico's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to New Mexico. The public may submit written comments on EPA's final decision until November 4, 1992. Copies of New Mexico's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of New Mexico's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverse the decision.

The New Mexico program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264–266, 268, and 270 that were published in the **Federal Register** (FR) through May 4, 1990. This proposed approval includes the provisions that are listed in the chart below. This chart lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. List (Phase 1) of Hazardous Constituents for Ground-Water Monitoring, July 9, 1987 [52 FR 25942–25953].	New Mexico Statutes Annotated (NMSA), 1978 § 74–4–3.1, 74–4–4(1)(4)(5) and (6) and 74–4–4.2 (Replacement Pamphlet 1992 ((Repl. Pamp.)), and New Mexico Laws 1991, Chapter 25, § 6, and the Hazardous Waste Management Regulations (HWMR)–6, as amended February 1991, §§ 501 and 901.
2. Identification and Listing of Hazardous Waste, July 10, 1987 [52 FR 26012]	NMSA §§ 74–4–4A(1) and 74–4–4D, 1978 (Repl. Pamp. 1992), and HWMR–6 as amended February 1991, § 201.
3. Liability Requirements for Hazardous Waste Facilities; November 18, 1987 [52 FR 44314–44321].	NMSA §§ 74–4–4A(5)(6) and 74–4–4D, 1978 (Repl. Pamp. 1992) and New Mexico Laws 1991, Chapter 25, § 6, and HWMR–6 as amended February 1991, §§ 501 and 601.
4. Technical Corrections; Identification and Listing of Hazardous Waste, April 22, 1988 [53 FR 13382–13393].	NMSA §§ 74–4–4A(1) and 74–4–4D, 1978 (Repl. Pamp. 1992), and HWMR–6 as amended Feburary 1991, § 201.
5. Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption, July 19, 1988 [53 FR 27290–27302].	NMSA §§ 74–4–4A and 74–4–4D, 1978 (Repl. Pamp. 1992), and HWMR–6 as amended February 1991, §§ 101 and 201.
6. Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, September 2, 1988 [53 FR 34079–34087].	NMSA, 1978, § 74–4–3.1, 74–4–4A and D, and 74–4–4.2 (Repl. Pamp. 1992), and NM Laws 1991, Chapter 25, § 6, and HWMR–6, as amended February 1991, §§ 101, 201, 301, 501, 601, and 901.
7. Identification and Listing of Hazardous Waste; and Designation Reportable Quantities, and Notification, September 13, 1988 [53 FR 35412–35421].	NMSA §§ 74–4–4A(1) and 74–4–4D, 1978 (Repl. Pamp. 1992), and HWMR–6 as amended February 1991, § 201.
8. Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities, October 11, 1988 [53 FR 39720–39731].	NMSA, 1978, § 74–4–3.1, 74–4–4A(5)(6) and 74–4–4.2 (Repl. Pamp. 1992), and NM Laws 1991, Chapter 25, § 6, and HWMR–6, as amended February 1991, § 501.
9. Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Waste, October 31, 1988 [53 FR 43878–43881].	NMSA §§ 74–4–4A(1) and 74–4–4D, 1978 (Repl. Pamp. 1992), and HWMR–6 as amended February 1991, § 201.
10. Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from the List of Hazardous Wastes, October 31, 1988 [53 FR 43881–43884].	NMSA §§ 74–4–4A(1) and 74–4–4D, 1978 (Repl. Pamp. 1992), and HWMR–6 as amended February 1991, § 201.
11. Standards for Generators of Hazardous Waste, November 8, 1988 [53 FR 45089–45093].	NMSA, 1978, § 74–4–4A(2)(3) and 74–4–4D (Repl. Pamp. 1992), and NM Laws 1991, Chapter 25, § 6, and HWMR–6, as amended February 1991, § 301.
12. Hazardous Waste Miscellaneous Units: Standards Applicable to Owners and Operators, January 9, 1989 [54 FR 615–617].	NMSA, 1978, §§ 74–4–4, 74–4–4.2 (Repl. Pamp. 1992), and HWMR–6, as amended February 1991, §§ 501, and 901.
13. Amendment to Requirements for Hazardous Waste Incinerator Permits, January 30, 1989 [54 FR 4286–4288].	NMSA, 1978, §§ 74–4–4, 74–4–4.2 (Repl. Pamp. 1992), and HWMR–6, as amended February 1991, § 901.
14. Changes to Interim Status Facilities for Hazardous Waste Management Permits; Procedures for Post-Closure Permitting, March 7, 1989 [54 FR 9596–9609].	NMSA, 1978, §§ 74–4–4, 74–4–4.2, 74–4–9, (Repl. Pamp. 1992), NM Laws 1991, Chapter 25, § 6, and HWMR–6, as amended February 1991, § 901.
15. Delay of Closure Period for Hazardous Waste Management Facilities, August 14, 1989 [54 FR 33376–33398].	NMSA, 1978, §§ 74–4–3.1, 74–4–4A and 74–4–4D (Repl. Pamp. 1992), and NM Laws 1991, Chapter 25, § 6, and HWMR–6, as amended February 1991, §§ 501 and 601.
16. Mining Waste Exclusion I, September 1, 1989 [54 FR 36592–36642]	NMSA §§ 74–4–4A and 74–4–4D, 1978 (Repl. Pamp. 1992), and HWMR–6 as amended February 1991, § 201.
17. Testing and Monitoring Activities, September 29, 1989 [54 40260–40269]	NMSA §§ 74–4–4A and 74–4–4D, 1978 (Repl. Pamp. 1992), and HWMR–6 as amended February 1991, § 101 and § 201.

Federal citation	State analog
18. Changes to Part 124 Not Accounted for by 48 FR 14146-14295, April 1, 1983; 48 FR 30113-30115, June 30, 1983; 53 FR 28118-28157, July 26, 1988; 53 FR 37396-37414, September 26, 1988; and 54 FR 246-258, January 4, 1989.	NMSA, 1978, § 74-4-4.2, (Repl. Pamp. 1992), HWMR-6, as amended February 1991, §§ 901, 902 and 1003.
19. Mining Waste Exclusion II, January 23, 1990 [55 FR 2322-2354]	NMSA, 1978, § 74-4-4A & § 74-4-4D (Repl. Pamp. 1992), HWMR-6, as amended February 1991, §§ 101, 201, & 301.
20. Modification of F019 Listing, February 14, 1990 [55 FR 5340-5342]	NMSA, 1978, § 74-4-4A(1), § 74-4-4D (Repl. Pamp. 1992), HWMR-6, as amended February 1991, § 201.
21. Testing and Monitoring Activities; Technical Corrections, March 9, 1990 [55 FR 8948-8950].	NMSA §§ 74-4-4A and 74-4-4D, 1978 (Repl. Pamp. 1992), and HWMR-6 as amended February 1991, §§ 101 and 201.
22. Criteria for Listing Toxic Wastes; Technical Amendment, May 4, 1990 [55 FR 18726].	NMSA, 1978, § 74-4-4A(1), § 74-4-4D (Repl. Pamp. 1992), HWMR-6, as amended February 1991, § 201

New Mexico is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

D. Decision

I conclude that the New Mexico application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, New Mexico is granted final authorization to operate its hazardous waste program as revised.

New Mexico now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application. New Mexico also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

E. Codification in Part 272

EPA uses part 272 for codification of the decision to authorize New Mexico's program and for incorporation by reference of those provisions of New Mexico's statutes and regulations that EPA will enforce under section 3008, 3013, and 7003 of RCRA. EPA is reserving amendment of part 272, subpart E, until a later date.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Lists of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6926, 6974(b).

Dated: September 25, 1992.

Philip A. Charles,

Acting Regional Administrator.

[FR Doc. 92-24089 Filed 10-2-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-4517-5]

Texas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Texas has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act. The Environmental Protection Agency (EPA) has reviewed Texas' application and has made a decision, subject to public review and comment, that Texas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Texas' hazardous waste program revisions, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Texas' application for program revision is available for public review and comment.

DATES: This final authorization for the State of Texas shall be effective December 4, 1992 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Texas' program revision application must be received by the close of business on November 4, 1992.

ADDRESSES: Copies of the Texas program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Texas Water Commission, Library, Fifth Floor, Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin, Texas 78711, phone (512) 463-7834; and U.S. EPA, Region 6, Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-6444. Written comments, referring to Docket Number TX-92-1, should be sent to Dick Thomas, Regional Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Programs Branch, U.S. EPA, Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Regional Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas, 75202, phone (214) 655-8528.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is

equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268 and 124 and 270.

B. Texas

Texas initially received final authorization on December 12, 1984, effective December 26, 1984 (see 49 **Federal Register** (FR) 48300), and clarified on March 26, 1985 (see 50 FR 11858), to implement its base hazardous waste management program. Texas received authorization for revisions to its program in notices published in the FR on January 31, 1986, effective October 4, 1985 (see 51 FR 3952), on December 18, 1986, effective February 17, 1987 (see 51 FR 45320), on March 1, 1990, effective March 15, 1990 (see 55 FR 7318), on May 24, 1990, effective July 23, 1990 (see 55 FR 21383), and on August 22, 1991, effective October 21, 1991 (see 56 FR 41626). On November 7, 1989, Texas submitted a program revision application for additional program approvals. Today, Texas is seeking approval of its program revision in accordance with Section 271.21(b)(3).

EPA has reviewed the State of Texas' application, and has made an immediate final decision that Texas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Texas. The public may submit written comments on EPA's final decision until November 4, 1992. Copies of Texas' application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Texas' program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The Texas program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR Parts 144, 260, 261, 264, 265, and 270 that were published in the *FR* through April 22, 1988. This proposed approval includes the provisions that are listed in the chart below. This chart lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Texas is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

The following language is contained in Texas' regulations at, *inter alia*, § 335.29; § 335.112(a); § 335.152(a); § 335.431(c); and essentially reads as follows:

"Except to the extent that they are clearly inconsistent with the Solid Waste Disposal Act, Texas Health and Safety Code, * * * or rules of the Commission * * * the regulations in 40 Code of Federal Regulations (CFR) Part * * * are adopted by reference".

Whenever this language is employed in the State's regulations, including those sections cited above, it shall mean that the State incorporates the subject Federal regulations by reference in their entirety, unless this language in the State regulation references a specific provision of the Federal regulations to be excluded from the incorporation. The State made this interpretation in the Memorandum of Agreement it submitted with the program revisions noted herein.

	State analog
1. List (Phase 1) of Hazardous Constituents for Ground-Water Monitoring, July 9, 1987 [52 FR 25942].	Title 31, Texas Administrative Code (TAC) 305.50(4), effective August 4, 1989; Title 31, TAC 335.164, effective August 4, 1989; Title 31, TAC 335.164(8)(B), effective August 4, 1989; Title 31, TAC 335.164(8)(C), effective August 4, 1989; Title 31, TAC 335.164(8)(D)(i), effective August 4, 1989; Title 31, TAC 335.165, effective August 4, 1989; Title 31, TAC 335.165(6), effective August 4, 1989.
2. Identification and Listing of Hazardous Waste, July 10, 1987 [52 FR 26012].	Title 31, TAC 335.1, effective August 4, 1989.
3. Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, November 18, 1987 [52 FR 44314].	Title 31, TAC 335.152(a)(6) effective December 13, 1991; Title 31, TAC 335.112(a)(7) effective December 13, 1991.
4. Hazardous Waste Miscellaneous Units, December 10, 1987 [52 FR 46946].	Title 31, TAC 305.50, effective August 4, 1989; Title 31, TAC 305.50(4), effective August 4, 1989; Title 31, TAC 331.3, effective August 4, 1989; Title 31, TAC 331.9, effective May 9, 1990; Title 31, TAC 335.1, effective August 4, 1989; Title 31, TAC 335.152(a), effective December 13, 1991; Title 31, TAC 335.152(a)(1), effective December 13, 1991; Title 31, TAC 335.152(a)(4), effective December 13, 1991; Title 31, TAC 335.152(a)(5), effective December 13, 1991; Title 31, TAC 335.152(a)(6), effective December 13, 1991; Title 31, TAC 335.152(a)(14), effective December 13, 1991.
5. Technical Correction; Identification and Listing of Hazardous Waste, April 22, 1988 [53 FR 13382].	Title 31 TAC 335.1, effective August 4, 1989.

C. Decision

I conclude that Texas' application for this program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, Texas is granted final authorization to operate its hazardous waste program as revised.

Texas now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Texas also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses part 272 for codification of the decision to authorize Texas' program and for incorporation by reference of those provisions of Texas' statutes and regulations that EPA will enforce under section 3008, 3013 and 7003 of RCRA. Therefore, EPA is reserving amending part 272, subpart E, until a later date.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Texas' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 25, 1992.

Philip A. Charles,

Acting Regional Administrator.

[FR Doc. 92-24090 Filed 10-2-92, 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-4516-9]

Arkansas; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Arkansas has applied for final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State of Arkansas' application and has made a decision, subject to public review and comment, that Arkansas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Arkansas' hazardous waste program revisions, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Arkansas' application for program revision is available for public review and comment.

DATES: Final authorization for the State of Arkansas shall be effective on December 4, 1992, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Arkansas' program revision application must be received by the close of business November 4, 1992.

ADDRESSES: Copies of the Arkansas program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209-8913, phone (501) 562-7444; and the U.S. EPA Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 655-6444. Written comments, referring to Docket Number AR-92-1, should be sent to the Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Program Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-8533.

FOR FURTHER INFORMATION CONTACT: Janie Hernandez, Grants and Authorization Section, RCRA programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendment of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive interim authorization for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6925(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revision are necessitated by changes to EPA's regulations in 40 CFR parts 260-266, 268, 124, and 270

B. Arkansas

Arkansas initially received final authorization on January 25, 1985 (see 50 FR 1513) to implement its base hazardous waste management program. Arkansas received authorization for revision to its program on August 23, 1985, May 29, 1990 (See 55 FR 11192), and November 18, 1991 (See 56 FR 57593). On June 3, 1992, Arkansas submitted a final complete program revision application for additional program approvals. Today, Arkansas is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed the State of Arkansas' application, and has made an immediate final decision that Arkansas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Arkansas. The public may submit written comments on EPA's final decision until November 4, 1992. Copies of Arkansas' application for program revision are available for inspection and copying at the locations indicated in the **"ADDRESSES"** section of this notice.

Approval of Arkansas' program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comments period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverse the decision.

The Arkansas program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260-262, 264-266, 268, and 270 that were published in the **Federal Register** (FR) through June 13, 1991. This proposed approval includes the provisions that are listed in the chart below. This chart lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Toxicity Characteristic; Hydrocarbon Recovery Operations, October 5, 1990, FR 40634–40637, as amended on February 1, 1991, at 56 FR 3978, and April 2, 1991, 1991, at 56 FR 13406–13411.	Arkansas Hazardous Waste Management Code (AHWMC) section 3a(2), as amended December 6, 1991, effective January 27, 1992.
2. Petroleum Refinery Primary and Secondary Oil/Water/Solid Separation Sludge Listings (F037 and F038), 55 FR 46354–46397, November 2, 1990, as amended on December 17, 1990, at 55 FR 51707.	AHWMC section 3a(2), as amended December 6, 1991, effective January 27, 1992.
3. Wood Preserving Listings, 55 FR 50450–50490, December 6, 1990	AHWMC section 3a(1), (2), (3), (5), (6), (9), as amended December 6, 1991, effective January 27, 1992.
4. Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments, 56 FR 3864–3926, January 31, 1991.	AHWMC section 3a(2), (3), (5), (6), (8), and (9), as amended December 6, 1991, effective January 27, 1992.
5. Toxicity Characteristic; Chlorofluorocarbon Refrigerants, 56 FR 5910–5915, February 13, 1991.	AHWMC section 3a(2), as amended December 6, 1991, effective January 27, 1992.
6. Burning of Hazardous Waste in Boilers and Industrial Furnaces, 56 FR 7134–7240, February 21, 1991.	AHWMC section 3a(1), (2), (5), (6), (7), and (9), as amended December 6, 1991, effective January 27, 1991.
7. Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment, 56 FR 7567–7568, February 25, 1991.	AHWMC section 3a(2), as amended December 6, 1991, effective January 27, 1992.
8. Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment, 56 FR 19290, April 26, 1991.	AHWMC section 3a(2), (5), (6), and (9) as amended December 6, 1991, effective January 27, 1992.
9. Administrative Stay for K069 Listing, 56 FR 19951, May 1, 1991	AHWMC section 3a(2), as amended December 6, 1991, effective January 27, 1992.
10. Revision to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038), 56 FR 21955–21960, May 13, 1991.	AHWMC section 3a(2), as amended December 6, 1991, effective January 27, 1992.
11. Mining Waste Exclusion III, 56 FR 27300–27330, June 13, 1991	AHWMC section 3a(2), as amended December 6, 1991, effective January 27, 1992.
12. Wood Preserving Listings, 56 FR 27332–27336, June 13, 1991	AHWMC section 3a(2), (5), and (6), as amended December 6, 1991, effective January 27, 1992.

Arkansas is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

D. Decision

I conclude that the Arkansas application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Arkansas is granted final authorization to operate its hazardous waste program as revised.

Arkansas now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application. Arkansas also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

E. Codification in Part 272

EPA uses part 272 for codification of the decision to authorize Arkansas' program and for incorporation by reference of those provisions of Arkansas' statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. EPA is reserving amendment of part 272, subpart E.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Arkansas' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Lists of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6926, 6974(b).

Dated: September 14, 1992.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 92–24091 Filed 10–2–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[FRL–4517–4]

Arkansas; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Arkansas has applied for final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State of Arkansas' application and has made a decision, subject to public review and comment, that Arkansas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Arkansas' hazardous waste program revisions, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Arkansas' application for program revision is available for public review and comment.

DATES: Final authorization for the State of Arkansas shall be effective on December 4, 1992, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Arkansas' program revision application must be received by the close of business on November 4, 1992.

ADDRESSES: Copies of the Arkansas program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209–8913, phone (501) 562–7444 or the U.S. EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 655–6444. Written comments, referring to Docket Number AR–92–3, should be sent to Janie Hernandez, Arkansas Authorization Lead, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655–8533.

FOR FURTHER INFORMATION CONTACT: Janie Hernandez, Grants and Authorization Section, RCRA programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124, and 270.

B. Arkansas

Arkansas initially received final authorization on January 25, 1985, (See 50 FR 1513) to implement its base hazardous waste management program. Arkansas received authorization for revision to its program on August 23, 1985, May 29, 1990 (See 55 FR 11192), and November 18, 1991 (See 56 FR 57593). On June 5, 1992, Arkansas submitted a final complete program revision application for additional program approvals. Today, Arkansas is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed the State of Arkansas' application, and has made an immediate final decision that Arkansas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Arkansas. The public may submit written comments on EPA's final decision until November 4, 1992. Copies of Arkansas' application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Arkansas' program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comments period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverse the decision.

The Arkansas program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264–266, 268, and 270 that were published in the **Federal Register** (FR) through August 10, 1990. This proposed approval includes the provisions that are listed in the chart below. This chart lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Identification and Listing of Hazardous Waste; Technical Correction, July 19, 1988 [53 FR 27162–27163].	Arkansas Hazardous Waste Management Code (AHWMC) 3a(2), 12a and 16b, as amended October 24, 1990, effective December 17, 1990.
2. Farmer Exemption: Technical Correction, July 19, 1988 [53 FR 27164–27165].	AHWMC 3a(3), (5), (6), (8), (9), as amended October 24, 1990, effective December 17, 1990.
3. Identification and Listing of Hazardous Waste; Treatability Studies Samples Exclusion, July 19, 1988 [53 FR 27290–27302].	AHWMC 3a(1), (2), as amended October 24, 1990, effective December 17, 1990.
4. Land Disposal Restrictions for First Third Scheduled Wastes, 53 FR 31138–31222, August 17, 1988, as amended on February 27, 1989 at 54 FR 8264–8266.	Arkansas Code of 1987, Annotated (Ark. Code Ann.) 8–7–205(3), 8–7–209(a)(1), (3), (5), (6), (11), b, 8–7–215, 8–7–216, 8–7–218, 8–7–303 and 8–7–308(4), as amended and effective in 1989. AHWMC 3a(5), (6), (7), (8), 4c and 13a(5), as amended October 24, 1990, effective December 17, 1990.
5. Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems 53 FR 34079–34087, September 2, 1988.	Ark. Code Ann. 8–7–209(1), (5), (9), (11), and (b), as amended and effective in 1989. AHWMC 3a(1), (2), (3), (5), (6), and (9), as amended October 24, 1990, effective December 17, 1990.
6. Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification, 53 FR 35412–35421, September 13, 1988.	AHWMC 3a(2), as amended October 24, 1990, effective December 17, 1990.
7. Permit Modifications for Hazardous Waste Management Facilities, 53 FR 37912–37942, September 28, 1988, as amended on October 24, 1988, at 53 FR 41649.	Ark. Code Ann. 8–7–211, 8–7–218 as amended and effective in 1989. AHWMC 3a(5), (6), (9), (11) and 12, as amended October 24, 1990, effective December 17, 1990.
8. Statistical Methods for Evaluating Groundwater Monitoring Data from Hazardous Waste Facilities, 53 FR 39720–39731, October 11, 1988.	AHWMC 3a(5), as amended October 24, 1990, effective December 17, 1990.
9. Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes; 53 FR 43878–43881, October 31, 1988.	AHWMC 3a(2), as amended October 24, 1990, effective December 17, 1990.
10. Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from the List of Hazardous Wastes, 53 FR 43881–43884, October 31, 1988.	AHWMC 3a(2), as amended October 24, 1990, effective December 17, 1990.
11. Hazardous Waste Miscellaneous Units, Standards Applicable to Owners and Operators, 54 FR 615–617, January 9, 1989.	AHWMC 3a(5), (9), and 12, as amended October 24, 1990, effective December 17, 1990.
12. Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286–4286, January 30, 1989.	AHWMC 3a(9), as amended October 24, 1990, effective December 17, 1990.
13. Changes to Interim Status Facilities for Hazardous Waste Management Permits; Procedures for Post-Closure Permitting, 54 FR 9596–9609, March 7, 1989.	Ark. Code Ann. 8–7–211, as amended and effective in 1989. AHWMC 3a(9), as amended October 24, 1990, effective December 17, 1990.
14. Land Disposal Restrictions Amendments to First Third Scheduled Wastes, 54 FR 18836–18838, May 2, 1989.	AHWMC 3a(5), (6), (7) and (8), as amended October 24, 1990, effective December 17, 1990.
15. Reportable Quantity Adjustment Methyl Bromide Production Wastes, 54 FR 41402–41408, October 6, 1988.	AHWMC 3a(2), as amended October 24, 1990, effective December 17, 1990.

Federal citation	State analog
16. Reportable Quantity Adjustment, 54 FR 50968–50979, December 11, 1989	AHWMC 3a(2), as amended October 24, 1990, effective December 17, 1990. AHWMC 3a(8), as amended October 24, 1990, effective December 17, 1990.
17. Land Disposal Restrictions Amendments to Second Third Schedules Wastes, 54 FR 26594–26852, June 23, 1989.	
18. Delay of Closure Period for Hazardous Waste Management Facilities, 55 FR 33376–33396, August 14, 1989, as amended on June 26, 1990, at 55 FR 25976.	AHWMC 3a(5), (6), and (9), as amended October 24, 1990, effective December 17, 1990.
19. Mining Waste Exclusion I, 54 FR 36592–36642, September 1, 1989	AHWMC 3(a)(2), as amended October 24, 1990, effective December 17, 1990.
20. Land Disposal Restrictions; Correction for the First Third Scheduled Wastes, 54 FR 36967, September 8, 1989, as amended on June 13, 1990 at 55 FR 23935.	AHWMC 3a(7), and (8), as amended October 24, 1990, effective December 17, 1990.
21. Testing and Monitoring Activities, 54 FR 40260–40269, September 29, 1989	AHWMC 3a(1), and (2), as amended October 24, 1990, effective December 17, 1990.
22. Mining Waste Exclusion II, 55 FR 2322–2354, January 23, 1990	AHWMC 3a(1), (2) and (3), as amended October 24, 1990, effective December 17, 1990.
23. Modification of F019 Listing, 55 FR 5340–5342, February 14, 1990	AHWMC 3a(2), as amended October 24, 1990, effective December 17, 1990.
24. Testing and Monitoring Activities; Technical corrections, 55 FR 8948–8950, March 9, 1990.	AHWMC 3a(1) as amended October 24, 1990, effective December 17, 1990.
25. Toxicity Characteristics Revision, 55 FR 11798–11877, March 29, 1990, as amended on June 29, 1990 at 55 FR 26986–26998, on August 2, 1990, at 55 FR 31387–31390, on August 10, 1990, at 55 FR 32733.	AHWMC 3a(2), (5), (6), (8), and 16e as amended October 24, 1990, effective December 17, 1990.
26. Listing of 1,1-Dimethylhydrazine Production Wastes, 55 FR 18496–18506, May 2, 1990.	AHWMC 3a(2), as amended October 24, 1990, effective December 17, 1990.
27. Criteria for Listing Toxic Wastes; Technical Amendment, 55 FR 18726, May 4, 1990.	Ark. Code Ann. 8–7–203(6) as amended and effective in 1989. AHWMC 3a(2), and 2a(5) as amended October 24, 1990, effective December 17, 1990.
28. HSWA Codification Rule, Double Liners; Correction, May 9, 1990	Ark. Code Ann. 8–7–218 as amended and effective in 1989. AHWMC 3a(5), and (8) as amended October 24, 1990, effective December 17, 1990.
29. Land Disposal Restrictions for Third Schedules Wastes, 55 FR 22520–22720, June 1, 1990.	AHWMC 3a(2), (5), (6), (8), and (9), as amended December 6, 1991, and effective January 27, 1992, and 13a(5) as amended October 24, 1990, effective December 17, 1990.
30. Organic Air Emission Standards for Process Vents and Equipment Leaks, 55 FR 25454–25519, June 21, 1990.	Ark. Code Ann. 8–4–303(1) and (2), 8–4–310(a)(1) and (2), 8–7–209(b), 8–7–210(d), 8–7–218(c) and 8–7–503(7), as amended and effective in 1989. 13a(5) as amended October 24, 1990, effective December 17, 1990. AHWMC 3a(1), (2), (5), (6), (9), 12, and 13a(3) as amended October 24, 1990, effective December 17, 1990.
31. Changes to Part 124 Not Accounted for by 48 FR 14146–14295, April 1, 1983, 48 FR 30113–30115, June 30, 1983, 53 FR 28118–28157, July 26, 1988, 53 FR 37396–37414, September 26, 1988, 54 FR 246–258, January 4, 1989.	AHWMC 3a(11), as amended October 24, 1990, effective December 17, 1990. Arkansas Department of Pollution Control and Ecology (ADPC&E) No. 8, dated and effective July 6, 1984, Ark. Code Ann. 8–4–218 through 8–4–229, as amended and effective in 1989.
32. Standards for Generators of Hazardous Wastes, 53 FR 45089–45093, November 8, 1988.	AHWMC 3a(3), as amended October 24, 1990, effective December 17, 1990.
33. Permit Conditions to Protect Human Health and the Environment	AHWMC 3a(9) & 14, as amended September 23, 1988, effective October 31, 1988.

On November 18, 1991, (56 FR 57593) the EPA granted final authorization for the State of Arkansas to operate the hazardous waste program. However, EPA did not intend to authorize the State of Arkansas for the Resource Conservation and Recovery Act (RCRA) section 3004(t) and (3). These provisions created a Federal cause of action for any person with a claim arising from conduct for which financial assurances are required under RCRA. This action may be asserted directly against the guarantor of the assurances if (1) the owner or operator of the facility is in bankruptcy or other similar proceedings under Federal law, or (2) the person with the claim is not likely to obtain jurisdiction over the facility owner operator in either Federal or State court. The cause of action created by Section 3004(t) is always available in delegable States. States are welcome to create parallel causes of action viable in State courts, but to the extent that States do so, the State cause of action cannot limit the availability of the Federal action. Therefore, EPA did not propose to authorize Arkansas for this provision.

Arkansas is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

D. Decision

I conclude that the Arkansas application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Arkansas is granted final authorization to operate its hazardous waste program as revised.

Arkansas now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application. Arkansas also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

E. Codification in Part 272

EPA uses part 272 for codification of the decision to authorize Arkansas' program and for incorporation by reference of those provisions of Arkansas' statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. EPA is reserving amendment of part 272, subpart E.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Arkansas' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Lists of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6926, 6974(b).

Dated: September 25, 1992.

Philip A. Charles,

Acting Regional Administrator.

[FR Doc. 92-24092 Filed 10-2-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43-CFR Public Land Order 6950

[NM-930-4214-10; NMNM 86060]

Withdrawal of Public Land for the Berrendo Camp Administrative Site; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 40 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to relocate, establish, and protect the Berrendo Camp Administrative Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico, 87502-7115, 505-438-7594.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Berrendo Camp Administrative Site:

New Mexico Principal Meridian

T. 23 S., R. 15 E.,
Sec. 9, NW¼NW¼.

The area described contains 40 acres in Otero County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 21, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-24099 Filed 10-2-92; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 57

RIN 0905-AD63

Grants for Construction of Teaching Facilities, Educational Improvements, Scholarships, and Student Loans

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final regulation.

SUMMARY: This final rule revises regulations which govern various Public Health Service (PHS) health professions and nursing training grant and loan programs to: Bring these programs into conformity with statutory amendments made to the various sections of the PHS Act under titles VII and VIII, include other changes to bring the regulations into line with current Department regulatory and grant policies; amend regulatory sections that contain information collection requirements with current Office of Management and Budget (OMB) approval numbers; and make other changes which are editorial or clarifying in nature.

The affected regulations are amended primarily by the following statutes: the Health Professions Reauthorization Act of 1988, the Nursing Shortage Reduction and Education Extension Act of 1988, the Drug-Free Workplace Act of 1988, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, and the National Health Service Corps Revitalization Amendments of 1990.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Shirley L. Johnson, Director, Office of Program Development, Bureau of Health Professions, Health Resources and Services Administration, room 8A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443-1590.

SUPPLEMENTARY INFORMATION: This final rule amends various Public Health Service (PHS) health professions and nursing training grant and loan regulations under title 42, part 57, primarily to implement the provisions of titles VI and VII of Public Law 100-607, the Health Professions Reauthorization Act of 1988 and the Nursing Shortage Reduction and Education Extension Act of 1988, respectively. The subparts listed below discuss the specific amendments made to the various sections of the PHS Act by: (1) Titles VI or VII of Public Law 100-607, as appropriate, (2) changes regarding current Department regulatory and grant policies, (3) changes regarding current Office of Management and Budget (OMB) approval numbers in those sections of the subparts that contain information collection requirements, (4) deletion of OMB control numbers in those sections that refer only to clearance of forms and not to clearance of regulatory language, and (5) other changes for consistency in the title 42, part 57 regulations which are editorial or clarifying in nature.

Other amendments which affect the various regulations under title 42, part 57 have been made in recent years by: (1) Public Law 100-690, the Drug-Free Workplace Act of 1988, and (2) Public Law 101-121, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990. These statutory amendments, cited below, are implemented through the following CFR revisions:

1. A new CFR citation to subparts C, D, F, H, L, Q, R, Y, Z, CC, DD, EE, FF, NN, and OO to bring these programs into compliance with governmentwide requirements established for this Department under 45 CFR part 76, in accordance with Public Law 100-690, title V, subtitle D, the Drug-Free Workplace Act of 1988, enacted on November 18, 1988, and a Notice and Interim-Final Rule, published in the Federal Register on January 31, 1989 (54 FR 4946). A Final rule was published in the Federal Register on May 25, 1990 (55 FR 21681). This CFR citation will be cited in the amendatory language as "45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide

Requirements for Drug-Free Workplace (Grants)".

2. A new CFR citation to subparts F, H, L, Q, R, V, Y, Z, AA, CC, DD, EE, FF, NN, and OO to bring these programs into compliance with governmentwide requirements established for this Department under 45 CFR part 93, in accordance with Public Law 101–121, section 319, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, enacted on October 23, 1989, and an Interim-Final Rule, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This CFR citation will be cited in the amendatory language as "45 CFR part 93—New restrictions on lobbying".

Another amendment is made to several subparts by title IV of Public Law 101–597, the National Health Service Corps Revitalization Amendments of 1990. Section 401 of Public Law 101–597 amended the term "health manpower shortage area" to read "health professional shortage area". This amendment is reflected in the following subparts: H, I, AA, and FF.

Several subparts have footnotes in the "Application" sections indicating addresses where training grant or student loan application forms and instructions may be obtained. The Department is removing these footnotes. Training grant application forms, materials, and instructions may be obtained as announced in **Federal Register** program announcements for periodic training grant award cycles. Student loan applications and instructions are directly forwarded to applicants or eligible active institutions during appropriate application cycles. Amendments to remove such footnotes are reflected in the following subparts: C, D, F, H, L, S, V, Y, Z, AA, FF, OO, and PP.

Further, this preamble includes discussions on those subparts that are no longer viable programs (subparts G, J, K, M, N, O, II, and JJ) where the legislative authority has expired or has been repealed and, therefore, are being removed and placed in reserve status in the CFR.

The following programs, implemented by the Bureau of Health Professions, Health Resources and Services Administration, codified at 42 CFR part 57, are discussed below according to the subparts, section numbers, and headings affected.

Subpart C—Health Professions Student Loans

This final rule amends subpart C governing the Health Professions Student Loan program under sections 740–747 of the PHS Act to:

1. Revise § 57.203, entitled "Application by school.", by:

(a) Removing footnote 1 in paragraph (a) providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations, and

(b) Removing the parenthetical phrase at the end of the section citing an outdated OMB control number.

2. Revise § 57.208, entitled "Health professions student loan promissory note and disclosure requirements.", by revising the parenthetical phrase at the end of the section providing the current OMB control number.

3. Revise § 57.210, entitled "Repayment and collection of health professions student loans.", by removing the two parenthetical phrases at the end of the section and adding in their place a parenthetical phrase providing the current OMB control numbers.

4. Revise § 57.213a, entitled "Loan cancellation reimbursement.", by removing the parenthetical phrase at the end of the section citing an outdated OMB control number.

5. Revise § 57.215, entitled "Records, reports, inspection, and audit.", by revising the parenthetical phrase at the end of the section providing the current OMB control number.

6. Revise § 57.216, entitled "What additional Department regulations apply to schools?", by revising the footnote number and the footnote reference to "45 CFR part 83".

Subpart D—Nursing Student Loans

This final rule amends subpart D governing the Nursing Student Loan program under sections 835–842 of the PHS Act to:

1. Revise § 57.303, entitled "Application by school.", by:

(a) Removing footnote 1 in paragraph (a) providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations; and

(b) Removing the parenthetical phrase at the end of the section citing an outdated OMB control number.

2. Revise § 57.308, entitled "Nursing student loan promissory note.", by revising the parenthetical phrase at the end of the section providing the current OMB control number.

3. Revise § 57.310, entitled "Repayment and collection of nursing student loans.", by:

(a) Removing the two parenthetical phrases at the end of the section and adding in their place a parenthetical phrase providing the current OMB control number; and

(b) Revising the footnote number and the footnote reference to paragraph (a)(1).

4. Revise § 57.313, entitled "Loan cancellation for full-time employment as a registered nurse.", by removing the parenthetical phrase at the end of the section citing an outdated OMB control number.

5. Revise § 57.314, entitled "Repayment of loans made after November 17, 1971, for failure to complete a program of study.", by revising the footnote number and the footnote reference to the section heading.

6. Revise § 57.315, entitled "Records, reports, inspection, and audit.", by revising the parenthetical phrase at the end of the section providing the current OMB control number.

7. Revise § 57.316, entitled "What additional Department regulations apply to schools.", by revising the footnote number and the footnote reference to "45 CFR part 83".

Subpart F—Grants for Nurse Anesthetist Traineeships

This final regulation amends subpart F governing Grants for Nurse Anesthetist Traineeships under section 831(a) of the PHS Act to:

1. Remove the "Effective Date Note" at the end of each of the section texts for: § 57.509, entitled "Who is eligible for financial assistance as a trainee?"; § 57.510, entitled "What are the requirements for traineeships and the appointment of trainees?"; and § 57.512, entitled "Termination of traineeships."; and add the OMB control numbers in these sections which contain information collection requirements.

2. Revise § 57.502, entitled "Definitions.", to amend the following terms:

(a) The definition of "Nurse anesthetist training program" to reflect the current name of the Council on Accreditation of Nurse Anesthesia Educational Programs; and

(b) The definitions of "Nonprofit" and "Secretary" to reflect current Department policy language for consistency in title 42, part 57 definitions.

3. Revise § 57.503, entitled "Who is eligible to apply for a grant?", by removing footnote 1 providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations.

4. Revise § 57.505, entitled "How long does grant support last?", to amend paragraph (b) by removing the second sentence which is repetitive of language regarding the submission of a separate application to receive consideration for continued support stated in the last sentence of paragraph (c) of this section.

5. Revise § 57.507, entitled "For what purposes may grant funds be spent?", to amend paragraph (c) to reflect current Department grants policy language for consistency in title 42, part 57 regulations.

6. Revise § 57.508, entitled "What financial support is available to trainees?", to amend:

(a) Paragraph (b) to reflect that the amount of stipends awarded to the trainee does not exceed the limits established by the "Public Health Service"; and

(b) Paragraph (c) by removing the phrase "on an individual basis when prior approval has been obtained from the Secretary" regarding transportation allowance to trainees for travel to field training, to comply with established PHS grants policy.

7. Revise § 57.509, entitled "Who is eligible for financial assistance as a trainee?", to revise paragraph (a) concerning an eligible individual's citizenship status, the Immigration and Naturalization Service policy as it relates to the admission into the United States, its territories and possessions, to reflect current Department policy language for consistency in title 42, part 57 regulations.

Subpart G—Scholarship Grants to Schools of Medicine, Osteopathy, Dentistry, Optometry, Podiatry, Pharmacy, and Veterinary Medicine

Section 780(a) of the PHS Act, 42 U.S.C. 295g, as it was in effect for Scholarship Grants to Schools of Medicine, Osteopathy, Dentistry, Optometry, Podiatry, Pharmacy, and Veterinary Medicine was repealed by section 409(a) of Public Law 94–484, the Health Professions Educational Assistance Act of 1976 (90 Stat. 2290), effective October 1, 1976, which repealed subpart 1 of part F of title VII of the PHS Act. The Department is therefore removing from title 42, part 57 of the Code of Federal Regulations this program under subpart G, consisting of §§ 57.601–57.613, and placing it in reserve status.

Subpart H—Grants for Physician Assistant Training Programs

This final regulation amends subpart H governing Grants for Physician Assistant Training Programs under section 788(d) of the PHS Act to:

1. Revise the section number of the Act from "783" to "788(d)" and the United States Code citation from "(42 U.S.C. 295g–3(a)(1))" to "(42 U.S.C. 295g-8(d))" wherever they appear in subpart H, as redesignated, in accordance with Public Law 100–607.

2. Change the word "osteopathy" wherever it appears in subpart H to read "osteopathic medicine", in accordance with Public Law 100–607.

3. Add or change the order of the words "nonprofit private" to read "private nonprofit" wherever they appear in subpart H when referring to a school or entity to reflect current Department policy language for consistency in title 42, part 57 regulations.

4. Change the term "health manpower shortage area" (or "areas") wherever it appears in subpart H to read "health professional shortage area" (or "areas"), in accordance with Public Law 101–597.

5. Revise § 57.702, entitled "Definitions.", to revise the definition of "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions.

6. Revise § 57.703, entitled "Eligibility.", to add the words "is eligible to" before the word "apply" to reflect current Department policy language.

7. Revise § 57.704, entitled "Application.", to:

(a) Revise paragraph (a) with current Department grants policy language to reflect that eligible applicants shall submit an application as the Secretary may prescribe. Paragraph (a) is further revised by removing footnote [1] providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations; and

(b) Remove paragraph (c)(4) of this section from the application requirements. This requirement states, "Evidence that all applicable requirements of section 1513(e) of the Act have been met." Section 1513(e) of the PHS Act (42 U.S.C. 300*l*–2(e)), "Approval of the Use of Federal Funds," under title XV, National Health Planning and Development, was repealed by section 701(a) of Public Law 99–660 (100 Stat. 3799), effective January 1, 1987.

8. Revise § 57.705, entitled "Project requirements.", to revise paragraph (b)(2) to provide that the program must have received a "Letter of Review" rather than a "Letter of Support" and to provide the current title of the Accreditation Review Committee.

9. Revise § 57.706, entitled "Evaluation of applications.", to remove language from paragraph (a)(4) which reads "including those identified by the Health Systems Agency and/or State Health Planning and Development Agency of the State or States in which the project will encourage graduates to practice;". Health system agency reviews for training grant programs are no longer required due to the repeal of section 1513(e) of the PHS Act by Public Law 99–660 as stated above (see amendments to § 57.704(c)(4)).

10. Revise § 57.707, entitled "Grant award.", to amend paragraphs (a)(2), (a)(3), and (c) to reflect current Department grants policy language for consistency in title 42, part 57 regulations.

11. Revise § 57.709, entitled "Purposes for which grant funds must be spent?", to amend paragraph (c) to reflect current Department grants policy language for consistency in title 42, part 57 regulations.

12. Revise § 57.711, entitled "Records, audit, and inspection.", to reflect current Department policy language by:

(a) Revising the heading of the section to read "What other audit and inspection requirements apply to grantees?"; and

(b) Removing the word "recordkeeping" in the section text.

Subpart I—Programs for the Training of Physician Assistants

This final regulation amends subpart I governing the Programs for the Training of Physician Assistants under section 701(8)(B) of the PHS Act to:

1. Change the term "Health manpower shortage area" (or "areas") wherever it appears in subpart I to read "Health professional shortage area" (or "areas"), in accordance with Public Law 101–597.

2. Change the word "osteopathy" wherever it appears in subpart I to read "osteopathic medicine", in accordance with Public Law 100–607.

3. Revise § 57.803, entitled "Requirements.", to revise paragraph (a)(2) to provide that a program for the training of physician assistants must have received a "Letter of Review" rather than a "Letter of Support" and to provide the current title of the Accreditation Review Committee.

Subpart J—Scholarship Grants to Schools of Nursing

Section 845 (formerly section 860(d)) of the PHS Act, 42 U.S.C. 297j, as it was in effect for Scholarship Grants to Schools of Nursing was repealed by section 9 of Public Law 99–92, the Nurse Education Amendments of 1985 (99 Stat. 400), effective October 1, 1985, which repealed subpart III of part B of title VIII of the PHS Act. The Department is

therefore removing from title 42, part 57 of the Code of Federal Regulations this program under subpart J, consisting of §§ 57.901–57.913, and placing it in reserve status.

Subpart K—Grants to Schools of Nursing for the Support of Their Educational Programs

Section 810 of the PHS Act, 42 U.S.C. 296(e), as it was in effect for Grants to Schools of Nursing for the Support of Their Educational Programs was repealed by section 9 of Public Law 99–92, the Nurse Education Amendments of 1985 (99 Stat. 400), effective October 1, 1985. The Department is therefore removing from title 42, part 57 of the Code of Federal Regulations this program under subpart K, consisting of §§ 57.1001–57.1014, and placing it in reserve status.

Subpart L—Grants for Residency Training and Advanced Education in the General Practice of Dentistry

This final regulation amends subpart L governing Grants for Residency Training and Advanced Education in the General Practice of Dentistry under section 785 of the PHS Act to:

1. Revise the section number of the Act from "786(b)" to "785" wherever it appears in subpart L, as redesignated, and the United States Code citation from "(42 U.S.C. 295g–6(b))" to "(42 U.S.C. 295g–5)", in accordance with Public Law 100–607.

2. Revise § 57.1101, entitled "To what projects do these regulations apply?", to add the words "public or private nonprofit" regarding the reference to schools of dentistry.

3. Revise § 57.1102, entitled "Definitions.", to revise the definition of "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions.

4. Revise § 57.1103, entitled "What entities are eligible to apply for a grant?", to provide current Department policy language to reflect that any "public or private nonprofit" school of dentistry is "eligible" to apply for a grant.

5. Revise § 57.1104, entitled "How must an entity apply for a grant?", to revise paragraph (a) with current Department grants policy language to reflect that each entity shall submit an application as the Secretary may prescribe. Paragraph (a) is further revised by removing footnote [1] providing the address for obtaining applications and instructions to reflect Department regulatory policy for consistency in title 42, part 57 regulations.

6. Revise § 57.1107, entitled "How will grant awards be made?", to amend paragraphs (a) (2), (3), and (4) and paragraph (b) to reflect current Department grants policy language for consistency in title 42, part 57 regulations.

7. Revise § 57.1109, entitled "Purposes for which grant funds may be spent.", to amend paragraph (b) to reflect current Department grants policy language for consistency in title 42, part 57 regulations.

8. Revise § 57.1111, entitled "What recordkeeping, audit, and inspection requirements apply to grantees?", to:

(a) Remove the word "recordkeeping" in the section heading and text to reflect current Department policy language; and

(b) Add at the end of the section the OMB control number regarding information collection requirements for this section.

9. Revise § 57.1112, entitled "What additional conditions apply to grantees?", to remove the parenthetical phrase at the end of the section citing an outdated OMB control number.

Subpart M—Financial Distress Grants to Health Professions Schools

Section 788(b) of the PHS Act, 42 U.S.C. 295g–8(b), as it was in effect for Financial Distress Grants to Health Professions Schools was repealed by section 2744(a)(1) of Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 923). Concurrently, effective August 13, 1981, section 2745 of Public Law 97–35 (95 Stat. 925) added section 788A of the PHS Act (42 U.S.C. 295g–8a), Financial Distress Grants. Subsequently, section 220(f)(1) of Public Law 99–129, the Health Professions Training Assistance Act of 1985 (99 Stat. 544) repealed section 788A (42 U.S.C. 295g–8a). The Department is therefore removing from title 42, part 57 of the Code of Federal Regulations this program under subpart M, consisting of §§ 57.1201–57.1212, and placing it in reserve status.

Subpart N—Grants for Dental Team Practice Training Program

Section 2740(c)(1) of Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981 (95 Stat 922), amended section 783(a) to authorize provisions only for physician assistant training. Concurrently, section 2744 of Public Law 97–35 (95 Stat. 924) restructured the provisions in section 783(a)(3) for Dental Team Practice Training, and the provisions were subsumed under the authority of redesignated section 788(b), as it was in effect for Conversion and Curriculum Grants for Various Health Professions, 42 U.S.C. 295g–8. Subsequently, the provisions under section 788(b) were amended by Public Law 99–129, the Health Professions Training Assistance Act of 1985, to provide for more broad provisions in health promotion and disease prevention, various curriculum development and training, and health professions initiatives. The Department is therefore removing from title 42, part 57 of the Code of Federal Regulations this program under subpart N, consisting of §§ 57.1301–57.1314, and placing it in reserve status.

Subpart O—Grants To Assist New Schools of Medicine, Osteopathy, and Dentistry

Section 771(a) of the PHS Act, 42 U.S.C. 295f–1, as it was in effect for Grants to Assist New Schools of Medicine, Osteopathy, and Dentistry was "stricken out" by section 502 of Public Law 94–484, the Health Professions Educational Assistance Act of 1976 (90 Stat. 2293), effective with respect to fiscal years beginning after 9/30/77. The authority was broadened and the eligibility was extended to schools of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, podiatry, and pharmacy (MODPVOPP) (as it was in effect for section 770, as amended, Capitation Grants). Concurrently, section 801 of Public Law 94–484 (90 Stat. 2319) amended part F of title VII by adding section 788(a) of the PHS Act (42 U.S.C. 294g–8(a)), a new general authority, effective in FY 1978, for start-up assistance to schools of MODPVOPP. Subsequently, section 2744 of Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 923) repealed section 788(a) except to allow phase-out of existing grants. The Department is therefore removing from title 42, part 57 of the Code of Federal Regulations this program under subpart O, consisting of §§ 57.1401–57.1415, and placing it in reserve status.

Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine

This final regulation amends subpart Q governing Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine under section 786(a) of the PHS Act to:

1. Change the word "osteopathy" wherever it appears in subpart Q to read "osteopathic medicine", in accordance with Public Law 100–607.

2. Change the words "medical or osteopathic" wherever it appears in subpart Q to read "medical (M.D. or

D.O.)", in accordance with Public Law 100–607.

3. Revise § 57.1602, entitled "Definitions.", to amend the following terms:

(a) The definition of "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions.

(b) The definition of "School of medicine or osteopathy" to revise the name of the term as reflected in item #1 above in accordance with Public Law 100–607 and to reflect current Department policy language for consistency in title 42, part 57 definitions.

(c) The definition of "State" by inserting after the "Trust Territory of the Pacific Islands" the phrase "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia", in accordance with Public Law 99–239, the Compact of Free Association Act of 1985. This change is being made to update those entities that are viewed as States.

4. Revise § 57.1603, entitled "Who is eligible to apply for a grant?", by adding a paragraph (6) reflecting current Department grants policy language that eligible applicants shall submit an application as the Secretary may prescribe.

5. Revise § 57.1604, entitled "What requirements must a project meet?", to remove the parenthetical phrase at the end of the section citing an outdated OMB control number.

6. Revise § 57.1606, entitled "How long does grant support last?", to reflect current Department grants policy language for consistency in title 42, part 57 regulations to:

(a) Amend paragraph (b) by removing the second sentence which is repetitive of language regarding the submission of a separate application to receive consideration for continued support stated in the last sentence of paragraph (c) of this section;

(b) Amend paragraph (c) by adding a sentence regarding continuation support; and

(c) Remove paragraph (d) concerning federally obligated grant funds, and relocate it in § 57.1607, entitled "For what purposes may grant funds be spent?".

7. Revise § 57.1607, entitled "For what purposes may grant funds be spent?", by adding a paragraph (c) on the expenditure of any balance of federally obligated grant funds to reflect current Department grants policy language.

8. Revise § 57.1609, entitled "What other audit and inspection requirements apply to grantees?", by adding at the end of the section a parenthetical phrase providing the current OMB control number regarding information collection requirements for this section.

Subpart R—Grants for the Establishment of Departments of Family Medicine

This final regulation amends subpart R governing Grants for the Establishment of Departments of Family Medicine under section 780 of the PHS Act to:

1. Change the word "osteopathy" wherever it appears in subpart R to read "osteopathic medicine", in accordance with Public Law 100–607.

2. Revise § 57.1702, entitled "Definitions.", to amend the following terms:

(a) The definition of "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions.

(b) The definition of "School of medicine or osteopathy" to revise the name of the term as reflected in item #1 above, in accordance with Public Law 100–607, and to reflect current Department policy language for consistency in title 42, part 57 definitions.

(c) The definition of "State" by inserting after the "Trust Territory of the Pacific Islands" the phrase "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia", in accordance with Public Law 99–239, the Compact of Free Association Act of 1985. This change is being made to update those entities that are viewed as States.

3. Revise § 57.1703, entitled "Who is eligible to apply for a grant?", by adding a second sentence to the section text reflecting current Department grants policy language that eligible applicants shall submit an application as the Secretary may prescribe.

4. Revise § 57.1704, entitled "Program requirements." by:

(a) Removing the phrase "required in § 57.1704(f)" in the first sentence of paragraph (f) as redundant language;

(b) Amending paragraph (g) by revising the phrase "required in § 57.1704(f) of this section" to clarify that the project must meet a requirement in paragraph (f) of this section; and

(c) Adding at the end of the section the OMB control number regarding information collection requirements for this section.

5. Revise § 57.1706, entitled "How long does grant support last?", to reflect current Department grants policy language for consistency in title 42, part 57 regulations to:

(a) Amend paragraph (b) by removing the second sentence which is repetitive of language regarding the submission of a separate application to receive consideration for continued support stated in the last sentence of paragraph (c) of this section;

(b) Amend paragraph (c) by adding a sentence regarding continuation support; and

(c) Remove paragraph (d) concerning federally obligated grant funds, and relocate it in § 57.1707, entitled "For what purposes may grant funds be spent?".

6. Revise § 57.1707, entitled "For what purposes may grant funds be spent?", by adding a paragraph (c) on the expenditure of any balance of federally obligated grant funds to reflect current Department grants policy language.

7. Revise § 57.1709, entitled "What other audit and inspection requirements apply to grantees?", by adding at the end of the section a parenthetical phrase providing the OMB control number regarding information collection requirements for this section.

Subpart S—Educational Assistance to Individuals From Disadvantaged Backgrounds

This final rule amends subpart S governing the program for Educational Assistance to Individuals from Disadvantaged Backgrounds under section 787 of the PHS Act to:

1. Revise § 57.1802, entitled "Definitions.", to amend the definition of "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions.

2. Revise § 57.1803, entitled "Who is eligible to apply for a grant?", by removing footnote [1] in paragraph (a) providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations.

3. Revise § 57.1805, entitled "Program requirements.", to amend paragraph (a) (2) to:

(a) Add statutory language clarifying the need to provide preliminary education to individuals from disadvantaged backgrounds "for a period prior to their entry into a regular course of education designed to assist them to complete successfully such regular course of education" in a health professions school or school of allied health; and

(b) Revise the second sentence defining preliminary education to clarify that preliminary education is designed to expand the academic ability of such individuals during their "preprofessional training."

4. Revise § 57.1809, entitled "What additional Department regulations apply to grantees?", by revising the footnote number and the footnote reference to "45 CFR part 83".

Subpart V—Grants for Centers for Excellence

This final regulation amends subpart V governing Grants for Centers for Excellence under section 782 of the PHS Act to:

1. Revise the heading of subpart V to read "Grants for Centers of Excellence", in accordance with the Disadvantaged Minority Health Improvement Act of 1990, Public Law 101–527.

2. Revise § 57.2102, entitled "Definitions.", to amend the following terms:

(a) "Health professions school" by:

(1) Changing the word "osteopathy" to "osteopathic medicine" and the word "podiatry" to "podiatric medicine", in accordance with Public Law 100–607; and

(2) Adding a comma and the words "or graduate programs in clinical psychology" after the words "in health administration" to reflect the current definition as set forth in section 701(4) of the PHS Act.

(b) "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions.

3. Revise § 57.2103, entitled "Who is eligible to apply for a grant?" to remove footnote [1] providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations.

4. Revise § 57.2107, entitled "For what purposes may grants funds be spent?", to amend paragraph (b) to reflect current Department grants policy language for consistency in title 42, part 57 regulations.

5. Revise § 57.2108, entitled "What additional Department regulations apply to schools?", by revising the footnote number and the footnote reference to "45 CFR part 83".

6. Revise § 57.2109, entitled "What other audit and inspection requirements apply to grantees?", to remove the "Effective Date Note" at the end of the section and add in its place a parenthetical phrase providing the current OMB control number regarding information collection requirements for this section.

Subpart Y—Grants for Nurse Practitioner and Nurse Midwifery Programs

This final regulation amends subpart Y governing Grants for Nurse Practitioner and Nurse Midwifery Programs under section 822(a) of the PHS Act to:

1. Change the order of the words "nonprofit private" to read "private nonprofit" wherever they appear in subpart Y when referring to a school or entity to reflect current Department policy language for consistency in title 42, part 57 regulations.

2. Revise § 57.2402, entitled "Definitions.", to amend the definition of "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions.

3. Revise § 57.2404, entitled "Application.", to:

(a) Remove footnote [1] in paragraph (a) providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations; and

(b) Remove paragraph (c)(8) from the application requirements. This requirement states, "Evidence that all applicable requirements of section 1513(e) of the Act have been met." Section 1513(e) of the PHS Act (42 U.S.C. 300*l*–2(e)), "Approval of the Use of Federal Funds," under title XV, National Health Planning and Development, was repealed by section 701(a) of Public Law 99–660 (100 Stat. 3799), effective January 1, 1987.

4. Revise § 57.2406, entitled "Evaluation and grant awards." to revise paragraph (a)(2)(i) to change the term "health manpower shortage areas" to read "health professional shortage areas", in accordance with Public Law 101–597.

5. Revise § 57.2408, entitled "Expenditure of grant funds.", to amend paragraph (b) to reflect current Department grants policy language for consistency in title 42, part 57 regulations.

6. Revise the appendix to subpart Y, paragraph C.1., Student Enrollment, to change the enrollment of the number of full-time equivalent students in each class from "eight" to "six", in accordance with Public Law 100–607.

Subpart Z—Grants for Advanced Nurse Education Programs

This final regulation amends subpart Z governing Grants for Advanced Nurse Education Programs under section 821 of the PHS Act to:

1. Revise § 57.2502, entitled "Definitions.", to amend the following terms:

(a) The definition of "Council" to reflect the current name of the Advisory Council on Nurses Education;

(b) The definition of "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions; and

(c) The definition of "State" to reflect current Department policy language for consistency in title 42, part 57 definitions.

2. Revise § 57.2504, entitled "Application.", to:

(a) Revise paragraph (a) with current Department grants policy language regarding the submission of applications at such time as the Secretary may prescribe;

(b) Remove footnote [1] in paragraph (a) providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations; and

(c) Remove the "Editorial Note" at the end of the section.

3. Revise § 57.2508, entitled "Expenditure of grant funds.", to amend paragraph (b) to reflect current Department grants policy language for consistency in title 42, part 57 regulations.

Subpart AA—Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs

This final regulation amends subpart AA governing Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs under section 822(b) of the PHS Act to:

1. Change the order of the words "nonprofit private" to read "private nonprofit" wherever it appears in subpart AA to reflect current Department policy language for consistency in title 42, part 57 regulations.

2. Change the term "health manpower shortage area" (or "areas") wherever it appears in subpart AA to read "health professional shortage area" (or "areas"), in accordance with Public Law 101–597.

3. Revise § 57.2602, entitled "Definitions.", to amend the term "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions.

4. Revise § 57.2603, entitled "Who is eligible to apply for a grant?", by removing footnote [1] providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations.

5. Revise § 57.2607, entitled "For what purposes may grant funds be spent?", to amend paragraph (c) to reflect current Department grants policy language for

consistency in title 42, part 57 regulations.

6. Revise § 57.2610, entitled "What are the requirements for traineeships and the appointment of trainees?", to remove the parenthetical phrase at the end of the section citing an outdated OMB control number.

7. Revise § 57.2612, entitled "Termination of traineeships.", to remove the parenthetical phrase at the end of the section citing an outdated OMB control number.

8. Revise § 57.2613, entitled "What must a trainee agree to do in return for traineeship support?", to remove the parenthetical phrase at the end of the section citing an outdated OMB control number.

9. Revise § 57.2615, entitled "When can the practice or payment obligation be waived or suspended?", to remove the parenthetical phrase at the end of the section citing an outdated OMB control number.

10. Revise § 57.2616, entitled "What additional Department regulations apply to schools?", by revising the footnote number and the footnote reference to "45 CFR part 83".

Subpart CC—Scholarships for First-Year Students of Exceptional Financial Need

This final regulation amends subpart CC governing Scholarships for First-Year Students of Exceptional Financial Need under section 758 of the PHS Act to:

1. Revise the heading of subpart CC by removing the words "First-Year" to reflect the statutory change to make students in all class-years eligible for scholarships, in accordance with Public Law 100–607.

2. Revise the word "osteopathy" wherever it appears in subpart CC to read "osteopathic medicine", in accordance with Public Law 100–607.

3. Revise § 57.2801, entitled "To what programs do these regulations apply?, to remove the words "first-year" to reflect that students in all class-years are eligible for scholarships, in accordance with Public Law 100–607.

4. Revise § 57.2802, entitled "Definitions.", to amend the following terms:

(a) The definition of "First year of study" is removed to reflect the current authority to make students in all class-years eligible for scholarships.

(b) The definition of "Health professions school" or "school" by revising the word "podiatry" to "podiatric medicine", in accordance with Public Law 100–607, and to make other minor changes to reflect current Department policy language for consistency in title 42, part 57 definitions.

(c) The definition of "State" by inserting after the "Trust Territory of the Pacific Islands" the phrase "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia", in accordance with Public Law 99–239, the Compact of Free Association Act of 1985. This change is being made to update those entities that are viewed as States. Other minor changes are made to reflect current Department policy language for consistency in title 42, part 57 definitions.

5. Revise § 57.2803, entitled "How to apply for a grant.", to:

(a) Revise paragraph (a) with current Department grants policy language to reflect that eligible applicants shall submit an application as the Secretary may prescribe; and

(b) Add at the end of the section a parenthetical phrase providing the OMB control number regarding information collection requirements for this section.

6. Revise § 57.2804, entitled "Students eligible for scholarships.", to:

(a) Revise paragraph (a)(1) concerning an eligible individual's citizenship status, the Immigration and Naturalization Service policy as it relates to the admission into the United States, its territories and possessions, to reflect current Department policy language for consistency in title 42, part 57 regulations;

(b) Revise paragraph (a)(2) to remove the words "in the first-year of study" to reflect that students in all class-years are eligible for scholarships, in accordance with Public Law 100–607;

(c) Remove the phrase in paragraph (b)(2) "and published under 45 CFR 144.13", since it is no longer used by the Department of Education. The need analysis methodologies are now authorized under part F of title IV of the Higher Education Act of 1965, as mended; and

(d) Add at the end of the section a parenthetical phrase providing the OMB control number regarding information collection requirements for this section.

7. Revise § 57.2805, entitled "Amount of scholarship award.", to remove the phrase "for the first year of study" to reflect that a portion of the scholarship award will consist of the tuition "in such school year".

8. Revise § 57.2806, entitled "How is the amount of grant award determined?", to remove the phrase "for the first year of study at the school" in paragraph (c)(1) to reflect the current authority regarding the award of scholarship funds to any student with no financial resources.

9. Revise § 57.2808, entitled "What additional Departmental regulations apply to grantees?" to revise the word "Departmental" in the section heading to "Department".

10. Revise § 57.2809, entitled "What other records, audit, and inspection requirements apply to grantees?" to add at the end of the section a parenthetical phrase providing the current OMB control number regarding information collection requirements for this section.

Subpart DD—Financial Assistance for Disadvantaged Health Professions Students

This final regulation amends subpart DD governing Financial Assistance for Disadvantaged Health Professions Students under section 787 (a)(2)(F) and (b) of the PHS Act to:

1. Revise § 57.2902, entitled "Definitions.", to amend the definition of "State" by inserting after the "Trust Territory of the Pacific Islands" the phrase "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia", in accordance with Public Law 99–239, the Compact of Free Association Act of 1985. This change is being made to update those entities that are viewed as States. Additionally, the footnote to the definition of "State" is removed.

2. Revise § 57.2904, entitled "Eligibility and selection of aid recipients.", to:

(a) Revise paragraph (a)(1) concerning an eligible individual's citizenship status, the Immigration and Naturalization Service policy as it relates to the admission into the United States, its territories and possessions, to reflect current Department policy language for consistency in title 42, part 57 regulations; and

(b) Revise paragraph (b)(1)(i) by removing the phrase "and published under 34 CFR 674.13", since it is no longer used by the Department of Education. The need analysis methodologies are now authorized under part F of title IV of the Higher Education Act of 1965, as amended.

Subpart EE—Grants for Residency Training in Preventive Medicine

This final regulation amends subpart EE governing Grants for Residency Training in Preventive Medicine under section 788(c) of the PHS Act to:

1. Revise the section number of the Act from "793" to "788(c)" and the United States Code citation from "(42 U.S.C. 295h-1c)" to "(42 U.S.C. 295g-8(e))" wherever they appear in subpart EE, as redesignated, in accordance with Public Law 100–607.

2. Change the word "osteopathy" wherever it appears in subpart EE to read "osteopathic medicine", in accordance with Public Law 100–607.

3. Revise § 57.3002, entitled "Definitions.", to amend the following terms:

(a) The definition of "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions; and

(b) The definition of "State" by inserting after the "Trust Territory of the Pacific Islands" the phrase "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia", in accordance with Public Law 99–239, the Compact of Free Association Act of 1985. This change is being made to update those entities that are viewed as States.

4. Revise § 57.3003, entitled "Who is eligible to apply for a grant?", to:

(a) Amend the section text to reflect current Department grants policy language for consistency in title 42, part 57 regulations; and

(b) Revise the parenthetical phrase at the end of the section to reflect the current OMB control number regarding information collection requirements for this section.

5. Revise § 57.3004, entitled "Project requirements.", to remove the "Editorial Note" at the end of the section and add in its place a parenthetical phrase providing the current OMB control number regarding information collection requirements for this section.

6. Revise § 57.3006, entitled "How long does grant support last?", to reflect current Department grants policy language for consistency in title 42, part 57 regulations to:

(a) Amend paragraph (b) by removing the second sentence which is repetitive of language regarding the submission of a separate application to receive consideration for continued support stated in the last sentence of paragraph (c) of this section;

(b) Amend paragraph (c) by adding a sentence regarding continuation support; and

(c) Remove paragraph (d) concerning federally obligated grant funds, and relocate it in § 57.3008, entitled "For what purposes may grant funds be spent?".

7. Revise § 57.3007, entitled "How is the amount of the grant award determined?", to remove the "Editorial Note" at the end of the section and add in its place a parenthetical phrase providing the OMB control number regarding information collection requirements for this section.

8. Revise § 57.3008, entitled "For what purposes may grant funds be spent?", by adding a paragraph (c) on the expenditure of any balance of federally obligated grant funds to reflect current Department grants policy language.

9. Revise § 57.3010, entitled "What other audit and inspection requirements apply to grantees?", to remove the "Editorial Note" at the end of the section and add in its place a parenthetical phrase providing the OMB control number for information collection requirements for this section.

Subpart FF—Grants for Residency Training and Faculty Development in General Internal Medicine and/or General Pediatrics

This final regulation amends subpart FF governing Grants for Residency Training and Faculty Development in General Internal Medicine and/or General Pediatrics under section 784 of the PHS Act to:

1. Change the word "osteopathy" wherever it appears in subpart FF to read "osteopathic medicine", in accordance with Public Law 100–607.

2. Revise § 57.3102, entitled "Definitions.", to:

(a) Change the term "Health manpower shortage area" to read "Health professional shortage area", in accordance with Public Law 101–597.

(b) Revise the definition of "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions.

3. Revise § 57.3103, entitled "Who is eligible to apply for a grant?", to remove footnote [1] providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations.

4. Revise § 57.3107, entitled "How long does grant support last?", to amend paragraph (b) by removing the second sentence which is repetitive of language regarding the submission of a separate application to receive consideration for continued support stated in the last sentence of paragraph (c) of this section.

5. Revise § 57.3109, entitled "For what purposes may grant funds be spent?", to amend paragraph (c) to reflect current Department grants policy language for consistency in title 42, part 57 regulations.

6. Revise § 57.3110, entitled "What additional department regulations apply to grantees?", to capitalize the word "department" in the section heading.

Subpart GG—Payment for Tuition and Other Educational Costs

This final regulation amends the existing regulations authorized under section 710 of the PHS Act that establish the criteria (set out in subpart GG) to be used in determining allowable increases in tuition and other educational costs for which the Secretary is responsible for payment. This rule amends § 57.3201 by:

1. Revising the outdated section numbers and United States Code citations for the first two scholarship programs listed under § 57.3201; and

2. Removing the reference to the program for "Scholarships for First-Year Students of Exceptional Financial Need" (sec. 758 of the PHS Act).

Public Law 100–607 made amendments to section 758 to leave to the school's discretion whether to pay all or part of the tuition and other educational expenses. The statutory amendment to sec. 758 states "a scholarship provided to a student for a school year * * * *may consist of all or part payment* to, or * * * on behalf of the student." Because the Federal Government no longer is required to pay full tuition, the authority in section 710 relating to allowable increases in tuition ceases to be relevant to the scholarship program authorized by section 758. The reference to the program "Scholarships for First-Year Students for Exceptional Financial Need", listed in § 57.3201, subpart GG, is therefore removed.

Subpart II—Grants for Programs for the Training of Expanded Function Dental Auxiliaries

Section 2740(c)(1) of Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 922, amended section 783(a) to authorize provisions only for physician assistant training. Concurrently, section 2744 of Public Law 97–35 (95 Stat. 924) restructured the provisions in section 783(a)(2) for Grants for Programs for the Training of Expanded Function Dental Auxiliaries, and the provisions were subsumed under the authority of redesignated section 788(b), as it was in effect for Conversion and Curriculum Grants for Various Health Professions, 42 U.S.C. 295g-8. Subsequently, the provisions under section 788(b) were amended by Public Law 99–129, the Health Professions Training Assistance Act of 1985, to expand the provisions in health promotion and disease prevention, various curriculum development and training, and health professions initiatives. The Department is therefore removing from title 42, part 57 of the Code of Federal Regulations this program under subpart II, consisting of §§ 57.3401–57.3413, and placing it in reserve status.

Subpart JJ—Capitation Grants for Schools of Public Health

Sections 770–772 of the PHS Act, 42 U.S.C. 295f, as it was in effect for Capitation Grants for Schools of Public Health was repealed by section 773 of Pub. L. 100–607, the Health Professions Reauthorization Act of 1988 (102 Stat. 3127), effective October 1, 1990 (sunset provision), which repealed part E of title VII of the PHS Act. The Department is therefore removing from title 42, part 57 of the Code of Federal Regulations this program under subpart JJ, consisting of §§ 57.3501–57.3510, and placing it in reserve status.

Subpart NN—Grants for Various Health Professions Projects

This final regulation amends subpart NN governing Grants for Various Health Professions Projects under section 788(b) of the PHS Act to:

1. Revise § 57.3902, entitled "Definitions.", to amend the following terms:

(a) The definition of "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions; and

(b) The definition of "State" by inserting after the "Trust Territory of the Pacific Islands" "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia", in accordance with Public Law 99–239, the Compact of Free Association Act of 1985. This change is being made to update those entities that are viewed as States.

2. Revise § 57.3906, entitled "How long does grant support last?", to reflect current Department grants policy language for consistency in title 42, part 57 regulations to:

(a) Amend paragraph (b) by removing the second sentence which is repetitive of language regarding the submission of a separate application to receive consideration for continued support stated in the last sentence of paragraph (c) of this section;

(b) Amend paragraph (c) by adding a sentence regarding continuation support; and

(c) Remove paragraph (d) concerning federally obligated grant funds, and relocate it in § 57.3907, entitled "For what purposes may grant funds be spent?".

3. Revise § 57.3907, entitled "For what purposes may grant funds be spent?", by adding a paragraph (c) on the expenditure of any balance of federally obligated grant funds to reflect current Department grants policy language.

4. Revise § 57.3908, entitled "What additional Departmental regulations apply to grantees?", to:

(a) Revise the word "Departmental" in the section heading to "Department";

(b) Add an introductory text to the section to indicate what other regulations apply to grants under this subpart.

Subpart OO—Grants for Health Professions Projects in Geriatrics

This final regulation amends subpart OO governing Grants for Health Professions Projects in Geriatrics under section 789(a) of the PHS Act to:

1. Change the word "osteopathy" wherever it appears in subpart OO to read "osteopathic medicine", in accordance with Public Law 100–607.

2. Revise § 57.4001, entitled "To what projects do these regulations apply?" to revise the section number of the Act from "788 (d)" to "789 (a)".

3. Revise § 57.4002, entitled "Definitions." to amend the following terms:

(a) The definition of "Allied health professional" to revise the words "an individual" to read "a health professional", in accordance with Public Law 100–607;

(b) The definition of "Health professional" to clarify the list of professionals, which includes "nurse" to read "professional nurse", and "nurse practitioner" in accordance with established definitions codified in title 42, part 57 definitions;

(c) The definition of "Health professions school" to:

(1) Change the word "podiatry" to read "podiatric medicine", in accordance with Public Law 100–607; and

(2) Incorporate the disciplines of "chiropractic, graduate programs in health administration, or graduate programs in clinical psychology" to conform to the current definition as defined in section 701(4) of the PHS Act;

(d) The definition of "Nonprofit" to reflect current Department policy language for consistency in title 42, part 57 definitions;

(e) The definition of "School of allied health" to incorporate "or hospital-based educational entity" as another entity to provide a program of education for allied health professionals, in accordance with Public Law 100–607; and

(f) The definition of "Training and retraining of faculty" to change the section number of the Act from "788(e)(3)" to read "789(b)(3)".

4. Revise § 57.4003, entitled "Who is eligible to apply for a grant?" to:

(a) Add the word "private" before the word "nonprofit"; and

(b) Remove footnote [1] providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations.

5. Revise § 57.4005, entitled "How will applications be evaluated?", by revising the section number of the Act in paragraph (a) from "788(d)(2)(B)" to "789(a)(2)(A)".

6. Revise § 57.4007, entitled "For what purposes may grant funds be spent?", to amend paragraph (c) to reflect current Department grants policy language for consistency in title 42, part 57 regulations.

7. Revise § 57.4009, entitled "What other audit and inspection requirements apply to grantees?", to revise the parenthetical phrase at the end of the section providing the current OMB control number.

Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

This final regulation amends subpart PP governing Grants for Faculty Training Projects in Geriatric Medicine and Dentistry under section 789(b) of the PHS Act to:

1. Revise § 57.4103, entitled "Who is eligible to apply for a grant?", to:

(a) Remove footnote [1] providing the address for obtaining applications and instructions to reflect current Department regulatory policy for consistency in title 42, part 57 regulations; and

(b) Add at the end of the section the OMB control number regarding information collection requirements for this section.

2. Revise § 57.4107, entitled "How long does grant support last?", by revising the last sentence in paragraph (a) to change the time allowance of a project period from "3 years" to "not exceed 5 years", in accordance with current grants policy for this program.

3. Revise § 57.4111, entitled "Duration of fellowships.", to clarify that fellowship assistance for participants in a 1-year fellowship program "and a 1-year" retraining program is limited to 12 months.

4. Revise § 57.4113, entitled "For what purposes may grant funds be spent?", to amend paragraph (c) to reflect current Department grants policy language for consistency in title 42, part 57 regulations.

Justification for Omitting Notice of Proposed Rulemaking

Since these amendments are of a technical and ministerial nature, the Secretary has determined, pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective date of these regulations.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern financial assistance programs in which participation is voluntary. The rule will neither exceed the threshold level of $100 million established in section (b) of Executive Order 12291 nor does it meet any of the additional criteria contained in the Executive Order. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because this rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

The following list of subparts in this final rule contains information collection language which have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and have been assigned control numbers for each affected section as listed below under each subpart.

Section No.	OMB control No.
Subpart C—Health Professions Student Loan Program	
§ 57.206	0915–0047
§ 57.208	0915–0047
§ 57.210	0915–0047, 0094
§ 57.211	0915–0047
§ 57.212	0915–0047
§ 57.215	0915–0047
§ 57.216a	0915–0047
Subpart D—Nursing Student Loan Program	
§ 57.306	0915–0047
§ 57.308	0915–0047
§ 57.310	0915–0094
§ 57.311	0915–0047
§ 57.312	0915–0047
§ 57.315	0915–0047
§ 57.316a	0915–0047
Subpart F—Grants for Nurse Anesthetist Traineeships	
§ 57.509	0915–0060
§ 57.510	0915–0060
§ 57.512	0915–0060
Subpart H—Grants for Physician Assistant Training Programs	
§ 57.704	0915–0060
§ 57.705	0915–0060
§ 57.711	0915–0060
Subpart L—Grants for Residency Training and Advanced Education in the General Practice of Dentistry	
§ 57.1104	0915–0060
§ 57.1111	0915–0060
Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine	
§ 57.1609	0915–0060
Subpart R—Grants for the Establishment of Departments of Family Medicine	
§ 57.1704	0915–0060
§ 57.1709	0915–0060
Subpart S—Educational Assistance to Individuals From Disadvantaged Backgrounds	
§ 57.1810	0915–0060
Subpart V—Grants for Centers of Excellence	
§ 57.2109	0905–0060
Subpart Y—Grants for Nurse Practitioner and Nurse Midwifery Programs	
§ 57.2404	0915–0060
§ 57.2405	0915–0060
Subpart Z—Grants for Advanced Nurse Education Programs	
§ 57.2504	0915–0060
Subpart CC—Scholarships for Students of Exceptional Financial Need	
§ 57.2803	0915–0028
§ 57.2804	0915–0028
§ 57.2809	0915–0028
Subpart DD—Financial Assistance for Disadvantaged Health Professions Students	
§ 57.2904	0915–0110
§ 57.2909	0915–0110
Subpart EE—Grants for Residency Training in Preventive Medicine	
§ 57.3003	0915–0060
§ 57.3004	0915–0060
§ 57.3007	0915–0060
§ 57.3010	0915–0060
Subpart FF—Grants for Residency Training and Faculty Development in General Internal Medicine and/or General Pediatrics	
§ 57.3104	0915–0060
§ 57.3111	0915–0060
Subpart OO—Grants for Health Professions Projects in Geriatrics	
§ 57.4009	0915–0060
Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry	
§ 57.4103	0915–0060
§ 57.4110	0915–0060
§ 57.4112	0915–0060
§ 57.4115	0915–0060

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Grant programs—education, Grants programs—health, Health facilities, Loan programs—health, Medical and dental schools, Student Aid.

Dated: July 9, 1992.

James O. Mason,

Assistant Secretary for Health.

Approved: August 18, 1992.

Louis W. Sullivan,

Secretary.

Accordingly, 42 CFR part 57 is amended to read as set forth below:

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart C—Health Professions Student Loans

1. The authority for subpart C continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–747, Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920, 99 Stat. 532–536, and as amended by 102 Stat. 3125 (42 U.S.C. 294m–q).

§ 57.203 [Amended]

2. Section 57.203 is amended by removing footnote [1] in paragraph (a); and by removing the parenthetical phrase at the end of the section text.

§ 57.208 [Amended]

3. Section 57.208 is amended by revising the parenthetical phrase at the end of the section to read "(Approved by the Office of Management and Budget under control number 0915–0047)".

§ 57.210 [Amended]

4. Section 57.210 is amended by removing both parenthetical phrases at the end of the section and adding in their place the following phrase "(Approved by the Office of Management and Budget under control numbers 0915–0047 and 0915–0094)".

§ 57.213a [Amended]

5. Section 57.213a is amended by removing the parenthetical phrase at the end of the section.

§ 57.215 [Amended]

6. Section 57.215 is amended by revising the phrase "45 CFR Part 74" to read "45 CFR part 74" in paragraph (a)(3); and by revising the parenthetical phrase at the end of the section to read "(Approved by the Office of Management and Budget under control number 0915–0047)".

7. Section 57.216 is amended by revising the footnote number and the footnote reference to "45 CFR part 83" from "2" to "1"; and by adding in

numerical order a CFR citation to read as follows:

§ 57.216 What additional Department regulations apply to schools?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

Subpart D—Nursing Student Loans

1. The authority for subpart D continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 67 Stat. 631 (42 U.S.C. 216); secs. 835–842, Public Health Service Act, 77 Stat. 913–916, as amended, 99 Stat. 397–400, 536–537, and as amended by 102 Stat. 3160–3161 (42 U.S.C. 297 a–i).

§ 57.303 [Amended]

2. Section 57.303 is amended by removing footnote [1] in paragraph (a); and by removing the parenthetical phrase at the end of the section.

§ 57.308 [Amended]

3. Section 57.308 is amended by revising the parenthetical phrase at the end of the section to read "(Approved by the Office of Management and Budget under control number 0915–0047)".

§ 57.310 [Amended]

4. Section 57.310 is amended by revising the footnote number and the footnote reference to paragraph (a)(1)(iii) from "2" to "1"; by revising the word "repaypment" in the first sentence of paragraph (b)(2)(i) to read "repayment"; and by removing the parenthetical phrases at the end of the section and adding in their place the following phrase "(Approved by the Office of Management and Budget under control number 0915–0094)".

§ 57.313 [Amended]

5. Section 57.313 is amended by removing the parenthetical phrase at the end of the section.

§ 57.314 [Amended]

6. Section 57.314 is amended by revising the footnote number and the footnote reference to the section heading from "3" to "2".

§ 57.315 [Amended]

7. Section 57.315 is amended by revising the parenthetical phrase at the end of the section to read "(Approved by the Office of Management and Budget under control number 0915–0047)".

8. Section 57.316 is amended by revising the footnote number and the footnote reference to "45 CFR part 83" from "4" to "3"; and by adding in numerical order a CFR citation to read as follows:

§ 57.316 What additional Department regulations apply to schools?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

Subpart F—Grants for Nurse Anesthetist Traineeships

1. The authority for subpart F is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 67 Stat. 631 (42 U.S.C. 216); sec. 831(a) of the Public Health Service Act, 93 Stat. 580, 96 Stat. 2061, and as amended by 99 Stat. 396–397 (42 U.S.C. 297–1).

2. Section 57.502 is amended by removing from paragraph (2) in the definition of "Nurse anesthetist training program" the slash symbol and the word "Schools"; by removing the acronym "(HHS)" from the definition of "Secretary"; and by revising the definition of "Nonprofit" to read as follows:

§ 57.502 Definitions.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

§ 57.503 [Amended]

3. Section 57.503 is amended by removing footnote [1] to the section.

§ 57.505 [Amended]

4. Section 57.505 is amended by removing the second sentence in paragraph (b).

5. Section 57.507 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 57.507 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of the budget period may be carried forward provided specific approval is granted by the Secretary. * * *

6. Section 57.508 is amended in paragraph (b) by removing the word "Secretary" at the end of the first sentence and adding in its place the words "Public Health Service."; and by revising paragraph (c) to read as follows:

§ 57.508 What financial support is available to trainees?

* * * * *

(c) A transportation allowance for travel to field training if the site is beyond a reasonable commuting distance and requires the trainee to establish a temporary new residence. However, the grantee may not pay an allowance for daily commuting from the new place of residence to the field training headquarters.

7. Section 57.509 is amended by removing the "Effective Date Note" at the end of the section and adding in its place a parenthetical phrase, and by revising paragraph (a) to read as follows:

§ 57.509 Who is eligible for financial assistance as a trainee?

* * * * *

(a) Be a resident of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Trust Territory of the Pacific Islands (TTPI) (consisting of the Republic of Palau), or a citizen of the Republic of the Marshall Islands or the Federated States of Micronesia (both formerly part of the TTPI);

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0060)

§ 57.510 [Amended]

8. Section 57.510 is amended by removing the "Effective Date Note" at the end of the section and adding in its place the following parenthetical phrase "(Approved by the Office of Management and Budget under control number 0915–0060)".

§ 57.512 [Amended]

9. Section 57.512 is amended by removing the "Effective Date Note" at the end of the section and adding in its place the following parenthetical phrase "(Approved by the Office of Management and Budget under control number 0915–0060)".

10. Section 57.513 is amended by adding in numerical order the following CFR citations to read as follows:

§ 57.513 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

45 CFR part 93—New restrictions on lobbying.

Subpart G—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart G (consisting of §§ 57.601 through 57.613).

Subpart H—Grants for Physician Assistant Training Programs

1. The authority for subpart H is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 783(a)(1), Public Health Service Act, 90 Stat. 2314, and 99 Stat. 524 (42 U.S.C. 295g–3(a)(1)); redesignated as sec. 788(d) and amended by 102 Stat. 3135 (42 U.S.C. 295g–8(d)).

2. Section 57.701 is revised to read as follows:

§ 57.701 Applicability.

The regulations in this subpart apply to the award of grants to public or private nonprofit schools of medicine or osteopathic medicine, and other public or private nonprofit entities under section 788(d) of the Public Health Service Act (42 U.S.C. 295g8(d)) to meet the costs of projects to plan, develop, and operate or maintain programs for the training of physician assistants.

3. Section 57.702 is amended by revising the word "osteopathy" to read "osteopathic medicine" in the definition of "Physician assistant"; by revising the term "Health manpower shortage area" to read "Health professional shortage area"; and by removing the term "School of medicine or school of osteopathy" and adding in its place the term "School of medicine or school of osteopathic medicine" and revising the definition; and by revising the definition of "Nonprofit" to read as follows:

§ 57.702 Definitions.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

School of medicine or "school of osteopathic medicine" means a public or private nonprofit school which provides training leading respectively to a degree of doctor of medicine or a degree of doctor of osteopathic medicine, and which is accredited as provided in section 701(5) of the Act.

* * * * *

4. Section 57.703 is revised to read as follows:

§ 57.703 Eligibility.

Any public or private nonprofit school of medicine or osteopathic medicine or public or private nonprofit entity located in a State is eligible to apply for a grant under this subpart.

5. Section 57.704 is amended by removing paragraph (c) (4); by revising the section number of the Act in paragraph (c) (1) from "783" to "788(d)"; and by removing footnote 1 in paragraph (a) and revising paragraph (a) read as follows:

§ 57.704 Application.

(a) Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.

* * * * *

6. Section 57.705 is amended by removing the parenthetical authority citation at the end of the section; and by revising paragraph (b) to read as follows:

§ 57.705 Project requirements.

(b) The program must (1) be accredited as an Educational Program for the Physician Assistant by the American Medical Association's Committee on Allied Health Education and Accreditation, or (2) have received a Letter of Review from the Accreditation Review Committee on Education for the Physician Assistant.

* * * * *

7. Section 57.706 is amended by revising the section number of the Act in paragraph (a) (2) from "783" to "788(d)"; and by revising paragraphs (a) (4) and (5) to read as follows:

§ 57.706 Evaluation of applications.

(a) * * *

(4) The local, regional, and national needs the project proposes to serve;

(5) The adequacy of the project's plan for placing graduates in health professional shortage areas;

* * * * *

8. Section 57.707 is amended by revising the section number of the Act in paragraph (a) (1) from "783" to "788(d)"; and by revising paragraphs (a) (2), (a) (3), and (c) to read as follows:

§ 57.707 Grant award.

(a) * * *

(2) The notice of grant award specifies the length of time the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed 5 years.

(3) Neither the approval of any project nor any grant award shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved project or portion of an approved project. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

* * * * *

(c) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, existence of legislative authority, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

9. Section 57.709 is amended in paragraph (a) by revising the section number of the Act from "783" to "788(d)"; by revising paragraph (b); and by revising the first sentence of paragraph (c) to read as follows:

§ 57.709 Purposes for which grant funds must be spent.

* * * * *

(b) Grant funds may not be spent for sectarian instruction or for any religious purpose.

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. * * *

10. Section 57.710 is amended by adding in numerical order the following CFR citations to read as follows:

§ 57.710 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

45 CFR part 93—New restrictions on lobbying.

11. Except for the Office of Management and Budget control number at the end of the section, § 57.711 is revised to read as follows:

§ 57.711 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must, in addition to the requirements of 45 CFR part 74, meet the requirements of section 705 of the Act, concerning audit and inspection.

* * * * *

Subpart I—Programs for the Training of Physician Assistants

1. The authority for subpart I is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 701(8)(B), 90 Stat. 2247, as amended by 95 Stat. 913 and 99 Stat. 525–526 (42 U.S.C. 292a(8)(B)).

§ 57.802 [Amended]

2. Section 57.802 is amended by revising the term "Health manpower shortage area" to read "Health professional shortage area"; and by revising the word "osteopathy" to read "osteopathic medicine" in the introductory paragraph of the definition of "Physician assistant".

3. Section 57.803 is amended by revising the word "osteopathy" to read "osteopathic medicine" in paragraph (b); by revising the words "one academic year" to read "1 academic year" in paragraph (d), and the words "four months" to read "4 months" in paragraph (e); by revising the word "manpower" to read "professional" in paragraphs (g) and (h); and by revising paragraph (a)(2) to read as follows:

§ 57.803 Requirements.

* * * * *

(a) * * *

(2) Have received a Letter of Review from the Accreditation Review Committee on Education for the Physician Assistant for its plans for a program for the training of physician assistants;

* * * * *

Subpart J—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart J (consisting of §§ 57.901 through 57.913).

Subpart K—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart K (consisting of §§ 57.1001 through 57.1014).

Subpart L—Grants for Residency Training and Advanced Education in the General Practice of Dentistry

1. The authority for subpart L is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 788(b) of the Public Health Service Act, 90 Stat. 2317, as amended by 99 Stat. 540–541 (42 U.S.C. 295g–6(b)); redesignated as sec. 785 and amended by 102 Stat. 3130–3131 (42 U.S.C. 295g–5).

2. Section 57.1101 is amended by revising the introductory paragraph in the section text to read as follows:

§ 57.1101 To what projects do these regulations apply?

These regulations apply to the award of grants under section 785 of the Public Health Service Act (42 U.S.C. 295g–5) to public or private nonprofit schools of dentistry and to accredited postgraduate dental training institutions to meet the costs of projects to:

* * * * *

3. Section 57.1102 is amended in the definition of "Practice of general dentistry" by revising the word "Subpart" in paragraph (4) to read "subpart"; and by removing the term "Nonprofit school" and adding in its place the term "Nonprofit" and revising the definition to read as follows:

§ 57.1102 Definitions.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned or operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

4. Section 57.1103 is revised to read as follows:

§ 57.1103 What entities are eligible to apply for a grant?

Any public or private nonprofit school of dentistry or accredited postgraduate dental training institution located in a State is eligible to apply for a grant.

5. Section 57.1104 is amended by removing footnote [1] in paragraph (a) and revising paragraph (a) to read as follows:

§ 57.1104 How must an entity apply for a grant?

(a) To apply for a grant under this subpart, each entity shall submit an application in the form and at such time as the Secretary may prescribe.

* * * * *

§ 57.1106 [Amended]

6. Section 57.1106 is amended in paragraph (a) by revising the section number "786(b)" to read "785".

7. Section 57.1107 is amended in paragraph (a)(1) by revising section number "786(b)" to read "785"; and by revising paragraphs (a)(2), (a)(3), (a)(4), and (b) to read as follows:

§ 57.1107 How will grant awards be made?

(a) * * *

(2) The notice of grant award specifies the length of time the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed 3 years.

(3) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, existence of legislative authority, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(4) Neither the approval of any project nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved project or any portion of an approved project. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

(b) *Determination of grant amount.* The Secretary will determine the amount of any award under this subpart on the basis of his or her estimate of the sum necessary for the cost (including both direct and indirect costs) of the project. In addition, in determining the amount of stipend support to be made available for the general practice residency program, the amount of any stipend must be limited to that portion of the annual amount normally paid to other residents by the applicant which the Secretary determines, on the basis of the documentation required in the application, cannot reasonably be paid from other available funds, including the incomes derived from the residents' services. For the advanced educational program in general dentistry, stipends for participants (who are postdoctoral students) must be paid in accordance with established Public Health Service postdoctoral stipend rates.

8. Section 57.1109 is amended by removing the word "other" from paragraph (c); and by revising the first sentence in paragraph (b) to read as follows:

§ 57.1109 Purposes for which grant funds may be spent.

* * * * *

(b) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. * * *

* * * * *

9. Section 57.1110 is amended by adding in numerical order the following CFR citations to read as follows:

§ 57.1110 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

45 CFR part 93—New restrictions on lobbying.

10. Section 57.1111 is revised to read as follows:

§ 57.1111 What other audit and inspection requirements apply to grantees?

Each grantee must, in addition to the requirements of 45 CFR part 74, meet the requirements of section 705 of the Act, concerning audit and inspection.

(Approved by the Office of Management and Budget under control number 0915–0060)

§ 57.1112 [Amended]

11. Section 57.1112 is amended by removing the parenthetical phrase at the end of the section.

Subpart M—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart M (consisting of §§ 57.1201 through 57.1212).

Subpart N—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart N (consisting of §§ 57.1301 through 57.1314).

Subpart O—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart O (consisting of §§ 57.1401 through 57.1415).

Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine

1. The authority for subpart Q is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 786(a), Public Health Service Act, 90 Stat. 2316, and as amended by 102 Stat. 3146 (42 U.S.C. 295g–6(a)).

2. Section 57.1601 is revised to read as follows:

§ 57.1601 To what programs do these regulations apply?

These regulations apply to the award of grants under section 786(a) of the Public Health Service Act (42 U.S.C. 295g–6(a)) to schools of medicine or osteopathic medicine, hospitals, and other public or private nonprofit entities for projects to: (a) Plan, develop, and operate, or participate in predoctoral, graduate, or faculty development educational programs in family medicine; and (b) provide financial assistance to trainees participating in predoctoral or graduate educational programs who are in need of financial assistance and who plan to practice family medicine or to trainees in faculty development programs who plan to teach in family medicine training programs.

3. Section 57.1602 is amended by removing the term "School of medicine or osteopathy" and by adding in its place the term "School of medicine or osteopathic medicine" and revising the term; and by revising the definitions of "Clerkship", "Nonprofit", "Predoctoral training program", paragraph (a) of "Residency training program", "State", "Student assistantship", and "Trainee" to read as follows:

§ 57.1602 Definitions.

* * * * *

Clerkship means supervised clinical training in a specific field of medicine for predoctoral medical (M.D. or D.O.) students.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

Predoctoral training program means an educational program in family medicine, including courses, clerkships or preceptorships in family medicine, which is part of a course of study leading to the degree of doctor of medicine or osteopathic medicine, and student assistantships in family medicine.

Residency training program means:

(a) A residency program in family practice which is fully or provisionally accredited by the Accreditation Council for Graduate Medical Education; or

* * * * *

School of medicine or osteopathic medicine means a public or private nonprofit school in a State which provides training leading, respectively, to a degree of doctor of medicine or to a degree of doctor of osteopathic medicine and which is accredited as provided in section 701(5) of the Act.

* * * * *

State includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

Student assistantship means a research program in family medicine for predoctoral medical (M.D. or D.O.) students.

Trainee means a medical (M.D. or D.O.) student, intern, resident, or physician participating in a training program supported by a grant under these regulations.

4. Section 57.1603 is amended by revising the word "osteopathy" to read "osteopathic medicine" in paragraphs (a) and (b); and by adding a new paragraph (c) to read as follows:

§ 57.1603 Who is eligible to apply for a grant?

* * * * *

(c) Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.

5. Section 57.1604 is amended by removing the parenthetical phrase at the end of the section; by revising the words "four consecutive weeks" to read "4 consecutive weeks" in paragraph (b)(3)(iii)(C), the words "eight consecutive weeks" to read "8 consecutive weeks" in paragraph (b)(4)(iii)(C), and the words "three months" to read "3 months" in paragraph (d)(5)(ii); and by revising paragraph (b)(3)(i) to read as follows:

§ 57.1604 What requirements must a project meet?

* * * * *

(b) * * *

(3) * * *

(i) The project must provide medical (M.D. or D.O.) students with ambulatory care training in a community setting.

* * * * * *

6. Section 57.1606 is amended by removing paragraph (d); and by revising paragraphs (b) and (c) to read as follows:

§ 57.1606 How long does grant support last?

* * * * *

(b) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

7. Section 57.1607 is amended by adding a new paragraph (c) to read as follows:

§ 57.1607 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

8. Section 57.1608 is amended by adding in numerical order the following CFR citations to read as follows:

§ 57.1608 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

45 CFR part 93—New restrictions on lobbying.

§ 57.1609 [Amended]

9. Section 57.1609 is amended by adding at the end of the section the following parenthetical phrase "(Approved by the Office of Management and Budget under control number 0915–0060)".

Subpart R—Grants for the Establishment of Departments of Family Medicine

1. The authority for subpart R is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 780, Public Health Service Act, 90 Stat. 2311, as amended by 95 Stat. 221 and 102 Stat. 3146 (42 U.S.C. 295g).

§ 57.1701 [Amended]

2. Section 57.1701 is amended by revising in the introductory text the phrase "schools of medicine and osteopathy" to read "schools of medicine and osteopathic medicine".

3. Section 57.1702 is amended by removing the term "School of medicine or osteopathy" and by adding in its place the term "School of medicine or osteopathic medicine" and revising the definition; in the definition of "Residency training program" by revising the words "three-year" to read "3-year" and the words "two years' " to read "2 years' "; and by revising the definitions of "Academic administrative unit", "Nonprofit", and "State" to read as follows:

§ 57.1702 Definitions.

Academic administrative unit or *unit* means a department, division, or other formal academic unit of a school of medicine or osteopathic medicine that provides clinical instruction in family medicine.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

School of medicine or *osteopathic medicine* means a public or private nonprofit school in a State which provides training leading, respectively, to a degree of doctor of medicine or to a degree of doctor of osteopathic medicine and which is accredited as provided in section 701(5) of the Act.

* * * * *

State includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

4. Section 57.1703 is revised to read as follows:

§ 57.1703 Who is eligible to apply for a grant?

Any school of medicine or osteopathic medicine which is located in a State is eligible to apply for a grant. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.

§ 57.1704 [Amended]

5. Section 57.1704 is amended in the first sentence of paragraph (f) by removing the phrase "required in § 57.1704(f)." and adding a period after the word "instruction"; in paragraph (g) by revising the reference of "§ 57.1704(f)" to read "paragraph (f)"; in paragraphs (d) and (e) by revising the word "osteopathy" to read "osteopathic medicine"; and by adding at the end of the section the following parenthetical phrase "(Approved by the Office of Management and Budget under control number 0915–0060)".

6. Section 57.1706 is amended by removing paragraph (d); by revising the words "five years" to read "5 years" in paragraph (a); and by revising paragraphs (b) and (c) to read as follows:

§ 57.1706 How long does grant support last?

* * * * *

(b) Generally, the grant will initially be funded for 1 year and subsequent noncompeting continuation awards will also be for 1 year at a time. Decisions regarding noncompeting continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, noncompeting continuation awards

require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application, nor the award of any grant, shall commit or obligate the United States in any way to make any additional, supplemental, noncompeting continuation or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

7. Section 57.1707 is amended by adding a new paragraph (c) to read as follows:

§ 57.1707 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amount awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

8. Section 57.1708 is amended by adding in numerical order the following CFR citations to read as follows:

§ 57.1708 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

45 CFR part 93—New restrictions on lobbying.

§ 57.1709 [Amended]

9. Section 57.1709 is amended by adding at the end of the section the following parenthetical phrase "(Approved by the Office of Management and Budget under control number 0915-0060)".

Subpart S—Educational Assistance to Individuals From Disadvantaged Backgrounds

1. The authority for subpart S continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 787, Public Health Service Act, 90 Stat. 2317, as amended by 95 Stat. 923, 99 Stat. 541, and 102 Stat. 3131–3132 (42 U.S.C. 295g–7).

2. Section 57.1802 is amended by revising the definition of "Nonprofit" to read as follows:

§ 57.1802 Definitions.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

§ 57.1803 [Amended]

3. Section 57.1803 is amended by removing footnote [1] from paragraph (a).

4. Section 57.1805 is amended by revising paragraph (a)(2) to read as follows:

§ 57.1805 Program requirements.

(a) * * *

(2) To provide individuals from disadvantaged backgrounds, for a period prior to their entry into a regular course of education of such a school, preliminary education designed to assist them to complete successfully such regular course of education in a health professions school or school of allied health, or to refer them to institutions which provide it. Preliminary education in this context is education designed to expand the academic ability of disadvantaged students during their preprofessional training. It may not include classes already taught as part of the regular course of education leading to a high school diploma or undergraduate degree. It may not be offered to students before they complete the junior year of high school.

* * * * *

§ 57.1807 [Amended]

5. Section 57.1807 is amended by revising the words "three years" to read "3 years" in paragraph (a), and the words "one year" to read "1 year" in two places in paragraph (b).

§ 57.1809 [Amended]

6. Section 57.1809 is amended by revising the footnote number and the footnote reference to "45 CFR part 83" from "2" to "1".

1. The heading for subpart V is revised to read as follows:

Subpart V—Grants for Centers of Excellence

2. The authority for subpart V continues to read as follows:

Authority: Sec. 788A of the Public Health Service Act, as established by Pub. L. 100–607, 101 Stat. 713–714 (42 U.S.C. 295g–8a), and redesignated as sec. 782 and as amended by Pub. L. 100–607, 102 Stat. 3136 (42 U.S.C. 295g–2).

3. Section 57.2102 is amended by revising the definitions of "Health professions school" and "Nonprofit" to read as follows:

§ 57.2102 Definitions.

* * * * *

Health professions school means any accredited school of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, and chiropractic or graduate programs in health administration, or graduate programs in clinical psychology, as defined in section 701(4) of the Act and as accredited in section 701(5) of the Act.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

§ 57.2103 [Amended]

4. Section 57.2103 is amended by removing footnote [1] from the section.

5. Section 57.2107 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 57.2107 For what purposes may grant funds be spent?

* * * * *

(b) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. * * *

* * * * *

6. Section 57.2108 is amended by revising the footnote number and the footnote reference to "45 CFR part 83" from "2" to "1"; and by adding in numerical order a CFR citation to read as follows:

§ 57.2108 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 93—New restrictions on lobbying.

§ 57.2109 [Amended]

7. Section 57.2109 is amended by removing the "Effective Date Note" at the end of the section and adding in its place the following parenthetical phrase "(Approved by the Office of Management and Budget under control number 0915–0060)".

Subpart Y—Grants for Nurse Practitioner and Nurse Midwifery Programs

1. The authority for subpart Y continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended; 63 Stat. 35 (42 U.S.C. 216); sec. 822(a) of the Public Health Service Act, 89 Stat. 361, as amended by 99 Stat. 394–395 and 548 (42 U.S.C. 296m).

2. Section 57.2401 is revised to read as follows:

§ 57.2401 Applicability.

The regulations of this subpart are applicable to the award of grants to public or private nonprofit schools of nursing and public health, public or private nonprofit schools of medicine which received grants under section 822(a) of the Public Health Service Act (42 U.S.C. 296m) prior to October 1, 1985, public or private nonprofit hospitals, and other public or private nonprofit entities under section 822(a) to meet the cost of projects to (a) plan, develop, and operate, (b) expand, or (c) maintain programs for the education of nurse practitioners or nurse midwives.

3. Section 57.2402 is amended in paragraph (b) the definition of "Associate degree school of nursing" by revising the phrase "two-year program" to read "2-year program"; by revising in paragraph (c) the word "or" the first time it is used to read "of" in the heading of the term "Programs for the education of nurse practitioners or nurse midwives"; and by revising paragraph (j) the definition of "Nonprofit", to read as follows:

§ 57.2402 Definitions.

* * * * *

(j) *Nonprofit* refers to the status of an entity which is a corporation or association or is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

4. Section 57.2403 is amended by revising paragraph (a)(1) to read as follows:

§ 57.2403 Eligibility.

(a) * * *

(1) Be a public or private nonprofit school of nursing or public health, a public or private nonprofit school of medicine which received grants under this subpart prior to October 1, 1985, public or private nonprofit hospital, or other public or private nonprofit entity; and

* * * * *

§ 57.2404 [Amended]

5. Section 57.2404 is amended by removing footnote[1] in paragraph (a) and removing paragraph (c)(8).

§ 57.2406 [Amended]

6. Section 57.2406 is amended in paragraph (a)(2)(i) by revising the phrase "health manpower shortage areas" to read "health professional shortage areas".

7. Section 57.2408 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 57.2408 Expenditure of grant funds.

* * * * *

(b) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. * * *

8. Section 57.2409 is amended by revising the first citation "45 CFR Part 50, Subpart D" to read "42 CFR part 50, subpart D"; and by adding in numerical order the following CFR citations to read as follows:

§ 57.2409 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

45 CFR part 93—New restrictions on lobbying.

9. The appendix to subpart Y, C. Student enrollment, paragraph 1., and D. Length of program, are revised as follows:

Appendix to Subpart Y—Guidelines for Nurse Practitioner and Nurse Midwifery Programs

* * * * *

C. *Student enrollment.* 1. A nurse practitioner or nurse midwifery education program shall have an enrollment of not less than six full-time equivalent students in each class.

* * * * *

D. *Length of program.* A nurse practitioner or nurse midwifery education program shall be a minimum of 1 academic year (or 9 months) in length and shall include at least 4 months (in the aggregate) of classroom instruction.

* * * * *

Subpart Z—Grants for Advanced Nurse Education Programs

1. The authority for subpart Z continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 821 of the Public Health Service Act, 89 Stat. 361; as amended by 95 Stat. 930, and by 99 Stat. 394 and 548 (42 U.S.C. 296*l*).

2. Section 57.2502 is amended in the definition of "State" by revising the word "Federal" to read "Federated"; and by revising the definitions of "Council" and "Nonprofit" to read as follows:

§ 57.2502 Definitions.

* * * * *

Council means the Advisory Council on Nurses Education established by section 851(a) of the Act.

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

§ 57.2503 [Amended]

3. Section 57.2503 is amended in paragraph (b)(1) by revising the words "one year" to read "1 year".

4. Section 57.2504 is amended by removing the "Effective Date Note" at the end of the section; and by removing footnote [1] to paragraph (a) and revising paragraph (a) to read as follows:

§ 57.2504 Application.

(a) Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.

* * * * *

5. Section 57.2508 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 57.2508 Expenditure of grant funds.

* * * * *

(b) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. * * *

6. Section 57.2509 is amended by adding in numerical order the following CFR citations to read as follows:

§ 57.2509 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

45 CFR part 93—New restrictions on lobbying.

Subpart AA—Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs

1. The authority for subpart AA continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 822(b) of the Public Health Service Act; 91 Stat. 393; amended by 95 Stat. 930; amended by 99 Stat. 395; and as amended by 102 Stat. 3157 (42 U.S.C. 296m).

2. Section 57.2601 is revised to read as follows:

§ 57.2601 To what programs do these regulations apply?

These regulations apply to grants awarded to schools of nursing and public health, schools of medicine which received grants or contracts under this subsection prior to October 1, 1985, public or private nonprofit hospitals, and other public or private nonprofit entities to meet the costs of traineeships under section 822(b) of the Public Health Service Act.

3. Section 57.2602 is amended by removing the term "Health manpower shortage area" and adding in its place "Health professional shortage area"; and by revising the introductory text and paragraph (c) of the definition of "Health professional shortage area" and the definition of "Nonprofit" to read as follows:

§ 57.2602 Definitions.

* * * * *

Health professional shortage area means any of the following which the Secretary determines has a shortage of health professionals:

* * * * *

(c) A public or private nonprofit medical facility.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

4. Section 57.2603 is revised (and footnote [1] is removed) to read as follows:

§ 57.2603 Who is eligible to apply for a grant?

Any school of nursing or public health, or school of medicine which received grants or contracts under this section prior to October 1, 1985, public or private nonprofit hospital or other public or private nonprofit entity which is located in a State and which provides a nurse practitioner or nurse midwifery educational program is eligible to apply for a grant. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.

§ 57.2604 [Amended]

5. Section 57.2604 is amended in paragraphs (a)(3) and (b) by revising the words "health manpower shortage areas" to read "health professional shortage areas".

6. Section 57.2607 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 57.2607 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. * * *

§ 57.2610 [Amended]

7. Section 57.2610 is amended by removing the parenthetical phrase at the end of the section; in paragraph (b), by revising the words "health manpower shortage area" to read "health professional shortage area"; and in paragraphs (d) and (h), by revising the words "health manpower shortage areas" to read "health professional shortage areas".

§ 57.2613 [Amended]

8. Section 57.2613 is amended by removing the parenthetical phrase at the end of the section; in paragraphs (a)(1) and (c), by revising the words "health manpower shortage area" to read "health professional shortage area"; and in paragraph (a)(2), by revising the words "health manpower shortage areas" to read "health professional shortage areas".

§ 57.2615 [Amended]

9. Section 57.2615 is amended by removing the parenthetical phrase at the end of the section.

10. Section 57.2616 is amended by revising the word "Manpower" in the CFR reference of 45 CFR part 5 to read "Professional"; by revising the footnote number and the footnote reference to 45 CFR part 83 from "2" to "1"; and by adding numerically a CFR reference at the end of the section to read as follows:

§ 57.2616 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 93—New restrictions on lobbying.

1. The heading of subpart CC is revised to read as follows: Subpart CC—Scholarships for Students of Exceptional Financial Need

2. The authority for subpart CC is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 758, Public Health Service Act, 90 Stat. 2289, as amended by 102 Stat. 3126–3127 (42 U.S.C. 294z).

§ 57.2801 [Amended]

3. Section 57.2801 is amended by removing the words "first-year" in the section text.

4. Section 57.2802 is amended by removing the term and the definition of "First year of study"; and by revising the definitions of "Health professions school or school", and "State" to read as follows:

§ 57.2802 Definitions.

* * * * *

Health professions school or *school* means, for this subpart, a public or private nonprofit school of medicine, osteopathic medicine, dentistry, optometry, podiatric medicine, pharmacy, or veterinary medicine providing a course of study, or a portion thereof, as defined in section 701(4) of the Act and as accredited in section 701(5) of the Act.

* * * * *

State means in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

5. Section 57.2803 is amended by revising paragraph (a); and by adding a parenthetical phrase at the end of the section to read as follows:

§ 57.2803 How to apply for a grant.

(a) Any health professions school located in a State may apply for a grant. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.

* * * * *

(Approved by the office of Management and Budget under control number 0915–0029)

6. Section 57.2804 is amended in paragraph (a)(2) by removing the phrase "in the first year of study"; in paragraph (b)(2) by removing the phrase "and published under 45 CFR 144.13"; by revising paragraph (a)(1); and by adding a parenthetical phrase at the end of the section text to read as follows:

§ 57.2804 Students eligible for scholarships.

(a) * * *

(1) Is a resident of the United States, and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Trust Territory of the Pacific Islands (TTPI) (consisting of the Republic of Palau), or a citizen of the Republic of the Marshall Islands or the Federated States of Micronesia (both formerly part of the TTPI).

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0028)

§ 57.2805 [Amended]

7. Section 57.2805 is amended in paragraph (a) by removing the words "for the first year of study" and adding in its place the words "in such school year".

§ 57.2806 [Amended]

8. Section 57.2806 is amended at the end of the first sentence of paragraph (c)(1) by removing the words "for the first year of study at the school,"; and by revising the word "osteopathy" to read "osteopathic medicine" in paragraph (b) once and in paragraph (c)(1) three times.

9. Section 57.2808 is amended by removing the word "Departmental" in the section heading and adding in its place the word "Department"; and by adding in numerical order the following CFR citations to read as follows:

§ 57.2808 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 76—Government-wide Debarment and Suspension (nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

* * * * *

45 CFR part 93—New restrictions on lobbying.

§ 57.2902 [Amended]

10. Section 57.2902 is amended by adding at the end of the section the following parenthetical phrase "(Approved by the Office of Management and Budget under control number 0915–0029)".

Subpart DD—Financial Assistance for Disadvantaged Health Professions Students

1. The authority for subpart DD continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 60 Stat. 35 (42 U.S.C. 216); sec. 782 of the Public Health Service Act, 90 Stat. 2309, as amended by 95 Stat. 923, 99 Stat. 541 (42 U.S.C. 295g–7).

2. Section 57.2902 is amended by revising the definition of "State" (and by removing the footnote) to read as follows:

§ 57.2902 Definitions.

* * * * *

State means in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

3. Section 57.2904 is amended in the first sentence of paragraph (b)(1)(i) by removing the phrase "and published under 34 CFR 674.13"; and by revising paragraph (a)(1) to read as follows:

§ 57.2904 Eligibility and selection of aid recipients.

(a) * * *

(1) Is a citizen, national, or lawful permanent resident of the United States, permanent resident of the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, or American Samoa, or lawful permanent resident of the Commonwealth of Puerto Rico, the Virgin Islands or Guam;

* * * * *

4. Section 57.2908 is amended by adding in numerical order the following CFR citations to read as follows:

§ 57.2908 What additional Department regulations apply to grants?

* * * * *

45 CFR part 76—Government-wide Debarment and Suspension (nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

* * * * *

45 CFR part 93—New restrictions on lobbying.

Subpart EE—Grants for Residency Training in Preventive Medicine

1. The authority for subpart EE is revised to read as follows:

Authority: Section 793, Public Health Service Act, 95 Stat. 928 (42 U.S.C. 295h–1c); redesignated as sec. 788(c) of the Public Health Service Act, 102 Stat. 3134–3135 (42 U.S.C. 295g–8(e)).

§ 57.3001 [Amended]

2. Section 57.3001 is amended by revising the section number of the Act from "793" to "788(c)"; by revising the United States Code number from "(42 U.S.C. 295h–1c)" to "(42 U.S.C. 295g–8(e))"; and by revising the word "osteopathy" to read "osteopathic medicine."

3. Section 57.3002 is amended in the definition of "Full-time faculty" by revising the word "osteopathy" to read "osteopathic medicine"; and by revising the definitions of "Nonprofit" and "State" to read as follows:

§ 57.3002 Definitions.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

State includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

4. Section 57.3003 is revised to read as follows:

§ 57.3003 Who is eligible to apply for a grant?

Accredited public or private nonprofit schools of medicine, osteopathic medicine or public health located in a State are eligible to apply for a grant. Each eligible applicant desiring a grant under this subpart shall submit an application at the time and in such a

form that the Secretary may prescribe. To be eligible for a grant, an applicant must demonstrate that it has, or will have by the end of 1 year of grant support, full-time faculty with training and experience in the fields of preventive medicine and support from other faculty members trained in public health and other relevant specialties and disciplines.

(Approved by the Office of Management and Budget under control number 0915–0060)

§ 57.3004 [Amended]

5. Section 57.3004 is amended by removing the "Effective Date Note" at the end of the section and adding in its place a parenthetical phrase to read "(Approved by the Office of Management and Budget under control number 0915–0060)".

§ 57.3005 [Amended]

6. Section 57.3005 is amended by removing the word "and" at the end of paragraph (a)(4); and by revising the section number "793" in paragraph (a)(1) to read "788(c)".

7. Section 57.3006 is amended in paragraph (b) by removing the second sentence and by revising in the first sentence the words "one year" to read "1 year" twice; by removing paragraph (d); by revising the words "three years" to read "3 years" in paragraph (a); and by revising paragraph (c) to read as follows:

§ 57.3006 How long does grant support last?

* * * * *

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of any approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

§ 57.3007 [Amended]

8. Section 57.3007 is amended by removing the "Effective Date Note" at the end of the section text and adding in its place a parenthetical phrase to read "(Approved by the Office of Management and Budget under control number 0915–0060)". Section 57.3007 is further amended in paragraph (b) by revising the words "two years" to read "2 years".

9. Section 57.3008 is amended by adding a new paragraph (c) to read as follows:

§ 57.3008 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

10. Section 57.3009 is amended by adding in numerical order the following CFR citations to read as follows:

§ 57.3009 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

45 CFR part 93—New restrictions on lobbying.

§ 57.3010 [Amended]

11. Section 57.3010 is amended by removing the "Effective Date Note" at the end of the section and adding in its place a parenthetical phrase to read "(Approved by the Office of Management and Budget under control number 0915–0060)".

Subpart FF—Grants for Residency Training and Faculty Development in General Internal Medicine and/or General Pediatrics

1. The authority for subpart FF continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, 63 Stat. 35 (42 U.S.C. 216); sec. 784, Public Health Service Act, 90 Stat. 2315, as amended by 95 Stat. 922–923 and 99 Stat. 540 (42 U.S.C. 295g–4).

§ 57.3101 [Amended]

2. Section 57.3101 is amended in the introductory section text by revising the words "osteopathy and pubic" to read "osteopathic medicine and public".

3. Section 57.3102 is amended by revising the term "Health manpower shortage area" to read "Health professional shortage area"; by removing the term "Nonprofit school" and adding in its place the term "Nonprofit" and revising the definition; and by removing the term "School of medicine and osteopathy" and adding in its place the term "School of medicine and osteopathic medicine" and revising the definition to read as follows:

§ 57.3102 Definitions.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

School of medicine and osteopathic medicine means a public or private nonprofit school which provides training leading respectively to a degree of doctor of medicine or to a degree of doctor of osteopathic medicine and which is accredited as provided in section 701(5) of the Act.

* * * * *

4. Section 57.3103 is amended by removing the footnote and revising the section to read as follows:

§ 57.3103 Who is eligible to apply for a grant?

Any school of medicine or osteopathic medicine, public or private nonprofit hospital or any other public or private nonprofit entity, located in a State, may apply for a grant under this subpart. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.

§ 57.3105 [Amended]

5. Section 57.3105 is amended in paragraph (a)(8) by revising the word "osteopathy" to read "osteopathic medicine".

6. Section 57.3107 is amended in paragraph (a) by revising the phrase "five years" to read "5 years"; and by revising paragraph (b) to read as follows:

§ 57.3107 How long does grant support last?

* * * * *

(b) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require

a determination by the Secretary that continued funding is in the best interest of the Federal Government.

* * * * *

7. Section 57.3109 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 57.3109 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. * * *

8. Section 57.3110 is amended by revising the heading of the section text; and by adding in numerical order the following CFR citations to read as follows:

§ 57.3110 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

45 CFR part 93—New restrictions on lobbying.

Subpart GG—Payment for Tuition and Other Educational Costs

1. The authority for subpart GG is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 711, Public Health Service Act, 90 Stat. 2253; section 710, PHS Act, as redesignated by Pub. L. 97–35, 95 Stat. 915 (42 U.S.C. 292k).

2. Section 57.3201 is revised to read as follows:

§ 57.3201 To which programs do these regulations apply?

The regulations in this subpart establish the criteria to be used in determining allowable increases in tuition and other educational costs for which the Secretary is responsible for payment under the following sections of the Public Health Service Act: The National Health Service Corps Scholarship Program (sec. 338A) (42 U.S.C. 254l) and the Indian Health Scholarship Program (awarded pursuant to sec. 338A–339G of the PHS Act) (25 U.S.C. 1613a). These programs are referred to herein as the "scholarship programs." The regulations apply to increases in tuition and other educational costs occurring after the school year beginning immediately before October 1, 1981.

Subpart II—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart II (consisting of §§ 57.3401 through 57.3413).

Subpart JJ—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart JJ (consisting of §§ 57.3501 through 57.3510).

Subpart NN—Grants for Various Health Professions Projects

1. The authority for subpart NN is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 67 Stat. 631 (42 U.S.C. 216); Sec. 788(b) of the Public Health Service Act, as amended by 95 Stat. 924 and 102 Stat. 3134 (42 U.S.C. 295g–8(e)).

2. Section 57.3902 is amended by revising the definitions of "Nonprofit" and "State" to read as follows:

§ 57.3902 Definitions.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

State includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

3. Section 57.3906 is amended by removing paragraph (d); in paragraph (a) by revising the words "five years" to read "5 years"; and by revising paragraphs (b) and (c) to read as follows:

§ 57.3906 How long does grant support last?

* * * * *

(b) Generally the grant will initially be funded for 1 year and subsequent continuation awards will also be for 1 year at a time. Decisions regarding continuation awards and funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

4. Section 57.3907 is amended by adding a new paragraph (c) to read as follows:

§ 57.3907 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's need for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

5. Section 57.3908 is amended by revising the section heading; by adding an introductory text; and by adding in numerical order the following CFR citations to read as follows:

§ 57.3908 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

45 CFR part 93—New restrictions on lobbying.

Subpart OO—Grants for Health Professions Projects in Geriatrics

1. The authority for subpart OO is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 788(d) of the Public Health Service Act, 99 Stat. 542 (42 U.S.C. 295g–6);

redesignated as sec. 789(a), as amended by Pub. L. 100-607, 102 Stat. 3139-37 (42 U.S.C. 295g-9(a)).

§ 57.4001 [Amended]

2. Section 57.4001 is amended by revising the section number of the Act from "789(d)" to "789(a)".

3. Section 57.4002 is amended by removing the word "only" in the definition of "State"; by revising the definitions of "Allied health professional", "Health professional", "Health professions school", "Nonprofit", "School of allied health", and "Training and retraining of faculty" to read as follows:

§ 57.4002 Definitions.

* * * * *

Allied health professional means a health professional who has received a certificate, an associate's degree, a bachelor's degree, a master's degree, a doctoral degree, or postbaccalaureate training, in a science relating to health care and meets the requirements as established in section 701(13) of the Act.

* * * * *

Health professional means, for purposes of this subpart, any allopathic or osteopathic physician, dentist, optometrist, podiatrist, pharmacist, professional nurse (as defined in § 57.2502), and nurse practitioner (as defined in § 57.2402), physician assistant, chiropractor, clinical psychologist, health administrator, or allied health professional.

Health professions schools means any school of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, chiropractic, graduate programs in health administration, or graduate programs in clinical psychology, as defined in section 701(4) of the Act and as accredited in section 701(5) of the Act.

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

School of allied health means a public or private nonprofit junior college, college, university or hospital-based educational entity which provides or is accredited to provide a program of education to enable individuals to become allied health professionals or to provide additional training for allied health professionals and which meets the criteria set forth in section 701(10) of the Act.

* * * * *

Training and retraining of faculty means a program to train and retrain faculty to provide geriatric instruction which is not a 1-year retraining program for faculty in schools of medicine and osteopathic medicine in geriatrics or a 1-year or 2-year internal medicine or family medicine fellowship program as identified in section 789(b)(3) of the Act.

§ 57.4003 [Amended]

4. Section 57.4003 is amended by removing footnote [1] from the section; and by adding the word "private" before the word "nonprofit" in the first sentence of the section text.

§ 57.4005 [Amended]

5. Section 57.4005 is amended in paragraph (a) introductory text by revising section number "789(d)(2)(B)" of the Act to read "789(a)(2)(A)".

6. Section 57.4007 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 57.4007 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. * * *

7. Section 57.4008 is amended by adding in numerical order the following CFR citations to read as follows:

§ 57.4008 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

* * * * *

45 CFR part 93—New restrictions on lobbying.

§ 57.4009 [Amended]

8. Section 57.4009 is amended by revising the OMB control number "0915-0128" in the parenthetical phrase at the end of the section to read "0915-0060".

Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

1. The authority for subpart PP continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 789(b) of the Public Health Service Act, as amended by Pub. L. 100-607, 102 Stat. 3136-3138 (42 U.S.C. 295g-9(b)).

§ 57.4102 [Amended]

2. Section 57.4102 is amended in the definition of "Extended care facility" by removing the words "medically-perscribed" and adding in its place the words "medically-prescribed"; by adding in the second sentence in the definition of "Full-time teaching dentist" the word "a" after the phrase "by the grantee institution but can be"; and by adding in paragraph (1) in the definition of "Fellowship program" the word "a" after the words "Physicians who have completed".

§ 57.4103 [Amended]

3. Section 57.4103 is amended by removing footnote [1] in the section; and by adding the following parenthetical phrase at the end of the section "(Approved by the Office of Management and Budget under control number 0915-0060)".

§ 57.4104 [Amended]

4. Section 57.4104 is amended by removing the word "retaining" and adding in its place the word "retraining".

§ 57.4105 [Amended]

5. Section 57.4105 is amended in the second sentence of paragraph (i) by removing the word "programs" and adding in its place the word "program".

§ 57.4107 [Amended]

6. Section 57.4107 is amended in the second sentence of paragraph (a) by removing the phrase "3 years" and adding in its place the phrase "5 years".

§ 57.4111 [Amended]

7. The second sentence in § 57.4111 is revised to read "Fellowship assistance for participants in a 1-year fellowship program and a 1-year retraining program is limited to 12 months".

8. Section 57.4113 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 57.4113 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally-obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward provided specific approval is granted by the Secretary. * * *

§ 57.4114 [Amended]

9. Section 57.4114 is amended by revising the footnote number and the

footnote reference to "45 CFR part 83" from "2" to "1".

[FR Doc. 92-23919 Filed 10-1-92; 8:45 am]
BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 92-1264]

List of Office of Management and Budget Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval and a current list of OMB-approved information collection requirements which do not have an FCC form number of rule section associated with it.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Office of Managing Director, (202) 632-7513.

SUPPLEMENTARY INFORMATION:

In the Matter of

Editorial Amendment of List of Office of Management and Budget Approved Information Collection Requirements Contained in Part 0 of the Commission's Rules; Order

By the Managing Director:

Adopted: September 24, 1992.
Released: September 29, 1992.

1. Section 3507(f) of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules display the OMB control numbers assigned to the Commission's non-form information collection requirements. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated and to add listings of new information collections which OMB has approved.

4. This Order also adds subsection (c) to include all miscellaneous information collections assigned an OMB control number. These miscellaneous information collections include information collections which do not have an FCC form number or rule section associated with it.

5. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is a matter of agency organization procedure or practice, the notice and comment and effective date provisions of the Administrative Procedure Act do not apply. See 5 U.S.C. 553(b)(A), (d).

6. Accordingly, *it is ordered*, That § 0.408 of the rules is *amended* as set forth in the Amendatory Text, effective on the date of publication in the **Federal Register**.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

List of Subjects in 47 CFR Part 0

Reporting and recordkeeping requirements.

Amendatory Text

Part 0 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 0.408, paragraph (b) is amended by removing the following rule sections and their corresponding control numbers.

§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act

* * * * *

(b) * * *

47 CFR part or section where identified and described	Current OMB control No.
* * * *	*
15.7	3060-0397
* * * *	*
15.214(c)	3060-0436
* * * *	*
15.233	3060-0324
* * * *	*
15.312(c)	3060-0387
* * * *	*
15.644	3060-0372
* * * *	*
25.391	3060-0343
* * * *	*
73.940	3060-0211
* * * *	*
74.985	3060-0465
* * * *	*
76.205	3060-0313
* * * *	*
76.619	3060-0356

§ 0.408 [Amended]

3. Section 0.408, paragraph (b) is further amended by adding the following rule sections and their corresponding OMB control numbers to read as follows.

* * * * *

(b) * * *

47 CFR part or section where identified and described	Current OMB Control No
* * * *	*
1.1107	3060-0440
* * * *	*
15.7(a)	3060-0397
* * * *	*
15.201(d)	3060-0387
15.214(d)(3)	3060-0436
* * * *	*
21.902	3060-0464
* * * *	*
21.911	3060-0464
21.912	3060-0464
21.913	3060-0464
* * * *	*
22.6(d)(2)	3060-0420
22.6(d)(3)	3060-0438
22.13(a)(1)(iv)	3060-0438
* * * *	*
22.903(b)	3060-0485
22.903(d)(3)(ii)	3060-0438
22.903(f)(1)	3060-0438
22.917	3060-0438
22.917(g)	3060-0457
22.924	3060-0438
22.925	3060-0438
22.926	3060-0438
22.940	3060-0457
22.941	3060-0457
22.943	3060-0457
22.944	3060-0457
22.945	3060-0457
* * * *	*
25.134	3060-0447
25.140	3060-0343
* * * *	*
43.21	3060-0395
43.22	3060-0395
* * * *	*
43.41	3060-0450
* * * *	*
63.01(k)(5)	3060-0454
63.07	3060-0408
* * * *	*
63.100	3060-0484
* * * *	*
64.604	3060-0463
64.605	3060-0463
* * * *	*
64.903	3060-0470
64.904	3060-0470

—Continued

47 CFR part or section where identified and described	Current OMB Control No.
64.1001	3060-0454
• • • •	•
73.30	3060-0488
73.37	3060-0489
• • • •	•
73.687	3060-0483
• • • •	•
73.1942	3060-0502
73.1943	3060-0211
• • • •	•
74.902	3060-0490
74.903	3060-0464
• • • •	•
74.931	3060-0464
• • • •	•
74.965(a)	3060-0464
74.965(b), (c), & (g)	3060-0465
74.966	3060-0493
74.990	3060-0494
74.991	3060-0491
74.992	3060-0492
• • • •	•
76.206	3060-0501
76.207	3060-0313
• • • •	•
76.607	3060-0580
• • • •	•
90.16	3060-0401
• • • •	•
90.621(b)(4)	3060-0441
• • • •	•
90.658	3060-0504
• • • •	•
97.527	3060-0323
• • • •	•

§ 0.408 [Amended]

4. Section 0.408, amended by adding a new paragraph (c) to read as follows:

Description of miscellaneous information collections	Current OMB Control No.
Tariff Review Plan	3060-0400
Terrain Shielding Policy	3060-0414
Informational tariffs by operator service providers	3060-0475
Document index terms (for Records Imaging Processing System (RIPS))	3060-0496
ARMIS operating data report	3060-0496

[FR Doc. 92-23977 Filed 10-2-92; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 87

[PR Docket No. 90-315; FCC 92-392]

Aviation Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Part 87 is amended to establish equipment technical standards and licensing procedures for aircraft earth stations. The new rules provide the regulatory framework for aeronautical public correspondence and safety related communications in an interoperable aeronautical mobile-satellite service. Communications involving safety and regularity of flight are given priority and preemptive access to the system.

EFFECTIVE DATE: January 4, 1992.

FOR FURTHER INFORMATION CONTACT: Marcus Wolf, International Liaison Staff, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632-7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 90-315, adopted August 20, 1992, and released September 9, 1992. The complete text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text may be purchased from the Commission's copy contractor: Downtown Copy Center, 1990 M Street NW., Suite 640, Washington, DC 20036; telephone (202) 296-3780.

The following collection of information contained in the rules has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, Downtown Copy Center (address and telephone number are given above). Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814. A copy of any comments made should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0057.
Title: PR Docket No. 90-315—Technical Standards and Licensing Procedures for Aircraft Earth Stations.
Action: Revision.
Respondents: Businesses.
Frequency of Response: On occasion.
Estimated Annual Burden: 8,605 respondents × 24 hours per response for a total of 206,520 burden hours.
Needs and Uses: Rules require that applicants submit the necessary data for evaluation to type accept aeronautical mobile-satellite equipment developed by various manufacturers. Applicants will be using the existing FCC Form 731 (OMB 3060-0057) with no changes being made to the current form.

Summary of Report and Order

1. This Report and Order sets forth the amendments that are necessary to establish equipment technical standards and licensing procedures for aircraft earth stations (AES). These amendments provide for the development of AES equipment for aeronautical public correspondence as well as safety related communications in mobile satellite operations. The radio services affected by this action are the Aeronautical Mobile-Satellite Service (AMSS) and the Aeronautical Mobile-Satellite (Route) Service (AMS(R)S) which is reserved for safety and regularity-of-flight communications. The frequency band which these services will use is the L-band.[1]

2. The Commission established technical standards for radio frequency output power, modulation, bandwidth, emission limits, frequency stability, and emission types, and a requirement for Doppler effect correction. The Commission also established licensing procedures and a requirement for interoperability between systems and priority and preemptive access to the L-band by AMS (R)S users. The Commission did not, however, adopt specific standards for interoperability and priority and preemptive access, nor did it adopt any rules for receiver standards.

3. Accordingly, It Is Ordered that, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), that Part 87 of the Commission's Rules IS AMENDED as set forth below.

4. It Is Further Ordered that this proceeding is terminated.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

List of Subjects in 47 CFR Part 87

Aircraft earth station commissioning and licensing, Communications equipment, Interoperability and priority

[1] In this proceeding, the term "L-band" refers to the paired bands 1545–1559 MHz and 1646.5–1660.5 MHz. The frequency band 1646.5–1660.5 MHz is for Earth (aircraft)-to-space transmissions and the corresponding space-to-Earth transmissions are made in the 1545–1559 MHz band.

and preemptive access, Technical requirements, Type acceptance.

Amendatory Text

Part 87 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read:

Authority: 48 Stat 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–158, 301–609.

2. Section 87.5 is amended by adding definitions in alphabetical order to read as follows:

§ 87.5 Definitions.

* * * * *

Aeronautical Mobile-Satellite Service. A mobile-satellite service in which mobile earth stations are located on board aircraft.

* * * * *

Aircraft earth station (AES). A mobile earth station in the aeronautical mobile-satellite service located on board an aircraft.

* * * * *

3. A new § 87.51 is added under Subpart B to read as follows:

§ 87.51 Aircraft earth station commissioning.

(a) Aircraft earth stations which require commissioning to use a privately owned satellite system must submit FCC Form 404 to the Commission before transmitting on any satellite frequency bands allocated for aeronautical mobile-satellite communications.

(b) Aircraft earth stations authorized to operate in the Inmarsat space segment must display the Commission license together with the commissioning certificate issued by Inmarsat. Notwithstanding the requirements of this paragraph, aircraft earth stations may operate in the Inmarsat space segment without an Inmarsat-issued commissioning certificate if written approval is obtained from Inmarsat in addition to the license from the Commission.

4. Section 87.131 is amended by adding to the table a new entry "Aircraft Earth" under the heading "Class of station" at the end of the table, and by adding a new footnote 8 to read as follows:

§ 87.131 Power and emissions.

* * * * *

Class of station	Frequency band/ frequency	Authorized emission(s)	Maximum power[1]
*	*	*	*
(Radio-navigation).	* * *	* * *	* * *
Aircraft Earth.	UHF	G1D, G1E, G1W	60 watts.[8]
*	*	*	*

[8] Power may not exceed 60 watts per carrier. The maximum EIRP may not exceed 2000 watts per carrier.

5. Section 87.133 is amended by adding to paragraph (a)(7) a new entry, "aircraft earth station," between the listings for "Aircraft stations" and "Radionavigation stations," and a new footnote 11 to read as follows:

§ 87.133 Frequency stability.

(a) * * *

Frequency band (lower limit exclusive, upper limit inclusive), and categories of stations	Tolerance [1]	Tolerance [2]
*	*	*
(7) Band-470 to 2450 MHz:	*	*
Aircraft stations		* * *
Aircraft earth station		320 Hz [11]
*	*	*

[11] For purposes of type acceptance, a tolerance of 160 Hz applies to the reference oscillator of the AES transmitter. This is a bench test.

* * * * *

6. Section 87.137 is amended by adding new entries to the table in paragraph (a), "G1D," "G1E," and "G1W" between the existing entries "F9D" and "G3E [6]," and by adding a new Footnote 16 to read as follows:

§ 87.137 Types of emission.

(a) * * *

Class of emission	Emission designator	Authorized bandwidth (kiloHertz) Below 50 MHz	Above 50 MHz	Frequency deviation
*	*	*	*	*
F9D	* * *	* * *	* * *	* * *
G1D [16]	21K0G1D		25	
G1E [16]	21K0G1E		25	
G1W [16]	21K0G1W		25	
G3E [6]	* * *	* * *	* * *	* * *
*	*	*	*	*

[16] Authorized for use by aircraft earth stations. Lower values of necessary and authorized bandwidth are permitted.

* * * * *

7. Section 87.139 is amended by adding a new paragraph (i) introductory text to read as follows:

§ 87.139 Emission limitations.

* * * * *

(i) When using G1D, G1E, or G1W emissions in the 1646.5–1660.5 MHz frequency band, the emissions must be attenuated as shown below.

(1) At rated output power, while transmitting a modulated single carrier, the composite spurious and noise output shall be attenuated below the mean power of the transmitter, pY, by at least:

Frequency (MHz)	Attenuation (dB) [1]
.005–1559	83 or $65+10\log_{10}pY$, whichever is greater.
1559–18000	55 or $37+10\log_{10}pY$ [2], whichever is greater.

[1] These values are expressed in dB below the carrier referenced to a 4 kHz bandwidth and relative to the maximum emission envelope level.

[2] Excluding the frequency band of +/−35 kHz or +/−4.00 x the symbol rate (SR), about the carrier frequency, whichever is the greater exclusion.

(2) For transmitters rated at 60 watts or less:

When transmitting two unmodulated carriers, each 3 dB below the rated power, the mean power of any intermodulation products must be at least 24 dB below the mean power of either carrier.

(3) The transmitter emission limit is a function of the modulation type and symbol rate (SR). Symbol Rate is expressed in symbols per second.

(4) While transmitting a single modulated signal at the rated output power of the transmitter, the emissions must be attenuated below the maximum emission level by at least:

Frequency Offset (normalized to SR)	Attenuation (dB)
+/−0.75 x SR	0
+/−1.40 x SR	20
+/−2.80 x SR	40
+/−4.00 x SR or +/−35 kHz, Whichever is greater	F_m

Where:

$F_m = 55$ or $(37+10\log_{10}pY)$, whichever is greater

SR = Symbol Rate

SR = 1 x channel rate for BPSK

SR = 0.5 x channel rate for QPSK

8. Section 87.141 is amended by adding a new paragraph (j) to read as follows:

§ 87.141 Modulation requirements.

* * * * *

(j) Transmitters used at Aircraft earth stations must employ BPSK for transmission rates up to and including 2400 bits per second, and QPSK for higher rates.

9. Section 87.145 is amended by revising paragraph (b) and by adding a new paragraph (e) to read as follows:

§ 87.145 Acceptability of transmitters for licensing.

* * * * *

(b) Each transmitter must be type accepted for use in these services, except as listed in paragraph (d) of this section. However, aircraft stations which transmit on maritime mobile frequencies must use transmitters authorized for use in ship stations in accordance with Part 80 of this Chapter.

* * * * *

(e) Aircraft earth stations must correct their transmit frequencies for Doppler effect relative to the satellite. The transmitted signal may not deviate more than 335 Hz from the desired transmit frequency. (This is a root sum square error which assumes zero error for the received ground earth station signal and includes the AES transmit/receive frequency reference error and the AES automatic frequency control residual errors.) The applicant must attest that the equipment provides adequate Doppler effect compensation and where applicable, that measurements have been made that demonstrate compliance. Submission of data demonstrating compliance is not required unless requested by the Commission.

10. Section 87.147 is amended by revising paragraph (d)(3) to read as follows:

§ 87.147 Type acceptance of equipment.

* * * * *

(d) * * *

(3) The frequency bands are as follows:

74.800 MHz to 75.200 MHz
108.000 MHz to 137.000 MHz
328.600 MHz to 335.400 MHz
960.000 MHz to 1215.000 MHz
1559.000 to 1626.500 MHz
1646.500 MHz to 1660.500 MHz
5000.000 MHz to 5250.000 MHz
14.000 GHz to 14.400 GHz
15.400 GHz to 15.700 GHz
24.250 GHz to 25.250 GHz
31.800 GHz to 33.400 GHz

§ 87.171 [Amended]

11. Section 87.171 is amended by adding the following symbol and class of station in alphabetical order, "T]—Aircraft earth station in the Aeronautical Mobile-Satellite Service."

12. Section 87.173 is amended by adding the frequency band 1646.5–1660.5 MHz to the frequency table in paragraph (b), to read as follows:

§ 87.173 Frequencies

* * * * *

(b) * * *

Frequency or frequency band	Subpart	Class of Station	Remarks
1559–1626.5 MHz.	F	TJ	Aeronautical Mobile-Satellite (R).
1646.5–1660.5 MHz.			

13. Section 87.185 is amended by revising paragraphs (b) and (c) and adding a new paragraph (d) to read as follows:

§ 87.185 Scope of service.

* * * * *

(b) Aircraft public correspondence service must be made available to all persons without discrimination and on reasonable demand, and must communicate without discrimination with any public coast station or mobile-satellite earth station authorized to provide aircraft public correspondence service.

(c) Aircraft public correspondence service on maritime mobile frequencies may only be carried by aircraft stations licensed to use maritime mobile frequencies and must follow the rules for public correspondence in Part 80.

(d) Aircraft public correspondence service on Aeronautical Mobile-Satellite (R) Service frequencies may only be carried on aircraft earth stations licensed to use Aeronautical Mobile-Satellite (R) frequencies and are subject to the rules for public correspondence in this Part. Aircraft public correspondence service on Maritime Mobile-Satellite Service frequencies may only be carried by aircraft earth stations licensed to use Maritime Mobile-Satellite frequencies and are subject to the rules for public correspondence in Part 80.

14. Section 87.187 is amended by redesignating paragraphs (p) through (aa) as paragraphs (q) through (bb), and adding a new paragraph (p) to read as follows:

§ 87.187 Frequencies.

* * * * *

(p) The frequencies in the band 1545.000–1559.000 MHz and 1646.500–1660.500 MHz are authorized for use by the Aeronautical Mobile-Satellite (R) Service. The use of the bands 1544.000–1545.000 MHz (space-to-Earth) and 1645.500–1646.500 MHz (Earth-to-space) by the Mobile-Satellite Service is limited to distress and safety operations. In the frequency bands 1549.500–1558.500 MHz and 1651.000–1660.000 MHz, the Aeronautical Mobile-Satellite (R) requirements that cannot be accommodated in the 1545.000–1549.500 MHz, 1558.500–1559.000 MHz, 1646.500–1651.000 MHz, and 1660.000–1660.500 MHz bands shall have priority access with real-time preemptive capability for communications in the Mobile-Satellite service. Systems not interoperable with the Aeronautical Mobile-Satellite (R) Service shall operate on a secondary basis. Account shall be taken of the priority of safety-related communications in the Mobile-Satellite Service.

* * * * *

15. Section 87.189 is amended by revising paragraph (a), redesignating paragraphs (b) through (d) as paragraphs (c) through (e), adding a new paragraph (b), and revising redesignated paragraphs (c) and (d) to read as follows:

§ 87.189 Requirements for public correspondence equipment and operations.

(a) Transmitters used for public correspondence by aircraft stations in the maritime mobile frequency bands must be authorized by the Commission in conformity with Part 80 of this Chapter.

(b) Transmitters used for public correspondence by aircraft stations in the Aeronautical Mobile-Satellite (R) or Maritime Mobile-Satellite frequencies must be type-accepted by the Commission in conformity with Part 87. Aircraft earth stations that are required to be commissioned to use a privately owned satellite system also must meet the provisions of § 87.51.

(c) A continuous watch must be maintained on the frequencies used for safety and regularity of flight while public correspondence communications are being handled. For aircraft earth stations, this requirement is satisfied by compliance with the priority and preemptive access requirements of § 87.187(p).

(d) All communications in the Aeronautical Mobile Service and the Aeronautical Mobile-Satellite (R) Service have priority over public correspondence.

* * * * *

[FR Doc. 92–23979 Filed 10–2–92; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL COMMUNICATION COMMISSION

47 CFR Part 90

[FCC No. 92-431]

Eligibility Rules for Special Emergency Paging

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action modifies 90.38 of the Commission's Rules by expanding the eligibility of end users to which special emergency paging licensees can provide service. Hospital paging systems could not be used to inform participants in an organ donor program of the availability of a suitable organ. The Commission has decided that patients actively awaiting an organ transplant should be eligible under the Special Emergency Radio Service to receive paging service.

EFFECTIVE DATE: November 4, 1992.

FOR FURTHER INFORMATION CONTACT: Kent Nakamura, Private Radio Bureau, (202) 632-6940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 92-431, adopted September 9, 1992 and released September 24, 1992. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, telephone (202) 452-1422.

Summary of Order

The Commission's Rules render certain classes of physically handicapped individuals and their parents or guardians eligible under the Special Emergency Radio Service to receive private carrier paging service. The enumerated classes of eligibles, however, did not explicitly include patients actively awaiting an organ transplant. Persons awaiting an organ transplant need to remain in contact with their hospitals in the event a suitable organ becomes available for transplant; if they are unable to be in surgery within hours after an organ has been located, the organ goes to the next patient on the waiting list. In response to a request for clarification from the Telocator Science and Education Foundation, the Commission amended its rules to make clear that patients actively awaiting an organ transplant as well as their parents or guardians are eligible to receive private carrier paging service.

Regulatory Flexibility Act Certification

The Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. The rule will make clear that persons actively awaiting organ transplants are eligible to receive private carrier paging service. The number of such persons is small, and the paging service is usually provided for free. Thus, the rule will not have a significant economic impact under the Regulatory Flexibility Act.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Amendatory Text

Part 90 chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. In Section 90.38, paragraph (a)(4) is redesignated as (a)(5) and a new paragraph (a)(4) is added to read as follows:

§ 90.38 Physically handicapped.

(a) * * *

(4) Any person actively awaiting an organ transplant.

* * * * *

[FR Doc. 92-23978 Filed 10-2-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC-100 (Sub-No. 7)]

Single State Insurance Registration—1993 Rules

AGENCY: Interagency Commerce Commission.

ACTION: Final rules; Suspension of effective date.

SUMMARY: By decision served September 11, 1992 (57 FR 43151 September 18, 1992), the Commission adopted revised regulations pertaining to registration of motor carrier certificates and permits with the States. A corrected decision was served September 24, 1992. The regulations, which govern filings for the 1993 registration year, eliminate the "bingo card" system codified in the predecessor rules. The regulations are intended to alleviate burdens on the trucking industry pending Commission formulation of single State insurance registration rules required under the Intermodal Surface Transportation Efficiency Act of 1991. The new rules were to be effective on October 1, 1992. However, on September 30, 1992, the United States Court of Appeals for the D.C. Circuit entered an order staying the effective date of the new rules.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz (202) 927-5316

or

Richard B. Felder (202) 927-5610

[TDD for the hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: On September 22, 1992, a number of joint petitioners filed an emergency motion to stay or, in the alternative for summary reversal, of final rules adopted by the Commission in *Single State Insurance Registration—1993 Rules*, 9 I.C.C.2d 1 (1992), in the United States Court of Appeals for the D.C. Circuit. In a decision entered and effective on September 30, 1992, the court concluded the petitioners had satisfied the standards required for a stay pending court review and granted the stay. *National Association of Regulatory Commissioners, et al.* v. *Interstate Commerce Commission and United States of America*, No. 92-1439 (D.C. Cir. Sept. 30, 1992). Accordingly, the rules are stayed pending further court action.

Dated: October 1, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-24251 Filed 10-1-92; 3:18 pm]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Reopening.

SUMMARY: NMFS announces that the recreational salmon fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, reopened for 1 day on September 27, 1992. This fishery was closed September 17, 1992, upon the projected attainment of the subarea coho salmon quota. The Director, Northwest Region, NMFS (Regional Director), determined that a sufficient number of coho salmon remain to allow the reopening of this fishery for 1 day. This action was intended to maximize the harvest of coho salmon without exceeding the ocean share allocated to the recreational fishery in this subarea.

DATES: Effective from 0001 hours until 2359 hours local time, September 27, 1992. Comments will be accepted through October 15, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way N.E., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the second season for the recreational fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, would begin no earlier than September 14 and continue through the earliest of October 1 or attainment of either the overall chinook salmon quota or the subarea coho salmon quota of 3,000 fish. The subarea coho salmon quota was revised to be 5,700 coho salmon and the fishery was closed on September 17 when the coho salmon quota was projected to have been attained (57 FR 44135, September 24, 1992).

The ocean salmon regulations at 50 CFR 661.21(a)(2) state that "If a fishery is closed under a quota before the end of a scheduled season based on over-estimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours."

Based on the best available information on September 22, 1992, the recreational fishery catch in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, totaled 4,270 coho salmon. The remainder of the subarea coho salmon quota is sufficient to provide for an additional 24 hour opening. Therefore, the fishery was reopened for 1 day on Sunday, September 27. This reopening is consistent with the management objectives for coho salmon in this subarea.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this reopening. The states of Washington and Oregon will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. Actual notice to affected fishermen was given prior to 0001 hours local time, September 27, 1992, through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 662.23. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 29, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–24010 Filed 9–30–92; 4:43 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 193
Monday, October 5, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 835

RIN 3206-AE72

Debt Collection

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations by establishing a new part 835 dealing entirely with debt collection. Collection procedures for both the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) will be combined in this part. Separate regulations will be prepared to cover subparts A through E of part 835. This regulation establishes a subpart F covering procedures whereby delinquent debts owed to OPM will be referred to the Internal Revenue Service (IRS) for collection by offset against Federal income tax refunds under 31 U.S.C. 3720A. These regulations are necessary for OPM to participate in the Tax Refund Offset Program for 1993.

DATES: Comments must be received on or before November 4, 1992.

ADDRESSES: Send comments to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, P.O. Box 884, Washington, DC 20044, or hand deliver to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Rochester, (202) 606-0299.

SUPPLEMENTARY INFORMATION: This proposed rule will establish procedures for OPM to refer past-due legally enforceable debts to the IRS for offset against Federal income tax refunds of persons owing debts to OPM. These procedures are being codified in OPM's regulations for general information and are consistent with IRS regulations for Federal tax refund offsets.

Section 3720A of title 31, United States Code, authorizes the IRS to reduce a taxpayer's Federal income tax refund by the amount of any legally enforceable debt that is owed to a Federal agency if it is at least 3 months overdue. An agency may give the IRS notice of a past-due legally enforceable debt in accordance with regulations issued by the Department of the Treasury at 26 CFR 301.6402-6. Before an agency gives such notice, however, it must: (1) Notify the debtor that the agency proposes to refer the debt for a Federal income tax refund offset; (2) give the debtor 60 days from the date of the notification to present evidence that all or part of the debt is not past-due or legally enforceable; (3) consider any evidence presented by the debtor and determine whether any amount of such debt is past-due and legally enforceable; and (4) satisfy such other conditions as the Secretary of the Treasury may prescribe to ensure that the agency's determination is valid and that the agency has made reasonable efforts to obtain payment of the debt.

This rule provides that before OPM refers a debt to the IRS, a Notice of Intent will be sent to the debtor. The Notice of Intent will inform the debtor of the amount of the debt and that unless the debt is repaid within 60 days from the date of the Notice of Intent, OPM intends to collect the debt by requesting the IRS to offset any Federal income tax refund payable to the debtor. In addition, the Notice of Intent will state that the debtor has a right, during the 60-day period, to present evidence that all or a portion of the debt is not past-due or legally enforceable and explain how the debtor can submit such evidence. OPM will consider this evidence and notify the debtor of its decision and any subsequent action to be taken as a result of the debtor's submission.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities because it will only affect private persons who owe debts to the Civil Service Retirement and Disability Fund.

List of Subjects in 5 CFR Part 835

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement, Survivors.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM proposes to add a new part 835 to 5 CFR chapter I to read as follows:

PART 835—DEBT COLLECTION

Subparts A-E—[Reserved]

Subpart F—Collection of debts by Federal tax refund offset

Sec.

835.601 Purpose.
835.602 Past-due legally enforceable debt.
835.603 Notification of intent to collect.
835.604 Reasonable attempt to notify.
835.605 OPM consideration of evidence submitted as a result of the notice of intent.
835.606 Change in notification to Internal Revenue Service.
835.607 Administrative charges.

Authority: 5 U.S.C. 8347(a) and 8461(g). Subpart F also issued under 31 U.S.C. 3720A

§ 835.601 Purpose.

This subpart establishes procedures for OPM to refer past-due legally enforceable debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to OPM. It specifies the agency procedures and the rights of the debtor applicable to claims referred under the Federal Tax Refund Offset Program for the collection of debts owed to OPM.

§ 835.602 Past-due legally enforceable debt.

A past-due legally enforceable debt for referral to the IRS is a debt that—

(a) Resulted from—

(1) Erroneous payments made under the Civil Service Retirement or the Federal Employees' Retirement Systems; or

(2) Unpaid health or life insurance premiums due under the Federal Employees' Health Benefits or Federal Employees' Group Life Insurance Programs; or

(3) Any other statute administered by OPM;

(b) Is an obligation of a debtor who is a natural person;

(c) Except in the case of a judgment debt, has been delinquent at least 3 months but not more than 10 years at the time the offset is made;

(d) Is at least $25.00;

(e) With respect to which the individual's rights described in 5 CFR 831.1301 through 831.1309 have been exhausted;

(f) With respect to which either:

(1) OPM's records do not contain evidence that the person owing the debt (or his or her spouse) has filed for bankruptcy under Title 11 of the United States Code; or

(2) OPM can clearly establish at the time of the referral that the automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding;

(g) Cannot currently be collected under the salary offset provisions of 5 U.S.C. 5514(a)(1);

(h) Is not eligible for administrative offset under 31 U.S.C. 3716(a) because of 31 U.S.C. 3716(c)(2), or cannot currently be collected as an administrative offset by OPM under 31 U.S.C. 3716(a) against amounts payable to the debtor by OPM; and

(i) Has been disclosed by OPM to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.

§ 835.603 Notification of intent to collect.

(a) *Notification before submission to the IRS.* A request for reduction of an IRS income tax refund will be made only after OPM makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notice of the intent to collect by IRS tax refund offset.

(b) *Contents of notice.* OPM's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(1) The amount of the debt;

(2) That unless the debt is repaid within 60 days from the date of OPM's Notice of Intent, OPM intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as a Federal income tax refund by an amount equal to the amount of the debt and all accumulated interest and other charges;

(3) A mailing address for forwarding any written correspondence and a contact name and a toll-free or collect telephone number for any questions; and

(4) That the debtor may present evidence to OPM that all or part of the debt is not past due or legally enforceable by—

(i) Sending a written request for a review of the evidence to the address provided in the notice;

(ii) Stating in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable;

(iii) Including in the request any documents that the debtor wishes to be considered or stating that the additional information will be submitted within the remainder of the 60-day period.

§ 835.604 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, OPM must have used a mailing address for the debtor obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2) within a period of 1 year preceding the attempt to notify the debtor, unless OPM received clear and concise notification from the debtor that notices from the agency are to be sent to an address different from the address obtained from IRS. Clear and concise notice means that the debtor has provided the agency with written notification, including the debtor's name and identifying number (as defined in 26 CFR 301.6109–1), and the debtor's intent to have the agency notices sent to the new address.

§ 835.605 OPM action as a result of consideration of evidence submitted as a result of the notice of intent.

(a) *Consideration of evidence.* If, as a result of the Notice of Intent, OPM receives notice that the debtor will submit additional evidence or receives additional evidence from the debtor within the prescribed time period, any notice to the IRS will be stayed until OPM can—

(1) Consider the evidence presented by the debtor; and

(2) Determine whether or not all or a portion of the debt is still past due and legally enforceable; and

(3) Notify the debtor of its determination.

(b) *Notification to the debtor.* Following review of the evidence, OPM will issue a written decision notifying the debtor whether OPM has sustained, amended, or cancelled its determination that the debt is past-due and legally enforceable. The notice will advise the debtor of any further action to be taken and explain the supporting rationale for the decision.

(c) *OPM action on the debt.* (1) OPM will notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund, if it sustains its decision that the debt is past-due and legally enforceable. OPM will also notify the debtor whether the amount of the debt remains the same or is modified.

(2) OPM will not refer the debt to the IRS for offset against the debtor's Federal income tax refund, if it reverses its decision that the debt is past-due and legally enforceable.

§ 835.606 Change in notification to Internal Revenue Service.

(a) Except as noted in paragraph (b) of this section, after OPM sends IRS notification of an individual's liability for a debt, OPM will promptly notify IRS of any change in the notification, if OPM—

(1) Determines that an error has been made with respect to the information contained in the notification;

(2) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to the IRS for offset; or

(3) Receive notification that the individual owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(b) OPM will not notify the IRS to increase the amount of a debt owed by a debtor named in OPM's original notification to the IRS.

(c) If the amount of a debt is reduced after referral by OPM and offset by the IRS, OPM will refund to the debtor any excess amount and will promptly notify the IRS of any refund made by OPM.

§ 835.607 Administrative charges.

All administrative charges incurred in connection with the referral of the debts to the IRS will be assessed on the debt and thus increase the amount of the offset.

[FR Doc. 92–23948 Filed 10–2–92; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 944

[Docket No. FV–91–245PR]

Fruits; Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would lift a temporary suspension of, and make

minor revisions to, the minimum grade and size requirements for grapefruit imported into the United States. These requirements were temporarily suspended on March 11, 1991, to provide the United States Trade Representative (USTR) adequate time of review contemplated changes in the import requirements. This proposed action is needed to require imported grapefruit to meet the same minimum grade and size requirements established for grapefruit under the marketing order covering Florida grapefruit, and is required by section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

DATES: Comments must be received by October 20, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–5331.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under section 8e 7 U.S.C. section 608e-1 of the Agricultural Marketing Agreement Act of 1937, as amended 7 U.S.C. 601–674, hereinafter referred to as the Act. Section 8e of the Act provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply regulations based on that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapefruit grown in Florida regulated under Marketing Order No. 905, and has found that the minimum grade and size requirements for imported grapefruit should be the same as those established for grapefruit under Marketing Order No. 905.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation, and impact on both small and large business entities in a manner comparable to rules issued under such marketing orders. There are about 25 importers of grapefruit. Small agricultural service firms, which includes importers, have been defined by the Small Business Administration 13 CFR 121.601 as those whose annual receipts are less than $3,500,000. A majority of these importers may be classified as small entities.

The minimum grade and size requirements specified in § 944.106 (7 CFR 944.106) for imported grapefruit were in effect on a continuous basis for several years prior to their suspension on March 11, 1991 (56 FR 10792, March 14, 1991). These requirements were suspended to provide the United States Trade Representative (USTR) adequate time to review contemplated changes in the grapefruit import requirements needed to reflect changes in the minimum grade and size requirements for Florida grapefruit specified in § 905.306 (7 CFR 905.306; as amended at 57 FR 334, January 6, 1992) under Marketing Order No. 905.

This rule proposes that imported grapefruit be inspected and certified as meeting the following requirements: (1) Seeded grapefruit would need to grade at least U.S. No. 1 and be at least $3^{1}\frac{2}{32}$ inches in diameter; and (2) white and red seedless grapefruit would need to grade at least Improved No. 2 (external) and U.S. No. 1 (internal) and be at least $3\frac{5}{32}$ inches in diameter, except that the minimum size would increase to $3\frac{9}{32}$ inches in diameter for white seedless grapefruit on August 17, 1992, and for red seedless grapefruit on October 26, 1992. These grapefruit import requirements would be the same as those in effect under Marketing Order No. 905, and similar to those in effect under § 944.106 just prior to their suspension on March 11, 1991.

The rule also proposes that the minimum grade and size requirements for grapefruit be specified in § 944.106. In addition, the section heading would be revised, the term "grapefruit" would be defined, and current paragraph (d) in the section would be removed since it is not needed. These changes would be non-substantive in nature and would be taken to make the regulation easier to read and understand by persons affected by the requirements.

Further, this rule proposes to increase the quantity of grapefruit which persons may import, exempt from import requirements to 15 standard packed $\frac{4}{5}$-bushel cartons, so that it is the same quantity as the quantity of Florida grapefruit currently exempted under § 905.141 (7 CFR 905.141). The exemption in the suspended import regulation was 10 standard packed $\frac{4}{5}$-bushel cartons.

During the 1989 and 1990 seasons, fresh grapefruit were imported into the United States from the Bahamas, the Dominican Republic, Israel, and Mexico. United States imports of grapefruit increased from 105,900 cartons (42.5 pounds per carton) in 1986 to 270,600 cartons in 1990. The 1988 import volume of 312,900 cartons was the largest in recent years. Imports from the Bahamas, the principal source of grapefruit imports, rose from 49 percent of the total in 1986 to 82 percent of the total in 1990.

The Department's National Agricultural Statistics Service final forecast for 1990–91 Florida grapefruit production is 90.2 million cartons (42.5 pounds per carton), 26 percent above the

1989–90 freeze-reduced crop. According to the Citrus Administrative Committee, which locally administers Marketing Order No. 905, Florida fresh grapefruit shipments totaled 44.7 million cartons for the 1990–91 season. Department Market News data indicate that Florida shipments accounted for over 85 percent of United States total fresh grapefruit shipments during the years from 1986 through 1990. Imports will likely constitute less than one percent of United States fresh utilization.

In accordance with section 8e of the Act, the USTR has concurred with the issuance of this proposed rule.

Based on the above, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

This proposed rule reflects the Department's appraisal of the need to lift the suspended grapefruit import requirements to provide equal treatment to both domestic producers and importers, and make the specified changes in the grapefruit import regulation, as hereinafter set forth, in accordance with the Act.

A comment period of 15 days is deemed appropriate because the import requirements need to be in place as soon as possible, since grapefruit are currently being imported into the United States.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is proposed to be amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The suspension of § 944.106 is lifted and that section is revised to read as follows:

§ 944.106 Grapefruit import regulation.

(a) Pursuant to Section 8e (7 U.S.C. section 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and part 944—Fruits; Import Regulations, the importation into the United States of any grapefruit is prohibited unless such grapefruit meet the following minimum grade and size requirements for each specified grapefruit classification:

Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (in.)[1]
Seeded	On and after[1]	U.S. No. 1	3 2/32
Seedless, red	[1]–10/25/92	Improved No. 2 (External), U.S. No. 1 (Internal)	3 9/32
	On and after 10/26/92	Improved No. 2 (External), U.S. No. 1 (Internal)	3 9/32
Seedless, except red	On and after 08/17/92	Improved No. 2 (External), U.S. No. 1 (Internal)	3 5/32

[1] Insert effective date of final rule.

(b) The term grapefruit is defined as citrus paradisi, MacFadyen.

(c) Terms and tolerances pertaining to grade and size requirements, which are defined in the United States Standards for Grades of Florida Grapefruit (7 CFR 51.750–51.784), and in Marketing Order No. 905 (7 CFR 905.18), shall be applicable herein.

(d) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of grapefruit imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of grapefruit, is required on all such imports. The inspection and certification services will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards of Fresh Fruits, Vegetables, and Other Products (7 CFR part 51), and in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.400).

(e) The term "importation" means release from custody of the United States Customs Service.

(f) Any person may import up to 15 standard packed cartons (12 bushels) of grapefruit exempt from the requirements specified in this section.

(g) Any grapefruit which fail to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such grapefruit borne by the importer.

(h) The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapefruit grown in Florida regulated under Marketing Order No. 905.

Dated: September 24, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–23859 Filed 10–2–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 1

[Docket No. 92–20]

Investment Securities Regulations

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The office of the Comptroller of the Currency (OCC) is requesting comments on a proposal to amend its investment securities regulation to remove the requirement that banks maintain for specified periods of time credit information on issuers of certain securities. The purpose of the change is to reduce regulatory burden while promoting bank safety and soundness. National banks are expected to continue to exercise prudent banking judgment to retain records for appropriate periods.

DATES: Comments must be received by November 4, 1992.

ADDRESSES: Interested persons are invited to submit written data, views, or comments regarding the proposed

amendment to Docket No. 92–20, Communications Division, 9th Floor, Office of the Comptroller of Currency, 250 E Street, SW., Washington, DC 20219. Attention: Karen Carter.

FOR FURTHER INFORMATION CONTACT: Owen Carney, Capital Markets Division, Telephone: (202) 874–5070, Michael C. Dugas, Securities, Investments and Fiduciary Practices Division, Telephone (202) 874–5210.

SUPPLEMENTARY INFORMATION: The OCC is proposing to amend its investment securities regulations to eliminate the requirement contained in 12 CFR 1.8(b). Section 1.8(a) requires banks to hold information adequate to demonstrate that they have exercised prudence in making determinations and carrying out securities transactions. Section 1.8(b) requires banks holding certain securities to maintain information for specified periods of time, depending on whether the bank is purchasing securities for its own portfolio, underwriting or engaging in dealer activities. The OCC believes these specific retention requirements in § 1.8(b) are unnecessary.

Under current industry practice and prudent management practices, investing banks generally use and maintain relevant credit data supplied by issuers, investment bankers and credit rating services. Examples of such credit data are summary analyses and in-depth analyses prepared by rating services or the financial advisory departments of large correspondent banks. These analyses generally are updated on an ongoing basis, and provide more meaningful information than an original prospectus, particularly as it becomes dated.

The OCC believes that current credit data, supplied in accordance with industry practice, will adequately demonstrate that the bank has exercised prudence in making investment determinations and carrying out investment transactions. Therefore, the § 1.8(b) requirement for banks to retain records for specific time periods appears unnecessary.

The intended effect of the change is to remove an unnecessary regulatory requirement. If this proposal is adopted, Part 1 will no longer expresely require national banks to maintain credit information on issuers of investment securities for specified time periods. Yet, banks will be expected to continue to maintain sufficient information to evidence prudent banking judgment.

The OCC requests comment on any aspect of this proposal.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required. The impact of this proposal is slight. The proposal would eliminate an unnecessary regulatory requirement.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The impact of this proposal is slight, regardless of bank size. This proposal would eliminate an unnecessary regulatory requirement.

List of Subjects in 12 CFR Part 1

Banks, Banking, National banks, Investment securities, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, part 1 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—INVESTMENT SECURITIES REGULATION

1. The authority citation for 12 CFR part 1 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a.

§ 1.8 [Amended]

2. Section 1.8 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

Dated: August 13, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92–23997 Filed 10–2–92; 8:45 am]

BILLING CODE 4810–33–M

Office of Thrift Supervision

12 CFR Part 567

[No. 92–338]

RIN 1550–AA59

Capital: Concentration Risk and Risk of Nontraditional Activities

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing this advance notice of proposed rulemaking to solicit comments on ways that the OTS could ensure that its capital regulation takes adequate account of concentrations of credit risk and the risks of nontraditional activities. The OTS will consider the comments received in developing a proposed rule on concentration risk and nontraditional activities as required by section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Section 305 also requires that the OTS develop a final rule on interest-rate risk, which is being treated separately. The OTS solicits comment on the specific questions set forth below and on all aspects of the concentration risk and nontraditional activities portions of section 305. This initiative is being undertaken on a coordinated basis with the other Federal banking agencies.

DATES: Comments must be received on or before December 4, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No 92–338. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7753 or (202) 906–7755. Submissions must be recieved by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Program Manager, Capital Policy, (202) 906–6465; Robert Fishman, Program Manager, Credit Risk Policy, (202) 906–5672, Policy; and Dorene Rosenthal, Attorney, (202) 906–7268, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 305 of FDICIA requires each appropriate Federal banking agency to revise its risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of concentrations of credit risk and the risks of nontraditional activities. Final regulations implementing section 305 must be published not later than 18 months after the enactment of FDICIA.

Before developing a proposal for these two types of risk, the OTS is issuing this advance notice of proposed rulemaking to seek guidance on how these risks should be defined and on the factors that should be considered when

incorporating these risks into capital standards. These comments will be considered in proposing any changes to the risk-based capital standards. The OTS intends to work together with the other Federal banking agencies in formulating a proposed rule that complies with all aspects of section 305 of FDICIA.

II. Concentration of Credit Risk

Section 305 requires each Federal banking agency to revise its risk-based capital standards to take adequate account of concentrations of credit risk. Currently, this risk is considered when performing an overall evaluation of an institution's capital adequacy. In making this revision, the OTS must consider an appropriate definition of concentration and must also assess whether current risk-based capital standards take adequate account of concentrations of credit risk. The OTS seeks comments on the following questions and issues:

(1) What factors should be taken into account in defining concentrations of credit risk for risk-based capital purposes, *i.e.* industry, geography, collateral, loan type, or all of these characteristics? How should this test be applied to savings associations that are required by the Qualified Thrift Lender Test to concentrate in residential mortgage lending?

(2) How should risk-based capital standards be revised, if at all, to take adequate account of concentrations of credit risk?

(3) Most insured depository institutions appropriately concentrate their activities in their local market areas and specialize in types of lending in which they have experience and expertise. How should concentration be defined and the concentration test be structured to avoid providing an incentive for institutions to increase their risk exposure by expanding their lending territories and lines of business beyond those in which they have adequate knowledge and experience?

(4) Should there be a requirement for additional capital based on an objective formula that increases with asset concentrations or should capital be based on an overall evaluation of the effect of concentration risk on a specific institution? How should an objective formula be specified? What factors should be considered when performing an overall evaluation of an institution's capital adequacy?

(5) What factors should be considered in revising capital standards for concentration of credit risk?

III. Nontraditional Activities

Section 305 also requires each agency to revise its risk-based capital standards to take account of the risks of nontraditional activities. Since risk-based capital standards were formulated in the mid-1980s, insured depository institutions have commenced certain activities, such as commodity-linked transactions, that were not directly identified or explicitly treated in the agencies' risk-based capital regulations. These activities have been monitored by the federal banking agencies. New or nontraditional activities have been reviewed for their appropriate treatment in the risk-based capital framework. If a new activity has not appeared to fit readily within the existing risk-based capital definitions, interpretations have been made to clarify the new activity's appropriate treatment for capital purposes.

In implementing section 305, the OTS would formalize this process to ensure that institutions hold capital commensurate with the risk of nontraditional activities. The agencies' risk-based capital regulations will be amended to explicitly incorporate the risks of nontraditional activities. In this regard, the OTS seeks comments on the following questions and issues:

(6) What should the OTS consider to be a nontraditional activity?

(7) Should there be a requirement for additional capital based on a general, objective formula or should additional capital be required based on a case-by-case evaluation of the risk of the nontraditional activity in the context of an institution's risk profile and capital adequacy? How should an objective formula be structured?

(8) How should risk-based capital standards be revised to take adequate account of the risk of nontraditional activities?

(9) What factors should be considered when evaluating the risk of nontraditional activities?

Dated: July 30, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-24021 Filed 10-2-92; 8:45 am]

BILLING CODE 6720-01-M

Customs Service

19 CFR Part 10

Proposed Customs Regulations Amendments Relating to the United States-Israel Free Trade Area Agreement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period of time within which interested members of the public may submit comments on proposed amendments to the Customs Regulations to implement the duty preference provisions of the Agreement which established the United States-Israel Free Trade Area. Customs has been requested to extend the comment period to allow additional time to prepare responsive comments. The comment period is extended 60 days.

DATES: Comments are requested on or before November 28, 1992.

ADDRESSES: Comments may be submitted to and inspected at the Regulations Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Maritza Castro, Office of Trade Operations (202-927-0789); Legal Aspects: Craig Walker, Office of Regulations and Rulings (202-927-0790).

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1992, a document was published in the **Federal Register** (57 FR 33909) proposing to amend the Customs Regulations in order to implement the duty preference provisions of the Agreement which established the United States-Israel Free Trade Area. The document solicited public comments that were to be received on or before September 29, 1992.

Customs has been requested to extend the period of time for comments in order to afford interested parties additional time to study the proposed regulations and prepare responsive comments. In view of the important role of the implementing regulations in carrying out the terms of the bilateral Agreement, Customs believes that the request for an extension of time should be granted. Accordingly, the period of time for the submission of comments is being extended 60 days.

Dated: September 29, 1992.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 92-24035 Filed 10-2-92; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 301

[IA-4-92]

RIN 1545-AQ49

Authority of the Federal Crop Insurance Corporation to Require Employer Identification Numbers From Policyholders and Reinsured Companies for Purposes of the Federal Crop Insurance Act; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (IA-4-92), which was published on Monday, August 31, 1992 (57 FR 39379). The proposed regulations relate to the authority of the Federal Crop Insurance Corporation (FCIC) to require policyholders and reinsured companies to furnish employer identification numbers for purposes of administering the Federal Crop Insurance Act.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman, (202-622-4940, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) to provide rules under section 6109 of the Internal Revenue Code of 1986, as amended by section 2201(d) of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101-624, 104 Stat. 3953 (1990 FACT Act).

Need for Correction

As published, the proposed regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (IA-4-92), which was the subject of FR Doc. 92-20921, is corrected as follows:

Paragraph 1. On page 39380, column one, under the heading **"FOR FURTHER INFORMATION CONTACT:"**, line six, the language "CC:IT&A:4) or telephone 202-566-6985" is corrected to read "CC:IT&A:4 or telephone 202-622-4940".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-24110 Filed 10-2-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

48 CFR Parts 5415 and 5452

DLA Acquisition Regulation; DLA Vendor Rating System

AGENCY: Defense Logistics Agency, DOD.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Defense Logistics Agency (DLA) is withdrawing the proposed Defense Logistics Agency acquisition regulation on the DLA Vendor Rating System (DVRS). The proposed coverage would have established new policy and a solicitation provision at parts 5415 and 5452, respectively. The proposed rule was published for public comment in the **Federal Register** on August 12, 1992 (56 FR 36051).

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Heretick, Defense Logistics Agency, DLA-PPR at (703) 274-6431.

List of Subjects in 48 CFR Parts 5415 and 5452

Government procurement.

By Order of the Director.

Jack S. Carver,

Acting Chief, Publications Division, Office of Administration.

[FR Doc. 92-24031 Filed 10-2-92; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Motor Vehicle Safety Standards; Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars—Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Herzlich Consulting requesting an amendment to Federal Motor Vehicle Safety Standards 110, *Tire Selection and Rims*, and 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*, that would require manufacturers to place in each vehicle's glove compartment or a similarly accessible/visible location the following warning: "Warning: underinflation, overloading or damage can cause any tire to fail suddenly." The agency has decided to deny the petition because the petitioner did not provide any data, and the agency is aware of none, demonstrating sufficient safety benefits to warrant the requested change. Accordingly, there is no reasonable probability that the requested amendment would be issued at the conclusion of a rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: Arthur H. Neill, Chief, Crash Avoidance Division, Office of the Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street Southwest, room 5307, Washington, DC 20590, (202) 366-5281.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard Number 110, *Tire Selection and Rims*, applicable to passenger cars and to non-pneumatic spare tire assemblies for use on passenger cars; establishes tire selection requirements. Pertinent to this petition, standard 110, at S4.3, requires manufacturers to affix a placard to each passenger car's glove compartment door or an equally accessible location, showing the vehicle's capacity weight, designated seating capacity, the manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, the manufacturer's recommended tire size designation, and for a vehicle equipped with a non-pneumatic spare tire assembly, the non-pneumatic tire identification code required by standard 129, *New Non-Pneumatic Tires for Passenger Cars*. The required information is intended to promote the vehicle's safe performance by preventing overloading of the tires or the vehicle itself.

Labeling requirements are also contained in 49 CFR part 567, *Certification*. Specifically, § 567.4 requires vehicle manufacturers to affix to each vehicle a label on which must

appear, among other things, the Gross Vehicle Weight Rating (GVWR), which shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the vehicle's rated seating capacity; and the Gross Axle Weight Rating (GAWR), which is the value specified by the manufacturer as the load carrying capacity of a single axle system. In addition, standard 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*, requires that each vehicle manufactured after December 1, 1984 must show, on the label required by § 567.4, or on a tire information label (S5.3.2.(b)) the recommended tire size designation appropriate for the GAWR (S5.3.3), the size and type designation of rims appropriate for those tires (S5.3.4), and the cold inflation pressure for those tires (S5.3.5). If the vehicle is so equipped, the label must also show the non-pneumatic tire identification code required by S4.3(a), Standard 129.

Petition

Herzlich Consulting (Herzlich) petitioned the agency on March 12, 1992, to amend standards 110 and 120 to include a requirement that the manufacturers of the vehicles subject to those standards place a warning in the glove compartment or some other accessible/visible location which would state, in high visibility letters: "Warning: Underinflation, Overloading, or Damage can Cause any Tire to Fail Suddenly."

In support of the petition, Herzlich argued that although the Federal and state governments and the tire industry continuously communicate tire safety information, such efforts are "rather unsuccessful." Herzlich also argued that tire failure due to road hazard damage, underinflation, or overload continues to be a problem. He stated that tires are the most important safety component on the vehicle and, perhaps because of their high degree of reliability, they are often taken for granted by consumers. He suggested that the industry maintain a tire registration and recall mechanism to retrieve tires that do not meet safety standards. The number of recalls in the past five years has been relatively small, but he asserted that actual tire failure because of underinflation, overload or road hazards is significant and requires additional NHTSA communication efforts. Citing a "recent Bendix brake survey," Herzlich stated that 48.4 percent of consumers cited brake failure as their greatest mechanical fear when driving, but only 19.6 percent said brakes should be inspected regularly. Herzlich then cited a NHTSA study, DOT HS 807 805, as showing that although 38 percent of consumers were familiar with tire heat resistance ratings, only 15 percent looked at them when purchasing tires and only 12 percent were influenced by the ratings. Herzlich referred to unspecified surveys purporting to show that a "significant number of vehicles are running on underinflated, overloaded, worn-out or damaged tires," which, he contended, indicates that people get careless and need to be reminded over and over again to inspect and properly maintain their tires. Hence, he submitted this petition to amend standards 110 and 120 to require the warning quoted above. Herzlich stated that although this petition is intended primarily to promote tire safety, exhorting people to maintain their tires properly could also enhance fuel economy and improve the environment. Specifically, Herzlich calculated that 1 to 3 billion gallons of gasoline could be saved per year by persuading people to maintain proper tire pressure which, he contends, would also result in a reduction in exhaust emissions, tire failure, and road service hazards.

Agency Decision

After a full and careful review of the petition, NHTSA has decided to deny it. There already exists a plethora of literature on proper tire maintenance from tire manufacturers, dealers, trade associations, government agencies, and vehicle manufacturers. Vehicle owners' manuals contain information on proper tire maintenance as well as related subjects which are equally important to proper vehicle operation. There is no reason to believe that requiring the same information be made available in yet another place would increase consumers' responsiveness to such information.

The petitioner has presented no data, and this agency is aware of none, that would support petitioner's assertions that improper maintenance causes the vast majority of tire failures; that a significant number of vehicles are running on underinflated, overloaded, worn out or damaged tires; or that granting this petition would have any effect on fuel economy or the environment. Indeed, it has not been demonstrated that tire failure is a significant safety problem or that granting this petition would significantly affect consumer behavior regarding tire maintenance.

In summary, NHTSA believes that the wealth of safety material already available to the public through industry, government, and consumer sources adequately address the issue of proper tire inflation and maintenance; that existing labeling requirements provide sufficient information to enable consumers to maintain tires properly and safely; and that the petitioner has not shown that the amendments he proposed would significantly change the behavior of the public in that respect. Thus, there is no reasonable probability that this agency would issue the requested amendments at the conclusion of a rulemaking proceeding. Accordingly, the petition of Herzlich Consulting is denied.

Issued on: September 30, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-24062 Filed 10-2-92; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

Denial of Petition for Rulemaking, Standard No. 108; Truck Trailer Manufacturers Association

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking to amend Standard No. 108, to require side turn signal lamps on trailers whose overall length exceeds 45 feet. Information available to the agency indicates that 90% of such trailers are already being manufactured with side turn signal lamps, and therefore that such safety benefits as may be ascribed to these devices are already being realized. Further, there appear to be no accident data to support the conclusion that mandatory side turn signals would prevent or lessen the severity of accidents.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA (202)-366-5275).

SUPPLEMENTARY INFORMATION: Truck Trailer Manufacturers Association (TTMA) has petitioned the agency for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to require that trailers whose overall length exceeds 45 feet be equipped with side turn signal lamps. The petitioner cited traffic situations where the visibility of long vehicles is important to safety. Tractors pulling long semitrailers make wide turns and side turn signals alert motorists of these impending turns. Drivers seeking to pass tractor-long trailer combinations typically require four times as long to pass as for a compact car. Further, when a driver is alongside a 65-foot tractor-trailer combination, the front and rear

turn signals may not be visible at all. TTMA cited in support a 1981 report by Vector Enterprises, *Improved Commercial Vehicle Conspicuity and Signalling Systems*. In this report, Vector stated that "With regard to the right turn collision problem, several companies reported that the addition of turn indicators (lamps) towards the front of their trailers has proven an effective countermeasure", and recommended, "in the case of trailers, a side-mounted turn signal * * * mounted midway along each side, and meeting the same requirements as the front, side-mounted signals." TTMA concluded that "There is compelling Reason to require side turn signal lamps on trailers longer than 45 feet."

NHTSA does not share TTMA's conclusion that safety compels the mandatory installation of side turn signals. As TTMA noted in its petition, "Most trailers which are longer than 45 feet are presently being manufactured with the side turn signal lamps typically located at the intermediate side marker lamp location * * *." When pressed to quantify the word "most", TTMA estimated that 90% of large trailers being manufactured today are equipped with side turn signals. It is true that there is not the standardization of size and location of these devices that could result from a Federal regulation. For example, some manufacturers provide a large amber lamp with a directional arrow silk-screened on the lens, while others provide a typical rear turn signal lamp placed at 45 degrees to the vehicle axis. But the fact remains that most long trailers are already equipped with turn signals visible to drivers in adjacent lanes.

It therefore appears to NHTSA that the principal safety benefits that could be realized from side turn signals may have already been achieved. The agency notes that there do not appear to be data available that actually demonstrate the efficacy of side turn signal lamps, and that such benefits as may be presumed are intuitive and anecdotal. Under the circumstances, such benefits appear to be an insufficient basis upon which to base rulemaking. Further, it has been the agency's policy not to expend its resources engaging in rulemaking in areas where virtually all industry's production are already equipped with the safety device in question. For example, the agency terminated rulemaking which would have required motorcycle headlamps to be illuminated when the ignition was turned to "on", because 90% or more of motorcycles were being produced with this feature. More recently, NHTSA declined to initiate rulemaking to require lap/shoulder belts on heavy trucks because there already appeared to be voluntary compliance with respect to 95% of production.

In accordance with 49 CFR part 522, this completes the technical review of the petition. The agency has determined that there is no reasonable possibility that the amendment requested by the petitioner will be issued at the conclusion of a rulemaking proceeding, and TTMA's petition is denied.

Authority: 15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.6.

Issued on: September 30, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-24063 Filed 10-2-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of Status Reviews for a Petition To List the Western Pond Turtle and California Red-Legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the western point turtle (*Clemmys marmorata*) and the California red-legged from (*Rana aurora draytonii*) under the Endangered Species Act of 1973, as amended (Act). The petition has been found to present substantial information indicating the requested action may be warranted. Through issuance of this notice, the Service is commencing a formal review of the status of these species.

DATES: The finding announced in this notice was made on August 12, 1992. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the above address until further notice.

ADDRESSES: Data, information, comments, or questions concerning the status of the petition species described below should be submitted to the Field Supervisor, Sacramento Field Office, Fish and Wildlife Service, 2800 Cottage Way, Room E-1803, Sacramento, California 95825-1846. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Peter Sorensen at the above address (916/978-4866).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the Service finds that a petition presents substantial information indicating that the requested action may be warranted, then the Service initiates a status review on that species. Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned action is warranted, within 1-year of the receipt of a petition that presents substantial information.

On January 29, 1992, the Service received a petition from Drs. Mark Jennings and Marc Hayes, and Mr. Dan Holland to list the western pond turtle (*Clemmys marmorata*) and the California red-legged frog (*Rana Aurora draytonii*). The petition specified endangered or threatened status by distinct drainages (watersheds) within the range of each species. The letter, dated January 15, 1992, identified itself as a petition and contained the names, addresses, and signatures of the petitioners. A letter acknowledging receipt of the petition was mailed to the petitioners on February 10, 1992.

The information submitted in support of the petition represents an impressive synthesis of research conducted on the western pond turtle and California red-legged frog to date. The petitioners have studied exhaustively the current and historic distribution and threats to these taxa. In addition, their biological studies on these species have resulted in the publication of numerous papers in the scientific literature. This 90-day finding is based on the above information.

The western pond turtle consists of two recognized subspecies: the northwestern pond turtle (*Clemmys marmorata marmorata*), which occurs from the Sacramento Valley and coastal drainages of California northward to the Columbia River drainage of Oregon and Washington; and the southwestern pond

turtle (*C. m. pallida*), found from the San Joaquin Valley and coastal drainages southward to northwestern Baja California, Mexico. Outlying populations of the northwestern pond turtle are recorded from the vicinity of Puget Sound, Washington; Grant County, Oregon; and the Carson and Truckee Rivers, Nevada.

A habitat generalist, the western pond turtle inhabits a wide range of fresh or brackish, permanent and intermittent water bodies from sea level to about 4,500 feet (1,372 meters). Hatchlings and juveniles require more specialized habitats. The western pond turtle feeds primarily on small aquatic invertebrates.

Over 90 percent of wetland habitats historically distributed throughout the pond turtle's range in California has been eliminated. A variety of human activities, including agricultural operations, urbanization, flood control, and water diversion projects, cumulatively have contributed to loss of habitat. In addition, primary threats include habitat fragmentation and associated effects on population viability, commercial harvest and overexploitation, and predation by introduced alien species. According to the petitioners, although the western pond turtle still occurs in most of its former geographic range, it has been completely or ecologically extirpated from many areas, including the type locality in Puget Sound. The few remaining areas that contain moderate to large viable populations are apparently under threat. Extirpation of historic populations has been most pronounced throughout southern California and the San Joaquin Valley.

The California red-legged frog historically was distributed throughout most of lowland California, occurring coastally from Point Reyes National Seashore, Marin County, and inland from Redding, Shasta County, southward into northwestern Baja California, Mexico. This taxon is a habitat specialist, which among other components, requires dense shrubby or emergent vegetation associated with essentially fresh, permanent, and deep (greater than about 3 feet (.9 meters), still or slow moving water. The diet of the California red-legged frog reportedly consists primarily of amphibians and other animals.

Like the western pond turtle, the California red-legged frog also has suffered severe losses of habitat, to the extent that the taxon has been extirpated from approximately 75 percent of its historic geographic range. Large breeding populations are apparently known from only three areas. The causes of habitat loss and population decline also are similar to that of the turtle. These include habitat fragmentation, overexploitation, and the spread of exotic species. The uncontrolled spread of bullfrogs (*Rana catesbeiana*), an alien species to California, represents a particularly severe threat that has resulted in the extirpation of numerous red-legged frog populations throughout its range.

The southwestern pond turtle (*Clemmys marmorata pallida*), and the California red-legged frog are both included as category 1 candidates in the November 21, 1991, Animal Notice of Review (56 FR 58804), with listing priority numbers of 3. The northwestern pond turtle (*C. m. marmorata*), is included as a category 2 candidate in the above notice of review.

The petition and supporting information have been reviewed by staff of the Sacramento Field Office and Portland Regional Office. As noted earlier, the petitioners have conducted a thorough review of the literature to date, as well as conducting biological studies on the status of these two species. The Service finds that the petition presents substantial information indicating that listing of the western pond turtle (*Clemmys marmorata*) and the California red-legged frog (*Rana aurora draytonii*) may be warranted. This decision is based on scientific and commercial information contained in the petition and on information otherwise available to the Service at this time.

This finding initiates status reviews for these two species. The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of these species.

Author

This notice was prepared by Peter Sorensen (Sacramento Field Office), and Leslie J. Propp (Portland Regional Office).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: August 12, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-24041 Filed 10-2-92; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN-1018-AA99

Endangered and Threatened Wildlife and Plants; Notice Reopening the Public Comment Period for the Bruneau Hot Springs Snail (Pyrgulopsis bruneauensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) is reopening the comment period on the proposal to add the Bruneau Hot Springs Snail (Pyrgulopsis bruneauensis) to the list of endangered wildlife. The Bruneau Hot Springs snail is endemic to the complex of related thermal springs adjacent to the Bruneau River south of Mountain Home, Idaho. The major threat to this species is habitat loss due to the drastic and continuing reduction in thermal spring flows from groundwater withdrawal/mining in the Bruneau Hot Springs aquifer. The Service proposed the snail for listing as endangered on August 21, 1985 (50 FR 33803). During four public comment periods and two public hearings following the proposed rule the Service received new information that questioned the distribution, population status, and impacts of present threats. In addition, there was substantial disagreement regarding the sufficiency or accuracy of the available data used to prepare the proposed rule. Following this period, the U.S. Congress appropriated funds to: (1) Implement a tentative draft management plan developed by the Service and five cooperating agencies; Bureau of Land Management, U.S. Geological Survey, Farmers Home Administration, Idaho Department of Fish and Game, and Idaho Department of Water Resources, (2) further study the species' current status and distribution, and (3) study hydrological conditions and groundwater withdrawal in the Bruneau River basin. A final decision concerning the proposed rule has not been published. On July 6, 1992, the Land Fund of the Rockies, representing the Idaho Conservation League and the Committee for Idaho's High Desert, filed suit in Federal district court in Boise, Idaho. The suit was filed under the Endangered Species Act of 1973, as amended, over the Service's failure to make a final decision on the proposed listing of the Bruneau Hot Spring snail. Because of the concerns raised in the lawsuit and to ensure the accuracy of any final decision concerning the

appropriateness of listing, the Service believes any additional new information must be considered. Therefore, the Service reopens the comment period on the proposed rule for 30 days. The Service's goal is to base its final decision on the best available scientific and commercial information.

DATES: The comment period on the proposal is reopened until November 4, 1992.

ADDRESSES: Written comments and materials should be sent to the Field Supervisor, Boise Field Office, Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Boise Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Duke, Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705 (208) 334–1931.

SUPPLEMENTARY INFORMATION:

Background

The first collections of the Bruneau Hot Springs snail were made in 1952 and 1953. Dr. Dwight Taylor studied the anatomy of the species and determined that it represented a previously unknown genus and species of the snail family Hydrobiidae. Dr. R. Hershler (1990) formally described this species, naming it *Pyrgulopsis bruneauensis*. The thin, transparent shell of the species is less than 3.00 mm (1/10 inch) in height, with 3.75 to 4.25 whorls and roughly globose to low-conic in shape.

Based on the most recent information, the species is found in over 100 small thermal springs and seeps along an 8 km length of the Bruneau River in southwestern Idaho (Mladenka 1992). No Bruneau Hot Spring snails have been collected outside thermal plumes of hot springs entering the Bruneau River. The species is normally collected in springs with seasonally fluctuating water temperatures greater than 20° C, with the maximum temperature tolerance limit of 35° C. The species is found in these habitats on all substrate types, including rocks, gravel, mud, silt and algal film. These springs and proximal thermal outflows are on lands administered by the Bureau of Land Management. Some downstream habitat is on private land.

The major threat to the Bruneau Hot Springs snail is the reduction of its thermal spring habitats from groundwater withdrawal/mining in the Bruneau Hot Springs aquifer. Exacerbated by drought, the extent of seepage at spring sources has been greatly reduced in recent years. In addition, considerable habitat has been lost in recent years due to sedimentation from flash flooding. This is especially true for the Indian Bathtub area, where the snail was first discovered. Heavy sedimentation of gravel, sand and silt has rendered a considerable amount of habitat in the Indian Bathtub unavailable to snails.

Dr. Dwight Taylor prepared a status report on the Bruneau Hot Spring snail, which was submitted to the Service in June 1982. This report was the basis for the placement of this species on the Service's comprehensive notice of review on invertebrate candidate species published in the **Federal Register** (49 FR 21664) on May 24, 1984. The Service proposed the Bruneau Hot Spring snail for listing as endangered on August 21, 1985 (50 FR 33803). The comment period on this proposal, which originally closed on October 21, 1985, was extended to December 31, 1985 (50 FR 45443). To accommodate public hearings in Boise, Idaho and Bruneau, Idaho, the comment period was reopened until February 1, 1986 (50 FR 51894). On December 30, 1986, the public comment period was once again reopened until February 6, 1987 to accommodate the receipt of additional information (52 FR 47033).

In 1990, Congress allocated approximately $400,000 for conservation measures associated with the Bruneau Hot Springs snail. This money was used to fund hydrological studies of the Bruneau Hot Spring aquifer by the U.S. Geological Survey and ecological life history studies by the Idaho State University.

The Service provided funding to implement a short-term conservation easement with Owen Ranches, Inc., owners of much of the snail habitat in Hot Creek and the Indian Bathtub. Terms of the easement included fencing to exclude cattle from grazing along snail habitats in Hot Creek. Expiration of this agreement will coincide with the completion of the hydrological studies by U.S. Geological Survey.

On July 6, 1992, the Idaho Conservation League and the Committee for Idaho's High Desert, filed a lawsuit in Federal District Court in Boise, Idaho. The lawsuit was filed under the Endangered Species Act of 1973, as amended, over the failure of the Service to make a decision regarding the listing of the Bruneau Hot Spring snail.

In order to respond to the concerns raised in the lawsuit and to ensure the accuracy of any final decision concerning the appropriateness of listing, the Service believes any additional new information must be considered. The Service reopens the public comment period for a period of 30 days. The Service's goal is to base its final decision on the best available scientific and commercial available. Written comments may now be submitted for this proposal until November 4, 1992. The Service continues to be particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

The final decision on this issue will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final decision that differs from the proposal to list the species. Comments and data concerning this species should be sent to the Boise Field Office, 4696 Overland Road, Room 576, Boise, Idaho, 83705.

References

Hershler, R. 1990. *Pyrgulopsis bruneauensis*, a new springsnail (Gastropoda:Hydorbiidae) from the Snake River plain, southern Idaho. Proc. Biol. Soc. Wash. 103(4), 1990, pp. 803–814.

Mladenka, G.C. 1992. The ecological life history of the Bruneau hot spring snail (*Pyrgulopsis bruneauensis*). Final report submitted to the Fish and Wildlife Service. Stream Ecology Center, Department of Biological Sciences, Idaho State University, Pocatello, Idaho. 116 pp.

Author

The primary author of this notice is Mr. Stephen Duke, Fish and Wildlife Service, Idaho Field Office, 4696 Overland Road, room 576, Boise, Idaho. (209) 334–1931.

Authority

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: September 17, 1992

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-24046 Filed 10-2-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 193
Monday, October 5, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Athens Purchase Unit, Ohio; Correction

AGENCY: Forest Service, USDA.

ACTION: Correction.

SUMMARY: This document corrects a legal land description contained in the notice of establishment of the Athens Purchase Unit which was published Tuesday, July 7, 1992 (57 FR 29860). On page 29861, in the 1st column, the heading which reads: T. 7N., R. 16W. should read: T. 7N., R. 13 W.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, 4 South, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 (202) 205-1248.

Dated: September 24, 1992.

H. M. Montrey,

Associate Deputy Chief.

[FR Doc. 92-24101 Filed 10-2-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Senior Executive Service; Performance Review Board

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Office of the Secretary Senior Executive Service (SES) Performance Appraisal System:

Hugh L. Brennan
Guy W. Chamberlin, Jr.
David L. Edgell
David Farber
Mary Ann T. Fish
Barbara S. Fredericks
Jose A. Lira
James M. LeMunyon
Otto J. Wolff
James W. Moses,

Executive Secretary, Office of the Secretary, Performance Review Board.

[FR Doc. 92-23999 Filed 10-2-92; 8:45 am]

BILLING CODE 3510-DS-M

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Materials Processing Technical Advisory Committee will be held October 22, 1992, 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to materials processing and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of Enhanced Proliferation Control Initiative.
4. Discussion of nuclear controls.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, TAC Staff/BXA/ Room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482-2583.

Dated: September 29, 1992.

Betty Anne Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 92-24025 Filed 10-02-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[[A-570-822 and A-583-820]

Initiation of Antidumping Duty Investigations; Certain Helical Spring Lock Washers From the People's Republic of China and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3464.

Initiation of Investigations

The Petition

On September 8, 1992, we received a petition filed in proper form by the Shakeproof Industrial Products Division of Illinois Tool Works Inc. (petitioner). Supplements to the petition were received on September 15 and 23, 1992

In accordance with 19 CFR 353.12, the petitioner alleges that certain helical spring lock washers (spring lock washers) from the People's Republic of China (PRC) and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petition was filed on behalf of the U.S. industry producing the products subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigations

For purposes of these investigations, spring lock washers are circular washers of carbon steel (including carbon alloy steel), or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. Spring lock washers are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; 2) distribute the load over a larger area for screws or bolts: and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as cooper. Spring lock washers constitute one class or kind of merchandise. The spring lock washers subject to these investigations are classifiable under subheading 7318.21.0000 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on observed price quotes of spring lock washers by producers of the subject merchandise in the PRC and Taiwan. Petitioner made deductions from USP for U.S. duty and freight charges. For Taiwan, petitioner made an additional deduction for sales commissions.

For the PRC, petitioner based foreign market value (FMV) on the market valuation of the factors of production used in producing the subject merchandise. For Taiwan, petitioner based FMV on the constructed value of the subject merchandise. Petitioner selected India as the most comparable surrogate for the PRC. Petitioner, therefore, first attempted to value the factors of production using Indian information. Where this was not possible, petitioner valued the factors of production based on its own experience. Petitioner obtained and valued the factors of production in the PRC and constructed a value for Taiwan as follows:

- For carbon steel, petitioner used for the PRC and Taiwan the high carbon wire rod per pound quotation contained in the American Metal Market Closing Prices Report for July 7, 1992. Petitioner claimed that it was unable to obtain prices for high carbon wire rod in India. Petitioner used the cost in the United States for processing the green carbon rod to finished trapezoidally shaped wire. For stainless steel in Taiwan, petitioner used price quotations in Taiwan.
- For labor, petitioner estimated the number of workers involved in producing spring lock washers based on its own experience using comparable equipment. For the PRC, petitioner valued these labor figures in India. For Taiwan, petitioner adjusted its own labor costs to account for the cost differences in the wage rates of workers in Taiwan.
- For depreciation, petitioner has provided evidence that its own equipment used to produce the subject merchandise is comparable to the equipment in the PRC and Taiwan. Petitioner valued this equipment using estimated costs of equipment available in the United States, Taiwan and Japan. Depreciation was based on a ten year period.
- For energy, petitioner estimated the amount consumed in producing the subject merchandise based on its own experience using comparable equipment. Petitioner divided energy cost into electricity cost and natural gas cost. For the PRC, petitioner adjusted its own energy costs to reflect the costs in India. For Taiwan, petitioner adjusted its own electricity cost to reflect the cost of electricity in Taiwan. Petitioner claimed that Taiwan natural gas costs were comparable to its own, and therefore made no adjustment.
- For tooling, petitioner used its own actual costs for both the PRC and Taiwan. Petitioner stated that it was impossible to obtain a public source for tooling costs since tooling is a function of production and the materials used. Petitioner stated that the tooling costs in the PRC and Taiwan should not vary from its own costs when using comparable equipment.
- For selling, general and administrative expenses (SG&A), petitioner used the statutory minimum of ten percent of the cost of manufacture for both the PRC and Taiwan.
- For profit, petitioner used the statutory minimum of eight percent of the cost of manufacture plus SG&A expenses for both the PRC and Taiwan.
- For packing, petitioner estimated the cost for both the PRC and Taiwan as a percentage of the cost of production based on its own experience.

Petitioner calculated margins for both plain and plated carbon steel lock washers in the PRC and Taiwan. For Taiwan, petitioner provided a plating price quote in Taiwan to demonstrate this cost. For the PRC, petitioner obtained and valued the plating factors of production as follows:

- For chemicals, petitioner stated that it was not able to value these factors in India after expending considerable time and effort. However, petitioner stated that the costs of the chemicals in India are comparable to its own chemical costs. Therefore, petitioner used its own chemical costs, adjusted for one percent waste.
- For labor, petitioner estimated the number of workers involved in the plating operation producing spring lock washers based on its own experience using comparable equipment. Petitioner valued these labor figures in India.
- For depreciation, petitioner stated that its own equipment used to produce the subject merchandise is comparable to the equipment in the PRC. Depreciation was based on a ten year period.
- For energy, petitioner used its own cost per pound.
- For SG&A, petitioner used the statutory minimum of ten percent of the cost of manufacture.
- For profit, petitioner used the statutory minimum of eight percent of the cost of manufacture plus SG&A expenses.

The range of dumping margins of spring lock washers from the PRC based on a comparison of USP to CV alleged by petitioner is 92.30 percent to 128.63

percent. The range of dumping margins of spring lock washers from Taiwan based on a comparison of USP to CV alleged by petitioner is 6.86 percent to 36.15 percent.

Initiation of Investigations

We have examined the petition on spring lock washers from the PRC and Taiwan and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of spring lock washers from the PRC and Taiwan are being, or are likely to be, sold in the United States at less than fair value.

Preliminary Determinations by the International Trade Commission

The International Trade Commission (ITC) will determine by October 23, 1992, whether there is a reasonable indication that imports of spring lock washers from the PRC and Taiwan are materially injuring, or threaten material injury to, a U.S. industry. Negative ITC determinations will result in the investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: September 28, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-24100 Filed 10-2-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-032]

Large Power Transformers From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 2, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on large power transformers from Japan. These final results of review cover one manufacturer/exporter of this merchandise for the period from June 1, 1990, through May 31, 1991. Based on our analysis of the comments received, we have adjusted the margin for the respondent.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 23204) the preliminary results of its administrative review of the antidumping finding on large power transformers (LPTs) from Japan (37 FR 11773, June 14, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of LPTs; that is, all types of transformers rated 10,000 kVA (kilovolt/amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of transformers, Fuji Electric Co., Ltd. (Fuji), during the period June 1, 1990, through May 31, 1991.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the petitioner, ABB Power T&D Company, Inc. (ABB), and the respondent, Fuji.

Comment 1: Fuji asserts that the Department should use these final results as an opportunity to clarify its position on the use of a constructed value methodology in future reviews. Fuji requests that the Department state explicitly in the final results whether constructed value has been used in this review only because of the absence of such or similar merchandise sold in the home market during the period of review, or also because of a policy decision on the part of the Department to use constructed value as the basis for foreign market value in all future reviews of this proceeding. Although Fuji stated a preference in its case brief for the constructed value methodology used in the preliminary results, it clarified its position in its rebuttal brief by stating that either the constructed value or the previously used Westinghouse Price Rules (WPR) methodology would be acceptable as long as the Department makes clear precisely what it is doing.

ABB submits that the Department's use of constructed value in this review is appropriate due to the highly complex and custom designed merchandise sold during the period of review. However, ABB asserts that the Department has a statutory responsibility to consider price-to-price comparisons in all future reviews before resorting to constructed value. ABB notes that in all past reviews, the Department has applied the WPR to the home market price to construct a foreign market value for comparison to the U.S. price. ABB argues that it would be unlawful for the Department to adopt automatically the constructed value methodology in all future reviews without first considering price-to-price comparisons based on the WPR methodology.

Department's Position: We agree with ABB that the Department has a statutory responsibility to consider price-to-price comparisons before resorting to constructed value. However, we disagree with ABB's assumption that the use of the WPR methodology constitutes the type of price-to-price comparisons called for in the statute.

The WPR methodology provides the basis for calculating a theoretical list price for both the home market and U.S. models. The difference between the theoretical list prices is used to calculate a U.S./home market price ratio. This theoretical price ratio is used to adjust the actual price of the home market model to account for differences in merchandise from the U.S. model. This type of adjustment was a surrogate for the traditional difmer adjustment based on differences in variable costs. The WPR methodology was adopted by the Department after the June 14, 1972 finding due to the fact that an LPT, which is a highly complex and custom designed product, does not lend itself to the more traditional price-to-price comparisons of such or similar merchandise as outlined in the statute.

Although the WPR methodology was not within the normal framework of the Department's antidumping calculations, it facilitated the comparison of home market models which were highly dissimilar to those sold in the United States.

After the Department issued the final results on the 1975–87 review periods on June 26, 1991, (56 FR 29215), we began to reevaluate the appropriateness of the WPR methodology. Our primary concern was that the WPR methodology was not consistent with the Department's practice for determining home market models that are similar to U.S. models. Indeed, the WPR methodology does not identify the most similar merchandise sold in the home market; rather, it simply provides a mechanism to calculate a theoretical price which is use to adjust for the differences between home market and U.S. models. In this manner, the WPR methodology is inconsistent with Departmental policy in that it results in the comparison of models which may be highly unequal in commercial value and could have a difference in merchandise adjustment of greater than twenty percent.

Due of these shortcomings, we have decided to replace the WPR methodology in this and all future administrative reviews of LPTs. In accordance with section 773(a)(1) of the Tariff Act, we will first consider the appropriateness of price-to-price comparisons in all future reviews. However, only in instances where the most similar merchandise sold in the home market has a difference in merchandise of less than twenty percent will we use price as the basis for foreign market value. In cases similar to LPTs, where the merchandise is highly customized and does not lend itself to comparison, the Department has adopted the use of constructed value in accordance with section 773(a)(2) of the Tariff Act (see Final Determination of Mechanical Transfer Presses From Japan, (55 FR 335, January 4, 1990)). Therefore, it is likely that in future reviews of this proceeding the Department will need to resort to constructed value due to the lack of merchandise sold in the home market which could be considered similar within the meaning of section 771(16)c) of the Tariff Act.

Comment 2: ABB asserts that the Department should be aware of the potential for Fuji and other respondents to manipulate dumping margins by using line-item prices on invoices including both subject and non-subject merchandise. ABB argues that the Department should put Fuji on notice that it will investigate potentially manipulated line-item prices in future administrative reviews. ABB notes that the respondent, not the petitioner, is in possession of any evidence that may indicate price manipulation; therefore, the Department must request such information and investigate the claim itself or allow the petitioner to do so.

Fuji argues that ABB's comments are based on an oversimplified view of reality that distorts the potential risk of line-item price manipulation in future administrative reviews. Fuji claims that for customs duty, taxation, depreciation, record-keeping, and other business purposes, customers care about individual price levels for large expensive equipment. Fuji asserts that as long as line-item prices are the result of arm's-length negotiations, a respondent such as Fuji should neither be "put on notice" nor required to submit business proprietary information regarding prices and cost of production of non-subject merchandise in the context of an annual review proceeding.

Department's Position: The Department's policy is to use line-item contract prices where they exist. Only if line—item contract prices do not exist, or if the Department has no confidence in those that do, does it accept alternative pricing methodologies (see Final Determination of Mechanical Transfer Presses From Japan, (55 FR 335, January 4, 1990)). Since the record indicates that the line-item prices submitted by Fuji were negotiated at arm's length, we have used these line-item prices for these final results.

Comment 3: ABB alleges that Fuji improperly removed research and development (R&D) expenses relating to "new products" from the pool of selling, general and administrative (SG&A) expenses before allocating these expenses to the subject merchandise. ABB argues that since Fuji's own internal accounting procedures include these R&D expenses in corporate SG&A, these expenses must be general in nature and should be included in the allocation over the subject merchandise.

Fuji argues that ABB is incorrect in asserting that the R&D expenses excluded from Fuji's calculation were general in nature. Fuji asserts that under its own internal accounting system, and consistent with good accounting practice, all R&D costs not associated with production process improvements are expensed on a specific product-line basis and are carried at the corporate level where records are kept as part of SG&A. Fuji claims that ABB is incorrect in assuming that Fuji's decision not to assign product-specific R&D costs to COM indicates that these R&D expenses were general R&D expenses of the company requiring even allocation across all of Fuji's sales.

Department's Position: We agree with the respondent. R&D expenses incurred for the specific development of products not subject to this administrative review may be excluded from the calculation of constructed value. Since Fuji's internal accounting methodology allows it to identify R&D costs that are not related to the subject merchandise, Fuji acted properly by not allocating these R&D costs across the subject merchandise (see Final Determination of Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea, (55 FR 32671, August 10, 1990)).

Comment 4: Fuji argues that for these final results the Department should use the transformer-specific methodology used to calculate SG&A expenses rather than its corporate average SG&A adjusted for warehousing, freight, packing, and unrelated R&D. Fuji asserts that the transformer-specific methodology is a more accurate representation of the SG&A expenses incurred by Fuji on behalf of its large power transformer operations.

ABB contends that Fuji's suggestion that the Department use Fuji's transformer-specific SG&A would be contrary to the Department's longstanding practice of using corporate-wide SG&A.

Department's Position: We disagree with the respondent. Upon examination of the transformer-specific and the adjusted corporate-average methodologies submitted by Fuji for calculating SG&A expenses, we have determined that the corporate-average methodology is more consistent with Fuji's internal accounting methodology and therefore less likely to distort the actual SG&A expenses experienced by Fuji with respect to transformers. Therefore, we have not changed our calculations for these final results.

Comment 5: Fuji has noted two clerical errors in the calculation of the preliminary results. First, Fuji alleges that the Department made a transcription error in picking up the gross unit price for unit T–3. Second, Fuji alleges an error in the addition of the constructed value for unit T–1. Finally, Fuji notes that the preliminary results do not reflect the more detailed home market warranty expense figures set forth in Fuji's May 22, 1992 submission.

Department's Position: We have corrected the two clerical errors for these final results. In addition, we have used the more detailed home market

warranty expenses included in Fuji's May 22, 1992 submission for these final results.

Final Results of Review

As a result of our comparison of United States price to foreign market value, we have determined that a weighted-average margin of 5.90 percent exists for sales of LPTs made to the United States by Fuji during the period June 1, 1990 through May 31, 1991.

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between the U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 5.90 percent. This rate represents the highest rate for any firm with shipments in the administrative review; other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 23, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-24099 Filed 10-2-92; 8:45 am]

BILLING CODE 3510-DS-M

Antidumpting Duties: Provisional Measures Deposit Cap

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of change in policy concerning provisional measures deposit cap in antidumping cases.

SUMMARY: The International Trade Administration is changing its policy concerning the provisional measures deposit cap, stated in 19 CFR 353.23 to limit the application of the provisional measures cap to entries of merchandise subject to an antidumping duty order which are secured by cash deposits. The provisional measures deposit cap will no longer apply to entries secured by bonds.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Joan MacKenzie, Office of the Chief Counsel for Import Administration, (202) 377-1310.

SUPPLEMENTARY INFORMATION: On July 29, 1991, the Court of International Trade (the Court) issued a decision in *Zenith Electronics Corp.* v. *United States*, 770 F. Supp. 648 (CIT 1991), that overturned the International Trade Administration's (ITA) interpretation of section 737(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1673f(a)(1)) (the Act), and 19 CFR 353.23 of the ITA'S regulations. Under the ITA's interpretation, the so-called provisional measures cap applied to entries of merchandise subject to an antidumping duty order that were secured by either cash deposits or bonds or other security. The Court ruled that the provisional measures cap applies only to entries secured by cash deposits. Accordingly, the ITA will no longer apply the cap to entries secured by bonds.

Section 733(d)(2) of the Act provides that an importer of merchandise subject to an antidumping duty investigation must post bonds, cash deposits, or other security for entries of the subject merchandise after the ITA publishes and affirmative preliminary determination of sales at less than fair value. This provisional measure applies until the International Trade Commission's (ITC) final injury determination. If an antidumping duty order is imposed, the actual amount of antidumping duties due on the sales during this period is determined through an administrative review of the entries under section 751. Section 737(a)(1) provides that, if the amount of a cash deposit collected as security for an estimated antidumping duty after publication of an affirmative preliminary determination under section 733(d)(2) is different from the amount of the antidumping duty determined under a section 751 administrative review, then the difference shall be disregarded, to the extent that the cash deposit collected is lower than the duty determined to be due under the section 751 administrative review, for entries between publication of the ITA's preliminary determination and the ITC's final determination of injury under section 735(b).

This provisional measures cap provided by section 737(a), therefore, imposes a limit on the amount of antidumping duties an importer pays between the ITA's affirmative preliminary less-than-fair-value determination and the ITC's affirmative final injury determination during an antidumping investigation. The cap may be adjusted to reflect a change in the margin found in the ITA's final determination. *Daewoo Electronics Corp.* v. *U.S.*, 712 Fed. Supp. 931 (CIT 1989). The importer is not liable for more than the amount of estimated duties imposed during this period, even if the actual duties due under a section 751 review are greater than the amount of the provisional measures.

As a result of the decision in *Zenith*, the ITA will instruct the U.S. Customs Service to refund the difference between estimated duties and final duties for the relevant period where the estimated duties are higher than the final duties, and not to collect the difference between estimated duties and final duties for the relevant period where the estimated duties are lower than the final duties, but only for entries that were secured by cash deposits. This change in practice applies only to antidumping duty investigations; there is no change for countervailing duty investigations.

This new policy will apply to all merchandise entered after any preliminary less-than-fair-value determination published subsequent to *Zenith's* invalidation of ITA's regulations. The *Zenith* decision was issued on July 29, 1991.

Dated: September 28, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration

[FR Doc. 92-24097 Filed 10-2-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-04]

Synthetic Methionine From Japan; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce has determined not to revoke the antidumping finding on synthetic methionine from Japan because it continues to be of interest to interested parties.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or Melissa G. Skinner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 29470) its intent to revoke the antidumping finding on synthetic methionine from Japan (38 FR 18382, July 10, 1973).

Scope of the Finding

Imports covered by the finding are shipments of DL-Methionine, an animal feed additive, currently classifiable under the Harmonized Tariff Schedule item number 2922.42.50.

Determination Not To Revoke

The Department may revoke a finding if the Secretary of Commerce concludes that the finding is no longer of interest to interested parties. We need not received a request for an administrative review of this finding for the last four consecutive annual anniversary months and, therefore, published a notice of intent to revoke pursuant to 19 CFR 353.25(d)(4)(i). See 57 FR 29470, July 2, 1992.

On July 17, and 29, 1992, the Degussa Corporation and Novus International, Inc., interested parties, objected in writing to our intent to revoke the finding. We received no further comments. Based on these objections, the Department has concluded that the finding continues to be of interest to interested parties. Therefore, we no longer intend to revoke the antidumping finding on synthetic methionine from Japan.

Dated: September 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-24098 Filed 10-2-92; 8:45 am]

BILLING CODE 3510-DS-M

Patent and Trademark Office

Advisory Committee for Patents; Establishment

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of establishment.

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101-6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Advisory Committee for Patents is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Patent and Trademark Office on a broad range of policy and operational matters related to the administration of the Office.

The Committee will consist of at least ten but no more than eighteen members to be appointed by the Assistant Secretary and Commissioner of Patents and Trademarks to assure a balanced representation among patent practitioners, corporate executives, research directors, inventors, the judiciary, professional patent searchers, information specialists and publishers, automation experts, consumer groups, entrepreneurs, and educators.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The charter will be filed under the Act, fifteen days from the date of publication of this notice.

Interested persons are invited to submit comments regarding establishment of this Committee to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Edward R. Kazenske, room 906, Crystal Park 2; Telephone 703/305-8600.

Dated: September 29, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-24059 Filed 10-2-92; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

September 30, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 6, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being increased for swing, reducing the limit for Categories 342/642 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1905, published on January 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

September 30, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 13, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on October 6, 1992, you are directed to amend further the directive dated January 13, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
340/640	1,589,360 dozen.
342/642	814,649 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-24026 Filed 10-2-92; 8:45 am]

BILLING CODE 3510-DR-F

Amendment of Export Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Federative Republic of Brazil

September 29, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements to require manufacturer's identification.

EFFECTIVE DATE: October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and the Federative Republic of Brazil is being amended, for goods produced or manufactured in Brazil and exported from Brazil on and after October 15, 1992, to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa be provided on the textile visa document.

The name and address of the company should be placed somewhere on the front of the original export visa document, not within the visa stamp. It should be preceded by the label "manufacturer's identification" or "M.I.D." The name is the full name of the company which performs the substantial part of the manufacturing of the product. The address should include the street name or P.O. Box number (if available), and the city and/or province where the manufacturing occurs. In the case of a shipment covered by a single export visa document containing products which are each manufactured by a number of different companies, the name and address of each company involved should be listed on the export visa document. If additional space is needed for listing the name and address of the firms, the back of the export visa document may be used. Responsible officials will make their best efforts to determine the name and address of a firm or firms which best meet the basic criterion of being an actual manufacturer of the product. This information should appear on the export visa document prior to export from Brazil.

See 54 FR 456, published on January 6, 1989.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 29, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 3, 1989, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Brazil which were not properly visaed by the Government of the Federative Republic of Brazil.

Effective on October 15, 1992, for goods produced or manufactured in Brazil and exported from Brazil on and after October 15, 1992, you are directed to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa be placed on the textile visa document. This information shall appear on the export visa document prior to export from Brazil.

Shipments entered for consumption, or withdrawn from warehouse for consumption according to this directive which are not accompanied by an appropriate export visa which includes the identification of the manufacturer on the visa document shall be denied entry and a new visa containing this information must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-24027 Filed 10-2-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Application and Applicable OMB Control Number: DOD FAR Supplement, 252.249-7001, Notification of Substantial Impact on Employment; DD Form 2604; OMB Control Number 0704-0327.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 16 Hours.

Responses Per Respondent: 7.5

Number of Respondents: 114.

Annual Burden Hours: 13,680.

Annual Responses: 855.

Needs and Uses: Section 4201 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510, Division D, Title XLII; Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990) requires the Secretary of Defense to notify the

Department of Labor if a modification or termination of a major defense contract or subcontract will have a substantial impact on employment. The Act defines what constitutes a major defense contract or subcontract and establishes criteria for determining if there is a substantial impact on employment. The statute reflects Congressional concern about the economic impact on communities, businesses, and employees affected by "(1) the annual budget of the President submitted to Congress . . . and any longer-term guidance document of the Secretary of Defense; (2) the public announcement of the realignment or closure of a military installation or defense facility; or (3) the cancellation or curtailment of a major defense contract" (Sec. 4101(a) of Pub. L. 101–510). In order to comply with the requirement to provide prompt notice to the Secretary of Labor, the Department of Defense needs to know if a proposed contract modification or termination will have a substantial impact on employment, as defined in the Act and implemented in the regulation. This information can only be provided by the contractor or subcontractor affected by the modification or termination. The final rule applies to all contract modifications and terminations for convenience of prime contracts over $5 million and subcontracts of $500,000 or more. Contractors may use optional form DD 2604, Notification of Substantial Impact, to provide the required notification.

Affected Public: Businesses or other for-profit organizations; Small businesses or organizations.

Frequency: On occasion.

Respondents Obligation: Voluntary.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia, 22202–4302.

Dated: September 29, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–23992 Filed 10–2–92; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Application Form, and Applicable OMB Number: Manufacturing Lead Time Production and Occupational Survey; OMB Control No. 0703–0033

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 1.5 hours.

Responses Per Respondent: 1.

Number of Respondents: 1,600.

Annual Burden Hours: 2,400.

Annual Responses: 1,600.

Needs and Uses: Survey is required to obtain data from shipbuilding industry and other DOD supportive businesses in order to evaluate capability to support current and planned weapon system programs. Information will be used to perform Industrial Base Analyses for Naval Sea Systems Command and Office of the Deputy Assistant Secretary of Defense (Production Resources).

Affected Public: Businesses or other for profit; Federal agencies or employees; and small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: September 29, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 92–23991 Filed 10–2–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Open Meeting—Coastal Engineering Research Board (CERB)

AGENCY: Coastal Engineering Research Board, DOD.

ACTION: Notice of open meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB)

Date of Meeting: October 27–29, 1992.

Place: Hilton Hawaiian Village, Honolulu, Hawaii.

Time: October 27, 8 am–4:45 pm; October 28—8 am–3:30 pm; October 29—8:30 am–2:45 pm

Theme: Pacific Islands Coastal Engineering.

Proposed Agenda: The morning session on October 27 will consist of a review of CERB business; Chief's Charge; and panel presentations to include coastal engineering needs in Hawaii, Guam, America Samoa, Commonwealth of the Northern Mariannas Islands, and Kwajalein Atoll. The afternoon session on October 27 will consist of a panel discussion dealing with R&D applicable to Pacific Islands Needs. Presentations include an introduction; Shoreline Effects of Seawalls/Revetments; Barbers Point; Wave/Surge Numerical Modeling (Kawaihae, Agat, Maalaea); Agat MCCP; Hawaiian Breakwaters MCCP; and Wave Gaging in the Pacific Islands.

October 28 will be devoted to a field trip with an overview prior to departing on the field trip. The following projects will be visited: Barbers Point Deep-Draft Project, Sand Island Shore Protection, Waikiki Project (state project), Bellows Beach, and other beaches dealing with coastal processes.

On October 29, there will be Hurricane Andrew, Typhoon Omar, and Hurricane Iniki updates, presentations entitled Surfrider Foundation and Waikiki Beach Improvement Plan, and recommendations by members of the Board.

This meeting is open to the public; participation by the public is scheduled for 10:00 am on October 29.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements.

2. Oral participation by public attendees encouraged during the time scheduled on the agenda; written statements may be subject prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Leonard G. Hassell, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry

Road, Vicksburg, Mississippi 39180–6199.

Kenneth L. Denton,

Army Federal Register, Liaison Officer.

[FR Doc. 92–24023 Filed 10–2–92; 8:45 am]

BILLING CODE 3710–08–M

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide a copy of the latest Regulatory Guidance Letter (RGL) to all known interested parties. RGL's are used by the Corps of Engineers as a means to transmit guidance on the permit program (33 CFR Parts 320–330) to its division and district engineers. The Corps of Engineers publishes RGL's in the **Federal Register** upon issuance as a means of informing the public of Corps guidance.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 272–1782.

SUPPLEMENTARY INFORMATION: .

RGL 92–03, Subject: Special Area Management Plans (SAMPs), issued on August 19, 1992, is hereby published as follows:

CECW–OR

Subject: Extension of Regulatory Guidance Letter (RGL) 88–10, subject: "Special Area Management Plans (SAMPs)" is extended until 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works.

/s/

John P. Elmore,

Chief, Operations, Construction and Readiness Division.

Directorate of Civil Works

RGL 88–10

Special Area Management Plans (SAMPs)

Issued 10/2/88. Expired 12/31/88.

1. The 1980 Amendments to the Coastal Zone Management Act define the SAMP process as "a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private users of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone." This process of collaborative interagency planning within a geographic area of special sensitivity is just as applicable in non-coastal areas.

2. A good SAMP reduces the problems associated with the traditional case-by-case review. Developmental interests can plan with predictability and environmental interests are assured that individual and cumulative impacts are analyzed in the context of broad ecosystem needs.

3. Because SAMPs are very labor intensive, the following ingredients should usually exist before a district engineer becomes involved in a SAMP:

a. The area should be environmentally sensitive and under strong developmental pressure.

b. There should be a sponsoring local agency to ensure that the plan fully reflects local needs and interests.

c. Ideally there should be full public involvement in the planning and development process.

d. All parties must express a willingness at the outset to conclude the SAMP process with a definitive regulatory product (see next paragraph).

4. An ideal SAMP would conclude with two products: (1) appropriate local/state approvals and a Corps general permit (GP) or abbreviated processing procedure (APP) for activities in specifically defined situations; and (2) a local/state restriction and/or an Environmental Protection Agency (EPA) 404(c) restriction (preferably both) for undesirable activities. An individual permit review may be conducted for activities that do not fall into either category above. However, it should represent a small number of the total cases addressed by the SAMP. We recognize that an ideal SAMP is difficult to achieve, and, therefore, it is intended to represent an upper limit rather than an absolute requirement.

5. Do no assume that an environmental impact statement is automatically required to develop a SAMP.

6. EPA's program for advance identification of disposal areas found at 40 CFR 230.80 can be integrated into a SAMP process.

7. In accordance with this guidance, district engineers are encouraged to participate in development of SAMPs. However, since development of a SAMP can require a considerable investment of time, resources, and money, the SAMP process should be entered only if it is likely to result in a definitive regulatory product as defined in paragraph 4 above.

8. This guidance expires 31 December 1988 unless sooner revised or rescinded.

For the Chief of Engineers.

/s/

Peter J. Offringa,

Brigadier General, USA, Deputy Director of Civil Works.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–24024 Filed 10–2–92; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Notice of Intent to Prepare an Environmental Impact Statement; for Environmental Restoration and Waste Management Activities at the Idaho National Engineering Laboratory Department of Energy—Idaho Field Office Idaho Falls, ID

AGENCY: Department of Energy.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for Environmental Restoration and Waste Management (ER&WM) activities at the Idaho National Engineering Laboratory (INEL) in Idaho Falls, Idaho.

SUMMARY: The Department of Energy (DOE), Idaho Field Office (DOE–ID), announces its intent to prepare an EIS pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), in accordance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508) and the DOE NEPA Implementing Procedures (57 FR 15122, April 24, 1992, to be codified at 10 CFR Part 1021), and to conduct a series of public scoping meetings. This EIS will address ER&WM activities at INEL. Such activities include decontamination and decommissioning (D&D) of existing facilities, environmental cleanup, waste and spent nuclear fuel (SNF) management and technology development, and infrastructure functions (e.g., roads, power, fire protection, security) in support of environmental restoration and waste management activities. The EIS will analyze the reasonably foreseeable environmental impacts of ongoing and proposed ER&WM activities and alternatives. Although some activities at the INEL are not ER&WM activities and therefore are not part of the proposed action, the cumulative effects of the proposed action and other past, present, and reasonably foreseeable future actions will be included in the EIS.

The EIS will cover the ER&WM activities at the INEL site, an 890-square mile reservation located approximately 35 miles west of Idaho Falls, and facilities located within the city limits of Idaho Falls (*e.g.*, the INEL Research Center). The EIS is intended to assure that the potential environmental impacts associated with the ER&WM activities at the INEL site are documented and factored into DOE decisionmaking, and

it will provide a broad-based environmental baseline from which subsequent INEL NEPA documents can be tiered. In accordance with the CEQ NEPA regulations, DOE is preparing this EIS to focus on significant environmental issues and to consider reasonable alternatives. Two alternatives, the "proposed action" and "no action," are currently being considered.

Under the proposed action, which is DOE's preferred alternative, DOE would continue existing waste and SNF management operations, ongoing site characterization and interim cleanup actions, ongoing D&D activities, and related technology development and supporting infrastructure functions at the INEL site. In addition, as part of the proposed action, DOE would undertake certain near-term (within 5 to 10 years) projects that would enhance waste and SNF management, D&D, and treatment capabilities. Examples of these proposed near-term projects include: mixed and low-level waste treatment and disposal facilities, a hazardous waste storage facility, a waste processing facility, and D&D of the Materials Test and Engineering Test Reactors. In addition, the proposed action includes the overall remedial action process pursuant to a Comprehensive Environmental Response Compensation, and Liability Act (CERCLA) Federal Facility Agreement/Consent Order (FFA/CO), including the integration of treatment, storage, and disposal needs with planned waste management facilities. With respect to SNF, a need exists to safely store SNF and to investigate, test, and, if appropriate, select technologies and process SNF, as well as high-level waste, for disposal in a geologic repository. The EIS will include analysis of the transport, receipt, storage and, as appropriate, processing of SNF associated with ER&WM activities, such as fuel from the Fort St. Vrain nuclear power reactor in Colorado, and will evaluate alternatives for such activities. Additional facilities and expanded D&D efforts that may be needed to support a recent change in mission of the Idaho Chemical Processing Plant (ICPP) also will be addressed.

The no action alternative serves as a benchmark for comparison with the environmental effects of the proposed action alternative. The no action alternative would continue existing waste and SNF management operations, ongoing site characterization and limited interim cleanup activities, ongoing D&D of existing facilities, and related technology development and supporting infrastructure functions, but would include only those actions necessary for safe and environmentally sound operations, such as routine maintenance. In other words, the no action alternative assumes no major changes to the existing ER&WM practices at the INEL. To the extent the NEPA review for activities is completed and the decision made to proceed with such activities prior to the issuance of the Record of Decision (ROD) for this EIS, these activities will be considered part of the no action alternative.

Under the no action alternative, DOE would not proceed with proposed near-term projects to enhance SNF and waste handling and treatment capabilities at the INEL or carry out proposed cleanups (*i.e.*, those that have not yet been approved under the CERCLA process) under the CERCLA FFA/CO, even though the FFA/CO is an enforceable agreement. Existing hazardous or mixed waste treatment, storage, or disposal (TSD) facilities and interim SNF storage facilities would be maintained in existing configurations without developing additional treatment and storage capacity and without implementing technology development programs to treat wastes and prepare SNF and high-level waste for eventual transport and disposal to a geologic repository. Analysis of the no action alternative also will consider effects from near-term discontinuation or orderly phaseout of the functions and/or facilities associated primarily with waste treatment and/or disposal. Facility maintenance, monitoring, and other necessary follow-on activity to support an orderly phaseout or discontinuation of these waste management functions and/or facilities will be discussed, as appropriate.

DATES: DOE invites interested agencies, organizations, and the general public to submit written comments or suggestions concerning the scope of the issues to be addressed, alternatives to be analyzed, and the environmental impacts to be assessed in the Draft EIS. The public is also invited to attend scoping-meetings in which oral comments and suggestions will be received. Oral and written comments will be considered equally in preparation of the EIS. Results of the scoping meetings (including a summary of comments received, DOE's response to public comments, and an annotated outline of the intended scope and environmental issues to be discussed in the EIS) will be presented in an Implementation Plan (IP) available at the locations listed below and to interested members of the public. The IP also will include DOE's publication schedule for the Draft EIS (DEIS). Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the IP and/or the DEIS for review when they are issued, should notify Rob Rothman (see **ADDRESSES**, below) or call the toll-free number 1–800–682–5583. When the DEIS is complete, its availability will be announced in the **Federal Register** and in the local news media, and comments will be solicited on this document.

Written comments postmarked by December 4, 1992, will be considered in preparation of the DEIS. Comments postmarked after that date will be considered to the extent practicable. Oral and written comments will be received at public scoping meetings to be held at the locations and times indicated as follows:

1. Idaho Falls, Idaho, on Thursday November 12, 1992, from 1:00 p.m. to 4:30 p.m. and 6:30 p.m. to 9:30 p.m. at the Westbank Inn, 475 River Parkway.
2. Boise, Idaho, on Monday November 16, 1992, from 1:00 p.m. to 4:30 p.m. and 6:30 p.m. to 9:30 p.m. at the Boise Center, 850 Front St.
3. Twin Falls, Idaho, on Tuesday November 17, 1992, from 1:00 p.m. to 4:30 p.m. and 6:30 p.m. to 9:30 p.m. at the Weston Plaza Hotel, 1350 Blue Lakes Blvd. North.
4. Pocatello, Idaho, on Thursday November 19, 1992, from 1:00 p.m. to 4:30 p.m. and 6:30 p.m. to 9:30 p.m. at the Quality Inn, 155 Pocatello Creek Rd.
5. Moscow, Idaho, on Tuesday November 24, 1992, from 1:00 p.m. to 4:30 p.m. and 6:30 p.m. to 9:30 p.m. at the University Inn, 1516 Pullman Road.

Requests to speak at these meetings may be made by calling the toll-free telephone number, 1–800–682–5583, to facilitate scheduling of speakers. The meetings will be chaired by a presiding officer but will not be conducted as evidentiary hearings; speakers will not be cross-examined although the presiding officer and DOE representatives present may ask clarifying questions.

To ensure that everyone has an adequate opportunity to speak, five minutes will be allotted for each speaker. Depending on the number of persons requesting to speak, the presiding officer may allow more time for elected officials, or speakers representing multiple parties, or organizations. Persons wishing to speak on behalf of organizations should identify the organization in their request. Persons who have not submitted a request to speak in advance of the scoping meetings may register at the meetings and will be called on to speak

if time permits. Written comments will also be accepted at the meetings, and speakers are encouraged to provide written versions of their oral comments for the record. An informal open house will also be held at all meeting locations to allow an opportunity for interactive discussions with DOE personnel and members of the public. Additional information on the procedures DOE intends to follow will be provided in information packets available in advance of the meetings during normal business hours at the following locations:

1. INEL Public Reading Room, University Place, 1776 Science Center Drive, Idaho Falls, ID
2. Idaho Falls Public Library, 457 Broadway, Idaho Falls, ID
3. Pocatello Public Library, 812 East Clark, Pocatello, ID
4. Twin Falls Public Library, 434 2nd Street East, Twin Falls, ID
5. Boise Public Library, 715 South Capitol Boulevard, Boise, ID
6. University of Idaho Library, Government Document Department, Rayburn Street, Moscow, ID
7. Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC.

Transcripts of each meeting will also be made available at these locations.

ADDRESSES: Written comments or suggestions on the scope of the DEIS should be submitted to Mr. Rob S. Rothman, ER&WM EIS Project Manager, U.S. Department of Energy, Idaho Field Office, P.O. Box 1625, Idaho Falls, Idaho 83415–1570. Envelopes should be marked "Attention: INEL ER&WM EIS". Requests to speak at the scoping meetings, and requests for additional information, may be submitted to Mr. Rothman in writing or by using the toll free telephone number 1–800–682–5583.

General information on the DOE NEPA process may be obtained from the Office of the Assistant Secretary for Environment, Safety and Health, Ms. Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Ms. Borgstrom may be reached by phone at (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

The INEL was established in southeastern Idaho in 1949 as a site where nuclear reactors, support facilities, and equipment could be safely built, tested, and operated. In 1975, INEL was designated as a National Environmental Research Park. One function under this designation is to advance science and technology related to environmental characterization and restoration of DOE reservations. Research and development of environmental restoration and waste management technology have been major thrusts of INEL activities.

Today, the INEL is a multi-disciplinary DOE laboratory primarily located outside Idaho Falls (approximately 35 miles west on an 890–square mile reservation) with additional facilities located within the city limits of Idaho Falls (such as the computer center, office buildings, and a major laboratory (the INEL Research Center)). The INEL site maintains a 164-mile network of paved roads and operates its own government-owned passenger bus fleet which transports 4000 to 5000 commuting employees daily between the INEL site and surrounding communities. A government-owned railroad spur is used to carry heavy materials, including radioactive material transport casks, to waste management and other facilities.

Commercial power is transmitted to the INEL site through the Antelope Substation owned by Utah Power and Light Company. In addition, the Liquid Metal Breeder Reactor at Argonne National Laboratory-West contributes 15 megawatts of electrical power to the INEL site power transmission loop. Medical services are provided through an INEL occupational program at medical facilities located at the INEL site and in Idaho Falls. Fire protection is provided by three fire stations at the INEL site which respond to fire, medical, rescue, and other emergency situations. INEL facilities in Idaho Falls are serviced by city and county emergency units. Safeguards and security functions provide physical and personnel security and material control and accountability services.

The INEL is responsible for (a) application of its engineering and scientific capabilities in the operation of defense production and materials testing facilities and in support of national security interests involving arms control and intelligence technologies; (b) development of engineering information and approaches relevant to nuclear reactor safety and advanced design of reactor systems/components; (c) development, transfer, and deployment of technologies to minimize generation and/or disposal of hazardous, mixed, and/or radioactive waste and for remediation/restoration of previous disposal sites to protect the public, workers, and the environment; and (d) receipt and storage of SNF resulting from DOE (and other) research, development, test, demonstration, power and isotope production, and propulsion programs. In the past, much of the SNF shipped to INEL was routinely reprocessed at the ICPP for the recovery of highly enriched uranium; however, DOE recently announced that SNF will no longer be reprocessed at the ICPP.

Operations at the INEL over the past decades have resulted in the generation of radioactive, hazardous, and mixed waste (waste containing both hazardous and radioactive constituents). Some of these wastes continue to be generated and/or stored on the INEL site. In addition to INEL-generated wastes, mixed and transuranic (TRU) wastes from off-site locations have been shipped to the INEL for management.

Many of the currently operating ER&WM-related facilities at the INEL are more than 30 years old. These facilities were designed to meet the environmental requirements and health standards applicable at the time of their design and construction. To continue operations at these facilities, enhanced environmental controls and remediation of contamination are necessary to ensure compliance with current environmental requirements. DOE is committed to upgrading and/or remediating these facilities in order to comply with all applicable or relevant and appropriate requirements and to protect the environment, the public, and worker health and safety.

Waste management activities have been studied and implemented at the INEL since 1949. In 1977, the DOE evaluated activities at its INEL waste management facilities and conducted an assessment of ongoing waste management operations (*Final Environmental Impact Statement, Waste Management Operations, Idaho National Engineering Laboratory*, ERDA–1536).

Current Practices for Waste Management

Waste management operations at the INEL include treatment, storage, and disposal of wastes generated by ongoing nuclear energy, energy research, and defense activities; by environmental restoration activities; and by other sources. These operations apply to high-level radioactive waste (HLW), low-level radioactive waste (LLW), TRU waste, mixed waste (MW), greater-than-class C (GTCC) waste, hazardous waste (HW), and industrial and sanitary wastes.

Programs have been implemented, and more are planned, to prevent pollution and minimize the quantities of wastes generated during remedial actions and ongoing operations.

Current Practices for Spent Fuel Management

SNF resulting from DOE (and other) research, development, test, demonstration, power and isotope production, and propulsion programs over the years has been and continues to be received and placed into storage at the INEL. Until recently much of the SNF at INEL was routinely reprocessed at the ICPP for the recovery of highly enriched uranium; however, DOE announced in April 1992 that SNF will no longer be reprocessed at the ICPP. SNF is currently stored in various dry and wet storage facilities at the ICPP and other INEL locations. Additional facilities and expanded D&D efforts that may be needed to support the change in mission of the ICPP will be addressed in this EIS.

SNF at the INEL will ultimately be disposed of in a geological repository. To continue to receive SNF for storage at INEL, DOE will need increased storage capacity to safely store SNF until its eventual transport to a repository. As part of the proposed action, the EIS will address current INEL SNF storage configurations, the need for modifications to existing facilities or additional storage capacity, proposed SNF receipt for storage, and disposition of the current and anticipated inventory of SNF at INEL.

Current Practices for Environmental Restoration and D&D

ER activities include characterization of inactive waste sites to determine the nature and extent of contamination, development and implementaion of remedial action alternatives, and the development of characterization and remedial action technologies. In addition, various technologies applicable to remedial actions are being tested and evaluated in laboratory settings and field demonstrations. Examples of potential remedial technologies include in situ vitrification, vapor vacuum extraction, soil farming, and bioremediation. D&D consists of surveillance, maintenance, characterization, analysis, and cleanup of contaminated facilities under the ER&WM program.

ER activities at the INEL include projects currently underway pursuant to a FFA/CO developed through the joint efforts of DOE, the U.S. Environmental Protection Agency (EPA), and the State of Idaho Department of Health and Welfare. The FFA/CO, signed December 9, 1991, fulfilled a CERCLA requirement arising when the INEL was added to EPA's National Priorities List in 1989. The FFA/CO establishes the technical requirements and schedules for characterization, feasibility assessment, and cleanup at each potentially contaminated area at the INEL pursuant to CERCLA. In addition to the compliance actions related to statutory and regulatory requirements, expanded programs for monitoring of waste, groundwater, and air have been undertaken. Further, some nuclear facilities at the INEL are no longer in use and are either already scheduled for, or will eventually require, D&D to assure continued environmental and human health protection and compliance with DOE requirements.

Current Practices for Technology Development

To support DOE's goal for cleanup of its sites by the year 2019 and to reduce program costs, DOE has established an aggressive applied research, development, demonstration, testing, and evaluation program. The Technology Development (TD) Program is responsible for developing new technologies or refining existing technologies to provide needed support in several areas of waste management and environmental restoration. Examples include technology to deal with remediation of buried waste at the Radioactive Waste Management Complex, innovative means for waste minimization, and treatment processes for certain waste streams. These activities are included within the environmental restoration and waste management alternatives and, thus, will not have separate alternatives presented in this EIS.

Relationship to Other DOE NEPA Actions

The DOE ER&WM Programmatic EIS (PEIS) will address DOE complex-wide issues and alternatives for environmental restoration and waste management policies and practices. The NOI for the DOE ER&WM PEIS was published on October 22, 1990 (55 FR 42633). DOE announced the availability of a draft Implementation Plan for the ER&WM PEIS on February 4, 1992 (57 FR 4193). Similarly, DOE is preparing a PEIS addressing alternatives for reconfiguration of the DOE nuclear weapons complex. The NOI for the Reconfiguration PEIS was published on February 11, 1991 (56 FR 5590). DOE announced the availability of an Implementation Plan for the Reconfiguration PEIS on March 2, 1992 (57 FR 7371). The INEL ER&WM EIS will not address in detail the alternatives or issues being addressed in these PEISs, but will describe its relationship to these PEISs. Because of the close timing of these three EISs, their preparation is being coordinated. The INEL ER&WM EIS will discuss how issues addressed in these Programmatic EISs on DOE complex-wide policies and practices could affect the INEL ER&WM alternatives analysis. To the extent that INEL site-specific actions or alternatives are affected by decisions reached on broader programmatic issues, the INEL ER&WM EIS will be reviewed and supplemented, as necessary, to assure consistency.

Under the Nuclear Waste Policy Act of 1982 (42 U.S.C 10101 *et seq.*), as amended, DOE is currently conducting detailed studies of the suitability of Yucca Mountain, Nevada, as the candidate site for the United States' first geologic repository for disposal of high-level waste and spent nuclear fuel. In addition, under the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (42 U.S.C. 7272 *et seq.*), as amended, DOE is developing the Waste Isolation Pilot Plant (WIPP) in Carlsbad, New Mexico, to demonstrate the safe disposal of defense-generated TRU waste. The environmental impacts associated with the construction and use of these facilities are or will be addressed in separate NEPA documentation and will not be addressed in this EIS.

Ongoing ER&WM operations and supporting activities at the INEL will continue during preparation of this EIS. Actions that are proposed to precede the issuance of the ROD for this EIS will be evaluated according to criteria for permissible interim actions in the CEQ Regulations for Implementing NEPA. Some examples of potential proposed actions that may precede the ROD for this EIS include the following projects: the Waste Characterization Facility, the Solid Waste Transfer Station at the Central Facilities Area (CFA), Transportation Complex (Bus Barn), a Sewer System Upgrade, various D&D projects, and the Fuel Storage Area Rack Reconfiguration.

In addition, an Environmental Assessment for the high-level waste tank replacement program and an Environmental Assessment for expanded capabilities of the WERF incinerator are currently under preparation and decisions on these actions are expected to precede the ROD. Individual environmental restoration projects under CERCLA may be the subject of integrated CERCLA/NEPA documents as provided in DOE Order 5400.4. These documents will address the impacts of individual cleanup actions as the actions are planned. Decisions on these or any other

potential proposed activities determined to be permissible prior to the issuance of the ROD for this EIS will be referenced as part of the baseline analyzed in the no action alternative. The INEL ER&WM EIS will reference and incorporate, as appropriate, analyses and discussion presented in other DOE NEPA documents to assure consistency and comprehensive consideration of ER&WM-related activities.

Preliminary Description of Alternatives

Two alternatives are currently being considered for detailed analysis in the EIS.

1. Proposed Action

As part of the proposed action, DOE proposes to continue existing ER&WM activities. Such activities include D&D of existing facilities, environmental cleanup, waste and SNF management and technology development, and infrastructure functions (e.g., roads, power, fire protection, security). In addition, DOE would add to these existing and ongoing activities those proposed near-term projects and new activities that could be initiated within a 5 to 10 year timeframe following issuance of the ROD for this EIS, to the extent such projects and activities can be sufficiently described to allow an evaluation of their potential environmental impacts. The proposed near-term waste management projects would enhance waste handling and treatment capabilities through study, demonstration, and full scale implementation of new technologies. With respect to SNF, there is a need to increase existing storage capacity for ongoing and proposed new receipts while DOE investigates, tests, and if appropriate selects technologies to prepare SNF, as well as high-level waste, for disposal in a geologic repository. DOE proposes to increase storage capacity by modifying existing facilities. Storage alternatives at INEL will be addressed. In addition, the proposed action will include the overall remedial action process pursuant to the FFA/CO, including the integration of treatment, storage, and disposal needs with planned waste management facilities.

Proposed near-term projects that will be considered as part of the proposed action fall into the following general categories: (a) facility upgrades, modifications, or renovations; (b) new construction projects, such as waste TSD facilities; and (c) D&D. Examples of these proposed near-term projects include mixed and low-level waste treatment and disposal facilities, a hazardous waste storage facility, a waste processing facility, and D&D of the Materials Test and Engineering Test reactors. Additional facilities and expanded D&D efforts may also be needed to support the change in mission at the ICPP. These proposed projects and activities are intended to reduce risks to workers, the environment, and the general public.

The EIS will analyze the reasonably foreseeable impacts, including those that may result from normal operations and from various accident scenarios, of current and proposed ER&WM activities. The EIS also will describe potential impacts associated with alternative locations at the INEL site for proposed near-term ER&WM projects or facilities. Some ongoing and proposed activities at the INEL are not ER&WM activities and therefore will not be considered as part of the proposed action. Nevertheless, the cumulative impacts to be considered in this EIS will include the incremental impacts from the proposed action added to the impacts from normal operations of non-ER&WM activities. For example, while the receipt of SNF at the ICPP from Naval Reactors Facility (NRF) is a waste management activity that will be analyzed in the ER&WM EIS, the transportation of SNF to the NRF and the inspection and research of SNF at the NRF are not ER&WM activities and therefore not part of the proposed action to be analyzed in the ER&WM EIS. However, the cumulative impacts of these non-ER&WM activities and the proposed action will be considered.

2. The No Action Alternative

The no action alternative serves as a benchmark for comparison with the environmental effects of the proposed action alternative. The no action alternative consists of continuing present ER&WM practices at the INEL without implementing proposed near-term ER&WM projects and activities. In other words, the no action discussion will focus on no major changes to the existing ER&WM practices at the INEL. To the extent that the NEPA review for activities has already been completed or is expected to be completed and the decision made to proceed prior to the issuance of the ROD for this EIS, these activities will be considered part of the status quo or no action alternative.

No new proposals or actions would be implemented under the no action alternative. Existing hazardous or mixed waste treatment, storage, or disposal facilities, and interim SNF storage facilities would be maintained in existing configurations without developing additional treatment or storage capacity, and without implementation of technology development programs to treat high-level waste and, if necessary, SNF for eventual transport to a geologic repository. No further receipt of SNF from Fort St. Vrain would occur. Ongoing receipt of SNF would continue subject to availability of adequate storage capacity. Proposed D&D activities would not be undertaken.

The analysis of the no action alternative will also consider what the effects would be from a near-term discontinuation or orderly phaseout of those functions and/or facilities associated primarily with waste treatment and/or disposal. However, passive storage, surveillance, and associated maintenance activities would continue. Examples of functions or facilities that may be assessed for discontinuation or phaseout include receipt of off-site waste, treatment of low-level and mixed waste at the WERF incinerator, and calcination of high-level liquid waste stored at the ICPP.

The implementation of this alternative in some respects would be contrary to the mandates of some applicable requirements and the FFA/CO. Analysis of the no action alternative is required by the Council on Environmental Quality regulations implementing NEPA. Analysis of the no action alternative is also required on an operable unit basis by the Environmental Protection Agency's regulations/guidelines for Feasibility Studies under CERCLA.

Preliminary Identification of Environmental Issues

The following issues, subject to consideration of comments received in response to public scoping, have been tentatively identified for analysis in the ER&WM EIS. This list is presented to facilitate public comment on the scope of the ER&WM EIS. It is not intended to be all inclusive nor is it intended to be a predetermination of impacts.

1. Potential impacts to the public and on-site workers from radiological and nonradiological releases caused by activities to be conducted within the context of the proposed action and alternative(s).

2. Potential environmental impacts, including air and water quality impacts, caused by the proposed action and alternative(s).

3. Potential transportation impacts of on-site and off-site shipments of radioactive or hazardous material, SNF, and radioactive, hazardous, or mixed waste as a result of the proposed action and alternative(s).

4. Potential effects on endangered species, floodplain/wetlands, and

archaeological/historical sites as a result of the proposed action and alternative(s).

5. Potential impacts from postulated accidents as a result of the proposed action and alternative(s).

6. Potential socioeconomic impacts to the surrounding communities as a result of implementing the proposed action and alternative(s).

7. Cumulative impacts from the proposed action and other past, present, and reasonably foreseeable future actions.

8. Potential irreversible and irretrievable commitment of resources.

Dated in Washington, DC this 29th day of September for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary for Environment, Safety, and Health.

[FR Doc. 92-24107 Filed 10-2-92; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance Awards; Central State University

AGENCY: Albuquerque Field Office (AL), Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance application for a grant to Central State University.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(C), which authorizes a financial assistance award to be made noncompetitively if the applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity, AL gives notice of its plans to award a four-year renewal grant to Central State University, Wilberforce, Ohio, for its Cooperative Education Program. The total estimated cost of the project is $75,000. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to advance the development of human potential, to strengthen the capacity of Historically Black Colleges and Universities to provide quality education, and to overcome the effects of discriminatory treatment. AL is sponsoring this program under Executive Order 12320, dated September 15, 1981, to improve the recruitment and participation of students of Historically Black Colleges and Universities in full-time employment with the DOE upon successful completion of educational requirements and work performance. The particular significance of the activity to be funded is to increase availability of underrepresented groups in the business and engineering disciplines.

FOR FURTHER INFORMATION CONTACT: M. Laurene Dubuque, U.S. Department of Energy Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, New Mexico 87185-5400, Telephone: (505) 845-4301.

Issued in Albuquerque, New Mexico, on September 17, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92-24103 Filed 10-2-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Cooperative Agreement; Financial Assistance Award to Char-Fuel Associates, LTD

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance application for award of a cooperative agreement.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a cooperative agreement to the Char-Fuel Associates, LTD, A Wyoming Limited Partnership, 5105 DTC Parkway, suite 317, Englewood, CO 80111 for the project entitled, "Pilot Scale Demonstration of Charfuel Coal Refining Process." The effort will take nine months to complete. The additional effort has an associated budget of approximately $2,154,953; the proposed DOE share is $249,990 and the proposed cost share is $1,904,963.

FOR FURTHER INFORMATION CONTACT: Mary C. Spatafore, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4253, Procurement Request No. 21-92MC29268.000.

SUPPLEMENTARY INFORMATION: The objective of this action is to provide support in developing a novel, short residence time, hydrocracking technology which employs rearrangement of hydrogen inherent in the feedstock to refine coal in a manner similar to petroleum refining. The primary refinery produce will be Charfuel fluidic fuel, a "slurry type" boiler fuel, which is an admixture of char, process-derived hydrocarbon liquids, and as needed, a small amount of water or wet methanol. The proposed product is a compliance slurry fuel derived by hydropyrolysis of high sulfur eastern coals or western subbituminous coals and can be of value to American industry, including the electric utilities, as a boiler and furnace fuel. DOE support will facilitate commercialization of the process which could ultimately lead to a decreased dependence on imported petroleum. To date, the participant has completed ninety percent of the design phase; DOE support will facilitate installation and operation. Furthermore, DOE knows of no other entity conducting this specific activity as the process is novel and unique to Char-Fuel.

Issued in Washington, DC, September 25 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92-24108 Filed 10-2-92; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance Award; Langston University

AGENCY: Albuquerque Field Office (AL), Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance application for a grant to Langston University.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(C), which authorizes a financial assistance award to be made noncompetitively if the applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity, AL gives notice of its plans to award a four-year renewal grant to Langston University, Langston, Oklahoma, for its Cooperative Education Program. The total estimated cost of the project is $75,000. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to advance the development of human potential, to strengthen the capacity of Historically Black Colleges and Universities to provide quality education, and to overcome the effects of discriminatory treatment. AL is sponsoring this program under Executive Order 12320, dated September 15, 1981, to improve the recruitment and participation of

students of Historically Black Colleges and Universities in full-time employment with the DOE upon successful completion of educational requirements and work performance. The particular significance of the activity to be funded is to increase availability of underrepresented groups in the business and engineering disciplines.

FOR FURTHER INFORMATION CONTACT: M. Laurene Dubuque, U.S. Department of Energy Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, New Mexico 87185–5400, Telephone: (505) 845–4301.

Issued in Albuquerque, New Mexico, on September 17, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92–24105 Filed 10–2–92; 8:45 am]

BILLING CODE 6450–01–M

Noncompetitive Financial Assistance Award; Prairie View A&M University

AGENCY: Albuquerque Field Office (AL), Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance application for a grant to Prairie View A&M University.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(C), which authorizes a financial assistance award to be made noncompetitively if the applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity, AL gives notice of its plans to award a four-year renewal grant to Prairie View A&M University, Prairie View, Texas, for its Cooperative Education Program. The total estimated cost of the project is $75,000. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to advance the development of human potential, to strengthen the capacity of Historically Black Colleges and Universities to provide quality education, and to overcome the effects of discriminatory treatment. AL is sponsoring this program under Executive Order 12320, dated September 15, 1981, to improve the recruitment and participation of students of Historically Black Colleges and Universities in full-time employment with the DOE upon successful completion of educational requirements and work performance. The particular significance of the activity to be funded is to increase availability of underrepresented groups in the business and engineering disciplines.

FOR FURTHER INFORMATION CONTACT: M. Laurene Dubuque, U.S. Department of Energy Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, New Mexico 87185–5400, Telephone: (505) 845–4301.

Issued in Albuquerque, New Mexico, on September 17, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92–24104 Filed 10–2–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2641–000 New York]

Niagara Mohawk Power Corp.; Availability of Environmental Assessment

September 29, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new transmission line license for the existing Feeder Dam Transmission Line Project located on the Hudson River in Saratoga County, near the Town of Moreau, Village of South Glen Falls, New York, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24045 Filed 10–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–004]

Frontier Gas Storage Co.; Compliance Filing

September 25, 1992.

Take notice that on September 12, 1992, Frontier Gas Storage Company (Frontier), in compliance with the provisions of the Commission's February 13, 1985 Order in Docket Nos. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 3 Bcf of Frontier's gas storage inventory on an "as metered" basis to Prairielands Energy Marketing, Inc.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Any person desiring to be heard or to make a protest with reference to Frontier's filing should, on or before October 16, 1992, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to protest in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24043 Filed 10–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–005]

Frontier Gas Storage Co.; Sale Pursuant to Settlement Agreement

September 29, 1992.

Take notice that on September 23, 1992, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 *et, al.*, submitted an

executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 5 Bcf of Frontier's gas storage inventory on an "as metered" basis to Hiland Partners (Hiland).

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Frontier makes the request that a waiver of the fourteen-day notice requirement of Subpart (b) above be granted to permit Frontier to commence service under the agreement on October 1, 1992. Frontier notes that it has filed this service agreement at its earliest opportunity—one day after the service agreement was executed. Frontier will proceed in accordance with the requested waiver, unless it receives a notification to the contrary from the Commission.

Any person desiring to be heard or to make a protest with reference to said filing should, on or before October 20, 1992, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Louis D. Cashell,

Secretary.

[FR Doc. 92–24044 Filed 10–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–731–000]

Texas Sea Rim Pipeline, Inc.; Petition for Declaratory Order

September 29, 1992.

Take notice that on September 24, 1992, Texas Sea Rim Pipeline, Inc. (TSR) 12450 Greenspoint Drive, Houston, Texas 77060–1991, filed in Docket No. CP92–731–000, a petition for Declaratory Order finding that the primary function of its facilities is "gathering" and that the operation of those facilities is exempt from the Commission jurisdiction in accordance with Section 1(b) of the Natural Gas Act, 15 U.S.C. 717 *et seq.*

TSR states that its facilities are comprised of two distinct pipeline systems, one interstate and the other intrastate. The interstate line, the subject of this request, is 14-inch in diameter, 14.1 mile long which begins offshore TX and terminates at the intake side of the Jefferson County, TX, separation plant. This line, as alleged by TSR, provides a gathering service of offshore production onshore.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 9, 1992, filed with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24012 Filed 10–2–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–104–NG]

Great Falls Gas Co., Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed by Great Falls Gas Company (GFGC) on August 10, 1992, as supplemented August 24, 1992, for authorization to import natural gas from Canada. GFGC proposes to import for system supply up to 5,000 Mcf's of gas per day on a firm basis and an additional 5,000 Mcf's per day on an interruptible basis from November 1, 1992, through October 31, 2007. The gas would be imported into the United States at an existing interconnection of the pipeline systems of NOVA Corporation of Alberta (NOVA) and Montana Power Company (MPC) near Carway, Alberta/Babb, Montana.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, November 4, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: GFGC is a corporation organized under the laws of the State of Montana with its principal place of business in Great Falls, Montana. It operates a natural gas distribution system in Montana that supplies residential, commercial and industrial customers, including a United States Air Force Base. Currently, GFGC receives natural gas from MPC which provides two thirds of the supply under a bundled tariff contract. The remaining gas supply comes from production contracts with producers in the State of Montana. According to GFGC, under Montana Public Service Commission Order No. 5474c, issued October 31, 1991, GFGC will only be allowed to take one third of its total supply from the bundled MPC gas contract for the heating season beginning September 1, 1992. GFGC will not be permitted to take any gas supply from the MPC supply contract for the heating season beginning September 1, 1993, or any subsequent time period.

The natural gas proposed to be imported would be purchased by GFGC under an agreement with Shell Canada Limited (Shell) dated July 30, 1992. The agreement is for a term of 15 years commencing November 1, 1992. Either party may terminate the agreement at

the end of the fifth and tenth contract year upon 27 months notice. The maximum daily quantity (MDQ) is 5,000 Mcf with a provision for the delivery of up to 5,000 Mcf of interruptible volumes. The agreement defines the annual contract quantity (ACQ) as the sum of the MDQ's in any year. Although there are no take-or-pay provisions, if GFGC's purchases of gas over a contract year are less than 80 percent of the ACQ, then Shell may reduce the MDQ and ACQ in the following contract year unless the shortfall is made up in the subsequent year.

The contract's pricing structure for firm gas deliveries consists of four parts which include two tiers of commodity prices based on the volume taken. The first component of the import price is a demand charge equal to Shell's actual cost of reserving the firm transportation required to deliver the gas on NOVA to Carway. The second component is a reservation charge set at $0.06 (U.S.) per MMBtu for the first two contract years. The third component is a commodity charge for the quantity of gas taken up to 65 percent of the ACQ (referred to as Tier I Gas) which would be $1.31 (U.S.) per MMBtu in the first two years. The last component is a commodity charge for the balance of the gas taken under the contract in excess of Tier I Gas up to the ACQ (referred to as Tier II Gas) which will be negotiated by the parties prior to the end of each previous month. If no agreement is reached on a new price for Tier II Gas, the index for Alberta gas published in Natural Gas Week will be used as the price. With respect to the price for interruptible quantities of gas purchased by GFGC, it would be established on a monthly basis by negotiation between the parties.

The demand charge and the reservation charge must be paid by GFGC each month regardless of the quantity of gas purchased. After the second contract year, the commodity charge for Tier I Gas and the reservation charge will be set by price renegotiation. If renegotiation is unsuccessful, then either party may request arbitration. The demand charge is not subject to redetermination.

The decision on GFGC's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the gas and security of the long-term supply. Parties, especially those that may oppose this application, should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as they relate to the requested import authority. The applicant asserts that imports made under this arrangement would be competitive and secure. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of GFGC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 29, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-24112 Filed 10-2-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-72-NG]

Intalco Aluminum Co., Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Intalco Aluminum Corporation blanket authorization to import up to 2 Bcf of natural gas from Canada over a two-year term, beginning on the date of first import delivery after September 28, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 28, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-24113 Filed 10-2-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Final 1994 Power Marketing Plan, Central Valley Project, CA

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of the final 1994 Power Marketing Plan governing allocation of 529.946 megawatts (MW) of power, final allocation of 500.824 MW of power to existing customers, and proposed allocation of the remaining 29.122 MW.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the DOE, hereby announces its 1994 Power Marketing Plan (Plan) for the Central Valley Project (CVP), California. The Plan consists of Western's decision regarding the amount of power to be marketed, the terms and conditions under which that power shall be marketed, and the final allocation of 500.824 MW of power to existing customers. The Plan will be complete upon publication of the final allocation of the remaining 29.122 MW of power (the 29.122 MW). Western's decision to allocate power to existing customers was published in the proposed Plan, set forth in 56 FR 41683, August 22, 1991. The public has commented on the allocation of power to existing customers, and a discussion of the comments received is included in this notice. Western may enter into contracts for the sale of power to existing customers under this plan after publication of this notice. Western may enter into contracts for the sale of the 29.122 MW of power after the publication of final allocations in the **Federal Register**. The electric service contracts for the 500.824 MW of power marketed under this plan to existing customers will be effective when signed by both the customer and Western. Electric service contracts for the 29.122 MW of power will be effective on the later of July 1, 1994, or when signed by the customer and Western.

The list of new customers who have received a proposed allocation of the 29.122 MW of power is subject to change. The list of final allocations for this power will be published after a 3-day comment period. Only comments relevant to the proposed allocations will be accepted during this 30-day period. The notice of the final allocations for the 29.122 MW of power will address responses to the comments received during the comment period.

DATES: Written comments on the proposed allocations of the 29.122 MW of power must be received at the address set forth below no later than 5 p.m., local time, November 4, 1992. Western will address each comment prior to publishing the final power allocations in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Inquiries and written comments regarding the proposed allocations should be directed to: David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825-1097, (916) 649-4418.

All documentation made or retained by Western for the purpose of developing the Plan and allocations is available for inspection and copying at this address.

SUPPLEMENTARY INFORMATION:

Background

Western formally initiated the development of the Plan with a January 31, 1989, public information meeting. In a brochure distributed at that meeting, Western explained the need for a power marketing plan for the marketing of CVP power that would become available with the expiration of certain power contracts on or about June 30, 1994. Western then published 54 FR 33064, August 11, 1989, which outlined four alternatives that Western believed would define options to market the CVP resource. One of the alternatives was designated as the draft power marketing plan in order to facilitate the public review process. The notice informed the public that Western would conduct an environmental assessment (EA) on the range of alternatives to determine whether any of the alternatives would result in significant impacts to the environment in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations. Dates were announced for public meetings for Western to accept comments on the alternative marketing plans and on the scope of the EA.

The public information meeting was held on September 12, 1989, with the public comment forum following on October 20, 1989. The formal comment period ended on November 20, 1989. After considering the comments received during the comment period, Western added various options to each of the alternatives and prepared an EA to determine the environmental effects on the range of the alternative marketing plans. On April 24, 1991, the DOE issued a finding of no significant impact (FONSI) on the human environment based on Western's EA. Western then used all available information gathered in the public process and developed the proposed Plan which was published in 56 FR 41683, August 22, 1991.

Western held a public information forum on the proposed Plan on August 27, 1991. A public comment forum followed on September 16, 1991, to accept oral and written comments on the proposed Plan. The 30-day formal comment period ended October 16, 1991. Approximately 100 comments were received from nearly 40 sources. These comments are addressed in this notice. The comments included requests for increased power allocations, the inclusion of forthcoming Energy Planning and Management Program conditions in new contracts under the marketing plan, and a clarification of the general allocation criteria.

One comment by the National Wildlife Federation suggested that Western withdraw its proposed Plan in order to prepare an environmental impact statement (EIS) on alternative actions that would be likely to affect the environment. Western representatives met with representatives of the National Wildlife Federation and discussed various aspects of the Plan, the relationship between CVP water and power operations, and potential environmental impact issues. Western representatives indicated in the discussions that the concurrent expiration of all CVP power contracts in the year 2004 offers the first opportunity to comprehensively investigate new methods of managing the CVP power resources. The expiration of power contracts in the year 2004 coincides with the expiration of Contract No. 14-06-200-2948A (Contract 2948A), which is the contract between Pacific Gas & Electric Company (PG&E) and Western which provides for the firming of the CVP resource, sales, exchanges, and transmission of electric power. Western intends to initiate the public process for the preparation of an EIS on post-2004 CVP power marketing in the near future.

Western also received letters from members of Congress requesting an explanation of the basis for Western's decision not to prepare an EIS on the proposed Plan. Responses to the letters were prepared by Western and are available upon request. Western responded that an EA was the appropriate level of NEPA consideration for the Plan due to the legislative

priorities for the operation of the CVP, the presence of reregulation dams immediately downstream of the major generation facilities, and Contract 2948A.

In considering these comments, Western determined that additional analysis could benefit the EA, and the decision was made to revise the EA.

Western published a notice in the **Federal Register**, 57 FR 17904, April 28, 1992, to bring the public up to date regarding the revision of the EA. In order to formally determine the demand for CVP power, that notice also called for applications for power under the Plan. Western received 96 applications for power under this Plan by the deadline of May 28, 1992. Sixty-three existing customers, including 4 customers who presently receive CVP power under contracts terminating in 2004, and 33 other entities applied for an allocation. After the applications were received, a letter with a copy of the prototype contract was sent to each applicant on June 18, 1992.

The additional environmental studies have now been completed, the EA has been revised, and a subsequent FONSI has been issued by DOE on September 21, 1992. The additional studies include an analysis of the impacts of the alternatives downstream from the CVP dams. The revised EA also contains expanded descriptions of the existing environment, provides a clarification of the operation of the CVP system, and includes a description of the studies conducted for the EA.

This Plan falls within the range of alternatives studied for the EA. Due to the nature of the public and environmental decision making process, environmental studies must be underway before Western knows what entities will apply for power, and completed before the publication of the final marketing plan. There is, at that time, an infinite number of possible plans that could eventually be adopted. Therefore, in order to appropriately study the environmental effects of our actions, Western has chosen alternatives that represent the range of possible marketing plans that could eventually be adopted. Four alternatives, with certain options relevant to the alternatives, were studied for the revised EA. They ranged from the "termination" alternative, under which no power would be marketed, to an alternative under which all available power would be marketed.

With this notice, Western allocates the same amount of power to the 59 existing customer applicants that they receive under contracts expiring in 1994, and proposes to allocate power to 4 of the 33 applicants that are not now customers of Western. Western also proposes to reserve 21 MW of Diversity Power so that it may be offered on a pro rata basis to customers with an allocation of Westlands Withdrawable Power in the event that power is withdrawn.

Summary of Revisions to the Marketing Plan

As a result of comments received during the comment period and public forums, the proposed Plan, published August 22, 1991, has been revised. The revisions are summarized as follows.

A change was made to the section entitled "Amounts of Power and Classes of Service" from the proposed Plan in that only 9.0 MW of Diversity Power will be marketed at this time. These 9.0 MW will be allocated to customers presently receiving that class of service under contracts expiring in 1994. The 21 MW of Diversity Power that is presently not under contract will be reserved so that it may be offered on a pro rata basis to customers with an allocation of Westlands Withdrawable Power in the event that Westlands Withdrawable Power is withdrawn. While Western prefers not to market these 21 MW of Diversity Power due to the present resource mix, Western will consider marketing this power if the withdrawal of Westlands Withdrawable Power causes undue hardship for Westlands Withdrawable Power customers. The 21 MW of Diversity Power will not be available for marketing to Westlands Withdrawable customers until after June 30, 1994. If this power is marketed, the terms and conditions set forth in this Plan shall govern the sale of the Diversity Power.

The requirements of a Diversity Power customer, as identified in section I.C of the proposed Plan, were expanded to include those who can reduce their Western schedule as well as shed load at the time of Western's simultaneous peak demands to maintain Western's customer load level.

In this Plan, power amounts were not rounded to the nearest tenth, as they were in the proposed plan.

The section in the proposed Plan entitled "Eligibility Criteria" was unchanged in the Plan other than some minor wording changes designed to improve clarity.

The section in the proposed Plan entitled "General Allocation Criteria and Contract Principles" was split into two separate sections entitled "General Allocation Criteria" and "General Contract Principles" in the Plan. This was done to better associate each criterion with a specific section. Some provisions were reworded or expanded to clarify the intent. Western decided to offer a new contract at least 6 months prior to the expiration of an existing contract, unless otherwise agreed in writing by the parties. Criterion III.J of the proposed Plan stated that an applicant's minimum load at each delivery point shall be no less than an annual peak of 500 kilowatts (kW). This criterion has been deleted from the Plan because there is no basis for inclusion of minimum loads at each delivery point. Criterion III.K of the proposed Plan was also eliminated from the Plan because it duplicated a provision contained in the "Eligibility Criteria" section.

Western discovered a discrepancy between the language of the proposed plan published in the **Federal Register** notice and the language of the prototype contract that was referenced in the notice and which was sent to the power applicants. The proposed plan states that the contracts will be effective in 1994, and the prototype contracts state that they are effective on the date of execution. Because the allocations to existing customers do not change under this Plan, and in order to simplify the administration of the contracts, Western hereby clarifies the effective date of the existing customer contracts as the date of the execution of the contracts by both the customer and Western. Electric service contracts for the sale of the 29.122 MW will be effective on the later of July 1, 1994, or when signed by Western and the customer.

The section in the proposed Plan that referred to contract terms and conditions was revised for the purpose of clarification. Western also determined that it was appropriate to add an explanation regarding Diversity Power.

Responses to Customer Comments Regarding Power Marketing Issues

A. Amounts of Power and Classes of Service

1. Western proposed to allocate a total of 379.195 MW of Long-Term Firm Power. Customers presently receiving Long-Term Firm Power under contracts expiring in 1994 would be allocated 346.73 MW of Long-Term Firm Power. Customers presently receiving 24.343 MW of Renewable Resource and Cogeneration Power under contracts which expire in 1994 would have those contract rates of delivery converted to Long-Term Firm Power allocations under the proposed Plan. New customers would be allocated a total of 8.122 MW of Long-Term Firm Power, which is derived from 2.465 MW of

Long-Term Firm Power presently under contracts expiring in 1994 but unused by existing customers and 5.657 MW of Renewable Resource and Cogeneration Power presently under contracts expiring in 1994 but unused by original allottees.

Comments: The cities of Alameda, Healdsburg, Lompoc, Lodi, Santa Clara, and Ukiah (Cities) recommended that Western not grant full contract renewals of CVP power to State agencies since the State has power resources of its own which could meet the needs of these entities.

Response: Western decided to allocate Long-Term Firm Power to all existing customers, including State agencies, in the same amounts that they are presently receiving under contracts expiring in 1994. The economic analyses done for the EA showed that the fewest net socioeconomic impacts would be expected to occur if the draft plan, which included the sale of power to the existing power customers, was implemented.

Comment: The Cities also recommended that Western fully renew all contract rates of delivery (CRD) as they may be in effect for the Cities, including any short-term allocations (including 1 MW temporary Renewable Resource and Cogeneration allocation).

Response: Although the city of Palo Alto was originally allocated 1 MW of Renewable Resource and Cogeneration Power, it was unable to use it. That 1 MW was then marketed by Western to the cities of Healdsburg, Lodi, Lompoc, and Ukiah as part of a settlement which relieved Western of the contractual obligation of purchasing energy associated with geothermal renewable resource allocations. The contracts to the four cities expire in 1994 and the 1 MW will become available to new customers.

Comment: The city of Roseville suggested that Western could prevent Long-Term Firm Power withdrawals by making some firm allocations that would be withdrawable before Long-Term Firm Power. They recommended allocating Type III Withdrawable, the 8.122 MW now unused, and the Renewable Resource and Cogeneration Power as "Interim Firm Power."

Response: Western has decided not to create new classes of power because it would require that new withdrawal procedures be established through a potentially lengthy public involvement and environmental compliance process.

Comment: Lassen Municipal Utility District (LMUD) believes Western should not allocate 346.73 MW of Long-Term Firm Power to customers presently receiving that class of power. They recommended that Western allocate a portion of the 346.73 MW of Long-Term Firm Power to new customers. They also suggested that customers presently receiving the 24.343 MW of Renewable Resource and Cogeneration Power should not have that power converted to Long-Term Firm Power. They believe Western should allocate a portion of this power to new customers.

Response: Western decided to allocate Long-Term Firm Power to all existing customers in the same amounts that they are presently receiving under contracts expiring in 1994. The economic analyses done for the EA showed that the fewest net socioeconomic impacts would be expected to occur if the draft plan, which included the sale of power to existing power customers, was implemented.

Comment: The National Wildlife Federation commented that Western should not market any power under this Plan.

Response: Western decided to allocate Long-Term Firm Power to all existing customers in the same amounts that they are presently receiving under contracts expiring in 1994. The economic analyses done for the EA showed that the fewest net socioeconomic impacts would be expected to occur if the draft plan, which included the sale of power to existing power customers, was implemented. Western intends to make a broad environmental analysis of power marketing alternatives in the EIS soon to be initiated for Western's 2004 power marketing program. At this time, however, the CVP electrical system is integrated with PG&E's electrical system by Contract 2948A, which expires in 2004. That contract states that CVP generators shall be operated up to their full capabilities within the constraints set by the Bureau of Reclamation. Even if Western marketed no power under this Plan, the operation of the CVP system would not change. PG&E is obligated to support Western's CVP customers' load levels up to the maximum simultaneous peak of 1,152 MW. Therefore, there is no environmental or economic reason that Western should not market power as is described in the Plan.

Comment: The cities of Palo Alto and Roseville and Reclamation District #2035 commented that Western should allocate the Long-Term Firm Power to its existing power customers only.

Response: The proposed Plan is consistent with the intent of Reclamation law that Federal electric power and energy available is marketed in such a manner as to encourage its most widespread use. Western has decided that allocation to both new and existing customers meet that criterion.

Comment: The Department of the Navy recommended that customers with Type III Withdrawable Power be first offered any available Long-Term Firm Power which may be available from unused Long-Term Firm Power presently under contract; then the Type III Withdrawable Power which becomes available should be offered to new customers.

Response: By its very nature, Type III Withdrawable Power is firm power which is withdrawable to protect the 1,152–MW load level. Marketing this power to various CVP customers was established in past marketing plans, and Western, in exercising its discretion in allocating this power under Reclamation law, has decided not to change its proposal.

Comment: The Northern California Power Agency (NCPA) and the Truckee-Donner Public Utility District (Truckee-Donner PUD) suggested that the previous allocation of 1.965 MW of Long-Term Firm Power made to Truckee-Donner PUD should be renewed, and that the requirement that an entity must be located within the PG&E service area should be waived for Truckee-Donner PUD. They commented that allocating this entitlement to another entity would preclude Truckee-Donner PUD from acquiring the benefits of negotiations and studies for which they have made substantial commitments of time, effort, and money.

Response: Since their allocation was made in 1982, Truckee-Donner PUD has been unable to enter into contractual arrangements which would allow them to utilize CVP power. Based on the contract principles established in this Plan, Western has determined that this power shall be available for allocation in the current Plan.

Comment: The city of Redding commented that the conversion of Renewable Resource and Cogeneration Power to Long-Term Firm Power should not compromise Western's ability to meet existing or new commitments, nor should it compromise Western's ability or willingness to allocate firm power to the Whiskeytown Power Project. The city of Ukiah also commented that the conversion of Renewable Resource and Cogeneration Power to Long-Term Firm Power should not impact the ability for existing customers to receive firm power allocations.

Response: The conversion of Renewable Resource and Cogeneration Power to Long-Term Firm Power does not change Western's responsibilities to its customers nor does it change

Western's ability to meet its contractual commitments.

2. Western proposed to allocate 40.7 MW of Type III Withdrawable Power to customers presently receiving that class of service under contracts expiring in 1994.

Comment: The Department of the Air Force and the University of California, Davis, suggested that the Type III Withdrawable Power be converted to Long-Term Firm Power. The city of Roseville requested that Western accept applications from any existing customer who wants Type III Withdrawable Power.

Response: Type III Withdrawable Power is firm power which is withdrawable to protect the 1,152–MW load level. The marketing of this type of firm power to various CVP customers was established in previous marketing plans. Conversion of Type III Withdrawable Power to Long-Term Firm Power or increasing the amount of this type of power would diminish Western's ability to protect the 1,152–MW load level. Therefore, Western, in exercising its discretion in allocating this power under Reclamation law, sees no reason to change its proposal.

3. Western proposed to allocate 9 MW of Diversity Power to customers presently receiving that class of service under contracts expiring in 1994. Under the proposed plan, the remaining 21 MW of Diversity Power which is presently not under contract could have been allocated as Diversity Power to existing and new customers. A Diversity Power customer, at the request of Western, must shed a specified amount of load at the time of Western's simultaneous peak demands.

Comment: The Cities and NCPA commented that Western should consider marketing more than 30 MW of Diversity Power.

Response: Diversity Power allows Western to achieve its load shaping capabilities required to maintain the contractual 1,152-MW maximum simultaneous demand. Therefore, Western will allocate Diversity Power based on the amount of load shedding capability needed for Western's load and resource mix.

Comment: Ames Research Center (Ames) suggested that Western consider allocating 21 MW of Diversity Power to Ames at the system average composite rate.

Response: Western published proposed rates for CVP power and transmission in the **Federal Register** on July 17, 1992, to be effective May 1, 1993, through April 30, 1998. These proposals are being addressed through the public process for the determination of the rates. The 21 MW of Diversity Power that are presently not under contract will be reserved so that they may be offered on a pro rata basis to customers with an allocation of Westlands Withdrawable Power in the event that power is withdrawn.

Comment: The Bay Area Rapid Transit District (BART), Modesto Irrigation District (Modesto), Turlock Irrigation District (Turlock), and the city of Redding recommended that the requirements of a Diversity Power customer be expanded to include those who can reduce their Western schedule as well as shed load at the time of Western's simultaneous peak demands to maintain Western's customer load level.

Response: As indicated in the Summary of Revisions section of this notice, the requirements of a Diversity Power customer were expanded to include those who can reduce their Western schedule.

4. Western proposed to allocate 80 MW of Curtailable Power to the city of Santa Clara, which currently has a contract for this power.

Comment: Turlock commented that the 80 MW of Curtailable Power should not all be allocated to the city of Santa Clara.

Response: Santa Clara's contract provisions for Curtailable Power evolved after the settlement of the *Santa Clara* lawsuit in 1980. Western will allocate 80 MW of Curtailable Power to the city of Santa Clara in exchange for the city's participation in Western's load management program.

B. Eligibility Criteria

1. Western proposed to apply general eligibility criteria to all applicants seeking an allocation of power under the Plan. Among those criteria, Western proposed that, to be eligible to receive an allocation, the preference entity must exist, operate, and be ready, willing, and able to receive and use, or receive and distribute, Federal power as of the publication date of the final 1994 Power Marketing Plan in the **Federal Register** or January 1, 1992, whichever date is earlier. The entity also must be located within the PG&E service area.

Comment: Contra Costa Water District recommended that new customers be given 2 years to make use of their allocation. They further commented that this eligibility criterion should be applied to the contract service date and not sooner.

Response: The requirement that customers must be able to use CVP power by January 1, 1992, promotes the most widespread use of the Federal resource consistent with Reclamation law. If customers were allowed 2 years to make use of their allocation, that power would, in effect, be unmarketed during that period of time, while another entity may have an immediate use for the power. Also, there is no guarantee that the customers would be able to make use of the power if they were given an allocation.

C. General Allocation Criteria and Contract Principles

1. Western proposed to apply general allocation criteria and contract principles to all applicants seeking an allocation of power under the Plan.

Comment: There were several comments which suggested that it would be appropriate for Western to remove all contract contingencies regarding Contract 2948A.

Response: Contract 2948A currently provides various firming and wheeling services to Western's power customers. If the contract is terminated, Western would make every effort to obtain these services elsewhere; however, Western cannot guarantee that these services will be available.

Comment: The city of Alameda recommended the inclusion of special allocation criteria to allow for existing customers to obtain additional power available due to Federal military base consolidations.

Response: It is not clear at this time whether the military's total demand for power will decrease due to the consolidations; therefore, Western's military customers were not treated as exceptions to the Plan.

Comment: The city of Ukiah suggested that Western include allocation criteria in the Plan recognizing investments in geothermal and renewable resource projects when allocating Diversity Power and other unused power.

Response: Investments in Renewable Resource and Cogeneration Power were considered when Western allocated power in 1981 for Renewable Resource and Cogeneration Power projects. The fact that power has been converted to Long-Term Firm Power is a substantial benefit to customers with that power.

2. Western proposed that, for existing Western customers, electric service contracts for power available under the Plan must be executed no later than the expiration date of the existing electric service contract.

Comment: The Department of the Navy suggested that Western modify the Plan to provide that Western shall present the new contract at least 6 months prior to the expiration of the existing contract.

Response: As indicated in the Summary of Revisions section of this notice, Western committed to present a new contract at least 6 months prior to the expiration of an existing contract, unless otherwise agreed in writing by the parties.

Comment: The National Wildlife Federation commented that Western should include forthcoming Energy Planning and Management Program conditions to new contracts under the Plan.

Response: It is anticipated that upon publication of the final Energy Planning and Management Program, integrated resource planning requirements will be applicable to all CVP customers. Western's prototype contract states that the Contractor shall have an on-going energy management program in accordance with requirements published by Western in the **Federal Register** following an appropriate public process or any subsequent amendments thereto.

3. Western proposed that it would enter into scheduling agreements with Western's customers when advantageous to its customer base as a whole and when consistent with applicable law or when required in accordance with the normal utility practice of interconnected utilities. Western further proposed that it would determine whether to enter into a scheduling agreement based upon satisfactory resolution of issues related to interconnected operations, including use of transmission capacity, voltage support, power factor, reactive powerflow, system operations, and modifications of facilities.

Comment: PG&E commented that scheduling contracts should be consistent with Contract 2948A power accounting.

Response: Western will schedule power to the extent allowed by law and Western's existing contract with PG&E.

4. Western proposed that an applicant's minimum load at each delivery point shall be no less than an annual peak of 500 kW.

Comment: Reclamation District #2035 recommended that Western include arrangements permitting more than one point of delivery and allowing for changes in points of delivery and amounts of power in response to growth or location changes. PG&E commented that the number of small power delivery points should be reduced, and that more load at fewer delivery points should be served to conform with Contract 2948A. They also suggested that Western should provide for fixed contract rates of delivery rather than allowing the contract rates of delivery to be shifted. The city of Avenal and BART stated that requiring a customer to maintain at least a 500 kW demand at each delivery point is contrary to customers' conservation efforts, and BART suggested eliminating this criterion from the Plan.

Response: As indicated in the Summary of Revisions section of this notice, criterion III.J of the proposed Plan has been deleted from this Plan.

5. Western proposed to give greater consideration in allocating power to irrigation or water districts which transmit CVP power or receive or purchase CVP water.

Comment: Many commenters suggested that no special consideration should be given merely because the customer purchases CVP water; i.e., irrigation and water districts.

Response: As indicated in the Summary of Revisions section of this notice, a clarification of Western's intent needed to be provided. This criterion has been reworded in this Plan as criterion C.4.

6. Western proposed to give greater consideration in allocating power to those applicants who have instituted and continue to actively pursue demand-side management activities.

Comment: The city of Palo Alto suggested that Western should include the words "energy-saving and peak-reducing" demand-side management activities since not all demand-side activities save energy or reduce peak.

Response: The call for applications for power published in the **Federal Register** did not specify that applicants should address "energy-saving and peak-reducing" activities, but requested that they address their demand-side management activities. In order to make the change requested by Palo Alto, Western would be required to obtain a clarification from all those who applied for power in order to be able to apply the suggested change to the applications. While Palo Alto's suggestion would have made Western's criterion more specific, Western has chosen not to make the change.

7. Western proposed to give greater consideration in allocating power to those applicants who assist Western in its mission of meeting its customer loads at the lowest possible cost consistent with sound business principles by providing such factors as, among others, transmission access to low-cost sources of power and aiding in providing efficient and reliable electrical service.

Comment: The Cities and the city of Redding suggested that joint generation projects should be included in this criteria as a factor.

Response: The call for applications for power published in the **Federal Register** did not specify that applicants should address joint generation projects in their applications. In order to make the change requested by Redding, Western would be required to obtain a clarification from all those who applied for power in order to be able to apply the suggested change to the applications. While Redding's suggestion would have made Western's criteria more specific, Western has chosen not to make the change.

D. Contract Terms and Conditions

Western proposed to apply contract terms and conditions to Long-Term Firm Power, Diversity Power, Curtailable Power, and Type III Withdrawable Power.

Comment: The Cities commented that Western should remove the Westlands Withdrawal provisions from all contracts to reduce the risk to any one entity. They suggested that Western manage the risk through system diversity.

Response: The Westlands Withdrawable Power is not additional power available for sale, but is allocated only because the Westlands Water District is not using that portion of its allocation. Withdrawal of that power was contemplated when the power was marketed. Procedures for withdrawal of CVP power allocations from customers under varying circumstances, including Westlands Withdrawable Power, were published at 51 FR 7702, March 5, 1986. Western has reserved the 21 MW of Diversity Power which it may allocate on a pro rata basis to Westlands Withdrawable customers upon the withdrawal of that power.

Comment: The Cities, the city of Avenal, and Reclamation District #2035 commented that Western should make its best effort to obtain a transmission agreement to wheel power to customers within the PG&E service area.

Response: As indicated in the Plan, Western will assist the allottees in obtaining third-party transmission arrangements for delivery of power allocated to customers in the PG&E service area. However, each allottee is ultimately responsible for obtaining its own delivery arrangements.

Comment: The Contra Costa Water District suggested that Western should acknowledge that its transmission system could be used, under the appropriate conditions, for delivery of power.

Response: Although Western does have capability to wheel power over its transmission system, this is not a provision of the Plan.

Comment: Many comments were received recommending that the contract term for the power allocations be extended beyond 10 years.

Response: The Plan has established that the contracts will become effective on the date of execution and, subject to prior termination as otherwise provided for in the contract, will remain in effect until midnight of December 31, 2004. This termination coincides with all of Western's remaining power sales contracts along with Western's integration contract with PG&E.

Comment: Lassen Municipal Utility District recommended that Western allocate 30 MW of Diversity Power on short-term contracts of less than 5 years.

Response: Western will allocate Diversity Power with a 1-year termination notice.

Responses to Customer Comments Regarding Other Issues

Members of Congress and the National Wildlife Federation submitted comments relevant to Western's environmental analyses.

Response: The environmental comments were addressed fully in the environmental documentation prepared for this Plan. See the Background section above for summary information.

Final Power Marketing Plan

A. Amounts of Power and Classes of Service

1. Western will allocate a total of 379.195 MW of Long-Term Firm Power. Long-Term Firm Power means firm power offered by Western and subject to the terms and conditions specified in the Western electric service contract. Customers presently receiving Long-Term Firm Power under contracts expiring in 1994 will be offered a total of 346.73 MW of Long-Term Firm Power. Customers presently receiving the 24.343 MW of Renewable Resource and Cogeneration Power under contracts which expire in 1994 will be offered Long-Term Firm Power with contract rates of delivery equal to their current Renewable Resource and Cogeneration Power contract rates of delivery. Renewable Resource and Cogeneration Power is firm power marketed in the past by Western for the development or operation of a renewable resource or cogeneration project. New customers will be allocated a total of 8.122 MW of Long-Term Firm Power, which is the sum of 2.465 MW of Long-Term Firm Power presently under contracts expiring in 1994 but unused by existing customers and 5.657 MW of Renewable Resource and Cogeneration Power presently under contracts expiring in 1994 but unused by original allottees.

2. Western will allocate 40.751 MW of Type III Withdrawable Power to customers presently receiving that class of service under contracts expiring in 1994. Type III Withdrawable Power means firm power which is withdrawable to protect the 1,152–MW load level before withdrawal of other types of noninterruptible power. The Type III Withdrawable Power is subject to additional terms and conditions specified in the Western electric service contract.

3. Western will allocate 9.0 MW of Diversity Power to customers presently receiving that class of service under contracts expiring in 1994. The 21 MW of Diversity Power that are presently not under contract will be reserved so that they may be offered on a pro rata basis to customers with an allocation of Westlands Withdrawable Power in the event that power is withdrawn. While Western prefers not to market these 21 MW of Diversity Power due to the present resource mix, Western will consider marketing this power if the withdrawal of Westlands Withdrawable Power causes undue hardship for Westlands Withdrawable Power customers. The 21 MW of Diversity Power will not be available for marketing to Westland Withdrawable customers until after June 30, 1994. If this power is marketed, the terms and conditions set forth in this Plan shall govern the sale of the Diversity Power. Diversity Power means firm power made available because of the diversity of Western's customers, peak demands at the time of Western's peak demand. A Diversity Power customer, at the request of Western, must shed a specified amount of load or reduce its Western schedule at the time of Western's simultaneous peak demands to maintain the customer load level. Since the purpose of a Diversity Power allocation is to assist Western in maintaining a limited load level, these allocations will be subject to a 1-year termination clause, at the sole discretion of Western, based upon the need for this class of power. This Diversity Power is subject to additional terms and conditions specified in Western's electric service contract.

4. Western will allocate 80.0 MW of Curtailable Power to the city of Santa Clara, which currently has a contract for this power. Curtailable Power means power offered by Western to qualified preference entities which may be curtailed on a real-time scheduling basis, by Western and at Western's sole discretion, to protect the 1,152 MW-load level. A Curtailable Power allocation also subjects a portion of the customers' firm power to curtailment. This allocation will be subject to a 1-year termination clause, at the sole discretion of Western.

5. Western reserves, as part of the long-term allocation, the operational capabilities of its power resources in excess of its contractual commitments under sections 1 through 4 above to market other classes of service, such as peaking capacity, emergency and backup power, and spinning reserves. Western will study any new long-term resources that may become available to the Sacramento Area Office, and will determine the best method of marketing that power.

B. Eligibility Criteria

Western applies the following general eligibility criteria to all applicants seeking an allocation of power under the Plan.

1. Only preference entities as defined by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented, will be eligible to receive an allocation.

2. To be eligible to receive an allocation, the preference entity must exist, operate, and be ready, willing, and able to receive and use or receive and distribute Federal power as of January 1, 1992.

3. A preference entity not presently receiving Long-Term Firm Power under a contract expiring in 1994 must be located within the PG&E service area. PG&E means the investor-owned utility having a service area in northern and central California and load control responsibility for the northern and central California area and with whom Western sells, exchanges, and transmits power under Contract No. 14–06–200–2948A (Contract 2948A). Contract 2948A means the contract between PG&E and Western, which provides for certain sales, exchanges, and transmission of electric power.

4. Applicants shall have submitted an application in response to 57 FR 17904, April 28, 1992. The submittal instructions, format, and applicant information were also included in that notice.

C. General Allocation Criteria

Western applies the following general allocation criteria to all applicants seeking an allocation of power under the Plan.

1. Allocations of power will be made in amounts as determined solely by Western in the exercise of its discretion under Reclamation law.

2. The decision to reallocate any CVP power that becomes available for marketing because an allottee has failed to accept a contract within the period allowed or because a contract has terminated will be at the sole discretion of Western's Administrator.

3. The minimum allocation shall be 500 kW. Western may waive this requirement for preference entities which historically have had loads under 500 kW and are directly connected to Western's transmission system.

4. Among new irrigation or water district applicants, greater consideration is given to irrigation or water districts which transmit CVP power or receive or purchase CVP water.

5. Among all applicants, greater consideration will be given in allocating power to those applicants who can demonstrate a diversity contribution at the time of Western's simultaneous peak; i.e., the applicant's peak demands are not coincident with Western's peak obligations.

6. Among all applicants, greater consideration will be given to those applicants who have instituted and continue to actively pursue demand-side management activities and the use of renewable resources.

7. Greater consideration will be given to those applicants who assist Western in its mission of delivering Federal power at the lowest possible cost consistent with sound business principles by providing such factors as, among others, transmission access to low-cost sources of power and aiding in providing efficient and reliable electrical service.

D. General Contract Principles

Western will apply the following general contract principles to all applicants seeking an allocation of power under the Plan.

1. An allottee will have the right to receive and the obligation to purchase such power only upon the execution of an electric service contract acceptable to Western, by the customer and Western, and upon satisfaction of all conditions in that contract.

2. Energy provided with power allocated will normally be based upon either (a) the customer's monthly system load factor or (b) the customer's monthly average energy use over the most recent 5-year period pursuant to a scheduling agreement.

3. For existing Western customers who receive an allocation of the 500.824 MW, electric service contracts for Long-Term Firm Power, Type III Withdrawable Power, Diversity Power, and Curtailable Power entered into under the Plan must be executed no later than the expiration date of the existing electric service contract. Western will present the new contracts at least 6 months prior to the expiration of the existing contract, unless otherwise agreed in writing by the parties. New contracts shall be effective when signed by the customer and Western.

4. Any electric service contract offered to a new customer shall be executed by the customer within 6 months of a contract offer by Western, unless otherwise agreed in writing by Western. Contracts shall be effective on the later of July 1, 1994, or when signed by the customer and Western.

5. Western will enter into scheduling agreements with its customers when advantageous to Western's customer base as a whole and when consistent with applicable law or when required in accordance with the normal utility practice of interconnected utilities. These scheduling agreements provide for the real-time scheduling of CVP power. Western will determine whether to enter into a scheduling agreement based upon satisfactory resolution of issues related to interconnected operations, including use of transmission capacity, voltage support, power factor, reactive powerflow, system operations, and modifications of facilities.

6. Western normally will contract with each individual customer. However, Western may enter into consolidated or combined delivery contracts with a group of customers or with a representative of a group of customers when advantageous to Western's customer base as a whole and when consistent with applicable law.

7. In addition to the general contract principles listed above, the following contract terms and conditions shall apply to Long-Term Firm Power, Type III Withdrawable Power, Diversity Power, and Curtailable Power.

a. Minimum Load Requirement: Western reserves the right to terminate a contract if a customer that receives Federal power over PG&E's transmission system does not have monthly demands of 500 kW or more for 3 consecutive months in the 12-month period immediately preceding the date that Western requests PG&E to begin transmission service.

b. Withdrawal Provisions: Power marketed under the Plan will be subject to the provisions for withdrawal of CVP power under varying circumstances prescribed by law or by contract. Such circumstances include the Westlands Withdrawable Power, withdrawals for project use, load-level limitations, first preference, and the condition that allows a customer's CRD to be reduced due to the termination of Contract 2948A. The withdrawal provisions will comply with the procedures announced in 51 FR 7702, March 5, 1986.

c. Transmission Service: Western will assist the allottees in obtaining third-party transmission arrangements for delivery of power allocated under the Plan to customers in the PG&E service area; nonetheless, each allottee is ultimately responsible for obtaining its own delivery arrangements.

d. Term: Electric service contracts for the 500.824 MW of power marketed under this plan to existing customers will be effective when signed by both the customer and Western. Contracts for Diversity and Curtailable Power are subject to a 1-year termination clause, at the sole discretion of Western. Electric service contracts for the 29.122 MW of power will be effective on the later of July 1, 1994, or when signed by both the customer and Western. Contracts entered into under the Plan shall provide for electric service through December 31, 2004. The 2004 date will correspond to the expiration dates for most of the Sacramento Area Office's other electric service contracts and the expiration date of Contract 2948A between Western and PG&E.

e. Type III Withdrawable Power and Curtailable Power: In the event that the quantity of Type III Withdrawable Power or Curtailable Power is reduced, such power may thereafter be reinstated in accordance with the terms of the contract, and the contract shall continue to exist through its term unless terminated in accordance with its provisions. Energy provided with Curtailable Power will be provided in quantities, at rates, and under other terms and conditions mutually agreed upon between Western and the customer.

f. Diversity Power: The amount, scheduling, and accounting for "load shedding" will be negotiated on a case-by-case basis. It is Western's intent to negotiate the Diversity Power to be contingent upon shedding 1.5 or greater MW of load for each MW of Diversity Power.

g. Standard Provisions: The contracts entered into as a result of the Plan will incorporate Western's standard provisions for power sales contracts, resale of electric energy, energy management, and the General Power Contract Provisions.

Final Allocations to Existing Customers

The following final power allocations to existing CVP customers are made in accordance with the Plan. All of the

allocations are subject to the execution of a mutually satisfactory contract in accordance with the Plan. If any of the power allocated in these categories fails to be subscribed, subsequent allocations may be made by Western without further public process.

Preference customer	Allocation (MW)
A. Allocation of 346.73 MW of Long-Term Firm Power	
Alameda, City of	15.645
Banta Carbona Irrigation District	3.700
Beale Air Force Base	20.507
Broadview Water District	.500
Byron-Bethany Irrigation District	2.200
Camp Parks Army Depot	.500
Castle Air Force Base	4.299
Concord Naval Base	2.200
California State University at Sacramento, Nimbus	.040
Delano-Earlimart Irrigation District	.987
Deuel Vocational Institute	1.700
Dixon Naval Base	1.075
East Bay Municipal Utility District	1.965
East Contra Costa Irrigation District	2.500
Folsom Prison	2.300
Glenn Colusa Irrigation District	3.000
Healdsburg, City of	2,941
ICA, Dixon Relay Station (USIA)	.500
James Irrigation District	.987
Kern Tulare Water District	.987
Lemoore Naval Base	16.000
Lindsay Strathmore Irrigation District	.987
Lawrence Livermore National Laboratory (DOE)	22.300
Lodi, City of	11.736
Lompoc, City of	4.897
Lower Tule River Irrigation District	1.965
Mare Island Naval Base	19.075
McClellan Air Force Base	10.094
Modesto Irrigation District	8.805
Moffett Naval Base	4.805
Nasa-Ames Research Center	80.000
Northern California Youth Center	1.700
Parks and Recreation	.100
Patterson Water District	2.000
Provident Irrigation District	.750
Rag Gulch Water District	.500
Reclamation District 2035	1.600
San Luis Water District	6.650
Santa Clara Valley Water District	.987
Sharpe Army Base	4.000
Site 300 (DOE)	.500
Skaggs Island Naval Base	.900
Stanford Linear Accelerator Center (DOE)	25.000
Stockton Naval Base	3.500
Terra Bella Irrigation District	.987
Tracy Army Base	3.800
Travis Air Force Base	12.000
Travis Wherry Air Force Base	.100
Treasure Island Naval Base	3.145
Turlock Irrigation District	2.941
University of California at Davis	11.500
Ukiah, City of	5.873
Vacaville Medical Facility	1.800
West Side Irrigation District	2.000
West Stanislaus Irrigation District	5.200
Total	346.730
B. Allocation of 24.343 MW of Renewable Resource and Cogeneration Power Converted to Long-Term Firm Power	
Alameda, City of	5.500
Glenn Colusa Irrigation District	.343
Healdsburg, City of	.380
Lodi, City of	1.500
Lompoc, City of	.300
Modesto Irrigation District	2.000
Sacramento Municipal Utility District	1.000
Santa Clara, City of	8.000
Sonoma County Water Agency	1.500
Turlock Irrigation District	1.000
Ukiah, City of	2.900
Total	24.343
C. Allocation of 40.751 MW of Type III Withdrawable Power	
Beale Air Force Base	1.068
Castle Air Force Base	.852
Concord Naval Base	.098
Lawrence Livermore National Laboratory (DOE)	5.911
Mare Island Naval Base	2.148
McClellan Air Force Base	1.906
Moffett Naval Base	2.270
Santa Clara, City of	3.532
Stanford Linear Accelerator Center (DOE)	14.903
Travis Air Force Base	1.000
Travis Wherry Air Force Base	1.300
Treasure Island Naval Base	2.581
University of California at Davis	3.182
Total	40.751
D. Allocation of 9.0 MW of Diversity Power	
Lawrence Berkeley Laboratory (DOE)	3.000
Stanford Linear Accelerator Center (DOE)	6.000
Total	9.000
E. Allocations of 80.0 MW of Curtailable Power	
Santa Clara, City of	80.000
Total	80.000

Proposed Power Allocations

All of the proposed power allocations are subject to change. Written comments on the proposed allocations must be received at the address set forth above by 5 p.m., local time, November 4, 1992. Western will respond to the comments received on the proposed allocations and publish its final allocations after the end of the public comment period. New customers' contracts may be entered into by Western after publication of that notice.

Preference customer	Proposed allocation (MW)
Allocation of 8.122 MW of Long—Term Firm Power	
Avenal, City of	.622
Bay Area Rapid Transit District	4.000
Cawelo Water District	.500
Lassen Municipal Utility District	3.000
Total	8.122

A two-step process must be undertaken before Western may propose an allocation of power. First, it is determined whether the applicants meet the eligibility criteria listed in the Plan. Next, Western reviews the applications to determine whether general allocation criteria have been met by the applicant. Western uses its discretion in proposing allocations to those applicants that meet these criteria.

Western received 33 applications from entities that do not now have allocations of power from Western. Western determined that all but three applicants were eligible under the Plan to receive an allocation of power. In total, the applicants requested allocations of 193.75 MW of power. Even if Western decided to allocate a share of the available 8.122 MW among as many applicants as possible, Western would only be able to choose 16 of the 33 applicants due to the threshold allocation amount of 500 kW. In allocating the 8.122 MW among the 33 new applicants for CVP power, Western used the allocation criteria and exercised its discretion under Reclamation law in determining the allotees for that power. The LMUD load peaks in the winter season which contributes to Western's system diversity, and LMUD is pursuing transmission interconnections with other utilities which may facilitate Western's access to more low-cost sources of power. BART has system diversity relative to Western's simultaneous daily peaks, Cawelo provides transmission and pumping service for numerous irrigation districts which have allocations of CVP water and power, and Avenal is also a recipient of CVP water.

Allocation of 21 MW of Diversity Power

The 21 MW of Diversity Power that are presently not under contract will be reserved so that they may be offered on a pro rata basis to customers with an allocation of Westlands Withdrawable Power in the event that power is withdrawn. While Western prefers not to market these 21 MW of Diversity Power due to the present resource mix, Western will consider marketing this power if the withdrawal of Westlands Withdrawable Power causes undue hardship for Westlands Withdrawable Power customers. The 21 MW Diversity Power will not be available for marketing to Westlands Withdrawable customers until after June 30, 1994. If this power is marketed, the terms and conditions set forth in this Plan shall govern the sale of the Diversity Power.

The following list of Westlands Withdrawable Power customers is to be used as a basis to pro rate the 21 MW of Diversity Power.

Customers	Present Westlands withdrawable power (MW)
Utility Districts:	
East Bay MUD	1.051
Irrigation Districts:	
Delano-Earlimart	.349
James	.349
Kern Tulare	.349
Lower Tule River	1.051
Lindsay Strathmore	.349
Modesto	5.960
Santa Clara Valley	.349
Terra Bella	.349
Turlock	1.751
Municipalities:	
City of Alameda	10.869
City of Healdsburg	1.751
City of Lodi	8.063
City of Lompoc	3.155
City of Ukiah	3.856
Total	39.601

Regulatory Procedure Requirements

A. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, each agency, when required to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the rule on small entities. Western has determined that (1) this rule making relates to services offered by Western and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an allocation from Western would not cause an adverse economic impact to such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

B. Environmental Compliance

Western revised its EA based on comments received prior to promulgating the Plan. The studies completed for the revised EA reaffirm the findings and conclusions of the original EA that the Plan has no significant environmental impact. Please see the Background section above for additional information.

C. Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is requested of the public. OMB has issued a final rule on the Paperwork Burdens on the Public, 48 FR 13666, March 31, 1983.

D. Determination Under Executive Order 12291

DOE has determination that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193, February 19, 1981. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of this procedure by OMB is required.

Issued at Golden, Colorado, September 22, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-24106 Filed 10-2-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4518-9]

Fuels and Fuel Additives; Waiver Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 24, 1992, the Lubrizol Corporation (Lubrizol) submitted an application for a waiver of the prohibitions against the introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act (Act). Lubrizol seeks a limited waiver for an organo-copper diesel additive, commercially labeled by Lubrizol as EZ-ADD ™, to be blended in diesel fuel for formulations within the 30 parts per million (ppm) to 60 ppm copper range (0.09 to 0.18 gram per gallon (gpg) copper), or which are below that copper concentration level. This fuel would be for use solely in urban buses equipped with certain particulate traps which require the additive for proper operation. The Administrator of EPA has until February 22, 1993 to grant or deny this application. If not denied by that date, it will be deemed to be granted, under section 211(f)(4).

DATES: Comments on this application will be accepted until November 4, 1992. Additional information on the submission of comments to the docket may be found below in the "Address" section of this notice.

ADDRESSES: Copies of the information relative to this application are available for inspection in public docket, A-92-33, at the Air Docket (LE-131) of the EPA, room M-1500, 401 M Street, SW., Washington, DC 20460, (202) 382-7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. weekdays. Any comments from interested parties should be addressed to this docket with a copy forwarded to Mary T. Smith, Director, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 233-9034.

SUPPLEMENTARY INFORMATION: Section 211(f)(1)(A) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light-duty motor vehicles manufactured after model-year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification or any model-year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" with respect to unleaded gasoline at 56 FR 5353 (February 11, 1991). Section 211(f)(1)(B) of the Act makes it unlawful, effective November 15, 1990, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model-year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model-year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Thus, section 211(f)(1)(B) expands the prohibitions of 211(f)(1)(A) to fuels and additives for use in any vehicle or engine for which emissions certification regulations have been established. Therefore, fuels for use in heavy-duty diesel engines are subject to the prohibitions. The prohibitions of 211(f)(1) apply to fuels and additives which are not "substantially similar" to those used in emissions certification. Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer, the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission

control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application, the statute provides that the waiver shall be treated as granted.

The submission by Lubrizol is an application under section 211(f)(4) of the Act for a waiver for an organo-copper diesel fuel additive, commercially labeled by Lubrizol as EZ–ADD ™, to be blended in diesel fuel for formulations within the 30 parts per million (ppm) to 60 ppm copper range (0.09 to 0.18 gram per gallon (gpg) copper), or which are below that copper concentration level in the final fuel. This fuel would be for use solely in urban buses with particulate traps that have the filtration efficiency, stability and the regeneration capabilities comparable to the Corning EX47 and EX54 corderite filters (traps). EPA request comments on what the lower concentration limit of copper additive shall be, in order to ensure proper operation of these types of particulate traps on urban mass transit buses.

It is the intention of Lubrizol corporation to only market the copper additive/trap system in municipalities to insure that diesel fuel treated with the copper additive is obtained at only centrally fueled locations that have urban transit buses equipped with the specified particulate traps. The presence of copper additive in the diesel fuel when used with a particulate trap lowers the regeneration temperature of the particulate trap, thus improving the ability of the particulate trap to oxidize soot and significantly reduce particulate emissions.

Lubrizoil has not requested any restriction on the sulfur content of the diesel fuel. Most of the test data presented by Lubrizol were developed using low-sulfur diesel fuel. Such fuel for highway use will be required by law effective October 1, 1993 (55 FR 34120). However, if this waiver were granted prior to October 1, 1993, during the interim, low sulfur diesel fuel may not be available, or more difficult to obtain, than high-sulfur diesel fuel. The EPA requests comment on the suitability of high-sulfur diesel fuel for use with EZ–ADD ™. Also, EPA invites comments on any potential impact on public health or welfare as a result of commercial use of this copper diesel fuel additive.

The Act requires that a decision be made within 180 days, or the waiver is automatically granted. The request was received on August 24, 1992. The 180th day is Saturday, February 20, 1993. Therefore, the due date for and decision is the next working day, Monday, February 22, 1992.

EPA invites comments on whether the Administrator should grant or deny this waiver application.

Dated: September 29, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–24087 Filed 10–02–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4519–2]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice

SUMMARY: Under the provisions of Section 208, paragraph (c) of the Clean Air Act, as amended, the EPA's Certification Division, located at the Ann Arbor, MI, National Vehicle & Fuel Emission Laboratory, has authorized that nine (9) contractors receive access to information that has been, or will be submitted to the EPA under Title II of the Clean Air Act (CAA) as amended. Some of the information may be claimed to be confidential business information (CBI) and some has already been classified by EPA's Office of General Counsel in previous "Class Determinations" as CBI. The contractors, identified below, can function in any or several of the following capacities: (1) Inspection of vehicles or engines, (2) perform maintenance on vehicles or engines (3) conduct testing on vehicles or engines, (4) review and compare data from vehicles or engines, (5) review technical support documentation describing vehicles or engines, (6) perform data analyses, (7) perform clerical support, (8) perform computer programming support, (9) conduct computer time sharing service, and (10) perform library services.

DATES: This Notice is effective October 12, 1992.

FOR FURTHER INFORMATION CONTACT: Clifford D. Tyree, Project Manager/ Freedom of Information Act Officer, Certification Division, Ann Arbor, MI, 48105, telephone (313) 668–4310.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under Title II of the CAA that EPA may provide the following contractors access to these materials on a need-to-know basis.

1. EG & G Automotive Research, 5404 Bandera Road, San Antonio, TX 78238.

2. VIAR & Company, 300 North Lee Street, Suite 500, Alexandria, Virginia 22314.

3. Computer Science Corporation, 2100 East Grand Ave., El Segundo, CA 90245.

4. Systex, Inc., Park Place, Suite 350, 10000 Virginia Manor, Beltsville, MD 20705.

5. Labat-Anderson, Inc., 2200 Clarendon Blvd., Arlington, VA 22201.

6. Sierra Research, 1521 I Street, Sacramento, CA 95814.

7. Southwest Research Institute, 6220 Culebra Road, P.O. Drawer 28510, San Antonio, TX 78228–0510.

8. Wayne State University, Computing and Information Technology, 5925 Woodward Avenue, Detroit, MI 48202.

9. Radian Corp., 7 Corporate Park, Suite 240, Irvine, CA 92714.

In accordance with 40 CFR 2.301 and section 2.311, EPA has determined that each contractor requires access to CBI submitted to EPA under Title II of the CAA to fulfill the obligations of their specific contract. The contractor's personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures.

Dated: September 30, 1992.

Jerry Kurtzweg,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–24096 Filed 10–2–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4517–8]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of Meeting.

SUMMARY: The United States Environmental Protection Agency is announcing a meeting of the Ozone Transport Commission to be held on Tuesday, October 20, 1992.

The Commission will deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on October 20, 1992.

ADDRESSES: The meeting will be held at: Portland Regency Hotel, 20 Milk Street, Portland, Maine 04101 (207) 774–4200.

Dated: September 29, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-24055 Filed 10-2-92; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, prescribes that grants made under section 411, Individual and Family Grant Program, and grants made under section 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under section 411 of the Act, with respect to any single disaster, is increased to $11,900 for all disasters declared after October 1, 1992.

Notice is also hereby given that the amount of any grant made to the State, local government, or at the owner or operator of an eligible private nonprofit facility, under section 422 of the Act, is increased to $41,300 for all disasters declared after October 1, 1992.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 3.1 percent for the prior 12-month period. The information was published by the Department of Labor during September 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director.

[FR Doc. 92-24051 Filed 10-2-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 29, 1992.

Backgound

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following survey proposal and form, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. The Board requests comments on the estimated average hours per response of the survey (part I and part II separately). At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before October 19, 1992.

ADDRESSES: Comments, which should refer to the OBM Docket number should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Street, NW., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street NW. Comments received may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

Proposal to approve under OMB delegated authority the implementation of the following report:

Report title: Survey of Costs of Truth in Savings.

Agency form number: FR 3074.

OMB Docket number: 7100-0257.

Frequency: One-time survey.

Reporters: Commercial banks and thrift institutions.

Annual reporting hours: To be determined.

Estimated average hours per response: Public comment solicited.

Number of respondents: Approximately 700.

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 4308(a)(3) and 4308(b)(1)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

SUMMARY: The survey will be conducted in two parts. The first part, to be collected in November 1992, will gather information on account practices before implementation of the regulation. The second part, to be collected in April 1993 shortly after compliance with the regualtion becomes mandatory, will gather information on start-up compliance costs and changes in account practices due to the regulation. Results from the survey should become available during the fourth quarter of 1993. The proposed survey is published below. The survey will assess the impact of the Truth in Savings regulation on the financial industry. In addition, the data will increase general knowledge of the impact of regulatory costs, improving the ability of the Federal Reserve to evaluate the costs of other new regulations and to respond to Congressional requests on the potential costs of proposed statutes concerning consumer protection for financial products. Statutes in this area typically concern information disclosures, which is also the main objective of Truth in Savings. A copy of the survey is attached.

SUPPLEMENTARY INFORMATION: Information on the costs of implementing a regulation is an important component of regulatory analysis that is typically unavailable. Cost analysis can be important in finding ways to reduce regulatory burden and in complying with the

Board's policy statement that calls for minimizing compliance costs and for periodic reviews of regulations and the Regulatory Flexibility Act, which requires an economic analysis of the impact of regulation on small business.

Available information. Information on the costs of regulations is very limited. Accounting systems used by financial institutions do not normally segregate regulatory costs from other costs. Data on regulatory costs are only available from studies designed to collect them.

Case studies are one source of information on the cost of regulation. Case studies often provide accurate and comprehensive information about costs at one or a small number of financial institutions. However, different case studies generally are not comparable because of differences in methodology, and the representativeness of data from case studies is unknown. Moreover, case studies cannot provide information on the variability of costs across the population of institutions, a consideration that is important for preforming responsibilities under the Regulatory Flexibility Act.

Estimates of costs derived from econometric studies using secondary data are also occasionally undertaken. Typically, such studies estimate costs using correlations between activity costs and regulatory differences across observations in cross-section data or examining changes in costs when regulations change in time-series data. The problem is that the regulation in question is seldom the only factor affecting costs. It is often difficult to control adequately for each of the separate factors that influence costs. Even in multivariate statistical models, it is sometimes not possible to conclude with confidence that the estimated difference in the cost of an activity is due to the regulation.

Surveys are a third source for estimates of costs of regulation. Although survey information on particular components of regulatory costs have been fairly common in some areas, surveys collecting comprehensive data on costs of regulations covering financial services are rare. Such surveys require a level of detail nearly equal to that of case studies but on a much larger scale.

There have been a few surveys of the costs of regulations for consumer financial services. These surveys have been successful in showing differences in costs across different size groups of banks and in identifying the impact of regulations on various cost categories (such as administration, training, and labor). Their results have been used in many regulatory analyses at the Board.

Proposed survey. The implementation of the Truth in Savings regulation provides an opportunity to track start up costs contemporaneously with the implementation of the regulation. During the comment period on the proposed regulation, the Board received many letters from financial institutions stating that the compliance costs for the proposed regulation will indeed be costly. Yet few of these comments provided actual cost estimates. The proposed survey of the costs of Truth in Savings will extend the work of previous surveys of regulatory costs. It will provide information on the process of complying with a new regulation, estimate the costs of specific activities undertaken to comply with the regulation, and permit an assessment of the relationship between overall regulatory costs and the extent of changes in existing procedures.

Not only will the data help assess the cost of the Truth in Savings Act; the data also will increase general knowledge of the impact of regulatory costs, especially regulatory costs involving information disclosures. Because many proposed and existing statutes are primarily concerned with information disclosures, the data will improve the ability of the Federal Reserve to evaluate costs of regulatory proposals and to report on the potential start-up cost of proposed statutes that require new disclosures.[1] Congress frequently asks the Board its views on proposed legislation. This information will help the Board formulate and support its views.[2]

Description of Information Collection

Reporting panel. 2,500 commercial banks (out of a universe of 14,000) will be asked to participate in the survey: the 600 banks that either currently participate or are expected to participate in the Federal Reserve's Functional Cost Analysis program,[3] an additional 900 volunteer banks identified by banking trade associations, and 1,000 randomly selected other banks. In addition, approximately 2,000 thrifts belonging to a thrift trade association will be asked to participate. Participation in the survey will be voluntary. Based on experience with similar surveys, responses from about 500 banks and 200 thrifts are expected.

The first two groups of banks will not be randomly selected. Much of the data requested cannot be provided without special efforts because accounting systems used by banks do not normally segregate compliance costs from other costs. Participants in the Functional Cost Analysis program already choose to make the effort and have experience in allocating costs to specific functions not normally segregated in conventional accounting. The sample of banks obtained from the banking trade associations will have agreed to cooperate with the Federal Reserve System to estimate these data. It is expected that respondents from these two groups will provide high-quality responses and help ensure that useful results will be obtained.

The third, randomly selected group of other banks provides coverage for the population not included in the first two groups. The third group is needed to compare regulatory costs across size classes of firms, an important objective of this survey. The first two samples of banks do not provide a sufficient number of medium-sized and large banks to achieve this objective.

The thrift sample will be obtained from the membership of a national thrift trade association. Based on its experience, the association expects to obtain about 200 respondents, with adequate participation by large and small institutions. This response should permit population estimates for the thrift industry and comparisons with commercial banks.

Survey questionnaire. The questionnaire contains questions on (1) deposit account practices and policies before implementation of Truth in Savings; (2) changes in account terms, types of accounts, and account-related services resulting from the law; (3) the various types of costs estimated to have been incurred in complying with Truth in Savings; and (4) certain characteristics of the respondents such as the number of consumer deposit accounts, which may be important for interpreting the significance of institutions' compliance costs.

Schedule and procedures for collection and processing. The questionnaires will be sent to potential

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[1] Information on bank practices and policies for deposit accounts before Truth in Savings will also be useful for identifying potential benefits to consumers from the law.

[2] Consumer survey data on information policies and problems associated with deposit accounts will be collected using the Survey of Consumer Attitudes conducted by the Survey Research Center of the University of Michigan. These data will assist the Board in assessing the impact of Truth in Savings on consumers.

[3] The Functional Costs Analysis program is a voluntary cost accounting system that collects cost, productivity, revenue, and profitability data for several product lines at depository institutions. The Federal Reserve Banks control and administer the Functional Costs Analysis program, which is provided as a service to participating banks at a charge of $150 per bank.

participants in October 1992. The first part of the questionnaire, which covers practices before Truth in Savings, will be collected in November 1992. The second part, which covers compliance costs, will be collected from respondents in April 1993 shortly after compliance with the final regulation becomes mandatory. Results from the survey should be available during the fourth quarter of 1993 and will be published in aggregate form.

The questionnaires will be mailed directly to potential respondents from the Board or the respective trade organizations, along with a cover letter explaining the purpose of the survey and requesting participation.[4] Respondents failing to return the first part of the questionnaire will be sent a second, follow-up mailing.

In early 1993, respondents will be sent reminder notices of the April 1993 collection date. Then, in April 1993, respondents will return the completed questionnaires to Board.

Consultation Outside the Agency

As discussed earlier, industry trade associations will provide volunteer institutions to participate in the survey. Industry trade associations and individual financial institutions have provided advice during questionnaire development.

Sensitive Questions

There are no sensitive questions as per OMB guidelines.

Estimate of Respondent Burden

The information requested is not readily available from respondents. Beyond that general assessment, the Federal Reserve is unable to estimate the number of hours that would be needed for institutions to track costs during the period that the survey is in the field and then to complete the survey. The Board is thus requesting comment on the estimated number of hours required to complete both parts of the survey.

Board of Governors of the Federal Reserve System, September 29, 1992.

William W. Wiles,

Secretary of the Board.

BILLING CODE 6210-01-M

[4] A hotline will be established at the Board to answer questions from participants.

FR 3074
OMB No. 7100–0257
Expires _____

TRUTH IN SAVINGS SURVEY

This survey is authorized by law [12 USC 4308(a)(3)&(b)(1)]. Your voluntary cooperation in submitting this survey is needed to make the results comprehensive, accurate, and timely.

Public reporting burden for this information collection is estimated to average ___ hours per response including time to gather the data in the required form and to review instructions and complete the information collection. Comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing the burden, may be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, and to the Office of Management and Budget, Paperwork Reduction Project (7100–0257), Washington, DC 20503.

PURPOSE OF THE SURVEY

The survey will be used by the Federal Reserve System to assess the cost to financial institutions of implementing the Truth in Savings Act.

GENERAL INSTRUCTIONS

This survey consists of two parts. Part I asks about the institution's policies and practices for consumer deposit accounts before the implementation of the Truth in Savings legislation. For this section, report the policies that were in effect as of January 1, 1992. Part I may be completed by a marketing manager at your institution.

Part II asks about start–up compliance costs and changes in the types of consumer accounts and account terms associated with Truth in Savings. The questions in Part II focus on the one–time costs of complying with Regulation DD that have been or will be incurred between September 21, 1992, and March 21, 1993, when compliance with the regulation becomes mandatory. Part II should be completed by a senior financial officer.

Part I should be filed by November 15, 1992.

Part II should be filed by April 1, 1993.

Please return each part of the survey to:

Ms. Barbara Lowrey
Office of the Secretary
Mail Stop 29
Board of Governors of the Federal Reserve System
Washington, DC 20551

HOTLINE number for questions on the survey: 1–800–000–0000.

_____ Name of Reporting Institution

_____ Person to be contacted concerning this report

_____ Address

_____ (Area code) Telephone number and extension

FR 3074

TRUTH IN SAVINGS SURVEY

Part I: Account Practices Before Truth in Savings

GENERAL INSTRUCTIONS

These questions pertain to your institution's policies and practices before Truth in Savings for six types of consumer accounts: demand deposits, NOW, MMDA, statement savings, passbook savings, and time deposit accounts. If your institution offers more than one variety of an account, *answer the questions with regard to the account variety with the greatest number of accounts.* Report the policies that were in effect as of January 1, 1992.

SPECIFIC INSTRUCTIONS

Item A Enter an "x" in the appropriate box. If the "other" category is checked for question 2, specify the method used on the space provided in line 2e. If an item in question 3 or 4 is not a *feature* of a particular account, enter "NA" in the "yes" box.

Item B Enter an "x" in the appropriate box. For questions 3–5, enter the number of days in the "yes" box.

Item C Enter the percentage in whole numbers.

DEFINITIONS:

NOTE: In general, definitions of the following deposit accounts correspond to those in Regulation D. General descriptions of the accounts are provided below. For a more detailed description of the accounts, please refer to the instructions for preparation of the Report of Transaction Accounts, Other Deposits, and Vault Cash (FR 2900) or to Regulation D. Please note, however, that this regulation no longer distinguishes between various types of savings accounts--e.g., MMDAs, statement savings, and passbook savings. For purposes of this survey, these accounts are defined below.

DEMAND DEPOSIT ACCOUNT: A noninterest–bearing deposit that is payable on demand. (Include in these accounts POWs and NINOWs.)

NOW ACCOUNT: An interest–bearing deposit on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and that can be withdrawn or transferred to third parties by issuance of a negotiable or transferable instrument.

SAVINGS ACCOUNT: A deposit with no specified maturity but for which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account. Certain transfers and withdrawals from a savings deposit are limited to no more than *six* per month or statement cycle, and no more than *three* of the six may be made by check or similar order.

For purposes of this survey, three types of savings accounts are addressed, as follows:

MMDA: A type of savings account that allows transfers or withdrawals (but no more than *three* per calendar month or statement cycle) to third parties by *check or draft.* MMDAs are commonly referred to as "checkable savings deposits."

STATEMENT SAVINGS: A type of savings account for which the customer receives from the institution a periodic record of transactions on the account.

PASSBOOK SAVINGS: A type of savings account for which the customer retains a book in which the institution records transactions on the account.

TIME DEPOSIT ACCOUNT: An account from which the depositor is not permitted to make withdrawals within six days after the date of deposit unless the deposit is subject to an early withdrawal penalty of at least seven days' simple interest on amounts withdrawn within the first six days after deposit. Time deposits include certificates of deposit (CDs) and time open accounts.

NOTE: The following definitions are based on Regulation DD.

Method of Computing the Balance on Which Interest is Paid:

DAILY BALANCE METHOD: A rate is paid based on the full amount of principal in the account each day.

AVERAGE DAILY BALANCE METHOD: A rate is paid based on the average daily balance of principal in the account for the payment period.

LOW BALANCE METHOD: A rate is paid based on the lowest amount of principal in the account on any day in the period.

INVESTABLE BALANCE METHOD: A rate is paid on only a portion of the principal in the account for the payment period.

PERIODIC STATEMENT: A statement setting forth information about an account that is provided to a consumer on a regular basis four or more times per year.

GRACE PERIOD: A period of time following the maturity of an automatically renewing time account during which the consumer may withdraw funds without being assessed a penalty.

ADVERTISEMENT: A commercial message, appearing in any medium, that promotes directly or indirectly the availability of, or a deposit in, an account.

PART I – ACCOUNT PRACTICES BEFORE TRUTH IN SAVINGS

Terms appearing below in bold capital letters are defined in the instructions to Part I.

Type of Account									
				Savings					
Demand		NOW		MMDA		Statement		Passbook	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No

	Type of Account									
							Savings			
	Demand		NOW		MMDA		Statement		Passbook	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
g. statement that the interest rate was subject to change										
h. minimum balance required to earn interest										
i. fees per check										
j. check printing fees										
k. fees for insufficient funds (NSF fees)										
l. periodic account maintenance fees										
m. minimum balance required to avoid fees										
n. ATM usage fees										

4. Did your institution send consumers written advance notification of changes in account terms, either in **PERIODIC STATEMENTS** or separate notice?

If so, which of the following terms were included in the notice?

a. method of determining the balance on which interest was paid

b. yield that reflects the effect of compounding during the year

c. simple interest rate

d. frequency of compounding

e. statement that the interest rate was subject to change

f. minimum balance required to earn interest

g. fees per check

h. check printing fees

i. fees for insufficient funds (NSF fees)

j. periodic account maintenance fees

Type of Account									
				Savings					
Demand		NOW		MMDA		Statement		Passbook	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No

k. minimum balance required to avoid fees

l. ATM usage fees

5. Did your institution provide **PERIODIC STATEMENTS** for the account four or more times a year?

If so, which of the following items were included in the statements?

a. dollar amount of interest

b. yield that reflects the effect of compounding during the year

c. itemized list of fees

d. either the number of days in the statement period or the beginning and ending dates for the statement period

B. TIME DEPOSITS

1. Did your institution offer accounts in this maturity range?

Complete questions 2 to 5 for any column in which the answer to question 1 was "yes".

less than 1 month		1 to 6 months		6 to 12 months		more than 1 year	
Yes	No	Yes	No	Yes	No	Yes	No

2. Did your institution provide written and retainable disclosure statements when consumers opened new accounts, or were they informed in some other way?

a. written

b. other

If written, which of the following items were included in the disclosure?

c. yield that reflects the effect of compounding during the year

d. simple interest rate

e. frequency of compounding

f. penalty for early withdrawal

g. maturity date

h. length of GRACE PERIOD for renewal (enter "NA" in the "yes" box if not a feature of the account)

Complete questions 3 and 4 for any time deposits that are automatically renewed upon maturity.

3. Did your institution send advance notice of renewal to consumers?

   If so:

   a. Did this notice contain information on the interest rate or any other terms of the renewal?

   b. How many days before maturity did your institution mail notice of upcoming renewal?

4. Did your institution provide a GRACE PERIOD for renewal of reinvested funds after the maturity date?

   If so, how long was the GRACE PERIOD?

Complete question 5 for any time deposits that are not automatically renewed upon maturity.

5. Did your institution send advance notice of renewal to consumers?

   If so, how many days before maturity did your institution mail notice of upcoming renewal?

less than 1 month		1 to 6 months		6 to 12 months		more than 1 year	
Yes	No	Yes	No	Yes	No	Yes	No

C. Advertising:

During the second half of 1991, approximately what percentage of your institution's **ADVERTISEMENTS** mentioned interest rates or yields? (Enter "NA" if your institution did not advertise.) Report the nearest whole number.

1. Newspaper, magazine, posters, mailings ____%

2. Television, radio, electronic billboards ____%

FR 3074

TRUTH IN SAVINGS SURVEY

Part II: Start–Up Costs and Changes in Products

GENERAL INSTRUCTIONS

Report the one–time, start–up costs of complying with Regulation DD. Exclude any estimates of recurring costs of compliance.

Cost categories are provided to assist in accounting for costs of compliance activities. Your institution may not incur costs in every category. *If there are no costs for a particular category, enter zero in the space provided.*

You may not be able to allocate costs precisely to some categories. If you cannot separate costs between two categories, enter the combined amount in one line and enter "included with letter ___" in the second line. For example, if you cannot separate the costs of training materials in section II.B.3 between development expenses (line a) and production expenses (line b), enter the total for these two items in line a and enter "included with line a" for line b. If you are unable to allocate costs to any of the subcategories, leave the spaces blank and enter the *total* costs for that category in the "subtotal" line.

Please include expenses for benefits and overhead for your employees. Round all data to the nearest whole dollar.

SPECIFIC INSTRUCTIONS

Compliance Costs

Items A–C Enter the amount in dollars.

Changes in Products

Item D Enter an "x" in the appropriate box.

Item E For questions 1–3, enter an "x" in the appropriate box. For question 4, enter the number and dollar amount of consumer acounts and the number of different products for each account category. For time deposits, the number of products should include products by *feature* (e.g., IRAs, Christmas Club) rather than by maturity.

Name of Reporting Institution

Person to be contacted concerning this report

Address

(Area code) Telephone number and extension

PART II: START–UP COSTS AND CHANGES IN PRODUCTS

	Amount in Dollars
A. Compliance Costs Incurred Before Issuance of the Final Regulation on September 21, 1992:	
1. Management and legal expenses for review of proposed regulation	
2. Management and legal expenses for preliminary analysis of products and practices	
3. Preparation of comment letter	
4. Other (specify _____)	
5. Subtotal (Sum of 1, 2, 3, and 4)	
B. One–time, Start–up Costs Incurred After Issuance of Final Regulation on September 21, 1992, and before March 31, 1993.	
1. Management and in–house legal expenses:	
a. Evaluation of the regulation; analysis of existing programs, products, and practices	
b. Alteration of existing products and development of new products; revision of policies and procedures for delivery of the products	
c. Assessment of data processing requirements; evaluation of new equipment and software, supervision of programming	
d. Development of procedures for record retention	
e. Design of internal compliance audit program	
f. Other (specify _____)	
g. Subtotal (Sum of 1a, 1b, 1c, 1d, 1e, and 1f)	
2. Fees for outside legal services	
3. Training:	
a. Development of training materials	
b. Production expenses for training materials; purchases of training materials from outside sources	
c. Time of in–house and outside trainers	
d. Time of employees in training (including travel time for outside training)	

	Amount in Dollars
e. Travel expenses and registration fees for outside training	
f. Other (specify _____)	
g. Subtotal (Sum of 3a, 3b, 3c, 3d, 3e, and 3f)	
4. Data processing and system changes:	
a. Purchase, capitalized value of leases, enhancements, installation of new equipment	
b. Purchase and installation of software	
c. Programming and testing; cost of outside contractors (include programming for new forms and notices to existing accountholders)	
d. Other (specify _____)	
e. Subtotal (Sum of 4a, 4b, 4c, and 4d)	
5. Disclosure statements:	
a. Design of forms	
b. Purchase or production expenses for disclosures to new accounts	
c. Purchase or production expenses for disclosures to existing accountholders incurred *prior to March 21, 1993.*	
d. Estimated purchase or production expenses for disclosures to existing accountholders incurred *after March 21, 1993.*	
e. Mailing costs for disclosures to existing accountholders (include costs incurred prior to March 21, 1993 and estimates of costs to be incurred after March 21, 1993).	
f. Destruction of old forms (includes the value of the inventory and costs of collecting and disposal of old forms)	
g. Other (specify _____)	
h. Subtotal (Sum of 5a, 5b, 5c, 5d, 5e, 5f)	
6. Miscellaneous expenses:	
a. Acquisition of storage facilities for new forms	

	Amount in Dollars
b. Purchases of books and other publications	
c. Production of manuals (excluding training manuals reported in 3b above)	
d. Clerical support	
e. Telephone and other communication costs	
f. Office supplies	
g. Subtotal (Sum of 6a, 6b, 6c, 6d, 6e, and 6f)	
7. Other costs (specify _____)	
C. Total start–up compliance costs (Sum of A5, B1g, B2, B3g, B4e, B5h, B6g, and B7)	

D. Changes in Accounts and Account Terms Due to Truth Savings:

	Yes	No
1. Has your institution discontinued or does it plan to discontinue offering specific types of consumer deposit accounts?		
If so, what types of accounts are being discontinued?		
a. consumer demand deposits		
b. NOW accounts		
c. MMDAs		
d. passbook savings deposits		
e. statement savings accounts		
f. time deposits		
g. other (specify: _____)		
2. Was the primary reason for discontinuing the account(s)?		
a cost of providing initial disclosure		
b. cost of disclosing changes in account terms		
c. concern about civil liability		
d. other (specify: _____)		
3. Has your institution changed or does it plan to change its offerings of specific features associated with deposit accounts?		
If so, which features are being changed?		
a. provide periodic statements less frequently or not at all		
b. discontinue or reduce bonuses		
c. discontinue early withdrawal of interest from time deposits		
d. charge explicitly for services formerly provided free to accountholders		
e. other (specify: _____)		
4. Was the reason for changing the feature?		
a. cost		
b. concern about civil liability		
c. other (specify: _____)		

Yes	No

5. Has your institution changed or does it plan to change the terms on any deposit accounts?

   If so, what terms are being changed?
   a. lower interest rates
   b. higher fees
   c. other terms (specify: _____ _____)

6. Will your institution offer any new types of accounts?
   (specify: _____)

E. Memoranda

1. Did your institution benefit or does it expect to benefit in any way from Truth in Savings?

   If so, how did your institution benefit?
   a. cost savings from consolidation of accounts
   b. elimination of underutilized accounts
   c. other (specify: _____)

2. Does your institution use a service bureau for data processing of consumer deposit accounts?

3. Relative to the second half of 1991, does your institution plan to promote annual yields in 1993 more, about the same, or less?
   a. in printed advertisements (newspapers, magazines, posters, mailings)
   b. in other advertisements (television, radio, electronic billboards)

More	Same	Less

4. Consumer deposit accounts as of March 31, 1992:
   a. consumer demand deposits
   b. NOW accounts
   c. MMDAs
   d. other savings deposits
   e. time deposits

Number of Accounts	Amount ($ thousands)	Number of Products

[FR Doc. 92-23993 Filed 10-2-92; 8:45 am]
BILLING CODE 6210-01-C

Elinor M. Garner Family Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Elinor M. Garner Family Trust, Clinton, Arkansas; to retain 7.24 percent; G. Robert Garner, Clinton, Arkansas, to retain 0.18 percent; and G. Robert Garner Family Trust, Clinton, Arkansas, to acquire 5.50 percent of the voting shares of Clin-Ark Bankshares, Inc., Clinton, Arkansas, and thereby indirectly acquire First National Bank, Clinton, Arkansas.

Board of Governors of the Federal Reserve System, September 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-24048 Filed 10-2-92; 8:45 am]

BILLING CODE 6210-01-F

First Virginia Banks, Inc., et al.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Virginia Banks, Inc., Falls Church, Virginia; to engage *de novo* in making equity or debt investments in entities formed to promote community welfare by making loans for low- to moderate-income housing projects pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Maryland, Virginia and Tennessee.

Board of Governors of the Federal Reserve System, September 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-24049 Filed 10-2-92; 8:45 am]

BILLING CODE 6210-01-F

Fleet Financial Group, Inc., Providence, Rhode Island; Application to Engage in Asset Management Activities

The organization listed in this notice has applied under § 225.23(a)(1) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(1) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 1992.

A. Federal Reserve Bank of Boston (Robert Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Fleet Financial Group, Inc., Providence, Rhode Island; to engage *de novo* in asset management activities through its subsidiary Fleet Management and Recovery Corporation, Boston, Massachusetts. The Board has previously approved bank holding companies to engage in asset management activities. *See, e.g., Michigan National Corporation*, 78 Federal Reserve Bulletin 65 (1992); *NCNB Corporation*, 77 Federal Reserve Bulletin 124 (1991). Fleet Financial Group, Inc. also proposes to service performing as well as non-performing assets.

Board of Governors of the Federal Reserve System, September 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-24047 Filed 10-2-92; 8:45 am]

BILLING CODE 6210-01-F

Pioneer Bankcorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 29, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Pioneer Bankcorp, Clewiston, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Clewiston, Clewiston, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Franklin Bancorp, Inc., Minneapolis, Minnesota; to acquire 81 percent of the voting shares of Park Financial of St. Paul, Inc., St. Paul, Minnesota, and thereby indirectly acquire St. Anthony Park State Bank, St. Paul, Minnesota.

2. West River Holding Company, Hettinger, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of West River State Bank, Hettinger, North Dakota.

Board of Governors of the Federal Reserve System, September 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-24050 Filed 10-2-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92M-0227]

McGhan Medical Corp.; Partial Denial of Approval of McGhan Intrashiel®, UHP®, and Biocell® Fixed Volume Prostheses and Variable Volume Prostheses Premarket Approval Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its partial denial of approval of the premarket approval application under the Medical Device Amendments of 1976 of the McGhan Intrashiel®, UHP®, and Biocell® Fixed Volume Prostheses and Variable Volume Prostheses, sponsored by the McGhan Medical Corp. After reviewing the recommendation of the General and Plastic Surgery Devices Panel and analyzing the data and information submitted in support of the application, FDA's Center for Devices and Radiological Health (CDRH) notified the sponsor by letter dated April 16, 1992, that the application was denied approval for use of the device in augmentation of the healthy female breast on the grounds that the device had not been shown to be safe and effective for such use as recommended in the submitted labeling. The agency determined, however, that for women seeking breast reconstruction, continued availability of the device, under strict controls, is necessary for the public health and, consequently, agreed to extend the review period for the application for that use only.

ADDRESSES: Requests for copies of the letter to the sponsor denying approval of the application for use of the device in augmentation of the healthy female breast, and the summary of the safety and effectiveness data, may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Office of Device Evaluation (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

SUPPLEMENTARY INFORMATION: On July 9, 1991, the McGhan Medical Corp., 700 Ward Dr., Santa Barbara, CA 93111, submitted to CDRH an application for premarket approval of the McGhan Intrashiel®, UHP®, and Biocell® Fixed Volume Prostheses and Variable Volume Prostheses, a silicone gel-filled breast prosthesis. On November 12 to 14, 1991, the application was reviewed by the General and Plastic Surgery Panel of the Medical Devices Advisory Committee, an FDA advisory committee, which recommended that the application not be approved. On April 16, 1992, the Director of CDRH sent a letter to the sponsor denying approval of the application for use of the device in augmenting the healthy female breast. For purposes of this decision, the term "augmentation" means cosmetic augmentation of a healthy female breast, including surgery for mammary hypoplasia, and surgery whose primary purpose is a cosmetic change to enhance self-esteem or to provide psychological benefit. The letter advised the sponsor of its right to file, within 30 days of its receipt of the letter, a petition for a formal hearing on, or for an independent advisory committee review of, CDRH's decision. No petition was filed within that time period, and therefore, the time for appeal has expired.

In accordance with section 515(d)(1)(B)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(1)(B)(i)), the agency determined that, for women seeking breast reconstruction, continued availability of the device, under strict controls, is necessary for the public health and, consequently, agreed to extend the review period for the application for that use only. For purposes of this decision, the term "reconstruction" means reconstruction surgery of the female breast following mastectomy, breast injury, burns, or trauma; surgery to correct serious congenital deformities (e.g., Poland's syndrome) or interrupted growth attributed to radiation therapy (e.g., treatment of teenagers with Hodgkin's disease); or replacement or revision surgery to replace an implant for a documented medical reason (e.g., implant rupture, leakage).

Copies of CDRH's letter denying approval of the application for use of the device in augmenting the healthy female breast and the summary of safety and effectiveness data on which CDRH's decision is based are on file with the Dockets Management Branch (address above) and are available upon request from that office. Requests should be identified with the name of the device and docket number found in brackets in the heading of this document.

Dated: September 28, 1992.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 92-23988 Filed 10-2-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92M-0226]

Mentor Corp.; Partial Denial of Approval of the Premarket Approval Application for Mentor Low Bleed Gel-Filled Mammary Prosthesis Smooth or Siltex Textured

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its partial denial of approval of the premarket approval application, under the Medical Device Amendments of 1976, of the Mentor Low Bleed Gel-Filled Mammary Prosthesis Smooth or Siltex Textured sponsored by Mentor Corp. After reviewing the recommendation of the General and Plastic Surgery Devices Panel and analyzing the data and information submitted in support of the application, FDA's Center for Devices and Radiological Health (CDRH) notified the sponsor by letter dated April 16, 1992, that the application was denied approval for use of the device in augmentation of the healthy female breast on the grounds that the device had not been shown to be safe and effective for such use as recommended in the submitted labeling. The agency determined, however, that for women seeking breast reconstruction, continued availability of the device, under strict controls, is necessary for the public health and, consequently, agreed to extend the review period for that application for that use only.

ADDRESSES: Requests for copies of the letter to the sponsor denying approval of the application for use of the device in augmentation of the healthy female breast and the summary of the safety and effectiveness data may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

SUPPLEMENTARY INFORMATION: On July 8, 1991, Mentor Corp., 600 Pine Ave., Goleta, CA, submitted an application to CDRH for premarket approval of the Mentor Low Bleed Gel-Filled Mammary Prosthesis Smooth or Siltex Textured, a silicone gel-filled breast prosthesis. On November 12 through 14, 1991, the application was reviewed by the General and Plastic Surgery Panel of the Medical Devices Advisory Committee, an FDA advisory committee. The Panel recommended that the application not be approved.

On April 16, 1992, the Director of CDRH sent a letter to the sponsor denying approval of the application for use of the device in augmenting the healthy female breast. For purposes of this decision, the term "augmentation" means cosmetic augmentation of a healthy female breast, including surgery for mammary hypoplasia and surgery whose primary purpose is a cosmetic change to enhance self-esteem or to provide psychological benefit. The letter advised the sponsor of its right to file, within 30 days of its receipt of the letter, a petition for a formal hearing on, or for an independent advisory committee review of, CDRH's decision. No petition was filed within that time period, and therefore, the time for appeal has expired.

In accordance with section 515(d)(1)(B)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(1)(B)(i)), the agency determined that, for women seeking breast reconstruction, continued availability of the device, under strict controls, is necessary for the public health and, consequently, agreed to extend the review period for the application for that use only. For purposes of this decision, the term "reconstruction" means reconstruction surgery of the female breast following mastectomy, breast injury, burns or trauma; surgery to correct serious congenital deformities (e.g., Poland's syndrome) or interrupted growth attributed to radiation therapy (e.g., treatment of teenagers with Hodgkin's Disease); or replacement or revision surgery to replace an implant for a documented medical reason (e.g., implant rupture or leakage).

Copies of CDRH's letter denying approval of the application for use of the device in augmenting the healthy female breast and the summary of safety and effectiveness data on which CDRH's decision is based are on file with the Dockets Management Branch (address above) and are available upon request from that office. Requests should be identified with the name of the device and docket number found in brackets in the heading of this document.

Dated: September 28, 1992.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 92-23987 Filed 10-2-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92M-0228]

Mentor Corp.; Partial Denial of Approval of Mentor Combination Gel-Saline Mammary Prosthesis Smooth or Siltex Textured Surface Premarket Approval Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its partial denial of approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Mentor Combination Gel-Saline Mammary Prosthesis Smooth or Siltex Textured Surface, sponsored by Mentor Corp. After reviewing the recommendation of the General and Plastic Surgery Device Panel and analyzing the data and information submitted in support of the application, FDA's Center for Devices and Radiological Health (CDRH) notified the sponsor by letter dated April 16, 1992, that the application was denied approval for use of the device in augmentation of the healthy female breast on the grounds that the device had not been shown to be safe and effective for such use as recommended in the submitted labeling. The agency determined, however, that for women seeking breast reconstruction, continued availability of the device, under strict controls, is necessary for the public health and, consequently, agreed to extend the review period for that application for that use only.

ADDRESSES: Requests for copies of the letter to the sponsor denying approval of the application for use of the device in augmentation of the healthy female breast, and the summary of the safety and effectiveness data, may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

SUPPLEMENTARY INFORMATION: On July 8, 1991, Mentor Corp., 600 Pine Ave., Goleta, CA 93117, submitted to CDRH

an application for premarket approval of the Mentor Combination Gel-Saline Mammary Prosthesis Smooth or Siltex Textured Surface, a silicone gel-filled breast prosthesis. On November 12 to 14, 1991, the application was reviewed by the General and Plastic Surgery Panel of the Medical Devices Advisory Committee, an FDA advisory committee, which recommended that the application not be approved. On April 16, 1992, the Director of CDRH denied approval of the application for use of the device in augmenting the healthy female breast by a letter to the sponsor. For purposes of this decision, the term "augmentation" means cosmetic augmentation of a healthy female breast, including surgery for mammary hypoplasia, and surgery whose primary purpose is a cosmetic change to enhance self-esteem or to provide psychological benefit. The letter advised the sponsor of its right to file, within 30 days of its receipt of the letter, a petition for a formal hearing on, or for an independent advisory committee review of, CDRH's decision. No petition was filed within that time period and, therefore, the time for appeal has expired.

In accordance with section 515(d)(1)(B)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(1)(B)(i)), the agency determined that, for women seeking breast reconstruction, continued availability of the device, under strict controls, is necessary for the public health and, consequently, agreed to extend the review period for the application for that use only. For purposes of this decision, the term "reconstruction" means reconstruction surgery of the female breast following mastectomy, breast injury, burns, or trauma; surgery to correct serious congenital deformities (e.g., Poland's syndrome) or interrupted growth attributed to radiation therapy (e.g., treatment of teenagers with Hodgkin's disease); or replacement or revision surgery to replace an implant for a documented medical reason (e.g., implant rupture, leakage).

Copies of CDRH's letter denying approval of the application for use of the device in augmenting the healthy female breast and the summary of safety and effectiveness data on which CDRH's decision is based are on file with the Dockets Management Branch (address above) and are available upon request from that office. Requests should be identified with the name of the device and docket number found in brackets in the heading of this document.

Dated: September 28, 1992.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 92-23989 Filed 10-2-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92M-0229]

Mentor Corp.; Partial Denial of Approval of Mentor Becker Expander/ Mammary Prosthesis Smooth or Siltex Textured Surface Premarket Approval Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its partial denial of approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Mentor Becker Expander/ Mammary Prosthesis Smooth or Siltex Textured Surface, sponsored by Mentor Corp. After reviewing the recommendation of the General and Plastic Surgery Device Panel and analyzing the data and information submitted in support of the application, FDA's Center for Devices and Radiological Health (CDRH) notified the sponsor by letter dated April 16, 1992, that the application was denied approval for use of the device in augmentation of the healthy female breast on the grounds that the device had not been shown to be safe and effective for such use as recommended in the submitted labeling. The agency determined, however, that for women seeking breast reconstruction, continued availability of the device, under strict controls, is necessary for the public health and, consequently, agreed to extend the review period for the application for that use only.

ADDRESSES: Requests for copies of the letter to the sponsor denying approval of the application for use of the device in augmentation of the healthy female breast, and the summary of the safety and effectiveness data, may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

SUPPLEMENTARY INFORMATION: On July 8, 1991, Mentor Corp., 600 Pine Ave., Goleta, CA 93117, submitted to CDRH an application for premarket approval of the Mentor Becker Expander/Mammary Prosthesis Smooth or Siltex Textured Surface, a silicone gel-filled breast prosthesis. On November 12 to 14, 1991, the application was reviewed by the General and Plastic Surgery Panel of the Medical Devices Advisory Committee, an FDA advisory committee, which recommended that the application not be approved. On April 16, 1992, the Director of CDRH denied approval of the application for use of the device in augmenting the healthy female breast by a letter to the sponsor. For purposes of this decision, the term "augmentation" means cosmetic augmentation of a healthy female breast, including surgery for mammary hypoplasia, and surgery whose primary purpose is a cosmetic change to enhance self-esteem or to provide psychological benefit. The letter advised the sponsor of its right to file, within 30 days of its receipt of the letter, a petition for a formal hearing on, or for an independent advisory committee review of, CDRH's decision. No petition was filed within that time period and, therefore, the time for appeal has expired.

In accordance with section 515(d)(1)(B)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(1)(B)(i)), the agency determined that, for women seeking breast reconstruction, continued availability of the device, under strict controls, is necessary for the public health and, consequently, agreed to extend the review period for the application for that use only. For purposes of this decision, the term "reconstruction" means reconstruction surgery of the female breast following mastectomy, breast injury, burns, or trauma; surgery to correct serious congenital deformities (e.g., Poland's syndrome) or interrupted growth attributed to radiation therapy (e.g., treatment of teenagers with Hodgkin's disease); or replacement or revision surgery to replace an implant for a documented medical reason (e.g., implant rupture, leakage).

Copies of CDRH's letter denying approval of the application for use of the device in augmenting the healthy female breast and the summary of safety and effectiveness data on which CDRH's decision is based are on file with the Dockets Management Branch (address above) and are available upon request from that office. Requests should be identified with the name of the device and docket number found in brackets in the heading of this document.

Dated: September 28, 1992.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 92-23990 Filed 10-2-92; 8:45 am]

BILLING CODE 4120-01-F

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Maryland State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 27, 1992 at 10 a.m. in room 3030, 3535 Market Street, Philadelphia, Pennsylvania to reconsider our decision to disapprove Maryland SPA 92-22.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by October 20, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, Telephone: (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Maryland State plan amendment (SPA) number 92-22.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Office within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Maryland submitted SPA 92-22 to establish the State's compliance with section 1926 of the Act. Maryland SPA 92-22 contains data alleging that at least 50 percent of obstetrical and pediatric (Ob/Ped) practitioners are full Medicaid participants.

The issue in this matter is whether the plan amendment meets the statutory provisions of section 1926 of the Act and thus also complies with section 1902(a)(30)(A) of the Act.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, requires that by no later than April 1 of each year (beginning in 1990), States submit plan amendments specifying their payment rates for Ob/Ped practitioner services. States must provide specific information to document that those payment rates are sufficient to enlist enough providers such that Ob/Ped services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). In addition, States must submit data to document that payments to health maintenance organizations take into account payment rates for fee-for-service Ob/Ped services.

HCFA has determined, on the basis of the statute and Congressional intent, that for Ob/Ped rate SPAs to be approvable under section 1926 of the Act, they must include the following:

1. Payment rates for July 1, 1991 through June 30, 1992 for Ob/Ped services, specified by procedures;

2. Data that document that payment rates for Ob/Ped services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and,

3. Data that document that payment rates to health maintenance organizations under section 1903(m) of the Act take into account the payment rates specified in number 1 above.

HCFA has also developed several guidelines, that if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a State Medicaid Manual (SMM) revision dated March 26, 1990.

On June 30, 1991, Maryland's initial SPA 91-20, concerning Ob/Ped payment rates, was disapproved because the data provided by the State were insufficient to document that the statutory requirements were met. On April 2, 1992, Maryland submitted its revised Ob/Ped SPA as required by the last sentence of section 1926(a)(3) of the Act. The new amendment was numbered Maryland 92-22. HCFA reviewed Maryland 92-22 and formally requested additional information needed for a final decision. On April 30, 1992, the State responded to the request for additional information.

Based upon the data submitted, HCFA has determined that Maryland's amendment does not comply with the statutory requirements of section 1926 of the Act, and, thus also does not comply with section 1902(a)(3)(A). The State has demonstrated adequacy of access utilizing guideline 1 from the March 26, 1990 SMM issuance, which permits the State to document its compliance with the statute by submitting data showing that at least 50 percent of On/Ped practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. However, HCFA believes Maryland's submittal is incomplete because the State has not submitted with SPA 92-22 its Ob/Ped fee-for-service payment rates for the period July 1, 1991 through June 30, 1992. The State's fee schedule submitted for SPA 91-20 was not acceptable because the schedule rates were the result of the State's Provider Tax Bill, and were not the rates that were paid to the providers. The State has not submitted an alternate fee schedule for SPA 92-22.

The State argues that sections 1926 (a)(1) and (a)(2) of the Act provide that a State must submit to the Secretary a plan amendment that specifies "the payment rates to be used for such services under the plan in the succeeding period." The State also argues that it submitted its payment rates to HCFA for Ob/Ped services and have therefore met this requirement. The payment rates were published in the Code of Maryland Regulations and are alleged to be the "actual" rates paid to the provider for these services. The State further argues that the fact that a tax is withheld from the provider payments does not mean the State has failed to comply with section 1926 of the Act. The rates in question were submitted with SPA 91-20 and were disapproved. No rates have been submitted with SPA 92-22. Since the rates submitted with 91-20 were disapproved and no new rates were submitted with SPA 92-22, HCFA believes the State has not met the requirements of sections 1902(a)(30)(A) and 1926 of the Act.

The notice of Maryland announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Nelson Sabatini,

Secretary, Department of Health and Mental Hygiene, 201 West Preston Street, 5th Floor, Baltimore, Maryland 21201

Dear Mr. Sabatini: I am responding to your request for reconsideration of the decision to disapprove Maryland State Plan Amendment (SPA) 92–22. Maryland submitted SPA 92–22 to establish the State's compliance with section 1926 of the Social Security Act (the Act). Maryland SPA 92–22 contains data alleging that at least 50 percent of obstetrical and pediatric (Ob/Ped) practitioners are full Medicaid participants.

The issue in this matter is whether the plan amendment meets the statutory requirements of section 1926 of the Act and thus, also complies with section 1902(a)(30)(A) of the Act. Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that by no later than April 1 of each year (beginning in 1990), States submit plan amendments specifying their payment rates for Ob/Ped practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that Ob/Ped services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). In addition, the States must submit data to document that payments to the health maintenance organizations take into account payment rates for fee-for-service Ob/Ped services.

I am scheduling a hearing on your request for reconsideration to be held on October 27, 1992 at 10 a.m. in room 3030, 3535 Market Street, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

William Toby, Jr.,

Acting Deputy Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18.

Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program.

Dated: September 11, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92–24036 Filed 10–2–92; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Program Announcement and Proposed Funding Preference and Priority for Cooperative Agreements for Area Health Education Centers Program for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces that applications are now being accepted for fiscal year 1993 Cooperative Agreements for the Area Health Education Centers (AHEC) Program under the authority of section 781(a)(1), title VII of the Public Health Service Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Pub. L. 100–607. Comments are invited on the proposed funding preference and priority stated below.

This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program.

In FY 1992, HRSA reviewed 11 applications for Cooperative Agreements for the Area Health Education Centers Program. Of those applications, 27 percent were approved and 73 percent were not recommended for further consideration. Three projects, or 27 percent of the applications received, were funded.

In FY 1991, HRSA reviewed 22 applications. Of those applications, 73 percent were approved and 27 percent were not recommended for further consideration. Sixteen projects, or 73 percent of the applications received, were funded.

Purpose

Section 781(a)(1) authorizes Federal assistance to schools of medicine and osteopathic medicine which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs.

To be eligible to receive support for an area health education center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathic medicine or consortium of such schools, or the parent institution on behalf of such school(s).

Applicants may request up to 3 years of support with the expectation that AHECs planned and developed in years 1 and 2 would be fully operational no later than the 3rd year. The period of Federal support should not exceed 9 years for an area health education center program and 6 years for an area health education center.

The Health Professions Reauthorization Act of 1988, title VI of Public Law 100–607, amended the authority for the area health education center program by:

1. Providing for a waiver, under specified circumstances, of the provision now contained in section 781(a)(2)(C) prohibiting an AHEC from being a school of medicine or osteopathic medicine, the parent institution of such a school, or a branch campus or other subunit of a school of medicine or osteopathic medicine or its parent institution, or a consortium of such entities. The waiver of this provision applies to an AHEC having, at the time of initial application for support, an operating program supported by appropriations of a State legislature as well as local resources;

2. Reducing the minimum number of individuals enrolled in first-year positions in a rotating osteopathic internship or a medical residency training program in family medicine, general internal medicine, or general pediatrics from six individuals to four; and

3. Revising the requirement that each AHEC shall "conduct interdisciplinary training and practice involving physicians and other health personnel including, where practicable, physician assistants and nurse practitioners" to add "and nurse midwives."

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR part 57, subpart MM.

Degree of Federal Involvement in the Planning, Development and Operation of Area Health Education Centers Program

The Bureau of Health Professions, within the Health Resources and Services Administration, has substantial programmatic involvement in the

planning, development, and administration of the AHEC projects by:

1. Reviewing and approving plans upon which continuation of the cooperative agreement is contingent in order to permit appropriate direction and redirection of activities;

2. Reviewing and approving all contracts and agreements among recipient medical or osteopathic schools, other health professions schools and community-based centers;

3. Participating with project staff in the development of funding projections;

4. Developing, with project staff, individual project data collection systems and procedures; and

5. Participating with project staff in the design of project evaluation protocols and methodologies.

Matching Funds Requirement

Section 781(e)(2) of the Act requires that not more than 75 percent of total operating funds of a program in any year shall be provided by the Secretary.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. This program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in 42 CFR 57.3804;
2. The capability of the applicant to carry out the proposed project; and
3. The extent of the need of the area to be served by the area health education centers.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

The following funding preference and funding priorities were established in FY 1989 after public comment (at 54 FR 189) dated January 4, 1989. Funding Priority No. 2, was established in FY 1989 as a special consideration and extended in FY 1990 on November 21, 1989, (54 FR 48156) and established as a funding priority in FY 1992, after public comment (57 FR 6229) dated February 21 1992. These funding factors are being extended in FY 1993.

Established Funding Preference for Fiscal Year 1993

In making awards for fiscal year 1993, a funding preference will be given to approved competing continuation applications under section 781(a)(1).

Established Funding Priorities for Fiscal Year 1993

A funding priority will be given to the following:

1. Applications which demonstrate substantial clinical training (a student or resident clerkship or preceptorship of 4 to 8 weeks) in one or more PHS Act, section 332 Health Professional Shortage Area(s) and/or a PHS Act, section 329 Migrant Health Center, a PHS Act, section 330 Community Health Center, or a State designated clinic/center serving an underserved population. Section 332 establishes criteria to designated geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 330 authorizes support for community health care services to medically underserved populations.

2. Applications proposing centers that will serve Health Professional Shortage Areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks, and/or Hispanics than exists in the general population in the United States.

Proposed Funding Preference for Fiscal Year 1993

A second funding preference is proposed:

In making awards for fiscal year 1993, a funding preference will be given to approved competing new application under section 781(a)(1) which propose to plan, develop and implement an AHEC program in a State where there is no existing AHEC program. These approved applications will be funded after approved competing continuation applications.

The overall goal of the AHEC Program is to develop a national network of State related AHEC Programs which can effectively address the supply and distribution issues related to health professions education. In times of limited dollars, it is reasonable to allocate funds to initiate new AHEC programs in states where there are no other AHEC programs. This is particularly true when there are States which still experience severe manpower shortages. Such a preference will also encourage State institutions to work together and plan AHEC strategies which are more consonant to overall State goals rather than segmenting planning through compartmented Federally funded initiatives. It will also allocate national resources so that no State will get a disproportionate share of scarce resources at the expense of States getting no resource support.

Proposed Funding Priority for FY 1993

It is proposed that a funding priority be given to applications which demonstrate the development or implementation of information dissemination systems with the capability to provide state-of-the-art information on clinical modalities, protocols, and other guidelines which can address emerging health issues such as substance abuse, clinical preventive services, infant mortality and geriatrics for primary care practitioners, including National Health Service Corps personnel.

This funding priority focuses on creating a network and infrastructure to transmit the most current information to practicing health professionals.

Additional Information

Interested persons are invited to comment on the proposed funding preference and priority. All comments received on or before November 4, 1992 will be considered before the final funding preference and priority are established. No funds will be allocated or final selections made until a final notice is published stating when the final funding preference and priority will be applied. Written comments should be addressed to:

Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C-25, Parklawn Building, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Diane Murray, Grants Management Specialist (U76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 8C-26, Rockville, Maryland 20857, Telephone: (301) 443-6857, FAX: (301) 443-6343.

Completed applications should be forwarded to the Grants Management Office at the above address.

If additional programmatic information is needed, please contact: Ms. Cherry Tsutsumida, Chief, Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 4C-5, Rockville, Maryland 20857, Telephone: (301) 443-6817, FAX: (301) 443-8890.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instruction and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915-0060.

The deadline date for receipt of applications is November 30, 1992. Applications should be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.824 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: September 9, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-24032 Filed 10-2-92; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on October 19, 1992. The meeting will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 20202. The Board will meet October 19, 8:30 a.m. to approximately 3:30 p.m.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Ms. Geraldine B. Pollen, Executive Director, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting her office.

Dated: September 24, 1992.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 92-23985 Filed 10-2-92; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service, Office of the Assistant Secretary for Health

Public Law 102-154, the Department of the Interior and Related Agencies Appropriations, Fiscal Year 1992 Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority from the Secretary of Health and Human Services to the Assistant Secretary for Health dated September 10, 1992, the Assistant Secretary for Health delegated to the Director, Indian Health Service, without authority to redelegate, all authority under Public Law 102-154, "The Department of the Interior and Related Agencies Appropriations Act, Fiscal Year 1992", as amended hereafter, to accept ownership of the buildings offered at no cost by the Standing Rock Sioux Tribe for use solely as the Aberdeen Area Youth Regional Treatment Center. This delegation excluded the authority to promulgate regulations, to submit reports to Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

This delegation was effective September 23, 1992.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 92-24034 Filed 10-2-92; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM010-4340-01-ADVB/G910G20108]

District Advisory Council Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice of Albuquerque District Advisory Council Meeting.

SUMMARY: The BLM Albuquerque District Advisory Council will meet November 5, and 6, 1992, in the Albuquerque District Office located at 435 Montano Blvd. N.E., Albuquerque, New Mexico. The meeting will begin at 10 a.m. on Thursday, the 5th and meet until 4 p.m. that day with a lunch break from 12 noon to 1:30 p.m.

Topics on Thursday's agenda will include the role of the Council, the proposed BLM reorganization, updates on the Taos, Rio Puerco and Farmington resource areas, an overview of the upper Rio Puerco watershed, and the animal damage control program.

On Friday, November 6th, the Council will meet at the BLM office in

Albuquerque at 8:30 a.m. and proceed on a tour of the upper Rio Puerco watershed area, returning to the office by 3:30 p.m.

The public is invited to attend all or part of the meeting, but transportation on the field trip will not be provided. Persons wishing to address the Council should contact Charna Lefton, Public Affairs Specialist, 435 Montano Blvd. N.E., Albuquerque, NM, 87107, (505) 761-8700.

Dated: September 30, 1992.

Robert T. Dale,

District Manager.

[FR Doc. 92-24267 Filed 10-2-92; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the White River Spinedace (Lepidomeda albivallis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the endangered White River spinedace (*Lepidomeda albivallis*). This species historically occupied the upper White River and six springs systems in Nye and White Pine Counties, Nevada. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before December 4, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Reno Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C-125, Reno, Nevada, 89502, (Phone: 702-784-5870) or Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon, 97232-4181 (Phone: 503-231-6131). Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow, Field Supervisor, at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada address.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Withers at the above Reno, Nevada address (telephone 702-784-5227).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

White River spinedace are endemic to the upper White River Valley in Nye and White Pine Counties, Nevada. The principle causes of decline for this species are habitat modification and nonnative fishes introduction. Recovery efforts will focus on maintaining and enhancing the one remaining population by increasing the extent of suitable habitat, eliminating threats from nonnative fish species, and reestablishing populations in historic habitats. Most of the historic habitat is currently under private ownership. The remaining population of White River spinedace occupies North Flag Spring, which is within the Nevada Department of Wildlife's Wayne E. Kirch Wildlife Management Area.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 25, 1992.

William E. Martin,

Acting Regional Director.

[FR Doc. 92-24042 Filed 10-2-92; 8:45 am]

BILLING CODE 4310-55-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0024—, Washington, DC 20503, telephone 202-395-7340.

Title: Procedures and Criteria for Approval or Disapproval of State Program Submissions 30 CFR part 732.

OMB Approval Number: 1029-0024.

Abstract: The regulations require a State to report to the Office of Surface Mining Reclamation and Enforcement (OSM) the information collected by the State and also requires notification to be made by the State of any changes to the State program. The information submitted by the State is used by OSM in evaluating whether the State is meeting the provisions of the approved State program.

Bureau Form Number: None.

Frequency: Quarterly and on occasion.

Description of Respondents: State Regulatory Authorities.

Estimated Completion Time: 9 hours.

Annual Responses: 120.

Annual Burden Hours: 1,080.

Bureau Clearance Officer: John A. Trelease, 202-343-1475.

Dated: August 25, 1992.

Andrew F. DeVito,

Acting Chief, Division of Technical Services.

[FR Doc. 92-24038 Filed 10-02-92; 8:45 am]

BILLING CODE 4310-05-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, paperwork Reduction Project (1029–0049), Washington, DC 20503, telephone 202–395–7340.

Title: Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors.
OMB Approval Number: 1029–0049.
Abstract: This section requires the permittee to install, maintain and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is needed to ensure that the agricultural utility and production of the alluvial valley floor is maintained.
Bureau Form Number: None.
Frequency: Annually.
Description of Respondents: Coal Mining Operators.
Estimated Completion Time: 50 hours.
Annual Responses: 10.
Annual Burden Hours: 500.
Bureau Clearance Officer: John A. Trelease, 202–343–1475.

Dated: August 25, 1992.

Andrew F. DeVito,

Acting Chief, Division of Technical Services.

[FR Doc. 92–24037 Filed 10–2–92; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–331]

Commission Decision to Vacate an Initial Determination Suspending the Investigation

In the Matter of certain microcomputer memory controllers, components thereof and products containing same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to vacate the initial determination (ID) issued by the presiding administrative law judge (ALJ) on July 9, 1992, suspending the above-captioned investigation.

ADDRESSES: Copies of the ID, the Commission's order, and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On September 12, 1991, Chips and Technologies, Inc. ("Chips") of San Jose, California filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain microcomputer memory controllers covered by claims of four U.S. patents owned by Chips. The Commission instituted an investigation of Chips' complaint in October 17, 1991. 56 FR 52058. Respondents OPTi Computer, Inc. (OPTi) of Santa Clara, California, and Elite Microelectronics, Inc. (Elite) of San Jose, California remain in the investigation.

On June 23, 1992, Chips moved to suspend the investigation in favor of concurrent litigation in the U.S. District Court for the Northern District of California between Chips and OPTi, *Chips and Technologies, Inc.* v. *OPTi Computer, Inc.*, Civil Action No. C–91–20349–SW (PVT). The Commission investigative attorney (IA) supported Chips' motion. OPTi and Elite opposed the motion. While the motion was pending before the ALJ, the district court trial date was rescheduled for a later date. On July 9, 1991, the ALJ granted Chips' motion and issued an ID (Order No. 25) suspending the investigation. No petitions for review of the ID were received.

On August 10, 1992, the Commission determined to review the ID because it deemed the basis for suspension given in the ID, *viz.*, avoidance of duplicative costs, contrary to Commission precedent and inappropriate in view of statutory language making section 337 available "in addition to" other relief, 19 U.S.C. 1337(a). Since ordering review, the concurrent district court litigation has been terminated by consent judgment. In the absence of concurrent court or agency proceedings, the Commission determined that it had no authority to suspend this investigation under section 337.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and sections 210.53(h), 210.55, and 210.56(c) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h), 210.55, and 210.56(c)).

Issued: September 29, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–24028 Filed 10–2–92; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219-9171). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Occupational Safety and Health Administration.
Survey on Ergonomic Hazards and Ergonomic Hazards Prevention Programs.
Non-recurring.
Business or other for-profit; Small businesses or organizations.

Information collection	Number of respondents	Average time per response	Total burden hours
Respondents without ergonomic programs in place	2,513	40 minutes	1,675 hours.
Respondents with ergonomic programs in place	1,237	1 hour	1,237 hours.
Site Visits	100	8 hours	800 hours.
Total	3,850		3,712 hours.

Description

The office of Regulatory Analysis of the Occupational Safety and Health Administration (OSHA) is collecting data to evaluate current levels of employee exposure to ergonomic hazards and to ascertain the extent to which establishments have established ergonomic efforts to monitor and mitigate the exposure to these hazards. OSHA is attempting to (1) identify those occupations and associated processes in which job activities pose significant ergonomic risks to employees, (2) collect information regarding the incidence and nature of injuries and illnesses associated with ergonomic exposures, (3) develop estimates of the number of establishments that have instituted ergonomic efforts to control ergonomic hazards, and (4) evaluate the characteristics of such efforts.

Necessity of Data Collection

In 1990 OSHA published voluntary guidelines for the design and implementation of ergonomic programs in the meatpacking industry. These guidelines were instituted in response to the high rate of ergonomic-related disorders reported among meatpacking employees. It has been recognized, however, that such injuries and illnesses constitute a significant share of reported injuries and illnesses in other industries. According to the Bureau of Labor Statistics, work-place illnesses associated with repeated trauma (e.g., conditions due to repeated motion, pressure, or vibration, such as carpal tunnel syndrome) made up approximately 56 percent (185,400) of all illness cases in 1990. In 1981 and 1984, these disorders accounted for only 18 and 28 percent, respectively, of all recordable illnesses. Furthermore, the rate of reported ergonomic-related cases has been increasing relative to the overall rate of injuries and illnesses. Between 1989 and 1990, repeated traumas constituted nearly 80 percent of the increase of 39,000 cases. During 1990, the industries with the 25 highest reported illness incidence rates of disorders associated with repeated trauma were in manufacturing.

There is growing recognition of the seriousness of cumulative trauma disorders, ergonomic disorders and the social costs imposed by such disorders. However, no explicit regulatory protection against ergonomic risks is provided for employees. OSHA, therefore, is interested in developing a database that will provide sufficient information to determine the effectiveness of existing efforts and the extent of ergonomic hazards. Ergonomic efforts cover workplace risks associated with repetitive motion and other ergonomic hazards which occur in the spectrum of industries regulated by OSHA. Program information collected would focus on five areas: (1) Trend analysis or ergonomic disorders due to exposure to ergonomic hazards and their symptoms; (2) systematic exposure analysis; (3) methods for ergonomic hazard prevention and control; (4) ergonomic health management; and (5) ergonomic training and education.

Finding technological solutions to the problems posed by ergonomic hazards may be one of the most significant occupational safety and health issues of this decade. The range of improvements is extremely broad, depending not only on industry and occupation, but also on the specific establishment, equipment in place and in some cases, the capabilities of the individual employee. Some general categories of solutions may include assembly line or work station modifications, administrative controls to limit the amount of time that a worker is exposed to the hazards, and changes in work practices such as improving lifting techniques. This broad range of possible actions necessitates that many individual situations be identified, primarily through the survey and through plant visits.

In order to assess the feasibility of initiatives designed to increase worker protection against ergonomic hazards, OSHA requires a database that describes current exposure levels to ergonomic hazards and characterizes current industry practices regarding the identification, monitoring, and control of such hazards. Thus, in accordance with Section 6 of the OSH Act, OSHA is planning to gather statistically accurate information regarding the incidence of exposure to ergonomic hazards and the extent and effectiveness of implemented health and safety programs to mitigate these hazards.

In addition to a statistical survey, OSHA is also planning to conduct up to one hundred in-depth site visits to establishments with on-going ergonomic efforts. They will be selected to obtain adequate data representation of the different types of ergonomic efforts currently used by employers. These site

visits will permit the collection of additional detailed information regarding the characteristics, practices, costs, and benefits associated with these ergonomic efforts. This information will be used to validate and supplement the survey findings.

A previous survey by OSHA covering medical surveillance and exposure assessment programs provided initial estimates of the extent to which establishments currently have ergonomic efforts in place. The present data collection effort seeks to expand this data base by collecting information on the types and extent of exposure to ergonomic hazards and on the detailed characteristics of the various components of existing ergonomic efforts. This survey will also encompass industries not covered in the previous survey such as forestry, fishing and hunting, as in scope industries.

A critical element of an ergonomics effort is the set of criteria by which ergonomic hazards would be judged to exist. The survey will, therefore, collect information regarding the extent to which specific occupations in each industry are exposed to ergonomic hazards. Further, the survey collects data on the incidence and nature of ergonomic disorders within each occupational class at risk to ergonomic hazards.

The extent and distribution of ergonomic hazards by SIC will be determined by collecting data on the number of employees in occupations engaged in activities which are likely to involve exposure to ergonomic hazards. A list of SIC specific occupations in which workers are most likely to be exposed to ergonomic hazards has been developed. Information will be requested about the processes associated with identified occupations. An SIC specific prompt list was developed by integrating the occupation list with the process list developed and tested under several OSHA surveys including personal protective equipment and medical surveillance.

Ergonomic efforts would most likely include provisions for the implementation of procedures to address ergonomic hazards. A successful program for control or ergonomic hazards must include provisions for identification, control, and monitoring of those hazards. Therefore, for those establishments that have developed ergonomic efforts, the survey will elicit information regarding the detailed characteristics of such efforts.

First, the survey will examine characteristics of efforts related to the assessment of ergonomic hazards and the associated methods used to identify such hazards in the workplace. These methods include workplace or ergonomic job hazard analyses, trend analyses, and other hazard assessment techniques.

Second, the survey will seek information regarding hazard prevention and control measures which employers have instituted in order to mitigate ergonomic risks. Such measures include appropriate engineering and work practice controls, physical devices (gloves, braces, etc.), and administrative controls. This information will include the specific nature of such controls, whether such controls reduce or eliminate employee exposure to ergonomic hazards and the associated costs to the employer.

Third, the survey will investigate the characteristics of procedures for ergonomic health management. Proper medical management is necessary to eliminate or materially reduce the risk of developing an ergonomic disorder. This can be accomplished through early identification and treatment and through the development of surveillance procedures. The questions under this topic address protocols for health surveillance, medical removal, and job re-entry after medical removal or disability leave.

Fourth, the survey will seek information about employer training and education efforts to assist employees and supervisors in the identification and prevention of ergonomic injuries and illnesses. The purpose of training and education is to ensure that employees are sufficiently informed about the ergonomic hazards to which they may be exposed and, thus, are able to participate actively in their own protection. Finally, the survey will elicit information regarding the methods used by establishments to audit the effectiveness of their ergonomic efforts and the extent to which these efforts have been successful in achieving their goals.

In order to develop corroborative information regarding the incidence of disorders related to ergonomic stressors, OSHA will collect copies of each OSHA Form 200 injury and illness log maintained by establishments participating and agreeing to submit such forms during the survey. Ergonomic disorders on these logs will be identified and coded to develop a data base of specific cumulative trauma disorders and back injuries. These data will then be correlated with survey results to determine relationships between ergonomic safety practices and the incidence of ergonomic injuries and illnesses. This date base will also provide information on the incidence of specific types of ergonomic disorders. Currently, only aggregate incidence rates are available from published injury and illness statistics.

Site visit information will be folded into the analysis of the survey and OSHA Form 200s to provide a realistic aspect on the statistical data.

Use of the Information

OSHA will use the data gathered through this survey to assess the extent of workplace exposure to ergonomic hazards in the range of industries and activities falling within OSHA's jurisdiction. In addition, the information will permit an assessment of current industry practices regarding mitigation of ergonomic hazards. The information will be used in support of an effort by OSHA to evaluate the extent of occupational ergonomic disorders and the extent and effectiveness of existing occupational ergonomic efforts. This will eventually allow the consideration of the effectiveness and feasibility of a variety of approaches for providing workplace protection against ergonomic hazards. The survey will provide a unique data base characterizing exposure levels associated with specific occupational classes of employees as well as the range of ergonomic efforts instituted by establishments in different industries.

The questions in the survey instrument are designed to gather the needed information in a straightforward manner. The discussion below describes in detail the data uses associated with each category of questions contained in the survey instrument.

- Section I—Background Information

The first elements of the survey instrument will provide the respondent with a general description of the nature of the survey. OSHA will collect information regarding the SIC code of the respondent, the total number of employees, and employment in specific activity areas (production, administrative, sales, etc). The survey also requests data on the activities performed at the establishment and the number of employees in each activity. If the respondent is not in the SIC code expected (based on the Dun and Bradstreet (D&B) industry list), the correct SIC code will be identified. Employment data from D&B will also be validated.

- Section II—Workplace Analysis

Questions in this section will establish whether the respondent has implemented any effort to identify

occupations which present ergonomic hazards at his or her facility. Respondents who have made no effort to establish whether they have ergonomic disorders among their employees will be administered questions designed to identify the existence and extent of ergonomic hazards, if any, in the establishment.

Respondents who have undertaken workplace analysis efforts will be administered questions which address the nature of the workplace analysis and the extent and type of ergonomic hazard identified.

All respondents will be queried regarding the existence of specific ergonomic stressors, the incidence of reported ergonomic disorders or symptoms, the body parts afflicted, and the specific traumas reported. This information, together with total employment in the classification, will be elicited for each ergonomically high-risk occupational classification present at the facility. In addition respondents will be asked to identify the processes associated with those occupations. Respondents will then be asked to supply their OSHA Form 200 injury and illness logs.

• Section III—Ergonomic Job Hazard Analysis

This section includes questions on whether the respondent has undertaken specific job analysis to identify ergonomic stressors present at the employee workstation and to characterize the duration and frequency of the exposure. Those who have undertaken such analyses are queried regarding the nature of the analyses and the personnel involved. Respondents are then asked to identify the occupations that were ergonomically analyzed.

• Section IV—Workplace Modifications

Questions in this section determine whether respondents have implemented workplace modifications to mitigate ergonomic hazards for those occupational classifications where ergonomic hazards were found to exist. For those respondents who have conducted workplace modifications, the survey instrument asks questions about whether controls have been implemented, the specific type and characteristics of the control measures, and the effectiveness of such controls.

• Section V—Ergonomic Health Management

Section V contains questions regarding the establishment's ergonomic health management efforts. These questions cover the existence and characteristics of a formal health program, the type and characteristics of a formal health program, the type and characteristics of health care available to employees, elements of health surveillance policies, and medical removal and re-entry procedures for employees with ergonomic disorders.

• Section VI—Ergonomic Training and Education

This section of the survey instrument contains questions regarding the training and education component of ergonomic efforts. The respondent is queried about who provides the training, which occupational categories receive such training, and the topics covered in such training.

• Section VII—Effectiveness of the Ergonomic Program

This final section of the survey contains questions for respondents with ergonomic efforts and addresses the (a) methods used to evaluate the effectiveness of ergonomic efforts, and (b) the overall effectiveness of ergonomic efforts in terms of such changes as injury/illness rates, workers' compensation and insurance costs, and worker productivity. Respondents are asked to provide, within numerical ranges provided by the interviewer, quantitative estimates of the effectiveness of their programs in these areas.

Use of Technology to Reduce Burden

The survey instrument for this survey will be administered by telephone thought the use of a computer assisted telephone interviewing (CATI) system. A telephone survey has several advantages. The response rate is consistently better than for mail surveys, and the cost and time for completing responses is reduced. With a CATI system, responses are entered directly into the computer, eliminating the need for separate recording and coding operations. Also, the CATI computer program ensures that the proper sequence of questions is followed automatically. For example, if the response to one question suggests that a follow up question can be skipped, the computer will automatically move on. The interviewer simply reads the questions as they appear on the screen. In addition, the use of CATI allows the interviewer to omit questions that are not relevant for the particular establishment being questioned. This system produces a smooth flowing interview and eliminates any pauses or delays by the interviewer to enter responses by hand or to find the next question. In essence, the computer produces a questionnaire tailored to each establishment.

Efforts to Avoid Duplication

An extensive literature review on the subject areas to be addressed by this survey effort has been conducted by OSHA. This research has led to the conclusion that there is currently no systematic, comprehensive, and statistically accurate data base on levels of exposure to ergonomic hazards, the incidence of ergonomic related disorders, or the number and characteristics of ergonomic efforts designed to identify, monitor or mitigate ergonomic hazards.

For further information contact Kathy Condit at the Office of Regulatory Analysis. (202) 219–5916.

Signed at Washington, DC this 29 day of September 1992.

Kennah A. Mills.

Departmental Clearance Officer.

[FR Doc. 92–23995 Filed 10–2–92; 8:45 am]

BILLING CODE 4510–26–M

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Fall meetings of the Board and Committees of the Business Research Advisory Council will be held on October 28 and 29, 1992. All of the meetings will be held in the Postal Square Building, 2 Massachusetts Avenue, N.E., Washington, D.C.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, October 28, 1992

10 a.m.—Committee on Compensation and Working Conditions—Postal Square Building Conference Center.

1. Results from the health care claims model.
2. The new locality pay and benefits bulletin.
3. Compensation cost levels: a comparison between state and local government and private industry.
4. The training research project with the Bureau's Labor Research Advisory Council (LRAC).

1 p.m.—Committee on Employment and Unemployment, Postal Square Building Conference Center.

1. Overview and budget briefing.

2. Understanding the June 1992 benchmark revision.
3. Developments in the Single Wage Report Initiative.
4. Implementation and application of the Business Establishment List (BEL).
5. Standard Industrial Classification 1997: economic classification policy issues.
6. Testing the new Current Population Survey (CPS) questionnaire.
7. First news release on employment in foreign-owned establishments.
8. Other business.

3:15 p.m.—Committee on Economic Growth, Postal Square Building Conference Center.
1. Evaluations of 1990 projections.
a. Labor force.
b. Economic and industry.
c. Occupations.
2. Discussion of assumptions to be used for new projections—1992–2005.

Thursday, October 29, 1992

9 a.m.—Committee on Prices, Postal Square Building Conference Center.
1. Status of work on the Consumer Price Index, Producer Price Index, and International Price Indexes Programs.
2. Other business.

9 a.m.—Committee on Productivity-Foreign Labor, Postal Square Building Conference Center.
1. Election of committee vice-chairperson.
2. Progress report on international comparisons of alternative unemployment indicators.
3. Update on BLS technical cooperation with Central and East European and Mexican statistical offices.
4. Study of productivity and changes in work force composition.
5. Brief update on status of Bureau of Economic Analysis work on real gross product originating.

1 p.m.—Board of the Business Research Advisory Council, Postal Square Building Conference Center.
1. Chairperson's remarks.
2. Deputy Commissioner's remarks.
3. Committee reports.
a. Committee on Compensation and Working Conditions.
b. Committee on Productivity-Foreign Labor.
c. Committee on Employment and Unemployment.
d. Committee on Price Indexes.
e. Committee on Economic Growth.
4. Other business.
5. Chairperson's closing remarks.

The meetings are open to the public. Persons planning to attend these meetings as observers may obtain more information from Constance B. DiCesare, Liaison, Business Research Advisory Council, at (202) 606–5886.

Signed at Washington, DC the 29th day of September 1992.

William G. Barron, Jr.,

Deputy Commissioner.

[FR Doc. 92–24061 Filed 10–2–92; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–27,614]

Brown Shoe Co.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 17, 1992 in response to a worker petition which was filed on August 17, 1992 on behalf of workers at Brown Shoe Company, St. Louis, Missouri.

An active certification covering the petitioning group of workers remains in effect (TA–W–27,570). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of September, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–24072 Filed 10–2–92; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Centra Leather Goods et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 15, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 15, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 21st day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Centra Leather Goods (workers)	Frederick, OK	09/21/92	09/03/92	27,813	Men's and women's wallets.
Weyerhauser (LSW)	Snoqualmie, WA	09/21/92	09/10/92	27,814	Softwood lumber, silva fiber.
Petroleum Testing Service, Inc. (workers).	Bakersfield, CA	09/21/92	08/31/92	27,815	Oil and gas services.
Lally Manufacturing Corp. (Co.)	New York Mills, NY	09/21/92	09/03/92	27,816	Men's undershirts.
Lally Manufacturing Corp. (Co.)	Port Leyden, NY	09/21/92	09/03/92	27,817	Men's undershirts.
Lally Manufacturing Corp. (Co.)	Adams, NY	09/21/92	09/03/92	27,818	Men's undershirts.
Scotty Construction Co., Inc. (Co.)	Odessa, TX	09/21/92	08/31/92	27,819	Fabrication of oil equipment.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Mitchell Energy Corp. (Co.)	Decator, TX	09/21/92	09/08/92	27,820	Oil and gas exploration, production.
Preferred Tool and Die. (workers)	Comstock Park, MI	09/21/92	08/27/92	27,821	Stamping dies.
Power Conversion, Inc. (workers)	Elmwood Park, NJ	09/21/92	09/21/92	27,822	Lithium batteries.
United Circuits, Inc. (workers)	Dracut, MA	09/21/92	09/04/92	27,823	Printed circuit boards.
Genicom Corp. (workers)	Herkimer, NY	09/21/92	08/28/92	27,824	Electronic printers.
Genicom Corp. (workers)	St. Johnsville, NY	09/21/92	08/28/92	27,825	Electronic printers.
Joseph & Feiss (ACTWU)	Utica, NY	09/21/92	09/16/92	27,826	Men's jackets and suite coats.
Tyco Toys (UFCW)	Moorestown, NJ	09/21/92	09/09/92	27,827	Toys.
Old Hickory Clay Co. (workers)	Hickory, KY	09/21/92	09/11/92	27,828	Clay.
Nerco Minerals (workers)	Portland, OR	09/21/92	09/02/92	27,829	Gold and silver.
Mitchell Energy Corp. (Co.)	Alba, TX	09/21/92	09/08/92	27,830	Oil & gas exploration, production.
Mitchell Energy Corp. (Co.)	Brigeport, TX	09/21/92	09/08/92	27,831	Oil & gas exploration, production.
Homco International, Inc. (workers)	Enid, OK	09/21/92	09/01/92	27,832	Oilfield services.
Homco International Inc. (workers)	Elk City, OK	09/21/92	09/01/92	27,833	Oilfield services.
Homco International, Inc. (workers)	Oklahoma City, OK	09/21/92	09/01/92	27,834	Oilfield services.

[FR Doc. 92-24073 Filed 10-2-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-26,830]

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance, Cold Spring Granite Co.

TA-W-26,830A Minnetonka, MN
TA-W-26,830B St. Cloud, MN
TA-W-26,830C Milbank, SD
TA-W-26,830D Marble Falls, TX
TA-W-26,830E Granite Shoals, TX
TA-W-26,830F Raymond, CA
TA-W-26,830G Lake Placid, NY

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 7, 1992, applicable to all workers of Cold Spring Granite Company, Cold Spring, Minnesota. The Notice was published in the **Federal Register** on April 20, 1992 (57 FR 14435).

At the request of the company the Department reviewed the certification for workers of Cold Spring Granite Company. New information from the company shows that worker separations occurred at Minnetonka and St. Cloud, Minnesota which provided substantial support for Cold Spring Granite in Cold Spring, Minnesota. Worker separations at production facilities with a substantial amount of integrated production with Cold Spring Granite are located in Milbank, South Dakota; Marble Falls, Texas; Granite Shoals, Texas; Raymond, California and Lake Placid, New York.

The intent of the Department's certification is to include all workers of Cold Spring Granite who were affected by increased imports of quarry and granite products.

The amended notice applicable to TA-W-26,830 is hereby issued as follows:

All workers of Cold Spring Granite Company, Cold Spring, Minnesota; Minnetonka, Minnesota; St. Cloud, Minnesota; Milbank, South Dakota; Marble Falls, Texas; Granite Shoals, Texas; Raymond, California and Lake Placid, New York who became totally or partially separated from employment on or after January 29, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of September 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24074 Filed 10-2-92; 8:45 am]
BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Manchester Steel Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 15, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 15, 1992.

The petitions filed in this case are available for inspection at Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 14th day of September 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Manchester Steel Co. (workers)	Cleveland, OH	09/14/92	08/27/92	27,794	Flat rolled sheet steel.
Louisiana Offshore Ventures (workers)	Houston, TX	09/14/92	09/01/92	27,795	Oil exploration & production.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Production Pattern (PAM)	Bedford, OH	09/14/92	09/03/92	27,796	Casting patterns.
Vandel Services, Inc. (LLGWU)	Newark, NJ	09/14/92	09/01/92	27,797	Ladies' coats.
Enterra Corp. (workers)	Houston, TX	09/14/92	08/13/92	27,798	Oilfields services.
Oilfield Rental & Fishing (workers)	Houston, TX	09/14/92	08/13/92	27,799	Oilfields services.
Oilfield Rental & Fishing (workers)	Odessa, TX	09/14/92	08/13/92	27,800	Oilfields services.
Spaulding Composites Co. (Co.)	Tonawanda, NY	09/14/92	09/01/92	27,801	Laminates and fibre.
Strategic Exploration, Inc. (Co.)	Houston, TX	09/14/92	08/31/92	27,802	Seismic data, acquisition & production.
Green Veneer, Inc. (workers)	Idanha, ID	09/14/92	08/27/92	27,803	Veneer plywood.
Anadrill/Schlumberger (workers)	Sugar Land, TX	09/14/92	08/26/92	27,804	Oil and gas exploration.
Workman Contracting, Inc. (workers)	Mossyrock, WA	09/14/92	09/02/92	27,805	Harwood & softwood logging.
Grid Systems Corp. (workers)	Fremont, CA	09/14/92	09/01/92	27,806	Computers.
Carter Jasper Co. (Co.)	Jasper, GA	09/14/92	08/31/92	27,807	Canvas shoes.
Specialty Steel Products (workers)	Pittsburgh, PA	09/14/92	08/31/92	27,808	Fabricated furnace hardware.
Western Production Co. (Co.)	Newcastle, WY	09/14/92	08/31/92	27,809	Oil and gas.
Hercules, Inc. (workers)	Radford, VA	09/14/92	08/27/92	27,810	Military propellants.
Quintana Petroleum Corp. (workers)	Lafayette, LA	09/14/92	09/08/92	27,811	Oil and gas.
Conoco, Inc. (Co.)	Houston, TX	09/14/92	08/13/92	27,812	Oil exploration & production.

[FR Doc. 92-24075 Filed 10-2-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,988]

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance, Signetics Co.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Revised Determination on Revised Determination on Reconsideration on September 4, 1992, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on September 17, 1992 (57 FR 43030).

The Department is changing the February 24, 1991 impact date set in the Revised Determination on Reconsideration to August 8, 1991 to avoid a coverage overlap with certification TA-W-23,046.

The amended notice applicable to TA-W-26,988 is hereby issued as follows:

All workers of Signetics Company, Orem, Utah who became totally or partially separated from employment on or after August 8, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24076 Filed 10-2-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,611]

Termination of Investigation; Sunstrand ATG

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 17, 1992 in response to a worker petition which was filed on August 17, 1992 on behalf of workers at Sunstrand ATG, Denver, Colorado.

An active certification covering the petitioning group of workers remains in effect (TA-W-27,485). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24077 Filed 10-2-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,418]

Revised Determination on Reconsideration; Tobin-Hamilton Company, Inc.

On September 11, 1992, the Department issued a notice of affirmative determination regarding application for reconsideration for workers and former workers producing children's athletic shoes at the Tobin-Hamilton Company in Mansfield, Missouri.

Investigation findings show that the Department's focus in its negative determination for the subject workers was only on the box toe and stringing operations at Mansfield and these workers were already certified under petition TA-W-26,759.

The initial investigation findings show that sales and production of children's shoes declined in fiscal year ending in April 92. The findings also show worker separations occurring in 1991 and in the first quarter of 1992.

Findings on reconsideration show that U.S. imports of juvenile nonrubber footwear increased absolutely and relative to domestic shipments in 1991 compared to 1990 and in the first quarter of 1992 compared to the first quarter of 1991.

On reconsideration, the Department conducted a customer survey of Tobin-Hamilton's major customers to determine whether increased imports of children's athletic shoes contributed importantly to worker separations and declines in sales or production at Tobin-Hamilton in Mansfield, Missouri.

The Department's survey of Tobin-Hamilton's major customers shows that they reduced their purchases from Tobin-Hamilton and increased imports of children's athletic shoes in the first nine months of 1992 compared to the same period in 1991.

Conclusion

After careful consideration of the new facts obtained on reconsideration it is concluded that increased imports of articles like or directly competitive with children's athletic shoes produced at Tobin-Hamilton in Mansfield, Missouri contributed importantly to the total or partial separation of workers at Tobin-Hamilton in Mansfield, Missouri. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Tobin-Hamilton Company, Inc., in Mansfield, Missouri, except those engaged in box toe or stringing operations who were certified earlier under TA-W-26,759, who became totally or partially separated from employment on or after June 11, 1991 are eligible to apply for adjustment

assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of September 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 92-24078 Filed 10-2-92; 8:45 am]

BILLING CODE 4510-30-M

Emergency Unemployment Compensation (EUC) Program; Notice of Decrease in EUC Benefit Levels in Four States

This notice announces recent changes in benefit levels under the Emergency Unemployment Compensation (EUC) Program in four States.

Background

The following trigger changes have occurred in States since publication of the last notice:

- August 2, 1992—Massachusetts decreased to 20 weeks.
- August 16, 1992—Pennsylvania and Vermont decreased to 20 weeks.
- August 30, 1992—Maine decreased to 20 weeks.

Claimants filing initial claims for EUC benefits on or after the above dates in the States cited are entitled to up to 20 weeks of benefits. Claimants who filed initial claims which were effective for a week beginning prior to the cited dates in the corresponding States are eligible to collect their entire entitlement as in effect prior to these changes.

Information for Claimants

The duration of benefits payable in the EUC Period, and the terms and conditions on which they are payable, are governed by the operating instructions issued to the States by the U.S. Department of Labor. The State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potential eligible for EUC benefits (20 CFR 615.13(c)).

Persons who believe they may be entitled to EUC benefits, or who wish to inquire about their rights under the program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on September 29, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92-24080 Filed 10-2-92; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D-9050, et al.]

Proposed Exemptions; Detroit Diesel Remanufacturing-West, Inc. Tax-Favored Retirement Savings Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5007, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Detroit Diesel Remanufacturing-West, Inc. Tax-Favored Retirement Savings Plan (the Plan)

Located in Reading, Pennsylvania

[Application No. D-9050]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990.) If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale (the Sale) by the Plan to Detroit Diesel Remanufacturing-West, Inc. (DDR-West), a party in interest with respect to the Plan, of an annuity contract, policy number 20274 (the Contract), issued on or about April 1, 1987, by American Protectors Insurance Company, a Utah corporation (American Protectors), provided the following conditions were satisfied: (1) the Sale was a transaction for cash; (2) the Plan did not suffer any loss or incur any expenses from the Sale; (3) the Plan received no less than the fair market

value of the Contract at the time of the Sale; (4) the independent trustee for the Plan, Zions First National Bank of Salt Lake City, Utah, determined that the Sale was appropriate for the Plan and its participants and beneficiaries and that the consideration for the Sale was not less than the current fair market value of the Contract on the date of the Sale; and (5) should DDR–West recover more from the contract than the amount paid, such excess shall be paid to the Plan.

EFFECTIVE DATE: This exemption if granted, will be effective as of May 14, 1992.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with approximately 112 participants and total assets of $238,180.66, as December 31, 1991. The Plan provides that participants may direct investments of their respective individual accounts in the Plan among three investment funds. One of these three funds is the Fixed Income Fund. One investment vehicle in the Fixed Income Fund was the Contract which was purchased by the Plan on or about April 1, 1987. Twelve participants of the Plan had part of their respective account balances invested in the Contract on September 31, 1990.

The fiduciary for the Plan that exercises investment discretion over the assets of the Plan and is responsible for administering the Plan is designated as the Administrative Committee (the Administrative Committee). The Plan also has the Zions First National Bank, located in Salt Lake City, Utah as independent trustee (the Trustee). The Administrative Committee has the power to instruct the Trustee to establish new investment vehicles or discontinue any investment vehicle from time to time. The members of the Administrative Committee are as follows: Robert Carter, Senior Vice President of Penske Trucking Leasing Co., L.P.; John Woodward, President of Detroit Diesel Remanufacturing Corporation; and Clark Keeler, Vice President/Finance of Detroit Diesel Remanufacturing Corporation.

2. DDR–West, a Delaware corporation located in Salt Lake City, Utah, is the sponsoring employer of the Plan. It is engaged in the re-manufacturing of diesel engines. Eighty percent of DDR–West is owned by Detroit Diesel Remanufacturing Corporation which in turn is 100 percent owned by Penske Truck Leasing Co.; also, Penske Truck Leasing Co. holds a 66⅔ interest in the limited partnership which is designated as Penske Truck Leasing Co., L.P. The headquarters of Penske Truck Leasing Co., L.P. and the Detroit Diesel Remanufacturing Corporation are located in Reading, Pennsylvania.

3. The applicant, represents that in its acquisition of the Contract as an investment, the Plan has made numerous and varying payments in the sum of $15,761.67 to American Protectors over a period from April 13, 1987, through August 23, 1989. After August 23, 1989, the Plan made no additional payments to American Protectors.

On September 27, 1990, the Plan was notified that the Third Judicial District Court for Salt Lake County, Utah (the Court) had placed American Protectors, as of September 18, 1990, into liquidation proceedings.[1] On October 5, 1990, the Plan filed a timely claim against American Protectors for the sum of $19,894.49.[2] On April 10, 1992, the Court's Special Deputy Liquidator of American Protectors (the Liquidator) notified the Plan that its claim of October 5, 1990, against American Protectors has been approved in the sum of $20,611.74 with the assigned priority classification of Class 3.[3] The applicants represent that they were informed by the Liquidator that Class 3 priority claims are expected to recover approximately 50 percent of the approved claim, provided there are not numerous objections and/or lengthy court proceedings.

4. The Contract was sold by the Plan to DDR-West on May 14, 1992 for $20,611.74. Payments to the Plan were made on May 14, 1992 and June 24, 1992, respectively, in the sums of $19,894.49 and $717.25. In the event that DDR-West were to recover from the Liquidator or any other source an amount in excess of $20,611.74, such excess shall be returned to the Plan, and will be proportionately, in accordance with each participant's interest in the Contract, allocated among the 12 Plan participants whose individual accounts were invested in the Contract at the time of the Court's notification in September 1990.

The Trustee represents that the Sale was appropriate for the Plan and its participants and beneficiaries because the Sale protects them from market value loss and provides an opportunity for productive reinvestment of funds. Furthermore, the applicant represents that the Sale was in the best interests of the Plan and the 12 participants of the Plan whose individual accounts were invested in the Contract. The Sale enables the Plan to recover assets which otherwise would not be fully recoverable, and was for consideration that exceeds the fair market value of the Contract.

The Trustee also represents that the Plan has not and will not incur any expenses in the transaction involving the Sale.

The applicant represents that the Plan has filed a request for a closing agreement under the terms of the Internal Revenue Procedure 92–16.[4] Whether or not the closing agreement is entered into, the applicants further represent that DDR-West will not treat any portion of the purchase price of the Sale as a funding contribution to the Plan; rather, DDR-West will treat the Sale as an acquisition of an asset by DDR-West.

5. In summary, the applicants represent that the transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The Plan received cash for its interest in the Contract as of the date of Sale, which the Trustee determined to be no less than the fair market value of the Contract on the date of the Sale: (b) the transaction enabled the Plan to avoid any risk from the continued holding of the Contract and permitted the participants to redirect their account balances to safer investments: (c) the Plan incurred no expenses with respect to the transaction; and (d) the Trustee determined that the sale to DDR-West was in the best interest of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department.

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[1] The Department notes that the decisions to acquire and hold the Contract are governed by the fiduciary responsibility requirements of Part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of part 4 of the Act which may have arisen as a result of the acquisition and holding of the contract.

[2] On June 6, 1991, the Utah Life and Disability Insurance Guaranty Association (ULDIGA) notified the Plan that under Utah law the claim of the Plan to ULDIGA had been rejected. The reason given for the rejection, which was substantiated by legal opinion from legal counsel for ULDIGA, was that ULDIGA provides coverage with respect to annuity contracts only when issued to or owned by individuals, and ULDIGA had concluded that the Plan was not an individual under Utah law.

[3] The claim filed in the amount of $19,894.49 represents the deposits made under the Contract plus accrued interest under the Contract to January 10, 1990, pursuant to the last statement furnished by American Protectors to the Plan. The Liquidator increased and approved the claim in the amount of $20,611.74 which includes additional interest earned from January 10, 1990 to October 18, 1990. October 18, 1990, is the date on which all American Protectors policies which were not covered by the ULDIGA were cancelled.

[4] Internal Revenue Procedure 92–16 provides for a temporary closing agreement program to settle certain tax liabilities that arise out of transactions between an employer-sponsor and the trust of a qualified defined contribution plan.

telephone (202) 523–8881. (This is not a toll-free number.)

Toledo Roofers Local No. 134 Pension Plan and Trust; Cement Masons Local No. 886/404 Pension Plan and Trust; Millwrights, Machinery Erectors & Pile Drivers Local 1393 Retirement Plan and Trust; Sheet Metal Workers Local No. 6 Pension Plan and Trust; Toledo Painters and Allied Trades Pension Plan and Trust; Toledo Plumbers & Pipefitters Pension Plan and Trust; and Toledo Plumbers & Pipefitters Retirement Plan and Trust (collectively, the Plans).

Located in Toledo, Ohio

[Application Nos. D–8502, D–8588, D–8589, D–8591, D–8592, D–8594 and D–8595]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) of the Code, shall not apply to the making by certain banks in the northwestern Ohio area (the Banks) of residential mortgage or home construction loans (the Loans) to individuals who are participants of the Plans and parties in interest with respect to such Plans (the Participants) pursuant to an arrangement in which the Plans will purchase certificates of deposit (CDs) from the Banks, provided that the following conditions are met:

(a) The Trust Company of Toledo, N.A. (the Trust Company), an investment manager which is independent of the Banks, the Plans' trustees, and their affiliates, acts on behalf of the Plans for the assets involved in the proposed purchases of CDs, pursuant to the terms of separate written investment management agreements with each of the Plans, to independently determine whether each Plan should make a particular CD purchase;

(b) Callister, Duncan & Nebeker, P.C. (CDN), an independent fiduciary for the Plans, determines on an annual basis that the relevant Plan fiduciaries have discharged their fiduciary duties to the Plans in accordance with the requirements of the Act with respect to any decisions made by the Plans to adopt, implement, or continue participation in the proposed arrangement involving the purchase of CDs by the Plans and the making of the Loans by the Banks to the Participants (the Loan Program), and suspends a Plan's involvement in the Loan Program if such a determination cannot be made;

(c) Such CD purchases by a Plan comply with the conditions of section 408(b)(4) of the Act in instances where the Bank is a fiduciary or other party in interest with respect to the Plan (see 29 CFR 2550.408b–4);

(d) Each CD purchased by a Plan has a maturity not to exceed 36 months from the date of issuance, and pays the maximum rate of interest provided by the Bank for CDs of the same size and maturity being purchased at the time of the transaction by any customer of the Bank who is not eligible to participate in the Loan Program;

(e) Each CD offered to the Plans pursuant to this exemption is sold by the Banks in transactions with unrelated parties in the ordinary course of its business with customers other than the Plans;

(f) The interest rates on all CDs purchased by the Plans under the loan Program, and the total net rate of return to the Plans taking into consideration all expenses associated with the transaction, are at least comparable to, or better than, the interest rates and total net rate of return that could be obtained by the Plans on other fixed income investments of similar risk and term at the time of each CD purchase;

(g) Each Bank which sells CDs to the Plans under the Loan Program is a solvent financial institution, as determined by the Trust Company at least annually based on an analysis of all relevant information involving the Bank's financial status;

(h) The CDs purchased by a Plan from any one Bank participating in the Loan Program do not exceed 4.99% of the fair market value of the Plan's total assets at the time of the transaction;

(i) The CDs purchased by a Plan from all of the Banks participating in the Loan Program do not exceed 8.49% of the fair market value of the Plan's total assets at the time of the transaction;

(j) No Plan trustee, or other Plan fiduciary, who may be involved in any decision regarding a Plan's participation in the Loan Program, receives a Loan under the Loan Program;

(k) As of the date this notice of proposed exemption appears in the Federal Register, a Plan trustee involved in decisions regarding the Loan Program, or an entity in which such Plan trustee has a 50% or more ownership interest, may not engage in any additional personal or business transactions with a Bank during a Plan's participation in the Loan Program with such Bank, as attested to in each instance by appropriate Bank officials on an annual basis and monitored by CDN as the Plan's independent fiduciary;

(l) The investment of the Plans' assets by the Trust Company in CDs of a Bank which participates in the Loan Program is not part of an agreement, arrangement or understanding designed to benefit the Trust Company; and

(m) In the event any Participant defaults on a Loan from a Bank, the Bank has no claim against, or recourse to, the CDs or any other assets of the Plans.

Temporary Nature of Exemption

The exemption, if granted, will be effective only for those Loans made by the Banks to the Participants pursuant to the Loan Program within five years of the date on which the Final Grant of this proposed exemption is published in the **Federal Register**. However, the applicant may, if desired, apply for an extension of the exemption at the end of the five-year period. The application for extension should describe: (i) whether and how compliance with the exemption has been achieved; (ii) the number of transactions engaged in under the exemption; and (iii) the particular decisions made by the Plans' fiduciaries regarding the Loan Program.

Summary of Facts and Representations

1. The Plans are multiemployer, jointly-trusted, employee benefit plans established and maintained pursuant to collective bargaining agreements between several of the northwestern Ohio building and construction industry labor unions (together, the Unions) and employer associations (together, the Associations). The Plans, collectively, have a total of approximately 6290 participants and have assets totalling approximately $126 million.

2. The trustees of each of the Plans (collectively, the Trustees) are the named fiduciaries of the Plans. The Trustees appoint from time to time certain investment managers to handle investment decisions for portions of the assets of each of the Plans. These Plan assets, which are managed by such investment managers, include short-term and fixed income investments made pursuant to broad investment guidelines established by the Trustees. Such investments often include CDs issued by banks as well as other investments designed to meet certain liquidity needs of the Plans. Under the Loan Program, the Trustees of each Plan will appoint a single investment manager (i.e. the Trust Company) to manage specific purchases of CDs from the Banks, within the guidelines set by the Trustees for the fixed income investment portfolios of the Plans. The CDs will be purchased under an arrangement pursuant to which

the Banks will consider making the Loans to the Participants under the Loan Program.

The Banks that are currently interested in participating in the Loan Program are Mid-American National Bank and Trust Company (Mid-Am), Ohio Citizens Bank, Fifth Third Bank of Toledo, Huntington National Bank of Toledo, and Society Bank and Trust.

The applicant represents that some of the Banks are or may become parties in interest with respect to the Plans as a result of being a service provider or fiduciary for certain assets of the Plans.[5] However, none of the Banks will be a fiduciary for any assets of the Plans involved in the proposed CD investments. All decisions concerning such CD investments will be made by the Trust Company, a Plan fiduciary that is independent of the Banks (see Items 5 and 6 below). In addition, all relationships of the Trustees and their affiliates with the Banks will be monitored by CDN to avoid any potential conflicts of interests under the Act by the Trustees and their affiliates (see Items 7 and 8 below).

3. The Loans which the Banks will consider making to the Participants include an unlimited number of residential mortgage loans that are underwritten to meet the standards of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). The Loans will have interest rates based on the market rates offered in the northwestern Ohio area but will be offered to the Participants with reduced or no closing costs. The Loans will also include a limited number of residential mortgage or home construction loans to Participants offering market interest rates, with reduced or no closing costs, which do not meet the standards of Fannie Mae or Freddie Mac. These Loans will not meet the Fannie Mae or Freddie Mac standards because, among other things, the Participant lacks enough cash for a down payment or because of technical rejections by the PMI insurance underwriter who underwrites the mortgage insurance for loans with less than a 20% down payment. All of the Loans will be made on a basis which is consistent with the general lending standards established by the Banks for similar loans and will be in compliance with applicable federal and state banking laws. The applicant states that in the event any Participant defaults on a Loan from a Bank, the Bank will have no claim against, or recourse to, the CDs or any other assets of the Plans.

4. The CDs will have a maturity not to exceed 36 months from the date of issuance. The CDs of the size and maturity purchased by the Plan will have terms identical to CDs which are offered and sold by the Banks to unrelated customers not participating in the Loan Program. Each CD purchased by a Plan will Pay the maximum rate of interest provided by the Bank for CDs of the size and maturity being purchased. The interest rates on the CDs will be at least comparable to, or better than, the interest rates that could be obtained by the Plans on fixed income investments of comparable security and term at the time of the transaction.

The CDs purchased by a Plan from any particular Bank participating in the Loan Program will not exceed 4.99% of the fair market value of the Plan's total assets at the time of the transaction. In addition, the CDs purchased by a Plan from all of the Banks participating in the Loan Program will not exceed 8.49% of the fair market value of the Plan's total assets at the time of the transaction.

No Trustee, or other Plan fiduciary, who may be involved in any decisions regarding a Plan's participation in the Loan Program, will receive a Loan under the Loan Program.[6] Moreover, no Trustee involved in decisions regarding a Plan's participation in the Loan Program, or an entity in which such Trustee has a 50% or more ownership interest, will engage in any additional transactions with a Bank during a Plan's participation in the Loan Program with such Bank. Therefore, the Trustees and related entities subject to their control will not derive any financial benefit, such as banking services at a reduced cost or business or personal loans from the Banks under more favorable terms than provided from other customers of the Banks, as a result of a Plan's participation in the Loan Program.

5. The Trustees will appoint the Trust Company to act as an investment manager on behalf of the Plans for the proposed purchases of CDs, pursuant to the terms of separate written investment management agreements with each of the Plans (the Investment Management Agreements). The Trust Company is a national bank chartered by the Comptroller of the Currency with authority to exercise fiduciary powers and is an investment manager, as defined in section 3(38) of the Act, with experience in handling trust investments for collectively bargained, jointly-trusteed employee benefit plans subject to the Act. The Trust Company is independent of the Trustees and their affiliates. The Trust Company will also remain independent of any Bank issuing CDs. There shall be no transactions between the Trust Company and the Banks which will interfere with the prudence or independence of the Trust Company to serve as the Plans' investment manager for CD purchases from such Banks.[7] The Trust Company acknowledges its duties, responsibilities and liabilities in acting as a fiduciary under the Act for the Plans. Theodore T. Hahn (Mr. Hahn), an Executive Vice President of the Trust Company, will be responsible for carrying out the duties of the Trust Company with respect to the Plans under the Investment Management Agreements. The applicant states that Mr. Hahn has extensive

[5] Section 408(b)(4) of the Act states, in pertinent part, that the prohibitions of section 406 of the Act shall not apply to the investment of a plan's assets in deposits which bear a reasonable interest rate in a bank supervised by the United States or a State, if such bank is a fiduciary of such plan and if such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment. Thus, a Plan's proposed purchase of CDs from a Bank that is a fiduciary or other party in interest with respect to the Plan would be exempt from the restrictions of section 406 by section 408(b)(4), if the conditions of the exemption, and the regulations thereunder (see 29 CFR 2550.408b–4), were met. However, the exemptive relief proposed herein would permit a Bank's making of Loans to certain parties in interest (i.e. the Participants) pursuant to an arrangement involving a Plan's purchase of CDs from the Banks. The Department notes that such an arrangement is a separate transaction which would not be exempted by section 408(b)(4) of the Act. The Department also notes that the proposed exemption is limited only to violations of section 406(a)(1)(D) of the Act which may result from the making of Loans to the Participants pursuant to the described arrangement.

[6] Section 406(b) of the Act states, in pertinent part, that a fiduciary with respect to a plan shall not deal with the assets of a plan in his own interest or for his own account and shall not receive any consideration for his personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

[7] The Department assumes, for purposes of the proposed exemption, that the investment of the Plans' assets by the Trust Company in CDs of a Bank will not be part of an agreement, arrangement or understanding designed to benefit the Trust Company. The Department recognizes that banks often price banking services based on a customer's total relationship to the bank. Thus, it is a common practice for a bank to treat some customers of the bank more favorably than other customers because of certain relationships (see Proposed Exemption for Relationship Banking for IRA and Keogh plan customers, 56 FR 8365, February 28, 1991). In this regard, the proposed exemption would permit the Participants to receive certain Loans from a Bank involved in the Loan Program pursuant to an arrangement whereby a Plan purchases CDs from the Bank. However, the Department notes that the relief provided by the proposed exemption does not extend to the receipt of consideration or benefits from a Bank, if any, as a result of a Plan's purchase of CDs from such Bank, by any Plan fiduciary, or to the receipt of any other consideration or benefits by a party in interest with respect to the Plan.

experience in managing fixed-income assets for employee benefit plans and has been recognized within the financial industry for providing superior fixed-income investment performance.

6. The Trust Company, as the Plans' investment manager for the proposed CD purchases, will determine whether each Plan should make a particular CD purchase from any of the Banks by reference to, among others, the following factors: (i) The asset allocations for the Plan; (ii) the investment policy guidelines of the Trustee; (iii) the financial conditions and creditworthiness of the Bank issuing the CD; (iv) the presence and extent of Federal Deposit Insurance Corporation (FDIC) protection for the Plan's CD; (v) the yield and liquidity of the CD as an investment in comparison to other fixed income investments of similar risk and term; and (vi) the expenses which the Plan will incur in connection with the transaction, including the payment of fees to CDN for its services as an independent fiduciary for the Plan (as discussed below in Item 8). In this regard, the Trust Company will ensure that the total net rate of return to the Plan from the CD, taking into consideration all expenses and fees associated with the transaction, will be at least comparable to, or better than, the rate of return available on other fixed income investments of similar risk and term at the time of the transaction. The Trust Company will also be responsible for decisions to suspend purchases of CDs by a Plan from a particular Bank based on these investment criteria.

The Trustees and the Trust Company have agreed, in writing as part of the Investment Management Agreements, to the specific percentage limitations on Plan assets that can be invested in CDs of a particular Bank (i.e. 4.99%) and in CDs of all of the Banks (i.e. 8.49%) under the Loan Program. In addition, the Trustees and the Trust Company have agreed that the purchase of any CDs by a Plan from the Banks when added to the Plan's other short-term or fixed income investments will not exceed the amount which the Trustees of the Plan have allocated for such investments. The Trustees of each Plan will monitor the Trust Company's purchases of CDs for the plan to ensure that such purchases are consistent with the Plan's asset allocation and investment policy guidelines.

With respect to the proposed investment by the Plans in CDs of a particular Bank, the Trust Company has initially determined that it would be prudent and consistent with the investment policies and objectives of the Plans, without taking into account any benefits which may accrue to the Participants under the Loan Program, to invest in CDs issued by Mid-Am in an amount up to the percentage limitations specified in the Investment Management Agreements. The Trust Company states that it will reconsider any investment decisions for CD purchases by the Plans from Mid-Am if the yields for CDs offered by the other Banks become more competitive or if other fixed income investments of comparable risk and term become more attractive for the Plans. The Trust Company will monitor interest rates on comparable CD investments after the Plan's proposed purchases of CDs from Mid-Am, or any other Bank, throughout the term of such CDs to ensure that holding the CDs until maturity would be in the best interests of the Plans, based on rates of return for comparable CD investments. If rates of return on comparable CD investments ever exceed the rate of return on a Plan's CD to such an extent that it would be economically advantageous to the Plan to redeem the CD prior to its maturity even if certain prepayment penalties are incurred, the Trust Company will redeem the CD, incur the prepayment penalties, and will reinvest the net proceeds in such comparable CD investments. However, the Trust Company is empowered to act only as a CD investment manager and is not authorized to invest assets of the Plans other than in CDs. In this regard, the trustees will monitor the performance of the Trust Company and will determine whether fixed income investments of comparable risk and term other than CDs become more attractive for the Plan. In such instances, the Trustees will instruct the Trust Company to return the net proceeds of the Plan's redemption of the CDs to the Trustees, who will reallocate the assets involved to other fixed income investments (such as U.S. Treasury Notes or Bills) managed by the Plan's other investment managers.[8]

7. The Trustees and the Trust Company have agreed to review at least annually the creditworthiness of any Bank issuing CDs to the Plans under the Loan Program. The Trustees and the Trust Company will contract the services of qualified, independent financial consultants to evaluate the financial conditions of such Banks on an annual basis, which will be reviewed by the Trust Company to determine whether the Banks are totally creditworthy and solvent lending institutions. The applicant states that the financial condition of Mid-Am and its affiliates is excellent based on a recent financial analysis by Houlihan, Dorton, Jones, Nicolatus & Stuart, Inc., an independent financial consultant in Salt Lake City, Utah.

The Trust Company's findings that CD purchases from the Banks would be prudent and consistent with the Plans' investment policies and objectives is based, in part, on the fact that, under current banking laws, each participant's interest in the Plans will have FDIC protection up to a maximum of $100,000 per participant.[9] The Trustees and the Trust Company will reconsider the purchase of CDs from the Banks if FDIC protection for the participants' interests in the Plans is ever reduced or jeopardized.

8. The Trustees have appointed CDN, a law firm in Salt Lake City, Utah, to act as an independent fiduciary for the Plans pursuant to separate written agreements with each of the Plans. CDN represents that it is independent of the Unions, the Associations, the Banks and the Participants. CDN acknowledges its duties, responsibilities and liabilities in acting as a fiduciary under the Act for the Plans. Jeffrey N. Clayton, Esq. (Mr. Clayton), an attorney with CDN who has had extensive experience with employee benefit plans, will be responsible for performing the independent fiduciary services for the Plans on behalf of CDN. The fees paid to CDN for all services rendered in connection with its engagement to act as

[8] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. In order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Investing plan assets in CDs would not be prudent if such CDs would provide the plan with less return, in comparison to risk, than comparable investments available to the plan or if such CDs would involve a greater risk to the security to plan assets than other investments offering a similar return. The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and benefits in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in CDs, a plan fiduciary must consider only factors relating to the interests of the plan participants and beneficiaries in their retirement income. A decision to make an investment in CDs of a particular bank may not be influenced by non-economic factors, such as a desire to encourage the bank to make loans to plan participants, unless the CD investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the plan.

[9] See 12 CFR § 330.10 (1990).

an independent fiduciary will be paid by the Plans.

9. CDN represents that it will determine on an annual basis whether the Trustees have discharged their fiduciary responsibilities to the Plans in accordance with the Act in any decisions made by the Plans to adopt, implement, or continue participation in the Loan Program.[10] CDN will suspend a Plan's involvement in the Loan Program if a determination is made by CDN that the Plan's purchase of CDs from Mid-Am or any of the other Banks, pursuant to the proposed arrangement, would be inconsistent with the general fiduciary duties of the Trustees under the Act.

CDN has obtained information from the Union and Management Trustees of the Plans, Union co-sponsors of the Plans, Association co-sponsors of the Plans and employers affiliated with the Trustees, disclosing all transactions and relationships which exist between such persons or entities and Mid-Am. CDN states that it will obtain the same information regarding the relationships of such persons or entities to any of the other Banks prior to a determination made by CDN that the Trustees have met their fiduciary duties to the Plans concerning the proposed participation by the Plans in the Loan Program through the purchase of CDs from such Banks. CDN will monitor all relationships that the Trustees and their affiliates have with the Banks to ensure that a Plan's participation in the Loan Program will not result in a conflict of interest under the Act regarding the role such Plan fiduciaries may have in the implementation of the Loan Program.[11]

CDN notes that some of the Trustees and employers of the Trustees are involved in loan transactions with Mid-Am. However, CDN has obtained an affidavit from Phillip C. Clinard, a senior corporate officer at Mid-Am, which indicates that all such transactions and relationships are bona fide, arm's-length, and have no relationship to the proposed Loan Program.

The applicant states that no additional loan transactions or services, or renewals of existing loan transactions or services, will occur between a Bank and any of the Trustees involved in decisions regarding the Loan Program, or any entities in which such Trustees have a 50% or more ownership interest, during a Plan's participation in the Loan Program with such Bank. CDN will obtain affidavits annually from any Bank that participates in the Loan Program. The affidavits will describe all existing transactions between the Bank and the Trustees of a Plan, as well as entities controlled by such Trustees, and will disclose whether any new transactions have occurred. If such new transactions have occurred during a Plan's participation in the Loan Program, CDN will provide notice to the parties to discontinue the transactions and will suspend a Plan's involvement in the Loan Program if the transactions are not discontinued within a reasonable time.[12]

10. CDN represents that the Trustees have discharged their fiduciary responsibilities to the Plans in accordance with the Act in the proposed implementation of the Loan Program and that proceeding with the Loan Program will not constitute a violation of the Trustees' fiduciary duties under the Act. However, CDN states that two of the Trustees, Neil MacKinnon (Mr. MacKinnon) and Robert R. Good (Mr. Good), have relationships to Mid-Am which would create a conflict of interest if they are allowed to participate in any decisions by the Plans to implement or continue participation in the Loan Program regarding the purchase of CDs from Mid-Am. In this regard, CDN notes that Mr. MacKinnon is a Trustee of the Toledo Roofers Local No. 134 Pension Plan and Trust (the Toledo Roofers Plan) and is a director and shareholder of Bancsites, a formerly wholly owned real estate subsidiary of Mid-Am which has derived significant amounts of its revenue from Mid-Am in recent years. Mr. Good is a Trustee of the Sheet Metal Workers Local No. 6 Pension Plan and Trust (the Sheet Metal Workers Plan) and is a stockholder in Mid-Am and a member of the advisory board for one of Mid-Am's branch banks. CDN represents that its determination that the Trustees will meet their fiduciary duties under the Act with respect to the implementation of the Loan Program presumes the removal of Mr. MacKinnon and Mr. Good from any role in decisions concerning the participation of the Toledo Roofers Plan or the Sheet Metal Workers Plan in the Loan Program with respect to the purchase of CDs from Mid-Am. The applicant states that Mr. MacKinnon and Mr. Good have not been involved in any decisions concerning their Plans' proposed participation in the Loan Program. In addition, the applicant states that Mr. MacKinnon and Mr. Good, as well as any other Trustee which has or may have a conflict of interest with Mid-Am or any of the other Banks that may become involved in the Loan Program, will remove themselves from any considerations or decisions made by the Plans to adopt, implement, or continue participation in the Loan Program and will not use their influence upon any other Trustee regarding such decisions.

11. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The CDs purchased by the Plans will have the maximum rate of interest provided by the Bank for CDs of the size and maturity being purchased at the time of the transactions by any customer of the Bank not eligible to participate in the Loan Program, and will be at least comparable to, or better than, the interest rates that could be obtained by the Plans on fixed income investments of similar risk and term at the time of the transaction; (b) the CDs purchased by a Plan from the Banks participating in the Loan Program will not exceed 8.49% of the Plan's total assets at the time of the transaction; (c) no Trustee, or other Plan fiduciary involved in any decisions regarding a Plan's participation in the Loan Program, will receive a Loan under the Loan Program, and no Trustee or entity in which such Trustee has a 50% or more ownership interest will engage in any additional transactions with a Bank selling CDs to a Plan during a Plan's participation in the Loan Program; (d) the Banks will have no claim against, or recourse to, the CDs or any other assets of the Plans in the event of a default by

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[10] The Department notes that CDN's representations pertain to the Trustees and their affiliates. The Department assumes the purposes of these representations that CDN will also perform the same functions with respect to any individual or entity which provides investment advice, within the meaning of 29 CFR 2510.3-21(c), to the Trustees regarding decisions to adopt, implement or continue participation in the Loan Program.

[11] The applicant states that the Northwestern Ohio Building and Construction Industry Foundation (the Foundation), a non-profit unincorporated association organized under the laws of Ohio which constitutes "plan assets" of some of the Plans, has participated in construction loans with certain lending institutions in the northwestern Ohio area, including Mid-Am. Pursuant to Prohibited Transaction Exemption 85-58 (PTE 85-58, 50 FR 11272, March 20, 1985), some of these construction loans have been made to parties in interest with respect to the Plans. The applicant represents that all transactions involving the Foundation and Mid-Am, as well as the other lending institutions, have met the conditions for relief under PTE 85-58.

[12] The Department notes that the proposed exemption, if granted, will not be available for any Loans from a Bank to Participants of a particular Plan pursuant to the described arrangement where any new transactions between that Plan's trustees, or entities controlled by such Trustees, and such Bank have occurred (see condition (k)).

a Participant on a Loan; (e) the Trust Company, as the Plans' independent investment manager for the proposed CD purchases, will determine whether each Plan should make a particular CD purchase from any of the Banks; and (f) CDN, a qualified, independent fiduciary acting for the Plans, will determine whether the relevant Plan fiduciaries have discharged their fiduciary responsibilities to the Plans with respect to any decisions made by the Plans to adopt, implement, or continue participation in the Loan Program and will suspend a Plan's involvement in the Loan Program in the event that such a determination cannot be made.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fidiciary or other party in interest of disqualified person from certain other provisions of the act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor done it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the masterial facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of September 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S., Department of Labor.

[FR Doc. 92–24084 Filed 10–2–92; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 92–75; Exemption Application No. D–8990, et al.]

Grant of Individual Exemptions; Holiday Inns, Inc.; Savings and Retirement Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Holiday Inns, Inc. Savings and Retirement Plan (the Plan), Located In Atlanta, Georgia

[Prohibited Transaction Exemption 92–75; Exemption Application No. D–8990]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extension of credit to the Plan (the Advances) by Holiday Inns, Inc., the sponsor of the Plan, with respect to guaranteed investment contract number CG0120303A (the GIC) issued to the Plan by Executive Life Insurance Company of California (Executive Life); and (2) the Plan's potential repayment of the Advances (the Repayments), provided that (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party; (b) the Advances are made only in lieu of payments due from Executive Life with respect to the GIC; (c) the Repayments shall not exceed the amount of the Advances plus any interest which may accrue thereon from the date of each Advance at the S.I. Daily Rate (as described in the Notice of Proposed Exemption); (d) the Repayments of the Advances, including interest thereon, if any, shall be made only from, and shall not exceed, the amounts actually received by the Plan from Executive Life and other responsible third parties with respect to the GIC (Third Party Recoveries); and (e) the Repayments are waived to the extent the Advances exceed the Third Party Recoveries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 23, 1992 at 57 FR 32816.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Garmac Company, Inc. Defined Benefit Pension Plan (the Plan)

[Prohibited Transaction Exemption 92–76; Located in White Plains, NY; Exemption Application No. D–9007]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a loan (the Loan) by the Plan to the Garmac Company, Inc. (the Employer), a party in interest with respect to the Plan, provided that: (a) No more than 25% of the assets of the Plan are involved in the Loan; (b) the terms and conditions of the Loan are no less favorable to the Plan than those obtainable in an arm's length transaction involving an unrelated third party; (c) an independent qualified fiduciary determines on behalf of the Plan that the transaction is feasible in the interest of the Plan, and protective of the participants and beneficiaries of the Plan; and (d) the independent qualified fiduciary monitors compliance with the terms of the Loan throughout the duration of the transaction.

EFFECTIVE DATE: This exemption is effective on August 12, 1992.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and any requests for a hearing on the proposed exemption within forty-five (45) days of the date of publication of the Notice in the **Federal Register**. All comments and requests for hearing were due by September 8, 1992.

The Department received no requests for hearing. However, the Department did receive one written comment with respect to the Notice from Garrison Corwin, Esq. (Mr. Corwin), the independent fiduciary acting on behalf of the Plan for the proposed transaction. In his letter of September 8, 1992, Mr. Corwin informed the Department that the Employer entered into the transaction on August 12, 1992. Mr. Corwin also represented that the formula for computing interest as set forth in the Notice resulted in an interest rate of 9.34%. In the opinion of Mr. Corwin, such interest rate remains reasonable, even though the Loan did not close on July 1, 1992, as originally requested by the Employer in the application for exemption.

After giving full consideration to the entire record, including the written comment, and because, among other reasons, Mr. Corwin, acting as independent fiduciary on behalf of the Plan, has reviewed and will monitor the terms of the Loan and has concluded that the transaction is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries, the Department has decided to grant the exemption retroactively.

Further, Mr. Corwin informed the Department that the Summary of Facts and Representations of the Notice contained one typographical error as published in the **Federal Register**. In this regard, the word, "Plan" should replace the word, "Loan" as the last word in the last sentence of the next to the last paragraph in the middle column on page 32822. The Department wishes to correct the error, and accordingly, incorporates this information into the granted exemption as corrected.

All comments submitted to the Department are included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension Welfare Benefits Administration, room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on July 23, 1992, at 57 FR 32821.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Shearson Lehman Brothers, Inc. (Shearson Lehman), Located in New York, NY

[Prohibited Transaction Exemption 92–77; Exemption Application No. D–8723]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) shall not apply to the proposed purchase or redemption of shares by an employee benefit plan, an individual retirement account (the IRA) or a retirement plan for a self-employed individual (the Keogh Plan; collectively, the Plans) in the Shearson Lehman-established Trust for TRAK Investments (the Trust) in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service (the TRAK Program). In addition, the restrictions of section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(E) shall not apply to the provision, by the Consulting Group Division of Shearson Lehman (the Consulting Group), of investment advisory services to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary) which may result in such fiduciary's selection of a portfolio grouping (the Portfolio-Type) in the TRAK Program for the investment of Plan assets.

This exemption is subject to the following conditions that are set forth below in section II.

Section II. General Conditions

(1) The participation of Plans in the TRAK Program will be approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Shearson Lehman and/or its affiliates covered by an IRA not subject to title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(2) The total fees paid to the Consulting Group and its affiliates will constitute no more than reasonable compensation.

(3) No Plan will pay a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(4) The terms of each purchase or redemption of Trust shares shall remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(5) The Consulting Group will provide written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(6) Any recommendation or evaluation made by the Consulting Group to an Independent Plan Fiduciary will be implemented only at the express direction of such independent fiduciary.

(7) The Consulting Group will generally give investment advice to an Independent Plant Fiduciary with respect to Portfolio-Types. However, in the case of a Plan providing for participant-directed investments (the Section 404(c) Plan), the Consulting Group will provide investment advice

that is limited to the Portfolios made available under the Plan.

(8) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio will be independent of Shearson Lehman and its affiliates.

(9) Immediately following the acquisition by a Portfolio of any securities that are issued by Shearson Lehman and/or its affiliates, the percentage of that Portfolio's net assets invested in such securities will not exceed one percent.

(10) The quarterly investment advisory fee that is paid by a Plan to the Consulting Group for investment advisory services rendered to such Plan will be offset by such amount as is necessary to assure that the Consulting Group retains no more than 20 basis points from any Portfolio which contains investments attributable to the Plan investor.

(11) The Consulting Group will not retain an investment advisory or management fee from the Government Money Investments Portfolio.

(12) With respect to its participation in the TRAK Program prior to purchasing Trust shares,

(a) Each Plan will receive the following written or oral disclosures from the Consulting Group:

(1) A copy of the prospectus (The Prospectus) for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between the Consulting Group, Shearson Lehman and its subsidiaries and the compensation paid to such entities.

(2) Upon written or oral request to Shearson Lehman, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(3) A copy of the investment advisory agreement between the Consulting Group and such Plan relating to participation in the TRAK Program.

(4) Upon written request of Shearson Lehman, copy of the respective investment advisory agreement between the Consulting Group and the Sub-Advisers.

(5) In the case of a Section 404(c) Plan, if required by the arrangement negotiated between the Consulting Group and the Plan, an explanation by a Shearson Lehman Financial Consultant (the Financial Consultant) to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(b) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan, will be required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of such documents.

(c) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents will be provided by the Independent Plan Fiduciary (i.e., the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary will be required to represent in writing to Shearson Lehman that such fiduciary is (1) independent of Shearson Lehman and its affiliates and (2) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(d) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or named fiduciary, and Independent Plan Fiduciary will be required to acknowledge, in writing, receipt of such documents and represent to Shearson Lehman that such fiduciary is (1) independent of Shearson Lehman and its affiliates, (2) capable of making an independent decision regarding the investment of Plan assets and (3) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(13) Each Plan will receive the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(a) The Trust's semi-annual and annual report which will include financial statements for the Trust and investment management fees paid by each Portfolio.

(b) A written quarterly monitoring report containing an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(c) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Consultants will meet periodically with Independent Plan Fiduciaries of Section 404(c) Plans to discuss the performance monitoring report as well as with eligible participants to review their accounts' performance.

(d) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and gives market commentary and toll-free numbers that will enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(e) On a quarterly and annual basis, written disclosures to all Plans of the (1) percentage of each Portfolio's brokerage commissions that are paid to Shearson Lehman and its affiliates and (2) the average brokerage commission per share paid by each Portfolio to Shearson Lehman and its affiliates, as compared to the average brokerage commission per share paid by the Trust to brokers other than Shearson Lehman and its affiliates, both expressed as cents per share.

(14) Shearson Lehman shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (16) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Shearson Lehman and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than Shearson Lehman shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (15) below.

(15)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (14) of this section shall be

unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(2) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(4) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraphs (2)–(4) of this paragraph (15) shall be authorized to examine the trade secrets of Shearson Lehman or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(1) An "affiliate" of Shearson Lehman includes—

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Shearson Lehman. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(b) Any officer, director or partner in such person, and

(c) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(2) An "Independent Plan Fiduciary" is a Plan fiduciary which is independent of Shearson Lehman and its affiliates and is either

(a) A Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares of a Section 404(c) Plan,

(b) A participant in a Keogh Plan,

(c) An individual covered under a self-directed IRA which invests in Trust shares, or

(d) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on April 3, 1992 at 57 FR 11514.

EFFECTIVE DATE: This exemption is effective as of April 3, 1992.

Written Comments

The Department received one comment letter with respect to the Notice and no requests for a public hearing. The letter, which was submitted by Shearson Lehman, addresses certain clarifications to the Notice, including clarifications to the General Conditions and the Summary of Facts and Representations. Discussed below are the changes suggested by Shearson Lehman and the Department's responses thereto. In addition, the Department has made several clarifying changes to the final exemption which are also discussed below.

With respect to the General Conditions that are set forth in Section II of the Notice, Shearson Lehman wishes to make several clarifications. In this regard, Shearson Lehman notes that, in general, in the case of IRAs that are maintained by employees of Shearson Lehman or its affiliates, such employees should be considered "Independent Plan Fiduciaries." In addition, Shearson Lehman requests that Condition (1) should read as follows in order that it will conform to the other General Conditions:

> The participation of plans in the TRAK Program will be approved by an Independent Plan Fiduciary.

To clarify that Sub-Advisers act for the Trust after having been approved by the Trust in accordance with the terms of section 15 (a) and (c) of the Investment Company Act of 1940, as amended (the 1940 Act), or any exemption granted by the Securities and Exchange Commission, Shearson Lehman recommends that Condition (8) of the General Conditions be modified to read as follows:

> Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio will be independent of Shearson Lehman and its affiliates.

In the case of a Plan covering one or more employees of the Plan sponsor (such as a Section 404(c) Plan), Shearson Lehman notes that Condition (10) requires only that the investment advisory fee paid by the Plan be offset in the manner described in the condition (i.e., the offset will be determined based on the aggregate investment of the Plan accounts). Shearson Lehman represents that it does not have control over how the Plan, for internal expenses, allocates the offset among individual accounts. As long as the fee is offset at the Plan level, Shearson Lehman represents that it cannot be construed to have any economic incentive to provide investment allocation advice favoring one Portfolio over another.

Shearson Lehman observes that several of the General Conditions refer to "Shearson Lehman and its affiliates" but the Notice does not define the term "affiliate." After giving due consideration to this comment, the Department has determined to add a new Section III to the exemption titled "Definitions" in which the terms "affiliate," and "Independent Plan Fiduciary" are defined as follows:

> An "affiliate" of Shearson Lehman includes (a) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Shearson Lehman (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.) (b) any officer, director or partner in such person, and (c) any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.
>
> An "Independent Plan Fiduciary" is a Plan fiduciary which is independent of Shearson Lehman and its affiliates and is either (a) a Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares of a Section 404(c) Plan, (b) a participant in a Keogh Plan, (c) an individual covered under a self-directed IRA which invests in Trust shares, or (d) a trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by section 404(c) of the Act.

With respect to modifications to the Summary of Facts and Representations, Shearson Lehman represents that the first paragraph of Item 1 of the Notice which was based on the application for exemption confuses the descriptions of Shearson Holdings, Shearson Lehman and Shearson Lehman Brothers. Accordingly, Shearson Lehman requests that the third, fourth and fifth sentences of that paragraph be amended to read as follows:

> Shearson Holdings conducts its principal businesses through two divisions of Shearson Lehman—Shearson Lehman Brothers and Lehman Brothers. Shearson Lehman Brothers is responsible for individual investor services and asset management while Lehman Brothers is responsible for securities underwriting, financial advisory, investment and merchant banking services and securities and commodities trading as principal and agent. Shearson Lehman is a member of all principal securities and commodities exchanges in the United States and the National Association of Securities Dealers, Inc.

Shearson Lehman also wishes to update the second sentence of the second paragraph under Item 2 of the Notice by noting that the Balanced Investments Portfolio is expected to be

offered in July 1992 at an initial per share value of $8.00.

In order that Footnote 1 of the Notice more closely tracks the language of Condition (9), Shearson Lehman suggests the following modification:

Because a Portfolio is not precluded from investing in securities that are issued by Shearson Lehman or its affiliates, Shearson Lehman represents that, as a limitation, immediately following the acquisition by a Portfolio of any securities that are issued by Shearson Lehman and/or its affiliates, the percentage of that Portfolio's net assets invested in such securities will not exceed one percent.

Since Shearson Lehman cannot assure that Section 404(c) Plans participating in the TRAK Program will pass through voting rights to participants on a pro rata basis, it recommends that the second paragraph of Footnote 2 of the Notice be amended to read as follows:

In the case of individual account plans such as Section 404(c) Plans, Shearson Lehman believes that most Plans will pass-through the vote to participants on a pro rata basis.

Shearson Lehman also represents that it may serve as prototype sponsor for Plans participating in the TRAK Program. Therefore, the third sentence of the second paragraph under Item 3 of the Notice should be amended by adding the following language:

Accordingly, Shearson Lehman has requested prospective exemptive relief from the Department with respect to the purchase and redemption of shares in the Trust by participating Plans which it does not sponsor (other than only as prototype sponsor) or have discretionary investment authority over the Plan's assets which would be invested in Trust shares.

To clarify that Plans for which Shearson Lehman has a pre-existing relationship will be able to participate in TRAK, Shearson Lehman asks that the second sentence of Footnote 4 be amended to read as follows:

The applicant further represents that, although the exemptive relief proposed above would not permit Shearson Lehman or an affiliate, while serving as a Plan fiduciary with discretionary authority over the management of a Plan's assets, to invest in Trust shares those assets over which it exercises discretionary authority, a purchase or redemption of Trust shares under such circumstances would be permissible if made in compliance with the terms and conditions of Class Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977).

Shearson Lehman represents that the Trust's Board of Directors consists of seven members, four of whom are not affiliated with Shearson Lehman and three of whom are affiliated with Shearson Lehman, all in accordance with the provisions of section 10(b) of the 1940 Act. Accordingly, Shearson Lehman recommends that Item 4 of the Notice be amended to read as follows:

Overall responsibility for the management and supervision of the Trust and the Portfolios rests with the Trust's Board of Trustees (the Trustees) which currently is comprised of seven members. The Trustees approve all significant agreements involving the Trust and the persons and companies who provide services to the Trust and the Portfolios. Three of the Trustees and all of the Trust's executive officers are affiliated with Shearson Lehman and/or its affiliates. The four remaining Trustees are not affiliated with Shearson Lehman.

Because the applicant now represents that not all services described in Footnote 7 of the Notice will be provided to every Section 404(c) Plan, Shearson Lehman believes that an updated, clarifying paragraph should be added to the footnote which would read as follows:

The applicant notes that not all of the services described in the preceding two paragraphs will be provided to every Section 404(c) Plan. The services provided to each Plan will depend on the arrangement negotiated between Shearson Lehman and the Independent Plan Fiduciary.

Shearson Lehman represents that it cannot assure that the Plan administrator, trustee or named fiduciary of a Section 404(c) Plan will make available a copy of the Trust Prospectus to each participant. Therefore, it requests that Footnote 9 of the Notice be amended to read as follows:

In the case of a Section 404(c) Plan, the applicant represents that the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares, will receive a copy of the Trust Prospectus. If requested by such Plan administrator, trustee or named fiduciary, Shearson Lehman will make available to such Independent Plan Fiduciary sufficient quantities of Prospectuses for a distribution to Plan participants, as well as provide Statements of Additional Information to any party upon request.

Item 15 of the Notice inadvertently states that investors in the TRAK Program may exchange Portfolio shares with one another. Shearson Lehman wishes to clarify that the first sentence of Item 15 should be amended to read as follows:

Shares of a Portfolio may be exchanged by an investor, without any exchange fee, for shares of another Portfolio at their respective net asset values.

Shearson Lehman states that PTE 77–3 applies only to employee benefit plans and is, therefore, inapplicable to IRAs maintained by employees of Shearson Lehman or its affiliates. In addition, Shearson Lehman states that it does not currently charge an outside fee for such IRA accounts but it may do so in the future. Accordingly, Shearson Lehman recommends that the first and last sentences of Footnote 13 of the Notice be amended to read as follows:

The applicant represents that the outside fee is not currently imposed on accounts of American Express and its subsidiaries, including Shearson Lehman, accounts of their immediate families and IRAs and certain employee pension benefit plans for these persons * * * With respect to employee pension benefit plans maintained by Shearson Lehman or its affiliates for their employees, the applicant asserts that such waiver would be required by PTE 77–3.

With respect to the TRAK fee structure described in the Notice in Item 18 and the accompanying example, Shearson Lehman wishes to make two clarifications. First, because the TRAK fee and corresponding fee offset for a calendar quarter are based on the "net asset value" of Trust Portfolio shares at the end of the immediately preceding calendar quarter rather than the "average daily value" of Trust Portfolio shares, Shearson Lehman requests that the first sentence of the example be amended to read as follows:

Assume that as of March 31, 1992, the net asset value of Trust Portfolio shares held by a Plan investor was $1,000.

Second, Shearson Lehman has updated its submission by representing that the last parenthetical of the last paragraph of the example should not refer to the "Statement of Additional Information" but should instead refer to the "TRAK Program Description." Therefore, Shearson Lehman recommends that the parenthetical read as follows:

(pursuant to the authorization contained in the TRAK Investment Advisory Agreement, and as described in the TRAK Program Description appended to the Prospectus).

Finally, Shearson Lehman suggests that Clause (e) under Item 19 should be modified to track the language of Condition (5) as follows:

the Consulting Group will provide written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based on objective criteria.

The Department has reviewed the clarifications and amendments as described above, and concurs with these changes. Accordingly, upon consideration of the entire record, including the written comment received, the Department has determined to grant the exemption subject to the aforementioned changes.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Goldman, Sachs & Co. (Goldman Sachs) and the Goldman Sachs Trust Company (GSTC), Located in New York, New York

[Prohibited Transaction Exemption 92–78; Exemption Application No. D–8977]

Exemption

The restrictions of sections 4069(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities to Goldman Sachs by employee benefit plans, including plans for which GSTC acts as custodian, and to the receipt of compensation by GSTC in connection with these transactions, provided that the following conditions are met:

1. Neither Goldman Sachs nor GSTC will have discretionary authority or control over a plan's investment in the securities to be loaned, and GSTC will have no discretionary authority or control over the investment of the plan assets involved in the transactions;

2. Goldman Sachs will directly negotiate an "exclusive borrowing" agreement with a plan fiduciary who is independent of Goldman Sachs and GSTC;

3. The exclusive borrowing agreement may be terminated by either party to the agreement at any time;

4. The market value of the collateral will initially equal at least 102 percent of the market value of the loaned securities and, if the market value of the collateral at any time falls below 100 percent, Goldman Sachs will delivery additional collateral on the following day such that the market value of all collateral will again equal 102 percent;

5. Goldman Sachs or GSTC will furnish weekly reports to the plan fiduciaries so that the value of the collateral may be monitored;

6. All procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of Prohibited Transaction Exemptions (PTEs) 81–6 and 82–63;

7. Goldman Sachs will indemnify the plan against any losses due to its use of the borrowed securities;

8. The plan will receive credit for all interest, dividends or other distributions on any borrowed securities;

9. Upon delivery of loaned securities to Goldman Sachs, GSTC or another custodian, on behalf of a plan, will receive from Goldman Sachs, the same day by physical delivery or book entry in a securities depository, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, or other collateral permitted under PTE 81–6; and

10. Prior to any plan's approval of the lending of its securities to Goldman Sachs, a copy of this exemption (and the notice of pendency) will be provided to the plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 23, 1992, at 57 FR 32819.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Amended and Restated Earth Consultants, Inc. Profit Sharing Plan (the Plan), Located in Bellevue, Washington

[Prohibited Transaction Exemption 92–79; Exemption Application No. D–8993]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of three lots of unimproved real property located in Camano Island, Washington, (the Properties) to Robert Levinson, a party in interest with respect to the Plan; provided that (a) the sale is a one-time transaction for cash; (b) the Plan receives a purchase price which is not less than the fair market value of the Properties as of the date of the sale; and (b) the Plan does not incur any costs or expenses related to the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 23, 1992, at 57 FR 32823.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of September, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–24085 Filed 10–2–92; 8:45 am]

BILLING CODE 4510–29–M

LEGAL SERVICES CORPORATION

Grant Award for Legal Service State Support Center in Missouri

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grant.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a one-time, non-recurring grant to provide substantive and training support to legal service programs in the state of Missouri. The Corporation plans to award a grant in the amount of $71,428 to legal Services of Eastern Missouri, Inc.

This one-time grants will be awarded pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, (Act) as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of

thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATES: All comments and recommendations must be received on or before the close of business on November 2, 1992.

ADDRESSES: Comments are to be sent to the Office of Field Services, Legal Services Corporation, 750 First Street, N.E., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants and Budgets Division, Office of Field Services, (202) 336–8825.

Date Issued: September 29, 1992.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 92–23981 Filed 10–2–92; 8:45 am]

BILLING CODE 7050–01–M

Solicitation for Proposals for the Provision of Civil Legal Services to the Tri-Parish Area of Louisiana

AGENCY: Legal Services Corporation.

ACTION: Solicitation for proposals.

SUMMARY: The Legal Services Corporation (LSC) is soliciting proposals to provide effective, efficient and high quality civil legal services in 1993 to the LSC-eligible client population in Catahoula, Concord, and LaSalle Parishes, Louisiana ("Tri-Parish area").

DATES: Proposals must be received by 5 p.m., November 4, 1992.

ADDRESSES: A solicitation package, containing the grant application guidelines, proposal content requirements, and specific selection criteria, is available from the Grants and Budget Division, Office of Field Services, Legal Services Corporation, 750 First Street, NE, 11th Floor, Washington DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Ressie Walker, Grants Specialist, Grants and Budget Division Office of Field Services, (202) 336–8826.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. LSC is seeking applicants from the private bar and other organizations (including currently funded LSC grantees) with a demonstrated sensitivity and commitment to deliver services to low-income persons, to provide civil legal services to the Tri-Parish area.

The amount of the grant will be consistent with any basic field formula mandated by the 1993 LSC Appropriations Act. The grant amount will be based on the service area's poverty population (derived from the 1990 census) multiplied by the per capita funding level prescribed by the 1993 basic field grant funding formal. A total of $132,725 was awarded for 1992.

The selected applicant will be awarded a onetime, nonrecurring grant that will begin no earlier than January 1, 1993, and will end on December 31, 1993. This onetime grant will be awarded pursuant to authority conferred by sections 1006(a)(1)(B) of the Legal Services Corporation Act of 1974 (LSC Act), as amended.

Dated: September 29, 1992.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 92–23982 Filed 10–2–92; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-57]

NASA Advisory Council Task Force on Advanced Computing Capabilities; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council Task Force on Advanced Computing Capabilities.

DATES: October 28, 1992, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 7002, 400 Maryland Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia K. Kraemer, Code ADA–2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8766.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Organization of Study
—Briefing on High Performance Computing and Communications
—Agenda for Next Meeting

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Visitors will be requested to sign a visitor's register.

Dated: September 30, 1992.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 92–24053 Filed 10–2–92; 8:45 am]

BILLING CODE 7510–01–M

[Notice 92-56]

NASA Advisory Council; Space Science and Applications Advisory Committee; Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Space Physics Subcommittee.

DATES: October 22, 1992, 8 a.m. to 5 p.m.; and October 23, 1992, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–5, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. George Withbroe, Code SS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1544.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Space Physics Division Overview: Budget, Ongoing Program, Future Activities
—Program Reports for Magnetospheres, Cosmic and Heliospheric Physics, Solar Physics, Ionosphere-Thermosphere-Mesosphere
—Space Physics Research and Analysis Program
—Space Physics Mission Operations and Data Analysis
—Discussion and Writing Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 28, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-24052 Filed 10-2-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collections, for expedited clearance, that will affect the public. Interested persons are invited to submit comments by October 30, 1992. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335, and to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: 1993 National Survey of College Graduates.

Affected Public: Individuals.

Respondents/Reporting Burden: 216,000 respondents; 25 minutes per response.

Abstract: The data collected in this survey will enable NSF to partially fulfill the requirement to serve as a clearinghouse for information on the scientific and technical population of the U.S. That information allows for policy and planning activities by officials of government, private industry and academic institutions.

Dated: September 28, 1992.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 92-24015 Filed 10-2-92; 8:45 am]

BILLING CODE 7555-01-M

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95-451.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 1, 1992. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357-7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States Citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. *Applicant:* Bill J. Baker, Department of Chemistry, Florida Institute of Technology, 150 West University Blvd., Melbourne, FL 32901.

Activity for Which Permit Requested: Introduction of non-indigenous species into Antarctica. The applicant requests a permit to bring samples of four non-pathogenic microorganisms to McMurdo: Vibrio alginelyticus, Staphylococcus aeueus, Klebsiella pheumenial and Serratia rubidae. The samples will be used to perform antimicrobial assays on extracts from marine invertebrates. Microorganisms will be handled using sterile techniques and will be disposed of by sterilization at the conclusion of the study.

Location: McMurdo Station, Antarctica.

Date: 11/5/92-2/28/93

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92-24014 Filed 10-2-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Second Quarter CY 1992; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the second quarter of CY 1992, the following incidents at NRC licensees were determined to be abnormal occurrences (AOs) and are described below, together with the remedial actions taken. The events are also being included in NUREG-0090, Vol. 15, No. 2 ("Report to Congress on Abnormal Occurrences: April-June 1992"). This report will be available at the NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555 about three weeks after the publication date of this Federal Register Notice.

Nuclear Power Plants

92-4 Loss of High-Head Safety Injection Capability at Shearon Harris Nuclear Power Plant

One of the AO reporting guidelines notes that a major degradation of essential safety-related equipment can be considered an abnormal occurrence. In addition, another AO reporting guideline notes that major deficiencies in management controls can be considered an abnormal occurrence.

Date and Place: April 3, 1992, Shearon Harris Unit 1, a Westinghouse-designed pressurized-water reactor, operated by Caroline Power & Light Company and located in Wake County, North Carolina.

Nature and Probable Consequences: While the reactor was shut down for refueling activities, the licensee observed a degradation of piping and relief valves used in the high-head safety injection (HHSI) system (see Figure 1):

BILLING CODE 7590-01-M

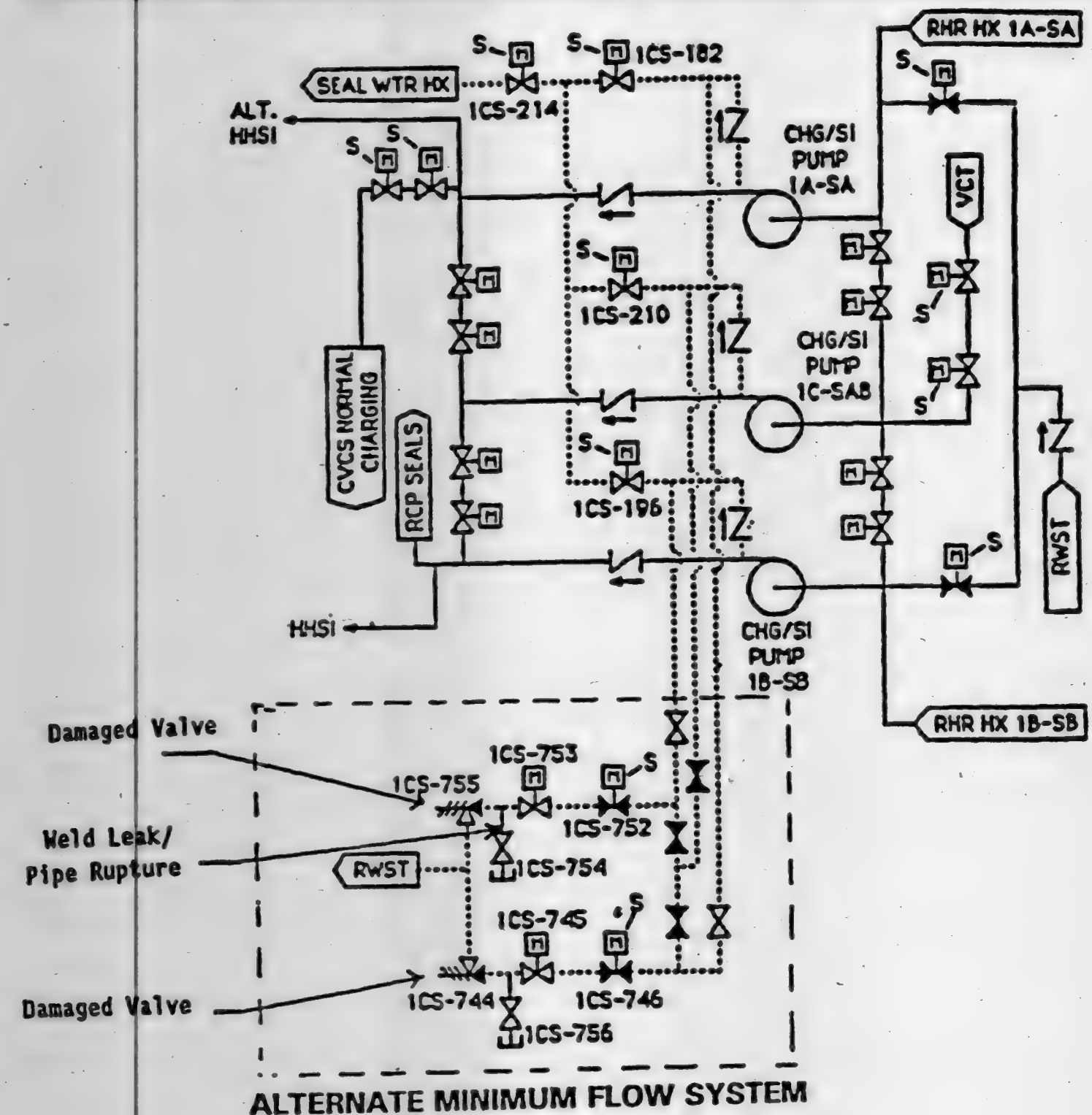

Figure 1
Shearon Harris High Head Safety Injection System

BILLING CODE 7590-01-C

This degradation was reported initially on April 3, 1991, by the licensee as adversely impacting the performance of the system during the previous operating cycle should it have been required to operate and deliver water to the reactor coolant system. The flow rate of water required to be going into the reactor system to mitigate design basis accidents assumed in the licensing analysis would not have been attained because a significant amount of safety injection flow would have been diverted by the piping failure and early relief valve opening. Subsequent to the initial assessment of the event, the event was analyzed by the NRC's Accident Sequence Precursor Program and the conditional core damage probability was estimated to be 6×10^{-3} for a particular set of conditions. The estimate is based upon the unavailability of the HHSI for a year prior to discovery. This value is indicative of an event with safety significance.

In 1992, after receiving preliminary notification of the core damage probability, an NRC inspection team was sent to the Shearon Harris site to review the circumstances leading to the event, the event itself, the licensee's corrective actions, and the safety significance of the event. A meeting with the licensee to discuss the event and collect additional information was held on August 20, 1992.

The degraded piping and relief valves are part of a subsystem that provides protection against the possibility of operating the charging/safety injection pumps against a reactor system pressurized above the pump discharge pressure by providing a flow path via the relief valves to the refueling water storage tank; the subsystem is referred to as the alternate minimum flow (AMF) system (see Figure 1). This subsystem is designed to pass flow only when the pump discharge pressure is above the lift setpoint of 230+/−69 psig for relief valves ICS–744 and ICS–755. Extended operation of the pumps with no net flow can cause damage and thereby preclude achieving the safety function flow rate at a later time. The AMF system was installed as part of the original facility prior to receiving an operating license. The design was deficient in that the physical layout of the AMF piping permits air to be trapped upstream and downstream of the relief valves when the valves are removed and reinstalled in the system. The upstream isolation valves ICS–746 and ICS–752 remain closed until a safety injection signal is received. This prevents water from refilling this piping. Also, piping upstream of the relief valves does not have high point vents for removing the trapped air. Water hammer events most likely have occurred as a result of a transient with the presence of trapped air.

The licensee identified the following damage to the AMF:

(1) Relief valve ICS–744 had a broken bellows and a cracked spring, and was found to have a reduced relief setpoint of 1100 psig.

(2) Relief valve ICS–755 had a broken bellows. Valve seat leakage prevented determining its setpoint with the available equipment.

(3) The piping connection upstream of ICS–754 failed as a result of a water hammer during engineered safety feature (ESF) testing. A small leak had previously existed in this weld, and was scheduled for repair during the 1991 refueling outage.

Cause or Causes: The degradation of the AMF relief valves and piping was the result of a design change that had implications that were not understood at the time of installation. Subsequent inadequate root cause determinations of recurrent water hammer events are believed to have permitted equipment to be degraded/damaged to the extent that the HHSI function would not be fulfilled.

Actions Taken to Prevent Recurrence

Licensee: The licensee has taken corrective actions by revising plant procedures to require the piping upstream of the relief valves to be refilled prior to installation of the relief valves and vented through the relief valves by hydraulic pressure to eliminate the air. They have also repaired the damage identified above. The licensee is currently evaluating the potential for water hammer downstream of the relief valves.

NRC: A special inspection team was sent to the Shearon Harris site to review the event. The team determined that several water hammer events could have occurred in the AMF system over the past 6 years. They concluded that the water hammer events likely occurred during ESF testing and during ESF system actuations when the pumps pressurized the AMF system piping which contained air. In addition, the following AMF system design weaknesses at Shearon Harris were identified:

(1) The potential for water hammer events upstream and downstream of the relief valves had not been analyzed.

(2) The AMF system piping had not been analyzed for transient or water hammer loads.

(3) The potential for relief valve chatter and setpoint drift had not been analyzed.

Similar damage to AMF system components has previously been identified at other facilities. Information Notice 92–61, "Loss of High Head Safety Injection," was issued to all licensees August 20, 1992.

The event is still under staff review. The NRC will review the inspection team's findings and will take action, as appropriate.

* * * * *

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

92–5 Medical Therapy Misadministration at Beth Israel Hospital in Passaic, New Jersey

One of the AO reporting guidelines notes that a therapeutic dose that is less than 0.5 times the prescribed dose can be considered an abnormal occurrence.

Date and Place: August 23, 1990; Beth Israel Hospital; Passaic, New Jersey. During a routine inspection conducted on May 22, 1992, it was discovered that the therapeutic misadministration, as well as an overexposure to a radiation worker's hand, had not been reported to the NRC.

Nature and Probable Consequences: On August 23, 1990, a patient was scheduled to have an endobronchial implant procedure that required two ribbons containing a total of 35 iridium-192 seeds (68.54 millicuries) to be implanted into the patient. One ribbon contained 20 iridium seeds and the other contained 15 iridium seeds. The medical physicist gave the attending physician the wrong end (portion that does not include radioactive sources) of one of the two ribbons and the physician inserted the wrong end into the patient. The other ribbon containing 20 iridium-192 seeds was inserted correctly. The remaining extra lengths of these ribbons were cut off by the physician and given to the medical physicist. The medical physicist, assuming that these pieces of ribbons contained no radioactive material, coiled them and held them in her hand. One of these pieces contained 15 iridium-192 seeds (29.37 millicuries).

The medical physicist, following the completion of the procedure, discarded these pieces of ribbons into a waste basket located in a waiting room across from the patient's room thus creating a radiation dose rate of up to approximately 63 millirems per hour in an unrestricted area. This dose rate was well above the regulatory limit of ■ millirem in any one hour for unrestricted

areas. The implant was performed at 2:30 p.m. and the patient was scheduled to have a dose of 1500 rads. The physician decided to remove the ribbons from the patient earlier than planned because the dose rate was higher than what he normally administers. The ribbons were removed at 8:30 p.m. on August 23, 1990. Neither the medical physicist nor the hospital's Radiation Safety Officer (RSO) was present during the removal procedure.

The following morning at approximately 8:30 a.m. the medical physicist inventoried the sources removed from the patient and found that one of the ribbons contained no seeds. She immediately informed the RSO, who conducted a search for the missing radioactive material and at approximately 11 a.m. found the two pieces of ribbon in the waste basket. The licensee determined that the dose to the hand of the medical physicist was approximately 272 rads assuming that she held the ribbon containing iridium-192 seeds in her hand for about 5 minutes. The physician stated that the patient received a dose of approximately 400 rads (which was only about 50 percent of the intended dose). No make up dose was given to the patient. Neither the therapeutic misadministration nor the overexposure to the physicist's hand was reported to the NRC.

Cause or Causes: Neither the medical physicist nor the physician performed a survey of the ribbons before implanting into the patient. The licensee did not inventory the sources promptly after removal from the patient. Also, the licensee failed to follow established procedures involving the removal of temporary implants in that the RSO or his designee was not present during the removal of temporary implants from the patients.

Actions Taken to Prevent Recurrence

Licensee: The licensee's corrective actions include a mandatory requirement that the RSO or his designee must be present during all implant and removal of radioactive materials. The management of the licensee is now more deeply involved in the radiological safety affairs. The licensee is conducting an audit of its radiation safety program by an independent person.

NRC: NRC Region I inspectors continued the inspection of the circumstances surrounding this misadministration on June 2, 1992. Numerous apparent violations were identified. A Confirmatory Action Letter was issued on June 5, 1992. An Enforcement Conference was held with the licensee in Region I on June 25, 1992, to discuss the violations and the corrective actions proposed and implemented by the licensee.

A Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $13,500 was sent to the licensee on August 7, 1992. The violations include: the overexposure of the hand of the medical physicist; the failure to perform a survey which directly contributed to the misadministration and the overexposure; the failure to report the misadministration and overexposure to the NRC, as well as the failure to report the misadministration to the patient's referring physician; and a breakdown in control of licensed activities of the facility. The violations associated with the overexposure and the failure to perform a survey were classified in the aggregate as a Severity Level II problem (on a scale in which Severity Levels I through V are the most and least significant, respectively), and assessed a civil penalty of $6,000. The violations of reporting requirements were classified in the aggregate as a Severity Level III problem and assessed a civil penalty of $3,750. The violations associated with the breakdown in control of licensed activities were classified in the aggregate as a Severity Level III problem and assessed a civil penalty of $3,750.

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92–6 Medical Therapy Misadministration at Hospital Metropolitano in Rio Piedras, Puerto Rico.

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation can be considered an abnormal occurrence.

Date and Place: March 24–25, 1992: Hospital Metropolitano; Rio Piedras, Puerto Rico.

Nature and Probable Consequences: On April 8, 1992, the licensee informed the NRC that on March 24–25, 1992, a brachytherapy misadministration occurred involving a patient receiving a therapeutic dose to the wrong part of the body.

The misadministration occurred when incorrect, no-longer-in-use, cesium-137 sources were placed in a brachytherapy applicator and administered to the patient. Because all the sources were smaller in diameter than the intended sources, they slipped from the prescribed position and irradiated normal tissue not intended to be irradiated. The applicator was loaded by a technologist who had never performed the procedure. The technologist was supervised by a technologist who had not performed the procedure in eight years, when the incorrect sources were in active use. The incorrect sources were discovered at the midpoint of the treatment by the licensee's medical physicist during an unplanned training session for a new physicist. The incorrect sources were promptly removed from the patient and the treatment restarted and completed as directed by the authorized user.

The licensee estimated the dose to normal tissue was approximately 400–500 rads. The licensee advised the NRC that no adverse effects to the patient are anticipated as a result of the misadministration.

Cause or Causes: The causes are attributed to the licensee's failure to: (1) Properly train individuals handling brachytherapy sources, (2) adequately implement a Quality Management Program (QMP), (3) develop and implement adequate QMP procedures, and (4) properly label the storage vault for the brachytherapy sources.

Actions Taken to Prevent Recurrence

Licensee: The licensee's corrective actions included revision of the QMP policies and procedures, training all supervised individuals on brachytherapy procedures and in the revised QMP, arranging safe storage for the sources no longer in use, posting a map of the source storage vault indicating the type of source at each storage point, and enhancing source accountability practices.

NRC: Region II reviewed the circumstances associated with the misadministration and the licensee's immediate corrective actions during a reactive inspection on April 10, 1992, and a follow-up inspection on April 22, and 23, 1992, which included NRC consultants in the areas of medical physics, oncology, and risk assessment. NRC Region II conducted an Enforcement Conference with the licensee on May 20, 1992, to discuss the event. A notice of Violation and Proposed Imposition of Civil Penalty in the amount of $2,500 was issued on June 26, 1992.

This action was based on two violations that contributed to the brachytherapy misadministration: (1) Failure of the QMP to include written policies and procedures to verify the use of correct brachytherapy sources and identify any unintended deviations, and (2) failure to instruct supervised individuals in the principles of radiation safety and the QMP. Each violation was categorized at Severity Level III on a

scale in which Severity Levels I through V are the most significant and least significant, respectively. Each violation was assessed a proposed civil penalty of $1,250. Six other violations (including the failure to notify the NRC within 24 hours after discovery of a therapy misadministration) were also cited at either Severity Level IV or V and involved the licensee's radiation safety program.

* * * * *

92–7 Medical Diagnostic Misadministration at Baystate Medical Center, Incorporated, in Springfield, Massachusetts

One of the AO reporting guidelines notes that administering a diagnostic dose of a radiopharmaceutical that is greater than five times the prescribed dose can be considered an abnormal occurrence.

Date and Place: May 19, 1992; Baystate Medical Center, Incorporated (Baystate); Springfield, Massachusetts.

Nature and Probable Consequences: On May 20, 1992, the licensee notified the NRC by telephone that a medical misadministration involving iodine-131 (I–131) radiopharmaceuticals had occurred at the licensee's facility the previous day. A diagnostic dose was intended; however, a therapeutic dose was administered. The details of the event are described below.

A nurse from the referring endocrine clinic called Baystate to make an appointment for a patient for a thyroid scan and I–131 uptake study. Baystate's departmental procedure for a thyroid scan and I–131 uptake is to perform the study using 16 microcuries of I–131 and 10 millicuries of technetium-99m. A whole body scan requires that approximately 4 millicuries of I–131 be given to the patient. Apparently, the order was entered in the patient's scheduling chart as a whole body scan rather than the thyroid scan and I–131 uptake study which was intended. Questions were raised on several occasions by licensee personnel because the patient was diagnosed with an enlarged thyroid and generally an I–131 whole body scan is not indicated for this diagnosis. Also, an authorized user was not consulted to review the study and prepare a written directive prior to the administration of greater than 30 microcuries of I–131 as required by 10 CFR 35.32. A nuclear medicine technologist administered 4.1 millicuries of I–131 for a whole body scan without following the department's procedures for administration of I–125 or I–131. The licensee evaluated the dose to the patient's thyroid to be approximately 14,300 rads based on an uptake of 66 percent and the dose to the whole body to be approximately 6.25 rads.

Cause or Causes: It was determined that one of the causes of the misadministration was a miscommunication between staff at both the referring endocrine clinic and Baystate. Other causes were failure of the staff at Baystate to follow regulatory procedures involving radioiodine doses greater than 30 microcuries which require that an authorized user prepare a written directive prior to the administration. Nuclear Medicine Departmental procedures also require that when an order for a requested study is unclear or illegible, the referring physician be contacted prior to the performance of the study.

Actions Taken to Prevent Recurrence

Licensee: The licensee's corrective actions included: (1) Instruction of nuclear medicine staff in the department procedures and regulatory requirements for radioiodine studies; (2) preparation, prior to the administration, of a written directive by the Director of Endocrine (an authorized user), or a designated authorized user before any iodine study using greater than 30 microcuries is performed; (3) prompt transmittal of written requests for nuclear medicine studies from the clinics to the Baystate Medical Center, Nuclear Medicine Division, in order to compare the request to the computer entry prior to the administration; and (4) review of this patient's progress once every six weeks for three months.

NRC: An NRC Region I inspector conducted an inspection on May 27 and 28, 1992, to determine the circumstances associated with the misadministration. An NRC medical consultant worked with the licensee to provide a clinical assessment of the misadministration. Although the medical consultant calculated the thyroid dose to be considerably less than the licensee's estimate, his evaluation of the event and consequences to the patient were similar to the licensee's evaluation. They were in agreement that because the patient was diagnosed as having Graves' disease, the ultimate therapy would be treatment with about 10 millicuries of iodine-131 (compared to about 4 millicuries that were mistakenly administered). Therefore, the patient did not suffer adverse health effects from the misadministration worse than those normally associated with treatment of Graves' disease.

The NRC inspection identified two apparent violations of NRC requirements: (1) Failure of authorized user to prepare a written directive, and (2) failure to follow procedures. An enforcement conference was held on June 23, 1992. Enforcement action is pending.

* * * * *

92–8 Medical Therapy Misadministration at The Christ Hospital in Cincinnati, Ohio

One of the AO reporting guidelines notes that a therapeutic dose that is less then 0.5 times the prescribed dose can be considered an abnormal occurrence. In addition, some tissue received considerably more radiation than it would have had the treatment been as prescribed.

Date and Place: May 29, 1992; The Christ Hospital; Cincinnati, Ohio.

Nature and Probable Consequences: On May 29, 1992, the licensee performed an implant of radiation seeds for treatment of a patient's prostate cancer. The patient had previously received radiation treatment to the prostate using a linear accelerator. The implant treatment plan called for placement of 58 seeds, each containing 0.31 millicuries of iodine-125. The seeds were to be implanted in the prostate using needles guided by an ultrasound image. The implanted seeds were to deliver a dose of 12,000 rads to the prostate.

The 58 seeds were implanted, but a subsequent computerized tomographic scan showed that 21 seeds were implanted in tissue surrounding the prostate rather than the intended sites. Two seeds were eliminated with the patient's urine. The licensee calculated that the mispositioning of the seeds resulted in the patient receiving a 5,000 rad dose to the prostate rather than the intended 12,000 rad dose.

The principal consequence of this misadministration is the potential effects of the underdosage to the prostate. In addition, tissue surrounding the prostate received a greater radiation dose than intended. The prescribing physician concluded that the delivered dose from the implanted seeds and from the previous linear accelerator treatment was sufficient. An NRC medical consultant, retained to evaluate the circumstances and response to the misadministration, noted: "Tumor recurrence is the greatest risk, and it will be monitored closely." The consultant also concluded that there was not a high probability of radiation damage to the rectum, which would be the area of principal concern.

Cause or Causes: The misadministration resulted from the difficulties in the ultrasound placement technique. The ultrasound image is difficult to interpret in guiding the

placement of the seeds with the implanting needles. The prescribing physician, who is the Authorized User in the NRC license, had been trained and certified in the ultrasound guided implant technique, but had not actually performed the procedure.

Actions Taken to Prevent Recurrence

Licensee: The physicians recommended several improvements in the implanting technique, including more detailed pretreatment planning, steps to improve the quality of the ultrasound image, and enhancements to the seed positioning technique.

NRC: NRC Region III conducted a special inspection June 17–18, 1992, to review the circumstances of the misadministration and to evaluate the licensee's follow-up activities. No violations of NRC requirements associated with the misadministration were identified. The NRC also retained a medical consultant to review the case.

* * * * *

Dated at Rockville, MD this 29 day of September 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–24040 Filed 10–2–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31245; File No. SR–Amex–92–01]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing of Amendments to and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing of Options on the Amex Biotechnology Index and Long-Term Options on a Reduced Value Biotechnology Index

September 28, 1992.

I. Introduction

On January 3, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the Amex Biotechnology Index ("Biotechnology Index" or "Index"). This order approves the Exchange's proposal.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

The proposed rule change was published for comment in Securities Exchange Act Release No. 30363 (February 10, 1991), 57 FR 6146 (February 20, 1992).[3] Two comment letters were received on the proposed rule change.[4]

[3] The Amex has filed several amendments to the proposal. First, on March 18, 1992, the Amex amended its proposal to provide that no stock can be included in the Index unless its average monthly trading volume over the previous six months is greater than 500,000 shares ("Amendment No. 1"). See letter from Claire P. McGrath, Senior Counsel, Legal & Regulatory Policy Division, Amex, to Howard L. Kramer, Assistant Director, Division of Market Regulation ("Division"), SEC, dated March 16, 1992 ("March 16 Letter"). Second, on March 24, 1992, the Amex amended the proposal to provide that at least 90% of the Index's numerical value, at the Index's quarterly rebalancing, must be represented by stocks that meet the current options listing standards ("Amendment No. 2"). Third, on March 30, 1992, the Amex amended the filing to indicate that four component securities had been deleted and replaced. The amendment also provides that the Exchange will submit a rule filing pursuant to section 19(b) of the Act to continue listing the Index options if the number of component issues changes to either less than 10 or more than 20 ("Amendment No. 3"). See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Thomas Gira, Branch Chief, Options Regulation, SEC, dated March 30, 1992. Fourth, on April 21, 1992, the Amex amended the filing to provide that the final settlement value of expiring Index options will be based on the closing prices of the component securities on the trading day prior to expiration, instead of their opening prices ("Amendment No. 4"). See letter from Claire P. McGrath, Senior Counsel, Legal & Regulatory Policy Division, Amex, to Thomas Gira, Branch Chief, Options Regulation, SEC, dated April 21, 1992. Fifth, on May 8, 1992, the Amex amended the filing to provide for the listing of long-term options on the full value Biotechnology Index or on a reduced-value Index that will be computed at one-tenth the value of the Index ("Amendment No. 5"). See letter from Claire P. McGrath, Senior Counsel, Legal & Regulatory Policy Division, Amex, to Thomas Gira, Branch Chief, Options Regulation, SEC, dated May 8, 1992. Sixth, on September 3, 1992, the Amex amended the proposal to revert back to the original proposal to use an opening price settlement method for expiring Index options ("Amendment No. 6"). See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Thomas Gira, Branch Chief, Options Regulation, SEC, dated September 3, 1992.

[4] The Commission received comments from the New York Stock Exchange, Inc. ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"). See letter to Jonathan G. Katz, Secretary, SEC, from Joseph R. Hardiman, President, NASD, dated May 22, 1992, and letter to Jonathan G. Katz, Secretary, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated August 11, 1992.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 26, 1992.

II. Description of Proposal

A. General

The Amex proposes to trade options on the Biotechnology Index, a new stock index developed by the Amex based on biotechnology industry stocks or American Depositary Receipts thereon ("ADRs") which are traded on the Amex, the NYSE, or are national market system securities traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ-NMS"). The Amex also proposes to list either long term options on the full value Index or long-term options on a reduced value Index that will be computed at one tenth of the value of the Biotechnology Index ("Biotechnology LEAPS" or "Index LEAPS").[5] Biotechnology LEAPS will trade independent of and in addition to regular Biotechnology Index options traded on the Exchange.

B. Composition of the Index [6]

The Index contains securities of highly-capitalized companies in the biotechnology industry. The biotechnology industry includes companies whose primary business involves the use of biological processes to develop products or to provide services. Such processes include, but are not limited to, recombinant DNA technology, molecular biology, genetic engineering, monoclonal antibody-based technology, and lipid/liposome technology. Currently, the Index is based on 15 stocks in the biotechnology sector that trade on the NASDAQ/NMS system. The Exchange will use an "equal" dollar weighted method to calculate the Index.[7] As of September 28, 1992, the Index was at 144.

[5] LEAPS is an acronym for Long Term Equity Anticipation Securities.

[6] The Amex has provided two letters that provide additional data concerning the composition and design of the Index. See letters from Claire P. McGrath, Senior Counsel, Legal & Regulatory Policy Division, Amex, to Howard L. Kramer, Assistant Director, Division, SEC, dated March 10, 1992 and from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Thomas Gira, Branch Chief, Options Regulation, SEC, dated September 8, 1992 ("September 9 Letter").

[7] See infra Section E entitled "Calculation of the Index" for a description of this calculation method.

As of August 31, 1992, the market capitalizations of the individual stocks in the Index ranged from a high of $8.36 billion to a low of $149 million, with the mean and median being $1.06 billion and $461 million, respectively. The market capitalization of all the stocks in the Index was $15.9 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 131.8 million shares to a low of 14.8 million shares. The average price per share of the stocks in the Index, for a six-month period between March and August 1992, ranged from a high of $61.54 to a low of $7.48. In addition, the average daily trading volume of the stocks in the Index, for the same six-month period, ranged from a high of 1.2 million shares per day to a low of 103,600 shares per day, with the mean and median being 411,000 and 359,100 shares, respectively. Lastly, no one stock comprised more than 8.99% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 38.58% of the Index's value. The percentage weighting of the lowest weighted stock was 5.82% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 29.29% of the Index's value.[8]

C. Maintenance

The Index will be maintained by the Amex. The Amex may change the composition of the Index at any time to reflect the conditions in the biotechnology sector and to ensure that the component securities continue to represent the biotechnology industry. At any time when it is necessary to replace a stock or stocks in the Index, the Exchange represents that it will make every effort to add new stocks that are representative of the biotechnology sector and will take into account a stock's capitalization, liquidity, volatility and name recognition. Further, stocks may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. If, however, the Exchange determines to increase the number of Index component stocks to greater than twenty or reduce the number of component stocks to fewer than ten, the proposal provides that the Amex will submit a rule filing with the Commission pursuant to Section 19(b) of the Act.[9]

[8] See September 9 Letter, *supra* note 5.

[9] See Amendment No. 3, *supra* note 3.

D. Eligibility Standards for the Inclusion of Component Stocks in the Index

Exchange Rule 901C specifies criteria for the inclusion of stocks in an index on which options will be traded on the Exchange. Specifically, Rule 901C states that an index must have a minimum of five stocks, and any index with less than 25 component stocks may not include stocks traded on the Amex.[10] In addition, the proposal amends Exchange Rule 901C to require that at least 90% of the Index's numerical value, after the Index's quarterly rebalancing, be accounted for by stocks that meet the Exchange's options listing standards.[11]

In choosing among biotechnology industry stocks that meet the minimum criteria set forth in Rule 901C, the Exchange will focus only on stocks that are traded on either the NYSE, Amex (subject to the limitations of Rule 901C) or traded through NASDAQ–NMS. In addition, the proposal requires that the stocks included in the Index have an average monthly trading volume of not less than 500,000 shares (or ADRs) in the U.S. market over the previous six-month period.[12] Further, the Exchange intends to focus on stocks that have a minimum market value (in U.S. dollars) of at least $75 million.[13] Although the stocks currently selected for inclusion in the Index meet or surpass this $75 million capitalization requirement, the Exchange intends for this standard to be used as a guideline only and reserves the right to include stocks in the Index that may not meet this guideline, but, nevertheless, meet the minimum requirements set forth in Amex Rule 901C.

[10] Accordingly, the Biotechnology Index as currently constituted does not include Amex-traded stocks. The Amex, however, has submitted a proposal, that, among other things, revises Amex Rule 901C to remove the limitation on the number of Amex stocks that can be included in an index which underlies a stock index option traded on the Exchange. Specifically, the proposal would allow, among other things, Amex-listed stocks to be included in Amex-traded index options that are comprised of less than 25 stocks. See Securities Exchange Act Release No. 30356 (February 10, 1992), 57 FR 5497.

[11] See Amendment No. 2, *supra* note 3. The Amex's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See Amex Rule 915.

[12] See Amendment No. 1, *supra* note 3.

[13] For ADRs, the proposal provides that the ADR price and total worldwide shares outstanding, on an ADR-equivalent basis, will be used for purposes of determining trading volume and market value.

E. Calculation of the Index

The Index will be calculated using an "equal-dollar weighting" methodology designed to ensure that each of the component securities are represented in approximately "equal" dollar amounts in the Index. The Exchange believes that this method of calculation is important since even among the largest companies in the biotechnology industry there is a great disparity in size. For example, although the stocks included in the Index represent many of the most highly capitalized companies in the biotechnology industry, Amgen Inc. currently represents over 50% of the aggregate market value of the Index. In addition, while currently there is not as much disparity in the prices of the stocks included in the Index, using a price-weighted method to calculate the Index's value is not the Exchange's preferred method since the prices of such stocks can fluctuate significantly as a result of a corporate action (*e.g.*, a stock split or distribution), rather than as a result of stock performance, causing the relative weightings of the stocks within the Index to fluctuate significantly.

In calculating the "equal dollar weighting" of component stocks, the Amex, using closing prices on October 18, 1991, calculated the number of shares that would represent an investment of $10,000 in each of the stocks contained in the Index (to the nearest whole share). The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the assigned number of shares of each of the stocks in the Index portfolio divided by the current Index divisor. The Index divisor was initially calculated to yield a benchmark value of $200.00 at the close of trading on October 18, 1991. Each quarter thereafter, following the close of trading on the third Friday of January, April, July and October, the Index portfolio is adjusted by changing the number of shares of each component stock so that each company is again represented in $10,000 "equal" dollar amounts. If necessary, a divisor adjustment is made to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

The number of shares of each component stock in the Index portfolio will remain fixed between quarterly reviews except in the event of certain types of corporate actions, such as the payment of a dividend, other than an ordinary cash dividend, stock splits, reverse stock

splits, rights offerings, or a distribution, reorganization, recapitalization, or some such similar event with respect to a component stock. The number of shares will also be adjusted in the event of a merger, consolidation, dissolution or liquidation of an issuer of a component stock. When the Index is adjusted between quarterly reviews, the number of shares of the relevant security in the portfolio will be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the new component stock to the nearest whole share. In both cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated on a real-time basis to market information vendors via the Options Price Reporting Authority.

The Index value for purposes of settling outstanding Index options contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day prior to expiration. In the case of securities traded through the NASDAQ–NMS system, the first reported sale price will be used. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component stock for purposes of determining the settlement value of the Index, the Amex will wait until the end of the trading day on expiration Friday.[14]

F. Contract Specifications

The proposed options on the Index will be cashed-settled, European-style options.[15] Standard options trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply to the contracts. Under Amex Rule 903C, the Exchange intends to list up to three near-term calendar months and two additional calendar months in three-month intervals in the January cycle. The Exchange also intends to list long-term options series, having up to thirty-six months to expiration, on either the full value Biotechnology Index or on a reduced value Biotechnology Index. Strike price interval, bid/ask differential and price continuity rules will not apply to the trading of Biotechnology LEAPS until their time to expiration is less than twelve months.[16]

The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Since options on the Index will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

G. Listing of Long-Term Options on the Full Value or Reduced Value Biotechnology Index

The proposal provides that the Exchange may list long-term index options that expire from 12 to 36 months from listing on the full value Biotechnology Index or a reduced value Index that will be computed at one-tenth the value of the full value Index. The current and closing Index value for reduced value Biotechnology LEAPS will be computed by dividing the value of the full value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, a Index value of 185.46 would be 18.55 for the Index LEAPS and 185.43 would become 18.54. The reduced value LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. The strike price interval for the reduced value Index LEAPS will be no less than $2.50 instead of $5.00.

In addition, the proposal provides that full value or reduced value Biotechnology LEAPS will be issued at no less than six month intervals and that new strike prices will either be near or bracketing the current Index value.

H. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is a Stock Index Option under Amex Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1), the proposal provides that Exchange rules that are applicable to the trading of narrow-based index options will apply to the trading of options on the Index. Specifically, Exchange rules governing margin requirements,[17] position and exercise limits,[18] and trading halt procedures [19] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that positions in full value and reduced value Index options will be aggregated for position and exercise limit purposes. Specifically, under the proposal, ten reduced value contracts will equal one full value contract.

I. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in full value and reduced value Index options. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[20]

III. Summary of Comments

The Commission received comments from the NYSE and the NASD.[21] Both

[14] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the Amex will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[15] A European-style option can be exercised only during a specified period before the option expires.

[16] See Securities Exchange Act Release No. 25041 (October 16, 1987), 52 FR 40008 (October 20, 1987) (order approving SR–Amex–87–22).

[17] Pursuant to Amex Rule 462(d)(2)(D)(iv), the margin requirements for the Index options will be: (1) for each short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

[18] Pursuant to Amex Rules 904C and 905C, respectively, the position and exercise limits for the Index options will be 8,000 contracts, unless the Exchange determines, pursuant to Rules 904C and 905C, that a lower limit is warranted.

[19] Pursuant to Amex Rule 918C, the trading of Index options will be halted or suspended whenever trading in underlying securities whose weighted value represents more than 10% of the Index value are halted or suspended.

[20] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[21] *See* note 4, *supra*.

commentators believe that the settlement of derivative stock index products, such as stock index options, should be based on opening prices rather than closing prices. The commentators believe that the use of an opening price settlement method provides a means of minimizing excess market volatility that has been associated with the expiration of stock index derivative products as market participants unwind related derivative and stock positions. Specifically, the commentators note that an opening price settlement method permits buying and selling interests in the underlying securities to be balanced at the opening and gives market participants the opportunity to adapt to the opening prices, and trade out of their positions, throughout the remainder of the trading day. The concerns raised by these commentators are no longer applicable to the current proposal since the Amex has amended its proposal to provide that expiring Index options will settle based on opening prices.

IV. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[22] Specifically, the Commission finds that the trading of Biotechnology Index options, including full value and reduced value Biotechnology LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with securities in the biotechnology industry. The Commission also believes that the trading of the Index options and Index LEAPS will allow investors holding positions in some or all of the underlying securities in the Index to hedge the risks associated with their portfolios more efficiently and effectively. Moreover, the Commission believes that the Index LEAPS, that will be traded on an index computed at one tenth the value of the Biotechnology Index, will serve the needs of retail investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long term market moves at a reduced cost.

The trading of options on the Biotechnology Index and on a reduced value Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Index is narrow-based because it is only comprised of fifteen stocks, all of which are within the biotechnology industry. The Commission further finds that the reduced value Biotechnology Index is also narrow-based because it is comprised of the same component securities as the Index and merely dividing the Biotechnology Index value by ten will not alter the basic character of the Index. Accordingly, the Commission believes it is appropriate for the Amex to apply its rules governing narrow-based index options to trading in the Index options.[23]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume of 411,000 and 359,100 shares, respectively.[24] Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $8.36 billion to a low of $149 million, with the mean and median being $1.06 billion and $461 million, respectively. Third, although the Index is only comprised of fifteen stocks, no one particular stock or group of stocks dominates the Index. Specifically, no one stock comprises more than 8.99% of the Index's total value and the percentage weighting of the five largest issues in the Index accounts for 38.56% of the Index s value. Fourth, all of the component stocks in the Index currently are eligible for options trading.[25] Finally, the Commission finds that the requirement that the Amex submit a rule filing pursuant to Section 19(b) of the Act prior to expanding the Index to greater than twenty stocks or reducing the Index to less than ten stocks will protect against the design of the Index being materially changed without Commission review and approval. Accordingly, the Commission believes it is unlikely that attempted manipulations of the prices of the issues in the Index would affect significantly the Index's value.

In addition, the Commission does not believe that the fact that the Index is equal dollar weighted instead of market weighted or price weighted results in the Index being readily susceptible to manipulation. Because the use of an equal dollar-weighting method could give securities with relatively small floats or prices a greater weight in the Index than if the Index were capitalization weighted or price-weighted, the Commission is concerned that this calculation method could make the Index more readily susceptible to manipulation. The Amex, however, has developed several composition and maintenance criteria for the Index that the Commission believes will minimize the possibility that the Index could be manipulated through trading in less actively traded securities or securities with smaller prices or floats. First, after each quarterly rebalancing, the Amex proposal requires that 90% of the weighting of the Index be accounted for by stocks that are eligible for standardized options trading. The Commission believes that this requirement will ensure that the Index will be almost entirely made up of stocks with large public floats that are actively traded, thus reducing the likelihood that the Index could be manipulated by abusive trading in the smaller stocks contained in the Index. Second, the proposal provides that only stocks with an average monthly trading volume of not less than 500,000 shares over the previous six months will be eligible for inclusion in the Index. This trading volume requirement is considerably higher than the requirement contained in the options listing standards for individual equity options. Third, the Commission believes that the quarterly rebalancing of the Index will further serve to reduce the susceptibility of the Index to manipulation. Through the quarterly rebalancing, any "overweight" stock [26] will be brought back into line with the other stocks, thus ensuring that less capitalized stocks do not become excessively weighted. Fourth, because the Index is narrow-based, the applicable position and exercise limits

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[22] 15 U.S.C. 78f(b)(5) (1988).

[23] *See supra* notes 17 through 19, and accompanying text.

[24] In addition, for the six-month period between March and August 1992, all of companies within the Index had an average daily trading volume greater than 103,600 shares per day. See September 9 Letter, *supra* note 6.

[25] For a description of the options listing standards, see *supra* note 11.

[26] A stock would be "overweight" if its weight in the Index were greater than the average weight of all of the stocks in the Index. This would occur, for example, if the price of a component stock significantly increased relative to the other stocks in the Index during a particular quarter and prior to the rebalancing.

and margin requirements will further reduce the susceptibility of the Index to manipulation. Lastly, the Amex represents that it will make every effort to add new stocks to the Index that are representative of the biotechnology sector and will take into account a stock's capitalization, liquidity, and volatility.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Biotechnology Index options (including full value and reduced value Biotechnology LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Biotechnology Index options and Index LEAPS.

The Commission also has some concern that the quarterly rebalancing of the Index could result in investor confusion because the number of stocks of each issuer in the Index could fluctuate each quarter. Such fluctuation, among other things, could make it difficult for investors to maintain any corresponding cash positions in the stocks underlying the Index. Based on data provided by the Amex, however, the Commission does not believe that the quarterly rebalancing will result in dramatic changes in the weightings of the component securities. Specifically, the Amex data showed that the weight of each stock changed on average only about 2% each quarter when measured over a two year period.[27] Moreover, the Commission believes the benefits to be derived from using a quarterly rebalancing will more than offset the potential confusion for investors. Specifically, the Commission believes the quarterly rebalancing will ensure that no stock or group of stocks will have a disproportionate impact on the Index. The Amex data also indicated that rebalancing the Index less frequently will result in more dramatic changes in the weightings of the component securities.[28]

Finally, the Amex has developed procedures to ensure that investors are adequately notified of any changes due to the quarterly rebalancing of the Index.[29] In particular, the Amex represents that it will send informational circulars to its members notifying them of any changes to the Index as a result of the quarterly rebalancing. In addition, the Amex has stated that it will include a description of the equal dollar weighting methodology in all its promotional and marketing materials for the Index. The Commission believes these procedures should help to avoid any investor confusion, while providing important information about the special characteristics of the Index.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the Amex and the NASD, which is the primary market for all of the Index's component stocks, are members of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[30]

D. Market Impact

The Commission believes that the listing and trading of Biotechnology Index options, including full value and reduced value Index LEAPS on the Amex will not adversely impact the underlying securities markets. First, as described above, due to the "equal-dollar" weighting method, no one stock or group of stocks dominates the Index. Second, because 90% of the numerical value of the Index must be accounted for by stocks that meet the options listing standards, the component securities generally will be actively-traded, highly capitalized stocks. Third, the 8,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring Biotechnology Index options (including full value and reduced value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act because it may contribute to the orderly unwinding of Index option positions upon expiration.

The Commission finds good cause for approving Amendment Nos. 1, 2, 3, and 5[31] to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** First, the modifications to the proposal effected by Amendment Nos. 1 and 2 are designed to reduce the likelihood that the Index could be susceptible to manipulation. In particular, Amendment No. 1 requires that at least 90% of the Index's numerical index value, after the quarterly rebalancing, must be accounted for by stocks that meet the options listing standards. Amendment No. 2 requires that securities eligible for inclusion in the Index must have sustained a monthly trading volume of not less than 500,000 shares over the previous six-month period. The Commission believes that these amendments strengthen the Index and do not raise new issues.

Second, Amendment No. 3 notified the Commission of a change in the composition of the Index. Because the filing is designed to ensure that the

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[27] *See* Amendment No. 1, *supra* note 3.

[28] *Id.*

[29] *Id.*

[30] *See supra* note 20. Although the Index currently does not contain ADRs, the proposal provides that the Index could contain ADRs representing biotechnology industry stocks. If the Amex were to change the composition of the Index so that greater than 20% of the Index was represented by ADRs whose underlying securities were not subject to an effective surveillance sharing arrangement with the Amex, then it would be difficult for the Commission to reach the conclusions reached in this order and the Commission would have to determine whether it would be suitable to continue to trade options on the Index.

[31] Amendment No. 4 provided for a closing price settlement method for expiring Index options. This amendment was superseded by Amendment No. 5 which switched the settlement method back to the proposal as originally filed, using the opening sale prices for each of the Index's component securities. As discussed above, opening price settlement was part of the original proposal and was noticed for comment. No negative comments were received on this aspect of the proposal. *See* Section III, discussing two comment letters in support of an opening settlement method for the Index options.

Index is representative of the biotechnology industry, the Commission believes it raises no new regulatory issues. The amendment also provides that the Exchange must submit a rule filing pursuant to section 19(b) of the Act to continue listing the Index options if the number of component securities in the Index changes to either less than 10 or more than 20. The Commission believes that this requirement strengthens the Index and does not raise new issues.

Third, Amendment No. 5 provides for full value and reduced value Biotechnology LEAPS. Because the Biotechnology LEAPS will be subject to the same rules that apply to other index LEAPS traded on the Exchange and the index underlying the reduced value Biotechnology Index LEAPS is identical to the Index, the Commission believes that the provisions of Amendment No. 5 raise no new regulatory issues. Therefore, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment Nos. 1, 2, 3, and 5 to the Amex's proposal on an accelerated basis.

It Is Therefore Ordered, Pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR-Amex-92-01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-31243; File No. SR-CBOE-91-51]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing of Amendments to and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing of Options on the CBOE Biotech Index and Long-Term Options on a Reduced Value Biotech Index

September 28, 1992.

I. Introduction

On December 30, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the CBOE Biotech Index ("Biotech Index" or "Index"). This order approves the Exchange's proposal.

The proposed rule change was published for comment in Securities Exchange Act Release No. 30324 (January 31, 1992), 57 FR 4655 (February 6, 1992).[3] Two comment letters were received on the proposed rule change and are discussed in more detail below.[4]

II. Description of Proposal

A. General

Pursuant to Exchange Rule 24.2, the CBOE proposes to list and trade cash-settled, European-style [5] stock index options on an industry index, the Biotech Index. The CBOE also proposes to amend Exchange Rule 24.9 to provide for the listing of long-term, reduced-value index options that will be computed at one-tenth of the value of the Biotech Index ("BGX LEAPS").[6] BGX LEAPS will trade independent of and in addition to regular Biotech Index options traded on the Exchange.

B. Composition of the Index

The Index is based on 20 stocks in the biotechnology sector that trade on the American Stock Exchange ("Amex") or through the facilities of the National Association of Securities Dealers Automated Quotation System and are reported national market system securities ("NASDAQ/MMS").[7] Currently, seventeen of the stocks trade on NASDAQ/NMS and the remaining three are listed on the Amex. The Index is price-weighted [8] and is designed to

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[32] 15 U.S.C. 78s(b)(2) (1988).

[33] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] The CBOE has filed several amendments to the proposal. First, on February 14, 1992, the CBOE amended the proposal to indicate that two securities in the Index, Genetics Institute, Inc. and Invacare, Inc., had been replaced by Immunomedics, Inc. and Amgen, Inc. See letter from Nancy Crossman, General Counsel, First Vice President, CBOE, to Howard Kramer, Assistant Director, SEC, dated February 13, 1992 ("Amendment No. 1"). Second, the proposal was amended on March 27, 1992, to clarify that, whenever it becomes necessary to replace a component security in the Index, the CBOE will ensure that after such change at least 90% of the weight of the Index is represented by stocks that are eligible for standardized options trading ("Amendment No. 2"). Third, the proposal was amended on April 8, 1992, to provide for the listing of long-term, reduced-value Index options that will be computed at one-tenth the value of the Biotech Index. The amendment also reorganized the CBOE's rules with respect to long-term options so that long-term equity options rules and long-term index options rules are separated ("Amendment No. 3"). Fourth, on July 31, 1992, the CBOE amended the proposal to indicate that four securities in the Index, Synergen, Cytogen, Calgene, and Bio-Technology General Corporation, had been replaced by SciMed Life Systems, St. Jude Medical, Nellcor, and Summit Technology ("Amendment No. 4"). Fifth, the proposal was amended on September 10, 1992, to provide that the final settlement value of expiring Index options will be based on the opening prices of the component stocks on the trading day prior to expiration, instead of their closing prices ("Amendment No. 5"). Sixth, the proposal was amended on September 24, 1992, to provide that the Exchange will submit a rule filing pursuant to Section 19(b) of the Act to continue listing the Index options if the number of component issues changes to either less than 10 or more than 30 ("Amendment No. 6"). In addition, the CBOE withdrew, from the proposal, a provision to trade capped options on the Index. See letter to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation ("Division"), SEC, from Michael L. Meyer, Schiff, Hardin & Waite, dated September 21, 1992. Finally, the CBOE provided additional data concerning the composition of the Index. See letters to Howard L. Kramer, Assistant Director, Division, SEC, from Joseph Levin, Vice President, Research, CBOE, dated March 4, 1992 ("March 4 Letter") and to Thomas Gira, Branch Chief, Options Regulation, Division, SEC, from Joseph Levin, Vice President, Research, CBOE, dated September 10, 1992 (September 10 Letter").

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 28, 1992.

[4] The Commission received comments from the New York Stock Exchange, Inc. ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"). See letter to Jonathan G. Katz, Secretary, SEC, from Joseph R. Hardiman, President, NASD, dated May 22, 1992, and letter to Jonathan G. Katz, Secretary, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated August 11, 1992.

[5] A European-style option only can be exercised during a limited period of time before the option expires.

[6] LEAPS is an acronym for Long-Term Equity Anticipation Securities.

[7] Real-time last sale reporting recently has been extended to all securities traded over NASDAQ, however, NASDAQ/NMS securities, among other things, are subject to higher listing standards.

[8] The calculation of a price-weighted index involves taking the summation of the prices of the stocks in the index. In contrast, the calculation of a capitalization-weighted index involves taking the summation of the product of the price of each stock in the index and the shares outstanding for each issue.

represent medium and small-capitalization biotechnology stocks. The Index will be calculated real time using last sales prices and was set to a value of 100 onJanuary 2, 1991. As of September 18, 1992, the Index was at 145.09.

As of September 9, 1992, the market capitalizations of the individual stocks in the Index ranged from a high of $8.56 billion to a low of $138 million, with the mean and median being $960 million and $316 million, respectively. The market capitalization of all the stocks in the Index was $19 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 133.3 million shares to a low of 8.5 million shares. The average price per share of the stocks in the Index, for a six-month period between March and August 1992, ranged from a high of $60.48 to a low of $7.05. In addition, the average daily trading volume of the stocks in the Index, for the same six-month period, ranged from a high of 1.2 million shares per day to a low of 57,900 shares per day, with the mean and median being 363,454 and 335,635 shares, respectively. Lastly, no one stock comprised more than 13.73% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 51.42% of the Index's value. The percentage weighting of the lowest weighted stock was 1.15% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 7.75% of the Index's value.[9]

C. Maintenance

The Index will be maintained by the CBOE. The CBOE may change the composition of the Index at any time to reflect the conditions in the biotechnology sector and to ensure that the component securities continue to represent the biotechnology field. At any time when it is necessary to replace a stock or stocks in the Index, the Exchange represents that it will make every effort to add new stocks that are representative of the biotechnology sector and will take into account a stock's capitalization, liquidity, volatility and name recognition. Further, stocks may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. If, however, the Exchange determines to increase the number of Index component stocks to greater than thirty or reduce the number of component stocks to fewer than ten, the proposal provides that the CBOE will submit a rule filing with the Commission pursuant to Section 19(b) of the Act.[10] In addition, in choosing replacement stocks for the Index, the CBOE will be required to ensure that at least 90% of the weight of the Index continues to be made up of stocks that are eligible for standardized options trading.[11]

D. Calculation of the Index

The Index will be calculated continuously and disseminated to the Options Price Reporting Authority ("OPRA") every 15 seconds by the CBOE or a designated agent of the CBOE, based on the last-sale prices of the component stocks. OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron.

If a component stock is not open for trading, the most recently traded price is used in the Index calculation. The Index is price-weighted and reflects changes in the prices of the component stocks relative to the base date. Specifically, the Index value is calculated by adding the prices of the component stocks and then dividing this summation by a divisor that is equal to the number of stocks in the Index to get the average price. To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes which may result in divisor changes include, but are not limited to, stock splits and dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

The Index value for purposes of settling outstanding Index options contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day prior to expiration.[12] In the case of securities traded through the NASDAQ-NMS system, the first reported sale price will be used. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the settlement value for the options. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component stock for the purpose of determining the settlement value of the Index, the CBOE will wait until the end of the trading day on expiration Friday.[13]

E. Contract Specifications

The proposed options on the Index will be cashed-settled, European-style options. Standard options trading hours (8:30 a.m. to 3:10 p.m. Central Standard Time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be five for full-value Index options with a duration of one year or less to expiration.[14] In addition, pursuant to CBOE Rule 24.9, there will be six expiration months outstanding at any given time. Specifically, there will be three expiration months from the March, June, September, and December cycle plus three additional near-term months so that the three nearest term months will always be available. As described in more detail below, the Exchange also intends to list several additional long-term options series with two and three year to expiration ("LEAPS").

Lastly, the options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Accordingly, since options on the Index will settle based upon opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

[9] See September 10 Letter, *supra* note 3.

[10] See Amendment No. 6, *supra* note 3.

[11] See Amendment No. 2, *supra* note 3. The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE Rule 5.3.

[12] The last trading day prior to expiration is the third Friday of the expiration month. For a more detailed discussion of the trading days for the Index options. See *infra* Section II, E.

[13] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the CBOE will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[14] For a description of the strike price intervals for reduced-value Index options and long-term Index options, see Section F below

F. Listing of Options on a Reduced Value Biotech Index

The proposal further provides for the listing of long-term index options that expire from 12 to 36 months from listing, on a reduced value Biotech Index that will be computed at one-tenth the value of the Index. The current and closing index value for BGX LEAPS will be competed by dividing the Index value by ten and rounding the resulting figure to the nearest one-hundredth. For example, a BGX value of 185.46 would be 18.55 for the reduced value LEAPS and 185.43 would become 18.54. Other than the reduced value, all other specifications and calculations for BGX LEAPS will remain the same. Pursuant to Exchange Rule 24.3, the reduced value Index will be continuously calculated and disseminated.

Under the proposal, the same rules which are applicable to the trading of long-term, reduced-value Standard & Poor's 100 and 500 Indexes ("OEX" and "SPX," respectively)[15] will be applicable to the trading of BGX LEAPS. For example, BGX LEAPS may expire from 12 to 36 months from the date of listing, and there may be up to six expiration months beyond one year to expiration. Specifically, the proposal provides that reduced value BGX LEAPS may be issued at six month intervals and that new strike prices will either be near or bracketing the current Index value. Strike price intervals, bid/ask differential and continuity rules will not apply to the trading of BGX LEAPS (or long-term, full-value Index options) until their time to expiration is less than 12 months. The strike price interval for BGX LEAPS will be no less than $2.50, instead of $5.00. Lastly, the proposal provides that additional long-term options series may be added when the value of the underlying Index increases or decreases by ten to fifteen percent. These provisions currently apply to the listing and trading of reduced value OEX and SPX LEAPS.

G. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is classified as an Industry Index under CBOE rules, Exchange rules that are applicable to the trading of options on narrow-based indexes will apply to the trading of Biotech Index options and BGX LEAPS. Specifically, Exchange rules governing margin requirements[16], position and exercise limits[17], and trading halt procedures[18] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that, for purposes of determining whether a given position in BGX LEAPS complies with applicable position and exercise limits, positions in BGX LEAPS will be aggregated with positions in the Index options. Under the proposal, ten reduced-value contracts will equal one full-value contract for purposes of aggregating these positions.

H. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. These procedures include complete access to trading activity in the underlying securities. In addition, the Intermarket Surveillance Group Agreement ("ISG Agreement"), dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[19]

III. Summary of Comments

The Commission received comments from the NYSE and the NASD.[20] Both commentators believe that the settlement of derivative stock index products, such as stock index options, should be based on opening prices rather than closing prices. The commentators believe that the use of an opening price settlement method provides a means of minimizing excess market volatility that has been associated with the expiration of stock index derivative products as market participants unwind related derivative and stock positions. Specifically, the commentators note that an opening price settlement method permits buying and selling interests in the underlying securities to be balanced at the opening and gives market participants the opportunity to adapt to the opening prices, and trade out of their positions, throughout the remainder of the trading day. The concerns raised by these commentators are no longer applicable to the current proposal since the CBOE has amended its proposal to provide that expiring Index options will settle based on opening prices.

IV. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[21] Specifically, the Commission finds that the trading of Biotech Index options, including full value and reduced value Index options[22], will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with securities in the biotechnology industry. The Commission also believes that the trading of Biotech Index options and BGX LEAPS will allow investors holding positions in some or all of the underlying securities in the Index to hedge the risks associated with their portfolios more efficiently and effectively. Moreover, the Commission believes that BGX LEAPS, which will be traded on an index computed at one-tenth the value of the Biotech Index, will serve the needs of retail investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.

The trading of options on the Biotech Index and on a reduced-value Biotech Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed

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[15] *See* Exchange Act Release No. 28686, 55 FR 51517 (December 14, 1990).

[16] Pursuant to CBOE Rule 24.11, the margin requirements for the Index options will be: (1) For each short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

[17] Pursuant to CBOE Rules 24.4 and 24.5, respectively, the position and exercise limits for the Index options will be 8,000 contracts, unless the Exchange determines, pursuant to Rules 24.4 and 24.5 that a lower limit is warranted.

[18] Pursuant to CBOE Rule 24.7, the trading on the CBOE of Index options may be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index value are halted or suspended.

[19] ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[20] See supra note 4. The CBOE responded to these comment letters in a letter to Jonathan G. Katz, Secretary, SEC, from Alger B. Chapman, Chairman and Chief Executive Officer, CBOE, dated June 8, 1992. Since the issue raised by the commentators was resolved when the CBOE amended its proposal to provide for an opening settlement, the CBOE response has not been discussed in this section.

[21] 15 U.S.C. 78f(b)(5) (1988).

[22] Although the CBOE, at this time, intends to list Biotech Index LEAPS only on a reduced value Index ("BGX LEAPS"), the amendments to CBOE Rule 24.9 that permit BGX LEAPS to be listed for trading, also permit the listing of full value Biotech Index LEAPS.

below, that the CBOE adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Index is narrow-based because it is only comprised of 20 stocks, all of which are within the biotechnology industry. The Commission also finds that the reduced value Biotech Index is also narrow-based since it is comprised of the same component securities as the Index and merely dividing the Biotech Index value by ten will not alter the basic character of the Index. Accordingly, the Commission believes it is appropriate for the CBOE to apply its rules governing narrow-based index options to trading in the Index options and BGX LEAPS.[23]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume of 363,454 and 335,635 shares, respectively.[24] Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $8.5 billion to a low of $138 million, with the mean and median being $960 million and $316 million, respectively. Third, no particular stock dominates the Index, in that no one stock comprises more than 13.73% of the Index's total value. Although the percentage weighting of the three largest issues in the Index accounts for half of the Index's value, this is not unreasonable given the nature of the biotechnology industry, the limited number of stocks in the Index, and the large capitalization and active trading markets of the three stocks.[25] Fourth, all of the component stocks in the Index currently are eligible for options trading.[26] Finally, the Commission finds that the requirement that the CBOE submit a rule filing pursuant to section 19(b) of the Act prior to expanding the Index to greater than thirty stocks or reduce the Index to less than ten stocks will protect against the design of the Index being materially changed without Commission review and approval. Accordingly, the Commission believes it is unlikely that attempted manipulations of the prices of the issues in the Index would affect significantly the Index's value.

In addition, the Commission does not believe that the fact that the Index is price-weighted instead of market-weighted results in the Index being readily susceptible to manipulation. Because the use of price-weighting could give securities with relatively small floats or prices a greater weight in the Index than if the Index were capitalization weighted, the Commission is concerned that this calculation method could make the Index more readily susceptible to manipulation. The CBOE, however, has developed several composition and maintenance criteria for the Index that the Commission believes will minimize the possibility that the Index could be manipulated through trading in less actively traded securities or securities with smaller prices or smaller floats. First, the CBOE proposal requires that 90% of the weighting of the Index be comprised of stocks that are eligible for standardized options trading. The Commission believes that these requirements will ensure that the Index will be almost entirely made up of stocks with large public floats that are actively traded, thus reducing the likelihood that the Index could be manipulated by abusive trading in the smaller stocks contained in the Index. Second, because the Index is narrow-based, the applicable position and exercise limits and margin requirements will further reduce the susceptibility of the Index to manipulation. Lastly, the CBOE represents that it will make every effort to add new stocks to the Index that are representative of the biotechnology sector and will take into account a stock's capitalization, liquidity, and volatility.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Biotech Index options and BGX LEAPS, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and BGX LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Biotech Index options and BGX LEAPS.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities market. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the CBOE, the Amex, and the NASD are members of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[27]

D. Market Impact

The Commission believes that the listing and trading of Biotech Index options and BGX LEAPS on the CBOE will not adversely impact the underlying securities markets. First, because 90% of the numerical value of the Index must be accounted for by stocks that meet the options listing standards, the component securities generally will be actively-traded, highly-capitalized stocks. Second, existing CBOE stock index options rules and surveillance procedures will apply to the Index options and BGX LEAPS. Third, the 8,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and BGX LEAPS will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring Biotechnology Index options and reduced value Biotechnology LEAPS based on the

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[23] See *supra* notes 16 through 18 and accompanying text.

[24] In addition, for the six-month period between March and August 1992, all of the companies within the Index had an average daily trading volume greater than 97,000 shares per day. See September 10 Letter, *supra* note 3.

[25] For an index with a significantly greater number of stocks than 20 issues, the Commission might come to a different conclusion if only three stocks accounted for 51% of the index's weighting. Further, if an index contained only a few stocks, the Commission might question whether it can be traded as an index product.

[26] For a description of the options listing standards, see *supra* note 11.

[27] See *supra* note 19.

opening prices of component securities is reasonable and consistent with the Act because it may contribute to the orderly unwinding of Index option positions upon expiration.

E. Other Proposed Rule Changes

The Commission also believes that the other rule changes proposed by the CBOE to accommodate the trading of Biotech Index options are consistent with the Act. Specifically, the Commission believes it is consistent with the Act for the CBOE to codify its rules relating to long-term index options and reduced-value index options because it will make these rules clearer for market participants.

The Commission finds good cause for approving Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. First, Amendment Nos. 1 and 4 merely notified the Commission of changes in the composition of the Index. Because these filings are designed to ensure that the Index is representative of the biotechnology industry, the Commission believes they raise no new regulatory issues. Second, Amedment No. 2 requires that at least 90% of the Index's numerical value be accounted for by stocks that meet the options listing standards. The Commission believes that this modification strengthens the integrity of the Index and does not raise new issues. Moreover, the Commission finds that this modification to the proposal is designed to reduce the likelihood that the Index could be susceptible to manipulation.

Third, Amendment No. 3 provides for the listing of BGX LEAPS and codifies CBOE rules concerning long-term, reduced value index options. Because the index underlying BGX LEAPS is identical to the Index and BGX LEAPS will be subject to the same rules that apply to other index LEAPS traded on the Exchange, the Commission believes the CBOE's BGX LEAPS proposal raises no new regulatory issues. In addition, the other proposals contained in Amendment No. 3 do not change or add any new CBOE rules, they merely rearrange or clarify preexisting CBOE rules.

Fourth, Amendment No. 5 provides that the final settlement value of expiring Index options will be based on the opening prices of the component stocks on the trading day prior to expiration, instead of their closing prices. The Commission believes that this contract design modification, while significant in terms of the potential market impact of the Index options, does not alter significantly the contract design specifications of the Index options contracts. Moreover, the Commission believes that this modification may contribute to the orderly unwinding of positions in Index options and related positions, thereby helping to ensure that the trading of Biotech Index options will not have any adverse market impacts.

Fifth, Amendment No. 6 provides that the Exchange will submit a rule filing pursuant to Section 19(b) of the Act to continue listing the Index options if the number of component securities in the Index changes to either less than 10 or more than 30. The Commission believes that this requirement strengthens the Index and does not raise new issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment Nos. 1, 2, 3, 4, 5, and 6 to the CBOE's proposal on an accelerated basis.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[28] that the proposed rule change (SR–CBOE–91–51) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24005 Filed 10–2–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

September 29, 1992.

On September 18, 1992, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under Section 12(b) of the Act.

File No.	Symbol	Issuer
7–9152	ERTS	Electronic Arts, Inc., Common Stock, $.01 par value.

The above-referenced issue is being applied for as a replacement for the following security which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The MSE also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act of the following issued:

File No.	Symbol	Issuer
7–9153	SOCI	Society Corporation, Common Stock, $1.00 par value.

A replacement issue is being requested as the common stock of Society Corporation has been listed on the New York Stock Exchange, rendering ineligible for the OTC/UTP program.

Comments

Interested persons are invited to submit, on or before October 20, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–24062 Filed 10–2–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues and to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

September 29, 1992.

On September 14, 1992, the Philadelphia Stock Exchange, Inc.

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[28] 15 U.S.C. 78s(b)(2) (1988).

[29] 17 CFR 200.30–3(a)(12) (1992).

("PHLX") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under Section 12(b) of the Act.

File No.	Symbol	Issuer
7-9144	FOFF	50-Off Stores, Inc., Common Stock $0.10, Par Value.
7-9145	BETZ	Betz Laboratories Inc., Common Stock $0.10, Par Value.
7-9146	CSCO	CISCO Systems, Common Stock $0.01, Par Value.
7-9147	CSFN	CoreStates Financial, Common Stock $1, Par Value.
7-9143	NOVX	Nova Pharmaceutical Corp., Common Stock $0.01, Par Value.
7-9149	DOLR	Dollar General Corporation, Common Stock $0.50, Par Value.
7-9150	CYTO	Cytogen Corporation, Common Stock $0.01, Par Value.
7-9151	MRDN	Meridian Bancorp., Common Stock $5, Par Value.

On September 2, 1992, the PHLX also applied to withdraw, pursuant to Section 12(f)(4) of the Act, UTP in following issue:

7-9072	LINB	Lin Broadcasting Corporation, Common Stock, $0.01 Par Value.

Comments

Interested persons are invited to submit, on or before October 20, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grant of UTP would be consistent with Section 12(f)(1), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24083 Filed 10-2-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31240; International Series No. 461; File No. SR-PHLX-92-25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Expiration of December End-of-Month Foreign Currency Options Series

September 25, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 1, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX hereby submits, pursuant to Rule 19b-4 under the Act, a proposed rule change to amend Exchange Rule 1000(b)(21) to provide for a change in the expiration dates for certain end-of-month ("EOM") foreign currency options series expiring in December. Specifically, in those instances where the Saturday following the last Friday is December is December 26 or January 1, the expiration date for month-end foreign currency options will be on the Saturday immediately preceding December 25. The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On July 21, 1992, the Commission approved a PHLX proposal that provided for the listing of foreign currency options that expire on the Saturday following the last Friday of the expiration month for certain near-term expiration months, EOM options.[1] EOM foreign currency options are only available in the two nearest term consecutive month expirations and the nearest term cycle month expiration.

In 1992, the December cycle month expiration falls on Saturday, December 26, 1992 and the following year, such expiration falls on Saturday, January 1, 1994. Accordingly, the last trading day for these expiring options series would be Thursday, December 24, 1992 for December 1992 EOM options and Thursday, December 30, 1993 for December 1993 EOM options. This results because all organized markets, including the PHLX, will be closed on Christmas Day, Friday, December 25, 1992 and on the observed New Years' Day holiday, Friday, December 31, 1993.

The PHLX believes that the historic liquidity concerns experienced in foreign currency options trading on those days immediately preceding holidays may be compounded by the fact that these days may now also coincide with the last trading day for expiring December EOM foreign currency options. The Exchange notes that deep and liquid markets in foreign exchange instruments are negatively impacted globally on these dates as holidays are observed worldwide. Accordingly, the PHLX believes the ability to hedge PHLX foreign currency options with other derivative instruments or positions in the underlying spot market is made more difficult by the relative lack of liquidity in these other markets during holiday periods.

In this regard, the PHLX believes hedge markets, including bank spot currency trading desks, while open, reflect markets of dramatically less size and wider spreads on the trading day before holidays. Moreover, as European

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[1] See Securities Exchange Release No. 30945 (July 21, 1992), 57 FR 33381.

trading hours are ahead of U.S. trading hours, European hedge markets and their participants will be even less of a factor in the market as they are further into these holiday periods. As European customers are a significant force in the PHLX's foreign currency options market, their absence due to these holidays will result in a further reduction of PHLX liquidity.

Finally, the PHLX believes that substantial risks are placed on the Exchange's market makers and other market participants because of liquidity concerns that occur on the Thursday before a Friday holiday and the fact that the PHLX and other markets are closed on the next day, the Friday holiday.

As market participants are generally active on the last trading day before an expiration date to among other reasons, unwind positions, offset long or short positions or engage in arbitrage transactions, such participants will be faced with the adverse market factors associated with the aforementioned holidays.

Accordingly, to address the prospect of these situations, the PHLX proposes to change the expiration dates for certain December EOM foreign currency options. Specifically, in those instances where the Saturday following the last Friday in December is December 26 or January 1, the expiration date for month-end foreign currency options will be on the Saturday immediately preceding December 25. The PHLX believes this amendment will also ease burdens on various securities industry operations staff during the December holiday periods. Because other December expiration PHLX foreign currency options classes and series expire prior to the Christmas and New Years' holidays, the PHLX does not seek any modification to their expiration dates.

The PHLX believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[2]

The Commission believes that the Exchange's proposal to change the expiration dates for certain December EOM foreign currency options likely will ease market liquidity concerns and help to reduce operational burdens during the holiday season period. In particular, the Commission believes that the PHLX's decision to change the expiration dates for certain of its December EOM foreign currency options is within the Exchange's business judgement given the realities of the global foreign currency market, which, is according to the Exchange, historically marked by reduced or declining liquidity during the days prior to the Christmas and New Year's holidays. Accordingly, the Commission finds that the PHLX's proposal to change the expiration dates for certain of its December EOM foreign currency options to the Saturday immediately preceding December 25th will promote just and equitable principles of trade and protect the investing public. In addition, the Commission notes that the PHLX has issued circulars to its membership advising them of these changes, thereby avoiding any possible investor confusion.

The Commission finds good cause for approving the proposed rule change prior to thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes the PHLX's proposal presents no new regulatory issues and that it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can commence implementing the modified December expiration cycle for December month-end foreign currency options expiring in December 1992. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

[2] 15 U.S.C. 78f(b)(5) (1982).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 26, 1992.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[3] that the proposed rule changes (SR–PHLX–92–25) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24003 Filed 10–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18978; 812–8052]

Capstead Securities Corporation VI; Application

September 25, 1992

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANT: Capstead Securities Corporation VI.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant seeks a conditional order exempting it from all provisions of the Act in connection with applicant's proposed issuance and sale of one or more series of collateralized mortgage obligations

[3] 15 U.S.C. 78s(b)(2) (1982).

[4] 17 CFR 200.30–3(a)(12) (1991).

and residual interests relating thereto, and applicant's proposed election to treat any such series as a real estate mortgage investment conduit ("REMIC") under the Internal Revenue Code of 1986, as amended.

FILING DATES: The application was filed on August 17, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 20, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2001 Bryan Tower, Suite 3300, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504–2406 or Barry D. Miller, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Delaware corporation, is a direct, wholly-owned limited purpose finance subsidiary of Capstead Mortgage Corporation ("CMC"), formerly Lomas Mortgage Corporation. Applicant was organized solely for the purpose of engaging in mortgage-backed financing, including issuing and selling one or more series of collateralized mortgage obligations (as defined below, "Bonds").

2. Applicant will issue one or more series of Bonds under the terms of an indenture ("Indenture") between an independent trustee ("Indenture Trustee") and applicant as supplemented by one or more series supplements. The Indentures with respect to each series of Bonds which are publicly offered will be qualified under the Trust Indenture Act of 1939, as amended, unless an appropriate exemption is available.

3. With respect to any series of Bonds, applicant may sell its rights (the "Residual Rights") under the Indenture to receive (a) the excess cash flow from the collateral after the payment of principal and interest on such series of Bonds and of expenses from the administration of the Bonds, plus (b) any remaining value in the collateral after the payment in full of the principal and interest on such series of Bonds. If a REMIC election is made with respect to a series of Bonds, applicants may issue certain certificates ("REMIC Certificates") representing the right to receive cash flow from the collateral included in such REMIC in excess of the amounts required to be paid on the Bonds issued by such REMIC in accordance with their terms and in excess of expenses of the REMIC, or may issue a single class of residual bonds (the "Residual Bonds") representing the residual interest in such REMIC. (The "Residual Rights, REMIC Certificates, and Residual Bonds are referred to herein as the "Residual Interests"). All other classes of Bonds (other than Residual Bonds) with respect to such REMIC will represent the "regular interests" in the REMIC. Regular interests, together with all classes of Bonds of a series for which no REMIC election is made, are referred to as "Regular Bonds." (Unless otherwise specified below, all references to "Bonds" shall mean only the Regular Bonds.)

4. Applicant may sell the Residual Interests through a private placement exempt from registration under the Securities Act of 1933 (the "1933 Act") or through a public offering subject to registration under the 1933 Act; provided that in either case applicant satisfies the conditions set forth below under the "Conditions to Relief—C. Conditions Relating to Sale of Residual Interests."

5. The term "Bond" means: (a) A debt instrument which entitles the holder or owner only to (1) a specified principal amount, provided that interest (determined as provided below) that is not paid currently may be accrued and added to the principal of a Bond, and (2) either (A) interest based on such principal amount calculated by reference to (i) a fixed rate, (ii) a floating rate determined periodically by reference to an index that is generally recognized in financial markets as a reference rate of interest, or (iii) a rate or rates determined through periodic auctions among holders and prospective holders or through periodic remarketing of the instrument, or (B) an amount equal to specified portions of the interest received on the Mortgage Collateral (as defined below) held by the issuer, provided that the portion of the interest payable to the Bondholder or owner must be expected to provide a rate of return on the specified principal amount which bears a reasonable relationship to a market rate of interest; or (b) a zero coupon debt instrument which does not have a stated interest rate but on which interest effectively accrues from its issuance at a discount and which entitles the holder or owner only to a stated principal amount payable on or before a stated maturity date.

6. The Bonds of each series shall consist of one or more classes of Bonds, which may include one or more classes of (a) Bonds paying interest on a current basis, (b) compound interest Bonds or zero coupon Bonds, (c) reduced volatility Bonds which may be planned amortization class Bonds or targeted amortization class Bonds, and (d) increased volatility Bonds which are also known as support bonds. Each class of Bonds may have a separate interest rate and stated maturity date as indicated in the related prospectus for such series of Bonds. Principal payments may be allocated to more than one class of Bonds, but such allocation will be consistent with the retirement of each class not later than its stated maturity date. A compound interest Bond is one on which interest is not paid currently but instead is accrued and added to the principal balance of the bond on each payment date until certain Bonds with an earlier stated maturity date have been paid in full. A zero coupon Bond does not have a stated interest rate but interest effectively accrues from the issuance of such Bond at a discount with the stated principal amount being payable on or before the stated maturity date.

7. The "Mortgage Collateral" securing each series of Bonds which is owned by applicant will consist of Agency Certificates [1] or Non-Agency

[1] Agency Certificates are defined as (a) fully-modified pass-through mortgage-backed certificates ("GNMA Certificates") guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("GNMA"), (b) mortgage pass-through certificates ("FNMA Certificates") guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA"), or (c) mortgage participation certificates ("FNMA Certificates") guaranteed as to timely payment of interest and under some programs timely payment of principal or under other programs ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("FHLMC"). All or a portion of the Agency Certificates securing a series of Bonds may be "partial pool" Agency Certificates.

Certificates [2] (together, "Mortgage Certificates"). (The Mortgage Collateral and all other collateral securing the Bonds are collectively referred to as the "Collateral".)

8. In the case of each series of Bonds: (a) applicant will own or hold no substantial assets other than the Mortgage Collateral and a limited amount of other collateral securing such Bonds; (b) such Mortgage Collateral will have a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) the scheduled distributions of principal and interest received on the Mortgage Collateral securing the Bonds (together with cash available to be withdrawn from any reserve funds, debt service funds, over-collateralization funds or other funds), plus reinvestment income thereon, will be sufficient to make timely payments of principal of and interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Collateral will be assigned to the Indenture Trustee and will be subject to the lien of the related Indenture.

9. Neither applicant, the Residual Interest holders, nor the Indenture Trustee will be able to impair the security afforded by the Mortgage Collateral to the holders of the Bonds. Without the consent of each Bondholder to be affected, neither applicant, the Residual Interest holders, nor the Indenture Trustee will be able to (a) change the stated maturity on any Bonds; (b) reduce the principal amount or the rate of interest (or the formula by which such rate is computed) on any Bonds; (c) change the priority of payment on any class of any series of Bonds; (d) impair or adversely affect the Mortgage Collateral securing a series of bonds; (e) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Collateral; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

10. The interests of the Bondholders will not be compromised or impaired by the sale of Residual Interests. The sale of Residual Interests will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created under the Indenture to support the payment of principal and interest on the Bonds.

11. Except to the extent permitted by the limited right to substitute Collateral, it will not be possible for the Residual Interest holders to alter the Collateral initially pledged to the Indenture Trustee, and in no event will such right to substitute Collateral result in a diminution in the value or quality of such Collateral. Although it is possible that any Mortgage Collateral substituted for Mortgage Collateral initially pledged to the Indenture Trustee may have a different prepayment experience than the original Collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any Mortgage Collateral will be determined by market conditions beyond the control of the Residual Interest holders, which market conditions are likely to affect all Mortgage Collateral of similar payments terms and maturities in a similar fashion; and (b) the interests of the Residual Interest holders are not likely to be greatly different from those of the Bondholders with respect to Mortgage Collateral prepayment experience.

Applicant's Legal Conclusion

The requested order is necessary and appropriate in the public interest because: (a) Applicant should not be deemed to be an entity to which the provisions of the Act were intended to be applied; (b) applicant may be unable to proceed with its proposed activities if the uncertainties concerning the applicability of the Act are not removed; (c) the activities of applicant are intended to serve a recognized and critical public need; (d) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act, and thereafter by the Indenture Trustee representing their interests under the Indenture; and (e) the Residual Interests will be held entirely by applicant or offered only to a limited number of sophisticated institutional or "accredited" non-institutional investors.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following (unless otherwise indicated all references to "Bonds" shall mean only the Regular Bonds):

A. Conditions Relative to Regular Bonds

1. Each series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt form registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Mortgage Collateral securing the Bonds will be limited to Agency Certificates and Non-Agency Certificates.

3. If new Mortgage Collateral is substituted for Mortgage Collateral initially pledged as security for a series of Bonds, the substitute Mortgage Collateral must: (a) Be of equal or better quality than the Mortgage Collateral replaced; (b) have similar payment terms and cash flow as the Mortgage Collateral replaced; (c) be insured or guaranteed to the same extent as the Mortgage Collateral replace; and (d) meet the conditions set forth in paragraphs 2. and 4. of this Section A. New Non-Agency Certificates may be substituted for Non-Agency Certificates initially pledged only in the event of default, late payments, or defect in such Non-Agency Certificates being replaced. In addition, new Mortgage Collateral will not be substituted for more than 40% of the aggregate face amount of the Mortgage Collateral initially pledged as Mortgage Collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

4. All Mortgage Collateral, funds, accounts or other collateral securing a series of Bonds will be held by the Indenture Trustee or on behalf of the Indenture Trustee by an independent custodian (a "Custodian"). Neither the Custodian nor the Indenture Trustee will be an "affiliate" (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of applicant or the master servicer or originating lender of any Mortgage Loans underlying Non-Agency Certificates securing a series of Bonds. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Indenture Trustee or Custodian. The Indenture Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the Act.

6. No less often than annually, an independent public accountant will audit the books and records of applicant and, in addition, with respect to each

[2] Non-Agency Certificates are defined as pass-through certificates and participation certificates which are neither issued nor guaranteed by an agency or instrumentality of the United States and which evidence the entire undivided interest in pools of whole mortgage loans secured by first liens on single family (one to four unit) residential properties ("Mortgage Loans").

series of Bonds, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Indenture Trustee.

7. The master servicer of any Mortgage Loans underlying Non-Agency Certificates securing a series of Bonds may not be an affiliate of the Indenture Trustee or Custodian. If there is no master servicer for such Mortgage Loans, no servicer of those Mortgage Loans may be an affiliate of the Indenture Trustee or Custodian. In addition, any master servicer and any other servicer of the Mortgage Loans will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential Mortgage Loans. Each agreement governing the servicing of Mortgage Loans shall obligate the servicer to provide substantially the same services with respect to such Mortgage Loans as it is then currently required to provide in connection with the servicing of Mortgage Loans insured by the Federal Housing Administration, guaranteed by the Veterans Administration, or eligible for purchase by FNMA or FHLMC.

8. Beneficial and legal ownership of all Mortgage Collateral deposited with the Indenture Trustee will not be transferred until such time as the Indenture Trustee releases such Mortgage Collateral from the Indenture.

B. Additional Conditions Relating to Variable Rate Regular Bonds

1. The interest rate for each class of variable-rate Bonds will be subject to maximum interest rates ("interest rate caps") which may vary from period to period, and will always be specified in the related prospectus supplement for a series of Bonds.

2. The Collateral deposited with the Indenture Trustee to secure a series of Bonds will at all times be sufficient to provide for the full and timely payment of all principal and interest on the Bonds of such series under the assumption that the interest rate on all Bonds of such series (including any class thereof) is the maximum rate for each specific period.[3]

[3] In addition to those mechanisms referred to in the application, applicant may utilize additional mechanisms to ensure the adequacy of the Collateral notwithstanding the issuance of Bonds bearing interest at variable rates. Applicant will give the staff of the SEC notice by letter of any such additional mechanisms before they are utilized to give the staff an opportunity to raise any questions as to their appropriateness. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories.

3. No Mortgage Collateral may be released from the lien of the Indenture prior to retirement in full of all Bonds of such series, except to the extent permitted by the limited right to substitute Collateral as described in the application.

C. Conditions Relating to the Sale of Residual Interests

1. Residual Interests will be sold or assigned only to a limited number, in no event more than one hundred, of institutional investors or non-institutional investors which are "accredited investors" as defined in rule 501(a) of the 1993 Act. Residual Interests will be sold or assigned only with respect to a series of Bonds in which the Mortgage Collateral is limited to Agency Certificates. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interests and to understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors, which may include individuals, will be limited to not more than fifteen, will be required to purchase at least $200,000 (measured by market value at the time of purchase) of such Residual Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage-related securities. Holders of Residual Interests will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutions or non-institutional investors as described above that customarily engage in the purchase or origination of mortgages and other types of mortgage related securities.

2. Each purchaser of a Residual Interests will be required to represent that it is purchasing such Residual Interest for investment purposes and not for distribution and that it will hold such Residual Interest in its own name and not as nominee for undisclosed investors. Each purchaser of a Residual Interest will be required to agree that it will not resell such interest unless (a) the subsequent purchaser would have been eligible to purchase the Residual Interest directly from applicant under the terms of Condition C.1, (b) after the sale there would be no more than one hundred Residual Interest holders, and (c) the subsequent purchaser agrees to be subject to the same representations and undertakings as are applicable to the reselling purchaser. Transfers of Residual Interests will be prohibited in any case where, as a result of the proposed transfer, there would be more than one hundred Residual Interest holders with respect to the series of Bonds at any time.

3. No holder of a controlling interest in applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with either the Custodian or any Rating Agency rating the Bonds.

4. No holder of a Residual Interest will be affiliated with the Indenture Trustee, the Custodian or any Rating Agency rating the Bonds.

5. If the sale of Residual Interests were to result in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of applicant, the relief afforded by any order granted on the application would not apply to subsequent Bond offerings by applicant.

D. Conditions Relating to REMICs

1. The election by applicant to treat the arrangement by which any series of Bonds is issued as a REMIC will have no effect on the level of the expenses that would be incurred relating to such series. If such REMIC election is made with respect to a series of Bonds, applicant will provide that all administrative fees and expenses in connection with the administration of the trust estate will be paid or provided for in a manner satisfactory to each Rating Agency rating the Bonds.

2. In addition, applicant will ensure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which method or combination of methods described in the application is selected to provide for the payment of such fees and expenses.

E. Special Condition

If any of the equity interests in applicant are sold and such sale results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of applicant (except with respect to a transfer of control to an affiliate of CMC), the relief afforded by

any order granted on the application would not apply to subsequent Bond offerings by applicant.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24007 Filed 10-02-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18979; No. 811-5863]

Chubb Separate Account B of Chubb Life Insurance Company of America

September 28, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Chubb Separate Account B of Chubb Life Insurance Company of America ("Separate Account B").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Separate Account B seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on July 16, 1992 and a restated and amended application was filed on September 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 22, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Bruce R. Stefany, President, Chubb Securities Corporation, One Granite Place, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney, at (202) 272-2676, or Wendell Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Chubb Separate Account B, registered as a unit investment trust under the 1940 Act, is a separate account of Chubb Life Insurance Company of America ("Depositor").[1] Separate Account B was organized under the laws of New Hampshire on February 2, 1989 for the purpose of issuing certain flexible premium variable life insurance contracts.

2. On August 16, 1989, Separate Account B filed a Notification of Registration as an investment company on Form N-8A, a registration statement under the 1940 Act on Form N-8B-2 (File No. 811-5863) and a registration statement under the Securities Act of 1933 ("1933 Act") on Form S-6 (File No. 33-30527). The 1933 Act registration statement was declared effective on October 3, 1989. No public offering of these securities has been made.

3. Separate Account B never has held any assets, never has had any security holders and never has incurred any liabilities.

4. Separate Account B is not a party to any pending litigation or administrative proceedings.

5. Separate Account B is current in all of its required filings under the 1940 Act.

6. Separate Account B never has engaged, and does not propose to engage, in any business activity other than those necessary for winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24000 Filed 10-2-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18977; 812-8084]

ML Venture Partners II, L.P., et al.; Notice of Application September 25, 1992

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under he Investment Company Act of 1940 (the "Act").

APPLICANTS: ML Venture Partners II, L.P. ("MLVP II"), Sprout Capital VI, L.P. ("Sprout VI"), and DLJ Venture Capital Fund II, L.P. ("DLJ Venture").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 57(i) and rule 17d-1 authorizing a transaction otherwise prohibited by section 57(a)(4), and pursuant to section 6(c) for an exemption from the terms of a prior order of the Commission to permit such transaction.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the exercise of certain options held by MLVP II and DLJ Venture in Horizon Cellular Telephone Co. L.P. ("Horizon"). Applicants also request an exemption from certain conditions of a prior order of the Commission which permits co-investments and other transactions between MLVP II and certain affiliated persons.

FILING DATE: The application was filed on September 11, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 20, 1992, and should be accompanies by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, MLVP II, World Financial Center, North Tower, New York, New York 10281; DLJ Venture and Sprout VI, DLJ Capital Corporation, 140 Broadway, New York, New York 10005-1285.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's public Reference Branch.

Applicants' Representations

1. MLVP II, a limited partnership organized under the laws of Delaware,

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[1] On July 1, 1991, Chubb Life Insurance Company of America was merged into The Volunteer State Life Insurance Company ("Volunteer Life"), and Volunteer Life changed its name to Chubb Life Insurance Company of America.

is a business development company. The investment objective of MLVP II is to seek long-term capital appreciation by making venture capital investments.

2. MLVP II has five general partners, consisting of four individuals (the "Individual General Partners") and one managing general partner, MLVPII Co., L.P. (the "Managing General Partner"). The Individual General Partners include three independent general partners (defined to be individuals who are not "interested persons" of MLVP II within the meaning of section 2(a)(19) of the Act) (the "Independent General Partners") and one general partner who is an individual and an affiliated person of the Managing General Partner. The Individual General Partners provide overall guidance and supervision with respect to the operations of MLVP II and perform all duties which the Act imposes on directors of business development companies organized in corporate form. The Independent General Partners assume the responsibilities and perform the obligations that the Act and the regulations thereunder impose on the non-interested directors of a business development company.

3. The general partner of the Managing General Partner is Merrill Lynch Venture Capital, Inc. (the "Management Company"), which is an indirect subsidiary of Merrill Lynch & Co., Inc. The Management Company performs management and administrative services for MLVP II pursuant to a management agreement between MLVP II and the Management Company. Subject to the supervision of the Individual General Partners, the Management Company performs, or arranges for the performance of, the administrative services necessary for the operation of MLVP II.

4. MLVP II, the Managing General Partner, and the Management Company have retained DLJ Capital Management Corporation (the "Sub-Manager"), an indirect wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., to provide management services in connection with the venture capital investments of MLVP II pursuant to a sub-management agreement (the "Sub-Management Agreement"). The Sub-Manager is a wholly-owned subsidiary of DLJ Capital Corporation ("DLJ Capital"); each of the officers of the Sub-Manager is an officer of the Sub-Manager. The Managing General Partner, the Management Company, and the Sub-Manager are registered under the Investment Advisers Act of 1940, as amended.

5. Sprout VI is a venture capital fund and a Delaware limited partnership. Affiliates of DLJ Capital are responsible for the management of Sprout VI. DLJ Venture is a Delaware limited partnership, the interests in which are owned by employees and former employees of DLJ Capital and its corporate affiliates. Under its governing policies, DLJ Venture is required to co-invest with three venture capital funds, including Sprout VI, in each investment made by such funds in an amount proportionate to its capital. Collectively, Sprout VI, DLJ Venture, and certain other entities affiliated with DLJ Venture (Sprout Growth Ltd., Sprout Growth L.P., and future venture capital funds managed by DLJ Capital) are the "DLJ Investors."

6. In connection with the retention of the Sub-Manager, MLVP II and the Management Company decided it would be desirable for MLVP II to be permitted to co-invest with DLJ Investors. In this connection, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") provided a letter to the Individual General Partners indicating that if any such co-investment opportunity were approved by them, MLPF&S or an affiliate would purchase such investment on behalf of MLVP II pending receipt of any necessary exemptive order. MLPF&S indicated that its obligation was subject to certain conditions, including a provision that it not be required to acquire any such investment on a nominee basis if the purchase price (and related carrying costs) of the total of such investments would exceed $8.0 million.

7. One such investment acquired by MLPF&S was a commitment to invest $1.5 million in Horizon, a limited partnership which owns interests in and operates cellular telephone systems. MLVP II had been offered the opportunity to commit up to an aggregate investment of $3.0 million in Horizon but limited its commitment to $1.5 million in light of the $8 million ceiling on the warehousing facility provided by MLPF&S. Horizon then offered to provide MLVP II with an option exercisable after the initial closing to make such additional $1.5 million investment on the same terms as its initial investment.

8. The investment opportunity was first presented to the Sub-Manager in 1991, which evaluated the proposed investment and determined that it was an appropriate investment for MLVP II. On February 19, 1992, the Independent General Partners considered and unanimously approved the investment by MLVP in Horizon.

9. Horizon received financing totalling approximately $53 million from a group of institutional investors, including a $4.0 million commitment from Sprout VI and the $1.5 million commitment from the Management Company on behalf of MLVP II. Horizon provided an option to DLJ Venture to make an investment in the aggregate amount of $137,000. DLJ Venture would have acquired such investment at the time of the original closing except for a delay in determining the form of its investment.

10. On May 11, 1992, applicants received a conditional order from the Commission permitting co-investments and other transactions by MLVP II and the DLJ Investors (Investment Company Act Release Nos. 18652 (Apr. 13, 1992) (notice) and 18700 (May 11, 1992) (order)) (the "Prior Order").

11. Upon receipt of the prior Order, the Independent General Partners reviewed the investment in Horizon in light of the considerations set forth in the Prior Order. On May 18, 1992, the Independent General Partners approved the acquisition by MLVP II of the $1.5 million investment commitment in Horizon from the Management Company, as a nominee investment, in accordance with the terms of the Prior Order.

12. Applicants state that they recognize that the proposed transaction is subject to the terms of the Prior Order, except to the extent discussed herein.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons specified in section 57(b) from participating in joint transactions with a business development company or a company controlled by a business development company in contravention of rules and regulations prescribed by the Commission. Section 57(i) provides that the rules and regulations of the Commission under sections 17(a) and (d) applicable to registered closed-end investment companies shall apply to transactions subject to 57(a) and (d) in the absence of rules under sections 57(a) and (d). No rules with respect to joint transactions have been adopted under section 57(a)(4). Rule 17d–1 under the Act prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the Commission has granted an order permitting such transaction after considering whether the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. With respect to the limitations imposed by section 57(a)(4) of the Act, the Sub-Manager is an investment adviser for MLVP II, and the DLJ Investors may be considered to be entities controlled by DLJ Capital or under common control with the Sub-Manager. Thus, the DLJ Investors may be considered entities within the scope of section 57(b)(2) of the Act and subject to the limitations set forth in section 57(a)(4). Pursuant to section 57(i), the limitations on joint transactions set forth in rule 17d–1 thus are applicable to transactions involving MLVP II and the DLJ Investors.

3. MLVP II believes that co-investments can provide considerable potential benefits to its investment process. Applicants believe the proposed investments in Horizon are consistent with both this position and the intent of the application for the Prior Order.

4. Section 6(c) of the Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act, or rule thereunder, "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions" of the Act.

5. The terms of the Prior Order contained specific conditions relating to the exemption provided by such order. Applicants have reviewed the conditions and believe that the commitment by MLVP II of an additional $1.5 million investment in Horizon and by DLJ Venture of a $137,000 investment will be consistent with each condition except for certain deviations from conditions 2(a) and (3). Condition 2(a) of the Prior Order provides that MLVP II will not make an investment for its portfolio, other than a follow-on investment in the same entity, if a DLJ Investor is an existing investor in such portfolio company with certain exceptions that do not apply to the proposed transaction. Applicants consider MLVP II's additional $1.5 million investment to be an extension of the initial investment, rather than a typical follow-on investment. As a result, there is a question as to whether the proposed transaction is consistent with condition 2(a). Condition 3 of the Prior Order requires, among other things, that the settlement dates be the same for all purchases of securities by MLVP II made jointly with a DLJ Investor. To the extent the proposed transaction is viewed as part of the initial investment transaction with a DLJ Investor, the settlement dates for the investment would be different, and thus, not in compliance with one of the requirements of condition 3.

6. Applicants submit that the requested order is consistent with the provisions, policies, and purposes of the Act and the protection of investors. In addition, prior to the time MLVP II makes such investment commitment to Horizon, its Independent General Partners will be required to make the specific findings required by condition 1(d) of the Prior order and MLVP II and the DLJ Investors will thereafter be subject to the terms of such order as it relates to their investments in Horizon.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24006 Filed 10–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18976; 812–7982]

Prudential California Municipal Fund, et al.; Notice of Application

September 25, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Prudential California Municipal Fund, Prudential-Bache Equity Fund, Inc., Prudential Equity Income Fund, Prudential FlexiFund, Prudential Global Fund, Inc., Prudential-Bache Global Genesis Fund, Inc., Prudential-Bache Global Natural Resources Fund, Inc., Prudential-Bache GNMA Fund, Inc., Prudential-Bache Government Plus Fund, Inc., Prudential Government Securities Trust, Prudential Growth Fund, Inc., Prudential-Bache Growth Opportunity Fund, Inc., Prudential-Bache High Yield Fund, Inc., Prudential-Bache IncomeVertible Plus Fund, Inc., Prudential Intermediate Global Income Fund, Inc., Prudential Multi-Sector Fund, Inc., Prudential Municipal Bond Fund, Prudential Municipal Series Fund, Prudential-Bache National Municipals Fund, Inc., Prudential-Bache Option Growth Fund, Inc., Prudential Short-term Global Income Fund, Inc., Prudential-Bache Strategic Income Fund, Inc., Prudential-Bache Structured Maturity Fund, Inc., Prudential U.S. Government Fund, Prudential-Bache Utility Fund, Inc., Global Utility Fund, Inc., Nicholas-Applegate Fund, Inc., The Blackstone Government Income Trust, and any openend management investment companies to be established in the future that are part of the same group of investment companies, and (i) whose investment adviser or manager is Prudential Mutual Fund Companies, Inc. ("PMF") or Prudential Securities Incorporated ("Prudential Securities") or an investment adviser or manager that is an affiliated person of PMF or Prudential Securities as "affiliated person" is defined in section 2(a)(3) of the 1940 Act, (ii) whose principal underwriter is Prudential Mutual Fund Distributors, Inc. ("PMFD") or Prudential Securities, or a principal underwriter that is an affiliated person of PMFD or Prudential Securities as "affiliated person" is defined in section 2(a)(3) of the 1940 Act, and (iii) which hold themselves out to investors as being related for purposes of investment and investor services (all of the above being referred to collectively, in whole or in part, as the context requires, as the "Funds"), Prudential Securities, PMF, and PMFD.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) to amend a prior order that exempted applicants from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the 1940 Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to amend a prior order, Prudential-Bache California Municipal Fund, Investment Company Act Release No. 17308 (Jan. 18, 1990) (the "Prior Order"), which permitted certain open-end management investment companies to sell two classes of shares representing interests in the same portfolio of securities. The requested relief would delete condition 11 of the Prior Order which required directors/trustees of the Funds to divide their purchases of Fund shares equally between the two classes of shares offered by a Fund.

FILING DATE: The application was filed on July 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 20, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, One Seaport Plaza, New York, New York, 10292.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190, or Barry D. Miller, Senior Special Counsel at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations and Analysis

1. Each Fund is or will be an open-end management investment company registered under the 1940 Act and has or will enter into an investment advisory or management agreement with PMF and a distribution agreement with PMFD and/or Prudential Securities as the principal underwriters for the Fund.

2. Pursuant to the Prior Order, the Funds may establish two classes of securities within the same investment portfolio, creating an alternative purchase plan (the "Alternative Purchase Plan"). The two classes consist of: (i) Class A shares which are subject to a front-end sales load and a rule 12b–1 distribution plan and (ii) Class B shares which are subject to a contingent deferred sales load and a rule 12b–1 distribution plan. The classes are identical in all respects except for disproportionate payments made under the rule 12b–1 distribution plans, any other incremental expenses subsequently identified that should be properly allocated to one class (which must be approved by the Commission pursuant to an amended order), shareholders of each class have exclusive voting rights with respect the rule 12b–1 distribution plan applicable to their class, and varying exchange privileges.

3. As one of the conditions to granting the relief requested in the Prior Order, applicants agreed in Condition 11 that:

> All purchases of shares of the Funds by the directors/trustees made after the issuance of a second class of shares will be equally divided between the two classes. Over time the actual holding of the two classes of newly purchased shares will differ to a minor degree if a director/trustee elects to have dividends reinvested.

4. Applicants believe that Condition 11 imposes a burden on the Funds' directors/trustees without any corresponding benefit. Accordingly, applicants propose to delete Condition 11 from the Prior Order.

5. At the time the Prior Order was granted, applicants assert that Condition 11 was included to eliminate any incentive on the part of the directors/trustees to favor the holders of one class of share over another. Applicants believe, however, that a Director's/Trustees's ownership of a different class of shares would not result in any conflicts of interest.

6. Since the issuance of the Prior Order, applicants cite to a number of similar exemptive applications granted by the Commission without the purchase restriction on directors/trustees. Accordingly, applicants assert that it would be unfair to continue to impose the burden of compliance with a condition not imposed on others similarly situated.

7. Applicants represent that the purpose of the Alternative Purchase Plan is to permit investors to choose the method of purchasing shares that is most beneficial, given the amount of the purchase, the length of time the investor expects to hold the shares and other relevant circumstances. Different investors have different needs. Applicants argue that elimination of Condition 11 would permit the directors/trustees to make their investment decisions based upon each individual's own situation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24004 Filed 10–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25644]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 25, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 19, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specially the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will received a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy Initiatives, Inc. (70–7828)

Energy Initiatives, Inc. ("EII"), One Upper Pond Road, Parsippany, New Jersey 07054, a nonutility subsidiary of General Portfolios Corporation, a subsidiary of General Public Utilities Corporation, a registered holding company, has filed a post-effective amendment under sections 9(a), 10 and 12(b) of the Act to its application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By order dated June 19, 1991 (HCAR No. 25335) ("June 1991 Order"), the Commission, among other things, authorized EII to enter into an option agreement ("Option Agreement") granting EII the option ("Option") to acquire the interests of two Delaware limited partnerships and their affiliates (collectively, "Seller") in a 79.9 megawatt ("MW") congeneration facility being developed in Selkirk, New York ("Phase I") and in 270 MW of additional generating capacity being developed at that project site ("Phase II") (collectively, with Phase I, the "Project").

On June 28, 1991, EII entered into the Option Agreement with the Seller and paid to the Seller the purchase price of $3.85 million plus $650,000 for historical development costs and other specified transaction costs. The Commission reserved jurisdiction over the exercise of the Option pending certification of Phase II by the Federal Energy Regulatory Commission ("FERC") as a qualifying cogeneration facility under the Public Utilities Regulatory Policies Act of 1978. By order dated June 9, 1992, the FERC has so certified Phase II. EII now requests that the Commission release its reservation of jurisdiction over exercise of the Option.

Presently, Seller's interest in Phase I consists of a 20% limited partnership

interest in a Delaware limited partnership ("Cogen Partnership I") which has been formed to construct, own and operate Phase I. The Seller's interest in Phase II is reflected in a cost sharing agreement, which, among things, requires the Seller to contribute 20% of the development costs of Phase II and entitles the Seller to acquire up to a 20% interest in Phase II at the time a separate limited partnership is formed to construct, own and operate Phase II ("Cogen Partnership II") or at the time the interests in Phase I and Phase II are consolidated into a single partnership ("Consolidated Cogen Partnership").

As explained in the 1991 Order, the Option Agreement requires EII to pay Seller's 20% share of the development costs of Phase II and, subject to certain limitations, the equity contribution in the Project. The Option Agreement also requires EII to pay certain development costs of, and equity contributions to, Phase II, prior to the exercise of the Option (collectively, the "Contribution Cap"). The June 1991 Order authorized these payments up to a maximum aggregate amount of $7.5 million. As of August 15, 1992, EII has paid an aggregate of $2,077,000 of Phase II development costs, and no equity contributions, under the Contribution Cap.

EII presently anticipates that the interests of both Phase I and Phase II will be consolidated into Consolidated Cogen Partnership at or prior to the construction financing closing for Phase II ("Phase II Construction Closing"). The application states that the financing arrangements now in effect for Cogen Partnership I will be merged into the Phase II financing agreements at the Phase II Construction Closing. As part of the consolidated financing, the Project lenders are expected to permit Consolidated Cogen Partnership to refund to EII all or a portion of the Phase II development contributions previously made by EII, but require that the partners of Consolidated Cogen Partnership contribute equity to the joint project. A portion of that equity would be attributed to Phase I.

Accordingly, EII now proposes to (i) increase the Contribution Cap to $10 million from the $7.5 million presently authorized in the June 1991 Order and (ii) contribute a portion of the amount subject to the Contribution Cap to Phase I as well as Phase II. The increase in the Contribution Cap by up to $2,500,000 is required to enable EII to make an equity contribution to Consolidated Cogen Partnership, on behalf of the Seller, sufficient to enable Seller to acquire a 20% limited partnership interest in Consolidated Cogen Partnership at the time of the Phase II Construction Closing. Pursuant to the Option Agreement, the Seller's limited partnership interest in Consolidated Cogen Partnership would be acquired by EII upon exercise of the Option.

The application states that the Phase II equity contribution will not be required to be actually made until Phase II commences operations in 1994. However, EII expects that at the Phase II Construction Closing EII will be required to secure its agreement to make the equity contribution with an irrevocable bank letter of credit. Accordingly, EII further proposes to enter into a letter of credit reimbursement agreement which would obligate EII to repay the letter of credit bank in the event of any draw on the letter of credit made to satisfy EII's Phase II equity contribution. The letter of credit would be in a maximum face amount of the Contribution Cap (less any equity contribution made to Phase I), and would expire not later than December 31, 1994. Drawings on the letter of credit would bear interest at not more than 5% above the prime rate, as in effect from time to time. EII may also be required to pay fees which would not exceed 1% annually of the face amount of the letter of credit.

The Option Agreement previously required EII to pay to the Seller an exercise price of $5.5 million, increased by 15% compounded annually, upon exercise of the Option. The Seller has now agreed to reduce that rate so as not to exceed 12.5% in consideration for EII's agreement to increase the Contribution Cap.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24002 Filed 10-2-92; 8:45 am]

BILLING CODE 8010-1-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 92-49-Notice 1]

Blue Bird Body Company; Receipt of Petition for Determination of Inconsequential Noncompliance

Blue Bird Body Company (Blue Bird) of Fort Valley, Georgia, has determined that some of its vehicles are equipped with seats that fail to comply with 49 CFR 571.222, "School Bus Passenger Seating—Crash Protection," (Federal Motor Vehicle Safety Standard (FMVSS) No. 222), and has filed an appropriate report pursuant to 49 CFR part 573. Blue Bird has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

During the period of November 1, 1984 to April 28, 1992, Blue Bird manufactured 2,250 Micro Bird school buses, with a gross vehicle weight rating (GVWR) or less than 10,000 pounds, which may have passenger seat back heights less than the required 20 inches above the seating reference point. Paragraph S5.1.2 *Seat Height and Surface Area* requires that the seat back height on each school bus passenger seat be at least 20 inches above the seating reference point.

Blue Bird supports its petition for inconsequential noncompliance with the following:

> Based on data provided on page 32 of a compliance test performed by NHTSA [Report No. 222/210/208-MSE-02-01-TR92037-01], the average height of the eight seats in the [Blue Bird Micro Bird school bus] was 19.84 inches above the seating reference point. This is only 0.16 inches (less than 1 percent) below the 20 inch requirement of section S5.1.2. Blue Bird Body Company sincerely believes that the noncompliance discussed herein is inconsequential as it relates to motor vehicle safety because the discrepancy in seat back height is so small.
>
> School buses with a GVWR of 10,000 pounds or less are required to have seat belts meet FMVSS 208, 209, and 210. These small school buses, therefore, rely on occupant restraint systems rather than on compartmentalization for occupant protection. Since these small school buses are not required to meet the seat spacing and barrier requirements of compartmentalization and are equipped with seat belts at all designated seating positions, [Blue Bird believes] that having seats with seat back heights slightly below the [seating reference point] plus 20 inches dimension is not a safety related noncompliance.

Interested persons are invited to submit written data, views, and arguments on the petition of Blue Bird, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested

but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 4, 1992.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: September 29, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-24013 Filed 10-2-92; 8:45 am]

BILLING CODE 4910-59-M

Federal Transit Administration

Environmental Impact Statement for Transportation Improvements in the Greenbush Line Corridor in Massachusetts

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Massachusetts Bay Transportation Authority (MBTA) are undertaking the preparation of a Supplemental Draft Environmental Impact Statement (EIS) for transportation improvements in the Greenbush Line Corridor in the coastal communities of Braintree, Weymouth, Hingham, Cohasset, and Scituate, Massachusetts. The supplemental EIS is being prepared in accordance with 40 CFR part 1500 Council on Environmental Quality regulations for implementing the procedural requirements of the National Environmental Policy Act of 1969 as amended; and 49 CFR part 622, Federal Transit Administration and Federal Highway Administration Environmental Impact and related procedures. The area surrounding the seventeen mile long Greenbush Line, a currently unused railroad right of way, is part of a high priority corridor for regional transportation improvements because this heavily populated area is currently underserved by mass transit. Proposed transit options in this area would provide service to downtown Boston which is a significant destination from the Greenbush Line Corridor communities. It is proposed that the Supplemental Environmental Impact Statement evaluate five alternatives in addition to the no action alternative and any additional alternatives which may result from the scoping process. These alternatives are transportation systems management, improved commuter boat service, at grade commuter rail service, and commuter rail service with a tunnel through the Hingham Square area.

DATES: Written comments on the scope of alternatives and the impacts to be considered should be sent to the MBTA on or before October 26, 1992 at the address given below. A public scoping meeting will be held on Thursday, October 15, 1992 at 7:30 pm at the Cohasset, MA Town Hall.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Beth Mello, Chief of Program Development, Federal Transit Administration, Region I, 55 Broadway, Cambridge, Massachusetts 02142, Telephone (617) 494-2055.

ADDRESS: Written comments on the project scope should be sent to Ms. Jane Chmielinski, Manager of Environmental Affairs, MBTA, 10 Park Plaza, Boston, Massachusetts 02116, Telephone (617) 722-3152. A scoping meeting will be held at the following location: Cohasset Town Hall, 41 Highland Avenue, Cohasset, MA 02025.

SUPPLEMENTARY INFORMATION:

Scoping

The FTA and the MBTA invite interested individuals, organizations, and federal, state and local agencies to attend the scoping meeting to be held on October 15, 1992, at the time and location indicated under **DATES** and **ADDRESSES** (above), to participate in defining the alternatives to be evaluated in the supplemental EIS and identify any significant social, economic or environmental issues related to the alternatives.

The FTA and the MBTA invite written comments for a period of thirty days, beginning September 25 and ending October 26. Comments may be sent to the address listed above. Comments should focus on the appropriateness of the proposed alternatives rather than on individual preferences for a particular alternative. Endorsement of an alternative should be communicated after the supplemental Draft Environmental Impact Statement has been issued. Comments on specific social, economic, or environmental impacts to be evaluated and on evaluation criteria are also invited.

If you wish to receive scoping materials or be placed on a mailing list to receive further information as the project continues, contact Wayne Duchemin, Community Liaison, Massachusetts Bay Transportation Authority, 1515 Hancock Street, Quincy, Massachusetts 02169, Telephone (617) 722-5835.

Description of Study Area and Project Needs

The study area consists of the Greenbush Line Corridor, the area that would be served by the restoration of commuter rail service on the Greenbush Line. It consists of the communities or portions of communities lying east of Route 3 from Quincy on the north to Kingston on the south. These are: Northeast Braintree, north Weymouth, Hingham, Hull, Cohasset, Scituate, Norwell, Marshfield, and east Duxbury.

This area is served by Route 3, a limited access highway, Route 53, an undivided highway which parallels Route 3 over much of its length, and Route 3A, an undivided highway which parallels the Greenbush Line right of way through the Greenbush Line Corridor. Transit service in the area consists of Massachusetts Bay Transportation Authority feeder bus service to the Red Line rapid transit system to downtown Boston, subsidized private commuter bus service from several locations in the study area to downtown Boston, and subsidized commuter boat service from Hingham to downtown Boston.

The existing transportation services and facilities in the Greenbush Line Corridor do not now meet the Corridor's transportation needs. Population centers are isolated from major highways and have inadequate access to existing transit facilities. Severe congestion on Route 3 and other area highways and constrained parking and crowding on the Red Line lead to significant travel delays and inconvenience for commuters and other travelers in the Greenbush Corridor. Access time to commuter boat facilities has made the commuter boat unattractive to many commuters in the corridor. Long travel times on congested roadways limit the ability of private buses to meet the corridor's transit needs.

Alternatives

Alternatives other than the No Build alternative proposed for evaluation in the Environmental Impact Statement are transportation systems management,

improved commuter boat service, at grade commuter rail service, and commuter rail service with a tunnel through the Hingham Square area. These alternatives have been selected based on the results of prior planning efforts in the corridor area. Other alternatives may emerge during the course of the scoping process.

Probable Effects

The FTA and the MBTA will evaluate all significant environmental, social, and economic impacts of the alternatives to be analyzed in the Environmental Impact Statement. Impacts include changes in the natural environment, such as changes in air quality, water quality, rare and endangered species, changes in the social environment, such as changes in land use, community cohesion, noise and vibration conditions, aesthetic conditions, parklands, historic resources, or archaeological resources, and changes in the economic environment such as secondary development. Changes in transit service and patronage and associated changes in highway congestion will be evaluated. Traffic impacts will be evaluated. Project capital and operating costs will be estimated, cost effectiveness calculated, and financial implications analyzed. Mitigation measures for any adverse impacts identified will be explored.

FTA Procedures

In accordance with the Federal Transit Act as amended, and FTA policy, the Supplemental Draft Environmental Impact Statement will be prepared in conjunction with an Alternatives Analysis and the Supplemental Final Environmental Impact Statement will be prepared in conjunction with Preliminary Engineering. After its publication, the Supplemental Draft Environmental Impact Statement will be available for public and agency review and comment. A public hearing will be held. On the basis of the Supplemental Draft Environmental Impact Statement and the comments received, the MBTA will select a locally preferred alternative and seek approval from the FTA to continue with Preliminary Engineering and preparation of the Supplemental Final Environmental Impact Statement.

Issued on: September 29, 1992.

Leonard Braun,

Director, Eastern Area.

[FR Doc. 92-24071 Filed 10-2-92; 8:45 am]

BILLING CODE 4910-57-M

National Highway Traffic Safety Administration

[Docket No. 92-30; Notice 2]

Bridgestone/Firestone, Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Bridgestone/Firestone, Inc., (Bridgestone/Firestone) of Akron, Ohio to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a failure to comply with Federal Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires." The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on June 24, 1992, and an opportunity afforded for comment (57 FR 28234).

Section S4.3 of Standard No. 109 specifies that each tire be labeled with the name of the manufacturer or brand name, and the number assigned to the manufacturer in the manner specified in Part 574.

From February 26, 1991 through April 24, 1991, Bridgestone/Firestone manufactured 7,259 tires, designated "P215/70R14 FR480 WHY FR5" that bear incorrect serial information. The information should read "P215/70R14 FR480 W2HY FR5," the "2" in W2HY" being omitted. The missing "2" is part of an identification code which identifies Bridgestone/Firestone as the manufacturer of the tire. The noncompliance resulted when an error was made during the manufacturing of the serial marker.

Bridgestone/Firestone supported its petition with the following:

All tires manufactured in the affected size/type meet all requirements of Standard No. 109 except label requirements pertaining to S4.3.3.

If there would be need for the consumer or manufacturer representative to read the serial, sufficient information exists to define the manufacturing location as Bridgestone/Firestone, Inc., Wilson, North Carolina.

No comments were received on the petition.

During the comment period, NHTSA sought further information from the petitioner as to how the tires could be identified as Bridgestone/Firestone, and manufactured at the Wilson, N.C. plant. The petitioner responded that the tires bore the brand name "Firestone", and that they are labeled "WH". This designation is an obsolete code that was previously assigned to Firestone of Sweden, and would serve as an identifier (rather than the missing "W2") in the event of a recall. The tires also bear a date code, size, model, and "Made in U.S.A." markings.

NHTSA believes that this information is sufficient to identify the tires in the event a notification and remedy campaign is required. The date code and origin markings preclude the possibility of confusion with tires manufactured in Sweden under the "WH" designation. The fact that the tires comply with the performance requirements of Standard No. 109 reduces the likelihood that they will, in fact, be the subject of a safety campaign.

Accordingly, for the reasons expressed above, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: September 30, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-24064 Filed 10-2-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-24; No. 2]

Chrysler Corporation; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Chrysler Corporation (Chrysler) of Detroit, MI to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.209, Federal Motor Vehicle Safety Standard No. 209, "Seat Belt Assemblies." The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on June 8, 1992, and an opportunity afforded for comments (57 FR 24298).

S4.6(b) of Standard No. 209 requires that a seat belt assembly that meets the requirements of manual belts subject to crash protection requirements of Standard No. 208 be permanently and legibly marked or labelled with the following statement:

"This dynamically-tested seat belt assembly is for use only in (insert specific seating position(s), e.g., "front

[Docket No. 92-12, Notice 2]

Mitsubishi Motors America; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Mitsubishi Motors America (Mitsubishi) of Southfield, MI to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that a noncompliance with Motor Vehicle Safety Standard No. 106, *Brake Hoses*, is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 6, 1992, and an opportunity afforded for comment (57 FR 11648). Mitsubishi determined that hoses manufactured by Meihi Rubber and Chemical Co., Ltd. (MRCC) were installed on 7,894 1986–1992 model Mitsubishi trucks, and that some of these may fail the adhesion requirement of S7.3.7 of Federal Motor Vehicle Safety Standard No. 106,"Brake Hoses." Section S7.3.7 requires that except for hose reinforced by wire, an air brake hose shall withstand a tensile force of eight pounds per inch of length before separation of adjacent layers.

Mitsubishi supported its petition with the following information:

1. Testing indicates that the noncompliance does not adversely affect vehicle safety. MRCC conducted FMVSS 106 tests on five different lots of hose which were manufactured by MRCC under the same manufacturing conditions as those which failed the adhesion requirement in the NHTSA test. The tests show full compliance with all requirements of FMVSS 106, with the exception of the adhesion test (S7.3.7).

2. In order to study whether separation of the adjacent layers may actually occur under regular vehicle operating conditions, MRCC imposed a pressure of 150 PSI, which is the maximum possible in the vehicle, for the same time periods. Again, no ballooning or separation was observed. Accordingly, in conditions which far exceed those that would actually be experienced in use, there is no indication of an adverse impact on vehicle operation or safety from the noncompliance.

3. MRCC also conducted a flexure test specified in SAE J140 on hose assemblies which did not comply with the adhesion requirement at the second layer. SAE J1402 is the standard from which FMVSS 106 was derived. The SAE standard requires that an air brake hose assembly not lose air pressure before one million flexure cycles. MRCC hoses met this requirement. In addition, hoses also passed the vacuum adhesion test requirements of SAE J1402 Para. 4.2.5.1.

4. It is Mitsubishi Motors America's position that the adhesion requirement is not, from a safety aspect, relevant to the operational characteristic of MMC brake hoses and that the other requirements of the standard better represent the hoses' in-service environment and performance.

The adhesion test is include in Standard No. 106 to ensure that the various layers of the brake hose do not separate in service. Low adhesion in brake hoses can result in the build-up of air between plies. The trapped air can cause inward ballooning of the hose resulting in slow reaction of the brakes served, or complete malfunction due to the hose conduit being blocked altogether. Mitsubishi felt that the aforementioned scenario is most likely to occur with brake hoses subjected to a vacuum condition and the brake system of MMC heavy duty trucks are never subjected to a vacuum condition. MMC vehicles exported to the U.S. operate brake systems only at pressure conditions higher than atmosphere pressure.

Mitsubishi also believes that low adhesion causing separation of the hoses will not occur in the pressure application of this hose because the end fittings are composed of a sleeve crimping the hose from the outside of the hose, and a nipple or a joint inserted into the inner tube. The sleeve, nipple, and joint are independent of each other. Accordingly, any air which did pass between the inner tube and the nipple or the joint would immediately be discharged into the atmosphere through the gap between the sleeve and the nipple or the joint. In addition, both the intermediate rubber and the outer rubber have pin-pricked holes specially designed to allow air trapped in the plies to escape.

No comments were received on the petition.

A previous petition by Navistar International relating to adhesion failures in hose manufactured by Dana Weatherhead was granted on October 11, 1991 (56 FR 51440), on the basis of the following arguments:

1. The end use of the hoses was such that they were subject to pressure, not vacuum applications.

2. If the hoses were used in vacuum applications, their crimpled end fittings make it unlikely that air would become trapped between the layers of the hose.

3. If there is any permeation of air from the inner tube, the hoses are designed to release it through the pin-pricked outer layer.

The petitioner uses the MRCC hoses in pressure application. The outer layer of the hoses is pin-pricked. The hoses are equipped with crimped end fittings as were the Weatherhead hoses. Thus, the same factors exist in this case as in the previous petition which was granted.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: September 30, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-24088 Filed 10-2-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-31, Notice 2]

PACCAR Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by PACCAR Inc. (PACCAR), of Bellevue, Washington, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 302, "Flammability of Interior Materials." The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on June 26, 1992, and an opportunity afforded for comment (57 FR 28768).

Paragraph S4.3(a) of FMVSS No. 302 specifies that "When tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

From July 15, 1986, to November 5, 1991, PACCAR installed 3,430 mattresses (part no. K348-58) in the aerodyne sleepers of Kenworth truck models K100, W900, T600, and T800. The mattress is composed of a virgin foam core, outer cover or ticking, thread, and tape edging. When tested for compliance with FMVSS No. 302, all of these components passed with the exception of the tape edging.

PACCAR supported its petition for inconsequential noncompliance with the following:

The tape edging is certified by its manufacturer to meet all applicable fire retardancy standards pertaining to the bedding industry, including the cigarette burn test, which shows that a glowing ember will not ignite the tape or cause it to flame up.

The tape makes up only 1.9 percent of the mattress total construction and offers only a minimal surface area to carry a flame front.

PACCAR Inc. believes that due to normal wear and tear most of the non-compliant mattresses have been replaced.

In order to ignite the tape edging, an open flame would be required and since the rest of the mattress as well as the other construction of the cab and sleeper are FMVSS 302 compliant the presence of an open flame is highly unlikely.

PACCAR added that on current production and for aftermarket parts, the manufacturer of the tape is treating the tape edging to ensure compliance to the requirements of FMVSS 302.

No comments were received on the petition.

Because the petition had failed to state the margin by which its fabric exceeded the 4-inch per minute limit, NHTSA asked PACCAR for this information because of its relevance as to whether the noncompliance is inconsequential. PACCAR replied that the burn rate was 11.86 inches per minute.

Since this is an excessively large margin of failure, the agency asked for a drawing or photograph of the mattress so that it might have a better idea of the noncompliance involved. The noncompliant fabric had been described as "tape edging." The drawing of the mattress that was supplied shows the presence of the tape, and that it edges the entire rectangular perimeter of the mattress on both its top and bottom sides.

Turning to the three arguments that the petitioner advanced, the first of these is that the tape edging is certified by its manufacturer as complying with bed industry fire retardancy standards, including the cigarette burn test which shows that a glowing ember will not ignite the tape. The ability of the edging to pass the ember test offers reassurance of its ability to retard fire under non-crash circumstances from such sources as matches or cigarettes, even though it fails Standard No. 302.

The petitioner also argued that due to normal wear and tear "most of the non-compliant mattresses have been replaced." Given the fact that the noncompliant mattresses were installed as late as November 6, 1991, and that the petitioner offered no data in support of its belief, NHTSA has discounted this argument.

Finally, according to the petitioner, all other components used in the mattress comply with the standard, that is to say, 98.1% of the materials, and the 1.9% that does not comply, the tape edging, offers only a minimal surface to carry a flame front. Further, the petitioner stated that all other interior materials in the truck cabs in question to conform to FMVSS No. 302.

Accordingly, for these reasons, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: September 30, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-24069 Filed 10-2-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-22; No. 2]

Uniroyal Goodrich Tire Company; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Uniroyal Goodrich Tire Company (Uniroyal) of Greenville, SC to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for a noncompliance with 49 CFR 571.119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars." The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on May 29, 1992, and an opportunity afforded for comment (57 FR 22861).

Federal Motor Vehicle Safety Standard (FMVSS) No. 119 requires that the maximum load rating and corresponding inflation pressure of the tire shall be molded into the sidewall of the tire. Uniroyal determined that during the period of the 9th week through the 15th week of 1992, the Uniroyal Goodrich plant in Opelika, Alabama produced approximately 2,000 LT245/75R16 load range C, Uniroyal Laredo tires with an incorrect load range marking in one location on one of the sidewalls. The tires were marked as Load Range E. The load range marking appears twice on each sidewall, and is correctly marked "Load Range C" in three of the four locations. Of the 2,000 tires, Uniroyal recovered 210 and will correct the error. Approximately 1,700 of the tires were sold as original equipment on General Motors light trucks. The remaining tires were sold in the replacement market.

The correct maximum load and inflation pressure are labeled on the tires. Uniroyal does not believe that the labeling of an incorrect letter for the load range designation on one sidewall of these tires will impact motor vehicle safety, since the tires are also marked with the correct load and inflation information. In addition, Uniroyal tested two of the noncompliant tires to the strength and endurance requirements. Uniroyal feels the test results demonstrate that even in the unlikely event that the tires were run at load range E conditions instead of load range C conditions, they would not present a safety problem.

No comments were received on the petition.

As the petitioner points out, the correct maximum load and inflation pressures are labeled on both sides of the tires, and an incorrect load rating designation on one side of the tires ought not to impact safety. The agency also finds persuasive that the petitioner has tested a sample of tires to the strength and endurance requirements of Standard No. 119 at the higher load range and inflation pressure, and that the tires passed these requirements. NHTSA also notes that it has granted petitions in the past that are similar to the one under consideration.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on September 30, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-24070 Filed 10-2-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 28, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by

calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0070.
Form Number: FFIEC 004.
Type of Review: Extension.
Title: (MA)—Inside Transactions (12 CFR 31).
Description: 12 CFR part 31 and FFIEC 004 implement statutes that require national bank insiders to report indebtedness and national banks to disclose the indebtedness of executive officers and principal stockholders to the bank or its correspondent banks.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 37,500
Recordkeepers: 3,750.
Estimated Burden Hours Per Respondent: 2 hours.
Recordkeeper: 10 hours.
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 112,500 hours.
Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–24008 Filed 10–2–92; 8:45 am]

BILLING CODE 4810-33-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 28, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0157.
Form Number: None.
Type of Review: Reinstatement.
Title: Exportation of Used Self-Propelled Vehicles.
Description: This information collection requires the submission of documents verifying vehicle ownership of exporters for importation/exportation of vehicles in the United States.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 4,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 12,662 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW, Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–24009 Filed 10–2–92; 8:45 am]

BILLING CODE 4820-02-M

[Number: 102–01]

Delegation of Authority Concerning Personnel Management

Dated: September 25, 1992

SUBJECT: Delegation of Authority Concerning Personnel Management

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b), 5 U.S.C. 301 and 302, and by the regulations of the Office of Personnel Management, there is hereby delegated to the Assistant Secretary (Management) all the Secretary's personnel management authority (including pay administration), subject to the conditions and exceptions noted below.

1. Delegation

a. The Assistant Secretary (Management) is delegated authority to:

(1) Establish personnel management policy and procedures for the Department. Such policies and procedures shall be binding on all constituent elements of the Department, regardless of how and where personnel functions are assigned; whether or not personnel are paid from appropriated or non-appropriated funds; and whether or not personnel are in the competitive or excepted Civil Service or in the Senior Executive Service (SES);

(2) Evaluate the effectiveness of the Department's personnel management program at all organizational levels and require appropriate remedial action; and

(3) Take final personnel actions on matters pertaining to the employment, direction, and general administration of personnel.

b. With respect to positions in the Internal Revenue Service, the Commissioner of Internal Revenue is delegated the authority cited in paragraph 1.a.(3), subject to any limitations and requirements established by the Assistant Secretary (Management) under paragraphs 1.a.(1) and (2).

2. Reserved Authorities

a. The Secretary and Deputy Secretary shall retain the right to exercise any authority which is delegated under this Order, and to review any other official's exercise of an authority which is delegated under this Order.

b. The following authorities are not delegated and are reserved to the Secretary of the Treasury or the Deputy Secretary, as may be appropriate:

(1) The selection, appraisal of performance, and discipline of the heads of bureaus and the official(s) next in line to the head of the bureau; the Chief Financial Officer, the Chief Operations Officer, and the Chief Information Officer of the Internal Revenue Service; and those officials in the Department Offices who report directly to the Secretary, the Deputy Secretary or the Under Secretaries;

(2) The following functions relating to the SES:

(a) Determining the number of SES positions to be requested from the Office of Personnel Management and allocating any positions awarded among the bureaus, the Office of the Inspector General, and the Departmental Offices;

(b) Determining the disposition among the bureaus, the Office of Inspector General, and the Departmental Offices of any existing SES positions that become vacant;

(c) Making selections of individuals for initial appointments to SES positions in the Departmental Offices;

(d) Approving the initial setting and adjusting of pay levels for SES members in the Departmental Offices;

(e) Making selections of individuals entering, by any means, SES positions at

pay levels ES 5 or 6 throughout the Department;

(f) Setting the initial pay level and adjusting the pay levels for SES members in pay levels ES 5 or 6 throughout the Department;

(g) Making recommendations to the Office of Personnel Management for Presidential Rank Awards;

(h) Serving as the appointing authority for the purpose of issuing final written performance appraisal ratings and performance awards for SES members in the Departmental Offices; and

(3) Any other matter which, by law or regulation of outside agencies, requires the personal decision of the agency head.

c. For the purposes of paragraph 2.b., personnel in the Office of the General Counsel are part of the Legal Division and not the Departmental Offices, except that paragraph 2.b.(2)(c) and 2.b.(2)(d) shall apply to the Assistant General Counsels.

3. Inspector General

a. The Deputy Secretary is designated to take all final personnel actions and issue final appraisals of performance with respect to the principal inspection and audit positions in the bureaus where those positions are not within the Office of Inspector General. The Deputy Secretary shall consult with the Inspector General and the head of the bureau in such matters.

b. The authority of the Inspector General concerning personnel management is defined in Treasury Order (TO) 114–01, dated May 16, 1989, or any successor Order. The provisions of this TO 102–01 shall not be construed to interfere with that authority.

4. The Assistant Secretary (Management)

The Assistant Secretary (Management), at the direction of the Secretary or Deputy Secretary, may exercise any authority with respect to all personnel matters reserved to the Secretary or Deputy Secretary.

5. Redelegation

The Assistant Secretary (Management) and the Commissioner of Internal Revenue may redelegate such of their authority under this Order as they deem appropriate.

6. Cancellation

TO 102–01, "Delegation of Authority Concerning Personnel Management," dated December 5, 1985, is superseded.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 92–24011 Filed 10–02–92; 8:45 am]

BILLING CODE 4810–25–M

Office of the Secretary

[Department Circular—Public Dept Series—No. 32–92]

Treasury Notes of October 15, 1999, Series H–1999; (CUSIP No. 912827 H2 1)

Washington, September 30, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the nest business day..

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase of sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal

Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g. 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outline in section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting noncompetitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autochage agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors.

Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3 The Notes issued under his circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4 Attachment A and the offering announcement are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

TREASURY'S SINGLE BIDDER GUIDELINES FOR NONCOMPETITIVE BIDDING IN ALL TREASURY SECURITY AUCTIONS

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries*—A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches*—A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries*—A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships*—Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions*—(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219-3350).

Auction of $9,750 Million of 7-Year Notes

The Treasury will auction $9,750 million of 7-year notes to refund $6,190 million of 7-year notes maturing October 15, 1992, and to raise about $3,550 million new cash. The $6,190 million of maturing 7-year notes are those held by the public, including $359 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

The $9,750 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average price of accepted competitive tenders.

In addition to the public holdings, Federal Reserve Banks for their own accounts hold $97 million of the maturing securities that may be refunded by issuing additional amounts of the new notes at the average price of accepted competitive tenders.

Details about the new security are given in the attached highlights of the offering and in the official offering circular.

Attachment

HIGHLIGHTS OF TREASURY OFFERING TO THE PUBLIC OF 7-YEAR NOTES TO BE ISSUED OCTOBER 15, 1992

[September 30, 1992]

Amount Offered:	
To the public	$9,750 million.
Description of Security:	
Term and type of security.	7-year notes.
Series and CUSIP designation.	H-1999 (CUSIP No. 912827 H2 1).
Maturity date	October 15, 1999.
Interest rate	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction.
Premium or discount	To be determined after auction.
Interest payment dates	April 15 and October 15.

HIGHLIGHTS OF TREASURY OFFERING TO THE PUBLIC OF 7-YEAR NOTES TO BE ISSUED OCTOBER 15, 1992—Continued

[September 30, 1992]

Minimum denomination available.	$1,000.
Terms of Sale:	
Method of sale	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor.	None.
Key Dates:	
Receipt of tenders	Wednesday, October 7, 1992.
(a) noncompetitive	Prior to 12:00 noon, EDST.
(b) competitive	Prior to 1:00 p.m., EDST.
Settlement (final payment due from institutions):	
(a) funds immediately available to the Treasury.	Thursday, October 15, 1992.
(b) readily-collectible check.	Tuesday, October 13, 1992.

[FR Doc. 92-24185 Filed 10-1-92; 10:31 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

English Teaching Advisory Panel Meeting

ACTION: Notice of meeting.

SUMMARY: The United States Information Agency announces a meeting of the English Teaching Advisory Panel on Monday November 9, and Tuesday, November 10, 1992, in room 840 at USIA Headquarters, 301—Fourth Street, SW., Washington, DC. The agenda will include discussion of USIA's world-wide English teaching programming, especially as executed by the English Language Programs Division. The Panel will review and discuss the activities of the Program, Materials Development and Forum branches of the Division. The Special Assistance Program for Central and Eastern European Countries (SEED III) will also be discussed as well as the Agency's English teaching programs and the "Family Album USA" project. There will be a discussion of the FY-93 budget as well as an open discussion on topics of professional concern affecting the execution of Division responsibilities. The Panel will also discuss the role played in English teaching overseas by other US government agencies, in particular Peace Corps and USAID.

DATES: November 9 and 10, 1992.

ADDRESSES: 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Betty Taska at (202) 619-5889.

SUPPLEMENTARY INFORMATION: The November 9 meeting will be open to the general public. The November 10 meeting will be closed. In its final session on November 10, in preparing its report to the Director of USIA, the Panel will review information of a proprietary nature, including technical information and financial data, such as salaries. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act. Copies of the minutes can be obtained by calling (202) 619-5889.

Dated: September 29, 1992.

Betty Taska,

Chief, English Language Programs Division.

[FR Doc. 92-24033 Filed 10-2-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by November 4, 1992.

Dated: September 28, 1992.

By direction of the Secretary:

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information, Resources Policies and Oversight.

Revision

1. Supplemental Disability Report, VA Form 29-30a.
2. The form letter is used by the insured to supply information required to process a claim for disability benefits.
3. Individuals or households.
4. 548 hours.
5. 5 minutes.
6. On occasion.
7. 6,570 respondents.

[FR Doc. 92-24016 Filed 10-2-92; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by November 4, 1992.

Dated: September 28, 1992.

By direction of the Secretary:

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information, Resources Policies and Oversight.

Revision

1. Request for Approval of School Attendance, VA Forms 21–674 and 21–674c.

2. These forms are used to gather the necessary information to determine continued entitlement to benefits for a child between the ages 18 and 23 who is attending school.

3. Individuals or households.

4. 34,500 hours.

5. 15 minutes.

6. On occasion.

7. 138,000 respondents.

[FR Doc. 92–24017 Filed 10–2–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by November 4, 1992.

Dated: September 28, 1992.

By direction of the Secretary:

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Reinstatement

1. Quarterly Report of State Approving Agency Activities, VA Form 22–7398.

2. The form will be used by State Approving Agencies to report work performed pursuant to the provisions of the yearly reimbursement contracts.

3. State or local governments.

4. 248 hours.

5. 1 hour.

6. Quarterly.

7. 62 Respondents.

[FR Doc. 92–24018 Filed 10–2–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by November 4, 1992.

Dated: September 28, 1992.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information, Resources Policies and Oversight.

Extension

1. Certification of Delivery of Advance Payment and Enrollment, VA Form 22–1999V.

2. This form is used by educatfonal institutions' certifying officials to certify delivery of advance payment and to report any changes in enrollment status. The information is used by VA to adjust benefits and, if necessary, to remove a bar to the future payment of benefits.

3. State or local governments; Non-profit institutions; Small businesses or organizations.

4. 3,261 hours.

5. 5 minutes.

6. On occasion.

7. 7,168 respondents.

[FR Doc. 92–24019 Filed 10–2–92; 8:45 am]

BILLING CODE 8320–01–M

Cooperative Studies Evaluation Committee; Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) as amended, by section 5 (c) of Public Law 94–409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Inn at Harvard, 1201 Massachusetts Avenue, Cambridge, MA on October 26 and 27, 1992. The session on October 26 is scheduled to begin at 7:30 a.m. and end at 5:30 p.m. and on October 27 from 7:30 a.m. to 1 p.m. The meeting will be for the purpose of reviewing five new clinical trials, one on type II diabetes; one on colonic adenomas; one on chronic dialysis; one on unstable angina; one on liver fibrosis and the progress of one on-going study on status epilepticus.

The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 a.m. to 8 a.m. on both days to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Department of

Veterans Affairs, Washington, DC (202–535–7154), prior to October 16, 1992.

The meeting will be closed from 8 a.m. to 5:30 p.m. on October 26, 1992 and from 8 a.m. to 1 p.m. on October 27, 1992, for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92–463, as amended by section 5(c) of Public Law 94–409, and 5 U.S.C. 552b (c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: September 1, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–24020 Filed 10–2–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 193
Monday, October 5, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:05 a.m. on Wednesday, September 30, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Application of Bank of Hawaii, Honolulu, Hawaii, for consent to acquire all the insured and outstanding stock of BNE Airfleets Corporation, Barbodos, West Indies.

Request for review of a previous denial of a bank's request for relief from reimbursement under the Truth in Lending Simplification and Reform Act.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Ms. Judith A. Walter, acting in the place and stead of Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the pubic interest did not require consideration of the matters in a meeting open to public observation; and that matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: September 30, 1992.

Federal Deposit Insurance Corporation.

[FR Doc. 92-24173 Filed 10-1-92; 10:42 am]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 5, 12, 19, and 26, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 5

Wednesday, October 7

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 12—Tentative

Wednesday, October 14

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 19—Tentative

Wednesday, October 21

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 26—Tentative

Tuesday, October 27

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no items has as yet been identified as requiring any Commission vote on this date.

To verify the status of meeting call (recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: September 30, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-24177 Filed 10-1-92; 11:03 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 57, No. 193
Monday, October 5, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 90-12; FAR Case 92-18]

Federal Acquisition Regulation; Cost Accounting Standards

Correction

In rule document 92-20667 beginning on page 39586 in the issue of Monday, August 31, 1992, make the following correction:

52.230-2 [Corrected]

1. On page 39592, in the third column, in section 52.230-2, in the clause, in paragraph (b), in the second line, "compiled" should read "complied".

2. In a correction to this document published on page 45422 in the issue of Thursday, October 1, 1992, in the second column, in the third line, "August 31" should read "September 21".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AD15

Federal Old-Age, Survivors and Disability Insurance Benefits; Revision of Appendices, Tables, and Lists

Correction

In rule document 92-23101 beginning on page 44095 in the issue of Thursday, September 24, 1992, make the following corrections:

Appendix II of Subpart C of Part 404 [Corrected]

1. On page 44096, in the third column, in appendix II of subpart C of part 404, in the table, for the year 1988, in the second column, "1,601" should read "1,603".

Appendix V of Subpart C of Part 404 [Corrected]

2. On page 44097:

a. In the first column, in appendix V of subpart C of part 404, in the table for December 1987, in the entry for 29, in the second column, "573.00" should read "573.30".

b. In the second column, in appendix V of subpart C of part 404, in the table for December 1991, in the entry for 13, in the first column, "71.600" should read "71.60".

Appendix VII of Subpart C of Part 404 [Corrected]

3. On page 44097, in the third column, in appendix VII of subpart C of part 404, for the year 1992, the amount reading "41.400" should read "41,400".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-02-4212-13; N-55815]

Realty Actions; Sales, Leases, etc.: Nevada

Correction

In notice document 92-18318 beginning on page 34302 in the issue of Tuesday, August 3, 1992, make the following correction:

On the same page, in the third column, in the land description, under T. 45 N., 61 E., in Sec. 25, in the first line, "E½SE¼SE¼SE¼," should read "E½SE¼SW¼SE¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Valdosta Regional Airport, Valdosta, GA

Correction

In notice document 92-22990 beginning on page 43771 in the issue of Tuesday, September 22, 1992, make the following correction:

1. On Page 43772, in the first column, in the second paragraph, in the third line, "$3,000" should read "$3.00".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8418]

RIN 1545-AJ67; 1545-AO14; 1545-AO33; 1545-AQ19; 1545-AO19; 1545-AO15

Arbitrage Restrictions on Tax-exempt Bonds

Correction

In rule document 92-11321 beginning on page 20971 in the issue of Monday, May 18, 1992, make the following corrections:

§ 1.148-0 [Corrected]

1. On page 20978, in the third column, in § 1.148-0(b)(4), in the fourth line, "ST(c)(2)" should read "5T(c)(2)".

§ 1.148-1 [Corrected]

2. On page 20982, in the third column, in § 1.148-1(b)(ii), in the ninth line "§ l.148-2" should read "§ 1.148-2".

§ 1.148-2 [Corrected]

3. On page 20984, in the second column, in § 1.148-2(b)(2)(iii), in the 12th and 13th lines "*present value*" and "*fair market value*" should read in quotations as follows: "present value" and "fair market".

4. On page 20986, in the first column, in 1.148-2(c), *Example 3.*, paragraph (iii), the second line should read as follows: "Total of previous rebate payments.....$143,631.67". Also, in the paragraph (iv), in the fourth line, "(1/01/01" should read "(1/01/01)".

§ 1.148–3 [Corrected]

5. On page 20997, in the first column, in the third column of the first table, in the second from the last line, the figure "2,007,882.671" should read "2,007,882.67".

6. On page 21005, in the second column, in the first column of the table, in the last line, "(9/01/93)" should read "(3/01/91)". Also, in the third column, in the first column of the table, in the last line, "(3/01/91)" should read "(9/01/93)".

§ 1.148–6 [Corrected]

7. On page 21013, in the first column, in § 1.148–6(b)(5)(ii), in the eighth line, "*transfer*" should read in quotations as follows: "transfer".

8. On page 21019, in the first column, in § 1.148–6(m)(4), in the fourth line, "dateon" should read "date on".

§ 1.148–11 [Corrected]

9. On page 21025, in the second column, the section should read as set forth above.

10. On page 21029, in the third column, in § 1.148–11(j)(3), in the second line, "use" should read "issue".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8426]

RIN 1545–AB48

Certain Returned Magazines, Paperbacks or Records

Correction

In rule document 92–20087 beginning on page 38595 in the issue of Wednesday, August 26, 1992, make the following corrections:

§ 1.458–1 [Corrected]

1. On page 38597, in the first column, in § 1.458–1(b)(5), in the first line, "(1)" should read "(i)".

2. On page 38598, in the third column, under § 1.458–1(e)(4)(i), in the fourth line from the end, after "($8)," "the " should read "is".

3. On the same page, in the same column, in § 1.458–1(e)(4)(iii), in the eighth line, "for gross" should read "from gross".

4. On the same page, under § 1.458–1(e)(4)(v), in the table, in the 1980 column "(3)" and "$(3)" should read "(3)" and "$(2)" respectively, and in the 1981 column "(3)" should read "(2)".

BILLING CODE 1505–01–D

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October 5, 1992

Part II

Postal Service

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 Rate and Letter and Flat-Size ZIP+4 Barcoded Rate Mailings; Final Rule

POSTAL SERVICE

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 Rate and Letter and Flat-Size ZIP+4 Barcoded Rate Mailings

AGENCY: Postal Service.

ACTION: Final rule with requests for comments.

SUMMARY: This rule adopts Domestic Mail Manual (DMM) regulations that add revised options in DMM Chapter 5 for the preparation of all letter-size First-, second-, and third-class ZIP+4 rate and ZIP+4 Barcoded rate mailings. Following a transition period, this rule will require the preparation of all such mailings in accordance with one of the options in DMM Chapter 5, and will eliminate the provisions on preparation of letter-size pieces to qualify for ZIP+4 rates and ZIP+4 Barcoded rates in DMM Chapters 3, 4, and 6. These revised options require all letter-size mailings to be prepared in trays, provide for preparation of AADC trays in package-based mailings, and require 100 percent ZIP+4 Barcoded or delivery point barcoded mail in the portion of the mailing sorted to 5-digit ZIP Codes. This rule also moves to Chapter 5 the general eligibility and postage payment requirements for flat-size ZIP+4 Barcoded rate mailings that now appear in Chapters 3, 4, and 6. Consequently, this rule will consolidate all requirements for automation-based rates in one location in the DMM. This final rule deals primarily with presortation and documentation requirements and does not affect current mailpiece preparation rules.

Although these regulations are to take effect on October 5, 1992, further comments on these rules are solicited, and will be considered and acted upon as appropriate.

DATES: *Effective Date:* October 5, 1992. See "**SUPPLEMENTARY INFORMATION**" for further information about compliance dates. *Comment Date:* Written comments on these regulations should be received on or before December 4, 1992.

ADDRESSES: All written comments should be mailed or delivered to the Vice President, Customer Service Support, U.S. Postal Service, room 5610, 475 L'Enfant Plaza, SW., Washington, DC 20260–5903. The comments should be sent to the attention of Lynn Martin. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn M. Martin, (202) 268–5176.

SUPPLEMENTARY INFORMATION:

Original Proposal

On May 7, 1992, the Postal Service published a proposed rule in the **Federal Register** (57 FR 19698–19747) to make the presort and corresponding documentation options in DMM Chapter 5 the only presort options available for preparation of letter-size mail qualifying for ZIP+4 rates and ZIP+4 Barcoded rates. It also proposed that December 20, 1992, be the date that DMM Chapter 5 preparation would be required. This proposed rule also made organizational changes to move all requirements for letter-size automation mailings, including eligibility and postage payment requirements, to DMM Chapter 5.

The Postal Service initiated these proposed revisions to simplify the preparation requirements for automation-based rates, and to make the preparation requirements more compatible with customer mailing needs and Postal Service operating needs. Currently, the DMM contains separate preparation requirements for each class of letter-size automation rate mail: In Chapter 3 for First-Class Mail, in Chapter 4 for second-class mail, and in Chapter 6 for third-class mail. In each of these chapters there are at least two different ways to prepare ZIP+4 rate mail, and at least two different ways to prepare letter-size ZIP+4 Barcoded rate mail. The presortation and preparation requirements for letter-size automation rate mailings in each of these chapters were originally modeled after the non-automation presort requirements previously established for the applicable class of mail. This has resulted in different preparation requirements for automation-based rates among these classes of mail, and in some instances, requirements that do not produce the best mail for processing through the Postal Service's automated equipment.

The proposed revisions set forth preparation requirements for letter-size automation-based rates that are essentially the same for First-, second-, and third-class mailings, consolidated all the requirements for automation-based rates in one chapter of the DMM (Chapter 5), and required traying and other preparation needed to reflect current Postal Service operational needs.

On the basis of the comments received and further consideration of the proposals by the Postal Service, the Postal Service has decided to adopt the proposed regulations for letter-size automation rate mailings, with the revisions detailed below. In addition, the regulations governing ZIP+4 Barcoded rates for automation-compatible flat-size mailings are relocated to Chapter 5, consistent with the Postal Service's decision to reorganize the DMM to put all eligibility and postage payment requirements for automation compatible letter-size mailings in Chapter 5.

The reader should note that the Postal Service has previously announced that it plans to require a delivery point barcode (DPBC) as a condition of eligibility for all barcode discounts for letter-size mail, effective March 21, 1993—the date on which many of the requirements described in this rule will take effect. See DMM, issue 42, 531.112 (March 15, 1992). Since the implementation of that change is subject to further regulatory action, this rule is limited to "ZIP+4" barcoded rates for letter-size mail. However, it is anticipated that the presort and documentation changes described here would also apply to any barcoded rates for which a delivery point barcode would be required.

Compliance Dates

Mailers may use the new preparation options established by this final rule in DMM 562.1, 563, 564.1, 565, 566, and 569 to prepare letter-size mailings for ZIP+4 rates or for ZIP+4 Barcoded rates on October 5, 1992. On March 21, 1993, these preparation options will be the only options available for preparation of letter-size ZIP+4 and letter-size ZIP+4 Barcoded rate mailings. Until that time, the pre-existing preparation options under DMM Chapter 5—DMM 562.2, 564.2 (formerly 563.2), and 567 (formerly 564)—may continue to be used. Also, until March 21, 1993, the preparation options in DMM Chapters 3, 4 and 6 for automation-based mailings may continue to be used.

The additional and clarifying information added to pre-existing tray-based ZIP+4, tray-based ZIP+4 Barcoded, and package-based ZIP+4 Barcoded preparation options (DMM 562.2, 564.2, and 567) contained in this final rule may be used beginning October 5, 1992; conformance will be mandatory on December 20, 1992, with issue 45 of the DMM. These additions and clarifications:

(1) Provide traying instructions for military mail not previously covered by DMM Chapter 5.

(2) Specifically allow additional sortation of residual mail in accordance with Management Instruction DM–140–91–01 which allows local authorization

of multiple acceptance times for First-Class Mail.

(3) Allow use of the new abbreviated documentation and mailing job documentation provisions set forth in DMM 568 of this final rule. (The summary listing and mailing list or cycle provisions currently contained in DMM Chapters 3 and 6 may still be used by First- and third-class mailers, including those preparing mail under pre-existing DMM Chapter 5 requirements (DMM 562.2, 564.2, and 567, until March 21, 1993).

(4) Clarify the types of additional tray separations that are required for residual mail in certain kinds of mailings under the physical separation preparation option; and clarify the additional information that is necessary in the documentation for certain kinds of mailings to account accurately for postage owed for all rate categories in those mailings.

(5) Permit mailers to prepare a less than full SCF tray to the SCF serving the post office where the mailing is entered under the pre-existing tray-based ZIP+4 Barcoded rate regulations (DMM 564.2).

(6) Clarify that 5-digit trays are optional within tray-based mailings, and 5-digit packages are optional within package-based mailings at ZIP+4 Barcoded rates. Further clarify that mailers need not prepare all possible 5-digit trays within tray-based mailings nor all possible 5-digit packages within package-based mailings. (See the note under DMM 564.232b(1) and see DMM 567.13.)

(7) Specifically state that when "exact postage affixed" or "lowest rate in the mailing affixed" is used for First-Class mailings, postage for any additional ounces must be affixed to each piece (see DMM 580). Clarify that when postcard-rate and letter-rate pieces are contained in the same mailing, the postcard-rate pieces must be metered at the postcard rate and letter-rate pieces must be metered at the letter rate.

The provisions in the pre-existing tray-based preparation options (DMM 562.2 and 564.2) allowing use of 1-foot trays only through December 20, 1992, remain in effect. Beginning December 21, 1992, mailings prepared under any DMM Chapter 5 preparation option in 560 for letter-size mail must be prepared in 2-foot trays. The Postal Service has discontinued procurement of 1-foot trays, and therefore will not permit use of these trays for automation rate mail with DMM Chapter 5 preparation past the December 20, 1992, date previously set.

The provisions in the pre-existing tray-based preparation option for ZIP+4 Barcoded rate mail (DMM 564.2—formerly DMM 563) requiring that all pieces in 5-digit trays be 100% ZIP+4 barcoded or delivery point barcoded on December 21, 1992, are eliminated. Accordingly, mailers using DMM 564.2 preparation, or the barcoded mail preparation options in DMM Chapters 3, 4, and 6, will not be required to prepare the 5–digit portion of their mailings so that it contains 100 percent ZIP+4 barcoded or delivery point barcoded pieces until March 21, 1993, when the new preparation options under DMM Chapter 5 become mandatory. (Mailers using preparations options under DMM 564.1, 565, 566, or 567 must currently meet the 100 percent ZIP+4 barcoded or delivery point barcoded requirement.)

Evaluation of Comments Received

The Postal Service received 9 comments on the proposed rule, including 3 from mailing industry trade associations, 2 from mailing related businesses, and 4 from companies and corporations. The topics covered in those comments are discussed below.

Consolidation of All Automation Regulations in Chapter 5

Two commenters expressed support for the Postal Service's efforts to consolidate all of the requirements for automation based rates within Chapter 5 of the DMM. One of these commenters indicated this will make it easier to use the DMM.

Effective Dates

Two comments were received concerning the proposed December 20, 1992, effective date for required use of one of the preparation options in DMM Chapter 5 to mail at ZIP+4 or ZIP+4 Barcoded rates. One commenter, citing the complexity of the proposed rule, stated that the Postal Service should delay the December 20, 1992, implementation date, unless the industry has by then embraced the new Chapter 5 preparation options.

The other commenter stated that his company schedules the printing and preparation of renewal notices three months in advance of the renewal month. The commenter stated that the proposed effective date of December 20, 1992, would require significant modifications to the company's automated program that generates mailing reports before the end of October 1992, and that the major impact on its operations would be the requirement for 100 percent ZIP+4 barcoded or delivery point barcoded pieces in the 5-digit portion of their mailings. This commenter requested a one-year extension of the effective date for mandatory use of Chapter 5.

In order to give mailers sufficient time to adapt to the new requirements, the Postal Service has decided to delay the required use of Chapter 5 preparation for automation-based mailings until March 21, 1993. This lead time of nearly 6 months should give mailers who have not already converted to Chapter 5 preparation sufficient time to do so. For mailers preparing tray-based ZIP+4 Barcoded rate mailings under DMM 562.2, the effective date for 100% ZIP+4 barcoded or delivery point barcoded pieces within the portion of the mailing sorted to 5-digits will also be moved to March 21, 1993. This will allow mailers currently preparing mail under tray-based regulations to make only one software change between now and March 21, 1993.

The Postal Service does not believe an extension past March 21, 1993, is warranted. By March 1993, the Postal Service will have significant deployment of barcode sorters in associate offices and stations and branches in addition to General Mail Facilities (GMFs). This deployment will reduce or eliminate the need for manual distribution at these locations, and will result in the Postal Service having limited capacity to process nonbarcoded mail manually in associate offices and stations and branches. Accordingly, mailpieces that do not bear a ZIP+4 barcode or delivery point barcode may have to be sent back to the GMF for processing. This additional transportation and distribution will negatively impact service and increase the Postal Service's operational costs. Therefore, although the Postal Service recognizes that requiring 100 percent ZIP+4 or delivery point barcoding of mailpieces in the 5-digit portion of a ZIP+4 barcoded mailing will cause mailers to incur some up-front operational expenses, and that it may have some effect on rate eligibility, the Postal Service does not believe it would be operationally sound to continue to accept non-ZIP+4 barcoded pieces in the 5-digit portion of ZIP+4 barcoded mailings after March 21.

Preparation of AADC Trays and Other Presort Changes

Although no formal comments were received on this subject in response to the May 7, 1992, proposed rule, the Postal Service has recently received general comments, that indicate concern over the number of trays needed to prepare letter-size mailings under Chapter 5. These mailers have indicated that the less-than-full tray issue also affects a second- or third-class mailer's ability to take advantage of drop

shipment discount rates since it causes their trailer density to be too low to justify drop shipment. Some mailers have requested permission to place mail prepared in 5-digit and 3-digit packages in Automated Area Distribution Center (AADC) trays and have such packages qualify for ZIP+4 Barcoded rates. These mailers have indicated that when the SCF tray is the last tray level in the mailing for qualifying pieces, the number of trays needed to prepare a mailing increases dramatically, and that the majority of SCF trays contain few pieces. One mailer stated that the majority of the SCF trays they prepare under DMM Chapter 5 package-based regulations are only ⅙ full.

In view of these comments, and the impact of large numbers of less-than-full trays on postal operations, the Postal Service has revised Chapter 5 preparation requirements to minimize the number of less than full trays in a mailing. For package-based ZIP+4 and ZIP+4 Barcoded rate mailings prepared under DMM 563, 565, and 566, SCF trays are to be prepared only when full and a required AADC tray has been added to the preparation requirements. (DMM 563 is a new two-tier package-based preparation option for ZIP+4 rate mailings.) 5-digit and 3-digit packages in AADC trays will qualify for the applicable 3/5 ZIP+4 presort rates under DMM 563 preparation. Under DMM 565 and DMM 566 preparation, 5-digit packages in AADC trays can qualify for the 5-digit ZIP+4 Barcoded rates and 3-digit packages in AADC trays can qualify for the 3-digit ZIP+4 barcoded rates. The Postal Service is currently in the process of revising the AADC list in DMM exhibit 122.63t to facilitate this sortation. Revisions to this list will be published shortly in the Postal Bulletin.

To further reduce the number of trays mailers will need to prepare a ZIP+4 Barcode rate mailing under DMM Chapter 5, the final rule introduces in DMM 565 a new two-tier package-based option for ZIP+4 Barcoded rate mailings that will allow mailers to combine 5-digit and 3-digit packages in the same trays. (As noted above this new option also requires preparation of AADC trays.)

Since packages in AADC trays will be distributed manually, packaging of all 5-digit and 3-digit groups in AADC trays will be required under the new package-based preparation options. Separator cards will not be permitted in AADC trays.

The AADC tray level has not been added to the tray-based ZIP+4 Barcoded rate preparation requirements. Since tray-based ZIP+4 Barcoded rate preparation has always required full SCF trays, use of this preparation option does not result in large quantities of less-than-full trays. Furthermore, since mail prepared in AADC trays must be packaged to facilitate distribution of the groups of pieces in these trays, it is not compatible with the tray-based mailing option in which packages generally are not prepared.

The AADC tray level has also not been added to the tray-based ZIP+4 option in 562 because it would require packaging. This would not be compatible with the concept of tray-based mailings, as discussed above. To eliminate the incidence of large numbers of less-than-full SCF trays, which are currently permitted in tray-based ZIP+4 rate mailings, a new DMM 562.1 tray-based preparation option is added that requires SCF trays for all classes to be full, and requires pieces remaining after preparation of full SCF trays to be prepared in residual trays labeled to the origin SCF. This new option will supersede the option in 562.2 on March 21, 1993. Under the new option pieces in full SCF trays will receive 3/5-digit presort ZIP+4 rates.

Pieces in residual trays can qualify for First-Class single-piece rates or second- or third-class basic rates. Within second- and third-class mailings, this could result in a larger number of pieces qualifying for 3/5-digit presort ZIP+4 rates since pieces in SCF trays now qualify only for basic rates. In First-Class mailings, the new preparation option could result in fewer pieces receiving a 3/5-digit ZIP+4 Presort rate since the First-Class 3/5-digit ZIP+4 Presort rates apply to groups of 50 or more pieces to a 3-digit area within less-than-full SCF trays. To avoid a negative impact on First-Class mailers the Postal Service is introducing a new package-based ZIP+4 presort rate preparation option in DMM 563, under which any group of 10 or more pieces to a 5-digit ZIP Code area or 50 or more pieces to a 3-digit ZIP Code area may qualify for the ZIP+4 Presort rate when properly packaged and trayed.

The new DMM 562.1 option for tray-based ZIP+4 mailings will simplify the regulations by making tray-based ZIP+4 presort requirements for First-Class the same as those for second- and third-class mailings (with the exception of the required groups of 50 or more pieces per 3-digit area in 3-digit and SCF trays for First-Class Mail and the addition of optional city trays for second-class mail). It will also simplify the regulations by making the requirements for ZIP+4 tray-based mailings basically the same as those for tray-based letter-size ZIP+4 Barcoded rate mailings. This in turn will make it easier for mailers to make a transition from ZIP+4 rate mailings to ZIP+4 Barcoded rate mailings.

The existing three-tier packaged based option will remain as an option, with the aforementioned new requirement for preparation of an AADC tray under new DMM 566.

In order to allow mailers already preparing mail under Chapter 5 sufficient time to make the software and operational changes necessary to add the AADC sortation to their mailing procedures, and for other reasons outlined below, the effective date for required use of the revised Chapter 5 sortations is extended to March 21, 1993.

Traying of Letter-Size Mail Exceeding Dimensions of Trays

Four comments were received concerning the Chapter 5 requirement to prepare all automation-based letter-size mailings in trays, even those containing mailpieces that exceed the dimensions of the standard letter trays. Three of these commenters stated that requiring mail that is more than 4½ inches high to be laid in the tray at an angle is a cumbersome and unsatisfactory procedure. Two of these commenters indicated that it is not possible to write software that will accurately predict when pieces to a destination will fill a tray if the angle at which pieces are placed in the tray must be considered, particularly when pieces of various sizes are combined in the same mailing. One commenter indicated that when mail is placed sideways in trays and tilted backwards to fit in the tray, it will take at least twice as many trays to prepare a mailing as it would if there were a deeper tray in which to prepare these pieces.

One commenter stated that Chapter 5 tray preparation should be mandatory only for those pieces which fit properly in the current 2-foot tray. Another commenter stated that Chapter 5 traying regulations should become mandatory only when trays large enough to accommodate letters measuring up to 6⅛ inches high by 11 inches long are available for use by mailers. Another commenter stated that if it is not possible for the Postal Service to provide adequate stocks of trays that will accommodate larger letters, then Chapter 5 should be amended to permit sacking of such larger letter-size pieces.

In response to these concerns, the Postal Service is planning to purchase larger trays (extended trays) which measure 6⅛ inches high by 11½ inches wide by 2 feet in length (measured from the bottom interior of the tray). It is

anticipated that these trays will be available for use by March, 1993. Therefore, the Postal Service is delaying required use of Chapter 5 preparation options until March 21, 1993. This will allow mailers of larger letter-size pieces to continue to prepare barcoded rate mail in sacks under the provisions of Chapter 4 or 6 until the extended trays are available for their use.

Mailers may also follow the current provisions for placing larger letter-size pieces in standard trays (new DMM section 561.23 and 561.24) until the extended trays are available. If it is subsequently determined that the extended trays will not be available for mailer use March 21, 1993, Chapter 5 will be amended to permit on an interim basis sacking of pieces that exceed the dimensions of standard trays under Chapter 5 procedures. More details on such sacking requirements will be provided if they become necessary. Once the extended MM trays are available, mailers will be required to use them for larger pieces and the applicable provisions in DMM 561.23 and 561.244 pertaining to placement of oversized pieces in standard trays will be deleted (together with any interim sacking provisions that may have been added).

Packaging of Postcard-Size Mailpieces

One commenter indicated that the Postal Service should develop a separate tray for postcard-size mailpieces, rather than require mailers to package postcard-size pieces in standard 2-foot trays.

The Postal Service does not plan to procure a separate tray for use with smaller postcard-size pieces. Maintaining an inventory of several different tray sizes imposes a significant burden on the Postal Service. The Postal Service already plans to add the extended tray to its inventory, and cannot, at the present time also afford to purchase and maintain an inventory of smaller trays. Accordingly, as explained in the proposed rule, the packaging of postcard-size pieces in standard 2-foot trays will be required to preserve the orientation of the pieces in the tray under the new presort options provided in this final rule (562.1, 563, 564.1, 565, and 566). However, this requirement will not apply where postcard-size pieces are intermingled with large pieces. Mailers will be required to use one of these new options beginning March 21, 1993.

Disparate Preparation Requirements for Different Elements of a Letter-Size Mailstream—Carrier Route, Presort, and Residual Mail

Current regulations permit traying of carrier route mailings only for mail originating and destinating within an SCF area, and only with the permission of the local postmaster. Three commenters stated that the final rule should permit mailers to tray carrier route mailings as well as the ZIP+4 or ZIP+4 barcoded mailings prepared as part of the same mailing job. Two of these commenters stated that requiring the carrier route portion of the mailstream to be sacked and the automation rate portion to be trayed creates added expense for mailers that could be avoided by allowing traying of carrier-route pieces.

One commenter pointed out that even if the Postal Service allows carrier route mail to be trayed, there are other features of Chapter 5 regulations that hinder preparation of carrier route and automation rate mail as a single mailstream. For example, plastic strapping of packages is permitted for securing carrier route packages, but only rubber bands are permitted for automation rate packages. These commenters stated that the Postal Service should consider permitting plastic strapping under Chapter 5, or permit separator cards for carrier route. They stated that requiring rubber bands for both carrier route and automation mail would result in slower machine speeds and make strapping machines obsolete for too many mailers.

One commenter stated that the software used by his company will not allow the portion of his mailing list sorted to carrier route to be broken out and run as a separate stream so that all carrier route mail for a job could be processed differently than the automation-compatible portion that must be presented in trays. Furthermore, the software allows traying of carrier route mail only for mail within an SCF area, as this is all the DMM currently permits.

One commenter recommended that mailers be allowed to combine carrier route and automation mailings on the same mailing statement.

At the present time the Postal Service will not extend traying of carrier route mail beyond the current provisions for mail both entered and destinating within the same SCF area. When the required use of trays for all automation rate mail takes effect March 21, 1993, the number of trays needed by mailers will greatly increase (due to their moving from sacked mailings in Chapters 3, 4, and 6). The Postal Service needs to make sure that enough trays are available for the automation rate portion of mailer mailstreams before extending use of trays to non-automation rate mailings. In addition, widespread use of trays for carrier route mail would greatly increase the number of trays that postal personnel must inspect to determine whether their contents are a candidate for processing on OCRs, and it would also increase the chance that carrier route mail would be run on OCRs, which would negate the value of the carrier route sortation. This could increase the cost to the Postal Service of handling carrier route mail, which is paid at the lowest available rates. The issue of traying carrier route mail will be reconsidered at a later date once we learn the number of trays required for automation rate mailings, and after experience with handling automation rate second- and third-class mailings in trays has been gained. Since carrier route mail and automation rate mail must be prepared as two separate mailings, separate mailing statements will continue to be required for the carrier route mailings and for ZIP+4 rate and ZIP+4 Barcoded rate mailings.

Requirement To Use Rubber Bands for Packaging

The final rule will permit the use of plastic strapping or string as a method of preparing packages in automated rate mailings under Chapter 5. Based on the comments discussed above, and the large number of comments received on this issue since the requirement to use rubber bands was originally proposed, the Postal Service recognizes that requiring use of rubber bands for packaging automated mail is a hardship to those second- and third-class mailers currently deploying automated equipment that prepares packages with plastic strapping.

Methods of Transporting Trays—Use of Pallets or Other Equipment

One commenter asked if the mailer will be required to unload bedloaded trays. Two commenters requested that regulations for trays on pallets be available before second- and third-class mailers are required to prepare automation-rate mail in trays. One of these commenters indicated, however, that trayed mail on pallets requires more pallets than are used with sacked mail, and that this situation has an adverse impact on drop shipment programs. The commenter stated that since the savings on drop shipment apply to the total mailstream (and not just the automation-rate portion that comprises only about

35% of the mailstream), he will choose to forego automation-based discounts in favor of sacking the entire mailstream and taking advantage of drop shipment discounts for the entire mailstream. This commenter further suggested that the Postal Service revise the 84-inch height limit on double stacking of pallets to coincide with the commercial trucking practice of 96 inches to allow some of the "lost" volume from mail in trays to be made up.

One mailer commented that the Postal Service has in the past suggested that for a mailer to be eligible to use trays the mailer would also have to enter the Postal Service's palletization program officially. The mailer expressed concern about this policy because they do not have sufficient volumes to make up full pallets to finer sorts, such as SCFs.

Mailers who bedload trays will be required to unload the trays at the time of acceptance only when claimed at a second- or third-class destination entry rate under 624.717d(2) (DMM Issue 44). The Postal Service expects to have procedures in place before the end of calendar year 1992 which will allow mailers to place trays of automation rate mail on pallets. It is likely that preparation of trays on pallets will require sortation of trays to pallet destinations. However, palletization of trays will be a voluntary option for mailers, not a requirement. The height restrictions for pallets will also be examined in the near future for possible changes. Mailers will have to assess the financial impact on their operations of the preparation requirements for various rate options when determining whether to prepare mail for automation discounts.

Requirement To Prepare First-Class Postcard-Rate Mail and First-Class Letter-Rate Mail in Separate Mailings

One commenter disagreed with the statement in the proposed rule that combining postcard-rate and letter-rate First-Class Mail in the same mailing would require extremely complex documentation regulations. The commenter stated that as long as the discount rates for both letter-size and postcards are the same there should not be any complexity.

Another commenter indicated his company has been combining letter-rate and postcard-rate First-Class Mail for some time and is able to provide the necessary documentation. He requested that mailers be allowed to continue preparation in this manner stating that this would allow mailers to obtain greater discounts and reduce the Postal Service's handling costs by reducing the number of trays, pallets and mailing statements.

Although the difference between the Presorted First-Class rate and the barcoded rates is the same for cards and letters, the difference between the ZIP+4 or ZIP+4 barcoded rates and the single piece rates that apply to residual pieces in such mailings is not the same. For example the difference between the single piece rate for letters ($0.29) and the 5-digit ZIP+4 Barcoded rate ($0.233) is $0.057; whereas the difference between the single piece rate for cards ($0.19) and the 5-digit ZIP+4 Barcoded rate ($0.155) is $0.035. Therefore, for residual mail there is an additional rate differential between qualifying pieces and single piece rate pieces that must be accounted for when postage is metered at the lowest rate in the mailing.

Since some mailers state they can use documentation procedures to account accurately for additional postage under this circumstance, the final regulations will permit card rate and letter rate mailpieces to be presorted together in the same mailing provided additional documentation is provided. The final regulations set forth the additional documentation requirements, both in the ZIP Code listing and summary portions, and further require that metered mailings have cards metered at the card rate and letters metered at the letter rate (including any additional postage for additional ounces). In addition, mailers using the physical separation option to prepare residual mail must prepare separate trays for postcard-rate pieces.

Ability of Postal System To Handle Large Volumes of Trays for Second- and Third-Class Mail

One mailer stated that the postal field facilities that handle third-class mail were originally designed to handle sacks and that postal personnel at BMCs are concerned as to whether they will be able to handle trays at that level. The commenter indicated that postal field personnel handling this mail should be made conversant with the Postal Service's intended regulations.

Trays can be easily processed through BMCs on parcel or sack sorting equipment. Since trays brought from the mailer's plant to BMCs are required to be strapped, sortation on BMC parcel or sack sorters should not be a problem. BMC personnel will be made aware of the new regulations and will be allowed to gain experience processing trays of automation rate mail before a large influx of trayed mail at other rate categories is permitted in the mail system.

Standardized Format for Documentation

One commenter indicated that it is essential that major manufacturers and their software vendors meet with the appropriate Postal Service staff personnel to assure uniformity of documentation format before promulgation of the final rule.

The Postal Service plans to hold a meeting concerning the requirements of the final rule for all interested software vendors. The time and date of the meeting will be announced in the **Federal Register**. Furthermore, the final regulations allow variations on the recommended formats, provided all required information is provided on a single report in a manner that is easily understandable to postal employees. There is an exception to the single report requirement for second-class combination mailings.

Barcoding Through CASS Certified MLOCRs

One commenter was concerned that a portion of the preamble to the proposed rule was misleading in that it stated that "all mailers must use CASS certified software to ZIP+4 code or delivery point code mailing lists used in automation rate mailings." The commenter stated it was his understanding that mailing lists used in automation rate mailings do not have to be CASS certified as long as the pieces are processed through MASS certified MLOCR systems.

The commenter's understanding is correct. The Postal Service uses the term "CASS Certification" to encompass use of CASS certified MLOCR equipment (also known as "MASS certified" equipment). This is stated in DMM section 531.112.

Support Automated Site Package-Based ZIP+4

One commenter who mails at ZIP+4 Presort rates indicated support for the inclusion of an automated site sortation option within the new ZIP+4 presort package-based regulations that require only preparation of 3-digit groups/packages, stating that she was pleased to see this option in the proposal because of concern about her company's ability to continue to qualify for ZIP+4 rates. The commenter urged adoption of this option in the final rule.

The provision for automated site package-based ZIP+4 Presort rate mailings is included in the final rule. The automated site provisions that allow mailers to omit preparation of mail to 5-digit destinations within either the new tray-based ZIP+4 option (DMM 562.1) or the new package-based ZIP+4 option

(DMM 563) have been placed in separate sections (rather than being provided for in footnotes as in the proposed rule) in order to make the requirements easier to understand.

Ability of Small Mailers To Obtain Discounts

One commenter indicated that traying regulations are "devised for large companies without any concern for the small mailers at all."

The package-based preparation options in Chapter 5 should give smaller mailers access to automation based rates provided they can meet the minimum quantity requirements for a bulk mailing. The Postal Service added a package-based preparation option for ZIP+4 Barcoded rate mail to the DMM effective November 14, 1991. This preparation option allows mailers to qualify for ZIP+4 Barcoded rates based upon the number of pieces in a package (10 ZIP+4 or delivery point barcoded pieces to a 5-digit ZIP Code destination and 50 pieces to a 3-digit destination). The "last" tray level in a package based mailing does not need to be full. Therefore, once the package qualification has been met, mailers do not need to fill trays to particular destinations to qualify for barcoded rates. An additional package-based preparation option for ZIP+4 Barcoded rate mail is added in this final rule, as well as a package-based preparation option for ZIP+4 rate presort mail. In addition, the Postal Service also offers nonpresorted ZIP+4 rates for all First-Class letter-size mailings, and a nonpresorted ZIP+4 Barcoded rate for First-Class postcard-rate mailings. These nonpresorted rates offer smaller discounts for nonpresorted First-Class Mail that has been ZIP+4 coded or ZIP+4 or delivery point barcoded by mailers using CASS certified procedures. Also, the minimum quantity requirements for First-Class nonpresorted automation-based rates are smaller than those for presort rates.

September 20 Effective Date for Barcode Clear Zone on Address Block Barcoded Mailpieces

One commenter raised again the issue of requiring in 551.4 a barcode clear zone on all pieces in an address block barcoded mailing that is prepared without ZIP+4 or delivery point barcodes.

This comment is not related to the subject matter of the proposed rule. This issue was addressed at length in the final rule published October 16, 1991, 56 FR 51838. The regulations governing this preparation option went into effect September 20, 1992, as announced in the October 1991 **Federal Register** notice and as stated in the DMM.

Other Changes to the Proposed Regulations

In reviewing the proposed rule, the Postal Service has determined to make the following changes in addition to those arising from comments. The changes listed below are effective immediately to the extent they apply to the new preparation options. Changes to pre-existing preparation options may be used immediately, and conformance will be mandatory effective December 20, 1992, with issue 45 of the DMM.

1. Tray Labels

a. Contents Line for Barcoded Mailings

The term "ZIP+4 BARCODED" is changed to "LTRS BARCODED" on all tray labels for the new preparation methods in 562.1, 563, 564.1, 565, and 566. Furthermore, the word barcoded is not permitted to be abbreviated, except that the last or last two letters may be omitted for lack of space on the labels as specifically provided in the applicable tray sortation sections. The term "ZIP+4" is deleted in anticipation of delivery point barcoding being required on March 21, 1993. The term "LTRS" is added for consistency with other labeling regulations and to differentiate labels for letter-size pieces from labels for flat-size pieces. The word "barcoded" must be spelled out to make recognition of the contents of the trays easier for postal employees.

b. Physical Requirements

Physical requirements for preparation of tray labels are spelled out (as opposed to preferring the reader to DMM 441.32) in new DMM 561.27. Extraneous information may be placed above line 1 of mailer produced tray labels if that information is printed in 6-point or smaller type. These new requirements also recommend use of barcoded tray labels that can be ordered from the Postal Service, or prepared by the mailer in accordance with specifications contained in the DMM.

c. Labeling Overflow SCF Trays in New Tray-Based Options

Within tray-based mailings prepared under 562.1 and 564.1, overflow trays to the SCF level are labeled as SCF trays even if the contents of the tray are for only one 5-digit ZIP Code area, or are for only one 3-digit area. This will simplify preparation for mailers, aid postal personnel in verification, and make the regulations more consistent with other labeling requirements in the DMM.

d. Labeling AADC Trays

If AADC trays prepared under the new package-based sortation options (DMM 563, 565, and 566) contain only mail for a single 5-digit ZIP Code area, or only mail for a single 3-digit ZIP Code area, the tray will be labeled to the AADC in accordance with Exhibit 122.63t, and will contain the designation AADC on the contents line of the tray label. This differs from the regulations in DMM 567 (available only until March 21, 1993) that require SCF trays (the last level of tray) which contain mail for only one 5-digit ZIP Code area, or mail for only one 3-digit area, to be labeled as a 5-digit tray or a 3-digit tray as applicable. This change in will simplify preparation for mailers, aid postal personnel in verification, and make the regulations more consistent with other presort requirements in the DMM.

2. Sleeving of Trays

New provisions are added for all preparation options, based upon mailer requests, that allow the manager of the local processing center to authorize mailings to be submitted without sleeving the trays when all trays in the mailing are for delivery within the SCF of mailing.

3. Sortation

a. Military Mail

In response to inquiries by many mailers, provisions for traying military mail have been added to all preparation options.

b. Provisions for Less-Than-Full SCF Trays to the Origin SCF

Provisions for preparing a less-than-full SCF tray to the SCF of the post office where the mailing is entered are added to all preparation options. This will speed processing and delivery of this mail, as well as allow third-class mailers to meet the physical separation requirements for SCF destination entry rates in 624.716e.

4. DMM Chapter 6 Requirements for Destination Entry Discounts

The requirements in 624.71 and 624.72 for obtaining third-class SCF and BMC destination entry discounts are modified to include references to trays and to AADC and residual sortation levels for mailings prepared under DMM Chapter 5.

5. Residual Mail

The new presort options in 562.1, 563, 564.1, 565, and 566 which will be required on March 21, 1993, contain the following provisions which are different

from the pre-existing preparation requirements now contained in DMM 562.2, 564.2, and 567 (options available only until March 21, 1993):

a. Residual mail is labeled to the origin SCF on the top line and requires the word "WORKING" to appear on the contents line. This provides label information that mail processing personnel will recognize to ensure proper handling of this mail. (Previously this mail was labeled "Residual" on the top line and contained only the class and contents on the second line.)

b. The requirement to show the range of ZIP Codes on the top line of tray labels prepared under the ZIP Code sequencing option is omitted. Since these trays must now be labeled to the origin SCF, this information cannot be placed on this line of the tray label. This will also simplify preparation for mailers. The Postal Service believes that omission of this information will not impede its ability to verify the preparation of residual pieces.

c. The requirements to indicate the applicable weight/rate designations on the tray label of each residual tray for mailings prepared according to the physical separation option which requires that pieces must be trayed by ounce increment, or by over- and under-2-oz. designations, or by second-class in-county and outside-county rate designations are deleted. However, trays must be grouped by the type of separation at the time they are presented to the post office for verification. This will allow mailers to use tray labels prepared by the Postal Service on residual mail.

d. A requirement to tray pieces in third-class mailings eligible for BMC destination entry discounts separately from other pieces is added. This will enable mailers to meet the requirement for BMC destination entry in 624.722.

e. Mailers should note that under the new package-based requirements in 563, 565, and 566, option 3 residual preparation allows packages of residual mail to be placed in AADC trays in the qualifying portion of the mailing only when there is an AADC tray for that destination that contains qualifying packages. Residual mail left over after this process must be separately trayed in 3-digit numeric ZIP Code sequence, and labeled to the origin SCF. AADC trays containing only residual pieces are not permitted. This differs from the package-based requirements in DMM 567 (for use only until March 21, 1993) which permit all residual pieces to be placed in SCF trays (the last level of tray in the qualifying portion) even if this results in an SCF tray containing only one residual mailpiece. The Postal Service made this change to limit the number of less than full trays it must handle.

f. A sentence is added to clarify that First-Class mailers, after performing the basic sequencing or grouping requirements for residual mail in the applicable presort regulations, may perform additional sortations of the residual mail in accordance with any local authorization for acceptance times as set forth in Management Instruction DM–140–91–01, First-Class Mail Acceptance Policy.

5. Changes to Documentation

The new presort options in 562.1, 563, 564.1, 565, and 566, which will be required on March 21, 1993, contain the following provisions within documentation requirements that differ from the pre-existing documentation requirements now contained in DMM 562.2, 564.2, and 567 (options available only until March 21, 1993) or that differ from the proposed rule requirements:

a. Additional Format for DMM 563 ZIP Code Listings

A new documentation format option for package-based ZIP+4 rate mailings prepared under DMM 563 is added that allows the ZIP Code listing portion of the documentation to be divided into sections by type of package. This is an alternative to providing the ZIP Code information for packages in numeric sequential ZIP Code sequence regardless of package type.

b. Documentation for Option 3 Residual/Basic Mail Preparation for Package-Based Mailings

For mailings prepared under DMM 567 (pre-existing DMM 564), residual pieces may be listed within the 3-digit or 3/5 presort tier section of the documentation when option 3 residual/basic preparation is used until that option is eliminated on March 21, 1993. Because of the changes discussed above to option 3 residual/basic preparation requirements in the new package-based options (DMM 563, 565, and 566), the documentation for mailings prepared under those options must list residual mail in a separate residual section.

c. Third-Class Destination Entry Rates

A requirement is added to indicate, with asterisks or other characters, the ZIP Codes of third-class mail pieces qualifying for destination entry rates when not all pieces in the mailing qualify for the same destination entry rate. The summary portion of the documentation must also indicate, by separate line items, pieces qualifying for each destination entry discount at the various rate categories. This information is needed to verify that the information reported on the mailing statement accompanying the mailing is correct.

d. ZIP+4 Rate Column in ZIP+4 Barcoded Rate Mailings

Within the new ZIP+4 Barcoded rate preparation options (DMM 564.1, 565, and 566) specific language is added to the basic rate column requirements for the documentation to clarify that a rate column for pieces that are eligible for ZIP+4 presort rates is necessary only if the mailing actually contains such pieces and the mailer elects to claim those rates for such pieces.

e. Postage Charge Information Not Required in Summary for Second-Class

The requirements for the summary portion of the documentation under the new preparation options (DMM 562.1, 563, 564.1, 565, and 566) relax the requirements for second-class mailers by making it optional to show the rate of postage and total postage charges for each rate category.

f. Replacement of Mailing List or Cycle Provisions

The mailing list or cycle provisions contained in the proposed rule for First- and third-class mailings are replaced by new documentation provisions for meeting the 85% ZIP+4 coding or 85% ZIP+4 barcoding requirement based upon all the ZIP+4 rate or all the ZIP+4 Barcoded rate mailings in a "mailing job". The new "mailing job" provisions are located in 568.2 and apply to second-class mailings as well as third-class mailings. The new provisions are essentially the same as the mailing list or cycle provisions, except that definition of a "mailing job", and a requirement that all mailings in the job must be paid for and verified at a single post office, replace the former 7-day maximum mailing list or cycle definition. This change makes the requirements for letter-size pieces consistent with those for flat-size pieces and should not have an adverse affect on mailers.

g. Replacement of Listing Requirements With Abbreviated Documentation Requirements

The summary listing provisions that appeared in the proposed rule are deleted, and are replaced by new abbreviated documentation requirements that will apply to First-, second-, and third-class mailings. The proposed summary listing provisions were limited to First-Class mailings. Since publication of the proposed rule, the Postal Service promulgated

abbreviated documentation requirements for flats barcoded rate mailings prepared under DMM 570. In the interest of consistency, the Postal Service is extending the new abbreviated documentation procedures to mailings of letter-size pieces prepared under DMM 560, regardless of class. Authorization to use abbreviated documentation must be obtained from the postmaster where the mail is verified. These new procedures reduce the requirement for paper documentation by allowing mailers to submit ZIP Code listings with each mailing for only a single SCF area selected by the mailer. That SCF area must include pieces entered at all rate categories in the mailing and represent at least 3 trays of mail. (In some cases, ZIP Code listings for more than one SCF area may be required to provide documentation that represents all rate levels in the mailing.) In addition, a summary of the column titles and column totals for each section of the ZIP Code listing must be provided. Mailers must separate the trays represented by the documentation from the rest of the mailing when the mail is presented for verification. The abbreviated documentation will facilitate the Postal Service's verification of the documentation against the mailing, and reduce the need for administrative reviews. Mailers must be able, however, to provide complete documentation upon request of the Postal Service for any past mailing or for any upcoming mailing (with sufficient notice), or to provide listing for SCF areas specified by the postmaster for an upcoming mailing. Mailers using the new sections 562.1, 563, 564.1, 565, and 566 to prepare mailings may apply for use of abbreviated documentation under 568.1, and may not use the summary listing procedures currently contained in 360. First-Class mailers preparing mail under 360, or under 562.2, 564.2, or 567 who are currently authorized to use summary listing procedures may continue to use summary listing procedures only until March 21, 1993.

6. Revisions to DMM 143 and 144

New DMM sections 143.134 through 143.137 and 144.114 through 144.117 are revised in this final rule. These provisions concern requirements for payment by postage meter or precanceled stamps for nonidentical weight pieces. The revisions exclude automation-rate mailings prepared under Chapters 3, 5, and 6 from the documentation alternatives set forth in 143.136c, 143.136e, 144.116c and 144.116e. These revisions to 143 and 144 are effective immediately. Since the postage payment and documentation requirements for automation-rate mailings adequately document the proper amount of postage for mailings paid with precanceled stamps, the additional documentation required by the previously mentioned sections in DMM 143 and 144 is not necessary for automation-rate mailings.

7. Postage Payment Options

Section 580 of the final rule is revised to relocate the postage payment requirements for mailings of flat-size ZIP+4 Barcoded rate mailings prepared under 570. The revised section 580 moves postage payment requirements for automation rate First- and third-class mailings prepared under Chapter 5 (both letter-size mailings and flat-size mailings) from 382 and 661 to Chapter 5. In addition to the relocation, new section 580 will clarify for First-Class mailings (both letter-size mailings prepared under 560 and flat-size barcoded rate mailings prepared under 570) that:

(1) All First-Class Mail prepared with meters must have postage for any additional ounces affixed to each piece. (This includes mailings submitted under 581.4, Neither Lowest Rate Nor Correct Postage Affixed to Each Piece.) Appropriate documentation under 560 or 570 must be submitted in all instances where the first-ounce postage is not affixed to each piece at the exact rate for which it qualifies. This has been a long-standing policy of the Postal Service and does not change any current preparation options available to First-Class mailers.

(2) When postcard-rate and letter-rate pieces are contains in the same First-Class mailing, the postcard-rate pieces must be metered at the postcard rate and letter-rate pieces must be metered at the letter rate.

(3) A provision is added to clarify that the same denomination of precanceled stamp must be affixed to each piece in the mailing for First-Class mailings paid with nondenominated precanceled stamps or precanceled stamps of a denomination less than the lowest rate in the mailing, under 581.34. This makes the First-Class requirements consistent with the third-class postage payment requirements and allows the additional postage owed for such mailings to be determined by means of the documentation required under 560 or 570.

In view of the above considerations, the Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

Domestic Mail Manual Issue 45, December 20, 1992, will include these changes. A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise chapter 1 as follows:

CHAPTER 1—DOMESTIC MAIL SERVICES

* * * * *

122 DELIVERY ADDRESS

122.63 ZIP Code Assignment

[Revise the title of Exhibit 122.63t to read as follows:

"Automated Area Distribution Center (AADC) Labeling List for Use with Letter-Size First-, Second-, and Third-Class ZIP+4 and ZIP+4 Barcoded Rate Mailings."]

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143 PRECANCELED STAMPS

143.1 General

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143.134 Amount of Postage

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c. Underpayment. Subject to 382 (for First-Class Mail), 661 (for third-class mail), and 580 (for automation-based First- and third-class mailings) customers may affix a value of precanceled stamps to each mailpiece to represent either the lowest rate in the mailing or another amount less than the full and correct rate if the mailer provides documentation with the mailing as specified in 143.136 to describe the contents of the mailing and substantiate the additional postage due.

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143.136 Documentation

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b. Documentation Required by Other Regulations. [Revise the references "e.g., 364, 382, 560, 628, 661" to read "e.g., 364, 382, 560, 570, 580, 628, 661."]

* * * * *

c. Content of Documentation. (1) *Mailings at Automation-Based Rates.* All mailings at automation-based rates

must meet the documentation requirements in 360, 424.8, 560, 570, 581.6, 583.5, or 628.32.

(2) *Mailings at Nonautomation-Based Rates.* [Insert text of current 143.136c.]

* * * * *

e. Alternatives. (1) *Mailings at Automation-Based Rates.* Documentation may be presented with the first mailing of each mailing job as provided in 568.2 or 575.2. Abbreviated documentation may be submitted as provided in 568.1 or 575.1. Until March 21, 1993, First-Class automation rate mailings prepared under 360 may be documented under the mailing list or cycle requirements of 364.24, 364.5, 365.4, 366.4, or the summary listing requirements of 364.223, 365.331c, 365.332 through 365.336, and 366.3. Until March 21, 1993, third-class automation rate mailings prepared under 628 may be documented under the mailing list or cycle provisions in 628.132c.

(2) *Mailings at Nonautomation-Based Rates.* [Insert current 143.136e.]

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144 Postage Meters and Meter Stamps

144.1 Postage Meters

144.11 Use of Meter Stamps

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144.114 Amount of Postage

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c. Underpayment. Subject to 382 (for First-Class Mail), 661 (for third-class mail), and 580 (for automation-based First- and third-class mailings) customers may affix a value of meter stamps to each mailpiece to represent either the lowest rate in the mailing or another amount less than the full and correct rate if the mailer provides documentation with the mailing as specified in 144.116 to describe the contents of the mailing and substantiate the additional postage due.

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144.116 Documentation

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b. Documentation Required by Other Regulations. [Revise the references "e.g.., 364, 382, 560, 628, 661" to read "e.g.., 364, 382, 560, 570, 580, 628, 661."]

* * * * *

c. Content of Documentation. (1) *Mailings at Automation-Based Rates.* All mailings at automation-based rates must meet the documentation requirements in 360, 424.8, 560, 570, 581.6, 583.5, or 628.32.

(2) *Mailings at Nonautomation-Based Rates.* [Insert text of current 144.116c.]

* * * * *

e. Alternatives. (1) *Mailings at Automation-Based Rates.* Documentation may be presented with the first mailing of each mailing job as provided in 568.2 or 575.2. Abbreviated documentation may be submitted as provided in 568.1 or 575.1. Until March 21, 1993, First-Class automation rate mailings prepared under 360 may be documented under the mailing list or cycle requirements of 364.24, 364.5, 365.4, 366.4, or the summary listing requirements of 364.223, 365.331c, 365.332 through 365.336, and 366.3. Until March 21, 1993, third-class automation rate mailings prepared under 628 may be documented under the mailing list or cycle provisions in 628.132c.

(2) *Mailings at Nonautomation-Based Rates.* [Insert current 143.136e.]

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147.4 Requests for Refunds for Payment of Excess Postage Submitted at Time of Mailing

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147.42 Value Added Refunds

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147.425 Preparation of Mailing. [In 147.425d, change the last sentence to read as follows: "(See 364.1, 364.2, 564.1, 564.2, 565, 566, 567, 628.35, 628.36, 647.22, or 647.23 for available options.]"

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147.426 Mailing Statements. [Change the last sentence to read as follows: "(See 364.1, 364.2, 564.1, 564.2, 565, 566, 567, 628.35, 628.36, 647.22, or 647.23 for available options.)"

147.427 Documentation for First-Class Mailings. [Change the last sentence of 147.427b to read as follows: "The presort documentation required by 364.21, 364.4, 564.14, 564.24, 565.5, 566.6, or 567.6 as applicable, must also be provided."

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147.43 Refunds for ZIP+4 Barcoded Rate Combined Mailings. [In all subsections change the reference "382.6" to "581.5;" the reference "382.7" to "581.6 and 583.5;" the reference "661.4" to "583.4."]

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3. In chapter 3 of the Domestic Mail Manual make the following revisions:

CHAPTER 3—FIRST-CLASS MAIL

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310 Rates and Fees

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312 NONPRESORTED BULK RATES

312.1 Nonpresorted ZIP+4 Rate

312.11 Card Rate

312.111 Rate Application. The nonpresorted ZIP+4 rates in 312.112 apply to cards meeting the requirements in 311.11 and 322 that bear a ZIP+4 code and are prepared in mailings meeting the requirements of 513 and 514.

* * * * *

312.12 Letter-Size Mail Other than Cards

312.121 Rate Application. The nonpresorted ZIP+4 rates in 312.122 apply to letter-size pieces (other than cards eligible for the card rates) bearing ZIP+4 codes in mailings that meet the requirements of 513 and 514.

* * * * *

312.2 Nonpresorted ZIP+4 Barcoded Rate

312.21 Cards

312.211 Rate Application. The nonpresorted ZIP+4 Barcoded rate in 312.212 applies to cards meeting the requirements of 311.11, 322, that bear a ZIP+4 barcode or delivery point barcode in mailings that meet the requirements of 513 and 515.

* * * * *

312.23 Flat-Size Mail

312.231 Rate Application. The nonpresorted flat-size ZIP+4 Barcoded rates in 312.232 apply to automation-compatible flat-size pieces bearing ZIP+4 barcodes or delivery point barcodes in mailings that meet the requirements of 513 and 516.

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313 Presorted Bulk First-Class Rates

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313.5 3/5-Digit ZIP+4 Barcoded Rate for Flat-Size Mail

313.51 Rate Application. The 3/5-digit flat-size ZIP+4 Barcoded rates in 313.52 apply to automation-compatible flat-size pieces bearing ZIP+4 barcodes or delivery point barcodes in mailings that meet the requirements of 513 and 516.

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313.6 ZIP+4 Presort Rates (Letter-Size Mail)

313.61 Rate Application. The ZIP+4 Presort rates in 313.62 apply to letter-size pieces, including cards, that bear ZIP+4 codes in mailings that meet the requirements of 513 and 514.

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313.7 3-Digit Letter-Size ZIP+4 Barcoded Rates

313.71 Rate Application. The 3-digit letter-size ZIP+4 Barcoded rates in 313.72 apply to letter-size pieces, including cards, that bear a ZIP+4 barcode or delivery point barcode in mailings that meet the requirements of 513 and 515.

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313.8 5-Digit Letter-Size ZIP+4 Barcoded Rates

313.81 Rate Application. The 5-digit letter-size ZIP+4 Barcoded rates in 313.72 apply to letter-size pieces, including cards, that bear a ZIP+4 barcode or delivery point barcode in mailings that meet the requirements of 513 and 515.

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324 ZIP+4 PRESORT FIRST-CLASS MAIL (LETTER-SIZE PIECES ONLY)

[*Replace existing 324.1 through 324.8 with the following:*]

324.1 General. ZIP+4 Presort mailings must consist of letter-size pieces, including cards, and must meet the requirements in 513 and 514. The rate eligibility criteria for mailings presorted under 562.1, 562.2 (presort option available only through March 20, 1993) or 563 are in 562.11, 562.22, and 563.1. The rate eligibility criteria for mailings presorted under 365 or 366 (presort options available only through March 20, 1993) are in 324.2 through 324.4.

324.2 Rate Eligibility for National Mailings Prepared Under 365

324.21 Availability. This option is available only through March 20, 1993.

324.22 Qualifying Portion. [Insert current 324.121a. Change the reference "324.2 through 324.8" to "513 and 514".]

324.23 Residual Portion. [Insert current 324.121b. Change the reference "324.2 through 324.8" to "513 and 514".]

324.3 Automated Site Mailings Prepared under 366

324.31 Availability. This option is available only through March 20, 1993.

324.32 Qualifying Portion. [Insert current 324.122a. Change the reference "324.2 through 324.8" to "513 and 514".]

324.33 Residual Portion. [Insert current 324.122b. Change the reference "324.2 through 324.8" to "513 and 514" ".]

324.4 Eligibility of Pieces Prepared With Barcodes. See 514.12 through 514.14.

325 ZIP+4 BARCODED RATE

[*Replace current 325.1 through 325.9 with the following:*]

325.1 General

325.11 Letter-Size Mailings. Presorted letter-size ZIP+4 Barcoded rate mailings must meet the requirements in 513 and 515. The rate eligibility criteria for letter-size mailings presorted under one of the options in Chapter 5 (564.1, 564.2, 565, 566, and 567) are in 564.111, 564.221, 565.21, 566.21, and 567.21. The presort options in 564.2 and 567 are available only through March 20, 1993. The rate eligibility criteria for letter-size mailings presorted under Chapter 3 (364.1 and 364.2—presort options available only through March 20, 1993) are in 325.2 and 325.3.

325.12 Flat-Size Mailings. Presorted flat-size ZIP+4 Barcoded rate mailings must meet the requirements in 513 and 516. The rate eligibility criteria for flat-size mailings presorted under 572 and 573 are in 571.11.

325.2 Letter-Size National Mailings Prepared Under 364.1 and 364.2 (Available only Through March 20, 1993)

325.21 Definition of National Mailing. A national mailing may contain pieces for addresses served by both automated and nonautomated postal facilities (i.e., for any domestic ZIP Code).

325.22 5-Digit Sortation. [Insert former 325.121, renumber subsections accordingly.]

325.23 3-Digit Sortation. [Insert former 325.122, renumber subsections accordingly.]

325.24 Residual Sortation. [Insert former 325.123, renumber subsections accordingly.]

325.3 Letter-Size Automated Site Mailings Prepared Under 364.3 and 364.4 (Preparation Option Available Only Through March 20, 1993)

325.31 Definition of Automated Site Mailing. [Insert text of former 325.111b.]

325.32 3-Digit Sortation. [Insert former 325.131.]

325.33 Residual Sortation. [Insert former 325.132.]

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327 NONPRESORTED ZIP+4 MAIL (LETTER-SIZE PIECES ONLY)

[*Delete current 327.1 through 327.5 and insert the following:*]

Nonpresorted ZIP+4 mailings must meet the requirements in 513 and 514. The rate eligibility criteria for mailings prepared under 569 are in 569.11. The rate eligibility criteria for mailings prepared under 368.1 (a preparation option available only through March 20, 1993) are the same as those in 569.11.

328 NONPRESORTED ZIP+4 BARCODED MAIL

[*Delete current 328.1 through 328.5 and insert the following:*]

328.1 Card-Rate Mailings. Nonpresorted card-rate ZIP+4 barcoded mailings must meet the requirements in 513 and 515, including preparation under 569.21. The rate criteria for mailings prepared under 569.2 are in 569.21. The rate criteria for mailings prepared under 368.1 (a preparation option available only through March 20, 1993) are the same as those in 569.21.

328.2 Flat-Size Mailings. Nonpresorted flat-size ZIP+4 barcoded rate mailings must meet the requirements in 513 and 516, including preparation under 577. The rate criteria for mailings prepared under 577 are in 577.1.

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360 Preparation Requirements

361 ADDRESSING

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361.5 ZIP+4 First-Class Mail. [Add the following to existing 361.5: "See 514.3 and 515.4 for further requirements."]

361.6 ZIP+4 Barcoded or Delivery Point Barcoded First-Class Mail

361.61 Letter-Size Mailings (Including Cards). [Add the following to existing 361.61: "See 515.3 and 515.4 for further requirements."

361.62 Flat-Size Mailings. The address on each piece in a flat-size ZIP+4 Barcoded rate mailing must contain the correct numeric 5-digit ZIP Code, the correct numeric ZIP+4 code, or the correct numeric equivalent to the delivery point barcode (see 517.3). In addition, at least 85% of the pieces must also contain a correct ZIP+4 barcode or delivery point barcode, and the remaining pieces must bear the correct 5-digit barcode. See 516.3 and 516.4 for further requirements.

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362 MARKING REQUIREMENTS

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362.4 Nonpresorted ZIP+4 Mail. See 514.531b.

362.5 ZIP+4 Presort First-Class Mail. See 514.531a.

362.6 ZIP+4 Barcoded First-Class Mail. See 515.531a for letter-size mailings (including cards). See 516.531a for flat-size mailings.

362.7 Nonpresorted ZIP+4 Barcoded Mail. See 515.531b for cards and 516.531b for flat-size mailings.

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364 LETTER-SIZE ZIP+4 BARCODED FIRST-CLASS MAIL

Note: The presort and documentation options in 364 may be used for mailings presented through March 20, 1993. Effective March 21, 1993, mailings must be presorted under either 564.1, 565, or 566.

364.1 National Mailings—Presort Requirements

364.11 General. ZIP+4 Barcoded rate national mailings (as defined in 325.21), claimed at the rates described in 325.22 through 325.24, must be packaged and trayed under 364.11 through 364.16, as applicable. Mailers must prepare mailings as required by 364.12 and 364.13 only if the 5-digit ZIP+4 Barcoded rate is claimed for the corresponding mail. If that rate is not being claimed, sortation can begin with the requirements of 364.13.

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364.13 5-Digit ZIP+4 Barcoded Rate Traying [Change the reference "325" in 364.131a to "515."]

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364.15 3-Digit ZIP+4 Barcoded Rate Traying [Change the reference "325" in 364.151a to "515."]

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364.16 Preparation for Residual Portion. [Change the reference "325.123" to "325.24."]

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364.3 Automated Site Mailings—Preparation [In 364.312a and 364.312b, change the references "325" to "515" and change the reference "325.123" to "325.24."]

364.4 Automated Site Mailings—Documentation

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364.411 When Documentation Required. [Change the reference "325.3" to "515.31."]

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364.431 Qualifying Trays. [In 364.431a, change the reference "325.122b" to "325.232", and the reference 325.122c" to "325.233".]

364.432 Residual Tray. [In 364.432a and 364.432b, change the reference "325.122a through 325.122c" to "325.231 through 325.233".]

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364.6 Mailing Statements. [Change the reference 382.4" to "382.5". Change the reference "382.31d or 382.33b" to "382.315b or 382.332b."]

365 ZIP+4 PRESORT FIRST-CLASS MAIL—NATIONAL MAILINGS

Note: The presort and documentation options in 365 may be used for mailings presented through March 20, 1993. Effective March 21, 1993, mailings must be presorted and documented under either 562 or 563.

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365.12 Rate Eligibility. See 324.2.

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365.3 Postage Payment

365.31 General. [Change the reference "382.4" to "382.5".]

* * * * *

365.5 Residual Pieces. [Change the reference "324.3 through 324.7" to "514."]

366 COMBINED PRESORT MAILINGS DESTINATING AT AUTOMATED SITES

Note: The presort and documentation options in 366 may be used for mailings presented through March 20, 1993. Effective March 21, 1993, mailings must be presorted and documented under either 562 or 563.

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366.12 Rate Eligibility. See 324.3.

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366.3 Documentation & Postage Payment. [Change the reference "382.4" to "382.".]

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368 PREPARATION OF NONPRESORTED BULK RATE FIRST-CLASS MAIL

Note: The preparation options in 368 may be used for mailings presented through March 20, 1993. Effective March 21, 1993, mailings must be prepared under 569.1 or 569.2.

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368.122 Traying Requirements—Physical Separation Option. [Change the reference "327.2" to "514.3."]

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368.222 Traying—Physical Separation Option. [Change the reference "328.2" to "515.3"]

380 Payment of Postage

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382 CARRIER ROUTE FIRST-CLASS, PRESORTED FIRST-CLASS, NONPRESORTED ZIP+4, NONPRESORTED ZIP+4 BARCODED, ZIP+4 PRESORT, 5-DIGIT ZIP+4 BARCODED, AND 3-DIGIT ZIP+4 BARCODED RATES

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382.2 Exact Postage on Each Piece

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382.23 ZIP+4 Barcoded Presort Rate Mailings

382.231 Letter-Size National Mailings Prepared Under 364.1 (Presort Option Available Only Through March 20, 1993) [Insert current text of 382.23.]

382.232 Letter-Size and Flat-Size Mailings Prepared Under Chapter 5. See 581.1 through 581.4.

382.233 Letter-Size Automated Site Mailings Prepared Under 364.3 (Presort Option Available Only Through March 20, 1993) [Insert current text of 382.233.]

382.24 Nonpresorted Letter-Size ZIP+4 Rates. See 581.1 through 581.4.

382.25 Nonpresorted Card-Size and Flat-Size ZIP+4 Barcoded Rates. See 581.1 through 581.4.

382.3 Postage at Lowest Rate in Mailing Affixed to All Pieces

382.31 Identical Pieces

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382.313 Letter-Size ZIP+4 Presort Mailings Prepared Under 365 or 366 (Presort Options Available Only Through March 20, 1993). [Insert text of current 382.313.]

382.314 Letter-Size ZIP+4 Presort Mailings Prepared Under Chapter 5. See 581.1 through 581.4.

382.315 ZIP+4 Barcoded Presort Rate Mailings

a. Letter-Size National Mailings Prepared Under 364.1 (Presort Option Available Only Through March 20, 1993). [Insert text of current 382.314a.]

b. Letter-Size Automated Site Mailings Prepared Under 364.3 (Presort Option Available Only Through March 20, 1993). [Insert text of current 382.314c.]

c. Letter-Size and Flat-Size Mailings Prepared Under Chapter 5. See 581.1 through 581.4.

382.316 Nonpresorted Letter-Size ZIP+4 Mailings. See 581.1 through 581.4.

382.317 Nonpresorted Card-Size and Flat-Size ZIP+4 Barcoded Mailings. See 581.1 through 581.4.

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382.33 Nonidentical Pieces at All ZIP+4 and ZIP+4 Barcoded Rates

382.331 Letter-Size ZIP+4 Presort Mailings

a. Letter-Size Mailings Prepared Under 365 or 366 (Presort Options Available Only Through March 20, 1993). [Insert text of current 382.331. At the end of the first sentence, change the phrase "provided the presort requirements in 365.33, 366.3, 562.162, or 562.252 are met" to "provided the presort requirements in 365.33 or 366.3 are met."]

b. Letter-Size Mailings Prepared Under Chapter 5. See 581.1 through 581.4.

382.332 ZIP+4 Barcoded Presort Mailings

a. Letter-Size National Mailings Prepared Under 364.1 (Presort Option Available Only Through March 20, 1993). [Insert text of current 382.332a.]

b. Letter-Size Automated Site Mailings Prepared Under 364.3 (Presort Option Available Only Through March 20, 1993). [Insert current text of 382.332c.]

c. Letter-Size and Flat-Size Mailings Prepared Under Chapter 5. See 581.1 through 581.4.

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382.333 Nonpresorted Letter-Size ZIP+4 Mailings. See 581.1 through 581.4.

382.334 Nonpresorted Card-Size and Flat-Size ZIP+4 Barcoded Mailings. See 581.1 through 581.4.

382.4 Neither Lowest Rate Nor Correct Postage Affixed to Each Piece

382.41 ZIP+4 and ZIP+4 Barcoded Rate Mailings. See 581.4.

382.42 Nonautomation-Based Rate Mailings. [Insert current 382.41 through 382.43, renumbered as 382.421 through 382.423. Renumber internal references accordingly.]

382.6 ZIP+4 Barcoded Rate Combined Mailings With Different Postage Payment Methods. See 581.5.

382.7 Combined Mailing Documentation Submission Requirements. See 581.6.

4. Revise Chapter 4 as follows.

CHAPTER 4—SECOND-CLASS MAIL

* * * * *

410 Rates and Fees

411 RATES

411.11 Rate Elements

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411.113 Piece Rates. [Insert current 411.113. Change the reference "(see 440)" to "(see 440, 560 or 570)."]

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411.12 Eligibility

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411.125 ZIP+4 Rates. ZIP+4 rates are available only for letter-size mailpieces meeting the physical requirements of 521. ZIP+4 rates include a level A/G, B3/H3/J3, and B5/H5/J5 discount applied to each addressed piece that bears a correct ZIP+4 code and meets the requirements of 513 and 514. A ZIP+4 rate is not available for pieces claimed at level C, I, and K rates.

411.126 ZIP+4 Barcoded Rates. ZIP+4 Barcoded rates include a level A/G, B3/H3/J3, and B5/H5/J5 discount applied to each addressed piece that bears a ZIP+4 barcode or delivery point barcode and meets the requirements of 513 and 515 for letter-size mailings, or the requirements of 513 and 561 for flat-size mailings. A ZIP+4 Barcoded rate (discount) is not available for pieces claimed at level C, I, and K rates.

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411.13 Computation of Postage

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411.132 Piece Rates

a. Outside-the-County. [Change the reference from "(see 411.146 and 440)" to "(see 411.146 and either 440, 560, or 570)."]

b. In-County. [Change the reference from "(see 411.146 and 440)" to "(see 411.146 and either 440, 560, or 570, as applicable)."]

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411.14 Presort Level Rates

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411.143 3- and 5-Digit Sortation (Level B Rates)

a. Nonautomation Rates and Automated Rate Mailings Prepared under 440. [Insert current 411.143a through c renumbered as 411.143a (1) through (3).]

b. Automation Rate Mailing Prepared Under Chapter 5

(1) *Tray-Based Mailings of Letter-Size Pieces (562 or 564)*

(a) Level B5 or H5 rates apply to pieces in 5-digit trays.

(b) Level B3 or H3 rates apply to pieces in optional city and unique 3-digit trays.

(2) *Package-Based Mailings of Letter-Size Pieces (563, 565, 566, or 567)*

(a) Level B5 or H5 rates apply to pieces in 5-digit packages of 10 or more pieces placed in 5-digit, optional city, 3-digit, SCF, or AADC trays.

(b) Level B3 or H3 rates apply to pieces in optional city or unique 3-digit packages of 50 or more pieces placed in optional city, 3-digit, SCF, or AADC trays.

(3) *Mailings of ZIP+4 Barcoded Rate Flat-Size Pieces*

(a) Level B5 or H5 rates apply to pieces in 5-digit packages of 6 or more pieces placed in 5-digit, optional city, 3-digit, SCF, or SDC sacks.

(b) Level B3 or H3 rates apply to pieces in optional city or unique 3-digit packages of 6 or more pieces placed in optional city, 3-digit, SCF, or SDC sacks.

411.145 In-County Level J Rates

a. Nonautomation Rates and Automation Rate Mailings Prepared Under 440. [Insert current 411.145a through c renumbered as 411.145a (1) through (3).]

b. Automation Rate Mailings Prepared Under Chapter 5

(1) *Tray-Based Mailings of Letter-Size Pieces (562 or 564)*

(a) Level J5 rates apply to in-county pieces (411.32) in 5-digit trays.

(b) Level J3 rates apply to in-county pieces (411.32) in optional city and unique 3-digit trays.

(c) Level J1 rates apply to in-county pieces (411.32) not eligible for the J5 or J3 rates.

(2) *Package-Based Mailings of Letter-Size Pieces (563, 565, 566, or 567)*

(a) Level J5 rates apply to in-county pieces (411.32) in 5-digit packages of 10 or more pieces placed in 5-digit, optional city, 3-digit, or SCF trays.

(b) Level J3 rates apply to in-county pieces (411.32) in optional city or unique 3-digit packages of 50 or more pieces placed in optional city, 3-digit, or SCF trays.

(c) Level J1 rates apply to in-county pieces (411.32) not eligible for the J5 or J3 rates.

(3) *Mailings of ZIP+4 Barcoded Rate Flat-Size Pieces*

(a) Level J5 rates apply to in-county pieces (411.32) in 5-digit packages of 6 or more pieces placed in 5-digit, optional city, 3-digit, SCF, or SDC sacks.

(b) Level J3 rates apply to in-county pieces (411.32) in optional city or unique 3-digit packages of 6 or more pieces placed in optional city, 3-digit, SCF, or SDC sacks.

(c) Level J1 rates apply to in-county pieces (411.32) not eligible for the J5 or J3 rates.

411.2 Regular Rates

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411.23 Piece Rates. [Insert current 411.23. Revise the first sentence to read as follows. "Each piece rate requires specific preparation as described in 411.113, 411.114, 411.12, and either 440, 560 or 570."]

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411.3 Preferred Rates

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411.32 In-County Rates

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411.326 Piece Rates. [Insert current 411.326. Revise the first sentence to read as follows. "Each piece rate requires specific preparation as described in 411.113, 411.114, 411.12, and either 440, 560 or 570, as applicable."]

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411.33 Special Nonprofit Rates

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411.333 Piece Rates. [Insert current 411.333. Revise the first sentence to read as follows. "Each piece rate requires specific preparation as described in 411.113, 411.114, 411.12, and either 440, 560, or 570, as applicable."]

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411.34 Classroom Rates

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411.343 Piece Rates. [Insert current 411.343. Revise the first sentence to read as follows: "Each piece rate requires specific preparation as described in 411.113, 411.114, 411.12, and either 440, 560, or 570, as applicable."]

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411.35 Science of Agriculture Rates

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411.353 Piece Rates. [Insert current 411.353. Revise the first sentence to read as follows. "Each piece requires specific preparation as described in 411.113, 411.114, 411.12, and either 440, 560 or 570, as applicable."]

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424 ADDITIONAL ELIGIBILITY REQUIREMENTS FOR SPECIFIC RATES

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424.5 ZIP+4 Rates (Letter-Size Pieces Only)

424.51 Rate Eligibility

424.511 General. ZIP+4 rate mailings must meet the preparation requirements specified in 513 and 514, including preparation under 562 or 563. The rate eligibility criteria for mailings prepared under 562.1, 562.2 (presort option available only through March 20, 1993), or 563 are contained in 562.112, 562.222 and 563.12. The rate eligibility criteria for mailings prepared under 447 (presort options available only through March 20, 1993) are contained in the remainder of this section.

424.512 National Mailings Presorted Under 447 (Available Only Through March 20, 1993). [Insert current 424.543a. Change the reference "424.532" to "447".

424.513 Automated Site Mailings Presorted Under 447 (Available Only Through March 20, 1993).

a. General. Subject to the requirements of 447.22, publishers may prepare mailings without making 5-digit packages or sacks when all pieces in the mailing are for destinations within the 3-digit ZIP Code ranges listed in Exhibit 122.63m. Pieces destinating in other ZIP Code areas must be prepared as a separate mailing.

b. Rates. Pieces in unique 3-digit sacks (see Exhibit 122.63c for the list of unique 3-digit ZIP Codes) are eligible for level B3/H3/J3 ZIP+4 rates. Pieces in all other sacks must be claimed at the level A/G/J1 ZIP+4 rates.

424.514 Eligibility of Pieces Prepared With Barcodes. See 514.12 through 514.14.

424.6 ZIP+4 Barcoded Rates

424.61 Mailings of Letter-Size Pieces

424.611 Rate Eligibility

a. General. Letter-size ZIP+4 Barcoded rate mailings must meet the requirements specified in 513 and 515, including preparation under 564.1, 564.2, 565, 566, or 567. The rate eligibility criteria for mailings prepared under 564.1, 564.2 (preparation option available only through March 20, 1993), 565, 566 or 567 (preparation option available only through March 20, 1993) are contained in 564.112, 564.222, 565.22, 566.22 and 567.22. The rate eligibility criteria for mailings prepared under 447 (preparation options available only through March 20, 1993) are contained in the remainder of this section.

b. National Mailings Presorted Under 447 (Available Only Through March 20, 1993). [Insert current 424.643. Change the reference "424.632" to "447".]

c. Automated Site Mailings Presorted Under 447 (Available Only Through March 20, 1993).

(1) *General.* Subject to the requirements of 447.22 or 447.32, publishers may prepare mailings without making 5-digit packages or sacks (or trays under 447.32) when all pieces in the mailing are for destinations within the 3-digit ZIP Code ranges listed in Exhibit 122.63m, and pieces destinating in other ZIP Code areas are prepared as a separate mailing.

(2) *Rates.* Pieces in unique 3-digit sacks or unique 3-digit trays (see Exhibit 122.63c for the list of unique 3-digit ZIP Codes) are eligible for level B3/H3/J3 letter-size ZIP+4 Barcoded rates. Pieces in all other sacks or trays must be claimed at the level A/G/J1 letter-size ZIP+4 Barcoded rates.

424.62 Mailings of Flat-Size Pieces

424.621 Rate Eligibility for Mailings of Flat-Size Pieces

a. General. Flat-size ZIP+4 Barcoded rate mailings must meet the requirements of Chapter 5 as specified in 513 and 516, including preparation under 570. The rate eligibility criteria for mailings prepared under 570 are contained in 571.12.

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424.8 Additional Requirements for Presort Rates

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424.82 5-Digit and Unique 3-Digit Presort (Level B and H) Rates

424.821 Mailings Prepared Under 440. [Insert text of current 424.82. Add the following to the end of the note: "For ZIP+4 and ZIP+4 Barcoded rate mailings prepared under 447, there must be at least four packages in each 5-digit, optional city, or unique 3-digit sack."]

424.822 Letter-Size Tray-Based ZIP+4 Rate or ZIP+4 Barcoded Rate Mailings Prepared Under 562 or 564. To qualify for the level B or H per-piece rate, a piece must be in one of the following trays:

a. Full or overflow 5-digit tray.

b. Full or overflow optional city tray.

c. Full or overflow unique 3-digit tray.

424.823 Letter-Size Package-Based ZIP+4 Rate or ZIP+4 Barcoded Rate Mailings Prepared Under 563, 565, 566, or 567. To qualify for the level B or H per-piece rate, a piece must be in one of the following packages:

a. A 5-digit package of 10 or more pieces, that is placed in either a 5-digit, optional city, 3-digit, SCF, or AADC tray.

b. An optional city package of 50 or more pieces, that is placed in either an optional city, 3-digit, SCF, or AADC tray.

c. A unique 3-digit package of 50 or more pieces, that is placed in either an optional city, 3-digit, SCF or AADC tray.

424.824 Flat-Size ZIP+4 Barcoded Rate Mailing. To qualify for the level B or H ZIP+4 Barcoded per-piece rate, a piece must be:

a. In a 5-digit package of six or more pieces, that is placed in either a 5-digit, optional city, 3-digit, SCF, or SDC sack.

b. In an optional city package of six or more pieces, that is placed in either an optional city, 3-digit, SCF or SDC sack.

c. In a unique 3-digit package of six or more pieces, that is placed in either a unique 3-digit, SCF, or SDC sack.

440 Presorting

441 PREPARATION FOR THE BASIC RATES (LEVELS A, G, AND J)

441.1 General. All addressed pieces in a second-class mailing must be presorted. Except for mailings prepared to claim ZIP+4 rate or ZIP+4 Barcoded piece rate discounts, the presort must at a minimum meet the requirements in 441.2 and 441.3. Publishers may perform additional preparation to meet the requirements for other presort rates or discounts. Mailings of letter-size pieces prepared for ZIP+4 rate or ZIP+4 Barcoded rate discounts must be presorted according to 560, except that through March 20, 1993, such mailings may be presorted under 447. Mailings of

flat-size pieces must be presorted under 570.

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447 SPECIAL PREPARATION FOR LETTER-SIZE ZIP+4 RATE AND ZIP+4 BARCODED RATE MAILINGS

447.1 General

447.11 Presort Options Available Through March 20, 1993. Through March 20, 1993, letter-size publications meeting the physical requirements of 521 and mailed at either the letter-size ZIP+4 rate or the letter-size ZIP+4 Barcoded rates may be presorted, packaged, and sacked as prescribed by 441 and 443, with the modifications described in 447.21; or may be packaged and sacked according to the optional automated site sortation in 447.22. Through March 20, 1993, letter-size mailings at ZIP+4 rates or ZIP+4 Barcoded rates may also be trayed under 447.3.

Through March 20, 1993, mailers may also prepare letter-size ZIP+4 and ZIP+4 Barcoded rate mailings under 562.1, 562.2, 563, 564.1, 564.2, 565, 566, or 567.

447.12 Presort Options Effective March 21, 1993. Beginning March 21, 1993, letter-size mail must be presorted under 562.1 or 563 to qualify for ZIP+4 rates, and under 564.2, 565, or 566 to qualify for ZIP+4 Barcoded rates.

447.2 Sacked Mailings of Letter-Size Pieces (Available Only Through March 20, 1993)

447.21 Basic Preparation

447.211 Packaging. [Insert text of current 447.21.]

447.212 Sacking. [Insert text of 447.22.]

447.22 Optional Sortation to Automated Sites

447.221 General. Publishers may prepare mailings without preparing 5-digit packages or sacks when all pieces in the mailing are for destinations within the 3-digit ZIP Code ranges listed in Exhibit 122.63m, and pieces destinating in other ZIP Code areas are prepared as a separate mailing.

447.222 Packaging. Pieces must be presorted in 3-digit, SCF, AADC and Mixed AADC packages according to Exhibits 122.63m, n, and o. Each package must contain a minimum of six addressed pieces, except for the "last" Mixed AADC package.

447.223 Sacking. The packages prepared under 447.212 must be presorted to 3-digit, SCF, AADC and Mixed AADC sacks according to Exhibits 122.63m, n, and o. Each sack must contain a minimum of four packages, except for the "last" Mixed AADC sack.

447.224 Rates. Pieces in unique 3-digit sacks (see Exhibit 122.63c for the list of unique 3-digit ZIP Codes) are eligible for level B3/H3/J3 rates. Pieces in all other sacks must be claimed at the level A/G/J1 rates. See 424.513 and 424.611c.

447.3 Trayed Mailings of Letter-Size Pieces (Available Only Through March 20, 1993)

447.31 Basic Sortation

447.311 General. Mailings may be packaged and trayed rather than packaged and sacked as provided in 447.312 through 447.316.

447.312 Packaging. Pieces must be prepared in packages as specified in 441.21 through 441.24 (if claimed at level A, G, and J rates) or 443.21 through 443.25 (if claimed at level B and H rates) except that each package in a mailing must contain a minimum of six addressed pieces. The "last" mixed states package may contain fewer than six pieces. Exceptions to packaging are provided in 447.312a-c.

[Insert current 447.322 through 447.324 renumbered as 447.312a through 447.312c. Delete current 447.325.

447.313 Tray Sortation. Insert current 447.33. Change the reference "447.325" to "447.32". Change the reference "447.34" to 447.314.

[Insert current 447.34 through 447.36 renumbered as 447.314 through 447.316.]

447.32 Optional Tray Sortation to Automated Sites

447.321 General. Publishers may prepare mailings without making 5-digit packages or trays when all pieces in the mailing are for destinations within the 3-digit ZIP Code ranges listed in Exhibit 122.63m. Pieces destinating in other ZIP Code areas must be prepared as a separate mailing.

447.322 Packaging. Pieces must be presorted in 3-digit, SCF, AADC and Mixed AADC packages according to Exhibits 122.63m-o. Each package must contain a minimum of 6 addressed pieces, except for the "last" Mixed AADC package. The exceptions to packaging in 447.312 b and c apply.

447.323 Traying. The packages prepared under 447.322 must be presorted to 3-digit, SCF, AADC, and Mixed AADC trays according to Exhibits 122.63m-o. A tray must be prepared to a required sortation whenever the mail for that destination fills 3/4 of a tray. Trays that are less than 3/4 full must not be prepared except for the final Mixed AADC tray in the mailing, or except for overflow trays as provided in 447.314. The general traying provisions in 447.314 through 447.316 apply.

447.324 Rates. Pieces in unique 3-digit trays (see Exhibit 122.63c for the list of unique 3-digit ZIP Codes) are eligible for level B3/H3/J3 rates. Pieces in all other trays must be claimed at the level A/G/J1 rates. See 424.513 and 424.611c.

5. Revise chapter 5 as follows.

CHAPTER 5—MAILINGS AT AUTOMATION-BASED RATES

510 Overall Requirements

511 Content

This chapter contains all the requirements for letter-size mailings at First-, second-, and third-class ZIP+4 rates, and all the requirements for both letter-size and flat-size mailings at First, second-, and third-class ZIP+4 Barcoded rates. 513 sets forth general requirements that must be met for each mailing. 514 sets forth the requirements that must be met for ZIP+4 rate mailings. 515 sets forth the requirements that must be met for letter-size ZIP+4 Barcoded rate mailings. 516 sets forth the requirements that must be met for flat-size ZIP+4 Barcoded rate mailings.

Exception: Through March 20, 1993, letter-size automation rate mailings may be presorted and documented in accordance with options available in 364, 365, 366, 368, 447, 641.1, or 647.3, instead of in accordance with one of the options in 560.

512 POSTAGE RATES

The specific rates of postage for the rates referred to in this Chapter are found in sections 310 (First-Class), 410 (second-class), and 610 (third-class).

513 GENERAL REQUIREMENTS FOR ALL ZIP+4 RATE AND ZIP+4 BARCODED RATE MAILINGS

513.1 Classes of Mail. Automation-rate mailings must meet the classification requirements for their specific class as set forth in Chapters 3, 4, and 6, as well as the requirements of this Chapter. Mixing pieces of different mail classes in the same mailing is prohibited.

513.2 Mail Processing Categories. Mixing letter-size pieces (128.2) and automation-compatible flat-size pieces (128.32) in the same mailing is prohibited.

Note: There is an overlap in the sizes for letters in 128.2 and the sizes for automation-compatible flats in 128.32 and 522. A flat-size ZIP+4 Barcoded rate mailing could therefore contain pieces that technically meet the definition of letter-size pieces. For mailpieces that, based upon size, could meet either the definition of a letter-size piece, or the

definition of an automation-compatible flat-size piece, mailers must choose whether to prepare them under the requirements for an automation-compatible flat-size ZIP+4 Barcoded rate mailing (see 516), or under the requirements for a letter-size ZIP+4 Barcoded rate mailing (see 515). It is not permissible to claim both the letter-size ZIP+4 Barcoded rates and the flat-size ZIP+4 Barcoded rates in a single mailing.

513.3 Carrier Route Mailings. ZIP+4 rate mail and ZIP+4 Barcoded rate mail (either letter-size or automation compatible flat-size) must not be presented as part of a mailing that includes carrier route rate mail (including walk-sequence mailings). Separate flat-size ZIP+4 Barcoded rate mailings and separate flat-size carrier route presort rate mailings that are part of the same mailing job as defined in 575.2, may however, be copalletized under the provisions of 576.4.

513.4 Annual Presort/Bulk Mailing Fees

513.41 First-Class Mailings. Persons or organizations mailing at First-Class ZIP+4 Presort or ZIP+4 Barcoded Rates (presorted) must pay the annual presort fee as described in 341. The presort fee does not apply to persons or organizations who enter only nonpresorted rate mailings (nonpresorted ZIP+4 rate mailings, nonpresorted letter-size ZIP+4 Barcoded rate mailings, or nonpresorted flat-size ZIP+4 Barcoded rate mailings).

513.42 Second-Class Mailings. There is no presort fee for second-class mailings.

513.43 Third-Class Mailings. Persons or organizations entering third-class ZIP+4 rate or ZIP+4 Barcoded rate mailings must pay the annual bulk mailing fee as described in 623.1.

513.5 Mailing. ZIP+4 and ZIP+4 Barcoded rate mailings must be presented for acceptance by the Postal Service as provided for the specific class of mail by 370, 450, and 650.

514 REQUIREMENTS FOR ZIP+4 RATE MAILINGS (LETTER-SIZE PIECES ONLY)

514.1 Rate Eligibility

514.11 General. Only mailpieces containing a correct ZIP+4 code in the address and otherwise meeting the eligibility requirements of 514 can qualify for ZIP+4 rates. Other pieces can qualify for presort rates and, if First-Class, single piece rates. Eligibility for specific rates differs based upon the class of mail and the presort option used. Specific rate eligibility for ZIP+4 rate mailings presorted under 562.1, 562.2 (presort option available only through March 20, 1993), or 563 is in 562.11, 562.22, and 563.1. Specific rate eligibility for nonpresorted First-Class mailings prepared under 569.1 is in 569.11. Specific rate eligibility for mailings presorted under Chapters 3, 4, or 6, (presort options available only through March 20, 1993) is listed in 324, 327, 424.5, and 628.

514.12 Pieces Prepared With ZIP+4 Barcodes or Delivery Point Barcodes. Mailers may elect to claim mailpieces prepared with correct ZIP+4 barcodes or delivery point barcodes at ZIP+4 rates. Such pieces are eligible for ZIP+4 rates on the same basis as pieces bearing a numeric ZIP+4 code in the address. The ZIP+4 barcodes or delivery point barcodes must be prepared in accordance with 530 and 551. See 514.3 and 514.52 for additional specifications for such pieces.

514.13 Pieces Prepared With 5-Digit Barcodes. ZIP+4 rate mailings prepared with ZIP+4 barcodes or delivery point barcodes may include pieces with correct 5-digit barcodes under the following conditions:

a. All pieces bearing a 5-digit barcode must meet the requirements of 514.3, 520, 530, 540, and 552.

b. When correct 5-digit barcodes are printed directly on mailpieces the pieces may qualify for ZIP+4 rates if they also bear a correct numeric ZIP+4 code (see 530).

c. When 5-digit barcodes are printed on inserts that appear through a barcode window located in the lower right barcode clear zone the pieces do not qualify for any automation-based rate, and may not be counted toward the 85% requirement in 514.3.

514.14 Pieces Prepared with Blank Barcode Windows in Lower Right Barcode Clear Zone. Pieces prepared with barcode windows in the lower right barcode clear zone through which no barcode appears are not eligible for any automation-based rate.

514.2 Minimum Quantity

514.21 First-Class Mailings

514.211 ZIP+4 Presort Rate. Each mailing must contain at least 500 pieces.

514.212 Nonpresorted ZIP+4 Rate. Each mailing must contain at least 250 pieces.

514.22 Second-Class Mailings. There is no minimum quantity requirement for second-class ZIP+4 mailings.

514.23 Third-Class Mailings. Each mailing must contain at least 200 pieces or 50 pounds of pieces.

514.3 Required Percentage of ZIP+4 Coded Pieces

514.31 General. At least 85% of the total pieces in a ZIP+4 rate mailing must bear the correct ZIP+4 code obtained using Coding Accuracy Support System (CASS) certified ZIP+4 or delivery point address matching software as described in 530. This requirement may be applied to all ZIP+4 rate mailings that are part of the same mailing job (instead of to each individual ZIP+4 rate mailing) under the conditions in 568.2.

514.32 ZIP+4 Barcoded or Delivery Point Barcoded Pieces. The correct ZIP+4 barcode or delivery point barcode prepared as required by 530 and 550 satisfies the requirement for a correct ZIP+4 code for purpose of rate qualification and meeting 514.31.

514.4 Addresses. The address on each piece in the mailing must include either the correct ZIP+4 code or the correct 5-digit ZIP Code. The addresses on pieces in mailings prepared with ZIP+4 or delivery point barcodes may bear the numeric equivalent to the delivery point barcode as provided in 517. Each piece in the mailing that bears a ZIP+4 code, or a ZIP+4 barcode or delivery point barcode, must bear an accurate address as specified in 534. The mailing must meet all requirements in 530. See also 514.52.

514.5 Mailpiece Characteristics

514.51 Physical Requirements. Each piece in the mailing must meet the requirements of 521.

Note: If 85% of the pieces of a First-Class nonpresorted ZIP+4 rate mailing are ZIP+4 barcoded or delivery point barcoded, the mailing may meet the weight requirements in 521.132.

514.52 OCR Processing Requirements. Each piece in the mailing, except those prepared with correct ZIP+4 barcodes or delivery point barcodes (see 530), must meet the requirements of 540, including the requirement that the address be printed in a standardized addressing format (see 541). Pieces prepared with ZIP+4 barcodes or delivery point barcodes must meet the requirements of 550.

514.53 Rate Markings

514.531 First-Class Mailings

a. ZIP+4 Presort Rate. [Insert text of current 362.5. Add the following as the next to last sentence: "Carrier route presort level rate pieces must not be included in a ZIP+4 rate mailing."]

b. Nonpresorted ZIP+4 Rate. [Insert text of current 362.4. Add the following as the next to last sentence: "Carrier route presort level rate pieces must not be included in a ZIP+4 rate mailing."]

514.532 Second-Class Mailings. None (other than the second-class imprint—

see 429.625g or 429.625h, and 429.323b(1)). Carrier route presort level rate pieces must not be included in a ZIP+4 rate mailing.

514.533 Third-Class Mailings. [Insert text of current 629.65. Revise the last sentence to read: Carrier route presort level rate pieces must not be included in a 3/5 ZIP+4 rate mailing."]

514.6 Presort and Documentation

514.61 First-Class Mailings

514.611 ZIP+4 Presort Rate. All pieces must be presorted and documented under 562.1, or 563, except that through March 20, 1993, mailings may be presorted and documented under 365 or 366, or 562.2.

514.612 Nonpresorted ZIP+4 Rate. All pieces must be prepared under 566, except that through March 20, 1993, mailings may be prepared under 368.1.

514.62 Second-Class Mailings. All pieces must be presorted and documented under 562.1 or 563, except that through March 20, 1993, mailings may be presorted and documented under one of the options in 447, or under 562.2.

514.63 Third-Class Mailings. All pieces must be presorted and documented under 562.1 or 563, except that through March 20, 1993, mailings may be presorted and documented under 562.2, or under 628.3 and either 641.1 or 647.3.

514.7 Postage Payment

514.71 First-Class Mailings. Postage must be paid by precanceled stamps (see 143); postage meter (see 144); or permit imprint (see 145). See 580 for specific requirements relating to use of these postage payment methods with mailings prepared under 562.1, 562.2, 563, or 369.1. See 382 for specific requirements for mailings presorted under 365, 366, or 368 (presort or preparation options that may be used only through March 20, 1993).

514.72 Second-Class Mailings. Postage must be paid through a second-class advance deposit account as described in 462.2.

514.73 Third-Class Mailings. Postage must be paid by one of the following methods: precanceled stamps (see 143); postage meter (see 144); or permit imprint (see 145). See 580 for specific requirements relating to use of these postage payment methods with mailings prepared under 562.1, 562.2, or 563. See 661.3, 661.4, and 661.5 for specific requirements for mailings presorted under 628.311, 641, or 647.3 (presort options that may be used only through March 20, 1993).

515 REQUIREMENTS FOR LETTER-SIZE ZIP+4 BARCODED RATE MAILINGS

515.1 Rate Eligibility

515.11 General. Only mailpieces bearing a correct ZIP+4 barcode or delivery point barcode and otherwise meeting the eligibility requirements of 515 can qualify for ZIP+4 Barcoded rates. Other pieces can qualify for ZIP+4 rates, or presort rates, and if First-Class, single piece rates. Eligibility for specific rates differs based upon the class of mail and the presort option used. Specific rate eligibility criteria for ZIP+4 Barcoded rate mailings presorted under 564.1, 564.2 (presort option available only through March 20, 1993), 565, 566, or 567 (presort option available only through March 20, 1993) is in 564.11, 564.22, 565.2, 566.2, or 567.2. Specific rate eligibility criteria for nonpresorted First-Class ZIP+4 Barcoded rate mailings prepared under 569.2 is in 569.21. Specific rate eligibility criteria for mailings presorted under Chapters 3, 4, or 6 (available only through March 20, 1993) is listed in 325, 328, 424.6, and 628.2.

515.12 Pieces Prepared With 5-Digit Barcodes. Pieces with correct 5-digit barcodes may be included in the mailing under the following conditions:

a. All pieces bearing a 5-digit barcode must meet the requirements of 515.3, 520, 530, and 552.

b. Pieces bearing only a 5-digit barcode do not qualify for the ZIP+4 Barcoded rates.

c. When correct 5-digit barcodes are printed directly on mailpieces the pieces may qualify for ZIP+4 rates if they also bear a correct numeric ZIP+4 code (see 530), and meet the requirements of 540.

d. When 5-digit barcodes are printed on inserts that appear through a barcode window located in the lower right barcode clear zone the pieces do not qualify for any automation based rate.

515.13 Pieces Prepared with Blank Barcode Windows in the Lower Right Barcode Clear Zone. Pieces prepared with barcode windows in the lower right barcode clear zone through which no barcode appears do not qualify for any automation-based rate.

515.2 Minimum Quantity

515.21 First-Class Letter-Size ZIP+4 Barcoded Rate Mailings

515.211 ZIP+4 Presort Rate. Each mailing must contain at least 500 pieces.

515.212 Nonpresorted ZIP+4 Rate. Each mailing must contain at least 250 pieces.

515.22 Second-Class Letter-Size ZIP+4 Barcoded Rate Mailings. There is no minimum quantity for second-class ZIP+4 Barcoded rate mailings.

515.23 Third-Class Letter-Size ZIP+4 Barcoded Rate Mailings. Each mailing must contain at least 200 pieces or 50 pounds of pieces.

4515.3 Required Percentage of ZIP+4 Barcoded or Delivery Point Barcoded Pieces

515.31 85% Barcoded Pieces for Entire Mailing. At least 85% of the total number of pieces in each mailing must bear the correct ZIP+4 barcode or delivery point barcode obtained using Coding Accuracy Support System (CASS) certified ZIP+4 or delivery point address matching software in accordance with 530, and prepared as required in 551. This requirement may be applied to all letter-size ZIP+4 Barcoded rate mailings that are part of the same mailing job instead of to individual ZIP+4 Barcoded rate mailings under the conditions in 568.2. See 515.32 for further requirements for the 5-digit portion of the mailing.

515.32 100% Barcoded Pieces for 5-Digit Portion of Mailing. Each piece placed in a 5-digit tray in a tray-based mailing prepared under 564.1 or 564.2, and each piece placed in a 5-digit package in a package-based mailing prepared under 565, 566 or 567 must bear the correct ZIP+4 barcode or correct delivery point barcode prepared as required by 530 and 551.

515.33 Limited Exception to 100% Requirement

a. Mailings Prepared Under 564.2. The 5-digit portion in mailings prepared under 564.2 are exempt from the requirement for 100% ZIP+4 barcoded or delivery point barcoded pieces and need only meet the overall 85% requirement in 515.31. (The option in 564.2 may be used to presort ZIP+4 Barcoded rate mail only through March 20, 1993, after which time mail must be sorted under 564.1, 565, or 566 and meet the requirement for 100% ZIP+4 barcoded or delivery point barcoded pieces in the 5-digit portion.)

b. Mailings Prepared Under 364. The 5-digit portion in mailings prepared under 364 is exempt from the requirement for 100% ZIP+4 barcoded or delivery point barcoded pieces and need only meet the overall 85% requirement in 515.31. (The options in 364 may be used to presort ZIP+4 Barcoded rate mail only through March 20, 1993, after which time mail must be sorted in accordance with 564.1, 565, or 566 and meet the requirement for 100% ZIP+4 barcoded or delivery point barcoded pieces in the 5-digit portion.)

515.4 Addresses. The address on each piece in the mailing must include either the correct numeric 5-digit ZIP Code, the correct numeric ZIP+4 code or the correct numeric equivalent to the delivery point barcode (see 517.3). Each piece in the mailing that bears a ZIP+4 barcode or delivery point barcode must bear an accurate address as specified in 534. The mailing must meet all requirements in 530.

515.5 Letter-Size Mailpiece Characteristics

515.51 Physical Requirements

515.511 Presort Rates. Each piece in the mailing must meet the requirements of 521.

515.512 Nonpresorted ZIP+4 Barcoded Rates (First-Class Only). Each piece in the mailing must meet the criteria for card rates in 311.1 and 322. Each piece in the mailing must also meet the requirements of 521.

515.52 Barcode Requirements. The requirements in 551 apply to pieces bearing ZIP+4 barcodes or delivery point barcodes. The requirements in 552 apply to pieces bearing 5-digit barcodes.

515.53 Rate Marking

515.531 First-Class Letter-Size ZIP+4 Barcoded Rate Mailings

a. Presorted ZIP+4 Barcoded Rate. [Insert current 362.6. Add the following as the next to last sentence: "Carrier route presort level rate pieces must not be included in a letter-size ZIP+4 Barcoded rate mailing."]

b. Nonpresorted ZIP+4 Barcoded Rate. [Insert current 362.7.]

515.532 Second-Class Letter-Size ZIP+4 Barcoded Rate Mailings. None (other than the second-class imprint—see 429.625g or h, and 429.323b(1)). Carrier route presort level rate pieces must not be included in a letter-size ZIP+4 Barcoded rate mailing.

515.533 Third-Class Letter-Size ZIP+4 Barcoded Rate Mailings. [Insert current 629.66.]

515.6 Presort and Documentation

515.61 First-Class Mailings

515.611 Presorted ZIP+4 Barcoded Rate. All pieces must be presorted and documented under 564.1, 565, or 566, except that, through March 20, 1993, mailings may be presorted and documented under one of the options in 364, or under 564.2 or 567.

515.611 Nonpresorted ZIP+4 Barcoded Rate. All pieces must be prepared under 569.2, except that, through March 20, 1993, mailings may be prepared under 368.2.

515.62 Second-Class Mailings. All pieces must be presorted and documented under 564.1, 565, or 566, except that, through March 20, 1993, mailings may be presorted and documented under one of the options in 447, or under 564.2 or 567.

515.63 Third-Class Mailings. All pieces must be presorted and documented under 564.1, 565, or 566, except that, through March 20, 1993, mailings may be presorted and documented under 628.3 and either 641.1 or 647.3, or under 564.2 or 567.

515.7 Postage Payment

515.71 First-Class Mailings. Postage must be paid by precanceled stamps (see 143); postage meter (see 144); or permit imprint (see 145). See 580 for specific requirements relating to use of these postage payment methods with mailings prepared under, 564.1, 564.2, 565, 566, 567, and 569.2. See 382 for specific requirements for mailings prepared under 364 or 368. (The preparation options in 364, 368, 564.1, and 567 may be used only through March 20, 1993).

515.72 Second-Class Mailings. Postage must be paid through a second-class advance deposit account as described in 462.2.

515.71 Third-Class Mailings. Postage must be paid by precanceled stamps (see 143); postage meter (see 144); or permit imprint (see 145). See 580 for specific requirements relating to use of these postage payment methods with automation rate mailings prepared under, 564, 565, 566, or 567. See 661.3, 661.4, and 661.5 for specific requirements for mailings prepared under 628.312 or 647.322 (preparation options that may be used only through March 20, 1993).

516 REQUIREMENTS FOR FLAT-SIZE ZIP+4 BARCODED RATE MAILINGS

516.1 Rate Eligibility. Only mailpieces bearing a correct ZIP+4 barcode or delivery point barcode and otherwise meeting the eligibility requirements of 516 can qualify for flat-size ZIP+4 Barcoded rates. 5-digit barcoded pieces can qualify for presort rates, or in First-Class mailings only, single piece rates. Eligibility for specific rates differs based upon the class of mail and level of presort (and for First-Class, whether the nonpresorted flat-size ZIP+4 Barcoded rate option is used). Specific rate eligibility for presorted flat-size ZIP+4 Barcoded rate mailings is found in 571.1. Specific rate eligibility for First-Class nonpresorted flat-size ZIP+4 barcoded rate mailings is contained in 577.1.

516.2 Minimum Quantity

516.21 First-Class Flat-Size ZIP+4 Barcoded Rate Mailings

516.211 Presorted ZIP+4 Barcoded Rate. Each mailing must contain at least 500 pieces.

516.212 Nonpresorted ZIP+4 Barcoded Rate. Each mailing must contain at least 250 pieces.

516.22 Second-Class Flat-Size ZIP+4 Barcoded Rate Mailings. There is no minimum quantity for second-class flat-size ZIP+4 Barcoded rate mailings.

516.23 Third-Class Flat-Size ZIP+4 Barcoded Rate Mailings. Each mailing must contain at least 200 pieces or 50 pounds of pieces.

516.3 Required Percentage of ZIP+4 Barcoded or Delivery Point Barcoded Pieces.

At least 85% of the total number of pieces in each mailing must bear the correct ZIP+4 barcode or delivery point barcode for the delivery address obtained using Coding Accuracy Support System (CASS) certified ZIP+4 or delivery point address matching software in accordance with 530, and prepared as required in 551. All remaining pieces must bear the correct 5-digit barcode for the delivery address prepared as required in 552. Pieces that do not bear a correct and properly prepared 5-digit barcode, ZIP+4 barcode, or delivery point barcode are not permitted in the mailing. See 575.2 for application of the 85% requirement to all barcoded rate mailings within a mailing job instead of to individual barcoded rate mailings.

516.4 Addresses. The address on each piece in the mailing must include either the correct numeric 5-digit ZIP Code, the correct numeric ZIP+4 code, or the correct numeric equivalent to the delivery point barcode (see 517.3). Each piece in the mailing that bears a ZIP+4 barcode or delivery point barcode must bear an accurate address as specified in 534. The mailing must meet all requirements in 530.

516.5 Flat-Size Mailpiece Characteristics

516.51 Physical Requirements. Each piece in the mailing must meet the requirements of 522.

516.52 Barcode Requirements. The requirements in 551 apply to pieces bearing ZIP+4 barcodes or delivery point barcodes. The requirements in 552 apply to pieces bearing 5-digit barcodes.

516.53 Rate Marking

516.531 First-Class Flat-Size ZIP+4 Barcoded Rate Mailings

a. Presorted ZIP+4 Barcoded Rate. [Insert current 362.6. Add the following as the next to last sentence: "Carrier route presort level rate pieces must not be included in a flat-size ZIP+4 Barcoded rate mailing."]

b. Nonpresorted ZIP+4 Barcoded Rate. [Insert current 362.7.]

516.532 Second-Class Flat-Size ZIP+4 Barcoded Rate Mailings. None (other than the second-class imprint—see 429.625g or h, and 429.323b(1)).

516.533 Third-Class Flat-Size ZIP+4 Barcoded Rate Mailings. [Insert current 629.66.]

516.6 Packaging, Sacking or Palletizing, and Documentation

516.61 First-Class Flat-Size ZIP+4 Barcoded Rate Mailings

516.611 Presorted ZIP+4 Barcoded Rates. All pieces in each mailing must be presorted together to the finest extent under 572 and 573. The documentation requirements in 574 or 575 must also be met.

516.612 Nonpresorted ZIP+4 Barcoded Rates. All pieces in each mailing must be packaged and sacked under 577. Where applicable, mailings must be documented under 577.221 or physically separated under 577.222.

516.62 Second- and Third-Class Flat-Size ZIP+4 Barcoded Rate Mailings. All pieces in each mailing must be presorted together to the finest extent under 572 and 573. Alternatively, mailings may be palletized under 576. All mailings must be documented under 574 or 575. Additional documentation is required for palletized mailings.

516.7 Postage Payment

516.71 First-Class Flat-Size ZIP+4 Barcoded Mailings. Postage must be paid by precanceled stamps (see 143); postage meter (see 144); or permit imprint (see 145). See 580 for specific requirements relating to use of these postage payment methods with flat-size ZIP+4 Barcoded rate mailings.

516.72 Second-Class Mailings. Postage must be paid through a second-class advance deposit account as described in 462.2.

516.73 Third-Class Flat-Size ZIP+4 Barcoded Mailings. Postage must be paid by precanceled stamps (see 143); postage meter (see 144); or permit imprint (see 145). See 580 for specific requirements relating to use of these postage payment methods with flat-size ZIP+4 Barcoded rate mailings.

517 DELIVERY POINT BARCODE. [INSERT TEXT OF CURRENT 515.]

* * * * *

560 Presort and Documentation for Letter-Size Mail

561 GENERAL

561.1 Grouping/Packaging

561.11 Secured Packages

561.111 Use of Packages

a. When Required. The requirements of this section apply whenever packages are prepared. The regulations governing when packaging is required and when packaging is prohibited for mailings are in 562.122, 562.124, 562.562.231, 562.24, 563.21, 563.3, 564.122, 564.124, 564.231, 564.233, 565.31, 565.4, 566.32, 566.42, 566.5, 567.32, 567.42, and 567.5. (These sections also indicate if separator cards may be used instead of secured packages in accordance with 561.12.)

b. General Rules. (1) *Postcard-Size Pieces.* Mailings of all classes prepared under both tray-based and package-based preparation options that consist entirely of postcard-size pieces (pieces not exceeding 4¼ inches high, 6 inches long, and .0095 inch thick) must be prepared in secured packages under 561.11, so that the pieces will maintain their integrity during transit.

(2) *Full Trays in Tray-Based Mailings.* Within tray-based mailings prepared under 562.1, 562.2, 564.1, or 564.2, that contain pieces larger than postcard size, groups of pieces within full trays must not be prepared in secured packages (nor delineated by separator cards), except that pieces that exceed the size of the tray may be packaged as provided in 561.23.

(3) *Overflow Trays.* Within tray-based mailings prepared under 562.1, 562.2, 564.1, or 564.2, pieces in less-than-full overflow trays must be prepared in secured packages and labeled under 561.131.

(4) *AADC Trays in Package-Based Mailings.* Within package-based mailings prepared under 563, 565, or 566, all groups/packages in AADC trays must be prepared into secured packages under 561.11. The packages must be labeled when prepared under 563 or 565.

561.112 General Requirements for Secured Packages

a. Size. Packages should measure approximately 4 inches in thickness. The maximum permissible thickness is 8 inches.

b. Materials. Packages may be secured using one of the following materials which are listed in order of preference: rubber bands, elastic strapping, flat plastic strapping, or string.

c. Approval Required for Use of Elastic Strapping. Elastic strapping must not be used unless it has been approved by the Engineering and Development Center prior to use (see 561.113) to ensure that it can adequately keep the packages intact during Postal Service handling, that it can stretch and then resume its original shape, and that it can be easily removed by stretching.

d. Placement of Packaging Material. Packages up to 1 inch thick must be secured with at least one rubber band, elastic strap, plastic strap, or string placed tightly around the girth. Packages thicker than 1 inch must be secured with at least two rubber bands, elastic straps, plastic straps or strings. For rubber bands and elastic strap, the first band or strap must be placed around the length and the second, around the girth so that it crosses over the first. It is recommended that packages secured with plastic strap or string also be strapped or tied in this order. For all methods of packaging, the packaging material should be placed as near as possible to the center of the mailpiece to provide the greatest stability during transit and handling. More than two rubber bands, elastic or plastic straps, or strings may be used to secure a package, but the packaging material must never lie along the outer 1 inch of any edge.

561.113 Testing of Elastic Strapping Material. [Insert current 561.223.]

561.12 Groups/Packages Delineated By Separator Cards

561.121 Use of Separator Cards. Within full optional city (second-class only), 3-digit, and SCF trays in mailings prepared under one of the packaged-based options in 563, 565, 566, and 567, use of separator cards to delineate groups/packages is recommended as an alternative to secured packages, except for mailings of postcard-size pieces (see 561.111b(1)). Separator cards must also be used to delineate groups of 100 pieces within trays of residual mail when the physical separation option is used. Within full trays in mailings prepared under a tray-based preparation option under 562.1, 562.2, 564.1, or 564.2, groups of pieces must not be delineated by separator cards (nor secured into packages). Separator cards are not permitted in AADC trays within package-based mailings prepared under 563, 565, 566, or 567 (secured packages are required).

561.122 Physical Requirements for Separator Cards. [Insert current 561.32.]

561.123 Placement of Separator Cards. The separator card must be placed in front of the group it is delineating.

561.13 Labeling Groups/Packages

561.131 Labeling Secured Packages. [Insert current 561.222.]

561.132 Labeling Groups/Packages Delineated by Separator Cards. Where groups/packages are required to be labeled, the first piece behind the separator card must be labeled as described in 561.131. Alternatively, the separator card appearing in front of the package separation may either bear the appropriate pressure sensitive label for the type of package as described in 561.131, or the separator card may bear the words "5-digit," "Optional City," or "3-digit" as appropriate for the package. If one of these alternatives is used, either the appropriate pressure sensitive label or the descriptive words must be placed at the top of each separator card in a position that allows the information to be easily read when the card is placed in trays of mail.

561.2 Trays

561.21 Use of Trays Required. All letter-size mailings prepared under Chapter 5 must be prepared in trays.

561.22 Size and Availability of Trays

561.221 Two-Foot Trays. Only 2-foot MM letter trays and sleeves may be used to prepare mailings under Chapter 5. The Postal Service will provide 2-foot trays and sleeves. Mailers may only use trays provided by the Postal Service.

Limited Exception: Until December 20, 1992, mailers may use 1-foot trays and sleeves provided by the Postal Service (to the extent such trays are available as they are being phased out) when preparing tray-based mailings under 562.2 and 564.2.

561.222 [Reserved for Extended MM Trays]

561.23 Placement of Pieces in Trays

561.231. Trays Containing Only Pieces Not Exceeding Width of Trays. [Insert current 561.421. Change references to "Exhibit 561.421a" and "Exhibit 561.421b" to "Exhibit 561.231a" and "Exhibit 561.231b."]

561.232 Trays Containing Pieces Exceeding Width of Trays. [Insert current 561.422. Change the reference "561.43" to "561.24". Revise the fourth sentence to read as follows: "In full trays, mailers must do one or both of the following to maintain the orientation of pieces in the tray: (a) place dividers made of cardboard or other stiff material that is the same width and height as the tray between the rows of pieces in the tray, (b) secure the pieces together into packages with rubber bands, elastic or plastic strapping, or string as provided in 561.11." Change the reference "561.22" to "561.1". Change the reference "Exhibit 561.422a" to "Exhibit 561.232a". Change the reference "Exhibit 561.422b" to "Exhibit 561.232b".]

561.24 Definition of Full Tray. [Insert current 561.43. Change subsections and Exhibit references accordingly. Change references "561.422" to "561.232".]

561.25 Volume per Tray—Preparation of Overflow Trays

561.251 When Overflow Trays Not Permitted. Overflow trays are not permitted in package-based mailings prepared under 563, 565, 566, or 567, except for AADC trays under 563, 565 and 566, and except for SCF trays under 567 (available only through March 20, 1993).

561.252 When Overflow Trays Permitted. Overflow trays are permitted for all tray levels in tray-based mailings prepared under 562 or 564, and at the last level of destination tray for package-based mailings (AADC trays for mailings prepared under 565 or 566, SCF trays for mailings prepared under 567).

561.253 Requirements for Preparation of Overflow Trays. Mailers should distribute the volume among trays when more than one tray is prepared for the same destination to ensure that the maximum number of full (as defined in 561.24) 5-digit, optional city (second-class mailings only), 3-digit, SCF, and AADC (package-based mailings only) trays are prepared. After this step, the remaining pieces for a destination for which a full tray is prepared may be placed in an overflow tray that is less than full, provided the pieces in the overflow tray are secured into packages and labeled under 561.11 and 561.131. Only one overflow tray for a particular 5-digit, optional city (second-class mailings only), 3-digit, SCF, or AADC (package-based mailings only) destination may be prepared in a mailing.

561.254 Labeling of Packages Within Overflow Trays. Pieces in 5-digit overflow trays must be secured and labeled as 5-digit packages, pieces in second-class optional city trays must be secured and labeled as optional city packages, and pieces in 3-digit, SCF and AADC (package-based mailings only) overflow trays must be secured into and labeled as 3-digit packages.

Exception: Packages in overflow AADC trays prepared under 566 must be secured into 3-digit packages under 561.11, but are not required to be labeled.

561.255 Listing of Overflow Trays. To allow accurate verification of the mailing by postal acceptance personnel, a listing of all overflow trays in tray-based mailings prepared under 562 or 564 must be provided in addition to the other documentation required. The listing must be by unique tray number or top line of the tray label for mailings documented under the tray label option in 562.14, 562.24, 564.14, or 564.24. The listing must be by level of tray and ZIP Code destination for mailings documented under the ZIP Code option in 562.14, 562.24, 564.14, or 564.24.

561.26 Sleeving and Banding

561.261 General Requirement. [Insert current 561.45. Add the following to the end of the first sentence: ", except as provided in 561.262.]

561.262 Limited Exception. When all the pieces in a mailing are for delivery within the SCF where the mail is entered, the local manager of the processing center may grant an authorization to submit the mailing in trays without sleeves. Mailers must obtain written authorization from the manager of the processing center that has authority over the SCF where the mailing is to be entered prior to presenting mailings without sleeves for acceptance.

561.27 Tray Labels

561.271 General. A tray label must be securely placed in the tray label holder at the end of each tray. Tray labels must not be taped to the end of trays. It is strongly recommended that mailers use barcoded tray labels, and for ZIP+4 Barcoded rate mailings, zebra coded tray labels as described in 561.272. The Postal Service is evaluating the mandatory use of barcoded tray labels in the future and, if a decision is made to require them, will publish a proposed rule in the **Federal Register**. Until such time, mailers may produce their own non-barcoded tray labels under the conditions in 561.273. Mailers may obtain barcoded labels (and limited quantities of non-barcoded tray labels) from the Postal Service.

561.272 Barcoded and Zebra Coded Tray Labels. Barcoded labels enable scanning and sortation of trays by automated equipment. Zebra coded labels allow for easy visual identification of trays containing ZIP+4 barcoded or delivery point barcoded mail. Tray labels that are machine-printed with barcodes, and for ZIP+4 Barcoded rate mailings, zebra codes, may be obtained from the Postal Service. Mailers may also produce their own barcoded/zebra coded tray labels

provided the labels meet the criteria in 369.2, 446, or 646 as appropriate to the rate claimed (see Exhibit 561.274).

561.273 Tray Label Requirements

a. General Requirements. (1) *Color.* The color of tray labels for First- and third-class mail must be white or manila. The color of tray labels for second-class mail must be pink.

(2) *Size/Paper Stock.* Tray labels must fall within the following tolerances:

(a) *Height (vertical):* Not less than 1.9 inches nor more than 2.015 inches.

(b) *Length (horizontal):* Not less than 3.25 inches nor more than 3.375 inches.

(c) *Thickness:* Not less than 0.007 inch nor more than 0.012 inch.

(d) *Stock:* The paper stock for labels must be 100 pounds ±20 percent (500 sheets, 24 by 36 inches).

(3) *Method of Preparation.* It is preferred that labels be machine-printed to ensure they are legible. However, legible hand-printed labels are acceptable. Illegible labels are not acceptable.

(4) *Trailing Zeros.* Two zeros may appear following 3-digit ZIP Code prefixes on tray labels.

(5) *Abbreviations.*

(a) *State Abbreviations.* It is preferred that the official two-letter state abbreviations shown in Publication 65, National Five-Digit ZIP Code and Post Office Directory, be used on tray labels.

(b) *City Abbreviations.* It is preferred that the name of cities or towns be spelled out on tray labels. However, in instances where this is not possible due to limitations on the number of characters that can appear on a line, the official postal name abbreviations listed in Publication 65 must be used. If a postal name is not listed, a recognizable abbreviation may be used. Care should be taken to use abbreviations that cannot be confused with the names of other cities or towns.

(c) *Mailer Names.* The name of the mailer may be abbreviated on the third line of labels in any recognizable fashion. Care should be taken to use abbreviations that cannot be confused with the name of another mailer.

(d) *Other.* Other required items of information on labels must not be abbreviated unless specifically provided for in 562.1, 562.2, 563, 564.1, 564.2, 565, 566, 567, or 569, as appropriate to the rate claimed and method of presort chosen.

(6) *Definition of Lines.* There are three printed lines required on tray labels that are referred to as: Line 1—Destination; Line 2—Contents; and Line 3—Mailer Information Line. See Exhibit 564.274 for examples of labels ordered from the Postal Service.

(7) *Barcodes.* It is recommended that tray labels include a barcode, prepared as required in 369.2, 446.2, or 646.2 (see Exhibit 564.274). Tray labels in ZIP+4 Barcoded rate mailings should also include a zebra code as provided in 369.2, 446.2, or 646.2 (see Exhibit 564.274).

b. Guidelines for Required Information. (1) *Line 1—Destination.* Line 1, the destination line, must be the first visible line on the label (except as otherwise provided for in 561.273a [Extraneous Information]). It must be completely visible and legible when placed in the tray label holder. The destination line must contain only the information specified by 563.23, 564.33, 564.43, or 564.5, as appropriate to the rate claimed.

(2) *Line 2—Contents.* The contents line must be the second visible line on the label. The information required in 562.1, 562.2, 563, 564, 565, 566, and 567 must be the only items of information shown on this line.

(3) *Line 3—Mailer Information Line.* The mailer information line contains information about the mailer that gives the Postal Service the opportunity to provide feedback to customers regarding mailing problems. This information can vary depending upon a particular mailer's operations. For example, the information on Line 3 may be the name of the mailer that is preparing the mail and the city/state location of that mailing plant, a particular product or publication name and the city/state location of that mailing plant, or the name of the mailer and the city/state location of the post office where the mailing will be entered.

c. Extraneous Information. Extraneous information on tray labels is information that is not required by the Postal Service to be printed or written upon the label. For barcoded tray labels, extraneous information is limited to the printer information line and the mailer information line (see 369.2, 446, or 646). Barcoded tray labels produced by the Postal Service can not contain any extraneous information of the mailer on the printer information line. Other mailer prepared labels may contain extraneous information as follows:

(1) *Above Line 1 (Printer Information Line).* Mailers may place extraneous information on the printer information line (the line above the destination line (line 1) of a tray label) provided the maximum character height of the text is not greater than 0.083 inch (6-point type).

(2) *Line 1—Destination.* No extraneous information is allowed on the destination line of tray labels.

(3) *Line 2—Contents.* No extraneous information is allowed on the contents line of tray labels.

(4) *Line 3—Mailer Information Line.*

(a) *Preceding Required Information.* The following may appear before the required information on the mailer information line of tray labels:

(i) A mailer code assigned by the post office.

(ii) The word "Mailer" or "From (FR)."

(iii) The words "Entered at" or similar notations.

(b) *Following Required Information.* Mailer codes and any other extraneous information may appear to the right of (after) the mailer and mailer location information on tray labels. However, if such information is shown, it must not consist of numerals that have the appearance of a ZIP Code or 3-digit ZIP Code prefix.

(5) *Between Required Lines.* Extraneous information must not be placed between required printed lines 1 and 2 (between the destination and contents lines) of tray labels. Only a blank line may appear between these required printed lines. Mailer codes or other extraneous information may appear between the contents line and the mailer information line. If such information is shown, it should not consist of numerals that have the appearance of a ZIP Code or 3-digit ZIP Code prefix.

(6) *Optional Lines 4 and 5 (Below the Mailer Information Line).* Mailers may place codes or any other information on optional fourth or fifth lines of tray labels appearing below the mailer information line.

562 TRAY-BASED PRESORTED ZIP+4 MAIL

562.1 OPTION 1—Tray-Based (Required March 21, 1993, Optional Until Then)

562.11 Rate Eligibility

562.111 First-Class Mail

a. 5-Digit, 3-Digit and SCF Trays. ZIP+4 coded pieces in 5-digit, 3-digit, and SCF trays can qualify for the ZIP+4 Presort rate. Other pieces in these trays can qualify for the Presorted First-Class rate. 5-digit, 3-digit, and SCF trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25) except that one less-than-full SCF tray for the SCF serving the entry post office is permitted (see 562.123d). There must be at least 50 pieces for each 3-digit ZIP Code area placed in 3-digit and SCF trays.

b. Residual Trays. Residual pieces (pieces remaining after preparing full 5-

digit trays and after preparing groups of 50 or more pieces per 3-digit area to full 3-digit and SCF trays) can qualify for the nonpresorted ZIP+4 rate if ZIP+4 coded or the single-piece First-Class rate.

562.112 Second-Class Mail

a. 5-Digit Trays. ZIP+4 coded pieces in 5-digit trays can qualify for the level B5/H5/J5 ZIP+4 rates. Other pieces in 5-digit trays can qualify for the level B5/H5/J5 presort rates. These trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25).

b. Optional City Trays. ZIP+4 coded pieces in optional city trays for a city listed in Exhibit 122.63a can qualify for the level B3/H3/J3 ZIP+4 rates. Other pieces in optional city trays can qualify for the level B3/H3/J3 presort rates. These trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25).

c. 3-Digit Trays

(1) *Unique 3-Digit Trays.* ZIP+4 coded pieces in 3-digit trays for a unique 3-digit ZIP Code area listed in Exhibit 122.63b can qualify for the level B3/H3/J3 ZIP+4 rates. Other Pieces in unique 3-digit trays can qualify for the level B3/H3/J3 presort rates. These trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25).

(2) *Nonunique 3-digit Trays.* ZIP+4 coded pieces in nonunique 3-digit trays can qualify for the level A/G/J1 ZIP+4 rates. Other pieces can qualify for the level A/G/J1 presort rates. These trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25).

d. SCF and Residual/Basic Trays. ZIP+4 coded pieces in SCF and residual/basic trays can qualify for the level A/G/J1 ZIP+4 rates. Other pieces in SCF and residual/basic trays can qualify for the level A/G/J1 presort rates. Less-than-full trays (as defined in 561.24) are not permitted, except one overflow tray per SCF area is permitted as provided in 561.25 and one less-than-full tray for the SCF serving the post office where the mailing is entered is permitted (see 562.123d). Residual trays (which contain pieces remaining after filling SCF trays) may be less than full.

562.113 Third-Class Mail

a. 5-Digit, 3-Digit and SCF Trays. ZIP+4 coded pieces in 5-digit, 3-digit, and SCF trays can qualify for the 3/5 ZIP+4 rates. Other pieces in these trays can qualify for the 3/5 presort rates. These trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25), except that one less-than-full SCF tray for the SCF serving the entry post office is permitted (see 562.123d).

b. Residual/Basic Trays. ZIP+4 coded pieces in residual/basic trays can qualify for the basic ZIP+4 rate. Other pieces in residual/basic trays can qualify for the basic presort rate. AADC trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25). Residual/basic trays (containing pieces remaining after filling AADC trays) may be less than full.

562.12 Sortation Requirements

562.121 General Preparation. Pieces must be sorted to full trays as described in 562.123 in the following sequence: 5-digit, optional city (second-class only), 3-digit, and SCF. Preparation of 5-digit trays may be omitted when mailings contain only pieces for the 3-digit ZIP Code areas designated as automated sites (listed in Exhibit 122.63m) and the mailing is prepared under 562.125. One overflow tray that is less than full is also permitted for any tray destination for which at least one full tray has been prepared (see 561.25). Pieces remaining after sortation to these tray levels are residual/basic and must be prepared as described in 562.124. The general traying requirements in 561.2 must be met. Pieces in certain types of trays must be grouped by ZIP Code, or packaged, or both as described in 561.122 for destination trays, and as described in 561.124 for residual/basic trays.

562.122 Grouping and/Packaging Within Destination Trays

a. Grouping. There are no requirements to group pieces by ZIP Code within 5-digit, optional city, or 3-digit trays. Within SCF trays, pieces for the same 3-digit ZIP Code must be grouped together in the trays. It is recommended, but not required, that the groups of pieces for the same 3-digit ZIP Code area be placed in SCF trays in numeric sequence (for example, pieces for 023 would be placed in an SCF tray in front of pieces for 024). In First-Class mailings, pieces in 3-digit and SCF trays must be part of a group of at least 50 pieces for the same 3-digit ZIP Code area. It is recommended that all the First-Class pieces in the group of 50 or more pieces for the same 3-digit area be placed in the same tray. However, where all the First-Class pieces cannot be placed in the same full tray, the remaining pieces in the group of 50 or more for that 3-digit ZIP Code area may be placed in an overflow tray to the same destination, or in a tray to the next level of sortation.

b. Packaging. (1) *Full Trays.* Neither packaging nor use of separator cards is permitted within mailings of any class that contain pieces that are larger than postcard-size dimensions (4¼ inches high, 6 inches long, and .0095 thick) within full 5-digit, optional city (second-class only), 3-digit, and SCF trays. Within mailings that consist entirely of postcard-size pieces, the pieces must be secured into packages as described in 561.11 to maintain their orientation within the trays during transit. No package labels are required for this packaging.

Exception: Until March 21, 1993, mailers may place in standard MM letter trays, pieces that are wider or taller than those trays in accordance with 561.23. Packaging is therefore permitted until March 21, 1993 for mailings of pieces that are wider than standard MM trays that are prepared in accordance with 561.23.

(2) *Overflow Trays.* Pieces in overflow trays to any tray destination must be secured into packages as described in 561.11 to maintain their orientation within the tray during transit. All packages in overflow trays must be labeled as described in 561.131. Packages in 5-digit overflow trays must be labeled as 5-digit packages. Packages in second-class optional city trays must be labeled as optional city packages. Pieces in 3-digit and SCF overflow trays must be packaged by 3-digit ZIP Code area and labeled as 3-digit packages.

562.123 Tray Sortation—3/5 Presort Tier

a. 5-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray, a 5-digit tray must be prepared for that destination. Less-than-full trays are not permitted, except that one overflow tray per 5-digit ZIP Code area is permitted as provided in 561.25. Full and overflow 5-digit trays must be labeled as follows:

(1) Nonmilitary Mail

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Mailer Information (see 561.273b(3)).

Example:

DETROIT MI—48235
FCM ZIP+4 PRESORT
NB COMPANY UNION SC

(2) Military Mail

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340) or AP (for ZIPs 962–966), and complete 5-digit APO or FPO ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Mailer information (see 561.273b(3)).

Example:

APO AE—09128
FCM ZIP+4 PRESORT
NB COMPANY UNION SC

b. Second-Class Optional City Trays. After preparing all possible full 5-digit trays, and at the mailer's option, overflow 5-digit trays, and before preparing 3-digit trays, second-class mailers may prepare optional city trays for the multi-ZIP Coded cities listed in Exhibit 122.63a. Less-than-full trays are not permitted except that one overflow tray per optional city is permitted as provided in 561.25. Full and overflow optional city trays must be labeled as follows:

Line 1: Name of optional city in Exhibit 122.63a, two-letter state abbreviation, and lowest 5-digit ZIP Code served by the city.

Line 2: Contents (2C or NEWS) followed by "ZIP+4 PRESORT" and directly under the ZIP Code on Line 1, "CITY".

Line 3: Mailer information (see 561.273b(3)).

Example:

LA JOLLA CA—92037
2C ZIP+4 PRESORT CITY
HARD TIMES NEWS UNION SC

c. 3-Digit Trays. After preparing all possible full 5-digit trays, full optional city trays (if applicable, for second-class mailings only), and at the mailer's option, overflow trays to those destinations, if there are enough pieces to fill a tray for a 3-digit ZIP Code destination, a 3-digit tray must be prepared. (For First-Class Mail, there must be at least 50 pieces for each 3-digit ZIP Code area. See 562.122.) Less-than-full trays are not permitted, except that one overflow tray per 3-digit ZIP Code area is permitted as provided in 561.25. Full and overflow 3-digit trays must be labeled as follows:

(1) *Nonmilitary Mail.*

(a) *Unique 3-Digit ZIP Code Prefixes.*

Line 1: City, two-letter state abbreviation and unique 3-digit prefix listed in Exhibit 122.63b.

Line 2: Appropriate class or contents designation, (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Mailer information (see 561.273b(3)).

Example:

KNOXVILLE TN—379
FCM ZIP+4 PRESORT
LMM COMPANY FAIRFAX VA

(b) *Other 3-Digit ZIP Code Prefixes.*

Line 1: Name of the SCF (letters "SCF" omitted) and the two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces contained in the tray (See Exhibits 122.63c or 122.63d for the name of the SCF serving the 3-digit area).

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Mailer information (see 561.273b(3)).

Example:

WATERLOO IA—506
FCM ZIP+4 PRESORT
XYZ CORP ROCHESTER NY

(2) *Military Mail.*

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340) or AP (for ZIPs 962–966), and 3-digit APO or FPO prefix.

Line 2: Appropriate class or contents designation, (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Mailer information (see 561.273b(3)).

Example:

FPO AE—095
FCM ZIP+4 PRESORT
XYZ CORP ROCHESTER NY

Note: ZIP Code prefixes 094, 096–098, 340, and 962–965 contain both APO and FPO addresses. Therefore, the destination line for 3-digit trays for destinations containing both APO and FPO mail must show the prefix APO/FPO before the code and the 3-digit prefix: Example: APO/FPO AA 340. (All 3-digit trays for ZIP Code prefixes 090–093 must be labeled APO, and 3-digit trays for ZIP Code prefixes 095 and 966 must be labeled FPO.)

d. SCF Trays. After preparing all possible full 5-digit trays, any full optional city trays (if applicable, for second-class mailings only), all possible full 3-digit trays, and at the mailer's option, overflow trays to those destinations, if there are enough pieces for one of the SCFs listed in Exhibit 122.63d to fill a tray, an SCF tray for that destination must be prepared. Less-than-full trays are not permitted, except that one overflow tray per SCF area is permitted as provided in 561.25, and one less-than-full tray for the SCF serving the post office of entry is permitted. (For First-Class Mail, there must be at least 50 pieces for each 3-digit ZIP Code area as provided in 562.122a. For all classes of mail, the pieces must be grouped by 3-digit area within each SCF tray. See 562.122.) Full SCF trays and overflow SCF trays must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation, and 3-digit ZIP Code prefix for the SCF shown in Exhibit 122.63d.

Line 2: Appropriate class or contents designation, (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Mailer information (see 561.273b(3)).

Example:

SCF SAN ANTONIO TX—780
FCM ZIP+4 PRESORT
NBT CO BAKERSFIELD CA

Note: Where there is no SCF listed for a given 3-digit area in Exhibit 122.63d (such as military mail and the Virgin Islands) mailers must place such pieces in a tray labeled on the top line in accordance with Exhibit 122.63t, when a full tray can be prepared in accordance with 122.63t. The second and third lines of tray labels for such trays are the same as those for SCF trays described above. Pieces in such trays are not eligible for SCF entry discounts.

562.124 Tray Preparation—Residual/Basic Tier

a. General. For mailings prepared under the tray sortation in 562.123, residual/basic pieces are those that cannot be trayed in accordance with 562.123a through 562.123d. For mailings prepared under the optional automated site traying option in 562.125, residual/basic pieces are those that cannot be trayed in accordance with 562.125. Residual/basic pieces must be placed in trays that are separate from trays of pieces to destination sorts. The traying requirements in 561.2 must be met. The pieces in residual/basic trays must be prepared under either 562.124b or 562.124c below. Once the basic requirements in 562.124b through 562.124c are met, additional sortation of First-Class residual mail may be performed in accordance with any local authorization for acceptance times described in Management Instruction DM–140–91–01, *First-Class Mail Acceptance Policy.*

b. Option 1: ZIP Code Sequencing and Listing. Residual/basic pieces for the same 3-digit ZIP Code area must be grouped together. Groups of pieces for the same 3-digit ZIP Code area must be placed in trays in ascending numeric 3-digit ZIP Code sequence. If the last tray is less than full, the pieces in the tray must be secured into and labeled as 3-digit packages under 561.11 and 561.131. In addition, full trays consisting entirely of postcard-size pieces (pieces measuring not more than 4¼ inches high by 6 inches long and .0095 inch thick), of any class of mail, must be secured into and labeled as 3-digit packages under 561.11 and 561.131. Mailers must provide a listing by 3-digit ZIP Code area of the various rate qualification categories as

described in 562.14. In third-class mailings in which destination BMC rates are claimed and not all pieces in the residual/basic portion of the mailing qualify for the destination BMC rate, separate residual/basic trays must be prepared for the ZIP Code areas eligible for the destination BMC rate as provided in 628.722. Trays must be labeled as follows:

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code of the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate Class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 WORKING" or "ZIP+4 WKG".

Line 3: Mailer information (see 561.273b(3).

Example:

DIS WILKES-BARRE PA—186
FCM ZIP+4 WORKING
EXETER CO DUPONT PA

c. Option 2: Physical Separation by Rate Qualification.

(1) *Basic Tray Separations.* Residual/basic pieces bearing correct ZIP+4 codes (see 530) must be separately trayed from residual/basic pieces that do not. The trays must be physically grouped according to these separations when presented to the post office for verification.

(2) *Additional Tray Separations.*

(a) *First-Class Nonidentical-Weight Metered or Precanceled Stamp Mailings.* There is a different first ounce rate for pieces weighing over 2 ounces in First-Class Mail. Accordingly, in nonidentical-weight First-Class metered or precanceled stamp mailings in which there are both pieces weighing 2 ounces or less and pieces weighing over 2 ounces, and postage at the exact rate is not affixed to each piece, further tray separations must be made by pieces weighing over 2 ounces and pieces weighing 2 ounces or less for each of the two basic separations required in 562.124c(1). The trays must be physically grouped according to these separations when presented to the post office for verification. Precanceled stamp mailings must meet the tray separation requirements in 562.124c(2) (b) when postage to cover additional ounce increments is not affixed to each piece as permitted under 581.34.

(b) *First-Class Nonidentical Weight Precanceled Stamp Mailings in which Postage to Cover Additional Ounce Increments is Not Affixed.* In First-Class mailings paid by precanceled stamps that contain pieces of more than one ounce increment in which precanceled stamps to cover postage for the additional ounce or ounces is not affixed under 581.34 or 581.4, further tray separations must be made by pieces of each ounce increment in the mailing for each of the two basic separations required in 562.124c(1). The trays must be physically grouped according to these separations when presented to the post office for verification.

(c) *First-Class Mailings Containing Both Letter-Rate and Postcard-Rate Pieces.* For metered and precanceled stamp First-Class mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates, pieces weighing one ounce or less must be further separated so that postcard-rate pieces are trayed separately from letter-rate pieces for each of the two basic separations required in 564.124c(1). The additional tray separations in 562.124c(2)(b) may also be necessary for precanceled stamp mailings. The trays must be physically grouped according to these separations when presented to the post office for verification.

(d) *Second-Class Mailings Containing In-County and Outside County Pieces.* Within second-class mailings containing both in-county and outside-county pieces, in-county pieces must separately trayed from outside-county pieces for each of the two basic tray separations required in 562.124c(1) above. The trays must be physically grouped according to these separations when presented to the post office for verification.

(e) *Third-Class Mailings Claiming Destination BMC Rates.* In third-class mailings in which destination BMC rates are claimed and not all pieces in the residual/basic portion of the mailing qualify for the destination BMC rate, further tray separations by pieces within the BMC service area and pieces outside the BMC service area must be made for each of the two basic separations required in 562.124c(1).

(3) *Separation Into Groups of 100 Pieces Within Each Tray.* Within each of the trays resulting from sortation in accordance with 562.124c(1) and 562.124c(2), the pieces must be separated into groups of 100 pieces. The groups of 100 must be delineated by separator cards (see 561.12). When the tray is full, nothing further is required. When the tray is less than full, pieces must also be secured into packages in accordance with 561.11 within each group of 100 pieces. In addition, full trays consisting entirely of postcard-size pieces (pieces measuring not more than 4¼ inches high, 6 inches long, and .0095 inch thick), of any class of mail, must be secured into packages as provided in 561.11. When there are fewer than 100 pieces in a group at the end of the last tray for any of the types of residual/basic trays, the actual number of pieces in the group must be written on the separator card. The total number of residual/basic pieces in each rate category must be added to the summary portion of the documentation required in 562.145.

(4) *Tray Labels.* Option 2 residual/basic trays must be labeled as follows:

(a) *Trays Containing ZIP+4 Coded Pieces.*

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate Class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 WORKING" or "ZIP+4 WKG".

Line 3: Mailer information (see 561.273b(3)).

Example:

DIS WILKES-BARRE PA—186
FCM ZIP+4 WORKING
EXETER CO DUPONT PA

(b) *Trays Containing Pieces Not ZIP+4 Coded.*

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate Class or contents designation (FCM, 2C, NEWS, or 3C LTRS) followed by "WORKING" or "WKG."

Line 3: Mailer information (see 561.273b(3)).

Example:

DIS WILKES-BARRE PA—186
FCM WORKING
EXETER CO DUPONT PA

562.125 Optional Tray Sortation to Automated Sites

a. Description and General Requirements. (1) *Definition.* This option applies to mailings that include only pieces for the 3-digit areas designated as automated sites in Exhibit 122.63m. Under this option, preparation of 5-digit trays may be omitted. When this option is used, pieces to 3-digit ZIP Code areas not listed in Exhibit 122.63m must be prepared as a separate mailing, except that in First-Class mailings such pieces may be included in the residual/basic portion. (This is because single piece rates are paid on First-Class residual mail.)

(2) *General Requirements.* The requirements of 562.121 and 562.122 must be met. The mail must be trayed to

3-digit and SCF destinations as described in 562.125b and 562.125c. (The traying requirements in 562.123 do not apply.) After these trays are prepared, remaining residual/basic pieces must be prepared under 562.124. The SCF destinations for mailings prepared to automated sites differ from those in mailings trayed under the required sortation in 561.123, and appear in Exhibit 122.63n.

b. 3-Digit Trays. When there are enough pieces to fill a tray for one of the 3-digit ZIP Code areas listed in Exhibit 122.63m, a 3-digit tray must be prepared. For First-Class Mail, there must be at least 50 pieces per 3-digit ZIP Code area as provided in 562.122a. Less-than-full trays are not permitted, except that one overflow tray per 3-digit ZIP Code area is permitted as provided in 561.25. Full and overflow 3-digit trays must be labeled as follows:

Line 1: City, two-letter state abbreviation and 3-digit prefix listed in Exhibit 122.63m.

Line 2: Appropriate class or contents designation, (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT."

Line 3: Mailer information (see 561.273b(3)).

Example:

KNOXVILLE TN—379
FCM ZIP+4 PRESORT
LMM COMPANY FAIRFAX VA

c. SCF Trays. If, after preparing all possible full 3-digit trays (and, at the mailer's option, 3-digit overflow trays) there are enough pieces for one of the SCFs listed in Exhibit 122.63n to fill a tray, an SCF tray for that destination must be prepared. Less-than-full trays are not permitted, except that one overflow tray per SCF area is permitted as provided in 561.25, and one less-than-full tray for the SCF serving the post office where the mail is entered is permitted provided that SCF is listed in Exhibit 122.63n. (For First-Class Mail, there must be at least 50 pieces for each 3-digit ZIP Code area as provided in 562.122a. For all classes of mail, the pieces must be grouped by 3-digit area within each SCF tray. See 562.122) Full SCF trays and overflow SCF trays must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation, and 3-digit ZIP Code prefix for the SCF shown in Exhibit 122.63n.

Line 2: Appropriate class or contents designation, (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT."

Line 3: Mailer information (see 561.273b(3)).

Example:

SCF SAN ANTONIO TX—780
FCM ZIP+4 PRESORT
NBT CO BAKERSFIELD CA

d. Residual/Basic Pieces. Pieces remaining after preparing trays in accordance with 562.125 a through c above are residual/basic and must be prepared in accordance with 562.124.

562.13 Mailing Statement. Each mailing must be accompanied by a complete and signed mailing statement appropriate for the method of postage payment and class of mail submitted. Mailers must write "DMM 562.1 Presort" at the top of the mailing statement. In addition, if mail is trayed according to the automated site option in 562.125, the words "Automated Site" must also be written at the top of the mailing statement.

562.14 Documentation

562.141 Purpose. Documentation enables the Postal Service to verify the percentage of ZIP+4 coded pieces in the mailing. It also enables the Postal Service to verify the number of pieces claimed at each rate category on the mailing statement, and to verify that any difference between the amount of postage affixed to the pieces in the mailing and the amount of postage owed for the pieces is paid. It does this by providing the Postal Service with a detailed description of what is being mailed, how it is prepared, the rate for which pieces qualify, and how many pieces have a ZIP+4 code. The USPS will compare the numbers shown on the mailer's documentation with counts of samples taken from the actual mailing to confirm that the information on the documentation is accurate.

Note: For second-class mailings, the documentation described in this section will provide the presort per piece rate documentation and the 85% ZIP+4 coded documentation required in 424.841 and 424.843. Documentation in addition to the documentation described in 562.14 must be prepared for mailings of second-class publications as set forth in 424.84.

562.142 General Requirements for Submission. Each mailing must be accompanied by the documentation described in 562.143, with the following exceptions:

a. No documentation is required (other than a listing of overflow trays if applicable as required in 561.25) when every piece in the mailing bears the correct ZIP+4 code and either of the following applies:

(1) Postage is affixed to each piece at the exact rate of postage for which it qualifies.

(2) Each piece in the mailing is of identical weight, the pieces in each individual tray are subject to the same rate, and the trays for each rate level are placed in groups by rate eligibility when presented for verification to allow weight verification of postage. (Second-class mailings containing both in-county and outside-county pieces and/or containing both Level A and Level B rates do not meet this condition.)

b. Abbreviated documentation may be submitted under the provisions of 568.1.

c. Documentation that describes all ZIP+4 rate mailings to be made from that mailing job may be submitted with the first mailing of a mailing job in accordance with 568.2.

562.143 Heading and General Format Requirements. The top of the first page of the documentation must show the class of mail and the words "DMM 562.1 Presort". If mail is sorted according to the automated site option in 562.125, the words "Automated Site" must also be shown at the top of the documentation. The words "ZIP Code Option" or "Tray Label Option" must also appear at the top of the first page of the documentation to indicate whether the listing option in 562.144b(1) or 562.144b(2) is used. When only some pieces in a third-class mailing qualify for a destination entry rate, or when a mailing contains pieces that qualify for more than one destination entry rate, a description of the characters used within the listing portion of the documentation to identify the ZIP Codes qualifying for each destination entry discount must also appear at the top of the first page (see 562.144d(6)). The documentation must consist of a listing portion (562.144) and a summary portion (562.145). It is recommended that one of the formats in Exhibit 562.144b(1) or 564.144b(2) be used. If another format is used, it must allow Postal Service verification personnel to easily determine the information required by 562.144 and 562.145 using a single report. See 562.144f for an exception to the single report requirement for second-class mailings containing more than one edition and/or publication. Information that could not pertain to the class being mailed (such as column headings for Level A, Level B, Level J rates in a third-class mailing) must not be included in the documentation.

562.144 Required Information—ZIP Code Listing Portion

a. Tray Sortation Level Sections. The ZIP Code listing portion of the documentation must be divided into sections by level of tray sortation in the following order: 5-digit trays; second-class optional city trays (if applicable); 3-digit trays; SCF trays; and residual/

basic trays (for mailings with residual/basic pieces prepared under 562.124b sequencing and listing). Each section must be preceded by a heading describing its contents (i.e., "5-Digit Trays," "Optional City Trays," "3-Digit Trays," "SCF Trays," and "Residual/Basic Trays").

b. Tray Label and/or ZIP Code Column(s). Within each tray sortation level section, all tray destinations in the mailing for that type of tray must be listed. The tray destinations must be listed either by the ZIP Code alone as described in 562.144b(1) (ZIP Code Option), or by both the exact tray label (or tray number) and ZIP code as described in 562.144b(2) (Tray Label Option).

(1) *ZIP Code Option.* For each tray sortation level section in the mailing, list the ZIP Code(s) contained in all trays to that level of sortation under a column heading "ZIP Code." The ZIP Codes within each section must be listed in ascending numeric order by 5-digit ZIP Code for 5-digit trays, by lowest assigned 5-digit ZIP Code for second-class optional city trays (see Exhibit 122.63a), and by 3-digit Zip Code for the 3-digit, SCF, and residual/basic trays (residual/basic trays for mailings prepared under the ZIP Code sequencing and listing Option in 562.124b). For example, two full 5-digit trays and one overflow 5-digit tray for ZIP Code 22033 would be listed under a single entry "22033" under the 5-digit tray sortation level section. (The destination 22033 would also have to appear on the separate overflow tray listing—see 561.25.)

(2) *Tray Label Option.*

(a) *Tray Label Column.* Within each tray sortation level section, list all trays in the mailing that are sorted to that tray sortation level. The trays must be listed either by a unique tray number that appears on the tray label, or by the exact top line of the tray label. For example two full 5-digit trays and one overflow 5-digit tray for ZIP Code 22030 would be listed on three separate lines either by individual tray numbers (such as 010, 011, and 012, or by the top line of the each tray label (such as Fairfax VA 22030, Fairfax VA 22030, and Fairfax VA 22030). The tray listings must appear under a column heading "Tray Number" or "Tray Label," as applicable. If unique tray numbers are used, the trays must be listed in ascending numerical order by tray number within each tray sortation level section. If the exact top line of tray labels is used, the trays must be listed in ascending numerical order by the ZIP Code shown on the tray label within each tray sortation level section. The ZIP Codes in each tray must also be listed in a separate column as described in 562.144b(2)(b) below.

(b) *ZIP Code Column.* For each tray in the mailing, the ZIP Codes contained in the tray must be listed under a column heading "ZIP Code." The ZIP Codes must be listed in ascending numeric order by 5-digit ZIP Code for 5-digit trays, by lowest assigned 5-digit ZIP Code for second-class optional city trays as listed in Exhibit 122.63a, and by 3-digit ZIP Code for 3-digit, SCF, and residual/basic trays (residual/basic trays for mailings prepared under the ZIP Code sequencing and listing option in 562.124b).

c. Basic Columns and Line Entries for Rates and Totals. For each ZIP Code entry listed under either the ZIP Code Option or the Tray Label Option the documentation must show:

(1) the number of pieces bearing a ZIP+4 code under a column heading (or column headings—see 562.144d) naming the rate of postage for which the pieces qualify based upon the class of mail (see 562.11) and indicating that the pieces are ZIP+4 coded.

(2) the number of pieces that are not ZIP+4 coded under a column heading (or column headings—see 562.144d) naming the rate for which the pieces qualify based on the class of mail (see 562.11) and indicating the pieces are not ZIP+4 coded.

(3) the cumulative total (the total of all pieces listed for that ZIP Code plus all pieces listed for the preceding ZIP Code entries within the same tray sortation level section of the documentation) under a column heading "Cumulative Total." (The totals accumulate for each tray level section only.)

d. Additional Rate Column Listings or Line Entries.

(1) *First-Class Metered or Precanceled Stamp Mailings Containing Pieces Both Over and Under 2 Ounces.* Within the residual/basic tray section of the documentation for metered and precanceled stamp mailings in which postage at the exact rate is not affixed, two rate columns, one for reporting pieces weighing less than 2 ounces and one for reporting pieces weighing 2 ounces or more must be shown for each of the basic column separations described in 562.144c. Each column heading must contain the name of the residual/basic rate (see 562.111b) for which the pieces qualify, the weight category, and a statement as to whether the pieces are ZIP+4 coded. Precanceled stamp mailings in which postage to cover additional ounce increments is not affixed must meet the additional documentation requirements in 562.144d(2) below.

(2) *First-Class Nonidentical-Weight Precanceled Stamp Mailings in Which Postage to Cover Additional Ounce Increments is Not Affixed.* In First-Class mailings paid by precanceled stamps that contain pieces of more than one ounce increment and in which precanceled stamps to cover postage for the additional ounce or ounces is not affixed as permitted in 581.34 or 581.4, additional rate columns for reporting each ounce increment in the mailing must be shown for each of the basic column separations described in 562.144c. Each rate column heading must show the name of the rate (see 562.111) for which the pieces qualify, the weight category, and a statement as to whether or not the pieces are ZIP+4 coded.

(3) *First-Class Mailings Containing Both Letter-Rate and Postcard-Rate Pieces.* Within the residual/basic tray section of the documentation for metered and precanceled stamp First-Class mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates, two columns, one for reporting pieces at the postcard rates and one for reporting pieces at the letter rate must be shown for each of the basic column separations described in 562.144c. The column headings must contain the name of the rate (see 564.111) for which the pieces qualify, the weight category, a statement as to whether the pieces are subject to postcard or letter rates, and a statement as to whether or not the pieces are ZIP+4 coded. The additional column separations in 562.144d(2) are also necessary for all tray sortation sections of the documentation for precanceled stamp mailings in which postage to cover additional ounce increments is not affixed to each piece in the mailing as permitted under 581.34 or 581.4.

(4) *Second-Class Mailings Containing Both In-County and Outside-County Rate Pieces.* For second-class mailings containing both in-county and outside-county pieces, separate columns for in-county pieces and for outside-county pieces must be shown for pieces listed under 562.144c(1), 562.144c(2), and 562.144c(3) for each tray level section. In addition, for 3-digit trays, separate columns for unique 3-digit trays that qualify for the level B3 or H3 rates, and for the level J3 rates must be shown, and separate columns for non-unique 3-digit trays that qualify for level A or G rates, and for level J1 rates must be shown, for each of the three general categories of pieces in 562.144c(1), 562.144c(2), and 562.144c(3). (Up to eight rate column headings showing applicable rate

categories are possible in the 3-digit tray portion.) To reduce the number of columns across a page, mailers may break the 3-digit tray portion of the documentation into sections by rate category: section 1 for optional city and unique 3-digit trays recorded at the level B3/H3 and J3 rates, and section 2 for nonunique 3-digit trays at the level A/G or J1 rates. The column headings must contain the name of the rate (see 562.112) for which the pieces qualify, and a statement as to whether or not the pieces are ZIP+4 coded.

(5) *Second-Class Combined Mailings.* See 562.144f.

(6) *Third-Class Mailings Claiming Destination SCF or Destination BMC Rates.* In third-class mailings in which some combination of SCF destination entry, BMC destination entry, and no destination entry discount is claimed (that is, not all pieces in the mailing qualify for the same destination discount) the ZIP Codes on the listing that are eligible for the SCF entry discount or the BMC entry discount must be marked with an asterisk or some other unique character. If both the SCF discount and BMC discount are claimed in the same mailing, a different character from the one used to mark the ZIP Codes eligible for the SCF discount must be used to mark the ZIP Codes eligible for the BMC discount.

e. Section Column Totals. At the end of each tray level section in the listing, show the total number of pieces listed under each rate and total column.

f. Additional Requirements For Second-Class Combined Mailings. In addition to the documentation required by 564.14, second-class mailings combining pieces from more than one second-class publication or edition must provide additional information by publication or edition as required by 424.853. This additional information may be provided as a separate report or reports.

562.145 Summary Portion

a. Second-Class Mailings and Identical-Weight Permit Imprint Mailings.

(1) *Rate Categories and Postage Owed.* The summary must list each rate at which any pieces in the mailing are claimed from the applicable column totals in the listing portions of the documentation. (For residual/basic mail sorted under the physical separation option in 562.124c, information is also obtained from the manual counts of residual/basic pieces in the separate trays for each rate category.) When not all pieces in a third-class mailing qualify for the same destination entry discount, a separate line entry for the pieces claimed at each destination entry discount and for pieces not qualifying for a destination entry discount must be shown to separately account for the different rates in the summary. For each rate listed, the summary must show:

(a) The total number of pieces claimed at that rate.

(b) The applicable rate (amount) of postage.

(c) The postage charges for that rate category (the total number of pieces times the amount of postage).

Note: The applicable rate amount and postage charges are not required for second-class mailings.

(2) Totals

(a) A grand total of the postage charges for all the rate entries for the entire mailing must be shown (optional for second-class mailings). This grand total is the amount of postage owed for the mailing and the amount to be deducted from the advance deposit account for permit imprint mailings, or is the amount of second-class per piece charges for the mailing prior to deductions for the nonadvertising percentage discount and zone rate discounts.

(b) The total number of pieces in the mailing that bear a ZIP+4 code, the total number of pieces that do not, and the total of both representing all pieces in the mailing must be shown.

(c) The percentage of ZIP+4 coded pieces in the mailing must be shown.

(d) The summary may also include the listing of overflow trays required by 561.25, if applicable.

b. First- and Third-Class Metered and Precanceled Stamp Mailings

(1) *Rate Categories and Postage Owed.* The summary must list each rate at which any pieces in the mailing are claimed from the applicable column totals in the listing portion of the documentation. For residual/basic mail sorted under the physical separation option in 562.124c, information is also obtained from the manual counts of pieces in the separate trays for each rate category. For nonidentical-weight First-Class precanceled stamp mailings in which stamps to cover the additional ounces are not affixed, each rate category must be listed more than once so that there is a separate listing for each ounce increment at that rate. First-Class postcard-rate pieces must also be listed separately from letter-rate First-Class pieces. For First-Class metered mailings containing residual pieces over and under two ounces, each residual rate category must have a separate listing for pieces weighing 2 ounces or less and a separate listing for pieces weighing over 2 ounces. When not all pieces in a third-class mailing qualify for the same destination entry discount, a separate line entry for the pieces claimed at each destination entry discount and for pieces not qualifying for a destination entry discount must be shown to separately account for the different rates in the summary. For each rate listed, the summary must show:

(a) The number of pieces claimed at that rate.

(b) The amount of additional postage due for each piece at that rate (when the amount of postage affixed is less than the rate of postage owed).

(c) The postage due for pieces claimed at that rate (the total number of pieces at that rate times the amount of postage due per piece).

(2) Totals

(a) A grand total of the additional postage charges due for all the rate entries for the entire mailing must be shown. This grand total is the amount of postage that must be affixed to the mailing statement or paid through an advance deposit account.

(b) The total number of pieces in the mailing that bear a ZIP+4 code, the total number of pieces that do not, and the total of both representing all pieces in the mailing must be shown.

(c) The percentage of ZIP+4 coded pieces in the mailing must be shown.

(d) The summary may also include the listing of overflow trays required by 561.44, if applicable.

562.2 OPTION 2—Tray-Based Presorted ZIP+4 Mail—Available Through March 20, 1993

562.21 [Reserved]

562.22 Rate Eligibility. [Insert current 562.22. Change all references "561.43" to "561.24." Change all references "561.44" to "561.25."]

562.23 Sortation Requirements

562.231 ZIP Code Grouping and Packaging Requirements. [Insert current 562.231. Change the reference "561.422" to "561.232." Change all references "561.44" to "561.25." Change all references "561.22" to "561.11 and 561.131."

562.232 Traying Requirements

a. General. The requirements in 561.2 must be met.

b. Required Tray Sortation—Qualifying Pieces.

(1) *5-Digit Trays.* [Insert current 562.232b(1). Change the reference "561.44" to "561.25". Insert "(a) Nonmilitary Mail" above current tray label information. Insert new section 562.232b(1)(b) as follows:

(b) Military Mail

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340) or AP (for ZIPs 962–966), and complete 5-digit APO or FPO ZIP Code designation.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

APO AE—09128
FCM ZIP+4 PRESORT
NB COMPANY UNION SC

(2) *Optional City Trays.* [Insert 562.233b. Change the reference "561.44" to "561.25". Change the reference "562.232b(3)(b)" to "562.232b(4)(b)".]

(3) *3-Digit Trays.* [Insert 562.232b(2). Change the first sentence to read "After preparing all possible full 5-digit trays, all possible full optional city trays (if applicable, for second-class mailings only), and at the mailer's option overflow trays to those destinations, there are enough pieces remaining to fill a tray for a 3-digit ZIP Code destination, a 3-digit tray must be prepared." Delete the sentence "In second-class mailings the mailer may elect to prepare optional city trays to obtain the level B3/H3/J3 ZIP+4 rates (see 562.233): if so, optional city trays must be prepared before preparing 3-digit trays." Change the reference "561.44" to "561.25". Insert the heading (a) Nonmilitary Mail in front of the current tray label information. Renumber current 562.232b(2)(a) as 562.232b(3)(a)(i). Renumber current 562.232b(2)(b) as 562.232b(3)(a)(ii). Insert new subsection 562.232b(3)(b) as follows:

(b) Military Mail

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340) or AP (for ZIPs 962–966), and 3-digit APO or FPO prefix.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location.

Example:

FPO AE—095
FCM ZIP+4 PRESORT
XYZ CORP ROCHESTER NY

Note: ZIP Code prefixes 094, 096–098, 340, and 962–965 contain both APO and FPO addresses. Therefore, the destination line for 3-digit trays for destinations containing both APO and FPO mail must show the prefix APO/FPO before the code and the 3-digit prefix. Example: APO/FPO AA 340. (All 3-digit trays for ZIP Code prefixes 090–093 must be labeled APO, and 3-digit trays for ZIP Code prefixes 095 and 966 must be labeled FPO.)

(4) *SCF Trays.* [Insert current 562.232b(3). Change all references "562.233" to "562.232b(2)". Change the reference "561.44" to "561.25." Change all references "561.22" to "561.11 and 561.131." Change the reference in the exception "562.232b(2)" to 562.232b(3)". Add the following note: "Note: When there is no SCF listed for a given 3-digit area in Exhibits 122.63c or 122.63d, (such as military mail and the Virgin Islands) mailers must place such pieces in a tray labeled on the top line in accordance with Exhibit 122.63t. The second and third line of such labels will be the same as for SCF trays described above."] Pieces in such trays are not eligible for SCF entry discounts.

562.24 Sortation Requirements-Residual/Basic Portion

562.241 General. [Insert current 562.241. Add the following: "Residual pieces must be placed in trays that are separate from trays of qualifying pieces. The traying requirements in 561.2 must be met for First-Class residual trays. The pieces in residual trays in First-Class mailings must be prepared under either 562.241a or 562.241b. Once the basic requirements in 562.252 have been met, additional sortation of First-Class residual mail may be performed in accordance with any local authorization for acceptance times as set fourth in Management Instruction DM–140–91–01, *First-Class Mail Acceptance Policy.*

a. Option 1: ZIP Code Sequencing and Listing. [Insert current 562.242a. Replace the first sentence with the following: "Residual pieces for the same 3-digit ZIP Code area must be grouped together. Groups of pieces for the same 3-digit ZIP Code area must be placed in trays in ascending numeric 3-digit ZIP Code sequence." Change the reference "561.22" to "561.11 and 561.131."]

b. Option 2: Physical Separation by Rate Qualification. [Insert current 562.242b. Add the following as the second sentence: "Additional tray separations may be required as set forth in 562.124c(2) to accurately account for postage." Change the reference "561.221" to "561.11."]

562.25 Documentation

562.251 General Requirements for Submission. Each mailing must be accompanied by the documentation described in 562.252, with the following exceptions:

a. No documentation is required (other than a listing of overflow trays if applicable as required in 561.25) when every piece in the mailing bears the correct ZIP+4 code and either of the following applies:

(1) Postage is affixed to each piece at the exact rate of postage for which it qualifies.

(2) Each piece in the mailing is of identical weight, the pieces in each individual tray are subject to the same rate, and the trays for each rate level are placed in groups by rate eligibility when presented for verification to allow weight verification of postage. (Second-class mailings containing both in-county and outside-county pieces and/or containing both Level A and Level B rates do not meet this condition.)

b. Abbreviated documentation may be submitted under the provisions of 568.1.

c. Documentation that describes all ZIP+4 presort rate mailings to be made from a mailing job may be submitted with the first mailing of a mailing job in accordance with 568.2.

562.252 Information Required

a. Tray Label Option

* * * * *

(2) *Information.* [Insert current 562.252a(2). Add the following as the second sentence: "See 562.144d for additional columns that may be required to account for pieces qualifying for each rate category."]

(3) *Summary.* [Insert current 562.252a(3). Change the reference "561.44" to "561.25."]

[Delete 562.252a(4).]

b. Listing Portion—ZIP Code Option

* * * * *

(2) *Information.* [Insert current 562.252b(2). Add the following as the last sentence: "See 562.144d for additional columns that may be required to account for pieces qualifying for each rate category."]

(3) *Summary.* [Insert current 562.252b(3). Change the reference "561.44" to "561.25."]

[Delete 562.252b(4).]

562.26 Mailing Statement. Each mailing must be accompanied by a complete and signed mailing statement appropriate for the method of postage payment and class of mail submitted. Mailers must write "DMM 562.2 Presort" at the top of the mailing statement.

563 PACKAGE-BASED PRESORTED ZIP+4 MAIL

563.1 Rate Eligibility

563.11 First-Class Mail

563.111 5-Digit and 3-Digit Packages. Pieces bearing a ZIP+4 code in 5-digit and 3-digit packages prepared under 563.2 can qualify for the ZIP+4 Presort

rate. Other pieces in these packages can qualify for the Presorted First-Class rate.

563.112 Residual Pieces. Pieces bearing a ZIP+4 code in the residual portion of the mailing prepared under 563.3 can qualify for the nonpresorted ZIP+4 Presort rate. Other pieces can qualify for the single-piece First-Class rate.

563.12 Second-Class Mail

563.121 5-Digit, Optional City, and Unique 3-Digit Packages. Pieces bearing a ZIP+4 code in 5-digit, optional city, and unique 3-digit packages prepared under 563.2 can qualify for the level B5/H5/J5 (5-digit packages) or the level B3/H3/J3 ZIP+4 rates. Other pieces in these packages can qualify for the level B5/H5/J5 rates (5-digit packages) or the level B3/H3/J3 rates.

563.122 Nonunique 3-Digit Packages. Pieces bearing a ZIP+4 code in nonunique 3-digit packages prepared under 563.2 can qualify for the level A/G/J1 ZIP+4 rates. Other pieces in these packages can qualify for the level A/G/J1 rates.

563.123 Residual/basic Pieces. Pieces bearing a ZIP+4 code in the residual/basic portion of the mailing prepared under 563.3 can qualify for the level A/G/J1 ZIP+4 rates. Other pieces can qualify for the level A/G/J1 rates.

563.13 Third-Class Mail

563.131 Qualifying 5-Digit and 3-Digit Packages. Pieces bearing a ZIP+4 code in 5-digit and 3-digit packages prepared under 563.2 can qualify for the 3/5 ZIP+4 rates. Other pieces in these packages can qualify for the 3/5 presort rates.

563.132 Residual/Basic Pieces. Pieces bearing a ZIP+4 code in the residual/basic portion of the mailing prepared under 563.3 can qualify for the basic ZIP+4 rates. Other pieces can qualify for the basic presort rate.

563.2 Sortation Requirements—3/5-Digit Portion

563.21 Grouping/Packaging

563.211 General Rules

a. Groups/packages must meet the requirements in 561.1.

b. In mailings consisting entirely of pieces that fall within the dimensions for postcards (not exceeding 4¼ inches high, 6 inches long, and .0095 inch thick) the pieces in any type of tray must always be secured into packages in accordance with 561.11.

c. All pieces, regardless of size, placed in AADC trays must be secured into packages in accordance with 561.11.

563.212 5-Digit Groups/Packages. When there are 10 or more pieces for the same 5-digit ZIP Code destination, they must be grouped together. Preparation of groups/packages containing fewer than 10 pieces for a 5-digit area is not permitted. Each group of pieces for the same 5-digit area must be secured together into a package (or packages) and each package must be labeled as described in 561.11 and 561.131, except that within 5-digit, second-class optional city, 3-digit, and SCF trays of mailings containing any pieces exceeding the dimensions for postcards, separator cards may be used to delineate pieces for the same 5-digit ZIP Code area as an alternative to securing pieces into packages. 5-digit groups delineated by separator cards must be labeled as described in 561.132. Neither packaging, separator cards, nor labeling, is required in full 5-digit trays, except for mailings consisting entirely of postcard size pieces which must be packaged (see 563.311b).

Note: 5-digit groups/packages need not be prepared when mailings sorted according to the automated site option in 563.4.

563.213 Optional City Groups/Packages (Second-Class Mailings Only). After preparing all possible 5-digit groups/packages, second-class mailers may choose to prepare groups of 50 or more pieces for the same optional city listed in Exhibit 122.63a, to obtain the level B3/H3/J3 ZIP+4 rates. Preparation of groups/packages containing fewer than 50 pieces for an optional city is not permitted. Each group of pieces for the same optional city must be secured together into a package (or packages) and each package must be labeled as described in 561.11 and 561.131, except that within optional city, 3-digit, and SCF trays of mailings containing any pieces exceeding the dimensions for postcards (see 563.311b), separator cards may be used to delineate pieces for the same optional city as an alternative to securing pieces into packages. Optional city groups delineated by separator cards must be labeled as described in 561.132.

563.214 3-Digit Groups/Packages. After preparing all possible 5-digit groups/packages under 563.212, and any optional city packages under 563.231 (second-class mail only), if there are 50 or more pieces remaining for a 3-digit ZIP code area, they must be prepared in 3-digit groups/packages. Preparation of groups/packages containing fewer than 50 pieces for the same 3-digit area is not permitted. Each group of pieces for the same 3-digit area must be secured together into a package (or packages) and each package must be labeled as described in 561.11 and 561.131, except that within 3-digit and SCF trays of mailings containing any pieces exceeding the dimensions for postcards (see 563.311b), separator cards may be used to delineate pieces for the same 3-digit ZIP Code area as an alternative to securing the pieces into packages. 3-digit groups delineated by separator cards must be labeled as described in 561.132.

563.215 Residual/Basic Groups/Packages. Pieces remaining after preparing packages in accordance with 563.212 through 563.214 are residual/basic pieces. Residual/basic pieces must be sorted in accordance with one of the options in 563.3.

563.22 Tray Sortation—3/5 Presort Tier

563.221 General. The requirements in 561.2 must be met. All pieces in a group/package for the same 5-digit, same optional city (second-class only), or same 3-digit destination must be placed together in the same tray. For example, all packages for ZIP Code 22033 within a 3-digit tray must be grouped together within the 3-digit tray. All pieces for the same group/package destination should be placed in the same tray. For example, 100 pieces for 220 should be placed in the same 3-digit tray, and not split between a 3-digit tray and an SCF tray if physically possible. When all the pieces for the same group/package destination cannot physically fit in the same tray, the remaining pieces for the group/package destination must be placed in either another full tray for the same tray destination, or in a tray for the next level of sortation (or a less-than-full AADC tray for the same AADC destination).

Note: Automated sites mailings may be sorted in accordance with 563.4 rather than as specified in 563.22.

563.222 5-Digit Trays. Whenever there are enough groups/packages for the same 5-digit ZIP Code area to fill a tray, a 5-digit tray must be prepared for that destination. Less-than-full 5-digit trays are not permitted. 5-digit trays must be labeled as follows:

a. Nonmilitary Mail

Line 1: City, two letter state abbreviation, and 5-digit ZIP Code

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT"

Line 3: Mailer information (see 561.273b(3))

Example:

DETROIT MI—48235
FCM ZIP+4 PRESORT
NB COMPANY UNION SC

b. Military Mail

Line 1: "APO" or "FPO", followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340) or AP (for ZIPs 962–966), and complete 5-digit APO or FPO ZIP Code designation.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Mailer information (see 561.273b(3)).

Example:

APO AE—09128
FCM ZIP+4 PRESORT
NB COMPANY UNION SC

563.223 Optional City Trays (Second-Class Only). After preparing all possible 5-digit trays, second-class mailers who have chosen to prepare optional city groups/packages may prepare optional city trays whenever there are enough 5-digit and optional city groups/packages for the same optional city listed in Exhibit 122.63a to fill a tray. Less-than-full optional city trays are not permitted. Optional city trays must be labeled as follows:

Line 1: Name of optional city in Exhibit 122.63a, two-letter state abbreviation, and lowest 5-digit ZIP Code served by the city.

Line 2: Contents (2C or NEWS) followed by "ZIP+4 PRESORT" and directly under the ZIP Code on Line 1, "CITY".

Line 3: Mailer information (see 561.273b(3)).

Example:

LA JOLLA CA—92037
2C ZIP+4 PRESORT CITY
HARD TIMES NEWS UNION SC

563.224 3-Digit Trays. After preparing all possible 5-digit trays, and any optional city trays (second-class mail only), if there are enough 5-digit, optional city (if applicable), and 3-digit groups/packages for the same 3-digit ZIP Code area to fill a tray, a 3-digit tray must be prepared. Less-than-full 3-digit trays are not permitted. 3-digit trays must be labeled as follows:

a. Nonmilitary Mail

(l) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation and unique 3-digit prefix listed in Exhibit 122.63b.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT."

Line 3: Mailer information (see 561.273b(3)).

Example:

KNOXVILLE TN—379
FCM ZIP+4 PRESORT
LMM COMPANY FAIRFAX VA

(2) Other 3-Digit ZIP Code Prefixes

Line 1: Name of the SCF (letters "SCF" omitted) and the two-letter state abbreviation of the SCF, followed by 3-digit prefix of the pieces contained in the tray (see Exhibits 122.63c or 122.63d for the name of the SCF serving the 3-digit area).

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Mailer information (see 561.273b(3)).

Example:

WATERLOO IA—506
FCM ZIP+4 PRESORT
XYZ CORP ROCHESTER NY

b. Military Mail

Line 1: "APO" or "FPO", followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340) or AP (for ZIPs 962–966), and 3-digit APO or FPO prefix.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Mailer information (see 562.273b(3)).

Example:

FPO AE—095
FCM ZIP+4 PRESORT
XYZ CORP ROCHESTER NY

Note: ZIP Code prefixes 094, 096–098, 340, and 962–965 contain both APO and FPO addresses. Therefore, the destination line for 3-digit trays for destinations containing both APO and FPO mail must show the prefix APO/FPO before the code and the 3-digit prefix. *Example:* APO/FPO AADC 340. (All 3-digit trays for ZIP Code prefixes 090–093 must be labeled APO, and 3-digit trays for ZIP Code prefixes 095 and 966 must be labeled FPO.)

563.225 SCF Trays. After preparing all possible 5-digit trays, any optional city trays (second-class mail only, see 563.223), and all possible 3-digit trays, if there are groups/packages (5-digit, second-class optional city, or 3-digit packages) remaining for one of the SCFs listed in Exhibit 122.63d serving more than one 3-digit area, an SCF tray must be prepared. Less-than-full SCF trays are not permitted, except that one SCF tray for the SCF serving the post office where the mailing is entered is permitted. SCF trays must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit SCF code as shown in Exhibit 122.63d

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT"

Line 3: Mailer information (see 561.273b(3))

Example:

SCF SAN ANTONIO TX—780
FCM ZIP+4 PRESORT
NBT CO BAKERSFIELD CA

563.226 AADC Trays. After preparing all possible 5-digit trays, any optional city trays (second-class mail only, see 563.223), and all possible 3-digit and SCF trays, remaining groups/packages (5-digit, second-class optional city, or 3-digit) must be trayed to one of the AADCs listed in Exhibit 122.63t. The groups/packages in all AADC trays must be secured into 5-digit, optional city, or 3-digit packages as appropriate and labeled. Use of separator cards is not permitted in AADC trays. AADC trays may be less than full. AADC trays must be labeled as follows:

Line 1: Applicable label information for the AADC shown in Exhibit 122.63t

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "AADC ZIP+4 PRESORT"

Line 3: Mailer information (see 561.273b(3))

Example

DIS PROVIDENCE RI—028
FCM AADC ZIP+4 PRESORT
NBT CO BAKERSFIELD CA

563.3 Tray Preparation—Residual/Basic Portion

563.31 General. For mailings prepared under the tray sortation in 563.22, residual/basic pieces are those pieces remaining after preparing packages in accordance with 563.212 through 563.214. For mailings prepared under the optional automated site option in 563.4, residual/basic pieces are those pieces remaining after preparing packages in accordance with 563.41 through 563.43. Residual/basic pieces must be placed in trays separate from those of the 3/5 presort tier, except as provided in 563.34. The traying requirements in 561.2 must be met. Residual/basic pieces must be prepared in accordance with one of the options listed in 563.32 through 563.34. Once the basic requirements in 563.32 through 563.34 have been met, additional sortation of First-Class residual mail may be performed in accordance with any local authorization for acceptance times described in Management Instruction DM–140–91–01, *First-Class Mail Acceptance Policy*.

563.32 Option 1: ZIP Code Sequencing and Listing. Residual/basic pieces for the same 3-digit ZIP Code area must be grouped together. Groups of pieces for the same 3-digit ZIP Code area must be placed in trays in ascending numeric 3-digit ZIP Code sequence. If the last tray is less than full,

the pieces in the tray must be secured into and labeled as 3-digit packages as provided in 561.11 and 561.131. In addition, full trays consisting entirely of postcard-size pieces (pieces measuring not more than 4¼" high by 6" long by .0095" thick), of any class of mail, must be secured into and labeled as three-digit packages as provided in 561.11 and 561.131. Mailers must provide a listing by 3-digit ZIP Code area of the various rate qualification categories as described in 563.53. In third-class mailings in which destination BMC rates are claimed and not all pieces in the residual/basic portion of the mailing qualify for the destination BMC rate, separate residual/basic trays must be prepared for the ZIP Code areas eligible for the destination BMC rate as provided in 624.722. Trays must be labeled as follows:

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code of the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 WORKING" (or "ZIP+4 WKG")

Line 3: Mailer information (see 561.273b(3))

Example

DIS BAKERSFIELD CA 932
FCM ZIP+4 WKG
NBT CO BAKERSFIELD CA

563.33 Option 2: Physical Separation by Rate Qualification.

563.331 Basic Tray Separations. Residual/basic pieces bearing correct ZIP+4 codes must be separately trayed from residual/basic pieces that do not. The trays must be physically separated according to these separations when presented to the post office for verification.

563.332 Additional Tray Separations for First-Class and Second-Class Mailings.

a. First-Class Nonidentical Weight Metered or Precanceled Stamp Mailings. There is a different first ounce rate for pieces weighing over 2 ounces in First-Class Mail. Accordingly, in nonidentical-weight First-Class metered or precanceled stamp mailings in which there are both pieces weighing 2 ounces or less and pieces weighing over 2 ounces, and postage at the exact rate is not affixed to each piece, further tray separations must be made by pieces weighing over 2 ounces and pieces weighing 2 ounces or less for each of the two basic separations required in 563.331 above. The trays must be physically grouped according to these separations when presented to the post office for verification. Precanceled stamp mailings must meet the tray separation requirements in 563.332b when postage to cover additional ounce increments is not affixed to each piece as permitted under 581.34 or 581.4.

b. First-Class Nonidentical Weight Precanceled Stamp Mailings in which Postage to Cover Additional Ounce Increments is Not Affixed. In First-Class mailings paid by precanceled stamps that contain pieces of more than one ounce increment in which precanceled stamps to cover postage for the additional ounce or ounces is not affixed under 581.34 or 581.4, further tray separations must be made by pieces of each ounce increment in the mailing for each of the two basic separations required in 563.331. The trays must be physically grouped according to these separations when presented to the post office for verification.

c. First-Class Mailings Containing Both Letter-Rate and Postcard Rate Pieces. For metered and precanceled stamp First-Class mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates, pieces weighing one ounce or less must be further separated so that postcard-rate pieces are trayed separately from letter-rate pieces for each of the two basic separations required in 563.331. The additional tray separations in 563.332b may also be necessary for precanceled stamp mailings. The trays must be physically grouped according to these separations when presented to the post office for verification.

d. Second-Class Mailings Containing In-County and Outside County Pieces. Within second-class mailings containing both in-county and outside-county pieces, in-county pieces must be trayed separately from outside-county pieces for each of the two basic tray separations required in 563.331 above. The trays must be physically grouped according to these separations when presented to the post office for verification.

e. Third-Class Mailings Claiming Destination BMC Rates. In third-class mailings in which destination BMC rates are claimed and not all pieces in the residual/basic portion of the mailing qualify for the destination BMC rate, further tray separations by pieces within the BMC service area and pieces outside the BMC service area must be made for each of the two basic separations required in 563.331.

563.333 Separation Into Groups of 100 Pieces Within Each Tray. Within each of the trays resulting from sortation in accordance with 563.331 and 563.332, the pieces must be separated into groups of 100 pieces. The groups of 100 must be delineated by separator cards (see 561.12). When the tray is full, nothing further is required. When the tray is less than full, pieces must also be secured into packages in accordance with 561.11 within each group of 100 pieces. In addition, full trays consisting entirely of postcard-size pieces (pieces measuring not more than 4¼ inches high, 6 inches long, and .0095 inch thick), of any class of mail, must be secured into packages as provided in 561.11. When there are fewer than 100 pieces in a group at the end of the last tray for any of the types of residual/basic trays, the actual number of pieces in the group must be written on the separator card. The total number of residual/basic pieces in each rate category must be added to the summary portion of the documentation required in 563.534.

563.334 Tray Labels. Option 2 residual/basic trays must be labeled as follows:

a. Trays Containing ZIP+4 Coded Pieces

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code of the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 WORKING" (or "ZIP+4 WKG").

Line 3: Mailer information (see 561.273b(3)).

Example:

DIS BAKERSFIELD CA—932
FCM ZIP+4 WORKING
NBT CO BAKERSFIELD CA

b. Trays Containing Pieces Not ZIP+4 Coded

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code of the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C LTRS) followed by "WORKING" or "WKG".

Line 3: Mailer information (see 561.273b(3)).

Example

DIS WILKES-BARRE PA—186
FCM WORKING
COAL CO DUPONT PA

563.34 Option 3: Placement in AADC Trays of the 3/5 Presort Tier. Under this option, whenever there are residual/basic pieces for an AADC area for which an AADC tray was prepared within the 3/5 presort tier, the residual/

basic pieces for that AADC area must be secured into and labeled as 3-digit packages and placed in the AADC tray with qualifying mail. Residual/basic pieces for 3-digit areas for which there is no corresponding AADC tray of qualifying mail must be placed in ascending numeric 3-digit ZIP Code sequence within separate trays containing only residual/basic pieces as described in 563.32. Mailers must provide a listing by 3-digit ZIP Code area under the residual/basic presort tier section of the documentation as described in 563.532 of the various rate qualification categories for both the pieces placed in AADC trays and the pieces trayed in separate residual/basic trays. Trays containing only residual/basic pieces must be labeled as described in 563.32.

563.4 Optional Tray Sortation to Automated Sites

563.41 Definition and General Requirements. Preparation of 5-digit packages and trays may be omitted when only pieces for the 3-digit areas designated as automated sites in Exhibit 122.63m are included in the mailing. When this option is used, pieces to 3-digit ZIP Code areas not listed in Exhibit 122.63m must be prepared as a separate mailing, except that in First-Class mailings such pieces may be included in the residual portion. (This is because single piece rates are paid on First-Class residual mail.) Mailings prepared under this option must be packaged and trayed in accordance with 563.42 and 563.43.

563.42 Grouping and Packaging Requirements. The mail for 3-digit automated site areas must be prepared in 3-digit groups/packages as required in 563.214. Optional city packages are not permitted for second-class mailings.

563.43 Traying Requirements—Automated Site 3/5 Presort Tier.

563.431 3-Digit Trays. When there are enough groups/packages for the same 3-digit ZIP Code area to fill a tray, a 3-digit tray must be prepared. Less-than-full 3-digit trays are not permitted. 3-digit trays must be labeled as follows:

Line 1: City, two-letter state abbreviation and 3-digit prefix listed in Exhibit 122.63m.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Mailer information (see 561.273b(3)).

Example

PATERSON NJ—074
FCM ZIP+4 PRESORT
LMM COMPANY FAIRFAX VA

563.432 SCF Trays. After preparing all possible 3-digit trays, if there are enough 3-digit groups/packages remaining for one of the SCFs listed in Exhibit 122.63n to fill a tray, an SCF tray must be prepared. Less-than-full SCF trays are not permitted, except one less-than-full tray for the SCF serving the post office where the mail is entered is permitted (provided that SCF is listed in Exhibit 122.63n). SCF trays must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit SCF code as shown in Exhibit 122.63n.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 PRESORT".

Line 3: Mailer information (see 561.273b(3)).

Example

SCF RENO NV—894
FCM ZIP+4 PRESORT
NBT CO BAKERSFIELD CA

563.433 AADC Trays. After preparing all possible 3-digit and SCF trays, if there are packages remaining for one of the AADCs listed in Exhibit 122.63o, an AADC tray must be prepared. The groups in all AADC trays must be secured into 3-digit packages and labeled under 561.11 and 561.131. Use of separator cards is not permitted in AADC trays. AADC trays must be labeled as follows:

Line 1: Applicable label information for the AADC shown in Exhibit 122.63o.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "AADC ZIP+4 PRESORT"

Line 3: Mailer information (see 561.273b(3)).

Example

DIS MACON GA—310
FCM ZIP+4 PRESORT
NBT CO BAKERSFIELD CA

563.44 Residual/Basic Preparation. Pieces remaining after preparation in accordance with 563.42 and 563.43 are residual/basic pieces and must be prepared in accordance with 563.3. Residual/basic pieces in second- and third-class mailings are limited to pieces to the 3-digit areas listed in Exhibit 122.63m. For First-Class mailings, pieces for any ZIP Code area may be included in the residual portion. See 563.41.

563.5 Documentation

563.5 Purpose. Documentation enables the Postal Service to verify the percentage of ZIP+4 coded pieces in the mailing. It also enables the Postal Service to verify the number of pieces claimed at each rate category on the mailing statement, and to verify that any difference between the amount of postage affixed to the pieces in the mailing, and the amount of postage owed for the pieces is paid. It does this by providing the Postal Service with a detailed description of what is being mailed, how it is prepared, the rate for which pieces qualify, and how many pieces have a ZIP+4 code. The USPS will compare the numbers shown on the mailer's documentation with counts of samples taken from the actual mailing to confirm that the information on the documentation is accurate.

Note: For second-class mailings, the documentation described in this section will provide the presort per piece rate documentation and the 85% ZIP+4 coded documentation required in 424.841 and 424.843. Documentation in addition to the documentation described in 564.14 must be prepared for mailings of second-class publications as set forth in 424.84.

563.52 General Requirements for Submission. Each mailing must be accompanied by the documentation described in 563.53, with the following exceptions:

a. No documentation is required when every piece in the mailing bears the correct ZIP+4 code and either of the following applies:

(1) Postage is affixed to each piece at the exact rate of postage for which it qualifies.

(2) Each piece in the mailing is of identical weight, the pieces in each individual tray are subject to the same rate, and the trays for each rate level are placed in groups by rate eligibility when presented for verification to allow weight verification of postage. (Second-class mailings containing both in-county and outside-county pieces and/or containing both Level A and Level B rates do not meet this condition.)

b. Abbreviated documentation may be submitted under the provisions of 568.1.

c. Documentation that describes all ZIP+4 rate mailings to be made from a mailing job may be submitted with the first mailing of a mailing job in accordance with 568.2.

563.53 Information Required.

563.531 Heading and General Format Requirements. The top of the first page of the documentation must show the class of mail and the words "DMM 563 Presort." When only some pieces in a third-class mailing qualify for a destination entry rate, or when a mailing contains pieces that qualify for more than one destination entry rate, a description of the characters used within the listing portion of the documentation to identify the ZIP Codes qualifying for each destination entry discount, must also appear at the top of the first page (see 563. The documentation must consist of ZIP Code

listings for the 3/5 presort tier and the residual/basic presort tier as described in 563.532, (except for residual/basic pieces prepared under the physical separation option in 563.33), as well as a summary as described in 563.533. At the mailer's option, additional information showing the trays in which the pieces appear may also be included. It is recommended that one of the formats show in Exhibit 563.53A or 563.53B be used. If another format is used, it must allow Postal Service verification personnel to easily determine the information required by 563.532 and 563.533 using a single report. See 563.532f for an exception to the single report requirement for second-class mailings containing more than one edition and/or publication. Information that could not pertain to the class being mailed (such as column headings for Level A, Level B, Level J rates in a third-class mailing) must not be included in the documentation.

563.532 Required Information—ZIP Code Listing Portion.

a. Presort Tier Sections. The ZIP Code listing portion of the documentation must be divided into two sections by presort tier; the 3/5 presort tier and the residual/basic presort tier. The residual/basic section is not required if residual/basic mail is prepared under the physical separation option in 563.33. Each presort tier section must be preceded by a heading that names the presort tier.

b. ZIP Code Column. The 5-digit or 3-digit ZIP Codes of pieces in all qualifying packages in the 3/5 presort tier of the mailing must be listed in ascending numeric order under a column heading "ZIP Codes." 5-digit packages must be listed by 5-digit ZIP Code, second-class optional city packages by lowest assigned 5-digit ZIP Code (see Exhibit 222.63a), and 3-digit packages by 3-digit ZIP Code. The ZIP Code listing for the residual/basic portion must be a single section that lists ZIP Codes for residual/basic pieces by 3-digit ZIP Code. The ZIP Code column must be listed using one of the following two methods:

(1) *ZIP Code Listings Divided into Sections by Type of Package (See Exhibit 563.53A).*

(a) *3/5 Presort Tier.* The ZIP Code listing for the 3/5 presort tier must be divided into sections by type of group/package (5-digit, second-class optional city, 3-digit). Each section must be preceded by a heading indicating the type of group/package to be listed. Under the 5-digit section, pieces in 5-digit groups/packages must be listed by 5-digit ZIP Code. In second-class mailings under the optional city section, optional city groups/packages must be listed by the lowest assigned 5-digit ZIP Code for the city shown in Exhibit 122.63a. Under the 3-digit section, pieces in 3-digit groups/packages must be listed by 3-digit ZIP Code.

(b) *Residual/Basic Presort Tier.* The ZIP Code listing for the residual/basic portion must be a single section that lists ZIP Codes for residual/basic pieces by 3-digit ZIP Code.

(2) *Continuous ZIP Code List (See Exhibit 565.53B).*

(a) *3/5 Presort Tier.* All packages are listed in numeric sequence in one section. For First- and third-class mailings, as well as second-class mailings that do not contain optional city packages, 5-digit packages must be listed by 5-digit ZIP Code and 3-digit packages must be listed by 3-digit ZIP Code. For second-class mailings containing optional city packages, 5-digit ZIP Codes representing pieces in 5-digit packages must be listed by 5-digit ZIP Code and preceded by the abbreviation 5DG; optional city packages must be listed by the lowest assigned 5-digit ZIP Code for the city shown in Exhibit 122.63a and preceded by the abbreviation CTY; 3-digit packages must be listed by 3-digit ZIP Code and preceded by the abbreviation 3DG.

(b) *Residual/Basic Presort Tier.* Residual/basic pieces listed under the residual/basic presort tier section must be listed by 3-digit ZIP Code. It is not necessary that an identifying prefix be shown in front of the 3-digit ZIP Code prefixes of residual/basic pieces, however, if one is used it should be WKG.

c. *Basic Columns and Line Entries for Rates and Totals.* For each ZIP Code entry on the listing show:

(1) The number of ZIP+4 coded pieces under a column heading (or column headings—see 563.532d) naming the rate for which the pieces qualify based on the class of mail (see 563.1) and indicating that the pieces are ZIP+4 coded.

(2) The number of remaining pieces that are not ZIP+4 coded under a column heading (or column headings—see 563.532d) naming the rate for which the pieces qualify based on the class of mail (see 563.21) and indicating that the pieces are not ZIP+4 coded.

(3) The cumulative total (the total of all pieces listed for that ZIP Code plus all pieces listed for the preceding ZIP Code entries in the applicable 3/5 presort tier or residual/basic presort tier section of the documentation) under a column heading "Cumulative Total." (The totals accumulate only for each section of the listing.)

d. Additional Columns or Line Entries.

(1) *First-Class Metered or Precanceled Stamp Mailings Containing Pieces Both Over and Under 2 Ounces.* Within the residual/basic presort tier section of the documentation for metered and precanceled stamps mailings in which postage at the exact rate is not affixed, two rate columns, one for reporting pieces weighing less than 2 ounces and one for reporting pieces weighing 2 ounces or more must be shown for each of the basic column separations described in 563.532c(1) and 563.532c(2). Each column heading must contain the name of the residual/basic rate (see 563.112) for which the pieces qualify, the weight category, and a statement as to whether or not the pieces are ZIP+4 coded. Precanceled stamp mailings in which postage to cover additional ounce increments is not affixed must meet the additional documentation requirements in 563.532d(2).

(2) *First-Class Nonidentical-Weight Precanceled Stamp Mailings in Which Postage to Cover Additional Ounce Increments is Not Affixed.* In First-Class mailings paid by precanceled stamps that contain pieces of more than one ounce increment and in which precanceled stamps to cover postage for the additional ounce or ounces is not affixed as permitted in 581.34 and 581.4, additional rate columns for reporting each ounce increment in the mailing must be shown for each of the basic column separations described in 563.532b(1) and 563.532b(2). Each rate column heading must show the name of the rate (see 563.112) for which the pieces qualify, the weight category, and a statement as to whether or not the pieces are ZIP+4 coded.

(3) *First-Class Mailings Containing Both Letter-Rate and Postcard-Rate Pieces.* Within the residual/basic presort tier section of the documentation for metered and precanceled stamp First-Class mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates, two columns, one for reporting pieces at the postcard rates and one for reporting pieces at the letter rate must be shown for each of the basic column separations described in 563.532c(1) and 563.532c(2). The column headings must contain the name of the rate (see 563.11) for which the pieces qualify, a statement as to whether the pieces are subject to postcard or letter rates, and a statement as to whether or not the pieces are ZIP+4 coded. The additional column separations in 563.532d(2) are also necessary for both

the 3/5 presort tier and the residual/basic presort tier sections for precanceled stamp mailings in which postage to cover additional ounce increments is not affixed to each piece in the mailing as permitted under 581.34 or 581.4.

(4) *Second-Class Mailings Containing Both In-County and Outside-County Rate Pieces.* For second-class mailings containing both in-county and outside-county pieces, separate columns for in-county pieces and for outside-county pieces must be shown for pieces listed under 563.532c(1) and 563.532c(2). In addition, for 3-digit packages, separate columns for unique 3-digit packages that qualify for the level B3 or H3 rates, and for the level J3 rates must be shown, and separate columns for nonunique 3-digit packages that qualify for level A or G rates, and for level J1 rates must be shown, for each of the two general categories of pieces in 563.532c(1) and 563.532c(2). To reduce the number of columns across a page, mailers using the ZIP Code listing option in 563.532b(1) (ZIP Code Listings Divided into Sections by Type of Package) may break the 3-digit package section into further sections by rate category: one section for optional city and unique 3-digit packages recorded at the level B3/H3 and J3 rates, and another section for nonunique 3-digit packages at the level A/G or J1 rates. The column headings must contain the name of the rate (see 563.12) for which the pieces qualify, and a statement as to whether or not the pieces are ZIP+4 coded.

(5) *Second-Class Combined Mailings.* See 563.532f.

(6) *Third-Class Mailings Claiming Destination SCF or Destination BMC Rates.* In third-class mailings in which some combination of SCF destination entry, BMC destination entry, and no destination entry discount is claimed (that is, not all pieces in the mailing qualify for the same destination discount) the ZIP Codes on the presort tier listings that are eligible for the SCF entry discount or the BMC entry discount must be marked with an asterisk or some other unique character. If both the SCF discount and BMC discount are claimed in the same mailing, a different character from the one used to mark the ZIP Codes eligible for the SCF discount must be used to mark the ZIP Codes eligible for the BMC discount.

e. Column Totals. At the end of each section (3/5 presort tier and residual/basic presort tier) of the listing (or under each package section of the 3/5 presort tier section when the type of package option is used), show the total number of pieces listed under each rate column and under the cumulative total column.

f. Additional Requirements For Second-Class Combined Mailings. In addition to the documentation required by 564.14, second-class mailings combining pieces from more than one second-class publication or edition must provide additional information by publication or edition as required by 424.853. The additional information may be provided as a separate report or reports.

563.533 Summary Portion

a. Second-Class Mailings and Identical Weight Permit Imprint Mailings

(1) *Rate Categories and Postage Owed.* The summary must list each rate category at which any pieces in the mailing are claimed from the applicable column totals in the listing portions of the documentation. (For residual/basic mail sorted under the physical separation option in 563.33, information is also obtained from the manual counts of residual/basic pieces in the separate trays for each rate category.) When not all pieces in a third-class mailing qualify for the same destination entry discount, a separate line entry for the pieces claimed at each destination entry discount and for pieces not qualifying for a destination entry discount must be shown to separately account for the different rates in the summary. For each rate listed, the summary must show:

(a) The total number of pieces claimed at that rate.

(b) The applicable rate (amount) of postage.

(c) The postage charges for that rate category (the total number of pieces times the rate of postage).

Note: The applicable rate and postage charges are not required for second-class mailings.

(2) *Totals.*

(a) A grand total of the postage charges for all the rate entries for the entire mailing must be shown (optional for second-class mailings). This grand total is the amount of postage owed for the mailing and the amount to be deducted from the advance deposit account for permit imprint mailings, or is the amount of second-class per piece charges for the mailing prior to deductions for the nonadvertising percentage discount and zone rate discounts.

(b) The total number of pieces in the mailing that bear a ZIP+4 code, the total number of pieces that do not, and the total of both representing all pieces in the mailing must be shown.

(c) The percentage of ZIP+4 coded pieces in the mailing must be shown.

b. First- and Third-Class Metered and Precanceled Stamp Mailings

(1) *Rate Categories and Postage Owed.* The summary must list each rate at which any pieces in the mailing are claimed from the applicable column totals in the listing portion of the documentation. For residual/basic mail sorted under the physical separation option in 563.33, information is also obtained from the manual counts of pieces in the separate trays for each rate category. For nonidentical-weight First-Class precanceled stamp mailings in which stamps to cover the additional ounces are not affixed, each rate category must be listed more than once so that there is a separate listing for each ounce increment at that rate. First-Class postcard-rate pieces must also be listed separately from letter-rate First-Class pieces. For First-Class metered mailings containing residual pieces over and under two ounces, each residual rate category must have a separate listing for pieces weighing 2 ounces or less and a separate listing for pieces weighing over 2 ounces. When not all pieces in a third-class mailing qualify for the same destination entry discount, a separate line entry for the pieces claimed at each destination entry discount and for pieces not qualifying for a destination entry discount must be shown to separately account for the different rates in the summary. For each rate listed, the summary must show:

(a) The number of pieces claimed at that rate.

(b) The amount of additional postage due for each piece at that rate (when the amount of postage affixed is less than the rate of postage owed).

(c) The postage due for pieces claimed at that rate (the total number of pieces at that rate times the amount of postage due per piece).

(2) *Totals.*

(a) A grand total of the additional postage charges due for all the rate entries for the entire mailing must be shown. This grand total is the amount of postage that must be affixed to the mailing statement or paid through an advance deposit account.

(b) The total number of pieces in the mailing that bear a ZIP+4 code, the total number of pieces that do not, and the total of both representing all pieces in the mailing must be shown.

(c) The percentage of ZIP+4 coded pieces in the mailing must be shown.

563.6 Mailing Statement. Each mailing must be accompanied by a complete and signed mailing statement appropriate for the method of postage

payment and class of mail submitted. Mailers must write "DMM 563 Presort" at the top of the mailing statement.

564 PRESORTED ZIP+4 BARCODED MAIL—TRAY-BASED PREPARATION

564.1 OPTION 1—Tray-Based (Required March 21, 1993, Optional Until Then)

564.11 Rate Eligibility

564.111 First-Class Mail

a. 5-Digit Trays. Pieces in 5-digit trays qualify for the 5-digit ZIP+4 Barcoded rate. All 5-digit trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25). All pieces in 5-digit trays must be ZIP+4 barcoded or delivery point barcoded.

b. 3-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in 3-digit and SCF trays can qualify for the 3-digit ZIP+4 Barcoded rate. Pieces without a ZIP+4 barcode or delivery point barcode can qualify for the ZIP+4 Presort rate if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the Presorted First-Class rate. In 3-digit and SCF trays there must be at least 50 pieces for each 3-digit ZIP Code destination. All 3-digit and SCF trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25), except that one less-than-full SCF tray for the SCF serving the entry post office is permitted (see 564.123d).

c. Residual Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in residual trays can qualify for the nonpresorted ZIP+4 Barcoded rate if the pieces are eligible for the card rates or the nonpresorted ZIP+4 rates if the pieces are other than cards. Residual pieces that do not bear a ZIP+4 barcode or delivery point barcode can qualify for the nonpresorted ZIP+4 rate if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the single-piece First-Class rate. Residual trays may be less than full.

564.112 Second Class Mail.

a. 5-Digit Trays. In 5-digit trays, each piece can qualify for the level B5/H5/J5 ZIP+4 Barcoded rates. All 5-digit trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25). All pieces in 5-digit trays must be ZIP+4 barcoded or delivery point barcoded.

b. Optional City Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in trays for an optional city listed in Exhibit 122.63a can qualify for the level B3/H3/J3 ZIP+4 Barcoded rates. Pieces without a ZIP+4 barcode or delivery point barcode can qualify for the level B3/H3/J3 ZIP+4 rate if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the level B3/H3/J3 presort rates. Optional city trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25).

c. 3-Digit Trays.

(1) *Unique 3-Digit Trays.* Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in unique 3-digit trays can qualify for the level B3/H3/J3 ZIP+4 Barcoded rates. Pieces without a ZIP+4 barcode or delivery point barcode can qualify for the level B3/H3/J3 ZIP+4 rates if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the level B3/H3/J3 presort rates. Unique 3-digit trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25).

(2) *Nonunique 3-Digit Trays.* Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in nonunique 3-digit trays can qualify for the level A/G/J1 ZIP+4 Barcoded rates. Pieces without a ZIP+4 barcode or delivery point barcode can qualify for the level A/G/J1 ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the level A/G/J1 presort rates. All 3-digit trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25).

d. SCF and Residual/Basic Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in SCF or residual/basic trays can qualify for the level A/G/J1 ZIP+4 Barcoded rates. Pieces without a ZIP+4 barcode or delivery point barcode can qualify for the level A/G/J1 ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the level A/G/J1 presort rates. All SCF trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25), except that one less-than-full SCF tray for the SCF serving the entry post office is permitted (see 564.123d). Residual/basic trays (which contain pieces remaining after filling SCF trays) may be less than full.

564.113 Third Class Mail.

a. 5-Digit Trays. Pieces in 5-digit trays qualify for the 5-digit ZIP+4 Barcoded rate. All 5-digit trays must be full trays (as defined in 561.24) or overflow trays (as defined in 561.25). All pieces in 5-digit trays must be ZIP+4 barcoded or delivery point barcoded.

b. 3 Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in 3-digit and SCF trays can qualify for the 3-digit ZIP+4 Barcoded rates. Pieces without a ZIP+4 barcode or delivery point barcode can qualify for the 3/5 ZIP+4 rates if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the 3/5 presort rate. Both 3-digit and SCF trays must be full trays (as defined in 561.43) or overflow trays (as defined in 561.44), except that one less-than-full SCF tray for the SCF serving the entry post office is permitted (see 564.123d).

c. Residual/Basic Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in residual/basic trays can qualify for the basic ZIP+4 Barcoded rates. Pieces without a ZIP+4 barcode or delivery point barcode can qualify for the basic ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the basic presort rates. Residual/basic trays (containing pieces remaining after filling SCF trays) may be less than full.

564.12 Sortation.

564.121 General Preparation. Pieces must be sorted to full trays as described in 564.123 in the following sequence: 5-digit, optional city (second-class only), 3-digit, and SCF. Preparation of 5-digit trays is optional, however only ZIP+4 barcoded or delivery point barcoded pieces in full 5-digit trays can qualify for the 5-digit ZIP + 4 Barcoded rates. One overflow tray that is less than full is also permitted for any tray destination for which at least one full tray has been prepared (see 561.25). Pieces remaining after sortation to these tray levels are residual/basic pieces and must be prepared as described in 564.124. The general traying requirements in 561.2 must be met. Pieces in certain types of trays must be grouped by ZIP Code, or packaged, or both as described in 561.122 for destination trays, and as described in 561.124 for residual/basic trays.

564.122 Grouping and/Packaging Within Destination Trays.

a. Grouping. There are no requirements to group pieces by ZIP Code within 5-digit, optional city, or 3-digit trays. Within SCF trays, pieces for the same 3-digit ZIP Code must be grouped together in the trays. It is recommended, but not required, that the groups of pieces for the same 3-digit ZIP Code area be placed in SCF trays in ascending numeric sequence (for example, pieces for 023 would be placed in an SCF tray in front of pieces for 024). In First-Class mailings, pieces in 3-digit

and SCF trays must be part of a group of at least 50 pieces for the same 3-digit ZIP Code area. It is recommended that all the First-Class pieces in the group of 50 or more pieces for the same 3-digit area be placed in the same tray. However, when all the First-Class pieces cannot be placed in the same full tray, the remaining pieces in the group of 50 or more for that 3-digit ZIP Code area may be placed in an overflow tray to the same destination, or in a tray to the next level of sortation.

b. Packaging.

(1) *Full Trays.* Neither packaging nor use of separator cards is permitted within mailings of any class that contain pieces that are larger than postcard-size dimensions (4¼ inches high, 6 inches long, and .0095 inch thick) within full 5-digit, optional city (second-class only), 3-digit, and SCF trays. Within mailings that consist entirely of postcard-size pieces, the pieces must be secured into packages as described in 561.11, to maintain their orientation within the trays during transit. No package labels are required for this packaging.

Exception: Until March 21, 1993, mailers may place in standard MM letter trays, pieces that are wider or taller than those trays in accordance with 561.23. Packaging is therefore permitted until March 21, 1993 for mailings of pieces that are wider than standard MM trays that are prepared in accordance with 561.23.

(2) *Overflow Trays.* Pieces in overflow trays to any tray destination must be secured into packages as described in 561.11 to maintain their orientation within the tray during transit. All packages in overflow trays must be labeled as described in 561.131. Packages in 5-digit overflow trays must be labeled as 5 digit packages. Packages in second-class optional city trays must be labeled as optional city packages. Pieces in 3-digit and SCF overflow trays must be packaged by 3-digit ZIP Code area and labeled as 3-digit packages.

564.123 Tray Sortation—⅝ Presort Tier.

a. Optional 5-Digit Trays. When there are enough ZIP+4 barcoded or delivery point barcoded pieces to the same 5-digit destination to fill a tray, a 5-digit tray may be prepared for that destination. Less-than-full trays are not permitted, except one overflow tray per 5-digit ZIP Code area is permitted as provided in 561.25. Full and overflow 5-digit trays must be labeled as follows:

(1) *Nonmilitary Mail.*

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

DETROIT MI—48235
FCM LTRS BARCODED
NB COMPANY UNION SC

(2) *Military Mail.*

Line 1: "APO" or "FPO", followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340) or AP (for ZIPS 962–966), and complete 5-digit APO or FPO ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

APO AE—09128
FCM LTRS BARCODED
NB COMPANY UNION SC

Note: 5-digit trays are required only if the mailer wants to qualify pieces for the 5-digit ZIP+4 Barcoded rates. Since these trays are optional, mailers may choose to prepare 5-digit trays for only one 5-digit ZIP Code area or for only some 5-digit ZIP Code areas, or may choose to prepare all possible 5-digit trays. If a 5-digit tray is prepared, however, it must be a full tray or overflow from a full tray as defined in 561.24 and 561.25.

b. Second-Class Optional City Trays. After preparing any full 5-digit trays, and at the mailers option, overflow 5-digit trays, second-class mailers may prepare optional city trays for the multi-ZIP coded cities listed in Exhibit 122.63a. Less-than-full trays are not permitted except one overflow tray per optional city is permitted as provided in 561.25. Full and overflow optional city trays must be labeled as follows:

Line 1: Name of optional city in Exhibit 122.63a, two-letter state abbreviation, and lowest 5-digit ZIP Code served by the city.

Line 2: Contents (2C or NEWS) followed by "LTRS BARCODED" and directly under the ZIP Code on Line 1, "CITY".

Line 3: Mailer information (see 561.273b(3)).

Example

LA JOLLA CA—92037
2C LTRS BARCODED—CITY
HARD TIMES NEWS UNION SC

c. 3-Digit Trays. After preparing any full 5-digit trays, any full optional city trays (second-class mailings only), and at the mailer's option, overflow trays to those destinations, if there are enough pieces to fill a tray for a 3-digit ZIP code destination, a 3-digit tray must be prepared. (For First-Class Mail, there must be at least 50 pieces for each 3-digit ZIP Code area. See 564.122.) Less-than-full trays are not permitted, except one overflow tray per 3-digit ZIP Code area is permitted as provided in 561.25. Full and overflow 3-digit trays must be labeled as follows:

(1) *Nonmilitary Mail.*

(a) *Unique 3-Digit ZIP Code Prefixes.*

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

KNOXVILLE TN—379
FCM LTRS BARCODED
LMM COMPANY FAIRFAX VA

(b) *Other 3-Digit ZIP Code Prefixes.*

Line 1: Name of the SCF (letters "SCF" omitted) and the two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces contained in the tray (See Exhibits 122.63c or 122.63d for the name of the SCF serving the 3-digit area).

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

WATERLOO IA—506
FCM LTRS BARCODED
XYZ CORP ROCHESTER NY

(2) *Military Mail.*

Line 1: "APO" or "FPO", followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPS 340) or AP (for ZIPs 962–966), and 3-digit APO or FPO ZIP Code prefix.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

FPO AE—095
FCM LTRS BARCODED
XYZ CORP ROCHESTER NY

Note: ZIP Code prefixes 094, 096–098, 340, and 962–965 contain both APO and FPO addresses. Therefore, the destination line for 3-digit trays for destinations containing both APO and FPO mail must show the prefix APO/FPO before the code and the 3-digit prefix. Example: APO/FPO AA 340. (All 3 digit trays for ZIP Code prefixes 090–093 must be labeled APO, and 3-digit trays for ZIP Code prefixes 095 and 966 must be labeled FPO.)

d. SCF Trays. After preparing any full 5-digit trays, any full optional city trays (if applicable, for second-class mailings only), all possible full 3-digit trays, and at the mailer's option, overflow trays to

those destinations, if there are enough pieces for one of the SCFs listed in Exhibit 122.63d to fill a tray, an SCF tray for that destination must be prepared. Less-than-full trays are not permitted, except that one overflow tray per SCF area is permitted as provided in 561.25, and one less-than-full tray for the SCF serving the post office where the mailing is entered is permitted. (For First-Class Mail there must be at least 50 pieces for each 3-digit ZIP Code area as provided in 564.122a. For all classes of mail, the pieces must be grouped by 3-digit area within each SCF tray. See 564.122.) Full SCF trays and overflow SCF trays must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation, and 3-digit ZIP Code prefix for the SCF shown in Exhibit 122.63d

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED"

Line 3: Mailer information (see 561.273b(3))

Example:

SCF SAN ANTONIO TX—780
3C LTRS BARCODED
NBT CO BAKERSFIELD CA

Note: Where there is no SCF listed for a given 3-digit area in Exhibit 122.63d (such as military mail and the Virgin Islands) mailers must place such pieces in a tray labeled on the top line in accordance with Exhibit 122.63t, when a full tray can be prepared in accordance with 122.63t. The second and third lines of tray labels for such trays are the same as those for SCF trays described above. Pieces in such trays are not eligible for SCF entry discounts.

564.24 Tray Preparation—Residual/Basic Portion

a. General. Residual/basic pieces are those that cannot be trayed in accordance with 564.123a through 564.123d. Residual/basic pieces must be placed in trays that are separate from trays of pieces to destination sorts. The traying requirements of 561.2 must be met. The pieces in residual/basic trays must be prepared under either 564.124b or 564.124c below. Once the basic requirements in 564.124b or 564.124c are met, additional sortation of First-Class residual mail may be performed in accordance with any local authorization for acceptance times described in Management Instruction DM–140–91–01, *First-Class Mail Acceptance Policy.*

b. Option 1: ZIP Code Sequencing and Listing. Residual/basic pieces for the same 3-digit ZIP Code area must be grouped together. Groups of pieces for the same 3-digit ZIP Code area must be placed in trays in ascending numeric 3-digit ZIP Code sequence. If the last tray is less than full, the pieces in the tray must be secured into and labeled as 3-digit packages under 561.11 and 561.131. In addition, full trays of postcard-size pieces (pieces measuring not more than 4¼ inches high, 6 inches long, and .0095 inch thick), of any class of mail, must be secured into and labeled as 3-digit packages under 561.11 and 561.131. Mailers must provide a listing by 3-digit ZIP Code area of the various rate qualification categories as described in 564.14. In third-class mailings in which destination BMC rates are claimed and not all pieces in the residual/basic portion of the mailing qualify for the destination BMC rate, separate residual/basic trays must be prepared for the ZIP Code areas eligible for the destination BMC rate as provided in 624.722. Trays must be labeled as follows:

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code of the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d

Line 2: Appropriate Class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED WKG"

Line 3: Mailer information (see 561.273b(3))]

Example:

DIS WILKES BARRE PA—186
FCM LTRS BARCODED WKG
EXETER CO DUPONT PA

c. Option 2: Physical Separation by Rate Qualification.

(1) *Basic Tray Separations.* Residual/basic pieces bearing correct ZIP+4 barcodes or delivery point barcodes must be separately trayed from residual/basic pieces that do not. Pieces not bearing ZIP+4 barcodes or delivery point barcodes must be further separated so that pieces bearing a correct (see 530) numeric ZIP+4 code in the address and meeting the requirements of 540 are separately trayed from other pieces. The trays must be physically grouped according to these separations when presented to the post office for verification.

(2) *Additional Tray Separations*

(a) *First-Class Nonidentical-Weight Metered or Precanceled Stamp Mailings.* There is a different first ounce rate for pieces weighing over 2 ounces in First-Class Mail. Accordingly, in nonidentical-weight First-Class metered or precanceled stamp mailings in which there are both pieces weighing 2 ounces or less and pieces weighing over 2 ounces, and postage at the exact rate is not affixed to each piece, further tray separations must be made by pieces weighing over 2 ounces and pieces weighing 2 ounces or less for each of the three basic separations required in 564.124c(1). The trays must be physically grouped according to these separations when presented to the post office for verification. Precanceled stamp mailings must meet the tray separation requirements in 564.124c(2)(b) when postage to cover additional ounce increments is not affixed to each piece as permitted under 581.34 or 581.4.

(b) *First-Class Nonidentical Weight Precanceled Stamp Mailings in which Postage to Cover Additional Ounce Increments is Not Affixed.* In First-Class mailings paid by precanceled stamps that contain pieces of more than one ounce increment in which precanceled stamps to cover postage for the additional ounce or ounces is not affixed under 581.34 or 581.4, further tray separations must be made by pieces of each ounce increment in the mailing for each of the three basic separations required in 564.124c(1). The trays must be physically grouped according to these separations when presented to the post office for verification.

(c) *First-Class Mailings Containing Both Letter-Rate and Postcard-Rate Pieces.* For metered and precanceled stamp First-Class mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates, pieces weighing one ounce or less must be further separated so that postcard rate pieces are separately trayed from letter-rate pieces for each of the three basic separations required in 564.124c(1). The additional tray separations in 564.124c(2)(b) may also be necessary for precanceled stamp mailings. The trays must be physically grouped according to these separations when presented to the post office for verification.

(d) *Second-Class Mailings Containing In-County and Outside County Pieces.* Within second-class mailings containing both in-county and outside-county pieces, in-county pieces must be separately trayed from outside-county pieces for each of the three basic tray separations required in 564.124c(1) above. The trays must be physically grouped according to these separations when presented to the post office for verification.

(e) *Third-Class Mailings Claiming Destination BMC Rates.* In third-class mailings in which destination BMC rates are claimed and not all pieces in the residual/basic portion of the mailing qualify for the destination BMC rate, further tray separations by pieces within the BMC service area and pieces outside the BMC service area must be made for

each of the three basic separations required in 564.124c(1).

(3) *Separation Into Groups of 100 Pieces Within Each Tray.* Within each of the trays resulting from sortation in accordance with 564.124c(1) and 564.124c(2), the pieces must be separated into groups of 100 pieces. The groups of 100 must be delineated by separator cards (see 561.12). When the tray is full, nothing further is required. When the tray is less than full, pieces must also be secured into packages in accordance with 561.11 within each group of 100 pieces. In addition, full trays of postcard-size pieces (pieces measuring not more than 4¼ inches high, 6 inches long, and .0095 inch thick), of any class of mail, must be secured into packages as provided in 561.11. When there are fewer than 100 pieces in a group at the end of the last tray for any of the types of residual/basic trays, the actual number of pieces in the group must be written on the separator card. The total number of residual/basic pieces in each rate category must be added to the summary portion of the documentation required in 564.146.

(4) *Tray Labels.* Option 2 residual/basic trays must be labeled as follows:

(a) *Trays Containing ZIP+4 Barcoded or Delivery Point Barcoded Pieces*

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED WKG".

Line 3: Mailer information (see 561.273b(3)).

Example

DIS WILKES-BARRE PA—186
FCM LTRS BARCODED WKG
EXETER CO DUPONT PA

(b) *Trays Containing Pieces Not ZIP+4 Barcoded or Delivery Point Barcoded Bearing Correct Numeric ZIP+4 Code in Address and Meeting Requirements of 540*

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 WORKING" (or "ZIP+4 WKG").

Line 3: Mailer information (see 561.273b(3)).

Example

DIS WILKES-BARRE PA—186
FCM LTRS ZIP+4 WORKING
EXETER CO DUPONT PA

(c) *Trays Containing Other Pieces Not ZIP+4 Barcoded or Delivery Point Barcoded*

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C LTRS) followed by "WORKING" (or "WKG").

Line 3: Mailer information (see 561.273b(3)).

Example

DIS WILKES-BARRE PA—186
3C LTRS WORKING
COAL CO DUPONT PA

564.13 Mailing Statement. Each mailing must be accompanied by a complete and signed mailing statement appropriate for the method of postage payment and class of mail submitted. Mailers must write "DMM 564.1 Presort" at the top of the mailing statement.

564.14 Documentation

564.141 Purpose. Documentation enables the Postal Service to verify the percentage of ZIP+4 barcoded pieces or delivery point barcoded pieces in the mailing. It also enables the Postal Service to verify the number of pieces claimed at each rate category on the mailing statement, and to verify that any difference between the amount of postage affixed to the pieces in the mailing, and the amount of postage owed for the pieces is paid. It does this by providing the Postal Service with a detailed description of what is being mailed, how it is prepared, the rate for which pieces qualify, and how many pieces have a ZIP+4 barcode or delivery point barcode. The USPS will compare the numbers shown on the mailer's documentation with counts of samples taken from the actual mailing to confirm that the information on the documentation is accurate.

Note: For second-class mailings, the documentation described in this section will provide the presort per piece rate documentation and the 85% ZIP+4 barcoded or delivery point barcoded documentation required in 424.841 and 424.843. Documentation in addition to the documentation described in 564.14 must be prepared for mailings of second-class publications as set forth in 424.84.

564.142 General Requirements for Submission. Each mailing must be accompanied by the documentation described in 564.143 with the following exceptions:

a. No documentation is required (other than a listing of overflow trays if applicable as required in 561.25) when every piece in the mailing bears the correct ZIP+4 barcode or correct delivery point barcode and either of the following applies:

(1) Postage is affixed to each piece at the exact rate of postage for which it qualifies.

(2) Each piece in the mailing is of identical weight, the pieces in each individual tray are subject to the same rate, and the trays for each rate level are placed in groups by rate eligibility when presented for verification to allow weight verification of postage. (Second-class mailings containing both in-county and outside-county pieces and/or containing both Level A and Level B rates do not meet this condition.)

b. Abbreviated documentation may be submitted under the provisions of 568.1.

c. Documentation that describes all ZIP+4 Barcoded rate mailings to be made from a mailing job may be submitted with the first mailing of a mailing job in accordance with 568.2.

564.143 Heading and General Format Requirements. The top of the first page of the documentation must show the class of mail and the words "DMM 564.1 Presort". The words "ZIP Code Option" or "Tray Label Option" must also appear at the top of the first page of the documentation to indicate whether the listing option in 564.144b(1) or 564.144b(2) is used. When only some pieces in a third-class mailing qualify for a destination entry rate, or when a mailing contains pieces that qualify for more than one destination entry rate, a description of the characters used within the listing portion of the documentation to identify the ZIP Codes qualifying for each destination entry discount must also appear at the top of the first page (see 564.144d(6)). The documentation must consist of a listing portion (564.144) and a summary portion (564.145). It is recommended that one of the formats in Exhibit 564.144b(1) or 564.144b(2) be used. If another format is used, it must allow Postal Service verification personnel to easily determine the information required by 564.144 and 564.145 using a single report. See 564.144f for an exception to the single report requirement for second-class mailings containing more than one edition and/or publication. Information that could not pertain to the class being mailed (such as column headings for Level A, Level B, Level J rates in a third-class mailing) must not be included in the documentation.

564.144 Required Information—Listing Portion

a. Tray Sortation Level Sections. The listing portion of the documentation

must be divided into sections by level of tray sortation in the following order: 5-digit trays; second-class optional city trays (if applicable); 3-digit trays; SCF trays; and residual/basic trays (for mailings with residual/basic pieces prepared under 564.124b sequencing and listing). Each section must be preceded by a heading describing its contents (i.e., "5-Digit Trays," "Optional City Trays," "3-Digit Trays," "SCF Trays," and "Residual/Basic Trays").

b. Tray Label and/or ZIP Code Column(s). Within each tray sortation level section, all tray destinations in the mailing for that type of tray must be listed. The tray destinations must be listed either by ZIP Code alone as described in 564.144b(1) (ZIP Code Option), or by both the exact tray label (or tray number) and ZIP Code as described in 564.144b(2) (Tray Label Option).

(1) *ZIP Code Option.* For each tray sortation level section in the mailing, list the ZIP Code(s) contained in all trays to that level of sortation under a column heading "ZIP Code." The ZIP Codes within each section must be listed in ascending numeric order by 5-digit ZIP Code for 5-digit trays, by lowest assigned 5-digit ZIP Code for second-class optional city trays (see Exhibit 122.63a), and by 3-digit ZIP Code for the 3-digit, SCF, and residual/basic trays (residual/basic trays for mailings prepared under the ZIP Code sequencing and listing Option in 564.124b). For example, two full 5-digit trays and one overflow 5-digit tray for ZIP Code 22033 would be listed under a single entry "22033" under the 5-digit tray sortation level section. (The destination 22033 would also have to appear on the separate overflow tray listing—see 561.25.)

(2) *Tray Label Option*

(a) *Tray Label Column.* Within each tray sortation level section, list all trays in the mailing that are sorted to that tray sortation level. The trays must be listed either by a unique tray number that appears on the tray label, or by the exact top line of the tray label. For example two full 5-digit trays and one overflow 5-digit tray for ZIP Code 22030 would be listed on three separate lines either by individual tray numbers (such as 010, 011, and 012) or by the top line of the each tray label (such as Fairfax VA 22030, Fairfax VA 22030, and Fairfax VA 22030). The tray listings must appear under a column heading "Tray Number" or "Tray Label," as applicable. If unique tray numbers are used, the trays must be listed in ascending numerical order by tray number within each tray sortation level section. If the exact top line of tray labels is used, the trays must be listed in ascending numerical order by the ZIP Code shown on the tray label within each tray sortation level section. The ZIP Codes in each tray must also be listed in a separate column as described in 564.144b(2)(b) below.

(b) *ZIP Code Column.* For each tray in the mailing, the ZIP Codes contained in the tray must be listed under a column heading "ZIP Code." The ZIP Codes must be listed in ascending numeric order by 5-digit ZIP Code for 5-digit trays, by lowest assigned 5-digit ZIP Code for second-class optional city trays as listed in Exhibit 122.63a, and by 3-digit Zip Code for 3-digit, SCF, and residual/basic trays (residual/basic trays for mailings prepared under the ZIP Code sequencing and listing option in 564.124b).

c. Basic Columns and Line Entries for Rates and Totals. For each ZIP Code entry listed under either the ZIP Code option or the tray label option, the documentation must show:

(1) The number of ZIP+4 barcoded or delivery point barcoded pieces under a column heading (or column headings—see 564.144d) naming the rate for which the pieces qualify based on the class of mail (see 564.11) and indicating that the pieces are ZIP+4 barcoded or delivery point barcoded.

(2) The number of non-ZIP+4 barcoded or non-delivery point barcoded pieces with a correct numeric ZIP+4 code (see 530) in the address and meeting the requirements of 540, under a column heading (or column headings—see 564.144d) naming the rate for which the pieces qualify based on the class of mail (see 564.11) and indicating that the pieces are not ZIP+4 barcoded or delivery point barcoded. The documentation does not need to contain a column for these pieces if none appear in a mailing, or if the ZIP+4 rates are not claimed for such pieces. These pieces are not permitted in 5-digit trays.

(3) The number of remaining pieces that are not ZIP+4 barcoded, delivery point barcoded, or numerically ZIP+4 coded under a column heading (or column headings—see 564.144d) naming the rate for which the pieces qualify based on the class of mail (see 564.11) and indicating that the pieces are not ZIP+4 barcoded or delivery point barcoded. (This column includes pieces with a 5-digit numeric ZIP Code as well as pieces without a ZIP+4 barcode or delivery point barcode that contain a correct numeric ZIP+4 code, but do not meet the OCR processing requirements in 540. It also includes pieces without a ZIP+4 barcode or delivery point barcode that contain a numeric ZIP+4 code not matched against CASS certified software in accordance with 530.) These pieces are not permitted in 5-digit trays.

(4) The cumulative total (the total of all pieces listed for that ZIP Code plus all pieces listed for the preceding ZIP Code entries within the same tray level section of the documentation) under a column heading "Cumulative Total." (The totals accumulate for each tray level section only.)

d. Additional Rate Columns or Line Entries

(1) *First-Class Metered or Precanceled Stamp Mailings Containing Pieces Both Over and Under 2 Ounces.* Within the residual/basic tray section of the documentation for metered and precanceled stamps mailings in which postage at the exact rate is not affixed, two rate columns, one for reporting pieces weighing less than 2 ounces and one for reporting pieces weighing 2 ounces or more must be shown for each of the basic column separations described in 564.144c. Each column heading must contain the name of the residual/basic rate (see 564.111c) for which the pieces qualify, the weight category, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded. Precanceled stamp mailings in which postage to cover additional ounce increments is not affixed must meet the additional documentation requirements in 564.144d(2) below.

(2) *First-Class Nonidentical-Weight Precanceled Stamp Mailings in Which Postage to Cover Additional Ounce Increments is Not Affixed.* In First-Class mailings paid by precanceled stamps that contain pieces of more than one ounce increment and in which precanceled stamps to cover postage for the additional ounce or ounces is not affixed as permitted in 581.34 or 581.4, additional rate columns for reporting each ounce increment in the mailing must be shown for each of the basic column separations described in 564.144c. Each rate column heading must show the name of the rate (see 564.111) for which the pieces qualify, the weight category, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded.

(3) *First-Class Mailings Containing Both Letter-Rate and Postcard-Rate Pieces.* Within the residual/basic tray section of the documentation for metered and precanceled stamp First-Class mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates, two columns, one for reporting pieces at the postcard rates and one for reporting pieces at the letter

rate must be shown for each of the basic column separations described in 564.144c. The column headings must contain the name of the rate (see 564.111) for which the pieces qualify, the weight category, a statement as to whether the pieces are subject to postcard or letter rates, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded. The additional column separations in 564.144d(2) are also necessary for all tray sortation sections of the documentation for precanceled stamp mailings in which postage to cover additional ounce increments is not affixed to each piece in the mailing as permitted under 581.34 or 581.4.

(4) *Optional Column Listings for Second-Class Mailings Containing Both In-County and Outside-County Rate Pieces.* For second-class mailings containing both in-county and outside-county pieces, separate columns for in-county pieces and for outside-county pieces must be shown for pieces listed under 564.144c(1), 564.144c(2) and 564.144c(3) for each tray level section. In addition, for 3-digit trays, separate columns for unique 3-digit trays that qualify for the level B3 or H3 rates, and for the level J3 rates must be shown, and separate columns for non-unique 3-digit trays that qualify for level A or G rates, and for level J1 rates must be shown, for each of the three general categories of pieces in 564.144c(1), 564.144c(2), and 564.144c(3). (Up to twelve rate column headings showing applicable rate categories are possible in the 3-digit tray portion.) To reduce the number of columns across a page, mailers may break the 3-digit tray portion of the documentation into sections by rate category: section 1 for optional city and unique 3-digit trays recorded at the level B3/H3 and J3 rates, and section 2 for nonunique 3-digit trays at the level A/G or J1 rates. The column headings must contain the name of the rate (see 564.112) for which the pieces qualify, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded. Only two rate columns are possible within the 5-digit tray section of the listing, since only ZIP+4 barcoded or delivery point barcoded pieces are permitted in these trays.

(5) *Second-Class Combined Mailings.* See 564.144f.

(6) *Third-Class Mailings Claiming Destination SCF or Destination BMC Rates.* In third-class mailings in which some combination of SCF destination entry, BMC destination entry, and no destination entry discount is claimed (that is, not all pieces in the mailing qualify for the same destination discount) the ZIP Codes on the listing that are eligible for the SCF entry discount or the BMC entry discount must be marked with an asterisk or some other unique character. If both the SCF discount and BMC discount are claimed in the same mailing, a different character from the one used to mark the ZIP Codes eligible for the SCF discount must be used to mark the ZIP Codes eligible for the BMC discount.

e. Section Column Totals. At the end of each tray level section in the listing, show the total number of pieces listed under each rate and total column.

f. Additional Requirements For Second-Class Combined Mailings. In addition to the documentation required by 564.14, second-class mailings combining pieces from more than one second-class publication or edition must provide additional information by publication or edition as required by 424.853. This additional information may be provided as a separate report or reports.

564.145 Summary Portion

a. Second-Class Mailings and Identical-Weight Permit Imprint Mailings

(1) *Rate Categories and Postage Owed.* The summary must list each rate at which any pieces in the mailing are claimed from the applicable column totals in the listing portions of the documentation. (For residual/basic mail sorted under the physical separation option in 564.124c, information is also obtained from the manual counts of residual/basic pieces in the separate trays for each rate category.) When not all pieces in a third-class mailing qualify for the same destination entry discount, a separate line entry for the pieces claimed at each destination entry discount and for pieces not qualifying for a destination entry discount must be shown to separately account for the different rates in the summary. For each rate listed, the summary must show:

(a) The total number of pieces claimed at that rate.

(b) The applicable rate (amount) of postage.

(c) The postage charges for that rate category (the total number of pieces times the amount of postage).

Note: The applicable rate amount and postage charges are not required for second-class mailings.

(2) *Totals*

(a) A grand total of the postage charges for all the rate entries for the entire mailing must be shown (optional for second-class mailings). This grand total is the amount of postage owed for the mailing and the amount to be deducted from the advance deposit account for permit imprint mailings, or is the amount of second-class per piece charges for the mailing prior to deductions for the nonadvertising percentage discount and zone rate discounts.

(b) The total number of pieces in the mailing that bear a ZIP+4 barcode or delivery point barcode, the total number of pieces that do not, and the total of both representing all pieces in the mailing must be shown.

(c) The percentage of ZIP+4 barcoded or delivery point barcoded pieces in the mailing must be shown.

(d) The summary may also include the listing of overflow trays required by 561.25, if applicable.

b. First- and Third-Class Metered and Precanceled Stamp Mailings

(1) *Rate Categories and Postage Owed.* The summary must list each rate at which any pieces in the mailing are claimed from the applicable column totals in the listing portion of the documentation. For residual/basic mail sorted under the physical separation option in 564.124c, information is also obtained from the manual counts of pieces in the separate trays for each rate category. For nonidentical-weight First-Class precanceled stamp mailings in which stamps to cover the additional ounces are not affixed, each rate category must be listed more than once so that there is a separate listing for each ounce increment at that rate. For First-Class metered mailings containing residual pieces over and under two ounces, each residual rate category must have a separate listing for pieces weighing 2 ounces or less and a separate listing for pieces weighing over 2 ounces. First-Class postcard rate pieces must also be listed separately from letter-rate First-Class pieces. When not all pieces in a third-class mailing qualify for the same destination entry discount, a separate line entry for the pieces claimed at each destination entry discount and for pieces not qualifying for a destination entry discount must be shown to separately account for the different rates in the summary. For each rate listed, the summary must show:

(a) The number of pieces claimed at that rate.

(b) The amount of additional postage due for each piece at that rate (when the amount of postage affixed is less than the rate of postage owed).

(c) The postage due for pieces claimed at that rate (the total number of pieces at that rate times the amount of postage due per piece).

(2) *Totals*

(a) A grand total of the additional postage charges due for all the rate entries for the entire mailing must be shown. This grand total is the amount of postage that must be affixed to the mailing statement or paid through an advance deposit account.

(b) The total number of pieces in the mailing that bear a ZIP+4 barcode or delivery point barcode, the total number of pieces that do not, and the total of both representing all pieces in the mailing must be shown.

(c) The percentage of ZIP+4 barcoded or delivery point barcoded pieces in the mailing must be shown.

(d) The summary may also include the listing of overflow trays required by 561.44, if applicable.

564.2 OPTION 2—Tray-Based Presorted ZIP+4 Barcoded Mail (Available Through March 20, 1993)

564.2 Requirements

564.21 [Reserved]

564.22 Rate Eligibility. [Insert current 563.22. Change the references "561.43" to "561.24." Change the references "561.44" to "561.25."]

564.23 Sortation

564.231 ZIP Code Grouping and Packaging Requirements—Qualifying Portion. [Insert current 563.231. Change all references "561.422" to 561.232". "Change the reference "(see 563.232b(1), 563.232b(2) and 563.233)" in the note under renumbered 564.231a(1) to "(see 564.232b(1), 564.232b(2) and 564.232b(3))." Change all references "561.22" to "561.11 and 561.131". Change the reference "563.232b(3)" to "564.232b(4)". Change the reference "561.44" to 561."25".]

564.232 Tray Sortation—Qualifying Portion

a. General. The requirements in 561.2 must be met.

b. Sortation

(1) 5-Digit Trays. [Insert current 563.232b(1). Change the label information and add a note to the end of this section as follows:

(a) *Nonmilitary Mail.*

[Insert current label information from 563.232b(1)].

(b) *Military Mail.*

Line 1: "APO" or "FPO", followed by AE (for 3-digit ZIP Code prefixes (090–098), AA (for ZIPs 340), or AP (for ZIPs 962–966), and complete 5-digit APO or FPO ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "Z+4 BARCODED" or "Z+4 B/C".

Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location.

Example

APO AE—09128
FCM ZIP+4 BARCODED
NB COMPANY UNION SC

Note: 5-digit trays are required only if the mailer wants to qualify pieces for the 5-digit ZIP+4 Barcoded rates. Since these trays are optional, mailers may choose to prepare 5-digit trays for only one 5-digit ZIP Code area, or for only some 5-digit ZIP Code areas, or may choose to prepare all possible 5-digit trays. If a 5-digit tray is prepared, however, it must be a full tray or overflow from a full tray as defined in 561.24 and 561.25.

(2) Optional City Trays (Second-Class Only). [Insert current 563.233b. Change the reference "561.44" to "561.25".]

(3) 3-Digit Trays. [Revise the first sentence to read as follows: "After preparing any full 5-digit trays, any full optional city trays (if applicable, for second-class mailings only), and at the mailer's option, overflow trays to those destinations, if there are enough pieces to fill a tray for a 3-digit ZIP Code destination, a 3-digit tray must be prepared." Change the reference "561.44" to "561.25". Change the reference "563.231a(1)" to "564.231a(1)". Omit the following two sentences: "Within mailings in which the First- or third-class 5-digit ZIP+4 Barcoded rates or second-class level B5/H5/J5 rates are claimed, 3-digit trays may be prepared only after all possible 5-digit trays have been prepared. In second-class mailings the mailer may elect to prepare optional city trays to obtain the level B3/H3/J3 ZIP+4 Barcoded rates (see 563.233); if so, optional city trays must be prepared before preparing 3-digit trays." Add following qualifier to existing tray label information and add new tray label information for military mail as follows:

(a) *Nonmilitary Mail.*

(i) *Unique 3-Digit ZIP Code Prefixes.*

[Insert label information in current 563.232b(2)(a).]

(ii) *Other 3-Digit ZIP Code Prefixes.*

[Insert label information in current 563.232b(2)(b).]

(b) *Military Mail.*

Line 1: "APO" or "FPO", followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPS 340) or AP (for ZIPs 962–966), and 3-digit APO or FPO ZIP Code prefix.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 BARCODED" or "Z+4 B/C".

Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location.

Example

FPO AE—095
FCM ZIP+4 BARCODED
XYZ CORP ROCHESTER NY

Note: ZIP Code prefixes 094, 096–098, 340, and 962–965 contain both APO and FPO addresses. Therefore, the destination line for 3-digit trays for destinations containing bo h APO and FPO mail must show the prefix APO/FPO before the code and the 3-digit prefix. Example: APO/FPO AA 340. (All 3-digit trays for ZIP Code prefixes 090–093 must be labeled APO, and 3-digit trays for ZIP Code prefixes 095 and 966 must be labeled FPO.)

(4) SCF Trays. [Insert current 563.232b(3). Change the references "563.232b(1)" to "564.232b(1)". Change all references "563.233" to "564.232b(2)". Change all references "563.232b(2)" to "564.232b(3)". Revise the sentence "SCF trays that are not full are prohibited, except for overflow trays as provided in 561.44" to read "Less-than-full SCF trays are not permitted, except that one overflow tray per SCF area is permitted as provided in 561.25, and one less-than-full tray for the SCF serving the post office where the mailing is entered is permitted". Add the following note after the label information:

Note: When there is no SCF listed for a given 3-digit area in Exhibit 122.63d, (such as military mail and the Virgin Islands) mailers must place such pieces in a tray labeled on the top line in accordance with Exhibit 122.63t, when a full tray can be prepared in accordance with 122.63t. The second and third lines of tray labels for such trays are the same as those for SCF trays described above. Pieces in such trays are not eligible for SCF entry discounts.

564.233 Sortation Requirements—Residual/Basic Portion

a. General. Residual/basic pieces are those that cannot be trayed as required by 564.232. Residual/basic pieces must be placed in trays that are separate from trays of qualifying pieces. The traying requirements of 561.2 must be met. The pieces in residual/basic trays must be prepared under 564.233b or 564.233c. Once the basic requirements in 564.233b or 564.233c have been met, additional sortation of First-Class residual mail may be performed in accordance with any local authorization for acceptance times described in Management Instruction DM–140–91–01, *First-Class Mail Acceptance Policy.*

b. Option 1: ZIP Code Sequencing and Listing. [Insert current 563.232c(1). Replace the first sentence with the following: "Residual/basic pieces for the same 3-digit ZIP Code area must be grouped together. Groups of pieces for the same 3-digit ZIP Code area must be placed in trays in ascending numeric 3-

digit ZIP Code sequence." Change the reference "563.242" to "564.53 (see also 564.1)".]

c. Option 2: Physical Separation. [Insert current 563.232c(2). Add the following as the third sentence: "Additional tray separations may be required as set forth in 564.124c(2) to accurately account for postage. Change the reference "561.221" to "561.11". Change the reference "563.242" to 564.242".]

564.24 Documentation

564.241 General Requirements for Submission. Each mailing must be accompanied by the documentation described in 564.242, with the following exceptions:

a. No documentation is required (other than a listing of overflow trays if applicable as required in 561.25) when every piece in the mailing bears the correct ZIP+4 barcode or correct delivery point barcode and either of the following applies:

(1) Postage is affixed to each piece at the exact rate of postage for which it qualifies.

(2) Each piece in the mailing is of identical weight, the pieces in each individual tray are subject to the same rate, and the trays for each rate level are placed in groups by rate eligibility when presented for verification to allow weight verification of postage. (Second-class mailings containing both in-county and outside-county pieces and/or containing both Level A and Level B rates do not meet this condition.)

b. Abbreviated documentation may be submitted under the provisions of 568.1.

c. Documentation that describes all ZIP+4 Barcoded rate mailings to be made from a mailing job may be submitted with the first mailing of a mailing job in accordance with 568.2.

564.242 Information Required

a. Tray Label Option

(1) *Sequence.* [Insert current 563.242a(1). Change the reference "563.232c(1)" to "564.233b".]

(2) *Information.* [Insert current 563.242a(2). Add the following as the second sentence: "See 564.144d and 564.144f for additional columns that may be required to account for pieces qualifying for each rate category." Change the reference "563.232c(1)" to "564.233b".]

(3) *Summary.* [Insert current 563.242a(3). Change the reference "563.232c(2)" to "564.233b". Change the reference "561.44" to "561.25."]

[Delete current 563.242a(4).]

b. ZIP Code Option

(1) *Sequence.* [Insert current 563.242b(1). Change the reference "563.232c(2)" to "564.233b".]

(2) *Information.* [Insert current 563.242b(2). Add the following as the last sentence: "See 564.144d and 564.144f for additional columns that may be required to account for pieces qualifying for each rate category."]

(3) *Summary.* [Insert current 563.242b(3). Change the reference "563.232c(2)" to "564.233b". Change the reference "561.44" to "561.25."]

[Delete current 563.242b(4).]

564.25 Mailing Statement. Each mailing must be accompanied by a complete and signed mailing statement appropriate for the method of postage payment and class of mail submitted. Mailers must write "DMM 564.2 Presort" at the top of the mailing statement.

565 Two-Tier Package-Based Presorted ZIP+4 Barcoded Rate Mailings

565.1 General Description and Requirements. A two-tier ZIP+4 Barcoded rate mailing prepared under 565 is made up of two presort tiers: a 3/5 Presort tier that contains 5-digit and 3-digit packages; and a residual/basic presort tier (remaining pieces). All pieces within 5-digit packages must contain the correct ZIP+4 or delivery point barcode. 5-digit packages may be made at the mailer's option whenever there are 10 or more ZIP+4 or delivery point barcoded pieces for the same 5-digit ZIP Code area. After making any 5-digit packages, any groups of 50 or more pieces for the same 3-digit ZIP Code area that remain must be prepared into 3-digit packages. The 5-digit packages and the 3-digit packages must then be trayed in accordance with 565.32 (5-digit packages and 3-digit packages are placed in the same 3-digit of SCF trays). For second-class mailings, optional city packages of 50 or more pieces may also be made, at the mailer's option, and on a selected basis, prior to preparing 3-digit packages. Remaining pieces must be prepared as residual/basic mail as described in 565.4. A mailing containing only a residual/basic presort tier is not permitted unless there are no groups of 50 or more pieces for the same 3-digit ZIP Code area within the mailing. Rates for pieces in the mailing are based upon the type of package and presort tier in which they are placed. See 565.2 for a detailed description of the rates for which pieces in each type of package or presort tier can qualify. A single mailing may, at the mailer's option:

a. Include 5-digit and 3-digit packages in the 3/5 presort tier, and a residual/basic tier.

b. Contain only 3-digit packages in the 3/5 presort tier, and a residual/basic tier;

c. Contain only 5-digit packages in a 3/5 presort tier;

d. (First-Class Mailings Only) contain only 5-digit packages in the 3/5 presort tier and a residual/basic tier;

e. (First-Class Mailings Only) contain only a residual/basic tier.

f. (Second- and third-class mailings) contain only a residual/basic tier under the limited conditions in 565.122a.

565.12 Hierarchy of Presort

565.121 Mailings Containing 5-Digit and 3-Digit Packages in the 3/5 Presort Tier. Since 5-digit packages in the 3/5 presort tier must be prepared only if 5-digit ZIP+4 Barcoded rates are claimed, mailers need not prepare all possible 5-digit packages in the 3/5-digit presort tier before going on to prepare 3-digit packages. Mailers may prepare 5-digit packages to only selected 5-digit ZIP Code areas. When a mailing contains 5-digit packages for a ZIP Code area, not all pieces for that ZIP Code area are required to be placed in 5-digit packages in the 3/5-digit presort tier. The mailer may elect to place some pieces for that 5-digit ZIP Code area in 3-digit packages in the 3/5 presort tier and pay a higher rate. In all cases, however, each 5-digit package must contain at least 10 ZIP+4 barcoded or delivery point barcoded pieces (see 565.311 and 515.32).

Example: A mailing contains 150 pieces for ZIP Code 22033, of which 135 are delivery point barcoded, and 15 are not barcoded but contain a 5-digit ZIP Code. The same mailing contains 30 pieces (28 delivery point barcoded and 2 nonbarcoded with a 5-digit ZIP Code) for other ZIP Codes with a 220 ZIP Code prefix. The mailer elects to prepare 5-digit packages to 22033. The 15 pieces to 22033 that do not contain a barcode cannot be included in the 5-digit packages and are identified for possible inclusion in a 3-digit package. These 15 pieces, when added to the 30 pieces for other ZIP Codes within 220, equal 45 pieces for the 3-digit area 220. Since 50 pieces are needed to make up a 3-digit package, the mailer may elect to take 5 pieces from 22033 and place them as part of a 3-digit package. This will result in a total of 130 pieces for 22033 in 5-digit packages and 50 pieces for 220 in 3-digit packages within the 3/5 presort tier.

565.122 Restrictions on Mailings Containing Only a Residual/basic Presort Tier

a. Second- and Third-Class Mailings. Within second- and third-class

packaged-based mailings, all possible 3-digit packages of 50 or more pieces to the same 3-digit area must be prepared and placed in the 3-digit presort tier, before the residual/basic tier is prepared. (Mailers may also prepare 5-digit packages, and, for second-class mail only, optional city packages, before preparing 3-digit packages.) The only instance in which a residual/basic tier may be submitted by itself as a second- or third-class package-based mailing is if the mailer attempts to perform 3-digit package sortations, but there are no groups of 50 or more pieces for any 3-digit ZIP Code area in the mailing.

b. First Class Mailings. Since the residual portion of a First-Class mailing is paid for at single-piece rates, mailers are not required to prepare all possible 3-digit packages of 50 or more pieces to the same 3-digit area and tray them under the requirements for the 3/5 presort tier before preparing the residual tier. That is, the residual portion of a First-Class mailing may contain groups of 50 or more pieces for the same 3-digit ZIP Code area.

565.2 Rate Eligibility

565.21 First-Class Mail

565.211 5-Digit Packages. Pieces in 5-Digit packages prepared under 565.3 can qualify for the 5-Digit ZIP+4 Barcoded rates. Only pieces bearing a correct ZIP+4 barcode or correct delivery point barcode may be included in 5-Digit packages.

565.212 3-Digit Packages. Pieces within 3-Digit packages prepared under 565.3 that bear a ZIP+4 barcode or delivery point barcode can qualify for the 3-Digit ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the ZIP+4 Presort rates. Other pieces qualify for the Presorted First-Class rates.

565.213 Residual Pieces. Pieces that bear a correct ZIP+4 barcode or delivery point barcode in the residual portion of the mailing prepared under 565.4 can qualify for the nonpresorted ZIP+4 Barcoded rates if they also meet the requirements for the card rates (see 311.11, 322, and 515.512), otherwise they can qualify for the nonpresorted ZIP+4 rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the nonpresorted ZIP+4 rate. Other pieces qualify for the single-piece First-Class rates.

565.22 Second-Class Mail

565.221 5-Digit Packages. All pieces in 5-Digit packages prepared under 565.3 can qualify for the level B5/H5/J5 ZIP+4 Barcoded rates. Only pieces bearing a correct ZIP+4 barcode or correct delivery point barcode may be included in 5-Digit packages.

565.222 Optional City Packages. Pieces within optional city packages prepared under 565.3 that bear a ZIP+4 barcode or delivery point barcode can qualify for the B3/H3/J3 ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the B3/H3/J3 ZIP+4 rates. Other pieces qualify for the B3/H3/J3 presort rates.

565.223 3-Digit Packages

a. Unique 3-Digit Packages. Pieces within unique 3-Digit packages prepared under 565.3 that bear a ZIP+4 barcode or delivery point barcode can qualify for the B3/H3/J3 ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the B3/H3/J3 ZIP+4 rates. Other pieces qualify for the B3/H3/J3 presort rates.

b. Non-Unique 3-Digit Packages. Pieces within nonunique 3-Digit packages prepared under 565.3 that bear a ZIP+4 barcode or delivery point barcode can qualify for the A/G/J1 ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the A/G/J1 ZIP+4 rates. Other pieces qualify for the A/G/J1 presort rates.

565.223 Residual/Basic Pieces. Pieces that bear a correct ZIP+4 barcode or delivery point barcode in the residual/basic portion of the mailing prepared under 565.4 can qualify for the level A/G/J1 ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the level A/G/J1 ZIP+4 rates. Other pieces qualify for the level A/G/J1 presort rates.

565.23 Third-Class Mail

565.231 5-Digit Packages. All pieces in 5-Digit packages prepared under 565.3 can qualify for the 5-Digit ZIP+4 Barcoded rate. Only pieces bearing a correct ZIP+4 barcode or correct delivery point barcode may be included in 5-Digit packages.

565.232 3-Digit Packages. Pieces within 3-Digit packages prepared under 565.3 that bear a ZIP+4 barcode or delivery point barcode can qualify for the 3-Digit ZIP+4 Barcoded rates; pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the 3/5 ZIP+4 rates. Other pieces qualify for the 3/5 presort rates.

565.233 Residual/Basic Pieces. Pieces that bear a correct ZIP+4 barcode or delivery point barcode in the residual/basic portion of the mailing prepared under 565.4 can qualify for the basic ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the basic ZIP+4 rates. Other pieces qualify for the basic presort rates.

565.3 Sortation Requirements—3/5 Presort Tier Qualifying Portion

565.31 Grouping/Packaging

565.311 General Rules

a. Groups/packages must meet the requirements in 561.1.

b. In mailings consisting entirely of pieces that fall within the dimensions for postcards (not exceeding 4¼ inches high, 6 inches long, and .0095 inch thick) the pieces in any type of tray must always be secured into packages in accordance with 561.11.

c. All pieces, regardless of size, placed in AADC trays must be secured into packages in accordance with 561.11.

d. All pieces in 5-digit packages must bear the correct ZIP+4 barcode or delivery point barcode.

e. Pieces in optional city and 3-digit packages may contain pieces that do not bear the correct ZIP+4 barcode or delivery point barcode up to the 85% limit in 515.3.

565.312 Group/Package Sortation

a. Optional 5-Digit Groups/Packages. When there are 10 or more ZIP+4 barcoded or delivery point barcoded pieces for the same 5-digit ZIP Code destination, they may be prepared in 5-digit groups/packages. Preparation of groups/packages containing fewer than 10 pieces for a 5-digit area is not permitted. Each group of pieces for the same 5-digit area must be secured together into a package (or packages) and each package must be labeled as

described in 561.11 and 561.131, except that within 5-digit, second-class optional city, 3-digit, and SCF trays of mailings that contain pieces exceeding the dimensions for postcards, separator cards may be used to delineate pieces for the same 5-digit ZIP Code area as an alternative to securing pieces into packages. 5-digit groups delineated by separator cards must be labeled as described in 561.132. Neither packaging, separator cards, nor labeling, is required in full 5-digit trays, except for mailings of postcard size pieces which must be packaged (see 565.311b).

b. Optional City Groups/Packages (Second-Class Mailings Only). After preparing any 5-digit groups/packages under 565.312a, second-class mailers may choose to prepare groups/packages of 50 or more pieces for the same optional city listed in Exhibit 122.63a, to obtain the level B3/H3/J3 ZIP+4 Barcoded rates. Preparation of groups/packages containing fewer than 50 pieces for an optional city is not permitted. Each group of pieces for the same optional city must be secured together into a package (or packages) and each package must be labeled as described in 561.11 and 561.131, except that within optional city, 3-digit, and SCF trays of mailings containing pieces exceeding the dimensions for postcards, separator cards may be used to delineate pieces for the same optional city as an alternative to securing pieces into packages. Optional city groups delineated by separator cards must be labeled as described in 561.132.

c. 3-Digit Groups/Packages. After preparing any 5-digit groups/packages under 565.312a, and any optional city packages under 565.312b (second-class mail only), if there are 50 or more pieces remaining for a 3-digit ZIP code area, they must be prepared in 3-digit groups/packages. Preparation of groups/packages containing fewer than 50 pieces for the same 3-digit area is not permitted. Each group of pieces for the same 3-digit area must be secured together into a package (or packages) and each package must be labeled as described in 561.11 and 561.131, except that within 3-digit and SCF trays of mailings containing pieces exceeding the dimensions for postcards, separator cards may be used to delineate pieces for the same 3-digit ZIP Code area as an alternative to securing the pieces into packages. 3-digit groups delineated by separator cards must be labeled as described in 561.132.

565.313 Residual/Basic Pieces. Pieces remaining after preparing groups/packages in accordance with 565.311 and 565.312 are residual/basic pieces. Residual/basic pieces must be sorted in accordance with one of the options in 565.4.

565.32 Traying—3/5 Presort Tier

565.321 General. The requirements in 561.2 must be met. All pieces in a group/package for the same 5-digit, same optional city (second-class only), or same 3-digit destination should be placed together in the same tray. For example, all packages for ZIP Code 22033 within a 3-digit tray must be grouped together within the 3-digit tray. All pieces for the same group/package destination should be placed in the same tray. For example, 100 pieces for 220 should be placed in the same 3-digit tray and not split between a 3-digit tray and an SCF tray if physically possible. When all the pieces for the same group/package destination cannot physically fit in the same tray, the remaining pieces for the group/package destination must be placed in either another full tray for the same tray destination, or in a tray for the next level of sortation (or a less-than-full AADC tray for the same AADC destination).

565.322 Sortation

a. 5-Digit Trays. When there are enough groups/packages for the same 5-digit ZIP Code area to fill a tray, a 5-digit tray must be prepared for that destination. Less-than-full 5-digit trays are not permitted. 5-digit trays must be labeled as follows:

(1) *Nonmilitary Mail*

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED"

Line 3: Mailer information (see 561.273b(3)).

Example

DETROIT MI—48235
FCM LTRS BARCODED
NB COMPANY UNION SC

(2) *Military Mail.*

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340) or AP (for ZIPS 962–966), and complete 5-digit APO or FPO ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

APO AE—09128
FCM LTRS BARCODED
NB COMPANY UNION SC

b. Optional City Trays (Second-Class Only). After preparing 5-digit trays, second-class mailers who prepare optional city groups/packages may prepare optional city trays whenever there are enough optional 5-digit and optional city groups/packages for the same optional city listed in Exhibit 122.63a to fill a tray. Less-than-full optional city trays are not permitted. Optional city trays must be labeled as follows:

Line 1: Name of optional city in Exhibit 122.63a, two-letter state abbreviation, and lowest 5-digit ZIP Code served by the city.

Line 2: Contents (2C or NEWS) followed by "LTRS BARCODED" and directly under the ZIP Code on Line 1, "CITY".

Line 3: Mailer information (see 561.273b(3)).

Example

LA JOLLA CA—92037
2C LTRS BARCODED CITY
HARD TIMES NEWS UNION SC

c. 3-Digit Trays. After preparing 5-digit trays (if applicable) and optional city trays (if applicable for second-class mail only), if there are enough optional 5-digit, optional city (second-class only), and 3-digit groups/packages for the same 3-digit ZIP Code area to fill a tray, a 3-digit tray must be prepared. Less-than-full 3-digit trays are not permitted. 3-digit trays must be labeled as follows:

(1) *Nonmilitary Mail.*

(a) *Unique 3–Digit ZIP Code Prefixes.*

Line 1: City, two-letter state abbreviation and unique 3-digit prefix listed in Exhibit 122.63b.

Line 2: Appropriate class or contents designation, (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

KNOXVILLE TN—379
FCM LTRS BARCODED
LMM COMPANY FAIRFAX VA

(b) *Other 3–Digit ZIP Code Prefixes.*

Line 1: Name of SCF (letters "SCF" omitted) and two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces contained in the tray (see Exhibits 122.63c or 122.63d for the name of the SCF serving the 3-digit area).

Line 2: Appropriate class or contents designation, (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

WATERLOO IA—506
FCM LTRS BARCODED
XYZ CORP ROCHESTER NY

(2) *Military Mail.*

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPS 340) or AP (for ZIPs 962–966), and 3-digit APO or FPO ZIP Code prefix.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

FPO AE—095
FCM LTRS BARCODED
XYZ CORP ROCHESTER NY

Note: ZIP Code prefixes 094, 096–098, 340, and 962–965 contain both APO and FPO addresses. Therefore, the destination line for 3-digit trays for destinations containing both APO and FPO mail must show the prefix APO/FPO before the code and the 3-digit prefix. *Example:* APO/FPO AA 340. (All 3-digit trays for ZIP Code prefixes 090–093 must be labeled APO, and 3-digit trays for ZIP Code prefixes 095 and 966 must be labeled FPO.)

d. SCF Trays. After preparing 5-digit trays (if applicable), optional city trays (if applicable for second-class mail only), and all possible 3-digit trays, if there are enough optional 5-digit, optional city (second-class only), and 3-digit groups/packages remaining for one of the SCFs listed in Exhibit 122.63d to fill a tray, an SCF tray must be prepared. Less-than-full SCF trays are not permitted, except that one less-than-full tray for the SCF serving the post office where the mailing is entered is permitted. SCF trays must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit SCF code as shown in Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example:

SCF SAN ANTONIO TX 780
FCM LTRS BARCODED
NBT CO BAKERSFIELD CA

e. AADC Trays. After preparing 5-digit trays (if applicable), optional city trays (if applicable for second-class mail only), and all possible 3-digit and SCF trays, remaining groups/packages (optional 5-digit, second-class optional city, and 3-digit packages) must be trayed to one of the AADCs listed in Exhibit 122.63t. The groups in all AADC trays must be secured into 5-digit (if applicable), optional city (if applicable for second-class only), or 3-digit packages as appropriate and labeled. Use of separator cards is not permitted in AADC trays. AADC trays must be labeled as follows:

Line 1: Applicable label information for the AADC shown in Exhibit 122.63t.

Line 2: Appropriate class or contents designation, (FCM, 2C, NEWS, or 3C) followed by "AADC LTRS BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

DIS PROVIDENCE RI—028
FCM AADC LTRS BARCODED
NBT CO BAKERSFIELD CA

565.4 Sortation Requirements—Residual/Basic Portion

565.41 General. Residual/basic pieces are those pieces remaining after preparing packages in accordance with 565.311 through 565.313. Accordingly, except as provided in 565.122b, there are always fewer than 50 pieces for the same 3-digit ZIP Code area within the residual/basic portion of the mailing. Residual/basic pieces must be placed in trays separate from qualifying pieces, except as provided in 565.44. The traying requirements in 561.2 must be met. Residual/basic pieces must be prepared in accordance with one of the options listed in 565.42 through 565.44 below. Once the basic requirements in 565.42 through 565.44 are met, additional sortation of First-Class residual mail may be performed in accordance with any local authorization for acceptance times described in Management Instruction DM–140–91–01, *First-Class Mail Acceptance Policy.*

565.42 Option 1: ZIP Code Sequencing and Listing. Residual/basic pieces for the same 3-digit ZIP Code area must be grouped together. Groups of pieces for the same 3-digit ZIP Code area must be placed in trays in ascending numeric 3-digit ZIP Code sequence. If the last tray is less than full, the pieces in the tray must be secured into and labeled as 3-digit packages under 561.11 and 561.131. In addition, full trays of postcard-size pieces (pieces measuring not more than 4¼ inches high, 6 inches long, and .0095" inch thick), of any class of mail, must be secured into and labeled as 3-digit packages under 561.11 and 561.131. Mailers must provide a listing by 3-digit ZIP Code area of the various rate qualification categories as described in 565.53. In third-class mailings in which destination BMC rates are claimed and not all pieces in the residual/basic portion of the mailing qualify for the destination BMC rate, separate residual/basic trays must be prepared for the ZIP Code areas eligible for the destination BMC rate as provided in 624.722. Trays must be labeled as follows:

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code of the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED WKG".

Line 3: Mailer information (see 561.273b(3)).

Example

DIS BAKERSFIELD CA—932
FCM LTRS BARCODED WKG
NBT CO BAKERSFIELD CA

565.43 Option 2: Physical Separation by Rate Qualification

565.431 Basic Tray Separations. Residual/basic pieces bearing correct ZIP+4 barcodes or delivery point barcodes must be separately trayed from residual/basic pieces that do not. Pieces not bearing ZIP+4 barcodes or delivery point barcodes must be further separated so that pieces bearing a correct (see 530) numeric ZIP+4 code in the address and meeting the requirements of 540 are separately trayed from other pieces. The trays must be physically grouped according to these separations when presented to the post office for verification.

565.432 Additional Tray Separations.

a. First-Class Nonidentical-Weight Metered or Precanceled Stamp Mailings. There is a different first ounce rate for pieces weighing over 2 ounces in First-Class Mail. Accordingly, in nonidentical-weight First-Class metered or precanceled stamp mailings in which there are both pieces weighing 2 ounces or less and pieces weighing over 2 ounces, and postage at the exact rate is not affixed to each piece, further tray separations must be made by pieces weighing over 2 ounces and pieces weighing 2 ounces or less for each of the three basic separations required in 565.431 above. The trays must be physically grouped according to these separations when presented to the post office for verification. Precanceled stamp mailings must meet the tray separation requirements in 565.432b when postage to cover additional ounce increments is not affixed to each piece as permitted under 581.34 or 581.4.

b. First-Class Nonidentical Weight Precanceled Stamp Mailings in Which Postage To Cover Additional Ounce Increments is Not Affixed. In First-Class mailings paid by precanceled stamps that contain pieces of more than one ounce increments in which precanceled

stamps to cover postage for the additional ounce or ounces is not affixed under 581.34 or 581.4, further tray separations must be made by pieces of each ounce increment in the mailing for each of the three basic separations required in 565.431. The trays must be physically grouped according to these separations when presented to the post office for verification.

c. First-Class Mailings Containing Both Letter-Rate and Postcard-Rate Pieces. For metered and precanceled stamp First-Class mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates, pieces weighing one ounce or less must be further separated so that postcard rate pieces are trayed separately from letter-rate pieces for each of the three basic separations required in 565.431. The additional tray separations in 565.432b may also be necessary for precanceled stamp mailings. The trays must be physically grouped according to these separations when presented to the post office for verification.

d. Second-Class Mailings Containing In-County and Outside County Pieces. Within second-class mailings containing both in-county and outside-county pieces, in-county pieces must be separately trayed from outside-county pieces for each of the three basic tray separations required in 565.431 above. The trays must be physically grouped according to these separations when presented to the post office for verification.

e. Third-Class Mailings Claiming Destination BMC Rates. In third-class mailings in which destination BMC rates are claimed and not all pieces in the residual/basic portion of the mailing qualify for the destination BMC rate, further tray separations by pieces within the BMC service area and pieces outside the BMC service area must be made for each of the three basic separations required in 565.431.

565.433 Separation Into Groups of 100 Pieces Within Each Tray. Within each of the trays resulting from sortation in accordance with 565.431 and 565.432, the pieces must be separated into groups of 100 pieces. The groups of 100 must be delineated by separator cards (see 561.12). When the tray is full, nothing further is required. When the tray is less than full, pieces must also be secured into packages in accordance with 561.11 within each group of 100 pieces. In addition, full trays of postcard-size pieces (pieces measuring not more than 4-1/4 inches high, 6 inches long, and .0095 inch thick), of any class of mail, must be secured into packages as provided in 561.11. When there are fewer than 100 pieces in a group at the end of the last tray for any of the types of residual/basic trays, the actual number of pieces in the group must be written on the separator card. The total number of residual/basic pieces in each rate category must be added to the summary portion of the documentation required in 565.533.

565.434 Tray Labels. Option 2 residual/basic trays must be labeled as follows:

a. Tray Containing ZIP+4 Barcoded or Delivery Point Barcoded Pieces.

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code of the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED WKG".

Line 3: Mailer information (see 561.273b(3)).

Example

DIS BAKERSFIELD CA—932
FCM LTRS BARCODED WKG
NBT CO BAKERSFIELD CA

b. Trays Containing Pieces Not ZIP+4 Barcoded or Delivery Point Barcoded Bearing Correct Numeric ZIP+4 Code in Address and Meeting Requirements of 540.

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate Class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 WORKING" (or "ZIP+4 WKG").

Line 3: Mailer information (see 561.273b(3)).

Example

DIS WILKES-BARRE PA—186
FCM ZIP+4 WORKING
EXETER CO DUPONT PA

c. Trays Containing Other Pieces Not ZIP+4 Barcoded or De1ivery Point Barcoded.

Line 1: Letters "DIS" followed by the name, two letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate Class or contents designation (FCM, 2C, NEWS, or 3C LTRS) followed by "WORKING" (or "WKG").

Line 3: Mailer information (see 561.273b(3)).

Example

DIS WILKES-BARRE PA—186
3C LTRS WORKING
COAL CO DUPONT PA

565.44 Option 3; Placement in AADC Trays of the 3/5 Presort Tier Portion. Under this option, whenever there are residual/basic pieces for an AADC area for which an AADC tray was prepared within the 3/5 presort tier, the residual/basic pieces for that AADC area must be secured into and labeled as 3-digit packages and placed in the AADC tray with qualifying mail. Residual/basic pieces for 3-digit areas for which there is no corresponding AADC tray of qualifying mail must be placed in ascending numeric 3-digit ZIP Code sequence within separate trays containing only residual/basic pieces as described in 565.42. Mailers must provide a listing by 3-digit ZIP Code area under the residual/basic presort tier section of the documentation as described in 565.532 of the various rate qualification categories for both the pieces placed in AADC trays and the pieces trayed in separate residual/basic trays. Trays containing only residual/basic pieces must be labeled as described in 565.42.

565.5 Documentation

565.51 Purpose. Documentation enables the Postal Service to verify the percentage of ZIP+4 barcoded pieces or delivery point barcoded pieces in the mailing. It also enables the Postal Service to verify the number of pieces claimed at each rate category on the mailing statement, and to verify that any difference between the amount of postage affixed to the pieces in the mailing, and the amount of postage owed for the pieces is paid. It does this by providing the Postal Service with a detailed description of what is being mailed, how it is prepared, the rate for which pieces qualify, and how many pieces have a ZIP+4 barcode or delivery point barcode. The USPS will compare the numbers shown on the mailer's documentation with counts of samples taken from the actual mailing to confirm that the information on the documentation is accurate.

Note: For second-class mailings, the documentation described in this section will provide the presort per piece rate documentation and the 85% ZIP+4 barcoded or delivery point barcoded documentation required in 424.841 and 424.843. Documentation in addition to the documentation described in 564.14 must be prepared for mailings of second-class publications as set forth in 424.84.

565.52 General Requirements for Submission. Each mailing must be accompanied by the documentation described in 565.53, with the following exceptions:

a. No documentation is required when every piece in the mailing bears the correct ZIP+4 barcode or correct delivery point barcode and either of the following applies:

(1) Postage is affixed to each piece at the exact rate of postage for which it qualifies.

(2) Each piece in the mailing is of identical weight, the pieces in each individual tray are subject to the same rate, and the trays for each rate level are placed in groups by rate eligibility when presented for verification to allow weight verification of postage. (Mailings containing both 5-digit and 3-digit packages do not meet this condition since 5-digit and 3-digit packages are placed in the same optional city, 3-digit, SCF, and AADC trays. Second-class mailings containing both in-county and outside-county pieces and/or containing both Level A and Level B rates also do not meet this condition.)

b. Abbreviated documentation may be submitted under the provisions of 568.1.

c. Documentation that describes all ZIP+4 Barcoded rate mailings to be made from a mailing job may be submitted with the first mailing of a mailing job in accordance with 568.2.

565.53 Information Required

565.531 Heading and General Format Requirements. The top of the first page of the documentation must show the class of mail and the words "DMM 565 Presort." When only some pieces in a third-class mailing qualify for a destination entry rate, or when a mailing contains pieces that qualify for more than one destination entry rate, a description of the characters used within the listing portion of the documentation to identify the ZIP Codes qualifying for each destination entry discount, must also appear at the top of the first page (see 565.532d(6)). The documentation must consist of ZIP Code listings for the 3/5 presort tier and the residual/basic presort tier (except for residual/basic pieces prepared under the physical separation option in 565.43) as described in 565.532, as well a summary as described in 565.533. At the mailer's option, additional information showing the trays in which the pieces appear may also be included. It is recommended that one of the formats shown in Exhibit 565.53 A or Exhibit 565.53 B be used. If another format is used, it must allow Postal Service verification personnel to easily determine the information required by 565.532 and 565.533 using a single report. See 565.532f for an exception to the single report requirement for second-class mailings containing more than one edition and/or publication. Information that could not pertain to the class being mailed (such as column headings for Level A, Level B, Level J rates in a third-class mailing) must not be included in the documentation.

565.532 Required Information—ZIP Code Listing Portion

a. Presort Tier Sections. The ZIP Code listing portion of the documentation must be divided into two sections by presort tier; the 3/5 presort tier and the residual/basic presort tier. The residual/basic presort tier is not required if residual/basic mail is prepared under the physical separation option in 565.43. Each presort tier section must be preceded by a heading that names the presort tier.

b. ZIP Code Column. The 5-digit or 3-digit ZIP Codes of pieces in all qualifying packages in the 3/5 presort tier of the mailing must be listed in ascending numeric order under a column heading "ZIP Codes." The ZIP Code column must be listed using one of the following two methods:

(1) ZIP Code Listings Divided Into Sections by Type of Package (See Exhibit 565.53A)

(a) *3/5 Presort Tier.* The ZIP Code listing for the 3/5 presort tier must be divided into sections by type of group/package (5-digit, second-class optional city, 3-digit). Each section must be preceded by a heading indicating the type of group/package to be listed. Under the 5-digit section, pieces in 5-digit groups/packages must be listed by 5-digit ZIP Code. In second-class mailings under the optional city section, optional city groups/packages must be listed by the lowest assigned 5-digit ZIP Code for the city shown in Exhibit 122.63a. Under the 3-digit section, pieces in 3-digit groups/packages must be listed by 3-digit ZIP Code.

(b) *Residual/Basic Presort Tier.* The ZIP Code listing for the residual/basic presort tier must be a single section that lists ZIP Codes for residual/basic pieces by 3-digit ZIP Code.

(2) Continuous ZIP Code List (See Exhibit 565.53B)

(a) *3/5 Presort Tier.* All packages are listed in numeric sequence in one section. For First- and third-class mailings, as well as second-class mailings that do not contain optional city packages, 5-digit packages must be listed by 5-digit ZIP Code and 3-digit packages must be listed by 3-digit ZIP Code. For second-class mailings containing optional city packages, 5-digit ZIP Codes representing pieces in 5-digit packages must be listed by 5-digit ZIP Code and preceded by the abbreviation 5DC; optional city packages must be listed by the lowest assigned 5-digit ZIP Code for the city shown in Exhibit 122.63a and preceded by the abbreviation CTY; 3-digit packages must be listed by 3-digit ZIP Code and preceded by the abbreviation 3DG.

(b) *Residual/Basic Presort Tier.* Residual/basic pieces listed under the residual/basic presort tier section must be listed by 3-digit ZIP Code. It is not necessary that an identifying prefix be shown in front of the 3-digit ZIP Code prefixes of residual/basic pieces, however, if one is used it should be WKG.

c. Basic Columns and Line Entries for Rates and Totals. For each ZIP Code entry on the listing show:

(1) The number of ZIP+4 barcoded or delivery point barcoded pieces under a column heading (or column headings—see 565.532d) naming the rate for which the pieces qualify based on the class of mail (see 565.21) and indicating that the pieces are ZIP+4 barcoded or delivery point barcoded.

(2) The number of non-ZIP+4 barcoded or non-delivery point barcoded pieces with a correct numeric ZIP+4 code (see 530) in the address meeting the requirements of 540, under a column heading (or column headings—see 565.532d) naming the rate for which the pieces qualify based on the class of mail (see 565.21) and indicating that the pieces are not ZIP+4 barcoded or delivery point barcoded. The documentation does not need to contain a column for these pieces if none appear in a mailing, or if the ZIP+4 rates are not claimed for such pieces. These pieces are not permitted in 5-digit packages.

(3) The number of remaining pieces that are not ZIP+4 barcoded, delivery point barcoded, or numerically ZIP+4 coded under a column heading (or column headings—see 565.532d) naming the rate for which the pieces qualify based on the class of mail (see 565.21) and indicating that the pieces are not ZIP+4 barcoded or delivery point barcoded. (This column includes pieces with a 5-digit numeric ZIP Code as well as pieces without a ZIP+4 or delivery point barcode that contain a correct numeric ZIP+4 code, but do not meet the OCR processing requirements in 540. It also includes pieces without a ZIP+4 barcode or delivery point barcode that contain a numeric ZIP+4 Code not matched against CASS certified software in accordance with 530.) These pieces are not permitted in 5-digit packages.

(4) The cumulative total (the total of all pieces listed for that ZIP Code plus all pieces listed for the preceding ZIP Code entries in the applicable presort tier section of the documentation) under a column heading "Cumulative Total." (The totals accumulate only for each individual presort tier section of the listing, except that when the type of package option is used for the 3/5 presort tier the totals accumulate only within each individual type of package section in the 3/5 presort tier.)

d. Additional Rate Columns or Line Entries.

(1) *First-Class Metered or Precanceled Stamp Mailings Containing Pieces Both Over and Under 2 Ounces.* Within the residual/basic presort tier section of the documentation for metered and precanceled stamps mailings in which postage at the exact rate is not affixed, two rate columns, one for reporting pieces weighing less than 2 ounces and one for reporting pieces weighing 2 ounces or more must be shown for each of the basic column separations described in 565.532c(1), 565.532c(2), and 565.532c(3). Each column heading must contain the name of the residual rate (see 565.213) for which the pieces qualify, the weight category, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded. Precanceled stamp mailings in which postage to cover additional ounce increments is not affixed must meet the additional documentation requirements in 565.532d(2).

(2) *First-Class Nonidentical-Weight Precanceled Stamp Mailings in Which Postage to Cover Additional Ounce Increments is Not Affixed.* In First-Class mailings paid by precanceled stamps that contain pieces of more than one ounce increment and in which precanceled stamps to cover postage for the additional ounce or ounces is not affixed as permitted in 581.34 or 581.4, additional rate columns for reporting each ounce increment in the mailing must be shown for each of the basic column separations described in 565.532b(1), 565.532b(2), and 565.532b(3). Each rate column heading must show the name of the rate (see 565.21) for which the pieces qualify, the weight category, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded.

(3) *First-Class Mailings Containing Both Letter-Rate and Postcard-Rate Pieces.* Within the residual/basic presort tier section of the documentation for metered and precanceled stamp First-Class mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates, two columns, one for reporting pieces at the postcard rates and one for reporting pieces at the letter rate must be shown for each of the basic column separations described in 565.532c(1), 565.532c(2), and 565.532c(3). The column headings must contain the name of the rate (see 565.213) for which the pieces qualify, a statement as to whether the pieces are subject to postcard or letter rates, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded. The additional column separations in 565.532d(2) are also necessary for both the 3/5 presort tier and the residual/basic presort tier for precanceled stamp mailings in which postage to cover additional ounce increments is not affixed to each piece in the mailing as permitted under 581.34 or 581.4.

(4) *Second-Class Mailings Containing Both In-County and Outside-County Rate Pieces.* For second-class mailings containing both in-county and outside-county pieces, separate columns for in-county pieces and for outside-county pieces must be shown for pieces listed under 565.532c(1), 565.532c(2), and 565.532c(3). In addition, for 3-digit packages, separate columns for unique 3-digit packages that qualify for the level B3 or H3 rates, and for the level J3 rates must be shown, and separate columns for nonunique 3-digit packages that qualify for level A or G rates, and for level J1 rates must be shown, for each of the three general categories of pieces in 565.532c(1), 565.532c(2), and 565.532c(3). To reduce the number of columns across a page, mailers using the ZIP Code listing option in 565.532b(2) (ZIP Code Listings Divided into Sections by Type of Package) may break the 3-digit package section into further sections by rate category: one section for optional city and unique 3-digit packages recorded at the level B3/H3 and J3 rates, and another section for nonunique 3-digit packages at the level A/G or J1 rates. The column headings must contain the name of the rate (see 565.22) for which the pieces qualify, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded. Only two rate columns are possible for 5-digit packages on the listing, since only ZIP+4 barcoded or delivery point barcoded pieces are permitted in those packages.

(5) *Second-Class Combined Mailings.* See 565.532f.

(6) *Third-Class Mailings Claiming Destination SCF or Destination BMC Rates.* In third-class mailings in which some combination of SCF destination entry, BMC destination entry, and no destination entry discount is claimed (that is, not all pieces in the mailing qualify for the same destination discount) the ZIP Codes on the presort tier listings that are eligible for the SCF entry discount or the BMC entry discount must be marked with an asterisk or some other unique character. If both the SCF discount and BMC discount are claimed in the same mailing, a different character from the one used to mark the ZIP Codes eligible for the SCF discount must be used to mark the ZIP Codes eligible for the BMC discount.

e. Presort Tier Column Totals. At the end of each presort tier section of the listing (or under each package section of the 3/5 presort tier when the type of package option is used), show the total number of pieces listed under each rate column and under the cumulative total column.

f. Additional Requirements For Second-Class Combined Mailings. In addition to the documentation required by 565.53, second-class mailings combining pieces from more than one second-class publication or edition must provide additional information by publication or edition as required by 424.853. This additional information may be provided as a separate report or reports.

565.533 Summary Portion

a. Second-Class Mailings and Identical Weight Permit Imprint Mailings.

(1) *Rate Categories and Postage Owed.* The summary must list each rate category at which any pieces in the mailing are claimed from the applicable column totals in the listing portions of the documentation. (For residual/basic mail sorted under the physical separation option in 565.43, information is also obtained from the manual counts of residual/basic pieces in the separate trays for each rate category.) When not all pieces in a third-class mailing qualify for the same destination entry discount, a separate line entry for the pieces claimed at each destination entry discount and for pieces not qualifying for a destination entry discount must be shown to separately account for the different rates in the summary. For each rate listed, the summary must show:

(a) The total number of pieces claimed at that rate.

(b) The applicable rate (amount) of postage.

(c) The postage charges for that rate category (the total number of pieces times the rate of postage).

Note: The applicable rate and postage charges are not required for second-class mailings.

(2) Totals

(a) A grand total of the postage charges for all the rate entries for the entire mailing must be shown (optional for second-class mailings). This grand total is the amount of postage owed for the mailing and the amount to be deducted from the advance deposit account for permit imprint mailings, or is the amount of second-class per piece charges for the mailing prior to deductions for the nonadvertising percentage discount and zone rate discounts.

(b) The total number of pieces in the mailing that bear a ZIP+4 barcode or delivery point barcode, the total number of pieces that do not, and the total of both representing all pieces in the mailing must be shown.

(c) The percentage of ZIP+4 barcoded or delivery point barcoded pieces in the mailing must be shown.

b. First- and Third-Class Metered and Precanceled Stamp Mailings.

(1) *Rate Categories and Postage Owed.* The summary must list each rate at which any pieces in the mailing are claimed from the applicable column totals in the listing portions of the documentation. For residual/basic mail sorted under the physical separation option in 565.43, information is also obtained from the manual counts of pieces in the separate trays for each rate category. For nonidentical-weight First-Class precanceled stamp mailings in which stamps to cover the additional ounces are not affixed, each rate category must be listed more than once so that there is a separate listing for each ounce increment at that rate. First-Class postcard rate pieces must also be listed separately from letter-rate First-Class pieces. For First-Class metered mailings containing residual pieces over and under two ounces, each residual rate category must have a separate listing for pieces weighing 2 ounces or less and a separate listing for pieces weighing over 2 ounces. First-Class postcard rate pieces must also be listed separately from letter-rate First-Class pieces. When not all pieces in a third-class mailing qualify for the same destination entry discount, a separate line entry for the pieces claimed at each destination entry discount and for pieces not qualifying for a destination entry discount must be shown to separately account for the different rates in the summary. For each rate listed, the summary must show:

(a) The number of pieces claimed at that rate.

(b) The amount of additional postage due for each piece at that rate (when the amount of postage affixed is less than the rate of postage owed).

(c) The postage due for pieces claimed at that rate (the total number of pieces at that rate category times the amount of postage due per piece).

(2) Totals

(a) A grand total of the additional postage charges due for all the rate entries for the entire mailing must be shown. This grand total is the amount of postage that must be affixed to the mailing statement or paid through an advance deposit account.

(b) The total number of pieces in the mailing that bear a ZIP+4 barcode or delivery point barcode, the total number of pieces that do not, and the total of both representing all pieces in the mailing must be shown.

(c) The percentage of ZIP+4 barcoded or delivery point barcoded pieces in the mailing must be shown.

565.6 Mailing Statement. Each mailing must be accompanied by a complete and signed mailing statement appropriate for the method of postage payment and class of mail submitted. Mailers must write "DMM 565 Presort" at the top of the mailing statement.

566 OPTION 1—THREE-TIER PACKAGE-BASED ZIP+4 BARCODED RATE MAILINGS (REQUIRED MARCH 21, 1993, OPTIONAL UNTIL THEN)

566.1 General Requirements

566.11 Description of a Mailing. A single ZIP+4 Barcoded rate mailing prepared under 566 may be made up of three presort tiers; the optional 5-digit presort tier, the 3-digit presort tier, and the residual/basic presort tier. See 564.12 for a further description of presort tiers. Rates for pieces in the mailing are based upon the type of package in which they are placed. See 566.2 for a detailed description of the rates for which pieces in each presort tier can qualify. A single mailing may, at the mailer's option:

a. Include all three presort tiers.

b. Contain only a 3-digit presort tier and a residual/basic tier.

c. Contain only a 5-digit presort tier.

d. If a First-Class mailing, contain only a 5-digit presort tier and a residual tier.

e. If a First-Class mailing, contain only a residual tier.

f. If a second- or third-class mailing, contain only a residual/basic tier under the limited conditions in 566.132a.

566.12 Description of Presort Tiers

566.121 Optional 5-Digit Presort Tier. The 5-digit presort tier consists of groups of 10 or more ZIP+4 barcoded or delivery point barcoded pieces per 5-digit area placed in 5-digit, 3-digit, SCF, and AADC trays, as required by 566.13 and 566.3. All trays must be full trays except for AADC trays. 5-digit groupings within trays must be packaged or delineated by separator cards in accordance with 566.32. The 10-piece minimum per 5-digit area applies to all classes of mail. All pieces in the 5-digit presort tier must contain the correct ZIP+4 barcode or delivery point barcode (see 515.32). The 5-digit presort tier is required only if 5-digit ZIP+4 Barcoded rate are claimed.

566.122 3-Digit Presort Tier. The 3-digit presort tier consists of groups/packages of 50 or more pieces per 3-digit area placed in 3-digit, SCF, or AADC trays as required by 566.13 and 566.4. These 3-digit groups/packages must be placed in trays that are separate from trays containing 5-digit groups/packages. For second-class mailings, optional groups/packages of 50 or more pieces for the multi-coded cities listed in Exhibit 122.63a may be prepared prior to preparing groups/packages of 50 or more pieces per 3-digit area and trayed with the 3-digit groups/packages. Packaging or use of separator cards is not required for groups/packages in the 3-digit presort tier except within less than full AADC trays and except for postcard-size pieces of any class.

566.123 Residual/Basic Presort Tier. The residual/basic presort tier consists of pieces remaining after performing 5-digit sortations under 566.3 (if applicable) and 3-digit sortations under 566.4. The residual/basic tier must be sorted to one of the following three options:

a. Trayed separately in 3-digit ZIP Code sequence as described in 566.52.

b. Physically separated by rate category as described in 566.53.

c. Packaged, labeled, and placed in AADC trays containing qualifying pieces in the 3-digit presort tier of the mailing, with pieces for which AADC trays are not available being trayed separately in ZIP Code sequence (see 566.54).

566.13 Hierarchy of Presort

566.131 Mailings Containing 5-Digit and 3-Digit Presort Tiers. Since the 5-digit presort tier must be prepared only if 5-digit ZIP+4 Barcoded rates are claimed, mailers need not prepare all possible 5-digit packages in the 5-digit presort tier before preparing the 3-digit presort tier. Mailers may prepare 5-digit packages to only selected 5-digit ZIP Code areas in the 5-digit presort tier. When a mailing contains 5-digit

packages for a ZIP Code area, not all pieces for that ZIP Code area are required to be placed in 5-digit packages in the 5-digit presort tier. The mailer may elect to place some pieces for that 5-digit ZIP Code area in the 3-digit presort tier and pay a higher rate. In all cases, however, each 5-digit package in the 5-digit presort tier must contain at least 10 ZIP+4 barcoded or delivery point barcoded pieces (see 566.31 and 515.32).

Example: A mailing contains 150 pieces for ZIP Code 22033, of which 135 are delivery point barcoded, and 15 are not barcoded but contain a 5-digit ZIP Code. The same mailing contains 30 pieces (28 delivery point barcoded and 2 nonbarcoded with a 5-digit ZIP Code) for other ZIP Codes with a 220 ZIP Code prefix. The mailer elects to prepare 5-digit packages to 22033. The 15 pieces to 22033 that do not contain a barcode cannot be included in the 5-digit presort tier and are dropped down to the 3-digit presort tier. These 15 pieces, when added to the 30 pieces for other ZIP Codes within 220, equal 45 pieces for the 3-digit area 220. Since 50 pieces are needed to make up a 3-digit package, the mailer may elect to take 5 pieces for 22033 and move them to the 3-digit presort tier. This will result in a total of 130 pieces for 22033 in the 5-digit presort tier and 50 pieces for 220 in the 3-digit presort tier.

566.132 Mailings Containing 3-Digit and Residual/Basic Presort Tiers

a. Required for Second- and Third-Class Mailings. All package-based second- and third-class ZIP+4 Barcoded rate mailings must contain both a 3-digit presort tier and a residual/basic presort tier. Within these mailings, all possible 3-digit packages of 50 or more pieces to the same 3-digit area must be prepared and placed in the 3-digit presort tier, before the residual/basic presort tier is prepared. For second-class mailings, optional city packages of 50 or more pieces may also be made, at the mailer's option, and on a selected basis, prior to preparing 3-digit packages. The only instance in which a residual/basic presort tier may be submitted by itself as a second- or third-class mailing is if the mailer attempted to perform 3-digit package sortations, but there were no groups of 50 or more pieces for any 3-digit ZIP Code area in the mailing.

b. First-Class Mailings. Since the residual portion of a First-Class mailing is paid for at single-piece rates, mailers are not required to prepare all possible 3-digit packages of 50 or more pieces to the same 3-digit area and tray them within the 3-digit presort tier before going on to prepare the residual presort tier. That is, the residual portion of a First-Class mailing may contain groups of 50 or more pieces for the same 3-digit ZIP Code area.

566.2 Rate Eligibility

566.21 First Class Mailings

566.211 5-Digit Presort Tier (Groups of 10 or more Pieces per 5-Digit Area in 5-Digit, 3-Digit, SCF, and AADC Trays). All pieces within the 5-digit presort tier prepared under 566.3 can qualify for the 5-digit ZIP+4 Barcoded rate. Only pieces bearing a correct ZIP+4 barcode or delivery point barcode may be included in this presort tier.

566.212 3-Digit Presort Tier (Groups of 50 or More Pieces per 3-Digit Area in 3-Digit, SCF, and AADC Trays). Within the 3-digit presort tier prepared under 566.4, pieces that bear the correct ZIP+4 barcode or delivery point barcode and meet the requirements of 550 can qualify for the 3-Digit ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code (see 530) in the address and meet the requirements of 540 can qualify for the ZIP+4 Presort rate. Other pieces qualify for the Presorted First-Class rate.

566.213 Residual Presort Tier. Within the residual presort tier prepared under 566.5, pieces that bear a correct ZIP+4 barcode or delivery point barcode can qualify for the nonpresorted ZIP+4 Barcoded rates if they also meet the requirements for the card rates (see 311.11, 322, and 515.512), otherwise they can qualify for the nonpresorted ZIP+4 rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the nonpresorted ZIP+4 rate. Other pieces qualify for the single-piece First-Class rates.

566.22 Second Class Mailings

566.221 5-Digit Presort Tier (Groups of 10 or More Pieces per 5-Digit Area in 5-Digit, 3-Digit, SCF, and AADC Trays). All pieces in 5-digit packages prepared under 566.3 can qualify for the level B5/H5/J5 ZIP+4 Barcoded rates. Only pieces bearing a correct ZIP+4 barcode or correct delivery point barcode may be included in 5-digit packages.

566.222 3-Digit Presort Tier—Groups of 50 or More Pieces per 3-Digit Area (or per Optional City) in 3–Digit, SCF, and AADC Trays.

a. Optional City and Unique 3-Digit Packages. Within the 3-digit presort tier, groups of 50 or more pieces for an optional multi-coded city listed in Exhibit 122.63a and groups of 50 or more pieces for a unique 3-digit ZIP Code area listed in Exhibit 122.63b can qualify for rates as follows. Pieces that bear a correct ZIP+4 or delivery point barcode can qualify for the B3/H3/J3 ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the B3/H3/J3 ZIP+4 rates. Other pieces qualify for the B3/H3/J3 presort rates.

b. Nonunique 3-Digit Packages. Within the 3-digit presort tier, groups of 50 or more pieces to a nonunique 3-digit ZIP Code area that are not part of a group of 50 or more pieces for an optional city listed in Exhibit 122.63a can qualify for rates as follows. Pieces that bear a ZIP+4 or delivery point barcode can qualify for the A/G/J1 ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the A/G/J1 ZIP+4 rates. Other pieces qualify for the A/G/J1 presort rates.

566.223 Residual/Basic Pieces. Within the residual/basic presort tier prepared under 566.4, pieces that bear a correct ZIP+4 barcode or delivery point barcode can qualify for the level A/G/J1 ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the level A/G/J1 ZIP+4 rates. Other pieces qualify for the level A/G/J1 presort rates.

566.23 Third-Class Mailings

566.231 5-Digit Presort Tier (Groups of 10 or more Pieces per 5-Digit Area in 5-Digit, 3-Digit, SCF, and AADC Trays). All pieces within the 5-digit presort tier prepared under 566.3 can qualify for the 5-digit ZIP+4 Barcoded rates. Only pieces bearing a correct ZIP+4 barcode or delivery point barcode may be included in this presort tier.

566.232 3-Digit Presort Tier (Groups of 50 or More Pieces per 3-Digit Area in 3-Digit, SCF, and AADC Trays). Within the 3-digit presort tier prepared under 566.4, pieces that bear the correct ZIP+4 barcode or delivery point barcode and meet the requirements of 550 can qualify for the 3-digit ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code (see 530) in the address and meet the requirements of 540 can qualify for the 3/5 presort rates. Other pieces qualify for the 3/5 presort rates.

566.233 Residual/Basic Presort Tier. Within the residual presort tier prepared under 566.5, pieces that bear a correct ZIP+4 barcode or delivery point barcode can qualify for the basic ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address (see 530) and meet the requirements of 540 can qualify for the basic ZIP+4 rates. Other pieces qualify for the basic presort rates.

566.3 Sortation—5-Digit Presort Tier

566.31 Minimum Quantity per 5-Digit Area. There must be at least 10 ZIP+4 barcoded or delivery point barcoded pieces for each 5-digit ZIP Code area in the 5-digit presort tier. Only pieces with a correct ZIP+4 barcode or delivery point barcode are permitted in the 5-digit presort tier. When there are fewer than 10 pieces for a 5-digit ZIP Code area, the pieces for that 5-digit area must be placed in the 3-digit presort tier or residual/basic presort tier of the mailing, or be submitted in a separate mailing.

566.32 Grouping and Packaging

566.321 Grouping/Packaging in Full 5-Digit Trays. There are no ZIP Code grouping or packaging requirements for full 5-digit trays of pieces of any class that contain pieces larger than the maximum dimensions for postcards (4–1/4 inches high, 6 inches long, and .0095 inch thick). It is recommended that such pieces in full 5-digit trays not be packaged. Pieces in full 5-digit trays of any class that consist entirely of pieces within the dimensions for postcards must be secured into packages under 561.11. Mailers are permitted to package pieces larger than the maximum dimensions for postcards in full 5-digit trays as provided in 561.11. If pieces are packaged, no package labels are required.

Note: Until March 21, 1993, mailers may place in standard MM letter trays, pieces that are wider or taller than those trays in accordance with 561.23. See 561.232 for additional restrictions on use of separator cards for pieces exceeding the width of standard MM trays.

566.322 Grouping/Packaging in Full 3-Digit and SCF Trays. Within full 3-digit and SCF trays, pieces for each 5-digit ZIP Code area contained in the tray must be grouped together. It is recommended, but not required, that the groups of pieces for the same 5-digit ZIP Code be placed in trays in ascending numeric sequence. Each group of pieces for a 5-digit area must be separated from other groups of pieces for 5-digit areas placed in the trays either by packaging or by separator cards under 561.11 or 561.12. Separator cards are the preferred method for pieces of any class that exceed the maximum dimensions for postcards. Pieces in 3-digit or SCF trays of any class that consist entirely of pieces within the dimensions for postcards (not exceeding 4¼ inches high, 6 inches long, and .0095 inch thick) must be secured into packages under 56.11. Package labels are not required.

Note: Until March 21, 1993, mailers may place in standard MM trays, pieces that are wider or taller than those trays in accordance with 561.23. See 561.232 for additional restrictions on use of separator cards for pieces exceeding the width of standard MM trays.

566.323 Grouping/Packaging in AADC Trays. Within both full and less-than-full AADC trays groups of pieces for each 5-digit ZIP Code area must be secured into packages as described in 561.11. Each package must contain only mail for a single 5-digit area. Packages for the same 5-digit ZIP Code area must be grouped together in the tray. It is recommended, but not required, that the groups of pieces for the same 5-digit ZIP Code be placed in trays in ascending numerical sequence. Package labels are not required.

566.33 Traying—5-Digit Presort Tier

566.331 General. The requirements in 561.2 must be met.

566.332 Tray Sortation.

a. 5-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray (see 561.24), a 5-digit tray must be prepared for that destination. Less-than-full trays are not permitted. 5-digit trays must be labeled as follows:

(1) *Nonmilitary Mail.*

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS 5DG BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example:

DETROIT MI—48235
FCM LTRS 5DG BARCODED
NB COMPANY UNION SC

(2) *Military Mail.*

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340) or AP (for ZIPS 962–966), and complete 5-digit APO or FPO ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS 5DG BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example:

APO AE—09128
FCM LTRS 5DG BARCODED
NB COMPANY UNION SC

b. 3-Digit Trays. After preparing all possible 5-digit trays, if there are enough 5-digit groups/packages remaining to fill a tray for a 3-digit ZIP Code destination, a 3-digit tray must be prepared. Groups of pieces for each 5-digit ZIP Code area within the tray must be delineated by separator cards or packaging as set forth under 566.322. Less-than-full 3-digit trays are not permitted. 3-digit trays must be labeled as follows:

(1) *Nonmilitary Mail.*

(a) *Unique 3-Digit ZIP Code Prefixes.*

Line 1: City, two-letter state abbreviation and unique 3-digit prefix listed in Exhibit 122.63b.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS 5DG BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example:

KNOXVILLE TN—379
FCM LTRS 5DG BARCODED
LMM COMPANY FAIRFAX VA

(b) *Other 3-Digit ZIP Code Prefixes.*

Line 1: Name of SCF (letters "SCF" omitted) and two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces contained in the tray (see Exhibits 122.63c or 122.63d for the name of the SCF serving the 3-digit area).

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS 5DG BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example:

NORTHERN VIRGINIA VA—221
NEWS LTRS 5DG BARCODED
ABC MAIL CO ROCHESTER NY

(2) Military Mail.

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPS 340) or AP (for ZIPs 962–966), and 3-digit APO or FPO ZIP Code prefix.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS 5DG BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example:

FPO AE—095
FCM LTRS 5DG BARCODED
XYZ CORP ROCHESTER NY

Note: ZIP Code prefixes 094, 096–098, 340, and 962–965 contain both APO and FPO addresses. Therefore, the destination line for 3-digit trays for destinations containing both APO and FPO mail must show the prefix APO/FPO before the code and the 3-digit prefix. Example: APO/FPO AA 340. (All 3-

digit trays for ZIP Code prefixes 090–093 must be labeled APO, and 3-digit trays for ZIP Code prefixes 095 and 966 must be labeled FPO.)

c. SCF Trays. After preparing all possible 5-digit and 3-digit trays, if there enough 5-digit groups/packages remaining for one of the SCFs listed in Exhibit 122.63d to fill a tray, an SCF tray must be prepared. Less-than-full SCF trays are not permitted, except that one less-than-full tray for the SCF serving the post office where the mailing is entered is permitted. Groups of pieces for each 5-digit ZIP Code area within the tray must be delineated by separator cards or packaging as set forth under 566.322. SCF trays must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit SCF code as shown in Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS 5DG BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example:

SCF SAN ANTONIO TX—780
2C LTRS 5DG BARCODED
ABC CO BAKERSFIELD CA

d. AADC Trays. After preparing all possible 5-digit, 3-digit, and SCF trays, any remaining 5-digit groups/packages must be trayed to one of the AADCs listed in Exhibit 122.63t. All 5-digit groups/packages in both full and less-than-full AADC trays must be secured into packages under 561.11. Use of separator cards is not permitted in AADC trays. AADC trays must be labeled as follows:

Line 1: Applicable label information for the AADC shown in Exhibit 122.63t.

Line 2: Appropriate class or contents designation, (FCM, 2C, NEWS, or 3C) followed by "LTR AADC 5D BARCODE".

Line 3: Mailer information (see 561.273b(3)).

Example:

DIS PROVIDENCE RI—028
FCM LTR AADC 5D BARCODE
NBT CO BAKERSFIELD CA

566.4 Sortation—3-Digit Presort Tier

566.41 Minimum Quantity per 3-Digit Area. There must be at least 50 pieces for each 3-digit ZIP Code area contained in the 3-digit presort tier. For second-class mailings, groups of 50 or more pieces for an optional city in Exhibit 122.63a may be prepared before preparing groups of 50 or more pieces for the same 3-digit ZIP Code area. All pieces in a group of 50 or more pieces for the same optional city or same 3-digit ZIP Code should be placed in the same tray. However, when all the pieces in a group of 50 or more pieces cannot fit in the same tray when trayed in accordance with 566.43, the remaining pieces must be placed in another full tray to the same destination or in a tray to the next level of sortation. Residual/basic packages consisting of fewer than 50 pieces per 3-digit ZIP code area may be trayed with qualifying mail. in AADC trays only as provided in 566.54. Such residual/basic pieces are considered part of the residual/basic presort tier for rate qualification and documentation purposes.

566.42 Grouping and Packaging Requirements

555.421 Grouping/Packaging in Optional City Trays (Second-Class Mailings Only). Second-class mailers may choose to prepare groups of 50 or more pieces for the optional cities listed in Exhibit 122.63a to obtain the level B3/H3/J3 rates as described in 566.222a, before preparing groups of 50 or more pieces for 3-digit ZIP Code area. If mailers choose to claim the level B3/H3/J3 rates for optional cities in this manner, and there is a full tray of this mail for the same optional city, an optional city tray must be prepared as described in 566.432. There are no ZIP Code grouping or packaging requirements for pieces in optional city trays except for pieces in trays consisting entirely of pieces that fall within the size dimensions for postcards (not exceeding 4¼ inches high, 6 inches long, and .0095 inch thick) which must be secured into packages under 561.11. It is recommended that mail in optional city trays not be packaged. However mailers are permitted to package pieces in optional city trays as provided in 561.11. If pieces are packaged, no package labels are required.

Note: Until March 21, 1993, mailers may place in standard MM letter trays, pieces that are wider or taller than those trays in accordance with 561.23. See 561.232 for additional requirements for packaging of pieces exceeding the width of standard MM trays.

566.422 Grouping/Packaging in 3-digit Trays.

a. First- and Third-Class Mailings. There are no grouping or packaging requirements for 3-digit trays, except for trays consisting entirely of pieces that fall within the size dimensions for postcards (not exceeding 4¼ inches high, 6 inches long, and .0095 inch thick) which must be secured into packages under 561.11. It is recommended that mail in 3-digit trays not be packaged. However, mailers are permitted to package pieces in 3-digit trays as provided in 561.11. If pieces are packaged, no package labels are required.

b. Second-Class Mailings. There are no grouping or packaging requirements for 3-digit trays except when mailers choose to perform optional city sortations as described in 566.421 and when the mailing consists entirely of pieces that fall within the size dimensions for postcards (not exceeding 4¼ inches high, 6 inches long, and .0095 inch thick). When optional city sortations are made, groups of 50 or more pieces for an optional city must be grouped together within 3-digit trays. Any remaining group of 50 or more pieces for the 3-digit ZIP Code area that is not related to an optional city must be grouped together in the tray. Trays containing only pieces that meet the dimensions for postcards must be secured into packages under 561.11. It is recommended that pieces exceeding the dimensions for postcards in 3-digit trays not be packaged. However, mailers are permitted to package or use separator cards to delineate optional city groups from 3-digit groups as provided in 561.11 or 561.12. If groups of 50 or more pieces for optional city or 3-digit ZIP Codes are secured into packages or delineated by separator cards, no package labels are required.

Note: Until March 21, 1993, mailers may place in standard MM letter trays, pieces that are wider or taller than those trays in accordance with 561.23. See 561.232 for additional requirements concerning packaging.

566.423 Grouping/Packaging in SCF Trays. In SCF trays, each group of 50 or more pieces for a 3-digit ZIP Code area contained in the tray must be grouped together, and each group of 50 or more pieces for the same optional city (second-class only) must be grouped together. It is recommended, but not required, that the groups of pieces for the same 3-digit ZIP Code be placed in trays in ascending numeric sequence (for example, pieces for 023 would be placed in a tray in front of pieces for 024). In trays that contain only pieces that meet the dimensions for postcards (pieces not exceeding 4¼ inches high, 6 inches long, and .0095 inch thick) the pieces must be secured into packages under 561.11. In trays containing pieces that are larger than the dimensions for postcards it is recommended that groups for 3-digit and optional cities not be packaged or separated. However, mailers are permitted to package or use separator cards to delineate optional city groups and 3-digit groups from each other as provided in 561.11 or 561.12. If

groups of 50 or more pieces for optional city or 3-digit ZIP Codes are secured into packages or delineated by separator cards, no package labels are required.

Note: Until March 21, 1993, mailers may place in standard MM letter trays, pieces that are wider or taller than those trays in accordance with 561.23. See 561.232 for additional requirements concerning packaging of such pieces in trays.

566.424 Grouping/Packaging in AADC Trays. Within both full and less-than-full AADC trays, the groups of pieces for each 3-digit ZIP Code area contained in the tray must be secured together into packages as described in 561.11. Each package must contain only mail for a single 3-digit area. Packages for the same 3-digit area must be grouped together in the tray. In second-class mailings in which groups of pieces to optional cities have been prepared, the optional city groups of pieces must be secured together into packages as described in 561.11. Each optional city package must contain only mail for a single optional city. Packages for the same optional city must be grouped together in the tray. It is recommended, but not required, that the groups of pieces for the same 3-digit ZIP Code be placed in trays in ascending 3-digit numeric sequence (for example, pieces for 324 would be placed in a tray in front of pieces for 325). No package labels are required.

566.43 Traying Requirements

566.431 General. The requirements in 561.2 must be met.

566.432 Tray Sortation.

a. Optional City Trays (Second-Class only). Second-Class mailers who have chosen to prepare optional city groups/packages may prepare optional city trays whenever there are enough pieces for the same optional city listed in Exhibit 122.63a to fill a tray. Less-than-full optional city trays are not permitted. Optional city trays must be labeled as follows:

Line 1: Name of optional city in Exhibit 122.63a, two-letter state abbreviation, and lowest 5-digit ZIP Code served by the city.

Line 2: Contents (2C or NEWS) followed by "LTRS 3DG BARCODED" "LTR 3DG BARCODE" and directly under the ZIP Code on Line 1, "CITY" or "CTY".

Line 3: Mailer information (see 561.273b(3)).

Example

LA JOLLA CA—92037
NEWS LTR 3D BARCODE CTY
HARD TIME NEWS UNION SC

b. 3–Digit Trays. After preparing optional city trays (second-class only), if there are enough optional city (second-class only) and 3-digit groups/packages remaining to fill a tray for a 3-digit ZIP Code destination, a 3-digit tray must be prepared. Less-than-full 3-digit trays are not permitted. 3-digit trays must be labeled as follows:

(1) *Nonmilitary Mail.*

(a) *Unique 3–Digit ZIP Code Prefixes.*

Line 1: City, two-letter state abbreviation and unique 3-digit prefix listed in Exhibit 122.63b.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS 3DG BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

KNOXVILLE TN—379
FCM LTRS 3DG BARCODED
LMM COMPANY FAIRFAX VA

(2) Other 3–Digit ZIP Code Prefixes.

Line 1: Name of SCF (letters "SCF" omitted) and two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces contained in the tray (See Exhibits 122.63c or 122.63d for the name of the SCF serving the 3-digit area).

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS 3DG BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

NORTHERN VIRGINIA VA—221
NEWS LTRS 3DG BARCODED
ABC MAIL CO ROCHESTER NY

(2) *Military Mail.*

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPS 340) or AP (for ZIPs 962–966), and 3-digit APO or FPO ZIP Code prefix.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS 3DG BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

FPO AE—095
FCM LTRS 3DG BARCODED
XYZ CORP ROCHESTER NY

Note: ZIP Code prefixes 094, 096–098, 340, and 962–965 contain both APO and FPO addresses. Therefore, the destination line for 3-digit trays for destinations containing both APO and FPO mail must show the prefix APO/FPO before the code and the 3-digit prefix. Example: APO/FPO AA 340. (All 3-digit trays for ZIP Code prefixes 090–093 must be labeled APO, and 3-digit trays for ZIP Code prefixes 095 and 966 must be labeled FPO.)

c. SCF Trays. After preparing optional city trays (second-class only) and all possible 3-digit trays, if there are enough optional city (second-class only) and 3-digit groups/packages remaining for one of the SCFs listed in Exhibit 122.63d to fill a tray, an SCF tray must be prepared. Less-than-full SCF trays are not permitted. SCF trays must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit SCF code as shown in Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS 3DG BARCODED".

Line 3: Mailer information (see 561.273b(3)).

Example

SCF SAN ANTONIO TX—780
2C LTRS 3DG BARCODED
ABC CO BAKERSFIELD CA

d. AADC Trays. After preparing optional city (second-class only) and all possible 3-digit and SCF trays, any remaining optional city (second-class only) and 3-digit groups/packages must be trayed to one of the AADCs listed in Exhibit 122.63t. The groups in both full and less-than-full AADC trays must be secured into optional city (second-class only) or 3-digit packages as appropriate under 561.11. Use of separator cards is not permitted in AADC trays. AADC trays must be labeled as follows:

Line 1: Applicable label information for the AADC shown in Exhibit 122.63t.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTR AADC 3D BARCODE".

Line 3: Mailer information (see 561.273b(3)).

Example

DIS PROVIDENCE RI—028
FCM LTR AADC 3D BARCODE
NBT CO BAKERSFIELD CA

566.5 Tray Preparation—Residual/Basic Presort Tier

566.51 General. Residual/basic pieces are those pieces remaining after performing sortation under 566.3 (5-digit presort tier) and/or 566.4 (3-digit presort tier). Accordingly, except for certain First-Class mailings as provided in 566.132b, there are always fewer than 50 pieces for the same 3-digit ZIP Code area within the residual/basic portion of the mailing. Residual/basic pieces must be placed in trays separate from qualifying pieces, except as provided in 566.54. The traying requirements in 561.2 must be met. Residual/basic pieces must be prepared in accordance with one of the options listed in 566.52 through 566.54 below. Once the basic requirements in 566.52 through 566.54 have been met, additional sortation of

First-Class residual mail may be performed in accordance with any local authorization for acceptance times described in Management Instruction DM-140-91-01, *First-Class Mail Acceptance Policy*.

566.52 Option 1: ZIP Code Sequencing and Listing. Residual/basic pieces for the same 3-digit ZIP Code area must be grouped together. Groups of pieces for the same 3-digit ZIP Code area must be placed in trays in ascending numeric 3-digit ZIP Code sequence. If the last tray is less than full, the pieces in the tray must be secured into and labeled as 3-digit packages under 561.11 and 561.131. In addition, full trays of postcard-size pieces (pieces measuring not more than 4¼ inches high, 6 inches long, and .0095" inch thick), of any class of mail, must be secured into and labeled as 3-digit packages under 561.11 and 561.131. Mailers must provide a listing by 3-digit ZIP Code area of the various rate qualification categories as described in 566.632. In third-class mailings in which destination BMC rates are claimed and not all pieces in the residual/basic portion of the mailing qualify for the destination BMC rate, separate residual/basic trays must be prepared for the ZIP Code areas eligible for the destination BMC rate as provided in 624.722. Trays must be labeled as follows:

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code of the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED WKG".

Line 3: Mailer information (see 561.273b(3)).

Example

DIS BAKERSFIELD CA—932
FCM LTRS BARCODED WKG
NBT CO BAKERSFIELD CA

566.53 Option 2: Physical Separation by Rate Qualification

566.531 Basic Tray Separations. Residual/basic pieces bearing correct ZIP+4 barcodes or delivery point barcodes must be separately trayed from residual/basic pieces that do not. Pieces not bearing ZIP+4 barcodes or delivery point barcodes must be further separated so that pieces bearing a correct (see 530) numeric ZIP+4 code in the address and meeting the requirements of 540 are separately trayed from other pieces. The trays must be physically grouped according to these separations when presented to the post office for verification.

566.532 Additional Tray Separations.

a. First-Class Nonidentical-Weight Metered or Precanceled Stamp Mailings. There is a different first ounce rate for pieces weighing over 2 ounces in First-Class Mail. Accordingly, in nonidentical-weight First-Class metered or precanceled stamp mailings in which there are both pieces weighing 2 ounces or less and pieces weighing over 2 ounces, and postage at the exact rate is not affixed to each piece, further tray separations must be made by pieces weighing over 2 ounces and pieces weighing 2 ounces or less for each of the three basic separations required in 566.531 above. The trays must be physically grouped according to these separations when presented to the post office for verification. Precanceled stamp mailings must meet the tray separation requirements in 566.5632b when postage to cover additional ounce increments is not affixed to each piece as permitted under 581.34 or 581.4.

b. First-Class Nonidentical Weight Precanceled Stamp Mailings in which Postage to Cover Additional Ounce Increments is Not Affixed. In First-Class mailings paid by precanceled stamps that contain pieces of more than one ounce increment in which precanceled stamps to cover postage for the additional ounce or ounces is not affixed under 581.34 or 581.4, further tray separations must be made by pieces of each ounce increment in the mailing for each of the three basic separations required in 566.531. The trays must be physically grouped according to these separations when presented to the post office for verification.

c. First-Class Mailings Containing Both Letter-Rate and Postcard-Rate Pieces. For metered and precanceled stamp First-Class mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates, pieces weighing one ounce or less must be further separated so that postcard rate pieces are trayed separately from letter-rate pieces for each of the three basic separations required in 566.531. The additional tray separations in 566.532b may also be necessary for precanceled stamp mailings. The trays must be physically grouped according to these separations when presented to the post office for verification.

d. Second-Class Mailings Containing In-County and Outside County Pieces. Within second-class mailings containing both in-county and outside-county pieces, in-county pieces must be separately trayed from outside-county pieces for each of the three basic tray separations required in 566.531 above. The trays must be physically grouped according to these separations when presented to the post office for verification.

e. Third-Class Mailings Claiming Destination BMC Rates. In third-class mailings in which destination BMC rates are claimed and not all pieces in the residual/basic portion of the mailing qualify for the destination BMC rate, further tray separations by pieces within the BMC service area and pieces outside the BMC service area must be made for each of the three basic separations required in 566.531.

566.533 Separation Into Groups of 100 Pieces Within Each Tray. Within each of the trays resulting from sortation in accordance with 566.531 and 566.532, the pieces must be separated into groups of 100 pieces. The groups of 100 must be delineated by separator cards (see 561.12). When the tray is full, nothing further is required. When the tray is less than full, pieces must also be secured into packages in accordance with 561.11 within each group of 100 pieces. In addition, full trays of postcard-size pieces (pieces measuring not more than 4¼ inches high, 6 inches long, and .0095 inch thick), of any class of mail, must be secured into packages as provided in 561.11. When there are fewer than 100 pieces in a group at the end of the last tray for any of the types of residual/basic trays, the actual number of pieces in the group must be written on the separator card. The total number of residual/basic pieces in each rate category must be added to the summary portion of the documentation required in 566.833.

566.534 Tray Labels. Option 2 residual/basic trays must be labeled as follows:

a. Trays Containing ZIP+4 Barcoded or Delivery Point Barcoded Pieces.

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code of the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "LTRS BARCODED WKG".

Line 3: Mailer information (see 561.273b(3)).

Example

DIS BAKERSFIELD CA—932
FCM LTRS BARCODED WKG
NBT CO BAKERSFIELD CA

b. Trays Containing Pieces Not ZIP+4 Barcoded or Delivery Point Barcoded Bearing Correct Numeric ZIP+4 Code in Address and Meeting Requirements of 540.

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate Class or contents designation (FCM, 2C, NEWS, or 3C) followed by "ZIP+4 WORKING" (or "ZIP+4 WKG").

Line 3: Mailer information (see 561.273b(3)).

Example:

DIS WILKES-BARRE PA—186
FCM ZIP+4 WORKING
EXETER CO DUPONT PA

c. Trays Containing Other Pieces Not ZIP+4 Barcoded or Delivery Point Barcoded

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: Appropriate Class or contents designation (FCM, 2C, NEWS, or 3C LTRS) followed by "WORKING" (or "WKG").

Line 3: Mailer information (see 561.273b(3)).

Example:

DIS WILKES-BARRE PA—186
NEWS WORKING
PUBLSH CO DUPONT PA

566.54 Option 3: Placement in AADC Trays of the 3-Digit Presort Tier Portion. Under this option, whenever there are residual/basic pieces for an AADC area for which an AADC tray was prepared within the 3-digit presort tier, the residual/basic pieces for that AADC area must be secured into and labeled as 3-digit packages and placed in the AADC tray with qualifying mail. Residual/basic pieces for 3-digit areas for which there is no corresponding AADC tray of qualifying mail in the 3-digit presort tier must be placed in ascending numeric 3-digit ZIP Code sequence within separate trays containing only residual/basic pieces as described in 566.52. Mailers must provide a listing by 3-digit ZIP Code area under the residual/basic presort tier section of the documentation as described in 566.633 of the various rate qualification categories for both the pieces placed in AADC trays and the pieces trayed in separate residual/basic trays. Trays containing only residual/basic pieces must be labeled as described in 566.52.

566.6 Documentation

566.61 Purpose. Documentation enables the Postal Service to verify the percentage of ZIP+4 barcoded pieces or delivery point barcoded pieces in the mailing. It also enables the Postal Service to verify the number of pieces claimed at each rate category on the mailing statement, and to verify that any difference between the amount of postage affixed to the pieces in the mailing, and the amount of postage owed for the pieces is paid. It does this by providing the Postal Service with a detailed description of what is being mailed, how it is prepared, the rate for which pieces qualify, and how many pieces have a ZIP+4 barcode or delivery point barcode. The USPS will compare the numbers shown on the mailer's documentation with counts of samples taken from the actual mailing to confirm that the information on the documentation is accurate.

Note: For second-class mailings, the documentation described in this section will provide the presort per piece rate documentation and the 85% ZIP+4 barcoded or delivery point barcoded documentation required in 424.841 and 424.843. Documentation in addition to the documentation described in 564.14 must be prepared for mailings of second-class publications as set forth in 424.84.

566.62 General Requirements for Submission. Each mailing must be accompanied by the documentation described in 566.63, with the following exceptions:

a. No documentation is required when every piece in the mailing bears the correct ZIP+4 barcode or correct delivery point barcode and either of the following applies:

(1) Postage is affixed to each piece at the exact rate of postage for which it qualifies.

(2) Each piece in the mailing is of identical weight, the pieces in each individual tray are subject to the same rate, and the trays for each rate level are placed in groups by rate eligibility when presented for verification to allow weight verification of postage. (Second-class mailings containing both in-county and outside-county pieces and/or containing both Level A and Level B rates do not meet this condition.)

b. Abbreviated documentation may be submitted under the provisions of 568.1.

c. Documentation that describes all ZIP+4 Barcoded rate mailings to be made from a mailing job may be submitted with the first mailing of a mailing job in accordance with 568.2.

566.63 Information Required

566.631 Heading and General Format Requirements. The top of the first page of the documentation must show the class of mail and the words "DMM 566 Presort." When only some pieces in a third-class mailing qualify for a destination entry rate, or when a mailing contains pieces that qualify for more than one destination entry rate, a description of the characters used within the listing portion of the documentation to identify the ZIP Codes qualifying for each destination entry discount, must also appear at the top of the first page (see 566.632d(6)). The documentation must consist of ZIP Code listings for the 5-digit presort tier if applicable, the 3-digit presort tier, and the residual/basic presort tier (except for residual/basic pieces prepared under the physical separation option in 566.53) as described in 566.632, as well as a summary (566.633). The summary must include pieces prepared under the residual/basic physical separation option in 566.53. At the mailer's option, additional information showing the trays in which the pieces appear may also be included. It is recommended that the format in Exhibit 566.63 be used. If another format is used, it must allow Postal Service verification personnel to easily determine the information required by 566.632 and 566.633 using a single report. See 566.632f for an exception to the single report requirement for second-class mailings containing more than one edition and/or publication. Information that could not pertain to the class being mailed (such as column headings for Level A, Level B, Level J rates in a third-class mailing) must not be included in the documentation.

566.632 Required Information—ZIP Code Listing Portion

a. Presort Tier Sections. The ZIP Code listing portion of the documentation must be divided into sections by presort tier in the following order: 5-digit presort tier, 3-digit presort tier; and residual/basic presort tier (not required if residual/basic is prepared under the physical separation option in 566.53). Each presort level section must be preceded by a heading naming the presort tier (i.e., "5-Digit Presort Tier "3-Digit Presort Tier," and "Residual/Basic Presort Tier."

b. ZIP Code Column. Within each presort tier section, all ZIP Codes prepared in groups/packages to that presort tier must be listed under a column heading "ZIP Codes". The ZIP Codes must be listed in ascending numeric order. Within the 5-digit presort tier, pieces in qualifying 5-digit groups/packages must be listed by 5-digit ZIP Code. Within the 3-digit presort tier, pieces in qualifying 3-digit groups/packages must be listed by 3-digit ZIP Code, and pieces in second-class optional city groups/packages must be listed by lowest assigned 5-digit ZIP

Code as shown in Exhibit 122.63a. Within the residual/basic presort tier section (if applicable) the pieces must be listed by 3-digit ZIP Code.

c. Basic Columns and Line Entries for Rates and Totals. For each ZIP Code entry listed under each presort tier section, the documentation must show:

(1) The number of ZIP+4 barcoded or delivery point barcoded pieces under a column heading (or column headings—see 566.632d) naming the rate for which the pieces qualify based on the class of mail (see 566.2) and indicating that the pieces are ZIP+4 barcoded or delivery point barcoded.

(2) the number of non-ZIP+4 barcoded or non-delivery point barcoded pieces with a correct numeric ZIP+4 code (see 530) in the address meeting the requirements of 540, under a column heading (or column headings—see 566.632d) naming the rate for which the pieces qualify based on the class of mail (see 566.2) and indicating that the pieces are not ZIP+4 barcoded or delivery point barcoded. The documentation does not need to contain a column for these pieces if none appear in a mailing, or if the ZIP+4 rates are not claimed for such pieces. These pieces are not permitted in the 5-digit presort tier.

(3) the number of remaining pieces that are not ZIP+4 barcoded, delivery point barcoded or numerically ZIP+4 coded under a column heading (or column headings—see 566.632d) naming the rate for which the pieces qualify based on the class of mail (see 566.2) and indicating that the pieces are not ZIP+4 barcoded or delivery point barcoded. These pieces are not permitted in the 5-digit presort tier. (This column includes pieces with a 5-digit numeric ZIP Code as well as pieces without a ZIP+4 barcode or delivery point barcode that contain a correct numeric ZIP+4 code, but do not meet the OCR processing requirements in 540. It also includes pieces without a ZIP+4 barcode or delivery point barcode that contain a numeric ZIP+4 Code not matched against CASS certified software in accordance with 530.)

(4) the cumulative total (the total of all pieces listed for that ZIP Code plus all pieces listed for the preceding ZIP Code entries within the same presort tier section of the documentation) under a column heading "Cumulative Total." (The totals accumulate for each presort tier section only.)

d. Additional Rate Columns or Line Rntries.

(1) *First-Class Metered or Precanceled Stamp Mailings Containing Pieces Both Over and Under 2 Ounces.* Within the residual/basic presort tier section of the documentation for metered and precanceled stamps mailings in which postage at the exact rate is not affixed, two rate columns, one for reporting pieces weighing less than 2 ounces and one for reporting pieces weighing 2 ounces or more must be shown for each of the basic column separations described in 566.632c(1), 566.632c(2), and 566.632c(3). Each column heading must contain the name of the residual rate (see 566.213) for which the pieces qualify, the weight category, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded. Precanceled stamp mailings in which postage to cover additional ounce increments is not affixed must meet the additional documentation requirements in 566.632d(2).

(2) *First-Class Nonidentical-Weight Precanceled Stamp Mailings in Which Postage to Cover Additional Ounce Increments is Not Affixed.* In First-Class mailings paid by precanceled stamps that contain pieces of more than one ounce increment and in which precanceled stamps to cover postage for the additional ounce or ounces is not affixed as permitted in 581.34 or 581.4, additional rate columns for reporting each ounce increment in the mailing must be shown for each of the basic column separations described in 566.632c(1), 566.632c(2), and 566.632c(3). Each rate column heading must show the name of the rate (see 566.2) for which the pieces qualify, the weight category, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded.

(3) *First-Class Mailings Containing Both Letter-Rate and Postcard-Rate Pieces.* Within the residual presort tier section of the documentation for metered and precanceled stamp First-Class mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates, two columns, one for reporting pieces at the postcard rates and one for reporting pieces at the letter rate must be shown for each of the basic column separations described in 566.632c(1), 566.632c(2), and 566.632c(3). The column headings must contain the name of the rate (see 566.213) for which the pieces qualify, the weight category, a statement as to whether the pieces are subject to postcard or letter rates, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded. The additional column separations in 566.632d(1) are also necessary for precanceled stamp mailings in which postage to cover additional ounce increments is not affixed to each piece in the mailing as permitted under 581.34 or 581.4.

(4) *Second-Class Mailings Containing Both In-County and Outside-County Rate Pieces.* For second-class mailings containing both in-county and outside-county pieces, separate columns for in-county pieces and for outside-county pieces must be shown for pieces listed under 566.632c(1), 566.632c(2), and 566.632c(3). In addition, for 3-digit packages listed under the 3-digit presort tier section, separate columns for unique 3-digit packages that qualify for the level B3 or H3 rates, and for the level J3 rates must be shown, and separate columns for nonunique 3-digit packages that qualify for level A or G rates, and for level J1 rates must be shown, for each of the three general categories of pieces in 566.632c(1), 566.632c(2), and 566.632c(3). To reduce the number of columns across a page, mailers may break the 3-digit presort tier portion of the documentation into further sections by rate category: one section for optional city and unique 3-digit packages recorded at the level B3/H3 and J3 rates, and another section for nonunique 3-digit packages at the level A/G or J1 rates. The column headings must contain the name of the rate (see 566.222) for which the pieces qualify, and a statement as to whether or not the pieces are ZIP+4 barcoded or delivery point barcoded.

(5) *Second-Class Combined Mailings.* See 566.632f.

(6) *Third-Class Mailings Claiming Destination SCF or Destination BMC Rates.* In third-class mailings in which some combination of SCF destination entry, BMC destination entry, and no destination entry discount is claimed (not all pieces in the mailing qualify for the same destination discount) the ZIP Codes in each presort tier section that are eligible for the SCF entry discount or the BMC entry discount must be marked with an asterisk or some other unique character. If both the SCF discount and BMC discount are claimed in the same mailing, a different character from the one used to mark the ZIP Codes eligible for the SCF discount must be used to mark the ZIP Codes eligible for the BMC discount.

e. Section Column Totals. At the end of each presort tier section of the listing, show the total number of pieces listed under each rate column and under the cumulative total column.

f. Additional Requirements For Second-Class Combination Mailings. In addition to the documentation required by 566.63, second-class mailings combining pieces from more than one second-class publication or edition must

provide additional information by publication or edition as required by 424.853. This additional information may be provided as a separate report or reports.

566.633 Summary Portion

a. Second-Class Mailings and Identical Weight Permit Imprint Mailings.

(1) *Rate Categories and Postage Owed.* The summary must list each rate category at which any pieces in the mailing are claimed from the applicable column totals in the listing portions of the documentation. (For residual/basic mail sorted under the physical separation option in 566.53, information is also obtained from the manual counts of residual/basic pieces in the separate trays for each rate category.) When not all pieces in a third-class mailing qualify for the same destination entry discount, a separate line entry for the pieces claimed at each destination entry discount and for pieces not qualifying for a destination entry discount must be shown to separately account for the different rates in the summary. For each rate listed, the summary must show:

(a) The total number of pieces claimed at that rate.

(b) The applicable rate (price per piece) of postage.

(c) The postage charges for that rate category (the total number of pieces times the rate of postage).

Note: The applicable rate and postage charges are not required for second-class mailings.

(2) *Totals*

(a) A grand total of the postage charges for all the rate categories in the entire mailing must be shown (optional for second-class mailings). This grand total is the amount of postage owed for the mailing and the amount to be deducted from the advance deposit account for permit imprint mailings, or is the amount of second-class per piece charges for the mailing prior to deductions for the nonadvertising percentage discount and zone rate discounts.

(b) The total number of pieces in the mailing that bear a ZIP+4 barcode or delivery point barcode, the total number of pieces that do not, and the total of both representing all pieces in the mailing must be shown.

(c) The percentage of ZIP+4 barcoded or delivery point barcoded pieces in the mailing must be shown.

b. First- and Third-Class Metered and Precanceled Stamp Mailings.

(1) *Rate Categories and Postage Owed.* The summary must list each rate category at which any pieces in the mailing are claimed from the applicable column totals in the listing portions of the documentation. For residual/basic mail sorted under the physical separation option in 566.53, information is also obtained from the manual counts of pieces in the separate trays for each rate category. For nonidentical-weight First-Class precanceled stamp mailings in which stamps to cover the additional ounces are not affixed, each rate category must be listed more than once so that there is a separate listing for each ounce increment at that rate. First-Class postcard rate pieces must also be listed separately from letter-rate First-Class pieces. For First-Class metered mailings containing residual pieces over and under two ounces, each residual rate category must have a separate listing for pieces weighing 2 ounces or less and a separate listing for pieces weighing over 2 ounces. First-Class postcard rate pieces must also be listed separately from letter-rate First-Class pieces. When not all pieces in a third-class mailing qualify for the same destination entry discount, a separate line entry for the pieces claimed at each destination entry discount and for pieces not qualifying for a destination entry discount must be shown to separately account for the different rates in the summary. For each rate listed, the summary must show:

(a) The number of pieces claimed at that rate;

(b) The amount of additional postage due for each piece at that rate (when the amount of postage affixed is less than the rate of postage owed);

(c) The postage due for pieces claimed at that rate (the total number of pieces at that rate category times the amount of postage due per piece).

(2) *Totals.*

(a) A grand total of the additional postage charges due for all the rate categories in the entire mailing must be shown. This grand total is the amount of postage that must be affixed to the mailing statement or paid through an advance deposit account.

(b) The total number of pieces in the mailing that bear a ZIP+4 or delivery point barcode, the total number of pieces that do not, and the total of both representing all pieces in the mailing must be shown.

(c) The percentage of ZIP+4 or delivery point barcoded pieces in the mailing must be shown.

566.7 Mailing Statement. Each mailing must be accompanied by a complete and signed mailing statement appropriate for the method of postage payment and class of mail submitted. Mailers must write "DMM 566 Presort" at the top of the mailing statement.

567 OPTION 2—THREE TIER PACKAGE-BASED ZIP+4 BARCODED RATE MAILINGS (AVAILABLE ONLY THROUGH MARCH 20, 1993)

567.1 General Requirements

567.11 Description of a Mailing. A single ZIP+4 Barcoded rate mailing prepared under 567 may be made up of three presort tiers: (1) the 5-digit presort tier (containing 5-digit packages); (2) the 3-digit presort tier (containing 3-digit packages and, if applicable, second-class optional city packages); and (3) the residual/basic tier (remaining pieces). The 5-digit presort tier is optional. See 567.12 for a further description of presort tiers. Rates for pieces in the mailing are based upon the type of package in which they are placed. See 567.2 for a detailed description of the rates for which pieces in presort tiers can qualify. A single mailing may, at the mailer's option:

a. Include all three tiers;

b. Contain only a 3-digit presort tier and a residual/basic tier;

c. Contain only a 5-digit presort tier;

d. (First-Class mailings only) contain only a 5-digit presort tier and a residual tier;

e. (First-Class mailings only) contain only a residual tier.

f. (Second- and third-class mailings) contain only a residual tier if the conditions in 567.132a are met.

567.12 Description of Presort Tiers. [Insert current 564.12. Change the reference "564.132" to "515.32".]

[*Delete current 564.13. Insert the following:*]

567.13 Hierarchy of Presort

567.131 Mailings Containing 5-Digit and 3-Digit Presort Tiers. Since the 5-digit presort tier must be prepared only if 5-digit ZIP+4 Barcoded rates are claimed, mailers need not prepare all possible 5-digit packages in the 5-digit presort tier before going on to prepare the 3-digit presort tier. Mailers may prepare 5-digit packages to only selected 5-digit ZIP Code areas in the 5-digit presort tier. When a mailing contains 5-digit packages for a ZIP Code area, not all pieces for that ZIP Code area are required to be placed in 5-digit packages in the 5-digit presort tier. The mailer may elect to place some pieces for that 5-digit ZIP Code area in the 3-digit presort tier and pay a higher rate. In all cases, however, each 5-digit package in the 5-digit presort tier must contain at least 10 ZIP+4 or delivery point barcoded pieces (see 567.31 and 515.32).

Example: A mailing contains 150 pieces for ZIP Code 22033, of which 135 are delivery point barcoded, and 15 are not barcoded but contain a 5-digit ZIP Code. The same mailing

contains 30 pieces (28 delivery point barcoded and 2 nonbarcoded with a 5-digit ZIP Code) for other ZIP Codes with a 220 ZIP Code prefix. The mailer elects to prepare 5-digit packages to 22033. The 15 pieces to 22033 that do not contain a barcode cannot be included in the 5-digit presort tier and are dropped down to the 3-digit presort tier. These 15 pieces, when added to the 30 pieces for other ZIP Codes within 220, equal 45 pieces for the 3-digit area 220. Since 50 pieces are needed to make up a 3-digit package, the mailer may elect to take 5 pieces from 22033 and move them to the 3-digit presort tier. This will result in a total of 130 pieces for 22033 in the 5-digit presort tier and 50 pieces for 220 in the 3-digit presort tier.

567.132 Mailings containing 3-Digit and Residual Presort Tiers.

a. Required for Second- and Third-Class Mailings. All package-based second- and third-class ZIP+4 Barcoded rate mailings must contain both a 3-digit presort tier and a residual presort tier. Within these mailings, all possible 3-digit packages of 50 or more pieces to the same 3-digit area must be prepared and placed in the 3-digit presort tier, before the residual presort tier is prepared. For second-class mailings, optional city packages of 50 or more pieces may also be made, at the mailer's option, and on a selected basis, prior to preparing 3-digit packages. The only instance in which a residual presort tier may be submitted by itself as a second- or third-class mailing is if the mailer attempted to perform 3-digit package sortations, but there were no groups of 50 or more pieces for any 3-digit ZIP Code area in the mailing.

b. First-Class Mailings. Since the residual portion of a First-Class mailing is paid for at single-piece rates, mailers are not required to prepare all possible 3-digit packages of 50 or more pieces to the same 3-digit area and tray them within the 3-digit presort tier before going on to prepare the residual presort tier. That is, the residual portion of a First-Class mailing may contain groups of 50 or more pieces for the same 3-digit ZIP Code area.

567.2 Rate Eligibility. [Insert 564.2. Renumber subsections accordingly. Renumber all references "564.3" as "567.". Renumber all references "564.4" as "567.4". Renumber all references "564.5" as 567.5".]

567.3 Sortation Requirements—5-Digit Presort Tier

567.31 Minimum Quantity per 5-Digit Area. [Insert current 564.31.]

567.32 Grouping and Packaging Requirements

[Insert current 564.32. Renumber all subsections accordingly. Renumber all references "561.422" as "561.232". Renumber all references "561.22" as "561.11". Renumber all references "561.222" as "561.131".]

567.33 Traying Requirements—5-Digit Presort Tier

567.331 General. The requirements in 561.2 must be met.

567.332 Tray Sortation

a. 5-Digit Trays. [Insert current 564.332a. Change the reference "561.43" to "561.24." Change the label information and add a note to the end of this section as follows:

(1) *Nonmilitary Mail.*

[Insert current label information from 564.332a.]

(2) Military Mail.

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340) or AP (for ZIPS 962–966), and complete 5-digit APO or FPO ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by "5DG Z+4 BARCODED" or "5DG Z+4 B/C".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example

APO AE—09128
FCM 5DG Z+4 BARCODED
NB COMPANY UNION SC

b. 3-Digit Trays. [Change the reference "564.322" to "567.322". Change the reference "564.43" to "561.24." Add the following qualifier to existing tray label information and add new tray label information for military mail as follows:

(1) *Nonmilitary Mail.*

(a) *Unique 3-Digit ZIP Code Prefixes.*

[Insert label information in current 564.332b(1).]

(b) *Other 3-Digit ZIP Code Prefixes.*

[Insert label information in current 564.332b(2).]

(2) *Military Mail*

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPS 340) or AP (for ZIPs 962–966), and 3-digit APO or FPO ZIP Code prefix.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) "5DG Z+4 BARCODED" or "5DG Z+4 B/C".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location

Example

FPO AE—095
FCM 5DG Z+4 BARCODED
XYZ CORP ROCHESTER NY

Note: ZIP Code prefixes 094, 096–098, 340, and 962–965 contain both APO and FPO addresses. Therefore, the destination line for 3-digit sacks for destinations containing both APO and FPO mail must show the prefix APO/FPO before the code and the 3-digit prefix. Example: APO/FPO AA 340. (All 3-digit trays for ZIP Code prefixes 090–093 must be labeled APO, and 3-digit trays for ZIP Code prefixes 095 and 966 must be labeled FPO.)

d. SCF Trays. Revise all references beginning with "564" to "567." Change all references "561.22 to "561.11." Add the following note after the label information:

Note: When there is no SCF listed for a given 3-digit area in Exhibit 122.63d, (such as military mail and the Virgin Islands) mailers must place such pieces in an tray labeled on the top line in accordance with Exhibit 122.63t. The second and third lines of tray labels for such trays are the same as those for SCF trays described above.

567.4 Sortation Requirements—3-Digit Presort Tier

567.41 Minimum Quantity per 3-Digit Area. [Insert current 564.41. Change the reference "564.522" to "567.522".

567.42 [Grouping and Packaging Requirements. Insert current 564.42. Renumber subsections accordingly. Change all internal references beginning with "564" to references beginning with "567". Change all references "561.422" to "561.232". Change all references "561.22" to "561.11". Change all references' "561.43" to "561.24". Change all references "561.221" to "561.11". Change all references "561.222" to "561.131".]

567.43 Traying Requirements

567.431 General. The requirements in 561.2 must be met.

567.432 Tray Sortation.

a. 3-Digit Trays. Change the reference "564.421" to "567.421." Add the following qualifier to existing tray label information and add new tray label information for military mail as follows:

(1) Nonmilitary Mail.

(a) *Unique 3-Digit ZIP Code Prefixes.*

[Insert label information in current 564.432a(1).]

(b) *Other 3-Digit ZIP Code Prefixes.*

[Insert label information in current 564.432a(2).]

(2) *Military Mail.*

Line 1: APO or FPO, followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPS 340) or AP (for ZIPs 962–966), and 3-digit APO or FPO ZIP Code prefix.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) "3DG Z+4 BARCODED" or "3DG Z+4 B/C".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example

FPO AE—095
FCM 3DG Z+4 BARCODED
XYZ CORP ROCHESTER NY

Note: ZIP Code prefixes 094, 096–098, 340, and 962–965 contain both APO and FPO addresses. Therefore, the destination line for 3-digit sacks for destinations containing both APO and FPO mail must show the prefix APO/FPO before the code and the 3-digit prefix. *Example:* APO/FPO AA 340. (All 3-digit trays for ZIP Code prefixes 090–093 must be labeled APO, and 3-digit trays for ZIP Code prefixes 095 and 966 must be labeled FPO.)

b. SCF Trays. Change all internal references beginning with "564" to references beginning with "567". Change reference "561.22" to "561.11 and 561.131." Add the following note to the end of this section:

Note: When there is no SCF listed for a given 3-digit area in Exhibit 122.63d, (such as military mail and the Virgin Islands) mailers must place such pieces in an tray labeled on the top line in accordance with Exhibit 122.63t. The second and third lines of tray labels for such trays are the same as those for SCF trays described above. Pieces in such trays are not eligible for SCF entry discounts.

567.433 Optional Tray Sortation for Second-Class Mailings Only. [Insert text of current 564.433. Change all internal references beginning with "564" to references beginning with "567". In the next to last sentence of 567.433b, before the tray label information, delete the phrase "except that one overflow tray per optional city is permitted as provided in 561.44."]

567.5 Sortation Requirements—Residual/Basic Presort Tier

567.51 Definition of Residual/Basic Pieces. [Insert current 564.51. Revise all references beginning with "564" to "567." Add the following as the last two sentences. "See 567.132b for an exception for First-Class Mail. Residual/basic pieces must be prepared under 565.52, 565.53, or 565.54. Once the basic requirements in 565.52 through 565.54 have been met, additional sortation of First-Class residual mail may be performed in accordance with any local authorization for acceptance times as described in Management Instruction DM–140–91–01, First-Class Mail Acceptance Policy.

567.52 Option 1: ZIP Code Sequencing and Listing. [Insert current 564.521. Replace the first sentence with the following: "Residual pieces for the same 3-digit ZIP Code area must be grouped together. Groups of pieces for the same 3-digit ZIP Code area must be placed in trays in ascending numeric 3-digit ZIP Code sequence.]

567.53 Option 2: Physical Separation. [Insert current 564.523. Add the following as the third sentence "Additional tray separations may be required as set forth in 566.532 to accurately account for postage." Change all references "561.3" to "561.12". Change all references "561.221" to "561.11". Change the reference "564.625" to "567.625".]

567.54 Option 3: Placement in SCF Trays of the 3-Digit Presort Tier. [Insert text of current 564.522. Change the reference "564.432b" to "567.432b".]

567.6 Documentation

567.61 General Requirements for Submission. Each mailing must be accompanied by the documentation described in 567.62, with the following exceptions:

a. No documentation is required when every piece in the mailing bears the correct ZIP+4 barcode or delivery point barcode and either of the following applies:

(1) Postage is affixed to each piece at the exact rate of postage for which it qualifies.

(2) Each piece in the mailing is of identical weight, the pieces in each individual tray are subject to the same rate, and the trays for each rate level are placed in groups by rate eligibility when presented for verification to allow weight verification of postage. (Second-class mailings containing both in-county and outside-county pieces and/or containing both Level A and Level B rates do not meet this condition.)

b. Abbreviated documentation may be submitted under the provisions of 568.1.

c. Documentation that describes all ZIP+4 Barcoded rate mailings to be made from a mailing job may be submitted with the first mailing of a mailing job in accordance with 568.2.

567.62 Information Required

567.621 Format. [Insert current 564.621. Change all references beginning with "564" to references beginning with "567". Add the following as the next to last sentence: "See 566.632d and 566.632f, for additional columns in the 5-digit, 3-digit, and residual/basic presort tier listings respectively that may be required for pieces qualifying for each rate category."

567.622 Information Required for 5-Digit Presort Tier Sorted Under 567.3. [Insert current 564.622.]

567.623 Information Required for 3-Digit Presort Tier Sorted Under 567.4. [Insert current 564.623. Change all references beginning with "564" to references beginning with "567".]

567.624 Information Required for Residual/Basic Presort Tier Sorted Under 564.5 [Insert current 564.624. Renumber subsection "b" as "c" and vice versa. Change all references beginning with "564" to references beginning with "567".]

567.625 Summary Portion. [Insert current 564.625. Change all references beginning with "564" to references beginning with "567".]

567.7 Mailing Statement. Each mailing must be accompanied by a complete and signed mailing statement appropriate for the method of postage payment and class of mail submitted. Mailers must write "DMM 567 Presort" at the top of the mailing statement.

568—ELECTIVE DOCUMENTATION FOR PRESORT RATE MAIL

568.1—Abbreviated Documentation for Postage and Percentage of ZIP+4 or Delivery Point Barcode Pieces

568.11 Authorization Procedure

568.111 Letter of Request. Mailers must submit a written letter of request for authorization to submit with each mailing the abbreviated documentation described in this section rather than complete documentation described for the type of mailing in 562.14, 562.25, 563.5, 564.14, 564.24, 565.5, 566.6, or 567.6, as applicable. The letter must be sent to the postmaster of the post office where the mailings are verified and postage is paid.

568.112 Authorization. Upon receipt of the letter of request, the postmaster or authorized representative will verify a subsequent mailing for which complete documentation is submitted. If the complete documentation is found to contain all the information required in 562.14, 562.25, 563.5, 564.14, 564.24, 565.5, 566.6, or 567.6, as applicable, and is found to be correct when the mail is sampled and compared to the documentation, the postmaster will authorize use of abbreviated documentation procedures. The authorization is good for a period of one year and will be provided to the mailer in writing. If the complete documentation does not contain all the information required in 562.14, 562.25, 563.5, 564.14, 564.24, 565.5, 566.6, or 567.6, as applicable, or is found not to be correct when compared to mail sampled, the request will be denied in writing. The written denial will state the deficiencies that must be corrected. The mailer may submit another request for abbreviated documentation authorization when the deficiencies noted have been corrected.

568.12 Requirement. The mailer must submit the summary section for the documentation required in 562.145, 562.252a(3), 562.252b(3), 563.533, 564.145, 564.242a(3), 564.242b(3), 565.533, 566.633, or 567.625 as applicable. In addition, those portions of the ZIP Code listings described in 562.144, 562.252a(2), 562.252b(2), 563.532, 564.144, 564.242a(2), 564.242b(2), 565.532, 566.632, 567.622, 567.623, and 567.624, as applicable for the method of preparation, that pertain to pieces destinating at a particular SCF area, must also be submitted. The SCF area selected by the mailer should include pieces qualifying for all rate levels in the mailing (both 3/5 ZIP+4 and basic/residual rates for ZIP+4 rate mailings; 5-digit ZIP+4 Barcoded (if applicable), 3-Digit ZIP+4 Barcoded, and residual/basic rates for ZIP+4 Barcoded rate mailings). If the selected SCF area does not contain pieces at all applicable rate levels included in the mailing, the ZIP Code listings for an additional SCF area that contains pieces qualifying for the missing rate levels must be provided with the mailing. A minimum of 3 trays must be represented by the documentation submitted. In addition, a listing of the column titles and column totals for each section of the ZIP Code listing or listings required by the individual method of preparation must be provided.

Note: Nothing in this section shall relieve the mailer from the requirement to submit, at the request of the postmaster, additional documentation including documentation pertaining to pieces that destinate at particular SCFs specified by the postmaster.

568.13 Tray Presentation. When the mailing is presented for verification and either acceptance or clearance for dispatch, the sacks that contain the pieces corresponding to the ZIP Codes of the selected SCF area or areas for which the ZIP Code listings are submitted must be identified and physically separated.

568.14 [Reserved]

568.15 Retention of Documents. Mailers authorized to submit abbreviated documentation must retain the information necessary to produce complete documentation for each mailing made during the past 12 months. Mailers must also be able to produce complete documentation of a particular mailing upon request by the postmaster, for either upcoming mailings or for past mailings.

568.16 Reauthorization and Review. Before the 1-year authorization expires, the postmaster or designee must schedule a review of complete documentation with the mailer. If the complete documentation is found to be accurate, the postmaster or designee will issue a written authorization to continue use of abbreviated documentation for another year. If the documentation is found to be inaccurate, complete documentation must be submitted for subsequent mailings until the problem is corrected and the mailer is again authorized to submit abbreviated documentation. A review of complete documentation must also be scheduled and performed by the postmaster or authorized representative anytime there is a change in the presort or documentation requirements for letter-size mailings.

568.2 Mailing Job Provisions for Meeting the 85% ZIP+4 Barcode and Form 3553 Requirements

568.21 Purpose. At the mailer's option, compliance with the requirement that at least 85% of the pieces bear a correct ZIP+4 or delivery point barcode may be based upon all letter-size ZIP+4 rate or all ZIP+4 Barcoded rate mailings within a mailing job when the mailing job meet the criteria in 568.22. In addition, one Form 3533 for all ZIP+4 rate or all ZIP+4 Barcoded rate mailings in the mailing job may be submitted.

568.22 Eligible Mailing Jobs

568.221 Definition of Mailing Job. Often referred to as a mailing cycle, mailing project, or publication issue, a mailing job consists of the total pieces meant to be mailed as an entity from a fixed set of addresses. These addresses may be from a single list or multiple lists that have been merged into a single list for the purposes of mailing. A mailing job may consist of only presorted ZIP+4 rate mailings, of only presorted ZIP+4 Barcoded rate mailings, or a combination of automation rate mailings, carrier route mailings, 3/5 and basic presort mailings. If carrier route or other nonautomation-based rate mailings are included in the job, the pieces in the nonautomation-based rate mailings must not be counted toward the 85% ZIP+4 code or 85% ZIP+4 barcode requirement regardless of whether the nonautomation-based rate mailpieces have been ZIP+4 coded or ZIP+4 barcoded. Similarly, if ZIP+4 rated pieces are contained in the same job as ZIP+4 barcoded rate pieces, only presorted ZIP+4 rate mailings in the mailing job may be counted toward the 85% ZIP+4 code requirement in 514.3, and only pieces in presorted ZIP+4 Barcoded rate mailings in the mailing job may be counted toward the 85% requirement in 515.3.

568.222 Verification and Payment at a Single Post Office. To be eligible for the option of submitting the 85% ZIP+4 barcode documentation and a single Form 3553 based on all the presorted ZIP+4 rate mailings, or based on all the presorted ZIP+4 Barcoded rate mailings in a mailing job (as opposed to the 85% requirements being separately applied to each individual mailing within the mailing job), all mailings in the job MUST be verified and paid for at a single post office. Mailing jobs containing mailings being entered at multiple destination post offices that are verified and paid for at a single post office under a Centralized Postage Payment (CPP) System or Plant-Verified Drop Shipment (PVDS) are eligible for this option.

568.23 Postage and 85% ZIP+4 Code or ZIP+4 Barcode Documentation for Mailing Job Option

568.231 Submission. Complete documentation that represents all pieces within ZIP+4 rate mailings for the entire mailing job, or complete documentation that represents all pieces within ZIP+4 Barcoded rate mailings for the entire mailing job must be submitted with the first automation-based rate mailing from that mailing job. The documentation must meet the requirements of 562.14, 562.25 or 563.5 as appropriate for ZIP+4 rate mailings. The documentation must meet the requirements of 564.14, 564.24, 565.5, 566.6, or 567.6 as appropriate for ZIP+4 Barcoded rate mailings. The abbreviated documentation in 568.1 may also be authorized for mailing jobs documented under 568.233. The documentation must meet the requirements of either 568.232 or 568.233.

568.233 Single Listing Representing All Mailings in the List or Cycle. A single ZIP Code listing (or listings where applicable) for all the ZIP+4 mailings in a job or for all the ZIP+4 Barcoded rate mailings in a job may be prepared if all of the following conditions are met:

(a) All mailings in the mailing job are accepted for entry at the same post office at which they are verified (mailings submitted under centralized postage payment and plant verified drop shipment are NOT authorized to use this method).

(b) The same method of preparation is used for all automation rate mailings in the mailing job (for example, all mailings in the job are prepared under 565).

(c) All the pieces listed on the same line for a particular ZIP Code on the documentation must be presented in the same mailing. For example, if the documentation shows 1082 pieces for ZIP Code 101 under the 5 Presort Tier

of a package-based ZIP+4 Barcoded rate mailing under 565, all 1082 pieces for ZIP Code 101 must be submitted on the same day as part of one mailing. If the mailing is a tray-based mailing under 562 or 564, and the tray label documentation option is used for tray-based mailings, a unique sequential tray label must be used for each tray presented during the entire mailing list or cycle. For example, if tray numbers 001 through 120 are used for the mailing on day 1, the tray labels for the mailing on day 2 must start at 121 and so forth.

(d) The abbreviated documentation in 568.1 must not be used.

(e) An overall summary in the format required for the method of preparation is submitted that summarizes the rate information and either the ZIP+4 code information or the ZIP+4 barcode information for all pieces in all mailings entered over the entire mailing job.

568.234 Separate Documentation Representing Each Mailing. Separate documentation for each individual ZIP+4 rate mailing or each individual ZIP+4 barcoded rate mailing that is prepared over the course of the mailing job must be prepared in accordance with 562.14, 562.25, 563.5, 564.14, 564.24, 565.5, 566.6 or 567.6, as applicable (both ZIP Code listings and summaries). The abbreviated ZIP Code listing documentation in 568.1 may also be authorized. In addition, a separate overall summary in the format required for the method of preparation must be submitted that summarizes the rate information and summarizes either the ZIP+4 code information or the ZIP+4 barcode information for all pieces in all mailings entered over the entire mailing job.

568.24 Mailing Statements in a Mailing Job. Each mailing submitted as part of a mailing job must be accompanied by the appropriate mailing statement for its class and method of postage payment.

568.25 Simultaneous Mailings From Different Mailing Jobs. If more than one mailing job is active at one time for a given mailer, mailings from each mailing job must be prepared and presented separately, and must be clearly identified as separate mailings from separate jobs. The documentation must contain an identifier that clearly distinguishes between the mailing jobs. Mailing statements presented for individual mailings within the mailing job must bear the appropriate identifier relating it to the appropriate mailing job.

568.26 Resolution of Discrepancies. When the last mailing from a mailing job is presented to the Postal Service, any discrepancies between the mail presented to and verified by the Postal Service, the mail described in the documentation, and the mail claimed on the corresponding mailing statements submitted for individual mailings (in regard to quantity, rate eligibility, or postage) must be reconciled to the satisfaction of the Postal Service, and any additional postage that may be due must be paid by the mailer.

569 FIRST-CLASS NONPRESORTED ZIP+4 RATE AND NONPRESORTED ZIP+4 BARCODED RATE MAILINGS

569.1 First-Class Nonpresorted ZIP+4 Rate Mailings (Required March 21, 1993, Optional Until Then)

569.11 Rate Eligibility. Pieces bearing correct ZIP+4 codes can qualify for the nonpresorted ZIP+4 rates. Pieces bearing 5-digit ZIP Codes can qualify for single-piece First-Class rates.

569.12 Packaging, Traying and Documentation

569.121 Mailings Containing 100% ZIP+4 Coded Pieces That Are Identical Weight, or Have Exact Postage Affixed to Each Piece.

a. ZIP Code Grouping and Packaging.

(1) *Postcard-Size Pieces.* Trays of pieces that fall within the dimensions for postcards (pieces measuring not more than 4¼ inches high, 6 inches long, and .0095 inch thick) must be packaged. No sortation or labeling of these packages is required.

(2) *Letter-Size Pieces That Exceed the Maximum Dimensions for Postcards.* Full trays of pieces that are larger than the dimensions of postcards must not be packaged. If the last tray is less than full, the pieces in that tray must be secured together into packages as provided in 561.11. No sortation or labeling of these packages is required.

b. Traying. The general requirements in 561.2 must be met. Pieces may be placed in trays without regard to ZIP Code order. Trays must be full except for the last tray. Trays must be labeled as follows:

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d

Line 2: FCM Z+4 WORKING

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location

Example:

DIS BAKERSFIELD CA—932
FCM ZIP+4 WORKING
NBT CO BAKERSFIELD CA

c. Documentation Requirements. None.

569.122 Mailings Containing Both ZIP+4 and 5-digit ZIP Coded Pieces and/or Requiring Postage Documentation

a. General. Mailings meeting one or more of the following criteria must be prepared in accordance with either 569.122b (ZIP Code sequencing and listing option) or 569.122c (physical separation option).

(1) Mailings containing both ZIP+4 coded and 5-digit ZIP Coded pieces.

(2) Mailings paid by meters or precanceled stamps that do not have postage affixed to each piece at the exact rate for which it qualifies.

b. ZIP Code Sequencing and Listing Option.

(1) *ZIP Code Grouping and Packaging.* Pieces for the same 3-digit ZIP Code area must be grouped together. In less than full trays the pieces must be secured into 3-digit packages and labeled (see 561.11 and 561.131). Full trays of post-card size pieces (pieces measuring not more than 4¼ inches high, 6 inches long, and .0095 inch thick) must be secured into 3-digit packages and labeled (see 561.11 and 561.131). No packaging or labeling is permitted for full trays of pieces that exceed the dimensions for postcards.

(2) *Traying.* Groups of pieces for the same 3-digit ZIP Code area must be placed in trays in ascending numeric 3-digit ZIP Code sequence. Trays must be labeled as follows:

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d

Line 2: FCM ZIP+4 WORKING

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location

Example:

DIS BAKERSFIELD CA—932
FCM ZIP+4 WORKING
NBT CO BAKERSFIELD CA

(3) *Documentation.* The format detailed below must be followed. At the top of the documentation the phrase "First-Class Nonpresorted ZIP+4" must be written. Each 3-digit ZIP Code contained in the mailing must be listed in ascending numeric order.

(a) *Basic Listing.* For each 3-digit ZIP Code listed show:

(i) The number of pieces that bear a ZIP+4 code under a column heading "Nonpresorted ZIP+4 Rate."

(ii) The number of pieces that do not bear a correct ZIP+4 code under a column heading "Single Piece Rate."

(iii) The cumulative total (the total of all pieces listed for that ZIP Code plus

all pieces listed for the preceding 3-digit ZIP Code areas under a column heading "Cumulative Total."

(b) *Additional Columns.*

(i) *Nonidentical-Weight Precanceled Stamp Mailings in Which Postage to Cover Additional Ounce Increments is Not Affixed.* In mailings paid by precanceled stamps that contain pieces of more than one ounce increment and in which precanceled stamps to cover postage for the additional ounce or ounces is not affixed as permitted in 581.34, additional rate columns for reporting each ounce increment in the mailing must be shown for each of the basic rate column separations described in 569.122b(3)(a). Each rate column heading must show the name of the rate (see 569.11) for which the pieces qualify, the weight category, and a statement as to whether or not the pieces are ZIP+4 coded.

(ii) *Mailings Containing Both Letter-Rate and Postcard-Rate Pieces.* Within metered and precanceled stamp mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates (the letter rate must be affixed to letters and the postcard rate must be affixed to the postcards), two columns, one for reporting pieces at the postcard rates and one for reporting pieces at the letter rate must be shown for each of the basic column separations described in 569.122b(3)(a). The column headings must contain the name of the rate (see 569.11) for which the pieces qualify, the weight category, a statement as to whether the pieces are subject to postcard or letter rates, and a statement as to whether or not the pieces are ZIP+4 coded. The additional column separations in 569.122b(3)(b)(i) are also necessary for precanceled stamp mailings in which postage to cover additional ounce increments is not affixed to each piece in the mailing as permitted under 581.34.

(c) *Column Totals.* At the end of the listing show the totals of the pieces under each column heading.

(d) *Summary.*

(i) *Rate Categories and Postage Owed.* List any rate amount in the mailing at which pieces are claimed from the applicable column totals in the listing. The list should be by the name of the rate (Nonpresorted ZIP+4 rate and single piece rate) and any additional identifier needed such as ounce increment, and whether the piece qualifies for the postcard rate. For each rate category (amount) show the total number of pieces claimed from the applicable column totals in the listing portion of the documentation. For each rate category in permit imprint mailings, show the rate of postage for each piece and the total postage due for all pieces claimed at that rate (the number of pieces times the rate of postage). For each rate category in metered or precanceled stamp mailings, show the amount of additional postage due for each rate category (if any) and the total postage due for all pieces claimed at that rate (the total number of pieces at that rate category times the amount of postage due per piece).

(ii) *Totals.* A grand total of the postage charges due for all the rate categories in the entire mailing must be shown. This grand total shows the amount of postage that must be affixed to the mailing statement or paid through an advance deposit account. The summary must also list the total number of pieces in the mailing that bear a ZIP+4 code and show the total number of pieces that do not. The percentage of ZIP+4 coded pieces in the mailing must be shown.

c. Physical Separation Option.

(1) *ZIP Code Grouping and Packaging.* No grouping/packaging is required in full trays of pieces exceeding the maximum dimensions for postcards (4¼ inches high, 6 inches long, and .0095 inch thick). In trays of pieces that do not exceed the maximum dimensions for postcards and in all less than full trays, pieces must be secured together into packages as provided in 561.11.

(2) *Traying.*

(a) *Basic Tray Separations.* Pieces bearing correct (see 530) ZIP+4 codes must be separately trayed from other pieces. The trays must be physically grouped according to these separations when presented to the post office for verification.

(b) *Additional Tray Separations.*

(i) *Nonidentical Weight Precanceled Stamp Mailings in which Postage to Cover Additional Ounce Increments is Not Affixed.* Mailings paid by precanceled stamps that contain pieces of more than one ounce increment in which precanceled stamps to cover postage for the additional ounce or ounces is not affixed under 581.34, further tray separations must be made by pieces of each ounce increment in the mailing for each of the two basic separations required in 569.122c(2)(a). The trays must be physically grouped according to these separations when presented to the post office for verification.

(ii) *Mailings Containing Both Letter-Rate and Postcard-Rate Pieces.* For metered and precanceled stamp mailings in which pieces do not have postage affixed at the exact rate and that contain both pieces subject to the letter rates and pieces subject to the postcard rates (the letter rate must be affixed to the letters and the postcard rate must be affixed to the postcards), pieces weighing one ounce or less must be further separated so that postcard-rate pieces are further separated from letter-rate pieces for each of the two basic separations required in 569.122c(2)(a). The additional tray separations in 569.122c(2)(b)(i) may also be necessary for precanceled stamp mailings. The trays must be physically grouped according to these separations when presented to the post office for verification.

(c) *Separation Into Groups of 100 Pieces Within Each Tray If Nonidentical Weight.* If the pieces in the mailing are of nonidentical weight (metered or precanceled stamp mailings only) they must be separated into groups of 100 pieces within each of the trays resulting from sortation in accordance with 569.122c(2)(a) and 569.122c(2)(b). The groups of 100 must be delineated by separator cards (see 561.12). When the tray is full, nothing further is required. When the tray is less than full, pieces must also be secured into packages in accordance with 561.11 within each group of 100 pieces. In addition, full trays consisting entirely of pieces that do not exceed the maximum dimensions for postcards (4¼ inches high, 6 inches long, and .0095 inch thick) must be secured into packages as provided in 561.11. When there are less than 100 pieces in a group at the end of the last tray for any of the types of trays the actual number of pieces in the group must be written on the separator card. Trays must be labeled as follows:

(i) *Trays Containing ZIP+4 Coded Pieces.*

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d

Line 2: FCM ZIP+4 WORKING

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location

Example:

DIS BAKERSFIELD CA—932
FCM ZIP+4 WORKING
NBT CO BAKERSFIELD CA

(ii) *Trays Containing Pieces Not ZIP+4 Coded.*

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: FCM WORKING.

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example

DIS BAKERSFIELD CA—932
FCM WORKING
NBT CO BAKERSFIELD CA

(3) *Documentation Requirements.* None.

569.13 Presentation of Trays. Trays do not have to be presented in any order in mailings that are 100% ZIP+4 coded or in mailings containing both ZIP+4 coded and 5-digit coded pieces that are prepared under the ZIP Code sequencing and listing option. Trays must be grouped by rate category at the time of acceptance when the physical separation option is used to prepare mailings containing 5-digit ZIP Coded pieces.

569.2 First-Class Nonpresorted ZIP+4 Barcoded Rate Mailings

569.21 Rate Eligibility. Pieces bearing correct ZIP+4 barcodes or delivery point barcodes can qualify for the nonpresorted ZIP+4 rates. Pieces without a ZIP+4 barcode or delivery point barcode can qualify for the nonpresorted ZIP+4 rate if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces can qualify for single-piece First-Class rates.

569.22 Packaging, Traying, and Documentation Requirements

569.221 Mailings Containing 100% ZIP+4 Barcoded or Delivery Point Barcoded Pieces That are Identical Weight, or Have Exact Postage Affixed to Each Piece.

a. ZIP Code Grouping and Packaging Requirements.

(1) *Postcard-Size Pieces.* Trays of pieces that fall within the dimensions for postcards (pieces measuring not more than 4-¼ inches high, 6 inches long, and .0095 inch thick) must be packaged. No sortation or labeling of these packages is required.

(2) *Letter-Size Pieces That Exceed the Maximum Dimensions for Postcards.* Full trays of pieces that are larger than the dimensions of postcards must not be packaged. If the last tray is less than full the pieces in that tray must be secured together into packages as provided in 561.11. No sortation or labeling of these packages is required.

b. Traying. The general requirements in 561.2 must be met. Pieces may be placed in trays without regard to ZIP Code order. Trays must be full except for the last tray. Trays must be labeled as follows:

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d.

Line 2: FCM LTRS BARCODED WKG.

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example

DIS BAKERSFIELD CA—932
FCM LTRS BARCODED WKG
NBT CO BAKERSFIELD CA

c. Documentation. None.

569.222 Mailings Containing Non-ZIP+4 Barcoded or Non-Delivery Point Barcoded Pieces and/or Requiring Postage Documentation

a. General. Mailings meeting one or more of the following criteria must be prepared in accordance with either 569.222b (ZIP Code sequencing and listing option) or 569.222c (physical separation option).

(1) Mailings containing non-ZIP+4 barcoded or non-delivery point barcoded pieces.

(2) Mailings paid by meters or precanceled stamps that do not have postage affixed to each piece at the exact rate for which it qualifies.

b. ZIP Code Sequencing and Listing Option.

(1) *ZIP Code Grouping and Packaging.* Pieces for the same 3-digit ZIP Code area must be grouped together. In less-than-full trays, the pieces must be secured into 3-digit packages and labeled (see 561.11 and 561.131). Full trays of post-card size pieces (pieces measuring not more than 4¼ inches high by 6 inches long by .0095 thick) must be secured into 3-digit packages and labeled (see 561.11 and 561.131). No packaging or labeling is permitted for full trays of pieces that exceed the dimensions for postcards.

(2) *Traying.* Groups of pieces for the same 3-digit ZIP Code area must be placed in trays in ascending numeric 3-digit ZIP Code sequence. Trays must be labeled as follows:

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d

Line 2: FCM LTRS BARCODED WKG

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location

Example

DIS BAKERSFIELD CA 932
FCM LTRS BARCODED WKG
NBT CO BAKERSFIELD CA

(3) *Documentation.* The format detailed below must be followed. At the top of the documentation the phrase "First-Class Nonpresorted ZIP+4 Barcoded" must be written. Each 3-digit ZIP Code contained in the mailing must be listed in ascending numerical order.

(a) *Basic Listing.* For each 3-digit ZIP Code listed show:

(i) The number of pieces that bear a ZIP+4 barcode or delivery point barcode under a column heading "Nonpresorted ZIP+4 Barcoded Rate."

(ii) The number of pieces that do not bear a ZIP+4 barcode or delivery point barcode, but that bear correct ZIP+4 numeric codes (see 530) and meet the requirements of 540 under a column heading "Nonpresorted ZIP+4 Rate."

(iii) The number of other pieces under a column heading "Single Piece Rate".

(iv) The cumulative total (the total of all pieces listed for that ZIP Code plus all pieces listed for the preceding 3-digit ZIP Code areas) under a column heading "Cumulative Total."

(b) *Column Totals.* At the end of the listing show the totals of the pieces under each column heading.

(c) *Summary.*

(i) *Rate Categories and Postage Owed.* List the rate categories in the mailing from the columns above. For each rate category show the total number of pieces claimed. For permit imprint mailings also show the rate of postage for each piece and the total postage due for all pieces claimed at that rate (the number of pieces times the rate of postage). For each rate category in metered or precanceled stamp mailings show the amount of additional postage due for each rate category (if any) and the total postage due for all pieces claimed at that rate (the total number of pieces at that rate category times the amount of postage due per piece).

(ii) *Totals.* A grand total of the postage charges due for all the rate categories in the entire mailing must also be shown. This grand total shows the amount of postage that must be affixed to the mailing statement or paid through an advance deposit account. The summary must also list the total number of pieces in the mailing that bear a ZIP+4 barcode or delivery point barcode and show the total number of pieces that do not. The percentage of ZIP+4 barcoded or delivery point barcoded pieces in the mailing must be shown.

c. Physical Separation Option.

(1) *ZIP Code Grouping and Packaging.* No grouping/packaging is required in full trays of pieces exceeding the maximum dimensions for postcards (4¼

inches high, 6 inches long, and .0095 inch thick). In trays of pieces that do not exceed the maximum dimensions for postcards and in all less than full trays, pieces must be secured together into packages as provided in 561.11.

(2) *Traying.*

(a) *Basic Tray Separations.* Pieces that bear correct ZIP+4 barcodes or delivery point barcodes must be separately trayed from pieces that do not. Pieces that do not bear correct ZIP+4 barcodes or delivery point barcodes must be further separated so that pieces bearing a correct numeric ZIP+4 code (see 530) in the address and meeting the requirements of 540, are separately trayed from other pieces.

(b) *Separation Into Groups of 100 Pieces Within Each Tray If Nonidentical Weight.* If the pieces in the mailing are of nonidentical weight (metered or precanceled stamp mailings only) they must be separated into groups of 100 pieces within each of the trays resulting from sortation in accordance with 569.222c(2) above. The groups of 100 must be delineated by separator cards (see 561.12). When the tray is full, nothing further is required. When the tray is less than full, pieces must also be secured into packages in accordance with 561.11 within each group of 100 pieces. In addition, full trays of pieces that do not exceed the maximum dimensions for postcards (4¼ inches high, 6 inches long, and .0095 inch thick) must be secured into packages as provided in 561.11. When there are fewer than 100 pieces in a group at the end of the last tray for any of the types of trays the actual number of pieces in the group must be written on the separator card. Trays must be labeled as follows:

(i) *Trays Containing ZIP+4 or Delivery Point Barcoded Pieces.*

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d

Line 2: FCM LTRS BARCODED WKG

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location

Example

DIS BAKERSFIELD CA—932
FCM LTRS BARCODED WKG
NBT CO BAKERSFIELD CA

(iii) *Trays Containing Pieces Not ZIP+4 or Delivery Point Barcoded Bearing Correct Numeric ZIP+4 Code in Address and Meeting Requirements of 540.*

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d

Line 2: FCM ZIP+4 WORKING (or FCM ZIP+4 WKG)

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location

Example

DIS BAKERSFIELD CA—932
FCM ZIP+4 WORKING
NBT CO BAKERSFIELD CA

(iii) *Trays Containing Other Pieces Not ZIP+4 or Delivery Point Barcoded.*

Line 1: Letters "DIS" followed by the name, two-letter state abbreviation, and 3-digit SCF code for the SCF serving the entry post office as shown in Exhibit 122.63c or Exhibit 122.63d

Line 2: FCM WORKING (or FCM WKG)

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example

DIS BAKERSFIELD—CA
FCM WORKING
NBT CO BAKERSFIELD CA

(3) *Documentation Requirements.* None.

569.23 Presentation of Trays. Trays do not have to be presented in any order in mailings that are 100% ZIP+4 barcoded or delivery point barcoded or in mixed mailings that are prepared under the ZIP Code sequencing and listing option. Trays must be grouped by rate category at the time of acceptance when the physical separation option is used to prepare mailings containing non-ZIP+4 barcoded or non-delivery point barcoded pieces.

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570 Presort and Documentation for Flat-Size Mail

571 RATE ELIGIBILITY

571.1 Presort Rate Mailings

571.11 First-Class Mailings

571.111 5-Digit and 3-Digit Packages. Pieces bearing a ZIP+4 barcode or delivery point barcode in 5-digit or 3-digit packages prepared under 572.1 and 573.1 and properly sacked under 573.2 can qualify for the 3/5 flat-size ZIP+4 Barcoded rate in 313.5. The 5-digit barcoded pieces in these packages can qualify for the Presorted First-Class rate in 313.222.

571.112 SCF Packages. Pieces bearing a ZIP+4 barcode or delivery point barcode in SCF packages prepared under 572.1 and 573.1 and properly sacked under 573.2 can qualify for the nonpresorted flat-size ZIP+4 Barcoded rate in 312.23. The 5-digit barcoded pieces in these packages can qualify for the single-piece First-Class rates in 311.2.

571.113 Residual Packages. Pieces bearing a ZIP+4 barcode or delivery point barcode in a residual package prepared under 573.27 can qualify for the nonpresorted flat-size ZIP+4 Barcoded rate in 312.23. The 5-digit barcoded pieces in these packages can qualify for the single-piece First-Class rates in 311.2.

571.12 Second-Class Mailings

571.121 5 Digit Packages of Six or More Pieces. Pieces bearing a ZIP+4 barcode or delivery point barcode in a 5-digit package of six or more pieces prepared under 572.1 and 573.1 and properly sacked or palletized under 573.2 or 576 can qualify for the level B5/H5/J5 flat-size ZIP+4 Barcoded rates. The 5-digit barcoded pieces in these packages of six or more pieces can qualify for the B5/H5/J5 presort rates. See 411.2 and 411.3.

571.122 Optional City and Unique 3-digit Packages of Six or More Pieces. Pieces bearing a ZIP+4 barcode or delivery point barcode in an optional city or a unique 3-digit package of six or more pieces prepared under 572.1 and 573.1 and properly sacked or palletized under 573.2 or 576 can qualify for the B3/H3/J3 flat-size ZIP+4 Barcoded rates. The 5-digit barcoded pieces in these packages of six or more pieces can qualify for the B3/H3/J3 presort rate. See 411.2 and 411.3.

571.123 Nonunique 3-Digit, and SCF Packages. Pieces bearing a ZIP+4 barcode or delivery point barcode in a nonunique 3-digit or an SCF package prepared under 572.1 and 573.1 and properly sacked or palletized under 573.2 or 576 can qualify for the A/G/J1 flat-size ZIP+4 Barcoded rates. The 5-digit barcoded pieces in these packages can qualify for the A/G/J1 presort rate. See 411.2 and 411.3.

571.124 5-Digit, Optional City, and Unique 3-Digit Packages of Less Than Six Pieces. Pieces bearing a ZIP+4 barcode or delivery point barcode in a 5-digit, optional city, or unique 3-digit package of less than six pieces prepared under 572.1 and 573.1 and properly sacked or palletized under 573.2 or 576 can qualify for the A/G/J1 flat-size ZIP+4 Barcoded rates. The 5-digit barcoded pieces in these packages can qualify for the A/G/J1 presort rate. See 411.2 and 411.3.

571.125 Residual Packages. Pieces bearing a ZIP+4 barcode or delivery point barcode in a residual package prepared under 573.27 can qualify for the A/G/J1 flat-size ZIP+4 Barcoded rates. The 5-digit barcoded pieces in

these packages can qualify for the A/G/J1 presort rate. See 411.2 and 411.3.

571.13 Third-Class Mailings

571.131 5-Digit and 3-Digit Packages. Pieces bearing a ZIP+4 barcode or delivery point barcode in 5-digit or 3-digit packages prepared under 572.1 and 573.1 and properly sacked or palletized under 573.2 or 576 can qualify for the 3/5 flat-size ZIP+4 Barcoded rate. Other pieces in these packages can qualify for the 3/5 presort rate.

571.132 SCF Packages. Pieces bearing a ZIP+4 barcode or delivery point barcode in SCF packages prepared under 572.1 and 573.1 and properly sacked or palletized under 573.2 or 576 can qualify for the basic flat-size ZIP+4 Barcoded rate. Other pieces in these packages can qualify for the basic presort rate.

571.133 Residual Packages. Pieces bearing a ZIP+4 barcode or delivery point barcode in residual packages prepared under 573.27 can qualify for the basic flat-size ZIP+4 Barcoded rate. Other pieces in these packages can qualify for the basic presort rate.

571.2 Nonpresorted First Class Mailings. See 577.1.

572 GENERAL PACKAGING AND SACKING

[*Delete current 572.1 through 572.3.*]

572.1 General Package Preparation. [Insert current 572.4. Renumber subsections and internal references accordingly.]

572.2 General Requirements for Sack Preparation. [Insert current 572.5. Renumber subsections and internal references accordingly. In renumbered 572.232b—Tray/Pouch Labels, change the reference "561.47" to "561.27".]

573 Package and Sack Sortation Requirements for Presorted Flat-Size Barcoded Mailings. [Insert current 573. Change all references "572.42" to "572.12." Change all references "572.442" to "572.142".]

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576 PALLETIZATION OF PRESORTED FLAT-SIZE ZIP+4 BARCODED RATE PACKAGES

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576.3 Package Preparation. [In current 576.3, change the reference "572.4" to "572.1."]

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577.1 Rate Eligibility. Pieces that bear the correct ZIP+4 barcode or delivery point barcode prepared under 551, and that meet the requirements of 513, 516, and this section qualify for the nonpresorted flat-size ZIP+4 Barcoded rate. Remaining pieces that bear the correct 5-digit barcode prepared under 552, and that meet the requirements of 513, 516, and this section qualify for the single-piece First-Class rate.

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577.212 Packaging. [In current 577.212 change the reference "572.4" to "572.1". Change the reference "572.442" to "572.142."]

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577.221 ZIP Code Sequencing and Listing

a. Packaging. [In current 577.221a, change the reference "572.4" to "572.1." Change the reference "572.442" to "572.142."]

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577.222 Physical Separation Option for Mailings of Identical Weight Pieces. [In current 577.222, change the reference "572.422" to "572.122."]

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580 Postage Payment

581 FIRST-CLASS ZIP+4 PRESORT, ZIP+4 BARCODED RATE, NONPRESORTED ZIP+4 RATE, AND NONPRESORTED ZIP+4 BARCODED RATE MAILINGS

581.1 Permit Imprint

581.11 General. The requirements of 145 must be met.

581.12 Identical-Weight Pieces

581.121 Letter-Size Mailings Prepared Under 560. Identical-weight mailings may have postage paid by permit imprint. The documentation required in 562.14 or 563.5 (or, through March 20, 1993, 365.3, 366.3, or 562.25) must accompany ZIP+4 Presort mailings. The documentation required by 564.14, 565.5, or 566.6 (or, through March 20, 1993, 364.2, 364.7, 564.24, or 567.6) must accompany letter-size ZIP+4 Barcoded rate mailings. For nonpresorted ZIP+4 rate mailings that are not 100% ZIP+4 coded, the documentation required by 569.122b(3) must accompany the mailing, or the trays must be grouped by the tray separations required by 569.122c upon presentation for acceptance. For nonpresorted ZIP+4 barcoded rate mailings that are not 100% ZIP+4 or delivery point barcoded, the documentation required by 569.222b(3) must accompany the mailing, or the trays must be grouped by the tray separations required by 569.222c upon presentation for acceptance.

581.122 Flat-Size Mailings Prepared Under 570. Identical-weight mailings may have postage paid by permit imprint. The documentation required by 574 or 575 must accompany presorted flat-size ZIP+4 Barcoded rate mailings. For nonpresorted flat-size ZIP+4 Barcoded rate mailings that contain 5-digit barcoded pieces, the documentation required by 577.221c must accompany the mailing, or the sacks must be grouped by the separations required by 577.22.

581.13 Nonidentical-Weight Pieces. Pieces of nonidentical-weight (in either letter-size mailings or in flat-size mailings) may be paid by permit imprint only under a manifest mailing system, optional procedure, or alternate mailing system procedure authorized by the general manager, rates and classification center (see 145.7, 145.8, or 145.9). Letter-size ZIP+4 Barcoded rate mailings may also be granted authorization to mail under combined mailing procedures under 581.5 and 581.6 by the general manager, rates and classification center.

581.2 Payment by Metered Postage

581.21 General Letter-Size and Flat-Size Mailings. The requirements of 144 must be met. Meters may be used to pay postage for mailings of both identical-weight and nonidentical-weight pieces. Either each piece in the mailing must have postage affixed at the exact rate of postage for which it qualifies (including postage for additional ounces) as described in 581.22; or all pieces in the mailing must have postage affixed at the lowest rate for which any piece in the mailing qualifies (including postage for additional ounces) as described in 581.22. In addition, mailers may prepare mailings under 581.4, in which neither the lowest rate nor the correct rate for the first ounce is affixed to each piece, and postage is paid based on the assumption that the lowest amount of postage for the first-ounce affixed to any one piece is affixed to all pieces. In all cases, whenever pieces in metered mailings weigh over one ounce, the appropriate amount of postage to cover the additional ounce or ounces of postage as set forth in 310 must be affixed to each piece. Letter-size ZIP+4 Barcoded rate mailings may also be prepared under procedures for value added refunds in 147.42, and under procedures for combined mailings under 581.5 and 581.6.

581.22 Exact Postage Affixed to Each Piece

581.221 ZIP+4 Presort Rate Mailings (Letter-Size Only). Pieces qualifying for the ZIP+4 Presort rate, the Presorted First-Class Rate, the nonpresorted ZIP+4 rate, and the single-piece First-Class rate are each metered at the corresponding rate for which they qualify, including postage to cover additional ounce increments when pieces weigh more than 1 ounce. If

postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must be metered at the applicable postcard rates, and letter-rate pieces must be metered at the applicable letter rates.

581.222 ZIP+4 Barcoded Rate Mailings

a. Letter-Size Mailings Prepared Under 560. Pieces qualifying for the 5-digit ZIP+4 Barcoded rate, the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, the Presorted First-Class rate, the nonpresorted ZIP+4 Barcoded rate (cards only), the nonpresorted ZIP+4 rate, and the single-piece First-Class rate are each metered at the corresponding rate for which they qualify, including postage to cover additional ounce increments when pieces weigh more than one ounce. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must be metered at the applicable postcard rates, and letter-rate pieces must be metered at the applicable letter rates.

b. Flat-Size Mailings Prepared Under 570. Pieces qualifying for the ⅗ Barcoded ZIP+4 Barcoded rate, the Presorted First-Class rate, the flat-size nonpresorted ZIP+4 Barcoded rate, or the single-piece rate are each metered at the corresponding rate for which they qualify, including postage to cover additional ounce increments when pieces weigh more than 1 ounce, and if applicable, the nonstandard surcharge (see 315.1).

581.223 Nonpresorted ZIP+4 Rate Mailings (Letter-Size Only). Pieces qualifying for the nonpresorted ZIP+4 rate and for the single-piece First-Class rate are each metered at the rate for which they qualify, including postage to cover additional ounce increments when pieces weigh more than 1 ounce. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must be metered at the applicable postcard rates, and letter-rate pieces must be metered at the applicable letter rates.

581.224 Nonpresorted ZIP+4 Barcoded Rate Mailings

a. Card-Rate Mailings. Pieces qualifying for the nonpresorted ZIP+4 Barcoded rate, the nonpresorted ZIP+4 rate, and the single-piece First-Class rate are each metered at the corresponding postcard rate for which they qualify.

b. Flat-Size Mailings. Pieces qualifying for the flat-size nonpresorted ZIP+4 Barcoded rate or the single-piece rate are each metered at the corresponding rate for which they qualify, including postage to cover additional ounce increments when pieces weigh more than 1 ounce, and if applicable, the nonstandard surcharge (see 315.1).

581.23 Lowest Rate in Mailing Affixed to Each Piece

581.231 ZIP+4 Presort Rate Mailings (Letter-Size Only). All pieces in a ZIP+4 Presort mailing may have postage at the ZIP+4 Presort rate affixed to each piece in the mailing. When mailings contain pieces weighing more than 1 ounce, each piece must be appropriately metered to cover the additional ounce or ounces of postage. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must be metered at the ZIP+4 Presort postcard rate, and letter-rate pieces must be metered at the ZIP+4 presort letter rates. Additional first-ounce postage for pieces at the Presorted First-Class rate, the nonpresorted ZIP+4 rate and the single-piece rate is assessed on the difference between the ZIP+4 Presort rate and the rate for which each piece qualifies according to the documentation required in 562.14 or 563.5 (or, through March 20, 1993, 365.3, 366.3, or 562.25). The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

581.232 Presorted ZIP+4 Barcoded Rate Mailings

a. Letter-Size Mailings Prepared Under 560.

(1) *Mailings Containing Pieces Qualifying for the 5-Digit Barcoded Rate.* Where 5-digit trays are prepared under 564, or 5-digit packages are prepared under 565, 566, or 567, all pieces may have metered postage affixed at the 5-digit ZIP+4 Barcoded rate. When mailings contain pieces weighing more than 1 ounce, each piece must be appropriately metered to cover the additional ounce or ounces of postage. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must be metered at the 5-digit ZIP+4 Barcoded postcard rate, and letter-rate pieces must be metered at the 5-digit ZIP+4 Barcoded letter rates. Additional first-ounce postage for pieces at the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, the Presorted First-Class rate, the nonpresorted ZIP+4 Barcoded rate (cards only), the nonpresorted ZIP+4 rate and the single-piece rate is assessed on the difference between the 5-digit ZIP+4 Barcoded rate and the rate for which each piece qualifies according to the documentation required in 564.14, 565.5, 566.6 (or, through March 20, 1993, 364.2 or 567.6). The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

(2) *Mailings Not Containing Pieces Qualifying for the 5–Digit Barcoded rate.* Where a mailing prepared under 564 does not include 5-digit trays or a mailing under 565, 566, or 567 does not include 5-digit packages, all pieces may have metered postage affixed at the 3-digit ZIP+4 Barcoded rate. When mailings contain pieces weighing more than one ounce, each piece must be appropriately metered to cover the additional ounce or ounces of postage. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must be metered at the 3-digit ZIP+4 Barcoded postcard rate, and letter-rate pieces must be metered at the 3-digit ZIP+4 Barcoded letter rates. Additional first-ounce postage for pieces at the ZIP+4 Presort rate, the Presorted First-Class rate, the nonpresorted ZIP+4 Barcoded rate (cards only), the nonpresorted ZIP+4 rate, and the single-piece rate is assessed on the difference between the 3-digit ZIP+4 Barcoded rate and the rate for which each piece qualifies according to the documentation required in 564.14, 565.5, or 566.6 (or, through March 20, 1993, 364.2, 364.4, 564.24, or 567.7). The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

b. Flat Size ZIP+4 Barcoded Rate Mailings Prepared Under 570. All pieces in the mailing may have metered postage affixed at the ⅗ ZIP+4 Barcoded rate. When mailings contain pieces weighing more than one ounce, each piece must be appropriately metered to cover the additional ounce or ounces of postage. Additional first-ounce postage for pieces at the Presorted First-Class rate, the flat-size nonpresorted ZIP+4 Barcoded rate, and the single-piece rate is assessed on the difference between the ⅗ ZIP+4 Barcoded rate and the rate for which each piece qualifies according to the documentation required in 574 or 575. The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

581.233 Nonpresorted ZIP+4 Rate Mailings (Letter-Size Only). All pieces in

the mailing may be metered at the nonpresorted ZIP+4 rate. When mailings contain pieces weighing more than 1 ounce, each piece must be appropriately metered to cover the additional ounce or ounces of postage. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must be metered at the nonpresorted ZIP+4 postcard rate, and letter-rate pieces must be metered at the nonpresorted ZIP+4 Barcoded letter rates. Additional first-ounce postage for pieces at the single-piece First-Class rate is assessed based on the documentation required by 569.122b(3), or piece counts from the tray separations and groupings required by 569.122c (or, through March 20, 1993, based on 368.122 or 368.123). The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

581.234 Nonpresorted ZIP+4 Barcoded Rate Mailings

a. Card-Rate Mailings Prepared Under 560. All pieces in the mailing may be metered at the nonpresorted ZIP+4 Barcoded postcard rate. Additional postage for pieces at the nonpresorted ZIP+4 postcard rate, and the single piece First-Class postcard rate is assessed based on the documentation required by 569.222b(3), or piece counts from the tray separations and groupings required by 569.222c (or, through March 20, 1993, based on 368.222 or 368.223). The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

b. Flat-Size Mailings Prepared Under 570. All pieces in the mailing may be metered at the nonpresorted ZIP+4 barcoded rate. When mailings contain pieces weighing more than 1 ounce, each piece must be appropriately metered to cover the additional ounce or ounces of postage. When mailings contain 5-digit barcoded pieces, additional first-ounce postage for those pieces at the single-piece rate is assessed based on the documentation required by 577.221c, or piece counts based upon the sack separations required by 577.22. The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

581.3 Payment by Precanceled Stamps

581.31 General—Letter and Flat-Size Mailings. The requirements of 143 must be met. Precanceled stamps may be used to pay postage for mailings of both identical weight and nonidentical weight pieces. Postage must be paid by one of three methods: Exact postage affixed to each piece (including postage for additional ounces) under 581.32; postage at lowest rate in the mailing affixed to each piece (including postage for additional ounces) under 581.33; or a nondenominated stamp or stamp of a denomination less than the lowest rate in the mailing may be affixed to each piece in the mailing under 581.34. In addition, 581.4 contains procedures where neither the lowest rate nor the correct rate is affixed to each piece and mailers choose to pay postage based upon the assumption that the lowest amount of precanceled postage affixed to any one piece is affixed to all pieces. Letter-size ZIP+4 Barcoded rate mailings may also be prepared under procedures for combined mailings under 581.5 and 581.6.

581.32 Exact Postage Affixed to Each Piece

581.321 ZIP+4 Presort Rate Mailings (Letter-Size Pieces Only). Pieces qualifying for the ZIP+4 Presort rate, the Presorted First-Class Rate, the nonpresorted ZIP+4 rate, and the single-piece First-Class rate must each have precanceled stamps affixed at the corresponding rate for which they qualify, including postage to cover additional ounce increments if pieces weigh more than 1 ounce. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must have precanceled stamps affixed at the applicable postcard rates, and letter-rate pieces must have precanceled stamps affixed at the applicable letter-rates.

581.322 ZIP+4 Barcoded Rate Mailings

a. Letter-Size Mailings Prepared Under 560. Pieces qualifying for the 5-digit ZIP+4 Barcoded rate, the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, the Presorted First-Class rate, the nonpresorted ZIP+4 Barcoded rate (cards only), the nonpresorted ZIP+4 rate, and the single-piece First-Class rate must each have precanceled stamps affixed at the corresponding rate for which they qualify, including postage to cover additional ounce increment(s) if pieces weigh more than one ounce. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must have precanceled stamps affixed at the applicable postcard rates, and letter-rate pieces must have precanceled stamps affixed at the applicable letter-rates.

b. Flat-Size Mailings Prepared Under 570. Pieces qualifying for the 3/5 flat-size ZIP+4 Barcoded rate, the Presorted First-Class rate, the flat-size nonpresorted ZIP+4 Barcoded rate, or the single-piece rate must each have precanceled stamps affixed at the corresponding rate for which they qualify, including postage to cover additional ounce increments when pieces weigh more than 1 ounce, and if applicable, the nonstandard surcharge (see 315.1).

581.323 Nonpresorted ZIP+4 Rate Mailings (Letter-Size Only). Pieces qualifying for the nonpresorted ZIP+4 rate and for the single-piece First-Class rate must each have precanceled stamps affixed at the corresponding rate for which they qualify, including postage to cover additional ounce increments if pieces weigh more than 1 ounce. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must have precanceled stamps affixed at the applicable postcard rates, and letter-rate pieces must have precanceled stamps affixed at the applicable letter-rates.

581.324 Nonpresorted ZIP+4 Barcoded Rate Mailings

a. Card-Rate Pieces. Pieces qualifying for the nonpresorted ZIP+4 Barcoded rate, the nonpresorted ZIP+4 rate, and the single-piece First-Class rate must each have precanceled stamps affixed at the corresponding postcard rate for which they qualify.

b. Flat Size Mailings. Pieces qualifying for the flat-size nonpresorted ZIP+4 Barcoded rate or the single-piece rate are each metered at the corresponding rate for which they qualify, including postage to cover additional ounce increments when pieces weigh more than 1 ounce, and if applicable, the nonstandard surcharge (see 315.1).

581.33 Lowest Rate in Mailing Affixed to Each Piece

581.331 ZIP+4 Presort Rate Mailings (Letter-Size Only). All pieces in a ZIP+4 Presort mailing may have precanceled stamps at the ZIP+4 Presort rate affixed to each piece in the mailing, including postage to cover additional ounce increments if pieces weigh more than 1 ounce. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must have precanceled postage affixed at the ZIP+4 Presort postcard-rate and letter-rate pieces must have precanceled postage affixed at the ZIP+4 Presort

letter rates. Additional first-ounce postage for pieces at the presorted first-class rate, the nonpresorted ZIP+4 rate, and the single-piece rate is assessed on the difference between the ZIP+4 Presort rate and the rate for which each piece qualifies according to the documentation required in 562.14 or 563.5 (or, through March 20, 1993, 365.3, 366.3, or 562.25). The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

581.332 ZIP+4 Barcoded Rate Mailings

a. Letter-Size Mailings Prepared Under 560.

(1) *Mailings Containing Pieces Qualifying for the 5-Digit Barcoded Rate.* Where 5-digit trays are prepared under 564, or 5-digit packages are prepared under 565, 566 or 567, all pieces may have precanceled stamps affixed at the 5-digit ZIP+4 Barcoded rate, including postage to cover additional ounce increments if pieces weigh more than 1 ounce. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must have precanceled postage affixed at the 5-digit ZIP+4 Barcoded postcard-rate, and letter-rate pieces must have precanceled postage affixed at the 5-digit ZIP+4 Barcoded letter rates. Additional first-ounce postage for pieces at the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, the Presorted First-Class rate, the nonpresorted ZIP+4 Barcoded rate (cards only), the nonpresorted ZIP+4 rate, and the single-piece rate is assessed based on the difference between the 5-digit ZIP+4 Barcoded rate and the rate for which each piece qualifies according to the documentation required in 564.14, 565.5, or 566.6 (or, through March 20, 1993, 364.2, or 567.7). The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

(2) *Mailings Not Containing Pieces Qualifying for the 5-Digit Barcoded Rate.* Where a mailing prepared under 564 does not include 5-digit trays, or a mailing under 565, 566, or 567 does not include 5-digit packages, all pieces may have precanceled stamps affixed at the 3-digit ZIP+4 Barcoded rate, including postage to cover additional ounce increments if pieces weigh more than 1 ounce. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must have precanceled postage affixed at the 3-digit ZIP+4 Barcoded postcard rate, and letter-rate pieces must have precanceled postage affixed at the 3-digit ZIP+4 Barcoded letter rates. Additional first-ounce postage for pieces at the ZIP+4 Presort rate, the Presorted First-Class rate, the nonpresorted ZIP+4 Barcoded rate (cards only), the nonpresorted ZIP+4 rate, and the single-piece rate is assessed on the difference between the 3-digit ZIP+4 Barcoded rate and the rate for which each piece qualifies according to the documentation required in 564.14, 565.5, or 566.6 (or, through March 20, 1993, 364.2, 364.4, 564.24, or 567.7). The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

b. Flat-Size Mailings. All pieces in the mailing may have precanceled stamps affixed at the 3/5 ZIP+4 Barcoded rate, including postage to cover additional ounce increments if pieces weigh more than 1 ounce. Additional first-ounce postage for pieces at the Presorted First-Class rate, the flat-size nonpresorted ZIP+4 Barcoded rate, and the single-piece rate is assessed upon the difference between the 3/5 ZIP+4 Barcoded rate and the rate for which each piece qualifies according to the documentation required in 574 or 575. The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

581.333 Nonpresorted ZIP+4 Rate Mailings (Letter-Size Only). All pieces in the mailing may have precanceled stamps affixed at the nonpresorted ZIP+4 rate, including postage to cover additional ounce increments if pieces weigh more than ounce. If postcard-rate and letter-rate pieces are included in the same mailing, postcard-rate pieces must have precanceled postage affixed at the nonpresorted ZIP+4 postcard rate, and letter-rate pieces must have precanceled postage affixed at the nonpresorted ZIP+4 letter rates. Additional first-ounce postage for pieces at the single-piece First-Class rate is assessed based on the documentation required by 569.122b(3), or piece counts from the tray separations and groupings required by 569.122c (or, through March 20, 1993, based on 368.122 or 368.123). The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

581.334 Nonpresorted ZIP+4 Barcoded Rate Mailings

a. Card-Rate Mailings. All pieces in the mailing may have precanceled stamps affixed at the nonpresorted ZIP+4 Barcoded postcard rate. Additional postage for pieces at the nonpresorted ZIP+4 postcard rate, and the single-piece First-Class postcard rate is assessed based on the documentation required by 569.222b(3), or piece counts from the tray separations and groupings required by 569.222c (or, through March 20, 1993, based on 368.222 or 368.223). The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

b. Flat-Size Mailings. All pieces in the mailing may have precanceled stamps affixed at the flat-size nonpresorted ZIP+4 Barcoded rate, including postage to cover additional ounce increments if pieces weigh more than 1 ounce. When mailings contain 5-digit barcoded pieces, additional postage for those pieces at the single-piece rate is assessed based on the documentation required by 577.221c, or piece count based upon the sack separations required by 577.22. The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

581.34 Nondenominated Precanceled Stamps or Precanceled Stamps of Denomination Less than Lowest Rate in Mailing Affixed to Each Piece

581.341 Description. A nondenominated precanceled stamp may be affixed to each piece in the mailing if available. Precanceled stamps of a denomination less than the first ounce of the lowest rate in the mailing may also be affixed to each piece if the stamps do not bear an inappropriate rate marking. The same denomination of stamp must be affixed to each piece in the mailing. If nondenominated stamps are used, nondenominated stamps must be affixed to each piece in the mailing.

581.342 Computation of Additional Postage Owed

a. Letter-Size Mailings Prepared Under 560. Mailers must pay the additional postage totaling the difference between the face value (or purchase price) of the precanceled stamp and the amount of actual postage owed for each piece in the amount documented under 562.14 or 563.5 (or, through March 20, 1993, 365.3, 366.3, or

562.25), for ZIP+4 Presort rate mailings and in the amount documented under 564.14, 565.5, or 566.6 (or, through March 20, 1993, 364.2, 364.4, 564.24, and 567.6), for ZIP+4 Barcoded rate mailings. For Nonpresorted ZIP+4 and Nonpresorted ZIP+4 Barcoded rate mailings, mailers must pay additional postage totaling the difference between the face value (or purchase price) of the precanceled stamps and the amount of actual postage owed based on the documentation required by 569.122b(3) or 569.222b(3), or based on the piece counts from the tray separations and groupings required by 569.122c or 569.222c (or, through March 20, 1993, based on 368.122 or 368.123 for nonpresorted ZIP+4 rate mailings, or based upon 368.222 or 368.223 for nonpresorted ZIP+4 Barcoded rate mailings.

b. Flat-Size Mailings Prepared Under 570. Mailers must pay the additional postage totaling the difference between the face value of the precanceled stamp and the amount of actual postage owed for each piece in the amount documented under 574 or 575 for presorted flat-size ZIP+4 Barcoded rate mailings. For flat-size nonpresorted ZIP+4 Barcoded rate mailings the additional postage totaling the difference between the face value (or purchase price) of the precanceled stamp and the amount of actual postage owed based on the documentation required by 577.221c, or pieces counts based on the sack separations under 577.22.

581.343 Method of Paying Additional Postage. The additional postage must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

581.4 Neither Lowest Rate Nor Exact Postage Affixed to Each Piece (Metered or Precanceled Stamp Mailings)

581.41 General. Where it is not practicable for the mailer to affix the exact postage to each piece as required by 581.22 or 581.32, or to affix the lowest postage rate to all pieces in the mailing as required by 581.23 and 581.33, postage for the mailing may be computed as if the lowest rate affixed to any piece in the mailing is affixed to all pieces as provided in 581.42 and 581.43. In such mailings, all pieces must bear metered postage, or all pieces must bear precanceled stamps. (Only letter-size mailings prepared under 560 may include both metered and precanceled postage if prepared as provided in 581.5 and 581.6.) If metered postage is affixed, and pieces weigh more than 1 ounce, the postage affixed to each piece may have different first-ounce rates affixed, but each piece must have postage affixed to cover the additional ounce increments.

581.42 Adding Postage. Additional postage for the mailing must be based on the difference between the actual amount of postage owed for the mailing and the product obtained by multiplying the lowest rate affixed to any piece in the mailing times the total number of pieces in the mailing. The actual amount of postage owed for the mailing is determined from the documentation required under 560 for letter-size ZIP+4 rate or ZIP+4 Barcoded rate mailings and from the documentation required under 570 for flat-size ZIP+4 barcoded rate mailings. No refund is paid on any piece where postage is affixed at a rate higher than the lowest rate claimed for or affixed to any piece. For example, if a letter-size ZIP+4 Barcoded rate mailing contains pieces bearing 5-digit ZIP+4 Barcoded rate postage, as well as pieces bearing Presorted First-Class postage, ZIP+4 Presort postage, and nonpresorted ZIP+4 postage, the computation of additional postage due for the mailing based upon the documentation required by 560 is computed as if all pieces in the mailing had the 5-digit ZIP+4 barcoded rate of postage affixed.

581.43 Payment. [Copy current 382.43.]

581.5 ZIP+4 Barcoded Rate Combined Mailings With Different Postage Payment Methods

[Insert current section 382.6. Renumber subsections and references accordingly.]

581.6 Combined Mailing Documentation Submission Requirements

[Insert 382.7. Renumber subsections and references accordingly.]

582 Second-Class ZIP+4 and ZIP+4 Barcoded Rate Mailings. Postage must be paid for second-class ZIP+4 and ZIP+4 Barcoded rate mailings as described in 462. The documentation described in 562.5, 563.5, 564.5, or 565.7 must be used to substantiate the per piece rates claimed on the mailing statement. Additional documentation to substantiate other elements on the mailing statement may be required as set forth in 424.84.

583 THIRD-CLASS ZIP+4 AND ZIP+4 BARCODED RATE MAILINGS

583.1 Permit Imprint

583.11 General. The requirements in 145 must be met.

583.12 Identical Weight Pieces. [Copy current 661.311. Change the Chapter 5 references to read "in 562.14, 562.25, 563.5, 564.14, 564.24, 565.5, 566.6, 567.6, 574, or 575." Delete all Chapter 6 references.]

583.13 Nonidentical-Weight Pieces. [Copy current 661.312. Insert the phrase "or ZIP+4 Barcoded rate combined mailing procedure" in front of the word authorized. Add the reference 583.4 to the end of the section.

583.2 Metered Postage

583.21 General. Meters may be used to pay postage for mailings of both identical weight and nonidentical weight pieces. Postage may be paid by either of the methods described in 583.23 or 583.24. When flat-size mailings contain pieces subject to the pound rates, the rate of postage is computed as described in 583.22. Flat-size mailings that are metered may contain both pieces subject to minimum per piece rates (pieces weighing 3.3067 ounces or less at regular rates or pieces weighing 3.3367 ounces or less at special rates) and pieces subject to pound rates.

583.22 Computation of Postage at Pound Rates. For flat-size mailings subject to pound-rates, postage for each piece is computed by multiplying the weight of the piece in decimal pounds by the pound rate, adding this amount to the applicable per-piece rate and rounding the sum up to the nearest tenth of a cent or whole cent that can be printed. As an alternative, mailers may meter the applicable per-piece rate to each piece and pay the pound rate portion of the postage for the entire mailing through a permit imprint advance deposit account, provided the entire mailing qualifies for the same pound rate (i.e. qualifies for the same destination entry rate). When this alternative method is used each piece in the mailing must bear the endorsement "Pound Rate Pd via Permit." The marking may be made via postage meter, special slug, ad plate, or other suitable means that ensures a legible endorsement.

583.23 Exact Postage Affixed to Each Piece. [Copy current 662.322. Renumber subsections and references accordingly. Delete all references to 624 and 628. Change all references "562.16, 563.24, or 564.6" to read "562.14, 562.25, 563.5, 564.14, 564.24, 565.5, 566.6, 567.6."]

583.24 Lowest Rate in Mailing Affixed to Each Piece. [Copy current 661.323. Renumber subsections and references accordingly. Delete all references to 624 and 628. Change all references "562.16, 563.24, or 564.6" to

read "562.14, 562.25, 563.5, 564.14, 564.24, 565.5, 566.6, 567.6."]

583.25 Neither Lowest Rate nor Correct Postage Rate Affixed to Each Piece

583.251 General. Where it is not practicable for the mailer to affix the exact postage to each piece as required by 583.23 or to affix the lowest postage rate to all pieces in the mailing as required by 583.24, postage for the mailing may be computed as if the lowest rate affixed to any piece in the mailing is affixed to all pieces as provided in 583.252 and 583.253. In such mailings, all pieces must bear metered postage or all pieces must bear precanceled stamped postage affixed. (Only letter-size mailings prepared under 560 may include both metered and precanceled postage if prepared as provided in 583.4 and 583.5.) If precanceled stamps are not available at either the lowest rate or at the exact rate of postage for ZIP+4 and ZIP+4 Barcoded rate mailings, the procedures in 583.3 may be followed for precanceled stamp mailings at these rates provided the same denomination of precanceled stamp is affixed to each piece in the mailing.

583.252 Adding Postage. [Copy current 661.324b. Add the following as the second sentence: "The amount of postage owed is based on the documentation required for the ZIP+4 or ZIP+4 Barcoded rate mailing under the applicable section of 560 or 570."]

583.253 Payment. [Copy current 661.324c.]

583.3 Precanceled Stamps or Precanceled Stamped Envelopes

[Copy current: 661.33. Delete the second sentence. Renumber references appropriately. After the sentence "The same denomination of stamp must be affixed to each piece in the mailing" add the following sentence: "If nondenominated stamps are used, nondenominated stamps must be affixed to each piece in the mailing." Delete all references to 624 and 628. Change all references "562.16, 563.24, or 564.6" to read "562.14, 562.25, 563.5, 564.14, 564.24, 565.5, 566.6, 567.6."]

583.4 ZIP+4 Barcoded Rate Combined Mailings With Different Postage Payment Methods

[Insert current 661.4. Renumber subsections and references accordingly.]

583.5 Combined Mailing Documentation Submission Requirements

[Insert 661.5. Renumber subsections and references accordingly.]

6. Revise Chapter 6 to read as follows.

CHAPTER 6—THIRD CLASS MAIL

611 RATES

* * * * *

611.2 Bulk Rates

* * * * *

611.22 Rate Structure

* * * * *

611.222 Postage Discounts and Reductions.

* * * * *

b. Automation.

* * * * *

624 CONDITIONS FOR SPECIFIC BULK RATE PREPARATION LEVELS

* * * * *

624.223 3/5 Presort Rate Eligibility. To be eligible for the 3/5 presort rate, pieces must be prepared in one of the following ways:

* * * * *

c. Until March 21, 1993, in an * * * [insert current 624.223c. Delete the last sentence.]

d. In full or overflow 5-digit and 3-digit trays prepared in accordance with ZIP+4 tray-based requirements in 562.2.

e. In full or overflow 5-digit, 3-digit, and SCF trays prepared in accordance with ZIP+4 tray-based requirements in 562.1.

f. In 5-digit and 3-digit packages prepared in accordance with ZIP+4 package-based requirements in 563.

g. In 5-digit, 3-digit and SCF trays prepared in accordance with letter-size ZIP+4 barcoded tray-based requirements in 564.

h. In 5-digit and 3-digit packages prepared in accordance with letter-size ZIP+4 barcoded package-based requirements in 565, 566, or 567.

i. In 5-digit and 3-digit packages prepared in accordance with 3/5 flat-size ZIP+4 Barcoded rate requirements in 570.

[Renumber current 624.223d through g as 624.223j through m.]

624.23 Residual. [Insert text of current 624.23. Change the reference "624.223g" to "624.223m".]

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624.72 Destination Bulk Mail Center (DBMC) Rate

* * * * *

624.723 Separation of Pieces by Rate

a. When Required. [Separate SDC, state, mixed states, or residual sacks, or separate AADC or residual trays, (as permitted by the presort requirements for the rate claimed) must be prepared for pieces eligible for the DBMC rate if the mailer includes them in that portion of the mailing claimed at the DBMC rate, and the facility to which the sacks, trays or pallets are labeled is within the DBMC service area.

* * * * *

624.73 Destination Sectional Center Facility (DSCF) Rate

* * * * *

624.732 Eligibility. [Revise the phrase "and placed in other than an SDC, BMC, state, or mixed states, tray, sack, or pallet" to read "and placed in other than an SDC, BMC, state, mixed states, AADC, ADC, or residual, tray, sack, or pallet."]

* * * * *

[Delete current 628. Insert the following:]

628.1 Eligibility Requirements for ZIP+4 Third-Class Mail (Letter Size Pieces Only)

628.11 General. ZIP+4 rate mailings must meet the requirements specified in 513 and 514. The rate eligibility criteria for mailings presorted under 562.1, 562.2, or 563 are contained in 562.113, 562.223, and 563.13. The rate eligibility criteria for mailings presorted under 628.311 are contained in 628.12 through 628.16.

628.12 Mailings Prepared Under 641 (Available Only Through March 20, 1993). ZIP+4 coded pieces in a 5-digit, optional city, or 3-digit package of 10 or more pieces that are correctly sacked in a 5-digit, optional city, or 3-digit sack that contains at least 125 pieces or 15 pounds of pieces under 641.1, can qualify for the 3/5 ZIP+4 rate. Pieces that bear a ZIP+4 code in 5-digit, optional city, 3-digit, optional SCF, state, optional SDC, and mixed states packages that are correctly sacked in SCF, optional SDC, state, or mixed states sacks under 641.1 can qualify for the basic ZIP+4 rate. Other pieces packaged and sacked in this manner can qualify for the basic presort rate.

628.13 Mailings Prepared Under 647 (Available Only Through March 20, 1993). ZIP+4 coded pieces in an optional firm, 5-digit, optional city, or 3-digit package of 10 or more pieces correctly trayed in a full 5-digit, optional city, or 3-digit tray as described in 641.135, 647.3, and 647.4 can qualify for the 3/5 ZIP+4 rate. Other pieces packaged and trayed in this manner can qualify for the 3/5 presort rate. Pieces that bear a ZIP+4 code in optional firm, 5-digit, optional city, 3-digit, optional SCF, state, optional SDC, and mixed states packages that are correctly trayed in SCF, optional SDC, state, or mixed states sacks under 641.135 and 647 can qualify for the basic ZIP+4 rate. Other

pieces packaged and sacked in this manner can qualify for the basic presort rate.

628.14 Optional Automated Site Mailings Prepared Under 628.3 (Available Only Through March 20, 1993). ZIP+4 coded pieces in optional city or 3-digit packages of 10 or more pieces correctly sacked in an optional city, or 3-digit sack that contains at least 125 pieces or 15 pounds of mail under 641.135, can qualify for the 3/5 ZIP+4 rate. Other pieces packaged and sacked in this manner can qualify for the 3/5 presort rate. Pieces for other destinations are not permitted in the mailing.

628.15 Optional Automated Site Mailings Prepared Under 647 (Available Only Through March 20, 1993). ZIP+4 coded pieces in an optional city, or 3-digit package of 10 or more pieces correctly trayed in a full optional city or 3-digit tray as described in 641.135, 647.3 and 647.4, can qualify for the 3/5 ZIP+4 rate. Other pieces packaged and trayed in this manner can qualify for the 3/5 presort rate.

628.16 Eligibility of Pieces Prepared With Barcodes. See 514.12 through 514.14.

628.2 Eligibility Requirements for ZIP+4 Barcoded Rate Mail

628.21 Mailings of Letter-Size Pieces

628.211 General. ZIP+4 Barcoded rate mailings must meet the requirements specified in 513 and 515. The rate eligibility criteria for mailings presorted under 564, 565, 566, or 567 are contained in 564.113, 564.223, 565.23, 566.23, and 567.23. The rate eligibility criteria for mailings presorted under 628.312 are contained in 628.212 through 628.216.

628.212 Mailings Prepared Under 641 (Available Only Through March 20, 1993).

a. Pieces in 5-Digit Packages Sorted to 5-Digit, Optional City, and 3-Digit Sacks Under 641.1. Pieces that bear the ZIP+4 barcode or delivery point barcode can qualify for the 5-Digit ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address as specified in 530 and meet the requirements of 540 can qualify for the 3/5 ZIP+4 rates. Other pieces qualify for the 3/5 presort rates.

b. Pieces in Optional City and 3-Digit Packages Sorted to Optional City and 3-Digit Sacks Under 641.1. Pieces that bear the ZIP+4 barcode or delivery point barcode can qualify for the 3-Digit ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address as specified in 530 and meet the requirements of 540 can qualify for the 3/5 ZIP+4 rates. Other pieces qualify for the 3/5 presort rates.

c. Pieces in Any Package Sorted to SCF, Optional SDC, State, and Mixed States Sacks Under 641.1. Pieces that bear the ZIP+4 barcode or delivery point barcode can qualify for the basic ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address as specified in 530 and meet the requirements of 540 can qualify for the basic ZIP+4 rates. Other pieces qualify for the basic presort rates.

628.213 Mailings Prepared Under 647 (Available Only Through March 20, 1993)

a. Pieces in Optional Firm and 5-Digit Packages Sorted to 5-Digit, Optional City, and 3-Digit Trays Under 647. Pieces that bear the ZIP+4 barcode or delivery point barcode can qualify for the 5-digit ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address as specified in 530 and meet the requirements of 540 can qualify for the 3/5 ZIP+4 rates. Other pieces qualify for the 3/5 presort rates.

b. Pieces in Optional City and 3-Digit Packages Sorted to Optional City and 3-Digit Trays Under 647. Pieces that bear the ZIP+4 barcode or delivery point barcode can qualify for the 3-Digit ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address as specified in 530 and meet the requirements of 540 can qualify for the 3/5 ZIP+4 rates. Other pieces qualify for the 3/5 presort rates.

c. Pieces in Any Package Sorted to SCF, Optional SDC, State, and Mixed States Trays Under 647. Pieces that bear the ZIP+4 barcode or delivery point barcode can qualify for the basic ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address as specified in 530 and meet the requirements of 540 can qualify for the basic ZIP+4 rates. Other pieces qualify for the basic presort rates.

628.214 Optional Automated Site Mailings Prepared Under 628.3 (Available Only Through March 20, 1993). Pieces in optional city or 3-digit packages of 10 or more pieces correctly sacked in an optional city, or 3-digit sack that contains at least 125 pieces or 15 pounds of mail under 641.135, can qualify for rates as follows:

a. Pieces that bear the ZIP+4 barcode or delivery point barcode can qualify for the 3-Digit ZIP+4 Barcoded rate.

b. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address as specified in 530 and meet the requirements of 540 can qualify for the 3/5 ZIP+4 rates.

c. Other pieces qualify for the 3/5 presort rates.

628.215 Optional Automated Site Mailings Prepared Under 647 (Available Only Through March 20, 1993). Pieces in an optional city, or 3-digit package of 10 or more pieces correctly trayed in a full optional city or 3-Digit tray as described in 641.135, 647.3 and 647.4, can qualify for rates as follows:

a. Pieces that bear the ZIP+4 barcode or delivery point barcode can qualify for the 3-digit ZIP+4 Barcoded rate.

b. Pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address as specified in 530 and meet the requirements of 540 can qualify for the 3/5 ZIP+4 rates.

c. Other pieces qualify for the 3/5 presort rates.

628.22 Mailings of Flat Size Pieces. ZIP+4 Barcoded rate mailings must meet the requirements specified in 513 and 516. The rate eligibility criteria are contained in 571.13.

628.3 Presort and Docmentation Requirements for Letter-Size ZIP+4 and ZIP+4 Barcoded Rate Mailings Not Presorted Under Chapter 5 (Available Only Until March 21, 1993)

628.31 Presort Requirements

628.311 ZIP+4 Mailings

a. General Requirements. All pieces in ZIP+4 rate mailings must be presorted together as required by 641.

b. Optional Sortation to Automated Sites. [Insert 628.26.]

c. Additional Sack Labeling Requirements. [Insert 628.27.]

d. Optional Use of Trays. ZIP+4 rate mailings may be prepared in trays rather than sacks as provided in 647.3.

628.312 Letter-Size ZIP+4 Barcoded Rate Mailings

a. General Requirements. All pieces in ZIP+4 Barcoded rate mailings must be presorted together as required by 641.

b. Optional Sortation to Automated Sites. [Insert 628.36.]

c. Additional Sack Labeling Requirements. [Insert 628.37.]

d. Optional Use of Trays. ZIP+4 Barcoded rate mailings may be prepared

in trays rather than sacks as provided in 647.

628.32 Documentation

628.321 General Requirements. [Insert current 628.13. Renumber subsections accordingly. Change the reference "628.131" to "628.321a" in current 628.122 (new 628.321b). Change the phrase "(see 628.212 and 628.312)" to "(see 628.13 and 628.213)" in current 628.132d (new 628.321b(4)). Change the phrase "(see 628.2 and 628.3)" to (see 628.322 and 628.3231)" in current 628.132f (new 628.321b(6)). Change the phrase "(see 628.212 and 628.312)" to "(see 628.13 and 628.213)" in current 628.133 (new 628.321c(3)). Change the reference "628.132" to "628.321b" in current 628.133d (new 628.321c(4)).

628.322 Additional Requirements for ZIP+4 Rate Mailings.

[Insert current 628.24. Change the reference "628.13" to "628.321".]

628.323 Additional Requirements for ZIP+4 Barcoded Rate Mailings. [Insert current 628.34. Change the reference "628.13" to "628.321".]

647 TRAY PREPARATION

647.1 3/5 and Basic Rate Mailings

647.11 Authorized Use. Trays may be used instead of sacks to prepare 3/5 and basic rate mailings only if authorized by the postmaster of the accepting post office. Authorization is granted only when the mail to be trayed is for delivery within the SCF of mailing. See 641.138.

647.12 Rate Eligibility. Mailings prepared in trays can qualify for 3/5 rates as described in 624.223b. Remaining pieces can qualify for basic rates. Mailings prepared in trays can qualify for the destination entry rates if the applicable requirements in 624.7 are met, and sufficient volume of mail per tray (see 647.41) is generated for the applicable destinations.

647.13 Packaging. Mailings prepared in trays must be packaged as required by 641.12, except as provided below.

647.131 5-Digit Trays. [Insert current 647.213.]

647.132 Optional City Trays. [Insert current 647.214.]

647.33 3-Digit Trays. [Insert current 647.215.]

647.14 Traying. Trays must be prepared in the same sequence as required for sacks under 641.135. A tray must be prepared for a required presort destination when the corresponding pieces (or packages of pieces) fill a tray. Trays that are less than full may not be prepared unless a sack containing fewer than 125 pieces and less than 15 pounds of pieces to the same destination is permitted under 641.135. See 647.4 for a definition of a full tray, provisions for overflow trays, and other traying requirements. The information placed on tray labels is the same as that for sacks.

647.2 Carrier Route and Walk-Sequence Mailings in Trays

647.21 Authorized Use. Trays may be used instead of sacks to prepared carrier route rate mailings only if authorized by the postmaster of the accepting post office. Authorization is granted only when the mail to be trayed is for delivery within the SCF of mailing. See 641.43.

647.22 Rate Eligibility. Mailings prepared in trays can qualify for carrier route or walk-sequence rates if the applicable provisions of 624.1, 624.3, 624.8 (if applicable), and 647.2 are met. Mailings prepared in trays can qualify for destination entry rates if the applicable requirements in 624.7 are met.

647.23 Packaging. Mailings prepared in trays must be packaged as required by 641.41, except that [insert current 647.212].

647.24 Traying. Trays must be prepared in the same sequence as required for sacks under 641.42. A tray must be prepared for a required presort destination when the corresponding pieces (or packages of pieces) fill a tray. Trays that are less than full may not be prepared unless a sack containing fewer than 125 pieces and less than 15 pounds of pieces to the same destination is permitted under 641.42. See 647.4 for a definition of a full tray, provisions for overflow trays, and other traying requirements. The information placed on tray labels is the same as that for sacks.

647.3 ZIP+4 and ZIP+4 Barcoded Rate Mailings in Trays

647.31 Mailings Prepared Under 560. Mailings must meet the requirements of the applicable preparation option in 560.

647.32 Letter-Size Mailings Not Prepared Under 560 (Available Only Through March 20, 1993)

647.321 Rate Eligibility (Mailings Not Prepared in Accordance with 560). ZIP+4 rate mailings prepared in trays qualify for rates as described in 628.13 or 628.15. ZIP+4 Barcoded rate mailings prepared in trays qualify for rates as described in 628.213 or 628.215. Mailings prepared in trays can qualify for destination entry rates if the applicable requirements in 624.7 are met.

647.322 Presort

a. Required preparation. (1) *Packaging.* (a) *General.* Mailings prepared in trays must be packaged as required by 641.12 except as provided below.

(b) *5-Digit Trays.* [Insert current 647.213.]

(c) *Optional City Trays.* [Insert current 647.214.]

(d) *3-Digit Trays.* [Insert current 647.215.]

(2) *Traying.* Trays must be prepared in the same sequence as required for sacks under 641.135. A tray must be prepared for a required presort destination when the corresponding pieces (or packages of pieces) fill a tray. Trays that are less than full may not be prepared unless a sack containing fewer than 125 pieces and less than 15 pounds of pieces to the same destination is permitted under 641.135. See 647.4 for a definition of a full tray, provisions for overflow trays, and other traying requirements. Tray labels must show the information specified for sacks in 641.133 and 641.135 followed by either ZIP+4 or Z+4 for ZIP+4 rate mailings and followed by either ZIP+4 Barcoded or Z+4 B/C for ZIP+4 Barcoded rate mailings.

b. Optional Automated Site Preparation. Mailers may prepare 3/5 ZIP+4 rate and 3-digit ZIP+4 Barcoded rate mailings without making 5-digit packages or trays if

(1) All pieces in the mailing are for destinations within the 3-digit ZIP Code ranges listed in Exhibit 122.63m.

(2) All pieces are prepared in optional city or 3-digit packages under 641.135c and 641.135d.

(3) All packages are trayed to full optional city or full 3-digit trays.

(4) Pieces not for a 3-digit destination in Exhibit 122.63m, and pieces that cannot be packaged and trayed in under 647.322b(2) and 647.322b(3) are prepared as a separate mailing.

647.4 General Traying Requirements

647.41 Minimum Volume per Tray. A tray must be prepared for a required presort destination when the corresponding pieces (or packages of pieces) fill a tray (see 647.42 and 647.43). Trays that are less than full may not be prepared unless a sack containing fewer than 125 pieces and less than 15 pounds of pieces to the same destination is permitted under 641.131b (Express Mail drop shipment), 641.135d, 641.135f and 641.135g (optional SCF, state, and mixed states), 641.421b (carrier route Express Mail drop shipment), 641.426 (exception for 5-digit carrier routes trays), and 641.427 (3-digit carrier routes trays).

647.42 Placement of Pieces in Trays. [Copy renumbered text of 561.42.]

647.43 Definition of Full Tray. [Copy renumbered text of 561.43. Do not

change Exhibit references. Change all other references to "561.42" to "647.42". Change all other references to "561.43" to "647.43."]

647.44 Overflow Trays. Mailers should balance the volume in trays when more than one is prepared for the same destination to ensure that the maximum number of full trays (as defined in 647.43) are prepared. After this step the remaining pieces for that destination may be placed in an overflow tray that is less than full. Pieces in overflow trays must be packaged and labeled. Only one overflow tray for a destination may be prepared. To allow accurate verification of the mailing by postal acceptance personnel, the mailer must provide a listing of all overflow trays except mixed states or 3-digit carrier routes trays, regardless of whether documentation is required for the rate claimed.

647.45 Sleeving and Banding. [Insert text of current 647.224.]

* * * * *

660 Payment of Postage

* * * * *

661.3 Bulk Mailings at ZIP+4 Rates and ZIP+4 Barcoded Rates (On March 21, 1993, these requirements will be located in 583 exclusively)

[Insert current 661.3. After every chapter 6 reference insert the phrase (available only until March 21, 1993.) Delete all references to 562.1 and 563.1. Revise all Chapter 5 ZIP+4 rate documentation references to read "562.14, 562.24, and 563.3." Revise all Chapter 5 ZIP+4 Barcoded rate documentation references to read: "564.14, 564.24, 565.5, 566.6, or 567.6." Revise all references "628.13, 628.24, 628.34" to read "628.321, 628.322, 628.323."]

661.4 ZIP+4 Barcoded Rate Combined Mailings With Different Payment Methods.

See 583.4.

661.5 Combined Mailing Documentation Submission.

See 583.5.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-23824 Filed 10-2-92; 8:45 am]

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VOL
57
SS
1
9
3
OC
5
1992
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federal register

Monday
October 5, 1992

Part III

Department of the Interior

Bureau of Indian Affairs

Intent To Prepare an Environmental Impact Statement for the Navajo Ten-Year Forest Management Plan; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent to Prepare an Environmental Impact Statement for the Navajo Ten-Year Forest Management Plan; Apache County, AZ; McKinley & San Juan Counties, NM

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Notice of intent and public scoping meeting.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs, with the cooperation of the Navajo Nation, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the Navajo Ten-Year Forest Management Plan proposed for areas including the Navajo Indian Reservation forest located in Apache County, Arizona, McKinley and San Juan Counties, New Mexico. A description of the proposed project, location, and environmental consideration to be addressed in the EIS are provided below (see supplemental information). In addition to this notice, public meetings regarding the proposal and preparation of the EIS will be held.

This notice is to be published in accordance with the National Environmental Policy Act (NEPA) regulations found in 40 CFR 1501.7. The purpose of the notice is to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are encouraged.

ADDRESSES: Comments should be addressed to Walt Mills, Area Director, Navajo Area Office, P.O. Box 1060, Gallup, New Mexico 87305. Public scoping meetings were held September 21, 1992, at the Chinle Chapter House, from 6 p.m. to 9 p.m. (M.D.T.) in Chinle, Arizona and on September 28, 1992, at the Fort Defiance Community Chapter House from 6 p.m. to 9 p.m. (M.D.T.) in Fort Defiance, Arizona. The next public scoping meetings will be on October 5, 1992, at the Aneth Chapter House from 6 p.m. to 9 p.m. (M.D.T.) in Aneth, Utah; October 12, 1992, at the Dilcon Chapter House from 6 p.m. to 9 p.m. (M.D.T.) in Dilcon, Arizona; October 19, 1992, at the Shiprock Chapter House from 6 p.m. to 9 p.m. (M.D.T.) in Shiprock, New Mexico; October 26, 1992, at the Crownpoint Chapter House from 6 p.m. to 9 p.m. (M.D.T.) in Crownpoint, New Mexico; and November 2, 1992, at the Tuba City Chapter House from 6 p.m. to 9 p.m. (M.S.T.) in Tuba City, Arizona.

DATES: Comments should be received by November 20, 1992. Public Scoping Meetings were held on September 21, 1992, and September 28, 1992. The next public scoping meetings will be on October 5, 1992; October 12, 1992; October 19, 1992; October 26, 1992; and November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Leonard Robbins, Environmental Quality Coordinator, Bureau of Indian Affairs, Navajo Area Office, P.O. Box 1060, Gallup, New Mexico 87305, telephone (505) 863–8286; C. Dexter Gill, Forest Manager, or Jonathan Martin, Forester I, telephone (602) 871–6449 and (602) 729–5165 respectively, Navajo Tribal Forestry Department, P.O. Box 308, Window Rock, Arizona 86515.

SUPPLEMENTARY INFORMATION: The Navajo Forest Management Plan will define the direction, scope and objectives for managing the natural resources of the Navajo commercial forest for the next 10 years. This plan will be produced by the Navajo Tribal Forestry Department using an interdisciplinary approach. It will allow the Navajo Nation to continue the management of its forest resources. The forest plan will address the environmental impacts of proposed management activities on Navajo forest lands located on the Defiance Plateau and the Chuska Mountains in northeastern Arizona and northwestern New Mexico. It will also define the harvest limits within a multiple-use sustained yield management scheme designed to enhance overall forest quality. The silvicultural procedures necessary bring the forest to desired conditions and the management principles intended to guide resource managers will be stated within the forest plan.

Dated: September 29, 1992.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 92–24060 Filed 10–02–92; 8:45 am]

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federal register

Monday
October 5, 1992

Part IV

Department of the Interior

Bureau of Indian Affairs

Rosebud Sioux Indian Reservation, South Dakota; Environmental Impact Statement; Notice

DEPARTMENT OF THE INTERIOR

Rosebud Sioux Indian Reservation, South Dakota; Environmental Impact Statement

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the Bureau intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) on Livestock Grazing and Prairie Dog Management Programs for the Rosebud Sioux Indian Reservation, South Dakota. Public scoping meetings regarding this proposal and preparation of this EIS will also be held.

This notice is being furnished as required by the National Environmental Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are being solicited.

DATES: Written comments must be received by December 1, 1992. Two public meetings are scheduled on October 13, 1992 and October 14, 1992.

ADDRESSES: Comments should be addressed to Dr. Jerry Jaeger, Area Director, Bureau of Indian Affairs, Aberdeen Area Office, 115 4th Avenue, SE., Aberdeen, South Dakota, 57401. For further information contact Mr. Ken Parr, Bureau of Indian Affairs, Aberdeen Area Office, 115 4th Avenue, SE., Aberdeen South Dakota, 57401, telephone (605) 226–7621.

Public scoping meetings will be held at the RST Tribal Council Chambers on October 13, 1992 from 6 p.m. to 10 p.m. in Rosebud, South Dakota; and at the White River Community Events Center on October 14, 1992 from 6 p.m. to 10 p.m. in White River, South Dakota.

The September 1991 Environmental Assessment for the Prairie Dog Control Program: Cheyenne River and Rosebud Indian Reservations can be obtained upon written request to Ken Parr.

SUPPLEMENTARY INFORMATION: In 1991, the BIA began studying Tribal Council proposals to poison prairie dogs on the Cheyenne River and Rosebud Reservations. Soon after, the BIA completed an Environmental Assessment (EA) pursuant to NEPA and a biological assessment pursuant to the Endangered Species Act. At the time, the BIA lacked the sufficient personnel, time and funding to meet the U.S. Fish and Wildlife Service (USFWS) and NEPA requirements for analyzing the impacts on prairie dog/black-footed ferret habitat and various threatened, endangered, and candidate species, such as the bald eagle and swift fox. For the EA, the BIA only investigated the effects of prairie dog poisoning.

The USFWS issued a biological opinion pursuant to the Endangered Species Act that the proposed poisoning programs would jeopardize the survival and recovery of the black-footed ferret. The Defenders of Wildlife and the Sierra Club threatened suit if the BIA implemented the alternative of poisoning prairie dogs because it could jeopardize potential black-footed ferret recovery and violate the Endangered Species Act. The organizations also disagreed with the BIA's conclusion that the proposed poisoning would not significantly affect the environment. The BIA has since continued current management until it could prepare an EIS.

Livestock grazing on the Rosebud Sioux Indian Reservation contributes substantially to the economic livelihood of Indian landowners and livestock operators on the reservation. Livestock grazing also supports the Tribal government through permitting and leasing of Tribal trust lands.

In 1990, the Tribal Councils of the Rosebud and Cheyenne River Reservations requested funding from Congress for prairie dog control to maintain or improve the range condition and increase the number of livestock that could be grazed on these lands. Congress encouraged the BIA to work with the Tribes and the USFWS to reorient the program to avoid poisoning wherever possible and develop management programs that will allow livestock to coexist with prairie dogs.

The resulting EA analyzed prairie dogs and their habitat, the plant and wildlife species associated with prairie dog habitat, and livestock grazing. After the EA was completed, the Cheyenne River Sioux Tribal Council developed a plan to manage the entire prairie ecosystem, including prairie dog and livestock grazing management.

Therefore, at this time, the Cheyenne River Reservation will not be included in this EIS.

The Rosebud Sioux Tribe is planning to continue management programs by implementing livestock grazing management and chemical control of Prairie dogs.

The Rosebud Sioux Tribe proposed to restore the prairie ecosystem to a more natural state in which prairie dog populations are maintained at acceptable levels. This will be accomplished by using rodenticide control of all prairie dogs on all reservation lands and by maintaining and improving the range resource through range improvement practices consisting of but not limited to cross fencing, water development, mechanical treatments, replanting of tame and native grasses, implementation of a range use management plan to mitigate the reinfestation of prairie dog towns.

This proposed action will require 5 years for completion at an estimated cost of $5,947,020 for control work and an additional $9,905,545 for range improvements, totalling $15,852,565.

Significant issues to be considered in detail are impacts on blackfooted ferrets and the potential for recovery through reintroduction efforts; biodiversity in the prairie ecosystem; economic feasibility of the various methods of prairie dog control related to meeting livestock grazing and range management objectives; impacts on bald eagles, peregrine falcons, swift foxes, golden eagles, whooping cranes, and other species.

Additional alternatives that may be considered are continuing the current wildlife, livestock grazing, and prairie dog management programs (the "No Action" alternative); implementing livestock grazing and other appropriate management systems with no chemical control of prairie dogs; and implementing various combinations of livestock grazing management systems, other appropriate management systems, and prairie dog control programs.

This notice is published pursuant to § 1501.7 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM–8.

Dated: September 29, 1992.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 92–24061 Filed 10–02–92; 8:45 am]

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Monday
October 5, 1992

Part V

The President

Proclamation 6482—Mental Illness Awareness Week, 1992

Proclamation 6483—National School Lunch Week, 1992

Proclamation 6484—Columbus Day, 1992

VOL
57
SS
193
OC
5
992
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The

Federal Register
Vol. 57, No. 193
Monday, October 5, 1992

Presidential Documents

Title 3—

The President

Proclamation 6482 of October 1, 1992

Mental Illness Awareness Week, 1992

By the President of the United States of America

A Proclamation

Advances in biomedical research and the behavioral sciences have dramatically improved our ability to prevent, diagnose, and treat mental illness—a public health problem that continues to call for greater public awareness and understanding.

Once clouded by mystery and shame, mental illness actually refers to a range of diseases, such as schizophrenia and depression, that may affect individuals of any age, race, or walk of life. In fact, it is estimated that as many as one-fourth of all Americans will suffer from a mental disorder at some point in their lives. The price to our Nation in terms of lost productivity, health care expenses, and other costs may total as much as $300 billion a year, according to the Department of Health and Human Services.

The suffering experienced by persons with mental illness is tremendous, as their conditions may deprive them of the ability to lead full, independent, and productive lives. Far too many of these individuals suffer from stigmatization by others as well, leading to a sense of rejection and alienation.

In order to dispel myths and misconceptions about mental illness and to help individuals and families who are affected by it, researchers in both the public and private sectors are working hard to unlock the secrets of the human mind. In recognition of their efforts and as a sign of our Nation's commitment to further progress in neuroscience, I proclaimed the 1990s the "Decade of the Brain." This is a time of unprecedented opportunity and hope as we work to promote the mental health and the overall well-being of all Americans.

The National Institute of Mental Health, the Federal Government agency that funds most of the mental health research in the United States, is making a major effort to inform Americans about mental disorders and their treatment. In addition, under the ADAMHA Reorganization Act that I signed in July, the Federal Government will concentrate its services for persons who suffer from, or are vulnerable to, mental illness and addictive disorders. By integrating into the National Institutes of Health the National Institute of Mental Health, the National Institute on Drug Abuse, and the National Institute on Alcohol Abuse and Alcoholism, we will bring research on mental illness and addictive disorders into the mainstream of biomedical and behavioral research.

The Federal Government is, of course, joined in its efforts by many private researchers and voluntary organizations, including organizations that have been established by persons who have overcome mental illness. These individuals are helping to promote new scientific and medical breakthroughs while also educating the public about the prevention, diagnosis, and treatment of mental illness. This week, we salute all of these volunteers and professionals and reaffirm our support of their noble work.

The Congress, by Senate Joint Resolution 287, has designated the week of October 4 through October 10, 1992, as "Mental Illness Awareness Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of October 4 through October 10, 1992, as Mental Illness Awareness Week. I invite all Americans to join with members of the health care community in observing this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-24324
Filed 10-2-92; 11:10 am]
Billing code 3195-01-M

VOL 57 ISS 193 OCT 5 1992 UMI

Presidential Documents

Proclamation 6483 of October 1, 1992

National School Lunch Week, 1992

By the President of the United States of America

A Proclamation

When the National School Lunch Act was adopted in 1946, the United States affirmed its commitment "as a measure of National security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food." Over the years the National School Lunch Program has brought nutritious meals to millions of school-age children, thereby fostering their physical and intellectual development. By helping to ensure that every student enters the classroom ready to learn, today's School Lunch Program contributes to a key aim of AMERICA 2000, our national strategy to achieve excellence in education.

The National School Lunch Program currently provides wholesome, well-balanced meals to more than 24 million children daily. These lunches promote learning and achievement by giving children the energy and stamina that they need to pay attention and to participate in the classroom. School lunches also provide children with an opportunity to develop healthy eating habits for a lifetime.

Many improvements have been made in the School Lunch Program over the years, and Federal food assistance in our schools now includes a School Breakfast Program as well. Parents, principals, and teachers have joined with school food service personnel and Federal, State, and local officials in improving the quality, appearance, and nutritional value of school meals. Students have also become more aware of the importance of good nutrition and have become involved in nutrition advisory committees. This week, we recognize all of the professionals and volunteers who help to ensure the success of the School Lunch Program in more than 92,000 schools and residential child care institutions across the country.

In recognition of the contributions of the School Lunch Program to the health and well-being of children, the Congress, by joint resolution approved October 9, 1962 (Public Law 87–780), designated the week beginning on the second Sunday of October of each year as "National School Lunch Week" and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning October 11, 1992, as National School Lunch Week. I encourage all Americans to recognize the dedicated and hardworking individuals who contribute to the success of the School Lunch Program.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-24325
Filed 10-2-92; 11:17 am]
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VOL 57 SS 193 OC 5 1992 UMI

Presidential Documents

Proclamation 6484 of October 1, 1992

Columbus Day, 1992

By the President of the United States of America

A Proclamation

A half-millennium ago, one man who dared to defy the pessimists and naysayers of his day made an epic journey that changed the course of history. That man was Christopher Columbus, and the account of his first voyage to the Americas provides us with timeless lessons about faith and courage in the face of the unknown, about the power of individuals to make a difference, and about the rewards of cultural and commercial exchange among nations.

Behind the larger-than-life legends that have evolved around Columbus is an ordinary, fallible man who achieved extraordinary, unforgettable things—and through qualities that any of us might well emulate today.

As with all progress, Columbus' great journey began with learning and hard work. Before he became a master mariner, Columbus was first a diligent student and deckhand who gained his knowledge and skills in Lisbon, then Europe's leading center of overseas exploration. Thus it was with both a strong foundation and a profound sense of higher purpose that Christopher Columbus set sail toward the horizon. If we are to continue to cross new frontiers today, we must not only cherish knowledge and learning, as did the peoples of the Renaissance, but also have faith and courage in the face of the unknown.

Although Columbus was slow to shrink from ridicule and adversity, he was quick to seize an opportunity; and when the Spanish monarchs Ferdinand V and Isabella I agreed to support his daring enterprise, this brave son of Genoa quickly readied the *Niña*, the *Pinta*, and the *Santa Maria* for their long ocean voyage. The story of Columbus is, therefore, a fitting prologue to our American narrative, for the history of the United States is filled with accounts of individuals who made a difference because they had the freedom, the opportunities, and the wherewithal to do so.

Columbus' first voyage to the Americas took just 33 days, yet it refuted centuries-old myths and transformed the lives of generations to come. The great encounter that was made possible by Columbus and his crew linked peoples on both sides of the Atlantic in a long and fruitful exchange of knowledge, resources, and ideas that continues to this day. Hence, on Columbus Day we celebrate both the rich heritage of America's native peoples and the development of the United States as a Nation of immigrants.

Finally, I am pleased to note that in many schools, teachers and students are planning to observe this Columbus Day with a special celebration of the 100th anniversary of our Pledge of Allegiance to the flag. Written in honor of Columbus Day a century ago, the Pledge has inspired generations of Americans to a greater love of country. As we celebrate the legacy of Columbus and the diverse cultural heritage of the United States, it is fitting that we also recall our many blessings—and responsibilities—as "one Nation, under God, indivisible, with liberty and justice for all."

The Congress, by joint resolution of April 30, 1934 (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 12, 1992, as Columbus Day. I encourage all Americans to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-24328
Filed 10-2-92; 11:38 am]
Billing code 3195-01-M

federal register

Monday
October 5, 1992

Part VI

Department of Agriculture

Farmers Home Administration

7 CFR Part 1980
Business and Industrial Loan Program; Final Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

RIN 0575-AB35

Business and Industrial Loan Program

AGENCY: Farmers Home Administration and Rural Development Administration, USDA.

ACTION: Final rule with comment period.

SUMMARY: Effective immediately the Farmers Home Administration (FmHA) and Rural Development Administration (RDA) amend its guaranteed loan program regulations to provide procedures for guaranteeing loans to businesses impacted by natural disasters such as Hurricane Andrew, Hurricane Iniki, and Typhoon Omar as well as providing such assistance for certain injuries caused by microbursts of wind. This action is needed to implement provisions of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102-368. The intended effect is to make loan guarantees available to businesses impacted by natural disasters.

DATES: Final rule effective October 5, 1992. Written comments must be received on or before November 4, 1992.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th and Independence, SW., Washington, DC, 20250. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Development Administration, USDA, room 6327, 14th & Independence Avenue SW., Washington, DC 20250, Telephone (202) 720-6819.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be non-major. The annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.422 Business and Industrial Loans.

Intergovernmental Review

As set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, Business and Industrial Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA and RDA conduct intergovernmental consultation in the manner delineated in FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

Regulatory Reform

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purpose described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this Notice.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." FmHA and RDA have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Final Rule With Comment Period

It is the policy of the Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, FmHA and RDA are making this action effective immediately upon publication in the Federal Register without securing prior public comment. The purpose of this rule is to provide assistance to businesses which have been devastated by natural disasters such as Hurricanes Andrew and Iniki and typhoon Omar. Due to the extent of the damage incurred by businesses and industries located in the areas of these disasters, an emergency situation exists. While this Department is reluctant to short circuit prior public comment, it is certain that failure to implement a mandated program at once will result in significant economic harm to the areas affected by the devastation wrought by the hurricanes and typhoon. FmHA and RDA believe it is essential that this assistance be made available as soon as possible before it is too late for the businesses to recover.

The legislative history of the Act indicates that Congress felt that quick response is needed to implement this disaster program in order to alleviate the effects of the devastation left by Hurricanes Andrew and Iniki and Typhoon Omar.

Public comments will be accepted for 30 days and later revisions will be made to this final rule if justified on the basis of comments received. This procedure will make assistance available now. The usual course of a proposed rule, comment period, comment analysis, and a final rule incorporating changes would inevitably mean a 60- to 90-day delay in

getting assistance where it is most needed. Those seeking to comment and make suggestions for improvement should be advised that final action will occur as promptly as possible after the 30-day comment period.

Paperwork Reduction Act

The reporting and recordkeeping requirements contained in this regulation have been approved under an emergency clearance through December 1992 by the Office of Management and Budget and have been assigned OMB control number 0575–0029. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 70 hours per response, with an average of 6.1 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0029), Washington, DC 20503.

Discussion of the Rule

FmHA and RDA are implementing provisions of the Dire Emergency Supplemental Appropriations Act by amending the existing regulations for the Business and Industry (B&I) loan program. B&I loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act cover costs arising from the consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock or damage to building structures from a microburst wind occurrence in 1992. Although part of the B&I program, loan guarantees made under this new authority will be called Business and Industry Disaster (BID) loans and will have some provisions different from other B&I loans.

The Act requires that BID loans be made available in both rural and nonrural areas and that businesses engaged in agriculture production be eligible. FmHA and RDA are making some additional provisions for BID loans different from other B&I loans. These differences include the following:

(1) When refinancing of existing debts is necessary, the lender may be allowed to bring previous exposure under the guarantee.

(2) Loans may be guaranteed for certain tourist or recreation facilities.

(3) The guarantee percentage for BID loans will not exceed 80 percent.

(4) The minimum equity requirements of the existing regulations will be relaxed and the full market value of collateral may be used for collateral analysis. In analyzing credit quality of proposed loans, the financial history and projections of the business will be emphasized.

(5) Conditional approval of loan guarantees may be given pending receipt of parts of the application package that are time consuming to obtain.

(6) The requirements of the existing regulations for audited financial statements will be relaxed.

(7) Specific portions of the existing regulations for FmHA Farm Operating and Farm Ownership loans will be adopted for BID loans to agricultural producers.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and Industry—Rural development assistance, Rural areas.

Accordingly, chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 7 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart E—Business and Industrial Loan Program

2. Section 1980.401 is amended by adding paragraph (f) to read as follows:

§ 1980.401 Introduction.

* * * * *

(f) This subpart and its appendices also contains regulations for Business and Industry Disaster (BID) loans under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. This program provides B&I guarantees for loans needed as a result of natural disasters. Some of the requirements of this subpart are waived or altered for BID loans. The waivers and alterations are provided in § 1980.498 of this subpart.

3. Section 1980.402 is amended by adding alphabetically definitions of *Business and Industry Disaster Loans, Hurricane Andrew, Hurricane Iniki, Microburst wind,* and *Typhoon Omar* to read as follows:

§ 1980.402 Definitions.

* * * * *

Business and Industry Disaster Loans. Business and Industry loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. These guaranteed loans cover costs arising from the direct consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a direct consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock or damage to building structures from a microburst wind occurrence in calendar year 1992.

* * * * *

Hurricane Andrew. A hurricane that caused damage in southern Florida on August 24, 1992, and in Louisiana on August 26, 1992.

Hurricane Iniki. A hurricane that caused damage in Hawaii on September 11, 1992.

* * * * *

Microburst wind. A violently descending column of air associated with a thunderstorm which causes straight-line wind damage.

* * * * *

Typhoon Omar. A typhoon that caused damage in Guam on August 28, 1992.

* * * * *

4. Section 1980.498 is added to read as follows:

§ 1980.498 Business and Industry Disaster Loans.

(a) *Introduction.* This section contains regulations for the Business and Industry Disaster (BID) loan program. The purpose of the program is to provide loan guarantees under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. These guaranteed loans cover costs arising from the consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock, or damage to building structures from a microburst wind occurrence in calendar year 1992. No application for a BID loan guarantee will

be accepted after July 31, 1993, and no BID loan guarantee will be approved after September 30, 1993. All provisions of subparts A and E of part 1980 of this chapter apply to BID loans, except as provided in this section. All forms used in connection with a BID loan will be those used with other Business and Industry (B&I) loans, except as provided in paragraph (m) of this section.

(b) Location of Applicants. (1) Section 1980.405 of this subpart, "Rural area determinations," will not apply to BID loans. BID loans may be made in rural and nonrural areas.

(2) Eligible borrowers' businesses must be located within the area covered by the Presidential declaration except for those with qualifying losses from microburst wind in accordance with paragraph (a) of this section.

(c) Loan Purposes. Loans may be guaranteed for the purposes listed in § 1980.411 of this subpart, "Loan Purposes," except as follows:

(1) *Relationship to disaster.* The purpose of any BID loan must be to cover costs that are a direct consequence of a natural disaster or microburst of wind in accordance with paragraph (a) of this section. The amount of the loan must not be greater than the amount needed as determined by the Rural Development Administration (RDA) to cure problems caused by the natural disaster so that the business is reestablished on a successful basis. Facilities which were damaged or destroyed by the natural disaster may be repaired or replaced by modern facilities as necessary to ensure success. Replacement by modern facilities will not be made solely for the purpose of enlarging the business or increasing its production capacity. No loan for a change of purpose of the business will be guaranteed. Eligible refinancing or working capital loans should not exceed the amount needed to overcome the financial distress caused by the disaster. Losses that were adequately paid by insurance or by loans or grants from other sources will not be covered by BID loans. BID loans may be used to supplement insurance payments and/or assistance from other sources when the insurance coverage or other assistance is not sufficient.

(2) *Refinancing.* Section 1980.452, Administrative C.1.(d) of this subpart does not apply to BID loans. If refinancing is needed as a direct consequence of the disaster, the lender may be allowed to bring previously unguaranteed exposure under the guarantee. No loan will be refinanced unless the current market value of the collateral is at least equal to the amount of the loan to be refinanced plus any new loan amount.

(3) *Agriculture.* Section 1980.412(e) of this subpart does not apply to BID loans. BID loans may be guaranteed for agriculture production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm or domestic animals.

(4) *Other eligible businesses.* Eligible types of businesses also include:

(i) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(ii) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iii) The growing of mushrooms or hydroponics.

(5) *Recreation and tourism.* Loans may be guaranteed for tourist or recreation facilities except for hotels, motels, bed and breakfasts, race tracks, gambling, or golf courses.

(6) *Meat processing facilities.* The provisions of § 1980.411(a)(8) of this subpart will not apply to BID loans. Loans, including working capital or debt refinancing, may be guaranteed for businesses engaged in meat or poultry processing.

(d) *Federal Emergency Management Agency (FEMA).* BID loans may be approved only to the extent that the assistance is not available from FEMA. The case file will be documented to show that FEMA assistance was not available or that FEMA assistance is not adequate to cover the costs as a consequence of the natural disaster.

(e) *Small Business Administration.* Section 1980.451 of this subpart will not apply to BID loans. Applicants eligible for Small Business Administration assistance will be advised of the availability of that assistance.

(f) *Loan guarantee limits.* Notwithstanding the provisions of § 1980.420 of this subpart, the guarantee percentage on any BID loan will not exceed 80 percent.

(g) *Credit quality analysis.* In analyzing the credit quality of a proposed loan to a business that has lost assets to a natural disaster, primary emphasis will be placed on the operating history of the business, rather than its current financial condition. If the business has a sound, profitable and successful history prior to the disaster and there are reasonable projections to ensure it can operate successfully in the future, the proposed loan may be approved even if disaster losses have caused somewhat less equity and/or collateral than would normally be expected for a B&I guarantee. If the business appears to have had an unprofitable operation or inadequate cash flow prior to the disaster, the proposed loan guarantee will not be approved.

(h) *Equity requirements.* The equity requirements of § 1980.441 of this subpart do not apply to BID loans.

(i) *Feasibility studies.* Feasibility studies as required by § 1980.442 of this subpart will not be required for BID loans if the business has a successful financial history that supports future plans and projections that indicate a successful operation with adequate repayment ability.

(j) *Collateral.* Section 1980.443, Administrative A. 2., 3., and 4. of this subpart will not apply to BID loans. Collateral may be considered at its current market value without discount. Work-in-process inventory may be valued at the estimated market value of the finished product. All costs of producing the finished product must be included in the cash flow analysis.

(k) *Conditional approval.* A Form FmHA 449–14, "Conditional Commitment for Guarantee," may be issued prior to receipt of specific items needed to complete an application package provided:

(1) The lender and/or borrower demonstrates to the Government's satisfaction that it has a need for a prompt indication of the availability of the proposed loan guarantee and the conditions under which a guarantee are available;

(2) The specific items missing from the application package will take considerable time to obtain;

(3) The lender requests a commitment prior to providing the items;

(4) The attachment to Form FmHA 449–14 clearly states that the commitment is conditioned on satisfactory completion of the missing item(s) and a guarantee will not be issued unless all conditions of these regulations are met; and

(5) No Form FmHA 449–14 will be issued prior to the obligation date established with the Finance Office.

(l) *Financial statements.* All requirements of § 1980.451(i)(13) of this subpart will apply except that it is modified for BID loans to require minimum annual financial statements as follows:

(1) For nonagricultural borrowers with a B&I indebtedness of $500,000 or less, an annual compilation by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(2) For nonagricultural borrowers with a B&I indebtedness of $500,001 through $1,000,000, an annual review by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(3) For nonagricultural borrowers with a B&I indebtedness of more than $1 million, an annual audited financial statement by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(4) All agricultural loans will require annual financial statements per § 1980.113(d)(7)(ii) of subpart B of part 1980 of this chapter.

(m) *Agriculture loans.* The following additional provisions apply to BID loan guarantees for businesses engaged in agriculture production:

(1) *General policy.* This portion of this section contains the regulations for making BID loans to farmers for agricultural purposes. BID loans made for agricultural purposes are subject to the provisions in subparts A and E of part 1980 of this chapter except as specified. In addition, certain sections of subpart B of part 1980 of this chapter referenced in this section are applicable subject to the limitations outlined in this section. BID loans made for agricultural purposes are made under the Business and Industry authority of section 310B of the Consolidated Farm and Rural Development Act of 1972, as amended. In this regard, several key loan processing and loan servicing requirements stipulated in subpart B of part 1980 of this chapter do not apply to loans made to borrowers under this section. Only the material cross-referenced to subpart B of part 1980 of this chapter is to be utilized in lieu of or in addition to the requirements contained in subpart E of part 1980 of this chapter in processing loans under this section.

(2) *Type of guarantee.* See § 1980.101(e)(1) of subpart B of part 1980 of this chapter. BID loans will be processed under the Loan Note Guarantee option ONLY. No loan will be processed for a Contract of Guarantee (Line of Credit) under this section.

(3) *Abbreviations and definitions.* (i) The abbreviations and definitions found in § 1980.106 of subpart B of part 1980 of this chapter will apply to loans made under this section except for § 1980.106(b)(7), (19), and (22) of subpart B of part 1980 of this chapter.

(ii) Loan guarantees may be made under the BID program without regard to the size of the farming operation.

(4) *Loan eligibility requirements.* In addition to the requirements set forth in this subpart, the requirements in § 1980.175(b) of subpart B of part 1980 of this chapter regarding controlled substances are applicable.

(5) *Filing and processing Preapplications and applications.* Section 1980.113 of subpart B of part 1980 of this chapter will apply with the following exceptions:

(i) Lines of credit will not be guaranteed.

(ii) Timeframes for applicant/lender notification in § 1980.113 of subpart B of part 1980 of this chapter do not apply.

(iii) If the application is submitted solely for a farm as defined in § 1980.106(b)(8) of subpart B of part 1980 of this chapter, Form FmHA 410–1, "Application for FmHA Services," or Form FmHA 449–1, "Application for Loan and Guarantee," will be used as an application for assistance.

(iv) Section 1980.113, Administrative A. and B. of subpart B of part 1980 of this chapter are applicable to receiving and processing applications for agricultural loans under this section.

(6) *Evaluation of applications.* The provisions outlined in § 1980.114 of subpart B of part 1980 of this chapter apply with the following exceptions:

(i) Timeframe requirements for the evaluation of applications and references to the Approved Lender Program are not applicable.

(ii) County Committee reviews of applications processed under this section will not be required. If the loan approval official finds the applicant is not eligible, the applicant will be notified in writing of the reasons for disapproval and the opportunity given for an appeal as set out in subpart B of part 1900 of this chapter.

(7) *Terms of loan repayment.* (i) Principal and interest on the loan will be due and payable to coincide with the cash flow operating cycle of the business. Installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. The first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income. However, such installment will be due and payable within 6 years from the date of the debt instrument and at least annually thereafter. All accrued interest will be due at least annually from the date of the debt instrument. In no case will interest be deferred. In granting a deferral of principal payment, the loan approval official must document based on pro forma financial statements and the nature of the crop that the deferral of payments is necessary.

(ii) The lender must ensure that loan repayment is scheduled to eliminate the possibility of a balloon payment at the end of the loan.

(8) *BID loan purposes.* Loans may be made only for the following purposes:

(i) Operating purposes as outlined in § 1980.175(c)(1) of subpart B of part 1980 of this chapter except for those stipulated in paragraphs (c)(1) (iv) and (vii) of that section.

(ii) Real estate purposes as outlined in § 1980.180(c) of subpart B of part 1980 of this chapter except for those stipulated in paragraphs (c) (1) and (4) of that section.

(9) *Sodbuster and swampbuster requirements.* The provisions of exhibit M of subpart G of part 1940 of this chapter will apply to loans made to enterprises engaged in agricultural production.

Dated: September 30, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

Mary Ann Baron,

Administrator, Rural Development Administration.

[FR Doc. 92–24291 Filed 10–2–92; 11:19 am]

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VOL
57
SS
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INFORM

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Index, f
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Index, f
Printing

Laws

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Other S

Data ba
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Privacy
Public
TDD fo

FEDER

45261–4
45559–4
45709–4

Reader Aids

Federal Register

Vol. 57, No. 193

Monday, October 5, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

45261–45558.....1
45559–45708.....2
45709–45972.....5

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6482.....45961
6483.....45963
6484.....45965
Executive Orders:
12775 (Continued by Notice of September 30, 1992).....45557
12779 (Continued by Notice of September 30, 1992).....45557
12813 (Amended by EO 12815).....45709
12815.....45709
Administrative Orders:
Notices:
September 30, 1992.....45557

5 CFR

630.....45261
Proposed Rules:
835.....45753

7 CFR

916.....45559
917.....45559
948.....45560
1065.....45562, 45563
1137.....45564
1494.....45262
1980.....45968
Proposed Rules:
910.....45581
944.....45754
1106.....45583

10 CFR

30.....45566
35.....45566

12 CFR

327.....45263
Proposed Rules:
1.....45756
567.....45757
935.....45338
940.....45338

14 CFR

Proposed Rules:
39.....45584–45586
71.....45660

16 CFR

Proposed Rules:
4.....45678

17 CFR

210.....45267
240.....45287
249.....45287
259.....45287
274.....45287

19 CFR

Proposed Rules:
10.....45758

20 CFR

404.....45676

21 CFR

5.....45294
310.....45319
Proposed Rules:
1401.....45353

24 CFR

888.....45468

26 CFR

1.....45568, 45660, 45711, 45678
43.....45713
602.....45711
Proposed Rules:
1.....45587
301.....45759

27 CFR

Proposed Rules:
9.....45588
17.....45357
19.....45357
70.....45357
170.....45357
194.....45357
197.....45357
250.....45357

28 CFR

1602.....45570
2802.....45713

30 CFR

917.....45295

33 CFR

100.....45570
Proposed Rules:
151.....45581
164.....45662–45667
165.....45596

37 CFR

202.....45307

39 CFR

20.....45570
111.....45682

40 CFR

35.....45311
52.....45715
271.....45514, 45717–45722
272.....45575
Proposed Rules:
Ch. I.....45597
52.....45358, 45360
63.....45363
300.....45597, 45599

42 CFR

57.....45725

43 CFR

Public Land Orders:
1567 (Revoked in part by PLO 6948).....45325
5712 (Revoked by PLO 6946).....45322
6944.....45321
6946.....45322
6948.....45324
6949.....45576
6950.....45725

45 CFR

1224.....45325

46 CFR

Proposed Rules:
35.....45667

47 CFR

0.....45747
73.....45577–45579
87.....45748
90.....45751
Proposed Rules:
73.....45601

48 CFR

30.....45422
52.....45878
202.....45422
204.....45422
206.....45422
210.....45422
214.....45326
215.....45422
216.....45422
219.....45422
223.....45422
225.....45422
226.....45422
227.....45422
228.....45422
231.....45422
232.....45422
236.....45422
237.....45422
239.....45422
242.....45422
245.....45422
252.....45422
253.....45422
Proposed Rules:
5415.....45759
5452.....45759

49 CFR

107.....45446
171.....45442, 45446
172.....45446
173.....45446
174.....45446
176.....45446
177.....45446
178.....45446
179.....45446
180.....45446
214.....45446
571.....45327, 45422
1023.....45751
Proposed Rules:
552.....45759
571.....45760
1039.....45602

50 CFR

17.....45328
285.....45579
661.....45751
672.....45580
Proposed Rules:
17.....45761, 45762
675.....45602

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List October 2, 1992

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board Service for Public Law Numbers is available on 202–275–1538 or 275–0920.

CFR CHE

This checkli
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(202) 512-2

Title

1, 2 (2 Rese
3 (1991 Com
Parts 100
4.....
5 Parts:
1–699.....
700–1199.....
1200–End, 6
7 Parts:
0–26.....
27–45.....
46–51.....
52.....
53–209.....
210–299.....
300–399.....
400–699.....
700–899.....
900–999.....
1000–1059..
1060–1119..
1120–1199..
1200–1499..
1500–1899..
1900–1939..
1940–1949..
1950–1999..
2000–End.....
8.....
9 Parts:
1–199.....
200–End.....
10 Parts:
0–50.....
51–199.....
200–399.....
400–499.....
500–End.....
11.....
12 Parts:
1–199.....
200–219.....
220–299.....
300–499.....
500–599.....
600–End.....
13.....

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
0-26	(869-017-00007-8)	17.00	Jan. 1, 1992
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
900-999	(869-017-00016-7)	29.00	Jan. 1, 1992
1000-1059	(869-017-00017-5)	17.00	Jan. 1, 1992
1060-1119	(869-017-00018-3)	13.00	Jan. 1, 1992
1120-1199	(869-017-00019-1)	9.50	Jan. 1, 1992
1200-1499	(869-017-00020-5)	22.00	Jan. 1, 1992
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
1940-1949	(869-017-00023-0)	23.00	Jan. 1, 1992
1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-017-00026-4)	17.00	Jan. 1, 1992
9 Parts:			
1-199	(869-017-00027-2)	23.00	Jan. 1, 1992
200-End	(869-017-00028-1)	18.00	Jan. 1, 1992
10 Parts:			
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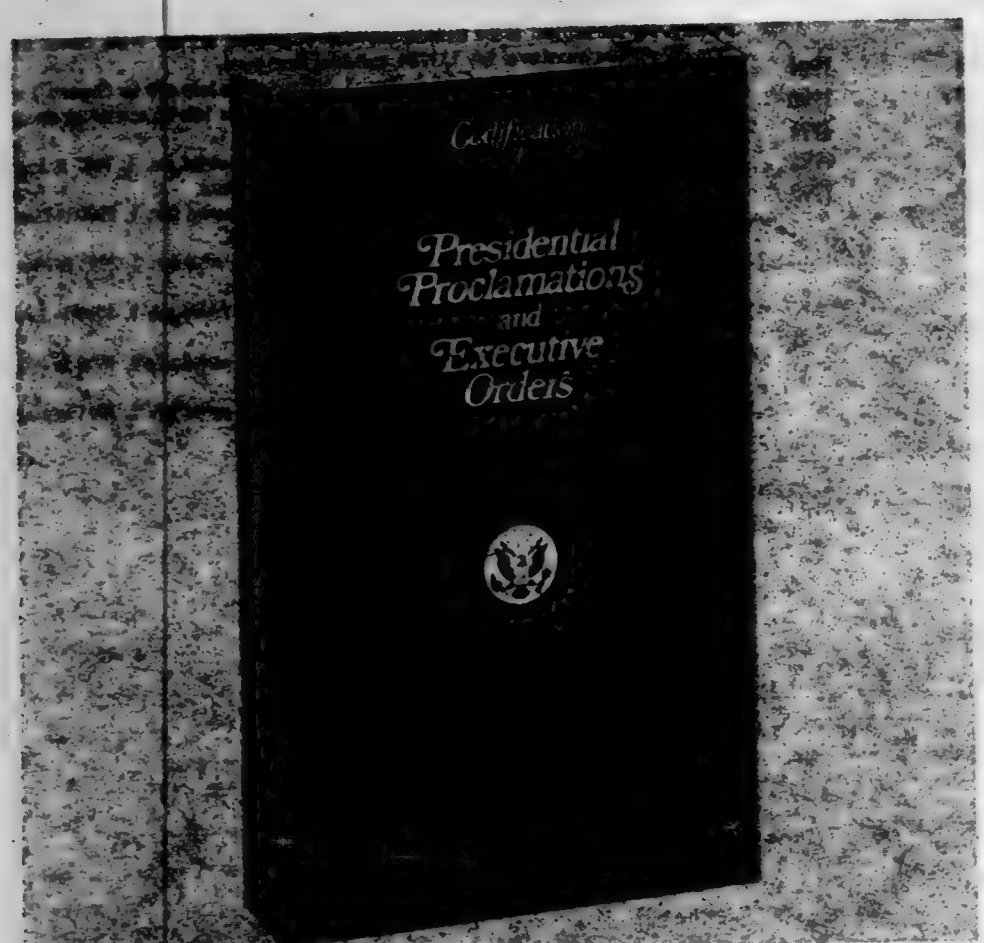

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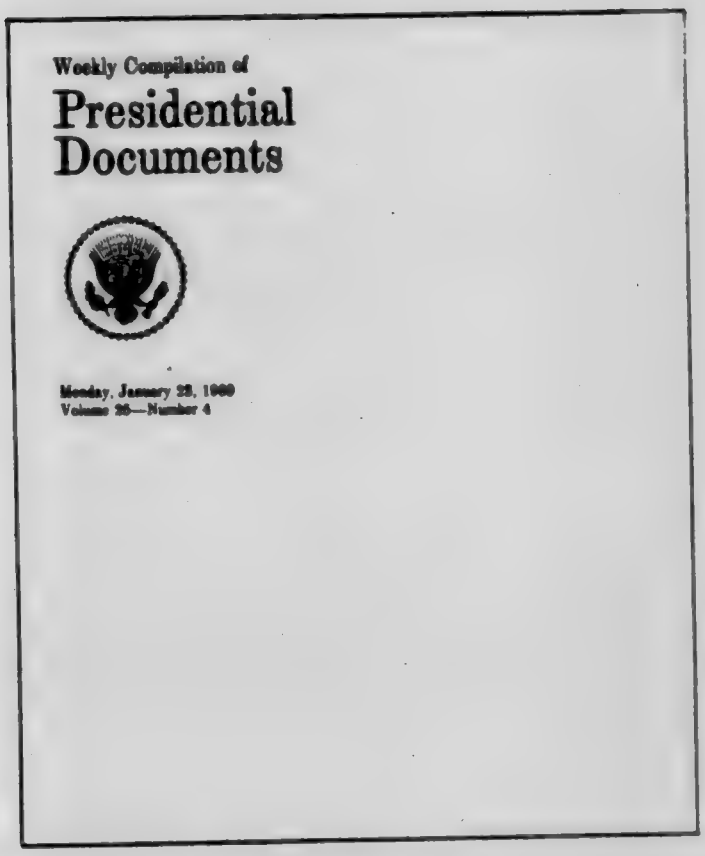

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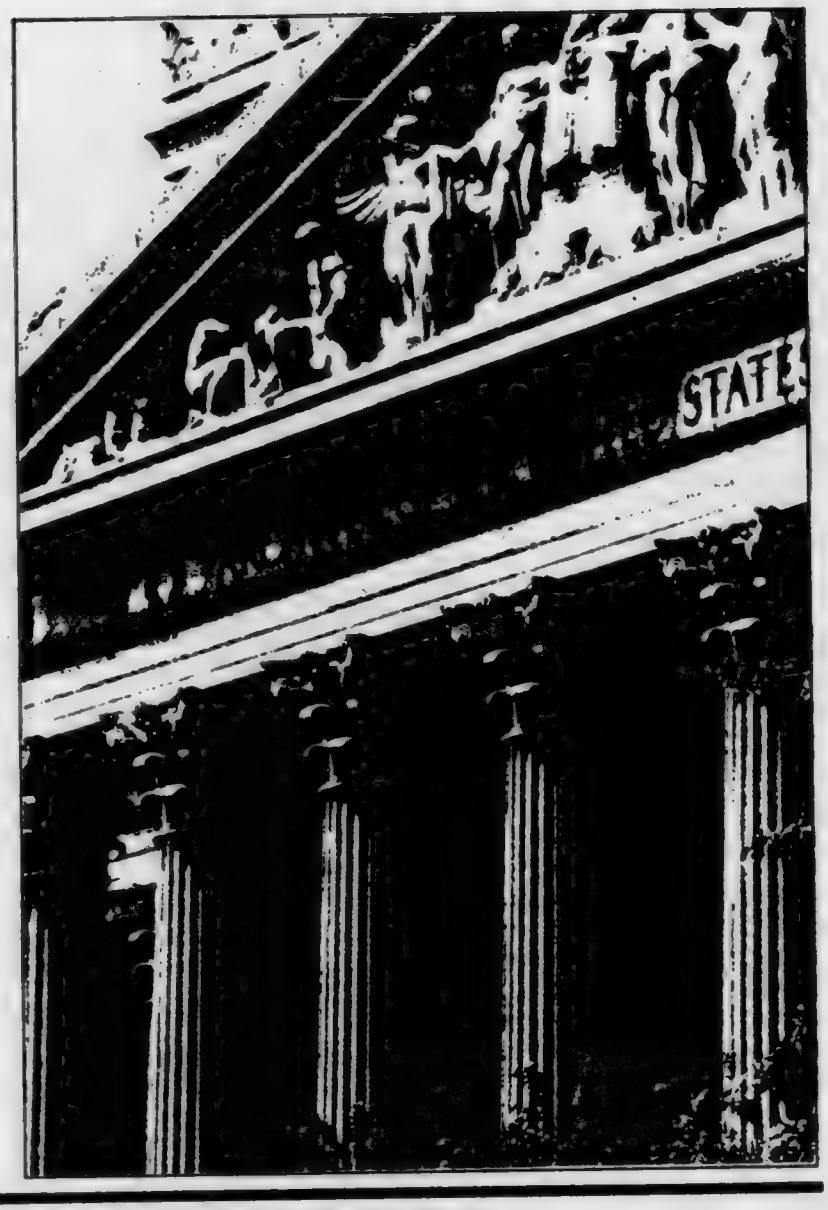

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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 57, No. 194

Tuesday, October 6, 1992

Agricultural Marketing Service
RULES
Dates (domestic) produced or packed in California, 45975
Kiwifruit grown in California, 45973
Onions (Vidalia) grown in Georgia, 45974
PROPOSED RULES
Milk marketing orders:
Chicago Regional, 45995
Nashville, TN, 45996
Onions grown in Idaho and Oregon, 45993

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Warehouses:
Warehousemen, licensed; liquidation and informal hearing procedures; withdrawn, 45993

Agriculture Department
See Agricultural Marketing Service
See Agricultural Stabilization and Conservation Service
See Rural Electrification Administration
See Soil Conservation Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
October, 46032

Antitrust Division
NOTICES
National cooperative research notifications:
Bell Communications Research, Inc., 46047
General Motors Corp., 46047
Open Software Foundation, Inc., 46047
Petroleum Environmental Research Forum Project No. 91-10, 46048

Centers for Disease Control
NOTICES
Meetings:
Immunization Practices Advisory Committee, 46033
National Center for Environmental Health, 46033

Coast Guard
RULES
Regattas and marine parades:
Philadelphia Columbus Day Fireworks Display, 45985

Commerce Department
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration
See National Technical Information Service

Commodity Futures Trading Commission
PROPOSED RULES
Commodity Exchange Act:
Financial reporting by introducing brokers; customer funds investments valuation by futures commission merchants, 45999

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 46065

Customs Service
NOTICES
Petroleum products; approved public gauger:
SGS Hawaii, Inc., 46063
Trade name recordation applications:
Lever Brothers Co., 46063

Education Department
NOTICES
Agency information collection activities under OMB review, 46018
Grants and cooperative agreements; availability, etc.:
Children with disabilities early education program, 46070

Employment and Training Administration
NOTICES
Adjustment assistance:
Athenia Wire Co. et al., 46048
Mobil Pipeline Co., 46049
Sonat Offshore Drilling, Inc., et al., 46050
Labor surplus areas classifications:
Annual list, 46050

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Industrial waste reduction program, 46018
Meetings:
International Energy Agency Reporting Companies Group, 46019
Natural gas exportation and importation:
Multi-Energies Inc. et al., 46020
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Genesis Coal Limited Partnership, 46021

Environmental Protection Agency
PROPOSED RULES
Acquisition regulations:
Prevention of actual or apparent duplication of effort by contractors
Withdrawn, 46007
Ambient air quality surveillance:
State, local, and national air monitoring stations; data reporting requirements, 46003
NOTICES
Agency information collection activities under OMB review, 46025
Water pollution control:
Clean Water Act—
Class I and II administrative penalty assessments, 46026

Federal Aviation Administration
RULES
Jet routes, 45982, 45983
Transition areas, 45981

VOR Federal airways, 45983
PROPOSED RULES
VOR Federal airways, 45997
NOTICES
Exemption petitions; summary and disposition, 46063

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 46065

Federal Deposit Insurance Corporation
RULES
Membership advertisement, 45977

Federal Emergency Management Agency
NOTICES
Agency information collection activities under OMB review, 46026

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Lake Cogen, Ltd., 46018
Hydroelectric applications, 46019
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Colorado Oil and Gas Conservation Commission, 46021
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 46022
Delhi Gas Pipeline Corp., 46022
Eastern Shore Natural Gas Co., 46023
Seagull Interstate Corp., 46023
Sea Robin Pipeline Co., 46023
Supenn Pipeline, 46023
Tarpon Transmission Co., 46024
Texas Eastern Transmission Corp., 46024

Federal Maritime Commission
NOTICES
Agreements filed, etc., 46026
Meetings; Sunshine Act, 46065

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 46065

Federal Trade Commission
PROPOSED RULES
Trade regulation rules:
Mail order merchandise; oral presentations and staff documents availability, 45998
NOTICES
Premerger notification waiting periods; early terminations, 46027
Prohibited trade practices:
American Psychological Association, 46028

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
American Hardware Mutual Insurance Co., 46064

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc., 46007
NOTICES
Meetings:
Garrison Diversion Unit Federal Advisory Council, 46040

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
RSR Laboratories, Inc., 45984
Human drugs:
Cold, cough, allergy, bronchodilator, and antiasthmatic products (OTC)—
Expectorant products with ipecac, etc.; correction, 46067
PROPOSED RULES
Medical devices:
Automated heparin analyzer; reclassification to class II Correction, 46068
Temporomandibular joint implants; class III classification Correction, 46068
NOTICES
Human drugs:
Anesthesia apparatus checkout recommendations; availability, 46033

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 46066

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 46032

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration
See Centers for Disease Control
See Food and Drug Administration
See National Institutes of Health
See Public Health Service

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Comprehensive housing affordability strategies Correction, 46068
NOTICES
Agency information collection activities under OMB review, 46037
Grants and cooperative agreements; availability, etc.:
Federally assisted low income housing drug elimination program; correction, 46039
Public and Indian housing homeownership program, 46038
Organization, functions, and authority delegations:
Regional offices, etc.; order of succession—
Chicago, 46040
Public and Indian housing:
Housing demolition and disposition; PHA-wide and IHA-wide resident councils, resident management corporations, and resident councils or tenant cooperatives

of developments; purchase opportunity, 46074

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Federal-State Coal Advisory Board et al., 46040

International Trade Administration
NOTICES
Antidumping:
Circular welded non-alloy steel pipe from—
Mexico; correction, 46067
United States-Canada free-trade agreement; binational panel reviews:
Magnesium from Canada, 46013, 46014

International Trade Commission
NOTICES
Import investigations:
Magnesium from—
Canada; correction, 46068

Justice Department
See Antitrust Division
See Foreign Claims Settlement Commission
NOTICES
Pollution control; consent judgments:
Federated Metals Corp., 46045
Hamm's Holiday Harbor, Inc., 46045
Hirsch Industries, Inc., 46045
Oak Crystal, Inc., 46046
Senesac Construction Co., 46046
Southwest Hazard Control, Inc., 46046
Specialty Systems of Ohio Construction, Inc., 46047

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Agency information collection activities under OMB review, 46040
Environmental statements; availability, etc.:
Bear River Resource Area, UT, 46041
Castlegate Coalbed methane project, UT, 46041
Pony Express Resource Area, UT, 46042
Meetings:
Boise District Grazing Advisory Board, 46042
Northern Alaska Advisory Council, 46042
Susanville District Grazing Advisory Board, 46042
Realty actions; sales, leases, etc.:
Arizona, 46042
Survey plat filings:
Oregon and Washington, 46043
Wild and scenic rivers policy and program direction; manual section 8351; availability, 46043

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minority Business Development Agency
NOTICES
Business development center program applications:
Texas, 46015

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 46060

National Institutes of Health
NOTICES
Meetings:
National Institute of Environmental Health Sciences, 46035
National Institute on Deafness and Other Communication Disorders, 46035
Research Grants Division Behavioral and Neurosciences Special Emphasis Panel, 46035

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements—
North Carolina coast; tow time limitations, 45986
Fishery conservation and management:
Gulf of Alaska groundfish, 45988
Pacific Coast groundfish, 45987
Western Pacific Region pelagic, 45989
NOTICES
Meetings:
Pacific Fishery Management Council, 46016
Permits:
Endangered and threatened species, 46016
Marine mammals, 46016

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 46044

National Science Foundation
NOTICES
Meetings:
Materials Research Advisory Committee, 46061

National Technical Information Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
American BioMed, Inc., 46017
Mustang Management Ltd., 46017

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration
See Centers for Disease Control
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
National Toxicology Program; Scientific Counselors Board, 46036
National toxicology program:
Advisory review by Scientific Counselors Board; preliminary findings release procedures, 46036

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 46061

Rural Electrification Administration
NOTICES
Assistance 1703 B application; maximum size:
announcement, 46013

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Upper Blanchard River Watershed, OH, 46013

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; correction, 45985

Thrift Supervision Office
RULES
Savings associations:
Executive officers, directors, and principal shareholders; loans, 45977

Transportation Department
See Coast Guard
See Federal Aviation Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 46062
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 46062
Hearings, etc.—
Business Helicopters, 46062

Treasury Department
See Customs Service
See Fiscal Service
See Thrift Supervision Office

Separate Parts in This Issue

Part II
Department of Education, 46070

Part III
Department of Housing and Urban Development, 46074

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
920.....45973
955.....45974
987.....45975
Proposed Rules:
735.....45993
736.....45993
737.....45993
738.....45993
739.....45993
740.....45993
741.....45993
742.....45993
958.....45993
1030.....45995
1098.....45996

12 CFR
328.....45977
506.....45977
563.....45977

14 CFR
71 (5 documents).....45981-45983
Proposed Rules:
71.....45997

16 CFR
Proposed Rules:
435.....45998

17 CFR
Proposed Rules:
1.....45999

21 CFR
310.....46067
510.....45984
520.....45984
Proposed Rules:
864.....46068
872.....46068

24 CFR
Proposed Rules:
91.....46068

30 CFR
914.....45985

33 CFR
100.....45985

40 CFR
Proposed Rules:
58.....46003

48 CFR
Proposed Rules:
1512.....46007
1516.....46007
1552.....46007

50 CFR
227.....45986
663.....45987
672.....45988
685.....45989
Proposed Rules:
17.....46007

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Rules and Regulations

Federal Register
Vol. 57, No. 194
Tuesday, October 6, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[FV-92-098IFR]

Kiwifruit Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 920. Authorization of this budget enables the Kiwifruit Administrative Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1992, through July 31, 1993. Comments received by November 5, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline Thorpe, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: 202–720–8139; or Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 920 [7 CFR part 920], as amended, regulating the handling of kiwifruit grown in California. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture [Department] in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, California kiwifruit are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable California kiwifruit during the 1992–93 fiscal year beginning August 1, 1992, through July 31, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of kiwifruit grown in California who are subject to regulation under the kiwifruit marketing order and approximately 850 producers of kiwifruit in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of kiwifruit producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal year was prepared by the Kiwifruit Administrative Committee (Committee), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The Committee consists of kiwifruit producers and a non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be

expedited so that the Committee will have funds to pay its expenses.

The Committee met on July 22, 1992, and recommended 1992–93 marketing order expenditures of $152,913 and an assessment rate of $0.02 per tray or tray equivalent of kiwifruit. In comparison, 1991–92 marketing year budgeted expenditures were $138,452 and the assessment rate was $0.015 per tray. Assessment income for 1992–93 is estimated to total $170,000 based on anticipated fresh domestic shipments of 8.5 million trays or tray equivalents of kiwifruit. This will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1992–93 fiscal year, estimated at $29,082, will be within the maximum permitted by the order of one fiscal year's expenses.

The major budget category for 1992–93 is $109,170 for administrative, staff and field salaries.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1992–93 fiscal year began August 1, 1992, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable kiwifruit handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committee at a public meeting; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR Part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 920.209 is added to read as follows:

§ 920.209 Expenses and assessment rate.

Expenses of $152,913 by the Kiwifruit Administrative Committee are authorized, and an assessment rate of $0.02 per tray or tray equivalent of assessable kiwifruit is established for the 1992–93 fiscal year ending on July 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: October 1, 1992.

Robert C. Keeney,

Deputy, Director, Fruit and Vegetable Division.

[FR Doc. 92–24228 Filed 10–5–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 955

[Docket No. FV–92–099IFR]

Vidalia Onions Grown in Georgia; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 955 for the 1992–93 fiscal period (September 16, 1992, through September 15, 1993). Authorization of this budget enables the Vidalia Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective September 16, 1992, through September 15, 1993. Comments received by November 5, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular hours.

FOR FURTHER INFORMATION CONTACT: John R. Toth, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 [7 CFR part 955], regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Vidalia onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1992–93 fiscal period, beginning September 16, 1992, through September 15, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

This Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later

than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 250 producers of Georgia Vidalia onions under this marketing order, and approximately 145 handlers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met July 23, 1992, and unanimously recommended a 1992–93 budget of $338,497, $145,697 more than the previous year. The size of the increase in the budget is due in large part to increased marketing activity, which appears necessary to the Committee as the crop size continues to grow. Major increases of $4,000 for furniture/equipment lease and maintenance, $6,177 for office overhead, $14,255 for contract management, $22,950 for research, and $127,965 for marketing will be partially offset by decreases of $1,000 for office supplies and $2,000 for postage/courier, and the elimination of the supplemental marketing category for which $27,300 was budgeted last year.

The Committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag, the same as last year. This rate, when applied to anticipated shipments of 2,094,517 50-pound bags, will yield $209,451 in assessment income. This, along with $14,000 in interest income and $115,046 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1992–93 fiscal period, estimated at $134,588, will be within the maximum permitted by the order of three fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on September 16, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 955.205 is added to read as follows:

§ 955.205 Expenses and assessment rate.

Expenses of $338,497 by the Vidalia Onion Committee are authorized, and an assessment rate of $0.10 per 50-pound bag of Vidalia onions is established for the fiscal period ending September 15, 1992. Unexpended funds may be carried over as a reserve.

Dated: October 1, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–24227 Filed 10–5–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 987

[Docket No. FV–92–097IFR]

Expenses and Assessment Rate for Marketing Order Covering Domestic Dates Produced or Packed in Riverside County, CA

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order 987 for the 1992–93 crop year established for that order. Authorization of the budget enables the California Date Administrative Committee (Committee) to incur operating expenses during the 1992–1993 crop year and to collect funds during that year to pay those expenses. Funds to administer this program are derived from assessments on handlers.

DATES: This action is effective for the period October 1, 1992, through

September 30, 1993. Comments must be received by November 5, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kellee J. Hopper, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901 or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 205–2829.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 987 [7 CFR part 987] regulating the handling of dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California dates are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates handled during the 1992–93 crop year, beginning October 1, 1992, through September 30, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity if filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California dates regulated under the date marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of these handlers and producers may be classified as small entities.

The California date marketing order, administered by the Department, requires that the assessment rate for a particular crop year apply to all assessable dates handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are date handlers and producers. They are familiar with the Committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of dates (in hundredweight). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses.

The Committee met on July 16, 1992, and recommended 1992–93 crop year expenditures of $495,500 and an assessment rate of $1.40 per hundredweight of assessable dates shipped under M.O. 987. In comparison 1991–92 crop year budgeted expenditures were initially established at $479,400 and the assessment rate was established at $1.40 per hundredweight [56 FR 50647, October 8, 1991]. Subsequently, the Committee recommended an increase in expenditures of $155,000 to $634,400, to cover advertising and promotion expenditures [57 FR 31670, July 17, 1992].

Included in 1992–93 budgeted expenditures is an operating budget of $121,703, with a 20% surplus account allocation, for a net operating budget of $97,363. The major expenditure item this year is $392,470 for continuation of the Committee's market promotion program The industry is faced with an oversupply of product dates and the Committee considers this program necessary to stimulate sales. The remaining expenditures are for program administration and are budgeted at about last year's amounts.

Income for the 1992–93 season is expected to total $495,500. Such income consists of $490,000 in assessments based on shipments of 35,000,000 assessable pounds of dates at $1.40 per hundredweight and $5,500 in interest income.

The Committee also recommended that any unexpended funds or excess assessments from the 1991–92 crop year be placed in its reserve. The Committee's reserve is well within the maximum amount authorized under the order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found

that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year begins on October 1, 1992, and the marketing order requires that the rate of assessment for the crop year apply to all assessable California dates handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 987.335, is added to read as follows:

§ 987.335 Expenses and assessment rate.

Expenses of $495,500 by the California Date Administrative Committee are authorized, and an assessment rate of $1.40 per hundredweight of assessable dates is established for the crop year ending September 30, 1993. Unexpended funds from the 1991–92 crop year may be carried over as a reserve.

Dated: October 1, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–24225 Filed 10–5–92; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 328

RIN 3064–AA95

Advertisement of Membership; Correcting Amendments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: CFR correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published Wednesday, August 16, 1989 (54 FR 33669). The regulations related to the manner of display and use of the official bank sign and the official savings association sign by insured banks and insured savings associations.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Jenetha M. Hickson, Alternate Liaison Officer, (202) 898–3807.

SUPPLEMENTARY INFORMATION: The final regulations contained errors that have appeared in the 1990 CFR and subsequent issues. The errors are misleading and, therefore, are in need of correction.

List of Subjects in 12 CFR Part 328

Advertising, Bank deposit insurance, Banks, Banking, Savings associations, Signs and symbols.

Accordingly, 12 CFR Part 328 is corrected by making the following correcting amendments:

PART 328—ADVERTISEMENT OF MEMBERSHIP

1. The authority citation for part 328 continues to read as follows:

Authority: 12 U.S.C. 1819; 12 U.S.C. 1828(a), as amended by sec. 221, Public Law 101–73, 103 Stat. 183.

§ 328.1 [Corrected]

2. In § 328.1(b), change the words "shall be 5¼" in diameter" to "shall be 5⅛" in diameter".

§§ 328.2 and 328.4 [Corrected]

3. In §§ 328.2(c) and 328.4(c), change the words "paragraph (a) of § 303.14" to "§ 303.0(b)(18) of this chapter".

Dated: October 1, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–24237 Filed 10–5–92; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506 and 563

[No. 92–361]

RIN 1550–AA42

Loans to Executive Officers, Directors, and Principal Shareholders of Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to and in accordance with sections 4(a), 10(d) and 11 of the Home Owners' Loan Act (HOLA), the OTS is amending its regulations pertaining to insider transactions by adopting a rule governing extensions of credit by savings associations to their executive officers, directors and principal shareholders, and to related interests of such persons (collectively referred to herein as "insiders"). This rule was proposed by the OTS on April 9, 1992. It will clarify and simplify the regulatory scheme currently governing these lending transactions involving insiders or affiliated persons by replacing the OTS's existing "Conflicts Rule," current 12 CFR 563.43, with a new rule that incorporates by means of cross-reference subpart A of the Federal Reserve Board's (FRB) Regulation O, 12 CFR part 215, as now or hereafter in effect.

In addition, the OTS has determined not to adopt at this time an additional rule, "Insider Transactions and Conflicts of Interest," also proposed on April 9, 1992, that would govern business transactions, other than extensions of credit, between savings associations and their insiders. These transactions continue to be subject to general fiduciary principles as enunciated in agency and judicial decisions.

EFFECTIVE DATE: November 5, 1992.

FOR FURTHER INFORMATION CONTACT: Leonard J. Essig, Senior Attorney (202) 906–6476; Aline J. Henderson, Assistant Chief Counsel (202) 906–7308, Corporate and Securities Division; or Michael P. Scott, Program Manager, Affiliates Policy (202) 906–5748; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On April 9, 1992 (57 FR 12232), the OTS published two proposed rules for comment. The first proposal, "Loans to

Executive Officers, Directors, and Principal Shareholders of Savings Associations," was designed to implement the provisions of sections 22(g) and 22(h) of the FRA,[1] which govern extensions of credit by savings associations to insiders, and also to implement the public disclosure requirements authorized by section 7(k) of the Federal Deposit Insurance Act [2] (FDIA). The second proposal, "Insider Transactions and Conflicts of Interest," was designed to regulate non-credit business transactions between savings associations and insiders. These rules would have been codified as new sections 563.43 and 563.44, respectively. The proposed rules would also have replaced the OTS's existing "Conflicts Rule" at current § 563.43.

II. Comment Summary

The OTS received a total of 11 comment letters on the proposed rules. Those who submitted comments included seven savings associations, three thrift trade associations, and one law firm. In addition, one savings association and one savings and loan holding company submitted letters after the close of the public comment period.

In general, the commenters supported the OTS's effort to clarify and simplify the existing regulatory scheme. However, nearly all commenters also stressed the importance of regulatory uniformity with the standards applicable to banks. They urged the OTS to adopt regulations consistent with those applicable to banks and avoid the imposition of additional restrictions with respect to loans to and other business transactions with insiders.[3] Several commenters noted that the President has directed the federal banking agencies to attempt to achieve regulatory uniformity in order to reduce unnecessary compliance costs for federally-insured financial institutions.[4] Some commenters also noted that adoption of nonconforming regulations by the OTS could put savings associations at a significant disadvantage relative to other depository institutions without a commensurate enhancement in the safety and soundness of savings associations' operations.

The great majority of commenters who addressed proposed § 563.43 encouraged the OTS to follow Regulation O in applying sections 22(g) and 22(h) of the FRA to thrifts. One commenter also suggested that the OTS adopt the approach used by the FDIC in 12 CFR 337.3, which generally makes Regulation O applicable to insured nonmember banks.

In addition, the commenters addressed a number of specific issues on which the OTS requested comment in connection with proposed § 563.43. These issues included whether the OTS should adopt a "direct or indirect benefit" standard for determining whether an extension of credit would be deemed made to an insider instead of the "tangible economic benefit" standard contained in Regulation L. Many commenters argued that this would be an unworkable and overly broad standard.

Other issues on which the OTS requested comment included (1) whether the OTS should broaden the definitions of certain terms such as "immediate family," "control," "principal shareholder" and "company" found in Regulation O and (2) whether the OTS should adopt provisions more stringent than those contained in regulation O in areas such as the calculation of the appropriate lending limits, the applicability of the provisions prohibiting the payment of overdrafts, the recordkeeping and reporting requirements for loans to insiders, and the possibility of imposing any additional restrictions on loans to executive officers. In general, commenters opposed these changes on the grounds that: (1) Thrifts should not be treated differently than banks; (2) adoption of some of these definitional changes might lead to confusion in implementation of the new rule; and (3) extending the purview of Regulation O to encompass additional parties and transactions is unnecessary and unwarranted.

One commenter asserted that § 563.43 would be unduly burdensome for diversified savings and loan holding companies and their subsidiaries since the definitions of "executive officer" and "director" include individuals holding such positions with the holding company or with holding company subsidiaries that are not depository institutions. The commenter requested that the OTS revise § 563.43 to provide for exemption procedures and recordkeeping requirements for diversified savings and loan holding companies that are less burdensome than those contained in Regulation O. Consistent with the policies of the FRB, the OTS has determined that it may not do so.

Virtually all of the commenters opposed the adoption of proposed § 563.44. They argued primarily that the other federal banking regulators have not adopted comparable rules. According to the commenters, since the issues raised by non-credit business transactions are common to both banks and thrifts, any rules addressing such transactions should be proposed jointly by all of the federal banking regulators.[5]

After reviewing all of the comments received, the OTS has determined that many have substantial merit and, as discussed below, has substantially revised the final rule to incorporate by means of cross-reference the FRB's Regulation O, as now or hereafter in effect.[6] The OTS has also determined not to proceed with the proposed business transactions rule at the present time, but to continue its reliance on general principles of fiduciary responsibilities and safety and soundness as enunciated in case law.

III. Changes to the Proposed Rules

A. Section 563.43

The OTS is revising proposed section 563.43 to incorporate by means of cross-reference substantially without change [7]

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[1] 12 U.S.C. 375a and 375b. These provisions are applicable to thrifts as a result of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Under section 11(b) of the HOLA, 12 U.S.C. 1468, as added by section 301 of the FIRREA and amended by section 308 of the FDICIA, sections 22(g) and 22(h) of the FRA are applicable to a savings association "in the same manner and to the same extent as if the savings association were a member bank" of the Federal Reserve System.

[2] 12 U.S.C. 1817(k).

[3] One commenter, however, objected to proposed § 563.43, asserting that federally insured institutions should be barred from extending credit to their directors and officers.

[4] See Office of the Press Secretary, The White House, "Fact Sheet on Financial Services Reforms" (Apr. 24, 1992).

[5] Some commenters also raised more specific issues with respect to proposed § 563.44. Included among these were comments opposing the proposed prohibition on a savings association investing in real property in which an insider has an equity interest and seeking clarification of the terms "business dealing" and "direct or indirect benefit." As the OTS is not adopting proposed § 563.44 at this time, these comments are not addressed in this final rule.

[6] *See* 12 U.S.C. 1468(b)(1). Section 1468(b)(1) mandates that "Subsections (g) and (h) of section 22 of the Federal Reserve Act shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank."

[7] Section 215.13 of Regulation O generally provides that any member bank or other person who violates subpart A of Regulation O will be subject to the civil penalties specified in section 29 of the FRA, 12 U.S.C. 504. Section 29 of the FRA is not applicable to savings associations, and thus the OTS has not incorporated § 215.13 into new § 563.43. The OTS notes, however, that the remedial provisions of section 8 of the FDIA, 12 U.S.C. 1818, will apply to any violations of new § 563.43.

the provisions of subpart A of Regulation O that implement sections 22(g) and 22(h) of the FRA, section 7(k) of the FDIA, and section 306(o) of the FDICIA. These provisions are set forth in §§ 215.1–215.12 of Regulation O.[8] By virtue of section 11 of the HOLA, enacted as part of FIRREA, savings associations have been required to comply with major portions of Regulation O since August 1989. This action therefore continues and updates the application to savings associations of the well-recognized standards of Regulation O, providing savings associations with stability in the rules they must follow, achieving a level playing field for savings associations and banks, and promoting regulatory uniformity among the federal banking agencies. This approach also permits savings associations and the OTS to take advantage of the experiences of the FRB and the other federal banking agencies in the application and implementation of Regulation O.

The final rule accordingly contains a number of substantive changes from the proposed rule. These changes are discussed below. Certain technical changes have also been made to the rule to conform certain definitional provisions of Regulation O to the regulatory scheme applicable to savings associations.

1. Extensions of Credit

As noted above, Regulation O provides that an extension of credit is deemed made to an insider "to the extent that the proceeds of the extension of credit are used for the tangible economic benefit of, or are transferred to" the insider.[9] By incorporating Regulation O by means of cross-reference, the OTS will follow this standard and will not, as set forth in the proposal, substitute a broader standard that would *per se* attribute an extension of credit to an insider if that insider received a "direct or indirect" benefit from the loan.

This change and the OTS's determination at this time not to adopt proposed § 563.44 highlight a crucial aspect of the function and effect of insider transactions rules such as Regulation O. The specific proscriptions and directives of statutes and regulations are only the *per se* portion of regulatory oversight. Compliance with Regulation O is not a "safe harbor." Simply because a transaction satisfies the quantitative and procedural requirements of the rule does not mean that an insider transaction is necessarily safe and sound or that an insider participating in or benefiting from a transaction has acted in full conformity with his or her fiduciary duties. In addition to compliance with *per se* regulatory requirements such as Regulation O, institutions and their insiders have fundamental responsibilities to ensure that transactions undertaken by the institution are safe and sound and comply with general fiduciary requirements.[10]

2. Lending Limits

Under the final rule and Regulation O, an association's loans to an insider may not exceed the loans-to-a-single-borrower limitations applicable to member banks prescribed by section 5200 of the Revised Statutes.[11] Proposed § 563.43 would have permitted savings associations to take advantage of certain higher lending limits available to thrifts pursuant to section 5(u) of the HOLA.

The OTS, however, has determined that its authority to apply the HOLA's higher lending limits to extensions of credit subject to section 22(h) is limited in light of the plain language in section 11(b) of the HOLA, which applies section 22(h) to thrifts "in the same manner and to the same extent" as if thrifts were member banks of the Federal Reserve System. Section 22(h) expressly provides that a member bank's loans to an insider may not exceed the limitations set forth in section 5200 of the Revised Statutes. Thus, the OTS has concluded that, for purposes of calculating the lending limits under section 563.43 as revised, the higher lending limitations are not available to savings associations. This result also achieves regulatory uniformity with banks.

3. Meaning of the Term "Bank"

The OTS has also revised § 563.43 to clarify that savings associations are regarded as "banks" as well as "member banks" for purposes of sections 22(g) and 22(h) of the FRA and § 563.43. The OTS has previously taken the position that savings associations should be regarded as both "member banks" and "banks" for purposes of sections 23A and 23B of the FRA, except where Congress expressly withheld such treatment.[12] In the OTS's view, savings associations should be afforded similar treatment under sections 22(g) and 22(h) of the FRA and Regulation O to the extent that status as both a "bank" and a "member bank" has relevance under those provisions.

4. FDICIA Section 306(o)

Section 306(o) of the FDICIA generally requires that executive officers and directors of an insured depository institution or bank or thrift holding company, the shares of which are not publicly traded, report annually to the board of directors any extensions of credit to the executive officer or director that are secured by the stock of the institution or holding company. Section 215.12 of Regulation O implements section 306(o) of FDICIA with respect to both member banks and, pursuant to new § 563.43, savings associations.[13]

B. Proposed Section 563.44

The OTS has determined at present not to adopt proposed § 563.44. As discussed above, however, the absence of a rule establishing *per se* regulatory standards and prohibitions relating to business transactions with insiders does not affect the responsibilities of directors and managers to oversee and ensure an institution's safe and sound operations; nor does it affect in any way the fiduciary standards applicable to insiders.

The OTS also notes that, under section 38 of the FDIA, "Prompt Corrective Action," enacted as part of FDICIA, the OTS may impose various restrictions on institutions that are "critically undercapitalized," "significantly undercapitalized," or "undercapitalized" and have failed to submit and implement an acceptable capital plan.[14] Under this Prompt

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[8] The FRB recently amended Regulation O to implement certain statutory revisions to section 22(h) wrought by FDICIA. See 57 FR 22417 (May 28, 1992) *republishing* 57 FR 21199 (May 19, 1992). By incorporating Regulation O by means of cross-reference, the OTS also adopts these regulatory amendments, as well as any future amendments to Regulation O that the FRB may adopt.

[9] 12 CFR 215.3(f).

[10] See in the Matter of Neil M. Bush, OTS Decision and Order (April 18, 1991); see also 12 CFR 571.7.

[11] 12 U.S.C. 84.

[12] See 56 FR 34005, 34006, July 25, 1991 (adopting rules implementing sections 23A and 23B of the FRA, now codified at 12 CFR 563.41 and 463.42).

[13] The FRB has amended its Regulation Y, 12 CFR part 225, to implement section 306(o) with respect to bank holding companies. With respect to savings and loan holding companies, the OTS notes that section 306(o) is self-executing and is thus applicable to such companies without implementing regulation.

[14] 12 U.S.C. 1831(o).

Corrective Action authority, effective December 19, 1992, the OTS has discretion to take any action with respect to such institutions that the OTS determines is necessary to carry out the purposes of section 38. This could include, on a case-by-case basis, limitations and standards for non-credit business transactions with insiders. Limitations and standards may also be required on a case-by-case basis as an element of an association's capital plan.

IV. Existing Section 563.43

In amending § 563.43 to incorporate by means of cross-reference Regulation O, the OTS is eliminating the provisions of the Conflicts Rule regarding loans, other investments and real and personal property transactions involving affiliated persons. The provisions of existing § 563.43 will remain in effect until the effective date of these amendments, however, and any violations of existing § 563.43 that have occurred or may occur prior to the effective date remain fully subject to enforcement action after such date.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act Analysis is not required.

Executive Order 12291

The OTS has determined that this rule does not constitute a "major rule" and, therefore, does not require the preparation of a final regulatory impact analysis.

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h) under OMB Control No. 1550-0075. It can be found in 12 CFR 563.43(f), (g), (h), (i)(3) and 563.44(g).

Due to changes made to the rule as proposed, now reflected in this final rule, the OTS has revised its estimate of the total recordkeeping and reporting burden for all savings associations. The first change to the proposed rule, resulting in a decreased burden, is that the OTS has determined not to proceed at present with proposed new § 563.44, which contained certain recordkeeping requirements. The second change, resulting in an increased burden, arises from the fact that the FRB has revised subpart A of Regulation O to implement a FDICIA provision requiring officers and directors of insured depository institutions that are not publicly traded to report annually to the institution's board of directors the amount of any outstanding loans to such officers or directors that are secured by the institution's stock. Because the OTS is now incorporating subpart A of Regulation O by means of cross-reference, this provision of Regulation O is incorporated as well. As a result of these changes, the total annual burden of the final rule for all savings associations is now estimated to be 19,950 hours, a decrease of 14,150 hours from the previous estimate. These changes will be made through an inventory correction worksheet.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood Insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision hereby amends chapter V, title 12, of the Code of Federal Regulations as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 is revised to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended by adding three new entries in numerical order to the table in paragraph (b) to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display*

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	
563.43(f) through (h)	1550-0075
563.43(i)(3)	1550-0075
* * * * *	

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

3. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464 1467a, 1468, 1817, 1828; 42 U.S.C. 4106; Public Law 102-242, sec. 306, 105 Stat. 2236, 2355 (1991).

4. Section 563.43 is revised to read as follows:

§ 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.

Pursuant to 12 U.S.C. 1468, a savings association, its subsidiaries and its insiders (as defined) shall be subject to the restrictions contained in subpart A of 12 CFR part 215, the Federal Reserve Board's Regulation O, with the exception of 12 CFR 215.13, in the same manner and to the same extent as if the association were a bank and a member bank of the Federal Reserve System, except that:

(a) Such provisions shall be administered and enforced by the OTS;

(b) References to the term "bank holding company" shall be deemed to refer to "savings and loan holding company";

(c) References to "report of condition filed under 12 U.S.C. 1817(a)(3)" shall be deemed to refer to "Thrift Financial Report"; and

(d) The term *subsidiary* shall include a savings association that is "controlled," within the meaning of § 563.41(a)(3) of this part, by a company (including for this purpose an insured depository institution) that is a savings and loan holding company. When used to refer to a subsidiary of a savings association, the term *subsidiary* shall mean a "subsidiary" as that term is defined at § 563.41(b)(4) of this part.

Dated: September 28, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-24206 Filed 10-5-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ANM-1]

Establishment of Transition Area; Salmon, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a 700 foot transition area at Salmon, Idaho, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Lemhi County Airport, Salmon, Idaho. The intent of this action is to accurately define controlled airspace for pilot reference. The airspace will be depicted on aeronautical charts.

EFFECTIVE DATE: 0901 u.t.c., December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket 92-ANM-1, 1601 Lind Avenue SW, Renton, Washington 98055-4056, Telephone: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

History

On July 10, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Salmon, Idaho (57 FR 30702).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes controlled airspace for aircraft executing a new instrument approach procedure to the Lemhi County Airport, Salmon, Idaho. The airspace will be depicted on aeronautical charts to accurately define controlled airspace for pilot reference. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71), is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

ANM ID TA Salmon, ID [New]

That airspace extending from 700 feet above the surface within an area bounded by a line beginning at lat. 45°25'10" N, long. 114°05'03" W to lat. 45°25'10" N, long. 113°48'18" W to lat. 45°07'20" N, long. 113°39'13" W to lat. 44°48'10" N, long. 114°17'48" W to lat. 44°58'30" N, long. 114°28'18" W to lat. 45°09'00" N, long. 114°09'23" W, thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on September 23, 1992.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 92-24117 Filed 10-5-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AWP-17]

Establishment of Mesquite, NV, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a 700' AGL transition area at Mesquite, NV. This transition area will provide controlled air space for aircraft executing a standard instrument approach procedure (SIAP) to the Mesquite Airport, Mesquite, NV.

EFFECTIVE DATE: 0901 u.t.c., December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297-0010.

SUPPLEMENTARY INFORMATION:

History

On December 16, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Mesquite, NV Transition Area (56 FR 65199). A SIAP had been developed to serve the Mesquite, NV Airport and the additional controlled airspace was needed for of IFR aeronautical operations. This proposed action would lower the base of controlled airspace from 1200 feet to 700 feet above the surface in the vicinity of the airport to the north and west and from the base of controlled airspace to 700 feet above the surface in a small area south and east of the airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received from the Department of the Air Force, Barksdale Air Force Base, Louisiana, the Originating Activity for two (2) established Military Training Routes (MTRs), IR126 and IR266, which will traverse the new transition area. The FAA believes the establishment of the transition area will have no impact on the two MTRs. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. Transition Areas are published in Section 71.181 of FAA Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR

71.1. The transition area listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes the Mesquite, NV Transition Area. The base of controlled airspace is lowered from 1200 feet to 700 feet above the surface in the vicinity of the Mesquite Airport to the north and west and from the base of controlled airspace to 700 feet above the surface to the east and south. A SIAP has been developed to serve the airport and the additional controlled airspace is needed to contain IFR aeronautical operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporated by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AWP CA TA Mesquite, NV [New]

(lat. 36°50'06" N, long. 114°03'19" W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Mesquite Airport and within 1.8 miles either side of the Mormon Mesa VORTAC 068° T (052° M) radial extending from the Mesquite Airport to 10 miles southwest of the Mesquite Airport.

* * * * *

Issued in Los Angeles, California, on September 15, 1992.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 92–24121 Filed 10–5–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91-AWA-10]

Alteration of Jet Route J–167 and Revocation of Jet Route J–529; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment removes Jet Route J–529 between Fort Yukon, AK, and Shingle Point, Canada, and extends Jet Route J–167 from Fort Yukon, AK, to the Shingle Point, Nondirectional Radio Beacon (NDB). Canada has a J–529 elsewhere in Canada and has requested the elimination of the J–529 segment that enters the United States.

EFFECTIVE DATE: 0901 u.t.c., December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On May 12, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove J–529 between Fort Yukon, AK, and Shingle Point, Canada, and also to extend J–167 from Fort Yukon, AK, to the Shingle Point, NDB (57 FR 20218). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in section 75.100 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be removed or published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations removes J–529 between Fort Yukon, AK, and Shingle Point, Canada. Canada has requested that the segment of J–529 that enters the United States be eliminated from the airspace system and that J–167 be extended from Fort Yukon, AK, to Shingle Point, Canada. This action removes the duplication of jet routes within Canadian airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.607 Jet Routes

* * * * *

J–167 [Revised]

From Johnstone Point, AK, via Gulkana, AK; Big Delta, AK; Fort Yukon, AK; to Shingle Point NDB, YT, Canada. The airspace within Canada is excluded.

* * * * *

J–529 [Removed]

* * * * *

Issued in Washington, DC, on September 29, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–24193 Filed 10–5–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASO–18]

Alteration of Jet Route J–91; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J–91 located in the vicinity of Cross City, FL. This alteration creates a common crossing for J–75, J–89, and J–91. This action improves flight planning and reduces land-line telephone coordination.

EFFECTIVE DATE: 0901 u.t.c., December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On March 25, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of J–91 located in the vicinity of Cross City, FL (57 FR 10304). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and a minor radial change between the INT Orlando, FL, and Cross City, FL, this amendment is the same as that proposed in the notice. Jet routes are published in § 75.100 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to 14 CFR part 71 of the Federal Aviation Regulations alters the description of Jet Route J–91 located in the vicinity of Cross City, FL. This alteration creates a common crossing for J–75, J–89, and J–91 thereby improving flight planning, traffic flow, and reducing land-line telephone coordination in that area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routing matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.607 Jet Routes

* * * * *

J–91 [Revised]

From INT Orlando, FL, 274° and Cross City FL, 135° radials; Cross City; INT Cross City 338° and Atlanta, GA, 169° radials; Atlanta; Knoxville, TN; Henderson, WV; to Bellaire, OH.

* * * * *

Issued in Washington, DC, on September 29, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–24194 Filed 10–05–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 90–ASO–19]

Alteration of VOR Federal Airway; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VHF Omnidirectional Range (VOR) Federal Airway V–329 located in the vicinity of Eglin Air Force Base (AFB), FL. The Eglin VOR has been decommissioned and was part of the description of V–329. Federal Airway V–329 is now realigned from an intersection. This action is in conjunction with the decommissioning of the Eglin VOR.

EFFECTIVE DATE: 0901 u.t.c., December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On December 5, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of V–329 located in the vicinity of Eglin AFB, FL (55 FR 50188). The Andalusia VOR would not pass flight check; the FAA therefore published a Supplemental Notice on February 5, 1991 (56 FR 4583), proposing to realign V–329 from Andal, FL, direct to Montgomery, AL. Federal Airway V–329 is now realigned direct to Montgomery, AL, from VOR Intersection Andal, FL. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the Supplemental Notice. VOR Federal Airways are published in Section 71.123 of Handbook

7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V–329 located in the vicinity of Eglin AFB, FL, due to the decommissioning of the Eglin VOR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal airways.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–329 [Revised]

From INT Monroeville, AL, 104° and Montgomery, AL, 188° radials; Montgomery; to Vulcan, AL.

* * * * *

Issued in Washington, DC, on September 29, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–24192 Filed 10–5–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Elite Chemical Corp., Inc., to RSR Laboratories, Inc.

EFFECTIVE DATE: October 6, 1992

FOR FURTHER INFORMATION CONTACT: Judith O'Haro, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8737.

SUPPLEMENTARY INFORMATION: Elite Chemical Corp., Inc., P.O. Box 1947, Norcross, GA 30091, has informed FDA that it has transferred ownership of, and all rights and interests in approved NADA 140–850 to RSR Laboratories, Inc., 501 Fifth St., Bristol, TN 37620. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) and in 21 CFR 520.580(b)(1) to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry "Elite Chemical Corp., Inc.," and by alphabetically adding a new entry for "RSR Laboratories, Inc.," and in the table in paragraph (c)(2) by removing the entry "055025" and by numerically adding a new entry for "058670" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
• • • • •	
RSR Laboratories, Inc., 501 Fifth St., Bristol, TN 37620	058670
• • • • •	

(2) * * *

Drug labeler code	Firm name and address
• • • • •	
058670	RSR Laboratories, Inc., 501 Fifth St., Bristol, TN 37620.
• • • • •	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.580 [Amended]

4. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing "055025" and adding in its place "058670".

Dated: September 29, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92–24191 Filed 10–5–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final rule approving revisions to the Indiana State Reclamation Plan, which was published Monday, May 11, 1992 (56 FR 20048).

EFFECTIVE DATE: October 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these corrections was published in the **Federal Register** on May 11, 1992. The regulation announced the approval of a proposed amendment to the Indiana Abandoned Mine Land Reclamation Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231 *et seq.*, as amended. The amendment pertains to changes to SMCRA made by the Abandoned Mine Land Reclamation Act of 1990 which became effective October 1, 1991. The amendment revises the Indiana Program to address the changes to SMCRA effected by the amendment.

Need for Correction

As published, the final regulation contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

On page 20051, second column, "section 914.15, Approval of Regulatory Program Amendments" was inadvertently designated and should be corrected to read, "section 914.25, Amendments to approved Indiana abandoned mine land reclamation plan." Paragraph (kk) should be corrected to read paragraph (b).

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 15, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

Accordingly, 30 CFR part 914 is amended as follows:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.25 is revised to read as follows:

§ 914.25 Amendments to approved Indiana abandoned mine land reclamation plan.

(a) The following amendments to the Indiana AMLR plan, as submitted on January 22, 1988, and modified on June 20, 1988, and August 10, 1988, are approved effective December 29, 1988: Revisions to the Indiana AMLR plan which concern policies and procedures regarding project selection reclamation coordination, land acquisition, rights of entry, lien consideration, public participation, procurement, accounting systems, endangered and threatened species listing, and a revised administrative and management structure of the plan.

(b) The following amendment, which concerns abandoned mine land reclamation, is approved effective May 11, 1992. Revisions to the Indiana State Reclamation Plan corresponding to 30 CFR 884.13 as follows:

884.13(c)(1)—Goals and Objectives
884.13(c)(2)—Project Ranking and Selection Procedures
884.13(c)(3)—Coordination with Other Programs
884.13(c)(5)—Reclamation on Private Land
884.13(c)(7)—Public Participation Policies
884.13(d)(1)—Organization of Designated Agency
884.13(e)(1)(2)—Description of Eligible Lands and Waters
884.13(f)(1)—Economic Base

[FR Doc. 92–24131 Filed 10–5–92; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–92–69]

Special Local Regulations for Marine Events; Philadelphia Columbus Day Fireworks Display; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of special local regulations.

SUMMARY: This notice implements 33 CFR 100.509 for the Philadelphia Columbus Day fireworks Display. The display will be launched from barges anchored off Penns Landing, Delaware River, Philadelphia, Pennsylvania on October 11, 1992. The regulations in 33 CFR 100.509 are needed to control vessel traffic in the immediate vicinity of the event due to the confined nature of the waterway and expected spectator craft congestion during the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.509 are effective from 6 p.m. to 9:30 p.m., October 11, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Philadelphia (215) 271–4825.

Drafting Information: The drafters of this notice are QMI Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations: The Philadelphia Columbus 500th Corporation submitted an application dated September 10, 1992 to hold a fireworks display in conjunction with a Columbus Day celebration. The display will be launched from barges anchored off Penns Landing, Delaware River, Philadelphia, Pennsylvania. Since many spectator vessels are expected to be in the area to watch the fireworks, the regulations in 33 CFR 100.509 are being implemented for this event. The fireworks will be launched from within the regulated area. The waterway will be closed during the display. Since the closure will not be for an extended period, commercial traffic should not be severely disrupted.

Dated: September 25, 1992.

W.T. LeLand,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92–24200 Filed 10–5–92, 8:45 am]
BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 920780-2180]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Turtle excluder device exemption in North Carolina restricted area and request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) will continue to allow limitations on tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in a small area off the coast of North Carolina through October 30, 1992. This area exhibits intermittently high concentrations of a brown alga, (*Dictyopteris sp.*), that makes trawling with TEDs impracticable. Shrimp inhabit the alga, and fishermen wish to harvest the alga to catch the shrimp. When algal concentrations are high, TEDs may reduce shrimp retention by excluding a large portion of the algae and the shrimp within. The tow time alternative allows fishermen to harvest shrimp more productively. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area when tow times are allowed in lieu of TEDs, and to determine whether algal concentrations continue to make TED use impracticable.

DATES: This rule is effective from October 1, 1992 through November 2, 1992. Comments on this action must be received by November 2, 1992.

ADDRESSES: Comments on this action should be sent to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713-2322) or Charles A. Oravetz, Chief, Protected Species Program, Southeast Region, NMFS, (813/893-3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in the U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, U.S.C. 1531 *et seq.* (ESA). Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in waters off of North Carolina. Interim final regulations at 50 CFR parts 217 and 227 require shrimp trawlers 25 feet (7.6m) long or longer in offshore waters of the Atlantic Area, which includes waters off North Carolina, to use approved TEDs in trawls year round. Shrimp trawlers less than 25 feet long in offshore waters of the Atlantic area are required to limit tow times to 90 minutes or less, or use TEDs. Tow time is defined as the interval for trawl doors entering the water to trawl doors being removed from the water.

Special Environmental Conditions

Interim final rules published on July 29, 1992 (57 FR 33452), and September 8, 1992 (57 FR 40859), allowed shrimpers to limit tow times rather than use TEDs through September 30, 1992, in a restricted area off the coast of North Carolina. The background and need for this exemption was thoroughly discussed in the July 29, 1992, interim final rule, and will not be repeated here. NMFS' continuing review of the TED exemption program in the North Carolina restricted area indicates there are no sea turtle mortalities associated with this program. Incomplete reports of sea turtle strandings on beaches adjacent to the restricted area show that one loggerhead turtle stranded during the period of September 1–25, 1992. NMFS and the State of North Carolina, have conducted cooperative enforcement activities and report that shrimpers have complied with the tow-time restrictions. Fishing activity in the restricted area has been limited. Thirty-eight vessels have registered for the TED exemption program, but daily fishing activity has been limited to a maximum of 15 vessels. NMFS placed an observer on one vessel on September 10, 1992. No turtles were taken during five tows that lasted a maximum of 34 minutes each. Shrimping was poor and bycatch of algae predominated the hauls, followed by finfish and other crustaceans.

NMFS has determined that there is nothing to indicate that the environmental conditions in the restricted area that were initially determined to make TED use impracticable have changed. Therefore, the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) extends the authorization to use restricted tow times, as an alternative to the requirement to use TEDs, in the North Carolina restricted area, acting pursuant to the interim final regulations effective September 1, 1992, (57 FR 40861), codified at 50 CFR 227.72(e)(3)(iii).

Comments on the Interim Final Rule

NMFS requested comments on the September 8, 1992, interim final rule extending the authorization to use restricted tow times instead of TEDs in the North Carolina restricted area. No comments were received.

Sea Turtle Conservation Measures

This action applies to shrimp trawlers 25 feet (7.6m) in length or longer in a restricted area off the coast of North Carolina. The "North Carolina restricted area" is that portion of the offshore waters between Rich Inlet, North Carolina, (34°17.6'N. latitude) and Brown's Inlet, North Carolina, (34°35.7'N. latitude), the inner boundary of which is the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972) and the seaward boundary of which is 1 nautical mile east of that line.

A shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes (measured from the time trawl doors enter the water, until they are retrieved from the water). NMFS does not anticipate that there will be adverse effects to sea turtles by substituting tow times for TEDs if shrimpers comply with the tow time requirements. The 55-minute tow time limitation allows at least 40 minutes bottom-time for trawling. The 55-minute tow time has also been determined to constitute an acceptable limit for forced submergence of sea turtles in shrimp trawls, and the more restricted tow time facilitates enforcement. The National Academy of Sciences report, "Decline of the Sea Turtles: Causes and Prevention," provided guidance on effects of tow times on sea turtles. The report concluded that tow times of 40 minutes in summer months and 60 minutes during winter months would provide protection comparable to the afforded by TEDs. Thus, a tow-time limitation appears to be an effective alternative to mandatory TED use and should provide comparable protection for sea turtles.

The owner or operator of a shrimp trawler 25 feet (7.6m) in length or longer trawling in the North Carolina restricted area must register with the Southeast Regional Director, NMFS, by telephoning at 813/893-3163. The following information is requested: (1)

The name and official number of the vessel; (2) the time and date of the telephone registration; the number of the state permit authorizing fishing in the restricted area; (3) a statement that the owner or operator intends to trawl in the North Carolina restricted area using the limited tow times option; (4) and the dates trawling operations in the North Carolina restricted area are expected to be conducted.

If required by the Assistant Administrator, or his designee, the owner and operator of a shrimp trawler 25 feet (7.6m) in length or longer trawling in the North Carolina restricted area must carry a NMFS-approved observer. The observer will monitor compliance with required conservation measures, including restricted tow times, and resuscitation of captured turtles in accordance with 50 CFR 227.72(e)(1)(i).

Any person who does not comply with any requirement in this action is in violation of the interim final regulations (57 FR 40861), codified at 50 CFR 227.71(b)(3).

Additional Sea Turtle Conservation Measures: Termination

The Assistant Administrator, at any time, may modify the required conservation measures through notice in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, including requiring more restrictive tow times or synchronized tow times, if the Assistant Administrator determines that conditions do not make trawling with TEDs impracticable, that there is insufficient compliance with the required conservation measures, or, that compliance cannot be monitored effectively. Likewise, conservation measures may be modified if monitoring to assess turtle mortality indicates that the incidental take level for the program is approaching the incidental take level established by the biological opinion for this action issued as a result of consultation under section 7 of the ESA. That level is one lethal take of a Kemp's ridley, green, hawksbill, or leatherback turtle; or two lethal takes of loggerhead turtles.

The Assistant Administrator will terminate this exemption for the North Carolina restricted area, if the incidental take level is exceeded, if significant or unanticipated levels of lethal or non-lethal takings or strandings of sea turtles associated with fishing activities in the North Carolina restricted area occur, or if conditions do not make trawling with TEDs impracticable. NMFS will monitor algal concentrations regularly in the restricted area through limited observer coverage and the testing of TEDs to evaluate the need for continued TED exemption for this local fishery. Finally, the Assistant Administrator may terminate this exemption for the North Carolina restricted area, if shrimpers refuse to accept observers when requested to do so and the level of observer coverage is insufficient to adequately monitor incidental take. The Assistant Administrator may take such action, for these or other reasons, as appropriate, at any time. A notice will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in the North Carolina restricted area.

Classification

The Assistant Administrator has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for listed sea turtles, and is consistent with the ESA and other applicable law. This action does not require a regulatory impact analysis under Executive Order 12291, because it is not a major rule.

Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the interim final rule published on September 8, 1992, (57 FR 40861), and the two previous interim final rules (57 FR 33452, July 29, 1992; and 57 FR 40859, September 8, 1992) implementing this TED exemption program. A supplemental EA prepared for this action concludes, that with specified mitigation measures, this action would have no significant impact on the human environment.

This action continues a registration program that contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, requests for registration to trawl using restricted tow times in lieu of TEDs in the North Carolina restricted area. This collection has been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0267.

The public reporting burden for this collection-of-information is estimated to average 7 minutes per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Comments regarding this burden estimate or any other aspect of this collection-of-information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see **ADDRESSES**). See OMB control number 0643-0267 and related analysis.

The Assistant Administrator, pursuant to section 553(b)(B) of the APA, finds there is good cause to take this action on an emergency basis and that it is impracticable and contrary to the public interest to provide notice and opportunity for comment. Failure to implement temporary measures immediately would result in fishermen not being able to catch shrimp as efficiently as possible in the North Carolina restricted area, while still protecting endangered and threatened sea turtles. Because this action relieves a restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this rule is being made immediately effective.

Dated: September 30, 1992.

Nancy Foster,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 92-24120 Filed 10-1-92; 10:12 am]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 920400-2100]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reassessment.

SUMMARY: NMFS announces that 24,000 mt of the initial shore-based allocation of 80,000 mt of Pacific whiting is surplus to shore-based processing needs and is available for at-sea processing in 1992. This action is intended to provide for full utilization of the Pacific whiting resource by U.S. fishermen and processors as provided for in the emergency interim rule allocating the 1992 whiting resource.

DATES: Effective one half hour after official sunrise (local time) October 1, 1992.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney McInnis at (310) 980-4040.

SUPPLEMENTARY INFORMATION: The emergency interim rule allocating the 1992 Pacific whiting (whiting) resource at 50 CFR 663.23(b)(5) (57 FR 13661,

April 17, 1992, extended at 57 FR 32181, July 21, 1992, corrected at 57 FR 35785, August 11, 1992) initially limited the amount of the whiting harvest guideline of 208,800 metric tons (mt) that could be processed at sea in the EEZ to 98,800 mt, with 80,000 mt set aside for shoreside processing and the remaining 30,000 mt set aside as a reserve. The reserve was made available for at-sea processing on September 4, 1992, because shoreside processors had not used 48,000 mt (60% of their initial allocation) by September 1, 1992, as provided in the emergency rule (57 FR 40136; September 2, 1992). Further at-sea processing of whiting was prohibited at 1400 hours on September 12, 1992, when the reserve was projected to have been taken (57 FR 42898; September 17, 1992).

The emergency rule also provides for an October reassessment such that any amount of the harvest guideline not needed by shore-based processors may be made available for at-sea processing on October 1 or as soon as practicable thereafter. The best available information on September 25, 1992, indicates that approximately 40,000 mt of whiting was processed shoreside through September 15, 1992, and that 56,000 mt would accommodate shore-based processing needs through November 30, 1992. Consequently, 24,000 mt of the initial 80,000-mt shore-based allocation for 1992 is surplus to shore-based processing needs and is made available for at-sea processing on October 1. This increases the limit for at-sea processing from 128,800 mt to 152,800 mt. Approximately, 127,500 mt has been processed at-sea in 1992, leaving about 25,300 mt available for at-sea processing after October 1.

The emergency rule allocating whiting in 1992 expires at 2400 hours on October 13, 1992, at which time all limitations on at-sea processing will expire. However, any amount of the whiting harvest guideline still remaining after October 14 is intended by the Pacific Fishery Management Council (Council) for shoreside processing needs through the end of November 1992.

The Council has recommended that a 3,000-pound trip limit be imposed when the harvest guideline is reached, to minimize landings in excess of the harvest guideline while allowing incidental catches to be landed and small target fisheries to continue. If approved, implementation of this trip limit will be announced in a separate notice in the **Federal Register**.

Secretarial Action

For the reasons stated above, an additional 24,000 mt of whiting is made available for at-sea processing one-half hour after official sunrise on October 1, 1992. This increases the amount of whiting available for at-sea processing in 1992 from 128,800 mt (98,800-mt initial allocation plus 30,000-mt reserve release) to 152,800 mt (128,800 mt plus 24,000-mt surplus from the initial shore-based allocation). When 152,800 mt of whiting is projected to have been processed at-sea in 1992, or the harvest guideline is projected to be reached, further at-sea processing in the fishery management area will be prohibited.

Consistent with 50 CFR 663.23 (b)(5)(vii), any prohibitions or adjustments may be made effective immediately by actual notice to fishermen and processors (by phone, FAX, Northwest Region computerized bulletin board (contact 206–526–6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF)), followed by publication in the **Federal Register**.

Classification

This action is taken under the authority of, and in accordance with 50 CFR 663.23(b)(5)(vi) and (vii). The determination of the amount of whiting surplus to shore-based processing needs is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until October 15, 1992.

This action implements the emergency rule for the 1992 allocation of Pacific whiting (57 FR 13661, extended at 57 FR 32181), is taken under the authority of 50 CFR 663.23(b)(5), and is exempt from the normal review procedures of Executive Order 12291.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Record keeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 30, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation, and Management, National Marine Fisheries Service.

[FR Doc. 92–24148 Filed 9–30–92; 4:31 pm]

BILLING CODE 3510–22–M

50 CFR Part 672

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure of directed fishing.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by the offshore component in the Central Regulatory Area (statistical areas 62 and 63) of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allowance of Pacific cod total allowable catch (TAC) to the offshore component in this area.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), September 30, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The allowance of Pacific cod TAC to the offshore component in the Central Regulatory Area of the GOA is 363 metric tons (mt) in accordance with § 672.20(a)(2)(v)(B).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(2)(ii), that the entire 363 mt will be needed as bycatch to support other groundfish fisheries. Therefore, NMFS is establishing a directed fishing allowance of 0 mt for the Central Regulatory Area, and is setting aside 363 mt as incidental catch in directed fishing for other species. Consequently, NMFS is prohibiting directed fishing for Pacific cod in the Central Regulatory Area of the GOA by the offshore component effective from 12 noon, A.l.t., September 30, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*
Dated: September 30, 1992.

David S. Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-24125 Filed 9-30-92; 4:38 pm]
BILLING CODE 3510-22-M

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50 CFR Part 685

[Docket No. 920538-2249]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule recommended by the Western Pacific Fishery Management Council (Council) to reduce seasonally (October through January) the longline fishing area closures off the windward sides of the Main Hawaiian Islands (MHI). This action will allow operators of longline vessels to fish for bigeye tuna in waters around the MHI that were previously closed to longline fishing to prevent conflicts with troll and handline fishing vessels. This action is intended to reduce economic strain experienced by certain longline vessel operators and owners as a result of the area closures without significantly increasing the risks of gear conflicts. It also may reduce the safety risk associated with longline vessels fishing far offshore in months with rough weather and dangerous ocean conditions.

EFFECTIVE DATE: This action becomes effective at 0001 hours local time October 1, 1992.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review for Amendment 5 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) establishing the original longline fishing area closures, and the supporting documentation for the proposed adjustment of the area closures, may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Southwest Region, NMFS, 310-980-4034; Alvin Z. Katekaru, Pacific Area Office, Southwest Region, NMFS 808-955-8831, or the Western Pacific Fishery Management Council at 808-523-1368.

SUPPLEMENTARY INFORMATION: Under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary of Commerce (Secretary) approved Amendment 5 to the FMP that established longline fishing area closures around the MHI. The amendment was implemented by a final rule (57 FR 7661, March 4, 1992). This amendment made permanent longline area closures that had been first imposed by emergency rule effective June 14, 1991 (56 FR 28816, June 19, 1991); corrected by a notice published on July 11, 1991 (56 FR 31689); and extended for a second 90-day period by a notice on September 20, 1991 (56 FR 47701). These regulations prohibit fishing for pelagic species with longline gear within 75 nautical miles (nm) of Kauai County (which includes the islands of Kauai, Niihau, and Kaula) and the island of Oahu, and within 50 nm around Maui County (which includes the islands of Maui, Kahoolawe, Lanai, and Molokai) and Hawaii County (which is the island of Hawaii). The closures are intended to prevent conflicts between longline gear and troll and handline gear by precluding longline fishing in areas on which troll and handline fisheries have been dependent. Additional information on the basis for this action may be found in the **Federal Register** of June 19, 1991 (56 FR 28816).

The amendment also established procedures for adjusting the longline area closures through a rulemaking process, if necessary, to meet the goals and objectives of the FMP (50 CFR 685.24). The Council proposal that has resulted in this rule has followed that procedure. The basis for the proposal and the rationale for the specific adjustment in the area closures are described in detail in the proposed rule published at 57 FR 33926 (July 31, 1992) and is not repeated here. When presented with information from participants in the longline fishery, troll and handline fisheries, and marketing and processing industries, the council concluded that a seasonal adjustment in the longline fishing area closures would provide opportunity for the longline fishery to fish for bigeye tuna in the waters concerned without significantly increasing the risk of gear conflict between the longline fishery and the troll and handline fisheries for pelagic species. The seasonal adjustment could reduce adverse economic impacts on the longline fishery sector without a significant reduction in the effectiveness of the closures in preventing gear conflicts. The information supporting the Council's conclusion was presented in the proposed rule and is not repeated here. The Council acknowledged the limitations of the data on which to base its decision, but noted that the areas to be open to longline vessel operators, although important for bigeye tuna fishing in the late fall and early winter months, are relatively little used by the troll and handline fishery sectors. While total longline fishery catches increased in 1991 compared to 1990, there was a sharp decrease in longline activity following the imposition of the original area closures, suggesting that the closures had severely affected at least a portion of the fleet. There is no definitive information concerning the effects of catches by one fishery sector on the catches of another sector; however, it was noted by the Council that total commercial small boat landings of pelagic species increased by 11 percent in 1991 from 1990 levels in spite of the large longline fishery landings.

Based on these data, the Council concluded that a seasonal reduction in the longline area closures on the windward sides of the MHI is warranted. This will relieve an economic burden for at least some longline vessel operators, while not increasing significantly the probability of gear conflicts among the principal gear types in the pelagics fishery around Hawaii.

The Council recommended that the longline fishery area closures around the MHI be as follows:

1. From October 1 through January 31 of the following year, longline fishing would be prohibited within waters approximately 25 nm from the windward shores of Kauai County, Maui County, and Hawaii County, and 50 nm off the windward coast of Oahu; and within waters approximately 75 nm off the leeward coasts of Kauai County and Oahu and 50 nm of Maui County and Hawaii County. The distances are approximations; the U.S. Coast Guard and NMFS Enforcement staff have provided specific latitude and longitude coordinates to designate the closed areas with straight lines that approximate the 25, 50, and 75 nm boundaries. In some areas, the closure may be slightly more or less than the mileage indicated.

2. From February 1 through September 30 each year, longline fishing would be prohibited within waters, on the windward and the leeward side,

approximately 75 nm from Kauai County and Oahu, and within 50 nm of Maui County and Hawaii County. Again, specific latitude and longitude coordinates are set to facilitate enforcement.

The Council did not condition this adjustment on a vessel tracking system (VTS) or observer requirement or a bycatch limit. However, the Council agreed to develop an amendment to require VTS equipment on all longline vessels by September 1993 and an amendment authorizing the Southwest Regional Director, NMFS (Regional Director), to place observers on longline vessels to collect scientific data on catch composition, especially the catch of blue marlin in the longline fishery. These FMP amendments are under preparation. The Council also agreed to convene a workshop on blue marlin management, including the possibility of bycatch limits.

NMFS agrees that the proposed modification of the longline fishing area closures is consistent with the FMP and is warranted to reduce an economic burden without reducing the effectiveness of the area closures in preventing gear conflicts.

Comments on the Proposed Rule and Responses

Three persons submitted comments on the proposed rule, with one person submitting several sets of comments. These comments and the responses to them are presented below.

1. *Comment:* The information is insufficient to support a reduction in the longline area closures. The total landings of the longline fleet increased in 1991, indicating the closures did not have an adverse effect on the fleet.

Response: It is correct that total fleet landings increased, largely due to a significant increase in swordfish landings made by vessels fishing beyond the closed areas and outside the EEZ. However, there was a sharp drop in the level of longline fleet activity in the period following the initial imposition of the area closures, indicating that the closures were preventing a portion of the fleet from fishing. These vessels may not have had the capability or gear to be used to fish beyond the closed areas, or the operators may not have had the experience to fish successfully beyond the closed areas. As longlining vessels that are smaller or less-equipped are forced to fish in waters further off the coast when ocean conditions are more severe, safety risks will increase. Thus, a long-term decrease in total fleet landings may occur as the gear of longlining vessels becomes lost or damaged, or as long as certain longlining vessels are unable to fish far offshore in the months of rough weather and dangerous ocean conditions. Nonetheless, the area closure adjustment will allow these vessels a period of time to fish closer to shore at a time when bigeye tuna, a principal target species, are generally available. This may mitigate the adverse economic effect of the closures.

2. *Comment:* The Council did not consider the potential adverse effects of the reduced closure on troll and handline fishery sectors. These sectors are dependent on waters which are closed to longline vessels. Longline vessels have the capability to fish farther from shore and are not dependent on nearshore waters.

Response: The Council considered the potential impacts on other fishery sectors. The Council noted that troll and handline fisheries are heavily dependent on nearshore waters, as most fishing trips occur less than 20 miles from shore according to State of Hawaii fisheries data. Further, there is less activity in these fisheries in the winter than in the summer, when the larger closures would be in effect. While many longline vessels are capable of fishing beyond the closed areas, the Council noted that longline fishing activity dropped sharply after the closures initially went into effect, indicating that at least a portion of the longline fleet was dependent on these areas and could not fish far from shore. The Council further noted that there is not a clear relationship between longline catches and troll and handline catches; all sectors experienced increased landings in 1991 compared to 1990.

3. *Comment:* The reduction in the area closures will pose a threat to threatened and endangered species, such as the Hawaiian monk seal and humpback whale. There has been increasing movement of seals between the northwestern Hawaiian Islands (NWHI) and the MHI, especially around Niihau and Kauai, and waters 50 miles west and north of Kauai should remain closed all year. The humpback whale range extends to Molokai, Lanai, and Kahoolawe, not just to Maui, and reducing the area closures in the winter when whales are most abundant risks more entanglements with longline gear.

Response: Based upon the environmental assessment (EA) prepared by the Council for the emergency action and FMP amendment that established the original longline area closures, NMFS concluded that there would be no risk to threatened and endangered species. The only documented instances of interaction between longline fishing and Hawaiian monk seals occurred in the NWHI; no instances have been known to occur around the MHI. While there have been increased sightings of monk seals around the MHI, these are still relatively rare and there is no reason to expect adverse effects on the population as a result of the closure adjustment. With respect to humpback whales, NMFS noted that there had been two recorded instances of entanglement in longline gear in 1991. NMFS concluded, however, that because the winter distribution of humpback whales is predominantly within the 100-fathom isobath around the MHI (less than 25 miles from shore), the seasonal closure adjustment would not adversely affect humpback whales.

4. *Comment*: The Council did not consider the bycatch by longliners of blue marlin and other species of importance to small scale commercial and recreational fisheries. The Council should have adopted requirements that a NMFS study has indicated would reduce the bycatch of these species. The requirement for longline vessels to carry observers also should be imposed.

Response: The Council considered these points but did not take immediate action. The Council is aware that troll and handline fisheries view blue marlin and some other species as bycatch to the longline fishery, but it is clear that these fish are sold and thus generate revenue to longline as well as troll and handline fisheries. As for the NMFS study, it indicated that it may be possible to reduce the catch of blue marlin on longlines by using certain gear modifications or techniques, but the ability to require and enforce the use of such gear or methods has not been evaluated by the Council or its plan team. The Council did agree to convene a workshop on blue marlin management, at which such actions may be addressed. The Council also agreed to prepare an FMP amendment to authorize the Regional Director to require a longline vessel operator to make accommodations for a scientific observer on a fishing trip to collect scientific data on the longline fishery. Completion of this amendment will take some time, including solicitation of public comments and consideration of the results of the blue marlin management workshop.

5. *Comment*: The Council did not adequately notify the public of its intent to consider longline fishing area closure adjustments and did not hold public meetings or hearings in all areas to solicit public comment before taking action.

Response: The Council met the Magnuson Act requirements and followed the framework process in the FMP for proposing adjustments to the area closures. The Council meeting at which the proposal was agreed to was announced in the Federal Register which indicated that this topic would be on the agenda for the meeting. The meeting also was announced in Honolulu newspapers and was open to the public. Meetings of the Council's Select Committee to address the area closure issue, Pelagics Plan Team, and Scientific and Statistical Committee also were announced in the Federal Register and in Hawaii newspapers and were open to the public. The Council also dedicated a portion of its March 16–17, 1992, meeting to take public testimony on the issue. The Council was not required to hold public hearings on all islands before making a decision on the issue.

6. *Comment*: The Council should accelerate the requirement for longline vessels to be equipped with vessel tracking system (VTS) devices before September 1993.

Response: The Council is preparing an FMP amendment on this issue. The requirement cannot be imposed until that amendment is finished and submitted to the Secretary for approval and implementation. Public input on the amendment will be required before it can be completed by the Council.

Changes From the Proposed Rule

No substantive changes were made from the proposed rule.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the western Pacific pelagics fishery and is consistent with the Magnuson Act and other applicable law.

The Council prepared an EA for the emergency action implementing the original area closures and prepared a supplemental EA for the FMP amendment that established the current area closures and the process for adjusting the area closures through rulemaking. The EA and supplemental EA concluded that the closures would not have a significant impact on the marine or human environment and were the basis for a Finding of No Significant Impact under the National Environmental Policy Act. There is no new information that would result in a different conclusion at this time, and this action falls within the scope of the alternatives considered in the EA and supplemental EA. Therefore, this action is categorically excluded from the requirement to prepare an environmental assessment under section 6.02.c.3(f) of NOAA Administrative Order 216–6. Copies of the EA and supplemental EA are available from the Council (see **ADDRESSES**).

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the fact that the final rule will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Biological Opinions and the results of informal consultations under the Endangered Species Act pertaining to the pelagic fisheries have concluded that, with the conservation and management measures in effect under the FMP, the fisheries are not likely to adversely affect any listed species or adversely affect critical habitat.

This rule will be implemented in a manner that is consistent to the maximum extent possible with the approved coastal management program of the State of Hawaii. The responsible state agency has concurred with this determination.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Administrative Procedure Act (5 U.S.C. 553) requires that, generally, final rules be published not less than 30 days before they become effective. This 30-day period may be shortened if the rulemaking agency publishes with the rule an explanation of what good cause justifies an earlier effective date. This rule is intended to alleviate economic strain during the months of October through January every year by allowing longline vessels an opportunity to fish for bigeye tuna when they are expected to be in waters which would be closed to longline vessels in the absence of this action. Also, the final rule relieves a restriction that forces longline vessels to operate far off the windward coasts in the winter, when ocean conditions are more severe. It is desirable to implement the rule by the intended effective date so that economic strain will be reduced. Allowing a full 30-day delayed effectiveness period will limit the beneficial effects of this action. Since the final rule is relieving a restriction, NMFS finds good cause to waive a portion of the delayed effectiveness period to make this rule effective on a timely basis.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 30, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.2, the definitions of "Guam longline fishing prohibited area" and "Hawaii longline fishing prohibited area" are removed, the definition of "Regional Director" is revised, and a new definition of "Longline fishing prohibited area" is added, to read as follows:

§ 685.2 Definitions.

* * * * *

Longline fishing prohibited area means the portions of the EEZ in which longline fishing is prohibited as specified in § 685.24 (b), (c), and (d).

* * * * *

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, California 90802, or a designee.

3. In § 685.5, paragraph (t) is revised to read as follows:

§ 685.5 Prohibitions.

* * * * *

(t) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 685.25.

§ 685.24 Redesignated as § 685.26

4. Section 685.24 is redesignated § 685.26 and a new § 685.24 is added to read as follows:

§ 685.24 Longline fishing prohibited area management.

(a) Longline fishing shall be prohibited in the longline fishing prohibited areas as defined in (b), (c), and (d) of this section.

(b) From February 1 through September 30 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	Latitude	Longitude
A	18°05′ N	155°40′ W
B	18°20′ N	156°25′ W
C	20°00′ N	157°30′ W
D	20°40′ N	161°40′ W
E	21°40′ N	161°55′ W
F	23°00′ N	161°30′ W
G	23°05′ N	159°30′ W
H	22°55′ N	157°30′ W
I	21°30′ N	155°30′ W
J	19°50′ N	153°50′ W
K	19°00′ N	154°05′ W
A	18°05′ N	155°40′ W

(c) From October 1 through the following January 31 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	Latitude	Longitude
A	18°05′ N	155°40′ W
L	18°25′ N	155°40′ W
M	19°00′ N	154°45′ W
N	19°15′ N	154°25′ W
O	19°40′ N	154°20′ W
P	20°20′ N	154°55′ W
Q	20°35′ N	155°30′ W
R	21°00′ N	155°35′ W
S	22°30′ N	157°35′ W
T	22°40′ N	159°35′ W
U	22°25′ N	160°20′ W
V	21°55′ N	160°55′ W
W	21°40′ N	161°00′ W
E	21°40′ N	161°55′ W
D	20°40′ N	161°40′ W
C	20°00′ N	157°30′ W
B	18°20′ N	156°25′ W
A	18°05′ N	155°40′ W

(d) The longline fishing prohibited area around Guam shall be the waters seaward of Guam bounded by straight lines connecting the following coordinates in the order listed:

Point	Latitude	Longitude
A	14°25′ N	144°00′ E
B	14°00′ N	143°38′ E
C	13°41′ N	144°33′30″ E
D	13°00′ N	143°25′30″ E
E	12°20′ N	143°37′ E
F	11°40′ N	144°09′ E
G	12°00′ N	145°00′ E
H	13°00′ N	145°42′ E
I	13°27′ N	145°51′ E

[FR Doc. 92–24208 Filed 10–1–92; 3:39 pm]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 194
Tuesday, October 6, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 735, 736, 737, 738, 739, 740, 741, and 742

RIN 0560 AC05

Liquidation and Informal Hearing Procedures Under the U.S. Warehouse Act

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Withdrawal of proposed rules.

SUMMARY: On May 9, 1991, a proposed rule was published in the **Federal Register** (56 FR 21452). The rule proposed amendments to the regulations governing warehousemen licensed under the U.S. Warehouse Act (USWA). Those amendments would provide liquidation procedures for the closure of licensed grain warehouses and informal hearing procedures for all USWA licensed warehousemen.

The proposal regarding informal hearing procedures will be published separately as a Proposed Rule for comment by interested parties. The proposal regarding liquidation procedures is hereby being withdrawn in response to the President's regulatory moratorium.

FOR FURTHER INFORMATION CONTACT: Lynda Moore, Agricultural Marketing Specialist, ASCS, USDA, telephone 202–720–2121.

Signed at Washington, DC, on September 30, 1992.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 92–24241 Filed 10–5–92; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV–92–093PR

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon—Amendment to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the term "pearl onions" to "pickler onions" for consistency of terminology with Federal grade standards. This proposal would also change the maximum size exemption of such onions from 1¾ inches to 1 inch in diameter. Under the current handling regulation, pearl onions as large as 1¾ inches in diameter are exempt from grade, size, maturity, assessment and inspection requirements, while other white onions more than 1 inch in diameter must meet minimum requirements in these areas. This action would eliminate the ambiguity over which onions are exempt and which are regulated by establishing a new, smaller, size range for pearl onions that more closely follows current industry practice. To eliminate redundancy and possible confusion in regulations, this proposal would also remove a paragraph from the handling regulation regarding imported onions.

DATES: Comments must be received by November 5, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted. Comments received will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Olson, Northwest Marketing Field Office, 1220 S.W. Third Avenue, room 369, Portland, Oregon, 97204, telephone (503) 326–2724, or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 690–0464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 130 and Order No. 958 (7 CFR part 958) (order), regulating the handling of onions grown in Idaho and Malheur County, Oregon. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a non-major rule.

This rule has been reviewed under Executive order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Idaho-Oregon onions subject to regulation under the marketing order, and approximately 450 producers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000. The majority of onion producers and handlers subject to regulations under the order may be classified as small entities.

On June 30, 1992, the Idaho-Eastern Oregon Onion Committee (Committee) unanimously recommended amending the order's handling regulation to change the term "pearl onions" to "pickler onions" and to reduce the maximum allowable size of such onions to not more than 1 inch in diameter. Paragraph (h) of § 958.328 *Handling regulation* currently defines pearl onions as onions grown using specific cultural practices that limit growth to the same general size as boiler and pickler onions, measuring 1¾ inches in diameter or less. The regulation groups all small onion under the heading of boilers and picklers with sizes up to 1¾ inches in diameter. The United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type) (7 CFR § 51.2834) states that the size range for boiler onions shall be 1 to 1⅞ inches in diameter while picklers shall be 1 inch or less in diameter. The industry generally considers pearl onions to be in the range of ¾ to 1 inch in diameter. Therefore, defining pearl onions as pickler onions, for purposes of the handling regulation, would describe the size of such onions in accordance with current industry practice. The Committee contends that using terminology consistent with the U.S. grade standards for onions would prevent confusion between sellers and buyers.

Pursuant to paragraph (e) of § 958.328, pearl onions are handled as special purpose shipments and, thus, are exempt from the grade, size, maturity, assessment and inspection requirements of the order. However, paragraphs (a)(1)(i) and (a)(3)(ii) of § 958.328 also specify that white varieties of onions must be at least 1 inch in diameter and that other (yellow) varieties must be at least 1½ inches in diameter, respectively. Because it is not readily apparent, after harvest, whether onions have been produced under cultural practices that would qualify such onions as pearl onions, small onions ranging from 1 inch to 1¾ inches in diameter could be considered exempt from regulations as pearl onions or regulated under the order's size requirements. This proposed rule would alleviate this ambiguity by limiting the size of pearl onions to 1 inch or less in diameter, which is smaller than the minimum size requirements for nonexempt onions. Handlers of pearl onions would still be required to comply with safeguard requirements of the order.

The Committee has twice increased the exempted size of pearl onions, most recently to 1¾ inches in diameter in September 1990 (55 FR 36601, September 6, 1990). That increase was justified because a small number of the pearl onions were larger than the intended size of 1 inch or less in diameter. The Committee had reported that buyers were more willing to purchase the somewhat larger onions in lots of pearl onions than to pay the additional handling costs associated with sorting the various sizes. Because pearl onions are sold as a specialty item, distinct from other onions grown in the production area, it was not expected that the increase in the exemption size would adversely affect the marketing of other onions.

However, the Committee now reports that the larger sizes of exempted pearl onions; i.e., those greater than 1 inch and 1¾ inches or less in diameter, compete directly with nonexempt onions regulated under the order. This size overlap for exempt and nonexempt onions has presented a compliance problem for the Committee. Thus, the Committee recommends that pearl onions larger than 1 inch and 1¾ inches or less in diameter not be exempt from order requirements. The Committee recommends that such pearl onions be subject to the same grade, size, maturity, assessment and inspection requirements as other smaller sized onions regulated under the order. Under this proposal, all pearl onions 1 inch or less in diameter would remain exempt from order requirements as special purpose shipments specified in paragraph (e) of § 958.328.

The information collection requirements that are contained in 7 CFR Part 958 have been previously approved by the Office of Management and Budget and have been assigned OMB No. 0581–0087. This action proposes that such pearl onions, currently being reported as special purpose shipments, be specified as pickler onions because such onions can be marketed in both fresh and processed markets. No additional increase in reporting burden would be required.

This action also proposes that paragraph (i) *Applicability to Imports* of § 958.328 be removed from the handling regulations. That paragraph provides information that is contained in 7 CFR 980.117 *Import regulations; onions.* Since the same information applicable to imported onions is contained in the import regulations, paragraph (i) in the domestic handling regulation should be removed to eliminate redundancy of regulations and possible confusion.

The recommended changes are intended to result in more consistent terminology used in describing onions produced in the production area, improve conformity in regulations by removing the ambiguity of size exemptions, and improve the Committee's ability to oversee compliance with program requirements.

The Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Written comments, timely received, in response to this action will be considered before finalization of this proposed rule.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 958 be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 958.328 is proposed to be amended by revising paragraph (e), the introductory sentence of paragraph (f), and paragraph (f)(2), adding a new paragraph (f)(5), revising paragraph (h), and removing paragraph (i) to read as follows:

§ 958.328 Handling regulation.

* * * * *

(e) *Special purpose shipments.* The minimum grade, size, maturity, assessment, and inspection requirements of this section shall not be

applicable to shipments of pickler onions or onions for any of the following purposes: (1) Planting, (2) livestock feed, (3) charity, (4) dehydration, (5) canning, (6) freezing (7) extraction, and (8) pickling.

(f) *Safeguards.* Each handler making shipments of pickler onions or onions for dehydration, planting, canning, freezing, extraction or pickling pursuant to paragraph (e) of this section shall:

(1) * * *

(2) Prepare, on forms furnished by the committee, a report in quadruplicate on each individual shipment to such outlets authorized in paragraph (c) of this section.

* * * * *

(5) Shipments of pickler onions shall be reported to the committee on forms and at time intervals as prescribed by the committee.

* * * * *

(h) *Definitions.* The terms "U.S. No. 1," "U.S. Commercial," and "U.S. No. 2" have the same meaning as defined in the United States Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Types), as amended (7 CFR 51.2830–2854), or the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195–3209) as amended, whichever is applicable to the particular variety, or variations thereof specified in this section. The term "braided red onions" means onions of red varieties with tops braided (interlaced). "Pickler onions" means onions which are produced using specific cultural practices that limit growth and which are 1 inch in diameter or less. The term "moderately cured" means the onions are mature and are more nearly well cured than fairly well cured. Other terms used in this section have the same meaning as when used in Marketing Agreement No. 130 and this part.

* * * * *

Dated: October 1, 1992.

William D. Paterson,

Acting, Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–24230 Filed 10–5–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1030

[DA–92–30]

Milk in the Chicago Regional Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Chicago Regional Federal milk marketing order for the months of October 1992 through January 1993. The proposal would suspend the shipping standard that applies to each plant in a unit of pool supply plants. Currently, each plant in a unit of supply plants must ship at least three percent or its receipts of milk or 47,000 pounds, whichever is less, to plants that distribute fluid milk products. The suspension was requested by Central Milk Producers Cooperative, (CMPC), a federation of cooperatives that represents producers who supply milk for the market. CMPC contends that the action is necessary to prevent uneconomical and inefficient movements of milk.

DATES: Comments are due no later than October 13, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 6456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Chicago Regional marketing area is being considered for the months of October 1992 through January 1993:

In § 1030.7, paragraph (b)(6)(v).

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures for October 1992.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would suspend certain provisions of the order during the months of October 1992 through January 1993. The suspension would eliminate the shipping standard that applies to each plant in a unit of pool supply plants during each of these months.

The order defines a unit of supply plants as two or more plants, which are located in the marketing area, from which Grade A milk is shipped to a qualified plant. The order provides that for pooling purposes a unit of supply plants must ship a specified percentage of total receipts to other plants and that each plant within a unit must ship at

least three percent of the plant's receipts of milk or 47,000 pounds, whichever is less, to plants that distribute fluid milk products during each of the months of August through January. The proposed suspension would suspend this shipping standard for individual plants during the months of October 1992 through January 1993.

The action was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represent a substantial number of producers who supply the market. CMPC contends that the most recent supply and demand estimates, and their commitments to the market, substantiate that there are more than sufficient fluid milk supplies from close-in sources available for the fluid market and it appears that this supply will continue. Based on these projections, CMPC asserts that it is impractical and unnecessary to require qualifying shipments from distant unit plants, while forcing the milk from nearby unit plants to be hauled out for manufacturing, merely for pooling purposes. CMPC states that this double hauling of milk is putting a financial burden on handlers who operate pool units. Thus, CMPC contends that the proposed action is necessary to prevent uneconomical and inefficient movements of milk.

Thus it may be appropriate to suspend the shipping standard for individual plants in a supply plant unit.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

PART 1030—[AMENDED]

The authority citation for 7 CFR part 1030 continues to read as follows:

Authority: [Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Dated: October 1, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–24228 Filed 10–5–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1098

[DA–92–31]

Milk in the Nashville, Tennessee Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This docket invites written comments on a proposal to suspend a portion of the pool plant definition of the Nashville, Tennessee milk order. The proposed action would suspend the 15 percent in-area route disposition requirement for pool plant status. The proposed suspension was requested by Malone and Hyde, Inc. (Malone), a proprietary handler that desires that its distributing plant located in Nashville, Tennessee remain regulated under that milk order.

DATES: Comments are due no later than October 13, 1992.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Nashville, Tennessee marketing area is being considered beginning October 1992:

In § 1098.7(a), the words "and that has route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of its total disposition of fluid milk products, except filled milk products, during the month".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. This period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include October 1992 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would suspend portions of the pool plant definition of the Nashville, Tennessee milk order. The proposal would suspend the 15 percent in-area route disposition requirement for pool plant status.

The suspension was requested by Malone and Hyde, Inc. (Malone), a proprietary handler operating a distributing plant that is regulated under the Nashville order. Under the provisions of that order, a distributing plant's total Class I disposition must not be less than 50 percent of certain specified milk receipts and the plant must have not less than 15 percent of its route disposition in the Nashville, Tennessee marketing area.

Malone contends that its distribution to grocery warehouses in corrugated boxes rather than plastic crates enables Malone to distribute over a much larger geographic market. The handler

contends that the Nashville market for milk in corrugated boxes is saturated at this time and that the 15 percent route disposition requirement restricts its ability to expand in other Federal order marketing areas without the loss of pool plant status or having to engage in uneconomic handling practices to meet the 15 percent standard. Malone contends that a suspension would not adversely affect the regulatory status of any other plant.

Accordingly, it may be appropriate to suspend the aforesaid provisions.

List of Subjects in 7 CFR Part 1098

Milk marketing orders.

The authority citation for 7 CFR part 1098 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: October 1, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–24229 Filed 10–5–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ASO–7]

Proposed Alteration to VOR Federal Airways; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to reflect the change of the name of the Chattanooga, TN, VHF Omnidirectional Range (VOR) within the legal descriptions of airways, jet routes, and domestic low altitude reporting points located in the State of Tennessee. The Chattanooga VOR is not located on the Chattanooga Airport and the FAA has determined that the current name could confuse pilots as to their desired destination. The Chattanooga VOR is located approximately 8 miles southeast of the airport. This action proposes, where necessary, to reflect the name change of the Chattanooga VOR to "Choo Choo."

DATES: Comments must be received on or before November 23, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 92–ASO–7, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ASO–7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the change of the name of the Chattanooga, TN, VOR to the Choo Choo, TN, VOR within the legal descriptions of airways, jet routes, and domestic low altitude reporting points located in the State of Tennessee. The Chattanooga, TN, VOR is not located on the Chattanooga Airport and the FAA has determined that the current name could confuse pilots as to their desired destination. The Chattanooga VOR is located approximately 8 miles southeast of the airport. This action proposes to reflect, where necessary, the name change of Chattanooga, TN, VOR to "Choo Choo." This action would aid pilots in flight planning. VOR Federal airways, Domestic low altitude reporting points, and Jet routes are published in §§ 71.123, 71.203, and 75.100, respectively, of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways, domestic low altitude reporting points, and jet routes listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic low altitude reporting points, Domestic VOR Federal airways, Incorporation by reference, Jet routes.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–5 [Revised]

From Pecan, GA, via Vienna, GA; Dublin, GA; Athens, GA; INT Athens 340° and Electric City, SC, 274° radials; INT Electric City 274° and Choo Choo, TN, 127° radials; Choo Choo; Nashville, TN; Bowling Green, KY; New Hope, KY; Louisville, KY; Cincinnati, OH; Appleton, OH; Mansfield, OH; DRYER, OH; London, ON, Canada. The airspace within Canada is excluded.

* * * * *

V–54 [Revised]

From Waco, TX; Scurry, TX; Quitman, TX; Texarkana, AR; INT Texarkana 052° and Little Rock, AR, 235° radials; Little Rock; Holly Springs, MS; Muscle Shoals, AL; Rocket, AL; Choo Choo TN; Harris, GA; Spartanburg, SC; Charlotte, NC; Sandhills, NC; INT Sandhills 146° and Fayetteville, NC, 287° radials; Fayetteville; to Kinston, NC.

* * * * *

V–67 [Revised]

From Choo Choo, TN; Shelbyville, TN; Graham, TN; Cunningham, KY; Marion, IL; Centralia, IL; INT Centralia 010° and Vandalia, IL, 182° radials; Vandalia; Capital, IL; Burlington, IA; Iowa City, IA; Cedar Rapids, IA; Waterloo, IA; Rochester, MN.

* * * * *

V–115 [Revised]

From Crestview, FL; INT Crestview 001° and Montgomery, AL, 204° radials; Montgomery; INT Montgomery 323° and Vulcan, AL, 177° radials; Vulcan; Choo Choo, TN; Knoxville, TN; Hazard, KY; Charleston, WV; Parkersburg, WV; Newcomerstown, OH; INT Newcomerstown 038° and Franklin, PA, 239° radials; Franklin; Tidioute, PA; Jamestown, NY; Buffalo, NY.

* * * * *

V–209 [Revised]

From Semmes, AL, via INT Semmes 356° and Eaton, MS, 080° radials; Kewanee, MS; Brookwood, AL; Vulcan, AL; INT Vulcan 097° and Gadsden, AL, 233° radials; Gadsden; and INT Gadsden 042° and Choo Choo, TN, 214° radials; Choo Choo.

* * * * *

V–243 [Revised]

From Craig, FL, via Waycross, GA; Vienna, GA; LaGrange, GA; INT LaGrange 342° and Choo Choo, TN, 189° radials; Choo Choo; Bowling Green, KY; Huntingburg, IN; to Terre Haute, IN.

* * * * *

V–333 [Revised]

From INT Rome, GA, 133° and Gadsden, AL, 091° radials via Rome; Choo Choo, TN; Hinch Mountain, TN; Lexington, KY.

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V–362 [Revised]

From Brunswick, GA, via Alma, GA; Vienna, GA; Macon, GA. From Choo Choo, TN, via Shelbyville, TN; Nashville, TN; INT Nashville 355° and Bowling Green, KY, 219° radials; to Bowling Green.

* * * * *

V–415 [Revised]

From From Montgomery, AL, via INT Montgomery 029° and Choo Choo, TN, 189° radials; INT Choo Choo 189° and Rome, GA, 252° radials; Rome; INT Rome 060° and Foothills, SC, 258° radials; Foothills; Spartanburg, SC; to INT Spartanburg 101° and Charlotte, NC, 229° radials.

* * * * *

V–515 [Revised]

From Choo Choo, TN, INT Choo Choo 332° and Nashville, TN, 116° radials; Nashville; INT Nashville 034° and New Hope, KY, 202° radials; New Hope; to Louisville, KY.

* * * * *

Section 71.203 Domestic Low Altitude Reporting Points

* * * * *

Chattanooga, TN [Remove]

Choo Choo, TN [New]

* * * * *

Section 71.607 Jet Routes.

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J–118 [Revised]

From Memphis, TN, via Choo Choo, TN; to Spartanburg, SC.

* * * * *

Issued in Washington, DC, on September 29, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–24195 Filed 10–5–92; 8:45 am]

BILLING CODE 4910–13–M

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FEDERAL TRADE COMMISSION

16 CFR Part 435

Mail Order Merchandise Trade Regulation Rule; Oral Presentations and Availability of Staff Documents

AGENCY: Federal Trade Commission.

ACTION: Notice of date for oral presentations before the Commission; placement of documents on the rulemaking record.

SUMMARY: The Federal Trade Commission has decided to grant the requests of the two interested parties who sought an opportunity to make oral presentations before the Commission, pursuant to the Commission Rules of Practice § 1.13(i), in the rulemaking to amend the Mail Order Merchandise Trade Regulation Rule. The Federal Trade Commission also has placed on the rulemaking record for the proposed Mail Order Merchandise Trade Regulation Rule the final recommendations of the rulemaking staff, the Deputy Director of the Bureau of Consumer Protection and the Assistant Director of the Bureau of Economics. A staff summary of the comments filed by the public on the reports of the staff and the Presiding Officer is also on the rulemaking record.

DATES: Oral presentations before the Commission will be heard at the Commission's open meeting on November 3, 1992, at 10 a.m.

ADDRESSES: The meeting will be held in room 532, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel N. Brewer, Federal Trade Commission, Washington, DC 20580, at (202) 326–2967.

SUPPLEMENTARY INFORMATION: Pursuant to § 1.13(h) of the Commission's Rules of Practice, comments were invited from the public on the reports of the staff and the Presiding Officer in the rulemaking to amend the Mail Order Merchandise Trade Regulation Rule, and interested parties who had previously participated in the proceeding were invited to submit requests to participate in oral presentations, pursuant to § 1.13(i) of the

Commission's Rules of Practice. The comment period closed on October 25, 1991 (56 FR 46133).

Five comments received were placed on the rulemaking record and the rulemaking staff prepared a summary of these comments. That summary is available for public inspection on the rulemaking record in this proceeding. Two other comments were not placed on the rulemaking record because, in one case, the comment attempted to place additional evidence in the rulemaking record and, in the second case, the comment was not timely submitted. These two comments were placed on the non-rulemaking public record.

The Federal Trade Commission has directed that the final recommendations of the rulemaking staff and the Deputy Director of the Bureau of Consumer Protection and the Assistant Director of the Bureau of Economics, submitted to the Commission after the conclusion of the post-record comment period specified in § 1.13(h) of the Commission's Rules of Practice, be placed on the rulemaking record in this proceeding for public inspection.

The Federal Trade Commission has offered the two interested parties who requested it the opportunity to make oral presentations. The prior participants in the proceeding who have been invited to appear include: The Direct Marketing Association and the Mail Order Association of America.

Each participant will be permitted thirty minutes to address comments to the Commission. No additional written comments may be submitted to the Commission. Oral presentations at the meeting must be restricted to the evidence already in the rulemaking record in this proceeding.

List of Subjects in 16 CFR Part 435

Mail Order merchandise, Telephone order merchandise, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-24188 Filed 10-5-92; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Financial Reporting by Introducing Brokers; Valuation of Investments of Customer Funds by Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing to reduce certain financial reporting requirements for independent introducing brokers (IBIs). These proposed rule amendments would: (1) Assure that IBIs are not required to file two certified financial statements within a six-month period; (2) require semiannual, rather than quarterly, financial reports; and (3) require that an IBI file notices of financial difficulties only with the National Futures Association (NFA) and futures commission merchants (FCMs) carrying or intending to carry accounts of the IBI's customers, and not also with the Commission. In light of the fact that an IBI's minimum financial requirement is lower than that of an FCM and that an IBI does not handle customer funds, the Commission believes it would be appropriate to reduce some of the related reporting requirements currently applicable to IBIs. The Commission is also proposing to amend its rule governing valuation of investments of customer funds by FCMs to conform the rule to modern financial practice.

DATES: Comments must be received by December 7, 1992.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to "IBI Finanical Reporting Requirements."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, at the above address. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Financial Reporting Requirements

A. Certified Financial Reports of IBIs

The Commission has historically considered the requirement for certified financial statements to be an integral part of its minimum financial and related reporting requirements and the financial surveillance program. The requirement provides a third-party certification as to a firm's financial condition and its records. Thus, when the Commission adopted rules to govern IBs,[1] it required an applicant for registration that intends to operate as an IBI to file financial statements certified by an independent public accountant demonstrating compliance with the minimum financial requirement of $20,000 of adjusted net capital. As is the case with an applicant for registration as an FCM, this requirement can be met by an IBI applicant in one of two ways: (1) By filing a Form 1-FR-IB, certified by an independent public accountant in accordance with Commission Rule 1.16, as of a date not more than 45 days prior to the date on which such report is filed; or, (2) by filing an uncertified Form 1-FR-IB as of a date not more than 45 days prior to the date on which such report is filed and a Form 1-FR-IB certified by an independent public accountant in accordance with Commission Rule 1.16 as of a date not more than one year prior to the date on which such report is filed.[2] Once an IBI is granted registration, it must file certified financial statements as of the close of its fiscal year. Interim unaudited reports must be filed quarterly. Commission Rule 1.10(b)(1) and (2).

An applicant for registration as an IB can avoid the need to file certified financial statements if it enters into a guarantee agreement with an FCM and files such agreement along with its application for registration. As long as the guarantee agreement remains in effect, the guaranteed introducing broker (IBG) need not raise its own capital or file financial reports. The Commission is aware, however, that some applicants for IB registration submit a guarantee agreement and a certified Form 1-FR-IB. The purpose is to begin operations immediately under a temporary license available to an IMB.[3] While NFA reviews the firm's certified financial statements. The IB and FCM enter into the agreement with the understanding that the agreement will terminate after NFA is satisfied that the IB meets the minimum financial requirements and grants the IB full registration. After that point, the firm will operate as an IBI.

Commission Rule 1.10(j)(8) requires, however, that if an IB is party to a guarantee agreement which terminates and the IB then seeks to operate as an IBI, it must file a certified Form 1-FR-IB as of the day following the date of termination of the guarantee agreement. The type of firm referred to in the preceding paragraph may have a rather simple financial structure and NFA's review of its Form 1-FR-IB may be completed quickly. In such circumstances, a second certified Form 1-FR-IB would be required in a

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[1] 48 FR 35248 (August 3, 1983).

[2] Commission Rule 1.10(a)(2)(ii) (A) and (B). See also Commission Rule 1.10(a)(1). Commission rules referred to herein can be found in 17 CFR Ch. I (1992), unless otherwise noted.

[3] See Commission Rules 3.44-3.47. Rule 3.44 has been amended recently. 57 FR 23130, 23151 (June 2, 1992).

relatively brief period. For instance, if an IB applied for registration on July 1, submitting both a certified Form 1–FR–IB as of May 29 and a guarantee agreement, it could operate immediately as an IBG. If the NFA reviewed the financial statements by July 30 and granted full registration, the guarantee agreement would terminate, and the IB would have to file another certified Form 1–FR–IB as of July 31.

The Commission has reviewed the IB financial filing requirements. Although the Commission continues to believe that it is important to have a reasonably current certified financial statement from an IBI when it begins operations, the Commission is aware that it can cost even the smallest IBI several thousand dollars to have its financial statements certified by an independent public accountant. This can be a substantial expense for an IBI, particularly when it is in the early stages of its operations and may not yet have generated much income. The Commission believes that it could be unduly burdensome to require two certified financial statements from an IBI within a six-month period, especially in light of the fact that an IBI does not hold customer funds. The Commission also believes that a change in the rules to provide that an IBI would not be required to file certified statements twice within six months is not inconsistent with the overall financial surveillance system since, as noted above, an applicant for registration as an IB can submit a certified financial report that is up to one year old.

Accordingly, the Commission is proposing to amend Rule 1.10(j)(8)(i) so that, if an IB is changing from guaranteed to independent status, it need not file a new certified financial report if it has filed one with an "as of" date not more than 185 days prior to the date of termination or expiration of the guarantee agreement.[4] This rule change should accommodate those firms referred to above that file a guarantee agreement in order to commence operations immediately and briefly as an IBG, with the understanding that they will operate as an IBI as soon as NFA is satisfied that the IB meets the minimum financial requirements and grants the IB full registration.

The Commission also recognizes that there will be other IBGs whose guarantee agreements are terminated or expire that had not originally applied for registration as IBGs with the understanding that they would soon assume independent status. The Commission is proposing certain rule amendments that should ease the financial reporting burden on these firms as well if they wish to remain in business as IBIs rather than enter into a new guarantee agreement. As noted above, current Rule 1.10(j)(8)(i) requires such firms to file a certified Form 1–FR–IB as of the day following the date of termination of the guarantee agreement. Since not all guarantee agreements terminate or expire near the end of a month, this could require certified financial statements as of a date other than a month-end. Such statements could be more difficult and costly to prepare for the IB and the independent public accountant, so the commission is proposing to allow the "as of" date of this first certified financial report to be no later than the end of the month of termination or expiration of the guarantee agreement. A similar change is proposed in Rule 1.10(j)(8)(ii) and in Rule 1.10(a)(3)(ii)(B) (which apply when a person that is not registered as an IB or as a securities broker or dealer succeeds to the business of an IBG).

The Commission is also proposing to amend Rule 1.10(b)(2) to further assure that an IBI will not need to file two certified financial reports within six months. If the IBI's first fiscal year-end following the "as of" date of its initial certified Form 1–FR–IB occurs within 185 days of such "as of" date, the IBI's Form 1–FR–IB as of the fiscal year-end would not need to be certified. (An uncertified Form 1–FR–IB would be required to be filed as of the fiscal year-end, however.) The firm's second certified Form 1–FR–IB would not need to be filed in such circumstances until the second fiscal year-end following the "as of" date of the initial certified Form 1–FR–IB. The second certified Form 1–FR–IB would need to cover the period from the day following the date of the initial certified Form 1–FR–IB through the second fiscal year-end following the initial "as of" date, which would be a period of up to eighteen months. Although IBIs may be able to avoid the need to utilize this provision by carefully designating their fiscal year when applying for registration or when first beginning to operate as an IBI, it may be more difficult for an IBI that had been operating as an IBG to accomplish this.

B. Unaudited Financial Reports by IBIs

The Commission has also reviewed the requirements for filing interim unaudited financial reports by IBIs. As noted above, Rule 1.10(b)(1) generally requires IBIs to file financial reports on a quarterly basis. However, Rules 1.10(b)(3) and 1.52 permit an IBI or an FCM to file financial reports on a semiannual basis if the rules of the firm's designated self-regulatory organization so provide. The only self-regulatory organization with an IB membership category is NFA, and all IBIs that handle customer business are members of NFA. NFA requires its member IBIs to file quarterly financial reports.[5] The Commission notes that certain contract markets only require their member FCMs to file financial reports on a semiannual basis.[6] In light of the fact that FCMs may hold customer funds and IBIs do not, it is somewhat anomalous for the latter to file financial reports more frequently than the former. Accordingly, the Commission is proposing to amend Rule 1.10(b)(1)(ii) to require that IBIs file Form 1–FR–IB semiannually rather quarterly. Commission staff have been in contact with NFA staff and the Commission would anticipate NFA will adopt a conforming change to its rules if the amendment to Rule 1.10(b)(1)(ii) is adopted.

To recapitulate the effect of the proposed amendments discussed above, assume that an IB files its initial certified financial report in 1992 with an as of date between June 30 and September 29 and is using the calendar year as its fiscal year. The next financial report filed by the IB would be an unaudited report as of December 31, 1992. In 1993, it would file an unaudited report as of June 30, 1993 and a certified report as of December 31, 1993. Thus, the firm would file two certified and two unaudited financial reports during this time period under the proposed rule amendments, while the current rules require three certified and four unaudited reports during the same time period.

C. Maintenance of Minimum Financial Requirements by IBIs

IBIs are not subject to a financial "early warning" notice requirement as are FCMs (*i.e.*, a requirement to give notice when adjusted net capital is less than 150 percent of the minimum amount required). However, IBIs, as well as applicants for registration as an IBI, are required to file notice and provide certain written reports when their adjusted net capital falls below the minimum amount required, they fail to make or keep current required books and records, or they discover or are

[4] The Commission is proposing 185 days as the time period because certain six-month periods include 184 days, *e.g.*, July–December.

[5] NFA Financial Requirements Section 9, NFA Manual (P–H) ¶ 7049.

[6] *See e.g.*, Commodity Exchange, Inc. Rule 7.05(a)(2).

notified by an independent public accountant of a material inadequacy in their accounting system or internal accounting controls.[7] Currently, IBIs and IBI applicants must file such notices and written reports with the Commission, NFA (the designated self-regulatory organization for IBIs) and with every FCM carrying or intending to carry customer accounts for the IBI or applicant for registration as an IBI.[8] Because IBIs are not subject to an early warning requirement, they are already relieved of a significant burden applicable to FCMs. However, in the other areas referred to above, where IBIs and applicants for registration as IBIs must give notice and file certain reports under Commission Rule 1.12, the reporting burden on IBIs is essentially the same as it is for FCMs.[9]

The Commission has reviewed this matter and believes that it can reduce the burden of Rule 1.12 notices and reports for IBIs and applicants for registration as IBIs by requiring that such notices and reports be filed only with NFA and any FCMs carrying or intending to carry such firms' customer accounts. The Commission is proposing to amend Rule 1.12(g) to so provide. Such reports and notices will continue to be required by Commission regulations and, in this context, NFA would receive them on behalf of the Commission. Any notice or report filed by an IBI or applicant for registration as an IBI with NFA pursuant to the proposed amendment to Rule 1.12(g) would be required to be maintained by NFA on behalf of the Commission and would be deemed for all purposes to have been filed with, and to be the official record of, the Commission. In particular, the willful making of a false or misleading statement of a material fact in a notice or report filed with NFA under the proposed amendment to Rule 1.12(g) will continue to be actionable under section 6(b) of the Commodity Exchange Act, 7 U.S.C. 9 (1982).

The Commission believes that this is consistent with the proposals discussed above regarding financial reports for IBIs. It is also consistent with the concept that, since IBIs do not carry customer funds and FCMs do, financial reporting burdens on the former can be somewhat lighter than on the latter.

D. Request for Comment

When the Commission adopted rules to govern IBs, it included, in response to a comment received on the proposed rules, a provision in Rule 1.10(i) that permits an applicant for registration as an IBI which is also a country elevator to file, in lieu of Form 1–FR–IB, a copy of a financial report that the country elevator would submit to the U.S. Department of Agriculture for other purposes.[10] The Commission hereby requests comment as to any other alternative financial reporting system that may exist which could be used to demonstrate effectively compliance by an IBI or applicant therefore with the minimum adjusted net capital requirement.

II. Valuation of Investments of Customer Funds

Commission Rule 1.28 requires FCMs who invest customer funds in permissible investments under Section 4d(2) of the Commodity Exchange Act, 7 U.S.C. 6d(2) (1988), and Commission Rule 1.25 to include such investments in segregated accounts at values no greater than the market value, determined as of the close of the market on the last preceding market day. When this rule was promulgated, an FCM was unable to obtain the bid price on permitted investments of customer funds prior to the preparation of the daily segregation record. Therefore, the rule allows the FCM to value permitted investments of customer funds as of the close of the market on the last preceding market day.

Since the market prices for permitted investments of customer funds are now readily and immediately available to an FCM because of sophisticated electronic communication facilities, there is no longer any purpose or need for using prices as of the close of the preceding trading day when preparing the daily segregation record. The Commission is, therefore, proposing to amend Rule 1.28 to recognize the ready availability of market prices for government securities.

Commission Rule 1.32 requires the daily segregation record to be completed prior to noon on the next business day. For example, Tuesday's segregation record must be completed by noon Wednesday. Under Rule 1.28 as currently in effect, such a record could use prices as of the close of business Monday to value investments of customer funds. The proposed amendment to Rule 1.28 would require an FCM, completing Tuesday's segregation record on Wednesday morning, to use prices as of the close of business on Tuesday.

The Commission understands that FCMs generally invest customer funds in short-term government securities whose historical cost generally does not exceed current prices under normal market conditions. Therefore, revaluation on a daily basis is usually unnecessary and this proposed rule amended should cause no change in current operations. The Commission specifically requests comment, however, from any FCM that believes this proposed rule amendment will present an undue burden.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments proposed herein will affect IBIs, with the exception of proposed amendment to Rule 1.28 which will affect FCMs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[11] The Commission has previously determined that registered FCMs are not small entities for the purpose of the RFA.[12] Therefore, the proposed amendment to Rule 1.28 would not have a significant economic impact on small entities.

With respect to IBS, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected IBS should be considered to be small entities and, if so, the economic impact on them of any rule.[13] The amendments to Rules 1.10 and 1.12 proposed herein would amend the Commission's rules currently applicable to IBIs so as to reduce rather than increase the financial reporting requirements of those rules. The general financial reporting requirements would be cut in half from quarterly to semiannually, the requirements for certified financial statements in the early stages of operations would be reduced, and the need to file Rule 1.12 notices with the Commission would be eliminated. The Commission believes that these proposed rule amendments will not have a significant economic impact on small entities.

Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these

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[7] Commission Rule 1.12(a)–(d).

[8] IBIs filed approximately 60 notices under Rule 1.12 for the first ten months of fiscal year 1992 (*i.e.*, October 1991 through July 1992).

[9] Commission Rule 1.12(g).

[10] See 48 FR 35248, 35262 (August 3, 1983). Since this rule was adopted almost ten years ago, the filing alternative has never been utilized and Commission staff have received no inquires on this issue.

[11] 47 FR 18618–18621 (April 30, 1992).

[12] 47 FR 18619.

proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted these proposed rule amendments and their associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including these proposed rule amendments, is as follows:

Average Burden Hours per Response—15.25
Number of Respondents—1,350
Frequency of Response—On Occasion

The burden associated with these specific rules, as proposed to be amended, is as follows:

Average Burden Hours per Response—1.75
Number of Respondents—240
Frequency of Response—On Occasion

Persons wishing to comment on the information which would be required by these rules as amended should contact Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subject in 17 CFR Part 1

Futures commission merchants, introducing brokers, reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1), 4b, 4c, 4d, 4f, 8a and 19, 7 U.S.C. 2, 6b, 6c, 6d, 6f, 12a and 23, the Commission hereby proposes to amend Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 is proposed to continue to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a–1, 16, 16a, 19, 21, 23 and 24, unless otherwise stated.

2. Section 1.10 is proposed to be amended by revising paragraphs (a)(2)(ii) introductory text, (a)(3)(ii)(B), (b)(1), (b)(2), and (j)(8) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *
(2) * * *

(ii) Except as provided in paragraphs (a)(3) and (h) of this section, each person who files an application for registration as an introducing broker and who is not so registered at the time of such filing, must, concurrently with the filing of such application file either:

* * * * *

(3) * * *
(ii) * * *

(B) Each such person who succeeds to and continues the business of an introducing broker which was operating pursuant to a guarantee agreement and which was not also a securities broker or dealer at the time of succession, who files an application for registration as an introducing broker, and who is not so registered in that capacity at the time of such filing, must file with the National Futures Association either a guarantee agreement or a Form 1–FR–IB with his application for registration. If such person files a Form 1–FR–IB with his application for registration, such person must also file a Form 1–FR–IB, certified by an independent public accountant, as of a date no later than the end of the month registration is granted. The Form 1–FR–IB certified by an independent public accountant must be filed with the National Futures Association not more than 45 days after the date for which the report is made.

(b) *Filing of financial reports.* (1)(i) Except as provided in paragraphs (b)(3) and (h) of this section, each person registered as a futures commission merchant must file a Form 1–FR–FCM for each fiscal quarter of each fiscal year unless the futures commission merchant elects, pursuant to paragraph (e)(2) of this section, to file a Form 1–FR–FCM for each calendar quarter of each calendar year. Each Form 1–FR–FCM must be filed no later than 45 days after the date for which the report is made: *Provided, however,* That any Form 1–FR–FCM which must be certified by an independent public accountant pursuant to paragraph (b)(2) of this section must be filed no later than 90 days after the close of each futures commission merchant's fiscal year.

(ii) Except as provided in paragraphs (b)(3) and (h) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, each person registered as an introducing broker must file a Form 1–FR–IB semiannually as of the middle and the close of each fiscal year unless the introducing broker elects pursuant to paragraph (e)(2) of this section to file a Form 1–FR–IB semiannually as of the middle and the close of each calendar year. Each Form 1–FR–IB must be filed no later than 45 days after the date for which the report is made: *Provided, however,* That any Form 1–FR–IB which must be certified by an independent public accountant pursuant to paragraph (b)(2) of this section must be filed no later than 90 days after the close of each introducing broker's fiscal year.–FR–IB f/

(2)(i) The Form 1–FR–FCM filed pursuant to paragraph (b)(1)(i) of this section, as of the close of the futures commission merchant's fiscal year, must be certified by an independent public accountant in accordance with § 1.16 of this part. A futures commission merchant who has elected to file its Forms 1–FR–FCM for each calendar quarter of each calendar year pursuant to paragraph (e)(2) of this section must nonetheless file a Form 1–FR–FCM so certified as of the close of such futures commission merchant's fiscal year.

(ii)(A) The Form 1–FR–IB filed pursuant to paragraph (b)(1)(ii) of this section as of the close of the introducing broker's fiscal year must be certified by an independent public accountant in accordance with § 1.16 of this part, except as provided in paragraph (b)(2)(ii)(B) of this section. An introducing broker who has elected to file its Forms 1–FR–IB semiannually on a calendar basis pursuant to paragraph (e)(2) of this section must nonetheless file a Form 1–FR–IB so certified as of the close of such introducing broker's fiscal year, except as provided in paragraph (b)(2)(ii)(B) of this section.

(B) If an introducing broker has filed previously a Form 1–FR–IB, certified by an independent public accountant in accordance with the provisions of paragraphs (a)(2)(ii) or (j)(8) of this section and § 1.16 of this part, as of a date not more than 185 days prior to the close of such introducing broker's fiscal year, it need not have certified by an independent public accountant the Form 1–FR–IB filed as of the introducing broker's first fiscal year-end following the as of date of its initial certified Form 1–FR–1B. In such a case, the introducing broker's Form 1–FR–IB filed as of the close of the second fiscal year-end following the as of date of its initial certified Form 1–FR–IB must cover the period of time between those two dates and must be certified by an independent

public accountant in accordance with § 1.16 of this part.

* * * * *

(j) * * *

(8)(i) An introducing broker which is a party to a guarantee agreement which has been terminated in accordance with the provisions of paragraph (j)(5) of this section, or which is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission or the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization either a new guarantee agreement effective as of the day following the date of termination of the existing agreement, or, in the case of a guarantee agreement which is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, a new guarantee agreement effective on or before such expiration, or a Form 1–FR–IB. If the introducing broker files such Form 1–FR-IB, the introducing broker must also file a Form 1–FR–IB, certified by an independent public accountant, as of the date no later than the end of the month of termination or expiration of the guarantee agreement, unless the introducing broker has filed previously a Form 1–FR–IB, certified by an independent public accountant in accordance with the provisions of paragraph (a)(2)(ii) of this section and § 1.16 of this part, as of a date not more than 185 days prior to the date of termination or expiration of the guarantee agreement. The Form 1–FR–IB certified by an independent public accountant must be filed with the designated self-regulatory organization not more than 45 days after the date for which the report is made.

(ii) Notwithstanding the provisions of paragraph (j)(8)(i) of this section or of § 1.17(a) of this part, an introducing broker which is a party to a guarantee agreement which has been terminated in accordance with the provisions of paragraph (j)(5)(ii) of this section shall not be deemed to be in violation of the minimum adjusted net capital requirement of § 1.17(a)(1)(ii) or (2) of this part, for 30 days following such termination. Such an introducing broker must cease doing business as an introducing broker on or after the effective date of such termination, and may not resume doing business as an introducing broker unless and until it files a new guarantee agreement or a Form 1–FR–IB. If the introducing broker files a Form 1–FR–IB, the introducing broker must also file a second Form 1–FR–IB, certified by an independent public accountant, as of the date no later than the end of the month in which the first Form 1–FR–IB is filed. The Form 1–FR–IB certified by an independent public accountant must be filed with the designated self-regulatory organization not more than 45 days after the date for which the report is made.

* * * * *

3. Section 1.12 is proposed to be amended by revising paragraph (g) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(g)(1) Every notice and written report required to be given or filed by this section (except for notices required by paragraph (f) of this section) by a futures commission merchant, an applicant for registration as a futures commission merchant or a self-regulatory organization must be filed with the regional office of the Commission nearest the principal place of business of the applicant or registrant (except that an applicant, registrant or self-regulatory organization under the jurisdiction of the Commission's Western Regional Office must file such notices and reports with the Southwestern Regional Office), with the designated self-regulatory organization, if any, with the Securities and Exchange Commission, if such applicant or registrant is a securities broker or dealer, and with the National Futures Association, if the firm is an applicant. In addition, every notice required to be given by this section must also be filed with the principal office of the Commission in Washington, DC. Each statement of financial condition, each statement of the computation of the minimum capital requirements pursuant of § 1.17 of this part, and each schedule of segregation requirements and funds on deposit in segregation required by this section must be filed in accordance with the provisions of § 1.10(d) of this part unless otherwise indicated.

(2) Every notice and written report which an introducing broker or applicant for registration as an introducing broker is required to give or file by paragraphs (a), (c) and (d) of this section must be filed with the National Futures Association (on behalf of the Commission), with the designated self-regulatory organization, if any, and with every futures commission merchant carrying or intending to carry customer accounts for the introducing broker or applicant for registration as an introducing broker.

* * * * *

4. Section 1.28 is proposed to be revised to read as follows:

§ 1.28 Appraisal of obligations purchased with customer funds.

Futures commission merchants who invest customer funds in obligations described in § 1.25 of this part shall include such obligations in segregated account records and reports at values which at no time exceed current market value, determined as of the close of the market on the date for which such computation is made.

Issued in Washington, DC, on September 30, 1992; by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–24154 Filed 10–5–92; 8:45 am]

BILLING CODE 6351-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[AD–FRL–3971–2]

Ambient Air Quality Surveillance Regulations

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to amend provisions of part 58 of chapter 1 of title 40 of the Code of Federal Regulations to take into account recent changes and developments in the overall management of ambient air quality data, and to reflect current operating practices of State and local agencies. The proposed revisions to the Ambient Air Quality Surveillance Regulations would change the data reporting requirements for State and Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS). The changes would affect the number of monitoring sites required to submit air quality data to the Aerometric Information Retrieval System (AIRS) and the timing for such data submittals. The data from both the current SLAMS and NAMS monitors would be submitted on a quarterly basis within either 60 or 90 days after the end of the calendar quarter. The proposed revisions would also replace most of the technical references to the former Storage and Retrieval of Aerometric Data (SAROAD) data base with references to the AIRS. Additional

technical revisions are also proposed to update the regulations to reflect organizational changes. The intent of the revisions is to update existing regulations to reflect current practices of many State and local agencies and to expedite data access with the AIRS data base for air quality planning and decision making.

A public hearing will be held, if requested, to provide interested parties an opportunity for oral presentation of data, views, or arguments concerning the proposed revisions.

DATES: Comments must be received on or before November 5, 1992. If a hearing is held, comments must be received on or before 30 days from the conclusion of the hearing.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air Docket (LE–131), Attention: Docket Number A–92–04, U.S. Environmental Protection Agency, room M–1500, 401 M Street, SW., Washington, DC 20460.

PUBLIC HEARING: If anyone contacts EPA requesting a public hearing, it will be held at the EPA's Environmental Research Center, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mr. David Lutz, Monitoring and Reports Branch (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5476.

DOCKET: Docket Number A–92–04, containing supporting information used in developing these revised regulations, is available for public inspection and copying between 8:30 a.m. and 12 noon, and between 1:30 p.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section at the address noted above. As provided in 40 CFR part 2, a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Lutz at telephone (919) 541–5476 concerning this action. The address is Monitoring and Reports Branch (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended in 1990, requires in sections 181(b)(2), 185A, and 186(b)(2)(A), ambient air quality monitoring for purposes of defining areas of "non-attainment" with the National Ambient Air Quality Standards (NAAQS), evaluating progress towards achievement of the NAAQS pursuant to State Implementation Plans, and reporting air quality data to EPA to document the status and trends of the Nation's air quality. In the discharge of these responsibilities, it is necessary for EPA to have timely access to valid and complete ambient air quality data as obtained by State and local air pollution control agencies. Current regulations require that State and local agencies submit air quality data only from certain designated sites (NAMS) to EPA within 120 days after the end of each calendar quarter. The data from other SLAMS (about 70 percent of the sites are SLAMS) are exempted from the quarterly reporting requirement and are required to be submitted in an annual report to the Administrator through the appropriate EPA Regional Office. Therefore, Part 58 currently includes two separate data processing and reporting requirements, a situation which States have found to be both inefficient and undesirable from a quality assurance standpoint. Consequently, most States have developed operational practices to process and report all ambient air quality data to EPA using one system. In practice all States except one are currently submitting all SLAMS data along with the NAMS data at least on a quarterly frequency basis. EPA's proposed revisions to part 58 are consistent with this current practice.

The EPA has now completed the development of a new comprehensive air quality data system. The Air Quality Subsystem (AQS) of the AIRS has replaced the former SAROAD data bank. The AIRS is a significant enhancement to the National monitoring program and results in improved efficiency at the State and local levels by allowing those agencies to directly input air quality data to AQS, thereby eliminating the need for additional data processing by the EPA Regional Offices. Most State and local personnel have already been trained in the use of the AIRS system and can now directly input their air quality data. This major enhancement, along with the development of electronic transfer and processing of air quality data, reduces the amount of time needed by State and local agencies to submit air quality data to the AIRS. Consequently, these revisions to Part 58 propose to change the data reporting requirements for two reasons: (1) To provide uniform quarterly reporting requirements for both NAMS and SLAMS, and (2) to shorten the data reporting time requirements from 120 days after the end of the calendar quarter to 60 days after the end of the calendar quarter for gaseous pollutant data and 90 days for particulate matter and lead data.

EPA is proposing a different reporting time between gaseous pollutant data and particulate pollutant data, since the filters for particulate sampling must be removed and weighed in a laboratory setting after the collection period. The gaseous pollutants can be measured and the data stored immediately after the measurement period.

The regulations in this notice deal with changes to the ambient air quality monitoring, data reporting, and surveillance requirements of 40 CFR part 58. These changes are needed based on the developments outlined above, and are required to reflect the implementation of the new AIRS data system. This will assure that high quality ambient air data are available to EPA on a more timely basis. EPA's need for timely air data is due to various requirements of the Clean Air Act, such as timely designations of attainment status and timely preparation and publication of annual reports, along with EPA's general need for consistent and timely access to ambient air quality data in AIRS, within a reasonable time frame after its collection. For example, under existing regulations, EPA may not receive NAMS air quality data collected on October 1 of a given year until May 1 of the following year. Clearly the need exists to shorten this timeframe.

Shorter reporting times are now feasible using readily available data processing equipment and standard operating procedures for data processing. Several State agencies already meet the 60/90 day data reporting timeframe proposed in these revisions. Earlier access to air quality data will allow EPA to be more responsive to the new requirements of the amended Clean Air Act and to the Nation's overall air quality program.

In an effort to evaluate the feasibility of the proposed regulatory change, a private contractor was retained by EPA to survey nine State and local agencies. The results of this effort have been fully documented and are available through the regulatory docket for this proposed action or through Mr. David Lutz in the Technical Support Division of Office of Air Quality Planning and Standards (OAQPS). The survey found that four out of the nine agencies surveyed were already meeting the 60/90-day data reporting requirement. The remaining agencies would have no difficulty in meeting part of the new requirement and some difficulty in meeting all requirements as of February 1991. The results of the study positively reinforced the proposed action by revealing that those States expecting difficulty in meeting the new requirements are those

States, in most cases, using antiquated data management equipment and procedures. The proposed revision will compel any agencies unable to meet this schedule to update their practices to reflect readily available and relatively inexpensive equipment and procedures. The efficiency and accuracy of these enhanced procedures will yield significant benefits in the utilization of resources and improvement of quality assurance and control programs. Also, the EPA estimates the additional burden associated with this rule in reporting the data on a quarterly basis versus summary statistics on a yearly basis is 11,000 hours. This represents an average of 50 hours per respondent (55 States and/or Territories) per quarter. Further discussion of the estimate of this burden is included in a following section on the Paperwork Reduction Act.

The proposed revisions also include several minor technical modifications to reflect changes in organizations, contacts, and references that have occurred since the last revisions to part 58 in 1986.

EPA solicits comments for all aspects of the proposal, specifically (a) the need and use of more frequent data, (b) the need to require the States to submit data more frequently versus voluntary submission, and (c) the EPA's estimate of the burden of this proposal.

Proposed Revisions to Part 58—Ambient Air Quality Surveillance

1. Section 58.1 Definitions

The revisions proposed today would amend the definitions section by adding a definition for the new AIRS. The Agency has completed major enhancements to the new AIRS data base, which replaces the former SAROAD data base for ambient air quality data. The proposed revisions will reflect this important program change by defining AIRS and replacing most references to SAROAD with references to AIRS. The definition of the SAROAD system would be maintained within this section because several organizations would continue to use certain parts of the SAROAD system as an interim interface with the new AIRS data base.

2. Section 58.26 Annual SLAMS Summary Report

No regulatory changes are proposed for this existing requirement. However, since the revisions proposed today would change the data reporting requirements for SLAMS data, the requirement of the annual SLAMS report has been questioned. Comments and suggestions are invited on whether this annual report is still necessary or whether any changes may be needed to this section to eliminate any redundancy in reporting requirements, while maintaining the necessary parts of this requirement.

3. Section 58.28 SLAMS Data Submittal

The revisions propose to require that all data from the SLAMS be submitted to AIRS under the same data reporting requirements as those for the NAMS. These regulatory changes reflect the actual operational practices of the majority of State and local agencies. For data processing purposes, EPA believes it is both inefficient and technically undesirable to maintain different reporting requirements for NAMS and SLAMS monitoring data.

The EPA solicits comments on the need to require submission of raw data on a quarterly basis and the estimated burden of this requirement.

Section 58.35 NAMS Data Submittal

The current monitoring regulations specify that all NAMS data be submitted in quarterly reports to the EPA Administrator (through the appropriate Regional Office) within 120 days of the end of each reporting period. This proposed requirement modifies the existing data reporting requirements for sites designated as NAMS, and now also includes the SLAMS as discussed above. The proposed requirement would change the existing data submittal for NAMS from 120 days after the end of the calendar quarter, to data submittals for both NAMS and SLAMS to 60 days for gaseous pollutants after the end of the calendar quarter and 90 days for particular and lead (Pb) data.

The EPA solicits comments on the need to require submission of raw data on a quarterly basis and the estimated burden of this requirement.

Part 58, Appendix A "Quality Assurance Requirements for State and Local Air Monitoring Stations (SLAMS)"

The revisions propose to change § 4.1 of appendix A to require that precision and accuracy data be submitted to AIRS under the same data reporting requirements as proposed for NAMS in § 58.35. The precision and accuracy data reporting requirement would be changed from 120 to 60 days after the end of the calendar quarter for the gaseous pollutants, and from 120 to 90 days for particulate matter and lead data.

Proposed revisions also would delete the forms for reporting precision and accuracy data in SAROAD format, along with the coding instructions for these forms. By mid-1991, procedures will have been developed to input these data directly into AIRS along with the air quality data, and these forms will no longer be used.

Impact on Small Entities

The Regulatory Flexibility Act requires that all Federal Agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small government jurisdictions (5 U.S.C. 601 et seq.). EPA's consideration pursuant to their Act indicates that no small entity group would be significantly affected in an adverse way by the proposal. Therefore, pursuant to 5 U.S.C. 605(b), the Administrator certifies that these proposed amendments would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirements in this proposed rule, which will amend the Information Collection Request (ICR) for Ambient Air Quality Networks, have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

The EPA has estimated the additional burden associated with this rule in reporting the data on a quarterly basis versus summary statistics on a yearly basis to be 11,000 hours. This includes an average of 50 hours per respondent (55 States and/or Territories) per quarter. This burden includes the editing, resolution of anomalies, and the updating of information on site location and environment. This estimate does not include the burden for reading the instructions, planning for report preparation, creating the information, or making electronic transmittal of data because these items were included in the previous labor estimate for the NAMS. It is also assumed that the State agencies are either AIRS users or operate storage and retrieval systems which allow automated submissions of data on a quarterly basis. The burdens for editing and anomaly resolution and for maintaining site information are assumed to be proportional to comparable functions for AIRS.

The EPA would like to solicit comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden. Send any comments to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection agency; 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs,

Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

Other Reviews

Under Executive Order 12291, EPA must judge whether a regulation is "major' and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. The revisions proposed in this rulemaking do not constitute major rules according to the established criteria. Most of the revisions update the regulations to reflect current practice by the States and the current air information data base employed by EPA. The shortened time periods for submitting required information after the end of a quarter are not expected to cause the effects noted in the above criteria. Therefore, I have determined that this proposal does not constitute a "major" regulation and no Regulatory Impact Analysis has been prepared.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments will be placed in the public docket for this rulemaking.

List of Subjects in 40 CFR Part 58

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements, Ambient air quality monitoring network.

Statutory Authority

The statutory authorities for today's proposal are Secs. 110, 301(a), and 319, Clean Air Act as amended, 42 U.S.C. 7410, 7101(a), and 7619.

Dated: September 29, 1992.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 58 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

1. Authority citation for part 58 is revised to read as follows:

Authority: Sections 110, 301(a), and 319 of the Clean Air Act as amended (42 USC 7410, 7601(a), and 7619.

2. Section 58.1 is amended by redesignating paragraphs (p) through (v) as (q) through (w), and by adding a new paragraph (p) and revising the newly designated paragraph (q) to read as follows:

§ 58.1 Definitions.

* * * * *

(p) *Aerometic Information Retrieval System (AIRS)-Air Quality Subsystem (AQS)* is the new EPA computerized system for storing and reporting of information relating to ambient air quality data.

(q) *Storage and Retrieval of Aerometric (SAROAD) system* is a computerized system which stores and reports information relating to ambient air quality. The SAROAD system has been replaced with the AIRS–AQS system; however, the SAROAD data reporting format continues to be used by some States and local air pollution agencies as an interface to AIRS on an interim basis.

* * * * *

3. Section 58.28 is revised to read as follows:

§ 58.28 SLAMS data submittal.

The State shall submit all of the SLAMS data according to the same data submittal requirements as defined for NAMS in § 58.35. The State shall also submit any portion or all of the SLAMS data to the appropriate Regional Administrator upon request.

4. Section 58.35 is revised to read as follows:

§ 58.35 NAMS data submittal.

(a) The requirements of this section apply to those stations designated as both SLAMS and NAMS by the network description required by § 58.20 and 58.30.

(b) The State shall report to the Administrator all ambient air quality data and information specified by the AIRS Users Guide (Volume II, Air Quality Data Coding, and Volume III, Air Quality Data Storage) to be coded into the AIRS–AQS format. Such air quality data and information must be submitted directly to the AIRS–AQS via either electronic transmission or magnetic tape, in the format of the AIRS–AQS, and in accordance with the quarterly schedule described in paragraph (c) of this section.

(c) The specific quarterly reporting periods are January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31. The data and information reported for each reporting period must:

(1) Contain all data and information gathered during the reporting period. For example, the CO, SO_2, NO_2, and O_3 data for the reporting period October 1–December 31, 1991 are due on or before March 1, 1992, and the PM_{10} and Pb data for this reporting period are due on or before April 1, 1992.

(2) Be received in the AIRS–AQS within 60 days after the end of the quarterly reporting period for data pertaining to SO_2, NO_2, CO, and O_3, and within 90 days after the end of the quarterly reporting period for data pertaining to PM_{10} and Pb.

(d) Air quality data submitted for each reporting period must be edited, validated, and entered into the AIRS–AQS for updating (within the time limits specified in paragraph (c) of this section) pursuant to appropriate AIRS–AQS procedures. The procedures for editing and validating data are described in the AIRS Users Guide, Volume II Air Quality Data Coding.

(e) This section does not permit a State to exempt those SLAMS which are also designated as NAMS from all or any of the reporting requirements applicable to SLAMS in Section 58.26.

§§ 58.20, 58.23, 58.31, 58.34 [Amended]

Appendices A and D [Amended]

5. Sections 58.20, 58.23, 58.31, 58.34, and appendices A and D are amended by revising the acronym, "SAROAD" to read, "AIRS" in the following places:

a. Section 58.20(e)(1), and (6)(i);
b. Section 58.23(a);
c. Section 58.31(a) and 58.31(g)(1);
d. Section 58.34(a);
e. Appendix A, Section 4; and
f. Appendix D, Section 2.5, last paragraph.

6. In Appendix A, section 4.1 is revised to read as follows;

Appendix A—Quality Assurance Requirements for State and Local Air Monitoring Stations (SLAMS)

* * * * *

4.1 Quarterly Reports. For each quarter, each reporting organization shall report to AIRS–AQS either directly (or via the appropriate EPA Regional Office for organizations not direct users of AIRS) the results of all valid precision and accuracy tests it has carried out during the quarter. The quarterly reports of precision and accuracy data must be submitted consistent with the data reporting requirements specified for air quality data as set forth in § 58.35(c). Each organization shall report all collocated measurements including

those falling below the levels specified in section 5.3.1. Do not report results from invalid tests, from tests carried out during a time period for which ambient data immediately prior or subsequent to the tests were invalidated for appropriate reasons, or from tests of methods or analyzers not approved for use in SLAMS monitoring networks under Appendix C of this part.

* * * * *

7. Appendix A is amended by removing Figure A–1 (for reporting accuracy data), and Figure A–2 (for reporting precision data) from section 4.3, the table labeled "Information to be Contained on the Back of the Data Reporting Forms", and the coding instructions for these forms.

Appendices A, B, and C [Amended]

8. Appendices A, B, and C are amended by removing the words "Environmental Monitoring Systems Laboratory" and inserting, in their place, the words "Atmospheric Research and Exposure Assessment Laboratory" in the following places:

a. Appendix A, Sections 2.3.1 and 2.4;
b. Appendix A, Section 4;
c. Appendix A, References 2 and 3;
d. Appendix B, Section 2.3.1;
e. Appendix B, Referenes 2, 3, 6, and 7; and
f. Appendix C, Section 2.7.1.

9. Appendices A and B are amended by revising the acronym "EMSL" to read "AREAL" in the following places:

a. Appendix A, Section 4;
b. Appendix A, Section 4.1;
c. Appendix B, Section 2.4.

Appendix D [Amended]

10. Appendix D, section 3.2 is amended by revising the acronym "OANR" to read "Office of Air and Radiation (OAR)".

Appendix F [Amended]

11. Appendix F is amended by revising the acronym, "SAROAD" to read; "AIRS–AQS" in the following places:

a. 2.1.1 (two places);
b. 2.2.1;
c. 2.3.1 (two places);
d. 2.4.1 (two places);
e. 2.5.1 (two places);
f. 2.6.1 (two places); and
g. 2.7.1.

Appendices A and B [Amended]

12. Section 58.1, Appendix A, and Appendix B are amended by revising the words "National Bureau of Standards" to read, "National Institute of Standards and Technology" in the following places:

a. Section 58.1(s) (revised);
b. Appendix A, Section 2.3.1; and
c. Appendix B, Section 2.3.1.

13. Section 58.1, Appendix A, and Appendix B are amended by revising the acronym, "NBS" to read "NIST" in the following places:

a. Section 58.1(s) (revised, 2 places);
b. Appendix A, Section 2.3.1. (3 places);
c. Appendix A, Section 3.2;
d. Appendix B, Section 2.3. (3 places); and
e. Appendix B, Section 3.2.

[FR Doc. 92–24233 Filed 10–5–92; 8:45 am]
BILLING CODE 6560–50–M

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48 CFR Parts 1512, 1516, and 1552

[FRL–4519–3]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: In the **Federal Register** of March 11, 1992 (57 FR 8612), the Environmental Protection Agency proposed to amend the Environmental Protection Agency Acquisition Regulation to require contractors to certify that work ordered by the Agency does not duplicate or is not similar to work previously performed or currently being performed for the Agency. Since public comments indicated that any potential benefits to the Agency would be outweighed by the burden on Agency contractors, EPA is now withdrawing the rule.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Procurement and Contracts Management Division (PM–214F), 401 M Street SW., Washington, DC 20460, ATTN: Edward N. Chambers (202) 260–6028.

Dated: September 28, 1992.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 92–24086 Filed 10–5–92; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Publication of 90–Day Findings for Two Petitions to List the North American Lynx in the North Cascades of Washington and Three Oaks From California as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) publishes 90–day findings that were made on petitions to add four species to the Lists of Endangered and Threatened Wildlife and Plants. Petitions to list the North American lynx in the North Cascades of Washington State and three species of oak from California have not presented substantial information indicating that the requested actions may be warranted.

DATES: The findings announced in this notice were made on February 4, 1992 (lynx) and September 23, 1992 (oaks).

ADDRESSES: The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the office of the Field Supervisor, U.S. Fish and Wildlife Service, Olympia Field Office, 3704 Griffin Lane S.E., Suite 102, Olympia, Washington 98502 (lynx) or the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, rooms E-1803 and E-1823, Sacramento, California 95825 (oaks).

FOR FURTHER INFORMATION CONTACT: David Frederick, Field Supervisor, Olympia Field Office (206/753–9440) (lynx), or Wayne White, Field Supervisor, Sacramento Field Office (916/978–4866) (oaks) (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicting that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Service finds that a petition presents substantial information indicating that a requested action may be warranted, then the Service initiates a status review on that species.

The Service has determined that the following petitions do not present substantial information that the requested actions may be warranted.

On August 22, 1991, the Service received a petition from the National Audubon Society, The Humane Society of the United States, Defenders of Wildlife, Greater Ecosystem Alliance, Friends of the Loomis Forest, Methow

Valley Forest Watch, Save Chelan Alliance, Lower Columbia Basin Audubon Society, Tonasket Forest Watch, Pilchuck Audubon Society, North Cascades Audubon Society and Sierra Club Cascade Chapter (collectively "petitioners") to list the North American lynx (*Felis lynx canadensis*) of the North Cascades ecosystem of Washington as an endangered species and designate critical habitat for the lynx. The petition, dated August 16, 1991, clearly identified itself as a petition and contained the names, addresses, and telephone numbers of the petitioners. The petition was signed by the attorney (Mark Tipperman) for the petitioners. The petition stated that the lynx is in imminent danger of extinction because of an extremely small population, an isolated habitat jeopardized by an ongoing practice of fire suppression, and encroachment by logging, roads, trappers and hunters, a very small prey base to feed on, and limited or no protection by the Washington State Department of Natural Resources and the U.S. Forest Service

The petition was reviewed by staff of the Service's Olympia, Washington, Fish and Wildlife Enhancement Field Office and its Portland, Oregon, Regional Office. The finding is based on numerous documents, including published and unpublished studies, responses to information requests, agency documents, literature syntheses, and field sighting records. Interviews were conducted with researchers, wildlife managers, personnel from Service field offices in Regions 6 and 7, British Columbia Ministry of Environment biologists, and others familiar with lynx. All documents and telephone conservation records on which this finding is based are on file in the Olympia field Office.

Lynx are found over most of Alaska and Canada, and their presence in Washington, Idaho, Montana, Utah, Colorado, and Wyoming marks the southern limits of their range in western North America (McCord and Cordoza 1982). Snowshoe hares (*Lepus americanus*) are the primary prey of lynx in north central Washington, as well as throughout the lynx's range (Saunders 1963, Van Zyll De Jong 1966, Nellis and Keith 1968, Nellis *et al.* 1972, Brand *et al.* 1976, More 1976). Lynx habitat coincides with habitat occupied by the snowshoe hare, its dominant prey (Koehler 1991).

The study by Koehler (Koehler 1988), conducted from 1981–87, indicated north central Washington supported a relatively stable, low density, low productivity lynx population presumably because of the scarcity of prey and poor habitat conditions for snowshoe hares. The information also indicated that the demography of lynx in Okanogan County, Washington, may be characteristic of lynx at the southern periphery of their range where habitat conditions are marginal for lynx and snowshoe hares.

The immediate threats to the survival of lynx were described by the petitioners, and focused specifically on the lynx in central Washington. They did not provide information indicating a decline throughout the entire range of the lynx or anywhere outside of Washington. Pursuant to 50 CFR 424.02(e), any species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act.

Although it may be assumed the same aforementioned threats (encroachment by logging, roads, trappers, hunters, etc.) exist throughout the southern periphery of the lynx's range (Washington, Idaho, Montana, Utah, Colorado, Wyoming), there is no indication the lynx is in danger of extinction throughout all or a significant portion of its range. The current range of the lynx in the North Cascades of Washington does not constitute a significant portion of its entire range (Figure 3.3. Brittell *et al.* 1989). British Columbia and Alaska constitute the majority of the lynx's range.

The Service's Olympia staff contacted biologists in British Columbia and Alaska concerning the status of lynx. Information received from these contacts indicates a decline in the 1980's that has caused some management concern in British Columbia. It was noted that additional information on population dynamics is needed. The most pressing information needs in British Columbia are for a better understanding of snowshoe hare distribution, biology, and cyclic patterns in the diverse ecological zones of the province, and of habitat requirements and relationships for both hares and lynx in those areas (Hatler 1988). The information did not indicate that the lynx throughout British Columbia and Alaska is significantly declining or in danger of extinction.

Another question which must be addressed is whether or not the lynx in the North Cascades ecosystem of Washington is a distinct population. The term "species" is defined in 50 CFR 424.02(k) as "any species or subspecies * * * and any distinct population segment of any vertebrate species that interbreeds when mature". *See also*, 16 U.S.C. 1532(16).

The 1989 study "Native Cats of Washington," by Brittell *et al.*, documented radio-collared lynx emigrating out of Okanogan County of north central Washington into British Columbia. The December 1988 final report of the study "Demographic Characteristics and Habitat Requirements of Lynx in North Central Washington," by Gary M. Koehler stated that lynx are known to emigrate from the study area into British Columbia. From 1981–83, Brittell (unpubl. report) found 3 to 8 of 23 radio-collared lynx emigrating from the study area into British Columbia. Brittell also indicated that immigration into the study area (Okanogan County of north central Washington) may occur. Therefore, the lynx of the North Cascades ecosystem of Washington do not appear to be isolated from other parts of their range in British Columbia and do not represent a distinct population segment.

Regulations at 50 CFR 424.14 describe the information which the Service shall consider in making a determination as to whether the petition presents substantial information that would lead a reasonable person to believe that the petitioned action may be warranted. Information to be considered includes past and present numbers and distribution of the species, threats faced by the species, and status of the species over all or a significant portion of its range. Data presented by the petitioners and otherwise available to the Service indicate that numbers and productivity of lynx in the North Cascades ecosystem of Washington remain low, but are relatively stable. Low numbers and productivity are often characteristic of animal species at the edge of their range due to marginal habitat conditions.

The petitioners did not present information on the status of the lynx in other parts of its range. The North American lynx throughout its entire range (Alaska, Colorado, Idaho, Maine, Michigan, Minnesota, Montana, North Dakota, New Hampshire, Nevada, New York, Oregon, Utah, Vermont, Washington, Wisconsin, Wyoming, and Canada) is currently a category 2 candidate for listing. A category 2 candidate is one for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. Information available to the Service on the status of

the lynx in British Columbia indicates that numbers had declined during the 1980's causing some management concern. However, the available information on the status throughout Alaska and British Columbia did not indicate a significant decline in numbers or a subspecies in danger of extinction.

On September 18, 1991, the Service received a petition to list three plants: blue oak (*Quercus douglasii* H. & A.), California black oak (*Quercus kelloggii* Newb.), and valley oak (*Quercus lobata* Nee.) as endangered species. Mr. Craig Dremann of Redwood City, California, submitted the petition dated September 17, 1991. The petition and other documentation have been reviewed to determine if substantial information has been presented to indicate the requested action may be warranted.

The petitioner stated that these three species "are endangered throughout their range by conversion of oak woodlands to agriculture or grasslands, firewood cutting, residential uses, livestock grazing, exotic annual grasses, climate changes, drought, lack of acorn production in some areas for the last decade, and other factors that have adversely impacted these species." The three species occur throughout California and, in the case of California black oak, into southern Oregon.

The changing status of oak woodlands in California has been a topic of great interest to botanists in recent years (Plumb 1980, Plumb and Pillsbury 1987, Standiford 1991). A recent statewide inventory of hardwoods in California (Bolsinger 1988) documents the extent of hardwood forest types, and estimates the occurrence of various species in woodland types dominated by other trees. The woodland types of the three oak species are listed below with the area occupied by each type (a plurality of a given species in the dominant crown classes) and the area of occurrence (includes areas where the species occurs as scattered trees or clumps and stringers in other types) according to Bolsinger (1988).

Woodland type	Area of woodland type (acres)	Total area of occurrence (acres)
Blue oak	2,911,000	3,398,000
California black oak	894,000	4,313,000
Valley oak	274,000	486,000

Blue oak is the most extensive hardwood type in California (Bolsinger 1988). Blue oak woodland forms a nearly continuous band around California's Central Valley, generally between 100 and 1,200 meters in elevation (300 to 3,600 feet) (Barbour 1987). This deciduous tree generally occurs on moderately rich, loamy, well-drained soils with neutral or slightly basic pH on gently rolling to steep topography (Barbour 1987). The type is generally considered to include two broad associations, stands dominated by blue oak, and stands in which blue oak is mixed with one or more other tree species.

California black oak is a deciduous tree that is most commonly an associate of mixed conifer stands. It is distributed from southern California to southern Oregon in the Coast Ranges, Sierra Nevada, and eastern slopes of the Cascades. According to Bolsinger (1988), California black oak grows best on conifer sites, and occurs in the absence of conifers most often on poor quality sites in relatively low density.

Valley oak is distributed throughout California's Central Valley, southward to the San Fernando Valley and Santa Monica Mountains (Griffin 1973). Although the range of this deciduous tree is relatively large (500 miles (804 kilometers) long and 100 miles (160 kilometers) wide according to Bolsinger (1988)), the acreage of the valley oak type is small. Valley oaks grow in a wide range of physiographic positions, usually some miles inland from the coast on relatively deep and fertile soils (Griffin 1973). In the Sacramento Valley, it shows a strong association with mesic riparian habitats (Knudsen 1987). Valley oak often occurs sparsely in grasslands, small groves and streamside stringers, and open savannas. It also is found in many parks, cities, and suburban residential developments.

The area occupied by oak woodlands has declined over the past 40 years or so. Oak woodlands have been cleared for rangeland, agricultural use, and residential development (including roads and reservoirs as well as homesites), at a rate of approximately 30,000 acres per year (for the years 1945 to 1985) (Bolsinger 1988). Most conversion to improve livestock pasturage occurs in blue oak woodlands. Valley oaks, on the other hand, are most seriously affected by residential construction and agricultural conversion (Bolsinger 1988). Typically, a fairly high percentage (Bolsinger (1988) says 80 percent) of mature trees remain on a site after residential conversion. This means that more oaks remain than would be estimated from habitat conversion figures, but the survival and reproduction of oaks under these conditions is not known. California black oak appears to be most adversely affected by reduced fire frequencies in its mixed-conifer habitat (Kauffman and Martin 1987), where the resulting heavier duff accumulation and higher-intensity fires tend to discourage establishment of young trees.

Barbour (1987) suggested that some hardwood communities have been so severely affected by human activity that they are in danger of becoming extinct: however, he did not specify which ones. Greg Greenwood (California Department of Forestry, pers. comm., December 13, 1991) concurred that certain habitat types, such as valley oak riparian and coast range forest types are endangered. Bolsinger (1987, 1988) addressed attrition of oak woodland from natural causes in lower foothills and valleys in a general manner. He concluded that either it is progressing too slowly to be detected over a 12-year period (the length of time between his observations) or that it is not as extensive as casual observation would indicate.

While the potential loss of certain hardwood communities represents a significant ecological concern, the protections of the Endangered Species Act can extend only indirectly to communities through one or more component species. In addition, none of the three oak species are restricted to specific habitat types, so continued loss of certain communities does not necessarily translate into a significant loss at the species level. The fact that tremendous public and professional attention is focused on the decline of certain hardwood communities suggests that there may yet be opportunity to halt or reverse this trend. Scientists continue to investigate both species and communities to identify possible management techniques that might help ensure perpetuation of these resources. Numerous local groups, primarily urban and suburban areas throughout California, are initiating actions to encourage management and enhancement of California's hardwood resources. Activities include such things as protective ordinances of various types, zoning, planting projects, heritage tree ordinances, registries, and conferences sponsored by community groups, municipal governments, landowners, and resource managers (Johnson 1987).

The petitioner cited woodcutting as a factor endangering blue oak, California black oak, and valley oak throughout their range. Oak woodland area has declined due to the cutting of firewood (Bolsinger 1988), largely for charcoal in the last century and early this century. In more recent times, Bolsinger (1988) reports that 14 percent of all woodlands sampled in his statewide inventory

showed evidence of cutting (5 percent cut within the last 5 years), but states that the volume cut is a minute fraction of the total wood volume on both woodland and timberland. According to Bolsinger (1988), fuelwood cutting does not appear to be a cause of woodland conversions at the present time. Wood cutting is often combined with clearing of oaks for rangeland or other uses. According to Bolsinger (1988), rangeland clearings in oak woodland between 1945 and 1975 amounted to about 32,000 acres per year, but since the 1970's have averaged less than 2,500 acres per year. He reports that oak stand thinning is now more prevalent than clearing.

Concerns over insufficient regeneration to perpetuate certain hardwood species have been expressed for over 75 years (Bartolome *et al.* 1987). According to Bartolome *et al.* (1987), "favorite culprits enjoy repeated mention in the literature", but there have been relatively few scientific investigations into these popularly cited causes, and results have sometimes been inconclusive or contradictory.

There have been at least two attempts to characterize the status of oak regeneration on a statewide basis (Bolsinger 1988, Muick and Bartolome 1987). Both studies tended to confirm that valley oak and blue oak are not regenerating well, but neither suggested that either species may be facing extinction from this cause. According to Bolsinger (1988), results from a one-time field survey cannot be conclusive about how hardwoods are regenerating. The mere presence of seedlings does not prove that tree replacement is occurring, nor does their absence necessarily indicate a problem. As an example, he cites that Douglas-fir seedlings are seldom found under a Douglas-fir overstory, yet seedling establishment by the species is common.

According to Bartolome *et al.* (1987), a major source of misinformation on hardwood regeneration has been overextension of stand size distribution data. Although correlation between size and age in oaks is statistically significant, this correlation is inadequate to determine most of the details of stand age necessary to assess regeneration. Because size-based studies cannot reveal past mortality or past stand structures, only part of the necessary information to determine regeneration status of present stands is known. Mortality rates for valley oak, California black oak, and blue oak have not been measured. In general, oaks are long-lived, with individuals surviving to several hundred years (Bartolome *et al.* 1987).

Current stand size structure of oak species is variable. Statewide, valley and blue oaks have apparently established infrequently during the last 50 years, but black oak shows signs of recent establishment based on presence of small trees, seedling, and saplings (Bartolome *et al.* 1987, Bolsinger 1988). Barbour (1987) cites several studies that concluded that establishment of blue oak appeared to be episodic, with the most recent flush occurring in the 1870's. The regeneration episode of the late nineteenth century may have created excessively stocked stands. In this case, lack of recent recruitment would be expected, and new individuals would be unnecessary for regeneration at the present time (Bartolome *et al.* 1987).

According to Bartolome *et al.* (1987), we do not know how much establishment is needed for regeneration of present stand structure, nor whether past patterns included periods without establishment prior to most recent establishment. They conclude that, in general, most investigations have lacked a proper temporal perspective on regeneration, particularly an understanding of how past stand structure affects the need for recruitment.

Regeneration varies with location as well as over time. Muick and Bartolome (1987) conducted a systematic investigation of the regeneration status of 8 major oak species in 25 California counties, and identified environmental or management characteristics associated with presence or absence of oak regeneration. They found regeneration of blue oak to be better in the Sierra Nevada than in the Coast Ranges. They concluded the blue oak regeneration is highly site specific, and found environmental factors such as slope as aspect to be significant factors in certain regions. The association of small-scale site variation with successful establishment was also noted by Griffin (1971), who found that seedling survival of blue and valley oak was higher in shade. Muick and Bartolome (1987) observed that valley and blue oak saplings were more common at canopy edges than either under the canopy or in open grassland. Other site characteristics have been investigated less thoroughly in relation to regeneration, such as interference with establishment by European annuals.

Bolsinger (1988) found that blue oak seedlings were scarce in the drier parts of the species' range, and suggested that blue oak woodlands might be retreating upslope to moister environments. Stand mapping and regeneration studies conducted by Rice and Greenwood support this observation (Rice, Assistant Professor, Dept. of Agronomy and Range Science, Univ. of California, Davis, pers. comm., November 12, 1991; Greenwood, pers. comm., December 13, 1991). Bolsinger (1988) found no valley oak seedlings on plots in the valley oak type, but documented them in conifer timber and interior live oak types, and noted that valley oak seedlings and saplings were sometimes observed outside plot boundaries. Bolsinger (1988) found valley oak saplings more often in types other than valley oak, such as California black oak, riparian cottonwood, and conifer timber types. Bolsinger (1988) also noted that his statewide sample does not represent nonforest areas such as widely scattered trees in grassland, small streamside stringers, and small groves less than an acre in size.

Bolsinger (1988) did not suggest that regeneration is a problem for California black oak based on his statewide sample, which found seedlings on 62 percent of the plots in type, and saplings on 44 percent. Muick and Bartolome (1987) found California black oak regeneration to be better in the Sierra Nevada than in either the north or south Coast Ranges. Kauffman and Martin (1987) cited declines in the abundance of California black oak in some areas within the mixed conifer zone. They attributed this to effects of fire suppression, which promotes buildup of downed woody materials that inhibit successful seedling establishment and which produce high heat loads when fires do occur, resulting in high mortality of California black oak in small size classes. They suggest that extremely hot fires were uncommon prior to the era of suppression, when frequent surface fires maintained much lower fuel accumulations than those of today.

Grazing is one of the "favorite culprits" mentioned by Bartolome *et al.* (1987), and has been thought to prevent regeneration of oaks. Bolsinger (1988) indicated that approximately 64 percent of blue oak woodland types, 28 percent of California black oak woodland types, and 73 percent of valley oak woodland types were grazed, but concluded that it is not clear that grazing always reduces oak regeneration and growth. Herbivory by deer and pocket gophers may inhibit regeneration on some sites (Griffin 1971, 1979), although Muick and Bartolome (1987) observed no significant pattern regarding presence of livestock grazing, gopher, or deer or blue oak regeneration, citing the almost universal presence of livestock grazing, gopher, and deer signs on plots with and without saplings. They also noted that they did not distinguish

season or intensity of livestock grazing, which would likely affect successful oak regeneration. Duncan *et al.* (1987) concluded that cattle grazing does not necessarily reduce regeneration of blue oak or valley oak in central California, based on observations of areas which had not been grazed for 40 or more years.

Griffin (1979) concluded that local damage by small mammals to valley oak seedlings in his study area in Monterey County, California, can prevent the development of valley oak saplings. He suggested that nutritious annual exotic species may have improved the habitat for many rodents to such a point that small mammal damage to seedlings may be higher than in the past, but that whether this source of seedling predation was a permanent threat to valley oaks was not clear, as the several-hundred year lifespan of these trees enables them to wait a long time for the proper combination of regeneration conditions.

Griffin (1971, 1979) measured acorn production of blue oak and valley oak in Monterey County, California, and concluded that acorn production was sufficient, even taking into account insect damage and predation by livestock and wildlife, to provide for more than the observed numbers of sapling-sized trees.

The petitioner cited exotic annual grasses as a factor endangering the three oak species. It has been suggested that the replacement of native perennial bunchgrasses with exotic annual grasses, which has occurred over the last century, has reduced oak regeneration (Danielson and Halvorson 1991, Gordon *et al.* 1989). Oak seedling growth is reduced for those seedlings grown with the exotic annuals (such as *Avena fatua* and *Bromus diandrus*) compared to those grown with the native perennial *Stipa pulchra*. This is true for both valley oak (Danielson and Halvorson 1991) and for blue oaks (Gordon *et al.* 1989). On the other hand, Bartolome *et al.* (1987) do not place much importance on exotic grass competition as a significant factor affecting oak regeneration.

Drought was another factor cited by the petitioner as endangering the three oak species. Rundel (1987) reviewed adaptations of California hardwoods to environmental stress such as drought and low nutrient availability. He concluded that California hardwoods, including blue oak, California black oak, and valley oak have evolved a broad range of adaptations to environmental conditions that occur within the state, and that drought represents a primary selective pressure. The adaptations vary with species, but include features such as wood anatomy, architecture and phenology of below-ground tissues, and physiological responses at both the whole plant and tissue levels. As a specific example, his measurements of relative water deficit of mature leaves at the point of zero turgor in blue oak and California black oak indicated high drought tolerance in these species. In other words, these trees have evolved with drought and have developed numerous physiological and morphological characteristics that allow them to persist through drought.

While drought has been identified as a major cause of deciduous oak seedling mortality (Barbour 1987, Danielson and Halvorson 1991, Gordon *et al.* 1991), and this undoubtedly affects successful recruitment in the short-term, these investigators have not suggested drought by itself or in combination with other factors as a threat to the long-term survival of any of these species in the wild.

In their summary of recommendations for future research into hardwood regeneration, Bartolome *et al.* (1987) state that factors most likely to reward investigation are those associated with grazing and how present canopy structure and local site potential affect understory environment for recruitment. They consider acorn production and predation, climatic change, and competition with herbaceous species as unlikely to be important.

An analysis of the existing data strongly suggests that the petitioner does not present substantial information indicating that listing blue oak, California black oak, and valley oak as endangered species may be warranted. Of the studies reviewed above, only a few consider the state-wide status of oaks; none specifically addresses the danger of extinction. Experts who were asked to address this concern agreed that none of the three oak species are currently in danger of extinction throughout all or a significant portion of their ranges, nor are they likely to become endangered within the forseeable future (Greenwood, pers. comm., December 13, 1991; Rice, pers. comm., November 12, 1991).

In spite of documented habitat conversion, blue oak and black oak still occur on approximately 3.4 and 4.3 million acres in California, respectively, while valley oak, never as widespread as the other two species, still occurs on nearly 500,000 acres. In regard to regeneration, existing data indicate that successful establishment of young trees, particularly valley oak, has not occurred at high rates over the past 40 years or so, but the significance of this is not clear. Researchers have predicted declines in extent of blue oak and valley oak woodlands, but also acknowledge that additional information must be obtained in order to place these observations in the proper ecological context and to assess their ecological significance.

In summary, the Service finds that the data contained in the above two petitions, referenced in the petitions, and otherwise available do no present substantial information that listing the North American lynx in the North Cascades of Washington or the three oak species from California may be warranted.

These finding were prepared by the staff of the Sacramento and Olympia Field Offices and reviewed by the Portland Regional Office. The findings are based on scientific and commercial information contained in the petitions, referenced in the petitions, and otherwise available to the Service at this time. All documents and telephone conversation records on which these findings are based are on file in the Sacramento and Olympia Field Offices.

References Cited

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Author

This notice was prepared by Jeffrey Haas (Olympia Field Office), Jan Knight (Sacramento Field Office) (see **ADDRESSES** section), and Allison Banks, Portland Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232–4181.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: September 23, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–24207 Filed 10–5–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 194
Tuesday, October 6, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Assistance 1703 B; Maximum Size of Application

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice.

SUMMARY: The Administrator of the Rural Electrification Administration is announcing the maximum size of an application for assistance under 7 CFR part 1703, subpart B.

EFFECTIVE DATE: October 26, 1992.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, Rural Electrification Administration, telephone number (202) 720–9552.

SUPPLEMENTARY INFORMATION: The Administrator has determined the maximum size of an application for assistance under this subpart that will be considered for funding during fiscal year 1993 as $400,000. Under § 1703.28, the maximum size is calculated as 3 percent of the projected total amount that will be credited to the subaccount during a fiscal year from the interest differential calculation and the amount appropriated for the zero-interest loans or grants under section 313 of the Rural Electrification Act of 1936, as amended (RE Act) (7 U.S.C. 901 *et seq.*), rounded to the nearest $10,000. However, regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000 nor greater than $400,000. Three percent of the projected total amount for fiscal year 1993, rounded to the nearest $10,000, is $590,000. Based on the limitation on the maximum size, the maximum size is determined to be $400,000.

Calculation of the Maximum Size

Projected amount that will be credited to the subaccount from the interest differential calculation based on the cushion of credit levels of REA borrowers as of August 31, 1992: $7,200,00.

Amounts appropriated for fiscal year 1993 for zero-interest loans or grants made under section 313 of the RE Act: $12,389,000.

Projected total amount that will be available during fiscal year 1993: $19,589,000.

The projected total amount of $19,589,000 multiplied by 0.03 equals $587,670. This product rounded to the nearest $10,000 equals $590,000.

The maximum size cannot exceed $400,000. Therefore, the Administrator has determined that the maximum size is $400,000. This maximum size will remain in effect until the Administrator has established a subsequent maximum amount.

Authority: 7 U.S.C. 901 *et seq.*

Dated: September 29, 1992.

George E. Pratt,
Acting Administrator.

[FR Doc 92–24147 Filed 10–5–92; 8:45 am]
BILLING CODE 3410–15–F

Soil Conservation Service

Upper Blanchard River Watershed, OH

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Blanchard River Watershed, Hancock and Hardin Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, 200 North High Street, room 522, Columbus, Ohio 43215, telephone (614) 469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention. The planned works of improvement include 3,300 feet of one-sided channel improvement, removal of an old low-head dam, installation of two smaller low-head dams, construction of two fish riffle structures, and the design and installation of an automated flood warning system.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Burris.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)Q02

Dated: September 24, 1992.

Joseph C. Branco,
State Conservationist.

[FR Doc. 92–24247 Filed 10–5–92; 8:45 am]
BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free Trade Agreement, Binational Secretariat, United States Section.

International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On September 25, 1992, Norsk Hydro Canada Inc. filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Affirmative Material Injury Determination in the Antidumping Duty Investigation respecting Magnesium from Canada made by the U.S. International Trade Commission, File Number 731–TA–528 (Final), which was published in the **Federal Register** on August 26, 1992 (57 FR 38696). The Binational Secretariat has assigned Case Number USA–92–1904–06 to this Request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedures for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15,1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the United States Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on September 25, 1992, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 26, 1992);

(b) a Party, an investigating authority or other interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 9, 1992); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: September 29, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92–24170 Filed 10–5–92; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On September 25, 1992, Norsk Hydro Canada Inc. filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Affirmative Material Injury Determination in the Countervailing Duty Investigation respecting Magnesium from Canada made by the U.S. International Trade Commission, File Number 701–TA–309 (Final), which was published in the **Federal Register** on August 26, 1992 (57 FR 38696). In addition, the Government of Quebec filed a Request for Panel Review in this matter. The Binational Secretariat has assigned Case Number USA–92–1904–05 to these Requests.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

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Rule 35(1)(C) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with rule 39 within 30 days

after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 26, 1992);

(b) a Party, an investigating authority or other interested person that does not file a Complaint may participate in panel review by filing a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 9, 1992); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: September 29, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-24171 Filed 10-5-92; 8:45 am]

BILLING CODE 3510-GT-M

Minority Business Development Agency

[Project I.D. No. 06-10-93003-01]

Business Development Center Applications; Beaumont MBDC

AGENCY: Minority Business Development Agency; DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds. An audit fee of $4,125 has been added to the Federal amount. The total funding breakdown is as follows: $169,125 Federal and $29,846 non-Federal for a total of $198,971. The period of performance will be from March 1, 1993 to February 28, 1994. The MBDC will operate in the Beaumont, Texas MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD-511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

Closing Date: The closing date for applications is November 10, 1992. Applications must be postmarked on or before November 10, 1992.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., Room 7B23, Dallas, Texas 75242.

FOR APPLICATION KIT OR OTHER INFORMATION CONTACT: Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767-8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on October 28, 1992 in the Earl Cabell

Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: September 24, 1992.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 92-24186 Filed 10-5-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Individual Quota Industry Committee will hold a public meeting on October 20-21, 1992, in room 240, at the Metro Center, 100 SW. First Avenue, Portland, OR. the meeting will begin at 8 a.m. on October 20, and adjourn at approximately 4:30 p.m. on October 21.

The purpose of this meeting is to continue working on development of an individual transferable quota program for the West Coast halibut and non-trawl sablefish fisheries. Included in the discussion will be the possibility of recreational sector participation in the halibut individual quota program.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: September 30, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-24145 Filed 10-5-92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Plan Development Team will meet on October 20, 1992, beginning at 10 a.m. The meeting will be held in the small conference room at the California Department of Fish and Game office, 330 Golden Shore, suite 50, Long Beach, CA.

The purpose of this meeting is to discuss the status of the coastal pelagic species fishery management plan.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590-5117, or Larry Jacobson from the National Marine Fisheries Service at (619) 546-7117.

Dated: September 29, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-24146 Filed 10-5-92; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Endangered Species; Application for Scientific Research Permit; Dr. Anne Rudloe, Gulf Specimen Marine Laboratory, Panacea, FL (P496-A)

Notice is hereby given that an applicant has applied in due form for a Scientific Research Permit to take an endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR parts 217-222).

1. *Applicant:* Dr. Anne Rudloe, Gulf Specimen Marine Laboratory, Inc., P.O. Box 237, Panacea, Florida 32346.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Species:* 75 Kemp's Ridley Sea Turtles, *Lepidochelys kempi*, each year.

4. *Type of Take:* The applicant proposes to conduct scientific studies on Kemp's ridley sea turtles to accrue fishery independent data on the occurrence, seasonality, population structure and behavior of Kemp's ridley sea turtles in the coastal waters of the northeastern Gulf of Mexico. Such information is necessary to develop a sound recovery plan for this species. All animals taken are expected to be subadults ranging in size from 20 to 60 cm in straight line carapace length. Animals will be taken in one of two ways:

1. A 38 cm mesh, 300 meter long, 4 meter deep nylon net anchored at each end will be fished one day per week for 12 hours. The net will be tended at all times and hand checked once every 30 minutes to recover any captive animals;

2. When tidal currents put the anchored net under too much tension to fish efficiently, the applicant will remove it from the water and continue sampling with a 35 meter section of net of the same depth and mesh size, deployed as a drift net with a small boat at each end to keep the net properly deployed.

5. *Location and Duration of Activity:* Taking will be done over a 12 hour period on one day per week for three years from April 1, 1993 to March 30, 1996 except during the months of December, January and February of each year. In addition, daily sampling will be done for 30 days during each summer. Sampling and tracking will be done in the coastal waters of Wakulla and Franklin Counties, Florida in the vicinity of Panacea, Florida.

Written data or views, or requests for a public hearing on this application should be submitted to the NMFS, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of NMFS. Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, SSMC#1, room 8268, Silver Spring, Maryland 20910, (301/713-2289); and Director, Southeast Region, NOAA, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: September 25, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92-24134 Filed 10-5-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTIONS: Receipt of Applications (P6N) and (P519).

SUMMARY: Notice is hereby given that the following applicants have applied in due form for Permits to take and import marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the

Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The National Zoological Park, Smithsonian Institution, Washington, DC 20008

Authorization is requested to import tissue samples (blood and skin) collected from grey seals (*Halichoerus grypus*) in Canada (Sable Island and either Amet Island or the pack ice in the Gulf of St. Lawrence) and Scotland (Faray Island, Orkney). Samples will be taken from 25 adult females and their pups from each location (total 150 animals sampled). Additionally, up to 150 samples will be collected from any females or pups, at any of the locations, which fostered or were fostered during the study. The activities are expected to continue through February 1994.

Dr. Bruce Lee Homer, College of Veterinary Medicine, University of Florida, P.O. Box 100145, Gainesville, FL 32610-0145

Authorization is requested to import tissue samples (lung, heart, liver, spleen, stomach, intestine, ovary and mammary gland) collected from 237 Juan Fernandez fur seals (*Arctocephalus philippii*) found dead in the rookery. The samples will be imported and if necessary re-exported from/to Chile.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Fisheries Service.

Documents submitted in connection with the above applications are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway., Suite 7324, Silver Spring, MD 20910 (301/713–2289); and

(P6N): Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

(P519): Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: September 28, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–24184 Filed 10–5–92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,254,774 titled, "Balloon Catheter and Technique for the Manufacture Thereof," to American BioMed, Inc., having a place of business at The Woodlands TX. The patent rights in this invention have been assigned to the United States of America.

The prospective field of use exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective field of use exclusive license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention is a single-lumen, one piece catheter approximately 0.04 inch in diameter with an integral balloon at its end having a wall thickness of 0.005 inch or less, sufficiently small to be retractable by a suction into the catheter and to be extensible at a desired site by fluid pressure. The balloon may have a calibrated restricted leak aperture. The balloon may have a calibrated restricted leak aperture. The balloon portion of the catheter is made by heating a portion of the catheter tubing, stretching the tubing lengthwise, and applying fluid pressure to the tubing. The apparatus for forming the balloon includes a spring-loaded clamp to hold the tubing at one end, a capstan to hold the tubing at the other end, a heating coil wrapped around the tubing near the clamped end thereof and mounted with the clamp, and a mechanism for controlling the pressure and of the pressurizing gas entering the lumen of the tube in accordance with the retractable movement of the spring-loaded clamp.

The availability of the invention for licensing was published in the **Federal Register** of November 13, 1981. A copy of US Patent No. 4,254,774 may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 for $3.00.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 92–24184 Filed 10–05–92; 8:45 am]

BILLING CODE 3510-04-M

Prospective Grant of Exclusive Patent License

This is in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Re. 32,612, a reissue of US Patent No. 4,489,044 titled, "Formation of Tungsten Monocarbide from a Molten Tungstate-Halide phase by Gas Sparging," to Mustang Management Ltd., having a place of business at Vancouver BC Canada. The patent rights in this invention have been assigned to the United States of America.

The prospective field of use exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective partially exclusive license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention describes how tungsten monocarbide is prepared by sparging a molten composition comprising an alkali metal halide and an oxygen compound of tungsten with a gas comprising a gaseous hydrocarbon, particularly methane.

The availability of the invention for licensing was published in the **Federal**

Register of December 13, 1984. A copy of US Patent Re. 32,612 may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 for $3.00.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 92-24185 Filed 10-5-92; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 5, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: September 29, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Special Education and Rehabilitation Services

Type of Review: Revision.
Title: Report of Children and Youth with Disabilities Exiting Special Education.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 56.
Burden Hours: 16,124.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: The Secretary of Education is directed to obtain data on the number of students with disabilities exiting the educational system each year. The data is used to assess the effectiveness of State efforts to implement the legislation and to provide Congress and Education with information for monitoring, planning, congressional reporting and dissemination.

Office of Policy and Planning

Type of Review: New.
Title: Study of Title VII Projects.
Frequency: One time.
Affected Public: State or local governments.
Reporting Burden:
Responses: 200.
Burden Hours: 66.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This study will increase the Department's understanding of how Title VII Funding affects services provided to limited English proficient students. A sample of 200 Title VII program files will be reviewed and a telephone survey of the 200 program directors will be conducted.

[FR Doc. 92-24153 Filed 10-5-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF92-198-000]

Lake Cogen, Ltd.; Amendment to Filing

September 30, 1992.

On September 28, 1992, Lake Cogen, Ltd., tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to the ownership structure of the cogeneration facility and technical details pertaining to a transmission line.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before October 21, 1992, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will no serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24215 Filed 10-5-92; 8:45 am]

BILLING CODE 6717-01-M

Individual Waste Reduction Program; Albuquerque Field Office; Solicitation for Cooperative Agreements

AGENCY: Department of Energy Albuquerque Field Office.

ACTION: Solicitation for cooperative agreements.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR

600.15 intends to issue Solicitation No. DE–SC04–93AL93300 for the Industrial Waste Reduction Program on October 15, 1992.

DATES: The Solicitation will remain open until January 4, 1993.

ADDRESSES AND FOR FURTHER INFORMATION CONTACT: To obtain a complete solicitation package, please contact Juan Williams, Department of Energy Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185–5400 or call Mr. Williams at (505) 845–5885.

SUPPLEMENTARY INFORMATION:

Program Title: Industrial Waste Reduction Program.

Solicitation Number: DE–SC04–93AL93300.

Citation for Authority: PL 95–91.

The U.S. Department of Energy (DOE), Office of Industrial Technologies, is planning to fund research and development technologies in the Industrial Waste Reduction Program. For the purpose of this solicitation, technologies include concepts, processes, and/or hardware. The U.S. DOE Albuquerque Field Office intends to issue a competitive solicitation for unique and innovative technologies in the areas of industrial processes, process changes, feedstock substitution, and/or product changes that will conserve energy while minimizing or reducing industrial waste material. The term "innovative technology" will be used in a very broad sense and includes, but is not limited to, (1) development of new processes, materials, or products, (2) substitution of materials or products, or (3) significant changes to existing manufacturing processes and operations. Applications with innovative technology applicable to more than one industry with enhanced energy savings potential are encouraged.

Applications must meet the nominal U.S. national net energy savings goal of one trillion BTUs by fuel type per year by the year 2010. Waste reduction *does not* include waste heat, noise, electromagnetic radiation, nuclear radiation, lowering the level or degree that waste is toxic or hazardous, and those cross-media transfers (i.e. processes that convert waste material into different physical states such as from solid to liquid or gas) which are for the purpose of reducing the toxicity or hazardousness of the waste. The focus of this effort will be on the petroleum industry but industries in SIC 1–39 will also be considered. Research and Development activities will be classified into four progressive phases. Phase I is "Exploratory Development", Phase II is "Technology Development", Phase III is "Engineering Development" for pilot-scale and full-scale test, and Phase IV is "Demonstration" to test and verify the potential commercial application. Applicants may propose one or more of these phases. The proposed effort may be initiated at any phase if conclusive evidence is presented that the previous phase (s) has been completed successfully.

Multiple awards are expected to be made in FY 93 (possibly three to four Cooperative Agreements). The period of performance for these Cooperative Agreements may vary from several months to 3–5 years, depending on the projects selected. Estimated DOE funding available is $1 million for FY 93, $1.5 million for FY 94, and $1.5 million for FY 95.

A minimum of 50 percent cost sharing over the life of the project is required.

Industrial participation or support by the affected industry is essential in all phases proposed. Industrial participation directly related to the project may be in the form of cost sharing.

A complete solicitation package with information on application preparation, evaluation procedures and criteria, the extent of Government participation in the Cooperative Agreements to be awarded, and other required data will be available upon request during the time the solicitation is open. Please note that both DOE and non-DOE evaluators will be used to evaluate applications.

All responsible sources may submit an application which will be considered. Applications must be submitted no later than December 31, 1992, to the DOE Albuquerque Field Office at the address listed in the **"ADDRESSES"** section of this Notice.

Richard A. Marquez,

Assistant Manager for Management and Operations, Albuquerque Field Office.

[FR Doc. 92–24245 Filed 10–5–92; 8:45 am]

BILLING CODE 6450–01–M

Application Filed With the Commission

September 30, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* 11221–002.

c. *Date Filed:* September 21, 1992.

d. *Applicant:* Peak Power Corporation.

e. *Name of Project:* Tropicana Pumped Storage Hydroelectric Project.

f. *Location:* On lands administered by the Bureau of Land Management on and near Blue Diamond Ridge, approximately 5 miles west of Las Vegas in Clark County, Nevada. Sections 32, 33, 34, and 35 in T21S, R59E; sections 3 and 4 in T22S, R59E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Rick S. Koebbe, Vice President, Peak Power Corporation, 10 Lombard Street, Suite 410, San Francisco, CA 94111, (415) 362–0622.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Description of Project:* The proposed pumped storage project would consist of: (1) A 203-foot-high dam and 40-acre upper reservoir on Blue Diamond Ridge; (2) a 1,000-foot-long, 14-foot-diameter concrete vertical shaft connecting the upper reservoir to a horizontal tunnel; (3) the 2,500-foot-long, 14-foot-diameter horizontal tunnel connecting the vertical shaft to a penstock; (4) the 1,900-foot-long, 10-foot-diameter penstock connecting the horizontal tunnel to a powerhouse; (5) the powerhouse containing two generating units with a total installed capacity of 200 MW; (6) a 53-foot-high dam and 44-acre lower reservoir; (7) a 14-mile-long transmission line; and (8) appurtenant facilities. Water for the project will be conveyed to the site via pipeline from an unidentified source.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24150 Filed 10–5–92; 8:45 am]

BILLING CODE 6717–01–M

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meeting.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–2900.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation

Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the International Energy Agency's (IEA) Group of Reporting Companies will be held on October 13, 14, and 15, 1992, commencing at 9:15 a.m. on October 13, at the Sheraton City Centre Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037. The purpose of this meeting is to permit attendance by representatives of U.S. Reporting Companies at the North American session of the IEA's Training Program for National Emergency Sharing Organizations ("NESOs") and Reporting Companies in relation to the Seventh Allocation Systems Test (AST-7), which training session is scheduled to be held at the Sheraton City Hotel on the dates indicated above. The agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following draft agenda will be followed:

October 13, 1992

9:15–10:00 Introduction
Review of the Agenda
Overview of training objectives
10:00–10:50 The IEA Emergency Sharing System, activation procedures and responsibilities
10:50–11:10 Coffee break
11:10–13:00 National emergency procedures; NESO and Reporting Company organization; national fair sharing and Non-Reporting Company operations
13:00–14:30 Lunch
14:30–15:45 IEA data bases
—Questionnaires A and B ("QA/QB") data
—Use of QA/QB data in AST–7
—AST–7 test assumptions and their impact on the data base
15:45–16:00 Coffee break
16:00–17:45 Key aggregates in the Emergency Sharing System
—Trigger calculations (Based Period Final Consumption, available supplies, Emergency Reserve Drawdown Obligation, and Allocation Rights and Allocation Obligations)
—The balancing job in AST–7

October 14, 1992

9:15–10:30 Market response to oil supply disruptions
10:30–10:45 Coffee break
10:45–12:15 IEA and NESO response to the AST–7 disruption assumptions
—Supply and operational considerations
—National response, including stockdraw and demand restraint
12:15–13:30 Lunch
13:30–15:00 IEA and industry response to the AST–7 disruption assumptions
—Type 1 and Type 2 activity
—Transport and refining operations
15:00–16:15 Industry Supply Advisory Group ("ISAG") and Emergency Operations Team ("EOT") activities
16:15–16:30 Coffee break
16:30–17:45 Information processing and transmission in AST–7
—The Voluntary Offer format and codes
—Preparation, transmission and processing
—The allocation screen—tracking countries' Allocation Rights and Obligations

October 15, 1992

9:15–10:15 Voluntary Offers
—Conditional offers, short fuse offers, split cargoes
—Voyage time problems, port restrictions, vessel size, product and crude oil offers
10:15–10:45 Shipping considerations in AST–7
10:45–11:15 Legal considerations in AST–7
11:15–11:30 Coffee break
11:30–12:45 AST–7 calendar
—Discussion among participants of value of training program
—Appraisal reports
—Relations with the media
—Closing remarks; end of session
12:45–14:00 Lunch
14:00–16:00 Optional revision of Training Program elements with ISAG and the IEA Secretariat

As permitted by 10 CFR 209.32, the usual 7-day period for publication of the notice of this meeting in the **Federal Register** has been shortened because unanticipated circumstances pertaining to the IEA's scheduling of this meeting delayed the issuance of this notice.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of IEA Reporting Companies and their counsel, representatives of NESOs, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, the Commission of the European Communities, and invitees of the IEA.

Issued in Washington, DC, September 29, 1992.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 92–24246 Filed 10–5–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[Docket Nos. 92–119–NG, 92–120–NG]

Multi-Energies Inc. and The Brooklyn Union Gas Co.; Applications for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that the applications identified in the attached Appendix were filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. The applicants request blanket authorization to import and/or export natural gas, including liquefied natural gas (LNG), from and to Canada, Mexico, and other foreign countries on a short-term or spot market basis over a period of two years beginning on the date of the first delivery. The proposed imports and exports would take place at any point on the borders of the United States that would not require the construction of new pipeline or LNG processing facilities.

Copies of these applications are available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the below address. The docket room is open between the hours of 8 a.m. an 4:30 p.m., Monday through Friday, except federal holidays. You are invited to submit protests, motions to intervene, notices of intervention, and written comments with respect to any docket listed above.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in the specific docket at the address listed below no later than 4:30 p.m., eastern time.

ADDRESSES: Office of fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW.,Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4819.

SUPPLEMENTARY INFORMATION: Notice of these applications is consolidated for administrative reasons, but DOE is conducting separate proceedings and will issue individual decisions on each application. Any protestor, intervenor, commenter, or other respondent who wishes to participate in more than one docket must submit a separate filing in each docket. DOE's decision on applications for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing

commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose any of these applications, should comment on these issues as they relate to the requested import/export authority. The applicants assert that their proposals are in the public interest. Parties opposing any of these applications bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in these proceedings until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to a proceeding and to have written comments considered as the basis for any decision on an application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to an application will not serve to make the protestant a party to that proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on an application. The filing of an intervention with respect to a particular docket will not serve to make the person a party in any other docket. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed to the specific docket with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on an application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trail-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Issued in Washington, DC, on September 29, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

Appendix

Filing date	Applicant name and Docket No.	Two-year maximum			Comments
		Import volume	Export volume	Import/export volume*	
9/17/92	Multi-Energies Inc. (92-119-NG)			200 Bcf	Imports/Exports (including LNG) from/to any foreign country.
9/18/92	The Brooklyn Union Gas Company (92-120-NG)	50 Bcf			Imports from Canada.

* Represents combined total of imports and exports.

[FR Doc. 92-24243 Filed 10-05-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. JD92-09927T Colorado-46]

Colorado; NGPA Determination by Jurisdictional Agency Designating Tight Formation

September 30, 1992.

Take notice that on September 28, 1992, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Shannon Formation underlying certain lands in Weld County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as follows:

Township 5 North, Range 66 West, 6th P.M.
Section 21: S/2SE/4; S/2SW/4; NW/4SW/4.
Section 22: SW/4.
Section 27: W/2.

The notice of determination also contains Colorado's findings that the referenced portion of the Shannon Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24216 Filed 10-5-92; 8:45 am]

BILLING CODE 6717-01-M

Genesis Coal Limited Partnership—Exclusive Patent Licenses

AGENCY: Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to Genesis Coal Limited Partnership of Pittsburgh, Pennsylvania, an exclusive license to practice the invention described in U.S. Patent No. 5,022,892 entitled "Fine Coal Cleaning

via the Micro-Mag Process". The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within sixty (60) days of this notice the Pittsburgh Energy Technology Center, Department of Energy, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than December 7, 1992.

ADDRESSES: Chief Counsel, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, Pennsylvania 15236-0940.

FOR FURTHER INFORMATION CONTACT: Curtis W. McBride, Chief Counsel, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, Pennsylvania 15236-0940, Telephone (412) 892-6161.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved under a nonexclusive license. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Genesis Coal Limited Partnership of Pittsburgh, Pennsylvania, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 5,022,892 and has a plan for commercialization of the invention.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Sun W. Chun,

Director, Pittsburgh Energy Technology Center.

[FR Doc. 92-24244 Filed 10-5-92; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. TM92-20-20-001 & TM93-3-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 30, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 25, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the following revised tariff sheets:

Proposed To Be Effective July 1, 1992

1 Rev 10 Rev Sheet No. 41
1 Rev 10 Rev Sheet No. 42

Proposed To Be Effective August 1, 1992

2 Sub 11 Rev Sheet No. 41
3 Sub 11 Rev Sheet No. 42

Proposed To Be Effective September 1, 1992

1 Rev 11 Rev Sheet No. 41
1 Rev 11 Rev Sheet No. 42

Proposed To Be Effective October 1, 1992

2 Sub 12 Rev Sheet No. 41
5 Sub 12 Rev Sheet No. 42

Algonquin states that the revised tariff sheets are being filed at FERC Staff's request to revise the pagination from that which was filed in Algonquin's Docket Nos. TM92-20-20-000 and TM93-3-20-000 on September 16, 1992. Algonquin also states that the calculations and rates reflected herein are identical to those reflected in the prior filing. The only difference between the tariff sheets contained in the instant filing and those tariff sheets in the previous filing is pagination.

Algonquin further states that the revised tariff sheets flow through rate changes in Texas Eastern Transmission Corporation's ("Texas Eastern") Rate Schedules SS-2 and SS-3, which underlie Algonquin's Rate Schedules STB and SS-III, respectively. Pursuant to section 10 of Rate Schedule STB and section 9 of Rate Schedule SS-III in Algonquin's FERC Gas Tariff, Third Revised Volume No. 1, Algonquin is hereby filing the above sheets to track the latest changes filed by Texas Eastern on August 28, 1992.

Algonquin requests to withdraw the previous tracker filing made in Docket Nos. TM92-20-20-000 and TM93-3-20-000 on September 16, 1992.

Algonquin states that copies of the filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24217 Filed 10-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-19-000]

Delhi Gas Pipeline Corp. (Oklahoma System); Petition for Rate Approval

September 30, 1992.

Take notice that on September 15, 1992, Delhi Gas Pipeline Corporation (Delhi) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 33.5 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Delhi states that it owns and operates extensive noninterconnected pipeline systems primarily in the states of Texas and Oklahoma with smaller operations in several other states. Its intrastate system in Oklahoma is the subject of this proceeding. By Commission letter order issued June 21, 1990 in Docket No. ST82-356-000 *et al.*, Delhi was authorized to charge a maximum rate of 33.5 per MMBtu for section 311(a)(2) transportation on its Oklahoma System.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before October 16, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24216 Filed 10-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 30, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on September 28, 1992 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective October 1, 1992.

The above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and §§ 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The increased gas cost in the instant filing result from adjusting ESNG's rates to reflect the impact of higher prices being paid to producers/suppliers under ESNG's market responsive gas supply contracts.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and Section 385.214). All such motions or protests should be filed on or before October 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24219 Filed 10-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-79-000]

Sea Robin Pipeline Co.; Rescheduling Conference

September 30, 1992.

Take notice that the conference previously scheduled for October 14, 1992 has been rescheduled. The conference will be held on Thursday, October 15, 1992, at 10 a.m., to discuss Sea Robin Pipeline Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in Hearing Room 1, at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Al Francese at (202) 208-0738.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24220 Filed 10-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-713-000]

Seagull Interstate Corp.; Petition for Declaratory Order

September 30, 1992.

Take notice that on September 17, 1992, Seagull Interstate Corporation (Seagull Interstate), 1001 Fannin Street, Houston, Texas, 77002, filed in Docket No. CP92-713-000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order finding that certain offshore pipeline facilities owned and operated by Seagull Interstate are production and gathering facilities not subject to the Commission's jurisdiction under the NGA, that previously issued certificates authorizing construction and operations of these facilities be rescinded, and that the Commission's Order No. 636 restructuring proceeding in Docket No. RS92-80-000 be terminated as moot, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Seagull Interstate states that the facilities in question are two short pipeline segments known as the 555 line and the 213 line attaching production in Federal waters offshore Texas to intrastate pipelines in state waters that carry the gas to processing markets onshore. Seagull Interstate indicates that the 555 line is 16 inches in diameter and extends 7 miles from a production platform to a subsea interconnection with an intrastate pipeline. Seagull Interstate also states that the 213 line is 6 inches in diameter and extends 5.67 miles from a production platform to a subsea interconnection with another intrastate pipeline. Seagull Interstate indicates that gas flowing through the 555 line undergoes separation and dehydration and minor compression on the platform; and processing and additional compression are provided downstream of Seagull Interstate's facilities. According to Seagull Interstate, the 213 line is currently idle, but when gas moved on the line it received no separation, dehydration or other processing and no compression.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 21, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24221 Filed 10-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-20-000]

Supenn Pipeline; Petition for Rate Approval

September 30, 1992.

Take notice that on September 18, 1992, Supenn Pipeline (Supenn) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.3218 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Supenn states that it owns pipeline facilities extending from production platforms located in the State of Louisiana, Sabine Pass Block 3 Area to an onshore condensate reseparation plant facility located approximately ten miles north. By Commission letter order issued May 22, 1990 in Docket No. ST89–4756–000, Supenn was authorized to charge a maximum rat of $0.11 per MMBtu for section 311(a)(2) transportation.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before October 16, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24222 Filed 10–5–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–164–004 and TM93–1–80–001]

Tarpon Transmission Co.; Notice of Compliance Tariff Filing

September 30, 1992.

Take notice that on September 25, 1992, Tarpon Transmission Company ("Tarpon") tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, proposed to be effective on November 1, 1992:

Revised Substitute Ninth Sheet No. 2A

Alternate Revised Substitute Ninth Sheet No. 2A
Revised Substitute Second Sheet No. 86A
Revised Substitute Third Sheet No. 96A

Tarpon is submitting these tariff sheets to reflect the four corrections indicated in the Letter Order issued by Kevin Madden, Director of the Office of Pipeline and Producer Regulation, on July 21, 1992, in Docket No. RP92–164–002 ("Letter Order"). The four corrections relate to the computation of Tarpon's special regulatory expense charge (and carrying charges thereon), as well as the treatment of the deferred tax liability associated with Tarpon's deferred regulatory expenses. The alternate sheet submitted by Tarpon reflects a change to the expiration date of the special charge for certain incremental expenses.

In addition to implementing the changes to its base rate and special regulatory expense charge required by the Letter Order, the above-listed tariff sheets reflect the most recent Commission-mandated change in the ACA charge. The ACA charge filing made by Tarpon on September 8, 1992 in Docket No. TM93–1–80–000 (notice of which was issued September 11, 1992), included changes to six tariff sheets proposed to be effective November 1, 1992, that had been rejected, unknown to Tarpon, in the Letter Order. Tarpon has requested that the six tariff sheets filed on September 8 to be effective November 1 be rejected, or discarded, as appropriate. Tarpon further states that the three tariff sheets to adjust the ACA charge for Tarpon's currently effective rates (which were unchanged by the Letter Order) filed on September 8 to be effective October 1, are not affected by the instant filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24223 Filed 10–5–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–234–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 30, 1992.

Take notice that on September 28, 1992, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing what it termed a limited application pursuant to Section 4 of the Natural Gas Act, to recover gas supply realignment costs (GSR Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states that the tariff sheets which provide for the recovery of GSR Costs are being submitted to the Commission contemporaneously in Docket No. RP92–234–000, and in Docket No. RS92–11, *et al.*, which is Texas Eastern's Order No. 636 Compliance Filing. Texas Eastern states that the mechanism for the recovery of GSR Costs is set forth in and is a part of Docket No. RS92–11.

Texas Eastern states that the sole purpose of the filing in this Docket [RP92–234–000] is to set forth the initial level of GSR Costs and the related rates that will be charged by Texas Eastern pursuant to Order No. 636. Texas Eastern requests waiver pursuant to Section 154.51 of the Commission's Rules in order to permit the limited rate application to take effect on the same date as the effectiveness of Texas Eastern's Order No. 636 Compliance Filing in Docket No. RS92–11.

Texas Eastern states that copies of the tariff filing were mailed to all customers of Texas Eastern, interested state commissions shown on Texas Eastern's system, and each person designated on the official service list compiled by the Secretary in Docket No. RS92–11–000.

Any person desiring to be heard or to protest the filing in Docket No. RP92–234–000 should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 7, 1992, and should address only the initial *level* of GSR Costs and related rates proposed in Docket No. RP92–234–000. Comments on the *mechanism* proposed in Docket No. RS92–11 for recovery of the GSR Costs will be due in accordance with the schedule established in Order No. 636. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24224 Filed 10–5–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4517-3]

Agency Information Collection Activities under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before November 5, 1992. To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Primary Drinking Water Regulations: Phase V Synthetic Organic and Inorganic Chemicals (ICR No. 0270.29)

Abstract: EPA's Phase V rule will establish national primary drinking water regulations for 24 pollutants, including inorganic chemicals, synthetic organic chemicals, and volatile synthetic organic chemicals.

In order to ensure compliance with the regulations and to protect public health, EPA will impose certain information requirements on State and local officials. Officials at Public Water Systems (PWSs) will be required to maintain records of compliance with treatment and monitoring standards. These records will enable them to identify system needs, to alter monitoring frequencies and to notify the public when systems are not in compliance with Federal and State regulations.

States will have to set up and maintain records of PWS data, including the results of drinking water tests and a list of systems out of compliance with standards. The States use this information for program implementation and oversight purposes.

States must also keep records of their actions concerning plans, enforcement, variances, and exemptions for each PWS.

The PWS information will also be useful to the primacy authority, either an EPA region or an approved State, for monitoring those PWSs trying to achieve compliance and for deciding which systems are likely targets for remedial or enforcement actions.

The States will submit reports to EPA which the Agency will use for oversight of State implementation of the regulations and to determine when to take enforcement action in cases where States have not done so. The information States submit will be stored in the Federal Reporting Data System (FRDS), where EPA and States can retrieve it. The FRDS allows for year-to-year analysis of compliance trends at the system, State, and national level and will also enable EPA to determine what policy changes are needed to increase compliance nationally.

Burden Statement: The average burden associated with the Phase V Synthetic Organic and Inorganic Chemicals Rule is 7.6 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: Public Water Systems, States.

Estimated No. of Respondents: 200,240.

Estimated Total Annual Burden on Respondents: 430,182 hours.

Frequency of Collection: Quarterly, annually, triennially and every nine years.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC, 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC, 20503.

Dated: September 29, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–24234 Filed 10–5–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4517–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before November 5, 1992.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Reporting and Recordkeeping Requirements for Asbestos Abatement Worker Protection. (EPA ICR No. 1246.03; OMB No. 2070–0072). This is a reinstatement of a previously approved collection.

Abstract: This rule covers state and local government employees who perform asbestos abatement activities. Employers are required to inform EPA of asbestos abatement projects, to train employees about the hazards of asbestos, to monitor employee exposure, to provide medical surveillance, and to keep records of all these activities. The records maintained provide EPA with the data necessary to ensure compliance with the worker protection rule authorized under sections 6 and 8 (a) of the Toxic Substances Control Act (TSCA).

Burden Statement: The public reporting burden for this collection of information is estimated to average 22 hours per response for reporting, and 1 hour for recordkeeping. This includes the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

Respondents: State and local governments.

Estimated No. of Respondents: 2080.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 47,882.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC, 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of

Information and Regulatory Affairs, 726 17th Street, NW., Washington, DC. 20503.

Dated: September 28, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-24235 Filed 10-5-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4519-6]

Proposed Assessment of Clean Water Act Class II Administrative Penalty to Pro-Tech, Incorporated and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. Section 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. Section 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the Procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Pro-Tech Incorporated, located at 11164 Young River Avenue, Fountain Valley, California; EPA Docket No. CWA-IX-FY92-37; filed on September 28, 1992 with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1388; proposed penalty of $125,000 for failure to comply with the categorical pretreatment standards and requirements for new metal finishers (40 CFR 433) and for failure to comply with the General Pretreatment Regulation for Existing Sources of Pollution (40 CFR 403).

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review of the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: September 25, 1992.

Catherine Kuhlman,

Acting Director, Water Management Division.

[FR Doc. 92-24236 Filed 10-5-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before December 7, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW Washington, DC 20472, (202) 646-2624.

Type: Extension of 3067-0090.

Title: Emergency Management Assistance Staffing Pattern.

Abstract: FEMA uses FEMA Form 85-17, Emergency Management Assistance Staffing Pattern, to obtain information from State and local governments on classifications of emergency management positions, salaries, and appointments of personnel funded under its Emergency Management Assistance matching fund grant program. Personnel supported by the EMA program are an important part of the civil defense infrastructure which is maintained in accordance with the national civil defense policy.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 1,375 hours.

Number of Respondents: 2,750.

Estimated Average Burden Time per Response: 30 minutes.

Frequency of Response: Annually.

Dated: September 24, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-24231 Filed 10-05-92; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010974-012.

Title: Oakland/International Transportation Service Terminal Agreement.

Parties: City of Oakland, International Transportation Service, Inc.

Synopsis: The amendment extends the term of the Agreement until June 30, 1997 with an option to extend the Agreement for an additional five year term. It also increases the breakpoint level and minimum annual cargo guarantee as well as providing for secondary use incentives, adjustment in rentals and storage charges and dredging obligations during the extended term of the Agreement.

Agreement No.: 203–011387.

Title: Hapag Lloyd A.G., Nippon Yusen Kaisha and Neptune Orient Lines, Ltd. Far East/U.S. Pacific and Atlantic Coasts/North Europe Discussion Agreement.

Parties: Hapag Lloyd A.G., Nippon Yusen Kaisha, Neptune Orient Lines, Ltd.

Synopsis: The proposed Agreement will authorize the parties to meet, discuss, exchange information and reach an understanding in regard to contemplated future coordinated operation of their vessels in the trade between ports in the Far East, U.S. Pacific (including Alaska) and Atlantic Coasts and North Europe and inland and coastal points via such ports.

Dated: September 30, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–24116 Filed 10–05–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notices of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091492 AND 092592

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Jonahan J. Oscher, Gordon Gray Irrevocable Living Trust, Summit Cable Service of Iredell County, Inc.	92-1438	09/14/92
O'Sullivan Corporation, HM Acquisition Partners, Meinor Industries, Inc.	92-1457	09/14/92
C. Itoh & Co., Ltd., General Electric Company, General Electric Capital Corporation	92-1461	09/14/92
Wellcome plc, Wellcome plc, WelGen Manufacturing Partnership	92-1432	09/15/92
Bass plc, Metropolitan Life Insurance Company	92-1440	09/15/92
Shipyard Hotel Venture	92-1446	09/15/92
Frank V. Carlow Irrevocable Trust, Pennsylvania Power & Light Company, Tunnelton Mining Company	92-1452	09/15/92
Johnson Matthey Public Limited Company, Alta Group, Inc. (The), Alta Group,Inc. (The)	92-1456	09/15/92
McDonald's Corporation, Estate Of John Kornblith, Deceased, Twenty First Century Corporation	92-1463	09/15/92
Warburg, Pincus Investors, L.P., Jennings Group Limited, Jennings Holdings (USA) Inc	92-1474	09/15/92
RJR Nabisco Holdings Corp.	92-1475	09/15/92
Plush Pippin Corporation, Plush Pippin Corporation	92-1484	09/15/92
Liberty Corporation (The), Magnolia Financial Corporation, Magnolia Financial Corporation	92-1486	09/15/92
Integon Life Partners, L.P., Skandia Group Insurance Company Ltd., Skandia America Corporation	92-1416	09/16/92
Integon Corporation, Skandia Group Insurance Company Ltd., Skandia America Corporation	92-1417	09/16/92
Roscoe Moss,Jr., SJW Corp., SJW Corp	92-1421	09/16/92
SJW Corp., Roscoe Moss Company, Roscoe Moss Company	92-1466	09/17/92
Student Loan Marketing Association, Citicorp, Citibank (New York State)	92-1412	09/18/92
Newell Co., Intercraft Holdings, L.P., Intercraft Industries, L.P. and Intercraft	92-1431	09/18/92
CSM nv, Allen S. Ziegler, Westco Products, Inc	92-1454	09/18/92
Burlington Resources, Inc., Mobil Corporation	92-1472	09/18/92
Mobil Producing Texas & New Mexico Inc.	92-1473	09/18/92
Koch Industries, Inc., Royal Dutch Petroleum Company, Shell Pipe Line Corporation	92-1477	09/18/92
Capstead Mortgage Corporation, Tyler Cabot Mortgage Securities Fund, Inc., Tyler Cabot Mortgage Securities Fund, Inc.	92-1485	09/18/92
Enron Corp., Access Energy Corporation, Access Energy Corporation	92-1510	09/18/92
Heilig-Meyers Company, Wolf Furniture Enterprises, Inc., Wolf Furniture Enterprises, Inc	92-1512	09/18/92
Tyler Capital Fund, L. P.	92-1480	09/21/92
United Technologies Corporation, United Technologies Automotive, Inc. and voting.	92-1492	09/21/92
Land Free II Investment Limited, Gillette Holdings, Inc., Gillett Holdings, Inc.	92-1501	09/21/92
Stichting Administratiekantoor ABN AMRO Holding, Stanley Stahl, Apple Bank for Savings	92-1511	09/21/92
Degussa Aktiengesellschaft, George D. Behrakis, Muro Pharmaceutical,Inc.	92-1489	09/22/92
Takara Shuzo Co., Ltd., AADC Holding Company,Inc., AADC Holding Company, Inc	92-1503	09/22/92
Nippon Mining Company, Limited, Kyodo Oil Company, Limited, Kyodo Oil Company, Limited	92-1504	09/22/92
William A. Goldring, Takara Shuzo Co., Ltd., AADC Holding Company, Inc.	92-1506	09/22/92
Swiss Bank Corporation, Swiss Bank Corporation, SBC/OC Partners L.P.	92-1429	09/23/92
Dr. & Mrs. Nicholas A Cummings, Medco Containment Services, Inc. Medco Containment Services, Inc	92-1441	09/23/92
Albert S. and Anita Howe-Waxman, Medco Containment Services, Inc., Medco Containment Services, Inc	92-1496	09/23/92
Medco Containment Services, Inc., American Biodyne, Inc., American Biodyne, Inc		
International Shipholding Corporation, General Dynamics Corporation, American Overseas Marine Corporation, Brai[illegible]		
Archer-Daniels-Midland Company, Overseas Shipholding Group, Inc.		
Overseas Shipholding Group, Inc.		
Gates Corporation (The), LASMO plc, Ultramar Oil & Gas Limited		

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091492 AND 092592—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
General Conference of Seventh-day Adventists, Hospital Associates of La Habra, Hospital Associates of La Habra	92-1490	09/24/92
General Conference of Seventh-day Adventists, Friendly Hills Medical Group, Friendly Hills Medical Group	92-1491	09/24/92
Warburg, Pincus Investors, L.P., CompuPharm, Inc., CompuPharm, Inc.	92-1502	09/24/92
Standard Chartered PLC	92-1516	09/24/92
First Interstate Bancorp, First Interstate Bank International	92-1460	09/25/92
Ford Motor Company, Chrysler Corporation, Chrysler Rail Transportation Corporation	92-1494	09/25/92
Automated Security (Holdings) PLC, INDRA FINANCE, Sonitrol Holding Company	92-1515	09/25/92
SCANA Corporation, PacifiCorp, NERCO Oil & Gas, Inc	92-1523	09/25/92
American Express Company, Royal Dutch Petroleum Company, Shell Oil Company	92-1529	09/25/92
USF&G Corporation, PetroCorp Acquisition Corporation, PetroCorp Acquisition Corporation	92-1530	09/25/92
CIGNA Corporation, PetroCorp Acquisition Corporation, PetroCorp Acquisition Corporation	92-1533	09/25/92
Mutual of America Life Insurance Company, Olympia & York Developments Limited, Olympia & York 320 Park Company	92-1537	09/25/92
Motorola, Inc., In Focus Systems, Inc., In Focus Systems, Inc		

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580 (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-24187 Filed 10-5-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 861 0082]

American Psychological Association; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Washington, DC association from restricting the dissemination of truthful, nondeceptive information about psychologists' services, products, or publications. In addition, the agreement would require the respondent for one year to cease its affiliation with any state, regional or other psychological association affiliate that imposes similar restrictions.

DATES: Comments must be received on or before December 7, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hilder, FTC/S–3115, Washington, DC 20580. (202) 326–2545.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of American Psychological Association, a corporation; File No. 861–0082.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the American Psychological Association, a corporation, and it now appearing that the American Psychological Association, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby Agreed by and between the American Psychological Association, by its duly authorized officers its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its offices and principal place of business located at 1200 Seventeenth Street, NW., Washington, DC 20036.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached. This admission is solely for the purposes of this agreement, the order contemplated by this agreement, any modification of the order or other proceeding related to the order, any action relating to a possible violation of this agreement or the order contemplated by this agreement, or any action relating to a possible violation of any law administered or enforced by or on behalf of the Federal Trade Commission.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of compliant here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant

to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of compliant here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I.

For the purposes of this order:

"Respondent" means the American Psychological Association, its directors, trustees, councils, committees, boards, divisions, officers, representatives, delegates, agents, employees, successors, or assigns.

"Members" means the Fellows, Members, and Associates classes of members of the American Psychological Association, and persons that hold Affiliate status with the American Psychological Association.

"Psychotherapy" means the therapeutic treatment of mental, emotional, or behavioral disorders by psychological means, and excludes programs, seminars, workshops, or consultations that address specific limited goals, such as career planning; improving employment skills or performance; increasing assertiveness; losing weight, giving up smoking; or obtaining non-individualized information about methods of coping with concerns common in everyday life.

"Current psychotherapy patient" means a patient who has commenced an evaluation for or a planned course of individual, family, or group psychotherapy, where the patient and the therapist have not agreed to terminate the treatment. However, a person who has not participated in psychotherapy with the psychologist for one year shall not be deemed a current psychotherapy patient.

II.

It is ordered that respondent, directly, indirectly, or through any corporate or other device, in or in connection with respondent's activities as a professional association, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, do forthwith cease and desist from:

A. Restricting, regulating, impeding, declaring unethical, interfering with, or restraining the advertising, publishing, stating, or disseminating by any person of the prices, terms, availability, characteristics, or conditions of sale of services, products, or publications offered for sale or made available by any psychologist, or by any organization or institution with which a psychologist is affiliated, through any means, including but not limited to the adoption or maintenance of any principle, rule, guideline, or policy that restricts any psychologist from:

1. Marking public statements about the comparative desirability of offered services, products, or publications;

2. Making public statements claiming or implying unusual, unique, or one-of-a-kind abilities;

3. Making public statements likely to appeal to a client, patient or other consumer's emotions, fears, or anxieties concerning the possible results of obtaining or failing to obtain offered services, products, or publications;

4. Presenting testimonials from clients, patients, or other consumers;

5. Engaging in any direct solicitation of business from actual or prospective clients, patients, or other consumers or offering of services directly to a client, patient, or other consumer receiving similar services from another professional.

Provided that nothing contained in this order shall prohibit respondent from adopting and enforcing reasonable principles, rules, guidelines, or policies governing the conduct of its members with respect to:

1. Representations that respondent reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act;

2. Uninvited, in-person solicitation of business from persons who, because of their particular circumstances, are vulnerable to undue influence; or

3. Solicitation of testimonial endorsements (including solicitation of consent to use the person's prior statement as a testimonial endorsement) from current psychotherapy patients, or from other persons who, because of their particular circumstances, are vulnerable to undue influence.

Provided further that nothing in this order shall prohibit respondent from adopting and enforcing editorial, scientific, peer review, or display standards for its publications and conferences.

B. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or restraining any of its members, or any organization or institution with which any of its members is associated, from giving or paying any remuneration to any patient referral service or other similar institution for referral of clients, patients, or other consumers for professional services.

Provided that nothing contained in this order shall prohibit respondent from formulating, adopting, disseminating, and enforcing reasonable principles, rules, guidelines, or policies requiring that disclosures be made to clients, patients, or other consumers that the psychologist, or organization or institution with which he or she is associated, will pay or give, or has paid or given, remuneration for the referral of the clients, patients, or other consumers for professional services.

III.

It is further ordered that respondent shall:

A. Cease and desist for ten (10) years from the date at which this order becomes final, from taking any action against a person alleged to have violated any ethical principle, rule, policy, guideline, or standard, or taking disciplinary action on any other basis against a person, so as to restrain or otherwise restrict advertising, solicitation of business, or the payment of fees for the referral of clients, patients, or other consumers for services without first providing such person, at a minimum, with written notice of any such allegation and without providing such person a reasonable opportunity to respond. The notice required by this part shall, at a minimum, clearly specify the

psychologist. The proposed consent order would bar the APA from restricting its members from advertising that is "intended or likely to appeal to a client's fears, anxieties, or emotions concerning the possible results of failure to obtain" psychotherapy services.[1] I dissent from this provision of the order because of its potential for harm to patients and prospective patients, given the nature of psychotherapy services.[2]

Appeals to the "fears, anxieties and emotions" of consumers can be an effective form of advertising. The Commission normally would view a broad restriction of this kind of advertising with a high degree of skepticism. The APA rule in question is limited, but even assuming it is inherently suspect, under Massachusetts Board of Registration in Optometry, 110 F.T.C. 549, 602–04 (1988), this is not the end of the inquiry. Instead, in deciding whether a restraint on advertising is unlawful under Section 5 of the Federal Trade Commission Act, it is necessary to consider the possible justifications for the restriction.

Here, the challenged rule restricts advertising by psychologists that is intended to arouse consumer's fears, anxieties or other emotions about the consequences of failing to obtain psychotherapy services. The plausible justification for this restriction is the professional concern about compounding the psychological problems of vulnerable individuals and interfering with psychotherapy. An individual who fears the consequences of failing to obtain psychotherapy may be less successful in psychotherapy or require a longer course of treatment than one who has positive expectations.[3] On the record before us, I do not know that this is a valid professional justification, but, more importantly, in deciding whether the APA's restriction may be unlawful, I do not know that it is not.

When we are presented with a plausible justification for restrictive conduct that involves or may involve a professional judgment, we should substitute our judgment for that of the professional only if we have a sound basis for doing so. The Commission has deferred to the professional judgments of professionals in the past, especially where quality of care has been involved. At the very least, it has not rushed to overturn such judgments absent compelling cause. Here, the justification is plausible, we have nothing to weigh against it and the Commission lacks expertise concerning psychotherapy. The decision to ignore the plausible justification and invalidate the rule is based on a truncated record. Everything the record contains on this point supports the justification, and nothing, even hypothetically, suggests that the justification is either implausible or invalid. In addition, as often happens in cases of this nature, the respondent has substantial financial incentives to accept the settlement rather than litigate.

The proposed order partly concedes the validity of the APA's concerns about engendering fears and anxieties in consumers and interfering with the therapeutic process by permitting the APA to restrict its members from direct solicitation of business and the solicitation of testimonials from current psychotherapy patients and others who may be "vulnerable to undue influence."[4] The same potential for harm to vulnerable persons might have been recognized by allowing the APA to restrict emotional appeals regarding failure to obtain psychotherapy services in advertisements. The majority instead paints with a broader brush, to the possible detriment of consumers.

As a matter of law, the Commission necessarily substitutes its judgment on this professional question for that of the APA when it invalidates the APA's rule. Making that judgment without better reason than is apparent here suggests a willingness to expand the *per se* rule, is unnecessarily intrusive and has serious implications for future cases, particularly in view of the recognized difficulty of identifying and articulating plausible efficiency justifications. Overly broad orders may deter legitimate conduct that the Commission never examines. Our zeal to promote competition should not override our attention to the interests of consumers. When judgments need to be made about the reasonableness of private conduct and the validity of justifications for it, the Commission should be cautious about overriding the tenets of professionalism, especially in the context of a consent order.

[FR Doc. 92–24189 Filed 10–5–92; 8:45 am]
BILLING CODE 6750–01–M

[1] The APA had such a restriction in its ethical code but repealed it in the face of the Commission's investigation. See ¶ II.3 of the order and ¶ 9.C of the complaint.

[2] "The therapeutic treatment of mental, emotional, or behavioral disorders by psychological means." Order ¶ 1.

[3] The APA Ethical Principle at issue fully supports the justification. By its terms, the APA's rule did not restrict emotional appeals about the benefits of obtaining psychotherapy services but rather advertising that is intended to appeal to a client's "fears, anxieties or emotions concerning the possible results of failure to obtain [psychotherapy] services." See Complaint ¶ 9.C.

[4] Order ¶ II.A. provisos 2 & 3. Although I might have addressed these issues differently in the context of the order as a whole, the provisos appropriately credit plausible justifications offered by the APA.

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the monthly meeting of the Federal Accounting Standards Advisory Board will be held on Monday, October 26, 1992, from 9 a.m. to 4 p.m. in the third floor Board Room (Metropolitan Washington Council of Governments), 777 North Capitol St., NE., Washington, DC. Please note that this and all subsequent meetings of the Board will be held at this new site, unless notice is given to the contrary.

The agenda for the meeting will consist of a review of the minutes of the September 23–24 meeting, a discussion of the *Statement of Recommended Accounting Standards No. 1, Accounting for Selected Assets and Liabilities*, a discussion of the Exposure Draft on *Accounting for Liabilities and Future Claims on Budgetary Resources*, and a discussion on *User Needs and Objectives*. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St., NW., room 302, Washington, DC 20001, or call (202) 504-3336.

Authority: Federal Advisory Committee Act. Public Law No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: October 1, 1992.

Jimmie D. Brown,

Deputy Director.

[FR Doc. 92–24249 Filed 10–5–92; 8:45 am]
BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute of Mental Health; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of an advisory committee of the National Institute of Mental Health for October 1992.

The initial review group will be performing review of applications for Federal assistance; therefore, portions of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and roster of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9–105, 5600 Fishers Lane,

Rockville, MD 20857 [Telephone: 301–443–4333].

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Clinical Subcommittee, Mental Health Special Projects Review Committee.

Meeting Date: October 28–30, 1992.

Place: Grand Hyatt Hotel, Park Avenue at Grand Central, New York, NY 10017.

Open: October 28, 7–8 p.m.

Closed: Otherwise.

Contact: Gwen Artis, Room 9C–06, Parklawn Building, Telephone (301) 443–1367.

Dated: September 30, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–24248 Filed 10–5–92; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices.

Times and Dates: 8:30 a.m.–5 p.m., October 21, 1992. 8:30 a.m.–12:45 p.m., October 22, 1992.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be Discussed: The committee will discuss polio, measles, mumps, BCG, rabies, and Haemophilus b conjugate vaccines; hepatitis B and C vaccination; general recommendations for immunization; immunization in bone marrow recipients; Guillain-Barre Syndrome; immunization schedule; and vaccination recommendations for health care workers. The agenda also includes a presentation on Influence on Vaccine Research and Development of Possible "Sole Source" Contract for Public and Private Vaccine; a summary of an FDA Workshop on Package Inserts and Warnings for Use of Vaccines; an update on Research Priorities of the Division of Immunization, CDC; an update on Immunization Action Plans; and an update on the National Vaccine Injury Compensation Program. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Gloria A. Kovach, Staff Specialist, CDC (1–B72), 1600 Clifton Road, NE, Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: September 30, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92–24201 Filed 10–5–92; 8:45 am]

BILLING CODE 4160–18–M

National Center for Environmental Health (NCEH) of the Centers for Disease Control (CDC) Announces the Following Meeting

Name: In-progress Review of U.S. Army Analysis of Risk of Liquid Lethal Chemical Agent Deposition Beyond Installation Boundaries.

Times and Dates: 8:30 a.m.–4 p.m., November 5, 1992. 8:30 a.m.–12 noon, November 6, 1992.

Place: Terrace Garden Inn-Buckhead, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 35 people.

Purpose: A working group of both intra-and extra-governmental experts will review Army analyses intended to assess the risk of contacting liquid chemical warfare agents beyond the installation boundaries in the event of a catastrophic release. The analyses were undertaken at the request of the Department of Health and Human Services in order to assist in selecting personal protective equipment for civilian emergency personnel responding to a release.

Matters to be Discussed: The meeting will be led by CDC program staff and a working group of subject experts. Planners for the Chemical Stockpile Emergency Preparedness Program know that a large enough release of nerve or blister agents, combined with certain adverse meteorological conditions, could create a vapor plume capable of endangering civilians outside the installations where these agents are stored. Planners do not know whether such releases, under any meteorologic conditions, could deposit liquid agent beyond the installation boundary in a way which could endanger people working in or moving through nearby areas.

The Army has performed some analyses regarding the liquid agent issue and is working on others. Participants of the working group will examine the Department of Army's efforts to date and provide their individual expert opinions regarding the validity of what has been done and the directions the work in progress should take. Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Sanford Leffingwell, M.D., Medical Director, Special Programs Group, NCEH, CDC, 4770 Buford Highway, NE., (F–29), Atlanta, Georgia 30341–3724, telephone 404/488–7070.

Dated: September 28, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92–24202 Filed 10–5–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 86D–0058]

Draft Anesthesia Apparatus Checkout Recommendations, 1992; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Draft Anesthesia Apparatus Checkout Recommendations, 1992." These draft recommendations are a revised version of the original recommendations dated August 1986 and announced in the Federal Register of February 25, 1987, and present a general checkout and inspection procedure. The checkout and inspection procedure should be conducted before administration of anesthesia to ensure that the anesthesia machine, patient breathing system, and monitors, which together comprise the anesthesia delivery system, are correctly interconnected, adjusted, and functioning as intended. These draft recommendations should be followed for anesthesia systems that conform to current and relevant standards (such as "Standards Specifications for Minimum Performance and Safety Requirements for Components and Systems of Anesthesia Gas Machines," ASTM F–1161–88) and that include an ascending bellows ventilator and at least the following monitors: capnograph, pulse oximeter, oxygen analyzer, respiratory volume monitor (spirometer), and breathing system pressure monitor with high and low pressure alarms. The original recommendations should be followed for all other anesthesia systems.

DATES: Written comments by February 16, 1993.

ADDRESSES: Submit written requests for single copies of the draft document entitled "Draft Anesthesia Apparatus Checkout Recommendations, 1992" to the Center for Devices and Radiological Health (HFZ–150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft

document to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: J. Jay Crowley, Center for Devices and Radiological Health (HFZ-150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-7003.

SUPPLEMENTARY INFORMATION: FDA is committed to carrying out a program to ensure the safety and effectiveness of medical devices. One aspect of this program involves regulatory activities under the laws administered by the agency concerning the design, manufacture, and distribution of medical devices. Patient safety, however, is dependent on more than properly functioning devices. Although proper operation, maintenance, and periodic inspection of these devices by the user are matters that cannot always be addressed effectively through regulatory action under the laws administered by the agency, they are essential in minimizing risks to patients. Consequently, as an important adjunct to its regulatory program, FDA has initiated a variety of educational efforts to aid medical professionals in the safe use of medical devices. These educational endeavors are done in cooperation, and usually with the active participation, of the relevant professional organizations and other groups within the private sector.

For example, to reduce unnecessary retakes in radiology and to improve image quality, in cooperation with the American College of Radiology and other private sector organizations, FDA developed voluntary recommendations for radiology facilities concerning equipment quality assurance programs (A Basic Quality Assurance Program for Small Diagnostic Radiology Facilities, FDA 83-8218). In cooperation with the American College of Radiology and numerous other medical professional societies, FDA fostered the development of guides for clinicians on the effective use of selected diagnostic imaging procedures ("The Selection of Patients for X-ray Examinations," FDA 80-8104; "The Selection of Patients for X-ray Examinations: The Pelvimetry Examinations," FDA 81-8174; "The Selection of Patients for X-ray Examinations: Chest X-ray Screening Examinations," FDA 83-8204). As an adjunct to the teaching of medical students and radiology residents, FDA funded the development of a basic teaching system in radiology "The Radiological Health Sciences Learning File," which is now in use in radiology education and is used in 118 medical schools in the United States and in several foreign medical schools as well. These examples illustrate FDA's commitment to ensuring that users of medical devices are sufficiently educated and motivated to use medical devices safely and effectively.

In the **Federal Register** of February 25, 1987 (52 FR 5583), FDA published the "Anesthesia Apparatus Checkout Recommendations" (checklist) (Ref. 1), a generic checklist for use by anesthesia professionals to checkout anesthesia equipment before use. Since that time, changes have occurred in both anesthesia equipment and the practice of anesthesia which have caused FDA to reexamine the checklist. The draft recommendations announced in this document are a revised version of the original recommendations dated August 1986 and published in the **Federal Register** of February 25, 1987.

Published and unpublished studies (Refs. 2 through 5) indicate that most practitioners do not routinely perform a thorough checkout of their anesthesia equipment. The primary reasons for resistance to doing a thorough, daily pre-use checkout of the anesthesia system, as described by the checklist, appear to be the excessive amount of time that would be required, the nonspecificity and ambiguity of certain steps, and the difficulty in performing step No. 16 of the 1986 checklist "Test for Leaks in Machine and Breathing System."

In March 1991, the American Society of Anesthesiologist's (ASA) Committee on Equipment and Facilities convened a meeting at which FDA was asked to present its opinions on revising the checklist. Invited participants included representatives of the ASA, ASA Committee on Equipment and Facilities, Anesthesia Patient Safety Foundation (APSF), American Association of Nurse Anesthetist (AANA), anesthesia machine manufacturers (Ohmeda and North American Drager) and anesthesia equipment experts. The objectives of a revision of the checklist were to:

(1) Improve the language of the checklist in order to increase clarity and remove any ambiguity;

(2) streamline the checklist to reduce the number of steps required daily to only those that are critical;

(3) modify certain steps to facilitate a more thorough and complete execution; and

(4) develop an educational initiative to improve effectiveness by encouraging daily use of the recommendations and understanding of the equipment.

As a result of that meeting and other work, a draft version of the checklist was reviewed at the 1991 ASA annual meeting. The draft was also reviewed by FDA's Anesthesia and Respiratory Care Devices Panel. Results of these reviews and further work have produced the draft 1992 version of the checklist which incorporates the following modifications to the original checklist:

Modifications Made to the 1986 Checklist Which Created the Draft Recommendations

Checklist Step

Step Nos. 1 through 4—Modified/edited to improve clarity and flow.

Step No. 5—Deleted—Present data indicate that central pipeline systems fail infrequently. Therefore, it seems unnecessary to check the backup system daily. It is still critical, though, to ensure that the cylinder of oxygen is at least half full.

Step No. 6—Editorial changes only.

Step No. 7—Deleted—Only critical components need to be checked. It is unnecessary to check non-life-sustaining gases.

Step Nos. 8 and 9—Combined/edited to improve clarity and flow.

Step No. 10—Deleted—Present data indicate that this piece of apparatus seldom fails. However, even if it does fail, it does not create a life threatening situation.

Step No. 11—Deleted—Supply hoses need only be checked during periodic maintenance. It is still necessary, however, to ensure that there is adequate supply pressure.

Step No. 12—Editorial changes only.

Step No. 13—Editorial changes only.

Step No. 14—Deleted—An unnecessary step without any real benefit. Combined with another step and modified for more thorough execution.

Step No. 15—Modified for more thorough execution.

Step No. 16—Combined with another step and modified for more thorough execution.

Step No. 17—Editorial changes only.

Step Nos. 18 through 24—Combined and edited for more thorough execution.

Interested persons may, on or before February 16, 1993, submit to the Dockets Management Branch (address above) written comments on the draft document. FDA will consider these

comments in determining whether further revisions of the document are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. After the public comment period closes, FDA intends to make the final version of the recommendations available to the public, to anesthesia clinicians through their professional organizations, and to anesthesia equipment manufacturers so that they may include them in their own user education programs.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m, Monday through Friday.

1. "Anesthesia Apparatus Checkout Recommendations; Availability," 52 FR 5583–5584, February 25, 1987.

2. March, M. G. and J. J. Crowley: "An Evaluation of Anesthesiologists' Present Checkout Methods and the Validity of the FDA Checklist," *Anesthesiology* 75:724–729, 1991.

3. "A Study to Determine the Effect of Intensive Check-Out Education On Anesthesiologist's Performance of the FDA Checklist for the Pre-Use Checkout of Anesthesia Equipment," an internal FDA study conducted at the New York Medical College in cooperation with David Lees, August, 1990.

4. "A Study to Determine the Effect of the Modified FDA Checklist on Checkout Performance," an internal FDA study conducted at the 1990 annual meeting of the American Association of Nurse Anesthetists in Atlanta, GA.

5. FDA contract of four States to examine anesthesia equipment and practices, 1989.

Dated: September 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–24190 Filed 10–5–92; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Board of Scientific Counselors, NIDCD, Meeting

Pursuant to Public Law 92–462, notice is hereby given of the meeting of the Board of Scientific Counselors, NIDCD, October 15 and 16, 1992, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. to 9:25 a.m. on October 15, 1992 to present reports and discuss issues related to committee business. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 9:25 a.m. until recess on October 15, 1992 and from 8:30 a.m. until adjournment on October 16, 1992. The closed portions of the meeting will be for the review, discussion, and evaluation of the Laboratory of Molecular Biology, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Betty Guy, Acting Executive Secretary of the Board of Scientific Counselors, NIDCD, Building 31, room 3C06, National Institutes of Health, Bethesda, Maryland 20892, 301–402–2829, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: September 23, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–24163 Filed 10–5–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIEHS, October 19–20, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 9 a.m. to 12 noon on October 19, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Genetics. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5 U.S. Code and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on October 19 from approximately 1 p.m. to recess and on October 20 from 9 a.m. to adjournment, for the evaluation of the programs of the Laboratory of Genetics, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. John McLachland, Scientific Director, Division of Intramural Research, NIEHS, Research Triangle Park, N.C. 27709, telephone (919) 541–3205, will furnish summaries of meeting, rosters of committee members and substantive program information.

Dated: September 23, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–24162 Filed 10–5–92; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research grants Behavioral and Neurosciences Special Emphasis Panel.

These meetings will be open to the public for approximately one half hour at the beginning of each meeting during the discussion of administrative details relating to Panel business. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the areas of the behavioral and neurosciences. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534, will furnish summaries of the meetings and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to announce meetings well in advance of the actual meeting, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences;

Scintific Review Administrator: Dr. Teresa Levitin (301) 496–7025.
Date of Meeting: October 9, 1992.
Place of Meting: Lowes New York Hotel, New York, NY.
Time of Meeting: 2 p.m.

Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences

Scientific Review Administrator: Dr. Robert Weller (301) 496–7906.
Date of Meeting: October 10, 1992.
Place of Meeting: Holiday Inn, Chevy Chase, MD.
Time of Meeting: 9 a.m.

Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences

Scientific Review Administrator: Dr. Robert Weller (301) 496–7906.
Date of Meeting: November 6, 1992.
Place of Meeting: Holiday Inn, Chevy Chase, MD.
Time of Meeting: 9 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 24, 1992.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 92–24159 Filed 10–5–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program, Board of Scientific Counselors; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina, on October 27, 1992.

The meeting will be open to the public from 9 a.m. to adjournment with attendance limited only by space available. The preliminary agenda topics with approximate times are as follows:

9 a.m.–12 noon—The NTP staff will present responses to the recommendations in the Advisory Review Report of the Board (**Federal Register** 57, No. 138, pp. 31721–31730, July 17, 1992), and provide a summary of public comments received. There will be a discussion of the proposed procedure for release of preliminary findings from NTP studies including comments received by agencies on the NTP Executive Committee. The impact of the recent reorganization of the NIEHS intramural programs and reordered research priorities on the NTP will be discussed.

1 p.m.–2 p.m.—Discussion of the role and responsibilities of the NTP Board within the context of the reorganized NIEHS Intramural Program.

2 p.m.–3 p.m.—(1) Update on Activities of the Technical Reports Review Subcommittee. (2) Concept Reviews.

Adjournment

The Executive Secretary, Dr. Larry G. Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, will have available a roster of Board members and other program information prior to the meeting and summary minutes subsequent to the meeting.

Dated: September 30, 1992.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 92–24160 Filed 10–5–92; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Request for Comments on Proposed Procedures for Release of Preliminary Findings From National Toxicology Program (NTP) Studies

Background

Dr. Kenneth Olden, Director of the NTP, has as one of his major goals to assure that the Program serves the public health by strengthening its role as the Nation's premier toxicology research and testing program. To accomplish this goal, Dr. Olden asked the NTP Board of Scientific Counselors, the primary scientific oversight body for the NTP, to review three specific issues of the operation and function of the NTP. Their findings and recommendations were published in the **Federal Register** 57, No. 138, 31721–31730, July 17, 1992.

A fourth issue, for which advice was sought, was concerned with how to improve the procedures for alerting regulatory agencies and the public about test results on chemicals (particularly data which suggest potential hazard to humans from chemicals of widespread importance). The NTP Executive Committee was asked to review this issue separately.

Action

To aid the Committee, Program staff drafted "Proposed Procedures for Release of Preliminary Findings from National Toxicology Program (NTP) Studies", which is attached to this announcement. The NTP seeks written comments and views on the proposed procedures and will consider those received by October 23, 1992. However, comments will be accepted after this date and used if possible. Comments should be addressed to Dr. Larry G. Hart, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, FAX 919/541–2260.

Dated: September 30, 1992.

Kenneth Olden,

Director, National Toxicology Program.

Proposed Procedures for Release of Preliminary Findings From National Toxicology Program (NTP) Studies

Periodically, NTP studies yield results that are judged to have such a significant potential impact on public health that release of the results on a preliminary basis is warranted. These have most often occurred with the rodent cancer studies, and less frequently in studies with non-cancer endpoints. Although many NTP studies give results that are suggestive of a potential hazard associated with exposure to a chemical, the relative strength of the "signal" depends on a variety of factors including the consequence of exposure (death, cancer), the effective doses required in relation to the human exposure, the numbers of people potentially exposed, and other factors. It has been NTP policy to alert the nominator, various government regulating agencies and others as deemed appropriate, to findings that are not yet in a final peer review form, when the Director has deemed such an early release of data to be in the public interest. The purpose of this document is to propose for your consideration a more formal procedure for handling such events.

Issuing Official: Director, NTP.
Issued to:

1. Assistant Secretary for Health, DHHS
2. Director, NIH; Director, NIOSH; and Commissioner, FDA
3. NTP Executive Committee
4. Nominator of agent for study
5. Private sector individuals or organizations who have expressed an interest

Nature of Communication: Written summary of protocol including agent, test species, response of concern (tabulated summary of preliminary findings limited to the responding organ or tissue), and any possible study confounders.

Timing of Notification: Assistant Secretary of Health, DHHS, followed by Director, NIH; Director, NIOSH; and Commissioner, FDA, within 24 hours. Notification of NTP Executive Committee, study nominator and others as appropriate within 48 hours.

It is the NTP position to limit the release of preliminary pathology or other toxicology findings until the usual verification steps have been completed. It is however, recognized that special situations may arise which would require deviating from these procedures. These will be considered on a case by case basis.

[FR Doc. 92-24161 Filed 10-5-92; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-92-3516]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extention, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 25, 1992.

John T. Murphy,

Director, Information Resources, Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 235 Homeownership Assistance Programs Computerized Magnetic Tape/Cartridge/Floppy Disk Data.

Office: Administration.

Description of the Need for the Information and Its Proposed Use: In order to validate each mortgagee's monthly subsidy request at the case level rather than at the portfolio level, an establishment of a computerized record of each mortgagee's portfolio is needed. This is a one-time establishment. Mortgagees will be requested to submit a copy of their portfolio using magnetic tape, cartridge, or IBM compatible 5¼ inch floppy disk. This will enhance efficiency and fund controls in determining monthly disbursements.

Form Number: None.

Respondents: Businesses or Other-For-Profit.

Frequency of Submission: One-time.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	450		1		240		108,000

Total Estimated Burden Hours: 108,000.

Status: New.

Contact: Lionel R. Barnes, HUD, (202) 708-0706. Angela Antonelli, OMB, (202) 395-6880.

Dated: September 25, 1992.

[FR Doc. 92-24157 Filed 10-5-92; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-92-3517]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information

submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 25, 1992.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Notification of Extension of Contract Time and Assessment of Liquidated Damages.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Public Housing Authorities will use the notification to transmit officially, amendments to construction contracts that concern extensions of contract time for assessments of liquidated damages.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	180		.27		.75		38
Recordingkeeping	50		1		.25		12

Total Estimated Burden Hours: 50

Status: Reinstatement.

Contact: Raymond Hamilton, HUD, (202) 708–1938. Angela Antonelli, OMB (202) 395–6880.

Dated: September 25, 1992.

[FR Doc. 92–24158 Filed 10–5–92; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3382; FR–3190–N–07]

Notice of Fund Availability (NOFA) Hope for Public and Indian Housing Homeownership Program (HOPE 1) Implementation Grants

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability; limited reopening of competition.

SUMMARY: This Notice of Fund Availability (NOFA) announces a second, limited competition for the 105,797,160 dollars in excess FY 1992 funds which remain following the recently completed implementation grant phase of the Homeownership and Opportunity for People Everywhere for Public and Indian Housing Homeownership Program (HOPE 1). Only HOPE 1 implementation grant applicants who were unsuccessful in response to the original competition announced by HUD on January 14, 1992 (57 FR 1550) may apply. The purpose of this NOFA is to increase the number of approvable HOPE 1 implementation grant applications so that viable homeownership opportunities may be developed at the earliest possible time. This limited funding round will be governed by the requirements contained in the HOPE 1 Program Guidelines (57 FR 1522) and the NOFA (57 FR 1550) published on January 14, 1992, except as specifically modified by this Notice of Fund Availability.

DATES: The deadline date for receipt of revised HOPE 1 implementation grant applications is November 5, 1992.

Revised applications must be physically received in the local HUD field office by 4:30 p.m. local time on the deadline date. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this requirement into account and make early submission of their materials to avoid loss of eligibility caused by unanticipated delays or other delivery-related problems. Applications may be hand-delivered to the appropriate HUD Field Office, so long as they are physically received by the deadline. Applications sent by facsimile will not be accepted. HUD field offices will date-stamp incoming applications to evidence timely receipt and, upon request, will provide the applicant with an acknowledgement of receipt.

ADDRESSES: An original and one copy of the revised application must be physically received by the deadline at the appropriate HUD Field Office having jurisdiction over the locality in which the proposed project is located. The applications should be addressed to the Attention of: Public Housing Division Director, or Office of Indian Programs Director. In States with more than one Field Office, applicants must submit their applications to the correct Field Office. Failure to submit an application to the correct Field Office by the deadline will result in disqualification of the application. In addition, one copy of the application must be submitted to Department of Housing and Urban Development, Office of Public and Indian Housing, Office of Resident Initiatives, room 4112, 451 Seventh St., SW., Washington, DC 20410, Attention: Gary Van Buskirk. While copies must be submitted both to the HUD Field and Central Offices, the date and time of receipt in the field office will be used to determine whether the application has been submitted on time.

FOR FURTHER INFORMATION CONTACT: Gary Van Buskirk, Director, Homeownership Division, Office of Resident Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4112, Washington, DC 20410, telephone (202) 708–4233. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or (202)–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–220 , and have been assigned OMB Control Number 2577–0132

Purpose and Substantive Description

On January 14, 1992, HUD announced in a NOFA published in the **Federal Register** (57 FR 1550) a competition for $161 million to be awarded pursuant to

the HOPE for Public and Indian Housing Homeownership Program (HOPE 1), enacted by section 411 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990). Of this amount, $24 million was to be allocated for mini and full planning grants, and the remaining $137 million was to be allocated for implementation grants.

Earlier this year, HUD allocated all of the available planning grant funds pursuant to a competition held for mini and full planning grant applicants, in accordance with the requirements contained in the HOPE 1 NOFA (57 FR 1550) and Program Guidelines (57 FR 1522). However, after holding the implementation grant funding competition, HUD was unable to fund some of the applications because of unresolved deficiencies (of the original 27 implementation grant applications submitted, 18 have been approved and funded by HUD). Consequently, HUD has an excess of FY 1992 HOPE 1 implementation grant funds.

Pursuant to the requirement contained in section 425(f) of the HOPE 1 Guidelines, HUD must first use excess implementation grant funds to fund the highest ranked, unfunded planning grant applicants. HUD has followed this requirement and has funded all of the remaining, approvable but previously unfunded planning grant applications.

Thereafter, pursuant to section 425(g) of the HOPE 1 Program Guidelines, HUD has the authority to request that HOPE 1 implementation grant applicants "who submitted applications that could not be funded * * * submit amended * * * implementation grant applications." (See 57 FR 1544.) In this NOFA, HUD is announcing a second, limited funding round in FY 1992, pursuant to the authority contained in section 425(g) of the HOPE 1 Program Guidelines, to allocate the $105,797,160 in excess HOPE 1 implementation grant funds. The reason that HUD is limiting this funding round to the pool of unsuccessful implementation grant applicants is that these applicants have already completed most of the work involved in putting together a viable homeownership program, and the Department believes that implementing such programs at the earliest possible opportunity is in the best interests of low-income families.

All HOPE 1 implementation grant applicants who are eligible to participate in this limited competition will receive written notification from HUD informing them of their eligibility, together with a copy of this published NOFA. Applicants will be required to revise their previously submitted applications based upon the requirements contained in the January 14, 1992 NOFA and Program Guidelines. Likewise, HUD will review the revised applications and make selections based upon the requirements contained in the January 14, 1992 NOFA and Program Guidelines, with one modification: the period for curing deficiencies, as outlined in Section III(D)(2) of the HOPE 1 NOFA and section 415(c) of the Program Guidelines, shall be extended from 14 to 45 calendar days following the date of HUD's written deficiency notification to the applicant.

HOPE 1 implementation grant applicants who were successful in response to the January 14, 1992 funding round will be notified by HUD of their selection, and shall not be affected by this second, limited funding round.

Authority: Title III of the United States Housing Act of 1937, as enacted by section 411 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990).

Dated: September 30, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–24238 Filed 10–5–92; 8:45 am]

BILLING CODE 4210–33–M

Office of the Assistant Secretary for Housing Federal Housing Commissioner

[Docket No. N–92–3436; FR–3235–N–02]

NOFA for Federally Assisted Low Income Housing Drug Elimination Grants, FY–1992; Technical Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of technical correction to Notice of Funding Availability (NOFA).

SUMMARY: On August 28, 1992, HUD published a NOFA that announced HUD's FY 1992 funding of $10,000,000 for Federally Assisted Low Income Housing Drug Elimination Grants. The purpose of this Notice is to make a correction to the section specifying eligible applicants under the NOFA, and extend the application period.

DATES: The application due date for this NOFA is extended to 4 p.m. (local time) for the Regional Office on November 9, 1992.

FOR FURTHER INFORMATION CONTACT: William Schick, Office of Multifamily Housing Management, Operations Division, (202) 708–2654 (voice) or (202) 708–3936 (TDD for hearing-impaired). (These are not toll free numbers).

SUPPLEMENTARY INFORMATION: A Notice of Funding Availability (NOFA) announcing HUD's FY 1992 funding of $10,000,000 for Federally Assisted Low Income Housing Drug Elimination Grants was published on August 28, 1992 (57 FR 39318). Section I.(c)(3)(i) of the NOFA, under the heading Eligible Applicants, incorrectly excluded from consideration as federally assisted low-income housing all market rate projects under section 221(d)(4) and 221(d)(3) of the National Housing Act that are without tenant-based assistance contracts. This exclusion should have read to apply to section 221(d)(4) and section 221(d)(3) market rate projects without project-based assistance contracts. To provide further clarification of what would constitute an eligible applicant, a sentence is added to specify that section 221(d)(4) and section 221(d)(3) market rate projects with tenant-based assistance contracts are not considered federally assisted low-income housing.

To give eligible applicants at least thirty days in which to submit their applications following the publication of this correction, the application due date for this NOFA is extended to 4 p.m. (local time) for the Regional Office on November 9, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. A "FAX" will not constitute delivery.

Accordingly, the following technical correction is made in FR Doc. 92–20841 to the NOFA titled, "NOFA for Federally Assisted Low Income Housing Drug Elimination Grants; FY–1992", published on August 28, 1992 (57 FR 39318):

1. On page 39320, paragraph I.(c)(3)(i), which appears in the second column is revised to read: "(i) Section 221(d)(3), section 221(d)(4) or 236 of the National Housing Act (Note however, section 221(d)(4) and section 221(d)(3) market rate projects without project-based assistance contracts are not considered federally assisted low-income housing. Therefore, section 221(d)(4) and section 221(d)(3) market rate projects with tenant-based assistance contracts are not considered federally assisted low-income housing and are not eligible for funding.)

Dated: September 29, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92–24156 Filed 10–5–92; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. D-92-1003; FR-3347-D-01]

Office of the Regional Administrator—Regional Housing Commissioner; Designation; Chicago Regional Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession, Region V, Chicago.

SUMMARY: The Regional Administrator—Regional Housing Commissioner is designating officials who may serve as Acting Regional Administrator—Regional Housing Commissioner during the absence, disability or vacancy in the position of the Regional Housing Commissioner.

EFFECTIVE DATE: This designation is effective as of September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis Nixon, Regional Counsel, Chicago Regional Office, 77 West Jackson Blvd, #2604, Chicago, Illinois, 60604-3507, (312) 353-4681. (This is not a toll-free number.)

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator—Regional Housing Commissioner during the absence, disability or vacancy in the position of the Regional Administrator—Regional Housing Commissioner, with all the powers, functions and duties redelegated or assigned to the Regional Administrator—Regional Housing Commissioner: Provided that no official in this designation is authorized to serve as the Regional Administrator—Regional Housing Commissioner unless all other officials whose title precedes his or hers in this designation are unable to act by reason of absence, disability or vacancy.

1. Deputy Regional Administrator
2. Regional Counsel
3. Director of Regional Administration
4. Director of Community Planning Development
5. Director of Regional Housing
6. Executive Assistant to the Regional Administrator
7. Director of Regional Fair Housing and Equal Opportunity
8. Director of Regional Indian Programs
9. Director of Regional Public/Housing

This designation supersedes the designation published, July 7, 1986, FR Doc. 86-15140, Filed 7-3-83 (Citation) Vol. 51, No. 129, effective May 28, 1986.

Authority: Delegation of Authority, 27 FR 4319, 1962; section 9(c), Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order II, 31 FR 515, 1966.

Dated: September 22, 1992.

Gertrude W. Jordan,

Regional Administrator—Regional Housing Commissioner, Region V, Chicago Regional Office.

[FR Doc. 92-24155 Filed 10-5-92; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[WO-650-4120-24 1A]

Federal-State Coal Advisory Board and Regional Coal Teams; Notice of Renewal

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix (1982)). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the Federal-State Coal Advisory Board (Board) and the Fort Union, Green River-Hâms Fork, Powder River, and San Juan River Regional Coal Teams (RCTs). The Board has a national focus and advises the Secretary on various coal leasing policies. The RCTs are independent subcommittees of the Board that provide advice to the Secretary, through the Director, Bureau of Land Management, on Federal coal leasing activities in specific coal production regions.

Further information may be obtained from Dan Wedderburn, (202) 208-3258, Bureau of Land Management (660), U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

The certification of renewal is published below.

Certification

I hereby certify that the renewal of the Federal-State Coal Advisory Board and the Fort Union, Green River-Hams Fork, Powder River, and San Juan River Regional Coal Teams is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities listed in 43 CFR 3400.0-3 and by Departmental policy for Federal-State cooperation concerning the Federal coal management program.

Dated: August 24, 1992.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 92-24242 Filed 10-05-92; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Garrison Diversion Unit Federal Advisory Council Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Garrison Diversion Unit Federal Advisory Council established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Pub. L. 99-294, May 12, 1986). The meeting is open to the public. Interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: The Garrison Diversion Unit Federal Advisory Council will meet from 8:30 a.m. to 4 p.m. on Tuesday, October 27, 1992.

ADDRESSES: The meeting will be held at the North Dakota Game and Fish Department, 100 N. Bismarck Expressway, Bismarck, North Dakota.

SUPPLEMENTARY INFORMATION: The Council will consider and discuss subjects such as the Garrison Diversion Unit Project update and wildlife budget, Lonetree Area tax issue, Kraft Slough Acquisition update, Wetlands Trust, Lake Audubon mitigation implementation, comprehensive mitigation plan, and offsite island mitigation progress, Arrowwood National Wildlife Refuge mitigation implementation progress, potential Oakes Test Area impacts after 1995, and progress in resolving current impacts to James River Refuges.

For further information, contact Dr. Grady Towns, Fish and Wildlife Enhancement, at (303) 236-8186.

Dated: September 29, 1992.

John L. Spinks, Jr.,

Acting Regional Director, Region 6.

[FR Doc. 92-24204 Filed 10-5-92; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[WO-260-09-4212-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the

proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office Management and Budget, Paperwork Reduction Project (1004–0056), Washington, DC 20503, telephone number (202) 395–7340.

Title: Exchanges—General Procedures, 43 CFR 2200.

OMB approval number: (1004–0056).

Abstract: This information collected is necessary for the initiation and completion of a land exchange with the Bureau of Land Management. The information would aid the Bureau in determining the non-Federal party's eligibility and whether all statutory requirements have been met.

Bureau form number: None.

Frequency: Once.

Description of respondents: Citizens of the United States, corporations, subject to the laws of any State or of the United States, a State, or a political subdivision of a State desiring to propose an exchange of lands or interests in lands.

Estimated completion time: Four hours each report.

Annual responses: 130.

Annual burden hours: 520.

Bureau Clearance Officer (Alternate): G. Jenkins 202–653–6015.

Dated: May 28, 1992.

Michael Penfold,

Assistant Director, Land and Renewable Resources.

[FR Doc. 92–24130 Filed 10–5–92; 8:45 am]

BILLING CODE 4310–84–M

[UT–020–02–4320–08]

Bear River Resource Area, UT; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: This is a Notice of Availability of the Environmental Assessment (EA) and Proposed Plan Amendment for the Randolph Management Framework Plan, Bear River Resource Area, Rich County, Utah. This notice is to advise the public that the EA and plan amendment to retire the grazing preference on the East Woodruff Allotment, Rich County, are available for public review. The final EA revealed no significant impacts from the proposed action. A Notice of Intent proposing to amend Range Decisions 1.1, 1.2, and 2.2 of the Randolph Management Framework Plan was published in the **Federal Register** on July 20, 1990. This plan amendment will affect public lands within Rich County.

DATES: A 30-day protest period for the plan amendment will commence with publication of this notice of availability.

FOR FURTHER INFORMATION CONTACT: Leon Berggren, Bear River Resource Area Manager, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 977–4300. Copies of the EA and Proposed Amendment are available for review at the Salt Lake District Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The Proposed Plan Amendment is subject to protest from any adversely affected party who participated in the planning process. Protest must be made in accordance with the provisions of 43 CFR 1610.5–2. Protest must be received by the Director (WO–760) of the BLM, 18th and C Street NW., Washington, DC 20240, within 30 days after the date of publication of this notice of availability for the Proposed Plan Amendment.

G. William Lamb,

Associate State Director.

[FR Doc. 92–24132 Filed 10–5–92; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–060–02–4111–04]

Availability of Final Castlegate Coalbed Methane Project Environmental Impact Statement

September 23, 1992.

AGENCY: Bureau of Land Management, Moab District, Moab, Utah.

ACTION: Notice of availability of the Final Castlegate Coalbed Methane Project Environmental Impact Statement.

SUMMARY: In accordance with section 202 of the National Environmental Policy Act of 1969, a Final Environmental Impact Statement has been prepared for the Castlegate Coalbed Methane Project.

Cockrell Oil Corporation of Houston, Texas proposes to develop its Federal, State, and private leases in the Emma Park area of Carbon County, Utah to produce coalbed methane gas.

The Castlegate Coalbed Methane Project involves a variety of elements. Up to 124 wells would be drilled and access roads constructed to each well site. Along the access roads, pipeline corridors would be constructed to carry gas from the wells, produced water from the wells, electrical lines to the well sites, and high-pressure gas from the compressor facility to each well. The high-pressure gas would be used in a gas-lift system to lift the produced water from the coal seams. Gas would be treated to remove water, CO2, and be compressed for delivery into a gas sales pipeline 14 miles long, which would connect with an existing interstate pipeline. Produced water would be treated by reverse osmosis (RO) to reduce the concentration of total dissolved solids (TDS) down to concentrations that are allowable for surface discharge. RO would result in approximately 80 percent of the produced water being acceptable for surface discharge, the remaining 20 percent would be discharged into evaporation pits. The remaining concentrate from the evaporation pits would be pumped into injection wells.

Copies of the Final EIS will be available at libraries in Moab, Price, and Castle Dale, Utah. Copies will also be available from the Moab District Office, 82 East Dogwood, Moab, Utah 84532, and the Price River Resource Area Office, 900 North 700 East, Price, Utah 84501, (801–637–4584), Utah State Office, 324 South State, P.O. Box 45155, Salt Lake City, Utah, 84145–0155.

DATES: No sooner than November 5, 1992 a Record of Decision for the project will be prepared.

FOR FURTHER INFORMATION CONTACT: Daryl Trotter, Planning and Environmental Coordinator, Moab District Office, Moab, Utah; phone (801) 259–6111.

SUPPLEMENTAL INFORMATION: The purpose of this EIS is to provide decision makers and the public with information pertaining to Cockrell's proposal, and to disclose environmental impacts and identify mitigation measures to reduce impacts.

The Final EIS analyzes two alternatives: Disposal of all produced water into injection wells, and No Action. Under the disposal of all produced water into injection wells (up to 68,000 BPD), it would require four or more injection wells to dispose of this quantity of water. Under the No Action alternative it would mean development of up to 105 wells located on private and state mineral estate and some on Federal mineral estate.

The preferred alternative is the applicant's proposed action as mitigated.

Public participation has occurred throughout the EIS process. A Notice of Intent was filed in the **Federal Register** in October 1991. A public scoping meeting was held in November 1991 in

Price, Utah. A 60 day public comment period was allowed on the Draft EIS. All comments presented throughout the process have been considered.

C. Delano Backus,

Acting District Manager.

[FR Doc. 92-24181 Filed 10-5-92; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-020-02-4333-03]

Pony Express Resource Area, Salt Lake District, Utah; Notice of Availability of the Environmental Assessment and Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: This is a Notice of Availability of the Environmental Assessment (EA) and Plan Amendment for the Pony Express Resource Management Plan (RMP) to classify areas for Off-Highway Vehicle use within the Pony Express Resource Area, Salt Lake District, Utah. This notice is to advise the public that the RMP and EA are available for public review. This plan amendment will affect public lands within Salt Lake, Tooele, and Utah Counties.

DATES: A 30-day protest period for the plan amendment will commence with publication of this notice of availability.

FOR FURTHER INFORMATION CONTACT: Howard Hedric, Pony Express Resource Area Manager, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 977-4300.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The Proposed Plan Amendment is subject to protest from any adversely affected party who participated in the planning process. Protest must be made in accordance with the provisions of 43 CFR 1610.5-2. Protest must be received by the Director (WO-760) of the BLM, 18th and C Street NW., Washington, DC 20240, within 30 days after the date of publication of this notice of availability for the Proposed Plan Amendment.

G. William Lamb,

Associate State Director.

[FR Doc. 92-24133 Filed 10-5-92; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-010-02-4320-02-ADVB]

Meetings; Boise District Grazing Advisory Board

AGENCY: Boise District, Bureau of Land Management, Idaho, DOI.

ACTION: Notice of meeting.

SUMMARY: The Boise District Grazing Advisory Board will meet on Tuesday, November 17, 1992. The following items will be discussed: Election of Officers, Sensitive Specis Management, Bighorn Sheep Policy, PILT Payments, Drought Update. The meeting is open to the public and a comment period will be held at 2 p.m.

DATES: The meeting will begin at 9 a.m. on Tuesday, November 17, 1992, in the district office conference room.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Fred Schley, Boise District, BLM, (208) 384-3300.

Dated: September 24, 1992.

J. David Brunner,

District Manager.

[FR Doc. 92-24123 Filed 10-5-92; 8:45 am]

BILLING CODE 4310-DQ-M

[AK-910-02-4830-02-ADVB]

Northern Alaska Advisory Council Public Meetings

The Northern Alaska Advisory Council will hold a public meeting Friday, November 6, 1992, in Fairbanks. The public meeting will be from 8:30 a.m. to 5 p.m. in the training rooms of the Bureau of Land Management's Fairbanks Office Building, 1150 University Ave. Public comments will be taken from 2 to 3 p.m. Written comments may be submitted at the meeting.

The council will hear brief BLM reports on (1) the effect the Intermodal Surface Transportation Efficiency Act has on BLM programs, (2) the BLM Law Enforcement/Ranger program, (3) results of past council involvement with the Fort Egbert National Historic Site and the Coldfoot administrative site, and (4) effects of the conveyance of public lands in the Utility Corridor. The council will also discuss (1) working relationships between BLM and the rural communities and (2) future activity planning for portions of the Squirrel River drainage.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474-2231.

Dated: September 30, 1992.

Richard Bouts,

Acting District Manager.

[FR Doc. 92-24203 Filed 10-5-92; 8:45 am]

BILLING CODE 4310-JA-M

Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Susanville District Grazing Advisory Board, Susanville, CA, DOI.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of Interior's discretionary authority on May 14, 1986, will meet on November 24, 1992.

The November 24 meeting will begin at 10 a.m. at the Surprise Resource Area Office, Bureau of Land Management, 602 Cressler Street, Cedarville, California.

The meeting will consist of a discussion on how to deal with the drought in the 1993 grazing season, a review of standards for leasing base property and livestock control agreements, an update on the East Lassen Integrated Vegetation Management Plan, an update on the Wild Horse and Burro Program, a progress report of FY 1992 range improvement projects, presentation of the plan for FY 1993 range improvements, and a discussion of other items as appropriate.

The meeting is open to the public.

Summary minutes of the Board Meeting will maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 92-24183 Filed 10-5-92; 8:45 am]

BILLING CODE 4310-41-M

[AZ-040-02-4212-11; AZA 23409]

Realty Action for Classification; Safford District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purposes Act Classification in Pima County, AZ.

SUMMARY: The following public lands in Tucson, Arizona, have been examined and found suitable for conveyance to Drexel Heights Fire Department under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The land will be used for a fire station to provide community

fire protection. Below is the legal description of the public land:

Gila and Salt River Meridian, Arizona

T. 15 S., R. 12 E.
Sec. 3, lot 29.

Containing 3.12 acres, more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current Bureau of Land Management land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

SUPPLEMENTARY INFORMATION: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed conveyance of the lands to the District Manager, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: September 24, 1992.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 92-24182 Filed 10-5-92; 8:45 am]

BILLING CODE 4310-32-M

[OR-942-00-4730-12; GP2-460]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 21 S., R. 2 W., accepted August 18, 1992
T. 36 S., R. 3 W., accepted August 25, 1992
T. 33 S., R. 5 W., accepted July 31, 1992
T. 29½ S., R. 7 W., accepted August 26, 1992
T. 30 S., R. 7 W., accepted August 26, 1992
T. 13 S., R. 9 W., accepted July 13, 1992
T. 17 S., R. 4 E., accepted August 27, 1992

Washington

T. 21 N., R. 11 W., accepted July 29, 1992
T. 33 N., R. 14 W., accepted August 25, 1992

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: September 22, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-24180 Filed 10-5-92; 8:45 am]

BILLING CODE 4310-33-M

[WO-270-4333-11]

Wild and Scenic Rivers

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, 8351 manual section, Wild and Scenic Rivers—policy and program direction for identification, evaluation, and management.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice to making available a manual concerning policy and program direction for the identification, evaluation, and management of Wild and Scenic Rivers under the stewardship of BLM.

DATES: October 6, 1992.

ADDRESSES: Send requests for copies to Director (270), Bureau of Land Management, 1849 C Street, NW., 302 LS, Washington, DC 20240-9998.

FOR FURTHER INFORMATION CONTACT: Gary G. Marsh, Recreation Resources Branch, (202) 653-9202.

SUPPLEMENTARY INFORMATION. This Manual Section (8351) makes use of existing authorities and regulations, and proposes policy, program direction, and procedural guidelines for fulfilling requirements of the Wild and Scenic Rivers Act. It provides the BLM line manager and program staff professional with specific policies for evaluating rivers within the BLM's resource management planning process.

In addition, it sets forth requirements for the identification, evaluation, reporting, and management of potential and existing wild, scenic, and/or recreational rivers in the National Wild and Scenic River System under BLM's administration. This Manual Section was developed as a direct result of field requests and experience, in furtherance of BLM's multiple-use mission, and in order to consolidate program guidance into one document. The Manual supplements other BLM Manuals and guidance, e.g., BLM 1623 Manual—Supplemental Program Guidance, and the U.S. Department of the Interior—U.S. Department of Agriculture (USDI-USDA) Final Revised Guidelines for Eligibility, Classification, and Management of River Areas (47 FR 39454).

Dated: September 24, 1992.

Michael J. Penfold,

Assistant Director, Land and Renewable Resources.

[FR Doc. 92-24240 Filed 10-5-92; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 26, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by October 21, 1992.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Boulder County

Longmont Carnegie Library, 457 Fourth Ave., Longmont, 92001406

Denver County

Palmer—Ferril House, 2123 Downing St., Denver, 92001408

El Paso County

Black Forest School, 6770 Shoup Rd., Colorado Springs, 92001407

Mesa County

Hotel St. Regis, 359 Colorado Ave., Grand Junction, 92001410

Routt County

Hayden Depot, 300 W. Pearl St., Hayden, 92001409

FLORDIA

Okaloosa County

Gulfview Hotel Historic District, 12 Miracle Strip Pkway, SE., Fort Walton Beach, 92001402

GEORGIA

Meriwether County

Champinole, GA Spur 109, 4 mi. NE of Greenville, Greenville vicinity, 92001400

Troup County

Jarrell, H. Frank, House, 605 Hill St., LaGrange, 92001399

Turner County

Ashburn Heights—Hudson-College Avenue Historic District, Roughly bounded by McLendon, Phillips, Monnie, Hudson and College Aves., Ashburn, 92001411

IDAHO

Bonneville County

Beckman, Andrew and Johanna M., Farm (New Sweden and Riverview Farmsteads and Institutional Buildings, MPS), US 20 0.5 mi. W of jct. with New Sweden Rd., Idaho vicinity, 92001414

Gooding County

Mays, James Henry and Ida Owen, House, Along N bank of Snake R. S of Wendell, Wendell vicinity, 92001412

Nez Perce County

McLaren, William and Elizabeth, House, 1602 15th Ave., Lewiston, 92001413

MISSISSIPPI

Warren County

Beulah Cemetery (Vicksburg MPS) Jct. of Openwood St. and Old Jackson Rd., Vicksburg, 92001404

NEW MEXICO

Rio Arriba County

Rattlesnake Ridge Site (Gallina Culture Developments in North Central New Mexico MPS), Address Restricted, Llaves vicinity, 92001405

NEW YORK

Essex County

Barngalow (Saranac Lake MPS), 108½ Park Ave., Saranac Lake, 92001427
Bogie Cottage [Saranac Lake MPS], 59 Franklin St., Saranac Lake, 92001464
Clark, Peyton, Cottage (Saranac Lake MPS), 9 Rockledge Rd., Saranac Lake, 92001435
Coulter Cottage (Saranac Lake MPS), 34 Shepard Ave., Saranac Lake, 92001438
Denny Cottage (Saranac Lake MPS), 76, Saranac Lake, 92001452
Fallon Cottage Annex (Saranac Lake MPS), 31 Franklin St., Saranac Lake, 92001463
Highland Park Historic District (Saranac Lake MPS), Roughly, Park Ave. from Military Rd. to 170 Park Ave., Saranac Lake, 92001474
Kennedy Cottage (Saranac Lake MPS), 26 Shepard St., Saranac Lake, 92001437
Lane Cottage (Saranac Lake MPS), 4 Rockledge Rd., Saranac Lake, 92001434
Larom—Welles Cottage (Saranac Lake MPS), 110 Park Ave., Saranac Lake, 92001478
Leetch, Dr. Henry, House (Saranac Lake MPS), 3 Johnson Rd., Saranac Lake, 92001471
Lent Cottage (Saranac Lake MPS), 18 Franklin Ave., Saranac Lake, 92001462
Marquay Cottage (Saranac Lake MPS), 6 Slater St., Saranac Lake, 92001439
Marvin Cottage (Saranac Lake MPS), 15 Franklin St., Saranac Lake, 92001461
Morgan Cottage (Saranac Lake MPS), 100 Park Ave., Saranac Lake, 92001426
Partridge Cottage (Saranac Lake MPS), 15 South St., Saranac Lake, 92001440
Pittenger Cottage (Saranac Lake MPS), 14 Forest Hill Ave., Saranac Lake, 92001460
Stevenson Cottage (Saranac Lake MPS), Stevenson Ln., Saranac Lake, 92001441

Franklin County

Allen, Dr. A.H., Cottage (Saranac Lake MPS), 22 Catherine St., Saranac Lake, 92001454
Ames Cottage (Saranac Lake MPS), 43 Church St., Saranac Lake, 92001458
Baird Cottage [Saranac Lake MPS], Glenwood Rd., Saranac Lake, 92001466
Camp Intermission (Saranac Lake MPS), Northwest Bay Rd., Saranac Lake, 92001421
Chuch Street Historic Districts (Saranac Lake MPS), Roughly, Church St. from Main St. to St. Bernard S., Saranac Lake, 92001472
Colbath Cottage (Saranac Lake MPS), 30 River St., Saranac Lake, 92001433
Cottage Row Historic District (Saranac Lake MPS), Roughly, Park Ave. N side from Rosemont Ave. to Catherine St., Saranac Lake, 92001473
Distin Cottage (Saranac Lake MPS), 11 Kiwassa Rd., Saranac Lake, 92001416
Drury Cottage (Saranac Lake MPS), 29 Bloomingdale Ave., Saranac Lake, 92001450
Ellenberger Cottage (Saranac Lake MPS), 183 Broadway, Saranac Lake, 92001453
Feisthamel—Edelberg Cottage (Saranac Lake MPS), 11 Neil St., Saranac Lake, 92001420
Feustmann Cottage (Saranac Lake MPS), 28 Cathering St., Saranac Lake, 92001455
Freer Cottage (Saranac Lake MPS), 40 Kiwassa St., Saranac Lake, 92001417
Gray, E.L., House (Saranac Lake MPS), 15 Helen St., Saranac Lake, 92001469
Hathaway Cottage (Saranac Lake MPS), 6 Charles St., Saranac Lake, 92001457
Hill Cottage (Saranac Lake MPS), 36 Franklin Ave., Saranac Lake, 92001475
Hillside Lodge (Saranac Lake MPS), Harrietstown Rd., Saranac Lake, 92001467
Homestead, The (Saranac Lake MPS), 3 Maple Hill, Saranac Lake, 92001418
Hosey Cottage (Saranac Lake MPS), 24 Park Pl., Saranac Lake, 92001429
Hopkins Cottage (Saranac Lake MPS), 5 Birch St., Saranac Lake, 92001448
Jennings Cottage (Saranac Lake MPS), 16 Marshall St., Saranac Lake, 92001419
Johnson Cottage (Saranac Lake MPS), 6½ St., Bernard St., Saranac Lake, 92001436
Larom Cottage (Saranac Lake MPS), 112 Park Ave., Saranac Lake, 92001428
Leis Block (Saranac Lake MPS), 3–5 Bloomingdale Ave., Saranac Lake, 92001440
Leis Cottage (Saranac Lake MPS), 28 Algonquin Ave., Saranac Lake, 92001444
Little Red (Saranac Lake MPS), Algonquin Ave., Saranac Lake, 92001446
Magill Cottage (Saranac Lake MPS), 37 Riverside Dr., Saranac Lake, 92001430
McBean Cottage (Saranac Lake MPS), 89 Park Ave., Saranac Lake, 92001425
Musselman Cottage (Saranac Lake MPS), 25 Riverside Dr., Saranac Lake, 92001431
Noyes Cottage (Saranac Lake MPS), 16 Helen St., Saranac Lake, 92001468
Pomeroy Cottage (Saranac Lake MPS), 28 Baker St., Saranac Lake, 92001447
Rodwell Cottage (Saranac Lake MPS), 2 Charles St., Saranac Lake, 92001456
Ryan Cottage (Saranac Lake MPS), 62 Algonquin Ave., Saranac Lake, 92001445
Sarbanes Cottage (Saranac Lake MPS), 72 Bloomindale Ave., Saranac Lake, 92001451
Savage, Orin, Cottage (Saranac Lake MPS), 33 Olive St., Saranac Lake, 92001422
Schrader—Griswold Cottage (Saranac Lake MPS), 49 Riverside Dr., Saranac Lake, 92001432
Seeley Cottage (Saranac Lake MPS), 27 Olive St., Saranac Lake, 92001423
Sloan Cottage (Saranac Lake MPS), 21 View St., Saranac Lake, 92001442
Smith Cottage (Saranac Lake MPS), 12 Jenkins St., Saranac Lake, 92001470

Stonaker Cottage (Saranac Lake MPS), Glenwood Rd., Saranac Lake, 92001465
Stuckman Cottage (Saranac Lake MPS), 6 Clinton Ave., Saranac Lake, 92001459
Walker Cottage (Saranac Lake MPS), 67 Park Ave., Saranac Lake, 92001424
Wilson Cottage (Saranac Lake MPS), 8 Williams St., Saranac Lake, 92001443
Witherspoon Cottage (Saranac Lake MPS), 3 Kiwassa Rd., Saranac Lake, 92001415

TEXAS

Bexar County

Aztec Theater, 104 N. St. Mary's St., San Antonio, 902001403

Liberty County

Black Cloud, Address Restricted, Liberty vicinity, 902001401

[FR Doc. 92-24166 Filed 10-5-92; 8:45 am]
BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under Resource Conservation and Recovery Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 10, 1992, a proposed Consent Decree in *United States* v. *Federated Metals Corporation* (Civil Action No. H-90-327) was lodged with the United States District Court for the Northern District of Indiana. The proposed Consent Decree concerns a hazardous waste land-disposal facility located at 2230 Indianapolis Boulevard, Whiting, Indiana (the "Facility"). The proposed Consent Decree requires Federated Metals Corporation ("Federated") to finance and perform corrective action at the Facility to remediate the release and threatened releases of hazardous substances and hazardous constituents from the Facility into the environment. In addition, Federated will pay a civil penalty in the amount $875,000 in settlement of claims based on Federated's failure to comply with certain financial responsibility requirements imposed on owners and operators of hazardous waste land-disposal facilities by the Resource Conservations and Recovery Act, 42 U.S.C. 6901 *et. seq.*

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20530, and should refer to *United States* v. *Federated Metals Corporation* and D.J. reference 90-7-1-569. The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Indiana, 1001 Main Street, Suite A, Dyer, Indiana; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Consent Decree Library, 601 Pennsylvania, Avenue, NW., Washington, DC 20044, (202) 347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $23.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Roger Clegg,
Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-24144 Filed 10-05-92; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Hamm's Holiday Harbor, Inc.*, Civil Action No. 87-1287 (C.D. Ill.), was lodged with the United States District Court for the Central District of Illinois on September 14, 1992.

The proposed consent decree concerns alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, and sections 10 and 13 of the Rivers and Harbors Act, 33 U.S.C. 403 and 407, as a result of the unlawful discharge of pollutants into waters of the United States, the unlawful obstruction and modification of navigable waters of the United States, and the unlawful discharge of refuse into navigable waters of the United States at property located in Peoria County, Illinois, owned by Hamm's Holiday Harbor, Inc., and Richard E. Hamm (hereinafter "the Site").

The consent decree permanently enjoins defendants from taking any action at the Site which: (i) Results in the discharge of dredged or fill material into the Illinois River, (ii) results in the obstruction or modification of the course or condition of the Illinois River, (iii) results in the discharge of refuse into or upon the banks of the Illinois River, or (iv) constitutes dredging of the Illinois River bottom by any means, except in compliance with an individual permit from the Secretary of the Army or any applicable general permit issued by the United States Army Corps of Engineers. Defendants shall take all necessary actions to conduct and complete a program of restoration at the Site in accordance with the activities and schedule detailed in the Restoration Plan.

The Department of Justice will accept written comments relating to this proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Robert E. Lefevre, Esquire, 10th St. & Constitution Avenue, NW., room 7204—Main Building, Washington, DC 20530, and should refer to *United States* v. *Hamm's Holiday Harbor, Inc.*, Civil Action No. 89-1287 (C.D. Ill.), DJ Reference No. 90-5-1-1-3404.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, 100 Northeast Monroe, Room 174, Peoria, Illinois 61602.

Roger B. Clegg,
Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92-24129 Filed 10-5-92; 8:45 am]
BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on September 22, 1992, a proposed Consent Decree in *United States* v. *Hirsch Industries, Inc.*, Civil Action No. 1:90CV0547, was lodged with the United States District Court for the Northern District of Indiana. The proposed Consent Decree resolves a suit brought by the United States against Hirsch Industries, Inc. under Section 113 of the Clean Air Act, 42 U.S.C. 7413, for violations of Sections 112(c) and 114(a) of the Act, 42 U.S.C. 7412(c) and 7414(a)(1), and the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 CFR part 61, subpart M. The consent decree requires Hirsch Industries, Inc. to pay a civil penalty of $16,000, and to maintain compliance with regulations governing asbestos removal.

The Department of Justice will receive for a period of thirty (30) days for the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hirsch Industries, Inc.*, D.J. Ref. 90-5-2-1-1452.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Indiana, suite 500, 1404 East Ninth St., Cleveland, Ohio 44114, and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Street, Chicago, Illinois 60604. The proposed Consent Decree may also be examined at the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page reproduction cost), payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division

[FR Doc. 92-24142 Filed 10-5-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Oak Crystal, Inc.*, Civil Action No. CV-91-0304, was lodged on September 23, 1992, with the United States District Court for the Middle District of Pennsylvania. The action was brought for alleged violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and its implementing regulations set forth at 40 CFR parts 403 and 433. In addition to providing for payment of civil penalties in the sum of $335,000, the consent decree requires the defendant to implement a supplemental environmental project estimated to cost $325,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Oak Crystal, Inc.* (M.D. Pa.), DOJ Ref. No. 90-5-1-1-3637.

The proposed consent decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Harrisburg, Pennsylvania 17108; or the Region III Office of the Environmental Protection Agency, 841 Chestnut Bldg., Philadelphia, PA 19104; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $27.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-24135 Filed 10-5-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Merchants Bank, Inc. and Joseph Senesac d/b/a Senesac Construction Company*, Civil Action No. 91-127 (D. Vt.) was lodged on September 24, 1992 with the United States District Court for the District of Vermont. The decree provides for defendants Merchants Bank, Inc. ("Merchants") and Joseph Senesac d/b/a/ Senesac Construction Company to jointly pay a civil penalty of $40,000 pursuant to the provision of section 113(b) of the Clean Air Act, 42 U.S.C. 7513(b). The civil penalty is for violations occurring during and subsequent to the June 1990 demolition by Senesac Construction of a building owned by Merchants Bank of the National Emission standard for Hazardous Air Pollutants ("NESHAP") promulgated for asbestos pursuant to section 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414. The decree also requires future compliance with the asbestos NESHAP regulations and provides for stipulated penalties for future violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Merchants Bank, Inc. and Joseph Senesac d/b/a Senesac Construction Company*, Civil Action No. 91-127 (D. Vt.), DOJ reference #90-5-2-1-1570.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Vermont, 11 Elmwood Avenue, Burlington, Vermont, 05402, and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $6.50 (25 cents per page reproduction costs), payable to "Consent Decree Library".

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-24127 Filed 10-5-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Southwest Hazard Control, Inc.*, Civil Action No. 92-3800 was lodged with the United States District Court for the Northern District of California on September 17, 1992. Defendant Southwest Hazard Control, Inc. is an Arizona asbestos abatement company which does business in California. The complaint alleges that defendant failed to comply with the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants, for asbestos, in removing asbestos from 630 Sansome Street, San Francisco, California. Under the proposed consent decree, Southwest must pay a civil penalty of $5,000 and institute procedures to ensure future compliance with the Clean Air Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Southwest Hazard Control, Inc.* 90-5-2-1-1374.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102; the Region 9 Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW , Box 1097,

Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-24209 Filed 10-5-92; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Final Judgment by Consent Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 23, 1992, a consent decree in *United States* v. *Specialty Systems of Ohio Construction, Inc.*, Civil Action No. 3:91 CV 7628, was lodged with the United States District Court for the Northern District of Ohio, Western Division.

The Complaint filed by the United States on October 21, 1991, alleged violations by the defendant of sections 112(c) and 114(a)(1) of the Clean Air Act (the "Act"), 42 U.S.C. 7412(c) and 7414(a)(1), as amended by the Clean Air Act Amendments of 1990, Public Law No. 101-549, 104 Stat. 2399, and the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR part 61, subpart M, at a facility in Norwalk, Ohio, in November 1988. The United States sought civil penalties and injunctive relief pursuant to section 113 of the Act, 42 U.S.C. 7413.

The proposed consent decree requires Specialty Systems of Ohio Construction, Inc. to pay a civil penalty of $55,000 and to comply with the asbestos NESHAP. Additional injunctive relief includes the designation of an asbestos program manager who will oversee Specialty's compliance with the NESHAP, additional on-site supervision of asbestos abatement work, and monthly compliance reports with payment of stipulated penalties for self-reported violations of the Decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Specialty Systems of Ohio Construction, Inc.*, DOJ Ref. No. 90-5-2-1-1628. The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Ohio, Toledo Office, United States Courthouse, suite 305 1716 Spielbusch Avenue, Toledo, Ohio 43624; at the Region V office of U.S. EPA, Records Center, Seventh Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590; and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044. (202-347-7829). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. When requesting a copy of the consent decree by mail, please refer to the referenced case and enclose a check in the amount of $7.25 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92-24143 Filed 10-5-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, on August 21, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") filed a written notification on behalf of Bellcore and France Telecom as represented by Centre National d'Etudes des Telecommunications ("CNET") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and CNET, Paris, France. Bellcore and CNET entered into an agreement effective on April 28, 1992, to engage in cooperative research of semiconductor laser reliability to better understand the long term behavior and failure modes of such devices when used as components in exchange and exchange access telecommunications systems.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-24136 Filed 10-5-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 United States Automotive Manufacturers Occupant Safety Research Partnership

Notice is hereby given that, on August 21, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), General Motors Corporation filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the name of the joint venture United States Automotive Manufacturers Crash Test Dummy Consortium. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the United States Automotive Manufacturers Crash Test Dummy Consortium is now known as United States Automotive Manufacturers Occupant Safety Research Partnership.

No other changes have been made in either the membership or planned activity of the joint venture. Membership in this joint venture remains open, and General Motors intends to file additional written notification disclosing all changes in membership.

On July 7, 1992, General Motors filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("The Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 11, 1992, 57 FR 35845.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-24141 Filed 10-5-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Open Software Foundation, Inc.

Notice is hereby given that, on July 29, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new, non-voting members of OSF are as follows: Reuters

Singapore Pte. Ltd., Singapore; The Royal Hong Kong Jockey Club of Hong Kong; Mobil E&P Services, Dallas, TX; National Center for High Performance Computing, Taipei, Taiwan; the University of Texas at Dallas, Richardson, TX; Battelle Memorial Institute, Columbus, OH; IIT Research Institute, Annapolis, MD; University of Durham, Durham, United Kingdom; Epoch Systems, Inc., Westborough, MA; Institute for Defense Analyses, Alexandria, VA; Tera Computer Company, Seattle, WA; PeerLogic, Inc., San Francisco, CA; Societe Intl. De Telecom Aeronautiques, Valbonne, France; Aristotelian University of Thessaloniki, Thessaloniki, Greece; and ITT Hartford Insurance, Hartford, CT. No new voting members have been added as of this filing.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSF intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, OSF and the Open Software Foundation Institute, Inc. (the "Institute") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on September 7, 1988 (53 Fed. Reg. 34594).

The last notification was filed with the Department on April 30, 1992. A notice was published in the Federal Register pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29538).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-24137 Filed 10-5-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Petroleum Environmental Research Forum Project No. 91-10

Notice is hereby given that, on August 11, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Petroleum Environmental Research Forum Project No. 91-10 has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties and its general area of planned activity are: Chevron Research and Technology Company, Richmond, CA; Exxon Research and Engineering Company, Florham Park, NJ; Mobil Research and Development Corporation, Paulsboro, NJ; Phillips Petroleum Company, Bartlesville, OK; and BP America, Inc., Cleveland, OH.

The general area of planned activity of Project No. 91-10 is the development of open path monitors for the detection of hydrogen fluoride ("HF") and hydrogen sulfide ("H_2S") using wavelength modulation technology with near infra-red semiconductor diode lasers.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-24138 Filed 10-5-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Athenia Wire Co. et al.; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,425; Athenia Wire Co., East Syracuse, NY

TA-W-27,441; Maghielse Tool Corp., Grand Rapids, MI

TA-W-27,499;— George— E.— Failing Co. A/K/A Gefco, Enid, OK

TA-W-27,540; Adobe Mining Co., Grove City, PA

TA-W-27,486; Milroy Wood Products, Milroy, PA

TA-W-27,409; Ultramatic Embroidery Machine Co., North Haven, CT

TA-W-27,508; Miller Holzwarth Div., IMO Industries, Inc., Byesville, OH

TA-W-27,518, TA-W-27, 519, TA-W-27,520, TA-W-27,521; Axem Resources Inc., Denver, CO, Belfield, ND, Gillette, WY, Woodward, OK

TA-W-27,522, TA-W-27,523, TA-W-27,524, TA-W-27,525; Axem Resources Inc., Arnett, OK, Freedom, OK, Welty, OK, Pond Creek, OK

TA-W-27,526, TA-W-27,527; Axem Resources, Inc., Perry, OK, Sapulpa, OK

TA-W-27,369; Wm. F. Surgi Equipment Corp., Harahan, LA

TA-W-27,533; Proctor Products, Bourbon, MO

TA-W-27,231; Optima Exploration, Inc., Oklahoma City, OK

TA-W-27,483; Ricke Knitting Mills, Inc., Maspeth, NY

TA-W-27,380; M & Q Plastic Products, Freehold, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,494; Excellon Automation Co., Tigard, OR, Renton, WA, Salt Lake City, UT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,478; Breed Automotive, Boonton Township, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,561; Outer Stuff, Altoona, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,565; Engineered Well Services, Inc., Dickinson, ND

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,481; Texas Oil Tools Div., Drexel Oilfield Service, Inc., Conroe, TX

U.S. imports of oil and gas field machinery in 1990, 1991 and 1992 are negligible.

TA–W–27,575; Dailey Petroleum Services, Conroe, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,444; National Semiconductor Corp., West Jordan, UT

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–27,515, TA–W–27,515A; Mewbourne Oil Co., Midland, TX and Perrytown, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–27,537; Sterling Plastic, Mountainside, NJ

A certification was issued covering all workers separated on or after July 10, 1991 and before September 30, 1992.

TA–W–27,557; Blocker Services, Inc., Alice, TX

A certification was issued covering all workers separated on or after June 2, 1991.

TA–W–27,379; Garrett Manufacturing, Inc., Deer Park, MD

A certification was issued covering all workers separated on or after May 30, 1991.

TA–W–27,532; Sackville Mills, Inc., Wallingford, PA

A certification was issued covering all workers separated on or after July 1, 1991.

TA–W–27,386; Advanced Monobloc Corp., Cranbury, NJ

A certification was issued covering all workers separated on or after January 24, 1991 and before February 28, 1992.

TA–W–27,398; Atlas Bradford, Houston, TX

A certification was issued covering all workers separated on or after June 11, 1991.

TA–W–27,424; Man Roland, Inc., Middlesex, NJ

A certification was issued covering all workers separated on or after June 15, 1991.

TA–W–27,484; Estoril Producing Corp., Midland, TX

A certification was issued covering all workers separated on or after June 30, 1991.

TA–W–27,485; Sunstrand Aerospace, Denver, CO

A certification was issued covering all workers separated on or after August 28, 1992.

TA–W–27,476; Sunshine Shake and Shingle Co., Inc., Forks, WA

A certification was issued covering all workers separated on or after July 6, 1991.

TA–W–27,492; General Electric Superabrasives, Worthington, OH

A certification was issued covering all workers separated on or after July 9, 1991.

TA–W–27,466; General Electric Appliances, Milwaukee, WI

A certification was issued covering all workers separated on or after June 25, 1991.

TA–W–27,505; Sayre Lingerie, Inc., Sayre, PA

A certification was issued covering all workers separated on or after July 6, 1991.

TA–W–27,558; Trexpro, Inc., Sedalia, CO

A certification was issued covering all workers separated on or after August 3, 1991.

TA–W–27,541; KBA Motter Corp., York, PA

A certification was issued covering all workers separated on or after July 13, 1991.

TA–W–27,557; Blocker Services, Inc., Alice, TX

A certification was issued covering all workers separated on or after June 2, 1991.

TA–W–27,530; BASF Corp. Information Systems, Bedford, MA

A certification was issued covering all workers separated on or after July 16, 1991.

TA–W–27,570; Brown Shoe Co., Clayton, MO

A certification was issued covering all workers separated on or after July 17, 1991.

TA–W–27,531; Coalinga Corp., Ira, TX

A certification was issued covering all workers separated on or after July 15, 1991.

TA–W–27,577, TA–W–27,578, TA–W–27,579; Briggs & Stratton Corp., Menomonee Falls, WI, Wauwatosa, WI, West Allis, WI

A certification was issued covering all workers separated on or after July 23, 1991 and before July 1, 1992.

TA–W–27,535; Toby Sportswear, Inc., York, PA

A certification was issued covering all workers separated on or after July 15, 1991.

TA–W–27,609; Eastman Teleco, Broussard, LA and Operating Out of the Following Locations: A; Houston, TX B; Lafayette, LA, C; Casper, WY, D; Ventura, CA, E; Anchorage, AK, F; Oklahoma City, OK

A certification was issued covering all workers separated on or after August 13, 1991.

I hereby certify that the aforementioned determinations were issued during the month of September 1992. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: September 30, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–24209 Filed 10–5–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,320]

Mobil Pipeline Co., Dallas, TX, Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Mobil Pipeline Company, Dallas, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–27,320; Mobil Pipeline Company, Dallas, Texas (September 25, 1992)

Signed at Washington, DC this 30th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–24210 Filed 10–5–92; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-26, 896, et al.]

Sonat Offshore Drilling Inc. and Sonat Offshore U.S.A., Inc.; Amended Certification Regarding Eligibility to Apply for Workers Adjustment Assistance

In the matter of Sonat Offshore Drilling, Inc., TA-W-2,896 New Orleans, LA; TA-W-26,896A Houston, TX; TA-W-26,896B Morgan City, LA and Sonat Offshore U.S.A., Inc., TA-W-26,896C New Orleans, LA

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Revised Certification on Reopening on May 6, 1992 applicable to all workers of Sonat Offshore Drilling, USA, Gulf of Mexico Division, New Orleans, Louisiana. The notice was published in the Federal Register on May 22, 1992 (57 FR 821828). The certification was subsequently amended on May 15, 1992 to include Houston, Texas and all other locations in Texas and Louisiana and offshore in the Gulf of Mexico. The notice was published in the Federal Register on May 28, 1992 (57 FR 21998).

At the request of the Louisiana State Agency, the Department reviewed the certification again. The findings show that the claimants wages are being reported under Sonat Offshore Drilling, Inc. and Sonat Offshore USA, Inc. and not Sonat Offshore Drilling, USA.

Both Sonat Offshore Drilling, U.S.A., Inc., and Sonat Offshore Drilling, Inc., are engaged in offshore drilling operations in the Gulf of Mexico and have had substantial worker separations in 1991 and 1992.

Accordingly, the Department is amending the certification to properly reflect the correct worker groups.

The amended notice applicable to TA-W-26,896 is hereby issued as follows:

"All workers of Sonat Offshore Drilling, Inc., and Sonat Offshore U.S.A., Inc., headquartered in Houston, Texas and New Orleans, Louisiana, respectively, and operating in other locations of Texas and Louisiana and offshore in the Gulf of Mexico who became totally or partially separated from employment on or after February 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 25th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24211 Filed 10-5-92; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: The annual list of labor surplus areas in effective October 1, 1992, through September 30, 1993.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N-4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-219-5185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has ben modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implememts Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the paticular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is publishing the annual list of labor surplus areas.

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below have been classified by the Assistant Secretary of Labor as Labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are effective October 1, 1992, through September 30, 1993.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on September 25, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92-24079 Filed 10-5-92; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Areas Eligible for Federal Procurement Preference

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Alabama	
Anniston City	Anniston City in Calhoun County
Barbour County	Barbour County
Bessemer City	Bessemer City in Jefferson County
Bibb County	Bibb County
Birmingham City	Birmingham City in Jefferson County
Bullock County	Bullock County
Butler County	Butler County
Chambers County	Chambers County
Cherokee County	Cherokee County
Chilton County	Chilton County
Choctaw County	Choctaw County
Clarke County	Clarke County
Cleburne County	Cleburne County
Colbert County	Colbert County
Conecuh County	Conecuh County
Covington County	Covington County
Crenshaw County	Crenshaw County
Dale County	Dale County
Decatur City	Decatur City in Morgan County
Escambia County	Escambia County
Fayette County	Fayette County
Florence City	Florence City in Lauderdale County
Franklin County	Franklin County
Gadsden City	Gadsden City in Etowah County
Greene County	Greene County
Hale County	Hale County
Jackson County	Jackson County
Lamar County	Lamar County
Lawrence County	Lawrence County
Lowndes County	Lowndes County
Macon County	Macon County
Marion County	Marion County
Marshall County	Marshall County
Monroe County	Monroe County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Perry County	Perry County
Phenix City	Phenix City in Lee County
	Russell County
Pickens County	Pickens County
Prichard City	Prichard City in Mobile County
Randolph County	Randolph County
Selma City	Selma City in Dallas County
Sumter County	Sumter County
Talladega County	Talladega County
Walker County	Walker County
Washington County	Washington County
Wilcox County	Wilcox County
Winston County	Winston County
Alaska	
Fairbanks City	Fairbanks City in Fairbanks North Star Borough
Balance of Fairbanks North Star Borough.	Fairbanks North Star Borough Less Fairbanks City
Haines Borough	Haines Borough
Kenai Peninsula Borough	Kenai Peninsula Borough
Ketchikan Gateway Borough.	Ketchikan Gateway Borough
Matanuska-Susitna Borough.	Matanuska-Susitna Borough
Nome Census Area	Nome Census Area
Northwest Arctic Borough.	Northwest Arctic Borough
Prince of Wales Outer Ketchikan.	Prince of Wales Outer Ketchikan
Skagway Yakutat Angoon Cens Area.	Skagway Yakutat Angoon Cens Area
Southeast Fairbanks Census Area.	Southeast Fairbanks Census Area
Valdez Cordova Census Area.	Valdez Cordova Census Area
Wade Hampton Census Area.	Wade Hampton Census Area
Wrangell-Petersburg Census Area.	Wrangell-Petersburg Census Area
Yukon-Koyukuk Census Area.	Yukon-Koyukuk Census Area
Arizona	
Apache County	Apache County
Balance of Coconino County.	Coconino County Less Flagstaff City
Gila County	Gila County
La Paz County	La Paz County
Navajo County	Navajo County
Pinal County	Pinal County
Santa Cruz County	Santa Cruz County
Sierra Vista City	Sierra Vista City in Cochise County
Yuma City	Yuma City in Yuma County
Balance of Yuma County	Yuma County less Yuma City
Arkansas	
Bradley County	Bradley County
Chicot County	Chicot County
Cleburne County	Cleburne County
Conway City	Conway City in Faulkner County
Conway County	Conway County
Crawford County	Crawford County
Balance of Crittenden County.	Crittenden County less West Memphis City
Cross County	Cross County
Dallas County	Dallas County
Desha County	Desha County
Drew County	Drew County
El Dorado City	El Dorado City in Union County
Balance of Faulkner County.	Faulkner County Less Conway City
Franklin County	Franklin County
Greene County	Greene County
Hempstead County	Hempstead County
Hot Spring County	Hot Spring County
Hot Springs City	Hot Springs City in Garland County
Howard County	Howard County
Independence County	Independence County
Jackson County	Jackson County
Jacksonville City	Jacksonville City in Pulaski County
Balance of Jefferson County.	Jefferson County less Pine Bluff City
Johnson County	Johnson County
Lafayette County	Lafayette County
Lawrence County	Lawrence County
Lee County	Lee County
Lincoln County	Lincoln County
Little River County	Little River County
Mississippi County	Mississippi County
Monroe County	Monroe County
Nevada County	Nevada County
Newton County	Newton County
Ouachita County	Ouachita County
Perry County	Perry County
Phillips County	Phillips County
Pike County	Pike County
Pine Bluff City	Pine Bluff City in Jefferson County
Poinsett County	Poinsett County
Prairie County	Prairie County
Randolph County	Randolph County
Searcy County	Searcy County
Balance of Sebastian County.	Sebastian County less Fort Smith City
St. Francis County	St. Francis County
Van Buren County	Van Buren County
West Memphis City	West Memphis City in Crittenden County
White County	White County
Woodruff County	Woodruff County
California	
Apple Valley City	Apple Valley City in San Bernardino County
Bakersfield City	Bakersfield City in Kern County
Baldwin Park City	Baldwin Park City in Los Angeles County
Bell City	Bell City in Los Angeles County
Bell Gardens City	Bell Gardens City in Los Angeles County
Balance of Butte County	Butte County less Chico City.
	Paradise City
Calaveras County	Calaveras County
Chico City	Chico City in Butte County
Clovis City	Clovis City in Fresno County
Colton City	Colton City in San Bernardino County
Colusa County	Colusa County
Compton City	Compton City in Los Angeles County
Corona City	Corona City in Riverside County
Del Norte County	Del Norte County
El Centro City	El Centro City in Imperial County
El Monte City	El Monte City in Los Angeles County
Fairfield City	Fairfield City in Solano County
Fontana City	Fontana City in San Bernardino County
Fresno City	Fresno City in Fresno County
Balance of Fresno County.	Fresno County Less Clovis City
	Fresno City
Gilroy City	Gilroy City in Santa Clara County
Glenn County	Glenn County
Hanford City	Hanford City in Kings County
Hemet City	Hemet City in Riverside County
Hesperia City	Hesperia City in San Bernardino County
Highland City	Highland City in San Bernardino County
Humboldt County	Humboldt County
Huntington Park City	Huntington Park City in Los Angeles County
Imperial Beach City	Imperial Beach City in San Diego County
Balance of Imperial County.	Imperial County less El Centro City
Indio City	Indio City in Riverside County
Inglewood City	Inglewood City in Los Angeles County
Balance of Kern County	Kern County less Bakersfield City
	Ridgecrest City
Balance of Kings County	Kings County less Hanford City
Lake County	Lake County
Lancaster City	Lancaster City in Los Angeles County
Lassen County	Lassen County
Lodi City	Lodi City in San Joaquin County
Lompoc City	Lompoc City in Santa Barbara County
Los Angeles City	Los Angeles City in Los Angeles County
Lynwood City	Lynwood City in Los Angeles County
Madera City	Madera City in Madera County
Balance of Madera County.	Madera County less Madera City
Manteca City	Manteca City in San Joaquin County
Marina City	Marina City in Monterey County
Maywood City	Maywood City in Los Angeles County
Mendocino County	Mendocino County
Merced City	Merced City in Merced County
Balance of Merced County.	Merced County less Merced City
Modesto City	Modesto City in Stanislaus County
Modoc County	Modoc County
Mono County	Mono County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Balance of Monterey County.	Monterey County less Marina City
	Monterey City
	Salinas City
	Seaside City
Moreno Valley	Moreno Valley in Riverside County
National City	National City in San Diego County
Norco City	Norco City in Riverside County
Oxnard City	Oxnard City in Ventura County
Palm Springs City	Palm Springs City in Riverside County
Palmdale City	Palmdale City in Los Angeles County
Paradise City	Paradise City in Butte County
Paramount City	Paramount City in Los Angeles County
Pico Rivera City	Pico Rivera City in Los Angeles County
Plumas County	Plumas County
Pomona City	Pomona City in Los Angeles County
Porterville City	Porterville City in Tulare County
Redding City	Redding City in Shasta County
Rialto City	Rialto City in San Bernardino County
Richmond City	Richmond City in Contra Costa County
Riverside City	Riverside City in Riverside County
Balance of Riverside County.	Riverside County less Cathedral City
	Corona City
	Hemet City
	Indio City
	Moreno Valley
	Norco City
	Palm Springs City
	Riverside City
Salinas City	Salinas City in Monterey County
San Benito County	San Benito County
San Bernardino City	San Bernardino City in San Bernardino County
Balance of San Joaquin County.	San Joaquin County less Lodi City
	Manteca City
	Stockton City
	Tracey City
Santa Cruz City	Santa Cruz City in Santa Cruz County
Santa Maria City	Santa Maria City in Santa Barbara County
Seaside City	Seaside City in Monterey County
Balance of Shasta County.	Shasta County less Redding City
Sierra County	Sierra County
Siskiyou County	Siskiyou County
South Gate City	South Gate City in Los Angeles County
Balance of Stanislaus County.	Stanislaus County less Modesto City
	Turlock City
Stockton City	Stockton City in San Joaquin County
Sutter County	Sutter County
Tehama County	Tehama County
Tracey City	Tracey City in San Joaquin County
Trinity County	Trinity County
Tulare City	Tulare City in Tulare County
Balance of Tulare County.	Tulare County less Porterville City
	Tulare City
	Visalia City
Tuolumne County	Tuolumne County
Turlock City	Turlock City in Stanislaus County
Vacaville City	Vacaville City in Solano County
Victorville City	Victorville City in Solano Bernardino County
Visalia City	Visalia City in Tulare County
Watsonville City	Watsonville City in Santa Cruz County
West Hollywood City	West Hollywood City in Los Angeles County
West Sacramento City	West Sacramento City in Yolo County
Woodland City	Woodland City in Yolo County
Balance of Yolo County	Yolo County less Davis City
	West Sacramento City
	Woodland City
Yuba County	Yuba County
Colorado	
Conejos County	Conejos County
Costilla County	Costilla County
Delta County	Delta County
Huerfano County	Huerfano County
Lake County	Lake County
Las Animas County	Las Animas County
Rio Grande County	Rio Grande County
Saguache County	Saguache County
San Juan County	San Juan County
Connecticut	
Ansonia Town	Ansonia Town
Beacon Falls Town	Beacon Falls Town
Bridgeport City	Bridgeport City
Bristol City	Bristol City
Canterbury Town	Canterbury Town
Derby Town	Derby Town
Griswold Town	Griswold Town
Hartford City	Hartford City
Killingly Town	Killingly Town
Naugatuck Town	Naugatuck Town
New Britain City	New Britain City
New London City	New London City
Norwich City	Norwich City
Plainfield Town	Plainfield Town
Plymouth Town	Plymouth Town
Putnam Town	Putnam Town
Sprague Town	Sprague Town
Sterling Town	Sterling Town
Thomaston Town	Thomaston Town
Thompson Town	Thompson Town
Voluntown Town	Voluntown Town
Waterbury City	Waterbury City
Watertown Town	Watertown Town
Winchester Town	Winchester Town
Florida	
Baker County	Baker County
Balance of Bay County	Bay County less Panama City
Boynton Beach City	Boynton Beach City in Palm Beach County
Calhoun County	Calhoun County
Citrus County	Citrus County
Columbia County	Columbia County
De Soto County	De Soto County
Deerfield Beach City	Deerfield Beach City in Broward County
Delray Beach City	Delray Beach City in Palm Beach County
Dixie County	Dixie County
Flagler County	Flagler County
Fort Pierce City	Fort Pierce City in St. Lucie County
Glades County	Glades County
Greenacres City	Greenacres City in Palm Beach County
Gulf County	Gulf County
Hallandale City	Hallandale City in Broward County
Hamilton County	Hamilton County
Hardee County	Hardee County
Hendry County	Hendry County
Hernando County	Hernando County
Hialeah City	Hialeah City in Dade County
Highlands County	Highlands County
Indian River County	Indian River County
Jupiter City	Jupiter City in Palm Beach County
Lake County	Lake County
Lake Worth City	Lake Worth City in Palm Beach County
Lakeland City	Lakeland City in Polk County
Lauderdale Lakes City	Lauderdale Lakes City in Broward County
Margate City	Margate City in Broward County
Balance of Marion County.	Marion County less Ocala City
Martin County	Martin County
Miami Beach City	Miami Beach City in Dade County
Miami City	Miami City in Dade County
North Miami Beach City	North Miami Beach City in Dade County
Okeechobee County	Okeechobee County
Balance of Palm Beach County.	Palm Beach County less Boca Raton City
	Boynton Beach City
	Delray Beach City
	Greenacres City
	Jupiter City
	Lake Worth City
	Riviera Beach City
	West Palm Beach City
Panama City	Panama City in Bay County
Pasco County	Pasco County
Balance of Polk County	Polk County less Lakeland City
Port St. Lucie City	Port St. Lucie City in St. Lucie County
Putnam County	Putnam County
Balance of St. Lucie County.	St. Lucie County less Fort Pierce City
	Port St. Lucie City
Sumter County	Sumter County
Sunrise City	Sunrise City in Broward County
Suwannee County	Suwannee County
Tamarac City	Tamarac City in Broward County
Taylor County	Taylor County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Georgia	
Appling County	Appling County
Bartow County	Bartow County
Brantley County	Brantley County
Burke County	Burke County
Chattahoochee County	Chattahoochee County
Chattooga County	Chattooga County
Crawford County	Crawford County
Dawson County	Dawson County
Emanuel County	Emanuel County
Haralson County	Haralson County
Jasper County	Jasper County
Jenkins County	Jenkins County
Macon County	Macon County
Mitchell County	Mitchell County
Murray County	Murray County
Pickens County	Pickens County
Polk County	Polk County
Quitman County	Quitman County
Schley County	Schley County
Screven County	Screven County
Stewart County	Stewart County
Taylor County	Taylor County
Terrell County	Terrell County
Turner County	Turner County
Warren County	Warren County
Webster County	Webster County
Idaho	
Adams County	Adams County
Benewah County	Benewah County
Bonner County	Bonner County
Boundary County	Boundary County
Camas County	Camas County
Cassia County	Cassia County
Clearwater County	Clearwater County
Fremont County	Fremont County
Gem County	Gem County
Idaho County	Idaho County
Lemhi County	Lemhi County
Nampa City	Nampa City in Canyon County
Power County	Power County
Shoshone County	Shoshone County
Valley County	Valley County
Washington County	Washington County
Illinois	
Alexander County	Alexander County
Alton City	Alton City in Madison County
Aurora City	Aurora City in Du Page County Kane County
Belleville City	Belleville City in St. Clair County
Bond County	Bond County
Boone County	Boone County
Brown County	Brown County
Calhoun County	Calhoun County
Carpentersville City	Carpentersville City in Kane County
Cass County	Cass County
Chicago City	Chicago City in Cook County
Cicero City	Cicero City in Cook County
Clark County	Clark County
Clay County	Clay County
Crawford County	Crawford County
Cumberland County	Cumberland County
Danville City	Danville City in Vermilion County
De Witt County	De Witt County
Decatur City	Decatur City in Macon County
East St. Louis City	East St. Louis City in St. Clair County
Edgar County	Edgar County
Edwards County	Edwards County
Effingham County	Effingham County
Elgin City	Elgin City in Cook County Kane County
Fayette County	Fayette County
Franklin County	Franklin County
Freeport City	Freeport City in Stephenson County
Fulton County	Fulton County
Gallatin County	Gallatin County
Granite City	Granite City in Madison County
Greene County	Greene County
Grundy County	Grundy County
Hamilton County	Hamilton County
Hardin County	Hardin County
Harvey City	Harvey City in Cook County
Henry County	Henry County
Balance of Jackson County.	Jackson County less Carbondale City
Jefferson County	Jefferson County
Johnson County	Johnson County
Joliet City	Joliet City in Will County
Kankakee City	Kankakee City in Kankakee County
La Salle County	La Salle County
Lawrence County	Lawrence County
Macoupin County	Macoupin County
Marion County	Marion County
Mason County	Mason County
Massac County	Massac County
Maywood Village	Maywood Village in Cook County
Mercer County	Mercer County
Montgomery County	Montgomery County
Moultrie County	Moultrie County
North Chicago City	North Chicago City in Lake County
Pekin City	Pekin City in Tazewell County
Peoria City	Peoria City in Peoria County
Perry County	Perry County
Pike County	Pike County
Pope County	Pope County
Pulaski County	Pulaski County
Putnam County	Putnam County
Randolph County	Randolph County
Richland County	Richland County
Rockford City	Rockford City in Winnebago County
Saline County	Saline County
Schuyler County	Schuyler County
Scott County	Scott County
Shelby County	Shelby County
Stark County	Stark County
Union County	Union County
Balance of Vermilion County.	Vermilion County less Danville City
Wabash County	Wabash County
Washington County	Washington County
Wayne County	Wayne County
White County	White County
Whiteside County	Whiteside County
Williamson County	Williamson County
Indiana	
Adams County	Adams County
Anderson City	Anderson City in Madison County
Blackford County	Blackford County
Crawford County	Crawford County
Dearborn County	Dearborn County
East Chicago City	East Chicago City in Lake County
Elkhart City	Elkhart City in Elkhart County
Fayette County	Fayette County
Franklin County	Franklin County
Gary City	Gary City in Lake County
Henry County	Henry County
Jay County	Jay County
Kokomo City	Kokomo City in Howard County
Lawrence County	Lawrence County
Marion City	Marion City in Grant County
Noble County	Noble County
Orange County	Orange County
Perry County	Perry County
Randolph County	Randolph County
Richmond City	Richmond City in Wayne County
Scott County	Scott County
Starke County	Starke County
Sullivan County	Sullivan County
Switzerland County	Switzerland County
Union County	Union County
Balance of Wayne County.	Wayne County less Richmond City
Iowa	
Clinton City	Clinton City in Clinton County
Lee County	Lee County
Balance of Wapello County.	Wapello County less Ottumwa City
Kansas	
Kansas City KN	Kansas City KN in Wyandotte County
Linn County	Linn County
Kentucky	
Adair County	Adair County
Allen County	Allen County
Ashland City	Ashland City in Boyd County
Ballard County	Ballard County
Barren County	Barren County
Bath County	Bath County
Bell County	Bell County
Balance of Boyd County.	Boyd County less Ashland City
Bracken County	Bracken County
Breathitt County	Breathitt County
Breckinridge County	Breckinridge County
Caldwell County	Caldwell County
Carlisle County	Carlisle County
Carter County	Carter County
Casey County	Casey County
Balance of Christian County.	Christian County less Hopkinsville City
Clay County	Clay County
Clinton County	Clinton County
Crittenden County	Crittenden County
Cumberland County	Cumberland County
Edmonson County	Edmonson County
Elliott County	Elliott County
Estill County	Estill County
Fleming County	Fleming County
Floyd County	Floyd County
Fulton County	Fulton County
Gallatin County	Gallatin County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Garrard County	Garrard County
Graves County	Graves County
Grayson County	Grayson County
Green County	Green County
Greenup County	Greenup County
Hancock County	Hancock County
Harlan County	Harlan County
Hart County	Hart County
Hickman County	Hickman County
Hopkins County	Hopkins County
Jackson County	Jackson County
Johnson County	Johnson County
Knott County	Knott County
Knox County	Knox County
Lawrence County	Lawrence County
Lee County	Lee County
Leslie County	Leslie County
Letcher County	Letcher County
Lewis County	Lewis County
Lincoln County	Lincoln County
Livingston County	Livingston County
Magoffin County	Magoffin County
Marion County	Marion County
Marshall County	Marshall County
Martin County	Martin County
Mc Creary County	Mc Creary County
Mc Lean County	Mc Lean County
Meade County	Meade County
Menifee County	Menifee County
Montgomery County	Montgomery County
Morgan County	Morgan; County
Muhlenberg County	Muhlenberg County
Nicholas County	Nicholas County
Ohio County	Ohio County
Owsley County	Owsley County
Pendleton County	Pendleton County
Perry County	Perry County
Pike County	Pike County
Powell County	Powell County
Pulaski County	Pulaski County
Robertson County	Robertson County
Russell County	Russell County
Simpson County	Simpson County
Trigg County	Trigg County
Balance of Warren	Warren County Less Bowling Green City
Washington County	Washington County
Wayne County	Wayne County
Webster County	Webster County
Whitley County	Whitley County
Wolfe County	Wolfe County
Louisiana	
Acadia Parish	Acadia Parish
Allen Parish	Allen Parish
Assumption Parish	Assumption Parish
Avoyelles Parish	Avoyelles Parish
Bienville Parish	Bienville Parish
Balance of Bossier Parish.	Bossier Parish Less Bossier City
	Bossier City
	Shreveport City
Caldwell Parish	Caldwell Parish
Catahoula Parish	Catahoula Parish
Concordia Parish	Concordia Parish
De Soto Parish	De Soto Parish
East Carroll Parish	East Carroll Parish
Franklin Parish	Franklin Parish
Grant Parish	Grant Parish
Iberville Parish	Iberville Parish
Jefferson Davis Parish	Jefferson Davis Parish
La Salle Parish	La Salle Parish
Livingston Parish	Livingston Parish
Madison Parish	Madison Parish
Morehouse Parish	Morehouse Parish
Natchitoches Parish	Natchitoches Parish
Pointe Coupee Parish	Pointe Coupee Parish
Red River Parish	Red River Parish
Richland Parish	Richland Parish
St. Helena Parish	St. Helena Parish
St. James Parish	St. James Parish
St. John Baptist Parish	St. John Baptist Parish
St. Landry Parish	St. Landry Parish
St. Mary Parish	St. Mary Parish
Tangipahoa Parish	Tangipahoa Parish
Tensas Parish	Tensas Parish
Union Parish	Union Parish
Vermilion Parish	Vermilion Parish
Washington Parish	Washington Parish
Webster Parish	Webster Parish
West Carroll Parish	West Carroll Parish
Maine	
Balance of Androscoggin County.	Androscoggin County Less Lewiston City
Aroostook County	Aroostook County
Franklin County	Franklin County
Lewiston City	Lewiston City in Androscoggin County
Oxford County	Oxford County
Piscataquis County	Piscataquis County
Somerset County	Somerset County
Waldo County	Waldo County
Washington County	Washington County
Maryland	
Allegany County	Allegany County
Baltimore City	baltimore City
Cecil County	Cecil County
Dorchester County	Dorchester County
Garrett County	Garrett County
Hagerstown City	Hagerstown City in Washington County
Somerset County	Somerset County
Worcester County	Worcester County
Massachusetts	
Abington Town	Abington Town in Plymouth County
Acushnet Town	Acushnet Town in Bristol County
Adams Town	Adams Town in Berkshire County
Amesbury Town	Amesbury Town in Essex County
Ashburnham Town	Ashburnham Town in Worcester County
Ashby Town	Ashby Town in Middlesex County
Athol Town	Athol Town in Worcester County
Attleboro Town	Attleboro Town in Bristol County
Auburn Town	Auburn Town in Worcester County
Avon Town	Avon Town in Norfolk County
Ayer Town	Ayer Town in Middlesex County
Barnstable Town	Barnstable Town in Barnstable County
Barre Town	Barre Town in Worcester County
Becket Town	Becket Town in Berkshire County
Bellingham Town	Bellingham Town in Norfolk County
Berkley Town	Berkley Town in Bristol County
Bernardston Town	Bernardston Town in Franklin County
Billerica Town	Billerica Town in Middlesex County
Blackstone Town	Blackstone Town in Worcester County
Blandford Town	Blandford Town in Hampden County
Bourne Town	Bourne Town in Barnstable County
Boylston Town	Boylston Town in Worcester County
Brewster Town	Brewster Town in Barnstable County
Bridgewater Town	Bridgewater Town in Plymouth County
Brimfield Town	Brimfield Town in Hampden County
Brockton City	Brockton City in Plymouth County
Brookfield Town	Brookfield Town in Worcester County
Carver Town	Carver Town in Plymouth County
Charlemont Town	Charlemont Town in Franklin County
Charlton Town	Charlton Town in Worcester County
Chelsea City	Chelsea City in Suffolk County
Cheshire Town	Cheshire Town in Berkshire County
Chester Town	Chester Town in Hampden County
Chesterfield Town	Chesterfield Town in Hampshire County
Chicopee City	Chicopee City in Hampden County
Clinton Town	Clinton Town in Worcester County
Cummington Town	Cummington Town in Hampshire County
Dartmouth Town	Dartmouth Town in Bristol County
Dennis Town	Dennis Town in Barnstable County
Dighton Town	Dighton Town in Bristol County
Douglas Town	Douglas Town in Worcester County
Dracut Town	Dracut Town in Middlesex County
Dudley Town	Dudley Town in Worcester County
East Bridgewater Town	East Bridgewater Town in Plymouth County
East Brookfield Town	East Brookfield Town in Worcester County
Eastham Town	Eastham Town in Barnstable County
Edgartown Town	Edgartown Town in Dukes County
Erving Town	Earving Town in Franklin County
Everett City	Everett City in Middlesex County
Fairhaven Town	Fairhaven Town in Bristol County
Fall River City	Fall River City in Bristol County
Falmouth Town	Falmouth Town in Barnstable County
Fitchburg City	Fitchburg City in Worcester County
Franklin Town	Franklin Town in Norfolk County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Freetown Town	Freetown Town in Bristol County
Gardner Town	Gardner Town in Worcester County
Gay Head Town	Gay Head Town in Dukes County
Gloucester City	Gloucester City in Essex County
Grafton Town	Grafton Town in Worcester County
Groveland Town	Groveland Town in Essex County
Halifax Town	Halifax Town in Plymouth County
Hanson Town	Hanson Town in Plymouth County
Hardwick Town	Hardwick Town in Worcester County
Harwich Town	Harwich Town in Barnstable County
Haverhill City	Haverhill City in Essex County
Hinsdale Town	Hinsdale Town in Berkshire County
Holland Town	Holland Town in Hampden County
Holyoke City	Holyoke City in Hampden County
Hopedale Town	Hopedale Town in Worcester County
Hubbardston Town	Hubbardston Town in Worcester County
Hull Town	Hull Town in Plymouth County
Huntington Town	Huntington Town in Hampshire County
Kingston Town	Kingston Town in Plymouth County
Lanesbough Town	Lanesbough Town in Berkshire County
Lawrence City	Lawrence City in Essex County
Lee Town	Lee Town in Berkshire County
Leicester Town	Leicester Town in Worcester County
Leominster City	Leominster City in Worcester County
Leyden Town	Leyden Town in Franklin County
Lowell City	Lowell City in Middlesex County
Ludlow Town	Ludlow Town in Hampden County
Lunenberg Town	Lunenberg Town in Worcester County
Lynn City	Lynn City in Essex County
Malden City	Malden City in Middlesex County
Mansfield Town	Mansfield Town in Bristol County
Marion Town	Marion Town in Plymouth County
Marshfield Town	Marshfield Town in Plymouth County
Mashpee Town	Mashpee Town in Barnstable County
Medway Town	Medway Town in Norfolk County
Mendon Town	Mendon Town in Worcester County
Merrimac Town	Merrimac Town in Essex County
Methuen Town	Methuen Town in Essex County
Middleborough Town	Middleborough Town in Plymouth County
Middlefield Town	Middlefield Town in Hampshire County
Milford Town	Milford Town in Worcester County
Millbury Town	Millbury Town in Worcester County
Millville Town	Millville Town in Worcester County
New Bedford City	New Bedford City in Bristol County
New Braintree Town	New Braintree Town in Worcester County
Newburyport City	Newburyport City in Essex County
North Adams Town	North Adams Town in Berkshire County
North Brookfield Town	North Brookfield Town in Worcester County
Northbridge Town	Northbridge Town in Worcester County
Norton Town	Norton Town in Bristol County
Oak Bluffs Town	Oak Bluffs Town in Dukes County
Oakham Town	Oakham Town in Worcester County
Orange Town	Orange Town in Franklin County
Orleans Town	Orleans Town in Barnstable County
Otis Town	Otis Town in Berkshire County
Oxford Town	Oxford Town in Worcester County
Pembroke Town	Pembroke Town in Plymouth County
Petersham Town	Petersham Town in Worcester County
Phillipston Town	Phillipston Town in Worcester County
Pittsfield City	Pittsfield City in Berkshire County
Plainfield Town	Plainfield Town in Hampshire County
Plainville Town	Plainville Town in Norfolk County
Plymouth Town	Plymouth Town in Plymouth County
Plympton Town	Plympton Town in Plymouth County
Provincetown Town	Provincetown Town in Barnstable County
Quincy City	Quincy City in Norfolk County
Raynham Town	Raynham Town in Bristol County
Rehoboth Town	Rehoboth Town in Bristol County
Revere City	Revere City in Suffolk County
Rockland Town	Rockland Town in Plymouth County
Rockport Town	Rockport Town in Essex County
Rowe Town	Rowe Town in Franklin County
Royalston Town	Royalston Town in Worcester County
Salisbury Town	Salisbury Town in Essex County
Savoy Town	Savoy Town in Berkshire County
Shelburne Town	Shelburne Town in Franklin County
Somerset Town	Somerset Town in Bristol County
Southbridge Town	Southbridge Town in Worcester County
Spencer Town	Spencer Town in Worcester County
Springfield City	Springfield City in Hampden County
Sturbridge Town	Sturbridge Town in Worcester County
Swansea Town	Swansea Town in Bristol County
Taunton City	Taunton City in Bristol County
Templeton Town	Templeton Town in Worcester County
Tewksbury Town	Tewksbury Town in Middlesex County
Truro Town	Truro Town in Barnstable County
Tyngsborough Town	Tyngsborough Town in Middlesex County
Uxbridge Town	Uxbridge Town in Worcester County
Wales Town	Wales Town in Hampden County
Ware Town	Ware Town in Hampshire County
Wareham Town	Wareham Town in Plymouth County
Warren Town	Warren Town in Worcester County
Warwick Town	Warwick Town in Franklin County
Washington Town	Washington Town in Berkshire County
Webster Town	Webster Town in Worcester County
Wellfleet Town	Wellfleet Town in Barnstable County
Wendell Town	Wendell Town in Franklin County
West Bridgewater Town	West Bridgewater Town in Plymouth County
West Brookfield Town	West Brookfield Town in Worcester County
Westminster Town	Westminster Town in Worcester County
Westport Town	Westport Town in Bristol County
Whitman Town	Whitman Town in Plymouth County
Williamsburg Town	Williamsburg Town in Hampshire County
Wilmington Town	Wilmington Town in Middlesex County
Winchendon Town	Winchendon Town in Worcester County
Windsor Town	Windsor Town in Berkshire County
Worcester City	Worcester City in Worcester County
Yarmouth Town	Yarmouth Town in Barnstable County
Michigan	
Alcona County	Alcona County
Alger County	Alger County
Alpena County	Alpena County
Antrim County	Antrim County
Arenac County	Arenac County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Baraga County	Baraga County
Barry County	Barry County
Battle Creek City	Battle Creek City in Calhoun County
Bay City	Bay City in Bay County
Balance of Bay County	Bay County less Bay City Midland City
Benzie County	Benzie County
Berrien County	Berrien County
Branch County	Branch County
Burton City	Burton City in Genesee County
Balance of Calhoun County.	Calhoun County less Battle Creek City
Cass County	Cass County
Charlevoix County	Charlevoix County
Cheboygan County	Cheboygan County
Chippewa County	Chippewa County
Clare County	Clare County
Clinton County	Clinton County
Clinton Township	Clinton Township in Macomb County
Delta County	Delta County
Detroit City	Detroit City in Wayne County
Dickinson County	Dickinson County
East Detroit City	East Detroit City in Macomb County
Emmet County	Emmet County
Ferndale City	Ferndale City in Oakland County
Flint City	Flint City in Genesee County
Flint Township	Flint Township in Genesee County
Balance of Genesee County.	Genesee County less Burton City Flint City Flint Township Mount Morris Township
Gladwin County	Gladwin County
Gogebic County	Gogebic County
Grand Rapids City	Grand Rapids City in Kent County
Grand Traverse County	Grand Traverse County
Gratiot County	Gratiot County
Highland Park City	Highland Park City in Wayne County
Hillsdale County	Hillsdale County
Houghton County	Houghton County
Huron County	Huron County
Inkster City	Inkster City in Wayne County
Ionia County	Ionia County
Iosco County	Iosco County
Iron County	Iron County
Jackson City	Jackson City in Jackson County
Balance of Jackson County.	Jackson County less Jackson County
Kalkaska County	Kalkaska County
Keweenaw County	Keweenaw County
Lake County	Lake County
Lansing City	Lansing City in Eaton County Ingham County
Lapeer County	Lapeer County
Leelanau County	Leelanau County
Lenawee County	Lenawee County
Lincoln Park City	Lincoln Park City in Wayne County
Luce County	Luce County
Mackinac County	Mackinac County
Balance of Macomb County.	Macomb County less Clinton Township East Detroit City Roseville City Shelby Township St. Clair Shores City Sterling Heights City Warren City
Madison Heights City	Madison Heights City in Oakland County
Manistee County	Manistee County
Marquette County	Marquette County
Mason County	Mason County
Mecosta County	Mecosta County
Menominee County	Menominee County
Balance of Midland County.	Midland County less Midland City
Missaukee County	Missaukee County
Monroe County	Monroe County
Montcalm County	Montcalm County
Montmorency County	Montmorency County
Mount Morris Township	Mount Morris Township in Genesee County
Muskegon City	Muskegon City in Muskegon County
Balance of Muskegon County.	Muskegon County less Muskegon City
Newaygo County	Newaygo County
Oceana County	Oceana County
Ogemaw County	Ogemaw County
Ontonagon County	Ontonagon County
Osceola County	Osceola County
Otsego County	Otsego County
Pontiac City	Pontiac City in Oakland County
Port Huron City	Port Huron City in St. Clair County
Presque Isle County	Presque Isle County
Roscommon County	Roscommon County
Roseville City	Roseville City in Macomb County
Saginaw City	Saginaw City in Saginaw County
Balance of Saginaw County.	Saginaw County less Saginaw City Saginaw Township
Sanilac County	Sanilac County
Schoolcraft County	Schoolcraft County
Shelby Township	Shelby Township in Macomb County
Shiawassee County	Shiawassee County
Balance of St. Clair County.	St. Clair County less Port Huron City
St. Joseph County	St. Joseph County
Taylor City	Taylor City in Wayne County
Tuscola County	Tuscola County
Van Buren County	Van Buren County
Warren City	Warren City in Macomb County
Waterford Township	Waterford Township in Oakland County
Wexford County	Wexford County
Ypsilanti Township	Ypsilanti Township in Washtenaw County
Minnesota	
Aitkin County	Aitkin County
Carlton County	Carlton County
Cass County	Cass County
Clearwater County	Clearwater County
Freeborn County	Freeborn County
Hubbard County	Hubbard County
Itasca County	Itasca County
Kanabec County	Kanabec County
Kittson County	Kittson County
Lake County	Lake County
Mahnomen County	Mahnomen County
Marshall County	Marshall County
Meeker County	Meeker County
Morrison County	Morrison County
Pennington County	Pennington County
Pine County	Pine County
Red Lake County	Red Lake County
Todd County	Todd County
Wadena County	Wadena County
Mississippi	
Adams County	Adams County
Alcorn County	Alcorn County
Attala County	Attala County
Benton County	Benton County
Biloxi City	Biloxi City in Harrison County
Bolivar County	Bolivar County
Calhoun County	Calhoun County
Carroll County	Carroll County
Chickasaw County	Chickasaw County
Choctaw County	Choctaw County
Claiborne County	Claiborne County
Clarke County	Clarke County
Clay County	Clay County
Coahoma County	Coahoma County
Columbus City	Columbus City in Lowndes County
Copiah County	Copiah County
Covington County	Covington County
Franklin County	Franklin County
George County	George County
Greene County	Greene County
Greenville City	Greenville City in Washington County
Grenada County	Grenada County
Gulfport City	Gulfport City in Harrison County
Holmes County	Holmes County
Humphreys County	Humphreys County
Issaquena County	Issaquena County
Itawamba County	Itawamba County
Jasper County	Jasper County
Jefferson County	Jefferson County
Jefferson Davis County	Jefferson Davis County
Jones County	Jones County
Kemper County	Kemper County
Lawrence County	Lawrence County
Leake County	Leake County
Balance of Lee County	Lee County less Tupelo City
Leflore County	Leflore County
Lincoln County	Lincoln County
Marion County	Marion County
Marshall County	Marshall County
Monroe County	Monroe County
Montgomery County	Montgomery County
Neshoba County	Neshoba County
Noxubee County	Noxubee County
Panola County	Panola County
Pascagoula City	Pascagoula City in Jackson County
Pearl River County	Pearl River County
Perry County	Perry County
Pike County	Pike County
Prentiss County	Prentiss County
Quitman county	Quitman County
Sharkey County	Sharkey County
Stone County	Stone County
Sunflower County	Sunflower County
Tallahatchie County	Tallahatchie County
Tate County	Tate County
Tippah County	Tippah County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Tishomingo County	Tishomingo County
Tunica County	Tunica County
Vicksburg City	Vicksburg City in Warren County
Walthall County	Walthall County
Balance of Washington County.	Washington County less Greenville City
Wayne County	Wayne County
Webster County	Webster County
Wilkinson County	Wilkinson County
Winston County	Winston County
Yalobusha County	Yalobusha County
Yazoo County	Yazoo County
Missouri	
Bates County	Bates County
Benton County	Benton County
Bollinger County	Bollinger County
Butler County	Butler County
Caldwell County	Caldwell County
Carroll County	Carroll County
Carter County	Carter County
Crawford County	Crawford County
Dallas County	Dallas County
Dent County	Dent County
Douglas County	Douglas County
Dunklin County	Dunklin County
Franklin County	Franklin County
Henry County	Henry County
Hickory County	Hickory County
Iron County	Iron County
Jefferson County	Jefferson County
Laclede County	Laclede County
Lincoln County	Lincoln County
Linn County	Linn County
Madison County	Madison County
Miller County	Miller County
Mississippi County	Mississippi County
Montgomery County	Montgomery County
Morgan County	Morgan County
New Madrid County	New Madrid County
Pemiscot County	Pemiscot County
Ray County	Ray County
Reynolds County	Reynolds County
Ripley County	Ripley County
Scott County	Scott County
Shannon County	Shannon County
St Louis City	St Louis City
St. Clair County	St. Clair County
St. Francois County	St. Francois County
Ste. Genevieve County	Ste. Genevieve County
Stoddard County	Stoddard County
Stone County	Stone County
Taney County	Taney County
Texas County	Texas County
Warren County	Warren County
Washington County	Washington County
Wayne County	Wayne County
Webster County	Webster County
Wright County	Wright County
Montana	
Big Horn County	Big Horn County
Blaine County	Blaine County
Butte—Silver Bow City	Butte—Silver Bow City in Silver Bow County
Deer Lodge County	Deer Lodge County
Fergus County	Fergus County
Flathead County	Flathead County
Glacier County	Glacier County
Golden Valley County	Golden Valley County
Granite County	Granite County
Lake County	Lake County
Lincoln County	Lincoln County
Mineral County	Mineral County
Musselshell County	Musselshell County
Park County	Park County
Ravalli County	Ravalli County
Roosevelt County	Roosevelt County
Rosebud County	Rosebud County
Sanders County	Sanders County
Balance of Silver Bow County.	Silver Bow County less Butte—Silver Bow City
Nevada	
North Las Vegas City	North Las Vegas City in Clark County
New Hampshire	
Belknap County	Belknap County
Balance of Rockingham County.	Rockingham County less Portsmouth City
New Jersey	
Atlantic City	Atlantic City in Atlantic County
Camden City	Camden City in Camden County
Cape May County	Cape May County
Balance of Cumberland County.	Cumberland County Less Millville City
Vineland City	
East Orange City	East Orange City in Essex County
Elizabeth City	Elizabeth City in Union County
Garfield City	Garfield City in Bergen County
Hoboken City	Hoboken City in Hudson County
Jersey City	Jersey City in Hudson County
Lakewood Township	Lakewood Township in Ocean County
Millville City	Millville City in Cumberland County
Newark City	Newark City in Essex County
Passaic City	Passaic City in Passaic County
Paterson City	Paterson City in Passaic County
Pemberton Township	Pemberton Township in Burlington County
Perth Amboy City	Perth Amboy City in Middlesex County
Plainfield City	Plainfield City in Union County
Trenton City	Trenton City in Mercer County
Union City	Union City in Hudson County
Vineland City	Vineland City in Cumberland County
West New York Town	West New York Town in Hudson County
New Mexico	
Alamogordo City	Alamogordo City in Otero County
Catron County	Catron County
Cibola County	Cibola County
Colfax County	Colfax County
De Baca County	De Baca County
Balance of Dona Ana County.	Dona Ana County Less Las Cruces City
Grant County	Grant County
Guadalupe County	Guadalupe County
Harding County	Harding County
Luna County	Luna County
McKinley County	McKinley County
Mora County	Mora County
Rio Arriba County	Rio Arriba County
Roswell City	Roswell City in Chaves County
Balance of San Juan County.	San Juan County Less Farmington City
San Miguel County	San Miguel County
Taos County	Taos County
Torrance County	Torrance County
Valencia County	Valencia County
New York	
Auburn City	Auburn City in Cayuga County
Bronx County	Bronx County
Buffalo City	Buffalo City in Erie County
Cattaraugus County	Cattaraugus County
Essex County	Essex County
Franklin County	Franklin County
Fulton County	Fulton County
Genesee County	Genesee County
Hamilton County	Hamilton County
Balance of Jefferson County.	Jefferson County Less Watertown City
Kings County	Kings County
Lewis County	Lewis County
Lockport City	Lockport City in Niagara County
Montgomery County	Montgomery County
Niagara Falls City	Niagara Falls City in Niagara County
Oswego County	Oswego County
St. Lawrence County	St. Lawrence County
Warren County	Warren County
Watertown City	Watertown City in Jefferson County
Wyoming County	Wyoming County
North Carolina	
Bladen County	Bladen County
Brunswick County	Brunswick County
Cherokee County	Cherokee County
Goldsboro City	Goldsboro City in Wayne County
Graham County	Graham County
Hyde County	Hyde County
McDowell County	McDowell County
Mitchell County	Mitchell County
Person County	Person County
Robeson County	Robeson County
Scotland County	Scotland County
Swain County	Swain County
Tyrrell County	Tyrrell County
Vance County	Vance County
Warren County	Warren County
Wilson City	Wilson City in Wilson County
North Dakota	
Benson County	Benson County
Eddy County	Eddy County
Kidder County	Kidder County
McHenry County	McHenry County
Pembina County	Pembina County
Rolette County	Rolette County
Sioux County	Sioux County
Ohio	
Adams County	Adams County
Ashtabula County	Ashtabula County
Brown County	Brown County
Canton City	Canton City in Stark County
Cleveland City	Cleveland City in Cuyahoga County
Crawford County	Crawford County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Dayton City	Dayton City in Montgomery County
Defiance County	Defiance County
East Cleveland City	East Cleveland City in Cuyahoga County
Elyria City	Elyria City in Lorain County
Fulton County	Fulton County
Gallia County	Gallia County
Guernsey County	Guernsey County
Hardin County	Hardin County
Harrison County	Harrison County
Henry County	Henry County
Highland County	Highland County
Hocking County	Hocking County
Huron County	Huron County
Jackson County	Jackson County
Lima City	Lima City in Allen County
Lorain City	Lorain City in Lorain County
Balance of Lorain County.	Lorain County Less Elyria City Lorain City
Mansfield City	Mansfield City in Richland County
Marion City	Marion City in Marion County
Massillon City	Massillon City in Stark County
Meigs County	Meigs County
Middletown City	Middletown City in Butler County
Monroe County	Monroe County
Morgan County	Morgan County
Morrow County	Morrow County
Balance of Muskingum County.	Muskingum County Less Zanesville City
Noble County	Noble County
Ottawa County	Ottawa County
Paulding County	Paulding County
Perry County	Perry County
Pike County	Pike County
Putnam County	Putnam County
Balance of Richland County.	Richland County Less Mansfield City
Ross County	Ross County
Sandusky County	Sandusky County
Scioto County	Scioto County
Seneca County	Seneca County
Springfield City	Springfield City in Clark County
Toledo City	Toledo City in Lucas County
Vinton County	Vinton County
Warren City	Warren City in Trumbull County
Wyandot County	Wyandot County
Youngstown City	Youngstown City in Mahoning County
Zanesville City	Zanesville City in Muskingum County
Oklahoma	
Caddo County	Caddo County
Choctaw County	Choctaw County
Coal County	Coal County
Cotton County	Cotton County
Creek County	Creek County
Grady County	Grady County
Haskell County	Haskell County
Hughes County	Hughes County
Latimer County	Latimer County
Le Flore County	Le Flore County
Mayes County	Mayes County
McCurtain County	McCurtain County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Murray County	Murray County
Muskogee City	Muskogee City in Muskogee County
Balance of Muskogee County.	Muskogee County less Muskogee City
Nowata County	Nowata County
Okmulgee County	Okmulgee County
Ottawa County	Ottawa County
Pittsburg County	Pittsburg County
Pushmataha County	Pushmataha County
Rogers County	Rogers County
Seminole County	Seminole County
Sequoyah County	Sequoyah County
Shawnee City	Shawnee City in Pottawatomie County
Tillman County	Tillman County
Oregon	
Baker County	Baker County
Columbia County	Columbia County
Coos County	Coos County
Douglas County	Douglas County
Grant County	Grant County
Harney County	Harney County
Hood River County	Hood River County
Josephine County	Josephine County
Klamath County	Klamath County
Lake County	Lake County
Balance of Linn County	Linn County Less Albany City
Morrow county	Morrow county
Springfield city	Springfield city in Lane county
Umatilla county	Umatilla county
Wallowa county	Wallowa county
Wasco county	Wasco county
Wheeler county	Wheeler county
Pennsylvania	
Altoona city	Altoona city in Blair county
Armstrong county	Armstrong county
Beaver county	Beaver county
Bedford county	Bedford county
Balance of Blair county	Blair county less Altoona city
Bristol township	Bristol township in Bucks county
Balance of Cambria county.	Cambria county less Johnstown city
Cameron county	Cameron county
Carbon county	Carbon county
Clarion county	Clarion county
Clearfield county	Clearfield county
Clinton county	Clinton county
Columbia county	Columbia county
Crawford county	Crawford county
Elk county	Elk county
Erie city	Erie city in Erie county
Fayette county	Fayette county
Forest county	Forest county
Fulton county	Fulton county
Greene county	Greene county
Hazleton city	Hazleton city in Luzerne county
Huntingdon county	Huntingdon county
Indiana county	Indiana county
Jefferson county	Jefferson county
Johnstown city	Johnstown city in Cambria county
Juniata county	Juniata county
Balance of Luzerne county.	Luzerne county less Hazleton city Wilkes-Barre city
Balance of Lycoming county.	Lycoming county less Williamsport city

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Mifflin county	Mifflin county
Monroe county	Monroe county
Northumberland county	Northumberland county
Potter county	Potter county
Reading city	Reading city in Berks county
Schuylkill county	Schuylkill county
Snyder county	Snyder county
Somerset county	Somerset county
Susquehanna county	Susquehanna county
Tioga county	Tioga county
Wayne county	Wayne county
Wilkes-Barre city	Wilkes-Barre city in Luzerne county
Williamsport city	Williamsport city in Lycoming county
Wyoming county	Wyoming county
Puerto Rico	
Adjuntas Municipio	Adjuntas Municipio
Aguada Municipio	Aguada Municipio
Aguadilla Municipio	Aguadilla Municipio
Aguas Buenas Municipio	Aguas Buenas Municipio
Aibonito Municipio	Aibonito Municipio
Anasco Municipio	Anasco Municipio
Arecibo Municipio	Arecibo Municipio
Arroyo Municipio	Arroyo Municipio
Barceloneta Municipio	Barceloneta Municipio
Barranquitas Municipio	Barranquitas Municipio
Bayamon Municipio	Bayamon Municipio
Cabo Rojo Municipio	Cabo Rojo Municipio
Caguas Municipio	Caguas Municipio
Camuy Municipio	Camuy Municipio
Canovanas Municipio	Canovanas Municipio
Carolina Municipio	Carolina Municipio
Catano Municipio	Catano Municipio
Cayey Municipio	Cayey Municipio
Ceiba Municipio	Ceiba Municipio
Ciales Municipio	Ciales Municipio
Cidra Municipio	Cidra Municipio
Coamo Municipio	Coamo Municipio
Comerio Municipio	Comerio Municipio
Corozal Municipio	Corozal Municipio
Dorado Municipio	Dorado Municipio
Fajardo Municipio	Fajardo Municipio
Florida Municipio	Florida Municipio
Guanica Municipio	Guanica Municipio
Guayama Municipio	Guayama Municipio
Guayanilla Municipio	Guayanilla Municipio
Gurabo Municipio	Gurabo Municipio
Hatillo Municipio	Hatillo Municipio
Hormigueros Municipio	Hormigueros Municipio
Humacao Municipio	Humacao Municipio
Isabela Municipio	Isabela Municipio
Jayuya Municipio	Jayuya Municipio
Juana Diaz Municipio	Juana Diaz Municipio
Juncos Municipio	Juncos Municipio
Lajas Municipio	Lajas Municipio
Lares Municipio	Lares Municipio
Las Marias Municipio	Las Marias Municipio
Las Piedras Municipio	Las Piedras Municipio
Loiza Municipio	Loiza Municipio
Luquillo Municipio	Luquillo Municipio
Manati Municipio	Manati Municipio
Maricao Municipio	Maricao Municipio
Maunabo Municipio	Maunabo Municipio
Mayaguez Municipio	Mayaguez Municipio
Moca Municipio	Moca Municipio
Morovis Municipio	Morovis Municipio
Naguabo Municipio	Naguabo Municipio
Naranjito Municipio	Naranjito Municipio
Orocovis Municipio	Orocovis Municipio
Patillas Municipio	Patillas Municipio
Penuelas Municipio	Penuelas Municipio
Ponce Municipio	Ponce Municipio

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Quebradillas Municipio	Quebradillas Municipio
Rincon Municipio	Rincon Municipio
Rio Grande Municipio	Rio Grande Municipio
Sabana Grande Municipio.	Sabana Grande Municipio
Salinas Municipio	Salinas Municipio
San German Municipio	San German Municipio
San Juan Municipio	San Juan Municipio
San Lorenzo Municipio	San Lorenzo Municipio
San Sebastian Municipio	San Sebastian Municipio
Santa Isabel Municipio	Santa Isabel Municipio
Toa Alta Municipio	Toa Alta Municipio
Toa Baja Municipio	Toa Baja Municipio
Trujillo Alto Municipio	Trujillo Alto Municipio
Utuado Municipio	Utuado Municipio
Vega Alta Municipio	Vega Alta Municipio
Vega Baja Municipio	Vega Baja Municipio
Vieques Municipio	Vieques Municipio
Villalba Municipio	Villalba Municipio
Yabucoa Municipio	Yabucoa Municipio
Yauco Municipio	Yauco Municipio
Rhode Island	
Bristol Town	Bristol Town
Burrillville Town	Burrillville Town
Central Falls City	Central Falls City
Charlestown Town	Charlestown Town
Coventry Town	Coventry Town
Cumberland Town	Cumberland Town
East Providence City	East Providence City
Foster Town	Foster Town
Johnston Town	Johnston Town
Lincoln Town	Lincoln Town
Little Compton Town	Little Compton Town
New Shoreham Town	New Shoreham Town
North Providence Town	North Providence Town
Pawtucket City	Pawtucket City
Providence City	Providence City
Scituate Town	Scituate Town
Tiverton Town	Tiverton Town
Warren Town	Warren Town
West Greenwich Town	West Greenwich Town
West Warwick Town	West Warwick Town
Woonsocket City	Woonsocket City
South Carolina	
Anderson City	Anderson City in Anderson County
Bamberg County	Bamberg County
Barnwell County	Barnwell County
Calhoun County	Calhoun County
Chester County	Chester County
Clarendon County	Clarendon County
Dillon County	Dillon County
Fairfield County	Fairfield County
Georgetown County	Georgetown County
Balance of Horry County	Horry County less Myrtle Beach City
Kershaw County	Kershaw County
Lancaster County	Lancaster County
Marion County	Marion County
Marlboro County	Marlboro County
McCormick County	McCormick County
Sumter City	Sumter City in Sumter County
Balance of Sumter County.	Sumter County less Sumter City
Union County	Union County
Williamsburg County	Williamsburg County
South Dakota	
Buffalo County	Buffalo County
Corson County	Corson County
Dewey County	Dewey County
Shannon County	Shannon County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Tennessee	
Bedford County	Bedford County
Benton County	Benton County
Campbell County	Campbell County
Cannon County	Cannon County
Carroll County	Carroll County
Clarksville City	Clarksville City in Montgomery County
Cocke County	Cocke County
Columbia City	Columbia City in Maury County
Cumberland County	Cumberland County
Decatur County	Decatur County
Fayette County	Fayette County
Fentress County	Fentress County
Gibson County	Gibson County
Giles County	Giles County
Grainger County	Grainger County
Greene County	Greene County
Grundy County	Grundy County
Hamblen County	Hamblen County
Hardin County	Hardin County
Haywood County	Haywood County
Henderson County	Henderson County
Hickman County	Hickman County
Houston County	Houston County
Humphreys County	Humphreys County
Jackson County	Jackson County
Jefferson County	Jefferson County
Johnson County	Johnson County
Lake County	Lake County
Lauderdale County	Lauderdale County
Lawrence County	Lawrence County
Lewis County	Lewis County
Lincoln County	Lincoln County
Macon County	Macon County
Marion County	Marion County
Balance of Maury County	Maury County less Columbia City
McMinn County	McMinn County
McNairy County	McNairy County
Meigs County	Meigs County
Monroe County	Monroe County
Morgan County	Morgan County
Obion County	Obion County
Overton County	Overton County
Perry County	Perry County
Polk County	Polk County
Rhea County	Rhea County
Scott County	Scott County
Sevier County	Sevier County
Unicoi County	Unicoi County
Van Buren County	Van Buren County
Warren County	Warren County
Wayne County	Wayne County
White County	White County
Texas	
Balance of Angelina County.	Angelina County less Lufkin City
Baytown City	Baytown City in Harris County
Brooks County	Brooks County
Brownsville City	Brownsville City in Cameron County
Balance of Cameron County.	Cameron County less Brownsville City
Cass County	Cass County
Coleman County	Coleman County
Coryell County	Coryell County
Del Rio City	Del Rio City in Val Verde County
Dimmit County	Dimmit County
Duval County	Duval County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Eagle Pass City	Eagle Pass City in Maverick County
Balance of Ector County	Ector County less Odessa City
Edinburg City	Edinburg City in Hidalgo County
Edwards County	Edwards County
El Paso City	El Paso City in El Paso County
Balance of El Paso County.	El Paso County less El Paso City
Frio County	Frio County
Harlingen City	Harlingen City in Cameron County
Henderson County	Henderson County
Balance of Hidalgo County.	Hidalgo County less Edinburg City McAllen City Mission City Pharr City Weslaco City
Jasper County	Jasper County
Jim Hogg County	Jim Hogg County
Jim Wells County	Jim Wells County
Killeen City	Killeen City in Bell County
La Salle County	La Salle County
Laredo City	Laredo City in Webb County
Liberty County	Liberty County
Longview City	Longview City in Gregg County Harrison County
Matagorda County	Matagorda County
Balance of Maverick County.	Maverick County less Eagle Pass City
McAllen City	McAllen City in Hidalgo County
McCulloch County	McCulloch County
Mission City	Mission City in Hidalgo County
Morris County	Morris County
Newton County	Newton County
Balance of Nueces County.	Nueces County less Corpus Christi City
Orange City	Orange City in Orange County
Balance of Orange County.	Orange County less Orange City
Paris City	Paris City in Lamar County
Pharr City	Pharr City in Hidalgo County
Port Arthur City	Port Arthur City in Jefferson County
Presidio County	Presidio County
Red River County	Red River County
Reeves County	Reeves County
Sabine County	Sabine County
San Patricio County	San Patricio County
Somervell County	Somervell County
Starr County	Starr County
Texarkana City Tex	Texarkana City Tex in Bowie County
Texas City	Texas City in Galveston County
Uvalde County	Uvalde County
Weslaco City	Weslaco City in Hidalgo County
Willacy County	Willacy County
Zapata County	Zapata County
Zavala County	Zavala County
Utah	
Duchesne County	Duchesne County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Emery County	Emery County
Garfield County	Garfield County
Piute County	Piute County
San Juan County	San Juan County
Sanpete County	Sanpete County
Wayne County	Wayne County
Vermont	
Essex County	Essex County
Franklin County	Franklin County
Grand Isle County	Grand Isle County
Orleans County	Orleans County
Virginia	
Alleghany County	Alleghany County
Bath County	Bath County
Brunswick County	Brunswick County
Buchanan County	Buchanan County
Buena Vista City	Buena Vista City
Caroline County	Caroline County
Carroll County	Carroll County
Charlotte County	Charlotte County
Clifton Forge City	Clifton Forge City
Covington City	Covington City
Danville City	Danville City
Dickenson County	Dickenson County
Floyd County	Floyd County
Galax City	Galax City
Giles County	Giles County
Grayson County	Grayson County
Halifax County	Halifax County
Henry County	Henry County
Highland County	Highland County
Lancaster County	Lancaster County
Lee County	Lee County
Lunenburg County	Lunenburg County
Martinsville City	Martinsville City
Balance of Montgomery County.	Montgomery County less Blacksburg Town
Northampton County	Northampton County
Northumberland County	Northumberland County
Norton City	Norton City
Page County	Page County
Petersburg City	Petersburg City
Pittsylvania County	Pittsylvania County
Prince Edward County	Prince Edward County
Pulaski County	Pulaski County
Radford City	Radford City
Rappahannock County	Rappahannock County
Russell County	Russell County
Smyth County	Smyth County
South Boston City	South Boston City
Surry County	Surry County
Tazewell County	Tazewell County
Warren County	Warren County
Westmoreland County	Westmoreland County
Wise County	Wise County
Wytho County	Wythe County
Washington	
Adams County	Adams County
Chelan County	Chelan County
Clallam County	Clallam County
Columbia County	Columbia County
Balance of Cowlitz County.	Cowlitz County less Longview City
Douglas County	Douglas County
Ferry County	Ferry County
Franklin County	Franklin County
Grant County	Grant County
Grays Harbor County	Grays Harbor County
Kennewick City	Kennewick City in Benton County
Kittitas County	Kittitas County
Klickitat County	Klickitat County
Lewis County	Lewis County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Mason County	Mason County
Okanogan County	Okanogan County
Pacific County	Pacific County
Pend Oreille County	Pend Oreille County
Skagit County	Skagit County
Skamania County	Skamania County
Stevens County	Stevens County
Wahkiakum County	Wahkiakum County
Yakima City	Yakima City in Yakima County
Balance of Yakima County.	Yakima County less Yakima City
West Virginia	
Barbour County	Barbour County
Berkeley County	Berkeley County
Boone County	Boone County
Braxton County	Braxton County
Brooke County	Brooke County
Balance of Cabell County.	Cabell County Less Huntington City
Calhoun County	Calhoun County
Clay County	Clay County
Doddridge County	Doddridge County
Fayette County	Fayette County
Gilmer County	Gilmer County
Grant County	Grant County
Greenbrier County	Greenbrier County
Hampshire County	Hampshire County
Hancock County	Hancock County
Hardy County	Hardy County
Harrison County	Harrison County
Jackson County	Jackson County
Jefferson County	Jefferson County
Lewis County	Lewis County
Lincoln County	Lincoln County
Logan County	Logan County
Marion County	Marion County
Balance of Marshall County.	Marshall County Less Wheeling City
Mason County	Mason County
McDowell County	McDowell County
Mercer County	Mercer County
Mingo County	Mingo County
Monroe County	Monroe County
Morgan County	Morgan County
Nicholas County	Nicholas County
Parkersburg City	Parkersburg City In Wood County
Pleasants County	Pleasants County
Pocahontas County	Pocahontas County
Preston County	Preston County
Putnam County	Putnam County
Raleigh County	Raleigh County
Randolph County	Randolph County
Ritchie County	Ritchie County
Roane County	Roane County
Summers County	Summers County
Taylor County	Taylor County
Tucker County	Tucker County
Tyler County	Tyler County
Upshur County	Upshur County
Balance of Wayne County.	Wayne County Less Huntington City
Webster County	Webster County
Wetzel County	Wetzel County
Wirt County	Wirt County
Balance of Wood County	Wood County Less Parkersburg City
Wyoming County	Wyoming County
Wisconsin	
Balance of Calumet County.	Calumet County Less Appleton City
Clark County	Clark County
Green Lake County	Green Lake County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1992 through September 30, 1993]

Eligible labor surplus areas	Civil jurisdictions included
Janesville City	Janesville City in Rock County
Kenosha City	Kenosha City in Kenosha County
Marinette County	Marinette County
Menominee County	Menominee County
Oconto County	Oconto County
Racine City	Racine City in Racine County
Rusk County	Rusk County
Sawyer County	Sawyer County
Washburn County	Washburn County

[FR Doc. 92-24079 Filed 10-5-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before November 20, 1992. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National

Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Commerce, Patent and Trademark Office (N1–241–92–3). Quality review samples of allowed patent applications.

2. Department of Defense, Office of the Secretary (N1–330–92–7). Routine records of the Defense Protective Service.

3. Department of Education, Office of Postsecondary Education (N1–441–92–1). Records relating to the Pell Grant program.

4. Department of Health and Human Services, Administration for Children and Families (N1–292–92–3). Records of Project SHARE, 1978–86.

5. Department of the Interior, Bureau of Mines (N1–70–92–1). Administrative records.

6. Department of Labor, Office of Management, Administration and Planning (N1–448–92–1). Comprehensive schedule covering personnel, management, automation, and support services records.

7. Department of State, Bureau of Economic Affairs (N1–59–92–27). Duplicative and fragmentary records.

8. Department of State (N1–59–92–28). Bureau of Intelligence and Research (N1–59–92–28). Routine, facilitative, and fragmentary records.

9. Department of State, All Foreign Service Posts (N1–84–92–3). Duplicate architectural drawings.

10. Department of the Treasury, Financial Management Service (N1–425–92–1). Presidential authorization letters for expenditures under the Emergency Relief Appropriation Acts of 1935–1942.

11. Defense Logistics Agency (N1–361–92–4). Routine records relating to alternative fuels.

12. United States Information Agency (N1–306–92–1). Public Diplomacy Query System indexes and text.

Dated: September 28, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92–24179 Filed 10–5–92; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Meeting

The National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee (MARC).

Place: State Plaza Hotel, Diplomat Room, 2117 E Street, NW., Washington, DC 20037.

Date: Thursday, October 15 and Friday, October 16, 1992.

Time: 8:30 a.m.–5 p.m. (Thursday), 9 a.m.–5 p.m. (Friday).

Type of Meeting: Open.

Contact Person: Dr. John H. Hoppa, Jr., Director, Division of Materials Research (DMR); room 408, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–9794. FAX: (202) 357–7959.

Minutes: May be obtained from the contact person, Dr. John H. Hoppa, Jr., at the above stated address.

Purpose of Committee: To provide advice and recommendations concerning support of materials research.

Agenda: Thursday, October 15, 1992.

8:30 a.m.—Introductory Remarks and Adoption of Minutes.

9 a.m.—DMR Status Reports and Budget Briefing.

11:30 a.m.—Presentation by Dr. Raymond Bye and Dr. Charles Brownstein on the Special Commission on the Future of the NSF.

12:15 p.m.—Working Lunch.

1:30 p.m.—Presentation by Dr. La Verne Hess on Advanced Manufacturing Technologies Initiative.

2:30 p.m.—Division Director's Perspective.

3 p.m.—Discussion of Strategic Planning for the Division of Materials Research.

5 p.m.—Adjourn.

Friday, October 16, 1992.

9 a.m.—Summary Discussion and Development of MRAC Strategic Planning Action Items.

10:30 a.m.—Meeting with Dr. Walter E. Massey, Director, NSF.

11:30 a.m.—Committee Free Discussion Period.

12 Noon—Working Lunch: Meeting with Dr. William Harris, Assistant Director, Directorate for Mathematical and Physical Sciences.

1 p.m.—Break.

1:30 p.m.—Discussion of Tactical Planning for the Division of Materials Research.

4:30 p.m.—Development of MRAC Tactical Planning Action Items.

5 p.m.—Adjourn.

Reason for Late Notice: Agenda re-evaluated and modified, in collaboration with MRAC Chairman, to allow appropriate consideration of issues related to the NSF Special Commission.

Dated: October 1, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24239 Filed 10–5–92; 8:45 am]

BILLING CODE 7555–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Medical Reports.

(2) *Form(s) submitted:* G–3EMP, G–250, G–260, RL–11b and RL–11d.

(3) *OMB Number:* 3220–0038.

(4) *Expiration date of current OMB clearance:* One year from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* State or local governments, Businesses or other for-

profit, Non-profit institutions, Small businesses or organizations.

(8) *Estimated annual number of respondents:* 27,400.

(9) *Total annual responses:* 27,400.

(10) *Average time per response:* .38883 hours.

(11) *Total annual reporting hours:* 10,654.

(12) *Collection description:* The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders them incapable of working in their regular occupation (occupational disability) or any occupation (total disability). The medical reports obtain information needed for determining the nature and severity of the impairment.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92–24178 Filed 10–5–92; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended September 25, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48365.

Date filed: September 22, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC31 Mail Vote 597–Commodity Rate For Fish.

Proposed Effective Date: October 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–24196 Filed 10–5–92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 25, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answer, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48363.

Date filed: September 21, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 19, 1992.

Description: Application of Scibe-Airlift S.P.R.L., pursuant to section 402 of the Act and subpart Q of the Regulations, for a foreign air carrier permit to authorize charter foreign air transportation of persons, property and mail between a point or points in the Republic of Zaire and a point or points in the United States.

Docket Number: 48367.

Date filed: September 24, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 22, 1992.

Description: Application of Millon Air, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests amendment of its certificate of public convenience and necessity issued by Order 91–5–24 so as to authorize scheduled transportation of property and mail between the United States and Bolivia, between the United States and Chile, between the United States and the Dominican Republic, between the United States and Ecuador, between the United States and Honduras, between the United States and Nicaragua, and between the United States and Venezuela.

Docket Number: 48373.

Date filed: September 25, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 23, 1992.

Description: Application of American Airlines, Inc., pursuant to section 401 of the Act of the Act and subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 370 (Dallas/Ft. Worth-London/Amsterdam/Brussels), and for the addition of a new condition authorizing the integration of route authority on American's certificates for Routes 370, 137, and 602.

Docket Number: 43591.

Date filed: September 24, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 22, 1992.

Description: Application of USAir, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests renewal of the Cleveland-Toronto/Montreal authority in its certificate for Route 291 for a period of five years.

Docket Number: 45008.

Date filed: September 24, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 22, 1992.

Description: Application of USAir, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, for renewal of New York-Ottawa authority in its certificate for Route 540 for a period of five years.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–24197 Filed 10–5–92; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Fitness Determination of New Hampshire Helicopters, Inc.; d/b/a Business Helicopters

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination; Order 92–9–71, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that New Hampshire Helicopters, Inc. d/b/a Business Helicopters is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation. 400

Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: September 30, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–24198 Filed 10–5–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–92–26]

Petition for Exemption; Summary of Petitions Received; Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; Correction.

SUMMARY: This action makes a correction to the comment close date for a notice of petitions for exemption published on September 22, 1992, (57 FR 43770). This action corrects that error.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 12, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, attn: Rules Docket (AGC–10), Petition Docket No. ————, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

SUPPLEMENTARY INFORMATION: The document was published September 22, 1992, (57 FR 43770). In the third columri under "Dates", the comment date should read October 12, 1992. Please change the docket number to read October 12, 1992, instead of October 12, 1993.

Issued in Washington, DC, on September 29, 1993.

Denise Castaldo,

Manager, Program Management Staff.

[FR Doc. 92–24122 Filed 10–5–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 92–84]

Revocation of Commercial Gauger Approval of SGS Hawaii, Inc. of Honolulu, HI

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of the Customs approval of a commercial gauger.

SUMMARY: SGS Hawaii, Inc. of Honolulu, Hawaii has notified the U.S. Customs Service that they no longer have a need to operate as a Customs approved commercial gauger and have requested that Customs revoke its approval. Therefore, pursuant to § 151.13. of the Customs Regulations (19 CFR 151.13), the Customs approval granted to SGS Hawaii, Inc. to gauge petroleum and petroleum products, organic chemicals in bulk and liquid form and vegetable oils has been revoked in full, without prejudice.

EFFECTIVE DATE: September 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, Room 7113, 1301 Constitution Avenue NW., Washington, DC 20229 (202) 927–1060.

Dated: September 30, 1992.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 92–24124 Filed 10–5–92; 8:45 am]

BILLING CODE 4820–02–M

Denial of Application to Restrict Parallel Imports Bearing Genuine Trademarks

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Denial of application to restrict parallel imports bearing genuine trademarks.

SUMMARY: This document gives notice of the denial of an application to prevent the importation of certain goods bearing genuine "Duracell" trademarks which was submitted to take advantage of the terms of a district court injunction requiring the U.S. Customs Service to provide protection to trademarks meeting certain criteria.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Chief, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., room 2104, Washington, DC 20229 (202–927–0650).

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1992, The United States District Court for the District of Columbia issued an amended order in *Lever Brothers Co.* v. *United States*, No. 86–3151 (HHG), which enjoined the U.S. Customs Service from allowing the importation of foreign-made goods otherwise admissible under 19 CFR 133.21(c)(2) that bear a trademark identical to a valid United States trademark but which are materially physically different. That order has been appealed to the U.S. Court of Appeals for the D.C. Circuit. *Lever Bros. Co.* v. *United States*, Appeal No. 92–5185. As a result of the district court action, and pending further action by a court or final resolution of the appeal, owners of recorded trademarks that are under common ownership or control with foreign companies that use the trademark on foreign-made goods with material physical differences were invited to apply to Customs to stop the importation of those foreign-made goods (57 FR 28605).

In order to receive the protection as outlined by the district court, applicants must first show that the trademark owner requesting the protection falls within the scope of §133.21(c)(2) of the Customs Regulations, as opposed to §133.21(c)(1). The District Court for the District of Columbia ordered Customs to provide protection only when goods would otherwise be admissible under §133.21(c)(2), which applies to goods of a foreign trademark owner under common ownership or control with the U.S. trademark owner. Section (c)(1) applies to goods of a foreign trademark owner that also owns the U.S. trademark.

Applicants for protection under the terms of the court order must also show Customs that the foreign affiliate of the U.S. trademark owner uses the mark on goods with material physical differences. For this, applicants must show Customs that the goods are different, and also that the difference is "material". On June 26, 1992, by publication in the **Federal Register** (57 FR 28605), Customs invited trademark owners to notify Customs if they believe that the trademark owner and the goods bearing the trademark meet these criteria. The notice published on June 26, 1992, also stated that before final action would be taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person opposing the application and that this notice of the action taken in response to

the application will be published in the Federal Register.

An application was submitted pursuant to the June 26, 1992, Federal Register notice, for a restriction against the importation of goods bearing genuine "Duracell" trademarks. The application from Duracell Inc., for protection against parallel imports is comprised of (1) a letter to the Commissioner of Customs dated July 7, 1992, (2) a letter to Barry P. Miller, Senior Attorney, Intellectual Property Rights Branch, dated August 21, 1992, and (3) a letter to John F. Atwood, Chief, Intellectual Property Rights Branch, also dated August 21, 1992. The July 7, 1992, letter sought to change the ownership of the recorded trademark and to apply for gray market protection under the terms of *Lever Brothers. Company* v. *United States of America*, No. 86–3151, slip op. (D.D.C. April 28, 1992). After a technical amendment required as a result of the expiration of the recordation for the trademark "DURACELL", the applicant submitted the August 21, 1992, letter to the Chief, Intellectual Property Rights, seeking to record the mark and obtain gray market protection. Although this letter included a request "pursuant to section 42 of the Lanham Act, 15 U.S.C. 1124 and section 526 of the Tariff Act, 19 U.S.C. 1526, that no goods bearing such trademark be permitted entry into this country," it contained no arguments in support of the application to receive gray market protection. The letter to the Senior Attorney, Intellectual Property Rights Branch, also dated August 21, 1992, contained the verbatim arguments in support of gray market protection found in the letter to the Commissioner.

After referencing the district court's findings in *Lever Brothers*, the applicant states in its submissions that material physical difference exists "[b]ecause of equally substantive and material differences between domestic[-] and foreign[-]produced Duracell batteries * * * [and because] the Belgian Duracell batteries were not shipped in a manner to protect the batteries from deterioration, that packaging information on the Belgian batteries was incomplete, [and] that similarities in the products led to consumer confusion."

Neither the manner of shipping nor packaging information constitutes a physical difference in the goods as required by the court's order. The statement that consumer confusion is caused by "similarities in the products" weighs against a finding of material physical differences in the goods. In the absence of other evidence on the Customs record, the application does not present a basis for protection, and is denied.

Customs received letters dated September 3, 1992, opposing the application from the International Mass Retain Association, Continent-Wide Enterprises, Ltd, and the Coalition for Competitive Imports. These letters can be viewed at the Intellectual Property Rights Branch, U.S. Customs Service, 1301 Constitution Ave., NW., room 2104, Washington, DC, on weekdays between the hours of 8:30 a.m. and 5 p.m.

Dated: September 30, 1992.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 92–24126 Filed 10–5–92; 8:45 am]

BILLING CODE 4820–02–M

Fiscal Service

[Dept. Circ. 570, 1991—Rev., Supp. No. 28]

Surety Companies Acceptable on Federal Bonds Termination of Authority; American Hardware Mutual Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to American Hardware Mutual Insurance Company, of Minneapolis, Minnesota, under the United States Code, title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds was terminated effective June 30, 1992.

The Company was last listed as an acceptable surety on Federal bonds at 57 FR 30132, July 1, 1991.

With respect to any bonds currently in force with American Hardware Mutual Insurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202/FTS) 874–6602.

Dated: August 4, 1992.

Charles F. Schwan, III,

Director, Funds Management Division.

[FR Doc. 92–24167 Filed 10–5–92; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 194
Tuesday, October 6, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 6, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report.

The staff will brief the Commission on the status of various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: October 1, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–24368 Filed 10–2–92; 8:45 am]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 8, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: FY 1993 Operating Plan.

The staff will brief the Commission on the issues related to the Operating Plan for Fiscal Year 1993.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: October 1, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–24369 Filed 10–2–92; 2:23 pm]

BILLING CODE 6355–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, October 8, 1992

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 8, 1992, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier, Office of International Communications—Title: Regulation of International Common Carrier Services (CC Docket No. 91–360, RM–7578). Summary: The Commission will consider adoption of a *Report and Order* concerning the regulation of international common carrier services.

2—Common Carrier—Title: In re Applications of fONOROLA Corporation (File No. I–T–C–91–103) and EMI Communications Corporation (File No. I–T–C–91–050). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order and Authorization* concerning international private line resale between the United States and Canada.

3—Common Carrier—Title: In the Matter of Billed Party Preference for 0+ InterLATA Calls (CC Docket No. 92–77, Phase I). Summary: The Commission will consider adoption of a *Report and Order* concerning calling cards and pay telephones.

4—Office of Engineering and Technology—Title: Amendment of the Commission's Rules with Regard to the Establishment and Regulation of New digital audio radio services (Gen. Docket No. 90–357). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* to allocate spectrum for a satellite digital audio radio service.

5—Office of Engineering and Technology—Title: Amendment of the Commission's Rules to Establish New Personal Communications Services (Gen. Docket No. 90–314, RMs–7140, 7175 & 7618, PPs 4–20, 26, 27 & 41–78). Summary: The Commission will consider adoption of a *Tentative Decision and Memorandum Opinion and Order* concerning requests for pioneer's preference.

6—Office of Plans and Policy—Title: Inquiry into Encryption Technology for Satellite Cable Programming. Summary: The Commission will consider adoption of a *Notice of Inquiry* concerning competition in the provision of encryption equipment for satellite cable programming and related technological issues.

7—Private Radio—Title: Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* to revise the Private Land Mobile Radio Services and generally promote spectrum efficiency.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Issued: October 1, 1992.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–24390 Filed 10–2–92; 3:23 pm]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION:

TIME AND DATE: 10:00 a.m., October 6, 1992.

PLACE: 1st Floor Hearing Room—Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: Maritime Administration/State Department Briefing on Discussions with Officials of Far East Countries.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92–24335 Filed 10–2–92; 1:28 pm]

BILLING CODE 6730–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Thursday, October 8, 1992.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following.

1. *Cyprus Empire Corporation*, Docket No. WEST 91–454–R, etc. (Issues include whether the judge erred in vacating two citations and an order of withdrawal issued by the Secretary of Labor that charged Cyprus with violations of 30 U.S.C. § 813(f) because of its refusal to allow a representative of its striking employees to accompany the Secretary's inspector during an inspection of its mine.)

2. *Aloe Coal Company*, Docket No. PENN 91–40, etc. (Issues include whether the judge erred in concluding that evidence of violations of safety standards obtained during a mine inspection conducted by the Secretary of Labor pursuant to 30 U.S.C.

§ 513(g)(1) at the request of a representative of Aloe's striking employees is admissible in Commission proceedings.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR §2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Dated: October 1, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92-24374 Filed 10-2-92; 2:54 pm]

BILLING CODE 6735-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. MEETING NOTICE NO. 1-93

ANNOUNCEMENT IN REGARD TO COMMISSION MEETINGS AND HEARINGS

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wed., October 21, 1992 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, DC, on October 2, 1992.

Judith H. Lock,

Administrative Officer.

[FR Doc. 92-24337 Filed 10-2-92; 1:29 pm]

BILLING CODE 4410-01-M

Corrections

Federal Register
Vol. 57, No. 194
Tuesday, October 6, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-805]

Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Mexico

Correction

In notice document 92-22562 beginning on page 42953 in the issue of Thursday, September 17, 1992, make the following correction:

On page 42954, in the second column, beginning with **CURRENCY CONVERSION** and ending on page 42955, in the first column with the text before *DOC Position*, the material should read as follows:

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the average monthly or quarterly exchange rates published by the International Monetary Fund.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1

IMSA objects to its classification as a mandatory respondent in this investigation, which resulted in IMSA's preliminary determination margin being based on best information available (BIA) following IMSA's decision not to submit a questionnaire response. IMSA states that there is no reason given in the record of this case why the Department decided to reclassify it from a voluntary to a mandatory respondent in this case. IMSA notes that examination of its exports to the U.S. was not necessary in order for the Department to examine at least 60 percent of POI subject merchandise sales, pursuant to 19 CFR 353.42(b). Without any other grounds in the record for this reclassification, IMSA contends that, under the regulations and consistent agency practice prior to the preliminary determination, IMSA should not be considered a mandatory respondent in this investigation. Consistent with Department treatment of other proceedings where a voluntary respondent has elected not to participate or whose questionnaire response was deemed insufficient, as in, *e.g.*, Final Determination of Sales at Less than Fair Value: Silicon Metal from Brazil, 56 FR 26977 (June 12, 1991), IMSA contends that it should be assigned the "all others" deposit rate.

Petitioners contend that the Department's resort to BIA was justified as IMSA was clearly aware that it had been chosen as a mandatory respondent on the day the questionnaire was presented. Petitioners cite the Department's Memorandum to the File of December 6, 1992, which indicates that IMSA understood its classification as a mandatory respondent at the time it received the questionnaire. Further, petitioners argue that it was within the Department's power and discretion to name IMSA as a mandatory respondent.

DOC Position

The Department has reconsidered its earlier classification of IMSA as a mandatory respondent and has assigned it the "All Others" rate. At the time of the preliminary determination, the Department was reassessing its policy regarding the treatment of voluntary respondents. At that time, we stated that once a company notified us of its intention to participate, it would be subject to the potential use of BIA if it failed to cooperate. We have since refined the policy. Accordingly, as previously announced, in all ongoing and future proceedings, once a voluntary respondent is provided an antidumping duty questionnaire by the Department and demonstrates its intent to participate in an antidumping investigation by submitting a response to the questionnaire, the Department will treat that respondent on the same basis as a mandatory respondent in all respects, including the potential use of adverse BIA. See Addendum to Notice of Initiation: Certain Flat-rolled Steel Products from Various Countries, 57 FR 33487 (July 29, 1992).

Comment 2

Hylsa claims that, because it grants quantity discounts to at least 20 percent of its sales to home market customers, which are categorized as "Class 1 customers", all U.S. sales should be compared to home market Class 1 sales as these home market transactions meet the quantity discount criteria of 19 CFR 353.55(b).

Petitioners contend that the Department properly rejected this argument in the preliminary determination. They state that Hylsa has turned the regulation on its head and would have the Department compare the prices on sales of completely different quantities. Based on its reading of the statute, petitioners state that sales at quantity discounts shall be the sole basis of foreign market value only when all the sales in the U.S. market are made in comparable quantities. In this case, not all U.S. sales are made in those comparable quantities. Petitioners also argue that Hylsa's claimed home market quantity discounts are not quantity discounts within the meaning of 19 CFR 353.55(b), as they are based on purchase volume expectations rather than quantities of specific sales.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 76N-052E]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Expectorant Drug Products for Over-the-Counter Human Use

Correction

In rule document 92-22005 beginning on page 41857 in the issue of Monday,

September 14, 1992 make the following correction:

On page 41858, in the third column, in the fifth line "his" should read "this".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 85P-0270]

Medical Devices; Reclassification of the Automated Heparin Analyzer

Correction

In proposed rule document 92-22620 beginning on page 43161, in the issue of Friday, September 18, 1992, make the following corrections:

On page 43164, in the first column, in the second full paragraph, in the seventh line "to" should read "of". And on the same page in the second column, in reference 6., in the third line "in" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 92N-0281]

Medical Devices; Classification of Temporomandibular Joint Implants

Correction

In proposed rule document 92-22621 beginning on page 43165, in the issue of Friday, September 18, 1992, make the following corrections:

On page 43168, in the third column, in reference 13., in the first line "Lagrotteria" was misspelled, and in the fourth line "Hour" should read Journal".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 91

[Docket No. R-92-1507; FR-2932-F-06]
RIN 2501-AB13

Comprehensive Housing Affordability Strategies

Correction

In rule document 92-20941 beginning on page 40038 in the issue of Tuesday, September 1, 1992, make the following correction:

§ 91.40 [Corrected]

On page 40060, in the first column, in § 91.40(c), in the fourth line, "date" should read "data".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-309 and 731-TA-528 (Final)]

Magnesium From Canada

Correction

In notice document 92-20420 beginning on page 38696 in the issue of Wednesday, August 26, 1992, make the following correction:

On page 38697, in the first column, in the first full paragraph, in the fifth line, "5220" should read "2550".

BILLING CODE 1505-01-D

federal register

Tuesday
October 6, 1992

Part II

Department of Education

Early Education Program for Children With Disabilities; Grant Availability; Notices

DEPARTMENT OF EDUCATION

Early Education Program for Children With Disabilities

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year 1993.

SUMMARY: The Secretary announces a final priority for the Early Education Program for Children With Disabilities for fiscal year 1993. The Secretary takes this action to focus Federal financial assistance on an identified national need. The priority is intended to increase the availability of personnel to provide early intervention, special education, and related services for infants, toddlers, and preschool aged children with disabilities, and their families.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2466. Telephone: (202) 205–9503. Deaf and hearing impaired individuals may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The purpose of this program is to support projects that are designed (a) to address the special needs of children with disabilities, birth through age eight, and their families, and (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

On June 25, 1992, the Secretary published a notice of proposed priority for this program in the Federal Register (57 FR 28560).

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the Federal Register.

This priority supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by seeking to help these children start school ready to learn. Specifically, National Education Goal 1 calls for all children in America to start school ready to learn.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, three parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: One commenter recommended that the target group be expanded to include service providers for primary-age children with disabilities, since the program authority includes children with disabilities, birth through age eight.

Discussion: Although the program authority includes children with disabilities from birth through eight years of age, the Secretary has determined that the need for personnel to provide services for infants, toddlers and preschool aged children with disabilities is so severe that projects funded under this priority should be limited to training service providers for this population.

Changes: None.

Comment: One commenter recommended that the phrases "professional support" and "and their families" be added in several places in the priority to emphasize these aspects of the purpose of the projects. The commenter also recommended specific language regarding the kinds of follow-up and support activities that should be included in the training models.

Discussion: The Secretary agrees that the phrases "professional support" and "and their families" should be added to the priority to emphasize the importance of these aspects of the priority. The Secretary does not agree, however, that language should be added requiring specific kinds of follow-up and support activities. The Secretary believes that adding that language would be overly prescriptive. However, the kinds of follow-up support and activities recommended by the commenter could be included in projects funded under this priority if project developers so desired.

Changes: The phrases "professional support" and "and their families" have been added to the priority.

Comment: One commenter recommended that training content include substantial information about the Americans with Disabilities Act (ADA).

Discussion: Although it is important that service providers be familiar with the laws and regulations affecting access to services for people with disabilities, the focus of this priority is to enhance the skills of personnel in providing services to young children with disabilities and their families. Therefore, requiring substantial information on the ADA would not be consistent with the purpose of this priority.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority.

Absolute Priority—Model Early Intervention and Preschool Training Projects

Background: Currently, States are striving to implement the Comprehensive System of Personnel Development (CSDP) component of the Program for Infants and Toddlers with Disabilities, under Part H of the Individuals with Disabilities Education Act (IDEA), and to provide improved services to preschool children with disabilities. States have a critical need for models for training personnel about changing populations and exemplary practices in early education of children with disabilities.

This priority supports capacity-building projects that develop, demonstrate, evaluate, and disseminate inservice training and professional support models (and accompanying materials) to prepare early intervention and preschool personnel to provide, coordinate, or enhance early intervention, special education, and related services for infants, toddlers, and preschoolers with disabilities, and their families.

Project Design: Model projects must provide training for professionals and paraprofessionals who are, or could be, engaged in the provision of services but who have not been trained to serve infants, toddlers, or preschoolers with disabilities, and their families. Projects must obtain agreement of existing infant, toddler, or preschool programs that will serve as training sites. The model may target service providers in the corporate or private for-profit sector, as well as in the public or private not-for-profit sector. The model must be based on a conceptual framework that identifies the existing roles and responsibilities of the individuals to be trained, the changes required in those roles to serve infants, toddlers, or preschool children with disabilities, and their families, and the skills needed to implement the new roles. The model must include the direct training of personnel to provide, coordinate, or

enhance early intervention, special education, or related services to those infants, toddlers, or preschool children, and their families, in appropriate environments (which may include hospital, home, community-based, or center-based programs). Training procedures and materials must address the importance of coordinating early intervention, special education, and related services with other service providers, as well as with the family. In addition to initial training, the model must include an array of follow-up and support activities that ensures that personnel participating in the training will master skills and implement services to meet the needs of infants, toddlers, and preschool children with disabilities, and their families.

Models must be consistent with personnel standards, and certification or licensing requirements in the States where the projects are located. Projects must collaborate with relevant State agencies responsible for the CSPD under Part H or Part B of IDEA. Projects must provide assurance that trainees will gain credit from training and that the credit will apply toward a degree, certification, licensure, or renewal of licensure through continuing education credits.

Evaluation: Projects must evaluate the training model through direct assessment of participant skills following the training and after returning to the service setting. At least some measures must be based on direct observation of trainees in the service setting using standardized observational rating techniques.

Dissemination: Projects must prepare and deliver reports as described in 20 U.S.C. 1409(g).

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that design training models to meet the special needs of children (1) who are members of culturally, linguistically, or racially diverse groups, or (2) who have been exposed prenatally to drugs or alcohol.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and action for this program.

Applicable Program Regulations: 34 CFR part 309.

Program Authority: 20 U.S.C. 1423.

Catalog of Federal Domestic Assistance Number: 84.024 Early Education Program for Children with Disabilities.

Dated September 18, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-24151 Filed 10-5-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.024P]

Early Education Program for Children With Disabilities Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide Federal support for a variety of activities designed to address the special problems of infants, toddlers, and preschool aged children with disabilities, and to assist State and local entities in expanding and improving programs and services for those children and their families. Activities include demonstration, outreach, experimental, research, and training projects, and outreach institutes.

This priority supports AMERICA 2000, the President's strategy for achieving the National Education Goals, by assisting those with disabilities to reach the high levels of academic achievement called for by the Goals.

Eligible Applicants: Public agencies and nonprofit private organizations are eligible for awards.

Deadline for Transmittal of Applications: January 11, 1993.

Deadline for Intergovernmental Review: March 12, 1993.

Applications Available: November 5, 1992.

Available Funds: $1,000,000.

Estimated Range of Awards: $120,000–$140,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 309, as amended on October 22, 1991 (56 FR 54686) and June 29, 1992 (57 FR 28964).

Priority: The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4622, Switzer Building, Washington, DC 20202–2644. Telephone (202) 205–9503. Deaf and hearing impaired individuals may call (202) 205–6170 for TDD services.

Program Authority: 20 U.S.C. 1423.

Dated: September 29, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education, and Rehabilitative Services.

[FR Doc. 92-24152 Filed 10-5-92; 8:45 am]

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October 6, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

Demolition and Disposition of Public and Indian Housing; Guidelines for Resident Organization Opportunity to Purchase; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3484; FR-3093-N-01]

Demolition and Disposition of Public and Indian Housing—Opportunity to Purchase by PHA-wide and IHA-wide Resident Councils, the Resident Management Corporation, Resident Council or Tenant Cooperative of the Development

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of guidelines for resident organization opportunity to purchase.

SUMMARY: This, notice provides guidelines and procedures to be followed, in compliance with section 412 of the National Affordable Housing Act, in affording the opportunity to purchase to existing PHA-wide and IHA-wide resident councils and to the resident management corporation, resident council or resident cooperative of the development that is proposed to be demolished or disposed of in whole or a portion thereof by the PHA or IHA. Where no resident management corporation, resident council, or resident cooperative currently exists in the affected development, it also requires that PHAs or IHAs allow 45 days for residents of the affected development to form a new resident organization. These provisions apply to public housing agencies and Indian housing authorities, hereinafter referred to collectively as housing agencies ("HAs").

For purposes of this notice, the term "resident organization," as that term is defined in 24 CFR 905.982, shall be used in place of "resident council" for IHAs.

Final regulations based on this notice will be issued eight months from the date of publication of this notice. The notice is the public's chance to comment. The final rule will be the same unless substantive public comments requesting change are received on this notice.

DATES: Effective date: October 6, 1992. Comment Due Date: December 7, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR MORE INFORMATION CONTACT: For public housing inquiries, Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, room 4136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–1800.

For Indian housing inquiries, Dominic Nessi, Director, Office of Indian Housing, room 4140, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–1015.

The Telecommunications Device for the Deaf (TDD) number is (202) 708–0850.

The telephone numbers set out above are not toll-free.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577–0075.

Background

The demolition/disposition regulations, at 24 CFR part 970 and part 905 (subpart M), currently require that an application for demolition or disposition be developed in consultation with the residents of the development involved, any resident organization for the development, and any HA-wide resident organization that will be affected by the demolition or disposition. Evidence of such consultation must be provided as part of the application before it can be approved by HUD.

Section 412 of the National Affordable Housing Act ("NAHA"), Public Law 101–625, amended section 18 of the U.S. Housing Act of 1937 to require that "tenant councils, resident management corporation, and tenant cooperative, if any," be given appropriate opportunities to purchase the project or portion of the project covered by the demolition or disposition application.

Section 418 of NAHA permits the Department to establish by notice the requirements necessary to carry out this provision. In the interest of time and to avoid further delay in processing applications for demolition or disposition, the Department is setting forth below the guidelines and procedures to be followed in affording the opportunity to purchase to existing HA-wide resident councils and any resident management corporation, resident council or resident cooperative of the development proposed for demolition or disposition in whole or in part by the HA, hereafter referred to as the "affected development."

The Department is soliciting public comments on the provisions set forth in this notice. At the close of the comment period, all comments will be reviewed and considered in the development of a final rule, which will be issued eight months from the date of publication of this notice.

I. Purpose

In the case of an application for demolition or disposition, this notice sets forth the guidelines and procedures for giving existing HA-wide resident councils and the resident management corporation, resident council and resident cooperative of the affected development, appropriate opportunities to purchase the development, or portion of the development, covered by the application. Additionally, where no resident council, resident management corporation, or resident cooperative currently exists in the affected development, the notice provides procedures to allow residents in the affected development 45 days to organize a resident organization and then to respond to an offer to purchase. In such a case, residents of the affected development must obtain the signatures of five percent of the resident families, as determined by the latest occupancy rent roll, or residents of 10 units, whichever is greater, on a petition which signifies interest in forming an organization. The petition is to be submitted to the HA ten days following a required resident meeting scheduled by the HA, as discussed later in this notice. All organizations would be required to meet the formation requirements of 24 CFR 964.7 or 905.962, except a resident cooperative would have to meet the requirements of State law.

II. Applicability

This notice applies to all demolition and disposition applications that have not received HUD approval on the effective date of this notice. This includes those applications for demolition or disposition of a development which involve nondwelling space and excess land. Subsequent to November 28, 1990, HUD approved only demolition or disposition applications from HAs that had no eligible resident organizations or where such organization waived their right to purchase.

A. The requirements of this notice do not apply to the following, which are excluded from coverage under 24 CFR 905.921(b) and 24 CFR 970.2:

1. HA-owned section 8 housing or housing leased under section 10(c) or section 23 of the United States Housing Act of 1937;

2. Demolition or disposition before the End of the Initial Operating Period (EIOP), as determined under the ACC, or property acquired incident to the development of a public or Indian housing project (However, this exception shall not apply to units occupied or available for occupancy by public or Indian housing tenants before EIOP.);

3. The conveyance of public or Indian housing for the purpose of providing homeownership opportunities for lower income families under section 21 of the United States Housing Act of 1937, the Turnkey III/IV or Mutual Help Homeownership Opportunity Programs, or the Public Housing Homeownership Demonstration Program or other homeownership programs established under section 5(h) or 6(c)(4)(D) of the United States Housing Act of 1937; the Homeownership and Opportunity for People Everywhere (HOPE 1) Grant Program, as authorized under title IV, subtitle A, of the National Affordable Housing Act (NAHA) (Pub. L. 101–625);

4. The leasing of dwelling or nondwelling space incident to the normal operation of the project for public or Indian housing purposes, as permitted by the ACC;

5. The reconfiguration of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units) without "demolition," as defined in 24 CFR 970.3 and 905.102; or

6. A whole or partial taking by a public or quasi-public entity through the exercise of its power of eminent domain.

B. The requirements of this notice do not apply to the following cases which it has been determined do not present appropriate opportunities for resident purchase:

1. The HA has determined that the property proposed for demolition is an imminent threat to the health and safety of residents;

2. The local government has condemned the property proposed for demolition;

3. A local government agency has determined and notified the HA that units must be demolished to allow access to fire and emergency equipment;

4. The HA has determined that the demolition of selected portions of the development in order to reduce density is essential to ensure the long term viability of the development or the HA (but in no case should this be used cumulatively to avoid Section 412 requirements);

5. A public body has requested to acquire land that is less than 2 acres in order to build or expand its services (e.g., a local government wishes to use the land to build or establish a police substation); or

6. The provision of land for easements.

In the situations listed in II.B. above, the HA may proceed to submit its request to demolish or dispose of the property, or the portion of the property, to HUD, in accordance with section 18 of the United States Housing Act of 1937 and 24 CFR part 970 or 24 CFR part 905, subpart M, without affording an opportunity for purchase by a resident organization. However, resident consultation would be required in accordance with 24 CFR 905.923(b)(1) and 24 CFR 970.4(a). The HA must submit written documentation, on official stationery, with date and signatures to justify (1), (2), (3), (4), and (5) of paragraph II.B. above. Examples of such documentation include: (a) a certification from a local agency, such as the fire or health department, that a condition exists in the development that is an imminent threat to residents; or (b) a copy of the condemnation order from the local health department. If, however, at some future date, the HA proposes to sell the remaining property described in (1) through (3) above, the HA will be required to comply with this notice.

III. Process for Consultation With Residents and Offer for Sale

A. The procedures in this section are in addition to the resident consultation currently required under 24 CFR 970.4 and 24 CFR 905.923 of the demolition or disposition regulations. Therefore, these activities should be integrated in planned resident consultation. HAs should make every reasonable effort to allow all residents and resident organizations to participate. Therefore, when a significant number of residents are non-English speaking, all notifications should be written in English and Spanish or the other non-English language used by the residents.

B. In order to allow sufficient opportunity for residents of the affected development to discuss the proposed demolition or disposition of the development or portion of the development, the HA is encouraged to begin consultation with residents as early as possible. The HA should send written notification to the HA-wide resident council and the resident management corporation, the resident council, resident cooperative, and the residents of the affected development, of its intentions for demolition or disposition. The notification should precede the meeting by at least two weeks.

C. The written notification shall be in the form of a letter which shall be sent by certified mail. It shall announce the meeting and shall include at a minimum all of the information listed in 1–10 below which shall be discussed at the meeting. The HA must offer to sell the property proposed for demolition or disposition to the HA-wide resident council and the resident management corporation, the resident council or resident cooperative of the affected development under at least as favorable terms and conditions as the HA would offer it for sale to another purchaser.

1. A statement that the HA-wide resident council and the resident management corporation, resident council or resident cooperative of the affected development have an opportunity to purchase the affected development, or portion of the affected development;

2. An identification of the development, or portion of the development, in the proposed demolition or disposition, including the development number and location, the number of units and bedroom configuration, the amount of space and use for non-dwelling space, the current physical condition (e.g., fire damaged, friable asbestos, lead based paint test results), and occupancy status (e.g., percent occupancy);

3. In the case of disposition, a copy of the appraisal of the property and any terms of sale;

4. An HA disclosure and description of plans proposed for reuse of land, if any, after the proposed demolition or disposition;

5. An identification of available resources (including its own and HUD's) to provide technical assistance to the HA-wide resident council and the resident management corporation, resident council or resident cooperative of the affected development to enable the organization to better understand its opportunity to purchase the development, the development's value and potential use;

6. Any and all terms of sale that the HA requires for the Section 18 action; (If the HA-wide resident council, the resident management corporation, resident council or resident cooperative of the affected development submit a proposal that is other than the terms of sale (e.g., purchase at less than fair market value with demonstrated

commensurate public benefit or for the purposes of homeownership), the HA may consider accepting the offer.)

7. A date by which the HA-wide resident council and the resident management corporation, resident council or resident cooperative of the affected development must respond to the HA's offer to sell the property proposed for demolition or disposition, which shall be no less than 30 days from the date of the official offering of the HA which will be made sometime after the meeting. The response from the HA-wide resident council and the resident management corporation, resident council or resident cooperative of the affected development shall be in the form of a letter expressing its interest in accepting the HAs written offer.

8. A statement that where there is no duly formed resident management corporation, resident council or resident cooperative of the affected development, the residents of the affected development have 10 days from the date of the scheduled meeting to determine whether at least 5 percent of such resident families, as determined by the latest occupancy rent record, or residents of 10 units whichever is greater, are interested, as evidenced by signed petition, in forming a new resident council, resident management corporation, or resident cooperative for the purpose of purchasing all or a portion of the property proposed for demolition or disposition. The interested residents have 10 days from the date of the scheduled meeting to submit the petition and the name, address, and telephone number of their spokesperson to the HA for verification.

9. A statement that HA-wide resident council, and the resident council, resident management corporation, and resident cooperative at the affected development will be given written notification of the right to purchase the property or the portion of the property proposed for demolition or disposition. The statement shall explain that the HA-wide resident council, and the resident council, resident management corporation, and resident cooperative of the affected development will be given 60 days to develop and submit a proposal to the HA to purchase the property and to obtain a firm financial commitment. It shall explain that the HA shall approve the proposal from the resident council, resident management corporation or resident cooperative of the affected development, if it meets the terms of sale. However, the statement shall indicate that the HA can consider accepting an offer from the resident council, resident management corporation or resident cooperative of the affected development that is other than the terms of sale; e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership. The statement shall explain that if the HA receives more than one proposal from a resident council, resident management corporation or resident cooperative at the affected development, the HA shall select the proposal that meets the terms of sale. In the event that two proposals from the affected development meet the terms of sale, the HA shall choose the best proposal. The statement shall explain that only if the HA does not accept the offer from the resident council, resident management corporation or resident cooperative of the affected development, can the HA consider the proposal from the HA-wide resident council. The HA can consider accepting an offer from the HA-wide resident council that is other than the terms of sale; e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership.

10. A statement that residents not attending the meeting may submit written comments and the timeframe for submitting those comments.

An HA letter that fails to include all of the specified information shall be considered an invalid notification.

D. In addition, the HA shall post notices in each building of the affected development to give at least two weeks notification of the meeting.

E. Where there is no duly formed resident management corporation, resident council or resident cooperative of the affected development, the residents of the affected development have 10 days from the date of the scheduled meeting to determine whether at least 5 percent of such resident families, as determined by the latest occupancy rent record, or residents of 10 units whichever is greater, are interested, as evidenced by signed petition, in forming a new resident council, resident management corporation, or resident cooperative for the purpose of purchasing all or a portion of the property proposed for demolition or disposition. The interested residents have 10 days from the date of the scheduled meeting to submit the petition and the name, address, and telephone number of their spokesperson to the HA for verification.

F. If after 10 days, residents of the affected development have not submitted petition, the HA may proceed with dispersing the formal offers for sale to HA-wide resident councils, as discussed below. However, if residents of the affected development submit a petition, as verified by the HA, the HA shall give the interested residents 45 days to form their organization before dispersing the formal offers for sale to all appropriate organizations which shall include the newly formed organization.

G. The HA shall make the formal offer for sale which must include the information contained in C. above. All contacted organizations shall have 30 days to express an interest in the offer.

H. After the 30 day time frame for the HA-wide resident councils, resident management corporation, resident council or resident cooperative of the affected development to respond to the notification letter has expired, the HA is to prepare letters to those organizations that responded affirmatively inviting them to submit a formal proposal to purchase the property. The organization has 60 days from the date of its affirmative response to prepare and submit a proposal to the HA that provides all the information requested in IV. and meets the terms of sale.

I. The HA has 60 days from the date of receipt of the proposals to review them and determine whether they meet the terms of sale set forth in its offer. The HA shall first review the proposal submitted by the resident management corporation, resident council or resident cooperative of the affected development to determine whether the terms of sale are met. If the resident management corporation, resident council or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than the fair market value with demonstrated commensurate public benefit or for the purposes of homeownership), the HA may consider accepting the offer. If the terms of sale are met, within 14 days of the HA's final decision, the HA shall notify the resident management corporation, resident council or resident cooperative of the affected development of that fact and that the proposal has been accepted or rejected, if it is not acceptable.

J. If the terms of the sale of the groups identified in I. above are not met, the HA shall then review the HA-wide resident council's offer, if any. If the HA-wide resident council's offer meets the HA's terms of sale, the HA shall notify it of acceptance. If the HA-wide resident council submits a proposal that is other than the terms of sale (e.g., purchase at less than the fair market value with demonstrated commensurate public benefit or for the purposes of

homeownership), the HA may consider accepting the offer. The HA shall notify it that the proposal has been accepted or rejected within 14 days of the final decision.

K. The HA-wide resident council, resident management corporation, resident council or resident cooperative of the affected development has the right to appeal the HA's decision to the HUD Regional Office. A letter requesting an appeal has to be made within 30 days of the decision by the HA. The request should include copies of the proposal and any related correspondence. The regional office will render a final decision within 30 days. A letter communicating the decision is to be prepared and sent to the HA and the HA-wide resident council, resident management corporation, resident council or resident cooperative of the affected development.

IV. Contents of Proposal

The proposal from the HA-wide resident councils, the resident management corporation, resident council or resident cooperative of the affected development shall at a minimum include the following:

A. The length of time the organization has been in existence;

B. A description of current or past activities which demonstrate the organization's organizational and management capability or the planned acquisition of such capability through a partner or other outside entities;

C. A statement of financial capability;

D. A description of involvement of any non-resident organization (non-profit, for profit, governmental or other entities), if any, the proposed division of responsibilities between these two, and the non-resident organization's financial capabilities;

E. A plan for financing the purchase of the property and a firm commitment for funding resources necessary to purchase the property and pay for any necessary repairs;

F. A plan for the use of the property;

G. The proposed purchase price in relation to the appraised value;

H. Justification for purchase at less than the fair market value in accordance with 24 CFR 970.9 or 24 CFR 905.933(a), if appropriate;

I. Estimated time schedule for completing the transaction;

J. The response to the HA's terms of sale;

K. A resolution from the resident organization approving the proposal; and

L. A proposed date of settlement, generally not to exceed six months from the date of HA approval of the proposal, or such period as the PHA may determine to be reasonable.

If the proposal is to purchase the property for homeownership under 5(h) or HOPE 1, then the requirements of section 18 of the United States Housing Act of 1937 and 24 CFR part 970 or 24 CFR part 905, subpart M, do not apply, but the applicable requirements shall be those under the HOPE 1 guidelines, as set forth at 57 FR 1522, or the section 5(h) regulation, as set forth at 56 FR 47852 and 57 FR 28240. In order for a PHA to consider a proposal to purchase under section 412, using homeownership opportunities under section 5(h) or HOPE 1, the HA-wide resident council or resident council, resident management corporation or resident cooperative of the affected development shall meet the provisions of this notice, including items A through L above.

If the proposal is to purchase the property for other than the aforementioned homeownership programs or for uses other than homeownership, then the proposal must meet all the disposition requirements of Section 18 of the United States Housing Act of 1937 and 24 CFR part 970 or 24 CFR part 905, subpart M.

V. HA Oblications

A. Prepare and disseminate the written notification to the HA-wide resident council and resident council, resident management corporation and resident cooperatives and residents of the affected development of the opportunity to purchase the property or portion of the property proposed for demolition or disposition and that a meeting will be held to discuss the proposal. The written notification shall be completed as required in III.C.

B. At least two weeks prior to the meeting, prepare and post notification of the resident meeting in each building of the affected development.

C. Convene and conduct the meeting of the HA-wide resident council and the resident council, resident management corporation and resident cooperative and the residents of the affected development to discuss the proposed demolition or disposition. The information in the notification shall be discussed at the meeting. Following the meeting the HA shall provide HA-wide resident council, the resident council, resident management corporation, resident cooperative and the residents of the affected development with a brief evaluation of the resident recommendations, indicating the reasons for HA acceptance or rejection consistent with HUD requirements and the HA's own determination of efficiency, economy and need. The HA shall submit all written comments from the HA-wide resident council, the resident council, resident management corporation, resident cooperative and the residents of the affected development and its evaluation of them with its demolition or disposition request.

D. Receive and verify petitions from interested residents of the affected development.

E. Prepare and disperse the formal offer of sale to the HA-wide resident council and the resident council, resident management corporation and resident cooperative of the affected development.

F. Evaluate proposals received and make the selection based on the considerations set forth in III. of the notice. Issuance of letters of acceptance and rejection.

G. Prepare certifications, where appropriate, as discussed in VII.C.

The HA shall comply with its obligations under 24 CFR 905.923(b)(1) and 24 CFR 970.4(a) regarding tenant consultation and provide evidence to HUD that it has met those obligations. The HA shall not act in an arbitrary manner and shall give full and fair consideration to any qualified HA-wide resident council, resident management corporation, resident council or resident cooperative of the affected development and accept the proposal if it meets the terms of sale.

VI. Appeal

The HA-wide resident council, resident management corporation, resident council or resident cooperative of the affected development has the right to appeal the HA's decision to the HUD Regional Office. A letter requesting an appeal has to be made within 30 days of the decision by the HA. The request should include copies of the proposal and any related correspondence. The regional office will render a final decision within 30 days. A letter communicating the decision is to be prepared and sent to the HA and the HA-wide resident council, resident management corporation, resident council or resident cooperative of the affected development.

VII. HA Application Submission Requirements for Proposed Demolition or Disposition

A. If the proposal from the resident organization is rejected by the HA, and either there is no appeal by the organization or the appeal has been denied, the HA shall submit its demolition or disposition application to HUD in accordance with section 18 of

the United States Housing Act of 1937 and 24 CFR part 970 or 24 CFR part 905, subpart M. The demolition or disposition application must include complete documentation that the requirements of this notice have been met. HAs must submit written documentation that the HA-wide resident council and the resident council, resident management corporation and tenant cooperative of the affected development have been apprised of the requirements of this notice. This documentation shall include a copy of the signed and dated HA notification letter(s) to each organization informing them of the HA's intention to submit an application for demolition or disposition and the responses from each organization.

B. If the HA accepts the proposal of the resident organization, the HA shall submit a disposition application in accordance with section 18 of the United States Housing Act of 1937 and 24 CFR part 970 or 24 CFR part 905, subpart M, with appropriate justification for a negotiated sale and for sale at less than fair market value, if applicable.

C. HUD will not process an application for demolition or disposition unless the HA provides the Department with one of the following:

1. Where no HA-wide resident council exists within the HA's jurisdiction and no resident management corporation, resident council or resident cooperative exists in the affected development and the residents of the affected development have not submitted a petition expressing an interest in forming an organization within 10 days of the meeting, or if interest has been expressed and the residents of the affected development have not formed such an organization within the 45-day period, a certification from either the executive director or the board of commissioners stating that no such organization(s) exists; or

2. Where a HA-wide resident council exists within the HA's jurisdiction and a resident management corporation, resident council or resident cooperative exists in the affected development one of the following, either (a) or (b):

(a) A board resolution or its equivalent from each tenant council, resident management corporation or tenant cooperative stating that such organization has received the HA letter, and that it understands the offer and waives its opportunity to purchase the project, or portion of the project, covered by the demolition or disposition application. The response should clearly state that the resolution was adopted by the entire organization at a formal meeting; or

(b) a certification from the executive director or board of commissioners of the HA that the thirty (30) day timeframe has expired and no response was received to its offer.

Other Matter

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577–0075.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this notice does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This notice only affects HA real property inventory. The groups affected by this notice are the HA and the groups within the HA. States and their political subdivisions would not be affected.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this notice does not have potential significant impact on family formation, maintenance, and general well-being because it affects only the HAs' real property inventory and addresses resident organizations, not families or individual tenants.

Authority: Sec. 18, United States Housing Act of 1937 (42 U.S.C. 1437p); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 30, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–24250 Filed 10–5–92; 8:45 am]

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Reader Aids

Federal Register

Vol. 57, No. 194

Tuesday, October 6, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
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Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

45261-45558.....1
45559-45708.....2
45709-45972.....5
45973-46078.....6

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6482.....45961
6483.....45963
6484.....45965
Executive Orders:
12775 (Continued by Notice of September 30, 1992).....45557
12779 (Continued by Notice of September 30, 1992).....45557
12813 (Amended by EO 12815).....45709
12815.....45709
Administrative Orders:
Notices:
September 30, 1992.....45557

5 CFR

630.....45261
Proposed Rules:
835.....45753

7 CFR

916.....45559
917.....45559
920.....45973
948.....45560
955.....45974
987.....45975
1065.....45562, 45563
1137.....45564
1494.....45262
1980.....45968
Proposed Rules:
735.....45993
736.....45993
737.....45993
738.....45993
739.....45993
740.....45993
741.....45993
742.....45993
910.....45581
944.....45754
958.....45993
1106.....45583
1030.....45995
1098.....45996

10 CFR

30.....45566
35.....45566

12 CFR

327.....45263
328.....45977
506.....45977
563.....45977
Proposed Rules:
1.....45756
567.....45757
935.....45338
940.....45338

14 CFR

71.....45981-45983
Proposed Rules:
39.....45584-45586
71.....45660, 45997

16 CFR

Proposed Rules:
4.....45676
435.....45998

17 CFR

210.....45287
240.....45287
249.....45287
259.....45287
274.....45287
Proposed Rules:
1.....45999

19 CFR

Proposed Rules:
10.....45758

20 CFR

404.....45878

21 CFR

5.....45294
310.....45310, 46067
510.....45984
520.....45984
Proposed Rules:
864.....46068
872.....46068
1401.....45353

24 CFR

888.....45468
Proposed Rules:
91.....46068

26 CFR

1.....45568, 45660, 45711, 45878
43.....45713
602.....45711
Proposed Rules:
1.....45587
301.....45759

27 CFR

Proposed Rules:
9.....45588

17 45357
19 45357
70 45357
170 45357
194 45357
197 45357
250 45357

29 CFR

1602 45570
2602 45713

30 CFR

914 45985
917 45295

33 CFR

100 ..... 45570, 45985

Proposed Rules:

151 45591
164 45662–45667
165 45596

37 CFR

202 45307

39 CFR

20 45570
111 45882

40 CFR

35 45311
52 45715
271 ..... 45514, 45717–45722
272 45575

Proposed Rules:

Ch. I 45597
52 ..... 45358, 45360
58 46003
63 45363
300 ..... 45597, 45599

42 CFR

57 45725

43 CFR

Public Land Orders:

1567 (Revoked in part by PLO 6948) 45325
5712 (Revoked by PLO 6946) 45322
6944 45321
6946 45322
6948 45324
6949 45576
6950 45725

45 CFR

1224 45325

46 CFR

Proposed Rules:

35 45667

47 CFR

0 45747
73 45577–45579
87 45748
90 45751

Proposed Rules:

73 45601

48 CFR

30 45422
52 45878
202 45422
204 45422
208 45422
210 45422
214 45326
215 45422
216 45422
219 45422
223 45422
225 45422
226 45422
227 45422
228 45422
231 45422
232 45422
236 45422
237 45422
239 45422
242 45422
245 45422
252 45422
253 45422

Proposed Rules:

1512 46007
1516 46007
1552 46007
5415 45759
5452 45759

49 CFR

107 45446
171 ..... 45442, 45446
172 45446
173 45446
174 45446
176 45446
177 45446
178 45446
179 45446
180 45446
214 45446
571 ..... 45327, 45422
1023 45751

Proposed Rules:

552 45759
571 45760
1039 45602

50 CFR

17 45328
227 45986
285 45579
661 45751
663 45987
672 ..... 45580, 45988
685 45989

Proposed Rules:

17 ..... 45761, 45762, 46007
675 45602

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

S. 1607/P.L. 102-374

Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Sep. 30, 1992; 106 Stat. 1186; 9 pages)

H.R. 2967/P.L. 102-375

Older Americans Act Amendments of 1992 (Sep. 30, 1992; 106 Stat. 1195; 116 pages)

H.J. Res. 553/P.L. 102-376

Making continuing appropriations for the fiscal year 1993, and for other purposes (Oct. 1, 1992; 106 Stat. 1311; 4 pages)

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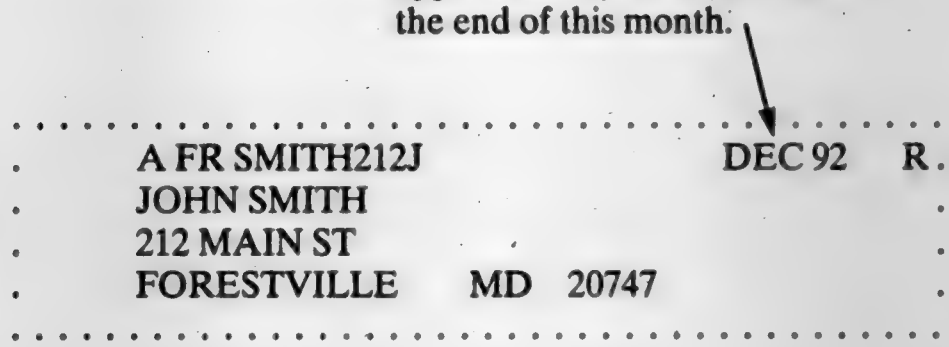

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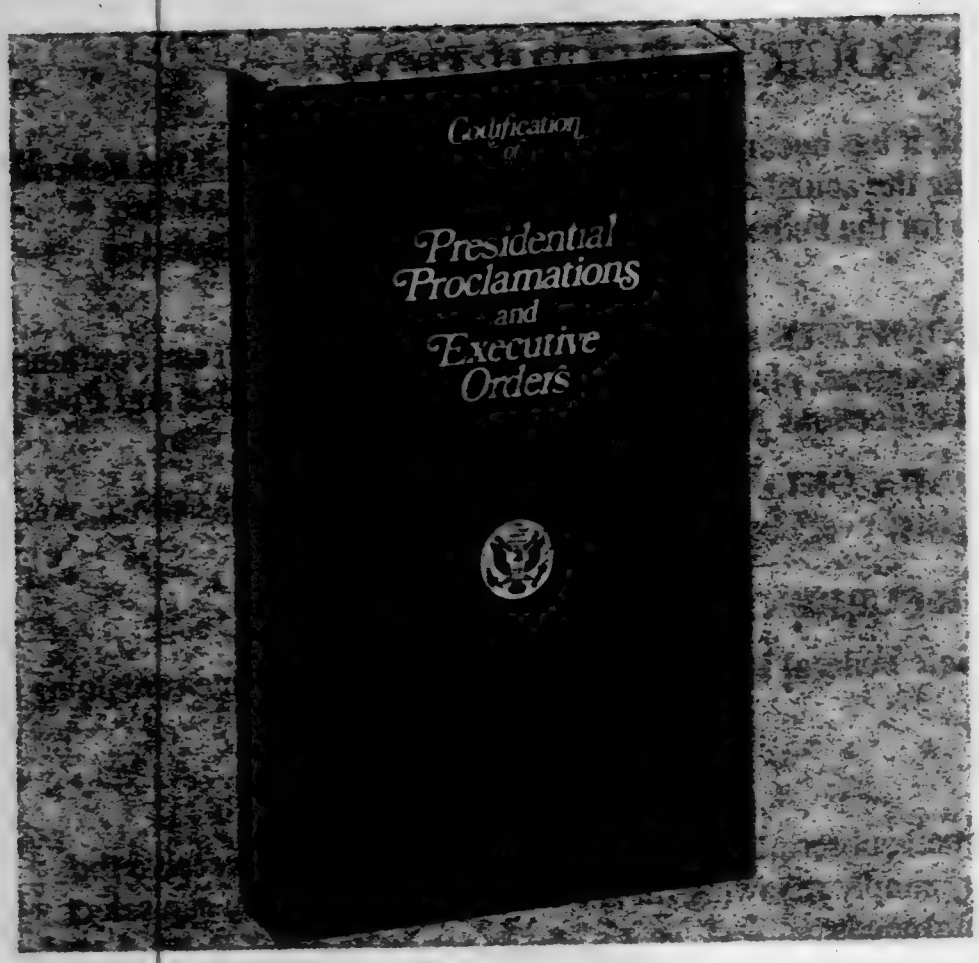

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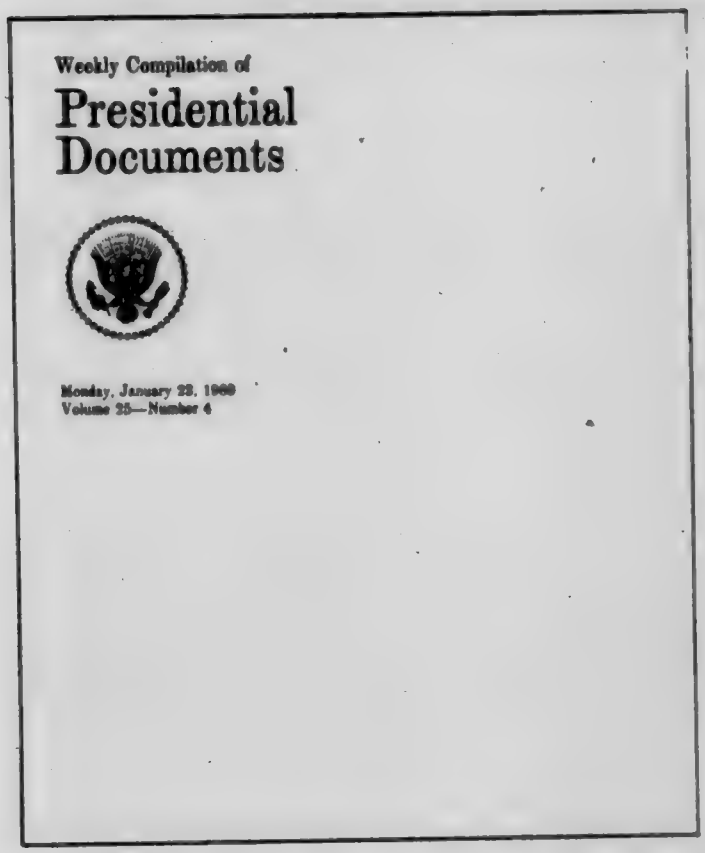

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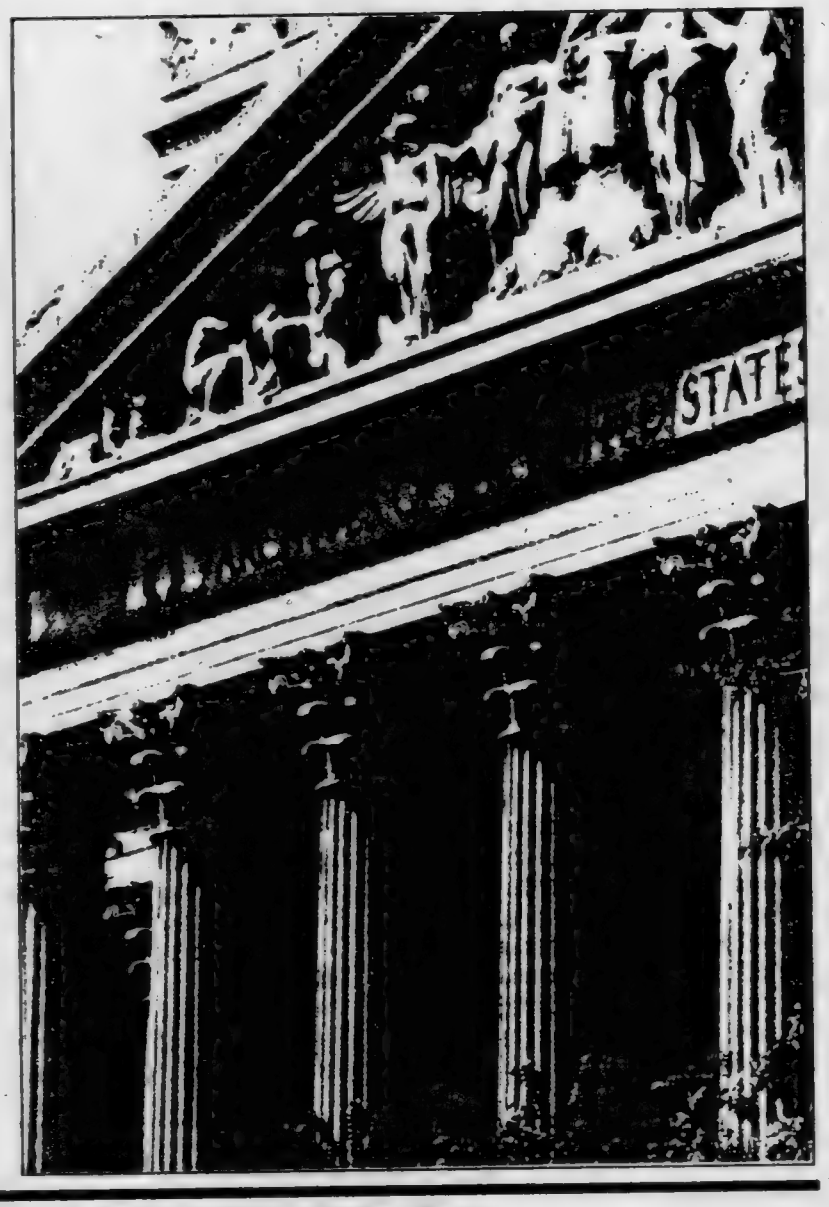

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Wednesday
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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

Administrative Conference of the United States
NOTICES
Meetings:
Regulation Committee, 46147

Agricultural Marketing Service
RULES
Kiwifruit grown in California
Correction, 46243
Milk marketing orders:
Texas, 46079

Agriculture Department
See Agricultural Marketing Service
See Forest Service

American Indian, Alaskan Native and Hawaiian Native Housing, National Commission
See National Commission on American Indian, Alaskan Native and Hawaiian Native Housing

Army Department
PROPOSED RULES
Supplies and equipment; Army materiel loan and lease, 46246
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
Army Research Laboratory, Adelphi, MD, 46152

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Diagnostic tests for R. henselae infections in humans and cats, 46173
Recombinant-derived rickettsia rickettsii vaccine for humans, 46174

Children and Families Administration
NOTICES
Agency information collection activities under OMB review, 46171–46173

Coast Guard
PROPOSED RULES
Marine occupational safety and health standards:
Asbestos exposure aboard vessels, at outer continental shelf facilities, and deepwater ports; exposure limits and control procedures, 46126

Commerce Department
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities under OMB review, 46147

Commodity Futures Trading Commission
RULES
Self-regulatory organizations; arbitration monetary ceiling increase, 46090
PROPOSED RULES
Commodity customer protection; risk disclosure by futures commission merchants and introducing brokers; bankruptcy disclosure, 46101
NOTICES
Chicago Board of Trade:
Non-member officials of member firms and non-member parent firms; registration, 46151

Comptroller of the Currency
RULES
Securities Exchange Act; disclosure rules, 46081

Customs Service
PROPOSED RULES
Articles conditionally free, subject to a reduced rate, etc.:
Works of art imported free of duty; declarations requirements, 46112
Exportation notice (Form 7511); proof of exportation for drawback; elimination, 46113

Defense Department
See Army Department
See Navy Department
NOTICES
Agency information collection activities under OMB review, 46152
Meetings:
Special Operations Policy Advisory Group, 46152

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Krulevitz, Keaciel Kenneth, M.D., 46197

Education Department
NOTICES
Educational research and improvement:
Library Services and Construction Act; Federal shares for States and territories, 46157

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
American Statistical Association Committee on Energy Statistics, 46159
Floodplain and wetlands protection environmental review determinations; availability, etc.:
Savannah River Site, SC, 46158
Natural gas exportation and importation:
North Canadian Marketing Corp., 46167
Recommendations by Defense Nuclear Facilities Safety Board:
Savannah River site, SC—
HB-line; operational readiness, 46159

Environmental Protection Agency
RULES
Water pollution control:
Underground injection control program—
Hazardous waste disposal injection restrictions and requirements for Class I wells; testing and monitoring requirements, 46292
PROPOSED RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Opacity emissions from stationary sources; measurement method, 46114
NOTICES
Clean Air Act:
Acid rain provisions—
Sulfur dioxide control program; transferable allowances auctions and sales, 46167

Executive Office of the President
See Science and Technology Policy Office
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Helicopters; alternative noise certification procedure for primary, normal, transport, and restricted categories
Correction, 46243
VOR Federal airways, 46089
NOTICES
Airport noise compatibility program:
Noise exposure map—
Bismarck Municipal Airport, ND, 46233
Passenger facility charges; applications, etc.:
Steamboat Springs Airport/Bob Adams Field, CO, 46234

Federal Communications Commission
PROPOSED RULES
Radio broadcasting:
Broadcast indecency; prohibitions enforcement, 46132

Federal Energy Regulatory Commission
NOTICES
Natural gas certificate filings:
Liberty Pipeline Co. et al., 46159

Federal Maritime Commission
NOTICES
Agreements filed, etc., 46168

Federal Reserve System
NOTICES
State member banks; branch closings; policy statement, 46168
Applications, hearings, determinations, etc.:
Banc One Corp. et al., 46170
Great Lakes Financial Resources, Inc. Employee Stock Ownership Plan, et al., 46171

Federal Transit Administration
NOTICES
Environmental statements; availability, etc.:
Dallas, TX, 46235

Food and Drug Administration
NOTICES
Human drugs:
New drug applications—
Wyeth-Ayerst Laboratories, Inc., 46175

Forest Service
NOTICES
Appealable decisions; legal notice:
Pacific Southwest region, 46147

Health and Human Services Department
See Centers for Disease Control
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Public Health Service

Health Care Financing Administration
RULES
Medicaid:
Income and eligibility verification systems, 46093
PROPOSED RULES
Medicare:
Beneficiaries in prepaid health care plans; appeal rights and procedures, 46119
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Tennessee, 46175
Medicare:
Skilled nursing facility inpatient routine service costs, schedule of limits, 46177

Health Resources and Services Administration
See Public Health Service

Interior Department
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Allocation of allocable investment expense; original issue discount reporting requirements
Correction, 46243

International Trade Administration
NOTICES
Antidumping:
Extruded rubber thread from—
Malaysia, 46150
Professional electric cutting and sanding/grinding tools from Japan, 46148
Export trade certificates of review, 46148

International Trade Commission
NOTICES
Import investigations:
Circular, welded, non-alloy steel pipes and tubes from—
Brazil, 46194
Greater economic integration within European Community; effects on United States, 46195
Pads for woodwind instrument keys from Italy, 46194
Sulfur dyes from—
China et al., 46195
Woodworking accessories, 46196

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Wisconsin Central Ltd., 46196

Justice Department
See Drug Enforcement Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Kettle River Project-Key Project, WA, 46189
Meetings:
Rawlins District Grazing Advisory Board, 46191
Mineral interest applications:
Arizona, 46191
Openings of public lands:
Oregon, 46191
Recreation management restrictions, etc.:
Lincoln and Spokane Counties, WA; vehicular travel and camping restrictions, 46192
Spokane District, WA; vehicular travel restrictions, 46192
Vale Districts, OR, et al.; camping stay limits, 46192
Resource management plans, etc.:
Glenwood Springs Resource Area, CO, 46193

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Oil and gas lease sales; restricted joint bidders list, 46194

Minority Business Development Agency
NOTICES
Business development center program applications:
Virgin Islands, 46149

National Aeronautics and Space Administration
NOTICES
Environmental statements; availability, etc.:
Outer solar system exploration program, 46198
Meetings:
Aeronautics Advisory Committee, 46199
Space Systems and Technology Advisory Committee, 46199

National Commission on American Indian, Alaskan Native and Hawaiian Native Housing
NOTICES
Meetings, 46199

National Commission on America's Urban Families
NOTICES
Meetings, 46199

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 46199

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 46236–46239

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Pacific Coast groundfish, 46097
PROPOSED RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 46133
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 46139

National Park Service
NOTICES
Meetings:
Gates of Arctic National Park Subsistence Resource Commission, 46194

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 46199

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Public telecommunications facilities planning and construction program, 46286

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 46242

Navy Department
NOTICES
Privacy Act:
Systems of records, 46153

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Consolidated Edison Co. of New York, Inc., 46200
Meetings:
Medical Uses of Isotopes Advisory Committee, 46200
Nuclear Waste Advisory Committee, 46201
Metric system conversion; policy statement, 46202
Applications, hearings, determinations, etc.:
General Electric Co., 46202

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Meetings:
Trademark Affairs Public Advisory Committee; correction, 46150

Public Health Service
See Centers for Disease Control
See Food and Drug Administration
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration, 46176

Science and Technology Policy Office
NOTICES
Meetings:
President's Council of Advisors on Science and Technology, 46231

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 46204
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 46205
Boston Stock Exchange, Inc., 46208
National Association of Securities Dealers, Inc., 46212, 46215
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 46207
Cincinnati Stock Exchange, Inc., 46211
Midwest Stock Exchange, Inc., 46211
Philadelphia Stock Exchange, Inc., 46216
Applications, hearings, determinations, etc.:
AMC Investors, Inc., 46217
American Skandia Life Assurance Corp. et al., 46218
Flagship Tax Exempt Funds Trust et al., 46219
Goldman Sachs Group, L.P., et al., 46223
Investor AB, 46225
Masters Group of Mutual Funds et al., 46226
Xerox Financial Life Insurance Co. et al., 46229

Tennessee Valley Authority
NOTICES
Privacy Act:
Systems of records, 46231

Thrift Supervision Office
RULES
Savings associations:
Securities offerings, 46085
PROPOSED RULES
Savings associations:
Capital—
Troubled, collateral-dependent loans and foreclosed assests, 46098

Trade Representative, Office of United States
NOTICES
Norway; government procurement code; United States dispute settlement proceeding results, 46232

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Customs Service
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 46240, 46241
Meetings:
Debt Management Advisory Committee, 46241

Separate Parts in This Issue

Part II
Department of Defense, Army Department, 46246

Part III
Department of Commerce, National Telecommunications and Information Administration, 46286

Part IV
Environmental Protection Agency, 46292

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
920 46243
1126 46079

12 CFR
5 46081
11 46081
16 46081
563 46085
563g 46085
Proposed Rules:
545 46098
563 46098
567 46098
571 46098

14 CFR
21 46243
36 46243
71 46089

17 CFR
180 46090
Proposed Rules:
1 46101
30 46101
33 46101
180 46101
190 46101

19 CFR
Proposed Rules:
10 46112
191 46113

26 CFR
1 46243
602 46243

32 CFR
Proposed Rules:
623 46246

40 CFR
146 46292
Proposed Rules:
51 46114

42 CFR
435 46093
Proposed Rules:
417 46119

46 CFR
Proposed Rules:
197 46126

47 CFR
Proposed Rules:
73 46132

50 CFR
663 46097
Proposed Rules:
672 46133
675 (2 documents) 46133, 46139

Rules and Regulations

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[DA-92-20]

Milk in the Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends portions of the pool plant and producer milk definitions of the Texas order, for the months of September 1992 through July 1993. The suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from pooling.

EFFECTIVE DATE: September 1, 1992, through July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 24, 1992; published August 28, 1992 (57 FR 39143).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action will also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

The final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice of proposed rulemaking was published in the **Federal Register** (57 FR 39143) on August 28, 1992, concerning the proposed suspension of the pool plant and producer milk definitions of the order for the months of August 1992 through July 1993. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by September 4, 1992. Two written comments were received that discussed the nature of the proposed suspension. The comments included general support of the suspension of rule, although the effective dates to be specified were not in agreement.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September 1992 through July 1993 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1126.7(d), introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In § 1126.7(e), introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13(e)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In § 126.13(e)(2), the paragraph references "(a), (b), (c) and (d)".

5. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

Statement of Consideration

This action suspends portions of the pool plant and producer milk definitions for the Texas order. This suspension will be in effect from September 1992 through July 1993. An earlier suspension expired in July 1992. This action continues the suspension of:

(1) The 60 percent delivery standard for pool plants operated by cooperatives;

(2) The restrictions on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants;

(3) The limits on the amount of milk that a pool plant operator may divert to nonpool plants;

(4) The shipping standards that must be met by supply plants to be pooled under the order; and

(5) The individual producer performance standards that must be met

in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant, if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. This action inactivates the 60 percent delivery standard for plants operated by a cooperative association, allows a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and removes the diversion limitation applicable to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. This action suspends these performance standards for September 1992 through July 1993 for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. This action suspends these requirements.

Continuation of the former suspension in effect through July 1992 was requested by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial share of the dairy farmers who supply the Texas market.

Due to the growth of milk production in the State of Texas and the inability to project production levels for 1993 and beyond, a suspension continues to be appropriate. When comparing January through July 1992, with the same period in 1991, producer receipts are 4.9 percent lower. In addition, Class I utilization is 3.6 percent lower when comparing the same two periods, with Class I utilization for the more recent period at 52.7 percent. This relationship is expected to continue.

Current indications are that there will be ample supplies of direct-ship producer milk that is located in the general area of the respective Texas distributing plants to meet the fluid needs of those plants.

In addition to the lower Class I utilization percentage than existed when these pooling standards were adopted for the Texas market, the marketing conditions that resulted in the granting of the earlier suspension still exist. The suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. The suspension will also provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers supplying the market.

In reference to data, views and arguments, two written comments were received that discussed the nature of the proposed suspension. Written comments were received from (1) Mid-America Dairymen, Inc. (Mid-Am) and (2) Southern Foods Group, Inc. (SFG). Mid-Am expressed support for the proposed suspension as published in the **Federal Register.** SFG supported the suspension for the months of September 1992 through July 1993, but not for the month of August 1992. SFG suggested that it would not be fair or just to issue the suspension in September to include August. SFG also suggested that the provisions suspended need to be reviewed at a hearing since they have been suspended for several years.

The suspension should apply to milk marketed during the months of September 1992 through July 1993. Although the provisions in question had been continually suspended for some time, and the proposal was a request to continue that suspension, certain handlers modified their operations to pool milk on the basis that the provisions had not yet been suspended for August. Therefore, the suspension should resume with the month of September 1992.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of supply plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Two comments in general support of the suspension were received, although there was disagreement concerning the month in which the suspension should be effective.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

It is therefore ordered, that the following provisions in title 7, § 1126.7 (d) and (e), and in § 1126.13(e) (1), (2) and (3) of the Texas order are hereby suspended for September 1992 through July 1993.

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1126.7 [Suspended in part]

2. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

3. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by

transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

§ 1126.13 [Suspended in part]

4. In § 1126.13(e)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

5. In § 1126.13(e)(2), the paragraph references "(a), (b), (c) and (d)".

6. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

Dated: October 1, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92-24275 Filed 10-6-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5, 11, and 16

[Docket No. 92-21]

RIN 1557-AA58

Securities Exchange Act Disclosure Rules

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulations detailing registration and reporting requirements for national banks with securities required to be registered under the Securities Exchange Act of 1934. The effect of this final regulation is to incorporate through cross reference the regulations of the Securities and Exchange Commission (SEC) into the provisions of the OCC's Securities Exchange Act Disclosure Rules. Incorporation through cross reference will assure that the OCC's regulations remain substantially similar to the SEC's regulations, as required by law. The regulation also makes technical, conforming amendments to the OCC's Rules, Policies, and Procedures for Corporate Activities and Securities Offering Disclosure Rules.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Jeff Mace, Attorney, Securities, Investments, and Fiduciary Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 874-5210.

SUPPLEMENTARY INFORMATION: Section 12(i) of the Securities Exchange Act of 1934, as amended (Exchange Act), 15 U.S.C. 781(i), grants authority to the OCC to promulgate regulations for the securities of national banks which are substantially similar to the SEC's regulations under sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. Section 12(i) does not, however, require the OCC to promulgate substantially similar regulations in the event that the OCC finds that implementation of such regulations is not necessary or appropriate in the public interest or for protection of investors and the OCC publishes such findings with detailed reasons therefor in the **Federal Register**.

The OCC proposed to amend its regulations in 12 CFR part 11 by incorporating through cross reference the regulations of the SEC. The proposal was published for comment on April 9, 1992. 57 FR 12222. The OCC received three comments in response to the proposal, all of which were supportive of the proposal. While supporting incorporation through cross reference, one commenter noted the OCC should not incorporate any regulations not presently applicable to national banks or any future SEC regulatory amendments, without a specific rulemaking by the OCC. The OCC has considered this comment but believes that the confusion and time delays arising from any requirement of a separate OCC rulemaking each and every time the SEC amends its regulations outweighs any benefit obtained from such duplicative rulemaking. As stated in its proposed rulemaking, the OCC believes the best way to assure that OCC rules remain substantially similar to the SEC rules is to incorporate through cross reference existing and future SEC regulations. However, the OCC will still retain the ability to exempt national banks, through a separate OCC rulemaking, from any particular SEC rule it determines should not apply to national banks. The OCC also retains its rulemaking authority to subject national banks to additional or different regulations where warranted. Another commenter suggested that the OCC also use incorporation by reference as a vehicle to amend its securities offering disclosure rules as found in 12 CFR part 16. Although under consideration, this suggestion is outside of the scope of this rule.

The OCC has determined to adopt the amendments to its regulation as proposed. The OCC's regulations found in part 11 generally apply only to national banks having one or more classes of securities required to be registered under the provisions of section 12 of the Exchange Act (registered national banks), except that the provisions of the existing subpart E of part 11 also apply to shareholders' meetings for all banks involved in any mergers or consolidations for which the resulting bank is a national bank. 12 CFR 5.33(b)(6)(ii). At present, there are 56 registered national banks.

Incorporation through cross reference generally makes all SEC regulations, and amendments thereto, applicable to registered national banks, unless the OCC acts to vary specific requirements applicable to such banks from the provisions of the SEC regulations. The OCC has chosen to incorporate SEC regulations through cross reference in order to simplify and clarify the scope of requirements applicable to registered national banks and their controlling persons.

Differences From Current Part 11 Regulations

Following is a discussion of the significant differences between the OCC's existing regulations and the SEC's regulations and procedures which are incorporated under this regulation. While there are other differences in the regulations, the OCC believes them to be technical or minor in nature.

A. Insider Transactions

One of the differences between the OCC's and the SEC's regulations arises from the SEC's rules recently promulgated under section 16 of the Exchange Act, 15 U.S.C. 78p, for reports of beneficial ownership to be filed by directors, officers, and shareholders holding at least ten percent of the equity of a particular issuer (insiders). A full description of the changes to the SEC's regulations under section 16 of the Exchange Act is found in SEC Release No. 34-28869, 56 FR 7242 (section 16 Rules). Under section 16(a) of the Exchange Act, 17 U.S.C. 78p(a), insiders must file statements of beneficial ownership and changes to such statements as they occur, as well as on a periodic basis. Section 16(b) of the Exchange Act, 17 U.S.C. 78p(b), seeks to limit the possibility of insider trading by requiring any profits made by insiders on a purchase and sale or sale and

purchase of an issuer's securities, within six months, to be paid to the issuer.

The changes in the SEC's section 16 Rules with the most impact on registered national banks involve the broadening of the types of persons subject to the requirements of section 16, to include all appropriate policy-making officers within the scope of the regulation. In addition, the SEC's rules contain a new requirement that issuers report—in their annual reports, proxy materials and information statements—on compliance of insiders with the reporting requirements of section 16. Rule 16a–1(f), 56 FR 7267; Form 10–K, 56 FR 7274; Item 7 of Schedule 14A, 56 FR 7265; and Item 1 of Schedule 14C, 17 CFR 240.14c–101. By incorporating through cross reference the SEC's regulations, this final rule adopts the SEC's revisions to the section 16 Rules.

B. Securities Exchange Act Industry Guide 3

A second difference involves the SEC's adoption of Securities Exchange Act Industry Guide 3, also known as Securities Act Industry Guide 3 (Guide 3), for periodic reporting requirements for bank holding companies. Guide 3 provides analytical, statistical disclosure provisions for the assets and liabilities of bank holding companies to be included in the business or management's discussion and analysis portions of registration statements under the Securities Act of 1933 or in periodic filings under the Exchange Act. These provisions specifically relate to a bank's investment and loan portfolios, sources of income, and exposures to credit, interest rate, and other risks.

While Guide 3 is not technically a "regulation," it does provide disclosures the SEC requires regarding the assets of bank holding companies and their subsidiaries and could equally be applied to disclosure by registered national banks. By incorporating through cross reference the SEC's regulations and procedures, this final rule incorporates Guide 3 into the OCC's disclosures review. The OCC believes that adopting Guide 3 for disclosures of registered national banks will provide greater information to investors without significant additional regulatory burden on registered national banks.

C. Audited Financial Statements

The SEC's regulations require financial statements included in proxy materials and information statements for shareholder meetings and annual reports to be audited by an independent auditor. Rule 14a–3, 17 CFR 240.14a–3; Rule 14c–2, 17 CFR 240.14c–2; and Form 10–K, incorporating Rule 3–01 of Regulation S–X, 17 CFR 210.3–01. Under existing rules, the OCC requires only verified financial statements, though registered national banks having audited financial statements must include them in their proxy materials and information statements and in their annual reports to shareholders. 12 CFR part 11, subpart I. By incorporating through cross reference the SEC's regulations, this final rule requires the use of audited financial statements (prepared in compliance with SEC Regulation S–X, 17 CFR part 210, including Article 9) for the 56 registered national banks (and any other banks required to register under 12 CFR part 11).[1] While the audit requirement will be new for some of the registered national banks, it will help to assure that investors are given accurate financial information concerning the bank.

D. Minimum Asset Test for Registration

The SEC's and OCC's regulations differ in the minimum total asset size of an issuing company. The company's size is used as one of the triggering events (in addition to the number of shareholders) for requiring registration of securities under section 12 of the Exchange Act. Section 12(g) of the Exchange Act, 17 U.S.C. 781(g), requires any issuing company with at least 500 shareholders and a minimum total assets of $1 million to register the class of securities, subject to limits, exemptions, and conditions prescribed by the SEC or other appropriate regulatory agency. The SEC's Rule 12g–1, 17 CFR 240.12g–1, prescribes the minimum asset test to be $5 million in total assets, whereas the OCC's regulation, 12 CFR 11.201(b), prescribes a minimum asset test of $3 million (an older limit established by the SEC). By incorporating through cross reference the SEC's regulations, this final rule adopts the SEC's threshold of $5 million.

E. Review of Proxy and Information Statements

The SEC's and the OCC's regulations differ significantly in the type of proxy and information statements subject to regulatory review prior to distribution to shareholders. The SEC requires preliminary filings of proxy and information statements, but only concerning those shareholder meetings which are other than routine annual meetings; and the SEC requires preliminary filings to be filed ten days prior to distribution to shareholders. Rule 14a–6, 17 CFR 240.14a–6; Rule 14c–5, 17 CFR 240.14c–5. The OCC, however, requires preliminary filings for all shareholder meetings, and requires that the preliminary filings be made at least ten days before routine meetings and 15 days before other than routine meetings. 12 CFR 11.506. By incorporating through cross reference the SEC's regulations, this final rule adopts the SEC's preliminary filing requirements.

F. Extensions of Credit to Insiders

Another significant difference between the SEC's and the OCC's regulations involves the minimum level of loans and other extensions of credit to insiders which are required to be disclosed in securities filings of the registrant. The SEC requires registrants to disclose, among others, all extensions of credit of more than $60,000 where there may be more than a normal risk of collectibility. Item 404(c) of Regulation S–K, 17 CFR 229.404(c). The OCC on the other hand, requires registered national banks to disclose all extensions of credit, regardless of the amount, if the credit involves more than a nominal risk of collectibility. Instruction 2(C) to 12 CFR 11.844(c). The OCC will continue to monitor loans to insiders in accordance with 12 CFR Part 31.

By incorporating through cross reference the SEC's regulations, this final rule adopts the SEC's criteria for disclosure of loans and extensions of credit to insiders.

Conforming Amendments to Parts 5 and 16

The OCC's regulations in 12 CFR parts 5 and 16 contain rules which do not correspond to SEC requirements adopted under the Exchange Act. In 12 CFR parts 5 and 16, the OCC makes certain portions of its regulations in 12 CFR part 11 applicable to national banks not otherwise subject to such rules. The incorporation through cross reference to the SEC's regulations requires conforming, technical amendments to parts 5 and 16, to change the citations from 12 CFR part 11 to the respective portions of the SEC's regulations.

Part 5 includes references to the OCC's proxy requirements for banks involved in mergers or consolidations where the resulting association is a national bank. 12 CFR 5.33(b)(6). Unless a bank is subject to the proxy

[1] The OCC also requires banks involved in mergers and consolidations to comply with the proxy and information statement requirements made applicable to registered national banks. 12 CFR 5.33(b)(6) and 16.4(b). However, as described below, this final rule does not require audited financial statements from all such banks. If such banks do have audited financial statements or are required to do so by any other provision of law or regulation, then they must use the audited financial statements in soliciting shareholder approval of the merger or consolidation.

requirements of the Board of Governors of the Federal Reserve System (12 CFR part 208) or the requirements of the Federal Deposit Insurance Corporation (12 CFR part 335), each bank involved in a merger or consolidation must comply with the proxy requirements of the OCC, pursuant to 12 CFR 5.33(b)(6). This final rule amends part 5 to specify that all such banks must comply with the proxy and information statement requirements described in the SEC's rules and regulations pursuant to section 14 of the Exchange Act, 15 U.S.C. 78n, except that such banks need not provide audited financial statements if the banks do not otherwise have an independent audit.

The OCC is not requiring all banks, regardless of the number of shareholders, to use audited financial statements. Only those banks which are by law required to have, or do in fact have, audited financial statements must use them in their disclosures to shareholders when proposing a merger or consolidation. Thus, this final rule makes no significant change in the proxy and information statement requirements for banks required to file proxy materials or information statements solely because of participation in a merger or consolidation.

Part 16 also includes several references to the provisions of part 11, namely with respect to identifying beneficial owners and compensation and transactions of management and principal security holders of a bank. This final rule simply states, through cross reference, the applicable SEC requirements that parallel the existing part 11 requirements incorporated through cross reference into the provisions of part 16. Thus, this final rule makes no significant change in the disclosure requirements for offering circulars.

Please note that the OCC is considering amending its regulations in 12 CFR part 16 to incorporate certain portions of the rules of the SEC under the Securities Act of 1933. To the extent any such proposal is adopted, the OCC will make changes to these portions of the regulations found in 12 CFR parts 5 and 16.

Use of New Forms for Filings With the OCC

This final rule requires the filing of new forms with the OCC, as of the effective date noted above. However, for any filings due between the effective date and November 15, 1992, the filing party may use either the applicable OCC form or the applicable SEC form. Any form required to be filed with the OCC under this final rule on or after November 16, 1992, must be on the applicable SEC form as found in 17 CFR part 249.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the OCC believes that this final rule will not have a significant economic impact on a substantial number of small entities. Since most of the changes arising from the amendments are technical in nature, the regulation should have a minimal impact on all registered national banks, regardless of their size.

Executive Order 12291

The OCC has determined that this regulation is not a "major rule" and therefore does not require a Regulatory Impact Analysis.

Because the OCC's current regulations are generally similar to the SEC's regulations, this incorporation through cross reference to the SEC's regulations will not alter the regulation or reporting requirements of registered national banks in any significant manner. In addition, the OCC believes that adoption of the incorporation through cross reference to the regulations of the SEC will help to clarify the reporting requirements already imposed on national banks by permitting use of the SEC's forms with which many persons are already familiar. Aside from changes arising from the SEC's section 16 Rules, there are no substantive differences between the SEC's forms and the OCC's forms.

Paperwork Reduction Act

This final rule will modify the information collection requirements in 12 CFR part 11 by abolishing separate OCC reports and directing national banks to file SEC reports with the OCC. The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1557–0106. The estimated annual burden per respondent varies from 30 minutes to 60 hours, depending on the particular form and individual circumstances, with an estimated average of 31 hours.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Comptroller of the Currency, Legislative and Regulatory Analysis Division, 8th Floor, 250 E Street, SW., Washington, DC 20219, and to the Office of Management and Budget, Paperwork Reduction Project (1557–0106), Washington, DC 20503.

List of Subjects

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 11

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the OCC amends 12 CFR parts 5, 11, and 16 as follows:

PART 5—[AMENDED]

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1, *et seq.*; 12 U.S.C. 93a.

2. In § 5.33, paragraph (b)(6)(ii) is revised to read as follows:

§ 5.33 Merger, consolidation, purchase and assumption.

* * * * *

(b) * * *

(6) * * *

(ii) It is required that all shareholders be adequately informed of all aspects of the transaction. In this regard, banks are required to file with the Office proxy materials in conformance with the requirements of Securities and Exchange Commission Regulation 14A, 17 CFR 240.14a–1 up to but not including 240.14b–1, or information statements in conformance with the requirements of Securities and Exchange Commission Regulation 14C, 17 CFR 240.14c–1 up to but not including 240.14d–1. However, if a bank does not have an independent auditor and is not required to have an independent auditor by any provision of law or regulation other than this Section, then such bank need not provide audited financial statements as part of its proxy materials or information statements. Such a bank shall, however, provide unaudited financial statements prepared in accordance with generally accepted accounting principles (GAAP) and otherwise meeting the requirements of Regulation 14A, 17 CFR 240.14a–1 up to but not including 240.14b–1, or Regulation 14C, 17 CFR 240.14c–1 up to but not including 240.14d–1.

* * * * *

PART 11—[AMENDED]

3. The authority citation for part 11 continues to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 781, 78m, 78n, 78p, and 78w.

4. Part 11 is amended by adding §§ 11.1 through 11.4 to read as follows:

§ 11.1 Authority and OMB control number.

(a) *Authority.* The Comptroller is vested with the powers, functions, and duties otherwise vested in the Securities and Exchange Commission (Commission) to administer and enforce the provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (1934 Act) (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p), regarding national banks and banks chartered in the District of Columbia with one or more classes of securities subject to the registration provisions of sections 12(b) and (g) of the 1934 Act (registered national banks). Further, the Comptroller has general rulemaking authority under 12 U.S.C. 93a, to promulgate rules and regulations concerning the activities of national banks and banks chartered in the District of Columbia.

(b) *OMB control number.* The collection of information contained in this part was approved by the Office of Management and Budget under OMB control number 1557–0106.

§ 11.2 Requirements under certain sections of the Securities Exchange Act of 1934.

(a) In general and except as otherwise provided in this part, the rules, regulations, and forms adopted by the Commission pursuant to the sections of the 1934 Act described in § 11.1 of this part apply to the securities issued by registered national banks. References to the "Commission" are deemed to refer to the "Comptroller" unless the context otherwise requires.

(b) The following list of Commission rules and regulations apply to registered national banks:

(1) Regulations adopted by the Commission under sections 12, 13, 14(a), 14(c), 14(d), and 14(f) of the 1934 Act, as codified at 17 CFR 240.12a–4 up to but not including 17 CFR 240.15a–2; and

(2) Regulations adopted by the Commission under section 16 of the 1934 Act, as codified at 17 CFR 240.16a–1 up to but not including 240.17a–1.

(c) Registered national banks required to file papers with the Comptroller pursuant to the provisions of the rules and regulations cited in paragraph (b) of this section shall use the forms and schedules adopted by the Commission, as described in the respective rules and regulations identified in paragraph (b) of this section.

§ 11.3 Filing requirements and inspection of documents.

(a) All papers required to be filed with the Comptroller pursuant to the 1934 Act or regulations thereunder shall be submitted in quadruplicate to the Securities, Investments, and Fiduciary Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219. Material may be filed by delivery to the Comptroller through the mails or otherwise. The date on which papers are actually received by the Comptroller shall be the date of filing thereof, if the person or bank filing the papers has complied with all requirements regarding the filing.

(b) Copies of the registration statement, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this part (exclusive of exhibits) will be available for public inspection at the Office of the Comptroller of the Currency, at the address identified in § 4.17(b) of this chapter.

§ 11.4 Filing fees.

(a) Filing fees must accompany certain filings made under the provisions of this part before the filing will be accepted for filing by the Comptroller. The applicable fee schedule is provided in the Notice of Comptroller of the Currency Fees described in § 8.8 of this chapter.

(b) Fees must be paid by check payable to the Comptroller of the Currency.

PART 16—[AMENDED]

5. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, and 93a.

6. In § 16.2, paragraph (g) is revised to read as follows:

§ 16.2 Definitions.

* * * * *

(g) *Beneficial ownership* shall be determined in accordance with the provisions of 17 CFR 240.13d–3.

7. In § 16.4, paragraphs (b) and (f) are revised to read as follows:

§ 16.4 Exempt transactions and abbreviated offering circular requirements.

* * * * *

(b) Any reorganization, merger, consolidation, or acquisition of assets by a bank where constituent security holders who will receive securities in the transaction are furnished with proxy materials or an information statement prepared substantially in accordance with the requirements of the Securities and Exchange Commission Regulations 14A, 17 CFR 240.14a–1 up to but not including 240.14b–1, or Regulation 14C, 17 CFR 240.14c–1 up to but not including 240.14d–1, respectively. However, if a bank does not have an independent auditor and is not required to have an independent auditor by any provision of law or regulation other than this Section, then such bank need not provide audited financial statements as part of its proxy materials or information statements. Such a bank shall, however, provide unaudited financial statements prepared in accordance with generally accepted accounting principles (GAAP) and meeting the requirements of Item 15 of § 16.6 of this part. Additionally, such proxy materials or information statement must contain information about the issuing bank which is substantially similar to that called for by Items 5 and 6 of § 16.6 of this part.

* * * * *

(f) *Abbreviated offering circular.* An existing national bank which makes an offering of its securities which, when aggregated with all other sales by the bank of its securities within the 12 months immediately preceding the commencement of the subject offering, does not exceed $2,000,000, may comply with the requirements of § 16.3(a) of this part with an offering circular which contains only the information required by the following Items of § 16.6 of this part: Items 1 through 4; Item 6, paragraphs (a) through (j), including Instructions 2 and 4; and Items 7 through 16. In responding to Item 13, the bank need only provide the information required by Item 402(a) of Regulation S–K, 17 CFR 229.402(a), and Items 404(a) and (c) of Regulation S–K, 17 CFR 229.404(a) and (c).

7. In § 16.6, Item 13 of paragraph (b) is revised to read as follows:

§ 16.6 Form and content of an offering circular of an existing national bank.

* * * * *

(b) * * *

Item 13—Remuneration and Other Transactions with Management.

Furnish the information required by Items 402 and 404(a) and 404(c) of Regulation S–K, 17 CFR 229.402 and 229.404(a) and (c).

* * * * *

Dated: August 19, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92–23996 Filed 10–6–92; 8:45 am]

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Office of Thrift Supervision

12 CFR Parts 563 and 563g

[No. 92-194]

RIN 1550-AA09

Sales of Securities at Savings Association Offices

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (the OTS) is amending and relocating its regulation relating to direct sales of securities of a savings association or its affiliates at the association's offices. The changes prohibit sales of securities of the savings association or its affiliates in any office of a savings association except for sales of stock in connection with the association's conversion from the mutual to the stock form of organization where the association will be in compliance with all of its capital requirements upon completion of the conversion. Sales of stock in a savings associations' offices will be subject to conditions in the existing rule with the addition of certain safeguards. One such safeguard is the use of a signed customer acknowledgment form before purchase. The acknowledgment form states that the securities purchaser is aware that the security is not a deposit or account, is not federally insured, and the purchaser has received an offering circular that describes the offering and its risks. The amendments are intended to minimize potential customer confusion and the danger of customer deception regarding the nature of securities sold at a savings association's offices while still preserving an effective means for a savings association to raise capital in the conversion process.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Paul D. Glenn, Assistant Chief Counsel, (202) 906-6203, v. Gerard Comizio, Deputy Chief Counsel, (202) 906-6411, Corporate and Securities Division; Robyn Dennis, Program Manager, (202) 906-5751, Thrift Policy; Julie L. Williams, Senior Deputy Chief Counsel, (202) 906-6459; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

Part 563g of the OTS's securities offering regulations, 12 CFR Part 563g (Securities Offering Regulations), establishes uniform disclosure requirements for securities offering by savings associations.[1] Section 563g.17 of the Securities Offering Regulations currently specifies certain requirements where savings associations seek to sell their own securities or those of an affiliate in the savings association's office(s).[2] These present provisions prohibit payment of commissions on sales, bar offers or sales at teller counters, require that sales may be made only by regular full-time employees, and provide that for such on-premises sales to occur, the savings association must be in compliance with its regulatory capital requirements.

B. The Proposed rule

The OTS published the proposed rule in the **Federal Register** on May 3, 1990. 55 FR 18610 (May 3, 1990). The proposed rule prohibited offers or sales of debt securities of a savings association or an affiliate thereof in the offices of the savings association that are generally accessible to the public for the purpose of accepting insured deposits. Equity securities offers and sales generally were not subject to such a ban, provided the association was in compliance with its capital requirements at the time the sales took place.

The proposed rule also suggested various safeguards to enhance the awareness of customers that purchased such securities to the nature of their investment. These proposed safeguards included specified disclosures to customers, minimum denominations of any debt securities, advertising restrictions, legends on securities and selling documents, prohibited representations, limitations on sales locations, and required regulatory capital compliance by the savings association. The proposal also required the use of a form of customer acknowledgment or certification to be signed by purchasers of securities before purchase. The acknowledgment form states that the securities purchaser is aware that the security is not a deposit or account, is not federally insured, and the purchaser has received an offering circular that describes the offering and its risks.

The proposed rule requested comments on suggested safeguards as well as other suggestions designed to accomplish the goals of the proposal.

C. Public Comments

The OTS received eleven comment letters in response to the proposal. The commentators were one governmental agency, three trade associations, four savings associations or their holding companies, one broker-dealer, and two law firms. Except for the governmental agency and one trade association, most commentators generally favored adding some regulatory enhancements to the OTS's regulation, but not a flat prohibition on office sales of securities. Many commentators wanted to avoid any regulations that will make raising additional capital for savings associations more costly.

The governmental agency suggested a complete ban on the sales of securities in offices of deposit-taking institutions as the most effective form of protection against abuses. On the other hand, one trade association recommended no action at all for fear of restricting financial institutions' access to the competitive financial market place.

Four commentators recommended allowing properly registered and supervised securities personnel to sell or assist in selling securities of the association on its premises. Four commentators supported requiring some form of signed acknowledgment in the sales of securities.

One savings association holding company recommended revising the definition of securities to exclude travelers checks. The OTS has considered that suggestion but believes that no regulatory change is needed. The definition of securities is not intended to include travelers checks for purposes of the rule.

D. The Final Rule

After considering the comments received, the OTS has decided to adopt a final rule similar to, but more stringent than the proposed rule, and to include in the rule certain safeguards designed to enhance to protections of the rule. Under the final rule, only sales of common stock in connection with a conversion from the mutual to the stock

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[1] Part 563g was first proposed in 1983. See FHLBB Res. No. 83-126, March 3, 1983, 48 FR 10684 (March 14, 1983). The final rule was adopted December 20, 1985, and became effective March 1, 1986, incorporating a number of technical and clarifying amendments. *See* 51 FR 8184 (March 10, 1986).

[2] In the past, the Federal Home Loan Bank Board (FHLBB) imposed various restrictions on the sales of specific securities such as subordinated debt. On January 8, 1973, the FHLBB permitted the sales of subordinated debt securities in minimum amounts of $50,000. On May 30, 1980, the FHLBB permitted sales of subordinated debt in denominations of $10,000 for such securities not offered or sold in the offices of the association or its affiliate. On December 5, 1984, the FHLBB raised the minimum denomination for subordinated debt to $100,000 but lowered to $1,000 the minimum denomination for such securities not offered or sold in the offices of the association or its affiliate. On March 1, 1986, the FHLBB repealed the minimum denomination on subordinated debt when the FHLBB adopted § 563g.17. The revised rule includes no minimum denomination requirement because the rule prohibits all sales of debt securities in offices of savings associations, including subordinated debt.

form of organization would be permitted in offices of savings associations. The amendments also are intended to minimize potential customer confusion and the danger of customer deception regarding the nature of investments offered and sold while still preserving an effective means for a savings association to raise capital in the conversion process.

1. Rule Applicability and Rule Placement

. As proposed, the rule applied to all sales of securities of a savings association or its affiliates on the premises of a savings association in areas that are generally accessible to the public for the purpose of accepting insured deposits. Because this scope would not have covered other parts of an association's premises or other types of offices, where dangers of customer confusion could well arise, the final rule applies to sales in all "offices" of a savings association. An association's "office" is defined for purposes of the rule as any premises used by the association that are identified to the public through advertising or signage using the association's name, trade name, or logo. This scope will insure that the rule's safeguards are available to sales of securities of the savings association and its affiliates in all types of offices of the savings association where confusion regarding the nature of the investment sold by the association is most likely to arise, not just in the deposit-taking premises of the savings association.

In conjunction with this change, the OTS is recodifying at 12 CFR 563.76 the substance of the rule currently found at 12 CFR 563g.17. The new location for the rule, "Part 563—Operations, Subpart C—Securities and Borrowings," relates more generally to all savings associations. The present reference in 12 CFR 563g.17 will now require that direct sales of securities at an office of a savings association shall be made only in accordance with the now relocated provisions of 12 CFR 563.76.

2. Debt Securities

A principal tenet of the final rule is the prohibition of all offers and sales of debt securities of the savings association and its affiliates in offices of the savings association. Several commentators opposed prohibiting the sales of debt of a savings association or its affiliate(s) in the offices of a savings association. The OTS has concluded, however, that debt securities, which are often sold in dollar denominated amounts and with interest rates stated in a manner similar to certificates of deposit or other insured accounts, create the greatest risk of confusion on the part of savings association customers who are used to purchasing various insured deposits at savings association offices. While disclosure may mitigate the risk of confusion, experience has shown that it may not be an adequate solution. Accordingly, the final rule prohibits offers and sales of debt securities of an association and its affiliates in the association's offices.

3. Equity Securities

The final rule allows saving associations to sell equity securities of the association or an affiliate in connection with the association's conversion from the mutual to the stock form of organization. The savings association also must be in compliance with all of its current capital requirements upon completion of the conversion. The sale of equity securities in association offices must be approved as part of the conversion application process and will be permitted only if the association complies with prescribed safeguards. The request to be able to sell common stock in the office(s) of the savings association as part of a conversion will be permitted only with the authorization of the appropriate Regional Director.

The OTS recognizes the importance of preserving cost-effective means for mutual savings associations to raise capital. OTS is permitting sales of securities in offices of savings associations in connection with the conversion of a savings association from the mutual to the stock form of ownership. Since the early 1970's hundreds of savings associations have successfully used this method to sell conversion stock, with no instances of abuse having been found. One of the goals of the conversion process is to permit existing account holders the maximum opportunity to participate in ownership of the converted association, while minimizing transaction costs. This provision will provide current mutual savings association customers a convenient way to participate in the conversion of their savings association and a cost-effective means for a mutual savings association to raise capital. OTS rules will continue to provide that such sales can only be made by the savings association if the association will meet its current capital requirements upon completion of the conversion.

The following additional safeguards offered in the proposal will be adopted to supplement those safeguards existing in the former § 563g.17:

a. Acknowledgment Form

The final rule requires that each potential purchaser of securities sold in the offices of the savings association must be provided with a specified brief and unambiguous disclosure document (i) stating prominently that "I ACKNOWLEDGE THAT THIS SECURITY IS NOT A DEPOSIT OR ACCOUNT, IS NOT FEDERALLY INSURED, AND IS NOT GUARANTEED BY [insert name of savings association] OR BY THE FEDERAL GOVERNMENT," (ii) stating that if anyone asserts that this security is federally insured or guaranteed, or is as safe as an insured deposit, the potential investor should call the appropriate Regional Director of the Office of Thrift Supervision, and (iii) stating the investment's principal risks, as set forth on specified pages of the offering circular. In addition, the acknowledgment or certification form will require that each customer be provided with a copy of an offering circular for the securities before making the purchase. The text of the required certification is set forth at the end of the rule as paragraph (c).

In practice, this requirement means that each potential purchaser must be provided with a subscription order form and, separately, the new form of acknowledgment and that the potential purchaser's signature be obtained on both forms before, or at the latest simultaneously with, the purchase. Savings associations should make such completed forms available for inspection to the OTS examiners upon request. The OTS may provide further guidance in the future concerning the substance and use of the certification form.

b. Minimum Denominations

Because the final rule prohibits sales of debt securities in the savings association's offices, no minimum denomination requirements are set in this rule.[3]

c. Sales Practices and Advertising

The final rule includes a reference in paragraph (d) that fraudulent securities sales practices and misleading advertisements or other sales literature are specifically included within the scope of § 563g.10. That section establishes that fraudulent behavior in connection with any purchase or sale of any security of a savings association

[3] The OTS's Thrift Bulletin 23 presently states that Supervision generally regards "retail" sales of debt securities in denominations of less than $10,000 as an unsound practice.

constitutes an unsafe or unsound practice and thereby provides another safeguard under the current regulatory scheme.[4] The contents of all advertising literature and sales practices for such securities are subject to § 563g.10 and also may be subject to any further guidance from the OTS. As is presently the case, such materials may be submitted to the OTS's Corporate and Securities Division for review and comment in connection with a registered offering of securities.[5]

d. Prohibited Representations

The OTS has not added any specific provision to the new rule governing written materials issued in connection with the sales of securities in offices of savings associations. Nevertheless, the OTS views as fraudulent, and thus a violation of the general anti-fraud provisions of § 563g.10, the appearance in any securities certificate of the savings association or its affiliate(s) sold at the savings association's office(s), or in any advertisements and offering documents relating to the securities sold at such office(s), of the terms "guaranteed," "no risk," "account," "deposit," "withdraw," or any other terms that imply the security is insured or guaranteed by the United States government or an agency of the United States government. The use of the term "fund" or other terms that imply the security is an interest in an investment company (if it is not) would violate § 563g.10. Such terms are inherently confusing and should not be used in connection with sales of securities of an association or its affiliates in offices of the savings association, in securities, offering circulars, sales presentations, or advertisements.

e. Legend

The final rule adds another safeguard requiring a savings association to include a legend conspicuously on each security of the savings association or its affiliate(s) sold at the savings association's office(s) as well as in all advertisements and offering documents relating to the securities sold at such office(s). The legend must state that the security is not a deposit or account and is not federally insured or guaranteed. The legend must state, on the face of the security, in a prominent and plainly legible form, the following: "This security is not a deposit or account and is not federally insured or guaranteed." The legend must appear in bold or other prominent type at least as large as other textual type in the document.

Adding such a requirement to the rule will help to avoid confusion by potential purchasers of any permitted securities of the savings association or its affiliates at the office(s) of the savings association. Such disclosure would already be expected to appear on most securities that savings associations issue. As one commentator mentioned in recommending the use of legends, although they may be marginally useful, legends involve little expense or burden to use.

f. Sales Locations

The existing rule requires that no offers or sales of securities of the savings association or its affiliates be made by tellers or at the teller counter, or by comparable persons at comparable locations. This requirement remains unchanged except that the OTS has added the affirmative requirement that sales of the issuers' or affiliates' securities be made a readily identifiable segregated or separately identifiable area of the savings association's office(s) apart from the area accessible to the general public for the purpose of making or withdrawing deposits. This provision also provides comparability with the requirements applicable to savings association service corporations selling retail securities of third-party issuers in savings associations' offices.

g. Regulatory Capital Compliance by the Savings Association

The rule presently requires that securities sales be made only by savings associations that are in compliance with their regulatory capital requirements.[6] Commentators supported the proposition that savings associations should be in capital compliance to make such sales. Certain issuers of common stock in conversions from the mutual to the stock form of organization are making their sales of securities in an effort to reach compliance with one or more required capital levels. Accordingly, the final rule permits sales of equity securities by savings associations or an affiliate in connection with the associations' conversion from mutual to stock form provided the association will meet its current capital requirements upon completion of the conversion.

h. Sales Personnel

Presently, the rule requires that sales of securities of savings associations and their affiliates in the offices of savings associations may be made only by "regular, full-time employees of the savings association." The OTS is expanding the personnel who may make such securities sales to include "securities personnel who are subject to supervision by a registered broker-dealer." [7] This change will allow trained securities brokerage personnel to be engaged to assist with sales of the savings association's securities if such personnel are properly trained and subject to adequate securities sales supervision. Under the Securities and Exchange Commission's (the "SEC") general securities regulatory scheme, securities sales personnel must be under the supervision of a registered broker-dealer. The requirement helps assure that such individuals will have accountability, management resources, adequate books and records, and approved procedures to follow.

i. Sales Commissions

To help offset the possibility of misdirected sales enthusiasm, the OTS is retaining and modifying the requirement that no commissions, bonuses, or comparable payments may be paid to any employee of the savings association or its affiliates in connection with on-premises sales of securities of the association or an affiliate. The OTS is aware that commissions are a customary method of compensating many securities salespersons. Nevertheless, to avoid potential abuses and undue sales pressure from personnel who may have contact with association customers in various capacities, commissions or bonuses may not be paid to any employee of the savings association or its affiliates.

The rule has not included a prohibition on commissions, bonuses, or comparable payments to broker-dealers. The SEC has in place an established regulatory framework and enforcement

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[4] For example, if the OTS discovers marketing techniques that have the effect of targeting a potentially unsophisticated segment of a savings association's customer base, e.g., older customers with large certificates of deposit coming due, the OTS may characterize such actions as an unsafe or unsound practice.

[5] Thrift Bulletin 23 has attached thereto Corporate and Securities Memorandum No. 2, dated March 21, 1989 (the "CASD Memo #2". CASD Memo #2 expresses concerns and offers guidance regarding securities advertising materials for debt offerings by savings associations, and in particular, the application of Securities and Exchange Commission rules 134 and 135 relating to advertisements (communications not deemed a prospectus) and "offers" (notice of certain proposed offerings). The OTS expects such guidance to be followed by savings associations.

[6] See, 12 CFR part 567.

[7] In this context, a registered broker-dealer means the same as used in the Securities Exchange Act of 1934, one that is registered with the U.S. Securities and Exchange Commission (including appropriately recognized self regulatory authorities) and any required state regulatory authorities.

mechanism to supervise actions of its registered broker-dealers and their affiliated persons.[8] The OTS expects that savings associations will limit their commissions or compensation to broker-dealers to amounts consistent with industry norms.

Regulatory Flexibility Act

The OTS certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The Director of OTS has determined that this rule does not constitute a "major rule" and, therefore, will not require the preparation of a final regulatory impact analysis.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends parts 563 and 563g, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—[AMENDED]

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106; Pub. L. 102–242, sec. 306, 105 Stat. 2236, 2355 (1991).

2. Section 563.76 is added to read as follows:

§ 563.76 Offers and sales of securities at an office of a savings association.

(a) A saving association may not offer or sell debt or equity securities issued by the association or an affiliate of the association at an office of the association; except that equity securities issued by the association or an affiliate in connection with the association's conversion from the mutual to stock form of organization in a conversion approved pursuant to part 563b of this subchapter may be offered and sold at the association's offices: *Provided*, That:

(1) The Regional Director does not object on supervisory grounds that the offer and sale of the securities at the offices of the association;

(2) No commissions, bonuses, or comparable payments are paid to any employee of the savings association or its affiliates or to any other person in connection with the sale of securities at an office of a savings association; except that compensation and commissions consistent with industry norms may be paid to securities personnel of registered broker-dealers;

(3) No offers or sales are made by tellers or at the teller counter, or by comparable persons at comparable locations;

(4) Sales activity is conducted in a segregated or separately identifiable area of the savings association's offices apart from the area accessible to the general public for the purposes of making or withdrawing deposits;

(5) Offers and sales are made only by regular, full-time employees of the savings association or by securities personnel who are subject to supervision by a registered broker-dealer;

(6) An acknowledgment, in the form set forth in paragraph (c) of this section, is signed by any customer to whom the security is sold in the savings association's offices prior to the sale of any such securities;

(7) A legend that the security is not a deposit or account and is not federally insured or guaranteed appears conspicuously on the security and in all offering documents and advertisements for the securities; the legend must state in bold or other prominent type at least as large as other textual type in the document that "This security is not a deposit or account and is not federally insured or guaranteed"; and

(8) The savings association will be in compliance with its current capital requirements upon completion of the conversion stock offering.

(b) Securities sales practices, advertisements, and other sales literature used in connection with offers and sales of securities by savings associations shall be subject to § 563g.10 of this subchapter.

(c) Offers and sales of securities of a savings association or its affiliates in any office of the savings association must use a one-page, unambiguous, certification in substantially the following form:

FORM OF CERTIFICATION

I ACKNOWLEDGE THAT THIS SECURITY IS NOT A DEPOSIT OR ACCOUNT AND IS NOT FEDERALLY INSURED, AND IS NOT GUARANTEED BY [insert name of savings association] OR BY THE FEDERAL GOVERNMENT.

If anyone asserts that this security is federally insured or guaranteed, or is as safe as an insured deposit, I should call the Office of Thrift Supervision Regional Director [insert Regional Director's name and telephone number with area code].

I further certify that, before purchasing the *[description of security being offered]* of *[name of issuer, name of savings association and affiliation to issuer (if different)]*, I received an offering circular.

The offering circular that I received contains disclosure concerning the nature of the security being offered and describes the risks involved in the investment, including:

[List briefly the principal risks involved and cross reference certain specified pages of the offering circular where a more complete description of the risks is made.]

Signature: _____

Date: _____

(d) For purposes of this section, an "office" of an association means any premises used by the association that are identified to the public through advertising or signage using the association's name, trade name, or logo.

PART 563g—[AMENDED]

3. The authority citation for part 563g is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78*l*, 78m, 78n, 78p, 78w.

4. Section 563g.17 is revised to read as follows:

§ 563g.17 Sales of securities at an office of a savings association.

Sales of securities of a savings association or its affiliates at an office of a savings association may only be made in accordance with the provisions of 12 CFR 563.76.

Dated: April 30, 1992.

By the Office of Thrift Supervision.

Timonthy Ryan,

Director.

[FR Doc. 92–24205 Filed 10–6–92; 8:45 am]

BILLING CODE 6720-01-M

[8] Persons selling securities in offices of savings associations may be subject to further OTS guidance. For example, Thrift Bulletin 23 presently requires that for any retail sales of debt, savings associations must assure themselves that sales practices in their offices include safeguards of "suitability" and "know your customer" standards such as those that the National Association of Securities Dealers, Inc. (NASD) requires.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AAL-1]

Alteration and Designation of VOR Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of several existing VOR Federal airways, and designates several new airways, located in the State of Alaska. The FAA made an agreement with the International Civil Aviation Organization (ICAO) to remove all alternate airway segments from the National Airspace System (NAS). This action supports that agreement.

EFFECTIVE DATE: 0901 UTC, December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On May 12, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of several existing VOR Federal airways, and to designate several new airways, located in the State of Alaska (57 FR 20217). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Alaskan VOR Federal airways are published in § 71.125 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of several airways and designates several new airways located in the State of Alaska. This action supports the FAA's agreement with ICAO to remove all alternate airway segments from the NAS.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Alaskan VOR Federal airways, Aviation safety, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.125 Alaskan VOR Federal Airways

* * * * *

V-317 [Revised]

From Ethelda, BC, Canada, NDB via Annette Island, AK; 42 miles 12 AGL, 42 miles 52 MSL, 15 miles 12 AGL Level Island, AK; Sisters Island, AK; to INT Sisters Island 272° and Yakutat, AK, 139° radials. The airspace within Canada is excluded.

V-318 [New]

From Annette Island, AK; INT Annette Island 311° and Level Island, AK, 164° radials; Level Island.

V-319 [Revised]

From Yakutat, AK, via Johnstone Point, AK; INT Johnstone Point 286° and Anchorage, AK, 117° radials; Anchorage; Sparrevohn, AK; Bethel, AK; to Hooper Bay, AK.

V-320 [New]

From Johnstone Point, AK, INT Johnstone Point 271° and Anchorage, AK, 130° radials; to Anchorage.

* * * * *

V-440 [Revised]

From Victoria, BC, Canada, From Sandspit, BC, 83 miles 12 AGL, 115 miles 35 MSL, 55 miles 12 AGL, via Biorka Island, AK; 31 miles 12 AGL, 50 miles 47 MSL, 85 miles 20 MSL, 40 miles 12 AGL, Yakutat, AK; 67 miles 12 AGL, 82 miles 75 MSL, 56 miles 12 AGL, Middleton Island, AK; Anchorage, AK; McGrath, AK; 23 miles 12 AGL, 54 miles 55 MSL, 46 miles 40 MSL, 25 miles 12 AGL, Unalakleet, AK; 17 miles 12 AGL, 91 miles 25 MSL, 17 miles 12 AGL to Nome, AK. The airspace within Canada is excluded.

V-441 [New]

From Middleton Island, AK, via the INT of Middleton Island 298° and Anchorage, AK, 163° radials; to Anchorage.

* * * * *

V-453 [Revised]

From King Salmon, AK; Dillingham, AK; 41 miles 12 AGL, 17 miles 60 MSL INT Dillingham 308° and Bethel, AK, 143° radials; 35 miles 60 MSL, 55 miles 12 AGL Bethel.

V-454 [New]

From King Salmon, AK, via the INT of King Salmon 271° and Dillingham, AK, 120° radials; to Dillingham.

* * * * *

V-481 [Revised]

From Johnstone Point, AK, via Gulkana, AK; Big Delta, AK; to Fort Yukon, AK.

V-482 [New]

From Johnstone Point, AK, via the INT of Johnstone Point 032° and Gulkana, AK, 184° radials; to Gulkana.

* * * * *

V-488 [Revised]

From Hooper Bay, AK, via Unalakleet, AK; Galena, AK, INT Galena 074° and Tanana, AK, 260° radials; Tanana; Fairbanks, AK.

V-489 [New]

From Galena, AK, INT Galena 089° and Tanana, AK, 245° radials; to Tanana.

* * * * *

Issued in Washington, DC, on September 29, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-24352 Filed 10-6-92; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 180

Amendments to Commission Regulations on Arbitration at Self-Regulatory Organizations Under Petition of the National Futures Association

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The National Futures Association ("NFA") petitioned the Commodity Futures Trading Commission ("Commission") to amend the Commission's regulations with respect to arbitration at self-regulatory organizations ("SROs") to raise the monetary ceilings on disputes that may be subject to procedures for resolution based solely on written submissions with no right to oral hearings. The Commission has determined to amend the regulations to raise the dollar limitation for summary arbitration from $2,500 to $5,000 for disputes involving customers and to raise the dollar limitation for any such summary arbitration of disputes between or among members of an SRO and their employees to $10,000. The regulations also are amended to ensure that oral hearings may be conducted in the discretion of the appointed arbitrators in the "small claim" cases, codifying current SRO policies.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Kurjan, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; 202–254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

Commission Regulation 180.2(d)(1) currently allows an SRO, in providing for arbitration of customers' disputes with the SRO's members, to have a procedure for resolution of a dispute without an oral hearing through submission of written documents (*i.e.*, "summary arbitration" or "summary proceedings") if the claims and counterclaims in the proceeding are less than $2,500 in the aggregate.[1] The regulation otherwise entitles every party in an SRO arbitration to appear personally at a hearing. Under Commission Regulation 180.5, an SRO's procedures for member-to-member arbitration also must conform to provisions of Regulation 180.2(d)(1).[2] Although Regulations 180.2 and 180.5 specifically refer to contract market arbitration procedures, Commission Regulation 170.8 effectively makes the part 180 provisions also applicable to registered futures associations, *i.e.*, NFA.[3] By letters dated June 19, 1990, and April 17, 1991, NFA requested the Commission to amend the arbitration regulations by raising the $2,500 summary arbitration ceiling, which has been in effect since 1976,[4] to $5,000 for customer disputes and as high as possible (e.g., $10,000 or $20,000) for member disputes.

The Commission published a notice of proposed amendments to its regulations on November 5, 1991, in the **Federal Register.**[5] Specifically, the Commission proposed to increase the limit to $5,000 for customer summary arbitration under Regulation 180.2(d)(1) as initially proposed by NFA and to $10,000 for member summary arbitration under Regulation 180.5. Parties would continue to be entitled to appear personally at a hearing whenever an amount larger than the proposed thresholds is involved. Moreover, the SROs would not be required to adopt the higher ceilings for summary arbitration.

The Commission received two comment letters, one from NFA[6] and the other from an attorney who has had extensive experience in the area of arbitration, including as an arbitrator for NFA and other forums, as publisher of a newsletter on securities and commodities arbitration, and formerly as director of a large securities arbitration forum.[7] Both commenters supported raising the ceiling as proposed, although the attorney-commenter conditioned his support on the Commission requiring oral hearings to be available upon the demand of any party regardless of the amount in controversy.

Having considered the issues and the comment letters, the Commission has determined to adopt a modified form of the proposed amendments to part 180. As amended, Regulations 180.2(d)(1) and 180.5 raise the dollar limit for summary arbitration from $2,500 to $5,000 for disputes involving customers and to $10,000 for those not involving any customers. In addition, Regulation 180.2(d)(1) is amended to ensure, at a minimum, that arbitrators have authority to order oral hearings in proceedings otherwise subject to SRO summary arbitration procedures. The latter amendment, which reflects current SRO practice, applies to SRO procedures governing summary member-to-member arbitration under Regulation 180.5, as well as to those governing customer-related arbitration.

II. Background

Regulation 180.2(d)(1) was promulgated by the Commission in part to provide a means by which an arbitration forum could control costs in dispute resolution proceedings where the total amount in controversy did not warrant the expense of an oral hearing.[8] The Commission was particularly concerned about instances where the costs associated with a hearing could approach or exceed the amount of the claim or grievance. The Commission also sought to reduce delays in arbitration proceedings involving small claims. Most of the SROs have adopted summary arbitration procedures under Regulation 180.2(d)(1) as part of their arbitration programs.[9]

NFA, which is the most frequently used forum for the arbitration of disputes involving commodity futures and options contracts in the United States, has found that the average size of claims that it receives has increased during the past few years, while the number of submissions with claims under $2,500 has remained relatively low.[10] Consequently, NFA believes that cost and time savings normally attributable to summary proceedings effectively are being limited to a diminishing number of cases and thus are not being realized in many cases for which NFA believes summary arbitration would be appropriate.[11] The

[1] 17 CFR 180.2(d)(1).

[2] 17 CFR 180.5. An SRO's procedure for resolving member-to-member disputes may not interfere with or delay the resolution of customer claims, however.

[3] 17 CFR 170.8.

[4] See 41 FR 27520 (July 2, 1976), effective September 30, 1976.

[5] 56 FR 56482 (November 5, 1991).

[6] Letter from Daniel J. Roth, NFA General Counsel, dated December 16, 1991.

[7] Letter from Richard P. Ryder dated November 15, 1991.

[8] See 40 FR 54432 (November 24, 1975) and 41 FR 27521 (July 2, 1976).

[9] Only the Commodity Exchange, Inc., and the Minneapolis Grain Exchange have not adopted rules providing for resolution of small claims solely on written submissions.

[10] The average claim size rose from $37,247 in fiscal year 1989 to $98,788 in fiscal year 1992. In fiscal year 1992, NFA received 34 submissions with claims below $2,500, down from 68 submissions three years earlier. (NFA's fiscal year runs July 1–June 30.)

[11] Letter from Daniel J. Roth ("Roth"), NFA Secretary and General Counsel, to Andrea M. Corcoran ("Corcoran"), Director of the Commission's Division of Trading and Markets, dated June 19, 1990.

situation could intensify as the number of intra-industry submissions rises as a result of NFA's recent implementation of mandatory arbitration to its entire membership.[13]

To ameliorate the perceived inefficiency, NFA, using a two-tiered formula, has proposed amendments to its rules to increase the maximum claim amounts that qualify for summary arbitration. First, every case claiming less than $5,000 when a customer is involved, or $10,000 for intra-industry disputes, automatically would proceed "on the papers" unless a hearing is ordered by the arbitrator or NFA's Secretary.[14] Summary procedures also would become the routine for larger cases up to $10,000 when a customer is involved and $20,000 for intra-industry disputes, but an oral hearing would be available at a party's request.[15] NFA's rule proposals are inconsistent with the Commission's regulations, however, since parties would not be entitled to an oral hearing at NFA for claims between $2,500 and $5,000 in a customer-related proceeding or between $2,500 and $10,000 in an intra-industry arbitration. Consequently, NFA petitioned the Commission to amend the regulations to allow NFA's proposed procedures. After considering NFA's petition, the Commission proposed to raise the summary ceiling in part 180.

[13] NFA initiated mandatory arbitration of disputes between and among all members and associated persons (unless the parties are required, by agreement or otherwise, to submit to another forum) on March 1, 1992. NFA Member Arbitration Rules § 2. In the first five-and-a-half months under the mandatory rules, NFA received over two-and-a-half times the number of member claims made in the comparable period in 1991. Of the 13 new cases (12% of all demands filed during the recent period), none involved less than $2,500, although five (38%) would have qualified for summary arbitration under the proposed higher threshold for industry cases.

[14] Proposed amendments to NFA Code of Arbitration § 9(i)(1) (formerly 9(h)(1)), submitted by letters dated June 7, 1990, April 17 and June 11, 1991; proposed amendments to NFA Member Arbitration Rules § 9(i)(1), submitted by letters dated September 9 and November 12, 1991. Had the rule changes been in effect at NFA for arbitrations initiated during fiscal year 1992, 43 customer claims and eight intra-industry disputes, in addition to the 34 cases filed with claims less than $2,500, could have proceeded on the papers under these ceilings. The policy of authorizing arbitrators and the Secretary to order oral hearings represents no change from NFA's current rules.

[15] NFA Code of Arbitration and NFA Member Arbitration Rules § 9(i)(2), as proposed. Had the proposed provisions been in effect for arbitrations initiated at NFA during fiscal year 1992, summary procedures would have applied, with oral hearing available upon demand, in an additional 49 customer-related cases and one intra-industry proceeding.

III. Discussion

A. Ceiling Amount

The $2,500 ceiling for SRO summary arbitration procedures was adopted over 15 years ago. In contrast, other alternative dispute resolution forums that accept commodities-related claims routinely allow for resolution of larger claims based on written submissions. For example, in the Commission's reparations program, cases with claims not exceeding $10,000 routinely proceed on the papers under the summary decisional process, which allows oral testimony only in limited circumstances.[16] In setting $10,000 as the threshold for the summary decisional process, the Commission noted that it could not ignore the diminutive effect of continuous high rates of inflation on the value of the dollar and the relative sizes of claims.[17] Parties subject to summary reparations have appeal rights unavailable in arbitration, however.[18]

In addition, at the New York Stock Exchange ("NYSE"), the National Association of Securities Dealers ("NASD") and other securities industry forums, the ceiling for routine arbitration based solely on the written pleadings and evidence is $10,000 (exclusive of attendant costs and interest).[19] Under the American Arbitration Association ("AAA") securities arbitration procedures, which also may govern some futures disputes, claims up to $5,000 are resolved by submission of documents.[20] Oral hearings, however, are readily available for such disputes at these arbitration forums. The AAA provides an oral hearing in a small-claims proceeding upon the request of any party. The securities industry forums provide an oral hearing when: (1) The customer demands one; (2) all the parties consent in writing; or (3) the arbitrator orders one.[20]

In contrast, Regulation 180.2(d)(1) does not require that any provision be made for oral hearings in summary proceedings, even in special circumstances. Nevertheless, the commodities SROs having summary procedures currently permit oral hearings in certain circumstances. At some of the SROs, such as NFA, the Chicago Board of Trade ("CBOT") and the New York Mercantile Exchange ("NYMEX"), it is up to the arbitrator to call an oral hearing.[21] At others, such as the New York Futures Exchange ("NYFE") and the AMEX Commodities Corporation ("ACC"), an oral hearing is provided upon customer demand or consent.[22]

B. Oral Hearing Option

The attorney-commenter supports an increase in the summary arbitration ceiling only if the Commission ensures that parties, particularly customers, in small-claims proceedings will be entitled to oral hearings upon request. He argued, in essence, that the benefits—which include greater public confidence in commodities arbitration and enhanced public perception of fairness—outweigh the costs. He further suggested that not making oral hearings available upon request in summary arbitration serves to discourage potential claimants from filing at commodities SROs, contrary to the Commission's policy of encouraging greater use of NFA as an arbitration forum.[23]

There are various advantages to resolving disputes based solely on written submissions, especially in a proceeding involving a relatively small amount of money in controversy. A summary proceeding expedites the arbitration process and eliminates the expense of an oral hearing. Prehearing activities for summary arbitration are less time-consuming for both the parties and forum staff, and written submissions normally are reviewed and decided by the arbitrator quickly.[24]

[16] 17 CFR 12.13(b)(viii), 12.18(a)(7), 12.26(b), 12.200 through 12.210 (Subpart D). Oral testimony is permitted if, in the discretion of the presiding judgment officer upon a party's motion, such oral testimony is shown to be necessary or appropriate to resolve factual issues that are central to the proceeding. 17 CFR 12.208(b).

As an alternative, parties may elect the voluntary decisional process, which is comparable in concept to summary arbitration and is available for any size dispute. Under this procedure, parties specifically waive all opportunity for an oral hearing. 17 CFR 12.100(b).

[17] 49 FR 6613 (February 22, 1984).

[18] Parties who elect the voluntary decisional process for reparations, however, waive the right to appeal the final decision to the Commission and thereafter to the courts.

[19] NYSE rule 601; NASD code of arbitration § 13 (customer-related dispute) and 10 (intra-industry dispute); Uniform Code of the Securities Industry Conference on Arbitration § 2.

[20] AAA securities rule 37.

[20] In addition, NASD provides an oral hearing upon the request of any party in an intra-industry proceeding. NASD code of arbitration § 10(a).

[21] NFA Code of Arbitration § 9(i)(1), which also gives authority to NFA's Secretary; CBOT Rule 630.12B; NYMEX Rule 5.09.

[22] NYFE Rule 620(h); ACC Rule 619(h).

[23] See 54 FR 1662 (January 17, 1989) (adoption of amendments to Commission Regulation 180.3 to encourage greater use of NFA's arbitration forum).

[24] For example, the average processing time for summary arbitration at NFA in fiscal year 1992 was 9.7 months, compared to 15.4 months for cases involving oral hearings.

Regarding the parties' expenses, forum fees tend to be lower for cases that proceed on the papers,[25] and the parties do not have to spend time and money preparing for and attending an oral hearing.[26] Moreover, reliance on written submissions may be a valid alternative for a *pro se* party who prefers not speaking or arguing the case in person. The forum's expenses in administering summary proceedings also tend to be less.

On the other hand, the opportunity for an oral hearing may offer significant benefits in certain small-claims proceedings. Oral hearings can be integral to arbitrators in assessing the credibility of parties. In addition, small-claims cases tend to involve *pro se* parties, who frequently have difficulty presenting their cases clearly and completely in writing and thus may be at more of a disadvantage in a written proceeding than in an oral hearing, where the arbitrator could assist in eliciting and elucidating the facts and arguments before rendering a decision that is final and binding. Furthermore, parties may be more motivated to reach a mutual settlement when faced with an approaching oral hearing than in a summary proceeding.[27] Additionally, some parties, for whatever reason, exhibit a preference for an oral hearing.[28]

In light of these considerations, futures SROs, while not required to do so, permit oral hearings for small claims cases in certain circumstances, as noted earlier. A review of the experience at NFA, the largest commodities arbitration forum, however, reveals that despite the availability of oral hearings under its summary procedures (at the direction of the arbitrator or the Secretary), NFA has not received requests from any party seeking an oral hearing in a proceeding involving less than $2,500 in lieu of proceeding on the papers. It also has not received complaints that oral hearings are not available upon demand in small-claims cases. On the contrary, parties occasionally have indicated to NFA that they intentionally understate their claim amounts below $2,500 in order to take advantage of the summary process. Moreover, arbitrators have informed NFA that as the decisionmakers, they ordinarily do not need to have small cases presented in person.[29]

C. Conclusion

The inexpensiveness and speed of arbitration relative to litigation frequently are cited as major advantages of that process. The Commission continues to be concerned that arbitration remain affordable to parties, especially to customers, and that the costs associated with commodities arbitration not outweigh the benefits of the process on the whole. So long as the fairness, equitability and integrity of the arbitration procedure are not compromised and the parties are not denied due process, the Commission encourages efforts to reduce delays in small-claims proceedings and to minimize related costs. Raising the permissible ceilings on summary arbitration as proposed could help achieve these goals. Moreover, establishing a different and higher permissible ceiling for member arbitration may allow an increased number of intra-industry disputes to proceed on the papers, with less drain on SRO resources and consequently less potential for interfering with or delaying customer-related proceedings in contravention of Regulation 180.5.

To assure due process in cases subject to summary arbitration, SROs must continue to provide mechanisms under which an oral hearing would be conducted in appropriate circumstances. At a minimum, the arbitrator must have the flexibility—and authority—to order an oral hearing. The Commission is amending its regulations to make this policy, which reflects existing SRO procedures, explicit.

Just as the regulations do not require an SRO to adopt an on-the-papers procedure for small-claims, SROs are not precluded from allowing oral hearings on demand, as some SROs currently provide. A procedure based on arbitrator authority, however, is the minimum acceptable to provide balance in small-claims arbitration between promoting expeditious resolution of a dispute solely through written procedures and ensuring adequate opportunity for parties to present their cases fully and for the arbitrator to ascertain facts and assess issues such as the credibility of the parties and witnesses in order to reach a fair, just result. The rules of the commodities SROs having summary arbitration procedures currently are consistent with the amendment in that they already provide for oral hearings to be conducted in small-claims cases either upon customer demand or consent or at the direction of the arbitrator.

As part of the responsibility for educating arbitrators to perform their functions fairly and effectively, the SROs must ensure that arbitrators are aware of their authority to call an oral hearing in summary proceedings and are sensitive to situations in which the exercise of the authority could be appropriate, whether or not requested by a party. In that regard, the SROs should review training mechanisms and other relevant materials, including arbitrator manuals, to ascertain whether arbitrators receive sufficient guidance.[30]

Based on the foregoing, the Commission has determined to amend its arbitration regulations to increase the dollar ceiling on permissible summary arbitration as proposed and to clarify that, at a minimum, the arbitration panel has authority to order an oral hearing in lieu of the summary procedure in appropriate circumstances. While the SROs are not required to adopt corresponding higher dollar limits, any proposals to expand summary arbitration consistent with the Commission's amended regulations must be submitted to the Commission pursuant to section 17(j) with respect to NFA [31] and section 5a(12) of the Act

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[25] For example, NFA has a sliding scale for filing fees based on claim amount. The smallest fee for customer-related proceedings ($50) applies to submissions with claims up to $2,500 (*i.e.*, summary arbitration). NFA's hearing fees, which primarily are intended to cover arbitrator compensation, similarly follow a sliding scale based in part on whether the hearing would be oral or on the papers.

[26] The cost of attending an oral hearing may include, among other things, absence from employment, as well as travel-related expenses and inconveniences for parties and their witnesses. (NFA's policy of giving preference to the customer's choice of hearing site helps minimize some of those costs; however, to attend exchange arbitration, parties must go to the city where the futures exchange is located.) In addition, parties are more likely to hire lawyers when an oral hearing is contemplated. NFA noted in its comment letter that the various costs could approach or exceed the initial claim, especially when under $5,000.

[27] For example, at the NASD, parties settle approximately half of all cases on an oral hearing track but less than 15% of the cases proceeding on the papers.

[28] At the NASD, for example, customers requested oral hearings in approximately 47% of the small-claims cases filed in 1991.

[29] The arbitrators indicated that in larger cases, where oral hearings are conducted routinely, they tend to rely more on documentary evidence and submissions than on the oral testimony.

[30] For example, NFA's arbitrator's manual currently advises only that a summary proceeding generally is not appropriate in cases where credibility is a central issue. The manual states that an oral hearing can be scheduled if credibility cannot be determined from the written submissions and if the expense of an oral hearing is justified. There is no reference to other possibly valid circumstances, such as where oral testimony is necessary or appropriate to resolve factual issues that are central to the proceeding, where a party's reasons for requesting an oral hearing are compelling, or where both claimant and respondent consent.

[31] As described *supra*, NFA submitted proposed rule changes regarding both customer arbitration and member arbitration, pending action on the Commission's regulations. Because the proposals are consistent with the amendments to part 180, the Commission concurrently has approved NFA's provisions.

and Commission Regulation 1.41 with respect to exchanges.

IV. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies, in proposing rules, consider the impact of those rules on small businesses.[32] The Commission previously determined that contract markets and registered futures associations, to which the amendments directly would apply, are not small entities for purposes of the RFA.[33] Moreover, the amendments do not impose changes in the SROs' rules or procedures. With respect to SRO members and other businesses or organizations that may become subject to any SRO arbitration rule changes adopted under the amendments, the Commission determined previously that futures commission merchants also are not small entities for purposes of the RFA.[34] The Commission separately stated that it would determine on a case-by-case basis whether introducing brokers, commodity pool operators, commodity trading advisors and floor brokers should be considered small entities in connection with particular rule proposals.[35] In the present context, the Commission believes that, regardless of whether such SRO members or any nonmember businesses or organizations that might be affected by SRO rules conforming to the amendments to the Commission's arbitration regulations would be considered small entities, the amendments would not result in the imposition of any additional regulatory burdens on such entities. On the contrary, such entities generally could spend less time and money to arbitrate under SRO summary procedures than to prepare for and participate in oral hearings when their disputes involve amounts not exceeding the new limits. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 U.S.C. 605(b) that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA") imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.[36] In compliance with the PRA, the Commission submitted the proposed rule amendments to the Office of Management and Budget ("OMB"). Although the Commission believes that the new amendments do not impose any information collection requirements as defined by the PRA, OMB previously had approved the collection of information associated with Regulation 180.2 on June 29, 1990 and assigned OMB control number 3038–0022 to the group of rules that includes Regulation 180.2. The burden associated with the entire collection, including Regulation 180.2 as amended, is as follows:

Average burden hours per response: 79.83.

Number of respondents: 58,283.

Frequency of response: On occasion.

Copies of the OMB-approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, 202–395–7340.

List of Subjects in 17 CFR Part 180

Arbitration, Claims.

For the reasons set out in the preamble and pursuant to the authority contained in the Commodity Exchange Act, in particular, sections 4c, 4d, 4f, 4k, 5a, 8a, and 17 thereof,[37] 17 CFR Part 180 is amended as set forth below.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

1. The authority citation for part 180 continues to read as follows:

Authority: 7 U.S.C. 6c, 6d, 6f, 6k, 7a, 12a, and 21, unless otherwise noted.

2. Section 180.2 is amended by revising paragraph (d)(1) to read as follows:

§ 180.2 Fair and equitable procedure.

* * * * *

(d) * * *

(1) Each of the parties shall be entitled personally to appear at such hearing, unless the contract market shall have adopted a procedure for the written submission of claims or grievances (and any counterclaims applicable thereto) which in the aggregate do not exceed $5,000. If the claim or grievance (and any counterclaim applicable thereto) in the aggregate does not exceed $5,000, provision may be made for the claim or grievance to be resolved without a hearing through a submission on the basis of written documents, unless a hearing is required by the panel or other decision-maker or by rule.

* * * * *

3. Section 180.5 is revised to read as follows:

§ 180.5 Member-to-member settlement procedures.

A contract market may establish a procedure for compulsory settlement of claims and grievances or disputes which do not involve customers. If adopted, the procedure shall be independent of, and shall not interfere with or delay the resolution of, customers' claims or grievances submitted for resolution under the procedure established pursuant to the Act. Such a procedure shall provide procedural safeguards which must include, at a minimum, fair and equitable procedures conforming to those set forth in § 180.2 of this part, except that:

(a) The election of the mixed panel and the prohibition of appeal to any entity within the contract market contained in § 180.2 (a) and (f) of this part need not be required; and

(b) The dollar limitation contained in § 180.2(d)(1) of this part on a claim or grievance (and any counterclaim applicable thereto) that may be subject to resolution without a hearing through submission of written documents may not exceed $10,000 in the aggregate.

Issued in Washington, DC, on September 30, 1992, by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 92–24263 Filed 10–6–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

[MB–56–F]

RIN 0938–AG01

Medicaid Program: Targeting Information for Income and Eligibility Verification Systems

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule eliminates a requirement included in the interim final rule with comment period that we published on March 2, 1989 (54 FR 8738) that State Medicaid agencies retain a central record of all information items

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[32] 5 U.S.C. 601 *et seq.* (1988).

[33] 47 FR 18618, 18619 (April 30, 1982) (contract markets); 55 FR 5023, 5024 (February 13, 1990) (registered futures associations).

[34] 47 FR 18618, 18619 (April 30, 1982).

[35] 47 FR 18618, 18620 (April 30, 1982).

[36] 44 U.S.C. 3501 *et seq.* (1988).

[37] 7 U.S.C. 6c, 6d, 6f, 6k, 7a, 12a, and 21.

received through the income and eligibility verification system (IEVS). It is aimed at simplifying program administration and granting States greater flexibility. The preamble to this rule also includes our responses to comments submitted on that interim final rule.

EFFECTIVE DATE: This rule is effective November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Helaine Jeffers, 301–966–5920.

SUPPLEMENTARY INFORMATION:

I. Background

Effective April 1, 1985, section 2651 of Public Law 98–369, the Deficit Reduction Act of 1984, established section 1137 of the Social Security Act (the Act), which contains provisions aimed at ensuring that Federally-funded welfare agencies (including the Aid to Families with Dependent Children, Food Stamp and Medicaid programs) furnish benefits only to individuals eligible for them. Section 1137 requires the agencies administering these programs to have an income and eligibility verification system (IEVS) for exchanging with each other and certain Federal agencies information that may be of use in establishing or verifying eligibility or benefit amounts. The provision mandated that the agencies target the use of the information to the uses most likely to be productive in identifying and preventing ineligibility and incorrect payments.

On February 28, 1986, HCFA, the Food and Nutrition Service (FNS) and the Administration for Children and Families (ACF) (formerly the Family Support Administration) published jointly a final rule (51 FR 7178) to implement the IEVS for the Medicaid, Food Stamp and AFDC programs. The rule required agencies that administer these programs to review and compare all information received against the case file to determine whether the information affects the applicant's or recipient's eligibility or benefits. The regulations also required the agency to notify the recipient of any intended adverse action, or make an entry in the case record that no action is necessary, within 30 days of receipt of the information for 80 percent of the determinations.

Legislation

After the three agencies jointly published the final rules, the Budget Committee of the House of Representatives in its report accompanying H.R. 5300 (which was the basis for the Omnibus Budget Reconciliation Act of 1986) noted that the agencies' current rules did not permit targeting in the manner it said it intended to allow in the original statute (H.R. Rep. No. 727, 99th Cong., 2d Sess. 424–425 (1986)). According to this 1986 report, the House Budget Committee originally intended to have States utilize a variety of information sources to verify the eligibility of applicants and recipients of benefit programs, as an effective and efficient tool in preventing benefit payments from being made to individuals who are not eligible. The report states that the Committee believed that for the use of such information to be productive, States must be afforded the discretion to target their efforts in ways they determine most cost-effective.

In addition, the Committee stated its belief that requiring States to act upon the information they receive within 30 days, as prescribed in the final rules, is unrealistic and "that a 45-day requirement is more reasonable than the 30 days set forth in the final rule." (H.R. Rep. No. 727, 99th Cong., 2d Sess. 425 (1986)).

In section 9101 of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509), Congress amended section 1137(a)(4) of the Act to prohibit the Secretary from requiring States to use all the information they receive from IEVS matches to verify the eligibility of all recipients. The House Budget Committee's directive to allow the public assistance agencies 45 days to act upon information received, however, was not included as a legislative amendment.

Revisions to the February 28, 1986 Regulations

In order to bring the regulations into conformity with the amendment to section 1137 of the Act made by Public Law 99–509, and to follow clearly expressed congressional intent on the time period for acting upon information received, we amended our regulations at 42 CFR part 435, subpart J, on March 2, 1989 (54 FR 8738) in an interim final rule with comment. We summarize the provisions of the amendments below.

Targeting the Use of Information

We added a new § 435.953 to provide that all information received through the IEVS on recipients need not be used. States instead may elect to target for followup that information they believe most useful to them.

Any agency that intends to exclude items from followup is required to submit a followup plan specifying the categories to be excluded and providing a description of the criteria defining each category. For each category, the agency must provide a reasonable justification explaining why the followup would not be cost-effective. A formal cost-benefit analysis is not required.

The rules at 42 CFR 435.948 that were in effect before the March 2, 1989 rules required State agencies to use all information concerning both applicants and recipients. In clarifying that State agencies be allowed to target information, the amendment to section 1137(a)(4) of the Act refers to "recipients" only. Therefore, we revised the regulations to permit targeting of recipients but not applicants.

Timeframe for Action on Match Results

The regulations at § 435.952 provided a 45-day period for following up on information items as a maximum time period.

Quality Control Requirements

In order to clarify that the agency is liable even for items not followed up, we amended § 435.945, General requirements, by adding paragraph (h) to require the State agencies to retain a separate central record of all the information items received, including those not followed up. The agency was required to continue to retain information in a manner that assured that it did not compromise information safeguards; the agency had to make this information available to quality control reviewers upon request. Such information must be retained for the periods specified by 45 CFR 74.20 through 74.25.

Third Party Liability

We stated in the March 2, 1989 rule that targeting does not apply to activities for establishing third party liability (TPL) benefit amounts. Section 1902(a)(25) of the Act requires that State agencies or local Medicaid agencies take all reasonable measures to ascertain the legal liability of third parties to pay for care and services provided to Medicaid recipients.

Technical Changes

We made three technical changes to § 435.952. In paragraph (a), by cross-reference, we incorporated the changes in § 435.953 that permit State agencies to limit review and comparison of information to targeted information. In paragraph (c), we reflected the correct order the State agency must follow when processing a recipient's case file under IEVS. Finally, in paragraph (e), we extended to 45 days the time within which a State agency may delay action on followup of IEVS information items.

However, the number of items that may be delayed beyond this time period remains limited to 20 percent of the items for which verification was requested.

We also changed the time period in § 433.138(g)(1)(i). We revised the time for followup for TPL purposes from 30 to 45 days to make it consistent with the time period allowed for IEVS followup. We retained the provision for limiting delaying action beyond 45 days to 20 percent of the information items when the agency does not receive requested verification.

II. Comments on the Proposed Rule

In response to our March 2, 1989 rule, we received 14 comments from 7 commenters. We set forth these comments and our responses to them below.

Targeting the Use of Information

Comment: One commenter recommended setting a $10 minimum tolerance level for asset match cases; that is, asset income under $10 would require no action.

Response: We do not agree that the regulation should contain a tolerance amount. While thresholds may be used by many States in their targeting plans, our stipulating these thresholds in regulations may place undue restrictions on States in their choices to target their efforts in ways they determine to be most cost-effective.

Comment: One commenter recommended that the regulation provide for prematch targeting so that it will not be necessary to request information on certain recipients. The commenter gave residents in psychiatric facilities as an example of individuals who could be excluded on a prematch basis.

Response: The regulations already contain a provision under § 435.948(d) for reducing the frequency at which information is requested for institutionalized individuals. This exception provides that State agencies are required to obtain information from State wage information collection agencies (SWICA) for institutionalized individuals only during the application period and once yearly; they are required to obtain the data from unemployment compensation agencies only during the application period. This final rule applies only to the targeting of information items received. We are considering further amending the regulation in the future to give States greater flexibility by allowing them to limit requests from IEVS data sources to those sources that are determined to be most cost-effective.

Comment: One commenter objected to the requirement that State agencies must justify the decisions on targeting to HCFA (under delegation from the Secretary of HHS). The commenter contended that congressional intent gave States the discretion to target on their own.

Response: Under section 1902(a)(4) of the Act, HCFA, acting for the Secretary of HHS, has the authority and responsibility to conduct activities as found necessary for proper and efficient administration of the State plans. Given the broad latitude that is provided State agencies in targeting information items, we consider it in the program's best interest for HCFA to maintain oversight and approval of State targeting plans. ACF and FNS similarly require that State targeting plans for programs they administer be approved.

Comment: Two commenters objected to excluding applicants from targeting and including only recipients. One commenter contended that his State agency's experience showed that applicants are frequently prior recipients and that the rule would preclude targeting and consequently delay processing the application while the agency awaits verification of the information on the new application.

Response: We do not agree with these comments. We believe that the time of application is the opportune time for State agencies to conduct an intensive review of all factors of the applicant's eligibility and to permit targeting at this point in the process could allow too many incorrect eligibility determinations.

Morever, under existing guidelines, State agencies are not required to wait for the verification of the information to place applicants on the rolls. The preamble to the March 2, 1989 regulations clearly states that States may not delay a pending application solely to await information if other evidence establishes the individual's eligibility for assistance.

Time Period for Action on Match Results

Comments: We received four comments on the extension to 45 days of the time allowable for action on match results. Two commenters believed the time period was too restrictive and recommended periods ranging from 60 to 180 days. Another commenter observed that followup within 45 days may be difficult because States have no control over the responses that must be requested from financial institutions. One commenter indicated that it would be particularly difficult for a State agency with a decentralized intake process to monitor the 20 percent tolerance that is permitted beyond the 45-day followup period.

Response: After serious consideration of the adequacy of the 45-day time period for following up information items received in IEVS matches, we concluded that the 45-day followup should be retained, since State agencies are permitted to limit followup to cost-beneficial cases, and they may exceed the 45-day period for 20 percent of followed up cases when verification is not received timely. We note that targeting could provide relief for State agencies with heavy followup case loads, inasmuch as targeting may be tied to staffing levels. For example, State agencies with heavy caseloads may have to establish higher followup threshold amounts because these activities may require additional hiring. If the thresholds are too low, the cost of followup may exceed the expected return.

We note, too, that although FNS has the authority to rescind the 45-day time period for cause, no State agencies have requested a waiver.

While we acknowledge that State agencies lack control over responses from financial institutions, we believe the 20 percent tolerance permitted will accommodate delayed verifications. We also recognize that monitoring the 20 percent tolerance in decentralized intake processes could be difficult for some State agencies and may require system changes to capture the data required to make this calculation. We do not consider either of these situations serious enough to warrant lengthening the followup time.

Quality Control Requirements

Comment: Three commenters objected to including in QC reviews sample cases that the agency excluded through targeting. They contended the cases were properly handled in accordance with an approved targeting plan.

Response: We do not agree that cases should be excluded from QC review because information received is not followed up. State agencies may exercise their option to target or not to target and to develop their individual targeting schemes. Exercising this prerogative and selecting the targeting levels, however, does not automatically eliminate the possibility of erroneous payment; those cases, therefore, should be subject to QC review along with other cases. Cases chosen for the QC review that have been excluded from further followup by targeting may also provide an opportunity for evaluating the cost-effectiveness of State agency

targeting plans. We will continue to subject information items that are not followed up to QC verification.

Comment: One commenter believed that State agencies should not be required to retain items not followed up, as doing so may cause a local data storage and retrieval problem.

Response: To the extent that the commenter objects to the storage of information items in individual case files, we continue to believe that items not followed up have to be retained. In order to conduct QC reviews, we have to have access to data not followed up as well as to those followed up.

However, our interpretation of this requirement was to require State agencies to keep a separate record of all items centrally as well as in individual case files. We have learned that retaining and retrieving records on information items not followed up requires States to write and maintain additional computer programs. The States need a program to identify matched cases, known as hits, and another to store and make all hits available for access to quality control reviewers. The costs added by these additional steps reduce the cost-effectiveness of these matches. Experience shows that these matches provide little, if any, additional information for quality control purposes.

We also note that, with the exception of Internal Revenue Service (IRS) data, quality control reviewers routinely check IEVS data in individual case files, apart from any central records that are maintained, to determine whether the data may be applicable to the review month. HCFA has contracted separately with the IRS to receive its data for the Federal review.

Therefore, we are amending our regulations at 42 CFR 435.945 by deleting paragraph (h) in its entirety. This amendment will remove our requirement that States keep a central log-type record of all IEVS information received.

Neither ACF nor FNS requires its State agencies to keep a central record; the agencies are only required to keep all information items in individual records. ACF regulations, however, do give States the flexibility to also maintain a central record. See 45 CFR 205.60 and 7 CFR 272.8(h), respectively, for ACF and FNS recordkeeping requirements pertinent to IEVS. Thus, our revision will also ensure that the three programs involved in the IEVS have similar requirements.

Deleting 42 CFR 435.945(h) does not change any other recordkeeping requirements. States are still required to maintain all items of information, followed up or not, in individual files in accordance with 42 CFR 431.17.

Third Party Liability

Comment: One commenter believed that third party liability (TPL) should not be excluded from targeting as provided in the targeting regulations.

Response: We do not agree with this comment. Every employment lead, no matter how small, could be a lead for health insurance, and our TPL instructions (section 3903.3 of the State Medicaid Manual) provide that if health insurance information is already in the file or is known by the State agency, additional followup is not required. Therefore, we continue to exclude TPL from targeting.

III. Summary of Revisions

Based on our evaluation of public comments and an assessment of program experience, we are revising the interim final rule we published on March 2, 1989 to remove § 435.945(h). This removes the requirement that State agencies keep a centralized record of all items received.

IV. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if this rule has a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 50 beds and is located outside a Metropolitan Statistical Area.

We indicated in section D of the interim final rule with comment period that we published on March 2, 1989 (54 FR 8738) that we expected the net effect not to result in a significant economic impact. Subsequent to that analysis we have eliminated our requirement that States keep a central log-type record of all IEVS information received, removing further unnecessary costs. However, we are unable to determine these savings at this time due to the lack of cost data.

We received no comments on our analysis and we believe that none of the changes incorporated into this final rule has any significant impact. Therefore, we are not preparing an analysis.

For these reasons, we have determined that the threshold criteria under E.O. 12291 are not met and a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these regulations will not have a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or analysis of effects on small rural hospitals.

V. Collection of Information Requirements

This rule deletes an information collection requirement that was part of a group of information collection requirements subject to review by the Office of Management and Budget and approved under approval number 0938–0467.

List of Subjects in 42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR part 435 is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 435.945 [Amended]

2. Section 435.945 is amended by removing paragraph (h).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 24, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: October 1, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-24319 Filed 10-6-92; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 920109-2009]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions, and request for comments.

SUMMARY: NOAA announces a reduction in the cumulative trip limit for thornyheads and the deepwater complex (thornyheads, Dover sole and trawl-caught sablefish) in the groundfish fishery off Washington, Oregon, and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The trip limit is designed to keep the catch within the 1992 harvest guideline for the species while extending the fishery as long as possible during the year.

DATES: Effective from 0001 hours (local time) October 7, 1992, until modified, superseded, or rescinded. Comments will be accepted through October 22, 1992.

ADDRESSES: Submit comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115; or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, California 90802-4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney McInnis at (310) 980-4040.

SUPPLEMENTARY INFORMATION: The FMP provides for rapid changes to specific management measures that have been designated as "routine." The trip limit for thornyheads, Dover sole, and sablefish are among those management measures that have been designated routine at 50 CFR 663.23(c)(1)(i).

The notice of 1992 groundfish fishery specifications and management measures (57 FR 1654, January 15, 1992) announced an initial 2-week cumulative trip limit for thornyheads of 25,000 pounds. At the July 1992 meeting, the Pacific Fishery Management Council (Council) found that landings were occurring at an unexpectedly high rate and recommended that the trip limit be reduced to 20,000, which occurred on July 29, 1992 (57 FR 34266; August 4, 1992). At its September 1992 meeting, the Council learned that even though the August 1992 catch had declined 16 percent (to 6,765 mt cumulatively through August 31), the 7,000-mt harvest guideline would be reached by mid-November if landing rates were not further curtailed. Consequently, the Council has recommended a further reduction of the cumulative trip limit for thornyheads to 15,000 pounds on October 7, 1992, the beginning of the next 2-week period. Thornyheads are part of the deepwater complex, which also includes sablefish and Dover sole. The Council also recommended a change in the cumulative trip limit for the deepwater complex from 55,000 pounds to 50,000 pounds, which applies to the same 2-week periods.

Secretarial Action

The Secretary of Commerce concurs with the Council's recommendation and herein modifies paragraph E.(4)(c) of the 1992 Management Measures (57 FR 1654, January 15, 1992; as modified at 57 FR 34266, August 4, 1992) so that the 2-week cumulative trip limit is reduced from 20,000 pounds to 15,000 pounds for thornyheads, and from 55,000 pounds to 50,000 pounds for the deepwater complex. All other provisions remain in effect.

Classification

This action is made under the authority of and in accordance with the regulations at 50 CFR 663.23(c).

This action is authorized by Amendment 4 to the FMP for which a Supplemental Environmental Impact Statement (SEIS) was prepared in accordance with the National Environmental Policy Act. Because this action and its impacts have not changed significantly from those considered in the SEIS, this action is categorically excluded from the requirement to prepare an environmental assessment in accordance with section 6.02c.3.(f) of NOAA Administrative Order 216-6.

This action is in compliance with Executive Order 12291. The public has had the opportunity to comment on this action. The public participated in the Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in September 1992 that resulted in the recommendation to take this action.

The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until October 21, 1992.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1992.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-24289 Filed 10-6-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 563, 567, and 571

[No. 92-283]

RIN 1550-AA50

Classification, Valuation and Regulatory Capital Treatment of Troubled, Collateral-Dependent Loans and Foreclosed Assets

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to revise its guidance regarding the classification, valuation and regulatory capital treatment of troubled, collateral-dependent loans and foreclosed assets. OTS seeks comment before issuing a final policy statement on the classification and valuation of troubled, collateral-dependent loans and foreclosed assets and making conforming amendments to the classification of assets regulation and other regulations in order to implement the proposed policy. OTS also proposes to amend the risk-based capital regulation to conform with this change in policy.

DATES: Comments requested must be received on or before December 7, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 92-283. These submissions may be hand delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Robert J. Fishman, Program Manager, (202) 906-5672, Deirdre G. Kvartunas, Program Analyst (202) 906-7933, Timothy J. Stier, Deputy Chief Accountant, (202) 906-5699, Office of Thrift Supervision, 1700 G St., NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under current policy (and under the policy followed by OTS's predecessor, the Federal Home Loan Bank Board), the OTS permits savings associations to value and to determine appropriate charge offs and specific valuation allowances (SVAs) for troubled, collateral-dependent loans based on the net realizable value (NRV) of the collateral that secures such loans. SVAs or charge offs are used to adjust the carrying value of such assets for estimated losses.[1]

Foreclosed assets, including real estate owned and "in-substance" foreclosures, are initially valued at the fair value of the underlying collateral. Charge offs are required for the difference between the recorded investment in the loan and the fair value of the underlying collateral. Thereafter, savings associations are permitted to use NRV to determine whether additional SVAs or charge offs must be established.

Section 4 of the Home Owners' Loan Act (HOLA) requires the Director of the OTS to establish accounting standards that incorporate generally accepted accounting principles (GAAP) to the same degree that such principles are used to determine compliance with regulations prescribed by the Federal banking agencies. HOLA also authorizes the Director of OTS to prescribe more stringent standards. Furthermore, it mandates that all regulations and policies of the Director that govern the safe and sound operation of savings associations shall be no less stringent than those established by the Office of the Comptroller of the Currency (OCC) for national banks.

Based on the statutory mandate, and to ensure that the classification standards used by savings associations are closely tied to losses incurred, the OTS proposes to adopt revised guidance on the classification, valuation and regulatory capital treatment of troubled, collateral-dependent loans and foreclosed assets.

II. Proposed Policy on the Classification, Valuation and Regulatory Capital Treatment of Troubled, Collateral-Dependent Loans and Foreclosed Assets

The OTS today proposes three new policies: (a) The use of fair value for the valuation of troubled, collateral-dependent loans and foreclosed assets; (b) the use of charge offs for amounts classified "loss"; and (c) the removal of the 200 percent risk-weight category for foreclosed assets.

These policies will affect savings associations in several ways. First, under a fair value accounting standard the required level of SVAs/charge offs for savings associations will increase because losses will be recognized earlier. Second, the removal of the 200% risk-weight category for foreclosed assets will reduce the risk-based capital requirement for savings associations and result in a treatment of these assets similar to that of the OCC. Because SVAs and charge offs have the same impact on capital adequacy, the requirement to use charge offs will not adversely affect savings associations' capital positions.

A. The Use of Fair Value

A collateral-dependent loan is a loan where proceeds for repayment can be expected to come only from the operation and sale of the collateral. This would not include loans that are adequately protected by a financially responsible guarantor that has both the ability and willingness to provide support for the loan.

For troubled, collateral-dependent loans where collection in full is not anticipated, any excess of the recorded investment in the loan over the fair value [2] of the underlying collateral

[1] Whether it results in a specific valuation allowance or a charge off, a "loss" classification reduces the carrying value of the loan. A "loss" classification resulting in a SVA is reflected in the financial statements as a contra-asset account. On the other hand, a "loss" classification resulting in a charge off is reflected in the financial statements as a direct reduction in the recorded investment in the loan. For purposes of determining capital adequacy, however, SVAs and charge offs have the same effect.

[2] Fair value should not be based solely on the current performance of the real estate, or on

Continued

would be classified "loss." Collection in full is not anticipated when either: (1) The projected cash flows (on an undiscounted basis) from the operation and sale of the collateral over the intermediate term (e.g., no greater than five years) are less than required payments of principal and interest, according to the contractual terms; or (2) the loan's original contractual terms have been significantly modified because of collectibility concerns.

For troubled, collateral-dependent loans where collection in full is possible, but not reasonably assured, any excess of the recorded investment in the loan over the fair value of the underlying collateral would be classified "doubtful." Collection in full might be possible, but not reasonably assured, when neither conditions (1) nor (2), above, is present. In such case, the recorded investment may be greater than the fair value due to a current collateral value shortfall, the problematic timing of collection, or other problems that lead to the characterization of the loan as troubled.

For a troubled, collateral-dependent loan, in either of the above cases, the portion of the loan not classified as either "doubtful" or "loss" would be classified "substandard" where well-defined weaknesses are present with respect to the remaining portion of the loan.[3]

Under current policy, assets or portions of assets classified "loss" must be charged off or a SVA must be provided. As noted in section B below, the OTS is also proposing to discontinue use of the SVA.

For portions of troubled, collateral-dependent loans classified "doubtful" or "substandard," as for any other asset classified "doubtful" or "substandard," a general valuation allowance would be required.

This proposed policy differs from current OTS policy in two respects: (1) Savings associations would be required to use fair value, rather than net realizable value, in the valuation of troubled, collateral-dependent loans; and (2) savings associations would be required to compare the projected cash flows and the contractual obligation (principal and interest) associated with troubled, collateral-dependent loans to determine whether collection in full is anticipated.

The OTS also proposes to revise the current guidance on foreclosed assets to require savings associations to use fair value both at the initial valuation and thereafter. Foreclosed assets, including real estate, would be carried at the lower of cost or fair value, based on the assumption that such assets are held for sale. This policy regarding foreclosed assets will also apply to in-substance foreclosures. As a result, OTS policy will conform with the recently issued Statement of Position (SOP) 92-3, "Accounting for Foreclosed Assets" by the American Institute of Certified Public Accountants (AICPA). Under this SOP, there is a rebuttable presumption that foreclosed assets are held for sale. The SOP recommends that foreclosed assets held for sale be carried at the lower of (a) fair value minus estimated costs to sell or (b) cost. This SOP should be applied to foreclosed assets in annual financial statements for periods ending on or after December 15, 1992.

The OTS also recognizes that the Financial Accounting Standards Board (FASB) has under development an exposure draft on the accounting for impaired loans. Any final action by the FASB on this issue will be addressed by the OTS in our issuance of final guidance on troubled, collateral-dependent loans.

These policies are appropriate to adopt for the following reasons:

- They are applied only where the recovery of principal and interest on the loan in question is solely dependent upon operation and sale of the collateral.
- They focus on the underlying economics of the lending arrangement, including cash flows, and underlying collateral to estimate losses.
- They comport with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) mandate that OTS prescribe standards no less stringent than those used by national banks and with the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) mandate that OTS have standards that are consistent with GAAP.
- They are consistent with the approach articulated in the March 1, 1991 "Joint Supervisory Policies" statement and the November 7, 1991 "Interagency Policy Statement on the Review and Classification of Commercial Real Estate Loans" jointly issued by the OTS, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Board. As stated in these releases, the evaluation of real estate loans is based on the ability of the collateral to general cash flow over time, not upon its liquidation value.

B. Charge Offs

The OTS also proposes to remove the current authority for savings associations to use SVAs. The proposed change would require associations to use charge offs for amounts classified as "loss" because such amounts are generally deemed to be uncollectible. As stated above, this change will not impact the capital adequacy calculations for savings associations. The adoption of this proposed policy would align OTS policy with the policies of the bank regulatory agencies.

C. Removal of 200 Percent Risk-Weight Category

In light of the proposed adoption of a fair value methodology, the OTS also proposes to amend its current minimum capital requirements at 12 CFR 567.6(a)(1)(v). The current minimum capital requirements include a risk-based capital standard that assigns assets to risk-weight categories based on their relative credit risk. The current rule includes a 200% risk-weight category for all repossessed assets or assets more than 90 days past due (and equity investments that the OTS determines to have the same risk characteristics as real estate owned). There is an exception to the 200% risk-weight category for 1-4 family residential real estate that is more than 90 days past due, which is placed in the 100% risk-weight category.

The 200% risk-weight category was established because a savings association could carry such assets at the lower of their cost of NRV. See 54 FR 48845, 48853 (Nov. 8, 1989). Because the OTS proposes to require the use of fair value instead of NRV, it is appropriate to remove the 200% risk-weight category. Thus, assets that are currently placed in the 200% risk-weight category would be placed in the 100% risk-weight category.

D. Miscellaneous Conforming Amendments

OTS is also proposing conforming amendments to various regulatory provisions to implement the policy that would require savings associations to use charge offs. These amendments would delete any references to SVAs as an alternative to the use of a charge off.

III. Transition Period

The OTS is considering the use of a transition period in the adoption of the

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liquidation value. Absent a completed, arms-length sale of the subject real estate, the best estimate of its fair value is that based on an independent appraisal. The discounted cash flow approach, often used by the appraiser, emphasizes the long-term ability of the real estate to generate income, and to increase in value over time. Fair value is to include a reduction for the seller's disposition costs.

[3] The remaining portion of the loan is the lower of the recorded investment in the loan or the fair value of the underlying collateral.

proposed policy on the classification, valuation and regulatory capital treatment of troubled, collateral-dependent loans and foreclosed assets in lieu of an immediate adoption of the proposed policy. The OTS specifically requests comment on whether to adopt a transition provision and, if so, what structure it should take.

One option the OTS specifically requests comment on is the application of these new policies beginning with the quarter ending December 31, 1992. That date would coincide with the AICPA's SOP 92–3 implementation date for the accounting for foreclosed assets for many institutions. It also provides institutions with a period of time to put in place new procedures to comport with the proposed new policies.

IV. Implementation

The OTS proposes to implement the proposed policy on the classification and valuation of troubled, collateral-dependent loans and foreclosed assets by issuing guidance to OTS regional staff and to savings associations in addition to making the modifications to its regulations contained in today's proposal. All comments received regarding the issues presented in this proposal will be considered when formulating such guidance and final modifications to regulations.

Implementation of the requirement to use charge offs and the revision of the risk-based capital regulations will be made by promulgation of a final rule.

V. Request for Comment

The OTS requests comments from all interested parties on the items discussed in this preamble and proposed rule. OTS specifically requests comment on the following issues:

1. Is the proposed policy on the classification, valuation and regulatory capital treatment of troubled, collateral-dependent loans and foreclosed assets appropriate for savings association? Will it improve the likelihood that the anticipation of loss associated with troubled, collateral-dependent loans is reported in a manner that enhances safety and soundness? Should restructured loans (Troubled Debt Restructurings) be included in this policy?

2. How does the proposed policy on the classification, valuation and regulatory capital treatment of troubled, collateral-dependent loans and foreclosed assets compare with that used by the bank regulatory agencies, particularly the Office of the Comptroller of the Currency?

3. Is the proposal to remove the authority for savings associations to use SVAs appropriate? What are the benefits and costs of the ability to establish SVAs?

4. Should OTS adopt a transition period for the new requirements? If so, how should OTS structure such a transition? How will any transition adopted by the OTS comport with the requirement for savings associations to recognize losses under GAAP? Is the use of December 31, 1992 as the implementation date appropriate?

5. Is the proposed revision to the risk-based capital standards appropriate?

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Office certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The Office has determined that this proposed rule does not constitute a "major rule"; therefore, a regulatory impact analysis is not required.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Saving associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Director, Office of Thrift Supervision, hereby proposes to amend parts 545, 563, 567, and 571, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Section 545.73 is amended by revising paragraph (a) to read as follows:

§ 545.73 Inter-American Savings and Loan Bank.

* * * * *

(a) The Federal savings association's regulatory capital meets the requirements of § 567.2 of this chapter, including any individual minimum capital requirement established under § 567.3 of this chapter or by a capital directive issued pursuant to § 567.4 of this chapter, and all losses have been offset by charge offs to the extent required by § 563.172 of this chapter;

* * * * *

3. Section 545.111 is revised to read as follows:

§ 545.111 Adjustments to book value of assets.

If the Director determines that an asset's stated book value exceeds its value or that documentation in the Federal savings association's loan file is inadequate to demonstrate that an investment made under 12 U.S.C. 1464(c)(3)(C)–(D) is sound, it may require the Federal savings association to charge off the asset immediately.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

4. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106; Pub. L. 102–242, sec. 306, 105 Stat. 2236, 2355 (1991).

5. Section 563.160 is amended by revising paragraphs (c)(3) and (d)(2) to read as follows:

§ 563.160 Classification of certain assets.

* * * * *

(c) *Implementation of classification system.* * * *

* * * * *

(3) In its quarterly reports to the Office, each savings association shall include aggregate totals of assets that the savings association has classified in each of the three asset classification categories, and the aggregate general valuation allowances established.

(d) *Effect of classification.* * * *

(2) When, pursuant to this section, either a savings association or an examiner has classified one or more assets or portions thereof Loss, the savings association shall charge off such amount.

* * * * *

PART 567—CAPITAL

6. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

7. Section 567.6 is amended by revising the section heading; by removing the period located at the end of paragraph (a)(1)(iv)(Q) and by adding in lieu thereof a semicolon; by adding new paragraphs (a)(1)(iv)(R) and (a)(1)(iv)(S); and by removing and reserving paragraph (a)(1)(v) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) *Risk-weighted Assets.* * * *

(1) *On-Balance Sheet Assets:* * * *

* * * * *

(iv) 100 percent Risk Weight (Category 4).

* * *

* * * * *

(R) All repossessed assets or assets that are more than 90 days past due; and

(S) Equity investments that the Office determines have the same risk characteristics as foreclosed real estate by the savings association.

* * * * *

PART 571—STATEMENTS OF POLICY

8. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

9. Section 571.26 is amended by removing paragraph (b)(3) and by revising paragraphs (c) and (d)(2) to read as follows:

§ 571.26 Classification of certain assets.

* * * * *

(c) *Loss.* An asset classified Loss is considered uncollectible and of such little value that continuance as an asset of the savings association is not warranted. A loss classification does not mean that an asset does not have recovery or salvage value, but simply that it is not practical or desirable to defer writing off all or a portion of a basically worthless asset, even though partial recovery may be effected in the future.

(d) *Effect of classification.* * * *

(2) When, pursuant to § 563.160 of this subchapter, either a savings association or an examiner has classified one or more assets or portions thereof Loss, the savings association shall charge off such amount.

* * * * *

Dated: June 25, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-24273 Filed 10-6-92; 8:45 am]

BILLING CODE 6720-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, 33, 180 and 190

Protection of Commodity Customers; Risk Disclosure by Futures Commission Merchants and Introducing Brokers to Customers; Bankruptcy Disclosure

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: As part of its comprehensive review of disclosure requirements applicable to futures and commodity option transactions, the Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to revise various rules to simplify and render more effective the risk disclosure process in several respects. The proposed amendments would: (1) Provide a consolidated risk disclosure statement applicable to domestic futures transactions as well as foreign futures and option transactions; (2) provide that the Commission may approve a risk disclosure statement that has been approved by a foreign jurisdiction or foreign self-regulatory organization in lieu of its own in appropriate circumstances; (3) clarify the requirement that the risk disclosure statement constitute a "separate" document; (4) permit, for accounts of specified categories of customers, a single acknowledgment format in lieu of the multiple acknowledgments and elections currently required; and (5) eliminate the acknowledgment requirement with respect to the disclosure concerning non-cash margin. Other proposed amendments would simplify bulk transfers of customer accounts and clarify the existing notice requirement to assure that the Commission will receive early warning of substantial bulk transfers of customer accounts. The Commission is also requesting comment on a number of additional issues relating to the disclosure process.

DATES: Comments must be submitted on or before December 7, 1992.

ADDRESSES: Comments should be sent to Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, Attention: Secretariat. Reference should be made to Risk Disclosure Rules.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is reviewing the disclosure requirements currently applicable to futures and commodity option transactions with the objective of rendering the disclosure process more effective in light of developing trends toward increased crossborder trading, establishment of electronic trading systems and interest in the formulation of special disclosure documents for users of such systems. The Commission is seeking public comment on a number of broad issues relating to the disclosure process and on a number of specific proposals designed to simplify required disclosures.

A. Rule 1.55

Commission Rule 1.55(a), 17 CFR 1.55(a) (1992),[1] requires an FCM or, in the case of an introduced account, an IB, to provide each new customer with a risk disclosure statement containing the language set forth in Rule 1.55(b). An acknowledgment, signed and dated by the customer, confirming that he received and understood the disclosure statement must be received by the FCM or, with respect to introduced accounts, the IB, before a commodity futures account may be opened for the customer.[2] The Commission adopted Rule 1.55, in connection with the implementation of its customer protection rules, to assure that futures customers are provided a simple, succinct and prominent disclosure of the risks of commodity futures trading. 43 FR 31886, 31888 (July 24, 1978). As explained by the Commission in adopting Rule 1.55, such a risk disclosure statement generally is intended to "advise new customers of the substantial risk of loss inherent in trading commodity futures." *Id.* The risk disclosure statement also is designed "to

[1] Commission regulations are found in Title 17 of the Code of Federal Regulations.

[2] Rule 1.55(c) requires the FCM or, in the case of an introduced account, the IB, to retain the acknowledgment in accordance with Rule 1.31. Because of the other proposed amendments to Rule 1.55 discussed herein, that paragraph would be redesignated as paragraph (e) but otherwise unchanged.

alert prospective customers to the possibility that futures trading may not be suitable for them in light of their financial condition." *Id.*

In adopting Rule 1.55, the Commission made clear that the prescribed disclosure statement was not meant to be an exhaustive explanation of the mechanics and risks of futures trading but, instead, to highlight some of the inherent generic risks of futures trading for new customers. Therefore, as Rule 1.55(d) expressly provides, furnishing a customer with a risk disclosure statement does not relieve an FCM or an IB from any other disclosure obligation it may have under applicable law. 50 FR 5380, 5382 (February 8, 1985). The disclosure obligations of FCMs and IBs include the obligation to disclose all material information to their customers. *Id.* at 5381.

B. Rule 30.6

Rule 30.6(a)(1) requires an FCM or, in the case of an introduced account, an IB, to provide each new foreign futures or option customer with a risk disclosure statement containing the text specified in that provision prior to opening a foreign futures or foreign option account for such customer. Rule 30.6(a)(2) requires an FCM or, in the case of an introduced account, an IB, who has received general discretionary authority to engage in foreign futures or foreign option trading on behalf of a foreign futures or foreign option customer, to receive a separate acknowledgment, signed and dated by such customer, that he has received and understood the risk disclosure statement.[3] Currently, this acknowledgment can be included in the grant of discretion for which a signature would be otherwise required in any event or in the risk disclosure statement.

The Commission adopted Rule 30.6 to enhance customer protection in the context of foreign futures and foreign option trading. The purpose of Rule 30.6 is to assure that futures customers are provided a brief but prominent disclosure of the risks of foreign futures and option trading. Specifically, Rule 30.6 highlights the following inherent risks of foreign futures and option trading: (1) participation in foreign futures and option trading involves the execution and clearance of trades on or subject to the rules of a foreign board of trade; (2) neither the Commission, the National Futures Association ("NFA") or any domestic exchange regulates the activities of foreign boards of trade or has the power to compel enforcement of the rules of such foreign boards of trade or applicable foreign laws; (3) foreign futures and option customers may not be afforded certain remedial mechanisms available to customers trading commodity futures and options domestically, including alternative methods to resolve futures-related disputes such as reparation proceedings before the Commission and arbitration proceedings before the NFA or domestic futures exchanges; and (4) the price of any foreign futures or option contract and, therefore, the potential profit and loss thereon, may be affected by variations in the foreign exchange rate over time.

C. Rule 190.10

Part 190 of the Commission's regulations implements Subchapter IV of Chapter 7 of the Bankruptcy Reform Act of 1978, which applies to commodity broker liquidations. 48 FR 8716 (March 1, 1983). Rule 190.10(c) prohibits FCMs and other commodity brokers within the meaning of Rule 190.01(f),[4] except clearing organizations, from accepting property other than cash from or for the account of a customer to margin, guarantee, or secure a futures contract unless the commodity broker first furnishes the customer with the disclosure statement prescribed in paragraph 190.10(c)(2). The FCM or other commodity broker must also receive a signed acknowledgment from the customer that he received and understood the contents of such disclosure statement or, if the statement is contained in the customer agreement, the customer must separately endorse the page on which the disclosure statement appears.

The disclosure statement required by Rule 190.10(c) states, in part, that in the event of a commodity broker bankruptcy, customer property, including property specifically traceable to the customer, will be returned to the customer only to the extent of the customer's pro rata share of all property available for distribution to customers.[5] The Rule 190.10(c) disclosure requirement was designed to assure that customers depositing property other than cash, such as securities, to margin a futures contract understand that the return of such property is subject to the pro rata distribution provisions of the Bankruptcy Code and that such property thus might not be returnable in full even if identified as property deposited by a specific customer. 48 FR 28977, 28979 (June 24, 1983); 48 FR 8716, 8738 (March 1, 1983).

II. Commission Proposals

A. Risk Disclosure Enhancement

Currently, at the time of opening an account, commodity futures and options customers are provided the risk disclosure statements described above in addition to various risk disclosure statements required by self-regulatory organizations. Risk disclosure requirements applicable to foreign futures and options have been promulgated by the NFA (Compliance Rule 2–28), the Chicago Mercantile Exchange (Rule 874) and the Commodity Exchange, Inc. (Rule 5.14) as a result of the development of trading linkages between domestic and foreign futures exchanges.[6] These rules require disclosure of the risks of foreign futures and foreign option trading and thus are designed to serve objectives similar to those of the risk disclosure requirements of Commission Rule 30.6.[7]

A number of Commission registrants have urged the Commission to reduce the number of required risk disclosure statements and required disclosure acknowledgments by futures customers.[8] The Commission has

[3] Rule 30.6(c) provides that in instances where such a separate acknowledgment is required the FCM or IB must retain such acknowledgment in accordance with Rule 1.31.

[4] Rule 190.01(f) defines "commodity broker" as any person who is registered or required to register as an FCM under the Commodity Exchange Act ("Act"), including a person registered or required to be registered as such under Parts 32 and 33 of the Commission's regulations, a commodity options dealer, a foreign futures commission merchant, a clearing organization and a leverage transaction merchant with respect to which there is a customer.

[5] The requisite disclosure statement also states that notice concerning the terms for the return of specifically identifiable property will be provided by publication in a newspaper of general circulation and that the Commission's regulations concerning commodity broker bankruptcies can be found at 17 Code of Federal Regulations part 190. Rule 190.10(c).

[6] These linkages operate such that a trade executed on one exchange liquidates or establishes a position on the other exchange. *See* Agreement for the Creation of a Mutual Offset System Between the Chicago Mercantile Exchange and The Singapore International Monetary Exchange Limited, dated as of June 28, 1984; Linkage Agreement Between the Commodity Exchange, Inc. and the Sydney Futures Exchange, Limited, dated February 1, 1985.

[7] National Futures Association Compliance Rule 2–28, Chicago Mercantile Exchange Rule 874 and Commodity Exchange, Inc. Rule 5.14 require that disclosure be made on a customer authorization document, executed by the customer prior to effecting any transaction on a foreign board of trade, which authorizes the member or member firm to effect such a transaction on the customer's behalf. Such authorizations must be maintained on file with the relevant member firm. Each of these rules provides that its requirements may be satisfied by including in the customer authorization document the language set forth in the risk disclosure statement specified in Commission Rule 30.6.

[8] As the preceding text makes clear, however, several risk disclosure statements required in particular contexts are mandated by self-regulatory organizations rather than by the Commission.

initiated this rulemaking proceeding for the purpose of better achieving the customer protection functions of existing disclosure rules by simplifying the risk disclosure process for Commission registrants. Among other things, the proposed rule amendments would consolidate the risk disclosure statements prescribed by Rules 1.55 and 30.6 and eliminate the acknowledgment requirement of Rule 190.10 except in instances where the Rule 190.10(c)(2) disclosure statement incorporates a subordination agreement executed by a customer depositing margin in foreign currencies in foreign depositories and the subordination agreement is not separately executed.[9] In addition, these rule amendments would permit the use of a risk disclosure document approved by a foreign jurisdiction (or multiple foreign jurisdictions) in lieu of the risk disclosure document required by Rule 1.55, provided that that document had been approved for U.S. customers by the Commission. In addition, the proposed amendments would eliminate the requirement of separate customer acknowledgments of the risk disclosure statements required by Rules 1.55, 30.6, 33.7 and of elections required under Rules 180.3 and 190.06(d) for specified categories of customers.

1. Consolidation of 1.55 and 30.6 Disclosure Statements

With respect to Rules 1.55 and 30.6, the Commission believes that a consolidated risk disclosure statement that warns of the risks of domestic futures trading and foreign futures and option trading may provide simpler and equally or even more effective risk disclosure than multiple statements. Such consolidation should preserve the substance of such disclosure and its effectiveness for customer protection purposes and also serve to alleviate certain burdens on firms. The proposed consolidated risk disclosure statement incorporates the bulk of the language of the Rule 1.55 and Rule 30.6 risk disclosure statements, with editorial revisions, such as the omission of duplicative language, for greater clarity and economy.[10] The consolidated risk disclosure statement would provide the same substantive information to customers as the risk disclosure statements currently prescribed by Rules 1.55 and 30.6 and would be consistent with the purposes of those rules, *i.e.*, to provide customers with a clear, succinct and prominent disclosure of the risks of domestic futures trading and foreign futures and option trading.[11]

The Commission emphasizes that providing the revised risk disclosure statement set forth in the proposed amendments to Rule 1.55 would satisfy a firm's obligation to provide a risk disclosure statement with respect to domestic futures and foreign futures and options trading. Consequently, the Commission proposes to modify Rule 30.6(a) to require that the Rule 1.55 risk disclosure statement, which will include the consolidated risk disclosures for foreign and domestic futures and options trading, be provided. Further, the Commission believes that the revised risk disclosure statement should obviate special linked market disclosures currently required by CME Rule 874, which permits the use of the language contained in Rule 30.6.[12]

The Commission intends that the consolidated risk disclosure statement may be presented to a non-English speaking customer in a foreign language that such customer understands rather than in English, provided that the disclosure statement provided is an accurate translation of the English version and that the English text is provided upon request. Delivery of the consolidated risk disclosure statement to a foreign customer would not preclude delivery to that customer of any additional disclosure documents required by a foreign regulator. However, at least in some instances, the consolidated risk disclosure statement may satisfy the risk disclosure concerns of foreign regulators and potentially may be useable as a substitute for the risk disclosure statements otherwise required in the foreign jurisdiction.

2. Use of Foreign Risk Disclosure Statement To Satisfy Rule 1.55

To reduce the duplication of required generic risk disclosures in the international markets, the Commission also is proposing to provide a mechanism for substitution of certain foreign risk disclosure statements or multi-jurisdiction risk disclosure statements for the Rule 1.55 statement. New paragraph (c) of Rule 1.55 would permit an FCM doing business in several jurisdictions to use a common risk disclosure document for purposes of satisfying the Rule 1.55 and 30.6 risk disclosure requirements, provided the Commission and the applicable foreign jurisdiction had previously approved the use of the statement for such purposes. Thus, foreign and U.S.-based firms could use essentially the same disclosure document, and hence a single document, for foreign and U.S. customers. Proposed Rule 1.55(c) contemplates that the Commission would, upon application of a firm or foreign regulatory or self-regulatory organization, review the foreign risk disclosure statement to determine whether it provides disclosures comparable in substance to those provided by the statements required by Rules 1.55 and 30.6 or the consolidated statement proposed herein. The Commission believes that it is desirable to reduce duplicative disclosure requirements resulting from cross-border futures transactions provided that, as appropriate, any special risks of foreign trading are disclosed. This rule contemplates a mechanism for eventually substituting a uniform disclosure format, accepted internationally, that could be used on a general basis and supplemented as

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[9] See Financial and Segregation Interpretation No. 12—"Deposit of Customer Funds in Foreign Depositories," 53 FR 46911 (November 21, 1988). The Commission stated that the subordination agreement discussed in Financial and Segregation Interpretation No. 12 may be incorporated into the Rule 190.10(c) bankruptcy disclosure document or separately executed. *Id.* at 46913–46914.

[10] Examples of such revisions include: (i) paragraph (2) of the current Rule 1.55 risk disclosure statement ("Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market makes a 'limit move' ") would be revised to read "Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market *reaches a daily price fluctuation limit ('limit move')* (emphasis added); (ii) paragraph (3) of the current Rule 1.55 risk disclosure statement ("Placing contingent orders, such as 'stop-loss' or 'stop-limit' orders, will not necessarily limit your losses to the intended amounts, since market conditions may make it impossible to execute such orders") would be revised to read "Placing contingent orders, such as 'stop-loss' or 'stop-limit' orders, will not necessarily limit your losses to the intended amounts, since market conditions *on the exchange where the order is placed* may make it impossible to execute such orders." (emphasis added); (iii) part of paragraph (3) of the Rule 30.6 risk disclosure statement ("Therefore, you should obtain as much information as possible from your account executive concerning the foreign rules which will apply to your particular transaction") would be revised to read "Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction."; (iv) the first sentence ("This statement is furnished to you because rule 1.55 of the Commodity Futures Trading Commission requires it.") and the last sentence ("You should therefore carefully study futures trading before you trade.") of the current 1.55 risk disclosure statement would be omitted. Other technical revisions of an editorial nature to facilitate consolidation of the Rule 1.55 and 30.6 disclosure documents without modifying the substance of the required disclosures would also be made.

[11] This proposal does not affect the risk disclosure requirements of Rule 33.7 with regard to domestic exchange-traded options trading but comment is requested as to how such disclosure could be made more effective in the context of these proposed changes. Proposed amendments to Rule 33.7, discussed *infra*, address disclosure procedures in the context of bulk transfers of customer accounts.

[12] *See* footnote 7 *supra*.

warranted for particular kinds of transactions or special markets.

Delivery of the proposed consolidated risk disclosure statement, like delivery of the current Rule 1.55 risk disclosure statement, would remain subject to the proviso that Rule 1.55 "does not relieve a futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law."[13] Similarly, Rule 30.6(e) of the Commission's foreign futures rules states that Rule 30.6 does not relieve an FCM, IB, commodity pool operator or commodity trading advisor "from any other disclosure obligation it may have under applicable law or regulation." Differences between products may warrant such additional disclosure. For example, the Commission has required additional disclosure with respect to foreign options offered on exchanges that employ futures-style margining, due to the fact, among others, that such margins will affect options pricing. *See, e.g.*, 54 FR 50348, Exhibit B (December 6, 1989); 54 FR 50356, Exhibit B (December 6, 1989).

3. Elimination of 190.10(c) Acknowledgment

To further simplify the risk disclosure process, the Commission is proposing to eliminate the acknowledgment requirement of Rule 190.10(c)(2). In adopting Rule 190.10(c)(2) in 1983, the Commission stressed the special need for disclosure concerning the treatment of non-cash margin in FCM bankruptcies. Such disclosure was warranted "[i]n view of the prior treatment of specifically identifiable securities in the bankruptcy of securities firms" and the resulting likelihood that customers might believe that their right to the return of non-cash margin would be unaffected by the pro rata distribution provisions of the Bankruptcy Code, which apply equally to cash and non-cash customer property. 48 FR 8716, 8738 (March 1, 1983).

However, as the commodity broker provisions of the Bankruptcy Code have now been in effect for approximately fifteen years and the Commission's bankruptcy rules for nearly ten years, the Commission believes that the Rule 190.10(c)(2) disclosure concerning the bankruptcy treatment of non-cash margin, while still appropriate, may no longer warrant the increased burdens created by the separate acknowledgment requirement. Accordingly, the Commission believes that the acknowledgment requirement of Rule 190.10(c)(1)(ii) can be eliminated without materially reducing customer protection. This proposal to delete the separate acknowledgment requirement would not apply, however, to the extent that a Rule 190.10(c)(2) disclosure statement incorporates a subordination agreement for a customer depositing margin in foreign depositories.[14] Separate acknowledgment of the 190.10(c)(2) disclosure statement in this context is a substitute for execution of a separate subordination agreement. A separate acknowledgment also would continue to be necessary where subordination is required for certain purposes such as cross-margining relative to bankruptcy of the firm at which the affected customer does business. This is because to be effective, such subordination requires a contract to be executed by the customer. *See* Financial and Segregation Interpretation No. 12, *supra* note 9.

4. Single Signature Acknowledgment Format for Specified Customers

The Commission has received a number of requests from FCMs to reduce or eliminate the requirement of separate customer acknowledgments of the risk disclosure statements required by Rules 1.55, 30.6, 33.7 and 190.10. In response to requests from FCMs who have sought relief from these requirements for certain institutional customers on the ground that multiple customer acknowledgments are unnecessarily burdensome for sophisticated market users, the Commission's Division of Trading and Markets ("Division") previously has provided "no-action" relief to simplify the account opening process for specified categories of customers. Most recently, on April 14, 1992, the Division issued to the Law and Compliance Division of the Futures Industry Association, on behalf of all FCMs, "no-action" relief with respect to the use of simplified account opening procedures for certain customers.[15] The simplified format permitted under the Division's no-action position allows FCMs, with respect to customers in specified categories, to obtain a single acknowledgment at the end of the customer agreement or on a separate checkoff page in lieu of the requirement to obtain separate customer acknowledgments of disclosure documents required under Rules 1.55, 30.6, 33.7 and 190.10 and the elections required by Rules 180.3 and 190.06(d).[16] The no-action relief currently is granted on an omnibus basis to FCMs opening accounts for: (1) customers who qualify for exclusion from the definition of commodity pool operator pursuant to Rule 4.5, *i.e.*, (i) registered investment companies, (ii) state regulated insurance companies, (iii) state or federally regulated financial depository institutions, and (iv) certain pension plans subject to regulation under the Employee Retirement Income Security Act of 1974 ("ERISA");[17] and (2) customers constituting qualified eligible participants ("QEPs") as set forth in Rule 4.7 [18] (which was then in proposed

[13] This proviso is currently contained in paragraph (d) of Rule 1.55. Because of the other proposed amendments to Rule 1.55 discussed herein, that paragraph would be redesignated as paragraph (f) but otherwise unchanged.

[14] *See* note 9, *supra*.

[15] *See* CFTC Interpretative Letter No. 92–5 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,272 (April 14, 1992).

[16] Under the following Commission rules, an FCM (or, where applicable, an introducing broker) is prohibited from opening a commodity interest account without first providing the customer with certain disclosure statements and receiving a signed customer acknowledgment form stating that the risk disclosure statements have been received and understood by the customer: Rule 1.55 (domestic futures trading risk disclosure statement); Rule 30.6 (foreign futures and options risk disclosure statement); Rule 33.7 (domestic exchange-traded commodity options risk disclosure statement); and Rule 190.10 (bankruptcy disclosure statement for non-cash margin).

Rule 180.3 provides, among other things, that if an arbitration or other customer dispute settlement agreement between a commodity professional and its customer is contained as a clause or clauses within a broader agreement, the customer must separately endorse the clause or clauses constituting the arbitration or dispute settlement agreement and the cautionary language specified in the rule. Rule 190.06(d) requires a commodity broker to provide each customer the opportunity, when undertaking its first hedging contract, to specify whether in the event of a bankruptcy such customer prefers that open contracts held in a hedging account be liquidated without seeking customer instructions in the event of bankruptcy.

[17] The procedure available under proposed Rule 1.55(d) would be available to any of these entities regardless of whether they operate a "qualifying entity" under Rule 4.5(b) (1)–(4). In addition, comparably regulated foreign entities would be entitled to use the proposed procedure.

[18] Generally, under final Rule 4.7, the term qualified eligible participant ("QEP") includes the following categories of customers: (1) brokers or dealers registered under the Securities and Exchange Act, FCMs and certain commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") registered under the Commodity Exchange Act. To be QEPs, CPOs and CTAs must have been registered and active as such for two years. Alternatively, CPOs must operate pools which contain in the aggregate total assets in excess of $5,000,000 and CTAs must provide commodity interest trading advice to commodity accounts which contain in the aggregate total assets in excess of $5,000,000 deposited at one or more FCMs. QEPs also include: (1) Natural persons and entities, including certain corporations, partnerships or similar entities, commodity pools, banks, savings and loan associations, insurance companies, registered investment companies, and employee benefit plans, which meet a portfolio requirement and in certain instances other requirements with respect to total assets, net worth or annual income; (2) certain non-United States persons; and (3)

Continued

form).[19] Essentially, the general no-action position expanded relief previously provided by the Division on a case-by-case basis.[20]

The Commission is proposing to codify the no-action relief granted by the Division's April 14, 1992 letter in a new paragraph (d) of Rule 1.55. The simplified format permitted under the proposed provision would allow FCMs to obtain a single acknowledgment for the disclosure statements required by Rule 1.55, 30.6, 33.7 and the elections required under Rule 180.3 and 190.06 from customers in specified categories.[21] The proposed rule would be limited to FCMs opening accounts for customers in the following categories: persons or entities constituting eligible persons under Rule 4.5(a) or "qualified eligible participants" ("QEPs") under Rule 4.7. Entities qualifying for relief under Rule 4.5 are, by definition, institutions that are subject to extensive federal or state regulation, *i.e.*, otherwise regulated entities. Similarly, under Rule 4.7, QEP status is dependent upon indicia of investment expertise and experience, such as the registered status of certain investment professionals or, in addition to satisfaction of the financial qualifications requisite to accredited investor status under SEC Regulation D, ownership of an investment portfolio of sufficient size to indicate a high degree of sophistication with regard to investments as well as financial resources to withstand the risks of commodity pool investments.[22] These criteria support the conclusion that such categories of customers should not need the protections afforded by separate acknowledgments of the various risk disclosure statements. The single signature format is appropriate for foreign persons, who are not required to be either accredited investors under SEC Regulation D or to meet a portfolio requirement in order to constitute QEPs under Rule 4.7, because the Commission's disclosure rules are focused on protection of United States customers.

Proposed Rule 1.55(d) contemplates that an FCM or IB would include on a separate page or incorporate in the customer agreement a list of all required disclosure statements and elections, which the customer would acknowledge by checking a box next to the appropriate acknowledgment and election and by signing a single signature line at the bottom of the page to acknowledge receipt of all such disclosure statements and to indicate assent to the noted elections. The required wording of the various risk disclosure statements and elections would remain unchanged.

The Commission requests comment as to whether, for purposes of this proposal, customer type distinctions are meaningful. Do separate acknowledgments in fact more clearly and compellingly convey the required disclosures to retail customers or should a single acknowledgment be considered sufficient in all cases for acknowledgment of delivery of the multiple disclosures required? Commenters may wish to address each type of acknowledgment specifically.

In any event, these proposed modifications of the Commission's acknowledgment requirements would not reduce any other obligations applicable under the Act or Commission regulations. For example, the proposed amendment would not affect an FCM's or IB's obligation to obtain separate acknowledgments for all other categories of customers. Similarly, the proposed rule would not affect the obligation of an FCM or an IB to obtain, by instrument separate and apart from the customer agreement, a customer's consent that the FCM may knowingly take the other side of a customer's order [23] or a power of attorney to engage in discretionary trades pursuant to Rule 166.2.[24]

In the event that these proposed amendments to Rules 1.55, 30.6, 33.7, 180.3, 190.06 and 190.10 are adopted, their effect would be prospective only. FCMs and IBs who have complied with the current requirements of these rules will be deemed to be in compliance with the amended rules. Consequently, firms will not be required to revise existing account documents until (and unless) they wish to print new customer account forms.

B. Clarification of the "Separate Statement" Requirement of Rule 1.55

Rule 1.55 provides that the risk disclosure statement required by that rule must be furnished to each customer as "a separate written disclosure statement containing only the language set forth in paragraph (b) of this section (except for nonsubstantive additions such as captions)". With respect to the "separate statement" requirement of Rule 1.55, the Commission is proposing an amendment of the rule to clarify its holding in *Batra* v. *E. F. Hutton & Company, Inc.*, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,937 at 34,283 (CFTC September 30, 1987) ("Batra").

In *Batra*, the Commission addressed the issue whether a risk disclosure statement appearing on the bottom half of a page that also contained a client financial statement complied with the requirement of Rule 1.55 that the customer be furnished "a separate written disclosure statement containing only the language" specified in Rule 1.55(b). *Id.* at 34,286. The page containing the risk disclosure statement was perforated to permit the disclosure statement to be detached and presented to the customer as a separate document. In *Batra*, the Administrative Law Judge found that the FCM had not detached the portion of the perforated page containing the prescribed risk disclosure statement prior to presenting it to the customer. The Commission held on appeal that the FCM therefore had not provided the customer with a separate written disclosure statement containing only the language set forth in Rule 1.55(b).

In *Batra*, the Commission rejected the respondent FCM's contention that the disclosure statement was "visually

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entities in which all the equity owners are QEPs. With respect to category (1) above, the QEP definition includes a portfolio requirement which requires that the person or entity: (i) own in excess of $2 million in securities of unaffiliated issuers and other investment property; (ii) have had on deposit at an FCM at any time during the preceding six months in excess of $200,000 in exchange-specified initial margin and option premiums for commodity interest trading; or (iii) own portfolio comprised of a combination of (i) and (ii). *See* 57 Fed. Reg. 34853 (August 7, 1992).

[19] *See* 57 FR 3148 (January 28, 1992).

[20] In two prior no-action letters the Division had addressed the use of customer agreements providing for only one signature for acknowledgment of all required risk disclosure statements by certain sophisticated institutional customers. In a July 1987 letter, the Division stated that it would not recommend enforcement action against an FCM solely for using a single signature and acknowledgment line format in its customer account documents for financial institutions identified in Commission Rule 4.5(a) (1)–(4). *See* letter from Andrea M. Corcoran, Director, Division of Trading and Markets, Commodity Futures Trading Commission to Philip McBride Johnson, Esq., dated July 22, 1987 (unpublished). In a second no-action letter, the Division granted comparable relief in the context of certain foreign trading vehicles regulated in a manner equivalent to Rule 4.5 trading vehicles, organized under the laws of specified jurisdictions and having assets of $250 million or more. *See* letter from Susan C. Ervin, Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission to Stephen F. Selig, Esq., dated September 21, 1989 (unpublished).

[21] Proposed Rule 1.55(d) will not apply to the acknowledgment required under Rule 190.10(c) due to the Commission's proposal, set forth herein, to eliminate the acknowledgment requirement contained in Rule 190.10(c)(2).

[22] *See* 57 FR 3148 (January 28, 1992).

[23] See Commission Rule 155.3(b)(2) and Division of Trading and Markets Interpretative Letter No. 83–7, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,907 (October 25, 1983).

[24] See Commission Rule 166.2(b).

distinct" and therefore achieved the regulatory objectives of Rule 1.55 even without physical detachment. The Commission held that a "simple, straight- forward interpretation of the regulatory language is that to be 'separate' a risk disclosure statement must be physically distinct from other account opening documents." *Id.* at 34,286.[25] Consequently, the disclosure statement in question, which had not been separated at the perforation prior to its presentation to the customer, failed to comply with Rule 1.55. The Commission noted that "it is neither administratively nor economically burdensome to require physical separation." *Id.* at 34,286.

Following the Commission's decision in *Batra*, a number of Commission registrants inquired concerning the permissibility of including the required risk disclosure statement in a booklet of customer account documents without violating the "separateness" requirement of Rule 1.55. Some registrants have argued that use of a booklet containing all required risk disclosure statements including the option disclosure statement and other customer account documents facilitates compliance efforts by assuring that all required disclosures are provided at the time at which an account is opened and facilitating maintenance of records of such disclosures with other account documentation. Proponents of a booklet disclosure format also contend that inclusion of the risk disclosure statement in a bound collection of documents presented to the customer helps to assure that the customer reads the risk disclosure statement at the time that the account is opened. Conversely, it is argued, a separate risk disclosure statement could be overlooked or not presented contemporaneously with the signing of the account agreement, when it would be most likely to serve its intended function.

The purpose of the separateness requirement of Rule 1.55 is to ensure that the prescribed risk disclosure statement is prominently brought to the customer's attention and is not obscured or reduced in apparent importance by inclusion on the same page as other text. Presentation of a separate risk disclosure statement to the customer highlights the importance of the required disclosures. The Commission believes that this purpose can also be accomplished, however, in the context of a booklet or packet containing risk disclosures as well as other futures account materials, provided that the Rule 1.55 risk disclosure statement appears on the cover page or the first page of such booklet or packet and is the only material included on such cover or first page. Consequently, the Commission is proposing to amend Rule 1.55 to make clear that FCMs and IBs may, in compliance with Rule 1.55, deliver the prescribed risk disclosure statement by either of the following methods: (1) Presenting the Rule 1.55 risk disclosure statement as a physically separate document; or (2) including the risk disclosure statement in a booklet or packet containing other commodity interest account materials, *e.g.*, the options disclosure statement required by Rule 33.7, provided that the Rule 1.55 risk disclosure statement appears as the cover page or first page and is the only material on such page, of such booklet or packet.

C. Account Transfers

1. Disclosure Requirements

The Commission receives frequent inquiries from FCMs and IBs planning to make bulk transfers of accounts, *i.e.*, transfers of accounts not requested by customers, concerning the effect of assignment clauses in customer account agreements and the extent to which new customer account documentation must be obtained in connection with bulk transfers. The customer's consent must be obtained prior to the transfer of the customer's account from one FCM to another.[26] Therefore, absent a provision in the customer account agreement that evidences the customer's prospective consent to transfer of his account to another FCM, there must be express consent by the customer to movement of the account. Where the account agreement contains an "assignment" clause pursuant to which the customer authorizes the FCM to transfer the account to an assignee firm, the Division has generally considered "implied" or "negative" consent of the customer, consisting of the customer's lack of objection to the proposed transfer within a reasonable time after notice of the proposed transfer, sufficient.[27] Such negative consent letters are designed to advise affected customers of the intended transfer, afford them sufficient opportunity to object to the proposed transfer or to request a transfer to another firm before the transfer occurs, and notify them that a failure to object to the transfer will be construed as consent to the transfer. As a matter of law, whether or not a negative consent letter operates to secure valid customer consent will depend upon whether the customer in fact receives the letter or whether reasonable efforts have been made to notify the customer, such as through mailing or delivery to the customer's last known address by the U.S. Postal Service, an overnight service of proven reliability, or by facsimile.[28]

With respect to compliance with the risk disclosure requirements, the Division generally has advised registrants that it would not be inconsistent with Rules 1.55, 30.6, 33.7, and 190.10 for a transferee FCM or, in the case of introduced accounts, a transferee IB, to open a customer account without providing new risk disclosure statements and receiving signed acknowledgments thereof provided that: (1) The customer agreement with the transferor firm includes a valid "assignment clause" by which the customer consents to future transfers of his or her account to another firm; and (2) the transferor FCM or IB, prior to effecting such transfer of accounts, delivers to such customers an appropriate "negative consent" letter. Although the Division has stated that in these circumstances the transferee FCM or IB may not be required to provide

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[25] The Commission's holding in Batra is consistent with the recommendations of the Advisory Committee on Commodity Futures Trading Professionals ("Advisory Committee") which was established by the Commission on August 5, 1975 for the purpose of considering and making recommendations with respect to the standards for regulation under the Act of domestic and foreign commodity futures professionals. The Advisory Committee reported on August 5, 1976 that to be effective the Rule 1.55 risk disclosure statement "must be conspicuously brought to the customer's full attention when it is transmitted to him." 42 FR 44743, 44747 (September 6, 1977).

[26] No commodity interest transaction may be effected for a customer without customer authorization. Rule 166.2.

[27] Generally, the Division has indicated that a letter will be appropriate to obtain customer consent to an account transfer based upon negative or implied consent where: (1) The letter clearly advises customers of the proposed transfer and the reasons for the transfer; (2) the letter expressly advises customers that they need not accept the proposed transferee firm but instead may direct the transferor firm either to liquidate the account or transfer the account to a different firm of the customer's choice; (3) the letter expressly notifies customers that the failure to respond to the letter will be construed as consent to the transfer; and (4) the letter affords customers a reasonable period (taking into account transmittal time) to respond to the request. What will constitute a reasonable period may be affected by the particular context of the transfer, including such factors as the number of customer accounts, customer location, reason for and extent of advance knowledge of the need to transfer, and the time required for delivery of the transfer notice and the response thereto. Commission staff has generally required at least ten business days for customer responses when the transfer was not occasioned by a financial emergency.

[28] To assure prompt receipt, FCMs should consider sending such letters by an overnight delivery service of proven reliability.

customers with new risk disclosure statements, the Division has recommended delivery of new risk disclosure statements within a reasonable time period following the transfer as a matter of customer protection and sound business practice. Generally, firms seek new account agreements from transferred customers so that all customer accounts with a firm are uniformly documented.

If the customer agreement with the transferor FCM or IB does not contain a valid assignment clause, Rules 1.55, 30.6, and 33.7 require that the transferee FCM or, in the case of introduced accounts the transferee IB,[29] provide customers with new risk disclosure statements and obtain the requisite customer acknowledgments before opening an account for a customer, as would be the case for any other new account. A transferee FCM also would be required to provide and obtain acknowledgment of the disclosure required by Rule 190.10 prior to the acceptance of non-cash margin from a customer whose account is transferred. FCMs and IBs who are unable to comply with Rule 1.55 prior to receiving a bulk transfer of customer accounts generally request that the Division provide "no-action" relief to permit such transfers of accounts to be made expeditiously and requisite disclosure acknowledgments to be obtained after the transfer. Where such relief has been granted, the Division has required the FCM or IB to whom such accounts were transferred to provide affected customers with actual advance notification of the transfer and to deliver to such customers the disclosure statements required by Rules 1.55, 30.6, 33.7 and, for FCMs only, Rule 190.10, shortly after the transfer, typically within thirty to sixty days.

To relieve FCMs and IBs of the necessity of requesting "no-action" relief on a case-by-case basis in view of the fact that such relief is routinely given, the Commission is proposing to amend Rules 1.55, 33.7 and 190.10 to establish by rule that compliance with the above risk disclosure requirements is not required prior to a bulk transfer but must be completed within sixty days following the transfer. Therefore, in the event of a bulk transfer of accounts from one FCM or IB to another, the Commission registrant to whom such accounts are transferred would be required to deliver to the holders of such accounts the risk disclosure statements required by Rules 1.55, 33.7 and 190.10 (FCMs only) and to receive from such customers the signed acknowledgment required by those rules within sixty (60) days of the transfer. This requirement would apply without regard to whether the account agreements between the transferor firm and affected customers contained an assignment clause. However, the delivery and acknowledgment requirements of Rules 1.55 and 33.7 would not apply in the context of a transfer of accounts from one IB to another IB where both IBs are guaranteed by the same FCM pursuant to a guarantee agreement satisfying the requirements of Rule 1.10(j) and the guarantor FCM maintains the acknowledgment required by Rules 1.55 (a) and 33.7(a).

The transfer of accounts proposal with respect to Rules 1.55 and 33.7 applies only in the context of a transfer of accounts from one FCM to another FCM, where such accounts are not introduced by an IB, and to transfers from one IB to another IB. If there is to be a bulk transfer of introduced accounts from one FCM to another FCM but the IB introducing the accounts remains the same, there may be no need for delivery of new risk disclosure statements under Rules 1.55 band 33.7 because, in this context, it is the IB's duty in the first instance to provide such statements.[30] The FCM carrying the account may need to use due diligence to assure such tact. However, a new disclosure statement concerning non-cash margin would be required in such circumstances pursuant to Rule 190.10(c) because the FCM is responsible for compliance with Rule 190.10(c).

The proposed bulk transfer amendments would apply in all cases where an account transfer is made other than at the customer's request, without regard to whether the customer's account agreement contains an assignment clause or other provision evidencing the customer's consent to account transfers.

The Commission believes that these proposed rule amendments will not impose any additional burdens upon FCMs or IBs and will facilitate the bulk transfer process, enhance futures customers' ability to continue their transaction business as efficiently as possible notwithstanding the fact of a bulk transfer, and assure that required disclosures are made promptly to affected customers.

2. Notice to Commission of Bulk Transfers

In conjunction with the Commission's proposals to reduce the disclosure burdens attendant upon account transfers, the Commission is proposing to clarify and refine its existing requirement that transferor firms give advance notice to the Commission of transfers which are not in the ordinary course of business. The current requirement could be read to require notice in any case where the account was moved for reasons outside of the ordinary course of business and not only in the case of transfers that are substantial in the context of the business of the FCM as a whole. Notice of account transfers is currently required by Rule 190.06 when an FCM or person required to be registered as an FCM intends to make any transfer of customer accounts that is not at the customer's request or "in the ordinary course of business." Rule 190.06(b). Although the Rule 190.06 notice requirement would be construed to cover most of the circumstances in which the Commission would wish to be apprised of bulk transfers, it appears that many firms are unaware that the notice requirement applies outside of the bankruptcy context as well as subsequent to a bankruptcy filing. Consequently, a separate notice requirement outside of the Commission's bankruptcy rules may be more readily accessible to and understood by market participants without increasing any regulatory burden. Moreover, as the proposed rule to simplify disclosure procedures in the context of bulk transfers would eliminate the necessity for firms to contact the Commission to request no-action relief as to disclosure compliance for specific transfers, absent clarification of the notice requirement the proposed rules may have the consequence of reducing the frequency with which the Commission receives notice of bulk transfers that occur outside of bankruptcy.

To assure that the Commission receives notice of bulk transfers of significant size, which may signal potential financial, sales practice or other incipient regulatory problems at a firm,[31] the Commission is proposing a more specific notice requirement that would require notice to the Commission of all transfers made other than at the customer's instance that involve twenty-five percent or more of the total number of customer accounts carried or

[29] However, an FCM may have residual responsibilities with regard to risk disclosure for introduced accounts and nothing herein is intended to alter such responsibilities. *See* 48 FR 35248, 35273 (August 3, 1983).

[30] *See* 48 FR 35248, 35273 (August 3, 1983).

[31] *Cf.* Rule 1.12(b), establishing an "early warning" requirement with respect to FCM adjusted net capital.

introduced by the transferor FCM or IB. If twenty-five percent of the firm's total customer accounts constitute fewer than one hundred accounts, notice will be required for transfers involving fifty percent of the firm's total customer accounts. The computation of the number and percentage of accounts would be based on the number of accounts of the transferor firm, irrespective of whether such accounts are transferred to a single firm or multiple transferees. The proposed rule would require filing of a notice with the Commission five business days prior to the transfer or, where such advance notice is impracticable, as soon as possible and in any event no later than the day of the transfer.

The proposed rule, which would be codified as new Regulation 1.65, is intended to provide the Commission with early notice of significant account movements which could reflect incipient financial difficulties at a registrant or have other customer protection implications. The rule would provide the Commission with information useful to it in discharging its oversight responsibilities but would not in itself require Commission concurrence in the transfer. Proposed Rule 1.65 would clarify and refine the notice requirement contained in Rule 190.06(b) by making clearer when notice is required and limiting the duty to give notice to those situations in which a substantial bulk transfer is involved, when the transfer in effect serves as an early warning of other problems at a firm. Because the transfers are substantial, generally they will signal a significant change in business or the inability to continue in business, matters of importance to the Commission as part of its ongoing surveillance. The Rule 190.06(b) notice requirement would be modified to apply only to transfers to be made after the filing of a bankruptcy petition. This requirement is necessary because the Commission must receive notice of all bulk transfers effected post-bankruptcy in order to preserve its ability to disapprove of such transfers.

The Commission believes that the burdens imposed by the proposed filing requirement would be minimal and would in many cases apply in situations in which the Rule 190.06(b) notice requirement already exists. The notice requirement would be triggered only by sizeable transfers and would encompass only summary information concerning the transferor and transferee firms, the name of the designated self-regulatory organization for the transferor and transferee firms, a brief statement as to the reasons for the transfer, a statement of the number of accounts to be transferred and a copy of the notice sent to customers advising them of the proposed transfer. Most, if not all, of this information is routinely provided to the Commission in the context of requests for no-action relief with respect to disclosure requirements applicable in the bulk transfer context and should be readily available to the FCM or IB contemplating a bulk transfer.

D. Other Disclosure Issues

The Commission recently has received many inquiries from industry participants concerning other issues relevant to the risk disclosure process. Although the Commission has not yet determined to take action with respect to these issues, the Commission requests comment concerning the appropriateness and desirability of modifying its risk disclosure requirements in several respects suggested by commentators.

Disclosure Concerning Electronic Trading Systems. The advent of electronic trading systems has given rise to concerns that particularized written disclosures concerning the operation of such systems is necessary. Specialized disclosure documents relating to such systems have been drafted by self-regulatory organizations to supplement the disclosures specified in Commission Rule 1.55. The Commission requests comment as to whether it is necessary or appropriate for the Commission to develop a regulatory approach to enable market participants to avoid the use of multiple disclosure documents to address specific trading systems. Such approaches could include, for example, development of a uniform electronic trading system disclosure statement or revision of the Rule 1.55 disclosure statement to address such systems. The Commission requests comment concerning any specific regulatory initiatives that might be undertaken to address the disclosure concerns raised by electronic trading systems, the specific areas in which additional disclosures are appropriate or necessary, and as to whether a generic disclosure statement for electronic trading systems would be appropriate or meaningful in light of differences in such systems.

Simplified Options Disclosure. The Commission is not at this time proposing to consolidate the options disclosure statement required by Rule 33.7 with the Rule 1.55 and 30.6 disclosure statements, which due to space constraints would result in elimination of disclosures specific to options or preclude use of a one-page format. However, the Commission is considering development of a "plain language" options disclosure statement to streamline and make more readable the required disclosures in this area. The Commission requests comment as to the desirability of a simpler options disclosure format, as to the potential costs and benefits of specific approaches, and as to other possible improvements of options disclosure.

Protection of Customer Funds. Further, the Commission has received unsolicited comments from several industry participants suggesting that some futures customers may not fully understand the nature of the protections afforded customer funds under the Act, the Bankruptcy Code and Commission regulations. Such commenters have suggested, for example, that customers may not realize that no public insurance program exists for the protection of futures customer funds and that the Commission should require some form of disclosure concerning the nature and limitations of existing safeguards. Some foreign jurisdictions, *e.g.*, New Zealand, Ireland and Canada, require disclosure to customers concerning the treatment of customer funds in the event of the bankruptcy of a commodity broker. The Commission requests comment as to the relative costs and benefits of requiring additional disclosures concerning the scope of the protections afforded by segregation of customer funds and the financial status of the FCM holding such funds, particularly in light of the relatively small incidence of FCM insolvencies.

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the PRA, the Commission has submitted the proposed rule amendments and the proposed rule and their associated information collection requirements to the Office of Management and Budget. The proposed amendments to Rules 30.6, 33.7, 190.06 and 190.10 do not change the burdens associated with those rules. The groups of rules of which they are a part have the following burdens:

Rule 30.6–(3038–0035)
Average Burden Hours per Response—18.50
Number of Respondents—420
Frequency of Response—occasionally
Rule 33.7–(3038–0007)

Average Burden Hours per Response—50.59
Number of Respondents—190,370
Frequency of Response—occasionally
Rules 190.06 and 190.10–(3038–0021)
Average Burden Hours per Response—.30
Number of Respondents—402
Frequency of Response—occasionally

The burden associated with the group of rules which encompasses Rules 1.55, 180.3 and Proposed Rule 1.65 is:

Rules 1.55, 180.3 and Proposed Rule 1.65–(3038–0022)
Average Burden Hours per Response—81.83
Number of Respondents—1342
Frequency of Response—occasionally

No additional burden is associated with the proposed amendments to Rule 1.55. The burden associated with Proposed Rule 1.65 (3038–0024) is borne by FCMs and IBs and is as follows:

Average Burden Hours per Response—1.0
Number of Respondents—20
Frequency of Response—occasionally

Persons wishing to comment on the estimated paperwork burdens associated with these proposed rule amendments and proposed rule should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joseph F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. § 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. In this connection, the Commission previously has determined that FCMs should not be considered small entities for purposes of the RFA.[32] With respect to IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some IBs should be considered small entities, and if so, that it would analyze the economic impact on them of any rule.[33] Because the proposed amendment to the Commission's rules discussed herein will not result in any significant additional burdens to the above-mentioned registrants and may in practice result in a reduction of certain existing burdens, the Commission believes that the proposed rule amendment will not have a significant economic impact on such entities. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. § 605(b), the Chairman of the Commission certifies that this proposed rule amendment will not have a significant economic impact on a substantial number of small entities.

[32] 47 FR 18618–18620 (April 30, 1982).

[33] 47 FR 18618–18620 (April 30, 1982) (commodity trading advisors and floor brokers); 48 FR 35248, 35276 (August 3, 1983) (introducing brokers).

List of Subjects

17 CFR Part 1

Customer protection, Risk disclosure statements.

17 CFR Part 30

Foreign futures and option transactions, Customer protection, Risk disclosure statements.

17 CFR Part 33

Domestic exchange-traded commodity option transactions.

17 CFR Part 180

Arbitration or other dispute settlement procedures.

17 CFR Part 190

Bankruptcy Rules

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 2(a)(1), 4b, 4d, 4f and 8a of the Act, as amended, 7 U.S.C. §§ 2, 6b, 6d, 6f and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17, and 20 of the Commodity Exchange Act, 7 U.S.C. §§ 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21 and 24.

2. Section 1.55 is proposed to be amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (d) as paragraphs (e) and (f) and by adding new paragraphs (c) and (d) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

(a)(1) No futures commission merchant or, in the case of an introduced account, no introducing broker may open a commodity futures account for a customer unless the futures commission merchant or introducing broker first:

(i) Furnishes the customer with a separate written disclosure statement containing only the language set forth in paragraph (b) of this section (except for nonsubstantive additions such as captions); *Provided, however,* that the risk disclosure statement may be attached to other documents as the cover page or the first page of such documents and as the only material on such page; and

(ii) Subject to paragraph (d) of this section, receives from the customer an acknowledgment signed and dated by the customer that he received and understood the disclosure statement.

(2) Where customer accounts are transferred from one futures commission merchant to another futures commission merchant or, in the case of introduced accounts, from one introducing broker to another introducing broker, other than at the customer's request, such transferee registrant must provide each customer whose account is transferred with the risk disclosure statement prescribed in this section and receive the acknowledgment required in paragraph (a)(1)(ii) of this section within sixty days of the transfer of such accounts. This requirement shall not apply if the transfer of accounts is made from one introducing broker to another introducing broker guaranteed by the same futures commission merchant pursuant to a guarantee agreement in accordance with the requirements of § 1.10(j) and such futures commission merchant maintains the acknowledgment required by paragraph (a)(1)(ii) of this section.

(b) The language set forth in the written disclosure document required by paragraph (a) of this section shall be as follows:

Risk Disclosure Statement

The risk of loss in trading commodity futures contracts can be substantial. You should, therefore, carefully consider whether such trading is suitable for you in light of your circumstances and financial resources. You should be aware of the following points:

(1) You may sustain a total loss of the funds that you deposit with your broker to establish or maintain a position in the commodity futures market, and you may incur losses beyond these amounts. If the market moves against your position, you may be called upon by your broker to deposit a substantial amount of additional margin funds, on short notice, in order to maintain your position. If you do not provide the required funds within the time required by your broker, your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.

(2) Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market reaches a daily price fluctuation limit ("limit move").

(3) Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit your losses to the intended amounts, since market conditions on the exchange where the order is placed may make it impossible to execute such orders.

(4) All futures positions involve risk, and a "spread" position may not be less risky than an outright "long" or "short" position.

(5) The high degree of leverage (gearing) that is often obtainable in futures trading because of the small margin requirements can work against you as well as for you. Leverage (gearing) can lead to large losses as well as gains.

All of the points noted above apply to all futures trading whether foreign or domestic. In addition, if you are contemplating trading foreign futures or options contracts, you should be aware of the following additional risks:

(6) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange, whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery, and clearing of transactions on such an exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use domestic alternative dispute resolution procedures. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

(7) Finally, you should be aware that the price of any foreign futures or option contract and, therefore, the potential profit and loss resulting therefrom, may be affected by any fluctuation in the foreign exchange rate between the time the order is placed and the foreign futures contract is liquidated or the foreign option contract is liquidated or exercised.

This brief statement cannot, of course, disclose all the risks and other aspects of the commodity markets.

I hereby acknowledge that I have received and understood this risk disclosure statement.

_____

Date

_____

Signature of Customer

(c) The Commission may approve for use in lieu of the risk disclosure document required by paragraph (a) of this section, a risk disclosure statement approved by a foreign regulatory agency or self-regulatory organization if the Commission determines that such risk disclosure statement is reasonably calculated to provide the disclosure required by paragraph (b) of this section. Notice of foreign jurisdiction risk disclosure statement approvals will be published in the **Federal Register**.

(d)(1) Any futures commission merchant or, in the case of an introduced account any introducing broker, may open a commodity futures account for a customer specified in paragraph (d)(2) of this section without obtaining the separate acknowledgments of disclosure and elections required by this section and by §§ 30.6, 33.7, 180.3, 190.06 of this chapter, provided that:

(i) Prior to the opening of such account, the futures commission merchant or introducing broker obtains an acknowledgment from the customer, which may consist of a single signature at the end of the futures commission merchant's or introducing broker's customer account agreement, or on a separate page, of the disclosure statements and elections specified in § 1.55 and §§ 30.6, 33.7, 180.3, and 190.06 of this chapter, as listed above the signature line, provided the customer has acknowledged by check or other indication next to the specified disclosure statement or election that reflects the customer's receipt of such disclosure statement or assent to such election;

(ii) The acknowledgment referred to in paragraph (d)(1)(i) of this section must be accompanied or preceded by delivery of the required disclosures and elective provisions as specified in § 1.55 and §§ 30.6, 33.7, 180.3, and 190.06 of this chapter;

(2) The provisions of this subparagraph are applicable only to the opening of a commodity futures or options account for a customer who is:

(i) An entity that qualifies for relief under § 4.5(a) of this chapter; or

(ii) An entity that is a "qualified eligible participant" as defined in § 4.7 of this chapter; or

(iii) A foreign entity that is comparable to and subject to a regulatory framework comparable to any entity specified in § 4.5 of this chapter.

* * * * *

4. Section 1.65 is proposed to be added to read as follows:

§ 1.65 Notice of account transfers.

(a) Each futures commission merchant or introducing broker shall file with the Commission, at least five business days in advance of the transfer, notice of any transfer of customer accounts carried or introduced by such futures commission merchant or introducing broker which is not initiated at the request of the customer and where the transfer involves the lesser of:

(1) 25 percent of the total number of customer accounts carried or introduced by such firm if that percentage represents at least 100 of these accounts; or

(2) 50 percent or more of the total number of customer accounts carried or introduced by such firm.

The computation of the percentage and number of accounts must be based on the accounts of the transferor futures commission merchant or introducing broker, irrespective of whether such accounts are transferred to a single or multiple transferees.

(b) The notice required by this section shall include:

(1) The name, principal business address and telephone number of the transferor futures commission merchant or introducing broker;

(2) The name, principal business address and telephone number of the transferee futures commission merchant or introducing broker;

(3) The designated self-regulatory organization for the transferor and transferee firms;

(4) A brief statement as to the reasons for the transfer;

(5) A copy of the notice to customers informing them of the proposed transfer and providing an opportunity to object to such transfer; and

(6) A statement of the number of accounts to be transferred and the estimated liquidating equity of the accounts to be transferred.

(c) The notice required by this section shall be filed with the Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; the National Futures Association (ATTN: Vice President-Compliance); and the designated self-regulatory organization for the transferor firm.

(d) In the event that the notice required by this section cannot be filed with the Commission at least five days prior to the account transfer, the transferee futures commission merchant or introducing broker shall file such notice as soon as practicable and no later than the day of the transfer. Such

notice shall include a brief statement explaining the circumstances necessitating the delay in filing.

(e) The requirements of this section shall not affect the obligations of a futures commission merchant or introducing broker under the rules of a self-regulatory organization or applicable customer account agreement with respect to transfer of accounts.

(f) If a proposed transfer is not completed in accordance with the notice required to be filed by this section, a corrective notice shall be filed within five business days of the date such proposed transfer was to occur explaining why the proposed transfer was not completed.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

5. The authority citation for Part 30 continues to read as follows:

Authority: Sections 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. §§ 2, 4, 6, 6c, and 12(a).

6. Section 30.6 is proposed to be amended by revising paragraph (a) to read as follows:

§ 30.6 Disclosure.

(a) *Futures commission merchants and introducing brokers.*

(1) No futures commission merchant or, in the case of an introduced account, no introducing broker may open a foreign futures or option account for a foreign futures or option customer unless the futures commission merchant or introducing broker first furnishes the customer with a separate written disclosure statement containing only the language set forth in § 1.55(b) of this chapter (except for nonsubstantive additions such as captions); *Provided, however,* that the risk disclosure statement may be attached to other documents as the cover page or the first page of such documents and as the only material on such page.

(2) If a futures commission merchant or introducing broker, or any associated person of such futures commission merchant or introducing broker, has received general discretionary authority to engage in foreign futures or foreign options transactions on behalf of a foreign futures or foreign options customer, the futures commission merchant or introducing broker must receive a separate acknowledgment signed and dated by the customer that the customer has received and understood the disclosure statement set forth in § 1.55(b) of this chapter. With respect to customers specified in § 1.55(d)(2) of this chapter, such futures commission merchant or introducing broker may obtain such acknowledgment as provided in § 1.55(d)(1) of this chapter or in a power of attorney required by § 166.2 of this chapter.

* * * * *

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

9. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19, and 21, unless otherwise noted.

10. Section 33.7 is proposed to be amended by revising paragraph (a) to read as follows:

§ 33.7 Disclosure.

(a)(1) No futures commission merchant or, in the case of an introduced account, no introducing broker may open or cause the opening of a commodity option account for an option customer unless the futures commission merchant or introducing broker first:

(i) Furnishes the option customer with a separate written disclosure statement as set forth in this section or includes such statement in a booklet containing the customer account agreement and other disclosure statements required by Commission rules and;

(ii) Subject to the provisions of § 1.55(c) of this chapter, receives from the option customer an acknowledgment signed and dated by the option customer that he received and understood the disclosure statement.

(2) The disclosure statement and the acknowledgment shall be retained by the futures commission merchant or the introducing broker in accordance with § 1.31 of this chapter. The disclosure statement must be as set forth in paragraph (b) of this section, typed or printed in type of not less than 10-point size, and where indicated, in all capital letters.

(3) Where option customer accounts are transferred from one futures commission merchant to another futures commission merchant or, in the case of introduced accounts, from one introducing broker to another introducing broker, other than at the customer's request, such transferee firm must provide each option customer whose account is transferred with the risk disclosure statement prescribed in this section and receive the acknowledgment required in paragraph (a)(1)(ii) of this section within sixty days of the transfer of such accounts. This requirement shall not apply if the transfer of accounts is made from one introducing broker to another introducing broker guaranteed by the same futures commission merchant pursuant to a guarantee agreement in accordance with the requirements of § 1.10(j) of this chapter and such futures commission merchant maintains the acknowledgment required by paragraph (a)(1)(ii) of this section.

* * * * *

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

11. The authority citation for Part 180 continues to read as follows:

Authority: 7 U.S.C. 6c, 6d, 6k, 7a, 12a, and 21 unless otherwise noted.

12. Section 180.3 is proposed to be amended by revising paragraph (b)(2) to read as follows:

§ 180.3 Voluntary procedure and compulsory payments.

* * * * *

(b) * * *

(2) If the agreement is contained as a clause or clauses of a broader agreement, the customer must separately endorse the clause or clauses containing the cautionary language and provisions specified in this section. This subparagraph shall not apply to any futures commission merchant or, in the case of an introduced account, any introducing broker opening an account with respect to customers specified in § 1.55(d)(2) of this chapter. Such futures commission merchant or introducing broker may obtain such endorsement as provided in § 1.55(d)(1) of this chapter.

* * * * *

PART 190—BANKRUPTCY

13. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. §§ 2, 4a, 6c, 6g, 7, 7a, 12, 19, 23, and 24 and 11 U.S.C. §§ 362, 546, 548, 556 and 761–766.

14. Section 190.06 is proposed to be amended by revising paragraphs (b) and (d)(1) to read as follows:

§ 190.06 Transfers.

* * * * *

(b) *Notice.* Unless notice has been filed pursuant to § 190.02(a)(2), if a futures commission merchant, or a person required to be registered as a futures commission merchant, intends to transfer commodity contracts held by or

for a commodity broker from or for the account of a customer to another person registered as a futures commission merchant after a petition in bankruptcy has been filed by or against such commodity broker and such transfer is not made upon the request of that customer or in the ordinary course of business, the transferor must notify the Commission no later than is required under § 190.02(e)(2) of this part. .

* * * * *

(d) *Customer instructions.* (1) *Customer instructions.* A commodity broker must provide an opportunity for each customer to specify when undertaking its first hedging contract whether, in the event of bankruptcy, such customer prefers that open commodity contracts held in a hedging account be liquidated by the trustee without seeking customer instructions. With respect to customers specified in § 1.55(d)(2) of this chapter, such commodity broker may obtain the customer instruction as provided in § 1.55(d)(1) of this chapter.

* * * * *

15. Section 190.10 is proposed to be amended by revising paragraphs (c)(1)(i) and (c)(1)(ii) to read as follows:

§ 190.10 General.

* * * * *

(c) * * *

(1) * * *

(i) The commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c)(2) of this section in boldfaced print in at least ten point type, which may be provided as either a separate, written document or incorporated into the customer agreement; and

(ii) Where customer accounts are transferred from one commodity broker to another commodity broker other than at the customer's request, such transferee commodity broker must provide each customer whose account is transferred with the risk disclosure statement prescribed in this section within sixty days of the transfer of such accounts.

* * * * *

Issued in Washington, DC, on September 29, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-23986 Filed 10-6-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

Declarations Required To Be Filed With Certain Imported Works of Art Entered Free of Duty

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Customs Regulations require that works of art entered free of duty under certain provisions of the Harmonized Tariff Schedule of the United States shall have a declaration filed with the entry by the artist who produced the articles showing whether the articles are originals, replicas, reproductions, or copies; or a declaration by the seller or shipper with the same information if the declaration by the artist is not available. This document proposes that 19 CFR 10.48 be amended to make it easier for importers to satisfy the declaration requirements and to reduce the instances in which a declaration will be required.

DATES: Comments must be received on or before December 7, 1992.

ADDRESSES: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Steven Bratcher, Commercial Rulings Division, Office of Regulations and Rulings, (202) 566-8181.

SUPPLEMENTARY INFORMATION:

Background

The Harmonized Tariff Schedule of the United States Annotated (HTSUSA), 19 U.S.C. 1202, provides in subheadings 9701.90.00, 9702.00.00 and 9703.00.00, for the classification of various "works of art" which are entitled to duty-free entry if classified therein. Section 10.48, Customs Regulations (19 CFR 10.48), sets forth procedures to assist Customs in making the determination whether merchandise so claimed is actually a "work of art" and thus properly classified in the above cited provisions. Section 10.48 states that Customs field personnel may require that a declaration be filed with an entry by the artist who produced the articles showing whether the articles are originals, replicas, reproductions, or copies; or a declaration by the seller or shipper with the same information if the declaration by the artist is not available. The regulation also states that, whereas the declarations of these parties may be waived upon a showing of impossibility, the declaration of the importer shall be required in all cases.

One purpose of this proposal is to facilitate the movement of merchandise and save the importers time and money by making it easier to provide the declaration, when one is deemed necessary by Customs, and by providing Customs with greater flexibility not to require a declaration. This document also proposes modifications to 19 CFR 10.48 to eliminate inconsistencies that exist between the regulation and the provisions of the HTSUSA (and applicable interpretative notes) which the regulation is intended to help implement. The elimination of inconsistencies in this instance has the effect of further reducing requirements placed on importers by eliminating an entire series of merchandise, i.e., merchandise classified in subheading 9701.90.00, HTSUSA, from the merchandise for which Customs may require a declaration.

Explanation of Changes

1. The section heading change is necessary because "drawings" are specifically provided for in subheading 9701.10.00, HTSUSA; 19 CFR 10.48 does not apply to subheading 9701.10.00.

2. The change to § 10.48(a) is based on the fact that subheading 9701.90.00, HTSUSA, is the provision in which "collages and similar decorative plaques" are classified. There is no requirement that these items be original works of art (see Explanatory Note 97.01(B)); a declaration should never be required when an item is entered under subheading 9701.90.00.

3. The changes to § 10.48(b) are intended to accomplish two goals; First, the language is changed to make it easier for the parties involved in the importation, i.e., the importer, artist, seller and shipper, to provide a declaration, if required, by providing each of the parties with equal authority to make and provide the declaration. Secondly, the regulation is harmonized with Additional U.S. Note 1 to Chapter 97, HTSUSA, and the Explanatory Notes to Chapter 97. Those interpretative notes refer to the first twelve (12) castings, replicas or reproductions as being classifiable in heading 9703 rather than the first ten (10) as presently required in the regulation.

4. Section 10.48(c) is changed to provide Customs personnel with greater flexibility to waive the requirement of a declaration.

5. The removal of paragraph (e) is necessitated by the change (in number 2,

above) which removes subheading 9701.90.00 merchandise from the impact of 19 CFR 10.48.

Comments

Before making a determination in this matter, Customs will consider any written comments timely submitted. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

For the reasons set forth in the preamble and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Steven Bratcher, Commercial Rulings Division, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspections, Reporting and record keeping requirement, Exports, Caribbean Basin Initiative.

Proposed Amendment

It is proposed to amend part 10, Customs Regulations (19 CFR part 10), as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

2. It is proposed to revise § 10.48 to read as follows:

§ 10.48 Engravings, sculptures, etc.

(a) Invoices covering works of art claimed to be free of duty under subheadings 9702.00.00 and 9703.00.00, HTSUS, shall show whether they are originals, replicas, reproductions, or copies, and also the name of the artist who produced them, unless upon examination the appraiser is satisfied that such statement is not necessary to a proper determination of the facts.

(b) The following evidence shall be filed in connection with the entry: A declaration in the following form by the artist who produced the article, or by the seller, shipper or importer, showing whether it is original, or in the case of sculpture, the original work or model, or one of the first twelve castings, replicas, or reproductions made from the original work or model; and in the case of etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes, that they were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks:

I, _____, do hereby declare that I am the producer, seller, shipper or importer of certain works of art, namely _____ covered by the annexed invoice dated _____; that any mosaics included in that invoice are originals; that any sculptures or statuary included in that invoice are the original works or models or one of the first twelve castings, replicas, or reproductions made from the sculptor's original work or model; and that any etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes included in that invoice were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks.

(c) The district director may waive the declaration requirement set forth in paragraph (b) of this section.

(d) Artists' proof etchings, engravings, woodcuts, lithographs, or prints made by other hand transfer processes should bear the genuine signature or mark of the artist as evidence of their authenticity. In the absence of such a signature or mark, other evidence shall be required which will establish the authenticity of the work to the satisfaction of the district director.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: October 1, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

FR Doc. 92-24365 Filed 10-6-92; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 191

Eliminate Notice of Exportation, Customs Form 7511, as Proof of Exportation for Drawback

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to eliminate the requirement that the Notice of Exportation, CF 7511, be submitted to Customs as proof of exportation for the purpose of obtaining drawback. Other documentation would be allowed to be used as proof. Currently, to issue a CF 7511, a Customs officer must compare it with the information on the drawback claimant's outbound manifest, and the shipper's export declaration or the ocean/airway export bill to verify its accuracy. By eliminating the form and allowing other proof of exportation, time will be saved by both the drawback claimant and Customs.

DATES: Comments must be received on or before December 7, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Office of Trade Operations, Entry Division, 202-927-0916.

SUPPLEMENTARY INFORMATION:

Background

Drawback is defined in § 191.2(a) of the Customs Regulations (19 CFR 191.2(a)), as a refund or remission, in whole or part, of a customs duty, internal revenue tax, or fee lawfully assessed or collected, because of a particular use made of the merchandise on which the duty, tax, or fee was assessed or collected. To obtain drawback, a claimant must show that the eligible merchandise was exported. Sections 191.51(a) and 191.52 of the Customs Regulations (19 CFR 191.51(a) and 191.52), require a drawback claimant to file a notice of exportation on a Customs Form (CF) 7511, for each shipment of merchandise, in order to receive drawback. When filing the CF 7511, the exporter-claimant simultaneously files the shipper's export declaration or the ocean/airway export bill of lading. A Customs officer reviews both forms to determine whether the information contained on the CF 7511 is

accurate. Upon receipt of the outbound manifest, the Customs officer also compares that document with the CF 7511 to verify the facts of exportation. Upon compliance with this procedure the Customs officer issues the CF 7511. Elimination of this process would save time for both the claimant and Customs.

The information required on a CF 7511 is the name of the exporting vessel or carrier, the number and kinds of packages and their marks and numbers, a description of the merchandise, the name of the exporter, and the country of ultimate destination. This information is also available from paperwork that is generated internally in the process of trade.

Comments

Before making a determination in this matter, Customs will consider any written comments timely submitted. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Based on the discussion above, and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Sheryl Rosenow, Entry Rulings Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 191

Claims, Customs duties and inspection, Exports, Reporting and record keeping requirements.

Proposed Amendments

It is proposed to amend part 191 of the Customs Regulations (19 CFR part 191) as set forth below:

PART 191—DRAWBACK

1. The general authority citation for part 191 would continue to read as follows:

Authority: 5.U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1313, 1624.

2. It is proposed to amend § 191.51, Customs Regulations (19 CFR 191.51), by revising paragraph (a) to read as follows:

§ 191.51 Alternative procedures.

Exportation of articles for drawback purposes shall be established by complying with one of the following procedures:

(a) Documentary evidence, § 191.52;

* * * * *

3. It is proposed to revise the heading and text of § 191.52 to read as follows:

§ 191.52 Documentary evidence.

A drawback claimant may support the drawback claim by documentary evidence of exportation, such as the bill of lading, air waybill, freight waybill, cargo manifest, or certified copies thereof, issued by the exporting carrier. The preceding documentary evidence shall be accompanied by an export invoice or packing list annotating the merchandise being exported with benefit of drawback.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 8, 1992.

Nancy L. Worthington,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92-24331 Filed 10-6-92; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL 3987-7

Approval and Promulgation of Implementation Plans; Appendix M, Addition of Method for Measurement of Opacity Emissions From Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: In this notice, the EPA proposes to add test Method 203, for the measurement of opacity from stationary sources, to appendix M [Example Test Methods for State implementation plans (SIP's)] in 40 CFR part 51. This action provides States with an instrumental test method which can be used in determining, on a continuous basis, compliance with stationary source opacity emission limitations.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before December 7, 1992.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by October 28, 1992 a public hearing will be held on November 6, 1992 beginning at 10 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by October 28, 1992.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket Section (LE-131), Attention: Docket Number A-91-08, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Anthony P. Wayne, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-3576.

Docket. Docket Number A-91-08, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and noon, and 1:30 and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, room M1500, First Floor, Waterside Mall, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standard, contact Peter R. Westlin or Anthony P. Wayne at (919) 541-3576, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed method.

I. Background
A. Introduction
B. 1990 Promulgation of Methods 201 and 201A
II. Proposed Revisions
A. Summary of Proposed Revisions
B. Rational for Proposal as an Example Method in part 51
C. Existing Regulatory Requirements
III. Administrative Requirements
A. Public Hearing
B. Docket
C. Office of Management and Budget Reviews
D. Regulatory Flexibility Act Compliance

I. Background

A. Introduction

Section 110 of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 ("the Act") (42 U.S.C. 7410), specifies that States are to submit State Implementation Plans (SIPs) to EPA for approval that provide for the attainment and maintenance of ambient air quality standards. These standards will necessarily include emission limits and other control programs directed at sources of the pollutants involved. Many SIPs include regulations limiting pollutant emissions by limiting opacity (i.e., visible emissions).

Subpart K of 40 CFR part 51 requires that States include enforceable test methods in their SIPs for each emission limit (40 CFR 51.212(c)). Appendix M to 40 CFR part 51, which is entitled "Example Test Methods For State Implementation Plans," is designated as the repository for example test methods for SIPs. In order to assist States, local agencies and the public with guidance on how a widely accepted source test methodology can be applied to measure opacity, EPA, in this notice, is proposing to add a instrumental continuous opacity test method to Appendix M.

B. 1990 Promulgation of Methods 201 and 201A

On April 17, 1990 (55 FR 14246), EPA promulgated Methods 201 and 201A for the measurement of stack particulate matter. These methods were included in appendix M of 40 CFR part 51. Under the same action, EPA also revised subpart K to 40 CFR part 51, to direct States to the test methods in Appendix M, and to reiterate that SIPs must include enforceable test methods for each emission limit.

The example test methods in Appendix M are methods that are not specifically required by Federal regulations, but are proposed and promulgated by EPA for use by the States. States may now incorporate appropriate appendix M test methods into their SIPs; or they may choose other methods (including methods in appendix A, part 60), which will be subjected to normal plan review process as stated at 40 CFR 50.212(c). The test method being proposed today is to be included as an example test method in appendix M.

II. Proposed Revisions

A. Summary of Proposed Revisions

Today's action proposes to make Test Method 203 applicable for determining the opacity of emissions from stationary sources. Method 203 uses a continuous opacity monitoring system (COMS) that is based on technology involving the principle of transmissometry.

The way this technology works is that light having specific spectral characteristics is projected from a lamp through the effluent in the stack or duct, and the intensity of the projected light is measured by a sensor. The projected light is attenuated because of absorption and scatter by the particulate manner in the effluent; the percentage of light attenuated is defined as the opacity of the emission. Transparent stack emissions that do not attenuate light will have a transmittance of 100 percent or an opacity of zero percent. Opaque stack emissions that attenuate all of the light will have a transmittance of zero percent or an opacity of 100 percent.

Method 203 requires that the COMS comply with all of the installation, design, and other specifications of PS–1, 40 CFR part 60, appendix B, in order to use opacity monitoring data to determine compliance with opacity standards. In addition, Method 203 specifies quality assurance requirements and procedures that must be performed by the COMS operator after the initial demonstration of compliance with PS–1 requirements. The procedures indicate that data obtained during periods when the monitor is considered "out-of-control" may not be used for compliance determinations. The statement is not to be viewed as a disincentive for a source owner or operator to perform required quality assurance and control activities called for in the Method 203 procedures. Failure to meet the requirements of these procedures should be considered a violation of the monitoring requirements called for. Though the procedures indicate caution on the use of the data during "out-of-control" periods, the use of data collected during these periods is left to the discretion of the appropriate regulatory agency.

The method identifies a valid data average for purpose of recognizing quality assurance activities which result in less than 100 percent data capture. A data average is valid if it contains 83 percent of the required measurement cycles. At a minimum, a cycle is 10 seconds in which a measurement is made. Opacity averages can be for example, a 1-minute average made up of six 10-second cycles. The 83 percent equates to 5 out of the required 6 cycles. In addition, a 95 percent valid data average capture requirement is also specified. Taken together, a minimum of 95 percent of the total opacity averaging periods available, determined by the sources operating time, must be obtained. Each averaging period must be comprised of 83 percent of the required 10-second cycles which make up the averaging period. The values are valid if the quality assurance criteria specified in this procedure are met.

B. Rationale for Proposal as an Example Method in Part 51

As described above, appendix M is the designated repository for example test methods for use in SIPs.

The test methods in appendix M are available for States to reference in their SIPs without further EPA review of the method. The EPA has revised subpart K to emphasize that States must include enforceable test methods in their SIPs for each emission limit, and has directed States to appendix M for example test methods to be used in determining compliance (55 FR 14249, April 17, 1990). Today's proposed Method 203 is an example test method intended for use in SIPs, and, therefore, clearly should be included in appendix M. The inclusion of test methods with SIP standards will ensure that standards are set with full consideration, given to test method procedures and accuracy. The type of test method and the error associated with it can affect both the standard chosen audits stringency.

C. Existing Regulatory Requirements

Test Method 203 is currently being informally provided as an example test method for use by State and local agencies in the development of their PM_{10} SIPs pursuant to the Act, and to enhance existing total suspended particulate requirements. The EPA advises State and local agencies to review the applicability of this method to a particular source as they would any other compliance determination method. Note in so doing, that Test Method 203 is intended as an addition to existing visible emission test methods such as Test Method 9 of 40 CFR part 60, to be

used by regulatory agencies as a part of their overall program of applying compliance determination methodologies. Situations exist where Test Method 9 would need to continue as an applicable compliance method, e.g., where wet scrubbers are used for particulate control, however, Method 203 may replace Method 9 where a regulatory agency sees a benefit in its application. The regulatory agency continues to be responsible for the proper application and designation of compliance methods.

III. Administrative Requirements

A. Public Hearing

In accordance with section 307(d)(5) of the Act, a public hearing will be held, if requested, to discuss the proposed Test Method 203. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file for all information submitted or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A)].

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional cost will be incurred.

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, air pollution control, particulate matter.

The EPA proposes to amend title 40, chapter I, part 51 of the Code of Federal Regulations as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a), unless otherwise noted.

Appendix M—[Amended]

2. Appendix M is amended by adding method 203 to read as follows:

* * * * *

Method 203—Determination of the Opacity of Emissions From Stationary Sources by Continuous Opacity Monitoring Systems

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of the opacity of emissions from stationary sources by continuous opacity monitoring systems (COMS), in order to determine compliance with an opacity emission standard. The method is not applicable where water droplets are present in the exhaust gas stream being measured.

1.2 Principle. The opacity of emissions from a stationary source is continuously measured and recorded using a COMS that meets all the requirements of Performance Specification 1 (PS–1) of 40 CFR part 60, appendix B. Minimum quality control (QC) and quality assurance (QA) requirements are specified to assess and assure the quality of COMS performance. Daily zero and span checks, quarterly performance audits, and annual zero alignment checks are required in order to assure the proper functioning of the COMS and the accuracy of the COMS data.

Because control and corrective action encompasses a variety of policies, specifications, standards, and corrective measures, this method treats QC requirements in general terms to allow the development of a QC system that is most effective and efficient for the circumstances.

2. Definitions

2.1 Continuous Opacity Monitoring System (COMS). The total equipment required for the determination of the opacity of emissions which meets the minimum requirements of Performance Specification 1 of 40 CFR part 60.

2.2 Simulated Zero Check. Method or device used to provide a simulated zero opacity (or low-level value between zero and 20 percent of the applicable opacity standard).

2.3 Out-of-Control Periods.

2.3.1 Daily Assessments. Whenever the calibration drift (CD) exceeds twice the specification of PS–1, the COMS is out-of-control. The beginning of the out-of-control period is the time corresponding to the last successful drift check. The end of the out-of-control period is the time corresponding to the completion of appropriate adjustment and subsequent successful CD assessment.

2.3.2 Quarterly and Annual Assessment. Whenever a quarterly performance audit or annual zero alignment audit indicates unacceptable results, the COMS is "out-of-control." The beginning of the out-of-control period is the time corresponding to the completion of the performance audit indicating an unacceptable performance. The end of the out-of-control period is the time corresponding to the completion of appropriate corrective actions and subsequent successful audit (or, if applicable, partial audit).

2.4 Upscale Opacity Condition. Method or device used to provide a simulated upscale opacity (50 to 100 percent of the opacity standard).

2.5 External Zeroing Device (Zero-Jig). An external, removable device for simulating or checking the cross-stack zero alignment of the COMS.

3. COMS Installations, Design, and Performance Specifications

In addition to the installation, design, and performance requirements of PS–1, the following are added:

3.1 External Calibration Filter Access. The COMS must be designed to allow for the evaluation of both linearity and accuracy relative to a simulated zero value and provide a check of all system components. The design must accommodate a calibration filter assembly and permit periodic use of external (i.e., not intrinsic to the instrument) neutral density filters.

3.2 Data Reduction/Recording. The COMS shall be designed to allow for the data reduction, recording, and reporting in accordance with the applicable opacity standards. Monitors that automatically adjust the data to the corrected calibration value must be capable of recording the amount of adjustment that is applied to the exhaust gas stream measurement. Data recorded during periods of COMS breakdowns, repairs, calibration checks, and adjustments shall not be used in the data averages of Section 3.4.

3.3 Zero and Upscale Calibration Evaluations. All COMS installed pursuant to

these procedures shall include a method for producing a simulated zero opacity condition and an upscale opacity condition using a certified neutral density filter to produce an known obscuration of light. Such procedures shall provide a system check of the analyzer internal optical surfaces and all active electronic circuitry including the lamp and photodetector assembly used in the measurement mode.

3.4 Data Averages. All COMS installed pursuant to these requirements shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each specified data average, e.g., 6-minute average. An arithmetic or integrated average of all data should be used.

4. Opacity Measurement

4.1 The opacity of emissions shall be continuously measured and recorded in units of percent opacity, and shall be expressed in the averaging period specified in the applicable regulation.

4.2 The COMS shall be operated, maintained and calibrated in accordance with the instructions provided by the instrument manufacturer.

4.3 Except for COMS breakdowns, repairs, calibration checks, zero and span checks, and other QA activities, the COMS shall be in continuous operation during all periods of source operation.

4.4 A data average shall be considered valid if no less than 83 percent of the required cycles of opacity readings upon which the data average is based are obtained.

4.5 Any and all valid data averages may be used to determine compliance with the applicable opacity standard. Data obtained during "out-of-control" periods may not be used for compliance determinations; however, it can be used for identifying periods of failure to meet quality assurance and control criteria.

5. Quality Control (QC) Requirements

5.1 Calibration Drift (CD) Assessment. The COMS shall be checked, at least once daily and the CD quantified and recorded at zero (or low-level) and upscale-level opacity. The COMS shall be adjusted whenever the CD exceeds the specification of PS–1, and the COMS shall be declared "out-of-control" when the CD exceeds twice the specification of PS–1. Corrective actions, followed by a validating CD check are required when the COMS is out-of-control.

5.2 Fault Indicators Assessment. At least daily, the fault lamp indicators, data acquisition system error messages, and other system self diagnostic indicators shall be checked. The appropriate corrective actions should be taken when the COMS is operating outside preset limits. All COMS data recorded during periods in which fault indicators are illuminated shall be considered invalid.

5.3 Performance Audits. Checks of the individual COMS components and factors affecting the accuracy of the monitoring data, as described below, shall be conducted on a quarterly basis. Examples of detailed audit procedures may be found in Reference 1, "Performance Audit Procedures for Opacity Monitors," and Reference 2, "CEMS pilot Project: Evaluation of CEMS Reliability and QA Procedures Volume 1." The following identify the absolute minimum checks included in the performance audit:

5.3.1 Optical Alignment Assessment. The status of the optical alignment of the monitor components shall be checked and recorded according to the procedures specified by the monitor manufacturer. Realign as necessary.

5.3.2 Optical Surface Dust Accumulation Assessment. The apparent effluent opacity shall be compared and recorded before and after cleaning each of the exposed optical surfaces. The total optical surface dust accumulation shall be determined by summing the apparent reductions in opacity for all of the optical surfaces that are cleaned. Caution should be employed in performing this check since fluctuations in effluent opacity occurring during the cleaning cycle may adversely affect the results.

5.3.3 Zero and Upscale Response Assessment. The zero and upscale response errors shall be determined and recorded according to the CD procedures. The error is defined as the difference (in percent opacity) between the correct value and the observed value for the zero and high-level calibration checks.

5.3.4 Zero Compensation Assessment. The value of the zero compensation applied at the time of the audit shall be calculated as equivalent opacity, corrected to stack exit conditions, according to the procedures specified by the manufacturer. The compensation applied to the effluent recorded by the monitor system shall be recorded.

5.3.5 Stack Exit Correlation Error Assessment. The optical pathlength correction ratio (OPLR) shall be computed from the monitor pathlength and stack exit diameter and shall be compared, and the difference recorded, to the monitor setup value. The stack exit correlation error shall be determined as the absolute value of the difference between the measured value and the correct value, expressed as a percentage of the correct value.

5.3.6 Calibration Error Assessment. A three-point calibration error test of the COMS shall be conducted. For either calibration error test methods identified below, three neutral density filters meeting the requirements of PS–1, shall be placed in the COMS light beam path five consecutive times, and the monitor responses shall be independently recorded from the COMS permanent data recorder. Additional guidance for conducting this test is included in section 7.0 of PS–1. The low-, mid-, and high-range calibration error results shall be computed as the mean difference and 95 percent confidence interval for the difference between the expected and actual responses of the monitor as corrected to stack exit conditions. These values shall be calculated using the procedures of Section 8.0 of PS–1.

5.3.6.1 Primary Calibration Error Method. The calibration error test requires the installation of an external calibration audit device (zero-jig). The zero-jig shall be adjusted to provide the same zero response as the monitors simulated zero.

5.3.6.2 Alternative Calibration Error Method. Conduct an incremental calibration test by superimposing the neutral density filters over the effluent opacity and comparing the COMS responses to the expected value calculated from the filter and opacity values immediately preceding the superimposing. Record both the stack effluent opacity and the calibration filter value prior to each test. This method is sensitive to fluctuations in the effluent opacity during the test.

5.3.6.3 Attenuators. Use calibration attenuators (i.e., neutral density filters or screens) with values that have been determined according to section 7.1.3, "Attenuator Calibration" of PS–1, and produce simulated opacities (as corrected to stack exit conditions) in the ranges listed in Table 1 below. For visible emission standards of 10 percent (or less) opacity, attenuator selection may be based on a 10 percent opacity standard.

5.3.6.4 Attenuator Stability. The stability of the attenuator values shall be checked at least once per year according to the procedures specified in PS–1. The attenuators shall be recalibrated if the stability checks indicate a change of 2 percent opacity or greater.

TABLE 1.—FILTER RANGES FOR COMS PERFORMANCE AUDITS

Audit Point	Audit Filter Range (% Op)
1	20–60 Percent of the Emission Limit (low).
2	80–120 Percent of the Emission Limit (mid).
3	150–200 Percent of the Emission Limit (high).

5.4 Zero Alignment Assessment. Compare the COMSs simulated zero to the actual clear path zero of the installation annually. The audit may be conducted in conjunction with, but prior to, a performance audit.

5.4.1 Primary Zero Alignment Method. The primary zero alignment shall be performed under clear path conditions. This may be accomplished if the process is not operating and the monitor pathlength is free of particulate matter or the monitor may be removed from its installation and set up under clear path conditions. The absence of particulate matter shall be demonstrated prior to conducting the test at the installed site. No adjustment to the monitor is allowed other than the establishment of the proper monitor pathlength and correct optical alignment of the COMS components. Record the COMS response to a clear condition and to the COMSs simulated zero condition as percent opacity corrected to stack exit conditions. For COMSs with automatic zero compensation, disconnect or disable the zero compensation mechanism or record the amount of correction applied to the COMSs simulated zero condition. The response difference in percent opacity to the clear path and simulated zero conditions shall be recorded as the zero alignment error. Adjust the COMSs simulated zero device to provide the same response as the clear path condition. Restore the COMS to its operating mode.

5.4.2 Alternative Zero Alignment Method. Monitors capable of allowing the installation of an external, removable zero-jig, may use the equipment for an alternative zero alignment, provided that the zero-jig setting has been established for the monitor pathlength and recorded for the specific COMS by comparison of the COMS responses to the installed zero-jig and to the clear path condition; the zero-jig is demonstrated to be capable of producing a consistent zero response when it is repeatedly (i.e., three consecutive installations and removals prior to conducting the final zero alignment check) installed on the COMS. The zero-jig setting shall be permanently set at the time of initial zeroing to the clear path zero value and protected when not in use to ensure that the setting equivalent to zero opacity does not change. The zero-jig setting shall be checked and recorded prior to initiating the zero alignment. Source owners and operators that employ a zero-jig shall perform a primary zero alignment audit once every 3 years.

5.5 Monitor Acceptance Criteria.

5.5.1 Performance Assessment. The following criteria are to be used for determining acceptable performance of and out-of-control periods for the COMS:

TABLE 2.—PERFORMANCE AUDIT CRITERIA

Stack Exit Correlation Error.	<2 percent.
Fault Indicators	Inactive—no error messages.
Zero and Upscale Responses.	<2 percent opacity.
Zero Compensation	<4 percent opacity.
Optical Alignment	Misalignment error, <2 percent opacity.
Optical Surface Dust Accumulation.	<4 percent opacity.
Calibration Error	<2 percent opacity.
Zero Alignment	<5 percent opacity for one check. <2 percent opacity for three consecutive checks.
Valid Data Average Capture.	>95 percent of source operating time.

5.5.2 Zero Alignment. The zero alignment is acceptable if the error at the simulated zero check is less than 2 percent opacity prior to adjustment. The simulated zero check shall be adjusted to provide the correct response each time the zero alignment check is performed.

5.5.3 Unacceptable Results—Single Performance Assessment. The COMS is out-of-control whenever the results of a quarterly performance audit indicate noncompliance with any of the performance assessment criteria of TABLE 2 of § 5.5.1 above. If the COMS is out-of-control, take necessary corrective action to eliminate the problem. Following corrective action, the source owner or operator must reconduct the appropriate failed portion of the audit and other applicable portions to determine whether the COMS is operating properly and within specifications. The COMS owner or operator shall record both audit results showing the COMS to be out-of-control and the results following corrective action. COMS data obtained during any out-of-control period may not be used for compliance determination or to meet the data capture requirement of § 5.5.6, however the data can be used for identifying periods where there has been a failure to meet quality assurance and control criteria.

5.5.4 Unacceptable Results—Multiple Performance Assessments. Repeated audit failures (i.e., out-of-control conditions resulting from the quarterly audits) indicate that the QC procedures are inadequate or the COMS is incapable of providing quality data. The source owner or operator shall increase the frequency of the above QC procedures until the performance criteria is maintained or modify or replace the COMS whenever two consecutive quarters of unacceptable performance occurs.

5.5.5 Unacceptable Zero Alignment. If the error of the simulated zero check prior to adjustment exceeds 5 percent opacity for any zero check, or exceeds 5 percent opacity for any zero check, or exceeds the 2 percent opacity acceptance criterion for three consecutive checks, the performance of the COMS is unacceptable. The source owner or operator shall take corrective action to resolve the problem and improve the stability of the simulated zero check method or device or replace the COMS. If the COMS is not replaced, zero alignment audits must be conducted at least biannually during nonconsecutive quarters.

5.5.6 Unacceptable Results—Insufficient Data Capture. Compliance with the 95 percent valid data capture requirement shall be determined by considering COMS downtime for all causes (e.g., monitor malfunctions, data system failures, preventive maintenance, unknown causes, etc.) except for downtime associated with routine zero and span checks and QA/QC activities required by this method. Failure of a COMS to obtain valid opacity data for at least 95 percent of the sources operating time during any reporting period (e.g., day, month, quarter, semiannual period, etc.) indicates that the QC/QA procedures are not sufficient or that the COMS is not capable of continuously providing quality data. Whenever less than 95 percent of the valid data averages are obtained for a reporting period, the source owner or operator shall either: (1) Perform such additional QC/QA activities as deemed necessary to assure acceptable data capture; or (2) modify or replace the COMS. Additional QC/QA procedures include, but are not limited to: Implementation or revision of a QC program, maintenance of a spare-parts inventory, conducting more frequent system performance audits.

6. Calculations for COMS Assessments

6.1 Performance Audit Calculations. The calculations contained in Section 8 of PS–1 shall be followed.

6.2 Zero Alignment Checks. The procedures contained in Reference 1, Section 10, Zero Alignment Checks, shall be followed.

7. Reporting Requirements

At the reporting frequency and in the format specified in the applicable regulation, report on a quarterly basis the performance and accuracy results from Section 5.0. The quarterly performance and accuracy report must contain the drift and audit result information as a Data Assessment Report (DAR), Figure 1. A copy of the quarterly DAR should be included as a separate report with the periodic reports of emissions required under applicable regulatory requirements. As a minimum, the DAR must contain the following information:

1. Source owner and operator name and address.

2. Identification (by serial number) and location of the monitors in the COMS.

3. Manufacturer and model of each monitor in the COMS.

4. Results of COMS performance and date of assessment as determined by performance audit or zero alignment audit, including performance audit results for each of the tests described in sections 5.3 and 5.4, the calculation of these results, as well as the zero error and its calculation. If the performance audit results show the COMS to be out-of-control, the COMS owner or operator must report both the audit results showing the COMS to be out-of-control and the results of the audit following corrective action showing the COMS to be operating within specification.

5. Summary of all corrective actions taken when COMS were determined to be out-of-control, as described in Sections 5.5.

8. Bibliography

8.1 "CEMS Pilot Project: Evaluation of CEMS Reliability and QA Procedures Volume 1," EPA–340/1–86–009a. May 1986. U.S. EPA, Office of Air Quality Planning and Standards, Washington, DC 20460.

8.2 "Performance Audit Procedures For Opacity Monitors," EPA–600/8–87–025. April 1987. U.S. EPA, Environmental Monitoring Systems Laboratory, Research Triangle Park, NC 27711.

8.3 Specification and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources, Performance Specification 1, 40 CFR part 60, appendix B.

8.4 Procedure 1. Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination, 40 CFR part 60, appendix F.

Example COMS Data Assessment report

Period ending date: _____
Year: _____
Company Name: _____
Plant Name: _____
Unit No.: _____
COMS Manufacturer: _____
Model: _____
COMS Serial No.(s): _____

I. Performance Audit

1. Stack Exit Correlation Error
   a. Actual pathlength correction factor _____
   b. Correct pathlength correction factor _____
   c. Stack exit Correlation Error _____
2. Active Fault Indicators; error messages present:

3. Zero and Upscale Calibration Check Responses

	Correct value	Response	Difference
Zero			
Upscale			

4. Zero Compensation Value (percent opacity):

5. Optical Alignment Status: _____
6. Dust Accumulation on Optical Surfaces

	Initial opacity	Final opacity	Difference
Window 1			
Window 2			
Total			

7. Calibration Error
a. Filter Values (equivalent opacity)
Low: _____
Mid: _____
High: _____
b. Test Results

	Low	Mid	High
1.			
2.			
3.			
4.			
5.			

c. Calibration Error
Low: _____
Mid: _____
High: _____
8. Corrective Action for Unacceptable Performance Out-of-control periods:
Date(s) and Time(s): _____
Number of hours: _____
Corrective action taken: _____
Results of audit (or partial audit) following corrective action.
(Use format, as applicable, as shown in I–8 above)
II. Zero Alignment Audit
1. Clear Path Zero Response: _____ percent opacity
2. Simulated Zero Response: _____ percent opacity
3. Zero Alignment Error: _____ percent opacity
4. Zero Error of Previous Two(2) Assessments: _____
III. Calibration Drift Assessment
Out-of-control periods:
Date(s): _____
Number of days: _____
Corrective action taken: _____
Results of CD after corrective action. (Use format above)
IV. Data Capture Assessment
1. Source operating hours: _____
2. Total hours of valid COMS data: _____ (During source operating hours, *including* valid data obtained during routine calibration checks and QA/QC activities required by this method.)
3. Percent data capture: _____
V. Calculations (Include on a separate page.)
Figure 1. Example format for COMS data Assessment Report.

[FR Doc. 92–24343 Filed 10–6–92; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OCC–20–P]

RIN 0938–AD79

Medicare Program; Appeal Rights and Procedures for Beneficiaries Enrolled in Prepaid Health Care Plans

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule would modify or establish administrative review procedures for Medicare beneficiaries who are enrolled in health maintenance organizations (HMOs), competitive medical plans (CMPs) and health care prepayment plans (HCPPs). Specifically, the proposed rule would (1) impose a 60-calendar-day time limit for an HMO and CMP to complete a reconsideration request by a Medicare enrollee for denied services or claims; (2) extend to HMO and CMP members the right to request immediate review by a Utilization and Quality Control Peer Review Organization (PRO) of an HMO or CMP or hospital determination that inpatient hospital stay is no longer necessary; and (3) require HCPPs to establish administrative review procedures for their Medicare enrollees who are dissatisfied with decisions on denied services or claims.

These proposed changes are necessary to improve efficiency in the administration of the Medicare program and to provide Medicare beneficiaries equitable administrative review rights, regardless of their enrollment status.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 7, 1992.

ADDRESSES: Mail written comments to the following address:
Health Care Financing Administration, Department of Health and Human Services, Attention: OCC–20–P, P.O. Box 26676, Baltimore, Maryland 21207.

For comments that relate to information collection requirements, mail a copy of comments to:
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Attention: Allison Herron Eydt, Washington, DC 20503.

If you prefer, you may deliver your written comments to one of the following locations:
Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OCC–20–P. Timely comments will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone (202) 245–7890).

FOR FURTHER INFORMATION, CONTACT:
Jean LeMasurier, (202) 619–1063, for matters on PRO appeals.
Jennifer Richmond, (202) 619–2755, for matters regarding reconsiderations and HCPP appeals.

SUPPLEMENTARY INFORMATION:

I. General Background

Generally, payment for services provided to Medicare beneficiaries under title XVIII of the Social Security Act (the Act) may be made on a fee-for-service basis or on a prepayment basis. Under the fee-for-service system, payment is made after a service is furnished. Claims for payments are submitted by providers, physicians, suppliers, or beneficiaries to intermediaries and carriers who, under contract with HCFA, determine whether payment is appropriate. Under the prepayment method, eligible organizations, such as health maintenance organizations (HMOs) and competitive medical plans (CMPs), and health care prepayment plans (HCPPs), enter into contracts or agreements with HCFA to provide a range of services to Medicare beneficiaries who voluntarily enroll in these plans. This proposed rule deals with Medicare services provided to beneficiaries by entities paid on a prepayment basis. We refer to these entities collectively as "prepaid health care organizations."

Section 1876 of the Act provides the authority for HCFA to enter into contracts with eligible HMOs and CMPs

to provide Medicare covered services to beneficiaries and specifies the requirements that must be met by the eligible HMO or CMP. Eligible HMOs and CMPs may be paid on either a (1) risk basis, under which the HMO or CMP is paid a prospectively determined per capita monthly payment, or (2) a cost basis under which interim per capita payments are made on the basis of a budget, and a retrospective cost settlement occurs to reflect the reasonable costs incurred by the HMO or CMP for the covered services it actually furnishes to enrolled members.

Section 1833 of the Act provides the basis for regulations under which HCFA enters into written agreements with HCPPs to furnish or arrange to have furnished covered Medicare Part B services only to a defined population on a prepayment basis.

Implementing Federal regulations for the organization and operation of prepaid health care organizations, contract requirements, and conditions for payments are located in 42 CFR Part 417.

Generally, this proposed rule would amend the Medicare regulations governing the administrative review rights and procedures for Medicare enrollees in prepaid health care organizations. We propose to: (1) Impose a 60-calendar day time limit for an HMO or CMP to complete a reconsideration requested by a Medicare enrollee (or authorized representative) for denied services or claims; (2) permit an HMO or CMP enrollee (or authorized representative) to request immediate PRO review of an HMO, CMP, or hospital notice of a determination that an inpatient hospital stay is no longer necessary; and (3) require HCPPs to establish administrative review procedures for Medicare enrollees similar to those that we require HMOs and CMPs to establish for Medicare enrollees.

II. Time Limit for Completing a Reconsideration

Section 1876(c)(5)(A) of the Act requires certain prepaid health care organizations to establish procedures for hearing and resolving grievances between the organization and its Medicare enrollees. Section 1876(c)(5)(B) provides specific administrative and judicial review rights to Medicare enrollees of HMOs and CMPs that contract with HCFA and who are dissatisfied with determinations by the HMO or CMP regarding services and claims. These rights are similar to those available to beneficiaries in the fee-for-service system, except that under the regulations at §§ 417.614 and 417.620, the initial level of review is by the HMO or CMP rather than by a PRO, intermediary, or carrier. Issues that are subject to the full scope of administrative and judicial review are those in which beneficiaries believe they: (1) Have been denied access to a service to which they are entitled; or (2) are required to pay an amount that is the responsibility of the HMO or CMP. (Other issues are only subject to the HMO's or CMP's internal grievance procedures.) Regulations at 42 CFR 417.600 through 417.638 describe the administrative and judicial review process. Under the first step of the process, the rules provide that within 60 days of the request for payment or for furnishing of services, the HMO or CMP must make a determination and explain the reasons for the determination. If the decision is unfavorable (in full or part), the beneficiary (or his or her authorized representative) may request that the HMO or CMP reconsider the decision. (The beneficiary must request reconsideration before proceeding to the next step in the review process.) An organization may issue a reconsidered determination on a case only if the reconsidered determination is entirely favorable to the beneficiary. If the organization reaffirms its denial of payment or services, in whole or in part, the organization may not issue a reconsidered decision to the beneficiary. Instead, the organization must prepare a written explanation and refer the case to HCFA, along with a justification for its initial denial, so that HCFA may make a new and independent determination concerning coverage of the services at issue. This step is considered to be part of the reconsideration process. If HCFA's reconsideration determination is not fully favorable to the beneficiary, the beneficiary has a right to request a hearing before an administrative law judge (ALJ) of the Social Security Administration (SSA) if the amount remaining in controversy is $100 or more. If the ALJ hearing does not result in a fully favorable determination, the beneficiary may request Appeals Council review of the ALJ decision. Following the administrative review process, the beneficiary is entitled to judicial review of the final determination of the Secretary if the amount remaining in controversy is $1,000 or more.

Currently, the regulations do not establish time limits for an HMO or CMP to complete a reconsideration. However, a beneficiary may not proceed to the next level of administrative review until the HMO or CMP issues its decision or refers the matter to HCFA. If the HMO or CMP unreasonably delays completing a reconsideration, the beneficiary is deprived of a timely opportunity for a hearing by an independent third party and, in the event the reconsidered decision is favorable to the beneficiary, payment or the provision of services is delayed. Therefore, we propose to revise the regulations containing the administrative review procedures to ensure that the process becomes more efficient.

Specifically, we propose to require that an HMO or CMP make a reconsidered decision (or submit the matter to HCFA if it cannot issue a totally favorable reconsidered decision) within 60 calendar days from the date of receipt of the beneficiary's request for reconsideration. We believe that 60 days is sufficient since the HMO or CMP has already made a determination and has all the necessary records. This timeframe is consistent with the time allowed for issuing the organization's wholly or partially adverse determination that is being reconsidered. If the reconsidered decision made by the organization is entirely favorable to the beneficiary, the organization must notify the beneficiary within the 60-calendar-day period. If the organization makes a reconsidered decision that is unfavorable, in whole or in part, the organization must automatically submit the case file to HCFA (or its designated agent) within the 60-calendar-day period for a reconsidered decision. HCFA's reconsidered determination is not subject to the 60-calendar-day time limit because it does involve review by an independent third party, and HCFA may need to request additional information from the HMO or CMP.

We propose to amend § 417.620 to establish the 60-calendar-day time limit for an HMO or CMP to complete a reconsideration and require the HMO or CMP to notify the enrollee if it refers the matter to HCFA for action.

III. Requests for Immediate PRO Review of Decisions for Hospital Discharges

Section 1154(e) of the Act, as amended by section 9351 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), provides Medicare beneficiaries with the right to an immediate review by a PRO and, in some cases, certain concurrent financial protections when a hospital, with the concurrence of the attending physician, determines that the beneficiary no longer requires inpatient hospital care. To exercise the immediate review right, after receiving the hospital's notice of

noncoverage, the beneficiary must request (by telephone or in writing) that the PRO review the validity of the hospital's decision. The beneficiary must make such a request by noon of the first working day after receipt of the notice. The PRO then must determine the appropriateness of the hospital's decision that the beneficiary no longer requires covered inpatient services within 1 full working day of the request (and receipt of pertinent information and/or records from the hospital). The hospital cannot charge the beneficiary for the cost of additional hospital days until noon of the day after receipt of the PRO's determination that the hospital's decision was correct.

HMOs and CMPs generally have the option to retain control of the hospital discharge decision or to delegate the discharge decision to the hospital and the attending physician. (In emergency situations, however, the "antidumping" provisions of the statute make the hospital responsible for determining that the patient is medically stable for discharge.) Often the discharge decision is linked to how hospital bills for HMO or CMP patients are paid. For example, most HMOs paid on a cost basis permit the hospital to bill Medicare intermediaries directly on the HMO's behalf. While all HMOs paid on a risk basis are responsible for paying hospital bills directly, some choose, as part of their contract with the hospital, to delegate the discharge decision to the hospital and attending physician. Other risk contractors, particularly staff model HMOs and HMOs that own their own hospitals, retain responsibility for the discharge decision, including the issuing of the discharge notice to the beneficiary.

Under current law, if the hospital (rather than the HMO or CMP) sends the discharge notice, the beneficiary is entitled to request immediate review by a PRO whether or not he or she is enrolled in an HMO or CMP. However, while a beneficiary enrolled in an HMO or CMP may be protected from being charged by the hospital, he or she is not necessarily protected from potential financial liability. If the PRO upholds the hospital's notice of noncoverage, there is no regulation prohibiting the HMO or CMP from billing the beneficiary for the extra days of care while the PRO is reviewing the case, if the extra days result in additional costs to the HMO or CMP. (Depending on the payment arrangement with the hospital, it is possible that the HMO or CMP will not incur any additional costs by virtue of the patient's additional days in the hospital. For example, if there is no contract between the HMO and the hospital, the hospital may not charge more than the amount Medicare would pay. Under the prospective payment system (PPS), that amount remains the same regardless of the length of the hospital stay, unless outlier days are involved. Similarly, a contract between an HMO and a hospital might provide that the hospital is paid on a basis similar to PPS, rather than on a per diem basis.)

In addition, if the HMO or CMP, rather than the hospital, makes the determination of noncoverage, the regulations do not specifically afford an immediate PRO review right to the enrollees. This results in inequitable treatment of HMO and CMP enrollees based on which organization issues the written notice.

We do not believe that Congress intended this result, and propose to exercise our authority under section 1871 of the Act to eliminate this difference. We are proposing to amend the Medicare regulations at §§ 417.440, 417.454, and 417.604 and add a new § 417.605 to provide the Medicare HMO or CMP enrollee with the same administrative review rights and financial protection as are available to beneficiaries in the fee-for-service system.

Under § 417.440(f), we propose to require that an HMO or CMP that has not delegated the discharge decision to the hospital and attending physician must: (1) Have the concurrence of the attending physician before making a determination that an enrollee no longer needs inpatient hospital care; and (2) provide the beneficiary with a written notice of noncoverage that specifies the effective date of the beneficiary's liability and reason why the HMO or CMP believes the patient no longer requires a hospital level of care and explains immediate review procedures.

We propose to revise the beneficiary administrative review procedures under § 417.604(a) and add a new § 417.605 to offer an immediate review by the PRO with which the hospital has an agreement under § 466.78 of the HCFA rules. We propose to adopt the same timeframes for immediate PRO reviews for HMO and CMP enrollees that are applicable to fee-for-service beneficiaries. Upon receiving a written notice from the HMO or CMP or a hospital of a determination that an inpatient hospital stay is no longer necessary, the enrollee (or authorized representative) would have until noon of the first working day after receipt of the notice to file a request for immediate PRO review. The request for immediate PRO review may be made by telephone or in writing. The PRO would notify the HMO or CMP that an appeal has been filed and require that the HMO or CMP provide any pertinent records or information by close of business of the first working day immediately following the day the beneficiary made the appeal. Further, in response to a request from the HMO or CMP, the hospital would be required to submit medical records and other pertinent information to the PRO by close of business of the first full working day immediately following the day the HMO or CMP makes its request. The PRO would also solicit the views of the enrollee who requested immediate PRO review (or the enrollee's authorized representative). The PRO would have 1 working day after receipt of the information from the HMO or CMP to make a determination. The HMO or CMP would be financially liable for the costs of the hospital stay until noon of the calendar day following receipt of the PRO determination.

In addition, we also propose to amend § 417.454 to prohibit the HMO or CMP from billing the Medicare beneficiary for the added cost of hospital days during the immediate review process. An enrollee who requests immediate PRO review would not be entitled to any subsequent review, under the HMO's or CMP's administrative review process, of the issue of whether hospitalization was still needed. However, the PRO determination would be subject to appeal under the administrative and judicial review process set forth in 42 CFR part 473 (that is, PRO reconsiderations and hearings and judicial review of PRO reconsiderations). As under the current fee-for-service system, the beneficiary who requests that a PRO reconsider its determination would not be protected from financial liability.

Under this proposed rule, the hospital is not required to be a concurring party in a discharge decision where the HMO or CMP issues the notice of noncoverage. However, the hospital may submit the request to the PRO for immediate review on behalf of the HMO or CMP enrollee. We propose to clarify (in § 417.605) that, with one exception, the HMO or CMP is financially responsible for the cost of the continued hospital stay until noon of the calendar day following the day the PRO notifies the enrollee of its review determination. Under the exception, a hospital may not charge the HMO or CMP (or the beneficiary) for the costs of the continued hospital stay during the PRO review process if the hospital files the request for immediate PRO review on

behalf of a beneficiary and the PRO upholds the noncoverage determination made by the HMO or CMP.

We are proposing these changes because the present regulations governing the administrative review process for Medicare beneficiaries who are enrolled in HMOs and CMPs with Medicare contracts does not provide the same right of immediate access to independent review of a notice of a determination that a beneficiary no longer requires inpatient hospital care nor the protection from financial liability that is provided to Medicare beneficiaries under the fee-for-service system. Without this proposed change, hospitalized beneficiaries who receive a notice of noncoverage from an HMO or CMP must use the more lengthy HMO and CMP administrative review process, and they would not be protected from being billed for the costs of the intervening days.

We considered the alternative of permitting the HMO or CMP, rather than the PRO, to conduct an immediate review. However, we believe that Congress intended that all hospital discharge decisions be reviewed by a PRO. The PRO that conducts the immediate review for the hospital's fee-for-service patients conducts the immediate review for the hospital's HMO and CMP enrollees. We do not expect this change to significantly add to the workload of existing PROs because current Medicare membership in the HMOs and CMPs to which this rule would apply is low (approximately 3 percent of the total Medicare population).

We also considered allowing the attending physician to request PRO review of an HMO/CMP noncoverage decision if the physician disagrees with the decision. However, except in emergency situations, the attending physician is acting as the representative of the HMO or CMP. We believe an internal disagreement between an HMO or CMP participating physician and the HMO or CMP should be resolved before a notice is issued to the beneficiary. Thus, we propose to require concurrence of the attending physician prior to patient notification. The HMO or CMP is responsible for obtaining the concurrence of the HMO or CMP attending physician. If there are disputes, the HMO or CMP is responsible for resolving any issues and may use binding arbitration or other dispute resolution mechanisms as appropriate.

Finally, we considered requiring in all circumstances that the HMO or CMP be financially liable for the cost of the hospital days during the expedited review process. However, we propose to make hospitals requesting reviews on behalf of HMO or CMP enrollees financially liable when the PRO upholds the HMO's or CMP's notice of noncoverage. Otherwise the hospital might have an incentive to appeal every case.

IV. Providing Administrative Review Rights to HCPP Members

Section 1833(a)(1)(A) of the Social Security Act provides that an organization that provides services on a prepayment basis may elect to receive payment for Part B services on a reasonable cost basis rather than a reasonable charge basis. There is no indication that Congress intended to deny Medicare beneficiaries enrolled in these organizations (referred to in these regulations as health care prepayment plans (HCPPs)) their full administrative review rights under section 1869 of the Act simply because they receive services through an organization that chooses this alternate payment option. Unlike the regulations governing HMOs and CMPs, the regulations at 42 CFR part 417, subpart D, applicable to HCPPs, do not specifically address administrative review rights for Medicare enrollees of HCPPs in the event there are disputes with the HCPP over coverage and reimbursement of Part B services. As a result, an HCPP could refuse to provide a Medicare-covered service to one of its enrollees and the enrollee would have no recourse other than to obtain the service from a physician not associated with the HCPP and have the service billed to the Medicare carrier. The disadvantage to the beneficiary in this situation is that the beneficiary is required to pay applicable coinsurance and perhaps an amount to meet the Part B deductible. The beneficiary already has paid a premium to the HCPP to cover the coinsurance and deductible amounts for Medicare Part B services the HCPP should have provided. Thus, the Medicare enrollee would be forced to make double payment. There is also the possibility that the beneficiary would go to a physician who does not accept assignment for the service and be required to pay an amount beyond the Medicare reasonable charge, which would not have occurred had the HCPP provided the service.

The fact that existing regulations do not specifically provide for administrative review of HCPP decisions is an oversight that we propose to correct in these proposed regulations. We propose to amend § 417.801 and add new §§ 417.830 through 417.840 to establish administrative review procedures for Medicare enrollees of HCPPs who are dissatisfied with denied services or claims. We propose to adopt under these sections administrative review procedures for HCPP enrollees that are the same as those for HMO and CMP enrollees. We believe this is appropriate because the method by which beneficiaries receive services in HCPPs more closely resembles the HMO and CMP context than fee-for-service methods.

V. Other Changes

We are proposing to make several clarifying technical changes to the regulations relating to administrative reviews for HMO or CMP enrollees:

- Subpart Q, §§ 417.600, 417.604, 417.606, 417.608, 417.610, 417.612, 417.614, 417.616, 416.618, 416.620, 417.622, and 417.638—We propose to change the term "initial determination" to "organization determination" to distinguish between a determination made by the HMO or CMP and one made by HFCA. Our use of the term "initial determination" in the HMO/CMP regulations under Subpart Q when referring to determinations made by the HMO or CMP has led to misunderstanding and confusion. We also propose to delete references to carriers and intermediaries making determinations on behalf of HMOs and CMPs. Carriers and intermediaries now only make fee-for-service determinations.
- Section 417.604—General provisions. We propose to revise § 417.604(a)(4) to clarify that physicians and other individuals who furnish items or services under arrangements with an organization do not have a right to appeal under the regulations. We propose to make a conforming change to § 417.610(b). These changes are necessary because the existing regulations are intended to prevent physicians or suppliers from billing both a beneficiary and the HMO to which he or she belongs for a service.
- Section 417.614—Right to reconsideration. We propose to clarify the language by making a distinction between an original determination and a revised or reopened determination.
- Section 417.630—Right to a hearing. We propose to clarify that the reference to the "amount in controversy" as a condition for a party to request a hearing is the amount "remaining" in controversy, not the amount of the total bill. For example, an HMO pays $80 of a $100 bill and the beneficiary appeals for full payment. The amount remaining in controversy is $20, not $100. We also propose to add a phrase to clarify that

when beneficiaries combine bills to meet the amount in controversy requirements, they can use both Part A and Part B bills.

VI. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the **DATES** section of this preamble, and respond to the comments in the preamble to the final rule that follows this proposed rule.

VII. Paperwork Burden

Sections 417.440(f), 417.605, 417.620(a), and 417.836 of this proposed rule contain additional requirements that are subject to review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). HMOs and CMPs would be required to notify beneficiaries if the HMO or CMP refers a request for reconsideration to HCFA. We estimate that this reporting burden will be approximately 5 minutes per case. HMOs and CMPs also would be required to provide Medicare enrollees with a written notice of a determination that an enrollee's inpatient hospital stay is no longer necessary prior to a hospital discharge. We estimate that the reporting burden for an HMO or CMP that has not delegated the discharge decision to the hospital to provide the written notice of noncoverage to be approximately 10 minutes per notice; for a Medicare enrollee of an HMO or CMP to complete a request for immediate PRO review of a notice of a determination that an inpatient hospital stay is no longer necessary to be approximately 10 minutes per request; for the HMO or CMP to submit requested medical information to the PRO, to be approximately 1/2 hour per response. HCPPs would be required to develop appeal procedures and inform Medicare enrollees of appeal rights. We estimate that it will take an HCPP 40 hours to develop these appeal procedures and 1 hour to process each appeal. A notice will be published in the **Federal Register** when OMB approval is obtained.

VIII. Regulatory Impact

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all HMOs, CMPs, and HCPPs to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

These proposed changes provide the Medicare HMO or CMP enrollee with the same administrative review rights and financial protections as are available to beneficiaries in the fee-for-service system. To the extent that current Medicare membership in HMOs, CMPs, and HCPPs to which this rule would apply is low (approximately 6 percent of the total Medicare population), we do not expect any significant increased costs.

For these reasons, we have determined that the threshold criteria of E.O. 12291 would not be met, and a regulatory impact analysis is not required. Further, we have determined and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organization (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR part 417 would be amended as follows:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215, 353, and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216, 263a, and 300e through 300e-17), unless otherwise noted.

2. The table of contents of part 417 is amended by revising the titles of §§ 417.440, 417.606, 417.608, 417.610, 417.612, and 417.620, adding a new § 417.605 under Subpart Q, and by adding new §§ 417.830, 417.832, 417.834, 417.836, 417.838, and 417.840 at the end of Subpart U to read as follows:

Sec.

* * * * *

417.440 Entitlement to health care services from an HMO or CMP.

Subpart Q—Beneficiary Appeals

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417.605 Immediate PRO review of a determination of noncoverage of hospital care.
417.606 Organization determinations.
417.608 Notice of adverse organization determination.
417.610 Parties to the organization determination.
416.612 Effect of organization determination.

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417.620 Responsibility for reconsideration; Time limits.

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Subpart U—Health Care Prepayment Plans

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417.830 Scope of regulations on beneficiary appeals.
417.832 Applicability of regulations and procedures.
417.834 Responsibility for establishing administrative review procedures.
417.836 Written description of administrative review procedures.
417.838 Organization determinations.
417.840 Administrative review procedures.

3. In § 417.440, the heading is revised and a new paragraph (f) is added to read as follows:

§ 417.440 Entitlement to health care services from an HMO or CMP.

* * * * *

(f) Notice of noncoverage of inpatient hospital care.

(1) If an enrollee is an inpatient of a hospital, entitlement to inpatient

hospital care continues until he or she receives notice of noncoverage of that care.

(2) Before giving notice of noncoverage, the HMO or CMP must obtain the concurrence of the attending physician.

(3) The HMO or CMP must give the enrollee written notice that includes—

(i) The reason why inpatient hospital care is no longer needed;

(ii) The effective date of the enrollee's liability for continued inpatient care; and

(iii) The enrollee's appeal rights.

(4) If the HMO or CMP delegates to the hospital the determination of noncoverage of inpatient care, the hospital obtains the concurrence of the attending physician and sends notice, following the procedures set forth in § 412.42(c) (3) of this chapter.

4. Section 417.454 is amended by revising paragraph (a) and adding a paragraph heading to paragraph (b) to read as follows:

§ 417.454 Charges to Medicare enrollees.

(a) *Limit on charges for inpatient hospital care.* If a Medicare enrollee who is an inpatient of a hospital requests immediate PRO review (as provided in § 417.605) of any determination by the hospital furnishing services or the HMO or CMP that the inpatient hospital services will no longer be covered, the HMO or CMP may not charge the enrollee for any inpatient care costs incurred before noon of the first working day after the PRO issues its review decision.

(b) Reporting requirements. * * *

§§ 417.600, 417.612, 417.614 [Amended]

5. Nomenclature change: In the following sections of subpart Q, the term "initial determination" or "initial determinations" is changed to read "organization determination" or "organization determinations", respectively, wherever it appears:

a. Section 417.600

b. Section 417.612, section title and text

c. Section 417.614

6. Section 417.604 is amended by revising paragraphs (a) and (b) to read as follows:

§ 417.604 General provisions.

(a) *Applicability.* The appeals procedures set forth in §§ 417.604 through 417.638 apply to organization determinations as defined in § 417.606, with the following exceptions:

(1) If an enrollee requests immediate PRO review (as provided in § 417.605) of a determination of noncoverage of inpatient hospital care—

(i) The enrollee is not entitled to subsequent review of that issue under this subpart.

(ii) The PRO review decision is subject to the appeals procedures set forth in Part 473 of this chapter.

(2) Any determination regarding services that were furnished by the HMO or CMP, either directly or under arrangement, for which the enrollee has no further liability for payment are not subject to appeal.

(3) Services included in an optional supplemental plan (see § 417.440(b)(2)) are subject only to a grievance procedure under § 417.436(a)(2).

(4) Physicians and other individuals who furnish items or services under arrangement with an HMO or CMP have no right of appeal under this subpart.

(5) The provisions of Subpart R of 20 CFR Part 404 dealing with representation of parties under title II of the Act are, unless otherwise provided in this subpart, also applicable to appeals under this subpart.

(b) *Responsibility for establishing appeals procedures.* The organization is responsible for establishing and maintaining the appeals procedures that are specified in §§ 417.604 through 417.638.

* * * * *

7. A new § 417.605 is added to read as follows:

§ 417.605 Immediate PRO review of a determination of noncoverage of inpatient hospital care.

(a) *Right to review.* A Medicare enrollee who disagrees with a determination made by an HMO, CMP, or a hospital that an inpatient hospital stay is no longer necessary may remain in the hospital and may (directly or through his or her authorized representative) request immediate PRO review of the determination.

(b) *Procedures.* For the immediate PRO review process, the following rules apply:

(1) The enrollee or authorized representative must submit the request for immediate review—

(i) To the PRO that has a contract with the hospital under § 466.78 of this chapter;

(ii) In writing or by telephone; and

(iii) By noon of the first working day after receipt of the written notice of the determination that the hospital stay is no longer necessary.

(2) On the date it receives the enrollee's request, the PRO notifies the HMO or CMP that a request for immediate review has been filed.

(3) The HMO or CMP must supply any information that the PRO requires to conduct its review and must make it available, by phone or in writing, by the close of business of the first full working day immediately following the day the enrollee submits the request for review.

(4) In response to a request from the HMO or CMP, the hospital must submit medical records and other pertinent information to the PRO by close of business of the first full working day immediately following the day the HMO or CMP makes its request.

(5) The PRO must solicit the views of the enrollee who requested the immediate PRO review (or the enrollee's representative).

(6) The PRO must make a determination and notify the enrollee, the hospital, and the HMO or CMP by close of business of the first working day after it receives the information from the hospital, or the HMO or CMP, or both.

(c) *Financial responsibility*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the HMO or CMP continues to be financially responsible for the costs of the hospital stay until noon of the calendar day following the day the PRO notifies the enrollee of its review determination.

(2) *Exception.* The hospital may not charge the HMO or CMP (or the enrollee) if—

(i) It was the hospital (acting on behalf of the enrollee) that filed the request for immediate PRO review; and

(ii) The PRO upholds the noncoverage determination made by the HMO or CMP.

8. Section 417.606 is revised to read as follows:

§ 417.606 Organization determinations.

(a) *Actions that are organization determinations.* An organization determination is any determination made by an HMO or CMP with respect to—

(1) Reimbursement for emergency or urgently needed services;

(2) Any other health services furnished by a provider or supplier other than the organization that the enrollee believes—

(i) Are covered under Medicare; and

(ii) Should have been furnished, arranged for, or reimbursed by the organization.

(3) The organization's refusal to provide services that the enrollee believes should be furnished or arranged for by the organization and the enrollee has not received the services outside the organization.

(b) *Actions that are not organization determinations.* The following are not organization determinations for purposes of this subpart:

(1) A determination regarding services that were furnished by the organization, either directly or under arrangement, for which the enrollee has no further obligation for payment.

(2) A determination regarding services included in an optional supplemental plan (see § 417.440(b)(2)).

(c) *Relation to grievances.* A determination that is not an organization determination is subject only to a grievance procedure under § 417.436(a)(2).

9. Section 417.608 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 417.608 Notice of adverse organization determination.

(a) If an organization makes an organization determination that is partially or fully adverse to the enrollee, it must notify the enrollee of the determination within 60 days of receiving the enrollee's request for payment for services.

* * * * *

(c) The failure to provide the enrollee with timely notification of an adverse organization determination constitutes an adverse organization determination and may be appealed.

10. In § 417.610, the section heading is revised, the undesignated introductory text is republished, and paragraph (b) is revised to read as follows:

§ 417.610 Parties to the organization determination.

The parties to the organization determination are—

* * * * *

(b) An assignee of the enrollee (that is, a physician or other supplier who has provided a service to the enrollee and formally agrees to waive any right to payment from the enrollee for that service);

* * * * *

11. Section 417.614 is revised to read as follows:

§ 417.614 Right to reconsideration.

Any party who is dissatisfied with an organization determination or with one that has been reopened and revised may request reconsideration of the determination in accordance with the procedures of § 417.616.

12. In § 417.616, the introductory text of paragraph (a) is republished, and paragraphs (a)(1), (b), (c)(1) and (2), and (d) are revised to read as follows:

§ 417.616 Request for reconsideration.

(a) *Method and place for filing a request.* A request for reconsideration must be made in writing and filed with—

(1) The organization that made the organization determination;

* * * * *

(b) *Time for filing a request.* Except as provided in paragraph (c) of this section, the request for reconsideration must be filed within 60 days from the date of the notice of the organization determination.

(c) *Extension of time to file a request.* (1) *Rule.* If good cause is shown, the organization that made the organization determination may extend the time for filing the request for reconsideration.

(2) *Method of requesting an extension.* If the time limit in paragraph (b) of this section has expired, a party to the organization determination may file a request for reconsideration with the organization, HCFA, SSA, or, in the case of a qualified railroad retirement beneficiary, an RRB office. The request to extend the time limit must—

(i) Be in writing; and

(ii) State why the request for reconsideration was not filed timely.

(d) *Parties to the reconsideration.* The parties to the reconsideration are the parties to the organization determination as described in § 417.610, and any other person or entity whose rights with respect to the organization determination may be affected by the reconsideration, as determined by the entity that conducts the reconsideration.

* * * * *

13. Section 417.618 is revised to read as follows:

§ 417.618 Opportunity to submit evidence.

The organization must provide the parties to the reconsideration reasonable opportunity to present evidence and allegations of fact or law, related to the issue in dispute, in person as well as in writing.

14. Section 417.620 is revised to read as follows:

§ 417.620 Responsibility for reconsideration; time limits.

(a) If the HMO or CMP can make a reconsidered determination that is completely favorable to the enrollee, the HMO or CMP issues the reconsidered determination.

(b) If the HMO or CMP recommends partial or complete affirmation of its adverse determination, the HMO or CMP must prepare a written explanation and send the entire case to HCFA. HCFA makes the reconsidered determination.

(c) The HMO or CMP must issue the reconsidered determination to the enrollee, or submit the explanation and file to HCFA, within 60 calendar days from the date of receipt of the request for reconsideration.

(d) If the HMO or CMP refers the matter to HCFA, it must concurrently notify the beneficiary of that action.

15. Section 417.622 is revised to read as follows:

§ 417.622 Reconsidered determination.

A reconsidered determination is a new determination that—

(a) Is based on a review of the organization determination, the evidence and findings upon which it was based, and any other evidence submitted by the parties, or obtained by HFCA or the organization; and

(b) Is made by a person or persons who were not involved in making the organization determination.

16. Section 417.630 is revised to read as follows:

§ 417.630 Right to a hearing.

Any party to the reconsideration who is dissatisfied with the reconsidered determination has a right to a hearing if the amount remaining in controversy is $100 or more. (The amount remaining in controversy, which can include any combination of Part A and Part B services, is to be computed in accordance with § 405.740 of this chapter for Part A services and § 405.820(b) of this chapter for Part B services. When the basis for the appeal is the refusal of services, the projected value of those services must be used in computing the amount remaining in controversy.)

17. Section 417.638 is revised to read as follows:

§ 417.638 Reopening determinations and decisions.

An organization, reconsidered, or revised determination made by an organization or HCFA, or a decision or revised decision of an ALJ or the Appeals Council, may be reopened in accordance with the provisions of § 405.750 of this chapter.

18. In § 417.801, the introductory language of paragraph (b) is republished, paragraph (b)(4) is revised, paragraph (b)(5) is redesignated as paragraph (b)(6), and a new paragraph (b)(5) is added to read as follows:

§ 417.801 Agreements between HCFA and health care prepayment plans.

* * * * *

(b) *Terms.* The agreement must provide that the HCPP agrees to—

* * * * *

(4) Not impose any limitations on the acceptance of Medicare enrollees or beneficiaries for care and treatment that

it does not impose on all other individuals;

(5) Establish administrative review procedures in accordance with §§ 417.830 through 417.840 for Medicare enrollees who are dissatisfied with denied services or claims; and

* * * * *

19. New §§ 417.830, 417.832, 417.834, 417.836, 417.838, and 417.840 are added under Subpart U to read as follows:

§ 417.830 Scope of regulations on beneficiary appeals.

Sections 417.832 through 417.840 establish procedures for the presentation and resolution of organization determinations, reconsiderations, hearings, Appeals Council review, court reviews, and finality of decisions that are applicable to Medicare enrollees of an HCPP.

§ 417.832 Applicability of requirements and procedures.

(a) The administrative review rights and procedures specified in §§ 417.834 through 417.840 pertain to disputes involving an organization determination, as defined in § 417.838, with which the enrollee is dissatisfied.

(b) Physicians and other individuals who furnish items or services under arrangements with an HCPP have no right of administrative review under §§ 417.834 through 417.840.

(c) The provisions of subpart R of 20 CFR part 404 dealing with representation of parties under title II of the Act are, unless otherwise provided, also applicable.

§ 417.834 Responsibility for establishing administrative review procedures.

The HCPP is responsible for establishing and maintaining the administrative review procedures that are specified in § 417.830 through 417.840.

§ 417.836 Written description of administrative review procedures.

Each HCPP is responsible for ensuring that all Medicare enrollees are informed in writing of the administrative review procedures that are available to them.

§ 417.838 Organization determinations.

(a) *Actions that are organization determinations.* For purposes of §§ 417.830 through 417.840, an organization determination is a refusal to furnish or arrange for services, or reimburse the party for services provided to the beneficiary, on the grounds that the services are not covered by Medicare.

(b) *Actions that are not organization determinations.* The following are not organization determinations for purposes of §§ 417.830 through 417.840:

(1) A determination regarding services that were furnished by the HCPP, either directly or under arrangement, for which the enrollee has no further obligation for payment.

(2) A determination regarding services that are not covered under the HCPP's agreement with HCFA.

§ 417.840 Administrative review procedures.

The HCPP must apply §§ 417.808 through 417.838 to organization determinations that affect its Medicare enrollees, and to reconsideration, hearings, Appeals Council review, and judicial review of those organization determinations.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: May 12, 1992.

William Toby,

Acting Administrator, Health Care Financing Administration.

Approved: May 12, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-24199 Filed 10-6-92; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 197

[CGD 88-103]

RIN 2115-AD16

Controlling the Marine Asbestos Hazard

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering incorporating into its regulations the guidance it has issued as advisories on exposure to asbestos aboard certain vessels and at outer continental shelf (OCS) facilities and deepwater ports. Since asbestos is a carcinogen, any exposure to its airborne fibers may be hazardous. If adopted as a final rule, the regulations will establish both limits on exposure and procedures for controlling exposure.

DATES: Comments must be received on or before February 4, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) [CGD 88-103], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Charles F. Barker, Project Manager, Office of Merchant Marine Safety, Security, and Environmental Protection (G-MVI-2), (202) 267-1181.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons may participate in this rulemaking at this stage by submitting written data, views, or arguments. Each letter should include the name and address of the person submitting the comments and a reference to the docket number [CGD 88-103], identify the specific section of this advance notice of proposed rulemaking (ANPRM) to which each comment applies, and give the reasons for each comment. Each person submitting a comment and wishing acknowledgment of receipt should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received by the close of the comment period before it acts further on this rulemaking. It may change the proposal in view of the comments received.

Drafting Information

The principal persons involved in drafting this ANPRM are Lieutenant Commander Mark A. Grossetti and Lieutenant Commander Mark G. VanHaverbeke, former Project Managers, Office of Marine Safety, Security, and Environmental Protection, and Donald W. Faleris, Project Counsel, Office of Chief Counsel.

Related Rulemakings

On September 1, 1989, the Coast Guard published a final rule (54 FR 36315) that removed from 46 CFR part 164 references to asbestos as an acceptable noncombustible material for the construction of merchant vessels. The final rule also removed from part 56 references to asbestos gaskets for piping systems. The Coast Guard no longer issues approvals for structural fire protection materials containing

asbestos, and does not permit the use of such materials in the construction of merchant vessels. The final rule of September 1989 made the regulations in parts 164 and 56 consistent with established practice of industry and established policy of the Coast Guard.

Background

"Asbestos" is a general term describing a group of fibrous minerals that do not burn and are excellent thermal insulators. For this ANPRM "asbestos" includes chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

In the past four decades asbestos has found many uses, with two-thirds of it being consumed in construction and shipbuilding. Its noncombustible features have made it an attractive material for structural fire protection and for insulation aboard vessels. These features, along with its strength and non-reactivity, have also led to many other uses, such as linings for brakes and clutches and as high-temperature or high-pressure gaskets. These uses have been largely curtailed since the hazards of asbestos have been identified. But there are still many vessels inspected and certificated by the Coast Guard ("inspected vessels"), mobile offshore drilling units (MODUs), OCS facilities, and a deepwater port which may have asbestos installed. Also, no adequate substitute may be available for some uses, particularly as linings for brakes and clutches.

Exposure to airborne asbestos fibers (AAF) significantly increases the risk of incurring four serious diseases: Lung cancer; pulmonary fibrosis, or asbestosis (a progressively debilitating lung disease that impairs breathing and increases the risk of serious illness and infections); mesothelioma (a cancer of the linings of the chest and abdominal cavities); and certain gastro-intestinal cancers, such as colon cancer. There is often a long period of latency, 10–40 years, between first exposure to asbestos and the development of disease.

In 1971 the Occupational Safety and Health Administration (OSHA) adopted a permissible exposure limit (PEL) for AAF of 12 fibers per cubic centimeter (f/cc). Since then, OSHA has decreased the PEL in stages to the current level, adopted in 1986, of 0.2 f/cc for an 8-hour time-weighted average (TWA). The Department of Labor determined that this limit reduces significant risk from exposure and is considered by OSHA, based upon substantial evidence in the record as a whole, to be the lowest level feasible. Therefore, on June 20, 1986, OSHA published this PEL (51 FR 22612). At the same time, OSHA adopted regulations concerning safe work practices and air monitoring as well as, in cases of exposures of over 0.1 f/cc, training and medical surveillance. The rate of 0.1 f/cc is known as the "action level" because exceeding it activates added regulatory requirements.

The Maritime Administration (MARAD) conducted several studies of levels of exposure to AAF aboard merchant vessels from 1979 to 1982. (The results are summarized in Table I, below; copies of the studies are in the rulemaking docket.) Samples were taken both by stationing sampling devices in appropriate locations (area samples) and by attaching devices to workers so that the sampled air was drawn from their breathing zones (personal samples). The studies showed that seamen were not generally overexposed to AAF using OSHA's old shoreside PEL of 2.0 f/cc. However, the studies also showed that exposure in excess of 2.0 f/cc would occur during maintenance and repair unless safe work practices were observed. With OSHA's decrease of the PEL to 0.2 f/cc, chronic exposure of crew members aboard inspected vessels and at OCS facilities and deepwater ports ("industrial maritime environment"), at even low levels of AAF, becomes a greater concern since exposure can occur over 24 hours a day, 7 days a week.

TABLE 1.—RESULTS OF STUDIES OF ASBESTOS BY MARAD

Activity	Eight-hour TWA (f/cc)	Type sample
Normal Engineroom...	0.00–1.00	Area.
Normal Engineroom...	0.01–0.11	Personal.
Repair of Pipe and Lagging.	0.08–0.35	Personal.
Cleanup after Repair of Pipe and Lagging.	0.24–3.30	Personal.
Repair of Valves, Cutting of Gaskets.	0.17	Personal.
Brake Repair.....	2.00–70.0	Area.
Brake Operation (Enclosed Space).	2.09	Area.
Accommodation Areas (Inactive Ready Reserve Vessels).	0.00–0.07	Area.

Memoranda of Understanding between the Coast Guard and OSHA, dated March 8, 1983 and December 19, 1979, respectively, (and contained in Volume X of the Marine Safety Manual, Commandant Instruction M16000.15), affirm that the Coast Guard is the dominant federal agency with statutory authority to prescribe and enforce standards or regulations affecting (1) the occupational safety and health of seamen aboard inspected vessels and (2) working conditions on the Outer Continental Shelf of the United States. Coast Guard Navigation and Vessel Inspection Circular (NVIC) 5–80 and later NVIC 6–87 published recommended procedures for controlling the asbestos hazard in the industrial maritime environment. Each NVIC provided a detailed, comprehensive program through which owners and operators of these vessels, OCS facilities, and deepwater ports could reduce and control exposure to asbestos, though neither took full account of circumstances peculiar to this industrial maritime environment.

Through its NVICs, the Coast Guard has recommended applying OSHA's shoreside standards to control the hazard of asbestos in the industrial maritime environment. This approach has been supposed to provide a level of safety equivalent to that of OSHA's shoreside standards. In the course of this regulatory proposal, the Coast Guard will (1) evaluate the appropriateness of those standards for the industrial maritime environment and (2) seek refinements to the procedures recommended in NVIC 6–87. This regulatory proposal would apply to crew members in the industrial maritime environment ("industrial maritime employees"). It would not apply to certain shore-based personnel, such as shipyard workers, even while they are working aboard inspected vessels. OSHA's regulations apply to them.

Purpose

The purpose of this regulatory project, starting with this ANPRM, is to limit the exposure to AAF of industrial maritime employees to levels commensurate with those encountered by personnel shoreside. To accomplish this purpose, the Coast Guard is relying on OSHA's technical expertise in this field, and on data in support of OSHA's PEL of 0.2 f/cc, published on June 20, 1986 (51 FR 22612).

Approach

After evaluating the conditions in the industrial maritime environment and possible strategies for reducing the exposure to AAF, the Coast Guard is considering adopting into regulation either NVIC 6–87, with some modifications intended to address the issues that arise in the adaptation of OSHA's standards to the industrial maritime environment, or one of several other alternatives discussed below, under "Regulatory Evaluation."

The modifications to NVIC 6–87, prior to incorporating it into Coast Guard regulations, might include the provisions addressing the appropriateness of OSHA's PEL and its regular procedures for air monitoring; the maintenance of medical records; and the establishment of training requirements, safe work practices, and engineering controls. This alternative may also require that, during repairs or maintenance, materials containing asbestos be replaced with materials free of asbestos, where suitable substitutes are available.

Specifically, the alternative based on NVIC 6–87 would apply to the industrial maritime environment and would—

(1) Define an "industrial maritime" PEL commensurate with that for personnel shoreside;

(2) Define an "industrial maritime" action level below the PEL and require medical surveillance of industrial maritime employees who are exposed to levels of AAF above the action level;

(3) Require periodic air monitoring if conditions such as frequent disturbance of the asbestos itself or the presence of friable asbestos suggest that the action level might be routinely exceeded;

(4) Define safe work practices in the industrial maritime environment for industrial maritime employees who undertake repairs or other operations involving materials containing asbestos, similar to the work practices described in certain of OSHA's rules, appendices F and G of 29 CFR 1926.58;

(5) Require training sufficient to institute safe work practices in the industrial maritime environment; and

(6) Upon maintenance or repair, confine the use of materials containing asbestos to instances where a material that does not contain asbestos is not available as a suitable substitute.

The alternative based on NVIC 6–87 would not in itself require the removal of materials containing asbestos. It would leave the choice of asbestos control alternatives to each owner or operator of an inspected vessel, OCS facility, or deepwater port who employs one or more crew members aboard an inspected vessel or at an OCS facility or deepwater port ("industrial maritime employer").

The alternative based on NVIC 6–87, fully implemented, would establish PELs for the industrial maritime environment comparable to those of OSHA for shoreside industry. Further, by requiring asbestos-related training and the observance of safe work practices regardless of the exposure level, this alternative would impose routine safety standards—in some cases above those of OSHA. The methods of reducing exposure to hazardous substances, short of eliminating the substances themselves, fall into three broad categories: safe work practices, engineering controls (*e.g.*, improved ventilation), and personal protective devices. OSHA allows any combination of the first two methods to bring the level of AAF below the PEL and allows the use of personal protective devices only to the extent that other methods are not sufficient. This alternative would use that same flexible approach except that safe work practices would be mandatory in all instances regardless of the other methods or of the level of AAF. Requiring safe work practices, along with the training necessary to implement them in each case of potential hazard from asbestos, would mitigate the actual hazard of occasional short-term exposures to high levels of AAF. This approach may be imperative because the industrial maritime environment is not so structured as its counterpart ashore and because testing the level of short-term exposure may not be practicable, particularly at sea.

The Coast Guard anticipates that the industrial maritime PEL, and most often the industrial maritime action level as well, can be met through the exercise of safe work practices by trained personnel and through engineering controls. However, air sampling is included in the alternative based on NVIC 6–87 as a check on the effectiveness of these measures and as a way of identifying any excessive chronic exposure due to deteriorating materials containing asbestos.

Assumptions

OSHA's PEL of 0.2 f/cc, as currently recommended by NVIC 6–87, assumes exposure to AAF over 8 hours a day, 5 days a week. The Coast Guard is considering a refinement in the application by NVIC 6–87 of OSHA's PEL to the industrial maritime environment. This refinement rests on the following two assumptions:

(1) Because exposures to AAF afford no significant "recovery period" during which the body exhales, excretes, or metabolizes the foreign substance, the hazards due to different levels and periods of exposure to AAF may be equated by cumulative doses. Given this, OSHA's TWA shoreside PEL of 0.2 f/cc for an 8-hour day, 5-day week, is equal to an industrial maritime TWA PEL of 0.05 f/cc for a 24-hour day, 7-day week. Likewise, OSHA's TWA shoreside action level of 0.1 f/cc for an 8-hour day, 5-day week, is equal to an industrial maritime TWA action level of 0.025 f/cc for a 24-hour day, 7-day week.

(2) An economically feasible means can be developed to measure levels of AAF below 0.1 f/cc.

OSHA and the National Institute for Occupational Safety and Health (NIOSH) confirm informally that the first assumption is probably valid. They also indicate that the second assumption may be valid for the industrial maritime environment—especially since industrial maritime employees may spend a majority of time in the "clean" atmosphere of the accommodation spaces where samples of large volumes of air may be taken without clogging the filter in the sample pump with particulates other than asbestos.

Detailed Discussion of the Proposed Adoption of NVIC 6–87 into Coast Guard Regulations

(1) Permissible Exposure Level (PEL)

The Coast Guard is considering a refinement of NVIC 6–87 through the establishment of an industrial maritime PEL based upon a 24-hour time-weighted average (TWA). This PEL—0.05 f/cc—multiplied by a 24-hour day and 7-day week, yields the cumulative dose normal for personnel at sea; this dose approximates the cumulative dose that would be received by personnel ashore exposed to OSHA's PEL, of 0.2 f/cc over a 40-hour work week. OSHA's ratio for establishing an action level, one-half of the PEL, yields an action level of 0.025 f/cc. The Coast Guard is rounding this off to 0.03 f/cc in deference to the limitations of the testing methods.

This industrial maritime PEL of 0.05 f/cc appears to be significantly more stringent than the shoreside PEL, but it is intended to provide protection equivalent to that afforded by the OSHA shoreside PEL. Industrial maritime employees may not get the daily respite from exposure that employees ashore get during non-working hours. Variations feasible for an industrial maritime environment may include (1) prescribing three tiers of exposure based upon the time spent in the industrial maritime environment (8, 12, or 24 hours) and (2) establishing separate PELs for living spaces and working spaces.

(2) Medical Surveillance for Exposures Above the Action Level

NVIC 6–87 recommends that seamen receiving exposures to AAF at or above the action level enter a program of medical surveillance like that required by OSHA. The Coast Guard is considering a further refinement of this recommendation through the establishment of a program of medical

surveillance for the industrial maritime environment along the same lines as OSHA's program for the construction industry. In inaugurating the latter program, OSHA recognized the high turnover of employees and the fluctuation of available work. Similarly, industrial maritime employers may hire seamen out of a labor hall and generally maintain a level of AAF below the industrial maritime action level except in unusual circumstances, such as emergency repairs.

As OSHA's program of medical surveillance applies to employees of the construction industry, the program of the alternative based on NVIC 6–87 would apply to industrial maritime employees who are engaged in work involving levels of AAF at or above the industrial maritime action level for 30 or more days a year or who are required to wear negative-pressure respirators. The program under consideration would also resemble OSHA's in that the threshold of 30 days would depend upon the worksite level of AAF rather than upon the length of employment of a particular crew member; that is, industrial maritime employees' turnover could not serve as a means of industrial maritime employers "complying with" the industrial maritime PEL and avoiding the medical surveillance program. OSHA adopted the worksite-specific approach to medical surveillance because OSHA had concluded that employees' turnover would actually increase the absolute risk among the larger number of employees exposed for less than their working lifetimes, compared with the risk predicted for a constant number of employees exposed throughout their working lifetimes. The Coast Guard, relying on OSHA's expertise, is considering this approach.

The Coast Guard is assessing a different requirement for maintenance of medical records from that imposed by OSHA. OSHA makes employers responsible for maintaining employees' records over 30 years. Employers in the construction industry may use the services of competent organizations, such as trade groups or unions, to maintain the records. OSHA's requirement is justified in that the retained records may become part of a data base for future studies of the effects of occupational exposure to AAF. Yet, because of the relatively low number of industrial maritime employees and the significant decline in the number of commercial vessels with asbestos installed that can be expected over the next 20 years, the central retention of these employees' records, even for the full 30 years, would not add much to the "asbestos exposure" data base. The Coast Guard therefore leans towards making industrial maritime employers maintain medical records throughout the employment of an industrial maritime employee, plus 3 years. Like their counterparts in the construction industry, these employers could use the services of a competent organization to maintain the records.

The Coast Guard recognizes that instituting a program of medical surveillance would be an administrative burden, particularly for employers with a high turnover, but the resulting reduction in diseases due to asbestos is a worthwhile social benefit which offsets this burden. Industrial maritime employers could also avoid the medical surveillance program by curtailing the levels of AAF in the industrial maritime environment.

(3) Monitoring of Air

The Coast Guard is considering a requirement for the monitoring of air at 1-year intervals unless an industrial maritime employer can establish that its employees' potential for exposure to AAF above the action level is minimal. Tracking the level of AAF is necessary to verify the effectiveness of the safe work practices and of the engineering controls instituted to reduce the hazard.

For example, the owner or operator of an older vessel with asbestos bulkhead panels in accommodation spaces and with asbestos insulation in machinery spaces may have to test all spaces where crew members normally are quartered or are turned to work. The owner or operator would have to test while the vessel is underway, handling cargo, or doing whatever else produces the greatest disturbance in a particular space. Spaces without asbestos would not be required to be tested unless there is a reason to suspect that a hazard exists.

The Coast Guard recognizes that sampling and analyzing levels of AAF below 0.1 f/cc with accuracy is difficult and may prove to be cost-prohibitive. The common method of determining the level of AAF, phase-contrast microscopy, uses optical methods and is relatively inexpensive. For these reasons it was chosen by OSHA as the reference method. However, this method cannot distinguish between asbestos and other types of fibers, such as those of fiberglass; its accuracy grows questionable below 0.1 f/cc; and the filters may become clogged by a dirty environment, particularly diesel exhaust. (Of course, industrial maritime employees may spend 16 hours of every day in the accommodation spaces, where "clean" air lends itself to measurement at much lower levels of contamination without filters becoming clogged.) An alternative method, transmission-electron microscopy, can analyze samples with greater accuracy and on that account might be preferable even though relatively expensive.

The Coast Guard is weighing two other variables in sampling: "Area sampling", for which a sampling device is fixed at a specific site, and "personal sampling", for which a sampling device is worn that draws air from the breathing zone. Personal sampling gives a more accurate indication of what the wearer actually inhales and is the method specified by OSHA. But area sampling is more helpful in tracing the source of contamination by AAF; and it may also help in precisely evaluating low levels of contamination, such as may be encountered in an accommodation space, or help in reliably determining that a space is free of AAF.

The air sampling procedures being weighed do not include a short-term exposure limit (STEL), though NVIC 6–87 does. STELs are intended to further reduce the risk to employees whose exposure to AAF occurs in short "bursts" that may fall within a TWA PEL. The greatest beneficiaries of STELs would be employees with undetectable background exposure to AAF, whose only detectable exposure is in "bursts." In the industrial maritime environment these "bursts" would most likely occur at infrequent intervals—when periodic maintenance or repairs are performed, often when testing facilities were unavailable. Rather than impose STELs, the procedures being considered would restrict exposures occurring in "bursts" by requiring the use of safe work practices during repairs and maintenance.

(4) Safe Work Practices for Asbestos-Related Operations

The Coast Guard is considering mandatory safe work practices (including hygiene facilities, where necessary) for industrial maritime employees along the lines of those options allowed or required by OSHA for the construction industry [29 CFR 1926.58 [g], [i], and [j], and illustrated in appendices F and G of those regulations, reproduced in NVIC 6–87]. The MARAD studies cited previously suggest that safe work practices alone would reduce most industrial maritime employees' exposures to below the action level, increasing safety. As part of the alternative based on NVIC 6–87, the Coast Guard is deliberating whether to include a specific prohibition, similar to

OSHA's, against general use of compressed air for cleaning asbestos-laden gear, such as brake drums. Data from both OSHA and MARAD indicate that this use of compressed air produces extremely high levels of AAF.

The alternative based on NVIC 6–87 differs from OSHA's standards in that it would require safe work practices in all instances in which industrial maritime employees must work with materials containing asbestos. Other than restricting the use of compressed air, OSHA does not require safe work practices if the level of AAF is below the action level. Nevertheless, a requirement for safe work practices in all work involving materials containing asbestos may be justifiable in the industrial maritime environment because it would bring about an immediate decrease in the exposure of industrial maritime employees to AAF, whether through direct contact or through passive exposure, such as would result from fibers carried on clothing. The immediate proximity of living areas to working areas aboard vessels and at OCS facilities and deepwater ports may be further reason to require safe work practices in all work involving materials containing asbestos.

As discussed earlier, a requirement for safe work practices also warrants not implementing a STEL. Safe work practices should keep even "bursts" of AAF to a minimum, obviating the need for a STEL (which may be impracticable in the industrial maritime environment).

(5) Training in Safe Work Practices

The Coast Guard is evaluating a requirement that each industrial maritime employer institute a training program commensurate with the potential for exposure to AAF at the unit. For instance, the program would have to be more extensive on a vessel outfitted with bulkhead panels, insulation, or gaskets containing asbestos than on one with only asbestos linings for brakes and clutches. A training program might be required to cover (1) the permissible levels for exposure and action, (2) safe work practices, and (3) medical surveillance. To be most effective, it might have to be provided for the entire crew because of the widespread use of brakes and clutches in deck machinery. (The training program's extent would vary according to the potential of individual crew members for exposure.)

The alternative based on NVIC 6–87 varies from OSHA's standards for shoreside industries by containing a requirement for training programs for the industrial maritime environment which has materials containing asbestos, regardless of the level of AAF. Like mandatory safe work practices, mandatory training would bring about a direct reduction in the level of exposure to AAF of industrial maritime employees.

(6) Limits on Use of Asbestos Where Suitable Substitutes are Available

Suitable substitutes for asbestos are available for most uses, the possible exceptions being when asbestos is used for brake linings, clutch linings, and gaskets. (The Coast Guard has informally received conflicting opinions on the suitability of materials free of asbestos for use as brake linings and as components of high temperature gaskets in systems designed for the use of materials containing asbestos.) The Coast Guard is considering requiring, during repairs or maintenance, the replacement of materials containing asbestos with materials free of asbestos where suitable substitutes are available. However, the requirement would not apply to materials containing asbestos that are not disturbed and that are still serviceable.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and is not significant under DOT's Regulatory Policies and Procedures published on February 26, 1979 (44 FR 11034).

To evaluate the economic impact of this rulemaking, the Coast Guard analyzed the following six alternatives:

(1) Require the measures detailed above;

(2) Initiate no new regulatory measures;

(3) Require only that industrial maritime employers implement training programs and institute safe work practices;

(4) Establish an industrial maritime PEL without more detailed requirements;

(5) Limit industrial maritime employees to performing only emergency repairs when materials containing asbestos are involved; and

(6) Require the removal from the industrial maritime environment of all materials containing asbestos, except brake linings, clutch linings, and gaskets.

The Coast Guard made the following assumptions or relied on the following premises in conducting the regulatory evaluation (the rationales for these assumptions appear in an initial regulatory evaluation, which is contained in the docket):

(1) The use of materials containing asbestos in the construction of inspected vessels, OCS facilities, and deepwater ports diminished or ceased after 1982;

(2) The cumulative exposure for a crew member at sea whose duties consist mostly or entirely of engineering aboard a vessel of more than 1,000 gross tons built before 1982, is equivalent to that of an employee ashore working 8 hours a day, 40 hours a week, in an atmosphere where AAF concentrates to a level of 0.25 f/cc;

(3) The cumulative exposure for every other industrial maritime employee is equivalent to that of an employee ashore working 8 hours a day, 40 hours a week, in an atmosphere where AAF concentrates to a level of less than 0.1 f/cc;

(4) The cost of instituting a program of safe work practices is $3,000 initially for every inspected vessel, OCS facility, or deepwater port. It is then $500 annually for each inspected vessel of over 1,000 gross tons built before 1982 and $250 annually for every other vessel, OCS facility, or deepwater port;

(5) The cost of monitoring for airborne asbestos fibers is $1,000 annually for each inspected vessel, OCS facility, or deepwater port;

(6) The cost of medical surveillance is $500 annually for each crew member; and

(7) The cost of training is about $500 annually for each inspected vessel of more than 1,000 gross tons built before 1982. It is about $250 annually for every other inspected vessel, OCS facility, or deepwater port.

These assumptions and premises yield the following costs and benefits for the first four alternatives:

TABLE II.—COSTS AND BENEFITS

Alternative	Average annual cost (million $)	Average annual benefit (lives saved)	Cost/benefit (million $/lives saved)
(1) Modified NVIC as Regulation	2.520–3.252	1.3–1.1	2.000–2.956
(2) Current NVIC	0.325	0.1	2.954
(3) Work Practices	1.681	0.5	3.362
(4) PEL Only	2.446	0.4	6.115

The quantified assessment of costs and benefits does not account for the risk of asbestos-induced pulmonary fibrosis, or asbestosis. Affected workers may die with asbestosis but not of it, so it will seldom appear on a death certificate as the primary cause of death. While asbestosis may not kill, it may

diminish the quality of life in later years. An advance case of asbestosis may result in shortness of breath even for a person sitting. OSHA's best estimate is that reducing the exposure over a working lifetime (45 years) from 2 f/cc to 0.2 f/cc, or the proposed "industrial maritime" PEL equivalent of 0.05 f/cc for a 24-hour day, 7-day week, would reduce the incidence of asbestosis from 5 percent to 0.5 percent.

Nor does the assessment account for the benefits to industry and society as a whole accruing from the lower rates of morbidity and mortality. These benefits would assume the form of less litigation; lower disability compensation, and lower medical costs.

If the value of a human life is at least $2,000,000, the quantifiable, quantified benefits alone, of the alternative based on NVIC 6–87, will exceed the costs. But there are drawbacks associated with each alternative, including this one.

The first alternative, that based on NVIC 6–87, imposes the greatest regulatory burden, and possibly the highest costs, short of complete removal of asbestos. Because of this burden, its implementation and enforcement would be among the most difficult. At the same time, it would prevent the most cases of asbestosis-related illnesses (quite apart from asbestosis) and, correspondingly, would save the greatest number of lives.

The second alternative, initiating no new regulatory measures, would leave only NVIC 6–87, other Coast Guard policy, and voluntary compliance by industrial maritime employers to protect industrial maritime employees. The NVIC provides a detailed, comprehensive asbestos control program through which these owners and operators could implement suitable programs for controlling asbestos and protecting their employees against exposure. However, use of the NVIC in its current form, without any modifications, raises issues regarding the application of OSHA's shoreside standards to the industrial maritime environment. The current shoreside PEL recommended in the NVIC may be too high (not protective enough) for some industrial maritime employees, particularly for those who live in the industrial maritime environment. Because of the long period of latency, 10–40 years for asbestos-related illnesses, the Coast Guard will not be able to determine the success of a voluntary program for a long time—at the end of which it would be too late to act. Further, even if the NVIC were amended, while this voluntary program might provide a significantly lower level of exposure, there have been instances reported in which the response by an owner or operator was less than adequate.

The third alternative, requiring only that industrial maritime employers implement training programs and institute safe work practices, is attractive in cost and in relative ease of implementation and might prove as beneficial as the alternative based on NVIC 6–87. The Coast Guard could make training programs and safe work practices mandatory through regulation and provide recommended practices through another NVIC. This alternative would provide greater flexibility in the adapting of the regulations to individual situations and to changing technology. It would also avoid the issues of an equivalent 24-hour industrial maritime PEL and of air monitoring, although it would still lack a means of verifying that the level of AAF is acceptable. The U.S. Navy has addressed these issues for several years. Its experience has been that training programs and safe work practices, coupled with the proper equipment and with good housekeeping, can bring the level of AAF down to the lower detectable limit for optical methods.

The fourth alternative, establishing a PEL without more detailed requirements, would remain silent on verifying the level of AAF, but by its very silence would raise the issues of where, when, and by whom air monitoring should be performed. Further, the program would not be conducted and monitored by a crew trained in the hazards of asbestos and the need for monitoring. This approach would not produce the benefits that mandatory training programs and safe work practices would for those employees exposed to AAF in "bursts" governed by the time-weighted PEL.

Both the fifth and sixth alternatives—respectively limiting industrial maritime employees to performing only emergency repairs when materials containing asbestos are involved and requiring the removal from the industrial maritime environment of all materials containing asbestos, except brake linings, clutch linings, and gaskets—appeared unworkable, so the Coast Guard did not calculate their costs. Limiting crew members to performing only emergency repairs around asbestos would delay routine preventive maintenance, which in turn could cause inadequate maintenance of existing installations of asbestos. This limitation also could give rise to other more numerous and more urgent repairs. Requiring the complete removal of all materials containing asbestos would be extremely expensive and could result in the sale overseas of most older inspected vessels. Complete removal would also bring about contamination by AAF throughout the vessel, OCS facility, or deepwater port.

As shown in Table II, the alternative based on NVIC 6–87, Alternative (1), would across almost its whole range return the best cost/benefit ratio. The most cost-effective means of implementing Alternative (1), *i.e.*, controlling any sources of AAF rather than practicing a program of medical surveillance, would improve the cost/benefit ratio to $2,000,000 spent for each life saved.

Most inspected vessels of over 1,000 gross tons were built without limits on the use of materials containing asbestos. As those vessels continue to age, the condition of the asbestos aboard will continue to deteriorate and the likelihood of fibers being released into the air will continue to climb, increasing the health hazard. The replacement of the older vessels in the near future is not likely. As the Jones Act restricts coastwise trade in the U.S. to vessels built in the U.S., owners tend to operate these vessels longer. Further weakening the impetus to scrap older vessels is the fact that the presence of asbestos in large quantities aboard them diminishes their value, making them more economic to operate than to sell.

A copy of an initial regulatory evaluation is in the rulemaking docket. This evaluation contains further details of the assumptions, premises, methodology, and data used in determining the costs and benefits of this proposed rulemaking. For information about inspecting and copying this evaluation, refer to "**ADDRESSES**" above. For mailed copies of it, write or call the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

Small Entities and Collection of Information

Under the Regulatory Flexibility Act (5 U.S.C. 901 *et seq.*), the Coast Guard must consider whether proposed regulations will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews

each proposed rule which contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

The Coast Guard is requesting specific information, suggestions, and comments, with supporting data and examples where possible, which will help it to evaluate the six alternatives discussed above, on the basis of "paperwork burden" and "economic impact" for affected persons. This will enable the Coast Guard to better evaluate these options.

Environmental Assessment

The alternative based on NVIC 6–87 is intended to protect industrial maritime employees from exposure to hazardous levels of AAF and would not affect the level of AAF released into the atmosphere. However, if the replacement of affected materials containing asbestos with materials free of asbestos is required under this alternative, during maintenance or repair, along with safe work practices and training, there may be a positive effect on the environment, although it may not be significant. Evaluation of all of the alternatives, from an environmental protection standpoint, is invited to better enable the Coast Guard to evaluate the six alternatives described above.

Questions

The Coast Guard solicits input from the public regarding all of the alternatives set forth in this advanced notice of proposed rulemaking, including suggestions for use of any of the alternatives with some modification. Suggestions for other possible approaches may be helpful, also.

In addition to general and specific comments on the several alternatives, other approaches, the assumptions, the initial regulatory evaluation, potential administrative and economic burdens, paperwork burdens, and the initial environmental assessment, the Coast Guard requests specific responses to the following questions to assist in developing a notice of proposed rulemaking:

(1) The alternatives described above would apply to the "industrial maritime environment", "industrial maritime employers", and "industrial maritime employees". OSHA governs uninspected vessels and shoreside activities. These proposals would affect only the industrial maritime environment. Is the scope of the alternatives (the vessels, facilities, ports, employers, and employees affected) over- or under-inclusive? Are the terms used sufficiently clear?

(2) When did shipyards stop installing materials containing asbestos, other than for brake linings, clutch linings, and gaskets, aboard inspected vessels?

(3) What results have shipyards and industrial maritime employers obtained while monitoring air for AAF? Furnish details, if available, on the age of each vessel, OCS facility, or deepwater port; the type of sample (personal or area); the place of the sample; the circumstances of the sample; and the procedural standard followed (*e.g.*, NIOSH 7400). Raw data may be furnished (flow rate, time, number of fields and fibers counted, and so forth.) Also, indicate any problems encountered, such as filters becoming clogged.

(4) What steps have industrial maritime employers taken to reduce the level of AAF? Why (*i.e.*, because of visual problems, because of air monitoring, or as a precautionary measure), and with what results?

(5) What costs have arisen from monitoring, abatement, or medical surveillance and maintenance of medical records?

(6) What requirements should the Coast Guard impose on the conditions under which air monitoring may be performed and by whom? From the data available, it appears that the only requirements should be that the persons monitored carry out their normal duties under normal circumstances. In principle, the monitoring could be performed by anyone with appropriate training, possibly both reducing the cost of obtaining technical assistance and providing greater flexibility.

(7) What are the experiences in the industrial maritime environment with substitutes for brake linings, clutch linings, and gaskets containing asbestos? Specific reports on and experiences with substitutes for asbestos in these systems are welcome.

Dated: October 1, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–24313 Filed 10–6–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GC Docket No. 92–223; FCC 92–445]

Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. 1464

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to adopt a rule which will prohibit the broadcast of indecent material between the hours of 6 a.m. and 10 p.m. on public broadcast stations that go off the air at or before 12 midnight, and which will prohibit the broadcast of indecent programming on all other broadcast stations between 6 a.m. and 12 midnight. The rule will prohibit obscene broadcasts at all times. This proposal is in response to legislation enacted by Congress.

DATES: Comments must be filed on or before November 6, 1992, and reply comments on or before November 23, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peter Tenhula, Office of General Counsel, at 202–254–6530.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Notice of Proposed Rule Making in GC Docket No. 92–223, adopted September 17, 1992, and released October 5, 1992. The full text of this document is available for inspection and copying, Monday through Friday, 9 a.m. to 4:30 p.m. in the FCC Dockets Reference Room (room 239), 1919 M St. NW., Washington DC 20554, and may be purchased from the Commission's copy contractor, Downtown Copy Center, 202–452–1422, 1114 21st St. NW., Washington, DC 20036.

2. On August 26, 1992, the President signed into law the Public Telecommunications Act of 1991, Pub. L. 202–356, which generally concerns the authorization of appropriations for the Corporation for Public Broadcasting. Section 16(a) of the Act contains the following provision:

The Federal Communications Commission shall promulgate regulations to prohibit the broadcasting of indecent programming—

(1) Between 6 a.m. and 10 p.m. on any day by any public radio station or public television station that goes off the air at or before 12 midnight; and

(2) Between 6 a.m. and 12 midnight on any day for any radio or television broadcast station not described in paragraph (1).

Id. section 16(a). The provision further states that the regulations required under this subsection shall be promulgated in accordance with section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and shall become final not later than 180 days after the date of enactment of the Act. In conformity with the statute, we propose to adopt the rule set forth in the Amendatory Text.

3. The focus of this proceeding is quite narrow and will be confined to the matter of updating the Commission's record pertaining to the governmental interest in restricting the broadcasting of indecent material. Accordingly, we invite the public to update the data considered in the Commission's 1990 Report on broadcast indecency (5 FCC Rcd 5297) with regard to the presence of children in the viewing and listening audience.

4. *Initial Regulatory Flexibility Analysis.* As required by Section 603 of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981)), the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document.

Reason for Action: This proceeding is being initiated pursuant to Public Law 102–356, section 16(a) and seeks public comment on the implementation of that statutory provision.

Objectives: Our goal in this proceeding is to supplement the Commission's record to support the implementation of Congress' enactment of a "safe harbor" time period for the broadcast of indecent material.

Legal Basis. Authority for this proposed rule making is contained in Sections 4(i) and (j), 303 and 312 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 303, 312, and in Section 16(a) of the Public Telecommunications Act of 1991, Pub. L. No. 102–356 (1992).

Reporting, Recordkeeping and other Compliance Requirements: None

Federal Rules that Overlap, Duplicate or Conflict with Proposed Rule: None.

Description, Potential Impact, and Number of Small Entities Involved: The rules proposed in this proceeding could effect certain small entities including radio and television broadcasters who choose to air indecent broadcast materials at times which will subject them to enforcement action by the Commission.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: None.

Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice of Proposed Rule Making, but they must have a separate and distinct heading, designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration is accordance with paragraph 603(a) of the Regulatory Flexibility Act.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 73

Radio broadcasting and Television broadcasting.

Proposed Rule Changes

Part 73 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.3999 is revised to read as follows:

§ 73.3999 Enforcement of 18 U.S.C. 1464 (restrictions on the transmission of obscene and indecent material).

(a) No licensee of a radio or television broadcast station shall broadcast any material which is obscene.

(b) No licensee of a public broadcast station, as defined in 47 U.S.C. 397(6), that goes off the air at or before 12 midnight shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent.

(c) No licensee of a radio or television broadcast station not described in paragraph (b) of this section shall broadcast on any day between 6 a.m. and 12 midnight any material which is indecent.

[FR Doc. 92–24457 Filed 10–6–92; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 672 and 675

[Docket No. 911215–2251]

RIN 0648–AD50

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; proposed regulatory amendment; request for comments.

SUMMARY: NMFS publishes a proposed rule that would implement a revision of Amendment 18 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) if the amendment is approved by the Secretary of Commerce (Secretary) after review and consideration of public comments. Revised Amendment 18 to the FMP was prepared by the North Pacific Fishery Management Council (Council) and has been submitted to the Secretary for review under provisions of the Magnuson Fishery Conservation and Management Act (Mugnuson Act).

In addition, NMFS publishes a proposed regulatory amendment to clarify regulations that were published June 3, 1992 (57 FR 23321), implementing portions of Amendment 18 to the BSAI FMP and Amendment 23 to the FMP for Groundfish of the Gulf of Alaska (GOA).

The proposed rule would continue an allocation of pollock between inshore and offshore components in the BSAI during the years 1993 through 1995. Also, these proposed regulations would revise the catcher vessel operational area (CVOA) established in the BSAI (57 FR 23321, June 3, 1992) to allow only catcher vessels and motherships to operate within the CVOA during the non-roe (or "B") season (June 1–December 31). The Council intends these actions to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMPs that govern these fisheries.

DATES: Comments are invited on or before November 4, 1992.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 or delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall

Road, Juneau, Alaska. Individual copies of the revision of Amendment 18 and the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, Alaska Region, NMFS at 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed in accordance with the BSAI and GOA FMPs. Both FMPs were prepared by the Council under authority of the Magnuson Act. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 and 50 CFR part 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620. The fishery for walleye pollock (*Theragra chalcogramma*) and the affected human environment are described in the FMPs and in the environmental impact statements prepared by the Council for each FMP and the RIR/IRFA prepared for this action.

The problems and issues resulting in Amendments 18/23 are discussed in the proposed rule notice for the amendments (56 FR 66009, December 20, 1991; corrected at 57 2814, January 23, 1992) and the final rule implementing Amendment 23 and the approved portions of Amendment 18 (57 FR 23321, June 3, 1992). Briefly, early in 1989, several catcher/processor vessels harvested substantial amounts of pollock from the GOA. This contributed to an early closure of the GOA pollock fishery and prevented inshore components from realizing their anticipated economic benefit from pollock later in the fishing year. At the April 1989 Council meeting, fishermen and processors from Kodiak Island requested that the Council consider inshore-offshore allocations to prevent future preemption of resources by one industry sector over another. The Council considered the issues of coastal community development and shoreside preference, and in December 1989 adopted management alternatives for analysis. The Council amended the alternatives and continued its analysis, review, and discussion throughout 1990 and early 1991. After receiving advice from its advisory bodies and hearing public testimony at its meeting of June 24–29, 1991, the Council adopted its preferred alternative.

As originally proposed by the Council, Amendments 18/23 allocated the total allowable catch (TAC) of pollock between inshore and offshore sectors in the BSAI and GOA in the years 1992 through 1995 as follows:

	Inshore (percent)	Offshore (percent)
BSAI:		
1992	35	65
1993	40	60
1994	45	55
1995	45	55
GOA All years	100	0

Secretarial review of the amendments began on December 1, 1991. Public comment on the proposed rule ended February 3, 1992. On March 4, 1992, the Secretary approved the proposed pollock and Pacific cod allocations for the GOA and the proposed pollock allocation for the BSAI for 1992. These allocations were implemented on June 1, 1992 (57 FR 23321, June 3, 1992). The proposed pollock allocations for the BSAI in 1993 through 1995 were disapproved.

The action of the Under Secretary for Oceans and Atmosphere (Under Secretary) disapproving the 1993–1995 BSAI pollock allocations was based, in part, on a cost-benefit analysis prepared by NMFS that indicated a significant net economic loss under these proposed allocations. The Council had not supplied sufficient evidence of social or other benefits to offset that loss. As a result, the disapproved measures violated national standard 7 and E.O. 12291. In a March 4, 1992, letter to the Council, the Under Secretary stated that the net economic effects in 1993 through 1995 were "not fully understood" at the time the Council took its action, and that it would be necessary for the Council to evaluate further the economic effects of each reasonable alternative before the additional years could be approved.

Under section 304(b) of the Magnuson Act, The Council may submit a revised amendment to the Secretary for consideration under an expedited review schedule. At its April 21–26, 1992, meeting, the Council considered the actions and recommendations of the Secretary and decided to submit a revised Amendment 18. The Council supplemented its previous analysis of management alternatives for the original Amendments 18/23. The allocation alternatives considered for revised Amendment 18 included (1) no action, (2) allocations in 1993 through 1995 or 30 percent and 70 percent to inshore and offshore components, respectively, and (3) inshore and offshore allocations, respectively, of 35 and 65 percent in 1993, 40 and 60 percent in 1994, and 45 and 55 percent in 1995. The Council reviewed the draft analysis of these alternatives at its meeting of June 22–28, 1992. The draft analysis was made available for public review on July 10, 1992.

At a special meeting to discuss the issue of allocation August 4–5, 1992, the Council again considered the comments of its advisory bodies and the public, and adopted its preferred alternative, recommended to the Secretary as revised Amendment 18. The preferred alternative would make allocations of pollock in the BSAI area between inshore and offshore components, respectively, of 35 and 65 percent in 1993, and of 37.5 and 62.5 percent in 1994 and 1995. In addition, the Council elected to create a CVOA for pollock only in the "B" season in the years 1993 through 1995. Further, the Council recommended allowing vessels in the offshore component that process only (i.e., motherships) to operate in the CVOA, so the catcher vessels that deliver to these vessels can also operate in the CVOA.

The Council has submitted revised Amendment 18 to the Secretary for review, approval, and implementation under section 304(b) of the Magnuson Act. A notice of availability of revised Amendment 18 and request for public comment was published on October 2, 1992. Preliminary determination that revised Amendment 18 is adequate to initiate Secretarial review should not be interpreted to mean that this amendment will be approved by the Secretary. Public comments on the consistency of the amendment and the proposed regulations with the Magnuson Act's national standards and other applicable law are invited. Comments are specifically requested on the adequacy of the analysis in the RIR/IRFA to support findings of compliance with national standards 4 (fair and equitable allocations), 5 (justification for economic allocations), and 7 (net benefits to the Nation). Information and analysis that bolster or contradict the conclusions in any of the supporting documents are also requested.

In addition, changes are proposed to clarify and improve the effectiveness of existing regulations that implement Amendments 18 and 23. Public comment is requested on the proposed changes.

Description of Proposed Management Measures

Revised Amendment 18

The definitions of "inshore" and "offshore" components of the industry remain unchanged from those implementing Amendment 23 in the GOA and the approved pollock allocation in the BSAI area for 1992. In addition, this action proposes no change to the western Alaska community development quota (CDQ) program. Proposed regulations to implement CDQ allocations of pollock in the BSAI area are the subject of a separate rulemaking ([*insert citation to CDQ proposed rule notice if known*]).

The principal new provisions of revised Amendment 18 include (1) the proportional allocation of the pollock TAC between inshore and offshore components, and (2) the CVOA.

1. Inshore-Offshore Allocation of Pollock in the BSAI Area

Under revised Amendment 18, the BSAI pollock TAC would be allocated between the inshore and offshore components for a 3-year period, 1993 through 1995. The amount of TAC to be allocated to each component would be calculated after a reserve (§ 675.20(a)(3)) is subtracted. The reserve is specified annually as 15 percent of the TAC of all species categories. One half of this amount (7.5 percent) would be designated as the CDQ reserve and made available to western Alaska communities under the approved CDQ program. If it appears that the CDQ program will not be able to harvest the amount designated for this program, the reserve would be reapportioned to the non-CDQ fishery in accordance with the specified proportional allocation for that year. In addition, if, during a fishing year, the Director of the Alaska Region, NMFS (Regional Director), determines that either the inshore or offshore component will not be able to catch and process the entire amount of pollock allocated to it, then the amount that the Regional Director projects will be unused by the component will be reallocated to the other component by notice in the **Federal Register**.

The proposed allocations of pollock for each subarea in the BSAI area and each pollock season defined at § 675.20(a)(2) are as follows:

	Inshore (percent)	Offshore (percent)
BSAI:		
1993	35.0	65.0
1994	37.5	62.5
1995	37.5	62.5

The allocation percentages developed in revised Amendment 18 are intended to achieve an equitable apportionment of the pollock resource without needlessly impeding the efficiency of either component.

During Secretarial review of the original Amendments 18/23, NOAA expressed concern that the analysis of potential economic effects of the allocations was not complete. The Council assessed the potential distributive effects of the proposed allocations and qualitatively described the potential net benefits to the Nation. The Secretary subsequently performed a quantitative economic analysis, which concluded there would be a total net loss to the Nation of $178 million during the last half of 1992 and 1993 through 1995.

For the GOA alone, the Secretary calculated a potential net economic loss of about $23 million. This potential economic loss under the proposed allocation of Amendment 23 was offset by nonquantified, positive social benefits to coastal communities in the GOA. This finding was not possible for the allocations proposed in Amendment 18 for the BSAI in 1993–1995. In partially disapproving Amendment 18, the Under Secretary urged the Council to identify countervailing social or other benefits or modify the allocation to minimize economic loss to the Nation if it submitted a revised Amendment 18.

2. Analysis Submitted by the Council for Revised Amendment 18

The RIR/IRFA prepared by the Council in consideration of the revised Amendment 18 alternatives again demonstrates a potential net loss to the Nation of $34 to $60 million depending on whether transfer of benefits to foreign entities is included in the estimates (RIR/IRFA Table 8.1). However, the RIR/IRFA and public testimony to the Council include other information that the Council believes offsets any potential economic losses to the Nation.

NOAA notes that some assumptions and parameters were changed between those used in section 2.0 of the RIR/IRFA and those used in section 8.0. The key variables in the analysis in section 2.0 are described in section 2.4 of the RIR/IRFA. The summary in Table 8.1 uses essentially the same parameters as those used in Tables 2.10 and 2.11 except for three changes made in response to recommendations of the Council's Scientific and Statistical Committee. These changes affect the estimates presented in Table 8.1 in that the underlying data and model assumptions for Table 8.1 as compared to those used in Chapter 2: (a) Do not assume a surplus or loss to fishing vessel crews; (b) assume a different discard rate for inshore processors that corrects a calculation error in the earlier analysis; and (c) assume different prices for certain pollock products that represent new and corrected price information not previously available to the analytical team.

The estimates in Table 8.6 are based on three changes in Table 8.1. These additional changes: (d) Assume an equal roe recovery rate between inshore and offshore processors; (e) assume a lower product recovery rate for surimi produced by offshore processors; and (f) assume higher variable costs in the offshore component, by increasing the variable costs from the 1989–90 OMB survey by 4 percent based on the Producer Price Index to update their value to 1991. If the effects of foreign ownership in processing firms are discounted, the estimates presented in Table 8.6 appear to show that net benefits to the Nation are possible. The RIR/IRFA analysis demonstrates that the calculation of net economic benefits is highly sensitive to assumptions made about the relative processing efficiency in the inshore and offshore components, the mix of products produced, their values in foreign and domestic markets, the effect of foreign ownership of fish processing firms, and the treatment of at-sea labor in the cost-benefit model. The impact of changing certain assumptions and parameters used to model the potential costs and benefits is illustrated in Tables 8.3 and 8.4 of the RIR/IRFA. The analytical team as a whole did not have the opportunity to review or endorse the data input changes suggested by the inshore industry. Public comment on the basis for and appropriateness of these changes in parameters and assumptions is requested.

3. Other Considerations Regarding the Allocations

Although offsetting social benefits are not as readily apparent for the BSAI as they were for the GOA, an established allocation to the inshore component operating in the BSAI area could foster social stability in several western Aleutian coastal communities. The Council received public testimony that the seafood processing industry accounts for about 49 percent of the

total employment and 65 percent of the total private employment in the Aleutians area. Communities that currently have a transient work force could develop year-round employment from the stability of an assured inshore allocation. Such development could stimulate demand for goods and services that could provide social benefits in those communities and the region. In addition, state and local fish landings taxes and fisheries-related property taxes apparently are shared by other coastal communities. For example, the Council heard that groundfish processing in Akutan provided about 37 percent of the Aleutians East Borough's total tax revenues in fiscal year 1991. These revenues presumably were shared with other communities in the borough such as King Cove, Sand Point, and others. The Secretary is particularly interested in the amounts of fish tax revenues collected and their distribution to coastal communities.

Finally, the fact that the Secretary had approved an inshore allocation of 35 percent of the pollock "B" season TAC for 1992 was a significant factor in the decision calculus. In his March 4, 1992, letter to the Council, the Under Secretary observed that a 35 percent allocation to the inshore sector for the 1992 "B" season only "* * * does not appear to result in significant economic losses." NMFS catch data indicate that the "B" season harvests of pollock by the shoreside operations increased from about 15 percent of the total "B" season pollock harvest in 1990 to about 29 percent of the total "B" season pollock harvest in 1991. At this rate of increase, the inshore component probably could have been predicted to harvest about 35 percent of the "B" season pollock in 1992 even without an inshore allocation.

For all of 1990, shoreside operations harvested about 16 percent of the total pollock harvest and in 1991, this proportion increased to about 28 percent. The growth rate of this increase in shoreside harvest between 1990 and 1991 was about 74 percent. To achieve a 35 percent share of the total pollock harvest in 1992, shoreside harvests would need to realize a growth rate of only about 20 percent between 1991 and 1992.

4. Catcher Vessel Operational Area (CVOA)

Revised Amendment 18 would establish a CVOA between 163° and 168° W. longitude, south of 56° N. latitude, and north of the Aleutian Islands. Offshore catcher-processors would not be allowed to conduct directed fishing operations for pollock in the CVOA during the pollock "B" season (June 1 through December 31). Access to this area would be unrestricted during the pollock roe or "A" season (January 1–April 15). This proposed CVOA is similar to that established by the approved portion of original Amendment 18 with the following two important differences.

First, under revised Amendment 18, the CVOA would exist only during the pollock "B" season instead of during the "A" and "B" seasons as originally proposed. This represents a compromise between an exclusive, year-round CVOA, and no CVOA. The compromise is based on compelling arguments made by representatives of the offshore fleet that closing the CVOA during the "A" season would deprive it of prime fishing grounds on the largest roe-bearing fish, particularly since the Bogoslof area (adjacent to, and west of, the CVOA) fishery had been closed. Further, the ice edge would cause congestion and gear conflicts between factory trawlers and vessels using longlines and pots. They also reasoned that moving factory trawlers north of 56° N. latitude would result in lower recovery rates and higher discard of small pollock. The Council retained the CVOA during the "B" season because catcher vessels that deliver their pollock catch to shore-based processing plants in the Aleutian Islands have a limited range compared with catcher/processor vessels that can harvest pollock resources north and west of the CVOA. In addition, public testimony indicated the possibility of overcrowding and grounds preemption within the CVOA by the catcher/processor fleet.

Second, motherships operating in the offshore component would be allowed to operate in the CVOA under revised Amendment 18. This was not allowed during the "B" season in 1992 because the original Amendment 18 established this area exclusively for catcher vessels. The current regulations do not prohibit operators of catcher vessels from harvesting pollock in the CVOA and delivering their catch to motherships outside the area. This is impractical, however, because catcher vessels working with motherships cannot tow cod ends large distances. The Council was also concerned with safety. During the winter, the combination of ice edge, icing conditions, and severe storms are very hazardous for the catcher-boat fleet to operate outside the CVOA.

Proposed Regulatory Amendment

Experience in implementing inshore-offshore allocations under Amendments 18 and 23 during 1992 has prompted NMFS to propose several changes to existing regulations. The following changes are suggested to improve clarity and understanding of the regulations and their effectiveness. Descriptions of the proposed changes follow.

1. The "inshore component" definition currently at §§ 672.2 and 675.2 would be changed by reordering the sequence of types of processing operations that qualify as "inshore." The category of processor vessels operating at a single location within State of Alaska waters would be identified third instead of second. This change would juxtapose this category of processor vessels with the succeeding sentence, which explains how a single location would be determined.

2. The "prohibitions" section at §§ 672.7 and 675.7 would be changed by substituting a paragraph prohibiting the use of any vessel in more than one of the three categories included in the definition of "inshore component" during any fishing year for the paragraph regarding the first single location of processing by "inshore" processing vessels in Alaska State waters. This change would delete regulatory text that is redundant with the "inshore component" definition. Instead, the change would clarify that the category in which a vessel begins operating in an "inshore" directed fishery for Pacific cod harvested in the GOA or pollock harvested in either the GOA or BSAI area is the category that the vessel must continue to operate in for the remainder of the fishing year whenever it processes these species. For example, this would prevent a processor vessel that operates at a single location in Alaska State waters processing pollock, harvested in a directed fishery for pollock, from subsequently processing pollock or GOA Pacific cod in a different location as a "shoreside processing operation."

In the past, the Alaska Region, NMFS, has allowed vessel operators voluntarily to surrender permits, which relieves the operator of various obligations and responsibilities under 50 CFR parts 620, 672, and 675. By surrendering a permit, a vessel would not qualify as a "processor vessel," under existing regulations at §§ 672.2 and 675.2, during the same fishing year that it earlier qualified as such a vessel. This could result in a processor vessel being able to avoid the "single location" requirement specified at §§ 672.20 and 675.20 for processor vessels operating in State of Alaska waters and processing pollock and Pacific cod harvested under the inshore-offshore allocation regime. The Council intended to prevent this kind of mobility by processor vessels in the inshore component to assure equity between

processor vessels and stationary, shoreside processing plants. This change would also prevent a processor vessel from starting the fishing year as a non-permitted "shoreside processing operation" and then applying for and receiving a permit later that year to process groundfish in State waters at a single location other than the one used while the vessel was a "shoreside processing operation." This change would not prevent a processor vessel used in the offshore component from surrendering its permit to operate in the inshore component as a "shoreside operation." Rather, such a transition would be prevented by §§ 672.7(h) and 675.7(i), which prohibit operating in the "inshore" and "offshore" components during the same fishing year.

3. Finally, regulatory text at §§ 672.20 and 675.20 would be changed to clarify that allocations of pollock and Pacific cod would be made to vessels that catch pollock (or GOA Pacific cod) for processing by the inshore or offshore components. It follows from this clarification that vessels that catch these species are subject to the directed fishing allowances and retention prohibitions that the Regional Director is authorized to establish for either the inshore or offshore components. Without this change, such directed fishing allowances and retention prohibitions could be confusing when applied to a processor vessel that does not actually fish. The proposed change, however, clearly places the burden of complying with such prohibitions on the vessels that actually catch fish.

Classification

The schedule established by section 304(b)(3) of the Magnuson Act requires the Secretary promptly to publish regulations proposed by the Council to implement a revised fishery management plan amendment. At this time, the Secretary has initially determined that the amendment these regulations would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making final determinations, will take into account the data and comments received during the comment period.

A final supplemental environmental impact statement (FSEIS) was prepared for Amendments 18 and 23, and was reviewed under the requirements of the National Environmental Policy Act. Since the impacts of revised Amendment 18 are within the scope of the FSEIS, this proposed rule is categorically excluded from the requirement to prepare an environmental assessment under section 6.02.c.3(f) of NOAA Administrative Order 216-6. A copy of the FSEIS may be obtained from the council (see **ADDRESSES**).

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, require the Secretary to publish this proposed rule 10 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The Assistant Administrator for fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the revised RIR/IRFA prepared by the Council. The revised RIR/IRFA concludes that (1) the projected net effect on the economy is less than $100 million annually over the 3-year period, (2) the amendment does not directly affect the technical efficiency of processing operations, (3) consumer prices are unlikely to experience major changes, and (4) the proposed allocation of resource shares is not expected to lead to significant changes in the overall competitiveness or innovative capabilities of the industry, in either the domestic or international market. A copy of the revised RIR/IRFA may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator concludes that this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. This determination is based on the revised RIR/IRFA prepared by the Council. The harvesting sector of this industry has expanded under an open access policy, to a point where capacity far exceeds what is necessary to take the TAC. Costs are high, and for many vessels, returns are marginal. For some vessels in the offshore component, revenue losses would likely induce business failure. The analysis in the revised RIR indicates that these revenue losses could be in excess of $20 million, in the aggregate. A copy of this document may be obtained from the Council (see **ADDRESSES**).

The proposed rule does not involve a collection-of-information requirement under the Paperwork Reduction Act.

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

NMFS has previously conducted a formal consultation on the original Amendment 18 under section 7 of the Endangered Species Act (ESA). The resulting biological opinion, dated March 4, 1992, concluded that the Amendment was not likely to jeopardize the continued existence of any endangered or threatened species or critical habitat. Since revised Amendment 18 is not expected to result in any effects to listed species that were not considered in the March 4, biological opinion, further consultation under section 7 is not required. NMFS will continue to evaluate the suitability of the existing management measures in the southeastern Bering Sea shelf to ensure adequate protection for Steller sea lions.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: October 2, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the existing definition of "inshore component" is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall; and

(3) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 672.5(c) of this part. For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a check-in notice submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the Gulf of Alaska or pollock for the first time in a fishing year.

* * * * *

3. In § 672.7, paragraph (h)(1) is revised to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) * * *

(1) Operate any vessel in more than one of the three categories included in the definition of "inshore component," at § 672.2 of this part, during any fishing year.

* * * * *

4. Section 672.20 is amended by removing paragraph (a)(2)(v)(C), and revising paragraphs (a)(2)(v) (A) and (B) to read as follows:

§ 672.20 General limitations.

(a) * * *
(2) * * *
(v) * * *

(A) The DAP apportionment of pollock in all regulatory areas and for each quarterly reporting period described in paragraph (a)(2)(iv) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component after subtraction of an amount that is projected by the Regional Director to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (c)(2) of this section for vessels catching pollock for processing by the inshore component and for vessels catching pollock for processing by the offshore component. If the Regional Director determines that the inshore component will not be able to process the entire amount of pollock allocated to vessels catching pollock for processing by the inshore component during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock to vessels catching pollock for processing by the offshore component.

(B) The DAP apportionment of Pacific cod in all regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (c)(2) of this section for vessels catching Pacific cod for processing by the inshore component and for vessels catching Pacific cod for processing by the offshore component. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to process the entire amount of Pacific cod allocated to vessels catching Pacific cod for processing by that component, then NMFS will publish a notice in the **Federal Register** That reallocates the projected unused amount of Pacific cod to vessels catching Pacific cod for processing by the other component.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 675.2, the definitions of "inshore component" and "offshore component" are revised to read as follows:

§ 675.2 Definitions

* * * * *

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 mt of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall; and

(3) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 672.5(c) of this part. For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a check-in notice submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the Gulf of Alaska or pollock for the first time in a fishing year.

* * * * *

Offshore component (applicable through December 31, 1995) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of "inshore component."

* * * * *

7. In § 675.7, the heading of paragraph (i) and paragraph (i)(1) are revised to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) *Applicable through December 31, 1995.* (1) Operate any vessel in more than one of the three categories included in the definition of "inshore component," at § 675.2 of this part, during any fishing year.

* * * * *

8. In § 675.20, paragraph (a)(2)(iii) is revised to read as follows:

§ 675.20 General limitations.

(a) * * *
(2) * * *

(iii) *Applicable through December 31, 1995.* The 1993 DAP apportionment of pollock in each subarea, and for each seasonal allowance defined in paragraph (a)(2)(ii) of this section, will be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component. The 1994 and 1995 DAP apportionment of pollock in each subarea, and for each seasonal allowance defined in paragraph (a)(2)(ii) of this section, will be allocated 37.5 percent to vessels catching pollock for processing by the inshore component and 62.5 percent to vessels catching pollock for processing by the offshore component. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraphs (a)(8) and (a)(9) of this section for vessels catching pollock for processing by the inshore component and for vessels catching pollock for processing by the offshore component. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to process the entire amount of pollock allocated to vessels catching pollock for processing by that component, then NMFS will publish a notice in the **Federal Register** that

reallocates the projected unused amount of pollock to vessels catching pollock for processing by the other component.

* * * * *

9. In § 675.22, existing paragraph (g) is revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1995).* Processor vessels in the "offshore component," defined at § 675.2 of this part, may not catch pollock in excess of the directed fishing standard for pollock during the second seasonal allowance of pollock, defined in paragraph (a)(2)(ii) of this section, in the Bering Sea subarea south of 56°00′ N. latitude, and between 163°00′ and 168°00′ W. longitude. Processor vessels in the "offshore component" that do not catch groundfish but process pollock that is caught in a directed fishery for pollock by catcher vessels, may operate within this area to process the second seasonal allowance of pollock. Offshore processor vessels that catch or process groundfish in directed fisheries for species other than pollock, may operate within this area.

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50 CFR Part 675

[Docket No. 920944-2244]

RIN 0648-AE80

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Western Alaska Community Development Quota (CDQ) program pursuant to Amendment 18 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area. This action is necessary to describe management of the CDQ program. It is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management in the BSAI area.

DATES: Comments on the implementation of this proposed rule during the balance of 1992 and for the year 1993 are invited until October 23, 1992. Comments on the implementation of this proposed rule during the years 1994–1995 are invited until November 16, 1992.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 or delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall Road, Juneau, AK. Individual copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may also be obtained from this address. Comments on the environmental assessment are requested.

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fishery Management Biologist, Alaska Region, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone of the BSAI area are managed by the Secretary of Commerce (Secretary) in accordance with the BSAI FMP. The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR 611.93 and for the U.S. fishery at 50 CFR part 675. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

The FMP allows certain measures to be changed by regulatory amendments without amending the FMP itself. This action proposes a regulatory amendment which would implement the CDQ program that was approved in concept as part of Amendment 18 to the FMP for the BSAI area.

Amendment 18, or the "inshore/offshore" amendment for the BSAI, was partially disapproved by the Secretary on March 4, 1992. The approved portion of Amendment 18 included inshore/offshore allocations for 1992 and the CDQ program, in concept, for a temporary period from 1992 through 1995.

The final rule implementing Amendment 18 (57 FR 23321, June 3, 1992) provided only for the basic allocation of pollock for the CDQ program. The CDQ allocation provides for 7.5 percent of the pollock total allowable catch (TAC), or one-half of the non-specific reserve, for each BSAI subarea to be set aside for the CDQ program. This regulatory amendment would implement the CDQ program by providing regulations that specify the contents of Community Development Plans (CDPs) and the criteria and procedures for apppoval by the Secretary. Approval of a CDP by the Secretary would result in allocations of portions of the "CDQ reserve" to specific western Alaska communities.

The CDQ program was proposed to help develop commercial fisheries in western Alaska communities. These communities are isolated and have few natural resources with which to develop their economies. Unemployment rates are high, resulting in substantial social problems. However, these communities are geographically located near the fisheries resources of the Bering Sea, and have the possibility of developing a commercial fishing industry. Although fisheries resources exist adjacent to these communities, the ability to participate in these fisheries is difficult without start-up support. This CDQ program is intended to provide the means to start regional commercial fishing projects that could develop into ongoing commercial fishing industries.

Current regulations require publication of proposed and final specifications of the pollock TAC in the **Federal Register** under 50 CFR 675.20(a). Regulations at § 675.20(a)(3) require 15 percent of the amount of the TAC specified for pollock in each subarea defined at § 675.2 to be placed automatically in a reserve that is not specific to any species. Under the proposed CDQ program, one-half of this reserve amount for each subarea would be assigned to the CDQ reserve. During the years 1993, 1994, and 1995, the Secretary, consultation with the Council, would publish proposed and final seasonal allowances of the CDQ reserve in the **Federal Register** under procedures provided for at § 675.20(a)(7). For the 1992 fishing year, the CDQ reserve would be 101,445 metric tons (mt), which is one-half of the pollock component of the non-specific reserve established for 1992. Once established, the CDQ amounts will be separate from proposed and final seasonal allowances of the pollock TAC provided for in § 675.20(a)(7).

Vessels conducting directed fishing for any CDQ reserve would be subject to all regulations in 50 CFR part 675. Unless prohibited by regulations, vessel operators may conduct directed fishing for a CDQ reserve during times and in areas closed to directed fishing for pollock TAC. The Secretary, in consultation with the Council, may limit the amounts of CDQ reserve that may be harvested during the roe or "A" season (January 1–April 15) and the non-roe or "B" season (June 1–December 31) provided at § 675.20(a)(2)(ii). For 1992, all of the 101,445 mt CDQ reserve would

be available from the effective date of the final rule until December 31, 1992, subject to other regulatory actions.

The communities could use their CDQ allocation by harvesting the fish with their own vessels and selling or processing the fish, or by entering into partnerships with harvesting vessels that would pay the CDQ communities in return for harvesting the communities' pollock allocation. Because most of the communities lack much of the infrastructure necessary to harvest pollock directly, many communities may initially sell their allocation of CDQ pollock to operators of vessels in the existing pollock fleet. The resulting income could be used to develop a pollock fishing infrastructure, or could be used to develop other BSAI fisheries. The types of fishery projects that could be funded by selling the harvesting of CDQ allocation could be any project that promotes development of the communities' commercial fishing industries. For example, proceeds from the sale of the CDQ allocation could be used to develop the harvesting of underutilized species, hook-and-line fisheries, processing capabilities, or basic fishery infrastructure to support the harvest of pollock or other species.

The following information outlines the proposed Federal CDQ Program regulations and explains their intent in more detail.

Eligible Community

NMFS is proposing the following criteria to identify communities eligible to apply for approval of CDPs with CDQ allocations of pollock. The criteria were developed by the Governor of the State of Alaska (Governor), in consultation with the Council. The Secretary has determined that the communities listed in Table 1 at § 675.27 meet these criteria; however, communities that may be eligible for CDPs and CDQ allocations of pollock are not limited to those listed in this table.

(1) For a community to be eligible, it must be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the Gulf of Alaska coast of the North Pacific Ocean even if it is within 50 nautical miles of the baseline of the Bering Sea.

(2) The community must be certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Publ. L. 92–203) to be a native village.

(3) The residents of the community must collectively conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea.

(4) The community must not have previously developed harvesting or processing capability sufficient to support substantial fisheries participation in the BSAI, except if the community can show that CDQ benefits would be the only way to realize a return from previous investments. Unalaska and Akutan are the only two communities at this time that would be excluded under this provision.

Prior to approval of the Governor's recommendations for approval of CDPs and CDQ allocations of pollock, the Secretary would review the Governor's findings as to how the communities meet these criteria.

CDP Application Contents

Under the proposed regulations, a qualified applicant from an eligible community or group of communities may apply for approval of a CDP but may not concurrently be a recipient of more than one CDQ allocation. To prevent monopolization of CDQ allocations and ensure an adequate distribution of benefits from the CDQ program, the Secretary would allocate no more than 33 percent of the total CDQ reserve of the BSAI to any approved CDP application. A CDP would consist of three parts: (1) Community development information; (2) business information; and (3) a statement of the managing organization's qualifications.

Community development information includes goals, objectives and information concerning the project(s) that will develop the fishing industry in the community(ies). The business information section of a CDP includes information about the catching and harvesting of CDQ pollock, and information about the business aspects of the fisheries development project(s) of the community(ies). The statement of the managing organization's qualifications includes information to ensure that he managing organization, whether it is the CDP applicant or a group contracted by the CDP applicant, is qualified and has the ability to properly manage the harvesting of the CDQ pollock and the fisheries development project(s) of the community(ies).

The intent of these regulations is that all applications for CDPs, which include requests for CDQs, would be similarly structured to facilitate their review and comparison. These standards are expected to reduce the need for follow-up information and should minimize administrative expenses for application review and evaluation.

Secretarial Review and Approval of Community Development Plans

The Governor, after consultation with the Council, would recommend specific CDPs to the Secretary. The Governor's recommendations may support all or part of the percentage of CDQ pollock and the number of years of CDQ allocation requested by an applicant. The total CDQ allocation included in the CDPs recommended by the Governor may not exceed the total amount of CDQ reserve.

Upon receipt by the Secretary of the Governor's recommendations, including his set of findings that the CDPs meet the requirements of these regulations and the Alaska Coastal Management Program, the Secretary will review the record of the Governor's findings, the transcript or summary of the public hearings held by the Governor in making the recommendations, and other information deemed relevant to the Secretary to determine if the eligibility conditions and approval criteria set forth in these regulations have been met. The Secretary shall then approve or disapprove the Governor's recommendations.

In the event of approval, the Secretary shall prepare a set of findings with respect to the requirements of these regulations. The Governor and the Council shall be notified in writing of the Secretary's decision, including the findings. Publication of the decision, including the allocation of portions of the CDQ reserve for each subarea to the specific CDPs and the availability of the findings, will appear in the **Federal Register**.

In the event the Secretary disapproves the recommendation of the Governor, the Secretary shall advise the Governor and the Council in writing, including the reasons therefor. Publication of the decision will appear in the **Federal Register**.

Monitoring of CDPs

A CDP could include single or multi-year pollock allocations representing a percentage of the TAC for each BSAI subarea. For single year allocations, a final report would be required to be submitted by June 30 annually to the Governor showing how the CDP's goals and objectives were met as set forth at § 675.27(e)(1). For multi-year allocations, annual reports would also be required to be submitted by June 30 to the Governor. Failure to submit an annual report could result in suspension or termination of a CDP. The Governor would then review

the status of the project and determine whether the project is being managed according to the provisions of the original CDP, and submit an annual report with recommendations on whether to continue the multi-year allocation to the Secretary for approval.

The Governor must be notified of and approve amendments to an approved CDP and submit a recommendation for approval of the amendment to the Secretary. Amendments to a CDP of which the Governor must be notified are those set forth at § 675.27(e)(3)(i) and include any change in the relationships among the business partners, the profit sharing arrangements, the CDP budget, the management structure, or audit procedures or control.

Suspension or Termination of a CDP

If any applicant fails to notify the Governor of an amendment to a CDP or if a multi-year CDP appears unlikely to meet its goals and objectives or the recipient of a CDQ is deviating from the approved CDP, the Governor may submit a recommendation to the Secretary that the CDP be suspended or terminated. The Governor must set out in writing his reasons for recommending suspension or termination of the CDP. After review of the Governor's recommendation and reasons, the Secretary would notify the Governor in writing of her approval or disapproval of his recommendation. If the Secretary approves the Governor's recommendation, NMFS would publish a notice in the **Federal Register** that the CDP has been suspended or terminated, with reasons for the Secretary's decision. The Secretary may also suspend or terminate any CDP at any time if the Secretary finds that a recipient of a CDQ allocation is not complying with these regulations or any other regulations and provisions of the Magnuson Act or other applicable law, or if the FMP is amended.

Recordkeeping and Reporting

The harvest of CDQ pollock would be tracked through the existing Federal recordkeeping and reporting system. A unique CDQ number would be issued to each approved CDP at the time CDQ allocations are made. This number would be written on existing forms that would identify each landing as a CDQ landing to be entered into the Federal fisheries landing database. The vessel operator would be required to write the CDQ number on the Daily Fishing Logbook, and the processor would be required to write the CDQ number on the Daily Cumulative Production Logbook and the Weekly Production Report that currently are required at § 675.5.

Operators of Federally permitted vessels harvesting CDQ pollock would be required to comply with existing regulations at 50 CFR part 675. The Council may consider, and the Secretary may implement, additional regulatory amendments that might apply to CDQ pollock harvesting. An approved CDP with an allocation of CDQ pollock does not guarantee a specific amount of pollock to approved CDP's. Instead, a CDQ allocation under an approved CDP provides an exclusive harvest privilege that may be fulfilled at the discretion of the Secretary and only in compliance with all fishery regulations.

NMFS preliminarily has determined that the CDQ program is consistent with the FMP and proposes this regulatory amendment. The State of Alaska is implementing regulations that will be compatible with these proposed Federal regulations. The State of Alaska regulations will serve as the standards and criteria for the Governor's development of CDPs and his recommendation to the Secretary for approval. State of Alaska regulations would be in effect on or before a date that the Secretary approves these regulations. The State's regulations will include provisions for notifying the public when the Governor is accepting CDP applications.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an EA for this proposed rule that discusses the impacts on the environment as a result of this rule. The public may obtain a copy of the EA from the Fisheries Management Division, Alaska Region, and comments on it are requested (see **ADDRESSES**).

The initial regulatory flexibility analysis (IRFA), prepared as part of the EA/RIR/IRFA, concludes that this proposed rule, if adopted, would have significant effects on small entities. Information contained in the IRFA is summarized below.

This proposed rule would transfer 7.5 percent of the Bering Sea and Aleutian Islands pollock TACs to western Alaskan communities. In 1992, 7.5 percent of these TACs amounts to 101,370 metric tons. If this is valued at an ex-vessel price of $0.107 per pound (0.45 kilograms), the total is about $24 million. If the resource rent is 10 percent, the potential proceeds accruing to disadvantaged western Alaskan communities would be approximately $2.4 million. These proceeds would be used to fund fisheries development projects in order to establish a permanent commercial fishing industry, which would be a basis for future regional economic growth.

A copy of this document may be obtained from the Fisheries Management Division, Alaska Region (see **ADDRESSES**).

NMFS concluded formal section 7 consultations on Amendment 18 to the BSAI FMP on March 4, 1992. The biological opinion issued for the consultation concluded that operation of the fishery under this amendment proposal, including the CDQ program, is not likely to jeopardize the continued existence and recovery of any endangered or threatened species. Adoption of the management measures described in this proposed rule will not affect listed species in a way that was not already considered in the aforementioned biological opinion. Therefore, NMFS has determined that no further section 7 consultation is required for adoption of this action.

This proposed rule and its implementing regulations will not have a significant impact on marine mammals that has not already been considered under the Endangered Species Act.

The Assistant Administrator has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more: a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions; or ■ significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS concluded that none of the proposed measures in this rule would cause impacts considered significant for purposes of E.O. 12291.

This rule involves collection-of-information requirements subject to the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*) that have been approved by the Office of Management and Budget (OMB) under control number 0648–0213. The rule also contains new requirements and a request for approval has been submitted to OMB. Public reporting burden for the new collections is estimated to average 160 hours per

response for applications, 40 hours per response for amendments, and 40 hours for annual report submissions. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

NMFS has determined that this proposed rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Department of Commerce's Federal Officer has determined that this proposed rule has sufficient federalism implications to warrant preparation of a federalism assessment (FA) under E.O. 12612. An FA has been prepared, which concludes that there are no provisions or elements of this proposed rule that are inconsistent with the principles, criteria, and requirements set forth in section 2 through 5 of E.O. 12612. Further, this proposed rule does not affect Alaska's ability to discharge traditional state governmental functions, or other aspects of state sovereignty.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: October 1, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is proposed to be amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.2, new definitions of "Community Development Plan," "Community Development Quota," "Community Development Quota Program," "Community Development Quota Reserve," and "Governor" are added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Community Development Plan (CDP) (applicable through December 31, 1995) means a plan for a specific Western Alaska community or group of communities approved by the Governor of the State of Alaska and recommended to the Secretary under § 675.27 of this part.

Community Development Quota (CDQ) (applicable through December 31, 1995) means a western Alaska community development quota for pollock assigned to an approved CDP. All CDQs, in the aggregate, equal one-half of 15 percent of the total allowable catch specified for pollock that is placed in reserve under § 675.20(a)(3) of this part.

Community Development Quota Program (CDQ Program) (applicable through December 31, 1995) means the Western Alaska Community Development Program implemented under § 675.27 of this part.

Community Development Quota Reserve (CDQ reserve) (applicable through December 31, 1995) means one-half of 15 percent of the total allowable catch specified for pollock in each subarea that is placed in reserve under § 675.20(a)(3) of this part.

* * * * *

Governor means the Governor of the State of Alaska.

* * * * *

3. In § 675.7, paragraphs (j) and (k) are redesignated as (k) and (l), respectively, and a new paragraph (j) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(j) *Applicable through December 31, 1995.* Participate in a Western Alaska Community Development Quota program in violation of § 675.27 of this part or submit information that is false or inaccurate with a CDP application or request for an amendment.

* * * * *

4. In § 675.20, paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), the first sentence of (a)(7)(i), and the first sentence of (a)(7)(ii), are revised and a new paragraph (e)(2)(iv) is added to read as follows:

§ 675.20 General limitations.

(a) * * *

(3) * * *

(i) *Applicable through December 31, 1995.* Any amounts of the nonspecific reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be apportioned between inshore and offshore components in the same proportion specified in paragraph (a)(2)(iii) of this section.

(ii) *Applicable through December 31, 1995.* In the publications of proposed and final harvest limit specifications required under § 675.20(a) of this part, one half of the pollock TAC placed in the reserve for each subarea will be assigned to a CDQ reserve for each subarea. NMFS may add any amount of a CDQ reserve back to the nonspecific reserve if, after September 30, the Regional Director determines that amount will not be used during the remainder of the fishing year.

(iii) *Applicable through December 31, 1995—Applicationion for approval of a CDP and CDQ allocation.* In accordance with Secretarial action under § 675.27 of this part, NMFS may allocate portions of the CDQ reserve for each subarea to one or more eligible communities or groups of communities that have an approved CDP. Applications for a CDP and CDQ allocations of pollock must contain the information described in § 675.27(c) of this part. In addition to the requirements in § 675.27, vessels participating in the CDQ program must comply with regulations in this part.

* * * * *

(7) * * *

(i) *Proposed specifications and interim harvest amounts.* As soon as practicable after consultation with the Council, NMFS will publish an action in the **Federal Register** specifying, for the succeeding fishing year, proposed annual TAC and initial TAC amounts for each target species and "other species" category and apportionments thereof among DAP, JVP, and TALFF; prohibited species catch allowances established under § 675.21(b) of this part; seasonal allowances of the pollock TAC; and seasonal allowances of the pollock CDQ reserve. * * *

(ii) *Final specifications.* NMFS will consider comments on the proposed specifications received during the comment period and, after consultation with the Council, will publish an action in the **Federal Register** specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final prohibited species catch allowances established under § 675.21(b) of this part, final seasonal allowances of the pollock TAC; and seasonal allowances of the pollock CDQ reserve. * * *

* * * * *

(e) * * *

(2) * * *

(iv) Exceeding a CDQ as defined at § 675.2 of this part.

* * * * *

5. A new § 675.27 is added to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (Applicable Through December 31, 1995).

(a) *State of Alaska CDQ regulations.* (1) The State of Alaska must be able to ensure implementation of the CDPs once approved by the Secretary. To accomplish this, the State must establish a monitoring system that defines what constitutes compliance and non-compliance.

(2) Prior to granting approval of a CDP by the Governor, the Secretary shall find that the Governor developed and approved the CDP after conducting at least one public hearing, at an appropriate time and location in the geographical area concerned, so as to allow all interested persons an opportunity to be heard. The hearing(s) on the CDP do not have to be held on the actual document submitted to the Governor under section § 675.27(b). Such hearing(s) must cover the substance and content of the proposed CDP in such a manner that the general public, and particularly the affected parties, have a reasonable opportunity to understand the impact of the CDP. The Governor must provide reasonable public notice of hearing date(s) and location(s). The Governor must make available for public review, at the time of public notice of the hearing, all state materials pertinent to the hearing(s). The Governor must include a transcript or summary of the public hearing(s) with the Governor's recommendations to the Secretary in accordance with § 675.27. At the same time this transcript is submitted to the Secretary, it must be made available, upon request, to the public. The public hearing held by the Governor will serve as the public hearing for purposes of Secretarial review under § 675.27(c).

(b) *CDP application.* The Governor, after consultation with the Council, shall include in his written findings to the Secretary recommending approval of a single or multi-year CDP, that the CDP meets the requirements of these regulations, the Magnuson Act, the Alaska Coastal Management Program, and other applicable law. At a minimum, the submission must discuss the determination of a community as eligible; information regarding community development, including goals and objectives; business information; and a statement of the managing organization's qualifications. For purposes of this section, an eligible community includes any community or group of communities that meets the critria set out in paragraph (d)(2) of this section. Applications for a CDP must include the following information:

(1) *Community development information.* Community development information includes:

(i) The goals and objectives of the CDP;

(ii) The allocation of CDQ pollock requested for each subarea defined at § 675.2;

(iii) The length of time the CDP and allocation will be necessary to achieve the goals and objectives of the CDP, including a project schedule with measurable milestones for determining progress;

(iv) The number of individuals to be employed under the CDP, the nature of the work provided, the number of employee-hours anticipated per year, and the availability of labor from the applicant's community(ies);

(v) Description of the vocational and educational training programs that a CDQ allocation under the CDP would generate;

(vi) Description of existing fishery-related infrastructure and how the CDP would use or enhance existing harvesting or processing capabilities, support facilities, and human resources;

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing or processing operations;

(viii) A plan and schedule for transition from reliance on the CDQ allocation under the CDP to self-sufficiency in fisheries; and

(ix) A description of short- and long-term benefits to the applicant from the CDQ allocation.

(2) *Business information.* Business information includes:

(i) Description of the intended method of harvesting the CDQ allocation, including the types of products to be produced; amounts to be harvested; when, where, and how harvesting is to be conducted; and names and permit numbers of the vessels that will be used to harvest a CDQ allocation.

(ii) Description of the target market for sale of products and competition existing or known to be developing in the target market;

(iii) Description of business relationships between all business partners or with other business interests, if any, including arrangements for management, audit control, and a plan to prevent quota overages. For this section, business partners means all individuals who have a financial interest in the CDQ project.

(iv) Description of profit sharing arrangements;

(v) Description of all funding and financing plans;

(vi) Description of joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties;

(vii) A budget for implementing the CDP;

(viii) A list of all capital equipment;

(ix) A cash flow and break-even analysis; and

(x) A balance sheet and income statement, including profit, loss, and return on investment on all business ventures within the previous 12 months by the applicant and/or the managing organization.

(3) *Statement of managing organization's qualifications.* (i) Statement of the managing organization's qualifications includes information regarding its management structure and key personnel, such as resumes and references;

(ii) Description of how the managing organization is qualified to manage a CDQ allocation and prevent quota overages; For purposes of this section, a qualified managing organization means any organization or firm that would assume responsibility for managing all or part of the CDP and would meet the following criteria:

(A) Documentation of support from each community represented by the applicant for a CDP through an official letter of support approved by the governing body of the community;

(B) Documentation of a legal relationship between the CDP applicant and the managing organization, which clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

(C) Demonstration of management and technical expertise necessary to carry out the CDP as proposed by the CDP application.

(c) *Secretarial review and approval of CDPs.* (1) Upon receipt by the Secretary of the Governor's recommendation for approval of proposed CDPs, the Secretary will review the record to determine whether the community eligibility criteria and the evaluation criteria set forth in paragraph (d) of this section have been met. The Secretary shall then approve or disapprove the Governor's recommendation within 45 days of its receipt. In the event of approval, the Secretary shall notify the Governor and the Council in writing that the Governor's recommendations for CDPs are consistent with the community

eligibility conditions and evaluation criteria under paragraph (d) of this section and other applicable law, including the Secretary's reasons for approval. Publication of the decision, including the percentage of the CDQ reserve for each subarea allocated under the CDPs, and the availability of the findings will appear in the **Federal Register**. The Secretary will allocate no more than 33 percent of the total CDQ to any approved CDP application. A community may not concurrently receive more than one pollock CDQ allocation, and only one CDP per community will be accepted.

(2) If the Secretary finds that the Governor's recommendations for CDQ allocations are not consistent with the criteria set forth in these regulations and disapproves the Governor's recommendations, the Secretary shall so advise the Governor and the Council in writing, including the reasons therefor. Publication of the decision will appear in the **Federal Register**. The CDP applicant may submit a revised CDP to the Governor for submission to the Secretary. Review by the Secretary of a revised CDP application will be in accordance with the provisions set forth in this section.

(d) *Evaluation criteria.* The Secretary will approve the Governor's recommendations for CDPs if the Secretary finds the CDP is consistent with the requirements of these regulations, including the following:

(1) Each CDP application is submitted in compliance with the application procedures described in § 675.27(b);

(2) Prior to approval of a CDP recommended by the Governor, the Secretary will review the Governor's findings as to how each community(ies) meet the following criteria for an eligible community:

(i) For a community to be eligible, it must be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering sea. A community is not eligible if it is located on the Gulf of Alaska coast of the North Pacific ocean even if it is within 50 nautical miles of the baseline of the Bering Sea.

(ii) The community must be certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92–203) to be a native village.

(iii) The residents of the community must conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea.

(iv) The community must not have previously developed harvesting or processing capability sufficient to support substantial fisheries participation in the BSAI, except if the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The communities of Unalaska and Akutan are excluded under this provision.

(3) Each CDP application demonstrates that a qualified managing organization will be responsible for the harvest and use of the CDQ allocation pursuant to the CDP;

(4) Each CDP application demonstrates that its managing organization can effectively prevent exceeding the CDQ allocation; and

(5) The Governor has found for each recommended CDP that:

(i) The CDP and the managing organization are fully described in the CDQ application, and have the ability to successfully meet the project milestones and schedule;

(ii) The managing organization has an adequate budget for implementing the CDP, and that the CDP is likely to be successful;

(iii) A qualified applicant has submitted the CDP application and that the applicant and managing organization have the support of each community participating in the proposed CDQ project as demonstrated through an official letter approved by the governing body of each such community; and

(iv) That the following factors have been considered:

(A) The number of individuals from applicant communities who will be employed under the CDP, the nature of their work, and career advancement;

(B) The number and percentage of low income persons residing in the applicant communities, and the economic opportunities provided to them through employment under the CDP;

(C) The number of communities cooperating in the application; and

(D) The relative benefits to be derived by participating communities and the specific plans for developing a selfsustained fisheries economy.

(6) For purposes of this paragraph, "qualified applicant" means:

(i) A local fishermen's organization from an eligible community, or group of eligible communities, that is incorporated under the laws of the State of Alaska, or under Federal law, and whose board of directors is composed of at least 75 percent resident fishermen of the community (or group of communities) that is (are) making an application; or

(ii) A local economic development organization incorporated under the laws of the State of Alaska, or under Federal law, specifically for the purpose of designing and implementing a CDQ project, and that has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities) that is (are) making an application.

(7) For the purpose of this paragraph, "resident fisherman" means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in the community and is eligible to receive an Alaska Permanent Fund dividend at that address.

(8) If a qualified applicant represents more than one community, the board of directors of the applicant must include at least one member from each of the communities represented.

(e) *Monitoring of CDPs (applicable through December 31, 1995).* (1) Applicants for single-year CDPs are required to submit final reports and applicants for multi-year CDPs are required to submit annual reports to the Governor by June 30 of the year following CDP approval and CDQ allocation. Multi-year CDP annual reports will include information describing how the CDP has met its milestones, goals, and objectives. The Governor will submit an annual report to the Secretary on the final status of all single-year CDPs, and recommend whether multi-year CDPs should be continued. The Secretary must notify the Governor in writing within 45 days of receipt of the Governor's annual report, accepting or rejecting the annual report and the Governor's recommendations on multi-year CDQ projects. If the Secretary rejects the Governor's annual report, the Secretary will return the Governor's annual report for revision and resubmission to the Secretary. The Governor's annual report will be deemed approved if the Secretary does not notify the Governor in writing within 45 days of receipt of the Governor's annual report.

(2) If an applicant requests an increase in CDQ allocation under a multi-year CDP, the applicant must submit a new CDP application for review by the Governor and approval by the Secretary as described in paragraphs (b) and (c) of this section.

(3) Amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and the Secretary before any change in CDP can occur. The Governor may recommend to the Secretary that the

request for an amendment be approved. The Secretary may notify the Governor in writing of approval or disapproval of the amendment within 30 days of receipt of the Governor's recommendation. The Governor's recommendation for approval of an amendment will be deemed approved if the Secretary does not notify the Governor in writing within 30 days of receipt of the Governor's recommendation. If the Secretary determines that the CDP, if changed, would no longer meet the criteria under paragraph (d) of this section, or if any of the requirements under § 675.27 would not be met, the Secretary shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, amendments are defined as substantial changes in a CDP, including, but not limited to, the following:

(A) Any change in the relationships among the business partners;

(B) Any change in the profit sharing arrangements among the business partners, or any change to the budget for the CDP; or

(C) Any change in management structure of the project, including any change in audit procedures or control.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) Description of the proposed change, including specific pages and text of the CDP that will be changed if the amendment is approved by the Secretary; and

(B) Explanation of why the change is necessary and appropriate. The explanation should identify which findings, if any, made by the Secretary in approving the CDP may need to be modified if the amendment is approved.

(f) *Suspension or termination of a CDP (applicable through December 31, 1995).* (1) The Secretary may, at any time, partially suspend, suspend, or terminate any CDP upon written recommendation of the Governor setting out his reasons, that the CDP recipient is not complying with these regulations. After review of the Governor's recommendation and reasons for a partial suspension, suspension, or termination of a CDP, the Secretary will notify the Governor in writing of approval or disapproval of his recommendation within 45 days of its receipt. In the event of approval of the Governor's recommendation, the Secretary will publish an announcement in the **Federal Register** that the CDP has been partially suspended, suspended, or terminated along with reasons therefor.

(2) The Secretary also may partially suspend, suspend, or terminate any CDP at any time if the Secretary finds a recipient of a CDQ allocation pursuant to the CDP is not complying with these regulations or other regulations or provisions of the Magnuson Act or other applicable law or if the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area is amended. Publication of suspension or termination will appear in the **Federal Register** along with the reasons therefor.

(3) The annual report for multi-year CDPs, which is required under paragraph (e) of this section, will be used by the Governor to review each CDP to determine if the CDP and CDQ allocation thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(i) If the Governor determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(ii) If the Governor recommends to the Secretary that an allocation be decreased, the Governor's recommendation for decrease will be deemed approved if the Secretary does not notify the Governor in writing within 30 days of receipt of the Governor's recommendation.

(iii) If the Governor determines that a CDP has not successfully met its goals and objectives, or appears unlikely to become successful, the Governor may submit a recommendation to the Secretary that the CDP be partially suspended, suspended, or terminated. The Governor must set out in writing his reasons for recommending suspension or termination of the CDP. After review of the Governor's recommendation and reasons therefor, the Secretary will notify the Governor in writing of approval or disapproval of his recommendation within 30 days of its receipt. The Secretary would publish a notice in the **Federal Register** that the CDP has been suspended or, with reasons therefor, terminated.

(g) *CDQ fishing requirements.* All processors and vessels will be responsible for the following recordkeeping and reporting requirements in addition to existing regulations at § 675.5:

(1) Operators of all vessels fishing CDQs must list all CDQ catch on a Daily Fishing Logbook sheet, as required in § 675.5(b)(2), and clearly write their CDQ identification number on the sheet. A separate sheet must be used for CDQ catch.

(2) A processor receiving CDQ landings must list all CDQ landings on a Daily Cumulative Production Logbook sheet, as required in § 675.5(b)(3), and clearly write the CDQ identification number on the sheet. A separate sheet must be used for CDQ landings.

(3) A processor receiving CDQ landings must list all CDQ landings on a Weekly Production Report sheet, as required in § 675.5(c)(2), and clearly write the CDQ identification number on the sheet. A separate sheet must be used for CDQ landings.

Table 1.—Communities Initially Determined To Be Eligible To Apply for Community Development Quotas

Aleutian Region

1. Atka
2. False Pass
3. Nelson Lagoon
4. Nikolski
5. St. George
6. St. Paul

Bering Strait

1. Brevig Mission
2. Diomede/Inalik
3. Elim
4. Gambell
5. Golovin
6. Koyuk
7. Nome
8. Savoonga
9. Shaktoolik
10. St. Michael
11. Stebbins
12. Teller
13. Unalakleet
14. Wales
15. White Mountain

Bristol Bay

1. Alegnagik
2. Clark's Point
3. Dillingham
4. Egegik
5. Ekuk
6. Manokotak
7. Naknek
8. Pilot Point/Ugashik
9. Port Heiden/Meschick
10. South Naknek
11. Sovonoski/King Salmon
12. Togiak
13. Twin Hills

Southwest Coastal Lowlands

1. Alakanuk
2. Chefornak
3. Chevak
4. Eek
5. Emmonak
6. Goodnews Bay
7. Hooper Bay
8. Kipnuk
9. Kongiganak
10. Kotlik
11. Kwigillingok
12. Mekoryuk
13. Newtok
14. Nightmute

15. Platinum
16. Quinhagak
17. Scammon Bay
18. Sheldon's Point
19. Toksook Bay
20. Tununak
21. Tuntutuliak

[FR Doc. 92-24254 Filed 10-2-92; 9:59 am]
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Notices

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of three meetings of the Committee on Regulation of the Administrative Conference of the United States.

First Meeting

Date: Friday, October 9, 1992.
Time: 11:30 a.m.–3 p.m.

Second Meeting

Date: Thursday, October 22, 1992.
Time: 10 a.m.–1:30 p.m.

Third Meeting

Date: Friday, November 6, 1992.
Time: 10 a.m.–1:30 p.m.

Location: All three meetings will be held at the Administrative Conference of the United States (Library), 2120 L Street, NW., Suite 500, Washington, DC.

Agenda: At each of these meetings, the committee will discuss a study and possible recommendations on De Minimis Settlements Under Superfund. The study was prepared for the Conference by Professors Lewis Kornhauser and Richard L. Revesz, New York University School of Law. The committee may also discuss other pending research projects, as well as the current status of earlier Conference recommendations in connection with a general review of Conference recommendations.

Contact: David M. Pritzker, 202–254–7020.

Public Participation: Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The committee chairman may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact person. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Dated: October 2, 1992.

Michael W. Bowers,
Deputy Research Director.

[FR Doc. 92–24396 Filed 10–6–92; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Southwest Region, California; Legal Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On April 2, 1991 (Vol. 56 No. 63, p. 13448), the Pacific Southwest Region published a list of newspapers in which decisions would be published in accordance with 36 CFR 217.5(d). This list must be updated twice annually.

The April 2, 1991 Pacific Southwest Region list will remain unchanged except for the Angeles National Forest, Arroyo-Seco and Valyermo Ranger Districts. District Decisions will be published in the legal notice section of the newspaper listed in the Supplemental Information section of this notice.

The April 2, 1991 notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Southwest Region to publish legal notice of all decisions subject to appeal under 36 CFR 217.

The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: The list of newspapers will remain in effect until April 1993 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sue Danner, Acting Regional Appeals Coordinator, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111, phone: (415) 705–2553.

SUPPLEMENTARY INFORMATION: On March, 1990, an interim rule amending the administrative appeal procedures at 36 CFR part 217 was published requiring publication of legal notice of decisions subject to appeal. On February 6, 1991, a notice was published in the **Federal Register** finalizing the interim rule. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state and date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

Angeles National Forest, California

Arroyo-Seco District Ranger decisions:
  Pasadena Star News, Pasadena, California
  Newspaper providing additional notice of Arroyo-Seco decisions:
  Daily News, Los Angeles California
Valyermo District Ranger decisions:
  Antelope Valley Press, Palmdale California

Dated: September 29, 1992.

Joyce T. Murasoka,
Deputy Regional Forester.

[FR Doc. 92–24330 Filed 10–6–92; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1993 Annual Survey of Government Employment.

Form Number(s): E–1, E–2, E–3, E–4, E–6, E–7, E–9.

Agency Approval Number: 0607–0452.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 17,646 hours.

Number of Respondents: 27,965.

Avg Hours Per Response: 37 minutes.

Needs and Uses: This is a request for approval of seven data collection forms for use in the 1993 Annual Survey of Government Employment. Data are collected on state and local government employment and wages. Each form is tailored to the particular size and type of government to be surveyed. The Bureau of Economic Analysis uses these data to develop the public sector components of the gross national product and national income accounts, and to develop personal income statistics. The Department of Housing and Urban Development determines the allocation of operating subsidies to local housing authorities based on this survey. The Bureau of Labor Statistics uses data from this survey to assist in the benchmarking of state and local government components of its monthly employment and earnings statistics. In addition, state and local government officials, public interest groups, and professional organizations use these data for analysis and study.

Affected Public: State or local governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 1, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–24370 Filed 10–6–92; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Initiation of Process of Revoke Export Trade Certificate of Review No. 89–00004.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to KIAD International Trading Company, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to KIAD International Trading Company, Inc.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") [15 U.S.C. 4011–21] authorized the Secretary of Commerce to issue export trade certificates of review. The regulations implementing title III ["the Regulations"] are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on May 16, 1989 to KIAD International Trading Company, Inc.

A certificate holder is required by law (section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [sections 325.14 (a) and (b) of the Regulations]. Failure to submit a complete annual report may be the basis for revocation [sections 325.10(a) and 325.14(c) of the Regulations].

The Department of Commerce sent to KIAD International Trading Company, Inc. on May 6, 1992 a letter containing annual report questions with a reminder that its annual report was due on June 30, 1992. Additional reminders were sent on August 11, 1992, and on September 2, 1992. The Department has received no written response to any of these letters.

On October 2, 1992, and in accordance with section 325.10(c)[2] of the Regulations, a letter was sent by certified mail to notify KIAD International Trading Company, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken for the certificate holder's failure to file an annual report.

In accordance with section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (section 325.10(c)[2] of the Regulations).

If the answer demonstrates that material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (section 325.10(c)[3] of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (section 325.10(c)[4] of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: October 2, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–24302 Filed 10–6–92; 8:45 am]

BILLING CODE 3510–DR–M

[A–588–823]

Postponement of Preliminary Antidumping Duty Determinations: Professional Electric Cutting Tools (PECTs) and Professional Electric Sanding/Grinding Tools (PESGTs) From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Office of Antidumping

Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–1766.

Postponement

On June 18, 1992, the Department of Commerce (the Department) initiated antidumping duty investigations on PECTs and PESGTs from Japan. The notice stated that we would issue our preliminary determinations on or before November 5, 1992 (57 FR 28483, June 25, 1992).

On September 18, 1992, we notified petitioner and respondent that we intended to postpone the preliminary determinations by 50 days. In accordance with 19 CFR 353.15(b), we find these investigations extraordinarily complicated by reason of respondent's large number of sales transactions, the complex nature of the products under investigation, and novel issues raised such as the class or kind of merchandise issue. Additionally, we find that the respondent is cooperating in these investigations. Therefore, we are postponing the date of the preliminary determinations in these investigations until not later than December 28, 1992. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended (the Act).

This notice is published pursuant to section 733f(c)(2) of the Act and 19 CFR 353.15(d).

Dated: September 30, 1992.

Rolf Th. Lundberg, Jr.,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 92–24253 Filed 10–6–92; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: U.S. Virgin Islands Service Area

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated at $169,125 in Federal funds, and a minimum of $29,846 in non-Federal (cost sharing) contribution, from April 1, 1993 to March 31, 1994. Cost-sharing contributions, may be in the form of cash contributions, client fees, in-kind contributions or contributions thereof. The MBDC will operate in the State of Connecticut SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies to performing the work requirements included in the application (20 points); and the firm's estimate cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&%TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with QMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by

each applicant as a precondition for receiving Federal grant or cooperative agreement awards. False information on the application can be grounds for denying or terminating funding.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements form using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD-511, "Certifications regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF-LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for application is November 23, 1992. Applications must be postmarked on or before November 23, 1992.

The mailing address for submission is:

ADDRESSES: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, rm. 3720, New York, New York 10278, Area Code/Telephone Number: (212) 265-3262.

FOR FURTHER INFORMATION CONTACT; John F. Iglehart, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Inter-governmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address. A Pre-application Conference to assist all interested applicants will be held on November 4, 1992, from 10 a.m. to 3 p.m. in St. Thomas, U.S. Virgin Islands at the Federal Building Conference Room No. 110.

For information, please contact the MBDA Regional Office at (212) 264-3262.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: September 28, 1992.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

[FR Doc. 92-24266 Filed 10-6-92; 8:45 am]

BILLING CODE 3510-21-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Meeting

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Correction notice.

SUMMARY: This Office proposes to change the time of the meeting of the Public Advisory Committee for Trademark Affairs, published in the issue of Wednesday, September 16, 1992, on page 42740. Please make the following correction: The meeting will begin at 9 a.m. and conclude at 4 p.m. on October 27, 1992.

Dated: September 29, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-24255 Filed 10-6-92; 8:45 am]

BILLING CODE 3510-16-M

International Trade Administration

[A-557-805]

Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Gary Bettger, Office of Countervailing Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482-2815 or 482-2239, respectively.

Order

Scope of Order

The product covered by this order is extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of sable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on August 25, 1992, the Department of Commerce (the Department) made its final determination that extruded rubber thread from Malaysia is being sold at less than fair value (57 FR 38465). On September 28, 1992, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of extruded rubber thread from Malaysia. These antidumping duties will be assessed on all entries of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after April 2, 1992, the date of publication of our preliminary determination in the **Federal Register** (57 FR 11287). Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margins as follows:

Producer/manufacturer/exporter	Margin percentage
Heveafil/Filmax Sdn. Bhd	10.68
Rubberflex Sdn. Bhd	20.36
All others	15.16

In its final determination, the Department made an affirmative determination with respect to critical circumstances for Rubberflex. However, the ITC in its final determination found that retroactive imposition of antidumping duties appears not to be necessary to prevent recurrence of material injury that was caused by massive imports of the subject merchandise over a short period of time. Therefore, we shall order Customs to terminate the retroactive suspension of liquidation under section 735(c)(4)(B), and to release any bond or other security and refund any cash deposit

required under section 733(d)(2) with respect to merchandise entered, or withdrawn from warehouse, for consumption prior to April 2, 1992.

This notice constitutes the antidumping duty order with respect to extruded rubber thread from Malaysia, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

Correction Ministerial Error

On September 15, 1992, Rubberflex Sdn. Bhd. (Rubberflex), one of the two respondents in the antidumping investigation, alleged that the Department made a ministerial error in calculating the less than fair value margin percentage for Rubberflex. Rubberflex alleged that the Department failed to use cost data which the company had supplied for food grade and heat resistant rubber thread and for certain other gauges of rubber thread, and used instead the best information available.

We agree in part with Rubberflex's allegations of ministerial error. We found that complete cost information was, in fact, on the record for food grade and heat resistant extruded rubber thread, and that this information had also been submitted on computer tape format, as requested by the Department. Although the coding used to identify these grades differed in the cost files from the coding used in the sales files, respondent had provided an explanation of the coding differences. Therefore, we recalculated the margin on these grades using respondent's cost information. The margin percentage for Rubberflex in this notice reflects this recalculation for food grade and heat resistant rubber thread.

For certain other gauges of rubber thread, Rubberflex provided neither complete cost of production nor constructed value information as requested by the Department in its original antidumping questionnaire and in a later supplemental questionnaire. Therefore, for these gauges, we did not recalculate the less than fair value margins but retained the fair value calculations as described in the final determination of sales at less than fair value. These calculations were based on the best information available rather than the incomplete information in the responses.

Treatment of Countervailing Duties to Offset Export Subsidies

On August 25, 1992, the Department published in a companion investigation a Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Extruded Rubber Thread from Malaysia, 57 FR 38472, which ordered a deposit of countervailing duties on the subject merchandise in the amount of 9.63 percent.

All of the subsidies to be offset by the countervailing duties in that case were export subsidies.

In accordance with section 772(d)(1)(D) of the Act, we normally increase the United States price by the amount of any countervailing duties imposed to offset export subsidies. In this case, however, no adjustment to the Untied States price for countervailing duties was required because the export subsidies did not affect the margin calculations. Foreign market value was based on sales for export to Hong Kong and on constructed value. On exports to Hong Kong, respondents received the same export subsidies as on exports to the Untied States. Because the export subsidies were reflected in both the U.S. price (USP) and foreign market value (FMV), the subsidies did not affect margin calculations using third country sales. See, Final Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof from Singapore, 54 FR 19112 (May 3, 1989). For those sales where constructed value was used for foreign market value, we based constructed value on costs which reflected the export subsidies. Because the export subsidies were reflected in both USP and FMV, the subsidies did not affect the margin calculations using constructed value.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: October 5, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-24525 Filed 10-6-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposal To Register Certain Non-Member Officials of Member Firms and To Require Membership of Certain Non-Member Parent Firms

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT") has submitted a proposed new rule which would establish procedures to register certain non-member officials of member firms and to require membership of certain non-member parent firms. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets has determined to publish the CBT proposal for public comment. The Division believes that publication of the CBT proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before November 6, 1992.

FOR FURTHER INFORMATION CONTACT: David Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rules and Rule Amendments

By a letter dated September 18, 1992, the CBT submitted a proposed new rule pursuant to section 5a(12) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(c) which would establish procedures requiring registration of certain non-member officials of member firms and application for membership by certain non-member parent firms.[1]

Under the proposal, certain non-member officers of member firms would be required to register with the CBT as "designated persons" of the member firm. A registered designated person would be personally responsible to the CBT for the member firm's compliance with CBT rules.

The proposal also would require any non-member individual who holds more than a ten percent financial interest in a member firm or exercises control over the management of the firm, but is not registered as a designated person, to consent to CBT jurisdiction.

Finally, the proposal would require any non-member firm that holds more than a ten percent financial interest in a member firm to also become a member firm. U.S. domiciled firms with adjusted net capital in excess of $100,000,000 would automatically be exempted from this requirement, and other firms could request exemption from the CBT.

[1] The CBT originally submitted its proposal on July 29, 1992. The Division of Trading and Markets remitted the submission pursuant to the authority delegated by Commission Regulation 1.41a(a)(1) and raised certain questions. The CBT responded to the questions and resubmitted the proposal in the September 18, 1992, letter.

II. Request for Comments

The Commission requests comments on any aspect of the CBT's proposed new rule that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the proposed rule and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposed rule should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 1, 1992.

Alan L. Seifert,

Deputy Director.

[FR Doc. 92–24334 Filed 10–6–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on Thursday, October 22, 1992 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations and Low-Intensity Conflict Forces.

In accordance with section 10(d) of Public Law 92–463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: October 1, 1992.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 92–24285 Filed 10–06–92; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Transition Assistance Survey, OMB No. 0701–0123

Type of Request: Expedited Submission—Approval Date Requested: 30 days following publication in the **Federal Register**

Average Burden Hours/Minutes Per Response: 15 minutes

Responses Per Respondent: 1

Number of Respondents: 8,750

Annual Burden Hours: 2,187

Annual Responses: 8,750

Needs and Uses: This survey is being conducted on Air Force personnel who were discharged or retired between July 1, 1991, and June 30, 1992. The group will be asked about their employment status and opinions about the Transition Assistance Program. The collected data will be used to improve services to future departing members.

Affected Public: Individuals or households

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: October 1, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–24284 Filed 10–6–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Environmental Assessment for Base Realignment at Adelphi, MD

AGENCY: United States Army, Department of Defense.

ACTION: Finding of no significant impact.

SUMMARY: The proposed action is to transfer various research functions to the newly established Army Research Laboratory (ARL) at Adelphi, Laboratory Center (ALC), Maryland. The transferring research functions to be realigned at ALC include the Electronics Technology and Devices Laboratory (ETDL) from Fort Monmouth, New Jersey; a portion of the Atmospheric Sciences Laboratory from White Sands Missile Range (WSMR), New Mexico; the research mission from the Harry Diamond Laboratories (HDL) at Woodbridge, Virginia; and the Directed Energy and Sensors Basic and Applied Research element of the Night Vision and Electro-optics Directorate (NVEOD) from Fort Belvoir, Virginia. Project construction would begin in 1993 and the move-in would be complete in 1997.

The relocation of functions from ETDL, WSMR, and NVEOD will move approximately 461 jobs, primarily civilian, to ALC. Approximately 128 positions will transfer out of ALC or be contracted out. An estimated 17 relocations to the newly established ARL will result in an overall net loss of 35 ARL positions at ALC.

Alternatives considered in this Environmental Assessment (EA) include the No-Action Alternative, accommodation with existing on-post facilities, constructing facilities or leasing space off post, and renovation and construction of new facilities on post. The No-Action Alternative would be inconsistent with the Defense Base Closure and Realignment Act, and the off-post space alternatives would not be cost effective and would not achieve the realignment objective of centralizing research activities. The ARL facilities could not be accommodated by existing on-post facilities, or by renovation of existing facilities without new construction. Therefore, renovation and construction of new facilities at ALC was identified as the Proposed Action.

Five alternative site plans were evaluated to determine the environmental impact of new construction and renovation at ALC. Site Plan No. 1 consists of constructing facilities in the north and south parking lots and renovating 200 Area laboratory facilities. Site Plan No. 2 is similar to Site Plan No. 1, but includes

construction in a grassy area west of the north parking lot. Site Plan Nos. 3 and 4 consist of construction of new laboratory facilities in the 400 Area, and construction of facilities in the north parking lot or the south parking lot. Site Plan No. 5 consists of renovation and vertical expansion of 200 Area laboratories, and constructing new facilities in the north and south parking lots. Because of the potential for impacts from the clearing of presently wooded land, operational difficulties, and the potential need for utility line construction, Site Plan Nos. 3 and 4 were dropped from further consideration. The differences among Site Plan Nos. 1, 2, and 5 with regard to potential environmental impacts are minor.

In general, implementation of the Proposed Action would not substantially alter baseline environmental conditions at ALC. During construction, there would be (1) minor disruption of existing activities in the 200 Area of ALC, including increased noise levels; (2) increased traffic and disruption of on-post parking; (3) clearing a small, grassy area west of the north parking lot for the waste water pretreatment plant (under Site Plan No. 2). The Naval Reserve Training Center would experience minor noise disturbance during construction of the parking structure in the south parking lot (Site Plan Nos. 1, 2, and 5). Construction of the ARL facilities at ALC would result in increases in employment levels, regional sales volume, and regional income in Prince George's and Montgomery Counties, but the increases would not be regionally significant.

Implementation of the Proposed Action would have no effect on groundwater since groundwater is not used as a potable supply at ALC. There would be a very minor increase in storm water runoff to Paint Branch Creek and in air emissions from laboratory fume hoods and boiler stacks. There would be no change in noise levels. There would be no change in the types of hazardous and toxic materials handled and hazardous and toxic waste generated, but the volumes would increase. There would be no change in ALC's status as a Resource Conservation and Recovery Act (RCRA) storage facility. ALC's RCRA Consent Agreement would be modified to accommodate the Proposed Action. Industrial waste waters would undergo pretreatment prior to discharge to the municipal waste water treatment system. There would be no increase in domestic waste water flow.

Implementation of the Proposed Action would not affect wetlands, since there are no wetlands in the proposed construction areas. There would be no significant impacts on flora, fauna, or on threatened or endangered species. Phase I cultural resources investigations have been conducted in the area west of the north parking lot (Site Plan No. 2) and in the 400 Area (Site Plan Nos. 3 and 4). All archaeological surveys will be completed prior to site preparation and clearing, and requirements for compliance with the National Historic Preservation Act (NHPA) will be met.

Based on the environmental impact analysis found in the EA, which is hereby incorporated into this Finding of No Significant Impact (FNSI), it has been determined that implementation of the Proposed Action under Site Plan Nos. 1, 2, and 5 would not have a significant impact on the quality of the natural or the human environment. Because there would be no significant environmental impacts resulting from implementation of the Proposed Action, an Environmental Impact Statement (EIS) is not required and will not be prepared.

SUPPLEMENTARY INFORMATION: There is a 30-day waiting period for the public prior to implementation.

ADDRESSES: A request for a copy of the EA and comments may be forwarded to: Commander, U.S. Army Corps of Engineers, P.O. Box 1715, Baltimore, Maryland 21203–1715.

FOR FURTHER INFORMATION CONTACT: Questions concerning this FNSI may be directed to Mr. Jack Butler, (410) 962–4937.

Dated: October 1, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health), OASA (I, L&E).

[FR Doc. 92–24363 Filed 10–6–92; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Privacy Act of 1974; Amend and Delete Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend and delete record systems.

SUMMARY: The Department of the Navy proposes to amend three existing systems of records and delete one to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on November 6, 1992, unless comments are received that would result in a contrary determination. The deletion is effective October 7, 1992.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the Federal Register as follows:

51 FR 12906, April 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, June 3, 1986
51 FR 30377, August 26, 1986
51 FR 30393, August 26, 1986
51 FR 45931, December 23, 1986
52 FR 2147, January 20, 1987
52 FR 2149, January 20, 1987
52 FR 8500, March 18, 1987
52 FR 15530, April 29, 1987
52 FR 22871, June 15, 1987
52 FR 45846, December 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, June 8, 1988
53 FR 25363, July 6, 1988
53 FR 39499, October 7, 1988
53 FR 41224, October 20, 1988
54 FR 8322, February 28, 1989
54 FR 14378, April 11, 1989
54 FR 32882, August 9, 1989
54 FR 40160, September 29, 1989
54 FR 41495, October 10, 1989
54 FR 43453, October 25, 1989
54 FR 45781, October 31, 1989
54 FR 48131, November 21, 1989
54 FR 51784, December 18, 1989
54 FR 52976, December 26, 1989
55 FR 21910, May 30, 1990 (Updated Mailing Addresses)
55 FR 37930, September 14, 1990
55 FR 42758, October 23, 1990
55 FR 47508, November 14, 1990
55 FR 48678, November 21, 1990
55 FR 53167, December 27, 1991
56 FR 424, January 4, 1991
56 FR 12721, March 27, 1991
56 FR 27503, June 14, 1991
55 FR 28144, June 19, 1991
56 FR 31394, July 10, 1991 (DOD Updated Indexes)
56 FR 40877, August 16, 1991
56 FR 46167, September 10, 1991
56 FR 59217, November 25, 1991
56 FR 63503, December 4, 1991
57 FR 2719, January 23, 1992
57 FR 2726, January 23, 1992
57 FR 2898, January 24, 1992
57 FR 5430, February 14, 1992
57 FR 9246, March 17, 1992
57 FR 12914, April 14, 1992
57 FR 14698, April 22, 1992
57 FR 18472, April 30, 1992
57 FR 26422, June 10, 1992
57 FR 26821, June 16, 1992

57 FR 28499, June 25, 1992
57 FR 28502, June 25, 1992
57 FR 31700, July 17, 1992
57 FR 33326, July 28, 1992
57 FR 34127, August 3, 1992
57 FR 37791, August 20, 1992
57 FR 42741, September 16, 1992

The amendments and the deletion are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: September 30, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION
N10570–1

SYSTEM NAME: Pet Registration, (51 FR 18210, May 16, 1986).

Reason: DoD Directive 6015.5 assigns responsibility for DoD Veterinary Services under the cognizance of the Department of the Army, therefore, the system is no longer needed. See Department of the Army system of records notice A0040-905DASG, "Privately Owned Animal Record Files".

AMENDMENTS
N01001–5

SYSTEM NAME:

MSC Civilian and Naval Reserve Personnel Data File, (51 FR 18089, May 16, 1986).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "MSC Masters and Chief Engineers Data File".

SYSTEM LOCATION:

Delete entry and replace with "Military Sealift Command, Department of the Navy, Washington, DC 20398–5100."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "MSC Masters and Chief Engineers aboard civil service manned ships."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Biographical and professional information which may include name, rank, Social Security Number, designation, date and place of birth, home address and phone number, active duty training, education, correspondence courses taken, active military service, civilian employment experience, training for sea, maritime licenses held, commercial shipboard and shoreside experience, marital status, number of children and their names and ages, highlights of merchant marine career, special skills and accomplishments, hobbies, community activity and association membership."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At end of entry add "and Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "To maintain personnel data on MSC Masters and Chief Engineers and maintain biographical information for MSC civil service mariners. Such information is used to identify location and provide biographical information on civil service mariners in response to media and internal requests for information prior to public appearances, press releases, or courtesy calls to MSC ships by MSC personnel and members of other organizations or commands."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Name."

SAFEGUARDS:

Delete entry and replace with "Files are maintained in areas accessible to authorized personnel only, who are properly screened, cleared and trained for proper use of the data stored. Building employs security guards. Civil service mariner files are stored in the Employment and Labor Relations Division."

RETENTION AND DISPOSAL:

Delete entry and replace with "Civil service mariner records are maintained for the duration of employment with MSC. Outdated files are destroyed when updated information is received and the entire file is destroyed immediately upon the employee's separation or retirement from the Command."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398–5100.

Written requests should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398–5100.

Written requests should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual."

* * * * *

N01001–5

SYSTEM NAME:

MSC Masters and Chief Engineers Data File.

SYSTEM LOCATION:

Military Sealift Command, Department of the Navy, Washington, DC 20398–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

MSC Masters and Chief Engineers aboard civil service manned ships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical and professional information which may include name, rank, Social Security Number, designation, date and place of birth, home address and phone number, active duty training, education, correspondence courses taken, active military service, civilian employment experience, training for sea, maritime licenses held, commercial shipboard and shoreside experience, marital status, number of children and their names and ages, highlights of merchant marine career, special skills and accomplishments, hobbies, community activity and association membership.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To maintain personnel data on MSC Masters and Chief Engineers and maintain biographical information for MSC civil service mariners. Such information is used to identify location and provide biographical information on civil service mariners in response to media and internal requests for information prior to public appearances, press releases, or courtesy calls to MSC ships by MSC personnel and members of other organizations or commands.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Data cards or paper file folders stored in file cabinets.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Files are maintained in areas accessible to authorized personnel only, who are properly screened, cleared and trained for proper use of the data stored. Building employs security guards. Civil service mariner files are stored in the Employment and Labor Relations Division.

RETENTION AND DISPOSAL:

Civil service mariner records are maintained for the duration of employment with MSC. Outdated files are destroyed when updated information is received and the entire file is destroyed immediately upon the employee's separation or retirement from the Command.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398–5100.

Written requests should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398–5100.

Written requests should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05210–1

SYSTEM NAME:

Correspondence Files, (51 FR 18145, May 16, 1986).

CHANGES:

SYSTEM NAME:

Add "General" to the beginning of the entry.

SYSTEM LOCATION:

Delete entry and replace with "Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals who have initiated correspondence with the Department of the Navy."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Incoming correspondence which may include name, address, telephone number, organization, date of birth, and Social Security Number of correspondent and supporting documentation. Files also contain copy of response letter and documentation required to prepare the response."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At end of entry add "and Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "To maintain a record of correspondence received and responses made."

* * * * *

STORAGE:

Delete entry and replace with "Paper and automated records."

RETRIEVABILITY:

Delete entry and replace with "Name, organization, and date of correspondence."

SAFEGUARDS:

Delete entry and replace with "Access provided on a need to know basis only. Records are maintained in a locked and/or guarded office."

RETENTION AND DISPOSAL:

Delete entry and replace with "Retained for two years and then destroyed."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain full name and date individual wrote to the Navy or received a response. Request must be signed."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain full name and date individual wrote to the Navy or received a response. Request must be signed."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of

the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual concerned and records collected by the activity to respond to the request."

* * * * *

N05210-1

SYSTEM NAME:

General Correspondence Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have initiated correspondence with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence which may include name, address, telephone number, organization, date of birth, and Social Security Number of correspondent and supporting documentation. Files also contain copy of response letter and documentation required to prepare the response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To maintain a record of correspondence received and responses made.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, organization, and date of correspondence.

SAFEGUARDS:

Access provided on a need to know basis only. Records are maintained in a locked and/or guarded office.

RETENTION AND DISPOSAL:

Retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The request should contain full name and date individual wrote to the Navy or received a response. Request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain full name and date individual wrote to the Navy or received a response. Request must be signed.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned and records collected by the activity to respond to the request.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N11012-1

SYSTEM NAME:

Navy Personnel Billeting System (NPBS), (51 FR 18210, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013; and Executive Order 9397."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N11012-1

SYSTEM NAME:

Navy Personnel Billeting System (NPBS).

SYSTEM LOCATION:

Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135–5110.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All bachelor military (officers and enlisted) and bachelor civilian personnel requesting berthing currently or in the future at a command where this system is installed may be covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Social Security Number, name, duty station, forwarding address and home address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013; and Executive Order 9397.

PURPOSE(S):

To manage the BEQ/BOQ complex; to report status of berthing availability, furniture and maintenance associated with a BEQ/BOQ complex.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, and hard copy reports.

RETRIEVABILITY:

Name and/or Social Security Number.

SAFEGUARDS:

Access to computer room, software and storage media requires special positive identification clear through security department. System access from remote terminals is controlled by user site ID's.

RETENTION AND DISPOSAL:

An individual's reservation record is maintained on disk for six months and is then system deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135–5110.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135–5110.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135–5110.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies in the form of Navy messages and/or travel orders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–24274 Filed 10–06–92; 8:45 am]

BILLING CODE 3810-01-F

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement; Library Services and Construction Act; Promulgation of Federal Shares

Section 7(b) of the Library Services and Construction Act, Public Law 84–597, as amended (20 U.S.C. 351 *et seq.*), requires the Secretary of Education to promulgate the Federal share for each State every second fiscal year beginning with fiscal year 1971. The Federal shares are in proportion to the State's per capita income and range from 33 to 66 percent. Per capita income data from the Department of Commerce for the years 1989, 1990, and 1991 have been used to establish the Federal shares applicable to titles I and II of the act. The Federal shares published in the table below are effective for the fiscal years ending September 30, 1994 and September 30, 1995.

Dated: October 1, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

State	Federal share (percent)
Alabama	60.02
Alaska	44.37
Arizona	56.47
Arkansas	62.33
California	44.86
Colorado	49.61
Connecticut	33.00
Delaware	45.16
Florida	49.87
Georgia	54.34
Hawaii	45.40
Idaho	59.80
Illinois	45.60
Indiana	54.96
Iowa	54.86
Kansas	52.58
Kentucky	59.80
Louisiana	61.62
Maine	54.03
Maryland	41.42
Massachusetts	39.26
Michigan	50.76
Minnesota	49.80
Mississippi	65.72
Missouri	53.24
Montana	59.89
Nebraska	54.04
Nevada	47.46
New Hampshire	42.99
New Jersey	33.00
New Mexico	62.12
New York	41.01
North Carolina	55.99
North Dakota	59.95
Ohio	53.35
Oklahoma	59.44
Oregon	54.13
Pennsylvania	49.78
Rhode Island	49.37
South Carolina	59.91
South Dakota	58.84

State	Federal share (percent)
Tennessee	57.26
Texas	55.39
Utah	62.25
Vermont	52.60
Virginia	46.99
Washington	49.58
West Virginia	63.27
Wisconsin	53.14
Wyoming	56.30
District of Columbia	37.19
Puerto Rico	66.00
American Samoa	66.00
Northern Mariana	66.00
Guam	66.00
Virgin Islands	66.00
Palau	100.00

[FR Doc. 92-24287 Filed 10-6-92; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Involvement Notification for DOE Permission for Off-Loading Activities To Support the Movement of Millstone Unit 2 Steam Generator Sub-Assemblies Across the Savannah River Site (SRS)

AGENCY: Department of Energy.

ACTION: Notice of floodplain/wetlands involvement and solicitation of comments.

SUMMARY: Regulations at 10 CFR part 1022 require DOE to evaluate actions that may be taken in a floodplain or wetland in order to ensure consideration of protection of floodplains and wetlands in the decision-making process. As soon as practicable after a determination that a floodplain and/or wetland may be involved, the regulations require that a public notice be published in the **Federal Register**, including a description of the proposed action and its location.

DOE proposes to grant permission to Chem-Nuclear Services, Inc. (CNSI) to modify the SRS boat ramp at river mile 157 on the Savannah River to facilitate off-loading and movement of two recommissioned Millstone Unit 2 nuclear steam generator subassembly packages (SGSA) over SRS roads for disposal at the CNSI low-level radioactive waste burial facility in Barnwell County, South Carolina. Two trips would be necessary. Modifications to an existing 15-foot wide SRS boat ramp, which was built in the 1950's would be to remove upland vegetative growth and silt that has accumulated on and adjacent to the ramp so a 40-foot wide access is provided to the ramp area for the barge to dock and off-load the SGSAs. The silt and soil including shrubs and small trees, after monitoring and sampling for contamination as necessary, would be disposed at an approved landfill on SRS. CNSI estimates approximately 17 cubic yards of sediment would be dredged 20 feet on either side of the centerline of the SRS boat ramp. In order to maintain compliance with the Corps of Engineers nationwide permit, CNSI has stated that in no case would more than 25 cubic yards of material be removed from below the Savannah River ordinary high water mark. During the time frame between the two proposed SGSA trips, the area around the SRS boat ramp would be protected from the effects of erosion by the use of erosion mats. At the termination of the project, CNSI would restore the affected floodplain contours above the ordinary high water mark to preproject conditions. Adherence to a DOE approved soil erosion control plan by CNSI would be required before this proposed work is initiated. No wetlands on the SRS would be affected by this project.

In accordance with DOE regulations for compliance with floodplain/wetland environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain/wetland assessment for the proposed action and the alternatives. This assessment will be included as an appendix to the Environmental Assessment for DOE Permission for Off-Loading Activities to Support the Movement of Millstone Unit 2 Steam Generator Sub-Assemblies Across the Savannah River Site (DOE/EA-0818). The Statement of Findings for this action will be issued in accordance with 10 CFR part 1022.

DATES: Comments on the proposed actions are due on or before October 22, 1992.

ADDRESSES: Send comments to: Floodplain/Wetlands Comments, Mr. Stephen R. Wright, U.S. Department of Energy, Savannah River Field Office, P.O. Box A, Aiken, South Carolina 29802, phone number (803) 725-3957. Fax comments to: (803) 725-8434.

FOR FURTHER INFORMATION CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585, phone number (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: The Millstone Unit 2 in Waterford, Connecticut, is retiring its two steam generators. Each steam generator sub-assembly (SGSA) would be seal-welded, filled with concrete, and moved to the CNSI facility located in Barnwell County, South Carolina for disposal as low-level radioactive waste. Each SGSA package would consist of a steam generator vessel, top hat, tubes, tube supports and concrete, and would have a total radioactivity calculated at 1403 curies. The major radionuclides are Cobalt-60/58, Iron-55, and Nickle-63. Each SGSA package would be loaded on a trailer and then on to a barge in Connecticut and transported to CNSI separately. The loaded truck-trailer combination would be 116 feet long, 18 ft. wide, 20 ft. high, and weigh 1,150,350 pounds. The loaded barge would be approximately 200 ft. long and 40 ft. wide, draw 4 ft. of water, and be pushed by two tugboats.

CNSI requests DOE's permission to modify and use the SRS boat ramp facility and SRS roads to dock and move each SGSA package across SRS to the CNSI facility. There is no other ramp on the upper Savannah River on the South Carolina side which will accommodate overweight loads. The Georgia side facilities cannot be used because the Savannah River bridges cannot handle the weight. Therefore other means of barge transport or rail movement are not reasonable alternatives. Overland transportation of the SGSAs is also considered unreasonable because of the bridges inability to support the weight. CNSI has contacted the State of South Carolina for a permit for oversize/overweight loads in order to transport the steam generators over state roads after off-loading at SRS to the CNSI burial site in Barnwell County, South Carolina. The U.S. Nuclear Regulatory Commission has granted a certificate of compliance, dated June 3, 1992, to Northeast Nuclear Energy Company for authority to use the package for shipment and for the package to be shipped.

Using specialized equipment, CNSI's contractor, would off-load the barge containing the SGSA package by pushing the bow of the barge against the boat ramp, placing transition beams on the bow of the barge and driving the equipment off the barge and moving it across SRS. Special operational controls would be used during movement of the SGSA packages. The movement of the SGSAs would require spanning two SRS bridges with transition beams in order to accommodate the additional weight. All activities on SRS related to the proposed project would occur in controlled-access areas on federally-owned property.

A location map showing the boat ramp site and further information can be obtained from the Savannah River Field Office (see "**ADDRESSES**" above).

Issued in Washington, DC, on October 5, 1992.

Everet Beckner,

Deputy Assistant Secretary for Defense Programs.

[FR Doc. 92-24523 Filed 10-6-92; 8:45 am]

BILLING CODE 6450-01-M

Renewal of the Charter of the American Statistical Association Committee on Energy Statistics

Pursuant to the Federal Advisory Committee Act (Public Law 92-463), I hereby certify that the renewal of the charter of the American Statistical Association Committee on Energy Statistics is in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR section 101-6.1029.

The purpose of the Committee is to provide advice on a continuing basis to the Administrator of the Energy Information Administration (EIA), including:

1. Periodic reviews of the elements of EIA information collection and analysis programs and the provision of recommendations;

2. Advice on priorities of technical and methodological issues in the planning, operation, and review of EIA statistical programs; and

3. Advice on matters concerning improved energy modeling and forecasting tools, particularly regarding their functioning, relevancy, and results.

Further information concerning this Committee can be obtained from Rachel Murphy (202) 586-3279.

Issued in Washington, DC, on October 2, 1992.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92-24359 Filed 10-6-92; 8:45 am]

BILLING CODE 6450-01-M

DOE Response to Recommendation 92-3 of the Defense Nuclear Facilities Safety Board Concerning the Conduct of Operational Readiness Reviews Prior to Restart of the HB-Line at the Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice and Request for Public Comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 92-3 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on June 4, 1992, (57 FR 23578) concerning the conduct of Operational Readiness Reviews prior to restart of the HB-Line at the Savannah River Site in the State of South Carolina.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before November 6, 1992.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC. 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington DC 20585.

Issued in Washington, DC, on September 27, 1992.

Mario Fiori,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

[FR Doc. 92-24360 Filed 10-6-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP92-715-000, et al.]

Liberty Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Liberty Pipeline Co.

[Docket No. CP92-715-000]

September 25, 1992.

Take notice that on September 21, 1992, Liberty Pipeline Company (Applicant) Transco Tower, 2800 Post Oak Boulevard, Houston Texas 77056, filed pursuant to Section 7(c) of the Natural Gas Act (NGA), and Section 157.6 of the Commission's Regulations application for Certificates of Public Convenience and Necessity for authorization to:

(1) Construct, own and operate approximately 38.2 miles of 30-inch O.D. pipeline and related facilities;

(2) Be granted a blanket certificate of public convenience and necessity under Subpart F of part 157 of the Commission's Regulation's authorizing certain construction and operation of facilities and certificate amendments and abandonment under Section 7 of the NGA; and

(3) Be granted a blanket certificate of public convenience and necessity under Subpart G of Part 284 of the Commission's regulations authorizing the transportation of natural gas for others.

Applicant is a partnership consisting of six partners: ANR Atlantic Pipeline Company, a wholly owned subsidiary of ANR Pipeline Company (ANR); Edison Liberty Transmission Corporation, a wholly owned subsidiary of Consolidated Edison Corporation of New York, Inc. (ConEd); North East Liberty Co., Inc., a wholly owned subsidiary of the Brooklyn Union Gas Company (BUG); LBX Transmission Corporation, a wholly owned subsidiary of Long Island Lighting Company (LILCO); Texas Eastern Liberty Inc., a wholly owned subsidiary of Texas Eastern Transmission Corporation (TETCO); and Transco Liberty Pipeline Company, a wholly owned subsidiary of Transco Gas Company (Transco).

Applicant proposes to construct, own and operate approximately 38.2 miles of new 30-inch O.D. pipeline extending from proposed points of receipt with TETCO and Transcontinental Gas Pipeline Company (TGPL) to be located in the Town of South Amboy, Middlesex County, New Jersey, across Raritan Bay and Lower New York Bay to a point offshore proximate to Rockaway, Long Island, New York. The pipeline will come onshore on Long Island at Rockaway Beach, proceed through Far Rockaway, cross the extreme southwestern corner of Nassau County, skirt the southern edge of John F. Kennedy International Airport and then terminate at a proposed interconnection with the New York Facilities System (NYFS) downstream of a metering and regulating station proposed to be installed by Applicant near Howard Beach in Queens County, New York. This interconnection will be the proposed primary point of delivery to the NYFS. The NYFS is owned and operated by three local distribution companies (LDCs), BUG, Con Ed and LILCO, all of which have executed precedent agreements for transportation service to be provided by Liberty.

In addition to providing transportation services to the LDCs that serve the New York metropolitan area, Applicant will also provide transportation services to other shippers, including the Power Authority of the State of New York, KIAC Partners (KIAC) and Nissequoge Cogen Partners (NCP), all of which have executed precedent agreements for transportation service to be provided by

Applicant. KIAC and NCP are proposed cogeneration facilities. It is claimed that Liberty will have the ability to deliver substantial new incremental quantities of domestic natural gas. Applicant states further that it is the intent of the LDC shippers to use Applicant as an alternate point of delivery for supplies which are presently authorized to be delivered by TETCO and TGPL through existing delivery points.

Applicant is a transportation only pipeline which will be connected directly to two existing interstate pipeline systems, TETCO and TGPL, and indirectly to the other major interstate pipeline systems of ANR, Panhandle Eastern Pipe Line Company (Panhandle), Texas Gas Transmission Corporation (TGT) and Trunkline Gas Company (Trunkline). Applicant's shippers have contracted with the aforementioned interstate pipelines to provide upstream transportation service. TETCO, TGT, TGPL and Trunkline will submit complementary applications for authorization to construct and operate facilities necessary for this transportation service. ANR and Panhandle will transport quantities of natural gas for various of the Applicant's shippers using existing capacity and under their respective blanket authorizations.

Applicant's facilities have been designed to deliver up to 500,000 dt per day on a firm basis. Applicant states that this capacity has been fully subscribed.

Applicant will be a project financed pipeline and it is anticipated that the Applicant's capital structure will consist of 75% debt and 25% equity. Applicant has provided a *pro forma* tariff which reflects a straight fixed variable rate design, includes provisions for capacity release and assignment, flexible receipt and delivery points and limitations on abandonment.

Applicant requests expedited approval of its application and the related applications filed by TETCO, TGPL, TGT and Trunkline so that all related facilities and services may be in place by November 2, 1994.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Eastern Transmission Corp.

[Docket No. CP92-716-000]

September 25, 1992.

Take notice that on September 21, 1992 Texas Eastern Transmission Corporation (Applicant), P.O. Box 1642, Houston, Texas, 77251-1642, filed under section 7(c) of the Natural Gas Act and § 157.7 of the Federal Energy Regulatory Commission's (Commission) regulations for a certificate of Public Convenience and Necessity authorizing Applicant to: (a) Perform a new firm incremental transportation service for certain customers; and (b) construct and operate the associated incremental facilities required to perform the service, and perform incremental open-access transportation on such facilities.

Applicant requests authorization to provide a new firm transportation service pursuant to proposed Rate Schedule FTS-10 for Elizabethtown Gas Company (Elizabethtown), a local distribution company, and Eastern Shore Natural Gas Company (Eastern Shore), an interstate pipeline.

Applicant proposes to render the firm incremental transportation service for Elizabethtown from the point of receipt at the interconnect of Trunkline Gas Company (Trunkline) and Applicant at M&R 2770 near Applicant's mainline compressor station at Lebanon, Ohio. Applicant proposes to transport and deliver up to 29,000 Dth per day (Dth/d) to Elizabethtown at the Applicant's existing Woodbine M&R Station No. 275 in Middlesex County, New Jersey. Applicant states that the receipt point on its system for Eastern Shore's volumes would be the interconnection of its system and various pipeline systems near its mainline compressor station at Lebanon, Ohio. Applicant would then transport up to 1,000 Dth/d for the account of Eastern Shore at an existing point of interconnection between Applicant and facilities of Columbia Gas Transmission Corporation (Columbia) at M&R 70011 located near Eagle, Pennsylvania and/or M&R 71528 located near Lancaster, Pennsylvania.

Applicant also requests authorization to construct, install, own and operate facilities including 20.58 miles of pipeline and modify Applicant's existing metering and regulating Station No. 275 in the States of Ohio, Pennsylvania and New Jersey. Applicant proposes to complete the construction and installation of the proposed facilities by November 1, 1994. The estimated cost of the facilities is $39,355,400.

Applicant proposes to charge Elizabethtown and Eastern Shore initial rates including a monthly demand charge of $22.408 per dth. Any authorized overrun would be charged at a rate equivalent to Applicant's currently effective Rate Schedule IT rate. Applicant requests that the Commission authorize these initial rates designed on a 100% demand charge basis, for the proposed service.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corp.

[Docket No. CP92-721-000]

September 25, 1992.

Take notice that on September 21, 1992 Transcontinental Gas Pipe Line Corporation (Applicant), Post Office Box 1396, Houston, Texas, 77251, filed an application pursuant to section 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing (1) the construction, installation, and operation of certain facilities, including pipeline loop and related compression facilities and certain market area facilities, and (2) firm transportation service of up to the dekatherm equivalent of 115,000 Mcf per day, all as more fully set forth in the Application which is on file with the Commission and open to public inspection.

Applicant states that under the instant Application, it would provide firm transportation service from a proposed interconnect with Texas Eastern Transmission Corporation at Leidy, Clinton County, Pennsylvania to a proposed interconnect with Liberty Pipeline Company (Liberty) near South Amboy, New Jersey. In order to effectuate the instant proposal, and in conjunction with various other related applications being filed concurrently and services to be provided under existing authorizations, shippers shall contract directly with suppliers of natural gas and will arrange for the delivery of these purchase quantities to points of receipt on the systems of Texas Gas Transmission Corporation (Texas Gas) and ANR Pipeline Company (ANR). Shippers would deliver or cause to be delivered a maximum total volume of 115,000 Mcf of gas per day (plus downstream fuel) to Texas Gas and ANR. Such quantities will be transported by Texas Gas and ANR to an existing interconnection with Texas Eastern Transmission Corporation (TETCO) at Lebanon, Ohio, and TETCO will then transport the volumes to a proposed interconnection with Applicant at Leidy, Pennsylvania for delivery by Applicant to Liberty at the Applicant's South Amboy interconnect under the instant proposal. The shippers who have contracted with Applicant for upstream transportation service for deliveries to Liberty are Consolidated Edison Company of New York, Inc., The Brooklyn Union Gas Company, Long Island Lighting Company, KIAC Partners and Nissequogue Cogen Partners.

Applicant states that in order to effectuate the delivery of 115,000 Mcf per day on a firm basis, new pipeline,

pipeline looping, compression facilities, and market area facilities must be constructed on the Applicant's system. The proposed new facilities include:

(a) New 16-inch tap on 24-inch "A" M.P. 194.06, to receive volumes from TETCO in Clinton County, Pennsylvania;

(b) 10.51 mile 36-inch Leidy Loop from M.P. 161.29—M.P. 171.80 in Lycoming and Clinton Counties, Pennsylvania;

(c) 6.67 mile 36-inch Leidy Loop from M.P. 142.74—M.P. 149.41 in Lycoming County, Pennsylvania;

(d) 12,000 HP of additional compression and regulation at Station 205 at M.P. 1773.40 in Lawrence Township, New Jersey;

(e) Regulator Station Expansion at Milltown Regulatory Station M.P. 1790.84, North Brunswick, New Jersey;

(f) 1.10 mile 26-inch pipeline segment from the existing M&R Station in Morgan, New Jersey northward to a proposed M&R Station near South Amboy, New Jersey;

(g) New Delivery Point, including an M&R Station in South Amboy, New Jersey.

Applicant states that the proposed facilities are estimated to cost $71,971,887.00 which will be financed initially through short-term loans and funds on hand, with permanent financing to be arranged as part of Applicant's overall long-term financing program.

Applicant proposes to charge a rate under proposed Rate Schedule FT–2P based on an incremental cost of service and a straight fixed-variable rate design methodology and will charge an initial monthly reservation rate of $10.28 per Mcf of capacity for the proposed firm transportation service.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of the notice.

4. Texas Eastern Transmission Corp.

[Docket No. CP92–719–000]

September 25, 1992.

Take notice that on September 21, 1992, pursuant to section 7(c) of the Natural Gas Act, as amended (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 157.7), Texas Eastern Transmission Corporation (Applicant), P.O. Box 1642, Houston Texas, 77251–1642, filed for a certificate of public convenience and necessity authorizing applicant to: (a) construct and operate certain pipeline additions to its existing pipeline system, and (b) to transport natural gas on a firm incremental basis for certain shippers via those facilities under new Rate Schedule FTS–9.

Applicant requests authorizations to transport a total of 115,811 dth on a firm incremental basis under its new Rate Schedule FTS–9 from Lebanon, Ohio to Leidy, Pennsylvania for five shippers. These shippers will also receive transportation service on the proposed Liberty Pipeline Company's (Liberty) facilities. The gas to be transported will be received by Applicant at Lebanon, Ohio from Texas Gas Transmission Corporation (Texas Gas) and ANR Pipeline Company (ANR) and will be transported by Applicant to the Transcontinental Gas Pipe Line Corporation (Transco) system for further transportation by Transco to Liberty's facilities at South Amboy, New Jersey.

Applicant's proposal in this docket is part of one of the two upstream pipeline strings which will provide transportation of natural gas from domestic sources of supply to the proposed facilities of Liberty. The facilities of Liberty will consist of a pipeline extending from the points of interconnection with the Transco system, and that of the Applicant near South Amboy, New Jersey to an interconnection with the facilities of the New York Facilities Group (Consolidated Edison of New York, Inc., The Brooklyn Union Gas Company, and Long Island Lighting Company) near the John F. Kennedy International Airport, Queens New York.

The proposed facilities in this Application include;

(a) Approximately 2.5 miles of 30" pipeline loop and 5.07 miles of 24" pipeline replacement between Lebanon, Ohio and Five Points, Ohio;

(b) Approximately 22.4 miles of 30" pipeline loop between Five Points, Ohio and Somerset, Ohio;

(c) Approximately 2.94 miles of 36" pipeline loop between Berne, Ohio and Holbrook, Pennsylvania;

(d) Approximately 6.5 miles of 36" pipeline loop between Holbrook, Pennsylvania and Uniontown, Pennsylvania;

(e) Approximately 4.71 miles of 36" pipeline loop between Uniontown, Pennsylvania and Delmont, Pennsylvania;

(f) Approximately 9.07 miles of 36" pipeline loop between Delmont, Pennsylvania and Arnagh, Pennsylvania;

(g) Approximately 5.52 miles of 36" pipeline loop between Lilly, Pennsylvania and Entriken, Pennsylvania;

(h) Approximately 5,350 horsepower of additional compression at the Lebanon Compressor Station, Ohio and piping upgrade at the Somerset Compressor Station, Ohio;

(i) Approximately 1,650 horsepower of additional compression at the five points Compressor Station, Ohio;

(j) Approximately 4,600 horsepower of compression at the proposed Leidy Compressor Station, Pennsylvania;

(k) Pipe modification and new impeller for the existing 4,600 horsepower compressor at the Perulack Compressor Station, Pennsylvania;

(l) A new metering and regulating station at the proposed interconnection of Applicant's and Transco's pipelines near Leidy, Pennsylvania.

These proposed facilities include approximately 58.71 miles of pipeline, and 11,600 horsepower of compression. The cost of these additions is estimated to be $104,197,400. With these facilities Applicant requests authority to transport up to 115,811 dth of natural gas per day for five shippers. The shippers are; Consolidated Edison Company of New York, Inc., The Brooklyn Union Gas Company, Long Island Lighting Company, Nissequogue Cogen Partners and KIAC Partners.

The proposed rates under Rate Schedule FTS–9 is a one-part 100% demand rate of $16.742 per dth and an excess natural gas transportation rate of $0.5504 per dth. Applicant states that the FTS–9 Rate Schedule provides for capacity reallocation by the FTS–9 shippers.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corp.

[Docket No. CP92–720–000]

September 25, 1992

Take notice that on September 21, 1992, pursuant to section 7(c) of the Natural Gas Act, as amended (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 157.7), Texas Eastern Transmission Corporation (Applicant), P.O. Box 1642, Houston, Texas, 77251–1642, filed an application for a certificate of public convenience and necessity authorizing (a) construction and operation of certain pipeline additions to its existing pipeline system, (b) transportation of natural gas on a firm incremental basis for certain shippers under a new Rate Schedule, (c) shifting delivery of natural gas currently being delivered to New York area distribution companies at Goethal's Bridge (M&R058) to the proposed South Amboy, New Jersey delivery point.

Applicant requests authorization to transport 128,333 dth per day on a firm incremental basis under new Rate Schedule FTS–6 from Lebanon, Ohio to South Amboy, New Jersey for five

shippers who would also receive transportation service on the proposed Liberty Pipeline Company (Liberty). The gas received by Applicant at Lebanon, Ohio will be transported upstream by Trunkline Gas Company (Trunkline), Panhandle Eastern Pipe Line Company (Panhandle), Texas Gas Transmission Corporation (Texas Gas) and ANR Pipeline Company (ANR). Applicant's proposed transportation, together with transportation on Trunkline, Panhandle, Texas Gas, and ANR upstream of Lebanon, Ohio, will provide upstream transportation for volumes to be delivered to the Liberty system. Applicant's proposal in this docket is part of one of the two upstream pipeline strings which will provide transportation of gas from domestic sources of supply to the proposed facilities of Liberty.

The facilities which the Applicant proposes to construct in this application are;

(a) Approximately 12.74 miles of 30" pipeline loop between Five Points, Ohio and Somerset, Ohio;

(b) Approximately 10.79 miles of 36" pipeline replacement between Somerset, Ohio, and Summerfield, Ohio;

(c) Approximately 10.5 miles of 36" pipeline loop between Holbrook, Pennsylvania, and Uniontown, Pennsylvania;

(d) Approximately 9.40 miles of 36" pipeline replacement between Uniontown, Pennsylvania, and Bedford, Pennsylvania;

(e) Approximately 8.31 miles of 36" pipeline replacement between Bedford, Pennsylvania, and Chambersburg, Pennsylvania;

(f) Approximately 7.02 miles of 36" pipeline replacement between Eagle, Pennsylvania, and Lambertville, New Jersey;

(g) Approximately 2.09 miles of 42" pipeline loop between Lambertville, New Jersey, and Linden, New Jersey;

(h) Approximately 11.7 miles of 24" pipeline connecting Applicant's existing pipeline system in South Plainsfield, New Jersey to a proposed point of interconnection with Liberty's pipeline near South Amboy, New Jersey;

(i) Approximately 1,650 horsepower of additional compression at the Somerset Compressor Station;

(j) Approximately 11,000 horsepower of additional compression at the Holbrook Compressor Station, Pennsylvania;

(k) Approximately 1,650 horsepower of additional compression at the Uniontown Compressor Station, Pennsylvania;

(l) Approximately 15,000 horsepower of additional compression at the Marietta Compressor Station, Pennsylvania;

(m) 1 new meter station near South Amboy, New Jersey, for delivery into Liberty's proposed pipeline;

(n) Replace impeller on two (2) existing 2750 horsepower units at the Hanover Compressor station.

These additions include approximately 72.10 miles of pipeline and 29,300 horsepower of compression. The cost of these facilities is estimated to be $166,045,400. Applicant requests authorization to transport a total of 128,333 dth per day for the following shippers; Consolidated Edison Company of New York Inc., The Brooklyn Union Gas Company, Long Island Lighting Company, Power Authority of the State of New York and Nissequoque Cogen Partners.

Applicant proposes to have the facilities in place so as to begin service by November 1, 1994, or such later date as the Liberty facilities and necessary upstream facilities are completed and placed in service.

Applicant proposes under Rate Schedule FTS–6 a one-part 100% demand rate of $24.788 per dth and an excess natural gas transportation rate of $0.8149 per dth. It is stated that the FTS–6 Rate Schedule provides for capacity reallocation by FTS–6 shippers.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of the notice.

6. Texas Eastern Transmission Corp. and Trunkline Gas Co.

[Docket No. CP92–717–000 and CP92–718–000]

September 25, 1992

Take notice that on September 21, 1992 Texas Eastern Transmission Corporation (Texas Eastern) and Trunkline Gas Company (Trunkline), both located at P.O. Box 1642, Houston, Texas, 77251–1642, filed a joint application in Dockets Nos. CP92–717–000, and CP92–718–000 pursuant to section 7(c) of the Natural Gas Act and § 157.7 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act for authorization for Texas Eastern or Trunkline to construct, install, own, and operate the associated facilities required to perform firm and interruptible open access blanket transportation services.

Texas Eastern is concurrently filing two applications for authorization to provide new incremental transportation services on its mainline system pursuant to proposed Rate Schedule FTS–6 and FTS–10. Certain of the Rate Schedule FTS–6 and FTS–10 shippers have elected upstream transportation by Panhandle Eastern and Trunkline and it is stated that they will require further transportation through the Lebanon Lateral to arrive at Texas Eastern's system. It is claimed that the authorized capacity of the Lebanon Lateral must be increased in order to accommodate fully delivery of the volumes to Texas Eastern.

Pursuant to section 7(c) of the NGA and § 157.7 of the Commission's regulations, applicants seek authority to allow, as appropriate, either Texas Eastern or Trunkline to increase the size of the second unit already certificated and authorized to be installed and operated at Gas City from 2,300 horsepower to 3,400 horsepower. In addition, authorization is requested to install and operate a 5,350 horsepower gas turbine compressor to be located near Glen Karn, Ohio. This additional compression on the Lebanon Lateral is required to provide increased transportation capacity for delivery of natural gas to Texas Eastern's mainline system at its Lebanon, Ohio compressor station. The estimated cost of the facilities is approximately $22,313,400.

Applicants state that inclusion of the facilities and related capacity proposed would result in an annual net economic benefit of approximately $1,371,479 to existing Texas Eastern shippers on the Lebanon Lateral. Texas Eastern proposes to perform transportation services under pending Rate Schedules LLT–1 and LLT–2 as proposed in Texas Eastern Docket No. CP92–459–000 and Trunkline Docket No. CP92–460–000. Rate Schedule LLT–1 will provide for firm, incremental open-access transportation service. Texas Eastern is not proposing to increase the proposed initial rates under LLT–1 and LLT–2.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

7. El Paso Natural Gas Co.

[Docket No. CP90–2214–004]

September 28, 1992

Take notice that on September 18, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed a motion at Docket No. CP90–2214–004, pursuant to section 7(c) of the Natural Gas Act and Rules 212 and 2002, *et seq.*, of the Commission's Rules of Practice and Procedure, requesting the Commission to amend the order issued August 1, 1991 at Docket No. CP90–2214–001 to reflect the facilities actually constructed, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

El Paso states that the Commission's order issued August 1, 1991 at Docket

No. CP90-2214-001 granted certificate authorization to construct and operate the facilities comprising its North System Expansion. It is stated that the new facilities will enable El Paso to transport increased volumes of gas from the San Juan Basin through El Paso's San Juan Mainline and Permian-San Juan Crossover Systems.

El Paso further states that it has completed construction of the facilities identified above and placed such facilities into service as of April 1, 1992. However, subsequent to receiving authorization El Paso determined that it would be more advantageous to install different compressor units at the White Rock and Dilkon Compressor Stations.

El Paso states that it proposed to install a 12,000 ISO horsepower Solar Mars gas turbine compressor unit at both the White Rock and Dilkon Compressor Stations. However, El Paso identified two (2) 14,000 ISO horsepower General Electric ("GE") Frame 3 compressor units, which if rebuilt, could be available for installation at the White Rock and Dilkon Compressor Stations. Rather than purchase new Solar Mars compressor units, El Paso elected to rebuild and install the available GE units at a lower total cost.

El Paso states that no adverse effects will result from the substitution of the GE Frame 3 for the Solar Mars units. The substitution of compressor units with a different horsepower rating will result in no change to the overall project design delivery capacity of 400 MMcf/d to the west-end of El Paso's system. El Paso's air quality permits for the White Rock and Dilkon Compressor Stations were based on a 14,000 ISO horsepower compressor unit. Finally, El Paso states there will be no adverse effects to noise levels from the substitution of the compressor units.

Comment date: October 19, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Trunkline Gas Co.

[Docket No. CP92-704-000]

September 28, 1992

Take notice that on September 15, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-704-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales service provided to Illinois Power Company (Illinois Power), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that it is requesting authorization to abandon sales service provided to Illinois Power pursuant to Trunkline's Rate Schedule P-1 of its FERC Gas Tariff, Original Volume No. 1 and a contract dated October 12, 1961. Trunkline indicates that under Rate Schedule P-1, Trunkline provided firm sales service to Illinois Power of up to 25,000 Mcf/d. Trunkline states that Illinois Power provided, and Trunkline accepted, notice of its intent to terminate the agreement on November 1, 1988. Trunkline, therefore, requests abandonment authorization, effective on the date of issuance of any Commission order granting abandonment authorization herein of its contractually terminated firm sales service obligation provided to Illinois Power under Rate Schedule P-1. Trunkline states that no facilities are proposed to be abandoned in the instant application.

Comment date: October 19, 1992, in accordance with Standard Paragraph F at the end of this notice.

9. Texas Gas Transmission Corp.

[Docket No. CP92-730-000]

September 8, 1992

Take notice that on September 24, 1992, pursuant to section 7(c) of the Natural Gas Act, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed an Application for a Certificate of Public Convenience and Necessity to authorize the construction and operation of facilities necessary to render firm transportation service for consolidated Edison Company of New York Inc. (Con Ed), Long Island Lighting Company, The Brooklyn Union Gas Company (BUG) and KIAC Partners, an affiliate of BUG (KIAC).

Applicant states that it is seeking authority to construct and operate facilities to expand its mainline system in order to accommodate an additional 102,239 MMBtu per day for firm upstream transformation for the Liberty Shippers.[1] Applicant will receive gas at various points on its system, and transport this gas under § 284.223 of the Commission's Regulations and its blanket certificate issued in Docket No. CP88-686-000, to Texas Eastern Transmission Corporation (TETCO) at an existing interconnection at Lebanon, Ohio. This gas would then be delivered to Liberty Pipeline Company (Liberty).

Applicant requests authority to construct and operate the following additions ot its system:

(A) 10.10 Miles of 36-inch pipeline looping on Applicant's 26-inch Main Lines and extending Northward to the south end of previously approved 36-inch loop, Ohio, Hancock and Breckinridge Counties, Kentucky;

(B) 6.0 Miles of 36-inch pipeline looping on Applicant's 26-inch Main Lines, beginning at the South end of the Existing 36-inch No. 1 Line and extending southward in Jefferson County, Kentucky;

(C) 13.70 Miles of 36-inch pipeline looping on Applicant's 26-inch Main Lines, beginning at the North End of previously approved 36-inch loop line and extending Northward in Oldham County, Kentucky; and

(D) 10.90 Miles of 36-inch pipeGasline looping Applicant's 26-inch Main Lines, beginning at the Southend of previously approved 36-inch loop Line and extending southward in Butler County, Ohio.

The estimated cost of these facilities is $54,000,000.

Applicant states that, although the proposed in service date is November 1, 1994, it has been agreed that the Liberty Shippers will not incur any demand charge responsibility on any transportation segment until the overall project is complete and in service. Thus, Applicant requests authority to capitalize interest on or after November 1, 1994, associated with the facilities which are complete and would be placed in service except for delays associated with the completion of the other segments comprising the overall project.

Comment date: October 19, 1992, in accordance with Standard Paragraph F at the end of the notice.

10. South Georgia Natural Gas Co.

[Docket No. CP92-709-000]

September 28, 1992

Take notice that on September 15, 1992, South Georgia Natural Gas Company (South Georgia), Post Office box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP92-709-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of

[1] Applicant's application, along with the applications of other pipelines providing upstream transportation service, is part of a project to bring additional domestic gas supplies to various markets in the Northeast. In addition to various upstream transportation arrangements, this project involves the construction of a new natural gas pipeline by a partnership known as Liberty Pipeline Company, extending from points of receipt with Transcontinental Gas Pipe Line Company and Texas Eastern Gas Transmission Corporation near South Amboy, New Jersey, across lower New York Bay to a new delivery point located near the John F. Kennedy International Airport.

firm transportation service performed for five existing customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

South Georgia states that all of its firm sales customers have converted all of their maximum daily quantities to firm transportation service on South Georgia pursuant to § 284.10 of the Commission's Regulations. South Georgia also states that in conjunction with their respective elections to convert, five of the converting customers request reductions in the level of firm transportation service they acquired as a result of the conversions. It is stated that the five customers request a reduction of firm transportation as follows:

Customer	Sales volume converted to firm transportation Mcfd	Requested reduction in firm transportation Mcfd	New level of firm transportation Mcfd
City of Andersonville, GA	122	61	61
City of Colquitt, GA	249	49	200
Decatur County, GA	250	100	150
Town of Meigs, GA	244	64	180
City of Shellman, GA	250	65	185

South Georgia requests that the partial abandonment of firm transportation service for the Town of Meigs, Georgia, be effective on March 1, 1992. South Georgia further requests that the partial abandonment of firm transportation service for the Cities of Andersonville, Colquitt and Shellman, Georgia and Decatur County, Georgia, be effective on May 5, 1992.

Comment date: October 19, 1992, in accordance with Standard Paragraph F at the end of this notice.

11. Williams Natural Gas Co.

[Docket No. CP92-727-000]

September 28, 1992

Take notice that on September 23, 1992, that Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-727-000 a request pursuant to §§ 157.205 and 157.216 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon the transportation of natural gas for direct sale to the City of Garden City, Kansas (Garden City) and to reclaim measuring and appurtenant facilities located in Finney County, Kansas, under WNG's blanket authorization issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG seeks authorization to abandon the transportation of gas for direct sale to Garden City for use at the old city solid waste dump site and to reclaim measuring and appurtenant facilities located in Section 36, Township 24 South, Range 33 West, Finney County, Kansas.

WNG states that Garden City notified WNG that they no longer required gas at the city's former solid waste dump site.

WNG states that the cost to reclaim measuring, regulating and appurtenant facilities is estimated to be approximately $510.

Comment date: November 12, 1992, in accordance with Standard Paragraph G at the end of this notice.

12. Williams Natural Gas Co.

[Docket No. CP92-728-000]

September 28, 1992

Take notice that on September 23, 1992, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-728-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon the transportation of gas for direct sale to Melvin Garey (MG) and the facilities installed for the delivery of the gas, under Williams' blanket certificate issued in Docket No. CP82-479-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Williams proposes to abandon the transportation of natural gas for MG and the associated facilities located in Stanton County, Kansas. It is stated that the gas was used in a grain dryer. It is asserted that Williams would reclaim measuring, regulating and appurtenant facilities used for the deliveries. It is explained that MG no longer requires gas service for the grain dryer and the letter requesting the abandonment is included in the request. The cost of the abandonment is estimated at $350.

Comment date: November 12, 1992, in accordance with Standard Paragraph G at the end of this notice.

13. Northwest Pipeline Corp.

[Docket No. CP92-729-000]

September 28, 1992

Take notice that on September 23, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP92-729-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate the Nicholas Wash meter station which would consist of a 6-inch orifice meter, a 4-inch hot tap and appurtenances to allow natural gas deliveries for Rocky Mountain Natural Gas Company (Rocky Mountain), an intrastate pipeline serving communities in Colorado, under the certification issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the Nicholas Wash meter station will be located on its Nucla Lateral in San Miguel County, Colorado, and will have a design capacity of 6,500 MMBtu per day at 220 psig. Northwest also states that the cost of the meter station is estimated to be $248,878 and that, pursuant to the facilities reimbursement provisions of its transportation tariff, Northwest will not now request Rocky Mountain to provide any reimbursement for the facilities. In addition, it is stated that deliveries to the Nicholas Wash meter station will occur under Rocky Mountain's existing firm transportation agreement and under interruptible transportation agreements with various shippers, all as authorized under part 284 of the Commission's Regulations.

Comment date: November 12, 1992, in accordance with Standard Paragraph G at the end of this notice.

14. Texas Gas Transmission Corp.

[Docket No. CP92–726–000]

September 29, 1992

Take notice that on September 23, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP92–726–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point for Protein Technologies International, Inc. (Protein Technologies), in Shelby County, Tennessee, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that Protein Technologies currently receives gas service from Memphis Light, Gas and Water Division (Memphis), a local municipal distribution company. Texas Gas also states that over the past year, Protein Technologies has negotiated with Memphis in an effort to obtain a more economical natural gas service and was unable to do so. In view of this, it is stated, Protein Technologies requested Texas Gas to add the proposed delivery point in order to receive gas directly from Texas Gas.

It is stated that Protein Technologies is requesting 500 MMBtu per day of firm service (with an annual D–2 billing quantity of 182,500) for a primary term of two years and year to year thereafter, and 9,500 MMBtu per day of interruptible service on a month-to-month basis. It is claimed that these services would be provided by Texas Gas pursuant to its blanket certificate issued in Docket No. CP88–686–000 and Section 284.223 of the Regulations. Texas Gas also states that the applicable rate schedules are FT and IT Rate Schedules as contained in its FERC Gas Tariff.

Texas Gas further states that its maximum day and annual transportation volumes would not be significantly affected.

Comment date: November 12, 1992, in accordance with Standard Paragraph G at the end of this notice.

15. Columbia Gas Transmission Corp.

[Docket No. CP92–687–000]

September 29, 1992

Take notice that on September 1, 1992, Columbia Gas Transmission Corporation (Columbia) 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an abbreviated application pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities subject to the jurisdiction of the Federal Energy Regulatory Commission (Commission) to be utilized for firm transportation service, under part 284 of the Commission's Regulations, of 16,200 Dth per day of natural gas for Indeck-Olean Limited Partnership (Indeck). Volumes will be received by Columbia at an existing interconnection between Columbia and ANR Pipeline Company (ANR) and delivered by Columbia to Empire Exploration, Inc. (Empire), an intrastate pipeline, at a proposed interconnection between Columbia and Empire in Cattaraugus County, New York for transportation and re-delivery by Empire to the Indeck cogeneration facility in Olean, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

This application is being renoticed because Staff inadvertently omitted the following facility enhancements that Columbia will make pursuant to § 2.55(a) of the Commission's regulations (18 CFR 2.55(a)), as well as constructions that will be performed by Empire and Indeck:

Item 2.55–1 Lewis Run—Overpressure Protection from Line 1862 (1,000 psig MAOP) to Line 4226 (770 psig MAOP). Facilities include a 6-inch regulator with a 6-inch bypass. Located in McKean County, Pa.

Item 2.255–2 Emporium Compressor Station—Install compressor remot stop capability. Located in Cameron County, Pa.

Item 2.55–3 Tamarack—Overpressure protection from Line 1818 (990 MAOP) to Line 1862 (755 MAOP). Facilities include an 8-inch regulator. Located in Clinton County, Pa.

Empire will construct a 900-horsepower compressor station at the proposed point of interconnection between Columbia and Empire, near Hartzfeld Mountain. Empire will also construct an 8-inch pipeline from its new compressor station to its existing 8-inch pipeline, approximately 800 feet away. Indeck will construct approximately 1,000 feet of 8-inch service line from an interconnection with Empire to its new cogeneration facility.

Columbia requests authority to construct and operate the following facilities to provide the service described above:

(1) Delmont Compressor Station—Install one 650-horsepower unit and related equipment and buildings in Westmoreland County, PA.

(2) Empire Measuring Station—Establish a point of interconnection with Empire, for firm transportation service to Indeck.

The cost of facilities for which Columbia seeks specific authorization is estimated to be $3,774,440. Indeck will make advance contributions in-aid-of-construction equal to Columbia's facility costs, plus applicable "gross up" for tax purposes. Columbia's cost will be limited to the filing fee of $39,440.

Comment date: October 20, 1992, in accordance with Standard Paragraph F at the end of this notice.

16. National Fuel Gas Supply Corporation

[Docket No. CP92–732–000]

September 29, 1992

Take notice that on September 25, 1992, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP92–732–000 a request pursuant to §§ 157.205, 157.211, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212, 157.216) for authorization to construct and operate sales taps, add a delivery point, and abandon a pipeline lateral under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to construct and operate 7 sales tap connections to attach new residential customers of National Fuel Distribution Company, an existing (RQ) wholesale customer, all of which are located in Pennsylvania.

Name	Line	County	Annual Mcf
Donald E. Schultz	T–3	Clarion	150
Daryl McKinney	S	Venango	150
Daryl L. Kittel	L	Warren	150
John F. Quirke	N–M47	Mercer	150
Raymond Kavinski	H	Warren	150
Rocky Ridge Park	S	Venango	2,900
Fred Yocca	K–2	Clarion	150

National proposes to add a delivery point required to provide a new firm (FT) transportation service to Distribution at an interconnection with Columbia Gas of Pennsylvania, Inc., in Warren County, Pennsylvania. National estimates that the deliveries would be 10,000 Mcf on a peak day and 3,650,000 Mcf annually.

National proposes to abandon in place approximately 5,200 feet of an 8-inch lateral line know as Line S. National states that the line is located in Venango County, Pennsylvania, and was certificated at Docket No. G-328. National further states that although there was one customer served from this line, National has been unable to contact that customer; the customer has not used any gas for at least 10 years; and the facility served is a seasonal dwelling in a remote location.

Comment date: November 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

17. ANR Pipeline Co.

[Docket No. CP92-725-000]

September 29, 1992

Take notice that on September 23, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92-725-000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a transportation service for Natural Gas Pipeline Company of America (Natural) effective November 9, 1992, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that by order issued October 31, 1972, as amended September 24, 1974, in Docket No. CP72-296, the Commission authorized a transportation agreement between ANR and Natural dated April 10, 1972, as amended October 15, 1973 and August 16, 1974. ANR further states that the service is designated as ANR's Rate Schedule X-31.

ANR says that the term of the agreement was to extend for 20 years, and year-to-year thereafter unless terminated by at least six months' written notice. ANR indicates that the initial term expires November 9, 1992. ANR states that Natural has requested termination of the agreement to be effective November 9, 1992.

Comment date: October 20, 1992, in accordance with Standard Paragraph F at the end of the notice.

18. Williams Natural Gas Co.

[Docket No. CP92-735-000]

September 29, 1992

Take notice that on September 25, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-735-000 a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act for authorization to abandon the transportation of natural gas for direct sale to George Schlosser (Schlosser) located in Jackson County, Missouri and the facilities necessary to make that sale under its blanket certificate issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that Schlosser has requested the abandonment of the sale and facilities.

Comment date: November 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

19. Texas Gas Transmission Corp.

[Docket No. CP92-734-000]

September 29, 1992

Take notice that on September 25, 1992, pursuant to section 7 of the Natural Gas Act (NGA) Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in the above-referenced docket an Abbreviated Application for a Certificate of Public Convenience and Necessity to authorize the construction and operation of certain facilities necessary to provide firm transportation service for the Power Authority of the State of New York (NYPA).

Applicant states that it seeks to construct and operate facilities to expand its mainline system in order to transport an additional 35,176 MMBtu per day for NYPA.[2] Applicant will receive the gas at various receipt points on its pipeline system and transport the gas, pursuant to Section 284.223 of the Commission's regulations, to Texas Eastern Transmission Corporation (TETCO) at Lebanon, Ohio where an existing interconnection is present.

Applicant proposes to construct and operate the following additions to its Pipe Line system:

1. 3.05 miles of 36-inch pipeline looping Applicant's 26-inch main line, extending north to the south end of previously filed 36-inch loop, Ohio County, Kentucky.

2. 2.68 miles of 36-inch pipe line looping Applicant's 26-inch main lines, extending north to the south end of previously filed 36-inch loop, Jefferson County, Kentucky.

3. 2.37 miles of 36-inch pipe line looping Applicant's 26-inch main lines, beginning at the North end of previously filed 36-inch loop line, and extending the line north to Oldham and Trimble Counties, Kentucky.

4. 2.79 miles of 36-inch pipe line looping Applicant's 26-inch main lines, beginning at the Dillsboro Compressor Station, and extending northward to Dearborn County, Indiana.[3]

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if

[2] Applicant's application along with the Applications of other pipelines providing upstream transportation service, is a part of an integrated" project to bring additional domestic gas supplies to various incremental markets in the Northeast, known as "The Liberty Project." In addition to various upstream transportation arrangements, this project involves the construction of a new natural gas pipeline by a partnership known as Liberty Pipeline Company, extending from points of receipt with Transcontinental Gas Pipe Line Company and Texas Eastern Gas Transmission Corporation near South Amboy, New Jersey, across lower New York Bay to a new delivery point located near the John F. Kennedy International Airport.

[3] the "previously filed" 36-inch loops referred to in the description of facilities are those loops for which authorization is being sought by Applicant in Docket No. CP92-730-000.

the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24276 Filed 10-6-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-92-NG]

North Canadian Marketing Corp.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting North Canadian Marketing Corporation blanket authorization to import up to 146 Bcf and to export up to 40 Bcf of natural gas from and to Canada over a two-year term, beginning on the date of first import or export after December 31, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 1, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-24361 Filed 10-6-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4519-8]

Clean Air Act; Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation of administration of auctions and sales under section 416 of the Clean Air Act from the Administrator of the Environmental Protection Agency to the Chicago Board of Trade.

SUMMARY: Pursuant to title IV of the Clean Air Act ("the Act"), the Administrator must promulgate regulations to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NOx), precursors of acid rain. The centerpiece of the SO_2 control program is the allocation of transferable allowances, or authorizations to emit SO_2 which are distributed in limited quantities for existing utility units and which eventually must be held by all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden. In addition, the Administrator is directed under section 416 of the Act to conduct annual auctions and sales of allowances. Auctions and sales are expected to stimulate and support such a market in allowances and to provide a public source of allowances, particularly to new units for which no allowances are allocated. Today, the Administrator is giving notice of a delegation of authority that permits the Chicago Board of Trade to administer such auctions and sales on EPA's behalf.

EFFECTIVE DATE: This delegation of authority is effective October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Reidt Critchfield, Environmental Protection Agency, OAIAP/Acid Rain Division (6204J), 401 M St., SW., Washington DC 20460, (202) 233-9087.

SUPPLEMENTARY INFORMATION:

I. Authority

Pursuant to section 416(f) of the Clean Air Act, the Administrator may delegate or contract for the conduct of auctions or sales under the Administrator's supervision by other departments or agencies of the United states Government or by nongovernmental agencies, groups, or organizations.

II. Background

EPA chose to delegate the administration of the auctions and sales to an organization with knowledge and experience in such areas. This decision was supported by the Acid Rain Advisory Committee (ARAC) and others who desired EPA to find a knowledgeable organization to conduct the auctions and sales.

EPA began the delegation process by requesting, in the December 17, 1991 **Federal Register**, proposals to administer the auctions and sales. EPA received proposals from three organizations: The Chicago Board of Trade, the New York Mercantile Exchange, and Cantor & Fitzgerald Brokerage Corporation. EPA followed an objective selection process that evaluated each applicant on criteria such as the entities: (1) Ability to process and manage financial instruments; (2) experience in developing and using transactional information systems; and (3) knowledge of section 416 of title IV of the Clean Air Act. Based on evaluation of the proposals, EPA selected the Chicago Board of Trade (CBOT) as likely to be the most capable administrator of the EPA auctions and sales. CBOT was chosen because they not only met, but exceeded, all of the evaluation criteria, specified their plans to implement the auctions and sales, and demonstrated an excellent working knowledge of the Acid Rain Program. Also, EPA believes a significant benefit for the allowance market is created by having an auctioneer who is active in facilitating the allowance market.

II. Terms of the Delegation

The delegation of authority to the CBOT will take effect today and continue for three years with a possibility of extension. The Administrator of EPA reserves the right to revoke the delegation at any time, but the delegation affords the CBOT the same privilege, provided CBOT notifies EPA no later than 12 months prior to termination of the delegation. The authority being delegated to the CBOT relates only to the ministerial aspects of the auctions and sales, such as the collection and processing of auction bids and direct sale applications. Functions relating to policy, the transfer of allowances, and disbursement of money will be retained by the EPA. CBOT will

perform the administration of the auctions and sales without compensation from EPA, nor will CBOT be allowed to charge fees for these functions. CBOT must also refrain from submitting bids for allowances in the annual auctions and comply with stringent confidentiality requirements for administration of the auctions. Lastly, CBOT will be required to adhere strictly to the requirements of section 416 of the Act and 40 CFR part 73.

Dated: September 25, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92-24385 Filed 10-6-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Houston, et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 N. Capitol Street. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.6 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200698.

Title: Port of Houston/Schroder Marine Services, Inc. Terminal Agreement.

Parties:

Port of Houston Authority ("Port")
Schroder Marine Services, Inc. ("Schroder")

Filing Party: Martha T. Williams, Staff Counsel, Port of Houston Authority, Post Office Box 2562, Houston, Texas 77252.

Synopsis: The agreement provides for the allocation of space within the Port facility to Schroder for its use to accommodate cargo which it handles, and for compensation to the Port. The Agreement expires December 31, 1993.

Dated: October 1, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24260 Filed 10-6-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0777]

Branch Closings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed policy statement.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is seeking comment on a proposed policy statement regarding branch closings by state member banks. The proposed policy statement provides guidance concerning the branch closing provisions of section 228 of the Federal Deposit Insurance Corporation Improvement Act (FDICIA), specifically the requirements that insured depository institutions, including state member banks, adopt policies for branch closings and provide notice before closing any branch.

DATES: Comments must be submitted on or before December 4, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0777, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Oliver I. Ireland, Associate General Counsel (202/452-3625), Gregory A. Baer, Senior Attorney (202/452-3236), Legal Division; Glenn E. Loney, Assistant Director (202/452-3585), Beverly C. Smith, Review Examiner (202/452-3946), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background Information

Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added a new section 39 to the Federal Deposit Insurance Act (FDI Act).[1] New section 39 took effect upon enactment of FDICIA on December 19, 1991. The law requires each insured depository institution, including state member banks, to give 90 days prior written notice of any branch closing to its federal regulator and to branch customers, to post notice at the branch site at least 30 days prior to closing, and to develop a policy with respect to branch closings. The notice to the regulator must include a detailed statement of the reasons for the decision to close the branch and information in support of those reasons.

The Board has developed a proposed policy statement applying section 39 to state member banks, and the Board is seeking public comment on that proposal. Because section 39 applies to all insured depository institutions, each of the Federal banking agencies will be required to monitor compliance with its requirements. Accordingly the Board has worked with the other Federal banking agencies to develop a consistent approach to section 39, and these efforts will continue in developing a final policy statement. At the same time, however, each agency also has existing rules, regulations, and policies that are affected by section 39, and the policies of the agencies will differ accordingly.

Issues for Specific Comment

The Board seeks comments on all aspects of its proposed policy statement. In addition, the Board invites comments on the following specific issues:

1. *Definition of "branch."* Section 39 requires any insured depository institution that proposes to close a branch to provide prior notice to its Federal banking agency and the customers of the branch. The proposed policy statement defines "branch" in the same manner as the FDI Act defines "domestic branch," thereby including

[1] Due to an error in drafting, section 132 of FDICIA also adds a new section 39 to the FDI Act. The section 39 of the FDI Act added by section 228 of FDICIA is codified at 12 U.S.C. 1831p.

any domestic facility of a state member bank, other than its main office, where deposits are received, checks are paid, or money is lent. In addition to traditional brick and mortar branches, the Board believes that the law applies to closings of other types of domestic facilities that constitute branches, including ATMs, drive-in facilities, and mobile branches.

2. *Branch relocations.* Because section 39 applies only to plans to "close" a branch, the Board is not interpreting section 39 to require notice in case of a branch relocation. The Board's regulations currently provide that an application to establish a branch need not be filed in the case of a "mere relocation of an existing branch in the immediate neighborhood without affecting the nature of its business or customers served." *See* 12 CFR 208.9(b)(7); *see* also F.R.R.S. 3-419. The Board is proposing to adopt the same test for relocation for purposes of branch closings as it currently employs for applications to establish branches. Thus, if a branch relocation occurs under circumstances such that no application to establish a branch would be required, then no branch closing notice would be required.

3. *Operation of branches during option period.* Under the standard agreements of the FDIC and RTC, an acquirer that assumes some or all of the assets and liabilities of an institution placed into conservatorship or receivership may also operate one or more of the branches of the failed institution temporarily until it decides, during an option period (generally 90-180 days), whether to purchase or lease the branch or to transfer it back to the FDIC or RTC.

The question has arisen whether an acquirer that decides not to exercise such an option has closed a branch for purposes of section 39. The language of the statute is ambiguous on this point, and application of the notice requirement in such cases would appear to defeat rather than serve the purposes of the statute. The RTC and FDIC encourage an acquirer to occupy temporarily any branch that the acquirer is unsure about acquiring permanently; this temporary arrangement not only may lead the acquirer eventually to decide to take the branch, it also serves as a convenience to customers. However, if section 39 were interpreted to require an acquirer to remain in the branch 90 days after a decision that it does not wish to acquire the branch, then acquirers would be more reluctant to occupy a branch temporarily, or would reprice their bids (at a cost to the government) to reflect the additional cost imposed by the notice requirement.

Under the proposed policy statement, the 90-day notice requirement does not apply when an acquiring state member bank operates branches of a failed institution on an interim basis, so long as the branches are closed prior to expiration of the acquirer's branch acquisition option period. If a state member bank were to exercise its branch acquisition option and acquire such a branch, the bank would be required to comply with the statutory notice requirements if it later decided to close the branch.

4. *Identifying customers of the branch.* The proposed policy statement permits each state member bank to determine which of its patrons will be identified as customers of a particular branch. The proposed policy statement requires a good faith determination using a reasonable method developed by the bank. One reasonable method that a state member bank could use is to allocate a customer to a branch based on where the customer opened his or her deposit or loan account.

Proposed Policy Statement for State Member Banks Concerning Branch Closing Notices and Policies

Purpose

This policy statement provides guidance to state member banks concerning the statutory requirements that a bank provide prior notice of any branch closing and establish internal policies for branch closings.

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) was enacted on December 19, 1991. Section 228 of the FDICIA adds a new section 39 to the Federal Deposit Insurance Act (FDI Act) and imposes notice requirements on insured depository institutions[2] that propose branch closings. The provision became effective on December 19, 1991. As the federal banking agency that supervises state member banks, the Board is charged with administering section 39 for those institutions.

The law requires an insured depository institution to submit a notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons.

The law also requires an insured depository institution to notify its customers of the proposed closing. The institution must mail the notice to the customers of the branch proposed to be closed at least 90 days prior to the proposed closing. The institution also must post a notice to customers in a conspicuous manner on the premises of the branch proposed to be closed at least 30 days prior to the proposed closing.

Additionally, the law requires each institution to adopt policies regarding closings of branches of the institution.

Applicability

Under section 3 of the FDI Act, a "branch" is defined as any domestic facility of an insured depository institution, other than its main office, where deposits are received, checks are paid, or money is lent. Thus, in addition to a traditional brick and mortar branch, section 39 of FDICIA applies to the closing of any facility that constitutes a branch, including an automated teller machine (ATM), drive-in facility, and mobile branch.

A state member bank must file a branch closing notice for a branch closing occurring in the context of a merger, consolidation or other form of acquisition, whether or not such transaction is subject to expedited approval under the Bank Merger Act (12 U.S.C. 1828). The parties to such a transaction should determine which party will give the notice. Thus, for example, the purchaser may give the notice prior to consummation of the transaction where the purchaser intends to close a branch following consummation, or the seller may give the notice because it intends to close a branch at or prior to consummation. In the latter example, if the transaction were to close ahead of schedule, the purchaser, if authorized by the Board, could operate the branch to complete compliance with the 90-day requirement without the need for an additional notice.

Section 39 would not apply to an interruption of service caused by an event beyond the institution's control (*e.g.*, act of God, fire), as the state member bank would not have closed the branch. Section 39 would apply, however, if the state member bank were to decide to close or not reopen the branch following the incident. Although prior notice would not be possible in such a case, the bank should notify the

[2] An insured depository institution means any bank or savings association, as defined in Section 3 of the FDI Act, the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC). The term includes state member banks.

customers of the branch and the Board in the manner specified by section 39 as soon as possible after the decision to close the branch has been made.

The law does not apply where a branch undergoes a change in name, location, or services but continues to meet the definition of branch and any change in location is within the same immediate neighborhood and does not affect the nature of the business or customers served. Thus, the law does not apply to:

• Mergers, consolidations, or other acquisitions, including branch sales, which will not result in any branch closings;

• Change of services at a branch so long as the remaining facility constitutes a branch, such as where loan services are removed from a branch that will continue to offer deposit services, or where a traditional brick and mortar branch is converted to an ATM;

• A branch relocation, within the meaning of the Board's existing regulation, 12 CFR 208.9(b)(7).

In addition, section 39 does not apply when a branch ceases operation but is not closed by a state member bank. Thus, the law does not apply to:

• A temporary interruption of service caused by an event beyond the institution's control, if the insured depository institution plans to restore branching services at the site in a timely manner;

• Transferring back to the FDIC or Resolution Trust Corporation, pursuant to the terms of an acquisition agreement, a branch of a failed bank or savings association operated on an interim basis in connection with the acquisition of all or part of a failed bank or savings association.

Notice of Branch Closing to the Board

The law requires an insured depository institution to give notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include the following:

• Identification of the branch to be closed;

• The proposed date of closing;

• A detailed statement of the reasons for the decision to close the branch; and

• Statistical or other information in support of such reasons consistent with the institution's written policy for branch closings.

If a state member bank believes certain information included in the notice is confidential in nature, the bank should prepare such information separately and request confidential treatment. The Board will decide whether to treat such information confidentially under the Freedom of Information Act (5 U.S.C. 552).

Notice of Branch Closing to Customers

The law requires a state member bank that proposes to close a branch to provide notice of the proposed closing to the customers of the branch. A customer of a branch is a patron of a state member bank who has been identified with a particular branch by such institution through use, in good faith, of a reasonable method for allocating customers to specific branches. A state member bank that allocates customers to its branches based on where a customer opened his or her deposit or loan account will be presumed to have reasonably identified each customer of a branch. A state member bank need not change its recordkeeping system in order to make a reasonable determination of who is a customer of a branch. If a state member bank cannot reasonably identify the customers of a particular branch using its current recordkeeping system, it may satisfy the requirements of section 39 by notifying all of its deposit and loan customers.

Under section 39, the bank must include a customer notice at least 90 days in advance of the proposed closing in at least one of the regular account statements mailed to customers, or in a separate mailing. If the branch closing occurs after the proposed date of closing, no additional notice is required to be mailed to customers (or provided to the Board) if the state member bank acted in good faith in projecting the date for closing and in subsequently delaying the closing.

The mailed customer notice should state the location of the branch to be closed, the proposed date of closing, and either identify where customers may obtain service following the closing date or provide a telephone number for customers to call to determine such alternative sites.

Under section 39, a bank also must post notice to branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing. This notice should state the proposed date of closing and identify where customers may obtain service following that date or provide a telephone number for customers to call to determine such alternative sites. A bank may revise the notice to extend the projected date of closing without triggering a new 30-day notice period.

In some situations, a bank, in its discretion and to expedite transactions, may mail and post notices to customers of a proposed branch closing that is contingent upon an event. For example, in the case of a proposed merger or acquisition, a bank may notify customers of its intent to close a branch upon approval by the appropriate Federal banking agency of the proposed merger or acquisition.

Policies for Branch Closings

The law requires all insured depository institutions to adopt policies for branch closings. Each state member bank with one or more branches must adopt such a policy. If a bank currently has no branches, it must adopt a policy for branch closing before it establishes its first branch. The policy should be in writing and meet the size and needs of the state member bank.

Each branch closing policy adopted pursuant to section 39 should include factors for determining which branch to close and which customers to notify, and procedures for providing the notices required by the statute.

Compliance

As part of each Community Reinvestment Act (CRA) examination, the Board will examine for compliance with section 39 of FDICIA to determine whether the state member bank has adopted a branch closing policy and whether the state member bank provided the required notices when it closed a branch. If a state member bank fails to comply with section 39, the Board may make adverse findings in the CRA evaluation or take appropriate enforcement action.

Board of Governors of the Federal Reserve System, October 1, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-24307 Filed 10-6-92; 8:45 am]

BILLING CODE 6210-01-F

Banc One Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation

Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Banc One Alpha Corporation, Columbus, Ohio; to merge with Valley National Corporation, Phoenix, Arizona, and thereby indirectly acquire The Valley National Bank of Arizona, Phoenix, Arizona; Valley Bank & Trust Company, N.A., Salt Lake City, Utah; Valley Central Bank, Salt Lake City, Utah; and California Valley Bank, N.A., Fresno, California. In connection with this application, Banc One Alpha Corporation has also applied to become a bank holding company.

Applicants also propose to acquire Concho Insurance Agency, Inc., Phoenix, Arizona, and thereby engage in the sale of credit-related insurance in connection with extensions of credit by affiliated banks pursuant to § 225.25(b)(8)(i); VNC Investment Corporation, Phoenix, Arizona, and thereby engage in making or arranging commercial loans pursuant to § 225.25(b)(1); and investing in five percent or less of the outstanding shares or other interests of unrelated entities pursuant to § 225.22(c)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 1, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-24305 Filed 10-6-92; 8:45 am]

BILLING CODE 6210-01-F

Great Lakes Financial Resources, Inc. Employee Stock Ownership Plan, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 29, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Great Lakes Financial Resources, Inc. Employee Stock Ownership Plan, Homewood, Illinois; to acquire 1.26 percent of the voting shares of Great Lakes Financial Resources, Inc., Homewood, Illinois, for a total of 42.81 percent, and thereby indirectly acquire First National Bank of Blue Island, Blue Island, Illinois; Bank of Matteson, Matteson, Illinois; and Bank of Homewood, Homewood, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Worthen Financial Corporation, Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Union of Arkansas Corporation, Little Rock, Arkansas, and thereby indirectly acquire Union National Bank of Arkansas, Little Rock, Arkansas, and Union National Bank, Austin, Texas.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Finlayson Bancshares, Inc., Finlayson, Minnesota; to acquire 100 percent of the voting shares of Barrett Bancorporation, Inc., Barrett, Minnesota, and thereby indirectly acquire Citizens State Bank of Barrett, Barrett, Minnesota.

Board of Governors of the Federal Reserve System, October 1, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-24306 Filed 10-6-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Office of Refugee Resettlement, HHS.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a new information collection entitled "U.S. Repatriate Program, Privacy Act Statement and Repayment Agreement" for the Office of Refugee Resettlement (ORR) of the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, Room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: U.S. Repatriate Program, Privacy Act Statement and Repayment Agreement (Form ACF–120).

OMB No.: 0970– (new request).

Description: This information collection request provides basic identifying information on recipients of repatriation assistance authorized under section 1113 of the Social Security Act. This provision of the Act authorizes the Department of Health and Human Services to operate a program of temporary assistance to U.S. citizens and their dependents who are certified by the Department of State as repatriates and returned to the United States from a foreign country as a result of destitution, illness, war or other violence, or natural disaster. The assistance is in the form of a loan from the United States Government to the repatriate and must be repaid.

The personal identification information (Name, Address, Social Security Number, and Telephone Number) provided by the recipient of the repatriation assistance will enable the Office of Refugee Resettlement of the Administration for Children and Families to make collection of the assistance repayments more efficiently. ACF proposes to collect this information for documentation and debt collection purposes. The information may also be shared with other agencies for purposes of collecting the debts of recipients under the Department's debt collection regulations, including the use of tax offset procedures developed with the Internal Revenue Service.

Annual Number of Respondents: 500

Annual Frequency: 1

Average Burden Hours Per Response: 2 min.

Total Burden Hours: 17

Dated: September 22, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92–24256 Filed 10–6–92; 8:45 am]

BILLING CODE 4130–01–M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Administration on Children, Youth and Families, Head Start Bureau, HHS.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a new information collection requirement for the Evaluation of the National Head Start/Public School Early Childhood Transition Demonstration Project. This request is a Congressionally mandated evaluation study (H.R. 4151–17) made by the Department of Health and Human Services' Head Start Bureau within the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Evaluation of the National Head Start/Public School Early Childhood Transition Demonstration Project.

OMB No.: New request.

Description: This study will provide essential data regarding the effectiveness of providing comprehensive, continuous, and coordinated services to Head Start families and children from the time of Head Start enrollment, to kindergarten and through the third grade of public school. The research and evaluation on the National Head Start/Public School Early Childhood Transition Demonstration Project include both a national study and a study by the 32 local projects throughout the country. Each local project is intended to serve as an independent study of the effectiveness of providing federally mandated services in four major areas: (1) Developmentally appropriate curriculum; (2) health services; (3) parent involvement; and (4) a social service component. The National Head Start/Public School Early Childhood Transition Study is designed to study the success of the program nationally. In addition, the national study serves the critical function of establishing scientific standards ensuring that a national core data set would be collected at each site. That is, each local project is to use the information gathered for the national study in the evaluation of their local demonstration project. Also, the evaluation must provide for longitudinal follow-up of all Head Start demonstration and control/comparison children and families who are enrolled in Head Start and kindergarten in the fall of 1992 through the third grade.

The results of the study will be reported annually to the U.S. Congress, as mandated by H.R. 4151–17 and provide the Head Start Bureau, the Administration on Children, Youth and Families and the Department with information on the impact and effectiveness of program strategies of the demonstration projects. The study findings will also be available to the general research community, early childhood educators and professionals, and special interest groups on early childhood development.

	First year	Second year
Annual Number of Respondents.	13,500	26,600
Annual Frequency	1–2	1–2
Average Burden Hours Per Response.	12–75m	12–75m
Total Burden Hours	21,325	34,983

Dated: September 22, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92–24257 Filed 10–6–92; 8:45 am]

BILLING CODE 4130–01–M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, HHS.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a continuation of an information collection, Small Business Innovation Research (SBIR) Program for the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Small Business Innovation Research (SBIR) Program's Phase 1 Proposal Cover Sheet and Abstract of Research Plan.

OMB No.: 0980–0193.

Description: In July 1982, the Small Business Act was amended to

strengthen the role of small, innovative firms in federally-funded research and development, and to utilize federal research and development as a base for technological innovation to meet agency needs and to contribute to the growth and strength of the Nation's economy.

Section 4 of Public Law 97–219 amended section 9(b) of the Small Business Act and directs the Small Business Administration (SBA) to issue policy directives for the general conduct of the SBIR program within the government.

The applicants for the SBIR awards provide a variety of data (e.g. project title, name and address of the firm, small business certification, etc.) which are used by the federal government to comply with the statutory and policy directive requirements as well as monitor the effectiveness of the SBIR program. The Department will use this information to provide an annual report to the Office of Science and Technology Policy.

Annual Number of Respondents: 500
Annual Frequency: 1
Average Burden Hours Per Response: 4
Total Burden Hours: 2,000

Dated: September 22, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92–24258 Filed 10–6–92; 8:45 am]

BILLING CODE 4130–01–M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Administration on Children, Youth and Families, Head Start Bureau, HHS.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a new information collection requirement for a national study on the Evaluation of the Head Start Family Service Center Demonstration Projects.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Evaluation of the Head Start Family Service Center Demonstration Projects.

OMB No.: (New request).

Description: This study will provide information on the implementation and effectiveness of the Head Start Family Service Center Demonstration Projects (FSC). The Head Start Bureau of the Administration on Children, Youth and Families has funded 41 FSC projects since 1990. FSC demonstration projects must provide an approach and set of services to address problems in one of the three focus areas of literacy, substance abuse and employment. In addition, the FSC demonstration projects are required to have a comprehensive needs assessment strategy in place, use a case management approach to working with families, and have established a collaboration with community groups. Thus, the FSC demonstration projects have included an array of comprehensive and new services to confront the changing patterns of disadvantaged families.

The information collection activity of the national evaluation study will collect summative and impact information on the implementation and effectiveness on a common set of variables across all of the 41 demonstration projects.

Annual Number of Response: 3,164
Annual Frequency: 2
Average Burden Hours Per Response: 1
Total Burden Hours: 6,328

Dated: September 22, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92–24259 Filed 10–6–92; 8:45 am]

BILLING CODE 4130–01–M

Centers for Disease Control

[CRADA 92–06]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control (CDC), National Center for Infectious Diseases, and other investigators have evidence that suggests that *Rochalimaea henselae* causes bacillary angiomatosis, peliosis hepatis and bacteremia in humans. Emerging evidence also suggests that *R. henselae* may be associated with cat scratch disease in humans. Epidemiologic evidence suggests that bacillary angiomatosis and cat scratch disease are transmitted by bites or scratches of cats. CDC desires to enter into a Cooperative Research and Development Agreement (CRADA) to develop and evaluate diagnostic tests for *R. henselae* infections in humans and cats and to use these tests to determine the epidemiology of diseases caused by *R. henselae*. In the process of diagnostic test development, we expect that specific immunodominant proteins will be identified that may serve as potential vaccine candidates. CDC further desires to develop, evaluate and commercialize any promising protein vaccines.

It is anticipated that all inventions that may arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the collaborator with which the CRADA is made. The CRADA will be executed for two years from date of signature with the possibility of renewal.

Because CRADA's are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA.

DATES: This opportunity is available until November 6, 1992. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical: Russell Regnery, Ph.D., National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop G–13, Atlanta, GA 30333, telephone (404) 639–1075.

Business: Lisa Blake-Dispigna, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, telephone (404) 639–3227.

SUPPLEMENTARY INFORMATION: The collaborators and CDC will jointly support research aimed at development of diagnostics for *Rochalimaea henselae* infections. CDC has identified *Rochalimaea* antigens and has produced monoclonal antibodies against them. Some of these antibodies do not react with antigens from numerous other closely related bacteria. Thus, we believe that these antigens might be unique to *Rochalimaea* species.

Furthermore, CDC data show that in a case-control study of cat scratch disease of residents owning cats in Connecticut, 81% (39/48) of case-cat sera and 46% (6/13) of control-cat sera were positive for antibody to *Rochalimaea henselae* ($p<0.05$). Studies in Georgia, Maryland, Kansas and Maine have shown that 59% (80/136) of cats being treated by collaborating veterinarians have antibodies against the *Rochalimaea* antigens, indicating widespread and common infection with *Rochalimaea*. As a result of these studies CDC is developing animal models of *R. henselae* infections to develop diagnostic capabilities and investigate the potential for vaccination against infection.

CDC will provide the antigen in sufficient quantities or the technology to produce it. The collaborator will utilize its expertise in diagnostic and vaccine development and evaluation, as indicated.

Diagnostic development shall include characterization of the antigens and antibodies developed and employed in assays and include extensive epidemiologic evaluation. Vaccine development would entail the physicochemical characterization of the protein, large-scale production, possible conjugation with another protein carrier and animal (mouse, guinea pig and cat) protection studies.

Respondents should provide evidence of expertise in the development and evaluation of human and veterinary diagnostics, and/or veterinary vaccines, experience in commercialization of diagnostics and/or vaccine products, and supporting data (e.g. publications, proficiency testing, certifications, resumes, etc.) of qualifications for the laboratory director and laboratory personnel who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC, but should provide an outline of a research plan for review by CDC in judging applications.

Applicants will be judged according to the following criteria:

1. Soundness of the research plan;
2. Adequacy of the staff to develop the vaccine;
3. Adequacy and availability of the facilities and equipment;
4. Evidence of scientific credibility; and
5. Evidence of commitment and ability to develop diagnostic tests capable of detecting infection with *R. henselae* and/or a vaccine that will protect against *Rochalimaea henselae* infection.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99–502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333.

Dated: September 25, 1992.

Robert L. Foster

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–24314 Filed 10–6–92; 8:45 am]

BILLING CODE 4160–18–M

[CRADA 92–05]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control (CDC), National Center for Infectious Diseases announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop a recombinant-derived *Rickettsia rickettsii* vaccine for humans.

It is anticipated that all inventions which may arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the collaborator with which the CRADA is made. The CRADA will be executed for one year from date of signature with the possibility of renewal.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA.

DATES: This opportunity is available until November 6, 1992. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical: Burt Anderson, Ph.D., Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop G–13, Atlanta, GA 30333, telephone (404) 639–1075.

Business: Lisa Blake-DiSpigna, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, telephone (404) 639–2897.

SUPPLEMENTARY INFORMATION: The collaborator and CDC will jointly support research aimed at the development and evaluation of a Rocky Mountain Spotted Fever (RMSF) vaccine using a *R. rickettsii* protein expressed from a cloned gene construct assembled at CDC.

CDC has assembled the complete gene of an *R. rickettsii* protein and cloned this gene into a recombinant expression system. The resulting recombinant appears to express the protein in a manner that is similar, if not identical, to expression in *R. rickettsii*. Previous work by other researchers suggests that a recombinant expressing a portion of this protein can be used to successfully vaccinate guinea pigs, conferring protection against challenge with live *R. rickettsii*. The dog is a suitable animal model for RMSF, therefore, we anticipate testing any potential candidate vaccine in the dog prior to human trials.

CDC will provide the recombinant-derived protein in a crude form or the technology to produce it. The collaborator will utilize its expertise in vaccine development and evaluation.

Vaccine development shall entail some characterization of the recombinant-derived protein, large scale production, guinea pig protection studies and vaccine trials to determine if immunized dogs survive challenge with live *R. rickettsii*.

Respondents should provide evidence of expertise in the development and evaluation of vaccines, evidence of experience in commercialization of vaccines, and supporting data (e.g. publications, proficiency testing, certifications, resumes, etc.) of qualifications for the laboratory director and laboratory personnel who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC but should provide an outline of a research plan for review by CDC in judging applications.

Applicants will be judged according to the following criteria:

1. Soundness of the analytic approach and research plan;
2. Evidence of appropriate personnel to complete the project in a timely fashion or evidence of a plan to recruit and fund personnel appropriate for the project;
3. Evidence of scientific credibility; and

4. Evidence of commitment and ability to develop and evaluate recombinant-derived vaccines.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99–502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333.

Dated: September 25, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–24316 Filed 10–6–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91N–0085]

Wyeth-Ayerst Laboratories, Inc.; Revocation of Notice Withdrawing Approval of Portions of Two New Drug Applications for Phenergan

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking a previous notice that withdrew approval of those portions of two new drug applications (NDA's) that provide for over-the-counter (OTC) marketing of two Phenergan syrup products. The previous action was based on the written request of the applicant, Wyeth-Ayerst Laboratories, Inc., P.O. Box 8299, Philadelphia, PA 19101 (Wyeth-Ayerst). Wyeth-Ayerst rescinded the request and the agency inadvertently overlooked this rescission.

DATES: This revocation is effective October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Diane M. Sullivan, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION: On August 11, 1988, FDA conditionally approved supplements to NDA's 8–604 and 11–265, held by Wyeth-Ayerst, to provide for the OTC labeling and marketing of Phenergan VC Syrup and Phenergan with Dextromethorphan Syrup. These OTC, promethazine hydrochloride-containing products were indicated for the relief of symptoms associated with the common cold. These OTC products were never marketed.

In a notice published in the **Federal Register** of March 14, 1991 (56 FR 10904), FDA withdrew approval of the NDA supplements. The withdrawal action was based on the written request by Wyeth-Ayerst that approval of the supplemental NDA's be withdrawn. However, before publication of the withdrawal order, Wyeth-Ayerst rescinded its request for withdrawal. The Center for Drug Evaluation and Research inadvertently overlooked Wyeth-Ayerst 's rescission letter and withdrew approval of the NDA supplements.

Accordingly, the Director of the Center for Drug Evaluation and Research hereby revokes the March 14, 1991, notice of withdrawal with respect to the NDA's listed above. The conditional approval of those portions of NDA's 8–604 and 11–625 that provide for OTC Phenergan VC Syrup and OTC Phenergan with Dextromethorphan Syrup is hereby reinstated.

This reinstatement, however, does not permit the OTC marketing of the Phenergan syrup products at this time. FDA's approval of the Phenergan syrup products for OTC use was conditioned on Wyeth-Ayerst's agreement to abide by the agency's conclusions about the OTC marketing of promethazine-containing products rendered under the agency's OTC Drug Review (Docket No. 76N–052G).

At the present time, the safety of promethazine for OTC use is under evaluation as part of the OTC Drug Review. In a policy statement published in the **Federal Register** of September 5, 1989 (54 FR 36762), FDA announced that cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products containing promethazine hydrochloride may not be marketed OTC at this time.

In accordance with the approval agreements pertaining to Wyeth-Ayerst's OTC Phenergan syrup products, the September 5, 1989, **Federal Register** notice that stopped the OTC marketing of combination drug products containing promethazine hydrochloride currently prohibits the OTC marketing of Phenergan VC Syrup and Phenergan DM Syrup. Wyeth-Ayerst has also confirmed to FDA that it will refrain from marketing the products OTC until their status is resolved by the agency.

The reinstatement of the conditional approval of the supplements that provide for the OTC Phenergan syrup products also does not, at this time, change the status of Wyeth-Ayerst's prescription Phenergan products. Wyeth-Ayerst may continue to market its Phenergan products for prescription use under NDA's 8–604 and 11–265. Prescription marketing may continue until such time, if ever, that the agency determines that such marketing is inconsistent with conditions establishing OTC marketing of promethazine-containing products.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505(f) (21 U.S.C. 355(f))), 21 CFR 314.160, and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: September 18, 1992.

D. B. Burlington,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 92–24371 Filed 10–6–92; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Tennessee State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 17, 1992, in room 702, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Tennessee SPA 92–19.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Tennessee State plan amendment (SPA) number 92–19.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party

must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Tennessee SPA 92–19 contains a list of Medicaid obstetrical and pediatric (Ob/Ped) payment rates and information on the average Statewide payment rates for the second previous year.

The issue is whether Tennessee SPA 92–19 meets the statutory requirements of section 1926 of the Act, and thus also complies with section 1902(a)(30)(A) of the Act.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that by no later than April 1 of each year (beginning in 1990) States are to submit plan amendments specifying their payment rates for Ob/Ped practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that Ob/Ped services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) the Act). In addition, States must submit data to document that payments to health maintenance organizations (HMO) take into account payment rates for fee-for-service Ob/Ped services and data on the average Statewide Medicaid payments for Ob/Ped services for the second previous year by procedure and by practitioner.

HCFA has determined, on the basis of the statute and Congressional intent, that for Ob/Ped rate SPAs to be approvable under section 1926 of the Act, they must include the following:

1. Payment rates for July 1, 1992 through June 30, 1993 for Ob/Ped services, specified by procedure;

2. Data that document that payment rates for Ob/Ped services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area;

3. Data that document that payment rates to HMOs under section 1903(m) of the Act take into account the payment rates specified in number 1 above; and

4. Average Statewide Medicaid payments for Ob/Ped services for the second previous year (the period July 1, 1990 through June 30, 1991 for SPAs due April 1, 1992) by procedure and by practitioner. The data must be provided separately for each metropolitan statistical area (or similar area) in the State and for the remainder of the State.

HCFA has also developed several guidelines that, if met by the State, would provide supporting evidence that the State is in compliance with the statutory requirements of section 1926 of the Act.

Based upon the data submitted, HCFA has determined that Tennessee's amendment does not comply with the statutory requirements of section 1926 of the Act and thus, also does not comply with section 1902(a)(30)(A) of the Act. Tennessee did not submit data relating to how rates established for payments to HMOs under section 1903(m) of the Act take into account payment rates for fee-for-service Ob/Ped services. While the State did provide a list of Medicaid Ob/Ped payment rates, it did not provide complete data on the average statewide Medicaid payments for Ob/Ped services for the second previous year. These data are incomplete in that the data are not provided by practitioner type or by metropolitan statistical area (or similar area) as required by sections 1926 (b) and (c) of the Act. In addition, there is no substantiation that the data submitted are for the correct time period of July 1, 1990 through June 30, 1991. Also, the SPA submission utilized the same reimbursement methodology that was submitted under SPA number 91–13 and Ob/Ped SPA number 91–14 and was disapproved.

The notice to Tennessee announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Manny Martins,
Assistant Commissioner,
Bureau of Medicaid, 729 Church Street, Nashville, Tennessee 37247–6501.

Dear Mr. Martins: I am responding to your request for reconsideration of the decision to disapprove Tennessee State Plan Amendment (SPA) 92–19.

Section 1926 of the Social Security Act (the Act) as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that by no later than April 1 of each year (beginning in 1990) States are to submit plan amendments specifying their payment rates for obstetrical and pediatric (Ob/Ped) practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that Ob/Ped services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). In addition, States must submit data to document that payments to health maintenance organizations take into account payment rates for fee-for-service Ob/Ped services and data on the average statewide Medicaid payments for Ob/Ped services for the second previous year by procedure and by practitioner.

The issue here is whether the plan amendment meets the statutory requirements of section 1926 of the Act, and thus also complies with section 1902(a)(30)(A) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on November 17, 1992, in Room 702, 101 Marietta Street, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

William Toby, Jr.,
Acting Deputy Administrator.

Authority: Sec. 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 30, 1992.

William Toby, Jr.,
Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92–24262 Filed 10–6–92; 8:45 am]
BILLING CODE 4120–03–M

Public Health Service

Health Resources and Services Administration; Services for Children of Substance Abusers Part M, Title III of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 14, 1981, (46 FR 10016), by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, with authority to redelegate, the authority under part M of title III of the Public Health Service (PHS) Act, as amended, pertaining to the Services for Children of Substance Abusers. Previous delegations and redelegations made to

officials within PHS of authorities under title III of the PHS Act may continue in effect provided they are consistent with this delegation.

The above delegation was effective on September 21, 1992.

Dated: September 21, 1992.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 92-24304 Filed 10-6-92; 8:45 am]

BILLING CODE 4160-15-M

Health Care Financing Administration

[BPD-743-NC]

RIN 0938-AF77

Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice with comment period.

SUMMARY: This final notice with comment period sets forth an updated schedule of limits on skilled nursing facility routine service costs for which payment may be made under the Medicare program. Section 1888(a) of the Social Security Act requires that for cost reporting periods beginning on or after October 1, 1992, and every two years thereafter, the Secretary update the per diem cost limits for skilled nursing facility routine service costs.

DATES: *Effective date:* The schedule of limits is effective for cost reporting periods beginning on or after October 1, 1992.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 7, 1992.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attn: BPD-743-NC, PO Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

In commenting, please refer to file code BPD-743-NC. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: 202-690-7890).

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FOR FURTHER INFORMATION CONTACT: Robert Kuhl (410) 966-4597.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1861(v)(1)(A) and 1888 of the Social Security Act (the Act) authorize the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under Medicare. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Implementing regulations appear at 42 CFR 413.30. Section 1888 of the Act directs the Secretary to set limits on per diem inpatient routine service costs for hospital-based and freestanding skilled nursing facilities (SNFs) by urban or rural area location. Section 4008(e)(2) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) amended section 1888(a) of the Act to require the Secretary to update the per diem SNF cost limits for cost reporting periods beginning on or after October 1, 1992, and every 2 years thereafter.

Under the authority of section 1888 of the Act, we published a final notice on April 1, 1991 (56 FR 13317) announcing a schedule of limits for freestanding and hospital-based SNFs effective for cost reporting periods beginning on or after October 1, 1989. The limits were computed using data from cost reporting periods ending on or after January 31, 1988, through December 31, 1988, as mandated by section 4008(e)(1) of Public Law 101-508.

That final notice contained provisions relating to: (1) Separate group limits for labor-related and nonlabor-related components of SNF per diem routine service costs; (2) adjustments to the cost limits by an area wage index developed from hospital industry wages; (3) a "market basket" index developed to reflect changes in the price of goods and services purchased by SNFs; (4) application of the adjusted hospital wage index to employee benefits, health service costs, costs of business services, and other miscellaneous expenses; (5) freestanding SNF cost limits set at 112 percent of the average per diem labor-related and nonlabor-related costs; (6) hospital-based SNF cost limits set at the limit for freestanding SNFs, plus 50 percent of the difference between the freestanding limit and 112 percent of the average per diem routine service costs of hospital-based SNFs, and an add-on for administrative and general (A&G) costs; (7) cost-of-living adjustments for Alaska, Hawaii, Puerto Rico, and the Virgin Islands; (8) exceptions to the cost limits; (9) a classification system based on whether the SNF is hospital-based or freestanding and whether it is located in an urban or rural area.

In addition to the above provisions, the April 1, 1991 final notice also provided for a per diem add-on to recognize the costs incurred by SNFs in complying with the additional requirements of section 1819 of the Act (including the costs of conducting nurse aide training and competency evaluations), as added by section 4201(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203). Section 1861(v)(1)(E) of the Act, as amended by section 4201(b) of Public Law 100-203, provides for Medicare payment for costs incurred by SNFs in complying with the requirements of section 1819 of the Act.

II. Update of Limits

In developing the limits set forth in this notice, we have retained the same provisions and the same basic methodology as in the limits effective for cost reporting periods beginning on or after October 1, 1989. We have updated the SNF cost report data using the most recent projections of the rates of increase in the costs included in the SNF market basket.

We are continuing to use the HCFA hospital wage index to account for area

wage differences. This is necessary because industry-specific data needed to calculate a wage index for SNFs are not available. We believe that a hospital wage index, based on geographic variations in hospital wages, provides the best measure of comparable wages that would also be paid by SNFs since hospitals and SNFs generally compete in the same labor market for employees. In setting the previous schedule of limits (that is, the schedule of limits applicable to cost reporting periods beginning on or after October 1, 1989), we used the HCFA hospital wage index that was developed based on 1984 hospital salary data from a survey conducted by HCFA. The methodology used to compute that wage index was described in the April 1, 1991, final notice (56 FR 13317).

For the schedule of limits effective with this notice, we are using a wage index based on 1988 hospital wage data. With the exception of those indices that may be affected by recent corrections to the 1988 wage data, this wage index uses the same wage data as are used to compute the wage index for the hospital prospective payment system for discharges occurring on and after October 1, 1991. However, this wage index does not reflect changes in geographic classification for certain rural hospitals required under section 1886(d)(8)(B) of the Act or geographic reclassifications based on decisions of the Medicare Geographic Classification Review Board or the Secretary under section 1886(d)(10) of the Act. Sections 1886(d)(8)(B) and 1886(d)(10) of the Act pertain to payment for the operating costs of inpatient hospital services, as defined in section 1886(a)(4) of the Act. These sections of the Act do not apply to payment for items and services furnished by a SNF, as defined in section 1861(h) of the Act, even if the items and services are furnished by a hospital-based SNF. Accordingly, it would not be appropriate to recognize changes in the geographic classification of hospitals for purposes of computing the SNF cost limits.

In all other respects, the methodology used to compute this wage index is the same as that used for the hospital prospective payment system. A detailed description of the methodology used to compute the hospital prospective payment wage index is set forth in the August 30, 1991, **Federal Register** (56 FR 43196).

III. Provisions of the Limits

The schedule of limits set forth below applies to all SNFs, including those low Medicare volume SNFs that are eligible to receive the optional prospective payment rate for routine services. Under section 1888(d) of the Act, a SNF's prospective payment rate, excluding capital-related costs, cannot exceed its routine service cost limits. The SNF prospective payment system for low Medicare volume SNFs is described in section 2820 of the Provider Reimbursement Manual (HCFA Pub. 15–1).

As required by section 1888 of the Act, this schedule of limits is effective for cost reporting periods beginning on or after October 1, 1992. The data used to compute the limits set forth in this notice are from the most recent settled SNF cost reports. These reports cover cost reporting periods ending on or after June 30, 1989, through May 31, 1990, for freestanding SNFs and on or after October 31, 1988, through September 30, 1989, for hospital-based SNFs.

In the April 1, 1991, notice setting cost limits for cost reporting periods beginning on or after October 1, 1989, we explained that our database, for the most part, contained data from unaudited (not settled for Medicare purposes) cost reports and therefore might include unallowable Medicare costs and/or Medicare inpatient days. In that notice we stated that we would develop and apply a cost report settlement adjustment factor to the unsettled cost report data with respect to future sets of limits.

These updated limits effective October 1, 1992, are based on data from only settled cost reports. We are using only settled cost report data in this notice because the use of the settled cost reports allows us to eliminate misstated data including nonallowable costs and noncovered inpatient days that inevitably resulted from using as-submitted cost reports. Current Contractor Performance Evaluation Program (CPEP) standards require Medicare fiscal intermediaries to settle the SNF cost reports sooner than was required under the former standards. Consequently, settled cost data are available much sooner than in previous cost years, and thus more accurately reflect current conditions in the health care industry. Therefore, in developing the limits in this notice, a settlement adjustment factor is not necessary.

This schedule of limits provides for the following:

A. Separate Group Limits for Labor-Related and Non-Labor-Related Components of Per Diem Routine Service Costs

We are retaining separate group limits for the labor-related and non-labor-related components of per diem routine service costs. We calculate these separate limits as follows:

1. Actual SNF per diem inpatient routine service cost data are obtained for each SNF.

2. To make the data reflect current conditions more accurately, the cost data are adjusted by the SNF market basket index from the midpoints of the cost reporting periods represented in the data collection to the midpoint of the initial cost reporting period to which the limits apply.

3. Each SNF's per diem cost is separated into labor-related and non-labor-related portions. The labor-related portion (83.1 percent) is divided by the wage index for the SNF's location (see Tables II and III).

4. Finally, separate group means are computed for the labor-related and non-labor-related components. Each group mean is multiplied by 112 percent.

B. Adjustment of SNF Cost Data by Wage Index

We are using a wage index based on 1988 hospital wage data, as described above, to adjust for area wage differences. We are continuing to use the same methodology for this adjustment.

C. Use of SNF Market Basket

We will continue to base the cost limits on routine service costs adjusted for actual and projected cost increases by applying the SNF market basket index. This market basket index is used to adjust the SNF cost data to reflect cost increases occurring between the cost reporting periods represented in the data collection to the midpoints of the cost reporting periods to which the limits apply.

The market basket index is comprised of the most commonly used categories of SNF routine service expenses. The categories are based primarily on those used by the National Center for Health Statistics in its National Nursing Home Surveys.

The categories of expenses are weighted according to the estimated proportion of SNF routine service costs attributable to each category (see Table V). The weights for all major categories of SNF costs are based on the National Nursing Home Surveys of 1973/1974 and 1977, conducted by the Office of Health Research, Statistics and Technology, National Center for Health Statistics of the Public Health Service. (As noted in footnote 1 at the end of Table V, the 1973/1974 survey contained 1972 cost data and the 1977 survey contained a combination of 1972 and 1976 cost data.) These are the most current and comprehensive sources of national data on the distribution of costs in SNFs.

(The second column of Table V specifies the weights used for each category.)

In developing the market basket index, we obtained historical and projected rates of increase in the price of goods and services in each category. The third column of the market basket index (Table V) identifies the price variables used and the source of the forecast.

The market basket index also provides for adjustments in the limits if our forecasts of economic trends prove erroneous. If the final rate of change in the market basket index for a year differs from the estimated rate of change by at least 0.3 of one percentage point, we will adjust the limits. We will advise the Medicare intermediaries to use the actual rate to adjust each SNF's limit retroactively.

D. Application of the Adjusted Hospital Wage Index to Wages, Employee Benefits, Health Service Costs, Costs of Business Services, and Other Miscellaneous Expenses

In developing the schedule of limits effective for cost reporting periods beginning on or after October 1, 1989, we applied the wage index to five categories of labor-related costs: wages, employee benefits, health service costs, business service costs, and other miscellaneous costs. We have used the same methodology in developing this schedule of limits.

For purposes of applying the wage index, employee benefits include such items as FICA tax, health insurance, life insurance, facility contributions to employee retirement funds, and all other compensation that the SNF records in the "employee health and welfare" cost center on its Medicare cost report.

Health service costs is a category used by the National Nursing Home Survey conducted in 1977, noted above. This category includes the costs of routine services that are purchased under arrangement from outside sources. Business service costs include costs of banking, contract laundry, telephone, and other services that SNFs purchase at retail from outside suppliers. Other miscellaneous costs include various types of routine operating costs not allocated to any other category of the market basket.

Thus, we are continuing to apply the wage index to the total portion of cost (83.1 percent attributable to wages, fringe benefits, health service costs, business service costs, and other miscellaneous expenses) rather than to the wage portion (64 percent) only. We are continuing to use this method because our analysis of the data shows that area variations in routine per diem costs in these additional categories are closely related to area variations in prevailing wage levels. We believe that applying the wage index to the other categories of labor-related costs specified above, rather than to wages only, results in individual limits that are more equitable and more appropriate to each SNF's actual market environment. Accordingly, the proportion of adjusted routine service costs that we will adjust by the wage index is 83.1 percent for cost reporting periods beginning on or after October 1, 1992.

E. Freestanding SNF Limits Set at 112 Percent of Mean

For cost reporting periods beginning on or after October 1, 1992, we are continuing to maintain the limits for freestanding SNFs at 112 percent of the average labor-related and average nonlabor-related costs of each group. We will continue to use the same methodology for freestanding SNFs as described in the April 1, 1991, notice.

F. Hospital-Based SNF Limits

For cost reporting periods beginning on or after October 1, 1992, the hospital-based limit will continue to equal the freestanding limit plus 50 percent of the difference between the freestanding limit and 112 percent of the mean per diem routine service costs of hospital-based SNFs. The methodology for hospital-based SNFs will be the same as that used for current hospital-based SNF limits, effective for cost reporting periods beginning on or after October 1, 1989, as described in the previous notice. We are continuing to provide an add-on adjustment for A&G costs for hospital-based SNFs. The purpose of this add-on is to make an adjustment for the allocation of costs in the A&G cost center.

G. Cost-of-Living Adjustments for Alaska, Hawaii, Puerto Rico, and the Virgin Islands

To avoid disadvantaging SNFs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, we will continue to provide a cost-of-living adjustment for these areas. This is an adjustment of the nonlabor-related component of the limit that applies to these areas, based on the amount of the most recently determined cost-of-living differentials developed by the Office of Personnel Management. Since we adjust the labor-related component by the applicable wage index as discussed above, this cost-of-living adjustment will apply only to the nonlabor-related component.

H. Exemption or Exception to Cost Limits

Under § 413.30(e)(2), a new provider of skilled nursing services may request an exemption from the cost limits. In addition, a SNF may request an exception to the cost limits under the provisions of § 413.30(f). In either case, the SNF must make the request to HCFA central office through the appropriate Medicare fiscal intermediary.

I. Classification System

We will retain the classification system based on whether a SNF is located within an MSA, as defined by the Office of Management and Budget (OMB), with exceptions for certain New England County Metropolitan Areas as described in the April 1, 1991, notice (56 FR 13319).

IV. Methodology for Determining Per Diem Routine Service Cost Limit

A. Development of Limits

1. Data

As discussed in section III above, we used actual freestanding and hospital-based SNF inpatient routine service cost data, less capital-related costs allocated to general inpatient routine services, obtained from the latest settled Medicare cost reports available. These cost reports cover cost reporting periods ending on or after June 30, 1989, through May 31, 1990, for freestanding SNFs and on or after October 31, 1988, through September 30, 1989, for hospital-based SNFs.

We adjusted these data using the market basket index discussed above to inflate costs from the midpoints of the cost reporting periods in the data base to the midpoint of the first cost reporting period to which the limits will apply.

The annual percentage increases in the market basket over the previous year that we used for this projection are:

1988	5.1
1989	6.6
1990	6.3
1991	[1] 4.3
1992	[1] 4.6
1993	[1] 5.2
1994	[1] 5.2
1995	[1] 5.3

[1] Forecasted increase.

An adjustment will be made to the limits if the forecasted market basket rate differs from the actual rate by at least 0.3 of one percentage point. Following the end of each year that the limits are in effect, we will determine the actual rate of increase or decrease in the market basket for that year. The

data necessary to make this determination are usually available in the second quarter of the following year.

If the forecasted market basket rate differs from the actual rate by at least 0.3 of one percentage point, we will notify the Medicare intermediaries of the actual rate of increase or decrease and advise them to adjust each SNF cost limit retroactively.

2. Use of Wage Index to Adjust Cost Data

We divided each SNF's adjusted per diem routine service costs into labor-related and nonlabor-related portions. We determined the labor-related portion by multiplying each SNF's adjusted per diem routine service cost by 83.1 percent, which is the labor-related portion of cost from the market basket. We then divided the labor-related portion of each SNF's per diem cost by the wage index value applicable to the SNF's location (see Tables II and III) to arrive at an adjusted labor-related portion of routine cost.

3. Group Means

We calculated separate means of labor-related and nonlabor-related adjusted routine service costs for each SNF group, that is, freestanding or hospital-based and MSA or non-MSA location.

4. Components of Limit

For each freestanding group, we multiplied the mean labor-related and mean nonlabor-related costs by 112 percent to arrive at the freestanding limits (Table I). We then subtracted the freestanding limit for each group from 112 percent of the hospital-based mean for each group and multiplied the result by 50 percent. To arrive at the hospital-based limit (Table I), the 50 percent amount described above is added to the appropriate freestanding limit.

COST LIMIT DATA—HOSPITAL-BASED SNFS

112 percent of hospital-based mean cost	Urban (MSA)	Rural (non-MSA)
Labor	$144.88	$124.86
Nonlabor	30.50	20.56
Total	175.38	145.42

CALCULATION OF 50 PERCENT OF DIFFERENCE BETWEEN 112 PERCENT OF HOSPITAL-BASED MEAN COST AND FREESTANDING LIMIT

	Labor	Nonlabor
Urban (MSA)		
112 Percent of Hospital-Based Mean Cost	$144.88	$30.50
Freestanding Limit (Table I)	79.56	17.08
Difference	65.32	13.42
50 Percent of Difference	32.66	6.71
Plus Freestanding Limit	79.56	17.08
Hospital-Based Limit (MSA)	112.22	23.79
Rural (MSA)		
112 Percent of Hospital-Based Mean Cost	$124.86	$20.56
Freestanding Limit (Table I)	80.79	13.64
Difference	44.07	6.92
Percent of Difference	22.04	3.46
Plus Freestanding Limit	80.79	13.64
Hospital-Based Limit (Non-MSA)	102.83	17.10

	Urban	Rural
A&G Difference		
1. Hospital-Based SNF A&G Mean [1]	$10.67	-$9.62
2. Freestanding SNF A&G Mean [1]	7.18	7.07
3. Difference	3.49	2.55
Amount of A&G included in the 50 percent difference between 112 percent of the hospital-based mean costs and the freestanding limit:		
4. A&G Difference (line 3)	3.49	2.55
5. 112 Percent of Hospital-Based Mean Cost (Total)	175.38	145.42
6. Average Routine Cost (line 5 divided by 112 percent)	156.59	129.84
7. Percent of A&G Difference to Average Routine Cost (line 4 divided by line 6)	2.23	1.96
8. 50 Percent of Difference between 112 Percent of Hospital-Based SNF Mean Cost and Freestanding SNF Limit	39.37	25.50
9. Amount of A&G Difference Included in line 8 (line 7 times line 8)	0.88	0.50
A&G Add-on		
10. A&G Difference from line 3	3.49	2.55
11. Less Amount from line 9	0.88	0.50
12. A&G Add-on (line 10 less line 11)	2.61	2.05
13. Labor-Related Component of A&G Add-on (Line 12 times 83.1 percent)	2.17	1.70
14. Nonlabor-Related Component of A&G Add-on (Line 12 times 16.9 percent)	0.44	0.35

[1] Wage deflated means.

B. Adjustment of Limits

1. Adjustment of Labor-Related Component by Wage Index

a. *Freestanding SNFs.* To arrive at a labor-adjusted limit for each SNF, we multiply the labor-related component of the limit for the SNF's group by the wage index developed from wage levels for hospital workers in the area in which the SNF is located (see Tables II and III). The adjusted limit that applies to a SNF is the sum of the non-labor-related component, plus the adjusted labor-related component, plus the nursing home reform and Occupational Safety and Health Administration (OSHA) per diem add-on discussed in section V below. Finally, the cost reporting year adjustment discussed in section IV.B.2. below may apply.

Example—Calculation of Adjusted Limit for a Freestanding SNF (A) Located in Dallas, Texas:

Labor-Related Component.	$79.56	(Table I).
Wage Index	×0.9638	(Table II).
Adjusted Labor Component.	76.68	
Non-Labor-Related Component.	+17.08	(Table I).
Nursing Home Reform and OSHA Per Diem Add-On.	+1.98	
Adjusted Limit	95.74	

b. *Hospital-Based SNFs.* To arrive at a labor-adjusted limit for each hospital-based SNF, we add the labor-related component of the limit and the labor-related component of the A&G add-on for the hospital-based SNF's group and multiply the sum by the wage index developed from wage levels for hospital workers in the area in which the hospital-based SNF is located (see Tables II and III). The adjusted limit that applies to a hospital-based SNF is the sum of the adjusted labor-related component and A&G add-on, plus the non-labor-related component and A&G add-on, plus the nursing home reform and OSHA per diem add-on discussed in section V below. Finally, the cost reporting year adjustment discussed below in section IV.B.2 may apply.

Example—Calculation of Adjusted Limit for a Hospital-Based SNF (B) Located in Scranton, Pennsylvania:

Labor-Related Component:		
Limit	$112.22	(Table I).
A&G Add-on	+2.17	(Table I).
	114.39	
Wage Index	×0.8952	(Table II).
Adjusted Labor Component.	102.40	
Non-Labor-Related Component:		
Limit	23.79	(Table I).
A&G Add-on	0.44	(Table I).
Nursing Home Reform and OSHA Per Diem Add-on.	+1.98	
Adjusted Limit	128.61	

2. Adjustment for Cost Reporting Period

If a facility has a cost reporting period beginning in a month after October 1992, the intermediary will increase the limit that otherwise would apply to the SNF by the factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded monthly increase derived from the projected annual increase in the market basket index and will be used to account for inflation in costs that will occur after the date on which the limits are effective.

Cost Reporting Year End Adjustment

Example: The following is a computation of a revised hospital-based limit for the previously cited SNF (B). Hospital-based SNF (B) has a cost reporting period beginning November 1, 1992. The base adjusted limit for SNF (B) is $128.61. The revised limit for SNF (B) applicable to its cost reporting period is $129.17.

Individual SNF Adjusted Base Limit	$128.61
Adjustment Factor from Table IV	×1.00431
Revised Limit	129.17

If a facility uses a cost reporting period that is not 12 months in duration, a special adjustment factor will be calculated. This is necessary because projections are computed to the midpoint of a cost reporting period and the adjustment factors in Table IV are based on an assumed 12-month reporting period. For cost reporting periods of other than 12 months, the calculation must be done for the midpoint of the specific cost reporting period. The SNF's intermediary will obtain this adjustment factor from HCFA central office.

V. Per Diem Add-On to the Cost Limits Effective for Cost Reporting Periods Beginning On or After October 1, 1992

In the April 1, 1991, final notice of SNF limits, we described a per diem add-on to the limits effective for cost reporting periods beginning on or after October 1, 1990. This per diem add-on was developed to take into account the costs associated with the additional requirements placed on SNFs by the nursing home reform provisions in section 1819 of the Act, as added by section 4201(a) of Pub. L. 100–203. (These requirements include conducting nurse aide training and competency evaluation programs.) Section 4201(b) of Pub. L. 100–203 amended section 1861(v)(1)(E) of the Act to provide for Medicare payment for costs incurred by SNFs in complying with these requirements.

In the April 1, 1991 notice we described the methodology used to compute the per diem add-on. We calculated the per diem add-on based on data from the 36 State Medicaid plans that had been approved by HCFA as of October 1, 1990. We also allowed for an adjustment to the cost limit when a provider's actual reasonable and verified costs incurred in implementing the additional requirements exceeded the per diem add-on.

We will continue to provide a per diem add-on to recognize the costs that must be incurred to comply with the nursing home reform provisions specified in section 1819 of the Act. The methodology used to compute the per diem add-on is the same as that described in the April 1, 1991, final notice. However, we are now basing the per diem add-on on data from the approved Medicaid State plans for 50 States and the District of Columbia. The average per diem increase amounted to $1.46. Since this amount is for services furnished on or after October 1, 1990, we have inflated the $1.46 for the per diem add-on effective for cost reporting periods beginning on or after October 1, 1992, by using the SNF market basket index described in this notice, which results in an average per diem increase of $1.61.

In addition, we are aware that SNFs are now incurring additional costs due to the universal precaution requirements of the Occupational Safety and Health Administration (OSHA). OSHA published a final rule in the **Federal Register** on December 6, 1991 (54 FR 64004) that set forth a standard under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) to eliminate or minimize occupational exposure to bloodborne pathogens. The rule includes requirements relating to employee vaccinations against bloodborne diseases, staff training on universal precautions, and the use of protective equipment (gloves, aprons, masks, etc.). While the limits set forth in this notice use the most recent cost report data available, we recognize that the new OSHA standards, which were effective March 6, 1992, will result in some SNFs incurring costs that are not reflected in the cost limits. We understand that all SNFs must comply with these regulations. Based on the technical data supporting the OSHA rule, we have computed that, on the average, a SNF will incur costs of $.16 per inpatient day in implementing this OSHA requirement. Therefore, we are adding $.16 to the $1.61 average per diem increase described above, resulting in a total increase of $1.77 per day. This represents the average total cost of compliance with both the nursing home reform and OSHA requirements.

As described in the April 1, 1991 notice, we will continue to compute the per diem add-on by using the same methodology as that used to compute the basic Medicare SNF cost limits. That is, the per diem add-on has been set at 112 percent of the average total cost of compliance with both the nursing home reform and OSHA requirements. Therefore, for cost reporting periods beginning on or after October 1, 1992, the per diem add-on is $1.98 (112 percent of $1.77). If an SNF's per diem routine costs exceed the cost limit and it has incurred costs in excess of the per diem add-on of $1.98 as a result of compliance with the nursing home reform and the OSHA requirements, the SNF may seek an adjustment to the cost limit. An adjustment will be made to the extent the costs in excess of the limit are reasonable, actually incurred in the implementation of the additional requirements, separately identified by the SNF, and verified by the intermediary.

When HCFA updates the SNF cost limits using a later data base that includes the costs of complying with the additional nursing home reform and OSHA requirements, a per diem add-on will no longer be needed because those updated limits would include these costs in the basic routine cost limit.

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

An annual effect on the economy of $100 million or more;

A major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under this final notice with comment period, the schedule of limits on payments for SNF inpatient routine services has been revised to reflect more recent cost report and wage index data. We estimate that the revised schedule of limits will result in the following savings on payments for SNF services under the Medicare program.

Fiscal year	Savings [1]
1993	$10
1994	20
1995	20
1996	20
1997	30

[1] Rounded to nearest $10 million.

These savings represent the effect of implementing the new limits effective for cost reporting periods beginning on or after October 1, 1992, compared with the effects of updating the previous limits by the market basket index. The savings from updating the previous limits by the market basket index is 5.6 percent of total SNF costs. The savings from implementing the new limits is 6.0 percent of total SNF costs. Therefore, these new limits decrease SNF reimbursement by 0.4 percent compared with the slightly higher limits that would have been in effect under the updating provisions of the 1989 limits.

Since this notice with comment period will not have an annual effect on the economy of $100 million or more or meet the other criteria of E.O. 12291, a final regulatory impact analysis is not required.

B. Regulatory Flexibility Act

For final notices such as this, we prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the notice will not have a significant economic impact on a substantial number of small entities. We consider all SNFs to be small entities under the RFA.

A small number of SNFs will be affected by this notice. Specifically, the revised cost limits will result in a small increase in the number of SNFs exceeding the SNF limits in all categories, as follows:

	Total SNFs	Exceeding old limits	Exceeding new limits
Freestanding SNFs:			
Urban	4074	680	706
Rural	1266	203	220
Hospital-Based SNFs:			
Urban	455	289	298
Rural	453	203	205

However, it is our practice not to consider an economic impact on small entities to be significant unless the annual total costs or revenues of a substantial number of entities will be increased or decreased by at least 3 percent. The revised limits will not result in a significant number of facilities' total revenues being increased or reduced by 3 percent or more over the October 1, 1989, limits adjusted for inflation since Medicare does not account for a high proportion of SNF utilization or revenue. Therefore, we have determined, and the Secretary certifies, that this final notice will not have a significant economic impact on a substantial number of small entities. Thus, we have not prepared a regulatory flexibility analysis.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside of a Metropolitan Statistical Area.

We have not prepared a rural impact statement since we have determined and the Secretary certifies that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VII. Other Required Information

A. Paperwork Burden

This final notice with comment period does not impose information collection requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

B. Waiver of Proposed Notice

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act.

As discussed in section IV above, we have used the same methodology to develop this schedule of limits that was used in setting the limits published for public comment on April 1, 1991. This notice also conforms to the clear direction provided in sections 1861(v)(1) and 1888 of the Act and the implementing regulations at § 413.30. The final cost reporting data on which these limits are based was not available from the Medicare fiscal intermediaries until September 30, 1991. We completed the data collection process in December 1991, and, between December 1991 and April 1992, we reviewed the data and developed the limits set forth in this notice. Section 4008(e)(2) of Public Law 101–508 specifies that this schedule of limits is effective for cost reporting periods beginning October 1, 1992. Given these time constraints, it would not have been possible to publish a proposed notice and still implement the new cost limits effective October 1, 1992. To do so would have been impracticable, unnecessary, and contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice.

C. Waiver of 30-Day Delay in Effective Date

We normally provide a delay of 30 days in the effective date for documents such as this. However, if adherence to this procedure would be impracticable, unnecessary, or contrary to the public interest, we may waive the delay in the effective date.

Sections 1861(v)(1)(A) and 1888 of the Social Security Act (the Act) authorize the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under Medicare. Also, the clear direction of section 4008(e)(2) of Public Law 101–508 requires that the Secretary update the per diem SNF cost limits for cost reporting periods beginning on or after October 1, 1992, and every 2 years thereafter. If SNFs are to receive timely the benefits of the overall increase in Medicare payments using the revised cost limits, it is necessary that these

limits be effective for cost reporting periods beginning on or after October 1, 1992. Thus, we believe that a delay in the effective date of these cost limits would be contrary to the public interest. Therefore, we find good cause to waive the usual 30-day delay in the effective date of this notice with comment period.

D. Public Comments

Because of the large number of items of correspondence we normally receive, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of the preamble to this notice. If we make any changes to this notice, we" will respond to the comments in the preamble to the notice that incorporates the changes.

VIII. Schedule of Limits

Under the authority of sections 1861(v)(1)(A) and 1888 of the Act, the following group per diem limits will apply to the adjusted SNF inpatient routine service costs paid for under Medicare for cost reporting periods beginning on or after October 1, 1992. Medicare fiscal intermediaries will compute the adjusted limits for SNFs using the methodology set forth in this notice and will notify each SNF of its applicable limit. These limits, as adjusted by the applicable wage indexes and the cost reporting year adjustments, and also adjusted by a per diem add-on to recognize the cost of implementing the nursing home reform and OSHA requirements described above, will remain in effect for cost reporting periods beginning on or after October 1, 1992.

TABLE I.—SNF GROUP LIMITS

[Cost reporting periods beginning on or after 10/1/92]

Location	Labor-related component	Non-labor [1] related component
Freestanding:		
MSA	$79.56	$17.08
Non-MSA	80.79	13.64
Hospital-based MSA:		
Limit	112.22	23.79
A&G add-on	2.17	0.44
Non-MSA:		
Limit	102.83	17.10
A&G add-on	1.70	0.35

[1] The nonlabor portion of the limits for SNFs located in the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands will be increased by the following cost-of-living adjustments:

	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE II.—WAGE INDEX FOR URBAN AREAS

Urban area (Constituent counties or county equivalents)	Wage index
Abilene, TX	0.9220
Taylor, TX	
Aguadilla, PR	0.4568
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9493
Portage, OH	
Summit, OH	
Albany, GA	0.8050
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8922
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0123
Bernalillo, NM	
Alexandria, LA	0.8275
Rapides, LA	
Allentown-Bethlehem, PA-NJ	0.9857
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9238
Blair, PA	
Amarillo, TX	0.8739
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2130
Orange, CA	
Anchorage, AK	1.4176
Anchorage, AK	
Anderson, IN	0.9583
Madison, IN	
Anderson, SC	0.7258
Anderson, SC	
Ann Arbor, MI	1.1384
Washtenaw, MI	
Anniston, AL	0.7931
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9179
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.3953
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8739
Buncombe, NC	
Athens, GA	0.8209
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	0.9596
Barrow, GA	
Bartow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0507
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.9401
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9665
Kane, IL	
Kendall, IL	
Austin, TX	0.9599
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0868
Kern, CA	
Baltimore, MD	1.0156
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9064
Penobscot, ME	
Baton Rouge, LA	0.9089
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9465
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9604
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0165
Beaver, PA	
Bellingham, WA	1.0497
Whatcom, WA	
Benton Harbor, MI	0.8406
Berrien, MI	
Bergen-Passaic, NJ	1.0295
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9325
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8062
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9260
Broome, NY	
Tioga, NY	
Birmingham, AL	0.8769
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Walker, AL	
Bismarck, ND	0.8812
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.8639
Monroe, IN	
Bloomington-Normal, IL	0.8658
McLean, IL	
Boise City, ID	0.9757
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1809
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0149
Boulder, CO	
Bradenton, FL	0.9262
Manatee, FL	
Brazoria, TX	0.9314
Brazoria, TX	
Bremerton, WA	0.9535
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.2032
Fairfield, CT	
Brownsville-Harlingen, TX	0.8601
Cameron, TX	
Bryan-College Station, TX	0.9489
Brazos, TX	
Buffalo, NY	0.8908
Erie, NY	
Burlington, NC	0.7986
Alamance, NC	
Burlington, VT	0.9358
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4479
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8811
Carroll, OH	
Stark, OH	
Casper, WY	0.8891
Natrona, WY	
Cedar Rapids, IA	0.8907
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8745
Champaign, IL	
Charleston, SC	0.8331
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9692
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	0.9486
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.9615
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	0.9198
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.7908
Laramie, WY	
Chicago, IL	1.0518
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0981
Butte, CA	
Cincinnati, OH-KY-IN	0.9821
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7319
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0739
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	0.9816
El Paso, CO	
Columbia, MO	0.9506
Boone, MO	
Columbia, SC	0.8940
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7482
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	0.9673
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8594
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.8188
Allegany, MD	
Mineral, WV	
Dallas, TX	0.9638
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7506
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.8471
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9664
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8943
Volusia, FL	
Decatur, AL	0.7487
Lawrence, AL	
Morgan, AL	
Decatur, IL	0.8286
Macon, IL	
Denver, CO	1.0758
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9171
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.0824
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7555
Dale, AL	
Houston, AL	
Dubuque, IA	0.8374
Dubuque, IA	
Duluth, MN-WI	0.9517
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8478
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8714
El Paso, TX	
Elkhart-Goshen, IN	0.8949
Elkhart, IN	
Elmira, NY	0.8810
Chemung, NY	
Enid, OK	0.8912
Garfield, OK	
Erie, PA	0.9155
Erie, PA	
Eugene-Springfield, OR	1.0164
Lane, OR	
Evansville, IN-KY	0.9276
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	0.9707
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8296
Cumberland, NC	
Fayetteville-Springdale, AR	0.7990
Washington, AR	
Flint, MI	1.1544
Genesee, MI	
Florence, AL	0.7679
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.8429
Florence, SC	
Fort Collins-Loveland, CO	1.0238
Larimer, CO	
Ft Lauderdale-Hollywood-Pompano Beach, FL	1.0356
Broward, FL	
Fort Myers-Cape Coral, FL	0.9799
Lee, FL	
Fort Pierce, FL	1.1041
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.7931
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8916

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Okaloosa, FL	
Fort Wayne, IN	0.8901
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	0.9747
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0737
Fresno, CA	
Gadsden, AL	0.8199
Etowah, AL	
Gainesville, FL	0.8798
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	0.9431
Galveston, TX	
Gary-Hammond, IN	0.9866
Lake, IN	
Porter, IN	
Glens Falls, NY	0.9231
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9577
Grand Forks, ND	
Grand Rapids, MI	0.9683
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9992
Cascade, MT	
Greeley, CO	0.9358
Weld, CO	
Green Bay, WI	0.9585
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.9165
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.8923
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.9157
Washington, MD	
Hamilton-Middletown, OH	0.9384
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9919
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1916
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.8741
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1580
Honolulu, HI	
Houma-Thibodaux, LA	0.7344
Lafourche, LA	
Terrebonne, LA	
Houston, TX	0.9935
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Huntington-Ashland, WV-KY-OH	0.9438
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8835
Madison, AL	
Indianapolis, IN	0.9663
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	0.9528
Johnson, IA	
Jackson, MI	0.9664
Jackson, MI	
Jackson, MS	0.7733
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7910
Madison, TN	
Jacksonville, FL	0.9051
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7154
Onslow, NC	
Jamestown-Dunkirk, NY	0.7735
Chautauqua, NY	
Janesville-Beloit, WI	0.8466
Rock, WI	
Jersey City, NJ	1.0526
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8668
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicol, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.9067
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0278
Grundy, IL	
Will, IL	
Joplin, MO	0.7957
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1709
Kalamazoo, MI	
Kankakee, IL	0.8489
Kankakee, IL	
Kansas City, KS-MO	0.9588
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	0.8855
Kenosha, WI	
Killeen-Temple, TX	1.1295

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8693
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9435
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.8958
LaCrosse, WI	
Lafayette, LA	0.8227
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8432
Tippecanoe, IN	
Lake Charles, LA	0.8374
Calcasieu, LA	
Lake County, IL	0.9994
Lake, IL	
Lakeland-Winter Haven, FL	0.8171
Polk, FL	
Lancaster, PA	0.9258
Lancaster, PA	
Lansing-East Lansing, MI	1.0222
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7278
Webb, TX	
Las Cruces, NM	0.7909
Dona Ana, NM	
Las Vegas, NV	1.0631
Clark, NV	
Lawrence, KS	0.8937
Douglas, KS	
Lawton, OK	0.8388
Comanche, OK	
Lewiston-Auburn, ME	0.9057
Androscoggin, ME	
Lexington-Fayette, KY	0.8446
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.8062
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.8956
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8420
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8691
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.8969
Lorain, OH	
Los Angeles-Long Beach, CA	1.2354
Los Angeles, CA	
Louisville, KY-IN	0.9092
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8790

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Lubbock, TX	
Lynchburg, VA	0.8544
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8804
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0311
Dane, WI	
Manchester-Nashua, NH	1.0261
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8392
Richland, OH	
Mayaguez, PR	0.4771
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7715
Hidalgo, TX	
Medford, OR	1.0045
Jackson, OR	
Melbourne-Titusville Fl	0.9199
Brevard, Fl	
Memphis, TN-AR-MS	0.9060
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0312
Merced, CA	
Miami-Hialeah, FL	1.0188
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0401
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0377
Midland, TX	
Milwaukee, WI	0.9719
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St Paul, MN-WI	1.0618
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8319
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1577
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9900
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.7864
Ouachita, LA	
Montgomery, AL	0.7738
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.8068
Delaware, IN	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Muskegon, MI	0.9568
Muskegon, MI	
Naples, FL	1.0324
Collier, FL	
Nashville, TN	0.9397
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2938
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	1.0002
Bristol, MA	
New Haven Waterbury-Meriden, CT	1.2095
New Haven, CT	
New London, London-Norwich	1.1571
New London, CT	
New Orleans, LA	0.8908
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3460
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1232
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8382
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	0.8515
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4283
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8614
Marion, FL	
Odessa, TX	1.0817
Ector, TX	
Oklahoma City, OK	0.9145
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.1002
Thurston, WA	
Omaha, NE-IA	0.8969
Pottawattamie, IA	
Douglas, NE	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Sarpy, NE	
Washington, NE	
Orange County, NY	0.9653
Orange, NY	
Orlando, FL	0.9621
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8114
Daviess, KY	
Oxnard-Ventura, CA	1.2309
Ventura, CA	
Panama City, FL	0.8632
Bay, FL	
Parkersburg-Marietta, WV-OH	0.8540
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8755
Jackson, MS	
Pensacola, FL	0.8623
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.8710
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.0952
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0429
Maricopa, AZ	
Pine Bluff, AR	0.7672
Jefferson, AR	
Pittsburgh, PA	1.0127
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0782
Berkshire, MA	
Ponce, PR	0.4601
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9292
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1576
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0060
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0447
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0630
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0230
Utah, UT	
Pueblo, CO	0.8722
Pueblo, CO	
Racine, WI	0.8849
Racine, WI	
Raleigh-Durham, NC	0.9465
Durham, NC	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8400
Pennington, SD	
Reading, PA	0.8814
Berks, PA	
Redding, CA	1.0549
Shasta, CA	
Reno, NV	1.1618
Washoe, NV	
Richland-Kennewick, WA	0.9402
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9417
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1160
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8284
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.1030
Olmsted, MN	
Rochester, NY	0.9710
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9283
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2232
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0451
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9420
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9414
Buchanan, MO	
St. Louis, MO-IL	0.9388
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Sullivan City, MO	
Salem, OR	1.0445
Marion, OR	
Polk, OR	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Salinas-Seaside-Monterey, CA	1.3041
Monterey, CA	
Salt Lake City-Ogden, UT	0.9932
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8139
Tom Green, TX	
San Antonio, TX	0.8452
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.1934
San Diego, CA	
San Francisco, CA	1.4539
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4900
Santa Clara, CA	
San Juan, PR	0.4987
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1768
Santa Barbara, CA	
Santa Cruz, CA	1.2784
Santa Cruz, CA	
Santa Fe, NM	0.9139
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2957
Sonoma, CA	
Sarasota, FL	0.9781
Sarasota, FL	
Savannah, GA	0.8327
Chatham, GA	
Effingham, GA	
Scranton, Wilkes Barre, PA	0.8952
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.0871
King, WA	
Snohomish, WA	
Sharon, PA	0.9061
Mercer, PA	
Sheboygan, WI	0.8872
Sheboygan, WI	
Sherman-Denison, TX	0.9089
Grayson, TX	
Shreveport, LA	0.9299
Bossier, LA	
Caddo, LA	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Sioux City, IA-NE	0.8504
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.8833
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0067
St. Joseph, IN	
Spokane, WA	1.0691
Spokane, WA	
Springfield, IL	0.9295
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8082
Christian, MO	
Greene, MO	
Springfield, MA	1.0316
Hampden, MA	
Hampshire, MA	
State College, PA	0.9901
Centre, PA	
Steubenville-Weirton, OH-WV	0.8712
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1612
San Joaquin, CA	
Syracuse, NY	0.9917
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0317
Pierce, WA	
Tallahassee, FL	0.9220
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	0.9188
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8758
Clay, IN	
Vigo, IN	
Texarkana-TX-AR	0.7892
Miller, AR	
Bowie, TX	
Toledo, OH	1.0097
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9302
Shawnee, KS	
Trenton, NJ	1.0038
Mercer, NJ	
Tucson, AZ	0.9591
Pima, AZ	
Tulsa, OK	0.8532
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.8521
Tuscaloosa, AL	
Tyler, TX	0.9838
Smith, TX	
Utica-Rome, NY	0.8512
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3203
Napa, CA	
Solano, CA	
Vancouver, WA	1.0796
Clark, WA	
Victoria, TX	0.8994
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9760

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Cumberland, NJ	
Visalia-Tulare-Portervile, CA	1.0392
Tulare, CA	
Waco, TX	0.7814
McLennan, TX	
Washington, DC-MD-VA	1.0941
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.8642
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9748
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0135
Palm Beach, FL	
Wheeling, WV-OH	0.8067
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	0.9809
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8172
Wichita, TX	
Williamsport, PA	0.8864
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0869
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8712
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0826
Worcester, MA	
Yakima, WA	1.0111
Yakima, WA	
York, PA	0.9021
Adams, PA	
York, PA	
Youngstown-Warren, OH	0.9866
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0167
Sutter, CA	
Yuba, CA	
Yuma, AZ	0.8885
Yuma, AZ	

TABLE III.—WAGE INDEX FOR RURAL AREAS

Non-Urban areas	Wage index
Alabama	0.7121
Alaska	1.3426
Arizona	0.8747
Arkansas	0.6966
California	1.0142
Colorado	0.8415
Connecticut	1.1905
Delaware	0.8572
Florida	0.8730
Georgia	0.7767
Hawaii	0.9618
Idaho	0.8953
Illinois	0.7700
Indiana	0.7806
Iowa	0.7532
Kansas	0.7446
Kentucky	0.7793
Louisiana	0.7384
Maine	0.8328
Maryland	0.8061
Massachusetts	1.1654
Michigan	0.8826
Minnesota	0.8309
Mississippi	0.6957
Missouri	0.7249
Montana	0.8255
Nebraska	0.6995
Nevada	0.9702
New Hampshire	0.9547
New Jersey	[1]
New Mexico	0.8318
New York	0.8402
North Carolina	0.7936
North Dakota	0.7719
Ohio	0.8453
Oklahoma	0.7400
Oregon	0.9607
Pennsylvania	0.8613
Puerto Rico	[2] 0.4333
Rhode Island	[1]
South Carolina	0.7650
South Dakota	0.7168
Tennessee	0.7340
Texas	0.7591
Utah	0.8983
Vermont	0.9035
Virginia	0.7815
Virgin Islands	[2] 0.5734
Washington	0.9635
West Virginia	0.8488
Wisconsin	0.8447
Wyoming	0.8457

[1] All counties within State are classified urban.
[2] Approximate value for area.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

[Effective October 1, 1992]

If a SNF cost reporting period begins	The adjustment factor is
November 1, 1992	1.00431
December 1, 1992	1.00851
January 1, 1993	1.01286
February 1, 1993	1.01723
March 1, 1993	1.02119
April 1, 1993	1.02560
May 1, 1993	1.02988
June 1, 1993	1.03433
July 1, 1993	1.03864
August 1, 1993	1.04313
September 1, 1993	1.04763
October 1, 1993	1.05200
November 1, 1993	1.05654
December 1, 1993	1.06095
January 1, 1994	1.06553
February 1, 1994	1.07021
March 1, 1994	1.07446
April 1, 1994	1.07919
May 1, 1994	1.08378
June 1, 1994	1.08854
July 1, 1994	1.09317
August 1, 1994	1.09798
September 1, 1994	1.10280

[1] Based on compounded projected market basket inflation rates of 5.2 percent for 1993; 5.2 percent for 1994, and 5.3 percent for 1995. These adjustment factors are subject to change based on later estimates of cost increases or decreases.

If for any reason we do not publish a new schedule of limits to be effective October 1, 1994 or do not announce other changes in the current schedule by that date, the current limits will continue in effect with the last adjustment factor above multiplied by 1.00442 (5.3 percent projected market basket inflation rate for 1995 divided by 12 plus 1.00000 for compounding) once for each month between September 1, 1994 and the month in which the cost reporting period begins, until a new schedule of limits or other provision is issued. For example, if the cost reporting period begins on November 1, 1994, 1.10280 would be multiplied by 1.00442 twice and the resulting factor would equal 1.11257 (1.10280×1.00442×1.00442=1.11257).

TABLE V.—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS

Category of costs	Relative [1] importance 1993	Price variable used [2]
Payroll Expenses	64.0	Percentage changes in average hourly earnings of employees in nursing and personal care facility. (SIC 805) Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table C-2.
Employee Benefits	7.8	Supplements to wages and salaries per worker in nonagricultural establishments.

TABLE V.—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS—Continued

Category of costs	Relative [1] importance 1993	Price variable used [2]
		For supplements to wages. Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Table 1.11. For total employment. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table B–4.
Food	7.6	Processed foods and feeds component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23. Food and beverage component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 22.
Other business services.	5.1	Services component of Consumer Price Index, all urban, Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Fuel and other utilities	4.0	A. Implicit price deflator-consumption of fuel oil and coal (derived from fuel oil component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, (monthly), Table 7.11. B. Implicit price deflator-consumer of electricity (derived from electricity component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis. C. Implicit price deflator for natural gas (derived from utility (piped) gas component of Consumer Price Index). Source: Same as electricity above. D. Water and sewage maintenance component of the Consumer Price Index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review, Table 23.*
Supplies	3.1	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Drugs	2.2	Pharmaceutical preparations, ethical component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Producer Prices and Price Indexes*, (monthly), Table 6.
Health services	1.6	Physician services component of Consumer Price Index for all urban consumers. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Miscellaneous	4.6	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.

[1] The basic weights for all major categories of skilled nursing home costs were obtained from the DHEW-National Center for Health Statistics (NCHS) National Nursing Home Surveys (NNHS) for 1972 and 1976 for home certified for participation in the Medicare program. See *Nursing Home Costs 1972, United States: National Nursing Home Survey, August 1973–April 1974, DHEW, NCHS: National Nursing Home Survey: 1977 Summary for the United States, Vital and Health Statistics, Senes 13, Number 43.*

A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. In calendar year 1977 each "price" variable has an index of 100.0. The relative routine service cost weights change each period in accordance with price changes for each price variable. Cost categories with relatively higher "price" increases get relatively higher cost weights and vice versa.

[2] Forecasted by DRI/McGraw Hill, Health Care Costs, First Quarter, 1992, 1750 K St., NW, Washington, D.C. 20006

Authority: (Sections 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy); section 6024 of Pub. L. 101–239 (42 U.S.C. 1395yy note); and 42 CFR 413.30)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: August 31, 1992.

William Toby, Jr.,

Acting Deputy Administator, Health Care Financing Administration.

Approved: September 9, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–24169 Filed 10–1–92; 11:17 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–4130–15; GP3–001; WMP–130–88–008B]

Kettle River Project—Key Expansion Plan of Operations, Final Environmental Impact Statement Record of Decision

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of record of decision for the Kettle River Project—Key Expansion Plan of Operations.

SUMMARY: In accordance with 43 CFR 1610.5 and section 102(2)(c) of the National Environmental Policy Act of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management, notice is hereby given of the issuance of the Record of Decision for the Kettle River Project—Key Project Expansion Plan of Operations, District Serial Number WMP–130–88–008B. Initiation of actions which implement this plan can begin on October 12, 1992, thirty days after the Notice of Availability of the FEIS appeared in the **Federal Register** (40 CFR 1506.10).

DATES: The Record of Decision was signed on September 30, 1992, by Joseph K. Buesing, District Manager, Spokane District, Washington, and will become effective on October 12, 1992. Copies of that document have been mailed to those people who received the draft and final EIS documents. The final EIS was made available to the public on August 27, 1992, and the notice of availability of this document (EIS No. 920362) was published in the **Federal Register** on September 11, 1992, by the Colville National Forest through the Environmental Protection Agency.

ADDRESSES: Requests for copies of the approved Kettle River Project—Key Project Expansion Plan of Operations, District Serial Number WMP–130–88–008B, Final Environmental Impact Statement Record of Decision should be addressed to Ann Aldrich, Border Area Manager, Bureau of Land Management, Spokane District, East 4217 Main Avenue, Spokane, Washington 99202.

SUPPLEMENTARY INFORMATION: The Record of Decision documents the decision for the Bureau of Land Management (BLM) regarding the Kettle River Project, including the Key Project Expansion (Key Expansion). The Record of Decision applies only to the existing (Overlook and Belcher subunits) and proposed (Key subunit) activities under the plan of operations on lands managed by the BLM. The plan of operations combines previously separate project areas established under notices of operations in one project area. The analysis began by publishing a Notice of Intent to prepare an EIS which appeared in the **Federal Register**, Vol 56, No. 197, on October 10, 1991. A Draft EIS (DEIS) was prepared and released to the public in May 1992. The Final Key Expansion EIS (FEIS) was released for public review in August, 1992. The document was the result of public involvement,

data collection, and analysis. Other State and Federal Agencies participated in the analysis process. The Washington State Department of Ecology (DOE) served as the lead State agency for the EIS. The U.S. Department of Agriculture—Forest Service was the lead Federal agency. The cooperating agencies included the U.S. Department of the Interior—Bureau of Land Management and the Washington State Department of Natural Resources.

Alternatives Considered

Four alternatives were considered in detail, including the No Action Alternative, to address the major issues associated with this project. Several other alternatives were considered but eliminated from detailed study, including two alternative access routes. The three action alternatives differed from each other in the type, configuration and location of various project components.

Alternatives Examined and Eliminated from Further Consideration include two possible Key Expansion haul routes which both involved more disturbances of BLM-administered public lands, greater impacts to other resources, and greater construction and operating costs, with limited offsetting benefits. One route involved constructing a new road over previously undisturbed land at a higher elevation, requiring the greatest amount of surface disturbance of all routes, with in excess of 30 percent greater excavation. Visual impact would have been greater due to the higher placement of the road. The second route involved constructing a road from Lambert Creek to the Key Expansion area along an existing primitive road alignment. This route would have significantly increased the travel distance to the Key Mill, with substantial increases in the fuel consumed and the associated pollutants from vehicle operation and road construction and maintenance. This route also had greater nuisance impacts to residences from noise, dust, etc., and greater potential for danger to wildlife and human safety.

The Selected Alternative (Alternative A) involves the following principal new components: Two open pit mining areas, the Key East and Key West pits; a single waste rock disposal facility, located entirely on private land southwest of the Key East pit; a main access haul road and internal mine haul roads connecting the Key Project site with Echo Bay's existing processing facilities at the Key Mill; topsoil stockpile areas; and surface water control installations including sediment ponds.

Alterative B is similar to Alternative A, but involves about 15% more new disturbance and incorporates separate waste rock disposal areas for each pit site. Alternative B involves no difference in the haul road configuration. As a result, associated with five waste rock disposal areas, including more disturbance on National Forest lands. Alternative B has greater potential to cause off-site impacts than Alternative A.

Alternative C involves a project configuration similar to Alternative B. Alternative C involves operational procedures and ancillary facilities (including the haul road) that are identical to Alternative A. Alternative C differs from Alternative A in that one open pit mine would be considerably larger, and five waste rock disposal areas would be developed rather than one, resulting in about 60 percent more new disturbance than Alternative A. Alternative C also has greater potential to cause off-site impacts than Alternative A.

Alternative D, the No Action Alternative, is considered as a requirement of the NEPA and SEPA regulations, and involves continuation of the existing management. Alternative D would eliminate those negative impacts potentially associated with the Key Expansion. This alternative provides a basis against which to compare the impacts of the other alternatives including the proposed action. Existing operations from the Kettle River Project would remain in place.

The Environmentally Preferred Alternative is identified in accordance with the requirement of Federal regulations (40 CFR 1505.2(b)). The environmentally preferred alternative is defined as the alternative causing the least impact to the biological and physical environment. Alternative D (No Action) is the environmentally preferred alternative.

Decision

Based on the analysis in the Final Environment Impact Statement (FEIS) for the Key Project, it is my decision to select and implement Alternative A as described in the FEIS, with supplemental mitigation measures identified in this decision. This Decision applies only to the portions of the Kettle River Project that take place on BLM-administered lands.

Alternative A includes open-pit mining for gold from two pit areas, an overburden or waste rock disposal facility, topsoil stockpile areas, surface water control installations including sediment ponds, haul roads, and ancillary facilities. BLM-administered lands affected by this decision include a portion of the Key haul road (2 acres), and lands previously disturbed under notices of operation at the Overlook Mine (4.8 acres) and Belcher area (1.4 acres). Reclamation work is already in progress at the Overlook Mine and Belcher area based on prior arrangements under the notices and the previous State EIS.

This Record of Decision completes the NEPA compliance which is required prior to approval of the plan of operations. The U.S. Forest Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Department of Social Health Services, and Ferry County will be issuing separate permits as required by their agencies.

All practical means to avoid or minimize environmental harm from implementation of the selected alternative, Alternative A, are adopted as part of this decision (43 CFR 3809.0–6). Mitigation measures and monitoring detailed in the FEIS in Section 5, Appendix B, Appendix C, Appendix D, and Appendix E are adopted as part of the decision. In addition, the following site specific measures are required for named subunits of the Kettle River Project:

Belcher Area

The operator shall seed the road at the northernmost Belcher site with the grass seed and fertilizer mixture evaluated in the FEIS. The operator shall close access road at the northernmost Belcher site with a substantial earth berm at least five feet in height across the full width of the road and shoulder, and twenty feet in depth. As an alternative, the road and shoulder shall be blocked with a substantial pile of timber at least five feet in height and fifty feet in length. Slash, if used, shall be obtained by relocating an existing slash pile. The closure point shall be on public land near the base of mountain.

Overlook Area

Mitigation measures and monitoring for operations and reclamation, as detailed in the FEIS Kettle River Project, in the Section "Environmental Analysis", Appendix B, Appendix D, Appendix G, and Appendix I are adopted as part of the decision. Except for the one through access road, all exploration roads or disturbance on public lands in this project submit shall be recontoured to conform to or emulate the original topography. The operator shall seed the disturbed areas with the

grass seed and fertilizer mixture evaluated in the FEIS.

Key Area

During the life of the project, interim stabilization shall include seeding, fertilizing and otherwise revegetating cut banks, berms and other disturbed areas using the mixtures identified in the Key Expansion FEIS. During the life of the project, the operator shall obtain prior written approval from the Washington Department of Ecology and the BLM before use of any chemicals or other substances for dust control on the main access haul road. Reclamation of the main haul road shall include recontouring and revegetation to a condition which approximates the configuration of the pre-existing primitive road. The road shall be restored to a single lane, with culverts removed and road berms outsloped and revegetated.

Revegetation will be considered successful when sustained growth after at least two full growing seasons produces vegetation density comparable to surrounding undisturbed lands, and the vegetation diversity is equivalent to the proportions of the seed mixture. The adopted mitigation measures have been developed to minimize the impacts from project development and to maintain the quality of the natural resources and improvements in the Kettle River Project area. The mitigation measures will be applied during all phases of project implementation and reclamation.

Monitoring will determine the compliance of the project with this FEIS and the Plan of Operations and will validate projected environmental effects of the project. The BLM will be responsible for monitoring activities on lands within its jurisdiction. Activities on other lands will be monitored by the Forest Service, Mine Health and Safety Administration, Washington State Department of Ecology and Department of Natural Resources, and Ferry County.

Dated: September 30, 1992.

Joseph K. Buesing,

District Manager.

[FR Doc. 92-24268 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-33-M

[WY-030-03-4320-14]

Rawlins District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Rawlins District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 and 94-5799 that a meeting of the Rawlins District Grazing Advisory Board will be held. This notice sets forth the schedule and proposed agenda for the meeting.

DATES: November 19, 1992.

ADDRESSES: Bureau of Land Management, Lander Resource Area Office, 125 Sunflower, P.O. Box 589, Lander, Wyoming, 82520 (307) 332-7822.

FOR FURTHER INFORMATION CONTACT: John Spehar, District Range Conservationist, Rawlins District Office, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming, 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Election of Chairman and Vice-chairman for Fiscal Year 1993.
3. Opportunity for the public to present information or make statements.
4. Review of the 1992 range improvement program.
5. Presentation of the proposed 1993 range improvements.
6. Wild Horse Program Update.
7. Other.

The meeting is open to the public. Individuals interested in attending the meeting or making an oral presentation to the Board must notify the District Manager by November 13, 1992. Written statements may also be filed for the Board's consideration. Summary minutes of this meeting will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Dated: September 28, 1992.

Al Pierson,

District Manager.

[FR Doc. 92-24303 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-22-M

[AZ-040-4212-24; AZA 27169]

Receipt of Application for the Conveyance of Federally-Owned Mineral Interests; Safford District, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of receipt of conveyance of mineral interest application in Santa Cruz County.

SUMMARY: Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Stewart Title and Trust of Tucson, an Arizona Corporation, as Trustee Under Trust No. 3411, c/o Sidney N. Mendelsohn, Jr., Esq., has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 20 S., R. 13 E.,
Sec. 12, N½N½, N½SE¼, SE¼SE¼.
Containing 280.00 acres, more or less.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws and the mineral leasing laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interest, upon final rejection of the application or two years from the date of filing of the application, August 5, 1992, whichever occurs first.

SUPPLEMENTARY INFORMATION: Additional information concerning this application may be obtained from the District Realty Specialist, Safford District Office, 425 E. 4th Street, Safford, AZ 85546.

Dated: September 28, 1992.

William T. Civish,

District Manager.

[FR Doc. 92-24296 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-32-M

[OR-943-4212-13; GP2-467; OR-44592]

Conveyance of Public Land; Order Providing for Opening of Lands; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 560 acres of public land out of Federal ownership. This action will also open 3,459.19 acres of reconveyed lands to surface entry, and 1,199 acres to mining and mineral leasing. The 2,260.19-acre balance is not in Federal ownership.

EFFECTIVE DATE: November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 560 acres in Wheeler County, Oregon, from Federal ownership to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 11 S., R. 20 E.,
Sec. 2, lots 1, 2, 3, and 4, SW¼NE¼, S½ NW¼, and SW¼;
Sec. 3, lots 1, 2, and 3, S½NE¼, E½SW¼, and SE¼;
Sec. 11, S½NE¼, W½, and SE¼;
Sec. 12, lots 1 to 16, inclusive;
Sec. 13, lots 1 to 16, inclusive.
T. 10 S., R. 21 E.,
Sec. 31, those portions of the S½NE½and SE¼lying northerly and easterly of Bridge Creek County Road No. 14.
T. 11 S., R. 21 E.,
Sec. 7, lots 2, 3, and 4, S½NE¼, SE¼ NW¼, E½SW¼, and SE¼EXCEPTING those portions lying within the limits of the Painted Hills County Road No. 16 and Bridge Creek Road No. 14 rights-of-way.

The areas described aggregate approximately 3,459.19 acres in Wheeler County.

3. At 8:30 a.m., on November 13, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on November 13, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on November 13, 1992, the following described lands will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 11 S., R. 20 E.,
Sec. 2, lots 1, 2, 3, and 4, SW¼NE¼, S½ NW¼, and SW¼;
Sec. 3, E½SW¼;
Sec. 12, lots 1 to 16, inclusive.

5. At 8:30 a.m., on November 13, 1992, the lands described in paragraph 4 will be opened to applications and offers under the mineral leasing laws.

Dated: September 29, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-24293 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-33-M

[OR130 4333-01 GP3-002]

Emergency Road Closures and Restrictions; Fishtrap Lake

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Public notice.

SUMMARY: Upon acquisition of the Fishtrap Lake (Miller Ranch) by BLM in Lincoln and Spokane Counties, vehicular travel including bicycles will be restricted to designated roads from the time of acquisition until completion of the Management Plan (tentatively scheduled for completion by October 1, 1994). Overnight camping will be authorized by permit only.

These restrictions are necessary to prevent resource damage to the soil, vegetation, including spread of noxious weeds and possible damage to cultural resources. Limitations are also necessary to reduce the development of trails/roads due to unregulated cross country travel. Vehicles used for administrative, emergency and law enforcement purposes will be exempt from these restrictions (43 CFR 8341.2).

SUPPLEMENTARY INFORMATION: Motorized vehicles are limited to designated roads for the 2 year period on public land in T. 21 N. R. 39 E. Sections 1, 2, 11, 12, NW¼ of Sec. 14, SE¼ of Sec. 10; Public lands east of the Burlington Northern Railroad Line in T. 22 N. R. 39 E. Sections 35, 26; T. 22 N. R. 40 E. S½NE¼, and SE¼NW¼ of Section 25, SE¼ of Section 24, W½ of Section 36, W½E½ of Section 36, NE¼NE¼ of Section 36, E½E½ of Section 36; T. 22 N. R. 40 E. S½ of Section 19, W½ of Section 30, NW¼SE¼ of Section 30.

Any person who fails to comply with this closure/restriction order is subject to the penalties provided in 8360.0-7. Violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

For more information contact: Spokane District, Border Resource Area Manager, Ann Aldrich, E. 4217 Main Avenue, Spokane, Washington 99202; 509-353-2570.

Dated: October 1, 1992.

Ann Aldrich,

Border Resource Area Manager.

[FR Doc. 92-24366 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-33-M

[OR130-4333-01-GP3-003]

Emergency Road Closures and Restrictions; Lincoln County Washington

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Public notice.

SUMMARY: Certain roads within the Spokane District's Upper Crab Creek Management Area (i.e. Lincoln County) will be either closed or restricted to vehicular travel, including bicycles, for a period from October 15, 1992, until March 15, 1993. These restrictions are necessary to prevent resource damage to the soil, and vegetation including spread of noxious weeds. Limitations are also necessary to reduce the development of trails/roads due to unregulated cross country travel until road maintenance activities can be completed in the Spring of 1993. Vehicles used for administrative, emergency and for law enforcement purposes will be exempt from these restrictions (43 CFR 8341.2).

SUPPLEMENTARY INFORMATION: The BLM administered roads closed to motorized vehicle travel by this order for the 152 day period include all those in T. 21 N., R. 36 E., Sections 15, 19, 20, 21, and 22 W.M.

Motorized vehicles are limited to designated roads in T. 22 N., R. 32 E. Sections 2, 4, 8, 9, 10, 11, 12, 15, 16, 26, 34, 35, & 36 W.M.; T. 21 N., R. 36 E. Section 1, 2, 3, & 4 W.M.; T. 22 N., R. 33 E. Sections 5, 6, 7, & 8 W.M.

Any person who fails to comply with this closure/restriction order is subject to the penalties provided in 8360.0-7. Violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Spokane District, Border Resource Area Manager, Ann Aldrich, E. 4217 Main Avenue, Spokane Washington 99202; 509-353-2570.

Dated: October 1, 1992.

Ann Aldrich,

Border Resource Area Manager.

[FR Doc. 92-24367 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-030-02-4333-04; G2-464]

Recreation Management; Camping Stay Limits; Oregon and Washington

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Establishment of camping stay limits for BLM lands in the Vale District, Oregon.

SUMMARY: Person(s) may camp within designated campgrounds, developed recreation sites or on public lands not closed or otherwise restricted to camping within the Vale District, Oregon for a period of not more than 14 days within any period of 28 consecutive days. The 14-day limit may be reached either through a number of separate visits or through a period of continuous occupation on public lands. After the 14th day of camping person(s) must move outside of a 14-mile radius of the previous location. When the camping limit has been reached, use of a site shall not occur again until at least 14 days have elapsed from the last day of use.

Under special circumstances and upon request, the authorized officer may give written permission for extensions to the 14-day camping limit.

Additionally, no person may leave personal property unattended in designated campgrounds or recreation developed site for a period of more than 72 hours, or elsewhere on public lands within the Vale District for a period of more than 10 days without written permission from the authorized officer.

DEFINITIONS: As used in these supplementary rules, the term:

a. *Camping* is defined as preparing a sleeping bag or other bedding material for use, or the erecting of a tent or shelter of natural or synthetic material,. or parking of a motor vehicle, motor home, or trailer for overnight occupancy. Occupation of a site within a designated fee area during any portion of the night period of 10 p.m. to 6 a.m. will be considered overnight camping for the purpose of fee collection.

b. *Occupation* means the taking or holding possession of a camp or residence on public land.

c. *Public lands* means any lands or interest in lands owned by the United States and administered by the Bureau of Land Management.

d. *Authorized Officer* means any employee of the BLM who has been delegated the authority to perform under Title 43 Code of Federal Regulations.

e. *Developed Site* means sites that contain structures or capital improvements primarily used by the public for recreation purposes.

EFFECTIVE DATE: These supplementary rules will go into effect on January 1, 1993.

SUPPLEMENTARY INFORMATION: This restriction order is necessary to:

(1) Preclude any individual or group from camping for an excessively long period, thereby denying others recreation opportunities;

(2) Prevent or reduce the incidence of unauthorized, long term occupancy of areas from occurring under the guise of recreational use;

(3) Prevent unacceptable sanitary and solid waste disposal conditions;

(4) Preserve and protect the natural, cultural, and scenic resource values of areas that are typically being used for camping purposes; and

(5) Provide consistency to visitors moving from one BLM district to another.

Authority for implementing this camping stay limit is contained in the Code of Federal Regulations, Title 43, Chapter II part 8360, Subparts 8364 and 8365.

Violations of this camping stay limit are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Rich Conrad, Bureau of Land Management, 100 Oregon Street, Vale, OR 97918, Telephone (503) 473–3144.

James E. May,

District Manager.

[FR Doc. 92–24294 Filed 10–6–92; 8:45 am]

BILLING CODE 4310–33–M

[CO–070–4410–08]

Glenwood Springs Resource Area Resource Management Plan; Notice of Intent

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice; intent to prepare an Integrated Activity Plan and environmental assessment to consider an amendment to the Glenwood Springs Resources Management Plan.

SUMMARY: The Bureau of Land Management, Glenwood Springs Resource area, is preparing a detailed management plan, referred to as an Integrated Activity Plan (IAP), for the Sheep Creek area. The Sheep Creek IAP area is bounded by the Colorado River on the east side, the White River National Forest on the north side, and Sweetwater Creek on the southwest side. The IAP is being written to resolve resource user conflicts in the Sheep Creek area. The IAP could change prior decisions made in the Glenwood Springs Resource Management Plan. As required by 43 CFR 1610.5–5, RMP decisions may be changed through a plan amendment, and the plan amendment may be made through an environmental assessment of the proposed changes. Public involvement is also required for a plan amendment. A 30-day public comment period is being held to help identify issues and conflicts that need to be resolved.

EFFECTIVE DATE: Public comments to identify issues in the Sheep Creek IAP area are being accepted on November 6, 1992. Written comments should be submitted to the Area Manager, Glenwood Springs Resource Area, at the address shown below.

SUPPLEMENTARY INFORMATION: Approximately 28,000 acres in Eagle and Garfield County are included in the boundaries of the IAP area. The IAP will address issues identified by the BLM, other agencies, and the public through initial scoping meetings held in March 1992. Identified issues include management of big game winter range and grazing to achieve vegetation management objectives, travel management, recreation use, and watershed damage. The IAP will propose management on former State lands which have been transferred to the BLM and also incorporate current Washington Office planning guidance for resource management plans. Analysis of the issues, concerns, and proposed actions will be conducted using an integrated approach, and it is felt resolution of most of the conflicts can be achieved within the parameters of the existing RMP. Those RMP decisions that could change as a result of the Sheep Creek IAP primarily involve recreation management and could change the off-highway vehicle (OHV) use designation. Disciplines represented on the IAP team include wildlife, range, fire management, recreation, lands, forestry, watershed, fisheries, and riparian.

A draft Sheep Creek Integrated Activity Plan and Environmental Assessment will be available for public review and comment in spring or summer 1993. The draft plan and environmental assessment will include legal descriptions of the affected public lands. News releases will be issued to inform the public of plan progress, dates, times, and locations of any meetings, and availability of the draft plan and environmental assessment.

FOR FURTHER INFORMATION CONTACT: Michael S. Mottice, Area Manager, Glenwood Springs Resource Area Office, 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602, (303) 945–2341; Tim Hartzell, District Manager, Grand Junction

District, 2815 H Road, Grand Junction, Colorado 81506, (303) 244–3000.

Tim Hartzell,

District Manager.

[FR Doc. 92–24297 Filed 10–6–92; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Congressional Shelf oil and gas lease sales to be held during the bidding period from November 1, 1992, through April 30, 1993. The List of Restricted Joint Bidders published in the **Federal Register** on April 28, 1992, at 57 FR 17928 covered by period of May 1 through October 31, 1992.

Group I. Chevron Corporation; Chevron U.S.A. Inc.

Group II. Exxon Corp.; Exxon San Joaquin Production Co.

Group III. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.; Shell Frontier Oil & Gas Inc.

Group IV. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group V. BP America Inc.; The Standard Oil Co.; BP Exploration & Oil Inc.; BP Exploration (Alaska) Inc.

Dated: October 1, 1992.

Scott Sewell,

Director, Minerals Management Service.

[FR Doc. 92–24277 Filed 10–6–92; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Roll call and review of agenda.

(2) Approval of Minutes.

(3) Superintendent's welcome:

a. Introduction of guests.

b. Review of SRC function and purpose.

(4) SRC Member Subsistence Reports.

(5) Federal Subsistence Management Program:

a. Subsistence Resource Advisory Council Program status report.

b. Federal Board actions.

(6) Hunting recommendations work session:

a. Status report on hunting plan recommendation submitted to the Secretary.

b. Status report on Hunting Plan.

c. Review previous SRC resolutions.

d. Develop new draft hunting plan recommendations.

(7) Superintendent's Report.

(8) Public and other agency comments.

(9) Set time and place of next SRC meeting.

DATES: The meeting will begin at 9 a.m. on Saturday, October 24, 1992, and conclude around 5 p.m. The meeting will reconvene at 9 a.m. on Sunday, October 25, 1992, and conclude around 5 p.m.

LOCATION: The meeting will be held in the Chart Room at the Captain Bartlett Inn in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Roger Siglin, Superintendent, P.O. Box 74680, Fairbanks, Alaska 99707. Phone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul F. Haertel,

Acting Regional Director.

[FR Doc. 92–24292 Filed 10–6–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–626 (Preliminary)]

Pads for Woodwind Instrument Keys from Italy

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigation.

SUMMARY: On September 29, 1992, the petitioner in the subject investigation (Prestini Musical Instruments Corp., Nogales, AZ) sent a letter to the U.S. Department of Commerce withdrawing its petition. A copy of that letter was sent by petitioner to the U.S. International Trade Commission on September 30, 1992. Commerce has not initiated an investigation as provided in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigation concerning pads for woodwind instrument keys from Italy (investigation No. 731–TA–626 (Preliminary)) is discontinued.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: October 1, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–24342 Filed 10–6–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–311 (Final)]

Certain Circular, Welded, Non-alloy Steel Pipes and Tubes From Brazil

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On September 17, 1992, the U.S. Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the countervailing duty investigation concerning certain circular, welded, non-alloy steel pipes and tubes from Brazil (investigation No. 701–TA–311 (Final)) is terminated.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments

who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: September 30, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–24341 Filed 10–6–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–267]

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Deadline for submissions in connection with the fifth followup report.

SUMMARY: The Commission has commenced work on the fifth in a series of followup reports updating its initial report issued in July 1989 in connection with investigation No. 332–267, The Effects of Greater Economic Integration Within the European Community on the United States. The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of December 21, 1988 (53 FR 51328), and notice of the procedure to be followed in followup reports was published in the **Federal Register** of September 20, 1989 (54 FR 38751).

The report on the initial phase of the investigation was sent to the Committees on July 17, 1989. Followup reports were sent to the Committees on March 30, 1990, September 28, 1990, March 29, 1991, and April 30, 1992. Copies of the reports, The Effects of Greater Economic Integration Within the European Community on the United States, may be obtained by calling 202–205–1807, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202–205–2186.

The fifth followup report will be sent to the Committees on April 30, 1993.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: For further information on the investigation contact Ms. Joanne Guth at 202–205–3264.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the fifth followup report should be received by the close of business on December 11, 1992. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: October 1, 1992.

By order of the Commission.

Paul Bardos,

Acting Secretary.

[FR Doc. 92–24339 Filed 10–6–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–548 and 551 (Final)]

Sulfur Dyes from China and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–548 and 551 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and the United Kingdom of sulfur dyes,[1] provided for in subheadings 3204.15, 3204.19.30, 3204.19.40, and 3204.19.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of sulfur dyes from China and the United Kingdom are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on April 10, 1992, by Sandoz Chemicals Corporation, Charlotte, NC.

Participation in the investigations and public service list. Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an

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[1] Sulfur dyes are synthetic organic coloring matter containing sulfur. Sulfur dyes are obtained by high temperature sulfurization of organic material containing hydroxy, nitro, or amino groups, or by reaction of sulfur or alkaline sulfide with aromatic hydrocarbons. For purposes of these investigations, sulfur dyes include, but are not limited to, sulfur vat dyes with the following color index numbers: Vat Blue 42, 43, 44, 45, 47, 49, and 50 and Reduced Vat Blue 42 and 45. Sulfur vat dyes also have the properties described above. All forms of sulfur dyes are covered, including the reduced (leuco) or oxidized state, presscake, paste, powder, concentrate, or so-called "pre-reduced, liquid ready-to-dye" forms.

administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in these investigations will be placed in the nonpublic record on November 20, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on December 9, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 30, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 2, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions. Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is December 4, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is December 16, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 16, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate to service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: September 28, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-24340 Filed 10-6-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337-TA-333]

Certain Woodworking Accessories; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a consent order agreement: Taiwan Zest Industrial Co., Ltd. and Trend-lines, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on October 1, 1992.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1820.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone (202) 205-1802.

Issued: October 1, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-24330 Filed 10-6-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-303 (Sub-No. 10X)]

Wisconsin Central Ltd.—Abandonment Exemption—In Douglas County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Wisconsin Central Ltd. of 33.14 miles of rail line between milepost 454.64, near Ambridge, and milepost 421.50, near Gordon, in Douglas County, WI, subject to historic preservation, public use, and standard labor protective conditions. In addition, a notice of interim trail use has been issued for portions of the line.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 22, 1992. Formal expressions of intent to file an offer [1] of financial assistance

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

under 49 CFR 1152.27(c)(2), requests for public use conditions, and petitions to reopen must be filed by October 19, 1992. Petitions to stay must be filed by October 12, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–303 (Sub-No. 10X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. and

Petitioner's representative: Janet H. Gilbert, Wisconsin Central Ltd., 6250 N. River Road, Rosemont, IL 60018–5062.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610 [TDD for hearing impaired (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: September 29, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–24315 Filed 10–6–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 92–6]

Keaciel Kenneth Krulevitz, M.D.; Revocation of Registration

On September 27, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Keaciel Kenneth Krulevitz, M.D., of 7538 Holabird Avenue, Dundalk, Maryland 21222 (Respondent), proposing to revoke his DEA Certificate of Registration, AK1522196, as a practitioner under 21 U.S.C. 823(f) and 824(a)(2). The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 824(a)(4).

By letter dated October 23, 1991, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held before Judge Bittner in Washington, DC, on January 21, 1992. On July 13, 1992, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On August 17, 1992, the Respondent, having been granted an extension of time, submitted exceptions to Judge Bittner's opinion and recommended ruling. On August 21, 1992, the administrative law judge transmitted the record of these proceedings. including the Respondent's exceptions, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter, adopting the administrative law judge's findings of fact and conclusions of law in their entirety.

The administrative law judge found that Respondent had practiced in the Baltimore, Maryland area since 1946, and that his prescribing of Ativan, the trade name for lorazepam, a Schedule III controlled substance, had doubled or tripled during the period from September 1986 through February 1987. The administrative law judge found that an investigation of the Respondent was initiated by the Medicaid Fraud Control Unit of the Maryland Attorney General's Office in early 1987, and that the investigation revealed that the Respondent had written prescriptions for Ativan on prescriptions billable to Maryland Medical Assistance. The investigation conducted by the Medicaid Fraud Control Unit indicated that most of the prescriptions which the Respondent wrote for Ativan were not for a legitimate medical purpose.

The administrative law judge further found that Respondent employed at least one drug addict to maintain order in his office and to keep records for him, while at the same time receiving treatment from the Respondent. The administrative law judge found that the evidence demonstrated that the Respondent billed Medicaid for services not performed and that he billed all patient visits at levels of service which were not rendered.

The administrative law judge found that the Respondent entered a plea of guilty in State court on May 16, 1988, to one felony count of Medicaid fraud, with the plea being entered under the terms of *North Carolina* v. *Alford*, 400 U.S.C. 25 (1970). The Respondent was placed on probation for two years, with the probation being lifted after six months. The evidence showed that the Respondent was fined $5,000.00 and ordered to pay $30,540.63 in restitution to the Maryland Medicaid program with approximately $8,400.00 of that amount representing drugs prescribed by the Respondent for no legitimate medical purpose. The administrative law judge noted that the Respondent had been disqualified from participation in the Maryland Medicaid program as of May 24, 1988.

The administrative law judge found that Respondent's only defense to the prescriptions which he admitted writing was his attempt to wean drug and alcohol dependent patients from the narcotics and alcohol to which they were addicted. Of specific interest were medical journal articles which the Respondent presented in his own defense which, ironically, demonstrated that the Respondent's practice was directly contrary to advised medical practice when prescribing benzodiazepines such as Ativan.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 824(a)(4), the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See *David E. Trawick, D.D.S.*, Docket No. 88–69, 53 FR 5326 (1988).

The administrative law judge found that the Government made a prima facie showing of the factors found in 21 U.S.C. 823(f)(2), (3), (4) and (5), as referenced by 21 U.S.C. 824(a)(4). In so finding, the administrative law judge found that the Respondent dispensed Ativan without a legitimate medical purpose, that the Respondent undisputedly had pled

guilty to Medicaid fraud, that the Respondent had billed Medicaid for patient visits that did not occur and for services that were not rendered, and that the Respondent's actions posed a threat to the public health and safety.

The Administrator finds that a clear showing was made of Respondent's illegal behavior, and that the behavior of the Respondent indeed posed a threat to the public health and safety. The Administrator, in reaching this conclusion, considered the Respondent's exceptions to Judge Bittner's opinion. The Respondent's exceptions failed to persuade the Administrator that the Government had acted in a dilatory or discriminatory manner, and failed to persuade the Administrator that the administrative law judge had either misconstrued or misinterpreted the evidence presented. While the Respondent may have maintained good intentions in his treatment of drug and alcohol dependent patients, it is clear that he was unfamiliar with the necessary indications for the legitimate prescribing of benzodiazepines. The Respondent further breached the public trust by taking advantage of a reimbursement program intended to aid those in need in receiving legitimate and competent medical care. The public was not only exposed to irresponsible prescribing practices, but to a fraudulent scheme of billing which deprived the Respondent's patients of adequate medical care for their specific medical problems. The Administrator determines that, based on the evidence in the record, the Respondent's DEA Certification of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him under the provisions of 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AK1522196, previously issued to Keaciel Kenneth Krulevitz, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of that registration be, and they hereby are, denied. This order is effective November 6, 1992.

Dated: October 1, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-24349 Filed 10-6-92; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 92-58]

National Environmental Policy Act; Outer Solar System Exploration Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Information update.

SUMMARY: On February 27, 1991, NASA published in the **Federal Register** (56 FR 8219) a notice of intent (NOI) to prepare an environmental impact statement (EIS) for NASA's Outer Solar System Exploration (OSSE) Program. The notice was issued in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et. seq.*) and implementing Council on Environmental Quality and NASA regulations. Because of the events described in the Supplementary Information, the EIS will focus only on the proposed Cassini mission, one element of the OSSE Program. This notice's sole purpose is to keep the public informed about the evolution of NASA's ongoing environmental review process. No comments are solicited at this time.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Wright, Cassini Program Manager, Office of Space Science and Applications, Code SL, National Aeronautics and Space Administration, Washington, DC 20546, 202-358-0315.

SUPPLEMENTARY INFORMATION: The February 27, 1991, NOI described the purpose and structure of the EIS for the OSSE Program. NASA intended that the EIS (1) serve as a programmatic EIS for NASA's future OSSE Program activities, and (2) specifically address the planned Comet Rendezvous Asteroid Flyby (CRAF) and Cassini missions. Program elements, including CRAF and Cassini, shared a number of common requirements including launch energy, on-board propulsion, power, communications, data handling, navigation, guidance and control, and electrical power needs. NASA was designing a modular spacecraft—the Mariner Mark II—to satisfy these common spacecraft configuration requirements and reduce the overall costs of each mission in the OSSE Program.

Since the publication of the NOI, changes have occurred in NASA's plan. In January 1992, the CRAF mission was deleted from the President's budget proposal for fiscal year 1993. Other potential OSSE Program missions that were mentioned in the NOI such as the Comet Nucleus Sample Return and Neptune Orbiter-Triton Probe are undergoing reassessment within NASA. In addition, the Agency has redirected its efforts from use of the multi-purpose Mariner Mark II spacecraft to the development of less expensive and lighter mission-specific spacecraft. Accordingly, the Cassini mission, as presently proposed, would utilize a redesigned Cassini mission-specific spacecraft.

The Cassini spacecraft, including its European Space Agency-developed Huygens Probe, is being designed to explore the planet Saturn and its environs. The Huygens Probe would be released from the Saturn Orbiter spacecraft into the atmosphere of Saturn's largest moon, Titan. The Saturn Orbiter would conduct a 4-year tour of Saturn and its satellites, rings, and magnetosphere. The present plan is to launch the spacecraft from Cape Canaveral Air Force Station, Florida, using a Titan IV/Centaur launch vehicle configuration. October 1997 is the projected launch date.

The changes that have occurred in the OSSE Program, especially the new focus on less expensive and lighter mission-specific spacecraft, have removed CRAF-specific requirements. Small changes have occurred in launch energy needs, on-board power, communications, data handling, navigation, and guidance and control requirements. Because of the elimination of the CRAF mission and the ongoing reassessment of other missions in the OSSE Program, it has been determined that a programmatic EIS will no longer be appropriate. Consequently, the initial environmental review efforts have been refocused toward preparing an EIS which will only address the Cassini mission.

The relevant environmental issues and alternatives noted in the February 27, 1991, NOI will be addressed in the Cassini, EIS. Furthermore, publish input and comment from the scoping process initiated by the NOI will be taken into account in the preparation of the Cassini EIS.

Dated: September 29, 1992.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 92-24298 Filed 10-06-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice 92-59]

NASA Advisory Council (NAC), Aeronautics Committee (AAC); Meeting on Materials and Structures

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on materials and structures.

DATES: November 4, 1992, 1 p.m. to 5 p.m.; and November 5, 1992, 8 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, room 124, Building 1229, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Blankenship, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681, 804/864–6005.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Research and Technology Overview.
—Aging Aircraft Program Overview.
—High Temperature Program Overview.
—Advanced Composites Technology Program Overview.
—High Speed Research Program Status.

Dated: October 1, 1992.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 92–24299 Filed 10–6–92; 8:45 am]

BILLING CODE 7510–01–M

[Notice 92–60]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting on Materials, Structures and Flight Performance

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Space Systems and Technology Advisory Committee meeting on materials, structures and flight performance.

DATES: October 28, 1992, 8:30 a.m. to 5 p.m.; and October 29, 1992, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, room 205, Building 1218, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Mr. Willard Weaver, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23665, 804/864–6053.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Structures and Materials Program Overview.
—Aerothermodynamis Program Overview.
—Flight Systems Program Overview.

Dated: October 1, 1992.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 92–24300 Filed 10–6–92; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

Meeting

AGENCY: The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.

ACTION: Notice of public hearings and meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing announces the forthcoming public hearings and meeting of the Commission.

DATES: October 14, 1992, 9 a.m. to 5 p.m.

ADDRESSES: The Board Room, Stouffer Mayflower Hotel, 1127 Connecticut Ave., NW., Washington, DC (202) 347–3000.

FOR FURTHER INFORMATION CONTACT: Lois V. Toliver, Administrative Officer, (202) 275–0045.

SUPPLEMENTARY INFORMATION:

Type of Meeting

Open.

Agenda

Call to Order
Roll Call
Chairman's Message
Update of Commission Activities
Committee Reports
Commission Strategy Session

Lois V. Toliver,

Administrative Officer.

[FR Doc. 92–24333 Filed 10–6–92; 8:45 am]

BILLING CODE 6820–07–M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the National Commission on America's Urban Families will hold a meeting in Dallas, Texas, on Thursday, October 22, Center for Community Cooperation, 2900 Live Oak Street, (Brazos room) Dallas, Texas 75204. The purpose of the meeting is to discuss the Commission's ongoing work. For the exact time please contact the Commission two days prior to the event at 202–690–6462.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW., room 305–F, Washington, DC 20201.

Anna Kondratas,

Executive Director.

[FR Doc. 92–24261 Filed 10–6–92; 8:45 am]

BILLING CODE 4150–04–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cancellation of Meeting for Humanities Panel

The meeting of the Humanities Panel scheduled for October 26, 1992, and published in the **Federal Register** on September 17, 1992, at page 43032 has been cancelled. The panel was to review applications for Public Humanities Projects, submitted to the Division of Public Programs.

David C. Fisher, Jr.

Advisory Committee Management Officer.

[FR Doc. 92–24288 Filed 10–06–92; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

September 30, 1992

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On August 27, 1992, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to Dr. Arthur L. DeVries, on September 30, 1992.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92-24254 Filed 10-6-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-247]

Consolidated Edison Company of New York, Inc. Indian Point Nuclear Generating Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-26 issued to the Consolidated Edison Company of New York, Inc. (the licensee) for operation of the Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would include provisions in the Technical Specifications (TS) 5.3, Reactor Core, which allows for an increase in reload fuel enrichment from 4.3 weight percent U-235 to 5.0 weight percent U-235 and in addition, TS 5.4, Fuel Storage, to allow for storage of 5.0 weight percent U-235 fuel assemblies in the new fuel storage rack.

The proposed action is in accordance with the licensee's application for amendment dated February 6, 1992, as supplemented September 17, 1992.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher fuel enrichment to provide the flexibility of extending the fuel irradiation and to permit operation for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel enriched to a nominal 5.0 weight percent uranium 235. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The higher enrichment, with fuel burnup to 60,000 megawatt day per metric ton uranium, may slightly change the mix of fission products that might be released in the event of a serious accident, but such changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operations with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c). This finding is applicable to the proposed change for Indian Point 2.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternatives would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of the Indian Point Nuclear Generating Unit No. 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 6, 1992, as supplemented September 17, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 30th day of September 1992.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-24309 Filed 10-6-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Medical Uses of Isotopes (ACMUI) will hold its next meeting on October 22 and 23, 1992. At this meeting, the NRC staff will provide the ACMUI with a medical issues document; status reports on a petition for rulemaking regarding the practice of radiopharmacy; resolution of petitions regarding patient release criteria; administration of byproduct material or radiation from byproduct material to women who are pregnant or breast feeding; abnormal occurrence criteria; and administrative issues concerned with ACMUI communication.

DATES: The meeting will begin at 8 a.m., on October 22 and 23, 1992. The entire meeting will be open to the public.

ADDRESSES: The U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6–H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–504–3417.

SUPPLEMENTARY INFORMATION: The following information is provided concerning the topics to be discussed at the meeting:

Administrative Issues

The Commission has directed the ACMUI to review and possibly revise certain committee operating procedures regarding ACMUI communication with NRC staff and the Commission.

Medical Issues

The NRC staff has begun a reassessment of the medical use program. The staff has prepared an "issues" paper regarding certain program areas that should be reviewed to determine if changes would improve the medical use program. The paper contains many open-ended questions for which the staff is soliciting input. In addition, the staff is soliciting topics that are not addressed in the paper.

American College of Nuclear Physicians/Society of Nuclear Medicine (ACNP/SNM) Radiopharmaceutical Petition

On June 15, 1989, the ACNP/SNM filed a petition with NRC addressing five issues relating to the preparation and use of radiopharmaceuticals. On August 23, 1990, NRC published the Interim Final Rule addressing two issues in the petition. The remaining issues to be resolved are: The practice of nuclear pharmacy, including compounding; the use of radiolabeled biologics; and the use of byproduct material for human research.

Patient Release Criteria

In response to three petitions for rulemaking, one from Carol S. Marcus, M.D. (February 6, 1991), and two from the American College of Nuclear Medicine (January 14, 1992, and April 21, 1992), regarding criteria for the release of patients administered byproduct material. The staff will review the issues and provide an approach to resolving these petitions.

Pregnancy and Breast-feeding

The staff will provide a brief status report on issues and recommendations concerning unintended radiation doses or dosages to an embryo, fetus, or nursing infant, resulting from administration of radiopharmaceuticals or radiation to pregnant or breast-feeding patients.

Abnormal Occurrence Criteria

The Quality Management Rule revised the criteria for medical use misadministrations. The staff will provide a brief status report on staff efforts to re-examine the existing criteria for selection of misadministration reports as abnormal occurrences.

Conduct of the Meeting

Barry Siegel, M.D. will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Larry W. Camper (address listed above). Comments must be received by October 13, 1992, to ensure consideration at the meeting. The transcript of the meeting will be kept open until October 28, 1992, for inclusion of written comments.

2. Persons who wish to make oral statements should inform Mr. Camper, in writing, by October 15, 1992. Statements must pertain to the topics at hand. The Chairman will rule on requests to make oral statements. Opportunity for members of the public to make oral statements will be based on the order in which requests are received. In general, oral statements should be limited to approximately 5 minutes. Oral statements must be supplemented by detailed written statements, for the record. Rulings on who may speak, the order of presentation, and time allotments may be obtained by calling Mr. Camper, 301–504–3417, between 9 a.m. and 5 p.m. EST, on October 20, 1992.

3. At the meeting, questions from attendees other than committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room,. 2120 L Street NW., Lower Level, Washington, DC 20555, on or about November 2, 1992.

5. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Act (5 U.S.C. App); and the Commission's regulations in title 10, Code of Federal Regulations, part 7.

Dated: October 1, 1992.

Joyce C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92-24310 Filed 10-6-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 47th meeting on Wednesday, October 21, 1992, 8:30 a.m. until 6 p.m., at the St. Tropez Hotel, 455 East Harmon Avenue, Las Vegas, NV.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

A. Continue discussions of a supplemental request from Chairman Selin made on a systems-analysis approach to reviewing the overall high-level waste program.

B. Review comments on the proposed high-level waste repository from State, Local and Indian Tribes representatives.

C. Invite DOE to discuss work in progress, results and strategy for setting priorities at the proposed Yucca Mountain High-Level Waste Repository Site.

D. Hear a briefing by DOE and its contractors on the Accelerated Seismic Initiative, and be provided information on the June 29, 1992, earthquake that occurred near the proposed Yucca Mountain High-Level Waste Repository Site.

E. Hear a report from the Chairman of the ACNW Natural Resources Working Group on a meeting held on October 20, 1992.

F. Discuss administrative matters related to Committee activities and items that were not completed at previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule of ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: October 1, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–24311 Filed 10–6–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–70]

Renewal of Facility License No. TR–1; General Electric Co

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 16 to Facility License No. TR–1, issued to the General Electric Company (the Licensee), Which renews the possession only license for the facility located on the Vallecitos Nuclear Center in Alemeda County, California. The renewed license will expire on January 26, 2016.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commissions regulations in 10 CFR chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of proposed issuance of this renewal in the **Federal Register** on August 31, 1992, (57 FR 39408). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a related Safety Evaluation, for the renewal of Facility License No. TR–1 and has, based on that evaluation, concluded that the facility can continue to be maintained by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment which was published in the **Federal Register** on September 11, 1992, (57 FR 41792) for the renewal of Facility License No. TR–1 and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see: (1) The application for amendment dated July 9, 1990, as supplemented on December 17, 1990, and August 7, 1992; (2) Amendment No. 16 to Facility License No. TR–1; (3) the related Safety Evaluation; and (4) the Environmental Assessment. These items are available for public inspections at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of September 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–24308 Filed 10–6–92; 8:45 am]

BILLING CODE 7590–01–M

Conversion to the Metric System

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing its policy on metrication. This action is in response to the Omnibus Trade and Competitiveness Act of 1988, Executive Order 12770 of July 25, 1991, as well as concerns of certain NRC licensees and other interested parties. The policy, which affects the NRC's licensees and applicants, is designed to allow them to respond to market forces in determining the extent and timing for their use of the metric system of measurement. The policy also affects the NRC in that the NRC will adhere to the Federal Acquisition Regulation and the General Services Administration (GSA) metrication program for its own purchases. The policy affirms that use of the metric system of measurement by Commission licensees is in accordance with protection of the public health and safety.

EFFECTIVE DATE: October 7, 1992.

ADDRESSES: Documents referenced in this policy statement are available for inspection in the NRC Public Document Room, 2120 L Street, NW., (Lower level), Washington, DC between 7:45 am and 4:15 pm.

FOR FURTHER INFORMATION CONTACT: Dr. Frank A. Costanzi, Chairman, NRC Metrication Oversight Committee, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3760.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1988, Congress passed the Omnibus Trade and Competitiveness Act (the Act), (19 USC 2901 et seq.), which amended the Metric Conversion Act of 1975, (15 USC 205a et seq.). Section 5164 of the Act (15 USC 205a) designates the metric system as the preferred system of weights and measures for United States trade and commerce. The Act also requires that all Federal agencies convert to the metric system of measurement in their procurements, grants, and other business-related activities by the end of fiscal year (FY), 1992, "except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firm, such as when foreign competitors are producing competing products in non-metric units," (section 5614(b)(2)).

Summary of Public Comments

In response to the Act, the NRC published a metrication policy statement for comment in the **Federal Register** on February 10, 1992 (57 FR 4891). As a result, comments were provided by twelve responders, including five power reactor licensees, three standards organizations, one comment each from a reactor vendor, a materials licensee, the Nuclear Management and Resources Council (NUMARC), and a joint letter submitted by three individuals. All commenters supported the policy. However, the materials licensee strongly

advocated rulemaking to require licensees to use the metric system of measurement. The analysis of the advantages and disadvantages of a policy statement versus a rulemaking was presented in the **Federal Register** notice issuing the draft policy statement for comment. The basis of the NRC's position was that no corresponding improvement in the public health and safety would result, but costs would be incurred without benefit, if metrication were made mandatory by a rulemaking. The commenter's argument was not persuasive, and the NRC continues to believe that rulemaking is not appropriate at this time.

NUMARC argued that because most of the analytical codes, references, and resource data, as well as standards for component sizes (i.e., pipe sizes, fasteners, etc.) still generally use the English system in this country, the primary units shown in regulatory documents presenting dual units should be the measurement system in which the parameter was derived, with the secondary unit clearly labeled and shown parenthetically. Three of the utilities commenting endorsed the NUMARC letter. However, the Commission believes that the English units should be provided in brackets after the use of the International System of Units (SI) since the SI system has been mandated by Congress to be the preferred system of weights and measures for U.S. trade and Commerce.

A Letter submitted by three individuals also supported the policy statement. While they supported the statement, they called for strong incentives such as requiring all future licensing of "new" applicants in the industry to be in metric. For the NRC to require this type of action, it would need to show that the benefit of the action, such as the reduction of risk or improvement in administrative efficiency, would outweigh its costs. The NRC believes that his activity is best determined by the market forces, and not by the NRC requiring the action, especially if the action is not initiated in response to an issue involving public health and safety. These commenters also asked that any new self-supporting units at existing plants be licensed only in the metric system. However, even if the self-supporting unit were designed and built in metric, the emergency response activity is station-wide and, therefore, must be in English units. These individuals also suggested that the NRC only grant licenses to parties operating in metric after the year 2000. Again, this type of requirement could only be accomplished by the NRC if it could demonstrate that the action provided a safety or other benefit commensurate with the cost. The NRC does not believe that to be the case, and again believes that the market forces are the best guides for this type of action.

A tax incentive for licensees converting to the metric system before the year 2000 was also suggested by these individuals. This recommendation is not possible for the NRC to pursue because the NRC does not have taxing authority.

Lastly, the commenters suggested that the NRC make grants available to parties requiring financial help and who choose to voluntarily convert to the metric system. The NRC's grants are research and development related and are meant to focus on new and improved technologies. The NRC believes conversion to metric is market driven, and use of grant funds for this purpose is not in keeping with the spirit of either the NRC program or this action.

Upon publication of the draft policy statement, the NRC sought comment from several organizations involved in developing national consensus standards. Specifically, the NRC inquired as to the impact of metrication on NRC regulations as it relates to National and International Standards, including the extent to which sufficient guidance is presently available to licensees and prospective applicants on the selection of metric equivalents of common mechanical and electrical components that have safety-related functions. Letters were sent to the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the American Society of Mechanical Engineers (ASME), and the Institute of Electrical and Electronics Engineers, Inc. (IEEE).

ASME and IEEE responded that they supported the policy. Although ASTM noted that it could not schedule the appropriate committees to meet and discuss the NRC's policy until after the comment period expired, the ASTM indicated that it requires the inclusion of metric (SI) units in all 9,000 ASTM standards, allowing the technical committees to decide whether SI or English units are the preferred unit of measurement used in the committee's document. If both units of measurement are used in the document, the order in which they appear is determined by the committee preparing the document.

The IEEE stated that its policy is to provide technical literature and standards in the measurement system that the industry requires. Further, the IEEE stated that it is studying the need to provide more or all of its technical literature and standards in metric (SI) units and that the decision will be heavily influenced by the desires of the users of its standards, such as the NRC and electric utility industry.

None of the standards organizations commented on the availability of hardware.

ANSI did not respond and when contacted by telephone indicated that it did not intend to comment.

For clarity, the Commission has decided to list which documents will be published in dual units. These documents include new regulations, major amendments to regulations, regulatory guides, NUREG-series documents, policy statements, information notices, generic letters, bulletins, and all written communications directed to the public.

Paperwork Reduction Act Statement

This policy statement contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Statement of Policy

The NRC supports and encourages the use of the metric system of measurement by licensed nuclear industry. In order to facilitate the use of the metric system by licensees and applicants, beginning January 7, 1993, the NRC will publish the following documents in dual units: New regulations, major amendments to existing regulations, regulatory guides, NUREG-series documents, policy statements, information notices, generic letters, bulletins, and all written communications directed to the public. Documents specific to a licensee, such as inspection reports and docketed material dealing with a particular license, will be in the system of units employed by the licensee. This protocol reflects a general approach that only documents applicable to all licensees, or to all licensees of a given type in which a licensee may operate in the metric system will contain dual units, otherwise English or metric units alone are permissible. In dual-unit documents, the first unit presented will be in the International System of Units with the English unit shown in brackets. The NRC will modify existing documents and procedures as needed to facilitate use of the metric system by licensees and applicants. In addition, the NRC will provide staff training as needed. Further, through its participation in national, international, professional, and industry standards organizations and

committees and through its work with other industry organizations and groups, the NRC will encourage and further the use of the metric system in formulating and adopting standards and policies for the licensed nuclear industry. However, should the NRC conclude that the use of any particular system of measurement be detrimental to the public health and safety, the Commission will proscribe, by regulation, order, or other appropriate means, the use of that system. In particular, all event reporting and emergency response communications between licensees, the NRC, and State and local authorities will be in the English system of measurement. After 3 years, the Commission will assess the state of metric use by the licensed nuclear industry in the United States to determine whether this policy should be modified. Lastly, the NRC will follow the Federal Acquisition Regulation and the General Services Administration metrication program in executing procurements.

Dated at Rockville, Maryland this 30th day of September 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-24312 Filed 10-6-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon written request copies available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 6c-6, File No. 270-160
Rule 10f-3, File No. 270-237
Rule 17j-1, File No. 270-239
Rule 1(c), Form U5S, File No. 270-168
Part 257, File No. 270-252

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rules 6c-6, 10f-3, and 17j-1 under the Investment Company Act of 1940 (1940 Act). Also submitted for extension of OMB approval is Rule 1(c), Form U5S and part 257 under the Public Utility Holding Company Act of 1935 (Act).

Rule 6c-6 continues exemptive relief received by Commission order to certain investment companies that respond to Revenue Ruling 81-225 by organizing new companies and substituting them for existing companies without prior Commission approval. All of the respondents, together, incur an estimated one burden hour annually complying with the rule.

Rule 10f-3 permits, under certain conditions, purchases of securities from underwriting syndicates whose members include affiliated persons of the purchasing investment company. Each of the 600 respondents spends about two hours per year complying with the rule.

Rule 17j-1 furthers the objective set forth in section 17(j) of the 1940 Act, which makes it unlawful for any affiliated person of a registered investment company to engage in certain types of fraudulent practices. The rule requires that companies adopt codes of ethics designed to prevent such fraudulent practices. The 4,612 recordkeepers each incur an estimated six hours annually complying with the rule.

Rule 1(c) and Form U5S implement section 14 of the Act, and require registered public utility holding companies to file such annual and other periodic and special reports as the Commission may prescribe to keep current information relevant to compliance with substantive provisions of that Act. Each of the 14 respondents annually incurs an estimated 8.46 burden hours to comply with this requirement.

The rules under 17 CFR part 257 implement sections of the Act that require registered holding companies and their subsidiary service companies to preserve records for periods specified by Commission rule. The 14 recordkeepers, together, incur about one annual burden hour to comply with requirements.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 21, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24279 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth St, NW, Washington, DC 20549.

New Collection; Revisions of Currently Approved Collections

Form SB-1, File No. 270-374
Form SB-2, File No. 270-366
Form S-2, File No. 270-60
Form S-4, File No. 270-287
Regulation A, File No. 270-110
Form 10-SB, File No. 270-367
Form 10-KSB, File No. 270-368
Form 10-QSB, File No. 270-369
Form 8-K, File No. 270-50

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for OMB approval Form SB-1, a form to register securities for sale under the Securities Act of 1933 and for revisions of currently approved collections in Forms SB-2, S-2, and S-4, forms to register securities for sale under the Securities Act, Regulation A, an exemption from the registration requirements of the Securities Act of 1933 and Forms 10-SB, 10-KSB, 10-QSB and 8-K for registration of a class of securities, annual, quarterly and periodic reporting respectively, under the Securities Exchange Act of 1934. The new form and revisions to existing forms constitute changes to the integrated registration and reporting system for small business issuers; revisions to other collections are a result of the use of this new system.

Each of the estimated 250 respondents using Form SB-1 incurs an average estimated 760 burden hours to comply with the Form requirements.

Each of the 259 respondents using Form SB-2 incurs an average 925 burden hours to comply with the Form requirements.

Each of the 84 respondents using Form S-2 incurs an average 500 burden hours to comply with the Form requirements.

Each of the 505 respondents using Form S–4 incurs an average 1,250 burden hours to comply with the Form requirements.

Each of the 201 respondents using Regulation A (Forms 1–A and 2–A) incurs an average 620 burden hours to comply with the Form requirements.

Each of the 65 respondents using Form 10–SB incurs an average 92 burden hours to comply with Form requirements.

Each of the 3,275 respondents using Form 10–KSB incurs an average 1,220 burden hours to comply with Form requirements.

Each of the 3,516 respondents using Form 10–QSB incurs an average 131 burden hours to comply with Form requirements.

Each of the 12,100 respondents using Form 8–K incurs an average 5 burden hours to comply with Form requirements.

The estimated average burden hours are solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative sample or study of the costs of the Securities and Exchange Commission's rules or forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget [Paperwork Reduction Projects OMB Number not yet assigned, Form SB–1; 3235–0418—Form SB–2; 3235–0072—Form S–2; 3235–0324—Form S–4; 3235–0286—Regulation A; 3235–0419—Form 10–SB; 3235–0420—Form 10–KSB; 3235–0416—Form 10–QSB; 3235–0060—Form 8–K], room 3208 New Executive Office Building, Washington, DC 20543.

Dated: September 23, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24278 Filed 10–6–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31255; File No. SR–Amex–92–30]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Options on the Retail Index

September 29, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 27, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to rule 19b–4 under the Act, proposes to trade options on the Retail Index ("Index"), a new stock index developed by the Amex based on retail industry stocks or American Depository Receipts ("ADRs") thereon, which are traded on the Amex, the New York Stock Exchange, Inc. ("NYSE"), or through the facilities of the National Association of Securities Dealers Automated Quotation system and are reported national market system securities ("NASDAQ/NMS").

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex has developed a new industry specific index called The Retail Index, based entirely on shares of widely held retail industry stocks or ADRs which are exchange or NASDAQ/NMS listed. A list of the current fifteen component stocks ("component stocks") is available at the places specified in Item IV below. It is intended that the Amex trade option contracts on the newly developed Index.

The Index contains securities of highly-capitalized companies in the retail industry whose primary business involves merchandising. Included in this group are companies which own and/or operate department stores, apparel retail outlets, specialty stores (*e.g.*, toy stores, electronic stores, retail building supplies stores, etc.), general merchandise chains, drugstores, and discount retail outlets.

Index calculation. The Index is calculated using an "equal-dollar weighting" methodology designed to ensure that each of the component securities is represented in an approximately "equal" dollar amount in the Index. The Exchange proposes to use this method of calculation since, even among the largest companies in the retail industry, there is a great disparity in size. For example, although the stocks included in the Index represent many of the most highly capitalized companies in the retail industry, Wal-Mart Stores, Inc. currently represents over 35% of the aggregate market value of the Index. It has been the Exchange's experience that options on market value weighted indexes dominated by one component stock are less beneficial to investors, since the index will tend to represent the largest component and not the industry as a whole.

In addition, while currently there is not as much disparity in the prices of the stocks included in the Index, the Exchange believes that a price-weighted method of calculating the Index's value is not preferred, since the prices of retail stocks can fluctuate significantly as a result of corporate actions (*e.g.*, a stock split or distribution) rather than as a result of stock performance, causing the relative weighting of a stock within the index to fluctuate significantly. In contrast, with an index calculated using the equal-dollar weighting method, a stock split will have no effect on the weighting of component stocks within the index since, for example, a two for one stock split will result in twice as many shares of that component stock in the index's portfolio, but at half the price.

The following is a description of how the equal-dollar weighting calculation method works. As of the market close on July 17, 1992, a portfolio of retail stocks was established representing an investment of $10,000 in the stocks (to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the

current index divisor. The Index divisor was initially calculated to yield a benchmark value of 200.00 at the close of trading on July 17, 1992. Each quarter thereafter, following the close of trading on the third Friday of January, April, July and October, the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in equal dollar amounts. The Exchange has chosen to rebalance following the close of trading on the quarterly expiration because it allows an option contract to be held for up to three months without a change in the Index portfolio while, at the same time, maintaining the equal dollar weighting feature of the Index. If necessary, a divisor adjustment will be made to ensure continuity of the Index's value. The newly adjusted portfolio will become the basis for the Index's value on the first trading day following the quarterly adjustment.

The Exchange has made regular quarterly adjustments to a number of its indexes and has encountered little or no investor confusion regarding the adjustments, since they are done on a regular basis and investors are given proper notice. In addition, the Exchange represents that it will distribute information circulars to all its members on a quarterly basis notifying them of the changes to the Index. These circulars also will be sent by facsimile to the Exchange's contacts at the major options firms, mailed to the approximately fifteen thousand recipients of the Exchange's options related information circulars, and made available to subscribers of the Options News Network. The Exchange also will include in its promotional and marketing materials for the Index a description of the equal dollar weighting methodology.

The number of shares of each component stock in the Index portfolio will remain fixed between quarterly reviews except, however, in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to a component stock, or merger, consolidation, dissolution or liquidation of the issuer of a component stock. In these instances, the number of shares of the "adjusted" security in the portfolio may be changed, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of a new component, to the nearest whole share. In both cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

The Amex will calculate and maintain the Index and, pursuant to Exchange Rule 901C(b), may at any time substitute component stocks, or adjust the number of component stocks included in the Index, based on changing conditions in the retail industry. However, in the event the Exchange determines to increase the number of Index component stocks to greater than twenty or reduce the number of component stocks to fewer than ten, the Exchange will submit a rule filing pursuant to section 19(b) of the Act. In selecting securities to be included in the Index, the Exchange will be guided by a number of factors including market value of outstanding shares and trading activity. The eligibility standards for Index components are described below.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The proposed options on the Index will be European style (*i.e.*, exercises are permitted at expiration only) and cash settled. Standard option trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply.

The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in an option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

In addition, the Exchange also plans to list, pursuant to Amex Rule 903C(a)(iii), option series on the Index having up to 36 months to expiration ("LEAPs"). These long term option series will be traded along with the series of Index options with expirations in the three near-term calendar months and in the two additional calendar months in the January cycle. The Exchange, in lieu of long term options on a full value Retail Index, may also choose to list long-term, reduced value put and call options on the Index ("Retail LEAPs"). Retail LEAPs will be based on a reduced value of the Index, equal to one-tenth of the Index's full value, and have expirations of up to 36 months. The interval between expiration months for both a full value and a reduced value long-term option will not be less than six months (*i.e.*, during any given year there will only be two long-term options listed; for example, after the expiration in December 1992, the Exchange will be trading both the June 1995 and the December 1995 long-term options.) Retail LEAPs would trade independent of, and in addition to, the regular Index options, would have European-style exercise and be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. Position limits on the Retail LEAPs will be equivalent to the position limits for regular Index options and will be aggregated with such options (for example, if the position limit for the Index options is 8,000 contracts on the same side of the market, then the position limit for the Retail LEAPs will be 80,000 contracts on the same side of the market).

The Index value for purposes of settling a specific Retail Index option will be calculated based upon the regular way opening sale prices for the component stocks on their respective primary markets. In the case of securities traded through the NASDAQ system, the first reported sale price will be used. As trading begins in each of the Index's component securities, its opening sale price on its primary exchange will be captured for use in the calculation. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the settlement value for expiring Index options. If any of the component stocks do not open for trading on the primary exchange on the last trading day before expiration, then the prior day's last sale price is used in the calculation.

Eligibility Standards for Index Components

Exchange rule 901C specifies criteria for inclusion of stocks in an index on which options will be traded on the Exchange. In choosing among retail industry stocks that meet the minimum criteria set forth in Rule 901C, the Exchange will focus only on stocks that are traded on either the NYSE, Amex (subject to the limitations of Amex Rule 901C) or NASDAQ/NMS. In addition, the Exchange intends to focus on stocks that: (1) have a minimum market value

(in U.S. dollars) of at least $100 million;[1] and (2) have an average monthly trading volume in the U.S. markets over the previous six month period of not less than 1,000,000 shares (or ADRs). Although the stocks currently selected for inclusion in the Index meet or surpass the above additional criteria, the Exchange intends the above criteria to be used as guidelines only and reserves the right to include stocks in the Index that may not meet these guidelines, but do meet the criteria of Rule 901C.

The Index currently has fifteen component stocks, all of which are eligible for, and the subject of, standardized options trading. However, to address concerns about the possibility of manipulation of an index containing a large percentage of stocks that do not meet the eligibility standards applicable to stocks eligible for standardized option trading, at each quarterly rebalancing, stocks that meet the then current criteria for standardized option trading set forth in Exchange Rule 915 will be required to account for at least 90% of the Index's numerical index value. This requirement is proposed to be reflected in Commentary .01 to Exchange Rule 901C.

Exchange rules applicable to stock Index options. Amex rules 900C through 980C will apply to the trading of option contracts based on the Index. These Rules cover issues such as surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. The Index options are deemed to be Stock Index Options under Amex Rule 901C(a) and the Index is deemed to be a Stock Index Industry Group under Rule 900C(b)(1). Under Amex Rule 903C, the Exchange intends to list up to three near-term calendar months and two additional calendar months in three month intervals from the January cycle. Exchange expects that the review required by Amex Rule 904C(c) will result in a position limit of 8,000 contracts for the Index options.

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number of the caption above and should be submitted by October 16, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24280 Filed 10-7-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

October 1, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Computervision Corp.
Common Stock, $.01 Par Value (File No. 7-9195)
Horsham Corporation
Subordinated Voting Shares, No Par Value (File No. 7-9196)
North American Mortgage Co.
Common Stock, $.01 Par Value (File No. 7-9197)
Tadiran, Ltd.
Ordinary Shares, NIS 6.2 (File No. 7-9198)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 23, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-24281 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[1] In the case of ADRs, this represents market value as measured by total world-wide shares outstanding.

[Release No. 31268; File No. SR-BSE-92-04]

September 30, 1992.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1, No. 2 and No. 3 by the Boston Stock Exchange, Inc. Relating to its Specialist Performance Evaluation Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on April 23, 1992, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On May 28, 1992, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change. On July 27, 1992, BSE submitted a further amendment to the proposed rule change.[1] On September 28, 1992, the BSE submitted Amendment No. 3 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE seeks to amend its Specialist Performance Evaluation Program ("SPEP") through the incorporation of objective measures of performance.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

The text of the proposed rule is as follows:

Chapter XV of the BSE's Rules of the Board of Governors *new language*; [deleted language]

¶*2156* [2155.03] Specialist Performance [Improvement] *Evaluation Program*

The [Dealer-]Specialist Performance Evaluation Program is a [12]*16*-month pilot program. All [Dealer-]Specialists shall be subject to regular performance evaluation designed to identify areas of performance needing improvement. The [Dealer-]Specialist Performance Evaluation Program shall be administered by the Exchange, subject to the supervision of the Market Performance Committee. Any [Dealer] Specialist whose performance [as a specialist] is below acceptable [performance] levels established by the market Performance Committee shall be subject to specific improvement actions as determined by the Market Performance Committee *as set forth in Paragraphs 2156.10 through 2156.60.* [Such actions may include, but are not limited to, the following sanctions: Withdrawal of approval to act as a specialist in one or more stocks, limitations on the privilege of protecting stocks from assignment to new specialists and the loss of the right to maintain trading accounts.]

In the event that the performance of a [Dealer-]Specialist is below acceptable performance levels, notice of such fact shall be given to the [Dealer-]Specialist.

Set forth below are the conditions warranting performance improvement [sessions] *action:*

[Condition for Requesting a Specialist to Attend a meeting With Performance Improvement Action Subcommittee.	[Condition Requiring a Hearing Before the Market Performance Committee.
[QUESTIONNAIRE]	
[Average grade below "4.5".	[Two out of three successive review periods.
Average grade below "4.5" for one question for two out of three successive review periods].	One out of two review periods subsequent to meeting condition for review with subcommittee.]

Any Specialist who receives a deficient score in one objective measure for two out of three consecutive review periods shall be deemed to have a deficient performance, and shall be required [A deficient specialist is initially requested] to attend an informal meeting with the Performance Improvement Action [Subcommittee. The Subcommittee] *to* discuss[es with the specialist] possible methods of improving his/her performance. [The specialist may elect not to attend this meeting.] *Any specialist who receives a deficient score in any one objective measure for three out of four consecutive review periods may be referred to the Market Performance Committee by the Performance Improvement Action Committee if it feels that improvement can be and should have been made. The Market Performance Committee shall take such actions as it deems necessary and appropriate to address the deficient score, including imposing [san]actions as specified in the Supplemental Material.*

Those Specialists that comprise the bottom ten percent of the overall performance evaluation ranking for two out of three consecutive evaluation review periods shall be required to appear before the Market Performance Committee. The Market Performance Committee shall take such actions it deems necessary and appropriate to address the deficient performance. (See Supplemental Material for possible [san]actions.)

[A deficient specialist that meets a condition requiring review] *The Specialist* shall be notified in writing of the basis for such action[. The member] *and* shall have an opportunity to submit a written reply no later than ten days after the receipt of such notice.

The *Specialist* [member] shall also have an opportunity to be heard upon the specific grounds to be considered before the Market Performance Committee and a written record of any such hearing shall be maintained. Following any such proceeding, the Market Performance Committee will inform the *Specialist* [member] in writing of its decision *and any [san]actions to be imposed,* and *its* reasons *therefor.* The decision of a majority of the members of that Committee shall be final, subject to the power of the Board of Governors to review such decision in accordance with the provisions of Article III, Section 2 of the Constitution.

.03(i) Exceptions. Where Specialists that comprise the bottom ten percent have threshold scores in each measure at the following levels (subject to change pursuant to SEC approval), they will be deemed to have adequately performed:

Overall Evaluation Score—at or above weighted score of 4.05

Turnaround time—below 31.0 seconds (6 points)

Holding Orders Without Action—below 26.0% (6 points)

Trades Between the Quote—at or above 21.0% (4 points)

[1] See letter from Karen Aluise, Attorney, BSE, to Sharon Lawson, Assistant Director, SEC, dated July 27, 1992 ("Amendment No. 2").

[2] See letter from Karen Aluise, Attorney, BSE, to Diana Luka-Hopson, Branch Chief, SEC, dated September 28, 1992 ("Amendment No. 3").

Size Larger than the BBO—at or above 71.0% (5 points)
Questionnaire—at or above weighted score of 50 (4 points)

Supplemental Material: .10 Stock Reallocation—Notice of Particular Stock—Together with written notice of the specific grounds to be considered as the basis for withdrawal of approval, the Market Performance Committee will give the member written notice of the particular stock or stocks to be considered for withdrawal of approval and give a written explanation of the basis on which the stock or stocks were selected.

.20 Stock Reallocation—Selection of Particular Stocks—In designating a particular stock or stocks to be considered as the basis for withdrawal of approval, the Markets Performance Committee shall consider indications of weaknesses in specialist performance in individual stocks to the extent such indications are available. Such indications of weak performance may include, among other factors, references to *a* particular stock by those responding to initial or supplemental evaluation questionnaires, [and] references in such questionnaires to weaknesses in performance of a type which relate to *a* particular stock or groups of stocks, *and/or indications of weaknesses as demonstrated by the objective measures in such stock or stocks.*

When the available measures of *S*[s]pecialist performance indicate weak performance generally, and not precisely in any particular stock or stocks, the Market Performance Committee may decide nonetheless to withdraw approval for a particular stock or stocks. In any case, the Market Performance Committee will exercise its best judgment to select a stock or stocks as to which a reallocation by the *Stock Allocation* [Market Performance] Committee is likely to result in improved *S*[s]pecialist performance.

[.30 Limiting Protected Stocks—All specialists are obligated to make available ten percent of the Dealer-Specialist's specialty stocks for acquisition by new Dealer-Specialists developing a book.

A Dealer-Specialist whose performance is below acceptable levels as determined by the Market Performance Committee may be required to make available more than the ten percent of the stocks in which he or she is registered.]

.*3*[4]0 Trading *and/or Alternative Specialist* Account Suspension—A *S*[s]pecialist that meets a condition for review *after one review period resulting in a deficient score for the overall evaluation period or for two review periods with a deficient score in any one objective measure* [subject to the Specialist Performance Evaluation Program criteria] shall be put on notice that approval for his or her trading account *or Alternate Specialist Account* may be suspended if the *S*[s]pecialist [remains in the bottom ten percentile] [a condition for review is met] *receives a deficient score* in the subsequent *review* period and may continue until the *S*[s]pecialist's [grades are within acceptable guidelines] *rank is above the bottom ten percentile or meets the provisions of Paragraph 2155.03(i), or the Specialist receives an adequate score in the one objective measure brought under review.*

.*4*[5]0 Other Action—the Market Performance Committee, in addition to the foregoing actions, may take such other action as it deems appropriate to address deficient performance of a *S*[s]pecialist.

.50 While reallocated stocks will not be restored upon the improved performance of a Specialist, a Specialist may, with the approval of the Market Performance Committee, have his/her status as an alternate and/or his/her trading account restored. He/she will also be in good standing regarding the application for and allocation of new stocks.

.60 The Market Performance Committee, in determining which [san]action(s) should be applied against a deficient Specialist, will use the following guidelines to determine the order of [san]actions, but in its discretion may apply them in any order or may apply more than one in a given situation:

(i) Suspension of trading account privilege.

(ii) Suspension of alternate specialist account privilege.

(iii) Stock reallocation.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to incorporate certain objective measures into the Exchange's Specialist Performance Evaluation Questionnaire ("SPEP"). The evaluation program, using the BEACON system, looks at all incoming orders routed to a Specialist for execution. A record of all action on these orders is accumulated in a separate file from which four calculations are run.

Selection criteria for eligible orders *in BEACON* includes regular buy and sell market and marketable limit orders only. Orders marked buy minus or sell plus are excluded *from the evaluation program,* as are crosses and all orders with qualifiers, (*e.g.,* market-on-close, stop, stop limit, all or none, etc.). The order entry date must equal the execution date.

For each of the measures *evaluated,* including the Specialist Performance Evaluation Questionnaire ("SPEQ"), a ten point scale will be applied to a range of scores. Based on the raw score for each measure, the respective specialist will receive an associated score between 1 and 10 points, which will be weighted as indicated for each measure.

The first measure is Turnaround Time, which calculates the average number of seconds for all eligible orders based on the number of seconds between the receipt of a market or marketable limit order in BEACON and the execution, partial execution, stopping or cancellation of the order. An order that is moved from the auto-ex screen to the manual screen will accumulate time until executed, partially executed, stopped or cancelled. This calculation will not be in effect until the individual stock has opened on the primary market. Certain situations, such as trading halts and periods where the BEACON system is off auto-ex floorwide, will result in blocks of time being excluded from the calculation. A specialist who averaged a raw score of 25 seconds will receive 7 points since it falls in the 21 to 25 second range. This calculation will comprise 15% of the overall evaluation program.

Turnaround Time

Time in seconds	Points
1–10	10
11–15	9
16–20	8
21–25	7
26–30	6
31–35	5
36–40	4
41–45	3
46–50	2
51 and up	1

The second measure is Holding Orders Without Action, which measures the number of market and marketable limit orders (all sizes included) that are held without action for greater than twenty-five (25) seconds. As in the Turnaround Time calculation, a stop, cancellation, execution or partial execution stops the clock. The same exclusions which apply in the Turnaround Time calculation also apply here. Thus, if a specialist receives a total of 100 market and marketable limit

orders and holds ten (10) of them for more than 25 seconds, his/her raw score of 10% would receive 9 points because it falls in the 6 to 10 percent range. This calculation will comprise 15% of the overall evaluation program.

Holding Orders Without Action

Percentage of orders	Points
0–5	10
6–10	9
11–15	8
16–20	7
21–25	6
26–30	5
31–35	4
36–40	3
41–45	2
46 and up	1

The third measure is Trading Between the Quote, which measures the number of market and marketable limit orders that are executed between the best consolidated bid and offer where the spread is greater than ⅛. Thus, if a specialist receives ten market and marketable limit orders where the spread between the best consolidated bid and offer is greater than ⅛, and such specialist executes five of the orders between the bid and offer, his/her raw score would be 50% and would receive 9 points since it falls in the 46 to 50 percent range. This calculation will comprise 25% of the overall evaluation program.

Trading Between the Quote

Percentage of orders	Points
51 and up	10
46–50	9
41–45	8
36–40	7
31–35	6
26–30	5
21–25	4
16–20	3
11–15	2
0–10	1

The fourth measure is Executions in Size >BBO, which measures the number of market and marketable limit orders which exceed the BBO size and are executed in size larger than the BBO size. Thus, if a specialist receives a total of 10 market and marketable limit orders which exceed the BBO size and executes nine of the orders in size larger than the BBO size, his/her raw score would be 90% and would receive 8 points since it falls in the 86 to 90 percent range. This calculation will comprise 25% of the overall evaluation program.

Filling Orders Greater Than BBO size

Percentage of orders	Points
96–100	10
91–95	9
86–90	8
81–85	7
76–80	6
71–75	5
66–70	4
61–65	3
56–60	2
55 and below	1

In addition, several changes have been made to the questionnaire in view of the adoption of the objective measures which have made some questions obsolete. The minimum acceptable raw score for each question remains at 4.5. Thus, if a specialist receives a raw score of 4.5 for each question for a weighted raw score (based on the weights for each question within the questionnaire) of 50.0052, he/she would receive 4 points since it falls in the 50 to 54 weighted raw score range. The questionnaire will comprise 20% of the overall evaluation program.

Questionnaire

Weighted raw score	Points
83 and above	10
77–82	9
72–76	8
66–71	7
61–65	6
55–60	5
50–54	4
44–49	3
38–43	2
37 and below	1

Using the examples from each measure above, the following weighted point totals would result in an overall program score of 7.45:

Measure	Points	Weighted points
Turnabout Time (15%)	7	1.05
Holding Orders Without Action (15%)	9	1.35
Trading Between the Quote (25%)	9	2.25
Executions in Size >BO (25%)	8	2.00
Questionnaire (20%)	4	*0.80*
		7.45

As discussed below, the rule specifically states at what score performance is deemed adequate in each measure. The rule has been amended to reflect that any Specialist who is deficient in any one of the objective measures for two out of three consecutive review periods will be required to appear before the Performance Improvement Action Committee to discuss ways of improving performance. If performance does not improve in the subsequent period, the Specialist will appear before the Market Performance Committee for appropriate action as described below.

Any specialist who is ranked in the bottom ten percent of the overall evaluation program for two out of three consecutive review periods will be required to appear before the Market Performance Committee and the Committee will take action to address the deficient performance as provided for in Paragraphs 2156.10–.60. However, the following threshold scores have been set at which a Specialist will be deemed to have adequately performed:

Overall Program—at or above weighted score of 4.05

Turnaround Time—below 3.10 seconds (6 points)

Holding Orders Without Action—below 26.0% (6 points)

Trades Between the Quote—at or above 21.0% (4 points)

Size Large than the BBO—at or above 71.0% (5 points)

Questionnaire—at or above weighted score of 50 (4 points)

A specialist who is deficient on the questionnaire alone will not be subject to review due to the subjectiveness of the questionnaire. However, a deficient score on the questionnaire may result in performance improvement action where it lowers the overall program score below 4.05.

The Exchange requests that the Commission approve this filing on a 16-month pilot basis effective for the September-December 1992 review period, at which point the BSE's current performance evaluation pilot (File No. SR–BSE–84–04) would cease to exist as a separate evaluation program.[3] This 16-month period will enable the Exchange to determine the appropriateness of the measures and their respective weights, as well as the effectiveness of the overall evaluation program.

[3] The Commission initially approved the BSE's SPEP pilot program in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8928 (March 14, 1986) (File No. SR–BSE–84–04). The Commission subsequently extended the SPEP pilot program in Securities Exchange Act Release Nos. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988) (File No. SR–BSE–87–6); 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990) (File No. SR–BSE–90–01); 28919 (February 26, 1991), 56 FR 9990 (March 8, 1991) (File No. SR–BSE–91–01); and 30401 (February 24, 1992), 57 FR 7413 (March 2, 1992) (File No. SR–BSE–91–01). The Commission's approval of BSE's current specialist evaluation pilot program expires on February 28, 1993.

(b) The basis under the Act for the proposed rule change is Section 6(b)(5) in that the SPEP results weigh heavily in stock allocation decisions and, as a result, Specialists are encouraged to improve their market quality and administrative duties, thereby promoting just the equitable principles of trade and aiding in the perfection of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

No burden on competition is perceived by the adoption of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-92-4 and should be submitted by October 28, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24320 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Incorporated

October 1, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Brown-Forman Corp.
$.40 Cum. Pfd. $10.00 Par Value (File No. 7-9211)
Buckeye Partners, L.P.
Common Stock, No Par Value (File No. 7-9212)
Brunham Pacific Properties, Inc.
Common Stock, No Par Value (File No. 7-9213)
Cabletron Systems, Inc.
Common Stock, $.01 Par Value (File No. 7-9214)
Cabot Oil & Gas Corp.
Class A Common Stock, $.10 Par Value (File No. 7-9215)
Callahan Mining Corp.
Common Stock, $1.00 Par Value (File No. 7-9216)
Canal Capital Corp.
Common Stock, $.01 Par Value (File No. 7-9217)
Canal Capital Corp.
$1.30 Exch. Pfd. $.01 Par Value (File No. 7-9218)
Capital Holding Corp.
Adj. Rte. Cum. Pfd. Ser. F $5.00 Par Value (File No. 7-9219)
Capstead Mortgage Corp.
Common Stock, $.01 Par Value (File No. 7-9220)
Carpenter Technology Corp.
Common Stock, $5.00 Par Value (File No. 7-9221)
Carriage Industries, Inc.
Common Stock, $.02 Par Value (File No. 7-9222)
Cascade Natural Gas Corp.
Common Stock, $1.00 Par Value (File No. 7-9223)
Cash America Investments, Inc.
Common Stock, $.10 Par Value (File No. 7-9224)
CBS, Inc.
$1.00 Conv. Pfd., Ser. A $1.00 Par Value (File No. 7-9225)
Central Hudson Gas & Electric Corp.
Dep. Pfd. Shares, $100.00 Par Value (File No. 7-9226)
CF Income Partners, LP
Depositary Units, No Par Value (File No. 7-9227)
Health Equity Properties, Inc.
Common Stock, $.01 Par Value (File No. 7-9228)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 23, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-24282 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

October 1, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Devon Energy Corporation
Common Stock, $.10 Par Value (File No 7-9181)
Income Opportunities Fund 1999, Inc.
Common Stock, $.10 Par Value (File No. 7-9182)
MuniYield Quality Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7-9183)
Neveen Select Maturities Municipal Fund
Shares of Beneficial Interest, $.01 Par Value (File No. 7-9184)
Nuveen Select Tax Free Income Portfolio 4

Shares of Beneficial Interest, $.01 Par Value (File No. 7–9185)
Rexnord Corp.
Common Stock, $.01 Par Value (File No. 7–9186)
Servico, Inc.
Common Stock, $.01 Par Value (File No. 7–9187)
Tee-Com Electronics, Inc.
Common Stock, No Par Value (File No. 7–9188)
Tommy Hilfiger Corp.
Ordinary Shares, $.01 Par Value (File No. 7–9189)
Banco Latino Americano De Exportaciones, S.A.
Class E Common Stock, No Par Value (File No. 7–9190)
USX-Delhi Corp.
Common Stock, $1.00 Par Value (File No. 7–9191)
Intercapital Quality Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–9192)
John Alden Financial Corporation
Common Stock, $.01 Par Value (File No. 7–9193)
Metro Bancshares, Inc.
Common Stock, $.01 Par Value (File No. 7–9194)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 23, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–24283 Filed 10–6–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31272; File No. SR–NASD–91–61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Close-Out Procedures and Customer Account Transfers

October 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 20, 1991,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has proposed to amend sections 59 and 65 of the Uniform Practice Code ("UPC"). Below is the text of the proposed rule change. Proposed language is italicized; proposed deletions are in brackets.

Close-Out Procedure "Buying-in"

Sec. 59

(a)–(h) Text unchanged.

Failure to Deliver and Liability Notice Procedures

(i)(1)*(A)* Text unchanged.

(B) If the contract is for a deliverable instrument with an exercise provision, and the exercise may be accomplished on a daily basis, and the settlement date of the contract to purchase the instrument is on or before the requested exercise date, the receiving member may deliver a Liability Notice to the delivering member no later than 11:00 A.M. on the day the exercise is to be effected. Notice may be redelivered immediately to another member but no later than noon on the same day. Such notice must be issued using written or comparable electronic media having immediate receipt capabilities. If the contract remains undelivered at expiration, and has not been cancelled by mutual consent, the receiving member shall notify the defaulting member of the exact amount of the liability on the next business day.

(C) In all cases, members must be prepared to document request for which a Liability Notice is initiated.

(i)(2)—(i)(4) Text unchanged.

(j)–(m) Text unchanged.

* * *

Customer Account Transfer Contracts

Sec. 65

(a)–(b) Text unchanged.

Transfer instructions

(c)(1)(A)–(B) Text unchanged.

(C) With respect to transfers of securities accounts other than retirement plan securities accounts, the customer affirms that he or she has destroyed or returned to the carrying member any credit/debit cards and/or unused checks issued in connection with the account.

For purposes of this rule, a "nontransferable asset" shall mean an asset that is incapable of being transferred from the carrying member to the receiving member because it is:

(i)–(iv) Text unchanged.

(v) An asset that is an issue for which the proper denominations cannot be obtained pursuant to governmental regulation or the issuance terms of the product (e.g., foreign securities, baby bonds, etc.)

(vi) limited partnership interests in retail accounts.

(D) The carrying member and the receiving member must promptly resolve and reverse any nontransferable assets which were not properly identified during validation. In all cases, each member shall promptly update its records and bookkeeping systems and notify the customer of the action taken.

(2)–(3) Text unchanged.

Validation of transfer instructions

(d)(1) Upon [receipt] *validation* of a transfer instruction, a carrying member must "freeze" the account to be transferred, i.e., all open orders, *with the exception of option positions which expire within seven (7) business days,* must be cancelled and no new orders may be taken.

(2) A carrying member may not take exception to a transfer instruction, and therefore deny validation of the transfer instruction, because of a dispute over securities positions or the money balance in the account to be transferred. Such alleged discrepancies notwithstanding, the carrying member must transfer the securities positions and/or money balance reflected on its books for the account.

[1] The NASD filed Amendments No. 1, 2, and 3, to the filing on April 9, 1992, August 26, 1992, and September 16, 1992, respectively. The terms of substance of these amendments are provided herein.

(3) A carrying member may take exception to a transfer instruction only if:

(A) it has no record of the account on its books;

(B) the transfer instruction is incomplete; [or]

(C) the transfer instruction contains an improper signature [.];

(D) the account is "flat" and reflects no transferrable assets;

(E) the account number is incorrect; or

(F) it is a duplicate request.

If a carrying member takes exception to a transfer instruction because the account is "flat," as provided in (D), the receiving member may re-submit the transfer instruction only if the most recent customer statement is attached.

(4)–(7) Text unchanged.

Completion of the transfer

(e) Within five (5) business days following the validation of a transfer instruction, the carrying member must complete the transfer of the account(s) to the receiving member. The receiving member and the carrying member must immediately establish fail-to-receive and fail-to-deliver contracts at then-current market values upon their respective books of account against the long/short positions [(including options)] in the customer's account(s) that have not been physically delivered/received and the receiving/carrying member must debit/credit the related money amount. The customer's account(s) shall thereupon be deemed transferred.

Fail contracts established

(f)(1) Any fail contracts resulting from this account transfer procedure [must be closed out promptly.] *shall be included in a member's fail file and shall be subject to applicable close-out and liability procedures.*

(2) A carrying member may not reject ("DK") a fail contract, including a *Receive/Deliver Instruction* [balance order] generated by an automated customer account transfer system, in connection with assets in an account transferred that have not been delivered to the receiving member.

(3) All fail contracts established pursuant to the requirements of this rule should be clearly marked or captioned as such. *This subsection will not apply if a fail contract participates in a repricing and reconfirmation service offered by a registered clearing agency.*

(4)–(9) Text unchanged.

Prompt resolution of discrepancies

(g)*(1)* Text unchanged.

(2) The carrying member must promptly distribute to the receiving member any transferrable assets which accrue to the account after the transfer of a customer's securities account.

Close-out procedures

(h) A valued fail contract in a security, for which there are no established close-out procedures, and which has not been completed by the carrying member, may be closed by the member not sooner than the third business day following the date delivery was due, in accordance with the following procedure:

(1) Written notice shall be delivered to the carrying member at his office not later than 12 noon, his time, two business days preceding the execution of the proposed "close-out".

(2)(A) Every notice of "close-out" shall state the settlement date, the quantity and contract price of the securities covered by said contract, and shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 3:00 P.M. local time in the community where the carrying member maintains his office, the security may be "closed-out" on the date specified for the account of the carrying member.

(B) Original notices may only be issued pursuant to fail contracts marked or captioned as fails established pursuant to subsection (f)(3) of this rule.

(C) Notice may be redelivered immediately to another member from whom the securities involved are due in the form of a re-transmitted notice. A re-transmitted notice must be delivered to subsequent members not later than 12 noon one business day preceding the original date of execution of the proposed close-out.

(D) Re-transmitted notices may be issued against any fail contract regardless of its origin.

(3)(A) On failure of the carrying member to effect delivery in accordance with the notice, or to obtain a stay as hereinafter provided, the receiving member may close the contract by purchasing the securities necessary to complete the contract. Such execution will also operate to close-out all contracts covered under re-transmitted notices.

(B) The party executing the "close-out" shall immediately upon execution, but no later than the close of business local time, where the seller maintains his office, notify the member for whose account the securities were bought as to the quantity purchased and the price paid. Such notification should be in written or electronic form having immediate receipt capabilities. If a medium with immediate receipt capabilities is not available, the telephone shall be used for the purpose of same day notification, and written or similar electronic notification having next day receipt capabilities must be sent out simultaneously. In either case formal confirmation of purchase along with a billing or payment (depending upon which is applicable) should be forwarded as promptly as possible after the execution of the "close-out". Notification of the execution of the "close-out" shall be given to succeeding members to whom a re-transmitted notice was issued using the same procedures stated herein.

(C) If prior to the closing of a contract on which a "close-out" notice has been given, the receiving member receives from the carrying member written notice stating that the securities are (1) in transfer; (2) in transit; (3) being shipped that day; or (4) due from a depository and include the certificate numbers, then the receiving member must extend the execution date of the "close-out" for a period of seven (7) calendar days from the date delivery was due the under "close-out", except for those securities due from a depository.

(4) In the event that a "close-out" is not completed on the day specified in the notice, said notice shall expire at the close of business on the day specified in the notice, or if extended, at the close of business on the last day of the extension.

Sell-out procedures

(i)(1) Upon failure of the receiving member to accept delivery in accordance with the term of the contract, and lacking a (1) properly executed Uniform Reclamation Form; (2) depository generated rejection advice; or (3) valid Reversal Form, the carrying member may, without notice, "sell-out" in the best available market, for the liability of the party in default, all or any part of the securities due or deliverable under the contract.

(2) The party executing a "sell-out" as prescribed above shall notify, no later than the close of business (local time where the receiving member maintains his office) on the day of execution, the member, for whose account and liability such securities were sold, of the quantity sold and the price received. Such notification should be in written or electronic form having immediate receipt capabilities. A formal confirmation of such sale should be forwarded as promptly as possible after the execution of the "sell-out".

(h)–(1) redesignated as (j)–(n).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

(a) The NASD is proposing to amend section 59 to provide fail to deliver and liability notice procedures for foreign currency and index warrants and other similar instruments. These new instruments may be exercised at any time and do not provide for a guaranteed post-expiration period for the buyer to deliver the physical certificates. Moreover, because the decision to exercise these instruments is based on the performance of a currency, index, or other standard, the buyer's exercise instruction to the agent may occur at any time and cannot be delayed. Because the buyer of foreign currency and/or index warrants has no protection under current UPC liability rules, the NASD, in conjunction with other securities industry groups, proposes to initiate a Liability Notice for these types of instruments.[3]

The change to subsection 59(i) is proposed to establish a procedure for using a Liability Notice for index warrants and other similar instruments. The amendment permits immediate origination and retransmission of Liability Notices, requires that the Notice be written or transmitted through an electronic device having immediate receipt capabilities, requires mutual consent prior to the cancellation of a Liability Notice, and cautions members to retain documentation relating to exercise requests.

Section 65 of the UPC establishes procedures for the processing and timely transfer of customer accounts. The NASD proposes to amend subsection 65(c) to address additional types of nontransferable assets such as foreign securities, baby bonds, and certain limited partnerships; to clarify the members' responsibility to resolve and reverse transfers of improperly identified assets; and to require members to update their records and notify customers of such action.

The NASD also proposes changes to subsections 65(d)–(f) to clarify the application of those provisions. Section (d) is proposed to be amended in the following ways: (1) Add an exception for option positions that expire within 7 days, (2) permit members to take exception to the transfer instruction if the account is flat, the account number is incorrect, or the instruction is a duplicate request, and (3) provide for the resubmission of transfer instructions which were rejected because the account was deemed "flat." Subsection (e) is proposed to be amended to delete the reference to options. Subsection (f) is proposed to be amended to require that all fail contracts be reflected in members' fail files and be subject to both close-out and liability procedures and, further, to provide an exemption for fail contracts participating in a repricing and reconfirmation service offered by a registered clearing agency.

The NASD also proposes to amend Subsection 65(g), expanding it to require the prompt transfer or distribution of assets which accrue (i.e., dividends, bond interest) to the customer's account after the initial transfer has been completed.

The NASD further proposes to add subsections 65(h)–(i) to establish procedures for closeout and sell-out fails, respectively, in instruments that do not currently have such procedures (i.e., zero coupon bonds, mutual funds, limited partnerships). The rule amendment is proposed to provide a means of closing-out or selling-out instruments that previously had remained outstanding for extended periods of time and prevented an account from transferring completely.

The new subsection (h) proposes procedures to permit the receiving member to close a valued fail contract not sooner than the third business day following the delivery due date pursuant to required written notification. Furthermore, this new subsection is proposed to permit redelivery of a notice, in the form of a re-transmission, against any existing fail, regardless of its origin, to facilitate the completion of the transfer and greatly reduce the member's general fail file. These procedures are based on Uniform Practice Code Section 50 Buy-In rules.

The new subsection (i) proposes notification and sell-out procedures to permit the carrying member to sell any and all securities due or deliverable under contract in the best available market, where the receiving member failed to accept delivery, or where a properly executed Uniform Reclamation Form, a depository generated rejection advice, or a valid Reversal Form is lacking.

(b) The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which require that the rules of the NASD be designed to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating, transactions in securities.

B. Self-Regulatory organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[3] The NASD proposal was developed in conjunction with the national Securities Clearing Corporation and the Midwest Clearing Corporation to the extent that the other clearing agencies and the NASD agreed that such liability notice procedures were needed, desirable, and should be adopted.

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 92-24328 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31264 ; File No. SR-NASD-92-39]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Interim Extension of the OTC Bulletin Board Service through December 31, 1992.

September 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of file No. SR-NASD-88-19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are not included in the Nasdaq System nor listed on a registered national securities exchange (collectively referred to as "unlisted securities"). Essentially, the Service supports NASD members' market making in unlisted securities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now include OTC Bulletin Board data. The Service is currently operating under an interim approval that expires on October 1, 1992.[2]

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the Service through December 31, 1992. During this interval, there will be no material change in the Bulletin Board's operational features.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR-NASD-92-7) that requested permanent approval of the Service. For the month of August 1992, the Service reflected 11,679 market making positions based on 297 NASD member firms displaying quotations/indications of interest in 4,069 unlisted securities.[3]

During the proposed extension, foreign securities and American Depository Shares (or Receipts) (collectively, "foreign/ADS issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADS issues will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (under section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2-11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealers' market making in unlisted securities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"). The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

The NASD relies on sections 11A(a)(1), 15A(b) (6) and (11), and section 17B of the Act as the statutory basis for the instant rule change proposal. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

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[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[2] Securities Exchange Act Release No. 30685 (July 2, 1992), 57 FR 30522.

[3] These are average daily figures calculated for the entire month.

The NASD submits that extension of the Service through December 31, 1992 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on the Burden on Competition

The NASD does not believe any burden will be placed on competition as a result of this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through October 1, 1992. Hence, it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support members firms' market making in approximately 4,100 unlisted equity securities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to section 2 of Schedule H to the NASD By-Laws.

The Commission finds that approval of this proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, an publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customer orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in unlisted securities that are eligible and quoted in the Service.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 28, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a three month period, inclusive of December 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,
Secretary.

[FR Doc. 92–24329 Filed 10–6–92; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

October 1, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Nuveen Select Maturities Municipal Fund
Shares of Beneficial Interest, $.01 Par Value (File No. 7–9199)
Real Estate Investment Trust of California
Common Stock, No Par Value (File No. 7–9200)
Medchem Products, Inc.
Common Stock, $0.01 Par Value (File No. 7–9201)
Intercapital Quality Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–9202)
Heller Financial, Inc.
9⅛ Pc Cum. Perpetual Senior Pfd Stock Series A, $.01 Par Value (File No. 7–9203)
Income Opportunities Fund 1999, Inc.
Common Stock, $.10 Par Value (File No. 7–9204)
Tommy Hilfiger Corporation
Common Stock, $.01 Par Value (File No. 7–9205)
John Alden Financial Corporation
Common Stock, $.01 Par Value (File No. 7–9206)
Royal Bank of Scotland Group Plc
American Depositary Shares Series C (File No. 7–9207)
USX Delhi Group
Common Stock, $1.00 Par Value (File No. 7–9208)
Georgia Power Company
$1.9375 Class A Pfd Stock, No Par Value (File No. 7–9209)
Servico, Inc.
Common Stock, $0.01 Par Value (File No. 7–9210)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 23, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are

consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-24284 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18986; 811-2972]

AMC Investors, Inc.; Application for Deregistration

September 30, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: AMC Investors, Inc. ("AMC").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 13, 1992, and amended on September 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o LEVCO, Plaza 46, West Paterson, New Jersey 07422.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or C. David Messman, Branch Chief, (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. AMC is a diversified closed-end management investment company incorporated under the laws of New York. In December, 1979, AMC (then known as Aberdeen Manufacturing Corporation) sold substantially all of its assets to Henry Crown and Company for approximately $18.7 million. Following this transaction, AMC made a cash tender offer for its securities. As a result of the asset sale and tender offer, several members of the same family, who had owned approximately 50% of the outstanding AMC shares prior to the asset sale, became the owners of approximately 93% of the AMC common shares outstanding following the tender offer. On March 26, 1980, AMC registered with the SEC as a closed-end management investment company.

2. On January 2, 1992, AMC and T. Rowe Price Tax-Free High Yield, Inc. ("TRP") entered into an Agreement and Plan of Reorganization (the "Plan"). The Plan called for AMC to transfer substantially all of its assets to TRP, other than Washington Public Power Supply System Generating Facilities Revenue Bonds Nuclear Projects Nos. 4 and 5 in aggregate market value of $117,686 owned by AMC (the "WPPSS Bonds"). AMC agreed to transfer the WPPSS Bonds to a liquidating trust (the "Liquidating Trust") for the benefit of AMC's shareholders.

3. On February 28, 1992, the board of directors of AMC approved the Plan and the transfer of the WPPSS Bonds to the Liquidating Trust. On March 13, 1992, a Prospectus/Proxy Statement related to the Plan and the transfer of the WPPSS Bonds was mailed to AMC's shareholders and was filed with the SEC. On April 13, 1992, the holders of over two-thirds of AMC's shares approved the Plan and the transfer of the WPPSS Bonds.

4. As of the close of business on April 10, 1992, the day AMC last valued its portfolio, AMC had outstanding 688,281 shares with a total net asset value of $8,478,972 and a net asset value per share of $12.32. On April 13, 1992, AMC transferred substantially all of its assets to TRP, other than the WPPSS Bonds (the "Reorganization"). On this same date, AMC transferred all of its right, title, and interest in and to the WPPSS Bonds to the Liquidating Trust. As a result of the Reorganization, AMC's shareholders received TRP shares having a net asset value equal to the net asset value of their AMC shares transferred to TRP. AMC also retained sufficient cash to pay any remaining expenses related to the Reorganization.

5. AMC is a member of the plaintiff class in lawsuits filed against various parties alleging violations of the federal and state securities laws in connection with the sale of WPPSS Bonds (the "WPPSS Lawsuits"). A settlement has been reached in the WPPSS Lawsuits and, in February, 1992, the United States Court of Appeals for the Ninth Circuit affirmed the settlement. Once all available rights of appeal to the settlement have been exhausted, AMC shareholders are expected to receive approximately $200,000. No determination has been reached, however, regarding the amount of funds, if any, which ultimately will be allocated to AMC's shareholders. AMC created the Liquidating Trust to hold the WPPSS Bonds and to collect any amounts to be paid to its shareholders in settlement of the WPPSS Lawsuits. The Liquidating Trust shall terminate upon the earlier of payment to AMC's shareholders on a *pro rata* basis of the moneys in the Liquidating Trust, distribution to AMC's shareholders of the WPPSS Bonds on a *pro rata* basis, or expiration of the term of the Liquidating Trust, which is April 13, 1995.

6. AMC was contingently liable on certain leases related to the sale of its former business in 1979. In connection with the Reorganization, certain of AMC's shareholders agreed to indemnify TRP for these contingent liabilities.

7. Each party was responsible for its own expenses in connection with the Reorganization. AMC incurred approximately $193,000 in expenses in connection with the Plan and Reorganization. Such expenses consisted of approximately $120,000 for legal fees, $44,000 for accounting fees, $18,000 for officers' salaries, and $11,000 for office expenses.

8. AMC has no shareholders and is not a party to any litigation or administrative proceedings except the WPPSS Lawsuits. Except for any distributions that may be made pursuant to the terms of the Liquidating Trust, there are no shareholders to whom distribution in complete liquidation of their interest have not been made. AMC is not engaged in, nor does it propose to engage, in, any business activities other than those necessary for the winding up of its affairs.

9. AMC filed a Certificate of Dissolution with the State of Maryland on June 30, 1992.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24285 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18991; File No. 812-8046]

American Skandia Life Assurance Corporation, et al.

September 30, 1992.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: American Skandia Life Assurance Corporation ("Skandia Life"), American Skandia Life Assurance Corporation Separate Account E (the "Account"), and Skandia Life Equity Sales Corporation ("SLESCO").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Account, which funds flexible premium tax deferred variable annuity contracts (the "Contracts").

FILING DATES: The application was filed on August 14, 1992, and amended on September 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, Connecticut 06484.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Counsel, at (202) 504-2802, or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. Skandia Life is a stock life insurance company that was incorporated in 1969 under the laws of Connecticut. It is engaged principally in the sale of annuities. On May 25, 1988, all the issued and outstanding stock of Skandia Life was acquired by Skandia U.S. Investment Holding Corporation, whose indirect parent is Skandia Group Insurance Company Ltd.

2. The Account was established by Skandia Life as a separate account under the laws of Connecticut on August 5, 1992, pursuant to a resolution of Skandia Life's Board of Directors. The Account is being registered under the 1940 Act as a unit investment trust, and is the funding vehicle for the Contracts. No sales load is imposed on purchases or redemptions of the Contracts.

3. SLESCO, a wholly-owned subsidiary of Skandia U.S. Investment Holding Corporation, will serve as the distributor and principal underwriter of the Contracts, and will bear the costs of such distribution. SLESCO is registered under the Securities exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are flexible premium tax deferred variable annuity contracts. A contract owner can allocate purchase payments to one or more subaccounts of the Account, each of which will invest in shares of a portfolio of the Galaxy VIP Fund (the "Fund"). The Fund is an open-end management investment company that presently offers four portfolios: Equity Growth, High-Quality Bond, Money Market, and Asset Allocation.

5. Skandia Life will deduct from the Account's assets, on a daily basis, an administration fee equal to 0.15% per annum of the average daily total value of the Account. Skandia Life will deduct an annual maintenance fee equal to the lesser of $30 or 2% of Account Value prior to the Annuity Date and upon surrender if the Account Value is less than $50,000 for certain maintenance services it provides to Contractowners. The maintenance fee is deducted from each of the Contract owner's sub-accounts according to the ratio that the value of such sub-account bears to the owner's total Contract value. Skandia Life believes that the administration fee and maintenance fee will not be greater than its total anticipated costs. Skandia Life also will charge a $25 set-up fee if the initial purchase payment is less than $10,000.

6. No deduction or charge will be made from purchase payments for sales or distribution expenses, or upon withdrawal, surrender, or annuitization. Distribution expenses for the Contracts are anticipated to be less than those incurred with respect to other annuities sold by Skandia Life. Skandia Life may or may not recover its distribution expenses depending upon its mortality and expense experience.

7. A mortality and expense risk charge equal to an annual rate of 0.40% of the net asset value of the Account will be deducted daily from the Account's net assets. Of that amount, approximately 0.30% is allocable to Skandia Life's assumption of mortality risks and 0.10% is allocable to Skandia Life's assumption of expense risks. Where a life annuity payment option is selected, the mortality risk borne by Skandia Life arises by virtue of minimum annuity rates incorporated in the Contracts which cannot be changed, and the provision of the minimum death benefit guarantee for deaths occurring prior to annuitization. The expense risk undertaken by Skandia Life is that the administration and maintenance fees, which may not be increased for current Contract owners, may be insufficient to cover Skandia Life's actual costs of maintaining the Contracts and the Account. If the 0.40% charge proves more than sufficient to cover such mortality and expense risks, the excess will result in a profit to Skandia Life. Any such profit, as well as any other profit realized by Skandia Life and held in its general account (which supports insurance and annuity obligations), would be available for any proper corporate purpose, including, but not limited to, payment of sales and distribution expenses.

Applicants' Legal Analysis

8. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction of the mortality and expense risk charge from the assets of the Account. Section 27(c)(2) of the 1940 Act prohibits any registered investment company issuing periodic payment plan certificates, and any depositor of or underwriter for such company, from selling any such certificate unless, among other things, the proceeds of all payments on such certificates (excluding sales loads) are held by a qualified trustee or custodian

under an indenture or agreement containing, in substance, the provisions required by sections 26(a)(2) and 26(a)(3) for trust indentures of unit investment trusts. Among the provisions required to be included in such an indenture or agreement is the proviso in section 26(a)(2)(C) that permits the trustee or custodian to deduct from the assets of the trust as an expense only bookkeeping and other administrative services charges not exceeding such reasonable amount as the Commission may prescribe. Thus, the proposed mortality and expense risk charge is not the type of expense permitted by section 26(a)(2)(C), and Applicants therefore seek an order of exemption.

9. Skandia Life represents that the charge of 0.40% for the mortality and expense risks it assumes is within the range of industry practice with respect to comparable annuity products. This representation is based on Skandia Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

10. Applicants acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses. Skandia Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum, which will be maintained by Skandia Life at its administrative offices and will be available to the Commission.

11. Skandia Life represents that the Account will only invest in management investment companies which undertake to have boards of directors or trustees, a majority of whom are not "interested persons" of such companies, approve any plan adopted under Rule 12b–1 under the 1940 Act.

Conclusion

12. Applicants assert that for the reasons and upon the facts set forth above, the requested exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24332 Filed 10–6–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC—18993; 812–7889]

Flagship Tax Exempt Funds Trust, et al.; Notice of Application

October 1, 1992.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Flagship Tax Exempt Funds Trust, Flagship Pennsylvania Triple Tax Exempt Fund, Flagship Admiral Funds Inc., (the "Funds"), Flagship Financial Inc. (the "Advisor"), and Flagship Funds Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Conditional order requested under section 6(c) for an exemption from the provisions of section 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting the Funds, series of the Funds, and certain future series and funds to: (a) Issue four classes of shares representing interests in the same portfolio of securities and (b) assess and, under certain circumstances, waive a contingent deferred sales load on certain redemptions of the shares of two of the classes.

FILING DATES: The application was filed on March 19, 1992 and amended on July 20, 1992, August 25, 1992, and September 25, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One First National Plaza, 130 W. Second Street, Dayton, Ohio 45402–1506.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicants seek a conditional order under section 6(c) of the Act on behalf of the Funds and any future sub-trust or series of the Funds, or any future registered open-end investment companies and any future sub-trust or series thereof that are part of the same "group of investment companies," as defined in rule 11a-3 under the Act, and (a) whose investment adviser (i) is the Adviser or (ii) directly or indirectly controls, controlled by, or under common control with the Adviser, (b) whose principal underwriter is the Distributor or is directly or indirectly controlling, controlled by, or under common control with the Distributor, (c) that hold themselves out to investors as being related for purposes of investment and investor services, and (d) whose shares are divided into up to four classes of securities whose sales load, contingent deferred sales load ("CDSL"), rate of distribution fees, exchange privileges, conversion feature, and differences in voting rights are substantially identical to those applicable to the Class A shares, Class B shares, Class C shares, and Class D shares, described below. Any such series or investment company will be subject to each of the conditions contained in the application.

2. The Funds are open-end management investment companies registered under the Act. The Adviser acts as the Funds' investment adviser. The Distributor acts as principal underwriter of the Funds' shares. The shares of each of the Funds' series are [1] currently offered at net asset value plus a front-end sales load. In addition, the Funds have each adopted a distribution plan pursuant to rule 12b-1 under the Act.

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[1] Any description or representation regarding a "series" of any of the Funds also refers to any of the Funds which do not have separate series outstanding.

3. Applicants propose to establish a multiple distribution system (the "Multiple Distribution System") enabling each of the Funds' series to offer four classes of shares and to assess and, under certain circumstances, waive a CDSL on certain redemptions of Class B and Class C shares.

A. The Multiple Distribution System

1. Under the Multiple Distribution System, all of their current shares outstanding of each series of the Funds will be redesignated as "Class A" shares. In addition, each series will create up to three additional classes of shares, referred to herein as "Class B," "Class C," and "Class D."

2. Class A shares will be sold at net asset value plus a front-end sales load. The sales load will be subject to reductions for larger purchases under a combined purchase privilege, under a right of accumulation, or under a letter of intent. The sales load will be subject to other reductions permitted by section 22(d) of the Act and set forth in the Funds' prospectuses. Pursuant to the Funds' 12b-1 distribution plan, the Funds will be able to spend up to .40% per year of the average daily net assets attributable to the Funds' Class A shares for distribution-related expenses.

3. Class B shares will be sold at net asset value per share without the imposition of a sales load at the time of purchase (the "Deferred Option"). Up to 1% per year of the average daily net assets attributable to the Class B shares will be subject to the Funds' 12b-1 distribution plan. An investor's proceeds from a redemption of Class B shares made within a specified period of years following their purchase (which will be at least four years but will not exceed ten years) generally will be subject to a CDSL payable to the Distributor. The CDSL is expected to range from 3% to 6% on Class B shares redeemed during the first year after purchase and will be reduced each year over the applicable CDSL period.

4. Class C shares will be sold at net asset value without the imposition of a front-end sales load (the "Level-Load Option"). An investor's proceeds from a redemption of Class C shares made within one year of the date of purchase will be subject to a CDSL of 1%, with no CDSL charged for any redemptions after one year. Up to 1% per year of the average daily net assets attributable to the Class C shares will be subject to the Funds' 12b–1 distribution plan.

5. Class D shares will be sold to institutional investors without a front-end sales load, a CDSL, or a rule 12b–1 fee (the "No Fee/No Load Option").

6. All Class B shares, other than those purchased through the reinvestment of dividends and distributions, automatically will convert to Class A shares after a certain number of years (which shall be at least four but not more than ten years) after the end of the calendar month in which the shareholder's order to purchase was accepted. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will be treated as Class B shares for purposes of determining the applicable distribution fee. For purposes of conversion to Class A shares, however, such Class B shares will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholders's account, other than those in the sub-account, convert to Class A shares, a proportionate number of Class B shares in the sub-account also will convert to Class A shares.

7. All expenses incurred by each series of the Funds will be allocated daily to each class of shares based on the percentage of net assets at the beginning of the day, except for the distribution expenses incurred pursuant to the Fund's rule 12b–1 distribution plan, and the incremental transfer agency costs to be borne by the Class B shares and the Class C shares. Because of the additional expenses borne by Class B shares and Class C shares, the net income attributable to and the dividends payable on Class B shares and Class C shares may be lower than the net income attributable to and the dividends payable on Class A shares and Class D shares. As Class D shares have no Rule 12b–1 Plan or sales loads, the income attributable to Class D shares will not be lower than on Class A shares and is expected to be higher than that of Class B and Class C shares.

8. Class A shares of each series of the Funds will be exchangeable for shares of the other funds which are sold subject to a front-end sales load, and for shares of money market funds distributed by the Distributor that offer an exchange privilege. Shareholders of other funds sponsored by the Distributor that are sold subject to a front-end sales load (or a holder of money market fund shares acquired through an exchange of such shares were such funds to be offered) and offer an exchange privilege will be able to exchange their shares for Class A shares of any series of the Funds. Class B shares of any series of the Funds will be exchangeable only for shares offered pursuant to a Deferred Option by any other series or fund in the complex which offers an exchange privilege. Class C shares of any series of the Funds will be exchangeable only for shares offered pursuant to a Level-Load Deferred Option by any other series or fund in the complex which offers an exchange privilege. Similarly, Class D shares of any series of the Funds will be exchangeable only for shares offered pursuant to a No Fee/No Load Option by any other series or fund in the complex which offers an exchange privilege. The exchange privilege for all classes of shares of the Funds will comply with the provisions of rule 11a–3 under the Act.

B. The CDSL

1. The Class B shares and Class C shares will be sold subject to a CDSL. The amount of the CDSL charged will vary depending on the length of time shares have been held and the net asset value of the shares at the time of redemption. The amount of any CDSL will be calculated as the lessor of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents a specified percentage of the net asset value of the shares at the time of redemption.

2. The CDSL will not be imposed on redemptions of (a) Class B shares purchased more than ten years prior to their redemption or Class C shares purchased more than one year prior to their redemption (the "CDSL Period"), (b) Class B shares or Class C shares derived from the reinvestment of distributions, or (c) an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSL period. In determining whether a CDSL is applicable, it will be assumed that a redemption is made first of Class B or Class C shares derived from reinvestment of dividends and distributions, second of Class B or Class C shares held for a period longer than the CDSL Period, third of any Class A shares in the shareholder's Fund account, and fourth of Class B or Class C shares held for a period not longer than the CDSL Period.

3. The Funds propose to waive the CDSL on redemptions of Class B or Class C shares (a) following the death of a shareholder and (b) with respect to distributions from an Individual Retirement Account, a custodial account maintained pursuant to Section 403(b)(7) of the Internal Revenue Code (the "Code"), or a qualified pension or profit-sharing plan, (i) in connection with a lump-sum or other distribution after attaining age 59½ or, in the case of a qualified pension or profit-sharing plan, after termination of employment after

age 55, (ii) on any redemption which results from the tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code, (iii) on the return of excess deferral amounts pursuant to section 401(i)(8) or 402(g)(2) of the Code, or (iv) from the death or disability of the employee.

4. If a series waives or reduces the CDSL, such waiver or reduction will be uniformly applied to all Class B or Class C shareholders, respectively, of such series. In waiving or reducing a CDSL, the Funds will comply with the requirements of rule 22d–1 under the Act as if such CDSL were a sales load.

5. If the trustees or directors of the Funds determine to discontinue the waiver of the CDSL, the disclosure in the affected Fund's prospectus will be appropriately revised. Class B shares and Class C shares purchased prior to the termination of such waiver will be able to have the CDSI waived as provided in that Fund's prospectus at the time of the purchase of such shares. Any changes in the annual rate of reduction with respect to the CDSL or any variation in the period over which the CDSL is charged will be reflected in the affected Funds' prospectus, and any such change or changes will not affect shares that have already been issued.

Applicants' Legal Analysis

A. The Multiple Distribution System

1. Applicants seek an exemption from sections 18(g), 18(f)(1), and 18(i) of the Act to the extent the Multiple Distribution System may result in the issuance and sale of a senior security, as defined by section 18(g), which would be prohibited by section 18(f)(1), and to the extent the allocation of voting rights under the Multiple Distribution System may violate the provisions of section 18(i). The proposal does not involve borrowings and will not affect the Funds' assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares of the Funds since all shares will participate equally as a class in all of a Fund's income and expenses with the exception of the differing rule 12b–1 distribution expenses and transfer agency costs.

2. Applicants believe that the issuance and sale of each class of shares by the Funds will better enable the Funds to meet the competitive demands of today's financial services industry and that the Multiple Distribution System will both facilitate the distribution of their securities and provide investors with a choice as to the appropriate method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. In addition, applicants believe owners of all classes of shares may be relieved of a portion of the fixed costs normally associated with mutual funds since such costs will, potentially, be spread over a great number of shares than they would be otherwise. Finally, the conversion feature will benefit long-term Class B shareholders by relieving them from most of the burden of distribution-related expenses.

3. Applicants believe that the allocation of expenses and voting rights relating to the rule 12b–1 distribution plans in the manner described above is equitable and would not discriminate against any group of shareholders. In addition, the proposed arrangement should not give rise to any conflict of interest because the rights and privileges of each class of shares are substantially identical and the interests of each respective class of shareholders will be adequately protected since the rule 12b–1 plans will conform to the requirements of rule 12b–1, including the requirement that the plans be approved and continued on an annual basis by the trustees or directors of the Funds.

4. Applicants argue that investors will not be given misleading impressions as to the safety or risk of any classes of shares because each class of shares will be redeemable at all times. No class of shares will have any preference or priority over any other class in the Fund in the usual sense (that is, no class will have distribution or liquidation preference with respect to particular assets, no class will have any right to require that lapsed dividends be paid before dividends are declared on the other classes, and no class will be protected by any reserve or other account). The similarities and the dissimilarities of the classes will be fully disclosed in the Funds' prospectuses and statements of additional information.

B. The CDSL

1. Applicants also seek an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder to permit the Funds to assess a CDSL on certain redemptions of Class B shares and Class C shares, and to permit the Funds to waive the CDSL for certain types of redemptions.

2. Section 2(a)(32) of the Act defines redeemable security to be a security that, upon presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets. Applicants assert that the imposition of the CDSL will not restrict a shareholder from receiving his proportionate share of the current net assets of a series of a Fund, but merely defers the deduction of a sales charge and makes it contingent upon an event which may never occur. However, to avoid uncertainty in this regard, applicants request an exemption from the operation of section 2(a)(32) of the Act to the extent necessary to permit implementation of the proposed CDSL.

3. Applicants believe that the proposed CDSL qualifies as a "sales load" within the meaning of section 2(a)(35) of the Act. Applicants believe that the CDSL is functionally a sales charge because it is paid to the Distributor to reimburse it for expenses related to offering shares for sale to the public. Applicants contend that the deferral of the sales charge, and its contingency upon the occurrence of an event that may not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. Nevertheless, in view of the possibility that section 2(a)(35) might be construed to apply only to sales loads charged at the time of purchase, applicants request an exemption from the provisions of section 2(a)(35) to the extent necessary or appropriate to implement the proposed CDSL.

4. Section 22(c) of the Act and rule 22c–1 thereunder require that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption, or repurchase be based on the company's current net asset value. When a redemption of the Funds' shares is effected, the price of such shares on redemption will be based on current net asset value. The CDSL will be deducted at the time of redemption in arriving at the shareholder's proportionate redemption proceeds. However, to avoid any question as to the potential applicability of section 22(c) and rule 22c–1, applicants request an exemption from rule 22c–1 to the extent necessary to permit applicants to impose the proposed CDSL.

5. Section 22(d) of the Act requires a registered investment company, principal underwriter, or dealer to sell a redeemable security only at a current offering price described in the company's prospectus. Rule 22d–1, in substance, permits variation or

elimination of sales loads to particular classes of investors, provided that such variation is described in the investment company's registration statement. The CDSL and the waivers therefrom will be applied as described in the Funds' registration statements. Nonetheless, to preclude any assertion that rule 22d–1 is inapplicable to the CDSL, applicants request an exemption from section 22(d) to the extent necessary or appropriate to implement the CDSL and waivers therefrom as described above.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

A. Conditions Relating to the Multiple Distribution System

1. Class A shares, Class B shares, Class C shares, and Class D shares will represent interests in the same portfolio of investments of each series of each Fund, and be identical in all respects, except as set forth below. The only difference between Class A shares, Class B shares, Class C shares, and Class D shares will relate solely to (i) the impact of the disproportionate rule 12b–1 distribution plan payments allocated to each of the holders of Class A shares, Class B shares, and Class C shares of each series of each Fund, the incremental transfer agency costs attributable to the Class B shares and Class C shares of each series of each Fund resulting from the Deferred Option arrangements, and any other incremental expenses subsequently identified that should be properly allocated to one class of shares which shall be approved by the Commission pursuant to an amended order; (ii) the Class B shares will be subject to a CDSL, the Class A shares will be sold subject to a front-end sales load, the Class C shares will be subject to a short-term low CDSL, and the Class D shares will not be subject to any sales load or distribution fee; (iii) the fact that each class of shares that is subject to a rule 12b–1 distribution expense will vote separately as a class with respect to each series of each Fund's rule 12b–1 distribution plan; (iv) different exchange privileges of the Class A shares, Class B shares, Class C shares, and Class D shares; (v) the fact that only Class B shares will have a conversion feature; (vi) the fact that the designation of each class of shares of the respective series of the Funds will differ; and (vii) the fact that the Class D shares will only be offered to institutional investors.

2. The trustees or directors, including a majority of the independent trustees or independent directors, will approve the Multiple Distribution System. The minutes of the meetings of the trustees or directors regarding the deliberations of the trustees or directors with respect to the approvals necessary to implement the Multiple Distribution System will reflect in detail the reasons for the trustees' or directors' determination that the proposed Multiple Distribution System is in the best interests of both the individual Fund and its shareholders.

3. On an ongoing basis, the trustees or directors, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each series of each Fund for the existence of any material conflicts between the interests of the four classes of shares of each such series. The trustees or directors, including a majority of the independent trustees or independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The adviser and the distributor will be responsible for reporting any potential or existing conflicts to the trustees or directors. If a conflict arises, the adviser and the distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. Any rule 12b–1 plan adopted or amended by a series of any Fund to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of that class of shares of such Fund will be submitted to the public shareholders of such class for approval at the next meeting of such shareholders after the initial issuance of the class of shares if such approval is still required by the Commission. If still required, such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

5. The trustees or directors will receive quarterly and annual statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale of a particular class of shares will be used to justify the distribution fee charged to that class. Expenditures not related to the sale of a particular class of shares will not be presented to the trustees or directors to justify the distribution fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees or independent directors in the exercise of their fiduciary duties.

6. Dividends paid by any series of any Fund will respect to its Class A shares, Class B shares, Class C shares, and Class D shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution fee payments relating to each class of shares subject to such an expense will be borne exclusively by that class and any incremental transfer agency costs relating to Class B shares or Class C shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the four classes and the proper allocation of expenses between the four classes will be reviewed by an expert, who has rendered a report to applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the expert, or an appropriate substitute expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually reports to the Funds that the calculations and allocations are being made properly. The reports of the expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the Commission staff upon the written request to a Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the expert is a "Special Purpose" report on the "Design of a System," and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. To ensure that the net asset value per share of each class of shares of any series of any Fund that will maintain a constant-dollar net asset value does not deviate from the net asset value per share of the other classes as a result of variations in net income among the classes from day to day, no class of any such series of any Fund will on any day bear any accrued class expenses that would cause the accrued expenses of such class for such day to exceed its allocated gross income. To accomplish this, any series of any Fund maintaining a constant-dollar net asset value will obtain undertakings from its service providers stating that, if necessary to prevent accrued class expenses of any class from exceeding the allocated gross incomes of such class on any given day, they will waive some or all of the payments to which they otherwise would have been entitled. In this manner, the net asset value per share of each class of shares in any such series of any Fund will remain the same.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the four classes of shares and the proper allocation of expenses between the four classes of shares, and this representation is expected to be concurred with by the expert in the initial report referred to in condition (7) above and will be concurred with by the expert, or an appropriate substitute expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants will take immediate corrective measures if this representation is not concurred in by the expert or appropriate substitute expert.

10. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different compensation for selling one particular class of shares over another in the Funds.

11. The distributor will adopt compliance standards as to when Class A shares, Class B shares, Class C shares, and Class D shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of any series of any Fund to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees or directors with respect to the Multiple Distribution System will be set forth in guidelines which will be furnished to the trustees or directors.

13. The Funds will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Funds will disclose with respect to each series the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement of sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the series of the Funds' net asset value and public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that any Fund may make pursuant to its rule 12b–1 distribution plan in reliance on the exemptive order.

15. In the circumstances and subject to the qualifications described in the application [2], after four but not more than ten years from the date on which a shareholder purchases Class B shares, such shares will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee or other charge.

B. Condition Relating to the CDSL

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

[2] The Funds will obtain a revenue ruling from the Internal Revenue Service that the assessment of the higher distribution expenses and transfer agency costs and any other special allocations described above with respect to Class B shares, Class C shares, and Class D shares does not result in any dividends or distribution constituting "preferential dividends" under the Internal Revenue Code of 1986, as amended ("IRC"), and that the conversion of Class B shares to Class A shares does not constitute a taxable event under current federal income tax law. The conversion of Class B shares to Class A shares might be suspended if such a ruling was no longer available at the time such conversion was to occur. In that event, no further conversions of Class B shares would occur, and such shares might continue to be subject to the additional distribution fee for an indefinite period which might extend beyond the time at which the conversion of the shares would otherwise have occurred.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24322 Filed 10–06–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 18994; 812–8042]

The Goldman Sachs Group, L.P., et al.; Application

October 1, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

Applicants: The Goldman Sachs Group, L.P. ("GS Group"), Goldman Sachs & Co., Goldman Sachs Funds Management, L.P., Goldman Sachs Asset Management International, and any persons who may from time to time be limited partners of GS Group.

Relevant Act Sections: Exemption requested under section 6(c) from the provision of section 2(a)(3).[1]

Summary of Application: Applicants seek an order exempting certain institutional limited partners from the definition of "affiliated person" where the limited partners do not own, control, or hold with the power to vote 5% or more of the outstanding voting securities of the partnership. The requested relief would permit the limited partners to sell commercial paper and other financial instruments to, and to engage in certain transactions with, registered investment companies advised or distributed by affiliated persons of GS Group.

Filing Date: The application was filed on August 13, 1992.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

[1] In the alternative, applicants requested relief from sections 10(f) and 17(a), and to permit certain joint transactions pursuant to rule 17d–1. Because relief from section 2(a)(3) is proposed to be granted, the alternative request is not being acted upon and is not discussed herein.

Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, D.C. 20549. Applicants, 85 Broad Street, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations:

1. The Goldman Sachs Group, L.P. (the "GS Group") and its consolidated corporate and partnership subsidiaries are an international investment banking organization. GS Group is a limited partnership with more than 125 general partners and over 100 limited partners and over 100 limited partners, including certain institutional limited partners. All of the institutional limited partners, except Sumitomo Bank Capital Markets, Inc. ("Sumitomo") and Royal Hawaiian Shopping Center, Inc. ("Royal"), receive a fixed return on their capital contributions (the institutional limited partners other than Sumitomo and Royal are collectively referred to herein as the "Institutional Limited Partners").

2. Most of the investment banking activities of GS Group are conducted through Goldman Sachs & Co. ("GS&Co"). GS&Co, a limited partnership, is registered as a broker-dealer under the Securities Exchange Act of 1934, and as an investment adviser under the Investment Advisers Act of 1940. GS Group is a general partner of GS&Co, with a 99% interest in GS&Co's profits and losses, and GS Group's general partners are the other general partners of GS&Co. Sumitomo is the sole limited partner of GS&Co.

3. The Institutional Limited Partners, primarily insurance companies and insurance holding companies, are passive investors. The Institutional Limited Partners: (a) Do not and cannot participate in the management of the partnership; (b) do not share partnership profits or the risk of loss; (c) each hold less than 5% of the total partner's capital of GS Group; and (d) do not have any direct or indirect interest in the profits and losses of GS&Co. The Institutional Limited Partners are active participants in the financial markets as: (a) issuers of commercial paper, long-term securities, and insurance products; (b) dealers and traders in securities and financial instruments; and (c) financial intermediaries in securities and related transactions.

4. Each of Goldman Sachs Fund Management, L.P., Goldman Sachs Asset Management International, and GS&Co, through its operating division Goldman Sachs Asset Management, serve as investment adviser or sub-adviser to certain investment companies (the "Funds"). The Funds seek the ability to purchase financial instruments, such as commercial paper or other debt securities and guaranteed investment contracts, from the Institutional Limited Partners and to engage in a variety of transactions, meeting the Funds various investment objectives, policies, and other investment criteria, with the Institutional Limited Partners.

5. Applicants seek to exempt the Institutional Limited Partners from the definition of "affiliated person" contained in section 2(a)(3) because of their concern that the proposed transactions would otherwise violate sections 10(f) and 17(a) and rule 17d–1 because the Institutional Limited Partners would be deemed affiliated persons of the Funds' investment advisers by virtue of their status as limited partners of GS Group. Only those limited partners owning, controlling, or holding with the power to vote less than 5% of GS Group's outstanding voting securities and who are affiliated with GS Group solely because they are limited partners of GS Group will be exempt from the definition of "affiliated persons."

Applicants' Legal Conclusions:

1. Section 2(a)(3) defines an "affiliated person" of another person as, among other things, any person directly or indirectly controlling that person, and a partner or copartner of such person. Applicants are concerned that unless the Institutional Limited Partners are exempted from the provisions of section 2(a)(3), to the extent that the Institutional Limited Partners would be deemed affiliated persons of GS Group because they are limited partners of GS Group, and to the extent that GS Group might be deemed to be an affiliated person of the Funds because of its control over GS&Co, the proposed transactions would violate sections 10(f), 17(a), and 17(d).

2. Section 10(f) prohibits registered investment companies from knowingly purchasing, during the existence of an underwriting syndicate, any security a principal underwriter of which is, among other things, an affiliated person of the investment company's adviser. Section 17(a) prohibits, among other things, an affiliated person of a registered investment company from selling securities or other property to, or purchasing securities or other property from, such company. Section 17(d) makes it unlawful for any affiliated person of a registered investment company or any affiliated person of such person acting as principal to effect any transaction in which the investment company is a joint participant or a joint and several participant with such person or persons in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1, among other things, requires a registered investment company to obtain an exemptive order prior to engaging in any joint transaction with an affiliated person or any affiliated person of an affiliated person.

3. Although organized as a limited partnership, GS Group is the structural holding company of GS&Co, and the Institutional Limited Partners are, in most respects, similar to preferred shareholders of the holding company of an investment banking organization. Unlike shareholders, who often enjoy the right to vote on the affairs of and participate in the profits and losses of the corporation, the Institutional Limited Partners have no ability whatsoever to control or bind GS Group. Yet, unless they hold 5% or more of a company's outstanding voting securities, shareholders are expressly exempted from the definition of affiliated person by section 2(a)(3)(A). The Act does not, however, contain a corresponding exception for limited partners whose only basis of affiliation is ownership of less than a 5% beneficial interest in a partnership. Consequently, the Institutional Limited Partners fall within the definition of affiliated persons notwithstanding the amount of their beneficial interest in GS Group.

4. Applicants contend that the question of affiliation and the applicability of related prohibitions should not turn on the mere form of organization of the entity. The Institutional Limited Partners should not be deemed to be "affiliated persons" of GS Group merely because they are partners with limited rights—rights that as a matter of law prohibit them from taking part in the management and control of the limited partnership. The requested relief will place Institutional Limited Partners on a footing more equal with shareholders who are not considered affiliates of a corporate entity merely because they are own less than 5% of the voting securities of that entity. The requested relief is appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the Act.

5. The Commission has frequently granted exemptions similar to the exemptive relief requested herein in the context of business development companies. Applicants believe that their situation more strongly favors exemption because the Institutional Limited Partners have fewer rights in respect of the affairs of GS Group than common stockholders with equity investments of similar proportion in a corporation. Moreover, the Institutional Limited Partners are limited partners of the parent company of the parent of the investment advisers of the Funds, and thus are much further removed from the investment company than the business development company applicants previously granted exemptive relief.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24321 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18988; International Series Rel. No. 466; 812-7970]

Investor AB; Application

September 30, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Investor AB ("Investor").

RELEVANT ACT SECTION: Section 2(a)(9).

SUMMARY OF APPLICATION: Applicant owns approximately 13% of the voting securities of Astra, and approximately 23% of the voting securities of both STORA and Atlas Copco. Applicant seeks an order declaring that it controls Astra, STORA, and Atlas Copco, notwithstanding that an owner of less than 25% of the voting securities of a company is presumed by the Act not to control such company.

FILING DATE: The application was filed on June 30, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, S-10332, Stockholm, Sweden.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Investor is a Swedish diversified industrial holding company. Investor owns a controlling interest in, among other things, eight of the largest Swedish companies operating internationally, as well as all of the outstanding equity securities of Saab-Scania AB, a large Swedish manufacturing and technology company. Investor is not registered under the Act by virtue of its reliance on rule 3a-1.[1]

2. Astra is one of the 30 largest pharmaceutical companies in the world. Investor owns approximately 13% of Astra's voting securities and is Astra's largest shareholder. Astra's next largest shareholder owns 6.3% of Astra's voting securities. Six of Astra's eleven directors, including the chairman and vice chairman of Astra, are directors of Investor. An Investor director also serves as Astra's president. Investor's officers and directors play an active role in setting Astra's general policies and provide support to Astra's management.

3. STORA is one of the world's largest forestry concerns. Investor owns approximately 23% of STORA's voting securities and is STORA's largest shareholder. STORA's next largest shareholder owns 4.5% of STORA's voting securities. Five of STORA's ten directors, including the chairman and vice chairman of STORA, are directors of Investor. An Investor director is also STORA's chief executive officer. Investor's officers and directors play an active role in setting STORA's general policies and provide support to STORA's management.

4. Atlas Copco is an international contractor and manufacturer of compressors, mining and contracting equipment, and industrial production equipment. Investor owns approximately 23% of Atlas Copco's voting securities and is Atlas Copco's largest shareholder. Atlas Copco's next largest shareholder, a mutual fund without board representation, owns 18.5% of Atlas Copco's voting securities. Six of Atlas Copco's fifteen directors, including the chairman and two vice chairmen of Atlas Copco, are directors of Investor. Investor's officers and directors play an active role in setting Atlas Copco's general policies and provide support to Atlas Copco's management.

Applicant's Legal Analysis

1. Section 2(a)(9) defines "control" as "the power to exercise a controlling influence over the management or policies of a company." Section 2(a)(9) also creates a presumption that owners of 25% or more of a company's voting securities control such company, and that owners of less than 25% of a company's voting securities do not control such company. A securityholder may obtain a Commission order rebutting either presumption by producing evidence to the contrary.

2. Investor seeks an order of the Commission declaring that it controls Astra, STORA, and Atlas Copco notwithstanding the presumption under the Act that ownership of less than 25% of a company's voting securities is insufficient to establish control.[2]

3. The facts set forth in the application are sufficient to support a finding that Investor controls Astra, STORA, and Atlas Copco. In each case, Investor holds the largest share of the company's voting securities and has significant representation on its board of directors. Moreover, Investor has used its position to influence the policies and management of each company.

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[1] Rule 3a-1 provides that an issuer meeting the statutory definition of an investment company is not an investment company if: (a) no more than 45% of the value of its total assets (exclusive of government securities and cash items) consists of securities other than government securities, securities issued by employed securities companies, securities of certain majority-owned subsidiaries, and securities issued by companies under the primary control of the issuer which are not investment companies; and (b) no more than 45% of its income after taxes (over the last four fiscal quarters combined) is received from such securities.

[2] The commission notes that any order will not determine whether Investor meets the requirement of "primary control" in rule 3a-1, or otherwise determine whether Investor is an investment company under the Act.

By the Commission.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 92-24286 Filed 10-6-92; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-18990; 812-7910]

The Masters Group of Mutual Funds et al.; Notice of Application

September 30, 1992

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Masters Group of Mutual Funds (the "Trust"), First Tennessee Bank National Association ("First Tennessee"), and National Financial Services Corporation ("National").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of sections 18(f)(1), 18(g), and 18(i) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Trust to issue and sell separate classes of securities representing interests in its investment portfolios. The classes would be identical in all respects except for differences relating to distribution expenses or shareholder servicing fees, voting rights relating to rule 12b–1 plans and shareholder service plans, the impact of any incremental transfer agency and other fees directly attributable to a particular class of shares, any difference in dividends and net asset value resulting from differences in rule 12b–1 plan or shareholder servicing fees or certain class expenses, and exchange privileges.

FILING DATE: The application was filed on April 27, 1992, and amended on September 22, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington DC 20549. Applicants, the Trust and National, 82 Devonshire Street, Boston, Massachusetts 02109; First Tennessee, 165 Madison Avenue, Memphis, Tennessee 38103.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is organized as a Massachusetts business trust and filed an initial registration statement as an open-end management investment company on March 11, 1992. The registration statement was declared effective by the Commission on September 14, 1992. The Trust intends initially to offer three series of shares representing interests in three investment portfolios: Municipal Money Market Portfolio, U.S. Government Money Market Portfolio, and U.S. Treasury Money Market Portfolio.

2. First Tennessee, investment adviser to the Trust, has hired Provident Institutional Management Corporation ("PIMC") as the sub-adviser of each portfolio to provide investment management and advisory services to the portfolios. PIMC is a wholly-owned subsidiary of Provident National Bank.

3. National, a wholly-owned subsidiary of Fidelity Brokerage Services, Inc., is the Trust's administrator and distributor.

4. Each currently existing portfolio is a money market portfolio ("Money Market Portfolio"). The existing shares of the portfolios ("Class I Shares") are designed exclusively for investment of short-term monies held in trust, fiduciary, advisory, agency, custodial, or similar accounts held by financial institutions or business organizations. Applicants propose that the Trust issue additional, separate classes of shares ("New Shares").

5. Class I shares are sold and redeemed daily at net asset value without a sales or redemption charge imposed by the Trust. Income dividends of each portfolio are declared daily and paid monthly.

6. Each portfolio may offer several classes of New Shares (a) in connection with a plan of distribution adopted pursuant to rule 12b–1 under the Act (the "12b–1 Plan"), and/or (b) in connection with a non-rule 12b–1 shareholder services plan (the "Shareholder Services Plan") (collectively, the "12b–1 Plan and the Shareholder Services Plan are the "Plans"). The Trust may offer an unlimited number of different classes of shares, in connection with either, both, or none of the Plans. All classes will be consistent with the conditions and representations contained herein. The Trust may also impose a sales charge or a contingent deferred sales charge in the future with respect to the New Shares. However, any contingent deferred sales charge will not be imposed, prior to the adoption of proposed rule 6c–10, without first obtaining an order from the Commission.

7. Applicants plan to use a structure under which New Shares could be created without having to establish corresponding separate portfolios. Under this arrangement, each New Share or Class I Share in a particular portfolio, regardless of class, would represent an interest in the same portfolio of investments and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations, and terms and conditions, except that: (a) each class of New Shares would have a different class designation; (b) each class of New Shares offered in connection with a plan (or plans) would bear the expense of the service payments that would be made under the service agreements that have been entered into with respect to such class; (c) each class of New Shares would also bear certain other expenses ("Class Expenses") that are directly attributable only to the class; (d) only the holders of the New Shares of the class or classes involved would be entitled to vote on matters pertaining to a plan and any related agreements relating to such class or classes (for example, the adoption, amendment, or termination of a 12b–1 Plan); and (e) each class would have different exchange privileges.

8. Under a 12b–1 Plan or the Shareholder Services Plan, either the Trust (on behalf of a portfolio) or National (such election to be at the discretion of the Trust) would enter into servicing agreements ("Service Agreements") with banks, broker-dealers or other institutions ("Service Organizations") concerning the provision of certain account administration services to the customers of the Service Organization who may beneficially own shares which are offered pursuant to a particular plan.

9. Service payments paid to a Service Organization pursuant to the 12b–1 Plan would not exceed 0.75% per annum of the average daily net asset value of the 12b–1 Plan shares beneficially owned by customers of the Service Organization. Currently, the amount of such service payments is expected to be up to 0.17% per annum. Service payments to Shareholder Services Plan would not exceed 0.25% per annum of the average daily net asset value of the Service Plan shares owned by customers of the Service Organization. Currently, such service payments are expected to be up to 0.25% per annum. In addition to any amounts received under a Service Agreement, Service Organizations may charge other fees to their customers who are the beneficial owners of New Shares in connection with their customer accounts.

10. Applicants currently propose three classes of shares, including the existing Class I Shares. Class II shares would adopt both a 12b–1 Plan and a Shareholder Services Plan. The 12b–1 Plan would compensate the Trust's principal underwriter or an affiliated broker-dealer, in its capacity as a Service Organization, at the annual rate of 0.07% of net assets of the class for advertising, marketing, and promotional services described above. The Shareholder Services Plan would pay Service Organizations, at an annual rate of up to 0.25% of net assets attributable to such parties for shareholder services described above. Annual Class II expenses under the Plans would total 0.32%. Class III shares would adopt (a) a 12b–1 Plan compensating the Trust's principal underwriter at the annual rate of 0.17% of net assets of the class for advertising, marketing, and promotional services and authorizing reimbursement of expenses, including asset based commission payments to third party broker-dealers and (b) a Shareholder Services Plan paying up to 0.25% of net assets for shareholder services described above. Annual Class III expenses under the Plan would total 0.42% of net assets.

11. Each class of shares may be exchanged only for shares of the same class in another portfolio, except exchanges among classes may be made when a shareholder of a class becomes eligible to purchase shares of another class and ineligible to purchase shares of the class originally held.

12. Expenses of the Trust that cannot be attributed directly to any one portfolio will be allocated to each portfolio either based on the relative net assets of such portfolio or upon the number of shareholders of such portfolio. Gross income of a portfolio and expenses of a portfolio that are not attributable to a particular class, would be borne on the basis of relative net asset values of the classes of that portfolio. All Class Expenses incurred by a class of shares would be borne on a *pro rata* basis by the outstanding shares of such class.

13. Because of the service payments and Class Expenses that may be borne by each class of shares, the net income of (and dividends payable to) each class may be different from the net income of the other classes of shares in the same portfolio.

14. Applications request that relief be extended to the Trust and all other investment companies and any series thereof that are in the same group of investment companies, as defined in rule 11a-3 under the Act.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of the Trust's New Shares might be deemed: (a) to result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act. The creation of New Shares may result in shares of a class having "priority over [another] class as to * * * payment of dividends" and having unequal voting rights because under the proposed arrangement certain classes of shares in the same portfolio would bear the expenses of service payments and Class Expenses and enjoy exclusive voting rights with respect to matters concerning the Plans.

2. Applicants believe that the proposed allocation of expenses and voting rights relating to the Plans is equitable and would not discriminate against any group of shareholders. Although investors purchasing shares offered in connection with a Plan would bear the costs associated with the related services, they would also enjoy exclusive shareholder voting rights with respect to matters affecting such Plan. Conversely, investors purchasing shares that are not covered by such a Plan would not be burdened with such expenses or enjoy such voting rights.

3. Proposed arrangement does not involve borrowings and does not affect the Trust's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a portfolio, since all shares, including those sold subject to a 12b–1 Plan or a Shareholder Services Plan, will participate *pro rata* in all of the portfolio's income and all of the portfolios's expenses (with the exception of the service payments and other expenses which can only be attributed to a particular class). The Trust's capital structure under the proposed arrangement will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders since the investment risks of each portfolio will be borne equally by all of the portfolio's shareholders.

4. If New Shares are created and Plans adopted as described, the Trust will be able to address more precisely the needs of the particular investors and to cause the associated expense to be borne by such investors. While this objective might be achieved through the ongoing organization of identical but separate investment portfolios, the Trust believes that it would be inefficient, and probably economically or operationally unfeasible, to organize a separate investment portfolio corresponding to each class of New Shares to be created. Not only would excessive accounting, bookkeeping, and legal costs be incurred in organizing and operating such new portfolios, but management of the new portfolios as well as any existing portfolios, might be hampered. Moreover, owners of all shares also would have the additional investment safety and stability resulting from their ability to invest in sizeable investment portfolios and may be relieved of a portion of the fixed costs normally associated with open-end companies since such costs potentially would be spread over a greater number of shares and a larger asset base than they would be otherwise.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares of a portfolio will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a portfolio will relate solely to: (a) The method of financing certain Class Expenses, which are limited to any or all of the following: (i) Transfer agency fees identified by applicants as being attributable to a specific class of shares, (ii) printing and postage expense related to preparing and distributing materials such as shareholder reports, prospectuses and proxy statements to current shareholders of a specific class, (iii) blue sky registration fees incurred by a class of shares, (iv) Commission registration fees incurred by a class of

shares, (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) trustees' fees or expenses incurred as a result of issues relating to one class of shares, and (vii) accounting expenses relating solely to one class of shares; (b) expenses assessed to a class pursuant to a Shareholder Services Plan and/or 12b–1 Plan with respect to a class; (c) the fact that the classes will vote separately with respect to the Trust's Shareholder Services Plan and/or 12b–1 Plan; (d) the different exchange privileges of the classes of shares; and (e) the designation of each class of shares of the Trust. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated unless and until approved by the Commission pursuant to an amended order.

2. The trustees of the Trust, including a majority of the trustees who are not interested persons of the Trust, as that term is defined in section 2(a)(19) of the Act (the "Independent Trustees") will approve the offering of different classes of New Shares (the "Multi-Class System") prior to the implementation of that system by the Trust. The minutes of the meetings of the trustees of the Trust regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' determination that the proposed Multi-Class System is in the best interests of the Trust and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Trust, including a majority of Independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by the Trust to meet Class Expenses shall provide to the board of trustees and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Trust for the existence of any material conflicts between the interests of the two classes of shares. The trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The distributor and the investment adviser will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the distributor and the investment adviser, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. Any rule 12b–1 plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective, or within such other period as required by the Commission staff via undertaking in the registration statement relating to such class or, if applicable, in the amendment to the registration statement offering such class.

6. The distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Trust to agree to conform to such standards.

7. The Shareholder Services Plans will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1. In evaluating the Shareholder Services Plan, the trustees will specifically consider whether (a) such plans are in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the Shareholder Services Plan are required for the operation of the applicable classes, (c) the Service Organizations can provide services at least equal, in nature and quality, to those provided by others, including the Trust, providing similar services and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

8. Each Service Agreement entered into pursuant to the Shareholder Services Plan will contain a representation by the Service Organization that any compensation payable to the Service Organization in connection with the investment of its customers' assets in the Trust (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the Service Organization.

9. Each Service Agreement entered into pursuant to the Shareholder Services Plan will provide that, in the event an issue pertaining to the Shareholder Services Plan is submitted for shareholder approval, the Service Organization will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

10. The trustees will receive quarterly and annual statements concerning the amounts expended under the Shareholder Services Plans and 12b–1 Plans and the related Service Agreements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

11. Dividends paid by the Trust with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that service payments made by a class under a Plan and any Class Expenses will be borne exclusively by that class.

12. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being

made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Trust (which the Trust agrees to provide), will be available for inspection by the Commission staff upon the written request to the Trust for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

13. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition (12) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (12) above. Applicants will take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

14. The prospectus of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Trust shares may receive different compensation with respect to one particular class of shares over another in the Trust.

15. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Trust with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the trustees.

16. The Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Trust will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such portfolio. The information provided by applicants for publication in any newspaper or similar listing of the Trust's net asset value and public offering price will present each class of shares separately.

17. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization of or acquiescence in any particular level of payments that the Trust may make pursuant to its rule 12b–1 distribution plan or Shareholder Services Plan in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24323 Filed 10–6–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18992; 812–8020]

Xerox Financial Life Insurance Company, et al

September 30, 1992.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Xerox Financial Life Insurance Company ("Company"), Xerox Variable Annuity Account Five (the "Separate Account"), and Xerox Life Sales Company.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain individual deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on July 29, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on October 26, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Dean H. Goossen, Esq., Xerox Financial Life Insurance Company, One Parkview Plaza, Oakbrook Terrace, IL 60181.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272–3046 or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company which was originally incorporated in 1972 as Industrial Indemnity Life Insurance Company, a California corporation. The Company is a wholly-owned subsidiary of Industrial Indemnity Company, an indirect subsidiary of Xerox Corporation.

2. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. The Separate Account currently is divided into sub-accounts which will invest in shares of the portfolios of Van Kampen Merritt Series Trust or Lord Abbett Series Fund, Inc.

3. The Contracts will be distributed through Xerox Life Sales Company, an affiliate of the Company.

4. The Contracts are individual flexible purchase payment deferred variable annuity contracts which are available in connection with retirement plans which may or may not qualify for federal tax advantages. The minimum

payment is $5,000 for a nonqualified contract and $2,000 for a qualified contract. Additional purchase payments must be at least $2,000.

5. Any premium or other taxes payable to a state or other governmental entity will be charged against the Contract Values. The Company intends to deduct state premium taxes, which range from 0% to 4%, at the time annuity payments begin or upon surrender if it is unable to receive a refund. However, the company reserves the right to deduct the premium taxes when incurred. The Company does not currently maintain a provision for federal income taxes with respect to the Separate Account but reserves the right to establish a provision for income tax incurred as a result of the operation of the Separate Account. The Company will deduct for income tax incurred by it as a result of the operation of the Separate Account whether or not there was a provision for taxes and whether or not it was sufficient.[1]

6. Contract owners may transfer all or part of their interest in a sub-account to another sub-account of the Separate Account. The Company will deduct a transfer fee from the amount which is transferred which will be equal to the lesser of $25 or 2% of the amount transferred if there have been more than 12 transfers in the contract year. After annuity payments begin, the Contract owner may make one transfer per contract year.

7. The Company will deduct an annual contract maintenance charge of $30 from the contract value on each contract anniversary, at the time a Contract is surrendered and, after the annuity date, on a monthly basis. Applicants represent that the charge has not been set at a level greater than its cost and contains no element of profit.

8. In addition, the Company deducts on each valuation date an administrative expense charge which is equal, on an annual basis, to .15% of the daily net asset value of the Separate Account. This charge is designed to cover the shortfall in revenues from the contract maintenance charge. The Company does not intend to profit from this administrative expense charge. This charge will be reduced to the extent that the amount of the charge is in excess of that necessary to reimburse the Company for its administrative expenses. Should this charge prove to be insufficient, the Company will not increase this charge and will incur the loss. Applicants are relying upon Rule 26a–1 with respect to the deduction of this charge.

9. The Contracts do not provide for a front-end sales charge. Instead, a withdrawal charge (sale load) is imposed on withdrawals of contract values attributable to purchase payments that have not been held for longer than five contract years. The withdrawal charge is equal to 5% of the purchase payment withdrawn. Subject to certain conditions noted in the application, up to 10% of purchase payments may be withdrawn free of the withdrawal charge on a noncumulative basis once each contract year.

10. The Company assumes mortality and expense risks under the Contracts. The mortality risks arise from the contractual obligation to make annuity payments after the annuity date for the life of the annuitant and to waive the withdrawal charge in the event of the death of the annuitant or contract owner (as applicable). The expense risk assumed by the Company is that all actual expenses involved in administering the Contracts, including contract maintenance costs, administrative fees, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount recovered from the contract maintenance charge and the administrative expense charge. To compensate it for assuming these risks, the Company deducts on each valuation date a mortality and expense risk charge, the amount of which is equal, on an annual basis to 1.25% (consisting of approximately .90% for mortality risks and approximately .35% for expense risks) of the daily net asset value of the separate account.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Separate Account of the mortality and expense risk charge under the contracts. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and represent that the mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. Applicants state that these representations are based upon an analysis of the mortality risks, taking into consideration such factors as the guaranteed annuity purchase rates, the expense risks taking into account the existence of charges against Separate Account assets for other than mortality and expense risks, the estimated costs, now and in the future, for certain product features, and industry practice with respect to comparable variable annuity contracts. The Company will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed and the methodology and results of this analysis.

3. Applicants state that if the mortality and expense risk charge is insufficient to cover the actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to the Company. The mortality and expense risk charge is guaranteed by the Company and cannot be increased.

4. Applicants acknowledge that the withdrawal charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. In such circumstances a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commission.

5. Applicants represent that the Separate Account will invest only in underlying mutual funds that undertake, in the event they should adopt any plan under Rule 12b–1 under the 1940 Act to

[1] *See* File No. 33–50174, Form N–4 registration statement for the Separate Account, which Applicants have incorporated herein by reference.

finance distribution expenses, to have such plan formulated and approved by a board of directors or a board of trustees, a majority of the members of which are not "interested persons" of such funds within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24327 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: The President's Council of Advisors on Science and Technology will meet on October 22-23, 1992. The meeting will begin with an open session at approximately 10 a.m. on Thursday, October 22, 1992, in the Conference Room, Points of Light Foundation, 736 Jackson Place, NW., Washington, DC, with one substantive agenda item to be discussed. This open session will end at approximately 12 noon. On Thursday afternoon, at approximately 1 p.m., the Council will continue its open session with two substantive agenda items to be discussed. This session will end at approximately 4:30 p.m. On Friday, October 23, 1992, the Council will reconvene in closed session at approximately 9 a.m. with two substantive agenda item to be discussed. This closed session will end at approximately 12 noon on Friday.

TYPE OF MEETING: Open and Closed.

AGENDA: On Thursday, October 22, there will be a discussion of the report on the U.S. Research Intensive Colleges and Universities Project. On Thursday afternoon, the Council will discuss possible panel and study topics for 1993. The Council will also hold a joint meeting with the Canadian National Advisory Board on Science and Technology, beginning at approximately 2:15 p.m.

During the closed session on Friday, October 23, the Council will be briefed on, and hold a discussion regarding, the prospects of impact of the upcoming new Office of Management and Budget Circular A-21. The Council will also finalize any remaining panel or study reports for 1992. This portion of the meeting will be closed to the public, pursuant to Title 5, U.S. Code, section 552b(c) (4), (6) & (9)(B).

For information regarding time, place and agenda, and for those wishing to attend the open portion of the meeting, please contact Ms. Ann Barnett, (202 395-4692, prior to 3 p.m. on October 21, 1992. Other questions can be directed to Dr. Alicia K. Dustira, (202) 395-4692.

Dated: October 2, 1992.

Vickie V. Sutton,

Assistant Director, Office of Science and Technology Policy.

[FR Doc. 92-24348 Filed 10-6-92; 8:45 am]

BILLING CODE 3170-01-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; New System of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(4), TVA is publishing a notice of the existence and character of a new system of records entitled TVA-36, "Section 26a Permit Application Records—TVA."

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MR 2F), Chattanooga, TN 37402-2801; telephone: (615) 751-2523.

SUPPLEMENTARY INFORMATION: On July 28, 1992 (57 FR 33382-33383) TVA published notice of a proposed new system of records entitled TVA-36, "Section 26a Permit Application Records—TVA." Reports were submitted to Congress and the Office of Management and Budget (OMB) on July 16, 1992, pursuant to the Privacy Act and OMB Circular No. A-130. No comments were received in response to the reports. In addition, no public comments were received on any aspect of the proposed new system of records notice for TVA-36. Accordingly, TVA is today publishing a notice of this new system of records. The text of TVA's notices covering its other systems of records appears at:

55 FR 34816-34840 (August 24, 1990), Compilation.
55 FR 41171 (October 9, 1990), Correction to compilation.
56 FR 4119-4120 (February 1, 1991), New routine uses for TVA-12.
56 FR 19137-19138 (April 25, 1991), New routine uses for TVA-2 and TVA-26.
56 FR 22902 (May 17, 1991), New routine uses for TVA-2 and TVA-11.
56 FR 30880 (August 1, 1991), New routine use for TVA-2.

This document gives notice that the following new TVA system of records is in effect:

TVA-36

SYSTEM NAME:

Section 26a Permit Application Records—TVA.

SYSTEM LOCATION:

For applications involving private facilities located on TVA reservoirs, such as boathouses, piers, docks, launching ramps, marine railways, beaches, utilities, and ground improvements, the records are maintained in the following locations:

—Manager, Property Management, Eastern Land Resources District, TVA, 2611 West Andrew Johnson Highway, Morristown, TN 37814.
—Manager, Property Management, Central Land Resources District, TVA, P.O. Box 606, Athens, TN 37303.
—Manager, Property Management, Southern Land Resources District, TVA, 170 Office Service Warehouse Annex, Muscle Shoals, AL 35660.
—Manager, Property Management, Western Land Resources District, TVA, P.O. Box 280, Paris, TN 38242.

For applications involving other facilities, the records are maintained by the Manager, Property Management and Administration Department, Land Resources, TVA, Ridgeway Road, Norris, TN 37828.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system includes individuals who have filed a Section 26a application for approval of construction of such things as boat ramps, docks, bridges, and dams located along, across, or in the Tennessee River and its tributaries. Also included in this system may be individuals whose structures do not have Section 26a permits, or whose approved structures have deteriorated so as to pose a threat to navigation, flood control, public lands or reservations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Section 26a permit applications made by individuals, businesses and industries, utilities, and federal, state, county and city government agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

PURPOSE(S):

Section 26a of the Tennessee Valley Authority Act of 1933, as amended, requires that TVA review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information collected is used to assess the impact of the proposed project on the statutory TVA programs and the environment and determine if the project can be approved. Rules on the application for review and approval of such plans are published in 18 CFR part 1304, Approval of Construction in the Tennessee River System and Regulation of Structures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To State or other Federal agencies for use in program evaluation, providing assistance to program participants, or engaged at TVA's direction in providing support services to the program, to the extent necessary to the performance of those services.

To TVA consultants, contractors, subcontractors or individuals who contract or subcontract with TVA, who are engaged in studies and evaluation of TVA's administration or other matters involving its Section 26a program or who are providing support services to the program, to the extent necessary to the performance of the contract.

To provide information to a Federal, State, or local entity, in response to its request, in connection with the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant and necessary to the requesting agency's decision on such matters.

To respond to a request from a Member of Congress regarding the status of a specific application.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, on microfilm, and in hardcopy files.

RETRIEVABILITY:

Records in the Property Management and Administration Department, Norris, Tennessee, may be retrieved by personal identifier (name of applicant), land tract number, or Section 26a application number, stream location, reservoir, county, or subdivision. Records in field offices are interfiled with land tract records and are retrieved by land tract number.

SAFEGUARDS:

Access to and use of these records are limited through physical, administrative, and computer system safeguards to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained in accordance with approved TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manger, Property Management and Administration Department, Land Resources, TVA, Norris, TN 37828.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name. A land tract number, Section 26a permit application number, stream location or legal property description is not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Information in this system is solicited from the individual to whom the record pertains. Information may also be obtained from other Federal, state, county or city government agencies; public records and directories; landowners, tenants, and other individuals and business entities, including financial institutions, having an interest in or knowledge related to land ownership, appraisal, or title history; and TVA personnel and contractors including independent appraisers and commercial title companies.

Michael L. Scalf,

TVA Archivist.

[FR Doc. 92–24295 Filed 10–6–92; 8:45 am]

BILLING CODE 8120–08

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Result of Dispute Settlement Proceeding Initiated Against Norway under the GATT Agreement on Government Procurement Pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Office of the United States Trade Representative.

ACTION: Publication of Results of Dispute Settlement Proceeding.

SUMMARY: The purpose or this notice is to provide the results of the dispute settlement proceeding that the United States initiated against Norway under the GATT Agreement on Government Procurement (Code). USTR initiated the case following the identification of Norway as a country apparently in violation of its Code obligations in the April 1991 Title VII review of foreign country discrimination in government procurement against U.S. products or services. This notice is published pursuant to section 305(j)(1)(a) of the Trade Agreements Act of 1979 (1979 Act), as amended (19 U.S.C. 2515(j)(1)(A)).

On May 13, 1992, the Code Committee on Government Procurement formally adopted a dispute settlement panel report, which concluded that Norway had violated its obligations in the procurement of an electronic toll collection system for the city of

Trondheim and recommended that Norway ensure that its procuring entitles conduct their procurement in accordance with its findings. On May 13, 1992, Norway agreed to comply with the panel's recommendations, and on June 12, 1992, Norway provided to the United States a written description of the measures it has taken to ensure that it conducts its procurement in accordance with the panel's findings, steps which the President found satisfactory. Pursuant to section 305(f)(2)(B) of the 1979 Act, therefore, the President will take no action to limit government procurement from Norway with respect to this matter.

FOR FURTHER INFORMATION CONTACT: Douglas Newkirk, Assistant United States Trade Representative for GATT Affairs, at (202) 395–6843, or Sanford Reback, Assistant General Counsel, at (202) 395–7203.

SUPPLEMENTARY INFORMATION: Title VII of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act) amended section 305 of the 1979 Act to require, among other things, the Administration to review discrimination against U.S. goods or services in foreign government procurements markets. In the April 1991 Title VII review, the Administration identified Norway as a country apparently in violation of its Code obligations. Norway had excluded U.S. suppliers from the procurement of an electronic toll collection system for the city of Trondheim. Instead, Norway had apparently sole-sourced the equipment required from a Norwegian supplier. The United States believed that this action was inconsistent with several of Norway's obligations under the Code, including the obligation not to discriminate against the products and suppliers of other signatories to the Code.

Pursuant to the requirements of Title VII, and in accordance with procedures outlined in the Code, on April 26, 1991, the United States requested consultations with Norway in an attempt to resolve the dispute. When these consultations did not prove successful in addressing U.S. concerns within the 60-day period specified in the statute, the United States initiated formal dispute settlement proceedings under the Code, in accordance with the statute. The United States originally requested the formation of a dispute settlement panel in this matter on June 20, 1991. At that time, Norway availed itself of the three-month period provided under the Code to allow the Committee on Government Procurement to examine the matter further. Following the expiration of the three-month period, the United States again requested the formation of a panel to examine the dispute, and the panel was formed on September 23, 1991.

On April 8, 1992, the panel submitted its report on the dispute to the United States and Norway. In accordance with Code procedures, the report was circulated to other Code signatories on April 28, 1992, and was formally considered by the Code Committee on May 13, 1992.

The report concluded that Norway had violated its obligations under the Code in its conduct of the Trondheim procurement. Although Norway attempted to justify its actions in the procurement as allowable on the basis that is was procuring in the context of a research and development project, the panel agreed with the U.S. contention that the principal purpose of the Norwegian procurement was the acquisition of toll collection equipment for the city of Trondheim, not research and development *per se*. Thus, Norway's action in single tendering the procurement to a particular Norwegian supplier violated the basic obligation of the Code the signatories may not discriminate against the products or suppliers of other signatories in procurements subject to the obligations of the Code.

The panel recommended that Norway take actions to ensure that its procuring entities conduct their procurement in accordance with its findings, and on May 13, 1992, Norway agreed to accept the recommendations of the Panel. On June 12, 1992, Norway provided the United States with written documentation of the steps that it has taken to comply with the panel report.

Section 305(f)(2)(B) of the 1979 Act specifies that the President shall take no action to limit procurement from Norway in this instance if Norway takes the actions recommended as a result of the dispute settlement proceedings "to the satisfaction of the President." The President has decided that Norway's actions in implementing the panel's recommendations are satisfactory. Thus, the United States will take no action to limit government procurement from Norway with respect to this matter under Title VII.

Julius L. Katz,

Acting United States Trade Representative.

[FR Doc. 92–24346 Filed 10–6–92; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; Bismarck Municipal Airport, Bismarck, ND

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Bismarck for Bismarck Municipal Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Bismarck Municipal Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before March 10, 1993.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is September 11, 1992. The public comment period ends November 10, 1992.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Federal Aviation Administration, Airports District Office, Room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725–4463. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Bismarck Municipal Airport are in compliance with applicable requirements of part 150, effective September 11, 1992. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 10, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft

operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Bismarck submitted to the FAA on June 8, 1991 noise exposure maps, descriptions and other documentation which were produced during the F.A.R. part 150 Noise Compatibility Study from September 1989 to June 1991. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Bismarck. The specific maps under consideration are the 1989 existing Noise Exposure Map and the 1995 future Noise Exposure Map. The FAA has determined that these maps for Bismarck Municipal Airport are in compliance with applicable requirements. This determination is effective on September 11, 1992.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting those noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consolation has been accomplished.

The FAA has formally received the noise compatibility program for Bismarck Municipal Airport, also effective on September 11, 1992. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 10, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Minneapolis Airports district Office, Room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450.

Bismarck Municipal Airport, Airport Administration, 2301 University, Building 22, Bismarck, North Dakota 58504.

City of Bismarck, City Auditors Office, 221 North 5th, Bismarck, North Dakota 58501.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Minneapolis, Minnesota, September 11, 1992.

Franklin D. Benson,

Manager, Minneapolis Airports district Office FAA Great lakes Region.

[FR Doc. 92-24356 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-13-M

Notice of Intent To Rule on Application To Impose and Use Revenue From a Passenger Facility Charge (PFC) at the Steamboat Springs Airport/Bob Adams Field, Steamboat Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Steamboat Springs Airport/Bob Adams Field under the provision of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 6, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager, Denver Airports District Office, DEN-ADO, Federal Aviation Administration, 5440 Roslyn Street, suite 300, Denver, Colorado 80216-6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Harvey M. Rose of the Steamboat Springs Airport/Bob Adams Field at the following address: P.O. Box 775088, Steamboat Springs, Colorado 80477.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the City of Steamboat Springs under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Bradley S. Davis, Colorado State Engineer, Denver Airports District Office, 5440 Roslyn Street, suite 300, Denver, Colorado 80216-6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Steamboat Springs Airport/Bob Adams Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 28, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Steamboat Springs, Steamboat Springs, Colorado was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later then January 20, 1993.

The following is a brief overview of the application.

Level of the Proposed PFC: $3.

Proposed charge effective date: March 1, 1993.

Proposed charge expiration date: March 1, 2012.

Total estimated PFC revenue: $1,887,337.

Brief description of proposed projects: Construct terminal building; construct terminal complex access road; utility extensions to terminal site; terminal building parking lot; rehabilitate air carrier apron and taxiway; tenant improvements at terminal; and land reimbursement.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Carriers as described in part 135 of the FAA Rules and Regulations.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA Regional Airports office located at: Federal Aviation Administration, Airports Division, 1601 Lind Avenue, SW., suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Steamboat Springs Airport/Bob Adams Field, Steamboat Springs, Colorado.

Issued in Renton, Washington on September 28, 1992.

Edward G. Tatum,

Manager, Airports Division Northwest Mountain Region.

[FR Doc. 92-24363 Filed 10-6-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Transit Administration

Environmental Impact Statement for the North Central Corridor Project, North of Park Lane in Dallas, TX

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and Dallas Area Rapid Transit (DART) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transit improvements in the North Central Corridor, north of Park Lane. The EIS will include an evaluation of a No-Build alternative, two Transportation System Management (TSM) alternatives, including High Occupancy Vehicle (HOV) options, an extension of the light rail transit system from the terminus of the line now under construction at Park Lane to the East Plano Transit Center at Parker Road, and any additional alternatives which result from the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and Federal, State, and local agencies, and through three public meetings.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Crist, FTA Region VI, 819 Taylor Street, suite 9A–32, Fort Worth, Texas 76102, telephone (817) 334–3787. Written materials on the proposed alternatives may be requested from Ms. Amy Coleman, Dallas Area Rapid Transit, 601 Pacific Avenue, Dallas, Texas 75202; telephone (214) 658–6314 until November 6, 1992. After November 6, Ms. Coleman can be contacted at (214) 749–2777, 1300 Pacific Avenue, Dallas Texas, 75201.

DATES: Written comments on the scope of alternatives and impacts to be considered must be received by FTA or DART on or before November 6, 1992. Public scoping meetings will be held on October 26, 1992 at the Richardson Civic Center, on October 28,1992 at the Plano City Hall and October 29, 1992 at the Hillcrest High School. Interested persons may view exhibits describing the North Central Corridor north of Park Lane beginning one hour before each meeting. See addresses below.

ADDRESSES: Written comments on the project scope should be sent to Ms. Amy Coleman, Dallas Area Rapid Transit, P.O. Box 660163, Dallas, Texas 75266. Scoping meetings will be held at the following locations:

1. Monday, October 26, 1992: 6 pm exhibit viewing; 7:00 pm—public meeting, Richardson Civic Center, 411 Arapaho, (The Parks Room).

2. Wednesday, October 28, 1992: 6 pm exhibit viewing; 7:00 pm—public meeting, Plano City Hall, 1520 Avenue K.

3. Thursday, October 29, 1992: 6 pm exhibit viewing; 7:00 pm—public meeting, Hillcrest High School Auditorium, 9924 Hillcrest.

SUPPLEMENTARY INFORMATION:

Scoping

Members of the public and affected Federal, State of Texas, and local agencies are invited to attend public meetings to be held on October 26, 28, and 29, 1992 at the times and locations indicated under Dates and Addresses, to participate in defining the alternatives to be evaluated in the EIS, and identifying any significant social, economic, or environmental issues related to the alternatives. Comments on the appropriateness of the alternatives and impact issues listed in this notice are encouraged. Specific suggestions on additional alternatives to be examined and issues to be addressed are welcome and will be given serious consideration in developing the final study scope.

Additional information on the EIS process, alternatives and environmental impact issues to be addressed by the study is contained in a "Scoping Information" document. Copies have been sent to affected Federal, State and local government agencies and interested parties on record, and are available from the DART contact listed above. Others may request the scoping material by contacting Ms. Amy Coleman at the above address or by calling her office at 214/658–6314. Scoping comments may be made verbally at any of the public scoping meetings or in writing. During scoping, comments should focus on identifying special social, economic, or environmental impacts to be evaluated, and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transit objectives.

Scoping should not indicate a preference for a particular alternative. Comments or preferences should be communicated after the Draft EIS has been completed. If you wish to be placed on a mailing list to receive further information as the project develops, contact Ms. Amy Coleman as previously described.

These meetings are not formal public hearings. Public hearings will be held after the Draft EIS is completed. DART

staff will be present to describe project alternatives, answer questions and receive comments.

Description of Study Area and Project Need

In June 1989, the DART Board of Directors adopted a Transit System Plan with 66 miles of light rail transit, 37 miles of high occupancy vehicle lanes and 18 miles of commuter rail. The adopted plan includes light rail transit in the study corridor. The corridor includes portions of three cities: Dallas, Richardson, and Plano. The corridor's southern boundary is the Park Lane station, which is located north of Northwest Highway along the former Southern Pacific railroad. Spring Creek Parkway is considered the northern boundary, Preston Road is the western and Jupiter Road is the eastern boundary. The corridor is 11.2 miles in length from Park Lane to Spring Creek Parkway and is home to several major activity and employment centers, including educational institutions and hospitals. An examination of employment growth patterns shows that the North Central corridor will continue to support high density development including retail centers, office complexes, and large scale regional activity centers.

Alternatives

Other alternatives proposed for consideration in the EIS are as follows:

No Build. The No Build alternative expands current bus service to meet anticipated year 2010 demand. Programmed high occupancy vehicle (HOV) lanes on LBJ (I.H. 635) and North Central Expressway (U.S. 75) are assumed to be committed. Highway and thoroughfare improvements are also assumed. The committed light rail starter system to Park Lane Station is also included.

TSM–NC HOV. This Transportation Systems Management (TSM) alternative includes the projects in the No Build alternative along with operational and relatively low cost physical improvements such as roadway and intersection modifications, expanded park-and-ride facilities, signalization improvements, and bus route restructuring.

The committed North Central HOV included in the No Build alternative is a one-way reversible HOV lane in the median of North Central Expressway between LBJ and Parker Road. The TSM–NC HOV alternative adds two one-way, concurrent flow lanes in the median of U.S. 75 south of LBJ to the Dallas CBD.

TSM–SP HOV. The TSM–SP HOV alternative is similar to the TSM–NC HOV alternative with the exception of the HOV element. In place of the North Central HOV extension south of LBJ, the HOV element of the TSM–SP HOV alternative consists of a two-way HOV in DART right-of-way (formerly Southern Pacific Railroad right-of-way). The HOV lanes originate at the Park Lane Station, and serve the Richardson Transit Center near Arapaho Road, and the East Plano Transit Center near Parker Road.

LRT–Parker Road. This alternative includes the projects in the No Build alternative along with light rail transit (LRT) in DART right-of-way. This LRT alternative originates at the Park Lane Station and terminates at the East Plano Transit Center at Parker Road.

LRT–Arapaho Road. This alternative is similar to the LRT–Parker Road alternative except that it terminates at the Richardson Transit Center near Arapaho Road. This length of extension is considered to be the Minimum Operable Segment (MOS), or the shortest reasonable extension to be considered.

Potential Impacts for Analysis

For all alternatives, the EIS will evaluate the following:

- Transit financial implications;
- Local and regional economic concerns;
- Transportation service, including future capacity of the corridor, transit cost, transit service, transit ridership change and effect on traffic movements;
- Community impacts, including land use, noise, neighborhood compatibility and aesthetics;
- Cultural resource impacts, including effects on historic and archaeological resources;
- Natural resource impacts, including air quality, noise and vibration, wetlands and parkland impacts and water resources and quality.

The proposed impact assessment and its evaluation criteria will take into account both positive and negative impacts, direct and indirect impacts, short-term (construction) and long-term impacts, and site-specific and corridor-wide impacts. Evaluation criteria will be consistent with the applicable Federal, State of Texas, and local standards, criteria, regulations, and policies.

Mitigation measures will be explored for any adverse impacts that are identified as part of the analysis.

FTA Procedures

In accordance with the Federal Transit Act and current FTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering. After its publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS and the comments received, DART will select a locally preferred alternative and seek approval from FTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: October 1, 1992.

Lee O. Waddleton,

Area Director.

[FR Doc. 92–24269 Filed 10–6–92; 8:45 am]

BILLING CODE 4910–57–M

National Highway Traffic Safety Administration

[Docket No. 92–54; Notice 1]

Receipt of Petition for Determination that Nonconforming 1986 BMW 316 Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1986 BMW 316 passenger cars are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1986 BMW 316 passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is November 6, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("WETL") (Registered Importer No. R–90–005) has petitioned NHTSA to determine whether 1986 BMW 316 passenger cars are eligible for importation into the United States. The vehicle that WETL believes is substantially similar is the 1986 BMW 325 that was manufactured for importation into and sale in the United States and that was certified by its manufacturer, Bayerische Motoren-Werke A.G., as complying with all applicable Federal motor vehicle safety standards.

The petitioner stated that it performed a careful evaluation of the 1986 BMW 316, and determined that it is substantially similar to the 1986 BMW 325. Based on this evaluation, the petitioner contends that the 1986 BMW 316, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1986 BMW 325, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the two models are identical with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the 1986 BMW 316 is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*:

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*:

(a) Installation of U.S.-model headlights;

(b) Installation of sidemarkers and reflectors;

(c) Installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Replacement of the passenger's outside rearview mirror with one bearing the required warning statement.

Standard No. 114 *Theft Protection*: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection*:

(a) Installation of a seat belt warning system;

(b) Replacement of the seat belt latch with one containing a microswitch to activate the seat belt warning system.

Standard No. 214 *Side Door Strength*: Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that depending on the country for which it was originally manufactured, the 1986 BMW 316 may require replacement or reinforcement of its bumpers to comply with the Bumper Standard found in 49 CFR part 581. The petitioner further states that a certification label must be affixed to the vehicle to comply with vehicle certification requirements found in 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5108, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 6, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 30, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–24270 Filed 10–6–92; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 92–53; Notice 1]

Receipt of Petition for Determination That Nonconforming 1991 BMW 730i Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1991 BMW 730i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1991 BMW

730i that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is November 6, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the Untied States on and after January 31, 1990, unless NHTSA has determined that:

> (I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1991 BMW 730i passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 BMW 735i. Champagne has submitted information indicating that Bayerische Motoren-Werke A.G., the company that manufactured the 1991 BMW 735i, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 730i is substantially similar to the 735i, and differs mainly in engine size and "minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Bayerische Motoren-Werke A.G. "generally design only a few basic body shell designs which they then equip with a multitude or engine-size and cosmetic or comfort options." The petitioner further surmised that the 730i's absence from the United States market could be attributed to "salability considerations or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1991 model 730i, vehicle safety standards in the same manner as the 1991 model 735i that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1991 model 730i is identical to the certified 1991 model 735i with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:*

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Installation of a seat-belt warning lamp;

(c) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:*

(a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers;

(b) Installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers;

(c) Installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer mircoswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:*

(a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system;

(b) Installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the 1991 model 730i is equipped with a passive restraint system, consisting of a driver side airbag, knee bolster, and control unit, and that those components have identical part numbers to the ones that are found on the 1991 model 735i.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1991 model 730i must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 6, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 30, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-24271 Filed 10-6-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-52; Notice 1]

Receipt of Petition for Determination That Nonconforming 1989 Mercedes Benz 500SL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1989 1989 Mercedes Benz 500SL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1989 Mercedes Benz 500SL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is November 6, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. * * *

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1989 Mercedes Benz 500SL (Model ID 129.066) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1989 Mercedes Benz 560SL (Model ID 107.048). Champagne has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1989 Mercedes Benz 560SL, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 500SL is substantially similar to the 560SL, and differs mainly in engine size "and minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Daimler Benz A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 500SL's absence from the United States market could be attributed to "salability considerations, or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1989 model 500SL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1989 model 560SL that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1989 model 500SL is identical to the certified 1989 model 560SL with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* *,* *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

Additionally, the petitioner claims that the 1989 model 500SL complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:*

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Installation of a seat belt warning lamp that displays the seat belt symbol;

(c) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:*

(a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers;

(b) Installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers;

(c) Installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:*

(a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system;

(b) Installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of the final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 6, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 30, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-24272 Filed 10-6-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form W-5.
Type of Review: New collection.
Title: Earned Income Credit Advance Payment Certificate.
Description: Form W-5 is used by employees to see if they are eligible for the earned income credit and to request part of the credit in advance with their pay. Eligible employees who want advance payments must give Form W-5 to their employers.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 8,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 minutes
Learning about the law or the form—8 minutes
Preparing the form—49 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 8,480 hours.
OMB Number: 1545-0245
Form Number: IRS Form 6627.
Type of Review: Revision.
Title: Environmental Taxes.
Description: Form 6627 is attached to Form 720 to compute and collect tax on petroleum, chemicals, imported chemical substances, and ozone-depleting chemicals.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 2,445.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—21 hours, 45 minutes
Learning about the law or the form—6 minutes
Preparing, copying, assembling, and sending the form to the IRS—26 minutes
Frequency of Response: Quarterly.
Estimated Total Reporting/Recordkeeping Burden: 34,035.
Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-24407 Filed 10-16-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submissions(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1277.
Form Number: IRS Form 1040-TEL.
Type of Review: Resubmission.
Title: TeleFile Income Tax Return for Singles Filers With No Dependents.
Description: State of Ohio 1040EZ filers will have the option of filing Form 1040-TEL, in which they will enter their

tax information on a Touch-Tone telephone. IRS will use the information collected to figure the filer's tax, and refund or balance due.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 200,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 minutes
Learning about the law or the form—5 minutes
Preparing the Worksheet—14 minutes
TeleFile phone call—7 minutes
Copying, assembling, and sending the voucher to IRS if you owe tax—7 minutes

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 119,025 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–24408 Filed 10–6–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0222.
Form Number: ATF F 5640.2.
Type of Review: Extension.
Title: Officer in compromise of Liability Incurred Under the Federal Alcohol Administration Act.

Description: Persons who have committed violations of the FAA Act may submit an offer in compromise. The offer is a request by the party in violation to settle liabilities for the violations in lieu of civil or criminal action. ATF F 5640.2 identifies the violations(s) to be compromised by the person committing them, and the amount of the offer, plus a justification for acceptance of the offer.

Respondents: Businesses or other for-profit.

Estimated Number of Recordkeepers: 34.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 68 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–24336 Filed 10–6–92; 8:45 am]

BILLING CODE 4810–31–M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92–463, that a meeting will be held at the U.S. Treasury Department in Washington, D.C. on November 2 and 3, 1992, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on November 2 and the preparation of a written report to the Secretary of the Treasury on November 3, 1992.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92–463, and vested in me by Treasury Department Order 101–05, I hereby determine that this meeting is concerned with information exempt from disclosure under subsection 552b(c)(9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92–463.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by subsection 552b(c)(9)(A) of title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: October 1, 1992.

John C. Dugan,

Assistant Secretary (Domestic Finance).

[FR Doc. 92–24301 Filed 10–6–92; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, October 14, 1992.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5841—Safety Study: Alcohol and Other Drug Involvement in Fatal Aviation Accidents, 1983 through 1988.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: October 5, 1992.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 92–24524 Filed 10–6–92; 8:45 am]

BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV-92-060IFR]

Kiwifruit Grown in California; Relaxation of Quality Requirements

Correction

In rule document 92-22043 beginning on page 41853 in the issue of Monday, September 14, 1992, make the following correction:

§ 920.302 [Corrected]

On page 41854, in the second column, in § 920.302(b)(1), in the fourth line from the bottom, the period after "misshapen" should be a comma and after the close quotation marks insert "and an additional tolerance of 7 percent is provided for kiwifruit that is 'badly misshapen'. "

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 26910; Amendment Nos. 21-71, and 36-20]

RIN 2120-AE50

Alternative Noise Certification Procedure for Primary, Normal, Transport, and Restricted Category of Helicopter not Exceeding 6,000 Pounds Maximum Takeoff Weight

Correction

In rule document 92-22382 beginning on page 42846 in the issue of Wednesday, September 16, 1992, make the following corrections:

1. On page 42851, in the 2d column, in the 12th line, "chapter II." should read "chapter 11.".

2. On page 42852, in the second column, in the first full paragraph, in the fifth line, "of" should read "or".

Appendix J [Corrected]

3. On page 42856, in the second column, in appendix J, in section J36.101(d)(3), in the third line from the bottom, "these" should read "those".

4. On page 42857, in the first column, in appendix J, in section J36.109(b)(4), in the first line, "is" should read "in".

5. On the same page, in the second column, in appendix J, in section J36.109(e)(1), in the fourth line, "mut" should read "must".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8431]

Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements

Correction

In rule document 92-21153 beginning on page 40319 in the issue of Thursday, September 3, 1992, make the following corrections:

1. On page 40319, in the second column, in the third line, after "1.1275-3" insert "(c), (d), and (e)".

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the second full paragraph, in the third line, "§ 1.67-(f)(1)" should read "§ 1.67-3(f)(1)".

3. On the same page, in the third column, in the third line from the bottom, "(54 FR 37102)" should read "(54 FR 37103)".

4. On page 40320, in the second column, in the fourth line from the bottom, the second "or" should read "on".

§ 1.1275-3 [Corrected]

5. On page 40322, in the 2d column, in § 1.1275-3(c)(1), in the 12th line, insert ")" after "1992".

§ 1.6049-7 [Corrected]

6. On the same page, in the third column, in § 1.6049-7(g), in the eighth line, "(f)2(i)(G)(*2*)" should read "(f)(2)(i)(G)(*2*)".

BILLING CODE 1505-01-D

VOL
57
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federal register

Wednesday
October 7, 1992

Part II

Department of Defense

Department of the Army

32 CFR Part 623
Loan and Lease of Army Materiel; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 623

Loan and Lease of Army Materiel

AGENCY: Army Logistics Evaluation Agency, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army as represented by the U.S. Army Logistics Evaluation Agency, Office of the Deputy Chief of Staff for Logistics, proposes to revise 32 CFR Part 623. This part on the loan and lease of Army materiel describes the policies, request submissions, accounting procedures, reimbursement, and reporting requirements. It includes policy and procedures for granting loans and leases to Army units and activities, non-Department of Defense Federal agencies, civilian law enforcement officials, civilian activities, and corporations.

DATES: Comments must be received on or before December 7, 1992.

ADDRESSES: Comments are to be submitted in writing only to: Commander, U.S. Army Logistics Evaluation Agency, ATTN: LOEA–IM/ Ms. Virginia Bunce, New Cumberland, Pennsylvania 17070–5007.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Bunce, U.S. Army Logistics Evaluation Agency, New Cumberland, PA 17070–5007. Telephonic inquiries will not be accepted.

SUPPLEMENTARY INFORMATION: This part, which is contained in Army Regulation 700–131, sets policies and procedures for the loan of Army materiel to both Department of Defense and non-Department of Defense activities of the Federal Government; and loan or lease of materiel to non-Federal civilian activities and agencies. It outlines when loans and leases of Army materiel can be made. Loans under 31 U.S.C. 1535 (The Economy Act) are limited to agencies of the Federal Government. Leases under 10 U.S.C. 2667 (The Leasing Statute) may be made to entities outside the Federal Government. Both the loans and leases just mentioned are distinguishable from statutory loan authorities which apply to specific organizations outside the Federal Government such as the American Red Cross and the Boy Scouts of America. This part provides procedures for requesting and processing loans and sets forth responsibilities, including requirements for reimbursement.

Publications and forms prescribed by this part are not stocked by the Army Logistics Evaluation Agency for public consumption but may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Executive Order 12291

This proposed rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor meaning that the effect on the economy will be less than $100 million.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C., § 601–612) and the Secretary of the Army has certified that this action does not have an adverse impact on small entities. The primary objective of this part is to establish an efficient program for the loan and lease of Army materiel and to describe the policies, request submissions, accounting procedures, reimbursement, and reporting requirements of the program. These requirements are not designed to preclude participation by small businesses. It is not anticipated that there will be any adverse effects on small businesses by the establishment of this program. Comments should be forwarded to the address provided in this part.

Paperwork Reduction Act

This proposed rule was previously approved by the Office of Management and Budget as required under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 623

Intergovernmental relations, Surplus government property.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

Accordingly, 32 CFR part 623 is revised as follows:

PART 623—LOAN OF ARMY MATERIEL

Subpart A—Introduction

Sec.

623.1 Purpose.
623.2 References.
623.3 Explanation of abbreviations and terms.
623.4 Responsibilities.
623.5 Approving authorities.

Subpart B—Loan Policies

Basic Loan and Lease Approval Policy

623.6 Basic policies.
623.7 Loans to Army activities and other DOD activities.
623.8 Government furnished equipment.
623.9 Loans to Federal departments.
623.10 Lease to activities outside the Federal Government.
623.11 Loans for special purpose or with special authority.
623.12 Loan or lease agreements.
623.13 Surety bonds.
623.14 Loan or lease duration.
623.15 Managing the provisions of loan agreements after approval.
623.16 Types of DA materiel available for loan or lease.
623.17 Loan of certain property.

Submission of Requests for Loan or Lease of Army Materiel

623.18 General.
623.19 Procedures for requesting loan or lease of materiel.
623.20 Actions by approving authorities.
623.21 Action by loaning or leasing activity

Subpart C—Accounting Procedures

623.22 Loan or lease document format.
623.23 Shipment of loaned or leased materiel.
623.24 Receipt of borrowed property.
623.25 Accounting by borrower.
623.26 Return of borrowed materiel.
623.27 Loan inventories.
623.28 Lost, damaged, or destroyed materiel.

Subpart D—Loan or Lease of Arms and Accouterments

623.29 General.
623.30 Loans or leases to civilian activities (other than rifle clubs and educational institutions).
623.31 Loans to rifle clubs and educational institutions.

Subpart E—Reimbursement for Loan or Lease of Army Materiel

623.32 Reimbursement policies and procedures.
623.33 Reimbursable costs.
623.34 Nonreimbursable costs.
623.35 Funding records.
623.36 Determination of charges and settlement.
623.37 Delinquent and uncollectable accounts.

Subpart F—Reports

623.38 General.
623.39 Aircraft piracy.
623.40 Civilian rifle clubs and schools.
623.41 Civil disturbances.
623.42 Disaster assistance.
623.43 Loans to civilian law enforcement officials.
623.44 United States Secret Service.
623.45 Other reports.
Appendix A to Part 623—References
Appendix B to Part 623—Approving Authority Action Office Addressees/Telephone Numbers
Appendix C to Part 623—Glossary
Appendix D to Part 623—Forms

Authority: 10 USC 2571, 2667 and 31 USC 1535.

Subpart A—Introduction

§ 623.1 Purpose.

This regulation sets policies and procedures for loan of Army materiel to both Department of Defense (DOD) and non-DOD activities of the Federal Government; and loan or lease of materiel to non-Federal civilian activities and agencies. It outlines when loans and leases of Army materiel can be made. Loans under 31 USC 1535 (The Economy Act) are limited to agencies of the Federal Government. Leases under 10 USC 2667 (The Leasing Statute) may be made to entities outside the Federal Government. Both the loans and leases just mentioned are distinguishable from statutory loan authorities which apply to specific organizations outside the Federal Government such as the American Red Cross and the Boy Scouts of America. This regulation provides procedures for requesting and processing loans and sets forth responsibilities, including requirements for reimbursement.

§ 623.2 References.

Required and related publications and prescribed and referenced forms are listed in appendix A to this part.

§ 623.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in the glossary (Appendix C to this part).

§ 623.4 Responsibilities.

(a) The Secretary of the Army (SA) has statutory authority to approve loans and leases of Army materiel. The Secretary has also been designated as the DOD Executive Agent for civil disturbance operations.

(b) The Under Secretary of the Army has been delegated authority by the SA to act in his behalf for civil disturbance operations.

(c) The Assistant Secretary of the Army (Installations, Logistics, and Environment) has been delegated the authority to act for the SA in logistics matters.

(d) The Director of Civilian Marksmanship (DCM) is responsible for management of the Army/Civilian Marksmanship Program.

(e) The Deputy Chief of Staff for Logistics (DCSLOG) has Army Staff responsibility for policy and procedures concerning the loan and lease of Army materiel.

(1) The Chief, Integrated Logistic and Troop Support Division (DALO–SMS), Directorate of Supply and Maintenance has been delegated the responsibility within the Office of the Deputy Chief of Staff for Logistics (ODCSLOG) as the proponent for loan and lease of Army materiel.

(2) The Chief, War Reserve Division (DALO–SMW), Directorate of Supply and Maintenance provides specific guidance for loan of Army materiel held in war reserves or designated operational project stocks.

(3) The Chief, Security Assistance Policy Coordinating Office (DALO–SAZ–A) is responsible for lease of equipment to commercial concerns for demonstration in connection with international programs, and for leases (or loans) to foreign countries or international organizations under the Arms Export Control Act (AECA).

(4) Heads of ODCSLOG Commodity Offices are responsible for approving requests for loans of materiel from Army or other DOD agencies in accordance with procedures established by this regulation. The various ODCSLOG offices handle requests for loan or lease of equipment only. When a request for loan/lease of equipment involves people, ODCSOPS (DAMO–ODS) is responsible for lead action.

(f) The Director of Military Support (DOMS), Office of the Deputy Chief of Staff for Operations and Plans (ODCSOPS) has been designated—

(1) The lead Army staff action office for support of the Federal Emergency Management Agency (FEMA), other Federal agencies, and the American National Red Cross (ANRC) in disaster assistance matters.

(2) To act for the SA or the Under Secretary of the Army in civil disturbance matters.

(3) DOD Executive Agent for support to the Federal Bureau of Investigation (FBI) in combatting terrorism.

(4) Army Staff proponent for cooperation with civilian law enforcement officials.

(5) Action office for those requests which involve people and equipment, or people only (to operate loaned or leased equipment).

(g) The Surgeon General (TSG) is responsible for loans of medical materiel controlled by the Office of The Surgeon General (OTSG).

(h) The Chief, Military History is responsible for approving requests for loan or lease of historical properties and military art.

(i) Program Executive Offices, under the Assistant Secretary of the Army (Research, Development, and Acquisition), are responsible for the development of additional equipment requirements to satisfy known or projected needs in support of testing, product improvement, configuration management, and contractual commitments and the loaning or leasing of equipment under their purview.

(j) The Commanding General, U.S. Forces Command (CG, FORSCOM), has been delegated authority by the SA to act on his behalf for Army materiel support of disaster relief operations within the continental United States.

(k) Commanders of unified commands are responsible for disaster relief operations in Alaska, Hawaii, U.S. possessions and trust territories.

(l) The Chief, Transportation Division (AMCLG–MT) has the responsibility for acting on loan and lease requests and loan and lease extensions forwarded for MACOM review by AMC MSCs. In addition, the office takes action to resolve delinquent loans and leases forwarded for resolution by AMC subordinate activities.

(m) Major subordinate commands (MSCs) of the U.S. Army Materiel Command (AMC) are responsible for approving requests for loan or lease of equipment belonging to the wholesale logistics system in accordance with procedures established by this regulation.

(n) CG, U.S. Army Armament, Munitions and Chemical Command (AMCCOM), is responsible for keeping a centralized serial number visibility record for all small arms made for the Army.

(o) Commanders of major Army commands (MACOMs) Active Army installations are responsible for approving requests for loan or lease of materiel under their control in accordance with procedures established by this regulation.

(p) Commander, U.S. Army Medical Materiel Agency (USAMMA) is responsible for approving requests for loan or lease of principal medical end items in accordance with procedures established by this regulation and AR 40–61.

(q) Commanders of medical treatment facilities are responsible for approving requests for loan of military medical equipment to authorized military health care recipients in accordance with procedures established by this regulation and AR 40–61.

(r) The Commander, U.S. Army Communications-Electronics Command. Communications Security Logistics Activity (USACCSLA) is responsible for approving loan of COMSEC equipment for one year or less.

(s) The Army National Guard Bureau is responsible for reviewing requests for loans and leases of Army National

Guard (ARNG) equipment that require DA approval.

(1) The Chief, Office of Military Support (NGB–MS) is responsible for acting on all emergency requests, and those involving law/drug enforcement, civil disturbances, terrorism, disaster relief, or environmental protection.

(2) The Chief, Aviation Division (NGB–AVN–O) is responsible for acting on all requests for loan or lease of ARNG aircraft.

(3) The Chief, Public Affairs Office (NGB–PA) is responsible for all requests concerning community relations or domestic action programs.

(4) The Chief, Logistics Division (NGB–ARL–SM) will act on all other requests for loan or lease of ARNG equipment.

(t) State Adjutants General (ARNG) are responsible for approving loans and leases in accordance with procedures established by this regulation.

(u) The Chief of Engineers is responsible for the loan or leasing of all equipment incident to his Civil Works and Prime Power management functions and, specifically, the loan/lease of—

(1) U.S. Army Corps of Engineers (USACE) owned equipment/supplies for emergency flood fighting operations.

(2) Plant and equipment used in support of authorized improvements/maintenance for river, harbor and flood control.

(3) Prime power generation transmission/distribution equipment for authorized contingencies.

(v) Regional Logistical Support Offices (RLSOs) will provide local, state, and regional offices of Federal drug law enforcement agencies (DLEAs) and civilian law enforcement agencies a focal point for requesting equipment and training support from DOD.

§ 623.5 Approving authorities.

A list of approving authority addresses is at appendix B to this part.

Subpart B—Loan Policies

Basic Loan and Lease Approval Policy

§ 623.8 Basic policies.

(a) Army materiel is intended for use in support of the Army's mission. However, when compelling circumstances exist, supported by general or specific statutory authority, materiel not immediately needed to support mission requirements may be loaned or leased to the following elements under the conditions prescribed herein:

(1) Army and other DOD elements.

(2) Non-DOD Federal departments and agencies.

(3) Civil governments (State and local).

(4) Special activities, agencies, and others.

(b) Table 2–1 in § 623.21 lists various types of Army materiel for loan or lease. There are three basic statutes (Federal) laws that authorize the loan or lease of Army property. There are also numerous specific statutes that authorize particular types of loans and leases in limited situations. Unless there is a reason to use the specific statute, one of the basic statutes will be used. (The statutes are cited by title, United States Code (USC), and section.)

(c) The following are the basic statutes:

(1) 10 USC 2571 (Interchange of property and services-Authority for loan of property within DOD.

(2) 10 USC 2667 (The Leasing Statute)—Authority for leases.

(3) 31 USC 1535 (The Economy Act)—Authority for loans to other Federal departments and agencies.

(d) Some of the specific authorizing statutes are listed below.

(1) 10 USC 331—Federal aid for State governments as result of insurrection.

(2) 10 USC 332—Use of militia and Armed Forces to enforce Federal authority.

(3) 10 USC 333—Use of militia or Armed Forces to suppress interference with state and Federal law.

(4) 10 USC 372 et. seq. (PL 97–86)—Military cooperation with civilian law enforcement officials.

(5) 10 USC 2541—Loan of equipment and barracks to national veterans organizations.

(6) 10 USC 2542—Loan of equipment to the American National Red Cross for instruction and practice.

(7) 10 USC 2543—Loan of equipment to US Presidential Inaugural Committee.

(8) 10 USC 2544 (PL 92–249)—Loan of equipment (e.g., cots, blankets, commissary equipment, flags, refrigerators) and services to the Boy Scouts of America for national and world jamborees.

(9) 10 USC 2572—(See AR 870–20). Loan of books, manuscripts, works of art, drawings, plans, models, and condemned or obsolete combat materiel not needed to—

(i) A municipal corporation.

(ii) A soldiers' monument association.

(iii) A State museum.

(iv) A nonprofit incorporated museum.

(v) Posts of Veterans of Foreign Wars of the USA.

(vi) American Legion Posts.

(vii) A local unit of any other recognized war veterans' association.

(10) 10 USC 4307—Authorizes the establishment of a Director of Civilian Marksmanship (DCM).

(11) 10 USC 4308—Establishment and support of civilian rifle ranges.

(12) 10 USC 4311—Issue of rifles and ammunition for conducting rifle instruction and practice.

(13) 10 USC 4508—Sale, loan, or gift of certain property (see § 623.17).

(14) 10 USC 4651—Issue of arms, tentage, and equipment to support educational institutions that do not have Reserve Officers' Training Corps (ROTC) but maintain a course in military training prescribed by the Secretary of the Army.

(15) 10 USC 4652—Loan of rifles and issue ammunition for target practice to educational institutions having corps of cadets.

(16) 10 USC 4653—Issue of ordnance and ordnance stores to District of Columbia high schools.

(17) 10 USC 4654—Issue of quartermaster supplies at educational institutions that maintain a camp for military instruction for their students.

(18) 10 USC 4655—Loan of arms and their accouterments, and issue ammunition to other agencies and departments of the U.S. Government.

(19) 10 USC 4656—Loan of aircraft and ancillary equipment to accredited civilian aviation schools at which Army or Air Force personnel pursue courses of instruction.

(20) 10 USC 4683—Loan of obsolete or condemned rifles and accouterments to local units of recognized national veterans organizations for certain ceremonial purposes.

(21) 10 USC 4685—Loan of obsolete ordnance to educational institutions and State soldiers' and sailors' orphans' homes for purpose of drill and instruction.

(22) 18 USC 1385—Unlawful use of Armed Forces in local law enforcement (Posse Comitatus Act).

(23) 18 USC 3056 (as amended by Pub. L. 91–651)—Powers, authorities and duties of United States Secret Service.

(24) 32 USC 702—Issue of supplies to State National Guard.

(25) 33 USC 575—Limits operation of power driven boats or vessels to Government business.

(26) 33 USC 701n (Pub. L. 84–99 as amended)—Flood emergency preparation; emergency supplies of drinking water.

(27) 33 USC 1251 et. seq. (Pub. L. 92–5000)—Federal Water Pollution Control Act.

(28) 42 USC 5121 et. seq. (Pub. L. 93–288)—Disaster Relief Act.

(e) The use of equipment loan procedures to issue new items of equipment to the field which are not fully supportable, or have not received a materiel release from the materiel developer, are not authorized.

(f) Loans or leases will be approved or disapproved based on the purpose, duration of the loan or lease, and consideration of the following factors that can take precedence over any loan or lease:

(1) Military requirements and priorities.

(2) Continuity of military operations, troop survival, and the rehabilitation of essential military bases.

(3) Stocks and programed Army requirements. This includes prepositioned mobilization reserve stocks.

(4) Type classification with pending changes.

(5) Minimum diversion of Army stocks.

(6) The adequacy of the borrower's resources. Requesters will be encouraged to use their own resources.

(7) The availability of alternative sources such as commercial lessors.

(g) Requests from civilian authorities or activities for lease will normally enter Army channels at the installation or major Army command (MACOM) levels. If on-post or off-post units receive lease requests, they will refer them at once to unit's supporting installation commander or higher headquarters as appropriate. ARNG units will refer all such requests to the state USPFO. USAR units will refer requests to the principal logistics staff officer at the Major United States Army Reserve Command (MUSARC) headquarters exercising command over the USAR unit. The principal logistics staff officer at the MUSARC will have the same approval authority as the "Installation Commander" for Active Army units. Emergency lease requests will be relayed by telephone or electrically transmitted message.

(h) When routine handling of a loan or lease request would result in loss of human life, grave bodily harm, or major destruction of property, and when the lack of communication facilities prevents use of normal procedures, loans or leases otherwise permitted by this AR can be made with local approval. However, normal policy should be followed to the extent possible. If procedural requirements cannot be fully complied with, they must be met promptly after the loan or lease is made.

(i) Army materiel loaned or leased under this regulation will be made available to borrower "as is, where is."

(j) Stocks in the "least serviceable condition" suitable for the purpose will be loaned or leased. Priority of equipment for loan or lease will be from condition code C, followed by condition code B, and then condition code A. (See AR 725–50, paragraph C–28, Federal Condition Codes.)

(k) Commanders of medical treatment facilities are subject to all the requirements of this AR, including the requirement for reimbursement.

(1) Emergency loans of medical supplies (drugs, vaccines, etc.) may not be made without reimbursement and the loan may not exceed 30 days. Reimbursement may take the form of replacement in kind by the borrowing agency or activity.

(2) Emergency loans of medical equipment not to exceed 15 days may be approved by the local medical facility commander without reimbursement if it is the practice in the community for other hospitals to make such loans. Equipment loans or leases that exceed 15 days must be approved, in writing, by the major medical command commander (U.S. Army Health Services Command in CONUS) and are subject to all the requirements of 10 USC 2667, including reimbursement.

(3) The requirement for surety bonding and formal lease or loan agreements for emergency loans of medical supplies or equipment are waived where the loan does not exceed 15 days if such is normal community practice. Minimum documentation for such loans will include a signed receipt from the borrowing official that identifies the loaned materiel and its condition.

(l) Army property loaned or leased to any activity will not be further loaned or leased nor can it be shipped or transferred without the written approval of the original approving authority.

(m) There will be no procurement or redistribution of assets to offset the effects of loans or leases. Materiel will not be set aside, earmarked, assembled, or stockpiled to be available for use related to loans or leases.

(n) Army materiel may be recalled from the borrower at any time to meet Army requirements.

(o) Stock record accounting and financial transactions for loans or leases will conform with existing regulations.

(p) Borrowers are responsible for the care, custody, and proper use of borrowed materiel. Except as stated in this regulation, reimbursement will be required for damage, destruction, loss, fair depreciation in value, costs to restore equipment to the condition that existed when original loan or lease of equipment commenced and for any Army repair, care, issue and turn-in inspection labor costs, packing, crating, transportation, preservation, and protection of loaned or leased equipment.

(q) Care, renovation, and repair of borrowed materiel will conform with the loan or lease agreement.

(r) Equipment may not be modified or altered by the borrower.

(s) Army property loaned or leased for demonstration purposes (table 2–1 in § 623.21) will not deviate from the approved demonstration unless specifically approved by HQDA.

(t) Loans or leases normally approved by ODCSLOG commodity offices that affect Department of the Army Master Priority List (DAMPL) issues or unit readiness require the concurrence of ODCSOPS prior to approval.

(u) As indicated in table 2–2 in § 623.21, borrowers must provide signed loan or lease agreements, provide surety bonds, and vehicular insurance prior to receipt of materiel. Loan or lease agreements and bonds will be prepared per §§ 623.12 and 623.13.

(v) Support of International Logistics (IL) programs/requirements/ initiatives when required, will be supported by wholesale owned equipment provided on a lease basis only. Wholesale assets will not be loaned to support IL requirements. When government furnished equipment (GFE) is provided pursuant to a contract, the sole basis of which is to provide a product or service in support of IL programs, the contract must include a lease clause, and provide a lease agreement which requires the user to reimburse the government for the use of the equipment.

(w) The loan or lease of military equipment (end items and secondary items) for the following purposes is prohibited:

(1) State Defense Forces authorized under section 109(c) of title 32, United States Code.

(2) Events or activities which appear, directly or indirectly, to endorse, favor or selectively benefit private individuals, groups, commercial ventures, sects, political and fraternal groups, private or solely civilian religious or ideological movements, or activities or individuals associated with solicitation of votes in an election. (Note: Service or luncheon clubs such as Kiwanis International, Lions International, Optimists, Rotary International, and Toastmasters International are not considered fraternal groups.)

(3) Events that are not open to the general public, or where admission is charged for profit purposes.

(4) Where the use of loaned or leased equipment would deny the employment of civilians in their regular profession.

(5) Production of nongovernment motion/television pictures (except where authorized by DODD 5410.15 or DODI 5410.16).

(6) Participation in, or support of fund raising events where the sponsoring cause is not a member of a United, Federal, or joint campaign.

(x) Equipment programmed for issue, or rebuild and issue to the Reserve Component will not be diverted, withdrawn, or reduced without prior approval of the Secretary of Defense. Such proposals will be forwarded to the Office of the Assistant Secretary of Defense (Reserve Affairs—Materiel Directorate), and should contain a projected replacement program for the removed equipment.

(y) The Chief of Engineers will loan equipment incident to his Civil Works responsibilities IAW the guidance of ASA(CW) and established engineer regulations. Normally, requests for this equipment should be directed to the appropriate District Commander (see appendix B to this part).

(z) The Chief of Engineers will loan Prime Power Program assets in accordance with the provisions of AR 700–128. Loans of Corps of Engineer equipment to include plant equipment, flood fighting equipment, and Prime Power equipment is normally executed on a reimbursable basis.

§ 623.7 Loans to Army activities and other DOD activities.

Army materiel may be loaned to Army activities and other DOD activities for temporary and nonrecurring requirements that support basic functions of the borrowing activity. Examples are field exercises, maneuvers, training exercises, including annual training of Reserve Components. These loans will normally be for a maximum 1-year period. Any request for extension beyond this 1-year period will be forwarded to the applicable ODCSLOG/OTSG commodity office for approval. An exception to this policy is materiel for research, development, test, and evaluation efforts that may be loaned for an initial 2-year period. If required for longer than 2 years, approval must be obtained from the applicable ODCSLOG/OTSG commodity office. As a matter of policy, equipment required for longer than 1 year (2 years for RDTE efforts) will be documented on unit MTOE/TDA/JTA per AR 71–13. Directors of Materiel Management may approve, following review of unfilled Army equipment requirements, a one-time 90-day loan extension to Army borrowers of wholesale equipment who request the extension, in order to permit the borrower time to submit the appropriate TAADS (The Army Authorization Documents System) change.

(a) Loans for 1 year or less of equipment belonging to MACOMs are approved at installation commander level. State AG's will approve loans of ARNG equipment. The Senior Logistics Officer at MUSARC headquarters will approve the loan of USAR equipment where authority is provided to the installation commander for Active Army units. (See table 2–1 in § 623.21.)

(b) Loans of equipment belonging to the wholesale logistics system are approved as follows:

(1) Major end items may be approved by the Director of Materiel Management of an AMC MSC, unless loan would interfere with issue against DAMPL priorities. In such cases, requests will be forwarded to the applicable ODCSLOG commodity office for approval. Concurrence in loan approval by HQDA (DAMO–ODR) is required.

(2) Principal medical end items in wholesale level inventories may be approved for loan by the Commander, U.S. Army Medical Materiel Agency (USAMMA) unless the loan would at any time interfere with issue against DAMPL priorities. In such cases, requests will be forwarded to HQDA (DASG–HCL), 5109 Leesburg Pike, Falls Church, VA 22041–3258 for approval. HQDA (DASG–HCL) will do any DA staff coordination required. Minor medical materiel in wholesale level inventories may be approved for loan by the commander of USAMMA.

(3) Materiels other than end items may be approved by the Director of Materiel Management of an AMC MSC.

§ 623.8 Government furnished equipment.

Government furnished equipment is Army materiel, furnished on a contractual basis when required for performance of a government contract, and where the contract specifies the requirements.

(a) Prior to commitment of Army resources as GFE to PMs, materiel developers and contractors, the responsible PM or individuals acting for the materiel developer must coordinate in advance with the Item Manager at the managing NICP to ensure higher priority claimants for materiel are not superseded. Records of coordination must be maintained. A simple certification of availability identifying the following items will be provided to the contracting officer who will prepare the contract committing the GFE: item nomenclature, quantity, NSN, date of coordination of office symbol, and name and phone number of Army item manager with whom coordination was accomplished.

(b) PMs and individuals acting on behalf of materiel developers are responsible for early identification of additional equipment requirements to satisfy known and projected loan needs in support of training, testing, product improvement, configuration management, and contractual commitments.

(1) Equipment requirements for loans discussed above should be managed under the AMC Interchange Process wherever possible, and programmed under AMP/POM procedures.

(2) When the procedure described in paragraph (b)(1) of this section is not practical, PMs and materiel developers should program funds for transfer to the item manager(s) for procurement of the required materiel.

§ 623.9 Loans to Federal departments.

Loans to Federal activities outside DOD are usually provided under the provisions of The Economy Act (31 USC 1535). Federal agencies borrowing DOD materiel under this act are responsible for reimbursing DOD for all DOD costs incident to the delivery, return, and repair of the materiel. Additionally, the borrower is responsible for reimbursing DOD for the full purchase price for consumable or nondurable items (such as batteries) and for depreciation if the depreciation cost is significant. Applicable costs are shown in subpart E of this part. Government agencies requesting loan extensions after the first year should provide in the request an explanation of what action has been taken to budget for or purchase the equipment by the borrowing agency. Approval authority for various categories of equipment are shown below.

(a) Arms, ammunition, combat vehicles, vessels, and aircraft are approved by the SA or his designee.

(b) Other equipment for retention on loan in excess of 180 days is approved by HQDA (DALO–SMS).

(c) Other equipment for less than 180 days is approved by installation commanders for Active Army owned equipment, State AG for ARNG equipment, Senior Logistics State Officer at MUSARC headquarters for USAR equipment, or directors of materiel management, AMC MSCs for items from the wholesale logistics system.

(d) Medical equipment loaned by a U.S. Army Medical Center or medical department activity (MEDCEN/

MEDDAC) for a period of less than 180 days is approved by the installation commander. Medical equipment in the wholesale inventory is approved by the commander of USAMMA. Loans of ARNG medical equipment are approved by the State AG.

(e) Medical equipment for retention on loan in excess of 180 days is approved by HQDA (DASG–HCL).

(f) If approval of equipment loans in paragraphs (c) and (d) of this section would impact DAMPL issues, HQDA approval is required.

§ 623.10 Leases to activities outside the Federal Government.

(a) Section 2667 of Title 10, USC, authorizes the lease of Army materiel to non-DOD elements or individuals when it is determined that the materiel is not, for the period of the lease, needed for public use; is not excess property; and the lease will promote the national defense or be in the public interest. (See AR 380–61.) Leases to civilian non-Federal law enforcement agencies will be made when they have been determined to be consistent with national security. Army policy is that leases of military equipment will not be made for which a counterpart exists on the commercial market place.

(b) If leases are approved under this paragraph, they must not be for more than 5 years, and they must provide that the lessee will pay consideration in an amount that is not less than the fair market value of the lease interest, and maintain, protect, repair, or restore the Government property. Lease fees will not be waived. Army policy requires a surety bond for all leases in lieu of insurance. Exceptions to this policy will be made on a case-by-case basis. Activities preparing and executing lease agreements will ensure that lease fees are charged according to the terms of 10 USC 2667. The delegation of authority to lease is AFARS, paragraph 1–9101 (SARDA 84–4, 7 Aug 84), and the prescribed lease agreement in AFARS, paragraph 45–390 (SARDA 84–4) Delegation of authority states: "The rental shall, in any event, be such as to prevent the lessee from obtaining an unfair competitive advantage over competitors by reason thereof." Review for specific items cited below is required prior to execution of the lease agreement.

(1) Arms, combat/tactical vehicles, vessels, and aircraft are approved by SA or designee.

(2) Other equipment for retention on lease in excess of 180 days is approved by HQDA (DALO–SMS).

(3) Other military equipment for less than 180 days is approved by the installation commanders for Active Army equipment, the State AG for ARNG equipment, the Senior Logistics Staff Officer at the MUSARC headquarters for USAR equipment, or commanders of AMC MSCs for items from the wholesale logistics system.

(4) Medical equipment for retention on lease in excess of 180 days is approved by HQDA (DASG–HCL).

(5) Medical equipment for less than 180 days is approved by the installation commander, the State AG for ARNG medical equipment, or commander of USAMMA for items from the wholesale logistics systems.

(6) For military equipment for lease to commercial sources for demonstrations in support of international programs, requests must be submitted to HQDA (DALO–SAA), WASH DC 20310–0512. Specific approval authorities are listed in table 2–1, in § 623.21.

(7) Loan of Government equipment acquired for research and development. Heads of contracting activities may authorize the loan of Government equipment acquired for research and development to a private industrial firm or educational institution for use in privately financed research and development programs, provided that—

(i) The programs are of interest to the Government.

(ii) The results of the research will be furnished to the Government without additional cost.

(iii) The loan shall be reflected in a written agreement which sets forth the terms of the loan and the benefits to be derived by the Government therefrom. (AFARS 45.191)

(c) This paragraph applies to leases with State and local governments as well as private and public activities or individuals.

§ 623.11 Loans for special purpose or with special authority.

(a) Disaster relief.

(1) In disaster situations, local civil authorities normally must furnish relief from their own resources. If this is not sufficient, and the American National Red Cross [ANRC] has a team at the disaster, requests for further assistance should be made to them. If the President has declared a major disaster or emergency, requests should be made to the regional director of FEMA. (See AR 500–60.)

(2) Commanding General, U.S. Forces Command (CG, FORSCOM), acting for the SA is responsible for Army materiel support of disaster relief operations within the continental United States (CONUS) and the District of Columbia. Unified commands are responsible for disaster relief operations in Alaska, Hawaii, U.S. possessions and trust territories. These commanders are authorized to task DOD agencies and commands, consistent with defense priorities, to furnish materiel in support of operations. A military representative will be appointed by the appropriate command to act as the DOD point of contact with the FEMA Federal coordinating officer when military assistance is required during a Presidential declared disaster or emergency. When a disaster or emergency is of such magnitude, the disaster area may be geographically subdivided and a military representative will then be appointed to assist each Federal coordinating officer. All requests for military assistance will be passed through the Federal coordinating office to the military representative at the disaster area.

(3) The Director of Military Support, ODCSOPS, acts as the DOD point of contact for the Administrator, FEMA, other Federal agencies, and ANRC in all disaster assistance matters.

(4) The Department of State is responsible for deciding when emergency foreign disaster relief operations will be undertaken. This authority is delegated to Chiefs of Diplomatic Missions for disaster relief operations whose total costs will not exceed $25,000. Send queries on foreign disaster relief to HQDA(DAMO–ODS), WASH DC 20310–0440.

(5) In case of flooding or coastal storm emergencies or other emergencies, major subordinate elements under Chief of Engineers are authorized to provide flood fighting equipment, and Plant and Prime Power supplies and equipment to state and local civil authorities. Assistance is authorized only when the situation is beyond control of state and local capabilities. Requests may be verbal with the formal request to follow as soon as possible.

(b) Civil disturbances. The maintenance of law and order is primarily the responsibility of local and State authorities. In civil disturbance situations, a basic goal of the Federal Government is to minimize the involvement of active military forces. One of the most effective means of minimizing that involvement is to loan or lease U.S. Army civil disturbance type equipment to Federal, State, and local law enforcement agencies and also to the National Guard. (For specific guidance, see AR 500–50.)

(1) Requests for loan of Army materiel during or for expected civil disturbances are of three types, with approval authority as follows:

(i) Group one. Personnel, arms, ammunition, combat/tactical vehicles, vessels, and aircraft. Loans or leases are approved by the SA or his designee.

(ii) Group two. Riot control agents, concertina wire, and similar military equipment that is not included in group one. Loans or leases are approved by the DOD Executive Agent or his designee (Under Secretary of the Army or the Director of Military Support, ODCSOPS) or when designated by the DOD Executive Agent, by an Army task force commander employed at an objective area during a civil disturbance.

(iii) Group three. Firefighting resources (including operating personnel); protective equipment such as masks and helmets; body armor; other equipment not included in group one or two such as clothing, communications equipment, and searchlights; and the use of DOD facilities. Such loans or leases are approved by installation commanders; Commanding General, U.S. Army Military District of Washington; by commanders-in-chief of unified commands outside CONUS as applicable; or by the Directors of Materiel Management, AMC MSCs for materiel belonging to the wholesale logistics system. The State AG is the approving authority for group three equipment issued to the Army National Guard. (Note: Firefighting equipment will not be used for riot control.)

(2) Queries concerning loans or leases in support of civil disturbances will be forwarded to HQDA(DAMO–ODS), WASH DC 20310–0440.

(3) There is no specific statutory authority to loan or lease equipment for use in civil disturbance situations. Equipment described above may be loaned to Federal agencies under the Economy Act (31 USC 1535). Equipment for non-Federal Law Enforcement Agencies must be leased, which includes requirement for payment of rental fees, under the leasing statute 10 USC 2667.

(c) Terrorism.

(1) The Department of the Army (DA) is the DOD Executive Agent for support to the Federal Bureau of Investigation (FBI) in combating terrorism. Existing civil disturbance loan procedures, including categories of equipment, apply to equipment loans to the FBI for combating terrorism. Military resources will be furnished only upon request of the Director of the FBI or the senior FBI official present at the scene of a terrorist incident. It may be difficult in some situations to determine whether a practical incident fits the definition of terrorism. In these cases, commanders are authorized to accept the judgment of the FBI official making the request if supported by available facts. (See table 2–1 in § 623.21.)

(2) As an exception to table 2–1 in § 623.21, item 8a, for requests from the FBI in connection with terrorist incidents, any commander in the chain of command down to and including commanders of active military installations and State Adjutants General for National Guard resources are authorized to approve loans of group two and group three resources. Requests for equipment that involve technical or operating personnel, excluding firefighting equipment and explosive ordnance disposal, will be processed as a group one resource.

(d) Aircraft piracy. Assistance to other federal agencies in the protection of airways is provided through loans under guidance contained in table 2–1 in § 623.21. Specific limitations on such support are covered in AR 500–1.

(e) Leases to civilian law enforcement officials. Equipment may be leased to civilian, non-Federal law enforcement officials for purposes other than civil disturbances. Requests for these leases fall into three separate categories with approval authority as follows:

(1) Arms, combat/tactical vehicles, vessels, and aircraft requests, regardless of duration of requirement, will be submitted to HQDA(DALO–SMS) for approval by the SA or his designee. Ammunition, by definition, cannot be leased to non-Federal agencies.

(2) Requests for all other equipment required in excess of 180 days will be submitted to HQDA(DALO–SMS), WASH DC 20310–0547 (or HQDA(DASG–HCL) for medical equipment) for approval.

(3) Requests for all other equipment required for less than 180 days may be approved by the active installation commander, State AG, principal logistics offices at the MUSARC headquarters (USAR equipment), and AMC MSC or the commander of USAMMA for equipment belonging to the wholesale logistics system provided DAMPL issues will not be affected. If diversion of DAMPL issue assets is required, the request must be forwarded to HQDA(DALO–SMS) or HQDA (DASC–HCL) as appropriate.

§ 623.12 Loan or lease agreements.

(a) Upon approval of a DA Form 4881–6–R (Request and Approval for Loan or Lease and Loan or Lease Agreement) and before shipment or issue of the materiel, the approving authority will direct that a written agreement be completed. In all cases, the statutory basis for the loan or lease will be cited. The approving authority is acting for the DOD on loans to other Federal agencies, and for the United States on leases to civil authorities and special activities. The agreement will be signed by the appropriate official of the loaning or leasing activity and an appropriate official of the borrowing activity. When emergency loans or leases have been made as authorized by this AR, follow-up action will be taken at once to formalize the action by completing a loan or lease agreement.

(b) Loan or lease agreements are mutually developed by the approving authority and the chief of the borrowing activity (or their designees). The agreements identify the responsibilities of all parties and include terms and conditions of the loan or lease. DA Form 4881–R (Agreement for Loan or U.S. Army Materiel), DA Form 4881–1–R (Certificate for Signature by an Alternate), DA Form 4881–2–R (Military Property of the United States—Exhibit 1), DA Form 4881–5–R (Agreement for Lease of U.S. Army Materiel), and DA Form 4881–6–R are located in Appendix D to this part and will be locally reproduced on 8½- by 11-inch paper.

(c) Loan or lease agreements will be held by the issuing activity until termination and final settlement of each loan or lease.

(d) If the loan or lease agreement is signed by someone other than the chief borrowing official, then a DA Form 4881–1–R will be completed. It will be attached to the signed (by the borrower) copy of the agreement that is retained by the loaning or leasing activity.

(e) When the borrowing agency's authorized representative is transferred, etc., the lending agency must be notified in writing to include the replacement's name, title, and telephone number.

§ 623.13 Surety bonds.

(a) Some borrowers of Army materiel must post a surety bond. (See section § 623.6(u) and DA Form 4881–3–R (Surety Bond) and DA Form 4881–4–R (Power of Attorney) which are located in Appendix D to this part and will be locally reproduced on 8½- by 11-inch paper.) Bonds insure safe return of the borrowed materiel or reimbursement for any loss of, or damage to, the materiel. The bond will consist of—

(1) A properly executed surety bond with a certified bank check, cash, or negotiable U.S. Treasury bonds.

(2) A notice of bond by a reputable bonding company deposited with the lending or leasing accountable property officer for the loan or lease. Bonds will equal the total price of the borrowed items as shown in exhibit I to the loan

agreement. A "double" bond (bond equal to twice the value of the borrowed item(s)) will be required—

(i) For Army materiel loaned to the ANRC for instruction and practice to aid the Army, Navy, or Air Force in time of war (10 USC 2542).

(ii) For ordnance and ordnance stores loaned to high schools in the District of Columbia (10 USC 4653).

(b) The bond does not have to be posted by the borrowing agency itself. The source of originating agency for the bond is immaterial if the bond is valid. For example, to secure a lease, a State may post bond on behalf of a city, county, or other governmental body or authority within the State.

(c) In an emergency, when posting a bond would delay issue of equipment for an urgent loan or lease, the approval authority may approve the issue prior to the posting of the bond. The bond must be posted within 5 days.

(d) Bond forfeitures or exceptions to mandatory forfeitures can only be made with the approval of the SA. Forfeitures will be based on actual expense incurred by the Army. Forfeitures do not release the borrowing agency from returning borrowed materiel or affect ownership. Bonds normally are forfeited under the following conditions:

(1) Materiel is not returned at the end of a loan or lease period or when return has been directed by the Army.

(2) The borrowing agent refuses to pay for damages or other Army expenses.

(e) Surety bonds will be held by the loaning or leasing activity until the loan or lease is ended and final settlement is made. At that time, the bond will be returned to the borrower.

(f) If U.S. treasury bonds are posted as surety bond, the borrower must complete a power of attorney. This will enable cashing of the treasury bonds if some forfeiture is required. A sample of a power of attorney is shown at figure 2–1.

Figure 2–1. Sample of a Power of Attorney

Instructions

The lettered blank portions of the Power of Attorney are to be completed as specified in the following paragraphs with the same letters:

(a) Enter the name of the Federal agency, authority, (local governmental body), or special activity which borrowed the Army materiel.

(b) Further identify the borrower by entering here the type of activity that it is; i.e., Federal agency, civil government, corporation (Boy Scouts of America), etc.

(c) Enter the name of the city.

(d) Enter the name of the state.

(e) Enter the name of the Army installation handling the account.

(f) Enter the name and rank of the commanding officer of the Army installation handling the account.

(g) Describe the U.S. Treasury bonds that have been posted as bond to include type, serial numbers, and interest rates if applicable.

(h) Enter date on which payment of the Treasury bonds becomes due if applicable. If it is not applicable enter "NA."

(i) Enter the date on which the agreement between the borrower and the U.S. Government was signed.

(j) Enter title of the borrowing activities' chief executive; e.g., governor, chief scout executive, national commander VFW, etc.

(k) Enter here, "comptroller," "Treasurer," etc. as appropriate.

(l) Enter date on which the Power of Attorney is signed.

(m) Enter month in which Power of Attorney is signed.

(n) Enter year in which Power of Attorney is signed.

(o) Enter name and title of chief executive of borrowing activity.

(p) Enter, if appropriate, the names and title of the comptroller or treasurer of the borrowing activity.

(q) Enter the name of the county in which the Power of Attorney is being signed.

(r) Enter the name of the state in which the power of Attorney is being signed.

(s) Enter the name of the chief executive of the borrowing activity.

(t) Signature of the Notary Public.

§ 623.14 Loan or lease duration.

(a) Loan or lease periods and extensions are shown in table 2–1.

(b) Materiel will be loaned or leased only for the number of days needed for the specific purpose for which borrowed. Loan or lease extensions must be justified. The reasons why other means or other than Army materiel cannot be used must be included. Approval of loan extensions will be based on the merit of the reasons given.

(c) If a requirement exists for longer than the normal loan or lease period, the original request must include justification for the entire period. If approved, no additional justification is required during the duration of the agreement.

§ 623.15 Managing the provisions of loan agreements after approval.

(a) The loaning command will establish a centralized management office within the loaning command. This office will have overall responsibility to monitor loans and act as a liaison between the loaner and the borrower.

(b) Loan agreements will provide for an annual inspection for all assets on loan. Inspections will ensure the condition of loaned equipment and that no unauthorized modifications have been made.

§ 623.16 Types of DA materiel available for loan or lease.

(a) Examples of types of items that may be loaned or leased, and examples of the types of organizations that may borrow Army materiel, are listed in table 2–1 in § 623.21. Loans will be nonexpendable items.

(b) Loan and lease of secondary items from wholesale stocks is not normally authorized. Secondary items include investment items (such as engines and transmissions) and Supply Management Army (SMA), Defense Business Operations Fund (DBOF) items (repair parts and expendable items). Only under rare circumstances such as testing by RDTE activities/PMs will exceptions be considered.

(c) Secondary items will be provided to other Federal agencies under the Economy Act as a sale based on prior certification of funds, or receipt of monies by the supporting NICP. Agencies desiring to return materiel previously purchased will follow the materiel returns procedures outlined in AR 725–50, chapter 7.

(d) Secondary items will be made available to non-DOD/non-Federal agencies and activities, on a reimbursable basis subject to the Army's ability to first satisfy its own operational requirements.

(e) The Director of Materiel Management at the managing NICP may approve the loan of secondary item stocks on a short term emergency basis to other services to support repair/replacement programs.

(f) Secondary items, including investment items and spare parts, will be loaned as GFE only when the part is not readily available from other sources of supply.

(g) The Director of Materiel Management at the managing NICP will be approving authority for the loan of secondary items.

§ 623.17 Loan of certain property.

(a) Heads of contracting activities are authorized to lend such samples, drawings, and manufacturing or other information as are considered in the interest of the national defense to—

(1) Any contractor for Army supplies under approved production plans.

(2) Any person likely to manufacture or supply Army supplies under approved production plans.

These loans will require a loan agreement. Generally, classified materiel will not be sold, loaned, or given.

(b) In determining whether to loan property under the authority in this

paragraph, consideration will be given to—

(1) The current or probable future need of the Government for the property.

(2) The residual value of the property.

(3) Expenses incident to handling and storage of the property.

(4) The probable cost of reproduction of the property in the event of future procurement. (See AFARS 45.190.)

Submission of Requests for Loan or Lease of Army Materiel

§ 623.18 General.

(a) Loan or lease requests will be expedited according to the situation's urgency. A situation may be so serious that waiting for instructions or approval from higher authority is unwarranted. Commanders will then take action as required to save human life, prevent human suffering, or reduce property damage or destruction. Such emergency actions will be reported at once to higher authority in accordance with subpart F.

(b) Requests to the U.S. Army for loan, lease, or extension will be promptly sent by the Army element that received the request through supply channels (property book and supporting stock record account) to the action office shown in table 2–1 in § 623.21 or as specified in appropriate regulations. All requests for loan of ARNG equipment that require HQDA action/approval will be routed through the NGB.

(c) Army activities will assist requesting civil law enforcement officials asking for materiel belonging to another Service. If there are no local activities (for example, Air Force base, Navy installations) in the immediate geographical area, the agency should be given an Air Force or Navy point of contact. (See appendix B to this part.)

§ 623.19 Procedures for requesting loan or lease of materiel.

(a) Army activities. Requests for materiel for loan to an Army activity, as well as extensions in excess of 1 year (2 years for RDTE efforts), that are sent to HQDA will be submitted on DA Form 4881–6–R. DA Form 4881–6–R should be sent through NGB for ARNG equipment, or through the appropriate MACOM or MUSARC to the proper AMC MSC for wholesale materiel, or other source of supply if known. Routine requests for loan or lease of Army materiel will be sent in writing 45 days prior to the date that the materiel is required. The form will include the following:

(1) Line item number/national stock number (LIN/NSN) and nomenclature of requested item.

(2) Quantity required.

(3) Requesting activity (title and unit identification code (UIC)).

(4) Shipping address including DOD Activity Address Code (DODAAC), or COMSEC account number for COMSEC equipment.

(5) Justification including statement that loan is to support an approved research and development effort, if applicable. RDTE efforts must specify test schedule, to include any anticipated movement of borrowed materiel.

(6) Fund citation for transportation, packing, crating, and so forth (not required for COMSEC loans).

(7) For extensions—

(i) Date of original loan and approving authority.

(ii) Loaning activity.

(iii) Dates of any previous extensions and approval authority.

(b) DOD activities. Requests for materiel from another DOD activity, or an Army activity to other DOD agencies, should be submitted to the approval authority (table 2–1 in § 623.21) in writing, and must include the following information:

(1) Requesting activity (full organizational name).

(2) Name and address of individual who will sign the loan agreement.

(3) Complete shipping address, including DODAAC, or COMSEC account number, where equipment is to be shipped.

(4) Complete identification of materiel to include NSN/LIN, as appropriate, and quantity required.

(5) Detailed justification for loan to include urgency of need.

(6) Duration of loan.

(7) Funds to defray transportation and handling including accounting classification code.

(8) Serviceability requirements.

(9) Additional instructions for delivery of equipment.

(c) Other Federal agencies.

(1) Non-DOD Federal agencies will request routine loan of Army materiel 45 days before the materiel is required from the action office listed in table 2–1 in § 623.21. Requests will be submitted by letter to include the following:

(i) Date request is submitted.

(ii) Title of requesting agency and/or person authorized to receive or pick up the borrowed materiel. Be specific; e.g., Special Agent in Charge John Doe, FBI, Anytown, USA (telephone number with area code).

(iii) Justification for loan to include anticipated use.

(iv) Statement that none of the requested materiel is internally available to the requesting activity.

(v) Statement that this support is not reasonably available from local government or commercial sources.

(vi) Authority for loan (if known); e.g., public law, U.S. code, executive order. (See table 2–1 in § 623.21.)

(vii) Positive identification of the type and quantity of items required. If the NSN and nomenclature are not available, identify the items needed by type, model, size, capacity, caliber, and so forth.

(viii) Geographic location where the materiel will be located and used.

(ix) Proposed duration of the loan.

(x) Statement that the agency has, or will acquire capability to properly operate, maintain, secure, and care for the borrowed materiel.

(xi) If firearms are requested, a statement that adequate facilities are available to secure the arms. (See § 623.28(d)).

(xii) The borrower hereby assumes all responsibilities, liabilities, and costs related to the movement, use, care, security, loss, damage, maintenance, and repair of the loaned materiel.

(xiii) A statement that funds are available to cover reimbursable costs.

(xiv) A statement that the loan agreement prepared by the Army will be signed by the "responsible official" of the borrowing activity (or designee).

(xv) Name, address, and telephone number of the person who will serve as the point of contact for the requesting agency, authority, or activity.

(xvi) Complete instructions for delivery of the equipment to ensure that shipping instructions in the request are consistent with the urgency of the situation. State whether a small quantity shipped by air, express, or other fast means will satisfy immediate needs until bulk shipments can arrive. Also state quantity immediately required.

(xvii) If applicable, the number of persons to be accommodated.

(2) Urgent requests may be made to meet unexpected or actual emergencies. Such requests may be made by telephone or by electrically transmitted message. Include information required by the above paragraphs to the extent possible. The request will be presented to the action office shown in table 2–1 in § 623.21. The borrower will then send a complete written request to formalize the emergency request.

(d) Non-Federal activities. Non-Federal activities will send routine requests for loan or lease of Army materiel by letter 45 days before the materiel is required to the action office listed in table 2–1 in § 623.21; for ARNG equipment, to the state USPFO; and for USAR equipment to the Senior Logistics

Officer at the supporting MUSARC headquarters. Requests will include—

(1) Date request is submitted.

(2) Title of requesting agency and/or person authorized to receive or pick up the borrowed materiel. Be specific; e.g., Sheriff, Any County, Anytown, USA, (telephone number with area code).

(3) Type of lease or loan; e.g., Boy Scout National Jamboree, American Legion Convention, etc. (with a short summary of circumstances).

(4) Statement that none of the requested materiel is internally available to the requesting activity.

(5) Statement that this support is not reasonably available from local government or commercial sources.

(6) Authority for the lease or loan (if known); e.g., public law, US code, Executive Order. (See table 2–1 in § 623.21.)

(7) Positive identification of the type and quantity of items required. If NSN and nomenclature are not available, identify the items needed by type, model, size, capacity, caliber, serial number, and other visible means of identification.

(8) Geographic location where the materiel will be located and used.

(9) Proposed duration of the lease or loan.

(10) Statement that the agency has, or will ensure capability to properly operate, maintain, secure, and care for the borrowed materiel.

(11) If firearms are requested, a statement that adequate facilities are available to secure the arms. (See § 623.28(d)).

(12) A statement that the borrowing activity will assume all responsibilities, liabilities, and costs related to the movement, use, care, security, loss, damage, and repair of the loaned or leased materiel.

(13) A statement that funds are available to cover reimbursable costs. Also, a statement that an adequate bond will be furnished, if required.

(14) A statement that the loan or lease agreement prepared by the Army will be signed by the "responsible official" of the borrowing activity (or designee).

(15) Name, address, and telephone number of the person who will serve as the point of contact for the requesting agency, authority, or activity.

(16) Although materiel is loaned or leased in as is, where is condition, arrangements can be made to have materiel shipped provided the recipient pays all costs. In this instance, ensure that the instructions for delivery of the equipment are complete and consistent with the urgency of the situation. State whether a small quantity shipped by air, express, or other fast means will satisfy immediate needs until bulk shipments can arrive. Also state the quantity immediately required.

(17) If applicable, state the number of persons to be accommodated.

§ 623.20 Actions by approving authorities.

(a) Each level within the approval chain must carefully weigh the impact of diverting equipment from authorized Army claimants before granting approval for loans or leases.

(b) Any equipment whose diversion will create an adverse impact on force readiness will be granted only with the concurrence of the appropriate operational element at that level (for example, installation Director of Plans and Training, G–3, DCSOPS).

(c) Equipment loaned to Army activities must be carefully reviewed to ensure that the requirements outlined by The Army Authorization Document System are not bypassed using loan procedures. Equipment on loan or lease is not an authorized requirement in the authorized acquisition objective; therefore, the Army cannot procure replacement items to offset the effects of the loan or lease. This results in shortages to authorized claimants.

(d) The information below is required for approval decisions at HQDA or higher. Since the information must be obtained from the applicable AMC MSC for requests received directly at HQDA, MACOM, and subordinate elements should determine this information and forward it to HQDA with the loan or lease request if received at that level.

(1) Availability of substitute, less critical items to satisfy the requirement.

(2) Asset posture (authorized and on hand) within the wholesale logistics system.

(3) AMC MSC recommendation on source of equipment if the loan or lease is approved.

(4) Alternate source of equipment if recommended source is not selected.

(5) Impact on Army to include payback data if procurement will offset impact prior to loan or lease termination.

(e) Notification of approval or disapproval will be provided by the appropriate action office to the requester and appropriate loaning or leasing activity. If approved, the notification will provide the appropriate point of contact within the AMC MSC, medical activity, or other agency for the borrower to contact to consummate the loan or lease agreement.

(f) For COMSEC items, approving authorities must obtain National Security Agency approval in compliance with NACSI No. 2007 and USCB 14–2.

§ 623.21 Action by loaning or leasing activity.

(a) An audit trail will be established by all activities who loan or lease equipment. Detailed accounting procedures are provided in subpart C.

(b) Documents establishing the loan or lease agreement to other than Army agencies will contain a "hold harmless" clause similar to that clause provided in paragraph 4e of DA Form 4881–R.

(c) If materiel is not returned at the end of the loan or lease period, the owning activity should correspond directly with the responsible individual who signed the loan or lease agreement. Coordination should be effected with Command Counsel as to appropriate action which may be initiated.

(d) Failure to return Army materiel upon demand will be cause for the loaning activity to elevate requests for resolution through the chain of command.

TABLE 2–1.—LOAN OR LEASE APPROVAL AUTHORITY

Requester	Category of equipment	Loan period/extension	Action office	Approval authority
Army activities and other DOD activities	MACOM owned	1 year/none	Installation	Installation commander.
	ARNG owned	1 year/none	USPFO	State AG.
	Prime Power Program	1 year/1 year	HQDA (DAEN–ZCM)	HQDA (DAEN–ZCA–A).
	Floating plant	As negotiated	Water Resource Support Center	HQDA (DAEN–ZCA–A).
	COMSEC	1 year/none	USACCSLA	Commander, USACCSLA.
	Wholesale (no DAMPL impact).	1 year/none	AMC MSC	Director, Materiel Management, AMC MSC.
	Wholesale (DAMPL impact).	1 year/none	HQDA ODCSLOG Commodity Office.	HQDA ODCSLOG Commodity Office.
	All equipment	Over 1 year	HQDA ODCSLOG Commodity Office.	HQDA ODCSLOG Commodity Office.

TABLE 2-1.—LOAN OR LEASE APPROVAL AUTHORITY—Continued

Requester	Category of equipment	Loan period/extension	Action office	Approval authority
Army research, development, test, evaluation activities; or Army procurement agencies for use by contractor personnel or Government contract.	Whole (no DAMPL impact).	2 years/none	AMC MSC	Commander, AMC MSC.
	Wholesale (DAMPL impact).	2 year/none	HQDA ODCSLOG Commodity Office.	HQDA ODCSLOG Commodity Office.
	Prime Power Program	1 year/1 year	HQDA (DAEN-ZCM)	HQDA (DAEN-ZCZ-A).
	COMSEC	2 years/none	USACCSLA	Commander, USACCSLA.
	Floating plant	As negotiated	Water Resource Support Center	HQDA (DAEN-ZCZ-A).
Federal departments and agencies	Arms, ammo, combat/tactical vehicles, vessels and aircraft.	As required	HQDA (DALO-SMS)	ASA(I,L&E).
	Prime Power Program	1 year/1 year	HQDA (DAEN-ZCM)	HQDA (DAEN-ZCZ-A).
	Floating plant	As negotiated	Water Resource Support Center	HQDA (DAEN-ZCZ-A).
	Medical	Over 180 days	HQDA (DASG-HCL)	HQDA (DASG-HCL).
	Medical (MACOM owned).	Less than 180 days	Commander, MEDCEN/MEDDAC.	Installation commander.
	Medical (ARNG owned)	Less than 180 days	USPFO	State AG.
	Medical (wholesale)	Less than 180 days	U.S. Army Medical Materiel Agency (USAMMA).	Commander, USAMMA.
	Other equipment	Over 180 days	HQDA (DALO-SMS)	HQDA (DALO-SMS).
	Other equipment (MACOM owned).	Less than 180 days	Installation	Installation commander.
	Other equipment (ARNG owned).	Less than 180 days	USPFO	State AG.
	Other equipment (wholesale).	Less than 180 days	AMC MSC	Director, Materiel Management, AMC MSC.
Activities outside Federal Government: State, local government agencies; schools; churches; private individuals; commercial activities.	Arms, combat/tactical vehicles, vessels, and aircraft.	As required	HQDA (DALO-SMS)	ASA(I,L&E).
	Industrial	As required	HQ AMC (AMCPD-IP) or AMC MSC.	ASA(RDA), Head of Contracting Activity, or designee.
	Industrial (wholesale)	Less than 180 days	AMC MSC	Director, Materiel Management, AMC MSC.
	Medical	Over 180 days	HQDA (DASG-HCL)	HQDA (DASG-HCL).
	Medical (MACOM owned).	Less than 180 days	MEDCEN/MEDDAC	Installation commander.
	Medical (wholesale)	Less than 180 days	USAMMA	Commander, USAMMA.
	Other equipment	Over 180 days	HQDA (DALO-SMS)	HQDA (DALO-SMS).
	Other equipment (MACOM owned).	Less than 180 days	Installation	Installation commander.
	Other equipment (ARNG owned).	Less than 180 days	USPFO	State AG.
	All equipment (except aircraft).	As required	HQDA (DALO-SSA)	ASA(RDA) or designee Director, DSAA.
Manufacturers for lease of previously produced materiel for demonstration purposes outside the United States.	Aircraft	As required	HQDA (DALO-SAA)	ASA(I,L&E).
Department of Agriculture: U.S. Forest Service	Protection against wildlife.	90 days/90 days	HQDA (DAMO-ODS)	ASA(I,L&E).
	Avalanche control	As required	HQDA (DALO-SMS)	ASA(I,L&E).
Animal Disease Eradication Program.	All equipment	90 days	HQDA (DAMO-ODS)	Director of Military Support, ODCSOPS.
Department of Justice, FBI	Aircraft piracy	Minimum essential	HQDA (DAMO-ODS)	DOD General Counsel or designee; in urgent cases, Deputy Director for Operations.
Department of Treasury, Secret Service	All equipment	Minimum	HQDA (DAMO-ODS)	Executive Secretary of U.S., the Department of Defense Military Assistant to the President.
Civilian law enforcement: Civil disturbances and terrorism	Personnel, arms, combat/tactical vehicles, vessels, and aircraft.	15 days/15 days	HQDA (DAMO-ODS)	ASA(I,L&E).
	Riot control agents, concertina wire, and other equipment to be employed in control of civil disturbances.	15 days/15 days	HQDA (DAMO-ODS)	DOD Executive Agent Under Secretary of the Army or HQDA (DAMO-ODS).
	Fire fighting resources and equipment of a protective nature (masks, helmets, body armor, vests) and use of Army facilities.	15 days/15 days	Installation	Installation commander, State AG Commander, MDW/CINC Unified Commands (OCONUS)/Director of Materiel Management, AMC MSC.

TABLE 2-1.—LOAN OR LEASE APPROVAL AUTHORITY—Continued

Requester	Category of equipment	Loan period/extension	Action office	Approval authority
Other law/drug enforcement activities.	Arms, combat/tactical vehicles, vessels, and aircraft.	As required	HQDA (DALO-SMS)	ASA(I,L&E).
	Medical	Over 180 days	HQDA (DASG-HCL)	HQDA (DASG-HCL).
	Medical (MACOM owned).	Less than 180 days	Commander (MEDCEN/MEDDAC).	Installation commander.
	Medical (ARNG owned)	Less than 180 days	USPFO	State AG.
	Medical (wholesale)	Less than 180 days	USAMMA	Commander, USAMMA.
	Other equipment	Over 180 days	HQDA (DALO-SMS)	HQDA (DALO-SMS).
	Other equipment (MACOM owned).	Less than 180 days	Installation	Installation commander
	Other equipment (wholesale).	Less than 180 days	AMC MSC	Director, Materiel Management, AMC MSC.
	Other equipment (ARNG owned).	Less than 180 days	USPFO	State AG.
Federal Law Enforcement Agencies (only).	Ammunition	As required	HQDA (DALO-SMS)	ASA(I,L&E).
Red Cross (aid to DOD in time of war)	Administrative and general support.	As required	HQDA (DALO-SMS)	ASA(IL&EFM).
Foreign governments	All equipment	As required, not to exceed 5 years.	HQDA (DALO-SAC)	Director, DSAA.
Youth groups: Boy and Girl Scouts of America (world or national Patrol; Camp Fire Girls, jamborees); Civil Air Inc; YMCA; YWCA; Boy's Club of America; Four H Clubs; and similar groups.	MACOM owned	As required for event	Installation	Installation commander.
	Wholesale	As required for event	AMC MSC	Director, Materiel Management, AMC MSC.
	ARNG owned	As required for event	USPFO	State AG.
Army Flying Clubs	Army aircraft	As negotiated	Installation/AMC MSC	ASA(IL&E) CG, FORSCOM.
Veterans organizations	Convention assistance (furniture).	15 days/15 days	Installation	Installation commander.
	Furniture (ARNG owned).	15 days/15 days	USPFO	State AG.
	Furniture (wholesale)	15 days/15 days	AMC MSC	Director, Materiel Management, AMC MSC.
	Burial functions (obsolete rifles).	As required	HQDA (DALO-SMS)	ASA(I,L&E).
Aid to District of Columbia Government in combating crime.	Materiel and supplies	As negotiated	HQDA (DAMO-ODS)	ASA(I,L&E)
Disaster relief:	Materiel and supplies	For minimum essential period.	HQDA (DAMO-ODS)	CG, FORSCOM or CINC of UCOM for OCONUS.
	For rehabilitation reconstruction (bridges, etc).	For minimum or essential period when requested by FEMA.	HQDA (DALO-SMS)	ASA(I,L&E).
	Flood fighting equipment and supplies.	For minimum essential period.	USACE District	USACE District Commander.
American National Red Cross in support of local civilian Government disaster relief.	Materiel and supplies	For minimum essential period.	Installation	Installation commander.
	ARNG owned	For minimum essential period.	USPFO	State AG.
Environmental Protection Agency and U.S. Coast Guard (oil and petroleum spills).	Materiel, supplies, and equipment.	For minimum essential period.	HQDA (DAMO-ODS)	ASA(I,L&E).
Environmental Protection Agency and U.S. Coast Guard.	Equipment/supplies	For minimum essential period.	HQDA (DAMO-ODS)	ASD(P&L).
Foreign Disaster Assistance	Equipment/supplies	For minimum essential period.	Through Department of State to HQDA (DAMO-ODS).	ASD (International Security Affairs).
Civil Defense	Equipment/supplies	For minimum essential period.	Installation	CG, FORSCOM.
Private individuals or activities	Historical properties	As needed for period of lease.	HQDA (DAMH-HS)	HQDA (DAMH-ZA).
	Military art	Not to exceed 2 years	HQDA (DAMH-HS)	HQDA (DAMH-ZA).
Civilian marksmanship (clubs and schools).	Arms and accouterments.	1 year/1 year	Director of Civilian Marksmanship.	ASA(I,L&E).
Community relations and domestic action programs (Youth Conservation Corps).	Equipment for instructional purposes.	As negotiated	Installation	Installation commander.
	ARNG owned	As negotiated	USPFO	State AG.
Civilian educational institutions	Quartermaster supplies	As negotiated	HQDA (DALO-SMS)	ASA(I,L&E).
Authorized military health care recipients.	Military	As required	HQDA (DASG-HCL)	HQDA (DASG-HCL).

TABLE 2-2.—AGREEMENTS, BONDS, AND INSURANCE REQUIREMENTS

Borrower	Loan or lease agreement required	Surety bond required	Vehicular insurance required
Army or other DOD activities.	See note (1).	No	No.
Non-DOD Federal Department and agencies.	Yes	No	No.
Civil authorities (State and local governments).	Yes	Yes (2)	Yes (2).
Civilian activities (veterans' organizations, youth groups, etc.).	Yes	Yes	Yes.
Corporations	Yes	Yes (3)	Yes.

(1) A hand receipt or other document assigning responsibility will suffice for retail ies. A loan agreement will be required for material on loan from wholesale activities.

(2) In emergency disaster relief cases, bonds and insurance may be provided after receipt of the materiel.

(3) This applies when FAR Part 45 is not applicable.

Subpart C—Accounting Procedures

§ 629.22 Loan or lease document format.

(a) When the lending or leasing accountable property officer receives copies of the request, the agreement, the surety bond (if required), and the written loan or lease authorization from the approving authority, the request will be converted to Military Standard Requisitioning and Issue Procedures (MILSTRIP) requisition format (DD Form 1348) shown in table 3–1 in § 623.28. In emergencies, requests and authorization for loans or leases may be made by telephone. The formal request, agreement, bond, and authorization will follow.

(b) Loaned or leased property will be kept on the accountable records of the owning property account. The entry showing the quantities will be supported by DD Form 1348–1 (DOD Single Line Item Release/Receipt Document), and copies of the loan or lease agreement and surety bond (if required). A self-addressed envelope and instructions for the receiving official to sign the DD Form 1348–1 will be included with the shipment.

(c) Loans and leases will be processed by accountable property officers according to normal supply procedures except as modified by this regulation.

(d) Accountable property officers, including the PBO of the borrowing activity and/or the SRO of the installation SSA, will keep files to provide an audit trail for transactions and a single source of accounting and billing for reimbursement. No separate property book accounts will be set up for these items. Items, with dates shipped, will be identified by use of "loan or lease control numbers" in loan or lease files and in supporting documentation. The files will include as a minimum—

(1) The loan or lease request. If the request was made by telephone (urgent), a copy of the Memorandum for Record prepared to summarize the call will be used.

(2) The approving authorization to make the loan or lease.

(3) The loan or lease agreement.

(4) A copy of the surety bond document (certified check, U.S. Treasury bonds, or adequate bond from a bonding company).

(5) DD Form 1348–1 used for shipping the items and a signed copy verifying receipt.

(e) In addition, a master loan or lease register with the control number and shipping document number will be maintained.

(f) Loaned COMSEC equipment records are maintained in the Army COMSEC Commodity Logistics Accounting Information Management System (ACCLAIMS) at USACSLA. COMSEC equipment is shipped to Army COMSEC accounts by the Armed Forces Courier Service (ARFCOS) as prescribed in AR 66–5. Standard Form 153 is used to ship classified COMSEC equipment; DD 1348–1 is used to ship controlled cryptographic items (CCI), and a signed copy, returned to the shipper, serves as verification of receipt. CCI must be reported in accordance with AR 710–3.

§ 629.23 Shipment of loaned or leased materiel.

(a) Army materiel will be shipped only to the chief of the borrowing activity or to a designee authorized to receive and sign for the materiel. To keep the materiel out of unauthorized hands, consignees (receivers) will be advised by the shipping activity of—

(1) The items and quantities to be provided.

(2) The source of supply.

(3) Whether the items are to be picked up or shipped.

(4) Shipments made.

(b) All shipments of loaned or leased equipment will be documented on DD Form 1348–1 or SF Form 153 (Classified COMSEC Equipment). DD Form 1348–1 or SF Form 153 will be generated by the shipping depot where materiel is stored in accordance with AR 725–50 and TB 380–41. They will include required special instructions, i.e., accounting classification or other data for charging transportation cost to borrower, and serial numbers (if applicable) of items shipped. The receipt certificate (not applicable to classified COMSEC) shown at figure 3–1 will be typed on two copies of the DD Form 1348–1 and included with the depot shipment. The depot will also include a self-addressed envelope for return of the signed document to the AMC MSC.

I certify receipt of and assume responsibility for the Army materiel listed on this document. The items were received in good condition except as noted. Serial numbers have been verified (omit if not applicable).

(Signature of responsible officer).

(Typed name of responsible officer and date).

Figure 3–1. Sample receipt certificate

(c) One copy of each signed DD Form 1348–1, or SF 153 (for classified COMSEC) will be returned to the shipper; one copy of each form will be kept in the borrower's file.

(d) The installation or depot transportation officer is responsible for coordinating movement of the items that must be shipped.

(e) Shipments, including those to foreign countries, will be made on commercial bills of lading (CBL). Freight charges will be paid by the borrower. The CBL will cite proper project codes. **Note:** In emergencies where use of CBL would delay shipment, Government bills of lading (GBL) may be used subject to later reimbursement. Shipments to Boy Scout World Jamborees in foreign countries will be by GBL unless otherwise specified by the Boy Scouts.

(f) Shipments will be consolidated to the maximum extent possible to obtain the lowest charges available.

(g) Separate shipping instructions will be furnished for each recipient, convention, jamboree, and so forth, to ensure correct consignee address.

(h) Transportation will be at no expense to the Government. The Defense Transportation Services (Military Sealift Command, Military Airlift Command (MAC), and Military Traffic Management Command (MTMC)) will send all billings for such transportation costs to the U.S. Army Finance and Accounting Center (USAFAC). USAFAC will then bill the fiscal station servicing the accountable property office that made the loan. This fiscal station will then bill the borrower for these transportation costs. Army materiel loaned or leased to non-DOD activities is not authorized for overseas movement on a space available basis by

Military Sealift Command or MAC without their prior approval.

(i) Detailed procedures for the shipment, security, accounting, reporting, and loss of CCI are contained in DA Pam 25–380–2.

§ 623.24 Receipt of borrowed property.

(a) The person authorized to receive the materiel (whether shipped or picked up) will check the quantities received against the quantities shown on the DD Form 1348–1. This person will also verify the condition of the materiel. Any variation in quantity or condition must be resolved at once. If the shortage or damage is not due to a common carrier, the borrower will submit, through the approving official, an SF 364, Report of Discrepancy (ROD) per AR 735–11–2. A copy of the ROD will be provided to the loaning official at the NICP in order to expedite resolution.

(b) When a DD Form 1348–1 has not been received by the borrower and does not accompany the shipment, an informal report will be made at once to the accountable property officer. The report will include the nomenclature, quantities, condition, and, if applicable, the model numbers and serial number(s) of all materiel received.

(c) When shipment has been verified, the borrower (or designee) will enter the quantity received on two copies of the DD Form 1348–1. Serial numbers will also be entered for serial numbered items. The completed copies of the DD Form 1348–1 will be signed by the authorized person. One copy of the DD Form 1348–1 will be returned to the accountable property officer.

(d) If shipments are received damaged or short, take action described in § 623.27.

(e) Classified COMSEC equipment is transferred between COMSEC accounts using SF 153 (see TB 380–41–3). The recipient of the equipment will return the signed SF 153 to the shipper immediately. It is the responsibility of the shipper to follow up with the receiving COMSEC account if 30 days have elapsed from the date of shipment and the signed SF 153 has not been returned. The follow-up may be extended to 45 days when shipment is from CONUS to overseas, overseas to CONUS, or from theater to theater. If the shipper cannot obtain or otherwise resolve confirmation of receipt on the first follow-up, the problem will be referred to USACCSLA, ATTN: SELCL–KP.

§ 623.26 Accounting by borrower.

Army borrowing activities should maintain suspense files that include copies of all documents that authorize the loan of materiel and relate to loan transactions. Such files will assist in returning materiel within the approved loan period. Files should be retained for audit or any other purpose as required. These files may be destroyed after return of the borrowed materiel and final completion of all accounting requirements including reimbursement for Army costs related to the loan. Non-Army borrowers are encouraged to conform to the requirements above.

§ 623.28 Return of borrowed materiel.

(a) General.

(1) Borrowed materiel will be returned to the Army in the condition received, less fair wear and tear, unless the terms of agreement specify otherwise.

(2) Property for which repair cost is claimed will be held at the Army depot or installation until final charges are determined and a release is given by respective property officers.

(3) Return of materiel loaned to rifle clubs and schools will conform with subpart D.

(4) Commodity managers will direct returned materiel to the nearest available depot. The materiel will be returned using the NICP assigned loan document number.

(b) Accountable property officer actions.

(1) At the end of a loan or lease period, recall, or upon notice by the borrower that the materiel is no longer needed, the accountable property officer will send a letter of instruction to the borrower for return of the materiel. He or she will verify or modify the turn-in instructions provided in the original agreement.

(2) The procedures below will be used by accountable property officers to terminate loan or lease agreements.

(i) For loans or leases up to 30 days, no specific termination action is necessary except when materiel is not returned by the due date. Then, a written termination notice will be sent to the borrower. A followup notice will be sent every 30 days until the materiel is returned or other settlement is made.

(ii) For all other loans or leases, a termination notice will be sent 30 days before the end of the period by the lending activity to the borrower verifying (or modifying) the turn-in instructions.

(iii) Follow up of the termination notice will be made at 30-day intervals at succeeding levels of command until the materiel is returned or other settlement is made. When reasonable efforts have been made (at least three followups, one of which has been signed at the General Officer or Senior Executive Service level) to satisfactorily conclude the loan or lease, assistance will be requested from higher headquarters. If all MACOM echelons are unsuccessful, a full report of all actions and circumstances should be forwarded to HQDA(DALO-SMS), WASH DC 20310–0547, with accompanying correspondence.

(3) After receiving inspection reports (c below) and final shipment receipts, the accountable property officer will clear the records.

(4) The accountable property officer will notify the servicing finance and accounting office (FAO) of any reimbursement required.

(c) Actions by the receiving installation, depot, or arsenal.

(1) The installation, depot, or arsenal receiving activities will inspect returned materiel.

(i) If the quantity received differs from the quantity shipped, the actual quantity received will be entered on the DD Form 1348–1. A Report of Discrepancy will be initiated for quantity variances. Evidence of negligence or willful misconduct will be reported to support report of survey investigation. If the quantity of classified COMSEC equipment received differs from the quantity shipped, the depot will send a corrected SF 153 to the COMSEC account that made the shipment. If the variance cannot be resolved, a report of survey will be initiated.

(ii) If the condition of the property differs from that noted on the DD Form 1348–1, the variation will be stated.

(2) Loaned or leased materiel returned in an unserviceable condition will be inspected by qualified technical inspectors at installation level and by quality assurance activities at depots to determine condition code.

(i) If the condition of returned materiel is the same as noted on the receipt document or the prepositioned materiel receipt card, the item will be processed as a normal receipt.

(ii) If there is a discrepancy between the actual condition of the item and the assigned condition code on the receipt document, obtain an estimate of repair cost and continue normal receipt documentation processing.

(iii) The receiving depot or installation will prepare an inspection and surveillance report on DA Form 3590 (Request for Disposition or Waiver) for each returned item that needs repair. Documentation will also be prepared for shortages and will include the cost of equipment repair or the value of shortage using standard prices. Two copies of each report will be sent to the proper accountable property officer.

§ 623.27 Loan inventories.

(a) If a loan or lease has been approved or extended for a period longer than 1 year, the correspondence advising the customer of the approval will also advise the customer to conduct an annual inventory. The borrower will report the results of the inventory to the accountable property officer of the loaning or leasing activity.

(b) If no discrepancies are noted, the accountable property officer will file the signed annual inventory form in the borrower's memorandum receipt file.

(c) If the borrower's annual inventory shows that amounts and kinds of Army materiel for which the borrower is responsible differ from that actually in his or her possession, the accountable property officer will take the following actions:

(1) For overages, assume accountability for the overages noted on the annual inventory form. Use a copy of the annual inventory form as a debit voucher to the account. No approval of this voucher is needed.

(2) For shortages, act to obtain reimbursement for the value of the missing property or to adjust the discrepancy by report of survey.

§ 623.28 Lost, damaged, or destroyed materiel.

(a) When materiel is lost or damaged during shipment, DOD and Federal agencies will refer to AR 55–38 for specific instructions. Non-Federal agencies will contact the shipper for guidance.

(b) Damage or loss that is the fault of the carrier will be billed to the carrier after reconciliation.

(c) Army materiel lost, damaged, or destroyed while in the possession of rifle clubs or schools will be handled as described in subpart D.

(d) Any Army materiel loaned at the request of an FEMA regional director that is not returned according to instructions in this chapter will be reported to the regional director who will arrange for proper reconciliation and reimbursement.

(e) Reports of survey for damaged or lost property will be submitted by borrowing Army units as directed by AR 735.

TABLE 3–1.—MILSTRIP REQUISITION FORMAT

Card columns	Code or data
1–3	"AOE."
4–6	Routing identifier code (lender).
7	Media and status code.
8–22	National stock number.

TABLE 3–1.—MILSTRIP REQUISITION FORMAT—Continued

Card columns	Code or data
23–24	Unit of issue.
25–29	Quantity.
30–43	Document number.
(30–35)	DODAAC of the requisitioner, if applicable, otherwise DODAAC of accountable property officer/MSC (lender).
(36–39)	Julian date.
(40–43)	Serial number.
44	"N" for nonrecurring demand.
45–50	Supplemental address (loanee DODAAC) for DOD units. For non-DOD activities enter Y00000 destination.
51	"M."
52–53	"G4" for loans to nonresearch and nondevelopment activities. "G6" for loans to research and development activities.
54–56	Blank.
57–59	Project code if applicable.
60–61	Priority.
62–64	Required delivery date.
65–66	Blank.
67–69	Depot routing identifier code.
70	Purpose code.
71	Condition Code.
72	Management code.
73–80	Blank.

Subpart D—Loan or Lease of Arms and Accouterments

§ 623.29 General.

(a) Loan or lease of arms and accouterments requires special processing and handling. Loans or leases to DOD and non-DOD activities will be handled as a normal loan or lease according to instructions in this subpart with the added requirement of maintaining serial number visibility.

(b) The Commanding General, U.S. Army Armament, Munitions and Chemical Command (AMCCOM) has been designated by AMC to maintain a centralized serial number visibility record for all small arms made for the Army. AMCCOM (AMSMC–MMD) maintains accountable property records for loans to organizations such as the Director of Civilian Marksmanship (DCM) and for loans and leases to non-DOD activities such as the FBI, United States Secret Service, rifle clubs, educational institutions, and veterans' organizations.

(c) Requests for loan or lease of arms that are type classified standard (logistics control code A or B) will be filled with the lowest type classified items available.

(d) Borrowers of Army arms will be fully responsible for the care, custody, and proper use of loaned materiel. Physical security measures must be equal to or greater than the minimum requirements in AR 190–11.

(e) If borrowed arms are lost, stolen, or unaccounted for, the borrower must inform the lender (accountable property officer), local security office or military police station, the local police, and the FBI within 24 hours after discovery.

(f) This regulation does not apply to arms issued to ROTC units under the National Defense Act. (AR 710–2 is applicable.)

§ 623.30 Loans or leases to civilian activities (other than rifle clubs and educational institutions).

(a) Arms and accouterments may be loaned by the Army to civilian authorities and to civilian activities as shown below. (Section 623.30 covers rifle clubs and institutions.)

(1) For use by Federal agencies or departments in protection of public money and property (10 U.S.C 4655).

(2) Obsolete or condemned rifles (not more than 10), slings, and cartridge belts may be loaned to local units of any national veteran's organization for use by that unit in ceremonies; for example, a funeral for a former member of the Armed Forces. The organization must be recognized by the Veterans' Administration (10 U.S.C. 4683).

(3) Arms and accouterments loaned to organizations listed in section 623.30(a) for a period of 1 year or less will be accounted for by AMCCOM. Loans of items that exceed 1 year will be accounted for by the DCM under § 623.30.

(b) Approved requests will be sent to AMCCOM, Rock Island, IL 61299, for completion of a formal loan agreement and issue of items. (See appendix B to this part.) Serial number control data will be entered in the DOD Small Arms Serialization Program.

(c) Shipments and returns are described in chapter 3 except as follows:

(1) Shipment of arms and ammunition will conform to all security requirements. (See AR 190–49.) The responsible property officer (borrowing activity) for materiel on loan or lease will request disposition instructions from the accountable property officer when materiel is no longer needed or at the end of the loan or lease period. Loaned or leased materiel may be withdrawn from the borrowing activity at any time to satisfy military requirements.

(2) The accountable property officer will—

(i) Issue shipping instructions for the return of property to a designated installation. The letter of instruction will contain a MILSTRIP document number

(AR 725–50, paragraph C–4) for each line item scheduled for return to be used for the shipment. The shipper will be directed to cite this document number on the shipping document.

(ii) Prepare and submit to the receiving installation a prepositioned materiel receipt card, DD Form 1486 (DOD Materiel Receipt Document) (Document Identifier DWC), as advance notice of the shipment. Exception data will be annotated as follows: "Return of Loan from Other Government Agency-Report Receipt of Arms and Accouterments Accountable Property Officer, ATTN: AMSMC–MMD." A copy of the letter of shipping instructions ((a) above) will be enclosed with the prepositioned materiel receipt card for information.

(3) Upon receipt at the receiving installation, property will immediately be inspected. Cost of repairing unserviceable items and cost of replacement, if irreparable, will be determined at time of inspection. The MILSTRIP receipt card will be mailed to the accountable property officer with estimated cost of repairing damage and detailed materiel condition as exception data.

(4) Upon notification of materiel receipt, the accountable property officer will clear the loan record with a credit entry verifying return of materiel, and file the receipt document with the other records.

§ 623.31 Loans to rifle clubs and educational institutions.

(a) Authorization. Arms and accouterments may be loaned to rifle clubs and educational institutions for periods established in table 2–1 in § 623.21 (see items 18 and 20) under the following conditions:

(1) Rifled arms may be loaned to civilian rifle clubs for promotion of marksmanship training among able-bodied U.S. citizens (10 USC 4308).

(2) Arms, tentage, and equipment, as the SA deems necessary, may be loaned to an educational institution to provide proper military training where there is no ROTC, but there is a course in military training prescribed by the SA. The educational institution must have at least 100 physically fit males over 14 years of age (10 USC 4651).

(3) Magazine rifles and appendages may be loaned to schools having a uniformed corps of cadets of sufficient number for target practice. Models loaned must not be in use at the time, or needed for a proper reserve supply (10 USC 4652).

(4) Ordnance and ordnance stores may be loaned to Washington, DC high schools for military instruction and practice (10 USC 4653).

(5) Obsolete ordnance and ordnance stores may be loaned to educational institutions and to State soldiers', sailors', and orphans' homes for drill and instruction if recommended by the Governor of the State or territory concerned (10 USC 4685).

(b) Director of Civilian Marksmanship (DCM). The President may detail an officer of the Army or Marine Corps as DCM (10 USC 4307). The DCM is responsible for—

(1) Control and accountability of Army materiel issued to civilian rifle clubs.

(2) Policies and procedures for the issue of arms and ammunition to civilian rifle clubs.

(3) Ensuring proper bonding of clubs before issue of Army materiel. The SA has further made the DCM similarly responsible for loans to institutions (schools).

(c) Property transactions. AMCCOM will transfer accountability for materiel shipped to civilian rifle clubs and institutions to the DCM. The DCM will keep a mission stock record account for these items as shown in AR 710–2. In addition, the account will note all property transactions between the DCM and civilian rifle clubs and institutions as follows:

(1) Loan and return of arms and accouterments to (from) civilian rifle clubs and institutions will not be posted to the accountable record as loss or gain vouchers. They will be posted as "loan transactions" with the DCM retaining accountability. In addition to debit, credit, and adjustment voucher files, the DCM accountable property officer will keep a "loan voucher" file in two sections: active and terminated.

(i) The active section (suspense for items on loan) will contain DD Form 1348–1 or a letter acknowledging receipt of the items. (The signature of the borrower will be in accordance with paragraph (d)(5) or (d)(6) of this section.) This section will contain a folder for each activity serviced by the DCM. The active loan vouchers will be filed in NSN and voucher number sequence. This section serves as the DCM loan record.

(ii) The terminated section (for items no longer on loan) will contain the original loan shipping document (loan voucher). The return receipt document that terminates the loan will be attached. The receipt document will contain the original shipping document number and the return advice code "IQ."

(2) Shipments of expendable items (e.g., ammunition and targets) will be posted as a credit to the accountable record. Accountability will be dropped. (These items are deemed to have been consumed at the time of issue.)

(3) Expendable items returned by rifle clubs and institutions will be posted to the accountable record as a debit voucher. The DCM will determine disposition of these items.

(d) Requisition procedures.

(1) The DCM will prepare requisitions based on information from the rifle clubs or institutions. DA Form 1273 (Requisition for Articles Authorized for Issue to Civilian Rifle Clubs) or DD Form 1348–1 will be used. Two completed copies of the requisition will be sent to the requester.

(2) The rifle club or institution will complete the required form and return one signed copy to the DCM (app B), and keep one copy for file.

(3) On receipt of the signed copy of DA Form 1273 or DD Form 1348–1, the DCM will take proper issue action. When more arms are required by the DCM, a DD Form 1348 will be prepared and sent to the SA for approval (AR 725–50).

(4) The supply source responsible for the loan will ship the materiel directly to the rifle club or school.

(5) Three copies of the DD Form 1348–1 received with the shipment or by mail will be annotated and signed by the person authorized to receive and sign for property for the rifle club or school. The quantity and condition of the items received will be entered thereon. This entry will be based on a physical check and inspection of the materiel. Serial numbers of items received, if applicable and not noted, will also be entered on the form. Two completed copies of DD Form 1348–1 will be mailed to the DCM. The third completed copy will be kept in the unit's file.

(6) If a DD Form 1348–1 is not received with the shipment or is not received by mail, a receipt letter will be sent to the DCM. It will set forth the nomenclature, quantities, condition, and serial numbers (of serial-numbered items) of all property received. This letter will be sent promptly after receipt of the property. The receipt letter will be used by the DCM as a loan voucher, recorded in the voucher register, and placed in the voucher file. The loan action will be posted to the DCM stock record account.

(e) Property returns.

(1) When property is ready to be returned by civilian rifle clubs or institutions, the DCM will prepare seven copies of the DD Form 1348–1. Five copies will be mailed to the rifle club or institution; one will be kept in suspense in the club's or institution's jacket file; and one will be sent to the US Army

Management Systems Support Agency, WASH DC 20310, to update the "rifles intransit program." The rifle club or institution will enter on the five copies the shipment date, how shipped, the quantity shipped, and other necessary data not entered by the DCM and distribute the five copies as follows:

(i) Two copies to the consignee (receiving depot, arsenal, or installation). One copy of the DD Form 1348–1 received by the consignee will be used to tally the shipment and to account for property received. The other copy will be signed by the accountable property officer (or representative) and will be sent to the DCM to terminate the oper receipt in the loan voucher file.

(ii) One copy with the shipment.

(iii) One copy to the DCM, accompanied by the bill of lading (where available).

(iv) One copy retained by the rifle club or institution.

(f) Lost, damaged, or destroyed property. Loss, damage or destruction of property in the possession of a rifle club or institution will be reported within 24 hours by telephone to the DCM (WATS 202–272–0810), the local police, and the FBI. All public and local laws must be complied with. Rifles and other equipment (except ammunition) that become unserviceable will be reported to the DCM by the club or institution. The DCM will give instructions for return of the equipment without expense to the Government. Any equipment damage or loss that is the fault of the club or institution will be determined by a report of survey (AR 735–5). The club or institution must then reimburse the DCM. The DCM may replace damaged equipment after reimbursement. Government property lost or destroyed without fault or neglect on the club's part will be replaced, if replacements are available. The club will pay only shipping and handling charges.

Subpart E—Reimbursement for Loan or Lease of Army Materiel

§ 623.32 Reimbursement policies and procedures.

(a) Policies.

(1) DA elements do not program for costs related to loan or lease of Army materiel. Lost, damaged, or destroyed property will be accounted for per AR 735–5.

(2) Loans to non-DOD Federal activities are made on the basis that there will be no extra cost to the Army. Costs that are in addition to normal Army operating expenses (incremental costs) will be reimbursed by the borrower. This provision will be part of the loan agreement.

(3) In cases of aircraft piracy, civil disturbance, disaster relief, or protection of the President or visiting dignitaries, emergency support will not be withheld for lack of a formal reimbursement agreement. In these cases, the supporting Army element will absorb initial costs (within existing fund availability). Reimbursement for other than United States Secret Service costs for protection of the President will be coordinated later.

(4) Leases made under 10 USC 2667 provide that the borrower must pay a fair monetary rental in addition to paying all incremental costs discussed in paragraph (a)(2) of this section. The fair monetary rental will be determined on the basis of prevailing commercial rates or computed by sound commercial accounting practices including a return on capital investment and administrative cost as well as depreciation. Leases made under this section will include a provision establishing the rental cost of the materiel and method of payment.

(5) Support to the United States Secret Service will be on a reimbursable basis except for costs directly related to protection of the President or Vice President or line of succession. Requests for reimbursement for all other support for United States Secret Service will be per AR 37–1.

(6) The cost of emergency support will be billed directly to the recipient.

(7) User charges will conform to AR 37–60, DODI 7230.7, and this chapter.

(8) User charges for non-civilian law enforcement actions may be waived or reduced when:

(i) The recipient of the benefits is engaged in nonprofit activity designed for the public safety, health, or welfare.

(ii) Payment of the full fee by a state, local government, or nonprofit group would not be in the interest of the program.

(iii) Furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis with a foreign country.

(iv) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

(9) The Army must be reimbursed for equipment damaged or destroyed by the borrowing agency (regardless of cost) prior to committing a replacement item to the borrower (Federal) or the lessee (non-Federal).

(b) Procedures.

(1) The Army accountable property officer handling the loan or lease of Defense Logistics Agency (DLA) stock fund items from an Army activity will coordinate DLA billings and borrower reimbursement to ensure that Army incremental costs are reimbursed. Requests for loan or lease of DLA-owned and stored materiel should be submitted directly to Director, Defense Logistics Agency, ATTN: DLA-OSC, Cameron Station, ALEX VA 22314.

(2) Installation financial accounting for "accounts receivable or payable (bonds)" will conform to AR 37–108.

(3) The FAO supporting the supplying accountable property officer will record all charges, including accounts receivable of DBOF offices (or branch offices), in separate ledger accounts for each borrower.

(4) Charges and collections recorded in each loan or lease account will be reported per Army regulations and directives prescribing the reporting of the fund status in any current fiscal year.

(5) Billing will be initiated on SF 1080 (Voucher for Transfer Between Appropriations and/or Funds), and sent to the borrower within 45 days of turn-in of materiel and loan or lease termination. For loans of arms and accouterments and issue of ammunition per 10 USC 4655, the SF 1080 will be annotated to show that collections are to reimburse DA appropriations.

(6) Special appropriations established to support disaster relief will be used promptly by Army commanders concerned to ensure that all direct expenses are charged to the special appropriation. Exclude those charges subject to reimbursement by the ANRC. The ANRC reimburses for supplies, materiel, and services for which they are responsible in the disaster area.

§ 623.33 Reimbursable costs.

Unless specifically stated, borrowing agencies, authorities, and activities will reimburse the Army for all costs related to loan or lease of Army materiel to include but not limited to the following:

(a) Any overtime pay and pay of additional civilian personnel required to accompany, operate, maintain, or safeguard borrowed equipment.

(b) Travel and per diem expenses of Army personnel (military and civilian).

(c) Packing, crating, handling, and shipping from supply source to destination and return. This includes port loading and offloading.

(d) All transportation including return for repair or renovation.

(e) Hourly rate for the use of Army aircraft.

(f) Petroleum, oils, and lubricants (including aviation fuel).

(g) The cost of materiel lost, destroyed, or damaged beyond

economical repair except for Army aircraft, motor vehicles, or motor craft used in connection with law enforcement efforts involving aircraft piracy.

(h) Utilities (gas, water, heat, and electricity). Charges will be based on meter readings or other fair method.

(i) Any modification or rehabilitation of Army real property that affects its future use by DA. In such cases the borrower will also bear the cost of restoring the facility to its original form.

(j) Overhaul of returned materiel. Renovation and repair will conform to agreement between the Army and the borrower. (See § 623.35(a)).

(k) Repair parts used in maintenance or renovation.

(l) Price decline of borrowed stock fund materiel at which returned property can be sold.

(m) Issue and turn-in inspection labor costs.

(n) Salaries for personnel who process/maintain loans.

(o) Reimburse shipping, receiving, and materiel release order (MRO) handling and inventory changes associated with loan.

§ 623.34 Nonreimbursable costs.

The following costs are normal operating expenses of the Army for which no reimbursement is required:

(a) Regular pay and allowances of Army personnel (except travel and per diem costs).

(b) Administrative overhead costs.

(c) Annual and sick leave, retirement, and other military or civilian benefits except as provided in certain cases; for example, Army Industrial Fund regulations.

(d) Telephone, telegram, or other electrical means used to requisition items, replenish depot stocks, or coordinate the loan.

(e) Charges for the use of Army motor vehicles and watercraft except POL and per diem costs (section 623.33).

(f) The use of real property (except as required for utilities, modification, etc.).

§ 623.35 Funding records.

(a) Records of all costs (other than normal operating expenses), related to loans or leases of Army materiel, will be kept at the accountable property officer level by the supporting FAO. This will be done within existing Army financial accounting systems.

(b) Separate subsidiary general ledger accounts and/or files of documents showing the total value of all issues and materiel returned for credit, and supporting documentation will be set up by the FAO. The accounts will be kept current for each transaction so reports may be made as prescribed; and that accounts receivable can be processed for billing and collection action.

§ 623.36 Determination of charges and settlement.

(a) Returned materiel will be promptly classified by a qualified inspector with action as follows:

(1) Materiel classified as unserviceable, uneconomically reparable will be billed at replacement cost minus depreciation.

(2) Materiel classified as unserviceable, economically reparable will be billed for reduced utility (if appropriate) as well as for overhaul costs.

(3) The depreciation of returned materiel will be determined by technical inspectors per AR 735–5. When qualified inspectors are not available, returned property will be received with "condition" shown as "subject to final classification by DA." Accountable property officers will complete classification promptly so charges and billing can be made within 30 days of return of materiel.

(4) Determination of loss or damage due to negligence, willful misconduct, or theft will be reported immediately to the appropriate accountable property officer.

(b) All returned property that needs repair will be examined by a technical inspector to determine cost of repair. Then the accountable property officer will prepare a property transaction record with supporting documents. These records will be sent to the proper MACOM commander or unified command CINC for final review. They will include—

(1) A statement on the transaction record identifying the financial account to which the reimbursement money is to be deposited.

(2) A statement on the transaction record (if appropriate) as follows: "The losses and/or damages shown on the Property Transaction Record in the amount of $_____ represent the total claim by the U.S. Army for property loaned or leased to _____. Upon settlement and deposit to the proper account, lender releases from further obligations."

(3) A description of the type and degree of repair (separate addendum).

(c) After final review, the servicing FAO will be notified via an approved list of charges of the existence of the receivable. The property will be released for repair and return to stock.

(d) The FAO will send a letter to the borrower requesting payment (payable to the Treasurer of the United States). Upon payment, collection documents will be prepared and fiscal accounts credited. The MACOM or unified command Surgeon will ensure the stock fund is reimbursed for expendable medical supply losses reported.

(e) The FAO will advise the appropriate accountable property officer that settlement has been made. Property transaction records will be closed.

(f) The approving authority will then return the bond to the borrower.

(g) The value of supplies and equipment returned to the Army will be credited to the account originally debited at the time of issue. FEMA regional directors may find that it is not in the public interest to return borrowed materiel that has not been consumed, lost, or damaged. They will negotiate with the CONUS Army concerned for proper reimbursement for the borrowed materiel not returned.

§ 623.37 Delinquent and uncollectable accounts.

(a) In cases of unsatisfactory settlement, bond proceeds will be used to satisfy the claim.

(b) If this does not settle the account and further collection efforts are unsuccessful then receivables will be referred to USAFAC per AR 37–108, chapter 6. The accountable property officer will notify HQDA (DALO–SMS) that the account has been referred to USAFAC. USFPOs will notify HQDA of delinquent account transfers through NGB–ARL–S.

(c) Appropriations available to the accountable property officer will reimburse the applicable business area within the DBOF. Any later reimbursements received will be credited to the appropriation from which payment was made.

(d) On receipt of the accounts in paragraph (b) of this section. USAFAC will take appropriate action under their normal operating procedures. All further collection action will be the responsibility of USAFAC. If further collection action fails, these accounts will be referred to the Justice Department.

Subpart F—Reports

§ 623.38 General.

Reports of Army materiel loaned or leased to non-DOD activities must be forwarded as described in this subpart.

§ 623.39 Aircraft piracy.

(a) Commands and agencies providing support for incidents involving aircraft piracy will initially report through command channels by telephone to HQDA(DAMO–ODS) (appendix B to this part). Confirmation will be made by

electrically transmitted message to HQDA(DAMO–ODS). These reports are exempt from reports control under AR 335–15. Initial reports will include all available details. The following is a guide for content of reports:

(1) Supporting unit or agency.

(2) Home station of supporting unit or agency.

(3) Support provided and duration of requirement.

(4) Changes, if any, in support requested or duration of requirement as made by the Federal civil official in charge.

(5) Additional remarks.

(b) A final report noting termination of support will be made.

§ 623.40 Civilian rifle clubs and schools.

(a) Each affiliated club and institution (school) must file an annual report on the anniversary date of the loan with the DCM. The following forms will be used:

(1) DA Form 1277 (Annual Statistical Report of Civilian Rifle Club). (See AR 920–20 for guidance.)

(2) OSA Form 119 (Roster of Club Members).

(b) The roster (OSA Form 119) will list each member required to fire annually. It will include the full name, address, and age; the DCM course; score; and the date the member fired for record.

(c) A description of the club's procedures and facilities for safekeeping arms and ammunition will be appended to the OSA Form 119.

§ 623.41 Civil disturbances.

(a) Approving authorities, other than the SA, will prepare reports (RCS DD–A(AR)1112) on all requests for loan of Army materiel to support civil disturbances. The reports will be sent within 2 work days after receipt of the request. They will be prepared in the format shown in AR 500–50. They will also serve as "the request" when no other written request is available.

(b) The reports will be sent through channels to HQDA(DAMO–ODS), WASH DC 20310–0440. When reports are received from unified or specified commands, ODCSOPS will send an information copy to the Joint Chiefs of Staff, National Military Command Center.

(c) The SA will send information copies of civil disorder reports to the DOD General Counsel and the U.S. Deputy Attorney General.

(d) Reports of civil disturbance operation costs (RCS DD–A(AR)1112) also will be prepared as shown in AR 500–50.

§ 623.42 Disaster assistance.

When Army materiel is loaned, or when the ARNG is federalized in support of disaster assistance, CONUS Army commanders and unified command CINCs will send reports as follows:

(a) Initial reports. Initial reports will be made by telephone to the CG, FORSCOM (AUTOVON 588–3912), who will, in turn, telephone the report to the Military Support Division, ODCSOPS, AUTOVON 225–2003 or 7045). This will be followed within 12 hours by a Tempest Rapid Report (RCS DD–A–(AR)1114) in message form and sent electrically. The message report will be prepared per AR 500–60.

(b) Daily message reports. Daily Tempest Rapid Reports of Army materiel loaned to support disaster relief will also be sent by electrically transmitted message. The reports will cover the 24-hour period from 0601Z to 0600Z. The reports must arrive at HQDA(DAMO–ODS), HQDA(DACA–BU), and FORSCOM (AFOP–COF) by 1100Z the same day. Daily reports will be sent per the format in AR 500–60 except that Part III may be omitted. Also, "no change reports" may be made by telephone. On the day that the last daily message report is issued, include the words FINAL DAILY REPORT in the subject line of the message.

(c) Final reports. In addition to the final Tempest Rapid Report, a final report on military assistance provided will be sent within 90 working days of termination of disaster assistance. The CONUS Army Commander will send the report by first class mail through the CG, FORSCOM to HQDA(DAMO–ODS). The final report will include—

(1) An historic account of the disaster.

(2) Cumulative totals of support given.

(3) A statement of accomplishments.

(4) Actual or estimated expenses excluding costs incurred by the Corps of Engineers under PL 84–99. Costs will be reported by Service, by appropriation, using three columns to identify normal costs, incremental costs, and total costs.

(5) The status of reimbursements requested from borrowing Federal agencies, and civilian authorities and activities. If reimbursement has not been completed by the date of the final report, a separate cost report will be sent upon final reimbursement payment.

(6) Lessons learned.

(d) Information copies. Information copies of all reports will be sent to the proper FEMA Office.

(e) Additional information. Additional information may be needed by Federal officials. Normally, such requests will be telephoned by HQDA(DAMO–ODS) to the CG, FORSCOM.

(f) Pollution spills. The CG, FORSCOM will report committal of Army resources to HQDA(DAMO–ODS) by the fastest means. Daily and final Tempest Rapid Reports will be sent with "not applicable" shown in paragraphs 8, 9, and 10 of the report.

§ 623.43 Loans to civilian law enforcement officials.

Active installations, MACOMs (including MUSARCs) and Army Staff agencies are required to submit a quarterly report of assistance requested by civilian law enforcement officials (RCS DD–M(Q)1595). This data will be consolidated by MACOM and submitted as required by AR 500–51.

§ 623.44 United States Secret Service.

Army commands and agencies providing materiel support (routine or urgent) to the United States Secret Service will report at once any significant problems or deviation from approved procedures. Reports will be telephoned through command channels to HQDA (DAMO–ODS), WASH DC 20310–0440.

§ 623.45 Other reports.

Active Army accountable property officers will make semiannual reports on loans or leases that have expired and for which the materiel has not been returned. The reports will be prepared as of the last day of June and December. They will be sent by the 15th day of the following month. These reports will include a narrative on the circumstances, a copy of the loan or lease agreement, and the steps taken to resolve the issue. Reports will be forwarded through command channels to HQDA (DALO–SMS), WASH DC 20310–0545. Negative reports are not required.

Appendix A to Part 623—References

Required Publications

(Note: Publications and forms referenced in this Appendix may be obtained from the National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.)

AFARS
Army Federal Acquisition Regulation Supplement. (Cited in § 623.10)

AR 37–1
Army Accounting and Fund Control. (Cited in § 623.31)

AR 37–60
Pricing for Materiel and Services. (Cited in § 623.31)

AR 36–108
General Accounting and Reporting for Finance and Accounting Offices. (Cited in § 623.31 and 623.36)

AR 66–5

Armed Forces Courier Service. (Cited in § 623.21)
AR 71–13
The Department of the Army Equipment Authorization and Usage Program. (Cited in § 623.7)
AR 190–11
Physical Security of Arms, Ammunition, and Explosives. (Cited in § 623.28)
AR 335–15
Management Information Control System. (Cited in § 623.38)
AR 360–61
Community Relations. (Cited in § 623.10 and the glossary)
AR 500–1
Aircraft Piracy Emergencies. (Cited in § 623.11)
AR 500–50
Civil Disturbances. (Cited in § 623.11 and 623.39)
AR 500–51
Support to Civilian Law Enforcement Officials. (Cited in § 623.41)
AR 500–60
Disaster Relief. (Cited in § 623.11, 623.12 and 623.40)
AR 700–128
Prime Power Program. (Cited in § 623.6)
AR 710–2
Supply Policy Below the Wholesale Level. (Cited in § 623.28 and 623.30)
AR 710–3
Asset and Transaction Reporting System. (Cited in § 623.21)
AR 725–50
Requisitioning, Receipt, and Issue System. (Cited in § 623.6 and 623.30)
AR 735–5
Policies and Procedures for Property Accountability. (Cited in § 623.27, 623.30, 623.31, and 623.35)
AR 735–11–2
Reporting of Item and Packaging Discrepancies. (Cited in § 623.23)
AR 870–20
Museums and Historical Artifacts. (Cited in § 623.6)
AR 920–20
Promotion of Practice with Rifled Arms. (Cited in § 623.39)
DODD 5410.15
Delineation of DOD Audio-Visual Public Affairs Responsibilities and Policies. (Cited in § 623.6)
DODI 5410.16
DOD Assistance to Non-Government, Entertainment-Oriented Motion Picture, Television, and Video Productions. (Cited in 623.6)
DODI 7230.7
User Charges. (Cited in § 623.31)
FAR
Federal Acquisition Regulation. (Cited in table 2–2 in § 623.21)
TB 380–41
Procedures for Safeguarding, Accounting and Supply Control of COMSEC Material. (Cited in § 623.23(e))

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 1–4
Employment of DA Resources in Support of the U.S. Secret Service.
AR 12–8
Security Assistance—Policy, Objectives and Responsibilities.
AR 28–19
Department of the Army Domestic Action Program.
AR 15–17
Army Representation on Office of Preparedness/General Service Administration (OP/GSA) Regional Field Boards in Crisis Management Operations.
AR 37–44
Accounting Procedures for Guaranteed Loans.
AR 37–111
Working Capital Funds: Army Stock Fund, Uniform Policies, Principles, and Procedures Governing Army Stock Fund Operations.
AR 40–61
Medical Logistics Policies and Procedures.
AR 55–38
Reporting of Transportation Discrepancies in Shipments.
AR 58–1
Management, Acquisition and Use of Administrative Use Motor Vehicles.
AR 130–400
Logistical Policies for Support.
AR 215–1
Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities.
AR 350–7
Training and Evaluation of Forces for Civil Disturbances.
AR 500–2
Search and Rescue (SAR) Operations.
AR 500–70
Military Support of Civil Defense.
AR 525–90
Wartime Search and Rescue (SAR) Procedures.
AR 700–32
Logistics Support of U.S. Nongovernmental, Nonmilitary Agencies, and Individuals in Overseas Military Commands.
AR 700–43
Management of Defense-Owned Industrial Plant Equipment.
AR 700–49
Loan of DLA Stock Fund Materiel.
AR 700–83
Army Support of United Seamen's Service.
AR 700–90
Army Industrial Preparedness Program.
AR 710–1
Centralized Inventory Management of the Army Supply System.
AR 725–1
Special Authorization and Procedures for Issues, Sales, and Loans.
AR 870–15
Army Art Collection Program.
AR 920–15
National Board for the Promotion of Rifle Practice and the Office of the Director of Civilian Marksmanship.
AR 920–25
Rifles, M14M and M14N for Civilian Marksmanship Use.
AR 930–5
American National Red Cross Service Program and Army Utilization.
DA Pam 25–380–2
Security Procedures for Controlled Cryptographic Items (CCI)
FM 20–150
National Search and Rescue Manual.

Prescribed Forms

DA Form 1277
Annual Statistical Report of Civilian Rifle Club. (Prescribed in § 623.39)
DA Form 4881–R
Agreement for Loan of U.S. Army Materiel. (Prescribed in § 623.12(b))
DA Form 4881–1–R
Certificate for Signature by an Alternate. (Prescribed in § 623.12(b))
DA Form 4881–2–R
Military Property of the United States—Exhibit 1. (Prescribed in § 623.12(b))
DA Form 4881–3–R
Surety Bond. (Prescribed in § 623.13(a))
DA Form 4881–4–R
Power of Attorney. (Prescribed in § 623.13(a))
DA Form 4881–5–R
Agreement for Lease of U.S. Army Materiel. (Prescribed in § 623.12(b))
DA Form 4881–6–R
Request and Approval for Loan or Lease and Loan or Lease Agreement. (Prescribed in § 623.12(a) and 623.17)
DD Form 1486
DOD Materiel Receipt Document. (Prescribed in § 623.29)
OSA Form 119
Roster of Club Members. (Prescribed in § 623.39)
Standard Form (SF) 153
COMSEC Materiel Report. (Prescribed in §§ 623.21, 623.22, 623.23, 623.25)
Standard Form (SF) 1080
Voucher for Transfer Between Appropriations and/or Funds. (Prescribed in § 623.31)

Referenced Forms

DA Form 1273–R
Requisition for Articles Authorized for Issue to Civilian Rifle Clubs.
DA Form 3590
Request for Disposition or Waiver.
DA Form 4610–R
Equipment Changes in MTOE/TDA.
DD Form 1348–1
DOD Single Line Item Release/Receipt Document.

Appendix B to Part 623—Approving Authority Action Office Addresses/Telephone Numbers

HQPA(DALO–SAA)

WASH DC 20310–0512
Telephone: DSN 224–3762
WATS 202–694–3762

HQDA(DALO–SMS)

WASH DC 20310–0547
Telephone: DSN 227–4330
WATS 202–697–4330

ODCSLOG Commodity Offices

HQDA(DALO–XXX)

Ammunition and Chemical Equipment (DALO–SMA)
WASH DC 20310–0541
Telephone: DSN 227–8455
WATS 202–697–8455

Aviation Items (DALO–AV)
WASH DC 20310–0505
Telephone: PSN 227–0487
WATS 202–697–0487
Communications/Electronic Equipment (DALO–SMC)
WASH DC 20310–0542
Telephone: DSN 225–3280
WATS 202–695–3280
Tank–Automotive Equipment (DALO–SMT)
WASH DC 20310–0548
Telephone: DSN 225–2881
WATS 202–695–2881
Missile/Weapons Logistics Office (DALO–SMA)
WASH DC 20310–0544
Telephone: DSN 224–0538
WATS 202–695–0538
Troop Support Equipment (less nontactical vehicles, watercraft) (DALO–SMS)
WASH DC 20310–0545
Telephone: DSN 224–7051
WATS 202–614–7051
Troop Support Equipment (watercraft) (DALO–TSM)
WASH DC 20310–0562
Telephone: PSN 224–4128
WATS 202–614–4128
Organizational Clothing and Individual Equipment (OCIE) (CTA 50–900) (DALO–TST)
WASH DC 20310–0564
Telephone: DSN 225–2711
WATS 202–695–2711

HQDA(DALO–SMW)
War Reserve Division
WASH DC 20310–0549
Telephone: DSN 224–5010
WATS 202–695–5010

HQDA(DAMO–ODS)
WASH DC 20310–0440
Telephone: DSN 225–2003
WATS 202–695–2003

HQDA (DASG–HCL)
5109 Leesburg Pike
Falls Church, VA 22041–3258
Telephone:

Director, Civilian Marksmanship
20 Massachusetts Avenue, NW
Room 1205, Pulaski Building
WASH DC 20314
Telephone: DSN 285–0810
WATS 202–272–0810
Director, Defense Security Assistance Agency
WASH DC 20310
Telephone: WATS 202–695–3291
Commander in Chief
U.S. Army, Europe and Seventh Army
Office of the Deputy Chief of Staff, Logistics (AEAGD–SM)
APO New York 09403
Telephone: DSN 370–6249
HDE MIL 2121–6249
Commander
U.S. Army, Pacific
ATTN: APLC–MM
Fort Shafter, HI 96858–5100
Telephone: (808)438–8627
Commander
First U.S. Army
Fort George G. Meade, MD 20755
Telephone: DSN 923–6508
WATS 301–677–6508
Commander
Fifth U.S. Army
Fort Sam Houston, TX 78234
Telephone: DSN 471–2009
WATS 512–221–2009
Commander
Sixth U.S. Army
Presidio of San Francisco, CA 94129
Telephone: DSN 486–4110
WATS 415–561–4110
Commander
U.S. Army Armament, Munitions and Chemical Command
ATTN: AMSMC–MMD–IC
Rock Island, IL 61299–6000
Telephone: DSN 793–4253/4862
Commander
U.S. Army Communications—Electronics Command
ATTN: AMSEL–MMD–IBDFRD (loans) or AMSEL–LC–MMD–IB (extensions)
Fort Monmouth, NJ 07703–5000
Telephone: DSN 992–1501
Commander
U.S. Army Communications-Electronics Command
Communications Security Logistics Activity
ATTN: SELCL
Fort Huachuca, AZ 86513–7090
Commander
U.S. Forces Command
ATTN: FCJ4–POO
Fort McPherson, GA 30330–6000
Telephone: DSN 367–6141
WATS 404–669–6141
Commander
U.S. Army Health Services Command
Fort Sam Houston, TX 78234

HQDA (DAMH–HS)
WASH DC 20314
Commander
U.S. Army Military District of Washington
Fort Leslie J. McNair
Washington, DC 20319
Commander
U.S. Army Missile Command
ATTN: AMSMI–SSDCIA
Redstone Arsenal, AL 35809
Telephone: DSN 746–2745/2631
Commander
U.S. Army Medical Material Agency
Frederick, MD 21701
Commander
U.S. Army Security Assistance Command
ATTN: AMSAC
5001 Eisenhower Avenue
Alexandria, VA 22333
Telephone: DSN 284–9638
WATS 202–274–9638
Commander
U.S. Army Tank—Automotive Command
ATTN: AMSTA–FTWI
Warren, MI 48397–5000
Telephone: DSN 786–5991
Commander
U.S. Army Test and Evaluation Command
Aberdeen Proving Ground, MD 21005–5055
Commander
U.S. Army Training and Doctrine Command
Fort Monroe, VA 23651
Telephone: DSN 680–3007
WATS 804–727–3007
Commander
U.S. Army Aviation and Troop Command
ATTN: AMSAV–SDIR
4300 Goodfellow Boulevard
St. Louis, MO 63120–1798
Telephone: DSN 693–2971
Commander
U.S. Army Aviation and Troop Command
ATTN: AMSTR–SDIR
4300 Goodfellow Boulevard
St. Louis, MO 63120–1798
Telephone: DSN 693–3485
Commander
U.S. Army Materiel Command
ATTN: AMCLG–MT
5001 Eisenhower Avenue
Alexandria, VA 22333–0001
Telephone: DSN 284–9674
Department of the Air Force
ATTN: LOLSM
Wright Patterson AFB, OH 45433
Telephone: DSN 787–6485
Chief of Naval Operations
Navy Dept—Duty Captain
WASH DC 20310
Telephone: DSN 225–0237
NGB Offices
(NGB–XXX)

All emergency requests; law/drug enforcement; civil disturbances; terrorism; disaster relief; and environmental protection (NGB–MS)
WASH DC 20310–2500
Telephone: DSN 227–4338
WATS 202–697–4338
Aviation (NGB–AVN–O)
WASH DC 20310–2500
Telephone: DSN 584–8144
WATS 301–671–8144
Community relations; domestic action programs (NGB–PA)
WASH DC 20310–2500
Telephone: DSN 225–0421
WATS 202–695–0421
All others (NGB–ARL–SM)
WASH DC 20310–2500
Telephone: DSN 225–4478
WATS 202–695–4478

Alabama
P.O. Box 3715
Montgomery, AL 36192–4801

Alaska
Camp Denali, Pouch B
Fort Richardson, AK 99505–5000

Arizona
5636 E. McDowell Road
Phoenix, AZ 85008–3495

Arkansas
Camp Robinson
North Little Rock, AR 72118–2200

California
P.O. Box 8104
San Luis Obispo, CA 93403–8104

Colorado
Camp George West
Golden, CO 80401–3997

Connecticut
State Armory
360 Broad St.
Hartford, CT 06105–3997

Delaware

Grier Building
1161 River Road
New Castle, DE 19720–5190

District of Columbia

Building 350
Anacostia Naval Air Station
Wash DC 20315–0001

Florida

State Arsenal
St. Augustine, FL 32085–1008

Georgia

P.O. Box 17882
Atlanta, GA 30316–0886

Guam

Fort Juan Muna
Tamuning, GU 96911–4421

Hawaii

3949 Diamond Head Road
Honolulu, HI 96816–4495

Idaho

P.O. Box 45
Boise, ID 83707–4501

Illinois

1301 N. MacArthur Blvd.
Springfield, IL 62702–2399

Indiana

P.O. Box 41346
Indianapolis, IN 46241–0346

Iowa

Camp Dodge
7700 NW Beaver Dr.
Johnston, IA 50131–1902

Kansas

P.O. Box 2099
Topeka, KS 66601–2099

Kentucky

Boone National Guard Center
Frankfurt, KY 40601–6192

Louisiana

Jackson Barracks
New Orleans, LA 70146–0330

Maine

Camp Keyes
Augusta, ME 04333–0032

Maryland

State Military Reservation
Havre de Grace, MD 21078–0206

Massachusetts

143 Speen Street
Natick, MA 01760–2599

Michigan

3111 W. Saint Joseph Street
Lansing, MI 48913–5102

Minnesota

P.O. Box 288
Camp Ripley
Little Falls, MN 56345–0288

Mississippi

P.O. Box 4447
Jackson, MS 39216–0447

Missouri

1715 Industrial Drive
Jefferson City, MO 65101–1468

Montana

P.O. Box 1157
Helena, MT 59624–1157

Nebraska

1234 Military Road
Lincoln, NE 68508–1092

Nevada

2601 S. Carson Street
Carson City, NV 89701–5596

New Hampshire

P.O. Box 2003
Concord, NH 03301–2003

New Jersey

P.O. Box 2000
Trenton, NJ 08607–2000

New Mexico

P.O. Box 4277
Santa Fe, NM 87502–4277

New York

State Campus
Building No. 4
Albany, NY 12226–5100

North Carolina

4201 Reedy Creek Road
Raleigh, NC 27607–6412

North Dakota

P.O. Box 5511
Bismarck, ND 58502–5511

Ohio

2811 West Granville Road
Worthington, OH 43085–2712

Oklahoma

3501 Military Circle, N.E.
Oklahoma City, OK 73111–4398

Oregon

2150 Fairgrounds Road, N.E.
Salem, OR 97303–3241

Pennsylvania

Department of Military Affairs
Annville, PA 17003–5003

Puerto Rico

P.O. Box 3786
San Juan, PR 00904–3786

Rhode Island

330 Camp Street
Providence, RI 02906–1954

South Carolina

P.O. Box 1090
Columbia, SC 29202–1090

South Dakota

Camp Rapid
Rapid City, SD 57702–8186

Tennessee

Powell Avenue
P.O. Box 40748
Nashville, TN 37204–0748

Texas

P.O. Box 5218
Austin, TX 78763–5218

Utah

P.O. Box 8000
Salt Lake City, UT 84108–0900

Vermont

Building 1
Camp Johnson
Winooski, VT 05404–1697

Virgin Islands

P.O. Box 1050
St. Croix, VI 00820–1050

Virginia

501 East Franklin Street
Richmond, VA 23219–2317

Washington

Camp Murray
Tacoma, WA 98430–5000

West Virginia

Buckannon, WV 26201–2396

Wisconsin

Camp Douglas, WI 54618–9002

Wyoming

P.O. Box 1709
Cheyenne, WY 82003–1709

U.S. Army Corps of Engineers
District Engineer Offices

U.S. Army Corps of Engr Dist, Mobile
P.O. Box 2288
Mobile, AL 36628–0001

U.S. Army Corps of Engr Dist, Alaska
P.O. Box 898
Anchorage, AK 99506–0898
Telephone: (907) 753–2504

U.S. Army Corps of Engr Dist, Little Rock
P.O. Box 867
Little Rock, AR 72203–0867
Telephone: (501) 378–5531

U.S. Army Corps of Engr Dist, Los Angeles
P.O. Box 2711
Los Angeles, CA 90053–2325
Telephone: (213) 894–5300

U.S. Army Corps of Engr Dist, Sacramento
670 Capitol Mall
Sacramento, CA 95814–4794
Telephone: (916) 551–2005

U.S. Army Corps of Engr Dist, San Francisco
211 Main Street
San Francisco, CA 94105–1905
Telephone: (415) 974–0358

HQ USACE (DAEN–CWO–EM)
WASH DC 20314–1000
Telephone: DSN 285–0830
(202) 272–0830

U.S. Army Corps of Engr Dist, Jacksonville
P.O. Box 4970
Jacksonville, FL 32232–0019
Telephone: (904) 791–2241

U.S. Army Corps of Engr Dist, Savannah
P.O. Box 889
Savannah, GA 31402–0889

U.S. Army Corps of Engr Dist, Chicago
219 S. Dearborn Street
Chicago, IL 60604–1797
Telephone: (312) 353–6400

U.S. Army Corps of Engr Dist, Rock Island
P.O. Box 2004
Clock Tower Building
Rock Island, IL 61204–2004
Telephone: (309) 788–6361 Ex 224

U.S. Army Corps of Engr Dist, Louisville
P.O. Box 59
Louisville, KY 40201–0059

Telephone: (502) 582–5601
U.S. Army Corps of Engr Dist, New Orleans
P.O. 60267
New Orleans, LA 70160–0267
Telephone: (504) 862–1121
U.S. Army Corps of Engr Dist, Baltimore
P.O. Box 1717
Baltimore, MD 21203–1717
Telephone: (301) 962–4545
U.S. Army Corps of Engr Dist, Detroit
P.O. Box 1027
Detroit, MI 48231–1027
Telephone: (313) 226–6762
U.S. Army Corps of Engr Dist, St. Paul
1135 USPO & Custom House
St. Paul, MN 55101–1479
Telephone: (612) 725–7501
U.S. Army Corps of Engr Dist, Kansas City
700 Federal Building
Kansas City, MO 64106–2896
Telephone: (816) 374–3201
U.S. Army Corps of Engr Dist, St. Louis
210 Tucker Blvd, N.
St. Louis, MO 63101–1986
Telephone: (314) 263–5860
U.S.Army Corps of Engr Dist, Vicksburg
P.O. Box 60
Vicksburg, MS 39180–0060
Telephone: (601) 634–5010
U.S. Army Corps of Engr Dist, Wilmington
P.O.Box 1890
Wilmington, NC 28402–1890
Telephone: (919) 343–4501
U.S. Army Corps of Engr Dist, Omaha
Rm 6014 USPO & Courthouse
Omaha, NE 63102–4978
Telephone: (402) 221–3900
U.S. Army Corps of Engr Dist, Albuquerque
P.O. Box 1580
Albuquerque, NM 87103–1580
Telephone: (505) 766–2732
U.S. Army Corps of Engr Dist, Buffalo
1776 Niagara Street
Buffalo, NY 14207–3199
Telephone: (716) 876–5454 Ex 2200
U.S. Army Corps of Engr Dist, New York
26 Federal Plaza
New York, NY 10278
Telephone: (212) 264–0100
U.S. Army Corps of Engr Dist, Tulsa
P.O. Box 61
Tulsa, OK 74121–0061
Telephone: (918) 581–7311
U.S. Army Corps of Engr Dist, Portland
P.O. Box 2946
Portland, OR 97208–2946
Telephone: (503) 221–6000
U.S. Army Corps of Engr Dist, Philadelphia
U.S. Custom House
2d and Chestnut Streets
Philadelphia, PA 19106–2991
Telephone: (215) 597–4848
U.S. Army Corps of Engr Dist, Pittsburgh
William S. Moorehead Federal Building
1000 Liberty Avenue
Pittsburgh, PA 15222–4186
Telephone: (412) 644–6800
U.S. Army Corps of Engr Dist, Charleston
P.O. Box 919
Charleston, SC 29402–0919
Telephone: (803) 724–4229
U.S. Army Corps of Engr Dist, Nashville
P.O. Box 1070
Nashville, TN 37202–1070
Telephone: (615) 251–5628
U.S. Army Corps of Engr Dist, Fort Worth
P.O. Box 17300
Fort Worth, TX 76102–0300
Telephone: (817) 334–2300
U.S. Army Corps of Engr Dist, Galveston
P.O. Box 1229
Galveston, TX 77553–1229
Telephone: (409) 766–3002
U.S. Army Corps of Engr Dist, Memphis
B–202 Clifford Davis Federal Building
Memphis, TN 38103–1894
Telephone: (901) 521–3221
U.S. Army Corps of Engr Dist, Norfolk
803 Front Street
Norfolk, VA 23510–1096
U.S. Army Corps of Engr Dist, Seattle
P.O. Box C–3755
Seattle, WA 98124–2255
Telephone: (206) 764–3690
U.S. Army Corps of Engr Dist, Walla Walla
Building 602, City-County Airport
Walla Walla, WA 99362–9265
Telephone: (509) 522–6506
U.S. Army Corps of Engr Dist, Huntington
502 8th Street
Huntington, WV 25701–2070
Telephone: ((513) 684–3694

Regional Logistical Support Offices

Officer in Charge
Regional Logistical Support Office
501 West Ocean Boulevard
Suite 800
Long Beach, CA 90822
Officer in Charge
Regional Logistical Support Office
6 Fountain Plaza
Suite 300
Buffalo, NY 14202
Officer in Charge
Regional Logistical Support Office
Brickell Plaza Federal Building
909 Southeast First Avenue
Room 432
Miami, FL 33131–3050
Officer in Charge
Regional Logistical Support Office
P.O. Box 8051
El Paso, TX 79908–8051

Note: Numbers are provided for principal loan and lease approving authorities and agencies responsible for specific loans or leases per table 2–1 in § 623.21.

Appendix C to Part 623—Glossary

Abbreviations

ACCLAIMS
Army COMSEC Commodity Logistics Accounting Information Management System
AECA
Arms Export Control Act
AFARS
Army Federal Acquisition Regulation Supplement
AG
Adjutant General
AMC
U.S. Army Materiel Command
AMCCOM
U.S. Army Armament, Munitions, and Chemical Command
AMC MSC
U.S. Army Materiel Command major subordinate command
AMDF
Army Master Data File
ANRC
American National Red Cross
ARC
Accounting requirements code
ARFCOS
Armed Forces Courier Service
ARNG
Army National Guard
ASA (IL&E)
Assistant Secretary of the Army (Installations, Logistics, and Environment)
ASA (RDA)
Assistant Secretary of the Army (Research, Development, and Acquisition)
CBL
Commercial bill of lading
CINC
Commander in Chief
COMSEC
Communications security
CONUS
Continental United States
DA
Department of the Army
DAMPL
Department of the Army Master Priority List
DBOF
Defense Business Operations Fund
DCM
Director of Civilian Marksmanship
DLA
Defense Logistics Agency
DLEA
Drug law enforcement agency
DOD
Department of Defense
DODAAC
DOD activity address code
DOMS
Director of Military Support (HQDA, ODCSOPS, DAMO–ODS)
DSAA
Defense Security Assistance Agency
DSN
Defense Switched Network
FAO
Finance and accounting office(r)
FAR
Federal Acquisition Regulation
FBI
Federal Bureau of Investigation
FDAA
Federal Disaster Assistance Administration
FEMA
Federal Emergency Management Agency
FORSCOM
U.S. Forces Command
FSC
Federal supply classification
GBL
Government bill of lading
GFE
Government furnished equipment
HQDA
Headquarters, Department of the Army

HUD
Housing Urban Development
IL
International Logistics
JTA
Joint table of allowances
LIN
Line item number
MAC
Military Airlift Command
MACOM
Major Army command
MDW
Military District of Washington
MEDCEN
U.S. Army Medical Center
MEDDAC
Medical department activity
MILSTRIP
Military Standard Requisitioning and Issue Procedures
MOU
Memorandum of Understanding
MSC
Major subordinate command
MTMC
Military Traffic Management Command
MTOE
Modification table of organization and equipment
MUSARC
Major United States Army Reserve Command
NGB
National Guard Bureau
NMCC
National Military Command Center
NSN
National stock number
OCIE
Organizational clothing and individual equipment
OCONUS
Outside continental United States
ODCSLOG
Office of the Deputy Chief of Staff for Logistics
ODCSOPS
Office of the Deputy Chief of Staff for Operations and Plans
OTSG
Office of The Surgeon General
PBO
Property book officer
POMCUS
Prepositioned materiel configured to unit sets
RDTE
Research, development, test, and evaluation
RLSO
Regional Logistical Support Office
ROTC
Reserve Officers' Training Corps
SA
Secretary of the Army
SMA
Supply Management Army
SRO
Stock record officer
SSA
Supply support activity
TAADS
The Army Authorization Documents System
TDA
Tables of distribution and allowances
UIC
Unit identification code
USACE
U.S. Army Corps of Engineers
USACCSLA
U.S. Army Communications-Electronics Command, Communications Security Logistics Activity
USAFAC
U.S. Army Finance and Accounting Center
USAMMA
U.S. Army Medical Materiel Agency
USAR
U.S. Army Reserve
USC
United States Code
USPFO
United States Property and Fiscal Officer

Terms

Accouterments

Equipment that is associated with small arms characterized as personal and individual that is available from Army stocks.

Approving Authority

The person (or designee) authorized to approve specific types of loans of Army materiel. (See table 2–1 and app B.)

Arms

Weapons for use in war.

Army COMSEC Account

An administrative entity, identified by a six-character alphanumeric number, responsible for maintaining custody and control of COMSEC material.

Civil Authorities

Those elected and appointed public officials and employees who govern the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, and governmental subdivisions thereof.

Civil Defense

All those activities and measures designed or undertaken to:

a. Minimize the effects upon the civilian population caused, or which would be caused, by an enemy attack upon the United States.

b. Deal with immediate emergency conditions which would be created by any such attack.

c. Effect emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by any such attack.

Civil Disturbance

Group acts of violence and disorders prejudiced to public law and order.

Civilian Law Enforcement Officials

An officer or employee of a civilian agency with responsibility for enforcement of the law within the jurisdiction of the agency.

Community Relations Program

A program of action, to earn public understanding and acceptance, conducted at all levels of military command wherever stationed. The program includes participation in public events, humane acts, and cooperation with public officials and civil leaders.

Communications Security (COMSEC)

The protection resulting from the application of cryptosecurity, transmission security and emission security measures to telecommunications, and from the application of physical security measures to COMSEC information. These measures are taken to deny unauthorized persons information of value which might be derived from the possession and study of such telecommunications.

COMSEC Equipment

End items (major items), major assemblies, tools, test and support equipment managed, controlled, stocked and distributed through the COMSEC Logistics System.

Domestic Action Program

A program of assistance to local, State, and Federal agencies for the continued improvement and development of society.

Emergency

Any catastrophe in any part of the United States that in the determination of the President requires Federal supplementary emergency assistance.

Emergency Medical Treatment

The immediate application of medical procedures to wounded, injured, or sick, by trained professional medical personnel.

Executive Agent

That individual or his or her designee authorized to act as the U.S. Government's agent in making certain loans of Government materiel. The President of the United States has delegated to the Secretary of the Army (or to his designee, the Assistant Secretary of the Army (Installations, Logistics, and Environment)) authority, as Executive Agent, to approve certain loans of DOD materiel to non-DOD activities. Other "approving authorities" act as "Executive Agents" for the U.S. Government, but do not have that title.

Expendable Item

An item of Army property coded with an accounting requirements code (ARC) of "X" in the Army Master Data File (AMDF). An expendable item requires no formal accountability after issue from a stock record account. Commercial and fabricated items similar to items coded "X" in the AMDF are considered expendable items. Note: This category consists of those items that are consumed during normal usage such as paint, rations, gasoline, office supplies, etc., or are merged into another entity when used for their intended purpose such as nuts and bolts, construction material, repair parts, components and assemblies, etc. This includes all class 1, 3, 5 (except 5L), and 9 items, and those class 2, 4, and 10 items that are not end items or have a unit price of less than $100. This category also includes office furniture of Federal Supply Classification (FSC) 7110, 7125, and 7195 with a unit cost of less than $300. Organizational clothing and individual equipment (OCIE) authorized by

CTA 50–900 will be accounted for in the same manner as nonexpendable property regardless of the (ARC) reflected in the AMDF.

Federal Agency

Any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, except the American National Red Cross.

Federal Coordinating Officer

The person appointed by the President to operate under the HUD Regional Director for Federal Emergency Management Agency (FEMA) to coordinate Federal assistance in Presidentially declared emergency or major disaster.

Federal Emergency Management Agency

The agency delegated the disaster relief responsibilities previously assigned to the Federal Disaster Assistance Administration (FDAA).

Federal Function

Any function, operation, or action carried out under the laws of the United States by any department, agency, or instrumentality of the United States or by an officer or employee thereof.

Federal Property

Property that is owned, leased, possessed, or occupied by the Federal Government.

Imminent Serious Condition

Any disaster or civil disturbance that is of such severity that immediate assistance is required to save human life, prevent immediate human suffering, or reduce destruction or damage to property.

Lease

The granting of temporary possession or use of property or materiel for which payment of a rental fee is required.

Loan

The granting of temporary possession or use of property or materiel for which payment of a rental fee is not required.

Local Government

Any county, parish, city, village, town, district, Indian tribe or authorized tribal organization, Alaskan native village or organization, or other political subdivision of any State.

Major Disaster

Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government. This assistance supplements the efforts and available resources of States, local governments, and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Nonexpendable Item

An item of Army property coded with an ARC of "N" in the AMDF. A nonexpendable item requires property book accountability after issue from the stock record account. Commercial and fabricated items, similar to items coded "N" in the AMDF, are considered nonexpendable items. Note: This category consists of end items of equipment that are separately identified. It includes all class 7 items assigned an LIN in SB 700–20 other than office furniture in FSC 7110, 7125, and 7195 with a unit cost of less than $300, and other selected class 2, 4, and 10 end items. OCIE authorized by CTA 50–900 will be accounted for in the same manner as nonexpendable supplies regardless of the ARC reflected in the AMDF.

Objective Area

A specific geographical location where a civil disturbance, disaster, or counter-drug operation is occurring or is anticipated.

Other Loan Requesters

Other loan requesters not listed in table 2–1 include: Junior and Senior ROTC, tribal (Indian) organizations, and the Alaska Native Corporation.

Routine Requests

Requests resulting from situations that are reasonably predictable or do not require immediate action to prevent or reduce loss of life, property, or essential services. Reduced efficiency of the requester's operation is not in itself grounds for classifying a request higher than routine.

Small Arms

Hand and shoulder weapons for use in war.

Surety Bond

A bond, including dollar deposit, guaranteeing performance of a contract or obligations.

Terrorist Incident

A form of civil disturbance that is a distinct criminal act committed or threatened to be committed by a group or single individual in order to advance a political or other objective, thus endangering safety of individuals or property. This definition does not include aircraft piracy emergencies.

Threatened Major Disaster

Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe which, in the determination of the Administrator, FDAA, threatens to be of severity and magnitude sufficient to warrant disaster assistance by the Federal Government. This assistance will be used to avert or lessen the effects of such disaster before its actual occurrence.

Urgent Requests

Those resulting from unforeseeable circumstances, civil disturbances, civil defense needs, aircraft piracy, secret service requirements, and disasters when immediate action is necessary to prevent loss of life, physical injury, destruction of property, or disruption of essential functions.

Youth Groups

Groups such as the Boy Scouts and Girl Scouts of the United States of America; Civil Air Patrol; Camp Fire Girls, Incorporated; the Boy's Club of America; Young Men's Christian Association; Young Women's Christian Association; 4–H Clubs; and similar groups.

Appendix P to Part 623—Forms

Attached at this appendix are the forms referred to in this part.

(a) DA Form 4881–R—Agreement for the Loan of US Army Materiel.

(b) DA Form 4881–1–R—Certificate for Signature by an Alternate.

(c) DA Form 4881–2–R—Military Property of the United States—Exhibit 1.

(d) DA Form 4881–3–R—Surety Bond for Safekeeping of Public Property and Guaranteeing Reimbursement to the Government for Expenses Incident to the Loan of Army Materiel—Exhibit II.

(e) DA Form 4881–4–R—Power of Attorney.

(f) DA Form 4881–5–R—Agreement for the Lease of US Army Materiel.

(g) DA Form 4881–6–R—Request and Approval for Loan or Lease of Equipment and Loan or Lease Agreement.

BILLING CODE 3710-08-M

AGREEMENT FOR THE LOAN OF US ARMY MATERIEL

For use of this form, see AR 700-131; the proponent agency is DCSLOG.

This form will be used to enter into agreements relative to the loan of Army materiel between the United States Army and —

1. Non-DOD Federal departments and agencies. 2. Civilian activities specifically authorized to receive Army materiel on loan. Paragraphs below are applicable to cases, as cited above, unless otherwise specified at the beginning of each paragraph.

This loan agreement is entered into, by, and between the United States of America, hereinafter called "the lender,"

represented by (b) _____

for the purpose of entering into this agreement; and (a) _____

hereinafter called "the borrower," represented by (c) _____

for the purpose of entering into this agreement.

1. PURPOSE. Under the authority of (d) _____, the lender hereby lends to the borrower and the borrower hereby borrows from the lender the Government materiel, hereinafter called " the materiel," listed and described in Exhibit 1 hereto attached and incorporated by reference into the terms of this agreement, which materiel is required by the borrower for (e) _____

_____.

2. TERM. This loan of materiel is intended to meet a temporary need covered by federal law. The borrower will keep the materiel only for the period of (f) _____. Loans may be renewed, if justified, and requested by the borrower and approved by the lender. Nevertheless, the lender may revoke and terminate this agreement and demand return of the materiel in whole or in part at any time.

3. CONDITIONS. This agreement is predicated upon the following conditions:

a. The lender will make every effort to ensure that each item of the materiel is furnished to the borrower in a serviceable and usable condition according to its originally intended purpose. However, if the use for which the materiel is loaned will permit, materiel of a lesser condition will be loaned. This lesser condition will be noted on the appropriate loan documents. Nevertheless, the lender makes no warranty or guarantee of fitness of any of the materiel for a particular purpose or use; or warranty of any type whatsoever.

b. The borrower will appoint a representative for the purpose of making joint inspection and inventory of all materiel when the borrower physically picks up or returns the borrowed materiel. Upon pickup *(or receipt after shipment)* of the borrowed materiel, the chief of the borrowing activity *(or his authorized representative)* will sign the appropriate documents acknowledging receipt and possession of the materiel. Upon return of the materiel to the Army, the borrower will certify that "the quantities listed in the shipping document(s) are correct." In instances where borrower representatives, authorized to receive and sign for borrowed materiel, are not available when the materiel is delivered, all claims for costs related to the loan will be valid.

c. The borrower is responsible for care and maintenance of borrowed materiel during the term of the loan. The borrower will provide sufficient personnel and facilities to adequately operate, maintain, protect, and secure the borrowed materiel. The borrower will maintain the materiel in a serviceable condition and ascertain that it is returned to the Army in as good a condition as when it was loaned *(fair wear and tear excepted)*. Records of maintenance performed will be kept and returned to the Army with the borrowed materiel. *(NOTE: When appropriate, the borrowing activity will place the materiel in a "properly preserved" status prior to or upon return.)*

d. The borrower will store, safeguard, and secure high value items, or arms in a manner consistent with common practice, public law, and local ordinances.

e. The borrower will prevent misuse of borrowed materiel; or its use by unauthorized persons.

f. The borrower will neither make nor permit any modification or alteration of any borrowed materiel except with permission of the approving authority for the loan.

g. The borrower will not mortgage, pledge, assign, transfer, sublet, or part with possession of any borrowed materiel in any manner to any third party either directly or indirectly except with the prior written approval of the lender.

h. At all times the lender shall have free access to all loaned materiel for the purpose of inspecting or inventorying it.

i. The borrower will return borrowed materiel to a location designated by the lender when the materiel is no longer needed; upon termination of the loan period *(including any approved extension)*; or upon demand therefore by the lender. The lender will provide documents to be used by the borrower to return the materiel.

j. (Applicable to agreements involving the loan of an Army building.) The building will not be moved. Upon termination of its use, the borrowing activity will vacate the premises, remove its own property therefrom, and turn in all Government property.

4. PAYMENT. The borrower will reimburse the lender for expenses incurred in connection with this loan as provided below:

a. (Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian activities only.) Before delivery of any materiel by the lender, the borrower will post with the approving authority a surety bond and a certified bank check, US Treasury bonds, or bonding company bond in the amount of the total value of the materiel as shown in Exhibit I. *(See paragraphs 2-7 a(2)(a) and 2-7 a(2)(b), AR 700-131, for exceptions where a "double bond" is required.)* The bond, marked Exhibit II, *(properly executed surety bond and evidence of deposit with the approving authority of certified check, United States of America Treasury bonds, or bonding company bond in the amount of the grand total shown on Exhibit I)*, is hereto attached and incorporated by reference into the terms of this agreement.

b. (Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian activities only.) Should the borrower fail to return any of the borrowed materiel or fail to reimburse the lender within 30 days after receiving a request for payment of expenses, the bond shall be forfeited as liquidated damages in an amount equal to the expense to the Government.

c. (Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian activities only.) Payment of liquidated damages by forfeiture of any portion of the bond to the Government shall not operate as a sale to the borrower of any of the materiel available to be returned, but not returned to the lender, nor to extinguish the lender's right to have the available missing materiel returned. Should the borrower later return to the lender any of the missing materiel on account of which a portion of the bond was forfeited as liquidated damages, the borrower shall be entitled to recoup from the lender a sum equal to 90 percent of the price of the returned materiel as shown on Exhibit I, less an amount in payment for expenses, if any, computed in accordance with Chapter 6, AR 700-131, and less an amount for depreciation.

d. (Applicable to loan agreements with civil authorities and civilian activities only.) If the normal life expectancy of borrowed materiel can be determined by reference to applicable military publications, the amount to be assessed for depreciation shall be computed by the straight line method using the price shown on Exhibit I and the date of expiration or termination of this loan as initial points. When normal life expectancy is not established by applicable military publications, the amount for depreciation shall be computed by the same method, applying a uniform depreciation rate of 50 percent per annum.

e. (Applicable to loan agreements with civil authorities and civilian activities only.) The borrower will assume all responsibility for Army claims arising from the possession, use, or transportation of the borrowed materiel; and, agrees to hold the lender harmless from any such claims and liability. The borrower will protect the interests of the lender by procuring comprehensive insurance for all borrowed materiel to include coverage for liability, property damage, fire, and theft; and deductible collision insurance for motorized vehicles. The borrower will file duplicate copies of such insurance policy(ies) with the lender and prepare accident reports in accordance with existing laws and local ordinances.

f. The borrower will bear the cost of pickup and return of borrowed materiel; and, will reimburse the lender for costs incurred incident to packing, crating, handling, movement, and transportation of the materiel.

g. The borrower will reimburse the lender for any expenses necessary to repair, rehabilitate, or preserve the materiel following its return to the lender. *(NOTE: Of any borrowed materiel, unless depreciation is significant.)*

h. The borrower will reimburse the lender *(as indicated and at the price shown on Exhibit I)* for the cost of all of the expendable materiel *(including, but not limited to, petroleum, oil, and other lubricants)* used or consumed during this loan.

i. The borrower will reimburse the lender for costs incident to the pay of Army personnel who may be temporarily required to operate, maintain, guard, or otherwise attend to borrowed Army materiel. This includes travel and per diem costs for both Army uniformed and civilian personnel, and regular salary and overtime costs for Army civilians.

j. The borrower will reimburse the lender for any other expense to the lender arising in connection with the loan of Army materiel.

k. (Applicable to loan agreements with Federal departments and agencies only.) The lender will indicate the specific accounting classification(s) against which any charges as enumerated above will be charged.

5. OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress shall be admitted to any share or part of this loan or to any benefit arising in connection with it.

6. CONTINGENCY FEES. No person or agency acting for or on behalf of the borrower to solicit or obtain this loan shall be paid any commission, percentage, brokerage, or contingent fee in any way connected with this loan.

7. DISPUTES. Any disputes concerning a question or fact arising under this loan agreement which are not mutually disposed of by the lender and the borrower shall be decided by the Secretary of the Army as the Government's Executive Agent, or by his designee.

Done at (g) _____ this _____

TYPED NAME, GRADE/RANK OF ARMY APPROVING AUTHORITY FOR THE LOAN, OR HIS DESIGNEE	SIGNATURE OF APPROVING AUTHORITY OR HIS DESIGNEE
TYPED NAME OF CHIEF EXECUTIVE OR HIS AUTHORIZED DESIGNEE OF THE BORROWING AGENCY, AUTHORITY, OR ACTIVITY	SIGNATURE OF CHIEF EXECUTIVE OR HIS DESIGNEE

INSTRUCTIONS: The lettered blank portions of the loan agreement are to be completed as specified in the following paragraphs with the same letters.

(a) Enter, as appropriate, the name of the Federal agency; city, county, state, or other civil governmental body; or special activity (e.g., Boy Scouts of America, American Legion) which is borrowing the Army materiel.

(b) Enter name and title of the Army approving authority for the loan, or his designee.

(c) Enter name and title of the borrowing activity's chief executive (e.g., John Doe - Secretary of the Treasury, Governor of the State of Iowa, National Commander of the American Legion, etc.) or his authorized (in writing) designee.

(d) Enter the appropriate authority for the loan from table 2-1, this regulation (e.g., Public Law, US code, DODD).

(e) State the purpose of the loan (use to which the borrowed materiel will be put); e.g., disaster relief activities in support of the Johnstown, PA, flood; National American Legion Convention at Chicago, IL; etc.

(f) Enter the calendar period (duration of the loan; e.g., 1 March 1978 to 15 April 1979).

(g) Enter location, day, month, and year that the agreement was signed.

(h) Signature of the Army approving authority for the loan, or his designee.

(i) Signature of the chief executive, or his authorized (in writing) designee, of the borrowing agency, authority, or activity.

NOTE: Exhibits I and II will be prepared as attachments to the loan agreement.

AGREEMENT FOR THE LOAN OF US ARMY MATERIEL

CERTIFICATE FOR SIGNATURE BY AN ALTERNATE

For use of this form, see AR 700-131; the proponent agency is DCSLOG.

I, the (a) _____

of the (b) _____ named as the

borrower in this loan agreement, certify that (c) _____

who signed this agreement on behalf of the borrower, was then (d) _____

_____ of (b) _____

and that this loan agreement was duly signed on behalf of (b) _____

_____ by authority of its governing or directing

body and is within the scope of its lawful powers. In witness whereof I have hereunto

affixed my hand and seal of (b) _____

this (e) _____ day of (f) _____, 19(g)___.

(OFFICIAL SEAL)

_____

(Name and title of certifying officer)

_____

(Signature)

INSTRUCTIONS: The lettered blank portions of the certificate are to be completed as specified in the following paragraph with the same letters.

(a) Enter the title of the chief officer of the borrowing activity; e.g., Governor, Chief Scout Executive, National Commander American Legion, etc.; (b) Enter the name of the Federal agency, civil authority, or the civilian activity borrowing the materiel; (c) Enter the name of the person who signed the agreement; (d) Enter the title of the person who signed the agreement; (e) Enter the date (e.g., 5th) of the month on which the certificate was signed; (f) Enter the month (e.g., July) in which the certificate was signed; (g) Enter the year (e.g., 1978) in which the certificate was signed.

DA Form 4881-1-R, Sep 84 EDITION OF MAY 80 IS OBSOLETE.

MILITARY PROPERTY OF THE UNITED STATES – EXHIBIT I

For use of this form, see AR 700-131; the proponent agency is DCSLOG.

NATIONAL STOCK NO.	NOMENCLATURE	QUANTITY	CONDITION CODE	PRICE EACH	TOTAL PRICE
				GRAND TOTAL	

DA Form 4881-2-R, 1 May 80

SURETY BOND FOR SAFEKEEPING OF PUBLIC PROPERTY AND GUARANTEEING REIMBURSEMENT TO THE GOVERNMENT FOR EXPENSES INCIDENT TO THE LOAN OF ARMY MATERIEL – EXHIBIT II

For use of this form, see AR 700-131, the proponent agency is DCSLOG.

Know all men by these presents, that the (a) _____,

a (b) _____ having its principal office in the city of (c) _____

and the state of (d) _____, as the obligor, is held and firmly bound into the United States of America in the penal sum of (e) _____, lawful securities of the United States, payment of which sum, will be made to the United States, without relief from evaluation or appraisement laws, said organization binds itself, its successors and assigns firmly by these presents.

The condition of the above obligation is such, that whereas the (a) _____ is a (b) _____ to which the Secretary of Defense is authorized to lend such materiel as may be necessary for accommodation of the requirement, subject to the provision that before delivering such materiel he shall take from the (a) _____ a good and sufficient bond for the safe return of such property in good order and condition and the whole without expense to the United States:

Now, therefore, as to all the property of the United States to be loaned to the (a) _____,

said (a) _____ shall take good care of, safely keep and account for, and shall, when required by the Secretary of Defense or his authorized representative, safely return to Department of the Army all said property issued and covered by this bond within (f) _____ days from the conclusion of said requirement the whole without expense to the United States, in as good order and in the same condition as that in which the equipment and property existed at the date of delivery, reasonable wear excepted, or upon formal demand make adequate monetary compensation for items lost or damaged as well as for costs of depreciation *(Note: "Depreciation" will not be included in bonds related to loans to other Federal agencies.)*, renovation, or repair of items accomplished at Government repair facilities, and all transportation provided as set forth and defined in the agreement dated (g) _____ between the United States of America and the (a) _____

The above bounded obligor, in order to more fully secure the United States in the payment of the aforementioned sum, hereby pledges as security therefor, in accordance with the provisions of Section 1126 of the Revenue Act of 1926, as amended,

United States of America Treasury bonds, in the principal amount of (e) _____ which are numbered serially, are in the denominations and amounts, are otherwise more particularly described as follows

United States of America Treasury bonds (h) _____ due (i) _____

_____ _____

_____ _____

Interest on said Treasury bonds shall accrue and be paid to the (a) _____ except and unless there occurs a default as defined herein and said securities are sold and applied to the satisfaction of such default as provided herein. Said Treasury bond(s) *(cash or certified check)* have/has this day been deposited with the Finance and Accounting Officer (j) _____ and his receipt taken therefor

NOTE If cash or a certified bank check is provided as bond instead of US of America Treasury bonds, the two paragraphs above will be crossed out and the following paragraph will apply

CONTINUED ON REVERSE

DA Form 4881-3-R, Sep 84 EDITION OF MAY 80 OBSOLETE

The above bonded obligor, in order to more fully secure the United States in the payment of the aforementioned sum, hereby pledges as security, therefore, in accordance with the provisions of section 1126 of the Revenue Act of 1926, as amended,

cash *(cashier's check)* in the amount of (e) _____. Said cash *(cashier's check)* has this day been deposited

with the Finance and Accounting Officer (j) _____ and his receipt taken therefor.

Contemporaneously herewith the undersigned have also executed an irrevocable power of attorney and agreement in favor of

the Finance and Accounting Officer, (j) _____, acting for and in behalf of the US Government authorizing and empowering said officer as such attorney to disburse said bond so deposited, or any part thereof, in case of any default in the performance of any of the above named conditions or stipulations.

In Witness Whereof, this bond has been signed, sealed, and delivered by the above named obligor, this

(k) _____ day of (l) _____ 19 (m) _____

(a) _____

(n) _____ SEAL

(o) _____ SEAL

Signed, sealed, and delivered in the presence of

(p) _____ (q) _____
(Name) *(Address)*

(p) _____ (q) _____
(Name) *(Address)*

Before me, the undersigned, a Notary Public within and for the county of (r) _____,

in the State of (s) _____, personally appear (t) _____,

(n) _____ and for and in behalf of said (a) _____,

a (b) _____ acknowledged the execution of the foregoing bond.

Witness my hand and notarial seal this (u) _____ day of (v) _____, 19 (w) _____

Notarial Seal (x) _____
(Notary Public)

My commission expires (y) _____
(Date)

DA Form 4881-3-R, Sep 84

INSTRUCTIONS

The lettered blank portions of the surety bond are to be completed as specified in the following paragraphs with the same letters:

(a) Enter the name of the Federal agency, authority (local governmental body), or special activity which borrowed the Army materiel, or is providing the bond.

(b) Further identify the borrower by entering here the type of activity that it is, e.g., Federal agency, civil government, corporation (Boy Scouts of America), etc.

(c) Enter the name of the city.

(d) Enter the name of the State.

(e) Enter the amount of the bond.

(f) Enter the number of days, or period, for which loan of the materiel is authorized.

(g) Enter the date on which the loan agreement between the borrower and the US Government was signed.

(h) Enter rate of interest paid on the bonds.

(i) Enter date on which bonds are due for redemption.

(j) Enter name of the Army installation (e.g., Fort Hood, TX) or US Army number (e.g., Fifth US Army) at which the servicing Finance and Accounting Office is located.

(k) Enter date on which bond is signed.

(l) Enter month in which bond is signed.

(m) Enter year in which bond is signed.

(n) Enter title of the borrowing activity's chief executive, e.g., governor, chief scout executive, national commander VFW, etc.

(o) Enter, if appropriate, the names and title of the comptroller or treasurer of the borrowing activity.

(p) Enter name of person witnessing signature.

(q) Enter address of person witnessing signature.

(r) Enter the name of the county in which the power of attorney is being signed.

(s) Enter the name of the State in which the Power of Attorney is being signed.

(t) Enter name of the borrowing activity's chief executive.

(u) Enter date on which the power of attorney is signed.

(v) Enter month in which power of attorney is signed.

(w) Enter year in which power of attorney is signed.

(x) Signature of Notary Public.

(y) Enter date that the Notary Public's commission expires.

PO ER OF ATTORNEY *(For Transactions Involving Treasury Bonds)*

For use of this form, see AR 700-131 the proponent agency is DCSLOG.

Know all men by these presents, that the (a) _____ is a (b) _____

having its principal office in the city of (c) _____ State of (d) _____, does hereby constitute

and appoint the finance and accounting officer, (e) _____, acting for and on behalf of the

(f) _____, and his successors in office, as attorney for said (a) _____, or its authorized representatives, for and in the name of said corporation to collect or to sell, assign, and transfer certain US Treasury bonds described as follows

(g) _____ due (h) _____

Such Treasury bonds have been deposited by (a) _____, pursuant to authority conferred by section 1126 of the Revenue Act of 1926, as amended, and subject to the provisions there of and of Treasury Department Circular No. 154, dated February 6, 1935, as security for the faithful performance of any and all of the conditions or stipulations

of a certain agreement entered into by (a) _____ with the United States, under date of

(i) _____ which is hereby made a part hereof as Inclosure 1. The undersigned agrees that, in case of any default in performance of any of the conditions and stipulations of such or any part thereof the finance and accounting officer

(e) _____ may sell, assign, and transfer said Treasury bonds or any part thereof without notice, at public or private sale, free from equity of redemption and without appraisement or evaluation, notice of right to redeem being waived, and may apply the proceeds of such sale or collection in whole or in part, to the satisfaction of such default. The undersigned further agree that the authority herein granted in irrevocable.

And such (a) _____ hereby for itself, its successors and assigns, ratifies and confirms such proper action taken within the scope of this power.

In witness whereof, the (a) _____, the (b) _____

herein above named by its (j) _____ and (k) _____ duly authorized

to act in the premises, has executed this instrument and caused the seal of the (a) _____

to be affixed this (l) _____ day of (m) _____ 19 (n) _____.

(a) _____

By. (o) _____ *(Name and title)* By: (p) _____ *(Name and title (Comptroller))*

Before me, the undersigned, a Notary Public within and for the County of (q) _____

in the State of (r) _____, personally appeared (s) _____, (j) _____,

and (p) _____, comptroller, and for an on behalf of said (a) _____,

a (b) _____, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this (l) _____ day of (m) _____, 19(n) _____.

Notarial Seal (t) _____ *(Notary Public)*

DA Form 4881-4-R, Sep 84 EDITION OF MAY 80 IS OBSOLETE.

INSTRUCTIONS

The lettered blank portions of the Power of Attorney are to be completed as specified in the following paragraphs with the same letters:

(a) Enter the name of the Federal agency, authority, (local governmental body), or special activity which borrowed the Army materiel.

(b) Further identify the borrower by entering here the type of activity that it is, i.e., Federal agency, civil government, corporation (Boy Scouts of America), etc.

(c) Enter the name of the city.

(d) Enter the name of the state.

(e) Enter the name of the Army installation handling the account

(f) Enter the name and rank of the commanding officer of the Army installation handling the account

(g) Describe the US Treasury bonds that have been posted as bond to include type, serial numbers, and interest rates if applicable.

(h) Enter date on which payment of the Treasury bonds becomes due if applicable. If it is not applicable enter "NA."

(i) Enter the date on which the agreement between the borrower and the US Government was signed.

(j) Enter title of the borrowing activities' chief executive, e.g., governor, chief scout executive, national commander VFW, etc.

(k) Enter here, "Comptroller " "Treasurer," etc. as appropriate.

(l) Enter date on which the Power of Attorney is signed.

(m) Enter month in which Power of Attorney is signed

(n) Enter year in which Power of Attorney is signed.

(o) Enter name and title of chief executive of borrowing activity

(p) Enter if appropriate, the names and title of the comptroller or treasurer of the borrowing activity.

(q) Enter the name of the county in which the Power of Attorney is being signed

(r) Enter the name of the state in which the Power of Attorney is being signed

(s) Enter the name of the chief executive of the borrowing activity.

(t) Signature of the Notary Public.

AGREEMENT FOR THE LEASE OF US ARMY MATERIAL

For use of this form, see AR 700-131, the proponent agency is DCSLOG.

NOTE: The format below is prescribed for any lease of Army materiel under the authority of 10 U.S.C. 2667.

This form will be used to enter into agreements relative to the lease of Army materiel between the United States Army and - 1. State and local government agencies; 2. Private individuals; and 3. Commercial activities.

LESSEE AND ADDRESS:

PROPERTY TO BE USED AT

PAYMENT

To be made to _____

United States Army, at _____

This lease is authorized by 10 U.S.C. 2667

This LEASE AGREEMENT, entered into this _____ day of _____ 19____ by and between the UNITED STATES OF AMERICA, hereinafter called the Government, represented by the Contracting Officer executing this agreement, and _____

*a corporation organized and existing under the laws of the State/City/County of _____

*joint venture consisting of _____

*partnership consisting of _____

*an individual trading as _____

of the City of _____ in the State of _____ hereinafter called the Lessee

Witnesseth That,

1. The Government hereby leases to the Lessee and the Lessee hereby hires from the Government, upon the terms and conditions hereinafter set forth, the personal property listed in Schedule A which is attached hereto and made a part hereof.

2. This lease is subject to the approval of _____ and shall not be binding until so approved. The term of this lease shall commence on the _____ day following the mailing of written notice to the Lessee that the lease has been so approved and that the property is ready for delivery, and shall continue for a period of _____ [days, months, or years] or until sooner terminated or revoked in accordance with the provisions hereof.

3. At any time during the term, either party may terminate this lease in whole or in part effective not less than 90 days after receipt by the other party of written notice thereof without further liability to either party. However, the Secretary of the Army may revoke this lease in whole or in part at any time.

4. Upon commencement of the term of this lease, the Lessee shall take possession of the leased property at _____ as is, without warranty express or implied, on the part of the Government as to condition or fitness for any purpose

5. The Lessee shall pay rent during the term of this lease at the rate prescribed in Schedule A. The rental accrued at the end of any calendar month, or at the expiration, termination or revocation of this lease, shall be paid to the Government on or before the 10th day thereafter.

6. The Lessee at its own expense shall maintain the property in good condition and repair and make all necessary replacements of components and parts during the term of this lease. In addition, AR 700-131, Chapter 5, provides examples of reimbursable costs required to be paid by the Lessee to the Army for the lease of property. The Lessee shall make no changes or alterations in the property without the written consent of the Contracting Officer.

7. The Lessee shall not mortgage, pledge, assign, transfer, sublet, or part with possession of any of the property in any manner to any third party either directly or indirectly, except that this provision shall not preclude the Lessee from permitting the use of the property by a third party with the prior written approval of the Contracting Officer; and the Lessee shall not do or suffer anything whereby any of the property shall or may be encumbered, seized, taken in execution, attached, destroyed, or injured.

8. After taking possession as provided in clause 4, the Lessee shall be solely responsible for the property until it is returned to the Government as provided for in this lease. The property shall be returned in as good condition as when received, reasonable wear and tear excepted. If the Lessee fails to return the property, the Lessee shall pay to the Government the amount specified in Schedule A (prepared by the Contracting Officer and appended to this agreement) as the value of the property less the amount determined by the Contracting Officer to represent reasonable wear and tear for the period during which the property was usable. If the Lessee returns the property in other than as good condition as when received, reasonable wear and tear excepted, the Lessee shall pay to the Government the amount necessary to place the property in such condition, or if it is determined by the Contracting Officer that the property cannot be placed in such condition, the Lessee shall pay to the Government the amount specified in Schedule A as the value of the property less both the amount determined by the Contracting Officer to represent reasonable wear and tear for the period during which the property was usable and the scrap value of the property.

9. The Lessee shall take all steps necessary to protect the interest of the Government in the property, and the Contracting Officer may require the Lessee, at its own expense, to take such specific measure, including but not limited to the procurement of insurance, as may be necessary to protect such interest.

10. On or before the last day of the term of this lease the Lessee shall return the property to the Government at _____ or such other place as the Contracting Officer may designate, except that in the event of revocation of this lease the Lessee shall return the property to the Government at the designated place as soon after such revocation as the same can be accomplished. The Lessee shall reimburse the Government immediately, upon presentation of a statement thereof, for all packing and handling costs incurred by the Government in performance of this lease. The Lessee shall also pay all other packing, handling, and transportation charges, including the expenses of reinstalling the property or processing it for extended storage, except that the Lessee's responsibility for return transportation charges shall not exceed the amount required to return the property to the place specifically named above. Further, if the Contracting Officer designates a place to which the property is to be returned other than that specifically named above and if the time required to return the property to such other place exceeds the time required to return the property to the place specifically named above, then the time for which the Lessee must pay rent under Clause 5 shall be reduced by the amount of such excess.

11. The property is leased without operators. Any operator deemed incompetent by the Contracting Officer shall be removed from the property.

12. Upon request of the Lessee, the Contracting Officer shall furnish without charge, copies of such drawings, specifications or instructions as the Lessee may require for the operation or repair of the property and as may in the discretion of the Contracting Officer be reasonably available.

13. The Government shall not be responsible for damages to property of the Lessee or property of others, or for personal injuries to the Lessee's officers, agents, servants, or employees, or to other persons, arising from or incident to the use of the property herein leased, and the Lessee shall save the Government harmless from any and all such claims; provided, that nothing contained in this Clause 13 shall be deemed to affect any liability of the Government to its own employees.

14. At all times the Contracting Officer shall have access to the job site whereon any of the property is situated, for the purposes of inspecting or inventorying the same, or for the purpose of removing the same in the event of the termination of this lease.

15. CONTROL OF GOVERNMENT PROPERTY. The provisions of Subpart 45.5 of the Federal Acquisition Regulation (FAR) and the DOD FAR Supplement which set forth requirements for establishing and maintaining control over Government Property are incorporated by reference and made a part hereof.

16. OFFICIALS NOT TO BENEFIT. No member or delegate to Congress, or resident commissioner, shall be admitted to any share or part of the lease, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this lease, if made with a corporation for its general benefit.

17. COVENANT AGAINST CONTINGENT FEES. The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to require the Lessee to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

18. DISPUTES (APR 1984)

(a) This lease is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this lease shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under a lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Lessee shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the Contracting Officer.

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that—

(i) The claim is made in good faith.

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the adjustment for which the Lessee believes the Government is liable.

(3) (i) If the Lessee is an individual, the certification shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by—

(A) A senior company official in charge at the Lessee's plant or location involved; or

(B) An officer or genera l partner of the Lessee having overall responsibility for the conduct of the Lessee's affairs.

(e) For Lessee claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over $50,000 the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of the payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

19. ADJUSTMENT OF RENTALS—STATE OR LOCAL TAXATION. Except as may be otherwise provided, the rental rates established in this lease do not include any State or local tax on the property herein leased. If and to the extent that such property is hereafter made taxable by State and local government by Act of Congress, then in such event the lease shall be renegotiated.

20. Except as otherwise specified in this lease, all notices to either of the parties to this lease shall be sufficient if mailed in a sealed postpaid envelope addressed as follows:

To the Lessee

_____
(Name)

_____
(Address)

To the Government

_____
(Name)

_____
(Title)

_____
(Address)

M TAB TAB TAB TAB

REQUEST AND APPROVAL FOR LOAN OR LEASE OF EQUIPMENT AND LOAN OR LEASE AGREEMENT

For use of this form, see AR 700-131; the proponent agency is DCSLOG.

	PAGE NO.	NO. OF PAGES
	REQUIRED DELIVERY DATE	
LOAN OR LEASE (Check one) [ ] LOAN [ ] LEASE	LOAN/LEASE AGREEMENT NUMBER (When Approved)	
ADDRESS OF ACCOUNTABLE OFFICER	EXPIRATION DATE OF LOAN/LEASE	

SECTION A - (To be completed by Requester/Lessee)

1. NAME AND ADDRESS OF ACTIVITY (Include UIC)

2. ITEM DESCRIPTION (Include LIN and NSN and Quantity Required)

3. OTHER ITEMS REQUIRED (Show item, page no. of request and agency to which request was submitted. A separate request is required for each item.)

4. EQUIPMENT TO BE SHIPPED TO (include DODAAC, if applicable)

5. FUND CITE FOR PC&H AND TRANSPORTATION COSTS

6. COMPLETE JUSTIFICATION INCLUDING PROPOSED DURATION OF LOAN/LEASE (If additional space is needed, use reverse)

7. CERTIFICATION

I certify that I am the authorized individual to request loan/lease of Army equipment, and if this request is approved, agree to pay all authorized charges including PC&H, transportation, and repair costs for other than fair wear and tear, and agree to abide by all conditions specified for Loan/Lease of Army materiel by AR 700-131.

8. TYPED NAME, GRADE, AND TITLE OF AUTHORIZED REPRESENTATIVE	8a. SIGNATURE	8b. DATE

SECTION B - (To be completed by the activity having custody of item)

9. NAME AND ADDRESS OF ACTIVITY

10. REQUESTED ITEM [ ] (Enter NSN) SUBSTITUTE ITEM [ ] (Enter NSN)	10a. AVAILABILITY (Check one) WITH DAMPL IMPACT [ ] WITHOUT DAMPL IMPACT [ ] NOT AVAILABLE [ ]

10b. APPROVAL AUTHORITY FOR LOAN/LEASE (Based upon above data and Table 2-1, AR 700-131)

11. FOR LOANS/LEASES WITH DAMPL IMPACT (Provide the following information to HQDA)

11a. AUTHORIZED	ON HAND (Worldwide)	QTY D/I PER MONTH PRODUCED OVERHAULED
11b. QTY O/H CONUS DEPOT BY PURPOSE CODE		11c. QTY BACKORDERED BY MACOM

11d. IMPACT OF LOAN/LEASE APPROVAL AND ACTIVITY RECOMMENDATION

12. TYPED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	12a. SIGNATURE	12b. DATE

SECTION C - (Action by final approval authority)

13. [ ] APPROVED [ ] DENIED [ ] OTHER (SEE REVERSE)

14. TYPED NAME AND TITLE OF APPROVING AUTHORITY	14a. SIGNATURE	14b. DATE

DA FORM 4881-6-R, SEP 84

[FR Doc. 92-23011 Filed 10-6-92; 8:45 am]

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Wednesday
October 7, 1992

Part III

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date for Applications; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 920907-2207]

Public Telecommunications Facilities Program: Closing Date for Applications

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of closing date for applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces that applications are available for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program administered by NTIA.

Congress has not completed action on the appropriation for this program. If, however, funds are made available for the program for the fiscal year, NTIA anticipates making grant awards by late summer 1993.

The amount of a grant award will vary depending on the project of the applicant. NTIA awarded $21.2 million in funds to 122 projects for fiscal year 1992. The awards ranged from $3,100 to $1,227,974.

Final Rules and Policy Statement for the Public Telecommunications Facilities Program were published on November 22, 1991 (56 FR 59160–59192, No. 226). Those rules will be in effect for 1993 applications.

EFFECTIVE DATES: November 6, 1992. Applications for PTFP must be received on or before 5 p.m., January 14, 1993.

ADDRESSES: Department of Commerce, Office of Telecommunications Applications, NTIA/DOC, 14th Street and Constitution Avenue, NW., room H–4625, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connoes, Associate Administrator, telephone (202) 482–5802.

SUPPLEMENTARY INFORMATION:

I. Eligibility

A. To be eligible to apply for and receive a construction grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or

(5) A state or local government or agency, or a political or special purpose subdivision of a state.

B. To be eligible to apply for and receive a planning grant, an applicant must be:

(1) Any of the organizations described in paragraph A of this section; or,

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

C. An applicant that is eligible under paragraphs A or B of this section may file an application with the Agency for a planning or construction grant to achieve the following:

(1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) The expansion of the service areas of existing public telecommunications entities;

(3) The establishment of new public telecommunications entities serving areas currently receiving public telecommunications services; or,

(4) The improvement of the capabilities of existing licensed public broadcast stations to provide public telecommunications services.

D. Applicants must certify whether they are delinquent on any Federal debt. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to the Department of Commerce are made. Delinquent accounts include debts incurred by sub-units of the applicant other than the sub-unit that is applying to NTIA, and includes debts owed to any agency of the Federal government, not just to the Department or NTIA.

E. An applicant whose proposal requires an authorization from the FCC must be eligible to receive such authorization.

II. Closing Date

Pursuant to § 2301.5(c) of the PTFP Final Rules (56 FR 59176 (1991), codified at 15 CFR part 2301), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications for 1993 is January 14, 1993.

III. Program Goals and Priorities

The Goals of this program as stated in section 390 of the Communications Act (47 U.S.C. 390) are:

"To assist through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(1) Extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(2) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(3) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public."

The Agency has established the following priorities for the PTFP:

Special Applications

NTIA possesses the discretionary authority to recommend awarding grants to eligible broadcast and nonbroadcast applicants whose proposals are so unique or innovative that they do not clearly fall within the priorities listed below. Innovative projects submitted under this category must address demonstrated and substantial community needs (*e.g.*, service to identifiable ethnic or linguistic minority audiences, service to the blind or deaf, electronic text, and nonbroadcast projects offering educational or instructional services).

Priority 1—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area

There are three subcategories:

A. Projects That Include Local Origination Capacity

This subcategory includes the planning or construction of new facilities that can provide a full range of radio and/or television programs including material that is locally produced.

B. Projects That do not Include Local Origination Capacity

C. Projects That Provide First Nationally Distributed Programming

This subcategory includes projects that provide satellite downlink facilities to noncommercial radio and television stations that would bring nationally

distributed programming to a geographic area for the first time.

Priority 1 and its subcategories apply only to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas that are presently unserved.

Priority 2—Replacement and Basic Equipment of Existing Essential Broadcast Stations

Projects eligible for consideration under this category include the urgent replacement of obsolete or worn out equipment in existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographic area.

Priority 3—Establishment of a First Local Origination Capacity in a Geographical Area

Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications service.

Priority 4—Replacement and Improvement of Basic Equipment for Existing Broadcast Stations

Projects eligible for consideration under this category include the replacement of obsolete or worn-out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards. There are two subcategories:

A. Under Priority 4A, NTIA will consider applications to replace urgently needed equipment from public broadcasting stations that do not meet the Priority 2 criteria. NTIA will also consider applications that improve as well as replace urgently needed production-related equipment at public radio and television stations that do not qualify for Priority 2 consideration but that produce, on a continuing basis, significant amounts of programming distributed nationally to public radio or television stations.

This subcategory will also enable the acquisition of satellite downlinks for public radio stations in areas already served by one or more full-service public radio stations. The applicant must demonstrate that it will broadcast a program schedule that does not merely duplicate what is already available in its service area.

The final projects included in this subcategory would enable the acquisition of the necessary items of equipment to bring the inventory of an already-operation station to the basic level of equipment requirements established by PTFP.

B. This subcategory includes the improvement and non-urgent replacement of equipment at any public broadcasting station.

Priority 5—Augmentation of Existing Broadcast Stations

Projects in this category would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. Projects To Equip Auxiliary Studios at Remote Locations, or To Provide Mobile Origination Facilities.

An applicant must demonstrate that significant expansion in public participation in programming will result.

B. Projects To Augment Production Capacity Beyond basic Level in Order To Provide Programming or Related Materials for Other Than Local Distribution

This subcategory would provide equipment for the production of programming for regional or national use.

IV. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file a timely and complete application on a current form approved by the Agency. No previous versions of the PTFP Application Form may be used. (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660–0003.)

All persons and organizations on the PTFP's mailing list will be sent a copy of the current application form and the Final Rules. Those not on the mailing list may obtain copies by contacting the PTFP at the address above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred will be mailed pertinent PTFP materials and instructions for requesting reactivation.

Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to serve a copy of their completed application on the appropriate SPOC on or before January 14, 1993. Applicants are encouraged to contact the appropriate SPOC well before the NTIA closing date.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC) must tender an application to the FCC for such authority on or before January 14, 1993. (A application is tendered to the FCC when it has been received by Secretary of the FCC.) However, applicants are urged to submit it with as much lead time before the PTFP closing date as possible. The greater the lead time, the better the chance the FCC application will be processed to coincide with NTLA's grant cycle. NTIA will return the application of any applicant which fails to tender an application to the FCC for any necessary authority on or before January 14, 1993.

Effective October 1, 1988, OMB Circular A–102, as it applies to grant recipients, has been superseded by Department of Commerce regulations, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments (53 FR 8034, codified at 15 CFR 24 (1988)). Applicants should note that PTFP grant recipients, depending on their type of organization, are subject to the provisions of diverse Office of Management and Budget (OMB) Circulars; i.e., A–87 "Cost Principles for State and Local Governments," A–21 "Cost Principles for Educational Institutions," A–110, A–122, A–128, as implemented by 15 CFR part 29a, and A–133, as implemented by 15 CFR part 29b.

All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. Potential grant recipient organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. Applicants are further advised that:

(1) Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related sectional of the certification form;

(2) Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

(3) Anti-Lobbying

Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applicants/bids for grants, cooperative agreements, and contracts for more than $100,000; and

(4) Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

For awards granted by NTIA, the recipient shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the grant award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL completed by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Awards granted under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards. In addition, unsatisfactory performance by the applicant under prior Federal awards may result in the application not being considered for funding.

Applicants are reminded that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

V. Funding Criteria

All PTFP funding criteria are equal in weight. In determining whether to approve or defer a construction grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the project meets the program purposes set forth in the Final Rules, 15 CFR 2301.2, as well as the specific program priorities set forth in the appendix of those Rules;

(b) The adequacy and continuity of financial resources for long-term operational support;

(c) The extent to which non-Federal funds will be used to meet the total cost of the project;

(d) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(-ies) to be served, and the extent to which the proposed service will not duplicate service already available;

(2) Evaluated alternative technologies and the basis upon which the technology was selected;

(3) Provided significant documentation of its equipment requirements, and the urgency of acquisition or replacement;

(4) Provided documentation of an increasing pattern of substantial non-Federal financial support;

(5) Provided other evidence of community support, such as letters from elected or appointed policy-making officials, and from agencies for whom the applicant produces or will produce programs or other materials;

(e) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned or controlled by minorities and women;

(f) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(g) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(h) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(i) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(j) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any; and

(k) The readiness of the FCC to grant any necessary authorization.

In determining whether to approve or defer a planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(b) The qualifications of the proposed project planner;

(c) The extent to which the project's proposed procedural design assures that the applicant would adequately:

(1) Obtain financial, human and support resources necessary to conduct the plan;

(2) Coordinate with other telecommunications entities at the local, state, regional and national levels;

(3) Evaluate alternative technologies and existing services; and

(4) Receive participation by the public to be served (and by minorities and women in particular) in the project planning;

(d) Any pre-planning studies conducted by the applicant showing the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary, for the project); and

(e) The feasibility of the proposed procedure and timetable for achieving the expected results.

VI. Matching Requirements

(a) Planning grants. A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications construction project.

(b) Construction grants.

(1) A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Agency and set forth in the award document. Such amount may not exceed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

Special Note: At the time the 1987 Final Rules for PTFP were adopted, NTIA announced a policy which did not require any rule change, but which is intended to encourage stations reporting substantial non-Federal revenues to increase the matching percentage in their proposals for replacement of equipment from 25% to 50%. The Agency emphasized that applicants proposing to provide first service to a geographic area encounter considerable ineligible costs, including construction or renovation of buildings or other similar expenses. NTIA, therefore, expects to continue funding projects to extend service at up to 75% of the total project cost. Applicants from small community-licensed stations, or those who can show that a station licensed to a large institution cannot obtain direct or in-kind support from the larger institution, also will not be subject to this preference. Otherwise, a showing of extraordinary need or emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost, but the presumption of 50% funding will be the general rule for replacement applications.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(3) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear and compelling showing of need.

(4) The expenditure of any local matching funds prior to the Closing Date will be disallowed.

(5) The Applicants should note that expenditure of local matching funds prior to the award of a grant is at the applicant's own risk. The exact amount of the match will not be known with certainty until the final award agreement is negotiated. Therefore, should the applicant's expenditure of non-Federal funds exceed the non-Federal share which will be established in the final award agreement, then either the Federal share of the total project cost may be reduced by a corresponding amount, or no Federal award may be offered.

VII. Selection Process and Project Period

PTFP grants are awarded on the basis of a competitive review process. This includes several grant review panels, which apply the Funding Criteria listed in section V above. The Agency determines the selection of grantees according to the Priorities listed in Section III above and the evaluation of the applications by the various review panels.

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods commonly range up to two years. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

VIII. Filing Applications

Applications delivered by mail must be received no later than 5 p.m., January 14, 1993, and must be addressed to: Public Telecommunications Facilities Program, NTIA/DOC, Room H-4625, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Applications delivered by hand must be delivered to the above address between 8:30 a.m. and 5 p.m. on or before January 14, 1993. Applicants whose applications are not received by 5 p.m., January 14, 1993, will be notified that their applications will not be considered in the current grant cycle and will be returned.

Authority: The Public Telecommunications Financing Act of 1978, 47 U.S.C. 390–394, 397–399b (Act), as amended by the Public Broadcasting Amendments of 1981, Public Law 97–35, 95 Stat. 82, 117 (1986).

(Catalog of Federal Domestic Assistance No. 11.550)

Dennis R. Connors,

Associate Administrator, Office of Telecommunications Applications.

[FR Doc. 92–24168 Filed 10–6–92; 8:45 am]

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Wednesday
October 7, 1992

Part IV

Environmental Protection Agency

40 CFR Part 146

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions and Requirements for Class I Wells; Revision of Testing and Monitoring Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL 4154-4]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions and Requirements for Class I Wells; Revision of Testing and Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a revision to the testing and monitoring requirements for Class I hazardous waste injection wells. These requirements were originally published on July 26, 1988 (53 FR 28118), and a proposed revision was published on August 19, 1991 (56 FR 41108). Specifically, the Agency is changing the timing requirement for the Casing Inspection Log (CIL) as required under 40 CFR 146.68(d)(4). Rather than running the test on a fixed schedule every five years, this rule requires that the log be run whenever a well workover involves the pulling of the injection tubing, unless the Underground Injection Control (UIC) Program Director waives the requirement because satisfactory results from the test were obtained within the previous five years. However, the Director may still require the log to be run on a fixed five-year schedule, in certain cases.

EFFECTIVE DATE: This rule revision becomes effective on November 6, 1992.

ADDRESSES: All comments received for this rulemaking are contained in the Public Docket. Any inquiries concerning the docket, or requests to review the material for this rule should be addressed to Bruce J. Kobelski, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (WH-550G), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Bruce J. Kobelski, EPA, Office of Ground Water and Drinking Water, (202) 260-7275.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background
- A. Summary of UIC Land Ban Requirements
- B. Part 146 Technical Requirements
- C. Settlement Agreement on Casing Inspection Log

II. Summary of Today's Rulemaking
- A. Description of Testing Method
- B. Agency Response to Comments
- C. Justification of Rule Revision
- D. Timing Considerations

III. Regulatory Requirements
- A. Regulatory Impact Analysis
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act

I. Background

A. Summary of UIC Land Ban Requirements

In response to the Hazardous and Solid Waste Amendments of 1984 (HSWA), on July 26, 1988, the Agency promulgated its approach to implementing the statutorily mandated prohibitions on the underground injection of hazardous waste. See 53 FR 28118. EPA promulgated one set of regulations governing hazardous waste injection wells under the authority of both the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921, *et seq.* and the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f-300j. This rulemaking codified at 40 CFR Part 148, for hazardous waste disposed of in Class I injection wells, the directly applicable sections of part 268, the Agency's regulatory framework for implementing the land disposal restrictions under section 3004 of RCRA; 42 U.S.C. 36924. See 51 FR 40572, November 7, 1986, for a further discussion. Part 148 also specifies the effective dates of the restrictions on the injection of hazardous wastes.

The July 26, 1988, rulemaking also codified under part 148, the procedure, or petition process, whereby an injection well operator may continue to inject untreated hazardous waste when he has demonstrated to the Administrator to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone for as long as the wastes remain hazardous. See RCRA Sections 3004 (d)(1), (e)(1), (g)(5), 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5). Upon a successful demonstration, the Agency will grant the owner or operator an exemption from the land ban prohibitions.

B. Part 146 Technical Requirements

The July 26, 1988, rule also promulgated amendments to the technical requirements for Class I hazardous waste injection wells pursuant to the SDWA. Both previously existing, and new technical requirements applicable to Class I wells were codified under part 146, subpart G of the UIC regulations. These requirements include appropriate siting standards, well construction requirements, area of review evaluation, corrective action, operating requirements, reporting, closure and post closure care, and testing and monitoring requirements, for Class I hazardous waste injection wells. Under 40 CFR 146.68 (testing and monitoring requirements), periodic mechanical integrity testing (MIT) of a well's tubular goods, and an assessment of the existence of movement of fluid along the borehole, must be conducted to fulfill the requirements of § 146.8 in the UIC regulations (which requires a satisfactory demonstration of mechanical integrity at least once every 5 years). A casing inspection log (CIL) must be run once every five years in order to meet these requirements for Class I hazardous waste injection wells.

C. Settlement Agreement on Casing Inspection Log

The July 26, 1988, rule was challenged by both industry and environmental groups in *NRDC* v. *EPA* No. 88-1657 and cons. cases (D.C. Cir.). EPA signed a partial settlement agreement with the Chemical Manufacturers Association (CMA) concerning minor issues in that litigation. One of the minor issues was the requirement to run a casing inspection log every five years. This method of casing evaluation requires the pulling of well tubing. CMA argued that a better approach would be to require such casing inspection to coincide with normal well workover operations. Such an approach would also avoid placing undue stress on injection well components. Well workovers occur at a reasonable frequency, but not necessarily every five years. A review of the methods used in assessing the mechanical integrity of a well, and new alternative methods which did not require that tubing be pulled from the well, were factors the Agency weighed in determining whether to revise the CIL scheduling requirement. Based on these considerations, EPA agreed to propose an amendment to 40 CFR Part 146, which it did on August 19, 1991, solicit and respond to public comments, and promulgate a final revision by July 30, 1992.

II. Summary of Today's Rulemaking

A. Description of Testing Method

The casing inspection log is a down-hole tool using variations in measured electromagnetic flux to record the thickness of the injection well casing. It has the distinct advantage of being a predictive tool in that it not only can indicate the presence of small holes or breaks in the metal casing, but it can also reveal any developing weaknesses, or pitting, which may be a precursor to a

hole or breach in the casing caused by corrosion. Interaction of the metal well casing with a highly corrosive waste stream, such as highly saline formation waters, is an example of what can cause the eventual loss of the well's mechanical integrity.

B. Justification of Rule Revision

The Agency has now assessed its position on the schedule for running the CIL in light of the public comments, and has decided to revise the original requirement in today's rulemaking. The Agency's original requirement was premised on the assumption that tubing always had to be pulled every 5 years in order to perform the required mechanical integrity test.

However, the procedures for conducting noise and temperature logging and more documentation regarding the efficacy of temperature and noise logging inside tubing, for evaluating the external mechanical integrity of a well, was reviewed and evaluated by the Agency. Additionally, a new mechanical integrity tool for assessing well fluid movement along the well bore, the Oxygen-Activation (OA) Method, has been approved by the Agency. This logging method, which can be used inside tubing, received final approval on January 10, 1992 (55 FR 1176). All of these factors, either combined or in part, negate the necessity of the operator's pulling the injection tubing at regular five-year intervals.

For detecting leaks in the injection well, the Agency already requires continuous pressure monitoring and annual pressure testing. The added information provided by the CIL is important as a predictive method, but it is a redundant protection factor with regard to assessing potential well leaks and any possible threat these leaks may pose to ground water resources. The CIL can help in assuring that no leaks would ever occur, but a leak of fluid from the long-string casing would probably not lead to any endangerment to drinking water as long as the injection tubing and packer had mechanical integrity.

Therefore, in order to balance industry concerns with any potential threats to human health and the environment, the Agency believes that it would be more practical to require running the CIL whenever the well is being worked over, rather than require the operators to pull the injection string on a fixed five-year interval. The Director may waive the casing inspection log requirement due to well construction or other factors which may limit the test's reliability, or based upon successful results from a CIL run within the previous five years. However, because in some limited cases such as where a corrosive wastestream may have come into contact with the well's casing, or in areas where formation fluids which come into contact with the casing are known to cause rapid degradation of a well's casing, or where other natural processes or man-made events may effect the casing integrity, the Director of the UIC program may still require a fixed five-year CIL schedule.

C. Agency Response to Comments

All of the comments received by the Agency supported the proposed rule revision for running a CIL. Many of the commenters supported the rule language as proposed and the Agency's justification for the change. However, several commenters objected to the Agency's justification for the change in timing requirement for conducting a casing inspection log based on the Agency's earlier 1988 interim approval of the Oxygen-Activation (OA) Method. See 53 FR 37294. As mentioned earlier, in most cases, the OA logging method does not require the well operator to remove the well tubing in order to conduct the test. With the supplemental information received by the Agency for noise and temperature logging, the Agency agrees that satisfactory mechanical integrity testing results may also be obtained without pulling tubing. And it is in consideration of all these developments, that the Agency is now changing the part 146 regulations as promulgated on July 26, 1988. See 53 FR 28118.

The Agency agrees, however, with the commenters that approval of the OA log was not a condition for today's rule revision, even though the OA log had already received interim approval for its use on September 26, 1988 (53 FR 37294). At this time, the Agency will reiterate that running an Oxygen Activation log is not the only prerequisite for assessing fluid flow behind pipe. Any EPA-approved MIT for assessing fluid flow behind pipe acceptable to the Director is satisfactory.

One commenter believed that the proposed rule revision language for the CIL could be misinterpreted, and that an operator may be required to run a CIL more frequently than every five years if a well was worked over more frequently. The commenter was also concerned that if a well was worked over, and a CIL had been run within the previous five years, a formal waiver process, which may potentially be time-consuming and disruptive to injection operations would be required by the Director before the well would be allowed to be brought back into service.

In response to this comment, the Agency does not believe that it is necessary, in most situations, to run a CIL more frequently than every five years. As indicated in the proposed rule, if a well were to be worked over more frequently than planned, and if a casing inspection log had been run within the previous five years, with results satisfactory to the Director, an additional CIL is probably unnecessary. It is our expectation that after review of previous data obtained from running a CIL, the Director will waive an additional CIL. The requirements and format, whether written or oral, for such a waiver are left to the Director's discretion. But the Agency is suggesting that waivers for a CIL should be granted quickly enough after a workover so as not to impede the overall efficiency of the injection facility.

Finally, one commenter suggested that the Agency provide a definition for the term "workover". Generally, in oil production and injection well field operations, workover is a fairly broad term defining any mechanical repair or maintenance operation related to well components, such as tubing, casing, or packer. As the term is widely understood and accepted for field practices, the Agency does not believe that any confusion will result when implementing today's rule.

The Agency will promulgate this rule revision with minor descriptive changes more clearly encompassing the events which may adversely affect the long string casing.

D. Timing Considerations

All new part 146 technical requirements for Class I hazardous waste injection wells became effective August 25, 1988. EPA has interpreted the timing requirement in 40 CFR 146.68(d)(4) for a casing inspection log as five years from this effective date. Therefore, the current regulations require a CIL beginning on August 25, 1993, for existing wells.

The Agency is promulgating this final rule revision now, in order to allow operators to schedule their well testing accordingly, and to allow the Primacy States adequate time to adopt this change. All Primacy States affected by the new Class I requirements promulgated in the July 26, 1988, rulemaking were to have conformed with the new part 146 regulations by April 26, 1989. See SDWA section 1422(b)(1), 42 U.S.C. 300h–1.

III. Regulatory Requirements

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major", and therefore subject to the requirement of a Regulatory Impact Analysis. The overall effect of today's rule, is to allow greater flexibility for requirements of part 146 testing and monitoring requirements for Class I hazardous waste injection wells. There are no additional requirements to the existing UIC rules. The net effect of this rule is to allow the UIC Director more discretion in the timing requirements for running the casing inspection log.

For some injection facilities, the changing of the timing requirement, or the obtaining of a waiver may result in cost savings to owners or operators by avoiding certain operational disruptions. However, for others, additional costs may be incurred from running the tool on an alternate schedule from the already required annual and five-year mechanical integrity tests, thus offsetting any potential savings. Consequently, as the Agency cannot estimate the exact number, or which injection facilities may benefit from this rule change, we have assumed that there will be no net change in costs or burden for the overall hazardous waste injection well population. Therefore, no additional regulatory impact analysis is required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical, and other manufacturing companies. This rule is deregulatory in nature and thus could provide beneficial opportunities to facilities that may be affected by the rule. The Agency is not aware of any small entities that would be directly affected by this rule. Accordingly, the Administrator certifies that this rule will not have significant economic effects on a substantial number of small businesses. As a result of this finding, EPA has not prepared a formal Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions proposed in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

The information collection requirements for the UIC Program have been approved by the Office of Management and Budget.

List of Subjects in 40 CFR Part 146

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 30, 1992.

William K. Reilly,

Administrator.

Therefore chapter I of title 40 is amended as follows:

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

1. The authority citation for part 146 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f et seq.; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

2. Section 146.68 is amended by revising paragraph (d)(4), to read as follows:

§ 146.68 Testing and monitoring requirements.

* * * * *

(d) * * *

(4) Casing inspection logs shall be run whenever the owner or operator conducts a workover in which the injection string is pulled, unless the Director waives this requirement due to well construction or other factors which limit the test's reliability, or based upon the satisfactory results of a casing inspection log run within the previous five years. The Director may require that a casing inspection log be run every five years, if he has reason to believe that the integrity of the long string casing of the well may be adversely affected by naturally-occurring or man-made events;

* * * * *

[FR Doc. 92-24344 Filed 10-6-92; 8:45 am]

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Reader Aids

Federal Register

Vol. 57, No. 195

Wednesday, October 7, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

45261–45558.....1
45559–45708.....2
45709–45972.....5
45973–46078.....6
46079–46294.....7

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6482.....45961
6483.....45963
6484.....45965

Executive Orders:
12775 (Continued by Notice of September 30, 1992).....45557
12779 (Continued by Notice of September 30, 1992).....45557
12813 (Amended by EO 12815).....45709
12815.....45709

Administrative Orders:

Notices:
September 30, 1992.....45557

5 CFR

630.....45261

Proposed Rules:
835.....45753

7 CFR

916.....45559
917.....45559
920.....45973, 46243
948.....45560
955.....45974
987.....45975
1065.....45562, 45563
1126.....46079
1137.....45564
1494.....45262
1980.....45968

Proposed Rules:
735.....45993
736.....45993
737.....45993
738.....45993
739.....45993
740.....45993
741.....45993
742.....45993
910.....45581
944.....45754
958.....45993
1106.....45583
1030.....45995
1098.....45996

10 CFR

30.....45566
35.....45566

12 CFR

5.....46081
11.....46081
16.....46081
327.....45263
328.....45977
506.....45977
563.....45977, 46085
563g.....46085

Proposed Rules:
1.....45756
545.....46098
563.....46098
567.....45757, 46098
571.....46098
935.....45338
940.....45338

14 CFR

21.....46243
36.....46243
71.....45981-45983, 46089

Proposed Rules:
39.....45584-45586
71.....45660, 45997

16 CFR

Proposed Rules:
4.....45676
435.....45998

17 CFR

180.....46090
210.....45287
240.....45287
249.....45287
259.....45287
274.....45287

Proposed Rules:
1.....45999, 46101
30.....46101
33.....46101
180.....46101
190.....46101

19 CFR

Proposed Rules:
10.....45758, 46112
191.....46113

20 CFR

404.....45878

21 CFR

5.....45294
310.....45310, 46067
510.....45984
520.....45984

Proposed Rules:
864.....46068
872.....46068
1401.....45353

24 CFR

91.....46068

888.....45468

26 CFR

1.....45568, 45660, 45711, 45878, 46243
43.....45713
602.....45711, 46243

Proposed Rules:

1.....45587
301.....45759

27 CFR

Proposed Rules:

9.....45588
17.....45357
19.....45357
70.....45357
170.....45357
194.....45357
197.....45357
250.....45357

29 CFR

1602.....45570
2602.....45713

30 CFR

914.....45985
917.....45295

32 CFR

Proposed Rules:

623.....46246

33 CFR

100.....45570, 45985

Proposed Rules:

151.....45591
164.....45662–45667
165.....45596

37 CFR

202.....45307

39 CFR

20.....45570
111.....45882

40 CFR

35.....45311
52.....45715
146.....46292
271.....45514, 45717–45722
272.....45575

Proposed Rules:

Ch. I.....45597
51.....46114
52.....45358, 45360
58.....46003
63.....45363
300.....45597, 45599

42 CFR

57.....45725
435.....46093

Proposed Rules:

417.....46119

43 CFR

Public Land Orders:

1567 (Revoked in part by PLO 6948).....45325
5712 (Revoked by PLO 6946).....45322
6944.....45321
6946.....45322
6948.....45324
6949.....45576
6950.....45725

45 CFR

1224.....45325

46 CFR

Proposed Rules:

35.....45667
197.....46126

47 CFR

0.....45747
73.....45577–45579
87.....45748
90.....45751

Proposed Rules:

73.....45601, 46132

48 CFR

30.....45422
52.....45878
202.....45422
204.....45422
208.....45422
210.....45422
214.....45326
215.....45422
216.....45422
219.....45422
223.....45422
225.....45422
226.....45422
227.....45422
228.....45422
231.....45422
232.....45422
236.....45422
237.....45422
239.....45422
242.....45422
245.....45422
252.....45422
253.....45422

Proposed Rules:

1512.....46007
1516.....46007
1552.....46007
5415.....45759
5452.....45759

49 CFR

107.....45446
171.....45442, 45446
172.....45446
173.....45446
174.....45446
176.....45446
177.....45446
178.....45446
179.....45446
180.....45446
214.....45446
571.....45327, 45422
1023.....45751

Proposed Rules:

552.....45759
571.....45760
1039.....45602

50 CFR

17.....45328
227.....45986
285.....45579
661.....45751
663.....45987, 46097
672.....45580, 45988
685.....45989

Proposed Rules:

17.....45761, 45762, 46007
672.....46133
675.....45602, 46133, 46139

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 5373/P.L. 102-377

Energy and Water Development Appropriations Act, 1993 (Oct. 2, 1992; 106 Stat. 1315; 31 pages)

H.R. 2950/P.L. 102-378

Technical and Miscellaneous Civil Service Amendments Act of 1992 (Oct. 2, 1992; 106 Stat. 1346; 16 pages)

Last List October 6, 1992

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VOL
57
SS
1
9
5
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Vol. 57 No. 196

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10-8-9
Vol. 57
Pages

10-8-92
Vol. 57 No. 196
Pages 46295-46476

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Problems with Federal agency subscriptions	523-5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 57, No. 196

Thursday, October 8, 1992

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Scientific Counselors Board, 46392
Superfund program:
Toxicological profiles; draft availability, 46393

Agriculture Department
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Forest Service

Animal and Plant Health Inspection Service
NOTICES
Genetically engineered organisms for release into environment; permit applications, 46370

Antitrust Division
NOTICES
National cooperative research notifications:
Ford Motor Co., 46408
Michigan Materials and Processing Institute, 46408
Network Management Forum, 46409
Petroleum Environmental Research Forum, 46409
Southwest Research Institute; correction, 46431
Switched Multi-Megabit Data Service Interest Group, 46409

Army Department
See Engineers Corps
NOTICES
Meetings:
Historical Advisory Committee, 46377
Science Board, 46377

Bonneville Power Administration
NOTICES
Environmental statements; availability, etc.:
Yakima River Basin Fisheries Project, 46379

Centers for Disease Control
NOTICES
Meetings:
Savannah River Site Environmental Dose Reconstruction Project, 46394
Tuberculosis transmission in health-care settings; revision of guidelines, 46394
Vital and Health Statistics National Committee, 46395

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
New York, 46371

Coast Guard
RULES
Drawbridge operations:
Louisiana, 46301, 46302
Oregon; correction, 46301
Regattas and marine parades:
Head of the Connecticut Regatta, 46300
Head of the Mississippi Regatta, 46300
PROPOSED RULES
Drawbridge operations:
Louisiana, 46361
NOTICES
Meetings:
Navigation Safety Advisory Council, 46424

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commission of Fine Arts
NOTICES
Meetings, 46376

Consumer Product Safety Commission
PROPOSED RULES
Hazardous substances:
Electrically operated toys or other electrically operated articles intended for use by children; video game exemption, 46349

Defense Department
See Army Department
See Engineers Corps
See Navy Department
NOTICES
Committees; establishment, renewal, termination, etc.:
DOD-DOE System Safety Red Team Advisory Committee, 46376
U.S. Military Academy Board of Visitors et al., 46376

Delaware River Basin Commission
PROPOSED RULES
Practice and procedure rules:
Administrative manual—
Electric generation or cogeneration projects review; hearings, 46354

Education Department
NOTICES
Meetings:
National Assessment Governing Board, 46377, 46378

Employment and Training Administration
NOTICES
Adjustment assistance:
Advanced Monobloc Corp., 46409
Brown Shoe Co., 46410
Compaq Computer Corp., 46410
Drillers, Inc., 46410
Fruehauf Trailer Operations, 46410

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
NOTICES
Mined geologic disposal system (MGDS) license application preparation packages; transmittal to NRC, 46379
Natural gas exportation and importation:
Wisconsin Power & Light Co., 46389

Engineers Corps
RULES
Danger zones and restricted areas:
Gulf Coast Homeports at Ingleside, TX, et al., 46303

Environmental Protection Agency
RULES
Air programs; fuel and fuel additives:
Reformulated gasoline standards—
Texas, 46316
Air quality implementation plans; approval and promulgation; various States:
Massachusetts, 46310, 46313
Minnesota, 46306
Wisconsin, 46309
Toxic substances:
Significant new uses—
Chemical substances, 46458
NOTICES
Agency information collection activities under OMB review, 46390
Meetings:
Border Environmental Plan Public Advisory Committee, 46391
Pesticide registration, cancellation, etc.:
Amitrole, 46448
Daminozide, 46436

Farm Credit System Insurance Corporation
NOTICES
Assistance to operating insured system banks; policy statement, 46391

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Boeing, 46348
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Computer generated/stored records, 46425
Product acceptance software; quality assurance controls, 46425
Environmental statements; availability, etc.:
Port Columbus International Airport, OH, 46426
Passenger facility charges; applications, etc.:
Pellston Regional Airport, MI, 46426

Federal Communications Commission
RULES
Radio broadcasting:
FM applications; temporary restriction removed, 46325
PROPOSED RULES
Common carrier services:
Video programming provision by telephone carrier; cross-ownership rules, 46366
Radio stations; table of assignments:
Alabama et al., 46367
California, 46368
Kansas, 46367
Minnesota, 46368
Missouri, 46369
Television broadcasting:
Advanced television (ATV) systems, 46367
NOTICES
Toll fraud issues; hearing, 46392

Federal Crop Insurance Corporation
RULES
Administrative regulations:
1990 Farm Act implementation; Social Security account numbers and employer identification numbers collection and storage, 46295

Federal Election Commission
PROPOSED RULES
Corporate and labor organization activity; membership association "member" definition, 46346

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Wisconsin Electric Power Co. et al., 46380
Hydroelectric applications, 46361
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Oklahoma Corporation Commission, 46381
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 46382
CNG Transmission Corp., 46382
Columbia Gas Transmission Corp., 46383
East Tennessee Natural Gas Co., 46383
Equitrans, Inc., 46384
Florida Gas Transmission Co., 46384
Granite State Gas Transmission, Inc., 46385
Kentucky West Virginia Gas Co., 46385
Mississippi River Transmission Corp., 46386
National Fuel Gas Supply Corp., 46386
Natural Gas Pipeline Co. of America, 46386
Northern Natural Gas Co., 46386
Sabine Pipe Line Co., 46387
Tennessee Gas Pipeline Co., 46387
Texas Eastern Transmission Corp., 46388
Texas Gas Transmission Corp., 46387
United Gas Pipe Line Co., 46388
Williston Basin Interstate Pipeline Co., 46389

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Craven County, NC, 46426

Federal Maritime Commission
RULES
Maritime carriers in foreign commerce:
Service contracts, 46318
NOTICES
Casualty and nonperformance certificates:
Phoenix Reisen GmbH, 46392
Phoenix Reisen GmbH et al., 46392

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 46430

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
RULES
Endangered and threatened species:
Ko'oko'olau, etc. (sixteen plants from Molokai, Lanai, HI), 46325

Smooth coneflower, 46340
NOTICES
Endangered and threatened species permit applications, 46405

Food and Drug Administration
NOTICES
Human drugs:
New drug applications—
Roche Pharmaceuticals; efficacy study implementation, 46395

Forest Service
NOTICES
Appeal exemptions; timber sales:
Southern Region, 46370

General Services Administration
RULES
Federal property management:
Governmentwide real property asset management; guidance, 46317

Geological Survey
NOTICES
Meetings:
Earth Observing System Land Processes Distributed Active Archive Center Science Advisory Panel, 46405

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Social Security Administration

Health Care Financing Administration
RULES
Medicaid and medicare:
Long-term care facilities (skilled nursing and intermediate care) requirements
Correction, 46431
PROPOSED RULES
Medicare and medicaid:
Medicare/medicaid provider agreement and supplier participation, 46362

Housing and Urban Development Department
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Housing-Federal Housing Commissioner, 46397
Assistant Secretary for Housing-Federal Housing Commissioner et al., 46401
General Counsel, 46398
Regional Administrators, 46401
Public and Indian housing:
"Step-Up" employment and training program, 46398

Indian Affairs Bureau
RULES
Financial activities:
Loans to Indians from Revolving Loan Fund; loan guaranty, insurance, and interest subsidy, 46470
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Southern Ute Indian Tribe, CO, 46434

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes:
Foreign corporations; earnings and profits
Correction, 46355
Procedure and administration:
Continuity of life of limited partnerships
Hearing, 46355

International Trade Administration
NOTICES
Antidumping:
Stainless steel butt-weld pipe and tube fittings from—
Japan, 46372
Antidumping and countervailing duties:
Administrative review requests, 46371

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Southern Pacific Transportation Co., 46406
Railroad services abandonment:
Consolidated Rail Corp., 46405

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
Browning-Ferris Industries, Inc., 46406
Forster, Leonard, 46407
Kampf, Raymond, et al., 46407
Prentiss Creosote & Forest Products, Inc., 46407
Thatcher Co., 46408

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Meetings:
Grand Junction District Advisory Council, 46402
Opening of public lands:
Montana, 46402
Oregon, 46403
Washington, 46403
Survey plat filings:
Wyoming, 46404
Withdrawal and reservation of lands:
New Mexico, 46404

National Archives and Records Administration
RULES
NARA facilities:
Motion picture, sound, and video research room procedures, 46304

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 46430

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Mack Truck, Inc., 46427

National Institutes of Health
NOTICES
Meetings:
National Institute of Allergy and Infectious Diseases, 46396
Research Grants Division study section, 46396

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 46344
NOTICES
Meetings:
Florida Keys National Marine Sanctuary Advisory Council, 46374
Permits:
Marine mammals, 46375

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Hayler, 46299
NOTICES
Meetings:
Chief of Naval Operations Executive Panel, 46377

Nuclear Regulatory Commission
PROPOSED RULES
Radiography licenses and radiation safety requirements for radiographic operations
CFR Part revision; workshop, 46345
NOTICES
Environmental statements; availability, etc.:
Carolina Power & Light Co., 46410
Meetings:
Nuclear Waste Advisory Committee, 46411
Reactor Safeguards Advisory Committee, 46411
SCDAP/RELAP5 Peer Review Committee, 46412
Applications, hearings, determinations, etc.:
Georgia Power Co., 46413
Northeast Nuclear Energy Co., 46413

Patent and Trademark Office
NOTICES
Senior Executive Service:
Performance Review Board; membership, 46376

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control
See Food and Drug Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 46414

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Municipal Securities Rulemaking Board, 46414
National Association of Securities Dealers, Inc., 46417
Participants Trust Co., 46418

Small Business Administration
NOTICES
Disaster loan areas:
California, 46420
Florida, 46421
Guam, 46421
Hawaii, 46421
Louisiana, 46421
Oklahoma, 46422
Pennsylvania et al., 46422
Rhode Island et al., 46422
South Dakota, 46422
Wisconsin, 46423
Interest rates; quarterly determinations, 46424
Meetings:
Investment Advisory Council, 46424
Meetings; regional advisory councils:
California, 46423
Colorado, 46423
Florida, 46423
Hawaii, 46423
North Carolina, 46424
Oregon, 46424
Tennessee, 46424

Social Security Administration
RULES
Supplemental security income:
Retroactive cash payments to ineligible individuals Correction, 46431

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Jersey Shore Savings & Loan Association, 46428
Peoples Federal Savings & Loan Association, 46428

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office
PROPOSED RULES
Practice before Internal Revenue Service; attorneys, certified public accountants, enrolled agents, and enrolled actuaries, 46356
NOTICES
Agency information collection activities under OMB review, 46427, 46428
Organization, functions, and authority delegations:
Customs Service, Commissioner, 46428

U.S. Commission on Improving Effectiveness of United Nations
See U.S. Commission on Improving Effectiveness of United Nations
NOTICES
Meetings, 46429

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Greek Miracle: Classical Sculpture from the Dawn of Democracy, the Fifth Century, B.C., 46429

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 46429

Separate Parts In This Issue

Part II
Department of Interior, Indian Affairs Bureau, 46434

Part III
Environmental Protection Agency, 46436

Part IV
Environmental Protection Agency, 46448

Part V
Environmental Protection Agency, 46458

Part VI
Department of Interior, Indian Affairs Bureau, 46470

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
400 46295

10 CFR
Proposed Rules:
34 46345

11 CFR
Proposed Rules:
110 46346
114 46346

14 CFR
Proposed Rules:
39 46348

16 CFR
Proposed Rules:
1500 46349
1505 46349

18 CFR
Proposed Rules:
401 46354

20 CFR
416 46431

25 CFR
101 46470
103 46470

26 CFR
Proposed Rules:
1 46355
301 46355

31 CFR
Proposed Rules:
10 46356

32 CFR
706 46299

33 CFR
100 (2 documents) 46300
117 (3 documents) 46301, 46302
334 46303
Proposed Rules:
117 46361

36 CFR
1254 46304
1258 46304

40 CFR
52 (4 documents) 46306
80 46316
721 46458

41 CFR
101 46317

42 CFR
447 46431
Proposed Rules:
431 46362
440 46362
442 46362
488 46362
489 46362
498 46362

46 CFR
514 46318
581 46318

47 CFR
73 46325
Proposed Rules:
63 46366
73 (6 documents) 46367–46369

50 CFR
17 (2 documents) 46325, 46340
672 46344

Rules and Regulations

Federal Register
Vol. 57, No. 196
Thursday, October 8, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 0198S]

General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) issues a new Subpart Q in chapter IV of title 7 of the Code of Federal Regulations (CFR) to provide for implementing amendments to the Federal Crop Insurance Act (FCI Act), made by the Food, Agriculture, Conservation, and Trade Act of 1990, with respect to the collection, use, and storage of Social Security Account Numbers (SSN) and Employer Identification Numbers (EIN). The intended effect of this rule is to implement rules affecting how the FCIC, direct insurance, and reinsured companies will collect, use, and store documents containing SSNs and EINs.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 2, 1997

James E. Cason, Manager, FCIC has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

James E. Cason, Manager, Federal Crop Insurance Corporation, certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities. This program is strictly voluntary. This regulation requires only that the participant provide the SSN or EIN. This regulation does not require or impose any requirement on the delivery agent or company that is not already required by the Privacy Act of 1974 (5 U.S.C. 552a). Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12778.

On November 28, 1990, the President signed into law the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Act). The 1990 Farm Act amendments to section 506 of the FCI Act constitute the basis of this rulemaking containing the requirements for the collection and use of SSN or EINs.

Section 506 of the FCI Act (7 U.S.C. 1506), as amended, directs the FCIC to require submission of an SSN or EIN as a condition of eligibility for participation in the multiple peril crop insurance program.

Further, as allowed by the FCI Act, each policyholder will be required to notify any other individual or entity that acquires or holds a substantial beneficial interest of 5% or more in such policyholder, of the requirements of the FCI Act and, if required by the FCIC, provide to the FCIC the name and SSN or EIN of the person holding the substantial interest.

The amendments also provide that: (1) Each policyholder will be required to furnish the insuring company or the FCIC the policyholder's SSN or EIN; (2) each reinsured company will be required to furnish to the FCIC the SSN or EIN of each of its insureds whose policy is reinsured by the FCIC; and, (3) the SSN or EIN's and related records must be maintained so as to protect their confidentiality by all parties.

Further, and with respect to the applicability of these regulations to companies under an Agency Sales and Service Contract or a Standard Reinsurance Agreement, the Privacy Act of 1974 (5 U.S.C. 552a) requires at subsection (m) that:

> When an agency [FCIC] provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system * * * [A]ny such contractor and any employee of such contractor * * * shall be considered to be an employee of an agency.

The Privacy Act of 1974 reflects the concern of Congress over the government's potential to invade individual privacy in the name of information collecting. The principle focus of the Privacy Act, for contracting companies and reinsured companies, is on the individual's access to certain records, the limitations on disclosure of records, safeguards to protect records, and remedial measures for violations of the Act.

This regulation requires the submission of the SSN or EIN and

prescribes the procedures the FCIC will follow when participants submit their SSN or EIN to be eligible to participate in the crop insurance program. Previously, submission of SSN or EIN's was voluntary for FCIC program purposes and no penalty was imposed on participants in the crop insurance program who failed to provide this number. Under the mandate of the FCI Act, the FCIC, direct insurance, and reinsured companies will now begin collecting SSN or EIN's to identify the policyholders. The following Privacy Act Statement will be included with any document requiring an SSN or EIN by either the FCIC or the private insurance company:

Collection of Information and Data (Privacy Act)

To the extent that the information requested herein relates to the information supplier's individual capacity as opposed to the supplier's entrepreneurial (business) capacity, the following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552(a)). The authority for requesting information to be furnished on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) and the Federal Crop Insurance Corporation Regulations contained in 7 CFR Chapter IV.

The information requested is necessary for the insurance company and the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, provide for reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums, and pay indemnities. Collection of the Social Security Account Number (SSN) or the Employer Identification Number (EIN) is authorized by section 506 of the Federal Crop Insurance Act (7 U.S.C. 1506), as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Act) (Pub. L. 101–624, 104 Stat. 3359), and is required as a condition of eligibility for participation in the Federal Crop Insurance program. The primary use of the SSN or EIN is to correctly identify you as a policyholder within the systems maintained by the Corporation. Failure to furnish that number will result in you being denied program participation and benefits. Furnishing the information required by this form is voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, ineligibility for insurance, and a unilateral determination of the amount of premium due.

The information furnished on this form may be used by federal agencies, FCIC employees, and contractors who require such information in the performance of their duties. The information may be furnished to: FCIC contract agencies, employees, and loss adjusters; reinsured companies; other agencies within the United States Department of Agriculture the Internal Revenue Service; the Department of Justice, or other federal or State law enforcement agencies; credit reporting agencies and collection agencies; other federal agencies as requested in computer matching programs, and in response to judicial orders in the course of litigation.

Pursuant to the FCI Act, FCIC exercises its right to require those holding 5% or more interest in such policyholders to supply their SSN or EIN to the FCIC, direct insurance, or reinsured company.

Furthermore FCIC, will; (1) maintain a system of records (for the FCIC, direct insurance, and reinsured companies); (2) collect, use, and store SSN and EINs; (3) clarify the FCIC's and the government contracting agents' authority to use and disclose SSN and EINs and (4) describe the procedures to be used to destroy or discontinue use of EIN and SSNs.

On Thursday, July 9, 1992, FCIC published a notice of proposed rulemaking in the **Federal Register** at 56 FR 30430, proposing rules affecting how the FCIC, direct insurance and reinsured companies will collect, use, and store documents containing Social Security Account Numbers and Employer Identification Numbers.

Following publication of the proposed rule, the public was given 15 days to submit written comments, data, and opinions. Comments were received from insurance companies and their legal representatives.

A summary of concerns and comments addressed to FCIC during the comment period is as follows:

1. *Comment:* Clarification was requested for the procedures of following the rule and penalties under civil sanctions which could imposed.

FCIC Response: The sanctions which may be imposed for failure to follow the requirements are statutory and will be contained in procedures and as warnings on documents which will contain the EIN and SSN. These sanctions range from denial of insurance for failure to supply your SSN or EIN on the application to criminal penalties under 18 U.S.C. 1014 if an individual gives a false number with the intent of obtaining benefits under the program to which they are not entitled.

2. *Comment:* Clarification of those authorized by law to collect Social Security and Employer Identification Numbers was requested.

FCIC Response: The Manager has the statutory authority to collect Social Security and Employer Identification Numbers and may delegate this authority. This rule serves as the Manager's delegation of authority to officers or employees of FCIC, and private insurance companies whose duties and responsibilities require access to SSN or EINs in the administration of the FCI Act. It has also been made clear in the rule that authorized persons extend to auditors and investigators of the United States as well as contractors and subcontractors of the private insurance companies.

3. *Comment:* A commenter inquired if the FCI Act precludes agents and loss adjusters from access to social security numbers if those agents and adjusters are independent contractors and not employees?

FCIC Response: The rule has been changed so as to make it clear that these persons are authorized persons under the rule. Agents and loss adjusters are established as authorized persons with access to social security and employer identification numbers collected.

4. *Comment:* Since most policies by FCIC are sold under an Agency Sales and Service Contract, a commenter suggested embracing sales and service contractors in the rule.

FCIC Response: Agency sales and service contractors are private insurance companies and are subject to this rule.

5. *Comment:* FCIC's officers and employees are subject to the Department of Agriculture's Privacy Act regulations, 7 CFR 1.110 *et seq.* A commenter asked if the FCIC's employees and officers can be subject to this regulation as well as to the proposed regulation, and if both sets of regulations are consistent.

FCIC Response: FCIC officers and employees must follow both sets of regulations. FCIC's rule incorporates many stipulations of the Privacy Act. The rules should not conflict but to the extent that they do, the specific FCIC rule would control. FCIC officers and employees will follow Privacy Act guidelines as they follow FCIC's regulation.

6. *Comment:* A commenter requested that the terms "agency sales and service contractor" and "private insurance company" be defined in the rule.

FCIC Response: FCIC has defined both terms in the final rule.

7. *Comment:* A commenter suggested that the term "Government contract employees" be amended to reflect the fact that in many cases adjusters are independent contractors, not employees and to include sales agents or representatives who also are independent contractors.

FCIC Response: Independent contractors, such as loss adjusters and sales agents, are included in the category of "authorized persons" in their capacity as subcontractors to the contractor and are therefore considered "Government contract employees" within the meaning of 5 U.S.C. 552a, the Privacy Act of 1974. The rule has been revised to make this point clear.

8. *Comment:* A commenter inquired if an application for insurance could be accepted if a Social Security or Employer Identification Number is not provided.

FCIC Response: The statute requires this number before processing of any insurance application. Therefore, an applicable will not be accepted if this information is not included. The rule has been revised to make this fact clear.

9. *Comment:* If a policyholder disagrees with an adjuster's determination of production to count or redetermination of the number of acres planted or their location and the documents containing that information also contain the policyholder's social security number, does the policy holder have a new forum from appeal of the determination? Should the FCIC's proposed appeal procedures be amended to preempt and exclude this possibility?

FCIC Response: An individual has a right to appeal determinations made by FCIC. However, separate rights do not exist for each individual determination made. No new avenue of appeal is created by this system. FCIC was always required to comply with the provisions of the Privacy Act, and to the extent that rights exist under the Privacy Act that do not exist under the FCI Act, those procedures have always existed. These regulations do not create any appeal right which did not exist before.

10. *Comment.* A commenter asked why "ASCS" is mentioned in the rule § 400.410(a)).

FCIC Response: "ASCS" is mentioned in the rule because ASCS sells FCIC Crop Insurance policies.

11. *Comment* One commenter requested clarification of the parties involved in the data collection process.

FCIC Response: The final rule has been revised to clarify the identity of the parties involved in the data collection process.

12. *Comment:* A commenter asked if the statute precludes agents and loss adjusters from access to social security numbers if those agent and adjusters are independent contractors and not employees.

FCIC Response: The final rule has been revised to make it clear that subcontractors, contractors and agents are all included in the rule, and to the extent that access to information is required, are included as authorized persons.

13. *Comment:* A commenter requested an extension of the comment period for this rule.

FCIC Response: The statute is mandatory and FCIC is required to publish this rule as quickly as possible so as to require the SSN and EIN for the 1993 crop year. FCIC believes that a 15 day comment period was sufficient for the reasons set out in the proposed rule. The reason given for the extension of the comment period does not override the benefits to be obtained by implementing this rule as quickly as possible.

List of Subjects in 7 CFR Part 400

Crop Insurance; General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identifications Numbers.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation (FCIC) adds a new subpart Q to its General Administrative Regulations to be known as 7 CFR part 400, subpart Q, General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers, to read as follows:

PART 400—GENERAL ADMINISTRATION REGULATIONS

Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

Sec.

400.401 Basis and Purpose and Applicability.
400.402 Definitions.
400.403 Required System of Records.
400.404 Policyholder Responsibilities.
400.405 Company Responsibilities.
400.406 Restricted Access.
400.407 Safeguards and Storage.
400.408 Unauthorized Disclosure.
400.409 Penalties.
400.410 Obtaining Your Records.
400.411 Disposition of Records.
400.412 OMB Control Numbers.

Authority: 7 U.S.C. 1506, 1508.

Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

§ 400.401 Basis and purpose and applicability.

(a) The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, (7 U.S.C. 1501 et seq.) (FCI Act), as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Act) (Pub. L. 101–624, 104 Stat. 3359), to prescribe procedures for the collection, use, and confidentiality of Social Security Account Numbers (SSN) or Employer Identification Numbers (EIN) and related records.

(b) These regulations are applicable to:

(1) All holders of all crop insurance policies issued by FCIC under the FCI Act and all private insurance companies, their contractors and subcontractors including past and present officers, agents, and employees of such companies, their contractors and subcontractors, selling and servicing such policies under an FCIC Agency Sales and Service Contract, a Loss Adjustment Contract, or some other similar contract.

(2) All holders of crop insurance policies sold by private insurance companies and reinsured by the FCIC under the provisions of an FCIC Standard Reinsurance Agreement or other FCIC reinsurance agreement; and all private reinsured companies, their contractors and subcontractors, including past and present officers and employees of such companies, their contractors and subcontractors;

(3) Any agent or company, or any past or present officer, employee, contractor or subcontractor of such agent or company, under contract to private insurance companies for loss adjustment or other purposes related to the crop insurance programs insured or reinsured by FCIC; and

(4) All past and present officers, employees, contractors, and subcontractors of the Federal Crop Insurance Corporation.

§ 400.402 Definitions.

(a) *Agency Sales and Service Contractor*—Any private insurance company selling FCIC policies (direct sales).

(b) *Access*—with respect to authorized persons, means the ability of the authorized person to read, review, or use for actions authorized under the FCI Act, the records containing the SSN or EIN.

(c) *ASCS*—Agricultural Stabilization Conservation Service, United States Department of Agriculture.

(d) *Applicant*—The person or entity that submitted the application for a crop insurance policy issued by the FCIC, or issued by a reinsured company under the FCI Act.

(e) *Authorized person*—An officer or employee of the FCIC, insurance company, reinsured company, or ASCS whose duties require access in the administration of the FCI Act.

(f) *Collection*—Act of obtaining and recording a SSN or EIN from participants in the crop insurance program.

(g) *Disposition of records*—the act performed by the insurance company or reinsured company of removing records containing a participant's SSN or EIN and disposition of such records by the insurance companies, or reinsured companies.

(h) *EIN*—a participant's Employer Identification Number required under section 6109 of the Internal Revenue Code of 1986.

(i) *FCI Act*—the Federal Crop Insurance Act as amended (7 U.S.C. 1501 *et seq.*).

(j) *FCIC*—Federal Crop Insurance Corporation.

(k) *Government contract employees*—authorized persons employed by a direct insurance or reinsured company, former officers or employees of such company, and loss adjusters.

(l) *Past officers and employees*—any officer or employee of the direct insurance company, reinsured company, or corporation who leaves the employ of such company or corporation subsequent to the official effective date of this rule.

(m) *Policyholder*—means an applicant accepted by the FCIC, the direct insurance company, or the reinsured company.

(n) *Private insurance company*—a direct insurance company selling FCIC policies under an Agency Sales and Service Contract.

(o) *Reinsured company*—a private insurance company having a Standard Reinsurance Agreement, or other reinsurance agreement, with the FCIC whose crop insurance policies are approved and reinsured by the FCIC under such agreements.

(p) *Related records*—any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom an SSN or EIN is maintained in a system of records.

(q) *Restricted access*—restricting review of all records maintained by authorized persons to only the authorized persons who need access to such records for official business under the FCI Act.

(r) *Retrieval of records*—retrieval of an individual's records by a participant's SSN or EIN.

(s) *Safeguards*—methods of security to be taken by the FCIC, the direct insurance company, and the reinsured companies to protect a participant's SSN or EIN from unlawful disclosure and access. Records containing the SSN or EIN must be secured in locked file storage, secured computer data files, or similar safe storage.

(t) *SSN*—an individuals's Social Security Number.

(u) *Storage*—the secured storing of records kept by the FCIC, direct insurance, or reinsured companies on computer diskettes (soft and hard drives), computer printouts, magnetic tape, index cards, microfiche, micro film, etc.

(v) *Substantial beneficial interest*—an interest of five percent (5%) or more in an applicant or policyholder.

(w) *System of Records*—records maintained by the FCIC, direct insurance companies, or reinsured companies from which information is retrieved by a personal identifier including the SSN, EIN, or name.

§ 400.403 Required System of Records.

Thirty days after the publication in the **Federal Register** of this rule, direct insurance companies and reinsured companies are required to implement a system of records for obtaining, using, and storing documents containing SSN or EIN data. This data should include: name; address; city and state; SSN or EIN; and policy numbers which have been used by the FCIC, the direct insurance company, or the reinsured companies.

§ 400.404 Policyholder responsibilities.

(a) The policyholder or applicant for crop insurance must provide a correct SSN or EIN to the FCIC, the direct insurance company, the reinsured company, or ASCS to be eligible for insurance. The SSN and EIN will be used by the FCIC, the direct insurance companies, and the reinsured companies in:

(1) Determining the correct parties to the agreement or contract;

(2) collecting premiums;

(3) determining the amount of indemnities;

(4) establishing actuarial data on an individual policyholder basis; and

(5) determining eligibility for program benefits.

(b) If the policyholder or applicant for crop insurance does not provide the correct SSN or EIN on the application and other forms where such SSN or EIN is required, the FCIC, direct insurance company, or reinsured company will reject the application.

(c) The policyholder is required to provide to FCIC, the insurance company, the reinsured companies, and ASCS the name and SSN or EIN of any individual or company holding or acquiring access to a substantial beneficial interest in such policyholder.

§ 400.405 Company responsibilities.

The insuring or reinsured company is required to collect and record the SSN or EIN on each application or any other form required by the FCIC.

§ 400.406 Restricted access.

The Manager, other officer, or employee of the FCIC or authorized person (as defined in § 400.402(d)) may have access to the EIN's and SSN's obtained pursuant to § 400.404 only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the FCI Act in accordance with § 400.404 of this part. These numbers may be used in administering the FCI Act.

§ 400.407 Safeguards and storage.

(a) Access to records identifying an applicant's SSN or EIN is restricted as provided in § 400.406. Records must be secured in locked file storage, secured computer data files, or similar safe storage. An authorized person, as defined in § 400.402(d) must maintain hardcopy records in file folders and, when not in use, such copies must be:

(1) Locked in a cabinet or safe;

(2) On a computer accessed only through a secure computer system procedure;

(i) Locked; or

(ii) On a computer accessed only through a secure computer system procedure.

(b) Records identifying a SSN or EIN stored on computer printouts, hard or floppy diskette, microfiche, or index cards must be kept in locked file cabinets, safes, or in secured computer systems.

§ 400.408 Unauthorized disclosure.

Anyone having access to the records identifying a participant's SSN or EIN will abide by the provisions of section 205(c)(2)(C) of the Social Security Act

(42 U.S.C. 405(c)(2)(C)), and section 6109(f), Internal Revenue Code of 1986 (26 U.S.C. 6109(f) and the Privacy Act of 1974 (5 U.S.C. 552a). All records are confidential, and are not to be disclosed to unauthorized personnel.

§ 400.409 Penalties.

Unauthorized disclosure of SSN's or EIN's by any person may subject that person, and the person soliciting the unauthorized disclosure, to civil or criminal sanctions imposed under various federal statutes, including 26 U.S.C. 7613, 5 U.S.C. 552a, and 42 U.S.C. 408.

§ 400.410 Obtaining personal records.

Policyholders in the crop insurance program will be able to review or correct their records, as provided by the Privacy Act. Participants may request their records by:

(a) Mailing a written request, with their signature, to the headquarters office of the FCIC; the field office, ASCS; the direct insurance company; or reinsured company; or

(b) Making a personal visit to the above mentioned establishments and showing valid identification.

§ 401.411 Disposition of records.

The private insurance company, either direct or reinsured, will retain all records of policyholders for a period of not less than five (5) years. If a policyholder's insurance has not been renewed within a five year period from a final action on a policy (such as termination, loss adjustment, or collection), the direct insurance company or the reinsured company will transfer such records to FCIC.

§ 400.412 OMB control numbers.

The principal information collection activity associated with this rule (application) has been approved by the Office of Management and Budget (OMB) under control number 056–003. Other OMB control numbers are contained in subpart H of part 400, title 7 CFR.

Done in Washington, DC on September 9, 1992.

David L. Bracht,

Associate Manager, Federal Crop Insurance Corporation.

[FR Doc. 92–24566 Filed 10–7–92; 8:45 am]

BILLING CODE 3410–08–M

DEPARMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS HAYLER (DD 997) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS HAYLER (DD 997) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific rules of 72 COLREGS: That portion of Annex I section 3(a) pertaining to the placement of the forward masthead light in the forward quarter of the vessel; that portion of Annex I, Section 3(a) pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. The entry for USS HAYLER (DD 997) in Table Five of § 706.2 is revised to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I sec. 2(f)	Forward masthead light not in forward quarter of ship Annex I sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light Annex I, sec. 3(a)	Percentage horizontal separation attained
USS HAYLER	DD 997	N/A	X	X	44

Dated: September 10, 1992.
Approved:
J.E. Gordon,
Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.
[FR Doc. 92-24477 Filed 10-7-0; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 92-23]

Special Local Regulations: Head of the Mississippi Regatta (Mississippi River Mile 850.0 to Mile 853.0)

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Head of the Mississippi Regatta. This event will be held near Minneapolis, Minnesota on the Mississippi River from mile 850.0 to mile 853.0 on October 10, 1992. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on October 10, 1992 from 7:30 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: Ensign D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103-2832. The telephone number is (314) 539-3971, Fax (314) 539-2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. There was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafter of these regulations is Ensign D.R. Dean, Project Officer, Second Coast Guard District Boating Safety Division.

Discussion of Regulations

The Head of the Mississippi Regatta consists of rowing shell boats, starting at the south end of the course near the Lake St. Bridge and finishing upstream, just south of the N.P.R.R. trestle bridge. There will be 19 such races taking place on Saturday, October 10, 1992 between 7:30 p.m. and 6 p.m. from mile 850.0 to 853.0. These regulations are required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regulated area. The river will be closed during portions of the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area.

These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (Water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-TO223 is added, to read as follows:

§ 100.35-T0223 Head of the Mississippi Regatta.

(a) *Regulated Area.* The Mississippi River between mile 850.0 and mile 853.0

(b) *Special Local Regulations.* (1) The U.S. Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size, speed limitations, and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier that the announced termination time.

(c) *Effective Dates.* These regulations are effective from 7:30 a.m. to 6 p.m., on October 10, 1992, local time.

Dated: September 25, 1992.
N.T. Saunders,
Rear Admiral (Lower Half), U.S. Coast Guard, Commander, Second Coast Guard District.
[FR Doc. 92-24561 Filed 10-7-92; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CGD1 92-121]

Head of the Connecticut Regatta, Cromwell, Portland and Middleton, CT

AGENCY: Coast Guard, DOT.

ACTION: Implementation notice.

SUMMARY: This notice puts into effect the permanent regulation, 33 CFR 100.105, for the Head of the Connecticut Regatta to be held on Sunday, October 11, 1992, from 9 a.m. to 6 p.m. The regulation is needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.105 are effective from 9 a.m. to 6 p.m. on October 11, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8311.

DRAFTING INFORMATION: The principal persons involved in drafting this document are LTJG E.G. Westerberg, Project Manager, First Coast Guard District Boating Safety Division, and LCDR J.D. Stieb, Project Attorney, First Coast Guard District Legal Office.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1992 running of the Head of Connecticut Regatta. The Regulated area is closed to all transiting vessel traffic during the effective period of regulation, except for escorted passages as described in the text of the regulation. The regulated area is that section of the Connecticut River between the southern tip of Gildersleeve Island and Light Number 87. Further public notification, including the full text of the regulation will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners. The full text of this regulation is found in 33 CFR 100.105.

Dated: September 29, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 92–24563 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD13–92–11]

Drawbridge Operation Regulations; Willamette River, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: The temporary final rule to test changes in operation of the upper deck drawspan of the Steel Bridge published August 28, 1992, at 57 FR 39118 requires two corrections. This correction adds the language omitted from the temporary final rule.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch at (206) 553–5864.

Correction

Page 39119, in the third column, in § 117.897, in paragraph (5), line 1, the word "draw" is corrected to read "upper deck drawspan".

Page 39120, in the first column, in § 117.897, in paragraph (5), line 10, the word "Steel" is preceded by the words "upper deck of the".

Dated: October 2, 1992.

John A. Pierson,

Captain, U.S. Coast Guard, Commander, 13th Coast Guard District, Acting.

[FR Doc. 92–24560 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD8–92–26]

Temporary Drawbridge Operation Regulations; Bayou Dularge, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the Terrebonne Parish School Board and the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is implementing temporary regulations for sixty (60) days, from August 31 through October 30, 1992, for the State Route 315 Bayou Dularge drawbridge over the Gulf Intracoastal Waterway, mile 59.9, at Houma, Terrebonne Parish, Louisiana, by extending the 7 a.m. to 8:30 a.m. closure by 15 minutes to 6:45 a.m. to 8:30 a.m. The afternoon closure of 4:30 p.m. to 6 p.m. will remain the same. The temporary change is being made to accommodate school bus traffic due to a new school starting schedule that has been implemented for the current school year. This action will accommodate the needs of school bus traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This temporary final regulation becomes effective on August 31, 1992 and terminates on October 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: This temporary final regulation is published in accordance with 33 CFR 117.43 in order to evaluate the suggested change in the present regulation. In accordance with 5 U.S.C. 533, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since implementation of this regulation will permit school bus traffic to maintain a schedule that is compatible with the new school starting schedule which began on August 18, 1992.

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Drafting Information

The drafters of the regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Economic Assessment and Certification

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11304: February 26, 1979).

The economic impact of this temporary final rule is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the regulated periods there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the temporary closure period should involve little or no additional expense to them. Since the economic impact of this temporary final regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental

This temporary final rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be

categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking document.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. From August 31, 1992 through October 30, 1992, § 117.451 is amended by revising paragraph (c), by redesignating existing paragraphs (d) and (e) as paragraphs (e) and (f) respectively, and by adding new paragraph (d), as follows:

Note: Because this is a temporary rule, this change will not be codified in the CFR.

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(c) The draws of the East Main Street Bridge, mile 57.5, and East Park Avenue bridge, mile 57.6, at Houma, shall open on signal; except that, the draws need not be opened for passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

(d) The draw of the Bayou Dularge bridge, mile 59.9 at Houma, shall open on signal; except that, from August 31, through October 30, 1992, the draw need not be opened for passage of vessels Monday through Friday except holidays from 6:45 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

* * * * *

Dated: September 23, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 92–24562 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD8–92–15]

Drawbridge Operation Regulations; Bayou Des Allemands, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge on LA 631, across Bayou Des Allemands, mile 13.9, at Des Allemands, in St. Charles Parish, Louisiana, by requiring at least four hours advance notice for an opening of the draw. The present regulation requires that the draw open on signal; except that from 9 p.m. to 5 a.m. the draw opens on signal if at least 12 hours notice is given.

This action will provide relief to the bridge owner and should still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On June 3, 1992, the Coast Guard published a proposed rule (57 FR 23363) concerning this amendment. The Commander, Eighth Coast Guard District also published the proposal as a Public Notice dated June 26, 1992. Interested parties were given until July 6, 1992 and August 10, 1992, respectively, to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Comments

Two letters were received in response to Public Notice No. CGD8–09–92 issued on June 26, 1992. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service offered no objection to the proposed regulation. Since there were no objections to the proposal the Coast Guard is publishing this Final Rule.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This final regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the regulated period will eliminate delays in their passage through the bridge and should involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environment

This final rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Part 117 is amended by revising Section 117.439 to read as follows:

§ 117.439 Des Allemands Bayou.

The draw of the S631 bridge, mile 13.9 at Des Allemands, shall open on signal if at least four hours notice is given.

Dated: September 25, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 92–24565 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas for Gulf Coast Homeports at Ingleside, TX; Mobile, AL and Pascagoula, MS

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing naval restricted areas in the waters of the Gulf of Mexico at the Naval Homeports located at Ingleside, Texas; Mobile, Alabama and Pascagoula, Mississippi. The purpose of the restricted areas is to reduce safety hazards and security risks and protect persons and property from the dangers encountered in these areas.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is hereby establishing restricted areas at each of the Navy Gulf Coast Homeports located at Ingleside, Texas; Mobile, Alabama and Pascagoula, Mississippi. The restricted areas encompass the waters surrounding the Naval Stations and piers where extensive Naval operations take place. The proposed restricted areas are used extensively by U.S. Naval ships and commercial vessels under contract to the Navy, in daily operations around the pier. The piers are used to provide fuel, maintenance and other services for these vessels. The restricted areas are essential to protect persons and property from the dangers associated with these operations and safeguard the area from accidents, sabotage and other subversive acts.

On July 22, 1992, the Corps published the proposed amendments to the naval restricted areas in the Notice of Proposed Rulemaking Section of the **Federal Register** (57 FR 32474–32475), with the comment period expiring on August 21, 1992. We received no comments. However, an omission was made in the proposed Naval Station, Pascagoula regulation in 334.786(b), The regulations. The following prohibition was omitted in the proposed rule "* * * mooring, anchoring, fishing or recreational boating within 500 feet of any quay, pier, wharf, or levee along the Naval Station northern shoreline." The prohibition on entry into the area within 500 feet of Government properties along the Naval Station northern shoreline was widely publicized at the local level by a public notice issued by the Mobile District Engineer on December 12, 1990. Furthermore, the entire restricted area (including the area "within 500 feet of any quay, pier, wharf, or levee along the Naval Station northern shoreline") is subject to closure at any time by the Commanding Officer under these regulations.

Therefore, we have determined that further public comment on this subsection is unnecessary and impracticable and subparagraph (b)(2) is added.

Economic Assessment and Certification

This rule is being issued with respect to a military function of the Department of Defense and the provisions of E.O. 12291 do not apply.

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities i.e., small businesses and small government jurisdictions. It has been determined that these final rules will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps of Engineers is amending part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Part 334 is amended by adding § 334.782, to read as follows:

§ 334.782 Mobile Naval Station, Mobile, Alabama; Naval restricted area.

(a) *The area.* The waters of Mobile Bay beginning at a point at latitude 30°31'25.9" N, longitude 88°05'25.8" W, thence easterly to latitude 30°31'26" N, longitude 88°04'59.2" W, thence northerly to latitude 30° 31'40.5" N, longitude 88°04'59.3" W, thence south-southwesterly along the shoreline to the point of beginning.

(b) *The regulations.* Mooring, anchoring, fishing or recreational boating shall not be allowed within the restricted area. Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the commanding officer, naval station, Mobile and such agencies as he/she shall designate.

3. Part 334 is amended by adding § 334.786, to read as follows:

§ 334.786 Pascagoula Naval Station, Pascagoula, Mississippi; restricted area.

(a) *The area.* The waters of Pascagoula Harbor beginning at a point at latitude 30°20'18" N, longitude 88°34'50.3" W, thence northerly to latitude 30°20'34.3" N, longitude 88°34'51.8" W, thence easterly to latitude 30°20'34.3" N, longitude 88°34'9.6" W, thence southerly to latitude 30°20'19.5" N, longitude 88°34'9.6" W, thence westerly along the shoreline to the point of beginning.

(b) *The regulations.* (1) Mooring, anchoring, fishing or recreational boating shall not be allowed within the restricted area when required by the Commanding Officer of the Naval Station Pascagoula to safeguard the installation and its personnel and property in times of an imminent security threat; during special operations; during natural disasters; or as directed by higher authority.

(2) Mooring, anchoring, fishing, or recreational boating shall not be allowed at any time within 500 feet of any quay, pier, wharf, or levee along the Naval Station northern shoreline.

(3) Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, naval station, Pascagoula and such agencies as he/she shall designate.

4. Part 334 is amended by adding § 334.802, to read as follows:

§ 334.802 Ingleside Naval Station, Ingleside, Texas; restricted area.

(a) *The area.* The waters of Corpus Christi Bay beginning at a point at latitude 27°49'13.6" N, longitude 97°12'5.7" W, thence southerly to latitude 27°49'7.3" N, longitude 97°12'5.4" W, thence south-southwesterly to latitude 27°49'01" N, longitude 97°12'39.4" W, thence north-northeasterly to latitude 27°49'02.4" N, longitude 97°12'48.3" W, thence north-

northeasterly to latitude 27°49'14.9" N, longitude 97°12'42.7" W, thence easterly along the shoreline to the point of beginning.

(b) *The regulations.* Mooring, anchoring, fishing or recreational boating shall not be allowed within the restricted area. Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Station, Ingleside and such agencies as he/she shall designate.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-24879 Filed 10-7-92; 8:45 am]

BILLING CODE 3710-02-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1254 and 1258

RIN 3095-AA19

Use of Motion Picture Research Room; Self-Service Copying

AGENCY: National Archives and Records Administration.

ACTION: Final rule and interim final rule.

SUMMARY: The National Archives and Records Administration (NARA) is revising its regulations in 36 CFR part 1254 on use of the Motion Picture, Sound and Video Research Room to allow self-service copying of unrestricted motion picture, video, and audio holdings under controlled conditions. This rule modifies the ban on self-service copying imposed by the NARA final rule published on November 19, 1991, at 56 FR 58311. NARA is also promulgating an interim rule setting fees in 36 CFR part 1258 for self-service copying on NARA-provided equipment. This rule will affect researchers who use motion picture, video, and audio holdings in the National Archives.

DATES: The effective date for this final rule and interim rule is October 8, 1992.

Comments on the changes to part 1258 must be received by NARA by November 9, 1992.

ADDRESSES: Submit comments on the amendments to part 1258 to Director, Program Planning and Congressional Liaison Division (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at 202-501-5110.

SUPPLEMENTARY INFORMATION: On May 28, 1992, NARA published a notice of proposed rulemaking (57 FR 22447) to amend the "clean research room" policy in effect in the Motion Picture, Sound, and Video Research Room in the National Archives Building. A public meeting was held on June 19, 1992, at the National Archives Building to answer questions about the proposed rule. Approximately 20 individuals attended the public meeting. Seventeen written comments were received. All comments received careful consideration in the development of this final rule. Following is a discussion of the major issues raised in the public meeting and written comments:

Appointments

The proposed rule stated that viewing stations would be available on a first-come, first-served, basis. When other researchers were waiting to use a station, a 4-hour limit would be imposed on use of the stations. Eight comments addressed the need for appointments, particularly for researchers coming from outside the Washington, DC, area. Several commenters suggested that half-day appointments be permitted. One commenter recommended full-day appointments. Another commenter suggested a mix of reserved and walk-in stations.

NARA proposed the first-come, first-served system as a fair means of providing access to the limited number of viewing stations in the research room. We recognize, however, that guaranteed access on specific dates is important to a number of researchers. We have decided, therefore, to make the following modifications in this final rule.

Viewing stations in both the unrestricted area and the restricted area of the Motion Picture, Sound, and Video Research Room will be made available on a first-come, first-served basis from 8:45 am to 1:45 pm., Monday through Friday. The restricted area stations and unrestricted area film stations may be reserved by advance appointment for use from 2 pm to 5 pm., Mondays through Fridays. Audio and video stations in both the restricted area and the unrestricted area may be reserved by advance appointment for use from 2 pm to 10 pm., Mondays through Fridays, and from 8:45 am to 5 pm., on Saturdays. Stations in both areas of the research room that have not been reserved will be made available on a first-come, first-served basis until 5 pm. Film viewing stations will not be available during the extended evening and Saturday hours because use of the equipment must be monitored by Motion Picture, Sound, and Video Recording Branch staff; these staff members are not available during the extended hours. The research room will be open during the extended evening and Saturday hours for reserved use of the audio and video viewing stations. Audio titles and restricted video titles must be requested and pulled in advance of the extended hours. No consultations will be available. The research room will be closed if there are no confirmed scheduled reservations.

The system for making appointments will be similar to the system now in effect. On the first working day of the month, NARA will begin accepting appointments for the following month and will continue to accept appointments for that month until all appointments are taken. For example, on October 1, 1992, NARA will begin accepting appointments for the entire month of November 1992. Because NARA must schedule staff from other research rooms to work the extended hours, reservations for evening and Saturday appointments on audio and video stations must be made at least two days before the date of use. NARA will accept later reservations only if at least one confirmed reservation has been made and staff already has been scheduled to work the extended hours.

Researchers may make up to six appointments each month. Appointments must be confirmed two days in advance and unconfirmed appointments will be canceled. Appointments will be held for 15 minutes; after that time on weekdays, the station will revert to first-come, first-served status. First-time researchers who must obtain a researcher identification card are encouraged to do so at least 15 minutes before the appointment or to check in with the research room attendant before going to the second floor to obtain the researcher identification card.

We believe that the system outlined here addresses the concerns expressed in the comments. Researchers will be able to reserve use of a station for at least 3 hours each day (8 hours for audio and video stations). Film stations are not as heavily used as the video stations; we anticipate that researchers with reservations for a film station often will be able to extend their period of use by arriving at the research room before the reserved time. With the addition of Saturday reservations, the number of potential reservations for the more heavily used video stations will increase over the present availability.

Copying Equipment Provisions.

The proposed rule specified that one piece of copying equipment would be allowed into the unrestricted area of the research room and defined that piece as

one recording device (videocassette recorder, audio recorder, or video camera) and the video and audio cables to connect the personal device to NARA-provided viewing equipment. Six individuals objected to this provision, suggesting that other accessory devices were necessary to make the most useful copy for the researcher's purpose. The purpose of the proposed provision was to allow effective supervision of the small and congested unrestricted areas of the research room. Based on the comments, we believe that our purpose will be accomplished and user needs will be better accommodated without a specific limit on the type and number of pieces of equipment that can be used in the research room. We have modified § 1254.26(h)(2) to require that all equipment, including cabling and accessory devices, brought into the unrestricted area of the research room must be placed on the small cart or table adjacent to each station. The cart or table is approximately 18 inches by 24 inches. At film viewing stations, a tripod holding a video recording camera may be placed on the floor in front of the flatbed; other equipment must be placed on the small table. Equipment (except tripods used at film stations) may not be placed on the floor, on top of NARA equipment, on another unoccupied station, or on a cart used for transporting the equipment. Because of the congestion in the research room, carts must be removed to the lockers or locker area outside the research room after equipment is unloaded on the small table at a station. The crowded conditions in the Motion Picture, Sound, and Video Research Room will be improved at the future Archives facility at College Park, MD (Archives II) where specially designed viewing stations will be used and equipment carts provided.

In response to two comments, we have clarified the restriction on leaving the research room in the proposed § 1254.26(h)(2) [now § 1254.26(h)(2)(ii)] to allow researchers to consult finding aids in the unrestricted research area while their audio or video equipment is operating at an audio or video viewing station. Researchers must remain in the research room while the equipment is operating in case the NARA or personal equipment malfunctions or the NARA reference tape breaks or jams. The film viewing stations still must be attended at all times.

In response to one comment, we have also removed the limit on the number of video and/or audio cassettes that may be brought into the unrestricted research area. All researcher copying media will be marked "NARA-approved personal property" and will be inspected upon departure as described in the proposed rule.

One commenter suggested that we allow researchers to hook up their own equipment to the NARA-provided self-service copying station when the station was not in use. We have not adopted that comment. This station is a viewing/copying station for researchers who do not bring their own equipment. As the proposed rule noted, hook-up of personal equipment to the NARA equipment in this station is prohibited to protect the NARA equipment from possible undue wear or damage.

Use of Restricted Materials

Three comments addressed the proposed segregation of restricted materials. One individual suggested that the restricted and "mixed" titles be maintained in the restricted viewing area on open shelves so that researchers could verify the copyright status of titles without having to consult the staff. Another individual suggested that NARA use a sign-out sheet for restricted titles instead of individual reference service slips. We did not adopt either of these suggestions because they would not provide the level of control necessary to protect the materials. Recopying of "mixed" reference tapes to separate unrestricted titles is scheduled for completion by late September; when this project is finished, there will be no "mixed" reference tapes.

A third commenter objected to NARA's decision not to permit copyrighted materials to be reproduced on personal copying equipment on the grounds that NARA should not act as "copyright police for a privileged group of copyright holders." The commenter suggested that NARA mark each frame of its reference copies with a small logo to allow "fair use" personal copying to take place. This suggestion is not practical. Segregation of copyrighted and other restricted materials in a viewing-only area remains the most feasible way for NARA to prevent unauthorized copying of these materials while allowing personal copying of unrestricted materials.

Other Comments

Several comments addressed issues outside the subject of this rulemaking, such as the handling of film requests and preventive maintenance on equipment. These issues are not appropriate for addressing in NARA regulations.

Fees

NARA is establishing in 36 CFR part 1258, as an interim rule, fees for use of the self-service copying station and separate purchase of blank videocassettes from NARA. NARA has agreed that a 120-minute length cassette should be provided instead of the 90-minute length cassette described in the proposed rule because the longer cassette is more commonly available.

These fees are established as an interim rule and NARA invites comments on the amendments to part 1258. NARA will address any comments received in a final rule to be published after the comment closing date. NARA fees are required by 44 U.S.C. 2116(c) to be set to recover, to the extent possible, the actual costs for making reproductions of records and other materials transferred to the custody of the Archivist of the United States.

Effective Date

Immediate implementation of this final rule will benefit users of the Motion Picture, Sound, and Video Research Room by restoring their personal copying privileges. Therefore, in accordance with 5 U.S.C. 553(d)(3), NARA finds good cause to make this rule effective upon publication in the **Federal Register**.

The NARA-provided self-service video copying equipment described in § 1254.26(h)(4) has been ordered but may not be available on the effective date of this regulation.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects

36 CFR Part 1254

Archives and records; Confidential business information; Freedom of information; Micrographics.

36 CFR Part 1258

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36 of the Code of Federal Regulations is amended as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118; 5 U.S.C. 552; and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section 1254.26 is amended by removing the words "and audio and video reproduction devices" from the introductory text of paragraph (e) and adding a new paragraph (h) to read as follows:

§ 1254.26 Additional rules for use of certain research rooms in the National Archives and the Washington National Records Center buildings.

* * * * *

(h) In addition to the procedures in paragraphs (e) through (g) of this section. the following procedures apply to the Motion Picture, Sound, and Video Research Room (hereinafter, "the research room") in the National Archives Building:

(1) The following procedures govern the use of NARA viewing equipment in the research room:

(i) Use of the viewing equipment in the research room is provided on a first-come, first-served basis, from 8:45 a.m. to 1:45 p.m., Monday through Friday, excluding holidays.

(ii) Reservations for use of film viewing equipment from 2 p.m. to 5 p.m., Monday through Friday, excluding holidays, may be made in accordance with the procedures in paragraph (h)(1)(iv) of this section. If viewing equipment is not occupied by a holder of a reservation, it will be made available on a first-come, first-served basis.

(iii) Reservations for use of the audio and video equipment from 2 p.m. to 10 p.m., Monday through Friday, excluding holidays, and 8:45 a.m. to 5 p.m. on Saturday, may be made in accordance with the procedures in paragraph (h)(1)(iv) of this section. If audio or video equipment is not occupied by a holder of a reservation, it will be made available on a first-come, first-served basis until 5 p.m., Monday through Friday. Audio and video equipment may be used after 5 p.m. on weekdays and on Saturdays only with a reservation. Audio and restricted video stations may be used after 5 p.m. on weekdays and on Saturdays only for previously furnished titles; no additional titles will be furnished during those time periods.

(iv) Reservations for viewing equipment will be accepted beginning on the first working day of the month preceding the date to be reserved. For example, a reservation for any date in November may be made on the first working day of October. Reservations for audio and video stations will not be accepted less than two working days (excluding Saturdays) before the date to be reserved, unless other confirmed reservations have been made for that date. A researcher may make up to six reservations each month. Reservations must be confirmed two days in advance of the date reserved. Reservations will be held for 15 minutes on the reservation date.

(2) The following procedures shall be followed when personal recording equipment and accessories are brought into the unrestricted viewing and copying area in the research room:

(i) Personal recording equipment brought into the unrestricted viewing and copying area in the research room must be inspected and tagged by the research room attendant prior to admittance. All equipment and accessory devices must be placed on the table adjacent to the viewing station, except that a tripod holding a video camera may be placed on the floor in front of a film viewing station.

(ii) Researchers shall remain in the research room while their personal equipment is in use at an audio or video viewing station. The film viewing stations must be attended at all times while in use. Researchers shall remove their personal equipment from the research room when they leave the room for the day or for extended breaks.

(iii) NARA will not be responsible for assisting with "hook-up" to NARA viewing equipment; for providing compatibility between the personal recording equipment and NARA viewing equipment; or for the quality of the copies made by researchers. NARA will provide the researcher information on the types of NARA equipment being used in the research room and on the cables necessary for hook up to the NARA viewing equipment.

(3) When a researcher brings audio or video recording tapes or cassettes into the unrestricted area of the research room, the research room attendant will mark the recording media "NARA-approved personal property" for identification purposes. Such media shall be inspected upon exit from the research room, as well as upon exit from the National Archives Building.

(4) A NARA-furnished video copying station and 120-minute blank video cassette may be reserved, for a fee, on a first-come, first-served basis for a 90-minute period of time. If no other individual is waiting to use the station, an additional time period may be reserved at the end of the current period. Personal recording devices may not be connected to NARA equipment at the video copying station. Only NARA-provided tapes may be used at the video copying station. Fees for use of the station and blank cassette are specified in § 1258.12 of this chapter.

(5) The NARA or personal recording device and media may be used to make a personal-use copy of unrestricted archival materials in the research room.

(6) Each researcher will be provided a copy of the Motion Picture, Sound, and Video Research Room rules and a warning notice on potential copyright claims in unrestricted titles. The researcher must sign a statement acknowledging receipt of the rules and notice. The individual making and/or using the copy is responsible for obtaining any needed permission or release from a copyright owner for other use of the copy.

(7) No personal recording device or media is permitted in the restricted viewing area in the research room.

PART 1258—FEES

3. The authority citation for part 1258 continues to read as follows:

Authority: 44 U.S.C. 2116(c).

4. Section 1258.12 is amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and adding a new paragraph (g) to read as follows:

§ 1258.12 Fee schedule.

* * * * *

(g) *Self-service video copying in the Motion Picture, Sound and Video Research Room:*

(1) Initial 90-minute use of video copying station with 120-minute videocassette: $15.25.

(2) Additional 90-minute use of video copying station with no videocassette: $8.75.

(3) Blank 120-minute videocassette: $6.75.

* * * * *

Dated: September 29, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92-24520 Filed 10-7-92; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN4-1-5178; FRL-4509-5]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On May 6, 1982, USEPA conditionally approved Minnesota's Part D State Implementation Plan (SIP) for particulate matter (47 FR 19520), conditioned on the State providing

emissions limits for grain loading operations that satisfied the requirements of Part D of the Clean Air Act. Minnesota submitted a SIP revision request on July 9, 1986, to address this condition. USEPA proposed to approve this request on June 24, 1987 (52 FR 23692). On February 24, 1992, Minnesota withdrew a portion of this request. The USEPA is approving the remaining request for revision to the SIP, and removing the condition on the approval of the State's Part D SIP for particulate matter.

EFFECTIVE DATE: This final rulemaking becomes effective on November 9, 1992.

ADDRESSES: Copies of the SIP revision and the October 17, 1991, technical support document are available at the following addresses for review: (It is recommended that you telephone John Summerhays at (312) 886–6067, before visiting the Region V office.)

U.S. Environmental Protection Agency (AE–17J), Region V, Air Enforcement Branch, 77 West Jackson Blvd., Chicago, Illinois 6064–3590.

A copy of today's revision to the Minnesota SIP is available for inspection at:

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region V, Chicago, Illinois 60604–3590, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

History

Pursuant to section 107 of the Clean Air Act, the USEPA designated certain areas of the country as not attaining the National Ambient Air Quality Standard (NAAQS) for total suspended particulates (TSP). In Minnesota, the Twin Cities and the City of Duluth were designated as nonattainment for TSP (see 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978)). for these areas, Part D of the Act required the State to revise its SIP to provide for the attainment of the NAAQS.

On August 4, 1980, and October 17, 1980, Minnesota submitted its Part D TSP SIP. This submittal generally required all industrial sources to control their TSP emissions to levels obtainable by applying reasonably available control technology (RACT) and to make a commitment to study nontraditional fugitive emissions such as reentrained road dust.

The USEPA conditionally approved the submittal on May 6, 1982 (47 FR 19520), conditioned upon Minnesota submitting RACT level opacity limits for grain handling facilities. On July 9, 1986, Minnesota submitted a request for a SIP revision in response to the condition. The revision request included revised regulations, a statement by the State of Minnesota interpreting certain requirements applicable to barge loading, and operating permits for three grain handling facilities in Duluth.

On June 24, 1987, the USEPA published a notice in the **Federal Register** proposing to approve the revisions requested by the State of Minnesota. The basis for the proposed action was a judgement that the revised limitations would require RACT at grain handling facilities. USEPA simultaneously proposed to remove the condition on the approval of the Minnesota's TSP SIP. No comments were submitted on this proposed rulemaking.

On July 1, 1987, USEPA promulgated a revision of the National Ambient Air Quality Standard (NAAQS) for particulate matter. This action replaced the standard based upon total suspended particulates with a new standard based upon smaller particulates nominally measuring 10 microns or less, a pollutant identified as PM_{10}. In conjunction with this revision, USEPA published its interpretation of the applicable SIP requirements for the new standard. Among the findings in this notice was a conclusion that particulate matter SIPs would no longer be required to meet the requirements of Part D of the Act, which included the requirement for the application of RACT. This notice also concluded that the revision will not interfere with attainment or maintenance of the new NAAQS.

The Clean Air Act Amendments of 1990, enacted on November 15, 1990, reinstate a requirement for RACT for particulate matter in some areas. Specifically, these amendments provide for attainment/nonattainment designations for PM_{10} and require that new SIP revisions including provision for RACT be submitted by November 1991 for statutorily designated PM_{10} nonattainment areas. In Minnesota, portions of the St. Paul and Rochester areas were designated nonattainment for PM_{10} and were required to submit PM_{10} SIP's by November 15, 1991.

On November 26, 1991, Minnesota submitted PM_{10} SIP revisions intended to meet the amended Clean Air Act requirements for the Saint Paul and Rochester areas. This submittal is being reviewed separately from the grain loading regulations being addressed here.

On November 1, 1991, William MacDowell of USEPA Region V transmitted a letter to Lisa Thorvig of the Minnesota Pollution Control Agency (MPCA) recommending withdrawal of a portion of the State's submittal. On February 24, 1992, Charles Williams, Commissioner of the MPCA, officially withdrew a portion of the submittal, as described below.

Reassessment of Submittal

Minnesota's July 9, 1986, submittal includes four regulations, a statement interpreting these rules with respect to barge loading, and a set of permits providing additional limitations. Rule 7005.2520 provides definitions of several terms. Rule 7005.2521 imposes many significant limitations, most notably including quantitative limits on opacity and emissions for applicable facilities. Rule 7005.2522 prohibits grain handling facilities from causing a public nuisance. Rule 7005.2523 sets criteria for identifying which facilities are subject to various limits in Rule 7005.2521. Minnesota's interpretative statement that was included in the SIP submittal concluded that barge loading in Minnesota uses normal loading even during topping off (and that trimming is not performed with barges), which signifies that the 20 percent opacity limit in Rule 7005.2521 applies throughout the barge loading process. Although the July 9, 1986 submittal included permits imposing additional opacity restrictions for three facilities in Duluth, these permits were withdrawn from USEPA consideration on February 24, 1992.

The requirements of particulate matter have changed substantially since USEPA proposed approval of Minnesota's grain handling regulations. Therefore, USEPA has reconsidered the criteria by which Minnesota's SIP submittal is evaluated. As a result of changes in applicable requirements, these Statewide regulations need no longer be evaluated according to whether they require the application of RACT. Instead, the submittal was reevaluated as to whether the submittal provides more or less stringent limitations than the existing SIP. Evaluation of whether the full set of requirements have been met for the Saint Paul and Rochester nonattainment areas will be conducted separately based in large part upon Minnesota's November 26, 1991, submittal.

The regulations submitted by Minnesota on July 9, 1986, include Rules 7005.2520 through 7005.2523. The existing SIP is based on an older regulation codified as APC–29. The new Rules 7005.2520 through 7005.2523 are

more stringent than the SIP rule APC–29 in several significant respects. Most notably, rules 7005.2520 through 7005.2523 provide opacity limits representing relatively stringent, quantitative requirements on the capture of emissions. In contrast, APC–29 only requires use of induced draft, which arguably need not be designed to capture emissions effectively. Second, Rule 705.2523 requires that emissions from emission control equipment meet both the grains per standard cubic foot limit of a rule codified in the SIP as APC–5 and a limitation of 10 percent opacity. In contrast, APC–29 allows noncompliance with the APC–5 limit if a control efficiency limit is met, and does not impose the opacity limit. The two sets of regulations appear to have comparable stringency with respect to the criteria for determining the applicability of the limitations. A more detailed comparison of the revised regulations to the existing SIP regulation is provided in the technical support document.

The technical support document also discusses concerns which arose after publication of the notice of proposed rulemaking relating to potential expiration of enforceability of approved but expiring permits. Since the State has withdrawn the permits submitted in 1986, this issue is now moot.

Based on this review, and considering Minnesota's interpretative statement pertaining to barge loading, USEPA has concluded that the revised regulations are more stringent than the existing SIP regulation. With respect to the Saint Paul and Rochester PM_{10} nonattainment areas, the submittal of July 9, 1986, may be considered an interim submittal for enhancing the control of particulate matter. With respect to the remainder of the State, no further submittal is required, and the submittal may be considered to provide better assurance that the PM_{10} NAAQS will be maintained. Consequently, USEPA has concluded that these revised regulations may be approved on a Statewide basis.

Conclusion

USEPA is by today's action approving Minnesota's revision to its State implementation plan for particulate matter. The revision pertains to Minnesota's plan for the reduction of particular emissions during grain loading operations. The revised grain handling regulations include Rule 7005.2520, Definitions; Rule 7005.2521, Standards of performance for dry bulk agricultural commodity facilities; Rule 7005.2522, Nuisance; and Rule 7005.2523, control requirements schedule. USEPA interprets these regulations in accordance with the interpretative statement included by Minnesota in its 1986 submittal. These regulations replace the rule previously identified as APC–29. USEPA is today also removing the condition on the approval of Minnesota's Part D SIP for particulate matter contained in 40 CFR 52.1230.

USEPA has reviewed the State's SIP revision request for conformance with the provisions of the Clean Air Act Amendments of 1990. These amendments require further submittals from the State for selected areas (which were in fact submitted November 26, 1991), but these requirements for further submittals do not change the criteria for judging this submittal. The Agency has determined that this action conforms with requirements under the amended Clean Air Act irrespective of the fact that the submittal preceded the date of enactment of the amendments.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables Two and Three SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 7, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 25, 1992.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(25) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(25) On July 9, 1986, the State of Minnesota submitted Rules 7005.2520 through 7005.2523, submitted to replace the rule APC–29 in the existing SIP (see paragraph (20)). This submittal also included State permits for three sources, but these permits were withdrawn from USEPA consideration on February 24, 1992. This submittal provides for regulation of particulate matter from grain handling facilities, and was submitted to satisfy a condition on the approval of Minnesota's Part D plan for particulate matter.

(i) Incorporation by reference.

(A) Minnesota Rule 7005.2520, Definitions; Rule 7005.2521, Standards of Performance for Dry Bulk Agricultural Commodity Facilities; Rule 7005.2522, Nuisance; and Rule 7005.2523, Control Requirements Schedule, promulgated by Minnesota on January 16, 1984, and effective at the State level on January 23, 1984.

(ii) Additional Material.

(A) Appendix E to Minnesota's July 9, 1986, submittal, which is a statement signed on April 18, 1986, by Thomas J. Kalitowski, Executive Director, Minnesota Pollution Control Agency, interpreting Rules 7005.2520 through 7005.2523 in the context of actual barge loading practices in Minnesota.

* * * * *

§ 52.1230 [Amended]

3. Section 52.1230 is amended by removing paragraph (a) and by

redesignating paragraphs (b) and (c) as (a) and (b), respectively.

[FR Doc. 92-24383 Filed 10-7-92; 8:45 am]
BILLING CODE 6560-60-M

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40 CFR Part 52

[WI23-1-5405; FRL-4514-5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving the Oshkosh Carbon Monoxide State Implementation Plan (SIP) as a revision to the Wisconsin SIP for Carbon Monoxide (CO).

USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act

DATES: This action will be effective December 7, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Camille Szematowicz at (312) 886-6081, before visiting the Region 5 Office). U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Wisconsin SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Camille Szematowicz, Air Toxics and Radiation Branch, Regulation Development Section (AT-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6081.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 22, 1991, the Wisconsin Department of Natural Resources (WDNR) submitted a revision to Wisconsin's SIP for CO. The submittal consists of a single source SIP revision pertaining to the Mercury Marine Engine Testing Facility located in Oshkosh, Wisconsin. The WDNR submitted the SIP revision to address violations of the National Ambient Air Quality Standards (NAAQS) that were recorded in 1988 and 1989. This SIP submittal is being presented for Direct Final rulemaking in today's **Federal Register.**

II. USEPA's Analysis of State Submittal

USEPA has reviewed the Wisconsin plan for conformance with the provisions of the Clean Air Act as amended on November 15, 1990, and has determined that the submitted plan conforms with the Clean Air Act requirements. That is, the plan: Contains enforceable emission limitations with a schedule for compliance; includes a program to provide for the enforcement of the emission limits; and provides modeling for the purpose of demonstrating that the SIP's control measures will provide for attainment and maintenance of the CO NAAQS in Oshkosh. In addition, the SIP includes provisions for the operation of air quality monitors in the Oshkosh area. More detail is provided in the following subsections as to how the Oshkosh SIP satisfies the appropriate Clean Air Act requirements.

(1) Enforceable Emission Limitations

The SIP revision consists of an Administrative Order signed by Donald R. Thieler, Director, Bureau of Air Management, WDNR, on November 22, 1991. The Administrative Order contains the following provisions which specify enforceable emission limitations with which Mercury Marine Engine Testing Facility must comply.

(a) Mercury Marine must operate its engine testing facility such that each engine tested at the Endurance Dock has its emissions vented through the exhaust collection system.

(b) The aggregate rated horsepower of engines being tested at any given time may not exceed:

(i) 4,000 horsepower for all engines at the Endurance Dock, of which not more than 2,000 horsepower may be attributable to inboard/outboard engines, and not more than 2,000 horsepower may be attributable to outboard engines;

(ii) 200 horsepower for all engines (outboard) at the wet cell tests; and

(iii) 1,500 horsepower for all engines at the shaker tests and the dynamometer cell tests.

(c) Mercury Marine must maintain operation records to demonstrate its compliance with the aggregate horsepower limitations. These records must be maintained for 3 years and be available to WDNR and USEPA upon request. The records shall include at a minimum: hourly data regarding the total rated horsepower of all engines being tested at the Endurance Dock, wet cells, shaker tests, and dynamometer cells of the facility; the fuel consumption rate; and the percentage of total horsepower attributable to outboard and inboard/outboard engines at each site. These records must be submitted quarterly along with any exceedance information.

(d) Mercury Marine shall conduct an inspection for leaks of the exhaust capture system each time an engine is connected to the exhaust system.

(e) Mercury Marine shall conduct biennial stack tests of the engine testing facility's exhaust capture system. These tests must be performed according to Method 10 in 40 CFR part 60.

USEPA has reviewed these provisions and has concluded that they are Federally enforceable. The Mercury Marine facility is already in compliance with the Administrative Order so that a timetable for compliance is no longer relevant. Mercury Marine must be in compliance upon the effective date of federal approval.

(2) Modeling Analysis/Attainment Demonstration

WDNR also submitted a modeling analysis of Oshkosh's air quality at the new emission limits and operating scenarios as part of the SIP revision. The modeling followed USEPA modeling guidelines. The USEPA Industrial source Complex Short Term (ISCST) model was used, with five years of meteorological data from Green Bay, WI. USEPA has concluded that the modeling analysis fully demonstrates attainment of the NAAQS with the limits and operating restrictions contained in the SIP revision.

(3) Ambient Air Monitoring

The Administrative Order mandates that Mercury Marine be responsible for the installation and operation of an ambient air quality monitor for CO as well as a meteorological station in the vicinity of the engine testing facility at a site approved by WDNR. This monitor must remain in operation for a period of at least 2 years. The monitor and meteorological system will be operated in accordance with USEPA monitoring requirements in 40 CFR part 58. USEPA believes the operation of these monitors will be useful in confirming the continued maintenance of the CO NAAQS in the Oshkosh area.

III. USEPA's Rulemaking Action

The SIP revision submitted by the WDNR to resolve the CO ambient air violations of 1988 and 1989 in Oshkosh satisfies the Clean Air Act requirements for such plan revisions. Therefore, USEPA is approving the Oshkosh Carbon Monoxide State Implementation Plan as a revision to the Wisconsin SIP for CO.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on December 7, 1992. However, if we receive notice by November 9, 1992 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S. Ct 1976); 42 U.S.C. § 7410(a)(2).

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of appeals for the appropriate circuit by December 7, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air Pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Reporting and record keeping requirements.

Note—Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 26, 1992.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52, subpart YY, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(62) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(62) On December 11, 1991, the United States Environmental Protection Agency received a revision to Wisconsin's State Implementation Plan for Carbon Monoxide. This revision took the form of Administrative Order AM–91–71, dated November 22, 1991, which incorporates a stipulation between the Wisconsin Department of Natural Resources and the Brunswick Corporation d.b.a. Mercury Marine. The Administrative Order addresses the emissions of carbon monoxide into the ambient air from Mercury Marine Engine Testing Facility in Oshkosh, Wisconsin.

(i) Incorporation by reference.

Administrative Order AM–91–71, dated November 22, 1991, which incorporates a stipulation between the Wisconsin Department of Natural Resources and the Brunswick Corporation d.b.a. Mercury Marine.

(ii) Additional materials.

Attainment modeling demonstration of control strategy to limit carbon monoxide emissions from Mercury Marine Engine Testing Facility, dated December 20, 1989.

[FR Doc. 92–24384 Filed 10–7–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[MA–14–2–5588; A–1–FRL–4507–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; (Amendment to Massachusetts' SIP, for Ozone and for Carbon Monoxide, for the Control of Air Pollution by Certifying Roadway Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision requires the pre-construction and operating certification of roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District. The intended effect of this action is to control vehicular emissions of carbon monoxide (CO), hydrocarbons (HC) and nitrogen oxides (NO_x). These pollutants contribute to the carbon monoxide and ozone air pollution problems in the Boston urbanized area. This action is being taken under section 110 and Part D of the Clean Air Act.

EFFECTIVE DATE: This rule will become effect on November 9, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, (617) 565-3227.

SUPPLEMENTARY INFORMATION: On December 30, 1991, (56 FR 67266–67268), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of a revision to Massachusetts' State Implementation Plan (SIP) for Ozone and for Carbon Monoxide, for the control of air pollution by certifying roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District. The revision contains definitions for four new terms added to 310 C.M.R. 7.00 (no-build alternative, project area, project roadway, and tunnel ventilation system) and adds a new section, 310 C.M.R. 7.38, to establish the roadway tunnel ventilation systems certification program. The formal SIP revision was submitted by Massachusetts on January 30, 1991.

Other specific requirements of the Commonwealth's State Implementation Plan (SIP) Revision for Ozone and for Carbon Monoxide, for the control of air pollution by certifying roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District, and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

EPA received comments on the NPR from two organizations. On January 28, 1992, the Sierra Club submitted comments opposing approval of the SIP revision. It supplemented these comments on February 12, 1992.[1] In addition, the Conservation Law Foundation submitted comments on January 29, 1992 which were supportive of EPA's approval of the proposed revision. The region has responded fully to these comments in a response memorandum attached to the Technical Support Document. A brief summary of these comments and EPA's responses appear below.

In its comments, the Sierra Club argues that the revision of the SIP to include the tunnel roadway ventilation system regulation would weaken the Massachusetts SIP in violation of Section 193 of the Clean Air Act. The tunnel ventilation system regulation states that tunnel ventilation systems are not subject to the plan approval requirements in 310 C.M.R. 7.02 (Regulation 7.02) of the Massachusetts SIP. The Sierra Club maintains that tunnel ventilation systems have been subject to Regulation 7.02 and that the adoption of this SIP revision would weaken the SIP by exempting tunnel ventilation systems from the requirements of Regulation 7.02. The Sierra Club also states that tunnel ventilation systems are "stationary sources" and consequently subject to the new source review and Prevention of Significant Deterioration (PSD) permitting requirements of the Act. Since the tunnel roadway ventilation system regulation does not meet the minimum requirements of a PSD or new source review permitting program, the Sierra Club comments that its adoption represents a weakening of the Massachusetts SIP and is inconsistent with the requirements of Parts C and D of the Act. Moreover, the Sierra Club states that subjecting tunnel ventilation systems to new source review requirements would further the Clean Air Act's purpose of requiring the installation of pollution control equipment on stationary sources. The Sierra Club has made these same arguments in the pending civil action *Sierra Club et al.* v. *Larson et al.*, Civil Action No. 91–10898C (D. Mass).

EPA has concluded that tunnel ventilation systems are not stationary sources subject to the PSD or new source review permitting requirements of the Act or Regulation 7.02 of the SIP and consequently the adoption of this SIP revision will not weaken, but will rather strengthen, the existing SIP. Tunnel ventilation systems, which do not generate their own emissions but rather simply funnel emissions from mobile sources, are not stationary sources within the meaning of the Clean Air Act. The Clean Air Act provides for means other than new source review and PSD to regulate emissions resulting directly from the internal combustion engines of motor vehicles. Because they are not stationary sources within the meaning of the Clean Air Act, tunnel ventilation systems are not subject to the new source review and PSD requirements of the SIP and the Act. Similarly, tunnel ventilation systems are not subject to Regulation 7.02 of the Massachusetts' SIP. The federally-approved Regulation 7.02 applies to the facilities listed at Subsection 7.02(4). Tunnel ventilation systems do not fall under any of the listed categories of facilities. Consequently, this SIP revision does not remove tunnel ventilation systems from any current requirements of the SIP or the Clean Air Act and therefore is not a weakening of such requirements.

In fact, the SIP revision will strengthen the SIP by contributing to overall state and federal strategies to reduce emissions from mobile sources in the Boston area. The revision requires certification that the construction and operation of a roadway tunnel ventilation system will not cause or exacerbate a violation of the National Ambient Air Quality Standards (NAAQS) or an actual or projected increase in the total amount of non-methane hydrocarbons measured within the project area when compared with the no-build alternative. Moreover, the tunnel ventilation certification process requires the monitoring of emissions and traffic data to ensure that the tunnel ventilation system continues to meet the certification criteria in the future. If the Massachusetts Department of Environmental Protection (DEP) finds that the certification criteria are being violated or are likely to be violated, the revision requires the operator of the tunnel ventilation system to submit a mitigation plan which identifies specific measures that the operator intends to implement to bring the ventilation system and the associated project area into compliance with the certification criteria.

DEP will then review and either accept or reject the plan. The terms of an accepted plan are incorporated into the tunnel ventilation system's operating certification. These requirements, as well as others in the revision, strengthen EPA's and the state's ability to regulate the overall emissions from mobile sources in the Boston area. The revision is consequently quite consistent with the purposes of the Clean Air Act.

The Sierra Club also comments that, because the regulation was not approved by the Governor and Council as required by Mass. Gen. Laws c. 111, § 142A, the state did not properly adopt the tunnel ventilation system regulation under state law and therefore the regulation cannot be approved by EPA as a SIP revision. EPA has concluded that the regulation was properly

[1] Although these supplemental comments were dated February 12, 1992, almost two weeks after the comment period on the Notice of Proposed Rulemaking closed, EPA has chosen to respond to the comments in the interest of fully addressing issues brought to the Agency's attention by the interested public.

adopted by the state. As indicated in the Massachusetts Secretary of State's attested certification of compliance with the state's administrative procedures, submitted to EPA with the proposed SIP revision, this regulation was adopted by DEP under its authority at Mass. Gen. Laws c. 111, §§ 142B and 142D. These statutory provisions authorize DEP to adopt such regulations without approval by the Governor and Council.

The Conservation Law Foundation submitted comments "strongly support[ing]" approval of the roadway tunnel ventilation system SIP revision. The organization did express concern over prompt, effective enforcement of the provisions. The Conservation Law Foundation urged EPA to approve the proposed SIP revision and then enforce its provisions.

EPA agrees that the tunnel ventilation system regulation, and any certification issued thereunder, need to be adequately enforced. EPA expects, in the first place, that DEP will ensure compliance with the regulation and any certification issued thereunder. In addition, EPA notes that federally-approved SIP provisions are enforceable by EPA under section 113 of the Clean Air Act and that, to the extent that DEP does not adequately enforce, EPA may choose to take additional steps to ensure compliance.

Final Action: EPA is approving the Commonwealth's regulation for certifying roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District *(310 C.M.R. 7.00 and 310 C.M.R. 7.38)*, as a revision to the Massachusetts SIP.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP Revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 7, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Clean Air Act section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 9, 1992.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of the Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(96) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(96) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on January 30, 1991.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated January 30, 1991 submitting a revision to the Massachusetts State Implementation Plan.

(B) Massachusetts Regulation 310 CMR 7.38, entitled "Certification of Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District," and amendment to 310 CMR 7.00, entitled "Definitions," effective in the Commonwealth of Massachusetts on January 18, 1991.

For the State of Massachusetts:

3. In § 52.1167 the table 52.1167 is amended by adding the following entries in numerical order:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA—APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310CMR 7.00.	Definitions	1/30/91	October 8, 1992	[FR citation from published date].	96	Definitions of no-build alternative, project area, project roadway, and tunnel ventilation system.
310CMR 7.38.	Tunnel vent certification regulation.	1/30/91	October 8, 1992	[FR citation from published date].	96	Tunnel ventilation certification regulation for Boston metropolitan area.

[FR Doc. 92–24385 Filed 10–7–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[MA-09-02-5384; A-1-FRL-4510-3]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revision to Massachusetts' Automobile Surface Coating Regulation (MA-09-02-5384)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts which amend the Massachusetts Automobile Surface Coating Regulation, 310 CMR 7.18(7). Additionally, EPA is withdrawing its proposed disapproval of the compliance dates for the topcoat and final repair applications in the automobile surface coating regulation. The intended effect of this action is to approve portions of the Massachusetts revised SIP for ozone and withdraw EPA's proposed disapproval of the compliance dates for the topcoat and final repair applications. This action is being taken in accordance with section 110 and Part D of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on November 9, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection, by appointment, during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th Floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565-3246; FTS 835-3246.

SUPPLEMENTARY INFORMATION: On October 12, 1990 (55 FR 41553), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of portions of Massachusetts's automobile surface coating regulation, 310 CMR 7.18(7), while also proposing disapproval of the compliance dates for the topcoat and final repair applications. Massachusetts subn.itted the formal SIP revision on August 17, 1989 and on June 7, 1991. The state submitted a letter on December 17, 1991 withdrawing a typographical error in the June 7, 1991 submittal for the emission limit for the primer-surfacer application.

Background

On May 25, 1988, EPA sent a letter to Michael Dukakis, then the Governor of Massachusetts, indicating that the Massachusetts SIP was substantially inadequate to attain the ozone standard. EPA requested that the state respond in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the states should correct their SIPs. The first phase included: (1) Correcting deficiencies and inconsistencies in existing regulations; (2) adopting regulations previously required or committed to but never adopted; and (3) updating the base emission inventory for those areas identified as nonattainment.

On June 16, 1988, EPA sent a letter to the acting director of the Massachusetts Department of the Environmental Quality Engineering's (now Massachusetts Department of Environmental Protection (DEP)) Division of Air Quality Control and identified the corrections that needed to be made in the existing regulations for the control of volatile organic compound (VOC) emissions. These corrections were necessary to make Massachusetts's SIP consistent with EPA guidance. The revised VOC regulations submitted by Massachusetts on August 17, 1989 and June 7, 1991 are in response to EPA's May 25 and June 16, 1988 letters.

On May 29, 1990 and October 12, 1990, EPA proposed approval of Massachusetts's August 17, 1989 submittal. EPA based this proposed approval on a determination that the submittal addressed most of the deficiencies identified in the SIP call and the fact that Massachusetts stated in discussions with EPA that they would address the remaining deficiencies outlined in the SIP call in the near future.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401—7671q. In section 182(a)(2)(A) of the amended Act, Congress codified the requirement that states revise their SIPS for ozone nonattainment areas so that they conform with EPA's preamendment guidance. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under preamended section 172(b) as that requirement was interpreted in preamendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The entire state of Massachusetts is classified as a serious ozone nonattainment area and is, therefore, subject to the RACT fix-up requirement.

Massachusetts' August 17, 1989 submittal was made in accordance with EPA's pre-amendment guidance. Although the submittal predates the amendments, it serves to fulfill part of the RACT fix-up requirement. In addition, Massachusetts' June 7, 1991 submittal was made in accordance with the RACT fix-up requirement. Therefore, EPA is taking final action because this action is consistent with the guidance that existed at the time of the proposal and because it strengthens the existing SIP.

Content of Revised Regulations

The Massachusetts DEP made the following changes pursuant to the revisions requested in the NPR:

1. The State clarified the units of the emission limits in 310 CMR 7.18(7)(b). Furthermore, the state revised the compliance dates for topcoat application and final repair application to December 31, 1985. The state also clarified the footnote of "Emission Limitation" to explicitly state that compliance is determined on a line-by-line basis through the daily weighted average of the coatings used in each category for each separate line.

2. 310 CMR 7.18(7)(e) has been revised to add testing to determine topcoat emission rate, transfer efficiency and other relevant criteria in accordance with the protocols described in EPA document 450/3-88-018 entitled "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations."

A more detailed description of these revisions and EPA's rationale for approving them was provided in the NPR and will not be restated here. EPA

[1] Among other things, the pre-amendment guidance consists of the VOC RACT portions of the Post-87 policy, 52 Fed. Reg. 45044 (Nov. 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Bluebook) (notice of availability published in the **Federal Register** on May 25, 1988); and the existing CTGs.

received two letters of public comment: one on its proposed partial approval and partial disapproval as published on October 12, 1990 and the other on an NPR published on July 22, 1988 (53 FR 27716) proposing approval of various VOC regulations submitted by the Commonwealth of Massachusetts.

Response to Public Comments

On August 22, 1988, General Motors Corporation (GM) submitted comments in response to the NPR published on July 22, 1988. Furthermore, on November 12, 1990, GM submitted comments on EPA's NPR partially approving the Massachusetts automobile surface coating regulations published on October 12, 1990. The comments submitted on August 22, 1988 were submitted in response to a notice of proposed rulemaking published in the **Federal Register** on July 22, 1988 (53 FR 27716) and finalized on March 10, 1989 (54 FR 10147). When EPA took final action on this submittal, EPA stated in the **Federal Register** that one comment letter was received on the amendment of the surface coating regulations for automobiles and miscellaneous metal parts and products. However, since EPA was not taking final action on those portions of the submittal, EPA stated that the comment letter would be addressed when EPA did take final action on those portions of the regulations. The August 17, 1989 and June 7, 1991 submittals supersede the amendments EPA proposed for approval on July 22, 1988. On October 12, 1990, EPA proposed partial approval and partial disapproval of the automobile surface coating regulation submitted on August 17, 1989. The notice listed amendments the state needed to make before EPA could take action. These amendments were submitted on June 7, 1991. Since the August 1989 and June 1991 submittals supersede the State's earlier rule of which EPA proposed approval and on which the comment was based, EPA is now responding to both letters.

Comments: GM states that the RACT limit for the surface coating of miscellaneous metal parts and products and automobile surface coating regulations should be expressed as pounds of volatile organic compounds (VOC) per gallon of solids applied. Furthermore, GM states that this expression of the RACT emission limit in terms of pounds of VOC per gallon solids applied is consistent with the approved EPA guidance "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations."

Response: EPA agrees with the commenter that the emission limits for the miscellaneous metal parts and products and automobile surface coating regulations should be expressed as pounds of VOC per gallon of solids applied. This is stated in 310 CMR 7.18(7)(b), where the emission limit units for the primer application, primer surfacer application, and final repair application coating lines are "lbs. of VOC/gallon of solids applied." It is important to note, however, that "applied" as used in Massachusetts' VOC regulations for these emission limits means "as applied from the applicator."

Comments: GM further comments that the applicable emission limit for new sources would not be affected by this RACT regulation and would be determined by reference to the New Source Performance Standards and source permit.

Response: In a March 2, 1989 memorandum from G.T. Helms, Chief of the Ozone/Carbon Monoxide Branch to Steve Rothblatt, Chief of the Air and Radiation Branch, entitled "Reasonably Available Control Technology (RACT) for New Automobile Assembly Plants," G.T. Helms states that automobile assembly plants in ozone non-attainment areas should have VOC emission requirements that are at least as stringent as RACT.

EPA policy for sources in nonattainment areas which must plan for attainment is that compliance must be determined over no greater than a 24 hours period. Averaging over longer time periods may make planning for and achieving the ozone standard impossible, because of the need to restrict or plan for emissions on a daily basis. New Source Performance Standards (NSPS) for automobile and light duty truck surface coating operations mandate that on a facility-wide basis over a one month time period, emission limitations of 0.16 kilograms of VOC per liter of applied coating solids shall not be exceeded for each prime coat operation, and 1.47 kilograms of VOC per liter of applied coating solids shall not be exceeded for each topcoat operation.

Depending upon fluctuations of VOC contents and daily use at a given facility, RACT may be more stringent than the NSPS. The NSPS are not established in place of RACT and are not intended to represent RACT.

Massachusetts has followed that policy in its regulations. Regulation 310 CMR 7.18(1) states "310 CMR 7.18 shall apply in its entirety to persons who own, lease, operate or control any facility which emits volatile organic compounds (VOC)." Likewise, 310 CMR 7.18(7) "Automobile Surface Coating," states "No person who owns, leases, operates, or controls an automobile and/or light duty truck manufacturing plant, which emits in excess of 15 pounds per day of volatile organic compounds (VOC), shall cause, suffer, allow or permit emissions therefrom in excess of the emission limitations, on a daily weighted average basis, and within the schedule contained in 310 CMR 7.18(7)(b)." Regulation 310 CMR 7.18(7) does not exempt new or modified sources from complying with the emission limitations contained in 310 CMR 7.18(7)(b).

Additionally, Massachusetts's permit regulations, 310 CMR 7.02(2) requires that no approval would be issued in instances where "the emissions from such a facility would exceed an applicable emission limitation as specified in these regulations." Furthermore, 7.02(2)(a)2.g. states "that no approvals will be issued in instances where the emissions from such a facility of operation of such a facility would not represent Best Available Control Technology (BACT) provided that in no event is BACT any less stringent than any applicable emission limitation. Massachusetts's regulations are consistent with EPA policy and are approvable.

Comments: GM states that EPA should approve the compliance date extensions that Massachusetts submitted on August 17, 1989 as an amendment to its SIP. Additionally, GM believes that its Administrative Petition for Reconsideration of 46 FR 51386 filed with EPA on November 15, 1988 contains detailed explanations as to why these two RACT compliance deadlines were properly extended by the Commonwealth of Massachusetts.

Response: GM's Administrative Petition for Reconsideration filed on November 15, 1988 petitioned EPA to reconsider the notice published in the **Federal Register** on September 16, 1988 (53 FR 36011). EPA published a Denial of Petition for Reconsideration by GM in the **Federal Register** on October 23, 1991 (56 FR 54789), which denied GM's petition in full. Issues raised by GM in its Petition for Reconsideration were addressed in that notice.

Comments: GM notes a typographical error in the October 12, 1990 rulemaking. GM states that the date that the automobile surface coating regulation was originally approved was September 16, 1980. Additionally, GM states that footnote 2 in the Table 2 of the automobile surface coating regulation

which states that 15 lbs of VOC per gallon of solids deposited is equivalent to 4.5 lbs of VOC per gallon of solids applied should state that 15.1 lbs of VOC per gallon of solids applied is the equivalent level.

Response: EPA agrees that the date that the original rule was approved by EPA was September 16, 1980 and not September 16, 1990 as listed in the notice. However, EPA does not agree with the statement that GM makes concerning footnote 2. EPA stated in the NPR that: "Footnote 2 should further specify that 15 pounds of VOC per gallon of solids deposited, at a transfer efficiency of 30% is equivalent to 4.5 pounds of VOC per gallon of solids applied." This statement was not a technical evaluation of Massachusetts' calculation of the topcoat application emission rate, but rather a statement by EPA asking Massachusetts to clarify the emission unit for the topcoat application coating line. Footnote 2 of 310 CMR 7.18(7)(b) submitted by Massachusetts on August 17, 1989 states that:

"The emission limitation for the top coat operations should be considered in terms of pounds of VOC per gallon of solids deposited. For example, with a transfer efficiency of 30%, the above emission limitation (4.5 pounds of VOC per gallon of solids applied) is equivalent to 15 pounds of VOC per gallon of solids deposited."

In Massachusett's June 7, 1991 submittal of revised volatile organic compound regulations, section 7.18(7)(b) is revised so that the emission limitation for the topcoat application coating line is listed as "15 lbs of VOC/gallon of solids deposited."

Furthermore, the emission limitation is footnoted with the footnote stating "The emission limitation for topcoat application is equivalent to 4.5 lbs of VOC/gallon of solids applied at a transfer efficiency of 30%." EPA was not suggesting any change in the emission limitation for topcoat application, but rather requesting the state to move the emission limit specification from the footnote to the main text of the rule.

Final Action

EPA is approving the Massachusetts SIP revision containing 310 CMR 7.18(7), "automobile surface coating" which was submitted on August 17, 1989 and June 7, 1991. EPA is also withdrawing its proposed disapproval of the compliance dates for the topcoat and final repair applications because the state revised the compliance dates for the topcoat and final repair application consistent with the compliance dates previous approved on September 16, 1980 (45 FR 61293). This revision corrects portions of the deficiencies in Massachusetts' Ozone Attainment Plan.

In addition, although the August 17, 1989 submittal preceded the date of enactment of the Clean Air Act Amendments of 1990, EPA is today approving portions of that submittal as well as portions of the June 7, 1990 submittal, as meeting part of the requirements of section 182(a)(2)(A) of the amended Act. Massachusetts' revised regulations for automobile surface coating, although submitted in response to the SIP call letter, also fulfill part of the RACT fix-up requirement.

Because EPA proposed approval of the August 17, 1989 submittal prior to enactment, EPA did not propose approval based on the requirements of new section 182(a)(2)(A). However, EPA believes that the good cause exception to notice-and-comment rulemaking applies and that the Agency, therefore, is not required to repropose approval of these submittals as meeting section 182(a)(2)(A). The Agency's action on a SIP or SIP elements is rulemaking that is subject to the procedural requirements of the Administrative Procedure Act (APA). Section 553(a)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency for good cause determines that notice and comment are "impracticable, unnecessary, or contrary to the public interest."

Notice and comment are impracticable and unnecessary in the present circumstance. Section 182(a)(2)(A) does not impose new requirements on the subject nonattainment areas. Rather, section 182(a)(2)(A) codifies the corrections nonattainment areas needed to make subject to the EPA SIP call letters issued in 1987 and 1988. Because these Massachusetts SIP submittals meets portions of the SIP call and, therefore, is consistent with the applicable pre-amendment guidance, EPA believes that these submittals also necessarily meet the requirements of section 182(a)(2)(A) of the amended Act. In EPA's earlier proposed approval of the Massachusetts SIP, EPA provided notice and an opportunity for comment on the consistency of the state's rules with EPA's preenactment guidance. Since notice and an opportunity for comment have been provided on that set of issues, and section 182(a)(2)(A) does not expand those requirements, it is unnecessary to repeat that process. In addition, it is impracticable for the Agency to take such action because, in light of the statutory time constraints on acting on SIPs, such a process would divert valuable agency resources from action on the large number of SIPs addressing new substantive requirements.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 7, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 15, 1992.

William K. Reilly,

Administrator.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 is amended to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(92) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(92) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on August 17, 1989, June 7, 1991 and December 17, 1991.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection dated August 17, 1989 and June 7, 1991 submitting a revision to the

Massachusetts State Implementation Plan.

(B) Portions of regulation 310 CMR 7.18(7) for automobile surface coating as submitted on August 17, 1989 effective in the Commonwealth of Massachusetts on September 15, 1989.

(C) Portions of regulation 310 CMR 7.18(7) for automobile surface coating as submitted on June 7, 1991 effective in the Commonwealth of Massachusetts on June 21, 1991.

(ii) Additional materials.

(A) A letter dated December 17, 1991 from the Massachusetts Department of Environmental Protection withdrawing the emission limit for the Primer-surfacer application from the June 7, 1991 submittal.

(B) Nonregulatory portions of state submittal.

3. In § 52.1167 table 52.1167 is amended by adding the following entry to 310 CMR 7.18(7).

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.18(7).	Automobile Surface Coating.	August 17, 1989, June 7, 1991.	October 8, 1992	[FR citation from published date].	92	

[FR Doc. 92-24386 Filed 10-7-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 80

[AMS-FRL-4520-2]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application for extension of the Reformulated Gasoline Program to the Dallas/Fort Worth area in the State of Texas.

SUMMARY: This notice publishes the application by the Governor of the state of Texas to have the prohibition set forth in section 211(k)(5) of the Clean Air Act, as amended (the Act), applied to the Dallas/Fort Worth ozone nonattainment area. Under section 211(k)(6) the Administrator of EPA shall apply the prohibition against the sale of gasoline which has not been reformulated to be less polluting in an ozone nonattainment area upon the application of the governor of the state in which the nonattainment area is located.

DATES: The effective date of the prohibition described herein is January 1, 1995 (see the Supplementary Information section of today's notice for a discussion of the possible delay of this date).

ADDRESSES: Materials relevant to this Notice are contained in Public Docket No. A-91-02. This docket is located in room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Jean Marie Revelt, U.S. EPA (SDSB-12), Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 741-7822.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Clean Air Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated in the nine worst ozone nonattainment areas beginning January 1, 1995. To be certified as reformulated a gasoline must comply with the following formula requirements: oxygen content of at least 2.0 percent by weight; benzene content of no more than 1.0 percent by volume; and no heavy metals (with a possible waiver for metals other than lead). The gasoline must also achieve toxic and volatile organic compound emissions reductions equal to or exceeding the more stringent of a specified formula fuel or a performance standard.

Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 through 1989. Applying those criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee. Under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the reformulated gasoline program.

Any other ozone nonattainment area may be included in the program at the request of the governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a governor, EPA shall apply the prohibition against selling conventional gasoline (gasoline EPA has not certified as reformulated) in any area in the governor's state which has been classified under subpart 2 of Part D of Title I of the Act as a Marginal, Moderate, Serious or Severe ozone nonattainment area.[1] Subparagraph 211(k)(6)(A) further provides that EPA is to apply the prohibition as of the date he "deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later." In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is "insufficient domestic capacity to produce" reformulated gasoline. Finally, EPA is to publish a governor's application in the **Federal Register**. To date, EPA has received and published applications from the Mayor of the District of Columbia and the Governors of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Virginia.

[1] EPA recently promulgated such designations pursuant to section 107(d)(4) of the Act (56 FR 56694; November 6, 1991).

EPA used the regulatory negotiation process in developing the requirements for reformulated gasoline. A supplemental notice of proposed rulemaking was published April 16, 1992 (57 FR 13416), which describes the consensus reached in that process on an outline for the reformulated gasoline program. The supplemental notice also describes the certification program for reformulated gasoline, the credits program for exceeding certain requirements, and the enforcement program, among other elements. A public hearing regarding the supplemental notice was held in Chicago, Illinois, on June 9–10, 1992. The comment period for the notice and supplemental notice closed on August 14, 1992.[2]

II. The Governor's Request

EPA received an application from the Hon. Ann W. Richards, Governor of the state of Texas, for the Dallas/Fort Worth ozone nonattainment area to be included in the reformulated gasoline program. Her application is set out in full below.

[State of Texas letterhead]

June 11, 1992.

Mr. William K. Reilly,
Administrator,
U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dear Mr. Reilly: In accordance with Section 211(k), (6)(A) of the Federal Clean Air Act, I request that, beginning January 1, 1995, the prohibition applying to the sale of conventional gasoline be extended to the Dallas/Ft. Worth ozone nonattainment area; which includes Dallas, Denton, Collin, and Tarrant Counties. The Texas Air Control Board passed a resolution on May 8, 1992, requesting that I apply to you to require the use of reformulated gasoline in these counties.

The North Central Texas Council of Governments, the designated Metropolitan Planning Organization for the Dallas/Fort Worth area, has favorably considered the use of reformulated gasoline for the purpose of further reducing the production of ozone in that area. The contact person for the implementation of the reformulated gasoline program is: Russell Baier, Director, Mobile Source Division, Texas Air Control Board, Air Quality Planning Annex, 12118 North IH–35, Park 35 Technology Center, Building A, Austin, Texas 78753, (512) 908–1483, Fax: (512) 908–1500.

Sincerely,

Ann W. Richards,

Governor

CC:

Mr. B. J. Wynne, III, Regional Administrator, U.S.E.P.A., Region 6, Dallas
Mr. William R. Campbell, Executive Director, Texas Air Control Board

[2] See 57 FR 31165 (July 14, 1992).

III. Action

Pursuant to the governor's letter and the provisions of section 211(k)(6), the prohibitions of subsection 211(k)(5) will be applied to the Dallas/Fort Worth ozone nonattainment area beginning January 1, 1995 (unless delayed, as provided above). This area is classified as a moderate ozone nonattainment area.[3]

The application of the prohibitions to the Dallas/Fort Worth area cannot take effect any earlier than January 1, 1995 under section 211(k)(5) and cannot take effect any later than January 1, 1995, under section 211(k)(6)(A); unless the Administrator extends the effective date by rule under section 211(k)(6)(B).

Dated: September 30, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92–24526 Filed 10–7–92; 8:45 am]

BILLING CODE 6560–50–M

[3] See 56 FR 56835 (November 6, 1991).

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–16

[FPMR Temp. Reg. D–75 Supp. 1]

Governmentwide Real Property Asset Management

AGENCY: Office of Governmentwide Real Property Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to FPMR Temporary Regulation D–75 extends the expiration date to September 30, 1993. FPMR Temporary Regulation D–75 implements Executive Order 12411, of March 29, 1983, and Executive Order 12512, of April 29, 1985.

This regulation provides broad guidance in the planning, acquisition, management and disposal of real property and is not designed to supplant existing agency regulation. Rather, it serves as a general guide for asset management and provides the tools to maximize economy and efficiency within the Federal community, ensures the protection and maintenance of the Federal Government's assets, supports individual agency program goals, and ensures a unified Federal approach to real property asset management.

DATES: *Effective date:* This regulation is effective October 1, 1992.

Expiration Date: This regulation expires September 30, 1993.

FOR FURTHER INFORMATION CONTACT: James M. Cayce, Acting Director, Office of Governmentwide Real Property Policy (202–501–0507).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; ■ major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 101–16

Federal real property asset management.

GSA's authority for issuing this temporary regulation is contained in Executive Order 12411, Executive Order 12512 and in the Federal Property and Administrative Services Act of 1949 amended (40 U.S.C. 486(c)).

In 41 CFR chapter 101, this temporary regulation is added in the appendix at the end of subchapter D.

Dated: September 14, 1992.

Federal Property Management Regulations Temporary Regulation D–75 Supplement 1

To: Heads of Federal agencies.

Subject: Governmentwide Real Property Asset Management.

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D–75.

2. *Effective date.* October 1, 1992.

3. *Expiration date.* This supplement expires September 30, 1993.

4. *Explanation of change.* The expiration date of FPMR Temporary Regulation D–75 is revised to September 30, 1993.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–24380 Filed 10–7–92; 8:45 am]

BILLING CODE 6820–34–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 581

[Docket No. 92-21]

Amendments to Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations in parts 514 and 581 to allow the parties to a filed service contract to amend the contract's "essential terms." The intent of this amendment is to create a more flexible service contract system in order to benefit carriers, U.S. shippers and consumers. Similarly situated shippers who had previously accessed the contract have the option of either continuing under the original contract or accessing the amended terms. Similarly situated shippers who had not previously accessed the contract may access the amended contract, in which case the shippers' minimum cargo volume obligation must be pro-rated according to the duration of the amended contract.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740.
Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION:

Background

By a Notice of Proposed Rulemaking ("NPR") published in the **Federal Register** on May 4, 1992 (57 FR 19,102), the Federal Maritime Commission ("FMC" or "Commission") proposed to amend its regulations to allow the parties to a filed service contract to amend the contract's "essential terms." Section 3(21) of the Shipping Act of 1984 ("1984 Act") defines a service contract as * * *

> * * * a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the even[t] of nonperformance on the part of either party.

46 U.S.C. app. 1702(21). Section 8(c) of the 1984 Act requires that * * *

> * * * each [service] contract * * * shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include—
>
> (1) the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;
>
> (2) the commodity or commodities involved;
>
> (3) the minimum volume;
>
> (4) the line-haul rate;
>
> (5) the duration;
>
> (6) service commitments; and
>
> (7) the liquidated damages for nonperformance, if any.

Id. 1707(c)

The NPR noted that the Commission's service contract regulations already permit contract parties to change a contract's essential terms, once filed, in two ways. First, the parties may make retroactive corrections of clerical or administrative errors through a specified procedure: The request for permission to correct must be filed with the Commission within forty-five days of the contract's original filing; the filing party must submit an affidavit describing the circumstances that gave rise to the error; the other contract party must submit a statement concurring in the request for correction; and the access rights of similarly situated shippers are protected. 46 CFR 581.7(b). Second, contract signatories can provide for substantive modifications of the contract's essential terms through contingency clauses. *Id.* 581.5(a)(3)(viii). Similarly situated shippers have a right to access the contingency clauses as well as the basic essential terms, and the Commission has prescribed a procedure whereby similarly situated shippers are informed of changes in a service contract as a result of an activated contingency clause. *Id.* 581.6(b)(5).

Otherwise, however, the FMC's regulations presently provide that "[t]he essential terms originally set forth in a service contract may not be amended * * *." 46 CFR 581.7(a). The NPR recounted the history of this restriction as dating to November, 1984, when the Commission published final rules implementing the new service contract provisions of the 1984 Act. *Service Contracts; Loyalty Contracts; and Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States*, ____ F.M.C. ____, 22 S.R.R. 1414 (1984). The Commission believed the restriction was necessary to prevent unfairness to similarly situated shippers. *Id.* at 1432. The prohibition was carried forward in subsequent rule revisions. *Service Contracts*, ____ F.M.C. ____, 24 S.R.R. 277, 300 (1987).

The NPR then pointed out that the Commission's concerns in 1984 about potential unfairness, when service contracts were a new concept in ocean transportation, may not have been borne out by actual shipper experience in subsequent years. It noted that when the FMC surveyed shippers about the new Shipping Act during the preparation of its report in 1989 to the Advisory Commission on Conferences and Ocean Shipping, permitting service contracts to be amendable was identified by shippers as the most important change they would like to see in the Commission's regulation of service contracts. Further, the NPR stated, the Commission's own experience with service contracts has been that very few contracts are "me-too'd" by outside shippers, which calls into question whether the benefits of the present no-amendment regulation justify removal of a right freely held by contract parties at common law. The NPR also acknowledged that the original concern that amending service contracts might leave shippers unable to take advantage of an amended contract did not take into account the possibility that some shippers who had been unable to "me-too" an original contract might be able to "me-too" the contract as amended.

The NPR stated that the proposed rule was drafted to accommodate the desire for greater flexibility under service contracts with the statutory prerogatives of similarly situated shippers. Corresponding to the procedure already in place for corrections of administrative or clerical errors, shippers who have accessed a service contract would have the choice of continuing under their original "me-too" contracts or electing to amend their contracts in the same way as the basic contract parties. To protect shippers who were unable to meet the original essential terms of a service contract, but could meet the terms as modified, the proposed rule further provided that the essential terms of an "amended service contract" as well as an "initial service contract" would be made available to all other shippers or shippers' associations similarly situated. The proposed rule also made technical changes to reflect the redesignation of the former Bureau of Domestic Regulation as the Bureau of Tariffs, Certification and Licensing.

In addition, the NPR solicited comments on four other issues raised by the proposal to permit amendments to the essential terms of a service contract:

1. Should the ability to amend be limited to only certain essential terms (*e.g.*, volume, origin and destination points) but not others (*e.g.*, rates)?

2. Should the ability to amend a contract be limited in time, *e.g.*, only during the first half of the contract's period, or within 60 days of its filing with the Commission?

3. What term should the shipper accessing an amended contract receive: The full original contract term, or only the time remaining?

4. Could and should the Commission require that the filing of amendments to a service contract be accompanied by a statement of the reason for the amendments?

Commenters desiring a particular result in these or other related areas were requested to include suggested rule language.

Summary of Comments

A. Supporting Comments

Comments in support of the proposed rule were filed by a number of shippers and shipper organizations—The Agriculture Ocean Transport Coalition ("AgOTC"); the American Institute for Shippers Associations, Inc. ("AISA"); the American Paper Institute ("API"); Cargill, Incorporated; ConAgra, Inc.; Corning Incorporated; E.I. du Pont de Nemours and Company ("Du Pont"); Hiram Walker & Sons, Inc.; the National Industrial Traffic League ("NIT League"); Weyerhauser Paper Company; and Union Camp Corporation—one carrier, Orient Overseas Container Line, Ltd. ("OOCL"), and the U.S. Department of Transportation ("DOT").

These commenters argue that the NPR's reference to the common law of contracts, whereby parties are free to amend a contract as long as it remains executory, was appropriate and should guide the Commission's regulation of service contracts. They cite in this regard the provision of section 8(c) of the 1984 Act that gives exclusive jurisdiction over breach of service contract disputes to common law courts. In general, they argue that shippers should be able to restructure their service contracts when business conditions change or new opportunities arise.[1] DOT states:

> Within the confines of the Shipping Act of 1984, the Commission's proposal would allow contracting parties more of the freedom to modify their bargain that exists in other industries, while maintaining the statutory protection now mandated for similarly situated shippers. The new rule, in other words, embodies the approach to statutory administration that is most consistent with sound public policy: it implements ongoing legal requirements in a manner that minimizes regulatory burdens.

Comments at 2. Union Camp similarly views the proposed rule as giving service contract parties the maximum freedom possible under current law:

> Until such time as the proper contracting environment is created by Shipping Act amendments to limit conference antitrust immunity pertaining to service contracts and exempt contracts and exempt contracts from FMC jurisdiction, the Proposed Rule would bring contracts as close as regulatory change can to that environment.

Comments at 3.[2] ConAgra argues that any concerns about discrimination are not well-founded:

> In the unlikely event that the freedom to amend service contracts is abused so as to discriminate against similarly situated shippers, that will become readily apparent and the Commission will be able to deal with it.
>
> However, the freedom to amend service contracts should not be denied to shippers and carriers on the basis of the mere supposition that it might result in abuse, particularly when the shippers who are the supposed beneficiaries of the present prohibition are so overwhelmingly in favor of the right to amend service contracts.

Comments at 4–5.[3]

On the four related issues posed by the NPR, these commenters all oppose any restrictions on the essential terms eligible for amendment. API argues that "the ability to amend should not be limited to only certain essential terms, but rather, should extend to any and all aspects of a contract to which the parties mutually agree should be changed." Comments at 3 (emphasis in original).[4] Du Pont asserts that "flexibility to meet customer demands is of utmost importance * * *." Comments at 1. Similarly, this group opposes any limits on when an essential term can be amended, urging that the Commission simply follow the common law rule noted in the NPR, *i.e.*, amendments should be permissible as long as the contract remains executory.

The question of what term should be available to a shipper "me-tooing" an amended contract caused some division. AgOTC [5] and API argue that outside shippers should not have a right to access an amended contract at all, because this would discourage amendments; under this approach, the statutory "me-too"right would apply only to original contracts, AgOTC Comments at 4; API Comments at 5. A few others would leave this matter up to the accessing shipper and the carrier to settle as they see fit (Union Camp, Hiram Walker and AISA [6]). Most contend that allowing the accessing shipper only the term remaining on the contract is "the fair approach." Du Pont Comments at 2. NIT League submits that "[t]o provide a [me-too] party with a term equal to the full original contract term would be an impermissible extension of the original contract term." Comments at 5. The possibility that the contract term itself may be the amended essential term accessed by an outside shipper was recognized only by DOT:

> * * * DOT submits that the time for performance should be treated identically to other contract terms, such as rates and service commitments. * * * Shippers who are similarly situated to the amended contract and who are not already participating in a "me too" arrangement would have their section 8(c) rights ensured if they are given the opportunity to avail themselves of the terms as subsequently modified, including the time allowed for performance by the amendments. In other words, regardless of whether new contracts expand, contract, or retain the time for performance contained in

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[1] The same themes are sounded by OOCL, which states that service contracts should be brought "more into line as true contracts" and that "shippers and carriers should have greater commercial flexibility between themselves." Comments at 2.

[2] Union Camp is a leading manufacturer and exporter of paper packaging chemicals and building products. It states that in 1990 it shipped roughly 20,000 TEU's of containerized cargo to virtually all major world markets, and that over forty percent of its containerized exports move under service contracts. Comments at 1.

[3] ConAgra states that it is "a diversified agribusiness enterprise operating across the entire food chain." Comments at 2. Its various divisions and subsidiaries conduct extensive trade in agricultural commodities and foodstuffs all over the world. *ID.* at 2–4.

[4] API states that it is the national organization of the pulp, paper and paper bond industry, consisting of approximately 175 manufacturers who are substantial users of ocean common carriers in international transportation.

[5] AgOTC states that it is "a coalition comprised of individual companies, cooperatives, shipper associations and national and regional associations involved in the ocean transportation of farm, food, fiber and forest products." Comments at 1.

[6] AISA interpreted the NPR as requesting comments on whether, once a service contract is amended, similarly situated shippers should be able to (1) access the contract for a new full original term commencing from the date the contract has been "me-too'd"; (2) access the contract retroactively for a full term commencing from the original commencement date; or (3) access the contract for whatever term is remaining. AISA favors both (2) and (3). Comments at 6–7. However, only (1) and (3) were contemplated by the NPR, which meant to avoid retroactive amendments. Another complication is that the NPR and most commenting parties, including AISA, overlooked the possibility that the contract term itself may be the subject of amendment. See discussion of DOT Comments in the text *infra*.

an original contract, it is that expanded, contracted, or continued amount of time to which these shippers are entitled.

Comments at 3.

Lastly, these commenters unanimously oppose any requirement that the filing of amendments to a service contract be accompanied by a statement of the reasons for the amendments. Union Camp argues:

> The reason an amendment is required could be the result of highly confidential corporate tactical or strategic planning. Requiring public disclosure of those plans could diminish the attractiveness of a business opportunity or investment. Trading off a contract amendment for confidentiality of reasoning would, in effect, produce the same result as no ability to amend at all.

Comments at 4. ConAgra makes a related point:

> As long as the terms of the amended contract are facially lawful, an explanation of the business reason for their adoption is unnecessary and, indeed, irrelevant to the Commission's exercise of its regulatory responsibilities. In the event that the terms of any particular contract should be so unusual as to warrant explanation, the Commission can request it informally or, if it should become necessary, by more formal means. However, the amendment process should not be burdened by a requirement for explanation of every amendment when such explanation will be totally unnecessary in almost every instance.

Comments at 6.

B. Opposing comments

Commenters opposed to the proposed rule include the North Europe-USA Rate Agreement and the USA-North Europe Rate Agreement ("North Europe Conferences");[7] the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference ("Japan Conferences");[8] Crowley Maritime Corporation; and a large group of conferences headed by the Asia North America Eastbound Rate Agreement ("ANERA *et al.*").[9] The National Customs Brokers and Freight Forwarders Association of America "(NCBFFAA") also filed opposing comments.

In general, these commenters submit that the Commission's decision in 1984 not to permit prospective amendment to service contracts—other than through the contingency clause procedure—was correct and should not be reversed. The North Europe Conferences argue that the proposed rule is contrary to the letter and intent of section 8(c) of the 1984 Act and is therefore legally impermissible. They point to the statute's references to the shipper's "commitment" to provide "a certain minimum quantity" of cargo "over a fixed time period," the "certain rate" promised in exchange by the carrier, and the right of similarly situated shippers to access "those essential terms." A free right to amend is characterized as inconsistent with this statutory scheme. Comments at 16–18. The opposing commenters also contend that the NPR was incorrect in suggesting that service contracts should be treated as common law contracts. Crowley argues:

> The rules of common carriage, not common law contract principles, form the touchstone of FMC regulation. Those rules impose restrictions on carriers and shippers to inhibit large shippers from turning their leverage over the market for transportation into a monopoly over the market for the goods they sell. Service contracts were not intended to create a path around basic common carrier requirements. The statute requires that essential shipping terms be published, as in regular tariff-based carriage, and that those terms be available to similarly situated shippers. This is a fundamental tenet of common carriage.

Comments at 3; see also Comments of North Europe Conferences at 18–20.

The opposing commenters further argue that allowing amendments would undermine the commercial stability provided by the service contract system, and would frustrate shippers' ability to "me-too" service contracts. ANERA *et al.* state:

> Shippers and carriers enter into service contracts to ensure a certain amount of stability with regard to rates, service and cargo levels. Once contracts are entered into, carriers are assured a certain amount of cargo on specified routes and shippers are assured a certain level of service at specified rates. This knowledge allows both carriers and shippers to plan their businesses more effectively and efficiently, thereby adding to stability in the marketplace. This stability, in turn, forms the cushion that continues to ensure the tremendous number of service and competitive options that exist in ocean commerce * * *.
>
> Allowing amendments to service contracts would undermine that stability, thereby removing many of the benefits of service contracts. Frequent adjustments to minimum cargo quantity commitments, geographic scopes, rates or carrier service levels would be disruptive to carrier and shipper stability. If amendments were allowed, there would be constant pressure from one party or the other to amend the contract to adjust to the ebbs and flows which occur in the market.

Comments at 3–4. Other commenters are more specific about which party would be causing such "constant pressure." Crowley predicts that the practical effect of the proposed rule "would be to allow shippers to coerce ever increasing, after-the-fact discounts out of carriers. Initial contracts would be meaningless, illusory commitments on the shippers' part * * *." Comments at 1.

These commenters offer examples intending to show how allowing amendments would work unfairness to original shippers, carriers and especially "me-too" shippers. The North Europe Conferences assume a service contract with a 500–TEU volume requirement and a duration of one calendar year. If the contract was amended on December 1 to provide for a 450–TEU volume requirement, they say, the original shipper * * *

> * * * and any similarly situated shippers accessing the original contract, would have 12 months in which to meet that commitment whereas similarly situated shippers who had not accessed the original commitment would have the right to access the amended one and, if so, be required to meet the new 450 TEU minimum volume requirement in one month. Likewise, were the contract amended on December 1st by extending its duration for one month, shipper parties to the contract originally filed would have 13 months in which to ship 500 TEUs and similarly situated shippers not having accessed that contract would have the right to access the amended version and, if so, be required to ship 500 TEUs in two months.

Comments at 14.[10] ANERA *et al.* describe circumstances in which problems could be present even if the shipper's obligation was prorated:

> Assume Shipper A has a two year contract beginning January 1, 1992 and terminating December 31, 1993. Shipper A's [volume obligation] is 2400 [forty-foot equivalent units ("FEU's")]. Four months before the contract expires, Shipper A and the conference or carrier agree to amend the contract by reducing the rates to reflect changes in the market and increased efficiencies that have occurred over the last year and a half. Due to the amendment, during the last four months, Shipper A is able to ship its remaining cargo at rates which are $200 below the original

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[7] Sea-Land Service, Inc., a member of these conferences, did not join in their comments. Sea-Land filed its own comments, which fall into the group suggesting an alternative final rule, *infra*.

[8] Again, except Sea-Land.

[9] The other conferences included the "8900 Lines"; Israel Trade Conference; Mediterranean North Pacific Coast Freight Conference; South Europe/U.S.A. Freight Conference; United States/East Africa Conference; United States/South Africa Conference; and the U.S. Atlantic & Gulf Western Mediterranean Conference.

Sea-Land, OOCL and American President Lines ("APL"), which are members of some of these conferences, did not participate in their comments. OOCL, as already described, offered general support of the proposed rule. APL submitted comments suggesting a rule similar to Sea-Land's.

[10] The North Europe Conferences' comments above assume that a shipper accessing only the remaining term of an amended contract would not have its volume obligation pro-rated. The proposed rule did not explicitly cover that point.

rates. Shipper B accesses the contract for the remaining term, i.e., four months. The [volume obligation] is prorated, so Shipper B is obligated to ship 400 FEUs in four months at the reduced rate. This result is unfair to Shipper A because Shipper B never had the volume to justify Shipper A's original reduced rates. * * * The conference or carrier also suffers because it is forced to provide service at reduced rates to a shipper without sufficient volume to create economies of scale.

Comments at 10.

Two other arguments made by the opposing commenters are that the proposed rule is unnecessary, because the flexibility to make necessary changes in an existing contract is already provided by the present regulation allowing contingency clauses and because unforeseen changes can be accommodated by execution of a new contract, and that it would be extremely difficult for potential "me-too" shippers to continually monitor the service contracts of interest to them.

C. Comments Offering Qualified Support

A third group of commenters indicates support for—or at least acceptance of—a right to amend service contracts, subject to certain qualifications. These include Sea-Land, APL, the American Import Shippers Association, the Transpacific Westbound Rate Agreement ("TWRA"),[11] Hanjin Shipping Co., Ltd., Tropical Shipping and Construction Co., Ltd., and a group of conferences serving South America, Central America and the Caribbean area ("Latin America Conferences").[12] These commenters oppose amendments to contract terms governing rates and volume. Most would also bar amendments to contract duration and liquidated damages. This group would support (or at least accept) a final rule allowing amendments to terms governing origin and destination port ranges or geographic areas and the commodities involved, although TWRA cautions that "core commodity coverage" (Comments at 1) should not be amended and that only insignificant changes to that term should be permitted. APL adds that "if shippers would like to have the option to effect an increase in service * * *, changes in service commitments should not be precluded." Comments at 5.

These commenters also argue that some limit be placed on when amendments can be made during the life of a contract. Their contention is that overlooked factors will usually become apparent during the early weeks or months of a contract, that *bona fide* changes in circumstances occurring later can always be handled through execution of a new contract, and that amendments in the last stages of a contract will lead to abuse and will undermine the statutory rights of similarly situated shippers. Hanjin Shipping contends that amendments should be permitted only during the first half of a contract's term.

On the question of what term the shipper accessing an amended contract should receive, APL and TWRA argue that the shipper should receive only the time remaining on the contract. The Latin America Conferences offer a more detailed suggestion—similar to DOT's argument on this point—to take into account a situation where the contract's term itself has been amended:

> If the contract has been extended, or is extended after the shipper "me toos", the accessing shipper should be entitled to the extra time. If the contract is not extended, the accessing shipper should only be entitled to the same term as the original shipper.

Comments at 4.

Sea-Land supports a regulation requiring that the filing of an amendment be accompanied by a statement of the reasons for the amendment, but TWRA opposes the idea as meaningless.

Discussion

Upon consideration of the comments, the Commission has determined that, with clarifying amendments concerning the minimum volume obligation appropriate for a shipper accessing an amended contract (46 CFR 581.6(b)) and the form and manner of amendment filing (46 CFR 581.3(a)(2)(iv)(A) and 581.4(b)(1)(iii)), the proposed rule should be adopted as a final rule. We emphasize again that the current restriction at 46 CFR 581.7(a) against amendments to the essential terms of filed service contracts is not mandated by the language or legislative history of section 8(c) of the 1984 Act. Rather, it is a Commission-written increment to the statute that was designed to protect the rights of similarly situated shippers. After eight years of experience with service contracts and administration of section 8(c), the Commission wishes to adjust its policy in this area so that service contracts will be treated more like ordinary commercial contracts, which are freely amendable while executory. The present bar to amendments rests upon the assumption that the statutory right of similarly situated shippers to access a service contract will necessarily conflict with the common law right of the original contract parties to amend their agreement. Operating from that assumption, the current regulation protects the right to access at the expense of the right to amend. The new approach undertaken here seeks instead to allow both similarly situated shippers and original contract parties to exercise their rights in a mutually consistent fashion.

Many of the opposing comments expressed concern that original shippers will renege freely on their contract commitments if amendments are permitted, and that similarly situated shippers will enjoy unfair advantages if they are allowed to "me-too" an amended contract. The solutions to these anticipated problems, should they actually occur, are already available to the parties and do not need reinforcement from FMC regulations.[13] A shipper cannot unilaterally amend a service contract; like the original contract, an amendment must be the product of a free meeting of the minds between both sides. A carrier, therefore, may withhold consent from a proposed amendment that it considers unfair or one-sided. A shipper may have more leverage in negotiating for an amendment if it generates large amounts of cargo, but that is true for service contracts in general; Congress accepted the fact that large shippers may be able to obtain relatively attractive bargains from carriers when it enacted the service contract provisions of section 8(c). H.R. Rep. No. 53 (Part 1), 98th Cong., 1st Sess. 17 (1983). Ultimately, the amount of leverage any shipper can bring to bear in proposing an amendment to a service contract will be controlled by the market forces of supply and demand for cargo space. The Commission does not read section 8(c) as requiring us to shelter carriers from the market by maintenance of the no-amendment rule. Similarly, if an original

[11] Except Sea-Land.

[12] Venezuelan Maritime Association; Atlantic and Gulf/West Coast South America Conference; United States/Central America Liner Association; Central America Discussion Agreement; United States Atlantic & Gulf/Hispaniola Steamship Freight Association; Hispaniola Discussion Agreement; United States Atlantic Gulf/Southeastern Caribbean Steamship Freight Association; Southeastern Caribbean Discussion Agreement; Jamaica Discussion Agreement; United States/Panama Freight Association; PANAM Discussion Agreement; Puerto Rico/Caribbean Discussion Agreement; and the Caribbean and Central American Discussion Agreement.

Sea-Land does not participate in these comments either.

[13] However, in response to those commenters who expressed concern that permitting amendments will encourage abuse, the Commission intends to closely monitor amendment filings and will be prepared to take appropriate action should indications of such abuse develop.

shipper and a carrier are concerned that an amendment will trigger a "me-too" claim from another shipper, they have the option of simply foregoing the amendment.

In sum, the final rule does not limit the right to amend to only some essential terms or to only part of a contract's period.[14] The Commission is also persuaded that the rule should not require that a filed amendment be accompanied by a statement of explanation or justification.[15] With respect to the contract duration available to a shipper accessing an amended contract, although no changes to the proposed rule are necessary, we do wish to clarify that, as suggested by DOT, the duration term must be treated like any other essential term. A shipper accessing an amended service contract is entitled to whatever duration is stated in that contract, and the "me-too" contract must have the same expiration date as the basic contract. On a related matter, § 581.6(b)(1) is amended to clarify that, where a "me-too" shipper who had not accessed the original contract chooses to access the amended contract, the "me-too" shipper's minimum volume commitment must be pro-rated according to the fractional relation between the duration of the contract between the carrier and the original shipper and the duration of the contract between the carrier and the "me-too" shipper. Technical amendments have been made to 46 CFR 581.3(a)(2)(iv)(a) and 581.4(b)(1)(iii) regarding the form and manner of amendment filing.

After the May 4, 1992, publication of the NPR in this proceeding, an interim rule was published on August 12, 1992 (57 FR 36,248), in Docket No. 90–23, *Tariffs and Service Contracts* (46 CFR part 514), which implements the Commission's Automated Tariff Filing and Information System ("ATFI") and tracks part 581 in §§ 514.7 and 514.17. Accordingly, even though the Commission has requested further comment on the proper format for essential terms electronically filed, which will probably generate some further changes, the appropriate provisions of part 514 are amended herein in a manner similar to the changes to part 581 made herein.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of that Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) Annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions, because it does not increase business costs or prices for consumers and does not impose substantive restrictions on commercial activity.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072–0044. Public reporting burden for this amendment to allow the parties to a filed service contract to amend the contract's "essential terms" is estimated to average 13.64 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

List of Subjects

46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and recordkeeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

46 CFR Part 581

Administrative practice and procedure; Contracts; Maritime carriers; Rates and fares.

Therefore, pursuant to 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601, parts 514 and 581 of Title 46, Code of Federal Regulations, are amended as follows:

PART 514—[AMENDED]

1. The authority citation for part 514 is revised to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. In section 514.2, the definition of "File or filing" (of service contracts) is revised to read as follows:

§ 514.2 Definitions.

* * * * *

File or filing (of service contracts or amendments thereto) means actual receipt at the Commission's Washington, DC offices. See § 514.7.

* * * * *

3. Section 514.7 is amended by revising paragraphs (a), (b), (f) introductory text, (f)(1), (f)(2)(i), (g)(2)(i), (h)(1)(i), (j)(1)(i), (j)(1)(ii), (j)(2) introductory text, (j)(2)(i), (j)(3)(i), (j)(3)(ii) introductory text, (j)(4) and (k), to read as follows:

§ 514.7 Service contracts in foreign commerce.

(a) *Scope and applicability.* Service contracts shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States. While tariffs and the essential terms of service contracts are required to be filed electronically and made available to the public under subpart C of this part, service contracts themselves and amendments thereto (incorporating mandatory essential terms as described in § 514.17 and confidential names of shippers, etc.), as well as certain related

[14] The final rule includes contracts already on file with the Commission, but, as previously stated, n.6 *supra*, retroactive amendments are not permissible. For example, in the case of a filed service contract that calls for quarterly minimum volumes over calendar 1992, the parties may not file an amendment in November that changes the January–March volume requirement.

[15] The Commission assumes, however, that any contract amendment will be supported by mutual and valid consideration, as is the case at common law

notices, shall be filed in paper, hard copy format under this subpart and section.

(b) *Confidentiality.* All service contracts and amendments to service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence.

* * * * *

(f) *Availability of essential terms.* A statement of the essential terms of each initial and amended service contract, as set forth in tariff format, shall be made available for inspection by the general public pursuant to the requirements of this section and § 514.17.

(1) *Availability of terms.* The essential terms of an initial or amended service contract shall be made available for use in a contract to all other shippers or shippers' associations similarly situated, under the same terms and conditions, for a specified period of no less than thirty (30) days from the date of filing of the essential terms of the service contract or amendment thereto under § 514.17, as may be adjusted under paragraph (j)(4) of this section, except that, where a shipper or shippers' association not a party to the original contract exercises its right to access the amended contract, the minimum volume obligation for the accessing shipper or shippers' association shall be pro-rated according to the relation between the duration of the original (now amended) contract and the duration of the access contract. The conference or carrier may specify in the Essential Terms Publication the information which must accompany a me-too request and the procedures for submitting same.

(2) * * *

(i) Whenever a shipper or shippers' association desires to enter into an initial or amended service contract with the same essential terms as in another existing service contract, a request shall be submitted to the carrier or conference in writing.

* * * * *

(g) * * *

* * * * *

(2) * * *

(i) The making available of contingent or amended essential terms to similarly situated shippers under paragraphs (f)(1) or (f)(4) of this section;

* * * * *

(h) * * *

(1) * * *

(i) A unique service contract number, and consecutively numbered amendment number, if any, bearing the prefix "SC" (see § 514.17(d)(2));

* * * * *

(j) * * *

(1) * * *

(i) Within 20 days after the initial filing of an initial or amended service contract, the Commission may reject, or notify the filing party of the Commission's intent to reject, a service contract and/or statement of essential terms that does not conform to the form, content and filing requirements of the 1984 Act or this part. The Commission will provide an explanation of the reasons for such rejection or intent to reject.

(ii) Except for rejection on the ground that the service contract or amendment thereto was not filed within ten days of its essential terms, or other major deficiencies, such as not containing an essential term, the parties will have 20 days after the date appearing on the notice of intent to reject to resubmit the contract (in paper form under paragraph (g) of this section) and/or statement of essential terms (in electronic form under § 514.17), modified to satisfy the Commission's concerns.

(2) Rejection. The Commission may reject an initial or amended contract and/or statement of essential terms if:

(i) The initial or amended service contract is not filed within 10 days of the electronic filing of its associated essential terms;

* * * * *

(3) * * *

(i) Performance under a service contract or amendment thereto may begin without prior Commission authorization on the day its associated statement of essential terms is electronically filed, except for rejection under paragraph (j)(3)(ii) of this section;

(ii) When the filing parties receive notice that an initial or amended service contract or statement of essential terms has been rejected under paragraph (j)(2) of this section:

* * * * *

(4) *Period of availability.* The minimum 30-day period of availability of essential terms required by paragraph (f)(1) of this section shall be suspended on the date of the notice of intent to reject an initial or amended service contract and/or statement of essential terms under paragraph (j)(1)(i) of this section, or on the date of rejection under paragraphs (j)(1)(i) and (j)(2) of this section, whichever occurs first, and a new 30-day period shall commence upon the resubmission thereof under paragraph (j)(1)(ii) of this section.

(k) Modification, correction and cancellation of service contract terms.

(1) *Modifications.* (i) The essential terms originally set forth in a service contract may be amended by mutual agreement of the parties to the contract and shall be electronically filed with the Commission under § 514.17.

(ii) Amended service contracts shall be filed with the Commission pursuant to paragraph (g) of this section.

(iii) Any shipper or shippers' association that has previously entered into a service contract which is amended pursuant to this paragraph may elect to continue under that contract or adopt the modified essential terms as an amendment to its contract.

(2) *Corrections.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission and shall include:

(i) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the initial or amended service contract to be corrected.

(ii) A paper copy of the proposed correct essential terms. Corrections shall be indicated as follows:

(A) Matter being deleted shall be struck through; and

(B) Matter to be added shall immediately follow the language being deleted and be underscored;

(iii) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(iv) Documents supporting the clerical or administrative error; and

(v) A brief statement from the other party to the contract concurring in the request for correction.

(3) Filing and availability of corrected materials.

(i) If the request for correction is granted, the carrier or conference shall file the corrected contract provisions under this section and/or a corrected statement of essential terms under § 514.17, using a special case number under § 514.9(b)(19). Corrected essential terms shall be made available to all other shippers or shippers' associations similarly situated for a specified period of no less than fifteen (15) days from the date of the filing of the corrected essential terms. The provisions of paragraphs (f)(1) to (f)(3) of this section shall otherwise apply.

(ii) The provisions of paragraph (k)(3)(i) of this section do not apply to clerical or administrative errors that appear only in a confidentially filed service contract but not also in the relevant essential terms.

(iii) Any shipper or shippers' association that has previously entered into a service contract that is corrected pursuant to this paragraph may elect to continue under that contract with or without the corrected essential terms.

(4) *Cancellation.* See paragraph (1) of this section and § 514.4(e)(2).

* * * * *

§ 514.8 [Amended]

4. In § 514.8, paragraph (n)(1)(iii)(G)(*3*) is removed.

5. Section 514.17 is amended by revising paragraphs (d)(2) and (d)(3), and the first sentence of paragraph (a)(1), to read as follows:

§ 514.17 Essential terms of service contracts in foreign commerce.

(a) * * *

(1) A concise statement of the essential terms (ETs) of every initial service contract (which is filed in paper form under § 514.7), or appropriate amendments to ETs resulting from any amendment of the filed service contract, shall be filed with the Commission by authorized persons (see § 514.4(d)(5)) and made available to the general public in electronic tariff format under this section. * * *

* * * * *

(d) * * *

* * * * *

(2) *ET (statement of essential terms) and SC (service contract and amendment) numbers.* The "ET Num" and "SC Num" (consecutive for amendments) are defined by the filer and shall be entered in the appropriate fields.

(3) *Period of availability.* The period of availability of the essential terms to similarly situated shippers shall be no less than thirty (30) days, i.e., from the "Filing date" (automatically entered by ATFI for initial or amendment filings under § 514.10(a)(2)) to the "Available until" date (automatically defaulted to 30 days from the filing date, but the filer can enter a later date, making the availability period longer).

* * * * *

§ 514.18 [Amended]

6. In § 514.18, in paragraphs (b) and (c)(3) introductory text, remove the citation "§ 514.7(k)(1)," and add in its place, the citation "§ 514.7(k)(2)."

PART 581—[AMENDED]

7. The authority citation for part 581 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706 1707, 1709, 1712, 1714–1716, 1718 and 1722.

8. Section 581.3 is amended by revising paragraphs (a) introductory text, (a)(1)(i), (a)(2)(iv)(A), (a)(2)(iv)(B) and (a)(3)(i) to read as follows:

§ 581.3 Filing and maintenance of service contract materials.

(a) *Filing.* There shall be filed with the "Director, Bureau of Tariffs, Certification and Licensing," the following:

(1) * * *

(i) The outer envelope shall be addressed to the "Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573."

* * * * *

(2) * * *

(iv)(A) With an accompanying transmittal letter in an envelope which contains only matter relating to essential terms. In filing service contract amendments, the transmittal shall include the effective date and/or filing date of the original service contract;

(B) The envelope and the inside address on the transmittal letter are to be addressed to the "Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573."

(3) * * *

(i) The making available of contingent or amended essential terms to similarly situated shippers under § 581.6(b)(5) or § 581.6(b)(1);

* * * * *

9. Section 581.4 is amended by revising paragraphs (a)(1)(i), (b)(1)(iii) and the last sentence of (b)(2)(iii)(A) to read as follows:

§ 581.4 Form and manner.

(a) * * *

(1) * * *

(i) A unique service contract number, and consecutively numbered amendment number, if any, bearing the prefix "SC";

* * * * *

(b) * * *

(1) * * *

(iii) Be identified by an essential-terms number bearing the prefix "ET No.," which shall be located on the top of each page of the statement of essential terms. In the case of amended essential terms, only the changed pages shall be filed and each affected amended page shall be likewise identified by the essential-terms "ET No." and a consecutively numbered amendment suffix, *e.g.*, ET No. 86, Amendment No. 1; and

(iv) * * *

(2) * * *

(iii)(A) * * *

The Index shall include for every statement of essential terms, the ET number and consecutively numbered ET amendment number, if any, as provided in paragraph (b)(1)(iii) of this section, the effective duration, as provided in § 581.5(a)(3)(i), the page and section number(s) [where used], and a column for cancellation dates which shall be used as an alternative to cancelling each individual page of the Essential Terms Publication; and

* * * * *

10. Section 581.6 is amended by revising paragraphs (a) and (b) (1) and (2) to read as follows:

§ 581.6 Availability of essential terms.

(a) *Availability of statement.* A statement of the essential terms of each initial or amended service contract as set forth in tariff format shall be made available to the general public pursuant to the requirements of this section and §§ 581.3, 581.4(b) and 581.5.

(b) *Availability of terms.* (1) The essential terms of an initial or amended service contract shall be made available to all other shippers or shippers' associations similarly situated under the same terms and conditions for a specified period of no less than thirty (30) days from the date of filing of the initial or amended service contract as may be adjusted under § 581.8(d); *provided that*, where a shipper or shippers' association accesses an amended service contract with an unchanged termination date, the minimum volume obligation for the accessing shipper or shippers' association must be pro-rated according to the relation between the original contract duration and the duration of the access contract.

(2) Whenever a shipper or shippers' association desires to enter into an initial or amended service contract with the same essential terms, a request shall be submitted to the carrier or conference in writing.

* * * * *

11. Section 581.7 paragraph (a) is revised to read as follows: § 581.7 Modification, termination or breach not covered by the contract.

For purposes of this part:

(a) *Modifications.* (1) The essential terms originally set forth in a service contract may be amended by mutual agreement of the parties to the contract.

(2) Amended service contracts shall be filed with the Commission pursuant to § 581.3(a) of this part.

(3) Any shipper or shippers' association that has previously entered into a service contract which is amended pursuant to this paragraph (a)

may elect to continue under that contract or adopt the modified essential terms as an amendment to its contract.

* * * * *

12. Section 581.8 is amended by revising paragraphs (a)(1), (b) introductory text, (c)(1), (c)(2) introductory text and (d) to read as follows:

§ 581.8 Contract rejection and notice; implementation.

(a) *Initial filing and notice of intent to reject.* (1) Within 20 days after the initial filing of an initial or amended service contract and statement of essential terms, the Commission may notify the filing party of the Commission's intent to reject a service contract and/or statement of essential terms that does not conform to the form, content and filing requirements of the Act or this part. The Commission will provide an explanation of the reasons for such intent to reject.

* * * * *

(b) *Rejection.* The Commission may reject an initial or amended contract and/or statement of essential terms if the objectionable contract or statement:

* * * * *

(c) *Implementation; prohibition and rerating.* (1) Performance under a service contract or amendment thereto may begin without prior Commission authorization on the day both the initial or amended contract and statement of essential terms are on file with the Commission, except as provided in paragraph (c)(2) of this section;

(2) When the filing parties receive notice that an initial or amended service contract, or statement of essential terms, has been rejected under paragraph (b) of this section:

* * * * *

(d) *Period of availability.* The minimum 30-day period of availability of essential terms required by § 581.6(b) shall be suspended on the date of the notice of intent to reject an initial or amended service contract and/or statement of essential terms under paragraph (a)(1) of this section and a new 30-day period shall commence upon the resubmission thereof under paragraph (a)(2) of this section.

13. Section 581.9 is revised to read as follows:

§ 581.9 Confidentiality.

All service contracts and amendments to service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24439 Filed 10-7-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-121; DA 92-1325]

Contour Protection for Shore-Spaced Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action, the Chief, Mass Media Bureau, pursuant to authority delegated in the Report and Order in this proceeding, removes the temporary restriction on FM applications which are short-spaced by more than 8 kilometers. The restriction is no longer necessary based on the staff's experience over the past three years in processing FM applications proposing directional antennas and the staff's refinement of numerous computer programs. The intended effect is to allow FM applicants to make full use of the rule allowing the use of directional antennas to provide adequate contour protection for short-spaced assignments.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Charles Jay Iseman, Mass Media Bureau, Federal Communications Commission, (202) 632-6908.

SUPPLEMENTARY INFORMATION: The temporary restriction is contained in a note to § 73.215(e) of the Commission's rules.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Final Rule

Part 73 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.215 [Amended]

2. Section 73.215 is amended by removing the note to paragraph (e).

[FR Doc. 92-24456 Filed 10-7-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB69

Endangered and Threatened Wildlife and Plants; Determination of Endangered or Threatened Status for 16 Plants From the Island of Molokai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 15 plants: *Bidens wiebkei* (ko'oko'olau), *Brighamia rockii* (pua 'ala), *Canavalia molokaiensis* ('awikiwiki), *Clermontia oblongifolia* ssp. *brevipes* ('oha wai), *Cyanea mannii* (haha), *Cyanea procera* (haha), *Hedyotis mannii* (pilo), *Hibiscus arnottianus* ssp. *immaculatus* (koki'o ke'oke'o), *Melicope reflexa* (alani), *Phyllostegia mannii* (no common name (NCN)), *Pritchardia munroi* (loulu), *Schiedea lydgatei* (NCN), *Silene alexandri* (NCN), *Silene lanceolata* (NCN), and *Stenogyne bifida* (NCN). The Service also determines threatened status for one plant, *Tetramolopium rockii* (NCN). Fourteen of the 16 taxa are known to be extant only on the island of Molokai, Hawaii; one species also is found on the island of Hawaii, the other is also on Lanai. Fifteen of these taxa are known from East Molokai and one is also known from West Molokai. The 16 plant taxa and their habitats have been variously affected and are threatened by one or more of the following: Habitat degradation and/or predation by wild, feral, or domestic animals (axis deer, goats, pigs, sheep, and cattle); competition for space, light, water, and nutrients by naturalized, alien vegetation; habitat loss from fires; predation by rats; human recreational activities; and military training exercises. Because of the depauperate number of extant individuals and their severely restricted distributions, populations of these taxa are subject to an increased likelihood of extinction from stochastic events. This rule

implements the protection and recovery provisions provided by the Act for these plants.

EFFECTIVE DATE: November 9, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 8+808+541-2749).

SUPPLEMENTARY INFORMATION:

Background

Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia ssp. *brevipes, Cyanea mannii, Cyanea procera, Hibiscus arnottianus* ssp. *immaculatus, Melicope reflexa, Phyllostegia mannii, Pritchardia munroi, Schiedea lydgatei, Silene alexandri, Stenogyne bifida,* and *Tetramolopium rockii are* currently known only from the island of Molokai, Hawaii. *Silene lanceolata* is found on both Molokai and the island of Hawaii, and *Hedyotis mannii* is found on both Molokai and the island of Lanai.

The island of Molokai, the fifth largest in the Hawaiian island chain, is approximately 38 miles (mi) (61 kilometers (km)) long, up to 10 mi wide, and encompasses an area of about 266 square (sq) mi (688 sq km) (Foote *et al.* 1972, Plasch 1985). Three shield volcanoes make up most of the land mass of Molokai: West Molokai Mountain, East Molokai Mountain, and a volcano that formed Kalaupapa Peninsula (Department of Geography, University of Hawaii 1983). Molokai also can be divided into three major sections: The West Molokai section, comprising West Molokai Mountain; the central Molokai section or Hoolehua Plain formed between the two large mountain masses; and the East Molokai section, incorporating East Molokai Mountain and Kalaupapa Peninsula (Foote *et al.* 1972).

The taller and larger East Molokai Mountain rises 4,970 feet (ft) (1,813 meters (m)) above sea level (Walker 1990) and comprises roughly 50 percent of the island's land area. Topographically, the windward side of East Molokai differs from the leeward side. Precipitous cliffs line the northern windward coast with deep inaccessible valleys dissecting the coastline. The annual rainfall on the windward side is 75 to over 150 inches (in) (200 to over 375 centimeters (cm)), distributed throughout the year. The soils are poorly drained and high in organic matter. The gulches and valleys are usually very steep, but sometimes gently sloping (Foote *et. al.* 1972). Much of the native vegetation on the northern part of East Molokai is intact because of its relative inaccessibility to humans and animals (Culliney 1988), although destructive ungulates have begun to enter the coastline in recent years (Joel Lau, The Nature Conservancy of Hawaii (TNCH), pers. comm., 1990). *Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus,* and *Stenogyne bifida* extend through various windward vegetation communities, from Coastal Dry Communities along the northern coast to the Montane Mesic Communities found inland on that side of the island. Halawa, on Molokai's extreme eastern end, has the same soil types as the windward side of the island. *Bidens wiebkei* is the only plant taxon of the 16 included in this final rule that grows in the Lowland to Montane Mesic Shrublands and Forests found on this section of the island.

Although Molokai's windward side receives most of the island's rainfall, some falls onto the upper slopes of the leeward (southern) side, decreasing as elevation decreases, and resulting in diverse leeward communities: from wet forests to dry shrub and grasslands. The average annual rainfall on the leeward side of East Molokai is between 30 and 50 in (80 and 130 cm), mostly falling between November and April. The gently sloping to very steep topography of upland regions has predominantly well drained and medium-textured soils. *Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, Cyanea procera, Hedyotis mannii, Melicope reflexa, Phyllosteiga mannii, Pritchardia munroi; Schiedea lydgatei, Silene alexandri,* and *Silene lanceolata* are found in habitats that extend from upper elevation Montane Wet Forests down to the Lowland Dry Communities on the leeward side of the island.

On the northwestern portion of East Molokai is Kalaupapa Peninsula, created after most of the island had been formed. Kalaupapa is the site of a Hansen's Disease settlement operated by the State Department of Health but with a cooperative agreement with the National Park Service. One population of *Tetramolopium rockii* is located along its ash-covered, basaltic coastline.

With the advent of cattle ranching and later pineapple cultivation, most of Molokai, particularly West Molokai and East Molokai's southern section, was converted to pasture land. The only remaining large tracts of native vegetation are found within the Molokai Forest Reserve on the upper elevation portions of East Molokai; most of the plant taxa in this rule are restricted to this forest reserve. *Tetramolopium rockii,* the only taxon found on West Molokai, is restricted to coastal calcareous sand dunes on the island's northeastern corner, where the impacts of ranching activities and development have been quite limited This Coastal Dry Community extends from sea level to 1,000 ft (300 m) in elevation and has an annual rainfall of 10 to 40 in (250 to 1,000 millimeters (mm))

Of the 16 taxa included in this rule, *Silene lanceolata* and *Hedyotis mannii* are the only species that are currently found on an island other than Molokai The Hawaii Island populations of *S. lanceolata* grow in the saddle region between Mauna Kea and Mauna Loa Mountains, Hawaii's two largest volcanoes. The Montane Dry Shrub and Grassland communities to which this species belongs extend into the subalpine zone, from 1,600 to 9,500 ft (500 to 2,900 m) in elevation with annual rainfall between 12 and 40 in (300 and 1,000 mm) (Gagne and Cuddihy 1990). The Lanai Island population of *H. mannii* grows in two gulches of Lanaihale. The vegetation communities of the area in which this species is found range from Lowland Wet Shrubland to Lowland Wet Forest. These communities range in elevation from 330 to 3,950 ft (100 to 1,200 m) with an annual rainfall between 60 and 240 in (150 to 600 cm) (Gagne and Cuddihy 1990).

The land that supports these 16 plant taxa is owned by the State of Hawaii, the Federal government, and private entities. The three State agencies are the Department of Land and Natural Resources (including the Natural Area Reserves System and Forest Reserves), the Department of Health, and the Department of Hawaiian Home Lands, the last two of which include cooperative management agreements with the National Park Service. Federally owned land consists of the Pohakuloa Training Area (PTA) on the island of Hawaii, under the jurisdiction of the U.S. Army. Among various private owners are The Nature Conservancy of Hawaii and a private owner with a conservation easement with that conservation organization.

Discussion of the 16 Taxa Included in This Rule

Bidens wiebkei was named by Earl Edward Sherff in honor of Henry Wiebke, a school principal on Molokai, who, with Otto Degener, discovered the plant in 1928 (Sherff 1928b). Sherff (1928a) named *Bidens campylotheca* var. *nematocera* based on Wilhelm

Hillebrand's (1888) description of an unnamed variety of *Campylotheca grandiflora* from Molokai; he later raised this taxon to specific status and published the combination *Bidens nematocera* (Sherff 1935a). Hillebrand's type, the only specimen of *B. nematocera* collected, was deposited in Berlin and destroyed during World War II. In the current treatment of the genus, Fred R. Ganders and Kenneth M. Nagata (1990) tentatively consider *B. nematocera* to be synonymous with *B. wiebkei*.

Bidens wiebkei, a member of the aster family (Asteraceae), is a perennial herb which is somewhat woody at the base and grows from 1.6 to 3.3 ft (0.5 to 1 m) tall. The opposite, pinnately compound leaves are 2.8 to 5.1 in (7 to 13 cm) long and each has three to seven leaflets, 1 to 3 in (2.5 to 8 cm) long and 0.4 to 1 in (1 to 2.5 cm) wide. Flower heads are arranged on side branches in clusters of usually 10 to 30, each 0.6 to 1 in (1.6 to 2.5 cm) in diameter and comprising 4 to 6 sterile, yellow ray florets, about 0.5 in (10 to 12 mm) long and 0.08 to 0.2 in (2 to 5 mm) wide, and 9 to 18 bisexual, yellow disk florets. Fruits are brownish-black achenes (dry, one-seeded fruits), which are curved or twisted and winged and measure 0.2 to 0.4 in (6 to 9 mm) long and 0.04 to 0.08 in (0.9 to 2 mm) wide. This plant is distinguished from other *Bidens* species which grow on Molokai by its erect habit and the curved or twisted, winged achenes (Degener and Sherff 1932a, 1932b; Ganders and Nagata 1990).

Historically, *Bidens wiebkei* was known from Pelekunu and the easternmost section of Molokai at Halawa (Hawaii Heritage Program (HHP) 1990a1, 1990a6). It is still found near Halawa and was recently discovered on Puu Kolekole, just south of its historical range, on privately owned land (HHP 1990a1 to 1990a5). The five known populations of this species are scattered along steep, exposed slopes (Gagne and Cuddihy 1990; HHP 1990a2, 1990a3, 1990a5) in *Metrosideros polymorpha* ('ohi'a) dominated mesic shrublands and forests at 820 to 3,450 ft (250 to 1,050 m) in elevation (Ganders and Nagata 1990), extending over a distance of 2.5 by 1 mi (4 by 1.6 km), and numbering no more than 60 individuals. Other associated plant species include *Antidesma* (hame), *Nestegis sandwicensis* (olopua), *Pisonia* (papala kepau), and *Scaevola gaudichaudii* (naupaka kuahiwi) (Cuddihy *et al.* 1982, HHP 1990a5). The major threats to *Bidens wiebkei* include habitat degradation and possible predation by deer and feral goats, competition with alien plants (*Melinus minutiflora* (molasses grass) and *Schinus terebinthifolius* (Christmas berry)), and fire. Damage or vandalism by humans of those plants found along trails is also a serious threat.

Asa Gray (Mann 1868) described *Brighamia insignis* based upon alcohol-preserved flowers and fruits collected by William Tufts Brigham on Molokai and a dried specimen collected on Kauai or Niihau by Ezechiel Jules Remy. Brigham's bottled material has since been lost. In his monograph, Harold St. John (1969) named plants collected on Molokai *B. rockii* and *B. rockii* f. *longiloba*, based, respectively, upon specimens collected by Francis Raymond Fosberg and Charles Noyes Forbes. The specific epithet was chosen to honor Joseph F. Rock. St. John (1969) also described *B. remyi*, based upon a specimen collected on Maui by Remy. In the current treatment of the genus, Thomas G. Lammers (1990) recognizes only two species: *B. rockii* for plants which presently can be found on Molokai and possibly for those which were formerly found on Lanai and Maui, and *B. insignis* for the Kauai and Niihau plants.

Brighamia rockii, a member of the bellflower family (Campanulaceae), grows as an unbranched plant 3.3 to 16 ft (1 to 5 m) tall with a thickened, succulent stem which tapers from the base. The fleshy, oval leaves are widest at their tips and are arranged in a rosette at the top of the plant. They measure 2.4 to 8.7 in (6 to 22 cm) long and 2 to 6 in (5 to 15 cm) wide. The fragrant flowers are clustered in groups of three to eight in the leaf axils (the point between the leaf and the stem). Each flower cluster is on a stalk 1.4 to 3.0 in (3.5 to 7.5 cm) long, and each flower is on a stalk 0.2 to 0.5 in (6 to 12 mm) long. The green basal portion of the flower (hypanthium) has 10 ribs and is topped by 5 calyx lobes 0.01 to 0.3 in (2.5 to 8 mm) long. The petals are fused into a green to yellowish-green tube 3.1 to 5.1 in (8 to 13 cm) long and 0.1 to 0.2 in (0.2 to 0.4 cm) wide which flares into five white, elliptic lobes 0.7 to 1.5 in (1.7 to 3.7 cm) long and 0.3 to 0.5 in (0.8 to 1.3 cm) wide. The fruit is a capsule 0.5 to 0.8 in (13 to 20 mm) long, 0.3 to 0.4 in (7 to 10 mm) wide, and 0.1 to 0.2 in (3 to 4 mm) thick which contains numerous seeds about 0.05 in (1.1 to 1.2 mm) long. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx lobes, and its shorter flower stalks (Lammers 1990, St. John 1969).

Brighamia rockii once ranged along the northern coast of East Molokai from Kalaupapa to Halawa and may possibly have grown on Lanai and Maui (HHP 1990b1, 1990b2, 1990b4; Lammers 1990). Today its range has decreased to scattered populations on steep, inaccessible sea cliffs along East Molokai's northern coastline from Anapuhi Beach to Wailau Valley on private land, and on the relatively inaccessible State-owned sea stack of Huelo, east of Anapuhi Beach (HHP 1990b3, 1990b5 to 1990b8; Hawaii Plant Conservation Center (HPCC) 1990a). The 5 known populations of *Brighamia rockii* that extend over this 6.5 mi (10.5 km) long stretch total fewer than 200 individuals (HHP 1990b3, 1990b5 to 1990b8). The plants are found in rock crevices on steep sea cliffs, often within the spray zone, in Coastal Dry to Mesic Forests or Shrublands at an elevation of sea level to 1,540 ft (0 to 470 m) with such associated species as 'ohi'a, *Canthium odoratum* (alahe'e), *Diospyros sandwicensis* (lama), *Osteomeles anthyllidifolia* ('ulei), and *Scaevola* (naupaka) (HHP 1990b1 to 1990b3, 1990b5 to 1990b7; HPCC 1990a; Lammers 1990). Ungulate damage (and possibly predation) by deer and goats poses a serious threat to *Brighamia rockii*. Although there is no evidence that rats feed on the fruits, rats are a potential threat as evidenced by predation on related Hawaiian genera. Competition with the alien plant Christmas berry is also a potential threat.

Forbes first collected *Canavalia molokaiensis* on Molokai in 1912, and 50 years later Otto Degener, Isa Degener, and J. Sauer described the species (Degener *et al.* 1962). Fosberg (1966) reduced several Hawaiian species of the genus to varieties, resulting in the name *C. galeata* var. *molokaiensis* for this taxon. In his revision of the Hawaiian taxa of the genus, St. John (1970) accepted *C. molokaiensis* and published two additional names, *C. peninsularis* and C. stenophylla, for Molokai plants. In the current treatment (Wagner and Herbst 1990), however, only *C. molokaiensis* is recognized.

Canavalia molokaiensis, a member of the pea family (Fabaceae), is a perennial climbing herb with twining branches. Each leaf is made up of three lance-shaped or sometimes oval leaflets which usually measure 1.4 to 3 in (3.5 to 8 cm) long and 0.5 to 2.1 in (1.3 to 5.4 cm) wide. Four to 15 flowers are arranged along a stalk 1.2 to 3.5 in (3 to 9 cm) long. The calyx (fused sepals), which is 0.8 to 1.1 in (20 to 28 mm) long, comprises a larger upper lip with two lobes and a smaller lower lip with three lobes. The five rose-

purple petals vary from 1.4 to 1.9 in (36 to 47 mm) in length. The flattened pods, 4.7 to 6.3 in (12 to 16 cm) long and 0.9 to 1.4 in (2.3 to 3.5 cm) wide, enclose flattened, dark reddish-brown, oblongelliptic seeds which are 0.7 to 0.9 in (17 to 22 mm) long and about 0.5 in (12 to 14 mm) wide. The only species of its genus found on Molokai, this plant can be distinguished from others in the genus by its narrower leaflets and its larger, rose-purple flowers (Degener *et al.* 1962, Sauer 1964, Wagner and Herbst 1990).

Historically, *Canavalia molokaiensis* was known from East Molokai, at Kalaupapa, Pelekunu, and farther south in Kahuaawi Gulch and the region of Manawai (HHP 1990c1 to 1990c3, 1990c9). It now has a more restricted range: from Kalaupapa to Waialeia, Kaunakakai, and Kamakou (HHP 1990c3 to 1990c10). This species typically grows in exposed dry sites on steep slopes in mesic shrublands and forests at 2,790 to 3,050 ft (850 to 930 m) in elevation (HHP 1990c7, 1990c10; Wagner and Herbst 1990). The 7 known populations, which contain an estimated 50 individuals, are on State and private land and are distributed over a 7 by 3.5 mi (11 by 5.5 km) area. The largest population of roughly 20 plants lies within a 0.2 acre (ac) (930 sq m) area (J. Lau, pers. comm., 1990). Associated plant species include 'ohi'a, *Chamaesyce* ('akoko), *Dodonaea viscosa* ('a'ali'i), *Styphelia tameiameiae* (pukiawe), and *Wikstroemia* ('akia) (Cuddihy *et al.* 1982, HHP 1990c5). Feral ungulates such as goats and pigs degrade the habitat of *Canavalia molokaiensis* extensively and pose an immediate threat to this species. Predation on a related species of *Canavalia* suggests that goats may possibly consume this species. Competition with the alien plant, molasses grass, is also an immediate threat.

Franz Elfried Wimmer (1943) described *Clermontia oblongifolia* f. *brevipes* based upon a specimen collected by Forbes on Molokai in 1912. The name of the form refers to the plant's short leaves, leaf stalks, and flower stalks. Lammers (1988) raised this taxon to the subspecific level when he published the new combination *C. oblongifolia* ssp. *brevipes*.

Clermontia oblongifolia ssp. *brevipes*, a member of the bellflower family, is a terrestrial shrub or tree which reaches a height of 6.6 to 23 ft (2 to 7 m). The leaves, on petioles 0.7 to 1.2 in (1.8 to 3 cm) long, are lance-shaped; have thickened, rounded teeth; and reach a length of 2.8 to 4.3 in (7 to 11 cm) and a width of 0.8 to 2 in (2 to 5 cm). Two or sometimes three flowers are grouped together on a stalk 0.2 to 0.4 in (5 to 10 mm) long, each flower having a stalk 0.4 to 1.8 in (1 to 4.5 cm) long. The flower is 2.4 to 3.1 in (6 to 7.8 cm) long; the calyx and corolla are similar in size and appearance, and each forms an arched tube which is greenish-white or purplish on the outside and white or cream colored on the inside. The nearly spherical, orange fruit is a berry, 0.7 to 1.2 in (17 to 30 mm) long. This species is distinguished from others in the genus by the structure of its calyx and corolla as well as by the lengths of the flower, the floral lobes, and the green hypanthium. This subspecies differs from others of the species by the shape of its leaves and the lengths of its leaves, leaf stalks, and flower stalks (Lammers 1988, 1990).

Clermontia oblongifolia ssp. *brevipes* is known from a single population located in the southeastern part of TNCH's Kamakou Preserve, East Molokai, where it occurs on private land (Cuddihy *et al.* 1982). This population was last seen in 1982, and its size is unknown. The other known population, also from the Kamakou area, has not been seen for over 40 years and may have been extirpated (HHP 1990d2). Other than these two populations, the historical range is not known. This taxon typically grows in shallow soil on gulch slopes in wet 'ohi'a-dominated forests at elevations between 3,500 and 3,900 ft (1,100 and 1,200 m) (1990d2; J. Lau, pers. comm., 1990). Associated plant species include *Cheirodendron trigynum* ('olapa) (J. Lau, pers. comm., 1990). Feral pigs are an immediate threat to the habitat of the single remaining population of *Clermontia oblongifolia* ssp. *brevipes*. Its limited number makes the taxon vulnerable to extinction by a single stochastic event. Predation on related species suggests that rats may possibly feed on the fruit or plant parts of this taxon.

Brigham named *Delissea mannii* in honor of Horace Mann, Jr., with whom he collected the plant on Molokai in the 1860s and in whose "Enumeration" Brigham published the name (Mann 1867). Hillebrand (1888) transferred the taxon to the genus *Cyanea*, resulting in the name *Cyanea mannii*.

Cyanea mannii, a member of the bellflower family, is a branched shrub 5 to 10 ft (1.5 to 3 m) tall. The leaves are narrowly elliptic or lance-shaped, 4.7 to 8.3 in (12 to 21 cm) long and 1 to 2 in (2.5 to 5 cm) wide, and have petioles 0.9 to 3.9 in (2.2 to 10 cm) long and hardened teeth along the leaf margins. Each flower cluster, arising from the axil of a leaf on a stalk 0.8 to 1.4 in (20 to 35 mm) long, comprises 6 to 12 flowers, each on a stalk 0.3 to 0.5 in (8 to 12 mm) long. Each flower has a smooth, green hypanthium which measures about 0.2 in (4 to 6 mm) long and 0.1 to 0.2 in (3 to 5 mm) wide and is topped by triangular calyx lobes 0.1 to 0.2 in (3 to 5 mm) long and 0.08 to 0.1 in (2 to 3 mm) wide. The purplish corolla forms a nearly upright tube 1.2 to 1.4 in (30 to 35 mm) long and 0.1 to 0.2 in (3 to 4 mm) wide, which ends in five spreading lobes. Berries have not been observed. This species is distinguished from the seven other species of the genus on Molokai by a combination of the following characters: A branched, woody habit; leaves with small, hardened, marginal teeth; and a purplish corolla (Lammers 1990, Rock 1919, Wimmer 1943).

Historically, *Cyanea mannii* was known only from Kalae on East Molokai (HHP 1990e2). In 1984, a single plant was discovered by Joan Aidem west of Puu Kolekole on East Molokai on privately owned land (HHP 1990e1; Lammers 1990; Edwin Misaki, TNCH, pers. comm., 1991). Since then, five populations have been discovered in the east and west forks of Kawela Gulch within Kamakou Preserve on East Molokai. The 6 populations are distributed over an area of about 2 by 0.8 mi (3.2 by 1.2 km) and total at least 40 individuals (E. Misaki, pers. comm., 1991). This species typically grows on the sides of deep gulches in 'ohi'a-dominated mesic to wet forests at elevations of about 3,300 to 4,000 ft (1,000 to 1,220 m) (HHP 1990e1; Lammers 1990; E. Misaki, pers. comm., 1991). Associated plant species include 'akia, 'olapa, *Dicranopteris linearis* (uluhe), and *Vaccinium* ('ohelo) (E. Misaki, pers. comm., 1991). Feral pigs threaten the habitat of *Cyanea mannii*. Rodents such as rats may feed on the fruit or other parts of the plant, as shown by predation on related species. Because of the small number of remaining individuals, one stochastic event could extirpate a significant proportion of the populations.

Hillebrand discovered *Cyanea procera* on Molokai and formed the specific epithet from a Latin word meaning "tall," in reference to the height of the plant (Hillebrand 1888). St. John (1987, St. John and Takeuchi 1987), believing there to be no generic distinction between *Cyanea* and *Delissea*, transferred the species to the genus *Delissea*, the older of the two generic names, creating *D. procera*. The current treatment, however, maintains the separation of the two genera (Lammers 1990).

Cyanea procera, a member of the bellflower family, is a palmlike tree 10[O]

to 30 ft (3 to 9 m) tall with stalkless, lance-shaped leaves 24 to 30 in (60 to 75 cm) long and 3.9 to 6.7 in (10 to 17 cm) wide with tiny hardened teeth along the margins. Each flower cluster has a stalk 1.0 to 1.6 in (25 to 40 mm) long and comprises 10 to 20 flowers, each on a stalk 0.2 to 0.4 in (6 to 10 mm) long. Each flower has a hypanthium, 0.6 to 0.8 in (15 to 20 mm) in length and 0.3 to 0.5 in (8 to 13 mm) in width, topped by shallow triangular calyx lobes 0.1 to 0.2 in (3 to 4 mm) long and about 0.2 in (4 to 5 mm) wide. The purplish corolla forms a nearly upright or slightly curved tube 2.4 to 3.1 in (60 to 80 mm) long and 0.2 to 0.4 in (6 to 11 mm) wide, which ends in five downwardly curving lobes which make the flower appear one-lipped. The ellipse- or egg-shaped berries are 1.2 to 1.8 in (3.0 to 4.5 cm) long and 0.8 to 1.1 in (2.0 to 2.8 cm) wide. This species can be distinguished from other species of the genus and from *C. mannii* by its growth habit, its sessile leaves, and the single-lipped appearance of the corolla (Lammers 1990, Rock 1919, Wimmer 1943).

Historically, *Cyanea procera* was known only from an unspecified site in the Kamalo region of East Molokai (HHP 1991a) until its discovery in 1987 at Puu O Kaeha, west of Kamalo on private land. Two individuals were found in a wet 'ohi'a-dominated forest at an elevation of 3,480 ft (1,060 m). The plants grow within 6.5 ft (2 m) of each other on a steep rock wall with thin soil on the southwest slope of a narrow gulch. Associated plant species include various species of *Asplenium, Coprosma ochracea* (pilo), *Pipturus albidus* (mamaki), and *Touchardia latifolia* (olona) (David Lorence, National Tropical Botanical Garden, pers. comm., 1991). In 1991, two additional individuals were discovered above a waterfall at about 4,000 ft (1,220 m) elevation in Waikolu Valley (J. Lau *in litt.*, 1991). Goats were observed in the area of this population, and the sides of the gulch where they grow are eroding. Only four plants of *Cyanea procera* are known to exist, making this species vulnerable to extinction from stochastic events. Like other *Cyanea* species and related genera, *C. procera* is potentially threatened by predation by rats. Habitat degradation by feral pigs is a potential threat.

Based upon a specimen he collected with Mann on West Maui, Brigham described *Kadua laxiflora* in Mann's list of 1867. In his revision of *Hedyotis*, Fosberg (1943) included *Kadua* in the genus *Hedyotis*, and he published the following names, which are synonymized under *Hedyotis mannii* in the current treatment of the genus (Wagner *et al.* 1990): *H. mannii* var. *laxiflora*, *H. mannii* var. *munroi*, *H. mannii* var. *scaposa*, *H. molokaiensis*, *H. thyrsoidea*, and *H. thyrsoidea* var. *hillebrandii* (Fosberg 1943), as well as *H. mannii* var. *cuspidata* (Fosberg 1956).

Hedyotis mannii, a member of the coffee family (Rubiaceae), is a perennial plant with smooth, usually erect stems 1 to 2 ft (30 to 60 cm) long which are woody at the base and four-angled or -winged. The leaves are opposite, thin in texture, elliptic to sometimes lanceshaped, and are usually 3 to 7 in (8 to 18 cm) long and 1 to 2.6 in (2.5 to 6.5 cm) wide. Stipules (leaf-like appendages), which are attached to the slightly winged leaf stalks where they join and clasp the stem, are triangular, 0.2 to 0.6 in (5 to 14 mm) long, and have a point usually 0.2 to 0.4 in (4 to 11 mm) long. Flowers are arranged in loose clusters up to 1 ft (30 cm) long at the ends of the stems and are either bisexual or female. The green hypanthium is top-shaped, about 0.05 in (1 to 1.5 mm) long, with sepals 0.06 to 0.1 in (1.5 to 3 mm) long and 0.04 to 0.08 in (1 to 2 mm) wide at the top. The greenish-white, fleshy petals are fused into a trumpets shaped tube 0.2 to 0.6 in (5 to 14 mm) long. Capsules are topshaped and measure 0.08 to 0.1 in (2 to 3 mm) long and about 0.1 in (3 to 4 mm) in diameter. This species' growth habit; its quadrangular or winged stems; the shape, size, and texture of its leaves; and its dry capsule which opens when mature separate it from other species of the genus (Hillebrand 1888, Wagner *et al.* 1990).

Hedyotis mannii was once widely scattered on three islands: Lanai, West Maui, and Molokai (HHP 1990f2 to 1990f10). After not being seen for 50 years, this species was rediscovered in 1987 by Steve Perlman on private land in Kawela Gulch on East Molokai (HHP 1990f1). Only two plants are known to exist in this area (Center for Plant Conservation (CPC) 1991). In 1991, an additional nine plants of this species were discovered on the island of Lanai: five mature and three juvenile plants were found at an elevation of 3,150 ft (960 m) at the head of Hauola Gulch, and a single mature plant at 2,640 ft (805 m) elevation in the gulch between Waialala and Kunoa Gulches (J. Lau, *in litt.* 1991). *Hedyotis mannii* typically grows on dark, narrow, rocky gulch walls in mesic and perhaps wet forests (Wagner *et al.* 1990) at 490 to 3,450 ft (150 to 1,050 m) in elevation (HHP 1990f1 to 1990f10). Associated plant species include mamaki, *Cibotium* (hapu'u), *Cyanea* (haha), and *Psychotria* (kopiko) (HHP 1990f1). The limited number of individuals of *Hedyotis mannii* makes it extremely vulnerable to extinction by stochastic events. Feral pigs and alien plants such as molasses grass degrade the habitat of this species and contribute to its vulnerability.

Sister Margaret James Roe (1961) described *Hibiscus immaculatus* based upon specimens collected by Forbes on Molokai in 1912. The specific epithet refers to the plant's pure white flowers. In his current treatment of the genus, David M. Bates regards the taxon as *Hibiscus arnottianus* ssp. *immaculatus* (Bates 1990, Wagner *et al.* 1989).

Hibiscus arnottianus ssp. *immaculatus*, a member of the hibiscus family (Malvaceae), is a tree up to 10 ft (3 m) tall with alternate, oval, toothed leaves measuring 2 to 2.8 in (5 to 7 cm) long and 1.6 to 2.6 in (4 to 6.5 cm) wide. Six lance-shaped bracts, 0.2 to 0.3 in (5 to 8 mm) long, are found under each of the faintly fragrant flowers, which are arranged singly near the ends of the branches. The calyx is 1 to 1.2 in (2.5 to 3.0 cm) long and cleft into five teeth with long, narrow points. The flaring petals are white and measure 3.1 to 4.3 in (8 to 11 cm) long and 1 to 1.4 in (2.5 to 3.5 cm) wide. Anthers, on spreading filament tips 0.4 to 0.8 in (1 to 2 cm) long, are arranged along the upper third of the white staminal column, which measures 4 to 5.5 in (10 to 14 cm) in length. Capsules are enclosed by the sepals and contain 0.2 in (4 mm) long seeds which are covered with yellowish-brown hair. This subspecies is distinguished from other native Hawaiian members of the genus by its white petals and white staminal column (Bates 1990; Neal 1965; Rock 1913; Roe 1959, 1961; St. John 1981).

Hibiscus arnottianus ssp. *immaculatus* once ranged from Waihanau Valley east to Papalaua Valley on East Molokai (HHP 1990g3, 1990g4). This taxon is now confined to a 3 mi (5 km) stretch of the northern coast of East Molokai from Waiehu to between Papalaua and Wailau valleys (Bates 1990; HHP 1990g1, 1990g2, 1990g5) on private and State land. The 4 populations, scattered along steep sea cliffs with native plant species such as alahe'e, hame, lama, mamaki, and 'ohi'a, are believed to total no more than 50 individuals (HHP 1990g1, 1990g5; HPCC 1990b). *Hibiscus arnottianus* ssp. *immaculatus* typically occurs in mesic forests between 50 and 1,600 ft (15 and 480 m) in elevation (Bates 1990, HHP 1990g1 to 1990g5, HPCC 1990b). The major threats to *Hibiscus arnottianus* spp. *immaculatus* are habitat destruction by feral goats and the small number of remaining populations.

St. John (1944) described and named *Pelea reflexa* based upon a specimen Rock collected on Molokai in 1910. The specific epithet refers to the slightly reflexed capsules. After further study of the genus, Thomas G. Hartley and Benjamin C. Stone (1989) placed *Pelea* into synonymy with *Melicope*, resulting in the new combination *M. reflexa* (Wagner *et al.* 1990).

Melicope reflexa, a member of the citrus family (Rutaceae), is a sprawling shrub 3.3 to 10 ft (1 to 3 m) tall with short, yellowish-brown, short-lived hairs on new growth. The opposite, thin, and leathery leaves are elliptical and measure 3.1 to 5.5 in (8 to 14 cm) long and 1.6 to 2.8 in (4 to 7 cm) wide. Flowers arise singly or in clusters of two or three from the leaf axil. The flower cluster has a stalk 0.1 to 0.6 in (3 to 15 mm) long, and each flower is on a stalk 0.6 to 0.8 in (15 to 20 mm) long. Male flowers have not been seen, but female flowers are made up of four overlapping sepals about 0.1 in (3 to 4 mm) long; four petals about 0.2 in (4.8 mm) long; an eight-lobed nectary disk; eight reduced, nonfunctional stamens; and a style about 0.2 in (4 mm) long. The capsules are 0.8 to 1.3 in (20 to 33 mm) wide with four sections 0.4 to 0.7 in (10 to 17 mm) long which are fused to each other along about one-fourth of their length. One or two glossy black seeds, about 0.3 in (7 to 8 mm) long, are found in each section of the capsule. This species' opposite leaves with leaf stalks usually over 0.4 in (1 cm) long, its larger leaves and fruit, and the partially fused sections of its capsule separate it from other species of the genus (Stone *et al.* 1990).

Historically, *Melicope reflexa* occurred from a ridge between Hanalilolilo and Pepeopae in Kamakou Preserve to as far east as Halawa on East Molokai (HHP 1990h1, 1990h2, 1990h5 to 1990h7). The 4 remaining populations of fewer than a total of 1,000 individuals are on private land at the headwall of Waikolu Valley, Wailau-Mapulehu summit and Kukuinui Ridge, and at Honomuni, and are distributed over a distance of about 7.5 mi (12 km) (HHP 1990h2 to 1990h4). *Melicope reflexa* typically grows in wet 'ohi'a-dominated forests with native trees such as 'olapa at elevations between 2,490 and 3,900 ft (760 and 1,190 m) (Stone *et al.* 1990). Major threats to *Melicope reflexa* include habitat degradation by ungulates (axis deer and feral pigs) and competition with the alien plant *Clidemia hirta* (Koster's curse). Because this species is known from a single restricted area, it is possible for one human-caused or natural event to destroy all or a significant portion of the extant individuals. Predation by deer or pigs is a potential threat in areas inhabited by these animals.

Mann (1868) published the name *Stenogyne parviflora* for a plant he and Brigham collected on Haleakala, Maui. In 1934, Sherff transferred this taxon to the genus *Phyllostegia;* as the name *P. parviflora* had previously been used for another species, he selected a new name *P. mannii*, for the taxon (Sherff 1934b). In the same year, Sherff (1934a) published the name *Phyllostegia racemosa* var. *bryanii* for the plants from the island of Molokai. In the current treatment (Wagner *et al.* 1990), *P. mannii* is the name applied to both the Molokai plants and specimens of the apparently extinct Maui plants.

Phyllostegia mannii, a nonaromatic member of the mint family (Lamiaceae), is a climbing vine with many-branched, four-sided, hairy stems. The opposite, hairy leaves, which are shaped like narrow triangles or narrow triangular ovals, measure 0.8 to 2.2 in (2 to 5.5 cm) long and 0.3 to 0.9 in (0.7 to 2.3 cm) wide and have coarsely toothed margins. Clusters of four to six flowers are arranged in each of several false whorls along an unbranched flowering stem 1.6 to 6 in (4 to 15 cm) long. The calyx is a bell-shaped, lobed structure. The slightly curved, two-lipped corolla tube is about 0.3 in (7 to 8 mm) long and is thought to be white. The fleshy, dark-green to black nutlets are 0.08 to 0.1 in (2 to 2.5 mm) long. This species is distinguished from others in the genus by its hairiness; its thin, narrow leaves which are not pinnately divided; and the usually six flowers per false whorl in a terminal inflorescence (Wagner *et al.* 1990).

Historically, *Phyllostegia mannii* was found from Hanalilolilo to Ohialele on East Molokai and at Ukulele on East Maui (HHP 1990i2 to 1990i8). It has not been seen on Maui for over 70 years and is apparently extinct on that island (Lammers 1990). This species is now known only from Hanalilolilo within Kamakou Preserve on privately owned land (HHP 1990i1). The only currently known population contains four individuals. It grows in shaded sites in sometimes foggy and windswept, wet, open, 'ohi'a-dominated forests with a native shrub and tree fern (hapu'u) understory (HHP 1990i1 to 1990i3) at 3,300 to 5,000 ft (1,010 to 1,525 m) in elevation (Wagner *et al.* 1990). Associated plant species include 'olapa, a few native ferns, and *Hedyotis* (manono). The only known population of *Phyllostegia mannii* is threatened by feral pigs. Because of the small number of individuals, a natural or human-caused event could extirpate all or a significant portion of the population.

Joseph F. Rock discovered a new palm on Molokai in 1920 and named it *Pritchardia munroi* in honor of James Munro, manager of Molokai Ranch (Beccari and Rock 1921).

Pritchardia munroi, a member of the palm family (Arecaceae), is a tree about 13 to 16 ft (4 to 5 m) tall with a trunk up to about 7.8 in (20 cm) in diameter. The leaf blade is about 35 in (88 cm) long and has a petiole about 33 in (85 cm) long. The leaves and petioles have scattered, mostly deciduous scales and hairs, somewhat larger on the lower leaf ribs. The leaves are deeply divided into segments which have long, drooping tips. Numerous bisexual or functionally male flowers are arranged in clusters on hairy, branching stalks about 20 in (52 cm) long which originate at the leaf bases. The flower consists of a cup-shaped, three-lobed calyx; three petals; six stamens; and a three-lobed stigma. The mature fruit is shiny, black, nearly spherical, and about 0.8 in (2 to 2.2 cm) in diameter. This species is distinguished from others of the genus by its relatively smooth leaves; the grayish-brown hair on the inflorescence stalks, which are shorter than the petioles; and the small size of the fruits (Beccari and Rock 1921, Read and Hodel 1990, St. John 1981).

Historically, *Pritchardia munroi* was found in leeward East Molokai, above Kamalo and near Kapuaokoolau (HHP 1990j1, Read and Hodel 1990). The last known wild specimen grows near the base of a small ravine in remnant dry to mesic forest at an elevation of about 2,000 ft (610 m) on privately owned land (Garnett 1989, HHP 1990j1, Read and Hodel 1990). Associated plant species include 'a'ali'i, 'ohi'a, pukiawe, and *Pleomele aurea* (hala pepe) (Garnett 1989, HHP 1990j1). A variety of threats affects the only known wild individual of *Pritchardia munroi*. Ungulates (axis deer, goats, and pigs) continue to degrade the habitat around its fenced enclosure and prevent the establishment of seedlings. Other serious threats include fire and predation of seeds by rats. The one known wild individual is vulnerable to extinction in its natural habitat because a single stochastic event could destroy the plant.

Hillebrand (1888) described *Schiedea lydgatei*, naming it in honor of the Reverend John M. Lydgate, who, as a student, accompanied Hillebrand on collecting trips. Later, Otto Degener and Sherff (Sherff 1944) described a new variety of the taxon, naming it variety *attenuata*. No infraspecific taxa are

recognized in the most recent treatment of the species (Wagner *et al.* 1990).

Schiedea lydgatei, a member of the pink family (Caryophyllaceae), is a low, hairless perennial plant with branched stems 4 to 16 in (10 to 40 cm) long which are woody at the base. The opposite, three-veined leaves are elliptic, 0.8 to 1.6 in (2 to 4.5 cm) long, and 0.2 to 0.6 in (0.6 to 1.5 cm) wide. Bisexual flowers are arranged in loosely spreading clusters 4 to 6.6 in (10 to 17 cm) long. The flowers comprise usually 5 distinct but overlapping, narrowly oval, green sepals, 0.1 to 0.2 in (3 to 4.5 mm) long; 5 nectaries about 0.1 in (2.5 to 3 mm) long; 10 stamens; and usually 3 styles. Petals are lacking. The capsules are about 0.2 in (4 to 5.5 mm) long and open when mature to reveal dark reddish-brown seeds about 0.03 in (0.8 mm) long. The opposite, thin, three-veined leaves with petioles and the smooth, open flower clusters with relatively larger, green sepals separate this species from other members of the genus (Degener and Degener 1956, Sherff 1944, Wagner *et al.* 1990).

Historically, *Schiedea lydgatei* was found in Kalae, Poholua, Makolelau, and Ohia Gulch on East Molokai (HHP 1990k2, 1990k4, 1990k7, 1990k8). This species is now known from five scattered populations in a more restricted area in Makakupaia, Kawela, and Makolelau. The 5 populations are distributed over an area of less than 1 by 3.5 mi (1.6 by 5.6 km), totalling fewer than 1,000 individuals (HHP 1990k1, 1990k3, 1990k5, 1990k6, 1990k9). This species is found along ridges and on cattle trails in dry to mesic grasslands, shrublands, and forests with scattered native and alien trees. It ranges in elevation from about 2,000 to 2,100 ft (600 to 650 m) (HHP 1990k5, 1990k6; Wagner *et al.* 1990). Associated plant species include 'a'ali'i, 'ohi'a, pukiawe, and uluhe (Gagne and Cuddihy 1990). The major threats to *Schiedea lydgatei* are fire and habitat degradation and competition with the alien plant species molasses grass. Because fire is such a pervasive threat in this species, dry, windswept habitat, a single fire potentially could destroy as many as four of the five populations.

Silene alexandri was described by Hillebrand (1888) based upon a specimen he discovered on Molokai; *S. alexandri* is its currently accepted name (Wagner *et al.* 1990).

Silene alexandri, a member of the pink family, is an erect, perennial herb, 1 to 2 ft (30 to 60 cm) tall, and woody at the base. The narrow, elliptic leaves are 1.2 to 2.5 in (30 to 65 mm) long by 0.2 to 0.6 in (6 to 14 mm) wide and hairless except for a fringe along the margins. Flowers are arranged in open clusters with stalks 0.4 to 0.7 in (10 to 19 mm) long. The 5-lobed, 10-veined, tubular calyx is 0.7 to 1 in (19 to 25 mm) long, and the 5 white, deeply-lobed, clawed petals extend about 0.2 in (4 to 6 mm) beyond the calyx. The capsule is about 0.6 in (14 to 16 mm) long, but seeds have never been seen. The hairless stems, flowering stalks, and sepals and the larger flowers with white petals separate this species from other members of the genus (Hillebrand 1888, Wagner *et al.* 1990, Williams 1896).

Historically, *Silene alexandri* was known from Makolelau and Kamalo on East Molokai, but now it occurs only at the former site on privately owned land (HHP 1990L1, 1990L2). The only known population, comprising fewer than 10 individuals, is found on a cattle trail in remnant dry forest and shrubland (HHP 1990L1, Wagner *et al.* 1990) at an elevation between 2,000 and 2,500 ft (610 and 760 m) (Wagner *et al.* 1990). Associated plant species include 'a'ali'i, 'ohi'a, pukiawe, and uluhe (Gagne and Cuddihy 1990). Feral goats continue to degrade the habitat of *Silene alexandri* and pose a serious threat to remaining populations. Predation of this species by goats and cattle may possibly occur. Fire also is an immediate threat. Because of the small number of individuals and their severely restricted distribution, extinction from stochastic events is a very real threat.

Silene lanceolata is based upon fertile specimens collected on Kauai during the United States Exploring Expedition in 1840, as well as vegetative material collected during the same expedition the following year on Maui. Gray (1854) described the species, naming it for its narrow leaves. Hillebrand (1888) recognized one variety, var. *angustifolia;* later Sherff (1946) described and named two additional varieties, vars. *hillebrandii* and *forbesii*. The current treatment does not recognize any subspecific taxa (Wagner *et al.* 1990).

Silene lanceolata, a member of the pink family, is an upright, perennial plant with stems 6 to 20 in (15 to 50 cm) long, which are woody at the base. The narrow leaves are 1 to 3 in (25 to 80mm) long, 0.08 to 0.4 in (2 to 11 mm) wide, and smooth except for a fringe of hairs near the base. Flowers are arranged in open clusters with stalks 0.3 to 0.9 in (8 to 23 mm) long. The 5-toothed, 10-veined calyx is about 0.3 in (7 to 9 mm) long, and the wide portion of the 5 white, deeply-lobed, clawed petals is about 0.2 in (6 mm) long. The capsule is about 0.3 in (8 to 9 mm) in length and opens at the top to release reddish-brown seeds about 0.04 in (1 mm) in diameter. This species is distinguished from *S. alexandri*, the only other member of the genus found on Molokai, by its smaller flowers and capsules and its stamens, which are shorter than the sepals (Gray 1854, Hillebrand 1888, Wagner *et al.* 1990, Williams 1896).

The historical range of *Silene lanceolata* includes four Hawaiian islands: Kauai, below Puu Kolekole on East Molokai, Maunalei on Lanai, and Mauna Kea on Hawaii Island (HHP 1990m1 to 1990m3, Wagner *et al.* 1990). *Silene lanceolata* is presently extant on the islands of Molokai and Hawaii. A single population of approximately 100 individuals was found in 1987 on Molokai, where it remains on private land near Puu Kolekole (HHP 1990m1; J. Lau *in litt.*, 1991). The Hawaii Island population at Puu Ahi was last seen in 1949. In 1991, two populations of this species were discovered on Federally owned land in Kipuka Kalawamauna and Kipuka Alala in the Pohakuloa Training Area, which is located in the saddle between Mauna Kea and Mauna Loa. The three island of Hawaii populations are distributed over a distance of roughly 9 mi (15 km) between about 5,200 and 6,000 ft (1,600 and 1,800 m) in elevation (HHP 1990m1; Robert Shaw, Colorado State University, pers. comm., 1991). It is not known whether the Puu Ahi population still exists after decades of ungulate, humancaused, and natural disturbances. The 2 populations at PTA number between 95 and 125 individuals (R. Shaw, pers. comm., 1991), giving a total of fewer than 230 known individuals for the species. The populations on the island of Hawaii grow in two dry habitat types: shrubland dominated by dense *Myoporum sandwicensis* (naio), *Sophora chrysophylla* (mamane), and pukiawe with 'a'ali'i, pilo, and *Pennisetum setaceum* (fountain grass); and on 'a'a lava in a former *Chamaesyce olowaluana* ('akoko) forest now converted to fountain grass grassland with 'a'ali'i, mamane, naio, and *Chenopodium oahuense* ('aheahea) (R. Shaw, pers. comm., 1991). On Molokai, this species grows on cliff faces and ledges of gullies in dry to mesic shrubland at an elevation of about 2,600 ft (800 m) (HHP 1990m1 to 1990m3, Wagner *et al.* 1990). Habitat destruction by feral ungulates (goats, pigs, and sheep), wildfires resulting from hunting activities and military maneuvers, and alien plant invasion (fountain grass) are immediate threats to *Silene lanceolata*. Military exercises and predation by goats and sheep pose probable threats.

Hillebrand discovered *Stenogyne bifida* on Molokai in 1870 and named it

in reference to the deeply two-lobed upper lip of its corolla (Hillebrand 1888). The name is accepted in the latest revision of the genus (Weller and Sakai 1990).

Stenogyne bifida, a nonaromatic member of the mint family, is a perennial herb, evidently climbing, with smooth or slightly hairy, four-angled stems. The opposite, membranous, toothed leaves are oval or elliptical in shape, measure 1.7 to 4 in (4.2 to 10 cm) long and 0.7 to 1.4 in (1.7 to 3.6 cm) wide, and are hairless except for the midribs. Flowers are usually arranged in groups of two to six in each of several whorls at the ends of the stems. The sepals are fused into a toothed calyx which is almost hairless, radially symmetrical, narrowly bell-shaped, and 0.3 to 0.5 in (8 to 12 mm) long. The petals are fused into a nearly straight, yellow tube 0.4 to 0.6 in (10 to 16 mm) long which flares into pale-brown lobes comprising an upper lip about 0.2 in (4 to 6 mm) long and a lower lip about 0.1 (2 to 4 mm) long. The fruits are fleshy, black nutlets about 0.1 in (2.5 to 3 mm) long. The long, narrow calyx teeth and the deep lobe in the upper lip of the yellow corolla separate this species from others of the genus (Hillebrand 1888, Sherff 1935b, Weller and Sakai 1990).

Historically, *Stenogyne bifida* was known from scattered populations from Waianui in central Molokai to Pukoo Ridge on East Molokai (HHP 1990n3 to 1990n9, Wagner *et al.* 1990). This species is now known from only 3 East Molokai populations totalling fewer than 10 individuals: On Manawai-Kahananui Ridge along a private/State land boundary, on Kolo Ridge, and on the eastern fork of Kawela Gulch in privately owned Pelekunu Preserve (HHP 1990n1, 1990n2; Steve Anderson, Haleakala National Park, pers. comm., 1990). These three populations are scattered over an area of 6.6 sq mi (17 sq km). *Stenogyne bifida* typically grows on steep ridges in 'ohi'a-dominated Montane Mesic to Wet Forests with native species such as hapu'u, manono, 'olapa, *Broussaisia arguta* (kanawao), and *Pouteria* ('ala'a) at elevations between 1,450 and 4,000 ft (450 and 1,200 m) (HHP 1990n1 to 1990n9, HPCC 1990c). Ungulates (axis deer, goats, and pigs) are pervasive threats to populations of *Stenogyne bifida* and may eat this species when available. One trailside population that represents a significant portion of the species potentially could be destroyed by over-collecting for scientific purposes or by vandals.

Sherff (1934c) described *Tetramolopium rockii*, naming it in honor of Joseph Rock, who first collected the plant in 1910, on Molokai. St. John (1974) described a new genus, *Luteidiscus*, for the species of *Tetramolopium* with yellow disk flowers. He transferred *T. rockii* to the new genus and also described a new species, *L. calcisabulorum*. The current treatment (Lowrey 1981, 1986, 1990) reduces St. John's two species to varieties of *Tetramolopium rockii:* the nominative variety and var. *calcisabulorum*.

Tetramolonium rockii, a member of the aster family, is a glandular, hairy, prostrate shrub which forms complexly branching mats 2 to 4 in (5 to 10 cm) tall and 3 to 16 in (8 to 40 cm) in diameter. Leaves of variety *calcisabulorum* are 0.8 to 1.2 in (2 to 3 cm) long and 0.2 to 0.3 in (5 to 7 mm) wide, have slightly inrolled edges, and are whitish due to the long silky hairs on their surfaces. Variety *rockii* has smaller, less hairy, flat, yellowish-green leaves, 0.6 to 0.8 in (1.5 to 2.1 cm) long and about 0.2 in (4 to 6 mm) wide. The leaves of both varieties are spatula-shaped with glands and smooth margins. Flower heads, arranged singly at the ends of flowering stalks 1.6 to 4.7 in (4 to 12 cm) long, have a hemispherical involucre (set of bracts beneath the florets) 0.2 to 0.3 in (4 to 8 mm) high and 0.4 to 0.7 in (10 to 18 mm) in diameter. Approximately 60 to 100 white ray florets, 0.1 to 0.2 in (3 to 4.5 mm) long and 0.02 to 0.04 in (0.5 to 1 mm) wide, surround 30 to 55 functionally male, yellow, funnel-shaped disk florets. Fruits are achenes, 0.08 to 0.1 in (2 to 2.5 mm) long and about 0.03 in (0.7 to 0.9 mm) wide when fertile, and are topped with white bristles 0.1 to 0.2 in (2.5 to 4 mm) long. This species differs from others of the genus by its growth habit, its hairy and glandular surfaces, its spatulate leaf shape, and its yellow disk florets (Degener and Degener 1965; Lowrey 1981, 1986, 1990; Sohmer and Gustafson 1987).

Of the two recognized varieties of *Tetramolopium rockii*, variety *rockii* was first discovered at Moomomi about 80 years ago and is still extant in that area. *Tetramolopium rockii* var. *rockii* remains in two areas: from Kapalauoa to Kahinaakalani on West Molokai (HHP 1990o2, 1990o3; HPCC 1990e; Lowrey 1990), and north of Kalawao on Kalaupapa Peninsula on East Molokai (Canfield 1990; HHP 1990o4; J. Lau, pers. comm., 1990). Variety *calcisabulorum* is only reported west of Moomomi, from west of Manalo Gulch to Kalani, intergrading with variety *rockii* where their ranges overlap (HHP 1990o1, 1990o2; HPCC 1990d). The only known population of *T. rockii* var. *calcisabulorum* and the scattered West Molokai population of *T. rockii* var. *rockii* extend over a distance of about 4.5 mi (7 km) along the northern coast, sometimes locally dominating the vegetation (HHP 1990o1, 1990o3). Twelve mi (19 km) to the east, the Kalawao population of variety *rockii* encompasses approximately 95 ac (35 ha) (HHP 1990o4). The species is estimated to number 174,000 individuals (HHP 1990o1 to 1990o4). *Tetramolopium rockii* is restricted to hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone or Coastal Dry Shrublands and Grasslands between 30 and 650 ft (10 and 200 m) in elevation (Lowrey 1990). Native plant species associated with this species include *Fimbristylis cymosa*, *Heliotropium anomalum* (hinahina), *Lipochaeta integrifolia* (nehe), *Sida fallax* ('ilima), and *Sporobolus virginicus* ('aki'aki) (Canfield 1990; HHP 1990o1 to 1990o4). The major threats to *Tetramolopium rockii* are ungulate (axis deer and cattle) activity, competition with the alien plant *Prosopis pallida* (kiawe), human recreational impacts, and fire. Predation by deer and cattle are potential threats. Although the threat to this species is limited because of the large number of existing individuals, *T. rockii* is likely to become endangered in the foreseeable future if the threats are not curbed.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Bidens wiebkei*, *Brighamia rockii*, *Canavalia molokaiensis*, *Hedyotis mannii* (as *H. thyrsoidea* var. *thyrsoidea*), *Hibiscus arnottianus* ssp. *immaculatus* (as *H. immaculatus*), *Melicope reflexa* (as *Pelea reflexa*), *Pritchardia munroi* (as *P. munroii*), *Silene alexandri*, and one of the varieties of *Silene lanceolata* accepted at that time were considered to be endangered. Three of the four varieties of *Hedyotis mannii* accepted in 1975 and three of the varieties of *Silene lanceolata* then accepted were considered to be threatened, and *Tetramolopium rockii* was considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and

giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including all of the above taxa considered to be endangered or thought to be extinct. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, nine of the taxa that had been in the 1976 proposed rule were treated as category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Other than *Hedyotis mannii*, all the aforementioned taxa that were either proposed as endangered or considered possibly extinct; in the June 16, 1976, proposed rule were considered category 1 candidates on all three of the notices of review. *Hedyotis mannii* (as *H. thyrsoidea*) was considered as a category 1* species on the 1980 and 1985 notices, but *H. thyrsoidea* is now regarded as synonymous with *H. mannii* (Wagner *et al.* 1990). *Hedyotis mannii* (as *H. mannii)* was considered a category 2 species on the 1980 and 1985 notices and was included as a category 1 candidate on the 1990 notice. Category 1* taxa are those which are possibly extinct; category 2 taxa are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. *Schiedea lydgatei* first appeared on the 1985 notice as a category 1 species and remained so on the 1990 notice. *Clermontia oblongifolia* ssp. *mauiensis*, *Cyanea mannii*, *Phyllostegia mannii*, and *Stenogyne bifida* first appeared on the 1990 notice as category 1 taxa. *Cyanea procera* first appeared on the 1990 notice as a category 1* taxon, but information regarding the current existence of individuals of this species became available in 1991.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, and 1990.

On September 20, 1991, the Service published in the **Federal Register** (56 FR 47718) a proposal to list 15 plant taxa from the island of Molokai as endangered, and 1 as threatened. This proposal was based primarily on information supplied by the Hawaii Heritage Program, the Hawaii Plant Conservation Center, and observations of botanists and naturalists. The Service now determines 15 taxa primarily from the island of Molokai to be endangered, and an additional taxon to be threatened, with the publication of this rule.

Summary of Comments and Recommendations

In the September 20, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final decision on the proposal. The public comment period ended on November 19, 1991. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the Maui News on October 1, 1991, and in the Hawaii Tribune-Herald on October 4, 1991. Two letters of comment, both from conservation organizations, were received. One letter supported the listing of these 16 taxa as threatened or endangered; the other provided additional information which has been incorporated into this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that 15 plant taxa from the island of Molokai should be classified as endangered species and 1 taxon from the island of Molokai should be classified as threatened. Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these 16 taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Feral animal activity					Alien plants	Fire	Human impacts	Rodents	Limited numbers [1]
	Deer	Goats	Pigs	Sheep	Cattle					
Bidens wailkei	X	X				X	X	X		X
Brighamia rockii	X	X				P			P	
Canavalia molokaiensis		X	X			X				X
Clermontia oblongifolia ssp. *brevipes.*			X						P	X
Cyanea mannii			X						P	X
Cyanea procera		X	P							X
Hedyotis mannii			X			X				X
Hibiscus arnottianus ssp. *immaculatus.*		X								

TABLE 1.—SUMMARY OF THREATS—Continued

Species	Feral animal activity					Alien plants	Fire	Human impacts	Rodents	Limited numbers [1]
	Deer	Goats	Pigs	Sheep	Cattle					
Melicope reflexa	X		X			X				X
Phyllostegia mannii			X				X		X	X
Pritchardia munroi	X	X	P				X			
Schiedea lydgatei						X	X			X
Silene alexandri		X					X			
Silene lanceolata		X	X	X		X	X	X		
Stenogyne bifida	X	X	X					X		X
Tetramolopium rockii	X				X	X	P	X		

X = Immediate and significant threat.
P = Potential threat.
[1] No more than 100 individuals.

These factors and their application to *Bidens wiebkei* Sherff (ko'oko'olau), *Brighamia rockii* St. John (pua 'ala), *Canavalia molokaiensis* Degener, I. Degener & J. Sauer ('awikiwiki), *Clermontia oblongifolia* Gaud. ssp. *brevipes* (F. Wimmer) Lammers ('oha wai), *Cyanea mannii* (Brigham) Hillebr. (haha), *Cynea procera* Hillebr. (haha), *Hedyotis mannii* Fosb. (pilo), *Hibiscus arnottianus* A. Gray ssp. *immaculatus* (M. Roe) D. Bates (koki'o ke'oke'o), *Melicope reflexa* (St. John) T. Hartley and B. Stone (alani), *Phyllostegia mannii* Sherff (NCN), *Pritchardia munroi* Rock (loulu), *Schiedea lydgatei* Hillebr. (NCN), *Silene alexandri* Hillebr. (NCN), *Silene lanceolata* A. Gray (NCN), *Stenogyne bifida* Hillebr. (NCN), and *Tetramolonium rockii* Sherff (NCN) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Native vegetation on the islands of Molokai and Hawaii has undergone extreme alterations because of past and present land management practices including ranching activities, deliberate animal and alien plant introductions, and agricultural development (Cuddihy and Stone 1990, Wagner *et al.* 1985). Ongoing and threatened destruction and adverse modification of habitat by feral animals and competition with alien plants are the primary threats facing the 16 taxa included in this rule.

Fifteen of the 16 taxa are variously threatened by feral animals. Of the ungulates that have become established on Molokai during the past 150 years, the axis deer (*Cervus axis*) has probably had the greatest impact on the native vegetation. Eight axis deer, introduced to Molokai in 1868 (Culliney 1988, Tomich 1986), increased to thousands of animals by the 1960s (Graf and Nichols 1966). By the turn of the century, these deer had occupied much of the dry to mesic lowland areas and were also found in the wet forests of East Molokai (Graf and Nichols 1966, van Riper and van Riper 1982), where herds so damaged the vegetation that professional hunters were hired to control their numbers (Culliney 1988). The native vegetation has suffered irreparable damage from overgrazing by these animals. Deer degrade the habitat by trampling, consuming, and overgrazing vegetation, which removes ground cover, exposing the soil to erosional actions (J. Lau, pers. comm., 1990). Alien plant species are then able to exploit the newly disturbed areas.

A large portion of the axis deer population on Molokai has been actively managed for recreational hunting by the Division of Forestry and Wildlife since 1959. The maximum allowable limit is only one male deer per hunting trip; the remainder are managed to provide a sustainable yield (Hawaii Department of Land and Natural Resources (DLNR) 1988). Its future as a game species is assured because of its popularity among hunting organizations and its adaptability to the environment of Molokai (Tomich 1986). At present, five of the seven managed hunting areas on Molokai are within the Molokai Forest Reserve. Many areas lack maintained boundary fences that would prevent deer from entering more fragile habitats to the north (Cuddihy *et al.* 1982) and non-game areas to the east. Recently axis deer have begun to enter the windward valleys and northern coastline of East Molokai where they were not previously observed (J. Lau, pers. comm., 1990). Axis deer are threatening the coastal habitats of *Brighamia rockii* and *Tetramolopium rockii* and the montane habitats of *Melicope reflexa, Pritchardia munroi, and Stenogyne bifida* (Bruegmann 1990; HHP 1990h2, 1990o1; J. Lau, pers. comm., 1990; E. Misaki, pers. comm., 1992). The lowland habitat of *Bidens wiebkei* is also threatened by axis deer (CPC 1991).

Introduced to Molokai in the early 1800s, the goat (*Capra hircus*) population flourished despite losses to the goatskin trade that spanned most of that century (Cuddihy and Stone 1990). Currently feral goats, unlike axis deer, degrade Molokai's higher elevation dry forests (Stone 1985) and are now invading the wetter regions along the northern coast of East Molokai (J. Lau, pers. comm., 1990). The impact of feral goats on native vegetation is similar to that described for deer (Cuddihy *et al.* 1982, Scott *et al.* 1986). Although northeastern Molokai is considered one of the most remote and inaccessible places in the main Hawaiian islands, the vegetation there is predominantly exotic (Culliney 1988). The replacement of native vegetation is attributed to the large number of goats. Due to their agility, goats are able to reach vegetation not usually accessible to other animals (Culliney 1988). As a result, various native plants are confined to areas inaccessible to goats. For example, *Brighamia rockii* persists on steep ledges out of the reach of goats and is unlikely to reestablish in any place accessible to them (Culliney 1988, HHP 1990b3). The sole populations of *Silene alexandri* and *Silene lanceolata* at Makolelau; the *Bidens wiebkei* population at Makakupaia; populations of *Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus*, and *Stenogyne bifida* along the northern shore of East Molokai; *Cyanea procera* at the head of Waikolu Valley; and the only known wild *Pritchardia munroi* palm are threatened by goats (Bruegmann 1990; CPC 1991; Garnett 1989; Gerum 1989; HHP 1990g5, 1990j1, 1990L1; J. Lau, pers. comm., 1990; J. Lau, *in litt.*, 1991). The Hawaii Island populations of *Silene lanceolata* located at Pohakuloa Training Area are also threatened by feral goats found throughout the region. Because goats are managed by the State as a game animal, hunting is encouraged. This activity increases the potential of vegetation being trampled by hunters and increases the threat of hunting-related fires.

Unlike axis deer and goats, pigs (*Sus scrofa*) are generally restricted to the wetter forested regions of Molokai, predominantly in the Molokai Forest Reserve where the majority of the plants included in this rule are located. Well known as a major destroyer of these forest habitats, feral pigs root extensively, trample native vegetation cover, and generally degrade native habitat (Cuddihy and Stone 1990, Stone 1985, van Riper and van Riper 1982). Not only are feral pigs major disseminators of alien plant seeds by carrying them internally or on their bodies, but they often carry the seeds into more pristine forests, further degrading the native ecosystem. In East Molokai's wet upland forests, pigs are destroying the habitat of most populations of *Canavalia molokaiensis*, *Cyanea mannii*, and *Melicope reflexa*, both populations of *Clermontia oblongifolia* ssp. *brevipes*, the only known population of *Phyllostegia mannii*, and the remaining individuals of *Hedyotis mannii* (CPC 1991; Dalton 1984; J. Lau, pers. comm., 1990). Pigs also threaten the Kawela gulch population of *Stenogyne bifida* on Molokai and locally degrade the habitat of *Silene lanceolata* on the island of Hawaii (Aplet *et al.* n.d., HPCC 1990c). The only known surviving plant of *Pritchardia munroi* in the wild was recently fenced to protect it from pigs and other ungulates (CPC 1991). Therefore, feral pigs are no longer a direct threat to this plant, although they continue to degrade the habitat outside the fenced enclosure, making it unlikely that seedlings will become established there. Eradication efforts in The Nature Conservancy preserves include public hunting; many other areas of East Molokai also have public hunting programs (E. Misaki, pers. comm., 1990). However, feral pigs are invasive animals and often inhabit gulches and areas not frequented by hunters or management personnel, hindering the control of those animals in remote sites.

Feral sheep (*Ovis aries*) have become firmly established on the island of Hawaii (Tomich 1986) since their introduction almost 200 years ago (Cuddihy and Stone 1990). Like feral goats, sheep roam the upper elevation dry forests of Mauna Kea (above 8,300 ft (1,000 m)), including Pohakuloa Training Area, causing damage similar to that of goats (Stone 1985). Sheep have decimated vast areas of native forest and shrubland on Mauna Kea and continue to do so as a managed game species. Sheep threaten the habitat of *Silene lanceolata* and at least two listed endangered plant species (Cuddihy and Stone 1990, Shaw *et al.* 1990, Stone 1985).

Although not a direct threat at present to the plant taxa in this final rule, cattle (*Bos taurus*) ranching on Molokai has played a significant role over most of the past 150 years in reducing areas of native vegetation to vast pastures of alien grasses (Cuddihy and Stone 1990, Pekelo 1973, Stone 1985). In 1960 approximately 61 percent of Molokai's land area was devoted to grazing, primarily the lower elevation dry to mesic forests, shrublands, and grasslands of West and central Molokai (Baker 1961). Cattle degraded the habitat by trampling and feeding on vegetation, eventually opening up the ground cover, exposing the soil, and increasing its vulnerability to erosion (Cuddihy and Stone 1990, Lindgren 1908, Pekelo 1973). Red erosional scars resulting from decades of cattle disturbance, exacerbated by other feral ungulate activities, are still evident on West Molokai and upper elevation ridges of East Molokai. Cattle also have facilitated the spread of alien grasses and other plants (Cuddihy and Stone 1990). Because of this alteration of vegetation, natural areas became limited to the upper elevation mesic to wet forests of East Molokai, where the State designated a single protected area: the Molokai Forest Reserve. Most of the taxa in this rule are restricted to this forest reserve, which occupies about 30 percent of Molokai's land area (Baker 1961). As the fences separating cattle ranches from the forest reserve began to deteriorate over time, cattle from low elevation pastures were free to enter the forest reserve, further degrading the native forest (Cuddihy and Stone 1990, Pekelo 1973, Pratt 1973).

In the early 1970s, in an effort to keep bovine tuberculosis from entering domestic stock, a total of 375 wild cattle were eradicated from the forest reserve (Pekelo 1973). Because this did not eliminate tuberculosis, domestic cattle were eradicated from the island between 1985 and 1986. After a mandatory 1-year hiatus, ranches were allowed to reintroduce non-breeding and later breeding animals, such that the cattle population on Molokai is now growing (Molokai Ranch, Ltd. 1988a; J. Lau, pers. comm., 1990). At present, cattle are limited to a large private ranch on West Molokai with over 1,800 animals and small private ranches on East Molokai (Molokai Ranch, Ltd. 1988a to 1988c; E. Misaki, pers. comm., 1990). Cattle are not known to have entered the Molokai Forest Reserve since their reintroduction to the island in 1987 (William Falconer, Maui Department of Agriculture, pers. comm., 1991). However, on West Molokai there have been reports of cattle in Moomomi Preserve (HPCC 1990e), where a protective fence was recently erected to protect *Tetramolopium rockii* and other unique native plants (E. Misaki, pers. comms., 1990, 1992). Since part of the *T. rockii* population lies outside the fence (E. Misaki, pers. comm., 1992), cattle continue to degrade habitat of *T. rockii*. The future of cattle and their impact on the native vegetation of Molokai, including the 16 taxa in this rule, is uncertain. However, as cattle ranching becomes a more important economic activity on the island, the impact of cattle will likely be increasingly deleterious.

Cattle ranching was the island's primary industry until the 1920s, when pineapple cultivation was introduced to boost the then failing economy (Bottenfield 1958). Most of the land used for this form of agriculture had already been altered through decades of extensive ranching activities. However, until the pineapple industry's decline in the 1970s, pineapple cultivation contributed significantly to the high degree of erosion (Cuddihy and Stone 1990, Wagner *et al.* 1985). More recently, economic growth has been based largely on tourism (Plasch 1985). Hotels are being proposed in conjunction with an anticipated increase in the tourist industry. Although development is limited at present to the primary tourist destination of Kaluakoi on Molokai's western end, it is inevitable that development will affect the native vegetation elsewhere on the island. For example, a water diversion plan currently under discussion proposes the extension of a tunnel eastward from Waikolu Stream, now being tapped, to other potential watershed sources such as Pelekunu Valley. Under current methods of tunnel development, construction at the surface level is likely to favor the spread of alien plant species (Alan Holt, TNCH, pers. comm., 1990).

Seven of the 16 taxa are threatened by competition with 1 or more alien plant species (see Table 1). Noxious alien plants such as *Schinus terebinthifolius* (Christmas berry) have invaded the dry to mesic lowland areas. Introduced to Hawaii before 1911, Christmas berry has had particularly detrimental impacts (Cuddihy and Stone 1990). Its spread is facilitated by the opening of the ground cover and canopy by feral ungulates. This fast-growing tree is considered one of the major alien plant problems affecting the native vegetation of Molokai because it is able to form dense thickets that displace other plants

(Cuddihy and Stone 1990; Smith 1985; J. Lau, pers. comm., 1990). It is spreading in Kalaupapa, Waikolu, and throughout Halawa (Kirch and Kelly 1975; Linney, in press; J. Lau, pers. comm., 1990), where it presently threatens the habitat of four of the five populations of *Bidens wiebkei* and may threaten populations of *Brighamia rockii* (HHP 1990b3).

With the introduction of cattle, goats, and deer and the development of organized ranching, the native forests in many parts of the State were converted to vast pastures of alien grasses. Of the alien grasses that have become established on Molokai, *Melinus minutiflora* (molasses grass) is probably the most disruptive to its native dry forests. First introduced as cattle fodder (Bottenfield 1958), then planted for erosion control (Cuddihy and Stone 1990), this alien species quickly spread to dry and mesic forests previously disturbed by ungulates. Molasses grass produces a dense mat capable of smothering plants (Smith 1985), essentially preventing seedling growth and native plant reproduction (Cuddihy and Stone 1990). As a fuel for fire, molasses grass intensifies its heat and carries fire into areas with woody plants (Cuddihy and Stone 1990, Smith 1985). It is able to spread prolifically after a fire and effectively compete with less fire-adapted native plant species, creating a dense stand of alien grass where forests once stood. Molasses grass is becoming a major problem in dry sites along the many leeward ridges of East Molokai. Also affected are the lower portions of Kamakou Preserve and outlying areas to the south (J. Lau, pers. comm., 1990). Here all five populations of *Schiedea lydgatei*, and populations of *Canavalia molokaiensis* and *Hedyotis mannii* are threatened by invading molasses grass (HHP 1990c4, 1990f1; J. Lau, pers. comm., 1990). The southern section of Halawa, containing a population of *Bidens wiebkei*, is also infested (HHP 1990a3). The other plant taxa covered by this rule which are found near molasses grass are not presently threatened, because they grow in gulches and wetter areas where the intact ground cover makes invasion by molasses grass difficult.

Prosopis pallida (kiawe), a common deciduous tree found in arid, low-elevation, disturbed sites on Molokai (Smith 1985, Wagner *et al.* 1990), has invaded areas adjacent to the hardened sand dunes of Moomomi Preserve where *Tetramolopium rockii* grows (HHP 1990o1; J. Lau, pers. comm., 1990). Kiawe shades the ground cover and its vast root system dries the substrate by utilizing all available water (Smith 1985). It thus competes with *Tetramolopium rockii* (E. Misaki, pers. comm., 1990) for light, space, and moisture.

Of the naturalized species in the melastome family, *Clidemia hirta* (Koster's curse) has become one of the most disruptive invaders of Hawaii's native ecosystems (Cuddihy and Stone 1990). First reported from the island of Oahu in 1941, Koster's curse quickly invaded the other Hawaiian islands and now occupies more than 23 sq mi (60 sq km) on East Molokai, primarily in Pelekunu and Wailau valleys (Cuddihy and Stone 1990). This noxious shrub forms a dense understory up to 6 ft (2 m) tall, shading other plants and hindering plant regeneration (Smith 1985). Koster's curse threatens to replace the Wailau-Mapulehu summit ridge population of *Melicope reflexa* (HHP 1990h2; J. Lau, pers. comm., 1991).

Pennisetum setaceum (fountain grass) is a fire-adapted bunch grass that has spread rapidly over bare lava flows and open areas on the island of Hawaii since its introduction in the early 1900s. Fountain grass is particularly detrimental to Hawaii's dry forests because it is able to invade areas once dominated by native plants, where it interferes with plant regeneration, carries fires into areas not usually prone to fires, and increases the likelihood of fires (Cuddihy and Stone 1990, Smith 1985). The *Chamaesyce olowaluana* ('akoko) forests on the island of Hawaii, apparently former habitat of *Silene lanceolata*, have burned repeatedly and are now largely replaced by fountain grass (R. Shaw, pers. comm., 1991). This alien plant is present in the habitat of one of the populations of *Silene lanceolata* on the island of Hawaii, where it is likely to become a more serious problem.

Fire is a major threat to the plant species found in dry to mesic habitats, especially in the lower portions of Kamakou Preserve and adjacent areas to the south, where populations of *Schiedea lydgatei, Silene alexandri*, and *Silene lanceolata* are located (Cuddihy *et al.* 1982; J. Lau, pers. comm., 1990; E. Misaki, pers. comm., 1991). Populations of *Bidens wiebkei* at Halawa and *Tetramolopium rockii* at Moomomi are also threatened by fire (CPC 1991; HHP 1990o1). For reasons previously discussed, the presence of molasses grass greatly enhances the potential and destructiveness of fires. For example, in 1988 a human-caused fire consumed roughly 15 sq mi (38 sq km) of shrubland and forest from the southern coastline of East Molokai to the southwest corner of Kamakou Preserve, about 3.5 mi (5.5 km) inland (E. Misaki, pers. comm., 1990), and may possibly have destroyed four of the five populations of *Schiedea lydgatei*. Molasses grass was the main carrier of that fire (E. Misaki, pers. comm., 1991). Although fires are not frequent at Moomomi, a single fire could burn extensively through dry shrub and grassland and destroy portions of the *Tetramolopium rockii* populations that grow there (E. Misaki, pers. comm., 1990). The dry to mesic habitat of *Pritchardia munroi* is also threatened by fire (CPC 1991, HHP 1990j1).

Natural fires and fires accidentally set by hunters or military ordnance or personnel within PTA on the island of Hawaii threaten native vegetation on the leeward side of Mauna Kea (Herbst and Fay 1979), including the habitat of three populations of *Silene lanceolata*. Although the habitat of Hawaii Island populations of *S. lanceolata* at Kipuka Alala and Kipuka Kalawamauna has apparently been burned repeatedly, those populations are still present (R. Shaw, pers. comm., 1991). This suggests the possibility that this species may be tolerant to fire. However, fire-adapted grasses already at these sites can exploit newly burned areas more rapidly than woody species (Cuddihy and Stone 1990) (presumably including *S. lanceolata*), resulting in the conversion of native shrubland to land dominated by alien grasses. Fire is therefore at least an indirect and serious threat to this species. In order to protect the Kipuka Kalawamauna population from fires, the U.S. Army has installed firebreaks and now redirects ordnance firing away from that kipuka. The Army is also developing plans to protect the newly discovered Kipuka Alala population.

Habitat disturbance caused by human activities threatens four of the taxa. Military exercises at PTA on the island of Hawaii may have threatened *Silene lanceolata* in the past. Planned military maneuvers are now being reevaluated in light of the recent discovery of the Kipuka Alala and Kipuka Kalawamauna populations of that species. Recreational activities such as fishing and camping have drawn people to Moomomi Preserve and the adjacent coastline. The population of *Tetramolopium rockii* on State-owned Hawaiian Home Lands east of Moomomi Preserve is subject to disturbance by vehicles passing along two jeep roads that run through that population (HPCC 1990e; E. Misaki, pers. comm., 1990), which represents almost 25 percent of the individuals of that species. Although the human impact on the spray zone population of *T. rockii* on Kalaupapa Peninsula is now minimal,

greater impacts may result from the expected increase in visitor use after the residents of Kalaupapa's Hansen's disease settlement live out their lives (Canfield, in press; Greene 1985; United States, National Park Service (NPS) 1988). A population of *Bidens wiebkei* at Makakupaia, representing approximately half the total individuals of that species, grows along a jeep road. Off-road activity would damage a significant portion of that population. One of the three populations of *Stenogyne bifida* is located near a hiking trail at Kawela and has the potential of being trampled or collected (S. Anderson, pers. comm., 1990).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a factor, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity and would seriously impact the 11 taxa whose low numbers make them especially vulnerable to disturbances. Such disturbance could promote erosion and greater ingression of alien plant species.

C. Disease or Predation

No evidence of disease has been reported for the 16 taxa. Rats (*Rattus* spp.) are known to eat the fruits of *Pritchardia munroi* (CPC 1991). Although the incidence of rats in the vicinity of the last remaining wild plant appears to be low, the fence that was erected to protect that plant from foraging animals does not prevent rats from continuing to feed on the fruit (Garnett 1989, HHP 1990j1). A more important threat is that of foraging by goats and other ungulates in the area, which has resulted in there being no successful regeneration of the palm (CPC 1991, Gerum 1989). There is no direct evidence that rats feed on *Brighamia rockii*, *Clermontia oblongifolia* ssp. *brevipes*, *Cyanea mannii*, or *Cyanea procera*. However, such evidence does exist for related *Clermontia* and *Cyanea* species in similar habitat on other islands (J. Lau, pers. comm., 1990). Because rats are found in remote areas on Molokai, it is likely that predation occurs on these four taxa as well (CPC 1991; HPCC 1990a; J. Lau, pers. comm., 1990).

A goat enclosure experiment on the island of Hawaii demonstrated that *Canavalia hawaiiensis*, a relative of *Canavalia molokaiensis*, is consumed by goats (St. John 1972). It is possible that goats also eat *C. molokaiensis*. At Moomomi, axis deer graze primarily on introduced plants inland of the dunes (Bruegmann 1988), but they are also likely to consume *Tetramolopium rockii* where it is the dominant ground cover. While there is no direct evidence of predation by ungulates on any of the 16 taxa, they are not known to be unpalatable to goats, deer, or cattle. Predation is therefore a probable threat at sites where those animals have been reported, potentially affecting 11 of the taxa: *Bidens wiebkei*, *Brighamia rockii*, *Canavalia molokaiensis*, *Cyanea procera*, *Hibiscus arnottianus* ssp. *immaculatus*, *Melicope reflexa*, *Pritchardia munroi*, *Silene alexandri*, *Silene lanceolata*, *Stenogyne bifida*, and *Tetramolopium rockii*.

D. The Inadequacy of Existing Regulatory Mechanisms

All 16 taxa have populations located on privately owned lawn. Nine taxa are found exclusively on private land. Of the remaining taxa, six also occur on State land (including one species located on the boundary between State and private land) and one occurs on Federal land. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private land. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State Government agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel.

Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act [of 1973] shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the Endangered Species Act shall be deemed to be a threatened species under the provisions of this chapter." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these 16 plant taxa would therefore reinforce and supplement the protection available under State law. The Act would also offer additional protection to these 16 taxa because if they were to be listed as endangered or threatened, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small number of populations and of individual plants of many of these taxa increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. For example, 6 of the taxa are known from a single population: *Clermontia oblongifolia* ssp. *brevipes* and *Pritchardia munroi* (the latter reduced to a single remaining plant); *Cyanea procera* and *Phyllostegia mannii* (each numbering only 4 plants); *Hedyotis mannii* (11 plants); and *Silene alexandri* (fewer than 10 plants). All of the 16 taxa are known from 7 or fewer populations; 11 of them from fewer than 5 populations. Eleven of the taxa are estimated to number no more than 100 known individuals (see Table 1). Approximately 22 plants of *Pritchardia munroi* are in cultivation in various arboreta and institutions throughout the world (Gerum 1989). However, little is known about the genetics of this species and it is unclear whether hybridization with other species occurs, resulting in the questionable species integrity of the cultivated plants. It is not clear whether selfing or outcrossing (outbreeding) occurs or whether the second generation seeds are viable (Derral Herbst, U.S. Fish and Wildlife Service, pers. comm., 1990).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these 16 taxa in determining to issue this final rule. Based on this evaluation, the preferred action is to list these 16 taxa: *Bidens wiebkei*, *Brighamia rockii*, *Canavalia molokaiensis*, *Clermontia oblongifolia* ssp. *brevipes*, *Cyanea mannii*, *Cyanea procera*, *Hedyotis mannii*, *Hibiscus arnottianus* ssp. *immaculatus*, *Melicope reflexa*, *Phyllostegia mannii*, *Pritchardia munroi*, *Schiedea lydgatei*, *Silene alexandri*, *Silene lanceolata*, and *Stenogyne bifida*, as endangered and the

species *Tetramolopium rockii* as threatened. All of the taxa determined to be endangered are known from 7 or fewer populations, and 11 taxa are estimated to number fewer than 100 individuals. The 15 taxa are threatened by 1 of more of the following: Habitat degradation and/or predation by deer, feral goats, pigs, sheep, and cattle; competition from alien plants; fire; recreational activities; and military training exercises. Small population size makes these taxa particularly vulnerable to extinction from stochastic events. Because these 15 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Although all populations of *Tetramolopium rockii* are threatened to some degree by competition with alien plants, habitat destruction and predation by feral animals, fire, and/or human activities, the relatively large number of existing individuals of *T. rockii* reduces the likelihood that this species will become extinct in the near future. Because the threats facing *T. rockii* are limited at present, this species is not now in immediate danger of extinction throughout all or a significant portion of its range. However, *T. rockii* is likely to become endangered in the foreseeable future if the threats are not curbed. As a result, *Tetramolopium rockii* fits the definition of a threatened species as defined in the Act.

Critical habitat is not being designated for the 16 taxa included in this rule, for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these taxa. Such a determination would result in no known benefit to the taxa. Eleven of the taxa have extremely low total populations and face anthropogenic threats (See Factor B in "Summary of Factors Affecting the Species"). The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a designation of critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the general location and importance of protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process.

There are two known Federal activities within the currently known habitats of these plants. Three populations of *Silene lanceolata* are known from the Pohakuloa Training Area on the Island of Hawaii: One population, which has not been seen for over 40 years, was located in the northern part of PTA; another population is in the Kipuka Kalawamauna Endangered Plants Habitat, an area of PTA cooperatively designated by the U.S. Army, the U.S. Fish and Wildlife Service, the Hawaii Department of Fish and Wildlife, and the Hawaii Department of Land and Natural Resources; and the third population is in Kipuka Alala. Existing firebreaks and redirection of ordnance firing away from Kipuka Kalawamauna will help protect that population, and the Army is now developing plans to protect the newly discovered Kipuka Alala population. Three of the seven populations of *Canavalia molokaiensis* and one of the four populations of *Tetramolopium rockii* are found in Kalaupapa National Historical Park. Although the State of Hawaii owns the land where these populations are found, the National Park Service leases and manages the area. Federal laws protect all plants in the park from damage or removal. The involved Federal agencies are aware of the presence and location of these species, and any Federal activities that may affect these plants will be addressed through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these taxa is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Some populations of two species, *Canavalia molokaiensis* and *Tetramolopium rockii*, are located in Kalaupapa National Historical Park. Laws relating to national parks prohibit damage or removal of any plants growing in the parks. Most of the known individuals of *Silene lanceolata* are located within Pohakuloa Training Area on the Island of Hawaii. Firebreaks and redirection of firing exercises away from the listed plant species at Kipuka Kalawamauna will help protect the population of *Silene lanceolata* at that kipuka. Military activities planned near the Kipuka Alala population are now being reevaluated in the light of that population's discovery. There are no other known Federal activities that occur within the present known habitat of these 16 plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species and 17.71 and 17.72 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered plants and to threatened plant species not covered by a special rule. With respect to the 16 plant taxa from the island of Molokai, the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, apply. These prohibitions, in part, make it illegal with respect to any endangered plant, or any threatened plant subject thereto, for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a

commercial activity; sell or offer for sale these species in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any state law or regulation or in the course of any violation of a State criminal trespass law. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation nor in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104, FAX 703/358–2281).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **"ADDRESSES"** section).

Author

The authors of this final rule are Derral R. Herbst, Joan E. Canfield, Joan M. Yoshioka, Z.E. Ellshoff, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Arecaceae—Palm family:						
Pritchardia munroi	loulu	U.S.A. (HI)	E		NA	NA
Asteraceae—Aster family:						
Bidens wiebkei	ko'oko'olau	U.S.A. (HI)	E		NA	NA
Tetramolopium rockii	None	U.S.A. (HI)	T		NA	NA
Campanulaceae—Bellflower family:						
Brighamia rockii	pua 'ala	U.S.A. (HI)	E		NA	NA
Clermontia oblongifolia ssp. *brevipes*	'oha wai	U.S.A. (HI)	E		NA	NA
Cyanea mannii	haha	U.S.A. (HI)	E		NA	NA
Cyanea procera	haha	U.S.A. (HI)	E		NA	NA
Caryophyllaceae—Pink family:						
Schiedea lydgatei	None	U.S.A. (HI)	E		NA	NA
Silene alexandri	None	U.S.A. (HI)	E		NA	NA
Silene lanceolata	None	U.S.A. (HI)	E		NA	NA
Fabaceae—Pea family:						
Canavalia molokaiensis	'awikiwiki	U.S.A. (HI)	E		NA	NA
Lamiaceae—Mint family:						
Phyllostegia mannii	None	U.S.A. (HI)	E		NA	NA
Stenogyne bifida	None	U.S.A. (HI)	E		NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Malvaceae—Mallow family:						
Hibiscus arnottianus ssp. *immaculatus*	koki'o ke'oke'o	U.S.A. (HI)	E		NA	NA
Rubiaceae—Coffee family:						
Hedyotis mannii	pilo	U.S.A. (HI)	E		NA	NA
Rutaceae—Citrus family:						
Melicope reflexa	alani	U.S.A. (HI)	E		NA	NA

Dated: September 18, 1992.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 92-23932 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-55-M

50 CFR PART 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Echinacea laevigata (Smooth Coneflower) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the plant *Echinacea laevigata* (smooth coneflower), a perennial herb limited to 21 populations in Virginia, North Carolina, South Carolina, and Georgia, to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *Echinacea laevigata* is endangered by collecting, encroachment of woody vegetation, residential and industrial development, highway construction and improvement, and certain types of roadside and power line right-of-way maintenance. This action implements Federal protection provided by the Act for *Echinacea laevigata*.

EFFECTIVE DATE: November 9, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/665-1195, Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Echinacea laevigata is a rhizomatous perennial herb described by Boynton and Beadle in Small (1903) from material collected in South Carolina in 1888. This coneflower grows up to 1.5 meters tall from a vertical root stock; stems are smooth, with few leaves. The largest leaves are the basal leaves, which reach 20 cm in length and 7.5 cm in width, have long stems, and are elliptical to broadly lanceolate, tapering to the base, and smooth to slightly rough. The mid-stem leaves have shorter stems or no stems and are smaller in size than the basal leaves. The rays of the flowers (petal-like structures) are light pink to purplish, usually drooping, and 5 to 8 cm long. Flower heads are usually solitary. Flowering occurs from May through July. The fruit is a gray-brown, oblong-prismatic achene, usually four-angled, and 4 to 4.5 mm long; seeds are .5 cm long (Kral 1983, Radford *et al.* 1964, McGregor 1968, Cronquist 1980, Gaddy 1991, and Wofford 1989). The smooth coneflower can be distinguished from its most similar relative, the purple coneflower (*E. purpurea*), by its leaves, which in the smooth coneflower are never cordate (heart-shaped) like those of the purple coneflower. In addition, the awn of the pale in the smooth coneflower is incurved, while that of *E. purpurea* is straight (Kral 1983, Gaddy 1991, and Wofford 1989).

The reported historical range of *Echinacea laevigata* included Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, Alabama, and Arkansas. The species is now known to survive only in Virginia, North Carolina, South Carolina, and Georgia. Five populations survive in Virginia, six in North Carolina, seven in South Carolina, and three in Georgia. Three additional populations in South Carolina (two in Aiken County and one in Allendale County) are believed to have been introduced. The habitat of smooth coneflower is open woods, cedar barrens, roadsides, clearcuts, dry limestone bluffs, and power line rights-of-way, usually on magnesium- and calcium-rich soils associated with limestone (in Virginia), gabbro (in North Carolina and Virginia), diabase (in North Carolina and South Carolina), and marble (in South Carolina and Georgia). Optimal sites are characterized by abundant sunlight and little competition in the herbaceous layer (Gaddy 1991). Natural fires, as well as large herbivores, are part of the history of the vegetation in this species' range; many of the associated herbs are also cormophytic, sun-loving species, which depend on periodic disturbances to reduce the shade and competition of woody plants (Kral 1983 and Gaddy 1991)

A total of 59 populations of *Echinacea laevigata* have been reported historically from 24 counties in 8 States. The reports from Alabama and Arkansas are now believed to have been misidentifications (Gaddy 1991). Of the 21 remaining populations (located in Pulaski, Montgomery, Campbell, and Franklin Counties, Virginia; Durham and Granville Counties, North Carolina; Oconee and Anderson Counties, South Carolina; and Stephens County, Georgia), 7 occur on land managed by the U.S. Forest Service, 2 are on U.S. Army Corps of Engineers lands, 1 is on North Carolina Department of Agriculture land, 1 site is owned by The Nature Conservancy, 1 site is owned by the South Carolina Heritage Trust Program, 1 site is within a right-of-way maintained by the South Carolina Department of Highways and Public Transportation, 1 is on land managed by Clemson University, and the remaining 7 are on privately owned lands. Several of these populations are in or near transmission line corridors of various utility companies or are near highway rights-of-way. Extirpated populations are believed to have succumbed due to the absence of natural disturbance (fire and/or grazing), highway construction and improvement, gas line installation, and residential and industrial development. The continued existence of *Echinacea laevigata* is threatened by these activities, as well as by collecting,

herbicide use, and possibly by encroachment of exotic species.

Federal government actions on this species began with Section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document number 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27832) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of its intention thereby to review the status of the plant taxa named within.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Echinacea laevigata* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1990, the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered.

On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Echinacea laevigata* was included in that notice as a category 2 species. Category 2 species are those species for which listing as endangered or threatened may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules.

Subsequent revisions of the 1980 notice have maintained *Echinacea laevigata* in category 2. However, recently completed status survey work provided sufficient data to support proposing the species as endangered, and indicated the species to have a listing priority of 2 (see **Federal Register** of September 21, 1983 (48 FR 43098) for discussion of priority guidelines). A proposal was published on December 9, 1991 (56 FR 64229) to list *Echinacea laevigata* as endangered, and constituted the final 12-month finding for this species under Section 4(b)(3)(B) of the Act.

Summary of Comments and Recommendations

In the December 9, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the Durham Herald (North Carolina) on December 29, 1991, and the Roanoke Times and World News (Virginia) on December 27, 1991.

Twenty-one comment letters were received. Nineteen of these expressed support for the proposal, and two presented additional information without stating a position.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Echinacea laevigata* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Echinacea laevigata* (Boynton and Beadle) Blake (smooth coneflower) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

Echinacea laevigata has been and continues to be endangered by destruction or adverse alteration of its habitat. Since discovery of the species, 64 percent of the known populations have been extirpated, partly as a result of conversion of habitat for silvicultural and agricultural purposes and for industrial and residential development. Fire suppression appears to be a problem for this species and will be discussed in detail under Factor E below. Of the 38 populations that have been extirpated, one is known to have been eliminated by highway construction, another by construction of a gas line, and a third by conversion of the site to pine plantation. Causes for the extirpation of the others are unknown. Many of the remaining populations are on the edges of highways or utility rights-of-way. The largest population remaining is in Granville County, North Carolina. This population, which contains one-third of the total smooth coneflower plants in existence, occupies a site that has recently been proposed for construction of a regional hazardous waste incinerator. Of the 21 extant populations, 13 are currently declining in numbers of plants, only 7 are considered stable, and 1 is increasing. Nineteen of the populations are currently threatened by habitat alterations (Gaddy 1991).

Half of the remaining populations survive along roadsides. Three populations remain on utility line rights-of-way, another is along an abandoned railroad right-of-way, and a fifth is on the edge of a motorbike trail in a wooded area. Most of the populations are small, with 11 containing less than 100 plants each. Four of these contain less than 10 plants each. Such small populations are inherently vulnerable to extirpation as a result of highway and right-of-way improvement, particularly if herbicides are use.

Highly restricted distribution and the scarcity of seed sources, as well as appropriate habitat, increase the severity of the threats faced by *Echinacea laevigata*. As stated in the "Background" section above, this species requires some form of disturbance to maintain its open habitat and can withstand mowing and timber-harvesting operations, if properly done. It cannot withstand bulldozing or direct application of broadleaf herbicides. In addition, the small populations that survive on road edges could be easily destroyed by highway improvement projects or by right-of-way maintenance activities, if these are not done in a manner consistent with protecting the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Echinacea laevigata, although offered for sale by a few native plant nurseries, is not currently a significant component of the commercial trade in native plants. However, many of the more common native coneflowers are in demand for horticultural use and are a significant part of the commercial trade. Publicity could generate an increased demand for this attractive species, which might exceed the currently available sources of cultivated material. Because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased specific notoriety.

Overshadowing the potential threat of taking for horticultural purposes is the threat of commercial collection for the

pharmaceutical trade. For over a century, Midwestern species in this genus have been harvested and sold in European and American markets under the trade name "Kansas snake root" (McGregor 1968). In Germany alone, over 280 products made from various species of this American genus are registered for medicinal use (Bauer and Wagner 1990). As stated by Steven Foster (Consultant, Eureka Springs, Arkansas, personal communication, 1990):

> The potential danger of inadvertent harvest of plants for commercial markets may be the greatest hidden danger to *Echinacea laevigata* * * * we have been able to document that three endemic species have also been harvested without proper attention to species identity in the Midwest. These include the Ozark endemics, *E. paradoxa* and *E. simulata*, as well as *E. atrorubens*.

Documented harvests have reached as high as 200,000 pounds collected from a single Kansas county in 1 year. Given the fact that at least 8 to 10 dried roots are required to make up 1 pound, this single harvest represented the collection of approximately two million roots. Dr. Ronald McGregor, director emeritus of the herbarium at the University of Kansas and the leading authority on the genus *Echinacea* (in Foster 1991), noted drastic declines in Kansas populations of *Echinacea pallida* as a result of commercial harvests in the 5 years prior to 1987. Although most of the commercial supply of *Echinacea purpurea* now comes from cultivated sources, the demand for the roots far outstrips the commercial supply and is resulting in increasing pressure on wild populations of nearly every species in the genus.

In 1987, 7,000 individuals of the Ozark endemic, *Echinacea paradoxa*, were stolen from a Missouri State park (Wallace 1987). Wallace further stated, "Diggers do not discriminate between species, collecting all *Echinaceas*." Foster (1991) further states:

> Unfortunately, a number of the endemic and more unusual *Echinacea* species are entering commercial lots, dug by unwitting harvesters. In the Ozarks, this author has observed *Echinacea simulata*, harvested by the truck load. Roadside populations have decreased dramatically in South Central Missouri. The plant is much less common in northern Arkansas. Commercial harvest of this species from the wild cannot be sustained. If harvested at current levels over he next 10 years, its fate will be extinction.

Although such devastation of *Echinacea laevigata* populations for the commercial pharmaceutical trade has not yet been documented, almost two-thirds of the originally known populations of this species are gone. Those remaining are small, easily accessible, and highly vulnerable.

C. Disease or Predation

Echinacea angustifolia is known to be a host plant for certain species of leaf beetle (family *Chrysomelidae*) (Wilcox 1979). Beetles in this family have been observed on *Echinacea laevigata* in North Carolina, but it is unknown what effect they have on the plants. At this time there is no known threat to this species from disease.

D. The Inadequacy of Existing Regulatory Mechanisms

Echinacea laevigata is listed in North Carolina as endangered (Sutter 1990), in South Carolina as nationally threatened (Rayner *et al.* 1984), in Georgia as threatened (McCollum and Ettman 1987), and in Alabama as endangered (Freeman *et al.* 1979). The species is not listed in Virginia.

In North Carolina, *Echinacea laevigata* is afforded legal protection by North Carolina general statutes, § 106–202.122, 106–202.19 (Cum. Suppl. 1985). This legislation provides for protection from intrastate trade (without a permit), provides for monitoring and management of State-listed species, and prohibits taking of plants without the written permission of landowners. In Georgia the species is afforded legal protection under the Wildflower Preservation Act of 1973, Code of Georgia Ann., Title 43, Section 43–1801 to 43–1806. Georgia legislation prohibits taking of listed plants from public lands (without a permit) and regulates the sale and transport of plants within the State. Although South Carolina and Alabama recognize this species as nationally threatened and endangered, respectively, neither State offers legal protection for plants.

State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitats, such as exclusion of fire. The Endangered Species Act will provide additional protection and encouragement of active management for *Echinacea laevigata*.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

As mentioned in "Background" section of this proposed rule, many of the remaining populations are small in numbers of individual stems and in area covered by the plants. Therefore, there may be low genetic variability within populations, making it more important to maintain as much habitat and as many of the remaining colonies as possible. Much remains unknown about the demographics and reproductive requirements of this species in the wild, although several of the other species in the genus are readily cultivated and grown from seed. A few commercial nurseries specializing in native plants are currently propagating this species and are offering cultivated specimens for sale.

Fire or some other suitable form of disturbance, such as well-timed mowing or careful clearing, is essential to maintaining the glade remnants occupied by *Echinacea laevigaga*. Without such periodic disturbance, this type of habitat is gradually overtaken and eliminated by shrubs and trees of the adjacent woodlands. As the woody species increase in height and density, they overtop *Echinacea laevigata*, which, like most other coneflowers, is intolerant of dense shade. In addition, the species seems to require bare soil for germination of seeds. The current distribution of the species is ample evidence of its dependence on disturbance. Of the 21 remaining populations, 15 are on roadsides, in utility or railroad rights-of-way, or adjacent to trails.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Echinacea laevigata* as endangered. With over two-thirds of the species' populations already having been eliminated and only 21 remaining in existence, and based upon its dependence on some form of active management, it definitely warrants protection under the Act. Endangered status appropriate because of the imminent serious threats facing all but one of the remaining populations. The largest population remaining, which contains almost a third of the total surviving plants, occupies the site of a proposed regional hazardous waste incinerator.

Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Echinacea laevigata*. As discussed in Factor B in the "Summary of Factors Affecting the Species," *Echinacea laevigata* is threatened by taking, an activity only regulated by the Act with respect to

plants in cases of (1) removal and reduction to possession of endangered plants from lands under Federal jurisdiction or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Half of the populations are located on Federal land, while the rest are on State or private land. Two of the four States with known populations have no restrictions on taking. The other two have limited restrictions—Georgia prohibits taking on public lands without a permit, and North Carolina prohibits taking without permission from the landowner. However, take provisions are difficult to enforce, regardless of land ownership, and publication of critical habitat descriptions and maps in the **Federal Register** and local newspapers would make *Echinacea laevigata* more vulnerable and would increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be directed through the recovery process and through the Section 7 consultation process. Therefore, it would not now be prudent to determine critical habitat for *Echinacea laevigata*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact *Echinacea laevigata* and its habitat in the future include, but are not limited to, the following: power line construction, maintenance, and improvements; highway construction, maintenance, and improvements; forest management activities; and permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Echinacea laevigata* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is ancitipated that some trade permits will be sought because the species is already in cultivation and is a part of the commercial trade in native plants. Commercial sources of cultivated material should be encouraged in order to reduce pressure on wild populations. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Ms. Nora Murdock (see "**ADDRESSES**" section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Echinacea laevigata	Smooth coneflower	U.S.A. (GA, MD, NC, PA, SC, VA)	E	481	NA	NA

Dated: September 23, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–24440 Filed 10–7–92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of sablefish by operators of vessels using trawl gear in the West Yakutat District of the Gulf of Alaska (GOA) and is requiring that incidental catches of sablefish be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the share of the sablefish total allowable catch (TAC) assigned to trawl gear in the West Yakutat District has been reached.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The share of the sablefish TAC assigned to trawl gear in the West Yakutat District was established by the final notice of specifications (57 FR 2844, January 24, 1992) as 187 metric tons.

The Director of the Alaska Region, NMFS, has determined in accordance with § 672.24(c)(3)(ii), that the share of the sablefish TAC assigned to trawl gear in the West Yakutat District has been reached. Therefore, NMFS is requiring that further catches of sablefish by operators of vessels using trawl gear must be treated as prohibited species effective from 12 noon, A.l.t., October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

Classification

This action is taken under 50 CFR 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq*

Dated: October 2, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–24531 Filed 10–5–92; 3:39 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 196
Thursday, October 8, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Workshop to Discuss Topics Related to an Overall Revision of 10 CFR Part 34

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public workshop with representatives of Agreement States to discuss the provisions of a proposed overall revision of its regulations concerning licenses for radiography and radiation safety requirements for radiographic operations. This revision is needed to clarify certain requirements which have frequently been misinterpreted by radiography licensees and have resulted in a large number of enforcement rulings. The revision is also needed to clarify some existing definitions and to incorporate additional definitions in order to bring NRC regulations more in line with regulations currently used by other organizations that regulate the radiography industry. In addition, the revision will ensure that the new regulations governing industrial radiography are compatible with other parts of NRC's regulations that involve radiation safety standards.

DATES: The workshop will be held on November 16–18, 1992. The times are:

Monday, November 16, 1992; 1:30 p.m.–5 p.m.

Tuesday, November 17, 1992; 8:30 a.m.–5:30 p.m.

Wednesday, November 18, 1992; 8:30 a.m.–12 noon

ADDRESSES: The meeting is to be held at the Crown Sterling Hotel, 4640 West Airport Highway, Irving, Texas (telephone number 214–790–0093).

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, Office of State Programs, Mail Stop 3D23, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2326.

SUPPLEMENTARY INFORMATION: The regulations applicable to radiographic operations, 10 CFR part 34, were first published in 1965 as part of the recodification of parts 30 and 31 (30 FR 8298; June 26, 1965). Although numerous modifications to the original part 34 have been made since 1965, many radiography licensees are not complying with the present regulations. This has led to a considerable number of enforcement actions. A review of many of the violations indicates that much of the present regulation is unclear and confusing. This confusion frequently results in improper interpretation by the licensees. In light of this funding, it has been recommended that an overall revision to Part 34 be undertaken for the purpose of—

(1) Clarifying the regulation to reduce misinterpretations and subsequent enforcement actions; and

(2) Making the revised regulation more compatible with State regulations governing industrial radiography.

In developing the proposed revision, the NRC staff has reviewed the regulations of other regulatory agencies as recommended by the Commission and will attempt to keep the NRC's revised regulation compatible with these regulations wherever practical. Among the regulations considered were: "Suggested State Regulations for Control of Radiation," which was developed by the Conference of Radiation Control Program Directors, Inc., part 31 of the Texas Regulations for the Control of Radiation, Chapter 5 of the Louisiana Radiation Regulations, and Section 18 of the Canadian Atomic Energy Control Regulations. In addition, the NRC solicited recommendations on issues to be addressed in the revised regulation at the 1991 Sacramento meeting of the Agreement States, from NRC regional offices, and from some radiography equipment manufacturers and radiography licensees to augment the recommendations provided by the NRC staff.

The objective of this workshop is to conduct a round-table discussion with representatives of the Agreement States on the principal issues to be addressed in the proposed revision of 10 CFR part 34. Some of the principal issues to be discussed involve:

(1) The need for a new definition for a "Permanent Radiographic Installation;"

(2) The need for additional definitions such as "Field Station," "Temporary Job Site," "Safety Review," "Shielded Position," "Personal Supervision," etc;

(3) Training for radiographers' assistants;

(4) Whether two-person radiography crews should be required at temporary job sites;

(5) Whether to require the Radiation Safety Office to have additional training in emergency procedures such as source retrieval;

(6) Need for a requirement to survey for depleted uranium contamination;

(7) Type of records required at temporary job sites;

(8) Require before-use inspection of radiography associated equipment such as remote control, cables and projection sheath;

(9) Require radiographer's signature on radiography equipment utilization logs; and

(10) Need to specify additional requirements on maintenance of radiation survey instruments.

Conduct of the Meeting

The workshop will be co-chaired by Mr. Vandy L. Miller, Assistant Director for State Agreements Program and Dr. John E. Glenn, Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission. The moderator will be Dr. Donald A. Cool, Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission. The workshop will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the workshop will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555 on or about December 17, 1992.

The following procedures apply to public attendance at the workshop:

1. Questions or statements from attendees other than participants, i.e., participating representatives of each Agreement State and participating NRC staff, will be entertained as time permits.

2. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 30 day of September 1992.

For the Nuclear Regulatory Commission.

Carlton Kammerer,

Director, Office of State Programs.

[FR Doc. 92-24502 Filed 10-7-92; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 1992—19]

Definition of "Member" of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comments on a proposal to amend the definition of "member" of a membership association contained in 11 CFR parts 100 and 114 to add several new criteria. the Federal Election Campaign Act of 1971 as amended, ["FECA" or "the Act"] 2 U.S.C. 431 *et seq.*, permits membership associations to solicit contributions from their members for a separate segregated fund ["SSF"], which contributions can be used for political purposes.

These requirements would apply to individuals, corporations, and all other persons.

DATES: Comments must be received on or before November 20, 1992. The Commission will hold a hearing on December 9, 1992. Persons wishing to testify should so indicate in their written comments.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: Under 2 U.S.C. 441b(b)(4)(C), a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by such an entity, may solicit contributions to the SSF from its "members." Current 11 CFR 100.8(b)(4)(iv) and 114.1(e) define "members" to include all persons who are currently satisfying the requirements for membership in any such membership association.

The current regulations were adopted in 1977. Since that time, the United States Supreme Court has addressed this issue, and the Commission has issued numerous advisory opinions interpreting the regulatory language.

The Supreme Court decision, *Federal Election Commission* v. *National Right to Work Committee* (NRWC), 459 U.S. 196 (1982), involved a nonprofit, noncapital stock corporation whose articles of incorporation stated that it had no members. The NRWC argued, however, that it should be able to treat as members, and thus solicit funds to its SSF from, individuals who had at one time responded, not necessarily financially, to an NRW advertisement, mailing, or personal contact. The Supreme Court rejected this definition of "member," stating that to accept it "would virtually excise from the statute the restriction of solicitation to 'members.' " *Id.* at 203.

Relying on 2 U.S.C. 441(b)(4)(C)'s brief legislative history, the Court determined that "members" of nonstock corporations should be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions. As stated by the Court, viewing the question from this perspective meant that "some relatively enduring and independently significant financial or organizational attachment is required to be a 'member' " under that section. *Id.* at 204.

Since the *NRWC* decision, the Commission has issued a number of Advisory Opinions on this point. In these opinions, the Commission has generally required both a financial attachment, usually the regular payment of dues, and a meaningful organizational attachment, usually the right to vote for at least some members of the membership association's governing board, before a person is considered a member for purposes of 2 U.S.C. 441(b)(4)(C). See, e.g., Advisory Opinions 1984-33, 1987-13, 1990-18, and 1991-24. These requirements apply not only to individual members, but to corporate and other members as well. E.g., Advisory Opinions 1984-33, 1986-13, and 1989-18.

However, there are exceptions to this general statement. For example, the Commission has not required voting rights when a person's financial stake was so substantial that this alone was thought sufficient to impose membership status. See Advisory Opinions 1987-31 and 1988-39.

The Commission is seeking to articulate a general rule that will reduce the need for individual membership associations to seek advisory opinions, based on each association's unique set of circumstances. The Commission therefore proposes to amend the definition of "member" set forth at 11 CFR 100.8(b)(4)(iv) and 114.1(e). The proposed definitions are identical, as is currently the case.

The proposed definition first defines "membership association; to include any membership organization; trade association; cooperative; corporation without capital stock; or a local, national, or international labor organization that meets two additional requirements.

First, the membership association's articles and by-laws would have to provide for "members." This part of the definition would exclude membership associations (such as the NRWC at the time of the Supreme Court decision) whose by-laws specifically state that they have no members.

Second, the membership association would have to expressly accept the proffered membership; and the association would have to expressly solicit members; members would have to expressly acknowledge this acceptance. It could make this acknowledgment by sending a membership card, including the member on a membership newsletter list, or in some comparable manner. A membership association could not send out unsolicited membership cards and then treat the recipients as members for solicitation purposes, unless these further requirements were also met. The Commission welcomes comments on what, if any, other types of contacts should be sufficient to satisfy this criterion of membership.

The proposed definition then builds on the current definition of "member," by stating that that term includes all persons who are currently satisfying the requirements for membership in a membership organization; trade association; cooperative; or corporation without capital stock and, in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. It then details the necessary financial and organizational ties that would be required, in the case of most members. [Consistent with the FECA's legislative history, members of a local union would continue to be considered members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated, regardless of whether they met these additional requirements.) The new requirements would supersede the last sentence of the current definition,

which states that a person is not considered a member of an association if the only requirement for membership is a contribution to an SSF.

The Commission anticipates that, in most instances, members will have both financial ties to the membership association, and some right to vote for the associations's officers or directors. However, there may be an occasional situation where a person's financial or organizational tie is so strong as to in and of itself be sufficient to confer membership status. The proposed language thus provides three different methods of meeting this requirement.

First, a person could have a significant financial attachment to the membership association, such as an investment or ownership stake. The proposed regulation does not define "significant" for this purpose, other than to state that the mere payment of dues would not be sufficient to satisfy this requirement. However, the Commission intends that this attachment be substantial, and notes that a nominal investment would not be sufficient for this purpose. If this financial attachment was present, no voting rights would be necessary.

Second, a person could be obligated to pay regular dues, in an amount predetermined by the association, and also be entitled to vote directly either for a majority of those on the highest governing body of the membership association, or for those who select the majority of those on the highest governing body. The Commission anticipates that this situation would apply to most membership associations.

Third, a person could be entitled to vote directly for the entire membership of the association's highest governing body. In this case, no financial ties (such as dues) would be required.

Under both the second and third methods, the draft rules recognize only those voting rights which entitle a member to vote to elect a membership association's officers or directors. The right to vote on policy statements and similar matters would not be sufficient to satisfy this requirement.

It should also be noted that, as drafted, the voting rights envisioned under the second method clearly include two-tiered associations, such as those in which members vote for delegates to a convention, and those delegates elect those who serve on the association's highest governing body. The Commission welcomes comments on whether this approach should be expanded to three- or more-tiered associations, such as those with national, state, and local levels. In particular, are there circumstances under which a member of a local branch of a national association can be considered to have sufficient direct involvement with the national level to qualify as a member of the national association under this rule?

In proposing this rule, the Commission is mindful of the *NRWC* Court's admonition that the Commission not "open the door to all but unlimited corporate solicitation and thereby render meaningless the statutory limitation to 'members.' " 459 U.S. at 204. However, the Commission welcomes comments on what, if any, other membership indicia should be considered, for purposes of the proposed rule.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Federal Election Campaign Act in this area.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

For reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100.8 would be amended by revising paragraph (b)(4)(iv) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(4) * * *

(iv)(A) For purposes of paragraph (b)(4)(iv) of this section, *membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that

(*1*) Expressly provides for "members" in its articles and by-laws;

(*2*) Expressly solicits members; and

(*3*) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(B) For purposes of paragraph (b)(4) of this section, *members* means all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(*1*) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but *not* merely the payment of dues);

(*2*) Are required to pay on a regular basis a specific amount of dues that is, predetermined by the association and are entitled to vote directly either for a majority of those on the highest governing body of the membership association, or for those who select the majority of those on the highest governing body of the membership association; or

(*3*) Are entitled to vote directly for all of those on the highest governing body of the membership association.

(C) Notwithstanding the requirements of paragraphs (b)(4)(iv) (B) (*1*)–(*3*) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

3. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

4. Section 114.1 would be amended by revising paragraph (e) to read as follows:

§ 114.1 Definitions.

* * * * *

(e)(1) *Membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that

(i) Expressly provides for "members" in its articles and by-laws;

(ii) Expressly solicits members; and

(iii) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(2) *Members* means all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(i) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but *not* merely the payment of dues);

(ii) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for a majority of those on the highest governing body of the membership association, or for those who select the majority of the highest governing body of the membership association; or

(iii) Are entitled to vote directly for all of those on the highest governing body of the membership association.

(3) Notwithstanding the requirements of paragraphs (e)(2) (i)–(iii) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

* * * * *

Dated: October 2, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-24351 Filed 10-7-92; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-148-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires that the FAA-approved maintenance inspection program include inspections which will give no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI). This proposal would revise the existing AD to require additional and expanded inspections, and to include additional airplanes in the candidate fleet. This proposal is prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. The actions specified by the proposed AD are intended to ensure the continuing structural integrity of the total Boeing Model 747 fleet.

DATES: Comments must be received by November 23, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-148-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2777; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-148-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-148-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion: On December 11, 1989, the FAA issued AD 84-21-02 R1, Amendment 39-6430 (55 FR 1005, January 11, 1990), applicable to certain Boeing Model 747 series airplanes, to require a revision to the FAA-approved maintenance inspection program. That AD requires that the Structural Significant Items (SSI's) listed in Boeing Supplemental Structural Inspection Document (SSID) D6-35022, Revision C, dated April 1989, be inspected on candidate airplanes so that at least a specified Damage Tolerance Rating (DTR) is maintained. The SSID includes instructions on how DTR's are determined. That action was prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. That condition, if not corrected, could result in failure to detect cracks in an SSI, which would result in loss of structural integrity.

Since the issuance of that AD, the manufacturer has reassessed the inspections required for certain SSI's and, based on this reassessment, has revised the Model 747 SSID. The FAA has reviewed and approved Boeing Supplemental Structural Inspection Document (SSID) D6-35022, Revision D, dated February 1992, that describes procedures to revise the FAA-approved maintenance inspection program for certain Boeing Model 747 series airplanes. This revision of the Model 747 SSID incorporates additional and expanded inspections. This revision also expands the effectivity listing to include additional airplanes to be included in the candidate fleet, line positions 137 and 197. Incorporation of the inspections and repairs described in this document will ensure the continuing structural integrity of the total Boeing Model 747 fleet.

Since the failure of an SSI can lead to an unsafe condition, and since such conditions are likely to exist or develop on other Model 747 airplanes, the FAA has determined that it is necessary to

revise the maintenance programs of the airplanes in the candidate fleet to include additional and expanded inspections. Therefore, an AD is proposed which would supersede AD 84-21-02 R1 to require that the FAA-approved maintenance inspection programs for candidate airplanes be revised to provide no less than the DTR's listed in Revision D of the SSID described previously.

There are approximately 113 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. This number includes two airplanes that would be added to the affected worldwide fleet via this proposal. The FAA estimates that 80 airplanes of U.S. registry and 8 U.S. operators would be affected by this proposed AD. (No additional U.S.-registered airplanes would be affected by this proposal). It is estimated that the implementation of the SSID program for a typical operator would take approximately 1,000 work hours. It is also estimated that the average labor cost would be $55 per work hour. Based on these figures, the cost to implement the SSID program is estimated not to exceed $440,000.

The recurring inspection impact on the affected operators is estimated to be 1,275 work hours per airplane at an average labor cost of $55 per work hour. Based on these figures, the annual recurring cost of this AD is estimated not to exceed $5,610,000.

Based on the figures discussed above, the total cost impact of this proposal for the first year is estimated not to exceed $6,050,000. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6430 (55 FR 1005, January 11, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92-NM-148-AD. Supersedes AD 84-21-02 R1, Amendment 39-6430.

Applicability: Model 747 series airplanes, as listed in Section 3.0 of Boeing Document No. D6-35022, "Supplemental Structural Inspection Document" (SSID), Revision D, dated February 1992, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of the total Boeing Model 747 fleet, accomplish the following:

(a) For airplanes listed in Boeing Document D6-35022, Revision C, dated April 1989: Within 3 months after February 12, 1990 (the effective date of AD 84-21-02 R1, Amendment 39-6430), incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required Damage Tolerance Rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document D6-35022, Revision C, dated April 1989. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include and be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID.

(b) For airplanes listed in Boeing Document D6-35022, Revision D, dated February 1992: Within 12 months after the effective date of this AD, replace the revision of the FAA-approved maintenance inspection program required by paragraph (a) of this AD with a revision that provides no less than the required Damage Tolerance Rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document D6-35022, Revision D, dated February 1992. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include and be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID.

(c) Cracked structure must be repaired, prior to further flight, in accordance with an FAA-approved method.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-24510 Filed 10-7-92; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1505

Proposed Exemption of Video Games

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to exempt video games from its safety regulations applicable to electrically-operated toys and other electrically-operated articles intended for use by children. Although many video games fall within the scope of these regulations, the Commission never enforced these regulations with respect to these games. Video games are associated with very few injuries and generally comply with nationally-recognized voluntary standards for electrical safety. The available information indicates that applying the regulations for electrically-operated toys' additional provisions for testing, recordkeeping, and labeling would be unlikely to prevent any of the injuries associated with video games. The proposed exemption is in response to a request from the Electronic Industries Association.

DATES: Comments on the proposed amendments should be submitted to the

Office of the Secretary by December 22, 1992.

This change is proposed to become effective 30 days after publication of a final rule in the Federal Register.

ADDRESSES: Comments on the proposal should be mailed to the Office of the Secretary, Consumer, Product Safety Commission, Bethesda, Maryland 20207, or delivered to the Office of the Secretary, room 422, 5401 Westbard Avenue, Bethesda, Maryland 20816.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0554.

SUPPLEMENTARY INFORMATION:

I. Background

A. Electrically-operated Toys

The Consumer Product Safety Commission ("Commission" or "CPSC") currently administers the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1276. Before the Commission was created, the FHSA was administered by the Food and Drug Administration ("FDA"). In 1972, the FDA proposed safety regulations under the FHSA for electrically-operated toys and other electrically-operated articles intended for use by children. In 1973, the FDA issued these regulations, and the Commission later republished them in the Code of Federal Regulations at 16 CFR 1500.18(b)(1) and part 1505. 38 FR 6138 (March 7, 1973) and 38 FR 27032 (Sept. 27, 1973).

The regulations for electrically-operated toys apply to "any toy, game, or other article designed, labeled, advertised, or otherwise intended for use by children which is intended to be powered by electrical current from nominal 120 volt (110–125 V.) branch circuits." 16 CFR 1505.1(a)(1). They do not apply to components powered by circuits of 30 volts rms (42.4 volts peak) or less, or to articles designed primarily for use by adults that may be used incidentally by children. *Id.*

The Commission's regulations for electrically-operated toys contain requirements for labeling, manufacturing, electrical design and construction, performance, and maximum acceptable temperatures for surfaces and materials. If any toy or other children's article fails to meet a regulatory requirement, it is a "banned hazardous substance" under the FHSA. 15 U.S.C. 1261(q)(1)(A).

B. Application to Video Games of the Regulations for Electrically-operated Toys

In 1972, the Electronic Industries Association's Consumer Electronics Group ("EIA/CEG") asked FDA for an interpretation of the proposed regulations for electrically-operated toys as they applied to consumer electronic equipment (February 17, 1972, letter from J. Edward Day, Esq.). FDA's Deputy Commissioner responded that "I should like to assure you that the proposal * * * is not intended to apply to television and radio receivers, phonographs, tape equipment, and audio components" (March 2, 1972, letter from FDA Deputy Commissioner James D. Grant). However, FDA indicated that the rule would apply to record players intended specifically for use by small children. *Id.*

Since the early 1970's a wide variety of video games have been marketed. In 1982, the Commission's compliance staff decided that the regulations for electrically-operated toys applied to video games and informed certain video game manufacturers of this determination. The EIA/CEG and some manufacturers disagreed with that decision, and the industry made plans to petition the Commission for an exemption from the regulations. The compliance staff decided informally not to enforce the regulations against video games while such a petition was under consideration.

C. EIA/CEG Petition for an Exemption for Video Games

On December 21, 1983, EIA/CEG submitted its petition (docketed by the Commission as petition HP 84–1). The petition made the following points:

1. Most video games are designed for teenagers and adults.
2. Application of the regulations for electrically-operated toys to video games raises insurmountable definitional problems.
3. Video game safety is already assured.
4. The regulations burden manufacturers with recordkeeping, testing, and labeling requirements.
5. Commission policy would be served by excluding video games from the regulations.

Despite its request for an exemption, the EIA/CEG did not concede that video games actually fall within the scope of the regulations. The petition asserted that the regulations were never intended to cover electronic video games because (a) such games do not fall within the traditional scope of the regulations and (b) they are like televisions and other home entertainment devices that FDA had indicted were not subject to the regulations for electrically-operated toys.

II. Interpretation of the Applicability to Video Games of the Regulations for Electrically-operated Toys.

Video games as a product group are difficult to define, but, for the purposes of this proposed exemption, the term video games refers to video game hardware systems, which consist of games which produce a dynamic video image and which have some way to control movement of portions of the video image. The image may be produced on a specially manufactured viewing screen or, by the use of cables or remote controls, on a television set. The term includes only hardware systems (the console, cables, and controls); nonelectrical software systems (the video game cartridges) are not included.

The Commission concludes that video games, as defined above, are products intended for use by children, as that term is used in section 2(f)(1)(D) of the FHSA, and are thus subject to the electrically-operated toy regulation if they are powered by current from nominal 120 volts branch circuits. According to one recent case that interpreted the meaning of "[a]ny toy or other article intended for use by children" in the FHSA, an objective test of intent must be used, *i.e.*, a product is a toy or other article intended for use by children if a reasonable person would believe that the object is a toy or article intended for use by children. *U.S.* v. *Articles of Banned Hazardous Substances Consisting of 1030 Gross (More or Less) of Baby Rattles*, 614 F. Supp. 226, 231 (E.D.N.Y. 1985). A U.S. Court of Appeals held that the determination of such intent "is vested in the sound discretion of the Commission." *Forester* v. *CPSC*, 559 F.2d 774 (D.C. Cir. 1977).

In addition, the fact that a children's product is also used by adults does not mean that the product is not intended for use by children. The Forester case was a challenge to the Commission's regulation of bicycles under the FHSA. Before issuing the regulation, the Commission had found that a large percentage of bicycles were of types that were used by adults, children, and adolescents, and that was no precise way of distinguishing between the ones intended exclusively for adults and those intended for children as well as adults. 39 FR 26100 (1974). The Court upheld the bicycle regulation, refusing to find that the Commission "abused its

discretion or acted contrary to law in determining that all bicycles except those excluded from the regulation are 'intended for use by children.' " Forester at 786.

In a more recent case, a Court considered FHSA jurisdiction over lawn darts. *First National Bank of Dwight* v. *Regent Sports Corp.*, 803 F.2d 1431 (7th Cir. 1986). The Court stated that sports equipment intended for the use of children falls within the statutory definition.

Under these principles, the Commission concludes that video games, as a product class, are intended for use by children and fall within the meaning of the FHSA term "toy or other article intended for use by children." Based on such objective factors, as advertising, marketing, and use patterns for these products, the Commission concludes that use of video games by children is reasonably foreseeable and that video games are therefore intended for use by children.

The Commission also concluded that most video games are the types of electrically-operated toys or articles intended for use by children that are within the scope of the regulation since they are intended to be powered from nominal 120 volt branch circuits. Video games that can be powered only by batteries are not currently subject to the regulation.

Only video games are described above are being proposed to be exempted. However, the Commission notes that a product is not covered by the regulation in the first place unless it is a "toy or other article used by children" as that term is used in section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D). Many home computers, for example, are not specifically adapted for the use of children, and are thus not subject to the regulation for electrically-operated toys. For example, a home computer whose ability to function as a video game is incidental to other functions it can perform, which does not contain features intended to make the computer especially suitable for children, and which is not marketed as being especially advantageous for the use of children may not be considered to be intended for use by children. In any event, such home computers would seem to fall within the intent of FDA's earlier interpretation that TV sets and other articles intended for the use of adults, but that are also used by children, are not within the scope of the regulation. The Commission sees no reason why this earlier interpretation by FDA should be changed.

III. Effects of Applying the Regulations for Electrically-Operated Toys to Video Games.

The Commission's Directorate for Epidemiology has reports of 27 incidents from January 1980 through September 1991 that may be related to the electrical aspects of products subject to this petition. Twenty-three of these incidents involved fires. Of these 23 fire incidents, five reports indicated that the fire was caused by either the video game or a television set, five reports cited short circuits, four cited the transformer or the AC adapter, one an overload in the AC circuit, one an overload of a video computer game, and one a lighted frame attachment for a hand-held video game. The remaining six fire incidents were categorized as involving video games, but the specific cause was not reported. The four remaining non-fire electrical incidents included one alleged "explosion" without injury and two incidents where electrical burns or shock occurred while the video game or adaptor was being plugged in.

There were five deaths and 10 injuries associated with the 27 reported incidents. One of the fire incidents resulted in four fatalities, but the exact involvement of the video game as a fire source was not established in that case. The other death occurred in a house fire started when an electrical adapter for a video game overheated while it was plugged into an electrical outlet.

Electronic video games are currently designed and tested to an existing voluntary standard (UL 961, Hobby and Sports Equipment). The Commission's Engineering Staff compared the Commission's regulations for electrically-operated toys with UL 961 to determine how effective each standard is in addressing electrical and thermal hazards associated with video games.

The Commission concludes that, despite differences in the requirements for video games in the CPSC regulation and the UL standard, there would not be a significant decrease in the risk of injury to children if the Commission enforced its regulation. The staff was unable to conclude from the 27 reports of incidents involving video games that any of these incidents would have been prevented had the games complied with all the requirements of the CPSC regulation for electrically-operated toys rather than only with the UL standard. Although the CPSC regulations do contain more stringent requirements in some areas, these deal with accessibility to live parts, labeling, and excessive surface temperatures in normal operation (to protect against burns, not against fires caused by failures or defects, which are addressed by the UL standard). None of the risks addressed by the CPSC standard but not the UL standard was found to be involved in the 27 known incidents, most of which were reported as fires.

If the regulations for electrically-operated toys were applied to video games, industry would incur a number of costs. These would include testing each model for compliance, keeping records of such testing, maintaining the records for three years and labeling the games' packaging and transformers.

IV. Regulatory Analysis

Under the FHSA, the Commission is required to develop a preliminary regulatory analysis containing a discussion of various factors, including a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, an identification of those likely to receive the benefits and bear the cost, and a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits and brief explanation why such alternatives should not be published as a proposed regulation.

A. Cost and Benefits of the Proposed Exemption

The potential cost of exempting electronic video games from the current regulation consists of the possibility that future injuries or deaths would be associated with games that did not comply with the regulation's requirements and that such injuries and deaths would have been prevented if the games had complied with the regulations. The Commission is aware of 23 fire incidents that occurred during the period from January 1, 1980, to October 1, 1991, that may have been related to the electrical aspects of products that would be subject to this proposed exemption. In most of these cases, the available information does not permit a determination of whether a video game was responsible for the fire. The Commission's Engineering Sciences staff concluded that "[a] review of incidents associated with video games did not reveal any that would have been prevented had the games been manufactured in accordance with the requirements of the Federal regulation 16 CFR part 1505." At the end of 1990, there were an estimated 25–40 million video games in use. Video games are found in an estimated 40 percent of U.S. households.

Costs may also be incurred if future sales of video games included units which were significantly more hazardous than those marketed over the last decade. However, there is no information to suggest that future entrants would market poorer quality hardware in order to obtain a price advantage, and the cost of hardware is not the primary determinant of demand. The current market is dominated by four firms, one of which accounts for nearly 90 percent of total sales. The current market leaders reached their market dominance through the marketing of popular game cartridges that are compatible only with their own hardware. Purchase decisions appear to be driven by the amount and popularity of the games' software, rather than by the price of the hardware systems.

Potential costs, if any, would be borne by families and friends of purchasing consumers. The Commission's staff estimates that 40 percent of U.S. homes have at least one "second generation" (8-bit) video game. Trade sources indicate that this segment of the video game market is not expected to increase significantly, and these games are directed most heavily (through advertising and software content) at those households with members aged 8–18. Bureau of the Census statistics indicate that about 27 percent of the total number of family units in the United States have members in this age group. The product also sees considerable use outside the target population. "Second generation" systems also see considerable use outside the target population. Future increases in households owning video games are expected to come from "third generation" (16-bit) and "fourth generation" (24-bit) systems, which currently are primarily targeted at adults. An estimated 3 percent of U.S. households will have "third generation" systems by the end of 1991.

Based on available epidemiological and engineering information, the CPSC staff expects no potential injuries or deaths to be associated with an exemption of video games from the electric-toy regulations. Thus, there will be no societal costs imposed by the exemption.

The proposed exemption would provide benefits to manufacturers through a continued avoidance of cost increases associated with compliance with the electric-toy regulations. The future purchasers of these products would also receive these benefits through the avoidance of retail price increases related to compliance. Manufacturers and retailers would also benefit through the elimination of uncertainty about enforcement of existing regulations, and from clarification of the requirements applicable to future product development.

The imposition of the requirements of 16b CFR part 1505 on video games would add certain costs to their production. As noted above, current production is designed and tested to an existing voluntary standard (UL 961, Hobby and Sports Equipment), and there are differences between requirements under the voluntary UL standard and the mandatory regulations under 16 CFR part 1505. For example, the mandatory regulation requires labels on both packages and instructional literature, while the UL standard requires labeling only on the product itself. (The per-unit costs of increased labeling, however, are not likely to be significant.) There are also differences between the tow standards in construction and performance requirements.

Trade sources indicate that compliance with the CPSC electric-toy regulations could require a significant retooling of the hardware, and video game consoles could have to be significantly changed. For instance, the plastic console may require reinforcement in order to meet the CPSC regulation's drop test, compression test, and pressure test requirements. Also, the existing CPSC regulation would not allow detachable cords, which may affect the portability of video hardware systems. Each of these modifications could entail design and production cost increases.

Modification of the hardware also could require modification of the game cartridges. If this occurred, existing machines might be incompatible with future cartridges, resulting in increased costs to consumers wishing to compile a library of video games, or in decreased utility for those who are not in a position to purchase the modified hardware and software. Such a situation may result in a consumer rejection of the concept of home video games, as occurred in the early 1980's. This type of consumer rejection is not similar to consumers switching to third generation systems, which because of superior visual quality and graphics, provide a more desirable product to the consumer.

Industry sources have not indicated what the expected per-unit price increase would be if the mandatory standard were applied to future production of video games; however, the total cost to society could be substantial due to the numbers of units involved. Over the period 1985–90 (the period during which current "second-generation" video games have been marketed), video game hardware sales averaged about six million units annually; an estimated 9.5 million units were sold in 1988, at an average retail price of about $120 each. If the required modifications added only a 1 percent increase at retail, the annual cost to consumers could be about $7 million (based on average sales).

Hand-held video games are designed to be used with batteries. Hand-held video games that are not sold with AC adapters are not subject to the regulations for electrically-operated toys because they operate on less than 30 V rms. Some hand-held units, however, are sold with adapters that step down the AC house voltage to the voltage provided by the batteries. In this case, the AC adapter and the video game's package would be subject to the requirements of the electrically-operated toy regulation because the adapter operates off 120 volts.

Hand-held units are not included in the analysis given above because the Commission's staff does not know what percentage of hand-held units are subject to the regulations for electrically-operated toys because they are sold with AC adapters. To the extent such units would need to be changed if the Commission were to enforce this regulation, however, the annual costs to consumers given above would be increased. (An estimated four million hand-held units were sold in 1990, at an average price of about $90.)

Industry sources indicate that compliance with the existing electric-toy regulation would also impose additional recordkeeping, testing, and labeling costs on manufacturers. These sources indicate that compliance with the existing rule "would impose substantial burdens on manufacturers." These costs would likely be passed on to purchasers in the form of higher prices.

Another benefit of the proposed exemption, considered by industry sources to be significant, would be the elimination of market uncertainty involving future sales of these products. Recent products have been designed to be in compliance with the UL standard. If the more stringent mandatory standards are applied (despite the lack of known safety benefits), the product features required by such standards may place limitations on the innovations that can be designed for these products. The Commission is unable to determine the extent to which this consideration would be a significant benefit of the proposed exemption. To the extent it is,

however, withholding the exemption could have an adverse effect on innovation.

The selection of an effective date to occur as early as 30 days after publication of the final rule in the Federal Register would have little or no effect on the quantifiable costs and benefits associated with this exemption. Manufacturers and marketers would be expected to receive some benefits associated with removal of market uncertainty; these benefits would accrue at the time the industry became aware of the rule, rather than at the effective date. Thus, the timing of the effective date is not likely to affect marketers or consumers of these products.

B. Alternatives to the Proposed Rule

As one alternative to the proposed exemption, the Commission could determine that electronic video games should comply with the existing electric-toy regulation. The Commission considered this option and preliminarily decided to reject this alternative because the uncertain level of benefits accruing through enforcement may be significantly less than potential costs associated with this option.

Another alternative would be for the Commission to issue a statement of enforcement policy stating that the Commission would not enforce the existing regulation as to video games. However, such a statement of policy may not assuage manufacturers' concerns over continued future action involving video games. The resulting uncertainty may lead to market disruption through postponements in innovation.

Because electronic video games are currently designed and tested to existing voluntary standard UL 961, another possible alternative to the proposed exemption of video games from the present mandatory standard would be to amend the mandatory standard to be essentially identical to the current UL standard. This would not be a feasible or desirable alternative for two reasons. First, the Commission is prohibited by statute from issuing a mandatory standard for a product when there is an adequate applicable voluntary standard for the product and there is substantial compliance with such voluntary standard. FHSA section 3(i)(2)(A); 15 U.S.C. 1262(i)(2)(A). This appears to be the situation with respect to video games and UL 961. Second, it is quicker and more feasible to revise a voluntary standard in response to changes in a product's design or use than it is to revise a mandatory standard.

The Commission preliminarily determined that the available feasible alternatives may not address the concerns of the parties that petitioned the Commission for an exemption. Further, potential future hazards from video games with design or manufacturing defects may be addressed through section 15(c) of the FHSA, 15 U.S.C. 1274(c), without reliance on the existing regulations for electrically-operated toys.

V. Environmental Impact

Pursuant to the National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission's staff performed a preliminary assessment of the environmental impact associated with the proposed rule. The assessment addresses the potential effects of an exemption of video games from existing regulations for electrically-operated toys.

The proposed rule is not expected to affect preexisting packaging, molds, printed circuit boards, plastic stocks, production processes, or other materials of construction now in the hands of manufacturers. Thus, there would be no destruction or discarding of existing materials. Existing inventories of finished products, including those at retail, would not be rendered unusable through the implementation of the rule. Further, inventories would not require retrofit in order to comply with the exemption.

The requirements of the rule are not expected to have a significant effect on the materials used in production or packaging of video games, or on the amount or types of materials discarded after the rule. Therefore, the Commission preliminarily finds that no significant environmental effects will result from the proposed exemption for video games.

VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601–612) requires agencies to prepare, and make available for public comment, an initial regulatory flexibility analysis whenever a general notice of proposed rulemaking is required for a proposed rule. Such analysis shall describe the impact of the proposed rule on small businesses, small organizations, and small government jurisdictions.

Since this proposed exemption merely formalizes existing industry and regulatory practices and does not make substantial changes in the Commission's enforcement activities, it is not likely to have a significant impact on small businesses or other small entities. Accordingly, the Commission certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

VII. Rulemaking Procedure

The Commission's regulations for electrically-operated toys were issued under the authority of section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D), which includes within the definition of hazardous substance "[a]ny toy or other article intended for use by children which the [Commission] by regulation determines, in accordance with section 3(e) of [the FHSA, 15 U.S.C. 1262(e)], presents an electrical, mechanical, or thermal hazard." Under section 3(e)(1), 15 U.S.C. 1262(e)(1), the Commission may use the notice-and-comment procedures of 5 U.S.C. 553 to determine that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard. The Commission concludes that the additional procedures in sections 3(f)–(i) of the FHSA are intended to apply where products that previously could be manufactured are being banned, and not where, as here, products are being exempted from existing requirements. Sections 3(f)–(i) provide for an advance notice of proposed rulemaking and detailed findings designed to ensure that the regulation is necessary to reduce or eliminate an unreasonable risk of injury. These types of findings are inappropriate when an exemption is being considered.

VIII. Conclusion

As discussed above, many video games fall within the FHSA's definition of toys and other articles intended for use by children, as well as within the scope of the Commission's regulations for electrically-operated toys. 15 U.S.C. 1261(f)(1)(D); 16 CFR part 1505. However, video games present a small risk of injury to children, and application of the regulations to video games would be unlikely to reduce future injuries to children. At the same time, compliance with the regulations for electrically-operated toys would involve testing, recordkeeping, and labeling costs for manufacturers. Therefore, the Commission granted petition HP 84–1 and preliminarily concludes that the regulations for electrically-operated toys should be amended to generically exclude video games.

Comments should be submitted to the Commission's Office of the Secretary by December 22, 1992.

Effective Date

The Commission proposes that the amendments proposed in this notice shall be effective November 9, 1992.

List of Subjects

16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

16 CFR Part 1505

Consumer protection, Electronic products, Infants and children, Toys.

For the reasons given above, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

Part 1500—[AMENDED]

1. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261–1277, 2079.

Part 1505—[AMENDED]

1. The authority citation for part 1505 is revised to read as follows:

Authority: 15 U.S.C. 1261–1262, 2079.

§ 1505.1 [Amended]

2. Section 1505.1(a)(1) is amended by removing the second word "or" in the last sentence and by adding ", or videogames" before the period in the last sentence.

3. Section 1505.1(a) is amended by adding a new paragraph (a)(2) to read as follows:

(a) * * *

(2) The term "video games" means video game hardware systems, which are games that both produce a dynamic video image, either on a viewing screen that is part of the video game or, through connecting cables, on a television set, and that have some way to control the movement of at least some portion of the video image.

Dated: October 2, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(Note: This list will not be published in the Code of Federal Regulations.)

1. 37 FR 1020 (January 21, 1972).
2. 38 FR 6138 (March 7, 1973).
3. Briefing package for the Commission, "Petition HP 84–1 on Video Games," dated August 22, 1988, with the following attachments:

TAB A. Letter from Gary J. Sharpiro, Staff Vice President, Government and Legal Affairs, Consumer Electronics Group, Electronic Industries Association re: "Petition for Exemption or Modification and Request for Stay of Enforcement Pending Decision on Petition," dated December 21, 1983 (HP 84–1).

TAB B. 1. Letter from J. Edward Day, Counsel for Consumer Electronics Group of the Electronics Industries Association, to James D. Grant, Deputy Commissioner, Food and Drug Administration dated February 17, 1972.

2. Letter from James D. Grant, Deputy Commissioner, Food and Drug Administration to J. Edward Day, dated March 2, 1972.

TAB C. 1. Memorandum from Carolyn Kennedy, Directorate for Economic Analysis to David W. Thome, Office of Program Management and Budget entitled "Video Game Petition, HP 84–1," dated June 24, 1988.

2. Memorandum from Carolyn Kennedy, Directorate for Economic Analysis to Carl W. Blechschmidt, Office of Program Management and Budget entitled "Video Games—Product Identification dated November 21, 1984.

TAB D. 1. Memorandum from Debbie Tinsworth, Directorate for epidemiology to David W. Thome, Office Program Management and Budget entitled "Video Game Petition (HP 84–1)," dated July 11, 1988.

2. Memorandum from William Rowe, Directorate for Epidemiology to Carole Shelton, Office of Program Management and Budget entitled "HP 84–1 Video Games: EPI Review of Incidents," dated February 25, 1988.

TAB E. Memorandum from John Preston, Directorate for Engineering Sciences to David W. Thome, Office of Program Management and Budget entitled "Petition HP 84–1: Electronic Video Games," dated July 1, 1988.

TAB F. Draft Proposed "Statement of Interpretation and Enforcement policy on Video Games."

4. Briefing package for the Commission, "Proposed Exemption of Video Games," dated August 11, 1992, with the following attachments:

TAB A. Draft Federal Register Notice, "Proposed Exemption of Video Games."

TAB B. Memorandum from Audrey E. J. Corley, EPHA, to Ron L. Medford, EXHR, entitled "Video Gram Exemption," dated October 15, 1991.

TAB C. 1. Memorandum from John Preston, ESMT, to David W. Thome, EXPB entitled "Petition HP 84–1 Electronic Video Games," dated July 1, 1988.

2. Memorandum from John Preston, ESMT, to David W. Thome, FO, entitled "Petition HP 84–1, Electronic Video Games," dated February 18, 1992.

TAB D. 1. Anthony C. Homan and Terrance R. Karels, Directorate for Economic Analysis, "Preliminary Regulatory Analyses, Economic and Environmental Assessments: Proposed Amendments to the Electrically Operated Toy Regulation," October, 1991.

2. Memorandum from Anthony C. Homan, to Bert G. Simson, EXHR, entitled "Market Sketch Update," dated October 16, 1991.

3. Memorandum from Anthony C. Homan, EXPA, to Elaine A. Tyrrell, EX–P, entitled Market Sketch Home Video Games," dated March 10, 1989.

[FR Doc. 92–24432 Filed 10–7–92; 8:45 am]

BILLING CODE 6355–01–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Proposed Amendments to Administrative Manual—Rules of Practice and Procedure; Public Hearings

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rules and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on proposed amendments to its Rules of Practice and Procedure in relation to Commission review of electric generation or cogeneration projects. The hearing will be part of the Commission's regular business meeting which is open to the public.

The Commission's Rules of Practice and Procedure presently require Commission review and approval of all projects involving a withdrawal of surface or ground water whenever the daily average withdrawal during any month exceeds 100,000 gallons per day (gpd). Similarly, review and approval by the Commission of all discharges of wastewater to surface or ground waters having a design capacity of 50,000 gpd or more is also required. One or both of these requirements generally trigger Commission review of major electric generating projects. However, the Rules of Practice and Procedure do not specifically address similar electric generation or cogeneration projects if they elect to use an existing source of water supply and the Commission has been made aware of the fact that several such projects are under consideration. The depletive water use from these projects could have a substantial impact on the water resources of the Basin. Since the Commission as a matter of policy has imposed special requirements on new electric generating facilities regarding the replacement of depletive water use during critical hydrologic periods, the Commission is now proposing to amend its Rules of Practice and Procedure by the addition of a new category of projects for review under section 3.8 of the Compact: Electric generating or cogenerating facilities designed to

consumptively use in excess of 100,000 gpd of water during any 30-day period

The Commission recognizes the need to consider all large consumptive water uses and has asked staff to survey large water purveyors to obtain information on major depletive water users. Based on the results of that survey, the Commission may consider extending review authority to other large consumptive water users.

DATES: The public hearing will be part of the Commission's regular business meeting which is scheduled for Wednesday, December 9, 1992 beginning at 1 p.m. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

ADDRESSES: The hearing will be held at the Harbour League Club, 800 Hudson Square, Camden, New Jersey. Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500 X203.

The subject of the hearing will be as follows:

Amendments to the Administrative Manual—Rules of Practice and Procedure.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

These amendments become effective upon adoption of the final rule by the Commission.

It is proposed to amend part 401 as follows:

PART 401—[AMENDED]

1. The authority citation for part 401 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

§ 401.35 [Amended]

2. New § 401.35(b)(17) is added to read as follows:

(17) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period.

Delaware River Basin Compact, 75 Stat. 688.

Dated: October 1, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92-24449 Filed 10-7-92; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0018-92]

RIN 1545-AQ55

Earnings and Profits of Foreign Corporations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (INTL-0018-92), which was published on Wednesday, July 1, 1992 (57 FR 29246). The proposed regulations relate to computing the earnings and profits of foreign corporations.

FOR FURTHER INFORMATION CONTACT: Margaret Hogan (202-622-3870, not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 964 and 952 of the Internal Revenue Code of 1986.

Need for Correction

As published, the proposed regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (INTL-0018-92), which was the subject of FR Doc. 92-15366, is corrected as follows:

Paragraph 1. On page 29247, column 3, in § 1.952-2(c)(2)(iv), line 6 and 7, the language "of paragraphs (c)(1)(ii)(B) and (c)(1)(iii)(D) of this section shall not" is corrected to read "of § 1.964-1(c)(1)(ii)(B) and (c)(1)(iii)(D) shall not".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-24111 Filed 10-7-92; 8:45 am]

BILLING CODE 4830-01-M

Internal Revenue Service

26 CFR Part 301

[PS-7-92]

RIN 1545-AQ46

Continuity of Life—Limited Partnerships; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 7701 of the Internal Revenue Code relating to the classification of organizations for tax purposes. The proposed regulations clarify the rule in the regulations regarding the characteristic of continuity of life of a limited partnership.

DATES: The public hearing originally scheduled for Tuesday, October 20, 1992, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that amend 26 CFR part 301. The proposed regulations clarify the rule in 26 CFR 301.7701-2(b)(1) regarding the characteristic of continuity of life of a limited partnership. A notice appearing in the **Federal Register** for Wednesday, July 22, 1992, (57 FR 32472), announced that the public hearing on the proposed regulations would be held on Tuesday, October 20, 1992, beginning at 10 a.m. in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Tuesday, October 20, 1992, has been cancelled.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-24552 Filed 10-7-92; 8:45 am]

BILLING CODE 4830-01-M

31 CFR Part 10

[IA-20-92]

RIN 1545-AQ57

Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries Before the Internal Revenue Service

AGENCY: Office of the Secretary, Department of the Treasury.

ACTION: Notice of proposed rulemaking and withdrawal of proposed rule.

SUMMARY: This document proposes rules that would amend the regulations governing the practice of individuals before the Internal Revenue Service. These regulations would affect individuals who are eligible to practice before the Service. The proposed amendments generally would establish tax return preparation standards and prescribe the circumstances under which a practitioner could be disciplined for violating those standards; prohibit contingent fees for preparing tax returns; extend certain of the existing restrictions governing limited practice before the Service to all individuals who are eligible to engage in limited practice before the Service; establish expedited proceedings to temporarily suspend, in cases where certain determinations have been made by independent bodies, individuals from practice before the Service; and permit attorneys and certified public accountants in good standing to obtain or retain enrolled agent status.

DATES: Written comments must be received on or before November 16, 1992. The Treasury Department intends to hold a public hearing on these regulations on December 16, 1992. Outlines of oral comments from persons wishing to speak at the public hearing must be received by December 2, 1992.

ADDRESSES: Send comments and a request to speak at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA-20-92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Attorney-Advisor, Office of the Assistant Chief Counsel (Income Tax and Accounting) at 202-622-6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the regulations governing practice before the Internal Revenue Service. The regulations are in subtitle A, part 10, of title 31 of the Code of Federal Regulations and have been reprinted as Treasury Department Circular 230 ("Circular 230"). Circular 230 provides that attorneys, certified public accountants, enrolled agents and enrolled actuaries (collectively referred to as "practitioners") generally are entitled to engage in practice before the Service. Circular 230 also grants eligibility to practice in limited circumstances to individuals who are not "practitioners." In general, this eligibility arises from either an individual's legal relationship to the person represented, or the individuals' preparation of the return of the person represented. Circular 230 also provides that an individual may be suspended or disbarred for cause from practice before the Service.

Both Treasury and the Service encourage comments on ways to improve these proposed rules and reduce the burden of complying with these rules.

This document also withdraws proposed amendments to the regulations governing practice before the Service that were published in 1986. See 51 FR 29113 (August 14, 1986).

Explanation of Provisions

Return Preparation Standard and Related Disciplinary Standards

The proposed amendments would establish standards applicable to practitioners who advise clients to take return positions or who sign or otherwise prepare returns. These new standards would supplement the existing requirement in § 10.22 of Circular 230 that practitioners exercise due diligence in preparing, or assisting in the preparation of, tax returns and other documents relating to IRS matters. These proposed rules reflect recent efforts by professional organizations and others to develop rules addressing a practitioners' responsibilities in return preparation.

In 1985, the American Bar Association ("ABA"), in Formal Opinion 85-352, adopted a standard requiring that a return position be supported by a "realistic possibility of success if litigated." This standard replaced, in the context of return preparation and advice, the less stringent "reasonable basis" standard of ABA Formal Opinion 314 (1965). In 1986, following the adoption of Formal Opinion 85-352, Treasury issued a proposed amendment to Circular 230 that generally would have prohibited a practitioner from advising or preparing a return position unless the practitioner determined that the position would not subject the taxpayer to the substantial understatement penalty. See 51 FR 29113 (August 14, 1986). The proposed standard was criticized because of concern that imposition of a substantial understatement penalty would automatically lead to discipline under Circular 230 and because, under the law in effect at that time, the standard significantly restricted the types of authority on which a practitioner could rely in arriving at a return position. The 1986 proposed amendments to Circular 230 have not been finalized.

In 1987, the ABA and American Institute of Certified Public Accountants ("AICPA") responded to the proposed amendments by submitting proposals to the Service recommending that a realistic possibility standard for return preparation be incorporated in Circular 230. In 1988, the AICPA amended its Statements on Responsibilities in Tax Practice to replace its "reasonable support" standard with a "realistic possibility" standard that is similar, but not identical, to the standard for lawyers under ABA Formal Opinion 85-352.

In 1989, Congress revised the penalties for income tax return preparers in section 6694 of the Internal Revenue Code to generally reflect the revised ABA and AICPA return preparation standards. See H. Rep. No. 247, 101st Cong., 1st Sess. 1396 (1989) ("The committee has adopted this new standard because it generally reflects the professional conduct standards applicable to lawyers and to certified public accountants"). Final regulations under section 6694 were issued by Treasury on December 30, 1991.

In light of these developments, Treasury is withdrawing the 1986 proposed amendments to Circular 230 and is proposing a standard of conduct under § 10.34(a) that more closely reflects the realistic possibility standards adopted by professional organizations and the preparer penalty provisions of section 6694 of the Code and the regulations thereunder. Because Circular 230's role in regulating practitioner conduct differs from the role played by the ABA and AICPA guidelines and Internal Revenue Code penalties, the proposed amendments provide that a practitioner may be disciplined under Circular 230 only if a failure to comply with the realistic possibility standard is willful, reckless, or a result of gross incompetence. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted recklessly or through gross incompetence. A practitioner will not be considered to

have acted willfully, recklessly, or through gross incompetence with respect to a return position if there was reasonable cause for the position and the practitioner acted in good faith. Because Circular 230 is intended to apply to all practitioners, the one-preparer-per-firm rule of § 1.6694-1(b)(1) of the preparer penalty regulations does not apply for purposes of 1034.

Under the new return preparer standard of conduct in § 10.34(a)(1), a practitioner may not advise a client to take a position on a return, or prepare the portion of a return on which a position is taken, unless (i) the practitioner determines that there is a realistic possibility of the position being sustained on its merits (the "realistic possibility standard"), or (ii) the position is not frivolous and the practitioner advises the client to adequately disclose the position. In addition, a practitioner may not sign a return as a preparer if the practitioner determines that the return contains a position that does not satisfy the realistic possibility standard, unless the position is not frivolous and is adequately disclosed to the Service. Section 10.34(a)(4) defines "realistic possibility" and "frivolous" for purposes of this section.

Proposed § 10.34(a)(2) generally requires a practitioner to advise a client of penalties reasonably likely to apply to a return position, of any opportunity to avoid the penalties by disclosure, and of the requirements for adequate disclosure. Proposed § 10.34(a)(3) generally permits a practitioner to rely without verification on information furnished by the client. However, the practitioner may not ignore the implications of the information and must make reasonable inquiries if the information appears incorrect, inconsistent or incomplete.

Fees

The proposed changes to § 10.28 generally prohibit a practitioner from charging a contingent fee for preparing a return of tax, including a claim for refund. A contingent fee includes a fee that is based on (i) a percentage of the refund shown on a return, (ii) a percentage of the taxes saved, or (iii) the specific result attained.

The proposed rule reflects Treasury's position that contingent fees should not be permitted for tax return preparation. Treasury is concerned that permitting contingent fees for tax return preparation would undermine voluntary compliance by encouraging return positions that exploit the audit selection process. An exception is made for refund claims that are filed in anticipation of litigation because these claims do not have the same potential for undermining voluntary compliance.

Restrictions on Individuals Engaging in Limited Practice

Section 10.7 of Circular 230 currently authorizes two categories of individuals who are not practitioners to engage in limited practice before the Service. The first category consists of non-practitioners who represent closely associated persons. This category includes, for example, an individual representing his or her employer or a trustee representing the trust. The second category consists of non-practitioners who represent taxpayers in connection with examinations of returns that the non-practitioners prepared.

Under § 10.7(a)(7), circular 230 only regulates and subjects to discipline individuals within the second category who engage in limited practice. Individuals in this category (i) must not be under suspension or disbarment from practice before the Service; (ii) may not engage in conduct that would justify suspending or disbarring a practitioner from practice before the Service; and (iii) must comply with such rules as the Director of Practice prescribes. These rules are currently in Rev. Proc. 81–38, 1981–2 C.B. 592.

Treasury believes it is in the interests of sound tax administration to require that all non-practitioners who engage in limited practice before the Service uphold the same standards of conduct as practitioners and be denied eligibility to engage in limited practice for violating those standards. Accordingly, the proposed amendments prohibit any non-practitioner from engaging in limited practice if he or she is under suspension or disbarment from practice before the Service, or if the non-practitioner engages in conduct that would justify suspending or disbarring a practitioner from practice before the Service. The proposed amendments do not extend the rules of Rev. Proc. 81–38 to individuals within the first category of limited practice because the revenue procedure only regulates representation before district offices.

Expedited Suspensions From Practice Before the Service in Certain Cases

Treasury believes current procedures under Circular 230 are inadequate to expeditiously discipline a practitioner who has been convicted of committing certain crimes or whose license to practice law or accounting has been suspended or revoked for cause, i.e., misconduct. Accordingly, the proposed regulations add § 10.53A to permit the Director of Practice, pursuant to the authority granted by 31 U.S.C. 330, to commence an expedited proceeding leading to a practitioner's suspension from practice before the Service in those instances in which an independent authority already has determined that the practitioner has engaged in serious misconduct.

Section 10.53A would apply only to a practitioner who, within 5 years of the commencement of the proceeding, (i) has been convicted of a crime under title 26 of the United States Code, such as willfully failing to file a tax return under section 7203, or a felony under title 18 of the United States Code involving dishonesty or breach of trust; or (ii) has had his or her license to practice law or accounting suspended or revoked for cause by the appropriate regulatory authority. A license will not be considered to have been revoked or suspended "for cause," for this purpose, if the revocation or suspension is due to a failure to pay licensing or other fees.

An attorney's or certified public accountant's right to practice before the Internal Revenue Service arises from his or her authority to practice as an attorney or certified public accountant. See 5 U.S.C. 500(b), (c); section 10.3(a), (b) of Circular 230. However, this right to practice does not impair Treasury's authority to discipline attorneys or certified public accountants. See 5 U.S.C. 500(d) and 31 U.S.C. 330.

An expedited proceeding under proposed § 10.53A commences with the filing of a complaint by the Director. If a practitioner so requests in a timely filed answer to the complaint, he or she is entitled to a conference with the Director on allegations in the complaint. Following such a conference (or at an earlier time if the practitioner does not request a conference or timely respond to the complaint), the Director may immediately suspend the practitioner from practice before the Service upon a finding that the practitioner has been convicted of one of the crimes specified in § 10.53A or has lost one or more of his or her professional licenses for cause. A practitioner retains the right to require the Director to institute a formal hearing before an administrative law judge pursuant to § 10.54 of Circular 230, which would be conducted *de novo*. An expedited suspension under § 10.53A remains in effect until it is lifted by the Director, or an administrative law judge or the Secretary of the Treasury pursuant to the formal proceeding.

Other Matters

Section 10.4(d) currently prohibits attorneys and certified public accountants from being enrolled. Section 10.3(a) and (b) invalidate an

enrollment card issued to an enrolled agent who subsequently becomes an attorney or certified public accountant.

It is believed that these rules are unfair to individuals who retire from the practice of law or accounting but nonetheless desire to continue to practice before the Service based on enrollment or who wish enrollment for other reasons. Therefore, the proposed rules would repeal § 10.4(d) and the portion of §§ 10.3(a) and (b) that invalidates prior enrollments. Attorneys and certified public accountants who desire enrolled agent status and who previously did not have such status must comply with the requirements of the regulations governing eligibility for enrollment. For example, individuals who do not qualify for enrolled status on the basis of their prior employment with the Service must pass the enrollment examination administered by the Director of Practice.

PROPOSED EFFECTIVE DATE: These regulations are proposed to be effective [on the date final regulations are published in the **Federal Register**].

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5. U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, an initial Regulatory Flexibility Analysis is not required.

Comments and Public Hearing

The Treasury Department intends to hold a public hearing on these regulations on December 16, 1992. Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Treasury Department. All comments will be available for public inspection and copying.

Drafting Information

The principal author of these proposed regulations is David L. Meyer, Office of Chief Counsel, Income Tax & Accounting. However, personnel from other offices of the Treasury Department and the Internal Revenue Service participated in their development.

List of Subjects in 31 CFR part 10

Administrative practice and procedure, Lawyers, Accountants, Enrolled agents, Enrolled actuaries, Appraisers

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, 31 CFR part 10 is proposed to be amended as follows:

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Paragraph 1. The authority citation for subtitle A, part 10 continues to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 *et. seq.*; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 1026; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., P. 1017.

Par. 2. Section 10.0 is revised to read as follows:

§ 10.0 Scope of part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing clients before the Internal Revenue Service. Subpart A of this part sets forth rules relating to authority to practice before the Internal Revenue Service; subpart B of this part prescribes the duties and restrictions relating to such practice; subpart C of this part contains rules relating to disciplinary proceedings; subpart D of this part contains rules applicable to disqualification of appraisers; and Subpart E of this part contains general provisions, including provision relating to the availability of official records.

Par. 3. Section 10.2 is revised to read as follows:

§ 10.2 Definitions.

As used in this part, except where the context clearly indicates otherwise:

(a) *Attorney* means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia.

(b) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any State, possession, territory, Commonwealth, or the District of Columbia.

(c) *Commission* refers to the Commissioner of Internal Revenue.

(d) *Director* refers to the Director of Practice.

(e) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a client's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include preparing and filing necessary documents, corresponding and communicating with the Internal Revenue Service, and representing a client at conferences, hearings, and meetings.

(f) *Practitioner* means any individual described in § 10.3 (a), (b), (c), or (d) of this part.

(g) A *return* of tax includes a claim for refund of tax.

(h) *Service* means the Internal Revenue Service.

Par. 4. Section 10.3 is amended by revising paragraphs (a), (b), (e) and (f) to read as follows:

§ 10.3 Who may practice.

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Service upon filing with the Service a written declaration that he or she is currently qualified as an attorney and is authorized to represent the particular party on whose behalf he or she acts.

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Service upon filing with the Service a written declaration that he or she is currently qualified as a certified public accountant and is authorized to represent the particular party on whose behalf he or she acts.

* * * * *

(e) *Others.* Any individual qualifying under § 10.5(c) or § 10.7 is eligible to practice before the Internal Revenue Service to the Extent provided in those sections.

(f) *Government officers and employees, and others.* An individual, including any officer or employee of the executive, legislative, or judicial branch of the United States Government; officer or employee of the District of Columbia; Member of Congress; or Resident Commissioner, may not practice before the Service if such practice would violate 18 U.S.C. 203 or 205.

* * * * *

Par. 5. Section 10.3 is amended by removing the footnote 1, reference from paragraphs (a) and (b) and footnote 1.

Par. 6. Section 10.4 is amended by removing paragraph (d).

Par. 7. Section 10.7 is revised to read as follows:

§ 10.7 Representing oneself; participating in rulemaking; limited practice; special appearances; and return preparation.

(a) *Representing oneself.* Individuals may appear on their own behalf before

the Internal Revenue Service provided they present satisfactory identification.

(b) *Participating in rulemaking.* Individuals may participate in rulemaking as provided by the Administrative Procedure Act. See 5 U.S.C. 553.

(c) *Limited practice*—(1) *In general.* Subject to the limitations in paragraph (c)(2) of this section, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service in the circumstances described in this paragraph (c), even if the taxpayer is not present, provided the individual presents satisfactory identification and proof of this or her authority to represent the taxpayer:

(i) An individual may represent a member of his or her immediate family.

(ii) A regular full-time employee of an individual employer may represent the employer.

(iii) A general partner or a regular full-time employee of a partnership may represent the partnership.

(iv) A bona fide officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(v) A trustee, receiver, guardian, personal representative, administrator, executor, or regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(vi) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(vii) An individual may represent an individual or entity outside of the United States before personnel of the Internal Revenue Service.

(viii) An individual who prepares and signs a taxpayer's return on behalf of the taxpayer, or who prepares a return but is not required (by the instructions or regulations) to sign it, may represent the taxpayer before officers and employees of the Examination Division of the Internal Revenue Service with respect to the tax liability of the taxpayer for the taxable year or period covered by that return.

(2) *Limitations.*

(i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Service under § 10.7(c)(1).

(ii) The Director of Practice, after notice and opportunity for a conference, may deny eligibility to engage in limited practice before the Internal Revenue Service under § 10.7(c)(1) to any individual who has engaged in conduct that would justify suspending or disbarring a practitioner from practice before the Service.

(iii) An individual who represents a taxpayer under the authority of § 10.7(c)(1)(viii) is subject to such rules of general applicability regarding standards of conduct, the extent of his or her authority, and other matters as the Director prescribes.

(d) *Special appearances.* The Director of Practice, subject to such conditions as he or she deems appropriate, may authorize an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter.

(e) *Preparing tax returns and furnishing information.* An individual may prepare a tax return, appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Service or any of its officers or employees.

Par. 8. Section 10.26(a)(4) is revised to read as follows:

§ 10.26 Practice by former Government employees, their partners and their associates.

(a) * * *

(4) *Practitioner* includes any individual described in § 10.3(e).

* * * * *

Par. 9. Section 10.28 is revised to read as follows:

§ 10.28 Fees.

(a) A practitioner may not charge an unconscionable fee for representing a client in a matter before the Internal Revenue Service.

(b) A practitioner may not charge a contingent fee for preparing a return, except as provided in the following sentence. A practitioner may charge a contingent fee for preparing a claim for refund if the practitioner reasonably anticipates, at the time the claim is filed, that the claim will be denied by the Service and subsequently litigated by the client. A contingent fee includes a fee that is based on a percentage of the refund shown on a return or a percentage of the taxes saved, or that depends on the specific result attained.

Par. 10. Section 10.33(a)(1) is revised to read as follows:

§ 10.33 Tax shelter opinions.

* * * * *

(c) * * *

(1) *Practitioner* includes any individual described in § 10.3(e).

* * * * *

Par. 11. Section 10.34 is added to read as follows:

§ 10.34 Standards for advising with respect to tax return positions and for preparing or signing returns.

(a) *Standard of conduct*—(1) *Realistic possibility standard.* A practitioner may not sign a return as a preparer if the practitioner determines that the return contains a position that does not satisfy the realistic possibility standard, unless the position is not frivolous and is adequately disclosed to the Service. A practitioner may not advise a client to take a position on a return, or prepare the portion of a return on which a position is taken, unless—

(i) The practitioner determines that there is a realistic possibility of the position being sustained on its merits (the "realistic possibility standard"); or

(ii) The position is not frivolous and the practitioner advises the client to adequately disclose the position.

(2) *Advising clients on potential penalties.* A practitioner advising a client to take a position on a return, or preparing or signing a return as a preparer, must inform the client of the penalties reasonably likely to apply to the client with respect to the position, of the opportunity to avoid any such penalty by disclosure, if relevant, and of the requirements for adequate disclosure.

(3) *Relying on information furnished by clients.* A practitioner advising a client to take a position on a return, or preparing or signing a return as a preparer, generally may rely in good faith without verification upon information furnished by the client. However, the practitioner may not ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent, or incomplete.

(4) *Definitions.* For purposes of this section:

(i) *Realistic possibility.* A position is considered to have a realistic possibility of being sustained on its merits if a reasonable and well-informed analysis by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits. The authorities described in 26 CFR 1.6662–4(d)(3)(iii) of the substantial understatement penalty regulations may be taken into account for purposes of this analysis. The possibility that a position will not be challenged by the Service (e.g., because the taxpayer's return may not be audited or because the issue may not be raised on audit) may not be taken into account.

(ii) *Frivolous.* A position is frivolous if it is patently improper.

(b) *Standard of discipline.* As provided in § 10.52, only violations of this section that are willful, reckless, or a result of gross incompetence will subject a practitioner to suspension or disbarment from practice before the Service.

Par. 12. Section 10.50 is revised to read as follows:

§ 10.50 Authority to disbar or suspend.

Pursuant to 31 U.S.C. 330(b), the Secretary of the Treasury after notice and an opportunity for a proceeding, may suspend or disbar any practitioner from practice before the Internal Revenue Service. The Secretary may take such action against any practitioner who is shown to be incompetent or disreputable, who refuses to comply with any regulation in this part, or who, with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client.

Par. 13. Section 10.51, paragraph (j) is amended by removing the third sentence and adding two sentences in its place to read as follows:

§ 10.51 Disreputable conduct.

* * * * *

(j) * * * For purposes of this paragraph, reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. * * *

Par. 14. Section 10.52 is revised to read as follows:

§ 10.52 Violation of regulations.

A practitioner may be disbarred or suspended from practice before the Internal Revenue Service for any of the following:

(a) Willfully violating any of the regulations contained in this part.

(b) Recklessly or through gross incompetence (within the meaning of § 10.51(j)) violating § 10.33 or § 10.34 of this part.

Par. 15. Section 10.53A is added to read as follows:

§ 10.53A Expedited suspension upon criminal conviction or loss of license for cause.

(a) *When applicable.* Whenever the Director has reason to believe that a practitioner is described in paragraph (b) of this section, the Director may institute a proceeding under this section to suspend the practitioner from practice before the Service.

(b) *To whom applicable.* This section applies to any practitioner who, within 5 years of the date a complaint instituting a proceeding under this section is served—

(1) Has had his or her license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause by any authority or court, agency, body, or board described in § 10.51(g); or

(2) Has been convicted on any crime under title 26 of the United States Code, or a felony under title 18 of the United States Code involving dishonesty or breach of trust.

(c) *Instituting a proceeding.* A proceeding under this section will be instituted by a complaint that names the respondent, is signed by the Director of Practice, is filed in the Director's office, and is served according to the rules set forth in § 10.57(a). The complaint must give a plain and concise description of the allegations that constitute the basis for the proceeding. The complaint, or a separate paper attached to the complaint, must notify the respondent:

(1) Of the place and due date for filing an answer;

(2) That a decision by default may be rendered if the respondent fails to file an answer as required;

(3) That the respondent may request a conference with the Director of Practice to address the merits of the complaint and that any such request must be made in the answer; and

(4) That the respondent may be suspended either immediately following the expiration of the period by which an answer must be filed or, if a conference is requested, immediately following the conference.

(d) *Answer.* The answer to a complaint described in this section must be filed no later than 21 calendar days following the date the complaint is served, unless the Director of Practice extends the time for filing. The answer must be filed in accordance with the rules set forth in § 10.58, except as otherwise provided in this section. A respondent is entitled to a conference with the Director only if the conference is requested in a timely filed answer. If a request for a conference is not made in the answer or the answer is not timely filed, the respondent will be deemed to have waived his or her right to a conference and the Director may suspend such respondent at any time following the date on which the answer was due.

(e) *Conference.* The Director or his or her designee will preside at a conference described in this section. The conference will be held at a place and time selected by the Director, but no sooner than 30 calendar days after the date the complaint is served on the respondent. An authorized representative may represent the respondent at the conference. Following the conference, upon a finding that the respondent is described in paragraph (b) of this section, or upon the respondent's failure to appear at the conference either personally or through an authorized representative, the Director may immediately suspend the respondent from practice before the Service.

(f) *Duration of suspension.* A suspension under this section will commence on the date that written notice of the suspension is issued. A practitioner's suspension will remain effective until the earlier of the following:

(1) The Director of Practice lifts the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason; or

(2) The suspension is lifted by an Administrative Law Judge or the Secretary of the Treasury in a proceeding referred to in paragraph (g) of this section and instituted under § 10.54.

(g) *Proceeding instituted under § 10.54.* If the Director suspends a practitioner under this § 10.53A, the practitioner may ask the Director to issue a complaint under § 10.54. The request must be made in writing within 2 years from the date on which the practitioner's suspension commences. The Director must issue a complaint requested under this paragraph within 30 calendar days of receiving the request.

Par. 16. Section 10.65(a) is revised to read as follows:

§ 10.65 Hearings.

(a) *In general.* An Administrative Law Judge will preside at the hearing on a complaint furnished under § 10.54 for the disbarment or suspension of a practitioner. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556. A hearing in a proceeding requested under § 10.53A(g) will be conducted *de novo.*

* * * * *

Par. 17. Subpart E of part 10 is amended by removing § 10.99.

Jeanne S. Archibald,

General Counsel.

[FR Doc. 92-24347 Filed 10-7-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-92-27]

Drawbridge Operation Regulations; Bayou Dularge, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Terrebonne Parish School Board and the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the State Route 315 Bayou Dularge bridge across the Gulf Intracoastal Waterway, mile 59.9, at Houma, Terrebonne Parish, Louisiana. The requested regulation would permit the draw to be closed to navigation an additional 15 minutes, at the beginning of the morning regulated period. Presently, the bridge is closed to navigation from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday except holidays. The primary purpose of this 15-minute additional regulation is to provide school bus traffic undelayed use of the bridge during the school year. Public vessels of the United States and vessels in distress would continue to be passed at any time.

This action will accommodate the needs of local school bus traffic and rush hour vehicular traffic, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before November 23, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 539-2985.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafing Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed to navigation position is 40 feet above high tide and 43 feet above low tide. Navigation through the bridge consists of barge tows, commercial fishing boats, and recreational craft.

Considering the very minimal amount of additional time that is involved in this proposed amendment to the drawbridge regulation, and they very significant amount of benefit to the Terrebonne Parish School System, the Coast Guard feels that vessel operators should be able to adjust the speed of their vessels to accommodate this additional 15 minute closure with little or no expense or inconvenience to themselves.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the proposed regulated periods there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the additional regulated period should involve little or no expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking document.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.451 is amended by revising paragraph (c), by redesignating existing paragraphs (d) and (e) as paragraphs (e) and (f) respectively, and by adding new paragraph (d) as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(c) The draws of the East Main Street bridge, mile 57.5, and East Park Avenue bridge, mile 57.6, at Houma, shall open on signal; except that, the draws need not be opened for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

(d) The draw of the Bayou Dularge bridge, mile 59.9, at Houma, shall open on signal; except that, the draw need not be opened for the passage of vessels Monday through Friday except holidays from 6:45 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

* * * * *

Dated: September 23, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 92-24564 Filed 10-7-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 440, 442, 488, 489, and 498

[HSQ-139-P]

RIN: 0938-AC88

Medicare and Medicaid Programs; Revised Effective Date of Medicare/Medicaid Provider Agreement and Supplier Participation

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish uniform criteria for determining the effective date of participation for all Medicare and Medicaid providers and Medicare suppliers. It also would specify that those dissatisfied with a decision on their effective date of participation under Medicare are entitled to a Medicare hearing on the decision.

DATES: To assure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5 p.m. on December 7, 1992.

ADDRESSES: Address comments in writing to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-139-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 306-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron Eydt.

Due to staffing and resource limitations, we cannot accept facsimile transmissions. In commenting, please refer to file code HSQ-139-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Irene Gibson, (410) 966-6788.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1866 of the Social Security Act (the Act), a health care facility seeking to participate in the Medicare program must enter into an agreement with the Secretary. As an additional condition for eligibility for Medicare payment, the facility is surveyed and certified by a State under section 1864 of the Act (or accreditation organization pursuant to section 1865 of the Act) to determine whether the facility meets the statutory definition of a Medicare provider or supplier. Rules relating to these requirements are in 42 CFR parts 488 and 489. Similar requirements apply for provider participation under the Medicare program (see sections 1902(a)(27), 1902(a)(33)(B), and 1905 of the Act, and 42 CFR part 442). This proposed rule concerns one aspect of the participation approval process—the determination of the effective date of a provider's or supplier's participation in the Medicare or Medicaid programs.

Under the general authority at section 1866 of the Act for Medicare, and section 1902(a)(4) and (a)(27) for Medicaid, and our regulations at 42 CFR 442.12(a) and 442.30, Federal payments may not be made for services furnished prior to the effective date of a provider's Medicare or Medicaid provider agreement. Moreover, § 442.13 specifies that a provider agreement may not be effective before the provider has met all Federal participation requirements or before the date it has provided an acceptable plan of correction to HCFA or the State to meet all Federal requirements. All health care facilities except Medicare skilled nursing facilities (SNFs) and Medical nursing facilities (NFs), must meet all conditions of participation (CoPs) in order to meet the statutory definition of a provider. Until very recently this was also the case with nursing homes. However, the legislative history of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100-203, revealed that Congress intended that HCFA eliminate CoPs for nursing homes.

The committee amendment would establish "requirements" of participation for nursing facilities. In using the term "requirements" the committee specifically intends that the Secretary discard the existing regulatory practices and conventions associated with the terms "conditions" and "standards" and develop a regulatory approach that will assure the clear articulation and enforcement of the requirements in the committee amendment.

H. Rep. 391, 100th Cong., 1st Sess. 453.

Therefore, existing Department policy, as embodied in regulations at § 442.13 and § 489.13, allows provider agreements to be effective as of the date of compliance at the CoP level or with Level A requirements for nursing homes. These provider agreements could be effective even if there are deficiencies below the CoP level or below the Level A requirements for nursing homes, as long as the facility submits an approved plan of correction to HCFA or to the State for these deficiencies.

The Medicaid rules at § 442.13 apply to nursing and intermediate care facilities for the mentally retarded. Although we have been applying similar policies to other Medicaid providers (such as hospitals and home health agencies), our regulations do not contain effective date regulatory provisions for these other Medicaid providers. Similarly, the Medicare provision at § 489.13 applies to Medicare providers, i.e., hospitals, skilled nursing facilities, home health agencies, comprehensive outpatient rehabilitation facilities, hospices and certain providers of outpatient physical therapy and speech pathology services. There is no corresponding effective date regulatory provision for suppliers. However, for purposes of consistency, ease of administering each program, and to protect the health and safety of beneficiaries and recipients, we have extended in our current procedure manuals and practice the same effective date provisions to all types of Medicare and Medicaid providers. Additionally, existing Medicare and Medicaid regulatory provisions do not address the effective date of participation for those providers and suppliers who are deemed to meet the conditions or requirements by an accreditation organization.

The statute at section 1866(h) for Medicare and the regulations at 42 CFR part 498 provide that an institution or agency dissatisfied with a determination that it is not a provider (and, under the regulations, a supplier) of services is entitled to an administrative law judge (ALJ) hearing on the issue. However, because an effective date determination is not specified as an appealable issue under § 498.3(b), institutions or agencies are not consistently granted ALJ hearings on this issue.

II. Provisions of the Proposed Regulations

We propose to promulgate uniform rules on establishing the effective date

of participation for all providers and suppliers.

Under current rules at § 442.13 for Medicaid NFs and ICFs/MR, and § 489.10 and § 489.13 for Medicare providers, provider agreements are made effective upon the completion of the on-site health and safety certification survey, if all Federal requirements are met on that date. Otherwise, the provider agreement is made effective upon the date on which (1) HCFA for Medicare, or the State survey agency for Medicaid, determines that all Federal requirements are met; or (2) if the facility meets all CoPs or Level A requirements for Medicare SNFs and Medicaid NFs, as of the date the facility submits a plan of correction to meet all lower level Federal requirements or waiver request that is acceptable to HCFA or the State survey agency for deficiencies below the CoP level or below Level A for SNFs and NFs. (Presently, § 489.10 requires that prospective providers meet the CoPs or requirements for SNFs, thereby limiting the use of plans of correction to facilities having deficiencies below the CoP level or below Level A requirements.)

We would revise § 489.13 to establish a requirement that all Medicare suppliers as well as all providers be subject to consistent effective date requirements. (No corresponding changes are needed in Part 442 because the Medicaid program recognizes only providers, not suppliers. However, in amending § 489.13 to apply the effective date provisions to suppliers, we would revise the overall language to clarify the intent of the policy with regard to effective dates in conjunction with plans of correction. We would make corresponding changes to § 442.13, to clarify Medicaid policies in this regard, as well.)

In addition, we would revise § 489.13 to establish rules to govern providers/suppliers that apply to participate in Medicare after they have been deemed to meet Federal requirements, including Life Safety Code Requirements, by a HCFA-approved accreditation organization. We would add a new paragraph to state that when a provider/supplier does not require an onsite survey by a State survey agency because it is deemed to meet Federal requirements by an accreditation organization, the effective date of the provider agreement or approval of a supplier's participation is the date on which the provider or supplier makes its initial request to HCFA to participate in the Medicare program. However, the effective date cannot be before the date on which the accreditation organization conducts its initial onsite survey and certifies the provider or supplier as meeting its accreditation requirements, nor before the date HCFA grants deeming authority to the accreditation organization conducting the survey of the provider or supplier. For those accredited providers or suppliers that are required to meet special requirements for which an accreditation organization is not authorized to grant deemed status, the effective date of the provider agreement or approval of a supplier's participation is the date on which all of the Federal requirements are met, including the special requirements. (Likewise, we would make the corresponding changes to § 442.13 to clarify Medicaid policies in this regard.) To reflect the nomenclature changes made by section 4211(a) of OBRA '87, we would also make conforming changes to the title of part 442 affected by this proposed rule to substitute the term "NF" for "SNF" and "ICF". Part 442 would now be entitled "Part 442—Standards for Payment for Nursing Facilities and Intermediate Care Facilities for the Mentally Retarded".

We would add a new paragraph (e)(3) of § 431.610, Relations with Standard Setting and Survey Agencies, to clarify that the Medicaid State plan specify that the State survey agency is responsible for recommending the effective date of an agreement for a provider as provided under § 442.13. We believe that this revision would be appropriate since the State survey agency usually has the initial responsibility for conducting the survey and certifying compliance with Federal requirements. Because the State survey agency, through its onsite survey, is aware of the date it verified that the entity complied with the Federal requirements, it is appropriate that it also recommend this date as the effective date of a provider agreement.

We would establish a new § 440.3, Effective Dates of Provider Agreements, that would specify that the effective date of provider agreements of all types of Medicaid providers would be determined in accordance with procedures at § 442.13, which currently specify effective date policies for Medicaid only nursing homes and ICFs/MR.

We would add a new paragraph (d) to § 488.11, Survey Agency Functions, to require that State and local agencies—that have agreements under section 1864(a) of the Act recommend an effective date of a Medicare agreement for a provider or Medicare participation for a supplier using the requirements of revised § 489.13.

We propose to revise § 498.3(b) by adding a new paragraph (12) to clarify that we consider effective date decisions to be initial determinations and, hence, a proper subject for Medicare hearings. This would specifically provide the appeal rights specified in §§ 498.3(b) (1) and (4) and 498.5 (a) and (d) to prospective providers and suppliers who are dissatisfied with a finding of noncompliance with a condition of participation or coverage, or dissatisfied with a finding of noncompliance with a Level A requirement (in the case of SNFs or NFs) as of the date of the initial survey. However, prospective providers and suppliers would not be entitled to an appeal based on the contention that the survey should have been conducted earlier than it was. This change is included at new § 498.3(d)(10. For unaccredited providers/suppliers, allegations that the effective date of participation should be earlier than the date the onsite survey by the State survey agency is completed (including the Life Safety Code survey), or earlier than the date on which a plan of correction or waiver request acceptable to HCFA or the State is submitted, would continue to be governed by § 489.13 and would not form a proper basis for appeal under § 498.3.

The proposed change to § 498.3(b) is in accord with an Appeals Council decision in the case of *Citizens General Hospital Home Health Agency* v. *the Health Care Financing Administration*, No. HIP 000–61–0031 (July 23, 1987), which held that a decision that a provider or supplier does not meet the Medicare conditions of participation or coverage on the date of its initial certification survey, even though it was found to meet Medicare requirements at a later date, constitutes an appealable decision.

In addition, we propose to revise § 498.3 by removing paragraph (d)(3), under which HCFA can refuse to enter into an agreement with a prospective provider adjudged bankrupt or insolvent under Federal or State law, or because insolvency or bankruptcy proceedings are pending. Paragraph (d)(3) is no longer applicable, pursuant to the Revised Bankruptcy Code, 11 U.S.C. § 525, which prohibits HCFA from denying participation of a provider or supplier solely because of bankruptcy or insolvency. This change is necessary to conform to the revision of § 489.12 that was effective January 27, 1989 (54 FR 4023).

III. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers and suppliers as small entities.

We believe that the impact of this proposed regulation would be minimal. Our existing regulations on the determination of effective dates provide that an agreement will be effective on the date the onsite survey is completed, if all Federal health and safety requirements are met on that date. Otherwise, if the prospective provider fails to meet all of the requirements as of the date of survey, the agreement is effective on the earlier of the following dates: the date it actually does meet all of the requirements; or the date it meets all conditions of participation, level A requirements or conditions for coverage and submits an acceptable correction plan for any deficiencies, or an approvable waiver request, or both to HCFA or the State agency. Our current regulations do not address the determination of effective dates for Medicare suppliers, Medicaid providers (other than nursing facilities and intermediate care facilities for the mentally retarded), and finally, providers/suppliers that are deemed to meet Federal requirements by an accreditation organization. In practice, however, we have used, for the most part, the policy discussed above for determining effective dates in most of these situations not addressed in the regulations. This proposed rule would codify in regulations uniform criteria for establishing the effective date of participation for every type of Medicare provider and supplier and Medicaid provider.

Existing regulations do not address the appeal rights of a provider or supplier who disagrees with the determination of an effective date. Therefore, this proposed regulation would establish an effective date determination as an appealable issue.

We do not anticipate any substantial increase in Medicare/Medicaid expenditures since, in practice, the procedures for determining effective dates generally will not change. Although the right to an appeal of a determination of an effective date is new policy, we do not anticipate a significant increase in the number of hearings. The current Federal regulations provide appeal rights for a prospective provider or supplier who is denied participation in the Medicare program. State regulations may provide for similar appeal mechanisms for Medicaid denials. Usually, when a determination is made to deny a prospective provider's or prospective supplier's participation, it is based on the prospective provider's or supplier's noncompliance with a condition of participation, level A requirement, or condition for coverage. We expect effective date hearings to focus on the same noncompliance issues, and do not anticipate that facilities will appeal both an initial denial and a subsequent effective date determination. The new hearings provided for by this proposed regulation will probably only result in an increased hearing workload in those situations where a facility disagrees with the date that HCFA or the State determined that compliance was achieved or refuses to submit a plan of correction for lower level deficiencies. We do not believe that the number of providers and suppliers that will exercise this particular hearing option will be great. For these reasons, we believe that the impact on both HCFA and facilities is negligible and consequently, a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities, and we have, therefore, not prepared a Regulatory Flexibility Act Analysis.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

IV. Paperwork Reduction Act

This proposed rule does not impose any information collection requirements subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980, as amended.

V. Response to Comments

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all timely comments contained in written correspondence that we receive by the date specified in the "DATE" section of this preamble, and will respond to the comments in the preamble to that rule.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 440

Health facilities, requirements and limits applicable to Medicaid services.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Survey and certification, Forms and quidelines

42 CFR Part 489

Health facilities, Medicare

42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare Practitioners, providers, and suppliers.

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR chapter IV would be amended as set forth below.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 431.610, paragraph (e) is revised to read as follows:

§ 431.610 Relations with standard-setting and survey agencies.

* * * * *

(e) *Designation of survey agency.* The plan must provide that—

(1) The agency designated in paragraph (b) of this section, or another State agency responsible for licensing health institutions in the State, determines for the Medicaid agency if institutions and agencies meet the requirements for participation in the Medicaid program;

(2) The agency staff making the determination under paragraph (e)(1) of this section is the same staff responsible for making similar determinations for institutions or agencies participating under Medicare; and

(3) The agency designated in paragraph (e)(1) of this section recommends the effective date of an agreement for a provider as provided under § 442.13 of this chapter.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

Subpart A—Definitions

B. Part 440, subpart A is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 440.3 is added to read as follows:

§ 440.3 Effective dates of provider agreements.

The effective dates of provider agreements for all types of Medicaid providers are determined in accordance with § 442.13 of this subchapter.

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

C. Part 442 is amended as follows:

1. The authority citation for part 442 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. The title of part 442 is revised to read as follows.

PART 442—STANDARDS FOR PAYMENT FOR NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

3. In § 442.13, paragraph (a) is republished, and paragraphs (b) and (c) are revised, and new paragraph (d) is added to read as follows:

§ 442.13 Effective date of agreement.

(a) *Basic requirements.* If the Medicaid agency enters into a provider agreement, the effective date must be in accordance with this section.

(b) *All Federal requirements are met on the date of the State agency survey.* The agreement must be effective on the date the onsite survey (including the Life Safety Code survey) is completed (or on the day following the expiration of a current agreement) if, on the date of the survey, the provider meets:

(1) All Federal requirements; and

(2) Any other requirements imposed for participation in the Medicaid program.

(c) *All Federal requirements are not met on the date of the State agency survey.* If the provider fails to meet any of the requirements specified in paragraph (b) of this section, the agreement must be effective on the earlier of the following dates:

(1) The date on which the provider meets all requirements; or

(2) The date on which a provider is found to meet all conditions of participation or conditions for coverage, or Level A requirements for NFs and the facility submits an acceptable correction plan for lower deficiencies, or an approval waiver request, or both. When the plan of correction or waiver request is approved or accepted by HCFA or the State agency later than the date on which it is submitted, the effective date is the date of submission.

(d) *Provider applies to participate in Medicaid after it is deemed to meet all Federal requirements by an accreditation organization.* (1) If a provider is deemed to meet all Federal requirements (including Life Safety Code requirements), the effective date of the provider agreement is the date on which the provider makes its initial request to the State Medicaid agency to participate in the Medicaid program. However, the effective date of the provider agreement cannot be before the date on which:

(i) The accreditation organization conducts its initial onsite survey of the provider and deems it to meet all Federal requirements, and

(ii) HCFA approves the organization conducting the survey of the provider as an accreditation organization.

(2) *Exception:* If a provider is accredited but is required to meet special requirements for which an accreditation organization is not authorized to deem, the effective date of the provider agreement is the date that all of the Federal requirements, including the special requirements, are met or deemed to be met.

PART 488—SURVEY AND CERTIFICATION PROCEDURES

D. Part 488, subpart A is amended as follows:

1. The authority citation for part 488 continues to read as follows:

Authority: Sec. 1102, 1814, 1861, 1865, 1871, 1880, 1881, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, and 1395tt).

2. In § 488.11, the introductory text is reprinted and paragraphs (b), (c), and (d) are revised to read as follows:

§ 488.11 State survey agency functions.

State and local agencies that have agreements under section 1864(a) of the Act—

* * * * *

(b) Conduct validation surveys as provided in § 488.6;

(c) Perform surveys and other appropriate activities and certify that their findings to HCFA; and

(d) Recommend the effective date of an agreement for a provider or the participation for a supplier as provided under § 489.13 of this subchapter.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

E. Part 489 is amended as follows:

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

* * * * *

2. In § 489.1, new paragraph (d) is added:

§ 489.1 Statutory basis.

* * * * *

(d) Although section 1866 of the Social Security Act pertains to providers and provider agreements, the rule in this part includes procedures for the effective date of approval for suppliers.

3. § 489.13 is revised to read as follows:

§ 489.13 Effective date of agreement or approval.

(a) *All Federal requirements are met on the date of the survey.* The agreement or approval must be effective on the date the onsite survey (including the Life Safety Code survey) is completed (or on the day following the expiration date of a current agreement) if, on the date of the survey, the provider or supplier meets all Federal requirements.

(b) *All Federal requirements are not met on the date of the survey.* If the provider or supplier fails to meet any of the requirements specified in paragraph (a) of this section, the agreement or approval must be effective on the earlier of the following dates:

(1) The date on which the provider or supplier meets all requirements or

(2) The date on which the provider or supplier is found to meet all conditions of participation or Level A requirements for SNFs or conditions for coverage and the facility submits an acceptable correction plan for lower-level deficiencies, or an approvable waiver request, or both. When the plan of correction or waiver request is approved or accepted by HCFA or the State agency later than the date on which it is submitted, the effective date is the date of submission.

(c) *Provider applies to participate in Medicare after it is deemed to meet all Federal requirements by an accreditation organization.* (1) If a provider is deemed to meet all Federal requirements, (including Life Safety Code requirements) the effective date of the provider agreement is the date on which the provider makes its initial request to HCFA to participate in the Medicare program. However, the effective date of the provider agreement cannot be before the date on which:

(i) The accreditation organization conducts its initial onsite survey of the provider and deems it to meet all Federal requirements, and

(ii) HCFA approves the organization conducting the survey of the provider as an accreditation organization.

(2) *Exception:* If a provider is accredited but is required to meet special Federal requirements for which an accreditation organization is not authorized to deem, the effective date of the provider agreement is the date that all of the Federal requirements, including the special requirements, are met or deemed to be met.

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

F. Part 498 is amended as follows:

1. The authority citation for 42 CFR part 498 continues to read as follows:

Authority: Sec. 205(a), 1102, 1866(h), 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395ff(c), 1395hh, and 1395ii), unless otherwise noted.

2. In § 498.3, the introductory text of paragraph (b) is republished, new paragraph (b)(12) is added, the introductory text of paragraph (d) is republished, paragraph (d)(3) is removed, paragraphs (d)(4)–(10) are redesignated as (d)(3)–(9), respectively, redesignated (d)(9) is revised, and new paragraph (d)(10) is added to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(b) *Initial determinations by HCFA.* HCFA makes initial determinations with respect to the following matters:

* * * * *

(12) The effective date of an agreement between HCFA and a provider or the effective date of the participation of a supplier of services in the Medicare program.

* * * * *

(d) *Administrative actions that are not initial determinations.* Administrative actions other than those specified in paragraphs (b) and (c) of this section are not initial determinations and thus are not subject to this part. Administrative actions that are not initial determinations include, but are not limited to the following:

* * * * *

(9) With respect to a SNF that is not in compliance with a requirement—

(i) The finding that the SNF's deficiencies pose immediate jeopardy to patients' health and safety; and

(ii) When the SNF's deficiencies do not pose immediate jeopardy, the decision to deny payment for new admissions.

(10) The decision by the State agency as to when to conduct an initial survey of a prospective provider or prospective supplier.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance; Program No. 93.774, Medicare Supplementary Medical Insurance; and Program No. 93.778, Medicare Assistance Program.)

Dated: September 28, 1992.

William Toby,

Acting Deputy, Administrator, Health Care Financing Administration.

Approved: October 1, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-24318 Filed 10-7-92; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87-266; DA 92-1300]

Rural Exemption to Telephone Company-Cable Television Cross Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This order extends the comment and reply dates to October 13 and November 12, respectively, on a proposed rule concerning telephone company-cable television cross-ownership rules to allow time for completion of population studies.

DATES: Comments must be filed on or before October 13, 1992, and reply comments on or before November 12, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Greg Lipscomb, Common Carrier Bureau, (202) 634-4216; or Donna N. Lampert, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION: The summary of the Second Further Notice of Proposed Rulemaking in this proceeding, adopted July 16, 1992 and released August 14, 1992, was printed in the **Federal Register**, see 57 FR 41118 (September 9, 1992).

List of Subjects in 47 CFR Part 63

Cable television, Telephone company-cable television cross-ownership rules.

Federal Communications Commission.

Cheryl A. Tritt,

Chief, Common Carrier Bureau.

[FR Doc. 92-24387 Filed 10-7-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-268; DA 92-1344]

Advanced Television Systems and Their Effect on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission's Chief Engineer has extended the time for filing comments and reply comments in response to the Second Further Notice of Proposed Rule Making (Second Further Notice) in MM Docket No. 87-268, FCC 92-332, released August 14, 1992, 51 FR 38652 (August 26, 1992). The Second Further Notice sets forth proposals for policies to be used in allotting reversion channels for advanced television service (ATV).

DATES: Comments must be filed on or before November 2, 1992, and reply comments on or before December 2, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202-653-8162) or Robert Eckert (202-653-8163), Office of Engineering and Technology, or Gordon Godfrey (202-632-9660), Mass Media Bureau.

SUPPLEMENTARY INFORMATION: In a joint letter of September 11, 1992, the Association of Maximum Service Telecasters and nine other parties asked the Commission to clarify certain technical information in the Second Further Notice and to extend the period for filing comments to allow sufficient time to prepare responses in light of the requested technical information. Comments and reply comments were originally due October 13, 1992, and November 12, 1992, respectively. We have placed the information requested in the joint letter in the docket file in this proceeding and are extending the period for filing comments to allow 30 days for filing comments after the date the requested information was placed in the docket file. We believe this extension of time will further the development of the record in this proceeding and will not delay our final action on ATV channel allotment policy.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-24386 Filed 10-7-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-225, RM-8073]

Radio Broadcasting Services; Northport, AL and Macon, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Warrior Broadcasting, Inc., licensee of Station WLXY(FM), Channel 264A, Northport, Alabama, seeking the substitution of Channel 264C3 for Channel 264A at Northport, and modification of the license for Station WLXY(FM) accordingly. In order to accommodate the request, petitioner seeks the deletion of vacant Channel 263A at Macon, Mississippi, or alternatively, the placement of a site restriction on the existing Macon allotment. (In the event an expression of interest is received in retaining Channel 263A at Macon, a new application filing window will be opened for the channel upon termination of this proceeding.) Coordinates used for Channel 264C3 at Northport, Alabama, are 33-16-00 and 87-44-01. Coordinates at the proposed restricted site for Channel 263A at Macon, Mississippi, are 33-05-10 and 88-39-48. See Supplementary Information, *infra.*

DATES: Comments must be filed on or before November 23, 1992, and reply comments on or before December 8, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Warrior Broadcasting, Inc., Attn: James E. Shaw, President, 3330 Main Avenue, P.O. Box 1020, Northport, Alabama 35476.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-225, adopted September 11, 1992, and released October 2, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 264C3 at Northport, Alabama, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-24451 Filed 10-7-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-218, RM-8053 and RM-8054]

Radio Broadcasting Services; Olathe and Topeka, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed and mutually exclusive petitions. The first proposal, filed by Bott Broadcasting Company requests the substitution of Channel 222C3 for Channel 222A at Olathe, Kansas, and modification of the construction permit for Station KCCV (FM) to specify operation on Channel 222C3. The coordinates for Channel 222C3 are 38-58-46 and 94-50-44. To accommodate the upgrade at Olathe, Bott Broadcasting Company has proposed the substitution of Channel 257A for Channel 223A at Topeka,

Kansas. The coordinates for Channel 257A at Topeka are 39–07–33 and 95–41–08. Margaret Escriva, permittee of Channel 223A, Topeka, Kansas, has requested the substitution of Channel 223C3 for Channel 223A at Topeka, and modification of her construction permit accordingly. The coordinates for Channel 223C3 at Topeka are 39–05–31 and 95–47–05.

DATES: Comments are due on or before November 23, 1992, and reply comments on or before December 8, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows:

Harry C. Martin, Cheryl A. Kenny, Reddy, Begley & Martin 1001 22nd Street, NW., suite 350, Washington, DC 20037; Meredith S. Senter, Jr., Stephen D. Baruch, Leventhal, Senter & Lerman, 2000 K Street, NW., suite 600, Washington, DC 2006–1809.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–218, adopted September 3, 1992, and released October 2, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–24452 Filed 10–7–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–221, RM–8071]

Radio Broadcasting Services; Quincy and Susanville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Olympic Broadcasters, Inc., licensee of Station KQNC (FM), Quincy, California, seeking the reallotment of Channel 271A from Quincy to Susanville, California, and modification of its license to specify operation on Channel 271C2 at the latter community. Coordinates used for channel 271C2 at Susanville are 40–27–13 and 120–34–14.

Petitioner's modification proposal complies with the provisions of § 1.420(g) and (i) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 271C2 at Susanville, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before November 23, 1992, and reply comments on or before December 8, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard A. Helmick, Esq., Cohn and Marks, 1333 New Hampshire Ave., NW., suite 600, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–221, adopted September 9, 1992, and released October 2, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–24453 Filed 10–7–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–220, RM–8075]

Radio Broadcasting Services; Moose Lake, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Agate Broadcasting of Minnesota requesting the allotment of FM Channel 296C3 to Moose Lake, Minnesota, as that community's first local service. Canadian concurrence will be requested for this allotment at coordinates 46–27–24 and 92–45–30.

DATES: Comments are due on or before November 23, 1992, and reply comments on or before December 8, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Brian T. Grogan, Moss & Barnett, 4800 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 44502–4129.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–220 adopted September 8, 1992, and released October 2, 1992. The full text of

this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-24452 Filed 10-7-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-219, RM-8039]

Radio Broadcasting Services; Tarkio, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition filed by KANZA, Inc., proposing the substitution of Channel 228C3 for Channel 228A and modification of the license for Station KTRX(FM) to specify operation on the new channel at Tarkio, Missouri. The coordinates for Channel 228C3 are 40-33-50 and 95-15-00.

DATES: Comments must be filed on or before November 23, 1992, and reply comments on or before December 8, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner' counsel, as follows: John R. Wilner, Bryan Cave, 700 Thirteenth Street, NW., suite 600, Washington, DC 20006-3960.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commissioner's Notice of Proposed Rule Making, MM Docket No. 92-219, adopted September 8, 1992, and released October 2, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-24455 Filed 10-07-92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 196
Thursday, October 8, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-152-1]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of this document by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-255-01	ICI Seeds, Inc.	09-11-92	Corn plants genetically engineered to express genes from a non-pathogenic source organism and tolerance to the herbicide glufosinate..	Hawaii.

Done in Washington DC, this 2nd day of October 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-24486 Filed 10-7-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Southern Region; Exemption From Appeal of the Decision To Control Southern Pine Beetle in Upland Island Wilderness

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 2.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notices is hereby given to exempt from administration appeal the decision to suppress southern pine beetle (SPB) infestations within Upland Island Wilderness, Angelina National Forest, Texas, during the current outbreak where they are threatening pine forests on adjacent private lands and potentially threatening a colony and foraging habitat of the red-cockaded woodpecker (RCW), a federally-listed endangered species.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Wesley A. Nettleton, Group Leader, Entomology, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347-2961.

SUPPLEMENTARY INFORMATION: The Forestry Stewardship Act of 1990 authorizes the protection of federally-owned forest lands from insects and diseases. The 1964 Wilderness Act in section 4(d)(1), states; "In addition, such conditions as the Secretary deems desirable." The 1973 Endangered Species Act requires that the Forest Service must "seek to conserve endangered species." The USDI Fish and Wildlife Service (FWS) issued a biological opinion dated December 12, 1986, stating that failure to take action in wilderness to protect the RCW colonies from SPB is likely to jeodardize the continued existence of the species. The Forest Service followed the advice of the FWS. A Record of Decision (ROD) for the Final Environmental Impact Statement for the Suppression of the Southern Pine Beetle (SPB-FEIS) was signed on April 6, 1987. The alternative selected in the ROD protects RCW colonies within the wilderness and adjacent private forested land by permitting suppression of SPB spots within wilderness. However, stringent criteria were set for determining the need for any control action. In wilderness, SPB spots will normally be allowed to run their natural course until an essential RCW colony or its foraging habitat or adjacent forested-private land is threatened. Before any control action is taken a site-specific environmental analysis must be completed. It must

indicate that the spot: (1) Occurs within ¼ mile of susceptible host type on private land, or (2) is predicted to threaten an essential RCW colony site within the next 30 days. The analysis must also show a reasonable expectation of meeting the control objectives. Affected and interested publics will be informed about potential control-related activities.

One SPB spot has crossed the wilderness boundary this year and others are active within the wilderness and within ¼ mile of susceptible host pine forests on private commercial forests and forested residential areas. Due to the current major SPB outbreak within Upland Island Wilderness, an environmental analysis is currently underway on a proposed action to suppress the SPB infestations that are predicted to cross the wilderness boundary onto private lands where owners show evidence of actively managing their land to suppress SBP infestations, or are maintaining a high degree of forest health. It also proposes to protect the essential RCW colony #95–1 and its associated foraging habitat that occurs within Upland Island Wilderness. The analysis includes control methods identified in the selected alternative in the ROD for SPB–FEIS, and it also analyzes the use of behavioral chemicals that have been proven effective in local experimental work by the Texas Forest Service. The environmental document being prepared will disclose the effects of the proposed action on the environment, document public involvement, and address the issues raised by the public.

Given the existing rapid expansion of infestations, time for action is critical. Any additional delay could result in further loss to presently undamaged forest resources on adjacent private lands or an essential RCW colony site resulting in a violation of the Endangered Species Act.

Dated: October 2, 1992.

Robert J. Lentz,

Deputy Regional Forester.

[FR Doc. 92–24443 Filed 10–7–92; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee will be convened at 1:15 p.m. and adjourn at 4 p.m. on Friday, October 30, 1992, in Conference Room 317–A, Leo O'Brien Federal Building, North Pearl Street and Clinton Avenue, Albany, New York, 12207. The purposes of the meeting are to release the Committee's recently approved report, Minority Elderly Access to Health Care and Nursing Homes and complete details for a Statewide conference.

Persons desiring additional information, or planning a presentation to the Committee, should contact Setsuko M. Nishi (718/951–5324, 212/642–2401) or John I. Binkley, Director, ERO, at (202/523–5264) or TDD (202/376–8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 2, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–24460 Filed 10–7–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 of § 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than October 31, 1992, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

Antidumping duty proceedings	Period
Italy:	
Pressure Sensitive Plastic Tape. (A–475–059)	10/01/91–09/30/92
Steel Wire Rope. (A–588–045)	10/01/91–09/30/92
Tapered Roller Bearings, 4 Inches or Less in Outside Diameter and Certain Components Thereof. (A–588–054)	10/01/91–09/30/92
Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, Over 4 Inches. (A–588–604)	10/01/91–09/30/92
The People's Republic of China:	
Barium Chloride. (A–570–007)	10/01/91–09/30/92
Shop Towels of Cotton. (A–570–003)	10/01/91–09/30/92
Yugoslavia:	
Industrial Nitrocellulose. (A–479–801)	10/01/91–09/30/92
Countervailing Duty Proceedings	
Argentina:	
Leather. (C–357–803)	01/01/91–12/31/91
Brazil:	
Certain Agricultural Tillage Tools. (C–351–406)	01/01/91–12/31/91
India:	
Certain Iron-Metal Castings. (C–533–063)	01/01/91–12/31/91
Iran:	
Roasted In-Shell Pistachios. (C–507–601)	01/01/91–12/31/91
New Zealand:	
Certain Steel Wire Nails. (C–614–701)	01/01/91–12/31/91

Antidumping duty proceedings	Period
Sweden:	
Certain Carbon Steel Products. (C–401–401)	01/01/91–12/31/91
Thailand:	
Certain Steel Wire Nails. (C–549–701)	01/01/91–12/31/91

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which resellers(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington DC 20230. Further, in accordance with § 353.31 or § 355.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by October 31, 1992.

If the Department does not receive, by October 31, 1992, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: October 1, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–24557 Filed 10–7–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–702]

Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administration review.

SUMMARY: On May 8, 1992, the Department of Commerce published in the **Federal Register** the preliminary results of its 1990–91 administrative review of the antidumping order on certain stainless steel butt-weld pipe and tube fittings (SSPFs) from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Benkan Corporation (Benkan), and the period from March 1, 1990 through February 28, 1991.

The Department gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, the dumping margins have not changed from the preliminary results of review. However, we note that the rate published in the preliminary results of review should have been 5.37 percent, not 5.30 percent and that the 5.37 percent rate was disclosed to interested parties. The difference in the rates is attributable to numeric rounding.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Bruce Harsh or Linda L. Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1992, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe and tube fittings (SSPFs) from Japan in the **Federal Register** (57 FR 19882). This review covers shipments made by Benkan during the period from March 1, 1990 through February 28, 1991. Verification was conducted at Benkan in Japan the week of November 4, 1991. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review are certain stainless steel butt-weld pipe and tube fittings. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants, and other areas. This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item 7307.23.0000. The HTS item number is provided for convenience and U.S. Customs purposes. The written product description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of this review. We received timely written comments from Benkan, the respondent. Flowline, the petitioner, provided timely rebuttal statements to Benkan's comments.

Comment 1: Benkan takes issue with the Department's exclusion of a certain related distributor's sales. Benkan notes that the reason stated by the Department in the preliminary results for the exclusion of these sales is that the Department was not satisfied that the price was comparable to the price at which Benkan sold such or similar merchandise to unrelated parties. However, the respondent claims that its sales were at arm's length because the prices to its related distributor were "comparable" to those charged to unrelated customers, and were even higher for a substantial number of product groups.

Benkan further claims that the Department's exclusion of the sales to the related distributor is clearly contradicted by the factual evidence on the record. Moreover, Benkan asserts that none of the facts relating to Benkan's sales to the related distributor have changed from the previous proceedings. Benkan notes that the Department examined home market

sales of conventional fittings in the original investigation and in two previous reviews, and verified data in two of the previous proceedings, and was satisfied that Benkan's sales to the related distributor were at arm's length.

Benkan argues that the Department's statements made in the disclosure conference on June 1, 1992, and the explanation provided in the preliminary results, regarding the exclusion of sales to the related distributor in question were inconsistent. Benkan notes that while the preliminary results emphasize price terms, the verification report emphasizes differences in sales contracts. Benkan points out that, assuming arguendo that the exclusion of the sales occurred because there were differences in the sales contracts rather than differences in prices, its contract with this particular distributor does not, on its face, reveal any terms that are "special" or "different" from other sales contracts. In addition, since the Department elected not to include any contracts that were "different" in the verification exhibits, or substantiate the differences between the contracts, it is unfair to ask Benkan to prove the negative. Benkan urges the Department to specifically state its reasons if the Department decides to exclude this related distributor's sales.

Petitioner holds that the statute and regulations both support the Department's position as stated in the preliminary results to exclude related party transactions. Flowline asserts that the burden of proof is on Benkan to satisfy the Department that the sales to a related party are at arm's length. Moreover, Benkan did not provide any new information that might overcome the regulatory presumption to exclude such sales.

Department's Position: We disagree with Benkan, and have continued to disregard these sales in the calculation of foreign market value (FMV) for the final results of this administrative review. Based on the sales contracts and other documents the Department examined at verification, we believe that sales made to this related distributor were not arm's length.

We found that, unlike the other distributors, this related distributor received a mark-up or commission. According to Benkan, the mark-up or commission was given to secure Benkan's relationship with this distributor; the amount varied depending upon the complexity of the sale (memorandum to the file, dated June 8, 1992). However, we do not have information on the record concerning the specific mark-up by transaction. We also found, at verification, that the prices reported in the questionnaire response were not the prices to this related distributor but were net of the mark-up or commission paid (Verification Exhibit BC–5). Since Benkan did not report the actual price paid, we could not, as suggested by Benkan, conduct a price-to-price comparison to determine whether these prices are arm's length (section 353.45(a) of the Commerce regulations). thus, as best information available, the Department concluded that the prices were not arm's length and could not be relied upon for price comparisons. (See 19 CFR 353.38).

Whether or not these prices are arm's length was not an issue in the original investigation or in previous reviews. This is the first time that the issue arose as a result of our verification. The Department must consider the evidence on the road of each review in making factual determinations such as this.

Comment 2: Benkan argues that the Department unreasonably rejected its difference-in-merchandise (DIFMER) adjustment calculation, which used an average per-ton, steel-pipe cost. Benkan points out that Commerce stated that no adjustments were made for the differences in merchandise because, at verification, the Department determined that Benkan improperly calculated the material costs by aggregating costs of different schedules of pipe.

Benkan asserts that the Department's position in this review is a sudden change from the methodology used in prior reviews and that Benkan has never been required to provide steel pipe costs by schedule (i.e., pipe thickness) or by pipe size, in this or any prior proceeding. The respondent argues that because the Department has consistently accepted Benkan's DIFMER methodology in the three prior proceedings and never requested any modification of its steel pipe cost data in this review, the Department is acting in an unfair manner. The respondent notes a decision made by the Court of International Trade (CIT) in *Shikoku Chemicals Corp., et. al.* v. *United States*, Slip Op. 92–74 (May 18, 1992) that rejects a sudden change in methodology where the Department had consistently used another methodology in several prior reviews and in the original investigation. The Court noted the Department's consistent application of another methodology in several proceedings and found that, given the unique facts of the case, the respondents had "a right to rely on Commerce's consistent approach extending over the original fair value investigation and four annual reviews."

Benkan also notes that the CIT has held that the Department erred in rejecting claimed adjustments on the grounds of insufficient information, citing *Floral Trade Council of Davis, Cal* v. *United States*, 775 Fed Supp. 1492 (CIT 1991). In that case, the CIT reversed Commerce's decision to reject calculation adjustments from certain respondents since they had failed to provide sufficient information to the Department concerning the requested adjustments.

Respondent also claims that the Department's methodology for selecting home market comparisons, comparing "always" the heavier schedule pipe fittings, necessitates the granting of the DIFMER adjustment in order to offset a "systematic bias" against Benkan.

Benkan notes that the record fails to provide any insight as to why the Department considered it imperative that the respondent calculate steel pipe by schedule rather than by pipe size or by supplier. At verification, the Department never attempted to test the validity of its assumption against other price-affecting factors in steel products.

The petitioner argues that the Department's denial of the DIFMER adjustment was appropriate and necessary. Petitioner notes that Benkan's physical DIFMER adjustment did not directly account for cost differences tied to wall schedule differences which had been described in Benkan's response dated July 3, 1991; they merely accounted for average cost differences based on weight. In addition, the verification report notes that Benkan could have accounted for costs attributable to pipe schedule differences.

The petitioner asserts that Benkan is being disingenuous to argue that it "has never objected * * * and the Department has never required Benkan to provide steel costs by 'schedule.' " Petitioner points out that this is the first time that the description of Benkan's DIFMER adjustment is correctly understood, even though it had been reviewed previously.

Petitioner further argues that the Department is not being "systematically biased" against Benkan in the use of best information available regarding the product comparisons.

Department's Position: Based on information obtained at verification, we determined that Benkan's DIFMER allocation methodology is not reasonable because it did not properly allocate the actual costs associated with the physical attributes of the SSPFs.

In the questionnaire response Benkan claimed that the model match must be based on the significant physical attributes of the SSPF Accordingly,

Benkan established a 6-digit code which denotes the physical appearance (i.e., shape or type of fitting), material grade, size (outside diameter), wall thickness and component material (i.e., seamless or welded pipe) (para. 4, p. 18). Using the 6-digit code, Benkan determined the identical or the most similar home market matches and reported them in the Merchandise Concordance List (Exhibit 13). Where similar matches were found, Benkan provided the material costs for the U.S. product and the most similar home market product.

Only through verification did we learn that Benkan's material costs were reported as averages of several different schedules of pipe in various sizes, and wall thicknesses, and that these averages were multiplied by the weight of the pipe to derive the reported DIFMERs. Moreover, we found that this allocation method was used for reporting purposes only and did not reflect how Benkan tracks the cost of the raw material pipe in its accounting records. Specifically, we found that Benkan tracks these costs by grade, size, schedule, etc. (verification Exhibits F–1 and F–4).

Since the size and wall thickness of the pipe are physical attributes used in the model matching process, and they are significant factors in the cost of the pipe, we determined that the use of overall average costs is inappropriate and is not reflective of the cost of physical differences. Our determination is further supported by the fact that the price of the raw material pipe varied by as much as 11 percent.

Benkan's assertion that the Department's position to not allow a DIFMER adjustment, particularly under these circumstances of the review, was "systematically biased" against it and ensured dumping margins is not true. The Department gave Benkan an opportunity to provide specific, alternative model matches for any comparison it did not agree with in the preliminary results. Since Benkan did not provide any alternative model matches and the company did not question the Department's selection of comparison models as not being such or similar, the Department continued to use the same models.

Moreover, Benkan's assertion that the Department should further test the validity of its assumption against "other steel-price-affecting factors" goes far beyond the purpose of verification, which is to determine the accuracy and completeness of the response. In this instance, the Department determined that Benkan's DIFMER calculations did not adequately reflect the costs of the physical differences.

We agree with Benkan's assertion that the Department should strive for consistency in its methodology. However, the DIFMER allocation was not an issue which had been focused upon by either the Department or the parties in the original investigation or in previous reviews. As a result, Benkan's claim that it relied on the Department's decision in prior reviews is without merit and Benkan cannot be said to rely on any affirmative actions by the Department with respect to its method of reporting raw material costs.

Although Benkan raises the *Shikoku* case to argue its point, that case is not final at this date. The case at hand is further distinguished from the *Shikoku* case by the fact that Benkan does not have four consecutive annual reviews with no dumping margins; in *Shikoku*, the Court emphasized that it was only the change in methodology that prevented *Shikoku* from obtaining a revocation. *Id.* Indeed, Benkan has never received a zero rate. Finally, the reporting error in this review is much more significant than the "insignificant' error in the *Shikoku* case.

Final Results of Review

After analysis of the comments received, we determined that a margin of 5.37 percent exists for Benkan for the period March 1, 1990 through February 28, 1991.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on entries of the subject merchandise covered by this review. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will remain in effect until publication of the final results of the next administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate will be 5.37 percent for Benkan; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 5.37 percent. This rate represents the highest rate for any firm with shipments in the most recent administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

In addition, this notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: October 1, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–24558 Filed 10–7–92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Florida Keys National Marine Sanctuary Advisory Council Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council; Notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

Time and place: October 23, 1992 from 9:00 a.m. until adjournment. The meeting

location will be at the Buccaneer Resort, Mile Marker 48.5, Route 1, Marathon, Florida.

Agenda

1. Presentations related to zoning
2. Discussion of management alternatives

Public Participation

The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743-2437 or Ben Haskell at (202) 606-4016.

Dated October 6, 1992.

Frank W. Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

(Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

[FR Doc. 92-24663 Filed 10-7-92; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification to Permit No. 738 (P77#51).

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531-1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217-222), and the Conditions hereinafter set out, Scientific Research Permit No. 729, issued to the Southeast Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038, on May 16, 1991 (56 FR 23684), has been modified to add aerial surveys and an increased number of takes of those species previously authorized, in order to include all cetaceans which may be sighted during the course of conducting aerial surveys.

This modification also grants authority for the addition of the following species to the list of cetaceans which may be sighted during the surveys, over the remaining three-and-one-half-year period that the permit is valid: up to 2500 right whale (*Eubalaena glacialis*); 250 blue whale (*Balaenoptera musculus*); 2500 fin whale (*B. physalus*); 1250 Sei whale (*B. borealis*); 2500 Bryde's whale (*B. edeni*); 2500 minke whale (*B. acutorostrata*); 2500 humpback whale (*Megaptera novaeangliae*); 2500 sperm whale (*Physeter macrocephalus*); 2500 beaked whale, including Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*), Sowerby's beaked whale (*M. bidens*), and Gervais' beaked whale (*M. europaeus*).

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220-222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

This Modification became effective upon signature.

The Permit and Modification documentation are available for review in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713-2289); and Director, Southeast Region, National Marine Fisheries Services, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141).

Dated: October 1, 1992.

Nancy Foster,

Office of Protected Resources.

[FR Doc. 92-24670 Filed 10-7-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Request for modification of permit No. (P77 #56).

Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science Center, Northwest Region, 7600 Sand Point Way, NE. BIN C15700—Building 1, Seattle, WA 98115-0070, requested a modification to Permit No. 754, issued on November 14, 1991 (56 FR 60988), as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 754 currently authorizes the researcher to: (1) Capture, tag, handle and release up to three times per year and to capture, instrument, tag, handle and release up to five times per year, 200 crabeater seals (*Lobodon carcinophagus*), 200 leopard seals (*Hydrurga leptonyx*), 200 weddell seals (*Leptonychotes weddelli*), 100 Ross seals *Ommatophoca rossi*), 200 southern elephant seals (*Mirounga leonina*) and 1100 Antarctic fur seals (*Arctocephalus gazella*); (2) incidentally harass up to 3,000 southern elephant seals, 40,000 Antarctic fur seals and 500 each crabeater, leopard, Weddell, and Ross seals during activities associated with the types of take specified above and with surveys for abundance and distribution of pinnipeds and seabirds; (3) import into the United States all biological specimens taken from the species listed above (e.g., blood samples, vaginal smears) or obtained from dead seals (e.g., skeletal material); and (4) import biological specimens from the pinniped species described above provided by collaborating investigators in Argentina, Australia, Brazil, Canada, Chile, Finland, France, Germany, India, Italy, Japan, New Zealand, Norway, Poland, South Africa, South Korea, Spain, Sweden, United Kingdom, and the USSR.

The applicant now requests authorization to capture, tag, handle and release Antarctic fur seals up to six times per year in order to monitor pup growth over the breeding season for the four-year period that the Permit remains valid.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee on Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. These individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those for the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335

East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700—Building 1, Seattle, WA 98115–0070 (206/526–6150).

Dated: September 29, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources.

[FR Doc. 92–24489 Filed 10–7–92; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Performance Review Board; Membership

AGENCY: Patent and Trademark Office, Department of Commerce.

ACTION: Announcement of membership of the Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

This notice announces the appointment of Deputy Assistant Secretary for Resource Management, Bureau of Diplomatic Security, the United States Department of State, Kathleen J. Charles as the "outside" member of the Performance Review Board to replace the Assistant Director, Office of Executive Development, Human Resources Development Group, Office of Personnel Management, Dr. Michael G. Hansen.

ADDRESS: Comments should be addressed to Personnel Officer, Patent and Trademark Office, Office of Personnel, One Crystal Park, suite 700, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Colleen Woodard at the above address on (703) 305–8062.

SUPPLEMENTARY INFORMATION: The new membership of the Patent and Trademark Office Performance Review Board is as follows:

Bradford R. Huther, Chairman, Assistant Commissioner for Finance and Planning, Patent and Trademark Office, Washington, DC 20231. Term—permanent.

Edward R. Kubasiewicz, Member, Counselor to the Assistant Secretary and Commissioner of Patents and Trademarks, Patent and Trademark Office, Washington, DC 20231. Term—permanent.

Jeffrey M. Samuels, Member, Assistant Commissioner for Trademarks, Patent and Trademark Office, Washington, DC 20231. Term—permanent.

Theresa A. Brelsford, Member, Assistant Commissioner for Public Services and Administration, Patent and Trademark Office, Washington, DC 20231. Term—permanent.

Thomas P. Giammo, Member, Assistant Commissioner for Information Systems, Patent and Trademark Office, Washington, DC 20231. Term—permanent.

John F. Terapane, Jr., Member, Director, Patent Examining Group 120, Patent and Trademark Office, Washington, DC 20231. Term—expires September 30, 1994.

J. David Sams, Member, Chairman, Trademark Trial and Appeal Board, Patent and Trademark Office, Washington, DC 20231. Term—expires September 30, 1994.

Kathleen J. Charles (Outside) Member, Deputy Assistant Secretary for Resource Management, Bureau of Diplomatic Security, U.S. Department of State, Washington, DC 20520. Term—expires September 30, 1994.

Dated: September 29, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92–24381 Filed 10–7–92; 8:45 am]

BILLING CODE 0651–16–M

COMMISSION OF FINE ARTS

Commission of Fine Arts; Meeting

The Commission of Fine Arts' next meeting is scheduled for 29 October 1992 at 10:00 a.m. in the Commission's offices in the Pension building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 30 September 1992.

Charles H. Atherton,

Secretary.

[FR Doc. 92–24375 Filed 10–7–92; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Department of Defense (DoD)-Department of Energy (DOE) System Safety Red Team Advisory Committee

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the DoD-DOE System Safety Red Team Advisory Committee is being established.

The DoD-DOE System Safety Red Team Advisory Committee will advise the Secretary of Defense, Secretary of Energy and the Assistant to the Secretary of Defense (Atomic Energy) on matters relating to the evaluation of safety and precautionary measures applicable to nuclear weapons systems. The committee will: perform technical evaluations of nuclear weapon system design and procedures, as they relate to the prevention of inadvertent nuclear detonation or plutonium dispersal; and, review the nuclear system of safety of warhead and weapon subsystems design in all credible environments, as well as the documentation related to such systems.

Careful efforts will be made to ensure that the membership of the Committee will be diverse and well-balanced in terms of the functions to be performed and the interest groups represented. Members will be drawn from among appropriate officials of the DoD and DOE, as well as several national research laboratories.

For additional information regarding the DoD-DOE System Safety Red Team Advisory Committee, please contact Stanley Keel, telephone: 703–695–7936.

Dated: October 2, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–24373 Filed 10–7–92; 8:45 am]

BILLING CODE 3810–01–M

Renewal of Five Statutory Boards of the Department of Defense

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the following statutorily mandated advisory boards of the Department of Defense have been renewed, effective October 1, 1992: The U.S. Military Academy Board of Visitors, the U.S. Naval Academy Board

of Visitors, the U.S. Air Force Academy Board of Visitors, the National Board for the Promotion of Rifle Practice, and the U.S. Army Coastal Engineering Research Board.

The membership of these Advisory Boards is determined primarily by the respective statutes governing their establishment and composition. In those instances where latitude is given, the membership will continue to be diverse and well-balanced in terms of the functions to be performed and the interest groups represented.

For additional information regarding these statutory advisory boards, contact Mr. Hank Gioia, 703-695-4281.

Dated: October 2, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-24372 Filed 10-7-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Department of the Army Historical Advisory Committee; Meeting

1. In accordance with section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Department of the Army Historical Advisory Committee.

Date: 24 October 1992.

Place: U.S. Army Center of Military History, 2d Floor, Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005-3402.

Time: 24 October—0900-1500 hours.

Proposed Agenda: Review and discussion of the status of historical activities in the U.S. Army.

Purpose of meeting: The committee will review the Army's historical activities for FY 92 based on reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, U.S. Army, and the Secretary of the Army for advancing history in the U.S. Army.

2. Meetings of the Advisory Committee are open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intention to attend the 24 October meeting.

3. Any members of the public may file a written statement with the Committee, before, during or after the meeting. To the extent that time permits the Commission Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, Washington, DC 20005-3402.

Dated: October 1, 1992.

Jeffrey J. Clarke,

Chief Historian.

[FR Doc. 92-24382 Filed 10-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: October 23, 1992.

Time: 1500-1600 hour.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup reviewing the U.S. Army Materiel Command (AMC), Research, Development and Engineering Centers (RDECs), will brief Army leadership on the study results. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (2) and (9) thereof, and Title 5, U.S.C. appendix 2, subsection 10(d). The matters to be discussed will relate solely to the internal personnel rules and practices of the Army, and would disclose information the premature disclose of which would be likely to significantly frustrate implementation of a proposed agency action thereby precluding opening any portion of the meeting. The ASB Administrative Office, Sally Warner, may be contacted for further information at (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-24436 Filed 10-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: October 27, 1992.

Time: 1030-1115 hours.

Place: Pentagon.

Agenda: The Army Science Board's Systems Issue Group will meet with government and contractor representatives to discuss results of the test firings at Yuma Proving Grounds, review pressure oscillation analysis and discuss the latest design of the Regenerative Liquid Propellant Gun. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-24437 Filed 10-7-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel, Meeting

Notice was published Friday September 11, 1992, at 57 FR 41736, that the Chief of Naval Operations Executive Panel will meet on October 27-28, 1992, from 9 am to 5 pm, in Alexandria, Virginia. That Meeting has been rescheduled and will be held on October 28-29, 1992. All other information in the previous notice remains effective. In accordance with 5 U.S.C. section 552b(e)(2), the meeting change is publicly announced at the earliest practical time.

Dated: September 30, 1992.

Geoffrey P. Lyon

LtCol, United States Marine Corps, Federal Register Liaison Officer.

FR Doc. 92-24478 Filed 10-7-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: The National Assessment Governing Board is announcing the opportunity for commentary and review of the achievement levels being considered for the 1992 writing assessment of the National Assessment of Educational Progress (NAEP). The Board, in accordance with its statutory responsibility to identify "appropriate achievement levels for each grade and subject to be tested under the National Assessment" has contracted with American College Testing, which convened a panel of writing experts to recommend writing achievement levels for grades 4, 8, and 12 to be used in reporting the 1992 NAEP. The Board intends to take final action on these recommendations at its regularly scheduled quarterly meeting on November 20, 1992. This document is intended to notify interested individuals

and organizations of their opportunity to present oral and/or written views to the Board.

DATES: November 9, 1992, and November 12, 1992.

TIME: 10 a.m. to 3 p.m.

PLACE: November 9, 1992—The Madison Hotel, 15th and M Streets, NW., Washington, DC; November 12, 1992—The Fairmont Hotel, 1717 North Akard Street, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Mel Webb, NAEP Project Director, American College Testing, 2201 North Dodge Street, Iowa City, Iowa 52243. Telephone: 319–337–1472; or Mary Lyn Bourque, Assistant Director for Psychometrics, National Assessment Governing Board, 800 North Capitol Street, suite 825, Washington, DC 20002–4233. Telephone: 202–357–6940.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Educational Provisions Act (GEPA) as amended by section 4303 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297) (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines and to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The National Assessment Governing Board will hold a public forum in Washington, DC on Monday, November 9, 1992, and a public forum in Dallas, Texas on Wednesday, November 12, 1992, to hear comments on proposed definitions of writing achievement levels for grades 4, 8, and 12 to be used in reporting the National Assessment of Educational Progress. The proposed achievement levels were prepared by the expert writing panel in accordance with the NAGB policy document "Setting Appropriate Achievement Levels for the National Assessment of Educational Progress," dated May 11, 1990, and a design developed by American College Testing and approved by the Board on January 16, 1992. The proposals include detailed descriptions of the subject-matter knowledge and skills proposed for each level.

These proposals are scheduled to be presented to the Board during its quarterly meeting in Fort Lauderdale, Florida on November 20 and 21, 1992. The text of these proposals and a description of the achievement levels-setting process may be obtained by contacting the ACT office at the address or telephone number above by 3 p.m. on November 2, 1992. However, every effort will be made to receive testimony from all persons attending the forum who wish to make a presentation. Written statements should be submitted at the forum or to the ACT office by 5 p.m. on November 12, 1992. The Board plans to analyze all comments received in response to this announcement. The results of the public comments will be used by the Board in conjunction with other information to fulfill its statutory requirement to establish achievement levels on the National Assessment.

Records are kept of all Board proceedings, and are available to public inspection at the National Assessment Governing Board, 800 North Capital Street, Suite 825, Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: October 3, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92–24517 Filed 10–7–92; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: The National Assessment Governing Board is announcing the opportunity for commentary and review of the achievement levels being considered for the 1992 reading assessment of the National Assessment of Educational Progress (NAEP). The Board, in accordance with its statutory responsibility to identify "appropriate achievement levels for each grade and subject to be tested under the National Assessment" has contracted with American College Testing, which convened a panel of reading experts to recommend reading achievement levels for grades 4, 8, and 12 to be used in reporting the 1992 NAEP. The Board intends to take final action on these recommendations at its regularly scheduled quarterly meeting on November 20, 1992. This document is intended to notify interested individuals and organizations of their opportunity to present oral and/or written views to the Board.

DATES: October 19, 1992, and October 22, 1992.

TIME: 10 a.m. to 3 p.m.

PLACE: October 19, 1992—The Madison Hotel, 15th and M Streets, NW., Washington, DC; October 22, 1992—Hyatt Regency Hotel, 711 South Hope Street, Los Angeles, California.

FOR FURTHER INFORMATION CONTACT: Mel Webb, NAEP Project Director, American College Testing, 2201 North Dodge Street, Iowa City, Iowa, 52243. Telephone: 319–337–1472; or, Mary Lyn Bourque, Assistant Director for Psychometrics, National Assessment Governing Board, 800 North Capitol Street, Suite 825, Washington, DC, 20002–4233. Telephone: 202–357–6940.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 4303 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines and to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The National Assessment Governing Board will hold a public forum in Washington, DC on Monday, October 19, 1992, and a public forum in Los Angeles, California on Thursday, October 22, 1992, to hear comments on proposed definitions of reading achievement levels for grades 4, 8, and 12 to be used in reporting the National Assessment of Educational Progress. The proposed achievement levels were prepared by the expert reading panel in accordance with the NAGB policy document "Setting Appropriate Achievement Levels for the National Assessment of Educational Progress," dated May 11, 1990, and a design developed by American College Testing and approved by the Board on January

16, 1992. The proposals include detailed descriptions of the subject-matter knowledge and skills proposed for each level.

These proposals are scheduled to be presented to the Board during its quarterly meeting in Fort Lauderdale, Florida on November 20 and 21, 1992. The text of these proposals and a description of the achievement levels-setting process may be obtained by contacting the ACT office at the address or telephone number above by 3 p.m. on October 14, 1992. However, every effort will be made to receive testimony from all persons attending the forum who wish to make a presentation. Written statements should be submitted at the forum or to the ACT office by 5 p.m. on October 22, 1992. The Board plans to analyze all comments received in response to this announcement. The results of the public comments will be used by the Board in conjunction with other information to fulfill its statutory requirement to establish achievement levels on the National Assessment.

Records are kept of all Board proceedings, and are available to public inspection at the National Assessment Governing Board, 800 North Capitol Street, Suite 825, Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: October 3, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92-24516 Filed 10-7-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Transmittal of Mined Geologic Disposal System (MGDS) Annotated Outline for the Preparation of a License Application, Revision 1, to U.S. Nuclear Regulatory Commission (NRC)

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) transmitted the Mined Geologic Disposal System (MGDS) Annotated Outline for the Preparation of a License Application, Revision 1, dated September 30, 1992, to the NRC for information and guidance on September 29, 1992. The annotated outline process is the basis for developing a license application, if any, for the MGDS program. The annotated outline process is iterative, with revisions to be developed in consultation with the NRC.

FOR FURTHER INFORMATION CONTACT: For further information and to obtain a copy of the annotated outline, contact Corinne Macaluso, RW-331, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2837.

Issued in Washington, DC on October 1, 1992.

John W. Bartlett,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 92-24528 Filed 10-7-92; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Yakima River Basin Fisheries Project; Availability and Notice of Public Meetings

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of availability and notice of public meetings.

SUMMARY: BPA is releasing a draft EIS on the Yakima River Basin Fisheries Project and is planning six public meetings on the draft EIS. The meetings will be held at the following times and locations:

Monday, October 26, 1992, 7-10 p.m., Best Western Tower Inn, 1515 George Washington Way, Richland, WA 99352.

Tuesday, October 27, 1992, 7-10 p.m., Arboretum, 1401 Arboretum Drive, Yakima, WA 98901.

Thursday, October 29, 1992, 1-4 p.m. and 7-10 p.m., Red Lion Inn—Coliseum, 1225 N. Thunderbird Way, Portland, OR 97227.

Wednesday, November 4, 1992, 7-10 p.m., Hyatt Regency—Bellevue, 900 Bellevue Way, NE., Bellevue, WA 98004.

Thursday, November 5, 1992, 7-10 p.m., Best Western—Ellensburg Inn, 1700 Canyon Road, Ellensburg, WA 98926.

BPA will be accepting written comments at the address listed below. If you need a copy of the draft EIS, please call the Public Involvement office's document request line in Portland at 800—622-4520, and request the Yakima River Basin Fisheries Project Draft EIS.

DATES: The public comment period closes December 18, 1992.

ADDRESSES: Written comments should be submitted to the public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kevin Ward, EIS Project Manager, at 503-230-5373; or the Public Involvement office, at the address listed above, 503-230-3478. Or call BPA's nationwide toll-free number, 800-622-4519. For general information on NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-4600 or 800-472-2756. Information may also be obtained from:

Mr. Marvin Nelson, Yakima Project Office, 103 S. Third St., Yakima, Washington 98901, 509-575-5805.

Mr. George E. Bell, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-465-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-353-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, Suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109-1030, 206-553-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509-522-6225.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. James R. Normandeau, Boise District Manager, room 450, 304 N. 8th Street, Boise, Idaho 83702, 208-334-9137

SUPPLEMENTARY INFORMATION: BPA proposes to fund several fishery related activities in the Yakima River Basin. These activities, known as the Yakima Fisheries Project (YFP), would be managed as a partnership among BPA, the State of Washington, and the Yakima Indian Nation. The YFP is a central feature of the Northwest Power Planning Council's (Council) Fish and Wildlife Program. The Council selected the Yakima River system for attention because fisheries resources are severely reduced from historic levels and because there is a significant potential for enhancement of these resources. BPA's proposed action is: (1) To fund the construction, operation, and maintenance of experimental facilities for anadromous fish; (2) to develop and carry out research activities; and (3) to gather information on supplementation

techniques. Supplementation is a strategy for building fish spawning runs by releasing artificially propagated fish into natural streams to increase natural production. Alternatives for accomplishing the proposed action combine: (1) variations of stocks to enhance; (2) numbers of salmon and steelhead to produce; and (3) types and locations of facilities. The No-Action Alternative would leave present anadromous fisheries resources in the Yakima River Basin. The preferred alternative has not yet been selected. Major issues analyzed in the draft EIS include potential impacts of the project on genetic and ecological resources in existing fish populations. The YFP is designed to operate with existing instream water flow levels and project operations would not impact water rights in the Yakima River Basin. Environmental analysis included in this draft EIS will cover operation of the planned production facilities and potential impacts from the siting and construction of acclimation facilities.

Stephen J. Wright,

Assistant Administrator for Bonneville Power Administration.

[FR Doc. 92-24529 Filed 10-7-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-575-000, et al.]

Wisconsin Electric Power Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 29, 1992.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Co.

[Docket No. ER92-575-000]

Take notice that on September 21, 1992, Minnesota Power & Light Company tendered for filing its FERC Order No. 84 Rate Schedule, First Revised Sheet No. 1. The proposed change would decrease revenues from third-party purchase and resale transactions under FERC Order No. 84. The rate decrease is proposed to be effective as of the effective date of the Interchange Agreement between Minnesota Power & Light Company and Wisconsin Electric Power Company, which was filed on May 28, 1992 in this docket and noticed on June 1, 1992. Copies of the filing were served upon the utility's jurisdictional customers, the Public Utilities Commission of Minnesota and the Public Service Commission of Wisconsin.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Co.

[Docket No. ER92-854-000]

Take notice that on September 24, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the City of St. Cloud Electric Utilities (St. Cloud) of 10 megawatts of capacity and energy from Tampa Electric's Big Bend Station coal-fired generating resources. The Letter of Commitment is submitted as a supplement to Service Schedule D under Tampa Electric's agreement for interchange service with St. Cloud.

Tampa Electric proposes an effective date for the Letter of Commitment of the earlier of January 1, 1994, or the date that St. Cloud requests, and Tampa Electric agrees to provide, the committed capacity and energy. Accordingly, Tampa Electric requests waiver of the Commission's notice requirements.

Copies of the filing have been served on St. Cloud and the Florida Public Service Commission.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Co.

[Docket No. ER92-853-000]

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated September 21, 1992, tendered for filing a Seventh Supplemental Agreement to the interconnection agreement between Southern Indiana Gas & Electric Company and LG&E.

The Seventh Supplemental Agreement modifies the Interconnection Agreement by the deletion of Service Schedules D and E, Energy Transfer and Short Term Power, respectively. This filing also includes new Service Schedules H, J, K, L, and M, for Southern Indiana Power and Energy, Southern Indiana Delivery of Third Party Purchases, Louisville Power and Energy, Louisville Delivery of Third Party Purchases, and Diversity Power, respectively. The filing also modifies Service Schedule A, Emergency Service, Service Schedule B, Interchange (renamed Economy Energy), and redefines "Out-of-Pocket Costs".

A copy of the filing was served upon the Kentucky Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Wheelabrator Falls Inc.

[Docket No. ER92-849-000]

Take notice that on September 22, 1992, Wheelabrator Falls Inc. submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales to Public Service Electric and Gas Company.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc.

[Docket No. ER92-847-000]

Take notice that on September 21, 1992, Western Resources, Inc. (WRI) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Service Tariff No. 208. WRI states the purpose of the change is to extend the term of the existing Electric Power Supply Contract between WRI and the City of Seneca, Kansas. The change is proposed to become effective November 20, 1992.

Copies of the filing were served upon the City of Seneca and the Kansas Corporation Commission.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Central Power and Light Co.

[Docket No. ER92-755-000]

Take notice that on September 21, 1992, Central Power and Light Company (CPL) tendered for filing a letter amendment to an Interconnection Agreement filed in this proceeding on July 29, 1992. The letter amendment clarifies the expenses which South Texas Electric Cooperative, Inc. (STEC) will reimburse to CPL.

Copies of the filing were served on STEC and the Public Utility Commission of Texas.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Co.

[Docket No. ER92-840-000]

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated September 21, 1992, tendered for filing a Sixth Supplemental Agreement to the interconnection agreement between Big Rivers Electric Corporation and LG&E.

The Sixth Supplemental Agreement modifies the Interconnection Agreement by the deletion of Service Schedules C and E, Short Term Power and Fuel Conservation Power and Energy, respectively. This filing also includes new Services Schedules F, G, H, J, and

K, for Big Rivers Power and Energy, Big Rivers Delivery of Third Party Purchases, Louisville Power and Energy, Louisville Delivery of Third Party Purchases, and Diversity Power, respectively. The filing also modifies Service Schedule A, Emergency Service, Service Schedule B, Interchange (renamed Economy Energy), and redefines "Out-of-Pocket Costs".

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corp.

[Docket No. ER92-746-000]

Take notice that on September 22, 1992, New York State Electric & Gas Corporation (NYSEG) tendered for filing, pursuant to § 35.13 of the regulations under the Federal Power Act, a proposed amendment to its filing regarding the borderline sales presently designated as Rate Schedule FERC No. 32. The proposed amendment eliminates the facilities charge initially described in January 6, 1937 letter agreement between NYSEG and CHG&E and subsequently modified in a July 24, 1958 letter agreement between the two parties.

NYSEG has sent a copy of this filing to both CHG&E and the Public Service Commission of the State of New York.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Philadelphia Electric Co.

[Docket Nos. ER92-632-000 and ER92-654-000]

Take notice that on September 10, 1992, Philadelphia Electric Company (PE) tendered for filing Amendment Agreements to the above mentioned Dockets.

The Amendment Agreements amend the Agreements for the sale of System Energy which PE has entered into with Allegheny Electric Cooperative, Inc. and Orange and Rockland Utilities, Inc. PE requests that the Rate Schedules become effective on the dates requested in their initial filings, August 17, 1992 for Allegheny and June 22, 1992 for O&R.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. The Union Light, Heat and Power Co.

[Docket No. E92-61-000]

Take notice that on September 24, 1992, the Union Light, Heat and Power Company filed an application with the Federal Energy Regulatory Commission under Section 204 of the Federal Power Act requesting authorization to issue not more than $35 million of unsecured promissory notes on or before December 31, 1994, with a final maturity date no later than December 31, 1994.

Comment date: October 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24430 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

October 2, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Conduit Exemption (Tendered Notice).

b. *Project No.:* 11336-000.

c. *Date Filed:* September 18, 1992.

d. *Applicant:* City of Buffalo, Wyoming.

e. *Name of Project:* Buffalo.

f. *Location:* On the City of Buffalo's water supply pipeline that draws water from Clear Creek, 2 miles west of the City, in Johnson County, Wyoming (NE ¼ of NE ¼, Sec. 5, T50N, R82W).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Michael T. O'Grady, States Water Resources Corporation, 2424 Pioneer Avenue, Suite 204, Cheyenne, Wyoming 82001, (307) 634-7848.

i. *FERC Contact:* Hector M. Pérez at (202) 219-2843.

j. *Description of Project:* The proposed project would consist of a powerhouse containing a 245-kW unit, and other appurtenant facilities. The project would have an estimated average annual generation of 1,638,000 kilowatthours.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than November 17, 1992, and must serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24411 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-09935T Oklahoma-27]

State of Oklahoma; NGPA Determination by Jurisdictional Agency Designating Tight Formation

October 1, 1992.

Take notice that on September 29, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Formation designated as the Cherokee Common Source of Supply, underlying Sections 24 and 25, and the Des Moines Common Source of Supply, underlying Sections 26 and 27, of Township 12 North, Range 14 West, Custer County, Oklahoma qualifies as a single designated tight formation under section 107(b) of the Natural Gas Policy Act of 1978.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24404 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

October 2, 1992.

Take notice that on September 30, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 1992:

35th Revised Sheet No. 4

Alabama-Tennessee states that this filing is an out-of-cycle purchased gas adjustment ("PGA") filing, the purpose of which is to correlate more accurately Alabama-Tennessee's projected gas costs with the rates of its upstream pipeline supplier, Tennessee Gas Pipeline Company ("Tennessee"). Alabama-Tennessee states that on September 27, 1992, it received the Transition Gas Inventory Charge ("TGIC") commodity cost of natural gas purchases for the month of October, 1992 from Tennessee in accordance with the so-called "Cosmic Settlement" which the Federal Energy Regulatory Commission ("Commission") approved in Docket Nos. RP88-228, *et al.* According to Alabama-Tennessee, this information shows that Tennessee's sales commodity rates will increase substantially from the rates that have been in effect since September 1, 1992, and upon which Alabama-Tennessee's recent out-of-cycle quarterly PGA filing submitted on August 31, 1992 in docket No TQ93-1-1-000 ("August 31 Filing") was based. Alabama-Tennessee states that, as a result, the commodity gas costs shown in Alabama-Tennessee's August 31 Filing are significantly understated.

In addition to a waiver of § 154.22 of the Commission's Regulations so that its revised tariff sheet can be made effective as of October 1, 1992, Alabama-Tennessee has requested any other waivers of the Commission's Regulations that may be necessary to permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24418 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-237-000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), on September 30, 1992, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for these tariff sheets is November 1, 1992. The proposed changes would increase revenues for jurisdictional sale for resale services by $8,181,350 annually, based on the 12-month period ending May 31, 1992, as adjusted for known and measurable changes for the period ending February 28, 1993.

According to Alabama-Tennessee, its proposed rates are based on the Commission's recently issued Order No. 636, "Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol," 57 FR 13,267 (April 16, 1992), III FERC Stats. & Regs. [Regulations Preambles] ¶30,939 (April 8, 1992), order on reh'g, Order No. 636-A, 57 FR 36,128 (August 12, 1992), III FERC Stats. & Regs. [Regulations Preambles] ¶30,950 (August 3, 1992) ("Restructuring Rule"). In particular, these tariff sheets reflect unbundled sales and transportation services and rates based on the straight fixed variable method of cost classification, allocation, and rate design. Alabama-Tennessee states that, except as required under the Restructuring Rule, these rates are also in accordance with the Commission's "Policy Statement Providing Guidance with Respect to the Designing of Rates," 47 FERC ¶61,295, order on reh'g, 48 FERC ¶61,122 (1989).

Alabama-Tennessee has requested such waiver of the Commission's Regulations as may be necessary to accept its application as proposed.

Alabama-Tennessee states that copies of the filing were served upon the company's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214, 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24416 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-28-000]

CNG Transmission Corp.; Notice of Proposed Change in FERC Gas Tariff

October 2, 1992.

Take notice that on September 30, 1992, CNG Transmission Corporation ("CNG") filed the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Twenty-Third Revised Sheet No. 31
Fifteenth Revised Sheet No. 32
Nineteenth Revised Sheet No. 34
Fourteenth Revised Sheet No. 35

CNG requests an effective date for these sheets of October 1, 1992.

CNG states that the purpose of this filing is to authorize CNG to establish a cost-based PGA sales rate for the period October 1, 1992, until April 1, 1993, when CNG plans to implement Order No. 636. CNG states further that this transitional measure is necessary for CNG to implement the new services envisioned by the Commission in Order No. 636 and that this filing will help minimize its transition costs.

CNG states that this filing will result in a weighted average cost of gas of $1.7028 for Rate Schedules RQ, CD, and ACD for the period October 1, 1992, to April 1, 1993.

CNG has requested a waiver of the Commission's regulations requiring it to make quarterly PGA filings in December

1992, and March 1993 as well as waiver of the requirement applying the three percent test. Alternatively, CNG requests that the Commission apply the three percent test to the six-month period reflected in this filing.

CNG states that copies of this filing were served upon CNG's customers as well as interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before October 9, 1992. Protests will be considered taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24415 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-1-21-000 and TM93-3-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 30, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1.

October 1, 1992

Twenty-fourth Revised Sheet No. 26
Sixteenth Revised Sheet No. 26.1
Twenty-third Revised Sheet No. 26A
Sixteenth Revised Sheet No. 26A.1
Thirteenth Revised Sheet No. 26B.1
Eighth Revised Sheet No. 26C.1
Thirteenth Revised Sheet No. 26D
Twenty-third Revised Sheet No. 163

Columbia states the sales rates set forth on Sixteenth Revised Sheet No. 26.1 reflect an increase of 27.92¢ per Dth in the commodity rate and a decrease in the demand rate of $.054 per Dth when compared with the total CDS rates reflected in its last PGA filing which was filed on September 1, 1992 with an effective date of September 2, 1992. In addition, the transportation rates set forth in Eighth Revised Sheet No. 26C.1 and Thirteenth Revised Sheet No. 26D reflect an increase in the Fuel Charge component of 0.67¢ per Dth.

Columbia states that copies of the filing is being mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24421 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-2-21-000 and TM93-2-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 30, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective November 1, 1992.

Twenty-Fifth Revised Sheet No. 26
Eighteenth Revised Sheet No. 26.1
Twenty-Fourth Revised Sheet No. 26A
Eighteenth Revised Sheet No. 26A.1
Twenty-Second Revised Sheet No. 26B
Fourteenth Revised Sheet No. 26B.1
Twenty-Third Revised Sheet No. 26C
Ninth Revised Sheet No. 26C.1
Fifteenth Revised Sheet No. 26D
Twenty-Fourth Revised Sheet No. 163

Columbia states the sales rates set forth on Eighteenth Revised Sheet No. 26.1 reflect an increase of 22.04¢ per Dth in the commodity rate and an overall decrease of $0.196 per Dth in the total demand rate when compared with the total CDS rates currently in effect. The transportation rates set forth on Ninth Revised Sheet No. 26C.1 and Fifteenth Revised Sheet No. 26D reflect an increase of 0.48¢ per Dth in the Fuel Charge component.

Columbia states that copies of the filing is being mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commisson and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24420 Field 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-2-000]

East Tennessee Natural Gas Co.; Rate Filing

October 2, 1992.

Take notice that on September 30, 1992, East Tennessee Natural Gas Company ("East Tennessee"), submitted for filing five copies each of Twenty-Eighth Revised Sheet Nos. 4 and 5 to First Revised Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1992.

East Tennessee Natural Gas Company states that the purpose of the instant filing is to implement an out-of-cycle PGA rate adjustment to East Tennessee's current rate, to be effective from October 1, 1992 to December 31, 1992. East Tennessee states that due to an unexpected increase in gas prices, it is currently unable to purchase gas at or below the rates reflected in its previously quarterly filing in Docket No. TQ-93-1-2, filed on August 31, 1992 to be effective October 1, 1992. The increase in the current adjustment is necessary to prevent substantial under-recoveries of gas costs.

East Tennessee further states that copies of the filing has been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protect such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

DC 20425, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining appropriate action but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had a previously filed a petition or intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24424 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

October 2, 1992.

Take notice that Equitrans, Inc. (Equitrans) on September 30, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective October 1, 1992:

Thirty-Ninth Revised Sheet No. 10
Twenty-Eighth Revised Sheet No. 34

This filing implements an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to reflect (1) increased gas costs charged by Texas Eastern Transmission Corporation's (TETCO) under its Rate Schedule CD-1 filed in Docket No. TQ92-8-17 on September 29, 1992; and (2) increases in the purchased gas costs of spot market purchases and Southwest supply purchases. The filing is necessary in order to have the rates charged to Equitrans' jurisdictional customers more closely reflect the experienced cost of gas being incurred by the Applicant.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the commodity cost of $0.4422 per dekatherm (Dth). The purchased gas cost adjustment to rate Schedule ISS is an increase of $0.4765 per Dth.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on October 1, 1992.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24409 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that on September 30, 1992 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective October 1, 1992:

Thirty-Second Revised Sheet No. 8

FGT states that the above-referenced tariff sheet is being filed to reflect an increase in FGT's cost of gas purchased from that level reflected in its last Out-of-Cycle PGA filing effective September 1, 1992 in Docket No. TQ92-6-34-000.

On August 28, 1992, FGT made a filing in its Out-of-Cycle PGA in Docket No. TQ92-6-34-000 containing a projected cost of purchased gas for the period August 1, 1992 through October 31, 1992 of $2.5088/MMBtu saturated. Subsequent to the Out-of-Cycle filing, FGT has again experienced an increase in its cost of purchased gas to a level that now exceeds the level of purchased gas cost established in FGT's last Out-of-Cycle PGA. However, FGT is precluded from adjusting its rates under Section 15.10 (Interim Adjustment Filings) of its FERC Gas Tariff to reflect a level of gas cost that exceeds the level established in its last Out-ot-Cycle PGA filing. Therefore, FGT is making the instant Out-of-Cycle PGA filing in order to reflect the increases in its cost of purchased gas to a level of $3.1538/MMBtu saturated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24426 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that on September 30, 1992 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 1, 1992:

Thirty-Third Revised Sheet No. 8
Sixth Revised Sheet No. 160
Fifth Revised Sheet No. 222
Sixth Revised Sheet No. 223
Fourth Revised Sheet No. 224
Sixth Revised Sheet No. 225
Fifth Revised Sheet No. 226
Sixth Revised Sheet No. 227
Sixth Revised Sheet No. 228
Fifth Revised Sheet No. 229
Fifth Revised Sheet No. 230
Fourth Revised Sheet No. 231
Seventh Revised Sheet No. 232

FGT states that Thirty-Third Revised Sheet No. 8 is being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to Section 15 of FGT's FERC Gas Tariff, Second Revised Volume No. 1 to reflect a decrease in FGT's jurisdictional rates due to a decrease in its average cost of gas purchased from that reflected in its Out-of-Cycle PGA filing, Docket No. TQ93-1-34-000, effective October 1, 1992.

FGT further states that its projected purchase cost of gas for the period

November, 1992 through January, 1993, shown in detail on Schedule Q1, represents a decrease from $3.1538/MMBtu saturated, as reflected in FGT's Out-of-Cycle PGA filing in Docket No. TQ93–1–34–000, effective October 1, 1992 to $3.0677/MMBtu saturated in the instant filing.

FGT is required to update its Index of Entitlements concurrently with its Quarterly PGA filing pursuant to Section 9 of the General Terms and Conditions of its Tariff and has included such changes in Fourth Revised Sheet Nos. 224 and 231, Fifth Revised Sheet Nos. 222, 226, 229, and 230, Sixth Revised Sheet Nos. 223, 225, 227, and 228, and Seventh Revised Sheet No. 232. Additionally, Sixth Revised Sheet No. 160 updates the receipt point list contained in Rate Schedule PTS–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with § 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24412 Filed 10–7–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–2–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

October 2, 1992.

Take notice that on September 30, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581–5039, tendered for filing with the Commission Nineteenth Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on October 1, 1992.

According to Granite State, its filing is a revised purchased gas adjustment for the fourth quarter of 1992. Granite State further states that it filed its regular fourth quarter purchased gas cost adjustment on September 9, 1992 in Docket No. TQ93–1–4–000. It is stated that, in the short interval since its prior filing, the costs for its projected spot market purchases during the fourth quarter have risen rapidly and spot market supplies comprise approximately 73 percent of projected purchases during the quarter. According to Granite State, the revised rates in the instant filing are derived on the same quantities of projected purchases and sales as in the prior filing.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24410 Filed 10–7–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–1–46–000]

Kentucky West Virginia Gas Co., Proposed Change in FERC Gas Tariff

October 2, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on September 29, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Out-of-Cycle PGA filing, which includes Fortieth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective October 1, 1992. The revised tariff sheet reflects a current increase of $0.5742 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $2.1589 per Dth.

Kentucky West states that effective October 1, 1992, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.1700 per Dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Pursuant to § 154.51 of the Commission's regulations, Kentucky West requests waiver of the thirty day notice requirement to permit the tariff sheet attched hereto to become effective on October 1, 1992. In addition, Kentucky West requests waiver of § 154.304 of the Commission's regulations and any other provisions of the Commission's regulations necessary to permit the attached tariff sheet to become effective on October 1, 1992.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested State Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and § 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24425 Filed 10–7–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93-1-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

October 2, 1992.

Take notice that on September 29, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing Eighty-Third Revised Sheet No. 4, and Forth-Second Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective October 1, 1992. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Eighty-Third Revised Sheet No. 4 and Forty-Second Revised Sheet No. 4.1 reflect an increase of 74.77 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed on August 28, 1992 to be effective September 1, 1992, in Docket No. TQ92-15-25-000. MRT also states that since the August 28, 1992 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24427 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that on September 30, 1992, National Fuel Gas Supply Corporation ("National") tendered for filing the following revised tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on October 1, 1992:

(A) Twenty-Fourth Revised Sheet No. 5
(B) Alt Twenty-Fourth Revised Sheet No. 5

National states that the purpose of this filing is to implement an out-of-cycle Purchased Gas Cost Adjustment ("PGA") rate change to reflect the increased gas cost resulted from the impact of the current market price. The primary tariff sheet (A) assumes the acceptance of National's August 28th compliance filing at Docket No. RP86-136-000 *et al* whereas the alternate tariff sheet (B) assumes otherwise. However, both sheets reflect identical gas cost projection in the quarter of October 1992. National states that the primary and alternate tariff sheet reflect commodity rate at 293.46 cents per Dt and 294.21 cents per Dt respectively.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to invervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24406 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-45-000]

Natural Gas Pipeline Company of America; Conference

October 1, 1992.

Take notice that a conference will be convened in the captioned restructuring proceeding on October 27 and 28, 1992 at the Naperville Inn, 1801 North Naper Boulevard, Naperville, Illinois 60563, (Telephone 708-505-4900). The conference will begin at 8:30 a.m. on Tuesday, October 27, 1992.

All interested parties are invited to attend. For additional information, call John A. Myler at (202) 208-0974.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24402 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-59-000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Northern Natural Gas Company (Northern), on September 30, 1992 tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $3.8260 per MMBtu to be effective October 1, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 3825.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24423 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-78-000]

Sabine Pipe Line Co.; Prefiling Conference

October 1, 1992.

Take notice that a prefiling conference will be convened in this proceeding on October 22, 1992, at 1:30 p.m., in Room 2402-A, 825 North Capitol Street, NE., Washington, DC. The conference will address proposals of Sabine Pipe Line Company to comply with Order Nos. 636 and 636-A. All parties and Commission staff are invited to attend.

For additional information, contact Marc G. Denkinger at (202) 208-2215.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24403 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-629-021, CP90-639-012 and CP91-2206-003]

Tennessee Gas Pipeline Co.; Technical Conference

October 1, 1992.

Take notice that on October 8, 1992, the Commission staff will convene a technical conference in the above-captioned dockets at the offices of the Federal Energy Regulatory Commission, located at 825 N. Capitol Street, Washington, DC 20426 at 10 a.m., in a room to be announced.

The purpose of the technical conference is to discuss Tennessee Gas Pipeline Company's (Tennessee) proposal to include increased facility costs in its initial rates for service in these dockets.

Tennessee should be prepared to present information, by project, regarding:

- Each facility for which cost increases are being claimed specifying type of facility (e.g., a pipeline loop), the mileposts (beginning and ending), miles, diameter, horsepower, county, state, in-service date or proposed in-service date. (Separately, list original facilities in existing approved rates for New England Power Company.)
- Cost increases for each cost item of an individual facility (i.e., right-of-way, materials, installation, contingency, project development, legal fees, AFUDC, etc.) and the particular subcategorics of each cost item where the cost increase occurs. For cost increases in the Iroquois/Tennessee Project, Tennessee should itemize cost increases by segments (Segments 3 and 4) and by phases (Phases I and II).
- The original cost, the cost increase (including the date these increases were incurred), and written justification for each cost increase.

Parties protesting these proposals should also be prepared to present specific information in support of their objections.

All interested parties and Commission staff are invited to attend the technical conference. For further information, contact Amy Heyman, (202) 208-0115.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24405 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on September 29, 1992 tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixtieth Revised Sheet No. 10
Sixtieth Revised Sheet No. 10A
Forth-first Revised Sheet No. 11
Thirty-first Revised Sheet No. 11A
Thirty-first Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to an Out-of-Cycle PGA Rate Adjustment and are proposed to be effective October 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $1.0553 per MMBtu from the rates set forth in the Out-of-Cycle PGA filed July 30, 1992 (Docket No. TQ92-8-18). No changes to the demand and SGN Standby rates are proposed in this filing.

Texas Gas states that copies of the filing are being mailed to all of Texas Gas's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24429 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on September 30, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixty-first Revised Sheet No. 10
Sixty-first Revised Sheet No. 10A
Forty-second Revised Sheet No. 11
Thirty-second Revised Sheet No. 11A
Thirty-second Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to a Quarterly PGA Rate Adjustment and are proposed to be effective November 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate decrease of $(.3147) per MMBtu from the rates set forth in the Out-of-Cycle PGA filed September 29, 1992 (Docket No. TQ92-9-18). No changes are proposed for the demand or SGN Standby rates.

Texas Gas states that copies of the filing are being mailed to Texas Gas's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24428 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 30, 1992 Tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on appendix A and appendix B to the filing.

The proposed effective date of these revised tariff sheets is October 1, 1992.

Texas Eastern states that these tariff sheets are being filed pursuant to Section 23, Purchased Gas Cost Adjustment contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff and pursuant to Order No. 483 issued November 10, 1987 in Docket No. RM86-14. As contemplated in Docket No. RM86-14 and Order No. 483, this filing constitutes an out-of-cycle PGA rate increase. Texas Eastern states that in compliance with § 154.308(b)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format as prescribed by FERC Form No. 542-PGA (Revised) and FERC's NOTICE OF CRITERIA FOR ACCEPTING ELECTRONIC PGA FILINGS dated April 12, 1991.

Texas Eastern states that the change proposed in this out-of-cycle PGA filing is a commodity sales rate increase of $0.5658/dth based upon the change in Texas Eastern's projected October 1992 cost of purchased gas from Texas Eastern's August 1, 1992 Out-of-cycle PGA in Docket No. TQ92-7-17 filed on July 30, 1992.

Texas Eastern states that on September 15, 1992 Texas Eastern filed substitute tariff sheets to be effective for the period beginning December 1, 1990 to-date reflecting the rates provided for in the Stipulation and Agreement in Docket No. RP88-67, *et al.* (Phase II/PCBs) filed by Texas Eastern on December 17, 1991 (PCB Settlement). The substitute tariff sheets filed herewith listed on appendix B reflect Texas Eastern's PCB settlement rates adjusted for the PGA change proposed herein.

Texas Eastern respectfully requests the Commission to accept the tariff sheets on appendix A hereto to be effective for purposes of rendering billings beginning October 1, 1992 and accept the substitute tariff sheets on Appendix B as a supplement to Texas Eastern's September 15, 1992 filing in Docket No. RP88-67 *et al.* (Phase II/PCBs) for the period beginning October 1, 1992.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern, applicable state regulatory agencies and all parties on the service list in Docket Nos. RP88-67, *et al.* (Phase II/PCBs).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24413 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-235-000]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 2, 1992.

Take notice that on September 30, 1992, United Gas Pipe Line Company ("United") tendered for filing proposed changes to its FERC Gas Tariff, Third Revised Volume No. 1, to establish rates and revenue responsibility for all jurisdictional customers on the United system effective November 1, 1992 pursuant to Section 4(e) of the Natural Gas Act ("NGA"). United states that the instant filing is made to comply with Section IV(B) of the Joint Stipulation and Agreement ("S&A") in Docket No. RP91-126, *et al.*, United anticipates an effective date of April 1, 1993, for the applicable tariff sheets assuming the Commission exercises its authority under section 4(e) of the NGA and suspends the effective date for the full five month statutory period.

United states that the filing is only made to satisfy its obligations under the S&A. United anticipates that the Commission will approve its Order No. 636 compliance filing, due November 2, 1992, on or before April 1, 1993. If the compliance filing is not approved by the Commission before April 1, 1993, the instant filing supports revised rates for its current services to be effective on that date. The base period for the filing is the twelve months ended May 31, 1992, as adjusted for known and measurable changes for the nine months ending February 29, 1993.

United states that the instant filing reflects the elimination of United's Market Response Storage and Delivery Service ("MRSDS"). MRSDS was a limited term experimental service explicitly approved by the Commission for a period expiring March 31, 1993. United further states that it intends to file to abandon its gathering facilities pursuant to section 7(b) of the NGA on or before November 2, 1992 in conjunction with its Order No. 636 filing. Accordingly, United has eliminated the allocation of general and overhead costs to the gathering functions in the instant filing in anticipation of the abandonment filing.

The filing supports a revised cost of service of $200.6 million, which is a reduction of $0.6 million from that approved by the Commission in Docket No. RP91-126. adjustments have been made to all components of the cost of service, including an adjustment to reflect the effect of FASB 106, Employers' Accounting for Postretirement Benefits Other Than Pension. United is claiming an overall rate of return of 14.14% on a capital structure consisting of 56.18% debt and 43.82% equity and an return on equity of 16%. The filing also reflects a decrease in throughput resulting from (1) anticipated reductions in sales due to the expiration of city gate customers S&A purchase commitments; (2) the elimination of MRSDS; and, (3) discounted transportation levels. united has proposed the use of the Straight Fixed Variable ("SFV") method of cost classification, allocation and rate design.

The tendered tariff sheets also reflect the expiration of MRSDS and Rate Schedule PL. United's last PL customer, Mississippi River Transmission Corporation, filed a notice of abandonment pursuant to for Order No. 490 on June 1, 1992, for effectiveness April 30, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with the

relevant provisions of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such petitions or protests must be filed on or before October 9, 1992. Protests will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of United's September 30, 1992, rate filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24414 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01

[Docket No. RP92-236-000]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs

October 2, 1992.

Take notice that on September 30, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), suite 300, 200 North Third Street, Bismarck, North Dakota 58501, tendered for filing revised tariff sheets to its FERC Gas Tariff.

These revised tariff sheets reflect the recalculation of rates to incorporate the fourth conversion of firm sales service to firm transportation service by a Williston Basin sales customer. Williston Basin has requested a November 1, 1992 effective date for the revised tariff sheets.

Williston Basin states that copies of the filing has been served upon Williston Basin's customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24422 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-1-49-000 and TM93-2-49-000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Adjustment Filing

October 2, 1992.

Take notice that on September 30, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, suite 300, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets:

First Revised Volume No. 1

5th Rev Alt 43rd Revised Sheet No. 10

Original Volume No. 1-A

5th Rev Alt 36th Revised Sheet No. 11
5th Rev Alt 41st Revised Sheet No. 12
3rd Rev Alt 22nd Revised Sheet No. 97A

Original Volume No. 1-B

5th Rev Alt 31st Revised Sheet No. 10
5th Rev Alt 31st Revised Sheet No. 11

Original Volume No. 2

5th Rev Alt 43rd Revised Sheet No. 10
5th Rev Alt 37th Revised Sheet No. 11B

The proposed effective date of the tariff sheets is November 1, 1992.

Williston Basin states that 5th Rev Alt 43rd Revised Sheet No. 10 (First Revised Volume No. 1) reflects a decrease in the Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1 and E-1 of 11.134 cents per dkt as compared to that contained in the Company's June 15, 1992 filing in Docket Nos. TA92-2-49-000 and TM92-7-49-000 which became effective August 1, 1992.

Williston Basin further states that 5th Rev Alt 36th Revised Sheet No. 11, 5th Rev Alt 41st Revised Sheet No. 12 and 3rd Rev Alt 22nd REvised Sheet No. 97A (Original Volume No. 1-A), 5th REv Alt 31st Revised Sheet Nos. 10 and 11 (Original Volume No. 1-B), 5th Rev Alt 43rd Revised Sheet No. 10 and 5th Rev Alt 37th Revised Sheet No. 11B (Original Volume No. 2) reflected revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates as compared to that contained in the Company's June 15, 1992 filing in Docket Nos. TA92-2-49-000 and TM92-7-49-000. Such changes in the fuel reimbursement charges and percentages are a result of the changes in Williston Basin's average cost of purchased gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24419 Filed 10-7-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-19-NG]

Wisconsin Power and Light Co.; Order Granting Interim Authority to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of interim order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that on September 29, 1992, it issued DOE/FE Opinion and Order No. 362-A which temporarily extends the import authorization granted Wisconsin Power and Light Company (WPL) on December 18, 1989, in DOE/FE Opinion and Order No. 362 (1 FE ¶ 70,278). DOE extended the previous authorization beyond its expiration date of September 30, 1992, to enable WPL to continue importing up to 10,718 Mcf of gas per day from TransCanada PipeLines Limited, and up to 100,000 Mcf per day of spot market gas until DOE issues a final decision on WPL's pending import application filed September 21, 1992, in FE Docket No. 92-121-NG. The interim order ensures there will be sufficient supplies of gas for customers served by WPL's distribution system during the 1992-1993 winter heating season.

Issued in Washington, DC on October 1, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-24527 Filed 10-7-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4519-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before November 9, 1992.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Environmental Education

Title: National Environmental Education Awards Application Form (EPA No. 1622.01).

Abstract: This ICR is a new collection in support of the National Environmental Education Awards Program established by the National Environmental Education Act (NEEA) under Public Law 101-169, section 8. Each year, in accordance with the NEEA, the National Environmental Education Advisory Council (NEEAC) will select three individuals for each of four awards. The EPA Administrator will then select a single recipient for one of these awards. The four awards are: 1) the 'Theodore Roosevelt Award', 2) the 'Henry David Thoreau Award', 3) the 'Rachel Carson Award' and the 4) 'Gifford Pinchot Award'. They are to be awarded to individuals for outstanding achievements in various fields of environmental education.

Following approval of this ICR, applicants will be required to complete and submit the National Environmental Education Award Application to EPA representatives from the Office of Environmental Education (OEE). The application will gather specific information on the applicant, the applicant's achievement, and the relevance of this achievement to environmental education and to a particular award. Applicants will also be required to submit a sample of their original work and a resume.

OEE representatives will screen the applications to ensure that the basic requirements, as outlined in the NEEA, are fulfilled. The information will then be compiled and presented to the NEEAC for the selection of candidates.

Burden Statement: Public reporting burden for this collection of information is estimated to average 1 hour per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the application.

Respondents: Eligible individuals, as described in the NEEA.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Frequency of Collection: On occasion.

Estimated Total Annual Burden on Respondents: 300 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC, 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC, 20503.

Dated: September 30, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-24553 Filed 10-7-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4519-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before November 9, 1992.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR,CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Modification of Secondary Treatment Requirements for Discharges into Marine Waters (ICR No. 0138.04)

Abstract: Section 301(h) of the Clean Water Act (CWA) states that Publicly Owned Treatment Works (POTWs) discharging pollutants into certain marine waters may apply for and be granted a waiver from secondary treatment requirements for conventional pollutants if the POTW meets particular regulatory conditions. EPA can only issue this waiver with the concurrence of the State in which the POTW is located. Section 301(h) also established a deadline of December 31, 1982 for waiver applications.

At present, EPA has received most of the information it needs to make initial decisions on waiver approvals and is receiving no new waiver applications. However, the Agency is accepting further application information from POTWs in two cases: 1) where the POTW chooses to submit a revised application and 2) where a permittee seeks renewal of an expiring permit.

To be granted a waiver, POTWs must have demonstrated that they meet nine water quality criteria and that they have established monitoring programs. Two of these criteria were recently added under sections 303(c) and 303(d) of the 1987 Water Quality Act (WQA). First, waiver applicants serving populations of 50,000 or more must demonstrate that industrial sources discharging toxic pollutants are in compliance with applicable pretreatment requirements. Second, these same respondents must demonstrate that they each have a pretreatment program which, together with the POTW's treatment process, eliminates the same amount of pollutants as would be the case if the POTW had a secondary treatment process.

States are responsible for determining compliance with two of the nine criteria. Namely, they must verify that: 1) an applicable water quality standard exists for the pollutant for which a permit modification is requested and 2) that a POTW's discharge does not bring about additional requirements for other point or nonpoint sources.

In addition, under section 401(a)(1) of the CWA, States must certify that the permits EPA issues comply with all State laws.

Burden Statement: The average burden associated with the present collection is 461 hours per response. This total includes time for searching existing data sources, gathering the data

needed, and completing and reviewing the collection of information.

Respondents: Publicly owned treatment works, States.

Estimated No. of Respondents: 63.

Estimated Total Annual Burden on Respondents: 75,093 hours.

Frequency of Collection: Variable.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC, 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC, 20503.

Dated: September 30, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–24554 Filed 10–7–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4520–1]

Open Meeting of the EPA Border Environmental Plan Public Advisory Committee; Meeting Agenda

INTRODUCTION: The EPA Border Environmental Plan Public Advisory Committee (the "Advisory Committee") was established on March 28, 1992 pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to advise the EPA Administrator on matters concerning the Agency's involvement in the protection and enhancement of the environment within the U.S.-Mexico border area (the "Border Area"), an area extending 100 kilometers (62 miles) on either side of the U.S.-Mexico border. The Advisory Committee also makes recommendations to the EPA Administrator on the implementation of the Integrated Environmental Plan for the Mexican-U.S. Border Area (First Stage, 1992–1994) (the "Border Plan").

TIME, PLACE AND PURPOSE: The EPA Border Environmental Plan Public Advisory Committee will meet on Monday, November 9 and Tuesday, November 10, 1992 in El Paso, Texas. On Monday, November 9, the meeting will take place at the Hotel Westin Paso del Norte, 101 S. El Paso Street, El Paso, Texas 79901, and will run from 8:30 a.m. to 5 p.m., with additional discussion time until 8 p.m., if necessary. There will be a break for lunch between Noon and 2 p.m. On Tuesday, November 10, members of the Advisory Committee and interested members of the public will visit one or more U.S. "colonias" in the vicinity of El Paso, and will attend a briefing a the offices of the International Boundary and Water Commission (IBWC), located at 4171 N. Mesa, Suite 310, El Paso, Texas 79902, as set out in the agenda below. Activities will run from 9 a.m. to Noon.

The purpose of this meeting is to review the issues raised at the Santa Fe, New Mexico meeting of the Advisory Committee held in June 1992, and to determine appropriate follow-up activities.

AGENDA:

Monday, November 9, 1992

8:30–9 a.m.: Welcome; presentation of the agenda

9–10:30: Discussion of the administration of the Advisory Committee, including further discussion of and a new vote on the Steering Committee

10:30–Noon: Presentations on Border Plan related activities by EPA Regions 6 and 9; circulation of the minutes of the June 1992 meeting of the full Advisory Committee

Noon–2 p.m.: Lunch

2–4: General discussion

4–5: Summary of proceedings

5–8: Additional time for discussion (if needed)

Tuesday, November 10, 1992

9–10:30 a.m.: Visit to one or more U.S. "colonias" in the vicinity of El Paso

11–Noon: Briefing at the offices of the International Boundary and Water Commission (IBWC) on IBWC programs:

PUBLIC PARTICIPATION: The meeting will be open to the public. All persons desiring to attend are encouraged to inform Sylvia I. Correa, the Designated Federal Officer for the EPA Border Environmental Plan Public Advisory Committee, at the address or telefax numbers listed below, no later than 5 p.m. on October 28, 1992. At the November 9 session, seating for interested members of the public, which is limited, will be available on a first-come, first-served basis. There will be a sign-up sheet at the November 9 session for a limited number of interested members of the public to indicate their desire to participate in the site visit(s) and briefing in the morning of November 10, the details of which will be announced at the November 9 session. These individuals must supply their own transportation.

Public comments to the Advisory Committee can be made at any time through the submission of written statements. Written statements to be reviewed by Advisory Committee members prior to the November meeting must be received by Sylvia Correa, at the address or telefax numbers listed below, no later than 5 p.m. on October 28, 1992.

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Designated Federal Officer for the EPA Border Environmental Plan Public Advisory Committee, Office of International Activities, Mail Code A–106, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone: (202) 260–4890; telefax: (202) 260–8512 or (202) 260–4470.

Dated: October 2, 1992.

Sylvia I. Correa,

Designated Federal Officer for the EPA Border Environmental Plan, Public Advisory Committee, Office of International Activities, U.S. Environmental Protection Agency.

[FR Doc. 92–24512 Filed 10–7–92; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT SYSTEM INSURANCE CORPORATION

Statement of Policy on Assistance to Operating Insured System Banks

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Comment period extension.

SUMMARY: On September 8, 1992 (57 FR 40912) the Farm Credit System Insurance Corporation (Corporation) published, with a request for comments, a notice of its intention to adopt a policy statement setting forth the circumstances under which financial assistance to operating institutions will be considered, and the terms and conditions which would likely be imposed in conjunction with the granting of assistance. The comment period will expire on October 8, 1992. In order to allow affected organizations additional time to respond, the Board of Directors of the Corporation extends the comment period until November 16, 1992, and invites public comment on such terms and conditions of assistance to operating insured System banks.

DATES: The comment period is extended until November 16, 1992. Comments must be submitted on or before that date.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to G. Michael Dew, Director, Risk Management Division, Farm Credit System Insurance Corporation, Mclean, Virginia 22102–0626. Copies of all comments received will available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: G. Michael Dew, Director, Risk Management Division, Farm Credit System Insurance Corporation, P.O. Box 9626, McLean, VA 22102-0626, (703) 883-4385, TDD (703) 883-4455.

SUPPLEMENTARY INFORMATION: Section 5.61 of the Farm Credit Act of 1971 (the Act) provides the Farm Credit System Insurance Corporation (Corporation) with authority, in its sole discretion, to provide assistance to insured banks as that term is defined in § 5.61. Given the importance of the provisions of § 5.61, the Corporation extends the comment period until November 16, 1992, and invites public comment on the terms and conditions which would likely be imposed in conjunction with the granting of assistance to operating insured System banks.

Dated: February 9, 1992.

Curtis M. Anderson,

Secretary, Board of Directors, Farm Credit System Insurance Corporation.

Editorial Note: This document was received at the Office of the Federal Register on October 5, 1992.

[FR Doc. 92-24458 Filed 10-7-92; 8:45 am]

BILLING CODE 6710-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold En Banc Hearing Friday, October 9, 1992

October 2, 1992.

The Federal Communications Commission will hold an *en banc* hearing on Toll Fraud issues. The hearing is scheduled to begin at 9 a.m. on Friday, October 9, 1992, in room 856, at 1919 M Street, NW., Washington, DC, and will continue all day.

The hearing will be open to the public; however, seating is limited. Overflow seating will be available in rooms 315 and 535.

For more information contact Linda Dubroof, Common Carrier Bureau, at (202) 634-1800. The contact for media coverage is Steve Svab, Office of Public Affairs, at (202) 632-5050.

Issued: October 2, 1992.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-24389 Filed 10-7-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Reisen GmbH, et al. Issuance of Certification (Casualty); Phoenix

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Phoenix Reisen GmbH, Unicom Management Services (Cyprus) Limited and Maxim Gorkiy Shipping Company Limited, Kolnstrasse 80, 5300 Bonn 1, Germany.

Vesel: MAXIM GORKIY.

Date: October 2, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24488 Filed 10-7-92; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Phoenix Reisen GmbH, Kolnstrasse 80, 5300 Bonn 1, Germany.

Vessel: MAXIM GORKIY.

Dated: October 2, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24489 Filed 10-07-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

NAME: Board of Scientific Counselors, ATSDR.

TIMES AND DATES:

8:30 a.m.-5 p.m., November 5, 1992.

7 p.m.-9 p.m., November 5, 1992.

8:30 a.m.-3:45 p.m., November 6, 1992.

PLACE: The Westlin Peachtree Plaza Hotel, Confederate Room/Six Flags Suite, Peachtree at International Boulevard, NE., Atlanta, Georgia 30343.

STATUS: The entire meeting will be open to the public.

PURPOSE: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

AGENDA: The agenda will include:

- Emergency response and consultation activities: Overview, issues, and Agency plan.
- Does Reconstruction: Science issues and research plans.
- Minority Health Initiative update: Waste site demographics, health conditions, health risk communication, and minorities in environmental health.
- Great Lakes Applied Research Program: Meeting of research grantees and overview of study protocols.
- Applied Research Program of the Association of Minority Health Professions Schools: Overview of ATSDR-funded research.
- Public Health Assessments: Science issues and future directions.
- ATSDR Cancer Policy Framework: Update.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR, Mailstop E-28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639-0708.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 92-24447 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-70-M

Agency For Toxic Substances and Disease Registry

[ATSDR-59]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i)(3)) directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and republish each toxicological profile as necessary. This notice announces the availability of 10 updated drafts and 5 new draft toxicological profiles prepared by ATSDR for review and comment. The original versions of the updated profiles were released for comment on August 14, 1990.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before February 19, 1993. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles should be sent to the attention of Ms. Susie Tucker, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing. Please specify the profiled hazardous substance(s) you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR-59. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. All written comments and draft profiles will be available for public inspection at the ATSDR, Building 4, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Susie Tucker at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639-6300.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified the 275 hazardous substances which both Agencies determined pose the most significant potential threat to human health. The lists were published in the **Federal Register** on April 17, 1987, (52 FR 12866); October 20, 1988, (53 FR 41280); October 26, 1989, (54 FR 43615); and October 17, 1990, (55 FR 42067). CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.

Section 104(i)(3) of CERCLA (42 U.S.C. 9604(i)(3)) outlines the content of these profiles. Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a program of research designed to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles are expected to be available to the public on or about October 17, 1992.

Document	Hazardous substance	CAS number
1	Acetone	67-64-1
2	Carbon Tetrachloride	56-23-5
3	Chlordane	57-74-9
4	Chlorodibenzofurans	No CAS #
5	4,4'-DDE, DDD, DDT	50-29-3, 72-54-8, 72-55-9
6	1,2-Dichloroethane	107-06-2
7	1,1-Dichloroethene	75-34-4
8	Hexachlorobutadiene	87-68-3
9	Hexachlorocyclohexanes	58-89-9, 319-84-6, 319-85-7, 319-86-8
10	4,4'-Methylenebis(2-chloroaniline) (MBOCA)	101-14-4
11	Mercury	7439-97-6
12	Methoxychlor	72-43-5
13	Pentachlorophenol	87-86-5
14	Toluene	108-88-3
15	Zinc	7440-66-6

All profiles issued as "Drafts for Public Comment" represent the agency's best efforts to provide important toxicological information on priority hazardous substances in compliance with the substantive and procedural requirements of section 104(i)(3) of CERCLA, as amended. As in the past, we are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our constituency.

Dated: October 1, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-24442 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Savannah River Site Environmental Dose Reconstruction Project: Public Meetings

The National Center for Environmental Health (NCEH), Centers for Disease Control (CDC), announces the following meetings:

Name: Savannah River Site Environmental Dose Reconstruction Project.

Date: October 26, 1992; November 2, 1992; November 4, 1992.

Time: 7 p.m.–9 p.m.; 7 p.m.–9 p.m.; 7 p.m.–9 p.m.

Place: Town House Hotel, 1615 Gervais Street, Columbia, South Carolina 29201; Hilton Desoto, South Harbor View, Meeting Room, 15 East Liberty Street, Savannah, Georgia 31401; City Manager's Office, Meeting Room 101; 215 "The Alley", Aiken, South Carolina 29802.

Status: Open to the public for observation and comment, limited only by space available. The meeting rooms accommodate approximately 200 people.

Purpose: Under a Memorandum of Understanding (MOU) with the Department of Energy (DOE), the Department of Health and Human Services has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use.

An initial step in an analytic epidemiologic study for persons living offsite of a given DOE facility is the reconstruction of radiation doses due to releases from that facility. CDC is beginning such an environmental dose reconstruction for DOE's Savannah River Site near Aiken, South Carolina. A contractor has been selected to begin gathering the data necessary to perform the dose reconstruction and to provide for public involvement in all aspects of this project. The purpose of these public meetings is to introduce the contractor to the community, to outline the project for the public, and to solicit individual public comments and suggestions on all aspects of the dose reconstruction.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Paul Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway NE, (F-35), Atlanta, Georgia, 30341-3724, telephone 404/488-7040.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-24444 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-18-M

Tuberculosis Transmission in Health-Care Settings; Meeting

The Centers for Disease Control (CDC) announces an open meeting to review and assess the need to revise the current CDC guidelines for reducing the risk of tuberculosis transmission in health-care settings, "Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Settings, with Special Focus on HIV-Related Issues," Morbidity and Mortality Weekly Report (MMWR) 1990; 39 [No. RR-17]: 1-29.

Name: Issues in Preventing Tuberculosis Transmission in Health-Care Facilities.

Times and Dates: 8:30 a.m.–5 p.m., October 22, 1992; 8:30 a.m.–1 p.m., October 23, 1992.

Place: CDC, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

CONTACT FOR ADDITIONAL INFORMATION: Organizations and persons who wish to obtain background materials and an agenda for the meeting may contact the National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE, Mailstop C-20, Atlanta, Georgia 30333, Attention: Diane Holley, telephone (404) 639-0044, FAX (404) 639-3853.

NOTIFICATION OF ATTENDANCE: If you or other representatives of your organization plan to attend the meeting, please provide name(s), organization, address, and telephone and FAX numbers to the contact shown above by October 16, 1992. There is no registration fee.

SUPPLEMENTARY INFORMATION:

A. Background

In 1990, CDC published "guidelines for Preventing the Transmission of Tuberculosis in Health-Care Settings, with Special focus on HIV-Related Issues," (MMWR 1990; 39 [No. RR-17]: 1-29). The 1990 guidelines address a variety of issues, including identification of persons with potentially infectious tuberculosis; isolation precautions for tuberculosis patients; engineering controls, such as ventilation and ultraviolet irradiation; health-care worker tuberculosis screening; and personal respiratory protection.

Recently, the National Institute for Occupational Safety and Health (NIOSH), CDC, prepared and submitted to the Occupational Safety and Health Administration a risk assessment regarding the use of personal respiratory protection in preventing tuberculosis transmission in health-care facilities ("NIOSH Recommended Guidelines for Personal Respiratory Protection of Workers in Health-Care Facilities Potentially Exposed to Tuberculosis" [September 14, 1992]).

B. Meeting

CDC will hold an open meeting on October 22-23, 1992, to review and assess the need to revise the 1990 CDC guidelines for reducing the risk of tuberculosis transmission in health-care settings. The meeting will bring together experts in tuberculosis prevention and control; nosocomial infection prevention; occupational safety and health and biosafety; as well as representatives of labor, medical, and hospital administration organizations; and other interested persons or organizations. The meeting will cover a range of issues related to tuberculosis infection control, including patient management; tuberculosis isolation precautions; engineering controls, such as ventilation and ultraviolet irradiation; health-care worker tuberculosis screening; and personal respiratory protection, including discussion of the September 14, 1992, NIOSH guidelines. Information from this meeting will be considered in assessing the need to revise the 1990 CDC guidelines.

C. Subsequent Comment Period

Written comments containing research findings, relevant data, or responses to the information presented during this open meeting will be considered by CDC if received on or before November 27, 1992. Comments should be submitted in writing to Ms. Holley at the address shown above.

D. Transcript

The proceedings of this meeting will be transcribed. Any interested person may, consistent with the orderly conduct of the meeting, record or otherwise transcribe the meeting.

Dated: October 2, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-24448 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting:

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9:30 a.m.-4 p.m., October 29, 1992.

Place: Room 337A-339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will hold discussions around potential future subcommittee activities including the collection and analysis of institutional and person-oriented longitudinal data on children and youth with mental disorders, and recent developments in the area of disability statistics.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436-7050.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 92-24445 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Medical Classification Systems; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting (working session):

Name: NCVHS Subcommittee on Medical Classification Systems.

Time and Date: 9 a.m.-12 noon, November 4, 1992.

Place: Room 303A-305A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will discuss the benefits of a single procedure classification system and the subcommittee's work plan for fiscal year 1993.

Contact Person For More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidentail Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-24446 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92N-0378; DESI 10520]

Levo-Dromoran Injection and Tablets; Drugs for Human Use; Drug Efficacy Study Implementation; Final Evaluation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that Levo-Dromoran (levorphanol tartrate) injection and tablets are effective for the management of pain or as a premedicant where an opioid analgesic is appropriate. FDA further announces the conditions for the approval and marketing of the drug for this use.

DATES: Revised labeling in accordance with this notice shall be put into use by December 7, 1992. Revised labeling and supplements are due on or before December 7, 1992.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 10520, and directed to the attention of the appropriate office named below.

Revised labeling and supplements to full new drug applications (NDA's) (identify with NDA number): Pilot Drug Evaluation Staff (HFD-7), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications and supplements thereto (identify as such): Office of Generic Drugs (HFD-600), Center for Drug Evaluation and Research, Food and Drug Administration, Metropark North #2, 5600 Fishers Lane, Rockville, MD 20857.

Requests for the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION:

Background

The following NDA's are the subject of this notice:

NDA 8-719 for Levo-Dromoran Injection, containing 2 milligrams per milliliter (mg/mL) levorphanol tartrate; held by Roche Pharmaceuticals (Roche), Division of Hoffmann-LaRoche, Inc., Nutley, NJ 07110.

NDA 8-720 for Levo-Dromoran Tablets, containing 2 mg levorphanol tartrate; held by Roche.

In a notice published in the **Federal Register** of July 9, 1966 (31 FR 9426), all holders of new drug applications that became effective before October 10, 1962, on the basis of a showing of safety, were requested to submit to FDA reports containing the best data available in support of the effectiveness of their products for the claimed indications. Roche, the holder of NDA's 8-719 and 8-720, did not submit data on Levo-Dromoran. Consequently, Levo-Dromoran was not included in the Drug Efficacy Study Implementation (DESI) review conducted by the National Academy of Sciences-National Research Council (NAS-NRC).

In a notice published in the **Federal Register** of November 19, 1975 (40 FR 53609), FDA invited firms that were not included in the NAS-NRC review to supplement their NDA's with data and information concerning effectiveness. Pursuant to this notice, which listed NDA's 8-719 and 8-720, Roche provided efficacy supplements in support of the use of levorphanol tartrate for the management of pain or as a premedicant. FDA has evaluated these data and determined that they provide substantial evidence of effectiveness for those indications.

Levorphanol tartrate is regarded as a new drug under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), and an approved application under section 505 of the act (21 U.S.C. 355) is required for marketing.

In addition to the product specifically named above, this notice applies to any product that is not the subject of an approved application and is identical to the product named above. It may also be

applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address above).

A. Effectiveness Classification

FDA has reviewed all available evidence and concludes that levorphanol tartrate injection and tablets are effective for the indications listed in the labeling conditions below.

B. Conditions for Approval and Marketing

FDA is prepared to approve abbreviated new drug applications that meet the relevant requirements of section 505(j) of the act (21 U.S.C. 355(j)), as well as the conditions described herein. The listed drug under section 505(j)(6) of the act for levorphanol tartrate injection is Roche's Levo-Dromoran Injection 2 mg/mL. The listed drug for levorphanol tartrate tablets is Roche's Levo-Dromoran Tablets 2 mg.

The agency is also prepared to approve supplements to previously approved NDA's under conditions described herein.

1. *Form of drug.* The injectable drug product contains 2 mg/mL of levorphanol tartrate and is suitable for injection, and the oral drug product contains 2 mg of levorphanol tartrate and is suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows: Levorphanol tartrate is indicated for the management of pain or as a premedicant where an opioid analgesic is appropriate.

3. *Marketing status.* a. *Approved products.* Marketing of the drug products that are now the subject of an approved or effective NDA may be continued provided that, on or before December 7, 1992, the holder of the application has submitted (i) revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted (this submission should be identified as "FPL for approved supplements 8719/S008 and 8720/S006"), and (ii) a supplement to provide updating information with respect to the composition, manufacture, and specifications of the drug substance and the drug product as described in 21 CFR 314.50(d)(1)(i) and (d)(1)(ii). Revised labeling in accordance with the labeling conditions described above shall be put into use on or before December 7, 1992. Approval of the revised labeling is not required before it is used.

b. *Other products.* Approval of an abbreviated new drug application must be obtained in accordance with section 505(j) of the act before marketing such products. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505 (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.70).

Dated: September 18, 1992.

D. B. Burlington,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 92-24450 Filed 10-7-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting; Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on October 27, 1992, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to the public from 8:15 a.m. to 10 a.m. on October 27, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10 a.m. until adjournment on October 27. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-5717, will provide summary of the meeting and a roster of the committee members upon request.

Dr. Mark Rohrbaugh, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, room 4C22, Bethesda, Maryland 20892, telephone 301-496-8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health.)

Dated: September 24, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-24433 Filed 10-7-92; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections for October through November 1992, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public for approximately one-half hour at the beginning of the first session of the first day of the meeting during the discussion of administrative details relating to study section business. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National

Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, whose telephone number is provided. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the scientific review administrator to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study section	October–November 1992 meetings	Time	Location
AIDS & Related Research 1, Dr. Sami Mayyasi, Tel. 301–496–0012.	November 9–10	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
AIDS & Related Research 2, Dr. Gilbert Meier, Tel. 301–496–5191.	October 30	8:00	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3, Dr. Marcel Pons, Tel. 301–496–7286.	October 26–28	8:00	Ramada Inn, Bethesda, MD.
AIDS & Related Research 4, Dr. Mohindar Poonian, Tel. 301–496–4666.	November 9–10	8:30	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 5, Dr. Mohindar Poonian, Tel. 301–496–4666.	November 6	8:30	Holiday Inn, Bethesda, MD.
AIDS & Related Research 6, Dr. Gilbert Meier, Tel. 301–496–5191.	November 6	8:00	Ramada Inn, Bethesda, MD.
AIDS & Related Research 7, Dr. Gilbert Meier, Tel. 301–496–5191.	November 5	8:00	Ramada Inn, Bethesda, MD.
Behavioral and Neurosciences—1, Dr. Luigi Giacometti, Tel. 301–496–5352.	November 16–18	9:00	St. James Hotel, Washington, DC.
Behavioral and Neurosciences—2, Dr. Luigi Giacometti, Tel. 301–496–5352.	November 24	8:30	St. James Hotel, Washington, DC.
Biological Sciences—1, Dr. James R. King, Tel. 301–496–1067.	November 18–20	8:30	St. James Hotel, Washington, DC.
Biological Sciences—2, Dr. Syed Amir, Tel. 301–402–2693	November 12–14	8:30	Holiday Inn, Georgetown, DC.
Biological Sciences—3, Dr. Donna Dean, Tel. 301–402–2690	November 23–24	8:30	St. James Hotel, Washington, DC.
Biomedical Sciences, Dr. Charles Baker, Tel. 301–496–7150	November 16–18	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences—1, Mrs. Jo Pelham, Tel. 301–496–7477	November 12–13	8:30	Holiday Inn, Chevy Chase, MD.
Clinical Sciences—2, Mrs. Jo Pelham, Tel. 301–496–7477	November 19–20	8:00	Clarion Hotel, New Orleans, LA.
Immunology, Virology & Pathology, Dr. Lynwood Jones, Tel. 301–496–7510.	November 18–20	8:30	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects, Dr. Donna Dean, Tel. 301–496–7600.	November 4–6	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Physiological Sciences, Dr. Nicholas Mazarella, Tel. 301–496–1069.	November 19–20	8:30	Holiday Inn, Crowne Plaza, Rockville, MD.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 24, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–24434 Filed 10–7–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–92–1005; FR–3199–D–01]

Amendment to the Consolidated Delegations of Authority for Housing for the Congregate Housing Services Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of amendment to the Consolidated Delegations of Authority for Housing.

SUMMARY: This Notice amends the Consolidated Delegations of Authority for Housing published in the **Federal Register** on May 22, 1989, at 54 FR 22033, to authorize the Assistant Secretary for Housing-Federal Housing Commissioner to administer the Congregate Housing Services Program ("CHSP") pursuant to section 802 of the National Affordable Housing Act ("NAHA") (42 U.S.C. 8011), in addition to title IV of the Housing and Community Development Act of 1978 (42 U.S.C. 8001 *et seq.*).

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Jerold S. Nachison, Elderly and Handicapped People Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 7th Street, SW., room 6122, Washington, DC 20410. Telephone (202) 708–3291. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: By Consolidated Delegations of Authority published in the **Federal Register** on May 22, 1989, at 54 FR 22033, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Housing-Federal Housing Commissioner the power and authority of the Secretary to administer the Congregate Housing Services Program ("CHSP") pursuant to title IV of the Housing and Community Development Amendments of 1978 (42 U.S.C. 8001 *et seq.*)

Section 802 of the National Affordable Housing Act ("NAHA") (42 U.S.C. 8011) established a revised Congregate Housing Services Program. The Dire Emergency Supplemental Appropriations Act of 1991 (Pub. L. 102–27) provides that all funds appropriated under the HUD Appropriations Act of 1991 (Pub. L. 101–507) and all unobligated balances of prior year appropriations available under title IV of the Housing and Community Development Amendments of 1978, shall now be available only under section 802 of NAHA. In order to assure that the Assistant Secretary for Housing-Federal Housing Commissioner has adequate authority to act under past and present law, therefore, the Secretary is amending the Consolidated Delegations of Authority for housing to include authority for the Assistant Secretary for Housing/Federal Housing Commissioner to administer the CHSP under section 802 of the NAHA, in addition to title IV of the Housing and Community Development Act of 1978, as follows:

Item 16 under Section A. Multifamily Housing, of the Consolidated Delegations of Authority dated May 22, 1989 at 54 FR 22033 is hereby amended to read as follows: "Title IV of the

Housing and Community Development Amendments of 1978 (42 U.S.C. § 8001, *et seq.*) and section 802 of the National Affordable Housing Act (42 U.S.C. 8011)."

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 30, 1992.

Jack Kemp,

Secretary of Housing and Urban Development.

[FR Doc. 92-24513 Filed 10-7-92; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-92-1000; FR-3343-D-01]

Delegation of Authority Under the Fair Housing Act

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: By this notice, the Secretary of Housing and Urban Development is delegating to the General Counsel the authority to reopen for purposes of reconsideration determinations of no reasonable cause made by the Assistant Secretary for Fair Housing and Equal Opportunity or determinations of no reasonable cause made by the Directors of the HUD Regional offices for Fair Housing and Equal Opportunity.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Harry L. Carey, Assistant General Counsel, Fair Housing Division, Office of the General Counsel, Department of Housing and Urban Development, Room 9238, 451 Seventh Street, SW., Washington, DC 20410-2000, telephone: (202) 708-0570. (This is not a toll-free number.) A telecommunications device for hearing impaired persons (TDD) is available at 1-800-543-8294.

SUPPLEMENTARY INFORMATION: Part 103 of title 24 of the Code of Federal Regulations contains HUD's regulations governing the processing of complaints by members of the public under the Fair Housing Act. Under 24 CFR 103.400, in processing complaints under the Act, the Secretary of Housing and Urban Development has delegated to the General Counsel the authority to make determinations of whether or not reasonable cause exists to believe that discrimination has occurred and to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to make determinations that no reasonable cause exists to believe that discrimination has occurred. In a redelegation of authority published in the **Federal Register** on January 3, 1992, at 57 FR 296, the Assistant Secretary for Fair Housing and Equal Opportunity redelegated his authority under 24 CFR 103.400 to the Directors of the HUD Regional Offices for Fair Housing and Equal Opportunity.

In this notice, the Secretary of Housing and Urban Development is delegating to the General Counsel the authority to reopen for purposes of reconsideration determinations of no reasonable cause made by the Assistant Secretary for Fair Housing and Equal Opportunity or determinations of no reasonable cause made by the Directors of the HUD Regional Offices for Fair Housing and Equal Opportunity. After such reconsideration, the General Counsel may affirm a determination that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, issue an independent determination that no reasonable cause exists, or issue a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.

If, pursuant to this delegation, the General Counsel reopens for purposes of reconsideration a no reasonable cause determination, the General Counsel or his or her designee shall promptly notify all parties to the complaint.

In a notice published in a recent issue of the **Federal Register** (57 FR 45066, September 30, 1992), the General Counsel amended a redelegation of authority published in the **Federal Register** on January 25, 1991, at 56 FR 2931, which redelegated authority to Regional Counsel to make determinations of no reasonable cause in instances specified therein, to clarify that the General Counsel is authorized to reopen for purposes of reconsideration determinations of no reasonable cause made by Regional Counsel, as well as his or her own such determinations. In another notice published in a recent issue of the **Federal Register** (57 FR 45066, September 30, 1992), the Assistant Secretary for Fair Housing and Equal Opportunity amended a redelegation of authority published on January 3, 1992, at 57 FR 296, which redelegated authority to the Directors of the HUD Regional offices for Fair Housing and Equal Opportunity to make determinations of no reasonable cause. The amendment clarifies that the Assistant Secretary for Fair Housing and Equal Opportunity is authorized to reopen for purposes of reconsideration determinations of no reasonable cause made by the Directors of the HUD Regional Offices for Fair Housing and Equal Opportunity, as well as his or her own such determinations.

Accordingly, the Secretary of Housing and Urban Development delegates to the General Counsel the following authority:

The General Counsel is authorized to reopen for purposes of reconsideration determinations made by the Assistant Secretary for Fair Housing and Equal Opportunity or made by the Directors of HUD Regional offices for Fair Housing and Equal Opportunity that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The General Counsel may, after reconsideration, affirm a determination that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, issue an independent determination that no reasonable cause exists, or issue a determination that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. If the General Counsel reopens for purposes of reconsideration such a no reasonable cause determination, the General Counsel or his or her designee shall promptly notify all parties to the complaint.

Authority: 42 U.S.C. 3600-3619; 42 U.S.C. 3535(d).

Dated: September 30, 1992.

Alfred A. DelliBovi,

Deputy Secretary of Housing and Urban Development.

[FR Doc. 92-24395 Filed 10-7-92; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-92-3518; FR-3335-N-01]

"Step-Up": An Employment and Training Program for Public and Indian Housing Residents and Other Low-Income People

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of new program.

SUMMARY: The Department is announcing a new employment and training program, called Step-Up, for public and Indian housing residents and other low-income people. The program is effective immediately; any Public Housing Authorities and Indian Housing Agencies (collectively, HAs) that are interested in sponsoring a Step-Up program should contact the HUD Office of Labor Relations at the address or telephone number below. The program utilizes flexibility in Federal prevailing wage and apprenticeship regulations to provide employment and training opportunities and fundamental support services to HA residents and other low-

income persons, and can provide contractors a vehicle for demonstrating a good faith effort toward meeting Federal affirmative employment and training obligations. Developed with the cooperation of the Department of Labor and the National Association of Housing and Redevelopment Officials, the program can provide many public and Indian housing residents, and other low-income persons, first-time access to maintenance and construction job opportunities, particularly jobs on Davis-Bacon covered construction work. Apprentices spend up to one year in Step-up status, after which they must be placed in appropriate further training or career opportunity positions. (This notice is informational in nature and does not announce funding availability; however, some costs may be eligible expenditures under other existing programs of the Department.)

FOR FURTHER INFORMATION CONTACT: Richard S. Allen, Deputy Assistant to the Secretary for Labor Relations, Department of Housing and Urban Development, 451 7th Street, SW., room 7118, Washington, DC 20410; telephone (202) 708–0370 or (202) 708–9300 (TDD) (these numbers are not toll-free), or 1–800–877–8339 (TDD).

SUPPLEMENTARY INFORMATION:

Background

Step-Up is a program to provide employment, job training, and career opportunities to residents of Public Housing Agency and Indian Housing Authority (collectively, HAs) developments, and other local low-income persons. In addition to on-the-job work experience, Step-Up apprentices will receive support services that may include daycare; transportation; career, educational, financial, and other counseling; and classroom instruction to supplement work experience and develop basic learning and personal skills (e.g., the competencies and foundation skills identified by the Department of Labor Secretary's Commission on Achieving Necessary Skills (SCANS), General Education Diploma (GED) training, and literacy and English language skills). The program can also provide a framework for focusing existing social and other support services toward empowering low-income persons through employment and training. The program is unique because it facilitates the exposure of apprentices to a variety of trades, unlike traditional apprenticeship programs that concentrate on a single trade.

The program will establish a temporary (one-year maximum) first step in a longer-term training and employment continuum. The Department's Office of Labor Relations (HUD/OLR) and the National Association of Housing and Redevelopment Officials (NAHRO) will provide or coordinate technical assistance and oversight for program sponsors and participants. Local programs must develop standards that are based on the National Apprenticeship Standards (Guidelines) that were approved by the Department of Labor's Bureau of Apprenticeship and Training (BAT) for the Step-Up program. BAT, HUD/OLR, and recognized State apprenticeship agencies will assist local sponsors in developing local program standards that meet the Guidelines, and will provide registration of resultant programs and apprentices with the local BAT or State apprenticeship agency, as appropriate.

Program Requirements

(1) *Program Eligibility.* Each proposal to establish a Step-Up program will be reviewed for joint approval by the Headquarters' offices of HUD/OLR and BAT. To be approved, a program must:

(a) Provide for consultation with resident organizations concerning program implementation;

(b) Provide resident preference in recruiting and screening for apprentices;

(c) Assign to Step-Up apprentices the same tasks normally performed by regular apprentices; and

(d) Stipulate that Helpers, as that term is defined by 29 CFR 5.2(n)(4), may not be employed at the same job site as Step-Up apprentices.

(2) *Wages.* The wage rates and ratios of Step-Up apprentices to other workers will be determined and clearly identified in the locally registered apprenticeship standards. These standards may require alternate wage rates if work assignments for Step-Up apprentices will vary between those governed by Davis-Bacon Act (49 Stat. 1011) wage requirements and HUD-determined prevailing wage rates. In most cases the wage rates will be less than the beginning rate of regular-track apprentices; however, the rates may not be less than the applicable Federal or State minimum wage rate.

Apprentice wage rates established to conform to Davis-Bacon Act prevailing wage requirements must provide a progressively increasing wage rate expressed as a percentage of the journeyworker's rate. If the local Step-Up program standards are silent regarding the level of benefits to be paid, Step-Up apprentices on Davis-Bacon projects must be paid the full prevailing fringe benefit, if any, contained in the applicable wage determination.

Wage rates for work assignments that are subject to the payment of HUD-determined prevailing wage rates must be determined for the local program in consultation with HUD.

(3) *Worksites.* Apprentices can be employed directly by the HA (force account), or they may be referred to contractors working on any private or public worksite in the community, including Davis-Bacon projects. The number of Step-Up apprentices allowed at a given worksite may not exceed the ratio approved for the local Step-Up program.

Sponsors

HAs are eligible to sponsor Step-Up programs themselves or may cosponsor programs with resident management corporations and other contractors. The sponsor is responsible for organizing all of the required components to the local program. Those components will include consultation with resident organizations, recruiting apprentices, providing support services, arranging work assignments for apprentices, and monitoring the progress of each apprentice. In addition, each sponsor is encouraged to establish cooperative arrangements with construction and maintenance contractors and other employers, and with local maintenance and building and construction trades unions, and to pursue and manage career opportunities for apprentices aggressively.

The sponsor is responsible for identifying potential worksites and promoting the use of Step-Up apprentices by public and private contractors and other employers. Every effort should be made to provide apprentices with diverse and meaningful job assignments, in order to maximize the variety of work experience provided.

The sponsor is also responsible for monitoring the progress of each apprentice, including the apprentice's progress in on- and off-the-job training; counseling; the development of good work and learning habits by the apprentice; and ensuring that work performed by the apprentice meets acceptable work standards. Supervisors and trainers should be encouraged to keep the local sponsor informed of the progress and performance of the apprentices in all facets of their training.

Apprentices

(1) *Recruiting and Screening.* Sponsors can take advantage of a number of existing resources to recruit, screen, and refer apprentice candidates.

Examples include resident councils and resident management corporations, local school districts, employment offices, and Private Industry Councils (as established pursuant to section 102(a) of the Job Training Partnership Act, 29 U.S.C. 1512(a)).

A preference factor for residents must be built in to the sponsor's selection process. Applicants for apprenticeship are required to possess a high school diploma or equivalency; be actively pursuing a GED; or agree to enroll in a program leading to a GED.

(2) *Support Services.* The sponsor is responsible for identifying what support services are needed, considering local conditions and the needs of individual Step-Up apprentices. Sponsors shall seek to arrange for the provision of these services to the extent available resources allow. Examples of support services that may be needed include daycare; transportation; career, educational, financial and other counseling; classroom training to supplement on-the-job experience; literacy and language skills (e.g., English as a second language); and work clothes, tools, or other equipment that might be needed for various work assignments.

Existing agencies and organizations are normally available in most localities to coordinate support services and referrals. For example, daycare may be arranged on-site through a resident management corporation; classroom training could be provided by local schools or community colleges; and counseling could be made available through social service and human resource agencies.

(3) *Placement.* Placement is the final step of the Step-Up year for each apprentice. Successful placement can include registration in a traditional construction, maintenance, or any other apprenticeship program; registration in similar training programs; enrollment in vocational education or professional studies (e.g., community college, higher education); and employment in a skills-oriented position. Apprentices may be placed at any time during their one-year term, and must be placed at the end of one year. While the sponsor is ultimately responsible for the successful placement of each apprentice, the apprentice is expected to participate in identifying and pursuing appropriate placement opportunities.

Other Federal Requirements and Programs

(1) *Requirements.* Section 3 of the Housing and Urban Development Act of 1968 provides in part that in covered projects the Department shall require, to the greatest extent feasible, that opportunities for training and employment be given to lower income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) in which the project is located. Furthermore, certain federally assisted contracts are also subject to the nondiscrimination and affirmative employment requirements of Executive Order 11246. The Step-Up program may provide a compliance vehicle for State and local agencies and contractors to meet these Federal affirmative employment and training obligations through the employment of Step-Up apprentices.

(2) *Linkages to Other Federal Programs.* (a) *Family Self-Sufficiency.* Step-Up also has strong linkages to Family Self-Sufficiency (FSS), an initiative enacted in section 554 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) to help residents of the Department's public and assisted housing achieve economic independence. Like Step-Up, FSS promotes the coordination of existing public and private resources to provide employment; training; and essential support services, including child care, transportation, education, and counseling. Beginning in Fiscal Year 1993, HAs that receive new allocations of public or Indian housing development funds, or Section 8 rental certificates or rental vouchers, must operate FSS programs of a size (i.e., for the same number of families) equal to the cumulative number of new units reserved. Step-Up programs operated in conjunction with FSS can greatly enhance the employment and training opportunities available to participating families.

(b) *non-HUD Programs.* A number of programs administered through other Federal agencies, including the Departments of Labor and Health and Human Services, also provide funding and technical resources for employment and training programs that seek to combine basic skills training, occupational skills training, and supportive services. These programs include the Job Opportunities and Basic Skills Training Program and similar programs authorized under the Job Training Partnership Act (29 U.S.C. 1501–1791g).

Additionally, the Department of Labor published a notice (57 FR 41016, September 8, 1992) announcing a grants competition for the Fiscal Year 1992 demonstration program under the Nontraditional Employment for Women Act (Pub. L. 102–235, approved December 12, 1991) (NEW Act). The NEW Act establishes a four-year, $6 million demonstration program to assist States in the development of exemplary programs that train and place women in nontraditional occupations, with a special focus on growth occupations with increased wage potential. This demonstration program is an outgrowth of several key initiatives undertaken by the Department of Labor, including the Secretary's Initiative to Improve Opportunities for Women in the Skilled Trades (WIST), which seeks to improve opportunities for women and minorities in the skilled trades, especially apprenticeships. Step-Up is an excellent vehicle to implement the objectives of WIST and the NEW Act, because Step-Up provides access for public housing residents (many of whom are female heads of households) to apprenticeship in construction and maintenance (skilled) occupations.

Person interested in learning more about these non-HUD programs should contact the sponsoring Federal agency directly.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(1) of the HUD regulations, the policies and procedures contained in this notice relate only to prevailing wage and cost determinations that do not constitute a development decision that affects the physical condition of specific project areas or building sites, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The notice is limited to announcing a new voluntary apprenticeship employment and training program.

Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and

general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from publication of this notice, as those policies and programs relate to family concerns.

Authority: 42 U.S.C. 1437j(a); 42 U.S.C. 3535(d).

Dated: October 2, 1992.

Joseph A. Scudero,

Assistant to the Secretary for Labor Relations.

[FR Doc. 92-24392 Filed 10-7-92; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. D-92-1006; FR-3351-D-01]

Amendment to the Redelegation of Authority for the Congregate Housing Services Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of amendment to the redelegation of authority.

SUMMARY: This Notice amends the Redelegation of Authority published in the **Federal Register** on November 29, 1990 at 55 FR 49579, to authorize the Deputy Assistant Secretary for Multifamily Housing Programs to approve the reservation of funds to continue existing Congregate Housing Services Program ("CHSP") grants for the CHSP funded under section 802 of the National Affordable Housing Act ("NAHA") (42 U.S.C. 8011), in addition to title IV of the Housing and Community Development Act of 1978 (42 U.S.C. 8001 *et seq.*). It also rescinds the authority of the Director, Office of Elderly and Assisted Housing to approve existing CHSP grantees.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Jerold S. Nachison, Elderly and Handicapped People Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 6122, Washington, DC 20410. Telephone (202)-708-3291. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: By delegation of authority published in the **Federal Register** on November 29, 1990 at 55 FR 49579, the Assistant Secretary for Housing-Federal Housing Commissioner redelegated to the Deputy Assistant Secretary for Multifamily Housing Programs and the Director, Office of Elderly and Assisted Housing, the power and authority of the Assistant Secretary for Housing-Federal Housing Commissioner to approve the reservation of funds for extension of Congregate Housing Services Program ("CHSP") grants funded under title IV of the Housing and Community Development Amendments of 1978 (42 U.S.C. 8001 *et seq.*)

Section 802 of the National Affordable Housing Act ("NAHA") (42 U.S.C. 8011) established a revised CHSP. The Dire Emergency Supplemental Appropriations Act of 1991 (Pub. L. 102-27) provides that all funds appropriated under the HUD Appropriations Act of 1991 (Pub. L. 101-507) and all unobligated balances of prior year appropriations available under title IV of the Housing and Community Development Amendments of 1978, shall now be available only under section 802 of NAHA. In order to assure that the Deputy Assistant Secretary for Multifamily Housing Programs has adequate authority to act under past and present law, therefore, the Assistant Secretary for Housing-Federal Housing Commissioner is amending the existing redelegation to the Deputy Assistant Secretary for Multifamily Housing Programs to grant the authority to approve the reservation of funds to continue existing CHSP grants funded under section 802 of the National Affordable Housing Act ("NAHA") (42 U.S.C. 8011), as well as title IV of the Housing and Community Development Act of 1978 (42 U.S.C. 8001 *et seq.*)

The Assistant Secretary for Housing-Federal Housing Commission is also rescinding the authority of the Director, Office of Elderly and Assisted Housing to approve CHSP grantees.

In order to effectuate these changes, the Redelegation of Authority dated November 29, 1990, at 55 FR 49579, is hereby amended to read as follows:

The Assistant Secretary for Housing Commissioner redelegates to the Deputy Assistant Secretary for Multifamily Housing Programs the authority to renew or extend any existing Congregate Housing Services Program ("CHSP") grant funded under the National Affordable Housing Act (42 U.S.C. 8011) ("NAHA") or under Title IV of the Housing and Community Development Act of 1978 (42 U.S.C. § 8001 *et seq.*), after the expiration of the original multi-year grant.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 30, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92-24518 Filed 10-7-92; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. D-92-1004; FR-3309-D-01]

Redelegation of Authority for the Component of the Home Investment Partnerships (HOME) Program for Indian Tribes

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates to all Regional Administrators the power and authority of the Assistant Secretary for Public and Indian Housing and the General Deputy Assistant Secretary for Public and Indian Housing with respect to the HOME Investment Partnership (HOME) Program for Indian tribes, which was delegated by the Secretary of Housing and Urban Development in the **Federal Register** on November 4, 1991, at 56 FR 56417.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410, telephone (202) 708-1015, TDD (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice redelegates all the power and authority of the Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing to Regional Administrators for the component of the HOME Program involving Indian tribes. This power and authority was delegated by the Secretary of Housing and Urban Development to the assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing in the **Federal Register** on November 4, 1991, at 56 FR 56417. The authority redelegated may not be redelegated further to other employees of the Department of Housing and Urban Development. This redelegation of authority does not include the power and authority to administer the

remainder of the HOME Program involving states and units of general local government, which was the subject of a delegation of authority published in the **Federal Register** on November 4, 1991, at 56 FR 56416, and two redelegations of authority published in the **Federal Register** on June 4, 1992, at 57 FR 23593.

The HOME Program is a new program authorized by the HOME Investment partnerships Act (Pub. L. 101–625, title II, 104 Stat. 4079, 4094–4128 (November 28, 1990), codified at 42 U.S.C 12721–12839. In general, under the HOME Program, funds are allocated by formula among eligible state and local governments that qualify as participating jurisdictions to develop affordable housing for low-income and very low-income families. HOME funds are also made available, on a competitive basis, to Indian tribes to develop affordable housing for low-income and very low-income families, HOME funds are also authorized for technical assistance.

The Assistant Secretary and General Deputy Assistant Secretary for Public and Indian Housing hereby redelegate the following power and authority:

Section A. Authority Redelegated

The Assistant Secretary and General Deputy Assistant Secretary for Public and Indian Housing redelegate to Regional Administrator all power and authority with respect to the HOME Investment Partnerships (HOME) Program for a Indian tribes (42 U.S.C. 12721–12939).

Section B. Authority Excepted

The authority redelegated under Section A does not include the power to sue and be sued or the power to issue or waive rules and regulations.

Section C. No Further Redelegation

The Regional Administrators may not redelegate to employees of the Department any of the power and authority delegated under this redelegation.

Authority: HOME improvement partnerships Act (42 U.S.C. 12721–12839); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 17, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–24894 Filed 10–7–92; 8:45am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–070–0–4410–13–241A]

Grand Junction Advisory Council; Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice meeting.

SUMMARY: The Grand Junction District Advisory Council will meet on Tuesday, November 10, 1992. The meeting will convene at 9 a.m. in the conference room at the Bureau of Land Management Office, 2815 H Road, Grand Junction, Colorado.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include (1) introduction, (2) opening remarks by District Manager, (3) Election of Officers (Chair and Vice-chair), (4) Year long scheduling of DAC meetings, (5) Board recommendation on Hawxhurst Land Exchange—Cathie Zarlingo, (6) Follow-up on Long Term Visitors—Mike Mottice, (7) Summary of the Federal Land Exchange Facilitation Act and changes from current procedures—Rich Arcand, (8) Briefing on the Ruby Canyon management plan process—Neil Bradford, (9) Any new issue updates for board members—Area Managers, and (10) Public Comment Period. Following the Public Comment Period, the Council will move the meeting to Rabbit Valley for lunch and tour.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 and 11:30 a.m. to file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado, 81506 by August 15, 1992. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Council will be available for public inspection in the District Office thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, District Manager, Grand Junction District Office, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506, phone (303) 244–3000.

Tim Hartzell,

District Manager.

[FR Doc. 92–24485 Filed 10–7–92; 8:45 am]

BILLING CODE 4310–84–M

[MT–930–4210–04; MTM 80295]

Conveyance of Certain Lands in Beaverhead County, Montana, and Order Providing for Opening of Public Land in Beaverhead County; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. The land that was acquired in the exchange provides access to a large block of public land adjacent to the Lima Reservoir, additional wetlands, wildlife habitat, and increased opportunity for riparian habitat improvement projects. The exchange also allows for increased management efficiency of public land in the area. No minerals were exchanged by either party. The public interest was well served through completion of this exchange.

EFFECTIVE DATE: November 16, 1992.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION: 1. Notice is here given that pursuant to section 206 of FLPMA the following described lands were transferred to Evan V. Huntsman, Bill G. Huntsman, and Evon W. Huntsman:

Principal Meridian, Montana

T. 14 S., R. 6 W.,
Sec. 7, lots 3 and 4, E½SW¼;
Sec. 17, NE¼NW¼;
Sec. 18, lots 1–4, inclusive, SE¼SW¼, W½SE¼;
Sec. 19, lots 1–4, inclusive, E½W½, S½S½;
Sec. 20, S½SW¼, SW¼SE¼;
Sec. 21, N½N½, SE¼NE¼;
Sec. 27, N½, SW¼;
Sec. 28, E½E½, NW¼NE¼, NW¼;
Sec. 29, N½.
T. 14 S., R. 7 W.,
Sec. 1, N½SW¼;
Sec. 12, SE¼.
Total acreage conveyed: 2,609.84 acres.

2. In exchange for the above selected land, the United States acquired the following described surface estate from Evan Huntsman, Senior, Florence M. Huntsman, and Evan V. Huntsman:

Principal Meridian, Montana

T. 13 S., R. 5 W.,
Sec. 18, SE¼SW¼, SW¼SE¼;
Sec. 19, W½E½, E½NW¼, NE¼SW¼.
T. 14 S., R. 6 W.,
Sec. 24, W½SW¼, SE¼SE¼;
Sec. 25, NE¼.

T. 9 S., R. 11 W.,
Sec. 3, S½;
Sec. 10, N½;
Sec. 14, SW¼NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 15, SW¼NE¼;
Sec. 23, NW¼NE¼, E½NW¼.
Containing 1,920.00 acres, more or less.

3. The value of the Federal public land was appraised at $143,000 and the private land was appraised at $132,000. An equalization payment was made to the United States for $11,000.

4. At 9 a.m. on November 16, 1992 the lands described in paragraph 2 above that were conveyed to the United States will be opened only to the operation of the public land laws generally, subject to valid existing rights and requirements of applicable law. All valid applications received at or prior to 9 a.m. on November 16, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: September 30, 1992.

James Binando,

Chief, Branch of Lands.

[FR Doc. 92-24472 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-4212-13; GP2-469; OR-43988]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 2,274.76 acres of public lands out of Federal ownership. This action will also open 11,711.42 acres of reconveyed lands to surface entry, and 2,920 acres to mining and mineral leasing. Of the balance, the minerals in 2,120 acres have been and continue to be open to mining and mineral leasing, and the minerals in 6,671.42 acres are not in Federal ownership.

EFFECTIVE DATE: November 15, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 2,274.76 acres in Crook, Harney, and Wheeler Counties, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridan

T. 10 S., R. 20 E.,
Sec. 13;
Sec. 14, NE¼, NE¼NW¼, and E½SE¼;
Sec. 15, 21, and 23;
Sec. 24, W½NW¼ and N½SW¼;
Sec. 28, SW¼NW¼ and NW¼SW¼;
Sec. 29, E½E½, NW¼, N½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 32, NW¼NE¼ and S½;
Sec. 33, NE¼NE¼.
T. 10 S., R. 21 E.,
Sec. 14, W½E½, S½NW¼, and SW¼;
Sec. 15, S½NE¼ and SE¼;
Secs. 16 and 17;
Sec. 19, lots 1, 2, 3, and 4, E½, and E½W½;
Sec. 21, W½E½, W½, and SE¼SE¼;
Sec. 22, N½N½, SW¼NW¼, and S½;
Sec. 23, E½NE¼, NW¼NW¼, S½NW¼, and S½;
Sec. 26;
Sec. 27, N½, SW¼, and E½SE¼;
Secs. 28, 29, and 33;
Sec. 35, N½, N½S½, and SE¼SE¼.

Excepting from the foregoing lands those portions thereof lying within the limits of the Bridge County Road No. 14, the Twickenham Bridge Creek Cut-Off County Road No. 20, and the Girds Creek County Road No. 18 rights-of-way.

The areas described aggregate approximately 11,711.42 acres in Wheeler County.

3. At 8:30 a.m., on November 15, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on November 15, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on November 15, 1992, the following described lands will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 1716, Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 10 S., R. 20 E.,
Sec. 14, NE¼, NE¼NW¼, and E½SE¼;
Sec. 24, W½NW¼ and N½SW¼;
Sec. 28, SW¼NW¼ and NW¼SW¼;
Sec. 29, E½E½, E½NW¼, N½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 32, NW¼NE¼;
T. 10 S., R. 21 E.,
Sec. 14, W½E½, SE¼NW¼, E½SW¼, and SW¼SW¼;
Sec. 16;
Sec. 22, N½N½, SW¼NW¼, N½S½, and SE¼SW¼;
Sec. 23, E½E½, W½NW¼, and NW¼SW¼;
Sec. 26, E½NE¼, SW¼NW¼, NE¼SW¼, and NE¼SE¼;
Sec. 27, SW¼NE¼ and E½NW¼.

5. At 8:30 a.m., on November 15, 1992, the lands described in paragraph 4 will be opened to applications and offers under the mineral leasing laws.

Dated: September 30, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-24476 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4212-13; GP2-470; WASH-04473]

Order Providing for Opening of Public Land; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 144 acres of reconveyed land to surface entry subject to the provisions of section 24 of the Federal Power Act and mining. The land has been and continues to be open to mineral leasing.

EFFECTIVE DATE: November 15, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the Recreation and Public Purposes Act of June 14, 1926 (44 U.S.C. 741), as amended and supplemented (43 U.S.C. 869 et seq), the following described land has been voluntarily reconveyed to the United States:

Willamette Meridian

T. 40 N., R. 26 E.,
Sec. 13, lots 4, 5, 6, and 7.
The area described contains 144 acres in Okanogan County.

At 8:30 a.m. on November 15, 1992, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and segregation of record

and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on November 15, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 8:30 a.m., on November 15, 1992, the above described land will be opened to location and entry under the United States mining laws, subject to the provisions of existing withdrawals. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 1716, Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 30, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations

[FR Doc. 92-24475 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-33-M

[WY-940-4730-12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 51 N., R. 68 W., accepted September 30, 1992
T. 52 N., R. 68 W., accepted September 30, 1992
T. 24 N., R. 119 W., accepted September 30, 1992

Sixth Principal Meridian, Nebraska

T. 27 N., R. 5 E., accepted September 30, 1992
T. 27 N., R. 6 E., accepted September 30, 1992

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $2.00 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys and subdivisions.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 30, 1992.

John P. Lee, Chief,

Branch of Cadastral Survey.

[FR Doc. 92-24480 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-22-M

[NM-920-4214-10; NMNM 86230]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 2,845.88 acres of public land in Taos County to protect the Orilla Verde Recreation Area. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by November 9, 1992.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, New Mexico, 87502-7115.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505-438-7594.

SUPPLEMENTARY INFORMATION: On September 21, 1992, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws subject to valid existing rights:

New Mexico Principal Meridian

T. 24 N., R. 11 E.,
Sec. 2, SE¼SW¼;
Sec. 10, lots 1 to 4, inclusive, NE¼NE¼, and NW¼SE¼;
Sec. 11, lots 1 to 4, inclusive;
Sec. 14, lots 1 to 3, inclusive, SE¼SW¼, and W½SW¼;
Sec. 15, lots 1 to 7, inclusive, S½NE¼, E½SW¼, and SE¼;
Sec. 16, lots 1 and 2, SE¼NE¼, SE¼SW¼, SW¼SE¼, and N½SE¼;
Sec. 20, E½SE¼;
Sec. 21, lots 1 to 10, inclusive, N½SW¼, E½SE¼, and NW¼;
Sec. 22, W½;
Sec. 28, lots 1 to 2, inclusive, SW¼NW¼, E½NW¼, and NE¼;
Sec. 29, lots 1 to 4, inclusive, NW¼NE¼, and NE¼NW¼.

The area described contains 2,845.88 acres in Taos County.

The purpose of the proposed withdrawal is to protect the Orilla Verde Recreation Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the New Mexico State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the New Mexico State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations, but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: September 29, 1992.

Monte G. Jordan,

Associate State Director.

[FR Doc. 92-24479 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-771629

Applicant: F.M. Driscoll, Kelso, WA.

The applicant requests a permit to import five pairs of captive-hatched white-eared pheasants (*Crossoptilon crossoptilon*) from Robert Ian Henderson, Stocksfield-On-Tyne, England, to obtain new breeding stock for enhancement of propagation and survival of the species.

PRT-772489

Applicant: F.M. Driscoll, Kelso, WA.

The applicant requests a permit to export one pair each of captive-hatched brown-eared pheasants (*Crossoptilon mantchuricum*) and Elliot's pheasants (*Syrmaticus ellioti*) to Michel Klat, Reading, England, for enhancement of propagation and survival of the species.

PRT-772488

Applicant: James Duffy, Foster, RI.

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by J. Van Druten, Riekertsfontein, Victoria-West, South Africa, for the purpose of enhancement of survival of the species.

PRT-772298

Applicant: Gladys Porter Zoo, Brownsville, TX

The applicant requests a permit to export five captive-hatched Philippine crocodiles. (*Crocodylus novaeguineae mindorensis*) to Silliman University, Philippines, for captive breeding purposes.

PRT-772452

Applicant: Richard Haskins, S. San Francisco, CA.

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by T.P. Erasmus, "Mariendal", Kroonstad, Orange Free State, South Africa, for the purpose of enhancement of survival of the species.

PRT-767310

Applicant: Hunter Schuehle, San Antonio, TX.

The applicant requests a permit to authorize interstate and foreign commerce and export of excess male red lechwe (*Kobus leche*), dama gazelle (*Gazella dama* supp.), barasingha (*Cervus duvavcel*), elds deer (*Cervus eldi*) and Arabian oryx (*Oryx leucoryx*) culled from his captive herd for the purpose of enhancement of propagation and survival of the species.

PRT-772637

Applicant: Racine Zoo, Racine, WI.

The applicant requests a permit to reimport one female Asian elephant (*Elephus maximus*) from the African Lion Safari, Cambridge, Ontario, Canada, for educational purposes aimed at the conservation of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 2, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-24391 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-55-M

U.S. Geological Survey

Land Processes Distributed Active Archive Center (DAAC) Science Advisory Panel Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, the Earth Observing System (EOS) Land Processes DAAC Science Advisory Panel will meet at the U.S. Geological Survey Earth Resources Observation System (EROS) Data Center near Sioux Falls, South Dakota. The Panel, comprised of scientists from academic and government institutions, will provide Land Processes DAAC management with advice and consultation on a broad range of scientific and technical topics relevant to the development and operation of DAAC systems and capabilities.

Topics to be reviewed and discussed by the Panel include FY 1992 Land Processes DAAC activities, FY 1993 planned activities, EOS Data and Information System (EOSDIS) development, topographic and other ancillary data requirements, common test sites for pre-EOS science investigations, data set validation and peer review, and other.

DATES: November 4–6, 1992, commencing at 8:30 a.m. November 4 and adjourning the 12 noon on November 6.

FOR FURTHER INFORMATION CONTACT: Dr. Bryan Dailey, Land Processes DAAC Project Scientist, EROS Data Center, Sioux Falls, SD, 57198 at (605) 594–6001.

SUPPLEMENTARY INFORMATION: Meetings of the Land Processes DAAC Science Advisory Panel are open to the public.

Dated: October 1, 1992.

Dallas L. Peck,

Director, U.S. Geological Survey.

[FR Doc. 92-24461 Filed 10-7-92; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-167 (Sub-No. 1105x)]

Consolidated Rail Corp.; Abandonments Exemption; in Centerville, IN

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonment* to abandon its 5.2 mile line of railroad from approximately milepost 121.3, in Richmond, IN to approximately milepost 126.5, in Centerville, IN.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 7, 1992 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 19, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 28, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market St., Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 13, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 1, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–24515 Filed 10–7–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32156]

Southern Pacific Transportation Co.; Merger Exemption; Northwestern Pacific Railroad Co. and Visalia Electric Co.

Southern Pacific Transportation Company (SPC) and its wholly owned subsidiaries, Northwestern Pacific Railroad Company (NWP) and Visalia Electric Company (VE), filed a notice of exemption to merge SPC's subsidiary corporations into SPC, with SPC as the surviving corporation. Under the plan of merger, SPC will acquire all of the assets and assume all liabilities and obligations of its subsidiaries. The merger will be consummated on or after October 1, 1992.

The transaction involves the merger of companies within a corporate family and is specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). The merger will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection under 49 U.S.C. 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Conntrol—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Transportation Company, Southern Pacific Bldg., room 846, One Market Plaza, San Francisco, CA 94105.

Decided: October 2, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–24514 Filed 10–07–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Browning Ferris Industries, Inc., Lodging of Consent Decrees Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that on September 10, 1992, two proposed consent decrees in *United States* v. *Browning-Ferris Industries, Inc.*, Civil Action No. 92–CV–75460–DT, were lodged with the United States District Court for the Eastern District of Michigan, Southern Division. The United States filed this action under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The first consent decree provides that fourteen of the defendants will complete the cleanup remedy selected by the U.S. Environmental Protection Agency for the G&H Landfill Site in Macomb County, Michigan, pay $2.6 million of the past response costs incurred by the United States concerning the Site, and pay all future response costs, including oversight costs, incurred by the United States in connection with the Site. The second consent decree provides that the remaining two defendents, PPG Industries, Inc. and Reichhold Chemicals, Inc., will pay $2,464,760 of the past response costs incurred by the United States concerning the Site, plus interest.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Browning-Ferris Industries, Inc., et al.*, D.J. Ref. No. 90–11–3–171B.

The proposed consent decrees may be examined at the office of the United States Attorney, Eastern District of Michigan 817 Federal Building, 231 West Lafayette, Detroit, Michigan 48226; at the Region V Office of U.S. Environmental Protection Agency, Records Center, Seventh Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044 (202–347–2072). Copies of the proposed

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[1] Ordinarily a stay will be routinely issued by the Commission in these proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987)

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

consent decrees may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $70.50 for the first decree, including its appendices, and in the amount of $3.75 for the second decree with PPG industries and Reichhold Chemicals (25 Cents per page for reproduction cost), payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General Environment and Natural Resources Division.

[FR Doc. 92–24468 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Estate of Forster; Lodging of Consent Decrees pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 10, 1992, a proposed Consent Decree in *United States* v. *Estate of Forster*, Civil Action No. *88–CV–70613–DT*, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree concerns the hazardous waste site known as the G & H Landfill Site, located in Shelby Township, Macomb County, Michigan. The Consent Decree sets forth a settlement between the United States and the Estate of Leonard Forster, under which the Estate will impose deed restrictions on the Site prohibiting any use of the Site that would interfere with any response action at the Site, reimburse the United States for $201,136 of its unreimbursed past costs plus interest earned on this amount following its deposit into the Court's Registry, and grant access to the Site for the performance of response actions.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Estate of Forster*, D.J. Ref. 90–11–3–171A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 817 Federal Building, 231 W. Lafayette, Detroit, Michigan 48226–2784; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page for reproduction costs) payable to the Consent Decree Library.

Vickie A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–24467 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Superfund (CERCLA) and RCRA

Notice is hereby given that on September 29, 1992, two proposed Consent Decrees in *United States* v. *Prentiss Creosote & Forest Products, Inc.*, No. H89–0130 CIV–W, were lodged with the United States District Court for the Southern District of Mississippi. These Consent Decrees concern the Prentiss Creosote Superfund Site in Jefferson Davis County, Mississippi. Pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499, and/or section 3008(a) and (h) of the Resource Conservation and Recovery Act, 42 U.S.C. 6928(a) and (h), the Complaint in this action seeks recovery of past response costs incurred by the United States at the Prentiss Creosote Site. The Site consists of a former wood treating facility. Under the first proposed Consent Decree, defendants Emmette Allen and Prentiss Creosote Materials, Inc. will pay $50,000. Under the second proposed Decree, defendant Sessions Polk will pay $3000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Prentiss Creosote & Forest Products, Inc.*, D.J. Ref. 90–7–1–461.

The proposed Consent Decrees may be examined at any of the following offices: (1) The Office of the United States Attorney for the Southern District of Mississippi, 245 East Capitol Street, room 324, Jackson, Mississippi; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Consent Decrees Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (telephone (202) 347–2072). Copies of the proposed Decrees may be obtained by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., P.O. Box 1097, Washington DC 20004. For a copy of the Consent Decrees please enclose a check for $7.75 ($.25 per page reproduction charge) payable to "Consent Decrees Library."

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92–24376 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 28, 1992, 492-CV0066 a proposed Consent Decree in *United States* v. *Raymond Kampf and Buddy O. Wilson*, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Air Act, the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR part 61, subpart M. The Consent Decree requires the defendants to pay a total civil penalty of $2,500 in full settlement of the claims set forth in the Complaint filed by the United States. The Consent Decree further requires the Defendant to comply with the asbestos NESHAP and provide EPA with notice before removing any asbestos in the future.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Raymond Kampf and Buddy O. Wilson*, D.J. Ref. No. 90–5–2–1–1692.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, suite 500, 1404 East Ninth Street, Cleveland, Ohio

44114–1748 (contact Assistant United States Attorney Arthur Harris); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Jeffrey Trevino); and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, room 1541, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, Box 1097, 601 Pennsylvania Avenue, NW., Washington, DC 20004, telephone (202) 347–7829. For a copy of the Consent Decree please enclose a check in the amount of $3.00 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Section Chief Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92–24378 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i) and Departmental policy at 28 CFR 50.7, notice is hereby given that on *September 25*, 1992, a proposed consent decree in *United States* v.*Thatcher Company*, (*John Day Acid Spill*), Civil Action No. *92–1187JO*, was lodged with the United States District Court for the District of Oregon. The complaint alleges, *inter alia*, that owner/operator Thatcher Company, Inc. was liable under Section 107 of CERCLA, 42 U.S.C. 9607, for natural resource damages, including the reasonable costs of assessing such damages, incurred in connection with the release of hydrochloric acid, a hazardous substance, into the John Day River. Pursuant to the proposed consent decree: (1) The State of Oregon is entitled to $7,498 for reimbursement of response action costs arising out of the discharge of the hydrochloric acid; and (2) the United States, the State, and the Confederated Tribes of the Umatilla Indian Reservation will receive, as natural resources trustee, $275,000 from the defendant to be used for restoration or replacement of natural resources damaged by the discharge of the hydrochloric acid. The Department of Justice, for a period of thirty (30) days from the date of this publication, will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v.*Thatcher Company*, Department of Justice reference number 90–11–3–678.

The proposed consent decree may be examined at the office of the United States Department of Interior, 500 NE. Multnomah Street, Portland, Oregon 97232, and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction costs) payable to "Consent Decree Library". When requesting a copy, please refer to *United States* v.*Thatcher Company*, Department of Justice number 90–11–3–678.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–24377 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Cyclic Thermoplastic Research Venture; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on August 25, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Ford Motor Company filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Cyclic Thermoplastic Research Venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture are Ford Motor Company, Dearborn, MI and General Electric Company, Fairfield, CT and its general area of planned activity is to develop new automotive applications and molding processes for General Electric developed cyclic thermoplastic composite materials. The program includes the fabrication of an automotive structural part under conditions which simulate volume production. The cost, performance and recyclability of the composite part will be evaluated for future applicability in automotive uses, the venture will work closely with governmental and other organizations and perform further acts allowed by the venture's objectives. Membership in the venture remains open, and the parties intend to file additional written notification disclosing all changes in membership to the venture.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–24462 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Michigan Materials and Processing Institute; Notice Pursuant to The National Cooperative Research Act of 1984

Notice is hereby given that, on August 26, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Michigan Materials and Processing Institute ("MMPI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following company was recently accepted as an Associate Member in MMPI: Thermoplastic Pultrusions, Inc., Bartlesville, OK.

On August 7, 1990, MMPI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990, 55 FR 26710. The last notification was filed with the Department on February 19, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 2, 1992, 57 FR 11338.

Membership in this venture remains open, and MMPI intends to file additional written notification disclosing all changes in membership of this venture.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–24463 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Network Management Forum;—Notice Pursuant To The National Cooperative Research Act of 1984

Notice is hereby given that, on August 10, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum, formerly known as OSI/Network Management Forum, ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional parties to the venture are as follows: Objective Systems Integrators, Folsom, CA, and Telecom Corporation of New Zealand, Wellington, NEW ZEALAND, are Associate Members; Central Computer Services, Hennopsmeer, SOUTH AFRICA, and US Army Belvoir RD&E Center, Fort Belvoir, VA, are Affiliate Members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on April 27, 1992. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 4, 1992 (57 FR 23600).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–24466 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Petroleum Environmental Research Forum;

Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on August 28, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the membership of PERF. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BHP Research Research, Melbourne Laboratories, Victoria, Australia has become a member of PERF.

No other changes have been made in either the membership or planned activities of PERF. Membership in PERF remains open, and PERF intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification of a change in membership was filed by PERF with the Department on July 17, 1992. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 11, 1992 (57 FR 35844–5).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92–24464 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984 Switched Multi-Megabit Data Service Interest Group

Notice is hereby given that, on July 30, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Switched Multi-Megabit Data Service Interest Group ("the Group") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following are additional parties to the Group: DSC Communications of Plano, TX, and Telenex of Springfield, VA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Group intends to file additional written notifications disclosing all changes in membership.

On April 19, 1991, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 23, 1991 (56 FR 23723). The last notification was filed with the Department on April 9, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 21, 1992 (57 FR 21672).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–24465 Filed 10–7–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,386]

Advanced Monobloc Corp., Cranbury, NJ; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 3, 1992, applicable to the workers at the subject firm. The certification notice will soon be published in the **Federal Register**.

New information from the company shows several worker separations after the termination date of February 28, 1992. Accordingly, the Department is changing the termination date from February 28, 1992 to October 5, 1992.

The intent of the Department's certification is to include all workers of Advanced Monobloc Corportion in Cranbury, New Jersey.

The amended notice applicable to TA–W–27,386 is hereby issued as follows:

All workers of Advanced Monobloc Corporation Cranbury, New Jersey who became totally or partially separated from employment on or after January 24, 1991 and before October 5, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974:

Signed in Washington, DC, this 30th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–24492 Filed 10–7–92; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-26,503]

Bigard/Drillers, Inc. a/k/a Drillers Inc. Mt. Pleasant, MI; Amended Certification Regarding Eligibility to Apply for Workers Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 31, 1991, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on January 9, 1992 (57 FR 932).

At the request of the State Agency and workers the Department reviewed the certification for workers of Bigard Drillers, Inc., in Mt. Pleasant, Michigan. New information received from the company shows that the parent company is Drillers, Inc., in Houston, Texas which purchased Bigard Drilling on November 13, 1990. The new name became Bigard/Drillers, Inc. The subject firm is also known as Drillers, Inc. Accordingly, the Department is amending the certification to show the correct workers group.

The amended notice applicable to TA-W-26, 503 is hereby issued as follows:

"All workers of Bigard Drilling and Bigard/Drillers Inc., a/k/a Drillers, Inc., Mt. Pleasant, Michigan who became totally or partially separated from employment on or after November 4, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Wasington, DC, this 30th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24494 Filed 10-7-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,614]

Brown Shoe Co., St. Louis, Mo; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 17, 1992 in response to a worker petition which was filed on August 17, 1992 on behalf of workers at Brown Shoe Company, St. Louis, Missouri.

The investigation revealed that the petitioning group of workers at Brown Shoe Company, 8300 Maryland Avenue, St. Louis, Missouri (TA-W-27,614) is the same group of workers which petitioned under Brown Shoe Company, 8300 Maryland Avenue, Clayton, Missouri (TA-W-27,570).

A previous investigation of Brown Shoe Company, Clayton, Missouri (TA-W-27,570) resulted in a active certification (Brown Shoe Company, Clayton, Missouri, TA-W-27,570, certification issued on September 23, 1992, impact date of July 17, 1991 and an expiration date of September 23, 1994); consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of September, 1992

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24495 Filed 10-7-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,818]

Compaq Computer Corp. Houston, TX.; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 17, 1992 in response to a worker petition which was filed on August 17, 1992 on behalf of workers at Compaq Computer Corporation, Houston, Texas.

An active certification covering the petitioning group of workers remains in effect (TA-W-26,663). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 30th day of September, 1992

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24493 Filed 10-7-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,726]

Fruehauf Trailer Operations, Uniontown, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 31, 1992 in response to a worker petition which was filed on behalf of workers at Fruehauf Trailer Operations, Uniontown, Pennsylvania.

A negative determination applicable to the petitioning group of workers was issued on January 16, 1992 (TA-W-26,381). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 30th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-24491 Filed 10-7-92; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-261]

Carolina Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of appendix R to 10 CFR part 50 to Carolina Power & Light Company (the licensee) for the H.B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief in 10 areas where fire protection features are not in conformance with the technical requirements of section III.J of appendix R to 10 CFR part 50, which requires eight-hour battery powered emergency lighting units in certain areas. The exemption is in response to the licensee's request dated January 22, 1992.

The Need for the Proposed Action

The proposed exemption is needed because the portable lighting units described in the licensee's request regarding the emergency light are more practical for meeting appendix R. Literal compliance with appendix R would not significantly enhance safety and is not necessary to meet the intent of appendix R.

Environmental Impacts of the Proposed Action

The proposed exemption will not adversely affect the licensee's ability to achieve and maintain safe shutdown conditions following a postulated fire. The probability of a fire will not be increased, and the post-fire radiological releases will be no greater than previously determined; furthermore, the proposed exemption will not otherwise affect radiological plant effluents. The Commission concludes, therefore, that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted areas as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other environmental impact; therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action does not involve use of resources not previously considered in the Final Environmental Statement for the H.B. Robinson Steam Electric Plant, Unit No. 2, dated April 1975.

Agencies and Persons Consulted

The staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated January 22, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland this 2nd day of October 1992.

Elinor G. Adensam,

Director, Project Directorate II–1, Division of Reactor Projects— I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–24504 Filed 10–7–92; 8:45 am]

BILLING CODE 7590–01–M

ACNW Working Group on Potential for Presence of Natural Resources at a High-Level Waste Repository Site; Meeting

The ACNW Working Group on Potential for Presence of Natural Resources at a High-Level Waste Repository Site will hold a meeting on October 20, 1992, at the St. Tropez Hotel, 455 East Harmon Avenue, Las Vegas, NV. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 20, 1992—8:30 a.m. Until the Conclusion of Business

The Working Group will discuss the potential for the presence of significant resources at the proposed Yucca Mountain high-level waste repository.

Applicable NRC and DOE regulations contain statements regarding the need to avoid sites with significant natural resources. The presence of significant natural resources, including groundwater, at or near the site of a proposed high-level waste repository is an adverse situation, that could potentially lead to a disqualifying condition. It is perceived that the presence of such resources in the vicinity of the site could give rise to activities that would eventually lead to inadvertent human intrusion into the repository.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Working Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the ACNW Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACNW staff engineer, Mr. Howard J. Larson, ACNW (telephone 301/492–7707) between 7:30 a.m. and 5:00 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 1, 1992.

R.K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 92–24499 Filed 10–7–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of Sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 8–10, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on September 23, 1992. Portions of this meeting on Friday and Saturday, October 9 and 10, 1992, have been revised to accommodate additional sessions.

Friday, October 9, 1992

8:30 a.m.–10 a.m.: Maintenance of Nuclear Power Plants (Open)—The Committee will review and comment on a proposed Regulatory Analysis and a draft Regulatory Guide, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," and an associated NUMARC document 93–01, Revision 2A, "Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants."

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

10:15 a.m.–10:45 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss the scope and content of reports to be considered during this meeting.

10:45 a.m.–11:15 a.m.: Training and Requalification of Nuclear Power Plant Operators (Open)—The Committee will hear a briefing, discuss, and report as appropriate on results of the NRC pilot simulator examination program and proposed changes to NRC rule (10 CFR part 55) regarding recertification of nuclear power plant operators.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

11:15 a.m.–12:15 p.m.: Use of PRA in the Regulatory Process (Open)—The Committee will hear a briefing by representatives of the NRC Working Group on the status of tasks related to use of PRA in the NRC regulatory process.

1:15 a.m.–3:15 p.m.: Design Acceptance Criteria (Open)—The Committee will review and comment on proposed Design Acceptance Criteria (DAC) in the areas of man/machine

interface and control and protection systems.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

3:15 p.m.–4:15 p.m.: Yankee Rowe Nuclear Power Plant (Open)—The Committee will hear a briefing by representatives of the NRC staff regarding lessons learned from the review and evaluation of the Yankee Rowe nuclear plant reactor pressure vessel integrity.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

4:15 p.m.–5:15 p.m.: Subcommittee and Members Activities (Open/Closed)—The Committee will discuss the report and recommendations of the ACRS Planning and procedures Subcommittee regarding conduct of Committee business, the international meeting on computers on September 22, 1992, and the visit to Eastern European nuclear power plants by the ACRS Chairman and information provided to him by representatives of the organizations responsible for the operation of these facilities.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

5:15 p.m.–5:30 p.m.: Election of ACRS Officer (Closed)—The Committee will discuss qualifications of candidates nominated for Member-at-Large of the Planning and Procedures Subcommittee.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during this meeting.

Saturday, October 10, 1992

8:30 a.m.–11:15 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during this meeting.

11:15 a.m.–12 Noon: Appointment of ACRS Members (Closed)—The Committee will discuss qualifications of candidates proposed for appointment as members of the Committee.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

1 p.m.–2:30 p.m.: Miscellaneous (Open/Closed)—The Committee will complete discussions of items considered during this meeting, including recommendations regarding candidates for the NRC "Thermal-Hydraulic" review group, and matters which were not completed at previous meetings as time and availability of information permit.

Portions of this session will be closed as necessary to discuss information regarding the qualifications of candidates proposed for appointment to this review group, the release of which would represent a clearly unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Mr. Raymond F. Fraley, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary, to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Information provided in confidence by a foreign source in accordance with 5 U.S.C. 552(c)(4) and information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c0(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301–492–8049), between 8 a.m. and 4:30 p.m. EST.

Dated: October 2, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–24498 Filed 10–7–92; 8:45 am]

BILLING CODE 7590–01–M

Fifth Meeting of the SCDAP/RELAP5 Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The SCDAP/RELAP5 Peer Review Committee will hold its fifth meeting to review the technical adequacy of the SCDAP/RELAP5 code.

DATES: November 3–4, 1992.

TIME: 8:30 am each day.

ADDRESSES: One White Flint North, Rockville.

FOR FURTHER INFORMATION CONTACT: Dr. Y.S. Chen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–3566.

SUPPLEMENTARY INFORMATION: The SCDAP/RELAP5 Peer Review Committee will hold its fifth meeting to review the technical adequacy of the SCDAP/RELAP5 code on November 3–4, 1992, in Rockville, Maryland. The SCDAP/RELAP5 code has been developed for best-estimate transient simulation of light water reactor coolant systems during severe accidents as well as large and small break loss-of-coolant accident, and operational transients such as anticipated transient without SCRAM, loss of offsite power, loss of feedwater, and loss of flow. The code is based on three separate codes: RELAP5, SCDAP, and TRAP–MELT, which are combined to model the coupled interactions that occur between the Reactor Coolant System (RCS), the core, and the fission products during a severe accident. The newest version of the code is SCDAP/RELAP5/MOD3. A number of organizations inside and outside the NRC are using or planning to use the current version. Although the quality control and validation efforts are seen to be proceeding, there is a need to have a broad technical review by recognized experts to determine the technical adequacy of the SCDAP and TRAP–MELT portions of SCDAP/RELAP5 for the serious and complex analyses it is expected to perform.

This meeting will focus on completing the review, finalizing the summary report and receiving comments from the NRC.

Dated at Rockville, Maryland, this 1st day of October, 1992.

For the U.S. Nuclear Regulatory Commission.

Farouk Eltawila,

Chief, Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 92-24501 Filed 10-7-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-321 and 50-366]

Georgia Power Co.; Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Georgia Power Company, (the Licensee) for amendments to Facility Operating License Nos. DPR-57 and NPF-5, issued to the licensee for operation of the Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, located in Appling County, Georgia. Notice of Consideration of Issuance of the amendments was published in the **Federal Register** on August 5, 1992 (57 FR 34584).

The licensee's application of July 17, 1992, proposed several changes to the Technical Specifications relating to shutdown and refueling operations. The amendments authorize these changes except for one to change Hatch Unit 2 Action statement regarding shutdown cooling operation of the residual heat removal (RHR) service water system. This specific change, as proposed, was found to be nonconservative in that it will reduce the redundancy required for the operability of the RHR service water system which presently exists in the limiting condition of operation for Technical Specification 3.7.1.1.

The NRC staff has concluded that the licensee's proposed change is unacceptable and is denied. The licensee was notified of the Commission's denial by letter dated October 1, 1992.

By November 9, 1992, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated July 17, 1992, and (2) the Commission's letter to the Licensee dated October 1, 1992.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, George 31513. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 1st day of October, 1992.

For the Nuclear Regulatory Commission.

David B. Matthews,

Project Directorate II-3, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 92-24503 Filed 10-7-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-336-OLA, FOL No. DPR-65 (ASLBP No. 92-665-02-OLA) (Spent Fuel Pool Design)]

Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit No. 2); Hearing and Prehearing Conference

October 1, 1992.

On April 28, 1992, the Nuclear Regulatory Commission published in the **Federal Register** a notice that the Commission was considering issuance of an amendment to the operating license issued to Northeast Nuclear Energy Company for the operation of Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut. 57 FR 17934.

The amendment would modify the spent fuel pool design of Millstone Unit 2 by changing the design from a two-region to a three-region configuration. The notice stated that the Commission Staff proposed to make a determination that the amendment request involves a "no significant hazards consideration" consistent with the provisions of 10 CFR 50.91. The public was invited to comment on the proposed determination. Further, the notice provided that any person whose interest may be affected by the amendment proceeding and who wishes to become a party to the proceeding may file a request for a hearing and petition for leave to intervene by May 28, 1992.

An Atomic Safety and Licensing Board (Licensing Board) was established to rule on requests for hearing and petitions for leave to intervene and to preside over any resulting hearing. Seven persons or organizations located in the vicinity of Millstone Nuclear Power Station submitted requests for hearing and petitions for leave to intervene. By Order of September 30, 1992, the Licensing Board found that one petitioner, Co-Operative Citizen's Monitoring Network (CCMN), had standing to intervene in the proceeding and the CCMN has submitted a contention appropriate for hearing. The Order admitted CCMN as a party to the proceeding and accepted the contention for hearing. The contention pertains to whether the criticality analysis for the redesign of the spent fuel pool was completed and accurate. Other parties to the proceeding are the Staff of the Nuclear Regulatory Commission and Northeast Nuclear Energy Company, the Licensee herein.

The public shall please take notice that a public hearing shall take place among the named parties on CCMN's contention at a time and place to be later announced.

To prepare for the hearing, the Licensing Board directs the parties or their representatives to appear at a prehearing conference in accordance with the provisions of 10 CFR 2.751a and 2.752. The conference shall be held on November 5, 1992 in New Haven, Connecticut at a time and place to be announced. The prehearing conference is open to the public, but only the parties and their representatives may participate.

Matters to be discussed at the prehearing conference shall include:

1. Further identification, simplification and clarification of the issues in the proceeding.

2. The possibility of settlement, stipulations of fact and admissions of fact.

3. Determine the need for any discovery under the NRC discovery rules, 10 CFR 2.740-2.744.

4. Establish a schedule for motions for summary disposition, exchange of evidence, and any evidentiary hearing.

5. Questions by the Board to the parties concerning technical matters relevant to the contention, and;

6. Any other matter properly before the Licensing Board.

The parties are requested to have their technical advisors present to aid the Licensing Board and the parties in the discussion of issues. The Licensing Board shall serve its questions upon the parties in advance of the prehearing conference.

Dated: October 1, 1992.

For the Atomic Safety and Licensing Board.

Ivan W. Smith,

Chairman, Administrative Judge.

[FR Doc. 92-24500 Filed 10-7-92; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Railroad Separation Allowance or Severance Pay Report.

(2) *Form(s) Submitted:* BA-9.

(3) *OMB Number:* 3220-0173.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* Quarterly.

(7) *Respondents:* Businesses or other for profit.

(8) *Estimated annual number of respondents:* 300.

(9) *Total annual responses:* 5,000.

(10) *Average time per response:* 1.25.

(11) *Total annual reporting hours:* 6,250.

(12) *Collection description:* Section 7301 of the Railroad Unemployment & Retirement Improvement Act of 1988 (Public Law 100-647) provides for a lump-sum payment to an employee or the employee's survivor equal to the Tier 2 taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits towards retirement. The collection obtains the information needed from railroad employers concerning the separate allowances and severance payments paid after December 31, 1988.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Olvien (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-24459 Filed 10-7-92; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* RUIA Claims Notification and Verification Systems.

(2) *Form(s) submitted:* ID-4k.

(3) *OMB Number:* 3220-0171.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On Occasion.

(7) *Respondents:* Businesses or other for profit.

(8) *Estimated annual number of respondents:* 500.

(9) *Total annual responses:* 500,000.

(10) *Average time per response:* .0105677

(11) *Total annual reporting hours:* 6,235

(12) *Collection description:* Section 5b of the RUI Act requires that effective January 1, 1990, when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer(s) and afford such employer(s) an opportunity to submit information relevant to the claims.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-24474 Filed 10-07-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31281; File No. SR-MSRB-92-7]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Delivery of Official Statements to the Board

October 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 3, 1992, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The purpose of the proposed rule change is to require underwriters of primary offerings to send copies of official statements to the Board if such documents are prepared by or on behalf of the issuer. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement Of The Terms Of Substance Of The Proposed Rule Change

The Board is filing an amendment to rule G-36, on delivery of official statements to the Board (hereafter referred to as "the proposed rule change"). The proposed rule change would expand the scope of rule G-36 by requiring that underwriters of primary offerings must send copies of official statements to the Board if such documents are prepared by or on behalf of the issuer. However, the amendment would retain the exemption for "limited placements," as that term is used in Securities Exchange Act Rule 15c2-12 ("SEC Rule 15c2-12").

II. Self-Regulatory Organization's Statement Of The Purpose Of, And Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G–36 currently requires that brokers, dealers, and municipal securities dealers deliver to the Board, among other things, copies of final official statements for most primary offerings, if such documents are prepared by or on behalf of the issuer.[1] These official statements then are made available to interested parties through the Board's Municipal Securities Information Library ("MSIL") system.

An underwriter's specific obligations under rule G–36 are governed, in part, by whether the offering is subject to SEC Rule 15c2–12, relating to preparation of official statements. In general, SEC Rule 15c2–12 requires underwriters participating in primary offerings of municipal securities of $1 million or more to obtain, review, and distribute to investors copies of final official statements. The rule also requires underwriters to, among other things, contract with the issuer to receive a sufficient number of copies of the final official statement to comply with Board rules.

Certain primary offerings of municipal securities are not subject to the requirements of SEC Rule 15c2–12. The rule does not apply to (i) offerings under $1 million in par value; and (ii) offerings that are specifically exempted under section (c) of that rule. The three categories of offerings that fall under this exemption are those primary offerings with authorized denominations of $100,000 or more and which:

(1) Are sold to no more than thirty-five persons, each of whom the underwriter reasonably believes (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment and (ii) is not purchasing for more than one account or with a view to distributing the securities (referred to herein as "limited placements"); or

(2) Have maturities of nine months or less; or

(3) At the option of the holder thereof may be tendered to an issuer of such securities or its designated agent for redemption or repurchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.

While SEC Rule 15c2–12 applies to primary offerings with aggregate principal amounts of $1 million or more (unless specifically exempted from that rule), rule G–36 applies to primary offerings of $1 million or more, as well as offerings under $1 million. For offerings of $1 million or more, rule G–36 requires that the underwriter send to the Board two copies of the official statement along with two completed Forms G–36(OS) [2] within one business day of receiving the official statement from the issuer, but in no event later than 10 business days after the date of the final agreement to purchase, offer or sell the securities. For issues under $1 million, rule G–36 requires that, if the issuer has voluntarily prepared an official statement, then the underwriter must send the documents to the Board within one business day of settlement or closing of the issue. However, the requirements of rule G–36 currently do not apply to offerings that qualify for an exemption under SEC Rule 15c2–12(c), regardless of the amount of the offering. While there is no mandatory delivery requirement for such exempt offerings, copies of official statements for such offerings are included in the MSIL system if an issuer voluntarily prepares an official statement and the underwriter voluntarily provides copies of that document (along with completed Forms G–36(OS)) to the Board. The Board specifically exempted these offerings from the scope of rule G–36 when it adopted the rule in 1989. At that time, the Board noted that SEC Rule 15c2–12 did not require that official statements be prepared for such offerings, and the Board believed that official statements voluntarily prepared for such offerings probably would be of little interest to the market.

At a meeting of the Board's MSIL Advisory Committee,[3] several committee members stated that the Board should ensure that its collection of official statements in the MSIL system is as complete as possible. Several committee members noted that disclosure documents for short-term securities, such as those nine months or under in maturity, were an important source of information about municipal issuers. Based on these comments, as well as the experience gained by the Board over the last several years in collecting and disseminating official statements, the Board believes that there is interest among market participants for official statements relating to two categories of offerings that are currently exempt from Board rule G–36, *i.e.*, offerings with maturities of nine months or less (which includes short-term notes), and offerings with put periods of nine months or less (which includes variable rate demand obligations).

In creating the MSIL system, the Board repeatedly has expressed its concern that the general lack of access to information about municipal securities and their issuers is detrimental to the overall integrity and efficiency of the municipal securities market. The Board's efforts in this area have been aimed at enhancing the availability of, and accessibility to, existing disclosure documents. The Board determined to adopt the proposed rule change because it believes that expanding the scope of rule G–36 to include offerings with maturities of nine months or less and offerings with put periods of nine months or less will result in a more complete collection of disclosure documents, thereby increasing the overall integrity, efficiency and liquidity of the municipal securities market.

(b) The Board has adopted this amendment to rule G–36 pursuant to Section 15B(b)(2)(C) of the Act which requires, in pertinent part, that the Board's rules be designed:

to prevent fraudulent and manipulative acts and practices, to promote just and

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[1] For purposes of rule G–36, the following terms have the following meanings:

(i) A "final official statement" is defined as a document or set of documents prepared by an issuer of municipal securities or its representative, setting forth, among other things, information concerning the issuer(s) of such securities and the proposed issue that is complete as of the date of delivery of the document or set of documents to the underwriter.

(ii) A "primary offering" is an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including certain remarketings.

[2] Form G–36(OS) requires the party sending the official statement to provide certain information which is necessary for the Board to process such documents for inclusion in the MSIL system.

[3] The MSIL Advisory Committee advises the Board on MSIL system operations. It is composed of 26 individuals, representing a cross-section of municipal securities market participants. The Committee met on January 15, 1992, in New York City, at which time the scope of rule G–36 was discussed.

equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it will apply equally to all brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

At its February 1992 meeting, the Board determined to publish for comment draft amendments to rule G–36, on delivery of official statements to the Board. The draft amendments and Request for Comments were subsequently published in the April 1992 issue of *MSRB Reports*, and the Board received four comment letters in response thereto. One commentator provided information on limited placements; one commentator opposed the inclusion of short-term and limited placement offerings; one commentator supported the amendments in their entirety; and one commentator opposed any expansion of rule G–36. The following specific comments were provided to the Board:

Limited Placements

None of the commentators suggested that limited placements by included within the scope of rule G–36. Two commentators believe that private placement memoranda differ from official statements, and that such documents are not intended for public distribution. One of these commentators believes that this mode of marketing sometimes is chosen to ensure the confidentiality of financial information, and that a mandatory delivery requirement would have a chilling effect on private placements. Nevertheless, this commentator believes that voluntary filings would provide useful information to the market without misleading the public because underwriters can refrain from filing in instances in which the disclosure would be misleading. One commentator believes that although some of these securities enter the public market, making the memoranda publicly available could lead to misuse of the information. The Board concurs with the commentators.

Variable Rate Demand Obligations ("VRDOs") and Short-Term Offerings

Two commentators believe that there is limited secondary market activity in VRDOs and short-term securities, and consequently, that there would be little, if any, benefit to including disclosure documents for such securities in the MSIL system. In contrast, members of the MSIL Advisory Committee have commented that such issues sometimes appear in the secondary market, and that it would be desirable for the Board to collect and make available these documents. The Board notes that primary offerings of short-term notes and VRDOs often are fairly large in par value and, in some cases, are actively traded in the market. Thus, the Board believes that, on balance, including such documents in the MSIL system would benefit the market by increasing public access to these disclosure documents.[4]

Some of the commentators believe that information disseminated from the MSIL System may be misleading to investors if, for example, circumstances have changed and the documents are no longer current or reliable, or if the investor attempts to apply information in the document to other securities to which the document does not relate, and for which purpose the document was not intended. The Board notes that such an argument can be applied to any of the official statements currently provided to the Board under rule G–36. The Board believes that these documents clearly describe the issues to which they relate and their dates of preparation. One commentator suggests that the Board place a legend on any materials disseminated from the MSIL system indicating that such materials are dated and may no longer be reliable. The Board has done so.

One of the commentators believes that including VRDOs and short-term offerings within the scope of rule G–36 would increase costs for issuers. This commentator states that the VRDO market is specialized and that if issuers believe that their documents may be accessed through the MSIL system and relied upon by unsophisticated investors, then they may be forced to make more comprehensive disclosure to avoid liability. Similarly, the commentator argues that disclosure that may be adequate for short-term securities may be misleading when applied to that issuer's long-term obligations, and that in order to avoid liability, such issuers may be forced to produce more comprehensive (and expensive) disclosure documents in connection with short-term securities.

The Board is prohibited from regulating the form and content of issuers' disclosure documents, and from requiring issuers to prepare official statements. Thus, the Board cannot require issuers to produce (or deliver) more comprehensive disclosure documents. As stated above, the Board's efforts in this area have been aimed solely at enhancing the availability of, and accessibility to, existing disclosure documents. The Board believes that expanding the scope of rule G–36 will enhance public access to these important disclosure documents, in furtherance of the Board's statutory purposes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–92–7 and should be submitted by October 29, 1992.

[4] As noted above, some underwriters now send official statements for these offerings to the Bureau on voluntary basis. The Board currently enters these documents into the MSIL system and makes them available to the public for inspection and copying.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24400 Filed 10-7-92; 8:45 am]

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Release No. 34-31280; File No. SR-NASD-92-31

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Designation of Public Arbitrators Under the NASD Code of Arbitration Procedure

October 1, 1992.

On July 2, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder.[2] The proposal amends part III, section 19(c) of the NASD's Code of Arbitration Procedure ("Code") [3] in order to designate individuals who are associated with the futures industry as being from the securities industry for the purpose of serving on an arbitration panel. Such individuals would, therefore, be excluded from the definition of "public arbitrator" contained in Section 19(d) of the Code.[4]

Notice of the proposed rule change, as amended, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 31056, August 19, 1992) and by publication in the Federal Register (57 FR 38802, August 27, 1992). No comments were received on the proposal. This order approves the proposed rule change.

The instant proposed rule change developed, in part, from a report by the Commodity Futures Trading Commission ("CFTC") which was reviewed by SICA. The report was the result of a study of arbitration facilities that had been used to resolve disputes involving commodities and futures products. Arbitration awards rendered under the rules of the National Futures Association ("NFA") and the various self-regulatory organizations ("SROs") were reviewed in connection with the study. The report concluded that while the number of futures-related arbitration cases handled outside the NFA was very low, the other forums' arbitration rules were adequate to qualify them as alternative forums under CFTC Regulation 180.3. Since some futures-related disputes are handled under the Code, SICA determined that the Code should be amended to exclude as public arbitrators any individuals who have close ties with the futures industry. The amendment would parallel other exclusions from the definition of public arbitrator for individuals who have close ties with the securities industry. SICA recommended that all SROs adopt this provision. In order to improve its arbitrator classification rules and to provide for more uniform arbitration standards throughout the securities industry, the NASD proposed the instant rule change.

In general, subparagraph (6) to section 19(c) designates individuals who are associated with the futures industry as being from the securities industry for the purpose of serving on an arbitration panel. This includes individuals who are registered under the Commodity Exchange Act,[5] who are members of a registered futures association or any commodities exchange, or who are associated with any such persons. Such individuals would, therefore, be excluded from the definition of "public arbitrator" contained in section 19(d) of the Code. The NASD's arbitrator classification rules for cases involving public investors have been designed to assure two distinct pools of arbitrators. One pool, from which a minority of an arbitration panel is selected, consists of securities arbitrators, persons who have a strong knowledge of securities industry practices based upon their own meaningful securities industry affiliations. The second pool, from which the majority of a panel is selected, consists of public arbitrators, persons who either do not have any industry affiliation, or who do not have current or significant industry affiliations. All arbitrators, public and industry, are required to be impartial with respect to each individual dispute before them. Given the close similarities and ties between the securities and commodities industries, the proposed rule change appropriately classifies persons with commodities industry affiliations as securities arbitrators.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of section 15A(b)(6) of the Act.[6] Section 15A(b)(6) requires, in part, that the rules of the NASD be designed "to prevent fraudulent and manipulative acts and practices * * * to foster cooperation and coordination with persons engaged in regulating, clearing, settling, [and] processing information * * * [and] to protect investors and the public interest * * *." The proposed rule change will help ensure the integrity of the arbitration process, thus furthering the prevention of fraudulent and manipulative practices and protecting investors and the public interest. Further, the instant rule proposal helps foster cooperation and coordination between the various entities that assist in regulating the securities industry.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[7]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 92-24401 Filed 10-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31279; File No. SR-NASD-92-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to an Exemption From Free-Riding and Withholding Interpretation for Securities of Issuers That Wholly Own a Member Firm

October 1, 1992.

On June 2, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder.[2] The proposal amends

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] *NASD Securities Dealers Manual*, Code of Arbitration Procedure, part III, Uniform Code of Arbitration, section 19, Designation of Number of Arbitrators, CCH, ¶3719.

[4] On July 31, 1992, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 replaced the phrase "designated contract market", as originally proposed in section 19(c)(6) of the Code with the phrase "commodities exchange". The amendment conforms the language proposed by the NASD with language previously adopted by the Securities Industry Conference on Arbitration ("SICA").

[5] 7 U.S.C. 1 *et seq.* (1988).

[6] 15 U.S.C. 78o-3(b)(6) (1988).

[7] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

Section 13 of Schedule E to the NASD By-Laws ("Section 13") [3] to provide an exemption from the NASD's Free-Riding and Withholding Interpretation ("Free-Riding Interpretation") [4] for securities of issuers that wholly own a member firm.

Notice of the proposed rule change, together with its terms of substance, was provided by the issuance of a Commission release (Securities Exchange Act Release No. 31019, August 11, 1992) and by publication in the **Federal Register** (57 FR 37178, August 18, 1992). No comments were received on the proposal. This order approves the proposed rule change.

The rule change approved herein amends Schedule E to the NASD's By-Laws to provide that a member may sell securities to its employees and other associated persons when the securities are issued by an entity that wholly owns the member. Currently, the NASD's Free-Riding Interpretation prohibits employees and other associated persons of NASD member firms owned by large holding companies from purchasing shares of their respective holding company in a public offering. The NASD believes that it is appropriate and within the original intent of Section 13 to permit such persons to purchase the securities offered by their respective holding companies.

The NASD's Free-Riding Interpretation requires NASD members to make a *bona fide* public distribution, at the public offering price, of securities in a public offering that trade at a premium in the secondary market, whenever such secondary market begins. The Free-Riding Interpretation is based on the NASD's belief that the failure to make a *bona fide* public distribution when there is demand for an issue can be a factor in artificially raising the price at which the security trades in the secondary market. In particular, failure to make a *bona fide* distribution when the member may have information relating to demand for the securities or other factors not generally known to the public would be inconsistent with high standards of commercial honor and just and equitable principles of trade, and would lead to an impairment of public confidence in the fairness of the investment banking and securities business.

Section 13 provides an exemption from the Free-Riding Interpretation to permit an NASD member to sell certain securities in a public offering that trade at a premium in the secondary market, to the member's employees; to potential employees of the member resulting from a merger, acquisition, or other business combination of members that results in one public successor corporation; to persons associated with the member; and to the immediate family of such employees or associated persons. This exemption is applicable only to securities that are offered in a public offering by (i) the member, (ii) a parent of a member, or (iii) an issuer treated as a member or parent of a member pursuant to Section 9 of Schedule E to the NASD By-Laws.[5] Section 13 is based on the NASD's belief that employees of a member may naturally wish to have an ownership interest in their member-employer or its parent that is a public company, and that investment by employees in their employers is beneficial to the employee-employer relationship.

Section 2(h) of Schedule E defines the term "parent" for purposes of Section 13 as any entity affiliated with a member from which member the entity derives 50% or more of its gross revenues or in which it employs 50% or more of its assets. Large, diversified holding companies cannot meet this definition of a parent of a member because the activities of the broker-dealer are only a small part of their business. Employees and other associated person of NASD member firms owned by such large holding companies, therefore, cannot rely on the section 13 exemption to the Free-Riding Interpretation to purchase shares of their respective holding company in a public offering.

The NASD believes that it is appropriate and within the intent of section 13 and the Free-Riding Interpretation to allow employees and other section 13 associated persons of NASD members wholly-owned by large holding companies to purchase the securities offered by such entities even though the holding company does not come within the Schedule E definition of "parent." It is the NASD's belief that enabling such persons to purchase shares of their respective holding company in a public offering is consistent with the policy of permitting employees of members to have an ownership interest in their member-employers.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) of the Act.[6] Section 15A(b)(6) requires, *inter alia*, that the NASD's rules be designed to "promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest." The Commission believes that investment by employees in their employers is beneficial to the employee-employer relationship, and thus, is in the interest of investors, and in the public interest. For this reason, and for the reasons stated above, the Commission believes that the proposed rule change satisfies the requirements of section 15A(b)(6) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the instant rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24399 Filed 10-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31282; File No. SR-PTC-92-11]

Self-Regulatory Organizations; Participants Trust Company; Order Approving on an Accelerated Basis Proposed Rule Change Relating to the Elimination of Pennies From the Face Amount of Certain GNMAs

October 1, 1992.

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Participants Trust Company ("PTC") has filed a proposed rule change with the Securities and Exchange Commission ("Commission") concerning the elimination of pennies (*i.e.*, any amount after the decimal point) from the face amount of certain GNMAs.[2] On September 9, 1992, notice

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[3] NASD Securities Dealers Manual, Schedule E to the By-Laws, Section 13, CCH ¶1893.

[4] *Id.* at Article III, Section 1 of the Rules of Fair Practice, CCH ¶2151.06.

[5] Section 9 of Schedule E provides that certain offerings that result in the issuer's affiliation or public ownership of the NASD member shall be subject to the provisions of Schedule E to the same extent as if the transaction had occurred prior to the filing of the offering. *Id.* at Section 9 of Schedule E to the By-Laws, CCH ¶1889.

[6] 15 U.S.C. 78*o*-3 (1988).

[7] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] PTC's proposed rule change was filed as File No. SR-PTC-92-11 on August 21, 1992. GNMA is the

Continued

of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[3] As discussed below, the Commission is approving PTC's proposal on an accelerated basis.

II. Description of the Proposal

PTC proposes to eliminate pennies from the face value of GNMA I and II securities [4] that are carried on deposit at PTC so that all such values will be expressed in whole numbers. PTC further proposes to change the trading multiple from $5,000 for GNMA I's and II's to $1.00 so that any portion of a GNMA which is a multiple of one will be deliverable through PTC, provided the minimum $25,000 denomination is met.

A. Pennies

1. *The Truncation Program*

PTC's proposal arose from discussions among PTC, GNMA, and the MBS Operations Committee of the Public Securities Association ("PSA") [5] regarding ways to increase the efficiency in trading of GNMA securities. As a result of those discussions, PTC proposes to eliminate on its records pennies from GNMA securities issued prior to October 1, 1988 and express the values of those GNMA securities in whole numbers.[6] GNMA securities, for depository purposes, will be rendered similar to FNMAs [7] and Freddie Macs,[8] which are both issued without pennies.

PTC will effect the truncation by performing a one-time elimination of pennies on PTC's records of Participant positions, including securities position reports, Repo In, Repo Out and CLF Positions, for the portion of each GNMA pool the Participant holds which was issued prior to October 1, 1988 (the "Affected Securities"). PTC will create a "dropped penny file" which will record, by pool number and Participant, the value of the pennies eliminated. Once the pennies have been eliminated, Participants will be unable to enter data for the Affected Securities with pennies because that data entry field will be eliminated.

Eliminating pennies from PTC's records will merely represent a change in PTC's record description of the GNMAs it holds on deposit for its Participants. Penny elimination will have no other financial or economic impact on PTC; however, it will have a modest financial effect on Participants over the remaining life of the Affected Securities.

The "jumbo certificate" for Affected Securities held by PTC's custodian, Chemical Bank, at the time of the pennies' elimination, as well as Affected Securities deposited after the conversion, will continue to show their original face value reflecting the presence of the pennies.

Issuers' records will continue to reflect the pennies' presence, and issuers' monthly principal and interest ("P&I") payments to PTC (as the registered owner through its nominee, MBSCC & Co.) on the Affected Securities will be determined accordingly. Nevertheless, PTC will not pass that portion of the P&I attributable to pennies directly to Participants.

On the rare occasion that a Participant should request the withdrawal of the entire balance of an issue on deposit at PTC, Chemical Bank, PTC's custodian, will issue two certificates. One will be issued to the Participant (or in the name requested by the PTC Participant) in the amount requested, less any pennies. Another certificate will be issued for the balance, including pennies, to MBSCC & Co., PTC's nominee name. Because of the *de minimis* amount involved, PTC will request that the GNMA issuer refrain from paying PTC P&I on a balance of less than a dollar.

2. Financial Impact of Penny Truncation

PTC maintains that the financial impact of its penny truncation program will be negligible and well within the industry practice for reconciling *de minimis* differences in deliveries, deposits and the like. PTC has illustrated the financial effect of the penny truncation program as follows:

Assumptions

1. All 53 PTC Participants hold positions of equal amounts of Affected Securities.

2. These Participant positions remain constant for the 12 year (assumed) remaining time to maturity of Affected Securities.

3. There will continue to be 53 PTC Participants for the next 12 years.

Illustrations	
Total face amount of affected securities.	$663 billion
Total Amortized amount of Affected Securities (58.3%).	$386.5 billion
Estimated remaining time to maturity of affected securities.	12 years
Number of GNMA pools affected.	148,681 pools
Total face amount of *pennies* on affected securities.	$76,660
Amortized value of *pennies* on affected securities (58.3%).	$44,692
Less estimated penny recapture at pool maturity [9].	−$3,717
Net amount of pennies truncated by PTC.	$40,975
Net amount of truncated pennies per year (net pennies divided by 12).	$3,415
Net amount of truncated pennies per Participant per year (*i.e.* net amount of truncated pennies per year divided by 53 Participants).	$64

[9] The amount of the recapture upon redemption is subtracted because when an Affected Security is redeemed, consistent with the procedures for P&I payments, the issuer will remit to PTC the redemption amount calculated on the original face amount (including pennies). PTC will not deduct any amount from the redemption value, but rather, will pass along to Participants the amount received from the issuer.

Because PTC does not operate to make a profit, the value of the truncated pennies will either be passed along as a rebate to Participants or be reflected in PTC's fee structure. Accordingly, the scale and scope of the economic loss to Participants, on the basis of the assumptions described above, is the loss of the use of the funds by Participants.

Assumed annual rate of return for truncated pennies—4% year

Economic loss per participant per year—$2.56

Of course, many Participants act as custodians. Therefore, it will be their customers, rather than PTC's Participants, that will bear the ultimate loss of their pro rata share of PTC's Participants' $2.56 per year loss.

B. Change in Multiple

PTC is also proposing to change the multiple on GNMA I and II securities from $5,000 to $1.00. Currently, the portion of a GNMA pool not divisible by

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Government National Mortgage Association, also known as Ginnie Mae.

[3] Securities Exchange Act Release No. 31135 (September 2, 1992), 57 FR 41158.

[4] There are two types of GNMA securities. GNMA I securities, which were first issued in 1970, have a central transfer agent but no central paying agent. The paying agent for each GNMA I issuer makes Principal and Interest ("P&I") payments directly to the registered owners of each issue. GNMA II securities, which were first introduced in 1983, take advantage of technological improvements made since 1970, thus allowing GNMA II securities issuers to make consolidated payments to registered owners through a centralized paying agent.

[5] The PSA is an association of brokers, dealers and banks active in the U.S. Government securities markets.

[6] Beginning October 1, 1988, GNMA has issued GNMA securities in whole numbers, obviating the need for truncation.

[7] FNMA is the Federal National Mortgage Association, also known as Fannie Mae.

[8] Freddie Mac is the Federal Home Loan Mortgage Corporation (FHLMC).

$5,000 is called a "tail" and cannot be delivered through PTC. By changing the multiple to $1.00, Participants will be able to deliver any portion of a pool, including a "tail," provided the minimum $25,000 denomination is met.

C. Industry Support for Pennies Program

PTC undertook its pennies truncation program following extensive consultation with the PSA and GNMA. In addition, the proposal has been discussed during ten separate meetings of PTC's Operations Committee, the members of which represent PTC's participating banks and dealers, and has the full support of that Committee. Participants have indicated their wish for the change through the PSA, citing the need for the elimination of pennies due to the administrative difficulty pennies produce in their systems. PTC maintains that the elimination of pennies will result in cost savings to the industry.[10] Furthermore, the retention of pennies on GNMAs creates a reconciliation problem because many banks and dealers delete pennies from their records and discrepancies may arise between their records and the records they receive from PTC.

III. Discussion

Sections 17A(b)(3)(A) and (F) of the Act require that a clearing agency is organized and its rules designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to assure the safeguarding of funds and securities which are in the custody or control of a clearing agency.[11] As discussed below, the Commission believes that PTC's proposal is consistent with these goals.

PTC estimates the direct financial effect of penny truncation to be minimal.[12] Even without taking into account the recapture of pennies upon the maturity of affected securities, PTC estimates the cost to participants to be $64 per year. With the recapture of pennies, that cost declines to only $2.56, representing the time value of the pennies lost by participants through penny truncation.

While the price of penny truncation is minimal, the continued presence of pennies imposes several burdensome costs on Participants. The presence of pennies increases the likelihood of errors in keystroke entry of transactions. Pennies also cause administrative difficulties in Participants' systems. Additionally, the presence of pennies creates a reconciliation problem because many banks and dealers delete pennies from their records and discrepancies may arise between their records and the records they receive from PTC. The elimination of pennies will result in fewer processing errors and a net cost savings to the industry.[13] Thus, the proposal will promote the prompt and accurate clearance and settlement of securities transactions.

PTC has established procedures designed to safeguard the funds and securities affected by the truncation of pennies from its records. PTC has established procedures to provide for an accurate accounting of the amount eliminated from its records by the proposal through the creation of a dropped penny file. PTC also has established mechanisms to recapture the P&I payments associated with the truncated pennies. Moreover, PTC has agreed to establish a policy for the disposition of truncated pennies that is consistent with section 17A(b)(3)(D) of the Act which requires the equitable allocation of dues, fees and other charges among participants of a clearing agency and to file such policy with the Commission as a proposed rule change under section 19(b) of the Act.[14]

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. PTC has requested that the Commission approve the proposal by October 1, 1992 to provide sufficient time for its participants to prepare for the truncation of pennies from PTC's records. Effective December 1, 1992, PTC plans to eliminate pennies from its records. The Commission believes that there is good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register** because the elimination of pennies from PTC's records will result in savings to investors and those that act on their behalf consistent with the goals of section 17A(a)(1) of the Act.[15]

The staff of the Board of Governors of the Federal Reserve System ("Board of Governors") has stated that it believes that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.[16]

IV. Conclusion

For the reasons stated above, the Commission finds that PTC's proposal is consistent with section 17A of the Act. The Commission also finds good cause for approving the proposal prior to the thirtieth day after publication in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that PTC's proposed rule change (SR–PTC–92–11) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24401 filed 10–7–92; 8:45 am]

BILLING CODE 8010–01–M

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[10] Cost savings include fewer keystrokes required to enter penny amounts and less record surveillance required to account for and reconcile penny amounts.

[11] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[12] See Section II.A.2 *supra*.

[13] This proposed rule change, however, does not authorize PTC participants to eliminate pennies from their records.

[14] Letter from Leopold S. Rassnick, General Counsel, PTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission, dated September 29, 1992.

[15] 15 U.S.C. 78q–1(a)(1).

[16] Telephone conversation between Don Vinnedge, Manager, Trust Activities, Board of Governors, and Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (October 1, 1992).

[17] 15 U.S.C. 78s(b)(2) (1988).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2594]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 29, 1992, I find that Calaveras and Shasta Counties in the State of California constitute a disaster area as a result of damages caused by fires beginning August 16 and continuing through August 20, 1992. Applications for loans for physical damage may be filed until the close of business on October 29, 1992, and for loans for economic injury until the close of business on June 1, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Alpine, Amador, Lassen, Modoc, Plumas, San Joaquin, Siskiyou, Stanislaus, Tehama, Trinity, and Tuolumne in the State of California may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 259405 and for economic injury the number is 770200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-24532 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2586]

Florida; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 24, 1992, and an amendment thereto on August 28, I find that the Counties of Broward, Collier, Dade, and Monroe in the State of Florida constitute a disaster area as a result of damages caused by Hurricane Andrew beginning on August 23, 1992 and continuing. Applications for loans for physical damage may be filed until the close of business on October 22, 1992, and for loans for economic injury until the close of business on May 24, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Hendry, Lee, and Palm Beach in the State of Florida may be filed until the specified date at the above location.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 259306 and for economic injury the number is 770100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 31, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-24533 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2593]

Territory of Guam; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration of August 28, 1992, I find that the Territory of Guam constitutes a disaster area as a result of damages caused by Typhoon Omar which occurred August 28, 1992 and continuing. Applications for loans for physical damage may be filed until the close of business on October 27, 1992, and for loans for economic injury until the close of business on May 28, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 258608 and for economic injury the number is 769200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-24534 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2596]

Hawaii; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 12, 1992, I find that the Islands of Oahu, Maui, Hawaii, Kauai, Niihau, Lanai, and Kahoolawe constitute a disaster area as a result of damages caused by Hurricane Iniki which occurred September 11, 1992. Applications for loans for physical damage may be filed until the close of business on November 13, 1992, and for loans for economic injury until the close of business on June 14, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 259608 and for economic injury the number is 770500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 25, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-24535 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2588]

Louisiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 26, 1992, and amendments thereto on August 26,

28, and 29, I find that the parishes of Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafayette, Lafourche, Pointe Coupee, St. Charles, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Terrebonne, West Baton Rouge, and West Feliciana in the State of Louisiana constitute a disaster area as a result of damages caused by Hurricane Andrew beginning on August 25, 1992 and continuing. Applications for loans for physical damage may be filed until the close of business on October 24, 1992, and for loans for economic injury until the close of business on May 26, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, Texas 76155, or other locally announced locations. In addition, applications for economic injury loans from small business located in the contiguous parishes of Acadia, Avoyelles, Concordia, Livingston, Orleans, Plaquemines, St. Helena, St. James, St. Landry, Tangipahoa, Vermilion, and Washington in the State of Louisiana, and the counties of Amite, Hancock, Pearl River, and Wilkinson in the State of Mississippi may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 258808 and for economic injury the number is 769500 for Louisiana and 770300 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 31, 1992.

Alfred E. Judd,

Acting Assistant Administrotor for Disaster Assistance.

[FR Doc. 92-24536 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7696]

Oklahoma; Declaration of Disaster Loan Area

McIntosh County and the contiguous counties of Haskell, Hughes, Muskogee, Okfuskee, Okmulgee and Pittsburg in the State of Oklahoma constitute an economic injury disaster area as a result of damages caused by a fire which occurred on August 15, 1992, in the City of Checotah. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on June 2, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives in 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: September 2, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-24537 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2590]

Pennsylvania (and Contiguous Counties in Delaware and Maryland); Declaration of Disaster Loan Area

Chester County and the contiguous counties of Berks, Delaware, Lancaster, and Montgomery in the State of Pennsylvania; New Castle County in the State of Delaware; and Cecil County in the State of Maryland constitute a disaster area as a result of damages caused by a fire which occurred on August 26, 1992 in the Seven Oaks Apartment complex in West Chester Borough. Applications for loans for physical damage may be filed until the close of business on November 9, 1992 and for economic injury until the close of business on June 9, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 259005 for Pennsylvania, 259105 for Delaware, and 259205 for Maryland. For economic injury the numbers are 769800 for Pennsylvania, 769900 for Delaware and 769900 for Maryland.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 9, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-24538 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7687]

Rhode Island (and Contiguous Counties in Massachusetts and Connecticut); Amendment Number 1; Declaration of Disaster Loan Area

The above-numbered declaration is hereby amended to reflect the economy injury numbers assigned to the States of Massachusetts and Connecticut.

The economic injury numbers assigned to this disaster are 768700 for Rhode Island, 768800 for Massachusetts, and 768900 for Connecticut.

All other information remains the same, i.e., the termination date for filing applications is May 19, 1993.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: September 1, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-24539 Filed 10-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2587]

South Dakota; Declaration of Disaster Loan Area

Lake County and the contiguous counties of Brooklings, Kingsbury, McCook, Miner, Minnehaha, and Moody in the State of South Dakota constitute a disaster area as a result of damages

caused by a tornado which occurred on August 9, 1992. Applications for loans for physical damage may be filed until the close of business on November 2, 1992 and for economic injury until the close of business on June 1, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Business and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 258712 and for economic injury the number is 769300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 1, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–24540 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2585]

Wisconsin; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 2, 1992, I find that Waushara County in the State of Wisconsin constitutes a disaster area as a result of damages caused by severe storms and tornadoes which occurred on August 29, 1992. Applications for loans for physical damage may be filed until the close of business on November 2, 1992, and for loans for economic injury until the close of business on June 2, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Adams, Green Lake, Marquette, Portage, Waupaca, and Winnebago in the State of Wisconsin may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 259512 and for economic injury the number is 770400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92–24541 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 10 a.m. on Thursday, October 22, 1992, at the Federal Reserve Bank of San Francisco, 101 Market Street, San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Michael R. Howland, District Director, U.S. Small Business Administration, 211 Main Street, 4th Floor, San Francisco, California 94105–1988, (415) 744–6801.

Dated: September 24, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24543 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Jacksonville, will hold a public meeting from 10 a.m.–2 p.m. on Thursday, October 22, 1992, at the First Union National Bank of Florida, 800 N. Magnolia Avenue, 8th Floor, Regional Administration Training Room, Orlando, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Thomas M. Short, District Director, U.S. Small Business Administration, 7825 Baymeadows Way, Suite 100–B, Jacksonville, Florida 32256–7504, (904) 443–1900.

Dated: October 1, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24545 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Denver, will hold a public meeting at 9:30 a.m. on Tuesday, November 17, 1992 at the U.S. Custom House, 721 19th Street, SBA District Office (4th floor), Denver, Colorado, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Antonio Valdez, District Director, U.S. Small Business Administration, 721 19th Street, Denver, Colorado 80201–0660, (303) 844–4028.

Dated: September 24, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24544 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, will hold a public meeting at 1 p.m. on Friday, November 6, 1992, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director,

U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2213, Honolulu, Hawaii 96850, (808) 541–2990.

Dated: September 28, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24549 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Charlotte, will hold a public meeting from 10 a.m. to 3 p.m. on Friday, October 23, 1992 at the U.S. Small Business Administration, 200 North College Street, Charlotte, North Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Gary Keel, District Director, U.S. Small Business Administration, 200 North College Street, Suite A 2015, Charlotte, North Carolina 28202, (704) 344–6561.

Dated: September 30, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24547 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Investment Advisory Council; Meeting

Time and Date: 9 a.m.–5 p.m., Wednesday, October 21, 1992.

Place: The meeting will be held in the Administrator's Conference Room on the seventh floor of SBA Washington Office Center at 409 3rd Street, SW., Washington, DC.

Purpose: The meeting is being held to discuss such matters concerning the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) Programs as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, contact Wm. H. Malloy III, Esq., room 6300, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, telephone (202) 205–6510.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–24542 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates

The interest rate of section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is 7⅝ percent for the fiscal quarter beginning October 1, 1992.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October-December quarter of FY 93, this rate will be 6⅞ percent.

Dated September 24, 1992.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 92–24550 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region X Advisory Council; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Portland, will hold a public meeting at 12 Noon on Friday, October 23 and continuing at 8 a.m. on October 24, 1992 at the Embarcadero Hotel, 1000 Southeast Bay Boulevard, Newport, Oregon, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John L. Gilman, District Director, U.S Small Business Administration, 222 SW. Columbia, suite 500, Portland, Oregon 97201, (503) 326–5221.

Dated: September 30, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24548 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Jackson, will hold a public meeting from 1 p.m. to 4:30 p.m. on Thursday, October 22, and 8:30 a.m. until 12 noon on Friday, October 23, 1992 at the Pickwick Landing State Resort Park Inn, Pickwick, Tennessee, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Jack Spradling, District Director, U.S. Small Business Administration, 101 W. Capitol Street, Suite 400, Jackson, Mississippi 39201, (601) 965–5371.

Dated: September 30, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–24549 Filed 10–7–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92–053]

Navigation Safety Advisory Council; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given to a meeting of the Navigation Safety Advisory Council to be held at the Hyatt Regency Tampa, Two Tampa City Center, Tampa, FL on Saturday through Tuesday, November 14–17, 1992. The Council will convene for a preliminary plenary session at 5:00 p.m. on Saturday, November 14, 1992.

Committees will meet on Saturday, November 14 from 5:30 to 8:30 p.m. and on Sunday, November 15 from 9 to 12 a.m. and 1 to 4 p.m. Committee discussions will include the following topics:

a. *Navigation Rules:*

1. Relationship between International Rule 5 and the lookout provisions of the STCW Convention.

2. Review of Rule 24(a) lighting requirements for vessels engaged in towing.

b. *Navigation Equipment Committee:*

1. Training for users of Electronic Chart Display (ECDIS).

c. *Human Factors in Navigation Safety:*

1. Bridge procedures and bridge team management.

2. Workhour limitations and fatigue.

3. Conduct of trials in which the officer of the navigational watch acts as the sole lookout in periods of darkness.

d. *Marine Information and Communications:*

1. Review draft U.S. Note to IMO Subcommittee on Standards of Training and Watchkeeping concerning the

relationship between master/navigational watch and the pilot.

The Council will convene in plenary session on Monday, November 16 at 8 a.m. to 5 p.m. and reconvene on Tuesday, November 17 at 8 a.m. to 12 noon to hear Committee status reports and any matters properly brought before the Council.

The meeting is open to the public. Persons wishing to make oral statements should notify the Executive Director at the address below no later than Friday, November 13, 1992. Any person may present a written statement to the Council at any time without advance notice.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council, U.S. Coast Guard (G–NSR–3), Washington, DC 20593–0001, Telephone (202) 267–0415.

Dated: October 1, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92–24559 Filed 10–07–92; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Proposed Advisory Circular 21–CGSR: Computer Generated/Stored Records

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 21–CGSR, Computer Generated/Stored Records. The proposed AC, provides information and guidance concerning computerized manufacturing and quality records systems. This notice is necessary to give all interested persons an opportunity to present views on the proposed AC.

DATES: Comments must be received on or before December 7, 1992.

ADDRESSES: Copies of the proposed AC 21–CGSR can be obtained from and comments may be returned, to the following address: Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Ava Robison, Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, room 333, Aircraft Certification Service, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–7147.

SUPPLEMENTARY INFORMATION:

Background

This AC is an acceptable means, but not the only means of demonstrating compliance with the requirements of Federal Aviation Regulations part 21, Certification Procedures for Products and Parts. The proposed AC provides information and guidance on the elements of a computer system that generates and stores aviation manufacturing and quality records.

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they desire to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing a final AC. Comments submitted must identify the proposed AC 21–CGSR, File Number PO–220–0171.

Comments received on the proposed AC 21–CGSR may be examined, before and after the comment closing date in room 333, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on September 21, 1992.

Terry A. Allen,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 92–24354 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–13–M

Proposed Advisory Circular 21–PAS; Quality Assurance Controls for Product Acceptance Software

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 21–PAS Quality Assurance Controls for Product Acceptance Software. The proposed AC provides information and guidance concerning control of product acceptance software. This notice is necessary to give all interested persons an opportunity to present views on the proposed AC.

DATES: Comments must be received by December 7, 1992.

ADDRESSES: Copies of the proposed AC 21–PAS can be obtained from, and comments may be returned to, the following address: Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ava Robinson, Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, room 333, Aircraft Certification Service, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–7146.

SUPPLEMENTARY INFORMATION:

Background

Prior to this proposed AC, the FAA has not issued any guidance concerning ground based software. Since most production approval holders use some form of software to test or inspect products, this proposed AC is intented to provide information on ensuring inspection/test software remains in the released configuration. The proposed AC 21–PAS provides information and guidance on the control of software used to demonstrate conformance with Federal Aviation Administration approved type design. This proposed AC is an acceptable means, but not the only means of demonstrating compliance with the requirements of Federal Aviation Regulations Part 21, Certification Procedures for Products and Parts.

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they desire to the address specified above. Comments submitted must identify the proposed AC 21–PAS, File Number PO–220–0221. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing a final AC.

Comments received on the proposed AC 21–PAS may be examined, before and after the comment closing date in room 333, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on September 21, 1992.

Terry A. Allen,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 92–24355 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Craven County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Craven County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, Operations Engineer, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone: (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Route 70 (U.S. 70) in Craven County, North Carolina. The proposed improvement would involve the reconstruction of existing U.S. 70 through the town of Havelock, North Carolina, or a bypass on new location for a distance of about 10 miles.

Improvements to the corridor are considered necessary for the existing and projected traffic demand. Alternatives under consideration include (1) No-build; (2) using alternative travel modes; (3) improving the existing highway; and (4) constructing a four-lane, limited access highway on new location.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. A series of public meetings and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provide above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 1, 1992.

Roy C. Shelton,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 92–24473 Filed 10–7–92; 8:45 am]

BILLING CODE 4910–22–M

Federal Aviation Administration

Intent To prepare an Environmental Document and To Conduct Scoping by Meeting for Establishing and Operating a Terminal Doppler Weather Radar (TDWR) to Serve the Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to last paragraph regarding the scoping meeting date.

SUMMARY: This is to correct the date the scoping meeting which will be conducted at the Licking Height School, Summit Station, Ohio.

In the notice document 92–20406, page 38710, issue of Wednesday, August 26, 1992, second column, under "The FAA plans to conduct a scoping meeting on * * *", change the date to October 6, 1992.

Issued in Des Plaines, Illinois, on October 2, 1992.

Russell P. Williams,

Manager, Resource and Planning Branch, AGL–420, Airway Facilities Division, Great Lakes Region.

[FR Doc. 92–24509 Filed 10–07–92; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Pellston Regional Airport, Pellston, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Pellston Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Raymond L. Thompson, Airport Manager, of the County of Emmet, Michigan, at the following address: Pellston Regional Airport, Pelston, Michigan 49769.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Emmet under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dean C. Nitz, Acting Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7300. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Pellston Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 190) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 21, 1992, the FAA determined that the application to impose and use a PFC submitted by County of Emmet, Michigan was subsequently complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 22, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1992.

Proposed charge expiration date: December 31, 1997.

Total estimated PFC revenue: $440,875.

Brief description of proposed project(s):

Project To Impose and Use PFC

Construct aircraft ramp
Heated sand storage building
Rehabilitate Runway 14/32
Rehabilitate Taxiway G

Project Only To Impose a PFC

Blast pads for Runways 14 and 32, and paved shoulders for Runway 14/32
Acquire physically challenged passengers (PCP) equipment
Acquire snow removal equipment (broom)
Runway 5/23 lighting

Rehabilitate taxiways A and B

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxis and Charters.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pellston Regional Airport.

Issued in Des Plaines, Illinois on October 1, 1992.

James H. Washington,

Acting Manager, Airports Division Great Lakes Region.

[FR Doc. 92-24508 Filed 10-7-92; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 92-34; Notice 2]

Mack Trucks Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Mack Trucks, Inc. (Mack) of Allentown, Pennsylvania, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices, and Associated Equipment." The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on July 17, 1992, and an opportunity afforded for comment (57 FR 31748).

From December 1, 1991 through March 26, 1992, Mack installed front-mounted turn signal lamps on approximately 1,000 RB, RD, RM, DM, and DMM model trucks. The turn signal lamps on these vehicles do not comply with the photometric requirements of Standard No. 108.

Effective December 1, 1991, paragraph S5.1.1 of Standard No. 108 was amended to incorporate by reference Society of Automotive engineers Standard J1395 April 1985. Paragraph 5.3.2 of J1395 states that the functional lighted lens area of a single lamp, each compartment of a multiple compartment, and each lamp of a multiple lamp arrangement shall be at least 75 cm^2 (11.635 in^2). The subject lamps have functional lighted lens area of 72 cm^2 (11.18 in^2). Mack supported its petition for inconsequential noncompliance with the following:

Mack Trucks, Inc. has utilized the lamps in question * * * since approximately 1979 without problem.

Each lamp provides 11.18 square inches (slightly more than 72 square centimeters) of functional lighted lens area compared to the required 75 square centimeters (equivalent to 11.625 square inches), a difference of less than 3 square centimeters (0.445 square inch).

Mack Trucks, Inc. believes that, based on the subject lamps' minimal difference (less than 4%) from the required functional lighted lens area and our use of these same lamps for more than ten (10) years on the same vehicle models without problem, the noncompliance * * * does not affect the safety of our vehicles and is, therefore, inconsequential.

No comments were received on the petition.

The noncompliance represented by this petition is clearly distinguishable from that which is the basis for the typical inconsequentiality petition. In the usual situation, the standard represents a fixed level of performance which the petitioner's vehicle or equipment item fails to reach. In this instance, the performance of the equipment has not varied, but the level of performance prescribed has changed. Had petitioner's vehicles been manufactured before December 1, 1991, they would have complied with Standard No. 108. The new requirement, effective that date, was intended to improve motor vehicle safety. Failure to meet the new requirement results, of course, in a noncompliance, but the noncompliance represents a level of safety performance previously considered an acceptable minimum standard. Further, the margin of failure in this instance is slight, less than half a square inch per lamp, as is the number of vehicles involved, 1,000 units.

There is precedent for granting a petition where compliance with previously existing requirements has become a noncompliance because of an amendment to a standard. These precedents have concerned Standard No. 101 where failure to provide certain identification symbols was deemed inconsequential because the identification that was provided met the requirement in effect before the effective date of the symbol requirement (Ford Motor Co., Docket IP81-5; Toyota Motor Co., Docket IP81-8; Volvo White, Docket IP85-7). The agency sees no substantive difference between those petitions, and the petition under consideration. Accordingly, in consideration of the foregoing, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: September 30, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-24487 Filed 10-7-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 2, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0201
Form Number: IRS Form 5308
Type of Review: Revision
Title: Request for Change in Plan/Trust Year
Description: Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 480
Estimated Burden Hours Per Respondent: 44 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 339 hours
OMB Number: 1545-1074
Form Number: IRS Form 8743
Type of Review: Revision
Title: Information on Fuel Inventories and Sales
Description: Form 8743 is used to provide information on fuel inventories and sales. This form enables IRS to monitor the excise tax liability for all taxable fuels. (Internal Revenue Code (IRS) sections 4081, 4091, 4041 and 4042). The form will be

filed by refiners, importers or terminal operators.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 108,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—6 hours, 13 minutes
Learning about the law or the form—18 minutes
Preparing and sending the form to the IRS—28 minutes
Frequency of Response: Quarterly
Estimated Total Reporting/ Recordkeeping Burden: 748,440 hours
Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92-24397 Filed 10-7-92; 8:45 am]
BILLING CODE 4810-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 2, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0065.
Form Number: None.
Type of Review: Extension.
Title: Privacy Act—Form of Request for Notification of Whether a Record Exists, Form of Request to Amend Records, Form of Request for Appeal of Refusal to Amend Records.
Description: Requests records pursuant to the Privacy Act. The Privacy Act provides that a U.S. citizen or resident alien may seek access or amendment to their records or any information pertaining to them maintained in a system of records and referenced by personal name or identifier.
Respondents: Individuals or households.
Estimated Number of Respondents: 4,822.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Other (voluntarily as required).
Estimated Total Reporting Burden: 4,822 hours.
OMB Number: 1505-0066.
Form Number: None.
Type of Review: Extension.
Title: FOIA—Form of Request for Information and Appeal of Denial, Waiver of Fees.
Description: Requests information pursuant to the Freedom of Information (FOI) Act. The public submits FOI requests in writing, signed by requestor; reasonably describe records; agree to pay fees for search, review and duplication or state up to what amount will be paid; state whether copies are desired or inspection of records is preferred.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 56,017.
Estimated Burden Hours Per Response: 45 minutes.
Frequency of Response: Other (voluntarily as required).
Estimated Total Reporting Burden: 42,013 hours.
Clearance Officer: Lois K. Holland, (202) 622-1563, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395-6880 cost of money to the government for maturities similar to the average, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92-24490 Filed 10-7-92; 8:45 am]
BILLING CODE 4810-25-M

[Directive Number: 15-21]

International Transport of Good Under Cover of Transport International Routier-International Road Transport (TIR) Carnets

Date: September 30, 1992.

1. *Delegation.* The Commissioner, Under States Customs Service is hereby delegated authority to take all necessary action required of the United States under Section 1 of Article 5 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention). The Commissioner shall exercise this authority subject to the conditions set forth in section 2 of said Article 5.

2. *Cancellation.* Treasury Directive 15-21, "International Transport of Goods Under Cover of TIR Carnets," dated July 30, 1968, is superseded.

3. *Office of Primary Interest.* Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,
Assistant Secretary (Enforcement).
[FR Doc. 92-24398 Filed 10-7-92; 8:45 am]
BILLING CODE 4810-25-M

Office of Thrift Supervision

[AC-57; OTS No. 5020]

Jersey Shore Savings and Loan Association, Toms River, NJ; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on September 9, 1992, the Deputy Director of Washington Operations approved the application of Jersey Shore Savings and Loan Association, Toms River, New Jersey, for permission to convert to the stock form of organization, in a voluntary supervisiory conversion in connection with a holding company acquisition. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place Centre, 18th Floor, Jersey City, New Jersey 07302.

Dated: October 2, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.
]FR Doc. 92-24497 Filed 10-7-92; 8:45 am]
BILLING CODE 6720-01-M

[AC-56; OTS No. 5333]

Peoples Federal Savings and Loan Association, Conway, SC; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on August 21, 1992, the Deputy Director for Washington Operations approved the application of Peoples Federal Savings and Loan Association, Conway, South Carolina, for permission to convert to the stock form of organization, in a voluntary supervisory conversion in connection with a holding company acquisition. Copies of the

application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: October 2, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-24498 Filed 10-7-92; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES COMMISSION ON IMPROVING THE EFFECTIVENESS OF THE UNITED NATIONS

Meeting and Hearing

AGENCY: United States Commission on Improving the Effectiveness of the United Nations.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this meeting is to obtain information on the subject of United Nations reform and U.S. policy toward the United Nations, and to conduct other Commission business. The meeting will be open to the public.

DATES: October 23, 1992, 9:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Ceremonial Court Room at the U.S. Federal Court House, 601 Market Street, Philadelphia, PA.

FOR FURTHER INFORMATION CONTACT: Gregory Wierzynski, Executive Director, 1825 Connecticut Avenue, suite 1011, Washington, DC 20009; telephone: (202) 673-5012; telefax: (202) 673-5007.

Experts or representatives of interested groups wishing to present testimony should contact the Executive Director and submit a summary of their presentation by October 16, 1992.

Citizens interested in testifying may sign up with the Court Security Officer between 9:30 a.m. and 11 a.m. on the date of the meeting and will be selected on a first-come, first-served basis. Testimony will be heard after 3:30 p.m. Citizen witnesses must limit their statements to five minutes but may submit additional material for the record.

The U.S. Commission on Improving the Effectiveness of the United Nations was established by Public Law 100-204, 101 Stat. 1934 (22 U.S.C. 287 note). The Commission is charged with preparing and submitting to the President and Congress a report containing a detailed statement of its findings, conclusions and recommendations regarding reform of the United Nations system and the role of the United States in the United Nations system. The Commission is bipartisan and is privately-funded.

The Commission members are: Representative James A. Leach and Charles M. Lichenstein, Co-Chairs; Thomas F. Eagleton, Representative Edward F. Feighan, Edwin J. Feulner, Jr., Walter Hoffmann, Senator Nancy L. Kassebaum, Alan L. Keyes, Jeane J. Kirkpatrick, Peter M. Leslie, Gary E. MacDougal, Reverend Richard John Neuhaus, Senator Clairborne Pell, Jerome J. Shestack, Harris O. Schoenberg, and Jose S. Sorzano.

Dated: October 5, 1992.

Gregory Wierzynski,

Executive Director.

[FR Doc. 92-24505 Filed 10-7-92; 8:45 am]

BILLING CODE 6820-BB-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Greek Miracle: Classical Sculpture from the Dawn of Democracy, the Fifth Century, B.C." (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC from on or about November 22, 1992 to on or about February 7, 1993, and at The Metropolitan Museum of Art, New York, New York, from on or about March 11, 1993, to on or about May 23, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: October 2, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-24438 Filed 10-7-92; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 9, 1992.

Dated: September 29, 1992.

By direction of the Secretary.

B. Michael Berger, Director,

Records Management Service.

Reinstatement

1. Veterans Application for Work-Study Allowance, VA Form 20-8691.
2. The form is needed to identify those veteran-students who wish to apply for the supplemental VA work-study benefit and to assist VA in selecting eligible applicants.
3. Individuals or households.
4. 5,375 hours.
5. 15 minutes.
6. On occasion.
7. 21,500 respondents.

[FR Doc. 92-24482 Filed 10-7-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 196
Thursday, October 8, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, October 13, 1992.

PLACE: Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previous announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-24820 Filed 10-5-92; 4:52 pm]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Tuesday, October 13, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Aproval of Minutes of Previous Open Meeting.
2. Proposed Charter Application for Citizens Community Federal Credit Union, Omaha, Nebraska.
3. Proposed Charter Application for South Central Los Angeles Community Development Federal Credit Union, Los Angeles, CA.
4. Proposed Amendment: Part 710, NCUA's Rules and Regulations, Voluntary Liquidation of Federal Credit Unions.
5. Final Amendment: Section 700.1(i), NCUA's Rules and Regulations, Risk Assets.
6. Fiscal Year 1993 Overhead Transfer Rate.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Tuesday, October 13, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Sections 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Central Liquidity Facility Investment Policy. Closed pursuant to exemption (9)(B).
4. National Credit Union Share Insurance Fund Investment Policy. Closed pursuant to exemption (9)(B).
5. Request from a Corporate Credit Union for a Determination under Section 704.1(b) of NCUA's Rules and Regulations. Closed pursuant to exemptions (8) and (9)(A)(ii).
6. Personnel Action. Closed pursuant to exemptions (2), (6), (8), and (10).

FOR MORE INFORMATION CONTACT: Beckey Baker, Secretary of the Board, Telephone (202) 682-9600.

Beckey Baker,

Secretry of the Board.

[FR Doc. 92-24882 Filed 10-6-92; 2:32 pm]

BILLING CODE 7535-01-M

Corrections

Federal Register
Vol. 57, No. 196
Thursday, October 8, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 447

[BPD-396-F]

RIN 0938-AD 12

Medicare and Medicaid; Requirements for Long Term Care Facilities

Correction

In rule document 92-22313 beginning on page 43922, in the issue of Wednesday, September 23, 1992, make the following correction:

§ 447.255 [Corrected]

On page 43924, in the first column, in § 447.255(a), in the third line, "submitted" should read "substituted" and "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960-AC66

Supplemental Security Income for the Aged, Blind, and Disabled Resources and Exclusions; Definition of Resources

Correction

In rule document 92-18874 beginning on page 35459 in the issue of Monday, August 10, 1992, make the following corrections:

1. On page 35459, in the third column, under **SUMMARY:**, in the fourth line from the bottom, "eligible" should read "ineligible".

2. On page 35460, in the first column, in the fourth line from the bottom, "not" should read "are".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—"Feasibility Study on Using Molecular Sieves for Diesel NO_x Control"

Correction

In notice document 92-18988 appearing on page 35845 in the issue of Tuesday, August 11, 1992, in the second column, in the third paragraph, in the sixth line, "of" the second time it appears should read "on" and "FR 35887." should read "FR 35877."

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57
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Thursday
October 8, 1992

Part II

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Southern Ute Indian Tribe—State of Colorado Gaming Compact, which was enacted on August 11, 1992.

DATES: This action is effective on October 8, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

Dated: October 1, 1992.

William D. Bettenberg,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–24435 Filed 10–7–92; 8:45 am]

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federal register

Thursday
October 8, 1992

Part III

Environmental Protection Agency

Daminozide; Notice of Final Determination for Non-Food Uses and Termination of the Daminozide Special Review

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/40C; FRL-4163-7]

Daminozide; Notice of Final Determination for Non-Food Uses and Termination of the Daminozide Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination and termination of Special Review.

SUMMARY: This Notice concludes the Special Review of the non-food uses of daminozide and announces the Agency's decision to retain these registrations without requiring modification to the label. This Notice also contains the Agency's revised estimate of the dietary risks based on the conclusions of the 2-year UDMH cancer studies in mice and rats.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460.

Additional information supporting this action is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in the Public Response and Program Resource Branch, Field Operations Division, (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By Mail: Thomas Moriarty, Special Review Branch, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office Location and Telephone Number: Third Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA 22202 (703) 308-8035.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the Federal Register. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

This Notice announces EPA's decision to retain the non-food use registrations of products which contain daminozide as the active ingredient. This Notice concludes EPA's administrative Special Review of the risks and benefits of daminozide which was initiated in a Federal Register notice of July 1984 (49 FR 29186). A notice of Preliminary Determination (PD 2/3) was issued in May 1989 (54 FR 22558), and supporting documents, including the Technical Support Document (TSD), for the PD 2/3 were made available to any requesting party at that time. The Agency received a request by the sole registrant of daminozide products, Uniroyal Chemical Company, in October 1989, to voluntarily withdraw all food-use registrations of daminozide. A notice was published in November 1989 (54 FR 47492) which canceled all food use registrations of daminozide as of November 17, 1989. This Notice concludes EPA's special review of the non-food uses of daminozide.

This Notice is organized into nine units. Unit I is an introduction providing background information and the legal basis for this action. Unit II is a summary of previous regulatory actions concerning the registration of daminozide products. Unit III presents EPA's summary of the toxicological concerns, cancer classification, and comments received in response to EPA's PD2/3. Unit IV contains EPA's exposure assessment, final worker risk estimates and additional comments received in response to the PD 2/3. Unit V contains the benefits associated with daminozide and comments received in response to the PD 2/3. Unit VI contains EPA's reassessment of the dietary risks of daminozide based on the refined cancer potency factor (Q_1^*) and Unit VII summarizes EPA's risk/benefit determination and announces EPA's regulatory action. Finally, Unit VIII announces the availability of the Public Docket and Unit IX lists references contained in this document.

I. Introduction

Daminozide is the common name for butanedioic acid mono (2,2-dimethylhydrazine). The sole registrant, Uniroyal Chemical Company (Uniroyal), produces four products, B-Nine, B-Nine SP, Alar 85, and Alar Technical, which contain daminozide as the active ingredient. Daminozide is a systemic growth regulator registered only for use on ornamental and bedding plants. Daminozide also was registered for use on food crops; however, Uniroyal Chemical Company voluntarily canceled all food use registrations of daminozide on November 14, 1989.

Legal background. Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by EPA (FIFRA sections 3(a) and 12(a)(1)). A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions of a registration.

In order to obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined in FIFRA section 2(bb), as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the statutory standard is on the proponent of registration and continues as long as the registration remains in effect. Under FIFRA section 6, the Administrator may issue a Notice of Intent to Cancel the registration of a pesticide product whenever it is determined that the pesticide product causes unreasonable adverse effects on the environment. EPA created the Special Review process to facilitate the identification of pesticide uses which may not satisfy the statutory requirements for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review is initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR part 154. EPA announces that a Special Review is initiated by issuing a notice in the Federal Register. Registrants and other interested persons are invited to review the data upon which the Special Review is based and to submit data and information to rebut EPA's conclusions by showing that EPA's initial determination was in error, or by showing that use of the pesticide is not likely to result in any significant risk to human health or the environment. In addition to submitting rebuttal evidence, persons wishing to comment may submit relevant information to aid in the determination of whether the economic, social, and environmental benefits of the pesticide outweigh the risks of use. After reviewing the comments received and other relevant material obtained during the Special Review process, EPA makes a decision

on the future status of registrations of the pesticide.

The Special Review process may be concluded in various ways depending upon the outcome of EPA's risk/benefit assessment. If EPA concludes that all of its risk concerns have been adequately rebutted, the pesticide registration will be maintained unchanged, or if all its risk concerns are adequately addressed through label changes, a special review may be terminated after such label changes. If, however, all risk concerns are not rebutted, EPA will proceed to a full risk/benefit assessment. In determining whether the use of a pesticide poses risks which are greater than its benefits, EPA considers possible changes to the terms and conditions of registration which can reduce risks, and what impacts such modifications may have on the benefits of use. If EPA determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registration. Alternatively, EPA may determine that no changes in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose any unreasonable adverse effects. If EPA makes such a determination, it may seek cancellation, and, if necessary, suspension. In either case, EPA must issue a Notice of Intent to Suspend or a Notice of Intent to Cancel the registrations. If the Notice requires changes in the terms and conditions of registration, cancellation may be avoided by making the specified changes set forth in the Notice, if possible. Adversely affected persons, including registrants and applicants for registration, may also request a hearing on the suspension or cancellation of a specified registration or use.

II. Regulatory History

A. Rebuttable Presumption Against Registration

In June 1984, EPA (the Agency) issued a Notice of Rebuttable Presumption Against Registration (RPAR) for Daminozide which initiated what is now called the Special Review Process (40 CFR part 154). The RPAR included the Notice of Initiation of Special Review (PD 1) (49 FR 29186, July 18, 1984), and the Pesticide Registration Standard and Guidance Document. At that time, the Agency was concerned about carcinogenic risk to the general population through dietary exposure to daminozide. Data available at that time indicated that daminozide was carcinogenic in laboratory mice and rats. The Agency was specifically concerned about risk from unsymmetrical dimethylhydrazine (UDMH). UDMH, a known carcinogen in laboratory animals, is a contaminant of commercial daminozide and a metabolite of daminozide once it enters the body.

EPA believed, however, that the risks associated with the non-food uses of daminozide were not significant. The Agency noted that daminozide was not rapidly absorbed through the skin and exposure to applicators was low (Ref. 1).

Through the PD 1, the Agency solicited information from registrants, applicants, and interested parties to help conduct a full risk/benefit analysis of daminozide. Information which the Agency solicited included information on the importance of daminozide to agriculture and information regarding alternative growth regulators such as their efficacy and use patterns.

B. Draft Preliminary and Final Determination (PD 2/3/4), Data Call-In, and Tolerance Extension.

In September 1985 EPA submitted a Draft PD 2/3/4 to the Scientific Advisory Panel (SAP) and the U.S. Department of Agriculture, as required by FIFRA. The Agency intended to proceed with a PD 2/3/4 in order to expedite the special review of daminozide. (A PD 2/3/4 allows the Agency to propose and finalize a regulatory action in one step whereas it is usually completed in two; first by proposing a regulatory action (PD 2/3) then by finalizing a regulatory action (PD 4)).

The SAP believed that the animal cancer data were insufficient to support a quantitative risk assessment and recommended that EPA require additional data before taking regulatory action on daminozide. Although EPA is not legally bound by the SAP's opinion, the Panel is an integral part of Agency decisions. In this case, EPA accepted the Panel's recommendations and did not proceed with the Draft PD 2/3/4 but required additional data, and took a number of steps to reduce risk to the general population as discussed below.

A Data Call-In Notice was issued in 1986 which required a number of additional studies including cancer studies in mice and rats, a greenhouse worker exposure study, and a market basket survey to measure levels of daminozide and UDMH on produce in the grocery store (Ref. 2).

To reduce risk to the general population, the Agency reduced the application rate of daminozide on apples and added to the label an advisory statement which cautioned against the use of daminozide on apples intended for processing. (Levels of UDMH increase when apples are processed). EPA also reduced the tolerance for daminozide residues on apples from 30 ppm to 20 ppm and set the tolerance to expire on July 31, 1987. The Agency intended to reevaluate the daminozide tolerance on apples after the preliminary results of the residue and market basket survey data were available. However, data available at that time (July 1987), showed that the tolerances could not be lowered without making some legally treated apples over tolerance and therefore, subject to seizure. Thus, EPA extended the 20 ppm apple tolerance until January 31, 1989 (51 FR 12889). In early 1989, the Agency reevaluated the tolerance in light of the interim results of the cancer studies.

In January 1989, EPA estimated, based on the interim results of the UDMH cancer studies in rat and mice, that the dietary risk to the general population from daminozide/UDMH was 4.9×10^{-6}. In considering the estimated risk, EPA believed that regulatory action should be pursued but that the daminozide tolerance, due to expire January 31, 1989, could be extended for an additional 18 months without posing an unreasonable risk to the general population.

C. Preliminary Determination to Cancel Certain Daminozide Product Registrations and Draft Notice of Intent to Cancel (PD 2/3)

In preparing the PD 2/3, which was issued in May 1989 (54 FR 22558), EPA reviewed all comments and data submitted in response to the PD 1, the historical toxicity data, and the interim results of the UDMH cancer studies required through the 1986 Data Call-In.

The Agency's primary concern about exposure to daminozide/UDMH was cancer. Although EPA had classified both UDMH and daminozide as Group B2, probable human, carcinogens, (Ref. 3), EPA had identified UDMH as the primary agent of concern. At that time EPA did not estimate risk from daminozide, as it did for UDMH. Although daminozide produced the same types of tumors as did UDMH (hemangiomas/hemangiosarcomas), the incidences of tumors showed trends but no statistical significance by pairwise comparison with controls (Ref. 3).

The interim results of the UDMH cancer studies in mice and rats were received in March 1988. Based on the report from the mouse study, EPA calculated an interim UDMH cancer potency factor (Q_1^*). (Cancer potency is a quantitative measure or estimate of the relationship between exposure to

increasing doses of the chemical substance in question and the increased severity of the carcinogenic effect, such as the number of tumors). EPA believed that vascular tumors (hemangiosarcoma) were appropriate to use in calculating the interim Q_1^* because: (1) It is a relatively uncommon malignant tumor and has a low background rate in laboratory mice and rats; and (2) it is the same type of tumor seen in the earlier UDMH studies (Toth 1973, Toth 1977a, Toth 1977b, and Haun 1984) (Refs. 4, 5, 6, and 7).

Dietary risk was estimated using the interim (Q_1^*) and exposure estimates derived from levels of daminozide residues on treated foods, as observed in the market basket survey, and consumption patterns. EPA estimated dietary risk to the general population from exposure to UDMH to be 4.9×10^{-5}. Full descriptions of exposure estimates and risk calculations, including exposure and risk calculations to various subpopulations, are contained in the Technical Support Document (TSD) (Ref. 3).

Risk from the non-food uses of daminozide was estimated using exposure estimates from a surrogate worker exposure study. Although Uniroyal submitted a daminozide worker exposure study in 1986, it was found to be inadequate to assess exposure, therefore, EPA used surrogate data (Sumagic PRG [Merricks, 1987]) it had on hand to estimate daminozide exposure to greenhouse workers. The Agency estimated risk to a worker performing the three job functions of mixer, loader, and applicator, to be 2×10^{-6} (Ref. 3).

The Agency also conducted a preliminary analysis of the benefits associated with the use of daminozide on both food and non-food crops. The analysis was conducted to determine the potential economic impacts to consumers, retailers, and producers if daminozide was not available. The Agency also considered the biological effects of daminozide, methods of application, and projected biological and economic impacts if daminozide were canceled, as well as the most likely chemical and non-chemical alternatives if daminozide were not available. EPA's preliminary benefit analysis of the following sites is contained in the TSD: apples (several varieties), peanuts, cherries, grapes, peaches, nectarines, pears and tomatoes (tomato transplants), and the non-food uses of daminozide.

EPA believed that the carcinogenic risk posed to the general population from the food uses of daminozide outweighed the benefits and therefore proposed to cancel all food-use registrations of daminozide. However, EPA proposed to retain the non-food uses of daminozide without modification to the label because it believed that the risks posed to greenhouse workers were outweighed by the benefits.

D. Notice of Receipt of Request to Cancel and Termination of Special Review of Food Uses, and Final Tolerance Rule

In October 1989, Uniroyal Chemical Company requested voluntary cancellation of all food-use registrations of daminozide. On November 14, 1989, the Agency published a notice (54 FR 47482) announcing its receipt of this request. That notice announced Uniroyal's commitment to submit the final report of the 2-year UDMH cancer studies and also announced EPA's intention to conduct a final dietary and worker risk assessment based on the conclusions of these studies. Subsequently, the Agency received the final reports of the UDMH cancer studies. In addition, Uniroyal Chemical Company voluntarily submitted worker exposure and metabolism data. The final dietary and worker risk assessments, based on these data, are contained in Units III, IV, VI, and VII of this Notice.

The Agency issued the Proposed Rule to revoke tolerances for daminozide on September 7, 1989 (54 FR 37276) the final tolerance rule for daminozide was published on March 19, 1990 (55 FR 10218), which set all tolerances for daminozide residues on food and feed crops at zero as of May 31, 1991.

E. Conclusion of Special Review (PD 4)

EPA's assessment and final decision regarding the risks and benefits for the non-food uses of daminozide are set forth in this document. This Notice also contains the Agency's reassessment of the dietary risks of daminozide. Based on both newly received data (including the final report of the rat and mouse cancer studies, new worker exposure data, and metabolism data), and historical daminozide data, EPA has determined that benefits from daminozide use on ornamental and bedding crops outweigh the risks to workers. Accordingly, EPA is announcing its decision to retain all non-food use registrations of daminozide without change to the label. Additionally, dietary risks have been reestimated using the final report of the UDMH cancer study in mice. EPA maintains that the dietary risk posed to the general population in 1989 was unreasonable and the Agency does not intend to change its regulatory position on the food-uses of daminozide. A more detailed discussion of the risks and benefits associated with the non-food uses is contained in the latter part of this Notice.

III. Summary of Toxicological Concerns and Agency Evaluation of Comments

The principal effect of concern with daminozide is the carcinogenic potential of UDMH. In 1989, EPA based its Preliminary Determination on the interim results of the UDMH cancer studies in rats and mice (Uniroyal 1988c, 1988d, 1988e). The final report of these studies has been submitted and EPA finds these data appropriate for cancer risk assessment (Ref. 8). EPA has considered, as a whole, the data from both the interim and the final reports of the cancer studies in evaluating the carcinogenic potential of daminozide and UDMH.

A. Carcinogenicity

1. *Hazard identification.* In one study (Uniroyal 1988c), Fisher 344 rats were administered UDMH in their drinking water at concentration levels of 0, 1, 50, or 100 ppm for 2 years. Gross findings included a dose related increase in cloudy corneas in both sexes which was not statistically significant. Non-neoplastic lesions were not observed in the test animals with the exception of bile duct hyperplasia and inflammation of the liver in the highest dosed males and in the mid-dose and high-dose females. The females also showed a statistically significant increasing trend of liver tumors (hepatocellular carcinomas/adenocarcinomas) and of combined liver tumors (hepatocellular adenomas and carcinomas/adenocarcinomas). Females also exhibited a significant increase in combined adenomas and carcinomas in the 50 and 100 ppm concentration groups when compared to controls. There were no other dose-related increases of neoplasms at other sites in females (Ref. 9).

A second study (Uniroyal 1988d), was conducted in which CD-1 mice were administered UDMH in their drinking water for 2 years at concentration levels of 0, 1, 5, or 10 ppm in males and 0, 1, 5, or 20 ppm in females. In the second year of the study, survival decreased in both sexes in all dose groups. However, only the top dose of both the males and females showed a substantial decrease in survival when compared to controls at termination. At week 78, the male mice showed a noticeable decrease in the survival (ranging from 82 percent to 86 percent), when compared to controls. There was an increase in the incidence

of brown pigment in the liver of both males and females in the mid-dose and high-dose groups between 12 and 24 months. Both males and females also showed a significant increase in the number of combined lung tumors (bronchioloalveolar adenoma and/or carcinoma). Male and female mice also showed an increase in the occurrence of bronchioloalveolar adenomas (Ref. 9).

In the third study (Uniroyal 1988e), CD–1 mice were administered UDMH at concentration levels of 0, 40, or 80 ppm in drinking water. The majority of deaths of the test animals occurred in the second year of the study. While there was a significant decrease in the survival of males only in the 80 ppm dose group, the females showed a significant decrease in survival in both the 40 ppm and 80 ppm dose groups. There was a biologically significant dose-related decrease in water consumption in male mice receiving 40 and 80 ppm when compared to controls. There was an increased incidence of lung tumors (alveolar/bronchiolar adenomas) and vascular liver tumors (hemangioma and hemangiosarcomas) which were considered dose related. In the 80 ppm dose group, both sexes showed both a pair-wise comparison, and a significant increasing trend in hemangiosarcomas and bronchioloalveolar tumors. In pair-wise comparison to the controls with the 40 ppm dose group, there was a significant increasing trend of vascular tumors (hemangiosarcomas) and combined vascular and lung adenomas (hemangiomas and lung adenomas/carcinomas). The males in the 40 ppm dose group also showed an increase in the incidence of combined vascular tumors (hemangiomas and hemangioma sarcomas), combined lung tumors (lung adenomas/carcinomas), and combined hepatocellular tumors (adenomas and/or carcinomas).

Female mice in the 80 ppm dose group showed significant increased trends and significant pair-wise comparison to controls for vascular tumors (hemangiosarcomas), combined vascular tumors (hemangiomas and hemangiosarcomas), lung tumors (bronchioloalveolar adenomas) and combined lung tumors (bronchioloalveolar adenomas and bronchioloalveolar carcinomas). In pair-wise comparison to controls, the 40 ppm dose group showed a significant increase in vascular tumors (hemangiosarcomas), combined vascular tumors (hemangiomas and hemangioma sarcomas), in hepatocellular adenomas, in lung tumors (bronchioloalveolar adenomas) and combined lung tumors (bronchioloalveolar adenomas and/or carcinomas) (Ref. 9).

2. *Metabolism.* A metabolism study in miniature swine was submitted to the Agency in 1987 (Ref. 10). Daminozide was administered in a single 5 mg/kg oral dose and after 96 hours was found in almost all tissues at levels up to 73 ppb, with the liver and kidney containing the highest levels. Analysis indicated that both ^{14}C-UDMH and ^{14}C-dimethylnitrosamine (DMN), which are derived from ^{14}C-daminozide, were excreted in the urine. From urinalysis, EPA estimated that only about 10 percent of the oral dose could be shown to be absorbed and approximately 1 percent (1 ppm) of daminozide is metabolized to UDMH. DMN levels in the urine, collected in the first 24 hours, ranged from 0.01 to 0.69 ppm.

3. *Mutagenicity.* While daminozide has been demonstrated to be negative for mutagenicity in a number of studies, UDMH has shown positive mutagenic activity in various other studies which have been submitted to the Agency. The Agency also notes that the open literature reports UDMH as positive for mutagenicity. Based on the available information, the Agency remains concerned about the mutagenic potential of UDMH (Refs. 11, 12, 13, 14, 15, and 16), although the available data does not conclusively indicate whether UDMH is mutagenic. In addition, further metabolism of UDMH can result in the formation of DMN, a well known mutagen.

B. Unit Risk (Q_1)*

EPA calculated the final Q_1* based on the incidence of hemangiosarcomas from all sites of the male CD–1 mouse study (the combined report of Uniroyal 1988d and Uniroyal 1988e) (Ref. 17). The Agency did not combine the incidence of the hemangioma with that of the incidence of the hemangiosarcoma in deriving the cancer potency factor because the data were insufficient to demonstrate evidence that the benign hemangioma progressed to the malignant hemangiosarcoma (Ref. 18). The number of hemangiomas were few and, even if included, would only marginally affect the unit risk estimate.

The Agency is also aware of the increased incidence of lung tumors in both the lower dose CD–1 mouse study and in the higher dose CD–1 mouse study. However, the refined unit risk estimate of UDMH (the final UDMH Q_1*) did not reflect the incidence of these tumors for the following reasons: (1) Historical incidences of lung tumors in the CD–1 male mouse were high, ranging from 17 percent to 52 percent; (2) incidences of lung adenomas and lung carcinomas in the two highest dose groups (40 and 80 ppm) were significantly higher than controls but were not dose-related; (3) the lung tumors were found only at interim or terminal sacrifice, or when animals died at unscheduled times during the study; (4) the hemangiosarcoma, which has a low background incidence in CD–1 mice, was a rapidly fatal tumor that was observed throughout the study; and, (5) the lung tumors were not able to be correctly evaluated by the same statistical method as the hemangiosarcoma (Ref. 18). The unit risk estimate of lung tumors alone, of hemangiosarcomas alone, and of the combined incidence of lung tumors and hemangiosarcomas were computed. The unit risk estimate of the combined tumors was within one order of magnitude of that of the unit risk estimate of the hemangiosarcoma. Use of either the combined unit risk estimate or that of the hemangiosarcoma alone would have a similar impact on the final regulatory decision.

Finally, the Agency did not use data from the rat study to estimate a UDMH Q_1* because only a small number of tumors occurred in only one sex and only at relatively high doses. The Agency believes that the responses observed in the rat study contrasted with the concerns raised by the responses seen in the mouse studies (Ref. 18).

A separate cancer potency factor was calculated using data from male mice (0.46 $(mg/kg/day)^{-1}$) and data from the female mice (0.31 $(mg/kg/day)^{-1}$). EPA used the more conservative Q_1* from the male mice, 0.46 $(mg/kg/day)^{-1}$, for the final risk assessment (Ref. 19). Because both sexes of mice had statistically significant increases in mortality with increasing doses of UDMH, hemangiosarcomas from all sites were evaluated by Peto's Prevalence test and the cancer potency factor was evaluated by the time-to-tumor Weibull83 model (Ref. 17).

C. Cancer Classification

EPA classified UDMH and the parent compound daminozide as Group B2 carcinogens using the weight-of-the-evidence approach and following the classification scheme set forth in EPA's Carcinogen Risk Assessment Guidelines (51 FR 33992, September 24, 1986). "Weight-of-the-evidence" is an approach the Agency uses to evaluate how likely an agent is to be a human carcinogen by taking into consideration the quality and adequacy of the data and the kinds and consistency of responses induced by a suspect

carcinogen. Using this approach the Agency has determined that there is sufficient evidence from animals to consider the agent(s) probable human carcinogens. Evidence is "sufficient" for an agent to be classified as a probable human carcinogen if there is an increased incidence of tumors: (a) In multiple species or strains of test animals; or (b) in multiple experiments, for example, with different dose levels or routes of administration; or (c) to an unusual degree in a single experiment with regard to high incidence, unusual site or type of tumor, or early age at onset.

UDMH is an inherent component of commercial daminozide and daminozide also breaks down to UDMH. The Agency, therefore, has classified both the metabolite, UDMH, and the parent, daminozide, as B2 carcinogens (Ref. 9) based on the following evidence:

(1) Administration of UDMH to female rats for 2 years was associated with a significant increase of combined liver tumors (carcinomas, and combined adenomas and carcinomas). In male and female mice, there was a statistically significant increase in the incidence of lung tumors.

(2) Administration of UDMH to male and female mice was associated with a significant increased incidence of vascular tumors (hemangiosarcomas and combined hemangiomas and hemangiosarcomas) at the mid-dose and high-dose levels.

(3) UDMH is structurally related to other hydrazine compounds (such as 1,2 dimethylhydrazine and monomethylhydrazine) which produce vascular and lung tumors.

(4) Data from a metabolism study in miniature pigs indicated the presence of DMN in the urine. DMN has been reported to produce vascular and pulmonary tumors identical to those evoked by both daminozide and UDMH.

(5) The mutagenicity concern for both UDMH and DMN also supports the Agency's cancer classification.

D. Comments and EPA Response

In response to the PD 2/3, EPA received comments regarding the Agency's evaluation of daminozide (Ref. 20). Several comments were submitted regarding the Agency's toxicological evaluation of daminozide/UDMH. A summary of these comments and the Agency's response follows.

Comment. Uniroyal believes that the Group B2 cancer classification of daminozide is inappropriate and that the weight-of-the-evidence supports a finding that daminozide is not carcinogenic. Uniroyal cited a 1988 study in which rats were administered daminozide in doses up to 10,000 ppm with no reported carcinogenic effects related to the administration of daminozide. Uniroyal also believes that several studies (Toth 77 and NCI 78), which the Agency used to support its regulatory decision, are not appropriate for cancer risk assessment because of irregularities in the design of the studies and in the way the studies were conducted.

EPA Response. With respect to the cancer classification of daminozide, the Agency recognizes that the cancer study in rats, as cited above, did not produce an overt incidence of tumors, as compared to the responses observed in mice. Additionally, the Agency notes that the gastrointestinal tract of various animal species to which alar is exposed, vary considerably and some species are more able to tolerate metabolic insult while others have a greater capability to cause (by metabolic conversion) or allow (due to appropriate pH condition) the breakdown of daminozide to UDMH. Since daminozide has been shown to breakdown to UDMH in several species, e.g., mice, guinea pig and swine, although not in the rat, the Agency believes that it is only appropriate that both the parent compound, daminozide, and the metabolite compound, UDMH, be classified as Group B2 carcinogens.

With respect to the Agency's use of the Toth 77 and NCI 78 studies, the Agency did not base its 1989 proposed regulatory decision on these two studies, rather the Agency used these two studies only as support for its proposed regulatory decision. (Indeed, the Scientific Advisory Panel recommended that the Agency not perform a quantitative risk assessment based on these studies.) The Agency, therefore, called for more definitive cancer data through a Data Call In, issued in 1986. The cancer studies in mice and rats provided the basis for the Agency's 1989 proposed regulatory decision.

Comment. Uniroyal believes that the dose levels used in the higher-dose cancer study in mice (40 or 80 ppm) exceed the Maximum Tolerated Dose (MTD), and therefore, the study is inappropriate to use for human health risk assessment. Uniroyal contends that the administered dose levels produced extreme levels of toxicity in the test animals, resulting in an increased rate of mortality. Uniroyal believes the high rate of mortality in the test animals makes data produced from this study highly questionable.

EPA Response. The Agency requested an additional carcinogenicity study in mice at doses of 0, 40, or 80 ppm because it did not believe that the MTD would be achieved with doses of 10 or 20 ppm of UDMH in the lower dose studies. The Agency consulted with other governmental testing facilities knowledgeable in setting test dose levels in cancer studies in order to establish dosing levels which should be administered to show whether UDMH was in fact carcinogenic.

Although the top doses produced some toxicity, the Agency believes that the high mortality, resulting from tumor rupture, cannot be attributed to exceedance of the MTD. Additionally, data from both higher dose and lower dose cancer studies with UDMH, when considered together show a good dose relationship with statistical significance, thereby arguing against the MTD being exceeded. The Agency, therefore, considered it appropriate to use the data from both the higher dose and the lower dose studies to assess human risk.

Comment. Uniroyal believes that the open literature on UDMH mutagenicity, which supports EPA's concern, is not accurate. UDMH mutagenicity data, as reported in the open literature, show that mutagenic responses are associated with cytotoxicity and are found only in studies where the test material was contaminated with dimethylnitrosamine (DMN).

EPA Response. The Agency believes that at least a portion of UDMH is nitrosated in humans, as it is in some animals, such as mice, due to the gastric acid secretions of a low pH. The Agency realizes that nitrosation does not occur in all mutagenicity studies. However, the Agency maintains a concern for the mutagenic potential of UDMH because it is capable of nitrosating, in the human, to DMN which is a known mutagenic agent.

IV. Worker Exposure and Risk

At the time of the PD 2/3, the Agency made a number of assumptions in estimating worker exposure to UDMH because of the limited data available at that time. Since then, the Agency has received a number of studies which have allowed EPA to refine the exposure assessment. Exposure to UDMH comes from two sources: (1) Conversion of daminozide to UDMH when it is ingested or absorbed through the skin or lungs; and (2) presence of UDMH as a contaminant in the commercial product and conversion of daminozide to UDMH when left standing in the mixing tank. The total risk from UDMH is estimated by adding together the individual risk from each source of exposure to UDMH.

A. Worker Exposure

A worker exposure study submitted by Uniroyal in 1990 measured dermal and inhalation exposure to daminozide from application to ornamentals in a greenhouse. Exposure was monitored separately for the mixer/loader job function and the applicator job function.

The Agency calculates the unit of exposure to daminozide by dividing the total dermal and inhalation exposure by the volume of pesticide handled. Actual dermal exposure to the body (exposure to the skin under the clothing) was measured using whole body dosimeters (long cotton briefs worn under the workers' typical clothing and over the workers' underwear). Dermal exposure to the face and neck was measured by extracts from swabs and exposure to the hands was measured from washing in detergent or rinsing in distilled water. Total dermal exposure was measured as the sum of all the residues from the upper and lower body dosimeters and residues measured from the facial and neck swab and hand rinse (Ref. 21).

Inhalation exposure was measured with an air sampling pump attached to the collar of the worker. Calculations for inhalation exposure were based on a respiration rate of 45 liters/minute for all job functions (Ref. 21).

Based on information provided by commercial growers and Uniroyal, EPA used the following parameters to estimate exposure to workers in both large and small greenhouses: (1) Workers in a large-greenhouse operation handle approximately 24 pounds of daminozide annually and small-greenhouse workers handle 10 pounds annually; (2) maximum exposure to a worker was estimated assuming that a worker will have a combined job function of mixer, loader, and applicator; (3) daminozide is not applied on consecutive days and the maximum period of exposure for any one application is 5 hours; (4) maximum concentration of the active ingredient is used (5,000 ppm solution), and is applied two times per year on multiple crops; and (5) daminozide is applied as a fine spray (as opposed to a coarse spray) which results in higher exposure (Ref. 22).

1. *Exposure to UDMH metabolized from daminozide.* Based on the miniature pig metabolism study, EPA has determined that upon entering the gut, about 1 percent of daminozide is metabolized to UDMH (Ref. 10). However, a worker's dermal and/or inhalation exposure to daminozide most likely does not result in metabolic conversion of daminozide to UDMH in the gut but elsewhere in the body e.g., the bloodstream. Because the exact rate of metabolic conversion in the body is not known, EPA assumes it to be the same as the 1 percent rate at which daminozide is metabolized to UDMH in the gut. EPA believes that this may be an overestimation because the metabolic conversion rate in the gut is generally higher (due to pH), than in other parts of the body. A worker's exposure to UDMH which is metabolically converted from daminozide is summarized in Column A of Tables 1a and 1b. in Unit. IV.A.2 of this notice.

2. *Exposure to UDMH from contamination and hydrolysis of daminozide.* The other source of UDMH exposure is from that amount of UDMH which is present as a contaminant of the commercial daminozide product. Commercial daminozide is comprised of 0.005 percent UDMH (Ref. 3). Exposure to UDMH also comes from the conversion (hydrolysis) of daminozide to UDMH when a solution of daminozide is mixed and stands in the tank before being used. EPA calculates that 0.012 percent of a daminozide solution hydrolyzes to UDMH when allowed to stand in the tank for 24 hours (the daminozide label states that spray and stock solutions must be used within 24 hours) (Ref. 22). Estimated exposure to UDMH as a contaminant, and UDMH as a hydrolysis product, is calculated as 0.005 percent and 0.012 percent respectively, of exposure to the parent compound, daminozide. A worker's dermal exposure to UDMH as a contaminant and hydrolysis product of daminozide is summarized in columns B and C of the following Table 1a:

TABLE 1a.—DERMAL EXPOSURE TO DAMINOZIDE AND UDMH

(in mg/kg/year, for combined function of mixer/loader/applicator)

Site	Daminozide	UDMH		
		A	B	C
	Exposure to daminozide (parent)	1 percent UDMH metabolized (in the body from the parent)	0.005 percent UDMH as part of the parent (contaminant)	UDMH hydrolyzed from the parent (0.012 percent)
Large Greenhouses	0.18	1.8×10^{-3}	9.0×10^{-6}	2.2×10^{-5}
Small Greenhouses	0.075	0.75×10^{-3}	3.8×10^{-6}	9.0×10^{-6}

A worker's inhalation exposure to UDMH which is metabolically converted from daminozide, which is a contaminant of commercial daminozide and is hydrolized from commercial daminozide is summarized in columns A, B, and C, respectively of the following Table 1b:

TABLE 1b.—INHALATION EXPOSURE TO DAMINOZIDE AND UDMH

(in mg/kg/year, for combined function of mixer/loader/applicator)

Site	Daminozide	UDMH		
		A	B	C
	Exposure to daminozide (parent)	1 percent UDMH metabolized (in the body from the parent)	0.005 percent UDMH as part of the parent (contaminant)	UDMH hydrolyzed from the parent (0.012 percent)
Large Greenhouses	0.12	1.2×10^{-3}	6.0×10^{-6}	1.4×10^{-5}

TABLE 1b.—INHALATION EXPOSURE TO DAMINOZIDE AND UDMH—Continued

(in mg/kg/year, for combined function of mixer/loader/applicator)

Site	Daminozide	UDMH		
		A	B	C
	Exposure to daminozide (parent)	1 percent UDMH metabolized (in the body from the parent)	0.005 percent UDMH as part of the parent (contaminant)	UDMH hydrolyzed from the parent (0.012 percent)
Small Greenhouses	0.049	4.9×10^{-4}	2.5×10^{-6}	5.9×10^{-6}

B. Absorption

1. *UDMH as a contaminant and hydrolyzed from daminozide.* The UDMH which is a contaminant of daminozide and which is hydrolyzed from daminozide comes into contact with the worker as UDMH per se and therefore, the rate of dermal absorption of UDMH is necessary to determine the dose.

A dermal absorption study was recently submitted by Uniroyal which demonstrated dermal absorption and bioavailability of UDMH in rats (Ref. 23). Based on this study, the bioavailability of UDMH for the treatment group which most closely matched a worker's potential exposure ranged from 11 percent to 24 percent. EPA used a UDMH dermal absorption rate of 20 percent as a reasonable worst-case scenario (Ref. 24).

The Agency assumes that 100 percent of the UDMH which is present as a contaminant of daminozide or is hydrolyzed from daminozide is absorbed into the lungs.

2. *UDMH which is metabolically converted from daminozide.* Metabolic conversion of daminozide to UDMH occurs once daminozide has entered the body. The rate of dermal absorption of daminozide is known to be 1 percent and the amount of daminozide which is metabolically converted to UDMH once it enters the body, is assumed to be 1 percent (Ref. 25).

EPA also assumes that 100 percent of that which is metabolically converted from daminozide to UDMH is absorbed into the lungs (Ref. 24).

C. Risk Characterization

Lifetime risk to workers may be estimated by converting exposure estimates to a lifetime average daily dose (LADD) and multiplying by the refined UDMH Q_1^* of 0.46 $(mg/kg/day)^{-1}$. The LADD converts yearly exposure to an average daily dose over a worker's lifetime (EPA assumes a professional applicator works 35 years of a 70-year lifetime). The Agency has calculated risk to workers using an approach which measures exposure to UDMH. Exposure to UDMH comes from three sources; as a contaminant of daminozide, as a hydrolysis product of daminozide and as a metabolic break down product of daminozide.

Inhalation and dermal risk from UDMH which is metabolically converted from daminozide is broken down in the following Table 2a:

TABLE 2a.—RISK FROM UDMH WHICH IS METABOLICALLY CONVERTED FROM DAMINOZIDE

Site	Dose[1] (mg/kg/day)	LADD (mg/kg/day)	Q_1^* $(mg/kg/day^{-1})$	Lifetime Risk
Large Greenhouse				
Inhalation	4.8×10^{-4}	6.6×10^{-7}	0.46	3.0×10^{-7}
Dermal	7.2×10^{-6}	9.9×10^{-9}	0.46	4.6×10^{-9}
Small Greenhouse				
Inhalation	2.0×10^{-4}	2.7×10^{-7}	0.46	1.2×10^{-7}
Dermal	3.0×10^{-6}	4.1×10^{-9}	0.46	1.9×10^{-9}

[1] Dose values are derived from Column A of Table 1a and 1b. Inhalation values are adjusted for molecular weight (UDMH is 40 percent by weight of daminozide). Dermal values are adjusted for molecular weight and dermal absorption (daminozide is dermally adsorbed at a rate of 1 percent).

Inhalation and dermal risk from UDMH which is a contaminant of, and hydrolized from commercial daminozide is broken down in the following Table 2b:

TABLE 2b.—RISK FROM UDMH AS A CONTAMINANT AND HYDROLYSIS PRODUCTS OF DAMINOZIDE

Site	Dose[1] (mg/kg/day)	LADD (mg/kg/day)	Q_1^* $(mg/kg/day^{-1})$	Lifetime Risk
Large Greenhouse				
Inhalation	1.2×10^{-3}	1.6×10^{-6}	0.46	7.4×10^{-7}
Dermal	3.6×10^{-6}	4.9×10^{-9}	0.46	2.3×10^{-9}
Small Greenhouse				
Inhalation	4.9×10^{-3}	6.7×10^{-6}	0.46	3.1×10^{-6}
Dermal	1.5×10^{-5}	2.0×10^{-8}	0.46	9.2×10^{-10}

[1] Dose values are derived by adding values from Columns B and C of Tables 1a and 1b. Inhalation values are taken from Column C and adjusted by 40 percent and added to Column B, dermal values are taken from Column B adjusted by 20 percent and added to Column C which is adjusted by 20 percent and 40 percent.

Risk from UDMH is the sum of the risks posed by UDMH from all three sources of exposure to UDMH. Incorporating a number of worst-case assumptions stated earlier in this Notice, EPA estimates upper-bound lifetime risk to workers in large greenhouses to be 3.1×10^{-7} and to workers in small greenhouses to be 1.2×10^{-7}, as summarized in the following Table 3 (Ref. 24):

TABLE 3.—TOTAL LIFETIME RISK FROM UDMH[1]

Site	Risk
Large Greenhouses	3.1×10^{-7}
Small Greenhouses	1.2×10^{-7}

[1] Includes risk from all sources, combined inhalation and dermal exposure and for the combined function of mixer/loader and applicator.

D. Risk From Daminozide

The Agency has regulated daminozide based on a risk estimate using an approach that measures exposure to UDMH. The Agency has also conducted an alternative UDMH risk assessment based on an approach that measures the effects of daminozide per se, since daminozide is also a Group B2 carcinogen. The Agency used a daminozide Q_1^* and estimates of exposure to daminozide to estimate worker risk. Based on this alternative approach, the Agency estimates upper-bound lifetime risk to workers to be 1.5×10^{-6} and 5.8×10^{-7}, for large and small greenhouses respectively. Although the Agency has performed this alternative risk assessment based on daminozide, the Agency believes that the preferable method to estimating risk is to measure exposure from UDMH per se. Therefore, the Agency has based its regulatory decision on risk estimates which come from measuring exposure to UDMH. The risk estimate based on daminozide is explained in full detail in the *Addendum to the Daminozide Risk Assessment*, available in the public docket.

E. Comments and EPA's Response

Only one comment was received regarding the Agency's non-dietary risk assessment. This comment and the Agency's response are summarized below.

Comment. Uniroyal believes that exposure estimates taken from the surrogate worker exposure study, (Sumagic PRG [Merricks, 1987]), which the Agency used to estimate exposure for the PD 2/3, are too high. Uniroyal also cites a surrogate study available in the open literature which shows that exposure values to workers are lower than those used by the Agency.

Response. At the time of the PD 2/3, the Agency chose to use the surrogate data which were available and considered appropriate instead of searching through the open literature for another appropriate exposure study. As stated earlier in this Notice, EPA found that risk to greenhouse workers, based on the surrogate exposure data, was acceptable.

The current exposure assessment incorporates a number of assumptions which are different from those incorporated into the exposure estimates of the PD 2/3; therefore, a direct comparison between the two is not possible. However, although the present exposure estimates and those contained in the PD 2/3 are based on different assumptions, EPA believes that the present exposure estimates are the most accurate measure of exposure available.

V. Summary of Benefits Assessment and Agency Evaluation of Comments

The benefits of a pesticide product are characterized by estimating the potential economic impact to industry, retailers, and consumers if that product were no longer available and more expensive or less efficacious alternatives are used.

Daminozide is a plant growth regulator used on a number of bedding plants and other crops including the following: chrysanthemums, azaleas, easter lilies, and hydrangeas. Daminozide is used to create a more compact plant with greener foliage (i.e., thicker and less elongated stems), to increase plant longevity, and to facilitate plant transport. Growers like daminozide because of its predictable effects and ease of application ("spray to run-off"). In 1989, EPA estimated that 90 percent of all potted chrysanthemums and 40 percent to 50 percent of the 65 million square feet of bedding plants were treated with daminozide. EPA believes that the use of daminozide on bedding plants, mums, and poinsettias has remained relatively constant.

There are four likely chemical alternatives to daminozide: uniconazole, ancymidol, chlormequat, and paclobutrazol. In addition, there are non-chemical controls such as withholding water or fertilizer, controlling light, and maintaining lower room temperatures. No single chemical alternative, however, can produce the same effects as daminozide. All the chemical alternatives are limited by either a narrower use spectrum, phytotoxic effects, or higher costs. Non-chemical controls are also considered less desirable because of adverse effects on the plants such as delayed flowering, discoloration, and smaller leaves.

To produce the same effects as daminozide, several chemical alternatives would have to be used in combination. The result would be increased cost (estimated to range from 10 to 20 times higher) and a lower quality of plant.

EPA currently estimates that the potential economic loss from cancellation of daminozide would be no less than $15 million and could be considerably higher (Ref. 26). This estimate is based on the incremental increase in costs resulting from the substitution of alternatives for daminozide.

Comments and EPA's Response. The Agency received one written comment in response to the PD 2/3 regarding the Agency's benefits analysis. This comment and the Agency's response are summarized below:

Comment. Uniroyal stated that EPA underestimated the benefits of daminozide use on ornamentals. The Society of American Florists and the Professional Plant Growers Association also submitted written comments in support of this position.

Response. Although Uniroyal agreed with EPA's estimate of percent crop treated, Uniroyal's figures for gross poundage of daminozide used on ornamentals are higher than those used by the Agency. EPA accepts the Uniroyal number for usage of daminozide on ornamentals.

Uniroyal also states that, based on the opinions of five university horticulturists and extension personnel, the added economic value to certain crops treated with daminozide ranges from 10 percent to 75 percent. However, without information on consumer acceptance and willingness to pay for treated versus non-treated plants, it is not possible to judge the accuracy of these estimates.

VI. Final Assessment of the Dietary Risks

In the Notice of Voluntary Cancellation (54 FR 47492), EPA stated that it would revise its dietary risk assessment based on the final report of the UDMH cancer studies. As stated earlier in this document, EPA has reviewed the final UDMH cancer data and has refined the UDMH Q_1^*. Using this refined Q_1^* (0.46 $(mg/kg/day)^{-1}$), and the dietary exposure estimates contained in the PD 2/3, EPA has revised the upper-bound lifetime dietary risk estimate in the PD 2/3 of 4.9×10^{-5} for the general population to 2.6×10^{-5} (Ref. 27). In light of the revised lifetime

dietary risk estimate of 2.6×10^{-5}, and the benefits of the food uses as estimated in 1989, EPA believes that it would have pursued the same course of action as that taken in 1989. Therefore, the revised dietary risk assessment does not change the Agency's regulatory or scientific position on the food-uses of daminozide.

In general, the Agency's risk assessment methodology may overestimate risk. However, it has been designed to avoid underestimating risk and, therefore, allows the Agency to act in a protective manner. The revised dietary risk assessment supports EPA's 1989 position that the dietary risks posed by the food uses of daminozide generally presented an unreasonable risk to human health. The Agency believes that its proposed regulatory action in 1989 on the food uses of daminozide was protective of public health.

VII. Risk/Benefit Analysis and Announcement of Termination of the Daminozide Special Review.

Based on the information summarized and presented in this Notice, EPA has determined that the non-food uses of daminozide, as currently registered, do not pose an unreasonable risk to workers (mixer/loaders and/or applicators). Given the magnitude of the benefits from the non-food uses of daminozide and the negligible risks posed to persons exposed to daminozide while working with it, EPA is announcing its decision to allow the continued uses of daminozide on the non-food use crops as presently registered.

The Agency estimates the lifetime risk to workers from exposure to UDMH to be 10^{-7} and estimates that the potential economic impacts from cancellation of daminozide would be no less than $15 million but could be considerably higher.

The cost-effectiveness (C-E) coefficient is a tool used to compare the estimated loss of benefits from cancellation of daminozide to the estimated reduction in carcinogenic risk from a particular use. It is an estimate of the societal cost per cancer case avoided. EPA has estimated that the C-E of cancellation of the non-food uses of daminozide is approximately $1 billion per theoretical cancer case avoided (Ref. 28). The Agency recognizes that the C-E coefficient has limitations and uses it only as a guide, not a decision tool, in the risk/benefit analysis determination.

VIII. Availability of the Public Docket

Pursuant to 40 CFR 154.15, the Agency has established a public docket (OPP-30000/40D) for the Daminozide Special Review. This public docket includes: (1) This Notice; (2) any other notices pertinent to the Daminozide Special Review; (3) non-Confidential Business Information (CBI) documents and copies of written comments or other materials submitted to the Agency in response to this Notice or any other Notice, and any other documents regarding daminozide submitted at any time during the Special Review process by any person outside the government; (4) a transcript of all public meetings held by the Agency for the purpose of gathering information on daminozide; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside the government pertaining to daminozide; and (6) a current index of materials in the public docket.

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Dated: September 28, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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Part IV

Environmental Protection Agency

Amitrole; Preliminary Determination To Terminate Special Review

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/38A; FRL 4164-1]

Amitrole; Preliminary Determination To Terminate Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed decision to terminate Special Review.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticide products containing amitrole and sets forth the Agency's assessment of the risks and benefits associated with the pesticidal uses of amitrole. On May 15, 1984, the Agency issued a Notice of Special Review of pesticide products containing amitrole based on carcinogenic concerns (49 FR 20546). This Notice proposes to terminate the amitrole Special Review based on the Agency's determination that the benefits of use outweigh the risks.

DATES: Written comments on this Notice must be received on or before November 9, 1992.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP-30000/38A; FRL 4164-1" by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter. All non-CBI written comments and the correspondence index will be available for public inspection and copying in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Philip J. Poli, Review Manager, Special Review Branch, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Third floor, Westfield Bldg., 2800 Jefferson Davis Highway, Arlington, VA. (703) 308-8038.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on the Federal Bulletin Board at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

This document presents the basis for the Agency's proposed decision to terminate the Special Review of amitrole.

I. Introduction

A. Summary

Amitrole is the common name for 3-amino-1,2,4-triazole. It is most commonly sold under the trade names AMIZOL and Amitrol T, and is formulated both as a wettable powder and a liquid concentrate.

Amitrole was first registered as an herbicide under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) in 1956. It is a systemic broad spectrum, post-emergence herbicide that is used to control many annual and perennial broadleaf weeds, grasses and woody species. Amitrole is classified by EPA as a Restricted Use pesticide [Ref. 1]. Section 3(d) of FIFRA specifies that only certified applicators trained for and familiar with pesticide use, or persons under their direct supervision, can use amitrole containing products. The current registered uses of amitrole are limited to non-crop, commercial sites. All amitrole food uses were canceled by the EPA in 1971 because of the carcinogenic potential from dietary exposure.

Currently, amitrole is registered for use on land surrounding commercial, industrial and farm premises, on rights-of-way, public utilities, and nurseries. Under the current use pattern, the principal pathway for human exposure is by the dermal route resulting from mixing, loading and applying the pesticide.

EPA's Special Review was initiated to address the use of amitrole on non-crop sites and by homeowners, and examined the carcinogenic risk to mixers, loaders and applicators. Since the time the Special Review was initiated, the registrant has taken voluntarily actions which have reduced worker exposure to amitrole. These actions include deletion of high exposure application methods such as knapsack sprayers, adoption of a "no-glug" container design for the liquid formulation to reduce splashing while pouring, addition of protective clothing requirements to labels, and packaging of the wettable powder formulation in water soluble packets. Additionally, the registrant has canceled all homeowner products.

EPA has completed its risk/benefit analysis of amitrole and has determined that the benefits from continued use of amitrole outweigh the risks. Accordingly, the Agency is proposing to terminate the Special Review.

B. Legal Background

In order to obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide will not cause "unreasonable adverse effects on the environment" [FIFRA section 3(c)(5)]. The term "unreasonable adverse effects on the environment" means "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" [FIFRA section 2(bb)]. This standard requires a finding that the benefits of each use of the pesticide outweigh the risks of such use, when the pesticide is used in compliance with the terms and conditions of registration and in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the statutory standard is on the proponents of registration and continues as long as the registration remains in effect. Under FIFRA section 6, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of a registration if he determines that the pesticide product causes unreasonable adverse effects to man or the environment. EPA created the Special Review process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide a public procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review may be initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR part 154. EPA announces that a Special Review is initiated by publishing a Position Document (PD) in the **Federal Register**. After a PD is issued, registrants and other interested persons are invited to review the data upon which the review is based and to submit data and information to rebut EPA's conclusions by showing that EPA's initial determination was in error, or by

showing that use of the pesticide is not likely to result in unreasonable adverse effects on human health or the environment. In addition to submitting rebuttal evidence, commenters may submit relevant information to aid in the determination of whether the economic, social and environmental benefits of the use of the pesticide outweigh the risks. After reviewing the comments received and other relevant materials obtained during the Special Review process, EPA makes a decision on the future status of registrations of the pesticide.

The Special Review process may be concluded in various ways depending upon the outcome of EPA's risk/benefit assessment. If EPA concludes that all of its risk concerns have been adequately rebutted, the pesticide registration will be maintained unchanged. If, however, all risk concerns are not rebutted, EPA will proceed to a full risk/benefit assessment. In determining whether the use of a pesticide poses risks which are greater than the benefits, EPA considers possible changes to the terms and conditions of registration which can reduce risks to the level where the benefits outweigh the risks, and it may require that such changes be made in the terms and conditions of the registration. Alternatively, EPA may determine that no changes in the terms and conditions of a registration will adequately assure that use of the pesticide will not cause any unreasonable adverse effects. If EPA makes such a determination, it may seek cancellation, suspension, or change in classification of the pesticide's registration. This determination would be set forth in a Notice of Final Determination issued in accordance with 40 CFR 154.33.

Issuance of this Notice means that the Agency has assessed the potential adverse effects associated with the uses of amitrole and has preliminarily determined that the benefits override the risks.

C. Regulatory Background

The Registration Standard for amitrole was published on March 30, 1984. It required submission of product chemistry, environmental fate, toxicology and ecological effects data.

On May 15, 1984, the EPA issued a notice to initiate a Special Review based on carcinogenic concerns to mixers, loaders and applicators for registrations of products containing amitrole (49 FR 20548). This document, also referred to as Position Document 1 or PD 1, detailed the basis for the Agency's decision to initiate a Special Review. At that time, the Agency determined that all uses, including the homeowner use, would be the subject of the Special Review for amitrole. Subsequently, all products designated for homeowner use were canceled [Ref. 2], and the ensuing Special Review focused on the carcinogenic risk to mixers, loaders and applicators. The Agency had reviewed data concerning the potential adverse effects associated with uses of amitrole which indicated that amitrole induces thyroid and pituitary tumors in the rat, plus liver and thyroid tumors in mice, and had determined that pesticide products containing amitrole met or exceeded the risk criterion in 40 CFR 162.11(a)(3)(ii)(A), (1984 volume). That section required that a Special Review shall be initiated if a pesticide "induces oncogenic effects in experimental mammalian species or in man as a result of oral, inhalation or dermal exposure." That criterion is mirrored by the current provision of 40 CFR 154.7(a)(2), (1991 volume), which sets forth the similar criterion for initiation of a Special Review by EPA.

II. Summary of Toxicological Concerns and Agency Evaluation ofComments

The Special Review of amitrole was initiated in 1984 because of data indicating that amitrole induces thyroid, pituitary and liver tumors in laboratory animals. In addition, the Agency required further information to be submitted regarding amitrole's other potential effects [Ref. 1]. This section summarizes the Agency's review of studies for all effects of concern and includes discussion of new information and public comments that have been received since publication of the PD 1.

A. Carcinogenicity

In the PD 1, the Agency indicated its concern about the carcinogenic effects of amitrole. In making its current determination, EPA reviewed nine long-term carcinogenicity studies conducted with amitrole on rats, mice or hamsters. One of the rat studies is a chronic inhalation study; the rest of the studies (4 rat, 3 mouse and 1 hamster) are oral feeding, gavage or drinking water studies [Refs. 3 through 12]. None of these studies individually satisfied EPA testing guidelines; some had major deficiencies (e.g., target doses grossly exceeded [Ref. 3]; problems with the histological examination and presentation of data [Ref. 4]). The rat inhalation study and one of the rat oral studies were classified as invalid. In addition, one perinatal carcinogenicity study in mice could not be evaluated. The chronic feeding study in hamsters was not addressed by the Agency because the hamster was determined to be the least sensitive species. The rest of the studies are classified as supplementary; that is, the studies are scientifically valid, but do not satisfy all Agency guideline requirements. These five studies are discussed below, and do indicate that amitrole is likely to be a carcinogen, inducing thyroid and pituitary tumors in rats, and thyroid and liver tumors in mice. They are considered part of the weight-of-evidence determination for the carcinogenic potential of amitrole. Following these studies are discussions of other pertinent information which support the carcinogenic potential of amitrole.

1. *Rat studies— a. Keller; Hazleton, 1959.* Amitrole was administered in the diet at 0, 10, 50 or 100 ppm to Charworth Farm rats and was associated with numerical increases, in both sexes at the terminal sacrifice, in the incidence of thyroid adenoma at 50 ppm and 100 ppm and in combined thyroid adenoma/carcinoma at 100 ppm. There were statistically significant positive trends for thyroid adenomas and for combined adenoma/carcinoma in both sexes. There were also statistically significant positive trends in thyroid hyperplasia in both sexes at 68 weeks, which were not seen at 104 weeks.

b. *Johnson; Food and Drug Research, 1981.* Amitrole was administered in the diet in five "pulsed" dose groups (A, 0–0; B, 5–100; C, 1–20; D, 3–60; E, 10–200 ppm) to Fischer 344 rats. In treatment groups B, D and E, statistically significant increases in the incidence of thyroid follicular cell adenoma and combined adenoma/carcinoma were reported in both sexes. There were also statistically significant positive trends for adenoma and carcinoma, both individually and combined, in both sexes. In both sexes, there were both statistically significant increases in the incidence of follicular cell hyperplasia in all treatment groups, and also statistically significant positive trends. Increases in thyroid organ weights were observed for groups B and E, both sexes. Thyroid hormone T3 was elevated throughout the study for all treatment groups compared to controls, while T4 values were variable.

c. *Steinhoff, 1979, 1983.* Amitrole was administered in the diet at 0, 1, 10 or 100 ppm to Wistar rats and was associated with statistically significant increases in the incidence of thyroid tumors at 100 ppm in males and females when compared to the controls, as well as a statistically significant positive trend in both sexes. There was a numerical increase in the incidence of pituitary tumors in both sexes in all treatment groups, which was statistically significant in both sexes at 100 ppm.

with a statistically significant positive trend for females. Percentage accumulations of radioiodine were increased in both sexes at 100 ppm at "the majority of the test times", which was thought to be due to increases in physiologically active thyroid tissue; proportional plasma iodine remained fairly constant throughout the study.

2. *Mouse studies*— a. *Innes, 1969.* Amitrole was administered by stomach tube at 6,667 ppm and by dietary feeding at 2,192 ppm. In this study, amitrole was used as a positive control for screening 120 compounds to C57 mice. Results indicated carcinoma of the thyroid in 64 of 72 treated animals and hepatomas in 67 of 72 animals.

b. *Steinhoff, 1979, 1983.* Amitrole was administered in the diet to NMRI mice at 0, 1, 10 or 100 ppm and was associated with statistically significant positive trends for hepatocellular carcinoma and combined liver carcinoma/adenoma in females. Thyroid weights were increased throughout the study in both sexes at 100 ppm.

3. *Mutagenicity.* Although the published literature shows that amitrole is negative in a majority of mutagenicity assays [Ref. 13], there is some evidence that amitrole may have some genotoxic activity, as well as transformation activity in mammalian tests. Two sister chromatid exchange assays were reported positive; there were mixed results for DNA damage and unscheduled DNA synthesis, and all in vitro cell transformation assays were positive.

In addition, several studies suggest that amitrole has mutagenic activity when assayed with metabolic activation systems other than the usual liver preparations (e.g. "S9" mixes) [Ref. 14]. Also, Daston et. al. [Ref. 15] found that mutations were induced by amitrole in the mouse lymphoma assay supplemented with a prostaglandin H synthase activation system. Further, Krause and Eling [Ref. 16] have shown PHS- and lactoperoxidase-mediated binding of labelled amitrole to protein and nucleic acid (tRNA), as well as protein binding catalyzed by microsomal thyroid peroxidases; this demonstrates that amitrole can be activated to a reactive species.

Therefore, the data suggest that evidence of amitrole's possible genotoxicity may play a role in its carcinogenic potential. However, this is not an established conclusion, and the exact role genotoxicity has for amitrole-induced thyroid tumors is unclear at this time.

4. *Mechanism of tumor formation (Threshold Concept).* Amitrole is a potent antithyroid agent in laboratory animals, causing thyroid tumors in rats and mice. A plausible theory for amitrole-induced thyroid tumor development is supported by the threshold concept, discussed below. While the Agency recognizes that this concept provides a possible mechanism for thyroid tumor evolution, it has not been proven.

Experimental evidence indicates that thyroid tumors in rats can only occur as a result of exceeding a threshold (i.e., tumors appear only when hormone concentrations are altered above or below a specific level, identified as the threshold, for an extended period of time). To fully understand the threshold concept, it is necessary to provide a brief explanation of the physiological relationship between the pituitary gland and thyroid gland. Decreased levels of thyroid hormones disturb the physiological equilibrium which causes the anterior pituitary gland to secrete thyroid stimulating hormone (TSH). In turn, TSH causes thyroid hormone levels to rise back to normal levels. The anterior pituitary then decreases production of TSH which causes a subsequent decrease in the production of thyroid hormone. If there is a disruption of this feedback mechanism resulting in decreased thyroid hormone levels that cannot be counterbalanced by increased TSH production, the result is the continuous but futile stimulation of the thyroid by TSH. This constant stimulation by TSH over an extended period of time changes the morphology of the thyroid gland and, at some critical point, results in tumor formation. This is the proposed mechanism for tumor formation involving a threshold. It is unclear what role the genotoxicity of amitrole may play in this process.

Amitrole may interfere with the synthesis of thyroid hormones by inhibiting iodide peroxidase, which results in positive feedback to the pituitary (described above) for as long as amitrole exposure is sufficient to maintain decreased thyroid levels. It has been argued, therefore, that unless exposure levels of amitrole are high enough to sufficiently inhibit iodide peroxidase for an extended period of time, causing the appropriate hormone levels to exceed a specific concentration, thyroid tumors should not be induced. In other words, doses of amitrole below the threshold would be inadequate to cause this exaggerated positive feedback.

5. *Structure-Activity.* Amitrole is a heterocyclic aromatic amine, with a structure somewhat similar to a few triazoles that have been shown to induce liver tumors in mice. Other heterocyclic aromatic amines, for instance, some bicyclo- and tricyclo-heterocyclic aromatic amines, have been shown to be very potent carcinogens and mutagens. Also, some homocyclic aromatic amines (those with double rings attached by a simple ether-like bridge), show a correlation between anti-thyroid activity (inhibition of thyroid peroxidase) and thyroid carcinogenesis. Because the structure of amitrole is remotely related to those of other tumor-inducing aromatic amines, it has been determined that there is a weak structure activity relationship.

6. *Classification of carcinogenic potential.* Based on the weight-of-evidence provided collectively by the five studies discussed in this document, amitrole is considered to be a probable human carcinogen. Evidence is considered to be sufficient if there is an increased incidence of tumors: (a) In multiple species or strains of test animals; or (b) in multiple experiments, for example, with different dose levels or routes of administration; or (c) to an unusual degree in a single experiment with regard to high incidence, unusual site or type of tumor, or early age of onset. Although it was generally agreed within the Agency that none of the individual studies were good. However, it was evident that malignant and benign tumors were observed in both sexes of multiple strains of the rat (thyroid) [Refs. 4, 5 and 8] and in two strains of mice (liver) [Refs. 7 and 10]. Other data supporting the conclusion of likely carcinogenic potential include the limited evidence of genotoxicity for amitrole, the structure-activity correlations based on the triazoles (mouse liver tumors), and the slight relationship to heterocyclic aromatic amines.

7. *Potency factor (Q_1^*).* For the purposes of risk characterization, the low dose extrapolation multi-stage model using the thyroid tumor data in the rat was chosen. None of the mouse liver data were amenable to quantification and, furthermore, the rat seemed to be the more sensitive species as tumors occurred at lower doses. Therefore, the amitrole Q_1^*, which is the geometric mean of estimates computed separately for male and female rats, was determined to be 1.13 $(mg/kg/day)^{-1}$ [Ref. 17].

B. Developmental and Reproductive Effects

Studies on rabbits, rats, and mice were conducted to assess the potential for amitrole to induce developmental effects [Refs. 18, 19, 20 and 21]. In all three species, amitrole is a developmental toxicant at dose levels

that are maternally toxic. The rabbit is the most sensitive species. In a gavage study in rabbits, dose levels of 0, 4, 40 and 400 mg/kg/day were tested. Developmental and maternal toxicity were observed at 40 mg/kg/day and higher. Maternal effects included loss of body weight, reduced gravid uterine weight, increased relative liver weight (400 mg/kg/day) and increased number of abortions and total litter resorptions, fewer viable implants per litter, blood on the paperboard and yellow/brown fluid in the amniotic sacs (40 and 400 mg/kg/day). The No Observed Effect Level (NOEL) for maternal toxicity was 4.0 mg/kg/day. Developmental effects included decreased fetal body weights and cleft palate (400 mg/kg/day) and increased numbers of early and late resorptions, malformed fore- and hindlimbs, dome-shaped head, hydrocephaly, lateral scoliosis, curved nasal bones, displaced thalamus and poorly ossified bones in skull, trunk and extremities (40 and 400 mg/kg/day). The developmental NOEL was 4.0 mg/kg/day.

A dermal developmental study also was conducted in rabbits. Again, in this study, amitrole is a developmental toxicant at levels which are maternally toxic. Rabbits were dosed over 10 percent of the body surface with 1,000, 1,500, or 2,000 mg/kg/day of amitrole during days 7 through 19 of gestation. The NOEL for maternal toxicity was 1,000 mg/kg/day and the Lowest Observed Effect Level (LOEL) was 1,500 mg/kg/day based on decreased body weights on gestation day 20, decreased food consumption from gestation days 10 through 20 and ascites. The NOEL for developmental toxicity was 1,000 mg/kg/day and the LOEL was 1,500 mg/kg/day based on decreased gravid uterine weights, decreased fetal bodyweights, increased number of total resorptions and increased skeletal anomalies including unossified hyoid (skull), unossified pubis, absent and/or unossified talus, and left carotid arising from innominate artery.

A 2–generation rat reproduction study was not required by the Agency because, based on current use patterns of amitrole, no reproductive risk to workers was expected. However, the Agency has received a 2–generation reproduction study (determined to be supplementary) [Ref. 22], in which Sherman rats were fed 0, 25 or 50 mg/kg amitrole in the diet for 55 days and then mated. Decreases in body weights and food consumption, enlarged thyroids and reduced liver and kidney weights were observed in the parents of both treated groups. The number of offspring, mean body weights and survival were reduced in the offspring of both treated groups. No malformations were reported. Because this study does not meet Agency guidelines, a determination on the validity of the noted reproductive effects could not be made.

The Agency has received a range-finding reproduction study [Ref. 23] in which rats were tested at dose levels of 40, 100, 300 and 800 ppm in the diet. There was maternal toxicity at all dose levels (decreased maternal body weight gains from gestation days 0–7 at 100 ppm and above, and goiter and increased thyroid-to-body weight ratios at 40 ppm and above). The mean number of pups was significantly lower at dose levels of 100 ppm and above, and decreases in T4 were seen in F1 males at 40 ppm, and in both sexes at 100 ppm and above. TSH was increased at 100 ppm and at 300 ppm. Increased thyroid weights, hyperplastic goiter and follicular hyperplasia also were observed in the offspring.

C. Public Comments and Agency Responses To The Position Document 1

A number of comments relating to the toxicity of amitrole were received in response to the PD 1. A summary of those comments and the Agency's responses follow.

1. *Comment.* Amitrole is a secondary, not a primary, thyroid and pituitary carcinogen in laboratory animals.

Response. The Agency believes that while the data in the rat are suggestive of a disruption in the thyroid-pituitary status, the data are neither clear and complete nor consistent. Therefore, the Agency treats amitrole as a primary carcinogen for the thyroid and pituitary. The Agency also believes that amitrole is a primary carcinogen for the liver.

2. *Comment.* It is inappropriate to extrapolate thyroid and pituitary carcinogenic effects in laboratory animals to humans.

Response. The Agency takes the position that humans are at least as sensitive as laboratory animals unless data are developed to establish and quantify any differences in sensitivity.

3. *Comment.* Exposure to amitrole must be of sufficient magnitude and duration to elicit thyroid, pituitary, and liver carcinogenic effects.

Response. The Agency believes that exposure to low doses of amitrole can elicit thyroid and pituitary carcinogenic effects. Thyroid tumors were observed in long-term rat studies at doses as low as 60 ppm in the diet. There are some data that indicate that amitrole may induce an increase in liver tumors in mice at low dose levels as well. The Agency agrees that exposure to amitrole must be prolonged to elicit thyroid and pituitary carcinogenic effects. The Agency believes that extended and continuing exposure is necessary to initiate the liver carcinogenic process.

4. *Comment.* Amitrole has no mutagenic potential.

Response. The Agency believes that while a large number of mutagenicity studies are negative (many of them from studies in bacteria), there are a number of studies with positive results (see Hill et al., 1989). In addition, several studies suggest that amitrole has mutagenic activity when assayed with metabolic activation systems other than the usual liver preparations; for example, "S9" mixes. (See Mutagenicity, Unit II. A. 3. of this notice) Overall, the genotoxicity evidence for amitrole from available tests is not entirely negative and there are indications of genotoxic, as well as transformation, activity in mammalian tests.

5. *Comment.* The appropriate model to estimate thyroid and pituitary carcinogenic risk is a non-linear model, not the multi-stage model.

Response. The Agency believes that while the data in the rat were suggestive of a disruption in the thyroid-pituitary status, the data were neither clear and complete nor consistent, and did not support the use of the threshold model. Therefore, for the purpose of risk characterization, a low dose extrapolation multi-stage model has been used for quantification of human risk.

6. *Comment.* The Agency inappropriately used modeling to estimate risk from exposure to amitrole.

Response. The Agency believes that the application of modeling techniques to estimate risk is appropriate for thyroid and pituitary carcinogenic effects. The Agency believes that the data are insufficient to support the use of a NOEL/uncertainty factor methodology for estimation of risk.

III. Occupational and Residential Exposure and Risk and Agency Evaluation of Comments

A. Position Document 1

In the May 1984 Notice of Special Review (PD 1), the Agency concluded that, except for uses associated with homeowner products, the carcinogenic risk associated with all use patterns and application techniques of amitrole may result in unreasonable adverse effects. The Agency's risk analysis was based on exposure estimates obtained from surrogate studies employing other pesticides with uses and application

techniques similar to amitrole, and one exposure study which utilized amitrole.

When conducting the risk assessment, the Agency assumed that all workers were unprotected; that is, they wore only cotton work clothes, short-sleeved shirts but no hat, gloves or respirator. Fifteen percent of the body surface was assumed to be uncovered. Applicator exposure was calculated from surrogate data where amitrole exposure was determined to be a linear function of the pounds of amitrole active ingredient expected to be used vs. the pounds of applied surrogate active ingredient. When no data were available, applicator exposure was calculated as a function of the duration of application and the concentration of the active ingredient in the spray. Mixer/loader exposures were estimated from surrogate data and were assumed to be proportional to the amount of amitrole active ingredient vs. the amount of surrogate active ingredient. Highway tractor (or truck) applicators and forest helicopter applicators were assumed to be tended by mixer/loader personnel. Except for applicators using home-use pressurized aerosols, all other applicators were assumed to be involved in mixing/loading operations. The Agency's assumptions were conservative and may have overestimated actual exposure.

The Agency estimated the exposure for each application technique and each site type on which amitrole was registered. These sites included: rights-of-way, marshes and drainage ditches, ornamentals, and land surrounding commercial, industrial, agricultural, domestic, and recreational premises. The typical exposure was based on average field worker exposure, while minimum and maximum values were based on the highest and lowest exposures observed in the data. Dermal exposure, especially to the hands, constituted virtually all of the total amitrole exposure. Exposure estimates ranged from 1×10^{-1} mg/kg/day for certain industrial uses to 3×10^{-7} mg/kg/day for homeowner uses. The use of protective clothing (coveralls, gloves, hats and boots) was expected to reduce the dermal exposure.

At the time of the PD 1, there were no data available to estimate the dermal penetration of amitrole. Since dermal exposure was the greatest single source of exposure to workers, this was an important parameter in assessing exposure and therefore risk. Because of the lack of data, the Agency calculated the risk to workers using two assumptions. First, EPA assumed that 100 percent of amitrole would be absorbed, a worst case assumption. Risk estimates under this assumption ranged from 10^{-6} to 10^{-5} for homeowners to 10^{-2} to 10^{-1} for utility power wagon applicators, industry power wagon applicators, industry knapsack/hand-carry applicators, railroad tanktrain mixer/loaders and highway tractor/truck mixer/loaders. Second, EPA also assumed 0.1 percent dermal absorption, based on the chemical properties of amitrole. Based on this assumption, the risk estimates ranged from 10^{-9} to 10^{-8} for homeowners to 10^{-4} to 10^{-3} for utility power wagon mixer/loader/applicators, and industry power wagon mixer/loader/applicators.

B. Current Exposure and Risk Estimates

1. *Label, packaging, and use changes.* Rhone-Poulenc, the sole U.S. registrant of amitrole, has voluntarily canceled all homeowner products (55 FR 41763, October 15, 1990), and has voluntarily taken actions which have reduced worker exposure to amitrole. These actions include deleting the high exposure application methods, such as knapsack sprayers, which had previously resulted in the highest risk. Rhone-Poulenc also adopted a "no-glug" container to reduce splashing while pouring, added protective clothing requirements to product labels and canceled all uses except on rights-of-way, public utilities, nurseries, and land surrounding commercial, industrial and farm premises. The current risk assessment for amitrole is for workers mixing, loading and applying amitrole to highway rights-of-way, the use with the greatest exposure and, therefore, risk.

2. *Current exposure estimates and assumptions.* The current assessment is based on worker exposure studies conducted for bromoxynil [Ref. 17], another herbicide. The Agency used the bromoxynil worker exposure study as a surrogate for the liquid formulations of amitrole because: (1) The container design for amitrole was amended so it is similar to that of bromoxynil; (2) the label restrictions for protective clothing and engineering controls for amitrole are comparable in effectiveness to those for bromoxynil; (3) the application equipment used to apply amitrole to rights-of-way is similar to that used for bromoxynil; and (4) the ground boom equipment used for bromoxynil agricultural sites would likely result in similar or greater exposure as compared to equipment used for amitrole on highway rights-of-way.

In general, the exposure assessment assumed that workers wore clean cotton (or cloth) coveralls over long sleeve shirts and long pants in addition to boots or sturdy footwear. For workers handling concentrated product (mixer/loaders) or when repairing and cleaning the equipment used with this product, chemical resistant gloves were also assumed to be used. These protective clothing requirements are on the current labels.

Usage data utilized for this assessment indicate that the typical usage per person on highway rights-of-way is 100 lbs active ingredient (ai) per day and 1,000 lbs ai/year. The typical application rate is assumed to be 2.5 lbs ai/acre and 40 acres are treated per day. A typical worker is assumed to weigh 70 kg.

Based on these assumptions, the total yearly exposure to liquid formulations for a 70 kg worker is 2.2×10^{-2} mg/kg/year. The average daily exposure is 5.9×10^{-5} mg/kg/day. The Agency believes that the exposure from the water soluble packets will be far less than the exposure incurred by mixer/loaders from the liquid formulation. Exposures of applicators to mixtures from either liquid or wettable powder formulations are assumed to be the same. Therefore, the exposure estimate of 5.9×10^{-5} mg/kg/day for the liquid is judged to be the highest exposure estimate for all amitrole formulations.

3. *Current risk estimates*— a. *Carcinogenic risk.* The availability of the bromoxynil exposure studies and the dermal penetration study has allowed EPA to refine its risk estimates. In the PD 1, in the absence of a valid study to demonstrate otherwise, dermal penetration was assumed to be 100 percent. A dermal penetration study on amitrole was subsequently received and reviewed, and was used in the current risk assessment. Dermal penetration in this study was shown to be 0.1 percent [Ref. 24]. Additionally, EPA estimates that the unit cancer risk (Q_1^*) is 1.13 $(mg/kg/day)^{-1}$.

When calculating the Lifetime Average Daily Dose (LADD), EPA assumed a worker life span of 70 years with an amitrole exposure period of over 35 years. Using these values, and an average daily exposure estimate of 5.9×10^{-5} mg/kg/day, the LADD was determined to be 2.9×10^{-5} mg/kg/day.

The excess lifetime cancer risk to workers involved in mixing, loading, and application of the liquid formulations of amitrole for highway rights-of-way uses is estimated to be 3.3×10^{-5} [Ref. 17].

b. *Other risks.* Three developmental studies, two oral and one dermal, are available for amitrole. Because the primary route of exposure is dermal, the most appropriate study to assess potential developmental effects to workers exposed to amitrole is the

dermal study. Using the NOEL of 1,000 mg/kg/day from this study to calculate margins of exposure, EPA determined that workers would not be at risk for developmental effects from exposure to amitrole.

C. Public Comments and Agency Responses to the Position Document 1

Comments relating to exposure to amitrole were received in response to the PD 1. A summary of those comments and the Agency's responses follow.

1. *Comment.* The worker exposure estimates used for the Registration Standard and the Position Document 1 in 1984 are unrealistic and represent a worst case exposure scenario.

Response. The Agency acknowledges that, in the absence of more specific available data, its 1984 worker exposure estimates were conservative and represented a worst case scenario. Both the Registration Standard and the PD 1 specifically state that calculations may overestimate exposure. Since 1984, the Agency has received better data that allow a more accurate estimate of exposure and risk. The Agency originally assumed 100 percent dermal penetration; actual data generated in 1985 by the registrant showed the dermal penetration to be 0.1 percent. Additionally, exposure data from a bromoxynil study were used as a surrogate for amitrole, which allowed the Agency to more accurately estimate exposure to mixers/loaders/applicators.

2. *Comment.* The amitrole exposure study [Ref. 25] demonstrated that hands received only 6 percent of the total dermal exposure. Lower legs, chest and thighs received 94 percent of the total exposure. Respiratory exposure was insignificant (less than 0.1 percent of the total exposure).

Response. The Agency disagrees with this and estimates hand exposure at approximately 96 percent. The estimate in Baugher (1982) was based on an application time of 2.36 hours with applicators using latex gloves. The actual application time was 7 hours with applicators wearing cotton gloves that absorb and retain moisture, with latex gloves worn underneath. The Agency noted that the exposure estimate was based on the residue on the outside of the latex gloves. The forearms, chest, and inhalation account for the balance of exposure. The Agency concurs that inhalation represents less than 0.1 percent of the total exposure.

3. *Comment.* Normal exposure will not alter thyroid function of workers.

Response. The Agency concurs that typical mixing/loading/application practices of certified applicators coupled with protective clothing and the exposure reduction measures will reduce exposure to levels which will not likely alter worker thyroid function.

IV. Summary of Benefits and Evaluation of Alternatives

A. Importance of Amitrole

Benefits of amitrole include its relatively low cost, broad spectrum control of newly emerged or established broadleafs and its miscibility with other low cost, broad spectrum residual soil active chemicals. Amitrole controls newly emerged or established broadleafs because it is a contact herbicide that kills growing vegetation. Amitrole is mixed with residual herbicides because its short 2–4 week half-life precludes effectiveness against later-germinating weeds. Amitrole provides nonselective weed control when used alone or in combination with longer lasting herbicides on highway berms, guard rails, around sign posts, railroad beds, and similar areas. Highway rights-of-way sometimes require total vegetation control which is generally achieved through use of nonselective herbicides such as amitrole in tank mix combination with a soil residual herbicide.

B. Usage of Amitrole

Amitrole is imported, not produced in the United States. Rhone-Poulenc is the only U.S. importer of amitrole. Domestic usage has been falling throughout the 1980's and 1990's, partially due to the 1984 classification of amitrole as a Restricted Use pesticide. The decline in use of amitrole may also be due to the recent registration of other herbicides with a broader spectrum of weed control. The EPA estimated that annual usage of amitrole in 1984 was between 500,000 and 800,000 pounds but, by 1989, had decreased to between 50,000 and 100,000 pounds of active ingredient. Total annual usage of amitrole declined even further in 1990 to between 40,000 and 60,000 pounds active ingredient. It is estimated that 80 to 90 percent of amitrole use is for highway rights-of-way. The remaining usage is divided among many minor uses which include landscape management, industrial areas and recreational areas. In the late 1970's, amitrole was used widely on railroad, highway and utility rights-of-way, but currently, its major use is along highways [Ref. 26].

According to the registrant, voluntary cancellation in 1991 of its California registration was due to its estimates that the projected sales volume of amitrole did not justify expenditures needed to comply with California data requirements [Ref. 27]. The registrant estimated at the time of cancellation that 90 percent of the pesticide's market share existed in that state. Concurrently, Rhone-Poulenc requested from the Agency, and was granted, a 2–year existing stocks provision to allow products currently in channels of trade to be distributed and sold in California until May 1993. It is expected that the voluntary cancellation in California will accelerate the current declining trend in usage of amitrole.

C. Alternatives Assessment

Amitrole rights-of-way alternatives are divided into two classes: chemical and mechanical control.

1. *Chemical control.* The major alternatives to amitrole are glyphosate, sulfometuron-methyl, diuron, imazapyr, and hexazinone [Ref. 28]. EPA has classified glyphosate as an E carcinogen; that is, evidence indicates that glyphosate is not carcinogenic in humans. Sulfometuron-methyl has not been assigned a carcinogenic classification, but may pose developmental risks. Many of the alternatives to amitrole have outstanding data requirements, thus a satisfactory comparison of the risks for all of the alternatives has not be completed by the Agency. However, glyphosate, at present, appears to be less toxic to humans than amitrole or its alternatives.

Alternatives to amitrole are generally more expensive, and the loss of amitrole from the market could result in increased cost of weed control. Amitrole alternatives provide equivalent, or in some cases, better control of certain weeds with the exception of poison ivy control, for which amitrole is the most efficacious herbicide. If the most likely alternatives, glyphosate and sulfometuron-methyl, were substituted for amitrole, there would be a chemical cost increase ranging from $12.02 to $40.34 per acre treated [Ref 27].

An estimated 30,000 to 50,000 acres of rights-of-way in the United States are currently treated with amitrole. Total chemical cost of maintaining rights-of-way in the United States is estimated to be $224 million per year [Ref. 29]. If glyphosate or sulfometuron-methyl were substituted for amitrole, the aggregated chemical cost increase may range from $600,000 for glyphosate to a chemical cost increase of $2 million for sulfometuron-methyl. Thus, although the other chemical alternatives offer similar control (except for poison ivy), the cost per acre is significantly higher.

2. *Mechanical control.* Controlling brush on highway rights-of-way by manual or mechanical cutting and

controlled burning are high cost alternatives, especially at sites along guardrails and steep slopes, the precise areas of herbicide use.

V. Risk/Benefit Analysis

A. Summary of Risk

EPA has evaluated the risk posed by amitrole to workers mixing, loading and applying the pesticide to highway rights-of-way. Although amitrole is registered for several additional sites, this use pattern is the one that poses the greatest exposure, and therefore risk. EPA has estimated the excess lifetime cancer risk from this exposure to amitrole to be 3.3 x 10^{-5}.

B. Summary of Benefits

Amitrole is a relatively inexpensive and efficacious broad-spectrum herbicide. If amitrole were unavailable, growers would have to use more expensive alternatives (e.g. glyphosate, sulfometuron-methyl) as substitutes, with costs increasing from $600,000 to $2 million/year. Also, many of these alternatives may not provide as effective control of certain weeds as amitrole.

C. Cost-Effectiveness

A cost-effectiveness analysis was developed by the Agency comparing amitrole and its two main alternatives, glyphosate and sulfometuron-methyl [Ref. 30]. The cost-effectiveness analysis reflected two scenarios that took under consideration three possible occupational exposure levels. The first scenario gave a point estimate for 250 applicators (an estimate provided by the registrant as the total annual number of workers exposed, before cancellation in California) and the second scenario utilized 100 applicators (an EPA estimate of the total number of exposed workers, before cancellation in California). The analysis also considered three scenarios for length of exposure: 1 year, 5 years and 35 years. Typically, 1 year of exposure represents college students who are exposed to amitrole only during summer work programs. Five years represents the applicator who finds different employment after several years. Thirty-five years depicts the applicator who is employed in the same profession throughout a lifetime. The exposure figure of 35 years was used for calculating the present risk assessment. This resulted in an estimated risk of 3.3 x 10^{-5}. However, the Agency believes that its assumption that worker exposure occurs for 35 years is conservative and tends to overestimate typical exposure. A more likely length of exposure for a typical worker is considered to be 5 years; the risk estimate for amitrole based on 5 years of exposure is calculated to be 5 x 10^{-6}.

For all scenarios, the upper end of the treated acreage was used in defining the low and high cost per cancer case avoided, if amitrole was canceled and replaced by one of the two principal alternatives. The cost-effectiveness estimate under the scenario of 250 applicators for a 35 year exposure period would range from $73 million to $244 million per cancer case avoided. The risk resulting from 5 years of exposure, the more likely scenario, would increase these costs associated with avoiding an extra cancer case.

D. Conclusions

Based on its risk and benefits assessment, the Agency has concluded that the benefits provided from the use of amitrole outweigh the risks. The cost-effectiveness analysis supports this conclusion by demonstrating the extremely high costs of avoiding a cancer case that would be incurred with cancellation of amitrole.

VI. Agency's Decision Regarding Special Review

Because EPA has concluded that the risks of amitrole are outweighed by the benefits of continued use, EPA proposes that the Special Review based on potential carcinogenic risk of amitrole to workers be concluded. Use of bromoxynil data as a surrogate for amitrole data and the data on dermal penetration have enabled the Agency to refine the amitrole risk assessment to be more realistic than the worst-case assessment conducted for the PD 1. The label modifications and risk reduction measures taken by the registrant, Rhone-Poulenc, have significantly reduced worker exposure to amitrole. Consequently, there is a corresponding reduction in the risks posed by the remaining uses of amitrole. Even given the differences in risk between amitrole and its most likely alternatives, EPA believes that the 3.3 x 10^{-5} risk associated with 35 years of exposure to amitrole is outweighed by the benefits of use. The Agency believes that amitrole's remaining uses pose no significant threat to workers or the general public, and that its significantly lower costs and higher efficacy rates as compared to its alternatives merit retention of the remaining uses. However, because of the positive carcinogenicity studies, the Agency will continue to require that amitrole remain a Restricted Use pesticide, that the cancer warning statement remain in place, that the current application method remain limited to boom sprayers and that present protective clothing requirements remain on labelling.

VII. Public Comment Opportunity

During the 30-day comment period, specific comments are solicited on the preliminary determination set forth in this Notice. The Agency will review and consider any comments received during the official comment period before issuing the final determination to conclude the Special Review of amitrole. Interested persons are invited to submit written comments on this proposal to conclude the Special Review of pesticide products which contain amitrole. All comments and information should be submitted in triplicate by [Insert date 30 days after date of publication in the **Federal Register**] to the address given in this Notice under the ADDRESS section. The comments and information must bear the document control number, "OPP-30000/38A; FRL 4164-1." All written comments filed pursuant to this notice, except "CBI", will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

VIII. References

(1) U.S. Environmental Protection Agency (USEPA). Amitrole Pesticide Registration Standard and Guidance Document. March 30, 1984.

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(14) Tsutsui, T., et. al. Amitrole-induced cell transformation and gene mutations in Syrian hamster embryo cells in culture. *Mutation Research.* 140:205–207. (1984).

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(17) Schlosser, A. Memorandum to Philip Poli (USEPA). Assessment of Risk to Workers from Exposure to Amitrole Used on Highway Rights-Of-Way. April 24, 1991.

(18) Percutaneous Teratology (Developmental Toxicity via Dermal Route of Administration). Study No. HLA 6224–107. Unpublished report prepared by Hazleton Laboratories America submitted by Rhone-Poulenc Ag Company. (1988).

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(27) Griffin, Karen. Memorandum to Special Review Team (USEPA). Summary of 1991 Amitrole Use, Usage, and General Benefits. July 1991.

(28) Esworthy, Robert. Memorandum to Philip Poli (USEPA). Amitrole Alternatives. January 3, 1992.

(29) Saulmon, J.G. Memorandum to Philip Poli (USEPA). EPA Estimate of Range of Dollar Costs of Maintaining Rights-of-Way in the USA. December 3, 1991.

(30) Griffin, Karen. Memorandum to Philip Poli (USEPA). Cost Effectiveness/Benefit Analysis for Amitrole. February 6, 1992.

All but the published references concerning this Preliminary Determination on amitrole are available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Room 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Dated: September 30, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 92–24555 Filed 10–7–92; 8:45 am]

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October 8, 1992

Part V

Environmental Protection Agency

40 CFR Part 721
Significant New Uses of Certain Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50598; FRL-3934-7]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 24 chemical substances which were the subject of premanufacture notices (PMNs) submitted to EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

EFFECTIVE DATE: The effective date of this rule is December 7, 1992. This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on October 22, 1992. If EPA receives notice before November 9, 1992 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPPTS-50598 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate (with additional sanitized copies if confidential business information is involved) to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-105, 401 M St., SW., Washington, DC 20460. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit IX. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing of a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specificuses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail.

Data on potential exposures or releases of the substances, testing other than that specified for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance. Descriptions of recommended tests are provided for informational purposes.

PMN Numbers P-88-2100 and P-88-2169

Chemical name: (generic) Acrylamide, polymers with tetraalkyl ammonium salt and polyalkyl, amino alkyl methacrylamide salt.
CAS numbers: Not available.
Basis for action: The PMN substances will be used as water clarifiers. Test

data on structurally similar polycationic compounds indicate that the PMN substances may cause toxicity to aquatic organisms. Based on this data EPA expects toxicity to aquatic organisms to occur at a concentration of 2 ppb of the PMN substances in surface waters. EPA determined that use of the substances as water clarifiers as described in the PMNs did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that potential uses, such as water retention aids, other types of clarifiers or flocculents could result in releases to surface waters where the concentration of the PMN substances exceeds 2 ppb. Based on this information, the PMN substances meet the concern criteria at 721.170(b)(4)(ii).

Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substances: Algal (40 CFR 797.1050); daphnid (40 CFR 797.1300); fish (40 CFR 797.1400); and fish toxicity mitigated by dissolved organic carbon (40 CFR 795.115). These tests should be conducted with flow-through conditions and measured concentrations.

CFR citation: 40 CFR 721.6540.

PMN Number P-90-2

Chemical name: (generic) Disubstituted phenoxazine, chlorometalate salt.

CAS number: Not available.

Basis for action: The use of the PMN substance as described in the PMN was claimed confidential. Test data on substances similar in structure to the PMN substance and an analogous chemical substance indicate that the PMN substance may cause mutagenicity and oncogenicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk to human health. EPA has determined that potential other uses such as a dye could result in risk to human health. Based on this information the PMN substance meets the concern criteria at 721.170(b)(1)(i)(D).

Recommended testing: The Agency has determined that the results of a 2-year rodent bioassay (40 CFR 798.3300) would help characterize possible human health effects of the PMN substance.

CFR citation: 40 CFR 721.4720.

PMN Numbers P-90-1984 and P-90-1985

Chemical name: (generic) Fatty acid polyamine condensate, phosphoric acid ester salt.

CAS numbers: Not available.

Basis for action: The PMN substances will be used as steel corrosion inhibitors. Test data on structurally similar ditallowimidazoline esters indicate that the PMN substances may cause toxicity to aquatic organisms. Based on this data EPA expects toxicity to aquatic organisms to occur at a concentration of 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances, as described in the PMN, did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that potential use as a fabric softener could result in releases to surface waters where the concentration of the PMN substances could be greater than 1 ppb. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(4)(ii).

Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050); daphnid (40 CFR 797.1300); and fish (40 CFR 797.1400). These tests should be conducted with flow-through conditions and measured concentrations.

CFR citation: 40 CFR 721.6200.

PMN Number P-91-87

Chemical name: (generic) Fatty amide.

CAS number: Not available.

Basis for action: The PMN substance will be used as an asphalt additive. Based on calculations of the physical and chemical properties of the substance, the quantitative structure activity relationship (QSAR) of the PMN substance indicates that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface waters greater than 1 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) will characterize environmental effects.

CFR citation: 40 CFR 721.3720.

PMN Number P-91-101

Chemical name: 2-Imino-1,3-thiazin-4-one-5,6-dihydromonohydrochloride.

CAS number: Not available.

Basis for action: Test data on structurally similar chemical substances indicate that the PMN substance may cause toxicity to aquatic organisms. Based on this data EPA expects toxicity to aquatic organisms to occur at a concentration of 30 ppb of the PMN substance in surface waters. The PMN submitter intends to import the PMN substance and therefore no releases from domestic manufacture will occur. However, EPA has determined that domestic manufacture could result in releases to surface waters where the concentration of the PMN substance would be greater than 30 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii). In addition, based on test data on structurally similar chemical substances, P-91-101 may be developmentally toxic to humans. EPA has determined that import, processing, and use of the PMN substance as a liquid for the use as described in the PMN does not pose a significant risk to workers. However, EPA predicts inhalation exposures to the PMN substance as a solid or a powder form may cause significant risk to workers. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050); daphnid (40 CFR 797.1300); and fish (40 CFR 797.1400). The daphnid and fish tests should be conducted with flow-through conditions and measured concentrations. The algal study should be conducted with static conditions and measured concentrations. In addition, the Agency has determined that the results of a two-species developmental toxicity test (40 CFR 798.4900) would help characterize possible human health effects of the substance.

CFR citation: 40 CFR 721.4480.

PMN Number P-91-102

Chemical name: (generic) Amidinodithiopropionic acid hydrochloride.

CAS number: Not available.

Basis for action: Test data on structurally similar chemical substances indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA expects

toxicity to aquatic organisms to occur at a concentration of 30 ppb of the PMN substance in surface waters. The PMN submitter intends to import the PMN substance and therefore no releases from domestic manufacture will occur. However, EPA has determined that domestic manufacture could result in releases to surface waters where the concentration of the PMN substance would be greater than 30 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050); daphnid (40 CFR 797.1300); and fish (40 CFR 797.1400). The daphnid and fish tests should be conducted with flow-through conditions and measured concentrations. The algal study should be conducted with static condiditons and measured concentrations.
CFR citation: 40 CFR 721.4460.

PMN Number P-91-118

Chemical name: (generic) Oligomeric silicic acid ester compound with an hydroxylalkylamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a binder for paints. Test data on structurally similar alkoxysilanes indicate that the PMN substance may cause lung toxicity. Based on these data EPA expects toxicity to exposed workers to occur if they are exposed by inhalation. EPA determined that use of the substance as a binder for paints as described in the PMN did not present an unreasonable risk because the substance would be processed and used in enclosed processes eliminating potential inhalation exposures. EPA has determined that other potential uses may result in inhalation exposures from nonenclosed processes. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: The Agency has determined that the results of a 90–day subchronic inhalation study in rats (40 CFR 798.2250) would characterize potential health effects of the substance.
CFR citation: 40 CFR 721.3100.

PMN Number P-91-288

Chemical name: (generic) Alkoxylated dialkyldiethylenetriamine, alkyl sulfate salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as a cellulose softener. Test data on structurally similar substances indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentrations as low as 5 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water during manufacturing. EPA has determined that other manufacturing processes may result in releases to surface waters greater than 5 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) conducted under static nominal conditions will characterize environmental effects.
CFR citation: 40 CFR 721.2420.

PMN Number P-91-328

Chemical name: (generic) Disubstituted phenylazo trisubstituted naphthalene.
CAS number: Not available.
Basis for action: The PMN substance was submitted for use as a chemical intermediate. Absorption of the PMN substance is not expected through the skin, expected to be poor through the GI tract, but is expected through the lungs. Test data on a structurally similar substance indicates that an azo reduced naphthalene product of the PMN substance may cause carcinogenicity and mutagenicity. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(D). This action is being taken because of human health concerns regarding toxicity from exposure to the PMN substance via inhalation. Although EPA does not expect inhalation exposure to manufacturing or processing workers or other targeted populations during the use identified in the PMN submission, if the use or physical form of the PMN substance were to change the inhalation exposure to workers could increase significantly. Therefore, the SNUR will require submission of a notice to EPA at least 90 days before the PMN substance may be used other than as an intermediate, or in a powder form, or in a way that generates a dust.
Recommended testing: The Agency has determined that the results of an in vitro rat hepatocyte primary culture/DNA repair test (unscheduled DNA synthesis UDS assay) on the PMN substance and naphthalene containing azo reduction product, with β-naphthylamine as a concurrent positive control, may help address the health concerns.
CFR citation: 40 CFR 721.5200.

PMN Number P-91-442

Chemical name: (generic) Ethylene oxide adduct of fatty acid ester with pentaerythritol.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate for the production of a disperse dye carrier for finishing polyester fibers. Test data on structurally similar nonionic surfactants indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA expects toxicity to aquatic organisms to occur at a concentration of 10 ppb of the PMN substance in surface waters. EPA determined that use of the substance as an intermediate for the production of a disperse dye carrier for finishing polyester fibers did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other potential uses, as well as potential domestic manufacture, could result in releases to surface waters where the concentration of the PMN substance could be greater than 10 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that the results of the following aquatic toxicity tests would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050); daphnid (40 CFR 797.1300); and fish (40 CFR 797.1400) acute tests. These tests should be conducted with flow-through conditions and measured concentrations.
CFR citation: 40 CFR 721.3680.

PMN Number P-91-487

Chemical name: (generic) Substituted phenylimino carbamate derivative.
CAS number: Not available.
Basis for action: The PMN substance will be used as a coloring agent. Test data on structurally similar substances indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentrations as low as 7 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance is imported and would not be released to water during manufacturing. EPA has determined that if the substance is manufactured in the United States releases to surface waters may result. Based on this information

the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) conducted under static nominal conditions will characterize environmental effects.
CFR citation: 40 CFR 721.2025.

PMN Number P-91-490

Chemical name: (generic) Substituted ethanolamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a chemical intermediate. Test data on structurally similar anionic polymers indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as a chemical intermediate as described in the PMN did not present an unreasonable risk because releases of the substance would not result in surface water concentrations exceeding the environmental concern level. Test data on a structurally similar chemical also indicate that the PMN substance may cause liver toxicity and cataracts. Based on these data EPA expects liver toxicity and cataract formation in workers exposed by inhalation. EPA determined that use of the substance in a liquid form as described in the PMN did not present an unreasonable risk because workers would not be exposed by inhalation. EPA has determined that other potential uses may result in releases to surface waters where the concentration of the PMN substance could be greater than 1 ppb or where workers could be exposed by inhalation. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii) and (b)(3)(ii).
Recommended testing: EPA has determined that a 21–day daphnid chronic test (40 CFR 797.1330) and a 28–day fish early life stage test (40 CFR 797.1600) would help characterize possible environmental effects of the substance. EPA has also determined that a 90–day subchronic oral study in rats (40 CFR 797.2650) would help characterize possible health effects of the substance.
CFR citation: 40 CFR 721.3360.

PMN Number P-91-521

Chemical name: (generic) Acrylic acid, polymer with substituted ethene.
CAS number: Not available.
Basis for action: The PMN substance will be used as a surface finishing agent. Test data on structurally similar anionic polymers indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA expects toxicity to aquatic organisms to occur at a concentration of 200 ppb of the PMN substance in surface waters. EPA determined that use of the substance as a surface finishing agent as described in the PMN did not present an unreasonable risk because releases of the substance would not result in surface water concentrations exceeding the environmental concern level. EPA has determined that other potential uses may result in releases to surface waters where the concentration of the PMN substance could be greater than 200 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that the results of the following toxicity testing would help characterize possible environmental effects of the substance: Acute algal (40 CFR 797.1050) and acute algal in hard medium where the PMN substance contains equivalent calcium.
CFR citation: 40 CFR 721.6560.

PMN Number P-91-584

Chemical name: (generic) Aryl sulfonate of a fatty acid mixture, polyamine condensate.
CAS number: Not available.
Basis for action: The PMN substance will be used as a corrosion inhibitor. Test data on structurally similar substances indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as a corrosion inhibitor as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other potential uses may result in releases to surface waters greater than 1 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) conducted under static nominal conditions will characterize environmental effects.
CFR citation: 40 CFR 721.6220.

PMN Number P-91-710

Chemical name: (generic) Alkyl substituted diaromatic hydrocarbons.
CAS number: Not available.
Basis for action: The PMN substances will be used as industrial chemicals. Based on calculations of the physical and chemical properties, the QSAR of the PMN substances indicate that they may cause toxicity to aquatic organisms. Based on these data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to water. EPA has determined that other uses of the substances may result in releases to surface waters greater than 1 ppb. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(iii).
Recommended testing: EPA has determined that the results of a chronic 60–day early life stage toxicity test in rainbow trout (40 CFR 797.1600), a 21–day chronic daphnid toxicity test (40 CFR 797.1330), and a 96–hr bioassay in algae (40 CFR 797.1050) would help characterize possible environmental effects of the substance.
CFR citation: 40 CFR 721.840.

PMN Number P-91-838

Chemical name: (generic) Salt of cyclodiamine and mineral acid.
CAS number: Not available.
Basis for action: The PMN substance will be used as a hardener for epoxide resins. Based on analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 90 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water during manufacturing because the substance would not be manufactured in the United States. EPA has determined that releases of the substance to surface water greater than 90 ppb may occur if the substance is manufactured in the United States. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish

assay (40 CFR 797.1400) will characterize environmental effects.
CFR citation: 40 CFR 721.2175.

PMN Number P-91-934

Chemical name: (generic) 2,2'-[[1-Methylethylidene]bis[4,1-phenyloxy[1-(butoxymethyl)-[2,1-ethanediyl]]oxymethylene]]bisoxirane, reaction product with a diamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a hardener for various epoxy systems. Based on analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk to aquatic organisms because the substance would not be released to water. EPA has determined that releases to surface waters greater than 2 ppb may result if the substance is used in marine paints. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) will characterize environmental effects.
CFR citation: 40 CFR 721.5050.

PMN Number P-91-1243

Chemical name: (generic) Substituted cyclohexyldiamino ethyl ester.
CAS number: Not available.
Basis for action: The PMN substance will be used as an industrial chemical. Based on the analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface waters greater than 1 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), an acute fish assay (40 CFR 797.1400), and an acute fish assay (40 CFR 797.1400) modified with humic acid will characterize environmental effects.
CFR citation: 40 CFR 721.2980.

PMN Number P-92-131

Chemical name: (generic) Cyclic amide.
CAS number: Not available.
Basis for action: The PMN substance will be used as solvent. Based on the analogy of the PMN substance to neutral organic chemicals, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 70 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not released to surface waters at concentrations above 70 ppb. EPA has determined that other uses of the substance may result in releases to surface water above 70 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050) will characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.2120.

PMN Number P-92-294

Chemical name: (generic) Diphenylmethane diisocyanate (MDI) modified.
CAS number: Not available.
Basis for action: The PMN substance will be used as a reactive component for structural article formation. Based on the known toxicity of analogous substances, the PMN substance may cause respiratory sensitization and other lung effects if inhaled. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be inhaled. EPA has determined that other uses of the substance may result in inhalation exposures. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a respiratory sensitization test (Karol et al., 1983 *Toxicology and Applied Pharmocology*, 68:229–241) and a dermal sensitization test in guinea pigs (40 CFR 798.4100) will characterize the sensitization effects of the PMN substance and that a 90–day subchronic toxicity test via the inhalation route (40 CFR 798.2450) will characterize other pulmonary effects of the PMN substance.
CFR citation: 40 CFR 721.2540.

PMN Number P-92-445

Chemical name: (generic) Fatty acid amine condensate, polycarboxylic acid salts.
CAS number: Not available.
Basis for action: The PMN substance will be used as a corrosion inhibitor. Based on the analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface waters greater than 4 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), an acute fish assay (40 CFR 797.1400), and an acute fish assay (40 CFR 797.1400) modified with humic acid will characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.3620.

PMN Number P-92-446

Chemical name: (generic) Coco acid triamine condensate, polycarboxylic acid salts.
CAS number: Not available.
Basis for action: The PMN substance will be used as a corrosion inhibitor. Based on the analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface water greater than 4 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), an acute fish assay (40 CFR 797.1400), and an acute fish assay (40 CFR 797.1400) modified with humic acid will characterize the

environmental effects of the PMN substance.
CFR citation: 40 CFR 721.2086.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the 24 chemical substances that are subject to this SNUR, EPA determined that one or more of the criteria of concern established at § 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance are subject to similar requirements. Issuance of a final effective SNUR for a chemical substance does not signify that the substance is contained on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is contained on the TSCA Inventory.

V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in § 721.160(c)(3) and 721.170(d)(4). In accordance with § 721.160(c)(3)(ii), this rule will be effective [insert date 60 days after date of publication in the **Federal Register**], unless EPA receives a written notice by [insert date 30 days after date of publication in the **Federal Register**] that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30–day comment period.

This action establishes SNURs for 24 chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. Unit III. of this preamble lists those recommended tests for informational purposes. The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e).

SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued in 16 cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which a NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, all of the substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing.

As discussed at 55 FR 17376 (April 24, 1990), EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS–50598).

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number – OPPTS–50598). The record includes information considered by EPA in developing this rule.

A public version of the record without any confidential business information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located at rm. NE–G004, 401 M St., SW., Washington, DC.

Any person who submits comments claimed as CBI must mark the comments as "confidential", "trade secret", or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any person submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice range from $4,552 to $12,166, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act.

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, D.C. 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: September 17, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.840 to subpart E to read as follows:

§ 721.840 Alkyl substituted diaromatic hydrocarbons.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an alkyl substituted diaromatic hydrocarbons (PMN P–91–710) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

3. By adding new § 721.2025 to subpart E to read as follows:

§ 721.2025 Substituted phenylimino carbamate derivative.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted phenylimino carbamate derivative (PMN P–91–487) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

4. By adding new § 721.2086 to subpart E to read as follows:

§ 721.2086 Coco acid triamine condensate, polycarboxylic acid salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as coco acid triamine condensate, polycarboxylic acid salts. (PMN P–92–446) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

5. By adding new § 721.2120 to subpart E to read as follows:

§ 721.2120 Cyclic amide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a cyclic amide (PMN P–92–131) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 70 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

6. By adding new § 721.2175 to subpart E to read as follows:

§ 721.2175 Salt of cyclodiamine and mineral acid.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a salt of cyclodiamine and mineral acid (PMN P–91–838) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

7. By adding new § 721.2420 to subpart E to read as follows:

§ 721.2420 Alkoxylated dialkyldiethylenetriamine, alkyl sulfate salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an alkoxylated dialkyldiethylenetriamine, alkyl sulfate salt (PMN P–91–288) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

8. By adding new § 721.2540 to subpart E to read as follows:

§ 721.2540 Diphenylmethane diisocyanate (MDI) modified.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a diphenylmethane diisocyanate (MDI) modified (PMN P–92–294) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (v)(2), (w)(1), (w)(2), (x)(1), (x)(2), (y)(1), and (y)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

9. By adding new § 721.2980 to subpart E to read as follows:

§ 721.2980 Substituted cyclohexyldiamino ethyl esters.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted cyclohexyldiamino ethyl esters (PMN P–91–1243) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

10. By adding new § 721.3100 to subpart E to read as follows:

§ 721.3100 Oligomeric silicic acid ester compound with a hydroxylalkylamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as oligomeric silicic acid ester compound with a hydroxylalkylamine (PMN P–91–118) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

11. By adding new § 721.3360 to subpart E to read as follows:

§ 721.3360 Substituted ethanolamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted ethanolamine (PMN P–91–490) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (v)(2), (w)(1), (w)(2), (x)(1), (x)(2), (y)(1), and (y)(2).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 1 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

12. By adding new § 721.3620 to subpart E to read as follows:

§ 721.3620 Fatty acid amine condensate, polycarboxylic acid salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a fatty acid amine condensate, polycarboxylic acid salts. (PMN P–92–445) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

13. By adding new § 721.3680 to subpart E to read as follows:

§ 721.3680 Ethylene oxide adduct of fatty acid ester with pentaerythritol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ethylene oxide adduct of fatty acid ester with pentaerythritol (PMN P–91–442) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

14. By adding new § 721.3720 to subpart E to read as follows:

§ 721.3720 Fatty amide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a fatty amide (PMN P–91–87) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

15. By adding new § 721.4460 to subpart E to read as follows:

§ 721.4460 Amidinothiopropionic acid hydrochloride.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as amidinothiopropionic acid hydrochloride (PMN P–91–102) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

16. By adding new § 721.4480 to subpart E to read as follows:

§ 721.4480 2-imino-1,3-thiazin-4-one-5,6-dihydromonohydrochloride.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-imino-1,3-thiazin-4-one-5,6-dihydromonohydrochloride (PMN P–91–101) is subject to reporting under this section for the significant new uses

described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (v)(1), (v)(2), (w)(1), (w)(2), (x)(1), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

17. By adding new § 721.4720 to subpart E to read as follows:

§ 721.4720 Disubstituted phenoxazine, chlorometalate salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as disubstituted phenoxazine, chlorometalate salt (PMN P–90–0002) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

18. By adding new § 721.5050 to subpart E to read as follows:

§ 721.5050 2,2'-[(1-Methylethylidene)bis[4,1-phenyloxy[1-(butoxymethyl)-(2,1-ethanediyl]oxymethylene]]bisoxirane, reaction product with a diamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2,2'-[(1-methylethylidene)bis[4,1-phenyloxy[1-(butoxymethyl)-(2,1-ethanediyl]oxymethylene]]bisoxirane, reaction product with a diamine (PMN P–91–934), is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

19. By adding new § 721.5200 to subpart E to read as follows:

§ 721.5200 Disubstituted phenylazo trisubstituted naphthalene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as disubstituted phenylazo trisubstituted naphthalene (PMN P–91–328) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g), (v)(1), (w)(1), (x)(1), and (y)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

20. By adding new § 721.6200 to subpart E to read as follows:

§ 721.6200 Fatty acid polyamine condensate, phosphoric acid ester salts.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified as fatty acid polyamine condensate, phosphate ester salts (PMNs P–90–1984 and P–90–1985) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

21. By adding new § 721.6220 to subpart E to read as follows:

§ 721.6220 Aryl sulfonate of a fatty acid mixture, polyamine condensate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an aryl sulfonate of a fatty acid mixture, polyamine condensate (PMN P–91–584) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

22. By adding new § 721.6540 to subpart E to read as follows:

§ 721.6540 Acrylamide, polymers with tetraalkyl ammonium salt and polyalkyl, aminoalkyl methacrylamide salt.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as acrylamide, polymers with tetraalkyl ammonium salt and polyalkyl, amino alkyl methacrylamide salt (PMNs P–88–2100 and P–88–2169) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

23. By adding new § 721.6560 to subpart E to read as follows:

§ 721.6560 Acrylic acid, polymer with substituted ethene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as acrylic acid, polymer with substituted ethene (PMN P–91–521) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 200 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

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Thursday
October 8, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 101 and 103

Loans to Indians From the Revolving Loan Fund, Loan Guaranty, Insurance, and Interest Subsidy; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 101 and 103

RIN 1076-AC39

Loans to Indians From the Revolving Loan Fund, Loan Guaranty, Insurance, and Interest Subsidy

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Indian Financing Act Amendments of 1988 increased the maximum amounts of loans to individuals which can be guaranteed and liberalized provisions for the sale of guaranteed loans so that they may be purchased by "any person." These amendments require changes to agency regulations on financial activities.

Other changes comply with OMB Circulars A–129, Managing Federal Credit Programs, and A–70, Federal Credit Policy.

Other changes reflect the current policies in the administration of the Revolving Loan and the Loan Guaranty Programs.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Woodrow B. Sneed, Division of Financial Assistance, Bureau of Indian Affairs, Mail Stop 4060 MIB, 1849 C Street NW., Washington, DC 20240, telephone (202) 208–4796.

SUPPLEMENTARY INFORMATION: These amendments are published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, these proposed regulations were published in the **Federal Register** on September 23, 1991 and interested persons were invited to submit written comments regarding the proposed rule.

Fifteen letters of comment were received. Twelve commenters objected to proposed § 103.13 reducing the maximum amount of guarantees from 90 percent to 80 percent. One comment was in favor of the 80 percent limitation. The arguments that reducing the amount of guaranty would drastically limit the ability of eligible borrowers to find lenders were persuasive, so the loan guaranty limit will remain at 90 percent.

Three comments objected to the requirement in § 101.3 that the borrower have at least 20 percent equity in the business being financed with a direct loan. The commenters feel this requirement will render the loan program inaccessible to tribes and individuals most in need of loans. Loans, however, under the Indian Financing Act, 25 U.S.C. 1465, may be made only when, in the judgment of the Secretary of the Interior, there is a reasonable prospect of repayment. Experience has proven that debt financing approaching 100 percent drastically increases the likelihood of loan default. Most private banks require at least 30 percent equity to support loan repayment. Less than a 20 percent equity requirement is believed to be insufficient to ensure the repayment standard required by the Indian Financing Act.

The Supplementary Information part of the preamble to the proposed rule points out that the requirement for 20 percent equity applies to both direct and guaranteed loans. This proposed requirement was inadvertently left out of part 103, the rule for guaranteed loans. We are putting the equity requirement in § 103.10 of that part.

One commenter pointed out that the definition of "equity" in §§ 101.1 and 103.1 could include intangible assets, such as goodwill, and assets which might not be subject to a lender's lien. We have modified the definition to avoid these results.

One commenter perceived an inconsistency between §§ 101.11 and 103.44, the first of which allows a charge for loan origination while the latter does not. We have deleted the provision allowing a loan origination fee in § 101.11 to remove this inconsistency.

Two writers commented that the penalties on default under proposed § 101.15 are too harsh. These are penalties which are enforceable against borrowers from all Federal lending programs. They are listed in OMB Circular A–129. Borrowers should be given notice of their availability to the Government and they will remain in the final rule.

One writer suggested requirements for a Debt Collection Certificate showing that borrowers were aware of the remedies available to collect debts owed the Government and a foreclosure/liquidation plan submitted by the lender prior to foreclosure. The proposed rule adequately addresses problems with which these proposals are concerned and they will not be added to the final rule.

Another commenter suggested allowing existing lenders to pay a one time premium. We have added language to § 103.43 to allow this option. The same commenter suggested changing § 103.46 so that it is clear that a late payment date on invoices is required and not discretionary. We have changed "should" to "shall" in the third sentence of that section to accomplish this result.

The Department of the Interior has determined that this document is not a major action under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Department has further determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The collections of information contained in § 101.4, 103.15, and 103.34 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076–0020. The information is being collected to implement the requirements of 25 U.S.C. 1451 et seq. and 25 U.S.C. 1481 et seq. and will be used to establish eligibility for loans or loan guaranties. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451 et seq. and 1481 et seq. Public reporting burden for this information is estimated to average 15 minutes to 3 hours per response to part 101 collections and 30 minutes per response to part 103 collections. This is the same burden as estimated in the rules being amended and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information to Information Clearance Officer; Bureau of Indian Affairs; Washington, DC 20240; and to the Office of Management and Budget; Paperwork Reduction Project (1076–0020); Washington, DC 20503.

Amendments to part 103 increase the amount of a loan to individual Indians which can be guaranteed and provide that guaranteed loans can be purchased by "any person."

These changes reflect changes in the Indian Financing Act by the 1988 amendments.

- Other changes listing remedies on default and limiting the amount of guaranties comply with OMB Circular A–129, Managing Federal Credit Programs, and A–70, Federal Credit Policy. The section on use of tribal funds for lending programs and economic development is deleted because the

disposition of tribal funds is the business of the tribes and should not be restricted unnecessarily by excessive regulation.

A provision that tribes may mortgage their unrestricted lands is deleted because there is no authority for it, unless the land was purchased subject to a mortgage.

Amendments clarify that the lender of guaranteed or insured loans retains responsibility for administering loans even if the guaranty certificate is conveyed to another party. To this end, most references to holders of guaranty certificates are deleted.

Amendments provide that interest subsidies on guaranteed or insured loans will be discontinued any time a guaranty or insurance agreement terminates for any reason.

The prohibition on points, finders fees, loan origination fees, bonuses, and commissions under the loan guaranty and insurance program is emphasized.

Amendments provide that lenders will share pro rata in proceeds from the liquidation of a borrower's assets upon default after the United States has recovered its costs in managing and disposing of the collateral.

A requirement that borrowers must provide at least 20 percent equity in the business being financed with a direct or guaranteed loan is added. Premium payments are required in a lump sum at the beginning of a loan.

The primary author of this document is Woodrow B. Sneed, Division of Financial Assistance, Bureau of Indian Affairs, telephone number [202] 208–4796.

List of Subjects in 25 CFR Parts 101 and 103

Indians—business and finance, Loan programs—Indians, Loan programs—business.

For the reasons set out in the preamble, parts 101 and 103 of title 25, chapter I, of the Code of Federal Regulations are amended as set forth below:

PART 101—LOANS TO INDIANS FROM THE REVOLVING LOAN FUND

1. The authority citation for 25 CFR part 101 is revised to read as follows:

Authority: 25 U.S.C. 1469.

2. Section 101.1 is revised to read as follows:

§ 101.1 Definitions.

As used in this part 101:

Applicant means an applicant for a United States Direct Loan from the revolving loan fund or a loan from a relending organization.

Commissioner means the Commissioner of Indian Affairs or an authorized representative.

Cooperative association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized as a corporation pursuant to state, Federal, or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to:

(1) Make scheduled payments on a loan when due,

(2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan, or

(3) Comply with the covenants, obligations, or other provisions of a loan agreement.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

Equity means the borrower's residual ownership, after deducting all business debt, of tangible business assets used in the business being financed, on which a lender can perfect a first lien position.

Financing statement means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

Indian means a person who is a member of an Indian tribe as defined in this part.

Organization means the governing body of any Indian tribe, or entity established or recognized by such governing body for the purpose of the Indian Financing Act.

Other organization means any non-Indian individual, firm, corporation, partnership, or association.

Partnership means a form of business organization in which two or more legal persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain, organized pursuant to tribal, state, or Federal law.

Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Revolving loan fund means all funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1968) and the Act of April 14, 1950 (64 Stat. 44), as amended and supplemented including sums received in settlement of debts for livestock pursuant to the Act of May 24, 1950, (64 Stat. 190) and sums collected in repayment of loans made, including interest or other charges on loans, and any funds appropriated pursuant to Section 106 of the Indian Financing Act of 1974 (88 Stat. 77).

Secretary means the Secretary of the Interior.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), as amended, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

3. Section 101.3 is amended by adding a sentence at the end of paragraph (a) as follows:

§ 101.3 Eligible borrowers under United States direct loan program.

(a) * * * In addition, the applicant will be required to have equity equal to 20 percent of the total cost of a new enterprise, or 20 percent of the total cost of expansion of an existing enterprise.

* * * * *

4. Section 101.4 is amended by removing the second sentence and by adding three new sentences in its place as follows:

§ 101.4 Applications.

* * * Applications shall include the name, current address and telephone number of the applicant(s); current and prior Taxpayer Identification Number—Employer Identification Number if a business entity, Social Security Number if an individual; and current employer's name, address, and telephone number; amount of the loan requested; purpose for which loan funds will be used; and security to be offered; period of the loan, assets, liabilities and repayment capacity of the applicant; budgets reflecting income and expenditures of the applicant; and any other information necessary to adequately evaluate the application. The borrower must sign a statement declaring no delinquency on Federal taxes or other Federal debt and borrower's good standing on dealings in

procurement or non-procurement with the Federal Government. The Bureau will obtain a current credit bureau report and prescribe procedures to be used in handling loan proceeds. * * *

5. Section 101.6 is amended by adding the following sentence at the end of paragraph (a):

§ 101.6 Modification of loans.

(a) * * * In addition, a current credit bureau report, obtained by the Bureau of Indian Affairs, will be made a part of the modification request.

* * * * *

6. Section 101.11 is amended by revising paragraph (b) and (c) as follows:

§ 101.11 Interest.

* * * * *

(b) Additional charges to cover loan administration costs, including credit reports, may be charged to borrowers.

(c) Education loans may provide for deferral of interest while the borrower is in school full time or in the military service.

* * * * *

7. Section 101.15 is amended by adding new paragraphs (j)-(s) as follows:

§ 101.15 Penalties on default.

* * * * *

(j) Report the name and account information of a delinquent borrower to a credit bureau.

(k) Assess additional interest and penalty charges for the period of time that payment is not made.

(l) Assess charges to cover additional administrative costs incurred by the Government to service the account.

(m) Offset amounts owed the borrower under other Federal programs including other programs administered by the Bureau of Indian Affairs.

(n) Refer the account to a private collection agency to collect the amount due.

(o) Refer the account to the U.S. Department of Justice for collection by litigation.

(p) If the borrower is a current or retired Federal employee, take action to offset the borrower's salary or civil service retirement benefits.

(q) Refer the debt to the Internal Revenue Service for offset against any amount owed the borrower as an income tax refund.

(r) Report any written-off debt to the Internal Revenue Service as taxable income to the borrower.

(s) Recommend suspension or debarment from conducting further business with the Federal Government.

§ 101.20 [Removed]

§§ 101.21 through 101.26 [Redesignated as 101.20 through 101.25]

(8) Section 101.20 is removed and §§ 101.21 through 101.26 are redesignated §§ 101.20 through 101.25.

§ 101.20 [Amended]

9. Newly redesignated § 101.20 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

PART 103—LOAN GUARANTY, INSURANCE, AND INTEREST SUBSIDY

10. The authority citation for 25 CFR part 103 is revised to read as follows:

Authority: 25 U.S.C. 1498.

11. Section 103.1 is revised to read as follows:

§ 103.1 Definitions.

As used in this part:

Applicant means one who applies for a guaranteed or insured loan.

Borrower means the Indian organization or individual Indian receiving a guaranteed or insured loan.

Commissioner means the Commissioner of Indian Affairs or his authorized representative.

Cooperative Association means an association of individuals organized pursuant to state, Federal, or tribal law for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized as a corporation pursuant to state, Federal, or tribal law, with or without stock for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to:

(1) Make scheduled payments on a loan when due,

(2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan, or

(3) Comply with the covenants, obligations, or other provisions of a loan agreement.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

Equity means the borrower's residual ownership, after deducting all business debt, of tangible business assets used in the business being financed, on which a lender can perfect a first lien position.

Financing statement means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

Guaranty means the obligation assumed by the United States to repay a specific percentage of a loan upon default of the borrower pursuant to the regulations in this part.

Indian means a person who is a member of an Indian tribe as defined in this part.

Insured loan means a loan made pursuant to an agreement approved by the Commissioner with a financial institution, under which an obligation is assumed by the United States to indemnify the lender for a percentage of the loss on loans, pursuant to the regulations in this part.

Interest subsidy means payments which may be made by the United States to lenders making guaranteed or insured loans to reduce the interest rate which borrowers pay the lenders to the rate established pursuant to section 104 of the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.).

Mortgage means a mortgage or deed of trust evidencing an encumbrance of land, a mortgage or security agreement executed as evidence of a lien against crops and chattels, and a mortgage or deed of trust evidencing a lien on leasehold interests.

Organization means the governing body of any Indian tribe or entity established or recognized by such governing body for the purpose of the Indian Financing Act.

Partnership means a form of business organization in which two or more persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain organized under tribal, state, or Federal law.

Premium means the charges paid by lenders for the guaranty or insurance of loans under provisions for reimbursement of lenders by the United States for a percentage of losses incurred.

Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Secretary means the Secretary of the Interior.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, or urban

or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) as amended which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

12. Section 103.7 is amended by removing the first sentence and adding two sentences in its place as follows:

§ 103.7 Eligible organizations.

Tribes and Indian organizations having a form of organization satisfactory to the Commissioner recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs, and indicating reasonable assurance of repayment, are eligible for guaranteed or insured loans. If Indian ownership of an economic enterprise falls below 51 percent, the borrower shall be in default and the guaranty shall cease and the interest subsidy shall be discontinued. * * *

13. Section 103.10 is amended by adding new paragraphs (e) and (f) as follows:

§ 103.10 Ineligible loans.

* * * * *

(e) Loans which are linked to Federally tax-exempt bond obligations.

(f) Loans to a borrower whose equity, as defined in § 103.1, in the business being financed is less than 20 percent.

14. Section 103.13 is amended by revising paragraph (a) to read as follows:

§ 103.13 Amount of guaranty.

(a) The percentage of a loan that is guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90 percent of the unpaid principal and interest. The liability under the guaranty shall increase or decrease pro rata with an increase or decrease in the unpaid portion of the principal amount of the obligation. No loan to an individual Indian, partnership, or other non-tribal organization may be guaranteed for an unpaid principal amount in excess of $500,000 or such maximum amount provided in any amendments to the Indian Financing Act of 1974.

* * * * *

15. Section 103.15 is amended by revising the heading of the section and paragraphs (a) and (c) as follows:

§ 103.15 Applications for loan guaranties or insurance.

(a) Applicants for loans will deal directly with lenders for both guaranteed and insured loans. The form of loan applications will be determined by the lender. The application for a loan guaranty or insurance, or attachments thereto, must include or show the following:

(1) The name and address of the borrower with the tax identification number if the borrower is a business entity or the social security number if an individual;

(2) A statement signed by the borrower that the borrower is not delinquent with any Federal tax or other obligations;

(3) The plan of operation for the economic enterprise including an identified target market for the goods or services being offered;

(4) Purpose(s) and the amount of the loan;

(5) Security to be given which shall be itemized with valuations of such collateral and the method used to value the collateral, the date of such valuation, who performed the valuation, and the creditor priority positions;

(6) Hazard and liability insurance to be carried;

(7) Interest rate;

(8) Repayment schedule;

(9) Repayment source(s);

(10) How title to the property to be purchased with the loan will be taken;

(11) Current financial statements of the loan applicant;

(12) Description and dollar value of the equity or personal investment to be made by the applicant;

(13) Charges pursuant to § 103.44;

(14) Pro forma balance sheets, operating statements and cash flow statements for at least three years;

(15) Balance sheets and operating statements for the two preceding years, or applicable period thereof if already in operation;

(16) The lender's evaluation of the economic feasibility of the enterprise and internal credit memorandum; and

(17) A current credit bureau report on the borrower.

Applications will also show the percentage of guaranty requested.

* * * * *

(c) The Commissioner may review applications for guaranteed loans individually and independently from the lending institution.

16 Section 103.16 is revised to read as follows:

§ 103.16 Loan otherwise available.

If the information in an application for a guaranteed or insured loan indicates that the applicant may obtain the loan without a guaranty or insurance, the Commissioner may deny the request for a guaranty or insurance.

17. Section 103.17 is amended by revising the second sentence of paragraph (a) and adding a third sentence as follows:

§ 103.17 Refinancing.

(a) * * * Applications to refinance loans to an economic enterprise will be accompanied by financial and cash flow statements required in § 103.15(a) (1) through (17).

A guaranty of a loan to refinance existing indebtedness will be considered only if the loan will result in a significantly lower lender's interest rate to the borrower, or provide a substantially longer term for repayment of the loan, or decrease the loan-to-asset value ratio of the business being financed.

* * * * *

18. Section 103.23 is amended by revising the last sentence in paragraph (b) as follows:

§ 103.23 Increase in principal of loans.

* * * * *

(b) * * * If the financing involves an economic enterprise, the application must be accompanied by the information required in § 103.15(a) (1) through (17) of this part.

* * * * *

19. Section 103.27 is amended by adding a sentence at the end as follows:

§ 103.27 Amount of security.

* * * The lender shall itemize and describe the collateral given as security as described in 103.15(a) (5) and (10) of this part.

20. Section 103.30 is amended by revising paragraph (a) as follows:

§ 103.30 Land.

(a) Indian individuals may execute mortgages or deeds of trust on nontrust or unrestricted land as security without the approval of any Federal official.

* * * * *

21. Section 103.34 is amended by adding a new sentence after the first sentence as follows:

§ 103.34 Restrictions

* * * Lenders will document any and all prior security interests of record with respect to proposed collateral. * * *

22. Section 103.36 is revised to read as follows:

§ 103.36 Default on guaranteed loans.

(a) Within 45 calendar days after the occurrence of a default, the lender shall notify the Commissioner by certified or registered mail showing the name of borrower, guaranty certificate number, amount of unpaid principal, amount of principal delinquent, amount of interest accrued and unpaid to date of notice.

amount of interest delinquent at time of notice, and other failure of the borrower to comply with provisions of the loan agreement. Within 60 calendar days after default on a loan, the lender shall proceed as prescribed in either paragraph (b), (c), or (d) of this section, unless an extension of time is requested by the lender and approved by the Commissioner. The request for an extension shall explain the reason why a delay is necessary and the estimated date on which action will be initiated. Failure of the lender to proceed with action within 60 calendar days or the date to which an extension is approved by the Commissioner shall cause the guaranty certificate to cease being in force or effect. If the Commissioner is not notified of the failure of a borrower to make a scheduled payment or of other default within the required 45 calendar days, the Commissioner will proceed on the assumption that the scheduled payment was made and that the loan agreement is current and in good standing. The Commissioner will then decrease the amount of the guaranty pro rata by the amount of the due installment and the lender will have no further claim for guaranty as it applied to the installment, except for the interest subsidy on guaranteed loans which may be due.

(b) The lender may make written request that payment be made pursuant to the provisions of the guaranty certificate or guaranty agreement. If the Commissioner finds that a loss has been suffered, the lender may be paid the pro rata portion of the amount guaranteed including unpaid interest.

(c) The borrower and the lender may agree upon an extension of the repayment terms or other forbearance for the benefit of the borrower. The lender may extend all reasonable forbearance if the borrower becomes unable to meet the terms of a loan. However, such forbearance will not be extended if it will increase the likelihood of a loss on a loan. Agreements between a lender and a borrower shall be in writing and will require approval by the Commissioner.

(d) The lender may advise the Commissioner in writing that suit or foreclosure is considered necessary and proceed to foreclosure and liquidation of all security interests. On completion of foreclosure and liquidation, if the Commissioner determines that a loss has been suffered, the lender will be reimbursed for the pro rata portion of the amount of unpaid principal and interest guaranteed. A lender will submit a claim for reimbursement for losses on a form furnished by the Commissioner and will furnish any additional information needed to establish the amount of the claim. On reimbursement of a lender for the pro rata amount of the loss guaranteed as provided in the guaranty certificate, the lender will subrogate its rights and interest in the loan to the United States and assign the loan obligations and security for the loan to the United States. The Commissioner may establish the date on which accrual of interest or charges shall cease. This date may not be later than the date of judgment and decree of foreclosure or sale. The Commissioner will take any action necessary to protect the interest of the United States.

Subsequent to subrogation and assignment, any collections shall be for the account of the United States up to the amount paid on the guaranty plus any costs or expenses incurred by the United States. Collections will be deposited in the loan guaranty and insurance fund established pursuant to this part. Any amounts collected in excess of those necessary to reimburse the United States for amounts paid under the guaranty plus costs or expenses shall be paid to the lender up to the amount of the lender's losses. Any residue from collection shall go to the borrower.

§ 103.38 [Amended]

23. Section 103.38 is amended by removing the word "deems" in the first sentence and adding in its place "deemed."

24. Section 103.42 is amended by revising the introductory text of paragraph (a); adding a new paragraph (a)(5); removing the second sentence in paragraph (c); and adding a sentence at the end of paragraph (c); as follows:

§ 103.42 Interest subsidy.

(a) The Commissioner may pay an interest subsidy to lenders on loans which are guaranteed or insured under this part 103 at rates which are necessary to reduce the interest rate payable by the borrowers to a rate determined in accordance with title I, section 104, of the Indian Financing Act of 1974 (Pub. L. 93–262, 83 Stat. 77). The rate of subsidy will be established by the Commissioner at the time of issuance of a guaranty certificate or insurance agreement on loans requiring approval by the Commissioner. Interest subsidy payments by the United States shall be discontinued on such loans if the lender elects to discontinue the guaranty or insurance or causes the termination of the guaranty or insurance by failure to make premium payments as required by § 103.43, or when one of the following occurs:

* * * * *

(5) Cash flow form the business being financed appears sufficient to pay for full debt service based on periodic review by the Commissioner. Cash flow shall be deemed sufficient to pay debt service when earnings before interest and taxes, after adjustments for extraordinary items, equal or exceed industry norms.

* * * * *

(c) * * * The interest subsidy rate established by the Commissioner will be in effect for three years. At the end of the third year the need for subsidy will be reviewed and extended on an annual basis for the next two years, if justified.

27. Section 103.43 is revised as follows:

§ 103.43. Premium charges.

A premium of 2.0 percent of the guaranteed portion of a loan will be charged to lenders. The lender may increase the principal amount of the loan by the cost of the premium and charge it to the borrower. The lender shall pay the premium within 90 days of the date of approval of the loan guaranty. Existing lenders may elect to modify their Loan Guaranty and Insurance Agreements with the Bureau of Indian Affairs so as to pay future premium payments in a lump sum. If the guaranty premium is not paid within 90 days of approval of the loan guaranty or modification of the agreement, the Commissioner will send the lender a notice of non-payment. If the premium is not paid within 30 days of the receipt of this notice, the guaranty shall be subject to termination.

28. Section 103.44 is amended by revising the last sentence as follows:

§ 103.44 Other charges.

* * * Payment by the borrower of points, finders fees, loan origination fees, bonuses or commissions for loans guaranteed under this part is prohibited.

29. Section 103.46 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) as follows:

§ 103.46 Loan servicing.

* * * * *

(b) Loan servicing must meet the following standards regarding billing and documentation. Payments must be routinely invoiced, in most cases on a monthly basis. Invoices shall include the date the payment is due and the date the payment will be considered late (i.e., grace period). Borrowers should be encouraged to use pre-authorized debits

or credit cards when making payments. Loan files must contain current information on payment history, including delinquencies and defaults, and any subsequent loan action concerning deferrals, refinancing, or rescheduling. There should be a record of the time and outcome of each contact with the borrower, including notification of delinquent status, requests for repayment, and intent to report the delinquent debt to credit bureaus or to refer debts to collection agencies.

30. Section 103.51 is amended by revising the first two sentences to read as follows:

§ 103.51 Sale or assignment of guaranteed loans.

Any guaranteed loan, including the security and guaranty certificate, may be sold to any person. The person acquiring the loan shall notify the Commissioner in writing with 30 days after acquisition. * * *

William D. Bettenberg,

Acting Assistant Secretary—Indian Affairs.

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57
SS
1
96
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8
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45261–
45559–
45709–
45973–
46079–
46295–

Reader Aids

Federal Register

Vol. 57, No. 196

Thursday, October 8, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

45261–45558.....1
45559–45708.....2
45709–45972.....5
45973–46078.....6
46079–46294.....7
46295–46476.....8

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6482.....45961
6483.....45963
6484.....45965
Executive Orders:
12775 (Continued by Notice of September 30, 1992).....45557
12779 (Continued by Notice of September 30, 1992).....45557
12813 (Amended by EO 12815).....45709
12815.....45709
Administrative Orders:
Notices:
September 30, 1992.....45557

5 CFR

630.....45261
Proposed Rules:
835.....45753

7 CFR

400.....46295
916.....45559
917.....45559
920.....45973, 46243
948.....45560
955.....45974
987.....45975
1065.....45562, 45563
1126.....46079
1137.....45564
1494.....45262
1980.....45968
Proposed Rules:
735.....45993
736.....45993
737.....45993
738.....45993
739.....45993
740.....45993
741.....45993
742.....45993
910.....45581
944.....45754
958.....45993
1106.....45583
1030.....45995
1098.....45996

10 CFR

30.....45566
35.....45566
Proposed Rules:
34.....46345

11 CFR

Proposed Rules:
110.....46346
114.....46346

12 CFR

5.....46081
11.....46081
16.....46081
327.....45263
328.....45977
506.....45977
563.....45977, 46085
563g.....46085
Proposed Rules:
1.....45756
545.....46098
563.....46098
567.....45757, 46098
571.....46098
935.....45338
940.....45338

14 CFR

21.....46243
36.....46243
71.....45961–45963, 46089
Proposed Rules:
39.....45584–45586, 46348
71.....45660, 45997

16 CFR

Proposed Rules:
4.....45676
435.....45998
1500.....46349
1505.....46349

17 CFR

180.....46090
210.....45287
240.....45287
249.....45287
259.....45287
274.....45287
Proposed Rules:
1.....45999, 46101
30.....46101
33.....46101
180.....46101
190.....46101

18 CFR

Proposed Rules:
401.....46354

19 CFR

Proposed Rules:
10.....45758, 46112
191.....46113

20 CFR

404.....45878
416.....46431

21 CFR

5.....45294
310.....45310, 46067
510.....45984
520.....45984
Proposed Rules:
864.....46068
872.....46068
1401.....45353

24 CFR

91.....46068
888.....45468

25 CFR

101.....46470
103.....46470

26 CFR

1.....45568, 45660, 45711, 45878, 46243
43.....45713
602.....45711, 46243
Proposed Rules:
1.....45587, 46355
301.....45759, 46355

27 CFR

Proposed Rules:
9.....45588
17.....45357
19.....45357
70.....45357
170.....45357
194.....45357
197.....45357
250.....45357

29 CFR

1602.....45570
2602.....45713

30 CFR

914.....45985
917.....45295

31 CFR

Proposed Rules:
10.....46356

32 CFR

706.....46299
Proposed Rules:
623.....46246

33 CFR

100.....45570, 45985, 46300
117.....46301, 46302
334.....46303
Proposed Rules:
117.....46361
151.....45591
164.....45662–45667
165.....45596

36 CFR

1254.....46304
1258.....46304

37 CFR

202.....45307

39 CFR

20.....45570
111.....45882

40 CFR

35.....45311
52.....45715, 46306
80.....46316
146.....46292
271.....45514, 45717–45722
272.....45575
721.....46458
Proposed Rules:
Ch. I.....45597
51.....46114
52.....45358, 45360
58.....46003
63.....45363
300.....45597, 45599

41 CFR

101.....46317

42 CFR

57.....45725
435.....46093
447.....46431
Proposed Rules:
417.....46119
531.....46362
440.....46362
442.....46362
488.....46362
489.....46362
498.....46362

43 CFR

Public Land Orders:
1567 (Revoked in part by PLO 6948).....45325
5712 (Revoked by PLO 6946).....45322
6944.....45321
6946.....45322
6948.....45324
6949.....45576
6950.....45725

45 CFR

1224.....45325

46 CFR

514.....46318
581.....46318
Proposed Rules:
35.....45667
197.....46126

47 CFR

0.....45747
73.....45577–45579, 46325
87.....45748
90.....45751
Proposed Rules:
63.....46366
73.....45601, 46132, 46367–46369

48 CFR

30.....45422
52.....45678
202.....45422
204.....45422
208.....45422
210.....45422
214.....45326
215.....45422
216.....45422
219.....45422
223.....45422
225.....45422
226.....45422
227.....45422
228.....45422
231.....45422
232.....45422
236.....45422
237.....45422
239.....45422
242.....45422
245.....45422
252.....45422
253.....45422
Proposed Rules:
1512.....46007
1516.....46007
1552.....46007
5415.....45759
5452.....45759

49 CFR

107.....45446
171.....45442, 45446
172.....45446
173.....45446
174.....45446
176.....45446
177.....45446
178.....45446
179.....45446
180.....45446
214.....45446
571.....45327, 45422
1023.....45751
Proposed Rules:
552.....45759
571.....45760
1039.....45602

50 CFR

17.....45328, 46325, 46340
227.....45986
285.....45579
661.....45751
663.....45987, 46097
672.....45580, 45988, 46344
685.....45989
Proposed Rules:
17.....45761, 45762, 46007
672.....46133
675.....45602, 46133, 46139

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 5126/P.L. 102–379
Civil War Battlefield Commemorative Coin Act of 1992. (Oct. 5, 1992; 106 Stat. 1362; 4 pages) Price: $1.00

H.R. 5428/P.L. 102–380
Military Construction Appropriations Act, 1993. (Oct. 5, 1992; 106 Stat. 1366; 8 pages) Price: $1.00

H.R. 5503/P.L. 102–381
Department of the Interior and Related Agencies Appropriations Act, 1993. (Oct. 5, 1992; 106 Stat. 1374; 48 pages) Price: $1.50

H.R. 6056/P.L. 102–382
District of Columbia Supplemental Appropriations and Rescissions Act, 1992. (Oct. 5, 1992; 106 Stat. 1422; 26 pages) Price: $1.00

S. 1731/P.L. 102–383
United States-Hong Kong Policy Act of 1992. (Oct. 5, 1992; 106 Stat. 1448; 7 pages) Price: $1.00

S. 3175/P.L. 102–384
National and Community Service Technical Amendment Act of 1992. (Oct. 5, 1992; 106 Stat. 1455; 5 pages) Price: $1.00

Last List October 7, 1992

OL
57
SS
196
OC
8
992
UMI

VOL
57
SS
1
9
7
OC
9
992
UMI

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Vol. 57 No. 197

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SS
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9
7
OC
9
992
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10-9-92
Vol. 57 No. 197
Pages 46477-46746

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Friday
October 9, 1992

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Problems with Federal agency subscriptions	523-5243

For other telephone numbers see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 57, No. 197

Friday, October 9, 1992

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Isco, Inc., 46532

Agricultural Stabilization and Conservation Service
RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Peanuts, 46477

Agriculture Department
See Agricultural Research Service
See Agricultural Stabilization and Conservation Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
NOTICES
Agency information collection activities under OMB review, 46532

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Veterinary services program, 46532

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Children and Families Administration
RULES
Head start program; eligibility requirements, 46718

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 46622

Coast Guard
RULES
Drawbridge operations:
Virginia, 46505
Ports and waterways safety:
Bayport Ship Channel, TX; safety zone, 46507
Gulf of Mexico, TX; safety zone, 46507
Los Angeles/Long Beach Ports, CA; safety zone, 46506
Port Arthur Turning Point, TX; safety zone, 46506

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 46543, 46544
Procurement list; additions and deletions; correction, 46544

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Myanmar, 46541
Textile consultation; review of trade:
Oman, 46542

Commodity Credit Corporation
RULES
Loan and purchase programs:
Price support levels—
Peanuts, 46477
NOTICES
Loan and purchase programs:
Price support levels—
Tobacco, 46534

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Board of Trade Clearing Corp. et al.—
Common banking and settlement system, 46544
Meetings; Sunshine Act, 46622

Consumer Product Safety Commission
RULES
Hazardous substances:
Art materials presenting chronic hazards; chronic toxicity determination guidelines; "toxic" supplemental definition, 46624

Customs Service
RULES
Articles conditionally free, subject to a reduced rate, etc.:
United States-Canada Free-Trade Agreement; interest payments treatment, 46502

Defense Department
NOTICES
Meetings:
Government-Industry Technical Data Committee, 46546
Nuclear Failsafe and Risk Reduction Review Advisory Committee, 46545
Wage Committee, 46545

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Library services to Indian tribes and Hawaiian Natives program, 46546

Employment Standards Administration
See Wage and Hour Division
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 46600

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Floodplain and wetlands protection environmental review determinations; availability, etc.:

Jefferson Tennis Court Site, Oak Ridge, TN, 46547
Grants and cooperative agreements; availability, etc.:
University research instrumentation program; correction, 46624

Environmental Protection Agency
PROPOSED RULES
Superfund program:
CERCLA response actions; costs recovery, 46527
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 46563
Weekly receipts, 46563

Executive Office of the President
See Management and Budget Office
See Trade Representative, Office of United States

Farm Credit Administration
RULES
Farm credit system:
Title V conservators and receivers, 46480

Federal Contract Compliance Programs Office
NOTICES
Contracts; eligible bidders:
Disposable Safety Wear, Inc., et al., 46602

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 46622

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Facilities construction and replacement, 46487
Interstate and intrastate pipelines; "on behalf of" standard and blanket transportation certificates, 46496
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.;
Arizona Public Service Co. et al., 46547
Natural gas certificate filings:
Texas Eastern Transmission Corp. et al., 46549
Applications, hearings, determinations, etc.:
Carnegie Natural Gas Co., 46551
Columbia Gas Transmission Corp., 46552
El Paso Refinery, L.P., et al., 46552
Florida Gas Transmission Co., 46553
Kentucky West Virginia Gas Co., 46553
Mississippi River Transmission Corp., 46553
National Fuel Gas Supply Corp., 46554
New England Power Co., 46554
Northwest Pipeline Corp., 46559
Northwest Pipeline Corp. et al., 46556
Pacific Gas Transmission Co., 46560
Paiute Pipeline Co., 46560
Southern Natural Gas Co., 46561
Tennessee Gas Pipeline Co., 46561
Texas Eastern Transmission Corp., 46561
Vermont Electric Power Co., Inc., 46562
Western Gas Interstate Co., 46562
Williams Natural Gas Co., 46562

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Kauai, HI, 46620

Federal Maritime Commission
NOTICES
Agreements filed, etc., 46564
Casualty and nonperformance certificates:
Holland America Line et al., 46564
Complaints filed:
Blue Star Line, Ltd., et al., 46565
Imperial Chemical Industries, PLC, et al., 46565

Federal Reserve System
RULES
Truth in Savings (Regulation DD)
Correction, 46480

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Star cactus, 46528

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Bacitracin and monensin, 46504
NOTICES
Human drugs:
New drug applications—
Computer-assisted new drug applications; guidance manual availability, 46565
Medical devices; premarket approval:
Blanchard Soft (Polymacon) Contact Lens, 46566

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
NOTICES
Agency information collection activities under OMB review, 46565

Health Care Financing Administration
RULES
Medicare:
Hospital inpatient prospective payment systems and 1993 FY rates; changes
Correction, 46509

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
November, 46567

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 46593
Supportive housing for persons with disabilities—
Persons disabled by infection with human acquired immunodeficiency virus (HIV); set-aside; correction, 46624
Organization, functions, and authority delegations:
Assistant Secretary for Community Planning and Development et al., 46568
Regional Administrators et al., 46593
Regulatory waiver requests; quarterly listing, 46568

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Fringe benefits; taxation and exclusions from gross income (personal use of company cars, etc.), 46525

International Trade Administration
NOTICES
Antidumping:
Roller chain, other than bicycle, from Japan, 46535
Countervailing duties:
Refrigeration compressors from Singapore, 46539
Export trade certificates of review, 46540

Interstate Commerce Commission
NOTICES
Rail carriers:
Cost recovery percentage; general purpose costing system review, 46598
Railroad operation, acquisition, construction, etc.:
La Belle Point Railroad Co., 46599
Peninsula Corridor Joint Powers Board, 46599
Southern Pacific Transportation Co., 46600
Railroad services abandonment:
Eastern Alabama Railway, Inc., 46599

Justice Department
NOTICES
Pollution control; consent judgments:
CF&I Fabricators of Utah, Inc., et al., 46600

Labor Department
See Employment Standards Administration
See Federal Contract Compliance Programs Office
See Occupational Safety and Health Administration
See Wage and Hour Division

Land Management Bureau
NOTICES
Meetings:
Carson City District Grazing Advisory Board, 46593
Yuma District Advisory Council, 46593
Realty actions; sales, leases, etc.:
Montana, 46594
Resource management plans, etc.:
Taos Resource Area, NM, 46594
Withdrawal and reservation of lands:
Wyoming, 46595

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 46623

Management and Budget Office
NOTICES
Budget rescissions and deferrals, 46730

National Aeronautics and Space Administration
NOTICES
Meetings:
Aerospace Medicine Advisory Committee, 46605
Space Science and Applications Advisory Committee, 46605

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Expansion Arts Advisory Panel, 46606

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 46511
Gulf of Alaska groundfish, 46510

National Park Service
RULES
Concession contracts and permits:
Competitive renewal
Correction, 46509
NOTICES
Environmental statements; availability, etc.:
Kaloko-Honokohau National Historical Park, HI, 46598

National Science Foundation
NOTICES
Meetings:
Astronomical Sciences Advisory Committee, 46606
Chemistry Advisory Committee, 46606
Electrical and Communications Systems Advisory Committee, 46606
Equal Opportunity in Science and Engineering Committee, 46606
Genetics and Nucleic Acids Advisory Panel, 46607
Linguistics Advisory Panel, 46607
Mathematical Sciences Advisory Committee, 46607
Physiology and Behavior Advisory Panel, 46607
President's Committee on National Medal of Science, 46608
Role of Professional Societies in Two-Year College Science, Mathematics, and Engineering Education; workshop, 46608
Social Psychology Advisory Panel, 46609
Undergraduate Education Special Emphasis Panel, 46609

Nuclear Regulatory Commission
PROPOSED RULES
Byproduct material; medical use:
Training and experience criteria; withdrawn, 46522

Occupational Safety and Health Administration
NOTICES
Meetings:
Construction Safety and Health Advisory Committee, 46601

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
PROPOSED RULES
Retirement:
Federal Employees Retirement System—
Reemployment of annuitants; effect on future CSRS and FERS benefits, 46512

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration

Research and Special Programs Administration
RULES
Hazardous materials:
Performance-oriented packaging standards; classification, hazard communication, packaging and handling requirements based on United Nations standards and agency initiative; correction, 46624
NOTICES
Air carrier groupings for publications; criteria, 46620

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 46610
New York Stock Exchange, Inc., 46611
Applications, hearings, determinations, etc.:
IBM Mutual Funds et al., 46612
Public utility holding company filings, 46613
Woodstock Collective Investment Trust, 46617

Small Business Administration
PROPOSED RULES
Business loan policy:
Unguaranteed loan portion; pledging or sale, 46523
NOTICES
Disaster loan areas:
North Carolina, 46618

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Indonesia:
Pencil slats exportation; policies and practices investigation, 46609

Transportation Department
See Coast Guard
See Federal Highway Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Trans American Charter, Ltd., 46619
U.S.-Brazil combination service case, 46619
International cargo rate flexibility level:
Standard foreign fare level—
Index adjustment factors, 46618, 46619

Treasury Department
See Customs Service
See Internal Revenue Service
NOTICES
Privacy Act:
Systems of records; correction, 46624

United States Information Agency
RULES
Exchange visitor program:
Au pair programs; policy statement, 46676
Summer student travel/work programs, 46676
PROPOSED RULES
Exchange visitor program:
Regulatory and management practice reform, 46678

Veterans Affairs Department
NOTICES
Meetings:
Former Prisoners of War Advisory Committee, 46621

Wage and Hour Division
RULES
Fair Labor Standards Act:
Computer-related occupations; exemption from minimum wage and overtime compensation requirements, 46742

Separate Parts In This Issue

Part II
Consumer Product Safety Commission, 46624

Part III
United States Information Agency, 46676

Part IV
Health and Human Services Department, Children and Families Administration, 46718

Part V
Office of Management and Budget, 46730

Part VI
Department of Labor, Employment Standards Administration, 46742

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
Proposed Rules:
831.....46512
837.....46512
841.....46512
842.....46512
844.....46512
846.....46512

7 CFR
729.....46477
1421.....46477

10 CFR
Proposed Rules:
35.....46522

12 CFR
230.....46480
611.....46480
615.....46480
627.....46480

13 CFR
Proposed Rules:
120.....46523

16 CFR
1500.....46624

18 CFR
2.....46487
284 (2 documents).....46487, 46496

19 CFR
10.....46502

21 CFR
558.....46504

22 CFR
514 (2 documents).....46676
Proposed Rules:
514.....46678

26 CFR
Proposed Rules:
1.....46525

29 CFR
541.....46742

33 CFR
117.....46505
165 (4 documents).....46506–46508

36 CFR
51.....46509

40 CFR
Proposed Rules:
300.....46527
308.....46527

42 CFR
412.....46509
413.....46509

45 CFR
1305.....46718

49 CFR
172.....46624

50 CFR
672 (2 documents).....46510
675.....46511
Proposed Rules:
17.....46528

VOL
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Rules and Regulations

Federal Register
Vol. 57, No. 197
Friday, October 9, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 729 and 1421

RIN 0560-AC66

1992-Crop National Poundage Quota, National Average Support Levels for Quota and Additional Peanuts, and Minimum CCC Export Edible Sales Price for Additional Peanuts

AGENCY: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, Untied States Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule establishes the 1992 national poundage quota for quota peanuts of 1,540,000 short tons (st), national average level of price support for quota peanuts of $674.93 per st, national average level of price support for additional peanuts of $131.09 per st, and minimum CCC sales price of additional peanuts for export edible use of $400.00 per st. These determinations were made pursuant to the statutory requirements of the Agricultural Adjustment Act of 1938, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990.

EFFECTIVE DATES: December 13, 1991, for § 729.214 (the national poundage quota). February 18, 1992, for § 1421.7(c)(8) (the national average support levels for quota and additional peanuts) and § 1421.27(a)(2) (i) and (ii) the minimum CCC sales price of additional peanuts for export edible use).

FOR FURTHER INFORMATION CONTACT: Ronald W. Holling, Tobacco and Peanuts Analysis Division, ASCS, USDA, room 3732, South Building, P.O. Box 2415, Washington, DC 20013, telephone 202-720-7477.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major". This rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local governments or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Final Regulatory Impact Analyses discussing the impacts of the established quota, support levels, and minimum CCC sales price of additional peanuts for export edible use are available from the above-named person.

The titles and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule do not preempt State law, are not retroactive, and do not involve administrative appeals.

It has been determined that the Regulatory Flexibility Act is not applicable because neither ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

The amendments to 7 CFR parts 729 and 1421 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Announcement of the Quota

Section 358-1(a)(1) of the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), requires that the national poundage quota for peanuts for each of the 1991 through 1995 marketing years (MYs) be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each such MY to domestic edible, seed, and related uses. Section 358-1(a)(1) of the 1938 Act further provides that the national poundage quota for a MY shall not be less than 1,350,000 st. The MY for 1992-crop peanuts is from August 1, 1992 through July 31, 1993. Poundage quotas for the 1991-1995 crops of peanuts were approved by 98.2 percent of peanut growers voting in a referendum conductd December 10-13, 1990.

A proposed quota with a public comment period was published on November 21, 1991, in the **Federal Register** (56 FR 58672). The proposed quota was 1,610,000 st. The calculations included individual estimates for: (1) Domestic food use, (2) farm sales and local sales of peanuts, (3) seed, (4) crushing residual, (5) shrinkage and other losses, and (6) quota product exports. A number of comments were received. Following a review of the comments and more recent estimates made by he USDA Interagency Commodity Estimate Committee (ICEC) for Oilseeds, Oils, and Meals, the 1992 quota is established at 1,540,000 st. Updated data resulted in adjustments to the estimates for domestic food use, seed, and crushing residual. The adjustments in those three factors also produced a slight revision in the estimate for shrinkage and other losses. The differences between the estimates on which the proposed quota was based versus the estimates on which the final quota was established are set out in the following table:

ESTIMATED DOMESTIC EDIBLE, SEED, AND RELATED USES

Item	Quota in short tons	
	Proposed [1]	Final [2]
Domestic Edible:		
Domestic food	1,211,000	1,186,000
On farm and local sales	21,000	21,000
Subtotal	1,232,000	1,207,000
Seed	119,000	106,000

ESTIMATED DOMESTIC EDIBLE, SEED, AND RELATED USES—Continued

Item	Quota in short tons	
	Proposed [1]	Final [2]
Related Uses:		
Crushing residual	189,000	158,000
Shrinkage and other losses	49,000	48,000
Segregation 2 and 3 loan transfers to quota loan	20,000	20,000
Quota product exports	1,000	1,000
Subtotal	259,000	227,000
Total	1,610,000	1,540,000

[1] Contained in November 21, 1992, **Federal Register** publication.
[2] Final Quota Determination.

Discussion of the Comments on Proposed Quota and of the Revisions

A total of 23 comments was received during the public comment period that ended on December 9, 1991. Comments were submitted by two manufacturer/processor associations, eight manufacturers, three sheller associations, two farm bureaus, four grower associations or commissions, and four growers.

The comments and revisions made to derive the 1992-crop national quota are discussed below.

Overall Quota Level

A number of comments were directed to the overall quota level rather than to individual elements of the calculation.

The manufacturer/processor associations and all manufacturers either supported the proposed quota of 1,610,000 st or a larger quota. One sheller association supported a 1992 quota unchanged from the 1991 quota of 1,550,000 st, but also expressed that it did not have serious disagreement with the proposed quota. All other associations, bureaus, and commissions supported a quota reduction to 1,500,000 st. All growers supported a smaller quota than that which was proposed. However, no grower recommended a specific tonnage. As set forth below, adjustments were made in the quota from the proposed amount based on adjustments in the individual estimates of use.

Crushing Residual

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given load of quota farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. Manufacturers supported the past and proposed use of a 14-percent factor to account for the amount of crushing peanuts in a ton of farmer stock peanuts. Shellers/growers proposed use of a 12-percent factor and argued that the 14-percent factor should be reduced to reflect the blending of loose shelled kernels and a portion of 1 1/16 kernel splits back into domestic edible shelled peanuts. The prior use of the 14-percent factor was based on the assumption that loose shelled kernels and 1 1/16 kernel would be crushed. Following a review of the comments, it was determined that crushing peanuts will be approximately 12 percent, on a farmer stock basis, of the total MY 1992 domestic food and seed production.

Domestic edible use

One manufacturer/processor association estimated the growth in the quota should be 8 to 9 percent but provided no specific estimate for individual components of domestic edible use. The other manufacturer/processor association estimated the amount of peanuts to be used for domestic edible use to be 1,200,000 st. Sheller and grower associations estimated the amount of peanuts to be used for domestic edible use to be 1,150,000 st. As of December 11, 1991, the ICEC estimated the MY 1992 domestic edible peanut use at 1,200,000 st, down 25,000 st from the ICEC estimate used in connection with the proposed quota. An estimated of 1,200,000 st was determined appropriate but was further reduced by 14,000 st to account for product exporters. (In most instances, product exports are either made from, or may otherwise be credited under section 359a(e)(1) of the 1938 Act as being made from, additional peanuts.)

Seed Use

The seed estimate is based on the expected 1993-crop planted acreage for peanuts and the farmer stock equivalent of the seed needed to plant such acreage. Manufacturer and grower comments regarding this estimate varied concerning seeding rates. Manufacturers supported the use of a more traditional 110-pound-per-acre seeding rate. Shellers/growers proposed the use of a 90-pound-per-acre seeding rate. The sheller/grower recommendation was based on the improved accuracy of pneumatic planters and research enabling growers to have sustained yields with reduced seeding rates. The final seed estimate is based on a review of the most reliable data. ICEC concluded that a 95-pound-per-acre seeding rate is the best estimate.

Shrinkage and Other Losses

This estimate is based on multiplying a factor of 0.04 times domestic food use. Because the domestic food use estimate was revised downward, the estimate for shrinkage and other losses was lowered accordingly.

Quota Peanuts Support Level

The Agricultural Act of 1949, as amended, provides that the Secretary of Agriculture (Secretary) shall determine the rate of loans, payments, and purchases for the 1991–1995 crops of commodities without regard to the requirements for notice and public participation in rulemaking as prescribed in 5 U.S.C. 553 or in any directive of the Secretary.

The announcement of the national support level for the 1992 crop of quota and additional peanuts was required to be made by the Secretary no later than February 15, 1992.

In accordance with section 108B(a)(2) of the 1949 Act, as amended, the national average price support level for the 1992 crop of quota peanuts must be the corresponding 1991-crop price support level adjusted to reflect any increases in the national average cost of peanut production excluding any changes in the cost of land) during the calendar year immediately preceding MY 1992, except that the price support level cannot exceed the 1991-crop support level by more than 5 percent. The 1991-crop quota peanut price support level was $642.79 per st. The 1992-crop support level was determined based on the following estimates:

COST ESCALATOR CALCULATIONS

Variable/component	1990 crop	1991 crop
Total Cash Expense, Capital Replacement, and Unpaid Labor, Less Land Return.	$507.76/acre	$567.91/acre.
Trend Yields	2,500 lbs/acre	2,500 lbs/acre.
Adjusted Costs Per Pound.	$0.20310	$0.22716.
	Dollars Per st.	
Adjusted Costs Per st.	1990	1991.
	406.21	454.33.

COST ESCALATOR CALCULATIONS—Continued

Variable/component	1990 crop	1991 crop
	1992 Quota Calculations Dollars per st.	
Change During 1991 in the Average Cost of Producing Peanuts.	48.12	
Maximum Increase (5%).	32.14	
1992 Quota Support Level.	642.79+32.14=674.93	

Source: T&PAD/ASCS/USDA January 1992.

As indicated in the chart, which was derived form data of the USDA, Economic Research Service, relevant peanut production costs, as calculated in accordance with the statute, increased $48.12 per st, exceeding the maximum permitted 5-percent increase ($32.14 per st). The 1992-crop quota peanut price support level is accordingly established at $674.93 per st.

Additional Peanut Support Level

Section 108B(b)(1) of the 1949 Act, as amended, provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The price support level for additional peanuts is established at $131.09 per st to assure no losses to CCC from the sale or disposal of such peanuts. It reflects the average 1991 soybean oil and meal price equivalent of $192.24 per st less an estimated carrying cost of $61.15 per st on 1991 loan inventory. Peanuts pledged as collateral for a price support loan are sold to recover the loan and related costs. The $131.09 per st support level will provide a reasonable margin of error to prevent losses to the CCC on the sale and disposition of 1992-crop additional peanuts. Prior to making this determination, the following information was considered.

The domestic use of peanut oil during MY 1992 is forecast to be 100,500 st, down 20 percent from MY 1991 projected domestic use. MY 1992 peanut oil beginning stocks are expected to be 30,000 st, up 240 percent from MY 1991. MY 1992 peanut oil prices are expected to average 26.5 cents per pound, up 4.5 cents per pound from MY 1991 prices, but lagging well behind the average price of 45.5 cents per pound for MY 1990.

The domestic use of peanut meal during MY 1992 is forecast to be 65,000 st, down 19,500 st from MY 1991 projected domestic use. MY 1992 peanut meal beginning stocks are expected to be 5,000 st, up 11 percent from MY 1991. Peanut meal prices are expected to average $175.00 per st, up $2.50 per st from MY 1991 prices, but lagging behind the average price of $193.00 per st for MY 1990.

The average price for soybean oil for MY 1992 is forecast to be 19.0 cents per pound, unchanged from MY 1991. The domestic disappearance of soybean oil during MY 1992 is forecast to be 6,200,000 st, up less than 1 percent from projected MY 1991 domestic disappearance. MY 1992 soybean oil beginning stocks are expected to be 1,125,000 st, up 242,500 st from MY 1991.

The average price for cottonseed oil for MY 1992 is forecast to be 18.75 cents per pound, up 0.25 cents per pound from MY 1991. The domestic disappearance of cottonseed oil during MY 1992 is forecast to be 505,000 st, up 7 percent from projected MY 1991 domestic disappearance. MY 1992 cottonseed oil beginning stocks are expected to be 80,000 st, up 12,000 st from MY 1991.

The average soybean meal price for MY 1992 is forecast to be $170.00 per st, down $2.50 per st from MY 1991. The domestic disappearance of soybean meal during MY 1992 is forecast to be 23,300,000 st, down 1 percent from projected MY 1991 domestic disappearance. MY 1992 soybean meal beginning stocks are expected to be 300,000 st, up 15,000 st from MY 1991.

The average cottonseed meal price for MY 1992 is forecast to be $140.00 per st, down $5.00 per st from MY 1991. The domestic disappearance of cottonseed meal during MY 1991 is forecast to be 1,845,000 st, up 4 percent from projected MY 1991 domestic disappearance. MY 1992 cottonseed meal beginning stocks are expected to be 75,000 st, down 20 percent from MY 1991.

The world use of peanuts for MY 1991 is expected to be 23.03 million metric tons, up 0.5 percent from MY 1990. World peanut production for MY 1991 is forecast to be a record 23.51 million metric tons, up 3 percent from MY 1990. Ending stocks for MY 1991 are forecast at 0.75 million metric tons, up 63 percent from MY 1990.

Minimum CCC Sales Price for Additional Peanuts Sold for Export Edible Use

The announcement of a minimum price at which additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is announced at the same time that the quota and additional peanut support level are announced. Thus, producers and handlers have information to facilitate the negotiation of private contracts for the sale of additional peanuts.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the price could unnecessarily adversely affect prices paid to producers for additional peanuts.

The minimum price at which 1992-crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is established at $400 per st. This level will provide price stability for additional peanuts sold under contract and provide some assurance to handlers that CCC will not undercut the handlers' export contracting efforts by offerings of additional peanuts for export edible sale below the historic minimum sales price.

List of Subjects

7 CFR Part 729

Poundage quotas, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 1421

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, 7 CFR parts 729 and 1421 are amended as follows:

PART 729—[AMENDED]

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375; 7 U.S.C. 1445c–3.

2. Part 729, subpart B, is amended by adding a new section, § 729.214, to read as follows:

§ 729.214 National poundage quota.

(a) The national poundage quota for quota peanuts for marketing year 1991 is 1,550,000 short tons.

(b) The national poundage quota for quota peanuts for marketing year 1992 is 1,540,000 short tons.

PART 1421—[AMENDED]

3. The authority citation for part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

4. Section 1421.7 is amended by revising paragraph (c)(8) to read as follows:

§ 1421.7 Adjustment of basic support rates.

* * * * *

(c) * * *

(8)(i) 1991 Peanuts, Quota—$642.79 per short ton; Additional—$149.75 per short ton;

(ii) 1992 Peanuts, Quota—$674.93 per short ton; Additional—$131.09 per short ton;

* * * * *

5. Section 1421.27(a)(2) (i) and (ii) is added to read as follows:

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a)(1) * * *

(2) * * *

(i) The 1991 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton;

(ii) The 1992 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton.

* * * * *

Signed at Washington, DC, on October 2, 1992.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-24569 Filed 10-8-92; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R-0753]

Truth in Savings; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Regulation DD (Docket No. R-0753) published September 21, 1992 (57 FR 43337). The regulation implements the Truth in Savings Act, which requires depository institutions to disclose fees, interest rates and other terms concerning deposit accounts, and limits the methods by which institutions determine the balance on which interest is calculated.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, or Jane Ahrens, Kurt Schumacher, or Mary Jane Seebach, Staff Attorneys (202/736-5500), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Regulation DD, which is the subject of these corrections, implements the Truth in Savings Act (12 U.S.C. 4301 *et seq.*, contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, 105 Stat. 2236).

Need for Correction

As published, the final regulation contains two drafting errors that may be confusing and should be clarified. Several minor typographical errors in the regulation appeared and are being corrected. Errors in the supplementary information that may be confusing are also being corrected at this time.

Correction of Publication

For the reasons set forth in the preamble, the publication on September 21, 1992 of the final regulations (Docket No. R-0753), which were the subject of FR Doc. 92-22478, is corrected as follows:

1. On page 43353, in the third column, in Paragraph (b)(6)(iii)—Withdrawal of interest prior to maturity, first sentence, the word "account" is corrected to read "amount".

2. On page 43362, in the third column, in Paragraph (a)(4)--Length of period, third paragraph, second sentence, the phrase "both April 30" is corrected to read "both April 1 and April 30".

3. On page 43371, in the third column, in Appendix A, Part I, B. Stepped-rate accounts (different rates apply in succeeding periods), second sentence, the word "but" is corrected to read "that".

4. On page 43372, in the second column, in Appendix A, Part I, D. Tiered-rate accounts (different rates apply to specified balance levels), Tiering Method A, second paragraph, third line from the top of the column, the word "within" is corrected to read "with".

PART 230 [CORRECTED]

§ 230.6 [Corrected]

5. On page 43379, in the second column, in § 230.6(a)(3), in the fourth and fifth lines, the words "dollar amounts of the" are removed.

Appendix A [Corrected]

6. On page 43380, in the second column, in Appendix A, introductory text, in the tenth line, the word "percentages" is corrected to read "percentage".

7. On page 43382, first column, in Appendix A, Part II, example (2), in the 16th line, the figure "6.69%" is corrected to read "5.40%".

8. On page 43382, first column, in Appendix A, Part II, example (2), in the equation in the last line, the figure "6.69%" is corrected to read "5.40%".

Appendix B [Corrected]

9. On page 43382, second column, in Appendix B, B-1 (a)(ii), under Limitations on Rate Changes, fourth line, the word "by" is corrected to read "be".

10. On page 43383, first column, in Appendix B, B-1 (f), Fees, the clause is corrected to read as follows:

* * * * *

(f) * * *

The following fees may be assessed against your account:

_____ $_____

_____ $_____

_____ $_____

_____ *(conditions for imposing fee)* $_____

_____ %

of _____.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-24623 Filed 10-8-92; 8:45 am]

BILLING CODE 6210-01-F

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 615 and 627

RIN 3052-AA92

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Title V Conservators and Receivers

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations governing conservatorships and receiverships for which the Farm Credit System Insurance Corporation (Insurance Corporation) is appointed as conservator or receiver. These regulations were published as proposed regulations on June 3, 1992, 57 FR 23348. The final regulations reflect

amendments to the Farm Credit Act of 1971 by the Agricultural Credit Act of 1987 providing that, after January 5, 1993, the Insurance Corporation will be the exclusive entity appointed as conservator or receiver of a Farm Credit System institution (System institution or Farm Credit institution). Also adopted are amendments to existing conservatorship and receivership regulations, which continue to apply in situations where the Insurance Corporation is not appointed as conservator or receiver.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444,

or

John J. Hays, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

The Agricultural Credit Act of 1987 (Pub. L. 100–233) (1987 Act) amended the Farm Credit Act of 1971 (Act) by adding a new title V which provided for the establishment of the Insurance Corporation. New sections 5.51(5) and 5.58(9) of the Act empower the Insurance Corporation to act as conservator or receiver. The 1987 Act also amended section 4.12(b) of the Act to provide that, after January 5, 1993, the Insurance Corporation will be the exclusive entity to be appointed by the FCA as conservator or receiver of a System institution. In new part 627, the Board sets forth the powers and duties of the Insurance Corporation when it acts as conservator or receiver of a System institution. Other conservators or receivers will continue to be governed by the existing provisions in part 611, subparts K, L, M, and N of the regulations, as amended.

The Board's decision to promulgate separate regulations for conservatorships and receiverships for which the Insurance Corporation is the conservator or receiver is based on fundamental differences between the Insurance Corporation and other persons or entities that have previously been appointed to the position. The primary difference is that the Insurance Corporation is a Federal agency in its own right. Thus, provisions pertaining to the status of other conservators or receivers as agents of the FCA are unnecessary for the Insurance Corporation. In addition, the Board believes that retention of a Farm Credit charter by an institution for which the Insurance Corporation acts as receiver is no longer necessary in all circumstances and has provided that the Board may, in its discretion, cancel the charter at the commencement of such receivership or at any time thereafter. Finally, most of the provisions relating to FCA supervisory involvement have been removed. For a full discussion of these matters, see 57 FR 23348 (June 3, 1992).

II. Discussion of Comments

The FCA received comments from the Farm Credit Council (FCC) on behalf of its member System institutions, and from two Farm Credit Banks (FCBs). The FCBs' comments consisted of statements of support for the FCC's comments. Their comments are discussed below.

A. Definition of "Farm Credit institution"

The FCC objected to the inclusion of the Federal Farm Credit Banks Funding Corporation (Funding Corporation), the Farm Credit System Financial Assistance Corporation (FAC), and the Federal Agricultural Mortgage Corporation (Farmer Mac) in the definition of "Farm Credit institution" in proposed § 627.2705(b) for purposes of applying the conservatorship and receivership regulations. These institutions are also included in the definition of "bank" in existing regulation § 611.1170(h) of this chapter. The FCC questioned the appropriateness of applying the receivership procedures to these institutions on the ground that such institutions are "congressionally established."

The FCA Board agrees with the FCC that the institutions were either established by Congress, in the case of the Funding Corporation and Farmer Mac, or chartered by the FCA pursuant to congressional mandate, in the case of the FAC. All the institutions are, however, designated by statute as "institution[s] of the Farm Credit System." See sections 4.9(a), 6.20, and 8.1(a) (1) of the Act. Section 4.12(b) of the Act empowers the FCA Board to "appoint a conservator or receiver for any *System institution*" (emphasis added) if one or more specified grounds exist, and the FCA's power to appoint is exclusive. Should a System institution become insolvent or should any other ground for appointment of a conservator or receiver arise, only the FCA can appoint a conservator or receiver. There is no distinction made in the application of section 4.12(b) on the basis of how a System institution was created. Therefore, unless some other provision of the Act provides for a different treatment, the three institutions in question should be subject to section 4.12(b) and to the conservatorship and receivership regulations.

The provisions pertaining to the FCA's authority to regulate Farmer Mac are in title VIII of the Act. This title was amended by the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (1991 Amendments) (Pub. L. 102–237) to establish a regulatory scheme of FCA examination and supervision through the Office of Secondary Market Oversight (OSMO). New section 8.11(a) provides that the FCA shall act through OSMO to examine, supervise, and promulgate rules and regulations for Farmer Mac, and new section 8.37(b)(6) authorizes the Director of OSMO to "[a]ppoint a conservator for [Farmer Mac] consistent with this Act." [1] Furthermore, section 8.3(c)(6), which was enacted in 1988, provides that Farmer Mac shall "have succession until dissolved by a law enacted by the Congress." Therefore, it appears that the Act gives the FCA, acting through the OSMO Director, power to appoint a conservator but does not permit the FCA to place Farmer Mac in receivership. The FCA would appoint a receiver only if Congress enacts a new law directing or authorizing the agency to take such action. Consequently, the receivership regulations would be inapplicable to Farmer Mac.

In addition, the Board has determined that the conservatorship regulations adopted here today should not be applicable to Farmer Mac but should be addressed separately. The Board has therefore removed Farmer Mac from the definitions of "bank" and "Farm Credit institution" in the final regulations.

There is no other provision of the Act that specifically addresses the appointment of a conservator or receiver for the Funding Corporation or the FAC. Accordingly, it is the Board's view that section 4.12(b) applies to them and that these regulations should likewise be

[1] The FCA interprets "consistent with this Act" to mean that relevant provisions of section 4.12 apply—such as, for example, the provision that an institution has a right to challenge the appointment of a conservator, or the requirement that the Insurance Corporation be appointed to act as conservator.

applicable.[2] Therefore, the final regulations include the Funding Corporation and the FAC in the definitions of "bank" and "Farm Credit institution."

The FCA Board is aware of the special statutory origin of the Funding Corporation and the FAC. Should one or more of the grounds for appointment of a conservator or receiver ever arise at one of the institutions, the Board would not anticipate taking any action without full consideration of such institution's special status and consultation with appropriate parties. The Board notes that the nature of the operational activities of these two institutions makes it extremely unlikely that either would ever be placed in receivership, but should that occur, there should be some mechanism for winding up the affairs of the institutions. Also, when the FAC terminates its existence, it may be necessary to place the corporation in receivership to wind up its affairs. When and if any of these events occur, it should be the FCA that places them in receivership and the Insurance Corporation that acts as receiver.

B. Consultation With District Bank Before Voluntary Liquidation of Association

Section 627.2720 of the proposed regulations did not contain a requirement that the FCA consult with the district FCB before placing an association in voluntary receivership, as is currently required in § 611.1160(a) of this chapter. The FCC requested that the consultation requirement be added to new part 627, reasoning that the FCA would and should want to know the views of the association's largest creditor and bank, in light of the potential impact of the liquidation on the FCB itself and the other association stockholders in the district. The FCC also stated that, if the district FCB did not have the opportunity to express its views to the FCA prior to the liquidation, it seemed unreasonable and unworkable to expect the FCB to fulfill its statutory and regulatory requirement to "institute appropriate measures to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution" (section 4.12(a) of the Act).

The Board does not agree that it is "unreasonable and unworkable" to expect an FCB to fulfill its statutory duties if the FCB has not been consulted. The Board notes, however, that because the FCA would also be concerned about minimizing the adverse effects of a liquidation, the FCA would ordinarily be in contact with a district bank before approving an association's proposed voluntary liquidation. Although the Board does not believe it is necessary to place a consultation requirement in the regulations, in light of the FCC's concerns a provision has been added in § 627.2720(a) that the FCA may, in its discretion, consult with the district bank prior to approving a voluntary liquidation of an association.

The discretionary consultation provision should not, however, be construed as granting an FCB any right to prevent an association's proposed liquidation. Rather, the consultation would provide the FCA with additional information with which to decide whether to approve the liquidation and, if it is approved, how to arrange for continued Farm Credit service in the territory.

The FCC also requested the addition in part 627 of another provision of existing regulations that permits the board of directors of an institution in receivership, at the discretion of the FCA Board, to remain in office during the receivership to provide advice and recommendations to the receiver during the liquidation. The Board has decided not to add this provision to part 627 because it believes that the issue is now more appropriately the concern of the Insurance Corporation when it acts as receiver.

C. Cancellation of the Charter of an Institution in Receivership

The FCC questioned the appropriateness of canceling the charter of an institution at the commencement of a receivership, rather than at the end as is currently the practice. The FCC asserted that the charter cancellation "needlessly clouds" the issue of whether the institution has standing to challenge the imposition of an involuntary receivership.

The FCA Board does not believe that cancellation of the charter places any cloud on the right of the institution to bring an action, within 30 days after the appointment of a receiver, for an order requiring the FCA Board to remove the receiver. This right is expressly granted by section 4.12(b) of the Act, and no valid regulation can have the effect of overriding a statutory requirement.

However, the Board has determined that it will consider the merits of cancellation of the charter at the commencement of each receivership on a case-by-case basis. The Board expects that, ordinarily, the charter would be canceled when the Insurance Corporation is appointed as receiver. If circumstances indicate that there would be a benefit to retaining the charter of a specific institution for a period of time after the appointment of the receiver, the Board will have the flexibility to so provide. Therefore, the Board is adopting a provision that the Board may, in its discretion, cancel the charter of an institution in receivership at any time after the Insurance Corporation is appointed as receiver.

D. Ongoing and Future Credit Needs of Eligible Borrowers

The FCC requested that the Board clarify in the final regulations how the ongoing and future credit needs of eligible borrowers will be met in the territory formerly served by an association in liquidation. The Board has decided not to revise the proposed regulations in response to this comment because it believes that the organizational differences among districts are too numerous and the credit needs of eligible borrowers throughout the country are too various to address this issue through regulations. Thus, future credit needs will necessarily be addressed on a case-by-case basis.

List of Subjects

12 CFR Part 611

Agriculture, Banks, Banking, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

12 CFR Part 627

Agriculture, Banks, Banking, Claims, Rural areas.

For the reasons set forth in the preamble, parts 627, 611, and 615 of chapter VI, title 12 of the Code of Federal Regulations are added and amended, respectively, as follows:

1. A new part 627 is added to read as follows:

PART 627—TITLE V CONSERVATORS AND RECEIVERS

Subpart A—General

Sec.

627.2700 General—applicability.
627.2705 Definitions.
627.2710 [Reserved]
627.2715 Action for removal of conservator or receiver.

Subpart B—Receivers and Receiverships

627.2720 Appointment of receiver.

[2] The FCA interprets the FAC termination provision in section 6.31 of the Act to set a time after which the FAC authorities are extinguished, not to prohibit the placing of the institution in conservatorship or receivership.

627.2725 Powers and duties of the receiver.
627.2730 Preservation of equity.
627.2735 Notice to holders of uninsured accounts and stockholders.
627.2740 Creditors' claims.
627.2745 Priority of claims—associations.
627.2750 Priority of claims—banks.
627.2752 Priority of claims—other Farm Credit institutions.
627.2755 Payment of claims.
627.2760 Inventory, audit, and reports.
627.2765 Final discharge and release of the receiver.

Subpart C—Conservators and Conservatorships

627.2770 Conservators.
627.2775 Appointment of a conservator.
627.2780 Powers and duties of conservators.
627.2785 Inventory, examination, audit, and reports to stockholders.
627.2790 Final discharge and release of the conservator.

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58 of the Farm Credit Act; 12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7.

Subpart A—General

§ 627.2700 General—applicability.

The provisions of this part shall apply to conservatorships and receiverships of Farm Credit institutions for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver.

§ 627.2705 Definitions.

For purposes of this part the following definitions apply:

(a) *Act* means the Farm Credit Act of 1971, as amended.

(b) *Farm Credit institution(s)* or *institution(s)* means all associations, banks, service corporations chartered under title IV of the Act, the Federal Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

(c) *Conservator* means the Farm Credit System Insurance Corporation acting in its capacity as conservator.

(d) *Insurance Corporation* means the Farm Credit System Insurance Corporation.

(e) *Receiver* means the Insurance Corporation acting in its capacity as receiver.

§ 627.2710 [Reserved]

§ 627.2715 Action for removal of conservator or receiver.

Upon the appointment of a conservator or receiver for a Farm Credit institution by the Farm Credit Administration Board pursuant to § 627.2710 of this part, the institution may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the home office of the institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove such conservator or receiver and, if the charter has been canceled, to rescind the cancellation of the charter. Notwithstanding any other provision of subpart B or C of this part, the institution's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may be authorized only by such institution's board of directors.

Subpart B—Receivers and Receiverships

§ 627.2720 Appointment of receiver.

(a) The board of directors of a Farm Credit institution, by the adoption of an appropriate resolution, may vote to liquidate the institution, and upon approval of the resolution by the Farm Credit Administration Board, the Board may, by order, place the Farm Credit institution in receivership. If the institution seeking to liquidate is an association, the Farm Credit Administration may, in its discretion, consult with the district bank prior to approving the association's resolution to liquidate.

(b) The Farm Credit Administration Board may, in its discretion, appoint ex parte and without notice a receiver for any Farm Credit institution in accordance with the grounds for appointment set forth in § 627.2710 of this part.

(c) The voluntary or involuntary liquidation of a Farm Credit institution shall be conducted by the receiver. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as receiver.

(d) Upon the appointment of the Insurance Corporation as receiver, the Chairman of the Farm Credit Administration Board shall immediately notify the institution, and its district bank in the case of an association, and shall publish a notice of the appointment in the **Federal Register.**

(e) In the case of the voluntary or involuntary liquidation of an association, the district bank shall institute appropriate measures to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.

(f) Upon the issuance of the order placing a Farm Credit institution into liquidation and appointing the Insurance Corporation as receiver, all rights, privileges, and powers of the board of directors, officers, and employees of the institution shall be vested exclusively in the receiver. The Farm Credit Administration Board may simultaneously, or any time thereafter, cancel the charter of the institution.

§ 627.2725 Powers and duties of the receiver.

(a) *General.* (1) Upon appointment as receiver, the receiver shall take possession of a Farm Credit institution pursuant to 12 U.S.C. 2183 and § 627.2710 of this part in order to wind up the business operations of such institution, collect the debts owed to the institution, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to stockholders. The receiver is authorized to exercise all powers necessary to the efficient termination of an institution's operation as provided for in this subpart.

(2) Upon its appointment as receiver, the receiver automatically succeeds to—

(i) All rights, titles, powers and privileges of the institution and of any stockholder, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) Title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(3) The receiver of a Farm Credit institution serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) *Specific powers.* The receiver may:

(1) Exercise all powers as are conferred upon the officers and directors of the institution under law and the charter, articles, and bylaws of the institution.

(2) Take any action the receiver considers appropriate or expedient to carry on the business of the institution during the process of liquidating its assets and winding up its affairs.

(3) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership.

(4) Borrow such sums as necessary to effectuate the purposes of the receivership.

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the institution's assets or property or rehabilitate or improve such property and assets.

(6) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the institution has a lien or in which the institution has a

financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(7) Investigate any matter related to the conduct of the business of the institution, including, but not limited to, any claim of the institution against any individual or entity, and institute appropriate legal or other proceedings to prosecute such claims.

(8) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the institution or in which the institution or its creditors or members have any interest, and represent in every way the institution, its members, and creditors.

(9) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(10) Hire any agents or employees necessary for proper administration of the receivership.

(11) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effective as if it had been executed by the institution's officers by authority of its board of directors.

(12) Sell for cash or otherwise any mortgage, deed of trust, chose in action, note contract, judgment or decree, stock, or debt owed to the institution, or any property (real or personal, tangible or intangible).

(13) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(14) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(15) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the institution or receiver.

(16) Pay, out of the assets of the institution, all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(17) Pay out of the assets of the institution all approved claims of indebtedness in accordance with priorities established in this subpart.

(18) Take all actions and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(19) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration Board authorizes by order or by amendment of any order or by regulation.

(c) *Authority to pay claims.* The receiver of a bank is also empowered to pay claims of holders of notes, bonds, debentures, or other obligations issued by the bank under 12 U.S.C. 2153(c) or (d) in accordance with procedures specified by the Insurance Corporation pursuant to § 627.2740(d) of this part.

§ 627.2730 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the institution, no capital stock, participation certificates, equity reserves, or other allocated equities of an institution in receivership shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate voluntarily the institution, the capital stock, participation certificates, equity reserves, and allocated equities of the institution shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities until such time as the stockholders of the institution or the Farm Credit Administration Board disapproves such resolution. In the event the resolution is approved by the stockholders of the institution and the Farm Credit Administration Board, and the institution is placed in receivership, the provisions of paragraph (a) of this section shall govern further disposition of the equities of the institution.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

§ 627.2735 Notice to holders of uninsured accounts and stockholders.

(a) Upon the placing of an institution in liquidation, the receiver shall immediately notify every borrower who has an uninsured account (voluntary or involuntary) as described in § 614.4513 of this chapter that the funds ceased earning interest when the receivership was instituted and will be applied against the outstanding indebtedness of any loans of such borrower unless, within 15 days of such notice, the borrower directs the receiver to otherwise apply such funds in the manner provided for in existing loan documents.

(b) As soon as practicable after the receiver takes possession of the institution, the receiver shall notify, by first class mail, each holder of stock and participation certificates of the following matters:

(1) The number of shares such holder owns;

(2) That the stock and other equities of the institution may not be retired or transferred until the liquidation is completed, whereupon the receiver will distribute a liquidating dividend, if any, to the owners of such equities; and

(3) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 627.2740 Creditors' claims.

(a) The receiver shall publish promptly a notice to creditors to present their claims against the institution, with proof thereof, to the receiver by a date specified in the notice, which shall be not less than 90 calendar days after the first publication. The notice shall be republished approximately 30 days and 60 days after the first publication. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the institution's books at the creditor's last address appearing thereon. Claims filed after the specified date shall be disallowed, except as the receiver may approve them for full or partial payment from the institution's assets remaining undistributed at the time of approval.

(b) The receiver shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority which is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending the notice of disallowance by first class mail to the claimant's address appearing on the proof of claim shall be sufficient notice. The disallowance shall be final, unless, within 30 days after the notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance. The receiver shall reconsider any claim upon the timely request of the claimant and may approve or disapprove such claim in whole or in part.

(c) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established in this subpart and

in such manner and amounts as the receiver deems appropriate. In the event the institution has a claim against a creditor of the institution, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

(d) The claims of holders of notes, bonds, debentures, or other obligations issued by a bank under 12 U.S.C. 2153 (c) or (d) shall be made, if deemed necessary or appropriate, in accordance with procedures formulated by the Insurance Corporation. In the formulation of such procedures, the Insurance Corporation shall consult with the Farm Credit Administration.

§ 627.2745 Priority of claims—associations.

The following priority of claims shall apply to the distribution of the assets of an association in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the association, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the association.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the association whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the association not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors, including the district bank, which are secured by assets or equities of the association in accordance with applicable Federal or State law.

(g) All claims of the district bank other than those provided for in paragraph (f) of this section, based on the financing agreement between the association and the bank, including interest accrued before and after the appointment of the receiver, minus any setoff for stock or other equity of the district bank owned by the association made in accordance with this paragraph or paragraph (f) of this section. Prior to making such setoff, the district bank must obtain the approval of the Farm Credit Administration Board for the retirement of such equities.

(h) All claims of general creditors.

§ 627.2750 Priority of claims—banks.

The following priority of claims shall apply to the distribution of the assets of a bank in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the bank, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the bank.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the bank whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the bank not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the bank, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of holders of bonds issued by the bank individually to the extent such are collateralized in accordance with 12 U.S.C. 2154.

(h) All claims of holders of consolidated and Systemwide bonds and claims of the other Farm Credit banks arising from their payments pursuant to 12 U.S.C. 2155.

(i) All claims of general creditors.

§ 627.2752 Priority of claims—other Farm Credit institutions.

The following priority of claims shall apply to the distribution of the assets of an institution, other than a bank or association, in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the institution, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the institution.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the institution whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the institution not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor)

for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the institution, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of general creditors.

§ 627.2755 Payment of claims.

(a) All claims of each class described in § 627.2745, § 627.2750, or § 627.2752 of this part, respectively, shall be paid in full, or provisions shall be made for such payment, prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay in full any class of claims described in § 627.2745, distribution on such class shall be on a pro rata basis.

(b) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the institution to the owners of stock, participation certificates, and other equities in accordance with the priorities for impairment set forth in the bylaws of the institution.

(c) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

§ 627.2760 Inventory, audit, and reports.

(a) As soon as practicable after taking possession of an institution, the receiver shall make an inventory of the assets and liabilities as of the date possession was taken.

(b) The institution in receivership shall be audited on an annual basis by a certified public accountant selected by the receiver.

(c) With respect to each receivership, the receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the institution in receivership or any member of the public, with a copy provided to the Farm Credit Administration.

(d) Upon the final liquidation of the institution, the receiver shall send to each stockholder of record a report summarizing the disposition of the assets of the receivership and claims against the receivership.

§ 627.2765 Final discharge and release of the receiver.

After the receiver has made a final distribution of the assets of the receivership, the receivership shall be terminated, the charter shall be canceled by the Farm Credit Administration Board if such cancellation has not previously occurred, and the receiver shall be finally discharged and released.

Subpart C—Conservators and Conservatorships

§ 627.2770 Conservators.

(a) The Insurance Corporation shall be appointed as conservator by the Farm Credit Administration Board pursuant to section 4.12 of the Act and § 627.2710 of this part to take possession of an institution in accordance with the terms of the appointment. Upon appointment, the conservator shall direct the institution's further operation until the Farm Credit Administration Board decides whether to place the institution into receivership. Upon correction or resolution of the problem or condition that provided the basis for the appointment and upon a determination by the Farm Credit Administration Board that the institution can be returned to normal operations, the Farm Credit Administration Board may turn the institution over to such management as the Farm Credit Administration Board may direct.

(b) The conservator shall exercise all powers necessary to continue the ongoing operations of the institution, to conserve and preserve the institution's assets and property, and otherwise protect the interests of the institution, its stockholders, and creditors as provided in this subpart.

§ 627.2775 Appointment of a conservator.

(a) The Farm Credit Administration Board may appoint ex parte and without notice a conservator for any Farm Credit institution provided that one or more of the grounds for appointment as set forth in § 627.2710 exist.

(b) Upon the appointment of a conservator, the Chairman of the Farm Credit Administration shall immediately notify the institution and, in the case of an association, the district bank, and notice of the appointment shall be published in the **Federal Register**. As soon as practicable after the conservator takes possession of the institution, the conservator shall notify, by first class mail, each holder of stock and participation certificates in the institution of the establishment of the conservatorship and shall describe the effect of the conservatorship on the institution's operations and on the borrower's loan and equity holdings.

(c) Upon the issuance of the order placing a Farm Credit institution in conservatorship, all rights, privileges, and powers of the members, board of directors, officers, and employees of the institution are vested exclusively in the conservator.

(d) The conservator is responsible for conserving and preserving the assets of the institution and continuing the ongoing operations of the institution until the conservatorship is terminated by order of the Farm Credit Administration Board.

(e) The Board may, at any time, terminate the conservatorship and direct the conservator to turn over the institution's operations to such management as the Board may designate, in which event the provisions of this subpart shall no longer apply.

§ 627.2780 Powers and duties of conservators.

(a) The conservator of an institution serves as the trustee of the institution and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) The conservator may, with respect to Farm Credit institutions, exercise the powers that a receiver of an institution may exercise under any of the provisions of § 627.2725(b) of this part, except paragraphs § 627.2725 (b)(2) and (b)(17). In interpreting the applicable paragraphs for purposes of this section, the terms "conservator" and "conservatorship" shall be read for "receiver" and "receivership."

(c) The conservator may extend credit to new and existing borrowers as is necessary to the continuing operation of the institution and to effectuate the purposes of the conservatorship.

(d) The conservator may also take any other action the conservator considers appropriate or expedient to the continuing operation of the institution.

§ 627.2785 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of a Farm Credit institution the conservator shall make an inventory of the assets and liabilities of the institution as of the date possession was taken. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The institution in conservatorship shall be examined by the Farm Credit Administration in accordance with section 5.19 of the Act. The institution shall also be audited by a certified public accountant in accordance with part 621 of this chapter.

(c) Each institution in conservatorship shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of

part 621 of this chapter. The conservator of the institution shall provide the certification required in § 621.12 of this chapter.

(d) Each institution in conservatorship shall prepare and issue published financial reports in accordance with provisions of part 620 of this chapter, and the certifications and signatures of the board of directors or management provided for in §§ 620.2(b), 620.2(c), and 620.5(m)(2) of this chapter shall be provided by the conservator of the institution.

§ 627.2790 Final discharge and release of the conservator.

At such time as the conservator shall be relieved of its conservatorship duties, the conservator shall file a report on the conservator's activities with the Farm Credit Administration. The conservator shall thereupon be completely and finally released.

PART 611—ORGANIZATION

2. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

Subpart K—Appointment of Conservators and Receivers

§ 611.1155 [Amended]

3. Section 611.1155 is amended by adding two sentences to the end of the existing text to read:

§ 611.1155 General.

* * * Subparts K, L, M, and N of this part shall not apply to conservatorships or receiverships for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver. Such conservatorships and receiverships shall be governed by part 627 of this chapter.

§ 611.1156 [Redesignated]

4. Section 611.1156 is redesignated as § 627.2710, and paragraph (a) of newly designated § 627.2710 is revised to read as follows:

§ 627.2710 Grounds for appointment of conservators and receivers.

(a) Upon a determination by the Farm Credit Administration Board of the existence of one or more of the factors set forth in paragraph (b) of this section, with respect to any bank, association, or other institution of the System, the Farm Credit Administration Board may, in its discretion, appoint a conservator or receiver for such institution. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as conservator or receiver.

* * * * *

§ 611.1157 [Amended]

5. Section 611.1157 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (a) and (b).

Subpart L—Liquidation of Associations

§ 611.1160 [Amended]

6. Section 611.1160 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (b) and (g).

7. Section 611.1168 is amended by removing paragraphs (c), (d), and (e); by redesignating paragraph (f) as new paragraph (d); and by adding new paragraph (c) to read as follows:

§ 611.1168 Inventory, examination, audit, and reports to stockholders.

* * * * *

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the association in receivership or any member of the public.

* * * * *

Subpart M—Liquidation of Banks

§ 611.1170 [Amended]

8. Section 611.1170 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (b) and (g); and by removing "the Federal Agricultural Mortgage Corporation," from paragraph (h).

9. Section 611.1175 is amended by removing paragraphs (c), (d), and (e); by redesignating paragraph (f) as new paragraph (d); and by adding new paragraph (c) to read as follows:

§ 611.1175 Inventory, examination, audit, and reports to stockholders.

* * * * *

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the bank in receivership or any member of the public.

* * * * *

Subpart N—Conservators and Conservatorships of Banks and Associations

§ 611.1180 [Amended]

10. Section 611.1180 is amended by removing the reference "§ 611.1156" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraph (a); and by removing "the Federal Agricultural Mortgage Corporation," from paragraph (f).

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

11. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25; 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1606.

Subpart H—Capital Adequacy

§ 615.5216 [Amended]

12. Section 615.5216 is amended by removing the reference "§ 611.1156" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraph (b).

Dated: October 2, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–24481 Filed 10–8–92; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM92–13–000; Order No 544]

Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities

Issued September 21, 1992

AGENCY: Federal Energy Regulatory Commission (Commission) DOE.

ACTION: Final rule.

SUMMARY: The Commission is issuing a final rule that requires companies (1) constructing natural gas facilities to transport natural gas pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA, or (2) replacing natural gas facilities pursuant to § 2.55(b) of the Commission's regulations, to notify the

Commission at least 30 days prior to commencing construction if the cost of the project exceeds the cost limit specified in the Commission's regulations. The purpose of this 30-day advance notification requirement is to enable the Commission to review the environmental impact of extensive section 311 construction and § 2.55(b) replacement activities before they commence and, where warranted, to intervene.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Paul W. Schach, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–2245.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabrandt, Elizabeth Anne Moler, Jerry J. Langdon, and Brando Terzic.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a final rule that requires companies (1) constructing natural gas facilities to transport natural gas pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA),[1] or (2) replacing natural gas facilities pursuant to § 2.55(b) of the Commission's regulations,[2] to notify the Commission at least 30 days prior to commencing construction if the cost of the project exceeds the cost limit specified in Column 1 of Table I of § 157.208(d) of the regulations. That cost limit, which in 1992 is $8.2 million, is that applicable to the Part 157, Subpart F automatic authorization. The purpose of this 30-day advance notification requirement is to enable the Commission to review the environmental impact of extensive section 311 construction and § 2.55(b) replacement activities before they commence and, where warranted, to intervene.

The Commission initiated this rulemaking proceeding by Notice of Proposed Rulemaking (NOPR) issued on August 3, 1992.[3] The objective was to re-promulgate regulations adopted in an interim rule, in Order No. 525,[4] and recently vacated on procedural grounds by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), in *Tennessee Gas Pipeline Company* v. *FERC (Tennessee)*.[5] While the NOPR proposed the identical regulations that were vacated, the commentors have persuaded us to modify our proposal substantially.

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collection of information required by the final rule's advance notification requirement to average approximately 5 hours per response. This estimate represents a weighted average for § 2.55(b) and section 311 filings. It recognizes the comments of four parties [6] that our previous estimate of 4 hours per response was too low. We anticipate that an average of 15 advance notifications will be filed each year. We thus estimate the annual reporting burden for advance notification filings to be about 75 hours.

We note that CNG, INGAA, and PGT claimed that 15 to 20 hours may be needed to prepare an advance notification. Transco stated that 12 hours was an approximate mean figure for its 1991 filings. No commentor, however, distinguished between § 2.55(b) and section 311 projects. We believe that § 2.55(b) filings cannot reasonably take longer than an average of 4 hours to prepare.

Regarding section 311 filings, we believe that 10 hours is a reasonable and conservative estimate of the time required, on average. We use as a starting point Transco's 12-hour estimate since it, apparently, was based on specific data. (CNG, INGAA, and PGT, we note, did not represent their 15- to 20-hour figures as average, but stated simply that some filings may take that long to prepare.) Additionally, many companies use standard forms for these filings, making data summarization easy. And many section 311 projects are no more extensive than § 2.55(b) projects. Therefore, such filings should not take significantly longer than § 2.55(b) filings.

Examining Transco's 12-hour figure, we note that it states that this estimate includes time to "research the project," internally review, and respond to subsequent inquiries. Since the Commission's § 157.206(d) regulations require certain things to be done and reports to be produced (but not filed), it is inappropriate, we believe, to include time involved with "researching the project" in the burden associated with the final rule. In addition, we have no way or determining whether the efficiency of Transco's internal review process is typical, and we believe that, for most filings for smaller section 311 projects, very little review time should be needed. Finally, Transco's figure is based on the first full year after implementation of the interim rule. We expect the time needed to prepare advance notifications to decrease as experience with the system grows. Thus, we believe 10 hours is a reasonable average burden for section 311 advance notification filings.

Regarding the final rule's annual reporting requirement, the Commission expects the public reporting burden to average approximately 41 hours per response. We anticipate that 55 pipeline respondents will file one annual report per year for a total annual reporting burden of 2,255 hours.

The industry burden associated with advance notification filings (75 hours) and annual report filings (2,255 hours) thus is expected to total approximately 2,330 hours per year. The average burden per filing (including both advance notifications and annual reports) is estimated to average 33.3 hours per filing. This includes the time needed to review instructions, search existing company files, gather and maintain the information needed, complete and review the collection of information, and file the information with the Commission.

[1] 15 U.S.C. 3301–3432 (1988).

[2] 18 CFR 2.55(b).

[3] Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities, IV FERC Stats. & Regs. ¶ 32,486 (1992) (Advance Notification NOPR); 57 *Fed. Reg.* 35,525 (Aug. 10, 1992).

[4] Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,895 (Order No. 525), *clarified*, 52 FERC ¶ 61,252, *reh'g denied*, 53 FERC ¶ 61,140 (1990) (Order No. 525–A).

[5] No. 90–1618 (July 14, 1992). The court's mandate issued on September 16, 1992, vacating the interim rule as of the date of the court's opinion, *i.e.*, July 14, 1992.

[6] CNG, INGAA, PGT, and Transco.

Send comments regarding these burden estimates or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capital Street, NE., Washington, DC 20426 [Attention: Mr. Michael Miller, Information Policy and Standards Branch, (202) 208–1415], and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

III. Background

Section 2.55(b) of the Commission's regulations permits a natural gas pipeline company to replace existing facilities without prior authorization under section 7(c) of the Natural Gas Act (NGA).[7] Section 284.3(c) of the regulations provides automatic authorization to construct facilities that will be used solely for the transportation of natural gas pursuant to NGPA section 311. Section 284.11 requires any pipeline constructing, or abandoning and removing, facilities under § 284.3(c) to comply with the environmental terms and conditions of § 157.206(d).

On August 2, 1990, the Commission issued an interim rule in Order No. 525, without notice and comment.[8] On the same day, it issued a NOPR in a proceeding that has come to be known as the construction rule proceeding.[9]

The interim rule required natural gas pipelines to notify the Commission 30 days before commencing any replacement of facilities pursuant to § 2.55(b), or any section 311 construction or abandonment with removal of facilities pursuant to § 284.3(c). The notification had to include the following information: (1) A brief description of the facilities; (2) U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities; and (3) a description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings. Additionally, for section 311 construction the pipeline also had to provide evidence of having met the Commission's environmental compliance procedure at § 157.206(d).

The purpose of the interim rule was to give the Commission a temporary procedure, pending adoption of a final rule in the construction rule proceeding, for reviewing section 311 construction activities under § 284.3(c), and replacement activities under § 2.55(b), before construction commenced. The Commission believed that the opportunity for prior review would allow it to take appropriate action where necessary to ensure compliance with the applicable environmental statutes and regulations.[10]

On September 20, 1991, the Commission issued a final rule in the construction rule proceeding, in Order No. 555.[11] For § 2.55(b) replacement activities, the Commission eliminated the 30-day advance notification requirement but narrowed the definition of exempt replacement activities, and added two new conditions, that together it believed would adequately minimize any potential adverse environmental impacts.[12] For section 311 construction, Order No. 555 adopted, at § 284.11(b) of the regulations, essentially the same 30-day advance notification requirement previously adopted as an interim rule.

Order No. 555 was scheduled to take effect on November 19, 1991 but, on November 13, 1991, the Commission postponed the effective date of the rule until 30 days after publication in the **Federal Register** of an order on rehearing.[13] This caused the interim rule to remain in effect. Rehearing of Order No. 555 is pending.

On July 14, 1992, as stated, the D.C. Circuit vacated the interim rule in Tennessee. The court found that the Commission had "failed to provide a sufficient basis for invoking the good cause exception" of the APA,[14] which permits an agency to promulgate a regulation without notice and comment under certain circumstances. The court's mandate issued on September 16, 1992, thus reinstating the pre-Order No. 525 regulations as of the date of the court's opinion on July 14, 1992.

IV. The Proposed Regulations

As stated, we instituted this rulemaking proceeding to repromulgate the same regulations vacated by the court in Tennessee. Specifically, we proposed to require a pipeline to notify the Commission 30 days prior to commencing: (1) Any section 311 construction, or abandonment with removal of facilities, pursuant to § 284.3(c) of the regulations; and (2) any replacement of facilities pursuant to § 2.55(b). Such advance notification, we believed, would enable the Commission to review planned activities before construction commenced and, where warranted, to intervene.

In proposing the same regulations vacated by the court, we expounded the identical rationale that the Commission previously adopted in promulgating the interim rule. We explained that originally it was thought that only very minor facilities, such as taps and interconnections, would be constructed under section 311, and that stringent Commission review therefore was unnecessary. As it turned out, however, pipelines viewed section 311 as a vehicle or constructing more extensive projects.[15] We gave two examples of section 311 construction that had proceeded without advance notification to the Commission and which, we believed, had presented serious environmental repercussions.[16] Without advance notification of section 311 construction projects, we stated, the Commission had no means, other than through the press, of being informed of such construction and ensuring environmental compliance.

Further, we stated that, like section 311 construction, the replacement of facilities under § 2.55(b) could be extensive. We noted that when § 2.55(b) was adopted over 40 years ago, [17] there

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[7] 15 U.S.C. 717–717z (1988).

[8] The Commission invoked the good cause exception of the Administrative Procedure Act (APA), which permits rulemaking without public notice and comment when an agency "for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B) (1988).

[9] Revisions to Regulations Governing Certificates for Construction, IV FERC Stats. & Regs. ¶ 32,477 (1990). The construction rule proceeding involved numerous matters in addition to the one addressed by the interim rule.

[10] *See* Order No. 525, FERC Stats. & Regs., Regulations Preambles 1986–1990, at 31,812.

[11] Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928 (1991).

[12] Specifically, Order No. 555 defined exempt replacement activities as involving "[f]acilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable to comply with Department of Transportation regulations * * *." In addition, the final rule required that: (1) Service through the replaced facilities not result in a reduction or abandonment of service; (2) the new facilities have a substantially equivalent designed delivery capacity as the old facilities; (3) the replacement occur within the pipeline's existing right-of-way; and (4) the old facilities be abandoned in compliance with the guidelines of the U.S. Environmental Protection Agency for facilities exposed to PCB contamination greater than 50 ppm.

[13] Revision to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928A (1991).

[14] Tennessee, slip op. at 2.

[15] As an example, we cited Arkla Energy Resources, a Division of Arkla, Inc., 54 FERC ¶ 61,033 (1991), where the Commission granted Arkla NGA section 7(c) authority to operate Line AC, a large diameter, 225-mile pipeline that Arkla previously had constructed pursuant to NGPA section 311.

[16] These examples, involving Transco and Questar, are discussed *infra*.

[17] See Order No. 148, 14 FR 681 (Feb. 16, 1949).

were fewer pipeline construction projects and the majority involved relatively short lengths of small-diameter pipeline. Over the years, an integrated and sophisticated national pipeline grid developed. Today, we stated, the replacement of facilities potentially could involve hundreds of miles of large-diameter pipeline. And the environment where a pipeline originally was laid may very well have changed completely by the time replacement occurred: what was once a rural area may now be densely populated. Accordingly, we believed that advance notification of § 2.55(b) replacement activities was as necessary as advance notification of section 311 construction projects.

V. The Commenting Parties

The 23 parties identified in the appendix to this order filed timely comments in response to the NOPR. (Beside the full name of each party is the shorthand name by which we refer to it in this order.)

In general, nearly all of the commenting pipelines and pipelines associations assail the proposed 30-day advance notification requirement for § 2.55(b) replacement activities. While many also oppose an advance notification requirement for section 311 construction, others, while less adamantly opposed to it, still believe it is overly broad as written. Only one pipeline, Texas Gas, states, albeit conditionally, that it does not object to complying with the proposed notification requirement.

Three commentors representing gas distribution companies [18] support a prior notification requirement for section 311 construction but oppose it for § 2.55(b) replacements. Another such commentor has no objection to an advance notification requirement for either type of activity.[19] All of these commentors, however, advocate some form of additional public notice of section 311 construction. We expand on these generalities, and discuss the particulars, in the immediately following section.

VI. Discussion

A. The Need For An Advance Notification Requirement

1. Commentors' Positions

a. *The Commission adduced insufficient data to support a need for the proposed rule.* Most commentors opposing the proposed rule in its entirety point out that the § 2.55(b) regulations were in effect for nearly 40 years, and the section 311 regulations nearly 11 years, with no prior notification requirement. The interim rule was in effect 2 years. The commentors argue that, despite all this experience, the Commission provided only scant evidence documenting either harm that occurred to the environment when no advance notification requirement was in effect, or potential harm that the interim rule averted.

Several commentors point out that the Commission cited just two examples to support the asserted need for the advance notification requirement. Both examples, they note, involved section 311 construction.

One case involved the construction by Transco of 138 miles of 30- and 42-inch pipeline, a compressor station, and other related facilities, at a cost of approximately $83 million.[20] The Commission found that, by failing to comply with the National Historic Preservation Act, Transco had seriously damaged or destroyed 48 archaeological sites. It required Transco to pay $25.5 million in civil penalties and reimbursements.

The other case involved the installation of approximately $75,000 of tie-in, metering, and regulating facilities by Questar at an existing regulation station.[21] The Commission imposed a $5,000 civil penalty on Questar for its inadvertent failure to provide the required 30-day advance notification, under the interim rule, and to consult certain agencies prior to beginning construction.[22]

Many commentors argue that these examples are meager evidence upon which to base a requirement affecting all section 311 construction and all § 2.55(b) replacement activities. Most argue that, even assuming that these examples are adequate to support some form of advance notification requirement for section 311 construction, they do not support the need to impose an advance notification requirement on § 2.55(b) replacement activities. As support, they point to the court's observation in Tennessee that "[i]t goes without saying that evidence of harm resulting from the past construction of a new [section 311] pipeline provides no support for the rule's requirement of advance notification of replacement work performed pursuant to section 2.55(b)." [23]

b. *Replacement activities already are subject to substantial environmental regulations.* In any event, PGT argues that replacement activities already are subject to substantial environmental requirements. For example, common replacement activities such as turbine and driver replacements are subject to rigorous air quality reviews under the New Source Review and Permitting processes of the U.S. Environmental Protection Agency (EPA), the states, and local air pollution control districts. Replacement activities involving PCB contaminated facilities are subject to EPA oversight. And pipelines must obtain individual permits from local districts for stream and road crossings, as well as permission from fish and wildlife agencies for river crossings. PGT argues that additional Commission oversight would only add a duplicative and unnecessary layer of regulatory review.

CNG asserts that one of the Commission's stated concerns for proposing an advance notification requirement for replacement activities—that a formerly rural area may now be densely populated—is assuaged by U.S. Department of Transportation (DOT) regulations. CNG states that DOT has defined class locations to ensure safe pipeline operations in populated areas.[24] The class location of a pipeline segment determines its MAOP. Whenever an increase in population density changes a pipeline segment's class location, the operator must lower the segment's MAOP or replace it with thicker walled pipeline.

c. *An advance notification requirement for replacement activities conflicts with DOT regulations.* Six parties [25] argue that, whereas the

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[18] They are AGA (which also represents gas transmission companies), AGD, and So-Cal.

[19] NI-Gas.

[20] Transcontinental Gas Pipe Line Corp., 48 FERC ¶¶ 61,132 and 61,189 (1989), 55 FERC ¶ 61,318 (1991).

[21] Questar Pipeline Co., 57 FERC ¶ 61,058 (1991), 58 FERC ¶ 61,157 (1992).

[22] Questar objects to our citing its case with Transco's as representative of extensive section 311 construction that has "presented potentially serious environmental repercussions." It believes that this wrongly impugns its reputation and character, because: (1) There was never the potential for any environmental harm (all construction occurred on a previously heavily developed, fenced, and graveled site that had been in continuous use by Questar for 25 years); (2) Questar voluntarily notified the Commission of its inadvertent failure to provide advance notification; (3) it cooperated fully with the Commission to remedy the inadvertent violation; and (4) it did not commence service until corrective regulatory action had been taken. We agree with Questar that its case is a bad example for the proposition cited. We no longer rely on it.

[23] Tennessee, slip op. at 8. The interim rule only cited the Transco Case. The Questar case occurred later and, as we have conceded above, is a poor example.

[24] 49 CFR 192.5 defines four class locations. For example, class 1 is any class location unit that has 10 or less buildings intended for human occupancy. Class 4 is any class location unit where buildings with four or more stories prevail.

[25] AGA, ANR, CNG, Enron, Great Lakes, and INGAA.

Commission stated, in both its clarification of the interim rule [26] and the new NOPR, that it does not intend the 30-day advance notification requirement to conflict with DOT's safety regulations, in fact it does.[27] The commentors point out that no segment of a pipeline may be operated unless it is maintained in compliance with the minimum federal safety standards established by DOT under the Natural Gas Pipeline Safety Act.[28] For example, a pipeline must report a safety-related condition to DOT within 5 working days after it is first determined to exist, and within 10 days after it is identified.[29] If permanent repairs are not feasible at the time of discovery, the operator must take "immediate temporary measures to protect the public * * *." [30] Failure to comply may lead to significant civil or criminal penalties.[31]

INGAA points out that, even assuming that our part 284, Subpart I regulations actually cover emergencies that require replacements, not all the replacements required by DOT constitute emergencies. Specifically, there are eight safety-related conditions that require a prompt report to DOT and immediate remedial action. Of these eight conditions, only one directly refers to an emergency.[32] The others focus on preventing emergencies.[33]

Several commentors,[34] however, argue that our own Part 284, Subpart I regulations do not cover emergencies requiring replacement activities. Thus, these regulations would not override, as the Commission asserted, the proposed 30-day advance notification requirement.

Additionally, the commentors argue that seeking a waiver of the advance notification requirement is not an adequate alternative because the process takes too long. CNG examined the five randomly selected cases that the Commission cited as evidence of its willingness to grant waivers. They took, it states, between 10 and 19 days to process.

d. *Alternatively, minor projects should be exempted from any advance notification requirement.* Many commentors argue alternatively that, if the Commission decides to adopt an advance notification requirement, for either section 311 construction, replacement activities, or both, minor facilities should be excluded from the requirement's scope. In this regard, they allege that the Commission overreacted to its stated reason for proposing the rule—to prevent potential damage to the environment—by seeking to include in the scope of its proposed remedy every section 311 construction project and every § 2.55(b) replacement activity. The commentors focus on the stated reason for the Commission's concern: that, where originally it was believed that only minor facilities would be constructed under section 311 or replaced pursuant to § 2.55(b), today both types of projects may be extensive. Assuming that this concern is valid (and many commentors dispute it with regard to replacement activities),[35] the commentors fault the Commission for not tailoring its proposal to this concern over extensive projects. Instead, the Commission proposed a broad, sweeping approach that would include in its scope all activities regardless of size, type, or potential environmental impact.

These commentors thus argue that if the Commission decides to adopt an advance notification requirement, it should exempt certain projects from it. Various commentors suggest various approaches, including excluding from the scope of the requirement: (1) Emergency replacements; [36] (2) minor replacements (*e.g.*, those less than 2 miles in length, and those inside the fence of an existing compressor station);[37] (3) projects costing less than the cost limit applicable to Part 157, Subpart F automatic authorization; [38] and (4) replacements costing less than $5 million.[39]

2. Commission Response

We conclude that a 30-day advance notification requirement is needed to enable the Commission to review extensive construction projects, under both section 311 and § 2.55(b), before they occur to ensure that they do not adversely affect the environment. The need for this advance notification derives from our mandate under the National Environmental Policy Act of 1969 (NEPA) [40] to weigh carefully the potential environmental impact of activities subject to our jurisdiction.

Section 311 construction activities, as stated, must comply with the environmental requirements at § 157.206(d) of the regulations. Although § 2.55(b) replacement activities are not subject to those environmental requirements, we may, where appropriate, require an environmental review.

Contrary to earlier statements that we first made in Order No. 525–A and repeated in the NOPR to this proceeding,[41] replacement activities are not categorically excluded under § 380.4 of our regulations from the need to prepare an environmental assessment (EA) or environmental impact statement (EIS).[42] Since the Commission thus has a responsibility under NEPA to review replacement activities that pose potentially serious, adverse environmental impacts, we need to be informed of such activities before they occur. The information submitted in the advance notification requirement that we are adopting here will allow us to review extensive replacement projects to determine whether additional environmental review is appropriate in a

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[26] Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities, 52 FERC at 61,877.

[27] In the NOPR, we emphasize that the proposed 30-day advance notification requirement would not conflict with DOT's regulations that require pipeline operators to take prompt action to correct safety-related conditions. We explained that the proposed rule would not override Commission regulations (at Part 284, Subpart I) that authorize pipelines to act immediately to correct conditions posing a safety hazard. Advance Notification NOPR, IV FERC Stats. & Regs. at 32,618.

[28] 49 U.S.C. 1671–1687 (1988); 49 CFR parts 191 and 192.

[29] 49 CFR 191.25(a).

[30] 49 CFR 192.711.

[31] 49 U.S.C. 1679a (1988).

[32] "A leak in a pipeline or LNG facility that contains or processes gas or LNG that constitutes an emergency." 49 CFR 191.23(6).

[33] Examples include: (1) General corrosion that has reduced the wall thickness to less than that required for the maximum allowable operating pressure; and (2) localized corrosion pitting to a degree where leakage might result. 49 CFR 191.23(1).

[34] AGA, CNG, Enron, and Great Lakes

[35] They acknowledge that while a replacement project could, conceivably, involve hundreds of miles of pipeline, as stated by the Commission, rarely does one involve more than a couple of miles of pipeline.

[36] AGA, CNG, and Great Lakes.

[37] AGA, ANR, CNG, PGT, Southern, and Texas Intrastates.

[38] Arkla, Tennessee, and Transco.

[39] PGT.

[40] 42 U.S.C. 4321–4370c (1988).

[41] See Order No. 525–A, 53 FERC at 61,470–471; Advance Notification NOPR, IV FERC Stats. & Regs. at 32,617.

[42] In Order No. 486, the Commission rejected some commentors' requests to create a categorical exclusion for replacement activities. The Commission stated:

> Merely because land was disturbed when the trench was originally dug does not mean that replacing the old pipe with a new pipe will not disturb the environment. Such an action must be assessed in light of current land use and concerns about erosion, sediment control, impact on streams and soils, threatened and endangered species and potential PCB contamination.

Regulations Implementing the National Environmental Policy Act of 1969, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783, at 30,928 (1987) (Order No. 486), *on reh'g*, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,799 (1988) (Order No. 486–A). Moreover, the replacement of facilities does not appear in the codified list of categorical exclusions at § 380.4.

particular instance. The same holds true for section 311 construction.

Our concern is focused on extensive construction projects. We noted above the example involving Transco that resulted in serious environmental damage. That damage could have been averted had we had the opportunity to review the project's environmental compliance before construction began. That example, coupled with our responsibility under NEPA, is sufficient, we conclude, to require a 30-day advance notification requirement for extensive section 311 projects.

We cannot provide a similar example concerning an extensive replacement project that resulted in serious environmental damage. That is primarily because most facilities are replaced in small increments (often less than 1 mile in length) and, commonly, in previously certificated rights-of-way. As we stated in the NOPR, however, a replacement could, potentially, involve hundreds of miles of large-diameter pipeline.[43] Accordingly, the very real possibility that a replacement activity can be extensive, coupled again with our responsibility under NEPA, is sufficient, we conclude, to require pipelines to notify us in advance of extensive replacement projects.

The commentors thus have convinced us that we framed our proposed rule too broadly to deal with our more limited concern for averting the potentially serious environmental harm that extensive section 311 construction and replacement activities may cause. They thus have persuaded us to exclude from the advance notification requirement non-extensive section 311 construction and § 2.55(b) replacement activities.

The reasons are twofold. First, the construction or replacement of minor facilities does not present the same potential for serious environmental harm as more extensive projects due, simply, to their smaller scale. Second, while the potential for environmental harm is not eliminated in smaller section 311 construction and § 2.55(b) replacement projects, we have to balance the burden on pipelines of an advance notification requirement with the potential benefits of that requirement. For minor facilities, we conclude, the potential benefits do not outweigh the burdens, particularly because, before construction can begin, all section 311 projects must comply with the environmental terms and conditions of § 157.206(d) and all replacement activities must comply with the environmental requirements of other federal, state, and local agencies. We thus are comfortable in limiting our prior review of such projects to those involving the construction or replacement of extensive facilities.

Our task, then, is to translate our concern, which is limited to extensive section 311 construction and replacement projects, into a workable rule—in other words, to define the universe of non-extensive projects that properly should be excluded from the advance notification requirement. It is very difficult to define this universe by identifying every type of facility that properly should be exempted from the requirement, particularly on the existing record. By far the most workable approach, we conclude, is to adopt a project cost limit. Projects falling under that cost limit will be construed as non-extensive, for purposes of this rule, and not subject to the advance notification requirement. Conversely, projects costing more than that cost limit will be considered extensive and subject to the requirement.

We have chosen as the project cost limit for the final rule the cost limit applicable to the NGA section 7, automatic authorization (which also is known as the as the part 157, subpart F automatic authorization). That cost limit, found in Column 1 of Table I of § 157.208(d) of the regulations, is, for 1992, $8.2 million. It is revised annually for inflation. One benefit of adopting that cost limit for this rule's advance notification requirement is that NGA section 7, NGPA section 311, and § 2.55(b) replacement activities all will be treated alike for purposes of advance notification.[44] In short, for purposes of the advance notification requirement, we can find no reason to treat the three types of construction authorizations differently. In fact, we find it desirable, from both our perspective and that of affected pipelines, to treat them alike.

Additionally, we agree with the commentors that the proposed advance notification requirement for replacement activities, if adopted, potentially would conflict with DOT safety regulations and that our own part 284, subpart I regulations would not override it. The purpose of the subpart I regulations is to "exempt[] a person who engages in an emergency natural gas transaction * * * from the certificate requirements of section 7" of the NGA.[45] "Emergency natural gas transaction" is defined as the sale, transportation, or exchange of natural gas (including the construction and operation of necessary facilities) conducted pursuant to subpart I that is: (1) Necessary to alleviate an emergency; and (2) not anticipated to last more than 60 days.[46]

Thus, a safety related replacement activity does not fall squarely within the codified purpose of the subpart I regulations, since a § 2.55(b) replacement activity is, by definition, already exempt from the requirements of NGA section 7. Nor does it fall within the codified definition of an "emergency natural gas transaction," since it cannot meet the second proviso concerning the expected duration of the emergency. In addition, the preamble [47] adopting the subpart I regulations clearly indicates that the focus of that proceeding was on certain types of supply emergencies resulting, for example, from curtailments or weather induced increases in requirements. The preamble does not mention, directly or indirectly, facility replacements.

However, even assuming that the subpart I regulations do apply to emergency replacement activities, they would not override the 30-day advance notification requirement. Subpart I only would exempt emergency replacement activities from the certificate requirements of NGA section 7. However, by definition a § 2.55(b) replacement activity already is exempt from those requirements.[48] And the 30-day advance notification requirement is a § 2.55(b) requirement, not a section 7 requirement.

Thus, the part 284, subpart I regulations are inapposite to emergency replacement activities. In addition, an advance notification requirement would conflict with DOT safety regulations requiring immediate action to prevent safety related problems not yet

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[43] As of September 3, 1992, the Commission received, under the interim rule, 643 advance notifications of replacement activities. Of that figure, 507 filings involved less than 1 mile of pipeline; 90 involved between 1 and 10 miles of pipeline; 19 between 11 and 20 miles of pipeline; and 27 filings involved more than 20 miles of pipeline (including two that involved more than 100 miles of pipeline).

[44] In this regard, we note that construction proceeding under the Part 157, Subpart F automatic authorization, while subject to the environmental requirements of § 157.206(d), is not subject to an advance notification requirement.

[45] 18 CFR 284.261.

[46] 18 CFR 284.262(d). "Emergency," in turn, is defined as "[a]ny situation in which the participant, in good faith, determines that immediate action is required or is reasonably anticipated to be required for the protection of life or health or for maintenance of physical property." 18 CFR 284.262(a)(1)(iii).

[47] Emergency Natural Gas Sale, Transportation and Exchange Transactions, III FERC Stats. & Regs. ¶ 30,888 (1988) (Order No. 449).

[48] Section 2.55 reads, as pertinent, "For the purposes of section 7(c) of the Natural Gas Act, as amended, the word *facilities* as used therein shall be interpreted to exclude: * * * (b) *Replacement of facilities.* * * *"

constituting an emergency. Accordingly, to prevent a possible conflict between the 30-day advance notification requirement and DOT's regulations in the case of an immediately required replacement that costs more than the cost limit specified in Column 1 of Table I of § 157.208(d), we are specifically excluding from the scope of the advance notification requirement replacement activities that are required to be performed immediately under DOT safety regulations.

The general, 30-day advance notification requirement for replacement activities and section 311 construction is found, respectively, at § 2.55(b)(1)(iii) and § 284.11(b)(1) of the final regulations. The exception to that general requirement for projects costing less than the § 157.208(d) cost limit is found at § 2.55(b)(2)(i) and § 284.11(b)(2). And the exception to that requirement for replacement activities that are required to be performed immediately under DOT safety regulations is found at § 2.55(b)(2)(ii) of the final regulations.

B. The Applicability of the Advance Notification Requirement For Section 311 Construction to Intrastate Pipelines

Section 311 was enacted to allow interstate and intrastate pipelines to provide service which, being in interstate commerce, would otherwise fall under the requirements of the NGA, without subjecting those entities to the full panoply of federal jurisdiction. Part 284 of the Commission's regulations governs section 311 transactions. As noted in the NOPR,[49] under § 284.11 an intrastate pipeline constructing facilities to be used for section 311 transactions (which are in interstate commerce by their very nature) always has been held to the same § 157.208(d) environmental standards as an interstate pipeline in like circumstances. Similarly, the advance notification requirement for section 311 construction that we are adopting here applies to both interstate and intrastate pipelines constructing section 311 facilities.

1. Commentors' Positions

The Association of Texas Intrastates asks us to clarify the applicability of the advance notification requirement to intrastate pipelines. It notes that intrastate pipelines may construct three kinds of facilities: (1) Those used solely for intrastate service; (2) those used for intrastate service and for section 311(a)(2) service;[50] and (3) those used solely for section 311(a)(2) service. The Association of Texas Intrastates notes further that the NOPR indicated that the section 311 advance notification requirement would apply to any pipeline constructing under the section 311 construction authorization at § 284.3(c) of the regulations.[51] It asks us to clarify that the only facilities eligible to be built under that authorization are those utilized solely for section 311 transportation.

2. Commission Response

The Association of Texas Intrastates is correct. The final rule makes the section 311 advance notification requirement applicable to any construction or replacement activity performed pursuant to § 284.3(c) of the regulations that exceeds the applicable cost limit. By definition, the § 284.3(c) authorization can be used only to build facilities that will be utilized solely for section 311 transportation.

C. The Information Required in an Advance Notification

We are adopting the proposal set forth in the NOPR concerning the specific information that an advance notification must include. Under § 284.11(c) of the final regulations, an advance notification for section 311 construction must include the following information:

(1) A brief description of the facilities to be constructed or replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each of the environmental terms and conditions contained in § 157.206(d) of the regulations;

(3) Current U.S. Geological Survey 7.5-minute series topographical maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

Under § 2.55(b)(3) of the final regulations, the advance notification for a replacement activity must include the information described in (1), (3), and (4) above. It need not include evidence of having complied with § 157.206(d) because replacement activities are not subject to those regulations.

We do not believe that collecting and collating this information for projects costing more than $6.2 million (for 1992) will be burdensome. All of the required information should be readily accessible to the pipeline. Any inconvenience to the pipeline that might be caused by the preparation of an advance notification should be minor when measured against the potential environmental damage that we are seeking to prevent.

1. Commentors' Positions

ANR and Columbia comment on the second element of the advance notification for section 311 construction that requires a pipeline to demonstrate that it has complied with the environmental terms and conditions of § 157.206(d) before filing the notification with the Commission. Columbia states that a minimum of six weeks is required to obtain clearances from state historic preservation officers for the construction of even minor facilities. Adding that 6-week period to the 30-day notification period thus delays at least 10 weeks the start of construction. Both ANR and Columbia request that we permit a pipeline to file an advance notification prior to its completing the § 157.206(d) environmental compliance process. The pipeline, however, would have to complete that process prior to beginning construction.

2. Commission Response

The very purpose of the advance notification requirement is to enable the Commission to review an extensive project before construction commences and to ensure that the pipeline has in fact achieved compliance with the environmental terms and conditions of § 157.206(d). If we adopted Columbia's and ANR's suggestions, a pipeline could file an advance notification, complete the § 157.206(d) process 29 days later, and begin construction the next day. Under that scenario, we would have no opportunity to review the pipeline's environmental compliance before construction began, thus defeating the very purpose of the requirement. Accordingly, we reject the suggestion.

Additionally, we believe that, particularly for extensive projects costing more than $6.2 million (for 1992), a pipeline is likely to obtain the clearances required by § 157.206(d) prior to entering into contracts for the actual construction or ordering the necessary equipment for the job. Therefore, submitting this information 30 days prior to the start of construction is not unreasonable and should not delay planned activities. In any event, in an unusual situation a pipeline may seek a waiver of the requirement.

[49] Advance Notification NOPR, IV FERC Stats. & Regs. at 32,617; *see also* Order No. 525–A, 53 FERC at 61,471.

[50] Section 311(a)(2) service is service by an intrastate pipeline on behalf of an interstate pipeline or an LDC served by an interstate pipeline.

[51] Advance Notification NOPR, IV FERC Stats. & Regs. at 32,617.

D. Reporting Requirements

1. One-Time Reports

It is likely that some section 311 construction or § 2.55(b) replacement activities may have commenced, or will commence, during the hiatus when the pre-Order No. 525 regulations are in effect—*i.e.*, between July 14, 1992 (the day the court's opinion in Tennessee issued) and the date this final rule takes effect (*i.e.*, November 9, 1992). Accordingly, to avoid a gap in the Commission's knowledge of projects commenced during that time, we are adopting the proposal set forth in the NOPR, at § 2.55(b)(4)(i) and § 284.11(d)(1) of the final regulations, and requiring pipelines to submit, within 30 days of this rule's effective date, a one-time report informing the Commission of every construction and replacement project costing more than $8.2 million that they commenced during the hiatus. If, for any reason, a pipeline filed an advance notification for a project commenced on or after July 14, 1992, it may reference that filing in its one-time report without repeating the required information.

2. Annual Reports

Additionally, we are adopting an annual reporting requirement at § 2.55(b)(4)(ii) and § 284.11(d)(2) of the final regulations. Under it, a company must file an annual report by May 1 of each year that includes, for each section 311 construction and § 2.55(b) replacement activity that it completed during the previous calendar year that was exempt from the advance notification requirement, the information required for an advance notification.

The annual reporting requirement will serve two purposes. First, it will allow the Commission to verify that pipelines are complying on their own with all applicable environmental requirements and, consequently, that the limited advance notification requirement is working. Second, as it will inform the Commission of all projects not subject to the advance notification requirement, it will bridge a gap in the Commission's knowledge of such activities. We note that this annual reporting requirement parallels a similar reporting requirement for projects authorized under the Part 157, Subpart F automatic authorization.[52]

In preparing this annual report, a company need not repeat information that is common to all projects. For example, if the company uses the same erosion control plan for all projects, it only has to describe it once. This should simplify and make less burdensome the requirement.

E. Matters Not Within the Scope Of This Proceeding

We noted in the NOPR that the proposed regulation at § 2.55(b) was somewhat different from the one adopted in Order No. 555 (which we described above, and which was stayed pending rehearing generally of Order No. 555). Because of the need to react quickly to the court's decision in Tennessee to ensure that some mechanism was in place to enable us to review both section 311 construction and § 2.55(b) replacement activities before construction commenced, we stated that we would not consider in this proceeding any of the issues raised on rehearing of Order No. 555 concerning the § 2.55(b) regulation adopted there.[53] We also should have stated expressly that we would not consider here any section 311 issues raised on rehearing of Order No. 555.

In this regard, we note that AGA, AGD, NI-Gas, and So-Cal have urged here that a pipeline be required to give either public notice of section 311 construction, or at least notice to affected LDCs and state commissions, in addition to Commission notification. That matter not only is at issue on rehearing of Order No. 555 but also is outside the publicly noticed scope of this proceeding. Accordingly, we will not address it here.

F. Conclusion

In sum, we conclude that a 30-day advance notification requirement is necessary to enable the Commission to review extensive section 311 construction and § 2.55(b) replacement activities before they occur. It will enable the Commission, in the case of section 311 construction, to ensue that a pipeline has complied with the environmental requirements of § 157.206(d) of the regulations, and, in the case of § 2.55(b) replacements, to determine whether additional environmental review is needed. For purposes of this rule, only section 311 construction and § 2.55(b) replacement projects costing more than the cost limit specified in Column 1 of Table I of § 157.208(d) of the regulations will be considered extensive and thus subject to the 30-day advance notification requirement.

In practical terms, this should eliminate the vast majority of replacement and section 311 projects from the scope of the advance notification requirement. We note that, in the 25 months between August 2, 1990 (the day the interim rule took effect) and September 2, 1992, the Commission received 699 advance notifications for § 2.55(b) replacement projects and 202 advance notifications for section 311 projects. Only 25 of the former, and 5 of the latter, were for projects costing more than $8.2 million.

Finally, to avert any possible conflict with DOT regulations, § 2.55(b) replacements that are required to be performed immediately under DOT safety regulations will not be subject to the advance notification requirement.

VII. Environmental Analysis

Commission regulations require that an EA or EIS be prepared for any Commission action that may have a significant adverse effect on the human environment.[54] The Commission has categorically excluded certain actions from these requirements on the ground that they do not have a significant effect on the human environment.[55]

The final rule requires pipelines to notify the Commission prior to commencing certain construction activities. However, it does not alter the inherent nature of the activities or their impact upon the human environment. Accordingly, an EA is unnecessary and was not prepared.

VIII. Regulatory Flexibility Act Certification

The Commission certifies, pursuant to the Regulatory Flexibility Act of 1980 (RFA),[56] that the final rule will not have a "significant economic impact on a substantial number of small entities."[57] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm or burdens to small entities.

We conclude that this rule will not have a significant economic impact, within the meaning of the RFA, on a substantial number of small entities, largely because we do not believe that most of the entities that will be affected by it fall within the RFA's definition of "small entity."[58] However, even if the

[52] See 18 CFR 157.207.

[53] Advance Notification NOPR, IV FERC Stats. & Regs. at 32,619.

[54] See 18 CFR part 380.

[55] See 18 CFR 380.4.

[56] 5 U.S.C. 601–612 (1988).

[57] 5 U.S.C. 605(b) (1988).

[58] Section 601 of the RFA defines "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. In turn, a "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is

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final rule were to affect a substantial number of small entities, we do not believe that its impact would be substantial. First, a substantial number of section 311 construction and § 2.55(b) replacement projects have been excluded from the scope of the final rule. Second, both the time needed to prepare an advance notification and the cost of doing so should be modest.

IX. Information Collection Requirements

The regulations of the Office of Management and Budget (OMB) require that OMB approve certain information collection requirements imposed by agency rules.[59]

The information collection form affected by the final rule's advance notification requirement is FERC–577(A), Gas Pipeline Certificates: Environmental Impact Statement, (1902–161). This information collection is required to enable the Commission to carry out its legislative mandate under the NGA, NGPA, and NEPA. As previously discussed, the information required by the advance notification requirement will permit the Commission to review extensive section 311 construction and § 2.55(b) replacement activities before they commence and, where necessary, to intervene. In addition, the annual report required by the final rule for projects not subject to the advance notification requirement will enable the Commission to verify pipelines' compliance with all applicable environmental requirements and, further, will bridge a gap in the Commission's knowledge of such projects.

An estimated 55 respondents on average per year will be affected by the final rule. The respondents will consist mostly of large interstate pipeline companies (approximately 50), with a few (approximately 5) medium to large intrastate pipeline companies. As stated, the public reporting burden with respect to the advance notification requirement is estimated to average approximately 5 burden hours per response. The public reporting burden with respect to the annual reporting requirement is estimated to average approximately 41 burden hours per response. The total public reporting burden with respect to the advance notification and annual reporting requirements is estimated to average approximately 33.3 hours per response or approximately 2,330 burden hours per year.

"independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1988).

[59] 5 CFR part 1320.

X. Effective Date

This final rule is effective on November 9, 1992.

List of Subjects

18 CFR Part 2

Administrative practice and procedure; electric power; environmental impact statements; natural gas; pipelines; reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf; natural gas; reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 2 and 284 of chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825r, 2601–2645; and 42 U.S.C. 4321–4361, 7101–7352.

2. In § 2.55, paragraph (b) is revised to read as follows:

§ 2.55 Definition of terms used in section 7(c).

* * * * *

(b) *Replacement of facilities.* (1) Facilities which constitute the replacement of existing facilities that have or will soon become physically deteriorated or obsolete, to the extent that replacement is deemed advisable, if:

(i) The replacement will not result in a reduction or abandonment of service through the facilities;

(ii) The replacement facilities will have a substantially equivalent designed delivery capacity as the facilities being replaced; and

(iii) Except as described in paragraph (b)(2) of this section, the company files notification of such activity with the Commission at least 30 days prior to commencing construction.

(2) *Advance notification not required.* The advance notification described in paragraph (b)(1)(iii) of this section is not required if:

(i) The cost of the replacement project does not exceed the cost limit specified in Column 1 of Table I of § 157.208(d) of this chapter; or

(ii) U.S. Department of Transportation safety regulations require that the replacement activity be performed immediately;

(3) *Contents of the advance notification.* The advance notification described in paragraph (b)(1)(iii) of this section must include the following information:

(i) A brief description of the facilities to be replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(ii) Current U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities to be replaced; and

(iii) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(4) *Reporting requirements.* (i) *One-time report.* A company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) a one-time report with the Commission, by December 9, 1992, that includes all of the information required in paragraph (b)(3) of this section, for any replacement activity authorized under paragraph (b)(1) of this section that cost more than $8.2 million and was commenced between July 14, 1992 and November 9, 1992.

(ii) *Annual report.* On or before May 1 of each year, a company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) an annual report that lists for the previous calendar year each replacement project that was completed pursuant to paragraph (b)(1) of this section and that was exempt from the advance notification requirement pursuant to paragraph (b)(2) of this section. For each such replacement project, the company must include all of the information described in paragraph (b)(3) of this section.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 15 U.S.C. 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

4. Section 284.11 is revised to read as follows:

§ 284.11 Environmental compliance.

(a) Any activity involving the construction of, or the abandonment with removal of, facilities that is

authorized pursuant to § 284.3(c) and Subpart B or C of this part is subject to the terms and conditions of § 157.206(d) of this chapter.

(b) *Advance notification*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, at least 30 days prior to commencing construction a company must file notification with the Commission of any activity described in paragraph (a) of this section.

(2) *Exception.* The advance notification described in paragraph (b)(1) of this section is not required if the cost of the project does not exceed the cost limit specified in Column 1 of Table I of § 157.208(d) of this chapter.

(c) *Contents of advance notification.* The advance notification described in paragraph (b)(1) of this section must include the following information:

(1) A brief description of the facilities to be constructed or abandoned with removal of facilities (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each provision of § 157.206(d) of this chapter;

(3) Current U.S. Geological Survey 7.5-minute series topographical maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(d) *Reporting requirements*—(1) *One-time report.* A company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) a one-time report with the Commission, by December 9, 1992, that includes all of the information required in paragraph (c) of this section, for any activity described in paragraph (a) of this section that cost more than $6.2 million and was commenced between July 14, 1992 and November 9, 1992.

(2) *Annual report.* On or before May 1 of each year, a company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) an annual report that lists for the previous calendar year each activity that is described in paragraph (a) of this section, and which was completed during the previous calendar year and exempt from the advance notification requirement pursuant to paragraph (b)(2) of this section. For each such activity, the company must include all of the information described in paragraph (c) of this section.

Appendix—Commentors

1. American Gas Association (AGA)
2. ANR Pipeline Company and Colorado Interstate Gas Company (ANR)
3. Arkla Pipeline Group (Arkla)
4. Associated Gas Distributors, Inc. (AGD)
5. Association of Texas Intrastate Natural Gas Pipelines (Association of Texas Intrastates)
6. CNG Transmission Corporation (CNG)
7. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia)
8. Enron Interstate Pipeline Companies (Enron)
9. Great Lakes Gas Transmission Limited Partnership (Great Lakes)
10. Interstate Natural Gas Association of America (INGAA)
11. K N Energy, Inc. (K N Energy)
12. Northern Illinois Gas Company, The Peoples Gas Light and Coke Company, and North Shore Gas Company (NI-Gas)
13. Pacific Gas Transmission Company (PGT)
14. Pacific Offshore Pipeline Company (Pacific Offshore)
15. Questar Pipeline Company (Questar)
16. Southern California Gas Company (So-Cal)
17. Southern Natural Gas Company (Southern)
18. Tennessee Gas Pipeline Company (Tennessee)
19. Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company, and Algonquin Gas Transmission Company (Texas Eastern)
20. Texas Gas Transmission Corporation (Texas Gas)
21. Transcontinental Gas Pipe Line Corporation (Transco)
22. United Gas Pipe Line Company (United)
23. Williston Basin Interstate Pipeline Company (Williston)

[FR Doc. 92-24522 Filed 10-8-92; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 284

[Docket No. RM90-7-001; Order No. 537-A]

Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates

Issued September 21, 1992

AGENCY: Federal Energy Regulatory Commission (Commission) DOE.

ACTION: Order on rehearing.

SUMMARY: On September 20, 1991, the Commission issued a final rule to revise its regulations governing transportation of natural gas by interstate and intrastate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA), and interstate pipelines under blanket certificates issued pursuant to Commission regulations. Order No. 537-A addresses requests for rehearing and/or clarification filed by ten parties.

In addition to clarifying various provisions of the final rule, Order No. 537-A grants rehearing with respect to new section 284.227 of the regulations promulgated by the final rule. Specifically, Order No. 537-A clarifies that intrastate pipelines holding limited-jurisdiction blanket certificates under section 284.227 may act in a chain to transport gas gathered by gathers in adjacent state or Federal waters for delivery in the intrastate pipelines' state of operation.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Jack O. Kendall, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission has made this document available so that all interested persons may inspect or copy its contents during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of Order No. 537-A will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Order on Rehearing

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

Revisions to Regulations Governing Transportation under section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, Docket No. RM90-7-001; Hadson Gas Systems, Inc., Docket No. GP88-11-004; Cascade Natural Gas Corp. v. Northwest Pipeline Corporation, *et al.*, Docket No. CP88-286-005; and Texas Eastern Transmission Corporation, Docket Nos. RP88-61-015, RP88-67-048, RP88-175-003.

I. Introduction

On September 20, 1991, the Federal Energy Regulatory Commission

(Commission) issued Order No. 537,[1] a final rule revising the regulations governing transportation by interstate and intrastate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA).[2] The final rule also revised the prior notice and protest procedures applicable to interstate pipelines' activities under part 284 blanket transportation certificates.[3] This order addresses requests for rehearing and clarification filed by Associated Gas Distributors (Gas Distributors), Association of Texas Intrastate Natural Gas Pipelines (Texas Intrastates), Houston Pipe Line Company (Houston), Ozark Gas Transmission (Ozark), United Texas Transmission Company (United Texas), Transcontinental Gas Pipe Line Corporation (Transco), United Distribution Companies (United Distribution), and Washington Gas Light Company, Frederick Gas Company, Inc., and Shenandoah Gas Company (Washington Gas), filing jointly.

II. Background

The final rule adopted a new interpretation of the "on behalf of" standard in section 311 of the NGPA, as applied to both interstate and intrastate pipelines.[4] Under the new rule, a transaction is authorized under section 311 if the "on behalf of" entity (1) has physical custody of and transports the gas at some point, or (2) holds title to the gas at some point for a purpose related to its identity as an intrastate pipeline, interstate pipeline, or local distribution company (LDC).[5] Further, an interstate pipeline's transportation service will qualify for section 311 authorization when the shipper/customer is either located in an LDC's service area or physically capable of receiving gas supplies directly from an intrastate pipeline if that LDC or intrastate pipeline certifies that the interstate pipeline's transportation service is on its behalf.

The final rule also adopted a new § 284.227 to provide limited-jurisdiction, blanket certificate authority under section 7 of the Natural Gas Act (NGA) authorizing intrastate pipelines to deliver directly to end users in their own states gas received by the intrastate pipelines from gatherers that gathered the gas in adjacent Federal waters or onshore or offshore in an adjacent state. Intrastate pipelines operating under this new authority must, with the exception of the "on behalf of" standard, comply with all conditions of subpart C of part 284, with subpart regulates intrastate pipelines performing services under section 311 of the NGPA.

The blanket certificate transportation regulations which apply to interstate pipelines were also revised in the final rule to operate similarly to the regulations in Subpart B of Part 284 governing section 311 transportation services performed by intrastate pipelines. The result of these revisions is that if any party files a complaint regarding an interstate pipeline's commencement of service, the interstate pipeline is able to continue service without interruption until the Commission issues an order requiring that the transportation service cease. These notification requirements applying to interstate pipelines performing service under blanket certificates were also revised to mirror those governing section 311 transportation services. The revised regulations provide that a pipeline that would provide service to a customer located in an LDC's service area is required to give prior written notice only to the LDC and its regulatory agency.

III. Requests for Rehearing and Clarification

A. Section 311 Issues

LDC Certification

In some instances, an interstate pipeline may receive gas that has been transported upstream by an intrastate pipeline. The interstate pipeline may rely on section 311 authority to deliver the gas directly to an end user, if the upstream intrastate pipeline is the designated "on behalf of" entity. In such instances, among others, the interstate pipeline's section 311 transportation authority does not depend on an "on behalf of" certification by an LDC whose service area includes the end user. However, in any instance where an end user is located in an LDC's service area, § 284.106(a)(4) of the regulations requires notification to the LDC prior to an interstate pipeline transporting gas under section 311 in an arrangement that will bypass the LDC.

United Distribution claims that an LDC within whose service area and end user is located should always certify that the transportation is on its behalf in order to prevent contorted transactions designed to avoid giving an LDC notice, or obtaining the LDC's support, and to prevent the construction of duplicative facilities. United Distribution emphasizes that the LDC may have existing facilities in the area and may still be under public service obligations to provide service to the customer.

The Commission's Response

In any situation where an intrastate pipeline is performing a qualifying function and has agreed to be the on behalf of entity, the Commission is unwilling to mandate that an interstate pipeline must always get the LDC's certification when transporting in the LDC's service area. Granting this authority to LDC's would effectively enable them to veto a potential transaction. This would frustrate and distort the market oriented industry structure the Commission is establishing. Section 311 of the NGPA sought to integrate intrastate and interstate gas markets by providing authority for interstate pipelines to transport on behalf of either intrastate pipelines or LDCs; thus, market integration is promoted if the interstate pipeline transports for the end user on behalf of either entity. We note, however, that even if the designated on behalf of entity is the intrastate pipeline, the interstate pipeline must give the LDC notice of the transaction. Notice to the LDC is required even though the LDC's certification is not.

Further, the state authorities have the means to address and adjust an LDC's service obligation to a particular end user served by an interstate pipeline transporting gas on behalf of an intrastate. Additionally, a state commission could adjust an LDC's service obligation to the extent that obligation would require the LDC to construct duplicative facilities. Moreover, the construction of duplicative facilities to permit transportation service by an interstate pipeline on behalf of an intrastate pipeline is not necessarily wasteful, but instead may be an efficient outcome if it is the result of economic pressure created by fair competition.

For instance, the construction of facilities by an interstate pipeline may allow an end user to choose among alternate sources of supply, instead of

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[1] 56 FR 50235 (Oct. 4, 1991). FERC Stats. & Regs., Regs. Preambles, ¶ 30,927 (1991).

[2] 15 U.S.C. 3301–3432 (1988).

[3] 18 CFR 284.221.

[4] On August 2, 1990, the Commission issued a notice of proposed rulemaking (NOPR) stating its intent to revise its interpretation of the "on behalf of" standard of section 311 transportation for interstate pipelines as mandated by the Court in *Associated Gas Distributors* v. *FERC*, 899 F. 2d 1250 (D.C. Cir. 1990), *reh'g denied*, No. 88–1856 (D.C. Cir June 4, 1990). The Commission proposed to revise the standard as applied to intrastate pipelines as well. The Commission also proposed to substitute notification procedures applicable to Part 284 blanket certificates with procedures similar to those applicable to section 311 transportation services.

[5] An interstate pipeline may transport gas under section 311 authorization for services performed on behalf of an intrastate pipeline or an LDC; an intrastate may transport gas under section 311 authorization for services performed on behalf of an interstate pipeline or an LDC.

being limited to an LDC as its single source of potential gas supply. Such duplication in facilities is not wasteful, in our view, if it serves to increase competition among companies to provide gas to an end user, and if the construction is not unfairly subsized by other customers of the pipeline who will benefit from the facilities.

In the absence of unfair competition (*e.g.*, price squeeze or undue discrimination), our policy of permitting interstate pipelines to bypass service provided by, or which may be provided by, an LDC benefits all segments of the natural gas industry by increasing direct access to transportation and supply markets; encouraging responsiveness to supply and price signals; imposing on LDC's (which often have monopoly power) the need to discipline costs to maintain customers bases; and allowing pipelines to compete for markets served inefficiently.

The question of who should bear the cost burden of facilities which bypass LDC's can be resolved by the Commission when a pipeline seeks to recover the costs in a rate case. Any issues of unfair competition can be addressed through complaint proceedings. Under these circumstances, we believe that the rule provides adequate protection for consumers and LDCs alike against unfair competition and any wasteful duplication of facilities.

For the above reasons, we will deny United Distribution's request for rehearing on this issue.

Pipeline Tariff Requirements

United Distribution also requests that the Commission clarify that transactions which qualify as section 311 transportation under the rule's on behalf of standard do not also have to satisfy the "shipper must own" provisions in a pipeline's open access transportation tariff.

The Commission's Response

As noted both in the final rule and here, there are instances in which an interstate pipeline's transportation of gas qualifies as on behalf of an intrastate pipeline or LDC, but which does not involve the on behalf of entity holding title to the gas while it is being transported by the interstate pipeline. Thus, although a pipeline's tariff may require that the shipper hold title to gas while it is in the interstate pipeline's system, the on behalf of entity may hold title at some other point in the gas's journey to an end user or LDC. Therefore, the "shipper must own provisions" of a pipeline's tariff are not necessarily inconsistent with the standards for qualifying under section 311 as an on behalf of entity. However, a pipeline's tariff may not require that the shipper and the on behalf of entity be the same entity.

Section 311 Facilities Used for Converted Transportation

Transco submits that the Commission failed to prescribe a reasonable period of time for interstate pipelines to obtain certificate authority under section 7(c) of the NGA authorizing the operation of facilities built under section 311 authority, but now used for converted transportation service.[6] In the interim rule, the Commission exercised its authority under the exemption provision of section 7 of the NGA to permit the continued use of uncertificated section 311 facilities for converted transactions for the duration of the interim rule without the issuance of NGA certificates. In the final rule, the Commission denied Transco's Entrade's and PSI Marketing's requests to extend the section 7(c) exemption for section 311 facilities affected by the final rule. The final rule did not provide a time period in which interstate pipelines were required to obtain the necessary authorization to operate the facilities under section 7 of the NGA. The result, Transco asserts, is that the temporary authorization for the continued use of section 311 facilities expired upon the effective date of the final rule.

Transco requests that the Commission grant pipelines a three month period after the effective date of the final rule to obtain necessary authorizations. Transco states that the Commission's failure to prescribe a reasonable time period must have been unintentional since the Commission acknowledged in the interim rule that pipelines may need to obtain an NGA certificate authorization for the use of the facilities for converted services.[7] Transco also requests the Commission to extend the authorization necessary for the continued use of these section 311 facilities for converted transportation service until such time as an NGA certificate is obtained, for a period of time not to exceed three months.

The Commission Response

As we noted in the final rule, there are some section 311 facilities constructed prior to the interim rule that would have been eligible under the automatic or prior notice provisions for construction by interstate pipelines under their part 157, subpart F, blanket certificates; and we granted Transco's request for clarification that interstate pipelines may seek NGA certification for qualifying section 311 facilities under Part 157's automatic and prior notice blanket construction procedures.[8] On the other hand, some pipelines may need to file case-specific certificate applications for certain facilities which are not eligible under the automatic or prior notice provisions of Part 157. We conclude that it would have been appropriate to provide for a reasonable time period in which pipelines could apply for appropriate authority to operate facilities constructed prior to the interim rule and now used to provide converted services.

In the time period since the final rule was issued, many pipelines are likely to have applied for and obtained appropriate certificate authority to operate the facilities formerly operated pursuant to section 311 of the NGPA. However, since the final rule did not provide a time frame for doing so and since rehearing on this issue was pending, there may have been uncertainty in the industry as to when pipelines were required to obtain authority to operate facilities constructed prior to the interim rule and now used for converted section 311 service. Some pipelines may have delayed filing for appropriate authority in anticipation of clarification or rehearing of the final rule. To allay any concern regarding whether pipelines which have not yet applied for section 7(c) authority have been authorized to operate section 311 facilities currently used for converted transportation, we clarify that the temporary exemption has continued and will be continued until the pipelines obtain appropriate authority, as discussed below.

Pipelines which have not filed for appropriate certificate authority under the NGA will have three months from the date of issuance of this order on rehearing in which to apply. To the extent such authority has not been obtained within the three-month time period, the Commission will consider

[6] On the same day the NOPR was issued, the Commission issued an interim rule adopting the "hold title or transport" interpretation of the on behalf of standard for section 311 transportation performed by interstate pipelines until a final rule was promulgated. In addition to adopting the safe harbor standard, the Commission established procedures to expedite the conversion of existing section 311 transportation services to blanket certificates authorizations so as to prevent market disruption. FERC Stats. & Regs., Reg. Preambles (1986–1990), ¶30,894, *amended*, FERC Stats. & Regs., Reg. Preambles (1986–1990), ¶30,898, *reh'g denied*, 53 FERC ¶ 61,141 (1990).

[7] FERC Stats. & Regs., Reg. Preambles (1986–1990), ¶30,894 at 31,795 n.7 (1990).

[8] FERC Stats. & Regs. Preambles, ¶30,927 at 30,208 (1991).

extensions of time on a case-by-case basis for pipelines with pending applications or prior notice filings. However, we urge all pipelines that must apply for certificate authority to do so as early as possible within the three-month time period.

B. New Section 284.227 Issues

Chain Transportation

Texas Intrastates, Houston, and United Texas request that the Commission revise new § 284.227 so that an intrastate pipeline may be eligible for a certificate to transport gas received from a qualifying gatherer to another intrastate pipeline in the same state which, in turn, delivers the gas to either another intrastate pipeline or an end user, thereby creating a chain of intrastate pipeline transportation links between the gatherer and the end user.

The parties point out that under the adopted § 284.227, the only transactions that appear qualify for the limited-jurisdiction blanket certificate involve a single intrastate pipeline as the link between the qualifying gatherer and the end user.

The Commission's Response

The final rule addressed circumstances where an intrastate pipeline receives gas from a gatherer who had gathered the gas from an adjacent State or from Federal waters and the intrastate pipeline's state of operation. In such cases, the intrastate does not necessarily transport the gas on behalf of an LDC or an interstate pipeline under the rule's new interpretation of the "on behalf of" requirement; therefore, the transportation is not authorized under section 311 of the NGPA. However, since the gas originates in an adjacent state or Federal waters, the intrastate is transporting the gas in interstate commerce. The question, therefore, arose as to the type of authority necessary to permit this type of transaction to occur without subjecting the intrastate pipeline and all of its facilities and operations to the jurisdiction of the Commission.

Through recognizing that only a small portion of intrastate pipelines' services include such transactions, the Commission concluded that transaction structured in this manner do enable parties to make efficient gas delivery arrangements and, while not authorized under section 311, do promote section 311's purpose of eliminating artificial restraints on the movement of gas supplies between interstate and intrastate markets. Accordingly, the rule adopted a new § 284.227 to provide that an intrastate pipeline would be eligible for a limited-jurisdiction blanket certificate in order to transport gas in the above-described situation.

As noted, the parties requesting rehearing point out that transaction involving gas gathered in an adjacent State or in Federal waters can be structured so that more than one intrastate pipeline provides the links between the gatherer and the end user. The parties emphasize that all of the intrastate pipelines would operate in the same State and the gas received from the gatherer would not leave the State in which the intrastate pipelines operate. Thus, these parties urge the Commission to revise § 284.227 to ensure that each intrastate pipeline's link is authorized in this type of transaction.

We agree that the requested revision of new § 284.227 is appropriate. As with single link transactions involving one intrastate pipeline, arrangements involving more than one intrastate pipeline, also promote section 311's purpose of eliminating artificial restraints on the movement of gas supplies between interstate and intrastate gas markets.

Therefore, in order to ensure that intrastate pipelines will be able to continue their involvement with these types of transactions, § 284.227 will be revised to clarify that more than one intrastate pipeline may rely on § 284.227's blanket certificate authorization to transport gas produced in adjacent Federal waters or onshore or offshore in an adjacent State if 91) the gas was received by the intrastate pipeline from a gatherer or other intrastate pipeline; (2) the intrastate pipeline delivers the gas in the intrastate pipeline's state of operation to an end user or another intrastate pipeline; and (3) the gas is ultimately used by an end user in the same State.

Section 601 Protection

Texas Intrastates and Houston further assert that since the limited-jurisdiction, blanket certificates will be authorized by section 7 of the NGA, rather than section 311 of the NGPA, intrastate pipelines that provide transportation services pursuant to such certificates are not longer afforded the protection of section 601 of the NGPA. Section 601 insulates an intrastate pipeline's section 311(a)(2) activities from the Commission's jurisdiction. They suggest a number of possible solutions to correct this alleged oversight.

The Commission's Response

The Commission stated in the final rule that an intrastate pipeline's acceptance of a blanket certificate under § 284.227, "will not subject the intrastate pipeline to the Commission's jurisdiction under the Natural Gas Act except to the extent necessary to ensure that services provided by the intrastate pipeline under the blanket certificate comply with the terms and conditions of the certificate."[9] The limited jurisdiction of the certificate attaches when the intrastate pipeline receives the gas to transport and ceases when it delivers the gas to its recipient, either an end-user or another intrastate pipeline.

Texas Intrastate's and Houston's concern is based on an assumption that because the gas which is moving in interstate commerce pursuant to an intrastate pipeline's limited-jurisdiction certificate will be commingled with gas moving in connection with the intrastate pipeline's nonjurisdictional activities, all of the gas in the system and the transportation of the commingled gas will become subject to Federal jurisdiction. This might be the result if the intrastate pipeline were undertaking these activities without its limited-jurisdiction certificate; however, the limited-jurisdiction certificate prevents this result. We reiterate that transportation performed pursuant to the limited-jurisdiction certificate authorized in § 284.227 will not affect the jurisdictional status of an intrastate's other activities.

Notice Requirements

United Distribution suggests that the Commission may not have met the notice and comments requirements of the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.*, since the limited-jurisdiction, blanket certificates were not raised in the NOPR. United Distribution is concerned about the potential use of the new certificates, with respect to both the number of intrastate pipelines using them and the types of services to be provided. To enable it to determine the impact of the new certificates, United Distribution requests clarification that an intrastate pipeline that accepts a limited-jurisdiction, blanket certificate under § 284.227 is subject to the same notice requirements as an interstate pipeline transporting under a part 284 blanket certificate.

The Commission's Response

We disagree with United Distribution's assertion that the APA's notice and comments requirements may not have been met. Although the limited-jurisdiction certificates were not

[9] FERC Stats. & Regs., Regs. Preambles, ¶ 30,927 at 30,203 (1991).

specifically mentioned in the NOPR, § 284.227 is a logical outgrowth of the notice and comments already given.[10] The Commission proposed in the NOPR to revise the regulations governing section 311 transportation by intrastate pipelines. As stated in the final rule, Texas Intrastates and Houston raised in their comments the issue of how to treat transactions previously performed under section 311 involving intrastate pipelines and gatherers that gathered the gas in adjacent Federal waters or onshore or offshore in adjacent states. The adoption of § 284.227 was a logical and rational resolution of this issue.

United Distribution also asks that the Commission clarify that an intrastate pipeline holding a certificate under § 284.227 is subject to the same notice requirements as an interstate pipeline transporting under its part 284 blanket certificate transportation. We note that section 284.227(e) provides that the intrastate pipeline's authority is subject to the intrastate pipeline's compliance with all the terms and conditions of subpart C of part 284, which includes the reporting requirements of § 284.126.

C. Prior Notice and Protest Procedure Issues

Removal of the Prior Notice and Protest Procedures

Gas Distributors, Washington Gas, and United Distribution oppose the revisions to the prior notice and protest procedures applicable to intrastate pipelines performing transportation services under their part 284 blanket certificates. These parties maintain that the notice and protest procedures are an essential element of blanket certificate transportation services and assist the Commission in the administration of its section 7(c) duties. They further argue that the revisions are contrary to the public interest and in conflict with Order No. 436.[11] They contend that the Commission's assertion of administrative burden is unsubstantiated and an inadequate justification for depriving interested parties of notice and an opportunity to be heard.

Gas Distributors, Washington Gas, and United Distribution maintain that, contrary to the Commission's assertions, the complaint procedures are insufficient to handle potential protests of blanket certificate transportation transactions. They contend that the time involved in the processing of complaints is too long for this to be a viable forum for resolution of matters related to open-access transportation. Gas Distributors and Washington Gas suggest that the Commission consider promulgating regulations, such as requiring the resolution of complaints within 60 days, to ensure that the process is more reliable.

They further submit that the Commission erred when it stated in the final rule that LDCs will have sufficient notice of transportation transactions by interstate pipelines when sales and delivery taps are constructed under a pipeline's part 157, Subpart F, blanket facilities certificate because the Commission, in Order No. 555, eliminated any requirement for notice to anyone other than the Commission for certain facilities.[12]

Gas Distributors, Washington Gas, and United Distribution believe that, rather than substituting the section 311 notification requirement for the blanket regulations' notice and protest procedures, the blanket regulations should have been substituted for the section 311 provisions. If the Commission does not impose the notice and protest procedures on section 311 transportation, at a minimum, the Commission should revise the section 311 notice procedures to require thirty days prior public notice, rather than requiring notice to an LDC and its state agency at any time prior to the commencement of the transportation. Thus, even if an LDC is not on behalf of the party, it would receive at least thirty days notice. Such a measure would allot the LDC a sufficient period to respond competitively to the possible changes in service demand and cost.

The Commission Response

As stated in the final rule, every individual blanket transportation service need not be made subject to the notice and hearing requirements of section 7(c) of the NGA. The rulemaking proceeding satisfies the NGA's statutory hearing requirements.

Furthermore, the fact that in Order No. 436 the Commission chose to impose a **Federal Register** notice requirement and other specific protest procedures for blanket certificate transportation services did not bar the Commission from modifying such procedures at a later date. Although the Commission concluded in Order No. 436 that the notice and protest procedures for blanket transportation services would be an effective mechanism for protecting the interests of parties concerned about specific open-access transactions, even though experience up to that point in time showed that few protests were filed, the Commission was free to reevaluate that conclusion at a later date. It is well established that an administrative agency may depart from prior policy or an earlier interpretation of a regulation if the departure is adequately explained and justified.[13]

In the instant rulemaking, the Commission discussed several reasons why it is reasonable to conclude that the notice and protest procedures at issue here are no longer necessary for blanket certificate transportation services. For example, the Commission found that there continued to be only a relatively few protests filed and that most such protests were really in the nature of complaints. Thus, the issues raised were inappropriate within the context of the notice and protest procedures. It was therefore, reasonable for the Commission to conclude that the remaining pleadings appropriately styled as protests, only 10 since Order No. 436 was issued, could be resolved through the Commission's complaint process.[14]

Additionally, the Commission concluded that the administrative burden and expense associated with notice in the **Federal Register** of each blanket transportation transaction and the processing of waiver requests could not be justified in light of the fact that so few parties had availed themselves of the previous procedures. Finally, and most importantly, the Commission found that the notice and protest procedures for blanket transportation created a non-market incentive for parties to rely on section 311 authority rather than section 7 blanket authority because of a desire on the part of pipelines to avoid the blanket transportation's notice and protest procedures. In light of the Commission's ongoing commitment to promote market-based decisions in the industry, it is reasonable for the Commission to conclude that the benefits gained by conforming blanket transportation and section 311 notice

[10] Whether an Agency has complied with the notice provisions of the APA depends on whether the final rule is a "logical outgrowth" of the proposed rule and rulemaking proceedings. *Hercules Inc.* v. *U.S. E.P.A.*, 938 F.2d 276 (citing *Small Refiner Lead Phase-Down Task Force* v. *E.P.A.*, 705 F.2d 506, 548–47 (D.C. Cir. 1983)) (D.C. Cir. 1991). See also *Chocolate Manufacturer's Association of United States* v. *Block*, 755 F.2d 1098 (Parties are deprived notice and an opportunity to be heard when a final rule is not a logical outgrowth of the notice and comments) (4th Cir. 1985).

[11] FERC Stats. & Regs., Reg. Preambles 1982–1985, ¶ 30,665 (1985).

[12] FERC Stats. & Regs., Reg. Preambles 1991, ¶ 30,928 (1991).

[13] See, *e.g.*, *Arcadian Gas Pipeline System* v. *FERC*, 878 F.2d 865 (5th Cir. 1989).

[14] We note that of these 10 complaints, none resulted in a finding in favor of the complainant.

procedures outweigh any benefit to interested parties resulting from retaining the notice and protest requirements.

The Commission reiterates its conclusion that the notice requirements put into place in the final rule will suffice to provide adequate information to interested parties. We disagree with the suggestion that the regulations should require notice 30 days before transportation commences in order to allow LDC's to respond competitively. Such a requirement would unnecessarily delay service and would conflict with our goals of creating an efficient market for natural gas. We think the existing compliant procedures provide adequate safeguards against unfair competition.

We also note that petitioners mischaracterize the affect that Order No. 555 would have had on notice requirements because even under the revised regulations adopted in Order No. 555, prior notice would still have been required for the construction of delivery taps, and the new regulations required public notification in newspapers and notification of state governors and attorneys general prior to any construction of interstate facilities.[15]

Services Commenced After September 20, 1991

Ozark states that it began transporting gas under its blanket transportation certificate on October 1, 1991, after the issuance of the final rule, but prior to the rule's effective date, November 4, 1991. Under § 284.223(a) as it was in effect on October 1, 1991, blanket transportation commenced under the authorization in that section is limited to 120 days. Ozark points out that before the 120 day period will run, the final rule will become effective and the provision for prior notice filings under § 284.223 will be eliminated. To avoid filing duplicate "new" reports if it desires to continue transporting after the 120 day period, Ozark requests that the Commission clarify that transportation authorization obtained through 120 day filings made after the filings made after the final rule's date of issuance, but before its effective date, does not expire at the end of the 120 days, but continues for the term of the underlying transaction.

The Commission's Response

The provisions of the final rule became effective November 4, 1991. Any transportation service commenced under a blanket certificate prior to that date must be performed in compliance with the regulations in effect at the time of commencement. Ozark commenced its service under the previously effective regulations and, therefore, must continue under this scheme. Accordingly, if a transportation service was commenced pursuant to previously effective § 284.223(a) after the issuance of the rule, but prior to the rule's effective date, the service was authorized to continue beyond 120 days only if the pipeline complied with the previously effective prior notice procedures. Therefore, the Commission denies Ozark's request.

D. Technical Amendment

A technical amendment to 284.122(d)(2) is being adopted to change the word "intrastate" to "interstate," as reflected in the appended regulatory text.

IV. Effective Date and Paperwork Reduction Act Statement

The technical revisions to § 284.122, as discussed herein, will become effective retroactively to the date revisions promulgated in Order No. 537 became effective, November 4, 1991. The technical revisions are necessary to clarify that intrastate pipelines may transport gas in a chain from certain gathers to end users pursuant to the certificate authorization issued in that section. Because the existing regulatory language is ambiguous as to whether more than one intrastate pipeline may use such authority in a given transaction, some transactions may already have been or are being conducted in this manner. Retroactive application of the revised § 284.122 is necessary to clarify that such authority was available for intrastate pipelines participating in chain transactions of this type and that the participating pipelines were not operating in violation of the NGA. Accordingly, good cause exists to apply the provisions of revised § 284.122 retroactively. Additionally, we note that the Commission is not required to give prior public notice of a technical amendment of the type discussed here.

Further, we note that the Office of Management and Budget's (OMB) regulations require that OMB approve certain collection and recordkeeping requirements imposed by an agency.[16] In connection with the issuance of the final rule, the Commission fully complied with OMB's regulations. This order on rehearing, however, does not have any impact on the collection and recordkeeping requirements already imposed by the final rule. Therefore, it is unnecessary for the Commission to submit this order on rehearing to the OMB for review.

V. Conclusion

List of Subjects in 18 CFR Part 284

Continential Shelf,
Natural gas,
Reporting and recordkeeping requirements.

For the reasons set forth above, the Commission grants rehearing in part, denies rehearing in part and amends part 284, title 18, chapter I, Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Moler dissented with a separate statement attached.

Lois D. Cashell,

Secretary.

PART 284—[AMENDED]

1. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 15 U.S.C. 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. In § 284.122, paragraph (d)(2) is amended by removing the word "intrastate" after the words "as an" and inserting in lieu thereof the word "interstate."

3. In § 284.227, paragraph (a) is revised to read as follows:

§ 284.227 Certain transportation by intrastate pipelines.

(a) *Blanket certificate.* A blanket certificate shall issue under this section to any intrastate pipeline that receives natural gas produced in adjacent Federal waters or onshore or offshore in an adjacent state, *provided that*:

(1) The gas must be received by the intrastate pipeline from a gatherer or other intrastate pipeline;

(2) The intrastate pipeline delivers the gas in the intrastate pipeline's state of operation to an end user or another intrastate pipeline; and

(3) The gas ultimately used by an end user in the same state.

* * * * *

In the matter of: Revisions of Regulations Governing Transportation under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, Docket No. RM90–7–001; Hadson Gas Systems, Inc., Docket No. GP88–11–004; Cascade Natural Gas Corp. v. and Northwest Pipeline Corp., *et al.* Docket No. CP88–286–005; and Texas Eastern Transmission Corporation, Docket Nos. RP88–81–015, RP88–67–048, RP88–175–003.

Issued September 21, 1992.

MOLER, Commissioner, *dissenting:*

[15] We note that Order No. 555 has been stayed pending rehearing. 57 FERC ¶61,195 (1991). Thus, the notice provisions relating to construction under blanket certificates have not gone into effect.

[16] 5 CFR 1320.13.

This order raises the issue of whether the Commission will provide local distribution companies (LDCs) a reasonable opportunity to respond to the threat of being bypassed. Faced with complaints that the "on behalf of" definition adopted on remand will encourage bypass, and if so what to do about it, the Commission's response is that the interstate pipeline must give notice of the transaction to the LDC. That "notice" is notice in name only; there is no requirement for advance notice with a meaningful opportunity for the LDC to respond. I have argued for a 30-day notice period to give the LDC that opportunity. My arguments have fallen on deaf ears. This decision is one more example of where the majority has taken steps to make bypass easier while, at the same time, continuing to do nothing to address rate consequences. I simply cannot support the result.

In recent years, the Commission has approved numerous applications filed by interstate pipelines to bypass LDCs, and to serve the end-users behind them directly. The Commission's bypass policy is clear. The Commission will approve a bypass—any bypass—in the absence of unfair competition or undue discrimination.[1] The policy is driven by a desire for the LDCs to compete at the local level to retain their industrial load.

The broad policy has been upheld in the courts.[2] However, the courts have told the Commission in clear terms that we cannot blindly approve bypass:

[I]f parties oppose bypass on the ground that it thwarts state efforts to subsidize residential customers with economic rents secured from businesses, the Commission will have to address such claims.[3]

Rather than developing the requisite policy, the Commission is moving in the opposite direction. It should be clear to all that the Commission will approve, without delay, virtually any bypass negotiated between an interstate pipeline and end-user. At the same time the Commission has done nothing to address the concerns about cost shifts which will occur at the local level. The Commission has either refused to recognize that the cost shifts will occur, saying those cost shifts are speculative, or advised state commissions that certain, unspecified steps, could be taken to avoid any cost shifting. All the while the Commission refuses to reduce the contract demand of a bypassed LDC on either a generic, or case specific, basis, or by reallocating ongoing take or pay costs to the end-user.[4] This is no accident. The Commission's policy makes bypass easier, thwarts LDC's efforts to respond, and refuses to adjust rates once the bypass occurs.

The lack of notice problem is exacerbated by other changes the Commission is making in the rules governing construction. Under the regulations in effect today, interstate pipelines constructing bypass facilities under Section 7(c) of the Natural Gas Act must give LDCs notice of the proposed construction and a 30-day period in which to protest.[5] Protests received, and not withdrawn or otherwise resolved, must be acted on by the Commission. There is no comparable notice and protest requirement for construction of facilities under Section 311 of the NGPA. In addition, in the final rule on NGPA 311 construction, [6] the Commission is allowing the construction of facilities costing up to $6.2 million without notice to any party. The rule refuses to address arguments of various parties [7] favoring a 30-day notice period prior to construction of 311 facilities.[8]

What does this complex set of rules and regulations mean when one takes into account the interplay of the instant order on remand, and the section 311 construction rule? I believe the answer is simple: Construction of bypass facilities costing less than $6.2 million under section 311 of the NGPA can and will occur with no Commission review. Service will be able to commence without any meaningful notice; indeed, actual notice to the LDC and state commission of the operation of those facilities can conceivably occur the second before the commencement of service.

That is not good policy if the purpose of our bypass policy is to force LDCs to compete for service. To compete, the LDC and state commission must first have adequate notice so they can respond with appropriate measures.

In conclusion, one can disagree with what should be the proper vehicle for addressing bypass concerns and what the proper approach should be. However, the Commission must first recognize that a problem exists and then be willing to address that problem. I do not see that willingness presently on the part of the Commission. Thus, I dissent.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 92-24521 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[1] *See* Northern Natural Gas Co., 46 FERC ¶ 61,270, *reh'g denied*, 48 FERC ¶ 61,232 (1989).

[2] *Michigan Consol. Gas Co.* v. *FERC*, 883 F.2d 117 (D.C. Cir. 1989); *Kansas Power and Light Company* v. *FERC*, 891 F.2d 939 (D.C. Cir. 1989); *Cascade Natural Gas Corp.* v. *FERC*, 955 F.2d 1412 (10th Cir. 1992).

[3] Kansas Power and Light, 891 F.2d. 939 at 943.

[4] For example, in Order No. 636-A, the Commission stated that it will consider requests for relief relating to LDC bypass on a case-by-case basis in the context of the new regime of this rule, but will not adopt a policy that would grant automatic relief in all circumstances. Order No. 636-A, 57 FR 36,128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶30,950 at 30,659 (August 3, 1992). See also Northern Illinois Gas Company v. Natural Gas Pipeline Company of America, 48 FERC ¶61,337 (1989), *order denying reh'g*, 56 FERC ¶61,215 (1991).

[5] 18 CFR 157.205 (1992).

[6] Revisions to Regulations Governing NGPA section 311 Construction and the Replacement of Facilities, RM92-13-000, which is being issued contemporaneously with this Order on Rehearing.

[7] Southern California Gas Company, Northern Illinois Gas Company, Peoples Gas Light and Coke Company, the American Gas Association, and Associated Gas Distributors.

[8] The order says that this matter will be addressed on rehearing of Order No. 555. In Order No. 555, the Commission adopted a rule that would allow sales and delivery taps constructed under section 7(c) to be done without any prior notice and opportunity to comment by the LDC. The effective date of that order has been delayed, pending further action by the Commission. Thus I find it little comfort to tell the LDCs that their bypass arguments will be addressed in that rule.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 92-98]

Treatment of Certain Interest Payments Under the United States-Canada Free-Trade Agreement

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Interim regulation; solicitation of comments.

SUMMARY: This document amends the Customs Regulations pertaining to the treatment of certain costs includable as direct costs of processing or assembling for purposes of the value-content requirement under the United States-Canada Free-Trade Agreement (CFTA). The change is made to reflect the recent recommendations of a panel convened pursuant to Chapter 18 of the CFTA that Article 304 of the CFTA includes any *bona fide* interest payments on debt of any form, secured or unsecured, to finance the acquisition of fixed assets used in the production of goods in the territory of a Party. Comments are solicited regarding the interim regulation particularly addressing procedures which would provide an objective traceable connection between proceeds of a loan and the acquisition of fixed production assets.

DATES: Interim rule effective October 9, 1992. Comments must be received on or before December 8, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the above location until November 4, 1992, and after November 9, 1992, at 1099 14th St., NW., 4th floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Valentine, International Nomenclature Staff, (202) 566-8530.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1988, the United States and Canada (the Parties) entered into a

bilateral reciprocal free-trade area agreement: The United States-Canada Free-Trade Agreement (CFTA). The objectives of the CFTA are to eliminate barriers to trade in goods and services between the territories of the Parties, facilitate conditions of fair competition within the free-trade area, liberalize significantly conditions for investment within this free-trade area, establish effective procedures for the joint administration of the CFTA and the resolution of disputes, and lay the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of the CFTA. Article 304 of the CFTA defines the phrases "direct cost of processing" and "direct cost of assembling" for purposes of applying a specific rule of origin requiring a value-content determination; Chapter 18 of the CFTA provides the institutional framework—a binational Commission and dispute resolution panels as required—for avoiding or settling certain disputes under the CFTA regarding the interpretation or application of CFTA provisions.

The CFTA became law on September 28, 1988, with enactment of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the Act), Public Law 100-449, 102 Stat. 1851 (codified at 19 U.S.C. 2112 note), and took effect on January 1, 1989. On December 23, 1988, Customs published T.D. 89-3, 53 FR 51762, which set forth interim regulations to implement those portions of the Act which form the basis for determining whether goods imported into the U.S. from Canada are eligible for the preferential duty treatment accorded to goods originating in Canada, and solicited comments regarding the regulations. Sections 10.301-10.311, Customs Regulations (19 CFR 10.301-10.311). Following an analysis of the comments received, the interim regulations became final on January 22, 1992, with the publication of T.D. 92-8, 57 FR 2447.

The final regulations included, at § 10.305(a)(3)(iv), an interpretation of interest expenses that would be treated as a direct cost of processing or assembling for purposes of the CFTA, and provided that "mortgage interest," secured by real property, would be treated as a direct cost of processing or assembling, but only that portion of the interest which is related to real property directly used in the production of exported goods. This interpretation was based in part on an administrative decision dated May 22, 1991, issued in response to an advice request dated November 7, 1989, concerning the treatment of certain interest as a direct cost of processing under Article 304 of the Act.

On January 6, 1992, Canada invoked the dispute settlement mechanism under Chapter 18 of the CFTA. A panel was convened to determine whether the definition of "direct cost of processing" or "direct cost of assembling" set forth in Article 304 of the CFTA included interest payments on debt of any form, secured or unsecured, undertaken to finance the acquisition of fixed assets used in the production of goods in the territory of a Party.

In its Final Report, the Panel concluded that "mortgage interest" includes:

bona fide interest payments on debt of any form, secured or unsecured, undertaken on arm's length terms in the ordinary course of business to finance the acquisition of fixed assets such as real property, a plant, and/or equipment used in the production of goods in the territory of a Party, and that are subject to a determination based on the criteria specified in FTA [CFTA] Annex 301.2, are includable in the 'direct cost of processing' or 'direct cost of assembling' set forth in Article 304 of the FTA [CFTA].

The Panel also determined that the U.S. interpretation of Article 304 contained in the Customs letter and the Customs Regulations relating to interest other than mortgage interest on funds used to acquire real property, equipment and other fixed assets used in the production of the goods was inconsistent with the provisions of the CFTA.

This document amends 19 CFR 10.305(a)(3)(iv) by removing the language limiting the phrase "mortgage interest," thus allowing other forms of interest payments to be includable as the direct cost of processing or assembling for purposes of the CFTA and the Act.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with section 552 of the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC until November 4, 1992, and after November 9, 1992, at 1099 14th St., NW., 4th floor, Washington, DC. Because the governments of the United States and Canada are consulting concerning the establishment of an objective, traceable connection between a loan and production assets, the scrutiny of intra corporation loans, and the ascertainment of ordinary business practices, Customs seeks, in particular, public comments concerning procedures that would provide an objective traceable connection between proceeds of a loan and the acquisition of fixed production assets.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

Pursuant to the provisions of 5 U.S.C. 553(a)(1), public notice is inapplicable to this interim regulation because it implements a provision of the CFTA, which constitutes a foreign affairs function of the U.S. The regulation implements commitments made to foreign governmental entities by the Executive Office of the President and is in accordance with the President's statutory authority regarding administration of the CFTA. Further, because this interim regulation is necessary to support the objectives of the existing CFTA, pursuant to 5 U.S.C. 553(b)(A), public notice is not required. Furthermore, for the above reasons, pursuant to 5 U.S.C. 553(d)(2), the requirement for a delayed effective date is inapplicable. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this amendment implements a foreign affairs function of the United States, it is not subject to E.O. 12291; therefore, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, U.S.-Canada Free-Trade Agreement.

Amendment to the Regulations

Accordingly, for the reason stated above, part 10, Customs Regulations (19 CFR part 10), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

2. Section 10.305(a)(3)(iv) is revised to read as follows:

§ 10.305 Value content requirement.

(a) * * *

(3) * * *

(iv) *Interest expense. Bona fide* interest payments on debt of any form, secured or unsecured, undertaken on arm's length terms in the ordinary course of business to finance the acquisition of fixed assets such as real property, a plant, and/or equipment used in the production of goods in the territory of Canada or the U.S. are includable in the direct cost of processing or direct cost of assembling. Interest will be treated as a direct cost of processing or assembling, but only that portion of the interest which is related to a fixed asset directly used in the production of the goods exported; thus, where a entire production facility is covered by a mortgage and incorporates both production and administrative or other general expense space, an appropriate allocation must be made in order to ensure that only that portion of the interest allocated to the production area is counted toward the value-content requirement. Interest expenses attributable to general and administrative costs or expenses, including interest on funds borrowed to meet the payroll of personnel directly involved in the production of goods, are not considered direct costs of processing or assembly.

* * * * *

Carol Hallett,

Commissioner of Customs.

Approved: September 25, 1992.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92-24364 Filed 10-8-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin and Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by A. L. Laboratories, Inc. The NADA provides for the use of separately approved bacitracin zinc and monensin Type A medicated articles in making Type C medicated feeds for increased rate of weight gain, improved feed efficiency, and as an aid in the prevention of coccidiosis in broiler chickens.

EFFECTIVE DATE: October 9, 1992.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8802.

SUPPLEMENTARY INFORMATION: A. L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 134-830, providing for combining separately approved Type A medicated articles to make Type C medicated feeds containing 90 to 110 grams (g) per ton of monensin and 4 to 50 g per ton of bacitracin zinc. The feeds are used in broiler chickens as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* for increased rate of weight gain and improved feed efficiency.

The NADA is approved as of September 1, 1992. The regulations are amended in 21 CFR 558.355 by revising paragraph (b)(11) and by adding new paragraph (f)(1)(xxv) to reflect the approval. The basis for the approval is discussed in the freedom of information summary. Monensin and bacitracin zinc are new animal drugs used in Type A medicated articles to make Type C medicated feeds. Both drugs are Category I drugs which, as provided in 21 CFR 558.4(a), do not require an approved FDA Form 1900 for making Type C medicated feeds as in approved NADA 134-830 and in the regulation contained in 21 CFR 558.355(f)(1)(xxv).

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years exclusivity beginning September 1, 1992, because it contains reports of new clinical or field investigations essential to the approval of the application.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.355 is amended by revising paragraph (b)(11) and by adding new paragraph (f)(1)(xxv) to read as follows:

§ 558.355 Monensin.

* * * * *

(b) * * *

(11) To 046573: 45 and 60 grams per pound, as monensin sodium provided by No. 000986, paragraphs (f)(1)(xviii), (xix), (xxiii), (xxiv), and (xxv) of this section.

* * * * *

(f) * * *

(1) * * *

(xxv) *Amount per ton.* Monensin, 90 to 110 grams plus bacitracin, 4 to 50 grams.

(a) *Indications for use.* For increased rate of weight gain and improved feed efficiency; as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(b) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; in the absence of coccidiosis, the use of monensin with no withdrawal period may limit feed intake resulting in reduced weight gain; as bacitracin zinc provided by No. 046573 in § 510.600(c) of this chapter, as monensin sodium.

* * * * *

Dated: September 30, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-24629 Filed 10-8-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-90-026]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the drawbridge across the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, mile 8.8, in Chesapeake, Virginia, by restricting drawbridge openings during the morning and evening rush hours, providing one opening for recreational vessels during the evening rush hour period, and allowing commercial vessels passage through the bridge at any time. This is intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

EFFECTIVE DATE: These regulations become effective on November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principle persons involved in drafting this document are Linda L. Gilliam, Project Officer, and CAPT M. K. Cain, Project Attorney.

Regulatory History

On August 6, 1990, the Coast Guard published a notice of proposed rulemaking entitled Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, Virginia, in the **Federal Register** (55 FR 31846). It would have closed the Dominion Boulevard Bridge to recreational, commercial and public vessels of the United States during morning and evening rush hours, Monday through Friday, from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m., but allow the draw to open on signal at all times for vessels in distress. Based on the comments received from the commercial maritime industry, on July 29, 1991, the Coast Guard published a supplemental public notice entitled Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, Virginia in the **Federal Register** (56 FR 35839). As a result of the comments received, on July 10, 1992, the Coast Guard published a second supplemental proposed rule entitled Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, Virginia, in the **Federal Register** (57 FR 30705) in the **Federal Register**. A public hearing was not requested and one was not held.

Background and Purpose

Concerned motorists requested that the regulations for the drawbridge across the Southern Branch of the Elizabeth River, mile 8.8 in Chesapeake, Virginia, be amended to restrict openings during the peak highway traffic hours to help reduce traffic congestion, but remain open on signal during the rest of the time. As a result of the second supplemental proposed rule and comments received from the maritime industry and motoring public, the Coast Guard is restricting drawbridge openings to recreational traffic from 7 a.m. to 8 a.m. and from 4 p.m. to 6 p.m. with the exception of one opening at 5 p.m.., Monday through Friday, except Federal holidays. Commercial traffic will be allowed access through the bridge at any time. The original proposal restricted commercial traffic from requesting bridge openings during the morning and evening rush hours; however, after receiving comments from the marine industry and the City of Chesapeake as a result of the last two proposals, the decision to restrict commercial traffic during the restricted times was changed to allow commercial traffic access any time. Providing an opening for recreational vessels at 5 p.m. during the evening rush hour was the result of comments received from concerned marina owners located upstream and downstream of the bridge.

Discussion of Comments

As a result of the proposed rule and the public notice, comments were received from the motoring public and the maritime industry. The motorists were all in favor of closing the bridge to navigation during the morning and evening rush hours since elimination of draw openings would help reduce traffic disruption, delays, congestion and minor accidents. The maritime industry was against such restrictions based on economic impact, and waterway safety concerns.

The comments indicated that the proposed three hour restriction in the morning and the evening was too severe and would cause undue hardships for waterway traffic transiting on the Southern Branch of the Elizabeth River. The Coast Guard issued a supplemental proposed rule with shorter morning and evening rush hour restrictions. The proposed new hours of restriction were from 6:30 a.m. to 7:30 a.m. and 3:30 p.m. to 5 p.m., Monday through Friday. All vessel traffic was still restricted, except vessels in distress. This supplemental proposed rule (56 FR 35839) was published on July 29, 1991, with the comment period ending September 12, 1991. A supplemental public notice was issued September 5, 1991, extending the comment period to October 12, 1991, to allow the maritime industry more time to submit comments on the supplemental proposed rule.

As a result of the supplemental proposed rule and the public notice issued on August 1, 1991, comments were received from the maritime community and the motoring public. The comments from the motorists again were all in favor of the proposed restrictions during peak traffic hours. The majority of the comments from the motorists suggested extending the morning and evening rush hours. All suggestions varied on the appropriate hours of restriction. The comments from the commercial maritime industry were opposed to restricting the drawbridge based on such factors as economic impact concerns and safety. The City of Chesapeake also forwarded a resolution to the U.S. Coast Guard requesting that the proposed regulations for this drawbridge restrict openings to recreational vessels only during hours that better reflect peak highway traffic usage to help reduce traffic congestion, but remain open on signal during the rest of the time.

The second supplemental proposed rule issued July 10, 1992, has resulted in one change to the proposal. The marinas requested that two openings be provided during the afternoon restrictions to allow recreational vessels passage through the bridge. They based this request on business and city economies being negatively impacted by delayed arrivals of recreational vessels. The Coast Guard has decided to include one opening for recreational vessels during the afternoon restrictions to alleviate economic impacts to the marinas and the local cities within the Hampton Roads area. This opening will occur at 5 p.m., Monday through Friday, except Federal holidays.

Regulatory Evaluation

This action is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full

regulatory evaluation is unnecessary. This opinion is based on the fact that commercial traffic will not be restricted during the morning and evening rush hours, and recreational traffic will not be totally restricted since one opening will be provided during the evening rush hour.

Small Entities

No comments were received concerning small entities or on the economic impact this rule would have on small entities. Since the impact on these regulations is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paper Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not raise sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.997, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f) and a new paragraph (d) is added to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(d) The draw of the Dominion Boulevard Bridge, mile 8.8, in Chesapeake shall open on signal, except:

(1) From 7 a.m. to 8 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the drawbridge may not be opened for recreational vessels except it may be opened at 5 p.m. for recreational vessels waiting to pass.

(2) Vessels in an emergency involving danger to life or property shall be passed at any time.

* * * * *

Dated: September 28, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard Division.

[FR Doc. 92-24667 Filed 10-8-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Los Angeles/Long Beach Regulation 92-83]

Safety Zone Regulations: Ports of Los Angeles/Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone of the territorial seas of the United States within 100 yards around the barges; St. Thomas, Isla Del Sol, Crowley 020, Crowley 411, Crowley 415, Crowley 417, Crowley 419, and the Crowley 420 and their attending tugs as they navigate in the territorial seas of the United States. The zone is needed to protect the public which may be attracted by the unusual appearance of, and danger posed by, tugs and barges carrying the topside platforms for offshore oil wells as they navigate in the territorial seas of the United States. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 12 midnight, PDT October 2, 1992. It terminates at 12 midnight, PST November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Lt. R.F. Shields at (310) 980–4457.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect the public which may be attracted by the unusual appearance of, and danger posed by, tugs and barges carrying the topside platforms for offshore oil wells as they navigate in the territorial seas of the United States.

Drafting Information

The drafters of this regulation are Lt. R.F. Shields, project officer for the Captain of the Port, and Capt. B.E. Weule, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will occur between 12 midnight, PDT October 2, 1992 and 12 midnight, PST November 30, 1992. This safety zone is necessary to protect the public which may be attracted by the unusual appearance of, and danger posed by, tugs and barges carrying the topside platforms for offshore oil wells as they navigate in the territorial seas of the United States.

List of Subjects in 33 CFR Part 165

Harbors marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T1106 is added to read as follows:

§ 165.T1106 Safety Zone: Port of Los Angeles/Long Beach, CA.

(a) *Location.* The following area is a safety zone: The territorial waters of the United States within 100 yards around the following barges; St. Thomas, Isla Del Sol, Crowley 020, Crowley 411, Crowley 415, Crowley 417, Crowley 419, and the Crowley 420, and their attending tugs as they navigate in the territorial seas of the United States.

(b) *Effective Date.* This regulation becomes effective effective at 12 midnight, PDT October 2, 1992. It terminates at 12 midnight, PST November 30, 1992.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited

unless authorized by the Captain of the Port.

Dated: October 2, 1992.

J.E. Terveen,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 92-24670 Filed 10-8-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Corpus Christi, TX, Regulation 92-14]

Safety Zone Regulation: Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Gulf of Mexico near the approach to the Aransas Pass Channel. The safety zone is needed to safeguard deep draft vessels from obstructions and shoaling in and near the channel that pose a threat to vessels transiting the area.

EFFECTIVE DATES: This regulation becomes effective at 12:01 a.m., August, 20, 1992. It terminates at 12 p.m. October 15, 1992, or upon the completion of dredging and salvage operations in the Aransas Pass Channel and safety fairway, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: LTJG K.S. Roberts, telephone number, (512) 888-3162.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard vessels transiting the area from hazards in the channel.

Drafting Information

The drafters of this regulation are LTJG K.S. Roberts, Chief Waterways Management section, U.S. Coast Guard Marine Safety Office, Corpus Christi, Texas; CAPT R.J. Reining, Commanding Officer, U.S. Coast Guard Marine Safety Office, Corpus Christi, TX; and LT J.A. Wilson, project attorney, Eighth Coast Guard District, New Orleans, Louisiana.

Discussion of Regulation

The safety zone is needed to ensure the safety of vessels from obstructions and shoaling both in and around the Aransas Pass Channel and safety fairway. On August 6, 1992, the Tank Vessel STENA CONCERTINA, while on the ranges approaching the Aransas Channel, suffered a rapid decrease in speed, in two different areas, indicating that the vessel had come in contact with the bottom or a submerged object. The STENA CONCERTINA was at a draft of 44 feet 9 inches in a channel with a charted dredged depth of 45 feet. After an underwater damage assessment, it was determined that a substantial amount of bottom plating had been damaged, confirming that the vessel had come in contact with the bottom. The Army Corps Of Engineers surveyed the area, using side scan radar, and found an obstruction in the safety fairway, in the vicinity of the three mile territorial sea boundary line, in-line with the ranges at a depth of 44 feet 2 inches. Two other areas of shoaling were also discovered within the maintained channel.

This regulation is issued under 33 U.S.C. 1231, as set out in the authority citation for all of part 165.

Federalism

This proposed action has been analyzed under the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T0857 is added to read as follows:

§ 165.T0857 Safety Zone: Gulf of Mexico.

(a) A stationary safety zone exists in the Gulf of Mexico within that portion of the Aransas Pass Safety Fairway, established in § 166.200(d)(4) of this title, that lies between the COLREGS Demarcation Line established in § 80.850(d) of this title and the seaward limit of the three mile territorial sea of the United States, as indicated on the National Oceanic and Atmospheric Administration chart 11307, 31st edition, March 16, 1991.

(b) *Regulations.* (1) Vessels with drafts exceeding 43 feet may not transit within the safety zone without permission from the Captain of the Port.

(2) Vessels with drafts from 41 feet to 43 feet may only transit within the safety zone at or near high tide.

(3) All other deep draft vessels transiting the safety zone must proceed with extreme caution.

(c) *Effective dates.* This regulation becomes effective at 12:01 a.m., August, 20, 1992. It terminates at 12 p.m. October 15, 1992, or upon the completion of dredging and salvage operations in the Aransas Pass Channel and safety fairway, whichever occurs first.

Dated: August 19, 1992.

Robert J. Reining,

Captain, U.S. Coast Guard, Captain of the Port, Corpus Christi, TX.

[FR Doc. 92-24669 Filed 10-8-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP HOUSTON: Regulation 92-03]

Safety Zone Regulations; Bayport Ship Channel

AGENCY: Coast Guard, DOT.

ACTION: Temporary final.

SUMMARY: The Coast Guard is establishing a safety zone in the Bayport Ship Channel entrance along the westernmost edge of the Houston Ship Channel between 29°37'16" N, 94°57'31" W and 29°36'34" N, 95°57'13" W, westward to the light 4 (LLN 23330) and light 5 (LLN 23335). The zone is needed to protect the safety of vessels transiting the Bayport Ship Channel due to progressive shoaling, which has reduced the 41 foot project depth. Entry into this zone by any vessel with a draft exceeding 35 feet is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 6 a.m. on July 17, 1992. It terminates at 6 a.m. on November 14, 1992, unless sooner terminated by the Captain of the Port, Houston.

FOR FURTHER INFORMATION CONTACT: LCDR Paul Bergman, c/o Commanding Officer, U.S. Coast Guard, Marine Safety Office Houston, P.O. Box 446, Galena Park, TX 77547-0446, Phone (713) 671-5113.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists

for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect marine shipping involved.

Drafting Information

The drafters of this regulation are LCDR Paul Bergman, project officer for the Captain of the Port, and CDR D.G. Dickman, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The situation requiring this regulation is a potential safety hazard associated with progressive shoaling in the Bayport Ship Channel. This shoaling is reported to have caused deep-draft vessels transiting this area to lose forward momentum and reduced steering response. This increases the possibility of a collision between vessels transiting the area, unintentional grounding, fouled cooling water intakes, or other marine casualties. This Safety Zone is a short term solution to this shoaling problem. Unless appropriate remedial action, such as dredging, is undertaken to return the Bayport Ship Channel to its project depth, a longer term solution, such as a Regulated Navigation Area, will be considered. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism Implications

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, and 49 CFR 1.46.

2. A new § 165.T844, is added to read as follows:

§ 165.T844 Safety Zone: Bayport Ship Channel.

(a) *Location.* The following area is a safety zone: The Bayport Ship Channel entrance along the westernmost edge of the Houston Ship Channel between 29°37′–16″N, 94°57′31″W and 29°36′34″N, 95–57′–13″W, westward to the light 4 (LLN 2330) and light 5 (LLN 23335).

(b) *Efective Date.* This regulation becomes effective at 8 a.m. on July 17, 1992. It terminates at 8 a.m. on November 14, 1992, unless cancelled by the Captain of the Port, Houston at an earlier time.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by any vessel with a draft exceeding 35 feet is prohibited unless authorized by the Captain of the Port.

(2) Requests to enter the safety zone shall be made to the Captain of the Port, via Coast Guard Houston/Galveston Vessel Traffic Service.

Dated: July 17, 1992.

A.C. Alejandro,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 92-24668 Filed 10-8-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Port Arthur, Texas Regulation 92-04]

Safety Zone Regulations: Port Arthur TX Turning Point

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the immediate vicinity of the Port Arthur Turning Point, GIWW MM 284.5 (Sabine-Neches Canal). The zone is needed to protect all vessels in the vicinity from a safety hazard associated with detected shoaling. The U.S. Coast Guard Captain of the Port, Port Arthur TX is establishing a draft restriction for vessels desiring to turn in this area. Vessels with a length exceeding 550 feet shall not attempt to turn in this area without permission of the Captain of the Port unless the vessel's draft is less than 30 feet. Vessels authorized to turn at this location shall effect the turn as close to the channel centerline as possible.

EFFECTIVE DATE: This regulation becomes effective on August 7, 1992. It terminates on February 1, 1993 unless emergency dredging operations are completed prior to this date.

FOR FURTHER INFORMATION CONTACT: The U.S. Coast Guard Captain of the Port, Port Arthur TX representative, LCDR M. R. DeVries at (409) 723–6511.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessels involved.

Drafting Information

The drafters of this regulation are LCDR M. R. DeVries, project officer for the Captain of the Port, and LT J. A. Wilson, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The conditions requiring this regulation were discovered with the apparent grounding of a deep draft vessel turning at the Port Arthur Turning Point. Shoaling was verified by USACE's August 1, 1992 hydrographic survey results. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Federalism Implications

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Safety measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary § 165.T850 is added to read as follows:

§ 165.T850 Safety Zone: Port Arthur Turning Point.

(a) *Location.* The following area is a safety zone: Port Arthur Turning Point,

GIWW MM 284.5 (Sabine-Neches Canal) Port Arthur TX.

(b) *Effective date.* This regulation becomes effective on August 7, 1992. It terminates on February 1, 1993 unless emergency dredging operations are completed prior to this date.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, The Coast Guard Captain of the Port is establishing a safety zone in the immediate vicinity of the Port Arthur Turning Point, GIWW MM 284.5 (Sabine-Neches Canal) requiring a draft restriction for vessels desiring to turn in this area. Vessels with a length exceeding 550 feet shall not attempt to turn in this area without the permission of the Captain of the Port unless the vessel's draft is less than 30 feet. Vessels authorized to turn at this location shall effect the turn as close to the channel centerline as possible.

Dated: August 7, 1992.

J. L. Robinson,

Captain, USCG, Captain of the Port, Port Arthur, Texas.

[FR Doc. 92-24671 Filed 10-8-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

Concession Contracts and Permits; Correction of Final Rule

AGENCY: National Park Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The National Park Service is correcting an error in the text of the Final Rule on concession contracts and permits, published in the **Federal Register** on page 40503 of the September 3, 1992 edition (57 FR 40503).

FOR FURTHER INFORMATION CONTACT: Lee Davis, Chief, Concessions Division, National Park Service, Washington, DC 20013-7127. Tele. (202) 343-3784.

EFFECTIVE DATE: October 5, 1992.

SUPPLEMENTARY INFORMATION: The National Park Service promulgated regulations on concession contracts and permits on September 3, 1992 (57 FR 40496). These regulations revised 36 CFR part 51. After publication in the **Federal Register** it was noticed that a sentence was inadvertently left out of the text of § 51.4(a) on page 40503. The sentence left out, which should have been the fifth sentence in this paragraph, reads as follows: "In order to encourage minority and women-owned businesses to compete for concession contracts, the National Park Service shall provide maximum allowable information and assistance to minority and women-owned business." This sentence was published substantially the same in the proposed regulations on August 23, 1991 (57 FR 41897). It was also discussed in the preamble to the final regulations on page 40497. The sentence was mistakenly left out of the final rule by the National Park Service, and is corrected by this notice.

The following correction is made to the final regulations for concession contracts and permits published on September 3, 1992 in the **Federal Register** (57 FR 40496):

§ 51.4 [Corrected]

On page 40503, third column, paragraph (a) of § 51.4 is corrected by adding a new sentence after the fourth sentence of the paragraph to read as follows:

"In order to encourage minority and women-owned businesses to compete for concession contracts, the National Park Service shall provide maximum allowable information and assistance to minority and women-owned business."

Dated: October 6, 1992.

David L. Moffitt,

Acting Associate Director, Operations.

[FR Doc. 92-24685 Filed 10-8-92; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-756-CN]

RIN 0938-AF79

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; correction.

SUMMARY: In the September 1, 1992, issue of the **Federal Register** (FR Doc 92-20647) (57 FR 39746), we revised the Medicare inpatient hospital prospective payment systems for operating costs and capital-related costs. Additionally, in the addendum to that final rule, we described changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes are applicable to discharges occurring on or after October 1, 1992. This notice corrects errors made in that document.

DATES: The corrections made in this notice are effective October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (410) 966-4529.

SUPPLEMENTARY INFORMATION: In the September 1, 1992, final rule, a portion of a response to a public comment and a portion of the subsequent public comment were inadvertently omitted. The final rule also contained several other typographical and technical errors. Therefore, we are making the following corrections to the September 1, 1992, final rule (56 FR 39746):

The following changes are made in the Supplementary Information:

1. On page 39776, first column, in the ninth line from the bottom of the page, the following text is inserted after the word "to":

take into account any additional funds required by hospitals to provide needed health care to Medicare beneficiaries. The issue of appropriate geographic classification of hospitals within the prospective payment system is clearly one of payment equity across hospitals rather than adequate funding of the system as a whole. We believe that the proper way to address the financial impact of MGCRB reclassifications on urban hospitals is to adopt appropriate guidelines that will ensure payment equity across hospitals. We believe the revised wage guidelines provide a major step in achieving that goal.

With respect to the method for computing the budget neutrality adjustment, we do not believe we have the statutory authority to change the way the budget neutrality adjustment is determined. Section 1886(d)(8)(D) of the Act clearly contemplates that geographic reclassifications will be funded through a uniform reduction in the urban standardized amounts. The suggestion that we compute the budget neutrality adjustment on a State-by-State basis would also violate the statute because it would result in a separate standardized amount for each State.

Comment: A commenter stated that the revised guidelines should be instituted for the reclassification decisions that will be implemented in FY 1993. The House Ways and Means.

2. On page 39786, beginning in the first column, in the first full paragraph, several technical changes are needed to conform the preamble language with the subsequent chart that the language describes. In the second line of the paragraph, the phrase "result in a slight

increase" is revised to read "result in no change". Also, in the same paragraph, beginning in the fifth line, the sentence that reads:

"We estimate that 57.8 percent of cases will be paid using the cost outlier methodology and 42.2 percent will be paid using the day outlier methodology, compared to 57.8 percent of cases being paid using the cost outlier methodology without the FY 1993 day outlier payment change."

is revised to read:

"We estimate that 57.8 percent of cases will be paid using the day outlier methodology and 42.2 percent will be paid using the cost outlier methodology."

3. On page 39786, third column, in the twentieth line of the first full paragraph, the operating cost-to-charge ratio is changed from "0.632770" to "1.285496".

The following changes are made in the regulatory text:

§ 412.1 [Corrected]

4. On page 39818, third column, in § 412.1(a), in the eighth line from the bottom of the page, a comma and the phrase "the costs of qualified nonphysician anesthetists' services, as described in § 412.113(c)," are inserted after the word "centers".

§ 412.2 [Corrected]

5. On page 39819, second column, in the introductory text of § 412.2(e), in the fourth line, the word "for" is inserted after the word "paid".

§ 412.302 [Corrected]

6. On page 39827, third column, paragraph (c)(1)(v) of § 412.302 is correctly revised to read as follows:

(c) * * *

(1) * * *

(v) The hospital must submit to its intermediary the binding agreement and supporting documents that relate to the obligated capital expenditure by the later of October 1, 1992, or within 90 days after the start of the hospital's first cost reporting period beginning on or after October 1, 1991. This documentation must include a project description (including details of any phased construction or financing) and an estimate of costs that were prepared no later than December 31, 1990.

The following changes are made in the addendum to the rule:

7. On page 39836, third column, beginning in the second line from the bottom of the page, the phrase "August 30, 1993 final rule" is revised to read "August 30, 1991 final rule."

8. On pages 39989 and 39990, in Table 1, under "Outlier Payment Changes", the heading "Proposed policy" is revised to read "Revised policy".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 5, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92-24631 Filed 10-8-92; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in statistical area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the fourth quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), October, 5, 1992, through 12 midnight, A.l.t., December 31 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The fourth quarterly allowance of pollock TAC for statistical area 63 is 10,103 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined that the 1992 fourth quarterly allowance of pollock TAC for statistical area 63 will soon be reached. Therefore, in accordance with § 672.20(c)(2)(ii), NMFS is establishing a directed fishing allowance for the fourth quarter of 9,603 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in statistical area 63, effective from 12 none A.l.t., October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-24595 Filed 10-5-92; 4:18 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by the offshore component in the Eastern Regulatory Area (statistical areas 64 and 65) of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod total allowable catch (TAC) to the offshore component in this area.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery

Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

Amendment 23 to the FMP (57 FR 23321, June 3, 1992) allocated ten percent of the Pacific cod TAC to the offshore component. When Amendment 23 became effective on June 1, 1992, the balance of the Pacific cod TAC available for harvest in the Eastern Regulatory Area GOA was 700 metric tons (mt). In accordance with § 672.20(a)(2)(v)(B), NMFS has determined that the offshore allowance of the remaining TAC is 70 mt.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(2)(ii), that the entire 70 mt will be needed as bycatch to support other groundfish fisheries. Therefore, NMFS is establishing a directed fishing allowance of 0 mt and is setting aside 70 mt as incidental catch in directed fishing for other species. Consequently, NMFS is prohibiting directed fishing for Pacific cod in the Eastern Regulatory Area of the GOA by the offshore component effective from 12 noon, A.l.t., October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-24596 Filed 10-5-92; 4:16 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing by operators of vessels using non-travel gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1992 limit of Pacific halibut for non-trawl gear in the BSAI has been caught.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Pursuant to § 675.21(a)(9), the prohibited species catch (PSC) limit of Pacific halibut caught while conducting any non-trawl gear fishery for groundfish in the BSAI Management Area during 1992 is an amount of Pacific halibut equivalent to 750 metric tons of halibut mortality.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(d), that operators of U.S. fishing vessels using non-trawl gear have taken the limit of Pacific halibut PSC. Therefore, NMFS is prohibiting directed fishing for groundfish with non-trawl gear in the BSAI from 12 noon, A.l.t., October 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-24597 Filed 10-5-92 4:16 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 197
Friday, October 9, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 837, 841, 842, 844 and 846

RIN 3206-AD60

Reemployment of Annuitants

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations governing the reemployment of Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) annuitants, and the effect of reemployment on future CSRS and FERS benefits. The proposed regulations would implement section 134 of Public Law 100-238 and consolidate all the rules governing reemployed annuitants into a single part of OPM regulations.

DATES: Comments must be received on or before December 8, 1992.

ADDRESSES: Send comments to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy, Office of Personnel Management, P.O. Box 884, Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street, NW., Washington, DC.

Comments on the information collection requirements contained in this regulation also should be filed with the office of Management and Budget. (See below under Paperwork Reduction Act.)

FOR FURTHER INFORMATION CONTACT: Eugene R. Littleford, (202) 606-0299.

SUPPLEMENTARY INFORMATION: Section 134 of Public Law 100-238, January 8, 1988, enacted provisions governing the reemployment of FERS annuitants, and CSRS annuitants who elect FERS coverage—provisions very similar to those in 5 U.S.C. 8344, which governs the reemployment of CSRS annuitants. The great similarity of these provisions, as well as the minor, technical differences that could cause confusion if they were dispersed throughout a number of different parts of title 5 of the Code of Federal Regulations, has led OPM to conclude that agencies and employees governed by the regulations would best be served by the promulgation of a new part of the regulations, part 837 of title 5, that would consolidate all the rules governing reemployed CSRS and FERS annuitants.

With the new part 837, OPM is proposing to express the determining factors governing the status of reemployment in the form of regulations, rather than relying strictly on the statutory provisions. In addition, these proposed regulations would require a mandatory exchange of information between the annuitant, the reemploying agency, and OPM. With this mandatory exchange of information, each party will be able to properly determine the reemployment status of the annuitant, and develop a more appropriate expectation of how reemployment will affect future annuity benefits.

This new part 837 will not, however, incorporate the rules governing the reemployment of annuitants without reduction in pay or annuity as provided by section 108 of the Federal Employees Pay Comparability Act of 1990. Those rules will remain codified in part 553 of title 5, Code of Federal Regulations. Also, waivers of annuity offset for annuitants employed by the judicial and legislative branches, as provided by section 655 of Public Law 102-190, December 5, 1991, will be governed by such rules and regulations as are promulgated by the waiving officials.

Reemployed Annuitants Generally

When a CSRS annuitant is reemployed by the Federal Government, his or her right to annuity may, by operation of law, be terminated, or it may continue during the period of reemployment, with the pay of the annuitant being offset by the amount of annuity allocable to the period of reemployment. A number of factors determine whether the annuity continues or terminates: type of annuity, type of appointment the annuitant receives, type of position to which the annuitant is appointed, and the annuitant's disability status. When FERS annuitants are reemployed, except for disability annuitants who have been found recovered or restored to earning capacity, their annuities generally continue during reemployment—without regard to the type of appointment used. Whether or not a CSRS or FERS annuitant is actually receiving annuity on the date of reemployment—for instance, when an annuitant has waived payment of annuity, or is receiving Federal Employees Compensation under chapter 81 of title 5, United States Code, in lieu of annuity—has no bearing on his or her status as an annuitant, or how future annuity benefits will be computed.

Whether annuitant status and right to annuity continue upon the reemployment of a disability annuitant depend on whether the disability annuitant has been found recovered or restored to earning capacity. Such findings can only be made by OPM. A disability annuitant who is reemployed at a lower grade or pay level than the position from which retired, or on a part-time basis when the previous employment was full time, or continues to receive partial compensation for loss of earning capacity due to a work-related injury during reemployment, generally cannot be found recovered form the disability strictly on the basis of the reemployment.

When the Right to Annuity Continues on Reemployment

Reemployed FERS annuitants whose annuities continue during reemployment (which includes reemployed CSRS annuitants who elect FERS) are subject, unless the employment is on an intermittent basis, to regular FERS deductions (currently 0.8 percent of basic pay). Reemployed CSRS annuitants are not automatically subject to CSRS deductions (7.0 percent for most employees), but may elect to have deductions taken from their pay. Since any future additional benefits are based on the total amount of basic pay, before the offset of annuity, both CSRS and FERS deductions are computed on the total amount of basic pay, before the offset of annuity. If, on separation from reemployment, the annuitant is not entitled to increased annuity benefits based on the period of employment, any CSRS or FERS deductions withheld during the period of reemployment will be refunded at the annuitant's request.

Except for certain circumstances involving receipt of Federal employees compensation in lieu of annuity, annuity is offset from pay even when the

annuitant is not in immediate receipt of annuity, or has waived receipt of annuity. The amount of annuity that the agency offsets from pay must be forwarded to OPM for deposit to the Civil Service Retirement and Disability Fund. While an annuitant's lump-sum credit (the total amount of contributions the annuitant had paid to the retirement fund at the time he or she retired, plus any accrued interest, where applicable) is ordinarily reduced by all annuity payments until it is expended, it is not reduced by any portion of any annuity payment that is offset from pay.

A supplemental annuity is an annuity earned through reemployment subject to certain statutory conditions: The retiree's entitlement to annuity must have continued during reemployment and his or her pay must have been offset by the amount of annuity. The supplemental annuity is added to the annuity previously awarded, effective upon separation from reemployment. However, the individual must apply for supplemental annuity before the supplemental annuity may be paid.

The statutes require the reemployment service be of a certain type and duration before title to a supplemental annuity is established. A reemployed annuitant who separates after completing at least 1 year of continuous, full-time reemployment service subject to offset of annuity, or periods of actual, continuous part-time and/or full-time reemployment service subject to offset of annuity and equivalent to 1 year of actual, continuous, full-time service, is entitled to a supplemental annuity.

Creditable full-time and part-time service only includes service performed during a regularly scheduled tour of duty. Intermittent employment, that is, employment without a regularly scheduled tour of duty, cannot be credited in determining title to, and in the computation of, a supplemental annuity. Only actual service, that is, service for which the employee was paid, may be credited for these purposes. Also, service as a judge or justice of the United States, as defined by section 451 of title 28, United States Code, or service as the President of the United States, does not qualify for supplemental annuity purposes.

All of the service credited in the computation of a supplemental annuity must be continuous. Continuous service is service that is not broken by a period of separation of more than 3 days, or by a conversion to an intermittent status. Leave without pay is not actual service, but does not break continuity of service.

In a supplemental annuity, reemployment subject to CSRS and CSRS Offset is credited under the CSRS formula; reemployment subject to FERS is credited under the FERS formula. This treatment of CSRS-Offset service is a special statutory rule for supplemental annuities—see section 302(a)(12) of Public Law 99–335, June 6, 1986, as amended by section 134 of Public Law 100–238, January 8, 1988—and is different from the rule that applies to the annuity computation of an employee who elects FERs. The average salary is the average rate of basic pay for all periods of service credited in the computation of the supplemental annuity. If the annuitant's basic annuity is reduced for a survivor benefit, the supplemental annuity will be reduced by 10 percent to provide an additional survivor benefit, unless the annuitant makes a timely filed written request to the contrary. For a CSRS annuitant, the additional survivor benefit is 55 percent of the unreduced supplemental annuity; for a FERS annuitant, it is 50 percent.

A reemployed annuitant who separates after completing at least 5 years of actual, continuous, full-time reemployment service subject to offset of annuity, or periods of actual, continuous, part-time and/or full-time reemployment service subject to offset of annuity and equivalent to 5 years of actual, continuous, full-time service, may elect, in lieu of his or her prior annuity and supplemental annuity entitlements, a redetermined annuity. A redetermined annuity is an annuity computed as if the annuitant had not previously retired, that is, all creditable service is used in a computation made under the provisions of law in effect at the time of separation from reemployment service.

When a reemployed annuitant who meets the service requirements for a supplemental annuity dies in service, any widow(er) (and former spouse under FERS) who is entitled to a survivor annuity is also entitled to supplemental survivor benefits.When a reemployed annuitant who meets the service requirements for a redetermined annuity dies in service, any widow(er) (and former spouse under FERS) who is entitled to a survivor annuity is entitled to elect redetermined survivor benefits.

Credit for service in the computation of a supplemental annuity or supplemental survivor benefit is subject to any deposit or deduction requirement that would otherwise apply to service of that nature.

When Annuity Terminates During Reemployment

Generally, former annuitants whose annuities were terminated on reemployment have their future annuity benefits redetermined on the basis of their subsequent separations from Federal service. However, there are certain exceptions to this rule.

An annuitant whose annuity was terminated on reemployment, and who, on once again separating from employment, is not entitled to either an immediate or deferred annuity on the basis of the most recent separation, and still meets the entitlement requirements to an immediate annuity based on a prior separation, may have that prior annuity reinstated. For example, if a CSRS annuitant who retired involuntarily has his or her annuity terminated on reemployment under the provisions of 5 U.S.C. 8344(b), but on separation from this reemployment, did not meet the 1-year-out-of-2 coverage requirement of 5 U.S.C. 8333(b), the annuitant would be entitled to have the prior annuity reinstated. A CSRS disability annuitant whose annuity had terminated during reemployment because of a finding of recovery or restoration to earning capacity, who on separation did not meet the 1-year-out-of-2 coverage requirement, would be entitled, before age 62, to reinstatement of the disability annuity, should both the disabling medical condition and lack of earning capacity reoccur. The reinstated annuity is equal in value to the terminated annuity, that is, it is not increased by cost-of-living adjustments that occurred during the period of termination.

Also, a CSRS annuitant, other than a former Member of Congress, whose annuity terminated when appointed by the President to a position covered by CSRS, or upon election as a Member of Congress, is guaranteed an immediate, redetermined annuity at least equal in amount to the annuity surrendered reemployment, increased by cost-of-living adjustments during the period of reemployment. If the former annuity was a disability annuity, however, the individual must still be disabled, or over age 60, when the individual is separated from the Presidential appointment. Also, if the individual elects FERS coverage during the period of reemployment, the guaranteed CSRS annuity is forfeited, and the individual's future annuity benefits are determined under FERS conversion rules (Section 302 of Pub. L. 99–335, June 6, 1986, the Federal Employees Retirement System Act of 1986, as amended, and part 846 of title 5, Code of Federal Regulations).

When Annuity Is Suspended During Reemployment

When a CSRS or FERS annuitant is appointed as a justice or judge of the United States, the annuity is suspended

because offset from salary of such employees is not permitted. Also, if a former Member who retired under the special CSRS provisions for Members is reemployed under certain conditions, the annuity is suspended. Suspension is different from termination, in that the individual retains annuitant status, and, consequently, the annuity benefit may be reinstated on termination of employment without the individuals meeting any additional entitlement requirements. Also, if the suspended annuitant dies while reemployed, death benefits are payable under CSRS as if he or she died as an annuitant. The amount of the reinstated annuity, or survivor annuity, includes cost-of-living adjustments that occurred during the period of reemployment.

Annuity Entitlements Based on Reemployment

On some occasions, reemployment may result in an individual's being potentially entitled to two annuity benefits under CSRS or FERS, based in part on the same service, or an annuity benefit under CSRS or FERS and another annuity benefit under another retirement system.

Neither CSRS or FERS contemplates simultaneous entitlement to two annuity benefits. However, this can occur, for example, when an individual entitled to a deferred annuity becomes reemployed before filing an application for benefits. These regulations would require an individual so situated to elect between the two possible benefits.

In regard to dual entitlement under two different retirement systems for Federal employees, these regulations provide that no individual can receive two annuity benefits based on the same period of service, or when dual receipt of the benefits is barred by other statute or regulation.

Part 837, as proposed, would also incorporate, without substantive amendment, certain portions of the regulations promulgated to implement the Whistleblower Protection Act of 1989.

Section Analysis

1. Section 837.101

This section describes the kinds of service to which part 837 applies—reemployment of CSRS and FERS annuitants in positions with the Federal Government and, with certain exclusions, the government of the District of Columbia.

2. Section 837.102

This section defines terms used in part 837.

3. Section 837.103

This section details information that must be provided by the annuitant to the agency, by the agency to the annuitant, and by the agency to OPM.

4. Section 837.201

This section states the rule that, unless the right to annuity is explicitly terminated on reemployment under the provisions of part 837, the individual's status as an annuitant continues, irrespective of whether the individual actually receives annuity during the period.

5. Section 837.202

This section details the types of annuity that terminate on reemployment.

6. Section 837.203

This section details what circumstance result in suspension of annuity during reemployment.

7. Section 837.301

This section details what circumstances result in the withholding of retirement deductions from the pay of reemployment annuitants

8. Section 837.302

This section details what circumstances require the reemploying agency to pay contributions to the retirement fund, and the amount of agency contributions due.

9. Section 837.303

This section states the circumstances that require the pay of the reemployed annuitant to be offset by the amount of annuity.

10. Section 837.304

This section provides that the reemploying agency must transfer to OPM the amount of funds that should have been withheld from the pay of the annuitant, whether or not it was withheld from the pay of the annuitant.

11. Section 837.305

This section states that an annuitant's lump-sum credit (of retirement deductions and deposits) shall not be reduced by the amount of annuity offset from pay under the provisions of § 837.303.

12. Section 837.306

This section provides that annuitants who are reemployed as justices and judges, as those terms are defined under 28 U.S.C. 451, may receive a refund of their unexpended lump-sum credit. Receipt of that payment will forfeit all rights to annuity based on the CSRS and/or FERS service.

13. Section 837.401

This section states that a disability annuitant may be reemployed in any position for which he or she is qualified.

14. Section 837.402

This section details additional information, over and above the requirements of § 837.103, that the agency must provide to a reemployed disability annuitant and OPM.

15. Section 837.403

This section states what action must be taken by the agency when the annuity of a reemployed disability annuitant is terminated during reemployment.

16. Section 837.404

This section provides rules controlling pay and annuity when OPM reinstates the disability annuity of an individual employed in a position not subject to CSRS or FERS.

17. Section 837.501

This section implements the statutory provision permitting a refund of retirement deductions withheld during reemployment when the reemployed annuitant is not entitled to a supplemental annuity on the basis of the reemployment.

18. Section 837.502

This section states that the circumstances under which an annuity terminated or suspended on the basis of reemployment will be reinstated on termination of the reemployment, and the rule for computation of the amount of the reinstated annuity.

19. Section 837.503

This section details the service requirements for supplemental annuity, what service may be credited in the computation of a supplemental annuity, and how a supplemental annuity is computed.

20. Section 837.504

This section details the title requirements, and computation, of a redetermined annuity.

21. Section 837.601

This section states the rule for determining whether a reemployed annuitant who dies while reemployed dies as an employee or as an annuitant.

22. Section 837.602

This section provides for a lump-sum payment of retirement deductions

withheld during reemployment when the reemployed annuitant dies in service, and there is no survivor annuitant, or the reemployment service did not establish entitlement to an increased survivor benefit under the provisions of § 837.602.

23. Section 837.603

This section details the service requirements, and computation, of increased survivor benefits based on reemployment service.

24. Section 837.701

This section details the circumstances that will result in the reduction of a supplemental annuity based on CSRS-Offset service because of simultaneous entitlement to social security old-age benefits based, in whole or in part, on the same service.

25. Section 837.702

This section details the circumstances that will result in the reduction of a supplemental survivor annuity based on CSRS-Offset service because of simultaneous entitlement to social security survivor benefits based, in whole or in part, on the same service.

26. Section 837.801

This section governs the simultaneous entitlement to two or more annuity benefits under CSRS, resulting from an employee's failure to apply for a benefit to which he or she is entitled prior to reemployment, or by applying for a benefit that would commence during a later period of employment.

27. Section 837.802

This section governs the reemployment of a CSRS or FERS annuitant under another retirement system for Federal employees.

28. Section 837.803

This section governs the reemployment of an annuitant when the retirement action has been canceled by the final order of a judicial or administrative authority.

29. Section 837.804

This section details the duration of elections made under 837.801 and 837.802.

Paperwork Reduction Act

The information collection requirement contained in § 837.103(c) has been submitted to the Office of Management and Budget for approval in accordance with the requirements of the Paperwork Reduction Act. It is estimated that there will be approximately 3000 responses annually, with an estimated average burden of 1 minute per response, for a total annual burden of 50 hours. Comments regarding these proposed collections of information at the time of reemployment should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attention: Joseph Lackey, Desk Officer for the Office of Personnel Management. Comments should be received on or before December 8, 1992. All other comments should be sent to OPM as instructed above under "**ADDRESSES.**"

E.O. 12991. Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees, retirees and survivors.

List of Subjects in 5 CFR Parts 831, 837, 841, 842, 844, and 846

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, the Office of Personnel Management proposes to amend parts 831, 837, 841, 842, 844 and 846, as follows:

PART 831—RETIREMENT

1. The general authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; * * *

§ 831.502 Disability retirement.

2. Paragraph (f) and (g)(5) of § 831.502 are removed and paragraph (g) is redesignated (f).

Subpart H—[Removed and reserved]

3. Subpart H, consisting of §§ 831.801–831.804, of part 831 is removed and reserved.

4. Part 837 is added to read as follows:

PART 837—REEMPLOYMENT OF ANNUITANTS

Subpart A—General Provisions

Sec.
837.101 Applicability.
837.102 Definitions.
837.103 Notice.

Subpart B—Annuitant and Employee Status

837.201 Annuitant status.
837.202 Annuities that terminate on reemployment.
837.203 Annuities that are suspended during reemployment.

Subpart C—Coverage and Contributions

837.301 Coverage.
837.302 Agency contributions.
837.303 Annuity offset.
837.304 Agency liability for payments.
837.305 Lump-sum credit not reduced.
837.306 Refund of lump-sum credit.

Subpart D—Reemployment of Disability Annuitants

837.401 Generally.
837.402 Special notice.
837.403 Termination of annuity after reemployment.
837.404 Reinstatement of annuity during a period of employment not subject to CSRS or FERS.

Subpart E—Retirement Benefits on Separation

837.501 Refund of retirement deductions.
837.502 Reinstatement of annuity.
837.503 Supplemental annuity.
837.504 Redetermined annuity.

Subpart F—Death Benefits

837.601 Generally.
837.602 Lump-sum payment of retirement deductions.
837.603 Increased survivor benefits.

Subpart G—CSRS Offset

837.701 Offset from supplemental annuity.
837.702 Offset from supplemental survivor annuity.

Subpart H—Alternative Entitlements and Canceled Retirements

837.801 Unperfected entitlement to CSRS benefits based on a prior separation.
837.802 Benefits under another retirement system for Federal employees based on the most recent separation.
837.803 Cancellation of retirement by judicial or administrative authority.
837.804 Finality of elections under this subpart.

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468.

Subpart A—General Provisions

§ 837.101 Applicability.

This part prescribes—

(a) The rules governing the reemployment of an annuitant by the Federal Government.

(b) The rules governing reemployment of an annuitant by the government of the

District of Columbia when the annuitant had been employed subject to CSRS by the District of Columbia prior to October 1, 1987, or was appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act.

(c) The rules governing the payment of retirement and death benefits based on reemployment covered by this part.

§ 837.102 Definitions.

Actual service means the period of time during which an annuitant is reemployed, excluding periods of separation and nonpay status.

Annuitant means a former employee or Member who is receiving, or meets the legal requirements and has filed claim for, annuity under either CSRS or FERS based on his or her service.

Another retirement system or *other retirement system* means a program created by Federal or District of Columbia statute or regulation and administered by an agency of the Federal Government or District of Columbia that provides retirement and/or death benefits to Federal or District of Columbia employees whose employment would otherwise be subject to the provisions of CSRS or FERS, or that credits service in the computation of benefits that would otherwise be credited in the computation of a CSRS or FERS benefit, or that provides a death benefit when a death benefit is payable from CSRS or FERS.

CSRS means the Civil Service Retirement System, as described in subchapter III of chapter 83 of title 5, United States Code.

CSRS annuitant means an annuitant retired under CSRS.

CSRS-Offset service means service by a reemployed CSRS annuitant that is subject to the OASDI tax by operation of section 101 of Public Law 98–21. It does not include any service performed before January 1, 1984.

CSRS-Offset wages means basic pay, as defined under 5 U.S.C. 8331(3), of an employee or Member performing CSRS-Offset service, but not to exceed the contribution and benefit base for the calendar year involved.

Continuous service means reemployment without a period of separation from service, or conversion to intermittent status, of more than 3 days.

Contribution and benefit base means the contribution and benefit base in effect with respect to the period involved, as determined under section 230 of the Social Security Act.

FEC means Federal Employees Compensation, that is, benefits paid on the basis of a work-related disease or injury under the provisions of chapter 81 of title 5, United States Code, but does not include a scheduled award under the provisions of 5 U.S.C. 8107, or medical services under 5 U.S.C. 8103.

FERS means the Federal Employees Retirement System, as described in chapter 84 of title 5, United States Code.

FERS annuitant means an annuitant who retired under FERS, or a reemployed CSRS annuitant whose election of FERS coverage under part 846 of this title is effective on or after January 8, 1988.

Full-time equivalent to part-time service means the amount of actual service that would result if the total hours worked on a part-time basis had been performed on a full-time basis, and the remaining portion of the period of reemployment was in a non-pay status.

Full-time service means actual service in which the reemployed annuitant is scheduled to work the number of hours and days required by the administrative workweek for his or her grade or class (normally 40 hours).

Fund means the Civil Service Retirement and Disability Fund as described at 5 U.S.C. 8348.

Intermittent service means any actual service performed on a less than full-time basis with no prescheduled regular tour of duty.

Lump-sum credit has the same meaning as the term is defined at section 8401(19) or section 8331(8) of title 5, United States Code, as may be applicable under the circumstances.

OASDI tax means, with respect to Federal wages, the Old Age, Survivors, and Disability Insurance tax imposed under section 3101(a) of the Internal Revenue Code of 1986.

Part-time service means actual service performed on a less than full-time basis under a pre-scheduled regular tour of duty.

Pay means the basic pay of the position to which the reemployed annuitant is appointed, prior to reduction for retirement contribution and annuity offset, and excludes any other benefits or compensation the reemployed annuitant receives, such as benefits authorized under the provisions of chapter 81 of title 5, United States Code.

Reemployed means reemployed in an appointive or elective position with the Federal Government, or reemployed in an appointive or elective position with the District of Columbia (when the annuitant was first employed subject to CSRS by the District of Columbia before October 1, 1987, or was appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeth Hospital and District of Columbia Mental Health Services Act), whether the position is subject to CSRS, FERS, or another retirement system, but does not include appointment as a Governor of the Board of Governors of the United States Postal Service, or reemployment under provisions of law that exclude offset of pay by annuity, that is, sections 8344(i), (j), or (k), or 8468(f), (g), or (h) of title 5, United States Code.

Retired Member means a former Member of Congress, as defined by 5 U.S.C. 2106, who has met the requirements for Member retirement as specified at sections 8336(g), 8337(a), 8338(b), 8412, 8413, and 8451(b) of title 5, United States Code, and who has filed claim therefor.

Suspension, in regard to payment of annuity, means that payment of annuity stops but annuitant status continues.

Termination, in regard to payment of annuity, means that both payment or annuity and annuitant status cease.

§ 837.103 Notice.

(a) *To OPM.* On or before the date a reemployed annuitant is appointed, the appointing agency must notify OPM in writing of the appointment, and provide OPM with the following information—

(1) The annuitant's name, date of birth, social security number (if applicable), and retirement claim number;

(2) A description of the kind of appointment;

(3) Whether the amount of annuity allocable to the period of reemployment is, or will be, withheld from the reemployed annuitant's pay, in accordance with § 837.303; and

(4) When the appointment is an interim appointment under § 772.102 of this chapter, an explicit statement that the appointment is required by the Whistleblower Protection Act of 1989.

(b) *To annuitant.* The agency should advise the annuitant in writing, generally, of the effect reemployment has on annuitant status and/or the continued receipt of annuity, the possible future retirement benefits that may be payable to an annuitant on the basis of reemployment and for CSRS annuitants, whether the annuitant may elect to have retirement deductions withheld from his or her basic pay.

(c) *Obligation of annuitant to provide information.* Before appointment, and as a condition of reemployment, the annuitant must provide the employing agency with the following information—

(1) Whether the annuitant is then in receipt of annuity;

(2) The gross monthly amount of annuity the annuitant is then receiving;

(3) Whether the annuitant is a disability annuitant, and if so, whether OPM has found the annuitant recovered from his or her disability, or restored to earning capacity; and

(4) If the annuitant is a CSRS annuitant, whether the annuitant's retirement was based on an involuntary separation, not for charges of misconduct or delinquency.

Subpart B—Annuitant and Employee Status

§ 837.201 Annuitant status.

Unless his or her annuity is terminated under the provisions of §§ 837.202 or 837.403, an annuitant continues to be an annuitant throughout the period of reemployment, whether or not he or she continues to receive annuity payments during the period of reemployment.

§ 837.202 Annuities that terminate on reemployment.

(a) *FERS annuitants.* (1) The annuity of a FERS annuitant who is a disability annuitant whom OPM has found recovered or restored to earning capacity prior to reemployment terminates on reemployment.

(2) The annuity of a FERS annuitant who is a former military reserve technician awarded a disability retirement annuity under 5 U.S.C. 8456, in addition to being subject to paragraph (a)(1) of this section, shall terminate on the date the annuitant declines an offer of employment with a department or agency, where the employment is in the same commuting area and of the same grade as, or a level equivalent to, the position from which the annuitant retired.

(b) *CSRS annuitants.* (1) The annuity of a CSRS annuitant terminates on reemployment if—

(i) The annuitant is a disability annuitant whom OPM has found recovered or restored to earning capacity prior to reemployment, or whose disability annuity was awarded under the provisions of 5 U.S.C. 8337(h) because the annuitant was a National Guard Technician who was medically disqualifed for continued membership in the National Guard;

(ii) The annuitant is not a retired Member and the annuity is based on an involuntary separation (other than a separation that was mandated by statute based on the annuitant's age and length of service, or a separation for cause on charges of misconduct or delinquency) where the reemployment would, if the individual were not an annuitant, be covered by CSRS;

(iii) The annuitant is not a retired Member and is appointed by the President to a position that would, if the individual were not an annuitant, be covered by CSRS; or

(iv) The annuitant is not a retired Member and is elected as a Member.

(2) A disability annuity awarded a former National Guard Technician under the provisions of 5 U.S.C. 8337(h) shall terminate on the date the annuitant declines an offer of employment with a department or agency, where the employment is in the same commuting area and of the same grade as, or a level equivalent to, the position from which the annuitant retired.

§ 837.203 Annuities that are suspended during reemployment.

(a) *All annuitants.* Payments of annuity is suspended when—

(1) The annuitant is appointed as a justice or judge of the United States, as defined by section 451 of title 28, United States Code; or

(2) The annuitant receives an interim appointment under § 772.102 of this chapter.

(b) *CSRS annuitants only.* Payment of annuity is suspended when the annuitant is a retired Member and becomes employed in an elective position, or is appointed to a position that is not intermittent or without pay.

Subpart C—Coverage and Contributions

§ 837.301 Coverage.

(a) *When annuity terminates on, or is suspended during, reemployment.* Retirement coverage under either CSRS or FERS is governed by subpart B of part 831 or subpart A of part 842 of this chapter, as is appropriate.

(b) *When annuity continues.* (1) Unless a reemployed FERS annuitant's employment is on an intermittent basis, as an employee subject to another retirement system, or as President, deductions for the Fund shall be made under 5 U.S.C. 8422(a).

(2) A CSRS annuitant is not subject to deductions, unless he or she is serving in an other-than-intermittent status (except as President), is not covered by another retirement system, and elects to have retirement deductions made from his or her pay. Generally, deductions are made no later than the beginning of the first pay period immediately following the date the reemployed annuitant files the election with the employing agency. When the annuitant elects to have deductions made, he or she may not change the election during continuous service with that agency.

(3) The amount of basic pay prior to offset of annuity under § 837.303 is used in computing the amount of deductions. The rate of retirement deductions is that which attaches to the position under the provisions of sections 8334(a), 8334(k), or 8422(a) of title 5, United States Code, as is applicable.

§ 837.302 Agency contributions.

(a) *FERS annuitants.* An agency that reemploys a FERS annuitant subject to retirement deductions under § 837.301(b)(1) shall make contributions, as specified in 5 U.S.C. 8423, to the Fund, based on the reemployed annuitant's pay prior to offset of annuity under the provisions of § 837.303.

(b) *CSRS annuitants.* An agency that reemploys a CSRS annuitant is required to make an agency contribution when—

(1) The annuity is suspended or terminated under the provisions of subpart B of this part; and

(2) The appointment is subject to CSRS deductions under the provisions of subpart B of part 831 of this chapter.

§ 837.303 Annuity offset.

(a) *Applicability.* When the right to receive annuity continues during reemployment (even though actual receipt of annuity may have been waived under 5 U.S.C. 8345(d) or 8465(a)), the pay of the reemployed annuitant shall be offset by the amount of annuity allocable to the period of reemployment, except that—

(1) No amount shall be offset from pay in accordance with this section for a period for which the annuitant has elected to receive FEC benefits in lieu of annuity; and

(2) No amount shall be offset from a lump-sum payment of annual leave, made on or after termination of the reemployment period.

(b) *Payment.* The employing agency shall pay to the Fund the full amount required to be offset from a reemployed annuitant's salary under this section in accordance with instructions issued by OPM. Payment in full to the Fund is not contingent on actual offset from the reemployed annuitant's salary.

(c) *Computation.* To compute the amount of the annuity offset for any particular pay period, divide the amount of annuity for the calendar days included in the pay period by the number of hours that would constitute a full-time tour of duty for that pay period, then multiply the result by the number of hours actually paid for the pay period, not to exceed the number of hours that constitutes a full-time tour of duty.

§ 837.304 Agency liability for payments.

(a) The agency will remit funds properly withheld from the pay of a reemployed annuitant in accordance with this subpart to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual.

(b) When the employing agency fails to withhold from the pay of the reemployed annuitant some or all of the amounts required to be withheld from that pay by this subpart, the employee has received an overpayment of pay. The employing agency must collect the overpayment of pay (unless it is waived under 5 U.S.C. 5584 or some other applicable statute) and remit the proper funds to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual.

(c) If the employing agency waives the annuitant's repayment of the salary overpayment, it must submit—on behalf of the reemployed annuitant—an amount equal to the correct deduction from pay (or the balance due in the case of a partial deduction) to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual.

§ 837.305 Lump-sum credit not reduced.

When annuity continues during the period of reemployment, and the reemployment is subject to annuity offset under the provisions of § 837.303, or any similar provision of law or regulation, the amount of an annuitant's lump-sum credit to the Fund shall not be reduced by the amount of annuity allocable to the period of reemployment.

§ 837.306 Refund of lump-sum credit.

An annuitant serving as a justice or judge of the United States, as defined by section 451 of title 28, United States Code, may apply for and receive payment of the annuitant's lump-sum credit, less the amount of annuity or other benefits previously paid on that account. Receipt of a refund under this section will irrevocably terminate the right to annuity, and the annuitant status, of the recipient, based on any prior separations from employment covered by CSRS or FERS.

Subpart D—Reemployment of Disability Annuitants

§ 837.401 Generally.

A disability annuitant may be reemployed in any position for which he or she is qualified.

§ 837.402 Special notice.

(a) *To annuitant.* In addition to the advice described in paragraph 837.103(b), the agency should generally also advise a disability annuitant, in writing, prior to reemployment, that—

(1) Reemployment on a permanent basis in a position equivalent in grade and pay to the position from which the annuitant retired may constitute the basis for an OPM finding of recovery from disability;

(2) Reemployment subject to medical and physical qualification standards equivalent to those of the position from which the annuitant retried may constitute the basis for an OPM finding of recovery from disability;

(3) The pay of the position in which the annuitant is reemployed, prior to the offset of annuity, or the pay of an interim appointment under § 772.102 of this chapter, as may be applicable, will be included as earnings in determining whether the disability annuity will be terminated due to restoration to earning capacity;

(4) Receipt of, or continued entitlement to receive, full or partial FEC benefits during reemployment, when those benefits are based on the same injury or medical condition that is the basis for OPM's award of disability retirement, is conclusive evidence (unless there is contravening medical evidence) that the annuitant has not recovered from the disability; and

(5) A disability annuitant age 60 or over cannot be found by OPM to be restored to earning capacity, and can only be found recovered at the annuitant's request.

(b) *To OPM.* On reemployment of a disability annuitant, the employing agency shall, in addition to the notice required by § 837.103(a), notify OPM in writing of—

(1) The physical and medical requirements of the position (providing a copy of the employee's position description);

(2) The position's grade level and/or rate of pay;

(3) Whether the employment is full-time, part-time, or intermittent;

(4) Whether, to the best of the agency's knowledge, the reemployed annuitant is receiving, or entitled to receive, FEC benefits; and

(5) Whether any medical evidence was used in making the employment decision, and if so, provide OPM with a copy of the medical information.

§ 837.403 Termination of annuitant during reemployment.

(a) *Agency action.* When a reemployed disability annuitant is found recovered from disability or restored to earning capacity by OPM, OPM shall terminate the annuity as of the date of the finding, and the employing agency shall cease reducing pay by the amount of annuity allocable to the period of reemployment effective that same date. If the appointment is subject to retirement deductions, retirement deductions will begin or continue, as the case may be.

(b) *Subsequent Benefits*—(1) *CSRS.* If, on separation from a period of reemployment during which the disability annuity was terminated because of recovery or restoration to earning capacity, the former disability annuitant is entitled to either an immediate or deferred annuity based on the most recent separation, any right to an annuity based on a prior separation is permanently extinguished. If no such right to immediate or deferred annuity accrues based on this most recent separation, however, any right to immediate or deferred annuity will be determined on the basis of the next prior separation.

(2) *FERS.* If a disability annuity is terminated during a period of reemployment because of recovery or restoration to earning capacity, any right to an annuity based on a prior separation is permanently extinguished, except as otherwise provided by § 844.405(b)(2) of this chapter.

§ 837.404 Reinstatement of annuitant during a period of employment not subject to CSRS or FERS.

When OPM reinstates the disability annuity of an individual employed in a position not subject to CSRS or FERS, the employing agency shall withhold retirement deductions and offset pay subject to the provisions of subpart C of this part, as of the date of OPM's administrative determination of reinstatement. OPM shall offset from any retroactive payment of annuity for a period that is also a period of employment an amount equal to the amount of annuity, or the pay for the period of employment, whichever is the lesser.

Subpart E—Retirement Benefits on Separation

§ 837.501 Refund of retirement deductions.

A reemployed annuity who separates from reemployment without title to either a supplemental annuity or a redetermined annuity under this subpart is entitled to have any retirement deductions withheld from pay during the period of reemployment refunded without interest.

§ 837.502 Reinstatement of annuity.

(a) *When Appropriate.* (1) when an annuity was terminated because of reemployment under the provisions of § 837.202, or any similar provision of statute or regulation in effect prior to the promulgation of this part, the annuity that was terminated will be reinstated effective the date immediately following the date the reemployed annuitant separated from reemployment, if—

(i) The reemployed annuitant's right to annuity has not been terminated under any other provision of regulation or statute; and

(ii) The reemployed annuitant is not entitled to either an immediate or deferred CSRS or FERS annuity based on the separation from reemployment.

(2) when an annuity was suspended because of reemployment under the provisions of § 837.203, the annuity that was suspended will be reinstated effective the date immediately following the date the reemployed annuitant separated from reemployment.

(b) *Amount of Reinstated Annuity.* The amount of an annuity reinstated under the provisions of paragraph (a)(2) of this section will be the amount of the annuity at the effective date of termination, adjusted by such adjustments as would have occurred had the annuity remained payable during the period of reemployment.

§ 837.503 Supplemental annuity.

(a) *Title Requirements.* A reemployed annuitant is entitled, on separation, or conversion to intermittent service, to a supplemental annuity if—

(1) The annuity is not terminated or suspended on reemployment;

(2) The pay during reemployment was subject to offset by the amount of annuity allocable to the period of reemployment; and

(3) The annuitant performs—

(i) At least 1 year of actual, continuous, full-time service;

(ii) Actual, continuous part-time service equivalent to 1 year of actual full-time service, or;

(iii) A combination of part-time and full-time actual, continuous service that is equivalent to 1 year of actual full-time service.

(4) An annuitant separating from an interim appointment made under the provisions of § 772.102 of this chapter need not meet the requirements of paragraphs (a) (1) and (2) of this section to establish title to a supplemental annuity under this section.

(b) *Computation of supplemental annuity—(1) CSRS.* (i) That portion of a supplemental annuity that is based on the total years and full months of creditable reemployment service performed while covered under CSRS is computed under the provisions of 5 U.S.C. 8339 (a), (b), (d), (e), (h), (l), (n) and (q).

(ii) A supplemental annuity computed in whole or in part under the provisions of this paragraph, using CSRS-Offset service, is subject to reduction under subpart G of this part.

(2) *FERS.* That portion of a supplemental annuity that is based on the total years and full months of creditable reemployment service performed on and after the effective date of FERS coverage is computed under the provisions of 5 U.S.C. 8415 (a) through (f).

(3) *Average pay.* The average pay used in the computation of a supplemental annuity is the average basic pay for the entire period of actual continuous reemployment service, excluding intermittent service.

(4) *Survivor reduction.* If the reemployed annuitant's annuity, at the time he or she applies for supplemental annuity, is reduced to provide a survivor benefit for a spouse, (or, for FERS annuitants only, a former spouse), the supplemental annuity will be reduced by 10 percent, and the survivor annuities increased, if the annuitant was retired under CSRS, by 55 percent of the supplemental annuity, and if the annuitant was retired under FERS, by 50 percent of the supplemental annuity, unless the reemployed annuitant notifies OPM at the time of application that he or she does not wish to have such reductions and increases effected.

(c) *Creditable service.* (1) All actual reemployment service performed after the date of retirement on a full-time or part-time basis may be credited in the computation of a supplemental annuity provided—

(i) When the reemployment service was performed on or after October 1, 1982, retirement deductions were withheld or, for CSRS annuitants, a deposit has been paid under the provisions of 5 U.S.C. 8334;

(ii) The reemployment service was not performed subject to another retirement system, except when the deductions under the other retirement system have been refunded and a deposit paid to OPM, where the law so permits, or benefits under the other retirement system have been waived in favor of CSRS or FERS benefits; and

(iii) The reemployment service has not been used in the computation of another supplemental or redetermined annuity.

(2) A period of reemployment service during which annuitant status continues and annuity is paid, and which is excluded from the normal annuity offset from pay by special statutory provision, cannot be credited in the computation of a supplemental annuity or any subsequent annuity entitlement.

(d) *Commencing date.* (1) Except as provided in clause (2) of this subparagraph, the supplemental annuity commences on the earlier of the first day of the month following—

(i) The day the annuitant is separated from reemployment; or

(ii) The day the annuitant is converted to an intermittent status.

(2) The supplemental annuity of a FERS annuitant, and the supplemental annuity of a CSRS reemployed annuitant who has not elected FERS coverage and who was—

(i) Involuntarily separated from the reemployment service (except by removal for cause on charges of misconduct or delinquency);

(ii) Involuntarily converted to an intermittent status, or;

(iii) Separated from reemployment service, or converted to intermittent status, after serving 3 days or less in the month of such separation or conversion—shall commence on the earlier of the day after separation from reemployment service, the effective date of conversion to intermittent status, or the day after the date pay ceases.

§ 837.504 Redetermined annuity.

(a) *Title Requirements.* (1) A reemployed annuitant is entitled, on separation, or conversion to intermittent service, to a redetermined annuity if—

(i) The annuity was not terminated or suspended during reemployment;

(ii) The pay during reemployment was subject to offset by the amount of annuity allocable to the period of reemployment;

(iii) The annuitant performs—

(A) At least 5 years of actual, continuous, full-time service;

(B) Actual, continuous part-time service equivalent to 5 years of actual full-time service, or;

(C) A combination of part-time and full-time actual, continuous service that is equivalent to 5 years of actual full-time service.

(iv) Retirement deductions are withheld, or a deposit is paid, for the entire period of continuous reemployment service immediately preceding the most recent separation from reemployment service; and

(v) The reemployed annuitant elects the redetermined annuity in lieu of his or her prior annuity and the supplemental annuity that would be payable under § 837.503 of this subpart.

(vi) An annuitant separating from an interim appointment made under the provisions of § 772.102 of this chapter need not meet the requirements of paragraph (a)(1) (i) and (ii) of this section in order to establish title to a redetermined annuity under this section.

(2) An employee whose annuity was terminated under the provisions of § 837.202(b)(1)(iii), and who has not elected FERS coverage, is entitled to a redetermined annuity on separation.

(b) *Computation.* (1) A redetermined annuity is computed using all the reemployed annuitant's creditable service, under the provisions of law in effect governing the payment of CSRS and/or FERS annuities, as may be applicable, at the time of separation from reemployment service, or conversion to intermittent status.

(2) The amount of the redetermined annuity of an individual whose previous annuity was terminated under the provisions of § 837.202(b)(1)(iii) will at least equal the amount of the terminated annuity plus any increases under section 8340 of title 5, United States Code, occurring after the termination of the previous annuity and before the commencement of the redetermined annuity, adjusted by any annuity increase or reduction resulting from additional or different elections made by the reemployed annuitant.

(c) *Commencing date.* The commencing date of the redetermined annuity is the same as the law and/or regulations would provide in the case of a retiring employee.

Subpart F—Death Benefits

§ 837.601 Generally.

Except as otherwise provided by this subpart, when an annuitant who is reemployed under circumstances that provide for continuation of annuitant status during reemployment dies, death benefits are payable under CSRS or FERS as if the individual died as an annuitant, and not as an employee.

§ 837.602 Lump-sum payment of retirement deductions.

If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would not have been entitled to a supplemental annuity, had the separation been for reasons other than death, or if there is no supplemental spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS) the amount of retirement deductions withheld during the period of reemployment will be paid in a lump sum to the person entitled under the provisions of 5 U.S.C. 8342(c) or 8424(d), as appropriate.

§ 837.603 Increased survivor benefits.

(a) *Supplemental Survivor Annuity.* (1) If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would have been entitled to a supplemental annuity, had the separation been for reasons other than death, and there is a spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS) the amount of the spousal survivor annuity will, if any necessary deposit for service credit is made, be increased by 55 percent of the supplemental annuity, if the reemployed annuitant was retired under CSRS, or 50 percent of the supplemental annuity, if the reemployed annuitant was retired under FERS.

(2) Supplemental survivor annuity benefits payable under this paragraph, computed in whole or in part under the provisions of § 837.503(b)(1)(i), using CSRS-Offset service, are subject to reduction under subpart G of this part.

(b) *Redetermined Survivor Annuity.* If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would have been entitled to elect a redetermined annuity, had the separation been for reasons other than death, and if there is a spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS), a person entitled to a spousal survivor annuity may elect to have his or her survivor annuity computed as if the annuitant had elected a redetermined annuity, provided any necessary deposit for service credit is made.

Subpart G—CSRS Offset

§ 837.701 Offset from supplemental annuity.

(a) OPM will reduce the supplemental annuity of an individual who has performed CSRS-Offset service, if the individual is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(b) The reduction required under paragraph (a) of this section is effective on the first day of the month during which the reemployed annuitant—

(1) Is entitled to a supplemental annuity under this part; and

(2) Is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(c) Subject to paragraphs (d) and (e) of this section, the amount of the reduction required under paragraph (a) of this section is the lesser of—

(1) The difference between—

(i) The social security old-age benefit for the month referred to in paragraph (b) of this section; and

(ii) The old-age benefit that would be payable to the individual for the month referred to in paragraph (b), excluding all CSRS-Offset wages as a reemployed annuitant, and assuming the annuitant was fully insured (as defined by section 214(a) of the Social Security Act); or

(2) The product of—

(i) The old-age benefit to which the individual is entitled or would, on proper application, be entitled; and

(ii) A fraction—

(A) The numerator of which is the annuitant's total CSRS-Offset service as a reemployed annuitant, rounded to the nearest whole number of years not exceeding 40 years; and

(B) The denominator of which is 40.

(d) Cost-of-living adjustments under 5 U.S.C. 8340 occurring after the effective date of the reduction required under paragraph (a) of this section will be based on only the supplemental annuity remaining after reduction under this subpart.

(e) The amounts for paragraphs (c)(1)(i), (c)(1)(ii), and (c)(2)(i) of this section are computed without regard to subsections (b) through (1) of section 203 of the Social Security Act (relating to reductions in social security benefits), and without applying the provisions of the second sentence of section 215(a)(7)(B)(i) or section 215(d)(5)(ii) of the Social Security Act (relating to part of the computation of the social security windfall elimination provisions).

(f) OPM will accept the determination of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to socal security benefits and the beginning and ending dates thereof.

§ 837.702 Offset from supplemental survivor annuity.

(a) OPM will reduce a supplemental survivor annuity (an annuity under 5 U.S.C. 8341) based on the service of an individual who performed CSRS-Offset service, if the survivor annuitant is

entitled, or on proper application would be entitled, to survivor benefits under section 202(d), (e), or (f) (relating to children's, widows', and widowers' benefits, respectively) of the Social Security Act.

(b) The reduction required under paragraph (a) of this section begins (or is reinstated) on the first day of the month during which the survivor annuitant—

(1) Is entitled to a disability or survivor annuity under CSRS; and

(2) Is entitled, or on proper application would be entitled, to survivor benefits under the Social Security Act provisions mentioned in paragraphs (a) and (c) of this section, respectively.

(c) The reduction under paragraphs (a) of this section will be computed and adjusted in a manner consistent with the provisions of § 837.701 (c) through (e).

(d) A reduction under paragraph (a) of this section stops on the date entitlement to the disability or survivor benefits under title II of the Social Security Act terminates. In the case of a survivor annuitant who has not made proper application for the social security benefit, the reduction under paragraph (a) of this section stops on the date entitlement to such survivor benefits would otherwise terminate. If a social security benefit is reduced under any provision of the Social Security Act, even if reduced to zero, entitlement to that benefit is not considered to have terminated.

(e) OPM will accept the determination or certification of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to social security survivor benefits and the beginning and ending dates thereof.

Subpart H—Alternative Entitlements and Canceled Retirements

§ 837.801 Unperfected entitlement to CSRS benefits based on a prior separation.

(a) An employee who meets the age and service requirements for title to a non-disability annuity under CSRS on the basis of a prior separation, but did not apply for that annuity before a subsequent separation from service to which a different annuity entitlement attaches, may elect, on application, to receive either—

(1) The annuity based on the later separation; or

(2) The annuity based on the prior separation, with payment of annuity suspended during the period(s) of employment subsequent to the commencing date of annuity, and such benefits as would be payable had the subsequent period(s) of employment been performed under the provisions of this part.

(b) When an individual who has applied for a deferred annuity under CSRS is reemployed under CSRS before the commencing date of that annuity, the application is deemed to have not been made.

§ 837.802 Benefits under another retirement system for Federal employees based on the most recent separation.

(a) *Generally.* An annuitant who has performed reemployment service after the commencing date of annuity under the provisions of another retirement system, and who is entitled to an annuity benefit from the other retirement system during a period in which he or she is also entitled to an annuity benefit under CSRS or FERS, may receive both benefits simultaneously, or for the same period, except that the annuitant may not receive both benefits simultaneously, or for the same period, if—

(1) The provisions of law or regulation governing the other retirement system do not permit the annuitant to receive both benefits simultaneously, or for the same period of time; or

(2) Entitlement to the annuity from the other retirement system is based on service credited in the computation of the CSRS or FERS annuity, or service credited in the computation of the annuity from the other retirement system was used in the computation of the CSRS or FERS annuity.

(b) *Election of Alternative Benefits.* (1) Where simultaneous receipt of, or entitlement to, both annuities is barred under the provisions of paragraph (a)(1) of this section, the annuitant must elect to receive either the annuity under the other retirement system, or the CSRS annuity.

(2) Where the annuitant, under the provisions of paragraph (b)(1) of this section, elects to receive annuity from the other retirement system in lieu of the CSRS or FERS annuity, the CSRS or FERS annuity terminates as of the commencing date of the other annuity, and any overpayment of CSRS annuity will be offset from the other annuity and paid to OPM.

(c) *Recomputation.* Where simultaneous receipt of annuities from more than one retirement system is barred by paragraph (a)(2) of this section, but not by paragraph (a)(1) of this section, the CSRS or FERS annuity may be recomputed to exclude credit for service credited in determining entitlement to, or the amount of, the annuity from the other retirement system, effective as of the commencing date of the annuity from the other retirement system for Federal employees, and the recomputed CSRS or FERS annuity may be paid simultaneous with, or for the same period as, the annuity from the other retirement system for Federal employees.

(d) *Forfeiture.* Where an annuitant's coverage as an employee under another retirement system, whether by election or by operation of law or regulation, results in forfeiture of annuity rights under CSRS or FERS, the CSRS or FERS annuity will terminate as of the effective date of coverage.

(e) *Survivors.* The rules detailed in this section in regard to dual entitlement to annuity benefits under CSRS or FERS and other retirement system also apply to dual entitlement to survivor benefits under CSRS or FERS and another retirement system, unless the particular circumstance is otherwise governed by specific provision of statute or regulation.

(f) *Agency Responsibilities.* The agency responsible for administering another retirement system must—

(1) Promptly notify OPM of an election of coverage under that retirement system by a reemployed CSRS or FERS annuitant, or the coverage of a reemployed CSRS annuitant under that retirement system by election or operation of law or regulation, when such coverage affects the annuitant's entitlement to CSRS annuity;

(2) Promptly notify OPM when a reemployed annuitant separates with entitlement to an annuity under the other retirement system that cannot, under the provisions of paragraph (a) of this section, be paid simultaneous with, or during the same period as, the CSRS annuity; and

(3) Reimburse OPM for overpayments of annuity resulting from a failure to comply with paragraphs (b) (1) and (2) of this section.

§ 837.803 Cancellation of retirement by judicial or administrative authority.

(a) *Cancellation of retirement action.* A separation from employment on which an application for retirement is based may only be canceled by the former employing agency in response to a direct and final order of a judicial or administrative body charged with the responsibility of reviewing the legality of the separation, and authorized to make such order, or by agreement between the annuitant and the former employing agency in resolution of a grievance, complaint, dispute, appeal or other action, involving an allegedly erroneous separation, before such authority.

(b) *Agency notification to OPM.* Upon receiving a final order requiring cancellation of the annuitant's separation or after the annuitant and the agency agree to cancel the separation, the employing agency must notify OPM and request the amount of the erroneous payment to be recovered under § 550.805(e) of this chapter from any back pay adjustment to which the employee may be entitled.

(c) *Collection of erroneously paid retirement benefits.*—(1) If OPM determines that an overpayment of annuity or lump-sum credit has occurred and the employee is entitled to receive back pay because of the canceled separation, the overpaid retirement benefits must be deducted to the extent they can be recovered from the back pay adjustment as required by § 550.805(e) of this chapter.

(2) Amounts recovered from back pay will not be subject to waiver consideration under the provisions of 5 U.S.C. 8346(b) or 8470(b). If there is no back pay or the back pay is insufficient to recover the entire payment, the employee may request that OPM waive the uncollected portion of the overpayment. If waiver is not granted, the employee must repay the erroneous payment.

§ 837.804 Finality of elections under this subpart.

Except as otherwise provided by this subpart, an election of coverage under, or annuity from, another retirement system, in lieu of CSRS or FERS coverage or annuity, or the election between simultaneous entitlements under CSRS or FERS, is final and conclusive for the period of simultaneous entitlement to coverage or annuity.

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

Subpart E—Employee Deductions and Government Contributions

5. The general authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461(g); * * *

§ 841.506 [Amended]

6. In § 841.506, paragraphs (b), (d), and (e) are removed, and paragraph (c) is redesignated (b).

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

Subpart A—Coverage

7. The general authority citation for part 842 and the specific authority for § 842.104 continue to read:

Authority: 5 U.S.C. 8461(g); Section 842.104 * * * also issued under 5 U.S.C. 8641(n) * * *

§ 842.104 [Amended]

8. In § 842.104, paragraph (a) is removed, and paragraphs (b) through (g) are redesignated (a) through (f).

PART 844—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DISABILITY RETIREMENT

9. The authority citation for part 844 continues to read:

Authority: 5 U.S.C. 8461.

Subpart D—Termination and Reinstatement of Disability Annuity

§ 844.403 [Removed]

§§ 844.404 and 844.405 [Redesignated as §§ 844.403 and 844.404]

10. Section 844.403 is removed, and §§ 844.404 an 844.405 are redesignated as §§ 844.403 and 844.404; and newly redesignated § 844.404, paragraph (e) is removed and paragraph (f) is redesignated (e).

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

11. The general authority citation for part 846 continues to read:

Authority: 5 U.S.C. 8461(g); * * *

Subpart C—Effect of an Election to Become Subject to FERS

§ 846.305 [Removed]

§ 846.306 [Redesignated as § 844.305]

12. Section 846.305 is removed, and § 846.306 is redesignated § 846.305.

[FR Doc. 92-24417 Filed 10-8-92; 8:45 am]
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NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Medical Use of Byproduct Material; Training and Experience Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing an Advance Notice of Proposed Rulemaking (ANPRM) on the training and experience criteria for all individuals who use byproduct material for clinical procedures in the practice of medicine.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-504-3417.

SUPPLEMENTARY INFORMATION: On May 25, 1988, the Commission published an ANPRM on the training and experience criteria for all individuals who use byproduct material for clinical procedures in the practice of medicine (53 FR 18845). In the ANPRM, the Commission explained that it was considering amending its training and experience criteria to reflect the realities of the evolution of medical practice, without compromising public health and safety. Rather than simply examining training and experience criteria for the diagnostic use of radiopharmaceuticals, NRC took that opportunity to request public comment on training and experience criteria for all individuals who participate in any type of medical use of byproduct material.

The comment period expired on August 24, 1988. The Commission received 94 letters of comment. Thirty-six were from hospital-based physicians; 16 from professional societies; 13 from technologies; 8 from State regulatory agencies; 6 from medical physicists; 5 from radiopharmacists; 4 from nuclear medicine training programs; 3 from private physicians; and 1 from a hospital administrator. Nineteen letters were received in support of a recommendation from the American College of Cardiology and the American Heart Association that the current 1000-hour requirement described in Subpart J be reduced for those practitioners performing only "single organ" imaging. Another 27 letters said that the training and experience requirements should be the same for every physician, and that the term "single organ" imaging was a misnomer, since cardiac imaging requires the use of various radioisotopes and radiopharmaceuticals, sophisticated instrumentation, and safe handling of radioactive material. Of the 41 letters addressing board certification, all were in favor of certification, but 27 letters stressed that the only satisfactory training was certification through an accredited program. Many letters addressed the shortage of professional

personnel. Several letters said that training and experience criteria for radiopharmaceutical and sealed source therapy were not sufficient.

In 1989, the staff received a contract report that characterized the training and experience criteria for personnel involved in the medical use of byproduct material. The final report was entitled: "Study on Training and Experience Criteria for Personnel Involved in the Medical Use of Byproduct Material," by S. Cohen and Associates, Inc. The report addressed the exact nature of the duties and responsibilities of all persons working in nuclear medicine departments, nuclear pharmacies, and radiation oncology departments; the degree to which current professional organizations already have criteria for educating and certifying individuals in these specialties; the degree to which States are already regulating persons working with radiation in medical institutions; and the existing Federal and State regulations for individuals working with radiation in medical institutions.

Using information from the public comments and the contracted report, the NRC staff prepared an analysis that was presented to NRC's Advisory Committee on Medical Uses of Isotopes (ACMUI) during its July 10, 1990, meeting. The ACMUI recommended against NRC modifying its requirements for physicians desiring to perform only limited nuclear procedures, and recommended that NRC do nothing about required training and experience criteria for technologists and other non-physician workers, unless additional information indicated that the deficient training of these groups contributed to misadministration reported to NRC.

On January 27, 1992, the Quality Management (QM) Program and Misadministration Rule became effective. NRC believes that implementation of this rule will result in increased direction and oversight by the authorized user, thus mitigating the need for NRC to specify training and experience criteria for technologists and other non-physician workers who handle byproduct material. Further, with the implementation of the QM Rule, the revised 10 CFR 35.25(a)(2) more clearly defines the requirements of adequate supervision.

The NRC staff continues to review and evaluate the adequacy of existing training and experience criteria for medical uses. The staff also continues to monitor the role of inadequate training or experience as a contributing factor to misadministration events reported to the NRC. Specific activities include: reviewing the preceptor process for documentation of training received by physician applicants, and establishing a new category of authorized individual, the "authorized nuclear pharmacist." Further, the NRC staff currently has studies underway using human factors and risk analysis techniques to examine reported misadministrations and brachytherapy and teletherapy practices. The staff hopes to gain insight regarding the design of equipment and the essential elements of training for these practices. The results of these studies may be used to develop guidance or proposed rulemaking, as appropriate, for medical personnel using byproduct material in these applications.

The Commission has concluded that the development of comprehensive training and experience criteria for the medical use of byproduct material, as described in the ANPRM, is not indicated at this time. The review of training and experience criteria for the medical use of byproduct material is an ongoing process, and revisions will be proposed as needed. Therefore, the Commission is withdrawing this ANPRM.

Dated at Rockville, Maryland, this 2d day of October 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-24630 Filed 10-8-92; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy; Pledging or Sale of Unguaranteed Portion of Loan

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 7(a) of the Small Business Act (Act) 15 U.S.C. 636(a), the Small Business Administration (SBA) makes loans and other financings (hereinafter referred to collectively as loans) on a deferred (guaranteed) basis with banks or other lending institutions. SBA can guaranty up to 90 percent of such loans depending upon the loan amount. As such, there is an unguaranteed portion of every SBA guaranteed loan. This proposed rule would permit, under prescribed procedures, on a case by case basis, and with SBA's prior written consent, either the transfer of the unguaranteed portions of SBA guaranteed loans or the pledge of the notes which evidence SBA guaranteed loans. The intent of this regulation is to make this procedure available only to those participating lenders who are financially secure, who have a history of being in compliance with applicable regulations, and who regularly use commercial lines of credit as a way to finance their lending operations.

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Comments should be mailed to: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, AA/FA, (202) 205-6490.

SUPPLEMENTARY INFORMATION: Section 7(a) of the Small Business Act (Act) 15 U.S.C. 636(a) authorizes SBA to make loans on a deferred (guaranteed) basis with banks or other lending institutions. Historically, since its enactment in 1953, section 7(a) has contained various limitations on the amount of guaranty SBA may make available to a bank or other lending institution in furtherance of the statutory objectives expressed elsewhere in that provision. As a result, there remains an unguaranteed portion of every SBA guaranteed loan, the minimum size of which is dependent upon the statutory provision under which the loan is made.

The legislative history of these limiting provisions makes it clear that Congress did not intend for SBA to guarantee 100% of a given loan, and that it did intend for the bank or lending institution making a guaranteed loan to retain a sufficient economic interest in the loan to ensure its diligence in the making, servicing and liquidating of that loan. To that end, SBA historically has promulgated various regulations and utilized various contractual provisions designed to enforce the statutory requirement that the lender of a guaranteed loan retain an economic interest in the loan reasonably commensurate with the unguaranteed portion.

In most instances, that requirement for retention of economic interest has translated into a requirement for retention of at least a part of the unguaranteed portion of the guaranteed loan by the lender. (See for example 13 CFR 120.403-7(d)) However, SBA has permitted under prescribed procedures, on a case by case basis, and with its prior written consent both the transfer by some lenders of the unguaranteed portions of loans and the pledge by other lenders of the notes which evidence SBA guaranteed loans for the

purpose of financing transactions for the benefit of those lenders. (See paragraph 12(a) of Blanket Guaranty Agreement, SBA Form (750)). The regulations proposed herewith will codify the procedures SBA has followed in those transactions so as to give its community of lenders clear guidance on when and how such financing transactions can be consummated. They are intended to facilitate the financing of the unguaranteed portions of SBA guaranteed loans only in circumstances where the lender regularly used commercial lines of credit as a way to finance its lending operations.

In this regard, SBA is considering adopting a change to its regulations applicable only for two types of Nondepository Lenders. Nondepository Lenders that would be covered under this proposal are Small Business Lending Companies which are licensed and regulated by SBA (See 13 CFR Part 120), and Business and Industrial Development Companies which are chartered under state statutes. SBA is reserving the right to deny a lender's request for its consent under these regulations if such lender is not, or in the past not been, in compliance with regulations governing SBA lending activities or any other applicable state or Federal statutory or regulatory requirements.

The procedures that would be established pursuant to this proposed regulations will be available only to those non-depository lenders which meet certain criteria. First, as a threshold matter, the lender must be financially secure. Next, the lender must presently be, and historically have been, substantially in compliance with SBA regulations. The underlying premise of the proposal is that some non-depository lenders who meet these criteria are in a good position, through the transfer or pledge of their unguaranteed portions, to generate new funds that will enable them safely to expand the number of small businesses to which they can provide financing. That purpose can only be served when SBA is satisfied that the lender has demonstrated the financial and programmatic ability to service its loans.

These proposed regulations are intended to cover either a situation in which a lender wants to pledge the notes evidencing SBA guaranteed loans, or to transfer for value the unguaranteed portions of such notes or the right to the income stream from such unguaranteed portions for the purpose of obtaining financing. The documents necessary to effectuate any such financing arrangement will differ from case to case. SBA will attempt to accommodate any reasonable proposal for such financing. However, the regulatory requirements set out below are designed to provide general conditions which must be satisfied in all such cases before SBA will accommodate any proposal with its prior written consent.

In this regard, under these proposed regulations, only a party agreeable to SBA will be permitted to hold the notes evidencing SBA guaranteed loans. Normally, SBA requires the lender to retain custody of such notes. (See 13 CFR 120.200–2) However, SBA recognizes that parties to the types of financing transactions contemplated by these proposed regulations may sometimes not be willing to permit a lender to retain the notes for reasons peculiar to the transactions. In this case, SBA will either hold the notes itself or allow an agreed upon third party, but not the party providing the credit to the non-depository lender, to hold the notes in custody under agreed upon terms and conditions.

The proposed regulations require all parties to the financing transaction to enter into a written agreement which protects SBA's interests as guarantor of a major portion of the repayment of the notes, as a precondition to SBA's prior written consent to the transaction. Any such agreement will have to indicate the mechanism by which the notes will be held and safeguarded, contain an acknowledgment of SBA's interest in the notes, and reflect the agreement by all relevant parties to recognize and uphold that interest in a way consistent with the Small Business Act, the relevant regulations promulgated thereunder and the provisions of the contractual agreement under which SBA's guaranty was given. In this regard, SBA has developed a recommended format for the requisite agreement which it will make available to any parties who wish to proceed under the regulations.

Finally, under these proposed regulations, SBA will precondition its prior written consent upon the demonstration by the participating lender of a continuing economic interest in the unguaranteed portions of the loans. In the case of a pledge, that interest is demonstrated by retention of all economic interest in the actual unguaranteed portions. In the case of a transfer, a participant lender will be required to make a satisfactory showing that it continues to be economically at risk for the unguaranteed portions in a degree sufficient in SBA's sole judgment to warrant SBA's consent. The ultimate risk of loss on the unguaranteed portions must continue to be borne by the participating lender. The proposed regulation cites a number of non-exclusive means which may be employed singly or in combination by a lender to demonstrate such risk retention.

Compliance With Executive Orders 12291, 12612, and 12778, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. ch. 35

For purposes of Executive Order 12291, SBA certifies that this proposed rule, if promulgated in final, would not be considered a major rule because it would not have an annual economic effect in excess of $100 million, it would not lead to a major increase in costs, and it would not have adverse effects on competition. SBA believes this proposed rule will lead to additional funds being made available for the purpose of lending to small business concerns. SBA is of the opinion that such increased amounts will be approximately $50 million annually.

For purposes of the Regulatory Flexibility Act, SBA certifies that this proposed rule, if promulgated in final, would not have a significant economic impact on a substantial number of small entities for the same reason that it is not a major rule.

For purposes of Executive Order 12612, SBA certifies that this proposed rule, if promulgated in final, will not have federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, SBA certifies that this proposed rule,if promulgated in final, will not have new or additional reporting or recordkeeping requirements.

For purposes of Executive Order 12778, SBA certifies that this proposed rule, to the extent practicable, is drafted in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—businesses, Small businesses.

For the reasons set forth above part 120 of title 13, Code of Federal Regulations, is proposed to be amended as follows:

PART 120—[AMENDED]

1. The authority cite for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Subpart C of part 120 is amended by adding a new § 120.301–7 to read as follows:

§ 120.301–7 Financings by Nondepository Lenders.

(a) A Nondepository Lender may pledge the notes evidencing loans or financings (hereinafter collectively loans), a portion of the repayment of which are guaranteed by SBA, or transfer for value the unguaranteed portions of loans, a portion of the repayment of which are guaranteed by SBA, if SBA gives its prior written consent to such pledging or transfer. In order for SBA to exercise its discretion under this section, the lender must be financially secure and must presently be, and historically have been, substantially in compliance with SBA's regulations or any other applicable state or Federal statutory or regulatory requirements. SBA's written consent to such a transaction will be given in SBA's sole discretion, and will be given only if the following conditions are agreed to in writing by SBA, the Nondepository Lender and all third parties whose interests are involved in such a transaction:

(1) The lender of the loans, SBA or a third party custodian agreeable to SBA, will hold all pertinent loan instruments as defined by 13 CFR 120.200–2 and SBA's blanket Guaranty Agreement (SBA Form 750), and the lender will continue to service the loans after the pledge or transfer is made.

(2) The ultimate risk of loss on the unguaranteed portions must continue to be borne by the participating lender. The lender of the loans will continue to retain an economic risk in the unguaranteed portions. Retention of such economic risk must be demonstrated to SBA's satisfaction. Such demonstration may include, but is not limited to, agreement to the following undertaking(s) and must be sufficient in SBA's sole discretion to satisfy SBA's requirement that the lender remains at economic risk for the unguaranteed portions:

(i) In the case of a sale of unguaranteed portions:

(A) Establishment of a reserve fund; and/or

(B) Retention of insurance; and/or

(C) Agreement to reacquire any unguaranteed portion of a guaranteed loan or the note evidencing in SBA guaranteed loan if the underlying loan goes into default pursuant to SBA's regulations.

(ii) In the case of a pledge of notes, retention by the lender of all economic interest in the unguaranteed portion of any loans which the notes evidence.

(3) SBA, the lender and all relevant third parties, as determined by SBA in its sole discretion, must enter into a written agreement satisfactory to SBA under which SBA's interest as guarantor of the subject loans is acknowledged and all relevant third parties agree to recognize and uphold those interests pursuant to the Small Business Act, the regulations promulgated thereunder and the contractual provisions under which SBA agreed to guaranty the loans (SBA Form 750).

(b) For purposes of this regulation the term Nondepository Lender shall mean one of the following two types of Loan Participant as that term is defined at 13 CFR 120.300:

(1) Small Business Lending Company regulated by SBA.

(2) Business and Industrial Development Company.

3. Section 120.200–2 is amended by revising the second sentence thereof to read as follows:

§ 120.200–2 Servicing guaranteed loans.

* * * Unless provided otherwise, an agreement developed pursuant to 13 CFR 120.301–7, the Lender shall hold the note, instruments of hypothecation and all other agreements, documents and instruments required in connection with such loans. * * *

4. Section 120.403–7(d) is amended by revising the first sentence thereof to read as follows:

§ 120.403–7 Limitations on preferred lenders; SBA access.

* * * * *

(d) *Sale of all or part of unguaranteed portion.* Except as otherwise agreed to by SBA pursuant to agreement developed under 13 CFR 120.301–7, a Preferred Lender is prohibited from selling all or part of any part of the unguaranteed portion of a PLP loan when such unguaranteed portion is 20 percent of the loan. * * *

Dated: September 24, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–24530 Filed 10–8–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–101–91]

RIN 1545–AQ28

Taxation of Fringe Benefits and Exclusions From Gross Income of Certain Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments relating to the taxation and valuation of fringe benefits under section 61 of the Internal Revenue Code. These proposed amendments update previous guidance concerning the valuation of an employee's personal use of employer-provided fuel when an employer-provided automobile is valued pursuant to the automobile lease valuation rule. The proposed regulations affect employees receiving this fringe benefit and provide guidance to employers and employees to help determine their federal tax liability.

DATES: Written comments and requests for a public hearing must be received by November 9, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE–101–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Marianna Dyson, at 202–622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 61 of the Internal Revenue Code of 1986 (Code). The amendments pertain to the valuation of employer-provided fuel under the automobile lease valuation rule of § 1.61–21(d) of the regulations.

Explanation of Provisions

The final fringe benefit regulations issued in July 1989 and effective for benefits furnished on or after January 1, 1989, provide that in valuing the personal use of automobiles under § 1.61–21(d) of the regulations, the Annual Lease Values do not include the fair market value of fuel provided by the employer. Thus, fuel consumed for any personal miles driven must be valued separately for inclusion in income. Section 1.61–21(d)(3)(ii)(A).

Under § 1.61–21(d)(3)(ii)(B), employer-paid fuel provided in kind to employees for personal use may be valued at fair market value or, in the alternative, at 5.5 cents per mile. If the cost of the fuel is reimbursed by or charged to an employer, the value of the fuel is its fair market value, which is generally the amount of the actual reimbursement or

amount charged, provided the purchase of the fuel is at arm's-length. Section 1.61–21(d)(3)(ii)(C).

For employers with fleets of at least 20 automobiles, § 1.61–21(d)(3)(ii)(D) sets forth two additional methods for valuing fuel for personal use. The general method provides that employers who reimburse employees for the cost of fuel or allow employees to charge the employer for the cost of fuel may value the fuel by reference to the employer's "fleet-average cents-per-mile fuel cost." The fleet-average cents-per-mile fuel cost is equal to the fleet-average per-gallon fuel cost divided by the fleet-average miles-per-gallon rate. The average per-gallon fuel cost and the miles-per-gallon rate are determined by averaging the per-gallon fuel costs and miles-per-gallon rates of a representative sample of the automobiles in the fleet equal to the greater of ten percent of the automobiles in the fleet or 20 automobiles for a representative period. Section 1.61–21(d)(3)(ii)(D).

In lieu of calculating the "fleet-average cents-per-mile fuel cost" under the general method of paragraph (d)(3)(ii)(D) of § 1.61–21, employers with fleets of at least 20 automobiles that use the fleet-average valuation rule of paragraph (d)(5)(D) may use the 5.5 cents-per-mile option of paragraph (d)(3)(ii)(B), if determining the amount of the actual reimbursement or the amount charged for the purchase of fuel would impose unreasonable administrative burdens on the employer ("the alternative method").

In no event, however, may an employer with a fleet of at least 20 automobiles use either the general or alternative method of paragraph (d)(3)(ii)(D) of § 1.61–21 unless the requirements of paragraph (d)(5)(v)(D) are also met. This paragraph contains the rules for using a fleet-average value in calculating the Annual Lease Values of the automobiles in the fleet. In particular, it specifies that the fair market value of each vehicle in the fleet may not exceed $16,500 (as adjusted pursuant to section 280F(d)(7) of the Code).

For calendar years prior to 1991, Notice 89–110, 1989–2 C.B. 447, expanded the availability of the 5.5 cents-per-mile option to employers with fleets of at least 20 automobiles that satisfy the requirements of paragraph (d)(5)(v)(D), regardless of whether they are actually using the fleet-average valuation rule of paragraph (d)(5)(v). Notice 91–41, 1991–51 I.R.B. 63, provides that the 5.5 cents-per-mile option as provided in Notice 89–110 is available in calendar year 1991.

Notice 89–110 did not eliminate the requirement that the employer must demonstrate that it is using the 5.5 cents-per-mile option because determining the amount of the actual reimbursement or the amount charged for the purchase of fuel would impose unreasonable administrative burdens on the employer. As a practical matter, however, it is believed that fleet operators with at least 20 automobiles would have little difficulty in demonstrating the existence of unreasonable administrative burdens.

The proposed amendments to § 1.61–21(d)(3)(ii) provide that, for calendar year 1992, employers with fleets of at least 20 automobiles may continue to use the 5.5 cents-per-mile rate as provided in Notice 89–110 and extended in Notice 91–41. In addition, the proposed amendments provide that employers with fleets of at least 20 automobiles may value fuel that is reimbursed by or charged to the employer by reference to the alternative cents-per-mile rate without regard to the rules in paragraph (d)(5)(v)(D) concerning the value of automobiles in the fleet, and without the necessity of demonstrating the existence of administrative burdens.

Finally, the proposed amendments provide that for calendar years subsequent to 1992 the Service will announce the appropriate cents-per-mile rate for valuing fuel that is provided in kind or that is reimbursed by or charged to employers with fleets of at least 20 automobiles. The announcement will appear in the annual revenue procedure concerning the optional standard mileage rates used in computing deductible costs for operating a passenger automobile for business.

The rules under paragraph (d)(3)(ii) of § 1.61–21, as amended by this Notice, will enable employers with fleets of at least 20 automobiles to value the personal use of employer-paid fuel in any of the following ways: (1) Fuel provided in kind may be valued at fair market value based on all the facts and circumstances; (2) fuel that is provided in kind may be valued at the cents-per-mile rate applicable to the particular year; (3) fuel, the cost of which is reimbursed by or charged to the employer, may be valued based on the amount of the actual reimbursement or the amount charged; (4) fuel, the cost of which is reimbursed by or charged to the employer, may be valued based on the fleet-average cents-per-mile fuel cost; or (5) fuel, the cost of which is reimbursed by or charged to the employer, may be valued based on the applicable cents-per-mile rate without regard to the fair market value of any automobile in the fleet or the administrative burdens requirement.

The amendments are proposed to be effective for benefits provided in calendar years beginning after December 31, 1992. However, because of the number of inquiries the Service has received from taxpayers expressing uncertainty as to the scope of the guidance in Notice 89–110 concerning employer-provided fuel, the amendments may be relied upon as if they had been included in the final regulations published on July 6, 1989.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. Written comments and requests for a hearing must be received by November 9, 1992. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Marianna Dyson, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.61–1 through 1.67–4T

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.61–21 is amended by revising paragraphs (d)(3)(ii) (A), (B), and (D) as follows:

§ 1.61–21 Taxation of fringe benefits.

* * * * *

(d) * * *

(3) * * *

(ii) *Fuel excluded*—(A) *In general.* The Annual Lease Values do not include the fair market value of fuel provided by the employer, whether fuel is provided in kind or its cost is reimbursed by or charged to the employer. Thus, if an employer provides fuel for the employee's personal use, the fuel must be valued separately for inclusion in income.

(B) *Valuation of fuel provided in kind.* Fuel provided in kind may be valued at fair market value based on all the facts and circumstances or, in the alternative, may be valued at 5.5 cents per mile for all miles driven by the employee in calendar years 1989 through 1992. For subsequent calendar years, the applicable cents-per-mile rate is the amount specified in the annual Revenue Procedure concerning the optional standard mileage raes used in computing deductible costs of operating a passenger automobile for business. However, fuel provided in kind may not be valued at the alternative cents-per-mile rate for miles driven outside the Unied States, Canada, or Mexico.

* * * * *

(D) *Additional methods available to employers with fleets of at least 20 automobiles*—(*1*) *Fleet-average cents-per-mile fuel cost.* If an employer with a fleet of at least 20 automobiles (regardless of whether the requirements of paragraph (d)(5)(v)(D) of this section are met) reimburses employees for the cost of fuel or allows employees to charge the employer for the cost of fuel, the fair market value of fuel provided to those automobiles may be determined by reference to the employer's fleet-average cents-per-mile fuel cost. The fleet-average cents-per-mile fuel cost is equal to the fleet-average per-gallon fuel cost divided by the fleet-average miles-per-gallon rate. The averages described in the preceding sentence must be determined by averaging the per-gallon fuel costs and miles-per-gallon rates of a representative sample of the automobiles in the fleet equal to the greater of ten percent of the automobiles in the fleet or 20 automobiles for a representative period, such as a two-month period.

(*2*) *Alternative cents-per-mile method.* In lieu of determining the fleet-average cents-per-mile fuel cost under paragraph (d)(3)(ii)(D)(*1*) of this section, an employer with a fleet of at least 20 automobiles may value the fuel provided for these automobiles by reference to the cents-per-mile rate set forth in paragraph (d)(3)(ii)(B) of this section (regardless of whether the requirements of paragraph (d)(5)(v)(D) of this section are met).

* * * * *

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–24551 Filed 10–8–92; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 300 and 308

[Docket No. 115 CCR; FRL–4520–7]

Recovery of Costs for CERCLA Response Actions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is extending the public comment period on the proposed rule entitled, "Recovery of Costs for CERCLA Response Actions," which appeared in the **Federal Register** at 57 FR 34742–34755 (August 6, 1992). This extension of the public comment period is provided to allow commenters an opportunity to complete their review of and comments on the Agency's proposed rule.

DATES: EPA will accept public comments on the proposed rule postmarked on or before November 4, 1992. Comments postmarked after the close of the extended comment period will be stamped "late" and will be considered only to the extent practicable in the final rule.

ADDRESSES: Comments should be addressed to Francis J. Biros, CERCLA Enforcement Division (Mail Code: 5502–G), Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket: Copies of all materials relevant to this rulemaking, including comments received during the public comment period, are contained in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 115 CCR). The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding federal holidays. The public must make appointments to review the docket materials and should call the docket clerk at 202–260–3046 for appointments.

FOR FURTHER INFORMATION CONTACT: For general information about this proposed rulemaking, contact Sally Martiny, U.S. Environmental Protection Agency (5502–G), at 703–603–8920, or the RCRA/CERCLA Hotline 1–800–424–9346 tollfree (703–920–9810 in the Washington, D. C. metro area).

SUPPLEMENTARY INFORMATION: On August 6, 1992, EPA proposed amendments to certain provisions of the National Contingency Plan, 40 CFR part 300, and proposed new regulations related to cost recovery actions authorized under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The proposed regulation would clarify for purposes of response actions taken by EPA: what costs are recoverable, including direct costs, indirect costs, and interest; how these costs are determined; what information will support EPA's cost recovery efforts by describing the response action taken and providing an accurate accounting of all costs incurred; and, certain terms in the CERCLA statute of limitations for cost recovery actions.

The proposed regulation is intended to clarify certain aspects of the cost recovery process and thereby avoid unnecessary costs and delays involved in that process whether they occur during settlement negotiations or administrative or judicial proceedings with potentially responsible parties. See 57 FR 34742–34755 for a more detailed explanation of the Agency's proposal.

Since publication, the Agency has received requests from several commenters to extend the comment period. These requests noted that additional time is needed to review the proposed regulation and related docket materials. The Agency considered these requests and has decided to extend the comment period for 30 days. The public comment period for the proposed regulation was originally scheduled to end on October 5, 1992. Today's notice extends the public comment period for the proposed regulation for 30 calendar days until November 4, 1992 to allow commenters an opportunity to finalize their review and comments on the Agency's proposed cost recovery regulation.

Dated: September 30, 1992.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER).

[FR Doc. 92–24672 Filed 10–8–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Plant Astrophytum Asterias (Star Cactus) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the plant *Astrophytum asterias* (star cactus), as an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This cactus is known from only two sites, one in Starr County, Texas, and the other in Tamaulipas, Mexico. Only about 2100 plants are known in the wild. The species is threatened by collecting, conversion of its habitat to agriculture or improved pasture, and habitat alteration from severe overgrazing. This proposal, if made final, would implement Federal protection provided by the Act for star cactus. Critical habitat is not being proposed. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 8, 1992. Public hearing requests must be received by November 23, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tim Cooper, at the above address (Telephone 512/888-3346).

SUPPLEMENTARY INFORMATION:

Background

Star cactus was first collected in Tamaulipas, Mexico, by Baron von Karwinsky in 1843, and was named *Echinocactus asterias* by Joseph Zuccarini in 1845. In 1868, C.A. Lemaire described *Astrophytum prismaticum* and included *Echinocactus asterias* and several other Mexican species in the new genus *Astrophytum*. Thus, *Echinocactus asterias* Zuccarini became *Astrophytum asterias* (Zuccarini) Lemaire. Since these initial treatments, various taxonomic experts have placed star cactus in one genus or the other. The Service takes no position on the correct generic placement of star cactus, but will use the name *Astrophytum asterias* because of its prevalence in most current horticultural cactus literature.

Astrophytum asterias is a small spineless cactus. It is disk- or dome-shaped, 2–15 cm (1–6 in) across, up to 7 cm (3 in) tall, brownish or dull green, and often speckled with a covering of tiny white scales. Vertical grooves divide the main body into eight vaguely triangular sections, each section marked with a central line of circular indentations filled with straw-colored to whitish wooly hairs. Flowers are yellow with orange centers, and up to about 5 cm (2 in) in diameter. Fruits are green to grayish-red, about 1.25 cm (0.5 in) long, oval, and fleshy (Damude and Poole 1990).

Star cactus is a strikingly attractive plant that has been a favorite in the cactus and succulent trade for many years. Plants are easily grown from seed and propagation techniques have been studied in detail (Martin *et al.* 1971, Backeberg 1977, Pilbean 1987, Minnich and Hutflesz 1991). In a greenhouse environment, plants grown from seed are consistently hardier and more disease resistent than plants taken from the wild, which tend to be highly sensitive to cold and excess moisture. Cultivated plants of star cactus probably outnumber those in the wild many times. Despite relatively easy propagation and the superior quality of cultivated plants for horticultural purposes, field collected plants of star cactus still enter the commercial market. In a recent survey of the cactus trade in Texas, approximately 400 field collected star cactus plants were found at one nursery (Damude and Poole 1990).

The star cactus grows at low elevations in the grasslands and shrublands of the Rio Grande Plains or the Tamaulipan thornshrub. Originally the vegetation in this area was likely a subtropical grassland, perhaps with scattered trees. Now, because of fire suppression and severe overgrazing, much of the area has been invaded with thorny shrub and tree species. The habitat of star cactus in the original grassland is unclear. Today the species is found in sparse, fairly open brushland. It is most often found in the partial shade of other plants or rocks, growing on gravelly, saline clays or loams overlaying the Tertiary Catahoula and Frio formations. The Texas site is in a creek drainage (Damude and Poole 1990).

Much of the probable native habitat of star cactus has been converted to agriculture or improved pasture. In the area where plants presently occur, pasture improvement is done by clearing the shrubs and then planting buffelgrass (*Cenchrus ciliaris*). This aggressive non-native grass forms dense stands for several years after which the grass is reduced by grazing and shrubs begin returning. The landscape is, therefore, a mosaic of buffelgrass pasture and shrub stands of various ages. It is unlikely star cactus could survive this land management regime. Much of the probable suitable habitat in Mexico has been converted to corn fields or orange groves (Sanchez-Mejorada, *et al.* 1986).

Historically, star cactus occurred in Cameron, Hidalgo, and Starr Counties in south Texas, and the adjacent states of Nuevo Leon, and Tamaulipas in Mexico. Presently, star cactus is known from only one locality in Texas and one in Tamaulipas, both privately owned, with only about 2,100 plants known in the wild (Damude and Poole 1990). The Nuevo Leon site is believed to have been extirpated by collectors, and the Tamaulipas site has been reduced to very few individuals (Sanchez-Mejorada, *et al.* 1986).

Star cactus was included (under the name *Echinocactus asterias*) in category 2 in the September 27, 1985, and February 21, 1990, **Federal Register** notices (50 FR 39526 and 55 FR 6184) of plants under review for threatened or endangered classification. Category 2 includes those taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. A status report on star cactus was completed December 1, 1990 (Damude and Poole 1990). This report provided sufficient information on the biological vulnerability and threats to star cactus to support a category 1 status and proposal to list the species as endangered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Astrophytum asterias* (Zuccarini) Lemaire are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Several common range management practices threaten the present habitat of star cactus. Root-plowing or other mechanical or chemical brush clearing activities, introduction of aggressive exotic grass species such as buffelgrass, suppression of the natural fire cycle, and excessive livestock numbers may all destroy or significantly alter the natural habitat (Damude and Poole 1990). Brush has been mechanically cleared in the past on the site of the Texas population, altering the habitat and possibly destroying many plants. Part of the Texas population is bisected by a paved road, and plants may have been destroyed during construction. Any potential road widening would present a threat to the population, as would the management practice of roadside pesticide or herbicide use (Damude and Poole 1990). Most of the historic range of star cactus in Mexico no longer contains suitable habitat because the natural vegetation has been destroyed and the land is under cultivation for oranges or corn. In Mexico today, the plant is restricted to rockier sites less threatened by cultivation and these sites are usually heavily grazed. Observers have noted that grazing practices are slowly altering the natural vegetation (Sanchez-Mejorada, *et al.* 1986).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Star cactus is highly prized by cactus enthusiasts for its rarity and unusual appearance. Though the plant has been in cultivation since the 1930's, and propagated material is available for sale, wild collected plants remain on the market. A recent survey of the cactus trade in Texas revealed 400 field dug specimens of star cactus at a Texas nursery, these presumably from Mexico. In addition to its desirability for horticultural collections, the plant has been reported to be used as a hallucinogen and to be actively sought in the wild for this purpose (E. Haner, Soil Conservation Service, Habbronville, Texas, *in litt.* 1992). The one known population in Nuevo Leon, Mexico is believed to be extirpated due to collecting. The known population in Tamaulipas, Mexico had many large individuals up to 15 cm (5 in) in diameter in 1978, but when visited in 1985 no plants remained over 7 cm (3 in) in diameter, and fewer than 100 individuals could be found in an extensive search (Sanchez-Mejorada, *et al.* 1986). Fewer than 2,100 individuals are known in the wild (Damude and Poole 1990).

C. Disease or Predation

Occasionally plants in deteriorated condition have been observed, but disease has not been confirmed in the known populations. No evidence of predation has been noted (Damude and Poole 1990).

D. The Inadequacy of Existing Regulatory Mechanisms

Commercial trade in field collected material of star cactus is not presently prohibited in the United States by Federal or Texas State law. Star cactus is listed in appendix I of the Convention on International Trade in Endangered Species of wild Fauna and Flora (CITES), 50 CFR 23.23, but protection under this treaty is limited to international trade. Mexico also has laws prohibiting the export of its native cacti. However, enforcement of Mexican export laws and CITES protections in this near-border area can be difficult. Listing under the Act would provide protection by prohibiting interstate commerce in this species without a permit, and would make it a Federal violation to collect this plant in knowing violation of any State law or regulation, including State criminal trespass law.

E. Other Natural or Manmade Factors Affecting its Continued Existence

With fewer than 2,100 individuals known in two populations, the species may well be vulnerable to extinction because of lowered viability and genetic variability in the wild.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Astrophytum asterias* as endangered. The status of endangered is appropriate because of the species' limited distribution, low population numbers, and imminent threats of collecting and habitat destruction.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary proposed critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the "Summary of Factors Affecting the Species," star cactus is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make star cactus more vulnerable and increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent or beneficial to the species to determine critical habitat for star cactus.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibition against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its

critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Some Federal actions that may affect this species include soil conservation and range improvement recommendations by the Soil Conservation Service to private landowners, the funding of these activities by the Agricultural Stabilization and Conservation Service, and the registration of herbicides and pesticides for rangeland use by the Environmental Protection Agency.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to move and reduce to possession the species for areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

Star cactus is a popular species with cactus and succulent enthusiasts and considerable commercial trade exists. The vast majority of trade involves plants artificially propagated from seed. However, some field collected plants are also being offered for sale (Damude and Poole 1990). Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358-2104).

On October 22, 1987, *Astrophytum asterias* was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 50 CFR 23.23. The effect of this action is that both export and import permits are generally required before international shipment of this species may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival. Generally, the import or export cannot be allowed if it is for primarily commercial purposes. If plants are certified as artificially propagated, however, international shipment requires only export documents under CITES, and commercial shipments may be allowed.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to: Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Backeberg, C. 1977. Cactus Lexicon, Blandford Press, Poole, Dorset, United Kingdom.

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Minnich, W.S. and F. Hutfless. 1991. Cacti and succulents for the Amateur. Cactus and Succulent Journal (U.S.) 63:122-123.

Pilbean, J. 1987. Cacti for the Connoisseur: A guide for growers and collectors. Timber Press, Portland, Oregon.

Sanchez-Majorada, H., E. Anderson, N. Taylor, and R. Taylor. 1988. Succulent Plant Conservation Studies and Training in Mexico. World Wildlife Fund, Washington, DC.

Zuccarini, J.G. 1845. Act. Acad. monac.: *Echinocactus asterias*. Abh. Bayer. Akad. Wiss. Munchen 4(2):13.

Authors

The primary authors of this proposed rule are Tim Cooper, U.S. Fish and Wildlife Service, Ecological Services Corpus Christi Field Office (see ADDRESSES) Telephone 512/888-3346 and Kathryn Kennedy, U.S. Fish and Wildlife Service, Ecological Services Austin Field Office, 611 East 6th Street, Austin, Texas 78701, Telephone 512/482-5436.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Cactaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) * * *

* * * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Cactaceae—Cactus family:						
*	*	*	*	*	*	
Astrophytum asterias (=*Echinocactus asterias*)	Star cactus	U.S.A. (TX); Mexico	E		NA	NA
*	*	*	*	*	*	

Dated: September 14, 1992.

Bruce Blanchard

Director, Fish and Wildlife Service.

[FR Doc. 92-24664 Filed 10-8-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 197
Friday, October 9, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 2, 1992.

The Department of Agricultural has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

Extenion

- Forest Service

Forest Industries Data Collection System
Annually
Businesses or other for-profit; 2,694 responses; 2,143 hours
Eric H. Wharton, (215) 975–4052

Extension

- National Agricultural Statistics Service

Mink Survey
Annually
Farms; 700 responses; 117 hours
Larry Gambrell, (202) 720–5778

New Collection

- Animal Plant & Health Inspection Service

Retrospective Study on Repopulation of Scrapie Contaminated Premises
One time only
State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations;
55 responses; 110 hours
Daniel E. Harpster, (301) 436–6954

Reinstatement

- Farmers Home Administration

7 CFR 1980–E, Business or Industrial Loan Program
FmHA 449–1, 2, 4, 22, 1980–68, 70, 71, 73
Recordkeeping; On occasion; Monthly; Quarterly
State or local governments; Businesses or other for-profit; Small businesses or organizations; 9,297 responses; 55,638 hours
Jack Holston, (202) 720–9736

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 92–24588 Filed 10–8–92; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Isco, Inc.; Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Isco, Inc., 4700 Superior Avenue, Lincoln, Nebraska, on U.S. Patent Application Serial No. 07/536,861, "Supercritical Fluid Extraction Enhancer," filed June 12, 1990. Notice of Availability for licensing this invention was given in the **Federal Register** on January 31, 1991.

DATES: Comments must be received within 60 calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301–504–6786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 92–24660 Filed 10–8–92; 8:45 am]

BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 92–110–2]

Veterinary Services Programmatic Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice

SUMMARY: We are advising the public of the proposed scope of study of a programmatic environmental impact statement (EIS) we intend to prepare for the Veterinary Services Program of the Animal and Plant Health Inspection Service. This notice identified potential issues to be analyzed in the EIS, and requests public comment on these and other issues.

DATES: Consideration will be given only to comments received on or before November 23, 1992.

ADDRESSES: Please send an original and three copies of your comments to Mr. Carl Bausch, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–110–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Bausch, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8565.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, intends to prepare a programmatic environmental impact statement on the Veterinary Services Program. A Notice of Intent was published in the **Federal Register** on July 23, 1992 (57 FR 32771–32772, Docket No. 92–110–1).

The Veterinary Services Program, which is responsible for protecting livestock and poultry from certain diseases, comprises four major activities: prevention, surveillance, control, and eradication. Implementation is in accordance with applicable Federal, State, and local authorities. The disease prevention activities administered by Veterinary Services are designed to reduce or prevent certain diseases from entering the United States or spreading to other States. Cooperation with States also prevents intrastate movement of infected and exposed animals. Most diseases for which Veterinary Services administers programs are listed by the U.S. Animal Health Association or the Office of International Epizootics.

The programmatic environmental impact statement will focus on the environmental effects of activities designed to deal with communicable diseases of livestock and poultry and to examine alternatives and the effects of those alternatives on the environment. The environmental impact statement also will serve as the document to which APHIS can tier an environmental assessment, and others may use as legally permissible, should the need arise to make decisions on program plans or a site-specific emergency.

Producers of livestock and poultry, land use planners, financiers, and others interested in animal production should actively participate in the environmental impact statement process. They will find it useful for raising disease issues to be considered when planning and designing production facilities and management strategies. States should find this process useful in their planning for management of diseases (including outbreaks and Federal-State cooperative disease eradication programs) and, insofar as legally permissible, will be able to tier their disease program to the environmental impact statement.

This notice of proposed scope of study identifies potential issues to be analyzed in the environmental impact statement. Public input regarding the issues discussed and the identification of any other issues is requested.

The Scoping Process

The initial step in the process of developing an environmental impact statement (EIS) is issue scoping. Scoping includes the solicitation of public comments in scoping meetings or by written comments. APHIS is inviting written comments from the interested public; Federal, State and local agencies; industry; environmental groups; and Federal and State agencies that have either jurisdiction by law or special expertise regarding any program issue or environmental impact that should be discussed in this EIS. The comments should identify those Veterinary Services activities believed to have consequential impact on the environment. Information obtained from scoping will be evaluated and used to target issues, including alternative means of accomplishing program goals, for study in the context of the EIS process. Information obtained by the scoping process also will be used to identify any environmental statute, regulation, policy, or custom of other interested parties or State or Federal agencies that might conflict with APHIS regulations, policies, or procedures related to disease prevention, surveillance, control, or eradication.

The Veterinary Services Program

If animal diseases are not continuously abated by public and private interests, the effects on the human environment could be severe. There are over 100 diseases and pests that can spread from animals to man and an even larger number that can spread from livestock and poultry to wild animals. When certain diseases are discovered in the United States, it sometimes is necessary to control or eradicate the disease by: destroying all infected and exposed animals; disposing of carcasses, manure, and waste in a biologically safe manner; and cleaning and disinfecting the premises using chemicals approved by the Environmental Protection Agency (EPA) or other appropriate devices. Insects and other animals capable of transmitting the disease (i.e., vectors and reservoirs) may need to be eliminated with pesticides, poison baits or other appropriate means.

In general, disease prevention and surveillance practices are less likely to affect the environment than control measures. Prevention and surveillance measures minimize the spread of diseases and pests. To this end, Veterinary Services regulates the movement of animals and animal products. Requirements for inspection, testing, treatment, quarantine and other similar procedures are designed to detect as many of the infected/infested carrier animals as possible. It is not possible to detect all animals that are infected with pathogenic microorganisms or infested with parasites. Some products derived from these carrier animals also may contain viable pathogens which can be responsible for the further spread of disease. Therefore, there is always a risk of spreading diseases with the movement of animals and animal products that have not been treated in a manner that would inactivate all microorganisms.

Information obtained in the scoping process will be carefully examined for ideas, concepts, and strategies that will enhance prevention and surveillance without increasing environmental impact.

In addition to adhering to all Federal statutes, APHIS has identified the following issues for closer scrutiny to determine whether they should be analyzed in the EIS:

- Pesticides used for vector and reservoir control. The pesticides used are those registered by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and used according to the label. Nevertheless, pesticides or their degradation products could accumulate over time, and/or run off or leach into surface and ground waters near dipping and spraying operations. Additionally, there may be concern for the safe storage and disposal of pesticides.
- Cleaning and disinfecting compounds. These chemicals could accumulate near cleaning and disinfecting sites if the rate of use is greater than the rate of degradation. Runoff and leaching of these compounds

could contaminate surface and ground water. Areas potentially susceptible to environmental accumulation include areas where animals have been destroyed and that have subsequently been cleaned and disinfected, and areas where trucks, planes and other vehicles used in the transport or holding of animals are cleaned and disinfected. There also may be concern for the safe storage and disposal of these compounds.

• Disposal of carcasses and contaminated manure and debris. This may be of particular concern when disposal is on the farm-of-origin. Such disposal must ensure that the decomposing materials do not contribute to the further spread of disease or to environmental degradation or contamination. These activities must be conducted in accordance with all appropriate Federal, State, and local statutes.

Comments on this notice are welcome. Following the comment period, a notice of final scope, reflecting, as appropriate, views and opinions submitted for consideration, will be published in the **Federal Register**. Any additional opportunities for public participation will be announced in the **Federal Register**.

Done in Washington, DC, this 5th day of October 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-24661 Filed 10-8-92; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

RIN 0560-AC41

1992 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-36), Virginia Sun-Cured (Type 37), and Cigar-Filler and Binder (Types 42-44, 53-55) Tobaccos

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of determination of 1992 price support levels for five kinds of tobacco.

SUMMARY: This notice sets forth the levels of price support for (1) fire-cured (type 21), (2) fire-cured (types 22-23), (3) dark air-cured (types 35-36), (4) Virginia sun-cured (types 37), and (5) cigar-filler and binder (types 42-44; 53-55) tobacco for the 1992 marketing year. The levels of price support for these kinds of tobacco are required to be determined under the provisions of section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: February 28, 1992.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller or Kenneth Robison, Tobacco and Peanuts Analysis Division, USDA, ASCS, room 3754-S, P.O. Box 2415, Washington, DC 20013, or call (202) 720-3734.

A Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Robison.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1, and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This notice has been reviewed in accordance with Executive Order 12778. The provisions of this notice do not preempt State law, are not retroactive, and do not involve administrative appeals.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3105, subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Determination of Levels of Price Support

Price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1992 crop of the five kinds of tobacco which are the subject of this notice, the respective maximum level of support is determined in accordance with section 106 of the Agricultural Act of 1949, as amended (the Act).

Section 106(f)(6)(A) of the Act provides that the level of support for the 1992 crop of a kind of tobacco shall be the level in cents per pound at which the 1991 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1992 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1991 crop, as determined under section 106(b) of the Act, as that difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii).

Accordingly, under section 106(f)(6)(A) of the Act, the support level for the 1992 crop of such kind of tobacco will be the 1991 level, adjusted by the difference between (plus or minus) the 1991 "basic support level" and the 1991 "basic support level."

In addition, section 106(f)(6)(B) of the Act provides that to the extent requested by the board of directors of an association through which price support is made available to producers ("producer association") the Secretary may reduce the support level determined under section 106(f)(6)(A) for any kind of tobacco (except flue-cured and burley) to more accurately reflect the market value and improve the marketability of tobacco. Accordingly, the price support level for a kind of tobacco set forth in this notice could be reduced if such a request is made.

The levels of price support for the 1991 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A), are as follows:

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	113.2
KY-TN fire-cured (types 22-23)	136.7
Dark air-cured (types 35-36)	116.9
Virginia sun-cured (type 37)	117.7
Cigar-filler and binder (types 42-44, 53-55)	101.4

Section 106(b) of the Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year. For the 1992 crop year:

(1) Average parity indexes for calendar years 1988–1991 are:

Year	Index	Year	Index
1988	1167	1989	1221
1989	1221	1990	1265
1990	1265	1991	1298
Average	1218	Average	1261

(2) Average parity index, calendar year 1959=298.

(3) 1991 ratio of 1218 to 298=4.09; 1992 ratio of 1261 to 298=4.23.

(4) Ratios times 1959 support levels are:

Kind and type	Support level 1959 ¢/lb.	Ratio 1991	Ratio 1992	Basic support level 1991 (¢/lb.)	Basic support level 1992 (¢/lb.)	Increase from 1991 to 1992 100%	Increase from 1991 to 1992 65%
VA 21	38.8	4.09	4.23	158.7	164.1	5.4	3.5
KY-Tenn 22–23	38.8	4.09	4.23	158.7	164.1	5.4	3.5
KY-Tenn 35–36	34.5	4.09	4.23	141.1	145.9	4.8	3.1
VA 37	34.5	4.09	4.23	141.1	145.9	4.8	3.1
Cigar-filler and binder 41–44, 54–55	28.6	4.09	4.23	117.0	121.0	4.0	2.6

Section 106(d) of the Act provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind to tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco.

For the 1992 crops, burley and flue-cured support levels were increased by 100 percent of the formula increase to within 13 percent of average market prices. For the remaining five kinds of tobacco, prices are further above the support level, and loan receipts remain low. However, loan placements rose sharply to 14 percent of sales compared with 0.3 percent in 1990/91 for fire-cured (type 21). For five-cured tobacco (type 21), and Virginia sun-cured (type 37), the 1992 support levels consist of the 1991 support levels increased by 65 percent of the difference between the 1992 "basic support level" and the 1991 "basic support level." The supply-use ratios suggest adequate supplies, except for dark air-cured (type 35–36) tobacco, for which supplies are tight. For fire-cured (types 22–23), dark air-cured (types 35–36), and cigar filler and binder (types 42–44; 53–55) tobaccos, the 1992 support level for each kind consists of the 1991 level of support increased by the difference between the 1992 "basic support level" and the 1991 "basic support level."

Determinations

Accordingly, the Secretary of Agriculture has determined, in accordance with section 106(f)(6)(A) and 106(f)(8)(A) of the 1949 Act, the following price support levels for the 1992 crops of Virginia fire-cured (type 21), Kentucky-Tennessee fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar filler and binder (types 42–44, 53–55).

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	136.7
Kentucky-Tennessee fire-cured (types 22–23)	142.1
Dark air-cured (types 35–36)	121.7
Virginia sun-cured (type 37)	120.8
Cigar filler and binder (types 42–44, 53–55)	105.4

Authority: (15 U.S.C. 714b, 714c); (7 U.S.C. 1441, 1445).

Signed at Washington, DC on October 2, 1992.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–24590 Filed 10–8–92; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) has conducted administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. The reviews cover nine manufacturers/exporters which exported the subject merchandise to the United States, and the periods April 1, 1983 through March 31, 1984 and April 1, 1984 through March 31, 1985. We determine dumping margins to range from 0.02 percent to 43.29 percent for the period April 1, 1983 through March 31, 1984 and 0.00 percent to 43.29 percent for the period April 1, 1984 through March 31, 1985.

EFFECTIVE DATE: October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1991, the Department published in the **Federal Register**, its preliminary results of the administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (56 FR 34174). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). We have reviewed the following companies for the periods April 1, 1983 through March 31, 1984 and April 1, 1984 though March 31, 1985: Caddy Corporation of America (Caddy); Hitachi Metals Techno, Ltd. and Hitachi Maxco, Ltd. (Hitachi); Izumi Chain Manufacturing Co., Ltd. (Izumi); Kaga Kogyo K.K. (Kaga); Kaga/APC; Pulton Chain Co., Inc. (Pulton); Pulton/HIC; Pulton/I&OC; and Takasago RK Excel Co., Ltd. (Takasago).

Scope of Review

Imports covered by these reviews are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle" as used in these reviews includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

The reviews also cover leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitchers. The reviews further cover chain model numbers 25 and 35. From 1983 through 1985, roller chain, other than bicycle, was classified under item numbers ranging from 652.1300 through 652.3800 of the Tariff Schedules of the United States Annotated (TSUSA). This product is currently classified under item numbers 7315.11.00 through 7315.12.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS categories are provided for convenience and customs purpose only. The written description remains dispositive.

These reviews cover the above nine manufacturers/exporters of roller chain, other than bicycle, from Japan to the United States for the periods April 1, 1983 through March 31, 1984 and April 1, 1984 through March 31, 1985.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments and/or rebuttal comments from the American Chain Association (ACA), the petitioner in these proceedings, Hitachi, Kaga Kogyo, Pulton and Takasago.

A. General Comments

Comment 1: Takasago argues that the age of these reviews and the long delay between the initial questionnaire response and the supplemental questionnaires should be taken into consideration when the Department calculates the dumping margins or makes any determination with regard to the use of best information available (BIA).

Department's Position: The Department considered both the age of these reviews and the delay in sending out supplemental questionnaires in conducting several aspects of these reviews. As stated in our preliminary results, the age of these reviews was one of the factors we considered in deciding to calculate annual foreign market values (FMVs). Each response was carefully reviewed before sending out any supplemental request for information, and the Department, for the convenience of the responding companies, increased the number of sales that could be submitted on diskette rather than computer tape.

Nonetheless, the Department must properly and consistently administer the antidumping law, and the failure of certain respondents to provide questionnaire responses, or to otherwise participate in these reviews, cannot be dismissed because of the delay in completing the reviews. The failure of certain respondents to supply the relevant prices and any information necessary for the proper calculation of a possible margin cannot be ignored. In such cases, the Department must resort to the use of BIA in accordance with section 776(c) of the Tariff Act.

Comment 2: Hitachi argues that companies that cooperated with the Department should not be subject to the same punitive BIA rate as those which failed to participate in the proceeding or respond to Departmental requests. Petitioner argues that, even for firms that do participate in the proceedings, certain glaring deficiencies or the omissions of large amounts of data should only be dealt with by using a punitive BIA.

Department's Position: We agree that, in general, companies that cooperate with the Department during the proceeding need not always be subject to the same BIA rate as those that do not. However, we disagree with any inference that BIA need not be adverse. The courts have consistently recognized that the Department may use the BIA rule as a necessary tool in order to complete its administrative reviews and encourage cooperation by respondents. (See *Atlantic Sugar, Ltd.* v. *United States*, 744 F.2d 1556 (Fed. Cir. 1984)). As a result, the best information rule is basically a rule of reasonable adverse inference, and by definition, requires the use of adverse assumptions. (See *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185 (Fed. Cir. 1990)).

Section 776(c) of the Act requires the Department to use the best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." In deciding what to use as best information available, the Department may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department may determine on a case-by-case basis what best information available is.

The Department generally applies the following two tier approach to BIA:

1. When a company substantially cooperates with the Department's requests for information, but fails to provide all of the information necessary to perform the required calculations, or fails to provide all of the information in a timely manner or in the form requested, as BIA we generally assign to that company the higher of: (a) The highest rate calculated for a responding firm with shipments during that period, or (b) the highest rate for that company for any previous review or the original investigation.

2. When a company refuses to cooperate with the Department or otherwise significantly impedes the proceedings, as BIA we generally assign the higher of: (a) The highest rate for any firm in any previous review or the original LTFV investigation, or (b) the

highest rate for any firm in this review. See, *e.g.*, Final Results of Antidumping Duty Administrative Review and Partial Termination: Roller Chain, Other Than Bicycle, From Japan (57 FR 6808, February 28, 1992), and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review (56 FR 31692, July 11, 1991).

When a company initially cooperates with the Department, but later will not supply the information needed for the Department to perform the necessary calculations, we consider the company to be uncooperative and apply the second tier of the BIA hierarchy. In this review, although Izumi initially cooperated with the Department by responding to the original questionnaire, their response was so deficient as to render it unusable. Izumi subsequently refused to respond to the supplemental questionnaire and our request for data on computer tape, citing the Department's delay in sending out the supplemental questionnaire, and the company's belief that its earlier submission was usable. Accordingly, the Department had no choice but to treat Izumi as an uncooperative firm.

As BIA for Izumi we have used the 43.29 percent rate calculated by the Department in the first completed roller chain review. (See, Roller Chain, Other Than Bicycle, From Japan, Final Results of Administrative Review of Antidumping Finding (46 FR 44488, September 4, 1981)).

When a company substantially cooperated with our requests for information, and only failed to provide certain requested information, the Department may find it necessary to use some form of partial BIA to ensure that a company does not benefit from its failure to supply requested information. In this review, for companies with missing data that prevented the Department from calculating margins or making product comparisons, we used the companies' weighted-average rate for sales with dumping margins during the review period as BIA for those sales for which we were unable to make proper comparisons. For those companies with missing data but no sales with dumping margins, we used the highest rate for that company from any previous review as BIA for those sales for which we were unable to make proper comparisons.

B. Hitachi Metals Techno, Ltd. and Hitachi Maxco, Ltd.

Comment 3: Hitachi claims that the Department improperly used BIA to calculate margins on seven of Hitachi's sales. Hitachi argues that two of these sales were returns and should not have been included in the margin calculation. Two other sales did not match because of typographical input errors made by Hitachi. The remaining three sales could not be matched because supplier price information was unavailable and there were no sales of similar products in the home market. Hitachi contends that should the Department decide to use a BIA rate for these sales, the rate applied should be Hitachi's total weighted average margin for the period.

Department's Position: We agree with Hitachi that the two returns listed in their supplemental response should not be included in the margin calculation and have made the appropriate adjustments. However, we disagree with Hitachi that the five remaining sales should not be subject to BIA rates, because the missing or incorrectly reported information prevented the Department from calculating margins, and an adverse inference must be drawn. We also disagree with Hitachi's contention that should the Department use BIA, the proper rate for these sales would be the final weighted average margin for the period. As discussed above in the general comments, we have applied the weighted average rate for Hitachi's sales with dumping margins.

Comment 4: Hitachi claims that the Department improperly applied the 20 percent difference-in-merchandise (DIFMER) test to its similar matches. Hitachi argues that the use of this test is purely discretionary and should not apply to products such as roller chain. Hitachi claims that roller chain is "a fairly simple product which involves straightforward manufacturing operations," and should not be subjected to the DIFMER test, citing as support the Department's position in the Korean cookware case. (Certain Stainless Steel Cooking Ware from the Republic of Korea: Final Results of Antidumping Duty Administrative Review (56 FR 38114, August 12, 1991)). Hitachi also argues that because these reviews predate the use of the DIFMER test, the Department is unfairly applying a standard which Hitachi could not have considered when making its submission of similar matches.

Petitioner argues that the Department properly applied the 20 percent DIFMER test in this case. In fact, because the test reflects the Department's standard practice, only its non-use in this case would require Departmental justification. Petitioner contends that the Korean cookware case did not provide a general exception to the DIFMER test for basic commodity products. The Department has, and continues to apply this test to other basic commodity products such as tapered roller bearings. Rather, the exception in the Korean cookware case addressed a very specific set of facts which included a product inspection that allowed the Department to verify that the products were similar even though their costs differed by more than 20 percent. The facts in this case do not justify an exception to the DIFMER test standard.

Petitioner argues further that although Hitachi did submit similar products in its questionnaire response, it never submitted any factual argument as to its selection of these products. In fact, Hitachi's assertions of similarity were raised for the first time after the preliminary determination, and based on information submitted after that determination. As such, the information is untimely and cannot be taken into account in this review. Petitioner notes, furthermore, that the disparity in the cost differences being measured in this case (*i.e.*; the differences in Hitachi's cost of acquiring roller chain from its suppliers), is one of types of distortions that the Department was trying to avoid when it established this test.

Department's Position: We agree with petitioner. The Department has developed its practice of applying a 20 percent cost differential cap in order to ensure that the home market model chosen is "similar" within the meaning of subparagraphs (B) and (C) of section 771(16) of the Act. The Department believes that if the costs of two products are greatly different due to physical differences in the merchandise, then the products can neither be deemed to be of approximately equal value, within the meaning of subparagraph (B), nor can they reasonably be compared, within the meaning of subparagraph (C). The application of the 20 percent cap as a benchmark serves to provide needed guidance and certainty to parties who are or may be involved in antidumping proceedings. In this regard, we agree with petitioner that Stainless Steel Cooking Ware from Korea did not provide a general exemption for so-called "basic commodity products," and that the fact pattern in that case is not present here.

We do not agree that the Department's application of its 20 percent DIFMER practice is discretionary in the sense that the Department may apply it or not apply it as it chooses. This practice represents the Department's current interpretation of section 771(16) of the Act, and the Department must apply this interpretation consistently from case to

case. The Department has followed this practice in cases involving similar industrial commodity products, and has applied it in proceedings much older than the instant proceeding. See, *e.g.*, Tapered Roller Bearings Four Inches or Less in Outside Diameter from Japan: Final Results of Antidumping Duty Administrative Review (55 FR 22369, June 1, 1990).

Comment 5: Hitachi claims that if the Department decides to apply the test, we should use the U.S. acquisition price rather than the net home market price as the denominator when calculating the 20 percent DIFMER test. Petitioner contends that the use of net home market prices is well within the Department's discretion and has been used in prior proceedings.

Department's Position: Although we agree with petitioner's contention that it is within the Department's discretion to use net home market prices in the DIFMER test, we agree with Hitachi that the U.S. acquisition price more accurately reflects the Department's standard practice with regard to the calculation of the 20 percent DIFMER cap and is the most reasonable choice for a denominator in this case. We have, therefore made the appropriate corrections.

Comment 6: Hitachi contends that the Department incorrectly deducted an imputed credit expense from the U.S. price. In addition, Hitachi argues that the Department double-counted the credit expense by also deducting the interest expense provided by Hitachi in its SG&A and interest expense calculations. Hitachi requests that the Department recalculate the SG&A and omit itemized interest expense data from the SG&A ratios if it continues to deduct an imputed credit expense.

Department's Position: We disagree with Hitachi that our use of an imputed credit expense is incorrect. However, we do agree that the itemized interest expense listed by Hitachi in its submission should be deducted from its SG&A ratios and have made the appropriate adjustments. See, Final Results of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan (55 FR 42608, October 22, 1990).

Comment 7: Hitachi claims that the Department incorrectly used the average home market credit days when calculating U.S. credit expense.

Department's Position: We agree and have made the appropriate adjustment.

Comment 8: Petitioner argues that the Department must make an inventory carrying cost adjustment to Hitachi's exporter's selling price (ESP) sales. Since Hitachi did not supply inventory carrying costs, the Department should make a BIA adjustment for both reviews.

Department's Position: We agree that inventory carrying costs should be deducted from Hitachi's ESP sales. We have imputed this cost for both reviews using the inventory turnover rate supplied by Hitachi in its 1983/84 submission.

Comment 9: Hitachi claims that the Department incorrectly applied certain 1984/85 home market expense ratios in the 1983/84 review. Hitachi claims that the home market expenses listed in its response were based on the home market unit price less discounts, and should be used by the Department in its calculation of the FMV without further recalculation.

Department's Position: We agree and have made the appropriate adjustments.

Comment 10: Hitachi argues that the Department incorrectly deducted as an expense the bad debt reserve allowance for the U.S. selling expense. Hitachi claims that this allowance is not an actual expense, but merely a reserve account used for covering future default payments by customers, and that this fund was not drawn upon during either review period. Hitachi maintains that this should preclude the deduction of the allowance as an expense.

Department's Position: We agree with respondent. The Department considers bad debt that is actually incurred on the sale of subject merchandise during the period of review to be either a direct or indirect selling expense depending on the relationship between the bad debt expense and the sale. See, Final Results of Antidumping Duty Administrative Review: Color Television Receivers from the Republic of Korea 56 FR 12705 (March 27, 1991). The figure for bad debt in Hitachi's submission is not an actual expense; rather it is a reserve account set aside by Hitachi in case an actual expense for bad debt is incurred in the future. Since no actual bad debt expense was incurred by Hitachi during the period of review, we are not deducting this expense from Hitachi's indirect selling expenses. See, Final Results of Antidumping Duty Administrative Reviews; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts From France, et. al. (57 FR 28412 June 24, 1992).

Comment 11: Hitachi claims that the Department incorrectly recalculated advertising and inland insurance expenses by applying the expense ratios to dollar-denominated unit prices, rather than accepting Hitachi's yen-denominated expenses which were based on F.O.B. values.

Department's Position: We disagree. Hitachi stated in its response to the Department's supplemental questionnaire that "the F.O.B. price for each type of roller chain product is not available." Therefore, although the Department may agree that the ratios presented in the submission were calculated on an F.O.B. basis, we are forced to apply them to the dollar-denominated gross unit price as the best information available since Hitachi did not supply the yen-denominated F.O.B. prices necessary to calculate these expenses.

Comment 12: Hitachi contends that the Department incorrectly used ESP ratios when calculating purchase price (PP) movement and commission ratios.

Department's Position: We disagree. Hitachi did not submit any explanation regarding the calculation of their PP movement or commission ratios. Unlike other variables listed in appendix C of the supplemental questionnaire response, such as the gross unit price (GRSUPRIP) or foreign brokerage (FBROKP), there is no indication in the definition column that these are actual expenses. Furthermore, Hitachi states in its response to the supplemental questionnaire that an average rate for each movement expense was calculated based on all entries of roller chain during the review period. Hitachi has not provided sufficient information to separately break out and calculate PP and ESP movement and commission expenses. The Department believes that because these ratios, which Hitachi contends should only apply to ESP sales, were based on all U.S. sales of roller chain during the period, they provide the best information available for calculating both ESP and PP movement and commission expenses.

Comment 13: Hitachi claims that the Department made incorrect adjustments for U.S. commissions and credit expenses in the preliminary margin calculation.

Department's Position: We agree and have made the appropriate adjustments.

Comment 14: Hitachi claims that the Department failed to properly adjust for differences in circumstances of sale when using constructed value in the preliminary margin calculation.

Department's Position: We agree and have made the appropriate adjustments.

C. Kaga Kogyo K.K. and Kaga/APC

Comment 15: Kaga Kogyo claims that the Department incorrectly applied BIA rates to certain U.S. sales with identical matches in the home market. The rejection of most of these identical matches came about from the slight

difference in product nomenclature for riveted roller chain in the U.S. and Japanese markets. In markets where both riveted and cottered versions of a chain model are commonly sold (e.g., the United States), the model number is always followed by a "C" or an "R". In markets where only the riveted version is commonly sold (e.g., Japan), the model number stands alone for sales of riveted chain and is followed by a "C" for cottered chain. The lack of an "R" on home market models caused the computer to reject certain U.S. sales even though there was an identical match in the home market. Additional non-matches also occurred because of data entry errors made by Kaga Kogyo in its tape submission. Petitioner contends that since Kaga Kogyo is addressing errors and deficiencies in its own submission, its clarification and list of corrections amount to an untimely submission of new data and should therefore be rejected.

Department's Position: The Department agrees with petitioner that any untimely submission of new data must be rejected. Therefore, we have only considered Kaga Kogyo's comments regarding matches to the extent that such information can be confirmed by information already on the record. We have been able to deduce from previously submitted information already on the record that Japanese models of riveted chain without an "R" in their product nomenclature are identical to U.S. models of riveted chain with an "R" (e.g. Japanese model 100H is identical to U.S. model 100HR).

Corrections and clarifications that could not be confirmed by information submitted prior to the issuance of the preliminary results were not taken into account in our margin calculation. Such new factual information is untimely under section 353.31 of the Department's regulations.

D. Pulton Chain Co., Inc., Pulton/HIC, and Pulton/I&OC of Japan Co., Ltd.

Comment 16: Petitioner states that based on Pulton's response, packing costs for roller chain sold to a customer in the United States should exceed the packing costs for the same roller chain sold to a customer in Japan. Petitioner suggests that if discrepancies in Pulton's response exist, that BIA be used for these costs.

Department's Position: We disagree. We have examined Pulton's response and found no reason to believe that Pulton's packing costs are not accurately reported.

Comment 17: Petitioner asks that the Department review Pulton's purchase price calculations to ensure that Department properly adjusted for commissions in both periods.

Department's Position: We have examined Pulton's response and our calculations and have determined that the proper adjustments were made in both periods.

Final Results of the Review

As a result of our review, we determine the margins to be:

Manufacturer/exporter	Margin percent	
	04/01/83–03/31/84	04/01/84–03/31/85
Caddy Corporation of America	NA	[1] 0.000
Hitachi Metals Techno, Ltd. and Hitachi Maxco, Ltd.	0.33	5.60
Izumi Chain Manufacturing Co.	43.29	43.29
Kaga Kogyo K.K.	5.89	0.41
Kaga/APC	5.89	0.41
Pulton Chain Co., Inc.	0.02	0.29
Pulton/HIC	0.02	NA
Pulton/I&OC	0.02	0.29
Takasago RK Excel Co., Ltd.	1.46	8.91

[1] Caddy's one-time sale is actually a sale by Tsubakimoto, a company for which the effective date of revocation of the antidumping finding was prior to these review periods.

The Department will instruct the Customs Service to assess antidumping duties at the above rates on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service. Because the Department has already completed and published the final results of reviews for subsequent, intervening review periods, the dumping margins determined in these reviews will have no impact on cash deposit rates.

As provided by section 751(a)(1) of the Tariff Act, the Customs Service shall continue to require a cash deposit based on each firm's rate calculated in the most recent administrative review period. For any future entries of this merchandise from a new producer and/or exporter, not covered in these or prior administrative reviews, and who is unrelated to any previously reviewed firms, a cash deposit of estimated antidumping duties, equal to the highest non-BIA rate for any firm with shipments during the most recently completed review period, shall be required.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 1, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–24079 Filed 10–8–02; 8:45 am]

BILLING CODE 3510–DS–M

[C–559–001]

Certain Refrigeration Compressors from the Republic of Singapore; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of Countervailing Duty Administrative Review.

SUMMARY: On July 14, 1992, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. We gave interested parties an opportunity to comment on the preliminary results. We received no comments, therefore we have not changed the final results from those presented in our preliminary results of review.

We have now completed this review and determine that the Government of Singapore, Matsushita Refrigeration Industries (Singapore) Pte. Ltd. and Asia Matsushita Electric (Singapore) Pte. Ltd., the signatories to the suspension agreement, have complied with the terms of the suspension agreement during the period April 1, 1990 through March 31, 1992.

EFFECTIVE DATE: October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Megan Pilaroscia or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 31174) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore (48 FR 51167; November 7, 1983). We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. During the period of review, such merchandise was classifiable under item number 8414.30.40 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one producer and one exporter of the subject merchandise. These two companies, along with the Government of Singapore, are the signatories to the suspension agreement. The review covers the period April 1, 1990 through March 31, 1991 and three programs.

Final Results of Review

In our preliminary results of review, we preliminarily determined that the signatories to the suspension agreement complied with the terms of the suspension agreement during the period of review. We gave interested parties an opportunity to comment on the preliminary results of review. We received no comments, and have made no changes to the findings of our preliminary results of review. Therefore, for these final results of review, we determine that the signatories to the suspension agreement have complied with the terms of the suspension agreement, including the payment of the provision export charges, for the April 1, 1990 through March 31, 1991 review period. A provisional export charge rate of 4.95 percent was in effect from April 1, 1990 through December 25, 1990, and a provisional export charge rate of 2.23 percent was in effect from December 26, 1990 through March 31, 1991.

We determine the total bounty or grant to be 5.52 percent of the f.o.b. value of the merchandise for the April 1, 1990 through March 31, 1991 review period. The suspension agreement states that the Government of Singapore will offset completely the net bounty or grant determined by the Department to exist with respect to the subject merchandise by the collection of an export charge applicable to exports of the subject product.

Following the methodology outlined in section B.4 of the agreement, the Department determines that, for the April 1, 1990 through December 25, 1990 portion of the review period, a positive adjustment of 0.57 percent must be made to the provisional export charge rate in effect, and for the December 26, 1990 through March 31, 1991 portion of the review period, a positive adjustment of 3.29 percent must be made to the provisional export charge rate in effect. These rates, established in the notices of the final results of the third and fifth administrative reviews of the suspension agreement (53 FR 25647, July 8, 1988; 55 FR 53028, December 26, 1990) are 4.95 percent and 2.23 percent, respectively. The Government of Singapore shall collect, in accordance with section B.4.c of the agreement, the difference, plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department.

The Department intends to notify the Government of Singapore that the provisional export charge rate on all exports of the subject merchandise to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 5.52 percent of the f.o.b. value of the merchandise.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Department's regulations (19 CFR 355.22 (1992)).

Dated: October 2, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-24678 Filed 10-8-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92-00012." A summary of the application follows.

Summary of the Application

Applicant: Balmac International, Inc., suite 2700, 61 Broadway, New York, NY 10006-2802.

Application No: 92-00012.

Date Deemed Submitted: October 2, 1992.

Members (in addition to applicant): None.

Export trade:

Products

Cold storage warehouses, ice flakers, ice machines, block ice machines, commercial and industrial mechanical refrigeration equipment and accessories.

Services

Design and modification of the above listed Products pursuant to foreign buyers' specification.

Export markets:

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export trade activities and methods of operation:

Balmac International, Inc. intends:

(a) To enter into and terminate exclusive independent agreements with Bally Engineered Structures, Inc. and any other Supplier separately wherein:

(1) Balmac International, Inc. agrees not to represent any competitors of such

Supplier as an Export Intermediary unless authorized by the Supplier;

(2) The Supplier agrees not to sell, directly or indirectly, through any other intermediary, into the Export Markets in which Balmac International, Inc. represents the Supplier as an Export Intermediary and, if such sales do occur to pay a commission to Balmac International, Inc.; or

(3) Both (1) and (2) above.

(b) To enter into and terminate exclusive agreements with Export Intermediaries wherein:

(1) Balmac International, Inc. agrees to deal in Products in the Export Markets only through that Export Intermediary;

(2) That Export Intermediary agrees not to represent Balmac International, Inc.'s competitors in the Export Markets or not to buy from Balmac International Inc.'s competitors for resale in the Export Markets; or

(3) Both (1) and (2) above.

(c) To enter into exclusive or nonexclusive agreements with an individual buyer in the Export Markets to act as a Purchasing Agent with respect to a particular transaction.

(d) For Balmac International, Inc. itself, or while acting as an Export Intermediary for separate Suppliers, to:

(1) Establish prices and quantities at which Products will be acquired, sold or resold for, or in the Export Markets;

(2) Establish the price and other terms of sale at which Services will be acquired, sold or resold for, or in the Export Markets;

(3) Allocate foreign territories or customers among Balmac International Inc.'s Export Intermediaries or to a Supplier and that Supplier's Export Intermediaries, or

(4) Any combination of (1), and (2), and (3) above. Balmac International, Inc. may engage in the activities in (d) above by agreement with Balmac International, Inc.'s Export Intermediaries, by independent agreement with separate Suppliers, by agreement with that Supplier's Export Intermediaries, or on the basis of its own determination.

(e) To disclose to an individual buyer in the Export Market prices and other terms of export marketing or sale.

Definitions

For purpose of this certificate application,the following terms are defined:

(a) "Export Intermediary" means:

(1) "Broker"—a person that locates buyers in the Export Markets for the Supplier or that locates Suppliers for buyers in the Export Markets on a straight commission or cost-plus commission basis and that, in so acting, offers, provides or engages in some or all Services.

(2) "Distributor"—a person that purchases Products for its own account from a Supplier, that may establish the resale price or maintain an inventory of Products for prospective, unidentified sale and that, in so acting, offers, provides or engages in some or all Services; or

(3) "Sales Representative or Agent"—a person that identifies and locates Products for sale; gives advice on, or chooses among prospective buyers in the Export Markets, advises on or negotiates prices, quantities, and other sale terms and conditions, sells Products for its own account or for the account of others; and that, in so acting, offers,provides or engages in some or all Services.

(b) "Purchasing Agent"—an intermediary who identifies and locates Products for purchase; gives advice on, or chooses among prospective Suppliers; advises on or negotiates prices, quantities, and other purchase terms and conditions; and purchases Products for its own account or for the account of others; and who, in so acting, offers, provides or engages in some or all Services.

(c) "Supplier"—a person that produces or sells Products to be exported from the United States or Services.

Dated: October 5, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-24677 Filed 10-8-92; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Myanmar

October 2, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of section 204 of the Agricultural Act of 1956, as amended, the Government of the United States has decided to establish a restraint limit for men's and boys' cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in Myanmar and exported during the twelve-month period which began on October 1, 1992 and extends through September 30, 1993 at a level of 93,975 dozen.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640 or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Information regarding the 1993

CORRELATION will be published in the Federal Register at a later date.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Myanmar

Category 340/640—Men's and Boys' Cotton and Man-Made Fiber Woven Shirts

September 1992

Import Situation and Conclusion

U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, from Myanmar reached 110,571 dozen during the year ending July 1992, 52 percent above the 72,512 dozen imported during the year ending in July 1991. During the first seven months of 1992, imports of Category 340/640 from Myanmar reached 74,271 dozen, more than double the 32,603 dozen imported during the same period a year earlier and 8 percent above Myanmar's total calendar year 1991 Category 340/640 imports.

The sharp and substantial increase in Category 340/640 imports from Myanmar is causing disruption in the U.S. market for men's and boys' cotton and man-made fiber woven shirts.

U.S. Production, Import Penetration, and Market Share

U.S. production of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined 28 percent falling from 16,401,000 dozen in 1988 to 11,729,000 dozen in 1991. U.S. production during the year ending March 1992 remained relatively even with the year ending March 1991 level. U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined in 1990 and 1991. However, Category 340/640 imports surged in 1992, increasing 30 percent in the first seven months over the January-July 1991 level and reaching 28,035,769 dozen in the year ending in July 1992, 21 percent above the 23,136,808 dozen imported during the year ending July 1991 and the highest 12 month level on record.

The ratio of imports to domestic production increased from 157 percent in 1988 to 205 percent in 1991. This trend continued in 1992, with the ratio of imports to production reaching 208 percent during the year ending March 1992. The domestic manufacturers' share of the market for men's and boys' cotton and man-made fiber woven shirts fell from 39 percent in 1988 to 33 percent in 1991. This decline continued in 1992, with the domestic manufacturer's share of the market falling to 32 percent during the year ending March 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 79 percent of Category 340/640 imports from Myanmar during the year ending July 1992 entered the U.S. under HTSUSA numbers 6205.20.2046—men's and boys' cotton napped yarn dyed shirts, 6205.20.2050—men's cotton yarn dyed shirts, other than napped, 6205.20.2065—men's cotton shirts, other than yarn dyed, 6205.30.2050—men's man-made fiber yarn dyed shirts and 6205.30.2070—men's man-made fiber shirts, other than yarn dyed. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable shirts.

Committee for the Implementation of Textile Agreements

October 2, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 13, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Myanmar and exported during the period beginning on October 1, 1992 and extending through September 30, 1993, in excess of 93,975 dozen. [1]

Textile products in Categories 340/640 which have been exported to the United States prior to October 1, 1992 shall not be subject to the limit established in this directive.

Textile products in Categories 340/640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-24622 Filed 10-8-92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after September 30, 1992.

Request for Public Comments on Bilateral Textile Consultations with the Government of Oman on Certain Cotton and Man-Made Fiber Textile Products

October 5, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On September 21, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Oman with respect to men's and boys' cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in Oman.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Oman, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Oman and exported during the twelve-month period which began on September 21, 1992 and extends through September 20, 1993, at a level of not less than 104,553 dozen.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Oman.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of Oman, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Oman

Category 340/640—Men's and Boys' Woven Shirts

September 1992

Import Situation and Conclusion

U.S. imports of men's and boys' cotton and man-made woven shirts, Category 340/640, from Oman reached 104,553 dozen during the year ending June 1992, 39 percent above the 75,462 dozen imported during the year ending in June 1991. During the first six months of 1992, imports of Category 340/640 from Oman reached 63,124 dozen, 65 percent above the 38,287 dozen imported during the same period a year earlier and 79 percent of Oman's total calendar year 1991 Category 340/640 imports.

The sharp and substantial increase in Category 340/640 imports from Oman is causing disruption in the U.S. market for men's and boys' cotton and man-made fiber woven shirts.

U.S. Production, Import Penetration, and Market Share

U.S. production of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined 28 percent falling from 16,401,000 dozen in 1988 to 11,729,000 dozen in 1991. U.S. production during the year ending March 1992 remained relatively even with the year ending March 1991 level. U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined in 1990 and 1991. However, Category 340/640 imports surged in 1992, increasing 30 percent in the first half over the January-June 1991 level and reaching 27,298,374 dozen in the year ending in June 1992, 18 percent above the 23,196,116 dozen imported during the year ending June 1991 and the highest 12 month level since the year ending in July 1987.

The ratio of imports to domestic production increased from 157 percent in 1988 to 205 percent in 1991. This trend continued in 1992, with the ratio of imports to production reaching 208 percent during the year ending March 1992. The domestic manufacturers' share of the market for men's and boys' cotton and man-made fiber woven shirts fell from 39 percent in 1988 to 33 percent in 1991. This decline continued in 1992, with the domestic manfacturers' share of the market falling to 32 percent during the year ending March 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 84 percent of Category 340/640 imports from Oman during the year ending June 1992 entered the U.S. under HTSUSA numbers 6205.20.2065—men's cotton shirts, other than yarn dyed, 6205.20.2075—boys' cotton shirts, other than yarn dyed, and other than those imported as parts of playsuits, and 6205.30.2070—men's man-made fiber shirts, other than yarn dyed. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable shirts.

[FR Doc. 92-24621 Filed 10-8-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 9, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Handle, Step
5340-01-114-7387

Nonprofit Agency: NOC Industries, Inc., Cadillac, Michigan

Trousers, Men's, Medical Assistant
8405-00-110-8290
8405-00-110-8291
8405-00-110-8292
8405-00-110-8293
8405-00-110-8294
8405-00-110-8295
8405-00-110-8296
8405-00-110-8297
8405-00-110-8298
8405-00-110-8299
8405-00-110-8301
8405-00-110-8302
8405-00-110-9468
8405-00-110-9469
8405-00-110-9470
8405-00-110-9471
8405-00-110-9472
8405-00-110-9473
8405-00-110-9474
8405-00-110-9475
8405-00-110-9476
8405-00-110-9477
8405-00-110-9478
8405-00-110-9479
8405-00-110-9480
8405-00-110-9481
8405-00-110-9482
8405-00-110-9483
8405-00-110-9484
8405-00-110-9485
8405-00-110-9486
8405-00-110-9487
8405-00-110-9488
8405-00-110-9489
8405-00-110-9490
8405-00-110-9697
8405-00-113-5418
8405-01-008-8848

Nonprofit Agency: Goodwill Industries of Central Indiana, Inc., Indianapolis, Indiana

Services

Food Service Attendant, Air National Guard Base, Otis, Massachusetts
Nonprofit Agency: Community Connections, Inc., Yarmouth Port, Massachusetts

Grounds Maintenance, USARC #4, 1920 Harry Wurzbach Highway, San Antonio, Texas
Nonprofit Agency: Goodwill Industries of San Antonio, Inc., San Antonio, Texas

Janitorial/Custodial, Social Security Administration, Albuquerque Data Operations Center and Annex, 933 Bradbury SE, Albuquerque, New Mexico
Nonprofit Agency: Adelante Development Center, Inc., Adelante, New Mexico

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-24680 Filed 10-8-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 9, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from a nonprofit agency employing individuals who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the commodity to the Government.

2. The action will result in authorizing a small entity to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List:

Paper, Toilet Tissue
8540-00-530-3770
(Requirements for Zone 6 only)
Nonprofit agency: Duluth Lighthouse for the Blind, Duluth, Minnesota

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-24681 Filed 10-8-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Additions; Corrections

In notice document 92-23360, appearing on page 44367 in the issue of Friday, September 25, 1992 under the Clamp, Loop heading the following NSN's are incorrect: 5340-01-276-9179 should read 5340-01-276-9169 and 5340-01-998-3164 should read 5340-00-998-3164.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-24682 Filed 10-8-92; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Board of Trade Clearing Corporation and Chicago Mercantile Exchange Proposed Common Banking and Settlement Rule Amendments

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rules and rule amendments of the Board of Trade Clearing Corporation and the Chicago Mercantile Exchange to establish a common banking and settlement system.

SUMMARY: The Board of Trade Clearing Corporation ("BOTCC") and the Chicago Mercantile Exchange ("CME") have submitted proposed new rules, rule amendments, and other materials which would establish a common banking and settlement system at the BOTCC and CME.[1] Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets has determined to publish the BOTCC and CME proposals for public comment. The Division believes that publication of the BOTCC and CME proposals is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. References should be made to the proposed amendments to establish common banking and settlement system

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Associate Director, or

[1] The BOTCC proposal includes proposed new Bylaws 118, 119, and 517, and proposed amendments to existing Bylaws 503, 508, 604, and 804. The CME proposal includes proposed new Rule 832 and proposed amendments to existing Rule 802.

Clarence Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rules and Rule Amendments

By letters dated August 27, 1992, and September 1, 1992, the CME and the BOTCC respectively submitted proposed new rules and rule amendments pursuant to section 5a(12) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(b) which would establish a common banking and settlement system at the BOTCC and CME.[2] In connection with these rule changes, the BOTCC and CME also submitted the BOTCC–CME common banking and settlement procedures agreement.

Under the proposals, a firm that is member of both the BOTCC and the CME clearing organization—a joint clearing member—would be required to elect either the BOTCC or the CME clearing organization as its designated clearing organization ("DCO"). The DCO then would carry out both custodial and payment functions with respect to the joint clearing member's proprietary and customer accounts on behalf of both clearing organizations. Although a joint clearing member would deposit all performance bond at its DCO, the joint clearing member also would be required to make an accounting allocation of performance bond between the two clearing organizations, subject to any requirements on form or valuation of collateral imposed by either clearing organization.

Each joint clearing member would be required to execute a common banking and settlement agreement giving to both clearing organizations jointly a first lien and security interest in property, or proceeds thereof, deposited as performance bond. Each joint clearing member also would be required to establish at a settlement bank separate proprietary and customer accounts for purposes of daily settlement at both clearing organizations. All daily settlement instructions would have to be approved by both clearing organizations, except under specifically identified conditions when a clearing organization would be permitted to withhold its approval. Settlements would be made among the clearing organizations' joint bank account and the joint clearing members' bank accounts.

The proposal includes provisions that provide for the suspension or expulsion of a joint clearing member. Similarly, the proposal contains terms governing the liquidation of a suspended or expelled joint clearing member's positions.

The proposal also would require that the two clearing organizations share information with one another regarding the condition and activities of joint clearing members. Such sharing of information would be required in several different areas, including changes in financial information reporting, changes in capital and collateral requirements, the institution of disciplinary action, the occurrence of processing or operational errors, and failure to meet timely any settlement obligations. Information sharing would not only be required upon the occurrence of any adverse condition but also upon the termination of such adverse condition.

II. Request for Comments

The Commission requests comments on any aspect of the BOTCC's and CME's proposed new rules and rule amendments that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the proposed rules and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposed rule should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 5, 1992.

Alan L. Seifert,

Deputy Director.

[FR Doc. 92–24602 Filed 10–8–92; 8:45 am]

BILLING CODE 6351–01–M

[2] The BOTCC originally submitted its proposal pursuant to Commission Regulation 1.41(c) but subsequently requested that its proposal be treated as if it had been submitted pursuant to Commission Regulation 1.41(b).

DEPARTMENT OF DEFENSE

Office of the Secretary

Nuclear Failsafe and Risk Reduction Advisory Committee; Meeting

AGENCY: Nuclear Failsafe and Risk Reduction Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Nuclear Failsafe and Risk Reduction Review Advisory Committee. The purpose of the meeting is to discuss and approve the Committee's Final Report to the Secretary of Defense on its comprehensive and independent review of U.S. positive measures for the prevention of unauthorized or inadvertent use of nuclear weapons with recommendations for enhancement of fail-safe policies, procedures and mechanisms and opportunities to reduce the risk of the outbreak of nuclear war. This meeting will be closed to the public.

DATES: October 30, 1992. 1000–1100.

ADDRESS: Pentagon, Crisis Coordination Center, room 3C912

FOR FURTHER INFORMATION CONTACT: Colonel Bill Jones, U.S. Army, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline #3, 5201 Leesburg Pike, suite 500, Falls Church, Virginia 22041, (703) 756–8680.

Dated: October 5, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–24591 Filed 10–8–92; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, November 3, 1992; Tuesday, November 10, 1992; Tuesday, November 17, 1992 and Tuesday, November 24, 1992, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees

pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b. (c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, the Pentagon, Washington, DC 20310.

Dated: October 5, 1992.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–24582 Filed 10–8–92; 8:45 am]

BILLING CODE 3810-01-M

Office of The Secretary

DoD Government-Industry Technical Data Committee

AGENCY: Office of the Under Secretary of Defense (Acquisition).

ACTION: Notice.

SUMMARY: Pursuant to section 807 of Public Law 102–120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The committee's November meetings are for November 17–18, 1992 from 9:30 a.m. to 4 p.m. at The Herman Lay Room, the U.S. Chamber of Commerce, 1615 "H" Street, NW., Washington, DC 20062–2000. These meetings will be open to the public. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693–5639.

Dated: October 5, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–24591 Filed 10–8–92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.197A–D, 84.036B, and 84.091A]

Office of Educational Research and Improvement; Higher Education Act Library Programs; Titles II–A, II–B, and II–C

AGENCY: Department of Education.

ACTION: Notice supplementing previous notice inviting applications for new awards for fiscal year 1993.

SUMMARY: On July 28, 1992, the Secretary published in the **Federal Register** a notice inviting applications for new awards for fiscal year 1993 under the Higher Education Act (HEA) title II library programs administered by the Office of Educational Research and Improvement. This supplemental notice advises potential applicants of the changes made to the title II library programs referenced in the July 28, 1992 notice by Public Law 102–325, "the Higher Education Amendments of 1992," which was enacted on July 23, 1992 and takes effect on October 1, 1992.

SUPPLEMENTARY INFORMATION: This supplemental notice summarizes the changes to HEA title II made by the Higher Education Amendments of 1992, which will govern the HEA title II library program applications for fiscal year 1993 and which applicants should consider in developing their applications. The July 28, 1992, **Federal Register** notice (57 FR 33411) remains in effect except as indicated in this supplemental notice. Copies of the HEA, as amended, are available from the program officers designated in the July 28 notice.

The title II library programs referenced in the July 28 notice have been redesignated or retitled under these new amendments as follows: (1) The College Library Technology and Cooperation Grants program (formerly designated as title II, part D) is now title II, part A; (2) HEA title II–B has been retitled "Library Education, Research, and Development;" and (3) HEA title II C has been retitled "Improving Access to Research Library Resources."

Application Notices Affected

CFDA No. 84.197A-D—College Library Technology and Cooperation Grants Program (Higher Education Act, Title II, Part A) Summary of Statutory Changes

(a) Networking Grants may now be awarded to institutions of higher education which demonstrate a need for special assistance for the planning, development, acquisition, maintenance, or upgrading of technological equipment necessary to organize, access, or utilize material in electronic formats and to participate in networks for the accessing and sharing of library and information resources.

(b) Combination Grants may now be awarded to combinations of institutions of higher education only for the purpose of accessing and sharing of library and information resources.

(c) The authority for Research and Demonstration Grants has been amended to provide participation in the National Research and Education Network as an example of an authorized activity.

(d) The minimum amount of a grant for the College Library Technology and Cooperation Grants program has been increased to $25,000.

(e) A Networking Grant may not exceed $50,000 for each institution of higher education

(f) For Networking Grants, the HEA directs the Secretary to give priority to certain applicants. That priority, and the manner in which it is implemented for fiscal year 1993, is listed under the heading "Implementation of New Priority."

Implementation of New Priority

The HEA directs the Secretary to give priority to institutions of higher education seeking assistance for projects that assist developing institutions of higher education in linking one or more institutions of higher education to resource sharing networks. In accordance with the HEA, and with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary reserves up to forty percent of all program funds solely for applications that meet this priority in a particularly effective way.

CFDA No. 84.036—Library Education and Human Resource Development Program Summary of Statutory Changes

(a) The Secretary is authorized to make awards "particularly in areas of critical needs, such as recruitment and retention of minorities." This provision will not affect the previously announced priorities governing fiscal year 1993 grants because those priorities are considered to address critical needs.

(b) Stipends are now available only to fellows who demonstrate need and are working toward a graduate degree. Stipends are not available to trainees or to undergraduate fellows.

FOR FURTHER INFORMATION CONTACT: Louise Sutherland, U.S. Department of Education, 555 New Jersey Avenue NW., room 404, Washington, DC 20208–5571. Telephone: (202) 219–1315. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: Public Law 102–325.

Dated: October 2, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–24594 Filed 10–6–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain Involvement Notification for Proposed Interim Remedial Action at the Jefferson Tennis Court Site Oak Ridge, TN

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of floodplain involvement and opportunity to comment.

SUMMARY: DOE has assessed and proposes to remediate a 1.5-acre field near the Jefferson Tennis Court, owned by the City of Oak Ridge, Tennessee. The City of Oak Ridge intends to sell the property to Girls' Inc., who intends to use the acreage for a softball field. The proposed action to be taken by DOE involves covering the field with 0.5 to 1.0 feet of clean soil so that the field can be made available for unrestricted use. The acreage to be covered is within the 100-year floodplain of East Fork Poplar Creek (EFPC). A portion of the property that is within the floodplain would not be disturbed. DOE understands that Girls' Inc., will erect a fence to restrict human access to the undisturbed portion.

In accordance with the DOE regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR part 1022), DOE will prepare a floodplain assessment and issue a Statement of Findings before conducting environmental restoration activities. Maps and further information are available from the Information Resource Center, 105 Broadway Avenue, Oak Ridge, Tennessee 37830, (615) 481–0695.

DATES: Comments are due no later than October 26, 1992.

ADDRESSES: Send comments to Mr. Robert C. Sleeman, Director, Environmental Restoration Division (EW–91), U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8541, or fax comments to (615) 576–6074.

FOR FURTHER INFORMATION ON THE DOE FLOODPLAIN/WETLAND REVIEW PROCESS CONTACT: Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The proposed action, if implemented, would be conducted with the concurrence of the U.S. Environmental Protection Agency and the Tennessee Department of Conservation. The proposed action would be performed at the site in such a manner as to avoid or minimize impacts on the floodplain.

Paul D. Grim,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92–24675 Filed 10–8–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–852–000, et al.]

Arizona Public Service Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 1, 1992.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Co.

[Docket No. ER92–852–000]

October 1, 1992.

Take notice that on September 24, 1992, Arizona Public Service Company (APS) tendered for filing revised Exhibit B (Exhibit) to the Wholesale Power Agreement (Agreement) between APS and Southern California Edison Company (SCE) (APS–FERC Rate Schedule No. 120). The Exhibit lists Maximum Demands applicable under the Agreement.

No change to the rate and revenue levels currently on file with the Commission for the 12 months immediately after the proposed effective as a result of this herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on SCE, the Arizona Corporation Commission and the California Public Utilities Commission.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. West Texas Utilities Co.

[Docket No. ER92–772–000]

October 1, 1992.

Take notice that on September 23, 1992, West Texas Utilities Company (WTU) tendered for filing two letter agreements amending the agreements between WTU and the Cities of Brady and Coleman, Texas, filed in the above referenced proceeding on August 10, 1992. The letter agreements limit the amounts that WTU may collect for service under the agreements.

Copies of the filing have been served on the Cities and the Public Utility Commission of Texas.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Alabama Power Co.

[Docket No. ER92–832–000]

October 1, 1992.

Take notice that on September 9, 1992, Alabama Power Company (APCo) tendered for filing a Transmission Service Delivery Point Agreement dated as of September 18, 1992, which reflects an increase in the maximum capacity of certain existing delivery points of Central Alabama Electric Cooperative, Inc. All of these delivery points are served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designated FERC Rate Schedule No. 147). The parties request an effective date for this Transmission Service Delivery Point Agreement of September 18, 1992.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power & Light Co.

[Docket No. ER92-860-000]

October 1, 1992.

Take notice that Minnesota Power & Light Company (Minnesota Power) on September 25, 1992, tendered for filing an Electric Service Agreement between Minnesota Power and the City of Proctor, Minnesota, by and through the Proctor Public Utilities Commission (Proctor). The Agreement adds Proctor as a full requirements customer of Minnesota for a 20 year term beginning January 1, 1995.

Minnesota Power requests an effective date of January 1, 1995, and requests waiver of the notice requirements of Section 35.3 of the Commission's regulations.

Copies of the filing have been served on Proctor, the Minnesota Public Utilities Commission and the Minnesota Department of Public Service.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Co. of New York, Inc.

[Docket No. ER92-861-000]

October 1, 1992.

Take notice that on September 28, 1992, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing two Supplements to its Rate Schedule FERC No. 62, which provides for interruptible transmission service to Orange and Rockland Utilities, Inc. (O&R).

Supplement No. 10 provides for a decrease in rate from 2.6 mills to 215 mills per Kwh of interruptible transmission of power and energy over Con Edison's transmission facilities, thus decreasing annual revenues under the Rate Schedule by a total of $213.50. Supplement No. 11 provides for the addition of Philadelphia Electric as a source of energy to be transmitted under the Rate Schedule. Con Edison has requested waiver of notice requirements so that Supplement No. 10 can be made effective as of September 1, 1992 and Supplement No. 11 as of September 28, 1992.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER92-862-000]

October 1, 1992.

Take notice that PacifiCorp, on September 28, 1992, tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, a Long-Term Power Sales Agreement (Agreement) between PacificCorp and Western Area Power Administration (Western) dated September 17, 1992.

Under terms of the Agreement, PacifiCorp will sell to Western firm capacity and energy for the period of December 1, 1993 through December 31, 2012.

PacifiCorp requests that the effective date of the Agreement be sixty (60) days after the Commission's receipt of this filing.

Copies of this filing were supplied to Western, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER92-859-000]

October 1, 1992.

Take notice that PacifiCorp on September 25, 1992, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Interconnection Agreement (Agreement) between PacifiCorp and Cowlitz County Public Utility District (Cowlitz) dated January 31, 1992.

The Agreement provides for the construction, ownership, operation and maintenance of the facilities required to connect Cowlitz's new Ariel Substation to PacifiCorp's existing 115 kV Kalama transmission line.

Copies of this filing were supplied to Cowlitz and Public Utility Commission of Oregon.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. ER92-343-003]

October 1, 1992.

Take notice that on September 23, 1992, Northern States Power Company (Minnesota) and Northern States Power (Wisconsin) jointly tendered for filing a Revised Transmission Loss Study dated September 1992.

The transmission system loss filing will reduce the NSP system average loss factors applicable to transmission service provided under various long term transmission service agreements and NSP's Transmission Service Tariff from 3.5% to 2.4%. The Revised Loss Study filing is being submitted in compliance with the Commission's initial Order dated April 29, 1992 and Order on Rehearing dated June 24, 1992, in this proceeding.

Copies of the filing have been served upon the wholesale and transmission wheeling customers of NSP-M and NSP-W, and upon the state commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: October 15, 1992, in accordance with Standard paragraph E at the end of this notice.

9. Century Power Corp.

[Docket No. ER92-851-000]

October 1, 1992.

Take notice that on September 23, 1992, Century Power Corporation (Century) tendered for filing a December 31, 1985 contract with the Western Area Power Administration (WAPA) and a Notice of Cancellation of the contract. Because the contract has never been used and is not expected to be needed, Century requests that the cancellation become effective on September 20, 1992, to coincide with the date on which the contract terminated pursuant to contractual notice given by Century to WAPA.

Century also tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 7 for the sale of surplus energy to WAPA. The agreement terminated by its terms on September 30, 1989. Century requests that the cancellation become effective on November 23, 1992.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Louis Dreyfus Electric Power, Inc.

[Docket No. ER92-850-000]

October 1, 1992.

Take notice that Louis Dreyfus Electric Power Inc. (LDEP) on September 22, 1992, tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, a petition of waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective on December 1, 1992.

LDEP intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where LDEP purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, LDEP will be functioning as a marketer. In LDEP's marketing transactions, LDEP proposes to charge rates mutually agreed upon by the parties. All sales will be at arms-length, and no sales will

be made to affiliated entities. In transactions where LDEP does not take title to the electric power and/or energy, LDEP will be limited to the role of a broker and charge a fee for its services. LDEP is not in the business of transmitting electric power. LDEP does not currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales my be made to affiliates.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Co.

[Docket No. ER92-600-001]

October 1, 1992.

Take notice that on September 24, 1992, New England Power Company (NEP) tendered for filing its compliance refund report in the above referenced docket.

Comment date: October 15, 1992, in accordance with Standard paragraph E at the end of this notice.

12. New England Power Service

[Docket No. ER92-335-000]

October 1, 1992.

Take notice that on September 8, 1992, New England Power Service tendered for filing an amendment in the above referenced docket.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. EEA III, L.P.

[Docket No. QF91-24-001]

October 2, 1992.

On September 25, 1992, EEA III, L.P. (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership structure and clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: October 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Co.

[Docket No. ER92-812-000]

October 2, 1992.

Take notice that on October 2, 1992, Wisconsin Electric Power Company supplemented its earlier filing in this docket by providing corrected Original Sheet No. 10.

Comment date: October 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Scrubgrass Generating Co., L.P.

[Docket No. QF88-406-002]

October 2, 1992.

On September 24, 1992, Scrubgrass Generating Company, L.P., c/o U.S. Generating Company, 7475 Wisconsin Avenue, Bethesda, Maryland 20814, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kennerdall, Scrubgrass Township, Venango County, Pennsylvania. The Commission previously certified the facility as a qualifying small power production facility, Scrubgrass Power Corp., 45 FERC ¶ 62,075 (1988), and recertified the facility as a qualifying small power production facility by order dated July 26, 1991, Scrubgrass Generating Company, L.P., 56 FERC ¶ 62,062 (1991). The instant request for recertification is due to the increase in electric power production capacity and a change in the facility's ownership structure.

Comment date: November 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Wheelabrator Falls Inc.

[Docket No. QF86-135-002]

October 2, 1992.

On September 22, 1992, Wheelabrator Falls Inc. (Applicant), c/o Wheelabrator Environmental Systems Inc., Liberty Lane, Hampton, New Hampshire 03842, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Falls Township, Bucks County, Pennsylvania. The Commission previously certified the facility as a qualifying small power production facility, Waste Management, Inc., 34 FERC ¶ 62,236 (1986). On August 16, 1989, a notice of self recertification was filed to reflect a change in ownership from Waste Management, Inc. to applicant and a change in the electrical output of the facility. The instant request for recertification is due to the addition of an electric transmission line to the facility and a decrease in the maximum net power production capacity of the facility from 60 MW to 48.1 MW.

Comment date: November 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24641 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-736-000, et al.]

Texas Eastern Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corp.

[Docket No. CP92-736-000]

September 30, 1992.

Take notice that on September 28, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP92-736-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to an existing service agreement with EnMark Gas Corporation (EnMark) at the proposed interconnection facilities with La-Nevada Transit Company (La-Nevada) under Texas Eastern's blanket certificates issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern states that it proposes to install a delivery point to the service agreement covering service for EnMark under Rate Schedule IT-1. Texas

Eastern further states that the peak and average day deliveries at the point would be 5,000 DTH per day.

Texas Eastern says that the addition of the delivery point would have no effect on Texas Eastern's peak day or annual deliveries. Texas Eastern submits that its proposal would be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Further, Texas Eastern states that the service it renders for EnMark would be performed pursuant to its Rate Schedule IT–1 and that Texas Eastern's existing tariff does not prohibit the additional volumes. It is indicated that the delivery point to be added would be located on Texas Eastern's 24-inch Line No. 1 at M.P.106.90 in Nevada County, Arkansas.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Co. of America

[Docket No. CP92–740–000]

September 30, 1992.

Take notice that on September 28, 1992, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP92–740–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add an existing delivery point to Midwest Gas, a division of Midwest Power Systems Inc. (Midwest), an existing customer, and to reassign volumes of gas sales to that point, under Natural's blanket certificate issued in Docket No. CP82–402–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Natural requests authorization to add a tap, presently used to deliver transportation natural gas to the City of Montezuma (Montezuma), Mahaska County, Iowa, as a sales tap to Midwest. Montezuma would receive the natural gas from Natural for Midwest's account and, pursuant to an agreement with Midwest, deliver the gas to Midwest through an existing interconnection of their facilities, it is stated. Natural states that it would deliver up to 100 Mcf of natural gas per day to Montezuma for Midwestern's account, which volume would be reassigned from Natural's certificated Oskaloosa delivery point to Midwest in Mahaska County, Iowa. Natural's delivery obligation to Montezuma would remain unchanged, it is stated. Natural asserts that no new facilities would be constructed by any party.

Natural further states that it has sufficient capacity to deliver the additional volumes of natural gas at the Montezuma delivery point.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corp.

[Docket No. CP92–737–000]

September 30, 1992.

Take notice that on September 28, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP92–737–000, a request pursuant to § § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act to, under its blanket certificate issued in Docket No. CP82–535–000 and two new delivery points to an existing interconnection with Libra Marketing Company (Libra), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

As stated by Texas Eastern, the two delivery points will be added to Libra's service covered under Texas Eastern's Rate Schedule IT–1, and the peak and average day deliveries at the points will be 40,000 DTH/d at the Hidalgo County, Texas delivery point and 100,000 DTH/d at the Nueces County, Texas delivery point.

Specifically, the delivery points would be installed on Texas Eastern's 8-inch Line No. 16–A in Hidalgo County, Texas and on Texas Eastern's 12-inch Line No. 16–I in Nueces County, Texas at an estimated cost of $119,800.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Co.

[Docket No. CP92–722–000]

October 1, 1992

Take notice that on September 21, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP92–722–000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate a new delivery point for Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (Peoples) to serve Eldon Grover, an end-user in Carlton County, Minnesota under Northern's blanket certificate issued in Do. CP82–401–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to construct and operate one small measuring station and appurtent facilities to provide natural gas deliveries to Peoples under Northern's CD–1 Rate Schedule to serve Eldon Grover a residential end-user located in Carlton County, Minnesota. Northern states that the estimated volumes to be delivered to Peoples is 1.5 Mcf of natural gas per day and 200 Mcf of natural gas per year. Northern states that the estimated cost to install these facilities is $1,340. The volumes to be delivered to Peoples at this delivery point would be within the currently effective entitlements for Peoples and the volumes for Eldon Gorver would be served from the total firm entitlement currently assigned to Minnesota small volume taps, it is indicated. Northern states that the establishment of this delivery point is not prohibited by Northern's existing tariff and Northern has sufficient capacity to accomplish deliveries at this new delivery point without detriment or disadvantage to Northern's other customers, it is stated.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP92–733–000]

Take notice that on September 25, 1992, Arkla Energy Resources (AER) a division of Arkla, Inc. P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP 92–733–000, a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain facilities in Arkansas under the blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER states that it proposes to construct and operate a new sales and to operate one existing tap for delivery of gas for resale to consumer other than the right-of-way grantor for whom the tap was originally installed, all for the delivery of gas to Arkansas Louisiana Gas Company ("ALG") for resale to domestic & commercial consumers in Arkansas. AER further states that the gas will be delivered from its general system supply, which it states is adequate to provide the service.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. Tennessee Gas Pipeline Co.

[Docket No. CP92-738-000]

October 1, 1992.

Take notice that on September 25, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP92-738-000, a request pursuant to § 157.205 of the Commissions's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and install a hot tap assembly to effectuate the delivery of natural gas for Chevron USA, Inc. (Chevron), a producer, under the authorization issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that it was authorized on July 17, 1989, in Docket No. CP89-1511-000, Tennessee was authorized to transport on an interruptible basis up to 2,000 Dt/d equivalent of natural gas for Chevron. It is stated that the gas is transported for Chevron for gas lift purposes from receipt points located Offshore Louisiana to a platform located at Eugene Island Block 215C.

On November 14, 1989, in Docket No. CP89-1511-001, Tennessee states that it was further authorized to construct six additional Offshore Louisiana delivery points for gas lift and emergency start-up purposes and to increase the transportation quantity to 21,500 Dt/d.

Tennessee states that it was further authorized on July 7, 1990, in Docket No. CP89-1511-002, to construct 10 additional Offshore Louisiana delivery points for gas lift and emergency start-up purposes and to increase the transportation quantity from 21,500 Dt/d for Chevron to 50,000 Dt/d.

It is stated that construction of one of the 10 authorized delivery points, Ship Shoal 168D, was delayed at Chevron's request and authorization to construct that point expired on July 7, 1991. By this filing, Tennessee states that it again seeks authorization to construct and install a 2-inch hot tap at Tennessee M.P. 523M-6501+0.86 on Chevron's Ship Shoal 168D Platform, Offshore Louisiana. Tennessee estimates that the cost of this facility is $10,000, which is 100 percent reimbursable to Tennessee.

Tennessee states that the addition of the requested delivery point will have no impact on its peak day and annual deliveries.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Eastern Transmission Corporation

[Docket No. CP92-745-000]

October 2, 1992.

Take notice that on September 30, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-745-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point under Texas Eastern's blanket certificate issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to install a new delivery point for delivery of natural gas to Libra Marketing Company (Libra) under an existing service agreement covering service under Texas Eastern's Rate Schedule IT-1. Texas Eastern states that it would install a 16-inch hot tap at M.P. 140.17 on its 30-inch Line No. 16 in San Patricio County, Texas. It is stated that a single 6-inch and a dual 8-inch meter station would also be installed. It is further stated that the peak and average day deliveries would be 100,000 dekatherms equivalent per day, corresponding to the Maximum Daily Delivery Obligation. Texas Eastern advises that Libra would resell the gas to Central Power & Light Company. Texas Eastern states that Libra would reimburse it for the cost of the facilities, estimated to be $49,500.

Comment date: November 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24642 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-63-000, TM93-1-63-000]

Carnegie Natural Gas Company; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that on September 30, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Thirty-Fifth Revised Sheet No. 8
Thirty-Fifth Revised Sheet No. 9
Fifth Revised Sheet No. 10
Third Revised Sheet No. 23

Carnegie states that pursuant to sections 23, 24 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment ("PGA"), Annual Charge Adjustment ("ACA"), and Transportation Cost Adjustment ("TCA") to reflect updated projections affecting the average commodity cost of purchased gas to be incurred by Carnegie on and after October 1, 1992. Carnegie states that the primary purpose of its filing is to accurately state the average commodity cost of gas on Carnegie's tariff sheets so that the negotiated sales rates agreed upon between Carnegie and its customers for interruptible sales service on and after October 1, 1992, will be in compliance with the rate conditions imposed by the Commission in issuing the SEGSS certificate and footnote 2 of Revised Tariff Sheet No. 9.

The revised rates are proposed to become effective October 1, 1992, and reflect the following changes from Carnegie's last regular PGA filing in Docket No. TA92-1-63-000, *et al.*: a $0.9575 per dth decrease in the demand rate, a $0.9464 per dth increase in the commodity rate, and a 0.0315 per dth decrease in the DCA rate of its CDS and LVWS rate schedules; a $0.9150 per dth increase in the maximum commodity rate and a $0.9464 per dth in the minimum commodity rate under Rate Schedule SEGSS. The revised tariff sheets also reflect a decrease in the TCA charge of $0.0196 per dth, from $0.0929 per dth to $0.0731 per dth. The above tariff sheets also reflect a decrease in the ACA charge from $0.0023 per dth to $0.0022 per dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24656 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-5-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 30, 1992 tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1.

To Be Effective November 1, 1992

Ninth Revised Sheet Nos. 30A01-30A05
Fifth Revised Sheet Nos. 30A06
Fourth Revised Sheet No. 30A07
Third Revised Sheet No. 30A08
Third Revised Sheet No. 30A09

By this filing, Columbia proposes to revise the allocation to its customers of the fixed monthly demand surcharges applicable to Transcontinental Gas Pipe Line Corporation's Docket Nos. RP88-68 and RP91-147 to be flowed through from November 1, 1992 to November 1, 1993. The revised allocation is being filed pursuant to Section 25, of the General Terms and Conditions of Columbia's FERC Gas Tariff, First Revised Volume No. 1, which states, in part, that periodic adjustments will be made annually at November 1 of each year reflecting the then current daily Total Firm Entitlements. The allocation proposed herein reflects the Total Firm Entitlements under Rate Schedules CDS, SGS, WS, FSS, FTS and OPT in effect for each customer at November 1, 1992. No change in the total level of Transco costs to be flowed through is proposed.

On August 20, 1992, Columbia advised the Commission that in light of the July 6, 1992 decision of the United States District Court for the District of Delaware precluding Columbia from flowing through refunds relating to prepetition periods and making payments to pipeline suppliers for charges relating to prepetition periods, it was suspending all prepetition Order No. 528 payments and all Order No. 528 billing adjustments to its customers. Accordingly, while Columbia is making this filing in compliance with its tariff, it is not seeking to collect any amounts reflected in this filing, pending the outcome of the appeals of the July 6, 1992 Court order.

Columbia states that copies of the filing were mailed to jurisdictional customers, interested state commissions, and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187, *et al.*, and RP91-41, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24643 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-4-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that on September 30, 1992, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1:

Seventeenth Revised Sheet No. 26.1
Seventeenth Revised Sheet No. 26A.1
Twenty-second Revised Sheet No. 26C
Fourteenth Revised Sheet No. 26D

The foregoing revised tariff sheets bear an issue date of September 30, 1992, and a proposed effective date of November 1, 1992.

Columbia states that § 26.3 of the General Terms and Conditions of Columbia's FERC Gas Tariff, First Revised Volume No. 1, requires Columbia at the end of each 12 month billing period commencing August 1, 1988, to recalculate the volumetric surcharge to reflect revisions for the actual FERC published interest rates during such 12 month period. This instant filing is said to be made to reconcile the period August 1, 1991 through July 31, 1992. The adjusted volumetric surcharge is 4.00¢ per Dth, which is a 0.14¢ reduction to the current surcharge.

Columbia states that copies of the filing were served on wholesale customers, interested state commissions and to each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Transmission's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24646 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR92-8-000]

El Paso Refinery, L.P. v. SFPP, L.P.; Complaint

October 5, 1992.

Take notice that on September 4, 1992, pursuant to section 13(l) of the Interstate Commerce Act (ICA) (49 App. U.S.C. 13(l) (1988)), El Paso Refinery, L.P. (El Paso) filed a complaint alleging that SFPP, L.P. has engaged in unduly discriminatory and unreasonably preferential practices affecting the transportation service provided by SFPP, L.P. to El Paso. El Paso seeks relief from the Commission under section 15(l) of the ICA (49 App. U.S.C. 15(l) (1988)).

directing SFPP, L.P. to cease and desist the reversal of the direction of flow of all lines in SFPP, L.P.'s "East Line" system from Phoenix to Tucson.

Further, El Paso alleges that SFPP, L.P.'s rates do not reflect the increased throughput that will result from the East Line facility expansion. Accordingly, El Paso requests that the Commission exercise its authority under ICA section 15(l) to implement rates for product deliveries on the East Line that will accurately reflect the present realities of the system.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before November 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before November 4, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24651 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA91-23-001]

Pipeline Rates: Hearing, Accounting and Florida Gas Transmission Co.; Order Establishing Hearing Procedures

Issued October 5, 1992.

On July 4, 1992, the Chief Accountant issued a contested audit report [1] under delegated authority noting Florida Gas Transmission Company's (Florida Gas) disagreement with the recommendation of the Division of Audits with respect to Exception No. 1, in Part I of the report. Florida Gas was requested to advise whether it would agree to the disposition of the contested matters under the shortened procedures provided for by Part 158 of the Commission's Regulations. 18 CFR 158.1, *et seq.*

On August 13, 1992, Florida Gas responded that it did not consent to the shortened procedures. Section 158.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Natural Gas Act, particularly sections 4, 5 and 8 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR, Chapter I), a public hearing shall be held concerning the appropriateness of Florida Gas' accounting practices as discussed in the audit report.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 92-24617 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-46-000]

Kentucky West Virginia Gas Co., Proposed Change in FERC Gas Tariff

October 5, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on October 1, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Quarterly PGA filing, which includes Forty-First Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective November 1, 1992. The revised tariff sheet reflects a current increase of $0.0012 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $2.1601 per Dth.

Kentucky West states that effective November 1, 1992, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.1700 per Dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24649 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-4-000]

Mississippi River Transmission Corporation; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that on October 1, 1992, Mississippi River Transmission Corporation (MRT) filed pursuant to section 4 of the Natural Gas Act (NGA) and the Regulations of the Federal Energy Regulatory Commission

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[1] 60 FERC ¶ 62,013 (1992).

(Commission) thereunder changes in its FERC Gas Tariff which are proposed to become effective November 1, 1992, all as more fully described in its rate increase application which is on file and available for public inspection.

MRT states that the rates proposed by its filing reflect a relative modest increase in its jurisdictional sales and transportation revenues of approximately $6.9 million annually. MRT states that principal reasons for this increase include recent increases in the costs of transportation of gas by others, increased depreciation expense associated with additional capital expenditures, increased levels of various operating and maintenance and general and administrative costs, and an increased rate of return commensurate with the increased risk of operating in increasingly competitive and volatile natural gas markets. The filing further reflects updated system throughput and utilization of the straight fixed variable method of cost classification in allocating costs and designing the proposed rates.

MRT notes that the rates proposed in its filing may be in effect for only a short period before being superseded by rates filed in compliance with restructuring obligations under Commission Order Nos. 636 and 636–A (in this regard, MRT notes that it has proposed a May 1, 1993 effective date for its restructured rates and services in its restructuring proceeding at Docket No. RS92–43–000). Thus, MRT states that this filing should serve, in part, as a transitional vehicle in its movement toward implementation of the system restructuring required by Order No. 636.

MRT states that copies of the rate filing were served upon interested state agencies, MRT sales customers, firm shippers, and interruptible shippers intervening in either MRT's last general rate proceeding at Docket No. RP89–248–000 or in its current restructuring proceeding at Docket No. RS92–43–000. Copies of a summary form of the filing were served upon remaining interruptible shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of MRT's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24652 Filed 10–8–92; 8:45]

BILLING CODE 6717–01–M

[Docket No. RP92–73–000]

National Fuel Gas Supply Corp.; Informal Settlement Conference

October 2, 1992.

Take notice that an informal settlement conference will be convened in this proceeding at 11 a.m. on Thursday, October 15, 1992. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-captioned proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Joanne Leveque at (202) 208–5705 or Warren Wood at (202) 208–2091.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24616 Filed 10–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER92–286–001]

New England Power Co.; Order Granting Rehearing and Announcing Additional 30-Day Amnesty Period for the Filing of Service Agreements

Issued October 5, 1992.

On July 2, 1992, New England Power Company (New England Power) filed a request for rehearing of the Commission's order issued in this proceeding on June 2 1992. New England Power Company, 59 FERC ¶ 61,253 (1992) (June 2 Order). New England Power seeks rehearing of the Commisson's decision in the June 2 Order to accept four of six proposed service agreements filed by New England Power on the condition that the company revise the rates charged under the agreements and refund excess amounts to its customers.

As explained below, we grant New England Power's request for rehearing and, accordingly, remove the refund obligation ordered in the June 2 Order. We take this opportunity to announce to the industry the adoption of an additional 30-day amnesty period in which to file service agreements governing jurisdictional service under tariffs of general applicability that have been approved or accepted under existing Commission regulations. We adopt this additional amnesty period in this limited context in an effort to clarify uncertainty created by the issuance and subsequent implementation of our policy concerning the timing of electric rate filings articulated in Central Maine Power Company [1] with respect to this limited category of rate filings.

Background

On January 27, 1992, as completed on April 3, 1992, New England Power filed with the Commission six service agreements under its short-term power sales tariff. That tariff, designated FERC Electric Tariff, Original Volume No. 5, was accepted for filing in 1988. By filing the service agreements, New England Power sought Commission authorization to serve new customers under the tariff.

New England Power requested waiver of the 60-day prior notice requirement, see 16 U.S.C. 824d(c) (1988); 18 CFR 35.3(a) (1992), for all six of the service agreements. The June 2 order noted that service under four of the filed agreements [2] was either on-going or had terminated at the time of New England Power's original filing. New England's request for rehearing concerns these four agreements.

In June 2 Order, the Commission accepted the rates in the four agreements for filing without suspension or hearing. However, the Commission found that with respect to the four agreements, New England Power had not demonstrated good cause for waiver of the prior notice requirement or for waiver of the Commission 's policy regarding late-filed agreements articulated in Central Maine.

In Central Maine, the Commission issued a policy statement governing its implementation of the 60-day prior notice requirement. The Commission stated that utilities providing jurisdictional service without agreements on file must submit rate for such pre-existing service within a certain period of time (amnesty window). The amnesty window ended

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[1] 56 FERC ¶ 61,200, *reh'g denied*, 57 FERC ¶ 61,083 (1991) (*Central Maine*).

[2] The agreements are with Niagara Mohawk Power Corporation, UNITIL Power Corporation, Hudson Light & Power Department (Hudson), and Long Island Lighting Company (LILCO).

on October 7, 1991, 60 days after publication of the Central Maine order in the **Federal Register**. The Commission stated that utilities filing rates outside of the amnesty window for pre-existing unauthorized service would be limited by the Commission to rates which would recover only contributions to such utilities' variable operation and maintenance (O&M) costs.[3]

Therefore, consistent with Central Maine, the Commission directed New England Power to revise its rates under the four late-filed service agreements for service provided prior to the date of issuance of the June 2 Order to a level reflecting New England Power's variable O&M costs. The Commission also directed New England Power to make refunds to reflect the revised rates.

On rehearing, New England Power argues that the Commission should open an additional amnesty window. New England Power argues that this additional amnesty window should be applciable to each of the four late-filed service agreements, *i.e.*, to filings of new service agreements under an existing tariff. In support, New England Power argues that, prior to clarification by the Commission, the Commission's policy was unclear as to whether the Central Maine policy applied to the filing of service agreements for new customers negotiated under the terms of an existing tariff. New England Power states that it reasonably interpreted the initial Central Maine order as not applying to service agreements for new customers negotiated pursuant to an existing tariff. New England Power argue (Request for Rehearing at 3) that the Commission's policy regarding the need to file such service agreements was not clarified until the Commission issued its decision in Mississippi Power Company, 58 FERC ¶ 61,286 (1992) (Mississippi Power). In this regard, New England Power argues that the Commission did not issue Mississippi Power until after service commenced under the four agreements, as well as after New England Power tendered its January 27, 1992 filing. Under these circumstances, New England Power argues that the Commission should create a brief amnesty period during which the Central Maine policy would not apply to utilities filing service agreements for new customers which are negotiated pursuant to an existing tariff.

In addition, New England Power argues that the Commission's actions in the June 2 Order were improper because the refunds ordered by the Commission constitute retroactive ratemaking and violate the file rate doctrine. New England Power also argues that the refunds ordered are unduly harsh and constitute an improper penalty outside the scope of the Commission's remedial authority under the Federal Power Act (FPA). Finally, New England Power argues that the Commission erred in calculating the length of the refund period and the amount of its refund obligation.

[3] See 58 FERC at 61,619.

Discussion

This is the fourth time since issuance of our Central Maine policy that we have addressed the filing of service agreements implementing jurisdictional service to particular customers under existing tariffs.[4] In our earlier rulings on this issue, we have explained that we consistently have required that utilities file service agreements for new customers which are negotiated pursuant to an existing tariff.[5] Our consistent policy for electric utilities has been that the filing of service agreements under previously-filed tariffs must be made in advance of the commencement of tariff service under the agreements.[6]

We further have explained in our earlier orders that the requirement of prior filing of service agreements is not a new requirement that originated at the time of issuance of our Central Maine policy. Nevertheless, we conclude from New England Power's filings and related filings that the Commission's initial order in Central Maine was not clear as to the applicability of the 60-day amnesty period announced in Central Maine (and which ended on October 7, 1991) to the filing of service agreements under general tariffs. According to New England Power, the Central Maine language that created the ambiguity is as follows:

> We are aware of the argument that, due to the need to respond quickly to market changes and opportunities for coordination, in some cases transactions must begin before the utility has a chance to file the rate reflecting the transaction with the Commission. While this argument has some merit, we note that many utilities have managed to avoid this problem by having tariffs on file that permit transactions to be negotiated subject to a cap of 100-percent contribution to fixed costs. * * * Such tariffs give the selling utility the flexibility to respond to market opportunities while satisfying its obligation to have its rates on file.[7]

Because the above language did not explicitly refer to service agreements and may have created uncertainty for the industry, we will accept New England Power's recommendation to offer public utilities one final chance in which to file for our consideration service agreements under general tariffs without risking Central Maine-type refunds for late filing.

Specifically, we will afford utilities 30 additional days, calculated from the date of publication of this order in the **Federal Register**, to file with the Commission any now-unfiled service agreements under which jurisdictional service already has commenced under generally-applicable tariffs. Utilities filing such service agreements after the close of this additional amnesty window will be limited by the Commission to rates which would recover (at most) only contributions to such utilities' variable operation and maintenance (O&M) costs.

Because New England Power already has filed service agreements governing service to Niagara Mohawk, UNITIL, Hudson, and LILCO under its short-term power sales tariff, and because the Commission has accepted those agreements for filing without suspension or hearing, there is no need to revise the rates for service provided under those four agreements. In other words, we no longer direct New England Power to revise its rates for service to the four wholesale customers prior to the date of issuance of the June 2 Order to a level reflecting its variable O&M costs. Accordingly, we no longer direct New England Power to refund (with interest) that portion of its rates that exceeds variable O&M costs incurred from the date of commencement of service under the four service agreements at issue until June 2, 1992.

In granting New England Power's request for rehearing, we wish to make clear that the 30-day extension of the Central Maine amnesty period announced herein applies only to the filing of service agreements pursuant to

[4] The first and second times we addressed this issue was in Mississippi Power and in the June 2 Order. The third time we addressed this issue was in our recent order in Central Power & Light Company, *et al.*, 60 FERC ¶_____ (Aug. 28, 1992). In a separate order issued today in Mississippi Power (Docket No. ER92-122-002), we grant rehearing for the same reasons we grant rehearing in the instant order. See 61 FERC ¶_____ (1992). We expect to issue a supplemental order in Central Power & Light in the near future that is consistent with this order.

[5] See Mississippi Power, 58 FERC at 61,897 (citing Boston Edison Company 25 FERC ¶ 61,157 (1983), *reh'g denied*, 26 FERC ¶ 61,124 (1984); Municipal Electric Utilities Association of Alabama v. FPC, 485 F.2d 987 (D.C. Cir. 1973)).

[6] See Central Hudson Gas & Electric Corp., *et al.*, 60 FERC ¶ 61,106 (1992) (articulating grounds for good cause waiver in the event of filing less than 60 days in advance of service), *reh'g pending*.

[7] 58 FERC at 61,818-19.

the tariffs of general applicability that have been approved or accepted under existing Commission regulations. As explained above, we base this decision on the ambiguous language in the initial Central Maine order concerning these types of tariffs.

Because we grant rehearing on the first of New England Power's arguments in favor of rehearing, we have no need to address any of its remaining arguments.

The Commission Orders:

(A) New England Power's request for rehearing is hereby granted.

(B) The Secretary shall promptly publish a copy of this order in the Federal Register.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24640 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. IN90-1-001, CP89-304-000, and CP89-305-000]

Northwest Pipeline Corp., et al.; Order Setting Matter for Expedited Hearing

Issued October 5, 1992.

I

On October 6, 1989, the Commission issued an "Order to Show Cause and Institution of Formal Investigation." [1] The order directed the Enforcement Section, Office of the General Counsel (Enforcement), to investigate certain activities of Northwest Pipeline Corporation (Northwest) in connection with its assignment of gas purchase contracts to its marketing affiliate, Williams Gas Supply Company (WGS). WGS subsequently sold gas produced under the assigned contracts to Williams Gas Marketing Company (WGM), another marketing affiliate of Northwest, for resale in the interstate market. The order also directed Northwest to show cause (1) why its activities had not violated the Natural Gas Act (NGA), 15 U.S.C. 717 et seq. (1988), the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 et seq. (1988), and the Commission's regulations thereunder, and (2) why the Commission should not impose appropriate remedies and assess a civil penalty. In addition, the order consolidated the investigative docket, IN90-1-000, with the proceedings in Docket Nos. CP89-304-000 and CP89-305-000. In these proceedings, Fina Oil and Chemical Company had protested Northwest's transportation under Northwest's open-access blanket certificate of some gas WGS purchased under the assigned contracts.[2]

Enforcement has completed its investigation under the Commission's Rules Relating to Investigations, 18 CFR part 1b (1992), and has reported to the Commission that Northwest, WGS and WGM may have engaged in and may be engaging in practices that violate the NGA, the NGPA, and the Commission's regulations thereunder. The facts alleged in Section II of this order describe the acts and practices that are the subject of this proceeding.

II

As a result of the investigation, the following information has been alleged to the Commission:

Corporate Affiliations

1. The Williams Companies, Inc. (Williams) is a parent company for corporations that engage in the marketing and transportation of natural gas.

2. Williams is the parent of and controls, among others, Williams Western Group (previously Northwest Energy Company, both hereinafter referred to as "WWG") and Williams Energy Company (previously Williams Gas Marketing Group, Inc. and Williams Gas Marketing Group, all of which are hereinafter referred to as "WGM Group").

3. WWG is the parent of and controls Northwest.

4. Since July 1, 1988, WGM Group has controlled several corporations engaging in the marketing (i.e., the purchase and sale) of natural gas, including WGM.

5. Prior to September 23, 1988, WWG was the parent of Northwest Marketing Company (Northwest Marketing), a marketing affiliate of Northwest.

6. On September 23, 1988, control of Northwest Marketing was transferred from WWG and WGM Group and Northwest Marketing was renamed Williams Gas Supply Company (WGS).

7. After that date, WGM Group controlled WGS and WGS engaged in the marketing (i.e., the purchase and sale) of gas.

Operations

8. Northwest operates a 7,000-mile gas gathering and interstate transmission facility that extends from the gas-producing areas of the San Juan Basin in northwestern New Mexico and southwestern Colorado through the states of Colorado, Utah, Wyoming, Idaho, Oregon and Washington, where Northwest interconnects with the facilities of Westcoast Energy, Inc., at the border of the United States and Canada. Effective July 1, 1991, Williams Field Services Company, an affiliate of Northwest, has operated Northwest's gathering and processing facilities for Northwest pursuant to an operating agreement.

9. Since September 30, 1987, WGS (or its predecessor-in-interest Northwest Marketing) and WGM have held blanket sales certificates issued by the Commission in Docket Nos. CI87-734 and CI87-738, respectively. These sales certificates allow WGS and WGM to sell gas (a) that is "committed or dedicated to interstate commerce," as defined in section 2(19) of the NGPA, 15 U.S.C. 3301(18) (1988), and therefore subject to the Commission's jurisdiction under the NGA, 15 U.S.C. 717f (1988) (such gas is referred to herein as "NGA gas"), and (b) that is not dedicated to any particular purchaser.

10. During May 1988, WGM and the WGM Group began marketing gas within the area served by Northwest's system.

11. Effective July 1, 1988, Northwest began providing "open-access" transportation under its blanket transportation certificate and part 284 of the Commission's regulations, 18 CFR part 284 (1992) (part 284 transportation).

12. As permitted by Northwest's blanket certificate, Northwest's sales customers converted approximately 62 percent and 78 percent of their firm sales entitlements to firm transportation entitlements as of July 1, 1988, and October 1, 1988, respectively.

Transfer of the Gas

13. As a result of the conversions described in ¶ 12 above, Northwest no longer needed all of its gas reserves for sale to its customers.

14. During a period including July 17, 1988, through September 30, 1988, representatives of Williams and Northwest discussed assigning Northwest's rights and obligations under some of Northwest's gas purchase contracts to a Northwest affiliate. Representatives of WGM Group and WGM participated in some of these discussions.

15. During a period including September 12, 1988 through November 8, 1988, representatives of Northwest, WGM Group and WGM discussed assigning many of Northwest's gas

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[1] 49 FERC ¶ 61,023 (1989).

[2] On September 30, 1992, Fina filed a withdrawal of its protests in Docket Nos. CP89-304-000 and CP89-305-000. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure, 18 CFR 385.216(b) (1992), the Commission will allow the withdrawal of Fina's protests unless a motion in opposition to the withdrawal is filed by October 15, 1992.

purchase contracts to a company under the control of WGM Group and/or discussed administering those contracts.

16. During the discussions described in ¶¶ 14 and 15, Northwest provided Williams, WGM Group and/or WGM substantial information regarding the contracts being considered for assignment and the wells subject to those contracts.

17. During the discussions described in ¶¶ 14 and 15, Northwest's representatives discussed with representatives of WGM Group and/or WGM (a) the criteria for selecting the gas purchase contracts that would be assigned, (b) obligations under the contracts, and (c) the respective obligations, following the assignment, of WGM, Northwest, and the assignee.

18. During a period including July 17, 1988 through October 15, 1988, Northwest did not provide the information described in ¶¶ 14 and 17 to any other shipper or potential shipper on its system.

19. On September 30, 1988, Northwest and WGS executed an agreement purporting to assign from Northwest to WGS the gas purchase contracts to which ¶¶ 14–17 above refer.

20. On September 30, 1988, Northwest sent out two types of form letters to producers with which Northwest had gas purchase contracts. One form letter (Letter A) notified producers that Northwest had assigned its contracts with them to WGS. Letter A indicated that if the producer preferred to terminate the contract rather than to sell to WGS, the producer should notify Northwest by October 14, 1988. Northwest sent Letter A to approximately 200 producers that were parties to 564 gas purchase contracts (Letter A contracts).

21. Northwest sent another September 30, 1988 form letter (Letter B) to approximately 50 producers that were parties to 73 gas purchase contracts that Northwest had not assigned (Letter B contracts). Letter B stated that Northwest would terminate each such contract by November 1, 1988 unless the producer agreed to (a) modify the contract to provide that Northwest would be responsible for taking gas only on a "best efforts" basis, or (b) permit Northwest to assign the contract to WGS. Letter B stated that WGS would contact each producer within several days about Letter B contracts Northwest proposed to terminate.

22. On or about September 30, 1988, Northwest provided WGS copies of Letters A and B and a list of all Letter A and Letter B contracts. Northwest did not provide these documents to any other shipper or potential shipper on Northwest's system at the time it provided them to WGS.

23. In order to introduce the WGM Group, answer questions about how WGS would purchase the assigned gas, and persuade any undecided producers to agree to the assignment prior to the October 14, 1988 deadline described in ¶ 20, WGS and WGM corresponded and met during the first half of October 1988 with producers which had received Letter A. During this period, no other shipper or potential shipper on Northwest's system gained access to the list of assigned contracts or was present during meetings or communications among WGS, WGM and producers with respect to the assigned contracts.

24. During and after the communications described in ¶ 23, Northwest and certain producers agreed to terminate approximately 60 Letter A contracts.

25. Northwest did not enter into a termination agreement with respect to a Letter A contract unless the producer surrendered all contractual rights under the contract, including any claims under take-or-pay provisions of the contract.

26. Discussions between producer parties to Letter B contracts and Northwest led to the assignment, at the producers' request, of 13 Letter B contracts from Northwest to WGS.

Gathering and Transportation of the Assigned Gas

27. Until July 1, 1991, Northwest owned and operated a gathering system that connects the wells producing gas subject to the assigned contracts to Northwest's main transportation line or to the transportation lines of other interstate pipelines. Effective July 1, 1991, Williams Field Services Company has operated the gathering system as contract operator for Northwest.

28. Gas produced from the vast majority of wells subject to the assigned contracts cannot be transported to market on mainline facilities unless Northwest provides gathering from the wellhead to interconnections with main transportation pipelines.

29. On September 22, 1988, WGS sent Northwest a request for gathering service. Attached to the request was a computer printout that Northwest had provided WGM Group on or about September 15, 1988 and that listed proposed receipt points. This printout listed the wells subject to contracts that Northwest proposed to assign.

30. On or about October 27, 1988, Northwest and WGM executed four contracts, numbered J–35 through J–38, to provide gathering service on Northwest's gathering system from the wells subject to assigned contracts to interconnections on the mainlines of Northwest and other pipelines. Each contract had an effective date of September 26, 1988.

31. Northwest began gathering the assigned gas for WGM under the J–36, J–37 and J–38 contracts on the following dates, all in 1988:

J–36—October 1
J–37—October 1
J–38—October 14

32. Northwest began gathering the assigned gas for WGM under the J–35 contract on December 2, 1988.

33. On September 30, 1988, Northwest's agreements to provide gathering services to shippers other than WGM applied to only a few wells subject to the assigned contracts.

34. After September 30, 1988, it was Northwest's policy not to provide gathering service for gas produced by wells subject to an assigned contract for a shipper other than WGM unless: (a) The producer agreed to terminate the assigned contract by giving up all contractual rights, including rights under take-or-pay provisions; or (b) WGS unilaterally released gas produced under the assigned contract.

35. As a result of Northwest's implementation of its gathering service after September 30, 1988, prospective shippers of assigned gas could not obtain access to the mainline systems of Northwest or any other interstate pipeline unless: (a) WGM was the shipper of the gas under the J–35 through J–38 gathering contracts; (b) the producer agreed to terminate the assigned contract by giving up all contractual rights, including rights under take-or-pay provisions: or (c) WGS in its unilateral discretion released gas produced under the assigned contract.

Marketing the Assigned Gas

36. Effective October 1, 1988, WGS and WGM executed a contract under which WGM agreed to purchase from WGS gas subject to the assigned contracts.

37. On or about November 1, 1988, WGS and WGM executed a contract under which WGM became the exclusive agent for marketing the assigned gas.

38. Since October 1, 1988:

(a) WGS has purchased assigned gas, at prices determined by WGS, and resold the gas to WGM; and

(b) WGM has primarily sold the gas to marketers or to customers located on gas transmission systems of Northwest and of El Paso Natural Gas Company (El Paso), an interstate pipeline transporting and selling gas in the State of California.

39. During the period between October 1 and December 28, 1988, WGM and WGM Group contacted potential customers on Northwest's and El Paso's transmission systems to advise them of the advantages of purchasing the augmented gas supply made available to WGM as a result of the assignments.

Administration of the Assigned Contracts

40. From or before November 1, 1988, through or on about March 26, 1990, Northwest detailed up to 31 employees to WGS for the purpose of assisting WGS in administration of the assigned contracts.

III

The Commission neither makes findings of fact nor reaches conclusions of law with regard to Northwest's alleged acts and practices. However, the allegations set forth in Section II of this order, if true, indicate that Northwest, WGS, and WGM may have committed the following violations:

A. By taking actions that served to transfer the assigned gas from Northwest to WGS and WGM, as described in ¶¶ 14–23, 25–26, 29–31, 34–35 and 40, Northwest may have violated and/or may be violating:

1. Section 4(b) of the NGA, 15 U.S.C. 717c(b) (1988), in that Northwest may have provided and may be providing WGS and WGM undue preferences with respect to jurisdictional sales by WGS and WGM and jurisdictional transportation;

2. Section 5(b) of the NGA in that Northwest may have subjected and may be subjecting its jurisdictional sales customers to an undue prejudice or disadvantage by assigning the gas at issue to WGS rather than selling such gas to them;

3. Standard C of the Commission's Standards of Conduct, 18 CFR 161.3(c), in that Northwest may have provided and may be providing WGS and WGM undue preferences in and relating to transportation;

4. Standard F of the Standards of Conduct, 18 CFR 161.3(f), in that Northwest may have provided to its marketing affiliates information related to transportation of natural gas without contemporaneously providing that information to other potential shippers on Northwest's pipeline;[3]

5. Sections 284.8 and 284.9 of the Commission's regulations, 18 CFR 284.8 and 284.9 (1992), in that (a) Northwest's unduly discriminatory gathering of assigned gas for transportation on its mainline may have been and may be equivalent to failing to offer and provide part 284 transportation on that mainline without undue discrimination and (b) that Northwest's unduly discriminatory transfer of the assigned gas may have otherwise rendered Northwest's mainline transportation of that gas unduly discriminatory;

6. Section 7(c) of the NGA, 15 U.S.C. 717f(c) (1988), in that Northwest's violations of §§ 284.8 and 284.9 of the Commission's regulations may have violated and may be violating Northwest's blanket certificate;

7. Section 311(a)(1) and 504(a)(2) of the NGPA, 15 U.S.C. 3371(a)(1), 3414(a)(2) (1988), to the extent that Northwest violated §§ 284.8 or 284.9 as described in ¶ A.5 above with respect to transportation Northwest provided under purported authority of section 311(a)(1); and

8. Standard G of the Commission's Standards, 18 CFR 161.3(g), in that Northwest may have failed to separate its operating employees from those of its marketing affiliate, WGS, to the maximum extent practicable.

B. Northwest, WGS and WGM may be properly treated as a single entity with respect to WGS's and WGM's sales of the assigned gas. If they are so treated, the sales of the assigned gas by WGS and WGM may be properly imputed to Northwest and, therefore, may have violated and may be violating:

1. Section 4(d) of the NGA, 15 U.S.C. 717c(d) (1988), in that Northwest has sold and is selling the gas at rates below its filed rates; and

2. Section 7(c) of the NGA in that Northwest has sold and is selling the gas to customers other than those on the Northwest system without certificate authority.

The issues to be addressed in the hearing and briefs in this proceeding are whether Northwest, WGS and WGM violated and are violating the foregoing provisions, or any other laws and regulations under the Commission's jurisdiction, as a result of the acts and practices described in Section II of this order and if so, what remedies should be imposed.

The Commission Finds

Good cause exists for the Commission to determine whether Northwest, WGS, and WGM violated and are violating the foregoing provisions or any other laws or regulations that the Commission administers, as a result of the acts and practices which are described in this order. Good cause also exists for the Commission to determine whether appropriate remedies should be imposed for any violations that the Commission determines have occurred or are occurring.

The Commission Orders

(A) Pursuant to Rule 501 of the Commission's Rules of Practice and Procedure (Commission's Rules), 18 CFR 385.501 (1992), this matter is hereby set for hearing.

(B) Northwest, WGS, and WGM shall file answers to this order pursuant to Rule 213 of the Commission's Rules, 18 CFR 385.213 (1992), within 30 days from the date of this order. In their answers, the respondents shall admit or deny, specifically and in detail, each allegation set forth in Section II of this order, and shall set forth every defense relied on. If an allegation is only partially accurate, each respondent shall specify that part of the allegation it admits and that part of the allegation it denies.

(C) Pursuant to sections 14, 15 and 16 of the NGA, 15 U.S.C. 717m, 717n, 717o (1988), sections 501 and 502 of the NGPA, 15 U.S.C. 3411, 3412 (1988), and Rule 601 of the Commission's Rules, 18 CFR 385.601 (1992), a prehearing conference shall be convened in this proceeding in a hearing room of the Federal Energy Regulatory Commission, 810 First Street NW., Washington, DC 20426, within 15 days after the filing of the answers pursuant to paragraph (B) of this order. Participants shall be fully prepared, as set forth in Rule 601(b), to discuss any and all matters to be considered at the conference.

(D) A Presiding Administrative Law Judge (Presiding Judge), to be designated by the Chief Administrative Law Judge, shall preside at the prehearing conference in this proceeding, with authority to establish and change procedural dates and to rule on motions, all as provided for in the Commission's Rules, 18 CFR part 385 (1992).

(E) The Presiding Judge shall conduct all hearings, pursuant to subpart E of the Commission's Rules, 18 CFR 385.501–385.510 (1992), and shall have all authority delegated by Rule 504 of the

[3] In *Tenneco Gas* v. *FERC*, No. 89–1766 (July 21, 1992), the U.S. Court of Appeals for the District of Columbia Circuit upheld Standard F insofar as it requires contemporaneous disclosure of transportation information, but set aside the portion of the standard that requires contemporaneous disclosure of gas marketing and gas sales information. The court remanded this portion of the standard for further explanation on how the requirement for contemporaneous disclosure of marketing and gas sales and supplies information relates to the pipelines' market power over transportation. In Order No. 636–A, the Commission stated that it will consider the remand of the Tenneco Gas decision in the near future. We expect that to occur soon enough to allow the parties to consider the remand order at an early stage of this hearing.

Commission's Rules, 18 CFR 385.504 (1992).

(F) This proceeding shall be phased. In the first phase, the Presiding Judge shall determine, based on the evidence introduced into the record, whether respondents have violated the provisions cited in Section III, or any other laws or regulations that the Commission administers, as a result of the acts and practices alleged in Section II of this order or as a result of any other related acts or practices. The Presiding Judge shall issue an initial decision in the first phase, which shall be subject to review by the Commision pursuant to Rule 711. The Presiding Judge shall issue the initial decision within 180 days from the date of this order.

(G) If the Commission finds violations in the first phase, the Presiding Judge will conduct a second phase. In the second phase, the Presiding Judge shall determine whether the Commission should order any or all appropriate remedies, including, but not limited to: (1) An order that Northwest, WGS, and WGM cease and desist from all future violations; (2) disgorgement by Northwest of all revenues (minus appropriate costs) obtained from transporting the assigned gas; (3) disgorgement by WGS and WGM of all sales revenues (minus appropriate costs) that they obtained by selling the assigned gas; (4) a refund by Northwest of the difference between what it actually collected through its PGA rates and what it would have collected through those rates had it retained the gas that it assigned to WGS; (5) rescission by Northwest of the assignment of Letter A and Letter B contracts and/or WGS's reassigment of the contracts back to Northwest; and (6) any other retrospective or prospective remedies that the Presiding Judge deems appropriate.

(H) Petitions for intervention shall be filed no later than 7 days after the date of this order.

By the Commission. Commissioner Moler dissented in part with a separate statement attached. Commissioner Terzic dissented.

Lois D. Cahsell,

Secretary.

Moler, Commissioner, *dissenting in part:*

I support the Commission's order setting for hearing the issue of whether Northwest violated Standard G of the Commission's marketing affiliate rule § 161.3(g) of our regulations). I also support setting for hearing the issue of whether Northwest denied access to the interstate market in an unduly discriminatory manner. The factual issue to be addressed is whether Northwest denied access to those who refused to use the services of Williams Gas Supply or Williams Gas Marketing.

However, based on the present record, I do not believe there is a sufficient basis for taking further action against Northwest by setting the remaining issues for hearing. It is clear to me as a matter of law that the assignment of a gas sales contract is not a jurisdictional activity. The order does not allege that Northwest violated the abandonment provisions of section 7(b) of the NGA by the assignment of contracts to its affiliates. Thus, because our authority to deal with discriminatory practices is limited to jurisdictional acts,[1] I do not believe that assignment of those contracts is a violation under section 4 of the NGA, and therefore subject to the Commission's enforcement action. The hearing order fails to clearly specify what type of section 4 violations may have occurred. It combines the denial of access issue with the assignment of contract issue. I support pursuing the denial of access issue, but do not believe we should pursue the assignment of contract issue.

And, I am troubled by how the Commission may handle the question of lack of access to nonjurisdictional facilities. While the Commission may, arguably, have rate jurisdiction over gathering facilities,[2] I am uncertain as to whether we have the authority to order access to nonjurisdictional facilities, or what remedies could be imposed if we find that access has been stymied in the past. I do believe that access to interstate markets is a critical element of the Commission's commitment to a competitive natural gas market, which is one reason why I have dissented from recent decisions finding pipeline facilities to be nonjurisdictional.

For these reasons, I must dissent in part from the Commission's hearing order in this proceeding.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 92-24654 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-5-000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

October 5, 1992.

Take notice that on October 1, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing changes to its FERC Gas Tariff to be effective November 1, 1992, consisting of the following tariff sheets:

Primary Tariff Sheets

Second Revised Volume No. 1:
- Twenty-First Revised Sheet No. 10
- Twentieth Revised Sheet No. 11
- Third Revised Sheet No. 12
- Fifteenth Revised Sheet No. 13
- Original Sheet No. 16
- Sheet Nos. 17 through 18
- First Revised Sheet No. 20
- First Revised Sheet No. 21
- First Revised Sheet No. 22
- Second Revised Sheet No. 25
- Third Revised Sheet No. 26
- First Revised Sheet No. 27
- Second Revised Sheet No. 31
- Second Revised Sheet No. 32
- Second Revised Sheet No. 34
- Second Revised Sheet No. 36
- Second Revised Sheet No. 37
- First Revised Sheet No. 38
- First Revised Sheet No. 45
- First Revised Sheet No. 62
- First Revised Sheet No. 63
- First Revised Sheet No. 64
- First Revised Sheet No. 65
- First Revised Sheet No. 66
- First Revised Sheet Nos. 67–72
- First Revised Sheet No. 81
- First Revised Sheet No. 85
- First Revised Sheet No. 92
- First Revised Sheet No. 95
- Second Revised Sheet No. 100
- First Revised Sheet No. 120
- First Revised Sheet No. 121
- First Revised Sheet No. 122
- First Revised Sheet No. 123
- First Revised Sheet No. 138
- Third Revised Sheet No. 148
- Original Sheet No. 153–A
- Original Sheet No. 153–B
- Fifth Revised Sheet No. 300
- Fourth Revised Sheet No. 301
- Fourth Revised Sheet No. 302
- Second Revised Sheet No. 303
- First Revised Sheet No. 304

First Revised Volume No. 1–A:
- First Revised Sheet No. 2
- Sixteenth Revised Sheet No. 201
- Fourth Revised Sheet No. 202
- First Revised Sheet No. 313
- Second Revised Sheet No. 314
- First Revised Sheet No. 318
- Second Revised Sheet No. 319
- Third Revised Sheet No. 320
- First Revised Sheet No. 400
- First Revised Sheet No. 406
- Second Revised Sheet No. 422
- First Revised Sheet No. 424
- Second Revised Sheet No. 437
- Original Sheet No. 439–A
- Original Sheet No. 439–B
- Original Sheet No. 439–C
- Fifth Revised Sheet No. 601
- Fifth Revised Sheet No. 602

Original Volume No. 2:
- Sixteenth Revised Sheet No. 2
- Eighth Revised Sheet No. 2.1
- Fourteenth Revised Sheet No. 2.2
- Thirtieth Revised Sheet No. 2.3
- Fourteenth Revised Sheet No. 2–A
- Eighth Revised Sheet No. 2–A.1
- Twenty-Sixth Revised Sheet No. 2–B
- Second Revised Sheet No. 2–C
- Second Revised Sheet No. 1557
- Second Revised Sheet No. 1558

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[1] *APGA* v. *FERC*, 587 F.2d 1089, 1095–96 (D.C. Cir. 1978).

[2] See Northwest Pipeline Corp. 59 FERC ¶ 61,115 (1992). I dissented to this order.

First Revised Sheet No. 1559
First Revised Sheet No. 1560
First Revised Sheet No. 1561

Alternate Tariff Sheet

First Revised Volume No. 1–A:
Alternate Sixteenth Revised Sheet No. 201

Northwest states that the changes reflect an overall change in its jurisdictional rates for the twelve months ended June 30, 1992, adjusted for known and measurable changes through March 30, 1993, to provide additional revenues of $74,421,850. Northwest further states that the increase in jurisdictional rates reflected in its filing is necessary to permit Northwest the opportunity to recover its revenue requirements due to (1) construction of significant mainline expansion facilities, and (2) changes in cost allocation and rate design from its prior rate proceeding.

Northwest's filing includes various other changes to its rates, tariffs, and terms and conditions to (1) respond to rate design initiatives set forth by the Commission in Order Nos. 636 and 636–A, (2) remove gathering and processing costs and services from its FERC Tariff, (3) include its mainline expansion facilities authorized in Docket No. CP91–780, (4) provide for use of rolled-in rate treatment to recover the cost of the mainline expansion facilities, and (5) provide for the aggregation of costs associated with Rate Schedules T–1 and X–87.

Northwest states that this filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commissions Regulations.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1992.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24657 Filed 10–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–1–86–000]

Change in Sales Rates Pursuant to Purchased Gas Adjustment

October 5, 1992.

Take notice that on September 30, 1992, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) regulations a proposed change in rates applicable to service rendered under Rate Schedule PL–1, affected by and subject to Paragraph 21, "Purchased Gas Cost Adjustment" (PGA) of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Such rates are proposed to become effective November 1, 1992.

PGT states that copies of the filing have been served upon all affected jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24658 Filed 10–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–6–000]

Paiute Pipeline Co.; Change in Rates

October 5, 1992.

Take notice that on October 1, 1992, Paiute Pipeline Company (Paiute), pursuant to section 4 of the Natural Gas Act and part 154 of the Commission's regulations thereunder, submitted for filing a notice of change in rates for natural gas service rendered to jurisdictional customers served under all rate schedules contained in First Revised Volume No. 1–A of Paiute's FERC Gas Tariff. In order to implement the notice of change in rates, as well as certain other tariff changes, Paiute tendered for filing and acceptance the following tariff sheets to be a part of First Revised Volume No. 1–A:

Title Page
First Revised Sheet No. 2
Third Revised Sheet No. 10
First Revised Sheet Nos. 20–24
First Revised Sheet Nos. 27–28
First Revised Sheet No. 59
First Revised Sheet No. 65
First Revised Sheet Nos. 68–77
First Revised Sheet No. 110
Second Revised Sheet No. 130
Original Sheet No. 131

Paiute proposes to make the tendered tariff sheets and the change in rates effective on November 1, 1992.

Paiute states that based upon the test period cost of service and the projected throughput quantities employed in its filing, Paiute projects a deficiency of approximately $6,842,736 in annual revenues from jurisdictional transportation and storage services at current rates. Paiute is therefore proposing to increase rates for its jurisdictional transportation and storage services in an amount that is sufficient to eliminate the revenue deficiency and recover the full cost of service reflected in its filing.

Paiute states that its proposed tariff sheets are submitted to revise its Statement of Rates and other tariff sheets as necessary to reflect the proposed changes to rates, and to revise certain other tariff sheets to reflect new monthly billing determinants used for rate design and billing purposes, the elimination of annual entitlements and associated overrun penalty payments, and certain minor housekeeping changes.

Paiute indicates that its proposed rates reflect costs and anticipated revenues applicable to a system-wide capacity expansion construction project for which a certificate of public convenience and necessity was issued in Docket No. CP91–2322–000. Paiute also states that in designing its proposed transportation rates, it has utilized a straight fixed variable rate design methodology, using a one-part, seasonally adjusted demand charge, which Paiute states is consistent with the discussion in Order No. 636–A, issued on August 3, 1992.

Paiute states that it has served copies of its filing on all affected customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24653 Filed 10–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–1–000]

Southern Natural Gas Co.; Limited Section 4 Filing

October 5, 1992.

Take Notice that on October 1, 1992, Southern Natural Gas Company (Southern), filed in accordance with Commission's Order Nos. 636 and 636–A its limited filing under section 4 of the Natural Gas Act to recover $92.6 million annually in Gas Supply Realignment (GSR) costs in accordance with the mechanism set forth in Southern's compliance filing in docket No. RS92–10–000. Southern proposes to commence recovery of the GSR costs on April 1, 1993 contemporaneously with the proposed effective date of its compliance filing Docket Nos. RS92–10–000.

Southern states it is filing to recover GSR costs which will immediately result from Southern's implementation of Order Nos. 636 and 636–A commencing on April 1, 1993. Specifically, Southern is filing to recover those costs which directly result from the restructuring required by the Commission and which are known and measurable as a result of the restructuring. Southern also requests authority to direct bill, in accordance with Order Nos. 636 and 636–A, any unrecovered balances that may exist in PGA Account No. 191 as of the effective date of service restructuring under Southern's compliance filing in Docket No. RS92–10–000.

Southern states that copies of the filing were served upon Southern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24647 Filed 10–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–2–000]

Tennessee Gas Pipeline Co.; Filing

October 5, 1992.

Take notice on October 1, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Fourth Revised Volume No. 1 of its FERC Gas Tariff to be effective on November 1, 1992:

First Revised Sheet No. 179
First Revised Sheet No. 268
First Revised Sheet No. 269

Tennessee states that this filing is being made to provide Rate Schedule FT–B shippers additional flexibility in sourcing gas in the supply area in accordance with the terms of its Cosmic Settlement, Docket Nos. RP88–119 *et al.* Tennessee states that the filing will permit FT–B shippers to nominate gas from primary and secondary receipt points on any of Tennessee's supply legs in excess of the shippers' firm entitlements on those supply legs. In addition, Tennessee has requested continued authorization from the Commission to waive the minimum rate requirements of § 284.7(d)(5) of the Commission's regulations for any Rate Schedule IT arrangements that "feed" a Rate Schedule FT–B contract at the pooling points under Tennessee's tariff, to the extent the parties mutually agree to discount such rate below the minimum rate.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–24650 Filed 10–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–2–17–000]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 1, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on appendix A and appendix B to the filing.

The proposed effective date of these revised tariff sheets is November 1, 1992.

Texas Eastern states that these tariff sheets are being filed pursuant to section 23, Purchased Gas Cost Adjustment contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. Texas Eastern states that in compliance with §154.308 (b)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format as prescribed by FERC Form No. 542–PGA (Revised) and FERC's Notice of Criteria for Accepting Electronic PGA Filings dated April 12, 1991.

Texas Eastern states that the changes proposed in this PGA filing consist of Demand current adjustment of $0.024/dth and a Commodity current adjustment of $0.0515/dth based upon the change in Texas Eastern's projected cost of purchased gas from Texas Eastern's October 1, 1992 Out-of-cycle PGA in Docket No. TQ92–8–17 filed on September 30, 1992.

Texas Eastern states that on September 15, 1992 Texas Eastern filed substitute tariff sheets to be effective for the period beginning December 1, 1990 to-date reflecting the rates provided for in the Stipulation and Agreement in Docket No. RP88–67, *et al.* (Phase II/

PCBs) filed by Texas Eastern on December 17, 1991 (PCB Settlement). The substitute tariff sheets filed herewith listed on appendix B reflect Texas Eastern's PCB settlement rates adjusted for the PGA change proposed herein.

Texas Eastern respectfully requests the Commission to accept the tariff sheets on appendix A hereto to be effective for purposes of rendering billings beginning November 1, 1992 and accept the substitute tariff sheets on appendix B as a supplement to Texas Eastern's September 15, 1992 filing in Docket No. RP88-67 *et al.* (Phase II/PCBs) for the period beginning November 1, 1992.

Texas Eastern states that copies of its filing have been served on all authorized Purchasers of Natural Gas from Texas Eastern, applicable state regulatory agencies and all parties on the service list in Docket Nos. RP88-67, *et al.* (Phase II/PCBs).

Any person desiring to be heard or to protest said filing should filed a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24644 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-284-000, ER92-284-001 and EL92-40-000]

Vermont Electric Power Co., Inc.; Initiation of Proceeding and Refund Effective Date

October 5, 1992.

Take notice that on September 25, 1992, the Commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL92-40-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL92-40-000 will be 60 days after publication of this notice in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24615 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-52-000,001 TM93-1-52-000]

Western Gas Interstate Company; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that on October 1, 1992, Western Gas Interstate Company ("Western"), pursuant to section 4 of the Natural Gas Act, the Commission's regulations thereunder and Western's FERC Gas Tariff, tendered for filing proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date for the tariff sheets are October 1, 1992 and November 1, 1992.

Western states that, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff.

Western states that the Tariff sheet proposed to become effective October 1, 1992 is to account for the decrease in Western's Annual Charge Adjustment (ACA). The adjustment of the ACA surcharge is determined each fiscal year, and reflects a decrease of $0.0001/Mcf from the currently effective ACA Surcharge.

Western further states that the Tariff sheet proposed to become effective November 1, 1992 is to provide for: (1) A increase in purchased gas cost under Western's Rate Schedule CD-N of $0.7572 per MMBTU; and (2) a increase in purchased gas cost under Western's Rate Schedule CD-S of $0.6735 per MMBTU.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24648 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1992.

Take notice that Williams Natural Gas Company (WNG) on September 30, 1992, tendered the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective November 1, 1992:

Thirteenth Revised Sheet No. 6,
Fourteenth Revised Sheet No. 6A,
Thirteenth Revised Sheet No. 9

WNG states that the tariff sheets are being filed in accordance with Article 18, Purchased Gas Adjustment of the General Terms and Conditions WNG's FERC Gas Tariff, First Revised Volume No. 1.

(1) A $0.1920 per Dth increase in Cumulative Adjustment due to an increase in WNG's projected gas purchase costs.

(2) A special Surcharge Adjustment of $0.0911 per Dth to amortize over the six-month period November 1992 through April 1993 $8.4 million which was the unrecovered Deferred Purchased Gas Cost Amortized Subaccount balance on April 30, 1992.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

Inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24645 Filed 10-8-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4520-3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075.

Availability of Environmental Impact Statements Filed September 28, 1992 through October 2, 1992 pursuant to 40 CFR 1506.9.

EIS No. 920385, Draft EIS, FHW, ND, North Dakota 1806 Transportation Improvements, from the Heart River Bridge in Mandan to Fort Lincoln State Park, Funding and COE 404 Permit, Morton County, ND, Due: November 25, 1992, Contact: George A Jensen (701) 250-4204.

EIS No. 920386, Draft EIS, FHW, AK, Kenai River Bridge Crossing Project, Construction from Sterling Highway to Funny River Road, Funding, COE Section 10 and 404 Permits, US CGD Permit and EPA NPDES Permit, Kenai Peninsula, AK, Due: November 27, 1992, Contact: Steve Moreno (907) 586-7428.

EIS No. 920387, Draft EIS, FHW, MA, MA-146/Massachusetts Turnpike Interchange Project, Improvements from MA-146 between I-290 at Brosnihan Square in Worcester and MA-122A in Millbury, Funding, COE Section 404 Permit and EPA NPDES Permit, Cities of Worcester and Millbury, Worcester County, MA, Due: November 24, 1992, Contact: Arthur O'Connor (617) 494-2528.

EIS No. 920388, Draft EIS, AFS, MT, Beartooth Mountains Oil and Gas Leasing and Development, Approval Implementation, Custer National Forest, Land Management Plan, Beartooth Ranger District, Carbon, Park, Sweetgrass and Stillwater Counties, MT, Due: November 23, 1992, Contact: Carl Fager (406) 657-6361.

EIS No. 920389, Final EIS, SFW, IA, Brushy Creek State Recreation Area (BCSRA) Dam and Lake Project, Implementation, Funding, NPDES Permit and Section 404 Permit, Des Moines River, Webster County, IA, Due: November 9, 1992, Contact: David Pederson (612) 725-3596.

EIS No. 920390, Draft EIS, FHW, MO, Ozark Mountain Highroad Corridor Construction from existing US 65/MO-F north of Branson, then south across Lake Taneycomo to another intersection with US 65 south of Branson, Funding, COE Section 10 and 404 Permits and Coast Guard Bridge Permit, Taney and Stone Counties, MO, Due: November 23, 1992, Contact: Jim Mullen (314) 636-7104.

EIS No. 920391, Final EIS, UAF, MO, B-2 Advanced Technology Bomer, A/OA-10 Thunderbolt and T-38 Talon Jet Trainer Aircrafts Basing at Whiteman Airforce Base, Implementation, Johnson County, MO, Due: November 09, 1992, Contact: Capt. Douglas Hulings (804) 764-3056.

EIS No. 920392, Final EIS, FAA, MI, Detroit Metropolitan Wayne Airport, Air Traffic Control Noise Abatement Procedures, Implementation and Completion of the Master Plan Development, Wayne County, MI, Due: November 09, 1992, Contact: Douglas Powers (312) 694-7899.

EIS No. 920393, Draft EIS, AFS, OR, East End Salvage Timber Sales and Restoration Projects, Implementation, Umatilla National Forest, Heppner Ranger District, Grant and Morrow Counties, OR, Due: November 23, 1992, Contact: David Kendrick (503) 676-9187.

EIS No. 920394, Draft EIS, NPS, HI, Kaloko-Honokohau National Historical Park, Management and Development, General Management Plan, Implementation, Hawaii County, HI, Due: December 08, 1992, Contact: Gary Barbano (808) 541-2693.

EIS No. 920395, Final EIS, FHW, TX, TX-35/Alvin Freeway Construction, I-45/Gulf Freeway to Belfort, Houston, Harris County, TX, Due: November 09, 1992, Contact: John E. Inabinet (512) 482-5516.

Amended Notices

EIS No. 920251, Draft Supplement, BLM, MT, Flathead National Forest Land and Resource Management Plan Amendment 16, Old-Growth Management Indicator Species Continued Populations Plan, Implementation, Flathead, Lake, Lincoln, Missoula, Powell and Lewis and Clark Counties, MT, Due: October 15, 1992, Contact: Nancy Warren (406) 758-5325.

Published FR 07-02-92—Review period extended.

EIS No. 920344, Draft EIS, FAA, CA, Lindbergh Field Facilities Improvements, San Diego International Airport, Plan Approval, San Diego County, CA, Due: October 27, 1992, Contact: Bill Johnstone (310) 297-1621.

Published FR 08-28-92—Review period extended.

EIS No. 920379, Legislative Draft E, AFS, OR, Steamboat Creek Wild and Scenic Suitability Study, Designation, North Umpqua River, Umpqua National Forest, Douglas and Lane Counties, OR, Due: January 15, 1993, Contact: Nancy L. Peckman (503) 496-3532.

Published FR 10-02-92—Due date correction.

Dated: October 5, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-24673 Filed 10-8-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4520-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 21, 1992 through September 25, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

DRAFT EISs

ERP No. D-FHW-E40744-NC Rating EC2, US 421 Highway Improvements, East of Secondary Road 2433 to West of I-77, Funding and Possible COE 404 Permit, Wilkes and Yadkin Counties, NC.

Summary: EPA had concerns over wetland losses and habitat fragmentation and therefore recommends using an alternative that uses the existing highway corridor.

ERP No. D-FHW-E40746-NC Rating EC2, US 421 Transportation Improvement just west of the South Fork New River to NC-1361 east of the Town of Deep Gap, Funding, Land Transfer and COE Section 404 Permit(s), Watauga County, NC.

Summary: EPA expressed concern for the potential for adverse water quality impacts related to construction activities in the mountainous region. Non-point source contributions and loss of upland habitat was also a concern.

ERP No. D-FHW-G40133-OK Rating LO, OK-99/OK-3E/US 377 North of Ada Transportation Corridor Reconstruction, Funding, Section 404 and NPDES Permits, Pontotoc and Seminole Counties, OK.

Summary: EPA had no objections to selection of the New Alignment

Alternative with New Alignment in the Byng Area as the proposed alternative.

ERP No. D-FHW-G40134-OK Rating LO, OK-82 Highway Construction, Red Oka to Lequire, Funding and Possible National Pollutant Discharge Elimination System Permit, Latimore and Haskell Counties, OK.

Summary: EPA had no objections to the selection of the West Alignment as the preferred alternative. The EIS was closely coordinated with other agencies to lessen the adverse impacts, for a project that will have a positive effect on the area.

ERP No. D-FHW-J40126-MT Rating E02, US 2 Reconstruction, Columbia Heights to Hungry Horse, Funding, Land Transfer and COE Section 404 Permit, Flathead County, MT.

Summary: EPA expressed objections to the placement of large amounts of fill material in the South Fork of the Flathead River ad the destruction of valuable wetlands and riparian areas. Water quality data and analysis were completely lacking

ERP No. D-ICC-J53004-MT Rating LO, Tongue River Railroad Additional Rail Line Construction and Operation, Ashland to Decker, Approval, Rosebud and Big Horn Counties, MT.

Summary: EPA had no objections to the ICC's Four Mile Creek Alternative. EPA did provide comments on cultural statements concerning Native American issues.

FINAL EISs

ERP No. F-AFS-J65184-UT, Uinta National Forest Plan Amendment, Rangeland Ecosystem Management Plan, Implementation, Sanpete, Wasatch, Utah, Toole and Juab Counties, UT.

Summary: EPA continued to find no significant concerns with the proposed action. EPA can support the Agency preferred alternative, Alternative B, with caveats raised in preceding paragraphs.

ERP No. F-AFS-K65134-CA, South Fork of the Trinity Wild and Scenic River Management Plan, National Wild and Scenic Rivers, Implementation, Trinity River, Six Rivers and Shasta-Trinity National Forests, Trinity and Humboldt Counties, CA.

Summary: EPA continued to express concerns with the extent of the Forest Service's proposed corridor of protection. EPA requested that the Record of Decision contain additional clarifying language.

ERP No. F-AFS-L65161-WA, Withrow Timber Sale, Implementation, Wenatchee National Forest, Naches Ranger District, Yakima County, WA.

Summary: EPA expressed environmental objections with the preferred alternative. EPA environmental objections are based on: potential violations of State water quality standards and exceeding the Forest Plan standard for stream temperature, decreased visibility and degradation of air quality in the Class I airsheds adjacent to the planning area, potential impacts to threatened species, the need for complete monitoring and mitigation discussions and the need for a broader cumulative effects analysis.

ERP No. FA-NOA-K90007-00, Pacific Coast Groundfish Fishery Management Plan (FMP), Updated Information to the License Limitation Program, Approval and Implementation of Amendment No. 6., OR, WA and CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Regulations

ERP No. R-NSF-A22124-00, 45 CFR parts 670, 671, & 672; Conservation of Antarctic Animals and Plants; Waste Regulation; Enforcement & Hearing Procedures; (57 FR 33918).

Summary: EPA expressed concerns regarding the vagueness of the proposed permit issuance criteria, and the permit application and review process. EPA also, recommended that NSF revise the proposed definitions to reflect consistency with Annex III to the Protocol, and that the regulations accurately reflect the provisions of Annex III regarding disposal of sewage and domestic liquid wastes.

Dated: October 5, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-24674 Filed 10-8-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Crowley American Transport, Inc., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011063-012.

Title: United States/Jamaica Discussion Agreement.

Parties:

Crowley American Transport, Inc.
Kirk Lines Ltd.
Sea-Land Service, Inc.
Blue Caribe Line

Synopsis: The proposed amendment modifies the Agreement Authority to provide for space chartering and rationalization of service. The parties have requested a shortened review period.

Dated: October 5, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24607 Filed 10-8-92; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Holland America Line—Westours Inc., (d/b/a Holland America Line), Wind Surf Limited and HAL Antillen N.V., 300 Elliott Ave. West, Seattle, Washington 98119.

Vessels: MAASDAM and RYNDAM

Dated: October 5, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24608 Filed 10-8-92; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 92-49]

Blue Star Line, Ltd., and Hamburg-Seudamerikansche Dampfschiffahrts-Gesellschaft Eggert & Amsinck DBA Columbus Line v. Lauritzen Reefers, A/S and J. Lauritzen (U.S.A.), Inc. Filing of Complaint and Assignment

October 5, 1992.

Notice is given that a complaint filed by Blue Star Lines, Ltd. and Hamburg-Seudamerikansche Dampfschiffahrts-Gesellschaft Eggert & Amsinck dba Columbus Line ("Complainant") against Lauritzen Reefers, A/S and J. Lauritzen (U.S.A.), Inc. ("Respondent") was served October 5, 1992. Complainants allege that Respondents engaged in violations of sections 10(a)(1) and (b)(1)–(4), (6), and (9)–(12) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1) and (b)(1)–(4), (6), and (9)–(12), by operating an ocean common carrier service in the California/New Zealand trade without filing a tariff while offering secret rates and commercial terms which vary at will.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 5, 1993, and the final decision of the Commission shall be issued by February 2, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24609 Filed 10-8-92; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 92-48]

Imperial Chemical Industries, PLC v. Empresa Naviera Santa S.A. Filing of Complaint and Assignment

Served October 5, 1992.

Notice is given that a complaint filed by Imperial Chemical Industries, PLC ("Complainant") against Empresa Naviera Santa S.A. ("Respondent") was served October 5, 1992. Complainant alleges that Respondent engaged in violations of section 10(b)(10) of the Shipping Act of 1984, 46 U.S.C. 1709(b)(10), by misrating two shipments from New York to Chile and declining to honor Complainant's overcharge claim.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 5, 1993, and the final decision of the Commission shall be issued by February 2, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24610 Filed 10-8-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. State Medicaid Fraud Control Units–42 CFR part 1002, subpart C 0990–0162—Extension—The regulation establishes application and annual reporting requirements to enable State governments to receive Federal funding for the operation of certified Medicaid Fraud Control Units. The information collected is necessary to monitor and ensure that costs are allowable and pertain to fraud against the Medicaid program. *Respondents:* State governments; Burden Information for Application—*Annual Number of Respondents:* 2; *Frequency of Response:* Once; *Average Burden per Response:* 112 hours; *Estimated Annual Burden:* 224 hours—Burden Information for Annual Recertification Report—*Annual Number of Respondents:* 41; *Frequency of Response:* Once; *Average Burden per Response:* 56 hours; *Estimated Annual Burden:* 2296 hours—*Total Burden:* 2520 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 25, 1992.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 92-24115 Filed 10-8-92; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 92D-0296]

Draft Guidance Manual for Submitting Computer-Assisted New Drug Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance manual for submitting computer-assisted new drug applications (CANDA's). The draft guidance manual, entitled "CANDA Guidance Manual," is intended to facilitate the use of computers in the drug approval process by giving applicants and other interested parties guidance on the factors FDA considers in accepting CANDA's. Computerized submissions will enable FDA to expedite its new drug approval process.

DATES: Written comments by January 7, 1993.

ADDRESSES: Submit written requests for single copies of the draft guidance manual to the CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that

office in processing your requests. Submit written comments on the draft guidance manual to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance manual and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The draft guidance manual is available via Internet and Bitnet by sending an electronic mail message to DOC0003@FDACD.BITNET. The sole purpose of this address is to automatically distribute the notice and report by return electronic mail. Therefore, no other correspondence should be sent to this address, and there is no need to include text in the body or subject of the request message.

FOR FURTHER INFORMATION CONTACT: Robert A. Bell, Center for Drug Evaluation and Research (HFD–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0845.

SUPPLEMENTARY INFORMATION: One of FDA's continuing objectives is to improve the speed and quality of its drug review and approval program. The Federal Food, Drug, and Cosmetic Act requires persons who wish to market new drug products to demonstrate that those drug products are both safe and effective before introducing them into interstate commerce. This is achieved through the submission of a new drug application to FDA. These applications ordinarily contain thousands of pages of reports, analyses, tabulations, and case reports, which must be reviewed by agency officials. FDA believes the increased use of CANDA's and computers will enhance the timeliness, effectiveness, and efficiency of the drug review process and reduce burdensome, nonessential, hard-copy handling and storage. For example, data from case report forms and tabular listings can be more effectively retrieved and reviewed using computer technology, and several reviewers can simultaneously review an application and search or analyze selected sections.

FDA has been accepting CANDA's for the past 6 years. During that time, the agency has issued computer-related guidances and information that have addressed the needs of several FDA review disciplines. The most comprehensive guidance was a notice published in the **Federal Register** of September 15, 1988 (53 FR 35912).

In an attempt to consolidate these guidances, FDA, the Pharmaceutical Manufacturers Association, and the Health Protection Branch of the Canadian Department of National Health and Welfare have worked over the past few years to develop the draft guidance manual.

The draft guidance manual includes the following information.

1. Policies and procedures for CANDA submissions to indicate:

(a) How, where, and when to submit a CANDA;

(b) Applicant and FDA interaction, agency contacts and appropriate offices, agency and division hardware and software; and

(c) Potential problem areas and their resolution.

2. CANDA definitions and terminology.

3. Guidelines for CANDA system security and integrity.

4. CANDA guidelines specific to the following FDA reviewing divisions and application sections: Biopharmaceutics; pharmacology and toxicology; chemistry, manufacturing, and controls; and statistics.

5. Survey results on CANDA's submitted from 1985 through 1988.

6. Administrative and technical requirements of the Canadian Drugs Directorate's Computer-Assisted New Drug Submissions.

CANDA's may be transmitted in several ways: (1) Direct access by agency reviewers to the applicant's mainframe; (2) direct access to a third party mainframe; (3) review of the application on a microcomputer in the reviewer's office; (4) review of the application on an agency mainframe; or (5) review of the application from an optical disk. CANDA's may also include the use of an electronic mail component to speed the transmission.

FDA is making this draft guidance manual available for public comment before issuing a final guidance. If, following the receipt of comments, the agency concludes that the draft guidance manual reflects acceptable criteria for use in submitting CANDA's, FDA will prepare a final guidance manual and announce its availability in the **Federal Register**.

This guidance may be useful to applicants in submitting CANDA's. Applicants may follow the guidance or may choose to use alternate procedures even though they are not provided for in the guidance. If an applicant chooses to use alternate procedures, the applicant may wish to discuss the matter further with the agency to prevent expenditure of money and effort on activities that may later be determined to be unacceptable by FDA. This guidance does not bind the agency and does not create or confer any rights, privileges, or benefits for or on any person.

Interested persons may, on or before January 7, 1993, submit written comments on the draft guidance manual to the Dockets Management Branch (address above). FDA is requesting comments pertaining to the development of an overall CANDA policy, rather than comments that propose adoption of specific equipment, systems, computer programs, and services. FDA will consider these comments in determining whether further amendments to, or revisions of, the draft guidance manual are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy.

Dated: September 17, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–24628 Filed 10–8–92; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92M–0241]

Les Laboratories Blanchard; Premarket Approval of Blanchard™ Soft (Polymacon) Contact Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Les Laboratories Blanchard, Sherbrooke, Quebec Canada, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the BLANCHARD™ Soft (polymacon) Contact Lens. The device is to be manufactured under an agreement with Allergan Optical, Irvine, CA, which has authorized Les Laboratories Blanchard to incorporate information contained it its approved premarket approval application (PMA) and related supplements for the Hydron® (polymacon) Hydrophilic Contact Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 22, 1992, of the approval of the application.

DATES: Petitions for administrative review by November 9, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23,

12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

SUPPLEMENTARY INFORMATION: On June 4, 1991, Les Laboratories Blanchard, Sherbrooke, Quebec Canada, submitted to CDRH an application for premarket approval of the BLANCHARD™ Soft (polymacon) Contact Lens. The BLANCHARD™ Soft (polymacon) Contact Lens is indicated for daily wear for the correction of visual acuity in aphakic and not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 1.50 diopters (D) or less that does not interfere with visual acuity. In addition, the lens is to be disinfected using either a heat or chemical lens care system. The application includes authorization from Allergan Optical, Irvine, CA 92713–9534, to incorporate information contained in its approved PMA and related supplements for Hydron® (polymacon) Hydrophilic Contact Lens.

In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On May 22, 1992, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 9, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 25, 1992.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 92–24566 Filed 10–8–92; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of November 1992.

Name: Predoctoral Training Review Committee.

Date and Time: November 12–13, 1992, 8:30 a.m.

Place: Ramada Inn Rockville, Georgetown & Montrose Rooms, 1775 Rockville Pike, Rockville, Maryland 20852.

Open on November 12, 8:30 a.m.–9:30 a.m.—Closed for Remainder of Meeting.

Purpose: The Predoctoral Training Review Committee shall review applications that either assist in meeting the cost of planning, developing, and operating; or participating in approved predoctoral training programs in the field of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on November 12, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Predoctoral Training Review Committee, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Name: Faculty Development Review Committee.

Date and Time: November 17–20, 1992, 8:30 a.m.

Place: Conference Rooms I and J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on November 17, 8:30 a.m.–10:30 a.m.—Closed for Remainder of Meeting.

Purpose: The Faculty Development Review Committee shall review applications that (1) plan, develop and operate programs for the training of physicians who plan to teach in family medicine training programs; and support physicians who are trainees in such programs and who plan to teach in family medicine training programs; and (2) plan, develop and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and support traineeships and fellowships to physicians in training.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on November 17, at 10:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Faculty Development Review Committee, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Agenda Items are subject to change as priorities dictate.

Dated: October 5, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–24567 Filed 10–8–92; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-92-1007; FR-3272-D-01]

Delegation of Authority or the HOPE for Homeownership of Single Family Homes Program (HOPE 3)

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Community Planning and Development and the Deputy Assistant Secretary for Grant Programs the Secretary's power and authority with respect to the HOPE for Homeownership of Single Family Homes Program (HOPE 3), subject to certain specified exceptions.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: John Garrity, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-0324, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice delegates all power and authority of the Secretary of Housing and Urban Development concurrently to the Assistant Secretary for Community Planning and Development and the Deputy Assistant Secretary for Grant Programs for the HOPE for Homeownership of Single Family Homes Programs (HOPE 3), except for the power to sue and be sued. The Secretary also does not delegate to the Deputy Assistant Secretary for Grant Programs the authority to issue or waive rules and regulations. The authority delegated to the Assistant Secretary only may be redelegated to employees of the Department, except for the authority to issue or waive rules and regulations.

The HOPE 3 Program is a new program authorized by title IV, subtitle C, of the National Affordable Housing Act ("NAHA") (Pub. L. 101-625, 104 Stat. 4079, 4172-4180 (November 28, 1990), codified at 42 U.S.C. 12891-12898). HOPE is an acronym which stands for Homeownership and Opportunity for People Everywhere. Among the HOPE grant programs, HOPE 3 provides homeownership opportunities for eligible, low-income families and individuals to purchase certain Federal, State and local government-owned single family properties, and units in scattered site, single family public and Indian housing developments. In general, under the HOPE 3 Program HUD awards grants on a competitive basis to eligible applicants (public bodies, Indian tribes, private nonprofit organizations, and cooperative associations) for the planning or implementation of eligible HOPE 3 homeownership programs.

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Community Planning and Development and to the Assistant Secretary for Grant Programs all power and authority of the Secretary with respect to the HOPE for Homeownership of Single Family Homes Program (HOPE 3) authorized by title IV, subtitle C of the National Affordable Housing Act ("NAHA") (42 U.S.C. 21891-12898).

Section B. Authority Excepted

The authority delegated to the Assistant Secretary for Community Planning and Development does not include the power and authority to sue and be sued. The authority delegated to the Deputy Assistant Secretary for Grant Programs does not include the power to sue and be sued or the power to issue or waive rules and regulations.

Section C. Authority to Redelegate

The Assistant Secretary for Community Planning and Development may redelegate to employees of the Department any of the power and authority delegated under this delegation, except the authority to issue or waive rules and regulations. The Deputy Assistant Secretary for Grant Programs is not authorized to redelegate the power and authority delegated under this delegation.

Authority: Title IV, subtitle C, of the National Affordable Housing Act (42 U.S.C. 12891-12898); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 30, 1992.

Jack Kemp,

Secretary of Housing and Urban Development.

[FR Doc. 92-24637 Filed 10-8-92; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-92-3038; FR-2736-N-08]

Regulatory Waiver Requests Granted by the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waiver requests: June 1, 1992 through August 31, 1992.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This Notice is the sixth in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this Notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this Notice, contact Grady J. Norris, Assistant General Counsel for Regulations, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. (Telephone 202-708-3055. TDD: (202) 708-3259. These are not toll-free numbers.) For information concerning a particular waiver action about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (section 7(q)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3)), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a Notice in the Federal Register. These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional informations about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the sixth Notice of its kind to be published under section 106. The first Notice, published on August 26, 1991, updated waiver-grant activity by the Department from the period immediately following passage of the Reform Act through the end of May 1991. Thereafter, notices updating waiver-grant activity for the ensuring three-month periods were published on October 28, 1991, January 13, 1992, April 8, 1992, and July 20, 1992.

Today's document updates HUD's waiver-grant activity through the end of August, 1992. In approximately three months, the Department will publish a similar Notice, providing information about waiver-grant activity for the period from September 1, 1992 through November, 1992.

Today's document also includes a large number of waiver-grant summaries representing activity associated with bond financing transactions under 24 CFR part 811 between July 1991 and the end of June 1992. Through error, these waiver-grant actions were not reported in earlier quarterly summaries.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in part 24) would come early in the sequence, while waivers in the section 8 and section 202 programs (24 CFR chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in the listing under § 811.105(b).) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between September and November 1992.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the appendix that follows this Notice.

Dated: September 30, 1992.

Jack Kemp,

Secretary.

Appendix— Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development June 1, 1991 through August 31, 1992 [and Listing of Pre-June 1, 1991 Regulatory Waivers Not Previously Reported]

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 1 through 4 in this listing is:

Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 451 Seventh Street, SW., room 7270, Washington, DC 20410–7000. Phone: (202) 708–2565. TDD: (202) 708–2565.

1. *Regulation:* 24 CFR 91.40(b).

Project/Activity: Norwalk, CA; Middletown, CT; Port St. Lucie, FL; Muskegon, MI; Roseville, MI; Newburgh, NY; and Parma, OH. Waiver of the 60-day comment period for the Comprehensive Housing Affordability Strategy (CHAS).

Nature of Requirement: 24 CFR 91.40(b) requires that a jurisdiction make its proposed comprehensive housing affordability strategy (CHAS) available to the public for a reasonable length of time (at least sixty days) for an examination and comment period.

Granted By: Jack Kemp, Secretary.

Date Granted: June 17, 1992 (Norwalk CA); June 30, 1992 (Middletown CT); August 4, 1992 (Port St. Lucie FL); August 6, 1992 (Muskegon, MI, Roseville MI, Newburgh NY, Parma OH).

Reasons Waived: 24 CFR 570.302(b), in implementing statute, requires that a grantee in the Community Development Block Grant (CDBG) program submit a final statement of community development objectives and projected use of funds to HUD no later than the first working day in September. Section 104(c) of the Housing and Community Development Act of 1974, as amended, (24 U.S.C. 5304(c)) requires that before HUD makes a grant under the CDBG program to a metropolitan city or an urban county, the unit of general local government must certify that it is following a current CHAS approved by HUD. Because the above jurisdictions could not meet these requirements, they requested that the requirement at 24 CFR 91.40(b) be waived and the required length of time for comments be shortened to thirty days, thus allowing time for a CHAS to be submitted to HUD and approved and a final statement to be submitted before the deadline. Because of the potential detrimental impact to each of the jurisdiction's low-income population, the Secretary determine that good cause existed for which to waive 24 CFR 91.40(b).

2. *Regulation:* 24 CFR 92.101(a).

Project/Activity: City of Tucson/Pima County, AZ. Waiver of the March 31, 1992 submission deadline regarding HOME consortia to August 14, 1992.

Nature of Requirement: 24 CFR 92.101(a), in part, requires a consortium of geographically contiguous units of general local government, for purposes of carrying out the HOME investment program, to notify HUD, submit written certifications, and have executed a legally binding cooperation agreement by March 31 prior to the beginning of the fiscal year the consortium will be effective.

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: August 11, 1992.

Reasons Waived: The consortium agreement document was delayed in receiving approval from both the Mayor and Council of the City of Tucson and the Board of Supervisors of Pima County. Failure to grant this waiver in the first year of the HOME program would prevent the City of Tucson/Pima County from receiving its FY 1993 HOME allocation which would be detrimental to the consortium's low-income population.

3. *Regulation:* 24 CFR 92.150(a).

Project/Activity: Stamford, CT and Lynwood, CA. Waiver of HOME Investment Partnerships program description submission requirements.

Nature of Requirement: 24 CFR 92.150(a) requires that a jurisdiction that has not yet been designated a participating jurisdiction for the HOME program must submit a program description within 45 days of designation as a participating jurisdiction under 24 CFR 92.105.

Granted By: Randall H. Erben Acting Assistant Secretary for Community Planning and Development.

Date Granted: July 27, 1992 and August 18, 1992.

Reasons Waived: Waivers of 24 CFR 92.150(a) were granted to the above

participating jurisdictions for good cause. In going through the HOME application process for the first time, in this new program, Stamford encountered difficulties in synchronizing local legislative hearing and meeting requirements with the 45-day deadline. Lynwood experienced delays due to the death of its CD Director/HOME Coordinator and the resignation of its City Manager.

4. *Regulation:* 24 CFR 92.250.

Project/Activity: Los Angeles, CA. Waiver of the HOME Investment Program maximum per-unit subsidy amount to 100 percent of the section 221(d)(3) limits.

Nature of Requirement: 24 CFR 92.250 limits the amount of HOME funds that may be invested on a per-unit basis in affordable housing to 67 percent of the per-unit dollar limits established by HUD for elevator-type projects, involving nonprofit mortgagors, insured under section 221(d)(3) of the National Housing Act, as amended.

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: June 19, 1992.

Reasons Waived: To permit the City of Los Angeles to more quickly rebuild in areas affected by the recent civil unrest, the waiver was granted, raising the subsidy limits from 67 percent to 100 percent for a period of twelve months ending July 1, 1993.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 5 through 16 in this listing is:

Morris E. Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–2700. TDD: (202) 708–4594.

5. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Independence One Mortgage Corporation and Adjustable Rate Mortgages.

Nature Of Requirement: The regulations, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 27, 1992.

Reasons Waived: Independence One Mortgage Corporation requested a waiver in order to extend the initial adjustment date on one loan in order to make it eligible for placement in a GNMA pool. Ineligibility for the pool would result in a financial hardship to the mortgagee. Extension of the date would not have an adverse effect on the mortgagor. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee obtaining written consent from the mortgagors to the modification of the initial adjustment date.

6. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Statewide Funding Corporation and Adjustable Rate Mortgages.

Nature Of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 4, 1992.

Reasons Waived: Statewide Funding Corporation requested a waiver in order to extend the initial adjustment date on one loan in order to make it eligible for placement in a GNMA pool. Ineligibility for the pool would result in a financial hardship to the mortgagee. Extension of the date would not have an adverse effect on the mortgagor. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee obtaining written consent from the mortgagors to the modification of the initial adjustment date.

7. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Independence One Mortgage Corporation and Adjustable Rate Mortgages.

Nature Of Requirement: The regulations, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 5, 1992.

Reasons Waived: Independence One Mortgage Corporation requested a waiver in order to extend the initial adjustment date on one loan in order to make it eligible for placement in a GNMA pool. Ineligibility for the pool would result in a financial hardship to the mortgagee. Extension of the date would not have an adverse effect on the mortgagor. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee obtaining written consent from the mortgagors to the modification of the initial date.

8. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Source One Mortgage Service Corporation and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 5, 1992.

Reason Waived: Source One Mortgage Service Corporation requested a waiver in order to extend the initial adjustment date on one loan in order to make it eligible for placement in a GNMA pool. Ineligibility for the mortgagee. Extension of the date would not have an adverse effect on the mortgagor. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee obtaining written consent from the mortgagors to the modification of the initial adjustment date.

9. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Liberty Mortgage Corporation and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 20, 1992.

Reason Waived: Liberty Mortgage Corporation requested a waiver in order to extend the initial adjustment date on one loan in order to make it eligible for placement in a GNMA pool. Ineligibility for the pool would result in a financial hardship to the mortgagee. Extension of the date would not have an adverse effect on the mortgagor. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee

obtaining written consent from the mortgagors to the modification of the initial adjustment date.

10. *Regulation:* 24 CFR 203.50(g).

Project/Activity: Hilltop area, Tacoma, WA, 203(k) Rehabilitation Loans.

Nature of Requirement: The regulation allows for the utilization of higher market values for properties where the unit of local government demonstrates that the properties are located in an area of concentrated redevelopment or revitalization and the prescribed loan limitation prevents utilization of the program to accomplish rehabilitation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 28, 1992.

Reason Waived: If the appraised value of the existing properties in this area were based on the value of other properties in the same area, rehabilitation under the 203(k) program could not take place because the maximum loan to value ratios would be exceeded. Since the city of Tacoma is involved in redeveloping and revitalizing this area of their city and they will help low and moderate income families by offering affordable housing opportunities, a waiver of the market values in equivalent neighborhoods in other parts of the community that had already been rehabilitated. This waiver will help the city of Tacoma expand affordable housing opportunities in the Hilltop area.

11. *Regulation:* 24 CFR 280.305.

Project/Activity: Dudley Street Neighborhood Initiative, Roxbury, MA, Nehemiah Housing Opportunity Grant Program.

Nature of Requirement: Regulations require that a grantee presell 25 percent of the total number of homes in a Nehemiah project prior to construction or substantial rehabilitation of any homes (with the exception of model homes).

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 25, 1992.

Reason Waived: The grantee requested approval to establish phases for the project. The waiver was granted in order to permit the grantee to pre-sell 25 percent of the homes in each phase before beginning construction or rehabilitation of any homes in the phase. Without the waiver, the grantee would have to pre-sell 25 percent of the units in the entire project before beginning construction or rehabilitation of any of the homes. Granting the waiver would facilitate the affordable housing opportunities for low- and moderate income families provided under the Nehemiah program by reducing the amount of time any family would have to wait in order to have work begin on their home.

12. *Regulation:* 24 CFR 280.305.

Project/Activity: Horace-Mann—Ambridge Neighborhood Improvement Organization, Inc., Gary, IN, Nehemiah Housing Opportunity Grant Program.

Nature of Requirement: Regulations require that a grantee presell 25 percent of the total number of homes in a Nehemiah project prior to construction or substantial rehabilitation of any homes (with the exception of model homes).

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 25, 1992.

Reason Waived: The grantee requested approval to establish phases for the project. The waiver was granted in order to permit the grantee to pre-sell 25 percent of the homes in each phase before beginning construction or rehabilitation of any homes in the phase. Without the waiver, the grantee would have to pre-sell 25 percent of the units in the entire project before beginning construction or rehabilitation of any of the homes. Granting the waiver would facilitate the affordable housing opportunities of low- and moderate income families provided under the Nehemiah program by reducing the amount of time any family would have to wait in order to have work begin on their home.

13. *Regulation:* 24 CFR 280.305.

Project/Activity: Woonsocket Housing Development Corporation, Woonsocket, RI, Nehemiah Housing Opportunity Grant Program.

Nature of Requirement: Regulations require that a grantee presell 25 percent of the total number of homes in a Nehemiah project prior to construction or substantial rehabilitation of any homes (with the exception of model homes).

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 17, 1992.

Reason Waived: The grantee requested approval to establish three phases for the project. The waiver was granted in order to permit the grantee to presell 25 percent of the homes in each phase before beginning construction or rehabilitation of any homes in the phase. Without the waiver, the grantee would have to presell 25 percent of the units in the entire project before beginning construction or rehabilitation of any of the homes. Granting the waiver would facilitate the affordable housing opportunities for low- and moderate income families provided under the Nehemiah program by reducing the amount of time any family would have to wait in order to have work begin on their home.

14. *Regulation:* 24 CFR 280.305.

Project/Activity: Wilson Community Improvement Association, Inc., Wilson, NC, Nehemiah Housing Opportunity Grant Program.

Nature of Requirement: Regulations require that a grantee presell 25 percent of the total number of homes in a Nehemiah project prior to construction or substantial rehabilitation of any homes (with the exception of model homes).

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 27, 1992.

Reason Waived: The grantee requested approval to establish phases for the project. The waiver was granted in order to permit the grantee to presell 25 percent of the homes in each phase before beginning construction or rehabilitation of any homes in the phase. Without the waiver, the grantee would have to presell 25 percent of the units in the entire project before beginning construction or rehabilitation of any of the homes. Granting the waiver would facilitate the affordable housing opportunities for low- and moderate income families provided under the Nehemiah program by reducing the amount of time any family would have to wait in order to have work begin on their home.

15. *Regulation:* 24 CFR 234.1(k).

Project/Activity: Tony Cruz Condominium, Colorado Springs, CO.

Nature of Requirement: The regulation requires that a condominium project must consist of four or more units to be eligible for FHA-insured financing.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 27, 1992.

Reason Waived: This duplex was originally built to be sold conventionally as a duplex. When the market did not respond, the builder, based upon advice from his counsel, decided to form a condominium project. Recognizing that this is an unusual situation that has occurred due to lack of familiarity with HUD's program requirements and that all HUD requirements, except the four-unit requirement, have been met; HUD determined that the units should not present a marketing problem should we acquire them in a claim. Without the waiver, the condominium would not be able to offer expanded affordable

housing opportunities for moderate income, first-time homebuyers.

16. *Regulation:* 24 CFR 234.28(e)(3).
Project/Activity: Colchester Town Condominium, Fairfax County, VA.
Nature of Requirement: The regulation requires that in order for a condominium project to be eligible for FHA-insured financing, at least 51 percent of the units must be occupied by owners of the units.
Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: July 28, 1992.
Reason Waived: Colchester Town Condominium is somewhat unique in that a governmental entity, the Fairfax County Redevelopment and Housing Authority (FCRHA) owns 32 of the 200 units in this project as part of the county's affordable rental program. Combined with a number of other investor-owned units, the ratio is currently 47 percent owner-occupied. Without the waiver, the condominium would not be able to offer expanded affordable housing opportunities for moderate income, first-time homebuyers as well as encouraging Fairfax County's initiative in providing affordable rental units.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 17 through 19 in this listing is:

Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 541 Seventh Street, SW., room 7270, Washington, DC 20410–7000. Phone: (202) 708–2565. TDD: (202) 708–2565.

17. *Regulation:* 24 CFR 570.200(a)(5) and 24 CFR 570.200(h).
Project/Activity: Petersburg, VA—rehabilitation program operations; Macomb County, MI—construction of a senior center; Jacksonville, NC—construction of sewer collector lines; Arlington, TX—Phase III-Arlington Human Services Center, a new gymnasium and renovation of a smaller existing gymnasium, and a senior recreation/nutrition center. Waiver of reimbursement of pre-agreement costs under the community Development Block Grant program.
Nature of Requirement: 24 CFR 570.200(h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreements. 24 CFR 570.200(a)(5) limits pre-agreement costs to those described in subparagraph 570.200(h).
Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.
Date Granted: June 16, 1992 (Petersburg, VA); June 26, 1992 (Macomb, MI); July 9, 1992 (Jacksonville, MI); July 14, 1992 (Arlington, TX).
Reasons Waived: In each of the jurisdictions above, the Acting Assistant Secretary determined that not granting a wavier would cause undue hardship on low and moderate income persons that would otherwise benefit from the facility or operations and adversely affect the purposes of the Housing and Community Development Act of 1974, as amended.

18. *Regulation:* 24 CFR 576.51(a).
Project/Activity: Yonkers, NY. Under the Emergency Shelter Grants program, waiver of the application submission deadline requirements to permit submission at a later date.
Nature of Requirement: 24 CFR 576.51(a) requires that any State, or formula city or county, or Territory, that elects to receive an Emergency Shelter Grant, submit an application no later than 45 days after the date of notification of the grant allocation amount.
Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.
Date Granted: July 9, 1992.
Reasons Waived: A waiver was granted for the above applicant because issues that arose in HUD review of the City of Yonker's Comprehensive Housing Affordability Strategy (CHAS) could have delayed approval of the CHAS beyond the date of the deadline for submission of the FY 1992 Emergency Shelter Grant (ESG) application. The CHAS must be approved before the ESG application. The CHAS was being submitted by applicant for the first time, as required by the National Affordable Housing Act. Not to grant a waiver of the application deadline and to extend the deadline would have caused undo hardship and would adversely affect the purposes of title IV of the Stewart B. McKinney Homeless Assistance Act, as amended.

19. *Regulation:* 24 CFR 577.400(b).
Project/Activity: Women's Housing Connection of Silicon Valley. Correction in a grant amount in the Transitional Housing for the Homeless program.
Nature of Requirement: 24 CFR 577.400(b) states that "After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for any approved assistance."
Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.
Date Granted: June 9, 1992.
Reasons Waived: Because of HUD's miscalculation of a disallowed expense, the initial grant award was less than it should have been. To avoid adversely affecting the purposes of the program, the waiver was granted.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 20 through 82 in this listing is:

James B. Mitchell, Financial Policy Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–4325, TDD: (202) 708–4594.

20. *Regulation:* 24 CFR 811.104(b), 811.107(a)(2), 811.108(a), 811.108(a)(1), 811.108(a)(2)(i), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).
Project/Activity: The Housing Authority of St. Marys current refunding of bonds which financed two Section 8 assisted projects in St. Marys Georgia: Cumberland Oaks (FHA No. 061–35340–PM–L8–M1) and Pines Apartments (FHA No. 061–35316–PM–L8–M1).
Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.
Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.
Date Granted: August 14, 1991.
Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by FHA mortgage amounts, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. These refunding proposals were approved by HUD on July 9, and July 2, 1991, respectively. Refunding bonds have been priced to average yields of 7.71% and 7.76%. The tax-exempt refunding bond issues of $4,245,000 and $1,790,000 at current low-interest rates will save Section 8 subsidy and in the case of Cumberland Oaks, forced the cure of deficiencies cited by HUD's Atlanta Office. The Treasury also gains long-term tax revenue benefits through immediate replacement of outstanding tax-exempt coupons of 10.04% and 10.43% with tax-exempt bonds yielding 7.71% and 7.76%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contracts, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit).

curing project deficiencies, and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

21. *Regulation:* 24 CFR 811.104, 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: Douglas Housing Finance Corporation refunding of bonds which financed two Section 8 assisted projects: Casas de Esperanza and Pioneer Village (FHA Project Numbers 123–35132 and 123–35129).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 19, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 27, 1991. Refunding bonds have been priced to an average yield of 7.00%. The tax-exempt refunding bond issue of $2,975,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 10.125 and 11.75% at the call date in 1992 with tax-exempt bonds yielding 7.00%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage risk plus the 221(g)(4) put feature. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues (helping to reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

22. *Regulation:* 24 CFR 811.104, 811.105, 811.105(b)(1), 811.107(a)(2), 811.107(b), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.108(a)(4), 811.108(b)(1), 811.109(a)(2), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Maumelle Housing Development Corporation refunding of bonds which financed a Section 8 assisted project: Maumelle (Project No. AR–37–8023–014).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 24, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 24, 1991. Convertible refunding bonds have been priced to an average yield of 7.875 percent. The 1992A tax-exempt refunding bond issue of $9,390,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 12.90 and 13.00 percent at the call date in 1992 with tax-exempt bonds yielding 7.875 percent. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

23. *Regulation:* 24 CFR 811.104, 811.105, 811.105(b)(1), 811.106, 811.107(a)(2), 811.107(b), 811.108(a), 811.108(a)(1), 811.1108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Brockton Housing Development Corporation refunding of bonds which financed a Section 8 assisted project: Douglas House (FHA No. 023–35266).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 26, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 18, 1991. Refunding bonds have been priced to an average yield of 7.375 percent. The tax-exempt refunding bond issue of $8,390,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12 percent at the call date in 1992 with tax-exempt bonds yielding 7.375 percent. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

24. *Regulation:* 24 CFR 811.104, 811.105(b), 811.107(a)(2), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: Charter Mound Bayou Housing Corporation refunding of bonds which financed a Section 8 assisted project: Herdy Micou Homes Project (FHA Project Number 065–35315).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 30, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on November 27, 1991. Refunding bonds have been priced to an average yield of 7.50%. The tax-exempt refunding bond issue of $940,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of high coupon outstanding tax-exempt bonds at the call date in 1992 with tax-exempt bonds yielding 7.50%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of

the HAP contract, thus reducing FHA mortgage risk plus the 221(g)(4) put feature. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues (helping to reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

25. *Regulation:* 24 CFR 811.104, 811.105(b), 811.107(a)(2), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: Rehab Housing Development Corporation of Natchez refunding of bonds which financed a Section 8 assisted project: Natchez Rehabilitation Apartments Project (FHA Project Number 065–35309).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 30, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 18, 1991. Refunding bonds have been priced to an average yield of 7.50%. The tax-exempt refunding bond issue of $1,420,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 10.50 and 12.50% at the call date in 1992 with tax-exempt bonds yielding 7.50%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage risk plus the 221(g)(4) put feature. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues (helping to reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

26. *Regulation:* 24 CFR 811.104, 811.105(b), 811.107(a)(2), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: Yazoo City Housing Development Corporation refunding of bonds which financed a Section 8 assisted project: Willow Wood Apartment Project (FHA Project Number 065–35267).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 30, 1991.

Reasons Waived: Certain 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 9, 1991. Refunding bonds have been priced to an average yield of 7.50%. The tax-exempt refunding bond issue of $1,420,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of high coupon outstanding tax-exempt bonds at the call date in 1992 with tax-exempt bonds yielding 7.50%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage risk plus the 221(g)(4) put feature. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues (helping to reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

27. *Regulation:* 24 CFR 811.104(d), 811.105(b)(1), and 811.117.

Project Activity: Jefferson County (Alabama) current refunding of bonds which financed a Section 8 assisted project in Alabama: Spring Gardens Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant Section 11(b) exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Dated Granted: January 15, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of this refunding transaction in which the project is owned by the Housing Authority, which will issue bonds as a non-profit entity under section 501(c)(3) of the Tax Code. This refunding proposal was approved by HUD on January 2, 1992. If permitted by future amendment of Section 8 appropriations statutes, the Authority has HUD approval to use the savings to provide housing for very low-income persons and families, a priority HUD objective established by Secretary Kemp.

28. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Beacon Heights HDC current refunding of bonds which financed a Section 8 assisted project in South Bend, Indiana: Beacon Heights Apartments (FHA No. 073–35371).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 3, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on May 8, 1991. Refunding bonds have been priced to an average yield of 7.625%. The tax-exempt refunding bond issue of $5,635,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.25% at the call date in 1991 with tax-exempt bonds yielding 7.625%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues,

(helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

29. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Michigan City HDC current refunding of bonds which financed a Section 8 assisted project in Elkhart, Indiana: Woodlands East Phase II Apartments (FHA No. 073–35337).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 3, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on June 20, 1991. Refunding bonds have been priced to an average yield of 7.625%. The tax-exempt refunding bond issue of $1,200,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.0% at the call date in 1991 with tax-exempt bonds yielding 7.625%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

30. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Beckley HDC advance refunding of bonds which financed a Section 8 assisted project in Beckley, West Virginia: Manor House Apartments (FHA No. 045–35154).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 23, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions, to credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on May 9, 1991. Refunding bonds have been priced to an average yield of 8.0%. The tax-exempt refunding bond issue of $4,145,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 8.0%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

31. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Bay Shore HDC refunding of bonds which financed a Section 8 assisted project in Islip, New York: Bay Towne Village Apartments (FHA No. 012–35538).

Nature of requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing/FHA Commissioner.

Date Granted: July 25, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its options under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 20, 1991. Refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of $7,175,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-germ tax revenue benefits through replacement of outstanding tax-exempt coupons of 13% at the call date in 1992 with tax-exempt bonds yielding 7.75%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

32. *Regulation:* 24 CFR § 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: The Lillian Cooper HDC current refunding of bonds which financed a Section 8 assisted project in Utica, NY: Faxton-Scott Apartments (FHA No. 013–35095).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: August 15, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 8, 1991. Refunding bonds have been priced to an average yield of 7.236%. The tax-exempt refunding bond issue of $3,090,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12.0% at the call date in 1991 with tax-exempt bonds yielding 7.236%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of

reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

33. *Regulation:* 24 CFR § 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: The Lillian Cooper HDC current refunding of bonds which financed a Section 8 assisted project in Utica, NY: Margaret Apartments (FHA No. 013–35105).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: August 15, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 8, 1991. Refunding bonds have been priced to an average yield of 7.27%. The tax-exempt refunding bond issue of $2,065,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.6% at the call date in 1991 with tax-exempt bonds yielding 7.27%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

34. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Biltmore HDC current refunding of bonds which financed a Section 8 assisted project in Ohio: Biltmore Apartments (FHA No. 046–35532).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: September 12, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on September 10, 1991. Refunding bonds have been priced to an average yield of 7.5%. The tax-exempt refunding bond issue of $10,555,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9⅝%–12¼% at the call date in 1992 with tax-exempt bonds yielding 7.5%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit, and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

35. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: The Lillian Cooper HDC current refunding of bonds which financed a Section 8 assisted project in Utica, New York: Genesee Towers Apartments (FHA No. 013–35108).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: September 12, 1991.

Reasons waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on September 4, 1991. Refunding bonds have been priced to an average yield of 7.5%. The tax-exempt refunding bond issue of $2,000,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt bonds of 10.3% at the call date in 1991 with tax-exempt bonds yielding 7.5%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

36. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a), 811.108(a)(3), 811.114(d), and 811.115(b).

Project/Activity: The Penfield-Crown Oak HDC refunding of bonds which financed a Section 8 assisted project in Rochester, NY: Crown Oak Estates (FHA No. 014–35048–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(B) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: September 23, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its options under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 9, 1991. Refunding bonds have been priced to an average yield of 7.35%. The tax-exempt refunding bond issue of $3,895,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11–7/8% at the call date in 1991 with tax-exempt bonds yielding 7.35%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and

increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

37. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Lillian Cooper HDC refunding of bonds which financed a Section 8 assisted project in Utica, New York: Lillian Cooper Memorial Apartments (FHA No. 031–35117–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: October 22, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its options under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 9, 1991. Refunding bonds have been priced to an average yield of 7.35%. The tax-exempt refunding bond issue of $1,720,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax-exempt bonds yielding 7.35%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

38. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Lillian Cooper HDC refunding of bonds which financed a Section 8 assisted project in Utica, New York: Macartovin Apartments (FHA No. 031–35119–PM–L8).

Nature of Requirement: The regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: October 22, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhanced refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 9, 1991. Refunding bonds have been priced to an average yield of 7.35%. The tax-exempt refunding bond issue of $2,760,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax exempt bonds yielding 7.35% The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

39. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: New Hartford HDC refunding of bonds which financed a section 8 assisted project in Utica, New York: Village Point Apartments (FHA No. 031–35118–PM–L8)

Nature of Requirement: The regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: October 22, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhanced refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 9, 1991. Refunding bonds have been priced to an average yield of 7.35%. The tax-exempt refunding bond issue of $1,585,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax exempt bonds yielding 7.35%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

40. *Regulation:* 24 CFR § 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Greater Tennessee HAC refunding of bonds which financed Section 8 assisted projects in Tennessee: Forest Creek, Dunlap Gardens, Sneedville, and Savannah Apartments.

Nature of Requirement: The regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 22, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 31, 1991. Refunding bonds have been priced to an average yield of 7.5%. The tax-exempt refunding bond issue of $6,520,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coup ns of 12%

at the call date in 1991 with tax-exempt bonds yielding 7.5%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purpose of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

41. *Regulation:* 24 CFR § 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Russel Erskine HDC refunding of bonds which financed a Section 8 assisted project in Montgomery, Alabama: Russel Erskine Memorial Apartments (FHA No. 062–35318–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 3, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 18, 1991. Refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of $2,460,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5–11.75% at the call date in 1992 with tax-exempt bonds yielding 7.75%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 progfam costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire a priority HUD objective established by Secretary Kemp.

42. *Regulation:* 24 CFR § 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: City of Little Rock refunding of bonds which financed a Section 8 assisted project in Arkansas: Kanis Place Apartments (FHA No. 082–35222–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 19, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 11, 1991. Refunding bonds have been priced to an average yield of 7.15%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The tax-exempt refunding bond issue of $3,000,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax-exempt bonds yielding 7.15%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

43. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Montgomery HDC refunding of bonds which financed a Section 8 assisted project in Montgomery, Alabama: Jefferson Davis Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 19, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 18, 1991. Refunding bonds have been priced to an average yield of 7.40%. The tax-exempt refunding bond issue of $3,710,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 7.40%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

44. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Greater Ohio HAC refunding of bonds which financed four Section 8 assisted projects in Ohio: Laurel Estates, Beasley Mills, Douglas Square, and Smiley Gardens.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 19, 1991.

Reason Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance

refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 18, 1991. Refunding bonds have been priced to an average yield of 7.45%. The tax-exempt refunding bond issue of $5,700,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1991 with tax-exempt bonds yielding 7.45%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit, and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire a priority HUD objective established by Secretary Kemp.

45. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 81.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Tri-City village HDC refunding of bonds which financed a Section 8 assisted projects in Dowagie, Michigan: Tri-City Village Apartments (FHA No. 047–35163–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 19, 1991.

Reason Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 30, 1991. Refunding bonds have been priced to an average yield of 8.15%. The tax-exempt refunding bond issue of $1,755,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax-exempt bonds yielding 8.15%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

46. *Regulation*: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Gadsden HDC refunding of bonds which financed a Section 8 assisted project in Gadsden, Alabama: College Manor Apartments (FHA No. 062–35334–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 23, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on October 30, 1991. Refunding bonds have priced to an average yield of 7.0%. The tax-exempt refunding bond issue of $1,565,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.4% at the call date in 1991 with tax-exempt bonds yielding 7.0%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

47. *Regulation*: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Port Chester CDC refunding of bonds which financed a Section 8 assisted project in Port Chester, NY: Southport Mews, FHA No. 36–0017–014.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: December 23, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 25, 1991. Refunding bonds have been priced to an average yield of 7.5%. The tax-exempt refunding bond issue of $3,900,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1991 with tax-exempt bonds yielding 7.5%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

48. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Macon (Georgia) HDC refunding of bonds which financed a Section 8 assisted project in Macon, Georgia: Riverside Gardens Apartments (FHA No. 061–35332–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: January 15, 1992.

Reasons waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 11, 1991. Refunding bonds have been priced to an average yield of 7.30%. The tax-exempt refunding bond issue of $2,410,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1992 with tax-exempt bonds yielding 7.30%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract when the mortgage interest rate drops from 12% to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

49. *Regulation:* 24 CFR 811.105(b), 811.105(b)(c)(3), 811.107(a)(2), 811.107(b), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: City of Fort Worth HC refunding of bonds which financed a Section 8 assisted project in Fort Worth, Texas: Peppertree Acres Apartments (FHA No. 113-35075-PM-L8), FAF & Ethics No. 213.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: February 4, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 6, 1992. Refunding bonds have been priced to an average yield of 7.36%. The tax-exempt refunding bond issue of $4,935,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of out-standing tax-exempt coupons of 11.95% at the call date in 1992 with tax-exempt bonds yielding 7.36%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

50. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Pinellas County HA refunding of bonds which financed to Section 8 assisted projects in Florida: Cypress Courts (FHA No. 066-35173-TN-L8) and Oceanside Estates Apartments (FHA No. 067-35235-TN-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Houseing—FHA Commissioner.

Date Granted: February 5, 1992.

Reasons Waived: The part 811 regulations cited above were intend for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 30, 1992. Refunding bonds have been priced to an average yield of 6.85%. The tax-exempt refunding bond issues of $2,035,000 and $3,295,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1991 with tax-exempt bonds yielding 6.85%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

51. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Lucas County HA refunding of bonds which financed a Section 8 assisted project in Toledo, Ohio: Lucas-Plaza Apartments (FHA No. 042-35364).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: February 1, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding does not use a HUD debenture lock or provide credit enhancement and, as an experiment, the bonds will be sold unrated. This refunding proposal was approved by HUD on February 1, 1991. Refunding bonds have been priced to an average yield of 8.5%. The tax-exempt refunding bond issue of $7,054,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exemt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 8.5%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to prove housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

52. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Chester Redevelopment Authority refunding of bonds which financed a Section 8 assisted projects in Pennsylvania:

Chester Apartments (FHA No. 034–35214–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: February 19, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 25, 1991. Refunding bonds have been priced to an average yield of 6.88%. The tax-exempt refunding bond issue of $5,165,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.75% at the call date in 1991 with tax-exempt bonds yielding 6.88%. The refunding will also substantially reduce FHA project exempt mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

53. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Devon Trace HDC refunding of bonds which financed a Section 8 assisted project in Ferndale, Michigan: Devon Trace Apartments (FHA No. 044–35527–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: February 24, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 30, 1992. Refunding bonds have been priced to an average yield of 7.55%. The tax-exempt refunding bond issue of $2,340,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.25% at the call date in 1992 with tax-exempt bonds yielding 7.55%. The refunding will also substantially reduce the FHA mortgage interest rate from 11.5% to 8.25% at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

54. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Jackson HA refunding of bonds which financed a Section 8 assisted project in Mississippi: Delhaven Manor Apartments (FHA No. 065–35350–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: March 3, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 27, 1992. Refunding bonds have been priced to an average yield of 7⅜%. The tax-exempt refunding bond issue of $3,050,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¾% at the call date in 1992 with tax-exempt bonds yielding 7⅜%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

55. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: El Paso HC refunding of bonds which financed three Section 8 assisted projects in Texas: Sierra Vista, Cove Village, and River Park East Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: March 30, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on February 19, 1992. Refunding bonds have been priced to an average yield of 7⅜%. The tax-exempt refunding bond issue of $6,895,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¾% at the call date in 1992 with tax-exempt bonds yielding 7⅜%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 7.5%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues,

(helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

56. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Niagara Falls Housing Agency refunding of bonds which financed a Section 8 assisted project in New York: Colt Block Apartments (FHA No. 014–35051–PM–SR–L8).

Nature of Requirement: The regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: March 31, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its options under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on February 24, 1992. Refunding bonds have been priced to an average yield of 7⅜%. The tax-exempt refunding bond issue of $2,270,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11% at the call date in 1992 with tax-exempt bonds yielding 7⅜%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.5% to 8.0%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

57. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.198(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Cleveland (Texas) HC refunding of bonds which financed four Section 8 assisted projects in Texas: Park Place, Heritage Square, Fox Run, and Colonial Park Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: April 23, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on Janaury 30, 1992. Refunding bonds have been priced to an average yield of 7.45%. The tax-exempt refunding bond issue of $7,190,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¾% at the call date in 1992 with tax-exempt bonds yielding 7.48%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

58. *Regulation*: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Ohio HFA refunding of bonds which financed seven Section 8 assisted projects in Ohio: Loveland Pines, West Park Senior, Brookside Village, Park Place, Rosaline, Orchard Terrace, and Crossgate Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: April 27, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on March 30, 1992. Refunding bonds have been priced to an average yield of 7.54%. The tax-exempt refunding bond issue of $11,325,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10–12.25% at the call date in 1992 with tax-exempt bonds yielding 7.54%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.16% to 12.0% down to 7.625%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

59. *Regulation*: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Hinesville Housing Authority refunding of bonds which financed a Section 8 assisted project in Georgia: Baytree Apartments (FHA No. GA06–0012–012).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted by: Authur J. Hill, Assistant Secretary for Housing-HFA Commissioner.

Date Granted: April 29, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on April 7, 1992. Refunding bonds have been priced to an average yield of 6.99%. The tax-exempt refunding bond issue of $1,700,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-

exempt coupons of 10.5% at the call date in 1992 with tax-exempt bonds yielding 6.99%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

60. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Bristol Housing Authority refunding of bonds which financed a Section 8 assisted project in Virginia: Springdale Village Apartments (FHA No. 051–35322–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: May 14, 1992.

Reasons Waived: The part 811 regulations cited bove were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 21, 1992. Refunding bonds have been priced to an average yield of 7¼%. The tax-exempt refunding bond issue of $3,785,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1992 with tax-exempt bonds yielding 7¼%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.55% to 7.8%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

61. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a) (1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Philadelphia Redevelopment Authority refunding of bonds which financed a Section 8 assisted project: West Philadelphia Townhouses (FHA No. 034–35208–LM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill Assistant Secretary for Housing-FHA Commissioner.

Date Granted: May 14, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on February 20, 1992. Refunding bonds have been priced to an average yield of 7⅜%. The tax-exempt refunding bond issue of $6,880,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1992 with tax-exempt bonds yielding 7⅜%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract from 11.78% to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

62. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Lehigh HA refunding of bonds which financed three Section 8 assisted projects in Pennsylvania: Coplay, Hokendauqua, and Whitehall Township Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: May 28, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on February 19, 1992. Refunding bonds have been priced to an average yield of 7⅛%. The tax-exempt refunding bond issue of $3,795,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11½% at the call date in 1992 with tax-exempt bonds yielding 7⅛%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11¾% down to 7½%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

63. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: North Tampa HDC refunding of bonds which financed a Section 8 assisted project in Florida: Country Oaks Apartments (FHA No. 063–35263–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: June 3, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding

transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 15, 1992. Refunding bonds have been priced to an average yield of 7.085%. The tax-exempt refunding bond issue of $4,280,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1992 with tax-exempt bonds yielding 7.085%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12% to 7.15%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

64. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Fifth Avenue HDC refunding of bonds which financed two Section 8 assisted projects in Gary, Indiana: NSA III and NSA V Apartments (FHA No. 073-33416-LM-L8 and 073-35459-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: June 23, 1992.

Reasons Waived: The part 811 regulation cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. Project refunding proposals were approved by HUD on October 25, 1991, and May 21, 1992. Refunding bonds have been priced to an average yield of 7.31%. The tax-exempt refunding bond issues of $5,635,000 and $9,780,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¼% at the call date in 1993 with tax-exempt bonds yielding 7.31%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 11.57% to 7¼%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

65. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Chicago HA refunding of bonds which financed 16 Section 8 assisted projects in Chicago (list attached to Notification of Tax Exemption).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: June 30, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 29, 1992. Refunding bonds have been priced to an average yield of 6.82%. The tax-exempt refunding bond issues of $59,240,000 and $23,030,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11½% at the call dates in 1992 with tax-exempt bonds yielding 6.82%. The refunding will also substantially reduce the FHA mortgage interest rates of expiration of the HAP contracts, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

66. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Mount Pleasant HDC refunding of bonds which financed a Section 8 assisted project in Boston: Mount Pleasant Apartments (FHA No. 023-35221-LDP-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: June 30, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on June 29, 1992. Refunding bonds have been priced to an average yield of 6.85%. The tax-exempt refunding bond issue of $4,400,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9-12% at the call date in 1992 with tax-exempt bonds yielding 6.85%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

67. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Rome HDC refunding of bonds which financed a Section 8 assisted project in Rome, New York: Park Drive Apartments (FHA No. 013-35127-PM-L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income

taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 1, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 15, 1992. Refunding bonds have been priced to an average yield of 7.23%. The tax-exempt refunding bond issue of %6,725,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10⅜% at the call date in 1993 with tax-exempt bonds yielding 7.35%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10¼% to 7.35%, thus reducing FHA mortgage insurance risk. The refunding serves the important pubic purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

68. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Bucks County RA refunding of bonds which financed a Section 8 assisted project in Pennsylvania: Warminster Apartments, FHA No. 034–34184–PM–L8.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissionet.

Date Granted: July 10, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 11, 1991. Refunding bonds have been priced to an average yield of 6.81%. The tax-exempt refunding bond issue of $3,800,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.5–11.5% at the call date in 1992 with tax-exempt bonds yielding 6.81%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.64% down to 7.125%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

69. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Ohio HFA refunding of bonds which financed three Section 8 assisted projects in Ohio: Plaza, Chadwick Place, and Western Glen Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 14, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 9, 1992. Refunding bonds have been priced to an average yield of 6.86%. The tax-exempt refunding bond issue of $5,090,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11–12.25% at the call date in 1992 with tax-exempt bonds yielding 7.25%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.0% down to 7.25%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Winter Haven HA refunding of bonds which financed a Section 8 assisted project in Winter Haven, Florida: Abbey Lane Apartments (FHA No. 067–35251—HUD Ethics No. 235).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: July 15, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 27, 1992. Refunding bonds have been priced to an average yield of 7.17%. The tax-exempt refunding bond issue of $4,075,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 10.25% and 20.00% at the call date in 1992 with tax-exempt bonds yielding 7.17%. The refunding will also substantially reduce the FHA mortgage interest rate from 11.23% to 7.37% at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

Regulation: 24 CFR 811.105(b), 811.107(a)(2), 811.108(b)(1), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Augusta Housing Agency Inc., an instrumentality of the Augusta (Georgia) Housing Authority refunding of bonds which financed a non-FHA Insured, 30-year Section 8 assisted project in Augusta, Georgia: Bon Air Apartments (GA–0013–002/GA–0015–003), FAF & Ethics No. 192.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: July 21, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on March 20, 1992. Refunding bonds have been priced at 7.36%. The 1992 Series C tax-exempt refunding bond issue of $8,025,000 at current low-interest rates will yield 7.36%. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12.00% at the call date in 1992 with tax-exempt bonds yielding 7.36%. While the refunding will not reduce the non-FHA project mortgage debt service, savings from the refunding (upon request of HUD's Atlanta Office) will by March 1995 contribute $702,700, to correct all deficiencies cited by said HUD Office and bring the project back into compliance. The refunding serves the important public purposes of also reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

72. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.0108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Clearwater (Florida) HDC refunding of bonds which financed a Section 8 assisted project in Clearwater, Florida: Clearwater Apartments, FAF and Ethics No. 1.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 29, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 29, 1992. Refunding bonds have been priced to an average yield of 7.09%. The tax-exempt refunding bond issue of $3,380,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 13.15% and 19.15% at the call date in 1992 with tax-exempt bonds yielding 7.09%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract from 12.0% down to 6.10%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of also reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

73. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b, 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Lewiston HA refunding of bonds which financed three Section 8 assisted projects in Lewiston, Maine: Bartlett Court, Bates Street, and Pierce Place Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 29, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 16, 1992. Refunding bonds have been priced to an average yield of 6.61%. The tax-exempt refunding bond issue of $5,005,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10–11.5% at the call date in 1992 with tax-exempt bonds yielding 6.61%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.77% to 7.0% down to 7.625%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of also reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

74. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Third Columbus (Georgia) HDC refunding of bonds which financed a Section 8 assisted project in Georgia: Renaissance Villa Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 29, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 16, 1992. Refunding bonds have been priced to an average yield of 7.06%. The tax-exempt refunding bond issue of $1,790,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11¼–12⅛% at the call date in 1992 with tax-exempt bonds yielding 7.06%. The refunding will also substantially reduce the FHA mortgage interest rates at

expiration of the HAP contract, from 12.0% down to 6.0%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

75. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Dayton (Kentucky) HA refunding of bonds which financed a Section 8 assisted project in Ohio: Cambridge Arms I Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 31, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 14, 1992. Refunding bonds have been priced to an average yield of 7.47%. The tax-exempt refunding bond issue of $4,345,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1992 with tax-exempt bonds yielding 7.47%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 10¼% to 7.75%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

76. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Hinesville (Georgia) HA refunding of bonds which financed a Section 8 assisted project in Georgia: Northgate Apartments.

Nature of Requirement: The regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 31, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise this option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 17, 1992. Refunding bonds have been priced to an average yield of 6.72%. The tax-exempt refunding bond issue of $2,655,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5 to 11% at the call date in 1992 with tax-exempt bonds yielding 6.72%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.0% to a rate close to the bond rate, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

77. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Spring Creek HDC refunding of bonds which financed a Section 8 assisted project in Illinois: Spring Creek Towers Apartments (FHA No. 072–35079–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: August 27, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal as approved by HUD on August 4, 1992. Refunding bonds have been priced to an average yield of 6.6%. The tax-exempt refunding bond issue of $5,145,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.2–12.3% at the call date in 1992 with tax-exempt bonds yielding 6.6%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 10.23% to 6.87%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

78. *Regulations:* 24 CFR 811.114(d), 811.115(b), 811.117.

Project/Activity: The City and County of Honolulu advance refunding of bonds which financed a Section 8 assisted project in the State of Hawaii, Smith-Beretania Apartments, FHA No. 140–35092.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: July 15, 1991.

Reasons Waived: The part 811 relations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was

approved by HUD on July 9, 1991. Refunding bonds have been priced to an average yield of 7.75%. The tax-exempt refunding bond issue of $10,680,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.75% at the call date in 1992 with tax-exempt bonds yielding 7.75%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood the projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

79. *Regulation:* 24 CFR 811.114(d), 811.115(b), 811.117.

Project/Activity: The Pryor Creek (Oklahoma) Development Authority funding of bonds which financed a Section 8 assisted project in the State of Oklahoma: Twin Villa Apartments, FHA No. OK56–0013–003.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 29, 1991.

Reasons Waived: The part 811 relations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 18, 1991. Refunding bonds have been priced to an average yield of 7.25%. The tax-exempt refunding bond issue of $2,385,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.3% at the call date with tax-exempt bonds yielding 7.25%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood the projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

80. *Regulation:* 24 CFR 811.114(d), 811.115(b), and 811.117.

Project/Activity: McKinney Act State Agency Refunding of bonds which financed four Section 8 assisted projects in the Sate of Delaware: (1) Woodlea Apartments, (2) Silver Lake Estates, (3) Little Creek Apartments, and (4) Spencer Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity. The refunding is accomplished via section 103 of the Internal Revenue Code of 1986, and FAF Agreements are in place.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 10, 1991.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on October 25, 1991, and is refunded under FAF/McKinney; it will not only reduce FHA project mortgage debt service but due to the 50–50 percent savings split derived from the refunding, Delaware is able to provide housing for very low-income persons and families (Homeless) as required by the McKinney Act and is a priority HUD objective established by Secretary Kemp.

81. *Regulation:* 24 CFR 811.114(d), 811.115(b), 811.117.

Project/Activity: The Craig County refunding of bonds which financed a Section 8 assisted project in Craig County, Oklahoma: "Hornet Apartments," FHA No. 118–35106–PM–L8.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing-FHA Commissioner.

Date Granted: February 20, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 30, 1992. Refunding bonds have been priced to an average yield of 6.9%. The tax-exempt refunding bond issue of $1,770,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.4% at the call date in 1992 with tax-exempt bonds yielding 6.9%. The refunding will also substantially reduce FHA project mortgage debt service at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

82. *Regulation:* 24 CFR 811.114(d), 811.115(b), and 811.117, and 207.259(e).

Project/Activity: McKinney Act State Agency Refunding of bonds which financed a Section 8 assisted project in the District of Columbia: Cavalier Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity. The refunding is accomplished via section 103 of the Internal Revenue Code of 1986, and no HUD Notification of 11(b) Tax Exemption is needed.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: May 28, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage, HUD agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 2, 1992. It will not only reduce FHA project mortgage debt service but due to the 50–50 percent savings split derived from the refunding, the D.C. HFA will gain $1.1

million to provide housing for very low-income households, as required by the McKinney Act, a priority HUD objective established by Secretary Kemp.

Note to Reader: The person to be contacted for additional information about waiver-grant item number 83 in this listing is: Michael Levine, Acting Director, Development Grant Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–0558. TDD: (202) 708–4594.

83. *Regulation:* 24 CFR 850.31(f).
Project/Activity:

Project name	Project No.	Field office
Washington Square Phase II.	PA009HG701	Philadelphia.

Nature of Requirement: The regulatory provision cited above prohibits certain modifications of Housing Development Grant (HDG) Projects after an application is funded. "Changes of site, total number of units, unit size (number of bedrooms), building type, or number of lower income units are not permitted."

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 17, 1992.

Reason Granted: The waiver permitted an increase in the number of low income units from 20 to 48, increase in number of units from 100 to 101, and reconfiguration of project buildings.

Since the waiver request was related to the introduction of Lower Income Housing Tax Credits to the project, the waiver was conditioned on a possible HDG reduction as determined appropriate by HUD subsidy layering analysis. Analysis is now in process.

Standard criteria for waiving § 850.31(f) and how the project met each criterion are as follows:

1. The revised project should be as competitive as the approved application.

Response: The revised project is more competitive than the original because of the increase in lower income units and the decrease in HDG funds per unit.

2. Unforeseeablity of change at time of project application.

Response: Since project approval, the housing market softened while the need for lower income housing units increased. Difficulties in leasing Phase I, provided evidence that the market had changed.

3. "Good cause" for revising the approved HDG application.

Response: The revision provides more lower income units while maintaining project feasibility.

4. The change is in the public interest.

Response: The increase in the number of lower income units is in the public interest.

5. Change meets at least one of the Secretary's goals for HUD.

Response: The goal of expanding housing opportunities is met by more low income units at no extra cost to HUD.

6. Change does not alter the basic character of the project.

Response: Project site, number of income-generating units, and bedroom distributions have not changed. The new design maintains open space. the change from stacked townhouses over garages to three-story garden apartments would have been required under new Handicapped Accessibility Standards.

Note to Reader: The person to be contacted for additional information about the waiver-grant item numbered 84 in this listing is: Kathryn Greenspan, Housing Program Specialist, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4116, Washington, DC 20410. Phone: (202) 708–3887. TDD: (202) 708–4594.

84. *Regulation:* 24 CFR 882.712(c)(1)(iii).

Project/Activity: Project-Based Certificate Program.

Nature of Requirement: (1) Temporary relocation policies apply only to lawful residential tenants who are temporarily relocated from a property (building or complex) following submission of the Owner's application to the PHA for project-based certificate (PBC) assistance. (2) The temporary location period for such tenants will not exceed 12 months.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: July 21, 1992.

Reason Waived: Families were temporarily relocated prior to submission of the PBC application to the PHA because of extensive code violations which made continued occupancy hazardous. The waiver will make it possible for the former tenants to return to the rehabilitated units.

Note to Reader. The person to be contacted for additional information about waiver-grant item number 85 in this listing is: Linda Cheatham, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–3000. TDD: (202) 708–4594.

85. *Regulation:* 24 CFR 888.103a.
Project/Activity:

Project name	Project No.	Field office
Elmwood Park Senior Complex.	071–EH451	Chicago.

Nature of Requirement: On April 24, 1991, HUD published "Final Fair Market Rents" pursuant to its duties to establish FMRs under the above cited regulation. In the preamble to the actual schedule of applicable FMRs, it is stated that for certain projects, subject to FY 1987 FMRs and earlier, the 1988 FMRs are the highest and most recent which they may use, and "* * * shall be applicable to all subsequent processing in reviewing contract rents and utilities." Therefore, if HUD wishes not to impose a restriction that appears in the published preamble, it must waive the regulation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Housing Commissioner.

Date Granted: August 26, 1992.

Reason Waived: The subject was selected for funding in 1988, and initially closed on May 22, 1989. Excavation of the site began in June 1989, and unforeseen soil contamination was discovered. The Illinois Environmental Protection Agency halted construction. A mortgage increase request to fund the estimated $483,472 cost of clean-up was submitted to Headquarters. If HUD strictly imposed the above referenced preamble requirement, which appears in the section on "applicability" to the FY 1989 schedule of new construction FMRs, and processed the subject FMRs applying the 1.20 prerogative of 1988 FMRs, an additional cash requirement of $78,663 was necessary. The subject's non-profit sponsor could not meet this necessary cash requirement, so it was likely that HUD would ultimately end up owning a contaminated site which it must then clean up anyway pursuant to its CERCLA liability. But if HUD waived the regulation, in recognition of the fact that the preamble requirement was not published until April 24, 1991, and previous established procedure would have permitted the use of 1989 FMRs, with a lesser prerogative of only 1.12 of 1989 FMRs, an additional cash requirement of only $83 would be necessary, since the sponsor's minimum capital investment of $10,000 has already been met. HUD and the sponsor share a common goal to provide this much needed housing and not waste the time, effort, and money already expended on this project.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 86 through 88 in this listing is: Roger Braner, Acting Director.

Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4116, Washington, DC 20410. Phone: (202) 708–1380. TDD: (202) 708–4594.

86. *Regulation:* 24 CFR 901.120(b)(2).
Project/Activity: Cleveland and Chicago Field Offices, Chicago Regional Office.
Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: April 21, 1992.
Reason Waived: The Cleveland Field Office was granted a waiver for the completion of the PHMAP assessment for the Cuyahoga Metropolitan Housing Authority (CMHA) due to the necessity to merge performance data from the Lakeview Terrace Resident Management Firm with that of CMHA; and the completion by the Field Office of a confirmatory review after the merge has been completed. The Chicago Field Office was granted a waiver for the completion of the PHMAP assessment for all of the public housing agencies in its jurisdiction due to the flooding by the Chicago River and various computer problems.

87. *Regulation:* 24 CFR 901.120(b)(2).
Project/Activity: The Denver Regional Office.
Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: April 22, 1992.
Reason Waived: The Denver Regional Office was granted a waiver for the completion of the PHMAP assessment for the Salt Lake Housing Authority (SLHA) due to the fact that the SLHA used incorrect date for its PHMAP Certification and it required additional time to resubmit its first phase PHMAP certification, thereby necessitating additional time for the Denver Regional Office to complete the PHMAP assessment.

88. *Regulation:* 24 CFR 901.120(b)(2).
Project/Activity: The Little Rock Field Office, Ft. Worth Regional Office.
Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: July 13, 1992.
Reason Waived: The Little Rock Field Office was granted a waiver for the completion of the PHMAP assessment for the Marianna Housing Authority (MHA) due to the fact that the MHA used incorrect data for its PHMAP Certification and it required additional time to resubmit its first phase PHMAP certification, thereby necessitating additional time for the Little Rock Field Office to complete the PHMAP assessment.

Note to Reader: The person to be contacted for additional information about waiver-grant items numbered 89 through 93 in this listing is: Dom Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–1015. TDD: (202) 708–0850.

89. *Regulation:* 24 CFR 905.325.
Project/Activity: Establishment of ceiling rents for Lac Courte Oreilles Housing Authority Rental Program.
Nature of the Requirement: Waiver of the Regulation cited above is required to allow establishment of ceiling rents for their Rental Program.
Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.
Date Granted: May 20, 1992.
Reason Waived: This waiver was requested and granted to allow the Lac Courte Orielles Housing Authority to establish ceiling rents for their rental program in accordance with PIH Notice 89–21, which provides for the establishment of ceiling rents in a rental Indian housing program.

90. *Regulation:* 24 CFR 905.325.
Project/Activity: Establishment of ceiling rents for Ute Mountain Ute Housing Authority.
Nature of the Requirement: Waiver of the Regulation cited above is required to allow establishment of ceiling rents for their Rental Program.
Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.
Date Granted: May 20, 1992.
Reason Waived: This waiver was requested and granted to allow the Ute Mountain Ute Housing Authority to establish ceiling rents for their rental program in accordance with PIH Notice 89–21, which provides for the establishment of ceiling rents in a rental Indian housing program.

91. *Regulation:* 24 CFR 905.404 (a); 24 CFR 905.407 (b) (1) (3); 24 CFR 905.407 (c); 24 CFR 905.410; 24 CFR 905.413 (a), (b) and (d); 24 CFR 905.416 (c) and (d); 24 CFR 905.419 (b) and (c); 24 CFR 905.422; 24 CFR 905.440 (b) (1) and (2).
Project/Activity : Conversion of 355 Turnkey III (TKY III) units to the Mutual Help (MH) Homeownership Opportunity Program by the Tlingit-Haida Regional Housing Authority in Juneau, Alaska.
Nature of Requirement: The Regulations cited above apply to the construction, development, funding and occupancy of new construction developments. Therefore, waivers are required to convert an existing unit funded and built under one program to operation under a different program.
Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.
Date Granted: May 22, 1992.
Reason Waived: This action was requested, and granted, in order to fulfill the Department's obligation in the case entitled *Samato* v. *Wilson, et al,* in which, based on meeting their obligations under the Settlement Agreement, eligible members of the class were to be transferred from the TKY III Program to the MH Program.
Also, many of these homebuyers have been in their TKY III units since they were built and transferring to the MH Program will enable participants to realize homeownership in a shorter period of time.

92. *Regulation:* 24 CFR 905.440(c).
Project Activity: Establishment of Purchase Price for a Subsequent Homebuyer in the Mutual Help Homeownership Opportunity (MH) Program at the Northern Circle Indian Housing Authority in Ukiah, California.
Nature of Requirement: The Regulation cited above applies to how to establish a purchase price for a subsequent homebuyer. Therefore, a waiver is required to use only the current replacement cost, instead of the lower of the current replacement cost or the appraised value of the home.
Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.
Date Granted: May 21, 1992.
Reason Waived: This action was requested, and granted, because Northern Circle Indian Housing Authority has been unable to obtain a current appraisal due to a lack of cooperation by the Bureau of Indian Affairs to complete timely appraisals, a lack of understanding of trust land by private firms, and the unavailability of comparable properties.

93. *Regulation:* 24 CFR 905.705.
Project Activity: Providing Performance Funding System subsidy for one unit unit from the Modoc-Lassen Indian Housing Authority's inventory which is used as a space for community members to make Native American crafts, which will be sold locally and in surrounding communities.
Nature of Requirement: The regulation cited above discusses how to determine the amount of operating subsidy for which an IHA is eligible under the Performance Funding System.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: March 25, 1992.

Reason Waived: This waiver was requested, and granted, to provide Performance Funding System operating subsidy for one unit removed from the Modoc-Lassen Indian Housing Authority's rental inventory. The rental units is being used as a crafts center which promotes economic self sufficient services to the community.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 94 through 100 in this listing is: Edward C. Whipple, Occupancy Division, Office of Management Operations, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708-0744, TDD: (202) 708-0850.

94. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Edgar Housing Authority of Edgar, Nebraska.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Edgar Housing Authority to establish ceiling rents for all one-bedroom units on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

95. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Housing Authority of Excelsior Springs, Missouri.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Housing Authority of Excelsior Springs to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

96. *Regulation:* 24 CFR 913.107

Project/Activity: Public housing projects owned and operated by the Ely Housing Authority of LaSalle County, in LaSalle County, Illinois.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Ely Housing and Redevelopment Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

97. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Lucas Metropolitan Housing Authority of Lucas, Ohio.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Lucas Metropolitan Housing Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

98. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Lynch Housing Authority

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Lynch Housing Authority to establish ceiling rents for one-bedroom units on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

99. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Housing Authority of the City of Marion, Indiana.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Housing Authority of the City of Marion to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

100. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Stromsburg Housing Authority of Stromsburg, Nebraska.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Stromsburg Housing Authority to establish ceiling rents for one-bedroom units on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 101 through 105 in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708-1872. TDD: (202) 708-0850.

101. *Regulation:* 24 CFR 990.109(b)(3)(iv).

Project/Activity: Detroit Housing Department, Detroit, MI.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.

Granted by: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 10, 1992.

Reason Waived: The initial request for a waiver came shortly after HUD had published a proposed rule in the **Federal Register** that would have established new conditions under which a PHA could include vacant units in the determination of operating subsidy eligibility. Congressional action on the Department's 1992 Appropriations Bill, however, included language in the Conference report that barred appropriated funds from being used to implement the proposed rule.

The proposed rule would have corrected inefficiencies and removed inequities contained in the current Vacancy Rule. The Congressional abrogation of the rule-making process meant a continuation of these problems. It was thus felt necessary to develop general policy describing the circumstances under which Vacancy Rule waivers would be considered and approved so that these problems could be minimized without being in conflict with the Congressional action. Waiver requests received during and after this period were reviewed but not generally not acted upon.

In response to this situation, HUD approved an obligation of $28.9 million of operating subsidy funds by issuing a letter-of-intent (LOI) in September 1991. In determining this amount, 62% was used as the assumed occupancy percentage. It was hoped, however, that a policy on Vacancy Rule waiver requests would be in place before payments of the LOI began so that appropriate conditions could be placed on the released funds, if warranted.

In November 1991, the Detroit Field Office was authorized to pay $14.4 million to the DHD and payment of an additional $4 million was authorized in March 1992. No conditions were placed on these payments. HUD is now asking Congress to reverse its earlier action on the proposed vacancy rule and allow HUD to proceed with publication of a final rule. Since only three months remained in the DHD's fiscal year and because there was an approvable budget in the Field Office, Good cause was found to exist to permit the DHD to use 62% as its projected Occupancy percentage.

102. *Regulation:* 24 CFR 990.109(e)(2).

Project/Activity: Denver Housing Authority, Denver, CO.

Nature of Requirement: The regulation requires a PHA to include locally-generated income in its calculation of operating subsidy eligibility.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 24, 1992.

Reason Waived: The waiver allows the exclusion from the subsidy calculation of surcharge income from a cable TV service being offered to residents at the Denver Housing Authority. The provision of this cable service is seen as a desirable resident initiative project. The Central Resident Council (CRC) is expected to become responsible for the cable service contract within a year. Residents choosing cable service will pay a mandatory $2 surcharge as part of their monthly bill and this income, less reasonable administrative expenses, would be used by the CRC for resident initiatives such as the scholarship fund. This project will be operated with the full consultation and involvement of the CRC. This waiver is for a period not to exceed 12 months from the time the cable service is implemented. During this period the housing authority shall train and prepare CRC to assume complete responsibility for the cable service contract.

103. *Regulation:* 24 CFR 990.118(h)(1).

Project/Activity: Bromley-Heath Resident Management Corporation, Boston Housing Authority, Boston, MA.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: June 30, 1992.

Reason Waived: The Resident Management Corporation (RMC) was not in place when the COP was developed and it does not have control over such resources as CIAP funding. The RMC was granted a waiver in order to permit the use of 89% as the projected occupancy goal for its 1992 fiscal year in recognition of these factors and as an encouragement to its financial stability.

104. *Regulation:* 24 CFR 990.118(h)(1).

Project/Activity: Carr Square RMC, St. Louis Housing Authority, St. Louis, MO.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: June 30, 1992.

Reason Waived: The Resident Management Corporation (RMC) was not in place when the COP was developed and it does not have control over such resources as CIAP funding. The RMC was granted a waiver in order to permit the use of 72% as the projected occupancy goal for its 1992 fiscal year in recognition of these factors and as an encouragement to its financial stability. The RMC was encouraged to use the relief provided to develop a homeownership occupancy plan, marketing program and waiting list.

105. *Regulation:* 24 CFR 990.118(h)(1).

Project/Activity: Cochran Gardens—Cochran Plaza RMC, St. Louis Housing Authority, St. Louis, MO.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: June 30, 1992.

Reason Waived: The Resident Management Corporation (RMC) was not in place when the COP was developed and it does not have control over such resources as CIAP funding. The RMC was granted a waiver in order to permit the use of 88% as the projected occupancy goal for its 1992 fiscal year in recognition of these factors and as an encouragement to its financial stability.

[FR Doc. 92-24519 Filed 10-8-92; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-99]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 9, 1992.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 2, 1992.

Denise R. Alexander,

Deputy Assistant Secretary for Operations.

[FR Doc. 92–24393 Filed 10–8–92; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. D–92–1008; FR–3273–D–01]

Redelegation of Authority for the HOPE for Homeownership of Single Family Homes Program (HOPE 3)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Community Planning and Development is redelegating all power and authority with respect to the HOPE for Homeownership of Single Family Homes Program (HOPE 3) to Regional Administrators, Field Office Managers, and Field Directors of Offices or Divisions of Community Planning and Development, and their Deputies, subject to certain specified exceptions.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: John Garrity, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0324, TDD (202) 708–2565. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION: The Secretary has delegated all power and authority with respect to the HOPE 3 Program to the Assistant Secretary for Community Planning and Development and the Deputy Assistant Secretary for Grant Programs, subject to certain exceptions, published elsewhere in today's issue. In this redelegation, the Assistant Secretary for Community Planning and Development is redelegating to specified officials of HUD Regional and Field Offices power and authority with respect to the HOPE 3 Program, subject to additional exceptions. In particular, the authority to approve and to terminate or to deobligate grants is limited to Regional Administrators, Field Office Managers, and their Deputies.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates as follows:

Section A. Authority Redelegated

Each Regional Administrator, Field Office Manager, and Director of an Office or Division of Community Planning and Development, and the Deputy of each such official, is authorized by the Assistant Secretary for Community Planning and Development to exercise the power and authority of the Assistant Secretary with respect to the HOPE for Homeownership of Single Family Homes Program (HOPE 3) authorized by title IV, subtitle C, of the National Affordable Housing Act (42 U.S.C. 12891–17898).

Section B. Authority Excepted

The authority redelegated above does not include: (1) The authority to issue or waive rules and regulations, or (2) the authority to redelegate further the power and authority delegated herein. In addition, there is excepted from the authority delegated to Directors of Offices or Divisions of Community Planning and Development, and their Deputies, the power and authority to approve grants and to terminate or deobligate grants.

Authority: Title IV, subtitle C, of the National Affordable Housing Act (42 U.S.C. 12891–12898); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535 (d)).

Dated: September 30, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92–24638 Filed 10–8–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–03–4320–2]

Carson City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Carson City District Grazing Advisory Board.

SUMMARY: The Carson City District Grazing Advisory Board will meet at 10 a.m., on Thursday, November 19, 1992, at the Carson City District Office Conference Room, 1535 Hot Springs Road, suite 300, Carson City, Nevada. The primary topics will be the FY 1993 Rangeland Improvement Projects, Allotment Management Plans, and the status of the Land Use Plans. The meeting is open to the public. Interested persons may make oral statements at 1 p.m. or file written statements for the Board's consideration.

FOR FURTHER INFORMATION CONTACT: Jim Gianola, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada, 89706, phone: (702) 885–6140.

Dated: September 29, 1992.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 92–24598 Filed 10–8–92; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–050–03–4740–01; 1784]

Arizona: Yuma District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

FOR FURTHER INFORMATION CONTACT: Jeanette Davis, Public Affairs Officer, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, (602) 726–6300.

SUPPLEMENTARY INFORMATION: A meeting of the Yuma District Advisory

Council will be held Tuesday, November 17, 1992, 10:30 a.m. to 3:30 p.m., at the Chamber of Commerce Office, Highway 95, Bullhead City, Arizona. Agenda topics will include: (1) Imperial Oasis, (2) Long-Term Visitor Areas, (3) Quartzsite Federal Prison, (4) Fish and Wildlife 2000, (5) Parker Strip Recreation Area Management Plan, (6) Lake Havasu Fisheries Improvement Program, and (7) Fiscal Year 1993 Direction.

Following the meeting, council members will participate in a field tour of sections of Bullhead City. Members of the public are invited to attend the meeting and the field tour, but must provide their own transportation.

Summary minutes of the meeting will be maintained in the Yuma District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

This notice is published under the authority of title 5, United States Code, section 552b(e)(3).

Dated: October 2, 1992.

Herman L. Kast,

District Manager.

[FR Doc. 92-24599 Filed 10-8-92; 8:45 am]

BILLING CODE 4310-32-M

[MT-070-02-4212]

Montana; Realty Action

ACTION: Designation of public lands in Missoula, Granite and Powell counties, Montana, for possible transfer out of federal ownership via exchange.

SUMMARY: BLM proposes to exchange isolated public land tracts with Champion International Corporation to acquire lands with high recreation and natural resource values.

The following public land is being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended by the Federal Land Exchange Facilitation Act of January 25, 1988, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 10 N., R. 10 W.,
  Sec. 4, Lots 1, 2, SE¼NE¼;
  Sec. 10, SE¼NE¼, SW¼NW¼, E½SE¼.
T. 11 N., R. 10 W.,
  Sec. 18, N½NE¼, SE¼NE¼.
T. 14 N., R. 10 W.,
  Sec. 8, W½W½;
  Sec. 14, E½NE¼, NE¼SE¼.
T. 15 N., R. 10 W.,
  Sec. 29, Lot 4.
T. 14 N., R. 11 W.,
  Sec. 1, Lot 3, SE¼NW¼, E½SW¼.
T. 11 N., R. 12 W.,
  Sec. 5, SW¼NW¼, SW¼;
  Sec. 6, Lots 1,2,6,7, E1/SW¼;
  Sec. 7, Lot 4, NE¼NE¼, S½NE¼, E½W½, W½SE¼, NE¼SE¼.
T. 11 N., R. 13 W.,
  Sec. 2, Lots 1–4, S½NW¼, NW¼SW¼;
  Sec. 12, SW¼SW¼, S½SE¼.
T. 14 N., R. 13 W.,
  Sec. 6, NE¼SE¼.
T. 12 N., R. 14 W.,
  Sec. 20, W½NE¼, N½NW¼, SE¼NW¼, E½SW¼, W½SE¼;
  Sec. 29, E½SE¼;
  Sec. 30, Lots 1–4, NE¼, E½NW¼, E½SW¼,SE¼.
T. 11 N., R. 15 W.,
  Sec. 6, Lots 1–7, SE¼NW¼, E½SW¼, S½SE¼;
  Sec. 10, All;
  Sec. 12, NE¼NW¼, W½SW¼, SE¼SW¼;
  Sec. 13, N½NW¼;
  Sec. 14, N½N½.
T. 12 N., R. 15 W.,
  Sec. 17, Lots 1 & 2;
  Sec. 20, Lots 1–7, NW¼NW¼, NW¼SW¼, NW¼SE¼;
  Sec. 30, Lots 1–4, E½W½, SE¼;
  Sec. 32, N½NE¼, SW¼SW¼, E½SW¼, SE¼SE¼;
  Sec. 34, W½W½.
T. 11 N., R. 16 W.,
  Sec. 6, Lots 1–3, 6, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼.
T. 12 N., R. 16 W.,
  Sec. 8, Lots 13–24, NW¼NW¼, SE¼SW¼;
  Sec. 9, Lots 1–3, S½NW¼, W½SW¼, SE¼SW¼, SW¼SE¼;
  Sec. 10, Lots 1–5, SW¼NE¼, S½NW¼, SW¼, W½SE¼, SE¼SE¼;
  Sec. 11, W½SW¼;
  Sec. 20, Lots 1–3, NE¼, E½NW¼, S½;
  Sec. 24, W½;
  Sec. 32, NW¼, N½S½, SE¼SE¼.
T. 13 N., R. 17 W.,
  Sec. 10, S½N½.
T. 13 N., R. 18 W.,
  Sec. 14, E½SW¼, SE¼;
  Sec. 22, Lots 3–8;
  Sec. 23, N½NE¼, NE¼NW¼;
  Sec. 24, NE¼, E½NW¼, NW¼NW¼.

These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent, upon publication in the **Federal Register** of termination of the segregation, or five years from the date of this publication, whichever comes first.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

DATES: On or before November 23, 1992, interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, MT 59702.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, Montana 59801.

Dated: September 30, 1992.

Michele D. Good,

Acting District Manager.

[FR Doc. 92-24600 Filed 10-8-92; 8:45 am]

BILLING CODE 4310-DN-M

[NM-018-03-4333-10]

Intent To Prepare a Resource Management Plan Amendment/ Environmental Assessment (RMPA/ EA); New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Taos Resource Management Plan (RMP) incorporating Orilla Verde Recreation Area (the former Rio Grande State Park) into the RMP and directing future management of the area.

SUMMARY: The Taos Resource Area (TRA), Bureau of Land Management (BLM), proposes an amendment to the Taos RMP which was completed in 1988. The amendment would incorporate a 1349 acre reconveyance of the former Rio Grande State Park to BLM which took place in 1990. The Park was constructed with Land and Water Conservation Fund (LWCF) monies. LWCF requires perpetual dedication of the lands for park purposes. The amendment would also provide the framework for management of the recreation area within this criteria.

DATES: Interested parties may submit comments regarding concerns, issues, and criteria to be addressed in the plan amendment by October 30, 1992. This will constitute public scoping for the plan amendment.

ADDRESSES: Comments should be sent to Area Manager, Bureau of Land Management, Taos Resource Area Office, 224 Cruz Alta Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Terry Humphrey, BLM, Taos Resource Area Office, 224 Cruz Alta Road, Taos, New Mexico 87571, 505-758-8851.

SUPPLEMENTARY INFORMATION: Several meetings concerning management of the area were held in Taos, Embudo, Santa Fe, and Questa, New Mexico during January and February, 1992. Several informal meetings were held with community leaders and interested citizens from March through August, 1992.

Following the public scoping comment period, the BLM will prepare a draft

RMPA/EA. A team of interdisciplinary specialists with backgrounds in outdoor recreation planning, wildlife biology, range management, hydrology, cultural resources, and geology will be involved in the preparation of the Plan Amendment/EA. Upon completion of the draft Plan Amendment/EA, a 30 day public review will follow. The Proposed Plan Amendment/EA and Decision Record will then be completed and a 30 day protest period will follow. A notice of availability will announce the Proposed Plan Amendment/EA and Decision Record in a subsequent **Federal Register**.

Dated: October 1, 1992.

Larry L. Woodard,

State Director.

[FR Doc. 92-24601 Filed 10-8-92; 8:45 am]

BILLING CODE 4310-FB-M

[WY-930-03-4214-11; WYW 75480, WYW 75481, WYW 75482, WYW 75483,WYW 75484, WYW 75485]

Proposed Modification, Continuation, and Termination of Bureau of Reclamation Withdrawals, Riverton Reclamation Project; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Approximately 261,269.43 acres of lands withdrawn for the Riverton Reclamation Project, including the Muddy Ridge Area, were reviewed under Section 204(l) of the Federal Land Policy and Management Act of 1976. Included in this total were 3,126.29 acres of lands in overlapping withdrawals within the Riverton Reclamation Project. The review resulted in the following Bureau of Reclamation recommendations:

1. Continue withdrawals on 45,059.53 acres which includes 390 acres of lands in overlapping withdrawals.

2. Terminate withdrawals on 59,472.39 acres which includes 476.33 acres of lands in overlapping withdrawals. Lands proposed for termination will return to the Bureau of Land Management. Future use and disposition of these lands will be based on land use planning, environmental analysis, and public participation.

3. Terminate withdrawals on approximately 66,332.30 acres which includes 1,120.34 acres of lands in overlapping withdrawals. The lands are privately owned surface having only ditches and canal reservations to the United States.

4. Terminate withdrawals on 90,405.21 acres, which includes 1,139.62 acres of lands in overlapping withdrawals. The lands are privately owned, having a reserved mineral or other interest to the United States.

The actions for termination in paragraphs 3 and 4 are record clearing actions. The termination would not open any lands to mineral location or leasing since all of the Federal mineral estate is currently available for development.

DATES: Comments need to be received by January 7, 1992 and should be limited to whether or not the lands proposed for continuation are being used for the purpose for which they were withdrawn. A map showing the lands proposed for retention and termination is available for viewing at the Lander Resource Area Office, Rawlins District Office, or the Wyoming State Office.

Public comment concerning future land uses, management, etc., for those lands proposed for termination (paragraph 2) and possible return to multiple use management by BLM, will be taken later when land use planning occurs.

ADDRESSES: Comments should be sent to the Ray Brubaker, State Director, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6001.

FOR FURTHER INFORMATION CONTACT: Duane Feick, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6127.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that 45,059.53 acres of lands withdrawn by Secretarial Orders of September 27, 1918, and January 3, 1920, the Act of Congress of August 15, 1953, and the Bureau of Land Management Order of April 5, 1956, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714 (1988). The lands are described as follows:

Wind River Meridian, Wyoming

T. 3 N., R. 1 E.,
- Sec. 1, lots 1-2, NE¼SE¼, W½SE¼SE¼;
- Sec. 12, NW¼NE¼NE¼, N½SW¼NE¼NE¼, SW¼SW¼NE¼NE¼, NW¼NE¼, NE¼NW¼;
- Sec. 16, S½N½SE¼NW¼, SW¼SW¼NW¼, W½W½NW¼SW¼;
- Sec. 17, N½SE¼NW¼NE¼, NW¼SW¼NE¼, SW¼SW¼NE¼, E½NW¼SE¼NE¼, SE¼SE¼NE¼, E½W½NW¼SE¼;
- Sec. 20, E½NE¼NW¼, N½S½NW¼, NE¼SE¼NW¼, N½SW¼SE¼NW¼, SE¼SW¼SE¼NW¼, SE¼SE¼NW¼;
- Sec. 21, SW¼SW¼;
- Sec. 28, SW¼NE¼, W½NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼;
- Sec. 29, NE¼, NE¼SE¼;
- Sec. 33, NE¼;
- Sec. 34, E½SE¼NE¼, E½W½SE¼NE¼, W½NW¼, S½S½SE¼NW¼.

T. 4 N., R. 1 E.,
- Sec. 22, SE¼SE;
- Sec. 23, S½S½;
- Sec. 24, S½S½;
- Sec. 25, N½NE¼, SW¼NE¼, W½SE¼NE¼, NW¼NE¼SE¼NE¼, N½NE¼NE¼SE¼NE¼, W½, NW¼SE¼, W½SW¼SE¼, W½E½SW¼SE¼;
- Sec. 26, all;
- Sec. 27, E½E½;
- Sec. 34, NE¼NE¼;
- Sec. 35, NE¼, N½NW¼, SE¼NW¼;
- Sec. 36, W½NE¼, W½SE¼NE¼, NW¼, N½SW¼, NW¼NE¼SE¼, N½SW¼NE¼SE¼, W½SE¼, S½SE¼SE¼.

T. 2 N., R. 2 E.,
- Sec. 1, lots 1-4, S½N½, S½;
- Sec. 2, lots 1-4, S½N½, S½;
- Sec. 3, S½;
- Sec. 10, N½;
- Sec. 11, N½, SE¼;
- Sec. 12, N½;
- Sec. 19, lots 3-4, SE¼SW¼, SW¼SE¼, W½SE¼SE¼;
- Sec. 25, NW¼NE¼NW¼, S½NE¼NW¼.

T. 3 N., R. 2 E.,
- Sec. 1, lots 2-4, N½SW¼NW¼, Trs. 1-2;
- Sec. 2, Trs. 1 and 11;
- Sec. 3, Trs. 6, 11, 12, 16, 17, 19, and 21;
- Sec. 4, Trs. 4-5;
- Sec. 6, lots 4-5, Trs. 7-8;
- Sec. 7, NE¼ of lot 4, N½SE¼ of lot 4;
- Sec. 8, S½SE¼;
- Sec. 12, N½S½NE¼, SE¼SE¼NE¼;
- Sec. 15, W½E½NW¼;
- Sec. 23, NW¼SE¼NE¼;
- Sec. 25, W½NE¼SW¼, SE¼NE¼SW¼, W½SW¼, SE¼SW¼, S½S½N W¼SE¼, SW¼SE¼, E½SE¼;
- Sec. 26, SE¼NW¼, E½SW¼, SW¼SW¼ SE¼;
- Sec. 27, S½SE¼;
- Sec. 34, E½, NE¼NW¼, E½E½N W¼NW¼, NE¼SE¼NW¼, S½SE¼N W¼, N½NE¼SW¼;
- Sec. 35, all;
- Sec. 36, all.

T.4 N., R. 2 E.,
- Sec. 1, lots 1-3, S½NE¼, NE¼SE¼NW¼, S½NE¼SW¼, W½SW¼, N½SE¼S W¼, N½SW¼SE¼SW¼, SE¼SE¼S W¼;
- Sec. 2, NE¼SE¼, Tr. 10;
- Sec. 3, Trs. 1, 2, 5, and 6;
- Sec. 10, E½NE¼;
- Sec. 11, SW¼NW¼, SE¼SW¼, Trs. 3, 4, 9, and 10;
- Sec. 12, NE¼NE¼, NE¼NE¼NE¼NW¼;
- Sec. 13, Trs. 6-9;
- Sec. 14, NW¼SE¼, SE¼SE¼, Trs. 4-6;
- Sec. 19, lots 3-4, NE¼SW¼, N½SE¼S W¼, N½SE¼, N½SW¼SE¼, SE¼SE¼;
- Sec. 20, S½;
- Sec. 21, SW¼, S½SE¼;
- Sec. 22, S½S½;
- Sec. 23, S½S½;
- Sec. 25, S½S½;
- Sec. 26, N½, NE¼SW¼, N½NW¼SW¼, N½SE¼, NE¼SW¼SE¼, E½SE¼S W¼SE¼, SE¼SE¼;
- Sec. 27, Trs. 1, 3, 4, and 6;
- Sec. 28, Trs. 1-3;

Sec. 29, Trs. 1, 2, and 11–14;
Sec. 30, Trs. 1, 7, 9, 12–14, 16, 19, and 21;
Sec. 32, Trs. 2, 12, 14, 16, 18, 20, and 21;
Sec. 33, S½SW¼SE¼, Trs. 4, 6, 8, 11, 12, and 14;
Sec. 35, Tr. 9;
Sec. 36, NE¼NE¼, W½SW¼, Trs. 1, 2, and 7.

T. 5 N., R. 2 E.,
Sec. 14, SE¼SE¼;
Sec. 36, W½SW¼, SE¼SW¼, S½SE¼.

T. 1 N., R. 3 E.,
Sec. 11, SW¼SE¼;
Sec. 13, SW¼NW¼, W½W½W½SE¼N W¼;
Sec. 14, S½NE¼NE¼, NW¼NE¼, N½N½SW¼NE¼, N½N½SE¼NE¼, S½NE¼SE¼NE¼, SE¼SE¼NE¼, N½NE¼NE¼SE¼.

T. 2 N., R. 3 E.,
Sec. 3, N½SW¼NE¼SW¼, S½N½SE¼NE¼SW¼, S½NE¼NW¼SW¼;
Sec. 4, lots 3–4, N½S½NW¼;
Sec. 5, lots 1–4, E½NE¼SW¼NE¼, N½SE¼NE¼, SW¼NW¼, W½NE¼SE¼NW¼, NW¼SE¼NW¼, NW¼SW¼;
Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, N½S½SE¼SE¼;
Sec. 7, lots 1–2, W½NW¼NE¼, W½E½NW¼NE¼, NE¼NW¼, E½SE¼SE¼;
Sec. 16, W½SW¼;
Sec. 17, S½S½NW¼NE¼, SW¼NE¼, NW¼NW¼NW¼, S½N½NW¼, S½NW¼, SW¼, S½N½NE¼SE¼, S½NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 18, lots 2–3, NE¼NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 19, N½NW¼NE¼, N½NE¼SE¼SW¼, E½SW¼, E½SW¼SE¼SE¼;
Sec. 20, N½N½NE¼NE¼NE¼, W½NE¼NE¼, S½N½SE¼NE¼NE¼, S½SE¼NE¼NE¼;
Sec. 22, SW¼NE¼SE¼;
Sec. 26, SW¼SW¼NW¼, S½SW¼NE¼SW¼, SE¼NE¼SW¼, N½NW¼NW¼SW¼, S½SE¼NW¼SW¼, N½NE¼SW¼SW¼, N½NW¼SE¼SW¼, N½NE¼SE¼SW¼, S½NW¼SE¼, N½NE¼SW¼SE¼, S½SE¼SE¼SE¼, N½SW¼SE¼SE¼, S½SE¼SE¼SE¼;
Sec. 35, S½N½N½NE¼NE¼.

T. 3 N., R. 3 E.,
Sec. 1, lots 1–4, S½N½, S½;
Sec. 6, Trs. 3–5;
Sec. 7, Trs. 8, 11, 18, 22–25, 27, and 29;
Sec. 8, SE¼NE¼NE¼SW¼, S½N½NW¼SW¼, S½N½SW¼, SW¼NE¼SE¼, SW¼NE¼NW¼SE¼, S½NW¼SE¼, N½SE¼SE¼;
Sec. 9, NW¼SW¼SW¼, SE¼SW¼SW¼, SW¼SE¼SW¼, SW¼SE¼SE¼SW¼;
Sec. 13, N½NE¼;
Sec. 14, N¼SW¼SW¼, N½SW¼SW¼, N½S½SW¼SW¼SW¼, N½S½S½SW¼SW¼SW¼, SE¼SW¼SW¼, S½SE¼SW¼;
Sec. 15, NE¼SW¼NW¼, S½SW¼NW¼, SW¼SE¼NW¼, SW¼SE¼NE¼SE¼, NW¼SE¼, N½SE¼SE¼;
Sec. 16, NW¼NE¼, NE¼SW¼NE¼, SE¼NE¼, N½NE¼NW¼, NE¼NW¼N W¼;
Sec. 23, N½SE¼NE¼, SE¼SE¼NE¼, NE¼NE¼SE¼;
Sec. 24, NW¼, N½SW¼, N½SE¼SW¼, W½SE¼, NW¼SE¼SE¼, S½SE¼SE¼;
Sec. 25, N½NE¼NE¼;
Sec. 27, SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼, SW¼NE¼NW¼SE¼, N½SW¼NW¼SE¼;
Sec. 29, S½SW¼SW¼, SE¼SW¼, N½N½SW¼SE¼;
Sec. 30, lot 4, SE¼SE¼SE¼;
Sec. 31, Trs. 1–9;
Sec. 32, S½NE¼, NW¼, S½;
Sec. 33, SW¼NE¼, N½NE¼SE¼NE¼, W½SE¼NE¼, S½NW¼, SW¼.

T. 4 N., R. 3 E.,
Sec. 4, SE¼SW¼, Tr. 1;
Sec. 5, Trs. 2, 3, and 9;
Sec. 6, lots 3–5, SW¼NE¼, N½SE¼NW¼, N½SE¼SE¼NW¼, N½NE¼SE¼, N½SE¼NE¼SE¼, N½NE¼NW¼SE¼;
Sec. 7, lot 3, NE¼SW¼;
Sec. 8, SW¼, W½SE¼;
Sec. 9, S½NE¼, N½SE¼, Trs. 1 and 4;
Sec. 10, SW¼NE¼, S½NW¼, N½SW¼, SE¼SW¼, Tr. 2;
Sec. 15, W½SW¼, SE¼SW¼, Trs. 9–10;
Sec. 16, NW¼, NE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 17, NE¼NE¼;
Sec. 18, lot 4, SE¼SW¼, Tr. 10;
Sec. 19, lots 1–4, W½E½, E½W½;
Sec. 22, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 23, W½SW¼, SE¼SW¼, Trs. 9, 11, and 13;
Sec. 25, N½SW¼, S½SE¼, Trs. 1 and 3;
Sec. 26, N½NE¼, SE¼NE¼, Trs. 3–4;
Sec. 30, lots 1–4, E½, E½W½;
Sec. 31, Trs. 1–4;
Sec. 36, Trs. 10 and 15.

T. 1 N., R. 4 E.,
Sec. 7, N½SE¼;
Sec. 8, E½NW¼, N½SW¼.

T. 2 N., R. 4 E.,
Sec. 4, lots 3–4, SW¼NW¼, W½NW¼S W¼;
Sec. 6, lots 6–7, E½SW¼, SE¼;
Sec. 7, lots 1–2, NE¼, E½NW¼;
Sec. 12, Trs. 3–4;
Sec. 13, E½NE¼NW¼, E½W½N E¼NW¼;
Sec. 21, SE¼SE¼;
Sec. 22, SW¼.

T. 3 N., R. 4 E.,
Sec. 5, W½SW¼;
Sec. 6, lots 3–4, E½SW¼, SE¼;
Sec. 7, E½;
Sec. 8, W½W½;
Sec. 18, NE¼;
Sec. 27, SE¼SW¼, S½SE¼;
Sec. 28, S½S½S½NW¼, N½NE¼SW¼, N½S½NE¼SW¼, N½NW¼SE¼;
Sec. 30, W½ and SE¼ of lot 1, S½S½N E¼NE¼, S½NW¼NE¼, S½NE¼NW¼;
Sec. 32, lot 1, S½S½ of lots 2–3, S½ of lot 4;
Sec. 33, lots 3–4, S½SW¼NE¼SW¼, SW¼SE¼NE¼SW¼;
Sec. 34, NE¼NE¼, N½NW¼NE¼;
Sec. 35, S½NE¼, S½NW¼NW¼, E½SW¼NW¼, SE¼NW¼;
Sec. 36, S½N½, N½N½S½.

T. 4 N., R. 4 E.,
Sec. 13, S½NE¼SE¼, S½S½;
Sec. 14, E½SW¼SW¼SE¼, SE¼SW¼S E¼, S½SE¼SE¼;
Sec. 16, S½S½;
Sec. 18, lots 3 and 5;
Sec. 19, lots 1–2, NE¼, E½NW¼;
Sec. 20, lot 1, N½, Trs. 41 and 46;
Sec. 21, N½, N½S½;
Sec. 22, S½N½, N½S½;
Sec. 23, N½N½, N½S½NW¼;
Sec. 24, N½N½N½;
Sec. 25, S½N½NW¼SW¼, S½N½SW¼, S½S½, S½NW¼SE¼;
Sec. 26, S½;
Sec. 27, N½SW¼, SE¼;
Sec. 28, S½SW¼, S½S½N½SE¼;
Sec. 29, S½S½;
Sec. 31, lot 1, N½NE¼, NE¼NW¼;
Sec. 32, N½N½;
Sec. 33, N½N½NE¼, N½NW¼;
Sec. 34, N½N½NW¼;
Sec. 36, NE¼NE¼NE¼.

T. 2 N., R. 5 E.,
Sec. 7, lot 4.

T. 3 N., R. 5 E.,
Sec. 25, NE¼NW¼, S½NW¼, N½NW¼N E¼SW¼, NW¼SW¼;
Sec. 26, S½SE¼NE¼, SW¼, N½SE¼, N½SW¼SE¼;
Sec. 27, S½S½;
Sec. 28, S½S½S½;
Sec. 29, SE¼SE¼SE¼SE¼;
Sec. 31, S½ of lot 1, N½NE¼, NE¼NW¼;
Sec. 32, N½N½;
Sec. 33, N½N½N½, N½S½N½N½, S½S½NW¼NW¼;
Sec. 34, N½N½N½NE¼NE¼, N½N½N W¼NE¼, N½N½N½NW¼, N½S½N ½NE¼NW¼, S½N½NW¼NW¼, N½N½SW¼NW¼NW¼.

T. 4 N., R. 5 E.,
Sec. 10, SE¼;
Sec. 11, S½S½NE¼, S½;
Sec. 12, S½S½NW¼, SW¼, W½SE¼, W½SE¼SE¼, SE¼SE¼SE¼;
Sec. 13, all;
Sec. 14, all;
Sec. 15, NE¼;
Sec. 17, SW¼NW¼SW¼, W½SW¼S W¼;
Sec. 18, S½ of lot 3, lot 4, S½NE¼SW¼, SE¼SW¼, S½N½SE¼, S½SE¼;
Sec. 19, lots 1–2, NE¼, E½NW¼;
Sec. 20, S½NE¼, W½NW¼NW¼, S½NW¼, S½;
Sec. 21, SW¼, S½N½SE¼, S½SE¼;
Sec. 23, all;
Sec. 24, all;
Sec. 25, N½NE¼NE¼, SW¼NE¼NE¼, NW¼NE¼, N½SW¼NE¼, SW¼SW¼NE¼, NW¼, N½SW¼, W½NW¼SE¼;
Sec. 26, N½, N½SW¼, N½S½SW¼, N½SE¼, NW¼SW¼SE¼;
Sec. 27, S½NE¼, W½NW¼, SE¼NW¼, S½;
Sec. 30, S½ of lot 4, S½SE¼SW¼;
Sec. 31, lot 1, S½NE¼, NE¼NW¼;
Sec. 32, S½S½NE¼NE¼, W½NE¼, SE¼NE¼, S½NW¼, NE¼SE¼;
Sec. 33, S½N½, N½S½;
Sec. 34, N½NW¼NE¼, NE¼NE¼NW¼, W½E½NW¼, W½NW¼.

T. 3 N., R. 6 E.,
Sec. 19, portion of Tr. 7;
Sec. 31, W½W½SW¼SE¼NE¼, W½W½W½NE¼SE¼;
Sec. 32, Tr. 3.

T. 4 N., R. 6 E.,

Sec. 7, lot 4, S½SE¼SW¼, S½S½SE¼;
Sec. 8, S½SW¼SW¼, SW¼SE¼SW¼;
Sec. 17, W½NW¼, W½E½NW¼, W½NE¼SW¼, W½SW¼;
Sec. 18, lots 1–4, E½W½, E½;
Sec. 19, lots 1–4, W½NE¼NE¼, NW¼NE¼, E½NW¼;
Sec. 30, NW¼ of lot 1.
T. 3 N., R. 1 W.,
Sec. 15, SW¼;
Sec. 16, S½;
Sec. 17, N½SW¼, SE¼;
Sec. 18, lot 3, NE¼SW¼;
Sec. 23, N½NW¼.
T. 3 N., R. 2 W.,
Sec. 13, SE¼SW¼;
Sec. 30, lots 1–7, SW¼NE¼, E½SW¼, NW¼SE¼.
T. 2 N., R 3 W.,
Sec. 3, lot 4;
Sec. 4, lots 1–2, SE¼NE¼;
Sec. 5, lots 1, 2, and 5;
Sec. 6, lots 6, 8–13, SW¼NE¼;
Sec. 7, lot 1.
T. 3 N., R. 3 W.,
Sec. 25, lots 1–9, N½NE¼, SW¼NW¼;
Sec. 26, lots 1–6, S½NE¼;
Sec. 27, lots 1–2, 4–5, S½NE¼;
Sec. 28, SE¼SE¼;
Sec. 32, lots 1–3;
Sec. 33, lots 1–5, NE¼NE¼, S½NW¼;
Sec. 34, lots 1–7, S½NE¼, SE¼SW¼;
Sec. 35, N½N½;
Sec. 36, N½N½.
T. 2 N., R. 4 W.,
Sec. 1, lots 10–12, NW¼SW¼, N½SE¼;
Sec. 12, lots 1–7.

The areas described aggregate 45,059.53 acres in Fremont County.

The purpose of the withdrawals is to protect capital improvements associated with the Riverton Reclamation Project and, additionally, to protect important recreation and wildlife areas associated with the project. The withdrawals continued will be modified to extend the term for 50 years.

The Bureau of Reclamation proposes termination of withdrawals on 59,472.39 acres of lands withdrawn by the Act of Congress of August 15, 1953, and Bureau of Land Management Order of April 5, 1956. These lands are no longer needed for project purposes and can be managed as public land by the Bureau of Land Management. Future use and disposition of these lands would be based on land use planning, environmental analysis, and public participation. These lands are described as follows:

Wind River Meridian, Wyoming

T. 2 N., R. 1 E.,
Sec. 12, S½NE¼, E½SE¼NW¼.
T. 3 N., R. 1 E.,
Sec. 18, lot 4, SE¼SW¼.
T. 4 N., R. 2 E.,
Sec. 13, Tr. 3.
T. 1 N., R. 3 E.,
Sec. 11, W½NW¼NE¼, N½NW¼SW¼NE¼, SW¼NW¼SW¼NE¼, NE¼NW¼, NE¼SE¼NW¼, E½E½SE¼NW¼, E½E½NE¼NE¼SW¼, E½NE¼SE¼NE¼SW¼, S½S½SW¼;
Sec. 12, S½SE¼.
T. 2 N., R. 3 E.,
Sec. 1, lots 1–2, S½NE¼, SE¼;
Sec. 7, N½SE¼SW¼SE¼;
Sec. 11, S½N½NE¼NE¼SE¼, S½NE¼NE¼SE¼, SE¼NE¼SE¼, E½SE¼SE¼;
Sec. 12, all.
Sec. 13, N½N½, SW¼NW¼;
Sec. 14, E½NE¼NE¼.
T. 3 N., R. 3 E.,
Sec. 2, lots 1–4, S½N½, S½;
Sec. 3, lots 1–4, S½N½, S½;
Sec. 4, lots 1–4, S½N½, S½;
Sec. 5, lots 1–3, S½NE¼, N½SE¼NW¼, N½S½SE¼NW¼, N½S½S½SE¼NW¼, SW¼, SW¼SE¼;
Sec. 8, NE¼, NE¼NW¼, N½NW¼NW¼, N½NE¼SE¼, SE¼NE¼SE¼, N½NE¼NW¼SE¼, SE¼NE¼NW¼SE¼, NW¼NW¼SE¼;
Sec. 9, N½, N½SW¼, NE¼SW¼SW¼, N½SE¼SW¼, N½SE¼SE¼SW¼, SE¼SE¼SE¼SW¼, SE¼;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, S½NE¼, NW¼, S½;
Sec. 14, N½, N½S½, N½SE¼SW¼;
Sec. 15, NE¼, N½NW¼, NW¼SW¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼, N½NE¼SE¼, SW¼NE¼SE¼, N½SE¼NE¼SE¼, SE¼SE¼NE¼SE¼;
Sec. 16, NE¼NE¼;
Sec. 24, NE¼, NE¼SE¼, NE¼SE¼SE¼;
Sec. 36, S½SW¼NW¼, E½NW¼SW¼, E½SW¼, SE¼.
T. 4 N., R. 3 E.,
Sec. 29, W½E½NE¼, W½NE¼, W½, SE¼;
Sec. 32, N½, N½SW¼, N½SW¼SW¼, SE¼SW¼, SE¼;
Sec. 33, all;
Sec. 34, SW¼;
T. 1 N., R. 4 E.,
Sec. 6, lots 3, 4, and 5, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lot 4, SE¼SW¼, S½SE¼;
Sec. 8, S½SW¼.
T. 2 N., R. 4 E.,
Sec. 5, lots 1–4, S½N½, SW¼, N½SE¼;
Sec. 6, lots 1–5, S½NE¼, SE¼NW¼;
Sec. 7, N½SE¼;
Sec. 8, SW¼SW¼NE¼, S½S½NW¼, N½SW¼, W½NW¼SE¼, SE¼NW¼SE¼;
Sec. 20, S½NE¼SE¼, S½SE¼;
Sec. 21, SW¼SW¼, S½SE¼SW¼;
Sec. 28, N½N½, SW¼NW¼, W½SW¼;
Sec. 27, S½NE¼, NW¼, E½SW¼, SE¼;
Sec. 28, N½NE¼, SE¼NE¼, N½NW¼, W½SW¼NW¼, NW¼SW¼, W½SW¼SW¼;
Sec. 29, NE¼, S½;
Sec. 33, W½NW¼NW¼;
Sec. 34, N½NE¼;
T. 3 N., R. 4 E.,
Sec. 1, all;
Sec. 2, all;
Sec. 3, all;
Sec. 4, all;
Sec. 5, N½, E½SW¼, SE¼;
Sec. 6, lots 1–2, NE¼, E½NW¼;
Sec. 7, lots 1–4, E½W½;
Sec. 8, E½, E½W½;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, N½, N½SW¼, SW¼SW¼, NE¼SE¼;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1–4, E½W½, SE¼;
Sec. 19, lots 1–4, E½, E½W½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, N½, N½S½;
Sec. 28, NE¼, N½NW¼, N½S½NW¼, N½S½S½NW¼;
Sec. 29, N½N½;
Sec. 30, NE¼ of lot 1, N½N½NE¼, N½S½NE¼NE¼, N½NE¼NW¼;
Sec. 31, lots 4–5;
Sec. 35, N½NE¼, NE¼NW¼, N½NW¼NW¼;
Sec. 36, N½N½.
T. 4 N., R. 4 E.,
Sec. 24, S½N½N½, S½N½, S½;
Sec. 25, S½NE¼SE¼;
Sec. 26, S½S½N½;
Sec. 29, Tr. 41;
Sec. 30, S½S½NE¼, S½SE¼NW¼;
Sec. 31, lots 2–4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 32, S½N½, S½;
Sec. 33, S½N½NE¼, S½N½, S½;
Sec. 34, NE¼, S½N½NW¼, S½NW¼, S½;
Sec. 35, all;
Sec. 36, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, NW¼, S½.
T. 2 N., R. 5 E.,
Sec. 12, S½NE¼NE¼.
T. 3 N., R. 5 E.,
Sec. 1, S½ of lots 1–4, S½N½, S½;
Sec. 2, lots 1–4, S½N½, S½;
Sec. 3, lots 1–4, S½N½, S½;
Sec. 4, lots 1–4, S½N½, S½;
Sec. 5, lots 1–4, S½N½, S½;
Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, NE¼, E½W½, SE¼;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, N½NE¼, SW¼NE¼, N½SE¼NE¼, W½, W½SE¼, W½SE¼SE¼;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1–4, E½, E½W½;
Sec. 19, lots 1–4, E½, E½W½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, W½E½E½, W½E½, W½;
Sec. 25, NW¼NW¼;

Sec. 26, NE¼NE¼, W½NE¼, N½SE¼N E¼, NW¼;
Sec. 27, N½, N½S½;
Sec. 28, N½, N½S½, N½S½S½;
Sec. 29, N½, SW¼, NE¼SE¼, W½SE¼, N½SE¼SE¼, SW¼SE¼SE¼, N½SE¼S E¼SE¼, SW¼SE¼SE¼SE¼;
Sec. 30, lots 1–4, E½, E½W½;
Sec. 31, N½ of lot 1.
T. 4 N., R. 5 E.,
Sec. 19, lots 3–4, E½SW¼, SE¼;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1–3, N½ of lot 4, NE¼, E½NW¼, NE¼SW¼, N½SE¼SW¼, SE¼;
Sec. 31, lots 2–7, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 32, lots 1–4, N½NE¼NE¼, N½S½N E¼NE¼, N½SW¼, NW¼SE¼;
Sec. 33, lots 1–4, N½N½;
Sec. 34, lots 1–3, W½ of lot 4, SE¼ of lot 4, N½SW¼, S½NW¼SE¼;
T. 2 N., R. 6 E.,
Sec. 7, lots 1, 2, and 4, E½NW¼;
Sec. 18, lots 1–2, W½W½SE¼NW¼, W½E½W½SE¼NW¼;
T. 3 N., R. 6 E.,
Sec. 5, lot 4, N½SW¼NW¼, S½S½SW¼;
Sec. 6, lots 1–3, 5–7, E½ and SW¼ of lot 4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, E½, E½W½;
Sec. 8, N½NW¼, N½SW¼NW¼, SW¼SW¼NW¼, W½W½SW¼, SE¼SW¼SW¼;
Sec. 17, NW¼NW¼, NW¼SW¼NW¼;
Sec. 18, lot 1, N½ of lot 2, N½NE¼, N½S½NE¼, NE¼NW¼, N½SE¼N W¼.
T. 4 N., R. 6 E.,
Sec. 31, S½SE¼SW¼, S½SE¼;
Sec. 32, SW¼SW¼.
The areas described aggregate 59,472.39 acres in Fremont County.

The Bureau of Reclamation proposes to terminate withdrawals withdrawn by Secretarial Orders of September 27, 1918, and December 31, 1925, the Act of Congress of August 15, 1953, and Bureau of Land Management Orders of April 5, 1956, and May 15, 1956, on 66,332.30 acres of private surface where the only Federal interests are ditches and canals reservations to the United States. The termination is a record clearing action having no effect.

A legal description of the lands are available at the Lander Resource Area Office, Rawlins District Office, or the Wyoming State Office.

The Bureau of Reclamation proposes to terminate withdrawals on 90,405.21 acres of private lands withdrawn by Act of Congress of August 15, 1953, and Bureau of Land Management Order of April 5, 1956, where the United States has a reserved mineral or right-of-way interest. The mineral estate is currently available for development. The termination would be a record clearing action having no effect.

A legal description of the lands is available at the Lander Resource Area Office, Rawlins District Office, or the Wyoming State Office.

The four categories of withdrawn lands may include small, scattered tracts of lands acquired by the Bureau of Reclamation for the project, which are not subject to any withdrawal. Some of these tracts have been identified and legal descriptions adjusted. Additional lands will be identified prior to the actual termination action and the acreages adjusted accordingly.

For a period of 90 days from the date of publication of this notice in the **Federal Register**, all persons who wish to submit comments in connection with this notice of proposed withdrawal continuation may present their views in writing to Ray Brubaker, State Director, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and resources associated with the withdrawn areas proposed for continuation. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if continued, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: September 24, 1992.

F. William Eikenberry,

Associate State Director, Wyoming.

[FR Doc. 92-24605 Filed 10-08-92; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

General Management Plan, Kaloko-Honokohau National Historical Park; Availability; Draft General Management Plan/Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the National Park Service has prepared a draft General Management Plan/Environmental Impact Statement (GMP/EIS) for Kaloko-Honokohau National Historical Park, Hawaii County, Hawaii.

The draft GMP/EIS presents a proposal and three alternatives for the future management, development and use of the park. The proposed action calls for full facility development of the park including a facility for interpretation of traditional Hawaiian ways and the carrying out of resource management strategies to preserve and protect the nationally significant cultural and natural values through an increase in park staffing. The other alternatives include no action, limited facility development, and maximization of vehicle access with more emphasis on recreation use. Impact topics evaluated include cultural resources, plant and animal communities, geology, freshwater and marine resources, visitor services, air quality, local economy and management and operations.

Comments on the draft GMP/EIS should be received no later than December 11, 1992, and should be addressed to Gary Barbano, Park Planner, National Park Service, Pacific Area Office, 300 Ala Moana Blvd., Box 50165, Honolulu, Hawaii 96850. Requests for additional information or copies of the document should be directed to this address or telephone number (808) 541-2693.

Copies of the draft GMP/EIS are available for inspection at the Pacific Area Office, the park and libraries in the vicinity of the park and in Honolulu. Copies are also available for inspection at the following address: Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, 600 Harrison St., Suite 600, San Francisco, CA 94107-1372.

Dated: September 9, 1992.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 92-24684 Filed 10-8-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte Nos. 339 and 431 (Sub 2)]

Cost Recovery Percentage; Review of the General Purpose Costing System

AGENCY: Interstate Commerce Commission.

ACTION: Request for comments.

SUMMARY: The Commission is requesting comments on a revised make whole adjustment procedure. A make whole procedure reallocates the cost savings of volume shipments to other traffic to ensure that all costs generated are accounted for. The proposed procedure allocates cost savings on an individual railroad basis. The current procedure allocates cost savings on a regional basis. The proposed methodology will produce more accurate costs.

DATES: Comments are due November 9, 1992.

ADDRESSES: Send comments referring to Ex Parte No. 399 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 927–5720 Robert C. Hasek, (202) 927–6239 [TDD for hearing impaired (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision in Ex Parte No. 399, *supra* served May 6, 1992. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 275–1721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: October 2, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–24632 Filed 10–8–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket NO. AB–374 (Sub-No. 1X)]

Eastern Alabama Railway, Inc.—Abandonment and Discontinuance Exemption—In Calhoun County, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the discontinuance and abandonment by Eastern Alabama Railway, Inc (EARY) as follows: (1) Discontinuance of service over 2.4 miles of track in Anniston, AL from a point formerly known as GP Junction (NS milepost 737.3) to a point 500 feet north of the north switch to Donoho Clay (approximately 11,417 feet north of GP Junction), including switches needed to access shipper Huron Valley Steel, FMC Sand, and Donoho Clay, and crossover tracks now in place between EARY and Norfolk Southern Railway Company; and (2) abandonment of the remaining 12.66 miles of EARY's 15.06-mile rail line extending between Anniston (milepost LAM 507.73) and Wellington, AL (milepost LAM 522.79), in Calhoun County, AL. The discontinuance and the abandonment are subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 8, 1992. Formal expressions of intent to file an offer of financial assistance [1] under 49 CFR 1152.27(c)(2) must be filed by October 19, 1992, petitions to stay must be filed by October 26, 1992, and petitions for reconsideration must be filed by November 3, 1992. Requests for public use conditions must be filed by October 29, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–374 (Sub-No. 1X) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and to petitioner's representative: Pritz R. Kahn, suit 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005–2301.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 (TDD for Hearing Impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927–5712]

Decided: October 1, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–24634 Filed 10–8–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32155]

La Belle Point Railroad Co.; Lease and Operation Exemption; Missouri Pacific Railroad Co.

La Belle Point Railroad Company (La Belle), a noncarrier subsidiary of the Arkansas Shortline Railroad, Inc., has filed a notice of exemption to lease and operate 49.34 miles of rail line (the Paris Branch) owned by Missouri Pacific Railroad Company (MP), extending from milepost 504.03, at Fort Smith, AR to milepost 553.42, at Paris, AR (excluding MP's connecting track to the Arkansas & Missouri Railroad between milepost 504.29 and milepost 504.34 at Forth Smith, AR). The exemption became effective on September 17, 1992.

Any comments must be filed with the Commission and served on: Jay Moody, 2200 Worthen Bank Building, 200 West Capital Ave., Little Rock, AR, 72201–3699.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[2] The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 1, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–24636 Filed 10–8–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32159]

Peninsula Corridor Joint Powers Board; Trackage Rights Exemption; Southern Pacific Transportation Co.

Southern Pacific Transportation Company (SPT) has agreed to extend for an additional 60 days, its 90-day grant of 4.7 miles of overhead trackage rights to Peninsula Corridor Joint Powers Board (JPB) between Santa Clara Junction (milepost 44.0), and Tamien, CA (milepost 48.70).[3] The extension was to

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[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[2] Pioneer Railcorp and Fort Smith Railroad Company have jointly filed a petition to reject or revoke this notice of exemption. The Commission will address that petition in a separate decision. If, as alleged in the petition to reject or revoke, La Belle upon consummation of the lease transaction will become a carrier affiliated with two other rail carriers, then the entity in control must obtain approval from the Commission to continue in control of these carriers pursuant to 49 U.S.C. 11343 and 49 CFR part 1180. Also, MP has advised that it will soon file a petition seeking Commission approval for an adverse discontinuance of service by the current operator, Fort Smith Railroad Company.

[3] SPT and JPB own parallel lines between these points. They recently agreed to grant limited term trackage rights to each other while they studied the feasibility of entering into a coordinated use agreement to achieve more efficient freight, intercity passenger, and commuter train operations in this area. See Finance Docket No. 32094, Penin. Corr. Jt. Powers Bd.—Tr. Rts. Exemp.—Sou. Pac. Transp. Co. (not printed), served July 13, 1992, and Finance Docket No. 32091, Sou. Pac. Transp. Co.—Tr. Rts. Exemp.—Penin. Corr. Jt. Powers Bd. (not printed), served July 13, 1992. This extension is necessary because the parties were unable to complete their negotiations within the original 90-day term. JPB has agreed to grant SPT a similar trackage rights extension in Finance Docket No. 32161.

become effective on or after October 1, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market St., Suite 2300, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: October 5, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-24633 Filed 10-8-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32161]

Southern Pacific Transportation Co.—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board

Peninsula Corridor Joint Powers Board (JPB) has agreed to extend for an additional 60 days the grant of trackage rights to Southern Pacific Transportation Company (SP), between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.70), a distance of approximately 4.7 miles.[1] The extension of the trackage rights will be effective on or after October 1, 1992, for a period of 60 days.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Transportation Company, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

[1] In Finance Docket No. 32091, Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Power Board (not printed), served July 13, 1992, the Commission exempted the grant of trackage rights by JPB to SP over JPB's Santa Clara Junction-Tamien line for a period of 90 days. During this time, the parties have been negotiating to coordinate use of their parallel lines in order to achieve more efficient freight, intercity passenger, and commuter train operations. Additional time is need to complete their negotiations.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: October 1, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-24635 Filed 10-8-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Stipulation and Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed stipulation and settlement will be lodged with the United States Bankruptcy Court for the District of Utah, Central Division in *In re CF&I Fabricators of Utah, Inc., et al.*, Case No. 90B-6721. The proposed stipulation and settlement resolves the claims of the United States under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") in the consolidated bankruptcy proceedings of CF&I Steel Corporation and its subsidiaries, with respect to the Roebling Steel Superfund Site, located in the Village of Roebling, Florence Township, New Jersey.

The proposed stipulation and settlement between the United States, CF&I Steel Corporation and the Committee representing the unsecured creditors of CF&I Steel Corporation gives the United States an allowed claim of $27,098,870 for its claim for pre-petition and post-petition response costs incurred or to be incurred at the Roebling Steel Superfund Site.

The Department of Justice will receive comments relating to the proposed stipulation and settlement from the date of this publication until October 23, 1992. Comments on the stipulation and settlement should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington DC 20044, and should refer to In re CF&I Fabricators of Utah, Inc., et. al., DOJ Ref. No. 90-7-1-618.

A copy of the proposed stipulation and settlement may be examined at the Office of the United States Attorney, District of Utah, U.S. Courthouse, room 478, 350 South Main Street, Salt Lake City, Utah 84101. A copy of the proposed stipulation and settlement may also be examined or obtained by mail at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004 (202-347-2072). When requesting a copy of the proposed stipulation and settlement, please enclose a check in the amount of $2.00 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92-24655 Filed 10-8-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing or the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II

Kansas:
KS91–17 (Oct. 9, 1992)..... p. All.

Modification to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia:
GA91–4 (Feb. 22, 1991)..... p. All.
GA91–31 (Feb. 22, 1991)..... p. All.
New Jersey:
NJ91–2 (Feb. 22, 1991)..... p. 701
pp. 705–708
p. 708
New Jersey:
NY91–3 (Feb. 22, 1991)..... p. 721
p. 725
New York:
NY91–2 (Feb. 22, 1991)..... p. 777
p. 781
NY91–3 (Feb. 22, 1991)..... p. 797
p. 798
NY91–7 (Feb. 22, 1991)..... p. 837
p. 840

Michigan *Volume II*
Illinois:
IL91–1 (Feb. 22, 1991)..... p. 69
p. 79
IL91–6 (Feb. 22, 1991)..... p. 133
p. 134
IL91–8 (Feb. 22, 1991)..... p. 145
p. 148
IL91–9 (Feb. 22, 1991)..... p. 153
p. 155
IL91–11 (Feb. 22, 1991)..... p. 163
pp. 165–166
IL91–12 (Feb. 22, 1991)..... p. 171
pp. 172–173
IL91–13 (Feb. 22, 1991)..... p. 183
p. 186
IL91–14 (Feb. 22, 1991)..... p. 195
p. 196
IL91–15 (Feb. 22, 1991)..... p. 205
p. 206

Kansas:
KS91–11 (Feb. 22, 1991)..... p. All.
Michigan:
MI91–4 (Feb 22, 1991)..... p. 491
pp. 493, 496–498
MI91–7 (Feb 22, 1991)..... p. All.
MI91–17 (Feb 22, 1991)..... p. All.Q03

Volume III

Montana:
MT91–5 (Feb 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 2402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 2d day of October 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92–24350 Filed 10–8–92; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standard Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on October 27, 1992, at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4215 A and B, Washington, DC. The meeting is open to the public and will begin at 9 a.m.

The agenda for this meeting includes reports regarding Office of Construction and Engineering activities, Office of Occupational Medicine activities, the OSHA/EPA incinerator inspection protocol, evaluation of state plan state OSHA programs, non-rulemaking changes in OSHA safety standards, OSHA's response to the March 13, 1990 Advisory Committee recommendations, and construction industry participation in the Voluntary Protection Program. The Advisory Committee will also

receive the report of the Lead Work Group. In addition, members of the public will make presentations regarding crane operator certification and the indemnification of general contractors by subcontractors.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202-219-8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 7th day of October, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92-24831 Filed 10-8-92; 8:45 am]

BILLING CODE 4510-26-M

Office of Federal Contract Compliance Programs

Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corp.

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Debarment, Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation.

SUMMARY: This notice advises of the Debarment of Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation as eligible bidders on Government contracts and subcontracts. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Jaime Ramon, Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., room C-3325, Washington, DC 20210 (202-219-9475).

SUPPLEMENTARY INFORMATION: On September 29, 1992, pursuant to 41 CFR 60-30.30 and 60-30.37, the Secretary of Labor issued a Decision and Final Administrative Order: (1) Finding Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation in violation of Executive Order 11246, as amended (30 FR 12319, September 28, 1965; 32 FR 14303, October 13, 1967; 43 FR 46501, October 5, 1978), section 504 of the Rehabilitation Act, as amended, 29 U.S.C. 793, the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, as amended, 38 U.S.C. 4212, and their respective implementing regulations; (2) cancelling all Federal contracts and subcontracts of Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation which were awarded after June 5, 1992; and (3) declaring Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation, and their successors, officers, or subsidiaries ineligible for the award of any Government contracts or subcontracts and ineligible for extensions or other modifications of any existing Government contracts or subcontracts until such time as Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation satisfy the Director of OFCCP that they are in compliance with the laws found to have been violated. The Decision and Order is set forth below.

The debarment from future Government contracts and subcontracts and the ineligibility for extensions or other modifications of any existing Government contracts or subcontracts is effective immediately. The contract cancellation part of the Order will not become effective until the relevant contracting agencies have been consulted in accordance in section 209(a)(5) of Executive Order 11246, as amended by Executive Order 12086.

Signed October 5, 1992, Washington, DC.

Jaime Ramon,

Director, OFCCP.

Date: September 29, 1992.

Case No. 92-OFC-11.

In the matter of United States Department of Labor, office of Federal Contract Compliance Programs, Plaintiff, v. Disposable Safety Wear, Inc., and Puerto Rico Safety Equipment Corporation, Defendants. Before: the Secretary of Labor.

Decision and Final Administrative Order

Plaintiff filed a complaint under the expedited hearing procedures, 41 CFR 60-30.31 to 37 (1990), on June 5, 1992, in this case arising under Executive Order No. 11,246, 3 CFR 339 (1964-1965), reprinted as amended in 42 U.S.C. 2000e note (1988), section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (1988), and section 402 of the Vietnam Era Veterans Readjustment Assistance Act, 38 U.S.C.A. 4211-4212 (West 1991) [1] (the Acts), alleging that Defendants violated a conciliation agreement entered into on December 19, 1988. The conciliation agreement resolved findings of noncompliance made by Plaintiff in a May 1988 compliance review of Defendants' plant in Aguadilla, Puerto Rico, where Defendants manufacture a wide variety of industrial protective clothing and protective products. 41 CFR part 60-2; 41 CFR 60-1.33; 41 CFR 60-741.25; 41 CFR 60-250.25. After a hearing on August 6 and 7, 1992, the Administrative Law Judge (ALJ) found that Defendants repeatedly violated the conciliation agreement, describing many of the violations in considerable detail. Recommended Decision and Order (R. D. and O.) at 4-7.

Plaintiff repeatedly notified Defendants of their failure to comply with specific requirements of the conciliation agreement in the agreed time limits. For example, Defendants failed to submit progress reports on time, and after repeated notification by Plaintiff, Defendants often submitted inadequate or incomplete reports, or reports containing significant errors. Defendants also failed to carry out actions to which they had committed themselves in their progress reports, such as a review of all physical and mental job qualification requirements for compliance with section 503, 41 CFR 60-741.6(c), or conducting outreach and positive recruitment for Vietnam Era veterans or handicapped workers. The ALJ found that

> Defendants' failure to comply with the specific requirements of the December 1988 Conciliation Agreement was not merely a failure to comply with "paperwork" rules, nor merely a failure to file routine reports on time, but rather a deliberate, complete violation of that agreement and of substantive equal employment opportunity law.

Id. at 13.

Defendants' vice-president and manager of the Aguadilla plant from the time of the compliance review and conciliation agreement until May 1991 was generally hostile toward and uncooperative with Plaintiff's investigators, R. D. and O. at 7-8, and Defendants' coordinator of equal

[1] The authority delegated to the Assistant Secretary for Employment Standards to issue final decisions under sections 504 and 402, 41 CFR 60-741.28(b)(3) and 60-250.29(b)(3) (1990), is withdrawn for purposes of this case.

employment opportunity had no training or background in the field and was given no training or support by Defendants after assuming those duties in 1989. *Id.* at 8–9. Even after the vice-president left the company, his successors as plant manager did little to bring Defendant into compliance. Francisco Martinez, the current plant manager, could offer only his assurance at the hearing that Defendants recognized their obligation to comply with the Acts and would do so after the hearing. T. (transcript of hearing) 230–33.

Defendants conceded they had violated the conciliation agreement, and I adopt the ALJ's findings in this regard. Defendants also had agreed to additional requirements and progress reports by acknowledging the terms of a letter sent by the Office of Federal Contract Compliance Programs (OFCCP) Caribbean District Director on April 17, 1990, P (Plaintiff's Exhibit)–22, characterized by Plaintiff as a Letter of Commitment, 41 CFR 60–1.33(b), but Defendants did not comply with the terms of that letter.

Plaintiff sought debarment of Defendants from the award of future contracts, but requested cancellation only of contracts awarded to Defendants after the date of filing of the administrative complaint. Thus Defendants' contract with the Department of Defense, Defense Personnel Support Center, P–27, for over $500,000 entered into on October 30, 1991, would not be canceled.

Finding "special factors" present here, however, the ALJ did not recommend that Defendants be declared ineligible for future contracts or that any of their current contracts be canceled. R.D. and O. at 13. The ALJ found that "there is persuasive evidence of clear resolve [by Defendants] to achieve compliance," because the uncooperative vice-president had been dismissed and the current plant manager promised to comply in the future. *Id.* at 14. He opined that "the jobs of 168 minority group workers should not be placed at risk [by debarment]." *Id.* The ALJ recommended entry of an order imposing detailed requirements with specific time limits to bring Defendants into compliance, including periodic progress reports, and permitting Plaintiff to seek debarment and contract cancellation through a subsequent expedited proceeding if Defendants failed to comply by the time of the due date for the second progress report, 90 days after entry of the order in this case. *Id.* at 14–16.

I.

The Secretary's authority to order debarment under the Acts is clear and Defendants do not contest it. See, e.g., *First Alabama Bank of Montgomery, N.A.* v. *Donovan*, 692 F.2d 714, 722 (11th Cir. 1982); *Uniroyal, Inc.* v. *Marshall*, 482 F. Supp. 364, 375 (D.D.C. 1979). Under Executive Order No. 11,246, for example, the Secretary has authority, after finding noncompliance, to order any of the sanctions listed in section 209(a) of the Order, including debarment and cancellation of contracts. See 29 U.S.C. 793(a) and 41 CFR 60–741.28 (1990); 38 U.S.C.A. 4212(a) and 41 CFR 60–250.28. I recently noted that

> [t]he usual practice in cases under the Executive Order where a violation has been found, has been to give the defendant a reasonable period of time to come into compliance on the specific violation(s), and to order cancellation of contracts and debarment if the defendant has not demonstrated compliance within that time * * *. When so framed, the final administrative order encourages compliance and is not punitive or draconian.

OFCCP v. *Lasko Metal Products, Inc.*, Case No. 87–OFC–00009, Sec. Dec., Aug. 31, 1992, slip op. at 11–12 (citations omitted).

However, where the facts are not in dispute and the law is settled, the Secretary has ordered debarment and contract cancellation without providing an additional period of time to demonstrate compliance. *Compare OFCCP* v. *Bruce Church, Inc.*, Case No. 87–OFC–7, Sec. Dec., June 30, 1987, slip op. at 5 (rejecting claimed lack of coverage as reason for failure to submit affirmative action program and imposing immediate sanctions), *with OFCCP* v. *Star Machinery Co.*, Case No. 83–OFCCP–4, Sec. Dec., Sept. 21, 1983 slip op. at 7 (resolving undecided question of coverage and giving defendant 120 days to prepare and submit AAP). See also *OFCCP* v. *The Prudential Insurance Company of America*, Case No. 80–OFCCP–19, Sec. Dec., July 27, 1980 (imposing sanctions for failure to provide copies of personnel computer tapes in compliance review); *U.S. Dep't of Housing and Urban Development* v. *S.T.C. Construction Co.*, Case No. 77–OFCCP–5, Sec. Dec., June 24, 1980, slip op. at 10–11 (imposing sanctions for failure to provide required reports and access to books and records); *OFCCP* v. *Uniroyal, Inc.*, Case No. OFCCP 1977–1, Sec. Dec., June 28, 1979, slip op. at 68 (imposing sanctions for failure to comply with discovery in enforcement proceeding), *aff'd as modified sub nom Uniroyal, Inc.* v. *Marshall*, 482 F. Supp. 364 (D.D.C. 1979).

Here, by entering the conciliation agreement, Defendant had an opportunity to demonstrate compliance for almost four years without being subjected to sanctions, but did almost nothing and concedes as much. On this record, which has been fully reviewed, I cannot accept the ALJ's conclusion that "there is persuasive evidence of clear resolve [by Defendants] to achieve compliance," R. D. and O. at 14, because they fired the uncooperative manager and hired a new one who "promises * * * to put things right, and to do so promptly." *Id.* at 13. The Secretary rejected a similar recommended finding in S.T.C. Construction, where the contractor also admitted failing to comply, repeatedly ignoring the requirements of the Executive Order, and blamed its failures on one of its managers but had given assurances of future compliance. The Secretary held those assurances could not be relied on and concluded that "[i]t is appropriate to impose sanctions where a clear violation of the Executive Order has occurred and impairment of the Government's monitoring and enforcement of the Order has resulted." *U.S. Dep't of Housing and Urban Devel.* v. *S.T.C. Construction Co.*, slip op at 10.

Here Defendants took no action to require their uncooperative vice-president to meet the compliance responsibilities, nor did they remove him until long after they were put on notice, repeatedly, of the plant's violations. The President of the parent company in New York received a copy of the August 1990 notice of violations, P–25, following the second compliance review, but did not order the vice-president to bring the plant into compliance and did not dismiss him until May 1991. Since May 1991, two new plant managers have also done virtually nothing to achieve compliance beyond assuring the ALJ that, right after the hearing, significant changes will be made.[2]

It appears that the ALJ was substantially influenced by the potential impact of debarment on the jobs of current employees. There have been no cases under the Acts addressing the question whether the Secretary should refrain from exercising her discretion to impose sanctions, after an unequivocal finding of violations, because of the possible impact on a contractor's business and on the jobs of the workers

[2] The hearing was held August 6 and 7, and Defendants' response before me is dated September 9, 1992. This three page response and two page cover letter continues to blame Defendants' former vice-president for the non-compliance with "paperwork procedures." There is no hint in either document that any effort to "put things right, and to do so promptly" has begun.

covered by these laws.[3] Useful analogies may be found, however, in cases under the Fair Labor Standards Act (FLSA) where district courts exercise similar discretion in fashioning remedies and imposing sanctions.

In *Donovan* v. *Sovereign Sec., Ltd.*, 726 F.2d 55 (2d Cir. 1984), the court of appeals reversed a district court order eliminating pre- and post-judgment interest on back pay due under the FLSA from earlier orders enjoining continued withholding of unpaid overtime compensation. The court said the defendant should have been found in contempt for violating the earlier orders and that "[t]he employer's financial difficulty * * * did not outweigh the strong policies favoring award of interest on back pay." 726 F.2d at 58. The court recognized that "it would be a Pyrrhic victory to force the company out of business, so that it could not pay even the back wages and current employees would lose their jobs. But the proper way to avoid this calamity is to formulate a manageable payment schedule, not to extinguish part of the debt." *Id.* The court deemed the district court's investigation of the company's ability to pay inadequate because based only on a conclusory affidavit by the company treasurer and the company tax returns. To avoid a contempt order, Defendants must carry a heavy burden of showing inability to comply. *Id.* at 59–60.

Similarly, in *Hodgson* v. *A–1 Ambulance Serv., Inc.*, 455 F.2d 372 (8th Cir. 1972), when an employer violated an injunction ordering it to comply with FLSA minimum wage and record keeping provisions, the Department of Labor sought contempt. The district court found the company in contempt, but imposed a fine of only $1,000 and refused to order payment of the wage deficiencies, based on balancing the equities of the impact of a back wage order on the company and the individual Defendants and their ability to remain in business, the impact on the city of cessation of ambulance service, and the impact on the employees who might get nothing and might lose their jobs. The court of appeals reversed, holding that in light of the "national policy involved in the Fair Labor Standards Act" the district court should have entered an order for payment of back wages. 455 F.2d at 374. "The financial ability or inability of the employer at the time of the contempt hearing to make payment * * * has nothing to do with the court's duty, in furtherance of the policy involved in the Act, to make an order for payment * * *." *Id.* Entry of such an order itself might "prompt the Company and its officers to extra endeavors [to make the payments and comply with the Act] * * *." *Id.* Quoting from *Hodgson* v. *Taylor*, 439 F.2d 288, 290 (8th Cir. 1971), the court said "'[t]he Act does not exempt employers who are in financial difficulties * * *.' [F]inancial hardship caused by the order is not a valid basis on which to deny the employees their remedy or to allow a wrong against the public to go uncorrected." 455 F.2d at 375. The court also noted that the district court did not have before it Defendant's financial records or income tax statements, and that the company was an "operating business [that] apparently desired to remain so." *Id.* at 374. The court of appeals noted, however, that after entering a "contempt-purging wage-payment order," *Id.*, the district court had the discretion to provide for "reasonable terms of time and manner of payment." *Id.* at 375.

Here, the ALJ did not have Defendants' financial statement or tax returns before him, and he noted the plant manager's concession that he was not familiar with Defendants' net sales or what portion of the sales were federal contracts.[4] *Id.* at 11. Indeed, the ALJ found that "there is no documented, objective evidence of record to support Defendants' assertion that debarment could cause closing the Aguadilla plant * * *." *Id.* at 13. Defendants' parent company, Eastco Industrial Safety Corporation, reported on its 10–K report to the Securities and Exchange Commission that "this [Defendants'] segment of the Company is not dependent upon any single customer or any few customers, the loss of any one or more of whom would have an adverse effect on the business of the Company. No one company or customer accounts for more than 10% of this segment's sales." P–28, pages 6–7.

It is not clear on this record, therefore, that debarment would have any significant impact on Defendants business, and it is entirely speculative whether Defendants would be awarded the large contract for gloves or other federal contracts mentioned by the plant manager. R.D. and O. at 11 and n.3 above. Loss of the opportunity to bid on federal contracts should sting enough to gain Defendants' attention, to "prompt" [them] to extra endeavors, "*Hodgson* v. *A–1 Ambulance Service, Inc.*, 455 F.2d at 374, but is unlikely to drive them out of business. As suggested by the FLSA cases, Defendants should bear the burden of showing that sanctions would so adversely affect their business as to threaten their existence, particularly after entering into a conciliation agreement which forestalled enforcement action in 1988.

"The purpose of debarment is * * * to encourag[e] compliance," *First Alabama Bank of Montgomery, N.A.* v. *Donovan*, 692, F.2d at 722, and I find the record here shows immediate imposition of sanctions is the appropriate next step to achieve that purpose. Defendants ignored their obligations under the Acts both before 1988 and after signing the conciliation agreement. Plaintiff could have filed an expedited proceeding in 1988 and, had the Secretary issued an order then giving them time to comply before being debarred and had they treated it as cavalierly as they have the conciliation agreement, Defendants likely would have been debarred several years ago. Defendants' latest filing before me shows they still view their noncompliance as technical in nature, no more than "solely * * * processing paperwork." Defendants' Response to Plaintiff's Exceptions at 1. Defendants attribute their problems to a "personal feud" with Plaintiff's compliance officer, still blame the uncooperative vice president, who has been gone for over a year, for their noncompliance, *id.* at 3, and seek to deflect the focus from their own failures by the *ad hominem* argument that Plaintiff's counsel is "conducting a vendetta" against them. Covering letter to Responses to Exceptions at 2. To paraphrase the court in Uniroyal, "the policy and program [of the Acts] would be nothing more than an empty shell, an abstract statement of principles, unless it is backed by adequate means of enforcement," 482 F. Supp. at 375, and the will to employ those means when a violator has had

[3] Plaintiff cited a number of cases arising under the Service Contract Act of 1965, as amended (SCA), 41 U.S.C. 351–58 (1988), which have addressed considerations similar to those relied on by the ALJ here for recommending against debarment. However, I find analogies to cases under the SCA of limited utility in Executive Order cases because of significant differences in the scope of the Secretary's discretion after a violation has been found. Under the SCA, a contractor *must* be debarred for a period of three years where the act has been violated, unless the Secretary "recommends otherwise because of unusual circumstances." 41 U.S.C. 354(a); 29 CFR § 4.188 (1991). The SCA debarment provision has been described as "particularly unforgiving", requiring violators who would avoid its impact to "run a narrow gauntlet." *A to Z Maintenance* v. *Dole*, 710 F. Supp. 858, 858 (D.D.C. 1989). By contrast the Secretary has broad discretion under the Executive Order to take any of the actions enumerated in section 209, and has similar discretion under sections 503 and 402 to "take such action * * * as the facts and circumstances warrant." 29 U.S.C. 793(b).

[4] The manager also expressed concern that debarment would deprive Defendants of an opportunity to bid on a large contract for gloves as well as other contracts.

more than adequate opportunity to comply. "Effective enforcement * * * depends" on voluntary compliance and "meaningful sanctions" when voluntary compliance repeatedly is not forthcoming. *Id.*

Plaintiff's request for debarment was tempered by restraint in not seeking cancellation of all current contracts. If Defendants can demonstrate compliance in 90 days, the period recommended by the ALJ, their names can be removed from the ineligibility list at that time and debarment should have little impact on their viability. If they do not comply, however, under the ALJ's recommended order. Plaintiff would be required to initiate new enforcement proceedings and, even under the expedited procedures, it could be well into next year before the matter is resolved. Under the order entered below, the burden is on Defendants to demonstrate that they are responsible contractors.

II.

Accordingly, I *adopt* paragraphs 1 and 2 of the Recommended Order of the ALJ. R.D. and O. at 14–16.

In addition, it is *ordered* that all Federal Government contacts, and subcontracts of Defendant Disposable Safety Wear, Inc., and Defendant Puerto Rico Safety Equipment Corporation awarded after June 5, 1992, shall be canceled, and Defendants, their officers, subsidiaries and successors shall be ineligible for the award of any Federal Government contracts or subcontracts and shall be ineligible for any extensions or other modifications of any existing Federal Government contracts or subcontracts until Defendants have satisfied the Secretary of Labor, in the manner provided in paragraphs 1 and 2 of the ALJ's Recommended Order, that they are in compliance with the provisions of Executive Order No. 11,246, section 503, section 402, the rules, regulations and orders issued thereunder, and the Conciliation Agreement of December 19, 1988, which have been found to have been violated in this case. After submission of the second progress report required in paragraph 2(g)(2) of the ALJ's Recommended Order, Defendants may petition for reinstatement as an eligible bidder for government contracts in accordance with 41 CFR § 60–1.31.

So ordered.

Washington, D.C.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–24666 Filed 10–8–92; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (92–62)]

NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Aerospace Medicine Advisory Committee.

DATES: October 19, 1992, 8:30 a.m. to 5 p.m.; October 20, 1992, 8:30 a.m. to 5 p.m.; and October 21, 1992, 8:30 a.m. to 2 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–5, 300 E Street, SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Dr. J. Richard Keefe, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1530).

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Tuesday, October 20, 1992, from 8:30 a.m. to 10 a.m. to allow for a discussion on qualifications of individuals being considered for membership to the Committee. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of Life Sciences in NASA
—Status of the Biomedical Monitoring and Countermeasures Program
—Status of the Aerospace Medicine Advisory Committee Strategy Study

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 2, 1992.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 92–24624 Filed 10–8–92; 8:45 am]

BILLING CODE 7510–01–M

[Notice (92–61)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee.

DATES: October 21, 1992, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–3, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Lia LaPiana, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0346.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public from 3:15 p.m to 4:30 p.m. for a discussion of the qualifications of additional candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this discussion will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Developments since June 1992 Meeting
—Current Status of High Energy Astrophysics Missions
—Pluto Flyby/Neptune Orbiter Program
—Potential Measures of the Scientific Productivity of Astrophysics Missions
—Reexamination of the Final Report of the Astronomy and Astrophysics Survey Committee (Bahcall Report) Recommendations
—Discussion of Subcommittee Membership (Closed Session)

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 2, 1992.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 92–24625 Filed 10–8–92; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Multidisciplinary Arts Section) to the National Council on the Arts will be held on October 27, 1992 from 9:15 a.m.–6 p.m., October 28–29 from 9 a.m.–6 p.m. and October 30 from 9 a.m.–5:30 p.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on October 27 from 9:15 a.m.–10:30 a.m. and October 30 from 3 p.m.–5:30 p.m. for opening remarks, general program overview, and policy discussion.

The remaining portions of this meeting on October 27 from 10:30 a.m.–6 p.m., October 28–29 from 9 a.m.–6 p.m., and October 30 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these questions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: October 6, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–24663 Filed 10–8–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Meeting Notice Amendment

The Advisory Committee for Astronomical Sciences is meeting in Washington, DC, on October 22 and 23, 1992. This notice serves to amend the announcement by providing for a closed session on October 22 from 2:30 to 5:30 p.m. in which the roles of the National Astronomy Centers and University Facilities will be discussed. It is necessary to close this session because discussions will cover topics which, if disclosed prematurely, would significantly frustrate the Foundation's implementation of proposed agency action. These matters are exempt under 5 U.S.C. 552b(c)(9)(B) of the Government in the Sunshine Act. There are no other changes to the agenda. For further information, please contact Dr. M. Kent Wilson, Director, Division of Astronomical Sciences, 202–357–9488.

This meeting was originally announced in the **Federal Register** on page 45407, October 1, 1992, (57 FR 45407).

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24573 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Chemistry; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announced the following meeting.

Date and Time: October 29, 1992, 9 a.m.–5 p.m. October 30, 1992, 9 a.m.–3 p.m.

Place: October 29, 1992, room 540, October 30, 1992 room 543, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Kenneth G. Hancock, Director, Division of Chemistry, room 340, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–7947.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research and education in chemistry.

Agenda: Long range planning for the Division of Chemistry, review of current activities, and discussion of new programs and procedures.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24580 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 28, 1992; 8:30 a.m.–5:30 p.m. October 27, 1992; 8:30 a.m.–3 p.m.

Place: Diplomat Room, State Plaza Hotel, 2117 E Street, NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Dr. Irene C. Peden, Division Director, Electrical and Communications Systems, room 1151, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7925.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide oversight review of the ECS Programs.

Agenda: To hear reports from subgroups of the Committee, which will provide oversight on the management of program activities of the Division, and to provide input to future directions that the Division should take. The Committee will provide advice on personnel and funding priorities, and on other interactions between the Division and the engineering community.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24584 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunity in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE)

Date and Time: October 28, 1992; 1 p.m.–1:30 p.m. (Open), 1:30 p.m.–3:30 p.m. (Closed), 3:30 p.m.–5:30 p.m. (Open). October 29, 1992; 8:30 a.m.–3:30 p.m. (Open), 3:30 p.m.–5 p.m. (Closed). October 30, 1992; 8:30 a.m.–12 p.m. (Open).

Place: Rooms 540 and 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Part-Open.

Contact Person: Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 1800 G Street, NW., Rm. 1225, Washington, DC 20550. Telephone: (202) 357–7461.

Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To review programs designed to attract the participation of women, minorities, and persons with disabilities in science and engineering; to review assessments of participation rates of all segments of society in science and engineering, and to prepare the Report to Congress.

Agenda: Open Sessions, October 28: 1 p.m. to 1:30 p.m.—Opening of the Meeting and report of the NSF National Conference on Diversity in the Scientific and Technological Workforce. 4 p.m. to 5:30 p.m.—Meeting with the Education and Human Resource Policy Committee to discuss the status of NSF programs to attract women, minorities, and persons with disabilities to science and engineering and to discuss the CEOSE strategic plan. October 29; 8:30 a.m. to 3:30 p.m.—Review of programs to attract woman, minorities, and persons with disabilities to science and engineering; assessments of outcomes; and review of the CEOSE strategic plan. 5:30 p.m., Reception. October 30: 8:30 a.m. to 12 p.m.—Plans for future programs and future NSF directions, and planning of Report to Congress. *Closed Sessions,* October 28, 1:30 p.m.–3:30 p.m. and October 29, 3:30 p.m.–5:00 p.m. Working sessions to review program performance and draft Report to Congress.

Reason for Closing: The Committee will discuss individual performances of NSF employees in the context of the report; therefore, these portions are closed to the public. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 2, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24578 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics and Nucleic Acids; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 29–31, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1242, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Philip Harriman, Program Director, Molecular and Cellular Biosciences, National Science Foundation, room 325I, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9687.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate genetic biology research proposals (Panel A) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24582 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Linguistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 29–30, 1992; 9 a.m. to 5 p.m.

Place: Georgetown Harbour Mews 1000 29th Street, NW Washington, DC 20007

Type of Meeting: Closed.

Contact Person: Paul G. Chapin, Program Director for Linguistics, Division of Behavioral and Cognitive Sciences, room 320, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7696.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate linguistics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24577 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: October 26–27, 1992 8:30 a.m. til 5 p.m.

Place: National Science Foundation, 1800 G St., NW., Washington DC, room 540.

Type of Meeting: Open.

Contact Person: Dr. Bernard R. McDonald, Acting Director, Division of Mathematical Sciences, room 339, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9689. Anyone planning to attend this meeting should notify Dr. McDonald no later than October 22, 1992.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research, education, and human resources in the mathematical sciences.

Agenda: Monday, October 26, 1992: 8:30 a.m. til 5 p.m.

Welcome and Introductions

Status of the Division

—Data on FY 1992

—Information on FY 1993 Budget

Planning at the National Science Foundation

—Commission on the Future of the National Science Foundation

Discussion on Funding Modes for the Division of Mathematical Sciences

—Flat Rate Demonstration Project, Tuesday, October 27, 1992 8:30 a.m. til 5 p.m. discussion on Funding Modes for the Division of Mathematical Sciences, Discussion with Foundation Administration, Advisory Committee Plans for Future Activities.

—Subcommittee Assignments

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24575 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date & Time: October 26–28, 1992, 8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

Contact Person: Dr. Vincent P. Gutschick, Program Director, IBN, room 321, National Science Foundation, 1800

G St. NW., Washington, DC 20550. Telephone: (202) 357–7975.

Agenda: Open session: October 27, 4 p.m. to 5:30 p.m. at which time both the Division Director for IBN and the Assistant Director of the BIO Directorate will give a brief talk on new research in Foundation and Physiological Ecology.

Closed session: October 26 & 28, 8:30 a.m. to 5 p.m. and October 27, 8:30 a.m. to 4 p.m. To review and evaluate Functional and Physiological Ecology proposals as part of the selected process for awards.

Date & Time: October 26–27, 1992, 8:30 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC.

Contact Person: Barbara Zain, Program Director, IBN, room 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7975.

Agenda: Open session: October 27, 4 p.m. to 5:30 p.m. at which time both Division Director for IBN and the Assistant Director for the BIO Directorate will give a brief talk on new research trend in Animal Systems Physiology.

Closed session: October 26, 8:30 a.m. to 5 p.m. and October 27, 8:30 a.m. to 4 p.m. To review and evaluate Animal Systems Physiology proposals as part of the selection process for awards.

Date & Time: October 26–27, 1992.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC. 20550.

Contact Person: Elvira Doman, Program Director, IBN, room 321, National Science Foundation, 1800 G Street NW., 20550. Telephone: (202) 357–7975.

Minutes: May be obtained from the contact person listed above.

Agenda: Open session: October 27, 4 p.m. to 5 p.m. at which time both the Division Director for IBN and the Assistant Director for the BIO Directorate will give a brief talk on new research trends in Endocrinology.

Closed session: October 26, 8:30 a.m. to 5 p.m. and October 27, 8:30 a.m. to 4 p.m. To review and evaluate Endocrinology proposals as part of the selection process for awards.

Date & Time: November 4–6, 1992. 8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

Contact Person: Dr. Fred Stollnitz, Program Director, IBN, room 321, 1800 G Street NW., Washington, DC.

Minutes: May be obtained from the contact person listed above.

Agenda: Open session: November 6, 9:30 a.m. to 11 a.m. at which time both the Division Director for IBN and the Assistant Director of the BIO Directorate will give a brief talk on new research trends in Animal Learning Behavior.

Closed session: November 4–5, 8:30 a.m. to 5 p.m. and November 6, 8:30 a.m. to 9:30 a.m. & 11 a.m. to 5 p.m. To review and evaluate Animal learning Behavior proposals as part of the selection process for awards.

Type of meeting: Part—Open.

Purpose of meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempted under 5 U.S.C. 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24581 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

President's Committee on the National Medal of Science; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: Tuesday, October 27, 1992; 8:30 a.m.–3 p.m.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Staff Assistant, room 545, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7512.

Purpose of meeting: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a person natural where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24583 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Workshop

The National Science Foundation (NSF) will hold a two day workshop on the Role of Professional Societies in Two-Year College Science, Mathematics, and Engineering Education. The meeting will begin at 8:30 a.m. October 29, 1992, and end at 5 p.m. on October 30, 1992, and will be held at the Washington Hotel, 515 15th Street, NW., Washington, DC 20550.

The primary focus of the meeting will be professional society activities to strengthen the role of two-year colleges in improving the mathematical, scientific, and technological levels of students at all levels. The types of items to address at the workshop include:

(1) Professional society actions to support the integrated teacher/scholar role of lower division science, engineering and mathematics faculty.

(2) Formation of networks among two-year college leaders from varied scientific, engineering and mathematics organizations.

(3) Promotion of two-year faculty leadership in professional organizations.

(4) Professional society services to enhance lower division education, particularly those directed to two-year faculty.

(5) Professional society roles in developing initiatives to increase the number and quality of proposals to NSF, and other funding agencies, from two-year college faculty.

Although the workshop will not operate as an advisory committee, the public is invited to attend. Participants will include two-year college faculty, four-year and university faculty, and members and staff from approximately 25 professional societies. A report of the workshop will be published.

For additional information, contact John Clevenger, NSF/AACJC Fellow, Division of Undergraduate Education, NSF, 1800 G Street, NW., Washington, DC 20550 (202) 357–7051.

Dated: October 5, 1992.

Dr. Robert Watson,

Director, Division of Undergraduate Education.

[FR Doc. 92–24574 Filed 10–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Social Psychology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 29–30, 1992; 9 a.m.
Place: National Science Foundation, 1800 G Street, NW., room 523, Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Dr. Jean B. Intermaggio, Program Director, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9485.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Social Psychology proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24579 Filed 10–8–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the Following meeting:

Name: Special Emphasis Panel in Division of Undergraduate Education.
Date and Time: October 26, 1992; 8:30 a.m. to 5 p.m. October 27, 1992; 8:30 a.m. to 5 p.m.
Place: National Science Foundation, 1110 Vermont Avenue, Washington, DC.
Type of Meeting: Closed.
Contact Person: Dr. Curtis Sears, Program Director, 1800 G Street, NW., rm 1210, Washington, DC 20550. Telephone: (2020 357–7051.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: A reverse site visit panel meeting for proposals submitted to the Teacher Preparation Collaboratives (TPC) Program.
Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–24585 Filed 10–8–92; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–90]

Initiation of Section 302 Investigation Concerning Indonesian Pencil Slats and Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of an investigation pursuant to section 302(a) of the Trade Act of 1974, as amended (Trade Act); request for public comment.

SUMMARY: Pursuant to section 302(a) of the Trade Act, 19 U.S.C. 2412(a), the United States Trade Representative (USTR) has determined to initiate an investigation of Indonesia's policies and practices with respect to the exportation of pencil slats. USTR invites public comment concerning the matter under investigation.

DATES: Written comments from the public are due on or before November 2, 1992.

ADDRESS: Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director, Southeast Asian Affairs (202) 395–6813; Joseph Papovich, Deputy Assistant United States Trade Representative for Industry and Labor (202) 395–6160; or Tim Reif, Associate General Counsel (202) 395–6800. For information concerning filing procedures, contact Dorothy Balaban, Special Assistant to the Section 301 Committee (202) 395–3432.

SUPPLEMENTARY INFORMATION: On August 18, 1992, P&M Cedar Products, Inc. and Hudson ICS filed a petition pursuant to section 302(a) of the Trade Act alleging that various Indonesian practices concerning pencil slats are unreasonable and burden or restrict United States commerce. The petition alleges that the following practices by Indonesia have the effect of enhancing exports of Indonesian pencil slats to third-country markets and are actionable under section 301: (1) The imposition of differential export taxes, with an extremely high tax on logs and no tax on finished products such as pencil slats; (2) underpricing of government-owned timber stock; and (3) failure to enforce the terms of timber concession arrangements.

According to petitioners, the combined effect of these practices has resulted in a substantial decline in their sales to third-country markets. Petitioners contend that these actions are part of Indonesia's plan to target exports of wood products, including pencil slats, a practice which is actionable under section 301(d)(3)(E) of the Trade Act, 19 U.S.C. 2411(d)(3)(E).

Copies of the public version of the petition are available for public inspection in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20506. An appointment to review the docket (Docket No. 301–90) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Investigation and Consultations

Section 302(a)(1) of the Trade Act provides that "[a]ny interested person may file a petition with the Trade Representative requesting that action be taken under section 301 and setting forth the allegations in support of the request." On October 2, 1992, after reviewing the allegations set forth in the petition filed by P&M Cedar Products, Inc. and Hudson ICS, the Trade Representative determined to initiate an investigation of Indonesia's acts, policies, and practices concerning pencil slat exports. USTR also requested consultations with the Government of Indonesia, as required by section 303(a) of the Trade Act. USTR will seek information and advice from the petitioners and the appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for the consultations.

Public Comment

Interested persons are invited to submit written comments concerning the issues raised in the petition and any other submissions to USTR in this investigation. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed by November 2, 1992. Comments must be in English and provided in 20 copies to: Chairman, Section 301 Committee, room 223, USTR

600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301-80) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

[FR Doc. 92-24659 Filed 10-8-92; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31284; File No. SR-NASD-92-33]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Enforcement of Arbitrators' Orders Under the NASD Code of Arbitration Procedure

October 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 1, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Part III, Section 35 of the NASD Code of Arbitration Procedure ("Code"). Below is the text of the proposed rule change. Proposed new language is in italics, proposed deletions are in brackets.

CODE OF ARBITRATION PROCEDURE

PART III—UNIFORM CODE OF ARBITRATION

Interpretation of Provisions of Code and Enforcement of Arbitrator Rulings

Sec. 35. The arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Code *and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such* [which] interpretations *and actions to obtain compliance* shall be final and binding upon the parties.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend section 35 of Part III of the Code to emphasize the authority of arbitrators to enforce orders they issue in the course of an arbitration proceeding. The proposed rule change states that arbitrators may take appropriate action to obtain compliance with their rulings, and that such action is final and binding on the parties. The proposed rule change was prompted by reports of situations in which parties have not complied with orders issued by arbitrators, and in which no specific provision of the Code could be cited to encourage compliance. The proposed rule change highlights existing arbitral authority to issue sanctions, and is to be accompanied by an addition to the Arbitrator's Manual, which lists the types of sanctions that may be applied by arbitrators.

The proposed rule change and additions to the Arbitrator's Manual were adopted by the Securities Industry Conference on Arbitration ("SICA") at its meeting on January 7, 1992. In adopting the change to the Code, SICA acknowledged that, although arbitrators have inherent authority to frame sanctions for non-compliance with their orders, they may not always exercise this authority because they are unaware of the extent of their authority. In addition, since no Code provision referred specifically to the enforcement of orders, SICA felt that parties might also be unaware that they can request arbitrators to issue sanctions for non-compliance with their orders. SICA determined that the proposed change to the Code and related addition to the Arbitrator's Manual would remedy these problems, and recommended that the self-regulatory organizations make similar changes to their arbitration rules.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act.[1] In pertinent part, section 15A(b)(6) requires that the rules of a national securities association be designed to "promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest." The NASD believes that the proposed rule change will facilitate the arbitration process, and therefore, is in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] 15 U.S.C. 78o-3 (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24612 Filed 10-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31285; File No. SR-NYSE-92-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amendments to Rule 421 (Periodic Reports)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 12, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Rule 421 (Periodic Reports) concerning the submission of monthly short position reports.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to require the electronic transmission of monthly short position reports by members and member organizations.

Rule 421 requires members and member organizations to report total "short" positions (*i.e.*, positions resulting from short sales, as that term is defined in Securities Exchange Act Rule 3b-3)[1] in listed securities on a monthly basis. Currently, reports are made on Form MF-2 or MF-2 Summary Form and submitted in "paper" form to the Exchange. The Exchange utilizes such data, in general, for surveillance of market activity. In addition, the Exchange publishes a monthly release of short interest information as a service to listed companies, the investing public, market professionals and other interested parties.

The proposed amendments to Rule 421 will eliminate the use of the paper forms currently used to report short position information and, instead, will require the electronic transmission of such information through the Securities Industry Automation Corporation ("SIAC").

Requiring electronic transmission of monthly short interest data will improve the Exchange's efficiency in the processing and compilation of such data and facilitate the Exchange's continuing efforts to reduce key-punching. The information required to be submitted to the Exchange will not be changed under the proposed rule amendment. There will be alternative methods of electronically reporting the short position information (*e.g.*, by P.C. or by CPU (Central Processing Unit) to CPU), through SIAC.

2. Statutory Basis

The proposed rule change is consistent with the requirements of section 6(b)(5) of the Act. By providing for enhanced automation, the proposed rule change will help ensure that the Exchange's regulatory and surveillance capabilities keep pace with today's market environment and thereby protect investors and the public interest in accordance with section 6(b)(5) of the Act. The proposed rule change is also consistent with section 6(b)(5) of the Act in that it will assist in preventing fraudulent an manipulative acts and practices and thereby promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[1] 17 CFR 240.3b-3 (1992).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-92-21 and should be submitted by October 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24611 Filed 10-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18995; 812-7994]

IBM Mutual Funds et al.; Application

October 2, 1992

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: IBM Mutual Funds that consist of three series, IBM Large Company Index Fund, IBM Small Company Index Fund, and IBM U.S. Treasury Index Fund (collectively, the "Funds"), and IBM Credit Investment Management Corporation, the investment adviser to the Funds (the "Manager"), and future funds for which the Manager or any person or entity in the future controlling, controlled by, or under common control with the Manager, acts as adviser, sub-adviser, or distributor (the "Future Funds," and, together with the existing Funds, the "Funds".

RELEVANT ACT SECTIONS: Order requested under section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the operation of a joint trading account to be used to enter into repurchase agreements.

FILING DATE: The application was filed on July 21, 1992.[1]

[1] In a letter dated September 29, 1992 from applicants' counsel, such counsel represented that applicants will submit an amendment during the notice period clarifying certain statements made in the application, the substance of which are incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 27, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o IBM Credit Corporation, 290 Harbor Drive, Stamford, Connecticut 06904-2399.

FOR FURTHER INFORMATION CONTACT: Fran M. Pollack-Matz, Senior Attorney at (202) 504-2801 or Nancy M. Rappa, Branch Chief at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The existing Funds are registered open-end management investment companies, authorized by their investment policies and limitations to invest in repurchase agreements. The Manager serves as investment adviser to each of the existing Funds.

2. Currently, the daily uninvested cash balances of the existing Funds are separately invested in individual repurchase agreements. Each morning the Funds' custodian, State Street Bank and Trust Company (the "Custodian"), determines each Fund's short-term cash availability balance. Once this amount is established, it is relayed to the Manager who, on behalf of the Funds, negotiates or approves the proposed interest rate for repurchase agreements for that day. The Custodian determines the securities required for collateral in connection with the repurchase agreements and such collateral is approved by the Manager. The estimated amount of collateral required is based on the amount of the current day's available cash. This projection may be adjusted during the day to reflect additional cash that becomes available.

3. Each of the existing funds has established similar standards, including quality standards for issuers of repurchase agreements, and requirements that the repurchase agreements be at least 102% collateralized at all times.

4. Currently, the Manager must separately pursue, secure, and implement the repurchase agreement investments. This has resulted in certain inefficiencies, and may limit the result that some or all Funds achieve. Therefore, the Funds seek permission to deposit the uninvested cash balances remaining at the end of each trading day into a joint account, the daily balance of which would be used to enter into one or more short-term repurchase agreements in a total amount equal to the aggregate daily balance in the account. Each Fund would participate in the joint account on the same basis as every other Fund in conformity with its fundamental investment objectives and policies.

5. Cash in the joint account will be invested only in repurchase agreements collateralized by suitable U.S. Government obligations that satisfy the policies and guidelines of the Funds concerning repurchase agreements. Particular types of obligations permitted as collateral by the Funds would be identified and the Funds' custodian bank would be notified. The securities would be either wired to the account of the custodian bank at the proper Federal Reserve Bank, transferred to a subcustodian account of the Funds at another qualified bank, or redesignated and segregated on the records of the custodian bank if the custodian bank is already the recorded holder of the collateral for the repurchase agreement.

6. The obligations of the Funds to counterparties in any particular repurchase transaction will be several in proportion to their respective participation in the account and not joint. Applicants believe that a Fund's investment in the joint account will not be subject to the claims of creditors (whether brought in bankruptcy, insolvency, or other legal proceeding) of any other participant Fund in the joint account.

7. The custodial account will not be distinguishable from any other accounts maintained by a Fund with its custodian bank except that monies from the Fund may be deposited on a commingled basis. The custodial account will not have any separate existence that would have indicia of a separate legal entity. Each Fund will transfer cash it wishes to invest in a joint account after the conclusion of its daily trading activity

into such account. The sole function of the custodial account will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management by each Fund of its uninvested cash balances. In addition, there will be no opportunity for one Fund to use any part of a balance in the account credited to another Fund, since no Fund will be allowed to create a negative balance in the account for any reason.

Applicants' Legal Analysis

1. The Manager and each Fund could be deemed to be a "joint participant" in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed joint account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d-1 under the Act.

2. The Funds will benefit by participating in the joint account for the following reasons: (a) It is possible to negotiate a higher rate of return on large short-term repurchase agreements that is greater than the rate of return that can be negotiated for smaller repurchase agreements, and (b) by reducing the number of trade tickets that each non-bank government securities dealer or major brokerage house will have to write, transactions should be simplified for those organizations, with a related reduction in the opportunities for errors.

3. Applicants believe that the proposed method of operating the account will not result in any conflicts of interest among the joint participants.

4. Although the Manager can gain some benefit through administrative convenience and some possible reduction in its clerical costs, the primary beneficiaries will be the participating Funds and their shareholders because the joint account may earn higher returns for the Funds.

5. For the reasons set forth in the application as summarized above, applicants submit that the criteria of rule 17d–1 for issuance of an order under Section 17(d) are met by the joint account.

Applicant's Conditions

As express conditions to obtaining an order granting the relief requested, applicants agree that the proposed joint account will operate as follows:

1. A separate cash account will be established at one or more custodian banks into which each participating Fund would deposit some or all of its daily uninvested net cash balances. Each Fund that has a custodian bank other than the bank at which the proposed joint account is maintained and that wishes to participate in the joint account will appoint the latter bank as a sub-custodian for the limited purpose of receiving cash for deposit into the proposed joint account.

2. Cash in the joint account will be invested only in repurchase agreements collateralized by suitable U.S. Government obligations which satisfy the policies and guidelines of the Funds concerning repurchase agreements.

3. Each repurchase agreement will have, with rare exceptions, an overnight or over-the-weekend duration and in no event will it have a duration of more than seven days.[2]

4. All investments held by the joint account will be valued on an amortized cost basis.

5. Each participating Fund relying upon rule 2a–7 under the Act permitting valuation on the basis of amortized cost will use the weighted average maturity of the repurchase agreements purchased by the Funds participating in the joint account for the purpose of computing that Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day.

6. In order to assure that there would be no opportunity for one Fund to use any part of a balance of the joint account credited to another Fund, no Fund will be allowed to create a negative balance for any reason, although it will be permitted to draw down its entire balance at any time. Each Fund's decision to invest in the joint account will be solely at its option; a Fund will not be required either to invest a minimum amount or to maintain a minimum balance. Each Fund will retain the sole rights of ownership to all of its assets invested in the joint account, including any interest payable on the assets invested in the joint account. Each Fund's investment in the joint account will be documented daily on the books of the Fund as well as on the books of the custodian bank.

7. Each Fund will participate in the net income earned or accrued in the account and all instruments held in the joint account (i.e., cash and U.S. Government securities subject to repurchase agreements) on the basis of the percentage of the total amount in the account on any day represented by its share of the account or of such particular instruments.

8. Under the general terms of each Fund's Investment Advisory Contract, ("Contract"), the Manager will administer the investment of the cash balances in and operation of the joint account and will not collect any separate fees for the management of the joint account. The Manager will collect its fees based upon the assets of each separate Fund as provided in each respective Contract.

9. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

10. The Board of Trustees of the Funds and any Future Funds participating in the joint account will evaluate annually the joint account arrangement, and will continue participation in the account only if they determine that there was a reasonable likelihood that the participating Fund and its shareholders would benefit from continued participation and that no participant will be treated on a less advantageous basis than another participant.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24614 Filed 10–8–92; 8:45 am]

BILLING CODE 8010–01–M

[2] For example, repurchase agreements may be of a longer duration than overnight or over-the-weekend in cases of a three-day holiday weekend, or instances where a better return would be obtained on a repurchase agreement extended longer than overnight or over-the-weekend but not longer than seven days.

[Release No. 35–25646]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 2, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rule promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 26, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing,

if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

EUA Cogenex Corporation

[70–8003]

EUA Cogenex Corporation ("Cogenex"), P.O. Box 2333, Boston, Massachusetts 02107, a wholly-owned subsidiary of Eastern Utilities Associates ("EUA"), a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act and rule 51 thereunder.

Cogenex proposes to acquire all of the outstanding shares of capital stock of New England Sun Control, Inc. ("NESC"), a Rhode Island corporation, consisting of 100 shares of no par common stock ("Shares"), from the sole stockholder of NESC ("Seller"). The purchase price will be $5.1 million, subject to certain adjustments, plus an amount not exceeding $3.5 million to be paid out over a four year period if certain objectives are achieved during that period.

NESC currently provides integrated lighting efficiency services designed to achieve an efficiency gain through integration of lamps, ballasts, and light reflectors. After performing a lighting survey, NESC manufactures light reflectors from aluminum sheets which are coated with a special material to maximize lighting efficiency and quality for its customers using computer controlled metal stamping presses which are fully integrated with a computer-aided design process. In addition, NESC sells and installs other energy-efficient equipment, including: (1) Lamps, ballasts, sensor switches and exit sign retrofit kits, (2) energy saving air conditioning equipment, (3) energy-efficient electric motors, (4) building automation systems, and (5) window film which reduces heat transfer through glass and screens sunlight.

Prior to the acquisition, NESC will transfer its wholesale window film distribution business to the Seller or his designee. After the acquisition, NESC will be merged into and operated as a division of Cogenex.

In the alternative, the manufacturing business of NESC will be transferred to a new company of the Seller or his nominee ("Newco") prior to the Acquisition. Cogenex would then enter into a supply contract with Newco for the supply of the reflectors. However, Newco would not be the exclusive source of reflectors for Cogenex. In addition, Cogenex would enter into an option agreement with Newco for the purchase of the assets and attendant liabilities of Newco at the then fair market value as of the date of the exercise of the option, but in no event, less than $60,000 nor more than $150,000.

In connection with the acquisition, Cogenex will enter into an employment agreement with the Seller, whereby the Seller will be retained as a divisional president of Cogenex. In addition, Cogenex, as tenant, will enter into a lease agreement with the Seller, as landlord, for office and manufacturing space which NESC now occupies and which is owned by the Seller.

Cogenex will purchase the Shares with funds obtained from: (1) Short-term borrowings through existing lines of credit; (2) internally generated funds; (3) capital contributions from EUA; and/or (4) purchases of Cogenex common stock by EUA. The application states that Cogenex has authorization to obtain such funds under prior Commission order dated October 24, 1991 (HCAR No. 25396).

The Official Bondholders' Committee of EUA Power Corporation

[70–8034]

The Official Bondholders' Committee of EUA Power Corporation ("Committee"), c/o State Street Bank and Trust Company, Corporate Trust Department, 5th Floor, One Heritage Drive, North Quincy, MA 02171–2128, has filed an application-declaration, as amended, including a modified second amended plan of reorganization ("Plan") and a modified first amended disclosure statement, under sections 11(f), 11(g), 12(c) and 12(d) of the Act and rules 42, 44, 62, 63 and 64 thereunder.[1] The Committee requests the Commission to issue (1) a report on the Plan pursuant to section 11(g) that may be included in a solicitation of creditors for approval of the Plan in bankruptcy court proceedings,[2] and (2) an order approving the Plan and related transactions under section 11(f).[3] In addition, the Committee states that it will file a declaration on Form U–R–1 pursuant to rule 62 prior to the solicitation.

EUA Power Corporation ("EUA Power"), a wholly-owned electric public-utility subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company, filed a voluntary petition for protection under Chapter 11 of the United States Bankruptcy Code, as amended ("Bankruptcy Code") on February 28,1991 in the United States Bankruptcy Court, District of New Hampshire ("Bankruptcy Court").[4] EUA Power's principal assets are an undivided 12.1324% interest in the Seabrook Nuclear Power Project ("Seabrook") and the electricity associated therewith and certain causes of action.[5] Since filing for bankruptcy, EUA Power has remained in operation as a debtor in possession pursuant to section 1107 of the Bankruptcy Code.

On March 14, 1991, the United States Trustee appointed the Committee as the duly authorized representative of the bondholders holding the Series B Notes and Series C Notes in the aggregate principal amount of approximately $280 million issued by EUA Power (collectively, "Notes"). EUA Power is in default under the indenture pursuant to which the Notes were issued.

Under the proposed Plan, all existing equity securities of EUA Power and certain contingent interest certificates issued by EUA Power in connection with the Series A and Series B Notes would be extinguished.[6] Reorganized

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[1] An original notice of the filing of the application-declaration was issued by the Commission on August 28, 1992 (HCAR No. 25614).

[2] Section 11(g) requires that any solicitation for consent or authorization with respect to any reorganization plan of a registered holding company or any subsidiary company thereof be "accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission."

[3] Section 11(f) provides, in pertinent part, that "a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court."

[4] On July 2, 1991, the Bankruptcy Court refused to extend EUA Power's exclusive right to file a plan. on August 12, 1992, the Committee submitted a plan of reorganization and a disclosure statement to the Bankruptcy Court. No other party (including EUA Power), other than the Committee, has filed a plan of reorganization to date. The application-declaration states that the Bankruptcy Court held a hearing on the disclosure statement of September 8, 1992 and decided to continue the hearing until October 5, 1992 on all issues except those arising under the Act until December 8, 1992 on all the issues arising under the Act.

[5] EUA Power financed its acquisition of its interest in Seabrook through the issuance and sale of $180 million of 17.5% secured notes ("Series A Notes") due November 15, 1991 pursuant to an indenture (HCAR Nos. 24244 and 24245; both dated November 21, 1988). As a result of its inability to pay the interest due on these notes, EUA Power exchanged and retired the Series A Notes for a new series of secured notes ("Series B Notes") (HCAR Nos. 24641; May 12, 1988). The Series B Notes provide for the payment of interest thereunder through issuance of up to $100 million in additional secured notes ("Series C Notes") instead of cash. EUA Power has issued to date approximately $100 million of the Series C Notes (HCAR No. 24879; May 5, 1989).

[6] Rule 64 states that "[a]ny application for approval of a plan of reorganization under section

Continued

EUA Power would then issue a single class of common stock [7] in exchange for the secured debt held by the bondholders ("Class One Claims") equal to each bondholder's proportionate share of 95% of the new securities; [8] all unsecured claims, including deficiency claims of the bondholders, in an amount in excess of $25,000 ("Class Three Claims") would be converted into the remaining 5% of the new securities.[9] The Plan incorporates a provision to permit the Bankruptcy Court to allocate the new securities between Class One Claims and Class Three Claims differently than the 95%/5% allocation depending upon the Bankruptcy Court's determination of the scope and value of the lien of Class Three Claims.[10] Each holder of a Class Three Claim will also receive a *pro rata* share of 100% of the beneficial interests of the Litigation Trust. The sole asset of the Litigation Trust will be the right to receive a certain number of additional shares of the new securities reflecting the value received by reorganized EUA Power from the causes of action, if any, which are currently being litigated or may be litigated in the future.

The taxing authorities with claims for unpaid real property taxes would receive payment in three equal annual installments of principal and interest, having a present value, as of the date the Plan becomes effective ("Effective Date"),[11] of not less than the value of the taxing authority's lien on EUA Power's interest in the property which secures such claims. The holders of unsecured claims of $25,000 or less would be paid 50% of the allowed amount of their claims in cash. The Plan contemplates that reorganized EUA Power would enter into the Plan Facility prior to the Effective Date. In addition, the Plan provides that reorganized EUA Power will retain a preference claim against EUA, as well as any other claims, including claims for breach of fiduciary duty, fraudulent conveyances, conversion and other causes of action and claims under a tax allocation agreement,[12] which EUA Power or its creditors may have against EUA or others for the benefit of reorganized EUA Power.[13] Upon consummation of the Plan, reorganized EUA Power will replace EUA Power as owner of the Seabrook interest.

After the confirmation of the Plan by the Bankruptcy Court, the Committee expects to enter into a commitment letter for the syndication of a secured revolving credit facility to finance the Plan.[14] The Plan Facility would be in a principal amount of not less than $45 million and not more than $60 million.[15] It is anticipated that reorganized EUA Power would issue warrants to the participants in the Plan Facility in the amount of the economic value of up to 15% of the equity interests in reorganized EUA Power on a fully diluted basis, excluding, however, any value attributable to recoveries that may be received as a result of any litigations. The Plan Facility is likely to bear interest at a floating rate of prime plus 5% to 7% *per annum*, with a minimum rate of 13% to 14%. Taking into account the various anticipated fees, the effective interest rate, with the base rate of 13%, is expected to be approximately 15.82% per annum.[16] It is expected that the Plan Facility will have a final maturity of no later than December 1997 and will be secured by a first priority lien and mortgage on all assets of reorganized EUA Power. In addition, EUA Power may be required to indemnify the lender and certain other indemnitees against any liabilities arising out of a commitment letter to provide the Plan Facility.

The Committee states that it will use its best efforts to obtain a Plan Facility on substantially the terms stated above. The Plan will not become effective unless such Plan Facility is obtained. In the event the Committee is unable to enter into a Plan Facility on above terms and the Committee deems it necessary to enter into a facility on terms materially less favorable than above terms, the Plan authorizes the Committee to enter into such other facility, subject to the approval of the Bankruptcy Court and any regulatory bodies with jurisdiction under applicable law, including this Commission.

In the meantime, EUA Power will continue to be funded by two of the joint owners of Seabrook, namely Connecticut Light and Power Company (CL&P) and United Illuminating Company ("UI"). By order dated August 21, 1992 (HCAR No. 25609), the Commission authorized CL&P, UI and EUA Power to extend the borrowing period to February 28, 1994 and to

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11, or otherwise, shall be deemed to include all applications and declarations under the Act which would otherwise be required as to any action necessary to consummate such plan." The Plan contemplates the cancellation of existing equity securities currently held by EUA under section 12(c) and the sale of utility assets by EUA to the bondholders under section 12(d). The Committee requests that the Commission address these transactions under rule 64 notwithstanding that EUA has not requested approval under sections 12(c) and 12(d).

[7] It is contemplated that a total of 12 million shares of common stock, at $0.01 par value, will be issued by reorganized EUA Power and that such securities, when issued, will be fully paid and non-assessable. Reorganized EUA Power will use its good faith efforts to have the new securities listed for trading on a national stock exchange.

[8] As a condition to participation under the Plan a holder of the Note that desires to receive its proportionate share of the new securities must surrender such Note.

[9] In each instance, these equity percentages would be calculated prior to any dilution resulting from the issuance of any securities such as the warrants that may be issued as part of a financing facility ("Plan Facility") under the Plan, but would be subject to dilution by the issuance of the new securities that may be issued pursuant to a certain litigation trust to be established ("Litigation Trust").

[10] There is a dispute between the holders of Class One Claims and EUA with respect to whether the lien of Class One Claims includes the entitlement to the electricity associated with EUA Power's interest in Seabrook. EUA and EUA Power argue that the lien is confined to the real estate and equipment comprising Seabrook and not to the electricity and that virtually all of the new securities should be allocated to the holders of Class Three Claims. This valuation issue may not be resolved by the Bankruptcy Court until after the Plan is confirmed.

[11] The Plan, by its terms, will not become effective until certain conditions are satisfied or waived. The Effective Date will not be later than August 28, 1993 unless further extended by the Committee.

[12] EUA Power is a party to certain federal income tax allocation agreements between EUA and its subsidiary companies pursuant to rule 45(c). The Committee states that it believes that EUA Power is entitled to receive certain tax benefit payments, although the amount cannot be determined presently, under the tax allocation agreements. However, three of EUA's subsidiaries have filed proofs of claim in the amount of $8,176,789 against EUA Power claiming that they overpaid EUA Power for tax benefits due to EUA Power for the years 1988 and 1989.

[13] The preference suit against EUA in the amount of approximately $38 million was filed on May 30, 1991, contending that one of the factors leading to EUA Power's bankruptcy was its preferential transfers to EUA. In addition, the Committee sought leave of the Bankruptcy Court to file an adversary complaint on behalf of EUA Power and its creditors against EUA and others for a variety of tort, contract and bankruptcy law claims. The proceeds of such claims, if successful and depending on when such proceeds are received, will be used to pay down the Plan Facility or the DIP Financing (defined hereinafter) or for working capital or for general corporate purposes of reorganized EUA Power.

[14] The Committee obtained a commitment letter ("Shearson Commitment") from Shearson Lehman Brothers Inc. ("Shearson") to provide the Plan Facility. However, at a hearing on July 21, 1992, the Bankruptcy Court declined to approve entry into the Shearson Commitment apart from the confirmation process so that it will not be possible to obtain a committed Plan Facility prior to the confirmation of the Plan. The Shearson Commitment expired on July 22, 1992. The Committee states that, in order to ensure impartial, arms-length negotiations, it established a special subcommittee to negotiate with Shearson because Shearson is a member of the Committee.

[15] The Plan permits the Plan Facility to be in an amount less than $45 million in the event there are net proceeds from the litigations. In such event, the sum of the net proceeds from the litigations and the amount of the Plan Facility will be at least $45 million.

[16] This figure does not include the economic value of any warrants.

increase the borrowing amount from $15 million to $22 million ("DIP Financing").

In addition, the Plan provides that, during the period between confirmation of the Plan and the Effective Date, EUA Power must employ agents designated by the Committee to act as (1) a marketing agent to maximize the value of reorganized EUA Power's assets, and (2) a managing agent to manage and maintain EUA Power's business, pursuant to written agreements to be approved by the Bankruptcy Court and any regulatory body with jurisdiction under applicable law, including this Commission.[17] On the Effective Date, all directors of EUA Power shall be deemed to have resigned without any further action on the part of any person and the Committee shall appoint the new board of directors or reorganized EUA Power.

Upon consummation of the Plan, any bondholder that receives 10% or more of the new securities would become a "holding company" within the meaning of section 2(a)(7). The application-declaration states that any such bondholder will file a separate application prior to the Effective Date for an order under section 3(a)(4) exempting such bondholder from all provisions of the Act, except section 9(a)(2). The Plan will not become effective if such exemption is not granted by the Commission.

Indiana Michigan Power Company

[70-8044]

Indiana Michigan Power Company ("I&M"), One Summit Square, Ft. Wayne, Indiana 46801, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a declaration under Section 12(c) of the Act and rule 42 thereunder.

I&M intends to issue and sell, in one or more transactions from time-to-time through June 30, 1993, up to $30 million aggregate par value of one or more new series of its cumulative preferred stock, par value $25 per share and/or par value $100 per share ("Preferred"), in connection with its 1992 long-term financing program under rule 52 of the Act. If market conditions require the Preferred to include a sinking fund and/or an optional redemption provision, I&M requests authorization to acquire or redeem through the operation of such sinking fund or optional redemption provision up to the entire amount of the Preferred to be issued and sold.

It is expected that the Preferred will be subject to optional redemption at a price per share equal initially to the par value plus the annual dividend per share declining on an annual basis to par value not later than the year in which the Preferred would be retired pursuant to the provisions of the mandatory sinking fund, provided that, the Preferred could only be redeemed during the first five years at a price equal to par value plus the annual dividend. Also, if market conditions require, the Preferred may be issued for the same period subject to a provision prohibiting any redemption if accomplished through a borrowing or stock issuance at an effective cost less than the effective dividend cost of the Preferred.

The terms of the Preferred may also include a sinking fund provision pursuant to which I&M would be required to retire annually at par value, commencing not earlier than two years after the first day of the month in which shares of any particular series are first sold, a number of shares of such series equal to between 5% and 20% of the number of shares of such series initially issued. Such sinking fund provision may give I&M the option to retire annually an additional number of shares of such series equal to the number of shares of such series required to be retired annually pursuant to such sinking fund provision. Such provision would also give I&M the option to credit against any sinking fund requirement Preferred of that series previously purchased or otherwise acquired by I&M and not previously credited against any sinking fund requirement. It is proposed that I&M will decide on the necessity for a sinking fund provision and its pricing terms, and the precise redemption terms, if any, for each series of Preferred at a subsequent date, depending on market conditions at the time of issuance.

Entergy Corporation

[70-8055]

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its operating public-utility subsidiary companies, Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, Louisiana Power & Light Company ("LP&L") New Orleans Public Service Inc. ("NOPSI"), both located at 317 Baronne Street, New Orleans, Louisiana 70112, Mississippi Power & Light Company ("MP&L"), 308 East Pearl Street, Jackson, Mississippi 39201, (AP&L, LP&L, NOPSI and MP&L, collectively, "Operating Companies"), System Energy Resources, Inc., a nuclear generating public-utility subsidiary of Entergy ("SERI"), Entergy Operations, Inc., a nuclear management operating public-utility subsidiary of Entergy ("EOI"), both located at 1349 Echelon Parkway, Jackson, Mississippi 39213, System Fuels, Inc., a fuel supply subsidiary of the Operating Companies ("SFI") and Entergy Services, Inc., a service company subsidiary of Entergy ("Services"), both located at 639 Loyola Avenue, New Orleans, Louisiana 70113 have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 40, 43 and 50(a)(5) thereunder.

Each of the applicants-declarants proposes, through November 30, 1994, to lend money to the Entergy system money pool ("Money Pool") through November 30, 1994. The Operating Companies, SERI, SFI, EOI and Services further propose, through November 30, 1994, to borrow from the Money Pool. Entergy may lend to the Money Pool, but may not borrow therefrom.

The Operating Companies and SERI propose to borrow from the Money Pool and/or issue and sell unsecured promissory notes to banks ("Notes") and commercial paper to commercial paper dealers ("Commercial Paper") (collectively, "Short-Term Borrowings") up to an aggregate principal amount of: (1) $255 million for AP&L; (2) $259 million for LP&L; (3) $113 million for MP&L; (4) $43 million for NOPSI; and (5) $238 million for SERI, in any combination thereof. The record is complete with respect to the Short-Term Borrowings of the Operating Companies and SERI up to an aggregate principal amount of: (1) $125 million for AP&L; (2) $125 million for LP&L; (3) $100 million for MP&L; (4) $43 million for NOPSI; and (5) $125 million for SERI. The Operating Companies and SERI request that the Commission reserve jurisdiction, pending completion of the record, over Short-Term Borrowings, up to an aggregate principal amount of: (1) $130 million for AP&L; (2) $134 million for LP&L; (3) $13 million for MP&L; and (4) $113 million for SERI, in any combination thereof.

The Notes will mature in less than one year from the date of issuance, and bear interest at a rate per annum no greater than 1.5 percentage points over the prime commercial bank rate in effect on the date of issuance or renewal or from time to time, depending upon the arrangements with the lending bank; provided that the rate of interest on the Notes may be based upon other market rates or indices such that, as a result of

[17] Such services are currently performed by EUA Service Corp., an affiliate of EUA Power, pursuant to a written service agreement. The Plan contemplates that such service agreement with EUA Service Corp. will be terminated as of the date the Plan is confirmed by the Bankruptcy Court.

fluctuations in such rates or indices, the rate may exceed, for certain brief periods, the above-described maximum rate of interest. However, the effective interest rate for any 30-day period, on an annualized basis, may not exceed the above-described maximum rate of interest.

The Commercial Paper will be in the form of unsecured promissory notes having varying maturities not to exceed 270 days. No commission or fee will be payable by the Operating Companies or SERI in connection with the issuance and sale of the Commercial Paper. The Operating Companies and SERI have requested authorization to issue the Commercial Paper under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5). The proceeds to be received by the Operating Companies and SERI from borrowings through Short-Term Borrowings will be used to provide interim financing for construction expenditures, to meet long-term debt maturities and satisfy sinking fund requirements, as well as for possible refunding, redemption purchase or other acquisition of all or a portion of certain outstanding series of high-cost debt and preferred stock.

SFI proposes to borrow from the Money Pool up to an aggregate principal amount of $65 million. The proceeds from the borrowings of SFI through the Money Pool or lines of credit available to SFI pursuant to other borrowing arrangements with one or more commercial banks will be used for the repayment of other borrowings and for the expenditures associated with the acquisition, ownership and financing of nuclear materials and related services and acquisition and ownership of fuel oil inventory.

EOI and Services propose to borrow up to $15 million and $90 million respectively, in any combination, from: (1) The Money Pool; (2) Entergy under loan agreements; and/or (3) banks pursuant to loan agreements.

By orders dated June 6, 1990 (HCAR No. 25100) and April 29, 1992 (HCAR No. 25526), EOI and Entergy were authorized, among other things, to enter into a loan agreement ("Loan Agreement") whereby EOI would borrow up to $15 million, at any one time outstanding through November 30, 1992. Borrowings by EOI from Entergy under the Loan Agreement were evidenced by a note. EOI and Entergy now propose to extend such authorization, through November 30, 1994, and provide for the issuance of a new note ("New Note") stated to mature on November 30, 1994. The New Note shall represent the borrowings of EOI from Entergy under the amended Loan Agreement ("New Loan Agreement") and replace and supersede the existing note and shall bear interest at a rate of the prime rate of interest publicly announced, from time to time, by Chemical Banking Corporation.

EOI further proposed to borrow up to an aggregate principal amount of up to $15 million from one or more banks pursuant a loan agreement(s) ("Bank Loan Agreements") by issuing unsecured promissory notes that bear interest at a rate per annum no greater than 1.5 percentage points over the prime commercial bank rate in effect on the date of issuance or renewal or from time to time, depending upon the arrangements with the lending bank; provided, that the rate of interest on the notes may be based upon other market rates or indices such that, as a result of fluctuations in such rates or indices, the rate may exceed, for certain brief periods, the above-described maximum rate of interest. The aggregate principal amount of borrowings by EOI outstanding at any one time pursuant to the Money Pool, the New Loan Agreement, the Bank Loan Agreements, and through such other borrowing arrangements as may hereafter be entered into by EOI pursuant to Commission authorization shall not exceed $15 million. The proceeds from borrowings by EOI through the Money Pool, the Loan Agreement, and the Bank Loan Agreement will be used to finance its interim capital needs.

By orders dated September 17, 1991 (HCAR No. 25376) and October 23, 1991 (HCAR No. 25395), the Commission authorized Services, among other things, through December 31, 1993, to borrow up to $90 million pursuant to: (1) A loan agreement entered into with Entergy ("Services Loan Agreement"); and/or (2) loan agreements with one or more banks which would correspondingly reduce the amount of Entergy's commitment to Services under the Services Loan Agreement. Borrowings by Services from Entergy under the Services Loan Agreement were evidenced by a note.

Services now proposed to extend such authorization, through November 30, 1994 pursuant to an amendment to the Services Loan Agreement ("New Services Loan Agreement") and a new loan agreement with one or more banks ("New Bank Loan Agreements"). Services' borrowings under the New Bank Loan Agreements would correspondingly reduce the amount of Entergy's commitment to Services under the New Services Loan Agreement.

Borrowings under the New Services Loan Agreement will be evidenced by the issuance and sale of a new note ("New Services Note") stated to mature on November 30, 1994. The New Services Note shall replace and supersede the existing note and shall bear interest at a rate of the prime rate of interest publicly announced, from time to time, by Chemical Banking Corporation. Borrowings under the New Bank Loan Agreements will be evidenced by the issuance and sale of unsecured bank notes by Services to one or more banks and would be at the same terms as those of EOI's Bank Loan Agreements discussed above. The aggregate principal amount of borrowings by Services outstanding at any one time pursuant to the Money Pool, the New Services Loan Agreement, the New Bank Loan Agreements and through such other borrowing arrangements as may hereafter be entered into by Services pursuant to Commission authorization shall not exceed $90 million. The proceeds from the borrowings by Services through the Money Pool, the New Services Loan Agreement and the New Bank Loan Agreements will be used for repayment of other borrowings, ongoing expenditures incurred in connection with the purchase of the Bulk Power Management system, the purchase of micro-computers and other computer equipment and furnishings, the implementation leasehold improvements to office space, the purchase and acquisition of aircraft to replace older aircraft, and the ongoing construction of an Entergy System management training and conference center.

Entergy proposes to guarantee: (1) EOI's obligations under the Bank Loan Agreements; and (2) Services' obligations under the New Bank Loan Agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24813 Filed 10-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18996; 811-5733]

Woodstock Collective Investment Trust; Deregistration

October 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Woodstock Collective Investment Trust.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 17, 1992, and amended on September 8, 1992 and September 29, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 27, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 181 Second Street South, Wisconsin Rapids, Wisconsin 54494.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272-3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was an open-end, diversified investment company organized as a collective investment trust under Wisconsin law. Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on May 25, 1989. Applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act on June 20, 1989, which was declared effective on May 30, 1991.

2. Applicant offered five portfolios for the collective investment and reinvestment of monies held in accounts for which the Wood County Trust Company (the "Trustee") serves as trustee and possesses investment discretion. Accounts included individual retirement trust accounts, simplified employee pension plans, and single or commingled tax qualified pension or profit sharing trusts. The Trustee is empowered with managing the funds of an account in its trustee capacity.

3. Applicant determined that it was not beneficial to continue the use of the portfolios offered by it, primarily as a result of the Wisconsin Commissioner of Banking's requirement that applicant comply with regulations of the Office of the Comptroller of the Currency which conflicted with certain provisions of the Act. Applicant's Supervisory Committee approved the termination and liquidation of one of the portfolios on September 9, 1991, and the remaining four portfolios on October 22, 1991. At such time, the Supervisory Committee directed the Trustee to liquidate the portfolios and distribute all proceeds to security holders. As a result, applicant sold all securities held by it at market prices through brokers transactions. Applicant distributed the proceeds of such sales to security holders *pro rata* based upon their ownership of units of benefical interest. Such distribution was completed as of November 1, 1991.

4. Expenses incurred in connection with the liquidation consisted of accounting expenses and brokerage commissions. Such expenses were allocated to accounts *pro rata* based upon their ownership of units of beneficial interest. Applicant's legal and organizational expenses were paid by the Trustee.

5. As of the date of the application, applicant had no security holders, assets, or liabilities, and was not a party to any current or pending litigation or administrative proceeding.

6. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant's existence as a collective investment trust was terminated upon applicant's liquidation on October 31, 1991. Applicant filed appropriate documents with the Wisconsin Office of the Commissioner of Securities to effect applicant's liquidation under state law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24604 Filed 10-8-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2589]

North Carolina Declaration of Disaster Loan Area

Pender County and the contiguous counties of Bladen, Brunswick, Columbus, Duplin, New Hanover, Onslow, and Sampson in the State of North Carolina constitute a disaster area as a result of damages caused by flooding which occurred on August 17-19, 1992. Applications for loans for physical damage may be filed until the close of business on November 9, 1992 and for economic injury until the close of business on June 8, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.0
Homeowners without credit available elsewhere	4.0
Businesses with credit available elsewhere	8.0
Businesses and non-profit organizations without credit available elsewhere	4.0
Others (including non-profit organizations) with credit available elsewhere	8.50
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.00

The number assigned to this disaster for physical damage is 258906 and for economic injury the number is 769700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-24606 Filed 10-8-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 92-8-38, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning October 1, 1992, we have projected non-fuel costs based

on the year ended June 30, 1992 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92–10–7 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic—1.2688

Western Hemisphere—1.1938

Pacific—1.6383

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: October 5, 1992.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–24569 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–62–M

[Docket No. 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interm SFFL, and Order 92–8–40 established the currently effective two-month SFFL applicable through September 30, 1992.

In establishing the SFFL for the two-month period beginning October 1, 1992, we have projected non-fuel costs based on the year ended June 30, 1992 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92–10–4 fares may be increased by the following adjustment factors over the October 1979 level:

Aflantic—1.5414

Latin America—1.4438

Pacific—2.1028

Canada—1.4624

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: October 1, 1992.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–24572 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

U.S.-Brazil Service; Notice Inviting Applications

By this Notice we invite U.S. air carriers interested in providing scheduled combination service as the third designated carrier for service between the United States and Brazil to file certificate applications to provide such service.

In August 1991 the Department instituted the *U.S.-Brazil Combination Service Case* to select one primary and one backup carrier/gateway for scheduled combination service between the United States and Brazil (Orders 91–8–4 and 91–8–25). Subsequent to the hearing in this proceeding, but prior to the issuance of the Administrative Law Judge's decision, Pan American World Airways, Inc., one of the two designated carriers serving Brazil, ceased all air services and applications were filed with the Department for transfer of Pan American's Latin America authority to United Air Lines, including its U.S.-Brazil route authority. In light of these circumstances, the Department terminated the *U.S.-Brazil Combination Service Case*, Stating that the issues were best considered after completion of the pending route transfer application (Orders 92–3–44 and 92–8–19).

By order 92–7–9, the Department approved the transfer of Pan American's U.S.-Brazil as well as other Latin and South American authorities to United Air Lines. As that case is completed, we are now prepared to consider the issue of new U.S. carrier combination service in the Brazil market and applications by carriers interested in providing that service beginning in calendar year 1993 as the third designated carrier.[1] Nine weekly frequencies are currently available for these services.[2] Effective January 1, 1993, an additional five frequencies, for a total of fourteen weekly frequencies, will be available for combination services.

Certificate applications to provide combination service in the U.S.-Brazil market should be filed no later than October 19, 1992. Answers (including competing applications) shall be due no later than October 26, 1992, and further responsive pleadings no later than November 2, 1992. Applications should be filed pursuant to part 302, subpart Q.[3] Docket numbers will be assigned individually by the Department for each application received.[4] Applications should be filed with the Department's Docket Section, room 4107, 400 Seventh Street, SW., Washington, DC 20590. Procedures for acting on the applications filed will be established by future Department order.

Should no combination carriers be interested in serving Brazil in 1993, we might consider using that designation for all-cargo operations. Under the U.S.-Brazil bilateral aviation agreement, the United States may designate a total of five U.S. carriers provided that no more than three designations are used for combination services. Therefore, carriers that are interested in using the designation as the third U.S. carrier for all-cargo services should notify the Director, Office of International Aviation, by letter of their interest no later than October 26, 1992.[5]

This notice will be served on all certificated U.S. air carriers and will be published in the **Federal Register.**

Dated: October 5, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 24628 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–62–M

[1] American Airlines and United Air Lines are the two other designated combination carriers serving the market.

[2] American and United have been allocated these frequencies temporarily (seven to American, two to United) pending a final decision on use of the frequencies on a long-term basis. See Order 92–8–57.

[3] We expect applications to include all of the information required by subpart Q.

[4] Interested carriers should not file their applications in the former *U.S.-Brazil Combination Service Case*, Docket 47678, since that case has been terminated.

[5] Federal Express and Challenge Air Cargo are the two air carriers already designated for all-cargo service.

[Order 92–10–8; Docket 48199]

Application of Executive Flight Management d/b/a Trans American Charter, Ltd. for a Domestic Charter Certificate

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation directing all interested persons to show cause why it should not issue an order finding Executive Flight Management d/b/a Trans American Charter, Ltd., fit and awarding it a certificate of public convenience and necessity to engage in interstate and overseas charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than October 19, 1992.

ADDRESSES: Objections and answers to objections should be filed in Docket 48199 and addressed to the

Documentary Services Division (C–55, room 4107), U.S. Department of Transportation 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: October 2, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–24573 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Kauai, Hawaii

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in the County of Kauai, State of Hawaii.

FOR FURTHER INFORMATION CONTACT: William B. Lake, Division Administrator, Federal Highway Administration, P.O. Box 50206, Honolulu, Hawaii 96850, Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Hawaii, Department of Transportation, Highways Division, will prepare an Environmental Impact Statement for proposed improvements to Kuhio Highway (FAP 56) on the island of Kauai. This proposed project would involve either the widening, bypassing, or some combination of the two along Kuhio Highway between Hanamaulu and Kapaa.

The purpose of the proposed project is to provide a ground transportation system within the study corridor that will provide for the safe, convenient, and economical movement of people and goods. There is a need to improve Kuhio Highway within this study corridor to alleviate current traffic congestion and provide sufficient highway capacity to meet the expected increase in traffic volumes over the next 20 years.

There are a total of ten alternatives under consideration which includes taking no action (No Action Alternative). The nine remaining build alternatives involve the widening, bypassing or some combination of the two along Kuhio Highway. Design variations of grade and alignments are planned to be incorporated into and studied with the various build alternatives.

Letters along with copies of the State EIS Preparation Notice describing the proposed project and soliciting comments will be sent to appropriate Federal, State, and County agencies, and to private organizations and individuals. Two public informational meetings are planned to be held on Kauai to receive comments and concerns from the public on alternatives being considered. In addition, a formal public hearing will be held after publication of the Draft EIS for the proposed project. Public notices will be appropriately given of the time and place these meetings and hearing will be held. The Draft EIS will be available for public and agency review and comment.

The ensure that all pertinent and significant issues related to this proposed project are addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed project and the EIS to be prepared should be directed to the FHWA at the address provided above.

Issued on: October 1, 1992.

Abraham Wong,

Assistant Division Administrator, Honolulu, Hawaii.

[FR Doc. 92–24471 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

[Docket No. 48383; Notice No. 92–16]

Air Carrier Groupings for Publications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice.

SUMMARY: This notice requests comments on the criteria the Department uses to group large certificated air carriers for the purpose of publishing financial, traffic, and other statistical information on the air transportation industry.

DATES: Comments submitted in response to this notice must be received on or before December 8, 1992.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr. or Jack M. Calloway, Office of Airline Statistics, DAI–10, Research and Special Program Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4385 and 366–4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

Prior to 1981, air carriers were grouped, for publication purposes, based on the type of operation being performed by the carrier, as designated by the carrier's certificate. For example, two of the groups were "trunk" and "local service" air carriers.

A "trunk" air carrier was defined as a class of certificated rout air carriers receiving original certification under the "grandfather clause" of the Civil Aeronautics Act (August 22, 1938) and whose primary operations were in domestic scheduled passenger service between medium and large air traffic hubs. In addition, these carriers may have had authority for scheduled all-cargo, scheduled international passenger and/or cargo, and nonscheduled service.

By comparison, a "local service" carrier was defined as a group of air carriers originally established in the late 1940's to foster and provide scheduled air service to small and medium communities on relatively low density routes and to feed that traffic to trunk air carriers. Over time, these carriers evolved from their "feeder" operations into "regional" operations with their own distinct route networks.

With the passage of the Airline Deregulation Act of 1978 (Pub. L. 95–504), the air transportation industry began a dynamic period of transition to a deregulated operating environment. One of the cornerstones of deregulation was the elimination, as of December 31, 1981, of the authority of the Civil Aeronautics Board (CAB) to regulate the domestic routes that a carrier could serve. Thus, carrier managements were given the freedom to make major changes to their domestic route networks by exercising the right to enter and exit markets as they saw fit.

During 1981, the CAB renamed the air carrier groups because the certificate designations had become meaningless. It also revised the methodology used to group large certificated air carriers for comparative purposes in its recurrent air transportation statistical publications, such as the Air Carrier Financial Statistics Quarterly and the Air Carrier Traffic Statistics Monthly. A "large certificated air carrier" is an air carrier operating under a certificate of public convenience and necessity issued under section 401 of the Federal Aviation Act of 1958, as amended, using aircraft with over 60 seats or over 18,000 pounds of

payload capacity, or operating internationally (14 CFR 241.03).

As a result, the criterion for grouping carriers was changed from the type of certificate operation conducted to the level of total annual operating revenues. The 1981 initial grouping of carriers was based on the total annual operating revenue boundaries shown below:

Carrier groups	Carriers with annual operating revenues of
Majors	$1,000,000,000+
Nationals	$75,000,000–$1,000,000,000
Large Regionals	$10,000,000–$74,999,999
Medium Regionals	$0–$9,999,999

In early 1991, the revenue boundaries were re-evaluated in light of the increase in airline operating revenues. As a result, the air carrier groupings for financial and statistical aggregation and analysis were restructured based on the revised operating revenue levels shown below.

Carrier groups	Carriers with annual operating revenues of
Majors	$1,000,000,000+
Nationals	$100,000,000–$1,000,000,000
Large Regionals	$20,000,000–$99,999,999
Medium Regionals	$0–$19,999,999

Request for Comments

The Department is currently reviewing the grouping of large certificated air carriers in various statistical publications to determine if further adjustment of the operating revenue criteria is needed. The aggregation of air carriers into the various group classifications is intended to facilitate data analysis and carrier comparisons. Carrier groupings are reflected in publications that are issued by the Research and Special Programs Administration (RSPA). They also affect consumer publications, issued by the Department's Office of the Secretary, that contain tables based upon airline economic data collected by RSPA.

RSPA is requesting comments from the airline data user community as to whether there is a need to change the carrier group criteria. Comments supporting change should describe what groupings are recommended.

The Department further requests that comments submitted in support of changing the criteria for grouping carriers include, in detail, the reasons for supporting a particular change as well as an explanation how the change would improve the overall value of the data used to measure and analyze trends within the air transportation industry.

Issued in Washington, DC on October 5, 1992.

Richard R. John,

Acting Associate Administrator for Research, Technology and Analysis, Research and Special Programs Administration.

[FR Doc. 92–24570 Filed 10–8–92; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held at The Department of Veterans Affairs Medical Center, 1000 Bay Pines Blvd. N., St. Petersburg, FL 33504, from October 21, 1992, through October 23, 1992. The meeting will convene at 9 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits delivery, including, but not limited to, the following: education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), room 275, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: September 28, 1992.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–24685 Filed 10–8–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 197
Friday, October 9, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

October 7, 1992.

DATE AND TIME: Friday, October 16, 1992, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., room 512, Washington, DC 20425.

STATUS: Open to the Public.

October 16, 1992

I. Approval of Agenda
II. Approval of Minutes of September Meeting
III. Announcements
IV. *Minority Elderly Access to Health Care and Nursing Homes*, New York SAC
V. 1993 Commission Meeting Calendar
VI. Staff Director's Report
VII. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376-8105, (TDD 202-376-8116), at least five (5) working days before the scheduled date of the meeting.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376-8312.

Emma Monroig,
Solicitor.
[FR Doc. 24803 Filed 10-7-92; 1:48 pm]
BILLING CODE 6335-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Friday, October 16, 1992.

PLACE: 2033 K St., NW., Washington DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92-24808 Filed 10-7-92; 2:01 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Monday, October 19, 1992.

PLACE: 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the MidAmerica Commodity Exchange, Inc. for contract designation in MidAm U.S. Dollar Composite Index futures
—Chicago Board of Trade Proposed Project A Automated Trading System
—Proposed rules on Optical Storage Systems and Electronic Filing

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92-24809 Filed 10-7-92; 8:45 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:30 p.m., Monday, October 19, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92-24810 Filed 10-7-92; 2:01 pm]
BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, October 13, 1992, to consider the following matters:

Summary Agenda:

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: Delegation of authority to issue rulings on procedural matters in enforcement proceedings.

Memorandum re: Review of the Corporation's 1991/1992 Business Plan.

Memorandum of Understanding relating to the Inter-Agency Clearinghouse Pilot Program for affordable Housing.

Discussion Agenda

Memorandum and resolution re: Proposed amendments to Part 330 of the Corporation's rules and regulations, entitled "Deposit Insurance Coverage."

Memorandum and Resolution re: Proposed statement of policy for FDIC-supervised banks regarding notices of branch closing.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should contact Llauger Valentin, Equal Employment Opportunity Manager, at (202) 898-6745 (Voice); (202) 898-3509(TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: October 6, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 92-24732 Filed 10-7-92; 9:21 am]
BILLING CODE 6714-0-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, October 13, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of the office of Inspector General.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" [5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)].

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Matters relating to the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,818 (Amendment)
Silverado Banking, Savings and Loan Association, Denver, Colorado
Case No. 47,829 (Amendment)
Various Failed Depository Institutions, Nationwide

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" [5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)].

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" [5 U.S.C. 552b(c)(2) and (c)(6)].

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–8757.

Dated: October 6, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–24733 Filed 10–7–92; 9:21 am]

BILLING CODE 6714-0-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS COMMITTEE MEETING

Notice

TIME AND DATE: Meetings of the Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services, Office of the Inspector General Oversight, and Audit and Appropriations Committees will be held on October 18, 1992. The meetings will commence at 12:00 p.m. and will be held in the following order, with each meeting continuing until all business has been concluded:

1. Provision for the Delivery of Legal Services Committee;
2. Office of the Inspector General Oversight Committee; and
3. Audit and Appropriations Committee.

PLACE: The Legal Services Corporation, 750 1st Street, NE., The Board Room, Washington, DC 20002, (202) 336–8896.

Provision for the Delivery of Legal Services Committee Meeting

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of August 8, 1992 Meeting Minutes.
3. Consideration of Status Report on the Staff Analysis of Law School Clinical Programs.
4. Consideration of Status Report on Development of Options for a Loan Repayment Program for the Recruitment and Retention of Staff Attorneys of LSC-Funded Grantees.
5. Consideration of Status Report on the Alternative Dispute Resolution Project.

Office of the Inspector General Oversight Committee Meeting

STATUS OF MEETING: Open, except that a portion of the meeting may be closed if a majority of the Board of Directors votes to hold an executive session. At the closed session, pursuant to receipt of the aforementioned vote, the Committee will consider and vote on approval of the draft minutes of the executive session held on August 10, 1992. In addition, the Committee will hear and consider the report of the Inspector General on several investigations. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(7) (C) and (D)], and the corresponding regulation of the Legal Services Corporation [45 CFR Sections 1622.5(f)(3)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC, 20002, in its two reception areas, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of August 10, 1992 Meeting.
3. Consideration of Inspector General's Report on the General Activities of the Office of the Inspector General.
4. Consideration of Inspector General's Report on the Fiscal Year 1993 Budget Request for the Office of the Inspector General.

Closed Session:

5. Approval of Minutes of August 10, 1992 Executive Session.

Open Session: (Resumed)

6. Consideration of Motion to Adjourn Meeting.

Audit and Appropriations Committee Meeting

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of September 26, 1992 Meeting.
3. Consideration of Report by the Provision for the Delivery of Legal Services Committee.
4. Consideration of Status Report on the Leasing of the Corporation's Former Headquarters Office Space.
5. Consideration of Inspector General's Report on the Fiscal Year 1993 Budget Request for the Office of the Inspector General.
6. Consideration and Review of Proposed Fiscal Year 1993 Consolidated Operating Budget.

CONTACT PERSON FOR INFORMATION:

Patricia Batie (202) 336–8896.

Date issued: October 7, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–24826 Filed 10–7–92; 3:44 pm]

BILLING CODE 7050-01 M

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[1] As to the Board's consideration and approval of the draft minutes of the executive session held on the above-noted date, the closing is authorized as noted in the **Federal Register** notice corresponding to that Board meeting.

Corrections

Federal Register
Vol. 57, No. 197
Friday, October 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

University Research Instrumentation Program 1993

Correction

In notice document 92-23740 beginning on page 45041 in the issue of Wednesday, September 30, 1992, make the following correction:

On page 45041, in the second column, in **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the tenth line from the bottom, "Instruction" should read "Instrumentation".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-92-3411; FR-3195-N-02]

Fund Availability (NOFA) for Supportive Housing for Persons With Disabilities-Set-aside for Persons Disabled as a Result of Infection With the Human Acquired Immunodeficiency Virus

Correction

In notice document 92-23618, beginning on page 45065 in the issue of Wednesday, September 30, 1992 make the following correction:

On page 45065, in the second column, in the **DATES** section, in the second line the date should read November 16, 1992.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket Nos. HM-181, HM-181A, HM-181B, HM-181C, HM-181D, HM-142A, HM-189, and HM-204; Amdt. Nos. 106-8, 107-23, 171-111, 172-123, 173-224, 174-68, 175-47, 176-30, 177-78, 178-97, 179-45, and 180-3]

RIN 2137-AA01, 2137-AB87, 2137-AB88, 2137-AA10, 2137-AB56, and 2137-AB90

Performance-Oriented Packaging Standards; Revisions and Response to Petitions for Reconsideration

Correction

In rule document 91-28240 beginning on page 66124 in the issue of Friday, December 20, 1991, on page 66254, in the third column, in § 172.313, paragraph (a) was incorrectly printed. Paragraph (a) is revised as set forth below:

§ 172.313 Poisonous hazardous materials.

(a) For materials poisonous by inhalation (see § 171.8 of this subchapter), the package shall be marked "Inhalation Hazard" in association with the required labels or placards, as appropriate, or shipping name, when required. (See § 172.302(b) of this subpart for size of markings on bulk packages.) Bulk packagings must be marked on two opposing sides.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974; Publication of an Existing System of Records

Correction

In notice document 92-22718 beginning on page 43485 in the issue of Monday, September 21, 1992, make the following correction:

On page 43486, in the 1st column, in the 1st full paragraph, in the 13th line after "or" insert "settlement negotiations, in response to a court-ordered subpoena, or".

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Friday
October 9, 1992

Part II

Consumer Product Safety Commission

16 CFR Part 1500

Labeling Requirements for Art Materials Presenting Chronic Hazards; Guidelines for Determining Chronic Toxicity of Products Subject to the FHSA; Supplementary Definition of "Toxic" Under the Federal Hazardous Substances Act; Final Rules

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Labeling Requirements for Art Materials Presenting Chronic Hazards; Guidelines for Determining Chronic Toxicity of Products Subject to the FHSA; Supplementary Definition of "Toxic" Under the Federal Hazardous Substances Act

AGENCY: Consumer Product Safety Commission.

ACTION: Final rules.

SUMMARY: This document announces three actions taken by the Consumer Product Safety Commission.[1] The Commission is finalizing the codification of ASTM standard D–4236 as a Commission rule which was mandated by the Labeling of Hazardous Art Materials Act ("LHAMA").

LHAMA also directed the Commission to issue guidelines specifying criteria for determining when any customary or reasonably foreseeable use of an art material can result in a chronic hazard. The Commission is issuing final chronic hazard guidelines as directed by LHAMA. Because the substance of the guidelines directed by LHAMA applies equally to materials other than art materials, these guidelines also may be used by the manufacturers of other products subject to the FHSA to determine whether their products present a chronic hazard and, therefore, require labeling under section 2(p) of the FHSA. The guidelines are not mandatory.

Finally, the Commission is issuing a final regulatory definition of toxic that will define chronic toxicity under the Federal Hazardous Substances Act (FHSA). This definition supplements the Commission's existing regulatory definition of toxic that concerns acute toxicity. The definition will apply to all products subject to the FHSA.

DATES: The codification of ASTM D–4236 (31500.14(b)(8)) which is effective on October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Charles M. Jacobson, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400.

SUPPLEMENTARY INFORMATION:

I. Introduction
A. The Proposals
B. Overview of This Document
II. Applicable Statutes
A. The Federal Hazardous Substances Act
B. The Labeling of Hazardous Art Materials Act
III. Issues Concerning the Codification of D–4236
A. General Requirements
B. Statement of Conformance
C. Telephone Number
D. Standard Is Applicable Only to Art Materials
E. Board-Certified Toxicologist
F. Amendment of ASTM D–4236
G. Annexes and Appendix
IV Issues Concerning the Chronic Hazard Guidelines
A. Broad Scope
B. Complexity of Determination
C. Customary or Reasonably Foreseeable Handling or Use
D. Guidelines Do Not Require Submission of Data
E. Risk Assessment for Children's Products
F. Legal Effect of Guidelines
V. Issues Pertinent to All Three Actions
A. Preemption
B. The CHAP Process
C. Enforcement
VI. The Chronic Hazard Guidelines
A. General
1. Toxicity and Exposure
2. Nature of the Guidelines
B. Carcinogenicity
1. Introduction
2. Assessment of Evidence for Carcinogenicity From Studies in Humans
a. Discussion
b. Categories of Human Evidence
i. Sufficient Evidence of Carcinogenicity in Humans
ii. Limited Evidence of Carcinogenicity in Humans
iii. Inadequate Evidence of Carcinogenicity in Humans
3. Assessment of Evidence for Carcinogenicity in Animals
a. Relevance of Animal Data to Humans
b. Factors in the Consideration of Animal Data
c. Comparison With EPA Criteria
d. Comparison With IARC's Criteria
e. ANSI Definitions
f. Categories of Animal Evidence
i. Sufficient Evidence of Carcinogenicity in Animals
ii. Limited Evidence of Carcinogenicity in Animals
iii. Inadequate Evidence of Carcinogenicity in Animals
C. Neurotoxicity
1. Introduction
a. Definition of Neurotoxicity
b. The Nervous System: Background and Definition
c. Manifestations of Neurotoxicity
2. Evidence of Neurotoxicity: General Discussion
3. Evidence of Neurotoxicity Derived From Studies in Humans
a. Discussion
b. Evidence of Neurotoxicity Derived From Studies in Humans
i. Sufficient Evidence of Neurotoxicity
ii. Limited Evidence of Neurotoxicity
iii. Inadequate Evidence of Neurotoxicity
4. Evidence of Neurotoxicity Derived from Studies in Animals
a. General Considerations
b. Categories of Neurotoxicity Studies
i. Neurobehavioral Studies
ii. Neurophysiological Studies
iii. Morphological Studies
iv. Biochemical and Endocrinological Studies
v. Developmental Neurotoxicity Studies
vi. In Vitro Neurotoxicity Studies
vii. Other Studies
c. Classification of Neurotoxicity Evidence Derived from Studies in Animals
i. Sufficient Evidence of Neurotoxicity
ii. Limited Evidence of Neurotoxicity
iii. Inadequate Evidence of Neurotoxicity
D. Reproductive and Developmental Toxicity
1. Introduction
a. General Discussion
b. Definitions and Terminology
2. Identification of Developmental and Reproductive Toxicity Hazards from Studies in Humans
a. Discussion
b. Categories of Human Evidence
i. Sufficient Evidence of Developmental or Reproductive Toxicity in Humans
ii. Limited Evidence of Developmental or Reproductive Toxicity in Humans
iii. Inadequate Evidence of Developmental or Reproductive Toxicity in Humans
3. Identification of Developmental and Reproductive Toxicity Hazards from Studies in Animals
a. Study Protocols for Studying Developmental and Reproductive Toxicity in Animals
b. Criteria for a Good Quality Developmental or Reproductive Toxicity Animal Study
c. Categories of Evidence for Developmental or Reproductive Toxicity Derived from Animal Studies
i. Sufficient Evidence of Developmental or Reproductive Toxicity in Animals
ii. Limited Evidence of Developmental or Reproductive Toxicity in Animals
iii. Inadequate Evidence of Developmental or Reproductive Toxicity in Animals
E. Sensitization
F. Evaluation of Risk from Exposure to Substances that May Present a Chronic Hazard
1. Guidelines for Assessing Exposure
a. Introduction
b. Background: The Three Routes of Exposure
i. Inhalation
(a) Direct monitoring
(b) Predictions of exposure (through modeling)
(c) Surrogate data
ii. Ingestion
iii. Dermal Exposure
c. Discussion of Exposure Estimates
i. Inhalation
(a) Direct Monitoring
(b) Modeling
(c) Surrogate Data
ii. Oral Ingestion
iii. Dermal Exposure
d. Conclusion

[1] Copies of statements issued by each of the three Commissioners are available from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0800.

2. Guidelines for Assessing Bioavailability
a. Introduction
b. Bioavailability
i. Background
ii. Physical or Chemical Forms of a Toxic Substance
iii. Route of Exposure
iv. Presence of Other Constituents
v. Dose
vi. Other Conditions
vii. Special Case Where Bioavailability Has Been Accounted for in Exposure and Risk Assessments
c. Guidelines for the Assessment of Bioavailability
i. General Strategy for Assessing Bioavailability
(a) Default Approach
(b) Bioavailability Assessment
(c) Adjusting Exposure Estimates for Bioavailability
ii. Routes of Exposure
(a) Gastrointestinal Tract
(b) Respiratory Tract: Factors That Affect Absorption from the Respiratory System
(c) Skin: Permeability Characteristics
3. Risk Assessment Guidelines
a. Introduction
b. Guidelines for Carcinogenic Risk Assessment
i. Selection of Data Upon Which Risk is Based
ii. High-to-low Dose Extrapolation
iii. Species to Species Extrapolation
iv. Route to Route Extrapolation
v. Scenario Extrapolation
4. Acceptable Risks to Children and Adults
a. Introduction
b. Acceptable Daily Intake (ADI) Based on Acceptable Risk
i. ADI for Carcinogens
ii. ADI for Neurotoxicological and Developmental/Reproductive Agents
VII. The Supplemental Definition of Toxic
A. The Existing Statutory and Regulatory Scheme
B. The Supplemental Definition
VIII. Significant Comments and Responses
A. Comments Concerning the Codification
B. General Comments Concerning Guidelines
C. Comments on Scientific Issues of the Guidelines and Definitions
1. General
2. Cancer
3. Neurotoxicity
4. Reproductive and Developmental Toxicity
5. Bioavailability
6. Exposure Assessment
7. Risk Assessment
D. Comments Concerning Labeling
E. Comments Concerning Economic Impact
F. Comments Concerning All Actions
IX. Effective Dates
X. Environmental Considerations
XI. Regulatory Flexibility Act Certification

This document is effective on January 7, 1993.

I. Introduction

A. The Proposals

On April 17, 1991, the Commission proposed (1) a codification of ASTM D–4236 standard for labeling hazardous art materials as a Commission rule under the Labeling of Hazardous Art Materials Act ("LHAMA"); (2) guidelines for determining when an art material or other product subject to the FHSA may present a chronic health hazard; and (3) a supplemental regulatory definition of "toxic" (under the FHSA) to include chronic toxicity. 56 FR 15672 and 56 FR 15705 (1991). (The proposed guidelines and definition were together in one document.) The Commission proposed that the guidelines and the supplemental definition would apply to all products subject to the Federal Hazardous Substances Act ("FHSA").

The proposal originally provided for submission of comments until July 1, 1991. In response to numerous requests for more time to respond, the Commission extended the comment period to October 1, 1991.

LHAMA required the Commission to conduct a public hearing on guidelines issued under LHAMA. 15 U.S.C. 1277(d)(1). The Commission originally scheduled a hearing for July 18, 1991. However, when the period for written comments was extended, the Commission rescheduled the public hearing for October 17, 1991. The Commission has considered all written and oral comments on the three proposed actions.

This document summarizes the most significant public comments received and explains the Commission's responses to those comments. It attempts to clarify some points in the proposed actions that engendered confusion, and in doing so it addresses the major issues raised by comments. The preamble also explains the statutory bases for the Commission's actions and makes some changes in the proposals.

B. Overview of this Document

The Commission is finalizing three actions. Each is described in greater detail in a separate section of this preamble. First, the Commission is issuing the final codification of ASTM D–4236. LHAMA made this voluntary standard for labeling hazardous art materials a mandatory Commission rule under section 3(b) of the FHSA. Congress made some changes in provisions of ASTM D–4236, such as the definition of art material. Although LHAMA did not require the Commission to codify ASTM D–4236, the Commission decided to do so for the convenience of those subject to the LHAMA. Since the codification reflects changes by Congress, contains some editorial changes to make the standard consistent with other standards in the Code of Federal Regulations, and reflects the Commission's interpretation of the standard, the Commission determined to publish the codification as a proposed rule. 56 FR 15705. Today the Commission issues the codification in final form. The substance of the codification and the Commission's interpretation of certain provisions are explained in section III. of the preamble.

The second action taken by the Commission is the finalization of guidelines for determining chronic toxicity. LHAMA required the Commission to issue guidelines for determining when customary or reasonably foreseeable use of an art material can result in a chronic hazard. 15 U.S.C. 1277(d)(1). The guidelines proposed by the Commission on April 17, 1991, explained the principles used by the Commission staff in making this determination. The proposed guidelines specified conditions under which an art material would be considered to contain a carcinogen, neurotoxin, or a developmental or reproductive toxicant. The proposed guidelines also explained certain principles to be used in evaluating the risk resulting from exposure.

Because the principles behind the proposed guidelines apply to other products subject to the FHSA as well as to art materials, the Commission proposed that the guidelines could be used by manufacturers of all products subject to the FHSA to determine if the product presents a chronic hazard. As explained more fully in section II A. of this preamble, the FHSA requires that all products subject to that act must be properly labeled if they present a chronic hazard.

The Commission continues to believe that the principles behind the guidelines are applicable to all products subject to the FHSA. Thus, manufacturers of all such products may use the final guidelines to aid in their determination of whether their products present chronic health hazards. The Commission reiterates that the guidelines are not mandatory. Producers of art materials or any other product will not be required to follow the guidelines in determining chronic toxicity. However, as explained in section V.C. of the preamble, the Commission does expect that products subject to the FHSA will be appropriately labeled according to section 2(p) of the FHSA if they present a chronic hazard. The Commission may bring enforcement actions against such misbranded products.

Finally, the Commission is issuing a final rule under section 10 of the FHSA to supplement the current regulatory definition of "toxic." The existing

regulatory definition specifies tests to determine if a substance presents an acute toxic hazard but does not specify a similar means for defining a chronic toxicant. As explained more fully in section VII A. of this preamble, the statutory definition of "toxic" is quite broad and includes chronic as well as acute toxicity. The supplemental definition will close this gap between the statutory definition and the regulatory definition. As the definition is issued under the FHSA, it will apply to all products subject to the FHSA, not just art materials. As explained in section VII.B. of the preamble, the final definition is broader and more flexible than the one proposed.

II. Applicable Statutes

The Commission's actions are taken pursuant to two statutes: LHAMA and the FHSA. It is important to understand both statutes and how they work together.

A. The Federal Hazardous Substances Act

The FHSA, enacted in 1960, requires labeling of "hazardous substances" if they are "intended, or packaged in a form suitable, for use in the household or by children." 15 U.S.C. 1261(p). A hazardous substance that does not bear the labeling specified by section 2(p)(1) of the FHSA is misbranded and its introduction or receipt in interstate commerce is a prohibited act under the FHSA, 15 U.S.C. 1263, subjecting the violator to certain penalties, 15 U.S.C. 1264.

A hazardous substance under the FHSA includes "any substance or mixture of substances which (i) is toxic * * * if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." 15 U.S.C. 1261(f)(1)(A). This definition encompasses two components: that the substance be "toxic" and that its reasonably foreseeable or customary use may cause substantial personal injury or illness.

The FHSA broadly defines the term "toxic" to apply to "any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." 15 U.S.C. 1261(g).

The FHSA's labeling requirement for a hazardous substance (as defined in the act) that is intended or packaged for household use or for children is essentially self-executing. The FHSA does not establish a program of pre-marketing approval of products. Nor does it require the Commission to develop lists of hazardous substances. Rather, it is the manufacturers' responsibility to determine if their products are or contain a hazardous substance and must be labeled under the FHSA. Section 3(a)(1) of the FHSA does provide for the Commission to declare a particular substance to be a "hazardous substance" under the act in order to avoid or resolve uncertainty 15 U.S.C. 1262. But the Commission is not required to designate a substance as hazardous before enforcing the labeling requirements of section 2(p).

The Commission's regulations specify tests that can be used to determine whether a product presents a hazard of acute toxicity. 16 CFR 1500.3(c)(2). The existing regulations do not contain criteria to determine if a product presents a risk of chronic toxicity.

B. The Labeling of Hazardous Art Materials Act

The Labeling of Hazardous Art Materials Act (LHAMA), enacted November 18, 1988, amended the FHSA. 15 U.S.C. 1277. It provided that, as of November 18, 1990, the requirements for the labeling of art materials set forth in the 1988 version of ASTM D–4236 shall be deemed to be a Commission regulation issued under section 3(b) of the FHSA. Section 3(b) of the FHSA authorizes the Commission to issue labeling regulations different from or in addition to those of section 2(p)(1).

ASTM D–4236 requires producers and repackagers of art materials to submit the material's formulation to a board certified toxicologist for review. The toxicologist must determine whether the art material has the potential to produce a chronic health hazard and must recommend appropriate labeling. The requirements of ASTM D–4236 are explained in greater detail in section III. of this preamble.

LHAMA made some changes and additions to ASTM D–4236. LHAMA requires each producer or repackager of art materials to describe in writing the criteria used to determine whether the product has the potential to produce chronic adverse health effects. The producer or repackager must submit to the Commission those criteria and a list of the art materials that require chronic hazard warning labels. *Id.* sec. 1277(b)(3). Upon request of the Commission, the producer or repackager must also submit to the Commission the product formulations. *Id.* sec. 1277(b) (4).

In addition to the labeling required by ASTM D–4236, LHAMA provides that art materials that require chronic hazard labeling must include on the label the name and address of the producer or repackager, an appropriate telephone number, and a statement that the art materials are inappropriate for use by children. *Id.* sec. 1277(b)(5). LHAMA requires that 12 months after a producer or repackager has discovered significant information regarding hazards of the art material or ways to protect against the hazards, the new information must be incorporated into the chronic hazard label. *Id.* sec. 1277(b)(6).

LHAMA states that a toxicologist must "take into account opinions of various regulatory agencies and scientific bodies" in determining whether an art material has the potential to produce adverse chronic health effects. 15 U.S.C. 1277(b)(8). In a separate section, the statute requires the Commission to issue guidelines containing criteria for determining when "customary or reasonably foreseeable use of an art material can result in a chronic hazard." Congress directed the Commission to issue these guidelines within one year of enactment of LHAMA. *Id.* sec. 1277(d)(1). Due to the complexity of the scientific issues involved and the lack of a Commission quorum for a period of time, issuance of the guidelines was delayed.

III. Issues Concerning the Codification of D–4236

A. General Requirements

ASTM D–4236 requires the producer or repackager of an art material to submit the product's formulation to a toxicologist who will review the formulation to determine if the art material has the potential to produce chronic adverse health effects through customary or reasonably foreseeable use. The toxicologist will advise the producer or repackager of appropriate chronic hazard labeling and the producer or repackager must adopt suitable precautionary labeling. The labeling recommended must be in accordance with section 5 of ASTM D–4236. Such labeling includes a signal word, a list of potential chronic hazards, the name(s) of the chronically hazardous component(s), safe handling instructions, a list of sensitizing components, an identification of a source for additional health information, and, where appropriate, more detailed technical information in supplemental documents.

If the art material presents an acute hazard the labeling must also warn of it. Labeling of art materials subject to LHAMA must also conform to labeling

requirements of section 2(p) of the FHSA and regulations issued thereunder.

ASTM D–4236 states certain considerations that the reviewing toxicologist must "take into account." These include "opinions of various regulatory agencies and scientific bodies * * *on the potential for chronic adverse health effects of the various components of the formulation."

B. Statement of Conformance

ASTM D–4236 provides for a statement of conformance that informs the purchaser that the product complies to the standard. The standard specifies that the conformance statement "should appear whenever practical on the product," but it could also be placed on (1) the individual product package, (2) a display or sign at the point of purchase, (3) separate explanatory literature available on request at the point of purchase, or (4) a response to a formal request for bid or proposal.

The Commission interprets this provision of ASTM D–4236 to require that with every art material product there must be a conformance statement or, if it presents a chronic hazard, the product must have an appropriate precautionary label. Although the language of ASTM D–4236 does not clearly mandate a conformance statement for all art materials, the Commission believes that allowing use of conformance statements for some products but not others would result in confusion to purchasers. Purchasers would be in doubt whether an unmarked art material has been found not to present a chronic hazard or simply has not been reviewed at all. ASTM D–4236 expresses a preference that the conformance statement appear on the product, but the other options mentioned in the standard will also satisfy the conformance statement requirement.

C. Telephone Number

ASTM D–4236 requires that the precautionary label on an art material that has been determined to present a potential chronic health hazard must identify a source for additional health information. The ASTM D–4236 standard provides three examples of such a statement: (1) provision of a 24-hour toll free telephone number, (2) a statement to contact a physician, or (3) a statement to call the local poison control center.

The LHAMA requires, however, that "art materials that require chronic hazard labeling * * * must include on the label * * *, an appropriate telephone number." 15 U.S.C. 1277(b) (5). Thus, Congress has required that an actual telephone number appear on the label. The Commission believes that "an appropriate telephone number" is one which will enable the purchaser to obtain additional information about the product's potential chronic hazard. The number could be that of the producer or repackager or another source that could provide such information. However, the label must contain a phone number, not just a statement to contact a doctor, and it must be a United States telephone number.

D. Standard is Applicable only to Art Materials

The Commission emphasizes that the requirements of ASTM–D4236 as modified by LHAMA are applicable only to art materials. Thus, only producers and repackagers of art materials must submit product formulations to toxicologists to determine the product's chronic hazard potential and appropriate labeling. Non-art materials must be properly labeled under the FHSA if they are hazardous, but the FHSA does not impose any specific review procedure upon manufacturers of non-art materials. Rather it is the manufacturers' responsibility to determine by appropriate means whether their non-art material product is hazardous.

Congress provided a very broad definition of art material or art material product in LHAMA. The term is defined as "any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium," excluding products subject to the Federal Insecticide, Fungicide, and Rodenticide Act or to the Federal Food, Drug, and Cosmetics Act. Although the Commission believes that the determination of what is or is not an art material must be made on a case by case basis, there are some general principles that the Commission believes will be helpful in enforcing the requirements for art materials.

The broad statutory definition could be interpreted to include many items not traditionally considered art materials, such as the many kinds of tools and implements used in the process of creating a work of art. The Commission does not believe that such a broad sweeping definition was intended by Congress. Statements during floor debates on the LHAMA amendment indicate a narrower interpretation. Examples noted are solvents in cements, permanent markers, and inks; lead in paints, clay, and glazes; cadmium in silver solders. 134 Cong. Rec. S16838 (Oct. 19, 1988) (statement of Sen. Gore). Similar examples also cited were solvents in oil painting and silk screening; solders for stained glass; lead in paints and ceramics; and asbestos in talcs and clays. *Id.* at S16838 (statement of Sen. McCain).

The Commission believes that under the statutory definition of "art material" three general categories can be discerned as follows:

1. Those products which actually become a component of the work of visual or graphic art, such as paint, canvas, inks, crayons, chalk, solder, brazing rods, flux, paper, clay, stone, thread, cloth, and photographic film.

2. Those products which are closely and intimately associated with the creation of the final work of art, such as brush cleaners, solvents, ceramic kilns, brushes, silk screens, molds or mold making material, and photo developing chemicals.

3. Those tools, implements, and furniture that are used in the process of the creation of a work of art, but do not become part of the work of art. Examples are drafting tables and chairs, easels, picture frames, canvas stretchers, potter's wheels, hammers, chisels, and air pumps for air brushes.

Although products falling in the third category could come within a broad interpretation of the term "art material," the Commission does not believe that Congress intended such a sweeping interpretation. Therefore, as a matter of enforcement policy, the Commission will not require that products falling in this third category comply with the standard for art materials. This means that the Commission will not require that formulations for such products be reviewed by a toxicologist. Manufacturers of such products would not be required by the Commission to submit their review criteria or lists of products requiring chronic hazard labels to CPSC. Nor do they have to provide a conformance statement for their products. However, the FHSA requires that all household or children's products (whether art materials or not) must be appropriately labeled if they are or contain a hazardous substance. 15 U.S.C. 1261(p). Thus, even a product that falls in the third category above must be appropriately labeled if it is toxic (acutely or chronically) and may cause serious injury or illness through reasonably foreseeable use.

This discussion is intended to provide some guidance on how the Commission interprets the statutory definition. Examples given are intended to illustrate the categories the Commission envisions. In making the determination of whether a product is an art material,

the Commission would consider the intended and anticipated uses of the product as indicated by, for example, its packaging and promotion. Firms that are uncertain whether their materials fall within the scope of this enforcement policy may request guidance from the Commission staff by addressing their inquiries to the compliance staff of the headquarters or the regional offices.

LHAMA made ASTM D–4236 a Commission regulation issued under section 3(b) of the FHSA. Section 3(b) authorizes the Commission to issue additional labeling requirements for "hazardous substance(s) intended, or packaged in a form suitable, for use in the household or by children." 15 U.S.C. 1262(b). When Congress enacted LHAMA it did not expand the Commission's authority under section 3(b) of the FHSA. Thus, there is a very narrow category of art material products, those that have no significant marketing except to schools for adults or to businesses for the use of adults away from the household, that are not subject to the FHSA. The Commission anticipates that very few products would fall within this category. The Commission's regulations at 16 CFR 1500.3(c)(10)(i) provide guidance on what types of products are considered to be intended, or packaged in a form suitable for use in the household. That regulation states in part: "the test shall be whether under any reasonably foreseeable condition of purchase, storage, or use the article may be found in or around a dwelling."

E. Board-Certified Toxicologist

ASTM D–4236 requires that art material formulations be reviewed by a toxicologist. It defines the term "toxicologist" as "any individual who through education, training, and experience has expertise in the field of toxicology, as it relates to human exposure, and is either a toxicologist or a physician certified by a nationally recognized certification board."

LHAMA did not alter this requirement of review or the definition of toxicologist. Several commenters expressed concern that allowing only board-certified toxicologists and physicians is too limited and that many toxicologists who are not certified would also be capable of making the determinations required under ASTM D–4236. However, this requirement of board certification is part of the standard made mandatory by LHAMA. LHAMA provides for the Commission to amend the standard if it follows certain procedures. The Commission cannot abolish the requirement of board certification without following these procedures. However, in enforcing LHAMA the Commission is primarily concerned that the person reviewing formulations has sufficient knowledge based on a combination of education, training, and experience and that the reviewer uses appropriate criteria to recommend complete and accurate labeling. Any enforcement action would be based on the failure to conduct an adequate product review resulting in noncomplying cautionary labeling, rather than on the fact that a toxicologist is not certified. As a matter of enforcement policy, the Commission will not require that all art material reviews be done by a board-certified toxicologist. When the Commission considers rulemaking to amend the codified ASTM standard, it will consider deleting the requirement of board certification.

F. Amendment of ASTM D–4236

Congress provided that the Commission can revise the standard LHAMA mandated if the Commission determines that the standard is "inadequate for the protection of the public interest" and that the Commission's amendment will adequately protect the public interest. The amendment must be issued in accordance with the procedures of section 553 of the Administrative Procedure Act allowing an opportunity for notice and comment. In addition, the Commission must allow interested persons an opportunity to present oral comments.

If ASTM proposes a revision to D–4236, LHAMA provides that the Commission shall incorporate it if the Commission determines that the revision is in the public interest. The Commission must provide for notice and comment concerning the revision. 15 U.S.C. 1277(c).

G. Annexes and Appendix

ASTM D–4236 contained two annexes and one appendix. One of the annexes provides chronic hazard statements. Section 5.2 of ASTM D–4236 (§ 1500.14(b)(8)(i)(E)(*2*) in the codification) states that potentially chronic hazards must be stated "substantially in accordance with statements" in the first annex. The second annex provides precautionary statements. Section 5.4 (§ 1500.14(b)(8)(i)(E)(*4*) in the codification) states that "appropriate precautionary statements as to work practices, personal protection, and ventilation requirements shall be used substantially conforming to those" in the second annex. These annexes are §§ 1500.14(b)(8)(i) (F) and (G) in the codification below.

The Commission considers the chronic hazard statements and the precautionary statements to be examples of appropriate statements when a product presents a chronic hazard. The Commission considers these lists to be suggestive, and does not consider these to be the only statements of hazard or precaution that could be used.

Because products other than art materials that are subject to the FHSA may present similar chronic hazards, manufacturers of non-art materials may find these lists of chronic hazard statements and precautionary statements helpful in labeling their products under section 2(p) of the FHSA. All products subject to the FHSA must be appropriately labeled for any acute hazards they present.

In addition, the staff is in the process of updating its 1979 labeling guide for products that present an acute hazard. The updated version would include recommendations on designing warning labels and examples of warning statements for products that pose a chronic hazard. This labeling guide would be appropriate for all products subject to the FHSA.

ASTM D–4236 also contained an appendix which provided guidelines for organizations that certify an art material conforms to the requirements of ASTM D–4236. In the proposed codification published on April 17, this appendix was erroneously listed as § 1500.14(b)(8)(i)(H) of the codified standard rather than as an appendix. The final codification corrects this and clarifies that these guidelines are not mandatory.

IV. Issues Concerning the Chronic Hazard Guidelines

A. Broad Scope

LHAMA requires the Commission to issue guidelines for determining when an art material presents a chronic hazard. When the Commission published proposed guidelines, it stated that the guidelines could be used for non-art materials as well because the basic principles behind the guidelines would apply broadly to all products subject to the FHSA. Although the Commission received several comments concerning the scope of the guidelines, the Commission is maintaining the broad scope of the proposed guidelines.

Essential to understanding this view is the fact that the guidelines are not mandatory. The Commission's purpose in issuing these guidelines is not to

create a static classification system that must be followed by manufacturers. Rather, the FHSA makes it the manufacturers' responsibility to properly label their products. The guidelines are intended to help the manufacturer in making that determination. The process set out in the guidelines would not be affected by the classification of a product as an art material or other product subject to the FHSA. The scientific principles upon which the guidelines are based are the same. It makes sense then, that the guidance available for art materials would also be useful for non-art materials. (The codification of ASTM D–4236, however, applies only to art materials. Thus, only manufacturers and repackagers of art materials must submit their products' formulation to a toxicologist and must supply the Commission with their criteria for determining chronic toxicity and a list of art materials that require chronic hazard labeling.)

The Commission has authority to issue these guidelines under the FHSA as part of its ability to regulate hazardous substances under that statute. As discussed in section VII.A. of the preamble, the FHSA provides the Commission with clear authority over household and children's products that present a chronic hazard. Section 2(p) of the FHSA requires appropriate labeling of hazardous substances, chronic as well as acute. It is within the Commission's general authority under the FHSA to provide guidance to manufacturers on determining whether a product presents such a hazard and therefore must be labeled. By issuing the guidelines the Commission is not imposing new requirements beyond those already made by section 2(p) of the FHSA.

B. Complexity of Determination

The Commission recognizes that determining if a product presents a chronic hazard is highly complex and often relies upon incomplete or non-conclusive data. The determination requires the exercise of professional judgment.

Under the FHSA, for a substance to be a "hazardous substance" (and thus require labeling) it must have the potential both to be toxic *and* to "cause substantial personal injury or illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." The fact that a product contains a toxic substance does not make the product a "hazardous substance" under the FHSA. The second component of the definition must be considered. For instance, the manufacturer must account for the amount of the substance in the product, for the bioavailability of the substance, and for exposure to the substance. This second aspect of the definition makes the determination of the need for labeling a complex decision.

C. Customary or Reasonably Foreseeable Handling or Use

Some comments expressed concern that the Commission had not provided sufficient guidance on the meaning of the phrase "customary or reasonably foreseeable handling or use" that is part of the definition of "hazardous substance" in the FHSA. The precise meaning of the phrase will, of course, depend on the product at issue. However, the Commission's regulations at 16 CFR 1500.3(c)(7)(iv) provide some general guidance and state:

> Reasonably foreseeable handling or use includes the reasonably foreseeable accidental handling or use, not only by the purchaser or intended user of the product, but by all others in a household, especially children.

Thus, in general, the Commission has taken a fairly broad view of what is reasonably foreseeable handling or use.

As far as the guidelines are concerned, defining a reasonable use scenario can be the most uncertain part of exposure assessment. As the guidelines indicate, there are many variables to consider. Exposure assessment is a mixture of science, knowledge of the product under consideration, and common sense. Unfortunately, due to the large number of art materials and other household and children's products, it is impossible to specify typical scenarios for all cases. Nevertheless, scientists have conducted exposure and risk assessments for many products.

D. Guidelines Do Not Require Submission of Data

The guidelines are intended as an aid to manufacturers in making their determination of whether a product is a hazardous substance due to chronic toxicity and thus would require labeling under the FHSA. The guidelines themselves establish no mandatory requirements.

LHAMA and the modified version of ASTM D–4236 mandated by that law do place certain requirements upon the manufacturers and repackagers of art materials. Thus, only the formulations of art materials must be submitted to a toxicologist for review. For other products, as has always been the case under the FHSA, it is up to the manufacturer to determine proper labeling. The FHSA does not establish a required procedure for doing this. The guidelines do not change this arrangement, but they provide guidance for making that determination.

E. Risk Assessment for Children's Products

For the reasons explained below, the Commission has decided not to include additional safety factors for children's products in the final guidelines and definition. As with other scientific issues of this type, support exists both for applying an additional safety factor of ten for children's products and for not doing so. For example, a child might be more sensitive than an adult in the case of lead poisoning, while adults may be more sensitive than children in the case of neurotoxicity of certain pesticides.

Since, on the basis of much of the theory and data, it was very possible that children would be more susceptible to many substances, the additional factors of ten were proposed to provide an extra margin of safety for children. After reviewing the comments relating to this issue and considering how the additional protective levels would be implemented, the Commission has decided not to include these additional safety factors for children's products. A more detailed response to these comments and a discussion of the analysis followed by the Art & Craft Materials Institute ("ACMI") compared with that recommended in the guidelines is contained in the comment section of the preamble, section VIII.

As a result of analysis of the comments, several overall themes have become clear. First, CPSC's proposed methods of calculating the allowable daily intake ("ADI") for adults are similar, or result in a lower allowable risk, to those allowed by other agencies for both children and adults. Second, ACMI's conclusion that the labeling status of many art materials would be affected is not consistent with the intended use of CPSC's guidelines, since it appears that in many cases, ACMI has applied redundant safety factors in its exposure assessments which result in the overestimation of risk. Third, the ten-fold factor for children, if applied as the staff intended and without redundant safety factors, would have minimal economic impact.

However, there are difficulties in determining if a product that poses a chronic hazard would be used by children. Because many factors would have to be considered, determination of whether children would use these materials would have to be made on a

case-by-case basis. Factors that would be considered include the appeal of the product in attracting and sustaining use; ability of a child to use the product; ability to appreciate the product; adult's perception of intended use, marketing, packaging, advertising, and promotion of the product; and the manufacturer's stated intent. In many cases, it may be impossible to conclude that a given product would not be used by children. Thus, most products could be subject to the additional factor of ten for children. A net effect of requiring labeling for all products exceeding a cancer risk of 1×10^{-7}, for example, was not the intent of the proposed guidelines. Thus, the final guidelines do not provide additional safety factors for children's products.

F. Legal Effect of Guidelines

The guidelines are not issued as substantive binding rules, but are a non-mandatory statement of Commission policy. They explain how the Commission determines whether a product presents a chronic hazard, and they provide guidance to those in industry whose responsibility it is to determine if their product is properly labeled under the FHSA. Some minor changes have been made in the final guidelines to clarify their non-mandatory nature.

LHAMA required the Commission to issue chronic hazard guidelines for art materials. Congress directed the Commission to develop guidelines, not a binding rule that would automatically categorize all art materials. Thus, the guidelines set forth recommended procedures to be followed with the use of expert judgment rather than mechanically. As explained elsewhere, the Commission believes that these guidelines will also be helpful to the manufacturers of non-art materials subject to the FHSA.

V. Issues Pertinent to All Three Actions

A. Preemption

The Commission received numerous comments concerning the issue of preemption of state laws and regulations.

Section 18(b)(1)(A) of the FHSA provides generally that:

> If a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b).

15 U.S.C. 1261n.

LHAMA mandated ASTM D–4236, with certain modifications, as a Commission rule under section 3(b) of the FHSA. Since LHAMA amended the FHSA, the FHSA's preemption provision applies. Thus, this standard for labeling of art materials, as a 3(b) rule, preempts non-identical state and local labeling requirements that are designed to protect against the same risk of illness or injury as ASTM D–4236, as modified by LHAMA.

LHAMA directed the Commission to issue chronic hazard guidelines. The guidelines finalized today are issued pursuant to that provision of LHAMA and the Commission's general authority under the FHSA. As explained above, the standard ASTM D–4236 as mandated by LHAMA has preemptive effect if the other conditions of FHSA section 18(b)(1)(A) are met. The guidelines, however, are not a labeling requirement. They do not require that any particular product be labeled. The requirement that hazardous substances be labeled appropriately comes from section 2(p), not the guidelines. The guidelines are a non-mandatory guide for determining whether a product presents a chronic hazard. Thus, the guidelines themselves do not have a direct preemptive effect. As may affect labeling for chronic hazards, however, they may have an indirect preemptive impact because the labeling requirement of section 2(p) could preempt different state or local requirements.

The supplemental definition of "toxic" is not itself "a cautionary labeling requirement" and would not, in itself, preempt a state or local definition of "toxic." However, the supplemental definition defines a term that is necessary to the labeling requirements of section 2(p) and section 3(b) just as the existing regulatory definition of toxic, which applies to acute toxicity, works together with the labeling requirement. For example, while a different state definition of "toxic" might not be preempted automatically, a state labeling requirement that exempts from labeling a hazardous substance that is hazardous because of the risk of chronic toxicity (as defined by the supplemental regulatory definition) could be preempted.

B. The CHAP Process

Another comment raised frequently concerned the appropriateness of convening a Chronic Hazard Advisory Panel ("CHAP") to develop or evaluate chronic hazard guidelines. As most commenters seemed to recognize, neither the FHSA nor LHAMA requires the Commission to convene a CHAP before issuing chronic hazard guidelines. The Commission must establish a CHAP before initiating rulemaking to ban a substance under section 2(q)(1) of the FHSA relating to the risk of cancer, birth defects, or gene mutations from a consumer product. 15 U.S.C. 2080(b)(1). The CHAP must submit a report to the Commission concerning whether a substance in the product is a carcinogen, mutagen, or teratogen. *Id.* Thus, the only action under the FHSA that requires the Commission to consult a CHAP is rulemaking to ban a particular substance.

In issuing these guidelines, however, the Commission is not promulgating a binding rule, is not seeking to ban a substance, and is not taking action with respect to any particular substance. Issuance of these guidelines is not appropriate for CHAP review. The CHAP's purpose is to review particular products and advise the Commission on the chronic risk posed by that product or by specific substances contained in the product. The chronic hazard guidelines being issued do not relate to any particular products or substances, but they provide guidance for determining, in general, whether a product can present a chronic health hazard.

The Commission certainly agrees that the guidelines should reflect sound scientific judgment and should be widely reviewed and commented upon. Other Federal agencies and interagency groups have reviewed relevant parts of the guidelines at CPSC staff's request prior to their publication for public comment, to ensure that the latest science has been addressed. The Commission published proposed guidelines and sought written comments even though LHAMA did not require the Commission to do so. The Commission also received comments as a result of the public hearing held in October. The Commission does not believe, however, that the CHAP process is the most appropriate means to obtain views on the guidelines.

CPSC staff is involved in many government and nongovernment activities to ensure consistency, use of the latest data, and use of the most current scientific approaches to the risk assessment process. These groups include the Federal Coordinating Council on Science, Engineering, and Technology (FCCSET), the International Life Sciences Institute (ILSI), and the National Academy of Sciences (NAS) Committee on Risk Assessment Methodology (CRAM) processes. CPSC staff is also involved with a number of

interagency committees such as the Interagency Pharmacokinetics Group and the Interagency Committee on Neurotoxicity (which, at CPSC's request, reviewed the neurotoxicity guidelines before they were proposed). Participating in these efforts, the consideration of the comments received by expert scientists, and the fact that there are very few departures in the guidelines from generally accepted risk assessment methodology, lends credence to the assertion that the guidelines are scientifically defensible and reasonable.

C. Enforcement

The Commission emphasizes that there has not been, nor will there be, enforcement of the guidelines as such. Even once the guidelines become final they will not be treated as mandatory requirements which must be followed by manufacturers. A firm could follow a different but sound and scientifically supportable analysis to determine whether a product presents a chronic hazard.

However, the Commission has enforced, and will continue to enforce, the FHSA requirements that a household product that is or contains a hazardous substance must be appropriately labeled to advise of the hazard. In addition, the Commission has sought to enforce the specific, and largely procedural, requirements that LHAMA mandated for art materials. During 1991, the Commission staff contacted all known manufacturers and repackagers of art materials to advise them of the procedural requirements of LHAMA which went into effect on November 18, 1990. In 1992, inspections are being made of firms that have not given some indication of compliance or if there is some other reason to suspect noncompliance. When firms are found with products or practices that are not in compliance, they will normally be given the opportunity to voluntarily make the necessary corrections. Only when a firm has demonstrated a refusal to cooperate voluntarily would legal action be sought to obtain compliance.

VI. The Chronic Hazard Guidelines

A. General

1. Toxicity and Exposure

As explained earlier, the definition of "hazardous substance" requires both that the substance fall into one of the designated hazard categories, in this case that of "toxic," and that the substance "may cause substantial personal injury or illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." Any of the chronic hazards, including but not limited to cancer, neurotoxicity, or developmental or reproductive toxicity addressed by this notice constitute "substantial personal injury or illness." In order to determine whether a product should be regarded as a hazardous substance, one must determine not only that the product has the potential to be toxic, but that in any customary or reasonably foreseeable handling or use persons are exposed to the toxic component(s) in a way that presents a significant risk of the substantial adverse health effect potentially associated with the product. This latter factor can be considered to reflect the person's exposure to the toxic component or the bioavailability of the component.

2. Nature of the Guidelines

Except as specifically noted, the current scientific knowledge concerning chronic hazards is insufficient to allow the guidelines to specify criteria that can be mechanically applied to determine whether a product is toxic. Interpretation of certain points in the guidelines will likely require expert knowledge and the application of professional judgment. Thus, the guidelines do not present a simple blueprint into which a given set of facts may be inserted to receive a certain determination. Rather, careful expert judgment must be used. If questions arise concerning matters not clarified by these guidelines, guidance may be obtained from previous Commission toxicity, exposure, and risk assessments; or from the Commission's Directorate for Health Sciences.

These guidelines contain a number of assumptions, methodologies, and procedures for determining chronic hazard and risk. While these are currently the most scientifically justified choices in the opinion of the Commission, the Commission recognizes that new data and methodologies continue to be developed. Accordingly, all default assumptions (i.e., numerical factors to be used in the absence of data for the particular substance or circumstance) contained in the following sections on hazard and risk determination may be replaced as new data become available.

In determining whether a substance should be regarded as hazardous all available scientific evidence should be considered. However, the guidelines do not require any additional laboratory tests to determine toxicity or exposure.

A condensed version of the guidelines will appear at 16 CFR 1500.135. A supplemental definition of "toxic" that defines chronic toxicity will appear at 16 CFR 1500.3(c)(2)(ii). The guidelines summarize discussions contained in documents prepared by the Commission's Directorate for Health Sciences. This preamble is also drawn from the backup documents and is intended to aid in interpretation of the guidelines. Copies of the backup documents are available at the Commission's Office of the Secretary, Consumer Product Safety Commission, room 428, 5401 Westbard Avenue, Bethesda, Maryland.

B. Carcinogenicity

1. Introduction

This section discusses the chronic hazard guidelines concerning carcinogenicity. The guidelines for determining chronic hazards by reason of carcinogenicity are especially needed because of (1) the long latency period between the initial exposure to a carcinogen and the appearance of tumors, (2) the fact that humans are exposed to multiple carcinogenic agents during the latency period under generally uncontrolled conditions (and other factors discussed below), and (3) the controversies that have surrounded the conditions under which tests showing a carcinogenic response in animals should be considered relevant to human risk. These factors make it impossible to demonstrate conclusively that such substances are human carcinogens. Nevertheless, considerable agreement exists in the scientific community as to the nature and amount of evidence that should exist in order to conclude that a substance is a likely human carcinogen.

The intent of the guidelines is to incorporate those areas where there is a substantial consensus as to the evidence needed to support a conclusion that a substance is a likely human carcinogen. For substances where the available evidence does not meet this standard, or where there is controversy about how the evidence should be evaluated, the Commission may proceed by rulemaking, as provided in section 3(a) of the FHSA, or by enforcement actions on a case-by-case basis to resolve the question of whether the substance presents sufficient evidence of an ability to be carcinogenic in humans that the substance should be considered toxic.

Evidence for carcinogenicity largely comes from two sources: Human studies (epidemiology) and animal studies (long-term carcinogen bioassay). Epidemiology is a broad medical science that deals with the incidence,

distribution, and control of disease in a population. Results from these epidemiologic and animal studies are supplemented with available information from short-term tests, pharmacokinetics (absorption, distribution, metabolism, and elimination of substances), and other relevant toxicological data. The guidelines would evaluate the toxicity of a substance on the basis of potential carcinogenicity by evaluating the available human and animal data. Under the guidelines, substances for which "sufficient evidence" exists to demonstrate carcinogenicity from studies in humans would be considered to be toxic. In addition, those substances for which there is "limited evidence" of carcinogenicity in humans or "sufficient evidence" of carcinogenicity in animals are considered toxic, except that evidence derived from animal studies that has been shown not to be relevant to humans is not included.

As noted above, it will be necessary to continue to rely on rulemaking under section 3(a) of the FHSA, or on enforcement actions, to resolve uncertainties that are not addressed by these guidelines. In this regard, the Commission is aware that the criteria stated in the guidelines do not lend themselves to a mechanical application. A number of the criteria include statements that themselves can be applied to particular chemicals only by the exercise of expert technical judgment. For example, one of the factors stated below for determining that an epidemiological study shows a causal relationship between exposure to an agent and cancer is that all possible confounding factors which could account for the observed association are eliminated after consideration. Expert technical judgment is required to identify possible confounding factors and to evaluate whether the available data are adequate to eliminate the factors as causes of the observed association. In some instances, this determination will not be straightforward. In these cases, the guidelines will not resolve the controversy, and it may be appropriate for the Commission to conduct rulemaking to resolve the controversy, or to bring enforcement actions in which the toxicity of the substance would be established on a case-by-case basis.

Although there are many difficult issues related to the interpretation of cancer studies in animals and humans, criteria for defining carcinogenicity have been established by several groups, such as the International Agency for Research on Cancer (IARC), the American National Standards Institute (ANSI), and the U.S. Environmental Protection Agency (EPA)

The following discussion explains the scientific principles and evidentiary approach upon which a determination that a substance is a "sufficient evidence" human or animal carcinogen or a "limited human evidence" carcinogen would be based. The criteria that are commonly used to evaluate the evidence derived from human and animal carcinogenesis data outlined in the following sections are similar to those of IARC and EPA, except for a few differences that are explained below.

2. Assessment of Evidence for Carcinogenicity from Studies in Humans.

a. *Discussion.* Epidemiological studies are the only direct means of assessing carcinogenicity of a substance in humans (the Office of Science Technology Assessment and Policy (OSTP), 1985, Principle # 15). Epidemiologic data are obtained from occupational, therapeutic or consumer exposure to a substance. These studies can provide sufficient evidence for a causal hypothesis (such as that between cigarette smoking and lung cancer) and compelling reasons for prevention of a health hazard (OSTP, 1985, p. 10421). They examine both the distribution of a disease using descriptive studies (correlational approaches) and determinants of a disease using analytical studies (case control and cohort methods) (OSTP, 1985, Principles ##16 & 17, p. 10377).

A good quality epidemiological study should have a clear and detailed description of the study population, disease, and exposure. The design of the study should have dealt with bias and confounding factors that can influence the risk of disease by matching, or the analysis should have dealt with bias and confounding factors by statistical adjustments (IARC, 1987, Suppl. 7, p. 26). The study should describe the determination of statistical parameters, such as relative risk, odds ratio, absolute disease rate, confidence intervals, significance tests, and adjustments made for confounding factors. The study should also describe the selection and characterization of exposed and control population, the adequacy of duration, the quality of follow up, and the identification of bias and confounding factors. A causal relationship is strengthened by the observation of a dose-response relationship, the consistency and reproducibility of results, the strength and specificity of the association, the mechanism of action, and other considerations (OSTP, 1985, p. 10421).

In assessing the strength of epidemiological studies, it is necessary to take into account the possible role of bias, confounding factors, and chance (IARC, 1987, Suppl. 7, p. 26; OSTP, 1985, Principle #18, p. 10377). "Bias" means that the operation of certain factors in the design and execution of a study lead erroneously to a stronger or weaker association between an agent and the disease than in fact exists. Confounding factors are factors associated with a test agent which create a situation in which the relationship between the test agent and a disease is made to appear stronger or weaker than it truly is as a result of the association between the confounding agent(s) and the test agent. Chance relates to the statistical significance of the observed causal association between the exposure to the agent and the development of the disease. This is ascertained by proper statistical analysis of the data. The statistical power of a study depends upon the size of the study group, the number of subjects exposed, and the level of excess risk which is required to be detected (OSTP, 1985, p. 10423).

The common problems encountered in epidemiological studies involving chemicals are: Long latent periods that exist between exposure to a carcinogenic agent and the development of cancer; inability to control for confounding risk factors; exposures to mixtures of chemicals; frequent absence of appropriate groups from the study; and difficulty in obtaining accurate and unbiased historical exposure assessment, disease ascertainment, and direct detection of relatively low level cancer risk (OSTP, 1985, p. 10424). These studies are inherently capable of detecting only comparatively large increases in the relative risk of cancer. Negative results even from high quality epidemiological studies cannot prove the absence of an association between the carcinogenic effect and the exposure (OSTP, 1985, Principle # 19, p. 10377). However, a well-designed and conducted epidemiological study with well-defined and usable exposure data can be used to assess upper limits of risk. Such a study is especially useful in this regard if there is animal evidence from well-conducted studies to show that the agent is potentially carcinogenic in humans (EPA, 1986, p. 33996).

The criteria stated below for assessing the evidence of carcinogenicity derived from human studies agree with those outlined by EPA, except that the "No Data Available" and the "No Evidence of

Carcinogenicity" classifications are deleted because they are not necessary for the purpose of determining toxicity. The criteria also agree with those of IARC, except that the "Evidence Suggesting Lack of Carcinogenicity" classification is deleted for the same reason, and the criteria suggested below include life-threatening benign tumors in the evaluation of human studies for the purpose of protecting public health. In this regard, the Commission agrees with EPA's position on benign tumors, because the threat to life is the most important consideration in health risk evaluations. Benign tumors could be life threatening if they are critically located, such as brain tumors (gliomas), which can compress and destroy the surrounding brain tissue, or tumors located in endocrine glands (hormone producing glands, like the pancreas, or pituitary), which can cause an imbalance of critical hormones.

The American National Standards Institute (ANSI, Z129.1–1988) did not specify criteria for the evidence of carcinogenicity derived from epidemiological studies but made use of epidemiological data in its overall categorization of carcinogens.

A causal relationship between exposure to an agent and cancer is established if one or more epidemiological investigations that meet the following criteria show an association between cancer and exposure to the agent: (1) No identified bias that can account for the observed association has been found on evaluation of the evidence; (2) all possible confounding factors which could account for the observed association can be ruled out with reasonable confidence, and (3) based on statistical analysis, the association has been shown unlikely to be due to chance.

b. *Categories of human evidence.* The following categories of evidence from human studies have been developed.

i. Sufficient evidence of carcinogenicity in humans. The evidence is considered sufficient when all three of the above criteria for establishing a causal relationship between exposure to the agent and development of cancer are fully met. Evidence in this category would establish that a substance is toxic.

ii. Limited evidence of carcinogenicity in humans. The evidence is considered limited for establishing a causal relationship between exposure to the agent and cancer when a causal interpretation is credible, but chance, bias, or other confounding factors could not be ruled out with reasonable confidence. Evidence in this category would establish that a substance is toxic.

iii. Inadequate evidence of carcinogenicity in humans. The evidence is considered inadequate when all of the above three criteria for establishing a causal relationship between exposure to the agent and cancer are not met, leaving an alternative explanation to be equally likely. Evidence in this category is insufficient to establish that a substance is toxic, but does not imply that non-carcinogenicity has been proven.

3. Assessment of Evidence for Carcinogenicity in Animals

a. *Relevance of animal data to humans.* In the absence of adequate human data, the next best source of evidence of the carcinogenicity of chemicals is animal data, which are considered relevant to humans for the following reasons. (1) Mechanistically, an induction of heritable changes in the cellular DNA is generally considered to be the first and major event in carcinogenesis, and DNA is chemically similar in humans and animals. (2) Several agents, *e.g.*, 4-aminobiphenyl, bis (chloromethyl) ether, diethylstilbestrol, melphalan, methoxalen plus ultraviolet radiation, mustard gas and vinyl chloride were first found to be carcinogenic in animal studies before they were found to be carcinogenic in human studies (IARC, 1987, Suppl. 7, p. 22). (3) Information evaluated by IARC shows that, out of the 44 agents for which there is "sufficient" or "limited" evidence of carcinogenicity to humans available, all 37 agents that have been tested adequately were found to produce cancer in at least one animal species. Based on this observation, IARC stated: "Although this association can not establish that all agents that cause cancer in experimental animals also cause cancer in humans, nevertheless, in the absence of adequate data on humans, it is biologically plausible and prudent to regard agents for which there is sufficient evidence (see p. 30) of carcinogenicity in experimental animals as if they presented a carcinogenic risk to humans." (IARC, 1987 Suppl. 7, pp. 22 & 30).

b. *Factors in the consideration of animal data.* Animal studies to determine the carcinogenicity of an agent involve both exposure of laboratory animals to the agent for a long period of time (several months to the entire life span) and histopathologic examination of the animals at the end of the study to detect an exposure-related increase in tumor incidence. Criteria for assessing the quality and adequacy of animal studies have been discussed by various groups (OSTP, 1985; National Toxicology Program (NTP), 1984). A good animal study (carcinogen bioassay) requires consideration of a variety of factors. For example: (1) The species and strain of animals used in the study should have a sufficient historical data base; (2) animals should be disease free and kept under good housing conditions and animal care; (3) the number of animals/group/sex should be adequate; generally 50 or more animals of each sex/group should be used; (4) animals should be randomly distributed in the groups; (5) dose levels selected should be adequate; at least one of the doses should be close to the maximum tolerated dose (MTD); doses in excess of the MTD may lead to increased mortality excessive toxicity, or other unphysiologic conditions not considered desirable in a carcinogen bioassay (OSTP, 1985, p. 10413, Principle #4, p. 10376); and (6) exposure duration and frequency should be adequate (daily exposure by oral or inhalation routes for a two-year period is generally used in rodents) (NTP, 1984).

Other factors associated with a good animal cancer bioassay or study that must be considered in assessing the evidence are: (1) Whether data collection and reporting are complete and clear, (2) whether routes, exposure patterns, and possible mechanisms of cancer induction are relevant to the human situation, *e.g.*, tumor development only at the site of transplant or injection of a material, or bladder tumors in the presence of bladder stones (OSTP, 1985, p. 10414; Principle # 4, p. 10376), (3) whether metabolic-pharmacokinetic properties are affected, and whether pathways required for activation of the agent to produce cancer are lacking in humans; if humans do not have the same metabolic pathway found necessary in the test animal for the carcinogenic effect, the evidence may not be relevant to humans, (4) results of short-term *in vivo* and *in vitro* tests provide additional information concerning a judgment of carcinogenicity of a chemical (OSTP, 1985, Principle #5, p. 10376), and (5) whether the methods used for statistical analysis are clearly stated and are generally accepted techniques for analyzing carcinogen bioassays (IARC, 1987, Suppl. 7, p. 26; OSTP, 1985, p. 10417).

The confidence in evidence of carcinogenicity derived from animal studies increases: With an increase in the number of responding species, strains, sites, dose levels, experiments, or unusual tumor types; with the

increase in the statistical significance of increased tumor incidence over controls; with dose-related increases in the proportion of malignant tumors and total tumors; and with shorter times between the start of chemical exposure and the onset of the tumor.

Benign tumors in experimental animals frequently represent a stage in the evolution of malignant neoplasms, but they may be endpoints that do not readily undergo transition to malignancy (IARC, 1987, Suppl. 7, p. 23; OSTP, 1985, p. 10416). However, if an agent is found to induce only benign neoplasms, it should be suspected of being a carcinogen and it requires further investigation. Consistent with this observation is a recent review of over 300 National Toxicology Program (NTP) cancer bioassays which found only a few chemicals (3%) causing only benign tumors (Huff, 1989). Thus, when benign tumors occur together with malignant tumors from the same cell type in an organ or tissue, the benign tumors should be combined with the malignant tumors for evaluating the carcinogenic effect (OSTP, 1985, principle 8, p. 10376; see McConnell et al., 1986 for guidelines for combining benign and malignant tumors).

In evaluating carcinogenicity studies, tumor data at sites with high background rates, such as testicular, pituitary, and mammary tumors in certain strains of rats and lung and liver tumors in certain strains of mice, may require special consideration (OSTP, 1985, p. 10417; principle #9, p. 10377). For example, in the case of the male $B6C3F_1$ mouse (which has a high background of liver tumors), if the only tumor response is the increase in liver tumors in males, the evidence will normally be considered "sufficient" evidence of carcinogenicity if the other criteria of "sufficient" evidence as outlined in the following section (such as, tumor response in another strain, species, or experiment) are met. However, the determination could be changed on a case-by-case basis to "limited evidence" if the liver response or other high background response is necessary for the original "sufficient evidence" determination but consideration of certain factors, stated below, relating to the high background response support such a change. Factors to be considered are: (1) The tumor incidence is increased only in the highest dose, and/or only at the end of the study; (2) the proportions of malignant tumors are not substantially increased in a dose-related manner; (3) the tumors are predominantly benign; (4) shortening of the time to the appearance of tumors did not occur in a dose-related manner; (5) negative or inconclusive results are obtained from a spectrum of short-term tests for mutagenic activity; and (6) excess tumors are found to occur only in a single sex (EPA, 1986).

c. *Comparison with EPA criteria.* The guidelines concerning carcinogenicity derived from evidence from animal studies agrees with criteria promulgated by EPA, except for the following differences.

i. The "No Data Available" and the "No Evidence of Carcinogenicity" classifications of EPA are not used because they are not necessary for the purpose of assessing the toxicity of consumer products. CPSC does not maintain an inventory of chemicals, as EPA does for all chemicals in commerce (except for drugs, food additives, and cosmetics), and therefore such categories are not needed.

ii. An increased incidence of benign tumors, with an indication that the tumors have the ability to progress to malignancy, is included as a contributing response in the criteria for "sufficient evidence" of carcinogenicity. Such evidence of carcinogenicity would not be treated this way by EPA's criteria. The Commission, after careful review of the available studies, has concluded that if a benign tumor is known to have the potential to progress to malignancy, then for all practical purposes the tumor should be considered to have the same potential health risk as if it is a malignant tumor. In addition, benign tumors in experimental animals frequently represent a stage in the evolution of a malignant tumor, as stated earlier.

iii. Increased tumor incidences at independent multiple sites of origin in the same species and study are considered as separate responses. Such evidence would be considered as a single response by the EPA's criteria. The Commission believes that the ability of a chemical to independently produce tumors at multiple sites indicates that it has a wide range of carcinogenic potential, similar to such an indication from responses in multiple strains, species, or experiments.

d. *Comparison with IARC's criteria.* The consideration of carcinogenicity derived from animal studies is also in agreement with that formulated by IARC, with the following exceptions.

i. The "Evidence Suggesting Lack of Carcinogenicity" classification is deleted since it is not necessary for the purpose of determining toxicity.

ii. According to IARC's criteria, increases in incidence rates of certain neoplasms that are known to have high background rates could be viewed as a "limited evidence," as opposed to a "sufficient evidence," classification. EPA's criteria, on the other hand, provide that such evidence should contribute to the "sufficient evidence" determination, which could be changed to "limited evidence" on a case-by-case basis, depending upon the specific information as described above in the section dealing with tumor data at sites with high background rates (EPA, 1986). The Commission, after careful review of available data, concludes that EPA's criteria provide a more thorough analysis of whether the high background rate of tumors is confounding the observed correlation between exposure and cancer.

iii. An increased incidence of benign tumors only, with an indication of the ability of the tumors to progress to malignancy, would contribute to the "limited evidence" classification by IARC's criteria. However, such evidence is viewed by the Commission as a contributing response in the criteria for "sufficient evidence" of carcinogenicity, for the reasons described above in section B.3.c.(ii) discussing how the criteria differ from EPA's classification scheme.

iv. Increased incidence of tumors at independent multiple sites of origin in the same species and study are treated as discussed above in section B.3.c.(iii) concerning differences from EPA's classification scheme. IARC's approach is similar to that of EPA's.

e. *ANSI definitions.* ANSI Z129.1 (1988) did not specify criteria for the evidence of carcinogenicity derived from animal studies, but it made use of animal data in its overall definitions of carcinogenicity.

f. *Categories of animal evidence.* Based on current information, the Commission concludes that the following classifications represent the best scientific assessment and are most appropriate to classify the evidence derived from animal cancer bioassay studies.

i. Sufficient evidence of carcinogenicity in animals. "Sufficient evidence" of carcinogenicity requires that the substance has been tested in well-designed and -conducted studies (*e.g.*, as conducted by National Toxicology Program, or consistent with the OSTP guidelines) and has been found to elicit a statistically significant ($p<0.05$) exposure-related increase in the incidence of malignant tumors, combined malignant and benign tumors, or benign tumors if there is an indication of the ability of such benign tumors to progress to malignancy: (a) in one or

both sexes of multiple species, strains, or sites of independent origin or in experiments using different routes of administration or dose levels; or (b) to an unusual degree in a single experiment (one species/strain/sex) with regard to unusual tumor type, unusual tumor site, or early age at onset of the tumor. The presence of positive effects in short-term tests, dose-response effects data, or structure-activity relationships are considered additional evidence. If evidence of carcinogenicity in animals is sufficient, the substance will be considered toxic, in the absence of adequate conflicting data.

ii. Limited evidence of carcinogenicity in animals. "Limited evidence" of carcinogenicity means that the substance has been tested and found to cause any of the following: (a) a statistically significant ($p<0.05$) exposure-related increase in malignant, benign, or combined malignant and benign tumors in one or both sexes of only one species, strain, and site and such evidence otherwise does not meet the criteria defined for "sufficient evidence" in the above section; (b) evidence derived from studies which can be interpreted to show positive carcinogenic effects but which have some qualitative or quantitative limitations with respect to particulars, such as doses, exposure, followup, survival time, number of animals/group, or reporting of the data, which would prevent consideration of the evidence as "sufficient" (category i above); or (c) an increase in the incidence of benign tumors if there is no indication of the ability of the tumors to progress to malignancy. If only "limited" animal data exist for a substance, the substance will not be considered toxic under the definition on the basis of the limited animal data.

iii. Inadequate evidence of carcinogenicity in animals. "Inadequate evidence" of carcinogenicity includes that evidence which cannot be placed into "sufficient" or "limited" categories, or which is derived from poorly conducted studies with major qualitative and quantitative limitations, such as inadequate doses, too few animals/group, poor survival, or inadequate reporting, so that there can be no interpretation of the data as showing either the presence or absence of a carcinogenic effect. Data in this category do not establish a substance as toxic.

C. Neurotoxicity

1. Introduction.

This section discusses "neurotoxicity" for purposes of providing guidelines concerning neurotoxicity. The discussion presents a synopsis of criteria for the determination of the neurotoxicity of substances based on animal or human data. All neurotoxic effects, except those immediate effects which are rapidly and completely reversible following a short-term exposure, are considered chronic effects in the guidelines.

This discussion reflects the Commission's assessment of the most current scientific knowledge and consensus in this field (WHO, 1986; EPA, 1985; Spencer and Schaumburg, 1985; Hartman, 1988; OTA, 1990). For substances where the available evidence does not meet this standard, or where there is controversy about how the evidence should be evaluated, the Commission may proceed by rulemaking, as provided in section 3(a) of the FHSA, or by enforcement actions on a case-by-case basis to resolve the question of whether the substance presents sufficient evidence of an ability to be neurotoxic in humans that the substance should be considered toxic.

Test methods to determine certain neurotoxicity endpoints (manifestation of a neurotoxicological effect) are available (Anger, 1985, 1986, 1989; Baker, *et al.*, 1990; Johnson and Anger, 1983; Hartman, 1988; Tilson, 1989; EPA, 1985; WHO, 1986). Several federal agencies regulating toxic substances and drugs have guidelines to evaluate neurotoxicity as a part of acute and chronic toxicity testing and safety evaluation. The EPA has published neurotoxicity test guidelines (EPA, 1985) and is currently developing neurotoxicity risk assessment guidelines.

The U.S. National Institute of Occupational Safety and Health (NIOSH) has recommended national strategies for the prevention of neurotoxic disorders (NIOSH, 1988). NIOSH has listed 65 historically established human neurotoxic agents, major sources of exposure to them, neurotoxic effects associated with various agents, and chemicals for which neurobehavioral effects have been reported.

Evidence of neurotoxicity is evaluated by the quality and adequacy of the data and consistency of responses induced by a suspect neurotoxicant. Criteria to evaluate evidence derived from human and animal neurotoxicity data and the associated terminology outlined in the following sections are based on those of the World Health Organization (WHO), NTP, EPA, and NIOSH.

Evidence for neurotoxicity comes largely from human studies and animal studies. The guidelines would evaluate the toxicity of a substance on the basis of potential neurotoxicity based on available human and animal data. Under the guidelines, substances would be considered to be toxic if "sufficient evidence" or "limited evidence" exists to demonstrate neurotoxicity from studies in humans. In addition, those substances for which there is "sufficient evidence" of neurotoxicity in animals are considered toxic except that evidence derived from animal studies that has been shown not to be relevant to humans is not included.

The criteria in these guidelines are not intended to be mechanically applied, but rather should be interpreted with the exercise of expert technical judgment.

a. *Definition of neurotoxicity.* Neurotoxicity is any adverse effect on the structure or function of the nervous system by any substance, physical, chemical or biological in nature. The term "adverse effect" as used here means any undesirable effect on the nervous system caused by direct or indirect actions on the nervous system following acute, subchronic, or chronic exposures. The effect may be immediate or delayed, reversible or irreversible.

Characteristics of "adverse effects" include the following: (1) Side effects (unwanted effects) or effects due to overdosing; (2) functional or structural responses in the nervous system that promote compensation to restore normal function; or (3) any alteration from baseline (the individual's particular normal state), although still within "normal" range, which may diminish the ability to survive, undergo repair, or adapt to the environment. This definition includes chemicals that act directly on elements within the nervous system, such as glutamate which directly stimulates receptors, or indirectly, such as carbon monoxide which decreases the availability of oxygen.

"Adverse effects" must be considered within the context of agent usage and exposure scenario (ICON, 1990).

b. *The nervous system: Background and definition.* Effects on the nervous system will be considered in relation to the two major anatomical divisions: central and peripheral. The central nervous system consists of the parts of the nervous system contained within the skull (brain) and the vertebral column (spinal cord). The peripheral nervous system consists of nerve cells (neurons)

and their processes (axons, dendrites) which conduct information between muscles, glands, sense organs, and the spinal cord and brain. The peripheral nervous system includes afferent (sensory) and efferent (motor) fibers; both types of fibers are represented in the components of the nervous system (WHO, 1986).

Basic cellular elements of the nervous system are neurons, glial cells associated with blood vessels, and other specialized epethelial and connective tissue cells (WHO, 1986). Neurons contain multiple short processes, called dendrites, which receive information from other nerve cells, and a single long axon that conducts electrical signals to other neurons and muscles, and to and from skin, muscles, and glands. The axon terminates at a synapse where chemically-encoded information is conveyed to neurons or muscles. Glial cells in the central nervous system comprise the supporting structure of nervous tissue.

Neurons are atypical cells because the dendrites and the axon are metabolically inactive and collectively are much larger than the cell body (somata), which alone is responsible for all the metabolic activity required for maintenance of the entire cell (WHO, 1986). The structure of neurons provides an enormous surface area for chemical exposure, and consequently, chemical injury. For example, a peripheral neuron located in the lumbar portion of the spinal cord and innervating a muscle in the foot is about a meter long and contains a long column of cytoplasm.

Some chemicals may interfere in the maintenance of this cytoplasm column by, for example, interrupting transportation of nerve impulses along the axon. In this way a chemical such as n-hexane, and n-methylbutyl ketone may affect the nervous system. Chemicals such as triethyl tin may induce changes in the metabolic system of the somata, which may then cause degenerative changes in the entire neuron. A chemical such as triethyl tin, hexachlorophene, or lead, may alter myelinating cells (myelin is a fatlike substance forming a sheath around certain nerve fibers), cytoplasmic processes, or the myelin sheath, thereby causing neurotoxic effects. Intracellular elements of intraneural blood vessels may be altered by chemicals such as lead and misonidazole. Secondary changes may then occur in other tissues, such as voluntary muscles (WHO, 1986).

Several means exist for chemicals to enter the nervous system. Although the nervous system is largely protected from chemicals entering into nerve cells through blood, the blood-brain barrier is not complete. Some chemicals, especially the lipid soluble type, may still cross the barrier. Another mode of entry of chemicals is by uptake into peripheral nerve terminals. The chemical is then transported to the cell bodies in the CNS through the axon. Parts of the nervous system such as neurons of the autonomic nervous system and the sensory ganglia, certain parts of the brain (*e.g.*, near the beginning of the spinal cord), and to a limited extent, the retina in the eye, are outside the blood-brain barrier and are likely to be more exposed to neurotoxic chemicals than are other parts (WHO, 1986).

Some other factors that may influence susceptibility to effects are the size and type of the nervous system cell, the level and type of the various neurotransmitters in different regions of the nervous system, the integrity of cellular membranes, the type of intracellular organelles, and the degree of vascularity (Baker, *et al.*, 1990). For example, a poorly vascularized (*i.e.*, has fewer vessels) nervous tissue, such as the globus pallidus, is likely to be more susceptible to hypoxia (abnormal condition resulting from decrease in oxygen supplied to or used by body tissue) than a more vascularized tissue of the nervous system, such as the cerebral cortex. However, in some cases where cells have a high requirement for oxygen, they may be more sensitive to hypoxia in spite of the high vascularization than less vascularized tissue having a low requirement for oxygen. For example, neurons of the grey matter of the cerebral cortex are more vascularized than the myelinated axons of the cerebral white matter. However, the neurons are more sensitive than the axons to hypoxia because they have a higher requirement for oxygen than the axons for metabolism.

c. *Manifestations of neurotoxicity.* Common manifestations of neurotoxicity may be categorized into four types: sensory effects, motor effects, autonomic effects, and pathophysiological effects (changes to the structure and function of nerve cells and tissue).

Common signs and symptoms of sensory effects include anxiety, irritability, apathy, lethargy, attention difficulty, illusion, delusion, hallucinations, dementia (mental deterioration), depression, euphoria, stupor (partial or nearly complete unconsciousness), and coma. Other signs and symptoms of sensory effects are abnormalities of (a) smell, vision, taste, hearing, skin senses (for example, numbness, pain); (b) proprioception (reception of information given by sensory nerve terminals concerning movements and position of the body; it occurs chiefly in the muscles, tendons, and the labyrinth).

Common signs and symptoms of cognitive effects include effects upon short-term memory, learning, verbal and non-verbal long-term memory, problem solving, attentional and arousal decrement and vigilance disturbances.

Common signs and symptoms of motor effects are muscle weakness, abnormal body posture or gait, paralysis, spasticity, rigidity, tremor, dystonia (abnormal muscle tone), incoordination, hyperactivity, myoclonus (alternate cycles of rigidity and spasm in rapid succession of a muscle or of a group of muscles), fasciculations (spontaneous contractions of a number of muscle fibers supplied by a single motor nerve filament), cramps, seizures, and convulsions.

Common signs and symptoms of autonomic effects are abnormalities in control of functions related to (a) temperature that may be manifested, for example, in sweating; (b) the gastrointestinal tract that may be shown in diarrhea, salivation, or a change in appetite; (c) the cardiovascular system, for example, a change in heart rate; and (d) changes in other functions, such as, urination, sexual functions, and lacrimation (tearing).

Common pathophysiological effects on the nervous system are as follows: (a) Neuronopathies (partial or complete loss of the neuronal cell body, its processes, collaterals, or terminations); (b) myelinopathies (segmental or focal demyelination which means destruction of myelin, a fatlike substance forming a sheath around certain nerve fibers); (c) axonopathies (axonal degeneration); (d) disruptions in synaptic transmission (synthesis, storage, degradation, transport, release, and binding to specific membrane receptors of neurotransmitter chemicals); (e) changes in levels and functions of ion channels (sodium and potassium ions responsible for depolarizing and repolarizing the membrane respectively) and changes in related enzymes such as neurotoxic esterases.

2. Evidence of Neurotoxicity: General Discussion

Evidence of neurotoxicity is derived from toxicological studies related to neurobehavior, neurochemistry, neuropathophysiology, and neurodevelopment in humans and in animals. Major objectives of a neurotoxicity study are to detect and

characterize toxicity endpoints, identify changes in the structure and function of the nervous system, characterize the changes associated with exposure, assess the existence of any dose-time-response association, and elucidate the mechanism of neurotoxicity (Hartman, 1988; WHO, 1986).

Neurobehavioral studies determine the effect of a chemical exposure based on observations of the behavioral functions of the subject. Some of the behavioral functions generally tested in these studies are motor speed and steadiness, attention/response speed, manual dexterity, visual perception/memory, auditory memory, verbal abilities, attention/vigilance, profiles of mood state, and respondent and operant behavior.

Neurochemical studies determine the effect of chemical exposure on changes in the level, activity, and pattern of neurotransmitter chemicals, such as acetylcholine, noradrenaline, dopamine, glycine, serotonin, and of enzymes like neurotoxic esterases.

Neuropathophysiolgical studies determine the effect of chemical exposure on the structure and function of the nerve tissues. Observed effects and types of studies include: (1) Degeneration, or demyelination of nerve tissues; (2) encephalography (electrical activity measurements of the brain); (3) evoked potential (electrical phenomena evoked in the brain by external activity such as auditory, visual, or somatosensory stimuli); (4) electromyography (recording electrical activity from a muscle); (5) electroneurography (measurement of both motor and sensory nerve conduction velocities); (6) temperature threshold; and (7) quantitative testing for cutaneous (skin) sensation.

Developmental neurotoxicity studies are concerned with adverse effects on the structure of the nervous system or on neurobehavioral functions related to physical growth and development (Wier, *et al.*, 1989).

Several major difficulties in determining neurotoxicity of chemicals exist. Problems may arise regarding the ability of the nervous system to conform with the immediate environment, due to the scientific community's incomplete understanding of the neurotoxic effects, due to interspecies differences in structure and complexity of functions, and due to a very wide range of normal neurological and physiological functions of the nervous system which can mask the ability to observe effects due to chemical exposure. Suitable methods are unavailable to detect changes with a reasonable degree of certainty in adaptive capacity of the nervous system, in homeostatic functioning, as well as in movement pattern, fatigue, and the ability to perform complex tasks. It is, therefore, clear that a single test may not suffice to detect neurotoxicity (WHO, 1986).

Evidence for neurotoxicity comes from two sources, namely, studies in humans and studies in animals. Results from these studies are evaluated in view of the available information on histopathology (changes in tissues), enzyme inhibition, metabolism, and other relevant toxicological data to determine if there is a causal association between exposure to a chemical and neurotoxicity.

3. Evidence of Neurotoxicity Derived From Studies in Humans

a. *Discussion.* Direct evidence of human neurotoxicity comes from observations of humans. A good quality human study should have a clear and detailed description of the studied population, disease, and exposure. A neurotoxicant can produce more than one neurotoxic effect including those related to sensory, motor, learning/memory, or mood activity. The history of occurrence of the effect should be relatively complete, and past events should be substantiated by medical records if possible. The design of the study should have dealt with bias and confounding factors that can influence the risk of disease by matching, or in the analysis by statistical adjustments. The study should describe the determination of statistical parameters, such as relative risk, odds ratio, absolute disease rate, confidence intervals, significance tests, and adjustments made for confounding factors. It should also describe the selection and characterization of exposed and control populations, size of the population groups, adequacy of duration, completeness, and quality of follow up. A causal association is strengthened by the observation of a dose-response relationship, consistency and reproducibility of results, strength and specificity of the association, and an established mechanism of action.

The evaluation of human neurotoxicity studies should consider many factors including: Age, sex, socioeconomic status, health, neurological disorders and other diseases, drug treatment history, recreational drug use, motivation of the test and reference groups, life style (alcohol, smoking, etc.), education level, individual levels of alertness, emotional state, and levels of sleep and fatigue. Tests should be blind and test sites free from distractions. Confounding factors to be considered in evaluation of these studies include allergic and idiosyncratic reactions. Other complex issues to be considered are: immediate versus delayed toxicity, reversible versus irreversible effects, local versus systemic effects, acute versus chronic effects, and tolerance development (Hartman, 1988; OTA, 1990; Anger, 1989; Jonson and Anger, 1983; Hooper, 1987).

Major difficulties encountered in studies in humans are the delayed neurotoxic effects, exposures to mixtures of chemicals, and the lack of information on the effects of acutely non-toxic low-dose levels of neurotoxicants over a long period of time.

b. *Evidence of neurotoxicity derived from studies in humans.* Since neurotoxic effects are very complex and often subtle in nature, scientific judgment is necessary in classifying the evidence. The confidence in evidence of neurotoxicity derived from human studies increases with the observation of a dose-response relationship, consistency and reproducibility of results, strength and specificity of the association, and conformance with an established mechanism of action.

i. Sufficient evidence of neurotoxicity. "Sufficient evidence" for a causal association between exposure to a chemical and neurotoxicity is considered to be present when the following four criteria are met. (1) A consistent pattern of neurological dysfunction is observed in multiple studies. (2) The adverse effects/lesions in the nervous system account for the neurobehavioral dysfunction with a reasonable degree of certainty. (3) All identifiable bias and confounding factors are discounted after consideration. (4) Based on statistical analysis, the association has been shown unlikely to be due to chance with reasonable certainty.

ii. Limited evidence of neurotoxicity. "Limited evidence" of neurotoxicity means that evidence is less than convincing, *i.e.*, one of the above "sufficient evidence" criteria for establishing a causal association is not met. Thus, uncertainties exist in establishing the association between exposure to a chemical and the neurotoxic effect.

iii. Inadequate evidence of neurotoxicity. "Inadequate evidence" of neurotoxicity means that evidence does not meet the criteria of the above two categories and that no interpretation of the data shows either the presence or absence of a chemical exposure-related neurotoxic effect.

4. Evidence of Neurotoxicity Derived From Studies in Animals

a. *General considerations.* In the absence of human data, the next best source of evidence of neurotoxicity is animal data which may be considered relevant to humans for the following reasons: (1) Anatomy, physiology, histology, and biochemistry of the nervous system in humans and mammals are essentially similar; (2) chemical agents first found to be neurotoxic in humans, such as methylmercury, carbon disulfide, n-hexane, methyl ethyl ketone, methyl butyl ketone, and dichloroacetaldehyde are also neurotoxic in animals; and (3) agents, like aluminum and pyridoxin phosphate (vitamin B6), first identified in animal studies as neurotoxic were later found to be neurotoxic in humans (WHO, 1986). In neurotoxicity studies, animals are dosed acutely, subchronically, or chronically. Neurotoxicity endpoints are studied using different test methodologies designed either to screen or investigate a mechanism of action of neurotoxicity, or to gather additional data.

Criteria for assessing quality and adequacy of animal studies have been discussed by various groups (WHO, 1986; EPA, 1985; Hartman, 1988; Tilson, 1987, 1989; OTA, 1990). The major factors indicative of a good quality animal study are the following. (1) Species, sex, age, health, housing conditions, and nutrition of the animals are suitable for the test. (2) The number of animals/group/sex are adequate. (3) Animals are randomly distributed in the groups. (4) Dose levels, duration, and frequency selected are adequate to detect the adverse neurotoxic effects. (5) Data collection and reporting are complete and clear. (6) Routes and exposure pattern are relevant to the human situation. (7) Test methods used for statistical analysis are appropriate, clearly stated, and are the generally accepted techniques for analyzing neurotoxicity studies (WHO, 1986; EPA, 1985; Hartman, 1988; Tilson, 1989; OTA, 1990).

A good quality animal study requires consideration of reliability, sensitivity, and validity of the results (Vorhees, 1987). Interpretation of neurotoxicity data should consider: (1) If the neurotoxic effects are caused by a single dose (such as cholinesterase inhibitors and pyrethrins); (2) if effects are reversible or irreversible (reversible effects may indicate compensation or adaptation rather than a simple acute effect); (3) if neurotoxicity is delayed; (4) if a threshold exists (effects may appear only after changes in the nervous system caused by repeated exposures have reached a threshold limit); and (5) if circadian rhythms may influence behavior, such as, feeding, drinking, sleeping, and mating (WHO, 1986).

b. *Categories of neurotoxicity studies.* Six common representative categories of neurotoxicity studies, with a few examples of test methods in each category, to determine various neurotoxicity endpoints are listed below.

i. Neurobehavioral studies are concerned with adverse effects of a chemical on the behavior of an organism. Behavior may be defined as movement of an organism or its parts within contexts pertaining to time and space. Behavioral responses typically have been divided into three types based on the functional relations that control their occurrence (WHO, 1986). These three types are respondent behavior, operant behavior, and mixed behavior.

Respondent behavior is controlled mainly or exclusively by the prior occurrence of an event (stimulus) in the environment. The events are referred to as eliciting stimuli. A classic example of unconditioned respondent behavior is a dog's salivation when food, an unconditioned stimulus, is placed in the dog's mouth.

Operant behavior is apparent exclusively from its consequences and is also referred to as emitted behavior. Operant behavior occurs with no known observable eliciting stimulus. For example, when an animal is exposed to a novel environment, it will show a characteristic pattern of exploratory activity initially, followed by a slowdown. The environment is not an eliciting stimulus. However, the motor activity is associated with the environment.

Some behavior, known as mixed behavior, is known to have both respondent and operant components. For example, bird pecks are controlled partly by eliciting stimuli and partly by response consequences.

Both respondent and operant behaviors may be modified by the conditioning (learning) process. For example, when food (a non-conditioning stimulus) is placed in a dog's mouth only after a special note is sounded (a conditioning stimulus) and the procedure is repeated for some time, the sound of the note alone starts inducing salivation, without placing food in the dog's mouth: a conditioned respondent behavior. A conditioned operant behavior occurs, for example, when a food-deprived rat is placed in a chamber with a food dispenser and a lever, and the depression of the lever results in presentation of food, then the consequence of the behavior (pressing the lever and presentation of food) comes to control the occurrence of the response.

Common neurobehavioral studies include detection and evaluation of changes in the following neurotoxicity endpoints: cognitive functions; eating and drinking behavior; social behavior involving two or more individuals; tremors, convulsions (threshold dose of convulsants is considered in view of other unrelated toxicity), ataxia (effects on muscular coordination), paralysis, lacrimation, and the presence and absence of certain reflexes; spontaneous motor activity; motor functions; and sensory processes.

ii. Neurophysiological studies basically measure various physiological functions; such as, (1) nerve conduction velocity, (2) peripheral nerve terminal function, (3) electromyographic activity, (4) spinal reflex excitability, (5) electrocardiographic activity (EKG), (6) blood pressure, (7) electroencephalographic activity (EEG), (8) general excitability, (9) convulsive activity, (10) stimulation of the cerebral motor cortex, (11) recovery functions, (12) cognitive functions, and (13) synaptic and membrane activity.

iii. Morphological studies assess structural changes in neural and non-neural cells of the nervous system. Such changes may include: (1) The accumulation, proliferation, or rearrangement of structural elements like intermediate filaments, microtubules, or organelles (*e.g.*, mitochondria, lysosomes); (2) the degeneration of neural cells in whole or in part; (3) gross changes in morphology of cells; (4) changes in brain weight; (5) discoloration of and hemorrhage in nerve tissue; and (6) changes in glial and fibrillary acidic protein (GFAP).

iv. Biochemical and endocrinological studies may include determination of changes in: (1) RNA, DNA, and protein synthesis in nerve cells; (2) enzyme levels; (3) lipids, glycolipids, and glycoproteins synthesis; (4) synthesis, uptake, release, reuptake, metabolism, stimulation and inhibition of acetyl choline, epinephrine, serotonin and other neurotransmitters; (5) ion channels and energy metabolism; (6) anterior pituitary hormones, *e.g.*, follicle stimulating hormone, thyrotropic hormone, hypothalamic control of pituitary secretions; and (7) peripheral metabolism of endocrine secretions.

v. Developmental neurotoxicity studies consist of a battery of tests to evaluate physical growth/

developmental and neurobehavioral functions. The tests given at the preweaning stage, for example, may include measuring brain weight and pup weight, and monitoring physical development at various intervals of time. Examples of the tests given at the postweaning stage are tests of sensory and neuromuscular functions, reactivity, problem solving, and neuroendocrine functions. (Wier, *et al* 1989). Neurotoxic agents may cause qualitatively different toxicity syndromes in developing animals than in adult animals.

vi. *In vitro* neurotoxicity studies may be used to support the animal studies. However, they are not considered adequate by themselves to classify neurotoxicants. These studies generally use primary cell cultures of various tissues, such as adult mouse sensory neurons, rodent fetal cells, and cerebellar cells. The studies may also use free-living soil nematodes, *e. g., caenorhabditis elegans,* and various microorganisms (Harvey, 1988; Reinhartz, *et al.,* 1987; Davenport *et al.,* 1989; Williams, *et al.,* 1987).

vii. Other studies may include studies dealing with pharmacokinetics, blood-brain barrier, bioavailability, and structure-activity relationships.

c. *Classification of neurotoxicity evidence derived from studies in animals.* Because of the complex and often subtle nature of the neurotoxic effects, scientific judgment is necessary in classifying neurotoxicity evidence. The confidence in evidence of neurotoxicity derived from animal studies increases (becomes convincing) with (1) an increase in the number of responding species, strains, dose-levels, experiments, severity and multiplicity of effects; (2) the observation of a dose-response relationship, consistency and reproducibility of results, and specificity and strength of the association; (3) supportive *in vitro* and other studies; and (4) an increase in statistical significance of neurotoxic effects over controls.

1. Sufficient evidence of neurotoxicity. "Sufficient evidence" for a causal association between exposure to a chemical and neurotoxicity means that (1) the substance has been tested in well-designed and -conducted studies (*e.g.,* NTP's neurobehavioral test battery, Tilson 1989; EPA's neurotoxicity test guidelines, EPA, 1985), and (2) the substance has been found to elicit a statistically significant ($p < 0.05$) increase in any neurotoxic effect in one or both sexes of multiple species, strains, or experiments using different routes of administration and dose-levels.

Evidence derived from animal studies that has been shown not to be relevant to humans is not included. Such evidence would result, for example, when there was an identified mechanism of action for a chemical that causes neurotoxicity in animals that has been shown not to apply to the human situation. For example, metabolic-pharmacokinetic properties concerning the need for activation of the agent to produce neurotoxicity may come into play. If humans do not have the same metabolic pathway found necessary in the test animal for the neurotoxic effect, then the study may not be relevant to humans.

ii. Limited evidence of neurotoxicity. "Limited evidence" of neurotoxicity means that the substance has been tested and (1) found to cause a statistically significant ($p < 0.05$) increase in a neurotoxic effect in one or both sexes of only one species, strain, and experiment and such evidence otherwise does not meet the criteria defined for "sufficient evidence" above; or (2) evidence derived from studies which can be interpreted to show positive neurotoxic effects, but have some qualitative or quantitative limitations with respect to particulars, *e.g.,* doses, exposure, follow-up, number of animals/group, and reporting of the data, which would prevent classification of the evidence as "sufficient" in the category above.

iii. Inadequate evidence of neurotoxicity. "Inadequate evidence" of neurotoxicity means that evidence does not meet the criteria of the above categories and that there can be no interpretation of the data as showing either the presence or absence of a chemical exposure-related neurotoxic effect. Data in this category would not establish a substance as toxic under the guidelines.

D. Reproductive and Developmental Toxicity

1. Introduction

a. *General discussion.* This section discusses the guidelines concerning reproductive and developmental toxicity. Section 2(g) of the FHSA defines toxic as applying "to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." 15 U.S.C. 1261(g).

The Commission is issuing these guidelines to specify criteria that will offer consistent guidance for identifying developmental or reproductive toxicants. This guidance reflects the Commission's assessment of the most current scientific knowledge and consensus in this field.

The intent of the guidelines is to incorporate those areas in which there is a substantial consensus as to the evidence needed to support a conclusion that a substance is a likely human developmental or reproductive toxicant. For substances where there is controversy about how the evidence should be evaluated, the Commission may proceed by rulemaking, as provided in section 3(a) of the FHSA, or by enforcement actions on a case-by-case basis to resolve the question of whether the substance presents sufficient evidence of an ability to produce developmental or reproductive toxicity in humans so that the substance should be considered toxic.

Evidence for developmental or reproductive toxicity largely comes from two sources: Human studies (epidemiology) and animal studies. Results from these studies are supplemented with available information from short-term tests, pharmacokinetics, and other relevant toxicological data. The guidelines issued by the Commission evaluate the toxicity of a substance on the basis of developmental or reproductive toxicity based on human and animal data. Under the guidelines, substances would be considered to be toxic if "sufficient evidence" or "limited evidence" exists to demonstrate developmental or reproductive toxicity from studies in humans. In addition, those substances for which there is "sufficient evidence" of developmental or reproductive toxicity in animals are considered toxic, except that evidence derived from animal studies that has been shown not to be relevant to humans is not included.

As noted above, it will be necessary to continue to rely on rulemaking under section 3(a) of the FHSA, or on enforcement actions, to resolve uncertainties that are not addressed by these guidelines. In this regard, the Commission notes that the criteria stated in the guidelines do not lend themselves to unambiguous application. A number of the criteria include statements that themselves can be interpreted only by the exercise of expert technical judgment. For example, one of the factors stated below for determining that an epidemiological study shows a causal relationship between exposure to an agent and developmental or reproductive toxicity is that confounding factors such as socioeconomic status, age, smoking, alcohol consumption, drug use, environmental or occupational exposure, and other diseases should be

adjusted for. Expert technical judgment is required to identify possible confounding factors and to evaluate whether the available data are adequate to eliminate such factors as causes of the observed association. In some instances, this will not be straightforward. The guidelines will not resolve such controversy, and it may be appropriate for the Commission to conduct rulemaking to resolve the controversy or bring enforcement actions in which the toxicity of the substance would be established on a case-by-case basis.

Although there are many difficult issues related to the interpretation of developmental or reproductive toxicity studies in animals and humans, criteria for defining developmental or reproductive toxicity have been established by several groups, such as the Food and Drug Administration (FDA), the EPA, and the European Economic Community (EEC). The Commission also believes that this approach for defining known or potential developmental or reproductive toxicants in consumer products is appropriate and feasible. The evidence of developmental or reproductive toxicity is determined by the quality and adequacy of the data and the consistency of responses induced by a suspect developmental or reproductive toxicant.

The following paragraphs describe definitions and terminology used in this section and suggest guidelines for identification and classification of reproductive and developmental toxicants. These guidelines may be used as a basis for labeling of consumer products under the FHSA.

b. *Definitions and terminology.* For these guidelines, the following definitions and terminology will be used. Some of these definitions were adapted from EPA (1988a), EPA (1988b), EPA (1989), and the Medical Dictionary by Saunders (1985).

Altered growth: An alteration in offspring organ or body weight or size.

Blastocyst: A structure resulting from the repeated divisions of the fertilized ovum.

Conceptus: The whole product of conception at any stage of development from fertilization of ovum to birth.

Developmental toxicity: Adverse effects on the developing organism that may result from its exposure during prenatal development, or postnatally to the time of sexual maturation. The adverse developmental effects may be detected at any point in the life span of the organism. The major manifestations of developmental toxicity include: (1) Death of the developing organism, (2) structural abnormalities, (3) altered growth (4) functional deficiencies, and (5) behavioral deficiencies.

Embryo: Developing young in the human uterus before eight weeks. The time period varies from one species to another in animals.

Embryotoxicity: Any toxic effect on the embryo as a result of prenatal exposure. These include malformations, altered growth and in utero death.

Epididymis: The elongated cordlike structure along the posterior border of the testis, containing ducts in which sperm are stored.

Estrogen: A female sex hormone secreted by the ovary.

Estrous cycle: The cycle of changes in the female genital tract of lower mammals, which are produced as a result of ovarian hormonal activity. It is equivalent to the menstrual cycle in humans and other primates.

Female reproductive toxicant: An agent which can adversely affect the ability of a sexually mature female to produce normal offspring.

Fertility: The capacity to conceive or induce conception.

Fertilization: The fusion of a sperm with an ovum resulting in the formation of a zygote.

Fetotoxicity: Any toxic effect on the fetus as a result of prenatal exposure. These include malformations, altered growth and in utero death.

Fetus: Developing young in the human uterus after eight weeks. The time period varies from species to species in animals.

Follicle Stimulating Hormone (FSH): A pituitary hormone responsible for the development of ova and production of estrogen in females, and the development of seminiferous tubules and production of sperms in males.

Gonad: An ovary or testis.

Implantation: Attachment of the blastocyst to the epithelial lining of the uterus.

Luteinizing Hormone (LH): A pituitary hormone responsible for ovulation, development of corpus luteum, and production of progesterone in the females, and production of testosterone in males.

Male reproductive toxicant: An agent which can adversely affect the ability of a sexually mature male to produce normal offspring.

Malformation: A permanent structural change that may adversely affect survival, development, or function.

Neonate: Newborn.

Ova: Plural of ovum.

Ovary: The female gonad.

Ovum: The female reproductive cell.

Pituitary gland: A gland which is located in the brain and secretes many hormones which control growth and functions of many organs of the body including the testis in males and the ovary in females.

Postnatal: After birth.

Prenatal: Before birth.

Progesterone: An ovarian hormone primarily responsible for the maintenance of pregnancy.

Prostate: An accessory male sex gland which secretes a part of semen.

Seminal plug: A wax like material found in the vagina of the female rodents approximately 12–24 hours after successful mating.

Seminal vesicle: An accessory male sex gland which secretes a part of semen.

Sperm: The male reproductive cell.

Terotogen: An agent or factor that causes the production of a structural defect in the developing embryo or fetus.

Testis: The male gonad.

Testosterone: The male sex hormone secreted by testis.

Variation: A structural deviation that may not adversely affect survival, development, or function.

2. Identification of Developmental and Reproductive Toxicity Hazards from Studies in Humans

a. *Discussion.* Good epidemiologic studies provide the most relevant information for assessing human risk. Epidemiologic data are obtained from occupational, environmental, therapeutic, or consumer exposure to a substance. A positive good quality epidemiologic study should meet the following criteria (EPA, 1988a; EPA, 1988b; EPA, 1989): (1) There should be no identifiable bias which can be introduced through a faulty design of the experiment. For example, if hospital records are used, embryonic or early fetal loss may be underestimated since women are not necessarily hospitalized for these outcomes. These parameters may be better ascertained by random interviews. (2) Confounding factors such as socioeconomic status, age, smoking, alcohol consumption, drug use, environmental or occupational exposure, and other diseases should be adjusted for. (3) The association between an endpoint and a causal factor should not be due to chance; there must be a statistically significant association.

b. *Categories of human evidence.* The following categories of evidence from human studies have been developed.

i. Sufficient evidence of developmental or reproductive toxicity in humans. The evidence for a substance causing an adverse reproductive or developmental effect(s) is considered sufficient when it is based on good

quality human epidemiology which meets all the requirements stated in the above discussion of human studies; the results are statistically significant and without identifiable bias or confounding factors.

ii. Limited evidence of developmental or reproductive toxicity in humans. The evidence for a substance causing an adverse reproductive or developmental effect(s) is considered limited when the human epidemiology meets the criteria for sufficient evidence except that it lacks one of the criteria described in the above discussion of human studies. Thus, evidence is limited when statistical significance is borderline as opposed to clear-cut, there is a source of bias, or there are confounding factors that have not been or cannot be corrected for.

iii. Inadequate evidence of developmental or reproductive toxicity in humans. The evidence is considered inadequate when more than one of the above criteria for establishing a causal association between exposure to the agent and reproductive or developmental effects are not met, leaving an alternative explanation to be equally likely.

3. Identification of Developmental and Reproductive Toxicity Hazards from Studies in Animals

Although human data are most relevant for predicting human hazard, in its absence animal information becomes a valuable tool for predicting effects in humans. Many chemicals which are reproductive and developmental toxicants in humans have been shown to produce similar effects in animals (Council on Environmental Quality (CEQ), 1981). Some examples are alcohol, busulfan, chlorobiphenyls, diethylstilbestrol, isotretinoins, organic mercury, thalidomide, valproic acid, aminopterin, lead, ethylenedibromide, kepone, and carbondisulfide (CEQ, 1981; EPA, 1989). In a review by FDA (1980) of 38 compounds known to be associated with birth defects in humans, 37 were found to produce similar effects in at least one species of animals (45 FR 69,823). In another review of the data of the teratologic potential of 203 chemicals by FDA (1980), FDA stated: "it is reasonable to conclude that positive animal teratology studies are at least suggestive of potential human response." (45 FR 69,824). In addition, Wilson (1977) has described the mechanism(s) and pathways which could be applicable to both humans and animals in the initiation and development of birth defects.

a. *Study protocols for studying developmental and reproductive toxicity in animals.* EPA has developed protocols for studying developmental, male reproductive, and female reproductive toxicities in laboratory animals. Each of these three study protocols is discussed briefly below.

A protocol for studying developmental toxicity has been described by EPA (1989). Developmental toxicity can be studied in animals by administering a test substance during pregnancy, and evaluating embryonal, fetal, and/or neonatal toxicity. The protocol may also include exposure of the organism during a specific period of development (*e.g.*, during organ development), evaluation of toxicity over several generations, evaluation of toxicity during the early postnatal period or even up to sexual maturity. Animals used for developmental toxicity studies are usually mice, rats, or rabbits The most important endpoints of developmental toxicity are embryonal mortality, fetal mortality, neonatal mortality, malformations (external, visceral, skeletal) at any stage of development, altered growth, as well as functional and behavioral abnormalities.

A protocol for studying male reproductive toxicity has been described by EPA (1988a). Male reproductive toxicity can be studied by exposing sexually mature male rats to a test substance for a certain period followed by cohabitation with untreated sexually mature female rats. The exposure of the males to the test material is continued during the mating period. The main endpoints for evaluating toxicity are mating ability, fertility, prenatal and postnatal developmental effects, and weight and histopathological evaluations of reproductive organs (testis, epididymus, prostrate, seminal vesicle and pituitary). Mating ability is ascertained by determining the number of animals with seminal plugs or the presence of sperm in a vaginal lavage, per number of pairs of rats cohabited. Fertility is ascertained by determining the number of animals pregnant per number of confirmed matings. The prenatal and postnatal developmental effects are ascertained by determining litter size, pre- and post-implantation loss, number of live and dead pups, sex ratios, malformation, birth and postnatal weight, and survival. Positive findings for supplemental endpoints such as sperm evaluation (count, morphology, and motility) and hormone evaluation (testosterone, FSH, and LH) increase the evidence for hazard identification.

EPA has also described a protocol for studying female reproductive toxicity (1988b). Female reproductive toxicity can be studied by exposing sexually mature female rats to a test material for a certain period followed by cohabitation with untreated sexually mature male rats. Exposure of females to the test material is continued during the mating period and throughout gestation and lactation. The main endpoints for evaluating toxicity are mating ability, fertility, prenatal and postnatal developmental effects, weight and histopathological evaluations of reproductive organs (ovary, uterus, and pituitary). Positive findings for supplemental endpoints such as estrous cycle abnormalities, and hormone evaluations (estrogen, progesterone, FSH, LH) increase the evidence for hazard identification.

Studies on reproductive toxicity are often performed where both males and females are treated, in a manner such as described above for the individual sexes. Such studies may not distinguish between "male" and "female" reproductive toxicity.

b. *Criteria for a good quality developmental or reproductive toxicity animal study.* Any reliable study of developmental or reproductive toxicity should be designed and carried out in accordance with certain recognized criteria. The following criteria should be met for a good quality developmental or reproductive toxicity animal study.

1. The study should include at least one dosed (treated) group and one concurrent control group. However, two or more differently dosed groups are preferred.

2. Maternal toxicity (*e.g.*, a reduction in maternal body weight or organ weight) should be evaluated and accounted for in the interpretation of a study. In an ideal situation, the toxic effect(s) observed in a positive study are significant at one or more doses in the absence of maternal toxicity. However, such toxicity is not automatically discounted as secondary when associated with maternal toxicity.

3. Test animals are selected based on consideration of species, strain, age, weight and health status, and should be randomized into dose groups in order to reduce bias and provide a basis for performing valid statistical tests.

4. Good historical data on developmental and reproductive toxicity should be available for the species/strain tested; ideally, such data should be obtained for animals from each supplier.

5. The number of animals per dose group should be adequate. Generally, 20 litters per group for rodents and 12 litters per group for rabbits are used (Sowinski, *et al.*, 1987).

6. Toxicity is evaluated using acceptable laboratory methods, and

data are analyzed using appropriate statistical methods.

Sufficient evidence derived from animal studies is used as a basis to predict probable developmental or reproductive toxicity of an agent in humans. The evidence for toxicity derived from animal studies is supported by observance of (1) dose-related effects over an increased number of doses, (2) an increased number of different endpoints, (3) the same route of exposure as the expected human exposure route, (4) multiple species/strains, or routes of administration exhibiting the response(s), and (5) pharmacokinetic data and information on the likely mechanism of action.

c. *Categories of evidence for developmental or reproductive toxicity derived from animal studies.* The following categories of animal evidence have been developed.

i. Sufficient evidence of developmental or reproductive toxicity in animals. The evidence for a substance is considered sufficient when obtained from a good quality animal study and there is a statistically significant ($p < 0.05$) treatment-related increase in multiple endpoints (as described in the toxicity study protocol section) in a single species/strain, or in the incidence of a single endpoint at multiple dose levels or with multiple routes of administration in a single species/strain, or increase in the incidence of a single endpoint in multiple species/strains/experiments. Evidence from animal studies which has been shown to be not relevant to humans is not used for this purpose.

ii. Limited evidence of developmental or reproductive toxicity in animals. The evidence for a substance is considered limited when (1) obtained from a good quality study and there is a statistically significant ($p < 0.05$) treatment-related increase in the incidence of a single endpoint in a single species/strain/experiment at a single dose level administered through only one route and such evidence otherwise does not meet the criteria defined for "sufficient evidence" above; or (2) the evidence is derived from studies which can be interpreted to show positive effects but have some qualitative or quantitative limitations with respect to experimental procedures (e.g., doses, exposure, follow-up, number of animals/group, reporting of the data, etc.) which would prevent classification of the evidence in the category of "sufficient evidence" above.

iii. Inadequate evidence of developmental or reproductive toxicity in animals. "Inadequate evidence" means that evidence does not meet the criteria of the above categories and that there can be no interpretation of the data as showing either the presence or absence of a chemical exposure-related effect.

E. Sensitization

The Commission already has issued a supplemental definition concerning sensitization, which is at 16 CFR 1500.3(c)(5). While that discussion relates to the separate category of hazardous substance referred to in the FHSA as a "strong sensitizer," the principles contained in that section will serve also as a guide to determine when a substance is toxic due to the chronic hazard of allergic sensitization.

F. Evaluation of Risk From Exposure to Substances That May Present a Chronic Hazard

1. Guidelines for Assessing Exposure—a. *Introduction.* The FHSA defines as toxic "any substance which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." 15 U.S.C. 1261(g). Under the FHSA, a toxic substance is "hazardous" if that substance "causes personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use," 15 U.S.C. 1261(f)(1)(A). In order for a substance to be considered a hazard by this definition, it must not only have the potential to be toxic, but it must be demonstrated that (a) persons are exposed to the substance, (b) the substance can enter the body, and (c) there is a significant risk of an adverse health effect(s) associated with the handling and use of the substance. These represent, in turn: exposure, bioavailability, and risk. This section discusses the subject of exposure, and is intended to be used in the determination of significant risk of chronic toxicity of art materials or other products subject to the FHSA.

A discussion by the Office of Science Technology Assessment and Policy (OSTP) concerning the level of evidence that a chemical or product poses a carcinogenic risk to humans and the level of exposure of the consumer when the product is used is presented in the **Federal Register** (50 FR 10372 (March 14, 1985)). Although advances have been made in the area of modeling and monitoring exposures during the five years since this publication, many of the variables concerning the use patterns, distribution of pollutants, sources, sinks, relationships between physical parameters and market penetration of products have not been defined to a level where predictive modeling can in any sense replace well-conducted field studies. Many of the strengths and weaknesses of the approaches discussed by the OSTP remain the same today as in 1985. These approaches are discussed in the following subsections.

Three routes of exposure—inhalation, dermal absorption, and oral ingestion—will be discussed in separate subsections in the following discussion. The largest current technical effort has been driven by the recent interest in indoor air quality. Thus, inhalation is the most thoroughly investigated exposure route. Oral ingestion has been largely addressed in dietary and food additive studies, while dermal contact is largely of interest to the cosmetics industry and hence also to FDA.

Protocols exist for both oral and dermal contact for foods, drugs, and cosmetics. They include procedures for considering the form of the material being studied, the site of application (for cosmetics), and amounts potentially consumed (for food). Similarly, the form of the product as used should be taken into consideration when designing exposure studies. Using pure chemicals to assess consumer exposure and subsequent health effects when the product under consideration is a mixture, is not likely to provide an accurate reflection of exposure. For example, in assessing exposure from di-2-ethylhexylphthalate (DEHP) rather than studying pure DEHP, the staff performed experiments with actual products in order to demonstrate release of DEHP from the products' plastic matrix and transfer to either skin or saliva. Exposure studies with paint removers demonstrated that studies using methylene chloride alone, rather than a formulated paint remover, would have resulted in erroneous exposure estimates.

There are a number of procedures for assessing exposure of individuals or populations to chemicals which may cause cancer or other adverse health effects. Reasonably accurate exposure data are important in the assessment of risk. The accuracy needed can not be categorically stated since such factors as potency, concentration, and strength of evidence for toxicity of the chemical of concern are all important in defining the resources required to obtain the data necessary to perform an exposure assessment. Further, when using population estimates, the broad range of use patterns, frequency of use, diversity of products, and the variations in the types of housing where the products are used, will lead to exposure limits that

are often several-fold multiples of the predicted average exposure. Information concerning use patterns, frequency of use, definition of housing stock, and definition and market penetration of the products of interest is often lacking.

b. *Background: the three routes of exposure.*—i. Inhalation. Active interest and advances in exposure assessment have been largely driven by the current concern about indoor air quality and past activities involving occupational exposure and ambient air quality criteria and monitoring. Although exposure estimation techniques are becoming more sophisticated, there is no universally accepted minimum set of specifications for either data collection or estimation of exposure from the collected data. Generally, exposure is assessed by direct monitoring of populations, predictions of exposure, or use of surrogate data. These three approaches are briefly discussed below.

(a) *Direct monitoring* involves monitoring the general population or select segments of the population for exposure to a chemical or chemicals. Past monitoring studies have provided concentrations averaged for various periods of time and concentration measured at discrete times. Such data were obtained for carbon monoxide and nitrogen dioxide, power plant plume dispersion/reaction and concentrations of various chemicals in such locations as work places, point sources, cities, and even regions. Similar data bases do not exist for equivalent populations for residential indoor air. Examples of recent studies addressing residential air quality are: The EPA TEAM study (Wallace, 1987), the Pierce Foundation New Haven study (Stolwijk, 1983), the Gas Research Institute Texas unvented gas space heater study (Koontz, 1988), the CPSC Atlanta unvented gas space heater study (TRC, 1987), and the Harvard Six Cities Study (Spengler, 1985).

These studies provide measurements of the concentration and duration of concentration for combustion products, volatile organics, particulates, and biological materials. In addition, they provide limited real time monitoring and information concerning selected health effects information. With field monitoring studies, due to the potential for exposure to pollutants other than those monitored, a health effect associated with one of the monitored pollutants may not be accurate.

(b) *Predictions of exposure (through modeling)* to a chemical(s) can be based on physical and chemical principles, mass balance principles and mathematical models. Examples of such studies are: (1) The exposure predictions presented in various CPSC staff reports on unvented kerosene and gas space heaters; (2) the CPSC–EPA and CPSC–LBL methylene chloride exposure studies from use of paint strippers; and (3) the CPSC–EPA exposure studies of perchloroethylene from dry cleaning and other uses.

Data necessary for use in predictive modeling are often obtained from studies on products in small chambers (50 to 100 liters), large chambers (20,000 to 30,000 liters), or in research houses. The studies are usually designed for specific products. In general, protocols, although having common features, are not directly applicable to other products which may be investigated.

Often such modeling studies are based on data obtained from representative products used in room-size chambers or research houses. The distinction between a modeling study and a field monitoring study is that often the modeling relates to a specific product while a field study may only attempt to identify the pollutants and their concentrations, not their sources.

(c) *Surrogate data* (data of exposure derived from chemicals of similar structure, reactivity and volatility as the chemical of interest) are used by some investigators when no data exist for the chemical of interest. Surrogate data have not been used extensively by the Commission but have been used in some instances by EPA in pesticide exposure estimates. Surrogate data should only be used for preliminary evaluations to establish the scope of additional studies that will be needed to define exposure more accurately.

ii. Ingestion. Ingestion studies have been performed for organics and inorganics in foods. The bioaccumulation of pesticides and chlorinated compounds has been studied in shellfish and edible fish. In its "total diet studies" the FDA has provided data on the concentrations of selected chemicals in approximately 200 foods purchased in grocery stores throughout the United States. These data, in conjunction with data obtained from tissue analyses for pesticides, provide estimates of the exposure, body burden and effectiveness of regulatory programs intended to limit exposure to certain pesticides.

These studies involve direct monitoring of sources of chemicals as well as fate of the chemicals in products such as foods. Laboratory simulations have been developed to estimate exposure to chemicals on a smaller scale. These latter studies do not usually involve a living species but are based on leaching or extraction of the chemical from a product with a simulated saliva or gastric fluid. Examples of such studies are studies performed by the FDA concerning lead released from decorated glassware (Soc. Glass Decorators, 1979), CPSC's studies concerning lead released from printed paper products, and CPSC's studies of nitrosamine and DEHP released from pacifiers.

The estimation of exposure from ingestion of chemicals present in foods or consumer products is then predicted based upon estimates of use of the product and its release from the product. In the case of oral ingestion of consumer products containing chemicals, data on chemical content of the products may be known. However, the exposure directly resulting from those products must be predicted on the basis of population studies of random households inquiring into the products used and their composition.

iii. Dermal exposure. Dermal exposure involves estimating the amount of substance contacting the skin. This may involve experiments measuring the amount of material leached from a product contacting a liquid layer which interfaces with the skin, or the amount of substance which migrates from a product (in solid or liquid form) which is in contact with the skin. Parameters which must be considered include surface area of the skin contacted, duration of contact, frequency of contact, and thickness of a liquid interfacial layer. Examples of how these types of experiments might be applied to exposure assessments can be found in the Commission's exposure assessments on dioxin and arsenic leached from children's playground equipment.

More recently, *in vitro* testing using animal or human skin held in specially designed cells has allowed the rate constants of penetration of various chemicals to be determined. This approach can be performed in the laboratory and, thus, is more controlled than experiments involving live animals or humans. Examples of studies using this approach are studies of the penetration of cosmetics and topical drugs performed by the FDA, and studies of the penetration of DEHP and formaldehyde performed by the CPSC.

c. Discussion of exposure estimates. Each of the three approaches for exposure assessment described above have certain strengths and weaknesses as discussed below.

i. Inhalation.—(a) *Direct monitoring.* Direct monitoring will provide the strongest data for demonstrating and quantifying exposure and should be used when available. The data obtained from such studies represent

measurements made in actual living conditions. The effects of weather, a residence's structural characteristics and contents, and human behavior are all reflected in the data obtained. With proper monitoring protocols, various human activities, weather conditions, source use (where the source of chemical is known), and other information directly of interest can be obtained. The resulting data base will reflect measurements of actual maximum and minimum concentrations and may provide adequate information to determine the effect of various parameters which affect the ultimate exposure. Such parameters include, but are not limited to, air exchange rate, ambient-indoor temperature differences, wind speed, type of heating system, and frequency of use of the source of interest. Direct monitoring studies can be of either randomly selected populations or selected specifically to represent a segment of the population expected to be at risk of exposure.

Data from such population studies are important not only because they provide direct measurement of human exposure, but also because, when well-designed and -conducted, they provide valuable information for the development of models to predict human exposure.

(b) *Modeling.* Mathematical modeling, another approach for assessing exposure, is based on the principles of conservation of mass; these models are often called mass balance models. The models may be one compartment where the whole house or building is treated as a single volume, or two or more compartments where rooms or portions of rooms are treated as individual exposure entities.

Model development with field validation has been largely performed using single story houses in investigations of unvented space heating appliances and gas ranges and ovens. In these cases the single compartment model has described the distribution of pollutants throughout the living space (Traynor 1983). A single compartment model in a house where there are multiple rooms appears to be adequate for predicting exposure to combustion products with heating appliances (Traynor 1987). This is a result of the heat produced by the appliances which rapidly disperses the pollutant throughout the house, leading to a uniform distribution of the pollutant. The case of multistory houses is less clear. In a study by the Gas Research Institute (Gas Research Institute in press) in a split entry research house, the distribution of pollutants from unvented gas space heaters or gas ranges/ovens was uniform at or above the levels where the heater was located. When the heater was in the lower "game room" area, pollutant distributions were uniform throughout the house. However when the heater or range/oven was operated on the second level which contained the kitchen, living room, and bedrooms, the pollutant concentrations were uniform on the second level and near background on the lower level.

During these studies the central heating system was not used. Thus, the effect of the furnace fan in distributing pollutants in the house is not known. The concent'rations of the reactive pollutant, nitrogen dioxide (NO_2), were nearly always higher in rooms distant from the heater than in the room where the heater was located. This effect was attributed to a combination of the reactive decay and convective transfer of pollutants within the house. Modeling pollutant concentrations in houses of three or more stories will be further complicated by the stack effect of the house itself and the more convoluted path required for the pollutant to move from room to room.

The following criteria are minimum inputs for use of mass balance models:

(1) Source strength of the pollutant-emitting product (obtained from literature and field or laboratory studies).

(2) Housing characteristics (obtained from literature or housing surveys specific to the pollutant source of interest), such as:

(a) Number and size of rooms,

(b) Level of insulation in floors, ceilings, and exterior and interior walls,

(c) Reactive decay rates if appropriate for certain pollutants,

(d) Air exchange rates for the sample being modeled,

(e) Construction characteristics of the housing sample,

(f) Occupant behavior involving the house,

(g) The number and usage of the pollutant source in the structure, and

(h) The type of central heating and air conditioning used in the house.

(3) Ambient conditions which are likely to be encountered for the population under study, such as:

(a) Ambient wind speed which can affect the infiltration rate (air exchange rate) and, thus, alter the concentration ranges predicted,

(b) Ambient temperature which is an important factor in air exchange and air distribution within a house, and

(c) Ambient surroundings that can affect the wind's and sun's effect on the house by providing shading or breaking the normal wind velocity.

All of these factors should be considered in modeling exposures.

The list of criteria needed for modeling is extensive and often the information is not available in the necessary detail to fill all cells of the model. It is often necessary to review the existing literature and use as inputs data representing the average and range of values reported. Although data from field studies of occupied housing should be used in exposure assessments, they are not always available. When field study data are available they should be used not only for the exposure assessment, but also for determining averages and distributions for the purpose of model development. Alternatively, where data are lacking, averages and ranges from laboratory chamber studies can be incorporated. Examples of such data are emission rates from unvented space heaters which have largely been determined in laboratory chambers the size of a small room. These data are often supplemented by small field studies of select populations using the appliance or product of interest. Such studies are used to confirm the laboratory-determined emission rates and to provide a limited validation of the predictive capability of the model. Examples of such studies are those performed by LBL (Traynor, 1983) and the Pierce Foundation (Stolwijk, 1983) with unvented gas and kerosene space heaters.

Exposure assessment models should be validated. The assumptions and limitations of the model, the validation process, and validation results should be described. Validation is generally done by comparing model predictions with the results of field or laboratory studies. Where possible, model validation should utilize input parameters independent of the field study house(s) being monitored for validation purposes. The model validation comparison should reflect the ability of the model to predict average, high, and low concentrations in a house.

Models have provided much of the exposure information for combustion products used by various federal agencies, both to determine the need for extensive field studies and to determine regulatory approaches. The modeling studies performed for combustion products predicted the concentrations measured in dwellings reasonably well, in large part, because the appliances under investigation produced a large amount of heat which drove the combustion products rapidly throughout

the dwellings. Thus, a relatively simple, one compartment model was suitable for assessing exposure. However, when there is no driving force to distribute the chemical of interest throughout the dwelling, *i.e.*, heat or a central ventilation system, the prediction of concentrations throughout a dwelling becomes less accurate. An example of the latter was the LBL study (Hodgson 1987) of paint removers tested in a room-size chamber and used inside dwellings to remove paint from standard panels or furniture. Until validation data from research house and field studies is obtained, models should only be relied on as preliminary estimates of exposure.

(c) *Surrogate data.* Surrogate data should be used only when data on a particular pollutant or source are sparse or unavailable. Care should be taken in interpreting surrogate data in order to minimize potential errors due to the following differences between the surrogate substance and the "real" substance of interest.

There may be differences in product composition. Linear extrapolation of pollutant concentrations based on differences in concentrations in the surrogate and "real" product are not appropriate. Matrix effects of the surrogate product may not be defined in sufficient detail to permit a valid extrapolation to another product.

Differences in the physical properties of the surrogate and the "real" substance may exist. Differences in such physical properties as vapor pressure, viscosity, and diffusion constants may be great enough to introduce substantial errors into the exposure assessment.

Finally, differences in reactivity/absorptivity may affect the ultimate emission rate and, thus, concentration measured or predicted.

In general, surrogate data should be used as a screening process to determine whether additional studies are necessary and what the parameters for those studies are.

ii. Oral ingestion. When chemicals are suspected to leach from a product, such as pacifiers or flame retardant treated sleepwear, studies designed to assess solubilization of the chemical using simulated saliva and chewing are required. If portions of the product may be swallowed, the product should be subjected to simulated gastric fluids to assess the chemical's release.

The diverse nature of consumer products precludes a standard protocol for exposure based on oral ingestion studies. Generally, each product will require specific procedures and techniques to assess exposure. However, once human factors data defining product use are available, the following criteria should be established to assess exposure:

(1) A stimulant or range of stimulants should be carefully selected to mimic the possible range of conditions which can occur in humans. Such conditions may represent full and empty stomachs, or various saliva compositions which differ during the course of the day.

(2) The mechanical action to which a product is submitted must be chosen to represent some range of realistic conditions to which a human may subject the product. This consideration should encompass the population using the product, such as infants, toddlers, young adults, and older adults.

(3) The simulation to be used to mimic the use of the product (*i.e.*, rubbing, abrasion, body area and areas in contact with the product) should be defined.

iii. Dermal exposure. Dermal exposure concerns the amount of a substance in contact with the skin over a period of time. In order to adequately define the amount of dermal exposure the following factors need to be considered: concentration of the substance in the product, migration of the substance from the product to the skin, site of application, skin surface contacted by the product (or substance), duration of exposure, and frequency of exposure. Examples of dermal exposure assessments previously performed by the Commission include those on dioxin in paper products (Babich, 1989), arsenic in wood playground equipment (Lee, 1990), and TRIS flame retardant in infant sleepwear (CPSC, 1977).

The diverse nature of consumer products and exposure scenarios precludes the development of a standard protocol for dermal exposure. The general protocols described below are given to illustrate the numerous factors which should be considered. One can envision that dermal exposure may occur by one of the following general pathways: (1) the substance is contained or bound in a solid matrix which is exposed to a liquid that contacts the skin (*e.g.*, dioxin in infant diapers, TRIS in infant sleepwear); (2) the substance is contained or bound in a solid matrix which contacts dry skin (*e.g.*, dioxin in communications paper, TRIS in infant sleepwear, arsenic in wood playground equipment); (3) the substance is dissolved in a liquid which contacts the skin (*e.g.*, dish detergent); and (4) the substance contacts the skin directly.

In pathways 1 and 2, the critical factor in assessing exposure is estimating the rate or extent of migration of the substance from the matrix to the skin. In pathway 1, migration is mediated by the liquid (*e.g.*, urine, perspiration), whereas migration in pathway 2 is unmediated. The distinction between pathways 1 and 2 may be contrived. Migration of dioxin from communications paper to the skin was modeled as unmediated migration by the Commission (Babich, 1989) and as liquid mediated migration with sebum as the liquid phase (A.D. Little, 1987). In pathway 1, migration may be described by a solid: liquid partition coefficient (K), defined by:

$$K = C(solid)/C(liquid)$$

where C(solid) is the concentration in the solid matrix and C(liquid) is the concentration in the liquid phase. Partition coefficients are generally measured in the laboratory. The conditions used in the laboratory should mimic the intended use. For example, for dioxin in infant diapers, fluff pulp with a known dioxin concentration was extracted with synthetic urine at 32 degrees for intervals up to twenty-four hours (NCASI, 1989).

The migration rate in pathway 2 may be determined by direct measurement (*e.g.*, Ulsamer, *et al.*, 1978).

d. *Conclusion.* Due to the multitude of consumer products and art materials, it is not possible to describe default scenarios for each product. Exposure scenarios should include customary or reasonably foreseeable use, including reasonably foreseeable accidental handling and use.

In most cases the best estimate of exposure (average exposure) is acceptable. Conservative estimates (i.e., those which may lead to overestimation of exposure, such as the upper confidence limit, "reasonable worst case," or "maximum exposed individual") are not required, but may be more appropriate in some cases. For example, conservative estimates should be used in cases where exposure data are lacking. Conservative estimates may also be useful to demonstrate that a certain exposure is not of concern. Exposure distributions are preferable to point estimates, provided that there are sufficient data for their development. In some cases, a range of exposures is appropriate, such as when the exposure distribution is bimodal.

It is important to note that exposure assessments for a single consumer product often represent only incremental additions to the total exposure that results from use of multiple products in the home. Thus, it may be useful to define what portion the incremental exposure is of the total environmental exposure. However, this determination may be difficult since data concerning other sources, and use

and duration of use patterns for a population or population segment, are often unavailable from the current base of human factors knowledge. While the focus of the guidelines is on individual products, exposures from other sources should be considered if they are known to the toxicologist.

In assessing exposure, all available data should be considered, including data from field studies, modeling studies, and studies of surrogate products. In general, field data are preferred over modeling studies, which are preferred over surrogate data. On a case by case basis, one must decide, for example, whether a good modeling study is better than a poor field study. Typically, the Commission uses both field data, when available, and model predictions. In most cases the Commission has utilized surrogate data only when there is reasonable assurance that they will accurately represent the chemical of interest.

2. Guidelines for Assessing Bioavailability

a. *Introduction.* The LHAMA directs the Commission to issue guidelines specifying criteria for determining when any customary or reasonably foreseeable use of an art material can result in a chronic hazard. This section discusses the LHAMA's directive to specify criteria for assessing bioavailability of chronically hazardous substances contained in art materials. Since the content of the guidelines can also apply to sources other than art materials, these guidelines should be considered for other products subject to the FHSA.

As explained in the previous section, bioavailability, which is concerned with the ability of a substance to be absorbed into the body, is one part of the inquiry into whether a toxic substance is "hazardous" under the FHSA. Therefore, these bioavailability guidelines will serve as part of a larger effort to outline the principles to be used in evaluating the risk resulting from exposure to materials that may present a chronic hazard.

b. *Bioavailability.*—i. *Background.* Bioavailability is a term used to indicate the extent to which a substance is absorbed by the body. The bioavailable dose can differ from the dose available for exposure (such as the amount ingested, the amount available for respiration, the amount deposited on the skin, etc.) and can also vary widely depending on the chemical nature of the substance and the route of entry into the body. For example, the estimated fraction of dietary lead absorbed by adults is only about eight percent (Rabinowitz, 1973). On the other hand, a volatile solvent, such as chloroform, whose vapors have high blood solubility can be expected to be almost completely absorbed during inhalation (Klaassen, 1980).

For purposes of these guidelines, an assessment of bioavailability will include, when necessary, the rate as well as the extent of absorption. Depending on the exposure scenario, the bioavailable dose may be directly affected by the rate at which a substance enters the body, particularly in the case of short-term inhalation and dermal exposures of slowly absorbed compounds. The rate of absorption may also be important when toxicity is related to a concentration of the toxicant above a critical level rather than the cumulative body burden.

The bioavailable dose, as defined in these guidelines, should also be distinguished from the dose of toxic substance that is delivered to its site of action. In addition to absorption, this delivered dose takes into account distribution, metabolism, and excretion. Therefore, estimation of delivered dose and its application to risk assessment cannot be addressed by bioavailability considerations alone, but requires a more complete pharmacokinetic (absorption, distribution, metabolism and elimination of substances) analysis. Use of pharmacokinetic information in the assessment of risk is addressed in the set of guidelines on risk assessment procedures.

The need to consider bioavailability in estimating the risk from use of a product containing a toxic substance arises when a difference is anticipated between the absorption characteristics of a substance to which there is human exposure and those characteristics for the substance when it is tested in animal toxicity or human epidemiological studies used to define the dose-response relationship. Some situations in which this might occur are outlined below.

ii. Physical or chemical forms of a toxic substance. If the physical or chemical form of a toxic substance in a product differs from the form present in the dose-response studies used to assess risk, the comparative bioavailability of the forms of the substance must be evaluated. This is particularly true of toxic metals which can exist as water soluble salts, water insoluble salts, alkyl compounds, and in various states of polymeric aggregation. All of these forms differ in their ability to be absorbed across biological surfaces. The bioavailability of toxic substances inhaled as particulates and aerosols will also vary based on particle size.

iii. Route of exposure. Bioavailability should be evaluated when it is anticipated that the route of human exposure to a toxic substance will differ from that used in the dose-response study. This could be a relatively common situation since the test substance is often administered orally in animal toxicity studies yet human exposure to chemicals from use of consumer products is frequently through the skin or by inhalation.

iv. Presence of other constituents. When a product contains constituents that are not accounted for during the dose-response study and that are reasonably anticipated to interfere with or enhance the absorption of a toxic substance, bioavailability must be considered. For example, the extent of dermal absorption of a compound can be influenced by the type of solvent present. Toxicity studies by the dermal route often use a vehicle that maximizes dermal absorption of the test substance. However, the dermal bioavailability of the substance might be quite different in the environment present in a consumer product.

v. Dose. Bioavailability should be considered during the exposure/risk assessment of a toxic substance if there is reason to believe that the dosing conditions used in the dose-response study would introduce a non-linearity in absorption when extrapolating to conditions encountered during human exposure. Animal toxicity and human epidemiology studies on which risk assessment is based often involve chemical exposures that are higher than exposures resulting from use of consumer products. Risk assessments usually predict toxicity at those lower doses using mathematical models that do not fully apply the biological non-linearities that can sometimes exist. In certain instances, non-linearities in absorption can influence low dose extrapolation. Some toxicants are absorbed from the gastrointestinal tract by carrier mediated transport systems [2] that may be saturated at the dose utilized in dose-response studies. Saturable metabolism (level of metabolism which cannot be exceeded) of toxic substances can produce non-linearities in bioavailability. This is particularly true following gastrointestinal absorption since the major metabolic organ in the body, the liver, receives the absorbed materials

[2] Carrier mediated transport requires the existence of a macromolecular carrier responsible for binding the substrate on one side of a biological membrane and releasing it on the other side. This process can be saturated at high doses.

via the portal circulation before the materials are available to the systemic circulation. The fraction of the applied dose absorbed as measured during dermal penetration studies is frequently less at high doses than at lower doses. Therefore, extrapolation of absorption data at high dermally applied doses without further study at lower doses could underestimate bioavailability.

vi. Other conditions. Other aspects of a dose-response study may make it inappropriate to estimate human risk without making adjustments in bioavailability, particularly if the animal model or human population under investigation does not adequately approximate the absorption characteristics anticipated in the population of concern. For example, certain metals, notably lead and cadmium, are more efficiently absorbed in the gastrointestinal tract of younger animals (and humans) than adults (Hoffmann, 1982). Thus, it is necessary to correct for this absorption difference when estimating risk to children based on a toxicity study in adult animals. In addition to age, other factors that might affect adjustments in bioavailability are animal species, sex, and strain. It may also be necessary to adjust bioavailability to reflect differences in dosing regimen. Often animal studies are conducted under conditions of repeated dosing while human exposure from use of a product may be intermittent.

vii. Special cases where bioavailability has been accounted for in exposure and risk assessments. Sometimes certain aspects of bioavailability are inherently accounted for during the assessment of either risk or exposure. Risk assessments that rely on pharmacokinetic models to account for non-linearities in delivered dose will usually have made a correction for bioavailability. Exposure assessments based on biological monitoring data, such as urinary metabolites or adducts present in the blood, will often have accounted for bioavailability due to the nature of the measurement. In these cases, it may be unnecessary to assess bioavailability separately.

c. *Guidelines for the assessment of bioavailability*—i. General strategy for assessing bioavailability. Three routes of exposure are normally encountered during use of consumer products: inhalation, ingestion, and dermal contact. Once the exposure assessment has established the routes of concern and the amount of toxic substance available to the appropriate absorptive surface (*i.e.*, respiratory tract, gastrointestinal tract, and skin), bioavailability should be addressed if any of the conditions described above requires it. This should be done for each toxic substance and each route of exposure presented by the product.

Two general approaches may be used to account for bioavailability in the process of estimating risk: a default value can be assumed for the amount of substance absorbed or a bioavailability assessment can be performed. The default value should be used when there are no adequate data which would lead to an alternative approach. The goal of the bioavailability assessment is to provide a quantitative estimate for the amount of substance absorbed into the body. There may be several acceptable measurements from which bioavailability can be determined.

Although all available data should be considered, it is usually best to use *in vivo* absorption studies for the substance of interest. *In vitro* data can often be used to supplement *in vivo* data. (With *in vivo* studies, the substance of interest is introduced into a live animal. With *in vitro* studies, the substance's effect on tissue or cells isolated from the animal is studied.) Bioavailability assessments based on *in vitro* data are acceptable if *in vivo* studies are not available, if *in vitro* data are shown to be of superior quality, or if *in vitro* data more closely approximate the exposure conditions anticipated from use of the product in question. In the absence of substance-specific absorption data, it is acceptable to use a bioavailability estimate based on the default assumption or a surrogate measurement of a related compound that is known or anticipated to be no less than the actual extent of absorption. In instances where no other acceptable data exist, a bioavailability estimate of a related compound whose bioavailability is expected to be less than that of the substance of interest, but not beyond the magnitude of reasonable experimental error, can be used. However, if a related compound has been chosen based on a surrogate measurement, it must be justified that small differences in the surrogate data will not cause the extent of absorption to be underestimated beyond reasonable acceptability limits. The acceptability limits and the conditions on their use apply in subsequent discussions of surrogate bioavailability data. These approaches are also useful when the risk is anticipated to be negligible as might occur with products containing very low concentrations of a toxicant or products whose use leads to very low human exposure. A bioavailability estimate that is known or anticipated to underestimate the extent of absorption should not be used. A qualitative assessment can sometimes assist in choosing a method to estimate the bioavailability of a substance. In cases where bioavailability is considered, exposure estimates must be adjusted for the fraction of substance absorbed relative to the dose-response study.

(a) *Default approach.* The default value for bioavailability assumes that 100 percent of a substance to which a person is exposed will be absorbed. Although the default assumption may overestimate absorption, it usually has the advantage of allowing a relatively quick and easy determination of an upper bound on risk without the need for a more time-consuming quantitative bioavailability assessment. Because exposure estimates must be adjusted for relative bioavailability, risk assessments based on the default value may still require a quantitative evaluation of the fraction absorbed under conditions of the dose-response study (see discussion below).

(b) *Bioavailability assessment.—Qualitative approach.* A qualitative assessment may be useful in choosing the final quantitative approach necessary to account for bioavailability. If a qualitative assessment can demonstrate that the bioavailability from use of a product is anticipated to be no greater than the bioavailability that would result under the conditions of the dose-response study, it is acceptable to assess risk based on the assumption that a substance is absorbed to the same extent as occurred in the dose-response study. Like the default assumption, this approach may overestimate bioavailability but could, nevertheless, provide an acceptable value with minimal time and effort.

A qualitative assessment can also justify utilizing bioavailability data for a related compound when data are not available for the substance of interest, provided all critical factors related to absorption by the route under consideration are taken into account. In this case, there must be compelling evidence to indicate that the bioavailability of the surrogate compound is no less than the substance under consideration. Because these are not quantitative determinations, data other than direct bioavailability measurements are sufficient to complete the assessment. For example, a knowledge of the relative solubilities of two forms of a toxicant may be sufficient to allow data on gastrointestinal bioavailability of the more soluble form to be used to estimate

the risk from ingestion of the less soluble form of the same substance. The type of measurements sufficient to produce a qualitative determination are route-specific and will be discussed below.

Quantitative approach. If a bioavailability assessment is needed and the default assumption is not used, then quantitative estimates for the amount absorbed must be determined. The necessary data may be available to sufficiently quantify bioavailability or the appropriate experimental studies can be conducted to generate this information. Acceptable methods for determining bioavailability depend on the route of exposure. However, there are some general considerations common to most bioavailability measurements that will be discussed here.

Bioavailability measurements from in vivo exposure. The most definitive method of determining bioavailability is to measure it directly after *in vivo* administration by the exposure routes of interest. When systemic bioavailability (the fraction of the administered dose that enters the systemic circulation) is the appropriate measure, the relative availability between exposure conditions and those of the dose-response study can be determined by a comparison of the total areas under the substance concentration in plasma versus time curve (area under the curve or AUC). This procedure estimates the amount of a substance to which a specific part of the body is exposed over time. The ratio of the AUCs can be shown to be equal to the relative extent of absorption (Gibaldi and Perrier, 1982) and can be used directly to adjust exposure estimates for calculation of risk. In cases where the toxicity of interest occurs at the site of exposure, such as effects on the skin following dermal exposure or respiratory toxicity from inhalation, systemic bioavailability is not a relevant measure; extent of absorption must be determined from the concentration in the tissue of interest.

For example, if a substance was given orally in a dose-response study and the principal route of exposure from use of a product was by inhalation, relative bioavailability can be calculated as $AUC_{inhalation}/AUC_{oral}$, provided comparable doses of the substance were administered. Mathematical accommodations can be made if different doses are given. The AUC method requires that plasma concentration of the substance be determined at several time points after dosing until at least 2 to 3 half-lives of elimination have occurred. Relative systemic bioavailability can also be determined using cumulative excretion data. This necessitates that excreta be collected from the major routes of elimination (urine, feces, expired air, etc.) until virtually all the substance has been expelled from the body. Regardless of the measure used, it is important to account for both the parent compound and its major breakdown products.

Use of radiolabeled compounds is usually the most effective way of insuring a complete accounting of the parent and its metabolites. Bioavailability measurements for at least two doses that span 1 to 2 orders of magnitude may be necessary in order to address possible non-linearities. In all situations, the doses employed should be such that the processes of absorption and metabolism (when it affects bioavailability) are not compromised. In general, bioavailability testing should conform with the EPA Good Laboratory Practice Standards (EPA, 40 CFR part 792) and applicable test standards for pharmacokinetics (EPA, 40 CFR part 798.7485).

Other data that may be used to quantitate bioavailability. Types of data other than *in vivo* measurement may be used to estimate bioavailability. Under the proper circumstances, absorption can be determined from *in vitro* preparations utilizing isolated organs. When estimating bioavailability from any *in vitro* preparation, it is important to ensure that it is truly representative of *in vivo* processes. For example, an isolated segment of intestine should not be utilized to assess absorption of a substance that also enters the body through the stomach or another part of the gastrointestinal tract. In most situations, it must also be demonstrated that the preparation was viable during the period of measurement and that those factors critical to bioavailability of a particular substance, such as specialized transport or metabolism, approximate the *in vivo* condition. Uptake studies using isolated cell systems, or subcellular fractions where cellular organization has been disrupted, are usually not sufficiently representative of the *in vivo* situation.

In certain defined circumstances, use of surrogate data to estimate bioavailability is acceptable. For example, the amount of substance absorbed from ingestion of a solid material can sometimes be estimated by measuring its solubility in media designed to mimic the gastrointestinal environment. Blood:gas partitioning (the relative amount in blood versus the amount in air) can sometimes assist in determining systemic bioavailability following inhalation of gases and vapors. The respirable fraction of dust and aerosols is sometimes an adequate estimate of that portion available for absorption through the alveoli of the lung. In order to use surrogate data, the test method used must accurately reflect the absorption process it is subetituting for, and any results must be reproducible. Data that overestimate the bioavailability are also acceptable, as noted previously.

Physiologically based models can also provide estimates of absorption. These models mathematically describe absorption in terms of physiological and biochemical parameters, such as, ventilation rate, blood flow, partition coefficients, and absorption rate constants. Physiological models have the advantage of being able to predict systemic or tissue bioavailability under different conditions, but they frequently require access to large amounts of input data. Model-dependent parameters should always be identified and the methods used to determine their values clearly stated. Like other methods used to generate surrogate data, models must be validated to ensure that they adequately estimate the particular measurement of interest.

(c) *Adjusting exposure estimates for bioavailability.* Route-specific exposure resulting from a particular product use can be expressed as the amount of substance to which one is exposed per body weight per day. This average daily dose can then be multiplied by a relative bioavailability ratio to give the amount of substance that contributes to the body burden for a particular situation. The relative bioavailability ratio determined by the bioavailability assessment is defined as the fraction of a substance absorbed from a specified exposure as a result of product use divided by the fraction absorbed during the dose-response study. Exposure estimates must be adjusted by the relative bioavailability ratio whenever exposure to a substance from product use leads to the conditions outlined in subsection b. above. This ratio takes a value of 1 when the bioavailability is assumed to be approximated by the dose-response study itself. If a use scenario involves multiple routes of exposure, the route-specific average daily doses may be summed to get the total average daily dose for a particular use scenario.

ii. Routes of exposure. The predominant routes of exposure encountered during use of consumer products are ingestion, inhalation, and dermal contact. The biological surfaces that function as bioavailability barriers

are different for each exposure route and, thus, the factors that control and the methodologies used to measure absorption can vary. This section will discuss the critical features that must be considered in determining absorption across the gastrointestinal tract (ingestion), respiratory tract (inhalation), and skin (dermal contact).

(a) Gastrointestinal tract.—Transport characteristics. The gastrointestinal tract is the site of potential absorption for ingested substances. Although, in principle, absorption can take place along the entire length of the gastrointestinal tract from mouth to rectum, most absorption takes place in the stomach and small intestine where larger surface areas, longer residence times, and higher perfusion rates are most conducive to transport across the mucosal barrier. The most common mechanism by which toxicants are absorbed across the gastrointestinal tract is by passive transport [3] through the absorptive cells. Absorption by this mechanism is greatest for small uncharged lipid soluble molecules with adequate aqueous diffusivity. In fact, for a series of non-electrolytes of similar molecular size, gastrointestinal absorption can be shown, in general, to be proportional to lipid solubility as measured by oil:water partition coefficients. Ionizable compounds such as organic acids and bases are not well absorbed in their ionized form, and the extent and rate of absorption will be governed by the pH at the absorption site and the pKa of the chemical. Thus, organic acids are likely to be better absorbed in the acidic environment of the stomach, while organic bases would be expected to be better absorbed in the more basic pH of the intestine. While lipid soluble compounds diffuse through the gastrointestinal cells, small water soluble compounds are capable of diffusing through aqueous pores located at the junctions of the intestinal epithelial cells. This is a major mechanism by which water and small electrolytes, such as potassium and sodium ions, penetrate the gastrointestinal tract. Other water soluble chemicals with a molecular weight below about 200 daltons have also been shown to be absorbed this way (Schanker, 1962).

Several more specialized transport systems exist in the gastrointestinal tract that can be responsible for absorption of selected substances. Some chemicals are transported by a carrier mediated mechanism. This type of transport is primarily responsible for absorption of some nutrients and endogenous substances, but sometimes non-essential chemicals, including metals, such as lead and aluminum, and several quaternary ammonium compounds, are capable of utilizing these systems. Intestinal absorption of large macromolecules (10,000–60,000 daltons) have been documented in man and experimental animals. This is believed to occur by pinocytosis.[4] Particles up to 5–6 micrometers (um) in diameter can be absorbed by phagocytosis [3] (Aungst and Shen, 1986). However, the extent of absorption by pinocytosis and phagocytosis is generally low. Gastrointestinal absorption of charged substances of high molecular weight is particularly poor.

Physiological and physicochemical factors. Aside from the transport characteristics, there are several physicochemical, biochemical, and physiological factors that can influence gastrointestinal absorption and systemic bioavailability. The nature of a substance can sometimes be substantially altered during the absorption process: degradation can occur in the acid environment of the stomach; a toxicant can be altered by the action of digestive enzymes or the bacterial flora present in the intestines; once absorbed, some chemicals can undergo extensive metabolism in the liver before reaching the systemic circulation.

Most substances must be solubilized before absorption can take place. The rate and extent of dissolution can often limit the rate of absorption of a chemical ingested as a solid material. A key determinant of dissolution of solid material, as well as absorption of complex mixtures, is aqueous solubility. Absorption of some substances can be changed by formation of insoluble salts or molecular complexes. Dissolution of a compound in a solid matrix is influenced by particle size: Smaller particles are more easily absorbed than large particles because of their greater surface area. Sometimes the way in which a substance is formulated can have profound effects on gastrointestinal absorption. Lipid soluble substances administered in oily vehicles are often absorbed directly into the blood through the lymphatics bypassing the liver. The result could be a significant increase in systemic bioavailability if the substance is known to undergo extensive hepatic metabolism. Highly viscous suspensions can affect absorption by slowing dissolution of a substance and delaying gastric emptying.

Physiological factors must be considered when assessing gastrointestinal bioavailability. Delayed gastric emptying caused by a test substance or its vehicle can affect absorption particularly in the case of acid-labile (*i.e.*, decomposes in the presence of acid) compounds or situations where acidity influences dissolution. Gastrointestinal motility can affect absorption by altering the time spent at the site of absorption. This is critical for compounds whose bioavailability is limited by the amount of time they reside in the intestine. The gastrointestinal absorption of some substances is known to be age dependent: the absorption of many metals such as cadmium, iron, mercury, lead, and zinc is highest in newborns and decreases with age (Hoffmann, 1982).

Physicochemical properties can sometimes indirectly aid in the determination of bioavailability estimates. When a chemical is ingested as a solid material, measurements of solubility in media that mimic the gastrointestinal environment may be used to estimate absorption, assuming certain conditions are met. Use of solubility measurements as an estimate of bioavailability implicitly assumes that absorption of the soluble material is known. Other assumptions about absorption are acceptable provided that the actual extent of absorption will not be underestimated. It must be shown that the test method under which solubility is measured will not lead to a lower solubility than is expected to occur following ingestion. This requires that the surrogate method be validated against the appropriate *in vivo* models for the substance of interest, the type of material for which it is present, and its dose range.

Relative solubilities, pKa's and oil:water partition coefficients can also be utilized to justify using gastrointestinal bioavailability data for a related compound. A chosen surrogate compound should never be expected to have a lower bioavailability than the compound of interest. Absorption of a more soluble form of a toxicant should never be estimated using data from a less soluble form of the same toxicant. Absorption of organic acids should never be estimated using data from a related acid with a lower pKa. On the other hand, bioavailability of organic bases should never be estimated from a

[3] Passive transport refers to simple diffusion of a substance from one compartment to another controlled by a diffusion coefficient and the concentration or electrochemical gradient across the membrane.

[4] Pinocytosis and phagocytosis refer to transport processes by which substances are engulfed by the cell membrane.

related base with a higher pKa. The oil:water partition coefficient of the surrogate substance should never be lower than the compound under consideration. In these cases, it is essential that other factors critical to bioavailability, such as transport mechanism, molecular weight, first pass metabolism, and physiological effects do not cause the bioavailability of the surrogate compound to be less than the substance of interest.

(b) Respiratory tract: Factors that affect absorption from the respiratory system. Chemicals that are absorbed through the respiratory tract are gases, such as, carbon dioxide or nitrogen dioxide; vapors of volatile liquids, such as, benzene or methylene chloride; and aerosols, such as, silica, asbestos, and other dusts, smokes, fogs or mists. Aerosol deposition and the efficiency of absorption is dependent on particle size and charge. The majority of aerosol particles with a mass median aerodynamic diameter ("MMAD") greater than 5 um are deposited in the nasopharyngeal region of the respiratory tract following nasal breathing. The particles are usually trapped in the thick mucus blanket of the nasal surface and are rapidly removed by either mucociliary clearance,[5] sneezing, or nose blowing. Much of this particulate matter is made available to the gastrointestinal tract after swallowing of the secreta. As nasal breathing becomes augmented by mouth breathing, which might occur during exercise or periods of nasal blockage, nasopharyngeal deposition is reduced while both the fraction and size of particles reaching the deeper regions of the respiratory tract are enhanced. Some sufficiently soluble aerosols can dissolve in the mucus and be absorbed through the epithelium of the nasopharyngeal region into the blood.

Particles with a MMAD in the range of 2 to 5 um are increasingly deposited in the tracheobronchial region of the respiratory tract following nasal breathing. These are also cleared by the upward movement of the mucus layer lining this portion of the respiratory tract. However, the mucus is generally thinner and the clearance times longer, particularly in the terminal bronchiolar regions of the lung, allowing for greater opportunity of being absorbed across the epithelial cells into the blood. Coughing and sneezing can result in more rapid movement of particulate matter from the larger airways to the glottis to be swallowed.

Particles with diameters around 5 um also begin to reach the alveolus of the lung during nasal breathing; this region becomes the major site of deposition for particles with diameters less than 2 um. Lipid soluble aerosols are very readily absorbed from this zone of the respiratory tract due to the large surface area, high blood flow, and thin diffusion barriers. Because of the relatively inefficient clearance mechanisms available in the alveoli, insoluble particles can remain for long periods until they are either removed by the bronchial mucociliary system, phagocytysed by alveolar macrophages, cleared by lymphatic drainage, or slowly undergo dissolution and vascular removal. The long residence times of particulates deposited in the inner regions of the respiratory tract, combined with the relative ease of diffusion across the alveolar membranes, make the lung a significant site of absorption for those substances that adsorb on the surface of small aerosols. Inhaled particles less than 1 um in diameter can be expected to reach the deepest regions of the lung easily. However, the total deposition/retention of these smaller particles in the respiratory system is generally less since they can be exhaled. Recent data using nasal casts of humans and experimental animals suggest that ultrafine aerosols less than 0.2 um in diameter become increasingly deposited in the nasopharyngeal region of the respiratory tract. Other particle characteristics such as density, shape, and hygroscopicity [6] may influence the site of deposition and absorption.

The uptake of gases and vapors can occur throughout the respiratory system. The predominant mechanism for most gases is passive diffusion driven by the higher concentration in the inspired air relative to the tissue and blood. Aqueous soluble gases tend to be taken up by the nasopharyngeal region and upper airways. A greater percentage of the less water soluble gases reach the lower airways and alveolar region of the lung where absorption into the systemic blood occurs much more readily. Once in the alveoli, the amount of a gaseous substance that enters the blood is controlled not only by its concentration in the inspired air, but also by its solubility in blood, pulmonary ventilation, and blood flow. As one continues to breathe a gas or vapor at a constant tension, a steady state concentration in the blood will eventually be achieved. The time needed for a gas to reach steady-state is primarily a function of its solubility in blood, which is characterized by a blood:gas partition coefficient defined as the ratio of the concentration of dissolved gas in the blood to that in the gas phase at equilibrium.

A highly soluble gas with a large partition coefficient will be almost completely transferred to the blood with each inspiration, but the time needed to reach steady-state may be several hours. On the other hand, only a small fraction of a gas with low blood solubility will be absorbed into the blood and saturation may be achieved more quickly. Other factors will influence the ability of a gas to be absorbed in the blood: Time to steady-state will be more prolonged for gases that are highly lipid-soluble and can be stored in body fat; insoluble gases that are rapidly cleared by metabolism will also be absorbed to a greater extent than a gas of similar solubility that is not metabolized; an increase in pulmonary ventilation will often increase the absorption of a highly soluble gas, while an increase in pulmonary blood flow can increase the absorption of an insoluble gas; some carrier mediated or other specialized transport systems are known to exist in the respiratory tract, but are uncommon.

Other considerations may affect absorption from the respiratory tract. Inhaled substances that alter mucociliary flow, cause bronchconstriction, or directly damage the respiratory epithelium can significantly influence the bioavailability from this route of exposure. Although the metabolic capability of the lung is generally more limited than that of the liver, certain selected substances may undergo extensive pulmonary metabolism that could result in reduced systemic bioavailability. A more detailed discussion of the factors that determine the bioavailable dose following inhalation can be found in the EPA Interim Guidelines for Development of Inhalation Reference Doses (EPA, 1989).

The determination of administered dose from inhalation studies is more complex than with other routes since it is dependent on duration of exposure, respiratory rate and tidal volume as well as concentration. It is best for *in vivo* respiratory measurents to be done by plethysmography, but in its absence, appropriate values for the particular species of experimental animal may be assumed based on literature values.

[5] Mucociliary clearance refers to a mechanism by which particulates and bacteria are entrapped in a layer of mucus lining the respiratory tract and swept upward out of the system by the movement of small hairs called cilia attached to the epithelial cells of the tracheobronchial and nasal regions.

[6] Hygroscopicity refers to the ability of particles to accumulate moisture.

Administered dose calculations from experimental animals must be defined in terms of an equivalent human dose. This means that the airborne concentration has to be adjusted to reflect differences in exposure duration and breathing rate between experimental conditions and humans. The default human breathing rate during typical product use is assumed to be 20 cubic meters per day. This produces a default alveolar ventilation rate of 13.4 cubic meters per day since only a fraction of the air breathed is available for gas exchange. Appropriate ventilation rates for a number of animal species have been documented (EPA, 1988). If the test material is an aerosol, particle size distribution needs to be determined as the mass median aerodynamic diameter (MMAD). For insoluble aerosols, the amount deposited in the various regions of the lung can be estimated from the aerosol size distribution, deposition efficiency, and lung surface area. Adjustments can be made to account for differences in aerosol deposition between animals and humans (Jurabek, *et al.*, 1989).

Absorption by the respiratory tract can also be predicted using physiologically based models. These can be developed to estimate blood concentration over time resulting from inhalation of a substance or doses reaching different sites of the respiratory tract. The accuracy of these models depends on precise values for a number of physiological (ventilation rate, blood flow, airway diameter, etc.), biochemical (metabolic rates), and physiochemical (blood:gas partition, diffusion coefficients, etc.) parameters. All models should be adequately validated before being used in assessing bioavailability.

Certain surrogate data may be used to assist in determining bioavailability estimates following inhalation. Aerosol/dust particulates with a MMAD less than 10 um can sometimes be used as an estimate of that fraction available for absorption across the alveolar region of the lung. Studies indicate that only a very small fraction (<10%) of aerosols greater than this size reach the respirable region even with ventilation rates that occur during moderate to heavy exercise (Miller, *et al.*, 1988). Although bioavailability from alveolar deposition of aerosols greater than 10 um may be eliminated from consideration, potential absorption of these particulates from other portions of the respiratory tract or from gastrointestinal exposure as a result of mucociliary clearance must be evaluated.

Blood:gas partition coefficients for gases and vapors can be utilized to justify the substitution of respiratory bioavailability data from a related compound, provided certain criteria are met. The blood:gas coefficient of the surrogate compound must not be less than the compound under consideration. In addition, it must be shown that other factors that control transport from the respiratory tract such as metabolism, clearance, tissue distribution, and uptake from other regions of the respiratory tract cannot be expected to cause absorption of the surrogate to be less than that of the substance of interest.

(c) Skin: permeability characteristics. The skin serves as a relatively impermeable barrier to many chemical agents. In contrast to the gastrointestinal tract and lung in which a chemical must only pass through two cells to reach the blood, the skin has multiple cell layers that must be crossed before systemic absorption takes place. The rate-limiting step in this process is usually diffusion across the stratum corneum, the outermost densely packed layer of keratinized epidermal cells. The stratum corneum of different regions of the body will vary in thickness and diffusivity, and will be reflected in different dermal permeabilities. For example, the palms and soles are much less permeable than other skin areas because of their very thick outer layer of skin. Chemicals diffuse much more readily across the inner epidermis and dermis than the stratum corneum. Some chemicals may be partially absorbed through the cells of the sweat glands and hair follicles. However, because the cross sectional area occupied by these structures in human skin is only 0.1 to 1 percent of that occupied by the epidermis, this route of absorption is unlikely to play a major role for most substances.

Absorption from the skin is believed to occur by passive diffusion. The overriding determinants for the rate of percutaneous absorption are, therefore, the concentration gradients from skin surface to blood and the permeability of the penetrant for the stratum corneum. In addition to skin thickness and membrane diffusivity, dermal permeability is controlled by molecular size and partitioning between the stratum corneum and the vehicle in which the penetrant is present. Except for some extremely nonpolar compounds, the permeability constants for many substances in aqueous solutions have been shown to correlate well with their lipid solubility as measured by the octanol:water partition coefficient, provided their diffusivity does not greatly vary. The correlation is not as strong for the highly nonpolar compounds because the transfer of chemical out of the stratum corneum into the inner epidermis can become rate-limiting. This could possibly lead to an overestimation of dermal permeability based on the octanol:water partition coefficient. The degree of polarity can influence the diffusivity of a substance in the stratum corneum. Very polar compounds appear capable of partially diffusing through the outer surface of protein filaments, while the less polar molecules must exclusively dissolve in, and diffuse through, the lipid matrix between the protein filaments. These differences in molecular mechanism can lead to quantitative differences in the diffusion coefficient among substances. Although small moderately lipid soluble molecules appear to be best absorbed from the skin, larger molecular weight and/or ionized substances will usually be absorbed to a lesser extent. More information on how physicochemical properties influence dermal absorption can be found in the EPA Guidance for Conducting Dermal Exposure Assessments (EPA, 1992).

The vehicle in which the substance of interest is applied to the skin can affect dermal absorption in several ways. A vehicle may improve skin absorption by increasing solubility, thus, providing a greater concentration gradient for diffusion. The vehicle can increase or decrease the partitioning of the penetrant in the stratum corneum, thereby altering absorption. Some vehicles such as dimethylsulfoxide, and certain lipid extraction solvents and detergents, can accelerate dermal penetration by altering the diffusivity of the dermal barrier. This can occur by chemically destroying the integrity of the stratum corneum, either by functioning as a swelling agent, removing lipid, or altering the conformational structure of the cell layer.

A number of other factors might affect dermal bioavailability. The rate of absorption is directly proportional to the amount of surface area contacted by the penetrant: a toxicant applied over a large area of skin will be absorbed faster than an equal amount over a smaller area. Diffusion across the skin increases exponentially with rising temperature. Skin hydration affects percutaneous absorption by altering the diffusivity and thickness of the stratum corneum; dehydration can decrease permeability by as much as tenfold (Klassen, 1980). Disease or damage to

the stratum corneum can cause an abrupt increase in percutaneous absorption. Like the respiratory tract, metabolism of certain chemicals by cells in the inner epidermis may significantly decrease the bioavailability from skin. Binding of penetrant within the different cell layers may also limit bioavailability. Volatility, chemical instability, and pH of the vehicle may alter the amount of toxicant in a form available for absorption. Finally, variability in skin permeability exists among species. Good models for human skin are dependent on the compound of interest; pig and monkey skin generally appear to share the greatest similarity to human skin in terms of percutaneous absorption, but skin from other animals may also be adequate. Human skin may also be available.

Percutaneous absorption can be estimated with physiologically based models. These use physiochemical, biochemical, and physiological data, such as, diffusion and partition coefficients, molecular weight, clearance, and blood flow to predict bioavailability. The parameters used as input to the model should be experimentally determined by legitimate methods and the values being estimated by the model should be appropriately validated.

Octanol: Vehicle partition coefficients can sometimes be utilized to justify using dermal bioavailability data from a related compound. The chosen surrogate must not have a partition coefficient lower than the substance of interest. Other factors that influence bioavailability, such as membrane diffusivity and skin metabolism, also should not be expected to cause the absorption of the surrogate to be less than the compound under consideration. Since dermal absorption data are often available as an experimentally determined or a mathematically derived (based on surrogate measurements) permeability constant when the skin contact is with a liquid, this measurement needs to be converted into the absorbed dose. This can be determined by multiplying the permeability constant (cm/min) by the concentration of the chemical in the medium contacting the skin, the exposed surface area (square centimeters) and the duration of exposure (min).

3. Risk Assessment Guidelines.—a. *Introduction.* The purpose of this section is to describe the procedures to be used when estimating risk for substances which are defined as toxic by nature of their carcinogenicity. Such risks are used in conjunction with exposure information to determine whether an acceptable daily intake (ADI) has been exceeded, as described in the section concerning that subject. As explained in that section, the process of quantitative risk assessment will not be applied to other chronic endpoints (reproductive/developmental effects and neurotoxicological effects) at this time. Thus, this section will only deal with carcinogenic risk assessment.

Although these guidelines will be fairly specific, further information on the rationale behind some of the assumptions, examples of how the guidelines are applied, and examples of the application of pharmacokinetics can be found in the Commission risk assessments on methylene chloride (dichloromethane) and formaldehyde (M.S. Cohn, Inhaled methylene chloride unit carcinogenic risk assessment, June, 1985; M.S. Cohn, Estimated carcinogenic risks due to exposure to formaldehyde released from pressed wood products, February, 1986; M.S. Cohn, Updated risk assessment for methylene chloride (dichloromethane), June 1987).

b. Guidelines for carcinogenic risk assessment.—i. Selection of data upon which risk is based. For a given carcinogenic substance, the data used will be obtained from those studies used to define the substance as "toxic" by virtue of its carcinogenicity. Among these, the study leading to the highest risk should normally be used. However, other factors may be considered in the choice of the study. For example, a study with three administered doses, showing a dose-response relationship, can be given more weight than a study in the same species/strain with a single administered dose. Similarly, a study with the same route of exposure as that anticipated for human use of the product under consideration can be given more weight than a study that uses the same species/strain, but uses a different route of exposure. If both sexes in the study respond significantly, they can be combined before risk analysis if the responses are similar (as done in the case of formaldehyde). Alternatively, the risks for each sex can be determined individually and then averaged for the final estimate (as done in the case of methylene chloride). If there is more than one significantly responding endpoint, the risks for each are determined individually and then added for the final estimate. See the risk assessments on methylene chloride referenced above for an example of this treatment.

ii. High-to-low dose extrapolation. The multistage model (Global83 or later version) is used in all cases unless a convincing argument can be made for an alternative model such as one addressing a distribution of thresholds. Linearity at low dose is always the default assumption, in light of the high probability that the action of any carcinogen will interact with background cancer processes and environmental agents, as opposed to acting independently. Upon request, a copy of Global83 that will run on a personal computer is available without charge from the Commission.

The risk will be based on the maximum likelihood estimate from the multistage model, unless the maximum likelihood estimate is not linear at low dose (which happens when the first-order coefficient, q_1, is zero). In such a case, the 95% upper confidence limit on risk (*i.e.*, the 95% lower confidence limit on dose) should be used. In the example risk assessments cited above, the maximum likelihood estimate was used in the case of methylene chloride and the upper confidence limit on risk was used in the case of formaldehyde.

Modification of doses put into the multistage model may be made if sufficient pharmacokinetic information is available. See the above referenced risk assessments on methylene chloride for an example of how such information can be used to account for nonlinearities in the dose-response curve due to pharmacokinetic influences.

iii. Species to species extrapolation. For systemic carcinogens, that is, those that exert an effect remote from the site of contact, a "surface area" correction will be used if estimates of human risk are made based on animal data. At present, this correction is a factor derived from dividing the assumed human weight (usually 70 kg) by the average animal weight during the study, and taking that to the ⅓ power. On a miligram per kilogram per day (mg/kg/day) basis, the human is assumed to be more sensitive than the animal by this factor. See the risk assessments on methylene chloride for an example of this approach. There is the possibility that this factor may be changed, using the ¼ power instead of the ⅓ power, as part of a unified Federal regulatory approach. If such an approach is adopted, it will apply here.

In cases where the concentration is expressed as parts per million (such as, in air or in diet) and the carcinogen acts at the site of contact (such as, nasal passages or the lung), species may be assumed to be of equivalent sensitivity on such a basis. In other words, humans and animals exposed to the same concentration (in parts per million) in air or diet for the same proportion of lifetime are assumed to be equally

sensitive. See the risk assessment on formaldehyde for an example of this approach.

At this time, pharmacokinetics should not be used to adjust for differences between species in sensitivity to a carcinogen; briefly, this is because information on sensitivity of various species to a "target" dose is not currently available. The rationale for this decision is explained in depth in the risk assessment for methylene chloride.

iv. Route to route extrapolation. If no experimental study having the same route of exposure as that anticipated for human use of a substance is available, a study by another route of exposure is used. In such cases, pharmacokinetic methods may be used if sufficient data are available, or methods described in the bioavailability section may be used. The less information available, however, the more one has to rely on default assumptions (as discussed in the bioavailability section).

v. Scenario extrapolation. Where exposure scenarios are different from those used in the underlying study upon which estimates of risk are based, proportionality should be applied. For example, if an experimental study is performed under conditions of exposure for six hours a day, five days a week for lifetime, then the risk for a single hour of exposure is the risk from the experimental study divided by a factor of: 6 (hours/day exposure) × 5 (days/week) × 52 (weeks/year) × 70 (assuming a 70-year lifetime). If pharmacokinetic methods are used to adjust for risks at high versus low exposure levels, one must be careful not to combine level-time measures (such as in calculating a lifetime average daily dose) without taking the non-linearity into account. Where such pharmacokinetic information is available, it may be used to adjust scenario extrapolations. For example, two uninterrupted days of exposure may lead to a different time versus concentration (area under the curve) estimate than two interrupted days of exposure, due to factors such as incomplete elimination of the substance after twenty-four hours, saturation of uptake processes, or saturation of metabolic processes.

4. Acceptable Risks to Children and Adults

a. *Introduction.* Under the LHAMA, the Commission is required to develop a number of criteria to be used in the determination of whether an art material is to be labeled. Two of these are addressed here, namely, (1) "criteria for determining when art materials may produce chronic adverse health effects in children and criteria for determining when art materials may produce such health effects in adults," with the added provision that "where appropriate, criteria used for assessing risks to children may be the same as those used for adults," and (2) "criteria for determining daily intake levels for chronically hazardous substances contained in art materials."

The first of these two criteria, effects in children and effects in adults, is addressed in this section. The second, criteria for acceptable daily intake, consists of two general parts: Guidelines for determination of the quantitative risk estimated to be incurred from use of an art material containing a toxic substance, and whether or not this risk is acceptable. The first general part is addressed in other sections regarding whether or not a substance is toxic, how exposure is assessed, and how risk is estimated. The second general part, what risk is acceptable, will be addressed here. This discussion is intended to address the issue of acceptable risk with regard to all products subject to the FHSA, not just art materials.

The reasons for the inclusion of these two particular elements (risks to children and adults, and whether such risks are acceptable) in this section become clear when one considers that hazard, as well as risk, cannot normally be distinguished relative to age of the person exposed. It would be extremely rare, if at all, that a case could be made that a specific chronic hazard would apply only to children and not to adults, or vice-versa. For cancer and chronic neurotoxicological effects, hazard identification is normally based on long-term studies in animals or humans, and unless there is some rare phenomenon indicating otherwise, both adults and children would be expected to be susceptible to substances causing such effects. Similarly, exposure of an adult or child to a reproductive toxicant could lead to effects in eventual offspring. A special case is that in which a substance has an effect only during pregnancy—a child exposed to such a substance would not be at risk, but exposure to a pregnant adult could affect the unborn child.

Although children may be more susceptible to the effects of chronic toxicants, current methodologies for carcinogenic or other chronic hazard risk assessment are usually unable to distinguish between risk to children and adults for most substances. This is because (1) data do not usually exist which relate ultimate risk to age at first exposure to a substance, and (2) in the absence of such data, the basic methodologies used for risk assessment have not developed to the point where such projections can be made. Such an endeavor may be further confounded by scenarios where exposure to a substance in childhood may lead to manifestation of a disease in adulthood. Of course, there are rare occasions when data have been available to allow distinction of risks relative to age of exposure, such as the methodology applied for the estimation of risk of mesothelioma due to exposure to asbestos. In this case, there are epidemiological data relating risks observed (after a lengthy period of followup) to the age at which members of the group were first exposed.

Since currently available hazard and risk assessment methods are unable to distinguish susceptibility of children and adults in most situations, the procedures for risk assessment and determination of acceptable daily intake will apply to both children and adults. Thus, the two subjects (children and adult hazard/risk, and acceptable risk) are discussed together in this section.

b. *Acceptable daily intake (ADI) based on acceptable risk.* As mentioned above, the concept of acceptable daily intake (ADI) for a substance depends upon the projected exposure to users of a product (and possibly others affected by the product) and the estimated risks at such exposures. Thus, for any specific product the ADI of a constituent hazardous substance is defined as that exposure which leads to or is below an "acceptable risk." The recommended value of such a risk is explored below.

1. ADI for carcinogens. Although no universal figure exists, several reviewers have observed that Federal agencies, when setting a value of acceptable risk to the public for carcinogens, have often used the figure of one in a million or less. A one in a million risk means that when exposure to an agent of concern occurs, the exposed individual has an estimated additional one chance in a million during his or her lifetime of developing the deleterious effect, such as cancer. The exposure scenario being evaluated can be one use, one year's use, "normal product utility," or anticipated use over a lifetime, depending on the nature of the situation being addressed. Thus, the choice of the exposure situation evaluated is important to the concept of what risk is "acceptable." The greater the exposure, the higher the risk. Risk can be expressed in terms of exposure. For example, risk can be expressed as a risk of one in a million of developing cancer from a certain level of radon measured in a house, if the person

exposed lives in the house for a lifetime. Alternatively, risk can be expressed as lifetime risk—eating an apple treated with a pesticide every day for an entire lifetime results in a certain risk of cancer.

Federal agencies have wrestled with the notion of "acceptable risk" for many years. The FDA in 1977 (42 FR 54148), and in 1979 (44 FR 17075), concluded that a lifetime risk of below one in a million imposes no additional risk of cancer to the public. The latter Federal Register notice dealt with diethylstilbestrol (DES). Since the industry was unable to show that use of DES led to risks of less than one in a million, DES was banned (Marraro, 1982). EPA has considered risks in the area of one in a million to one in 100,000 as a value for "acceptable risk," although other values have certainly been considered (Lave, 1985). The range reflects the attitude that, although the line for a specific regulatory action on a substance might normally be drawn at one in a million, there is flexibility if the benefits of the particular substance drive the definition of "acceptable risk" to a higher value. Industry has also noted the one in a million value. Mieure (1984) of Monsanto Company has stated that risks less than one in a million "are not normally considered relevant for regulatory consideration; FDA, OSHA, and EPA have all stated that substances having risks below one in a million ought not be subjected to regulation."

The Commission has also acted to require labeling at estimated risks on the order of one in a million for a carcinogen. In the case of methylene chloride, some 30 products containing this compound were identified and evaluated in terms of estimated individual risks. By and large, those products having estimated risks of over one in a million were subject to a labeling requirement under an enforcement policy, and those under one in a million were exempt from this requirement. Additionally, the Commission took an action to minimize the amount of DEHP allowed in baby pacifiers when the maximum estimated risks were within the range of one to ten in a million.

The above discussion gives examples of past, present, and proposed definitions of "acceptable risk" used by Federal regulatory agencies that center around the figure of one in a million. While the discussion does not give examples of the many other figures that have also been considered or proposed, the use of one in a million has been most prominent and also has the most precedent in the case of actions taken by the Commission and other agencies for carcinogens. Other chronic endpoints (reproductive effects and neurotoxicity) should receive a similar level of concern. Therefore, for purposes of the LHAMA (and for other products subject to the FHSA), the maximum ADI under the guidelines is that exposure of a toxic (by virtue of its carcinogenicity) substance estimated to lead to a lifetime excess risk of one in a million. The term "exposure," as used in the guidelines, refers to the anticipated exposure from normal lifetime use of the product, including use by artists, art teachers, and art students. The assessment of exposure is covered in the section on exposure in these guidelines.

ii. ADI for neurotoxicological and developmental/reproductive agents. As mentioned in the section on risk assessment, no numerical risk assessment method for neurotoxicological or developmental/reproductive agents will be specified at this time. Although other Federal agencies such as EPA are developing and considering such methods for these types of chronic agents, the development is still ongoing, and they are not ready for implementation in guidelines such as these. When implementation is feasible, the Commission will specify appropriate amendments to these guidelines.

Therefore, as an alternative, a safety factor approach is specified for handling neurotoxicological or developmental/reproductive agents. Safety factors have been used extensively in the past for non-carcinogenic substances, and even for carcinogens as late as the early 1970's. Typically, a factor of ten is applied to account for potential differences in sensitivity between humans and animals, and another factor of ten is applied to account for differences in sensitivity among humans (Hutt, 1985).

Using the safety factor approach, the ADI under the guidelines is the following. If the hazard is ascertained from human data, such as that derived from epidemiological studies, a safety factor of ten will be applied to the lowest no observed effect level ("NOEL") seen among the relevant studies. For each study, the NOEL is considered to be the highest experimental exposure or dose level at and below which no significant response is observed (presumably, the next higher experimental point reflects a significant, positive response). The ADI is then tenfold less than the lowest (among the relevant studies) of these doses or exposures. If the hazard is ascertained from animal data, the ADI is one hundredfold less than the lowest NOEL.

The above concepts require some clarification. First, in the event that the only study or studies available have significantly positive responses at all levels tested (for example, only two single-point studies are available), a NOEL cannot be determined. Therefore, in such cases, the safety factor used to determine ADI will be applied to the lowest exposure or dose yielding positive results, known as the lowest observed effect level ("LOEL"). The safety factor will include an additional factor of ten (*i.e.*, ADI's of 100 and 1000 below the LOEL for situations based on human and animal data, respectively) to account for the probability that a response would occur at a lower dose or exposure.

Second, the NOEL (or LOEL) and ADI reflect daily dose levels, that is, the NOEL (or LOEL) is calculated in terms of amount per day experienced by the animals or humans under study, and the safety factor is applied to that number to determine ADI. When a specific art material (or other material subject to the FHSA) containing a toxic substance is used, if the daily exposure during use (with use, again, referring to anticipated use pattern(s)) exceeds the ADI, the product should be labeled according to provisions of the LHAMA and the FHSA.

Third, where only specific populations are susceptible, the product is still subject to the provisions of the LHAMA and the FHSA, although any labeling would identify such populations. For example, if a developmental toxicant acts only during pregnancy, this quality would be so noted on the labeling.

VII. The Supplemental Definition of Toxic

A. The Existing Statutory and Regulatory Scheme

Section 2(g) of the FHSA defines the term "toxic" very broadly as "any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." 15 U.S.C. 1261(g). This broad statutory definition covers both acute and chronic toxicity.

The Commission's regulatory definitions that interpret and supplement the statutory definitions provide specific tests that can be used to determine whether a product is acutely toxic by oral ingestion, inhalation, and skin contact. 16 CFR 1500.3(c)(2). However, there currently is no

corresponding regulatory definition to apply to products presenting a risk of chronic toxicity.

The Commission has long taken the position that the statutory definition of toxic includes both acute and chronic toxicity. Several regulations issued under the FHSA have addressed chronic hazards associated with a variety of products, such as lead (a neurotoxin), 16 U.S.C. 1500.17(a)(6), asbestos (a carcinogen), *id.* § 1500.17(a)(7), and vinyl chloride (a carcinogen), *id.* § 1500.17(a)(10). Another example of the Commission's action regarding chronic hazards is its Statement of Interpretation and Enforcement Policy on methylene chloride which notified the public that, due to risk of cancer, the Commission considered household products containing methylene chloride to be hazardous substances subject to FHSA labeling requirements. 52 FR 34698 (1987).

Congress and the courts have also recognized the Commission's authority to regulate chronic hazards under the FHSA. In *Gulf South Insulation* v. *CPSC*, 701 F.2d 1137, 1148–50 (5th Cir. 1983), the Fifth Circuit ruled that the FHSA would be the proper statute under which the Commission could ban urea-formaldehyde foam insulation if the Commission could establish a proper evidentiary basis for concluding that the product presented a cancer risk (a chronic hazard). Also, Congress indicated its expectation that the Commission would address chronic hazards through the FHSA. 15 U.S.C. 2080(b)(1)(C) and (2)(A)(iii) (CHAP to review data before Commission can ban a product that contains a carcinogen, teratogen, or mutagen).

B. The Supplemental Definition

The supplemental regulatory definition finalized today amends the regulatory definition of "toxic" to provide a definition that will include chronic toxicity, not just acute. The Commission hopes that this will clarify the definition and fill the gap in the Commission's current regulatory definition of "toxic."

The Commission is issuing the supplemental definition under the authority of section 10 of the FHSA which authorizes the Commission to issue regulations "for the efficient enforcement of this Act." Having this definition will improve the Commission's enforcement capabilities since the staff would not have to prove the meaning of chronic toxicity in each enforcement action. The Commission also believes that the definition will be helpful to manufacturers since it will clarify that chronically toxic substances are "toxic" (and must be labeled appropriately) under the FHSA. The supplemental definition discusses the particular chronic hazards of cancer, neurotoxicity, and developmental or reproductive toxicity. However, the definition is not limited to these hazards, but includes other chronic hazards.

The Commission has simplified the proposed definition. Some commenters felt that the proposed definition would eliminate the flexibility necessary to properly consider all factors affecting risk. They objected to an automatic risk level and automatic safety factors.

The Commission's intention in issuing the proposed guidelines and definition was to provide a balance of flexibility and certainty. The Commission did not intend to impose an automatic system that leaves no room for expert judgment. The general principle that determination of chronic hazards is a complex matter requiring the assessment of many factors is stated throughout the proposed and final guidelines.

After reviewing the comments and considering how the proposed definition would be implemented, the Commission decided to issue a broad definition rather than the more rigid one proposed. The final definition will clearly inform the public that chronic hazards are covered under the FHSA. It will also allow the flexibility intended by the Commission. This does not mean, however, that manufacturers will lack direction on when to label products that may present chronic hazards. The guidelines present exhaustive discussions of the chronic hazards of cancer, neurotoxicity, and reproductive and developmental toxicity, as well as the principles of exposure and risk assessment. The guidelines clearly recommend a risk level of 1×10^{-6} for carcinogens and certain safety factors for neurotoxins and reproductive and developmental toxicants. The guidelines provide that these levels should generally be followed in making labeling decisions, but they recognize that sound scientific data may warrant deviation from these levels.

Rather than requiring set risk levels, the final supplemental definition defines "toxic" as including such chronic toxicants as carcinogens, neurotoxins and reproductive and developmental toxicants.

VIII. Significant Comments and Responses

A. Comments Concerning the Codification

Comment. Several commenters expressed concern that art materials intended for adults and for use outside of the household are not covered by the Commission's interpretation of LHAMA.

Response. As explained more fully in section III.D of the preamble, the Commission construes this exclusion to be very narrow. LHAMA mandated ASTM D–4236 as a Commission rule under section 3(b) of the FHSA. Section 3(b) applies to substances intended or packaged in a form suitable for use in a household or by children. Thus, a substance that is not so packaged or intended is not covered by a section 3(b) rule. However, the Commission believes that it will be a very rare art material whose use is not anticipated in the household or by children.

This is particularly true since many artists do not separate their households from the area where they use art materials.

Comment. Some commenters stated that the final rule should clearly require a conformance statement on all art material products.

Response. As explained in section III.B. of the preamble, the Commission understands ASTM D–4236 to require that art material products that do not require chronic hazard labeling provide a conformance statement indicating that they conform to the requirements of ASTM D–4236.

Comment. A few commenters observed that the Commission needs to be able to amend ASTM D–4236 if ASTM changes any provisions of the standard.

Response. LHAMA provided for the Commission to amend the standard once it has provided an opportunity for written comments. If the change is not one initiated by ASTM, oral comments must also be permitted. The procedure for amending the standard is discussed in section III.F. of the preamble.

Comment. Several commenters noted the difficulty in defining "reasonably foreseeable or customary use" of an art material. This problem was also noted for other materials.

Response. The Commission agrees that this concept is difficult to define and may be particularly so with art materials. As the discussion in section IV.C. of the preamble indicates, the Commission has generally given a broad interpretation to the term.

Comment. Several commenters questioned the need for boardcertified toxicologists to review the formulations of art materials, and some recommended deleting this requirement from ASTM D–4236.

Response. As explained in section III.E. of the preamble, ASTM D–4236 defines the term "toxicologist" for

purposes of that standard as a board certified toxicologist or physician. The Commission can only change this requirement by the rulemaking process that LHAMA provided to amend the standard. The process for amending the standard is discussed in section III.F. of the preamble.

However, the staff does not believe that, in most instances, whether a toxicologist is board certified or not will be crucial to the analysis performed. Rather, the Commission is primarily concerned that the review is conducted by a person who has sufficient knowledge based on education, training, and experience and that the review is based on appropriate criteria. Section III.E. of the preamble explains that as a matter of enforcement policy, the Commission will not require that all art material reviews be conducted by a board certified toxicologist.

Comment. One commenter stated that no scientific and epidemiological data exist to suggest that consumers are being harmed by current use of art materials.

Response. The Commission is not asserting that any particular art material does or does not present a hazard. The guidelines set up a process to determine whether a product presents a chronic hazard. Congress has made the judgment that there is a need for a standard relating to the chronic health risk of art materials and that the Commission should develop guidelines.

Comment. Some individuals and organizations have sought clarification of the term "art material," and they have asked for some guidance on how the Commission will interpret the term as defined in LHAMA.

Response. Congress provided a broad definition of the term "art material." With the exception of certain products regulated under other statutes, the term is defined as "any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium." 15 U.S.C. 1277(b)(1). The Commission has not developed any supplemental definition that would further define this term. However, some guidance on the Commission's interpretation of this term is provided in the discussion earlier in the preamble in section III.D.

B. General Comments Concerning Guidelines

Comment. One commenter suggested that the Commission should issue chemical-by-chemical "guidelines" somewhat like the lists that are developed by the state of California under Proposition 65. Similar comments suggested that the Commission develop substance-specific lists of carcinogens, sensitizers, neurotoxins, and developmental/reproductive toxins.

Response. The Commissions's action fulfills the Congressional intent behind LHAMA and is consistent with the FHSA. The Commission believes that its approach strikes a balance between the desire for certainty and the need to allow expert judgment. As explained in the preamble and the guidelines, many factors must be considered and assessments made to come to the determination that a substance is a "hazardous substance" under the FHSA. A simple list of substances would not reflect the complexities involved in this determination.

Comment. Commenters expressed views on both sides of the issue of the scope of the guidelines, that is, whether they should apply to products other than art materials. Chemical Manufacturers Association ("CMA"), for one, suggested that the Commission address non-art materials in a separate proceeding.

Response. As stated elsewhere in the preamble, the guidelines are intended to help manufacturers and others in determining whether their product presents a chronic hazard and, therefore, must be labeled under the FHSA. These same considerations are equally appropriate for art materials and for other products subject to the FHSA. The guidelines are not mandatory. Thus, to say that they only "apply" to art materials makes no sense since their use will be equally helpful to the manufacturers of art materials and of other products subject to the FHSA.

Comment. Several commenters suggested that the Commission convene a Chronic Hazard Advisory Panel ("CHAP"). CMA, for example, envisions the CHAP as a "screening mechanism" to identify particular consumer products "that deserve a full evaluation for potential chronic health risks." The CHAP would conduct hazard determinations on materials nominated by CPSC. There would be an opportunity for public comment. If warranted, the CHAP would assess potential exposure and, if there was significant exposure potential, conduct a risk assessment. The CHAP would then make recommendations to CPSC regarding labeling. CSMA recognized that the Commission is not required to consult a CHAP before issuing the guidelines, but suggested this "as a matter of sound administrative practice." Another commenter suggested that the Commission should establish a CHAP to review the need to expand the chronic hazard guidelines to product categories other than art materials

Response. As explained more fully in section V.B. of the preamble, the Commission must establish a CHAP in certain specified situations. The only action under the FHSA that requires the Commission to consult a CHAP is rulemaking to ban a particular substance.

In issuing these guidelines, however, the Commission is not promulgating a binding rule, is not seeking to ban a substance, and is not taking action with respect to any particular substance. The CHAP's purpose is to review particular products and substances. CHAP review is not appropriate in this case. The chronic hazard guidelines do not relate to any particular products or substances, but they provide guidance for determining, in general, whether a product can present a chronic health hazard.

Comment. In a somewhat similar vein, some commenters suggested that the Commission should regulate chronic hazards under the CPSA rather than the FHSA. They thought that the Commission should address specific consumer products and consult CHAPs in the process of doing this.

Response. As discussed in the preamble, the FHSA provides authority for the Commission to regulate chronic hazards. Although the Commission may have the authority to proceed under the CPSA, the FHSA is the more appropriate statute. The FHSA specifically requires the labeling of hazardous substances. The Commission has acted in the past to provide for chronic hazard labeling under the authority of the FHSA (e.g., methylene chloride). In fact, if the Commission were to issue chronic hazard guidelines under the CPSA, it may have to first issue a rule under section 30(d) of the CPSA finding that it is in the public interest to proceed under the CPSA rather than the FHSA.

Comment. CMA commented that the Commission has not given adequate notice to extend the chronic hazard guidelines from art materials to other products covered by the FHSA. CMA stated that the proposed guidelines did not adequately explain the Commission's authority and did not address the economic effects of the extension.

Response. The Commission believes that adequate notice was provided. The proposed guidelines clearly stated that because the scientific principles behind the guidelines are not affected by the types of products under consideration, manufacturers could use the proposed guidelines to aid their determination of whether a product covered by the FHSA presents a chronic hazard. The

commission received 47 written comments, including several on the very issue of the scope of the guidelines, and 15 people presented testimony at the public hearing in October.

Moreover, as explained in the preamble, the chronic hazard guidelines are not mandatory and are not being issued as substantive, binding rules. Rather, they are intended as guidance for manufacturers and others who must determine if their product requires labeling under the FHSA.

The Commission believes that it has adequately addressed the economic effects of the chronic hazard guidelines. The guidelines impose no new requirements on manufacturers. It is the FHSA that requires proper labeling of hazardous substances. The guidelines represent the CPSC's interpretation of the current scientific concensus regarding chronic health hazard assessment. Furthermore, the guidelines do not require any review of non-art materials by a toxicologist. This is a requirement of LHAMA and is directed exclusively at art materials.

Some commenters, including CMA may incorrectly believe that toxicological review would be required of all products subject to the FHSA. The requirements associated with the codification of the ASTM D-4236 apply only to art materials.

Comment. Several commenters stated that the Commission should clarify that chronic hazards covered by the FHSA are those that have the potential for "substantial" injury or illness.

Response. The FHSA definition of "hazardous substance" at issue in these guidelines does concern substances that may cause "substantial personal injury or substantial illness." 15 U.S.C. 1261(f)(1). The Commission's regulatory definitions provide guidance in interpreting this term. The applicable regulation states: "Substantial, personal injury or illness' means any injury or illness of a significant nature. It need not be severe or serious. What is excluded by the word 'substantial' is wholly insignificant or negligible injury or illness." 16 CFR 1500.3(c)(7)(ii).

C. Comments On Scientific Issues of the Guidelines and Definition

I. General

Comment. Commenters noted that it is important to keep the guidelines flexible and that rigid adherence to default factors (i.e., numerical factors to be used in the absence of data for the particular substance or circumstances) should not be required.

Response. The guidelines are intended to be flexible. This is stated very clearly in the guidelines as proposed and finalized. Default assumptions such as those used in exposure and risk assessment are, by definition, to be used in the absence of appropriate data. The guidelines permit the replacement of default assumptions with data-based alternatives. Alternative approaches should be scientifically defensible and supported by appropriate data.

Comment. Some commenters suggested that the guidelines should clarify that lack of significant bioavailability (or exposure) of a substance that would otherwise be a chronic toxicant will result in that substance being exempt from consideration as a "hazardous substance" under the FHSA.

Response. The proposed guidelines explained that for a substance to be a "hazardous substance" under the FHSA it must have the potential to be toxic and present a significant risk of adverse health effect through customary or reasonably foreseeable handling or use. The proposed guidelines also explained that this second factor reflects the person's exposure to the toxic component or the component's bioavailability. 56 FR 15674. The final guidelines reiterate this point.

Comment. Several commenters suggested that CPSC should specify using a species extrapolation method based on body weight since the use of the proposed "surface area correction" is not supported by the science.

Response. The science does not more strongly support one specific choice for a species extrapolation factor over another. Such a factor is commonly used to predict human cancer risks on the basis of results in animals. It is generally agreed that the best choice for such a factor lies within the range of the body weight method cited by the commenters, and the "surface area" method proposed in the guidelines. The FDA has used the body weight method in the past, and CPSC and the EPA have used the "surface area" method.

However, CPSC staff has been working closely with EPA, FDA, OSHA, and other Federal agencies to adopt a unified approach for species extrapolation (a factor related to weight ratio of humans and animals to the three-fourths power, which is in the middle of the range previously described). The guidelines state that this approach should be used when the unified Federal effort is adopted. There is extensive scientific justification and much peer review associated with this process. The Commission does not believe any change to this discussion in the proposed guidelines is warranted.

Comment. A few commenters stated that CPSC proposes to select data which produces the highest risk estimate. They suggested that the CPSC should encourage users to evaluate all appropriate data sets, and that the most scientifically relevant data, preferably human epidemiology, should be regarded as the key data to use for dose-response modeling.

Response. The proposed and final guidelines do not specify using data that produce the highest risk estimate. In choosing which data sets will serve as the basis for risk estimates, toxicologists should review all the data. The guidelines state that expert judgment is to be used in this, as well as in the many other choices which are part of the risk characterization process. For example, a method is presented which combines the results from different sexes, as opposed to only calculating risk from the highest responding sex. Furthermore, statements are made within the guidelines indicating that human epidemiology, when adequate, is the preferred source of data for human risk characterization.

Comment. Several commenters objected that the proposed definition of "toxic" would remove flexibility and require automatic application of a specified risk level for carcinogens and safety factors for other chronic toxicants.

Response. After considering these comments and how the proposed definition would work in practice, the Commission decided to revise the definition so that it defines "toxic" with respect to chronic toxicity but does not specify particular trigger levels. The definition is discussed in section VII of the preamble.

2. Cancer

Comment. Several commenters suggested that the guidelines' consideration of benign tumors as evidence of carcinogenicity should be similar to the approach of the Environmental Protection Agency and the International Agency for Research on Cancer (IARC), which consider such tumors as "limited evidence," and not "sufficient evidence." The grouping of benign and malignant lesions, they assert, is controversial and is only appropriate when certain criteria, like histogenic cell type, are met.

Response. The basis for considering benign tumors as part of "sufficient evidence" under certain conditions, and combining benign tumors with malignant tumors was discussed in the proposed guidelines. The CPSC believes that a benign tumor, if it has the potential to progress to malignancy, or is

life-threatening, should be considered to have the same potential health risk as if it is a malignant tumor. Current information supports combining benign and malignant tumors when scientifically defensible (e.g., same cell type in an organ or tissue). This is one of the principles of the consensus document proposed by Federal government agencies under the aegis of the Office of Space and Technology Policy. As it is rarely found that chemicals cause only benign tumors (in a review of 300 National Toxicology Program bioassays by Huff in 1988), the CPSC staff believes since a benign tumor may be life-threatening itself, or may be transitioning to malignancy, it should be treated as a malignant tumor unless there is adequate evidence showing that these possibilities are unlikely to occur.

Comment. Several commenters observed that increased tumor incidence at independent multiple sites are not necessarily independent observations and should not be treated as such in the guidelines. Tumors resulting from metastasis are not considered as separate tumors. Significance of multiple site tumors should be considered in the same way as that by EPA.

Response. The issue of tumors produced at multiple sites was discussed in the proposed guidelines. The phrase "sites of independent origin" means independent cancers which originate at unique sites and not that the same cancer metastasizes to a different site where cancer is reestablished. Thus, metastasis of a primary tumor to different sites will not be counted as different primary tumors because they would not have independently originated. The staff believes that the ability of a chemical to independently produce tumors at multiple sites indicates that the chemical has a wider range of carcinogenic potential similar to such an indication from responses in multiple strains, species, or experiments. No information was found in the comments to warrant any change in this position.

Comment. Several commenters stated that according to the Commission's proposals, a single study in humans which shows only limited evidence, or a study in animals which shows "sufficient evidence," is all that is required to determine that a substance is toxic under the FHSA due to chronic toxicity. They observed that in general, consistent findings from multiple human studies or multiple species are necessary to ensure valid hazard identification for this type of toxicity.

Response. Evidence from a study or studies taken together must be evaluated by the toxicologist. If a single extremely well conducted, non-biased study shows a powerfully significant effect, it by itself can serve as a basis for "sufficient evidence" of a toxic effect.

Epidemiological studies are very complex, and generally have inherent problems, such as exposure to multiple chemicals and problems ascertaining exposure. Much of this complexity leads to the evidence falling into the "limited evidence" category. CPSC staff believes that an epidemiological study or studies, which provides convincing evidence of a causal relationship between the incidence of cancer (or other chronic effects) and exposure to a chemical, but in which chance, bias, or other confounding factors could not be absolutely ruled out (limited evidence), may warrant the characterization of a chemical as toxic (probable human carcinogenic substance) under the FHSA. The criteria in these guidelines are not intended to be mechanically applied, but rather should be interpreted with the exercise of expert technical judgment. A single animal study with a response at only one dose will not normally lead to a conclusion that the substance is "toxic" under the guidelines.

Comment. Several commenters suggested that a "weight of the evidence" approach used by EPA should be followed in place of a "strength of the evidence" approach used by IARC in categorizing the evidence. CPSC, they observed, seems to have adopted the "strength of the evidence" approach. The commenters suggested that the guidelines should emphatically direct the consideration of all available information, including tests that show negative responses, as part of any evaluation.

Response. Both approaches include evaluation of all the available data regardless of the positive or negative results. CPSC's approach, which is not designated by any name, is similar to that of EPA and IARC; it also includes evaluation of all the available data. CPSC's approach does require a certain amount and quality of positive data before a finding of "toxic" can be made, but CPSC's guidelines also state that certain data and evidence can negate the impact of the positive data. The Commission believes that the approach adopted in the guidelines to evaluate carcinogens is a sound one, because it allows consideration of all the available data and not just the positive data.

3. Neurotoxicity

Comment. Numerous commenters noted that since LHAMA is concerned with only chronic effects, acute neurotoxic effects should not be considered. Discussion in the proposed guidelines on neurotoxicity, they stated, is too broad and would cover everything including water. Consideration should be limited to the agents which primarily affect the nervous system; only direct neurotoxic effects should be included in the definition. Effects due to overdosing, or alterations from baseline should not be considered as an indication of neurotoxicity unless statistical significance can be demonstrated.

Response. The guidelines do address only chronic effects. The nervous system is integrally connected to the functioning of all the other systems in an organism, which complicates the interpretation of neurotoxic effects. Effects can be chronic under several circumstances. These include long-term exposure followed by the effect, short-term exposure followed by an effect occurring at some time in the future, and an immediate effect due to short-term exposure which then lasts for a prolonged period of time. "Acute" in this case would refer to only those immediate effects, from short-term exposure, which are rapidly and completely reversible. The terms "short," "prolonged," and "immediate" are general guides to the interpreting toxicologist, who must decide from the nature of the studies if the effect is acute or chronic.

Comment. Several commenters stated that defining "sufficient evidence" by statistics is not appropriate since some results may be statistically significant due to random variability. They suggested that results must be statistically significant and biologically plausible, that "limited evidence" should also require biological plausiblity, and that the "possible neurotoxic substances" class should be deleted. Neurotoxicity criteria, they commented, are impractical to determine an appropriate hazard warning.

Response. Although it is possible that some neurotoxicity findings may be the result of false positives, this is accounted for by the guidelines. For human studies, the studies must be of high quality, and bias (which could lead to a false positive) must be considered. For animal studies, the effects must be statistically significant in more than one good quality study. Expert technical evaluation includes examination of reliability, sensitivity, and validity along with the requirement that a study should be well designed and conducted. Biological plausibility is a factor that increases confidence in a result, but by no means is it a prerequisite for using

the study as a basis for a finding of toxicity. In addition, it is clearly stated that evidence derived from animal studies that has been shown not to be relevant to humans is not included in the consideration of the neurotoxicity of a substance. The "possible neurotoxic substances" class is important to retain because it could indicate that more work is necessary on a particular chemical, and it gives the basis why the current evidence is not sufficient to conclude that a substance is toxic.

4. Reproductive and Developmental Toxicity

Comment. Some commenters stated that it is inappropriate to list a chemical in the "sufficient" category if it has been found to be active in only one species, regardless of the number of endpoints. A single statistically significant endpoint is not "sufficient" evidence to classify a material as a reproductive or developmental toxicant.

Response. The staff believes a good quality study with significant changes in multiple endpoints using multiple doses, routes of administration, or strains, constitutes a degree of toxicity in animals that is predictive of probable harm to humans and thereby warrants further assessment of exposure, risk, and bioavailability. If an effect occurs more than once (at two dose levels or two sites, for example), or if there are multiple effects, the possibility that the observed reproductive or developmental toxicity is an anomoly is greatly reduced.

Comment. Some commenters stated that maternal toxicity and its relationship to developmental toxicity should be evaluated and integrated into the interpretation of a study. Developmental toxicity, they stated, should not be automatically discounted as secondary when it is associated with maternal toxicity.

Response. The Commission agrees with this comment. The proposed guidelines stated "maternal toxicity * * * must be evaluated and accounted for in the interpretation of a study. The toxic effect(s) observed in a positive study *should* be significant at one or more doses in the absence of maternal toxicity." 56 FR 15684 (emphasis added). The final guidelines have been revised to clarify this point and state that toxicity is not automatically discounted as secondary when associated with maternal toxicity.

5. Bioavailability.

Comment. One commenter observed that CPSC proposes to set the dermal penetration rate for chemicals present in mixtures at 100 percent. CPSC should require skin penetration rates based on the physical-chemical characteristics of an art material, the commenter stated. While direct measurement of the skin penetration is desirable, in numerous instances it is impractical. Alternatively, other indirect approaches must be relied upon to estimate systemic doses from skin contact; and any default value, particularly one as severe and overly simplistic as 100 percent, must be left to rare and extreme circumstances.

Response. The proposed CPSC bioavailability guidelines did not set the dermal penetration rate for chemicals at 100 percent. In fact, the guidelines as proposed and finalized specify the use of indirect approaches, including use of physicochemical data, to estimate dermal bioavailability where appropriate. The proposed guidelines, at section III.F.2.c.i (56 FR 15660) clearly indicated that either a default value may be assumed or a bioavailability assessment may be performed. That paragraph also states that "the default value should be used when there are no adequate data which would lead to an alternative approach." The following paragraph of the proposed guidelines generally describes the alternative approaches and the conditions under which they can be used to estimate bioavailability.

The type of data which may be used in a quantitative bioavailability assessment are discussed in subsection (b) of VI.F.2.c.i. A number of acceptable methods of measuring dermal penetration are also specifically identified in the technical support document for the bioavailability guidelines available through the CPSC's Office of the Secretary. They include *in vivo* bioavailability studies, isolated perfused skin studies, *in vitro* studies using excised skin, physiologically based dermal absorption models, surrogate data such as octanol:vehicle partition coefficients and bioavailability data from surrogate compounds. It is stressed throughout the guidelines that all factors expected to affect dermal penetration must be considered in the assessment. This is especially important when bioavailability is based on *in vitro*, surrogate compound, or physicochemical data.

Comment. One commenter states that in the proposed guidelines, CPSC fails to acknowledge the range of information that may be relied upon to make estimates of systemic doses from skin contact with chemicals reliably in the absence of direct empirical measurements. The information lacking from CPSC's proposed guidelines, the commenter states, includes viscosity of a chemical mixture, the molecular weight of each substance, the polarity of each substance in a mixture, and the lipophilicity of each compound.

Response. This comment is incorrect. Section III.F.2.c.ii(c) of the proposed guidelines (56 FR 15684) acknowledged a large number of factors that impact dermal bioavailability including three of the four examples cited in this comment. Lipophilicity, molecular size, and degree of polarity are all discussed in the second paragraph of the section as important chemical-specific determinations of dermal absorption.

This section of the guidelines describes several vehicle-specific determinants of dermal absorption but does not include viscosity. The commenter claims that "high viscosity acts as a barrier to absorption through the skin" based on "many incidental observations" related to pen and marker inks. The staff is unaware of scientific data that show viscosity retards skin penetration, although it is generally recognized that viscosity will affect dermal migration (migration of a substance from a product to the skin surface). Dermal migration is discussed in the guidelines for assessing exposure (VI.F.1.c.iii). Finally, the fourth paragraph of the skin permeability section describes the major physiological and other factors expected to influence dermal absorption. Hydration of the stratum corneum and volatility of the mixture, also mentioned elsewhere by the commenter, are discussed in that section.

Comment. One commenter asked how a hazard can be established and estimated when the exposure is infinitesimally smaller than doses known to produce any effects in animals. The commenter stated that hazards are estimated by direct exposure to a substance regardless of the route of exposure, and, more often than not in art materials, the particular ingredients of concern are not readily bioavailable.

Response. This comment is interpreted to question the basis on which CPSC can ever consider ingredients contained in art materials as hazardous when: (a) Users are exposed to much smaller amounts of these substances than cause adverse effects in experimental animals, and (b) the routes of human exposure to art materials are often such that the ingredients would not be readily bioavailable.

The first part of the question was addressed in section III.F.4.b of the proposed guidelines on acceptable daily intake. The ADI is the maximum daily dose of a chronically toxic substance (as determined by other sections of the

guidelines) to which a person can be exposed without presenting an unacceptable risk of injury and illness. The ADI will usually be considerably less than the dose observed to cause an adverse health effect in animals as discussed in subsection (i) and (ii) of this discussion in the guidelines. This is because the observed adverse effect levels in animals, in most instances, have to be adjusted (1) to assure that the toxicity observed at the high levels is acceptably reduced or eliminated at the human exposure levels, (2) to protect for the possibility that humans may be more sensitive to the toxic effect at equivalent administered doses, and (3) to account for the larger expected variation within the human population. Unfortunately, scientific data on which to determine the magnitude of these adjustments are rarely available, necessitating the use of assumptions based on longstanding policies within the regulatory community. However, the guidelines indicate that these assumptions should be replaced with biologically-based approaches when there is valid and convincing scientific evidence that an alternative is clearly superior.

The second part of the comment is addressed within the guidelines for assessing bioavailability. That section of the guidelines describes the situations in which there is a need to assess bioavailability, including when it is anticipated that the routes of human exposure to a toxic substance will differ from those used in an animal toxicity study.

If it is true that exposure to ingredients within art materials are "infinitely smaller" than the doses that produce chronic toxicity in animals and that the ingredients of concern are not bioavailable, then of course there is no hazard. However, this needs to be established through the hazard assessment process.

6. Exposure Assessment.

Comment. One commenter suggested that exposure assessment should be done in accordance with handling instructions on the product package, such as, "use with adequate ventilation."

Response. ASTM D–4236 states that reasonably foreseeable misuse should be considered in assessing risk. Use with inadequate ventilation, for example, is likely to be reasonably foreseeable. Commission regulations also state that under the FHSA "reasonably foreseeable handling or use" includes foreseeable accidental handling or use. 16 CFR 1500.3(c)(7)(iv). Thus, in the context of LHAMA and the FHSA, exposure assessment should not be limited to the manufacturer's instructions.

Comment. Two commenters suggested that CPSC eliminate consideration of incremental exposures when judging the need to label an art material, as suggested in the guidelines for assessing exposure. This provision, they stated, is impractical and unnecessary, and CPSC fails to provide adequate guidance for its implementation. They stated that it will create confusion among users if a product is labeled due to incremental exposures from other sources.

Response. It is often impractical to consider exposures from other sources, although it is sometimes desirable to do so. One example is products containing lead since there is an existing background level near the point where an effect can occur. However, in the context of LHAMA and the FHSA, the focus is clearly on individual products. The proposed guidelines stated in the discussion only that "it may be useful" to define what portion the product-specific exposure is of the total environmental exposure, but the discussion acknowledged the difficulties. The final guidelines clarify that assessment of exposures from other sources is not required, but should generally be noted. Whether other sources should be considered must be determined on a case-by-case basis.

7. Risk Assessment.

Comment. Several commenters objected to CPSC's proposal in the chronic hazard guidelines that an additional ten-fold safety factor be applied to products intended for use by children for all chronic endpoints when calculating the acceptable daily intake, to account for the possibility that children may be more sensitive than adults. Several stated that this was not supported by the scientific data. Some commenters stated that this additional ten-fold factor would have an adverse economic impact on the art materials industry, especially on manufacturers of unleaded glazes used for ceramics. As a result of this safety factor, they stated, 92 product lines which currently do not require warning labels under the Art and Craft Materials Institute's review program will be required to carry warning labels.

Response. As discussed in section IV.E. of the preamble, the Commission has decided not to include additional safety factors for children's products in the final guidelines and definition.

Although children may be more susceptible to many substances than adults, it may be difficult to differentiate between products for children and those for adults, particularly in the area of art materials. This could result in a more widespread use of the ten-fold safety factor than the Commission had intended.

Even if CPSC's proposed ten-fold safety factor were implemented, however, it is questionable whether the extra safety factor for children would actually affect the labeling status of unleaded glazes. According to Dr. Stopford (ACMI's consulting toxicologist), ACMI applies safety factors of its own to risk assessments involving children. In many cases, the ACMI safety factors, which are not required in the proposed guidelines, may be equivalent to or greater than CPSC's proposed ten-fold safety factor. In effect, ACMI's toxicologist has applied redundant safety factors and, as a result, has overestimated risk.

Multiple overestimations of exposure, in total greater than a factor of ten, have been incorporated by ACMI's analysis; these would not be used if CPSC staff were to do the analysis. Of course, ACMI's overestimation of exposure is intentional. It is its means of providing an additional safety factor for children.

In addition, for assessing cancer risk, according to Dr. Stopford, ACMI assumes that children are exposed for 70 years. In comparison, the Directorate for Health Sciences would assume that a child is exposed to a children's product only during childhood. If childhood is considered to last for ten years, then ACMI in effect is applying a seven-fold safety factor of its own which is not directed by CPSC's guidelines. Taken together, ACMI's self-imposed seven-fold safety factor and the 1×10^{-7} acceptable risk directed by the CPSC guidelines, are equivalent to a 70-fold safety factor, while the proposed guidelines required only a ten-fold factor.

Comment. Several commenters stated that the Commission's guidelines and rules should be consistent with those of other agencies, such as OSHA, EPA, and FDA.

Response. Congress mandated the voluntary standard as a Commission standard. The Commission cannot change these provisions without going through the amendment procedures specified in LHAMA. The CPSC's chronic hazard assessment guidelines are almost entirely consistent with the guidelines and methodologies of other agencies, including those mentioned by the commenters. Some of the differences relate to what is required by Congress; for example, LHAMA requires CPSC to address the determination of acceptable daily intake for chronic hazards.

The few technical differences between CPSC and other agencies have been carefully considered by CPSC. For example, two major differences between CPSC's guidelines and EPA's guidelines are the use of benign tumors and the treatment of tumor responses at multiple sites. EPA, which is in the process of revising its cancer guidelines, is reconsidering its position on these two points. It is quite possible that EPA's revised guidelines will be in agreement with CPSC's on these points.

CPSC is working with other agencies to harmonize risk assessment methodologies. For example, CPSC staff has been working with EPA, FDA, and OSHA to adopt a uniform approach for species-to-species extrapolation. CPSC's proposed guidelines state clearly that the uniform approach (body weight ratio to the three-fourths power) will be used when the proposal is finally adopted.

Under the Hazard Communication Act, OSHA may require manufacturers to warn workers if there is a single, well designed study showing a statistically significant effect for a health hazard such as cancer. The toxic potency and exposure are not necessarily considered, as they are under LHAMA and the FHSA. Therefore, it is possible that a product could require a warning in the workplace, but not require a label when sold as a consumer product. Occupational exposures are typically greater than consumer exposures from similar materials.

Regarding labels themselves, the Commission is not requiring any labeling beyond what is required by LHAMA and FHSA. The staff is revising its 1979 labeling guide so that it will provide guidance on developing chronic hazard labeling.

D. Comments Concerning Labeling

Comment. CMA suggests that the Commission adopt the ANSI standard for Hazardous Industrial Chemicals (Z129.1–1988) for precautionary labeling of chronic hazards.

Response. The Commission is not prescribing particular labeling requirements. Some requirements for art materials are mandated by LHAMA. Other materials must adhere to the requirements of section 2(p) (1) of the FHSA and regulations previously issued under that authority (e.g. for prominence, placement, and conspicuousness at 16 CFR 1500.121). The staff will, in the future, develop some general guidance about the design and content of labels warning of chronic hazards.

Comment. Several commenters noted that while the proposed guidelines and supplemental definition of toxic would apply to all products subject to the FHSA, not just art materials, the Commission did not include additional labeling requirements for what the chronic hazard labels should say except in the case of art materials.

Response. Neither the guidelines nor the definition specify labeling requirements beyond those already in force under the FHSA. ASTM D–4236, now codified as a Commission standard for art materials, does provide some examples of labels that may be appropriate to warn of chronic hazards. These warnings may also be appropriate for other products subject to the FHSA that present a chronic hazard. However, the suggested labeling may not be sufficient to satisfy all the requirements of section 2(p)(1) of the FHSA for art materials or other household products, especially mixtures containing various chemicals. It is the manufacturer's responsibility to determine the product's characteristics and to design appropriate labeling. The staff is in the process of revising its 1979 labeling guide for products that present an acute hazard. The updated version will provide guidance on developing warning statements for products that pose a chronic hazard.

Comment. One commenter suggested that since it is not known how various components of art materials interact, the most informative labeling might be to state "Contains (name of toxic substance). Use this product with caution and as intended or instructed."

Response. Art material mixtures may be more or less hazardous than the components themselves because of synergistic or antagonistic reactions. For this reason, labeling may not reflect the true effect of the mixture if it is based on the extent to which one component is a carcinogen, neurotoxicant, or reproductive or developmental toxicant. Moreover, as explained in the guidelines, bioavailability and exposure must be considered. Labeling of art materials should be accurate and as specific as possible in terms of precautionary statements and consequences of ignoring the warning. Specificity increases the likelihood that users would take precautionary measures and reduces the likelihood that the product will be used in a manner perceived as safe, but which may not include the appropriate safety measures. Thus, mixtures should be evaluated based on existing scientific data so that the label can reflect the true nature of the hazard.

E. Comments Concerning Economic Impact

Comment. Some commenters expressed concern about the burden that would be placed on each manufacturer having products assessed by toxicologists and submitting to the Commission assessments of the potential chronic hazard of each product. Additionally, if a product were mistakenly required to have chronic hazard labeling under the guidelines, this would be tantamount to banning the product, since no consumer would buy the product. Thus, the guidelines should be carefully thought through. CMA suggested that the Commission issue a separate notice of proposed rulemaking to address such economic concerns.

Response. The preamble attempts to clarify that the requirement that a manufacturer provide a toxicologist with formulations of the manufacturer's products and that the manufacturer submit to the Commission the criteria used to determine chronic toxicity only applies to art materials. As discussed in the preamble, with products other than art materials, it is the manufacturer's responsibility to see that products are properly labeled, but the means used to reach this goal are left to the manufacturer. The guidelines impose no labeling requirements beyond those already in existence in the FHSA.

Even with art materials, however, LHAMA and ASTM D–4236 do not require a risk assessment of each product be submitted to the Commission. Rather, the producer or repackager of an art material must provide the Commission with a summary of the criteria a reviewing toxicologist uses to determine chronic toxicity and a list of those specific products that require chronic hazard labeling.

Manufacturers who have credible reasons to believe that their products are safe or else are applying the appropriate warning labels, would not need to reevaluate their products against the guidelines. The guidelines and supplemental definition, in and of themselves, do not increase the regulatory burden on manufacturers. The labeling of hazardous substances is mandated by the FHSA, not by the guidelines. The choice of means used for evaluating the hazardousness of a product is left to the manufacturer. However, because failure to properly label a hazardous substance is a violation of the FHSA, and because unnecessary labeling of non-hazardous products may put the firm at a competitive disadvantage, it is in the

firm's interest to have a "carefully thought through" method for evaluating its products. The guidelines and definition should aid the manufacturer in the determination that a product must be labeled under the FHSA. As the preamble and other responses to comments explain, the Commission has given a great deal of thought to the guidelines and definition. The Commission believes that it has adequately addressed the economic concerns expressed and that a separate rulemaking is unnecessary.

Comment. Two commenters requested that the Commission extend the effective date of the final guidelines and definition to six months or one year rather than the 90 days proposed. They stated that additional time is necessary for manufacturers to ensure labeling compliance without excessive hardship.

Response. Neither of the commenters requesting an extension of the effective date are producers of art materials. Thus, only the guidelines and supplemental definition of toxic would apply to these commenters. The guidelines and definition do not impose new requirements on manufacturers of consumer products subject to the FHSA. Therefore, manufacturers of consumer products will not incur additional costs solely because of the adoption of the final guidelines and definition. It is possible that in reviewing the guidelines and definition, a firm may realize that its interpretation of the FHSA requirements has been in error and will incur costs correcting its mistake. However, these costs would be incurred whenever and for whatever reason a firm discovered that it was not in compliance with the FHSA. Furthermore, one of the above commenters stated that it has already "conducted extensive testing to ensure the safety of [its] products and has not discovered any chronic hazard concerns." If responsible evaluation has occurred, the firm is likely to be in compliance with the FHSA. The Commission does not believe that there is any economic justification to extend the effective date.

F. Comments Concerning all Actions

Comment. Several comments raised the issue of preemption. Some commenters stated that the proposed rules might lend strength to an argument that they would preempt state laws dealing with toxic chemicals, and these commenters requested the Commission to state that the rulemaking would not preempt state law. Other comments requested the Commission to indicate that its actions would preempt state law.

Response. The issue of preemption is quite complex and cannot be resolved simply by stating that all contrary state laws are or are not preempted. As the preamble explains more fully, under section 18 of the FHSA, a cautionary labeling requirement under section 2(p) or 3(b) of the FHSA designed to protect against a risk of injury or illness associated with a hazardous substance would preempt non-identical state or local cautionary labeling requirements applicable to that hazardous substance and designed to protect against the same risk of injury or illness. LHAMA mandated ASTM D–4236 as a Commission rule under section 3(b) of the FHSA. As a labeling requirement under section 3(b) of the FHSA, it has preemptive effect in the circumstances stated in section 18(b)(1)(A).

The final chronic hazard guidelines, however, are not mandatory and do not themselves impose any cautionary labeling — requirements. The requirement to place hazard labeling on a substance that is a "hazardous substance" comes from sections 2(p) and 3(b) of the FHSA. The guidelines, in contrast, are an aid to manufacturers and producers in determining whether a product is a hazardous substance. Thus, the guidelines themselves would not directly preempt any non-identical state guidelines.

The supplemental regulatory definition of "toxic" is not itself a cautionary labeling requirement. However, it does work with the labeling requirements under section 2(p) and 3(b). The regulatory definition in itself does not have direct preemptive effect, but the labeling requirements under sections 2(p) and 3(b) would preempt state and local labeling requirements that applied to hazardous substances (as defined in the FHSA and its regulations) covered by section 2(p) or 3(b) and designed to protect against the same risk.

Comment. An ancillary comment was made that the labeling requirements under the FHSA are too weak and vague to preempt state laws.

Response. The requirements of the FHSA are not vague. The FHSA defines the term "misbranded hazardous substance" at section 2(p)(1)(E) as a hazardous substance that "fails to bear a label (I) which states *conspicuously* * * * an affirmative statement of the principal hazard or hazards, * * * or similar wording *descriptive* of the hazard" (emphasis added). This means the labeling must communicate to the consumer an understanding of the potential principal hazard or hazards presented by the product in order to avoid being misbranded and subject to legal action.

In some cases simply restating the defined hazard, such as "FLAMMABLE" will provide a meaningful statement of hazard. In other cases, more descriptive language is necessary, such as for corrosive hazards, statements like "CAUSES BURNS" or "CAUSES SEVERE BURNS" are required to satisfy the FHSA.

The cautionary labeling required under the FHSA must present a balanced perspective of the potential hazards of the product. Many products which may cause chronic health effects may also be acutely toxic and present physical hazards, such as flammability. The suggested labeling for methylene chloride paint strippers had to take into consideration the product's acute inhalation toxicity in addition to the carcinogencity hazard. Therefore, the suggested front panel label statement is "VAPOR HARMFUL" with the instruction "Read Other Cautions and HEALTH HAZARD INFORMATION on back panel" and the back panel statement is "Contains methylene chloride, which has been shown to cause cancer in certain laboratory animals." For products where the only hazard is carcinogenicity and the evidence of increased risk of cancer to humans is clear, the labeling would be more straight forward. In its policy statement regarding the labeling of asbestos containing consumer products, 51 FR 33911, September 24, 1986, the following signal word and statement of hazard were suggested as adequate for asbestos cement sheet products, "WARNING: BREATHING FIBERS MAY CAUSE CANCER" with the hazardous component declared as "Contains asbestos which is known to cause cancer in humans."

Comment. The Chemical Manufacturers Association ("CMA") commented that the Commission should provide explicit protection for trade secrets.

Response. Again, there is confusion over requirements of ASTM D–4236 for art materials and requirements for other products. The requirement to submit formulation data to a toxicologist and the determining criteria to the Commission applies only to art materials. Thus, the protection of trade secret information is not as wide-spread a problem as some may have believed. A provision of ASTM D–4236, now codified at 16 CFR 1500.14 (b)(8)(i)((C)(2), states that only the reviewing toxicologist shall have access to the product formulation submitted for review. There is an exception if written

permission is given or if the data are provided on a confidential basis to a physician for purposes of diagnosis or treatment.

Section 2(p)(1) of the FHSA requires that the name of the hazardous substance be listed on the label. This is a statutory requirement and is not something the Commission can change. Listing the generic name is acceptable. There is no requirement to spell out the product formulation or the amount of the hazardous substance.

As for submission of data to the Commission, in general, the Commission does provide for protection of trade secret or proprietary information submitted to it if the material is so marked (16 CFR 1015.18). These provisions would apply to the information submitted by art material producers or repackagers under LHAMA, as well as others subject to the FHSA.

IX. Effective Dates

In order to allow sufficient time for manufacturers and packagers to evaluate the guidelines and supplemental definition, the guidelines and definition will take effect 90 days after publication. The final guidelines and definition will apply to products initially introduced into commerce on or after the effective date. The codification of ASTM D–4236 (§ 1500.14(b)(8)) will be effective upon publication.

X. Environmental Considerations

These actions are unlikely to have any effect on the quantity or physical characteristics of, or other changes in, product, materials, or packaging that could impact the environment beyond normal formulation, packaging, or promotional changes currently common among these producers of art materials and other products subject to the FHSA. Therefore, the Commission concludes that the guidelines, definition, and codification will have little or no potential for affecting the human environment and that neither an environmental assessment nor an environmental impact statement is required. See 16 CFR part 1021.

XI. Regulatory Flexibility Act Certification

The Commission is finalizing guidelines which will provide guidance for determining when a product presents a chronic hazard based on animal or human data. The supplemental definition of "toxic" reflects these guidelines and clarifies the meaning of chronic toxicity. The Commission is also codifying the provisions of ASTM D–4236 which Congress mandated as a Commission standard.

The Commission certifies that the guidelines, definition, and codification will not have a significant economic effect on a substantial number of small entities, and therefore no regulatory flexibility analysis need be prepared

List of Subjects in 16 CFR Part 1500

Arts and crafts, Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

For the reasons discussed above, the Commission amends 16 CFR part 1500 as follows:

PART 1500—[AMENDED]

1. The authority citation for part 1500 is revised to read as follows

Authority: 15 USC 1261–1277

2. A new § 1500.135 is added to read as follows:

§ 1500.135 Summary of guidelines for determining chronic toxicity.

A substance may be toxic due to a risk of a chronic hazard. (A regulatory definition of "toxic" that pertains to chronic toxicity may be found at 16 CFR 1500.3(c) (2).) The following discussions are intended to help clarify the complex issues involved in assessing risk from substances that may potentially cause chronic hazards and, where possible, to describe conditions under which substances should be considered toxic due to a risk of the specified chronic hazards. The guidelines are not intended to be a static classification system, but should be considered along with available data and with expert judgment. They are not mandatory. Rather, the guidelines are intended as an aid to manufacturers in determining whether a product subject to the FHSA presents a chronic hazard. All default assumptions contained in the guidelines on hazard and risk determination are subject to replacement when alternatives which are supported by appropriate data become available. The following are brief summaries of more extensive discussions contained in the guidelines. Thus, the guidelines should be consulted in conjunction with these summaries. Copies of the guidelines may be obtained from the Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207. (In addition to the chronic hazards discussed below, issues relating to the chronic hazard of sensitization are discussed in 16 CFR 1500.3(c) (5).)

(a) *Carcinogenicity.* Substances are toxic by reason of their potential carcinogenicity in humans when they are known or probable human carcinogenic substances as defined below. Substances that are possible human carcinogenic substances or for which there is no evidence of carcinogenic effect under the following categories lack sufficient evidence to be considered toxic by virtue of their potential carcinogenicity.

(1) *Known Human carcinogenic Substances ("sufficient evidence" in humans).* Substances are toxic by reason of their carcinogenicity when they meet the "sufficient evidence" criteria of carcinogenicity from studies in humans, which require that a causal relationship between exposure to an agent and cancer be established. This category is similar to the Environmental Protection Agency's (EPA) Group A, the International Agency for Research on Cancer's (IARC) Group 1, or the American National Standards Institute's (ANSI) Category 1. A causal relationship is established if one or more epidemiological investigations that meet the following criteria show an association between cancer and exposure to the agent.

(i) No identified bias that can account for the observed association has been found on evaluation of the evidence.

(ii) All possible confounding factors which could account for the observed association can be ruled out with reasonable confidence.

(iii) Based on statistical analysis, the association has been shown unlikely to be due to chance.

(2) *Probable Human Carcinogenic Substances.* Substances are also toxic by reason of their probable carcinogenicity when they meet the "limited evidence" criteria of carcinogenicity in humans or the "sufficient evidence" criteria of carcinogenicity in animals described below. This category is similar to EPA's Group B, IARC's Group 2, or ANSI's Categories 2 and 3. Evidence derived from animal studies that has been shown not to be relevant to humans is not included. For example, such evidence would result when there was an identified mechanism of action for a chemical that causes cancer in animals that has been shown not to apply to the human situation. It is reasonable, for practical purposes, to regard an agent for which there is "sufficient" evidence of carcinogenicity in animals as if it presented a carcinogenic risk to humans.

(i) *"Limited evidence" of carcinogenicity in humans.* The evidence is considered limited for establishing a causal relationship between exposure to the agent and cancer when a causal interpretation is

credible, but chance, bias, or other confounding factors could not be ruled out with reasonable confidence.

(ii) *"Sufficient evidence" of carcinogenicity in animals.* Sufficient evidence of carcinogenicity requires that the substance has been tested in well-designed and -conducted studies (*e.g.*, as conducted by National Toxicology Program (NTP), or consistent with the Office of Science Technology Assessment and Policy (OSTP) guidelines) and has been found to elicit a statistically significant ($p < 0.05$) exposure-related increase in the incidence of malignant tumors, combined malignant and benign tumors, or benign tumors if there is an indication of the ability of such benign tumors to progress to malignancy:

(A) in one or both sexes of multiple species, strains, or sites of independent origin; or experiments using different routes of administration or dose levels; or

(B) to an unusual degree in a single experiment (one species/strain/sex) with regard to unusual tumor type, unusual tumor site, or early age at onset of the tumor.

The presence of positive effects in short-term tests, dose-response effects data, or structure-activity relationship are considered additional evidence.

(3) *Possible Human Carcinogenic Substance ("limited evidence" animal carcinogen).* In the absence of "sufficient" or "limited" human data, agents with "limited" evidence of carcinogenicity from animal studies fall into this category. Such substances, and those that do not fall into any other group, are not considered "toxic." This does not imply that the substances are or are not carcinogens, only that the evidence is too uncertain to provide for a determination. This category is similar to EPA's Group C, IARC's Group 3, or ANSI's category 4.

(b) *Neurotoxicity.* Substances are toxic by reason of their potential neurotoxicity in humans when they meet the "sufficient evidence" or "limited evidence" criteria of neurotoxicity in humans, or when they meet the "sufficient evidence" criteria of neurotoxicity in animals.

(1) *Known Neurotoxic Substances ("sufficient evidence in humans").* Substances are toxic by reason of their neurotoxicity and are considered "known neurotoxic substances" when they meet the "sufficient evidence" criteria of neurotoxicity derived from studies in humans which require that a causal association between exposure to an agent and neurotoxicity be established with a reasonable degree of certainty. Substances in this category meet the definition of "neurotoxic" as stated above. "Sufficient evidence," derived from human studies, for a causal association between exposure to a chemical and neurotoxicity is considered to exist if the studies meet the following criteria.

(i) A consistent pattern of neurological dysfunction is observed.

(ii) The adverse effects/lesions account for the neurobehavioral dysfunction with reasonable certainty.

(iii) All identifiable bias and confounding factors are reasonably discounted after consideration.

(iv) The association has been shown unlikely to be due to chance, based on statistical analysis.

(2) *Probable Neurotoxic Substances.* Substances are also toxic by reason of their probable neurotoxicity when they meet the "limited evidence" criteria of neurotoxicity in humans, or the "sufficient evidence" criteria derived from animal studies. Evidence derived from animal studies that has been shown not to be relevant to humans is not included. Such evidence would result, for example, when there was an identified mechanism of action for a chemical that causes neurotoxicity in animals that has been shown not to apply to the human situation.

(i) *"Limited evidence" of neurotoxicity in humans.* The evidence derived from human studies is considered limited for neurotoxicity when the evidence is less than convincing, *i.e.*, one of the criteria of "sufficient evidence" of neurotoxicity for establishing a causal association between exposure to the agent and neurotoxicity is not met, leaving some uncertainties in establishing a causal association.

(ii) *"Sufficient evidence" of neurotoxicity in animals.* Sufficient evidence of neurotoxicity derived from animal studies for a causal association between exposure to a chemical and neurotoxicity requires that:

(A) The substance has been tested in well-designed and -conducted studies (*e.g.*, NTP's neurobehavioral battery, or conforming to EPA's neurotoxicity test guidelines); and

(B) The substance has been found to elicit a statistically significant ($p < 0.05$) increase in any neurotoxic effect in one or both sexes of multiple species, strains, or experiments using different routes of administration and dose-levels.

(3) *Possible Neurotoxic Substances.* "Possible neurotoxic substances" are the substances which meet the "limited evidence" criteria of neurotoxicity evidence derived from animal studies in the absence of human data, or in the presence of inadequate human data, or data which do not fall into any other group. Substances in this category are not considered "toxic."

(c) *Developmental and Reproductive Toxicity.—(1) Definitions of "Sufficient" and "Limited" Evidence.* The following definitions apply to all categories stated below.

(i) "Sufficient evidence" from human studies for a causal association between human exposure and the subsequent occurrence of developmental or reproductive toxicity is considered to exist if the studies meet the following criteria:

(A) No identified bias that can account for the observed association has been found on evaluation of the evidence.

(B) All possible confounding factors which could account for the observed association can be ruled out with reasonable confidence.

(C) Based on statistical analysis, the association has been shown unlikely to be due to chance.

(ii) "Limited evidence" from human studies exists when the human epidemiology meets all but one of the criteria for "sufficient evidence"; *i.e.*, the statistical evidence is borderline as opposed to clear-cut, there is a source of bias, or there are confounding factors that have not been and cannot be accounted for.

(iii) "Sufficient evidence" from animal studies exists when

(A) Obtained from a good quality animal study; and

(B) The substance has been found to elicit a statistically significant ($p < 0.05$) treatment-related increase in multiple endpoints in a single species/strain, or in the incidence of a single endpoint at multiple dose levels or with multiple routes of administration in a single species/strain, or increase in the incidence of a single endpoint in multiple species/strains/ experiments.

(iv) "Limited evidence" from animal studies exists when:

(A) Obtained from a good quality study and there is a statistically significant ($p < 0.05$) treatment-related increase in the incidence of a single endpoint in a single species/strain/ experiment at a single dose level administered through only one route and such evidence otherwise does not meet the criteria for "sufficient evidence"; or

(B) The evidence is derived from studies which can be interpreted to show positive effects but have some qualitative or quantitative limitations with respect to experimental procedures (*e.g.*, doses, exposure, follow-up, number of animals/group, reporting of the data,

etc.) which would prevent classification of the evidence in the group of "sufficient evidence."

(2) *Developmental Toxicants.* Substances are toxic by reason of their potential developmental or reproductive toxicity when they meet the "sufficient evidence" or "limited evidence" criteria of developmental or reproductive toxicity in humans, or when they meet the "sufficient evidence" criteria of developmental or reproductive toxicity in animals. The Food and Drug Administration (FDA) and the European Economic Community (EEC) have developed categories for teratogens but not other developmental toxicants. The teratogen guidelines limit the information only to structural birth defects and do not include other hazards of developmental toxicity such as embryonal death, fetal death, or functional deficiencies which are also important in assessing the overall toxicity of a substance when administered during pregnancy. Recently, EPA has proposed a system for classifying developmental toxicity. The Occupational Safety and Health Administration (OSHA) has not yet developed any classification for developmental toxicity. The commission has established the following categories for determination of developmental toxicity according to the available evidence.

(i) *Known Human Developmental Toxicant ("sufficient evidence in humans").* A substance is considered a "known human developmental toxicant" if there is "sufficient" human evidence to establish a causal association between human exposure and the subsequent occurrence of developmental toxicity manifested by death of the conceptus (embryo or fetus), or structural or functional birth defects. This category (Human Developmental Toxicant) is comparable to category 1 of the EEC and categories D and X of FDA, except that these guidelines are limited to teratogens. This category is also comparable to the category "definitive evidence for human developmental toxicity" proposed by EPA.

(ii) *Probable Human Developmental Toxicant.* A substance is considered a "probable human developmental toxicant" if there is "limited" human evidence or "sufficient" animal evidence to establish a causal association between human exposure and subsequent occurrence of developmental toxicity. This group (Probable Human Developmental Toxicant) is comparable to the category "adequate evidence for human developmental toxicity" proposed by EPA. This category is also comparable to category 2 of the EEC and category A1 of FDA, except that these guidelines are limited to teratogens.

(iii) *Possible Human Developmental Toxicant.* A substance is considered a "possible human developmental toxicant" if there is "limited" animal evidence, in the absence of human data, or in the presence of inadequate human data, or which does not fall into any other group, to establish a causal association between human exposure and subsequent occurrence of developmental toxicity. EEC, FDA, and EPA have not developed a category comparable to this group. The Commission believes that data from well planned animal studies are important to consider even though they may provide only limited evidence of developmental toxicity.

(3) *Male Reproductive Toxicants.* Male reproductive toxicants can be grouped into the following different categories based on evidence obtained from human or animal studies.

(i) *Known Human Male Reproductive Toxicant.* A substance is considered a "known human male reproductive toxicant" if there is "sufficient" human evidence to establish a causal association between human exposure and the adverse effects on male reproductive main endpoints which are mating ability, fertility, and prenatal and postnatal development of the conceptus. This category is comparable to the one termed "Known Positive" in the EPA guidelines on male reproductive risk assessment.

(ii) *Probable Human Male Reproductive Toxicant.* A substance is considered a "probable human male reproductive toxicant" if there is "limited" human evidence or "sufficient" animal evidence to establish a causal association between human exposure and the adverse effects on male reproductive main endpoints. This category is comparable to the one termed "Probable Positive" in the EPA guidelines on male reproductive risk assessment. However, the EPA category is based only on sufficient animal evidence. CPSC believes that limited human evidence is also sufficient for a chemical to be placed in this category.

(iii) *Possible Human Male Reproductive Toxicant.* A substance is considered a "possible human male reproductive toxicant" if there is limited animal evidence, in the absence of human data, or in the presence of inadequate human data, or which does not fall into any other group, to establish a causal association between human exposure and adverse effects on male reproductive main endpoints. This category is comparable to the one termed "Possible Positive A" in the EPA guidelines on male reproductive risk assessment. EPA proposes to use either limited human or limited animal evidence data to classify a toxicant as a "Possible Positive A" toxicant. As described above, CPSC would elevate limited human evidence to the category "Probable Human Male Reproductive Toxicant."

(4) *Female Reproductive Toxicants.* Female reproductive toxicants can be grouped into the following different categories based on evidence obtained from human or animal studies. EPA has proposed guidelines for assessing female reproductive risk but has not yet proposed a specific system for categorization of female reproductive toxicants.

(i) *Known Human Female Reproductive Toxicant.* A substance is considered a "known human female reproductive toxicant" if there is "sufficient" human evidence to establish a causal association between human exposure and adverse effects on female reproductive function such as mating ability, fertility, and prenatal and postnatal development of the conceptus.

(ii) *Probable Human Female Reproductive Toxicant.* A substance is considered a "probable human female reproductive toxicant" if there is "limited" human evidence or "sufficient" animal evidence to establish a causal association between human exposure and adverse effects on female reproductive function.

(iii) *Possible Human Female Reproductive Toxicant.* A substance is considered a "possible human female reproductive toxicant" if there is "limited" animal evidence, in the absence of human data, or in the presence of inadequate human data, or which does not fall into any other group, to establish a causal association between human exposure and adverse effects on female reproductive function.

(d) *Other Subjects Related to the Determination that a Substance is Toxic.* Under the FHSA, for a toxic substance to be considered hazardous, it must not only have the potential to be hazardous but there must also be the potential that persons are exposed to the substance, that the substance can enter the body, and that there is a significant risk of an adverse health effect associated with the customary handling and use of the substance. Under these guidelines, existence of an adverse health effect means that such exposure is above the "acceptable daily

intake" ("ADI"). The ADI is based on the risks posed by the substance, and whether they are acceptable under the FHSA. This section addresses those issues by providing guidelines concerning assessment of exposure, assessment of bioavailability, determination of acceptable risks and the ADI to children and adults, and assessment of risk.

(1) *Assessment of Exposure.* An exposure assessment may comprise a single exposure scenario or a distribution of exposures. Reasonably foreseeable use, as well as accidental exposure, should be taken into consideration when designing exposure studies. The following guidelines should be used in the assessment of exposure.

(i) *Inhalation.* Inhalation studies to assess exposure should be reliable studies using direct monitoring of populations, predictions of exposure through modeling, or surrogate data.

(A) *Direct Monitoring.* Populations to be monitored should be selected randomly to be representative of the general population, unless the exposure of a particular subset population is the desired goal of the assessment. The monitoring technique should be appropriate for the health effect of interest.

(B) *Modeling.* Predictions of exposure to a chemical using mathematical models can be based on physical and chemical principles, such as mass balance principles. Mass balance models should consider the source strength of the product of interest, housing characteristics, and ambient conditions likely to be encountered by the studied population.

(C) *Surrogate Data.* Surrogate data should only be used when data concerning the chemical of interest are sparse or unavailable and when there is a reasonable assurance that the surrogate data will accurately represent the chemical of interest.

(ii) *Oral Ingestion.* Oral ingestion studies may involve direct monitoring of sources of chemicals as well as laboratory simulations. The estimation of exposure from ingestion of chemicals present in consumer products is predicted based upon estimates of use of the product and absorption of the chemical from the gastrointestinal tract. The following criteria should be established for laboratory simulations to estimate exposure:

(A) A simulant or range of simulants should be carefully selected to mimic the possible range of conditions which occur in humans, such as full and empty stomachs, or various saliva compositions at different times of the day.

(B) The mechanical action to which a product is submitted must be chosen to represent some range of realistic conditions to which a human may subject the product.

(iii) *Dermal Exposure.* (A) Dermal exposure involves estimating the amount of substance contacting the skin. This may involve experiments measuring the amount of material leached from a product contacting a liquid layer which interfaces with the skin, or the amount of substance which migrates from a product (in solid or liquid form) which is in contact with the skin.

(B) Parameters to be considered include: Surface area of the skin contacted, duration of contact, frequency of contact, and thickness of a liquid interfacial layer.

(2) *Assessment of Bioavailability.* (i) The need to consider bioavailability in estimating the risk from use of a product containing a toxic substance only arises when it is anticipated that the absorption characteristics of a substance to which there is human exposure will differ from those characteristics for the substance tested in the studies used to define the dose-response relationship.

(ii) In determining the need to assess bioavailability, the factors to be examined include:

(A) The physical or chemical form of the substance,

(B) The route of exposure (inhalation, ingestion, or through the skin),

(C) The presence of other constituents in the product which interfere with or alter absorption of the toxic substance, and

(D) Dose.

(3) *Assessment of Risk.* This section on quantitative risk assessment applies to estimates of risk for substances that are toxic by reason of their carcinogenicity.

(i) Generally, the study leading to the highest risk should be used in the risk assessment; however, other factors may influence the choice of study.

(ii) Risk should be based on the maximum likelihood estimate from a multistage model (such as Global83 or later version) unless the maximum likelihood estimate is not linear at low dose, in which case the 95% upper confidence limit on risk should be used.

(iii) For systemic carcinogens, if estimates of human risk are made based on animal data, a factor derived from dividing the assumed human weight (70 kg) by the average animal weight during the study and taking that to the ⅓ power should be used. There is the possibility that this factor may be changed, using the ¼ power instead of the ⅓ power, as part of a unified Federal regulatory approach. If such an approach is adopted, it will apply here.

(iv) When dose is expressed as parts per million, and the carcinogen acts at the site of contact, humans and animals exposed to the same amount for the same proportion of lifetime should be assumed to be equally sensitive.

(v) If no experimental study having the same route of exposure as that anticipated for human use of a substance is available, a study by another route of exposure may be used. Pharmacokinetic methods may be used if sufficient data are available.

(vi) When exposure scenarios are different from those used in the underlying study upon which estimates of risk are based, proportionality should be applied. If pharmacokinetic methods are used to adjust for risks at high versus low exposure levels, level-time measures should not be combined without taking the non-linearity into account.

(4) *Acceptable Risks.*—(i) *ADI for Carcinogens.* The maximum acceptable daily intake ("ADI") is that exposure of a toxic (by virtue of its carcinogenicity) substance that is estimated to lead to a lifetime excess risk of one in a million. Exposure refers to the anticipated exposure from normal lifetime use of the product, including use as a child as well as use as an adult.

(ii) *ADI for Neurotoxicological and Developmental/Reproductive Agents.* Due to the difficulties in using a numerical risk assessment method to determine risk for neurotoxicological or developmental/reproductive toxicants, the Commission is using a safety factor approach, as explained below.

(A) *Human Data.* If the hazard is ascertained from human data, a safety factor of ten will be applied to the lowest No Observed Effect Level ("NOEL") seen among the relevant studies. If no NOEL can be determined, a safety factor of 100 will be applied to the Lowest Observed Effect Level ("LOEL"). Both the NOEL and LOEL are defined in terms of daily dose level.

(B) *Animal Data.* If the hazard is ascertained from animal data, a safety factor of one hundred will be applied to the lowest NOEL. If no NOEL can be determined, a safety factor of one thousand will be applied to the lowest LOEL. Both the NOEL and LOEL are defined in terms of daily dose level.

3. Section 1500.3(c)(2) is amended by revising paragraph (c)(2) introductory text, redesignating paragraphs (c)(2) (i) through (iii) as paragraphs (c)(2)(i) (A) through (C) and adding new paragraphs

(c)(2)(i) introductory text and (c)(2)(ii) to read as follows:

§ 1500.3 Definitions.

* * * * *

(c) * * *

(2) To give specificity to the definition of "toxic" in section 2[g] of the act [and restated in paragraph (b)(5) of this section), the following supplements that definition. The following categories are not intended to be inclusive.

(i) *Acute toxicity.* "Toxic" means any substance that produces death within 14 days in half or more than half of a group of:

(ii) *Chronic toxicity.* A substance is toxic because it presents a chronic hazard if it falls into one of the following categories. (For additional information see the chronic toxicity guidelines at 16 CFR 1500.135.)

(A) *For Carcinogens.* A substance is toxic if it is or contains a known or probable human carcinogen.

(B) *For Neurotoxicological Toxicants.* A substance is toxic if it is or contains a known or probable human neurotoxin.

(C) *For Developmental or Reproductive Toxicants.* A substance is toxic if it is or contains a known or probable human developmental or reproductive toxicant.

4. Section 1500.14 is amended by adding a new paragraph (b)(8) to read as follows:

§ 1500.14 Products requiring special labeling under section 3(b) of the Act.

(b) * * * * *

(8) *Art materials.*

Note: The Labeling of Hazardous Art Materials Act ("LHAMA"), 15 U.S.C. 1277 (Pub. L. 100-695, enacted November 18, 1988) provides that, as of November 18, 1990, "the requirements for the labeling of art materials set forth in the version of the standard of the American Society for Testing and Materials ["ASTM"] designated D-4236 that is in effect on [November 18, 1988] * * * shall be deemed to be a regulation issued by the Commission under section 3(b)" of the Federal Hazardous Substances Act, 15 U.S.C. 1262(b). For the convenience of interested persons, the Commission is including the requirements of ASTM D-4236 in paragraph (b)(8)(i) of this section, along with other requirements (stated in paragraph (b)(8)(ii) of this section) made applicable to art materials by the LHAMA. The substance of the requirements specified in LHAMA became effective on November 18, 1990, as mandated by Congress.

(i) *ASTM D-4236.*—(A) *Scope.*—(*1*) This section describes a procedure for developing precautionary labels for art materials and provides hazard and precautionary statements based upon knowledge that exists in the scientific and medical communities. This section concerns those chronic health hazards known to be associated with a product or product component(s), when the component(s) is present in a physical form, volume, or concentration that in the opinion of a toxicologist (see paragraph (b)(8)(i)(B)(*11*) of this section) has the potential to produce a chronic adverse health effect(s).

(*2*) This section applies exclusively to art materials packaged in sizes intended for individual users of any age or those participating in a small group.

(*3*) Labeling determinations shall consider reasonably foreseeable use or misuse.

(*4*) Manufacturers or repackagers may wish to have compliance certified by a certifying organization. Guidelines for a certifying organization are given in paragraph (b)(8)(i)(H) of this section.

(B) Descriptions of Terms Specific to This Standard.—(*1*) Art material or art material product—any raw or processed material, or manufactured product, marketed or represented by the producer or repackager as intended for and suitable for users as defined herein.

(*2*) Users—artists or crafts people of any age who create, or recreate in a limited number, largely by hand, works which may or may not have a practical use, but in which aesthetic considerations are paramount.

(*3*) Chronic adverse health effect(s)—a persistent toxic effect(s) that develops over time from a single, prolonged, or repeated exposure to a substance. This effect may result from exposure(s) to a substance that can, in humans, cause sterility, birth defects, harm to a developing fetus or to a nursing infant, cancer, allergenic sensitization, damage to the nervous system, or a persistent adverse effect to any other organ system.

(*4*) chronic health hazard(s) (hereafter referred to as "chronic hazard")—a health risk to humans, resultant from exposure to a substance that may cause a chronic adverse health effect.

(*5*) Analytical laboratory—a laboratory having personnel and apparatus capable of performing quantitative or qualitative analyses of art materials, which may yield information that is used by a toxicologist for evaluation of potentially hazardous materials.

(*6*) Label—a display of written, printed, or graphic matter upon the immediate container of any art material product. When the product is unpackaged, or is not packaged in an immediate container intended or suitable for delivery to users, the label can be a display of such matter directly upon the article involved or upon a tag or other suitable labeling device attached to the art material.

(*7*) Producer—the person or entity who manufactures, processes, or imports an art material.

(*8*) Repackager—the person or entity who obtains materials from producers and without making changes in such materials puts them in containers intended for sale as art materials to users.

(*9*) Sensitizer—a substance known to cause, through an allergic process, a chronic adverse health effect which becomes evident in a significant number of people on re-exposure to the same substance.

(*10*) Toxic—applies to any substance that is likely to produce personal injury or illness to humans through ingestion, inhalation, or skin contact.

(*11*) Toxicologist—an individual who through education, training, and experience has expertise in the field of toxicology, as it relates to human exposure, and is either a toxicologist or physician certified by a nationally recognized certification board.

(*12*) Bioavailability—the extent that a substance can be absorbed in a biologically active form.

(C) Requirements.—(*1*) The producer or repackager of art materials shall submit art material product formulation(s) or reformulation(s) to a toxicologist for review, such review to be in accordance with paragraph (b)(8)(i)(D) of this section. The toxicologist shall be required to keep product formulation(s) confidential.

(*2*) Unless otherwise agreed in writing by the producer or repackager, no one other than the toxicologists shall have access to the formulation(s); except that the toxicologists shall furnish a patient's physician, on a confidential basis, the information necessary to diagnose or treat cases of exposure or accidental ingestion.

(*3*) The producer or repackager, upon advice given by a toxicologist in accordance with paragraph (b)(8)(i)(D) of this section and based upon generally accepted, well-established evidence that a component substance(s) is known to cause chronic adverse health effects adopt precautionary labeling in accordance with paragraph (b)(8)(i)(E) of this section.

(*4*) Labeling shall conform to any labeling practices prescribed by federal and state statutes or regulations and shall not diminish the effect of required acute toxicity warnings.

(*5*) The producer or repackager shall supply a poison exposure management information source the generic formulation information required for dissemination to poison control centers or shall provide a 24-hour cost-free

telephone number to poison control centers.

(6) The producer or repackager shall have a toxicologist review as necessary, but at least every 5 years, art material product formulation(s) and associated label(s) based upon the then-current, generally accepted, well-established scientific knowledge.

(7) Statement of Conformance—"Conforms to ASTM Practice D–4236," or "Conforms to ASTM D–4236," or "Conforms to the health requirements of ASTM D–4236." This statement may be combined with other conformance statements. The conformance statement should appear whenever practical on the product; however, it shall also be acceptable to place the statement on one or more of the following:

(*i*) The individual product package,

(*ii*) a display or sign at the point of purchase,

(*iii*) separate explanatory literature available on requirements at the point of purchase,

(*iv*) a response to a formal request for bid or proposal.

(D) Determination of Labeling.—(*1*) An art material is considered to have the potential for producing chronic adverse health effects if any customary or reasonably foreseeable use can result in a chronic hazard.

(*2*) In making the determination, a toxicologist(s) shall take into account the following:

(*i*) Current chemical composition of the art material, supplied by an analytical laboratory or by an industrial chemist on behalf of a manufacturer or repackager.

(*ii*) Current generally accepted, well-established scientific knowledge of the chronic toxic potential of each component and the total formulation.

(*iii*) Specific physical and chemical form of the art material product, bioavailability, concentration, and the amount of each potentially chronic toxic component found in the formulation.

(*iv*) Reasonably foreseeable uses of the art material product as determined by consultation with users and other individuals who are experienced in use of the material(s), such as teachers, or by market studies, unless such use information has previously been determined with respect to the specific art material(s) under review.

(*v*) Potential for known synergism and antagonism of the various components of the formulation.

(*vi*) Potentially chronic adverse health effects of decomposition or combustion products, if known, from any reasonably foreseeable use of the hazardous art material product.

(*vii*) Opinions of various regulatory agencies and scientific bodies, including the International Agency for Research on Cancer and the National Cancer Institute, on the potential for chronic adverse health effects of the various components of the formulation.

(*3*) Based upon the conclusion reached in conformance with review determinations set forth herein, the toxicologist(s) shall recommend precautionary labeling consistent with paragraph (b)(8)(i)(E) of this section.

(E) Labeling Practices.—(*1*) Signal Word.—(*i*) When a signal word for an acute hazard(s) is mandated and a chronic hazard(s) exists, the signal word shall be that for the acute hazard.

(*ii*) When only a chronic hazard(s) exists, the signal word WARNING shall be used.

(*iii*) The signal word shall be prominently visible and set in bold capitals in a size equal to or greater than the statement of potential chronic hazards.

(*2*) List of Potentially Chronic Hazards—Potentially chronic hazards, as determined under the procedures of paragraph (b)(8)(i)(D) of this section, shall be stated substantially in accordance with the statements listed in paragraph (b)(8)(i)(F) of this section. Potentially chronic hazards noted shall be those that are clinically significant and that might be expected with any reasonably foreseeable use of the art material. The hazards should be grouped in the order of relative descending severity.

(*3*) Name of Chronically Hazardous Component(s)—All components and known decomposition products of the formulation with a potential for chronic hazards, as determined under the procedures of paragraph (b)(8)(i)(D) of this section, shall be listed prominently. Generically equivalent names may be used.

(*4*) Safe Handling Instructions—Appropriate precautionary statements as to work practices, personal protection, and ventilation requirements shall be used substantially conforming with those listed in paragraph (b)(8)(i)(G) of this section.

(*5*) List of Sensitizing Components—To protect users from known sensitizers found within art materials, each label shall contain a list of those sensitizers present in sufficient amounts to contribute significantly to a known skin or respiratory sensitization.

(*6*) Combined Statement—If an art material contains more than one component capable of causing a chronic adverse health effect, or if a single chemical can cause several different chronic adverse health effects, the potential effects may be combined into one statement.

(*7*) Information Sources—The precautionary label shall contain a statement identifying a source for additional health information substantially in conformance with one of the phrases listed below:

(*i*) For more health information—(24 hour cost-free U.S. telephone number).

(*ii*) Contact a physician for more health information, or

(*iii*) Call your local poison control center for more health information.

(*8*) Labeling Content, Product Size—Any art material product in a container larger in size than one fluid ounce (30 ml) (if the product is sold by volume) or one ounce net weight (28 g) (if the product is sold by weight) shall have full precautionary labeling, as described in paragraph (b)(8)(i) (E) of this section. Any art material product in a container equal to or smaller than one fluid ounce or one ounce net weight shall have a label that includes a signal word in conformance with paragraph (b)(8)(i)(E)(*1*) of this section and a list of potentially harmful or sensitizing components in conformance with paragraphs (b)(8)(i)(E) (*3*) and (*5*) of this section.

(*9*) The information described in paragraph (b)(8)(i)(E) of this section must appear on:

(*i*) The outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper and

(*ii*) All accompanying literature where there are directions for use, written or otherwise. Where a product that requires warning labels under paragraphs (b)(8)(i) (D) and (E) of this section is packed within a point-of-sale package that obscures the warning statement(s), the point-of-sale package shall carry the signal word conforming to paragraph (b)(8)(i)(E)(*1*) and the following wording: "Contains: (list hazardous product(s)) that may be harmful if misused. Read cautions on individual containers carefully. Keep out of the reach of children."

(*10*) Statements required under paragraphs (b)(8)(i) (D) and (E) of this section must be in the English language and located prominently in conspicuous and legible type in contrast by topography, layout, or color with other printed matter on the label.

(*11*) Supplemental Information—Where appropriate, more detailed information that relates to chronic hazard(s), such as physical properties, decomposition products, detailed safety instructions, or disposal recommendations, shall be included in supplemental documents, such as

Material Safety Data Sheets, technical brochures, technical data sheets etc.

(F) chronic Hazard Statements

MAY CAUSE STERILITY.
CONTACT MAY CAUSE PERMANENT EYE DAMAGE.
MAY BE HARMFUL BY BREATHING VAPORS/DUSTS.
MAY BE HARMFUL IF SWALLOWED.
MAY BE HARMFUL BY SKIN CONTACT.
MAY PRODUCE BIRTH DEFECTS IN THE DEVELOPING FETUS.
MAY BE EXCRETED IN HUMAN MILK.
MAY CAUSE HARM TO THE NURSING INFANT.
CANCER AGENT! EXPOSURE MAY PRODUCE CANCER.
CANCER AGENT BASED ON TESTS WITH LABORATORY ANIMALS.
POSSIBLE CANCER AGENT BASED ON TESTS WITH LABORATORY ANIMALS.
MAY PRODUCE ALLERGIC REACTION BY INGESTION/INHALATION/SKIN CONTACT.
MAY PRODUCE NUMBNESS OR WEAKNESS IN THE EXTREMITIES.
EXPOSURE MAY CAUSE (SPECIFY THE ORGAN(S)) DAMAGE.
HEATING/COMBUSTION MAY CAUSE HAZARDOUS DECOMPOSITION PRODUCTS.

(G) Precautionary Statements

Keep out of reach of children.
When using do not eat, drink, or smoke.
Wash hands immediately after use.
Avoid inhalation/ingestion/skin contact.
Avoid fumes from combustion.
Keep container tightly closed when not in use.
Store in well-ventilated area.
Wear protective clothing (specify type).
Wear protective goggles/face shield.
Wear NIOSH-certified mask for dusts/mists/fumes.
Wear NIOSH-certified respirator with an appropriate cartridge for (specify).
Wear NIOSH-certified supplied-air respirator.
Use window exhaust fan to remove vapors and ensure adequate cross ventilation. (Specify explosion-proof if necessary.)
Do not heat above (specify temperature) without adequate ventilation.
Use (specify type) local exhausting hood.
Do not use/mix with (specify material).

(ii) The following shall apply with respect to the standard for art materials set forth in § 1500.14(b)(8)(i).

(A) The term *art material or art material product* shall mean any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium. The term does not include economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act or drugs, devices, or cosmetics subject to the Federal Food, Drug, and Cosmetics Act.

(B) The standard referred to in paragraph (b)(8)(i) of this section applies to art materials intended for users of any age.

(C) Each producer or repackager of art materials shall describe in writing the criteria used to determine whether an art material has the potential for producing chronic adverse health effects. Each producer or repackager shall submit, to the Commission's Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207, the written description of the criteria described above and a list of art materials that require hazard warning labels under this section. Upon request of the Commission, a producer or repackager shall submit to the Commission product formulations.

(D) All art materials that require chronic hazard labeling pursuant to this section must include on the label the name and United States address of the producer or repackager of the art materials, an appropriate United States telephone number that can be contacted for more information on the hazards requiring warning labels under this section, and a statement that such art materials are inappropriate for use by children.

(E) If an art material producer or repackager becomes newly aware of any significant information regarding the hazards of an art material or ways to protect against the hazard, this new information must be incorporated into the labels of such art materials that are manufactured after 12 months from the date of discovery. If a producer or repackager reformulates an art material, the new formulation must be evaluated and labeled in accordance with the standard set forth § 1500.14(b)(8)(i).

(F) In determining whether an art material has the potential for producing chronic adverse health effects, including carcinogenicity and potential carcinogenicity, the toxicologist to whom the substance is referred under the standard described above shall take into account opinions of various regulatory agencies and scientific bodies, including the U.S. Consumer Product Safety Commission (CPSC), the U.S. Environmental Protection Agency (EPA), and the International Agency for Research on Cancer (IARC).

(iii) Pursuant to the LHAMA, the Commission has issued guidelines which, where possible, specify criteria for determining when any customary or reasonably foreseeable use of an art material can result in a chronic hazard. These guidelines include criteria for determining when art materials may produce chronic adverse effects in children and adults, criteria for determining which substances contained in art materials have the potential for producing chronic adverse effects and what those effects are, criteria for determining the bioavailability of chronically hazardous substances contained in art materials when the products are used in a customary or reasonably foreseeable manner, and criteria for determining acceptable daily intake levels for chronically hazardous substances contained in art materials. Because these guidelines apply to hazardous substances in general as well as to hazardous substances in art materials, the guidelines are set forth in § 1500.135 and a definition of "chronic toxicity" is provided in § 1500.3(c)(2)(ii) as part of supplementation of the term "toxic" in section 2(q) of the FHSA.

Appendix A to § 1500.14(b)(8)—Guidelines for a Certifying Organization (Not Mandatory)

(a) The term "certifying organization," as used in this paragraph, refers to an organization or an institute that, after assuring that all provisions are met, certifies that an art material does conform to the labeling requirements of this practice.

(b) The certifying body may be funded by member manufacturers, but should include users or their representatives, as well as manufacturers' chemists, on its technical and certifying committees.

(c) Representative samples of art materials, labeled as conforming to this section and bought at retail, should be analyzed at random and from time to time by an analytical laboratory to ensure they are the same as the formulation used by the toxicologist(s) for determining labeling requirements.

(d) The methods used by the toxicologist(s) in review and determination of the need and content of precautionary labeling for potentially chronic adverse health effects should be periodically reviewed by an advisory board composed of not less than three or more than five toxicologists, at least one of whom is certified in toxicology by a nationally recognized certification board.

(e) In cases where there is disagreement by participating producers or participating users with the determination of the toxicologist(s), there should be a method whereby the toxicologist's decision can be presented to the advisory board of toxicologists for arbitration.

Dated: September 22, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of References

The following documents contain information relevant to this rulemaking proceeding and form the basis for the proposed guidelines and definition. They are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, room 428, 5401 Westbard Avenue, Bethesda, Maryland:

1. Memorandum from Lakshmi C. Mishra, Senior Toxicologist, to Sandra Eberle, Program Manager, EXPB, dated October 5, 1990, entitled Criteria for Determining if a Substance is Toxic on the Basis of Carcinogenicity.

2. Memorandum from Lakshmi C. Mishra, Senior Toxicologist, to Sandra Eberle, Program Manager, EXPB, dated October 5, 1990, entitled Criteria for Determining if a Substance is Toxic on the Basis of Neurotoxicity.

3. Memorandum from Vishnudutt D. Purohit, HSHE, to Sandra Eberle, Program Manager, EXPB, dated November 15, 1990, entitled Guidelines for Identification and Classification of Developmental and Reproductive Toxicants in Consumer Products.

4. Memorandum from Warren K. Porter, Jr., Director, HSHL, to Sandra Eberle, Program Manager, EXPB, dated November 15, 1990, entitled Exposure Assessment Guidelines.

5. Memorandum from Valentine H. Schaeffer, HSHE, to Sandra Eberle, Program Manager, EXPB, dated October 5, 1990, entitled Guidelines for Assessing Bioavailability of Chronically Hazardous Substances Found in Consumer Products.

6. Memorandum from Murray S. Cohn, Director, HSHE, to Sandra Eberle, Program Manager, EXPB, dated October 5, 1990, entitled FHSA Risk Assessment Guidelines.

7. Memorandum from Murray S. Cohn, Director, HSHE, to Sandra Eberle, Program Manager, EXPB, dated October 5, 1990, entitled Acceptable Risks to Children and Adults.

8. Memorandum from Michael A. Babich, Project Manager, dated March 24, 1992, entitled Responses to Public Comments and Draft Final Rule on the Labeling of Art Materials and Other Products.

The following documents are referenced in the Memoranda listed above and may have been referred to in the preamble of this rulemaking. They are listed here for the convenience of the reader.

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federal register

Friday
October 9, 1992

Part III

United States Information Agency

22 CFR Part 514

Exchange Visitor Program; Final Rules and Proposed Rule

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Statement of Policy Regarding Exchange Visitor Au Pair Programs

AGENCY: United States Information Agency.

ACTION: Statement of policy regarding exchange visitor au pair programs.

SUMMARY: In September 1988, Congress enacted legislation extending Agency-designated au pair pilot programs for two years, upon the same terms and conditions previously authorized (Foreign Operations, Export Financing, and Related Programs Appropriation Act of 1989). In October 1990, Congress enacted legislation requiring the Agency to continue to implement the au pair programs designated by the Agency as of July 10, 1990, until such au pair program are authorized and implemented by another agency of the United States Government (Eisenhower Exchange Fellowship Act of 1990). Guidelines for the conduct of au pair programs were distributed to all designated au pair program sponsors in 1988–1989. Those Guidelines have not been materially changed or amended since. All designated au pair program sponsors will continue to adhere to the Guidelines and to the general regulations which apply to all Exchange Visitor Program sponsors until such time as au pair programs are authorized and implemented by another U.S. Government agency.

DATES: The Statement of Policy is effective October 9, 1992.

ADDRESSES: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: The Agency's Exchange Visitor Program designated its first au pair program in 1986. In that year, the American Institute For Foreign Study (AIFS) and Experiment In International Living (EIL) were designated to conduct a two-year au pair pilot program in which foreign youths between the ages of 18 and 25 were to come to the U.S. for one year to learn about American culture, provide a cross-cultural exchange, improve their English, and assist their host family with child care.

The programs were to be evaluated every six months by an interagency review panel composed of representatives of the Department of State, the Immigration and Naturalization Service, the Department of Labor, and USIA. The panel found that au pairs were working up to forty-five hours per week and concluded that the program in reality was a full-time home child care work program and not a valid educational and cultural exchange. The panel recommended that the program could be continued only if the hours of work were substantially reduced, and it further recommended that the Agency draft guidelines to ensure that the program became a valid educational and cultural exchange. Concurrently, the Agency's legal research concluded that the Agency had no legal authority to designate the au pair program as then designed, an opinion shared by the General Accounting Office (GAO). The Agency sought to terminate the au pair program in December 1987.

In September 1988 Congress enacted legislation extending the AIFS and EIL pilot programs for two years. Public Law 100–461. By December 1989, the Agency had designated six more au pair programs, bringing the total to eight. Each program was authorized to bring up to 2,840 participants a year into the U.S. In October 1990, Congress passed additional legislation bearing on the au pair program. Public Law 101–454 directed the Agency to continue to implement the au pair programs previously designated under the same terms and conditions previously authorized until such programs were authorized and implemented by another U.S. Government agency.

The same section of Public Law 100–461 which extended the AIFS and EIL au pair programs for fiscal years 1989 and 1990 also required the GAO to conduct an assessment of J-visa activities, including the au pair program. In February 1990 the GAO issued its report "Inappropriate Uses of Educational and Cultural Exchange Visas," which, *inter alia*, concluded that "the currently structured au pair programs are not compatible with the original intent of the 1961 [Mutual Educational and Cultural Exchange Act of 1961—the Fulbright-Hays] Act. We hold this view because current au pair programs are essentially child care work programs that do not correlate with the qualifying categories mentioned in the J-visa statute. As currently structured, au pair programs would normally be subject to Department of Labor administrative review and certification." (GAO Report, at p. 20) (material in brackets added.)

There are presently pending in Congress two bills (S. 1914 and H.R. 3982) which, if enacted, would transfer the au pair program to the Department of Justice. In light of Public Law 101–454, which requires the Agency to continue to implement the au pair programs previously designated until such programs are authorized and implemented by another U.S. Government agency, USIA-designated au pair programs shall continue to follow the previously issued "Guidelines Governing the Administration of Au Pair Programs." In addition, currently designated au pair program sponsors are required to comply with all Exchange Visitor Program regulations which appear at 22 CFR part 514.

Pending the transfer of the au pair program to the Department of Justice or some other U.S. Government agency, no additional au pair programs will be designated. Currently designated programs are not permitted to expand their programs, i.e., they are limited to bringing in au pairs only from the countries of Western Europe, and each designated program is authorized to bring only 2,840 participants a year into the U.S.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Dated: September 30, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92–24213 Filed 10–8–92; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Sponsors of Exchange Visitor Summer Student Travel/Work Programs

AGENCY: United States Information Agency.

ACTION: Notice to sponsors of exchange visitor summer student travel/work programs; statement of policy.

SUMMARY: The General Accounting Office (GAO) issued a report entitled "Inappropriate Uses of Educational and Cultural Exchange Visas" dated February 16, 1990. The report questioned the legality of summer student travel/work programs under the J-visa. On August 13, 1990 the Agency published a Statement of Policy in the Federal Register, 55 FR 32906, which served as an interim response to the GAO report.

This notice sets forth the Agency's final response.

DATES: The Statement of Policy is effective October 9, 1992.

ADDRESSES: Questions regarding this notice should be addressed to Stanely S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: The GAO issued a report entitled "Inappropriate Uses of Educational and Cultural Exchange Visas" dated February 16, 1992. That report questions the legality of the Summer Student Travel/Work Programs under the J-visa.

The Agency has been designating Summer Student Travel/Work programs for a number of years. Regulations covering such programs presently appear to 22 CFR 514.13(d). Those programs are designed to achieve the educational objectives of international exchange by involving foreign students during their summer vacations directly in the daily life of the host country through temporary employment opportunities. Selection of participants is limited to *bona fide* foreign university students who are between 18 and 23 years of age. A participant must have a prearranged job before he or she comes to the U.S., or have firm appointments with prospective employers, or have sufficient personal funds so as to be financially independent if not employed.

Because of the potential adverse impact on labor opportunities for U.S. youth, the Agency requires program sponsors to check in advance with the Department of Labor to obtain information regarding areas which have a high unemployment rate and sponsors are directed to advise program participants to avoid such areas in seeking employment. Potential adverse labor impact is avoided further by an Agency requirement that sponsors administer their programs on a reciprocal basis, i.e., they cannot bring more students to the U.S. than they send abroad each calendar year on similar travel/work programs.

The statutory basis under which the United States Information Agency can designate programs for a J-visa is found in section 101(a)(15)(J) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(15)(J). That section defines nonimmigrants of the J category as an alien having a residence in a foreign country which he has no intention of abandoning who is a *bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill,* or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the *purpose of teaching, instructing or lecturing, or studying, observing, conducting research, consulting; demonstrating special skills, or receiving training* and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title, and the alien spouse and minor children of any such alien if accompanying him or following to join him. [emphasis added.]

The GAO pointed out that summer student travel/work programs, which provide foreign university students with employment opportunities in the United States during their summer vacations, do not require participants to engage in activities cited in the legislation. Some sponsors told us that the participants work at fast food restaurants, summer resorts, amusement parks, or other places where they can find work. Participants may be placed in jobs before they arrive or find work after they arrive. These are not jobs requiring special skills or distinguished merit and ability. One of the program sponsors we interviewed brings about 8,000 to 11,000 summer students a year to the United States.

In response to the GAO report, the Agency established a Task Force on Regulatory Reform of the Exchange Visitor Program. In addition to preparing an overall revision to the Exchange Visitor Program regulations, the Task Force examined the Summer Student Travel/Work program as part of the regulatory reform. The Task Force has examined the Summer Student Travel/Work Program from the perspective of overall U.S. foreign policy interests and from the perspective of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright Hays Act) and its legislative history. While the Agency believes that, from a foreign policy perspective, it is desirable to continue the program, it nevertheless has concluded that additional legislation will be required in order to bolster the Agency's authority to conduct such a program.

The Agency agrees with the GAO that participants in the Summer Student Travel/Work Program do not engage in the activities delineated in the Fulbright-Hays Act. In other words, they do not come to the U.S. for the purpose of teaching, instructing or lecturing, or studying, observing, conducting research, consulting, demonstrating special skills, or receiving training. For the most part, they come to work in the U.S. and take jobs requiring no special skills or distinguished merit or ability. Typical jobs accepted by participants in the program include work at fast food restaurants, summer resorts and camps, or amusement parks.

Nevertheless, while such programs do not fall squarely within the language of the Fulbright-Hays Act, the Agency believes that they accommodate certain foreign policy needs in that they promote mutual understanding between the people of the United States and the people of the other countries.

While Congress intended that the Fulbright-Hays Act be given a broad interpretation, the legislative history of the Act also strongly suggests, however, that although exchanges were not to be limited to the exchange of students and teachers, they were not to serve as vehicles for staffing regular industrial or commercial positions. The Agency believes that Congress recognized that there would be instances where the very nature of the exchange, e.g., a training program, would have a "work" or staffing component, but such programs would be permitted only where the "work" component was incidental to the training. The Agency believes that the principal activity of participants in existing summer student travel/work programs, for the most part, is working full-time for pay in a job which has no formal educational or cultural component, except perhaps as a product of chance, i.e., the educational/cultural component is merely incidental to the "work" component. This is the reverse of what Congress envisioned.

For this reason, the Agency has determined that it will propose a change in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended (the Fulbright-Hays Act) which will accommodate these programs. In the interim, the sponsors of summer student travel/work programs will continue under their present designations and will continue to abide by those regulations currently published at 22 CFR 514.13(d). Pending a legislative resolution of this issue, no new programs will be designated.

Simultaneously with the publication of this Statement of Policy the Agency is publishing, as a proposed rulemaking, an entire overhaul of the Exchange Visitor Program regulations (22 CFR part

514). When the proposed regulations become final, current § 514.13(d), which governs the Summer Student Travel/Work Program, will be renumbered as 22 CFR 514.31.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Dated: September 30, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-24214 Filed 10-8-92; 8:45 am]

BILLING CODE 8230-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 100]

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this notice the Agency is proposing replacement regulations governing its administration of the Exchange Visitor Program. The Agency has undertaken a thorough review of the Program, its enabling legislation, and past history. This review has, in turn, directed the Agency upon a course of regulatory and management practice reform. The complete revision to 22 CFR part 514 set forth in detail below are proposed in an effort to define more clearly the obligations, duties and relationships of the Agency, sponsors, and exchange participants.

DATES: Comments on the proposed rule will be accepted until December 8, 1992. All written communications received by the Agency on or before the closing date will be considered by the Agency before action on a final rule is undertaken.

ADDRESSES: Please submit five copies of written comments to: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, (202) 619–6829.

SUPPLEMENTARY INFORMATION: The Director of the United States Information Agency ("Agency") is authorized to facilitate and direct educational and cultural exchange activities in order to develop and promote mutual understanding between the people of the United States and other countries of the world. Now governed by the provisions of the Mutual Educational and Cultural Exchange Act of 1961 ("Fulbright-Hays Act"), educational and cultural exchange is the cornerstone of United States public diplomacy efforts.

First begun pursuant to the provisions of the United States Information and Educational Exchange Act of 1948 ("Smith-Mundt"), and subsequently incorporated into and broadened under the Fulbright-Hays Act, educational and cultural exchange activities have, over the past forty years, exposed millions of foreign nationals to the United States, its culture, philosophy, business techniques, and educational institutions. The Fulbright-Hays Act mandates reciprocal exchange and Americans traveling abroad have, in similar fashion, developed an enhanced awareness of foreign people, their cultures and societies. Originally performed by the Department of State, oversight of exchange activities, occurring under the umbrella of the Exchange Visitor Program, has been the responsibility of the Agency since 1978.

The Fulbright-Hays Act prescribed categories of eligible exchange participants. The Act provides for the exchange of students, scholars, trainees, teachers, professors, researchers, specialists, leaders in a specialized field of knowledge or skill, or other person of similar description. In addition, the Act requires that exchanges participate in bona fide teaching, study, instruction, lecturing, observation, consultation, research, training or demonstration of special skill activities. Further, the Act authorizes non-immigrant aliens falling within the statutory parameters of the Act to enter the United States under the aegis of a J visa for the purpose of participation in an exchange visitor program. Necessarily, Agency determination of the appropriate usage of the J visa is an integral element of this rulemaking.

The Exchange Visitor Program is facilitated—indeed, largely conducted—by Agency-designated program sponsors who are responsible for the recruitment, placement, and supervision of exchange participants. Congress clearly intended that the private sector was to have a major role in educational and cultural exchange activities. Indeed, when Congress assigned the Agency its mission in 1978, it reemphasized, amongst other things, that the Agency was to "encourage private institutions in the United States to develop their own exchange activities, and provide assistance for those exchange activities which are in the broadest national interest." 22 U.S.C. 1461–1 (1988). Pursuant to this Congressional mandate, utilization of private sector expertise and resources has resulted in the designation of over 5,000 exchange visitor programs during the past forty years. Currently, in excess of twelve hundred program sponsors are conducting exchange activities. In 1990, these Agency-designated sponsors facilitated the entry into the United States of more than 180,000 Exchange Visitor Program participants.

Though widely hailed as an innovative and successful foreign policy initiative, the Exchange Visitor Program is not without flaw. Debate concerning the parameters of program participation and activity has arisen in recent years. In response to this debate, the Agency has undertaken a thorough review of the Program, its enabling legislation, and past history. This review has, in turn, directed the Agency upon a course of regulatory and management practice reform. The amendments to 22 CFR part 514 set forth in detail below are proposed in an effort to define more clearly the obligations, duties, and relationships of the Agency, sponsors, and exchange participants.

Acting in response to Congressional request, the General Accounting Office ("GAO") investigated Agency oversight and administration of the Exchange Visitor Program and its attendant utilization of the J visa. In its report to Congress, dated February 5, 1990 and entitled "Inappropriate Uses of Educational and Cultural Exchange Visas," the GAO determined that certain Exchange Visitor Program activities appeared to be inconsistent with the statutory grant of authority and its underlying legislative intent. GAO summarized its findings, stating:

> Most J-visa activities appear to conform to the intent of the 1961 act. However, GAO believes that certain activities and programs in the trainee and the international visitor categories, including the summer student/travel work, international camp counselor, and au pair (child care) programs, are inconsistent with legislative intent. GAO identified instances of participants working as waiters, cooks, child care providers, amusement and leisure park workers, and summer camp counselors. Authorizing J visas for participants and activities that are not clearly for educational and cultural purposes as specified in the act dilute the integrity of the J visa and obscures the distinction between the J visa and other visas granted for work purposes.
>
> Report, p. 3.

In turn, Agency response to this criticism began with a thorough review of enabling legislation authorizing the Exchange Visitor Program and admission into the United States of foreign nationals on a J visa.

Subpart A: General Provisions

Exchange Participants and Activities

The Agency has determined that it may best prevent future confusion regarding participant eligibility by establishing eligibility criteria. To this end, the Agency proposes such criteria at § 514.4. New categories of participation, those of "short-term scholar" and "government visitor" are introduced and participation as a "student" is more clearly defined. The category of "specialist" has been expanded and that of "international visitor" restricted to Agency use.

Further, the Agency has determined that camp counselor programs do in fact fall within the Agency's statutory authority to promote exchange. All of these matters are discussed below.

The Agency has determined that the academic exchange community could readily increase the velocity of academic related exchanges through the development of "short-terms scholar" exchanges. A new category of participation, such exchanges will be limited to four months duration. In similar fashion, the Agency believes exchanges within the business community could be substantially increased through the use of the "specialist" category of participant. This category allows for experts in a field of specialized knowledge or skill to engage in observation, consultation, or demonstration of special skill activities for a period of time not to exceed one year.

To correct confusion which periodically arises from the sponsorship of student participants, the Agency proposes criteria governing student status. Given the *bona findes* requirement set forth in 8 U.S.C. 1101(a)(15)(J), the Agency believes that a student participant must pursue a full course of study. In determination of what constitutes *bona fide* study, the Agency has surveyed the catalogues of various educational institutions regarding their criteria for full-time student status. The results of this survey indicate that current practice in the field of higher education generally requires an enrolled full-time student to pursue a minimum of twelve semester hours of undergraduate or nine semester hours of graduate academic credits each semester. This minimum course load is considered satisfactory evidence of appropriate advancement toward degree completion and is commonly used as the measure for payment of full-time tuition.

The Agency has also examined Immigration and Naturalization Service regulations set forth at 8 CFR 214.2(f)(6). This regulation, first promulgated by publication at 40 FR 32312 (1975), requires an undergraduate student to complete a minimum of twelve semester hours of academic credit (or equivalent) per semester of attendance and a graduate student to complete the minimum number of credits per semester which an appropriate school official certifies as a full course of study.

Based upon the above, the Agency concludes that pursuit of *bona fide* study is best evidenced by a student's successful completion of a minimum number of academic credits per semester. Pursuant to the *bona fide* requirements of 8 U.S.C. 1101(a)(15)(J), the Agency has determined that an exchange visitor entering the United States as a "student" under the J visa must be actively engaged in the pursuit of a "full course of study." In lieu of setting forth a minimum number of semester hours of academic credit (or its equivalency) per academic term, the Agency proposes that the standard for full course of study be set by the academic institution at which the exchange student is pursuing his or her studies.

In response to a perceived need in the academic community, the Agency proposes to expand student status to also encompass participation in a specialized program of instruction of less than two year's duration. Such program shall be conducted under the aegis of an accredited educational institution and must be comprised of a structured course of study devoted to a particular academic endeavor. No requirement that the participant pursue a degree is imposed. An example of such a program would include an interdisciplinary course of study in arts management comprised of courses offered by the fine arts, business, public administration and law schools of a given academic institution.

Also set forth in § 514.4 as subparts of the "other persons of similar description" participant category are "International Visitor" and "Government Visitor." Originally intended only for Agency use, the International Visitor category has devolved to "catch-all" usage over the years. As proposed, reservation of this category only for Agency use will allow definitive and statistical illustration of the nature and scope of exchanges occurring under direct Agency sponsorship. Similar in nature to International Visitor, the proposed Government Visitor category will be utilized for exchanges directly sponsored by local, state, or federal government agencies.

The GAO report discussed *supra*, concluded that camp counselor programs are inconsistent with the legislative intent of the Fulbright-Hays Act. The Agency, having reviewed this matter in great detail, is now of the opinion that camp counselor programs may be continued. This conclusion is based upon policy and legislative analysis and will require certain programmatic reforms.

International camp counselor is not a statutorily enumerated category of exchange participation. If, however, camp counselor exchange participants are students, teachers, *bona fide* youth workers, and persons with specialized skills in their home country they will fall squarely within the statutorily authorized category of "other person of similar description." As regards activities while in the United States, camp counselors are actively engaged in teaching, observation, and instruction activities, all of which are activities specifically authorized by the statute.

Given the directive of broad interpretation found in the legislative history of the Fulbright-Hays Act, Agency designation of these programs is clearly consistent with the statutorily enumerated purpose and objective of the legislation. To avoid confusion as to the categorization of camp counselor program participants, a new category, set forth at § 514.4 as a subpart of "other persons of similar description," is proposed.

Program Designations

Agency examination of its administration of the Exchange Visitor Program has resulted in a determination that certain internal program controls should be bolstered. In part, the Agency has determined that sponsor application and designation procedures should be strengthened and more clearly delineated. To this end, the Agency proposes, pursuant to provisions set forth at § 514.5 and § 514.6, modification of existing application and designation procedures and the addition of a new requirement dictating periodic redesignation.

Confusion concerning the actual number of Agency-designated Exchange Visitor Program sponsors was an initial area of GAO investigation and proved a fertile source of criticism. Actual determination of this number proved problematic given both the Department of State's and Agency's failure to cancel sponsor designations due to program inactivity or abandonment. This failure is best illustrated by the fact that over 5,400 programs designated in the last forty years, less than a third are operating today. Through utilization of its Exchange Visitor Information System the Agency has determined that slightly more than 1,200 exchange visitor programs are currently in operation. The Agency contemplates the continued utilization of existing Form IAP–37, "Application for Program Designation" for both initial purposes. Modifications to such form will be made to reflect designation and re-designation proposed changes.

The Agency proposes to prevent this confusion concerning the number of valid exchange programs through a proposed utilization of periodic designations. This action is prompted by the Agency's recognition that many

exchange programs exhibit a life cycle of establishment, maturation, and demise. The Agency proposes to designate program sponsors for five years and require sponsors desiring to continue program operations to advise the Agency affirmatively of such intent pursuant to request for redesignation as set forth in § 514.7, *infra*. Such periodic designations will allow the Agency to track program life cycles, efficiently cancel inactive programs, and monitor the activity within and direction of designated exchange programs. Programs for which designation is not sought will be canceled through administrative action. The Agency contemplates a two-year phase-in of this requirement during which all existing designations will be reviewed and extended, if appropriate.

Program Administration

In addition to delineating sponsor and participant eligibility criteria, the Agency proposes that all exchange programs designated by the Agency meet certain eligibility requirements. As set forth at § 514.8, the Agency has determined, as in the past, that all programs should have not less than five exchange participants annually. Further, with the exception of programs for the new defined "scholar" and "government visitor" participants, all programs must provide for cross-cultural activities and afford all participants an exchange program in the United States of not less than three weeks. These requirements are currently set forth in existing regulations, but have, along with a requirement for reciprocity, been reordered and will henceforth be prerequisites to program designation.

The Agency will require sponsors to be both United States citizens as such term is defined in this Part and to affirmatively demonstrate an ability to comply, and remain in continual compliance, with all regulatory provisions. As regards exchange visitors, the Agency has defined the statutorily enumerated categories of eligible participation in terms of the activity inherent to each categorical status. Thus, by way of illustration, the Agency has determined that an eligible "student" exchange participant is one entering the United States for the purpose of pursuing a full course of study at an accredited educational institution. This approach will ensure that exchanges occurring under the aegis of the Exchange Visitor Program fall squarely within the established statutory parameters of status and activity. As participation in the Exchange Visitor Program is thus limited, strict adherence and compliance with Agency promulgated definitions of status will be expected.

A statement addressing the Agency's long-standing reciprocal exchange policy is set forth in § 514.8. Such policy contemplates that exchange sponsors will make a good faith effort to facilitate reciprocal exchange of persons to the fullest possible extent. Statutorily mandated, reciprocity is inherent in the concept of mutual exchange of persons. Confusion over the nature and scope of reciprocity has been problematic for some time. As a policy consideration, the Agency seeks to promote and foster innovative and expansive responses to this critical program requirement. Although one-for-one exchange is the ultimate objective of the foreign policy underlying passage of the Act, the Agency recognizes that circumstances may permit no, or only limited, reciprocal exchange opportunities.

Related to reciprocity is the requirement that exchange visitors be exposed to various activities designed to promote cross-cultural awareness. Sponsors will be required to offer a reasonable amount of cross-cultural activities, including sports, cultural, and social activities for the purpose of enhancing the participant's knowledge and understanding of American mores, customs, and ways of life.

Agency scrutiny of existing regulations governing the Exchange Visitor Program has revealed a lack of specificity and clarity regarding sponsor obligations and program administration. Although the Agency is secure in its belief that sponsors act in the best interests of sponsored exchange participants, the existing regulations do little to ensure uniform program administration and oversight of exchange visitors. To correct this deficiency, the Agency proposes amendment to existing regulations in an effort to provide some measure of uniformity in the conduct of exchange activities.

Recognizing that exchange visitors are dependent upon the sponsors who facilitate their entry into the United States, the Agency proposes that such sponsors demonstrate, to Agency satisfaction, their organizational and financial ability to fulfill their duties and obligations as exchange sponsors. Pursuant to proposed regulations set forth at § 514.9, non-government sponsors must affirmatively establish both their ability to pay timely all financial obligations and that sufficient funds are readily available to fulfill all obligations and responsibilities attendant to exchange sponsorship.

The Agency is obligated to introduce this requirement due to evidence of financial instability among certain Agency-designated sponsors. As a matter of administrative convenience, the Agency deems it appropriate to consider public colleges and universities as government sponsors, for the purposes of this provision only, and thereby exempts them from compliance. In addition to furnishing evidence of fiscal integrity, sponsors must also comply with additional obligations pertaining to internal organizational operations.

The proposed regulation set forth at § 514.9 also requires that sponsors adhere to Agency-promulgated regulations governing the Exchange Visitor Program. This regulation is advanced, in part, to ensure that officers, employees, and agents involved in sponsor facilitation of exchange activities are aware of the Program, its intent, and regulatory requirements. this proposed regulation will require employees, officers, and agents responsible for program administration to be adequately trained and qualified to permit assigned duties relating to exchange activities. Underlying this requirement is an Agency concern that responsibility for both exchange visitors and program administration be vested in persons who have knowingly undertaken such responsibility.

Proposed amendments governing the selection and orientation of exchange participants are set forth at § 514.10. The Agency will require that sponsors ensure that prospective exchange participants meet the eligibility criteria for program participation and that such program is suitable to the participant's background, needs, and experience. Upon selection for participation and prior to commencement of the program, sponsors will be required to provide the participant with information regarding the exchange program, travel, housing, and cost. The sponsor must also inform all exchange visitors of the two-year home residency requirement which may apply to the exchange visitor due to government funding or area of study.

Upon the exchange participant's arrival, or as soon as practical thereafter, the sponsor must provide sufficient orientation to acquaint the exchange visitor with United States customs and monitor the visitor's stay in the United States. This requirement is introduced in an effort to both facilitate the exchange visitor's adjustment to life in the United States and enhance the positive impression of the United States which is the underlying purpose of all exchange activity. Although the Agency

has determined that orientation for accompanying dependents is highly desirable, a mandatory requirement that such orientation be conducted is not proposed. The Agency strongly encourages sponsors to provide dependent orientation.

Additionally, the Agency has reviewed the health and accident insurance coverage afforded Program participants. The need for such coverage is self-evident. Given the escalating costs of U.S. health care, the current levels of coverage, in place since 1983, are now woefully inadequate. As set forth in § 514.14, the Agency proposes to increase the level of coverage to $50,000 per accident or illness. The Agency is also proposing that exchange visitors obtain coverage for repatriation of remains in the amount of $7,500 and coverage for medical evacuation to their home country in the amount of $10,000. A waiting period for pre-existing conditions, reasonable as determined by industry standards, and a deductible not in excess of $500 per accident or illness will be permitted. Provision is made for co-insurance. Policies may not exclude from coverage perils or dangers inherent to the exchange activity. For example, an insurance policy secured to cover flight training participants may not exclude injury arising from operation of small aircraft. In an effort to ensure the quality of the provided coverage, the Agency proposes that only insurance corporations having an A.M. Best policyholder rating of "A" or above, an Insurance Solvency International, Ltd. (151) rating of "A" or above, or a Standard & Poor's Claims-paying Ability rating of "AA" or above, may act as underwriters.

The proposed regulation provides for self-insurance by federal, state or local governments, state colleges and universities, and public community colleges. A non-governmental sponsor may elect to self-insure or to accept full financial responsibility for the above requirements, but may do so only with the Agency's permission.

Current regulations do not require that an accompanying spouse or dependent of an exchange visitor be covered by insurance. Proposed regulations cure this programmatic flaw by requiring accompanying dependents entering the United States on a J visa to be covered under an insurance policy. An exchange visitor's failure to secure insurance coverage for his or her self and J–2 accompanying dependents will obligate their program termination. Sponsors shall also be prepared to provide exchange visitors with information on the availability of such coverage.

Notification, Annual Reporting, and Control of Form IAP–66

A proposed regulation governing certain notification requirements is set forth at § 514.13. Such requirements include notification to the Agency of material changes in a sponsor's organizational structure which affects the citizenship requirement set forth in § 514.2, and overall ownership and control. The Agency is obligated to introduce this requirement as many designated sponsoring organizations are small entities comprised of key personnel. Upon notification of a substantial change in ownership or control, the Agency will ascertain whether designation should continue based upon the experience and expertise of the new management. It must be noted that Agency designations are not transferable.

Efficient Agency oversight and administration also dictates that sponsors apprise the Agency of any changes in responsible officers, address, or telephone number. In similar fashion, loss of licensure or accreditation, change in financial circumstances or the voluntary termination of the exchange visitor program must be reported. The Agency has also determined that notification concerning a participant's early completion or withdrawal from the sponsor's exchange visitor program is necessary. Upon receipt of such notification the Agency will deem the sponsor's obligations to an exchange visitor to have ended.

The Agency has determined that a substantial correction must be made to the current practice surrounding the care and custody of the Form IAP–66. Such forms are controlled U.S. Government documents and have been found to have a substantial black market value. The Agency has also discovered unauthorized utilization of the forms by program sponsors to facilitate the entry of foreign nationals for the purpose of participation in non-designated exchange activities. The Agency proposes to correct this abuse by institution of a strict accounting of all forms disbursed to sponsors. To this end, the Agency proposes, pursuant to the provisions of § 514.12 and § 514.13, that sponsors record and destroy damaged forms, track and record forms issued, and maintain all forms on hand in a secure fashion. An accounting for all forms will be made, in part, pursuant to an expanded annual reporting requirement.

Considerable debate has surrounded the Agency's proposal regarding annual reporting requirements. The Exchange Visitor Program is an anomaly in the U.S. immigration scheme and provides extraordinary latitude in the selection of exchange participants. As a program and an extension of U.S. foreign policy a degree of accountability is required. The burden of submitting an annual report which reflects a sponsor's activity for a year and which ensures an annual reconciliation of their usage of Forms IAP–66 is viewed by the Agency as a de minimus imposition upon designated sponsors. The Agency has elected to resurrect a one page report form which has been in use for the past thirty years and which is familiar to long established exchange sponsors. Further, the Agency takes this opportunity to advise designated sponsors that this annual reporting requirement pursuant to an oral representation made by an Agency official. Be that as it may, the regulatory requirement of an annual report has been in place since the inception of the Exchange Visitor Program. The requirement that sponsors submit an annual report will be strictly enforced.

To assist the exchange community in review of these proposed regulations, the Agency has incorporated into this Rulemaking the definitions currently set forth at 22 CFR 514.1. Minor changes, not affecting underlying meaning, have been made to most of the definitional terms. Such changes, when made, are proposed in an effort to enhance overall clarity and readability. Although definition of the term "citizenship" was the subject of a separate rulemaking, such term is included here, in final form, to facilitate overall review. Comments concerning this definition are not sought.

Finally, to assist in review of these proposed regulations the Agency attaches as appendices copies of forms which are used in conjunction with sponsor administration of exchange visitor programs. At appendix A is a modified version of the certification used to attest to the citizenship of sponsors and responsible officers. Appendix B contains the IAP–37, the Exchange Visitor Application, which has been approved by the Office of Management and Budget. The Agency anticipates that it will continue to use the form with a few minor changes to reflect § 514.4, Participant Eligibility. Appendix C contains a copy of IAP–87, Update of Information on Exchange Visitor Program Sponsor. The Agency anticipates a limited modification of this form. Finally, at appendix D, a copy of the proposed annual report form is attached for examination.

Subpart B: Specific Program Provisions

Section 514.20 Professors and Research Scholars

Although professor, researcher, and scholar exchanges are the very heart of the Exchange Visitor Program, regulations which specifically govern these exchanges have never been promulgated. In an effort toward regulatory consistency and program integrity the Agency is herein proposing regulations which specifically provide guidance regarding such exchanges.

The term "scholar," although set forth as a category of exchange in the Fulbright-Hays Act, has never before been defined in Exchange Visitor Program regulations or considered a distinct category of authorized exchange activity. This lapse is possibly due to the conceptual overlap of the term with "professor" and "researcher." The Agency proposes to correct this discrepancy by introducing the category of "short-term scholar," which is discussed below. On an additional point of terminology, the Agency has been advised that a number of academic exchange sponsors prefer to retain the current category of "research scholar" rather than "researcher." Upon deliberation, the Agency agrees that retention of this term, long used and understood within the exchange community, is appropriate.

In deciding whether to facilitate the exchange of a professor or research scholar, the sponsor shall consider the underlying purpose for which the individual is visiting the United States. It is appropriate for a professor or research scholar to come to the United States as an exchange visitor only when the underlying purpose of his or her entry into the United States is to stimulate international collaborative teaching and research efforts or to promote interchange between research and educational institutions in the United States and other countries. To this end the proposed regulations require that appointments of professors and research scholars be temporary and not on a tenure track, even if the position itself is permanent.

Recognizing that the positions of professor and research scholar are intertwined, the Agency proposes to permit professors to freely conduct research and research scholars to teach or lecture, unless disallowed by the sponsor. The definition of professor and research scholar set forth in these regulations, rather than the position description utilized by the individual educational or research institutions, is to be used by sponsors in determining the category of exchange participation.

Prior to issuance of the Form IAP–66, the responsible officer must review the parameters of the individual exchange to assess whether research or lecturing will comprise the participant's primary activity. If the exchange participant will primarily be conducting research, he or she must be categorized as a research scholar on the Form IAP–66. If the exchange participant will primarily lecture, then he or she must be categorized as a professor.

Further, the proposed regulations allow sponsors to authorize a change of category from professor to research scholar, or vise versa when the principal activities of the participant so dictate. Such change of category does not require Agency approval or notification. A change of category does not extend the duration of the exchange visitor's program beyond what is permitted at § 514.20(i).

Professors or research scholars may conduct their exchange activity at the location(s) listed on the Form IAP–66, which could be either at the location of the exchange visitor sponsor or the site of a third party facilitation the exchange. Pursuant to § 514.20(g), exchange visitors may also engage in activities at locations not listed on the Form IAP–66 if such activities constitute lectures or consultations authorized in advance by the sponsor. By way of illustration, a research scholar may conduct research at the universities listed on his or her Form IAP–66, and may also conduct short-term consultations at any location when the conditions set forth in the regulations are satisfied.

Over the years the Agency has received numerous requests from the academic community to extend the permitted duration of participation for research scholars. The National Institutes of Health and other United States Government agencies have also requested greater flexibility in arranging the duration of participation for the professors and research scholars that they sponsor. In revisiting this issue, the Agency has determined that a greater degree of flexibility in the permitted period of participation is desirable.

To this end, the Agency proposes that up to three additional years beyond the duration of participation set forth in § 514.20(i) may be authorized by the Agency when exceptional or unusual circumstances so warrant. The Agency proposes the additional time in an effort to be responsive to needs which arise from the participation of exchange visitors in international research projects and in medical and biomedical research. Based upon representations made by designated sponsors, the Agency anticipates that a small percentage of professor and research scholar exchanges will encounter the exceptional or unusual circumstances which would warrant such an extension. Requests for such extensions shall be made directly to the Agency's Exchange Visitor Program Services.

The proposed regulations also allow responsible officers to approve short-term extensions of six months or less beyond the duration of participation allowed in § 514.20(i). In addition, the Agency will entertain sponsors' request to extend the permitted period of participation for a group of research scholars engaged in specific fields of endeavor on a blanket petition basis. The Agency believes that such short-term extensions and blanket approvals will provide both desired flexibility and enhanced administrative efficiency.

Section 514.21 Short-term Scholars

The agency proposes to create the category of "short-term scholar," which is defined as a professor, research scholar, specialist, or a person with similar education or accomplishments coming to the United States on a short-term visit for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. Educators, scientists, research fellows, writers, museum administrators, librarians, and similar persons of recognized expertise are examples of participants appropriate for this category.

The goal of short-term scholar exchanges is to increase the velocity of the interchange of knowledge and skills and collaborative research efforts between foreign and American scholars. This may be accomplished by providing foreign scholars the opportunity to share ideas with their American colleagues, participate in educational and professional programs, confer on common problems and projects, and thereby promote improved professional relationships and communications.

Because these exchanges are of limited ratio and the participants are often senior in their field, the Agency has determined that it will not be necessary for sponsors to provide orientation or cross-cultural activities for short-term scholars. The proposed regulations exempt short-term scholars from the minimum duration of participation set forth at § 514.8(b) but limit the maximum duration of participation to four months. As this category is intended only as a vehicle

for short-term collaboration and interchange, these participants will not be eligible for a program extension.

Section 514.22 Training

Following the passage of the Smith-Mundt Act in 1948, the Department of State, the Agency's predecessor in implementing exchange programs, promulgated regulations governing educational and cultural exchanges. Among other things, these regulations recited various categories of aliens allowed to participate in exchange visitor programs pursuant to the statutory language of the Act. Among these categories were "trainee", defined as an alien seeking to enter the United States temporarily in order to participate in an exchange visitor program "for the purpose of obtaining practical training in public administration, industry, medicine, agriculture, or some other specialized field of knowledge or skill * * *" 22 CFR part 68 (1949).

In 1961, Congress in turn passed the Fulbright-Hays Act, again directing the inclusion of training as a category of exchange participation. Although an integral part of Agency-administered exchanges, it was not until 1963 that separate regulations governing training activities utilizing the J-visa were promulgated. 22 CFR 514.13(c) (1963). These regulations have not been amended or revised since first promulgated.

In response to the General Accounting Office (GAO) investigation noted above, the Agency has reviewed the legislation and legislative history underlying the Exchange Visitor Program and existing regulations to determine whether such regulations comport with the statute governing this program. As discussed below, the Agency proposes to amend existing regulations in such a manner that the criticisms raised by the GAO are addressed and distinctions between training and work are obvious and clearly drawn.

The Agency is proposing regulations which address the criticisms of the GAO and clearly distinguish between training and work that is not training. Thus, the Agency proposes that all training conducted under the aegis of the Acts be clearly defined and structured, and on a level appropriate to the trainee's background and experience.

GAO Report

The controversy over the legitimacy of certain activities of foreign nationals in the United States on exchange visitor visas sparked Congressional concern as to the propriety of certain educational and cultural exchange programs administered by the Agency. A GAO investigation and report followed.

The report by GAO, entitled "Inappropriate Uses of Educational and Cultural Exchange Visas," and dated February 18, 1990, (GAO Report) concluded that:

> A number of J-visa activities in the practical training and international visitor categories, including summer student travel/work, camp counselor, and au pair activities—some of which have been ongoing for years—do not conform to the original legislative intent concerning educational and cultural exchanges.
>
> GAO Report at 23.

While the words "trainee" and "receiving training" are not expressly defined in either of the educational and cultural exchange Acts, the GAO noted that the existing training sanctioned by the Agency "did not have the same status as the categories mentioned in the statutes and would not generally be considered to have the same educational and cultural value." *Id.* at 16.

The Agency is of the opinion that the vast preponderance of the exchange visitor training programs are conducted well within the legislative authorities created by the Act. However, the GAO found that certain training programs inappropriately "consisted primarily of employment in commercial enterprises with no cultural or educational emphasis placed on the participants' activities. This training involved participants in such capacities as waiters, cooks, hotel workers, and automobile body repairers." *Id.* at 3. It is noted that the GAO Report stated only that "some" training programs consisted primarily of employment in commercial enterprises with no cultural or educational emphasis placed on the participants' activities.

Distinction Between Work and Training

As noted above, the Agency has been criticized for allowing the Exchange Visitor Program to be used to circumvent the immigration and labor laws of the United States by allowing foreign workers to use the program under the guise of educational and cultural exchange. This criticism has centered on designated private sector training programs and generated considerable debate concerning the distinction between work, i.e. gainful employment, and legitimate training. Recognizing that training more often than not occurs in a work place setting, the Agency has determined that the distinction between unauthorized gainful employment and authorized training may best be drawn through examination of the components of a *bona fide* training program. The requirements for a *bona fide* training program are set forth in § 514.22(f).

The Training Plan

As a prerequisite to Agency designation, the Agency proposes that applicants submit a training plan which describes what the training objectives are, the competencies which the trainee will obtain through participation in the training program, a general description of the schedule of the training activities, and a justification for the use of on-the-job training to achieve the objectives of the training course. Special skills, e.g., computer training, to which the trainee will be exposed should also be noted.

The Agency has received many comments suggesting that the training plan requirement will be unduly burdensome in all cases, and in some cases, impossible to comply with because the sponsor is active in many different training areas. The Agency believes that the revised proposed regulations set forth herein meet those objectives.

Applicants need not submit a training plan for each trainee. However, the applicant must submit a training plan for each type of training it intends to conduct. For purposes of these regulations, the Agency has listed eleven broad categories and it believes that every conceivable type of training will fall within one of these eleven categories. See § 514.22(i)(2). Moreover, the Agency believes that the submission of a maximum of eleven general training plans is not unduly burdensome. Specific comment on this matter is invited.

Proposed §§ 514.22 (f) and (g) set forth that information which the applicant is to include in the training plan and describes three types of training plans which an applicant may utilize in order to comply with the regulation.

The Agency recognizes that at the time the applicant is applying for designation it may not have identified individual trainees who are going to participate in the program. In such instances, the applicant need only submit a generalized, hypothetical training plan which illustrates the training the applicant proposes to provide.

In other instances, the applicant may not have prepared the training plan at the time it applied for designation. However, if the applicant has previously been engaged in the same sort of training for which it is now seeking designation it may submit a copy of a previously used training plan.

If the applicant has already designed a structured training plan at the time it is applying for designation, a copy of such training plan should be submitted with the application.

If all of the above instances, the applicant should bear in mind that the Agency's interest is not in creating needless paperwork, but in having sufficient facts to determine that the applicant is capable of conducting the training for which designation is sought.

Points to be discussed and included in the training plan are set forth in the Appendix to the proposed regulations. In addition, the general training plan must indicate whether the training is in a specialty occupation or a non-specialty occupation.

The Agency is aware that many sponsors will expand the breadth of their programs. If a sponsor desires to add additional training areas to its program, it does not need to apply formally for re-designation. The sponsor may simply request the Agency to amend its designation to include the added training areas. The sponsor must, however, submit a general training plan for each new training area added to its designation.

Specialty and Non-Specialty Occupations

The Agency does not necessarily view a specialty occupational trainee as a worthier participant in the Exchange Visitor Program than a non-specialized occupational trainee. Therefore, non-specialty occupational training programs will be designated if otherwise in compliance with the regulations. However, the Agency considers the distinction to be significant because past experience has shown that some of the non-specialty occupational training programs were, in reality, work programs designed to meet the staffing needs of an employer. Thus, the Agency has determined that non-specialty occupational programs may require closer monitoring after designation than was previously undertaken in the past.

The Agency has concluded that the potential for inappropriate usage of the J visa is most pronounced in those non-specialized occupational areas which are generally considered unskilled in nature. For example, the Agency would not approve an application for designation of a program to train persons in clerk typist skills or in nurses' aides or orderly skills. The Agency will presume that such training would in reality be designed for staffing purposes and, therefore, inconsistent with the Agency's mission. A listing of those occupations which the Agency considers to be unskilled is set forth. Applications for designation of training programs in such occupations will not be approved.

Justification for the distinction between "specialty occupation" and "non-specialty occupation" may be found in both the original regulations governing the Exchange Visitor Program and in the legislative history of the Acts. In 1949, the Department of State permitted "trainee" participants pursuing training in "public administration, industry, medicine, agriculture, or some other *specialized* field of knowledge or skill * * *." 22 CFR part 68 (1949) (emphasis added). The legislative history of the Smith-Mundt Act refers to the training of meteorologists, agricultural research by the operation of collaborative experiments and research stations, hydroelectric experts, malaria experts, and experts in the fields of economics, business administration, agricultural design and construction, communications, and distribution of electric power. United States Information and Educational Exchange Act of 1948: Hearings on H.R. 3342 Before a Special Subcomm. of the House Comm. on Foreign Affairs, 80th Cong., 1st Sess. 148–50 (1947).

While most of the early exchange visitor training programs fell in specialized areas such as those noted above, the legislative history of the 1961 Fulbright-Hays Act strongly suggests that Congress intended the program to be broadly construed and highly flexible and adaptable to changing needs and conditions. In recognition that non-specialty occupational training programs can be an important part of our foreign policy, the Agency does not propose to exclude them from the Exchange Visitor Program. Since the passage of the Fulbright-Hays Act, the world has seen a major expansion in non-specialty occupational training and such programs have become an important part of our foreign policy, which the Agency intends to continue. However, for the reasons set forth above, the Agency will monitor non-specialty occupational training on an *ad hoc* basis in order to ensure that such training is *bona fide*.

As noted above, while the Agency will not require that a detailed training plan be submitted for each trainee, we anticipate that sponsors engaged in bona fide training programs will, in the ordinary course of business, prepare such plans and retain them in their files. The Agency may from time to time request an opportunity to inspect these training plans in order to verify sponsor compliance with Agency regulations.

Sponsor Supervision

In the proposed regulations, the sponsor of the program must be directly responsible for all aspects of the trainee's activities while the trainee is in the United States, including the selection, orientation, training, supervision, and evaluation of the trainee. The purpose of this proposal is to assure that responsibility for the trainee resides in one place. It has always been the policy of the Exchange Visitor Program that sponsors be directly responsible for these aspects of the Program, yet analysis of some programs reveals that this policy has not always been observed. The proposed regulations codify and strengthen this existing long-standing policy.

In order to carry out the actual training set forth in a sponsor's approved training plan, the Agency has determined that utilization of a third party by the sponsor may be appropriate. If the sponsor elects to delegate its responsibility for providing approved training to a third party, the sponsor is nevertheless accountable for ensuring that the third party complies with these regulations. A third party's violation of these regulations shall be imputed to the sponsor; therefore, the sponsor's obligation to monitor, control, and oversee the third party is absolute. Simply put, a third party may act for or in place of the sponsor; however, the accountability of the sponsor shall be non-delegable.

When a third party is utilized by the sponsor, the Agency requires evidence of an express written agreement between the sponsor and the third party Any such agreement shall specifically recite the third party's obligation to act in accordance with all Agency promulgated regulations applicable to the sponsor. In addition, the sponsor must provide the third party with the individualized training plan to be used to train the trainee. The sponsor shall retain a copy of such training plan for a period of three years.

The Agency will no longer approve an organization as a sponsor of a training program where the organization or its agent abdicates its responsibility to directly train and supervise the trainee. The regulations, as noted, will require that the sponsor retain full responsibility for the conduct of the program. Simply placing a trainee in a third-party training program will not be allowed in the future if the sponsor abdicates accountability for the training and well-being of the trainee.

Flight Training Programs

Included amongst the exchange visitor programs currently designated by the Agency are flight training programs. The Agency considers flight training to be in an important yet sensitive occupational area which requires that particular attention be given to quality assurance. Additionally, flight training schools require more financial resources than many other types of training programs.

Over the past two years, five of the thirty Agency-designated flight training programs have met with financial failure and recently one flight training program was suspended by the Agency for various violations of Agency regulations. These incidents suggest that the Agency must monitor more closely the flight training programs in order to ensure that program participants are adequately protected.

The Agency has engaged in considerable dialogue with representatives of flight training programs during the course of the Agency's regulatory reform effort. The Agency has conveyed to the sponsors its concerns about the financial stability of a number of sponsors and its concerns about the "work vs. training" issue involved in flight training programs. Similarly, the flight training sponsors and those seeking to become designated flight training sponsors have expressed their concern over the eighteen month maximum duration, arguing that flight trainees require more time to complete their training.

Flight training sponsors have also argued that participants in flight training programs should more properly be treated by the Agency as "students" rather than as "trainees" because typically flight training programs are more like schools than training programs in that they follow fixed curricula, have classroom instruction, and, at least in some cases, are accredited by nationally recognized accrediting agencies. It is further argued that placing flight training program participants in the student, rather than the trainee category, would also entitle the flight student to a total of eighteen months of training at the conclusion of the classroom portion of the program, rather than the maximum of eighteen months period of participation permitted under the training regulations.

The Agency has considered these arguments and has concluded that the flight training participants more appropriately fit under the training category than the student category. Moreover, the stated goals of the flight training program participants are better met under the trainee category than under the student category. For example, proposed § 514.23 ("College and University Students") requires that the student be studying at a degree-granting post-secondary educational institution. Most flight training schools do not grant degrees. Also, before a student can commence "academic training," the proposed regulation requires that the student first must have been a student in the exchange visitor program for the preceding nine months. See § 514.23(g)(2)(i)(A). The Agency has been advised that most flight students spend no more than six months in a full-time classroom or academic setting.

Therefore, in order to meet the Agency's concerns about quality assurance and financial stability of flight training programs, while at the same time allowing flight trainees to gain more training time in the U.S., the Agency is proposing the following:

1. All flight training programs must be accredited by a nationally recognized accrediting authority. If the proposed regulation is made final, the Agency will consider only the applications of those programs which have already been accredited as set forth in the regulation, or which have formally commenced the accreditation process. The Agency is aware that accreditation may take as long as one year to be completed. The Agency will, therefore, accept applications for designation from flight schools which have commenced the accreditation process, but will only conditionally designate them for up to twelve months. Similarly, currently-designated flight training programs will be conditionally redesignated for up to twelve months, but only if they have commenced the accreditation process.

2. With respect to duration of participation, flight trainees are to be granted an additional six months of training time beyond the normal 18-month maximum duration of participation. The Agency believes that a longer stay is justified in the case of flight training because of the strict training requirements of the international aviation community. As under current regulations, any extension of the program beyond twenty-four months must be specifically approved by the Agency, and such extensions will be granted only under highly unusual circumstances.

The Agency believes that this proposal is a reasonable accommodation to the need of the Agency and the needs of the flight training industry. Recognizing that there are both time and cost considerations in the accreditation process, the Agency is willing to extend the training time allowed to flight trainees in return for the flight training sponsors' acceptance of the accreditation requirement.

The Duration of Participation

The Agency had considered limiting training programs to twelve months. Upon consultation with a number of current sponsors, the Agency decided to keep the duration of training programs to a maximum of eighteen months, as is presently provided for in the regulations. The primary purposes of training under the Exchange Visitor Program are to expose the visitor to uniquely American techniques, methodology, and philosophy in the visitor's field of endeavor and to provide an opportunity for open interchange of ideas between the visitors and Americans. The law envisions that exchange visitors will return to their home country to share with their compatriots their experiences in the United States, including the fruits of their training. While many of the exchange visitor training programs funded by the United States Government are for less than eighteen months in duration, the Agency concludes that many private sector programs may require eighteen months to maximize the benefits to the trainee. An exception is being proposed for flight training programs in order to allow additional time to complete this highly specialized training. As noted above, flight training programs will be given a twenty-four month duration of participation.

Section 514.23 College and University Students

In response to requests from the academic community the Agency has undertaken the task of clearly defining when and under what circumstances a student should be issued a J visa. Sponsors should place foreign college and university students in their exchange visitor program when the students academic programs are funded by the United States Government, the government of the exchange visitor's home country, an international organization of which the United States is a member, or when the program is carried out under an agreement between the United States and a foreign government. Sponsors may also place foreign students in their exchange visitor program if the program is carried out under a written agreement between American and foreign educational institutions, or when foreign students are supported substantially by scholarships designed to promote international educational exchanges.

Further, the Agency proposes that the category of college and university

students shall be limited to exchange participants at post-secondary accredited educational institutions who are (i) pursuing a recognized full course of study leading to or culminating in the award of a U.S. degree; or (ii) engaged full-time in a prescribed course of study of up to 24 months duration. The latter category is proposed in order to allow and encourage college or university students who seek to pursue a clearly defined non-degree academic program.

8 U.S.C. 1101(a)(15)(J) provides, in part, that an exchange visitor may enter the United States under the aegis of a J visa if such visitor is a *bona fide* student actively engaged in *bona fide* academic study. 22 U.S.C. 2460(b) directs the Agency to ensure that exchange visitor programs sponsored by its Bureau of Educational and Cultural Affairs are of the highest academic standards. Pursuant to these statutes, Agency stewardship of the Exchange Visitor Program requires that the *bona fides* of an exchange visitor's academic studies be ascertained.

In order to quantify *bona fide* academic study and enhance Agency administration and oversight of the Exchange Visitor Program, definition of the term "accredited educational institution" is proposed. The Agency proposed to (i) define the *bona fides* of an educational institution by way of its accreditation status; and (ii) define the *bona fides* of student status in terms of attendance at an accredited educational institution and successful completion of the minimum number of academic credits per semester which best evidences full-time study.

It is Agency opinion and belief that accreditation is an objective and independent measurement of the *bona fides* of an "established school or institution of learning." Evidence of Agency policy and practice regarding accreditation is set forth at the current 22 CFR 514.15. This regulation authorizes the Agency to require evidence of accreditation from applicants seeking sponsor designation under the Exchange Visitor Program. The absence of a specific definition concerning accreditation was, in part, the basis of recent litigation. This litigation arose due to an Agency determination that a non-accredited educational institution was not an appropriate sponsor within the purview of the Exchange Visitor Program. Although the Agency prevailed in this litigation, the Agency now desires to amend existing regulations explicitly to enunciate the Agency's accreditation policy.

Recognizing that the expertise for determining accredited educational institutions lies with various independent accrediting authorities, the proposed Agency definition makes provision for the use of such findings on accreditation made by these independent authorities. Specifically, in review of the *bona fide* status of a post-secondary educational institution, the Agency proposes to utilize the annual listing of accreditation authorities promulgated by the Secretary of Education pursuant to 20 U.S.C. 1141(a). As explained in 34 CFR 602.1, accreditation is both a prerequisite to eligibility for various types of Federal financial assistance and a reliable measure concerning the quality of education offered by an educational institution. Agency use of such annual listing is also appropriate given the Department of Education's expertise and responsibility for oversight and implementation of Federal education initiatives. Pursuant to the proposed definition, post-secondary academic study completed at a non-accredited educational institution will not be deemed to comply with the *bona fide* requirement set forth in 8 U.S.C. 1101(a)(15)(J).

The proposed regulations set forth the requirement that exchange visitor students possess sufficient proficiency in the English language to enable them to participate in their program or are provided English language training. In addition, exchange visitor students are required to take a full course of study at a post-secondary accredited educational institution as such terms are defined in this Part. Pursuant to exceptions to this requirement set forth at § 514.23(f), provision has been made to ensure that students may maintain their status in the event of sickness or academic difficulties.

Recognizing the importance of academic training, the Agency proposes liberal regulations governing the pursuit of such opportunities. Such training may include internships, practicums, and cooperative educational programs. It may occur before graduation, after graduation, or a combination of both when the requirements set forth in § 514.23(g) are satisfied. Academic training may be as long as the period of the classroom instruction at the accredited educational institution, but shall not exceed a total of 18 months for any exchange visitor student. The Agency strongly supports training for college and university students but will require that it be an integral or critical part of the exchange visitor's academic program.

The Agency proposes that academic training be allowed for exchange visitor students when the exchange visitor: (1) Has been a student in the exchange visitor program for the preceding nine months; (2) is participating in academic training that is directly related to his or her major field of study; (3) is in good academic standing with the post-secondary accredited educational institution; (4) will adhere to the period of time permitted for academic training; (5) receives approval in advance and in writing by the responsible officer for the duration and type of training; and (6) satisfies the other requirements set forth in these regulations.

When students do not receive compensation for services when they participate in academic training during their studies, the requirements set forth in § 514.23(g) are not applicable. In this situation, the student needs only to obtain approval for such training by the academic dean or advisor and the responsible officer.

The Agency recognizes the benefits of exchange visitor students working while studying. At the same time, the Agency recognizes the importance of students completing their studies in a timely manner. The proposed regulations allow exchange visitor students to engage in part-time employment when it is approved by the responsible officer and is (1) pursuant to a scholarship, fellowship, or assistantship, or (2) necessary because of serious, urgent, and unforeseen economic circumstances which have arisen since acquiring the exchange visitor status. The regulations require that the exchange visitor student is in good academic standing and continues to comply with the full course of study requirement. Exchange visitor students shall be permitted to be employed no more than 20 hours per week, except during official school breaks and summer vacations.

A number of sponsors and other interested parties have asked the Agency to increase the maximum duration of training for Ph.D. graduates for 18 to 36 months. The rationale for such requests has been that these students need the time to complete their post-doctoral research. The Agency views academic training for exchange students as an opportunity for exposure or introduction to their profession or field of study. Foreign students often spend four to eight years or longer in the United States to complete their studies. The Agency believes the advantage of foreign students returning home to share their experiences and to contribute to their country home overrides the benefit of academic training longer than 18 months. As discussed in § 514.41, below, post-doctoral students may, in unusual or exceptional circumstances, petition

the Agency for a change of category to research scholar.

Section 514.24 Teachers

Although teacher exchanges are a vital component of the Exchange Visitor Program, regulations governing such exchanges have never been promulgated. The Agency seeks to correct this programmatic inconsistency by herein proposing regulations designed specifically to provide guidance to sponsors of such teacher exchanges.

The proposed regulations define at teacher as an individual teaching full-time in a primary or secondary accredited educational institution. As for primary and secondary schools, accredited educational institution is defined as any publicly or privately operated primary or secondary institution of learning duly recognized and declared as such by the appropriate authority of the state in which the institution is located. Teachers at the post-secondary level are under the category of professors, rather than teachers.

In deciding whether to include a teacher as a participant in its program, the sponsor shall consider the purpose for which the foreign national is visiting the United States. It is appropriate for a teacher to come to the United States as an exchange visitor teacher if (a) the individual will teach full-time at a primary or secondary accredited educational institution, and (b) the objective of the program is to promote the purpose of the Exchange Visitor Program. The proposed regulations require that the appointment of teachers be temporary and not involve permanent or long-term employment. This requirement is consistent with the intent that the exchange visitors return home after their program to share their experience with those in their country. The teaching position shall be also in compliance with any applicable collective bargaining agreement, where one exists.

As stated previously, the teacher category is reserved for primary and secondary teachers who come to the United States to teach full-time. The Agency wants to encourage educational administrators, curriculum developers, and other educational specialists at the primary and secondary level to participate in exchange visitor programs. The Agency intends that the latter group participate in exchange visitor programs under the specialist or government category, depending on who is sponsoring and selecting the exchange visitors.

Section 514.25 Secondary Students

Secondary school student exchanges are designed to afford students an opportunity to study in the United States for up to one year while living with an American host family. Such exchanges provide secondary school students an in-depth and broad exposure to American ideas and institutions through immersion in the everyday aspects of living and attending school in the United States.

Secondary school student exchange programs have been a part of United States public diplomacy efforts since 1949. Expanding from a small base of non-profit organizations dedicated to student exchange, the Agency currently designates sixty-two organizations to conduct such exchanges. Secondary student programs vary in size from 50 to 4,000 participants. In 1990, Agency-designated sponsors facilitated the entry of 24,552 secondary school students, accounting for approximately fifteen percent of all exchanges conducted under the aegis of the Exchange Visitor Program. Although generally viewed as a highly successful category of exchange activity, some secondary school student exchanges encounter problems which are best addressed through regulation.

Over the years concerns have arisen regarding the administration and operation of secondary school exchange programs. In 1982, the Agency awarded a grant to the Council of Chief State School Officers to conduct a study of such exchange activity and to make recommendations concerning possible areas of improvement. From this study sprang the impetus for the formation of the Council for Standards in International Education Travel (CSIET). Devoted to the establishment of standards to govern organizations conducting educational international travel and exchanges, CSIET evaluates such organizations seeking CSIET endorsement on the basis of their compliance with none performance standards. The Agency considers these nine standards to be appropriate guideposts for organizations engaged in international educational travel in that such standards are a distillation of current Agency regulations governing secondary school student exchanges. The proposed regulations set forth below continue to incorporate these standards but also impose additional requirements that are unique to exchange programs.

Part of an all-encompassing regulatory reform effort, the revision of regulations governing secondary school exchanges comes at an opportune moment. Nationwide, states and local school districts are beginning to devote considerable attention to the enrollment of non-resident foreign students in their schools. Although not all foreign students enrolled in local schools are participating in an exchange program, the perception of the general public is that all such students are, in fact, exchange students. Given this perception, the Agency is determined to ensure the highest possible standards for those exchanges under its auspices.

In response to egregious experiences related to the enrollment of non-resident foreign students, state and local school authorities have begun to enact various rules and regulations governing such enrollments. This piecemeal legislation is creating a patchwork of administrative requirements which hamper the ability of Agency-designated sponsors to facilitate secondary student exchanges. The Agency is concerned about this development and is devoted to achieving an overall strengthening of regulations and monitoring of program administration in an effort to forestall any further piecemeal legislation.

Program Administration

Mindful of the unique program considerations inherent to secondary school student exchanges, the Agency seeks to delineate clearly the obligations and responsibilities program sponsors must meet in administering such exchanges. Student participants are placed in a vulnerable position, far from home at a tender age. Due to this position, students are dependent upon program sponsors whose integrity, expertise, and professionalism must be above reproach.

Apparent to all observers is the fiduciary duty a sponsor owes to a student exchange participant. Such duty necessarily requires the sponsor to undertake responsibility for all aspects of the student participant's stay in the United States from the selection of a suitable host family and enrollment in a secondary school through on-going monitoring of the exchange and the student's return to the home country. To meet this duty satisfactorily the Agency concludes that an adequately trained and supervised staff, including agents or volunteers acting on the sponsor's behalf, is of paramount importance to secondary school exchange programs. The Agency therefore proposes, pursuant to the provisions of § 514.25(d) that sponsors properly train and supervise all staff members and volunteers acting on their behalf.

Working with adequately trained and supervised staff and volunteers, the Agency proposes that all sponsors

maintain a monthly schedule of personal contact with the student, school, and host family. The Agency contemplates that this degree of contact will provide adequate assurance that the student is successfully adapting to his or her new home and school environment. This proposed monthly schedule of contact is a minimum. Sponsors will be expected to increase the level of contact with the student, school, and host family when adjustment problems so dictate.

To ensure that all students are properly supervised, the Agency proposes a new requirement that program sponsors arrange no host family placement outside a 150 mile radius of the home of an organizational representative authorized to act on the sponsor's behalf in both routine and emergency matters. A geographical limitation is proposed to enhance the sponsor's ability to maintain the proposed level of contact. This geographical limitation is a maximum. If staff members or volunteers are unavailable in a given geographic location, the sponsor must necessarily refrain from placing a student in such location.

Student Selection, Enrollment, and Orientation

Considerable debate surrounds the selection criteria for student participants. Currently, students must be between the ages of 15 and 19 years of age, be capable of functioning in an English speaking environment and must demonstrate maturity, good character, and scholastic aptitude. These criteria were developed to ensure that foreign exchange students entering United States schools could benefit from the exchange experience and provide a meaningful contribution to the educational experience of their American counterparts. Such criteria are by nature somewhat subjective but do provide general guidance to both sponsors and local school officials. The Agency has determined that modification of these selection criteria is needed.

8 U.S.C. 1101(a)(15)(J) provides, in part, that an exchange visitor may enter the United States under the aegis of a J visa if such visitor is a *bona fide* student actively engaged in *bona fide* academic study. Pursuant to this statute, Agency stewardship of the Exchange Visitor Program requires that the bona fides of an exchange visitor's academic studies be ascertained. The Agency concludes, in light of this statutory requirement, that a modification of the maximum age for participation in a secondary school student exchange program is required.

The Agency is obligated to utilize the United States standard of 12 years of primary and secondary school study in assessing *bona fide* student status. Students who have completed not more than eleven years of primary and secondary study will be deemed, automatically, *bona fide* secondary school students. Attendance in kindergarten should be excluded for the purpose of calculating years of study under this 12 year standard. This standard is of limited importance except to those students who continue their studies into A-level or international baccalaureate programs or their equivalent. Students who complete this additional level of study are, in academic terms, the equivalent of United States college and university students.

Students intending to continue their studies in an A-level or international baccalaureate program may participate in a secondary school student exchange program prior to their enrollment in A-level or international baccalaureate studies. Such students will not have completed 12 years of study as determined by United States standards and would therefore be appropriately placed with their United States peers at the senior year of high school level.

After consultation with Agency-designated sponsors, and in an effort to accommodate potential secondary school student exchange participants who have completed international baccalaureate or A-level studies, the Agency has determined that *bona fide* secondary school student status should also be extended to participants who are not more than 18 and a half years of age at the time of enrollment in a United States secondary school.

It has come to the Agency's attention that some students have returned to the United States in an exchange program for a second year of study. The Agency concludes that this is an inappropriate practice which must be curtailed. Current regulations limit secondary school exchanges to no more than one year. The proposed regulations continue this limitation. To this end, the Agency proposes at § 514.25(e), below, that sponsors specifically inquire whether a potential exchange student has previously participated in a secondary school exchange program and disqualify for further participation any student who has.

Provisions governing the enrollment in United States schools of selected student participants are set forth at § 514.25(f). The Agency proposes to safeguard this program's integrity and good reputation among school administrators by continuing to require the prior written acceptance of the student by an appropriate school official. Each September the Agency is contacted by local school principals who have been surprised to find an unannounced exchange student on the school's doorstep. Given the administrative burden and inconvenience which accompanies unanticipated arrivals, the Agency will henceforth strictly enforce the regulatory requirement that all students be authorized for school enrollment prior to their entry into the United States.

As a policy matter, the Agency seeks to ensure that all exchange participants are properly and timely informed of matters germane to their exchange experience. Pursuant to § 514.25(g) set forth below, the Agency proposes that secondary student exchange sponsors provide all participants with advance notice of travel, school, community, and host family arrangements. This information must be provided well enough in advance of the student's departure from the home country to be of use to the student. Additionally, the student must be apprised of all operating procedures, rules, and regulations governing participation in the exchange program.

Host Family Selection, Placement, and Orientation

The Agency has considered, at some length, the recurrent problems associated with host family placements. Aware that tensions will develop naturally from the obligations which arise from serving as a host, the Agency seeks to introduce some measure of uniformity to host family selections. Specific provisions governing host family selection are set forth at § 514.24(j), below.

First and foremost among such proposed selection criteria is the need to ascertain that potential host families fully understand both the rewards of hosting an international student as well as the duties and obligations attendant thereto. To this end, the Agency proposes that sponsors utilize a standard application form which solicits a detailed profile of the family and conduct an in-person interview with all family members residing in the home. In-person interviews will allow the sponsor to determine whether the potential host family is capable of providing a comfortable and nurturing home environment and that the decision to serve as a host family is one which is supported by all family members.

Due to the vulnerable position in which a student is placed by the nature of these exchanges, sponsors will be expected to undertake appropriate safeguards to ensure that the potential host family is of good reputation and character. Recognizing that one incident of abuse is beyond the pale of acceptability, the Agency must insist that sponsors exercise due diligence in the screening of all potential host families. A mere superficial compliance with this regulatory requirement will not be tolerated. Recommendations from members of the community as well as solicitation of the local school official's opinion of the potential host family may be considered a bare minimum in this regard. In similar fashion, sponsors must also satisfy themselves that the potential host family possess adequate financial resources to undertake hosting obligations.

Having adequately screened the potential host family, sponsors will in turn be expected to properly orient the family concerning the exchange activity. Host families must be fully informed of the sponsor's rules and regulations which govern the exchange program and be provided with a copy of Agency promulgated Exchange Visitor Program regulations. In addition to these requirements, the Agency proposes, pursuant to § 514.25(k) below, that sponsors conduct orientation workshops designed to familiarize the host family with cultural differences and practices as well as strategies for effective cross-cultural interaction.

Finally, the Agency has concluded that the quality and integrity of secondary school student exchanges are best safeguarded by requiring sponsors to secure a host family placement for a student participant prior to his or her departure from the home country. This requirement, set forth at § 514.25(l), below, when coupled with the requirement of advance written acceptance by local school officials will remove any uncertainly from the parameters of the student's exchange.

The Agency has been advised by sponsors that host family placements are always made before the student arrives in the United States. Without debating the veracity of this statement, the Agency concludes that a mechanism to ensure that such placements have been made in timely fashion is required.

To ensure that such host family placements, as well as school placements, have been made the Agency proposes that sponsors submit to the Agency, by August 1st of each school year a listing of student participants, their school and host family placement. This requirement is proposed in lieu of listing the name and address of the host family and school placement on the Form IAP–66 and embodies the suggestions of various exchange sponsors. The Agency concludes that such a listing will provide the desired certainty in respect to the parameters of each individual exchange but will also allow sponsors to continue their administrative process as long as possible.

Section 514.25 Specialists

Exchanges of American and foreign specialists exemplify the reciprocal exchanges of persons that the Fulbright-Hays Act seeks to promote. These exchanges have resulted in a flow of specialists between the United States and other countries, and have contributed to the growth of mutual understanding and dissemination of knowledge that is at the heart of the Exchange Visitor Program. Such exchanges are primarily nonacademic and provide opportunities to increase the interchange of knowledge and ideas between American and foreign specialists, and promote improved professional relationships and communications.

Although specialists have played an important role in the Exchange Visitor Program, regulations which specifically address this category of exchange visitor participation have never been promulgated. The Agency is herein proposing regulations which are designed specifically to provide this guidance to sponsors and to clarify the relationship between sponsors, the Agency, and exchange visitors.

Specialists may be appropriately sponsored as an exchange participant if the underlying purpose of such exchange is to stimulate international collaboration between individuals in the professions, businesses, and government. The proposed regulations require that the appointment of a specialist be temporary and not involve permanent or long-term employment.

Section 514.27 Alien Physicians

Federal law requires that foreign physicians seeking to pursue graduate medical education or training in the United States must do so on a J visa. This centralization of authority for the admission of such clients is due, in part, to past concerns regarding the academic and medical qualifications of foreign trained physicians. Since 1971, the Educational Commission for Foreign Medical Graduates ("ECFMG") has administered the issuance of Form IAP–66 for foreign medical graduates coming to the United States to pursue graduate medical education or training.

Foreign physicians must successfully complete examinations administered by ECFMG which measure their command of medical sciences. Such exam was, until 1983, the Visa Qualifying Examination. Currently, the required exam is Parts I and II of the National Board of Medical Examiners Examination. The National Board of Medical Examiners plan, however, to adopt as of January 1993 a new examination, the United States Medical Licensure Examination Steps I, II, and III. In light of this impending change the proposed regulations require an alien physician participant to successfully pass this examination.

The remaining proposed regulations reflect past practice regarding administration of these exchanges. A statement of need from the participant's home country and an annual statement executed by the participant reflecting intent to return to the home country remain in place.

Section 514.28 International Visitors

The Agency proposes that the category of international visitors be for its exclusive use. Sponsors other than the Agency will have comparable categories to use for short-term exchanges as discussed below. In the proposed regulations, international visitors programs are for foreign nationals who are recognized or potential leaders and are selected by the Agency to participate in observation tours, discussions, consultations, professional meetings, conferences, workshops, and travel.

The international visitors category is for people-to-people programs which seek to develop and strengthen professional and personal ties between key foreign nationals, Americans, and American institutions. The Agency proposes to continue the general limitation of participation for international visitors to one year. Such exchanges are intended specifically for short-term exchanges.

The Agency encourages the private sector and other government agencies to sponsor similar types of short-term exchange programs. The active participation of all parties is critical to the development and success of short-term exchange programs. In the proposed regulations, the Agency sets forth the categories of short-term scholar and specialist, especially for the private sector, and government visitors for exchangees selected by U.S. federal, state, and local government agencies.

Section 514.29 Government Visitors

The Agency is proposing to create the government visitors category to encourage U.S. federal, state, and local government agencies to expand their role in the Exchange Visitor Program. Currently, a number of government agencies are designated sponsors of the Exchange Visitor Program. The Agency intends that government sponsors continue to use a variety of categories for their exchange visitors, including the category of government visitors.

For the purpose of this section, government agencies include such entities as U.S. federal, state, and local government agencies (e.g., federal agency or commission, a state department of education, county government, incorporated city, and local school district). A government agency as used in this category does include an international organization of which the U.S. is a member by treaty or statute. However, a government agency as used in this section does not include state colleges or universities, unless such programs are sponsored by their state department of education.

The Agency is proposing that foreign nationals be eligible for a government visitors program when they meet the following three criteria. They shall be (a) selected by a U.S. federal, state, or local government agency, (b) engaged in consultation, observation, training, or demonstration of special skills, and (c) an influential or distinguished person. Under this category, exchange visitors would be eligible to participate in such activities as observation tours, discussions, consultations, professional meetings, conferences, workshops, and travel.

Government visitors programs are people-to-people programs designed to enable government visitors to better understand American culture and society, and to contribute to enhanced American knowledge of foreign cultures. The objective of government visitors programs is to develop and strengthen professional and personal ties between key foreign nationals and Americans and American institutions. These programs are for such persons as editors, business and professional persons, government officials, and labor leaders. This category is for programs of up to 18 months in duration.

Section 514.30 Camp Counselors

As discussed in Subpart A above, the Agency has determined that camp counselor programs are an appropriate addition to the matrix of exchange activities conducted under the Exchange Visitor Program. Such exchanges have a long history and have provided thousands of foreign nationals the opportunity to observe the United States and its people through their employment with domestic summer camp facilities.

Although the Agency has traditionally viewed these exchanges as a youth activity, upon review it appears appropriate to expand permissible participants to include *bona fide* youth workers and individuals demonstrating special skills. The Agency proposes that all participants be at least eighteen years of age and have not previously participated more than once in a camp counselor exchange. This latter requirement is proposed in an effort to ensure that as many persons as possible are recruited for these exchanges and that the participants are not utilized for staffing purposes inconsistent with exchange objectives.

Sponsors must conduct in-person interviews with all potential participants and secure references regarding the participant's suitability for a camp placement. Most importantly, sponsors must under no circumstance facilitate the entry of a participant for whom no camp placement has been arranged. The very nature of an exchange requires a prearranged placement. Recruitment of individuals and their "warehousing" in hotels awaiting placement arising from staff shortages is not viewed as an acceptable practice by the Agency. To ensure that placements are arranged in advance a placement report, reflecting the participant's name and placement, must be submitted to the Agency no later than July 1st of each program year.

Subpart C: Status of Exchange Visitors

Regulations proposed in this subpart govern various administrative chores relating to an exchange participant's visa status. At § 514.40, the Agency proposes criteria for termination of a program participant's exchange visitor status. This regulation directs the sponsor to terminate a participant for failure to maintain insurance coverage. Such provision is necessary to prompt compliance with the proposed insurance requirements. Sponsors may terminate an exchange participant for serious violation of sponsor program guidelines and directives. Sponsors shall terminate a participant due to his or her failure to pursue the activities for which sponsored.

At § 514.41 the Agency proposes regulations governing changes to a visitor's category of participation. Few participants request a change in their category of participation and the Agency has generally discouraged such action as a program matter. Recognizing that a change of category may often benefit both the participant and the Exchange Visitor Program, the Agency proposes that requests for such change be submitted to the Agency for approval. The Agency intends to approve only those requests which are due to unusual or exceptional circumstances. A change in category must be clearly consistent and closely related to the participant's original exchange objective. By way of illustration, a Ph.D. student participant may, upon a showing of unusual and exceptional circumstance, change to the research scholar category.

In an effort to simplify the visa status requirements for exchange participants, the Agency proposes that transfer of program transactions be facilitated by the sponsors involved without INS adjudication or Agency review. As set forth at § 514.42 sponsors seeking to facilitate a change of program for an exchange participant shall secure the participant's release from the original sponsor and notify the Agency by submitting a duly executed Form IAP–66 reflecting such transfer. In similar fashion, the mechanics of extending a participant's program have also been simplified.

The Agency proposes that sponsors extend a participant's program by executing a new Form IAP–66 which reflects the new program termination date. INS adjudication of this extension will not be required so long as the extension does not exceed the categorical duration of participation limitation. As illustration, a sponsor may extend a research participant's program, one year at a time, so long as the three year category limitation on research scholar programs is not exceeded. As set forth in § 514.43, the sponsor shall notify the Agency of this action by forwarding a duly executed Form IAP–66 reflecting such extension. In those circumstances in which an extension past the categorical duration of participation is sought, Agency approval in INS adjudication will be required.

Finally, the provisions governing application of the two-year home-country physical presence requirement are set forth at § 514.44. This long-standing program requirement is applicable to participants for whom government financing of the exchange was made or who have acquired skills for which there is a need in their home country. The Agency has developed, in cooperation with foreign governments, a listing of such skills. This "skills list" may be found at 49 FR 24194, *et seq.* (June 12, 1984). Revision of the skills list

will begin in the near future. Waiver of the two-year home country requirement is possible and provisions governing such waiver requests are also set forth in this regulation. Provisions addressing waiver procedures as well as the composition and functions of a Waiver Review Board are also set forth.

Subpart D: Sanctions

The Agency first promulgated regulations providing for sanctions for violations of the exchange Visitor Program regulations in 1978. The regulations were expanded in 1978 to provide additional procedural due process rights of those threatened with suspension or revocation for violations of the Exchange Visitor Program Designation Suspension and Revocation Board ("the Board").

That the Board has had to be convened only once since 1987 to hear a revocation case speaks highly of the thousands of institutions which have been designated over the years as exchange visitor program sponsors. Nevertheless, the Agency has long been hamstrung in its oversight of the Exchange Visitor Program by the absence of regulations providing for sanctions of less severity than suspension or revocation. As part of the overall regulatory reform of the Exchange Visitor Program, the Agency believes that the sanctions regulations need, on the one hand, to be strengthened so as to provide violations of the Exchange visitor Program regulations and, on the other hand, to provide the sponsors with clearly defined procedural due process rights. This will improve the Agency's managerial oversight and allow the Agency to move rapidly against a sponsor whose acts or omissions endanger the health, safety or welfare of a program participant.

As is true of all the Exchange Visitor Program regulations, the ultimate goals of the sanctions regulations are to further the foreign policy interest of the United States and to protect the health, safety and welfare of Exchange Visitor Program participants. A violation of the regulations may result in both of those goals being frustrated. For example, a secondary school student exchange program sponsor that willfully or negligently allows a teenage exchangee to come to the U.S. without first having placed the exchangee with a host family, or that fails to confirm transportation arrangements for the exchangee, may have endangered that teenager's health, safety and/or welfare. Should a teenager be injured in an accident or as a victim of a crime, it is not only a personal tragedy, but there well may be adverse foreign policy effects arising from the incident.

To hypothesize another situation, if a sponsor fails to ensure that a participant in an exchange visitor training program is covered by health and accident insurance, and the trainee is injured in the course of his or her training and requires extensive medical treatment for which the trainee is unable to pay, then not only does the health care provider suffer financially but the reputation of the Exchange Visitor Program suffers as well. Indeed, resulting claims made by the health care provider may well have adverse foreign policy effects.

Clearly, not all violations of the Exchange Visitor Program regulations are of equal gravity. The proposed regulations recognize that violations of the regulations range over a spectrum from, for example, an inadvertent, negligent failure to comply with a program reporting requirement, at one end of the spectrum, to a willful act endangering the health or safety of a program participant, at the other end of the spectrum. Recognition of this spectrum of violations is reflected in the various sanctions provided for in the proposed regulations. Like the spectrum of violations, the sanctions also cover a spectrum, ranging from "lesser sanctions" for less serious violations to revocation for the most serious violations. The proposed regulations provide procedural due process safeguards at each level of sanctioning. The sanctions fall into four categories.

1. Lesser Sanctions

For minor violations of the regulations, which interfere with the Agency's proper administration of the Exchange Visitor Program but do not rise to the level of endangering the health, safety or welfare of program participants or of bringing the Program or the Agency into notoriety or disrepute, the proposed regulations provide for the imposition of sanctions of less severity than suspension or revocation. Examples of such violations may include, but are not limited to, the following: Failure to timely provide the Agency with an annual report; failure to provide the Agency with specially requested information to which it is entitled under the regulations; failure to adequately safeguard Forms IAP–66; negligent misrepresentations made by a sponsor in its promotional literature. The proposed regulations provide that, with respect to such violations of the regulations, the Agency may, in its discretion, impose any or all of the following sanctions: A letter of reprimand, warning that repeated or persistent violations of the regulations may result in a suspension or revocation of the sponsor's designation, or a directive to the sponsors that it must reduce the scope of its exchange programs numerically, geographically, or in terms of the types of exchange programs it offers.

Upon being given notice that the agency is imposing such a sanction, the sponsor has the opportunity to submit to the Agency any arguments in explanation or mitigation of the alleged violation. The sponsor may request a conference to discuss its submission. However, the Agency is not required to grant such a conference. The Exchange Visitor Program Office, upon its review of such submission may, in its discretion, modify, withdraw, or continue the imposition of the sanctions.

2. Suspension

The proposed regulations provide that in all suspension actions, other than the summary suspension, the sponsor is given notice in writing that the Agency intends to suspend the sponsor's designation for a period not to exceed one hundred twenty (120) days, specifying the grounds for the suspension. Before the suspension takes effect, the sponsor has an opportunity to submit a response to the Agency, setting forth any reason as to why the Agency should not suspend, and may include any documentary evidence or affidavits in support thereof. After the Agency reviews the sponsor's submission, it notifies the sponsor of its decision on whether or not to effect the suspension. If the decision is to effect the suspension and of its right to a formal hearing before the Board.

The proposed regulations also set forth the sponsor's procedural rights before the Board. The key difference between the "summary suspension" and all other suspension proceedings is that in the former the suspension takes effect immediately upon notice being given to the sponsor, whereas in the latter the suspension does not take effect until the Board decides to effect the suspension after the completion of the appeal and hearing.

3. Summary Suspension

Current regulations provide for a form of summary suspension. 22 CFR 514.17(b). However, the current regulations require the Agency to give the sponsor at least ten days notice that it intends to suspend the designation. The suspension does not take effect until the Office of General Counsel considers and takes into account any response submitted by the sponsor. If the Office of General Counsel decides to

effect the suspension, then the sponsor may appeal to the Board, which must make a decision within ten working days from receipt of the appeal. Thus, the summary suspension is summary in name only; the process, even in the best of circumstances, is lengthy. The health, safety or welfare of a program participant might already have been endangered. Under current regulations the Agency is virtually powerless to act in a prompt and decisive manner.

In order to remedy this deficiency, the proposed regulations provide for a true summary suspension which empowers the Agency to send a sponsor a written notice of the Agency's intent to suspend the sponsor's designation for up to sixty (60) days. Prior to the suspension becoming effective, however, the sponsor has a right to submit a protest to the Agency setting forth any reason why its designation should not be suspended. The Agency will review the protest and decide whether or not to effect the suspension. If the decision is made to effect the suspension the sponsor may appeal the suspension to the Board. However, the suspension is not stayed during the pendency of the appeal.

The summary suspension, as is set forth in the proposed regulation, is to be used only in the most serious situations where the sponsor's acts of omission or commission could have the effect of endangering the health, safety or welfare of an exchange visitor program participant and the Agency deems that immediate action is necessary.

4. Revocation

For serious willful violations of the Exchange Visitor Program regulations or for the omission or commission or an act which has or could have the effect of endangering the health, safety or welfare of an exchange visitor, where the Agency concludes that a continuation of the sponsor's designation is detrimental to the Exchange Visitor Program a revocation of the sponsor's designation may be the most appropriate sanction. Revocation is also the only realistic sanction to impose on the sponsor who willfully or through gross negligence repeatedly violates the regulations and takes no meaningful steps to bring itself into compliance.

Whereas the current regulations require that revocation must be preceded by suspension, the proposed regulations eliminates that requirement. Revocation commences with the Agency giving the sponsor not less than thirty days notice in writing, specifying the grounds for such revocation and the effective date of the revocation. The grounds for the revocation shall be stated in the notice, and before the revocation may take effect the sponsor has an opportunity to submit a response to the Agency providing any information in explanation or mitigation of the violations charged.

Upon receipt of such submission, the Agency will review same and notify the sponsor, in writing, of its decision. The sponsor is also notified of its right to appeal the revocation and of its right to a formal hearing. Within ten days of its receipt of the notice effecting the revocation, the sponsor may file its appeal with the Board. The filing of the notice of appeal serves to stay the revocation pending the appeal. The proposed regulation set forth the procedural rights accorded the sponsor at the hearing before the board.

5. Denial of Application for Redesignation

Current regulations make no provision for an appeal by an applicant in those cases where the Agency denies approval of an application for designation of an exchange visitor program. The proposed regulation creates a right of appeal for the applicant whose application is denied by the Office of Exchange Visitor Program Services and gives to that applicant the same procedural due process protections as are granted to sponsors against whom sanctions are imposed.

The proposed regulations also set forth the composition of the Board, which remains the same as under current regulations and set forth in detail the powers of the Board in conducting hearings under this subpart.

Sponsors should also be aware that certain sanctions, other than those set forth in this section of the regulations, may be available. For example, 18 U.S.C. 10001 makes it a crime to knowingly and willingly make any false, fictitious or fraudulent statements or representations in any matter within the jurisdiction of any Agency of the United States.

Implementation Schedule

The Agency recognizes the impact of a major regulatory revision upon program sponsors. Accordingly, informed comment regarding implementation of these regulations is specifically requested.

The Agency anticipates that implementation upon promulgation of a final rule will not result in substantial disruption of sponsor operations. Provisions governing insurance requirements, however, may prove problematic. For this reason the Agency proposes that insurance requirements need not be met until the start of the 93–94 academic year.

Public Comment

The Agency is inviting comments from the public on the proposed regulations notwithstanding that it is under no legal requirement to do so. The designation of exchange visitor sponsors and administration of the Exchange Visitor Program are a foreign affairs function. The Administrative Procedure Act, 5 U.S.C. 553(a)(1) (1989), specifically exempts form application of the Act a "foreign affairs function of the United States."

In the interest of preserving its valuable working relationship with the exchange community, the Agency is providing a sixty-day period for written comments on the proposed regulations. In order to expedite review of the comments the Agency requests that interested parties submit five copies of their comments.

The Agency informally circulated a prior draft of the proposed regulations to some members of the exchange community and received informal comments in response. The Agency reviewed those comments and incorporated suggestions into these proposed regulations. If these parties wish further consideration of their position, or wish to influence the outcome of the final rule, they must submit written comments to the Agency in response to this proposal.

The information collection requirement contained in this regulation will be submitted to the Office of Management and Budget (OMB) for review and approval under the provision of the Paperwork Reduction Act.

In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The reporting and regulatory requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35. The Agency has previously sought, and OMB has cleared, a portion of the reporting requirements set forth in this proposed rule, specifically those related to Forms IAP–66 (15 minutes), IAP–37 (1 hour) and IAP–87 (20 minutes per respondent). It is estimated that an additional one-time reporting

requirement will be imposed upon the currently designated 1,200 sponsors regarding their proposed obligation to seek redesignation. This burden will be approximately one hour per sponsor. Further, an annual reporting requirement regarding program activity will result in an estimated 30 minutes burden per sponsor.

Comments on this matter should be submitted to both the Agency and OMB and addressed as follows:

Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, Attn: USIA Desk Officer.

United States Information Agency, Office of the General Counsel, 301 4th St., SW., room 700, Washington, DC 20547, Attn: Stanley S. Colvin.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Dated: September 30, 1992.

Alberto J. Mora,

General Counsel.

Accordingly, 22 CFR part 514 is revised to read as follows:

PART 514—EXCHANGE VISITOR PROGRAM

Subpart A—General Provisions

Sec.

514.1 Purpose.
514.2 Definitions.
514.3 Sponsor Eligibility.
514.4 Categories of Participant Eligibility.
514.5 Application Procedure.
514.6 Designation.
514.7 Redesignation.
514.8 General Program Requirements.
514.9 General Obligations of Sponsors.
514.10 Program Administration.
514.11 Duties of Responsible Officers.
514.12 Control of Forms IAP–66.
514.13 Notification Requirements.
514.14 Insurance.
514.15 Annual Reports.
514.16 Employment.
514.17 Fees and Charges [Reserved].

Subpart B—Specific Program Provisions

514.20 Professors and Research Scholars.
514.21 Short-term Scholars.
514.22 Trainees.
514.23 College and University Students.
514.24 Teachers.
514.25 Secondary School Students.
514.26 Specialists.
514.27 Alien Physicians.
514.28 International Visitors.
514.29 Government Visitors.
514.30 Camp Counselors.

Subpart C—Status of Exchange Visitors

514.40 Termination of Exchange Visitor Status.
514.41 Change of Category.
514.42 Transfer of Program.
514.43 Extension of Program.
514.44 Two-Yr. Home-Country Physical Presence Requirement.

Subpart D—Sanctions

514.50 Sanctions.

Subpart E—Termination and Revocation of Programs

514.60 Termination of Designation.
514.61 Revocation.
514.62 Responsibilities of the Sponsor Upon Termination or Revocation.

Appendix A to Part 514—Certification of Responsible Officers and Sponsors.

Appendix B to Part 514—Exchange Visitor Program Services, Exchange Visitor Program Application.

Appendix C to Part 514—Update of Information on Exchange Visitor Program Sponsor.

Appendix D to Part 514—Annual Report.

Appendix E to Part 514—Unskilled Occupations.

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85–5 (50 FR 27393).

Subpart A—General Provisions

§ 514.1 Purpose.

(a) The regulations set forth in this part implement the Mutual Educational and Cultural Exchange Act of 1961 (the "Act"), 22 U.S.C. 2451 (1988). The purpose of the Act is to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. Educational and cultural exchanges assist the Agency in furthering the foreign policy objectives of the United States. These exchanges are defined by section 102 of the Act and are limited to the activities that are described therein and are in compliance with the Immigration and Nationality Act.

(b) The Director of the United States Information Agency facilitates activities specified in the Act, in part, by designating public and private entities to act as sponsors of the Exchange Visitor Program. The purpose of the Program is to provide foreign nationals with opportunities to participate in educational and cultural programs in the United States and return home to share their experiences, and to encourage Americans to participate in educational and cultural programs in other countries. Exchange visitors enter the United States on a J visa. The regulations set forth in this subpart are applicable to all sponsors.

§ 514.2 Definitions.

Accredited educational institution means any publicly or privately operated primary, secondary, or post-secondary institution of learning duly recognized and declared as such by the appropriate authority of the state in which such institution is located: *provided, however,* That in addition to any state recognition, all post-secondary institutions shall also be accredited by a nationally recognized accrediting agency or association as recognized by the United States Secretary of Education but shall not include any institution whose offered programs are primarily vocational in nature.

Act means the Mutual Educational and Cultural Exchange Act of 1961, as amended.

Agency means the United States Information Agency.

Citizen of the United States means:

(1) An individual who is a citizen or permanent resident of the United States or one of its territories or possessions; or,

(2) A general or limited partnership created or organized under the laws of the United States, or of any State, the District of Columbia, or a territory or possession of the United States, of which a majority of the partners are citizens of the United States; or,

(3) A for-profit corporation, association, or other legal entity created or organized under the laws of the United States, or of any state, the District of Columbia, or a territory or possession of the United States, which:

(i) Has its principal place of business in the United States, and

(ii) Has its shares or voting interests publicly traded on a U.S. stock exchange; or, if its shares or voting interests are not publicly traded on a U.S. stock exchange, it shall nevertheless be deemed to be a citizen of the United States if a majority of its officers, Board of Directors, and its shareholders are citizens of the United States; or,

(4) A non-profit corporation, association, or other legal entity created or organized under the laws of the United States, or any state, the District of Columbia, or territory or possession of the United States, and

(i) Which is qualified with the Internal Revenue Service as a tax-exempt organization pursuant to § 501(c) of the Internal Revenue Code; and

(ii) Which has its principal place of business in the United States; and,

(iii) In which a majority of its officers and a majority of its Board of Directors or other like body vested with its management are citizens of the United States; or,

(5) An accredited college, university, or other post-secondary educational institution created or organized under the laws of the United States, or of any

State, including a county, municipality, or other political subdivision thereof, the District of Columbia, or of a territory or possession of the United States; or,

(6) An agency of the United States, or of any state or local government, the District of Columbia, or a territory or possession of the United States.

Consortium means a not-for-profit corporation or association formed by two or more accredited educational institutions for the purpose of sharing educational resources, conducting research, and/or developing new programs to enrich or expand the opportunities offered by its members.

Country of nationality or last legal residence means either the country of which the exchange visitor was a national at the time status as an exchange visitor was acquired or the last foreign country in which the visitor had a legal permanent residence before acquiring status as an exchange visitor.

Cross-cultural activity is an activity designed to promote exposure and interchange between exchange visitors and Americans so as to increase their understanding of each other's society, culture, and institutions. Examples of such activities are intercultural workshops, receptions for American and foreign faculty, educational field trips, international festivals, international conferences, and local community events. A cross-cultural activity is in addition to the principal activity of the exchange visitor's program (e.g., teaching, lecturing, training, studying, or demonstrating special skills).

Designation means the written authorization given by the Agency to an exchange visitor program applicant to conduct an exchange visitor program as a sponsor.

Director means the Director of the United States Information Agency or an employee of the Agency acting under a delegation of authority from the Director.

Exchange visitor means a foreign national who has been selected by a sponsor to participate in an exchange visitor program and who is seeking to enter or has entered the United States temporarily on a J–1 visa. The term does not include the visitor's immediate family.

Exchange Visitor Program means the international exchange program administered by the Agency to implement the Act by means of educational and cultural programs. When "exchange visitor program" is set forth in lower case, it refers to the individual program of a sponsor which has been designated by the Agency.

Exchange Visitor Program Services means the Agency staff delegated authority by the Director to administer the Exchange Visitor Program in compliance with the regulations set forth in this part.

Exchange visitor's government means the government of the country of the exchange visitor's nationality or the country where the exchange visitor has a legal permanent residence.

Financed directly means financed in whole or in part by the United States Government or the exchange visitor's government with funds contributed directly to the exchange visitor in connection with his or her participation in an exchange visitor program.

Financed indirectly means:

(1) Financed by an international organization, with funds contributed by either the United States or the exchange visitor's government for use in financing international educational and cultural exchanges, or

(2) Financed by an organization or institution with funds made available by either the United States or the exchange visitor's government for the purpose of furthering international educational and cultural exchange.

Form IAP–66 means a Certificate of Eligibility, a controlled document of the Agency.

Full course of study means enrollment in an academic program of classroom participation and study at an accredited educational institution as follows:

(1) Secondary school students shall satisfy the attendance and course requirements of the State in which the school is located;

(2) College and university students shall register for and complete a full course of study, as defined by the accredited educational institution in which the student is registered, unless exempted in accordance with § 514.23(f).

Graduate medical education or training means participation in a program in which the alien physician will receive graduate medical education or training, which generally consists of a residency or fellowship program involving health care services to patients, but does not include participation in a program involving observation, consultation, teaching or research in which there is no element or only incidental elements of patient care. This program may consist of a medical specialty, a directly related medical subspecialty, or both.

Home-country physical presence requirement means the requirement that an exchange visitor who is within the purview of section 212(e) of the Immigration and Nationality Act (substantially quoted in § 514.44) must reside and be physically present in the country of nationality or last legal permanent residence for an aggregate of at least two years following departure from the United States before the exchange visitor is eligible to apply for an immigrant visa or permanent residence, a nonimmigrant H visa as a temporary worker or trainee, or a nonimmigrant L visa as an intracompany transferee, or a nonimmigrant H or L visa as the spouse or minor child of a person who is a temporary worker or trainee or an intracompany transferee.

Immediate family means the alien spouse and minor unmarried children of an exchange visitor who are accompanying or following to join the exchange visitor and who are seeking to enter or have entered the United States temporarily on a J–2 visa or are seeking to acquire or have acquired such status after admission. For the purpose of these regulations, a minor is a person under the age of 21 years old.

J. visa means a non-immigrant visa issued pursuant to 8 U.S.C. 1101(a)(15)(J). A J–1 visa is issued to the exchange visitor. J–2 visas are issued to the exchange visitor's immediate family.

Non-specialty occupation means any occupation that is not a specialty occupation (q.v.). Non-specialty occupations range from unskilled occupations up to and including skilled occupations requiring at least two years training or experience.

On-the-job training means an individual's observation of and participation in given tasks demonstrated by experienced workers for the purpose of acquiring competency in such tasks.

Prescribed course of study means a non-degree academic program with a specific educational objective. Such course of study may include intensive English language training, classroom instruction, research projects, and/or academic training to the extent permitted in § 514.23.

Reciprocity means the participation of a United States citizen in an educational and cultural program in a foreign country in exchange for the participation of a foreign national in the Exchange Visitor Program. Where used herein, "reciprocity" shall be interpreted broadly; unless otherwise specified, reciprocity does not require a one-for-one exchange or that exchange visitors be engaged in the same activity. For example, exchange visitors coming to the United States for training in American banking practices and Americans going abroad to teach foreign nationals public administration would be considered a reciprocal exchange.

when arranged or facilitated by the same sponsor.

Responsible officer means the employee or officer of a designated sponsor who has been listed with the Agency as assuming the responsibilities outlined in § 514.11. The designation of alternate responsible officers is permitted and encouraged. The responsible officer and alternate responsible officers must be United States citizens or permanent residents.

Specialty occupation means an occupation that requires theoretical and practical application of a body of highly specialized knowledge to perform fully in the stated field of endeavor. It requires completion of a specified course of education, where attainment of such knowledge or its equivalent is the minimum competency requirement recognized in the particular field of endeavor in the United States. Some examples of specialized fields of knowledge are public and business administration, agricultural research, architecture, engineering, computer and physical sciences, accounting, and print and broadcast journalism.

Sponsor means a legal entity designated by the Director of the United States Information Agency to conduct an exchange visitor program.

Third party means an individual or organization to whom the sponsor has delegated partial responsibilities to carry out its Exchange Visitor Program obligations and responsibilities.

§ 514.3 Sponsor eligibility.

(a) Entities eligible to apply for designation as a sponsor of an exchange visitor program are:

(1) United States Local, State and Federal government agencies;

(2) International agencies or organizations of which the United States is a member and which have an office in the United States; or

(3) Reputable organizations which are "citizens of the United States," as that term is defined in § 514.2.

(b) To be eligible for designation as a sponsor, an entity is required to:

(1) Demonstrate, to the Agency's satisfaction, its ability to comply and remain in continual compliance with all provisions of part 514; and

(2) Meet at all times its financial obligations and responsibilities attendant to successful sponsorship of its exchange visitor program.

§ 514.4 Categories of participant eligibility.

Sponsors may select foreign nationals to participate in their exchange visitor programs. Participation by foreign nationals in an exchange visitor program is limited to individuals who shall be engaged in the following activities in the United States:

(a) *Student.* An individual who is:

(1) Studying in the United States:

(i) pursuing a full course of study at a secondary accredited educational institution;

(ii) pursuing a full course of study leading to or culminating in the award of a U.S. degree from a post-secondary accredited educational institution; or

(iii) engaged full-time in a prescribed course of study of up to 24 months duration conducted by a post-secondary accredited educational institution;

(2) Engaged in academic training as permitted in § 514.23(g); or

(3) Engaged in English language training at:

(i) a post-secondary accredited educational institution, or

(ii) an institute approved by or acceptable to the post-secondary accredited educational institution where the college or university student is to be enrolled upon completion of the language training.

(b) *Short-term scholar.* A professor, research scholar, or person with similar education or accomplishments coming to the United States on a short-term visit for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions.

(c) *Trainee.* An individual participating in a structured training program conducted by the selecting sponsor.

(d) *Teacher.* An individual teaching full-time in a primary or secondary accredited educational institution.

(e) *Professor.* An individual primarily teaching, lecturing, observing, or consulting at post-secondary accredited educational institutions, museums, libraries, or similar types of institutions. A professor may also conduct research, unless disallowed by the sponsor.

(f) *Research scholar.* An individual primarily conducting research, observing, or consulting in connection with a research project at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. The research scholar may also teach or lecture, unless disallowed by the sponsor.

(g) *Specialist.* An individual who is an expert in a field of specialized knowledge or skill coming to the Untied States for observing, consulting, or demonstrating special skills.

(h) *Other person of similar description.* An individual of description similar to those set forth in paragraphs (a) through (g) coming to the United States, in a program designated by the Agency under this category, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training. The programs designated by the Agency in this category consist of:

(1) *International visitor.* An individual who is a recognized or potential leader, selected by the Agency for consultation, observation, research, training, or demonstration of special skills in the United States.

(2) *Government visitor.* An individual who is an influential or distinguished person, selected by a U.S. Federal, State, or local government agency for consultation, observation, training, or demonstration of special skills in the United States.

(3) *Camp counselor.* An individual selected to be a counselor in a summer camp in the United States who imparts skills to American campers and information about his or her country or culture.

§ 514.5 Application procedure.

(a) Any entity meeting the eligibility requirements set forth in § 514.3 may apply to the Agency for designation as a sponsor. Such application shall be made on Form IAP–37 ("Exchange Visitor Program Application") and filed with the Agency's Exchange Visitor Program Services.

(b) The application shall set forth, in detail, the applicant's proposed exchange program activity and shall demonstrate its prospective ability to comply with Exchange Visitor Program regulations.

(c) The applicant must provide:

(1) Evidence of legal status as a corporation, partnership, or other legal entity (e.g., charter, proof of incorporation, partnership agreement, as applicable) and current certificate of good standing;

(2) Evidence of financial responsibility as set forth at § 514.9(e);

(3) Evidence of accreditation if the applicant is a post-secondary educational institution;

(4) Evidence of licensure, if required by local, State, or Federal law, to carry out the activity for which it is to be designated;

(5) A resolution or directive by the applicant's governing body authorizing the application for sponsor designation; and

(6) Certification by the applicant that it and its responsible officer and alternate responsible officers are citizens of the United States as defined

at § 514.2 using the language set forth in appendix A.

(d) The Agency may request any additional information and documentation which its deems necessary to evaluate the application.

(e) An organization seeking designation should allow the Agency no less than six months to process its application for designation.

§ 514.6 Designation.

(a) Upon a favorable determination that the proposed exchange program meets all statutory and regulatory requirements, the Agency may, in its sole discretion, designate an entity meeting the eligibility requirements set forth in § 514.3 as an exchange visitor program sponsor.

(b) Designation shall confer upon the sponsor authority to engage in one or more activities specified in § 514.4. A sponsor shall not engage in activities not specifically authorized in its written designation.

(c) Designations are effective for a period of five years. In its discretion, the Agency may designate programs, including experimental programs, for less than five years.

(d) Designations are not transferable or assignable.

§ 514.7 Redesignation.

(a) Upon expiration of a given designation term, a sponsor may seek redesignation for another five-year term.

(b) To apply for redesignation, a sponsor shall submit to the Exchange Visitor Program Services a letter indicating its desire for redesignation.

(c) Request for redesignation shall be evaluated according to the criteria set forth at § 514.6(a) taking into account the sponsor's annual reports and other documents reflecting its record as an exchange visitor program sponsor.

(d) A sponsor seeking redesignation should apply to the Agency no less than four months prior to the expiration date of its designation.

§ 514.8 General program requirements.

(a) *Size of program.* Sponsors, other than Federal government agencies, shall have no less than five exchange visitors per calendar year.

(b) *Minimum duration of program.* Sponsors, other than federal government agencies, shall provide each exchange visitor, except short-term scholars, with a minimum period of participation in the United States of three weeks.

(c) *Reciprocity.* In the conduct of their exchange programs, sponsors shall make a good faith effort to achieve the fullest possible reciprocity in the exchange of persons.

(d) *Cross-cultural activities.* Sponsors shall offer or make available to exchange visitors cross-cultural activities both at and away from the site where the exchange activities are centered. The extent and types of the cross-cultural activities shall be determined by the needs and interests of the particular category of exchange visitors. Sponsors will be responsible to determine the appropriate type and number of cross-cultural programs for their exchange visitors. The Agency encourages sponsors to give their exchange visitors the broadest exposure to American society, culture and institutions.

§ 514.9 General Obligations of Sponsors.

(a) *Adherence to agency regulations.* Sponsors are required to adhere to all regulations set forth in part 514.

(b) *Legal status.* Sponsors shall maintain legal status. A change in ■ sponsor's legal status (e.g. partnership to corporation) shall require application for designation of the new legal entity.

(c) *Accrediation and licensure.* Sponsors shall remain in compliance with all local, state, federal, and professional requirements necessary to carry out the activity for which they are designated, including accreditation and licensure, if applicable.

(d) *Representations and disclosures.* Sponsors shall:

(1) Provide accurate and complete information, to the extent lawfully permitted, to the Agency regarding their exchange visitor programs and exchange visitors;

(2) Provide only accurate information to the public when advertising their exchange visitor programs or responding to public inquires;

(3) Provide literature to prospective exchange visitors which clearly explains the activities, costs, conditions, and restrictions of the program;

(4) Not use program numbers on any advertising materials or publications intended for general circulation; and

(5) Not represent that any program is endorsed, sponsored, or supported by the Agency or the United States Government, except for United States Government sponsors or exchange visitor programs financed directly by the United States Government to promote international educational exchanges. However, sponsors may represent that they are designated by the Agency as a sponsor of an exchange visitor program.

(e) *Financial responsibility.* (1) Sponsors shall maintain the financial capability to meet at all times their financial obligations and responsibilities attendant to successful sponsorship of their exchange visitor programs.

(2) The Agency may require non-government sponsors to provide evidence satisfactory to the Agency that funds necessary to fulfill all obligations and responsibilities attendant to sponsorship of exchange visitors are readily available and in the sponsor's control, including such supplementary or explanatory financial information as the Agency may deem appropriate such as, for example, audited financial statements.

(3) The Agency may require any non-government sponsor to secure a payment bond in favor of the Agency guaranteeing all financial obligations arising from the sponsorship of exchange visitors.

(f) *Staffing and support services.* Sponsors shall ensure:

(1) Adequate staffing and sufficient support services to administer their exchange visitor programs; and

(2) That their employees, officers, agents, and third parties involved in the administration of their exchange visitor programs are adequately qualified, appropriately trained, and comply with the Exchange Visitor Program regulations.

(g) *Appointment of responsible officer.* (1) The sponsor shall appoint a responsible officer and such alternate responsible officers as may be necessary to perform the duties set forth at § 514.11.

(2) The responsible officer and alternate responsible officers shall be employees or officers of the sponsor. The Agency may, however, in its discretion, authorize the appointment of an individual who is not an employee or officer to serve as an alternate responsible officer.

(3) The Agency may recommend or direct the replacement of the responsible officer or any alternate responsible officer as provided for in § 514.50.

(4) The Agency may limit the number of alternate responsible officers appointed by the sponsor.

§ 514.10 Program administration.

Sponsors are responsible for the effective administration of their exchange visitor programs. These responsibilities include:

(a) *Selection of exchange visitors.* Sponsors shall provide a system to screen and select prospective exchange visitors to ensure that they are eligible for program participation, and that:

(1) The program is suitable to the exchange visitor's background, needs, and experience; and

(2) The exchange visitor possesses sufficient proficiency in the English

language to participate in his or her program.

(b) *Pre-arrival information.* Sponsors shall provide exchange visitors with pre-arrival materials including, but not limited to, information on:

(1) The purpose of the Exchange Visitor Program;

(2) Home-country physical presence requirement;

(3) Travel and entry into the United States;

(4) Housing;

(5) Fees payable to the sponsor;

(6) Other costs that the exchange visitor will likely incur (e.g., living expenses) while in the United States;

(7) Health care and insurance; and

(8) Other information which will assist exchange visitors to prepare for their stay in the United States.

(c) *Orientation.* Sponsors shall offer orientation for all exchange visitors. Sponsors are encouraged to provide orientation for the exchange visitor's immediate family, especially those who are expected to be in the United States for more than one year. Orientation shall include, but not be limited to, information concerning:

(1) Life and customs in the United States;

(2) Local community resources (e.g., public transportation, medical centers, schools, libraries, recreation centers, and banks), to the extent possible;

(3) Available health care, emergency assistance, and insurance coverage;

(4) A description of the program in which the exchange visitor is participating;

(5) Rules that the exchange visitors are required to follow under the sponsor's program;

(6) Address of the sponsor and the name and telephone number of the responsible officer; and

(7) Address and telephone number of the Exchange Visitor Program Services of the Agency and a copy of the Exchange Visitor Program brochure outlining the regulations relevant to the exchange visitors.

(d) *Form IAP–66.* Sponsors shall ensure that only the responsible officer or alternate responsible officers issue Forms IAP–66.

(e) *Monitoring of exchange visitors.* Sponsors shall monitor, through employees, officers, agents, or third parties, the exchange visitors participating in their programs. Sponsors shall:

(1) Ensure that the activity in which the exchange visitor is engaged is consistent with the category and activity listed on the exchange visitor's Form IAP–66;

(2) Monitor the progress and welfare of the exchange visitor to the extent appropriate for the category; and

(3) Require the exchange visitor to keep the sponsor apprised of his or her address and telephone number, and maintain such information.

(f) *Requests by the agency.* Sponsors shall, to the extent lawfully permitted, furnish to the Agency within a reasonable time all information, reports, documents, books, files, and other records requested by the Agency on all matters related to their exchange visitor programs.

(g) *Inquiries and investigations.* Sponsors shall cooperate with any inquiry or investigation that may be undertaken by the Agency.

(h) *Retention of records.* Sponsors shall retain all records related to their exchange visitor program and exchange visitors for a minimum of three years.

§ 514.11 Duties of Responsible Officers.

Responsible officers shall train and supervise alternate responsible officers. Responsible officers and alternate responsible officers shall:

(a) *Knowledge of regulations and codebook.* Be thoroughly familiar with the Exchange Visitor Program regulations and the Agency's current *Codebook and Instructions for Responsible Officers.*

(b) *Advisement and assistance.* Ensure that the exchange visitor obtains sufficient advice and assistance to facilitate the successful completion of the exchange visitor's program.

(c) *Communications.* Conduct the official communications relating to the exchange visitor program with the Agency, the United States Immigration and Naturalization Service, or United States Department of State. Reference to the sponsor's program number shall be made on any correspondence with the Agency.

(d) *Custody of the Form IAP–66.* Act as custodian for the control, issuance, and distribution of Form IAP–66 as set forth in § 514.12.

§ 514.12 Control of Forms IAP–66.

Forms IAP–66 shall be used only for authorized purposes. To maintain adequate control of Forms IAP–66, responsible officers or alternate responsible officers shall:

(a) *Requests.* Submit written requests to the Agency for a one-year supply of Forms IAP–66, and allow four to six weeks for the distribution of these forms. The Agency has the discretion to determine the number of Forms IAP–66 to be sent to a sponsor. The Agency will take into consideration the current size of the program and the projected expansion of the program in the coming 12 months. If requested, the Agency will consult with the responsible officer prior to determining the number of Forms IAP–66 to be sent to the sponsor. Additional forms may be requested later in the year if needed by the sponsor.

(b) *Verification.* Prior to issuing Form IAP–66, verify that the exchange visitor:

(1) Is eligible, qualified, and accepted for the program in which he or she will be participating;

(2) Possesses adequate financial resources to complete his or her program; and

(3) Possesses adequate financial resources to support any accompanying dependents.

(c) *Issuance of Form IAP–66.* Issue the Form IAP–66 only so as to:

(1) Facilitate the entry of a new participant of the exchange visitor program;

(2) Extend the stay of an exchange visitor;

(3) Facilitate program transfer;

(4) Replace a lost or stolen Form IAP–66;

(5) Facilitate entry of an exchange visitor's alien spouse or minor unmarried children into the United States separately;

(6) Facilitate re-entry of an exchange visitor who has traveled outside the United States during the program; or

(7) Facilitate a change of category when permitted by the Agency.

(d) *Safeguards.* (1) Store Forms IAP–66 securely to prevent unauthorized use;

(2) Prohibit transfer of any blank Form IAP–66 to another sponsor or other person unless authorized in writing (by letter or facsimile) by the Agency to do so;

(3) Notify the Agency promptly by telephone (confirmed promptly in writing) or facsimile of the document number of any completed Form IAP–66 that is presumed stolen or any blank Form IAP–66 lost or stolen; and,

(4) Forward the completed Form IAP–66 only to an exchange visitor, either directly or via an employee, officer, or agent of the sponsor, or to an individual designated by the exchange visitor.

(e) *Accounting.* (1) Maintain a record of all Forms IAP–66 received and/or issued by the sponsor;

(2) Destroy damaged and unusable Forms IAP–66 on the sponsor's premises after making a record of such forms (e.g. forms with errors or forms damaged by a printer); and

(3) Request exchange visitors and prospective exchange visitors to return any unused Form IAP–66 sent to them and make a record of Forms IAP–66

which are returned to the sponsor and destroy them on the sponsor's premises.

§ 514.13 Notification requirements.

(a) *Change of circumstances.* Sponsors shall notify the Agency promptly in writing of any of the following circumstances:

(1) Change of its address, telephone, or facsimile number;

(2) Change in the composition of the sponsoring organization which affects its citizenship as defined by § 514.2;

(3) Change of the responsible officer or alternate responsible officers;

(4) A major change of ownership or control of the sponsor's organization;

(5) Change in financial circumstances which may render the sponsor unable to comply with its obligations as set forth in 512.9(e);

(6) Loss of licensure or accreditation;

(7) Loss or theft of Forms IAP–66 as specified at § 514.12(d)(3);

(8) Litigation related to the sponsor's exchange visitor program, when the sponsor is a party; and

(9) Termination of its exchange visitor program.

(b) *Serious problem or controversy.* Sponsors shall inform the Agency promptly by telephone (confirmed promptly in writing) or facsimile of any serious problem or controversy which could be expected to bring the Agency or the sponsor's exchange visitor program into notoriety or disrepute.

(c) *Status of exchange visitor.* Sponsors shall notify the Agency and the United States Immigration and Naturalization Service in writing when:

(1) The exchange visitor has completed or withdrawn from a program prior to the ending date on his or her Form IAP–66;

(2) The exchange visitor ceases to maintain exchange visitor status; or

(3) An exchange visitor's participation in the Exchange Visitor Program is terminated in accordance with § 514.40.

§ 514.14 Insurance.

(a) Sponsors shall require each exchange visitor to have insurance in effect which covers the exchange visitor for sickness or accident during the period of time that an exchange visitor participates in the sponsor's exchange visitor program. Minimum coverage shall provide:

(1) Medical benefits of at least $50,000 per accident or illness;

(2) Repatriation of remains in the amount of $7,500;

(3) Expenses associated with the medical evacuation of the exchange visitor to his or her home country in the amount of $10,000; and,

(4) A deductible not to exceed $500 per accident or illness.

(b) An insurance policy secured to fulfill the requirements of this section:

(1) May require a waiting period for pre-exisitng conditions which is reasonable as determined by current industry standards;

(2) May include provision for co-insurance under the terms of which the exchange visitor may be required to pay up to 25% of the covered benefits per accident or illness; and,

(3) Shall not unreasonably exclude coverage for perils inherent to the activities of the exchange program in which the exchange visitor participates.

(c) Any insurance policy secured to fulfill the above requirements must be underwritten by an insurance corporation having an A.M. Best rating of "A" or above, an Insurance Solvency International, Ltd. (ISI) rating of "A" or above, a Standard & Poor's Claims-paying Ability rating of "AA" or above, a Weiss Research, Inc. rating of B+ or above, or such other rating service as the Agency may from time to time specify. Insurance coverage backed by the full faith and credit of the government of the exchange visitor's home country shall be deemed to meet this requirement.

(d) Federal, state or local government agencies, state colleges and universities, and public community colleges may, if permitted by law, self-insure any or all of the above-required insurance coverage.

(e) At the request of a non-governmental sponsor of an exchange visitor program, and upon a showing that such sponsor has funds readily available and under its control sufficient to meet the requirements of this section, the Agency may permit the sponsor to self-insure or to accept full financial responsibility for such requirements.

(f) The Agency, in its sole discretion, may condition its approval of self-insurance or the acceptance of full financial responsibility by the non-governmental sponsor by requiring such sponsor to secure a payment bond in favor of the Agency guaranteeing the sponsor's obligations hereunder.

(g) An accompanying spouse or dependent of an exchange visitor is required to be covered by insurance in the amounts set forth in § 514.14(a) above. Sponsors shall inform exchange visitors of this requirement, in writing, in advance of the exchange visitor's arrival in the United States.

(h) An exchange visitor who fails to maintain the insurance coverage set forth above while a participant in an exchange visitor program or who makes a material misrepresentation to the sponsor concerning such coverage shall be deemed to be in violation of these regulations and shall be subject to termination as a participant.

(i) A sponsor shall terminate an exchange visitor's participation in its program if the sponsor determines that the exchange visitor or any accompanying spouse or dependent fails to remain in compliance with this section.

§ 514.15 Annual reports.

Sponsors shall submit an annual report to the Agency. Such report shall be filed on an academic or calendar year basis, as directed by the Agency, and shall contain the following:

(a) *Program report and evaluation.* A brief summary of the activities in which exchange visitors were engaged, including an evaluation of program effectiveness;

(b) *Reciprocity.* A description of the nature and extent of reciprocity occurring in the sponsor's exchange visitor program during the reporting year;

(c) *Cross-cultural activities.* A summary of the cross-cultural activities provided for its exchange visitors during the reporting year;

(d) *Proof of insurance.* Certification of compliance with insurance coverage requirements set forth in § 514.14.

(e) *Form IAP–66 usage.* A report of Form IAP–66 usage during the reporting year setting forth the following information:

(1) The total number of blank Forms IAP–66 received from the Agency during the reporting year;

(2) The total number of Forms IAP–66 voided or destroyed by the sponsor during the reporting year and the document numbers of such forms;

(3) The total number of Forms IAP–66 issued to potential exchange visitors that were returned to the sponsor or not used for entry into the United States; and

(4) The total number and document identification number sequence of all blank Forms IAP–66 in the possession of the sponsor on December 31 of the reporting year.

§ 514.16 Employment.

(a) Except as provided in § 514.23 and § 514.25, *infra*, the exchange visitor shall not engage in gainful employment that both produces income from U.S. sources and is unrelated to the exchange visitor's program.

(b) An exchange visitor who engages in unauthorized employment shall be deemed to be in violation of his or her lawful status and be subject to

termination as participant in an exchange visitor program.

(c) The acceptance of employment by an accompanying spouse or minor child of an exchange visitor is governed by Immigration and Naturalization Service regulations.

§ 514.17 Fees and charges. [Reserved]

Subpart B—Specific Program Provisions

§ 514.20 Professors and research scholars.

(a) *Introduction.* These regulations govern professors and research scholars, except:

(1) Alien physicians in graduate medical education or training, who are governed by regulations set forth at § 514.27; and

(2) Short-term scholars, who are governed by regulations set forth at § 514.21.

(b) *Purpose.* A primary purpose of the Exchange Visitor Program is to foster the exchange of ideas between Americans and foreign nationals and stimulate international collaborative teaching and research efforts. The exchange of professors and research scholars promotes interchange, mutual enrichment, and linkages between research and educational institutions in the United States and foreign countries. It does so by providing foreign professors and research scholars the opportunity to engage in research, teaching, and lecturing with their American colleagues, to participate actively in cross-cultural activities with Americans, and to ultimately to share their experiences and increased knowledge about the United States and their substantive fields.

(c) *Designation.* The Agency may, in its sole discretion, designate bona fide programs which offer foreign nationals the opportunity to engage in research, teaching, lecturing, observing, or consulting at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions in the United States.

(d) *Visitor eligibility.* An individual participating in a program which furthers the objectives under § 514.20(b) and whose activities are compatible with said objectives shall be eligible to participate in an exchange visitor program as a professor or research scholar. The exchange visitor's appointment to a position shall be temporary, even if the position itself is permanent. The individual shall not be on a tenure track.

(e) *Issuance of Form IAP–66.* The Form IAP–66 shall be issued only after the professor or research scholar has been accepted by the institution(s) where he or she will participate in an exchange visitor program.

(f) *Location of the exchange.* Professors or research scholars shall conduct their exchange activity at the location(s) listed on the Form IAP–66, which could be either at the location of the exchange visitor sponsor or the site of a third party facilitating the exchange. An exchange visitor may also engage in activities at locations not listed on the Form IAP–66 if such activities constitute occasional lectures or consultations as permitted by § 514.20(g).

(g) *Occasional lectures or consultations.* Professors and research scholars may participate in occasional lectures and short-term consultations without compensation for services, unless disallowed by the sponsor. Such lectures and consultations must be incidental to the exchange visitor's primary program activities. For the purpose of this section, reimbursement for travel, lodging and other out-of-pocket expenses for participating in conferences, seminars, meetings, and similar types of short-term activities shall not be considered compensation for services. If the occasional lectures and short-term consultations involve compensation for services, then the following criteria and procedures shall be satisfied:

(1) *Criteria.* The occasional lectures or short-term consultations shall:

(i) Be directly related to the objectives of the exchange visitor's program;

(ii) Be incidental to the exchange visitor's primary program activities; and

(iii) Not delay the completion date of the visitor's program.

(2) *Procedures.* (i) To obtain authorization to engage in occasional lectures or short-term consultations involving compensation for services, the exchange visitor shall present to the responsible officer:

(A) A letter from the offeror setting forth the terms and conditions of the offer to lecture or consult, including the duration, number of hours, field or subject, amount of compensation, and description of such activity; and

(B) A letter from his or her department head or supervisor recommending such activity and explaining how it would enhance international exchange.

(ii) The responsible officer shall review the letters required in § 514.20(g)(2)(i) above and make a written determination whether such activity is warranted and satisfies the criteria set forth in § 514.20(g)(1).

(h) *Category.* At the discretion of the responsible officer, professors may freely engage in research and research scholars may freely engage in teaching and lecturing, unless disallowed by the sponsor. Because these activities are so intertwined, such a change of activity will not be considered a change of category necessitating a formal approval by the responsible officer or reporting to the Agency. Any Form IAP–66 issued to the exchange visitor should reflect the current category of the exchange visitor, either professor or research scholar.

(i) *Duration of participation.* The exchange professor and research scholar shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which time shall not exceed three years. A change of category shall not extend the exchange visitor's period of participation beyond the permitted three-year maximum duration.

(j) *Extension of program.* Professors and research scholars may be considered for program extensions for up to 36 months as follows:

(1) *Six-month extension.* The responsible officer has the discretion to approve an extension of up to six months for professors or research scholars beyond the three year duration of participation permitted under § 514.20(i), when exceptional or unusual circumstances so warrant. The purpose of such an extension is to provide the professor or research scholar the necessary time to complete his or her teaching and research responsibilities. The responsible officer shall notify the Agency as required in § 514.43(c) when authorizing such an extension.

(2) *Additional extension.* The Agency, in its discretion, may approve an extension for a professor or research scholar for exceptional or unusual circumstances. Applications to the Agency for such extension should be filed no later than 45 days before the expiration of the exchange visitor's authorized stay. The application shall be in writing and shall:

(i) State the period of time the sponsor is requesting the extension for the exchange visitor; and

(ii) Include a letter from the department head or supervisor of the exchange visitor;

(A) Indicating the expected date of completion of the exchange program; and

(B) Providing a description of the exceptional or unusual circumstances which warrant such an extension.

§ 514.21 Short-term scholars.

(a) *Introduction.* These regulations govern scholars coming to the United States for a period of up to four months

to lecture, observe, consult, and to participate in seminars, workshops, conferences, study tours, professional meetings, or similar types of educational and professional activities.

(b) *Purpose.* The Exchange Visitor Program promotes the interchange of knowledge and skills among foreign American scholars. It does so by providing foreign scholars the opportunity to exchange ideas with their American colleagues, participate in educational and professional programs, confer on common problems and projects, and promote professional relationships and communications.

(c) *Designation.* The Agency may, in its sole discretion, designate bona fide programs which offer foreign nationals the opportunity to engage in short-term visits for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions.

(d) *Visitor eligibility.* A person participating in the Exchange Visitor Program under this section shall satisfy the definition of a short-term scholar as set forth in § 514.4.

(e) *Cross-cultural activities and orientation.* Due to the nature of such exchanges, sponsors of programs for short-term scholars shall be exempted from the requirements of providing cross-cultural activities and orientation as set forth in § 514.8(d) and § 514.10(c). However, sponsors are encouraged to provide such programs for short-term scholars whenever possible.

(f) *Location of the exchange.* The short-term scholar shall participate in the Exchange Visitor Program at the conferences, workshops, seminars, or other events or activities stated on his or her Form IAP–66.

(g) *Duration of participation.* The short-term scholar shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which time shall not exceed four months. Programs under this section are exempted from § 514.8(b) governing the minimum duration of program. Extensions beyond the duration of participation are not permitted under this category.

§ 514.22 Trainees.

(a) *Introduction.* These regulations govern all exchange visitor programs under which foreign nationals are provided with opportunities for receiving training in the United States. Regulations dealing with training opportunities which may, under certain conditions, be authorized for foreign students who are studying at post-secondary accredited educational institutions in the United States are found at § 514.23. Regulations governing medical trainees are found at § 514.27.

(b) *Purpose of Training.* The primary objectives of training are to enhance the exchange visitor's skills in his or her specialty or non-specialty occupation through participation in a structured training program and to improve the participant's knowledge of American techniques, methodologies, or expertise within the individual's field of endeavor. Such training programs are also designed to enable the exchange visitor trainee to understand better American culture and society and to enhance American knowledge of foreign cultures and skills by providing the opportunity for an open interchange of ideas between the exchange visitor trainees and their American counterparts. Use of the Exchange Visitor Program for employment or work purposes is strictly prohibited. For this reason the regulations in this section are designed to distinguish between receiving training, which is permitted, and gaining experience, which is not permitted unless as a component of a *bona fide* training program.

(c) *Designation of training programs.* (1) The Agency groups are occupations into specialty, non-specialty, or unskilled occupational categories. The Agency will designate training programs in specialty and non-specialty occupations. Training programs in unskilled occupations or occupations in other categories which the Agency may from time to time identify by publication in the **Federal Register** will not be designated. For purposes of these regulations, the Agency considers those occupations listed in the United States Department of Labor's "Schedule B" to be unskilled occupations, and the Agency will not designate training programs in those occupations. See appendix to part 514.

(2) For purposes of designation, the Agency will designate specialty and skilled non-specialty occupational training programs in any of the following occupational categories:

(i) Arts and Culture;
(ii) Information Media and Communications;
(iii) Education;
(iv) Business and Commercial;
(v) Banking and Financial;
(vi) Aviation;
(vii) Science, Mechanical and Industrial;
(viii) Construction and Building Trades;
(ix) Agricultural;
(x) Public Administration;
(xi) Training, Other (Specify).

(3) Once designated, the sponsor may provide training in any occupation falling within the designated category, if not otherwise prohibited from doing so. Sponsors shall provide training to exchange visitors only in the category or categories for which they have obtained Agency designation.

(d) *Obligations of training program sponsors.* (1) Sponsors designated by the Agency to provide training to foreign exchange visitors shall:

(ii) Possess and maintain the demonstrable competence to provide training in the subjects offered to exchange visitors.

(ii) Impart skill, knowledge, and competencies to the trainee through a structured program of activities supportive of the training experience. These may include, for example, classroom training, seminars, rotation through several departments, on-the-job training, and attendance at conferences, as appropriate.

(iii) Develop, prior to the start of training, a detailed training plan geared to defined objectives for each trainee or group of similarly-situated trainees.

(iv) Provide for continuous supervision and periodic evaluation of each trainee.

(v) Have available sufficient plant, equipment, and trained personnel to provide the training specified.

(2) Sponsors designated by the Agency to provide training to foreign exchange visitors shall not:

(i) Provide training in unskilled occupations; or

(ii) Place trainees in positions which are filled or would be filled by full-time or part-time employees.

(e) *Use of third parties.* (1) The sponsor may utilize the services of third parties in the conduct of the designated training program. If a third party is utilized, the sponsor and the third party shall execute a written agreement which delineates the respective obligations and duties of the parties, and specifically recites the third party's obligation to act in accordance with these regulations. The sponsor shall maintain a copy of such agreement in its files.

(2) The sponsor's use of a third party in the conduct of a designated training program does not relieve the sponsor of its obligation to comply, and to ensure the third party's compliance, with all applicable regulations. Any failure on the part of the third party to comply with all applicable regulations will be imputed to the sponsor.

(f) *Application for designation of training programs.* (1) An applicant for

designation as an exchange visitor training program shall demonstrate to the Agency its ability to comply with both the General Provisions set forth in subpart A, and the obligations of training sponsors set forth in § 514.22(d).

(2) (i) An applicant shall provide the Agency with documentary evidence of its competence to provide the training for which designation is sought.

(ii) If a third party will be used to conduct the training, documentary evidence of the third party's competence to conduct the training shall be included.

(iii) If the applicant intends to utilize the services of third parties to conduct the training, a copy of an executed third-party agreement or, if one has not yet been executed, an illustrative copy of the type of agreement the applicant intends to execute with third parties shall be submitted with the application.

(3) If the training program is accredited in accordance with § 514.22(n), the applicant shall include a copy of the accreditation in its application.

(4) The application shall include a certification that:

(i) The applicant will dedicate sufficient physical plant, equipment, and trained personnel to provide the training specified;

(ii) The training program is not designed to recruit and train aliens for employment in the United States;

(iii) The applicant will not place trainees in positions which displace full-time or part-time employees.

(5) As to each occupational division for which the applicant seeks designation, the applicant shall indicate whether it intends to provide training in specialty or non-specialty occupations, or both.

(6) In order to meet the requirements of this subsection and to evidence the applicant's competence to provide training, the applicant for designation may submit any one of the following types of training plans for each division for which designation is sought:

(i) If the applicant has already designed a structured training plan to use in the proposed exchange visitor program, a copy of such training plan may be submitted with the application;

(ii) If the applicant has not yet prepared a new training plan, but has been engaged previously in the type of training for which designation is being sought, the applicant may demonstrate its capability to conduct such training by submitting a copy of a previously used training plan;

(iii) If the applicant proposes to create individualized training plans for as yet unidentified trainees, then the applicant may submit a hypothetical training plan which illustrates the training the applicant proposes to provide.

(g) *The training plan.* Each training plan required to be prepared by a sponsor for each trainee pursuant to § 514.22(d)(1)(iii) above, shall include, at a minimum,

(1) a statement of the objectives of the training;

(2) the skills to be imparted to the trainee;

(3) a copy of the training syllabus or chronology;

(4) a justification for the utilization of on-the-job training to achieve stated course competencies; and,

(5) a description of how the trainee will be supervised and evaluated.

(h) *Agency consultation with experts.* The Agency may consult experts whenever its examination of a training plan or its evaluation of application for designation indicates the need for such expertise in making an evaluation.

(i) *Records.* Sponsors shall retain for three years all records pertaining to individual trainees, including training plans, trainee evaluations, and agreements with third parties. Such records shall be made available to the Agency upon the Agency's request.

(j) *Selection of trainees.* In addition to meeting the requirements of § 514.10(a), trainees shall be fully qualified to participate successfully in a structured training program at a level appropriate for the individual trainee's career development. However, such training shall not be duplicative of the trainee's prior training and experience.

(k) *Duration of participation.* The duration of participation shall correspond to the length of the program set forth in the sponsor's designation. The maximum period of participation in the Exchange Visitor Program for a trainee shall not exceed 18 months total.

(l) *Financial and program disclosure.* Sponsors shall provide trainees, prior to their arrival in the United States, with:

(1) A written statement which clearly states the stipend, if any, to be paid to the trainee;

(2) The costs and fees for which the trainee will be obligated;

(3) An estimate of living expenses during the duration of the trainee's stay, and;

(4) A summary of the training program which recites the training objectives and all significant components of the program.

(m) *Evaluation.* In order to ensure the quality of the training program, the sponsor shall develop procedures for the on-going evaluation of each training segment. Such evaluation shall include, as a minimum, semi-annual and concluding evaluation reports from the trainee and his or her immediate supervisor, signed by both parties. For training courses of less than nine months duration, evaluation reports are required, at a minimum, at mid-point and upon conclusion of the training course. Evaluation reports shall be kept in the custody of the sponsor for a period of three years and shall be made available to the Agency upon request.

(n) *Flight training.* (1) The Agency will consider the application for designation of a flight training program if such program complies with the above regulations, and, additionally,

(i) is, at the time of making said application, a Federal Aviation Administration certificated pilot school pursuant to title 14, Code of Federal Regulations, part 141; and

(ii) at the time of making said application is accredited as a flight training program by an accrediting agency which is listed in the current edition of the United States Department of Education's "Nationally Recognized Accrediting Agencies and Associations," or is accredited as a flight training program by a member of the Council on Postsecondary Accreditation; or,

(iii) at the time of making said application has formally commenced the accreditation process with an accrediting agency which is listed in the current edition of the United States Department of Education's "Nationally Recognized Accrediting Agencies and Associations," or with a member of the Council on Postsecondary Accreditation. If the application for designation is approved, such designation shall be for up to twelve months duration, with continued designation thereafter conditioned upon completion of the accreditation process.

(2) Notwithstanding the provisions of § 514.22 (k), *supra*, the maximum period of participation for exchange visitors in designated flight training programs shall not exceed 24 months total. Any request for extension of time in excess of that authorized under this subsection shall be made in accordance with § 514.43, *infra*.

§ 514.23 College and University students.

(a) *Purpose.* Programs under § 514.23 provide foreign students the opportunity to participate in a designated exchange program while studying at a degree-granting post-secondary accredited educational institution. Such exchanges are intended to promote mutual understanding by fostering the exchange of ideas between foreign students and their American counterparts.

(b) *Designation.* The Agency may, in its sole discretion, designate bona fide programs which offer foreign nationals the opportunity to study in the United States at post-secondary accredited educational institutions.

(c) *Selection criteria.* Sponsors select the college and university students who participate in their exchange visitor programs. Sponsors shall secure sufficient background information on the students to ensure that they have the academic credentials required for their program. Students are eligible for the Exchange Visitor Program, if at any time during their college studies in the United States:

(1) They or their program are financed directly or indirectly by:

(i) The United States Government;

(ii) The government of the student's home country; or

(iii) An international organization of which the United States is a member by treaty or statute;

(2) The programs are carried out pursuant to:

(i) An agreement between the United States Government and a foreign government; or

(ii) A written agreement between American and foreign educational institutions; or

(3) The exchange visitors are supported substantially by one or more scholarships from public or private organizations, rather than personal or family funds, for the purpose of promoting international educational exchanges.

(d) *Admissions requirement.* In addition to satisfying the requirements of § 514.10(a), sponsors shall ensure that the exchange visitor student has been admitted to the post-secondary accredited educational institution(s) listed on the Form IAP–66 before issuing the form.

(e) *Full course of study requirement.* Exchange visitor students shall pursue a full course of study at a post-secondary accredited educational institution in the United States as defined in § 514.2, except under the following circumstances:

(1) *Vacation.* During official school breaks and summer vacations if the student is eligible and intends to register for the next term.

(2) *Medical problem.* If the student is compelled to reduce or interrupt a full course of study due to an illness or medical condition and the student presents to the responsible officer:

(i) A written statement from a physician requiring or recommending an interruption or reduction in studies; and

(ii) Written approval by the academic dean or advisor to reduce the number of credits for the school term.

(3) *Academic difficulties.* If the student is compelled to pursue less that a full course of study for a term and:

(i) Receives a statement from the academic dean or advisor recommending that the student reduce his or her academic load to less than a full course of study due to academic difficulties; and

(ii) Obtains written approval from the responsible officer to pursue less than a full course of study for the term.

(4) *Non-degree program.* If the student is engaged full-time in a prescribed course of study in a non-degree program of up to 24 months duration conducted by a post-secondary accredited educational institution.

(5) *Academic training.* If the student is participating in authorized academic training in accordance with § 514.23(g).

(6) *Graduation.* If the student needs less than a full course of study to complete all degree requirements in the final term.

(f) *Academic training.* (1) A student may participate in academic training programs during his or her studies, without compensation for services, with the approval of the academic dean or advisor and the responsible officer.

(2) A student may participate in academic training programs during his or her studies, with compensation for services, and/or immediately after completion of the formal course work or graduation, with or without compensation, when the following criteria, procedures, and evaluation requirements are satisfied.

(i) *Criteria.* The exchange visitor:

(A) Has been a student in the exchange visitor program for the preceding nine months;

(B) Is participating in academic training that is directly related to his or her major field of study at the post-secondary accredited educational institution listed on his or her Form IAP–66;

(C) Is in good academic standing with the post-secondary accredited educational institution;

(D) Will participate in academic training programs for the period necessary to complete the goals and objectives of the training, provided that the total amount of time for an exchange visitor to participate in academic training programs shall not exceed any of the following:

(*1*) The time recommended by the academic dean or advisor and approved by the responsible officer;

(*2*) The period of the classroom instruction at the post-secondary accredited educational institution; and

(*3*) A total of 18 months for all academic training programs of the exchange visitor; and

(E) Receives approval in advance and in writing by the responsible officer for the duration and type of academic training.

(ii) *Procedures.* To obtain authorization to engage in academic training:

(A) The exchange visitor shall present to the responsible officer a letter of recommendation from the student's academic dean or advisor setting forth:

(*1*) The goals and objectives of the specific training program;

(*2*) A description of the training program, including its location, the name and address of the training supervisor, number of hours per week, and dates of the training;

(*3*) Hope the training relates to the student's major field of study; and

(*4*) Why it is an integral or critical part of the academic program of the exchange visitor student.

(B) The responsible officer shall:

(*1*) Determine if and to what extent the student has previously participated in academic training as an exchange visitor student, in order to ensure the student does not exceed the period permitted in § 514.23(g);

(*2*) Review the letter required in section (A) above; and

(*3*) Make a written determination whether the academic training currently being requested is warranted, and the criteria set forth in § 514.23(g)(2)(i) are satisfied.

(iii) *Evaluation requirements.* To ensure the quality of the academic training program, the sponsor shall develop procedures to evaluate its effectiveness and appropriateness in achieving the stated goals and objectives.

(A) Evaluations shall include, at a minimum, mid-point and concluding evaluation reports from the exchange visitor and his or her immediate supervisor, signed by both parties.

(B) The responsible officer shall maintain copies of evaluation reports or have reasonable access to such reports.

(G) *Student employment.* Exchange visitor students may engage in part-time employment when the following criteria and conditions are satisfied.

(1) The student employment:

(i) Is pursuant to the terms of a scholarship, fellowship, or assistantship; or

(ii) Is necessary because of serious, urgent, and unforeseen economic

circumstances which have arisen since acquiring exchange visitor status.

(2) Exchange visitor students may engage in employment as provided in paragraph (g)(1) of this section if the:

(i) Student is in good academic standing at the post-secondary accredited educational institution;

(ii) Student continues to engaged in a full course of study, except for official school breaks and summer vacations;

(iii) Employment totals no more than 20 hours per week, except during official school breaks and summer vacations; and

(iv) The responsible officer has approved the specific employment in advance and in writing. Such approval may be valid up to twelve months, but is automatically withdrawn if the student's program is terminated.

(h) *Duration of participation.* (1) *Degree of students.* Exchange visitor students who are in degree program shall be authorized to participate in the Exchange Visitor Program as long as they are either:

(i) Studying at the post-secondary accredited educational institution listed on their Form IAP–66 and are:

(A) Pursuing a full course of study as set forth in § 514.23(f), and

(B) Maintaining satisfactory advancement towards the completion of their academic program; or

(ii) Participating in an authorized academic training program as permitted in § 514.23(g).

(2) *Non-degree students.* Exchange visitors who are non-degree students shall be authorized to participate in the Exchange Visitor Program for up to 24 months, if they are:

(i) Participating full-time in a prescribed course of study conducted by a post-secondary accredited educational institution; and

(ii) Maintaining satisfactory advancement towards the completion of their academic program.

§ 514.24 Teachers.

(a) *Purpose.* These regulations govern exchange visitors who teach full-time in primary and secondary accredited educational institutions. Programs under § 514.24 promote the interchange of American and foreign teachers in public and private schools and the enhancement of mutual understanding between people of the United States and other countries. They do so by providing foreign teachers opportunities to teach in primary and secondary accredited educational institutions in the United States, to participate actively in cross-cultural activities with Americans in schools and communities, and to return home ultimately to share their experiences and their increased knowledge of the United States. Such exchanges enable visitors to understand better American culture, society, and teaching practices at the primary and secondary levels, and enhance American knowledge of foreign cultures, customs, and teaching approaches.

(b) *Designation.* The Agency may, in its discretion, designate bona fide programs satisfying the objectives in section (a) above as exchange visitor programs in the teacher category.

(c) *Visitor eligibility.* A foreign national shall be eligible to participate in an exchange visitor program as a full-time teacher if the individual:

(1) Meets the qualifications for teaching in primary or secondary schools in his or her country of nationality or last legal residence;

(2) Satisfies the standards of the U.S. state in which he or she will teach;

(3) Is of good reputation and character;

(4) Seeks to come to the United States for the purpose of full-time teaching at a primary or secondary accredited educational institution in the United States; and

(5) Has a minimum of three years of teaching or related professional experience.

(d) *Visitor Selection.* Sponsors shall adequately screen teachers prior to accepting them for the program. Such screening, in addition to the requirements of § 514.10(a), shall include:

(1) Evaluating the qualifications of the foreign applicants to determine whether the criteria set forth in § 514.24(c) are satisfied; and

(2) Securing references from colleagues and current or former employers, attesting to the teachers' good reputation, character and teaching skills.

(e) *Teaching position.* Prior to the issuance of the Form IAP–66, the exchange visitor shall receive a written offer and accept in writing a teaching position from the primary or secondary accredited educational institution in which he or she is to teach. Such position shall be in compliance with any applicable collective bargaining agreement, where one exists. The exchange visitor's appointment to a position at a primary or secondary accredited educational institution shall be temporary, even if the teaching position is permanent.

(f) *Program disclosure.* Before the program begins, the sponsor shall provide the teacher, in addition to what is required in § 514.10(b), with:

(1) Information on the length and location(s) of his or her exchange visitor program;

(1) Information on the length and location(s) of his or her exchange visitor program;

(2) A summary of the significant components of the program, including a written statement of the teaching requirements and related professional obligations; and

(3) A written statement which clearly states the compensation, if any, to be paid to the teacher and any other financial arrangements in regards to the exchange visitor program.

(g) *Location of the exchange.* The teacher shall participate in an exchange visitor program at the primary or secondary accredited educational institution(s) listed on his or her Form IAP–66 and at locations where the institution(s) are involved in official school activities (e.g., school field trips and teacher training programs).

(h) *Duration of participation.* The teacher shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which shall not exceed three years.

§ 514.25 Secondary School Students.

(a) *Introduction.* These regulations govern Agency designated exchange visitor programs under which foreign national secondary students are afforded the opportunity for up to one year of study in a United States public or private secondary school, while living with an American host family. As used herein, the term "sponsor" shall mean an Agency designated non-profit organization and its officers, employees, and agents; the term "student" shall mean a foreign national whose entry into the United States is for the purpose of study and attendance at a United States secondary school.

(b) *Program Sponsor Eligibility.* Eligibility for designation as a secondary school student exchange program sponsor shall be limited to:

(1) Organizations with tax-exempt status as conferred by the Internal Revenue Service pursuant to section 501(c)(3); and

(2) Organizations which are United States citizens as such terms is defined § 514.2.

(c) *Program Eligibility.* Secondary school students exchange programs designated by the Agency shall:

(1) Require all participants to pursue a full course of study at an accredited educational institution as such terms are defined in this Part of not less than one academic semester (or quarter

equivalency) nor more than two academic semesters (or quarter equivalency) duration; and

(2) Be conducted on an academic calendar year basis provided, however, participants may begin in the second semester of an academic year if specifically permitted to do so, in writing, by the school in which the exchange visitor is enrolled.

(d) *Program administration.* Sponsors shall ensure that all officers, employees, agents, and volunteers action on their behalf:

(1) Are adequately trained and supervised;

(2) Make no student placement outside a 150 mile radius of the home of an organizational representative authorized to act on the sponsors behalf in both routine and emergency matters arising from a student's participation in their exchange program;

(3) Ensure that no organizational representative act as both host family and area supervisor for any student participant whom that organizational representative may host;

(4) Maintain a monthly schedule of personal contact with the student, school, and host family; and

(5) Adhere to all regulatory provisions set forth in this Part and all additional terms and conditions governing program administration that the Agency may from time to time impose.

(e) *Student selection.* In addition to satisfying the requirements of § 514.10(a), sponsors shall ensure that all participants in a designated secondary school student exchange program:

(1) Are *bona fide* students who:

(i) Are secondary school students in their home country who have not completed more than eleven years of primary and secondary study, exclusive of kindergarten; or

(ii) Are at least 15 years of age but not more than 18 and six months years of age at the time of initial school enrollment;

(2) Demonstrate maturity, good character, and scholastic aptitude; and

(3) Have not previously participated in an academic year or semester secondary school student exchange program in the United States.

(f) *Student enrollment.* (1) Sponsors shall secure prior written acceptance for the enrollment of any student participant in a United States public or private secondary school. Such prior acceptance shall:

(i) Be secured from the school principal or other authorized school administrator of the school or school system that the student participant will attend; and

(ii) Include written arrangements concerning the payment of tuition or waiver thereof if applicable.

(2) Sponsors shall maintain copies of all written acceptances and make such documents available for Agency inspection upon request.

(3) Sponsors shall submit to the school placement a written English language summary of the student's complete academic course work prior to commencement of school.

(4) Under no circumstance shall a sponsor facilitate the entry into the United States of a student for whom a school placement has not been secured.

(5) Sponsors shall not facilitate the enrollment of more than five students in one school unless the school itself has requested, in writing, the placement of more than five students.

(g) *Student orientation.* In addition to the orientation requirements set forth herein at § 514.10, all sponsors shall provide students, prior to their departure from the home country, with the following information:

(1) A summary of all operating procedures, rules, and regulations governing student participation in the exchange program;

(2) A detailed profile of the school, family, and community in which the student is placed;

(3) A detailed summary of travel arrangements;

(4) An identification card which lists the student's name, United States home placement address and telephone number, and a telephone number which affords immediate contact with both the Agency and sponsor in case of emergency. Such cards may be provided in advance of home country departure or immediately upon entry into the United States.

(h) *Student extra-curricular activities.* Students may participate in school sanctioned and sponsored extra-curricular activities, including athletics, if such participation is:

(1) authorized by the local school district in which the student is enrolled; and

(2) authorized by the state authority responsible for determination of athletic eligibility, if applicable.

(i) *Student employment.* Students may not be employed on either a full or part-time basis but may accept sporadic or intermittent employment such as babysitting or yard work.

(j) *Host family selection.* Sponsors shall adequately screen all potential host families and at a minimum shall:

(1) provide potential host families with a detailed summary of the exchange program and the parameters of their participation, duties, and obligations;

(2) utilize a standard application form for all host family applicants which provides a detailed summary and profile of the host family, the physical home environment, family composition, and community environment;

(3) conduct an in-person interview with all family members residing in the home;

(4) ensure that the host family is capable of providing a comfortable and nurturing home environment;

(5) ensure that the host family is of good reputation and character by securing two personal references for each host family from the school or community, attesting to the host family's good reputation and character;

(6) ensure that the host family has adequate financial resources to undertake hosting obligations; and

(7) maintain a permanent record of application forms, evaluations, and interviews for all selected host families for a period of three years.

(k) *Host family orientation.* In addition to the orientation requirements set forth in § 514.10, sponsors shall:

(1) inform all host families of the philosophy, rules, and regulations governing the sponsor's exchange program; and

(2) provide all selected host families with a copy of Agency promulgated Exchange Visitor Program regulations; and

(3) advise all selected host families of strategies governing cross cultural interaction and conduct workshops which will familiarize the host family with cultural differences and practices.

(l) *Host family placement.* (1) Sponsors shall secure, prior to the student's departure from the home country, a host family placement for each student participant. Sponsors shall not:

(i) Facilitate the entry into the United States for a student for whom a host family placement has not been secured; and

(ii) Place more than one student with a host family without the express prior written consent of the Agency.

(2) Sponsors shall advise both the student and host family, in writing, of the respective family compositions and backgrounds of each and shall facilitate and encourage the exchange of correspondence between the two prior to the student's departure from the home country.

(3) In the event of unforeseen circumstances which necessitate a change of host family placement, the sponsor shall document the reasons

necessitating such change and provide the Agency with an annual statistical summary reflecting the number and the reason for such change in host family placement.

(m) *Placement report.* In lieu of listing the name and address of the host family and school placement on a participant's Form IAP-66, sponsors must, no later then August 1st of each academic year, submit to the Agency a report of all academic year program participants. Such report shall set forth the participant's name, school, and host family placements. A report of semester participants entering United States schools during the January to June term shall be submitted to the Agency by December 15th of the preceding year.

§ 514.26 Specialists.

(a) *Introduction.* These regulations govern experts in a field of specialized knowledge or skill coming to the United States for observing, consulting, or demonstrating special skills, except:

(1) Research scholars and professors, who are governed by regulations set forth at § 514.20;

(2) Short-term scholars, who are governed by regulations set forth at § 514.21; and

(3) Alien physicians in graduate medical education or training, who are governed by regulations set forth at § 514.27.

(b) *Purpose.* The Exchange Visitor Program promotes the interchange of knowledge and skills among foreign and American specialists, who are defined as experts in a field of specialized knowledge or skills, and who visit the United States for the purpose of observing, consulting, or demonstrating their special skills. It does so by providing foreign specialists the opportunity to observe American institutions and methods of practice in their professional fields, and to share their specialized knowledge with their American colleagues. The exchange of specialists promotes mutual enrichment, and furthers linkages among scientific institutions, government agencies, museums, corporations, libraries, and similar types of institutions. Such exchanges also enable visitors to better understand American culture and society and enhance American knowledge of foreign cultures and skills. This category is intended for exchanges with experts in areas, for example, as mass media communication, environmental science, youth leadership, international educational exchange, museum exhibitions, labor law, public administration, and library science. This category is not intended for experts covered by the exchange visitor categories listed in § 514.26(a)(1)–(3) above.

(c) *Designation.* The Agency may, in its discretion, designate bona fide programs satisfying the objectives in section (b) above as an exchange visitor program in the specialist category.

(d) *Visitor eligibility.* A foreign national shall be eligible to participate in an exchange visitor program as a specialist if the individual:

(1) Is an expert in a field of specialized knowledge or skill;

(2) Seeks to travel to the United States for the purpose of observing, consulting, or demonstrating his or her special knowledge or skills; and

(3) Does not fill a permanent or long-term position of employment while in the United States.

(e) *Visitor selection.* Sponsors shall adequately screen and select specialists prior to accepting them for the program, providing a formal selection process, including at a minimum:

(1) Evaluation of the qualifications of foreign nationals to determine whether they meet the definition of specialist as set forth in § 514.4(g); and

(2) Screening foreign nationals to ensure that the requirements of § 514.10(a) are satisfied.

(f) *Program disclosure.* Before the program begins, the sponsor shall provide the specialist, in addition to what is required in § 514.10(b), with:

(1) Information on the length and location(s) of his or her exchange visitor program;

(2) A summary of the significant components of the program; and

(3) A written statement which clearly states the stipend, if any, to be paid to the specialist.

(g) *Issuance of Form IAP–66.* The Form IAP–66 shall be issued only after the specialist has been accepted by the organization(s) with which he or she will participate in an exchange visitor program.

(h) *Location of the exchange.* The specialist shall participate in an exchange visitor program at the location(s) listed on his or her Form IAP–66.

(i) *Duration of participation.* The specialist shall be authorized to participate in the Exchange Visitors Program for the length of time necessary to complete the program, which shall not exceed one year.

§ 514.27 Alien physicians.

(a) *Purpose.* Pursuant to the Mutual Educational and Cultural Exchange Act, as amended by the Health Care Professions Act, Public Law 94–484, the Agency facilitates exchanges for foreign medical graduates seeking to pursue graduate medical education or training at accredited schools of medicine or scientific institutions. The Agency also facilitates exchanges of foreign medical graduates seeking to pursue programs involving observation, consultation, teaching, or research activities.

(b) *Clinical exchange programs.* The Educational Commission for Foreign Medical Graduates must sponsor alien physicians who wish to pursue programs of graduate medical education or training conducted by accredited U.S. schools of medicine or scientific institutions if they:

(1) Have adequate prior education and training to participate satisfactorily in the program for which they are coming to the United States;

(2) Will be able to adapt to the educational and cultural environment in which they will be receiving their education or training;

(3) Have the background, needs, and experiences suitable to the program as required in § 514.10(a)(1);

(4) Have competency in oral and written English;

(5) Have passed either Parts I and II of the National Board of Medical Examiners Examination, the Foreign Medical Graduate Examination in the Medical Sciences, the United States Medical Licensing Examination, Step I and Step II, or the Visa Qualifying Examination (VQE) prepared by the National Board of Medical Examiners, administered by the Educational Commission for Foreign Medical Graduates. N.B. Graduates of a school of medicine accredited by the Liaison Committee on Medical Education is exempted by law from the requirement of passing either Parts I and II of the National Board of Medical Examiners Examination or the Visa Qualifying Examination (VQE); and,

(6) Provide a statement of need from the government of the country of their nationality or last legal permanent residence. Such statement must provide written assurance, satisfactory to the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien physician seeks to acquire and shall be submitted to the Educational Commission for Foreign Medical Graduates by the participant's government. The statement of need must bear the seal of the concerned government and be signed by a duly designated official of the government. The text of such statement of need shall read as follows:

Name of applicant for Visa: _____. There currently exists in (Country) a need for qualified medical

practitioners in the specialty of _____. (Name of applicant for Visa) has filed a written assurance with the government of this country that he/she will return to this country upon completion of training in the United States and intends to enter the practice of medicine in the specialty for which training is being sought.

Stamp (or Seal and signature) of issuing official of named country.

Dated:_____

_____

Official of named Country.

(c) *Non-clinical exchange programs.* (1) A United States university or academic medical center which has been designated an exchange visitor program by the Director of the United States Information Agency is authorized to issue From IAP–66 to alien physicians to enable them to come to the United States for the purposes of observation, consultation, teaching, or research if:

(i) The responsible officer or duly designated alternate of the exchange visitor program involved signs and appends to the Form IAP–66 a certification which states "this certifies that the program in which (name of physician) is to be engaged is solely for the purpose of observation, consultation, teaching, or research and that no element of patient care is involved" or,

(ii) The dean of the involved accredited United States medical school or his or her designee certifies to the following five points and such certification is appended to the Form IAP–66 issued to the prospective exchange visitor alien physician:

(A) The program in which (name of physician) will participate is predominantly involved with observation, consultation, teaching, or research.

(B) Any incidental patient contact involving the alien physician will be under the direct supervision of a physician who is a U.S. citizen or resident alien and who is licensed to practice medicine in the State of _____.

(C) The alien physician will not be given final responsibility for the diagnosis and treatment of patients.

(D) Any activities of the alien physician will conform fully with the State licensing requirements and regulations for medical and health care professionals in the State in which the alien physician is pursuing the program.

(E) Any experience gained in this program will not be creditable towards any clinical requirements for medical specialty board certification.

(2) The Educational Commission for Foreign Medical Graduates may also issue Form IAP–66 to alien physicians who are coming to the United States to participate in a program of observation, consultation, teaching, or research provided the required letter of certification as outlined in this paragraph is appended to the Form IAP–66.

(d) *Public health and preventive medicine programs.* A United States university, academic medical center, school of public health, or other public health institution which has been designated as an exchange visitor program by the Director of the United States Information Agency is authorized to issue Form IAP–66 to alien physicians to enable them to come to the United States for the purpose of entering into those programs which do not include any clinical activities involving direct patient care. Under these circumstances, the special eligibility requirements listed in paragraphs _____ and _____ of this section need not be met.

The responsible officer or alternate responsible officer of the exchange visitor program involved shall append a certification to the Form IAP–66 which states:

This certifies that the program in which (name of physician) is to be engaged does not include any clinical activities involving direct patient care.

(e) *Duration of participation.* (1) The duration of an alien physician's participation in a program of graduate medical education or training is limited to the time typically required to complete such program. Duration shall be determined by the Director of the United States Information Agency at the time of the alien physician's entry into the United States. Such determination shall be based on criteria established in coordination with the Secretary of Health and Human Services and which take into consideration the requirements of the various medical specialty boards as evidenced in the Directory of Medical Specialties published by Marquis Who's Who for the American Board of Medical Specialties.

(2) Duration of participation is limited to seven years unless the alien physician has demonstrated to the satisfaction of the Director that the country to which the alien physician will return at the end of such specialty education or training has an exceptional need for an individual with the additional qualifications.

(3) Subject to the limitations set forth above duration of participation may, for good cause shown, be extended beyond the period of actual training or education to include the time necessary to take an examination required for certification by a specialty board.

(4) The Director may include within the duration of participation a period of supervised medical practice in the United States if such practice is an eligibility requirement for certification by a specialty board.

(i) Alien physicians shall be permitted to undertake graduate medical education or training in a specialty or subspecialty program whose board requirements are not published in the Director of Medical Specialists if the Board requirements are certified to the Director and to the Educational Commission for Foreign Medical Graduates by the Executive Secretary of the cognizant component board of the American Board of Medical Specialties.

(ii) The Director may, for good cause shown, grant an extension of the program to permit an alien physician to repeat one year of clinical medical training.

(5) The alien physician must furnish the Attorney General each year with an affidavit (Form I–644) that attests the alien physician:

(i) Is in good standing in the program of graduate medical education or training in which the alien physician is participating, and

(ii) Will return to the country of his nationality or last legal permanent residence upon completion of the education or training for which he came to the United States.

(f) *Change of program.* The alien physician may, once and not later than two years after the date the alien physician enters the United States as an exchange visitor or acquires exchange visitor status, change his designated program of graduate medical education or training if the Director approves the change and if the requirements of paragraphs 514.27 (b) and 514.27 (e) of this section are met for the newly designated specialty.

(g) *Applicability of Section 212(e) of the Immigration and Nationality Act.* (1) Any exchange visitor physician coming to the United States on or after January 10, 1977 for the purpose of receiving graduate medical education or training is automatically subject to the two-year home-country physical presence requirement of section 212(e) of the Immigration and Nationality Act, as amended. Such physicians are not eligible to be considered for section 212(e) waivers on the basis of "No Objection" statements issued by their governments.

(2) Alien physicians coming to the United States for the purpose of observation, consultation, teaching, or research are not automatically subject to the two-year home-country physical presence requirement of section 212(e) of the Immigration and Nationality Act,

as amended, but may be subject to this requirement if they are governmentally financed or pursuing a field of study set forth on their countries' Exchange Visitor Skills List. Such alien physicians are eligible for consideration of waivers under section 212(e) of the Immigration and Nationality Act, as amended, on the basis of "No Objection" statements submitted by their governments in their behalf through diplomatic channels to the Director of the United States Information Agency.

§ 514.28 International Visitors.

(a) *Purpose.* The international visitor category is for the exclusive use of the Agency. Programs under § 514.28 are for foreign nationals who are recognized or potential leaders and are selected by the Agency to participate in observation tours, discussions, consultation, professional meetings, conferences, workshops, and travel. These programs are designed to enable the international visitors to better understand American culture and society and contribute to enhanced American knowledge of foreign cultures. The category is for people-to-people programs which seek to develop and strengthen professional and personal ties between key foreign nationals and Americans and American institutions.

(b) *Selection.* The Agency and third parties assisting the Agency shall adequately screen and select prospective international visitors to determine compliance with § 514.10(a) and the visitor eligibility requirements set forth below.

(c) *Visitor eligibility.* An individual participating in an exchange visitor program as an international visitor shall be:

(1) Selected by the Agency;

(2) Engaged in consultation, observation, research, training, or demonstration of special skills; and

(3) A recognized or potential leader in a field of specialized knowledge of skill.

(d) *Program disclosure.* At the beginning of the program, the sponsor shall provide the international visitor with:

(1) Information on the length and location(s) of his or her exchange visitor program; and

(2) A summary of the significant components of the program.

(e) *Issuance of Form IAP–66.* The Form IAP–66 shall be issued only after the international visitor has been selected by the Agency.

(f) *Location of the exchange.* The international visitor shall participate in an exchange visitor program at locations approved by the Agency.

(g) *Duration of participation.* The international visitor shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which shall not exceed one year.

§ 514.29 Government visitors.

(a) *Purpose.* The government visitor category is for the exclusive use of the U.S. federal, state, or local government agencies. Programs under § 514.29 are for foreign nationals who are recognized as influential or distinguished persons, and are selected by U.S. federal, state, or local government agencies to participate in observation tours, discussions, consultation, professional meetings, conferences, workshops, and travel. These are people-to-people programs designed to enable government visitors to better understand American culture and society, and to contribute to enhanced American knowledge of foreign cultures. The objective is to develop and strengthen professional and personal ties between key foreign nationals and Americans and American institutions. The government visitor programs are for such persons as editors, business and professional persons, government officials, and labor leaders.

(b) *Designation.* The Agency may, in its sole discretion, designate as sponsors U.S. federal, state, and local government agencies which offer foreign nationals the opportunity to participate in people-to-people programs which promote the purpose as set forth in (a) above.

(c) *Selection.* Sponsors shall adequately screen and select prospective government visitors to determine compliance with § 514.10(a) and the visitor eligibility requirements set forth below.

(d) *Visitor eligibility.* An individual participating in an exchange visitor program as a government visitor shall be:

(1) Selected by a U.S. federal, state, and local government agency;

(2) Engaged in consultation, observation, training, or demonstration of special skills; and

(3) An influential or distinguished person.

(e) *Program disclosure.* Before the beginning of the program, the sponsor shall provide the government visitor with:

(1) Information on the length and location(s) of his or her exchange visitor program;

(2) A summary of the significant components of the program; and

(3) A written statement which clearly states the stipend, if any, to be paid to the government visitor.

(f) *Issuance of Form IAP–66.* The Form IAP–66 shall be issued only after the government visitor has been selected by a U.S. federal, state, or local government agency and accepted by the private and/or public organization(s) with whom he or she will participate in the exchange visitor program.

(g) *Location of the exchange.* The government visitor shall participate in an exchange visitor program at the locations listed on his or her Form IAP–66.

(h) *Duration of participation.* The government visitor shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which shall not exceed eighteen months.

§ 514.30 Camp Counselors.

(a) *Introduction.* In order to promote diverse opportunities for participation in educational and cultural exchange programs, the Agency designates exchange sponsors to facilitate the entry of foreign nationals to serve as counselors in U.S. summer camps. These programs promote international understanding by improving American knowledge of foreign cultures while enabling foreign participants to increase their knowledge of American culture. The foreign participants are best able to carry out this objective by serving as counselors per se, that is, having direct responsibility for supervision of groups of American youth and of activities that bring them into interaction with their charges. While it is recognized that some chores are an essential part of camp life for all counselors, this program is not intended to assist American camps in bringing in foreign nationals to serve as administrative personnel, cooks, or menial laborers, such as dishwashers or janitors.

(b) *Participant eligibility.* Participation in camp counselor exchange programs is limited to foreign nationals who:

(1) Are at least 18 years of age;

(2) Are bona fide youth workers, students, teachers, or individuals with specialized skills; and

(3) Have not previously participated more than once in a camp counselor exchange.

(c) *Participant selection.* In addition to satisfying the requirements in § 514.10(a), sponsors shall adequately screen all international candidates for camp counselor programs and at a minimum:

(1) Conduct an in-person interview; and

(2) Secure references from a participant's employer or teacher

regarding his or her suitability for participation in a camp counselor exchange.

(d) *Participant orientation.* Sponsors shall provide participants, prior to their departure from the home country, detailed information regarding:

(1) Duties and responsibilities relating to their service as a camp counselor;

(2) Contractual obligations relating to their acceptance of a camp counselor position; and

(3) Financial compensation for their service as a camp counselor.

(e) *Participant placements.* Sponsors shall place eligible participants at camping facilities which are:

(1) Accredited;

(2) A member in good standing of the American Camping Association;

(3) Officially affiliated with a nationally recognized non-profit organization; or

(4) Have been inspected, evaluated, and approved by the sponsor.

(f) *Participant compensation.* Sponsors shall ensure that international participants receive pay and benefits commensurate with those offered to their American counterparts.

(g) *Participant supervision.* Sponsors shall provide all participants with a phone number which allows 24 hours immediate contact with the sponsor.

(h) *Program administration.* Sponsors shall:

(1) Comply with all provisions set forth in Subpart A of this part;

(2) Not facilitate the entry of any participant for a program of more than four months duration; and

(3) Under no circumstance facilitate the entry into the United States of a participant for whom a camp placement has not been pre-arranged.

(i) *Placement report.* In lieu of listing the name and address of the camp facility at which the participant is placed on Form IAP–66, sponsors shall submit to the Agency, no later than July 1st of each year, a report of all participant placements. Such report shall reflect the participant's name and camp placement.

Subpart C—Status of Exchange Visitors

§ 514.40 Termination of exchange visitor status.

A sponsor shall terminate an exchange visitor's participation in its program when the exchange visitor:

(a) Fails to pursue the activities for which he or she was admitted to the United States;

(b) Is unable to continue, unless otherwise exempted pursuant to these regulations;

(c) Violates the Exchange Visitor Program regulations and/or the sponsor's rules governing the program, if, in the sponsor's opinion, termination is warranted;

(d) Fails to maintain the insurance coverage required under § 514.14 of these regulations; or,

(e) Engages in unauthorized employment.

§ 514.41 Change of category.

(a) The Agency may, in its discretion, permit an exchange visitor to change his or her category of exchange participation. Any change in category must be clearly consistent with and closely related to the participant's original exchange objective and necessary due to unusual or exceptional circumstances.

(b) A request for change of category along with supporting justification must be submitted to the Agency by the participant's sponsor. Upon Agency approval the sponsor shall issue to the exchange visitor a duly executed Form IAP–66 reflecting such change of category and provided a notification copy of such form to the Agency.

§ 514.42 Transfer of program.

(a) Program sponsors may permit an exchange visitor to transfer from one designated program to another designated program. The responsible officer of the program to which the exchange visitor is transferring must:

(1) Verify the exchange visitor's visa status; and

(2) Obtain, prior to transfer, a release signed by the responsible officer of the exchange visitor's current sponsor.

(b) The responsible officer of the program to which the exchange visitor is transferring shall issue to the exchange visitor a duly executed Form IAP–66 reflecting such transfer and provide a notification copy of such form to the Agency.

§ 514.43 Extension of program.

(a) Responsible officers may, pursuant to the provisions set forth in this section, extend an exchange visitor's participation in the Exchange Visitor Program.

(b) Responsible officers shall, under no circumstance, authorize an extension which would permit an exchange visitor to exceed the permissible period of participation authorized for his or her specific category.

(c) A responsible officer extending the program of an exchange visitor shall issue to the exchange visitor a duly executed Form IAP–66 reflecting such extension and provide a notification copy of such form to the Agency.

(d) An exchange visitor seeking a program extension in excess of that authorized for his or her specific category of participation shall:

(1) Adequately illustrate why exceptional or unusual circumstances justify such extension;

(2) Secure the prior written approval of the Agency for such extension; and

(3) Apply to the United States Immigration and Naturalization Service for approval of such extension.

§ 514.44 Two-Year Home-country physical presence requirement.

(a) **Statutory Basis for Rule.** § 212(e) of the Immigration and Nationality Act, as amended, provides in substance as follows:

(1) No person admitted under § 101(a)(15)(J) or acquiring such status after admission

(i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the United States Government or by the government of the country of his nationality or of his last legal permanent residence;

(ii) who at the time of admission or acquisition of status under § 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged [See "Exchange Visitor Skills List", 49 FR 24194, *et seq.* (June 12, 1984) as amended];

(iii) who came to the United States or acquired such status in order to receive graduate medical education or training shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last legal permanent residence for an aggregate of at least two years following departure from the United States.

(2) Upon the favorable recommendation of the Director of the United States Information Agency, pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after the latter has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen

of the United States or a legal permanent alien), or that the alien cannot return to the country of his nationality or last legal permanent resident because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the national interest.

(3) Except in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, the Attorney General, upon the favorable recommendation of the Director of the United States Information Agency, may also waive such two-year foreign residency requirement in any case in which the foreign country of the alien's nationality or last legal permanent residence has furnished the Director of the United States Information Agency a statement in writing that it has no objection to such waiver in the case of such alien.

(b) *Request for waiver on the basis of exceptional hardship or probable persecution on account of race, religion, or political opinion.* (1) An exchange visitor who seeks a waiver of the two-year home-country physical presence requirement on the grounds that such requirement would impose exceptional hardship upon the exchange visitor's spouse or child (if such spouse of child is a citizen of the United States or a legal permanent resident alien), or on the grounds that such requirement would subject the exchange visitor to persecution on account of race, religion, or political opinion, shall submit the application for waiver (INS Form I–612) to the District Office of the Immigration and Naturalization Service having administrative jurisdiction over the exchange visitor's place of temporary residence in the United States, or, if the exchange visitor has already departed the United States, to the district Office having administrative jurisdiction over the exchange visitor's last legal place of residence in the United States.

(2)(i) If the Commissioner of Immigration and Naturalization Service ("Commissioner") determines that compliance with the two-year home-country physical presence requirement would impose exceptional hardship upon the spouse or child of the exchange visitor, or would subject the exchange visitor to persecution on account of race, religion, or political opinion, the Commissioner shall transmit a copy of his determination together with a summary of the details of the expected hardship or persecution, to the Waiver Review Branch, office of Exchange Visitor Program Services, in the Agency's Office of General Counsel.

(ii) With respect to those cases in which the Commissioner has determined that compliance with the two-year home-county physical presence requirement would impose exceptional hardship upon the spouse or child of the exchange visitor, the Waiver Review Branch shall review the Commissioner's determination, together with the supporting evidence accompanying it, make a recommendation, and forward it to the Commissioner. If deem appropriate the Agency may request the views of each of the exchange visitors sponsors concerning the waiver application. Except as set forth in § 514.44(e)(2), *infra*, the recommendation of the Waiver Review Branch shall constitute the final decision of the Agency and such recommendation shall be forwarded to the Commissioner.

(iii) With respect to those cases in which the Commissioner has determined that compliance with the two-year home-country physical presence requirement would subject the exchange visitor to persecution on account of race, religion, or political opinion, the Waiver Review Branch shall review the Commissioner's determination, together with the supporting evidence accompanying it, and after consulting thereon with the Bureau of Human Rights and Humanitarian Affairs of the United States Department of State, make a recommendation, and forward such recommendation to the Commissioner. Except as set forth in § 514.44(e)(2), *infra*, the recommendation of the Waiver Review Branch shall constitute the final decision of the Agency and such recommendation shall be forwarded to the Commissioner.

(c) *Requests for waiver made by an interested United States Government agency.* If an exchange visitor is a participant in an exchange visitor program sponsored by or of interest to an agency of the United States Government, said agency may apply to the Waiver Review Branch for a waiver of the two-year home-country physical presence requirement on the grounds that the granting of the waiver would be in the national interest and the exchange visitor's compliance with said requirement would be detrimental to a program or activity of interest to that agency. The application shall identify by name or location the organization which will utilize the exchange visitor's services and the name and address of the exchange visitor in the United States. The Waiver Review Branch shall review the application and forward its recommendation to the Commissioner. Except as set forth in § 514.44(e)(2), *infra*, the recommendation of the Waiver Review Branch shall constitute the final decision of the Agency and such recommendation shall be forwarded to the Commissioner.

(d) *Requests for waiver made on the basis of a statement from the exchange visitor's home country that it has no objection to the waiver.* (1) Applications for waiver of the two-year home-country physical requirement may be supported by a statement of no objection by the exchange visitor's country of nationality of last legal permanent residence. The statement of no objection shall be directed to the Director through diplomatic channels; i.e., from the country's Foreign Office to the Agency through the U.S. Mission in the foreign country concerned, or through the foreign country's head of mission or duly appointed designee in the United States to the Director in the form of a diplomatic note. This note shall include applicant's full name, date and place of birth, and present address. Upon receipt of the no objection statement, the Waiver Review Branch shall instruct the applicant to complete a data sheet and to provide all Forms IAP–66 and the data sheet to the Waiver Review Branch. If deemed appropriate, the Agency may request the views of each of the exchange visitor's sponsors concerning the waiver application.

(2) Except as set forth in § 514.44(e)(2), *infra*, the recommendation of the Waiver Review Branch shall constitute the final decision of the Agency and such recommendation shall be forwarded to the Commissioner.

(3) An exchange visitor who is a graduate of a foreign medical school and who is pursuing a program in graduate medical education or training in the United States is prohibited under section 212(e) of the Immigration and Nationality Act from applying for a waiver on the basis of no objection from his or her country of nationality or last legal permanent residence.

(e) *The Exchange Visitor Waiver Review Board.* (1) The Exchange Visitor Waiver Review Board ("Board") shall consist of the following Agency officers:

(i) The Deputy Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee, who shall serve as presiding officer of the Board;

(ii) An officer appointed by the Deputy Associate Director of the Bureau of Educational and Cultural Affairs from an appropriate office of the Bureau; and

(iii) The country desk officer for the geographic area office responsible for the geographical area of the waiver applicant, or his or her designee.

(2) The Director of the office of Exchange Visitor Program Services or his or her designee shall serve as the Executive Secretary of the Board and shall present the facts of the waiver case to the Board, but shall not take part in the Board's deliberations.

(3) A person who has had substantial prior involvement in the particular case pending before the Board shall not be appointed to serve on the Board.

(4) The following waiver cases shall be referred to the Board for review:

(i) Cases involving requests of interested United States Government agencies, in which the recommendation of the Waiver Review Branch was unfavorable;

(ii) Cases in which another federal agency has provided the Agency with a written opposition to a waiver in which the recommendation of the Waiver Review was favorable;

(iii) Cases in which a no objection letter has been submitted by the government of the exchange visitor's country of nationality or last legal residence, and in which the exchange visitor's participation in an exchange visitor program was financed by the United States Government in an amount not exceeding $2,000, and as to which the recommendation of the Waiver Review Branch was unfavorable;

(iv) Cases involving claims of probable persecution on the grounds of race, religion, or political opinion, in which the Department of State has provided the Agency with a written opinion that there is no genuine basis for a claim of probable persecution on the ground alleged by the applicant, and as to which the recommendation of the Waiver Review Board was favorable; and,

(v) Cases in which for any reason the Waiver Review Branch requests Board review of its decision.

(f) *Action on cases referred to the Board.* (1) In each case to be referred to the Board pursuant to § 514.44(e), *supra*, the Waiver Review Branch shall transmit its complete file on the case along with a request to convene the Board, to the General Counsel of the Agency.

(2) The General Counsel shall promptly convene the Board.

(3) The General Counsel shall appoint, on a case-by-case basis, from among the attorneys in the Office of the General Counsel, one attorney to serve as legal advisor to the Board.

(4) Upon being convened, the Board shall review the case file and the policy, program, and foreign relations implications of the case.

(5) The Board may consult with the attorney in the Office of the General Counsel who has been designated to serve as legal advisor to the Board.

(6) The Board may request that officers of the Waiver Review Branch appear before the Board and explain orally the basis for the recommendation of the Waiver Review Branch; however, no persons other than members of the Board and the Board's legal advisor may be present during the Board's deliberations.

(7) At the conclusion of its review of the case, the Board shall make a written recommendation either granting or denying the waiver application.

(8) Each member of the Board shall sign the recommendation and promptly transmit the recommendation to the Waiver Review Branch for forwarding to the Commissioner.

(9) The recommendation of the Board in any case reviewed by it shall constitute the final recommendation of the Agency and such recommendation shall be forwarded to the Commissioner.

Subpart D—Sanctions

§ 514.50 Sanctions.

(a) *Reason for sanctions.* The Agency may, upon a determination by the office of Exchange Visitor Program Services ("EVPS"), impose sanctions against a sponsor which has:

(1) Willfully or negligently violated one or more provisions of this part;

(2) Evidenced a pattern of willful or negligent failure to comply with one or more provisions of this part;

(3) Committed an act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor; or,

(4) Committed an act or acts which may have the effect of bringing the Agency or the Exchange Visitor Program into notoriety or disrepute.

(b) *Lesser sanctions.* (1) In order to ensure full compliance with the regulations in this part, the Agency, in its discretion and depending on the nature and seriousness of the violation, may impose any or all of the following sanctions ("lesser sanctions") on a sponsor for any of the reasons set forth in § 514.50(a):

(i) a written reprimand to the sponsor, with a warning that repeated or persistent violations of the regulations in this Part may result in suspension or revocation of the sponsor's exchange visitor program designation, or other sanctions as set forth herein;

(ii) A declaration placing the exchange visitor sponsor on probation, for a period of time determined by the Agency in its discretion, signifying a pattern of serious willful or negligent violation of regulations such that further violations could lead to suspension or revocation;

(iii) A corrective action plan designed to cure the sponsor's violations; or,

(iv) A limitation or reduction in the authorized number of exchange visitors in the sponsor's program or in the geographic area of the sponsor's recruitment or activity.

(2) Within ten days of service of the written notice to the sponsor imposing any of the sanctions set forth in this paragraph, the sponsor may submit to EVPS any statement or information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction, and may request a conference. Upon its review and consideration of such submission, the Agency may, in its discretion, modify, withdraw, or confirm such sanction. The decision of EVPS with regard to lesser sanctions (i) to (iii) and (iv), if the proposed limitation in the size of the sponsor's program is equivalent to 10 percent or less of the number of authorized visitors in the sponsor's program during the previous calendar year, is not appealable.

(c) *Suspension or significant program limitation.* (1) Upon a finding that a suspension, or a reduction in the sponsor's program equivalent to a number greater than 10 percent of the number of authorized visitors, is warranted for any of the reasons set forth at § 514.50(a), EVPS shall given written notice to the sponsor of the Agency's intent to impose the sanction, specifying therein the reasons for such sanction and the effective date thereof, which shall be not sooner than 30 days after the date of the letter of notification.

(2) Prior to the proposed effective date of such sanction, the sponsor may submit a protest to EVPS, setting forth therein any reasons why suspension should not be imposed, and presenting any documentary evidence in support thereof.

(3) EVPS shall review and consider the sponsor's submission and, within seven (7) days of receipt thereof, notify the sponsor in writing of its decision on whether the sanction is to be affected. In the event that the decision is to impose the sanction, such notice shall inform the sponsor of its right to appeal the sanction and of its right to a formal hearing thereon.

(4) The sponsor may within ten (10) days after receipt of the aforesaid notice effecting the sanction, appeal the sanction to the Exchange Visitor

Program Designation, Suspension and Revocation Board ("Board") by filing a notice of appeal with the Agency's General Counsel, room 700, 301 4th Street, SW., Washington, DC 20547. The filing of the notice of appeal shall serve to stay the effective date of the sanction pending appeal.

Upon receipt of the notice of appeal, the General Counsel or his or her designee shall forthworth convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in § 514.50(i), *infra*.

(d) *Summary suspension.* (1) EVPS may, upon a finding that a sponsor has willfully or negligently committed a serious act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, and upon written notice to the sponsor specifying the reason therefor and the effective date thereof, notify the sponsor of the Agency's intent to suspend the designation of the sponsor's program for a period not to exceed sixty (60) days.

(2) No later than three (3) days after receipt of such notification, the sponsor may submit a rebuttal to the EVPS, setting forth therein any reasons why a suspension should be imposed.

(3) The sponsor may present any statement or information in such protest, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction. Within three (3) days of receipt of such submissions, EVPS shall notify the sponsor in writing of its decision whether to effect the suspension. In the event the decision is to effect the suspension, such notice shall advise the sponsor of its right to appeal the suspension and of its right to a formal hearing thereon.

(4) The sponsor may, within ten (10) days after receipt of the aforesaid notice continuing the suspension, appeal the suspension to the Board by filing a notice of appeal with the Agency's General Counsel, room 700, 301 4th Street, SW., Washington, DC 20547. The filing of the notice of appeal of a summary suspension shall not serve to stay the suspension pending appeal.

(5) Upon receipt of the notice of appeal, the General Counsel or his or her designee shall, within three (3) days, convene the Board. Thereafter, proceeding before the Board shall follow the regulations set forth in § 514.50(i), *infra*.

(e) *Revocation.* (1) EVPS may, for any reason set forth at § 514.50(a), give the sponsor not less than thirty (30) days notice in writing of its intent to revoke the sponsor's exchange visitor program designation, specifying therein the grounds for such revocation and the effective date of the revocation. Revocation need not be preceded by the imposition of a summary suspension, a suspension, or any lesser sanctions.

(2) Within ten (10) days of receipt of the aforesaid notice of intent to revoke, the sponsor shall have an opportunity to show cause as to why such revocation should not be imposed, and may submit to EVPS any statement of information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the violations charged.

(3) EVPS shall review and consider the sponsor's submission and thereafter notify the sponsor in writing of its decision on whether the revocation is to be effected. In the event that the decision on whether the revocation is to effect the revocation, such notice shall advise the sponsor of its right to appeal the revocation and of its right to a formal hearing thereon.

(4) The sponsor may, within twenty (20) days after receipt of the aforesaid notice effecting the revocation, appeal the revocation to the Board by filing a notice of appeal with the Agency's General Counsel, room 700, 301 4th Street, SW., Washington, DC 20547. The filing of the notice of appeal shall serve to say the effective date of the revocation pending appeal.

(5) Upon receipt of the notice of appeal the General Counsel or his or her designee shall, within ten (10) days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in § 514.50(i), *infra*.

(f) *Denial of application for redesignation.* (1) EVPS shall give an applicant for redesignation not less than thirty (30) days notice in writing of its intentions to deny the application for exchange visitor program redesignation, specifying therein the grounds for such denial.

(2) Within ten (10) days of receipt of the aforesaid notice of intent to deny the application, the applicant shall have an opportunity to demonstrate why the application should be approved, and may submit to EVPS any statement or information including, if appropriate, any documentary evidence or affidavits in support of its application.

(3) EVPS shall review and consider the applicant's submission and thereafter notify the applicant in writing of its decision on whether the application for redesignation will be approved. In the event that the decision is to deny the applicant, such notice shall advise the applicant of its right to appeal the denial and of its right to a formal hearing thereon.

(4) The applicant may, within twenty (20) days after receipt of the aforesaid notice of denial, appeal the denial to the Board by filing a notice of appeal with the Agency's General Counsel, room 700, 301 4th Street, SW., Washington, DC 20547.

(5) Upon receipt of the notice of appeal the General Counsel or his or her designee shall, within ten (10) days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in § 514.50(i), *infra*.

(g) *The Exchange Visitor Program Designation, Suspension, and Revocation Board.* (1) The Exchange Visitor Program Designation, Suspension, and Revocation Board ("Board") shall consist of:

(i) The Deputy Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee, who shall serve as presiding officer of the Board;

(ii) The Deputy Director of the relevant geographic area office, or his or her designee; and

(iii) A member of the public appointed by the Deputy Associate Director of the Bureau of Educational and Cultural Affairs. A different public member shall be appointed for each sanction case brought before the Board.

(2) The General Counsel of the Agency shall appoint an attorney in the Office of the General Counsel to prosecute the case before the Board on behalf of the Agency. Such attorney shall not take part in the deliberations of the Board.

(3) The General Counsel of the Agency shall also appoint an attorney in the Office of the General Counsel to serve as a legal advisor to the Board. Such attorney shall not have had any substantial prior involvement with the particular case pending before the Board.

(h) *General powers of the Board.* At any hearing before the Board pursuant to this Part, the Board may:

(1) Administer oaths and affirmations;

(2) Rule on offers of proof and receive any oral or documentary evidence;

(3) Require the parties to submit lists of proposed witnesses and exhibits, and otherwise regulate the course of the hearing;

(4) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(5) Dispose of motions, procedural requests, or similar matters; and

(6) Make decisions, which shall include findings of fact and conclusions of law on all the material issues of fact and conclusions of law on all the material issues of fact, law or discretion

presented on the record, and the appropriate sanction or denial thereof.

(i) *Proceedings before the Board.* The following procedures shall govern all designation, suspension, summary suspension, and revocation proceedings before the Board:

(1) Upon being convened, the Board shall schedule a hearing, within ten (10) days, at which hearing the parties may appear on their own behalf or by counsel, present oral or written evidence, and cross-examine witnesses. A substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding;

(2) At the conclusion of the hearing, the Board shall promptly review the evidence and issue a written decision within ten (10) days, signed by a majority of the members, stating the basis for its decision. The decision of the majority shall be the decision of the Board. If a Board member disagrees with the majority, the member may write a dissenting opinion;

(3) If the Board decides to affirm the suspension, summary suspension, revocation, or denial of redesignation, a copy of its decision shall be delivered to EVPS, the sponsor, the Immigration and Naturalization Service, and the Bureau of Consular Affairs of the Department of State. EVPS, at its discretion, may distribute the Board's decision as it deems appropriate; and

(4) The suspension, revocation, or denial of designation shall be effective as of the date of the Board's decision.

(j) *Effect of suspension, summary suspension, revocation, or denial of redesignation.* A sponsor against which an order of suspension, summary suspension, revocation, or denial of redesignation has been entered shall not thereafter issue any Forms IAP–66, advertise, recruit, or otherwise promote its program, and under no circumstances shall the sponsor facilitate the entry of an exchange visitor. Suspension, summary suspension, revocation, or denial of redesignation shall not invalidate any Forms IAP–66 issued prior to the effective date of the suspension, summary suspension, revocation, or denial of redesignation, nor shall the suspension, summary suspension, revocation, or denial of redesignation in any way diminish or restrict the sponsor's legal or financial responsibilities to existing program participants.

(k) *Miscellaneous*—(1) *Computation of time.* In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, or legal holidays, shall be excluded in the computation.

(2) *Service of notice on sponsor.* When used in these regulations the terms "written notice to the sponsor" shall mean service of written notice upon either the president, managing director, responsible officer, or alternate responsible officer of the sponsor.

Subpart E—Termination and Revocation of Programs

§ 514.60 Termination of Designation.

Designation shall be terminated when any of the circumstances set forth in this section occur.

(a) *Voluntary termination.* A sponsor may voluntarily terminate its designation by notifying the Agency of such intent. The sponsor's designation shall terminate upon such notification. Such sponsor may reapply for designation.

(b) *Inactivity.* A sponsor's designation shall automatically terminate for inactivity if the sponsor fails to comply with the minimum size or duration requirements, as specified in §§ 514.8 (a) and (b), in any twelve month period. Such sponsor may reapply for program designation.

(c) *Failure to file annual reports.* A sponsor's designation shall automatically terminate if the sponsor fails to file annual reports for two consecutive years. Such sponsor is eligible to reapply for program designation upon the filing of the past due annual reports.

(d) *Change in ownership or control.* An exchange visitor program designation is not assignable or transferable. A major change in ownership or control automatically terminates the designation. However, the successor sponsor may apply to the Agency for redesignation and may continue its exchange visitor activities while approval of the application for redesignation is pending before the Agency.

(1) With respect to a for-profit corporation, a major change in ownership shall be deemed to have occurred when thirty-three and one-third percent (33⅓ percent) or more of its stock is sold or otherwise transferred within a 12 month period;

(2) With respect to a not-for-profit corporation, a major change of control shall be deemed to have occurred when fifty percent or more of the board of trustees, or other like body vested with its management, is replaced within a 12 month period.

(e) *Loss of licensure or accreditation.* A sponsor's designation shall automatically terminate in the event that the sponsor fails to remain in compliance with local, state, federal, or professional requirements necessary to carry out the activity for which it is designated, including loss of accreditation or licensure.

(f) *Failure to apply for redesignation.* Prior to the conclusion of its current designation period, the sponsor is required to apply for redesignation pursuant to the terms and conditions of § 514.7. Failure to apply for redesignation will result in the automatic termination of the sponsor's designation. If so terminated, the former sponsor may apply for a new designation, but the program activity will be suspended during the pendency of the application.

§ 514.61 Revocation.

A designation may be terminated by revocation for cause as specified in § 514.60. A sponsor whose designation has been revoked may not apply for a new designation within a five-year period.

§ 514.62 Responsibilities of the sponsor upon termination or revocation.

Upon termination or revocation of its designation, the sponsor shall:

(a) Fulfill its responsibilities to all exchange visitors who are in the United States at the time of the termination or revocation;

(b) Notify exchange visitors who have not entered the United States that the program has been terminated unless a transfer to another designated program can be obtained; and

(c) Return all Forms IAP–66 in the sponsor's possession to the Agency within 30 days of program termination or revocation.

Appendix A to Part 514—Certification of Responsible Officers and Sponsors

In accordance with the requirement at § 514.5(c)(6), the text of the certifications shall read as follows:

1. Responsible Officers and Alternate Responsible Officers

I hereby certify that I am the responsible officer (or alternate responsible officer, specify) for exchange visitor program number _____, and that I am a United States citizen or permanent resident. I understand that the United States Information Agency may request supporting documentation as to my citizenship or permanent residence at any

time and that I must supply such documentation when and as requested. (Name of organization) agrees that my inability to substantiate the representation of citizenship or permanent residence made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all Forms IAP–66 transferred to it.

Signed in ink by

(Name)

(Title)

Witness:

This _____ day of _____, 19____.
Subscribed and sworn to before me this _____ day of _____, 19 .

Notary Public

2. Sponsors

I hereby certify that I am an officer of (Name of Organization) with the title of (specify); that I am authorized by the (Board of Directors, Trustees, etc.) to sign this certification and bind (Name of Organization); and that a true copy certified by (Board of Directors, Trustees, etc.) of such authorization is attached. I further certify that (Name of Organization) is a citizen of the United States as that term is defined at 22 CFR § 514.2. (Name of Organization) agrees that inability to substantiate the representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all Forms IAP–66 transferred to it.

Signed in ink by

(Name)

(Title)

Attestation/Witness:

This _____ day of _____, 19____.
Subscribed and sworn to before me this _____ day of _____, 19 .

Notary Public

Appendix B to Part 514—Exchange Visitor Program Services; Exchange-Visitor Program Application

FORM APPROVED OMB _____
Serial No. _____

1. Name and Address of Sponsoring Organization

2. Name and Title of Responsible Officer

Telephone Number

3. Name and Title of Alternate Responsible Officer

Telephone Number _____

4. Type of Application (check one)

New _____ Re-Apply _____
Re-Designation _____

Section I—Program Participant Data (For Definition & Length of Stay See 22 CFR _____)

5. Participation by Category (indicate total no. and approximate duration of stay in each category)

A. Student
B. Teacher
C. Professor
D. Researcher
E. Short-Term Scholar
F. Specialist
G. Trainee
  1. Specialty
  2. Nonspeciality
H. Int'l Visitor
I. Gov't Visitor
J. Physicians
k. Camp Cnslr
L. Sumr/Wk/Trvl

6. Method of Selection

7. Arrangements for Financial Support of Exchange Visitor while in the U.S.

Section II—Program Data

8. Outline of Proposed Activities (If training, See Reverse)

9. Arrangements for Supervision and Direction

10. Purpose of Objective

11. Role of other Organizations Associated with Program (if any)

Section III—Certification

12. Citizenship Certification of Organization and Responsible Officer (see reverse)

13. I certify that information given in this application is true to the best of my knowledge and belief and that I have completed appropriate information on reverse of this form.

Signature of Responsible Officer
Date _____

(See Reverse side for instructions)

Instructions for all Programs

If additional space is needed in supplying answers to any questions, please use continuation sheets on plain white paper

1–3. Names and address of organization and telephone numbers.

4. Select type of application.

5. Select appropriate categories (see 22 CFR prior to filling out this data.

6–7. Complete information on program sponsor.

8–11. Complete information on program.

IF TRAINING PROGRAM, identify appropriate fields: 01–Arts & Culture; 02–Information Media and Communications; 03–Education; 04–Business and Commercial; 05–Banking and Financial; 06–Aviation; 07–Science, Mechanical and Industrial; 08–Construction and Building Trades; 09–Agricultural; 10–Public Administration; 11–Training, Other.

Reapplication and Redesignation

If your organization is making reapplication as an exchange visitor program, or applying for redesignation under 22 CFR _____, please certify to the following:

I hereby certify that as an officer of the organization making application for an exchange program under 22 CFR _____ or 22 CFR _____ that the following documents which have been submitted to the United States Information Agency, Exchange Visitor Program Services, remain in effect and not altered in any way:

(1) Legal status as a corporation such as Articles of Incorporation and By Laws. Provide dates and state of both: _____.

(2) Accreditation. Provide date, type of accreditation, and State of accreditation: _____.

(3) Evidence of Licensure. Provide date, type of license, and state of licensure: _____.

(4) Authorization of governing body authorizing application. Please provide date of such authorization and authorizing body: _____.

(5) Activities in which the organization has been engaged have not changed since application dated: _____

(6) Citizenship. Provide the date of compliance with citizenship requirements: _____. If citizenship compliance is not current, please complete the following: Organization: I hereby certify that I am an officer of _____ with the title of _____; that I am authorized by the Board of Directors, Trustees, etc.) to sign this certification and bind _____; and that a true copy certified by the Board of Directors, Trustees, etc.) of such authorization is attached. I further certify that _____ is a citizen of the United States as that term is defined at 22 CFR 514.1.

Responsible Officer or Alternate Responsible Officer: I hereby certify that I am the responsible officer (or alternate responsible officer) for _____, and that I am a citizen of the United States (or a person lawfully admitted to the United States for permanent residence. _____ agrees that my inability to substantiate my citizenship or status as a permanent resident will result in the immediate withdrawal of its designation

and immediate return of or accounting for all IAP–66 forms transferred to it.

Certification as to (1)–(6) Requirements

I understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Signed in ink by (Name _____

Title _____

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public

USIA Use Only

Type of program: _____
Subtype if applicable: _____
No. Forms IAP–66: _____
Categories: _____

Please return form to: Exchange Visitor Program Services-GC/V, United States Information Agency, Washington, DC 20547.

Note: Public reporting burden for this collection of information (Paperwork Reduction Project: OMB No. 3116–0011) is estimated to average ____ minutes/hours per response, including time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to USIA Clearance Officer, M/ASP, U.S. Information Agency, 301 4th Street, S.W., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Appendix C to Part 514—Update of Information on Exchange-Visitor Program Sponsor

Please amend the United States Information Agency records for Exchange-Visitor Program Number _____ assigned to _____ as follows:

(Name of institution/organization)

1. Change the name of the Program Sponsor from the above to _____

_____

2. Change the address of the Program Sponsor

From: _____

_____

_____

_____

To: _____

_____

_____

(city) (state) (zip)

_____

(city) (state) (zip)

3. ( ) Change the telephone number from _____ to _____

( ) Change the fax number from _____ to _____

4. ( ) Change the name of the Responsible Officer of the above program from _____ to _____

5. a. Delete the following Alternate Responsible Officer:

_____

_____

_____

_____

_____

5. b. Add the following Alternate Responsible Officer:

_____

_____

_____

_____

_____

_____

(Citizenship is required for all Responsible and Alternate Responsible Officers—See Reverse)

6. ( ) Send _____ (Indicate number) IAP–66 forms. (Please allow four to six weeks for response and remember to submit the annual report)

7. ( ) Send _____ copies of this form.

8. ( ) Send _____ copies of *Codes for Educational and Cultural Exchange.*

9. ( ) Cancel the above named Exchange Visitor Program.

_____

(Signature of Responsible or Alternate Responsible Officer)

_____

(Date)

_____

(Title of Signing Officer)

Appendix D to Part 514—Annual Report; Exchange Visitor Program Services (GC/V), United States Information Agency, Washington, DC 20547, (202–401–7964)

Exchange Visitor Program No. _____

Reporting Period _____

Provide range of forms IAP–66 documents covered by this report

(_____ - _____). _____

(a) Statistical Report

(1) Activity by Category

	Number
Professor	
Research Scholar	
Short-term Scholar	
Trainee	
Student (College and University)	
Student (Practical Trainee)	
Teacher	
Student (Secondary)	
Specialists	
Physicians	
International Visitors	
Government Visitors	
Camp Counselors	
Total	

(2) Forms IAP–66 Reconciliation

(i) Number of Forms IAP–66 voided or otherwise not used by participant _____

(ii) Number of Forms IAP–66 issued for dependents _____

(iii) Number of Forms IAP–66 currently on hand _____

(b) Program Evaluation

On a separate sheet, please provide a brief narrative report on program activity, difficulties encountered and their resolution, program transfers, anticipated growth and the proposed new activity, cross-cultural activities, as well as the reciprocal component of the program.

I, The Responsible Officer of the program indicated above, certify that we have complied with the insurance requirement (22 CFR 514.14). I also certify that the information contained in this report is complete and correct to the best of my knowledge and belief.

_____

Responsible Officer (signed)

Date _____

_____

Name and address of sponsoring institution

Appendix E to Part 514—Unskilled Occupations

The current descriptions of Schedule B occupations appear following the list at 20 CFR 656.11 and are incorporated herein by reference. Schedule B currently lists the following occupations.

(1) Assemblers
(2) Attendants, Parking Lot
(3) Attendants (Service Workers such as Personal Services Attendants, Amusement and Recreation Service Attendants)
(4) Automobile Service Station Attendants
(5) Bartenders
(6) Bookkeepers
(7) Caretakers
(8) Cashiers
(9) Charworkers and Cleaners
(10) Chauffeurs and Taxicab Drivers
(11) Cleaners, Hotel and Motel
(12) Clerks, General
(13) Clerks, Hotel

(14) Clerks and Checkers, Grocery Stores
(15) Clerk Typist
(16) Cooks, Short Order
(17) Counter and Fountain Workers
(18) Dining Room Attendants
(19) Electric Truck Operators
(20) Elevator Operators
(21) Floorworkers
(22) Groundskeepers
(23) Guards
(24) Helpers, any industry
(25) Hotel Cleaners
(26) Household Domestic Service Workers
(27) Housekeepers
(28) Janitors
(29) Key Punch Operators
(30) Kitchen Workers
(31) Laborers, Common
(32) Laborers, Farm
(33) Laborers, Mine
(34) Loopers and Toppers
(35) Material Handlers
(36) Nurses' Aides and Orderlies
(37) Packers, Markers, Bottlers and Related
(38) Porters
(39) Receptionists
(40) Sailors and Deck Hands
(41) Sales Clerks, General
(42) Sewing Machine Operators and Handstitchers
(43) Stock Room and Warehouse Workers
(44) Streetcar and Bus Conductors
(45) Telephone Operators
(46) Truck Drivers and Tractor Drivers
(47) Typist, Lesser Skilled
(48) Ushers, Recreation and Amusement
(49) Yard Workers

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federal register

Friday
October 9, 1992

Part IV

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1305
Head Start Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1305

RIN 0970–AB02

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is amending 45 CFR part 1305 which governs eligibility requirements for enrollment of children in Head Start.

Currently, most Head Start grantees have more children living in their service areas than they are able to serve. Each grantee must make decisions regarding recruitment, selection and enrollment of children.

The purpose of this rule is to specify procedures that will assure that these decisions are carefully planned and made at the local level; give all interested families an opportunity to be considered for enrollment; and help maintain full enrollment, allowing as many eligible children as possible to be served.

EFFECTIVE DATE: This rule is effective November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Acting Associate Commissioner, Head Start Bureau. (202)205–8569.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start, as authorized under the Head Start Act (the Act), section 635 of Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981, (42 U.S.C. 9831 *et seq.*) is a national program providing comprehensive child development services. These services are provided primarily to low-income children, age three to five, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children. Parents receive training and education that fosters their understanding of and involvement in the development of their children. They also become involved in the development, conduct, and direction of local programs.

In fiscal year 1991, Head Start served 582,325 children through a network of approximately 1,340 grantees and 620 delegate agencies. Delegate agencies have approved written agreements with grantees to operate Head Start programs.

While Head Start is intended to serve primarily low-income children and their families, Head Start's regulations permit up to 10 percent of the children in local programs to be from families who are not low-income. The Act requires that a minimum of 10 percent of enrollment opportunities in each State be made available to children with disabilities. Such children are expected to participate in the full range of Head Start activities with their non-disabled peers, and to receive needed special education and related services.

II. Purpose of the Final Rule

The purpose of this rule is to define a process to be used by local Head Start programs for the recruitment, enrollment and selection of Head Start children that is organized, focused, and more uniform among grantees and which provides opportunities for the greatest number of children to be considered for Head Start services.

Currently, Head Start grantees are funded to serve a geographic area. This area may be a city, county, multicity, multicounty, or other-area that possesses a commonality of interest needed to operate a Head Start program. In the past, we have assumed that a grantee is responsible for providing Head Start services to its entire service area, even though its operations may have long been concentrated in certain parts of the area because resources were limited. We are concerned that, as funding for Head Start programs increases, grantees may tend to expand services in the areas where they are already operating, rather than move into unserved parts of their service area. We are, therefore, requiring: (1) That grantees clearly identify a specific service area which is agreed to, in writing, by the responsible HHS official, and (2) that grantees consider the needs of and recruit children from the entire geographic area they have agreed to serve, to the extent their financial resources allow. This, combined with the establishment of new grantees in currently unserved communities or service areas, will enable the maximum number of children to have an opportunity to enroll in Head Start.

In order to help children carry the gains they have made in Head Start into school, we are also requiring that once a child is enrolled in Head Start as either a three or a four year old, he or she is to remain in the program until kindergarten or first grade is available to the child in the child's community, except when there are compelling reasons for the child not to remain in Head Start. This would, in most instances, prevent a child from being enrolled as a three year old but not served at age four, as is possible under current regulations. This rule would also draw attention to the importance of grantees carefully weighing the need for more than one year of Head Start services when making decisions to enroll younger children, since serving a child for more than one year means that another child will not have the opportunity for a Head Start experience.

Under current regulations, when there are more income-eligible children than can be served, programs must select those families with the lowest income. When programs adhere to this single criterion, it limits their ability to respond to a variety of special circumstances in their communities, such as the needs of families involved in substance abuse or of single parents who are working.

In addition, the current regulation may cause programs to enroll three year old children and serve them for two years, not because they believe they need an additional year of service, but simply because their family income is slightly lower than another child's.

We are expanding the criteria for selecting among income-eligible children by allowing each program to define other criteria, in addition to lowest income. Such criteria might include the age of children or the special needs that a family may have. We believe this will result in programs establishing criteria for selection that are more closely based on the needs in their communities and the capacity of their programs. However, as programs determine their own selection criteria based on local needs and circumstances, we want to urge programs to consider serving the maximum number of children during the year before they enter public school. Programs are expected to serve the children with the greatest need for and who can benefit the most from Head Start. When a program's resources are limited, such choices should involve considering whether the needs of three year olds justify providing them with two years of service at the expense of eligible four year olds who would thereby not be served at all.

In addition to these major elements, this rule requires that Head Start grantees:

- Make decisions about the design of their program based on a periodic community needs assessment that includes the collection and analysis of data about demographics, available resources and the needs of families and children.
- Implement a recruitment process that is designed to inform all income-eligible families within their recruitment area of the availability of services so families may have a fair opportunity to apply and be considered for enrollment when the number of children who can be served is limited.
- Maintain funded enrollment so that resources can be used efficiently.
- Implement appropriate family support procedures for those children with patterns of unexcused absences so these children have a greater opportunity to obtain the benefits of regular attendance.

III. Rulemaking History

This Rule was published in the Federal Register (55 FR 29970) on July 23, 1990 as a Notice of Proposed Rulemaking (NPRM). The NPRM proposed amendments to part 1305 based on changing conditions that have affected the Head Start program over the past several years. The most significant factors are the following:

- Some grantees are not maintaining funded enrollment levels throughout the program year. In some cases, grantees achieve full enrollment in the beginning of the year but are not able to fill vacancies that occur during the year. In other cases, grantees are not able to achieve full enrollment at any time during the program year.
- Some grantees are serving children for more than one year simply because they need to fill vacancies. In some instances, this occurs because the program's recruitment area is too small and children must be served for two years simply to meet agreed upon enrollment levels, while children receive no services in communities outside the recruitment area.
- Many grantees are experiencing high turnover rates among program enrollees. The national average for children who drop out of the program after they have been enrolled is 20 percent of an agency's funded enrollment. There is a need to make sure that all grantees have systems in place for filling vacancies as they occur.
- Many grantees are finding that the number and location of eligible children in their service area have changed considerably over time. In some cases, there are many more children eligible to be served than in the past. Other grantees have experienced significant population shifts from one part of their service area to another. There is a need to make sure that enrollment opportunities are available where the need for Head Start services is greatest.
- The number of State and locally funded preschool programs continues to increase. In some cases, this means a significant decrease in the number of children who are available to be served by Head Start. Grantees must take into account other preschool services for low-income children in their community when determining the need for Head Start services in specific areas.

This final rule reorganizes the content of part 1305 and sets forth additional actions to be taken by Head Start grantees and delegate agencies to recruit, select and enroll those children and families who are most in need of or who will benefit the most from Head Start services.

The final rule contains revisions to the NPRM which incorporate, as appropriate, the comments received from the general public, local Head Start staff and parents, national organizations and other interested agencies.

IV. Section by Section Discussion of the NPRM

We received 85 letters with over 250 separate comments on various sections of the proposed revisions to part 1305. Many of the comments were positive and supportive of the clarity and comprehensive nature of the revisions. A number of comments also expressed specific concerns regarding particular sections of the proposed regulation. We have reviewed all of the comments received and, after full consideration, have modified some sections of the NPRM. Discussed below are the revised sections and the rationale for making a change from the NPRM.

Section 1305.2 Definitions

The definition of children with disabilities in paragraph (a) was changed since the publication of the NPRM. It now reflects the amended definition in the Individuals with Disabilities Education Act (IDEA) as required by section 640(d) of the Head Start Act.

In response to comments received, the phrase "within the past 12 months" was added to the definition of migrant families in paragraph (1) to make it clear that children served by Migrant Head Start programs are to be from mobile migrant families that have moved within the past 12 months.

Section 1305.3 Determining Community Needs

With respect to paragraph (a), we have made a small clarifying change, requiring grantee service areas to be approved by the responsible HHS official.

Several respondents from programs serving migrant farmworker families expressed concern about their ability to identify their service area at the time they submit a refunding application unless the service area could be broadly defined. For example, if crops fail or if the weather is bad, migrants may not return to an area where they have been in the past. We believe that the language in the NPRM is adequate to allow for negotiation with the responsible HHS official to approve a geographic area that would be broad enough to meet the needs of Migrant Head Start programs. However, the final rule has been changed to require that the responsible HHS officials approve each grantee's service area in writing.

A number of comments were received concerning the requirement in paragraph (b) that each grantee must conduct a community needs assessment once every three years and that it contain specific data regarding the local community. Some of the respondents supported the community needs assessment information requirements and indicated that the data are reasonable and available. Some indicated that the data are typical of those currently being used in their agencies. Other respondents disagreed. Some indicated that Census data are the only reliable data available in their communities and that these data are only useful for a limited number of years. Some indicated that the racial and ethnic data are not reliable because of undercounting in some communities. Several indicated that data on the numbers of low-income children with disabilities are not available, since disabling conditions are not identified by income categories.

In response to these concerns, we modified some of the data requirements. We ordered the data requirements into a more logical sequence of information and we clarified some of the wording. We also acknowledge that some of the data, particularly Census data, may not remain accurate over the length of time that they are needed. We expect that grantees will estimate some of the information, particularly the numbers of eligible children, and may have to use proxy data or make adjustments as decennial Census data become less current. We have inserted the word

"estimated" regarding the number, geographic location and racial and ethnic composition of children in the grantee's service area.

Comments received on paragraph (c) of this section of § 1305.3 were favorable. A technical change was made for clarification.

Paragraph (d) of § 1305.3 proposed an annual update of the community needs assessment to assure that changes in the community are reflected in the Head Start program decision-making process. Several respondents suggested that we eliminate the updates in years two and three since communities do not change that much. We believe that there may be instances where there are significant changes in community circumstances over a one or two year period, and, therefore, we are keeping the language as it was proposed. We do not expect grantees to conduct an extensive review of community needs assessment information in the second and third years, but rather to limit analysis and information to those areas where there have been significant changes that require a program to adjust plans for Head Start services.

There were no comments regarding paragraphs (e) and (f) of § 1305.3 and no changes have been made.

Section 1305.4 Age of Children and Family Income Eligibility

Paragraph (a) of § 1305.4 proposed a change in the age eligibility requirement by stating that a child would be eligible for Head Start services when the child is at least three years of age by the date used in the community to determine eligibility for public school, unless the approved grant award specifies otherwise. All comments on this paragraph were positive and no changes have been made.

Several respondents were concerned that the discussion regarding giving four-year-old children priority over other age groups implied that programs were limited to serving four-year-old children. The purpose of the discussion in the preamble to the NPRM was to emphasize the principle that programs must make decisions regarding the needs of each child when selecting those to be served by Head Start. Some children may have needs that would warrant more than one year of Head Start services. Others may not have the same level of need. All children, once enrolled in Head Start, are to remain in the program until they are eligible for public school, unless there are compelling reasons for the child not to remain in Head Start.

Paragraph (b) reiterates the current requirement contained in § 1305.4 that at least 90 percent of the children who are enrolled in the program must be from low-income families. Several respondents, many of them parents of children enrolled in the same Head Start Program, requested that the income-eligibility guidelines be raised to allow programs the option of serving children from families that are barely over the income-eligibility guidelines. Others suggested that Head Start income eligibility should be the same as that of the USDA Child Care Feeding Program for free and reduced meals. We are not changing the requirement that at least 90 percent of families must be at or below the income-eligibility guidelines, since we are currently serving only a portion of the eligible children from families that are at or below the guidelines. In addition, changing this requirement would involve a change in the Head Start legislation regarding how the poverty line is determined.

There were no comments on paragraphs (c), (d), and (e) of § 1305.4 and no changes have been made.

Section 1305.5 Recruitment of Children

This section describes actions to be taken by Head Start grantees and delegate agencies when recruiting Head Start children.

Paragraph (a) requires that each Head Start Program employ a recruitment process that assures full enrollment in the Head Start Program. Several respondents wrote in support of this requirement, indicating that it reflects current practice in their Head Start Programs. Others, while supporting an intensive recruitment effort, were concerned that the NPRM implied door-to-door recruitment that is not always possible because of limited staff and safety factors. This paragraph is a restatement of the existing policy contained in the Enrollment and Attendance Policies in Head Start, S–30–317–1–40, A. 1.a., 1.b and 1.c. The intent of this requirement is to reach those children most in need of or who could benefit most from Head Start services in order to provide them with an opportunity to apply for admission to the program. In response to the concern stated above, we changed the word "must" to "may" in the last sentence of paragraph (a) concerning activities in the recruitment process.

Paragraph (b) of the NPRM added a new requirement that, during the recruitment process that occurs prior to the beginning of the enrollment year, a Head Start program must solicit applications from as many Head Start eligible families within the recruitment area as possible. If necessary, the program must assist families in filling out the application form in order to assure that all application requirements for the program are completed before the selection process begins. There was one comment supporting this section and no change has been made.

Paragraph (c) of the NPRM added a new requirement that, for each program, except migrant programs, the number of applications obtained during the recruitment process that occurs prior to the beginning of the enrollment year must be at least 20 percent greater than the enrollment opportunities that are anticipated to be available over the course of the next enrollment year. There were 21 comments on this section. Some respondents supported having a specific, measurable requirement regarding the number of applications each program must obtain during the major recruitment effort. Most, however, disagreed, indicating that the amount was not realistic, especially for large programs. Some indicated that it would not eliminate the need for ongoing recruitment to fill vacancies within 30 days of their occurrence, since families on the waiting list are often as transient as families enrolled in the program. Others indicated that, as programs begin to serve a higher percentage of the eligible population in certain communities, it will become more difficult to adhere to this requirement. We agree that current and future increases in the number of children served by each grantee may make it increasingly difficult for grantees to meet the requirement for a fixed percentage of applications. We are modifying paragraph (c) of this section by dropping a fixed percentage of applications that programs are required to obtain during recruitment and are requiring programs simply to obtain a number of applications that is greater than the enrollment opportunities that are available over the course of the year. This will allow each Head Start program to establish an individualized target.

We proposed a new requirement to address the drop-out pattern of migrant programs in paragraph (d) of the NPRM that, prior to beginning Head Start services in a new community, migrant programs must obtain a number of applications that is at least 20 percent greater than the enrollment opportunities that are available while they are providing services in that community. Respondents from programs serving children of migrant farmworkers did not believe that this requirement was realistic for their programs, since it is often difficult to anticipate the number of families that will require

Head Start services. Most families are enrolled as they arrive in a community and need Head Start services. Enrollment is often gradual in the first few weeks of services. We agree that this requirement would be difficult to implement for programs serving migrant children and we are eliminating this paragraph from the final regulation.

Paragraph (e) in the NPRM contained an exception to the requirements contained in paragraphs (c) and (d) for programs that do not obtain sufficient applications from Head Start eligible families to meet the requirement. Since we are eliminating the requirements of obtaining twenty percent more applications than the enrollment opportunities that are available that were contained in paragraphs (c) and (d), it is not necessary to retain paragraph (e) and it has been eliminated from the final regulation.

Section 1305.6 Selection Process

This section contains requirements for establishing and implementing a process for selecting children and families to be enrolled in the program. Using selection criteria that are based on the information obtained from the community needs assessment, each program must go through a process that selects those children and families that are most in need of and who could benefit most from Head Start services. This is intended to assure that each program considers all of the children and families applying for admission to the program in order to identify the children and families that are most in need of Head Start services, as defined by each program for the community it is serving.

Paragraph (a) incorporates the requirement found in the Enrollment and Attendance Policies, S–30–317–1–40, A.1.e., regarding the selection of children and families. It requires that each grantee and delegate agency must establish a written process for selecting children and families that is based on the program's specific selection criteria. A single comment on this paragraph came from a director of a program serving migrant farmworker families. The respondent indicated that it is difficult for migrant programs to have an extensive selection process since families are enrolled as they arrive in a community. While it may be difficult for programs serving migrant farmworker families to compare all children and families that could be served when selecting which families have the greatest need for Head Start services, we believe that it is important for migrant programs to have pre-established criteria for selecting each family as they apply for services. Families and children that meet the criteria would then be selected for services. We, therefore, are not changing this paragraph.

Paragraph (b) requires that, in selecting children and families to be served, the Head Start program shall consider income, age, and individual child and family needs. This would change the current requirement in § 1305.4 that children from the lowest income families shall be given preference. All comments related to this paragraph were positive, supporting the opportunity to consider child and family needs in addition to income when selecting children to be served by the Head Start program. We have, however, added new language previously contained in the NPRM in paragraph (d) of this section, that proposed to require programs to give priority to serving children for whom kindergarten or first grade is not available.

Based on comments received on paragraph (d) of the NPRM, we are eliminating the requirement to give priority and, instead, are making the availability of kindergarten or first grade to the child one of several criteria to consider when selecting children for enrollment in Head Start. If kindergarten or first grade is available to the child in the child's community, we encourage programs to give that child a lower priority for service. We recognize that for reasons that include those discussed in comments on paragraph (d), there will be situations when a child should remain in Head Start when kindergarten or first grade is available. For example, we recognize that, in some instances, children who are age-eligible for kindergarten do not have the option of going to kindergarten because of local circumstances that include readiness testing, and lack of transportation. Head Start programs, therefore, may provide services to the child who does not pass a kindergarten readiness test and would otherwise remain at home for the entire year. On the other hand, if a child can attend kindergarten or first grade, we believe the child should receive a lower priority for enrollment in Head Start than a child who cannot be enrolled in school. To do otherwise may deny another eligible child the opportunity to participate in Head Start.

Paragraph (c) of the NPRM added a new requirement that each grantee and delegate agency must make available at least 10 percent of the enrollment opportunities in its program to children with disabilities who meet the definition of children with disabilities in § 1305.2(a). Such children must also meet the Head Start eligibility requirements contained in § 1305.4. The Head Start Act requires that 10 percent of enrollment opportunities within each State be made available to children with disabilities. Paragraph (c) proposes to require each Head Start program to meet the 10 percent figure in order to assure that all programs are serving children with disabilities in all areas in the State.

There were several comments on this paragraph. Some supported requiring grantees and delegate agencies to provide at least 10 percent of their enrollment opportunities to children with disabilities, since that is already the practice with most programs. Others were concerned about the feasibility of achieving this requirement at the grantee level in light of the growth of early intervention programs for preschool children that are operated by public school systems. We agree that there is an increase in the number of programs serving preschool children with disabilities and that it may be more difficult to recruit children for Head Start services. In recent years, 13 percent of Head Start's enrollment has consisted of children with disabilities. Most programs have successfully achieved enrollment levels of at least 10 percent. We are retaining this requirement as it was written in the NPRM because we believe that there are many children with disabilities who would be best served in a Head Start program. In some instances, children are served by Head Start for some portion of each week and by another local agency for the remainder of the week. We continue to encourage this arrangement.

Paragraph (c) also states that an exception to the requirement can be granted by the responsible HHS official if a program made an attempt to comply but could not because income-eligible children with disabilities are being served by other agencies or when Head Start is not the most appropriate placement for them. There were several comments related to obtaining an exception. Most respondents were concerned about the growing competition for serving children with disabilities in early intervention programs. This could mean that many programs would be requesting an exception on a regular basis. In response to this, we are retaining the possibility of an exception to the requirement, but we are broadening the reason for an exception by eliminating the words "income eligible." This requires programs to make enrollment opportunities available to children with

REDESIGNATION TABLE—Continued

Section of the final rule	Superseded rule or policy or identification of new requirement
1305.9	1305.8 [Amended]
1305.10	Enrollment and Attendance Policies in Head Start, S-30-317-1-20, 1. and 2. New Requirement

IV. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that these rules are not major rules within the Executive Order because they will not have an annual effect on the economy of $100 million or more; nor result in a major increase in costs or prices for consumers, any industries, and governmental agencies, or any geographic region; and, they will not have an adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

This final rule specifies procedures that will assure that decisions regarding Head Start recruitment, selection and enrollment of children are carefully planned and made at the local level; give all interested families an opportunity to be considered for enrollment; and help maintain full enrollment, allowing as many eligible children as possible to be served. Such procedures are necessary to address changing conditions that have affected the Head Start program over the past several years.

We expect any additional costs attributable to these provisions to be significantly less than $100 million. The main reason for this is that many grantees already meet most of the new requirements. For example, with respect to the community needs assessment requirement, Head Start grantees have always been required to complete a community needs assessment as part of the application for refunding. In the past, the grant application instructions have not included specific data requirements or explicit requirements for analyzing the data to determine key program decisions. The added specificity of this rule will assist grantees by focusing their community needs assessment efforts on specific data. Grantees will not be required to conduct demographic surveys or create new data bases, thereby minimizing costs.

The Department has always monitored grantee recruitment practices along with other program requirements. In addition, the Department has reviewed community needs assessment data during the grant review process. These efforts will not change as a result of this rule and the costs should remain stable for Federal government activities and for many of the grantees in complying with this rule as a whole, the intent of which is to assure that minimum and consistent standards in this important area are achieved nationally.

When grantees design their program and recruitment systems, they are currently required to consider community needs. Most grantees comply with this requirement. We do not have data that allows us to estimate the number that will need major changes in their recruitment practices. However, since carrying out recruitment and enrollment activities is an existing requirement for grantees, we do not believe the new requirements will result in significant added costs in this area nationally. Some of the specific rules some grantees follow in recruiting and enrolling children may change but not their overall level of effort.

Costs associated with implementing this rule will be mainly administrative and minimal given the fact that the changes required will not affect the entire grantee population and the fact that the changes required are "best practices" that many grantees have been successfully using in their programs. Thus, the Department concluded that these regulations are not major rules within the meaning of the Executive Order because they do not meet the threshold criteria.

We believe the benefits derived from this rule will far outweigh any costs incurred. The benefits include a more focused and uniform process for Head Start recruitment, enrollment and selection activities, thereby, resulting in the provision of services to as many eligible children as possible who are most in need of Head Start services.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" we prepare an analysis describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities. While this regulation would affect small entities, it is not substantial. In many instances small entities already meet most of the requirements, since many are restatements of current policy and since they are considered best practice. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 (the Act), Public Law 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements in a proposed or final rule. The final rule contains information collection requirements in section 1305.3 concerning community needs assessment. We estimate that this requirement will take each grantee 40 hours to complete annually. As one-third of the grantees (447) will be doing the needs assessment each year, the total number of hours annually will be 17,800. The requirement for the update reports in years two and three have minimal burden hours because we anticipate only a very small number of grantees will have any significant changes in their communities to report. In accordance with section 3504(h) of the Act, the Department has submitted § 1305.3 of the final rule to OMB for its review and approval.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (room 308), Washington, DC 20503, Attention Desk Officer for the Administration for Children and Families.

List of Subjects in 45 CFR Part 1305

Head Start Enrollment, Education of Disadvantaged, Grant Programs/Social Programs, Disabilities, Preschool Education.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: May 21, 1992.
Anne B. Bamhart,
Assistant Secretary for Children and Families.

Approved: June 29, 1992.
Louis W. Sullivan,
Secretary.

For the reasons set forth in the preamble, title 45, chapter XIII, subchapter B, part 1305 of the Code of Federal Regulations is amended as follows:

Part 1305 is revised to read as follows:

PART 1305—ELIGIBILITY, RECRUITMENT, SELECTION, ENROLLMENT AND ATTENDANCE IN HEAD START

Sec.
1305.1 Purpose and scope.
1305.2 Definitions.
1305.3 Determining community needs.
1305.4 Age of children and family income eligibility.
1305.5 Recruitment of children.
1305.6 Selection process.
1305.7 Enrollment and re-enrollment.
1305.8 Attendance.
1305.9 Policy on fees.
1305.10 Compliance.

Authority: 42 U.S.C. 9831 et seq.

§ 1305.1 Purpose and scope.

This part prescribes requirements for determining community needs and recruitment areas. It contains requirements and procedures for the eligibility determination, recruitment, selection, enrollment and attendance of children in Head Start programs and explains the policy concerning the charging of fees by Head Start programs.

§ 1305.2 Definitions.

(a) *Children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities, and who, by reason thereof, need special education and related services. The term children with disabilities for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and measures by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, and who, by reason thereof, need special education and related services.

(b) *Enrollment* means the official acceptance of a family by a Head Start program and the completion of all procedures necessary for a child and family to begin receiving services.

(c) *Enrollment opportunities* mean vacancies that exist at the beginning of the enrollment year, or during the year because of children who leave the program, that must be filled for a program to achieve and maintain its funded enrollment.

(d) *Enrollment year* means the period of time, not to exceed twelve months, during which a Head Start program provides center or home-based services to a group of children and their families.

(e) *Family* means all persons living in the same household who are:

(1) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in the program, and (2) related to the parent(s) or guardian(s) by blood, marriage, or adoption.

(f) *Funded enrollment* means the number of children which the Head Start grantee is to serve, as indicated on the grant award.

(g) *Head Start eligible* means a child that meets the requirements for age and family income as established in this regulation or, if applicable, as established by grantees that meet the requirements of section 645(a) (2) of the Head Start Act. Up to ten percent of the children enrolled may be from families that exceed the low-income guidelines.

(h) *Head Start program* means a Head Start grantee or its delegate agency(ies).

(i) *Income* means gross cash income and includes earned income, military income (including pay and allowances), veterans benefits, social security benefits, unemployment compensation, and public assistance benefits.

(j) *Income guidelines* means the official poverty line specified in section 652 of the Head Start Act.

(k) *Low-income family* means a family whose total annual income before taxes is equal to, or less than, the income guidelines. For the purpose of eligibility, a child from a family that is receiving public assistance or a child in foster care is eligible even if the family income exceeds the income guidelines.

(l) *Migrant family* means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who change their residence by moving from one geographic location to another, either intrastate or interstate, within the past twelve months, for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity.

(m) *Recruitment* means the systematic ways in which a Head Start program identifies families whose children are eligible for Head Start services, informs them of the services available, and encourages them to apply for enrollment in the program.

(n) *Recruitment area* means that geographic locality within which a Head Start program seeks to enroll Head Start children and families. The recruitment area can be the same as the service area or it can be a smaller area or areas within the service area.

(o) *Responsible HHS official* means the official of the U.S. Department of Health and Human Services having authority to make Head Start grant awards, or his or her designee.

(p) *Selection* means the systematic process used to review all applications for Head Start services and to identify those children and families that are to be enrolled in the program.

(q) *Service area* means the geographic area identified in an approved grant application within which a grantee may provide Head Start services.

(r) *Vacancy* means an unfilled enrollment opportunity for a child and family in the Head Start program.

§ 1305.3 Determining community needs.

(a) Each grantee must identify its proposed service area in its Head Start grant application and define it by county or sub-county area, such as a municipality, town or census tract or a federally recognized Indian reservation. A grantee's service area must be approved, in writing, by the responsible HHS official in order to assure that the service area is of reasonable size and does not overlap with that of other Head Start grantees.

(b) Each Head Start grantee must conduct a community needs assessment within its service area once every three years. The community needs assessment must include the collection and analysis of the following information about the grantee's Head Start service area:

(1) The demographic make-up of Head Start eligible children and families, including their estimated number, geographic location, and racial and ethnic composition;

(2) Other child development and child care programs that are serving Head Start eligible children, including publicly funded State and local preschool programs, and the approximate number of Head Start eligible children served by each;

(3) The estimated number of children with disabilities four years old or

younger, including types of disabilities and relevant services and resources provided to these children by community agencies;

(4) Data regarding the education, health, nutrition and social service needs of Head Start eligible children and their families;

(5) The education, health, nutrition and social service needs of Head Start eligible children and their families as defined by families of Head Start eligible children and by institutions in the community that serve young children;

(6) Resources in the community that could be used to address the needs of Head Start eligible children and their families, including assessments of their availability and accessibility.

(c) The Head Start grantee must use information from the community needs assessment to:

(1) Help determine the grantee's philosophy, and its long-range and short-range program objectives;

(2) Determine the type of component services that are most needed and the program option or options that will be implemented;

(3) Determine the recruitment area that will be served by the grantee, if limitations in the amount of resources make it impossible to serve the entire service area.

(4) If there are delegate agencies, determine the recruitment area that will be served by the grantee and the recruitment area that will be served by each delegate agency.

(5) Determine appropriate locations for centers and the areas to be served by home-based programs; and

(6) Set criteria that define the types of children and families who will be given priority for recruitment and selection.

(d) In each of the two years following completion of the community needs assessment, the grantee must conduct a review to determine whether there have been significant changes in the information described in paragraph (b) of this section. If so, the community needs assessment must be updated and the decisions described in paragraph (c) of this section must be reconsidered.

(e) The recruitment area must include the entire service area, unless the resources available to the Head Start grantee are inadequate to serve the entire service area.

(f) In determining the recruitment area when it does not include the entire service area, the grantee must:

(1) Select an area or areas that are among those having the greatest need for Head Start services as determined by the community needs assessment; and

(2) Include as many Head Start eligible children as possible within the recruitment area, so that:

(i) The greatest number of Head Start eligible children can be recruited and have an opportunity to be considered for selection and enrollment in the Head Start program, and

(ii), the Head Start program can enroll the children and families with the greatest need for its services.

§ 1305.4 Age of children and family income eligibility.

(a) To be eligible for Head Start services, a child must be at least three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located, except in cases where the Head Start program's approved grant provides specific authority to serve younger children. Examples of such exceptions are programs serving children of migrant families and Parent and Child Center programs.

(b) At least 90 percent of the children who are enrolled in each Head Start program must be from low-income families. Up to ten percent of the children who are enrolled may be children from families that exceed the low-income guidelines but who meet criteria the program has established for selecting such children and who would benefit from Head Start services.

(c) The family income must be verified by the Head Start program before determining that a child is eligible to participate in the program.

(d) Verification must include examination of any of the following: Individual Income Tax Form 1040, W–2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status as recipients of public assistance.

(e) A signed statement by an employee of the Head Start program, identifying which of these documents was examined and stating that the child is eligible to participate in the program, must be maintained to indicate that income verification has been made.

§ 1305.5 Recruitment of children.

(a) In order to reach those most in need of Head Start services, each Head Start grantee and delegate agency must develop and implement a recruitment process that is designed to actively inform all families with Head Start eligible children within the recruitment area of the availability of services and encourage them to apply for admission to the program. This process may include canvassing the local community, use of news releases and advertising, and use of family referrals and referrals from other public and private agencies.

(b) During the recruitment process that occurs prior to the beginning of the enrollment year, a Head Start program must solicit applications from as many Head Start eligible families within the recruitment area as possible. If necessary, the program must assist families in filling out the application form in order to assure that all information needed for selection is completed.

(c) Each program, except migrant programs, must obtain a number of applications during the recruitment process that occurs prior to the beginning of the enrollment year that is greater than the enrollment opportunities that are anticipated to be available over the course of the next enrollment year in order to select those with the greatest need for Head Start services.

§ 1305.6 Selection process.

(a) Each Head Start program must have a formal process for establishing selection criteria and for selecting children and families that considers all eligible applicants for Head Start services. The selection criteria must be based on those contained in paragraphs (b) and (c) of this section.

(b) In selecting the children and families to be served, the Head Start program must consider the income of eligible families, the age of the child, the availability of kindergarten or first grade to the child, and the extent to which a child or family meets the criteria that each program is required to establish in § 1305.3(c)(6).

(c) At least 10 percent of the total number of enrollment opportunities in each grantee and each delegate agency during an enrollment year must be made available to children with disabilities who meet the definition for children with disabilities in § 1305.2(a). An exception to this requirement will be granted only if the responsible HHS official determines, based on such supporting evidence as he or she may require, that the grantee made a reasonable effort to comply with this requirement but was unable to do so because there was an insufficient number of children with disabilities in the recruitment area who wished to attend the program and for whom the program was an appropriate placement based on their Individual Education Plans (IEP), with services provided directly by Head Start or in conjunction with other providers.

(d) Each Head Start program must develop at the beginning of each

enrollment year and maintain during the year a waiting list that ranks children according to the program's selection criteria to assure that eligible children enter the program as vacancies occur.

§ 1305.7 Enrollment and re-enrollment.

(a) Each child enrolled in a Head Start program, except those enrolled in a migrant program, must be allowed to remain in Head Start until kindergarten or first grade is available for the child in the child's community, except that the Head Start program may choose not to enroll a child when there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.

(b) A Head Start grantee must maintain its funded enrollment level. When a program determines that a vacancy exists, no more than 30 calendar days may elapse before the vacancy is filled. A program may elect not to fill a vacancy when 60 calendar days or less remain in the program's enrollment year.

(c) If a child has been found income eligible and is participating in a Head Start program, he or she remains income eligible through that enrollment year and the immediately succeeding enrollment year.

§ 1305.8 Attendance.

(a) When the monthly average daily attendance rate in a center-based program falls below 85 percent, a Head Start program must analyze the causes of absenteeism. The analysis must include a study of the pattern of absences for each child, including the reasons for absences as well as the number of absences that occur on consecutive days.

(b) If the absences are a result of illness or if they are well documented absences for other reasons, no special action is required. If, however, the absences result from other factors, including temporary family problems that affect a child's regular attendance, the program must initiate appropriate family support procedures for all children with four or more consecutive unexcused absences. These procedures must include home visits or other direct contact with the child's parents. Contacts with the family must emphasize the benefits of regular attendance, while at the same time remaining sensitive to any special family circumstances influencing attendance patterns. All contacts with the child's family as well as special family support service activities provided by program staff must be documented.

(c) In circumstances where chronic absenteeism persists and it does not seem feasible to include the child in either the same or a different program option, the child's slot must be considered an enrollment vacancy.

§ 1305.9 Policy on fees.

A Head Start program must not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in the program. If the family of a child determined to be eligible for participation by a Head Start program volunteers to pay part or all of the costs of the child's participation, the Head Start program may accept the voluntary payments and record the payments as program income.

Under no circumstances shall a Head Start program solicit, encourage, or in any other way condition a child's enrollment or participation in the program upon the payment of a fee.

§ 1305.10 Compliance.

A grantee's failure to comply with the requirements of this Part may result in a denial of refunding or termination in accordance with 45 CFR part 1303.

[FR Doc. 92-24578 Filed 10-8-92; 8:45 am]

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VOL
57
SS
1
9
7
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9
992
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federal register

Friday
October 9, 1992

Part V

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report seven deferrals of budget authority, totaling $930.9 million.

These deferrals affect International Security Assistance programs as well as programs of the Agency for International Development and the Departments of Agriculture, Defense, Health and Human Services, and State. The details of these deferrals are contained in the attached report.

George Bush.

The White House, October 1, 1992.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D93–1	Economic support fund	492,736
	Agency for International Development	
D93–2	Demobilization and transition fund	13,750
	Department of Agriculture:	
	Forest Service:	
D93–3	Cooperative work	364,582
D93–4	Expenses, brush disposal	40,241
	Department of Defense, Civil:	
D93–5	Wildlife conservation	2,175
	Department of Health and Human Services:	
	Social Security Administration:	
D93–6	Limitation on administrative expenses	7,267
	Department of State:	
	Bureau of Refugee Programs:	
D93–7	United States emergency refugee and migration fund	10,123
	Total, deferrals	930,875

Deferral No. 93–1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Funds Appropriated to the President	New budget authority..... $ _____
BUREAU: International Security Assistance	Other budgetary resources.... $ 492,736,396
Appropriation title and symbol: Economic support fund 1/ 112/31037 11X1037	Total budgetary resources..... $ 492,736,396
	Amount to be deferred: Part of year..... $ 492,736,396
	Entire year..... _____
OMB identification code: 11–1037–0–1–152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[X] Multi–year: September 30, 1993 (expiration date)	[ ] Contract authority
[X] No–Year	[ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....	11X1037	11–1037–0–1–152	30,495,496
Economic support fund.....	112/31037	11–1037–0–1–152	462,240,900
			492,736,396

JUSTIFICATION: This account provides economic and countemarcotics assistance to selected countries in support of U.S. efforts to promote stability and U.S. security interests in strategic regions of the world. This account also includes contributions to the International Fund for Ireland. This action defers funds pending approval of specific loans and grants to eligible countries. This interagency review process will ensure that each approved transaction is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92–1A).

Deferral No. 93–2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Funds Appropriated to the President	New budget authority.....
BUREAU: Agency for International Development	Other budgetary resources..... $ 13,750,000
Appropriation title and symbol: Demobilization and transition fund 11X1500	Total budgetary resources..... $ 13,750,000
	Amount to be deferred: Part of year..... $ 13,750,000
	Entire year.....
OMB identification code: 11–1500–0–1–152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi–year: (expiration date)	[ ] Contract authority
[X] No–Year	[ ] Other

JUSTIFICATION: This account was established to facilitate cease–fire monitoring, demobilization, and transition to peace in El Salvador. Funds were transferred into this account pursuant to P.L. 101–513, Section 531(f) (2). These funds are available solely to support costs of demobilization, retraining, relocation, and reemployment in civilian pursuits of former combatants in the conflict in El Salvador. Funds are available for obligation and expenditure only upon notification by the President to the Congress that the Government of El Salvador and representatives of the Farabundo Marti National Liberation Front (FMLN) have reached a permanent settlement of the conflict, including a final agreement on a cease– fire. This action is taken pursuant to the Antideficiency Act (31 U.S. C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92–9).

Deferral No. 93–3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of Agriculture	New budget authority..... $ 242,572,000 (16 U.S.C. 576b)
BUREAU: Forest Service	Other budgetary resources..... $ 483,617,206
Appropriation title and symbol: Cooperative Work 1/ 12X8028	Total budgetary resources..... $ 726,189,206
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 364,582,206
OMB identification code: 12–8028–0–7–999	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi–year: _____ (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Under the Cooperative work account, funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where timber operators have not completed all of the contract obligations during the year funds are deposited. As a result, restoration efforts cannot begin, and the funds cannot be obligated this year. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92–3).

Deferral No. 93–4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of Agriculture	New budget authority..... $ 27,278,000 (16 U.S.C. 490)
BUREAU: Forest Service	Other budgetary resources..... $ 81,975,029
Appropriation title and symbol: Expenses, brush disposal 1/ 12X5206	Total budgetary resources..... $ 109,253,029
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 40,241,029
OMB identification code: 12–9922–0–2–302	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi–year: _____ (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Purchasers of National Forest timber are required to deposit to the Forest Service the established cost for disposing of brush and other debris resulting from timber cutting operations authorized by 16 U.S.C. 490. The deposits becoming available in the current year are estimated, and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose. Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year–to–year program, which will require $69 million in 1993. The current fiscal year reserve of $40 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92–10).

Deferral No. 93–5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY:
Department of Defense – Civil

BUREAU: Wildlife Conservation
Military Reservations 1/

Appropriation title and symbol:

Wildlife Conservation, Army	21X5095
Wildlife Conservation, Navy	17X5095
Wildlife Conservation, Air Force	57X5095

OMB identification code:
97–5095–0–2–303

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multi–year: _____ (expiration date)
[X] No–Year

New budget authority (16 U.S.C. 670F)	$ 2,525,000
Other budgetary resources	$ 1,975,000
Total budgetary resources	$ 4,500,000
Amount to be deferred:	
Part of year	_____
Entire year	$ 2,175,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Wildlife Conservation, Army	21X5095	97–5095–0–2–303	$ 1,600,000
Wildlife Conservation, Navy	17X5095	97–5095–0–2–303	$ 175,000
Wildlife Conservation, Air Force	57X5095	97–5095–0–2–303	$ 400,000
			$ 2,175,000

JUSTIFICATION: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These programs are carried out through cooperative plans agreed upon by the local representatives of the Secretary of Defense, the Secretary of the Interior, and the appropriate agency of the State in which the reservation is located. These funds are being deferred (1) until, pursuant to the authorizing legislation (16 U.S.C. 670f(a)), installations have accumulated funds over a period of time sufficient to fund a major

1/ These accounts were the subject of a similar deferral in FY 1992 (D92–4).

D93–5

project; (2) until individual installations have designed and obtained approval for the project; and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure since most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project approval is obtained. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No. 93–6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of Health and Human Services	**New budget authority**.....
BUREAU: Social Security Administration	**Other budgetary resources**..... $ 14,517,051
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X8704	**Total budgetary resources**..... 14,517,051
	Amount to be deferred: Part of year..... Entire year..... $ 7,267,051
OMB identification code: 20–8007–0–7–651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi–year: (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: This account contains the no–year funds appropriated to the Social Security Administration (SSA) for construction and renovation of SSA facilities, and for Information Technology Systems (ITS). It has been determined that obligational authority for construction projects in the amount of this deferral is not currently needed. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92–5).

Deferral No. 93–7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of State	New budget authority..... $ _____
BUREAU: Bureau of Refugee Programs	Other budgetary resources..... $ 10,126,000
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	Total budgetary resources..... $ 10,126,000
	Amount to be deferred: Part of year..... $ 10,123,000
	Entire year..... _____
OMB identification code: 11–0040–0–1–151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi–year: _____ (expiration date)	[ ] Contract authority
[X] No–Year	[ ] Other _____

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94–141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96–212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1992 (D92–6A).

[FR Doc. 92–24567 Filed 10–8–92; 8:45 am]
BILLING CODE 3110–01–C

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

29 CFR Part 541

RIN 1215-AA65

Defining and Delimiting the Terms "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity (Including any Employee Employed in the Capacity of Academic Administrative Personnel or Teacher in Elementary or Secondary Schools), or in the Capacity of Outside Salesman"

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final regulations for certain workers employed in computer-related occupations under 29 CFR part 541. These rules implement the provisions of Public Law 101–583, enacted November 15, 1990, which requires the issuance of regulations to permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers to qualify for exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA). Regulations in 29 CFR part 541, contain the criteria for exemption under section 13(a)(1) of the Act from the minimum wage and overtime compensation requirements of the Act for executive, administrative, professional and outside sales personnel.

DATES: These rules are effective November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 219–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

There are no reporting or recordkeeping requirements contained in these regulations.

II. Background

Section 13(a)(1) of the FLSA exempts any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary). The existing regulations, 29 CFR part 541, provide that, in order to be exempt as a bona fide executive, administrative or professional employee, an individual must meet certain tests with respect to job duties and responsibilities and must be compensated on a salary basis at no less than a specified amount.

Section 2 of Public Law 101–583, enacted November 15, 1990, provides that not later than 90 days after the date of enactment of the Act, the Secretary of Labor shall promulgate regulations that permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to qualify as exempt executive, administrative, or professional employees under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)). Such regulations shall provide that if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage rate under section 6 of the Act (29 U.S.C. 206).

Pursuant to Public Law 101–583, an interim final rule was published in the **Federal Register** on February 27, 1991 (56 FR 8250), with a comment period that closed April 29, 1991. This rule added a new § 541.5c to 29 CFR part 541 to exempt workers in the computer field who met the new duties tests specified in the regulations and whose regular rate of pay, regardless of whether paid on a salary basis or on an hourly basis, was in excess of 6½ times the FLSA minimum wage. The interim final rule did not alter the exemption criteria for salaried workers in computer-related occupations who earn an amount equal to or less than 6½ times the minimum wage. Such workers continued to be eligible for exemption if the existing requirements in 29 CFR part 541 (i.e., duties and responsibilities) were met, typically in either an executive or administrative capacity. However, such salaried workers were not exempt by virtue of their employment in the specified computer-related occupations. Likewise, such workers paid on an hourly basis at rates of pay equal to or less than 6½ times the minimum wage continued to be ineligible for exemption for failure to meet the "salary basis" requirement generally applicable to all other exempt categories in the private sector.

Sixty-eight comments were received during the comment period on the interim final rule from employers, trade associations, law firms, and individuals. The major commenters and the issues they raised are discussed below, as are the significant changes that have been made in the final regulatory text in response to the comments received.

III. Discussion of Major Comments Received

National Association of Computer Consultant Businesses, the law firm of Epstein, Becker & Green, the law firm of Blackwell, Sanders, Matheny, Weary & Lombardi, Total System Services, Association of Data Processing Service Organizations (ADAPSO), Professional Services Council, CDI Corporation, and the Texas Employment Commission all commented that the interim final rule was inconsistent with the intent of Public Law 101–583. These commenters, for the most part, argue that the statutory language specifically requires the Secretary of Labor to permit salaried workers employed in the specified computer-related occupations to qualify as exempt executive, administrative, or professional employees, regardless of whether their pay exceeds 6½ times the minimum wage, and that the exemption must also be made available to such workers who are compensated on an hourly basis provided that they receive more than 6½ times the minimum wage.

L.J. Gonzer Associates, Additional Technical Support, Inc., and the law firm of Devin & Drohan generally viewed the interim final rule as too narrow and suggested that the term "other similarly skilled professional workers" should not be limited to computer-related occupations, as provided by the statute, but expanded to additional areas not within the scope of Public Law 101–583 such as to hardware engineers, other engineers, or all other categories of "professional" employees whether or not in the computer field. Similarly, the National Technical Services Association, without endorsing or objecting to the interim final rule, posed several questions about other highly-skilled workers not included in the statute who perform tasks that are facilitated by the use of computers, e.g., an engineer conducting flight systems analysis, and requested that the status of these and similar workers be clarified.

The American Engineering Association commented that Public Law 101–583 was prejudicial, repressive, and targets a very small percentage of the nation's technical workforce, and urged the Department, through hearings, to seek repeal by those who initiated the legislation.

The Department of Personnel of Washington County Courthouse (WI) and the Dalkon Shield Claimants Trust objected to the requirement of 6½ times the minimum wage as being too high.

In addition, another 53 comments were received from individuals working as computer systems analyst/programmers or engineers who ordinarily obtain employment in their fields through service firms, some of whom referred to themselves as "job shoppers".[1] For the most part, these individuals are accustomed to compensation on an hourly basis with premium pay for overtime, and they expressed general opposition to the enactment of Public Law 101–583.

The Department also has included in the record correspondence from members of the House Committee on Education and Labor who were the principal House sponsors of the amendment, Representatives Austin Murphy (Chairman, Labor Standards Subcommittee) and William Goodling (Ranking Minority Member), who contended that the interim final rule was inconsistent with the language of the statutory amendment, as well as to the underlying Congressional intent. They stated that the two sentences of the amendment should be read separately. The first, which states that certain highly-skilled computer professionals should qualify for exemption, contains no reference to any particular wage or salary requirement. The second sentence, they contend, then adds an additional requirement for those computer professionals who are compensated on an hourly basis. Similar views were also expressed by Senator John F. Kerry, a sponsor of the amendment in the Senate, in recent correspondence.

In issuing the interim final rule, the Department concluded that Congress intended that the exemption was applicable to highly-skilled computer workers paid more than the equivalent of 6½ times the minimum wage, regardless of how paid. The Department has carefully considered the comments received and made a further review of the statutory provision and its legislative history. In light of the fact that the legislative history is not free from doubt,[2] and that the language of the provision itself is more conducive to the reading suggested by the commenters, the Department has concluded that the new exemption for certain highly-skilled computer professionals is not limited to employees whose pay exceeds 6½ times the minimum wage. Rather, that limitation is imposed only upon those computer professional employees who are paid on an hourly basis.

Thus, this final regulation provides that the statutory exemption for highly-skilled computer-related occupations is not limited to those employees whose pay exceeds 6½ times the minimum wage, regardless of whether paid on a salary or on an hourly basis, as was provided by the interim final rule. In addition, consistent with the statutory characterization of these employees as professionals, the Department has deleted § 541.5c in the interim final rule and is adopting new exemption criteria in § 541.3 to permit the specified computer-related occupations to qualify for exemption as professional employees. The exemption in § 541.3 for these occupations is defined more fully in subpart B—Interpretations, under a new § 541.303. Section 541.302(h) of existing subpart B (renumbered herein as § 541.301), which discussed why computer programmers and systems analysts were not included in the learned professions prior to Public Law 101–583, is deleted, and § 541.312 is revised to permit an exception from the "paid on a salary basis" requirements of § 541.118 for those computer professional employees who are paid on an hourly basis at a rate in excess of 6½ times the minimum wage.

In addition to the substantive comments on the scope of Public Law 101–583 discussed above, commenters also submitted technical suggestions, some of which have been adopted. While the basic requirements for exemption as contained in § 541.5c of the interim final rule are retained in the new § 541.303, the final rule makes the following clarifying changes:

—The exemption is expressly limited to employees in computer systems analysis, programming, software engineering, or related work in software functions;
—A list of the more common job titles in use in the industry is added for illustration purposes;
—Editorial changes are made in the primary duties test for exemption;
—The exemption is not dependent on any particular academic requirements, but rather on proficiency in the theoretical and practical application of a body of highly-specialized knowledge in computer systems analysis, programming, and software engineering;
—The exemption excludes employees who operate computers or who are engaged in the manufacture, repair, or maintenance of computer hardware; and
—Employees within the scope of the exemption may also qualify for exemption under § 541.1 or § 541.2, if applicable.

Executive Order 12291

This final rule in not a "major rule" within the meaning of Executive Order 12291, in that it is not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Analysis

The Department has determined that the final regulation will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the proposal merely incorporates a narrow, technical modification imposed by statute. Therefore, no regulatory flexibility analysis is required. The Secretary of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration.

Document Preparation

This document was prepared under the direction and control of Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 541

Labor, Minimum wages, Overtime pay, Salaries, Wages.

Accordingly, part 541 of title 29 of the Code of Federal Regulations is amended as set forth below.

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[1] Of these comments, one was co-signed by 55 individuals.

[2] Sponsors of the legislation and others making floor statements during the debate suggested that the exception was narrowly crafted and intended to apply only to those employees who are paid in excess of 6½ times the minimum wage. On the other hand, Senator Kerry, one of the Senate sponsors, was of the view that the legislation called for a revamping of outdated regulations that failed to recognize certain computer industry employees as professionals.

Signed at Washington, DC on this 2d day of October 1992.

Lynn Martin,

Secretary of Labor.

Judith A. Sotherlund,

Deputy Assistant Secretary for Employment Standards.

Karen R. Keesling,

Acting Administrator, Wage and Hour Division.

PART 541—DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESMAN"

The authority citation for part 541 continues to read as follows:

Authority: 29 U.S.C. 213; Public Law 101–583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR 1945–53 Comp., p. 1004); Secretary's Order No. 13–71 (36 **Federal Register** 8755).

2. Section 541.3 of subpart A is amended by deleting the semicolon and the word "and" and substituting a comma and the word "or" at the end of paragraph (a)(3); by adding a new paragraph (a)(4); and by revising paragraph (e) to read as follows:

§ 541.3 Professional.

(a) * * *

(4) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field, as provided in § 541.303; and

* * * * *

(e) Who is compensated for services on a salary or fee basis at a rate of not less than $170 per week ($150 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week (or $200 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1), (3), or (4) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section: *Provided further*, That the salary or fee requirements of this paragraph shall not apply to an employee engaged in computer-related work within the scope of paragraph (a)(4) of this section and who is compensated on an hourly basis at a rate in excess of 6½ times the minimum wage provided by section 6 of the Act.

§ 541.5C [Removed]

3. Section 541.5c is removed.

§ 541.302 [Amended]

4. In subpart B of part 541, § 541.302 is amended by removing paragraph (h).

§§ 541.301, 541.302, and 541.303 [Redesignated as 541.300, 541.301 and 541.302]

5. In subpart B of part 541, existing §§ 541.301, 541.302, and 541.303 are redesignated as 541.300, 541.301, and 541.302, respectively, and a new § 541.303 is added to read as follows:

§ 541.303 Computer Related Occupations Under Public Law 101–583.

(a) Pursuant to Public Law 101–583, enacted November 15, 1990, § 541.3(a)(4) provides that computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer software field are eligible for exemption as professionals under section 13(a)(1) of the Act. Employees who qualify for this exemption are highly-skilled in computer systems analysis, programming, or related work in software functions. Employees who perform these types of work have varied job titles. Included among the more common job titles are computer programmer, systems analyst, computer systems analyst, computer programmer analyst, applications programmer, applications systems analyst, applications systems analyst/programmer, software engineer, software specialist, systems engineer, and systems specialist. These job titles are illustrative only and the list is not intended to be all-inclusive. Further, because of the wide variety of job titles applied to computer systems analysis and programming work, job titles alone are not determinative of the applicability of this exemption.

(b) To be considered for exemption under § 541.3(a)(4), an employee's primary duty must consist of one or more of the following:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on a related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) a combination of the aforementioned duties, the performance of which requires the same level of skills..

(c) The exemption provided by § 541.3(a)(4) applies only to highly-skilled employees who have achieved a level of proficiency in the theoretical and practical application of a body of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and does not include trainees or employees in entry level positions learning to become proficient in such areas or to employees in these computer-related occupations who have not attained a level of skill and expertise which allows them to work independently and generally without close supervision. The level of expertise and skill required to qualify for this exemption is generally attained through combinations of education and experience in the field. While such employees commonly have a bachelor's or higher degree, no particular academic degree is required for this exemption, nor are there any requirements for licensure or certification, as is required for the exemption for the learned profession.

(d) The exemption does not include employees engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware

and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs, e.g., engineers, drafters, and others skilled in computer-aided design software like CAD/CAM, but who are not in computer systems analysis and programming occupations, are also excluded from this exemption.

(e) Employees in computer software occupations within the scope of this exemption, as well as those employees not within its scope, may also have managerial and administrative duties which may qualify the employees not within its scope, may also have managerial and administrative duties which may qualify the employees for exemption under § 541.1 or § 541.2 (see §§ 541.205(c)(7) and 541.207(c)(7) of this subpart).

6. In subpart B of part 541, § 541.312 is revised to read as follows:

§ 541.312 Salary basis.

The salary basis of payment is explained in § 541.118 in connection with the definition of "executive." Pursuant to Public Law 101–583, enacted November 15, 1990, payment "on a salary basis" is not a requirement for exemption in the case of those employees in computer-related occupations, as defined in § 541.3(a)(4) and § 541.303, who otherwise meet the requirements of § 541.3 and who are paid on an hourly basis if their hourly rate of pay exceeds 6½ times the minimum wage provided by section 6 of the Act.

[FR Doc. 92–24639 Filed 10–8–92; 8:45 am]

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VOL
57
SS
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9
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FE

45
45
45
45
46
46
46

Reader Aids

Federal Register

Vol. 57, No. 197

Friday, October 9, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

45261–45558.....1
45559–45708.....2
45709–45972.....5
45973–46078.....6
46079–46294.....7
46295–46476.....8
46477–46746.....9

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6482.....45961
6483.....45963
6484.....45965

Executive Orders:
12775 (Continued by Notice of September 30, 1992).....45557
12779 (Continued by Notice of September 30, 1992).....45557
12813 (Amended by EO 12815).....45709
12815.....45709

Administrative Orders:

Notices:
September 30, 1992.....45557

5 CFR

630.....45261

Proposed Rules:
831.....46512
835.....45753
837.....46512
841.....46512
842.....46512
844.....46512
846.....46512

7 CFR

400.....46295
729.....46477
916.....45559
917.....45559
920.....45973, 46243
948.....45560
955.....45974
987.....45975
1065.....45562, 45563
1126.....46079
1137.....45564
1421.....46477
1494.....45262
1980.....45968

Proposed Rules:
735.....45993
736.....45993
737.....45993
738.....45993
739.....45993
740.....45993
741.....45993
742.....45993
910.....45581
944.....45754
958.....45993
1106.....45583
1030.....45995
1098.....45996

10 CFR

30.....45566
35.....45566

Proposed Rules:
34.....46345
35.....46522

11 CFR

Proposed Rules:
110.....46346
114.....46346

12 CFR

5.....46081
11.....46081
16.....46081
230.....46480
327.....45263
328.....45977
506.....45977
563.....45977, 46085
563g.....46085
611.....46480
615.....46480
627.....46480

Proposed Rules:
1.....45756
545.....46098
563.....46098
567.....45757, 46098
571.....46098
935.....45338
940.....45338

13 CFR

Proposed Rules:
120.....46523

14 CFR

21.....46243
36.....46243
71.....45981–45983, 46089

Proposed Rules:
39.....45584–45586, 46348
71.....45660, 45997

16 CFR

1500.....46624

Proposed Rules:
4.....45676
435.....45998
1500.....46349
1505.....46349

17 CFR

180.....46090
210.....45287
240.....45287
249.....45287

259 45287
274 45287

Proposed Rules:
1 ..... 45999, 46101
30 46101
33 46101
180 46101
190 46101

18 CFR
2 46487
284 ..... 46487, 46496

Proposed Rules:
401 46354

19 CFR
10 46502

Proposed Rules:
10 ..... 45758, 46112
191 46113

20 CFR
404 45878
416 46431

21 CFR
5 45294
310 ..... 45310, 46067
510 45984
520 45984
558 46504

Proposed Rules:
864 46068
872 46068
1401 45353

22 CFR
514 46676

Proposed Rules:
514 46678

24 CFR
91 46068
888 45468

25 CFR
101 46470
103 46470

26 CFR
1 ..... 45568, 45660, 45711, 45878, 46243
43 45713
602 ..... 45711, 46243

Proposed Rules:
1 ..... 45567, 46355, 46525
301 ..... 45759, 46355

27 CFR

Proposed Rules:
9 45568
17 45357
19 45357
70 45357
170 45357
194 45357
197 45357
250 45357

28 CFR
541 46742
1602 45570
2662 45713

30 CFR
914 45985
917 45295

31 CFR

Proposed Rules:
10 46356

32 CFR
706 46298

Proposed Rules:
823 46246

33 CFR
100 ..... 45570, 45985, 46300
117 ..... 46301, 46302, 46505
165 46506–46508
334 46303

Proposed Rules:
117 46361
151 45591
164 45662–45667
165 45596

36 CFR
51 46509
1254 46304
1258 46304

37 CFR
202 45307

39 CFR
20 45570
111 45662

40 CFR
35 45311
52 ..... 45715, 46306
80 46316
146 46282
271 ..... 45514, 45717–45722
272 45575
721 46458

Proposed Rules:
Ch. I 45597
51 46114
52 ..... 45358, 45360
58 46003
63 45363
300 ..... 45597, 45599, 46527
308 46527

41 CFR
101–16 46317

42 CFR
57 45725
412 46509
413 46509
435 46093
447 46431

Proposed Rules:
417 46119
531 46362
440 46362
442 46362
466 46362
498 46362
499 46362

43 CFR

Public Land Orders:
1567 (Revoked in part by PLO 6948) 45325
5712 (Revoked by PLO 6946) 45322
6944 45321
6946 45322
6948 45324
6949 45576
6950 45725

45 CFR
1224 45325
1305 46718

46 CFR
514 46318
581 46318

Proposed Rules:
35 45667
197 46126

47 CFR
0 45747
73 ..... 45577–45579, 46325
87 45748
90 45751

Proposed Rules:
63 46366
73 ..... 45601, 46132, 46367–46369

48 CFR
30 45422
52 45878
202 45422
204 45422
208 45422
210 45422
214 45326
215 45422
216 45422
219 45422
223 45422
225 45422
226 45422
227 45422
228 45422
231 45422
232 45422
236 45422
237 45422
239 45422
242 45422
245 45422
252 45422
253 45422

Proposed Rules:
1512 46007
1516 46007
1552 46007
5415 45759
5452 45759

49 CFR
107 45446
171 ..... 45442, 45446
172 ..... 45446, 46624
173 45446
174 45446
176 45446
177 45446
178 45446
179 45446
180 45446
214 45446
571 ..... 45327, 45422
1023 45751

Proposed Rules:
552 45759
571 45760
1039 45602

50 CFR
17 ..... 45328, 46325, 46340
227 45986
285 45679
661 45751
663 ..... 45987, 46097
672 ..... 45580, 45988, 46344, 46610
675 46511
685 45989

Proposed Rules:
17 ..... 45761, 45762, 46007, 46528
672 46133
675 ..... 45602, 46133, 46139

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

Passed over the President's veto

S. 12/P.L. 102–385
Cable Television Consumer Protection and Competition Act of 1992. (Oct. 5, 1992; 106 Stat. 1460; 45 pages) Price: $1.50

H.R. 2194/P.L. 102–386
To amend the Solid Waste Disposal Act to clarify provisions concerning the application of certain requirements and sanctions to Federal facilities. (Oct. 6, 1992; 106 Stat. 1505; 14 pages) Price: $1.00

H.J. Res. 560/P.L. 102–387
Waiving certain enrollment requirements with respect to any appropriations bill for the remainder of the One Hundred Second Congress. (Oct. 6, 1992; 106 Stat. 1519; 1 page) Price: $1.00

H.R. 5518/P.L. 102–388
Department of Transportation and Related Agencies Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1520; 51 pages) Price: $1.50

H.R. 5679/P.L. 102–389
Departments of Veterans Affairs and Housing and

Urban Development, and Independent Agencies Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1571; 49 pages) Price: $1.50

H.R. 3654/P.L. 102-390

To provide for the minting of commemorative coins to support the 1996 Atlanta Centennial Olympic Games and the programs of the United States Olympic Committee, to reauthorize and reform the United States Mint, and for other purposes. (Oct. 6, 1992; 106 Stat. 1620; 13 pages) Price: $1.00

H.R. 5368/P.L. 102-391

Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1633; 70 pages) Price: $2.25

H.R. 5427/P.L. 102-392

Legislative Branch Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1703; 26 pages) Price: $1.00

H.R. 5488/P.L. 102-393

Treasury, Postal Service, and General Government Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1729; 63 pages) Price: $2.00

H.R. 5677/P.L. 102-394

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1792; 36 pages) Price: $1.25

H.R. 5678/P.L. 102-395

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1828; 48 pages) Price: $1.50

H.R. 5504/P.L. 102-396

Department of Defense Appropriations Act, 1993. (Oct. 6, 1992; 106 Stat. 1876; 73 pages) Price: $2.25

S. 1766/P.L. 102-397

To add to the area in which the Capitol Police have law enforcement authority, and for other purposes. (Oct. 6, 1992; 106 Stat. 1949; 4 pages) Price: $1.00

S.J. Res. 23/P.L. 102-398

To consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920. (Oct. 6, 1992; 106 Stat. 1953; 1 page) Price: $1.00

H.R. 5058/P.L. 102-399

To authorize appropriations for the American Folklife Center for fiscal year 1993. (Oct. 7, 1992; 106 Stat. 1954; 1 page) Price: $1.00

H.R. 5389/P.L. 102-400

United States Commission on Civil Rights Authorization Act of 1992. (Oct. 7, 1992; 106 Stat. 1955; 1 page) Price: $1.00

H.R. 5630/P.L. 102-401

Head Start Improvement Act of 1992. (Oct. 7, 1992; 106 Stat. 1956; 5 pages) Price: $1.00

Last List October 8, 1992

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102d Congress, 2nd Session, 1992

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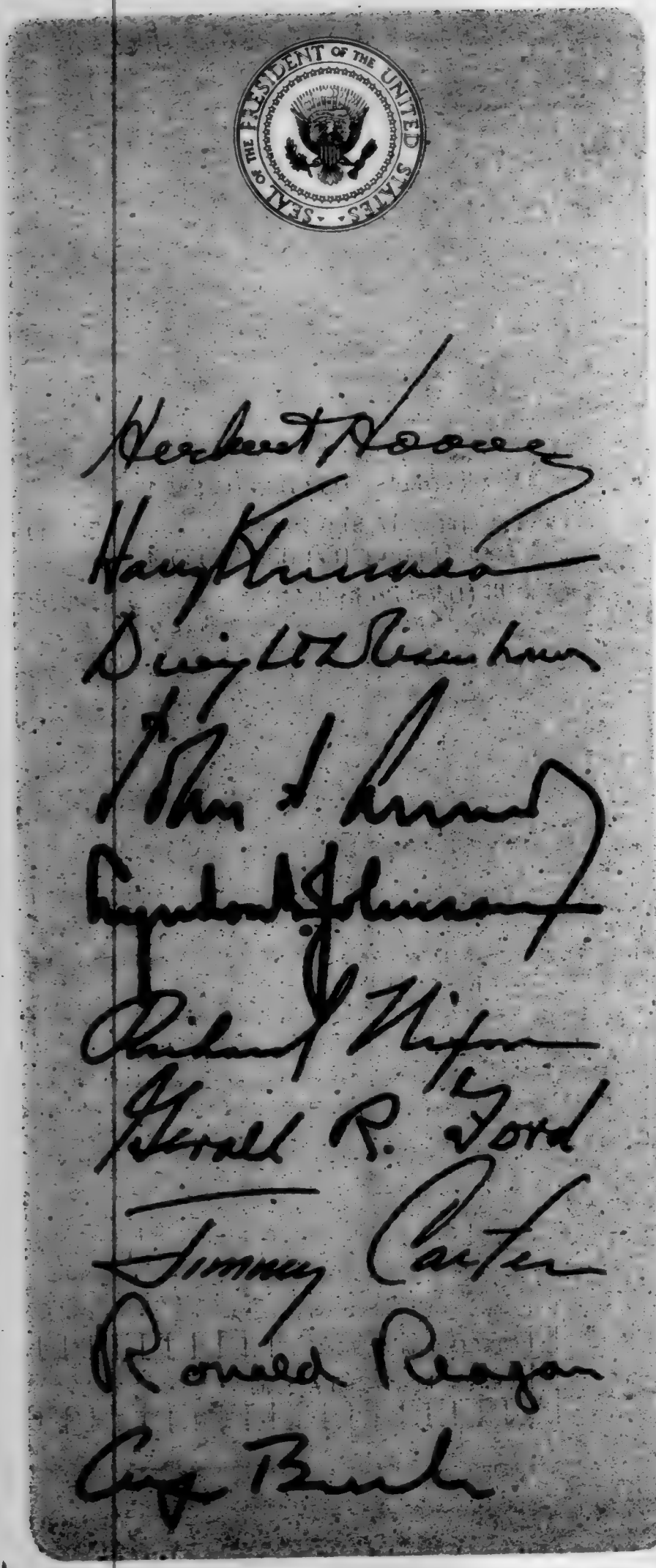

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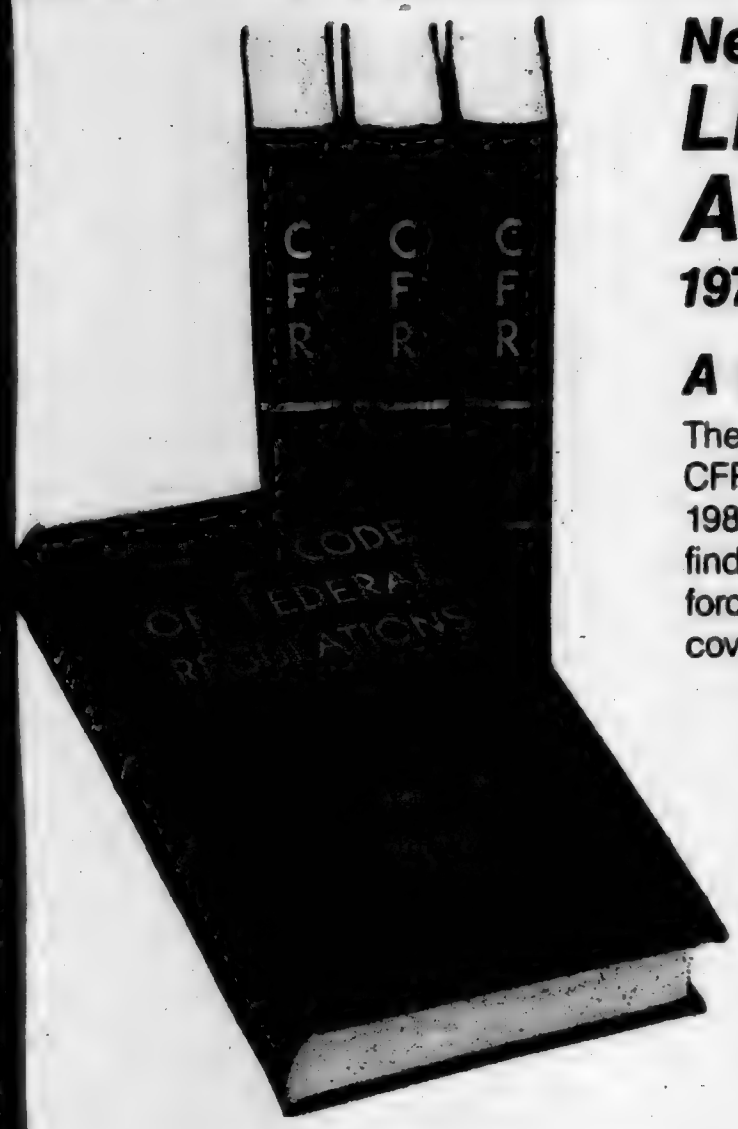

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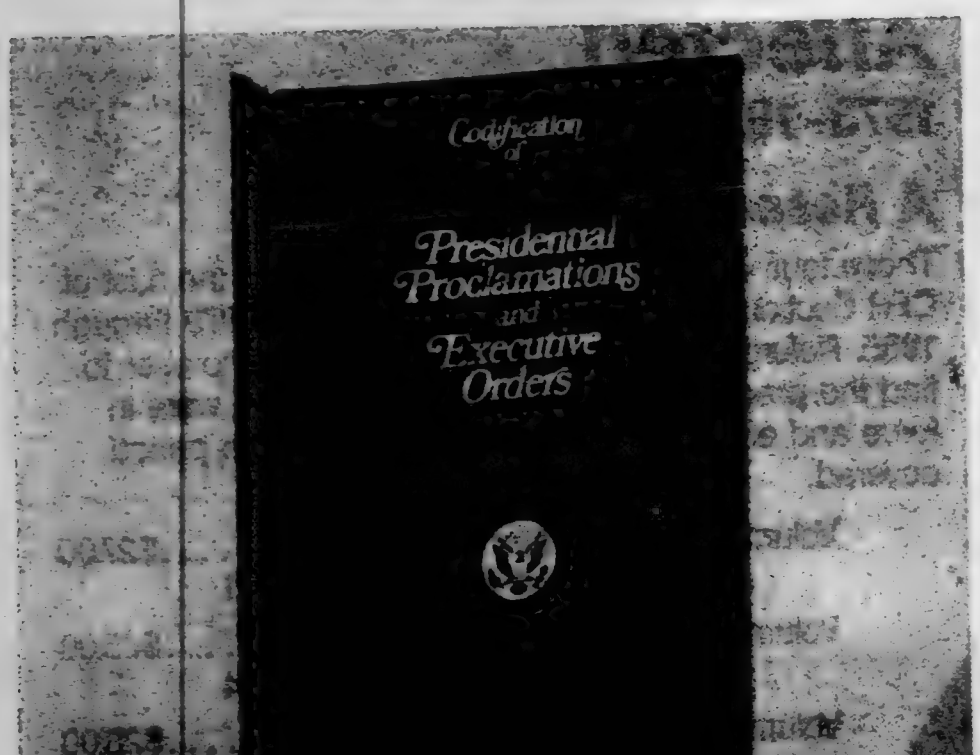

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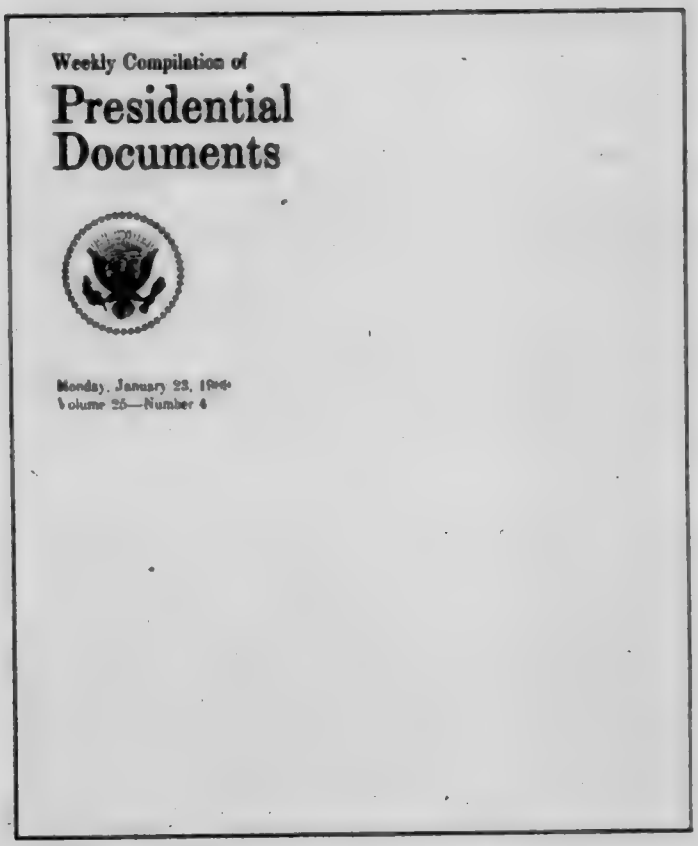

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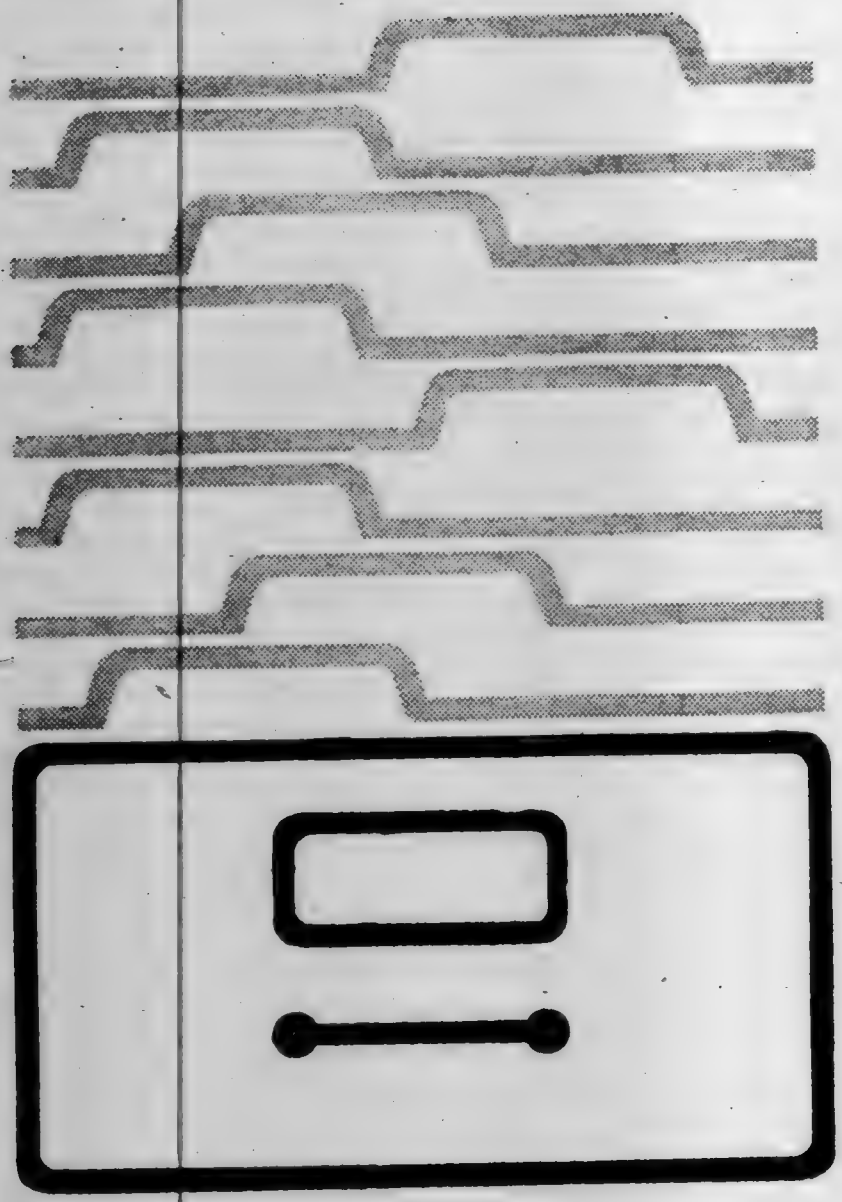

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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 57, No. 198

Tuesday, October 13, 1992

Agency for International Development
NOTICES
Meetings:
Voluntary Foreign Aid Advisory Committee, 46868

Agriculture Department
NOTICES
Import quotas and fees:
Meat import limitations; quarterly estimates, 46842

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Cookson Group, plc, et al., 46869
Greater Bridgeport Individual Practice Association, Inc., 46874
National cooperative research notifications:
Fuel Cell Commercialization Group, 46879

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blackstone River Valley National Heritage Corridor Commission
NOTICES
Meetings; Sunshine Act, 46901

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
National/regional minority organization HIV/STD prevention, immunization, and TB projects, 46856

Children and Families Administration
RULES
Public assistance programs:
Aid to families with dependent children (AFDC)—
Adult assistance programs; revised quality control system, 46782

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 46842

Committee for the Implementation of Textile Agreements
NOTICES
Textile consultation; review of trade:
Bahrain, 46846
Qatar, 46847

Defense Department
See Defense Nuclear Agency
NOTICES
Meetings:
Electron Devices Advisory Group, 46848
Military Personnel Testing Advisory Committee, 46848

Defense Nuclear Agency
NOTICES
Senior Executive Service:
Performance Review Board; membership, 46848

Education Department
NOTICES
Meetings:
National Assessment Governing Board, 46849

Employment and Training Administration
NOTICES
Adjustment assistance:
All Fab Corp. et al., 46879
Allied Signal Aerospace Co. et al., 46880
GTE Telephone Operations et al., 46881
Online Resource Exchange, 46882
Secorp Industries, 46882
SWS NAM, Inc., 46882

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental restoration, preliminary design; department responses, 46849
Natural gas exportation and importation:
P.M.I. Comercio Internacional, S.A. de C.V., 46853

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Georgia, 46780
Missouri, 46778
NOTICES
Meetings:
National Air Pollution Control Techniques Advisory Committee, 46854

Executive Office of the President
See Presidential Documents

Export Administration Bureau
PROPOSED RULES
Export licensing:
Foreign policy-based export controls; effects on exporters and general public, 46838

Farm Credit Administration
RULES
Farm credit system:
Funding and fiscal affairs, loan policies and operations, and funding operations—
Permanent capital rations computation; temporary suspension, 46755
Loan policies and operations—
Lending authorities and purchase and sale of interests in loans, 46755
PROPOSED RULES
Farm credit system:
Personnel administration, etc.—
Referral of crimes and suspected crimes, 46819

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
Airport noise control; Stage 2 airplanes operating in contiguous United States; transition to Stage 3; rule interpretations, 46944
Airworthiness directives:
Airbus Industrie, 46765
Boeing, 46768, 46771
British Aerospace, 46763, 46764
Canadair, Ltd., 46762
deHavilland, 46761
Fokker, 46757
Learjet, 46760
McDonnell Douglas, 46755, 46758
Short Brothers, 46772
Standard instrument approach procedures, 46774, 46776
PROPOSED RULES
Airworthiness standards:
Special conditions—
Airbus Industrie model A340 series airplanes, 46821
NOTICES
Airport noise compatibility program:
Ohio State University Airport, OH, 46892
Environmental statements; availability, etc.:
Washington National Airport, Washington, DC; airport surveillance radar model 9 facility, 46893
Meetings:
Aviation Rulemaking Advisory Committee, 46894

Federal Communications Commission
RULES
Radio stations; table of assignments:
Michigan, 46812
Minnesota et al., 46812
North Carolina, 46812
Tennessee, 46813
Washington, 46813
PROPOSED RULES
Radio stations; table of assignments:
Arkansas, 46839
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 46854

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Hawaii, 46854, 46855

Federal Energy Regulatory Commission
NOTICES
Meetings; Sunshine Act, 46901
Applications, hearings, determinations, etc.:
Arkla Energy Resources, 46852
Massachusetts Electric Co., 46853
Union Electric Co., 46853

Federal Financial Institutions Examination Council
NOTICES
Agency information collection activities under OMB review, 46855

Federal Highway Administration
NOTICES
Emergency vehicles on interstate system and water well drilling rigs transporters on public highways, regulation; studies of vehicle weight laws, 46940

Federal Transit Administration
RULES
Bus testing facility program, 46814

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
California candidate plant species listing; meeting, 46840
NOTICES
Marine mammal permit applications, 46844

Food and Drug Administration
NOTICES
Meetings:
Advisory committees, panels, etc., 46865

General Services Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 46855

Health and Human Services Department
See Centers for Disease Control
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration

Health Care Financing Administration
NOTICES
Agency information collection activities under OMB review, 46865

Health Resources and Services Administration
NOTICES
Advisory committees; annual reports; availability, 46866

Interior Department
See Fish and Wildlife Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Dynamic random access memory semiconductors of one megabit and above from Korea, 46842
Export trade certificates of review, 46843

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
American Seating Co. et al., 46868
Re-Solve Inc. et al., 46869

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 46903

Martin Luther King, Jr. Federal Holiday Commission
NOTICES
Meetings, 46883

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 46883, 46884
Meetings:
Music Advisory Panel, 46884

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 46894
Motor vehicle safety standards; exemption petitions, etc.:
Isis Imports Ltd., 46896

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Sea turtle conservation; shark gillnet fishing restrictions, 46815
Fishery conservation and management:
Gulf of Alaska groundfish, 46816
PROPOSED RULES
Fishery conservation and management:
Northeast multispecies, 46840
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 46845
Mid-Atlantic Fishery Management Council, 46845
South Atlantic Fishery Management Council, 46845
Permits:
Marine mammals, 46844

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 46867
Native American human remains and associated funerary objects; inventory:
Tuolumne County, CA; Lucas Gulch site et al., 46866

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
American College of Nuclear Physicians and Society of Nuclear Medicine, 46818
NOTICES
Agency information collection activities under OMB review, 48884
Environmental statements; availability, etc.:
Yankee Atomic Electric Co., 46885
Meetings:
Reactor Safeguards Advisory Committee, 46886
Petitions; Director's decisions:
Houston Lighting & Power Co., 46886
Applications, hearings, determinations, etc.:
Power Authority of State of New York, 46886

Pension and Welfare Benefits Administration
RULES
Employee Retirement Income Security Act:
Participant directed individual account plans, 46906

Presidential Documents
ADMINISTRATIVE ORDERS
Colombia; drawdown of DOD stocks for counternarcotics assistance (Presidential Determination 92–48 of September 30, 1992), 46751
Pakistan; drawdown of DOD stocks for disaster assistance (Presidential Determination 92–49 of September 30, 1992), 46753
PROCLAMATIONS
Special observances:
General Pulaski Memorial Day (Proc. 6486), 46749
National Customer Service Week (Proc. 6485), 46747

Public Health Service
See Centers for Disease Control
See Food and Drug Administration
See Health Resources and Services Administration

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 46897

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 46904
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 46887
Applications, hearings, determinations, etc.:
Mexico Capital Growth Fund, Inc., 46890
Money Store, Inc., 46890
Pall Corp., 46891

State Department
NOTICES
Meetings:
Historical Diplomatic Documentation Advisory Committee, 46891

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 46868

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 46891
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 46892

Treasury Department
NOTICES
Agency information collection activities under OMB review, 46899

United States Information Agency
NOTICES
Meetings:
Public Diplomacy, U.S. Advisory Commission, 46900

Veterans Affairs Department
NOTICES
Meetings:
Wage Committee, 46899

Separate Parts in This Issue

Part II
Department of Labor, Pension and Welfare Benefits Administration, 46906

Part III
Department of Transportation, Federal Highway Administration, 46940

Part IV
Department of Transportation, Federal Aviation Administration, 46944

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

6485.....46747
6486.....46749

Administrative Orders:

Presidential Determinations:

No. 92-48 of September 30, 1992.....46751
No. 92-49 of September 30, 1992.....46753

10 CFR

Proposed Rules:

170.....46818
171.....46818

12 CFR

614.....46755
615.....46755
619.....46755

Proposed Rules:

612.....46819
617.....46819

14 CFR

39 (12 documents).....46755-46772
91.....46944
97 (2 documents).....46774, 46776

Proposed Rules:

21.....46821
25.....46821

15 CFR

Proposed Rules:

Ch. VII.....46838

29 CFR

2550.....46906

40 CFR

52 (2 documents).....46778, 46780

45 CFR

205.....46782

47 CFR

73 (6 documents).....46812, 46813

Proposed Rules:

73.....46839

49 CFR

665.....46814

50 CFR

217.....46815
222.....46815
227.....46815
672.....46816

Proposed Rules:

17.....46840
651.....468401

VOL
57
SS
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9
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Presidential Documents

Title 3—

The President

Presidential Determination No. 92–48 of September 30, 1992

Presidential Determination To Drawdown DOD Stocks for Counternarcotics Assistance for Colombia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by Section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (the "Act"), I hereby determine that it is in the national interest of the United States to drawdown defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training for the purpose of providing counternarcotics assistance to Colombia.

Therefore, I hereby direct the drawdown of up to $7 million of such defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training for the purposes and under the authorities of Chapter 8 of Part I of the Act.

The Acting Secretary of State is authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, September 30, 1992.

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Presidential Documents

Presidential Determination No. 92–49 of September 30, 1992

Presidential Determination To Drawdown DOD Stocks for Disaster Assistance for Pakistan

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by Section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (the "Act"), I hereby determine that it is in the national interest of the United States to drawdown defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training, for the purpose of providing disaster assistance in Pakistan.

Therefore, I hereby authorize the furnishing of up to $5 million of such defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training, for the purposes and under the authorities of Chapter 9 of Part I of the Act.

The Acting Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, September 30, 1992.

[FR Doc. 92–24948
Filed 10–8–92; 4:11 pm]
Billing code 3195–01–M

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Presidential Documents

Proclamation 6485 of October 8, 1992

National Customer Service Week, 1992

By the President of the United States of America

A Proclamation

In a thriving free enterprise system such as ours, which provides consumers with a wide range of goods and services from which to choose, the most successful businesses are those that display a strong commitment to customer satisfaction. Today foreign competition as well as consumer demands are requiring greater corporate efficiency and productivity. If the United States is to remain a leader in the changing global economy, highest quality customer service must be a personal goal of every employee in business and industry.

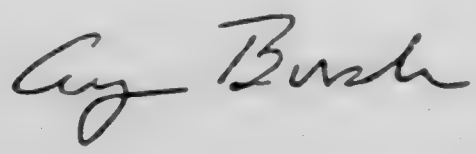
A business built on customer service understands and anticipates the customer's needs. It designs goods and services to meet those needs and builds products that perform to customer expectations. It then packages them carefully, labels them correctly, sells them at a fair price, delivers them as scheduled, and follows up, as necessary, to satisfy the customer. This kind of commitment to service leads to customer loyalty and to genuine improvements at the bottom line.

A business will do a better job of providing high quality goods and services by listening to its employees and by empowering them with opportunities to make a difference. Customer service professionals work in the front lines where a firm meets its customers; where supply meets demand. With responsive policies and procedures and with simple courtesy, customer service professionals can go a long way toward ensuring customer satisfaction and eliciting the next round of orders and purchases.

The Congress, by Senate Joint Resolution 166, has designated the week of October 4 through October 10, 1992, as "National Customer Service Week" and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of October 4 through October 10, 1992, as National Customer Service Week. I invite all Americans to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



[FR Doc. 92-24954
Filed 10-8-92; 4:45 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 6486 of October 8, 1992

General Pulaski Memorial Day, 1992

By the President of the United States of America

A Proclamation

Each October 11, when our Nation honors the memory of General Casimir Pulaski, the great Revolutionary War hero who died on this date in 1779, we also celebrate the deep and abiding friendship that exists between the Polish and American peoples. That friendship has been rooted in a shared love of liberty and democratic government, and as we proudly reflect on the past, we also look forward to continuing cooperation between our two countries in this new, post-Cold War era.

Before he came to the United States more than 200 years ago, Casimir Pulaski had fought in the struggle to free his native Poland from foreign domination and repressive rule. By the time the young Count was forced into exile, he was, as Benjamin Franklin noted, "famous throughout Europe for his bravery and conduct in the defense of the liberties of his country." Although Count Pulaski would not live to see the liberation of his beloved homeland, no amount of adversity could deter him from a cause as universally important as that of freedom. This skilled horseman and fighter thus adopted our ancestors' struggle as his own, volunteering for service in the Continental Army, where he was named a General and eventually granted command of his own cavalry unit.

General Pulaski and his troops fought with great tenacity in a number of major campaigns, including at Brandywine and Trenton. Impressed by Pulaski's fearlessness and persistence, General George Washington later wrote to the Congress that "the Count's valor and active zeal on all occasions have done him great honor."

It was such zeal for the cause of liberty that inspired General Pulaski to lead a bold yet dangerous charge during the seige of Savannah on October 9, 1779. He was mortally wounded in the attempt and died 2 days later.

General Pulaski and other martyrs in America's War for Independence did not die in vain, however, and today we know that their hard-won victory helped to ignite the continuing expansion of freedom around the globe. On this occasion we remember, especially, the generations of courageous Poles who have shared in the epic struggle for liberty and self-determination. From our own Savannah, Georgia, to places such as Westerplatte, the Katyn Forest, and the Gdansk shipyards, brave Poles have made heroic, and sometimes costly, stands for freedom. Their courage and resolve should remain an inspiration to us all.

Having triumphed over decades of communist rule, not with musket and bayonet, but with voices and votes, petitions and prayers, the people of a free and independent Poland are now working to complete the challenging transition to democracy and to a thriving, market-oriented economy. The United States is proud to cooperate in this effort through a wide range of trade, investment, and technical assistance programs, including the Polish-American Enterprise Fund.

Americans of Polish ancestry continue to play an important role in promoting stronger political, cultural, and economic ties between the United States and Poland, and as we join these citizens in remembering General Casimir Pulaski, we also give thanks for the contributions that they are making to our common future.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 11, 1992, as General Pulaski Memorial Day. I direct the appropriate government officials to display the flag of the United States on all government buildings on that day, and I invite all Americans to observe the occasion with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-24965
Filed 10-8-92; 4:34 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 198
Tuesday, October 13, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN 3052-AB13

Loan Policies and Operations; Definitions; Lending Authorities and Purchase and Sale of Interests in Loans; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under parts 614 and 619 on August 24, 1992 (57 FR 38237). The final regulations amend 12 CFR parts 614 and 619 governing the lending, loan sale and purchase, and loan participation authorities of Farm Credit System institutions. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 7, 1992.

EFFECTIVE DATE: October 7, 1992.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4498, or;

Richard A. Katz, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: October 7, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-24799 Filed 10-9-92; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Part 615

RIN 3052-AB18

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a suspension of rule under part 615 on August 24, 1992 (57 FR 38250). The rule suspends certain provisions of the Farm Credit regulations, through December 31, 1994, governing the computation of permanent capital ratios of Farm Credit System institutions to allow Farm Credit Banks and direct lender associations through the end of 1994 to determine by agreement whether, and to what extent, an association's investment in a Farm Credit Bank is considered as part of the association's permanent capital for the purpose of computing the permanent capital ratio. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 7, 1992.

EFFECTIVE DATE: October 7, 1992.

FOR FURTHER INFORMATION CONTACT:

Robert S. Child, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4498, or Rebecca S. Orlich, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: October 7, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-24799 Filed 10-9-92; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-84-AD; Amendment 39-8372; AD 92-19-14]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that requires inspections to detect fatigue cracks of the side skin and doubler surrounding the pressure relief door assembly of the tail pylon, and structural modification of the tail pylon pressure relief door opening. This amendment is prompted by a full-scale fatigue test that detected the development of fatigue cracks. The actions specified by this AD are intended to prevent skin and doubler fatigue cracking, which could cause loss of fail-safe capability of the tail pylon structure.

DATES: Effective November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-8001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 E. Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mr. Wahib Mina, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA, Transport

Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5324; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on June 5, 1992 (57 FR 23976). That action proposed to require inspections to detect fatigue cracks of the side skin and doubler surrounding the pressure relief door assembly of the tail pylon, and structural modification of the tail pylon pressure relief door opening.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Since issuance of the notice, the FAA has reviewed and approved McDonnell Douglas Service Bulletin 54–17, Revision 1, dated July 16, 1992. This revision is similar in technical content to the original version, but contains only minor editorial and format changes; there is no change in the effectivity listing. The final rule has been revised to include this revision to the service bulletin as an acceptable source of service information.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 28 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection requirements, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the inspection requirements of the AD on U.S. operators is estimated to be $990.

Installation of the interim modification will take approximately 35 hours to accomplish, at an average labor rate of $55 per work hour. Parts will be provided at no cost to the operators. Based on these figures, the total cost impact to U.S. operators who install the interim modification is estimated to be $1,925 per airplane.

Installation of the permanent modification (without removal of the interim modification) will take approximately 308 work hours to accomplish, at an average labor rate of $55 per work hour. Parts will be provided at no cost to operators. Based on these figures, the total cost impact to U.S. operators who install the permanent modification (without removing the interim modification) is estimated to be $16,940 per airplane.

Installation of the permanent modification (with removal of the interim modification) will take approximately 316 work hours to accomplish, at an average labor rate of $55 per work hour. Parts will be provided at no cost to operators. Based on these figures, the total cost impact to U.S. operators who install the permanent modification (with removing the interim modification) is estimated to be $17,380 per airplane.

Based on the figures discussed above, the total cost impact of the AD on U.S. operators is estimated to be between $305,910 and $348,480. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–19–14. McDonnell Douglas: Amendment 39–8372. Docket 92–NM–84–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, and Revision 1, dated July 16, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent skin and doubler fatigue cracking, which could cause loss of fail safe capability of the tail pylon structure, accomplish the following:

(a) For Group I airplanes, as listed in McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, prior to the accumulation of 2,100 landings or within 60 days after the effective date of this AD, whichever occurs later, visually inspect to detect cracks on the tail pylon skin and interior doubler around the pressure relief door, and install either the interim or permanent modification, as specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, or Revision 1, dated July 16, 1992.

(1) If no cracks are detected, prior to further flight, install either the interim modification, which consists of interim external doublers; or the permanent modification, which consists of internal doubler, frame, and stiffener. If the interim modification is installed, prior to the accumulation of 6,000 landings or within 60 days after the effective date of this AD, whichever occurs later, install the permanent modification (internal doubler, frame, and stiffener), in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, or Revision 1, dated July 16, 1992.

(2) If cracks are detected, prior to further flight, install the permanent modification, which consists of external doublers, internal doubler, frame, and stiffener, in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, or Revision 1, dated July 16, 1992.

(b) For Group II airplanes, as listed in McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, prior to the accumulation of 6,000 landings or within 60 days after the effective date of this AD,

whichever occurs later, conduct a dye penetrant inspection for cracks of the tail pylon skin around the pressure relief door, in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, or Revision 1, dated July 16, 1992.

(1) If no cracks are found, prior to further flight, install the permanent modification, which consists of an internal doubler, frame, and stiffener, in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, or Revision 1, dated July 16, 1992.

(2) If cracks are detected, prior to further flight, install the permanent modification which consists of external doublers, internal doubler, frame, and stiffener, in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, or Revision 1, dated July 16, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note.—Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and installation shall be done in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992; or McDonnell Douglas Service Bulletin 54–17, Revision 1, dated July 16, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on August 26, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 92–24715 Filed 10–9–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–69–AD; Amendment 39–8379; AD 92–20–05]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires the replacement of currently installed aluminum alloy rivets in the rib-to-auxiliary-spar attachment at wing station 10110 with nickel copper alloy rivets and Hilok bolts. This amendment is prompted by a full-scale fatigue test of the wings that detected numerous broken rivets. The actions specified by this AD are intended to prevent reduced structural integrity of the wings.

DATES: Effective on November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the Federal Register on June 16, 1992 (57 FR 27192). That action proposed to require the replacement of currently installed aluminum alloy rivets in the rib-to-auxiliary-spar attachment at wing station 10110 with nickel copper alloy rivets and Hilok bolts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost of required parts will be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,000 or $440 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-20-05. Fokker: Amendment 39-8379. Docket 92-NM-68-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11256, inclusive; 11259; 11260; and 11268 through 11278, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Prior to the accumulation of 18,000 landings or within 60 days after the effective date of this AD, whichever occurs later, replace the currently installed aluminum alloy rivets at the rib-to-auxiliary-spar attachment at wing station 10110 with nickel copper alloy rivets and Hilok bolts, in accordance with Fokker Service Bulletin SBF100-57-017, dated September 12, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Fokker Service Bulletin SBF100-57-017, dated September 12, 1991. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on September 4, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-24711 Filed 10-09-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-43-AD; Amendment 39-8364; AD 92-19-06]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes, that requires initial inspection and subsequent modification of galley power feeder wire assemblies. This amendment is prompted by a report of smoke in the cabin coming from the ceiling panels during flight due to chafing of the wire assembly on ceiling panel attachments. The actions specified by this AD are intended to prevent chafing damage to the wire assemblies that can lead to arcing and smoke in the cabin.

DATES: Effective on November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Elvin K. Wheeler, Los Angeles Aircraft Certification Office, ANM-130L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5344; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes was published in the **Federal Register** on April 8, 1992 (57 FR 11927). That action proposed to require initial inspection and subsequent modification of galley power feeder wire assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter is concerned that paragraph (a) of the notice will penalize operators who previously took immediate action to correct the unsafe condition. The commenter specifically is concerned about the "unless previously accomplished within the last 60 days" portion of the compliance time. Based on this wording of paragraph (a) of the notice, the commenter feels that these operators will be required to reinspect all airplanes that have not been inspected within the last 60 days once the effective date of this AD has been established. For example, this commenter first began inspecting its airplanes on November 4, 1991. If the wording of paragraph (a) of the proposal remains as proposed, the commenter would be required to reinspect those airplanes, which would entail considerable cost. Therefore, the commenter requests that "unless previously accomplished within the last 60 days" be removed from paragraph (a) and be replaced with "unless previously accomplished after November 1, 1991." Upon further consideration, the FAA concurs that the compliance time can be adjusted somewhat. The FAA recognizes that the proposed requirement to perform the inspection "unless previously accomplished within the last 60 days" could cause some operators to inspect airplanes when there is no need to do so; however, the commenter's suggested threshold of November 1, 1991, could also cause some operators to re-inspect airplanes. The AD specifically states that compliance is required as indicated, "unless accomplished previously;" this statement provides credit for operators who have previously accomplished the requirements of the final rule. Therefore, paragraph (a) has been revised to eliminate the phrase that would have credited operators only if they had performed the inspection within the last 60 days. The FAA has determined that safety will not be compromised by eliminating this phrase.

One commenter requests that the compliance time for inspection of the galley power feeder wire assemblies be extended from the proposed 4,500 flight hours to 6,000 flight hours. Such extension of this compliance time would

allow the inspection to be accomplished during regularly scheduled maintenance. The commenter notes that it has operated Model DC–9–80 airplanes for nine years and 27,000 flight hours, and has not experienced any difficulties with the wire bundles. The FAA concurs with the commenter's request to extend the compliance time for the inspection required by paragraph (c)(2) of this AD. Extending the compliance time by an additional 1,500 flight hours will not adversely affect safety. Paragraph (c)(2) of the final rule has been revised to specify a compliance time of 6,000 flight hours.

Two commenters request an extension for accomplishing the modifications that would be required by proposed paragraphs (b) and (c)(2) of this AD. One commenter requests an extension of 4,500 flight hours. Such extension of this compliance time would allow the repair to be accomplished during regularly scheduled maintenance. The other commenter requests and extension of the compliance time for modification of the galley power wire assemblies by an additional 1,500 flight hours. This commenter also requests that the compliance terms for modification of the galley power feeder wire assemblies be revised to, "within 6,000 flight hours of the initial inspection or within 15,000 total flight hours, whichever occurs later." This compliance period would allow those operators whose inspection programs are based on the DC–9–80 Maintenance Review Board (MRB) document to schedule the modification during regularly scheduled maintenance. The FAA concurs that the compliance time for modifying the galley power wire assemblies can be extended somewhat. Extending the compliance time by 1,500 additional flight hours and adding a compliance threshold of 15,000 total flight hours will not adversely affect safety, and will allow the modification to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Paragraph (b) of the final rule have been revised to reflect a compliance time of within 6,000 flight hours of the initial inspection or within 15,000 total flight hours, whichever occurs later.

Paragraph (d) of the final rule has been revised to clarify the procedures for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 656 McDonnell Douglas Model DC–9–80 series and Model D–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 330 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the proposed inspection; that it will take approximately 43 work hours per airplane to accomplish the proposed modification; and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $853,050 or $2,585 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–19–06. McDonnell Douglas: Amendment 39–8364. Docket 92–NM–43–AD.

Applicability: Model DC–9–81, –82, –83, and –87 (MD–81, –82, –83, and –87) series airplanes, and Model MD–88 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing damage to the wire assemblies that could lead to arcing and smoke in the passenger cabin, accomplish the following:

(a) Prior to or upon the accumulation of 9,000 total flight hours or within 6 months after the effective date of this AD, whichever occurs later: Inspect the galley power feeder wire assemblies, in accordance with McDonnell Douglas Alert Service Bulletin A24–132, Revision 1, dated March 2, 1992.

(b) If no damage is detected as a result of the inspection required by paragraph (a) of this AD, within 6,000 flight hours of the initial inspection or within 15,000 total flight hours, whichever occurs later, modify the galley power feeder wire assemblies, in accordance with McDonnell Douglas Alert Service Bulletin A24–132, Revision 1, dated March 2, 1992.

(c) If damage is detected as a result of the inspection required by paragraph (a) of this AD, accomplish subparagraph (c)(1) and (c)(2) of this AD:

(1) Prior to further flight, repair the damaged wire insulator (install protective sleeving), in accordance with McDonnell Douglas Alert Service Bulletin A24–132, Revision 1, dated March 2, 1992;

(2) Within 6,000 flight hours after accomplishing the inspection required by paragraph (a) of this AD, modify the galley power feeder wire assemblies, in accordance with McDonnell Douglas Alert Service Bulletin A24–132, Revision 1, dated March 2, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

(f) The inspection and modification shall be done in accordance with McDonnell Douglas Alert Service Bulletin A24-132, Revision 1, dated March 2, 1982. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles ACO, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on August 20, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-24712 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-111-AD; Amendment 39-8376; AD 92-19-12]

Airworthiness Directives; Learjet Model 23, 24, 25, 28, 29, 31, 35, and 36 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Learjet Model 23, 24, 25, 28, 29, 31, 35, and 36 series airplanes, that requires modification of the crew oxygen plumbing and map light wires. This amendment is prompted by a report of a malfunction on a Learjet Model 24 series airplane involving chafing of the copilot map light wires, which caused electrical arcing against the oxygen mask tubing and subsequent burn-through and fire. The actions specified by this AD are intended to prevent an in-flight fire.

DATES: Effective on November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Learjet Corporation, Customer Services, P.O. Box 7707, Wichita, Kansas 67277-7707. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE-130W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4135; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Learjet Model 23, 24, 25, 28, 29, 31, 35, and 36 series airplanes was published in the Federal Register on July 2, 1992 (57 FR 29453). That action proposed to require modification of the crew oxygen plumbing and map light wires.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 1,482 Learjet Model 23, 24, 25, 28, 29, 31, 35, and 36 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,063 airplanes of U.S. registry will be affected by this AD, that it will take approximately 25 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $113 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,581,744. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-19-12. Learjet (Formerly Gates Learjet): Amendment 39-8376. Docket 92-NM-111-AD.

Applicability: Model 23, 24, 25, 28, 29, 31, 35, and 36 series airplanes, as listed in Learjet Airplane Modification Kit No. AMK 90-5, dated October 11, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing and an in-flight fire, accomplish the following:

(a) Within 30 days after the effective date of this AD, modify the crew oxygen plumbing and map light wires, in accordance with Learjet Airplane Modification Kit AMK No. 90-5, dated October 11, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), ACE-115W, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Learjet Airplane Modification Kit AMK No. 90-5, dated October 11, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet Corporation, Customer Services, P.O. Box 7707, Wichita, Kansas 67277-7707. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on August 28, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-24714 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-55-AD; Amendment 39-8375; AD 92-20-01]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, that requires a detailed inspection to detect corrosion of the main landing gear (MLG) emergency down release cables, and replacement, if necessary; and eventual installation of stainless steel cable assemblies. This amendment is prompted by a report of corrosion found underneath the anti-friction sleeve of the two MLG emergency down release cables. The actions specified by this AD are intended to prevent failure of the cables to extend the landing gear, resulting in a gear-up landing.

DATES: Effective on November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket 92-NM-55-AD, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-7 series airplanes was published in the **Federal Register** on June 15, 1992 (57 FR 26629). That action proposed to require a detailed inspection to detect corrosion of the main landing gear (MLG) emergency down release cables, and replacement, if necessary; and eventual installation of stainless steel cable assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters concur with the proposal.

One commenter requests that the AD be revised to reference the original issue of de Havilland Alert Service Bulletin A7-32-94, dated September 3, 1991. The commenter replaced the carbon steel cables with stainless steel cables, Post-Modification Number 7/2609, using the accomplishment instructions in the original issue of the service bulletin. However, the NPRM specifies that modifications must be performed in accordance with Revision A. The commenter maintains that Revision A does not add any substantive changes to the original issue of the service bulletin. The FAA concurs. Accordingly, the FAA has revised the final rule to cite the original issue of the service bulletin as an additional source for service information.

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the inspection, and 15 works per airplane to accomplish the modification, at an average labor rate of $55 per work hour. Required parts will cost approximately $825 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $91,080. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-20-04. De Havilland, Inc.: Amendment 39-8375. Docket 92-NM-55-AD.

Applicability: Model DHC-7 airplanes; on which stainless steel cables, Post-Modification Number 7/2809, have not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a gear-up landing, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a detailed inspection of the left- and right-hand main landing gear (MLG) emergency down release cables to detect corrosion, in accordance with de Havilland Alert Service Bulletin A7-32-04, dated September 3, 1991; or Revision A, dated November 15, 1991.

(b) If any corrosion is detected as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace both cable assemblies with either stainless steel cables (Post-Modification Number 7/2809) or carbon steel cables (Pre-Modification 7/2809), in accordance with de Havilland Alert Service Bulletin A7-32-04, dated September 3, 1991; or Revision A, dated November 15, 1991.

(c) Within 6 months after the effective date of this AD, or within 12 months after installing carbon steel cables, if installed in accordance with paragraph (b) of this AD: Install Post-Modification 7/2809 cables, in accordance with de Havilland Alert Service Bulletin A7-32-04, dated September 3, 1991; or Revision A, dated November 15, 1991.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection, replacement, and installation shall be done in accordance with de Havilland Alert Service Bulletin A7-32-04, dated September 3, 1991; or Revision A, dated November 15, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on September 2, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-24710 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-248-AD; Amendment 39-8378; AD 92-20-04]

Airworthiness Directives; Canadair, Ltd., Model CL-600-2A12 (CL-601) and CL-600-2B16 (CL-601-3A) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Canadair Model CL-600-2A12 and CL-600-2B16 series airplanes, that currently requires repetitive visual inspections of the sensing line in the aft equipment bay to detect damage or deformations, and replacement of the sensing line or drainage of the tail cone fuel tank, if necessary. This amendment requires modification of the sensing line, installation of a bonding jumper assembly on the fuel sensing line, and performance on an electrical bonding test. This amendment is prompted by the development of a modification which, if installed, eliminates the need for the repetitive visual inspections prior to and after each refueling of the tail cone fuel tank. The actions specified by this AD are intended to prevent the presence of fuel vapors in the aft equipment bay, which could result in an in-flight fire in the event of a lightning strike or other ignition source in the area.

DATES: Effective November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

The incorporation by reference of Canadair Alert Wire TA601-0361-003, dated June 11, 1991, was approved previously by the Director of the Federal Register as of August 28, 1991 (56 FR 38337, August 13, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, Canada H3C 3G9. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fiesel, Aerospace Engineer, Propulsion Branch, ANE-174, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-7421; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-17-02, Amendment 39-8000 (56 FR 38337, August 13, 1991), which is applicable to certain Canadair Model CL-600-2A12 and CL-600-2B16 Series airplanes, was published in the Federal Register on July 7, 1992 (57 FR 29847). The action proposed to require modification of the sensing line, installation of a bonding jumper assembly on the fuel sensing line, and performance of an electrical bonding test.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the Public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 34 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $52,360. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8000 (56 FR 38337, August 13, 1991), and by adding a new airworthiness directive (AD), Amendment 39-8378, to read as follows:

92-20-04. Canadair, LTD.: Amendment 39-8378. Docket 91-NM-248-AD. Supersedes AD 91-17-02, Amendment 39-8000.

Applicability: Model CL-600-2A12 (CL-601) and CL-600-2B16 (CL-601-3A) series airplanes equipped with a tail cone fuel tank, installed in accordance with the Original Issue, Revision 1, or Revision 2 of Canadair Service Bulletin 601-0282, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the presence of fuel vapors in the aft equipment bay, which could result in an in-flight fire in the event of a lightning strike or other ignition source in the area, accomplish the following:

(a) Within 5 days after August 28, 1991 (the effective date of AD 91-17-02, Amendment 39-8000), or prior to refuelling of the tail cone fuel tank, whichever occurs later, perform a visual inspection of the unshrouded portion of the sensing line in the aft equipment bay to detect any damage or deformation, in accordance with Canadair Alert Wire TA601-0381-003, dated June 11, 1991. Thereafter, repeat the inspection prior to each refuelling. If damage or deformation of the sensing line is found as a result of the visual inspection, accomplish either subparagraph (a)(1) or (a)(2) of this AD, in accordance with the alert wire:

(1) Prior to further flight, drain the tail cone fuel tank, and continue flight operations with no fuel in the tail cone fuel tank; or

(2) Prior to further flight, drain the tail cone fuel tank, replace the level control valve sensing line, and continue flight operations with fuel in the tail cone fuel tank.

(b) After each refuelling of the tail cone fuel tank, inspect for any signs of leakage from the fuel sensing line in the aft equipment bay and at the fuel shroud drain, in accordance with Canadair Alert Wire TA601-0381-033, dated June 11, 1991. If leakage is found, prior to further flight, either drain the tail cone fuel tank, or replace with tail cone fuel tank level control valve sensing line, in accordance with the alert wire.

(c) Within 6 months after the effective date of this AD, modify the sensing line; perform functional tests of the refuel/defuel line, tail tank fuel shroud, and tail tank sensing line; and perform an electrical bonding and resistance test on all fuel lines installed during this modification; in accordance with Canadair Alert Service Bulletin A601-0381, Revision 2, dated January 27, 1992.

(d) Modification of the sensing line, as required by paragraph (c) of this AD, constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

(e) An alternative method of compliance of adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The modification and test shall be done in accordance with Canadair Alert Service Bulletin A601-0381, Revision 2, dated January 27, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The inspection shall be done in accordance with Canadair Alert Wire TA601-0381-003, dated June 11, 1991. This incorporation by reference was approved previously by the Director of the Federal Register as of August 28, 1991 (56 FR 38337, August 13, 1991). Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3C9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on September 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-24718 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-97-AD; Amendment 39-8353; AD 92-18-09]

Airworthiness Directives; British Aerospace Model BAe 125-800A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 125-800A series airplanes, that requires modification of the auxiliary power unit (APU) wiring. This amendment is prompted by a report that in the event of an uncontained engine failure, debris from the engine may damage the power supply wiring between certain electrical panels. The actions specified by this AD are intended to prevent a short circuit, arcing, and an electrical fire.

DATES: Effective on November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the

Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplance Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 125–800A series airplanes was published in the **Federal Register** on June 5, 1992 (57 FR 425876). That action proposed to require modification of the auxiliary power unit (APU) wiring.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 108 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to the $11,880, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of the Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rule Docket. A copy of it may be obtained from the Rule Docket at the location provided the "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–18–09 British Aerospace: Amendment 39–8353. Docket 92–NM–97–AD.

Applicability: Model BAe 125–800A series airplanes; post-mod 259404B (Turbomach auxiliary power unit) and post-mod 258706 (Garrett auxiliary power unit); certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent a short circuit, arcing, and an electrical fire, accomplish the following:

(a) Within 120 days after the effective date of this AD, modify the auxiliary power unit wiring, in accordance with British Aerospace Service Bulletin 49–37–25A253A&B, dated October 28, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manger, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with Far 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with British Aerospace Service Bulletin 49–37–25A253A&B, dated October 28, 1991.

Note: The issue date of that service bulletin is indicated only on "page 1 of 10"; no other page of the document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on August 12, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–24716 Filed 10–9–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–98–AD; Amendment 39–8377; AD 92–20–03]

Airworthiness Directives; British Aerospace Model DH/HS 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model DH/HS 125 series airplanes, that requires a one-time visual inspection to detect corrosion on the main landing gear (MLG) support brackets, rear spar sections, inboard flap hinge arms, and associated attachment hardware; and repair or replacement, if necessary. This amendment is prompted by a report of severe corrosion found on the wing rear spar at the interface with the outboard MLG support bracket. The actions specified by this AD are intended to prevent loss of structural integrity and possible collapse of the MLG on landing or take-off.

DATES: Effective on November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the

Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model DH/HS 125 series airplanes was published in the Federal Register on June 23, 1992 (57 FR 27955). That action proposed to require a one-time visual inspection to detect corrosion on the main landing gear (MLG) support brackets, rear spar sections, inboard flap hinge arms, and associated attachment hardware; and repair or replacement, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 49 airplanes of U.S. registry will be affected by this AD, that it will take approximately 300 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $808,500. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-20-03. British Aerospace: Amendment 39-8377. Docket 92-NM-98-AD.

Applicability: Model DH/HS 125 series airplanes; as listed in British Aerospace Service Bulletin SB 57-76, dated December 31, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of structural integrity and possible collapse of the main landing gear (MLG) on landing or take-off, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time visual inspection to detect corrosion on the MLG support brackets, rear spar sections, inboard flap hinge arms, and associated attachment hardware, in accordance with British Aerospace Service Bulletin SB 57-76, dated December 31, 1991.

(b) If no corrosion is found on the MLG support brackets, rear spar sections, inboard flap hinge arms, and associated attachment hardware, no further action is necessary.

(c) If any corrosion is found on the MLG support brackets, rear spar sections, and inboard flap hinge arms, prior to further flight, replace any corroded parts found, or repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(d) If corrosion is found on any associated attachment hardware that is within the limitations specified in the Structural Repair Manual (SRM) Chapter 51-10, prior to further flight, replace or repair in accordance with the SRM.

(e) If corrosion is found on any associated attachment hardware that is beyond the limitations specified in the Structural Repair Manual (SRM) Chapter 51-10, prior to further flight, replace or repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspection shall be done in accordance with British Aerospace Service Bulletin SB 57-76, dated December 31, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on September 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-24717 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-252-AD; Amdt. 39-8362; AD 92-19-04]

Airworthiness Directives; Airbus Industrie Model A300-600 and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300-600 and A310 series airplanes, that requires inspection of the forward engine mount link and the aft engine mount beam assembly to detect cracks and replacement of the link or beam assembly, if necessary. This amendment is prompted by reports

indicating that the forward engine mount links may have been overheated during the machining process and the aft engine mount beam assemblies may not have been dip etched prior to fluorescent penetrant inspections. The actions specified by this AD are intended to prevent reduced structural integrity of the airplane.

DATES: Effective November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Balgnac, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300-600 and A310 series airplanes was published in the **Federal Register** on February 12, 1992 (57 FR 5091). That action proposed to require inspection of the forward engine mount link and the aft engine mount beam assembly to detect cracks and replacement of the link or beam assembly, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

A second commenter requests that paragraphs (b)(1) and (b)(2) of the AD be revised to allow "in-situ" (on aircraft) visual inspection/sign-off of beam and links by serial number, provided that the serial number can be read and is not found on the list of affected units specified in the service bulletin. The FAA does not concur that paragraphs (b)(1) and (b)(2) of the AD should be revised. The FAA clarifies that the NPRM does not require (nor do the service bulletins cited in the NPRM indicate) that parts must be removed from the airplane if those parts are not identified by serial number as affected parts. If an operator can determine by inspection of the beam and links on the airplane that a serial number is not identified on the list of affected parts, no further action is required.

One commenter remark that linkages manufactured after July 31, 1989, were machined correctly and, therefore, should not be included in the applicability statement of the AD. The FAA concurs. The revised Pratt and Whitney service bulletins discussed below, which are cited in the final rule, contain this information.

Since issuance of the Notice, Pratt and Whitney has issued Revision 1, dated July 25, 1991, to Service Bulletins PW7R4 71-100 and PW4NAC 71-105. These revisions change the service bulletin effectively, revise certain illustrations, and provide additional information with regard to procedures for accomplishing the termination action. Pratt and Whitney has also issued Revision 2 to Service Bulletin PW4NAC 71-86, dated February 28, 1992, which adds clarification concerning the status of spare thrust links. In addition, Pratt and Whitney has issued Revision 2 to Service Bulletin PW7R4 71-90, dated May 14, 1992, which specifies the location on the engine mount link on which the service bulletin compliance note should be etched. The FAA has reviewed and approved these revised service bulletins, and has revised the final rule to reflect the latest revisions to these service bulletins as the appropriate service information sources.

Paragraph (c) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,620. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-19-04. Airbus Industrie: Amendment 39-8362. Docket 91-NM-252-AD.

Applicability: Model A300-B4-620, A310-221, A310-222, and A310-322 series airplanes, equipped with Pratt and Whitney JT9D-7R4D1, JT9D-7R4E1, or JT9D-7R4H1 series engines; and Model A300-B4-622, A300-B4-622R, and A310-324 series airplanes, equipped with Pratt and Whitney PW 4152 or PW 4158 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane, accomplish the following:

(a) Accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD

as follows: For airplanes equipped with Pratt and Whitney JT9D–7R4D1, JT9D–7R4E1, and JT9D–7R4H1 series engines, accomplish the actions in accordance with Pratt and Whitney Service Bulletin PW7R4 71–90, Revision 2, dated May 14, 1992, unless previously accomplished in accordance with Pratt and Whitney All Operator Letter JT9/71–00/SS:JDS:0–12–3–1. For airplanes equipped with Pratt and Whitney PW 4152 and PW 4158 series engines, accomplish the actions in accordance with Pratt and Whitney Service Bulletin PW4NAC 71–86, Revision 2, dated February 28, 1992, unless previously accomplished in accordance with Pratt and Whitney All Operator Letter 4000/71.00/SS:TJF:0–12–03–1.

(1) Prior to the accumulation of 500 hours time-in-service after the effective date of this AD, perform a visual inspection to detect cracks or a broken link in the forward engine mount thrust link, in accordance with part 1 of the applicable service bulletin.

(i) If no crack or broken link is found, repeat the visual inspection thereafter at intervals not to exceed 1,000 landings until the requirements of paragraph (a)(2) of this AD are accomplished.

(ii) If any crack or a broken link is found as a result of the visual inspection, prior to further flight, replace the link with a serviceable part that has been inspected in accordance with the applicable service bulletin. Such replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

(2) At the next engine removal or within 4,000 hours time-in-service after the effective date of this AD, whichever occurs first, perform a nital etch inspection to detect cracks or a broken link in the forward engine mount thrust link, in accordance with the applicable service bulletin.

(i) If no crack is found as a result of the nital etch inspection, reinstall the link assembly in accordance with the applicable service bulletin. No further action is required.

(ii) If any crack or broken link is found as a result of the nital etch inspection, prior to further flight, replace the link with a serviceable part, in accordance with the applicable service bulletin. Such replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

(3) Replacement of the forward engine mount thrust link in accordance with the applicable service bulletin constitutes terminating action for the requirements of this AD.

(b) Accomplish the requirements in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD as follows: For airplanes equipped with Pratt and Whitney JT9D–7R4D1, JT9D–7R4E1, and JT9D–7R4H1 series engines, accomplish the actions in accordance with Pratt and Whitney Service Bulletin PW7R4 71–100, Revision 1, dated July 25, 1991, unless previously accomplished in accordance with Pratt and Whitney All Operator Letter JT9/71–00/SS:0–12–3–1. For airplanes equipped with Pratt and Whitney PW 4152 and PW 4158 series engines, accomplish the actions in accordance with Pratt and Whitney Service Bulletin PW4NAC 71–105, Revision 1, dated July 25, 1991, unless previously accomplished in accordance with Pratt and Whitney All Operator Letter 4000/71–00/SS:TJF:0–12–03–1.

(1) Prior to the accumulation of 500 hours time-in-service after the effective date of this AD, perform a visual inspection to detect cracks or forging laps in the aft engine mount beam assembly, in accordance with Part 1 of the applicable service bulletin.

(i) If no crack or forging lap is found as a result of the visual inspection, repeat the visual inspection thereafter at intervals not to exceed 1,000 landings until the requirements of paragraph (b)(2) of this AD are accomplished.

(ii) If any crack is found as a result of the visual inspection, prior to further flight, perform a dip etch and a spot fluorescent penetrant inspection to confirm the findings of cracks or forging laps, in accordance with part 2 of the applicable service bulletin. If any finding of cracks or forging laps is confirmed, prior to further flight, replace the defective beam assembly with a serviceable part, in accordance with the applicable service bulletin. Such replacement constitutes terminating action for the requirements of paragraph (b) of this AD. As of the effective date of this AD, none of the aft beam assemblies listed in the applicable service bulletin shall be installed on any airplane.

(2) Except as provided by paragraph (b)(3) of this AD, at the next engine removal or within 4,000 hours time-in-service after the effective date of this AD, whichever occurs first, perform a dip etch and a fluorescent penetrant inspection to detect cracks or forging laps in the aft engine mount beam assembly, in accordance with part 2 of the applicable service bulletin.

(i) If no crack or forging lap is found as a result of the dip etch and fluorescent penetrant inspection, reinstall the beam assembly in accordance with the applicable service bulletin. No further action is required.

(ii) If any crack or forging lap is found as a result of the dip etch and fluorescent penetrant inspection, prior to further flight, replace the beam assembly with a serviceable part, in accordance with the applicable service bulletin. Such replacement constitutes terminating action for the requirements of paragraph (b) of this AD.

(3) If the requirements of paragraph (b)(2) of this AD result in a dual engine removal, the dip etch and fluorescent penetrant inspection of one of the two aft engine mounts may be deferred to the next 4,000 hours time-in-service or engine removal, whichever occurs first, provided no crack or forging lap is found while accomplishing the visual inspections required by paragraph (b)(1) of this AD. If those inspections are deferred, repeat the visual inspection of the deferred aft engine mount, as required by paragraph (b)(1) of this AD, at intervals not to exceed 1,000 landings.

(4) Replacement of the aft engine mount beam assembly, in accordance with the applicable service bulletin, constitutes terminating action for the requirements of paragraph (b) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirement of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with the following Pratt and Whitney service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
PW4NAC 71–105, Revision 1, July 25, 1991	1–19	1	July 25, 1991.
PW4NAC 71–86, Revision 2, February 28, 1992	1–2	2	February 28, 1992
	3, 6, 8, 11–16, 18.	1	July 25, 1991.
	4–5, 7, 9–10, 17	Original	May 10, 1991.
PW7R4 71–90, Revision 2, May 14, 1992	1, 16–20	2	May 14, 1992.
	2, 4–5, 7, 10	Original	May 10, 1991.
	3, 6, 8–9, 11–15.	1	July 25, 1991.
PW7R4 71–100, Revision 1, July 25, 1991	1, 4, 6–18	1	July 25, 1991.
	2–3, 5	Original	May 10, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on August 20, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-24751 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-234-AD; Amdt. 39-8357; AD 92-18-12]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires that maximum wear limits for landing gear brakes be incorporated into the FAA-approved maintenance inspection program. This amendment requires the inspection for wear of certain additional landing gear brakes if the maximum brake wear limits prescribed in this AD are not met; replacement or rework of certain brakes; and changes of Airplane Flight Manual Brake Energy Categories. This amendment is prompted by the determination of the maximum allowable brake wear limits for additional brakes. The actions specified by this AD are intended to prevent the loss of braking effectiveness of the landing gear brakes.

DATES: Effective November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and Allied-Signal Aerospace Company, Bendix Wheels and Brakes Division, South Bend, Indiana 46628. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2672; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-18-08, amendment 39-8011 (56 FR 51232, October 11, 1991), which is applicable to Boeing Model 747 series airplanes, was published in the **Federal Register** on May 20, 1992 (57 FR 15260). The action proposed to require the inspection for wear of certain additional landing gear brakes that were not listed in the existing rule, and replacement of the brakes if the maximum brake wear limits prescribed in the proposal are not met; replacement or rework of certain brakes; and changes of Airplane Flight Manual Brake Energy Categories.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Several commenters request that the proposed compliance time of 180 days be extended so that the proposed inspections of the brakes can be accomplished during a regularly scheduled maintenance visit. One commenter states that adoption of the proposed compliance time would require operators to schedule special brake removals or retrofit at considerable expense. Another commenter states that the proposed compliance time of 180 days would require the premature removal of brakes that are not yet completely worn out. The commenters suggest that a compliance time of 360 days or 12 months would coincide with normal brake removal schedules and would alleviate the economic burden on affected operators.

The FAA disagrees that an extension of the compliance time is warranted. Brakes are not removed at regularly scheduled intervals now, but are continually inspected and removed when at or near the allowable wear limit. Over the 180-day compliance period, operators could replace brakes with brakes from spares that are configured to the new allowable wear limit; this would limit the large number of brakes needing to be replaced at the end of the 180-day compliance period. The FAA considers that the compliance time for this AD action, as proposed, represents the maximum interval of time allowable wherein the inspection/modification can be accomplished, parts could be obtained, and an acceptable level of safety could be maintained. The FAA has determined that the increase in costs associated with a 180-day compliance time is mitigated by the increase in safety to the flying public.

One commenter requests that the rule be revised to allow the intermixing of brakes having part number 2601902-6 with brakes having part number 2601902-60 for 360 days, if a 1.73-inch maximum allowable brake wear limit is used. Providing the extension of this time would minimize the economic burden on affected operators whose airplanes are equipped with those brakes. The FAA concurs with the commenter's request. The FAA has reconsidered the period of time for the use of combinations of all of the intermixed brakes specified in the proposal, and has determined that the interval of use of this intermixibility may be extended to 360 days without compromising safety.

One commenter requests that the proposed rule be revised to include additional procedures that would allow modification of the brakes to be performed without the removal of the brakes from the airplane, and that would not require changing the AFM Brake Energy Category. The commenter states that the proposed requirements to modify the brakes within 180 days would necessitate removing brakes prematurely on airplanes that are currently in storage or that have low utilization rates. The commenter also states that, for its particular operations, the requirement to change the AFM Brake Energy Category would require operating the airplane at reduced performance limited takeoff weights of 500 kilograms, and this would result in an economic penalty. In light of this, the commenter suggests that a procedure be included in the final rule, such as trimming the wear pin on the airplane so that the "Category C" classification remains applicable.

The FAA does not concur that a revision to the final rule is necessary. The rule has been written to provide flexibility of the operators in complying with it. The required change in the AFM Brake Energy Category provides the operator an option of using the existing brake part number and operating the

airplane at lower gross takeoff weights. The allowable wear limit depends upon the brake energy category that an operator chooses for its particular operations. The rule provides for the intermix of the brakes for a period of time, as long as certain wear limits are adhered to. A change in part number was required due to the nature of most of the affected Model 747 operations. Trimming of the wear pins and change in part numbers could feasibly be done while brakes are installed on the airplane. The FAA did not include such specific procedures in the rule because it is not aware of all operators' capabilities of doing this work. The FAA considers it more appropriate that the individual affected operators be free to develop procedures that are appropriate for their operations and request FAA concurrence with those procedures.

One commenter requests that proposed paragraph (b)(1)(i) be revised to include an initial inspection of each part number 2602012–2, –3, –4, and –5, brake to ensure that it is not worn beyond 1.75 inches, and, subsequently, to require the replacement of the brake if that limit is not met. This would make the requirements parallel to those for the other brakes affected by the rule. It would also allow the intermix of these brakes, as specified in proposed paragraph (b)(1)(iii), during the compliance period, as is allowed for the other brakes affected by the rule. The FAA concurs. The FAA had intended that the AD contain, where appropriate, parallel requirements for all of the affected brakes. The FAA has determined that, rather than to require merely the removal and replacement of the subject brakes within 180 days, it is more practicable to allow operators first to perform an initial inspection of the brakes to detect brake wear and then to replace those brakes when they are worn beyond the specified limit. Permitting the accomplishment of the inspection action will alleviate the economic burden on affected operators that would have been imposed by the proposed removal and replacement requirements. Additionally, allowing the inspection to be accomplished first will relieve the concern of some commenters, as discussed previously, that the proposed replacement requirement would mean the premature removal of brakes that are not yet completely worn out. Accordingly, paragraph (b)(1) of the final rule has been revised to include this change, and reformatted to make it parallel with other similar paragraphs in the AD.

One commenter requests that proposed paragraph (b)(1)(iv) be revised to delete the sentence that states that changing the references of Bendix part number 2602012–2, –3, –4, and –5 brakes to Category "B" on the Maximum Brake Energy Chart in Section 4 of the AFM, should be delayed until intermixing is ended. The commenter states that, since the performance information on that chart in the AFM remains unchanged, it is not affected by the intermixing of brakes. The FAA concurs. Paragraph (b)(1)(iv) of the final rule has been revised to delete the sentence that referred to this delay.

One commenter requests that proposed paragraphs (b)(3)(v), (b)(4)(v), and (b)(5)(v) be revised to state that changes of all references of the cited part numbered brakes should be to Category "C" rather than to Category "B;" and to delete the sentence in each paragraph stating that this change should be delayed until after intermixing is ended. The commenter states that the cited part numbered brakes were rated as AFM Category "C" prior to this AD activity and, under the proposed requirements, would be derated to Category "B." The relative Maximum Brake Energy Chart in Section 4 of the AFM refer to these brakes as Category "C," so that changing the references to Category "B" would be in error. Additionally, the performance information on that chart is not affected by the intermixing of brakes. The FAA concurs and has revised the final rule accordingly.

One commenter noted an error in the Boeing brake part number of the brake cited in proposed paragraph (b)(4)(i). The proposal referred to Boeing part number "60B10014–20," but the correct part number is "60B10014–30." The FAA notes this inadvertent error and has corrected the final rule accordingly.

This same commenter noted an error in the Bendix brake part number cited in proposed paragraph (b)(4)(iv). The proposal referred to Bendix part number "260566–2," but the correct part number is "2605662–2." The FAA notes this error that occurred in the publication of the notice and has corrected the final rule accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 966 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that a total of 247 airplanes of U.S. registry and 14 operators will be affected by this AD; of these numbers, 199 airplanes and 3 operators will be directly affected by this new proposed action.

With regard to the 199 newly-affected airplanes, it will take approximately 59 work hours per airplane to accomplish the required actions, at an average labor cost of $55 per work hour. The cost of parts necessary to accomplish the change in wear limits (that is, the cost resulting from the requirement to change brakes before they are worn to their previously-approved limits for a one-time change) average $10,520 per airplane for 153 of these airplanes, and $14,170 per airplane for the remaining 46 airplanes. Based on these figures, the cost impact of the AD is $2,907,135 for the 199 newly-affected airplanes.

Further, the FAA estimates that for the 3 operators directly affected by this AD action, it will require 40 work hours per operator to incorporate the requirements into an operator's FAA-approved maintenance inspection program. The average labor cost is estimated to be $55 per work hour. Based on these figures, the cost impact of the AD totals $6,600 for the 3 newly-affected operators.

Based on the figures discussed above the total cost impact of the AD on U.S. operators is estimated to be $2,913,735. This total cost figure assumes that no operator has yet accomplished the requirements of this rule.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rule Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8011 (56 FR 51232, October 11, 1991), and by adding a new airworthiness directive (AD), amendment 39-8357, to read as follows:

92-18-12 Boeing: Amendment 39-8357. Docket No. 91-NM-234-AD. Supersedes AD 91-18-08, Amendment 39-8011.

Applicability: Model 747 series airplanes, equipped with brake part numbers (P/N) identified in paragraphs (a) and (b) of this AD, certificated in any category.

Compliance required as indicated, unless previously accomplished.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after November 12, 1991 (the effective date of Amendment 39-8011, AD 91-18-08), incorporate the maximum brake wear limits, shown below, into the FAA-approved maintenance inspection program:

Brake mfr.	Brake P/N	Boeing P/N	Maximum wear limit (inches)
Bendix	2603703-13	60B10014-9	1.55
Bendix	2603703-14	60B10014-11	1.55
Bendix	2605662-1	60B10014-15	2.50
Bendix	2605662-3	60B10014-23	2.70
BFGoodrich	2-1515-1	60B10062-11	2.00
BFGoodrich	2-1515-2	60B10062-12	2.00

(b) Within 180 days after the effective date of this AD, accomplish the requirements specified in paragraph (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), or (b)(6) of this AD, as applicable:

(1) For airplanes equipped with Bendix Part Numbers (P/N) 2602012-2, -3, -4, and -5, (Boeing P/N 60B00150-5, -6, -8, and -12):

(i) Inspect each brake to ensure it is not worn more than 1.75 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with a Bendix Brake P/N 2602012-30, -40, or -50, (Boeing P/N 60B00150-21, -22, and -23), as applicable, built in accordance with Bendix Service Bulletin 2602012-32-001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N's 2602012-30, -40, and -50 to the FAA-approved Airplane Flight Manual (AFM), Section 4, "Maximum Brake Energy Limit Speed," Category "B," and remove Bendix brake P/N's 2602012-2, -3, -4, and -5 from the AFM.

(iii) Intermix of the P/N 2602012-2, -3, -4, and -5 brakes with the P/N 2602012-30, -40 and -50 brakes is allowed for 360 days after the effective date of this AD. Delay removal of the P/N 2602012-2, -3, -4, and -5 brakes from the AFM, as required by paragraph (b)(1)(ii) of this AD, until intermix is ended.

(iv) Change all references of Bendix Brake P/N's 2602012-2, -3, -4, and -5 to Category "B" on the Maximum Brake Energy Chart in Section 4 of the AFM.

(v) Incorporate a 1.75-inch maximum allowable brake wear limit for Bendix brake P/N's 2602012-30, -40 and -50 into the FAA-approved maintenance inspection program.

(2) For airplanes equipped with Bendix Brake P/N's 2602012-2, -3, -4, and -5, (Boeing P/N's 60B00150-4, -9, and -13): Incorporate a 2.38-inch maximum allowable brake wear limit into the FAA-approved maintenance inspection program.

(3) For airplanes equipped with Bendix Brake P/N's 2601902-3 -4, and -6, (Boeing P/N's 60B00150-10, -11, and -14):

(i) Inspect each brake to ensure it is not worn more than 1.73 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with a Bendix Brake P/N 2601902-30, -40, or -60, (Boeing P/N's 60B00150-24, -25, and -26), as applicable, built in accordance with Bendix Service Bulletin 2601902-32-001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N's 2601902-30, -40, and -60 to the AFM, Section 4, "Maximum Brake Energy Limit Speed, " Category "C."

(iii) Intermix of the P/N 2601902-2, -3, -4, and -6 brakes with the P/N 2601902-30, -40 and -60 brakes is allowed for 360 days after the effective date of this AD when a 1.73-inch maximum allowable brake wear limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N's 2601902-2, -3, -4, and -6 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." if intermixing is used, delay movement of these brakes to Category "B" until intermixing is ended.

(v) Change all references of Bendix P/N's 2601902-3, -4, -6 to Category "C" on the Maximum Brake Energy Chart in section 4 of the AFM.

(vi) Incorporate a 2.38-inch maximum allowable brake wear limit for Bendix Brake P/N's 2601902-3, -4, and -6, and a 1.73-inch maximum allowable brake wear limit for P/N's 2601902-30, -40, and -60, into the FAA-approved maintenance inspection program.

(4) For airplanes equipped with Bendix Brake P/N 2605662-2, (Boeing P/N 60B10014-14):

(i) Inspect each brake to ensure that it is not worn more than 1.73 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with Bendix Brake P/N 2605662-20, (Boeing P/N 60B10014-30), built in accordance with Bendix Service Bulletin 2605662-32-028, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N 2605662-20 to the AFM, Section 4, "Maximum Brake Energy Limit Speed," Category "C."

(iii) Intermix of the P/N 2605662-2 brakes with the P/N 2605662-20 brakes is allowed for 360 days after the effective date of this AD when a 1.73-inch maximum allowable ware limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N 2605662-2 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." If intermixing is used, delay movement of these brakes to Category "B" until intermix is ended.

(v) Change all references of Bendix P/N 2605662-5 to Category "C" on the Maximum Brake Energy Chart in Section 4 of the AFM.

(vi) Incorporate a 2.38-inch maximum allowable brake wear limit for Bendix Brake P/N 2605662-2, and a 1.73-inch maximum allowable brake wear limit for P/N 2605662-20, into the FAA-approved maintenance inspection program.

(5) For airplanes equipped with Bendix Brake P/N 2605155-1, (Boeing P/N 60B10014-10):

(i) Inspect each brake to ensure that it is not worn more than 2.50 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with Bendix Brake P/N 2605155-2, (Boeing P/N 60B10014-31), built in accordance with Bendix Service Bulletin 2605155-32-001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N 2605155-2 to the Airplane Flight Manual (AFM), Section 4, "Maximum Brake Energy Limit Speed," Category "C."

(iii) Intermix of the P/N 2605155-1 brakes with the P/N 2605155-2 brakes is allowed for 360 days after the effective date of this AD when a 2.50-inch maximum allowable wear limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N 2605155-1 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." If intermixing is used, delay movement of this brake to Category "B" until intermixing is ended.

(v) Change all references of Bendix P/N 2605155-1 to Category "C" on the Maximum Brake Energy Chart in Section 4 of the AFM.

(vi) Incorporate a 3.20-inch maximum allowable brake wear limit for Bendix Brake P/N 2605155-1, and a 2.50-inch maximum allowable brake wear limit for P/N 2605155-2, into the FAA-approved maintenance inspection program.

(6) For airplanes equipped with Bendix Brake P/N 2605392-1, (Boeing P/N 60B10035-2): Incorporate a 1.90-inch maximum allowable brake wear limit into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) Brakes shall be built in accordance with Bendix Service Bulletin 2601902–32–001, Revision 2, dated October 10, 1991; Bendix Service Bulletin 2602012–32–001, Revision 2, dated October 10, 1991; Bendix Service Bulletin 2605155–32–001, Revision 2, dated October 10, 1991; or Bendix Service Bulletin 2605662–32–028, Revision 2, dated October 10, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allied-Signal Aerospace Company, Bendix Wheels and Brakes Division, South Bend, Indiana 46620. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on August 13, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–24750 Filed 10–9–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–78–AD; Amdt. 39–8363; AD 92–19–05]

Airworthiness Directives: Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines, that requires rework of the flow control tee assembly in the deploy lines on both engine struts, by removal of the poppet valves; installation of a restrictor check valve in the stow and deploy lines on each thrust reverser sleeve; and a functional test of the thrust reverser system. This amendment is prompted by a determination that damage to a thrust reverser actuator piston seal in combination with activation of the thrust reverser auto restow system could result in uncommanded thrust reverser deployment. The actions specified by this AD are intended to prevent in-flight deployment of one thrust reverser sleeve on one engine, which could result in reduced controllability of the airplane.

DATES: Effective November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket 92–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Jeffrey Duven, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2688; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes, equipped with Pratt and Whitney PW2000 series engines, was published in the Federal Register on May 5, 1992 (57 FR 19286). That action proposed to require rework of the flow control tee assembly in the deploy lines on both engine struts, by removal of the poppet valves; installation of a restrictor check valve in the stow and deploy lines on each thrust reverser sleeve; and a functional test of the thrust reverser system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the compliance time for the modification be increased from the proposed 180 days to 4,000 flight hours. The commenter suggests that such an extension would ensure that the modification could be accomplished during a regularly scheduled "C" check, when airplanes are brought to the main maintenance base for an extended hold, and sufficient time will be available for the installation of the modification. An extension of the proposed compliance period would preclude the need for special scheduling of maintenance at considerable expense, beyond what was projected by the cost impact analysis of the proposed rule. Finally, the commenter has operated the Model 757 series airplane with over 190,000 flight hours for the fleet, with no uncommanded thrust reverser deployment occurrences whatsoever. The FAA does not concur with the request for an extension of the compliance time. The possible consequences of an in-flight thrust reverser deployment on the Model 757 series airplane have led the FAA to require this modification be implemented as soon as it is practicable, as proposed by the 180-day compliance period. This safety issue overrides the commenter's operating experience and the convenience of completing the modification coincidental with scheduled heavy maintenance. Airplane downtime for the modification will require approximately 5 work hours, which can be performed during an overnight hold. The FAA has determined that the compliance requirements, as proposed, represent the maximum time interval in which the modification can be accomplished, and an acceptable safety level be maintained.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 207 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 189 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by Boeing at no charge to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $207,900. This total cost figure assumes that no operator has yet

accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–19–50. Boeing: Amendment 39–8363. Docket 92–NM–78–AD.

Applicability: Model 757 airplanes equipped with Pratt and Whitney PW2000 series engines; as listed in Boeing Alert Service Bulletin 757–78A0029, dated February 28, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight deployment of one thrust reverser sleeve on one engine, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 180 days after the effective date of this AD, rework the flow control tee assembly in the deploy lines on both engine struts, by removal of the poppet valves; install a restrictor check valve in the stow and deploy lines on each thrust reverser sleeve; and perform a functional test of the thrust reverser system; in accordance with Boeing Alert Service Bulletin 757–78A0029, dated February 28, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Boeing Alert Service Bulletin 757–78A0029, dated February 28, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001.

(e) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on August 20, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–24752 Filed 10–9–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–40–AD; Amdt. 39–8367; AD 92–19–09]

Airworthiness Directives; Short Brothers Model SD3–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Short Brothers Model SD3–30 series airplanes, that currently requires inspections of various structural and system components, and repair or modification, if necessary. This amendment adds specific requirements for repetitive inspections to detect cracks of the rib/skin attachment cleats at left Wing Station 160. This amendment is prompted by a report that the existing AD is unclear as to the required repetitive inspections of this area. The actions specified by this AD are intended to prevent failure of the cleat attachment, which could comprise the structural capability of the wing.

DATES: Effective November 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 84–07–06 R1, Amendment 39–6036 (53 FR 38003, September 29, 1988), which is applicable to certain Short Brothers Model SD3–30 series airplanes, was published in the **Federal Register** on May 12, 1992 (57 FR 20213). The action proposed to require inspections of various structural and system components, and repair or modification, if necessary, and repetitive inspections to detect cracks of the rib/skin attachment cleats at left Wing Station 160.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed, but requests that the FAA determine if a similar AD should be issued against Short Brothers Model SD3–60 series airplanes. The FAA concurs. The FAA has taken action to ascertain whether or not Model SD3–60 series airplanes are also subject to the addressed unsafe condition, and will initiate appropriate rulemaking action, if

necessary, once that determination has been made.

A second commenter requests that paragraphs (e) and (e)(2) of the proposed rule be clarified by citing references to those specific parts of the service bulletin that apply to these paragraphs. The FAA concurs, and has revised the final rule accordingly.

In addition, the commenter suggests that a new paragraph, (e)(3), be added to the proposal to specify that after the repair has been accomplished, the repetitive inspection interval reverts to 4,800 hours time-in-service. The FAA does not concur, since paragraph (e)(2) of the proposal already specifies that the inspections of repaired bays must be repeated at intervals not to exceed 4,800 hours time-in-service.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 180 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $3,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $748,200. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 11612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6036 (53 FR 38003, September 29, 1988), and by adding a new airworthiness directive (AD), amendment 39-6367, to read as follows:

92-19-09. Short Brothers: Amendment 39-6367. Docket 92-NM-40-AD. Supersedes AD 84-07-06 R1, Amendment 39-6036.

Applicability: All Model SD3-30 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To preserve the structural integrity of the wing and horizontal stabilizer; to prevent fuel leaks into the cabin; to ensure adequate fire protection for the aft baggage compartment; and to prevent attempted operations with the control surfaces locked; accomplish the following:

(a) To ensure the availability of an adequate concentration of fire extinguishing agent in the event of a baggage compartment fire within 180 days after November 3, 1988 (the effective date of AD 84-07-06 R1, Amendment 39-6036), install a new closing panel in the aft baggage compartment in accordance with Short Brothers Ltd. Service Bulletin SD3-25-30, dated January 8, 1982.

(b) To prevent weather or fuel leakage into the passenger cabin, within 180 days after November 3, 1988, inspect and seal the fuselage crown in accordance with Short Brothers Ltd. Service Bulletins SD3-53-01, Revision 2, dated January 19, 1977; SD3-53-18, dated November 25, 1977; and SD3-53-41, dated May 21, 1980.

(c) To prevent fatigue failure of the wing drag links, within 600 hours time-in-service after November 3, 1988, or upon the accumulation of 4,800 total hours time-in-service, whichever occurs later, inspect and modify in accordance with Short Brothers Ltd. Service Bulletin SD3-53-48, Revision 1, dated January 5, 1983. Replaced damaged parts prior to further flight, in accordance with the service bulletin.

(d) To detect excessive corrosion or wear in the horizontal stabilizer (tailplane)-to-fuselage attachment fittings, pins, and bushings: Within 90 days after November 3, 1988, perform an inspection for corrosion or wear of the horizontal stabilizer (tailplane)-to-fuselage fittings, pins, and bushings in accordance with Short Brothers Ltd. Service Bulletin SD3-55-10, Revision 3, dated November 1987. For airplanes that have accumulated less than 4,800 hours time-in-service or 2 years of age, whichever occurs first. Any parts found to be worn or corroded must be replaced prior to further flight, in accordance with the service bulletin.

(1) If the pins are not replaced by new pins, and if there is no corrosion found on the attachment fittings, repeat this inspection at intervals not to exceed 1,200 flight hours or 6 months from the previous inspection, whichever occurs sooner.

(2) If all the pins on one side are replaced by new pins, repeat the inspection on that side within the next 4,800 flight hours or 2 years from the replacement, whichever occurs sooner. Thereafter, inspect at intervals not to exceed 2,400 flight hours or 1 year from the previous inspection, whichever occurs sooner.

(e) To detect cracked or broken rib/skin attachment cleats at left Wing Station 180, within 300 hours time-in-service after November 3, 1988, or upon the accumulation of 4,800 total hours time-in-service, whichever occurs later, inspect in accordance with Part A (Inspection) of paragraph 2.A. of the Accomplishment Instructions of Short Brothers Ltd. Service Bulletin SD3-57-10, Revision 1, dated October 11, 1982. Repeat this inspection within 2,400 hours time-in-service after the immediately preceding inspection, or within 300 hours time-in-service after the effective date of this AD, whichever occurs later, in accordance with the service bulletin.

(1) If no cracks are found, repeat the inspection of each bay at intervals not to exceed 2,400 hours time-in-service, in accordance with the service bulletin.

(2) If any cracks are found, prior to further flight, repair in accordance with Part B (Repair—Rear Bay) and/or Part C (Repair—Forward Bay) of paragraph 2.A. of the Accomplishment Instructions of the service bulletin; and repeat the inspection of the repaired bay at intervals not to exceed 4,800 hours time-in-service, in accordance with the service bulletin.

(f) To prevent takeoff with locked flight controls, within 180 days after November 3, 1988, modify the power control circuit in accordance with Short Brothers Ltd. Service bulletin SD3-76-01, dated September 8, 1981.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Standardization Branch.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The installation, inspections, and modifications shall be done in accordance with the following Short Brothers, Ltd., service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
SD3-25-30, January 8, 1992	1-7	Original	January 8, 1992.
SD3-53-01 Revision 2, January 19, 1977	1, 25	2	January 19, 1977.
	2-24, 26-60	1	November 27, 1976.
SD3-53-18, November 25, 1977	1-5	Original	November 25, 1977
SD3-53-41, May 21, 1980	1-8	Original	May 21, 1980.
SD3-53-48, Revision 1, January 5, 1983	1-7	1	January 5, 1983.
SD3-55-16, Revision 3, November 1987	1-8	3	November 1987.
SD3-57-10, Revision 1, October 11, 1982	1-12	1	October 11, 1982.
SD3-76-01, September 8, 1981	1-7	Original	September 8, 1981.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on November 17, 1992.

Issued in Renton, Washington, on August 21, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-24753 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26984; Amdt. No 1511]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standard Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight

safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on September 25, 1992.

Thomas C. Accardi,

Director, Flight Standard Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective December 10, 1992.*

Denver, CO—Centennial, NDB RWY 35R, Amdt. 9
Denver, CO—Centennial, ILS RWY 35R, Amdt. 7
Denver, CO—Centennial, RNAV RWY 28, Amdt. 5, CANCELLED
Denver, CO—Centennial, VOR/DME RNAV RWY 28, Orig.
Denver, CO—Front Range, NDB RWY 26, Amdt. 2
Denver, CO—Front Range, ILS RWY 26, Amdt. 2
Destin, FL—Destin-Ft. Walton Beach, VOR-A, Amdt. 5, CANCELLED
Lake City, FL—Lake City Muni, NDB RWY 28, Amdt. 1
Manahawkin, NJ—Manahawkin, VOR-A, Amdt. 1, CANCELLED
Albany, OR—Albany Muni, VOR/DME-A, Amdt. 3
Norfolk, VA—Norfolk Intl, NDB/DME RWY 23
Casper, WY—Natrona County Intl, LOC BC RWY 28, Amdt. 17, CANCELLED

* * * *Effective November 12, 1992*

Mount Joy/Marietta, PA—Donegal Springs Airpark, VOR RWY 27, Amdt. 1, CANCELLED
Mount Joy/Marietta, PA—Donegal Springs Airpark, VOR/DME RWY 27
Pickens, SC—Pickens County, VOR/DME-A, Orig.
Lumberton, NC—Lumberton Muni, NDB RWY 05, Orig.
Moundsville, WV—Marshall County, VOR/DME-A, Amdt. 1

* * * *Effective October 15, 1992*

Mobile, AL—Mobile Downtown, ILS RWY 32, Orig.
Nome, AK—Nome, LOC/DME BC RWY 9, Orig.
Nome, AK—Nome, ILS-1 RWY 27, Orig.
Nome, AK—Nome, ILS-2 RWY 27, Orig.
Los Angeles, CA—Los Angeles Intl, ILS RWY 24L, Amdt. 20
San Francisco, CA—San Francisco Intl, LDA/DME RWY 28R, Amdt. 1
Denver, CO—Stapleton Intl, LOC RWY 18, Amdt. 5
Denver, CO—Stapleton Intl, NDB RWY 26L, Amdt. 39
Denver, CO—Stapleton Intl, NDB RWY 26R, Amdt. 9
Denver, CO—Stapleton Intl, ILS/DME-1 RWY 17L, Amdt. 7
Denver, CO—Stapleton Intl, CONVERGING ILS/DME-2, RWY 17L, Amdt. 3
Denver, CO—Stapleton Intl, ILS RWY 26L, Amdt. 47
Denver, CO—Stapleton Intl, ILS RWY 35L, Amdt. 29
Denver, CO—Stapleton Intl, ILS RWY 35R, Amdt. 13
Denver, CO—Stapleton Intl, ILS RWY 36, Amdt. 4
Effingham, IL—Effingham County Memorial, VOR RWY 1, Amdt. 8
Effingham, IL—Effingham County Memorial, LOC RWY 29, Orig.
Lincoln, IL—Logan County, NDB RWY 21, Amdt. 5, CANCELLED
Lincoln, IL—Logan County, NDB RWY 21, Orig.
Lincoln, ME—Lincoln Regional, NDB RWY 17, Orig.
North Kingstown, RI—Quonset State, VOR-A, Amdt. 3
North Kingstown, RI—Quonset State, VOR RWY 34, Amdt. 5, CANCELLED
North Kingstown, RI—Quonset State, ILS RWY 16, Amdt. 4
North Kingstown, RI—Quonset State, RADAR-1, Amdt. 4, CANCELLED
North Kingstown, RI—Quonset State, VOR/DME RNAV RWY 34, Orig.
Phillips, WI—Price County, NDB RWY 6, Orig.
Phillips, WI—Price County, NDB RWY 24, Amdt. 2
Shell Lake, WI—Shell Lake Muni, NDB RWY 31, Amdt. 2, CANCELLED
Shell Lake, WI—Shell Lake Muni, NDB RWY 32, Orig.
Waukesha, WI—Waukesha County, VOR-A, Amdt. 15
Waukesha, WI—Waukesha County, LOC RWY 10, Amdt. 5
Waukesha, WI—Waukesha County, NDB RWY 28, Amdt. 3

* * * *Effective September 23, 1992*

Delano, CA—Delano Muni, VOR RWY 32, Amdt. 6

* * * *Effective September 17, 1992*

Augusta, ME—Augusta State, ILS RWY 17, Amdt. 2
Medford, OR—Medford-Jackson County, ILS/DME RWY 14, Amdt. 14

* * * *Effective September 09, 1992*

Indianapolis, IN—Indianapolis Intl, RADAR-1, Amdt. 30

* * * *Effective September 03, 1992*

Phoenix, AZ—Phoenix Sky Harbor Intl, LOC BC RWY 26L, Amdt. 7

[FR Doc. 92-24769 Filed 10-9-92; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26895; Amdt. No. 1512]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC) /Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore–(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on September 25, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983), and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
09/09/92	RI	Block Island	Block Island State	FDC 2/5458	VOR/DME Rwy 10 Amdt 3.
09/10/92	ST	Charlotte Amalie	Cyril E. King	FDC 2/5438	Thomas, VI. VOR-A Amdt 14A.
09/14/92	MI	Detroit	Detroit Metropolitan Wayne County	FDC 2/5521	ILS Rwy 3R Amdt 12.
09/14/92	PA	Allentown	Allentown Queen City Muni	FDC 2/5529	VOR-B Amdt 4.
09/14/92	PA	Pottstown	Pottstown Muni	FDC 2/5528	VOR-B Amdt 4.
09/15/92	WI	Green Bay	Austin Straubel Intl	FDC 2/5556	ILS Rwy 6R Amdt 19.
09/15/92	WI	Green Bay	Austin Straubel Intl	FDC 2/5557	RADAR-1 Amdt 7.
09/15/92	WI	Green Bay	Austin Straubel Intl	FDC 2/5558	NDB Rwy 6R Amdt 15.
09/15/92	WI	Green Bay	Austin Straubel Intl	FDC 2/5559	VOR/DME or Tacan Rwy 36L Amdt 6.
09/15/92	WI	Green Bay	Austin Straubel Intl	FDC 2/5560	LOC BC Rwy 24L Amdt 16.
09/15/92	WI	Green Bay	Austin Straubel Intl	FDC 2/5561	ILS Rwy 36L Amdt 5.
09/17/92	AL	Anniston	Anniston Metropolitan	FDC 2/5582	ILS Rwy 5, Amdt 1.
09/21/92	NJ	Caldwell	Caldwell/Essex County	FDC 2/5655	NDB-A Amdt 4.
09/21/92	NJ	Sussex	Sussex	FDC 2/5658	VOR-A Amdt 5.
09/21/92	NJ	Woodbine	Woodbine Muni	FDC 2/5659	VOR-A Amdt 1.
09/22/92	MD	Salisbury	Salisbury-Wicomico Co Regional	FDC 2/5700	RNAV Rwy 5 Amdt 3A.
09/22/92	MD	Salisbury	Salisbury-Wicomico Co Regional	FDC 2/5701	VOR Rwy 23 Amdt 8.
09/22/92	MD	Salisbury	Salisbury-Wicomico Co Regional	FDC 2/5702	VOR Rwy 5 Amdt 8.
09/22/92	MD	Salisbury	Salisbury-Wicomico Co Regional	FDC 2/5703	VOR Rwy 14 Amdt 1.
09/22/92	MD	Salisbury	Salisbury-Wicomico Co Regional	FDC 2/5704	VOR Rwy 32 Amdt 8.
09/22/92	MO	Columbia	Columbia Regional	FDC 2/5705	ILS Rwy 32 Amdt 4.
09/23/92	MO	Columbia	Columbia Regional	FDC 2/5685	ILS Rwy 2 Amdt 12.
				FDC 2/5711	LOC BC Rwy 20 Amdt 11.

NFDC Transmittal Letter Attachment

Anniston

Anniston Metropolitan
Alabama
ILS RWY 5, AMDT 1...
Effective: 09/17/92
FDC 2/5582/ANB/FI/P Anniston Metropolitan, Anniston, AL ILS RWY 5, Amdt 1...ALTN Mins Cats A/B 900–2, Cat C/D 900–2 3/4. This becomes ILS RWY 5, Amdt 1A.

Salisbury

Salisbury-Wicomico Co Regional
Maryland
RNAV RWY 5 AMDT 3A...
Effective: 09/22/92
FDC 2/5700/SBY/ FI/P Salisbury-Wicomico Co Regional, Salisbury, MD. RNAV Rwy 5 Amdt 3A...Circling Cat A MDA/HAT 460/408. This becomes RNAV Rwy 5 Amdt 3A.

Salisbury

Salisbury-Wicomico Co Regional
Maryland
VOR RWY 23 AMDT 8...
Effective: 09/22/92
FDC 2/5701/SBY/ FI/P Salisbury-Wicomico Co Regional, Salisbury, MD. VOR Rwy 23 Amdt 8...DMEMIN... Circling Cat A MDA/HAT 460/408. This becomes VOR Rwy 23 Amdt 8A.

Salisbury

Salisbury-Wicomico Co Regional
Maryland
VOR RWY 5 AMDT 8...
Effective: 09/22/92
FDC 2/5702/SBY/ FI/P Salisbury-Wicomico Co Regional, Salisbury, MD. VOR Rwy 5 Amdt 8...Circling Cat A MDA/HAT 460/408. This becomes VOR Rwy 5 Amdt 8A.

Salisbury

Salisbury-Wicomico Co Regional
Maryland
VOR RWY 14 AMDT 1...
Effective: 09/22/92
FDC 2/5703/SBY/ FI/P Salisbury-Wicomico Co Regional, Salisbury, MD. VOR Rwy 14 Amdt 1...DME MIN... Circling Cat A MDA/HAT 460/408. This becomes VOR Rwy 14 Amdt 1A.

Salisbury

Salisbury-Wicomico Co Regional
Maryland
VOR RWY 32 AMDT 8...
Effective: 09/22/92
FDC 2/5704/SBY/ FI/P Salisbury-Wicomico Co Regional, Salisbury, MD. VOR Rwy 32 Amdt 8...Circling Cat A MDA/HAT 460/408. This becomes VOR Rwy 32 Amdt 8A.

Salisbury

Salisbury-Wicomico Co Regional
Maryland
ILS RWY 32 AMDT 4...
Effective: 09/22/92
FDC 2/5705/SBY/ FI/P Salisbury-Wicomico Co Regional, Salisbury, MD. ILS Rwy 32 Amdt 4...S–LOC 32 MDA/HAT 400/438 All Cats; Circling Cat A MDA/HAT 460/408. This becomes ILS Rwy 32 Amdt 4A.

Block Island

Block Island State
Rhode Island
VOR/DME RWY 10 AMDT 3...
Effective: 09/22/92
FDC 2/5458/BID FI/P Block Island State, Block Island, RI. VOR/DME 10 Amdt 3...DLT DSTC FAF to Map. Chg

Map from "5NM after Rhina INT/SEY 5.3 DME or at SEY 0.3 DME" TO "SYE 0.3 DME". This is VOR/DME Rwy 10 Amdt 3A.

Detroit

Detroit Metropolitan Wayne County
Michigan
ILS RWY 3R AMDT 12...
Effective: 09/14/92
FDC 2/5521/DTW/ FI/P Detroit Metropolitan Wayne County, Detroit, MI. ILS Rwy 3R Amdt 12...Delete profile note...Loc unusable inside runway threshold. This is ILS Rwy 3R Amdt 12A.

Columbia

Columbia Regional
Missouri
ILS RWY 2 AMDT 12...
Effective: 09/22/92
FDC 2/5685/COU/ FI/P Columbia Regional, Columbia, MO. ILS Rwy 2 Amdt 12...Add Note... ADF or DME Required. This becomes ILS Rwy 2 Amdt 12A.

Columbia

Columbia Regional
Missouri
LOC BC RWY 20 AMDT 11...
Effective: 09/23/92
FDC 2/5711/COU FI/P Columbia Regional, MO. LOC BC Rwy 20 Amdt 11...Add note...ADF or DME required. This becomes LOC BC Rwy 20 Amdt 11A.

Caldwell

Caldwell/Essex County, NJ.
NDB-A AMDT 4...
Effective: 09/21/92
FDC 2/5655/CDW/ FI/P Caldwell/Essex County, Caldwell, NJ. NDB-A Amdt 4...Circling MDA/HAA Cat A940/767, Cat B 960/787, Cat C 980/807, Cat D1040/867. This becomes NDA-A Amdt 4A.

Sussex

Sussex
NJ.
VOR-A AMDT 5...
Effective: 09/21/92
FDC 2/5656/N63/ FI/P Sussex, Sussex, NJ. VOR-A Amdt 5...DLT CAT D Mins. This becomes VOR-A Amdt 5A.

Woodbine

Woodbine Muni
NJ.
VOR-A AMDT 1...
Effective: 09/21/92
FDC 2/5659/1N4/ FI/P Woodbine Muni, Woodbine, NJ. VOR-A Amdt 1...DLT Cat D Mins. This becomes VOR-A Amdt 1A.

Pottstown

Pottstown Muni
Pennsylvania
VOR-B AMDT 4...
Effective: 09/14/92
FDC 2/5528/N47/ FI/P Pottstown Muni, Pottstown, PA. VOR-B Amdt 4...Cat D Mins NA. This becomes VOR-B Amdt 4A.

Allentown

Allentown Queen City Muni
Pennsylvania
VOR-B AMDT 4...
Effective: 09/14/92
FDC 2/5529/1N9/ FI/P Allentown Queen City Muni, Allentown, PA. VOR-B Amdt 4...CAT D Minimums NA. This becomes VOR-B Amdt 4A.

Charlotte Amalie

CYRIL E. KING
ST.
THOMAS, VI. VOR-A AMDT 14A...
Effective: 09/10/92
FDC 2/5438/STT/ FI/P Cyril E. King, Charlotte Amalie, St. Thomas, VI. VOR-A AMDT 14A...Procedure turn outbound min alt 2800. Missed approach...If unable to proceed visually to airport upon descent to 1160, climb to 2800 VIA HDG 180 then right turn direct STT VOR/DME and hold. This becomes VOR-A Amdt 14B.

Green Bay

Austin Straubel Intl
Wisconsin
ILS RWY 6R AMDT 19...
Effective: 09/15/92
FDC 2/5558/GRB/FI/P Austin Straubel Intl, Green Bay, WI. ILS Rwy 6R Amdt 19...Change all reference to Rwy 6R-24L to 6-24. This is ILS Rwy 6 Amdt 19A.

Green Bay

Austin Straubel Intl
Wisconsin
Radar-1 AMDT 7...
Effective: 09/15/92
FDC 2/5557/GRB/FI/P Austin Staubel Intl, Green Bay, WI. Radar-1 Amdt 7...Change all reference to Rwy 36L-18R and 24L-6R to Rwys 36-18 and 24-6. This is Radar-1 Amdt 7A.

Green Bay

Austin Straubel Intl
Wisconsin
NDB RWY 6R AMDT 15...
Effective: 09/15/92
FDC 2/5556/GRB/FI/P Austin Straubel Intl, Green Bay, WI. NDB Rwy 6R Amdt 15...Change all Reference to Rwy 6R-24L to 6-24. This is NDB Rwy 6 Amdt 15A.

Green Bay

Austin Straubel Intl
Wisconsin
VOR/DME OR TACAN RWY 36L AMDT 6...
Effective: 09/15/92
FDC 2/5559/GRB/FI/P Austin Straubel Intl, Green Bay, WI. VOR/DME or TACAN Rwy 36L Amdt 6...Change all reference to Rwy 36L-18R to 36-18. This is VOR/DME Tacan Rwy 36 Amdt 6A.

Green Bay

Austin Straubel Intl
Wisconsin
VLOC BC RWY 24L AMDT 16...
Effective: 09/15/92
FDC 2/5560/GRB/FI/P Austin Straubel Intl, Green Bay, WI. Loc BC Rwy 24L Amdt 16...Change all reference to Rwy 24L-6R to 24-6. This is Loc BC Rwy 24 Amdt 16A.

Green Bay

Austin Straubel Intl
Wisconsin
ILS RWY 36L AMDT 5...
Effective: 09/15/92
FDC 2/5561/GRB/FI/P Austin Straubel Intl, Green Bay, WI. ILS Rwy 36L Amdt 5...Change all reference to Rwy 36L-18R to 36-18. This is ILS Rwy 36 Amdt 5A.

[FR Doc. 92-24768 Filed 10-09-92; 8:45 am]
BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. M08-1-5559; FRL-4510-2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approves revisions to the Air Pollution Control State Implementation Plan (SIP) submitted by the state of Missouri, which pertain to the St. Louis vehicle inspection and maintenance (I/M) program. As a result of two EPA audits of the program, EPA requested that the state of Missouri submit a corrective action plan (CAP). This CAP consists of regulatory specifications for computerized emission analyzers which should facilitate correction of the problems experienced in the program. Improvements in the I/M program will reduce vehicle emissions which will ensure progress toward

attaining the ozone standard in St. Louis.

EFFECTIVE DATE: November 12, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at: the Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101; and the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stanley A. Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION: On January 1, 1984, the state of Missouri began implementing a motor vehicle I/M program in the St. Louis metropolitan area. The St. Louis I/M program is jointly administered by the Missouri State Highway Patrol (MSHP) and the Missouri Department of Natural Resources (MDNR). The MSHP oversees the vehicle inspection process, while MDNR provides technical assistance and tracks progress. On August 12, 1985, EPA approved the St. Louis I/M program as a SIP revision (50 FR 32411).

At that time, I/M programs were required to meet the minimum emission reduction requirements (MERR), as defined in House Report Number 95–294, 95th Congress, 1st Session, 281–291 (1977). A March 1985 audit indicated that the St. Louis I/M program experienced a significant shortfall in achieving the minimum required volatile organic compound (VOC) and carbon monoxide (CO) emission reductions necessary for an acceptable I/M program.

As a follow-up to the March 1985 audit, EPA conducted a second audit of the St. Louis I/M program in May 1987. The follow-up audit showed that the state had not made sufficient progress toward improving the program and once again failed to achieve a level of emission reduction consistent with MERR.

Because the St. Louis I/M program did not meet the minimum requirements, EPA requested the state to submit a CAP to rectify the St. Louis I/M program deficiencies. As part of the CAP, Missouri implemented new computerized emission analyzers on December 1, 1990. On June 28, 1991, the state of Missouri submitted the computerized I/M analyzer specifications as a SIP revision.

On June 23, 1992, EPA published a Notice of Proposed Rulemaking (NPR) to approve the revised I/M analyzer specifications as a SIP revision (57 FR 27959); no comments were received on the NPR. For a complete discussion of the state's submittal and EPA's rationale for approval, the reader is referred to the above mentioned Federal Register notice.

Section 182(b)(4) of the Act requires moderate ozone nonattainment areas to implement an I/M program. The program must be consistent with the requirements of section 182(a)(2)(B), which is the savings clause for vehicle I/M programs. The I/M savings clause requires implementation of an I/M program which is no less stringent than that of either the 1977 House Report or the program already included in the Sip, whichever is more stringent. Therefore, for St. Louis, the effect of the 1990 CAA is to maintain the I/M program requirements of the preamended Act. In accord with section 182(a)(2)(B)(ii) of the Act, EPA is presently revising its guidance for I/M programs (see Federal Register, June 13, 1992, 57 FR 31068). Based on the final guidance, EPA may require appropriate changes, as necessary, to the St. Louis I/M program.

EPA Action: In today's notice, EPA takes final action to approve revisions to the I/M analyzer specifications as a revision to the Missouri SIP. The St. Louis I/M program is incorporated into an existing statewide safety inspection program; consequently, the state submittal contains rule revisions pursuant to the safety portion of the inspection program. The applicable requirements of the CAA pertain only to I/M programs, not to vehicle safety programs. Therefore, EPA approves the state submittal only insofar as it pertains to the emissions portion of the Missouri vehicle inspection program.

Nothing in this action should be constructed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action the Regional Administrator under the procedures published in Federal Register on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Tables 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 14, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: September 8, 1992.

Morris Kay,

Regional Administrator.

40 CFR part 52, subpart AA, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part [redacted] continues to read as follows:

Authority: 42 U.S.C 7401–7642.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(80) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(80) On June 28, 1991, the Missouri Department of Natural Resources (MDNR) submitted revisions to the Missouri State Implementation Plan which pertain to the St. Louis vehicle inspection and maintenance program. The Missouri rules contain requirements which apply to both safety and emission testing; EPA takes action on these rules only insofar as they pertain to emissions testing.

(i) Incorporation by reference.

(A) New rules 11 CSR 50–2.401, General Specifications; 11 CSR 50–2.402, Missouri Analyzer System (MAS) Software Functions; 11 CSR 50–2.403, MAS Display and Program Requirements; 11 CSR 50–2.405, Vehicle Inspection Certificate, Vehicle Inspection Report and Printer Function Specifications; 11 CSR 50–2.406, Technical Specifications for the MAS; and 11 CSR 50–2.407 Documentation, Logistics and Warranty Requirements; (appendix A, B, C), effective June 28, 1990.

(B) New rule 11 CSR 50–2.404, Test Record Specifications, effective September 28, 1990.

(C) Amended rules 11 CSR 50–2.370 Inspection Station Licensing; 11 CSR 50–2.410, Vehicles Failing Reinspection; and 11 CSR 50–2.420 Procedures for Conducting Only Emission Tests; effective December 31, 1990.

(D) Rescinded rule 11 CSR 50–2.400, Emission Test Procedures; effective December 31, 1990.

[FR Doc. 92–24811 Filed 10–9–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[GA 019–1–5414 and GA 020–1–5415; FRL–4506–2]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the Volatile Organic Compound (VOC) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the revisions submitted by Georgia to correct the deficiencies in Georgia's Volatile Organic Compound (VOC) regulations submitted to EPA in April 1987. These VOC regulations are being approved to satisfy the requirements of section 182(a)(2)(A) of the Clean Air Act (CAA) for states to correct deficiencies in VOC RACT regulations by May 21, 1991. The April 1987, submittal was in response to a February 1984 SIP call, and to the Agency's proposed disapproval of the 1985 SIP due to major deficiencies. The submittals were to revise the ozone attainment plan for the Atlanta metropolitan area, which is designated as an ozone nonattainment area. The revisions were to demonstrate attainment of the ozone National Ambient Air Quality Standards (NAAQS) by December 31, 1994. Modifications to the VOC regulations, Inspection and Maintenance program (I&M), control strategy, emission inventory, and modeling demonstration were included in the plan. The State of Georgia submitted additional information during 1988, and 1989, and on January 3, 1991, and September 30, 1991, Georgia submitted revisions incorporating changes to VOC regulations. However, it was not until April 3, 1991, and November 15, 1991, respectively, that all of the required elements were received for a complete submittal. The VOC regulations apply to all 25 tons per year or greater VOC emission sources in the ozone nonattainment counties of the Atlanta metropolitan area, and all 100 tons per year or greater VOC emission sources, statewide. These revisions correct all of Georgia's VOC deficiencies including capture efficiency.

EFFECTIVE DATES: This action will be effective December 14, 1992, unless notice is received by November 12, 1992, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal are available during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 205 Butler Street, Southeast, Room 1162, East Tower, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Diane Altsman of the EPA Region IV Air Programs Branch at (404) 347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On March 3, 1978, (43 FR 8962), EPA designated the Atlanta area as nonattainment for ozone. The State was subsequently required to revise its ozone State Implementation Plan (SIP) for the Atlanta area, pursuant to the Part D requirements of the Clean Air Act, as amended in 1977 (1977 Act). Georgia submitted information to satisfy the requirements for a Part D submittal as follows:

January 17, 1979, March 9, 1979, March 16, 1979, March 20, 1979, June 29, 1979, December 27, 1979, and April 8, 1980.

On November 24, 1981 (46 FR 57486), EPA announced final approval of the Georgia ozone SIP. The State had calculated that Georgia would achieve the ozone standard in the Atlanta metropolitan area by December 31, 1982.

However, the control strategy for ozone, referenced above, did not result in attainment of the NAAQS for ozone by December 31, 1982. Consequently on February 24, 1984, EPA notified the Governor of Georgia pursuant to Section 110(a)(2)(H) of the 1977 Act that the SIP was substantially inadequate to achieve the NAAQS for ozone in the Atlanta area and called upon the State to revise the SIP. The Environmental Protection Division (EPD) of the Georgia Department of Natural Resources submitted the final SIP revision to EPA on November 21, 1985, in response to the 1984 SIP call.

During EPA's review of the submittal, it was determined that the SIP contained deficiencies and was not approvable. A revised and modified SIP was submitted on October 1, 1987. This SIP demonstrated attainment by December 31, 1994, and resolved many of the problems noted in the earlier submittal, but major deficiencies remained. Submittals on January 3, 1991, and April 3, 1991, corrected the VOC Reasonably Available Control Technology (RACT) deficiencies, and a submittal on September 30, 1991, included an EPA-approved capture efficiency protocol. EPA is approving the revisions to the RACT regulations to satisfy the requirements of section 182(a)(2)(A) for correction of deficiencies in those regulations.

EPA is today approving the following revisions:

391–3–1–.01 Definitions

Revised definition of VOC, (jjj), to conform with the EPA definition as contained in the pre-amendment guidance entitled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, Clarification to Appendix D of November 24, 1987, **Federal Register** Notice." Since that time, EPA has published **Federal Register** notices that added other non-reactive compounds. Revisions to the definition to include these additional compounds will be submitted by the State in their RACT revisions pursuant to section 182(b)(2)(B).

391–3–1–.02(2) Emission Standards

The following existing subsections have been revised to be consistent with the CAA as interpreted in EPA guidance:

(t) VOC Emissions from Automobile and Light-Duty Truck Manufacturing
(u) VOC Emissions from Can Coating
(v) VOC Emissions from Coil Coating
(w) VOC Emissions from Paper Coating
(x) VOC Emissions from Fabric and Vinyl Coating
(y) VOC Emissions from Metal Furniture Coating
(z) VOC Emissions from Large Appliance Surface Coating
(aa) VOC Emissions from Wire Coating
(bb) Petroleum Liquid Storage
(cc) VOC Emissions from Bulk Gasoline Terminal
(ee) Petroleum Refineries
(ff) Solvent Metal Cleaning

(ii) VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products
(jj) VOC Emissions from Surface Coating of Flat Wood Paneling
(mm) VOC Emissions from Graphic Arts Systems

The following subsections have been added to be consistent with the CAA as interpreted in EPA guidance:

(pp) Bulk Gasoline Plants
(qq) VOC Emissions from Large Petroleum Dry Cleaners
(rr) Gasoline Dispensing Facility—Stage I
(ss) Gasoline Transport Vehicles and Vapor Collection Systems
(ww) Perchloroethylene Dry Cleaners

391-3-1-.02(3) Sampling

Revise subparagraph (3)(a) to reference the methods specified in the Georgia Department of Natural Resources Manual of Procedures for Testing and Monitoring Sources of Air Pollutants dated August 1, 1991.

391-1-.02(6) Source Monitoring

Paragraph (6)(a) is amended by adding recordkeeping requirements to be consistent with the CAA is interpreted in EPA guidance.

Final Action

EPA is approving the Georgia VOC regulations listed in the SUPPLEMENTARY INFORMATION section of this notice and the incorporation of a revised test manual, which includes capture efficiency protocols.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. SS 7401-7671q. In the amended act Congress codified the requirement that States with areas classified as marginal or above revise their SIPs for these classified ozone nonattainment areas so that the SIPs conform with EPA's pre-amendment guidance.[1] Section 182(a)(2)(A). Section 182(a)(2)(A) established a deadline of May 15, 1991, for submittal of these RACT "fix-ups."

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. If, however, notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 14, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), the Administrator certifies that SIP approvals under sections 107, 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 31, 1992.

Patrick M. Tobin,

Acting, Regional Administrator.

Part 52 chapter I, title 40 of the Code of Federal Regulation is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows;

Authority: 42 U.S.C. 7401-7671q

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c) (37) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(37) Revisions to the VOC regulations, to correct RACT deficiencies; Chapter 391-3-1-.01, and .02 of the Georgia Department of Natural Resources Rules for Air Quality Control, which was submitted on January 3, 1991, and April 3, 1991. Change to Chapter 391-3-1-.02(3) to reference a new version of the test manual which includes capture efficiency protocols, which was submitted on September 30, 1991, and November 15, 1991.

(i) Incorporation by reference.

(A) The following revised Rules of the Georgia Department of Natural Resources, Chapter 391-3-1, Air Quality Control, became State effective on January 9, 1991.

391-3-1-.01(jjj);
402-3-1-.02(2)(a)4.;
391-3-1-.02(2)(t);
391-3-1-.02(2)(u)2.(i) and (iii);
391-3-1-.02(2)(v)2.(i) and (iii);
391-3-1-.02(2)(w)2.(i) and (iii);
391-3-1-.02(2)(x)2.(i),(iii), and (x)3.(v);
391-3-1-.02(2)(y)2.(i) and (iii);
391-3-1-.02(2)(z)2.(i) and (iii)
391-3-1-.02(2)(aa)2.(i) and (iii);
391-3-1-.02(2)(bb)1.(ii);
391-3-1-.02(2)(cc);
391-3-1-.02(2)(ee)1.(iii);
391-3-1-.02(2)(ff)2.(ii)(V) and 3. (iii) (III);
391-3-1-.02(2)(ii)4.(i) and (iii);
391-3-1-.02(2)(jj)2.(i) and (iii);
391-3-1-.02(2)(mm)1.(i), (ii) and (iii);
391-3-1-.02(2)(pp);
391-3-1-.02(2)(qq);

[1] Among other things, the pre-amendment guidance consists of the Post-87 Policy, 52 FR 45044 (Nov. 24, 1987); the Blue Book, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice"; and the existing CTGs.

391-3-1-.02(2)(rr);
391-3-1-.02(2)(ss);
391-3-1-.02(2)(ww);
391-3-1-.02(6)(a)3.

(b) A revised Rule 391-3-1-.02(3)(a) "Sampling" which became State effective October 17, 1991.

(ii) Other material—None.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 205

RIN 0970-AA82

Aid to Families With Dependent Children; Adult Public Assistance: Revised Quality Control System

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes a revised quality control (QC) system for the Aid to Families with Dependent Children (AFDC) and the Adult assistance programs beginning in fiscal year 1991. Under the new system, we will impose disallowances in AFDC matching funds (Federal financial participation) on the States whose assistance payment error rates are above the national average; take into account both overpayments and underpayments made to AFDC recipients; provide incentives to States to improve their overpayment recoveries and their child support collections; use a Departmental Quality Control Review Panel to review differences between State and Federal AFDC review findings; and use the Departmental Appeals Board to review all other QC disallowance issues in dispute between the States and Federal government.

EFFECTIVE DATE: October 1, 1990, with the following exceptions.

Sections 205.41(c)(2), 205.41(d)(2)(iii), 205.41(d)(3)(iii), 205.41(d)(4)(iii), 205.41(d)(5), 205.42(b)(1), 205.42(e), 205.42(f), 205.42(g)(4), 205.42(i)(2), 205.42(i)(4), and 205.42(i)(5) are effective as of October 1, 1992; prior to October 1, 1992, applicable Federal policies set forth in Departmental issuances (e.g., regulations, action transmittals, etc.) govern.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Hurley, Office of Family Assistance, Division of Quality Control, room 558a, 370 L'Enfant Promenade, SW., Washington, DC 20447 telephone (202) 401-9296.

SUPPLEMENTARY INFORMATION:

Background

These final rules govern the revised QC system for the AFDC program established by section 408 of the Social Security Act (the Act), as added by section 8004 of the Omnibus Budget Reconciliation Act (OBRA) of 1989 (Pub. L. 101-239), as well as revised program rules governing quality control for the Adult assistance programs under titles I, X, XIV, and XVI (AABD) of the Act. The QC system is the major management tool for measuring the accuracy of payments and the level of Federal funding under the AFDC and Adult assistance programs, and for obtaining the data needed to analyze and improve performance in paying benefits. We accomplish these two objectives by a continuous review of statistically valid and reliable State samples of AFDC and Adult assistance cases and Federal samples of AFDC assistance cases. To the extent that Medicaid eligibility is based on AFDC eligibility, these regulations also affect the Medicaid program.

In accordance with the legislative mandate in section 408(h) of the Act, we have consulted with representatives of the National Governors' Association, the American Public Welfare Association and the States in developing the regulations in the following areas: sampling methodology; sample size and selection procedures; time frames for sample completion and reporting of QC data; resolution of differences between State and Federal review findings; notification of error rates; and disallowances.

While the QC operating Manuals do not constitute substantive rules subject to rulemaking in accordance with 5 U.S.C. 553, we have also included in the final regulations some of the major aspects contained in the various QC Manuals which we believe are fundamental and would not significantly change over time. For example, we include the policy of requiring minimum verification and documentation standards for each element of eligibility and payment amount in § 205.42(c)(2) of the regulations. However, we set forth implementing verification and documentation methods in the QC Manuals.

Further, we have also included in the final regulations the existing regulatory requirements for the review of: (1) AFDC negative case actions in the States and in Guam, Puerto Rico, and the Virgin Islands; and (2) active cases and negative case actions of the Adult assistance programs in Guam, Puerto Rico, and the Virgin Islands. While section 408 of the Act does not require a change in the policies governing negative case actions and the Adult assistance programs, we have changed these policies, where appropriate, to be consistent with the AFDC active case requirements. However, as required by section 408, the Department is currently conducting a study of the AFDC negative case action QC system and will make recommendations to Congress on the future design and use of the system.

The Adult assistance programs exist only in Guam, Puerto Rico, and the Virgin Islands. The Department's authority for requiring a QC system in these programs derives from the requirement that Federal matching funds be provided for proper assistance payments (sections 3, 1003, 1403, and 1603 of the Act) and from the authority in section 1102 of the Act to issue rules for proper and efficient administration. For the purpose of uniformity and consistency, we are applying, except as indicated, the same sampling and review requirements contained in §§ 205.40, 205.41, and 205.42 (a) through (f) to both the AFDC and the Adult assistance programs. Sections 205.42(g), (h) and (i) and 205.43 do not apply to the Adult assistance programs since we do not utilize the Federal re-review and the calculation of the regressed error rates for these programs.

We have revised §§ 205.40, 205.42 and 205.43, added § 205.41, and removed and reserved § 205.44.

Major Provisions of the Statute

OBRA of 1989, which became law on December 19, 1989, provides a revised QC system for AFDC beginning in fiscal year 1991. While Congress made changes in the error rate tolerance and method for calculating disallowances, the basic design and features of the system remain unchanged. The major provisions of the legislation include:

1. Waiver of all pending or potential QC disallowances for fiscal years 1981 through 1990, estimated at $2.4 billion;
2. Establishment of a new error rate tolerance set at the national average error rate each year, or at 4 percent, whichever is higher;
3. Exclusion of certain types of errors in computing a State's payment error rate;
4. Calculation of disallowances based on a sliding scale which reflects the degree to which a State's error rate exceeds the national average;
5. Adjustment of disallowances based on good performance in achieving other program goals (i.e., low underpayment

rate relative to the national underpayment rate, high or improved child support collections and overpayment recoveries); and

6. Establishment of a Departmental QC Review Panel to review differences between State and Federal QC findings.

We have carefully reviewed the 484 comments which we received from 56 States, interested organizations and individuals on various aspects of the proposed regulations.

Discussion of the Regulations

In the following discussion, we have identified each section of the regulation being addressed and generally followed the format of the notice of proposed rulemaking (NPRM) issued June 17, 1991 (56 FR 27709). Preamble language in the final regulations generally follows the same sequence as in the NPRM, and we have interspersed comments and responses as appropriate. The regulatory language from the NPRM was retained except where indicated.

This discussion is divided into five parts. The first addresses comments on the scope, definitions and the codification of certain sections of the QC Manuals; the second addresses sampling issues; the third discusses a number of issues involving the QC review; the fourth describes the error rate and disallowance calculations and notification procedures; and the fifth discusses data analysis and corrective action.

Section 205.40 Quality Control System

This section of the final regulations contains the scope, definitions and basic elements of the QC system for the AFDC program and the Adult assistance programs in Guam, Puerto Rico, and the Virgin Islands. It also contains definitions of terms used in the QC system.

References to and Codification of QC Manual Procedures

Comment: Several commenters pointed out that since there are separate QC Manuals for the active and negative case reviews, appropriate references and definitions should be added to the regulations regarding the negative case action QC system.

Response: We agree and have made the appropriate additions. We have also added definitions for "negative case action error" and "suspended case" and made appropriate references to the negative case action QC Manual in paragraphs (b) and (c) of § 205.40.

Comment: Several commenters stated that we proposed to codify sections of the QC Manuals without full disclosure of the contents of those sections in the regulations. They said that if procedural matters were to be codified, they should be subject to the same codification requirements as all other regulations.

Response: Provisions of the QC operating Manuals are not subject to rulemaking in accordance with 5 U.S.C. 553 because they do not constitute substantive rules. However, we have included in the regulations some of the major aspects contained in the QC Manuals on which we felt comments and guidance would be helpful. We view these aspects as fundamental and not subject to significant changes. It should be noted that since 1975, the regulations have required States to operate the QC system in accordance with the policies and procedures prescribed in the QC Manuals issued by the Department.

Dollar Tolerance for Overpayments (and Underpayments)

Section 205.40(b)(8) of the NPRM defined an overpayment as financial assistance received by or for an assistance unit for the review month which exceeds, by at least $5.00, the amount for which that unit was eligible under permissible State practice in effect on the first day of the review month.

Comment: Two commenters indicated that the $5.00 tolerance has been in effect a number of years and we should adjust it upward due to inflation. One commenter suggested that we raise the tolerance to at least $10.00 since States are prohibited from making payments when an assistance unit is due less than $10.00.

Response: We do not agree that the tolerance should be adjusted. Given the substantial liberalization of the error rate tolerance (i.e., the average error rate achieved by all States each fiscal year), as well as the exclusion of certain erroneous payments under section 408 of the Act, we believe the upward adjustment of the $5.00 tolerance is unwarranted.

Permissible State Practice

In § 205.40(b)(11) of the NPRM, we defined permissible State practice as written rules and policies relating to eligibility and payment that are in accordance with an approved State plan or a proposed State plan amendment that has been submitted to but not acted upon by the Department. If an approved State plan does not conform to Federal regulations or law, subject to exception, permissible State practice means the Federal regulations or law. We note that in the prior QC regulations, the definition of permissible State practice contained language to clarify the basis of the QC review when written rules and policies are inconsistent with the State plan. In such instances, the QC review was conducted against the State plan or proposed amendment. We have amended the language in the final regulations at § 205.40(b)(12) to address this situation.

Comment: Two commenters indicate that the proposed definition did not make a distinction between substantive policies relating to eligibility and procedural requirements. An example was given by one commenter of an instance where a recipient had a social security number as of the review date but had not furnished it to the local agency. The commenter believed that an error should not be cited in such situations because furnishing the number is a procedural requirement.

Response: Rules and policies relating to eligibility and payment mean the qualifying conditions that must exist to establish eligibility and payment. The tools and methods which the local agency uses to demonstrate that the qualifying conditions exist are considered procedural requirements. The QC process is not concerned with how eligibility is verified by the local agency but rather that eligibility in fact exists, and that the recipient is paid the appropriate amount of assistance due. The agency may devise any procedural methodology for its income maintenance worker to use in determining eligibility and payment which differ from that used by the QC worker. Any difference in the procedures would not constitute an error. However, an error would be cited based on the differences in the established factual conditions and how those conditions impact eligibility and payment. For the example mentioned above, the regulations at § 205.42(d)(2)(v) specify that a recipient must apply for a social security number and furnish it to the local agency upon receipt. These requirements are basic conditions of eligibility. Procedures established to verify these conditions must demonstrate that the applicant or recipient applied for a number and furnished it to the agency when it was received.

Comment: One commenter stated that the proposed definition of permissible State practice did not provide for a time period between implementation of a State policy and the submission of a State plan amendment.

Response: It is not necessary to include in the definition of permissible State practice a time period between implementation of a State policy and the submission of a State plan amendment. Longstanding Federal policy at § 201.3(g)

provides that a State plan amendment, in operation on a statewide basis, may not be in effect any earlier than the first day of the quarter in which it is submitted.

Comment: One commenter wanted to know if the sentence "Where the plan provision does not conform to Federal regulations or law, permissible State practice means the Federal regulations or law, except as noted in § 205.42(b)(1)" applies to approved plan provisions.

Response: The sentence does not apply to approved plan provisions. As indicated at § 205.42(b)(1)(i) of the final regulations, where Federal staff approves a State plan amendment that is later determined to be inconsistent with Federal law or regulations, QC staff will continue to review to the inconsistent plan until a new amendment is submitted or for six months from the date which the State receives notice in writing of the inconsistency, whichever is earlier. This time period represents a change from the 60 calendar days in the proposed regulations and is consistent with the six months provided in the statute for implementing a new law.

Comment: One commenter indicated that a State rule or policy issued in accordance with the proposed plan should not be subject to questions of conformity with Federal law by QC staff.

Response: A State's rule and policy statements are interpretations of the conditions and options specified in the State plan. The State plan is a streamlined statement of State policy under Federal law and regulations. As part of the plan, every State is required to sign an agreement indicating that it will operate its program in accordance with Federal statute and regulations. Since Federal staff approves a State's plan and not the detailed operating policies and procedures developed to implement a plan provision, there may be times when a State's interpretation, as specified in its policy statements, is inconsistent with the intent of Federal law and regulations. A basic role of QC is to measure the incidence of such occurrences.

Section 205.41 Sampling Plan and Procedures

This section of the final regulations provides the sampling plan and sample size requirements and procedures for the AFDC and Adult assistance programs.

Sampling Plan Requirements and Submittal Dates

The regulations at § 205.41 specify the content of the State QC sampling plan. However, except as noted below under "Sampling Methodology," the content does not represent a change in sample plan requirements from those set forth in the QC Manual, section 2, which is applicable to both the AFDC and Adult assistance programs.

A State may not implement a new sample design without prior approval. The State must submit its revised sampling plan to the Regional Administrator (RA) of the Administration for Children and Families (ACF), with specific documentation of any substantive modification of a previously approved sample design, at least 60 calendar days before the start of the annual sample period, i.e., no later than August 1. States should not submit changes in random start numbers, sample intervals, and caseload estimates as revisions to their sampling plan since they represent supporting documentation of plan implementation and do not require prior approval. This information should be submitted at the beginning of each annual sample period.

The plan must be in effect for the entire annual sample period and must include the population to be sampled, a description of the lists from which the sample is selected, the State's choice whether to drop or complete cases for which a review was completed within the last six months, and a procedure to correct for oversampling and undersampling.

The regulations at § 205.41(c)(3) require States to submit a reliability waiver statement (for active AFDC cases only) by the first day of the annual sample period.

We have also incorporated in these regulations submittal dates for universe estimates, sample intervals, monthly lists of selected sample cases, computer-generated random start numbers and seed numbers, and reserve pool cases (if applicable). States must submit universe estimates and sample intervals within 30 calendar days prior to the selection of the October sample, and the remaining information within 10 calendar days after the sample selection date specified in the State's approved sampling plan. Although these time frames do not represent a change to current procedure as set forth in the QC Manual, section 2, we have explicitly incorporated them in the regulations consistent with section 408(h) of the Act.

Comment: One commenter proposed that when there is reduction in staff because of budget cuts or unexpected increases in caseload, the State should be allowed to change its sampling plan on a six-month basis.

Response: Anticipated budget cuts and policy changes should be taken into consideration at the time the caseload estimate for the annual sample period is made. The QC Manual, section 2, provides both minimum and standard sample sizes and methods that can be used to reduce sample size for the annual sample period when unexpected increases in caseload or budget cuts occur. It is important to avoid introducing the possibility of bias in the error rate estimates as a result of changes in sample design or sampling procedure. QC staff reductions do not affect the QC sample design but can affect the State's ability to complete its required sample size.

Comment: One commenter suggested changing the current time frame for State submittal of universe estimates and sample intervals from 30 calendar days prior to the selection of the October sample to the first day of the annual sample period.

Response: The 30 days are necessary so that we can verify the State caseload estimates and sample interval computations and resolve discrepancies with the States before the States select their October samples.

Sample Selection

In order to ensure that (1) all cases, including cases added to the rolls during the review month, are subject to sampling, and (2) all payments, including adjustments to sample cases, are included in the QC review, we invited comments on whether we should change our current operating policy to require States to select their samples after the end of the review month. Under our current policy, States are required to select their review month samples from lists of active cases with payments authorized prior to sample selection and paid by the end of the review month. States could use regular first-of-the-month payroll listings as the frame for sample selection, extend that frame at the end of the review month, and continue sampling all the cases added to the payment rolls during the review month that were not on the regular payroll listing.

Comment: A number of commenters opposed sample selection after the end of the review month. Most commenters supported States having the option of when to select their samples. The reasons given for the opposition included the integration with other programs, limited resources, staffing requirements, sample completion deadlines, complexity of the reviews, administrative burden, data processing systems, and difficulty in locating clients and securing needed verifications. One commenter suggested

that the Department should take appropriate action when it believes that a State's sample integrity is compromised, rather than regulate all States to address isolated problems. Another suggested two alternative policy changes regarding supplemental payments. The first alternative would be to notify the local office that the case having a supplemental payment is included in the QC sample. This notification could provide an opportunity for detection of incorrectly issued supplemental payments. The second alternative would be to exclude all supplemental payments authorized on or after the review date, both from the review process and from the calculation of the national overpayment error rate and disallowance amount. The only exception might be for States that pay twice a month.

Response: We have decided not to change our current operating policy which provides flexibility to the States on when they select their samples. We agree, however, with the comment that the Department should take appropriate action when a State's sample integrity is compromised. To ensure that sample integrity is not compromised, we will continue to examine situations where States make supplemental payments for the review month after the sample is selected. Where it is demonstrated that sample integrity is compromised, the State may be required to select its samples after the end of each review month.

To ensure a more complete sample frame, we included in the final regulations at § 205.41(d)(2)(iii) and (d)(4)(i) the requirement that the frame shall include all active AFDC cases with payments authorized or made by the end of the review month for that review month.

A State may, in addition, include on its sample frame cases for which the review month payment was authorized after the end of the review month, but before sample selection. Such cases, if selected in the sample, shall be included in the QC review.

Sample Size

As requested by the State representatives, the proposed regulations at § 205.41(d)(3) specified the current active AFDC and Adult assistance sample sizes included in the QC Manual, sections 2 and 3, with an option for States to reduce their standard sample size. States may not reduce their standard sample size below the minimum sizes specified in these sections. The proposed regulations also included the requirement that a State provide the Department with a reliability waiver statement as an addendum to its sampling plan, if it elects the option to reduce its sample for completed AFDC active case reviews below the standard size. When a State opts for a reduced AFDC active sample, the reliability waiver statement ensures that the risk of reduced precision in the error rate estimate will be shared by the State and the Federal government.

Comment: A number of commenters pointed out that the proposed regulatory language at § 205.41(d)(3)(ii), requiring a State that elects to reduce its standard sample size to sign a statement "accepting the reliability of the payment error rate and waiving the right to challenge the resulting AFDC (and Medicaid) error rates based on the reduced sample size," was unreasonably and unfairly broad. They also felt that States should retain the right to challenge the reliability of the payment error rates on factors other than the State's reduced sample size, e.g., the Federal subsample size. They requested that the proposed regulation be modified to limit the waiver solely to the election of the reduced sample size.

Response: We have modified the language in the final regulations so that States waive the right to challenge the precision of the resulting AFDC (and Medicaid) error rates based only on their reduced sample sizes. With this revision, the regulatory language is consistent with the language in the waiver statement.

Comment: One commenter remarked that evidence appears to reflect "abnormalities" when sample sizes are reduced. The commenter recommended that a thorough study of the impact of such reductions on the error rates should be made and published in the **Federal Register**.

Response: No further study is warranted. Standard statistical theory indicates that for large samples the regression estimator used to estimate the payment error rates is essentially unbiased. Under contract with the Department, Westat, Inc. conducted a study (A Statistical Evaluation of AFDC Quality Control, October 1987) to validate the sampling procedures and regression methodology of the AFDC payment error rates based on sample sizes in use. It concluded that our procedures and methodology are consistent with statistical theory. It also found that (1) the regression methodology provides unbiased, or at most trivially biased, point estimates of the error rates for the sample in use, and (2) the sampling errors estimated from the samples also provide nearly unbiased estimates of the sampling errors of the estimated error rates. The abnormalities observed by the commenter may relate to the precision of the estimated payment error rates, which could be affected by the reduced sample sizes.

Comment: One commenter believed that the number of Federal subsample cases should be based on the precision of the payment error rate and the methodology involved should be published in the **Federal Register**.

Response: We addressed this issue in the Department's Congressionally-mandated study of the AFDC–QC system (Quality Control in AFDC and Medicaid, a Report to Congress, March 1988). Based on our analysis, we concluded that setting sample sizes to produce a specified magnitude of equal precision across States would be difficult to achieve because of the volatility of the standard error estimates and the fact that using past data to determine sample size for future periods does not ensure that equal precision would be achieved. Even if equal precision could be achieved, it would not be cost-effective because larger sample sizes would be required resulting in greater administrative costs to States with smaller assistance expenditures.

Negative Case Action Sample

The negative case action sample size requirements are the same for both the AFDC and the Adult assistance programs. Before October 1990, we required larger AFDC negative case action samples for Guam, Puerto Rico, and the Virgin Islands in order to have adequate data to make six-month incentive payment determinations under section 403(j) of the Act. Since section 408(b) of the Act repealed section 403(j), we have reduced the AFDC negative case action sample requirement for Guam, Puerto Rico, and the Virgin Islands, effective October 1, 1990. However, the regulations retain the current negative case action sample requirements in the Adult assistance programs for Guam, Puerto Rico, and the Virgin Islands.

We believe these sample sizes are sufficient to provide both valid and reliable estimates of State error rates and adequate information for States to identify problem areas for corrective action purposes. For purposes of uniformity and consistency, we include the sample sizes in the regulations for both the AFDC and the Adult assistance programs, although the statute requires the Department to regulate in this area only for the AFDC program.

Comment: One State said that the proposed procedure at § 205.41(d)(4) for sample selection of negative case

actions is inconsistent with current sampling procedure. The NPRM required that the sample be selected from a list of actions taken to deny or terminate assistance with effective dates in the review month, whereas under prior procedure the sample selection list could include many actions with effective dates in the month following the review month.

Response: The proposed regulations did not change our current procedure. The effective date can never follow the review month. The effective date for application is the date on which the application is officially withdrawn or the agency officially takes action to deny the application. The date, therefore, always coincides with the month of sample selection. For terminations, the effective date is the initial date for which the case fails to receive assistance. In most cases, the effective date will coincide with the month of selection. For example, a case receiving assistance through the month of January but not receiving assistance in February, will show a February 1 effective date as well as a February selection date.

The effective date will differ, however, from the month of selection in cases where the termination occurs during the month or the case is terminated with previously held checks. Although such actions are not subject to sample selection until the first month the case fails to appear on the regular payroll, the effective date, for QC purposes, is the first day for which the case failed to receive a payment by the expected payment date. For example, a State paying semi-monthly terminates a case in the middle of the month. Although the action would not be subject to sampling until the following month, i.e., the first month the case failed to appear on the first of the month regular payroll, the effective date would be in relation to the semi-monthly check that was not issued.

We have revised and clarified the negative case action sampling procedure in the final regulations at § 205.41(d)(4)(ii) to address these comments.

Comment: One commenter indicated that the option in the NPRM at § 205.41(d)(5) to drop or complete a sample case for which less than six months has elapsed since it was last selected and reviewed should apply only to active sample cases. This option could not apply to the negative case action sample since each sampled negative action must be reviewed so long as it was not in the active universe for the same month. The commenter also suggested that States that choose to drop such duplicate active cases should be required to specify in their sampling plan the exact method by which all these cases are identified and dropped.

Response: We agree with the commenter and have modified the language in the regulations at § 205.41(d)(5) accordingly.

Sampling Methodology

In the NPRM, we proposed that States would select their samples using the systematic random sampling method. This method has always been preferred for selection of State samples because it conforms to principles of probability sampling, is easily implemented, and can easily be duplicated to provide Federal oversight with an audit trail. Currently, 48 States are using this method. States may continue to stratify their samples in accordance with procedures specified in the QC Manual, section 2, and may continue to integrate their AFDC active case samples with Food Stamps and Medicaid QC samples.

Comment: Many commenters said that sample selection procedures should remain unchanged, i.e., that the use of systematic random sampling should be optional. They believe that change is unnecessary and cost-prohibitive and would cause the States hardship. Some commenters believe that Federal oversight with an audit trail is possible for simple random sampling. One commenter suggested that we should allow a State to use simple random sampling conditioned on the State's meeting additional requirements to address Federal oversight concerns.

Response: In light of the many comments in support of our current policy and the States' belief that Federal oversight is possible for simple random sampling, we, in the final regulations at § 205.41(d)(4)(iii), allow simple random sampling, provided the State develops an acceptable audit trail for "proof of sampling" and fully describes in its sampling plan how the trail was constructed and how it can be used to duplicate the sample.

Comment: Another commenter believes that systematic random sampling is inferior to simple random sampling because the estimated variances may be both "statistically inconsistent" and "objectively undefinable" and the arrangements of cases on the frame with respect to certain estimated characteristics may be "monotonic," and "periodic."

Response: States generally arrange AFDC cases on the sample frame by geographic code (i.e., county or local agency code) and/or case number order. This type of ordering is normally random for error cases and payment amounts and should not present a problem of monoticity or periodicity on a State's sample frame. When a population, such as the AFDC caseload, is randomly ordered, the precision of an estimate obtained from systematic random sampling will be approximately equivalent to the precision obtained from simple random sampling (Cochran, Sampling Techniques, 2nd edition, p. 214).

An estimate obtained from systematic sampling is statistically consistent because, as the sample size increases, the estimate approaches the population parameter being estimated. While several formulas for the variance of an estimate from a systematic random sample have been developed, the variance formula for simple random sampling is normally used when the items being measured are essentially randomly arranged on the frame. Cases arranged on the sample frame by county or local agency code could be spread out more evenly over the State and, thus, be more representative of the caseload when systematic sampling is used.

Comment: One commenter mentioned that since two States are currently using disproportionate stratified random sampling instead of systematic random sampling, he would like more information on the impact of disproportionate stratified samples on the national average to ensure that other States are not disadvantaged when a State uses disproportionate stratified sampling.

Response: We see no impact on the national average payment error rate resulting from a State's use of a disproportionate stratified sampling design, i.e., the national average remains unbiased. Stratified sampling may impact the precision of the State's estimated error rate, depending on the type of stratification that is used. (Statistically, major increases in efficiency in precision of a State's estimate are obtained only from disproportionate samples when the strata are sampled in direct proportion to each stratum size or to the square root of the variance, or are sampled in inverse proportion to strata per-unit costs). We see no particular advantage or disadvantage to the States as a result of some States using disproportionate sampling.

Section 205.42 Case Review and Management Requirements

This section of the final regulations establishes the rules and procedures for the conduct of QC reviews, completion of QC sample cases and determination of whether an error exists in a sample

case in the AFDC and Adult assistance programs.

Treatment of State Plan Provisions

The QC review is conducted against the substantive conditions of eligibility and amount of assistance payment provisions as reflected in State operating policies that are consistent with the State plan. To receive Federal matching funds, each State agrees to administer its AFDC program "in accordance with title IV–A of the Act" and "all other applicable laws and regulations . . ." (Streamlined State Plan for Title IV–A of the Social Security Act: Financial Assistance Aid to Families with Dependent Children, 1982).

Section 408(c)(2)(A) of the Act generally provides that, if an approved State plan provision is determined to be inconsistent with Federal law or regulation, and the State has been notified of the inconsistency, the QC review will be governed by the provision of Federal law or regulation. We recognize that a State will need some lead time after notification of a plan inconsistency to submit an amendment to the State plan and revise its operating procedures.

In the NPRM at § 205.42(b)(1)(i), we proposed a period of 60 calendar days, after receipt of notification of the inconsistency, for a State to submit an amendment to its plan removing the inconsistency. Unless an amendment was submitted, sample cases selected for the review month after the 60-day time period would be reviewed against applicable Federal law and regulations. If an amendment was submitted timely, we would review against the submitted amendment until final disapproval by the Department. If the amendment is disapproved by the Department, we would review against applicable provisions of Federal law and regulations with the sample cases selected for the review month immediately following the date of disapproval. The review would continue on this basis until the State has received approval of a plan amendment.

Section 408(c)(2)(A) of the Act is silent on the appropriate treatment of a pending plan amendment which is inconsistent with Federal law or regulations. The NPRM provided that if a State implemented a plan amendment which was submitted to, but not acted upon by the Department, the QC review would continue to be conducted against the pending plan amendment until final disapproval by the Department. If the pending plan amendment was disapproved, sample cases selected for the review month immediately following the date of final disapproval would be reviewed against the existing approved plan, provided the existing plan was consistent with Federal law and regulations. However, if the existing plan was inconsistent with Federal law and regulations, we would review against Federal law and regulations until the date of approval of a revised plan amendment.

Section 408(c)(2)(B)(i) of the Act requires the Secretary to grant a State a reasonable time period to make the State plan consistent with Federal law and regulations if it is necessary for the State to enact a new law. As indicated in the NPRM, if a new law needed to be enacted, the State, after receipt of notification of the inconsistency between the State plan and Federal law and regulations, was to advise the Department. The NPRM did not include a specific time period for a State to enact a law and amend its State plan.

Comment: Several commenters have noted that the proposed rules are silent regarding the manner and form of notification triggering the time limit to remove the inconsistency. Another commenter suggested we put the means for determining the date of notification in the regulations.

Response: The final regulations at § 205.42(b)(1)(i) clarify that the Assistant Secretary for Children and Families, the RA, or the designee of either, will notify the State in writing of the inconsistency in the approved State plan. The dated notice to the State will spell out each inconsistency, the policy basis for this conclusion (including but not limited to policy interpretations, positions and citations to applicable law or regulations), as well as the requisite time frame from receipt of the written dated notification for removing it.

Comment: Numerous commenters felt that the 60-day time period is too short and suggested that a six-month period would be more reasonable. Others suggested that we should establish, on a case-by-case basis, a reasonable time period not to exceed six months. Several other commenters suggested periods of a year or more.

Response: The notification requirement and time frame at § 205.42(b)(1)(i) apply only to situations where a State plan provision was incorrectly approved (i.e., the State plan is inconsistent with existing Federal law or regulations at time of approval). It does not pertain to a State plan provision which is inconsistent with Federal law or regulations solely because of a State's failure to implement new legislation or carry out changes in Federal law or regulation. This latter situation falls under section 408(c)(3)(A) of the Act and § 205.42(d)(2)(i) of the regulations.

We have changed the time frame in the final regulations at § 205.42(b)(1)(i) to provide that States will have six months to submit a State plan amendment to remove an inconsistency following receipt of written dated notification. During the sixth-month period, the QC review will be conducted against the existing State plan. If the plan amendment is submitted timely (i.e., within six months of receipt of notification), the review will be conducted against the submitted plan amendment provisions beginning with the date of submission.

Comment: Several commenters noted that the proposed regulation did not address the status of a QC review when a State challenges the Federal determination of an inconsistency They believe that States should be allowed the entire compliance process prior to reviewing against applicable Federal law and regulations.

Response: There is no statutory requirement for extending the administrative review procedures for disapproved plan amendments to situations where an approved plan is determined to be inconsistent with Federal law or regulations. Given the congressional desire for timely release of error rates, we see no reason to have an administrative process in the Department for this purpose.

Comment: Several commenters were opposed to the fact that when a plan amendment to remove an inconsistency is disapproved, QC will begin reviewing against applicable provisions of Federal law and regulations with sample cases selected for the review month immediately following the date the disapproval becomes final. They contend that this leaves States virtually no time to change its practices. One commenter suggested a minimum of 120 days lead time; another, a minimum of 60 days or up to six months, when necessary; while others felt that six months would be needed to submit a new plan amendment and to revise State practices.

Response: We believe that the time frame as proposed is reasonable. A State already will have had six months to correct the plan and its corresponding State practices. During that time, the State should have been working with the Regional Office to ensure that the State's submittal removing the inconsistency would be approvable.

Comment: Two commenters felt that further guidelines should be established as to what constitutes a reasonable period of time in cases where it is

necessary for the State to enact a new law to reconcile the inconsistency.

Response: We do not believe this level of detail is appropriate. Each State's legislative process has its own characteristics that must be taken into account once an inconsistency is identified. However, we have clarified the final regulations at § 205.42(b)(1)(iii) to provide that if the State needs to enact a new law to make the State plan consistent with Federal law and regulations, it must submit such a proposed law for enactment no later than the next scheduled legislative session immediately following receipt of written notification of the inconsistency. Where an inconsistency requires a change in the State law, the State must bring this requirement and all associated problems to the Region's attention, including the steps and timetable involved to remove the inconsistency. These actions are especially important if the process will take longer than the six months allowed under § 205.42(b)(1)(i). The Assistant Secretary for Children and Families, the RA, or the designee of either, will then decide how much longer the State will have to remove the inconsistency and will notify the State in writing of that decision. QC will continue to review to the existing plan provision during the additional time allowed.

Comment: Several commenters remarked that the regulations as proposed at § 205.42(b)(1)(i) did not address the QC review procedures when a plan amendment is submitted to remove an inconsistency. The commenters contend that there is a conflict between the requirements contained herein and the requirements for approval of State plans and amendments provided in §§ 201.3 and 205.5 of the regulations. Regulations at §§ 201.3(g) and 205.5 permit States to submit an approvable plan or amendment by the last day of a calendar quarter and have it retroactively effective to the first day in the quarter in which the change was actually in operation statewide. Since a State's operational policies are frequently implemented before a revised plan amendment is submitted, the commenters believe there will be inconsistencies between State manual materials and the State plan. Consequently, the commenters suggested that QC should be allowed to review to State directives during the calendar quarter in which the State submits a plan amendment.

Response: There is no conflict, in most instances, between the QC regulations at § 205.42(b)(1)(i) and §§ 201.3 and 205.5 of the regulations. We developed the concept of "permissible State practice", the basis of the QC review, to conform to those regulations. Since the regulations at § 205.42(b)(1)(i) have not changed the plan amendment approval process, there is no need to revise the QC review procedure. Under the regulations at §§ 201.3(g) and 205.5, Federal financial participation is available beginning as early as the first day of the calendar quarter in which an approvable plan is submitted and in operation on a statewide basis. Therefore, when a State implements revised operating instructions in response to a notification of an inconsistency in an approved State plan provision (or for any other reason implements revised operating instructions) and submits the corresponding plan amendment by the end of the calendar quarter in which the implemented provision became effective, QC will review against the revised operating instructions unless these instructions are inconsistent with the proposed plan amendment. If the operating instructions are inconsistent with the proposed plan amendment, then QC will review directly against the submitted proposed amendment. If, on the other hand, the State implements new operating instructions without submitting the plan amendment by the end of the calendar quarter of implementation, then assuming the six-month time period has not elapsed, QC would continue to review against the existing inconsistent plan provision until the first day of the calendar quarter in which the State submits a proposed plan amendment or the end of the six-month time period, whichever occurs earlier. If a State submits a plan amendment after the end of the six-month time period, QC would review against applicable Federal law and regulations until the State has an amendment approved.

Comment: One commenter suggested that the regulations at § 205.42(b)(1)(i) specify that only the item identified as inconsistent is subject to the review requirements stated herein. This clarification is important because States frequently submit State plan amendments composed of multiple preprint pages where all but one item may be consistent with Federal law and regulations.

Response: We clarified our language in the final regulations to address this commenter's concerns. The requirements stated in § 205.42(b)(1)(i) of the regulations pertain only to the approved plan provision which is found to be inconsistent with Federal law or regulations.

Comment: One commenter said that since most State plans involve State options, the proposed regulations were unclear about how State and Federal QC would know which option to review against.

Response: State and Federal QC will review according to the provisions at § 205.42(b). If a previously approved plan provision consists of an option(s) which, as expressed, is inconsistent with Federal law or regulations, QC will continue to review to it until a revised plan amendment removing the inconsistency has been submitted or, the six-month time period has expired, whichever is earlier. If a revised amendment removing the inconsistency is not submitted timely or is submitted but is disapproved, then QC will review in accordance with applicable Federal law and regulations.

Comment: One State commented that the regulations at § 205.42(b)(1)(i) should indicate that State policy and procedural changes are part of the State plan as defined in this section. In this State, State policy and procedural changes are submitted to Federal authorities at the same time they are issued to State staff. Thus, as part of the State plan amendment approval process pursuant to § 201.3, the Region should have caught any inconsistencies prior to approving a plan provision.

Response: State practices (i.e., written policy and manual material) are not part of the State plan and, as such, are not covered by the plan approval. While the Region may utilize the submitted policy material to assess the State's intentions or interpretation of a proposed plan amendment, the plan amendment approval process does not include a specific review or approval of this material. Should a Region identify an inconsistency between the plan and proposed practice in any informal review, it would normally advise the State. However, the responsibility for ensuring consistency between the plan and State practices resides with the State. Thus, under these final regulations at § 205.42(b), where a State's practices are inconsistent with the provision(s) of the State plan, QC will conduct the review against the State plan. This review policy is unchanged from the prior regulations.

Treatment of Court Orders

Section 408(c)(2)(B)(ii) of the Act provides that, for error rate determination purposes, the QC review will be conducted in accordance with applicable court orders. Therefore, we will consider a QC sample case paid in compliance with a court order issued by

a Federal, State or local court to be correctly paid if all other eligibility and payment conditions not affected by the court order are met. The final regulation at § 205.42(b)(2) reflects this policy. Regulations at § 205.10 provide that Federal matching is available for "Payments of assistance within the scope of the Federally aided public assistance programs made in accordance with the court order." Pursuant to section 408(c)(2)(B)(ii) for QC purposes, Federal matching is available for all payments to AFDC assistance units subject to QC sampling, made in accordance with a court order without regard to the "scope" of program limitation noted above.

We have not, however, amended § 205.10(b)(3). The regulations at § 205.10(b)(3) continue to be applicable since court order matching specifications still apply to families for whom assistance is provided under the Emergency Assistance program and families presumptively eligible under the AFDC program.

While QC will review to the conditions of all court orders under the final regulations, it continues to be important for States to defend against any legal challenge to Federal AFDC law, regulation or policy. In order to assist the States in meeting these legal challenges, it is essential that the Department be immediately advised when lawsuits that challenge substantive Federal AFDC eligibility and payment rules are filed against the State or its political subdivisions. Timely notice is especially important when the lawsuit affects payments of assistance units subject to QC sampling.

Case Review Requirements

As indicated earlier, we had included in the NPRM at § 205.42(c) certain basic verification requirements which we view as fundamental and not subject to significant change.

Comment: Several commenters stated that we should delete the proposed § 205.42(c) since OBRA of 1989 does not require inclusion of basic case review procedures in regulations. Others suggested deletion of the section because States, facing difficult economic times, need to make best use of their limited resources by having flexibility in completing case reviews.

Response: We have decided to retain this section of the regulations. Even though case review requirements at § 205.42(c) are not specified in section 408 of the Act (which requires the Secretary to establish and operate a new AFDC–QC system), we believe them necessary for implementing the new QC system.

We do not agree that the varying economic conditions among States should be the basis for determining which factors of eligibility QC reviews. QC cannot be selective in reviewing eligibility factors. It must verify each element of eligibility and payment for a sampled case to determine the accuracy of a State's eligibility and payment determinations. Furthermore, since the QC system is intended to be a uniform national system, verification standards of an element must be the same from State to State. This consistency ensures that our statistical results are unbiased and reliable.

Comment: Two States suggested that some verification requirements do not need to be used in every review. As an example, the commenters observed that no errors due to real property ownership have been cited in their States, even with the adherence to QC standards for verifying real property. The commenters asked that States be granted flexibility to determine which verification sources to use on a case-by-case basis. Other commenters stated that we should allow a State to negotiate with the Regional Office to establish a set of verification standards for each State within the region. One commenter suggested that if State practice requires an eligibility worker to accept certain evidence as verification of an element of eligibility, then the QC reviewer should also be required to use the same information as verification in the QC review. As an example, the State suggested that where the eligibility worker is limited by court order from making certain collateral contacts, the QC review should limit its use of information accordingly.

Response: We do not agree that States should be permitted to selectively apply QC case review requirements. Verification standards are established to provide a thorough and consistent method of substantiating a reviewer's decision regarding an element of eligibility and payment. They must be applied uniformly to each case to maintain the integrity of the QC system and to ensure the accuracy of our statistical results. Payment accuracy information generated through the QC review provides States with performance information and is a basis for assessing disallowance liabilities. The absence of recent errors in a particular element of eligibility for a given State is not sufficient reason for QC to abandon review of that element. Some States, for example, still identify errors due to real property ownership through the QC review process. The QC system would be undermined if our verification standards were based solely on the number of errors occurring in particular elements of eligibility for certain States.

We also believe that it would not be appropriate to permit a Regional Office to define review procedures based on its negotiations with its States. While local agencies have their own methods for establishing eligibility and payment, QC independently carries out its responsibility to measure the correctness of payments by establishing its own national verification standards. Since QC reviews a State's eligibility and payment determinations and not its case review procedures, the correctness of payment to a case does not depend on whether QC and State review requirements are identical. Furthermore, since we afford States wide latitude in establishing verification requirements for their AFDC programs, QC error data provides States essential information about the effectiveness of those verification procedures.

Comment: Several commenters asked that we avoid locking States into narrowly defined review procedures that are not cost-effective. One State remarked that it recently submitted evidence to the Department showing that certain case review procedures are not cost-effective in that State.

Response: We believe the basic case review requirements contained in the proposed regulations are cost-effective. One measure of the cost-effectiveness of that system is the large amount of costs avoided over the past decade because of reductions in payment error rates. We continually review and evaluate case review requirements and revise our procedures to maintain an efficient and effective system. In evaluating the appropriateness of a review procedure, we not only consider its cost-effectiveness, but also other factors such as the reliability and availability of alternative verification methods. As an example, we recently revised requirements in the QC Manual, section 3, for verifying relationships among members of a household. These revisions were geared to reducing a State's expenditure of resources and expediting the review process in certain cases.

Comment: A number of commenters asked that we revise the proposed regulations to indicate that exceptions to certain review requirements are permissible. Most expressly disagreed with our proposal to require a field investigation with a face-to-face interview in all active sample cases. One commenter remarked that the proposed regulations failed to provide alternative procedures for situations where a face-to-face interview cannot

be obtained. Several commenters asked that the requirement for a face-to-face interview be waived in situations where fulfilling the requirement risks the QC reviewer's safety or where it is not feasible or practical because of geographic or other reasons. Other commenters suggested that it should be permissible, in some cases, to conduct the field interview via telephone.

Response: We believe the face-to-face interview continues to be an effective procedure that aids in the verification of a family's eligibility for AFDC and its payment amount. Therefore, we have retained the requirement that a face-to-face interview with the recipient must be conducted as part of the field investigation (except as noted below). The intent of QC policy is that the face-to-face interview take place in the recipient's home. It provides the reviewer with a personal observation and assessment of the family's actual living arrangements in relation to the family's eligibility and payment amount for the review month. The QC Manual, section 3, already provides for face-to-face interviews to be conducted outside the recipient's home where the safety of the reviewer is at issue. We have added a provision in the final regulations at § 205.42(c)(3) to provide for an exception to face-to-face interviews in situations where a recipient (or applicant) lives in an extremely isolated area not reachable by regularly scheduled commercial air service, other public transportation, or automobile. For these exception cases, we require the State to provide supporting documentation.

Comment: Two commenters wanted to know if a reviewer can still make "special determinations" if he or she cannot secure primary or secondary evidence.

Response: Section 408 of the Act does not require QC to change its current policy regarding use of the "special determination" in the case review process. If a reviewer cannot document an element of eligibility or payment according to the verification standards, the reviewer must try to make a special determination. Guidelines for making such determinations will continue to be included in the QC Manual, section 3.

Comment: Two States objected to codifying QC review procedures because they interpret this codification as allowing the Department to declare a State's sample "invalid" if the State does not conduct its case reviews and verification activities in accordance with Federally prescribed procedures. Furthermore, the commenters observed, if the Department completes the sample, it passes the cost on to the States.

Response: Section 408(b)(1)(A) of the Act provides that States shall conduct the QC review in accordance with the time frames and methodology specified in the regulations by the Secretary. Where the State fails to do so, section 408(b)(1)(B) requires the Secretary to complete the State sample and charge the cost of this activity to the State. However, under § 205.43(h) a State will be provided an opportunity to take timely remedial action to comply with prescribed procedures. We believe this policy is reasonable and necessary to provide a means to continue operation of a reliable and unbiased QC system if a State refuses to operate its QC system in accordance with established Federal procedures.

Use of QC Forms and Schedules

Comment: Two commenters requested that the regulations allow States to tailor Federal forms to States' needs and circumstances.

Response: In the final regulations, we have included a reference to approved State forms at § 205.42(c)(4). States may substitute their own Worksheets and/or Review Schedule if they receive our approval. Once an approval is received, we will no longer supply the State with Federal forms.

Treatment of Changes in Circumstances

In the NPRM at § 205.42(d)(1), we defined a change in circumstances as a change occurring after the date of authorization of the initial payment which may affect the assistance unit's eligibility or payment amount. In § 205.42(d)(1)(i), we specified that a change in circumstances would not be considered in the payment error determination if the change occurred in the review month or in the month immediately preceding the review month, known as the payment adjustment lag (PAL) period.

Comment: One commenter indicated that the proposed regulation at § 205.42(d)(1)(i) conflicts with the operating procedures for error computation in on-going prospective budgeting cases. The operating procedures state that when the current best estimate of income is incorrect, and there is a subsequent change in circumstances in the PAL period, any error will be based on the actual circumstances that existed in the review month. The commenter feels that the estimate of income should be recalculated based on information that existed prior to the PAL period and the amount of error should not reflect the change in circumstances that occurred in the PAL period.

Response: We believe that the operating procedures of using the review month income to determine the amount of the payment error in prospectively budgeted cases is consistent with § 205.42(d)(1)(i). The PAL period, which is unchanged from prior regulations, was incorporated into the QC review process in recognition that changes in recipient circumstances, even if properly reported, cannot be immediately reflected in a corrected payment. However, where there are multiple changes in circumstances in the same eligibility or payment factors, some occurring before the PAL period and some occurring in the PAL period, the earlier changes are not eliminated by the later changes. The same concept applies to prospectively budgeted income. In prospective budgeting, current income and anticipated future income are used as predictors of income to be budgeted in a future payment month. The State estimating procedures attempt to approximate, as closely as possible, the actual income circumstances in a future payment month. Where the estimate is no longer valid because it was incorrectly calculated and a change in income circumstances subsequently occurs, it is appropriate to use actual review month income. Likewise, if the income estimate was incorrectly calculated and a subsequent change in income circumstances occurred in the PAL period, the payment error would be included in the State's error rate since the change in the PAL period does not negate the initial incorrect estimate. The best estimate of what income should have been budgeted, given both an incorrect estimate and a change in circumstances, is actual review month income.

Comment: One commenter indicated that the RPRM definition of change in circumstances did not specify a time period in which errors resulting from any policy change are held harmless. Only Federal policy changes are afforded a six-month hold harmless period. The commenter indicated that States do not have the ability to identify all active cases affected by every policy change and frequently have to apply a new policy at the next periodic review. The commenter felt that States should have at least six months to implement a new policy, regardless of the reason for the change.

Response: We have no authority to establish a "hold harmless" time period for State-initiated policy changes. The six-month "hold harmless" period in section 408(c)(3)(A) of the Act applies only to Federal law changes. A State

can determine the timing of its own initiated policy changes and take steps necessary to ensure effective implementation.

Treatment of Changes in Federal Law

Section 408(c)(3)(A) of the Act provides for excluding QC payment errors resulting solely from a State's failure to implement changes in Federal statute property within six months after the effective date of the changes or the issuance of final regulations, where such regulations are necessary to construe or apply the Federal statutory changes, whichever is later. This provision means, for example, that if statutory changes are effective as of October 1 of a given year and necessary final (or interim-final) regulations are issued on January 1 of the following year, a State will have until July 1 of that following year to implement such changes before any payment error resulting solely from such changes will be counted in the computation of the State's error rate. The QC review will be conducted in accordance with permissible State practice after the end of the latter six-month period, i.e., July 1 in our example. We will notify the States when the six-month procedures will apply. Regulations are set forth at § 205.42(d)(2)(i).

Comment: Several commenters objected to the language in the NPRM which indicated that the Department would determine which Federal law changes would be encompassed by the six-month rule. They stated that the statute protects the States from QC errors related to all Federal law changes for the six-month period.

Response: We agree that the six-month error exclusion provision includes all Federal law changes that affect the eligibility or payment status of AFDC applicants and recipients. The notification in the NPRM preamble referred to notification to the States as to when the six-month period would begin.

Detrimental Reliance

Sections 408(c)(3)(B) and (C) of the Act exclude from consideration as an erroneous payment, a payment that is in error solely by reason of the State's reliance upon and correct use of erroneous information provided by the Secretary about matters of fact or the State's reliance upon and correct use of written statements of Federal policy provided to the State by the Secretary. The proposed regulations specified that an assistance payment made by a State should not be considered an erroneous payment if the payment was in error solely because of the State's reliance upon and correct use of incorrect factual information or incorrect written policy statements provided by the Department.

We specified in the NPRM that "reliance upon and correct use of incorrect factual information" in the proposed rules means that the State depended on the written factual information to make payment decisions, had reasonable expectation that the information was timely and accurate, and followed procedures for access and use of the information. State exemption from a payment error as a result of incorrect factual information would be made on a case-by-case basis. For example, the Department supplies States with Social Security benefit information via the Beneficiary and Earnings Data Exchange (BENDEX) system. In order to get appropriate information from BENDEX, it is necessary for a State to provide specific information about potential beneficiaries. Failure to do so can result in incorrect information being supplied to the State. In this instance, the State would have failed to follow procedures for access to BENDEX data. The resulting error would not be excluded from the error rate.

We also specified in the NPRM that "incorrect written statements of Federal policy by Department officials" means written policy from a Federal official in the Department responsible for dissemination of such policy in the AFDC program—i.e., from the Assistant Secretary for Family Support (now the Assistant Secretary for Children and Families), an FSA Regional Administrator (now the ACF Regional Administrator), or the Director of the Office of Family Assistance. This provision would apply to situations where the State's eligibility and payment policy correctly reflects the policy directive by the Department official, but the directive is subsequently determined to be incorrect.

Comment: Several commenters did not understand the meaning of the phrase "incorrect written factual information provided by the Department."

Response: We have clarified the language in the final regulations at § 205.42(d)(2)(ii). For purposes of this regulation, information in a written form is defined to mean hard copy documentation such as a signed statement, a computer printout, a computer data tape, reports, etc. Factual information refers to specific data provided by the Department about a given individual. It includes, for example, data from the Social Security Administration on the amount of an individual's Social Security benefit or Supplemental Security Income benefit.

Comment: Several commenters suggested that the regulation be revised to provide that detrimental reliance may also be based on verbal statements received from the Department. They believed that by basing detrimental reliance only on written information from the Department, our interpretation of the statute is not in accord with the congressional intent.

Response: We believe our interpretation is in accord with the statute and its legislative intent. The statute expressly refers to policy statements provided in written form and information about matters of fact provided by the Secretary. It is appropriate to require a written statement in order to avoid disputes regarding what, in fact, was actually said or provided. For example, where there is no written record of information provided by the Department during a telephone conversation with a State, and a disagreement develops as to what was actually provided by the Department, the State would not have a clear and objective basis to support its position. A State must have complete documentation to support its request to exclude errors based on erroneous information provided by the Department.

Comment: One commenter objected to the explanation in the NPRM that a State's reliance upon and correct use of incorrect factual information means that the State had reasonable expectation that the information was timely and accurate. The commenter felt that a State should not be put in the position of having to determine if information received from the Department is timely and accurate. There is nothing in the legislative history of the statute that suggests that Congress intended such responsibility to be placed on the States.

Response: Both the statute and legislative history refer to the State's responsibility to make correct use of information received from the Department as a condition for excluding payment errors resulting from erroneous factual information from the Department. Specifically, the statute provides that a payment error is excluded based on "the State's reliance upon and correct use of erroneous information provided by the Secretary about matters of fact." For a State to make "correct use" of information provided by the Department in determining eligibility of and payment to a case, the State must evaluate the information to determine if it proves the eligibility and payment factors to be verified. This evaluation requires the State to determine if it is reasonable to

expect that the information is timely and accurate for determining an individual's eligibility or payment. It is reasonable to expect that the information would be examined to see that it pertains to the individual(s) to whom it is supposed to apply and that it is applicable to the time period (payment month) in question. We would agree that State assessment of "timely and accurate" beyond this is not consistent with the statute.

Comment: A number of commenters noted that in the NPRM we cited only BENDEX as a system which could provide incorrect information to a State and result in payment errors not being counted. They requested that specific references to reliance on IEVS and SAVE systems should also be included.

Response: The exemption of payment errors as a result of incorrect written factual information is applicable only to the extent that such information is maintained and provided by the Secretary. The Income and Eligibility Verification System (IEVS) is a system of computer data matching to determine an individual's initial and continuing eligibility for public welfare programs, including AFDC. Congress mandated it in the Deficit Reduction Act of 1984 (DEFRA, Pub. L. 98–369). Data are matched from various Federal and State sources, including the Department of Health and Human Services, against applicant and recipient information. Even though there is a Federal mandate for States to use IEVS, the Secretary does not have administrative oversight over each of the data files used in the IEVS matching.

The same is true of the Systematic Alien Verification for Entitlements System (SAVE). The SAVE data files used in computer matching with AFDC are not maintained by the Secretary. The system is administered by the Immigration and Naturalization Service (INS) to provide States with procedures for retrieving information from the INS data base about an individual's alien status. However, section 121 of the Immigration Reform and Control Act (IRCA) of 1986, which amended section 1137 of the Act, provides that if erroneous eligibility and payment determinations are made based on information provided through the SAVE system, a State agency will not be liable for QC errors related to the verification of alien status (provided that IV–A agency both accessed the INS data base and did so correctly).

Therefore, based on the above discussion, we decline to reference IEVS or SAVE in the final regulations as potential data sources from which incorrect information could have been provided.

Comment: One commenter thought that if a State uses the BENDEX system and transmits data on a specific SSN and the information is returned on the same SSN, the State would conclude that it followed correct procedure to access the data and that the data were correct. QC should not have to ascertain whether Federal source data were correct or not.

Response: Proof that a State accessed the BENDEX, or similar systems, correctly involves more than an evaluation to see if the SSNs are the same. As we stated previously in the preamble, exemption from a payment error as a result of incorrect factual information from the Department requires that we determine that the State followed procedures for access and use of the information. Such determination requires a thorough review of all factors that may have an impact on the correctness of the State's information request.

It is not necessary to determine whether the Department's source data are correct, only whether information provided to a State is correct. The statutory basis for error exclusions based on incorrect factual information is related to the correctness of information provided to the State rather than to the correctness of information maintained in the Department's source data files.

Comment: In the NPRM at § 205.42(d)(2)(ii), we defined "Departmental officials" to mean Federal officials in the Department responsible for dissemination of written policy, i.e., the Assistant Secretary for Family Support (now the Assistant Secretary for Children and Families), the ACF Regional Administrator, or the Director of the Office of Family Assistance. Twenty-six commenters felt that our definition as to who can be held responsible for providing written statements of Federal policy for the Department was too restrictive. Ten of the commenters suggested that we include the Regional Directors, branch specialists at the Regional Directors, branch specialists at the Regional level, ACF managers and program specialists and other ACF staff. The other 16 commenters recommended that we should define Departmental officials to mean any Departmental employee who States with policy information. The commenters stated that our definition is impractical and unduly restrictive because information is generally provided to a State by a lower-level ACF official. One commenter felt, for example, that it is the Regional staff with programmatic experience and a personal knowledge of a State's AFDC program that typically provides the information. Most of the commenters noted that neither the statute, nor its legislative history in the conference report, lists specific Federal officials who can be held responsible for providing incorrect statements of Federal policy.

Response: We believe that, in order to ensure the integrity of the QC system, we should specifically identify certain ACF officials as responsible for disseminating AFDC policy. The persons so designated are the senior staff of the agency. They are the managers responsible for seeing that the ACF staff administers the AFDC program in accord with Federal law and regulations. To have an operating procedures that allows any employee to issue policy statements would make it administratively difficult, if not impossible, to manage and coordinate the issuance of policy information on behalf of the Secretary. Moreover, such a procedure would more likely result in the issuance of inconsistent policy statements for a program that is mandated by the Congress to include certain national and uniform program requirements.

The statutory provision involves situations where the Department provides a State with information that is designated as reflecting an official Departmental position, i.e., a position of the Secretary. It is within the Secretary's administrative authority to designate certain officials as responsible for this activity.

In response to State concerns that limiting the number of persons with authority to issue Federal AFDC policy would delay the ability of ACF at the Regional level to respond to issues and questions raised by the States, we have added the ACF Assistant Regional Administrator for the AFDC program to the three officials mentioned in the NPRM preamble. The titles of the four Departmental officials who are responsible for dissemination of written policy are included in the final regulations at § 205.42(d)(2)(ii).

Comment: One commenter objected to our use of the qualifier "incorrect" in the proposed regulations when we state that errors are excluded as a result of a "State's reliance on, and correct use of, incorrect written statements of Federal policy by Departmental officials." The commenter felt use of the word "incorrect" significantly alters the meaning of the statute which ensures that no QC error can result from a State's reliance on written Federal policy, whether that policy is right or

wrong. The commenter cited instances where errors were cited by Federal QC even though the errors resulted solely because of the State's correct application of correct statements of written Federal policy.

Response: We disagree that our use of the word "incorrect" alters the meaning of the statute. The law provides that a payment error will be excluded if the payment is in error solely by reason of the State's reliance upon and correct use of written statements of Federal policy provided to the State by the Secretary. If an error occurs solely because of written statements where the State relied upon and correctly used this information, this means the "incorrect" guidance from the policy statements must cause the State to make the erroneous payment. Instances where it appears that the State correctly used correct written Federal statements of policy, and yet reliance on the information results in the citation of an error, may involve issues such as incorrect State interpretation and application of Federal policy.

Comment: One commenter asked that we specify that detrimental reliance applies to a State's dependence on Federal instructions which are promulgated via the Federal re-review process.

Response: We have not incorporated this suggestion in the final regulations. A State is not exempted from a payment error as a result of incorrect information obtained through the QC re-review process and used to determine eligibility and payment. The Federal re-review is conducted against the same laws, regulations, and policies the State should have used in making the eligibility and payment determination. It is not a system for introducing new policy guidance, but a system for applying existing policy. Furthermore, we are specifying in the final regulations that only certain officials may provide written program policy statements on behalf of the Department. If, during the re-review process, the State believes that application of policy conflicts with policy statements from Departmental officials, the appeal process affords States the opportunity to raise issues regarding consistency of agency policy and QC application of that policy.

Comment: Two commenters wanted to know if all AFDC policy statements must be cleared through ACF Central Office, or will the Regional Office still play a role in disseminating official policy guidance.

Response: The Regional Office has authority to issue AFDC policy statements through the ACF Regional and Assistant Regional Administrators without prior approval from Central Office depending upon the significance of the policy involved.

Comment: One commenter recommended that we establish a system to share policy statements from each Regional Office with all States when appropriate.

Response: We will explore the feasibility of such a system.

Declaration of State of Emergency or Disaster

Section 408(c)(3)(D) of the Act provides that an assistance payment issued by a State shall not be considered an erroneous payment if the payment is in error solely because of the occurrence of an event in the State that results in a declaration of a state of emergency or major disaster by the President or the Governor of the State. The proposed regulations at § 205.42(d)(2)(iii) included this as one of the types of payment errors which would not be counted in the determination of a State's error rate.

We specified in the NPRM that the state of emergency or major disaster must be declared pursuant to Federal or State statute and the event must directly affect the State's ability to make correct payments. We also specified that the State must provide adequate documentation of the event and its impact on the State's eligibility and payment determination process for consideration by the Department. Request for error exclusion under this provision must be submitted in writing to the Department as soon as possible after a state of emergency or disaster is declared. The request must include: a copy of the declaration; a detailed explanation of the circumstances; identification of the affected jurisdictions; the reason(s) why the State's ability to make correct payments has been or will be impaired; the length of time required to overcome the effects of the emergency or disaster; and the actions the State is taking to minimize the magnitude and duration of the negative effect. The Department would consider the appropriateness of each request and notify the State accordingly. The State would be required to continue to cite errors in accordance with permissible State practice until a decision on its request is made. If the request is appropriate, errors due solely to the effects of the emergency or disaster would be excluded in the determination of the State's error rate beginning with the date of the emergency or disaster.

Comment: A number of commenters indicated that the proposed rules on declaration of a state of emergency or major disaster were too restrictive. They pointed out that section 408(c)(3)(D)(i) of the Act neither ties the declaration of an emergency or disaster to a particular statute, nor prescribes the extensive documentation requirements set forth in the proposed regulations.

Response: We agree that section 408 of the Act does not specifically tie the required declaration to Federal or State laws governing emergency, emergency response, or relief. Accordingly, the final rule at § 205.42(d)(2)(iii) does not contain this limitation.

In order to establish that an erroneous payment was directly the result of an emergency or disaster, the proposed regulations specified required documentation to be submitted by a State. While section 408 does not identify specific documentation, we believe that an evaluation is appropriate in order for us to assess which, if any, erroneous payments were the direct result of the emergency or disaster. In response to the concerns raised, we reviewed the proposed documentation requirements and determined they could be streamlined. In the final rule, we removed the proposed requirements to determine the length of time required to overcome the emergency or disaster and to identify actions taken by the State to minimize the effects.

Monthly Reporting

Section 408(c)(3)(E) of the Act excludes, for QC purposes, errors which result from the failure of a family to submit monthly reports to the State pursuant to section 402(a)(14), if the failure did not affect the amount of the payment. Under section 402(a)(14) of the Act, as amended by section 5051 of OBRA of 1990, failure to submit a monthly report where required under a State plan option, results in an assistance unit becoming ineligible for assistance payments. We interpreted the language of the Act to exclude the ineligibility of the assistance unit which results from a failure to submit the monthly report where required by the State. Otherwise, the failure to submit a monthly report would always affect the amount of payment, since it is a condition of eligibility, and section 408(c)(3)(E) would have no effect. Based on this interpretation, we will no longer cite as an error failure to file a monthly report where required. However, information that should have been reported on the monthly report will continue to be evaluated for its effect on the accuracy of the payment and errors will be cited as appropriate.

Payments Considered Erroneous

Section 408(c)(4) of the Act identifies two types of payment errors which occur solely as a result of the failure of AFDC recipients to meet statutory conditions of eligibility and which count in the computation of a State's error rate. These conditions are the failure to assign child support rights without good cause and the failure to apply for or provide a Social Security number (SSN) for each person in the assistance unit. Since section 408 does not address other factors of eligibility, including such factors as income and resource limits, we believe Congress intended that adherence to all other statutory eligibility factors would continue under the revised QC system. We believe that these two requirements were included in section 408 to affirm the congressional view of their importance. Moreover, section 408 did not repeal basic statutory requirements of the AFDC program, but clarified how QC must review certain eligibility factors for the purpose of calculating the error rate.

All statutory conditions of eligibility are important, serve program objectives and must be met for an individual to be eligible for assistance. The continued QC review of assignment of child support rights and enumeration requirements emphasize payment accuracy, effective management objectives, and provide information to improve verification capability to reduce the need for assistance by identifying means for support other than AFDC assistance.

Since section 408(c)(4)(B) of the Act specifies that the enumeration requirement is met if an application for an SSN is made within 30 calendar days after the date of application for AFDC, we have included this requirement in the final regulations at § 205.42(d)(2)(v). Payments made during the 30-day period to recipients who have not met the enumeration requirement will be considered as correct payments provided all other factors of eligibility are met.

Comment: Many commenters disagreed with our interpretation of the section 408(c)(4) provisions. They indicated that since the statute expressly identified only two eligibility requirements (assignment and SSN) which could result in an erroneous payment, then other requirements, if not met, should not result in erroneous payments.

Response: We continue to believe our interpretation is correct. To accept the interpretation suggested by many commenters would frustrate the purpose of section 408(a) of the Act which is to improve the accuracy of payments of aid to families with dependent children "Erroneous payments" as defined in section 408(m)(6) is a far broader concept than "an erroneous payment" set forth in section 408(c)(4). Furthermore, if the only erroneous payments were those in section 408(c)(4), there would be no need to specify in section 408(c)(3) that certain payments are not erroneous. Therefore, section 408(c)(4) does not constitute all erroneous payments.

Comment: Several commenters said that the phrase in the NPRM—"failure to * * * provide a social security number"—is not contained within the language of the statute and, therefore, is beyond congressional intent.

Response: Section 408(c)(4)(B) must be read together with section 1137(a)(1) of the Act. Section 1137(a)(1) contains the enumeration requirement and provides that as a condition of eligibility for AFDC payments, a State shall require that each applicant for or recipient of benefits furnish to the State his social security account number. When these two sections are read together, it follows that, unless the State can secure the number through procedures established with the Social Security Administration, validation cannot be accomplished when an applicant or recipient to whom an SSN was issued does not provide the number to the agency. Thus, failure to furnish an SSN will constitute an erroneous payment for QC error rate determination purposes.

Comment: Several commenters were concerned that the regulation does not provide additional time in "Enumeration at Birth" (EAB) cases for the applicant or recipient to provide the SSN for the newborn. They believe that more time is needed because the EAB procedure does not provide for automated feedback of the number. Some commenters recommended that the time frame for such cases be keyed to the next redetermination.

Response: We have changed the proposed rule at § 205.42(d)(2)(v)(B) to provide that a payment error shall not be counted in the computation of a State's error rate if a recipient makes application for an SSN through the EAB project and furnishes the number to the State by the next redetermination period or within six months after the recipient of the SSN, whichever is earlier. We have decided not to extend the time period to 12 months for monthly reporting cases and error-prone profiling cases where the formal determination of eligibility is conducted on an annual basis. We believe to do so would constitute an unreasonable delay in ensuring compliance with a basic condition of eligibility. We have also decided to limit this time extension for furnishing the SSNs to EAB cases because procedures are available to secure issued numbers in other cases through data exchange agreements established with the Social Security Administration.

Comment: One commenter requested clarification of what effect the 30-day grace period, provided in section 408(c)(4)(B) of the Act, will have on the existing SSN eligibility requirements at § 205.52(a)(2).

Response: Section 408 specifies what constitutes a payment error for determining State error rates and potential disallowances under the QC system. Applicants and recipients of AFDC are still required to meet the eligibility requirements under program regulations. Thus, the SSN eligibility requirement § 205.52(a)(2) is unchanged by the 30-day QC grace period.

Comment: Two commenters requested clarification on how the 30-day grace period will apply to new-born children.

Response: We will retain the existing policy as provided in Action Transmittal FSA–AT–90–21, dated August 30, 1990. Under this policy, the change in circumstance provisions in the regulations at § 205.42(d)(1) apply. The birth of a child constitutes a change in circumstances and the parent(s) has until the second month after the birth of the child, or the discharge of the mother from the hospital, to apply for an SSN.

Comment: One commenter suggested that we revise the proposed § 205.42(d)(2)(v) regulation to include a "good cause" provision for failure to meet the enumeration requirement when an applicant does not have the required documentation needed by the Social Security Administration. The commenter suggested that this may be one area for compatibility with the Food Stamp Program in the Department of Agriculture.

Response: We have not included a "good cause" provision in the final regulations. Section 1778 of Public Law 101–624, enacted in November 1990, requires the Department of Agriculture to establish an "Advisory Committee on Welfare Simplification and Coordination." This Committee is to identify the significant differences among a variety of programs, including Food Stamps and AFDC, and to make recommendations for common or simplified programs. Changes, such as the commenter proposed, will be considered by that Committee.

Treatment of Fair Hearing Decisions

The NPRM incorporated current policy on treatment of fair hearing decisions in QC payment error cases. A change to a QC-identified payment error as a result of a fair hearing decision would be permitted provided the State had defended the adverse action during the hearing process, and the decision was based only on the facts of the case at the time of the QC review. In addition to the above criteria, we proposed to establish a time limit of 11 months after the end of the annual sample period to which the error rates would apply, for States to submit requests for such changes. These requests would not be considered after that time.

In the proposed regulations at § 205.43(d), we established one year after the end of the annual sample period, or within 60 calendar days of the last decision of the QC Review Panel, whichever is later, as the target date for the release of the error rates. Since the national average error rate achieved in a year constitutes the error rate tolerance level that will be used to measure State performance for the same year, it is essential that once the State error rates are released, no further error rate adjustment be considered. The 30-day period between the submittal deadline for requests for changes due to fair hearing decisions and the expected error rate release date is necessary in order for the Department to evaluate the circumstances of the request and make any necessary adjustment in the error rates. Since these would not be difference cases, we decided that we could give States this much time and still issue final error rates 12 months after the end of the fiscal year.

Comment: A number of commenters expressed belief that the proposed regulation unreasonably limits to 11 months the time States have to seek adjustments of their error rates as a result of fair hearing decisions. They believe the Department has arbitrarily imposed the 11-month deadline for fair hearing adjustments and that the decision is not supported by the Act.

Response: We continue to believe the proposed time limit is necessary and reasonable given congressional concern and required annual reporting by the Secretary about timely release of error rates and prompt notification to States of potential disallowances. Since the national error rate tolerance each year is the weighted average of all State error rates, it is essential that all adjustments to error findings be made prior to computing final error rates. As indicated at § 205.43(d), the target date for notifying each State of its final error rates is 12 months after the end of the annual sample period or within 30 calendar days of the resolution by the QC Review Panel of all differences, whichever is later. In recognition that issuance of appeal decisions by the QC Review Panel could result in issuance of error rates beyond the 12-month target, we have provided in the final regulations at § 205.42(d)(2)(vi)(C) an extension of the deadline for consideration of fair hearing adjustments if such delays should occur. Therefore, the deadline for receipt of requests for error rate adjustments as a result of fair hearing decisions shall be 11 months after the end of the annual sample period or the date of the last appeal decision by the QC Review Panel, whichever is later. Should a State be subject to a disallowance, the State is afforded the opportunity to challenge the disallowance before the Departmental Appeals Board (DAB) based on the lack of inclusion of fair hearing decisions issued after the deadline.

We have also changed proposed rules at § 205.42(d)(2)(vi)(A) to clarify that "facts" evaluated in relation to the fair hearing decision are the actual case circumstances that existed as of the review month.

Sample Disposition and Data Submission Time Frames

Prior regulations required States to dispose of and report findings on QC sample cases based on the following completion standards: 90 percent or all but five cases within 75 days after each sample month; 95 percent or all but five cases within 95 days after each sample month; and 100 percent within 120 days of the sample month. We proposed in the NPRM at § 205.42(e) somewhat more stringent standards to ensure more timely establishment and issuance of State error rates. States would be required to dispose of and report findings on sample cases as follows: 75 percent within 75 days after each sample month, and 100 percent within 95 days after the end of each sample month.

We also proposed in the NPRM at § 205.42(f)(1) to waive the "75 percent in 75 days" disposition standard where the Department has approved an alternate sample disposition plan based on permanent or recurring events in the State at certain times of the year. Unless the Department has approved a temporary alternate sample disposition plan for a particular annual sample period because of an unforeseen event in that year (as indicated in § 205.42(f)(2)), States would be required to submit a report immediately on cases that remain pending 95 days after the end of the sample month explaining why each case was not disposed of and the date by which it will be. The Department could grant an extension to the sample disposition time frame for individual cases that exceeded the 95-day deadline if sufficient justification for each overdue case was provided. However, in the proposed rules at § 205.42(h)(2), in the event of a significant failure on the part of the State to dispose of the required number of monthly AFDC sample cases within the proposed time frames, or time frames approved under a temporary alternate disposition plan, the Department could initiate action to establish the State's error rate.

The provision for an alternate sample disposition plan existed under prior regulations at § 205.40(b)(3). The extension to the time frame for individual cases where an alternate disposition has not been submitted or approved is new.

Comment: We received 47 comments on the sample completion time frames from State agencies and others. The commenters were universally opposed to shortening the disposition standard from 120 days to 95 days. Some commenters recommended a single 120-day standard; others opposed the required written justification for cases exceeding the 95-day standard, viewing it as an unnecessary burden. Commenters argued that the shortened time frames would force States to issue findings on sample cases before all information and verifications were secured. Some noted that the proposed completion standards would reduce State flexibility in managing its workload and that shrinking State resources would make it difficult to meet existing standards, let alone the proposed more rigorous ones. A number of commenters agreed with the percentage completion reduction for the 75-day standard.

Response: We are persuaded that shortened sample completion time frames would create a significant administrative burden, reduce State flexibility in managing shrinking staff resources, and not result in appreciable reduction in the time necessary to establish and issue State error rates. We have, therefore, provided in the final rule at § 205.42(e) for the retention of the prior standards with modification of the 75-day requirement (i.e., incorporating the proposed 75-percent completion requirement within the 75-day standard). However, we have not included the proposed requirement of a written justification for cases exceeding

the 100-percent completion standard. While a single 120-day deadline was recommended both in our consultation with States prior to development of the proposed regulations and in comments to the proposed regulations, we have included in the final regulations the proposed interim deadlines to ensure an even flow of work at both the State and Federal level. We believe the new interim disposition deadlines are reasonable and achievable as demonstrated by past performance.

Federal Re-review of State Sample Cases

We indicated in the preamble to the proposed regulations that we intended to use similar disposition time frames for completion of the Federal re-reviews as those imposed on the States.

Comment: Several commenters indicated that section 408(h)(1)(A) of the Social Security Act required the Department to include the Federal subsample disposition standards in the regulations. A few commenters suggested that State findings for subsample cases not disposed of within the Federal completion deadlines be automatically considered correct.

Response: We have no objection to including the Federal subsample disposition standards in the regulations. We have adopted the same disposition time frames applicable to the States and have added the specifications to the final regulations at § 205.42(g)(4). We reject the suggestion that should the Federal staff fail to dispose of the subsample cases by the disposition deadline, the State finding should be considered correct. The purpose of the Federal subsample is to validate the results in the State sample. The proposal would result in invalid State and national error rates. If we find in the Federal subsample that the State disposed of a case prior to receipt of all verification information in order to meet the disposition deadline, the missing information will be secured, evaluated and utilized in the computation of the regressed estimate of the State error rate. We have and will continue to monitor the Federal timely completion of the subsample closely and take remedial action where necessary.

Comment: Several commenters raised concerns about the nature of State records used in the Federal re-review and the time frame for submitting these records to the Federal agency. These commenters believe that States should be allowed to submit legible copies or original records within 10 working days of receipt of the Federal request for the records. The postmarked date on the record submitted should be considered the date of receipt.

Response: The prior regulations at § 205.40(b)(2)(iv) contained the requirement to furnish records to the Department for the conduct of the Federal subsample reviews. We inadvertently changed the wording when we incorporated this requirement into the proposed regulation. The final regulation at § 205.42(g)(1) allows for submittal of original or legible copies of case records within 10 calendar days beginning with the date the State receives the request for the records. We believe 10 calendar days is sufficient time to furnish the required records. This time frame reiterates the prior existing requirement, which States have consistently met.

Failure to Complete Sample

Pursuant to section 408(b)(1)(B) of the Act, if a State fails to provide the Department with information necessary to determine a State's AFDC error rate, the Department, directly or through contractual or other arrangements as determined appropriate, shall establish the error rate for the State on the basis of the best data reasonably available to the Department and in accordance with the statistical methods that would apply if the reviews were conducted by the State.

We interpreted this section of the Act in the NPRM at § 205.42(h) to mean that the State must complete a proper sample, that the results of this sample must be reported timely, and that payment and eligibility records must be provided promptly upon request for the Federal re-review. By "proper sample", we mean that the State has completed a sample in accordance with federally prescribed instructions as set forth in QC Manual, sections 2 and 3. Thus, if a State does not follow the federally prescribed instructions, or if the State does not select the sample in accordance with its approved sampling plan, the sample will be considered invalid, unreliable, or both. Similarly, if a State does not complete the federally prescribed minimum number of reviews and submit the review data in a timely manner, the available sample findings will be considered to be unreliable. State records must be supplied for the Federal re-review timely to enable the Department to meet the proposed time frames for establishing and issuing the State error rates.

We have interpreted that the statutory language that the department shall use the best data "reasonably" available as authorizing the Department to determine the method(s) to be used to establish the State's error rate. Thus, the actual method used would depend on the particular circumstances involved. Some of the circumstances we would consider include the timing and extent of a State's non-cooperation, and the time and resources available to the Department. For example, from the beginning of the annual sample period a State completed a valid but less reliable sample because the sample contained fewer than the prescribed number of AFDC active case reviews. We might combine this State sample with the Federal subsample of this State sample and add an additional federal sample (de novo review) to determine the State's error rate. However, if we have reason to question the State's findings, we might conduct an audit directly or through a contractual agreement with a third party.

Similarly, if we had reason to question the validity of the reviews being conducted by the State because the State did not conduct its reviews and verification in accordance with federally prescribed procedures or improperly excluded cases from its sample, and the State failed to timely take the remedial action that was indicated, it might become necessary for us to complete these reviews.

Comment: Several commenters objected to the necessity of our proposed provision and the broad discretionary authority it provided the Department in determining when a State "failed to complete the sample."

Response: Section 408(b)(1)(B) of the Act contains the authority for this regulatory provision. It indicates that if a State fails to conduct and complete a sample on a timely basis, the Secretary may complete the State's sample and charge the State the cost of this effort. The final regulations provide for notification to a State of failure to complete its sample and afford the State an opportunity to negotiate a solution before we take action to complete the State's sample. We, therefore, believe that the regulation is necessary, reasonable, and consistent with the intent of the statute.

Comment: One commenter suggested that we could strengthen the proposed regulation by requiring the State to develop a QC operational plan to be approved by the Department prior to the start of each review period. Both parties would have a clear understanding of what would be required, and deficiencies could be identified easily and detected earlier.

Response: We disagree that this suggestion would strengthen the regulation. We believe the current QC system—which makes use of the

approved State plan, the approved sampling plan, the QC Manuals, the statute and the regulations—clearly defines the requirements. QC reviews to permissible State practice (as specified in the approved State plan) and not to State operating procedures.

Differences in Review Findings

Section 408(b)(3), in describing the process for resolving differences between State and Federal AFDC review findings, indicates that a "difference case" is a case in which the Department finds the case erroneously paid, and the State review determined it correctly paid. We believe that a somewhat broader concept is appropriate in order to address other types of inconsistencies between State and Federal review findings, e.g., the State finds a case incorrectly paid and the Federal review finds the case correctly paid.

Accordingly, in the proposed regulations at § 205.42(i), we defined a difference case as a disagreement between State and Federal review findings that may affect the State's official payment error rate. This definition incorporated our current operational definition in the QC Manual, section 3. Specifically, a difference case would be a Federal re-review case where there is a disagreement between (1) a State review and Federal re-review finding of a correct payment, overpayment, or a payment to an ineligible case, or (2) a State finding of a correct payment, overpayment, underpayment, or a payment to an ineligible case and a Federal finding that the sample case should be dropped from the QC review.

Comment: One commenter pointed out that the proposed regulations neglected to include an underpayment case in the definition.

Response: We agree. Since the underpayment case was inadvertently omitted from the definition, we have added it to the final regulation at § 205.42(i).

Comment: One commenter proposed that the regulations also extend to the State the opportunity to seek administrative relief when the Federal review finding disagrees with a State finding that a sample case should be dropped from the QC review. The commenter believed that this situation should be subject to the same resolution process as any other difference that is cited by Federal re-review since it may affect the State's official payment error rate.

Response: Section 408(b)(3) defines a difference case as any case in the subsample in which the Secretary finds an erroneous payment and which the State's review determined the payment to be correct. Thus, the underlying concept of a "difference case" is a Federal-State disagreement regarding the amount of payment made to a case.

However, "dropped cases" are not "difference cases." We review all State-dropped sample cases to ensure that all reviewable sample cases are included in the determination of a State's payment error rate. When we find that a sample case dropped from the QC review by a State is reviewable, the case is returned to the State to complete the review and determine the correctness of the payment made. When we find that a State-dropped case is not reviewable, the case is dropped from the sample because neither the State nor the Federal review can be completed.

Comment: Another commenter proposed that the resolution process be expanded to include situations where a State finding of error, agreed to by the Federal review, is later discovered by the State to be incorrect.

Response: To ensure representativeness of the Federal subsample and unbiased error rate estimates, the original State finding must be fixed prior to Federal subsample selection and not changed thereafter. While we believe the situation presented would be extremely rare and, thus, regulating in this area is not warranted, we would consider new information provided by the State on a case-by-case basis if such information was provided prior to resolution of all differences by the QC Review Panel (Panel).

Comment: Several commenters requested that there be a provision that allows for informal resolution of differences between State and Federal sample case findings. The felt that such a provision would result in a more expedited resolution of many of the differences.

Response: We believe it would be inappropriate to include a provision for informal resolution of differences, either before they are formally cited by Federal regional staff or during the formal resolution process. Such a practice could result in inconsistent and inequitable treatment of differences among States. These resolution procedures, however, do not preclude informal discussions to clarify points during the resolution process.

Comment: Several commenters suggested that we modify the proposed regulations to require that State notification of a Federal difference be sent only by certified mail.

Response: We decline to include this restriction in the final regulations. There are other methods for ensuring uniform measurement of the date of receipt by the State of a difference notification. We will use the method that is appropriate to a particular situation.

Comment: A number of commenters suggested that a full 30 days should be allowed for both State responses to Federal disagreement notices and appeals of the RA's decisions to the Panel. The extra two days would ease logistical consideration without compromising the congressional intent for timely release of the error rates.

Response: We have revised the regulations at § 205.42(i) (2) and (4) to provide that the State shall respond to the difference notification agreeing or indicating the reason for disagreeing with the Federal finding within 30 days. Responses postmarked, otherwise officially dated, or delivered by the 30th calendar day after the date of receipt of the difference letter shall have met the time frame. If the deadline is a Saturday, Sunday, legal holiday, or an office closing, the deadline shall be extended to the next business day. If the State fails to respond within the 30-day time frame, the Federal finding shall be the final decision of the Department. If the State disagrees with the RA's decision, it may seek review with the Panel. The 30-day time frame would apply.

Comment: Several States suggested that the time frame for the RA's decision on a State's appeal of a difference be set at 30 calendar days, instead of the proposed 21 calendar days, for a decision or interim response pending review of law or policy. They thought the proposed standard was inequitable and would result in indefinite delays in processing appeals.

Response: We have not changed the 21-day time frame specified in the proposed regulations. We believe it is appropriate for the RA, on an exception basis, to provide interim responses to State appeals pending review of the law, regulations or policy. It is essential that the RA's decisions to sustain or reverse the initial Federal findings be consistent with national policy. Where consultation on that policy is necessary, it is provided for under the 21-day standard. Furthermore, our experience over a number of years indicates that the vast majority of difference cases are decided by the RA within the 21-day time frame.

Quality Control Review Panel

Under prior procedures, there was a two-step administrative appeal process for resolving differences between State and Federal active AFDC review findings within the ACR regional office.

Section 408(b)(4) of the Act requires that there be a QC Review Panel (Panel) to review State appeals of QC difference cases. After consultation with State representatives, we decided to retain one appeal level within ACF, the appeal to the ACF RA, to ensure the accuracy of the Federal difference decision before involving the Panel. We retained the prior 28-day time frame for States to request a review by the RA. In the proposed regulations at § 205.42(i)(2), we defined the 28 calendar days in terms of the receipt date of the difference notification and the postmarked date of the appeal letter. This definition was consistent with the State representatives' request for a change in how the time frame should be measured.

Given the congressional desire for timely release of error rates, we proposed that States have 28 calendar days from the receipt of the RA's decision to sustain a difference case to submit an appeal of the difference to the Panel. (We plan to send difference notifications and RAs' appeal decisions via telefax or certified mail to ensure uniform measurement of a State's receipt date.) The appeal request would include all supporting documentation. The proposed regulations did not limit the kinds of documentation a State may submit to substantiate its position. However, the appeal could only be based on issues that were raised in the initial appeal to the RA. In addition, the State would be required to send an informational copy of its appeal request to the RA concurrent with the submittal of the request to the Panel.

We proposed in the NPRM a target 60-day time period for the Panel to render a decision after receipt of a State's appeal request. Sixty days was viewed as a goal since a complex issue requiring supplemental information from the State, or the RA, could delay the decision. Sections 408(b)(5) (C) and (D) provide that decisions of the Panel in difference cases shall constitute those of the Secretary and that such decisions are not appealable. We interpreted this to mean that the Secretary may delegate these decisions to the Panel but retains authority to review individual differences cases. If a State appealed a disallowance for an error rate in excess of the national standard to the Departmental Appeals Board, the decision of the Panel, or the Secretary, in difference cases would not be reviewable by the Board.

The Panel was created to ensure an independent evaluation of difference cases since the findings in the Federal subsample are critical in determining the State's error rate. Consistent with a delegation of authority to the Chair of the Departmental Appeals Board (DAB), signed by the Secretary of February 19, 1992, the function of the Panel is being performed by staff attorneys of the Board. The regulations at § 205.42(i) (4) and (5) specify the time frames and general procedures to be followed when the State disagrees with the RA's decision and seeks review with the Panel.

Comment: Several commenters noted that there are no provisions in the proposed regulations regarding the size or the Panel or the composition of its members. Two commenters recommended a constituency of three members—a Federal representative, an independent party and a State agency representative, with the latter to be selected by the Department from a pool of State-recommended individuals. Two other commenters also suggested that at least one Panel member represent the States.

Response: We received these recommendations during our earlier discussions with State representatives. We believe that the current Panel composition and location address the commenters' concerns for an independent and impartial review body. In this connection, we note that there are no requirements in the statute regarding the size or composition of the Panel membership. The statute only requires that there be a Panel.

Comment: Many commenters objected to the proposed rule which required that States file an appeal and submit all supporting documentation with the Panel within 28 calendar days of receipt of the RA's decision to sustain a difference. Most suggested a 30-day deadline to file the appeal and with a minimum of 15 additional days after filing to provide all supporting documentation.

Response: We have revised the proposed regulations at § 205.42(i)(4) to provide 30 calendar days after the receipt of the RA's decision for the State to file an appeal and provide supporting documentation of the difference to the Panel. We believe 30 days is a reasonable time frame for a State to develop its arguments and submit supporting documentation for its appeal. However, in recognition of unusual circumstances that can arise, extensions may be granted by the Panel where good cause is shown.

Comment: One commenter suggested amending the proposed regulations at § 205.42(i), in general, and § 205.42(i)(4) in particular, to provide for situations where an appeal of a difference is delivered to its destination without benefit of a postmark. This situation can occur when overnight delivery or courier service is used.

Response: We agree that clarification in the regulations to address different forms of delivery is warranted. Therefore, the final regulations at § 205.42(i)(2) and (4) provide that a State's appeal request must be postmarked, otherwise officially dated, or delivered to the Panel by the stated deadline. Where no delivery service is used because the State has hand-delivered or telefaxed the appeal request, the Regional Office and the Panel will use a date-stamp or the date of transmission for purposes of the deadline.

Comment: Several commenters felt that the 60-day target for the Panel to render a decision is unnecessarily broad and lacks justification. They suggested that a decision on State appeals should be rendered in 30 days. If not, the State finding should be accepted by default. One commenter suggested that the case should be dropped from the subsample if a decision on the appeal request is not reached by the deadline.

Response: There is no legitimate basis for dropping or accepting by default a State finding simply because the State's appeal of the Federal finding goes beyond the anticipated time for a decision. Therefore, we decline to make such a change. However, we have changed the proposed regulations at § 205.42(i)(5) to indicate that the Panel shall notify the State of its decision within a target date of 45 calendar days following the completion of the record in the case as determined by the Panel. We have retained the reference to "a target date" for the decision to allow the Panel more time to render a sound decision where issues under appeal are complex.

Comment: Many commenters objected to the limitation proposed in the NPRM at § 205.42(i)(4) that the appeal to the Panel of a difference case can only be based on issues raised during the initial appeal to the RA. They contend that the statute provides no such limitation.

Response: This limitation is not included in the final regulations. However, States are to appeal difference cases initially to the RA. Any difference case appealed directly to the Panel will not be considered until the RA renders a review decision.

Section 205.43 Determination of Payment Error Rates and Disallowances of Federal Financial Participation for Erroneous Payments

This section sets forth the rules and procedures for calculating State AFDC

error rates and for disallowing Federal financial participation (FFP) to the States with erroneous payments in excess of the national standard for a fiscal year. This section also includes the disallowance notification and payment schedule and the administrative and judicial reviews of disallowances.

AFDC Expenditures for Disallowance Purposes

Comment: One commenter suggested excluding IV–D collections, recoveries and cancellations from the AFDC assistance expenditures before calculating the disallowance for a State. This change would preclude a State from paying disallowances on dollars which a State has returned to the Department.

Response: Section 408(f)(1)(A) of the Act, for purposes of determining the basic disallowance, defines AFDC expenditures as total payments of aid to families with dependent children. It is this amount that is reviewed in the QC sample and not the paid amount less child support collections and AFDC recoveries or cancellations. The error rate is computed using the total monthly payments to the sample cases.

Child Support Collection Rate

In the proposed regulations, we defined the child support collection rate as the ratio of the sum of the number AFDC cases reported by the State IV–D agency for which an assignment and a collection were made under section 402(a)(26) of the Social Security Act to the sum of the number of AFDC cases with such assignments reported by the State IV–D agency in the fiscal year.

Comment: One commenter was concerned that the definition of the child support collection rate in the NPRM at § 205.43(b)(1) would eventually be used for determining incentives under the child support enforcement program or for evaluating the child support enforcement program. The commenter also questioned the appropriateness of setting the child support collection rate by comparing the number of AFDC cases with a collection to the number of AFDC cases referred to the State child support agency by the State AFDC agency. The concern was based on the fact that many of the AFDC cases referred to the child support agency lack the basic information (e.g., the name of the alleged father) to allow the child support agency to have a reasonable chance of collecting support. The commenter suggested a definition that would compare the number of AFDC cases with a collection to the number of AFDC cases with an established order.

Response: The definition in the proposed rule is imposed by section 408(m)(4) of the Act and applies only to the AFDC program for QC purposes. We have no intention of extending this definition to other areas.

Using AFDC cases with an established order rather than AFDC cases referred to the child support agency would "improve" the child support collection rate of each State, but it would not create an incentive for States to obtain the missing information and support orders. Although this is not an easily solved problem, State agencies must begin to work more closely with one another and improve communications so that the needs of both programs are met and better results obtained.

Weighting for the National Payment Error Rates

To conform to standard statistical practice, we proposed to modify the weighting procedure used in determining the national overpayment and underpayment rates. Currently, the national overpayment (or underpayment) rate is defined as the sum, over all States, of the product of each State's regressed overpayment (or underpayment) rate and total amount of assistance payments divided by the sum of the total amount of assistance payments of all States in the fiscal year. In the proposed regulations, the national overpayment (or underpayment) rate was defined as the ratio of the sum, over all States, of the product of each State's average monthly caseload and regressed average monthly erroneous assistance payment (or average monthly assistance payment that should have been made but was erroneously not made) per case, to the sum, over all States, of the product of each State's average monthly caseload and average monthly payment per case for the fiscal year.

Comment: A number of commenters urged that we retain our current weighting procedures. They stated that the Department has not statistically proven that the proposed procedure represents a significantly more valid, reliable, and fairer method than the current method. Some commenters said that the proposed procedure was unclear and required interpretation and consultation to work. They also believed that the proposal increased the disallowance risk to all States by producing a lower national error rate than that produced by the current procedure.

Response: Both the current and proposed weighting procedures produce valid and reliable estimates of the national payment error rate. Based on five years of national average overpayment error rates, the difference in the estimates between the two procedures is extremely small. However, in light of the States' concerns, the fact that both methods produce valid and reliable estimates, and the relatively small difference in the national average error rate estimates, we decided to retain our prior weighting procedure. The final regulations at § 205.43(b) (3) and (6) reflect this decision. We also retain the prior weighting procedure for computing the payment error rate for States that use disproportionate stratified sampling.

Comment: One commenter suggested that the Department use the weighting procedure currently used by the Food and Nutrition Service (FNS).

Response: The FNS weighting procedure for calculating the national overissuance (or underissuance) rates is essentially the same as our prior procedures, and, thus, we see no reason to change. FNS weights each State error rate with the ratio of the State reported total issuances to total reported issuances of all States in calculating the national error rates.

National Standard

In § 205.43(b)(4) of the proposed regulations, we defined the national standard as the national overpayment rate for the fiscal year or four percent, whichever is larger. If a State's overpayment rate exceeded the national standard for a fiscal year, its FFP would be reduced. The authority for this standard is contained in section 408(f) of the Act.

Comment: One commenter believed that the proposed definition of the national standard was not clear because it did not indicate whether the phrase "national overpayment rate" refers to the national rate before, or after, any error rate reductions are taken into account.

Response: The definition of national overpayment is given in § 205.43(b)(3) of the regulation. It is the error rate before any reductions are taken.

Comment: One commenter noted that the source of the total assistance payment data used for the error rate computation differs from the source used for the disallowance computation. The commenter recommended that total payments derived from the QC sample cases should be used for both computations.

Response: The commenter's observation is correct. We use different data sources for total assistance payment expenditures in the two computations. For error rate

computations, we use the average monthly assistance payment per case derived from the review month's payments to the sample cases. For disallowance computations, however, we use the total assistance payments and the Federal share of such payments as reported by the States on their quarterly financial reports to the Department. Since we compute the regressed payment error rate from the sample cases for which QC reviews have been completed, the average payment derived from the sample cases is the better average to use for the error rate computation. In the 1987 study cited earlier, Westat, Inc. demonstrated that the statistical variance is small (i.e., the error rate estimate is better) when the average payment derived from the sample cases is used, instead of the average payment derived from the quarterly financial reported data. Westat not only proved that the average from the sample is appropriate, but recommended its use.

On the other hand, the quarterly financial reports submitted by the States provide more accurate dollar figures for computing the disallowance amounts. The expenditure figures reported on the quarterly reports represent the actual assistance expenditures for which Federal matching is claimed. All Federal dollars claimed for a fiscal year are used in the computation of disallowances. Therefore, we will continue to use the two different expenditure sources; they provide the most accurate data for the two respective computations.

Point Estimate of the Error Rate

Section 205.43(c) of the proposed rules defined the State error rate as the point estimate of the regression estimator as set forth in the QC Manual, section 2. We used this method to calculate error rates prior to the enactment of OBRA of 1989. Additionally, the conference report to this legislation, in describing the purpose and basis for the revised AFDC QC system, states "[t]he conferees assume that the Secretary will use the same statistical methods to estimate errors as have been used under the current system" (Congressional Record, H9591, November 21, 1989).

Comment: A number of commenters believes that the statute explicitly left only the question of the method to be used to make estimates of the error rate and that we should discuss the method with the States. Several commenters suggested we use alternative approaches. Other commenters recommended that we use the lower confidence bound instead of the point estimate as the official error rate.

Response: We have discussed the issue of using the point estimate or the lower bound as the estimate for the official State and national error rates over the years. In consultation with State representatives prior to issuance of the proposed regulations, we indicated our intention to use the point estimate as the official error rate, and State expressed no substantive concerns. The conference report makes it clear that Congress assumed that we would continue to use the existing statistical methods, which includes the use of the point estimate, for estimating error rates. Use of the point estimate for calculating disallowances is the best and fairest method to all parties over time. It is ordinarily and appropriately used in practice when a sample estimate is used to allocate a payment amount between two parties. Given some unavoidable level of sampling error in the estimated State error rate, some risk always exists that the disallowance will be different from what would be determined if the true error rate was known. Fairness dictates that the risk should not be solely borne by either the State or the Federal government; rather, the risk should be equally shared. Alternative approaches offer various advantages, disadvantages and results which may be preferred, as a matter of individual choice. However, given the current partnership responsibilities of the States and the Department to carry out the complex and critical AFDC program, we believe that the point estimate of the error rate is the appropriate rate to use in determining disallowances.

Error Rate Notification

Under the regulations at § 205.43(d), we proposed that the Department's target date for notifying each State of its overpayment and underpayment rates and the national overpayment and underpayment rates would be one year after the end of the annual period to which the error rates apply, or within 30 calendar days after the resolution by the Panel of all differences, whichever is later. While we would expect to release the error rates as close to the one-year target date as possible, we did not establish a fixed date in the proposed regulations for the following reasons: (1) final national error rates cannot be calculated until all sample cases are completed and all differences are resolved; (2) if a State failed to complete a valid and reliable sample, we would need to establish the error rate for the State on the basis of the best data reasonably available and the calculation and release of error rates would likely be delayed; (3) a delay could also occur if an unforeseen event occurred and we approved an alternate disposition plan which provided for the completion of the State sample beyond the prescribed time frames; (4) a delay in the timely adjudication of appeals by the Panel due to the complexity of appeal issues could also delay the release of the error rates.

Comment: Several commenters felt that the proposed target date for notifying each State of its error rates was inadequate for corrective action planning. They requested that the regulations incorporate interim feedback of both State and Federal error rates throughout the review period until we produce final error rates.

Response: We believe it is inappropriate to regulate or release interim error rates. Such information would be meaningless. Accurate national payment error rates cannot be computed until all State and Federal reviews are completed and all differences are resolved by the Panel. The best information for corrective action planning is the States' own findings in their QC samples. Since we advise States of differences in their findings as they occur in the Federal re-review, States can plan corrective actions based on the review and analysis of these findings.

Comment: Several commenters suggested that the error rate notification should include all information necessary to allow estimation of the disallowance. One commenter would like a 30-day rebuttal period for detection of possible computational errors and a final notification date no later than 30 days following the rebuttal period added to the regulation.

Response: The error rate notification letter will include all the necessary information to allow States to calculate their QC disallowances, i.e., the national and the State's overpayment rates, underpayment rates and child support collection rates, and the State's amount of overpayment recoveries. As for building a rebuttal period into the notification process, we do not believe this is necessary. If computational errors are identified in the information provided to the States, we will make appropriate corrections.

Adjusted Payment Error Rate

We make several adjustments before we determine the amount of State's disallowance. If a State's underpayment rate is less than the national underpayment rate for the fiscal year, the State may request that its overpayment rate be reduced by the amount by which the national underpayment rate exceeds the State s

underpayment rate. Section 408(d)(3) of the Act provides that, at the request of the State, we may apply the underpayment reduction to either of the two following fiscal years instead of to the year to which the reduction would otherwise apply. In the NPRM, we have interpreted this to mean that a State may use the underpayment reduction earned in a fiscal year one time only, either in the year in which it is earned or in one of the following two years. Only one underpayment reduction may be applied to any given year. States whose unadjusted overpayment rate exceeds the national average will have 30 calendar days from the receipt of notification of their error rates to advise us of their decision, where applicable, on how to apply the underpayment adjustment. If the State does not notify us in writing within this time period, we will use the underpayment adjustment that would apply for the fiscal year.

Comment: Most commenters believed that § 205.43(e)(1)(i) in the proposed regulations was inconsistent with the statute. They felt that since underpayment reductions could be used only over a three-year period, they should be allowed to combine these reductions as they wish for that period. They requested that the restriction on the combining of underpayment reductions be eliminated.

Response: We decline to make the requested change. We believe Congress provided flexibility to the States in the application of the underpayment adjustment in recognition that, in any one year, a significant number of States would be below the national standard. In order to encourage States to maintain low underpayment rates, even in a year when their payment error rates were below the national standard, the statute allows for the adjustment to applied in one of the three years. Our policy of a one-time and non-cumulative application of the underpayment adjustment, as specified at § 205.43(e)(1)(i), is consistent with the adjustments to the disallowance for overpayment recoveries and child support collections, as provided in sections 408(f) (2) and (3) of the Act.

Comment: One commenter believed that since Congress intended that all provisions take full effect in 1991, the underpayment rates for fiscal years 1989 and 1990 should be utilized in the reductions of the overpayment rates for 1991.

Response: The first fiscal year to which the error rate formula set forth in section 408(d)(2) of the Act can apply is 1991. Therefore, the application of the underpayment reduction specified in section 408(d)(3) of the Act can only apply beginning with fiscal year 1991, i.e., only the fiscal year 1991 underpayment reduction can be applied to the 1991 error rate or to either of the two following fiscal year error rates (1992–1993). Furthermore, if the Congress had intended to allow States to apply an underpayment reduction to a fiscal year error rate based on underpayment error rates achieved in years prior to fiscal year 1991, it would have written section 408(d)(3) to provide that such reduction can be based on the underpayment error rate achieved in the current fiscal year or on the underpayment error rate achieved in either of the two preceding fiscal years. Therefore, the application defined in section 408(d)(3) cannot be used for any fiscal year prior to 1991.

Calculation of Basic Disallowance

A State's basic disallowance for a fiscal year was defined in the NPRM at § 205.43(e)(2) as the product of (1) the Federal share of the total amount of assistance paid under the State plan, (2) the difference between the State's adjusted payment error and the national standard, and (3) the ratio of the difference between the State's adjusted error rate and the national standard to the national standard.

Comment: Several commenters pointed out that the proposed regulation omitted the part of the disallowance formula in the statute which ensures that a State's disallowance amount can never be greater than the Federal share of the State's overpayment above the national standard.

Response: We have corrected this oversight in the final regulations at § 205.43(e)(2)(iii).

Comment: One commenter would like the final regulation to specify the number of decimal places and the rounding procedures to be used in the calculations of the error rates and disallowances.

Response: Historically, we have not put this level of detail in the regulations and do not believe that it should be included. However, we plan to use the same number of decimal places and the same rounding procedures as have been used in the past. We will round all error rates and child support collection rates to the nearest six decimal places (i.e., four digits beyond the decimal point) and round all computed dollar values to the nearest dollar.

Comment: Another commenter suggested that the Department should pick a point in time to freeze the information used to calculate the basic disallowance amounts in order to avoid constant revisions of disallowance amounts. The commenter believed there should be a tie-in to the target date for the release of the error rates and to the forms used to calculate disallowances whereby no further adjustments would be allowed.

Response: With the exception of computational errors, the States' official error rates are frozen at the time States are officially notified of the error rates, i.e., prior to the calculation of the basic disallowances. Historically, the Department has been willing to revise the actual amount of the disallowance based on the latest fiscal data on AFDC assistance expenditures up to the time when the disallowance is collected.

Reduction in Disallowance for Overpayment Recoveries

Section 408(f)(2) of the Act requires that a State's basic disallowance for a fiscal year shall be reduced by its overpayment recoveries. The amount of reduction for overpayment recoveries is the product of the Federal share of payments recovered in the fiscal year and the proportion of the State's adjusted payment error rate in excess of the national standard.

Comment: One commenter stated that States with error rates that excessively exceed the national standard have a higher proportion of their overpayment recoveries deducted from their disallowance amount than States with lower error rates. The commenter believed this result is inconsistent with the intent of the legislation to levy penalties in relation to State performance compared to the national average.

Response: Although the commenter's understanding of the calculation is correct, the statute is very explicit as to how we are to calculate the overpayment recoveries.

Comment: Several commenters would like the actual sources of the overpayment recoveries specified in the regulations.

Response: We do not believe that this level of detail should be included in the regulations since reporting forms are subject to change. For fiscal year 1991 and the first calendar quarter of fiscal year 1992, we will use the quarterly expenditure reports on Form FSA–231 (10/89), Part 1, section A, item 9, column (a). Starting with the second quarter in fiscal 1992, we will use the quarterly reports on Form ACF–231 (10/91), Part 1, section A, item 10, column (a). These forms contain the Federal share of cash recovered by the State from overpayments made to current and former AFDC recipients under title IV–A.

Reduction in Disallowance for Child Support Collections

The proposed regulations followed the specifications set forth in the Act on how the child support collection rate would be used to reduce a State's basic disallowance. The procedure remains the same in the final regulations. If a State's child support collection rate is greater than the national child support collection rate for the fiscal year, or is greater than the average of the State's child support collection rate for the three preceding fiscal years, the State's basic disallowance is further reduced. The amount of reduction will be the larger of the proportions by which the State's collection rate exceeds the national collection rate or exceeds the State's average collection rate for the preceding three years. (The smaller collection rate will produce the larger proportion and, thus, a larger disallowance reduction.) See § 205.43(e)(5) of the final regulations for a detailed example of the disallowance calculation.

Comment: A number of commenters said they would like to know specifically how the child support collection rate will be calculated. The definition appears to be designed to use AFDC case information, but the child support reports combine AFDC and foster care data. The asked if "arrears-only" cases will be included in the calculation. One commenter questioned using the number of cases with collections only during the second month of each calendar quarter. This commenter believed that the number of cases with collections could vary significantly from month to month, especially when Federal tax refund setoff collections come in. Some commenters would like assurances that there would be no new reporting requirements as a result of this provision.

Response: We agree that it would not be advisable to revise the child support reporting requirements for the purpose of calculating the child support collection rate. Since the number of cases with collections is reported only for the second month of the calendar quarter (Form OCSE–156, line 17, column a), this number will be assumed to be the average of such cases for the calendar quarter. (The second month of the quarter is used in order to permit States an additional month in which to compile information from the local agencies.)

Since Form OCSE–156 does not break out AFDC cases from AFDC foster care cases, we will use the combined cases in the calculation. We do not expect that the inclusion of such cases will adversely impact on the States because the number of foster care cases is relatively small.

"Arrears-only" cases (Form OCSE–156, column c) will not be included in the calculation of the child support collection rate because of differences among the States in defining and reporting arrears.

Starting with fiscal year 1991, the child support collection rate will be computed entirely from data reported on lines 4, 5, and 17 of the current Form OCSE–156. Although the preamble to the proposed regulations stated that both Forms OCSE–156 and 158 would be used for the child support collection rates, no data from Form OCSE–158 will be used for this purpose.

To obtain the child support collection rate for a fiscal year, we will divide the sum of "Cases with collections in second month of quarter" (line 17, column a) on the four quarterly reports for the fiscal year by the sum of "Cases open at end of quarter," including both those with and without orders established, (lines 4 and 5, column a) on the same four quarterly reports.

The average child support collection rate for the preceding three fiscal years (i.e., 1988, 1989, 1990) will be computed entirely from data reported on lines 4 and 9 of an earlier version of Form OCSE–156 (i.e., Form OCSE–56) which we used. We will divide the sum of "Cases with collections in second month of quarter" (line 9, column A) on the 12 quarterly reports for the 1988, 1989 and 1990 fiscal years by the sum of "Cases open at last day of quarter" (line 4, column A) on the same 12 quarterly reports.

Comment: Some commenters were concerned that the child support data on the OCSE reports are imprecise and unreliable because States have not uniformly gathered and reported this information.

Response: We are aware of the inconsistencies in reported child support data and are making improved reporting a priority. Although the data are not perfect, they are the best we have, and we must use them. We are hopeful, however, that joint Federal/State efforts to improve data collection will be fruitful and inconsistencies in the data will be minimized. It is in the States' best interest to report program data fully and accurately. The reports are the only available information we have for this measure and for many other measures, including measuring program results for congressional review and funding purposes.

Comment: Several commenters stated that there are conceptual problems with using the statutory definition of child support collection rate. The following comments were made: (1) Some States run all orders through the child support program, allowing those States to get credit for the "good payer" segment of the population which is not seen in other jurisdictions; (2) the definition fails to take into consideration improvements in collections due to modifications of child support orders; (3) it also does not take into account the welfare cost avoidance due to improvements made to the non-welfare collections; (4) Form OCSE–158 data, particularly the accounts receivable data, are subject to manipulation and inaccuracy and pose consistency problems among the States; and (5) it is inconsistent to use cases instead of dollars as the measurement of collections.

Response: The fact that some States run all orders through the child support program should not affect the AFDC child support collection rate since only AFDC orders are counted. Section 408(m)(4) of the Act requires that the child support collection rate be based on cases and not dollars. While this methodology does not account for increases in the amount of collections or in welfare cost avoidance, it does provide credit for improvements in the number of cases in which collections are made. Greater improvement in child support collection rates may be obtained if the AFDC agencies could provide better case initiation information to the child support agencies. This change could increase the number of cases with collections.

As mentioned earlier, since we do not plan to use Form OCSE–158, the accounts receivable data it contains will not be used in the calculation of the child support collection rate.

Comment: Two commenters felt it was inappropriate to link improvements in one program with recovery of disallowances in another. Since child support and AFDC are two distinct and separately run programs, the AFDC agency does not control the activities of the child support agency.

Response: Section 408 requires this linkage. In this connection, we note that, although the AFDC and child support programs are separately administered, they are linked in their mission of providing financial help to families in need. These families must cooperate with the agencies of both programs to ensure receipt of AFDC payments. Both agencies must cooperate in sharing information and support collections as required by Federal law. The AFDC

agency can only win through this cooperation. As it provides more and better case initiation information to the child support agency, more AFDC cases can be processed by the child support agency, and the result would be larger collection rates and larger reductions in any disallowance.

Comment: One commenter stated that it is inevitable that some States will be penalized because their child support collection rate will be below the national average. In addition, inconsistencies among the States in the definition of "accounts receivable" will continue to impact the national average. The commenter believed that performance should be based only on the State's current collection rate compared with the average of the State's collection rate for the three preceding rates.

Response: No State will be penalized through the child support collection rate measure; rather, States are provided an opportunity to reduce their QC disallowance. Using both the national child support collection rate and the State's performance in the preceding three fiscal years improves a State's chance of reducing any QC disallowance. The State reduces its disallowance by meeting either standard, not both. The disallowance is reduced by the larger of the amounts calculated from these two rates.

Because the statute bases the child support collection rate on cases rather than dollars, "accounts receivable" will not be a component of the calculation and will not affect the national average.

Comment: One commenter believed that collection rates cannot continue to increase indefinitely, and it is inappropriate to base a performance appraisal on the assumption that they will continue to increase. There is a false assumption that States are identical in their ability to improve and increase collections over the long term, when, in reality, there are many factors outside the control of the child support programs that affect collections.

Response: While there are factors outside the control of child support programs that affect collections, there is also a great deal of room everywhere for improvement. In 1990, the collection rate was 11.9 percent. The rate has been going up slowly but steadily since 1986 when it was 10.1 percent. We recognize that economic conditions, for example, may make it more difficult for some States to improve at a given point in time. There could be such difficulties no matter what incentive is used to improve performance and no matter how those improvements are measured. We believe, however, that performance incentives are worthwhile and continue to support them as a means of encouraging States to strive for better programs.

Disallowance Notification and Payment Schedule

Under the proposed regulations at § 205.43(f), we had specified a time frame for notification to States that are disallowance-liable. The Department's target date for notifying States with overpayment rates above the national standard of their disallowance would be within 60 calendar days after the release of the error rates for the fiscal year. As indicated earlier, the 60 days included 30 days for States to decide on the application of any underpayment adjustment to their overpayment rate.

Section 408(i)(1) of the Act requires disallowance-liable States to pay the amount of the disallowance within 45 days after the date of notification or negotiate an agreement with the Department to repay the disallowance with interest in calendar quarterly installments over a period not to exceed 30 months, beginning no later than the first calendar quarter after the receipt of notification.

Comment: Two commenters suggested that the Department make the 60 calendar days an absolute date rather than a target date.

Response: We believe that requiring an absolute date is not appropriate. The Department must maintain some flexibility in releasing the imposed disallowances. We will, however, do everything possible to meet the target date of 60 days after the release of the error rates for the fiscal year.

Comment: One commenter suggested that the repayment time frames be extended to at least six months because of time required to secure funds for the disallowance through the legislative process.

Response: The repayment time frames at § 205.43(f)(1) are specifically stated in section 408(i)(1) of the Act.

Administrative Review of Disallowances

In the regulations at § 205.43(g), we state that a State may appeal the imposition of a disallowance to the Departmental Appeals Board (DAB) in writing within 60 calendar days after the receipt of the notification of the disallowance. The Board shall not review, but incorporate by reference in its disallowance determination, the decisions on difference cases made by the Panel or the Secretary.

Comment: One commenter suggested that the language at § 205.43(g) specify that the appeal with the DAB should need only to be "registered" within 60 calendar days because it takes at least six months to prepare an appeal.

Response: The final regulations at § 205.43(g) indicate that the DAB rules at 45 CFR part 16 will apply. Specifically, § 16.7 of part 16 provides for the procedures for filing a notice of appeal.

Comment: One commenter felt that the DAB should have the right to hear information regarding the disputed decisions by the Panel, such as on policy or philosophical issues. Another commenter expressed concern that the DAB would not consider a wide range of issues in reviewing the appropriateness of disallowances when a State makes an appeal.

Response: The congressional intent and the legislation are clear concerning appealability of the Panel's decisions to the DAB. The conference report as set forth in the Congressional Record, (H. 9591), November 21, 1989, includes the following statement: "Decisions by the Quality Control Review Panel will be on the record and will not be appealable to the Departmental Appeals Board." Section 408(j)(2) of the Act states that the Board shall conduct a thorough review of the issues and take into account all relevant evidence. In rendering its final decision, the board shall incorporate by reference any findings of the Quality Control Review Panel and such findings shall not be reviewable by the board.

Comment: One commenter suggested that § 205.43 (g) and (h) of the proposed regulations be revised to state that any lowering of a State's error rate by the DAB or the Federal courts shall not result in a recalculation of the national average or in the reassessment of disallowances against States whose error rates fell below the previously calculated national average.

Response: We concur. We have included in the final regulations at § 205.43(b)(3) that the national overpayment rate shall not be changed after disallowance notification to all States. For consistency, we have included a similar provision at § 205.43(b)(6) for the national underpayment rate.

Data Analysis and Corrective Action

Information collected on individual sample cases is used to identify the types, frequency, nature, and cost of payment errors occurring in the eligibility process. This information is also used to assess the effectiveness of actions that have already been taken to correct problems. However, corrective action to eliminate the cause of errors, which is the heart of the QC system, is

dependent on a thorough statistical and program analysis by competent staff. Basic statistical analysis on the sample case data (such as tests of significance on error elements and percentage change between two sample periods) should be performed to interpret the QC results. Since the QC findings are based on a sample, the interpretation of the findings must take sampling variability into account. Furthermore, States should conduct research by using statistical methodology, such as discriminant analysis and classification, in developing the appropriate corrective action to take to reduce their erroneous payments.

The proposed regulations at § 205.40(d)(4) provided for the elimination of the annual corrective action report which documented State efforts to reduce erroneous payments. On an exception basis, however, States would be required to provide data on their corrective action activities to the Department.

Comment: The majority of commenters were in favor of elimination of the reporting requirement, the completion of which they stated reduced resources available for corrective action planning and implementation. However, several commenters objected to the proposed deletion based on the fact that, without the requirement, States may have difficulty obtaining or justifying resources for corrective action activities. They also viewed the corrective action report as a valuable vehicle for obtaining Departmental involvement and assistance in their corrective action initiatives. Additionally, a number of commenters expressed concern about how information would be requested on an exception basis.

Response: The initiation of corrective actions to reduce the incidence of erroneous payments and incorrect negative case actions is an essential element in the effective management of the AFDC program and should be an ongoing process in all States. After careful review of the comments, we have concluded that States with high error rates should be required to report their corrective action activities. These reports will assist us in monitoring State performance and provide a vehicle for determining needed assistance. Therefore, we have changed the proposed regulations at § 205.40(d)(4) to require that (a) States that exceed the national AFDC overpayment rate by one percentage point or more in any annual sample period submit a corrective action plan for reducing the level of payment errors; (b) States with error rates that exceed the national overpayment rate for two consecutive annual sample periods beginning with fiscal year 1991 submit a corrective action report for that second sample period irrespective of the one percentage point threshold; (c) States with AFDC negative case action error rates above the national average rate in any annual sample period submit a corrective action plan for reducing incidence of incorrect denials and terminations. Each required report will be submitted within 30 calendar days after the official release of the State and national applicable error rates.

Corrective Action for the Adult Assistance Programs

Guam, the Virgin Islands, and Puerto Rico continue to be required to conduct QC reviews of the Adult assistance programs under titles I, X, XIV, and XVI (AABD) of the Act and to take necessary corrective measures to reduce the incidence of improperly authorized or denied assistance. However, we will no longer require an annual corrective action plan for excessive errors in these programs. We will continue to assess and monitor the error rate performance of the Adult assistance programs and request information on corrective action activities as necessary.

Regulatory Procedures

Executive Order 12291

These regulations do not meet any of the criteria for a major regulation. Further, although Federal matching may be reduced, the reduction results from legislation and not from the terms of these regulations. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

We have determined that there are public paperwork burdens for the collections of information required under §§ 205.40(d)(4), 205.42(d)(2)(iii), and 205.42(f). However, we have been unable to estimate the burden hours because at this point we do not know how many States will be subject to corrective action plans, major disasters, or alternative disposition plans. Nevertheless, these information collection requirements are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Comments regarding burden estimates or any other aspect of these collections of information should be sent to the Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Flexibility Act

We certify that these final regulations will not, if promulgated, have significant economic impact on a substantial number of small entities because the rules involve minor changes in State agency procedures. These regulations revise the Federal quality control system as it applies to the States' use of Federal funds in administering the AFDC and Adult assistance programs. A regulatory flexibility analysis is not required because the Federal government will only be recouping monies that were incorrectly paid by the States.

(Catalog of Federal Domestic Assistance Programs 93.020, Assistance Payments Maintenance Assistance)

List of Subjects in 45 CFR Part 205

Computer technology, Family Assistance Office, Grant programs-social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

Dated: June 8, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: August 12, 1992.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for part 205 is revised to read as follows:

Authority: 42 U.S.C. 602, 603, 606, 608, 1302, and 1306(a).

2. Sections 205.40, 205.42 and 205.43 are revised and § 205.41 is added to read as follows:

§ 205.40 Quality control system.

(a) *Scope.* Sections 205.40 through 205.43 of this part set forth requirements—

(1) For a quality control (QC) system for the Aid to Families With Dependent Children (AFDC) program (and for the Adult assistance programs in Guam, Puerto Rico, and the Virgin Islands) designed to reduce incorrect expenditures by identifying the nature, magnitude and causes of all errors and to improve the accuracy of payments to recipients of the AFDC and Adult assistance programs;

(2) For obtaining data on the correctness of negative case actions and reducing the incidence of incorrect

denials for and terminations of assistance; and

(3) For determining the amount of any disallowance required to be repaid to the Department due to excess erroneous assistance payments made by the State under the AFDC program.

(b) *Definitions.* For purposes of §§ 205.40 through 205.43 of this part:

(1) *Assistance unit,* or *case,* means all individuals whose needs, income, and resources are considered in determining eligibility for, and the amount of, a payment for which Federal financial participation is claimed under this chapter.

(2) *Department* means the U.S. Department of Health and Human Services.

(3) *Disallowance* means the amount of reduction in Federal financial participation.

(4) *Disposed of case* means that a decision was made on the eligibility and payment status of a case under review, or that the case was dropped or listed in error.

(5) *Erroneous payments* means the sum of overpayments made to eligible assistance units and payments to ineligible assistance units.

(6) *Fiscal year,* or *annual sample period,* means the 12-month period, October 1, through September 30.

(7) *Negative case action* means an action to deny an application for assistance or to otherwise dispose of that application without a determination of eligibility (for instance, because the application was withdrawn or abandoned), or to terminate or suspend assistance.

(8) *Negative case action error* means an action to deny, terminate or suspend a case when the agency's reason for the action was determined to be incorrect or the notice and hearing requirement for the action was not met.

(9) *Overpayment* means a financial assistance payment received by or for an assistance unit for the review month, which exceeds by at least $5.00 the amount for which that unit was eligible under permissible State practice in effect on the first day of the review month.

(10) *Payment* means a single payment or multiple payments received for a specific calendar or fiscal month.

(11) *Payment to ineligibles* means a financial assistance payment received by or for an assistance unit for the review month, when that assistance unit was not eligible for any part of the payment under permissible State practice in effect on the first day of the review month, even though the State agency had not made a finding of ineligibility under § 206.10(a)(5) of this chapter.

(12) *Permissible State practice* means written rules and policies relating to eligibility and payment that are in accordance with existing, approved State plan provisions or with proposed plan amendments submitted to, but not acted upon, by the Department. In situations where written rules and policies are not consistent with the existing, approved State plan or proposed plan amendments, permissible State practice means the provisions of the State plan or proposed plan amendments. Where the plan provisions or proposed amendments do not conform to Federal law and regulations, permissible State practice means the Federal law and regulations (see also § 205.42(b)).

(13) *Quality Control Manuals* means the active or negative AFDC/Adult Quality Control Manuals that are issued by the Administration for Children and Families of the Department.

(14) *Review month,* or *sample month,* means the specific calendar or fiscal month for which the assistance payment under review is authorized or received.

(15) *Secretary* means the Secretary of Health and Human Services.

(16) *State* means the several States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands and American Samoa.

(17) *Suspended case* means a formalized agency action which results in no check generated for one or more months.

(18) *Underpayment* means a financial assistance payment received by or for an assistance unit for the review month which is at least $5.00 less than the amount for which that assistance unit was eligible under permissible State practice in effect on the first day of the review month.

(c) *State plan requirements.* A State plan under title IV–A, and in Guam, Puerto Rico, and the Virgin Islands under title I, X, XIV or XVI (AABD), shall provide a continuing QC system for assuring that assistance is furnished in accordance with permissible State practice as defined in paragraph (b)(12) of this section.

(d) *Basic elements of the quality control system—*

(1) *General requirements.* The State shall operate the QC system in accordance with §§ 205.40 through 205.43 of this part, other applicable regulations of this chapter, and the implementing procedures in the active and negative QC Manuals.

(2) *Sampling requirements.* The State shall carry out sampling in accordance with the requirements specified in § 205.41 of this part, and with the implementing procedures in the active QC Manual, section 2, and in the negative QC Manual.

(3) *Review requirements.* The State shall conduct QC reviews in accordance with the requirements specified in § 205.42 of this part, and with the implementing procedures in the active QC Manual, section 3, and in the negative QC Manual.

(4) *Data management requirements.* The State shall provide the resources and methods necessary to analyze the findings of the system and shall take appropriate corrective action on the causes of improperly authorized or denied assistance. The State shall submit the following corrective action material:

(i) A corrective action plan to reduce payment errors when the State's AFDC overpayment rate, as defined at § 205.43(b)(8) of this part, exceeds the national overpayment rate, as defined at § 205.43(b)(3) of this part, by one percentage point or more for any fiscal year, or when such State rate exceeds the national overpayment rate for two consecutive fiscal years;

(ii) A corrective action plan to reduce the number of incorrect denials, terminations and suspensions when the State's AFDC negative case action error rate, as defined at § 205.43(b)(7) of this part, exceeds the national negative case action error rate, as defined at § 205.43(b)(4) of this part, for any fiscal year;

(iii) The State shall submit to the Department corrective action plan material within 30 calendar days after the official release of the appropriate State and national AFDC error rates for the fiscal year; and

(iv) Corrective action information and statistical data on reducing the incidence of improperly authorized or denied assistance in the Adult assistance programs under titles I, X, XIV, and XVI shall be submitted to the Department upon request.

§ 205.41 Sampling plan and procedures.

(a) *Purpose.* This section provides the sampling plan, sample size requirements, and procedures for the AFDC and Adult assistance programs.

(b) *Definitions.* In addition to the definitions in § 205.40(b), the following definitions apply to this section.

(1) *Completed active case review* means a case has been subject to QC review and for which a finding of correctly paid, overpaid, underpaid or ineligible has been made.

(2) *Completed negative case action review* means a negative case action

that has been subject to QC review and for which a finding that the action to deny, terminate or suspend assistance is correct or incorrect has been made.

(c) *Plan approval and submittal dates.* (1) The State shall submit to the Department for approval a QC sampling plan (or revisions to a current plan) that meets the requirements of this section at least 60 calendar days before the beginning of the annual sample period in which it is to be implemented. The State is not required to resubmit a plan which is unchanged from a previous sample period.

(2) Universe estimates (i.e., average monthly caseload and total number of negative case actions) and sample intervals for the annual period are required 30 calendar days prior to the selection of the October sample.

(3) The reliability waiver statement for AFDC active cases, as described in paragraph (d)(3)(ii) of this section, is required by the first day of the annual sample period.

(4) The monthly list of selected sample cases, computer-generated random start and seed numbers, and reserve pool cases (if applicable) are to be submitted within 10 calendar days after the date of sample selection specified in the State sampling plan.

(d) *Plan requirements.* The State shall have an approved sampling plan in effect for the full annual sample period that includes the following:

(1) *Population to be sampled;*

(2) *List(s) from which the sample is selected,* describing the following characteristics:

(i) Sources;

(ii) Components;

(iii) Accuracy and completeness of the list(s) in relation to the population of interest. The list of active cases shall be an unduplicated list of all assistance units for which either a full or partial payment was made or authorized for the review month by the end of that month. The list of negative case actions shall be a list of all completed actions taken by the State to deny, terminate or suspend financial assistance for the review month, except for those assistance units that are on the active case list for the same review month;

(iv) Form and structure of the list (e.g., all or part is automated; supplemental lists are added; code definitions are used);

(v) Frequency of updating the list or its sources;

(vi) Estimated proportion of cases for which a review may not be completed; and

(vii) Methods of deleting listed-in-error cases from the list.

(3) *Sample size* (the number to be completed). The AFDC and the Adult assistance sample sizes for the annual sample period shall be determined in accordance with the requirements in this section. The active case samples shall be based on the estimated average monthly caseload for the annual sample period. The negative case action samples shall be based on the estimated total number of negative case actions for the annual sample period.

(i) *AFDC active cases—standard sample size.* The required standard sample sizes for AFDC completed active case reviews for specified estimated average monthly caseloads shall be as follows:

Average monthly caseload (N)	Completed annual sample size (n)
60,000 and over	2,400
10,000–59,999	(1)
Under 10,000	300

[1] $n = 300 + 0.042\ (N - 10{,}000)$

(ii) *AFDC active cases—minimum sample size.* A State may choose to reduce its sample size for AFDC completed active case reviews below the standard size only before the beginning of the annual sample period. For each annual period where the State chooses to reduce its standard sample size, the State shall provide the Department with a statement (see Appendix to this section) as an addendum to the sampling plan, accepting the precision of the payment error rate produced by the reduced sample size and waiving the right to challenge the precision of the resulting AFDC (and Medicaid) error rates based on this reduction. The required minimum sample sizes for AFDC completed active case reviews for specified estimated average monthly caseloads shall be as follows:

Average monthly caseload (N)	Completed annual sample size (n)
60,000 and over	1,200
10,000–59,999	(1)
Under 10,000	300

[1] $n = 300 + 0.018\ (N - 10{,}000)$

(iii) *AFDC negative case action sample size.* The required negative case action sample sizes for AFDC completed negative case action reviews for specified estimated total number of negative case actions shall be as follows:

Total number of negative case actions (N)	Completed annual sample size (n)
180,000 and over	800
14,000–179,999	(1)
700–13,999	175
Under 700	100 or ⅛ (N), whichever is less

[1] $n = 175 + 0.00376\ (N - 14{,}000)$

(iv) *Adult active cases—standard sample size.* The standard annual sample sizes required for completed active Adult assistance case reviews shall be as follows:

Guam and the Virgin Islands	150
Puerto Rico	(1)

[1] $300 + 0.02625\ (N - 10{,}000)$ where N is the estimated average monthly caseload.

(v) *Adult active cases—minimum sample size.* The minimum annual sample sizes required for completed active Adult assistance case reviews shall be as follows:

Guam and the Virgin Islands	75
Puerto Rico	(1)

[1] $300 + 0.01125\ (N - 10{,}000)$ where N is the estimated average monthly caseload.

(vi) *Adult negative case action sample size.* The required annual sample size for completed Adult assistance negative case action reviews shall be the same as specified for AFDC negative case action cases in paragraph (d)(3)(iii) of this section.

(4) *Sample selection procedure.* The procedure for sample selection shall conform to principles of probability sampling. Approximately one-twelfth of the annual sample shall be selected each month. A separate sample shall be selected for active cases and negative case actions.

(i) The active case sample shall be selected from a list of all active cases with payments made or authorized for the review month by the end of that month.

(ii) The negative case action sample shall be selected from a combined list of denied applications and terminated and suspended cases. The list of denied applications shall consist of all actions taken to deny, or otherwise dispose of, applications during the review month. The list of terminations and suspensions shall consist of all actions in which the case first failed to appear on the regular payroll listing for the review month. Multiple actions (by the same applicant) denied in the same month are separate actions, and each shall be subject to sample selection.

(iii) States shall select their samples using the systematic random sampling

method or an alternative sampling method with equivalent precision. The alternative sampling method shall be approved by the appropriate Federal regional office before implementation, contingent on a full description of the method and documentation of an acceptable audit trail and "proof of sampling".

(5) *Option to drop or compete certain active cases.* The State shall specify in its sampling plan whether it chooses to drop or complete an active sample case for which less than six months have elapsed since it was last selected and reviewed, regardless of annual sample period. If the State chooses to drop these duplicate cases, the sampling plan shall specify the exact method by which these cases are identified and dropped.

(6) *Procedure to correct for over- or undersampling.* States shall evaluate their caseload estimates during the annual sample period to ensure that the required number of case reviews is completed. A change in the caseload estimate may require an adjustment to the sample size. Undersampling shall be corrected during the annual sampling period. Oversampling may be corrected at the State's option and, if exercised, shall be coordinated with the Federal regional office. When correcting for over- or undersampling, the State shall follow the procedures described in QC Manual, section 2.

(e) *Review of State sampling procedures.* In order for the Department to carry out its responsibilities under § 201.10 of this chapter, the State shall fully document and make available for review by the Department all sampling procedures, including construction and content of the universe and sample lists.

Appendix to § 205.41—State Reliability Waiver Statement

State Reliability Waiver Statement

I (We), _____
State Official Name(s)
the _____
Position(s)

certify that I/we have the authority to enter into binding agreements on behalf of the _____ AFDC and
State

Medicaid programs. Pursuant to 45 CFR 205.41(d)(3)(ii), I/we, acting in my/our official capacity(ies), elect on behalf of the State to exercise the option to reduce the standard AFDC–QC active sample size of ____ completed case reviews to ____ completed case reviews based on an estimated average monthly case load of _____ for the annual sample period, October 1, 19____through September 30, 19____. If the reduced sample size specified herein does not meet the required minimum sample size as determined by the actual average monthly caseload for this annual sample period pursuant to the formula specified in QC Manual, section 2, the State agrees to increase this reduced sample size to the required minimum. In so doing, I/we recognize that by electing this option the AFDC and Medicaid payment error rates based on this reduced sample size may have less precision that the error rates produced by the standard sample size. Because of this possible effect, the State waives the right to challenge the precision of the resulting AFDC error rate based on the reduced sample size. The State also waives the right to challenge the precision of the Medicaid error rate based on this reduced AFDC sample size.

_____
Signature

_____
Title

_____
Date

_____
Signature

_____
Title

_____
Date

§ 205.42 Case review and management requirements.

(a) *Purpose.* Except for paragraphs (g),(h) and (i) of this section, which apply only to AFDC, this section establishes the rules and procedures for the conduct of QC case reviews, completion of QC sample cases and the determination of whether an error exists in a sample case in the AFDC and Adult assistance programs.

(b) *Review basis.* The review shall be conducted against permissible State practice, except as follows:

(1)(i) Where a State plan provision(s) is approved incorrectly and is inconsistent with Federal law or regulations, the review shall be conducted against the approved State plan until either an amendment to remove the inconsistency is submitted or six months have elapsed since receipt by the State of a dated written notification from the Assistant Secretary for Children and Families, the Regional Administrator, or either's designee, of the inconsistency(ies), whichever occurs earlier. If the plan amendment is submitted within six months, the review shall be conducted against the submitted plan amendment. If the plan amendment is not approved by the Department or is not submitted within six months, sample cases selected for the review month immediately following the date that disapproval becomes final or the six-month period, whichever occurs earlier, shall be reviewed against applicable Federal law and regulations until the State has an amendment approved.

(ii) Where a State implements a pending plan amendment which is subsequently disapproved by the Department, the review shall be conducted against the pending plan amendment until disapproval becomes a final. Sample cases selected for the review month immediately following the date that disapproval becomes final shall be reviewed against the prior approved plan if it is consistent with Federal law and regulations. If the prior approved plan is inconsistent with Federal law and regulations, the review shall be conducted against applicable Federal law and regulations until the State has submitted and had approved a plan amendment. A final disapproval here, and at paragraph (b)(1)(i) of this section, means the decision issued by the Assistant Secretary for Children and Families if the State requests a hearing pursuant to part 201; otherwise a final disapproval means the decision issued by the Regional Administrator.

(iii) If it is necessary for a State to enact a law in order to remove an inconsistency, the State must submit the proposed law change for enactment no later than the next scheduled legislative session immediately following written notification, pursuant to paragraph (b)(1)(i) of this section, and shall notify the Department. The Department shall establish in writing a reasonable period of time, on a case-by-case basis, for the State to enact the law and amend its State plan. The review shall continue to be conducted against the State's current plan during this time period.

(2) Where the State makes payment in compliance with a court order, the review shall be conducted against the provisions of the court order.

(c) *Case review requirements.* (1) The State shall review all cases selected in the active and negative case samples as prescribed in § 205.41 of this part and reach a review finding as required on each case.

(2) The review shall include: an examination and analysis of the case record; the conduct of a field investigation with a face-to-face interview in all cases in the active case sample (unless paragraph (c)(3) of this section applies) and, as necessary, in the negative case action sample; the verification and documentation of all required review elements through contacts with appropriate collateral sources of information; the securing of specified primary or secondary evidence; a determination of the correctness of the eligibility and payment decisions; and, where required, transmission of the coded findings to a designated host computer.

(3) A face-to-face interview with a recipient shall not be required if the recipient lives in an isolated area not

reachable by regularly scheduled commercial air service, other public transportation, or automobile. For these cases, the State shall document why the interview cannot be held in another location convenient to both parties. The State shall also make at least one attempt to contact the recipient to obtain statements regarding factors of eligibility and payment. If a case is exempted from a face-to-face interview under this section, the QC review shall be completed through the case file information and collateral contacts as provided by QC policy and procedures. Exceptions to the face-to-face interview requirements shall be determined on a case-by-case basis.

(4) The State shall use the forms and schedules set forth in the QC Manuals and otherwise prescribed by the department to document all review findings. The State may substitute their own forms and review schedules if approved by the Department in advance.

(d) *Special provisions applicable to error determination.* The following provisions modify what constitutes a payment error under permissible State practice.

(1) *Changes in circumstances.* For purposes of this paragraph (d), a change in circumstances means a change occurring after the date of authorization of the initial payment which may affect the assistance unit's eligibility or payment amount. Multiple changes in circumstances shall be evaluated individually to assess their impact on the final payment error determination. A change in policy or the issuance of a hearing decision shall be considered a change in circumstances.

(i) A change in circumstances shall not be counted as a payment error if the change occurred in the review month or the month immediately preceding the review month, or if the review month's payment continues unadjusted because a hearing was requested.

(ii) A change in circumstances shall be counted as a payment error if the change was incorrectly reflected in the review month's payment, or if the change occurred in or before the second prior month to the review month and was not reflected in the review month's payment.

(2) *Other types of payment error not to be counted. The following types of payment error shall not be counted as errors.*

(i) Payment errors which result solely from failure on the part of the State to properly implement changes in Federal law or regulation for a period of six months after the effective date of the Federal legislation or implementing regulations, whichever is later;

(ii) Payment errors which result solely from a State's reliance on, and correct use of, incorrect written factual information provided by the Department about matters of fact or from incorrect written statements of Federal policy by Department officials. "Written factual information" means hard copy documentation, such as a signed statement, a computer printout or data tape, and reports of specific data provided by the Department about a given individual (e.g., social security data). "Departmental officials" means the Assistant Secretary for Children and Families (ACF), the ACF Regional Administrator, the ACF Assistant Regional Administrator for AFDC programs, or the Director of the Office of Family Assistance.

(iii) Payment errors which result from a declaration by the President or the State Governor of a state of emergency or major disaster and which directly affects the State's ability to make correct payments, if adequate documentation of the event and its impact are provided. The information shall include: a copy of the declaration; a detailed explanation of the circumstances; identification of the affected jurisdictions; and the reason(s) why the State's ability to make correct payments has been or will be impaired;

(iv) Payment errors which result solely from failure of the assistance unit to submit a monthly report;

(v) Payment errors which result when a recipient—

(A) Does not have a social security number, but has filed an application (as defined by the Social Security Administration) for a number within 30 calendar days after the date of application for assistance, or

(B) Does not furnish a social security number upon receipt but has furnished a social security number through the Enumeration at Birth (EAB) project by the next redetermination of eligibility or with six months after the receipt of the social security number, whichever occurs earlier; and

(vi) Payment errors which are inconsistent with fair hearing decisions under § 205.10 of this part when the hearing decision meets the following criteria:

(A) The decision is based only on the case circumstances that existed as of the QC review month;

(B) The State defended the adverse action during the hearing process; and

(C) The request for adjustment is made within eleven months after the end of the annual sample period to which the adjustment would apply, or the date of the last appeal decision by the Quality Control Review Panel, whichever occurs later.

(e) *Sample disposition and data submission time frames.* (1) The State shall input review findings for disposed of active sample cases into the computer terminal provided by the Federal government and transmit the edited data to a designated host computer. For States that cannot transmit the data due to lack of equipment or a telecommunication linkage, the State shall submit the review findings in a format specified by the Department. The State shall submit the review findings for disposed of negative sample cases also in a format specified by the Department.

(i) Review findings of both active and negative case samples shall be disposed of and submitted in accordance with the following time frames:

(A) Seventy-five percent or all but 5 cases of the cases selected in both the active and negative case samples each month, within 75 calendar days after the end of each sample month;

(B) Ninety-five percent or all but five cases of the cases selected in both the active and negative case samples each month, within 95 calendar days after the end of each sample month; and

(C) One hundred percent of the cases selected in both the active and negative case samples each month, within 120 calendar days after the end of each sample month;

(ii) If the State does not submit 100 percent of the review findings of the case selected in the active case sample each month within 120 calendar days after the end of the sample month, and the Department finds there is insufficient justification for the delay, the Department may initiate action to establish the State's error rate under the procedures specified in paragraph (h) of this section.

(2) The State shall submit the review findings for disposed of sample cases promptly (i.e., at least on a monthly basis).

(f) *Alternate disposition plan.* (1) The State may submit an alternate disposition plans for the Department's approval if the State is unable to meet the requirements of paragraph (e)(1)(i) of this section, either as a result of circumstances of a permanent or recurring nature, or as a result of the occurrence of an unforeseen event during the annual sample period. Until the Department approves the alternate disposition plan, the State shall continue to comply with the requirements in paragraph (e)(1)(i) of this section. The alternate disposition plan may be approved when:

(i)(A) The State's sample population is dispersed over such great distances that conducting the number of field interviews needed to meet the requirements of paragraph (e)(1)(i) is cost prohibitive; or

(B) The State's usual weather conditions or geography make significant numbers of the sample population inaccessible or difficult to contact during certain times of the year, making it a hardship for the State to comply with the requirements of paragraph (e)(1)(i);

(ii) The State's request contains evidence and data to justify the need for an alternate disposition plan, including a description of the State's population dispersal or inaccessibility, and the reason(s) why the State cannot comply with the requirements in paragraph (e)(1)(i) of this section;

(iii) The request contains detail on the State's proposed disposition schedule for sample cases, including the annual sample period(s) to be covered, the revised disposition dates and percentages, and the revised schedule for the transmission of the edited review findings of the sample cases; and

(iv) The request is submitted at least 60 calendar days before the beginning of the first annual sample period covered by the alternate disposition plan.

(2) The Department may approve a temporary alternate disposition plan for a particular annual sample period based on unforeseen events and allow the State to submit the edited review findings of its sample cases at later dates than those specified in paragraph (e)(1) of this section, when:

(i) Unforeseen events (e.g., floods, earthquakes, computer breakdowns, snow-storms and labor disputes) occur which prevent the State temporarily from meeting the requirements in paragraph (e) of this section; and

(ii) The request contains a description of the circumstances of the unforeseen event, the period to be covered by the alternate disposition plan, the revised disposition dates and percentages, and the revised schedule for the transmission of the edited review findings of the sample cases.

(g) *Federal re-review of State sample cases.* As part of the Federal monitoring of State QC programs, the Department conducts a re-review of a subsample of each State's AFDC active case sample.

(1) The State shall provide the original or legible copies of the case record and State QC file for each subsample case, by mail or delivery service, within 10 calendar days after the State's receipt of a request for such information.

(2) The information provided shall include records relating to public assistance, recipients and third parties, including information available under § 205.55 of this part.

(3) The Department may grant exceptions to these requirements in unusual circumstances.

(4) The Department shall conduct reviews of a subsample of the State's completed active AFDC sample cases and, as necessary, of the State's negative case actions and shall dispose of and report subsample findings in accordance with the following time frames:

(i) Seventy-five percent of the subsampled cases selected each month within 75 calendar days after the end of the month in which they are selected;

(ii) Ninety-five percent of the subsampled cases selected each month within 95 calendar days after the end of the month in which they are selected; and

(iii) One hundred percent of the subsampled cases selected each month within 120 calendar days after the end of the month in which they are selected.

(h) *Effects of failure to complete the sample.* This paragraph provides the procedures that the Department shall follow if a State fails to complete a valid and reliable AFDC active case sample in accordance with prescribed QC procedures and deadlines which include obtaining and using information available under § 205.55 of this part.

(1) The Department shall notify the State of its failure to complete its sample and provide the State the opportunity to negotiate a solution for the completion of the sample.

(2) When a State is unable to negotiate a solution or fails to carry out a negotiated solution, the Department shall, directly or through contractual or other such arrangement as appropriate, conduct the review and establish the fiscal year error rate for the State on the basis of the best data reasonably available to the Department, in accordance with statistical methods that would apply if the reviews were completed by the State.

(3) Notwithstanding any other provision of this chapter, total payments to a State under section 403(a)(3)(D) of the Act for the proper and efficient administration of the State plan shall be reduced by the costs incurred by the Federal government to complete the State's sample.

(i) *Differnce resolution process.* A "difference" is a disagreement between State and Federal review findings that affect the State's official AFDC payment error rate (i.e., a difference between a State review and a Federal re-review finding of a correct payment, overpayment, underpayment, or a payment to an ineligible case, or a Federal finding that the sample case should be dropped from the QC review). The process for resolving the difference shall be as follows:

(1) The State shall be notified in writing of the disagreement and afforded an opportunity to request a review of the difference by the ACF Regional Administrator.

(2) The State shall respond to the difference notification within 30 calendar days after receipt of such notification agreeing, or indicating reasons for disagreeing, with the Federal finding. Responses postmarked, otherwise officially dated, or delivered by the 30th calendar day after the date of the receipt of the difference letter shall have met the deadline. If the deadline is a Saturday, Sunday, legal holiday, or an office closing, the deadline shall be extended to the next business day. If the State fails to respond within the 30-day deadline, the Federal finding shall be the final decision of the Department.

(3) The Regional Administrator shall respond to the State within 21 calendar days of receipt of the review request. The response shall either be a decision on the State's request, or an indication that the decision will be delayed pending further review of applicable laws, regulations, or policies.

(4) If the State disagrees with the Regional Administrator's decision, it may seek review with the Quality Control Review panel. The appeal request shall be postmarked, otherwise officially dated, or delivered to the Panel by the 30th calendar day after the receipt of the Regional Administrator's decision; otherwise the Regional Administrator's decision shall be the final decision of the Department. If the deadline is a Saturday, Sunday, legal holiday, or an office closing, the deadline shall be extended to the next business day. The State shall forward an informational copy of its appeal request to the Department's regional office concurrent with submittal of its request to the Review Panel. The State may submit to the Panel any documentation appropriate to substantiate its position as part of its appeal request. Extensions may be granted by Panel for a State to submit documentation in support of its appeal where good cause is shown.

(5) The Panel shall evaluate all of the pertinent evidence submitted and shall notify the State of its decision (within a target date of 45 calendar days following the completion of the record as determined by the Panel). Unless the Secretary chooses to review an

individual difference case, the decision of the Panel with respect to that case shall constitute the decision of the Secretary for establishing a State's payment error rate for the fiscal years.

§ 205.43 Determination of payment error rates and disallowances of Federal financial participation for erroneous payments.

(a) *Purpose.* This section sets forth the rules and procedures for calculating State AFDC error rates and for disallowing Federal financial participation (FFP) to the States with erroneous payments in excess of the national standard for a fiscal year.

(b) *Definitions.* In addition to the definitions in §§ 205.40(b) and 205.41(b) of this part, the following definitions apply to this section.

(1) *Child support collection rate* means the ratio of—

(i) The sum of the number of AFDC cases reported by the State IV–D agency for each quarter in the fiscal year for which an assignment under section 402(a)(26) of the Act and a collection were made, to

(ii) The sum of the number of AFDC cases with such assignments reported by the State IV–D agency for each quarter in the fiscal year.

(2) *National child support collection rate* for a fiscal year means the ratio of the sum of the number of cases (excluding AFDC "arrears-only" cases) described in paragraph (b)(1)(ii) of this section reported by all States for quarters in the fiscal year, to the sum of the number of cases described in paragraph (b)(1)(ii) of this section reported by all States for quarters in the fiscal year.

(3) *National overpayment rate* means the ratio of the total amount of erroneous assistance payments made by all States to the total amount of assistance paid by all States for the fiscal year. (This figure is equivalent to the ratio of the average monthly erroneous assistance payment per case for all States to the average monthly assistance payment per case for all States.) The rate shall be computed as the sum, over all States, of the product of each State's regressed overpayment rate and total amount of assistance payments divided by the sum of the total amount of assistance payments of all States for the fiscal year. The rate shall not be changed after disallowance notification to all States.

(4) *National negative case action error rate* means the ratio of the total number of incorrect negative case actions taken by all States for the fiscal year, to the total number of negative case actions taken by all States for the fiscal year, to the total number of negative case actions taken.

(5) *National standard* means the national overpayment rate for the fiscal year or four percent, whichever is larger.

(6) *National underpayment rate* means the ratio of the total amount of assistance that should have been but was erroneously not paid for the fiscal year, to the total amount of assistance paid by all States. (This figure is equivalent to the ratio of the average monthly amount of assistance payment per case for all states that should have been but erroneously was not made, to the average monthly assistance payment per case for all States.) The rate shall be computed as the sum, over all States, of the product of each State's regressed underpayment rate and total amount of assistance payments divided by the sum of the total amount of assistance payments of all States for the fiscal year. The rate shall not be changed after disallowance notification to all States.

(7) *Negative case action error rate* means the ratio of the total number of incorrect negative case actions taken by a State for the fiscal year, to the total number of negative case actions taken.

(8) *Overpayment rate* means the ratio of the total amount of erroneous assistance payments made by a State for the fiscal year, to the total amount of assistance payments made. (This figure is equivalent to the ratio of the average monthly erroneous assistance payment per case to the average monthly assistance payment per case in a State for the fiscal year.) The rate shall be computed as the ratio of the State's regressed average monthly erroneous assistance payment per case to the State's average monthly assistance payment per case for the fiscal year. (For States that use disproportionate stratified sampling, the procedure shall be the same as the procedure in paragraph (b)(3) of this section, except "stratum" shall be substituted for "State".)

(9) *Underpayment rate* means the ratio of the total amount of assistance payments that should have been but erroneously was not made by a State for the fiscal year, to the total amount of assistance payments made. (This figure is equivalent to the ratio of the average monthly assistance payment per case that should have been but erroneously was not made by a State to the State's average monthly assistance payment per case for the fiscal year.) The rate shall be computed as the ratio of the regressed average monthly assistance payment per case that should have been but erroneously was not made by a State to the State's average monthly assistance payment per case for the fiscal year. (For States that use disproportionate stratified sampling, the procedure shall be the same as the procedure in paragraph (b)(5) of this section, except "stratum" shall be substituted for "State".)

(c) *General.* All error rates for a State shall be based on a double sampling methodology which includes a statistically valid State sample of cases selected each month during the fiscal year, followed by a statistically valid Federal subsample of cases selected from the State completed samples. The State error rate shall be the point estimate of the regression estimator as set forth in the QC Manual, section 2.

(d) *Error rate notification.* The target date for the Department to notify each State of its overpayment and underpayment rates and the national overpayment and underpayment rates shall be one year after the end of the annual sample period or within 30 calendar days of the resolution by the Quality Control Review Panel of all differences, pursuant to § 205.42(i)(5) of this part, whichever is later.

(e) *Determination of disallowances in Federal matching funds.* If a State's overpayment rate for a fiscal year exceeds the national standard, Federal matching funds to the State shall be reduced. The procedure for determining the disallowance for a fiscal year shall be as follows:

(1) *State adjusted overpayment rate.* A State with an underpayment rate below the national underpayment rate in a fiscal year shall have its overpayment rate reduced by the amount by which the national underpayment rate exceeds the State's underpayment rate.

(i) A State shall use the underpayment reduction earned in a fiscal year one time only, either in the year in which it was earned, or in one of the following two years. Only one underpayment reduction shall be applied in any one year. A reduction earned in one year shall not be used to reduce an overpayment rate of a prior year.

Example: The State was disallowance-liable in 1992 and 1993 and had earned reductions for low underpayments in 1991, 1992 and 1993. The State can apply either the 1991 or 1992 reduction to the 1992 overpayment rate. If the 1991 reduction is applied to the 1992 error rate, the State can then apply either the 1992 or 1993 reduction to the 1993 error rate. If, in 1992, the State applied the 1992 reduction, then either the 1991 or the 1993 reduction can be applied to the 1993 error rate. If, in 1993, however, the State applied the 1993 reduction, then the 1991 reduction can no longer be used since it was not used in the year it was earned or one of the following two years.

(ii) At the request of a State, the Department shall apply the reduction,

described in paragraph (e)(1)(i), in determining the State's overpayment rate for either of the two following years instead of in determining the State's error rate for the fiscal year to which the reduction would otherwise apply. The request shall be made in writing within 30 calendar days from the date of receipt of the notification described in paragraph (d) of this section.

(2) *Basic disallowance amount.* If a State's overpayment rate for a fiscal year, adjusted as described in paragraph (e)(1) of this section, exceeds the national standard for the fiscal year, the amount of the basic disallowance shall be the product of—

(i) The Federal share of the State's total AFDC payments for the fiscal year;

(ii) The difference between the State's adjusted overpayment rate and the national standard for the fiscal year; and

(iii) The ratio of the amount obtained in paragraph (e)(2)(ii) of this section to the national standard, or "1", whichever is smaller.

(3) *Reduction of the basic disallowance amount for overpayment recoveries.* A State's basic disallowance amount for a fiscal year shall be reduced to reflect AFDC overpayment recoveries by the State. The amount of the reduction shall be the product of—

(i) The Federal share of payments recovered in the fiscal year; and

(ii) The ratio of the amount obtained in paragraph (e)(2)(ii) of this section, to the State's adjusted overpayment rate.

(4) *Reduction for improvement in child support collections.* If a State's child support collection rate is greater than the national child support collection rate for the fiscal year, or is greater than the average of the State's child support collection rates for the three preceding fiscal years, the State's disallowance amount shall be further reduced. The amount of the reduction shall be the product of—

(i) The amount of the basic disallowance calculated in paragraph (e)(2) minus the amount of the reduction calculated in paragraph (e)(3) of this section, and

(ii) The larger of—

(A) The ratio of the difference between the State and the national child support collection rate, to the national child support collection rate for the fiscal year; or

(B) The ratio of the difference between the State's child support collection rate for the fiscal year and the State's average child support collection rate for the preceding three fiscal years, to the State's average child support collection rat for the preceding three fiscal years.

(5) *Final disallowance amount.* The amount of disallowance imposed on the State by the Secretary shall be the amount of the disallowance calculated in paragraph (e)(2) of this selection minus the sum of the amounts of reductions calculated in paragraphs (e)(3) and (e)(4) of this section.

Example: All references are to paragraph (e) of this section.

Fiscal year	State	National
Overpayment rate	8.0%	6.0%.
Underpayment rate.	2.8%	3.0%.
Federal share of—.		
Total AFDC payments.	$5,000,000	Not applicable.
Total AFDC overpayment recoveries.	$5,000	Do.
AFDC child support collection rate.	16.0%	12.0%.
Average AFDC child support collection rate for preceding 3 years.	14.04%	Not applicable.

Calculation

1. State adjusted overpayment rate, paragraph—
   (e)(1)—8.0–(3.0–2.8)=7.8%
2. Basic disallowance amount, paragraph—
   (e)(2)(i)—$5,000,000
   (e)(2)(ii)—7.8–6.0=1.8%
   (e)(2)(iii)—1.8/6.0=0.30
   Amount=$5,000,000×1.8%×0.30=$27,000
3. Reduction for overpayment recoveries, paragraph—
   (e)(3)(i)—$5,000
   (e)(3)(ii)—1.8/7.8=0.231
   Amount=$5,000×0.231=$1,155
4. Reduction for improvement in child support collections, paragraph—
   (e)(4)(i)—$27,000–$1,155=$25,845
   (e)(4)(ii)(A)—(16.0–12.0)12.0=0.333
   (e)(4)(ii)(B)—(16.0–14.0)/14.0=0.143
   Since 0.333 is larger than 0.143, then the —
   Amount=$25,845×0.333=$8,606
5. Final disallowance, pragraph—
   (e)(5)=$27,000—($1,155+$8,606)=$17,239

(f) *Disallowance notification and payment schedule.* The Department shall notify the States with overpayment rates about the national standard of their imposed disallowances, with a target date of 60 calendar days after the release of the error rates for the fiscal year.

(1) A State subject to a disallowance shall pay the amount of its disallowance within 45 calendar days after the date of receipt of the notification, or negotiate an agreement with the Department to repay the disallowance with interest in calendar quarterly installments over a period not to exceed 30 months beginning not later than the first calendar quarter after the date of the receipt of the notification.

(2) If a State fails to pay the amount of the imposed disallowance as specified in paragraph (f)(1) of this section, the Department shall reduce the Federal matching funds otherwise payable to the State under the Social Security Act by amounts sufficient to recover the amount of disallowance with interest.

(3) Interest on the unpaid amount of the State's disallowance shall accrue at the overpayment rate pursuant to section 408(i)(3)(A) of the Act beginning 45 calendar days after the date the State receives notice of the disallowance. If a subsequent appeal by the State is decided in the State's favor, the Department shall repay to the State all payments made, with interest from the date payment is received at the same accrued rate applicable to unpaid disallowances.

(g) *Administrative review of disallowances.* A State may appeal the imposition of the disallowance to the Departmental Appeals Board in writing within 60 calendar days after the receipt of the notification described in paragraph (f) of this section. The Board shall consider the State's appeal in accordance with 45 CFR Part 16.

(1) The Board shall not review the decisions on difference cases made by the Panel or the Secretary but shall incorporate them by reference in its disallowance determination.

(2) If the Board does not decide an appeal within 90 calendar days after the date on the State's notice of appeal, interest on the unpaid disallowance amount shall be suspended beginning with the 90th calendar day and ending on the date of the Board's final decision, except to the extent that the Board finds that the State caused or requested the delay.

(h) *Judicial review of disallowances.* A State may appeal a decision by the Department Appeals Board, including a decision incorporated by the Board on a difference case, to the Federal district court within 90 calendar days after the date of the decision by the Board. Court review shall be on the record established in the Departmental Appeals Board review and shall be in accordance with the standards of review prescribed by title 5 U.S.C. 706(2), subparagraphs (A) through (E).

§ 205.44 [Removed and reserved]

3. Section 205.44 is removed and reserved.

[FR Doc. 92–24317 Filed 10–9–92; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-103; RM-7466, RM-7471, RM-7474, RM-7750]

Radio Broadcasting Services; Rochester, Minnesota, Clear Lake, Osage and St. Ansgar, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel *225A for Channel 203 at Rochester, Minnesota, reserves the channel for noncommercial educational use and modifies the construction permit for Station KFSI-FM accordingly, in response to a petition filed by Faith Sound, Inc. See 56 FR 18557, April 23, 1991. The coordinates for Channel *225A are 44-01-30 and 92-31-30. In response to a counterproposal filed by Mitchell County Broadcasting Company, we shall allot Channel 238A to St. Ansgar, Iowa, without a site restriction at coordinates 43-22-48 and 92-55-18. The petition filed by Jay Leilman (RM-7471) to allot Channel 225A to Rochester as the community's fifth FM broadcast service is denied. The petition filed by Mad Hatter Broadcasting, Inc., to substitute Channel 279C3 for Channel 276A at Clear Lake, Iowa, and to substitute Channel 225A for Channel 279A at Osage, Iowa, was withdrawn. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 16, 1992. The window period for filing applications for Channel 238A at St. Ansgar, Iowa, will open on November 17, 1992, and close on December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-103, adopted September 11, 1992, and released October 5, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel *225A at Rochester.

3. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Channel 238A, St. Ansgar.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-24097 Filed 10-9-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-139; RM-8000]

Radio Broadcasting Services; Rogers City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The document allots Channel 260C2 to Rogers City, Michigan, as that community's second FM broadcast service in response to a petition filed by Ives Broadcasting Company. See 57 FR 29855, July 7, 1992. The coordinates for Channel 260C2 are 45-25-17 and 83-49-06. Canadian concurrence has been received for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 19, 1992. The window period for filing applications for channel 260C2 at Rogers City will open on November 20, 1992, and close on December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92-139, adopted September 11, 1992, and released October 5, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 260C2 at Rogers City.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-24094 Filed 10-9-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-358; RM-7867; RM-7906; RM-7910; RM-7911]

Radio Broadcasting Services; Atlantic, Atlantic Beach, Clinton, Englehard, Hatteras, and St. Pauls, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Down East Radio, substitutes Channel 297C3 for Channel 297A at Atlantic and modifies Station WTKF's construction permit to specify operation on the higher class channel. At the request of Carolina Media Group, Inc. and WMXS, Inc., Channel 229A is substituted for Channel 297A at St. Pauls, North Carolina. At the request of WMXS, Inc., Channel 297C3 is substituted for Channel 297A at Clinton, North Carolina, and Station WMXS' license is modified to specify operation on the higher class channel. At the request of Robert L. Purcell, the Commission dismisses his request to allot Channel 297C1 to Atlantic Beach, North Carolina. *See* 56 Fed. Reg. 65875, December 19, 1991, and Supplementary Information, *infra*. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 19, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-358, adopted September 11, 1992, and released October 5, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 23), 1919 M Street, NW., Washington, DC. The complete text of this decision may also

be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Channel 297C3 can be allotted to Atlantic in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.2 kilometers (9.4 miles) west to accommodate Down East's desired transmitter site, at coordinates North Latitude 34–53–01 and West Longitude 76–30–21. Channel 297C3 can be allotted to Clinton with a site restriction of 13 kilometers (8.1 miles) west to accommodate WMXS' desired transmitter site, at coordinates 35–02–22; 78–27–32. Channel 299A can be allotted to St. Pauls with a site restriction of 9.3 kilometers (5.7 miles) west to avoid a short-spacing to Station WNCT–FM, Channel 300C, Greenville, North Carolina, at coordinates 34–48–20; 79–04–22.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 297A and adding Channel 297C3 at Atlantic, by removing Channel 296A and adding Channel 297C3 at Clinton, and by removing Channel 297A and adding Channel 299A at St. Pauls.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–24693 Filed 10–9–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–127; RM–7917]

Radio Broadcasting Services; Germantown, TN

AGENCY: Federal Communications Commission:

ACTION: Final rule.

SUMMARY: The Commission, at the request of Omni Broadcasting Corporation, permittee of Channel 298A, Germantown, Tennessee, substitutes Channel 298C3 for Channel 298A at Germantown and modifies Omni's authorization to specify operation on the higher powered channel. See 57 FR 29691, July 6, 1992. Channel 298C3 can be allotted to Germantown in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.2 kilometers (11.9 miles) southeast in order to avoid a short-spacing to a pending application for Station WMJW–FM, Channel 298C3, Rosedale, Mississippi. The coordinates for Channel 298C3 at Germantown are 34–56–28 and 89–41–45. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 19, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the commission's Report and Order, MM Docket No. 92–127, adopted September 10, 1992, and released October 5, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW. suite 640 Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 298A and adding channel 298C3 at Germantown.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–24691 Filed 10–9–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–68; RM–7949]

Radio Broadcasting Services; Goldendale, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Colin B. Malcolm, substitutes Channel 272C3 for 272A at Goldendale, Washington, and modifies the license for Station KYYT(FM) accordingly. See 57 FR 13328, April 16, 1992. Channel 272C3 can be allotted to Goldendale in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.7 kilometers (9.7 miles) south. The coordinates for Channel 272C3 at Goldendale are North Latitude 45–41–23 and West Longitude 120–54–14. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 19, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–68, adopted September 16, 1992, and released October 5, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing 272A and adding 272C3 at Goldendale.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–24692 Filed 10–9–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–138; RM–8003]

Radio Broadcasting Services; Winlock, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Premier Broadcasters, Inc., allots Channel 236A at Winlock, Washington, as its first local aural transmission service. See 57 FR 29691, July 6, 1992. Channel 236A can be allotted to Winlock at the petitioner's requested site without a site restriction. The coordinates for Channel 236A at Winlock are North Latitude 46–29–30 and West Longitude 122–56–12. Since Winlock is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 19, 1992. The window period for filing applications will open on November 20, 1992, and close on December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–138, adopted September 16, 1992, and released October 5, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 236A, Winlock.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–24808 Filed 10–9–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 665

[Docket No. 89–B]

RIN 2132–AA30

Bus Testing Program; Delay In Application For Small Vehicles

AGENCY: Federal Transit Administration, DOT.

ACTION: Interim final rule.

SUMMARY: On July 28, 1992, the Federal Transit Administration published an interim final rule on its bus testing program. Among other things, the rule added two new vehicle types (small vehicles with service lives of 4 and 5 years) to the vehicles subject to testing at the FTA sponsored testing facility. Today's document postpones the application of the July 28, 1992 interim final rule for these vehicle types, based on new information available to the agency. This additional time is need for the Federal Transit Administration to determine what, if any, changes need to be made to the rule to accommodate this information.

DATES: Effective Date: October 13, 1992.

Comment due date: Comments must be submitted by December 14, 1992.

FOR FURTHER INFORMATION CONTACT: For technical issues, Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366–0090; for legal issues, Richard Wong, Office of the Chief Counsel, (202) 366–1936. The test faculty can be reached by contacting Bohdan Kulakowski, Director, Bus Research and Testing Program, Pennsylvania Transportation Institute, Penn State, (814) 863–1893.

SUPPLEMENTARY INFORMATION:

I. This Rule

The Surface Transportation and Uniform Relocation Assistance Act of 1987 required the Federal Transit Administration to establish a bus testing facility, for testing a model of any new bus model purchased with FTA financial participation. The agency issued its first interim final rule implementing this program in 1989, and announced that it would phase-in the program—applying the testing requirements to different size vehicles over a multi-year period.

On July 28, 1992, FTA issued its third interim final rule applying the testing requirements to two final two categories of vehicles (small vehicles, with service lives of 4–5 years). These vehicles are defined in the rule at § 665.11 as:

(a) Minimum service life of five years or 150,000 miles—typified by light duty mid-size buses, approximately 25–35 foot.

(b) Minimum service life of four years or 100,000 miles—typified by light duty small buses, cutaways, and modified vans, approximately 16–28 foot.

The July 28, 1992, interim final rule states that the effective date for these vehicle types was August 27, 1992, and keys the effective date to advertisements for bids or requests for proposal for new model buses that are issued on or after that date.

Since publishing this interim final rule, however, the agency has become aware that there has been a recent, major change in the configuration of the chassis of a standard vehicle, which increases significantly the number of vehicle models in these two categories to be tested. This new information changes the government's estimate of the vehicles affected by the phase-in of these categories.

Therefore, the agency is postponing the application of the July 28, 1992 interim final rule for these two categories for 120 days. During this time the agency will be able to gather and analyze the information needed to phase-in the testing of these vehicle models without causing undue economic hardship in the affected industry.

The agency emphasizes that this delay in application applies only to these two new categories and does not affect the other changes announced in the July 28, 1992, interim final rule or other rule provisions already in effect.

Finally, the FTA's July 28, 1992, interim final rule provided that comments on it would be accepted until September 28, 1992. Because of this postponement of the application of a portion of that rule, the agency is extending the due date for comments on the entire interim final rule until December 14, 1992.

II. Regulatory Matters

This rule is not a major rule under Executive Order 12291. However, it is a significant rule, because it is related to a significant rule under the Department's Regulatory Policies and Procedures. The extension of time to comply, the primary focus of today's document, imposes no costs on the affected public. In fact, the deferral will delay costs to vehicle manufacturers for the period of the extension. Since the economic impact is minimal, a regulatory evaluation has not been prepared. There are no Federalism effects sufficient to warrant the preparation of a Federalism assessment. The FTA certifies that this rule will not

have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 665

Vehicle testing, Grant programs—transportation, Mass transportation.

Accordingly for the reasons described in the Preamble, part 665 is amended as set forth below:

PART 665—BUS TESTING

1. The authority citation for 49 CFR part 665 continues to read as follows:

Authority: 49 U.S.C. App. 1601 et seq., 1608(h); 49 CFR 1.51.

2. Paragraph (d) of § 665.3 is revised as set forth below.

§ 665.3 Scope.

* * * * *

(d) The provisions in §§ 665.11(e)(4) and (5) concerning the last two categories of buses which must be tested, apply to advertisements for bids or requests for proposals for buses issued on or after February 10, 1993.

Issued: October 5, 1992.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 92-24586 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217, 222 and 227

[Docket No. 921054-2254]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Establishment of a temporary observer requirement in the shark gillnet fishery and request for comments.

SUMMARY: NMFS notifies owners and operators of vessels conducting shark gillnet fishing from North Carolina through Florida that, for the next 30 days, they, upon request, must carry a NMFS-approved observer aboard such vessel(s). This action is necessary to monitor the taking of threatened and endangered sea turtles. Unusually high strandings of turtles on Georgia beaches may be attributable to shark gillnet fishing off Georgia and justify the imposition of this requirement. NMFS may extend this requirement beyond 30 days and/or impose additional temporary sea turtles conservation measures on the shark gillnet fishery as necessary to adequately protect sea turtles.

DATES: This action is effective from October 7, 1992 through November 5, 1992. Comments on this action must be submitted by November 5, 1992.

ADDRESSES: Requests for a copy of the environmental assessment for this action and comments on this action should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713-2319) or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813/893-3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, U.S.C. 1531 *et seq.* (ESA). Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in U.S. coastal waters. Sea turtle take by other types of fishing gear has also been documented, but the amount and extent of impact to turtles by such gear types is unknown. Gillnets of different sizes have been reported to take sea turtles; for example, gillnets have been reported to take loggerhead turtles in South Carolina sturgeon fisheries, and green turtles in southern Florida. In fact, gillnets were the preferred means of capturing turtles when turtle fisheries were allowed in U.S. waters. NMFS recently issued an advance notice of proposed rulemaking (FR 57 30709, July 10, 1992) that requested comments on the need to impose monitoring requirements and/or conservation measures on non-shrimp trawl fisheries that may adversely affect sea turtles.

Recent Events

In July 1992, the shark gillnet fishery came under suspicion of taking sea turtles when over 20 loggerhead turtles stranded on Cumberland Island, Georgia, during a 10-day period. Three shark gillnet vessels were reportedly fishing off Cumberland Island during this time period. In response to this stranding event, NMFS law enforcement efforts were increased and a number of shrimp trawlers were boarded to determine whether these strandings could be attributed to a lack of compliance by shrimp trawlers with the sea turtle conservation regulations. These boardings indicated that overall the shrimp trawlers were complying with the sea turtle conservation regulations. By August 1992, the number of strandings declined significantly. Coincidentally, the three shark gillnet vessels has moved north.

During the period of September 5-7, 1992, a total of seven turtles stranded on Cumberland Island. These strandings coincided with the return of shark gillnet vessels into waters off southern Georgia. A number of tarpon and other large fish stranded at the same time, suggesting that they may have been killed by the same gear as the turtles. Tarpon and large fish are seldom taken by shrimp trawlers, but are commonly taken as bycatch in gillnets.

NMFS has received a number of complaints from private individuals and the Georgia Department of Natural Resources (DNR) suggesting that shark gillnet vessels are responsible for the recent large number of turtle strandings off Georgia. On September 9, 1992, the Georgia DNR formally requested that NMFS take regulatory action to require that shark gillnet vessels fishing in Federal waters off Georgia's coast carry observers.

Vessels in the shark gillnet fishery use gillnets up to 1.5 miles (2.4 km) in length, usually consisting of 10-inch (25.4 cm) stretched mesh net, averaging about 40 meshes deep. Sets are generally made at night with vessels leaving port in the afternoon and returning the following morning. All fishing reporting occurs outside of state waters in the U.S. exclusive economic zone.

Sea Turtle Conservation Measures

Based on the information presented and evidence indicating that the shark gillnet fishery may be taking endangered and threatened sea turtles, the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that immediate action is necessary to conserve sea turtles pursuant to interim final regulations effective on September 1, 1992, (57 FR 40861, September 8, 1992), codified at 50 CFR 227.72(e)(6)(ii). The Assistant Administrator has determined that incidental takings of sea turtles during shark gillnet fishing are unauthorized unless these takings are consistent with the applicable biological opinions and associated incidental take statements. A biological opinion on the entire shark fishery, including a variety of gear types, was completed on September 23, 1991; that incidental take statement allows for the documented take by injury or mortality of two Kemp's ridley, or two hawksbill, or four green, or four leatherback, or ten loggerhead turtles. The reasonable and prudent measures

necessary to minimize the impacts of the shark fishery on sea turtles include implementation of observer programs to document incidental capture, injury, and mortality, with emphasis on monitoring of the gillnet fishery for sharks. A biological opinion on this action analyzed the impact of the shark gillnet fishery on threatened and endangered sea turtles. That opinion reemphasized the need for an observer program to determine the impact of the shark gillnet fishery on listed species; the incidental take statement issued with that opinion allows for the documented take by injury or mortality of: one Kemp's ridley, or one green, or one hawksbill, or one leatherback turtle, or two loggerhead turtles.

Requirements

The definitions in 50 CFR 217.12, as revised by the interim final regulations (57 FR 40881, September 8, 1992), are applicable to this action, as well as all relevant provisions in 50 CFR parts 217, 222, and 227. For example, under 50 CFR 227.71(b)(1) it is unlawful to own, operate, or be on board a vessel, except if that vessel is in compliance with all applicable provisions of § 227.72(e); more specifically, § 227.71(b)(3) states that it is unlawful to fish for or possess fish or wildlife contrary to a restriction specified or issued under § 227.72(e)(6).

The term "shark gillnet restricted area" means all inshore and offshore waters of the Atlantic area. This includes waters south of 36°33'00.8" N. latitude (North Carolina/Virginia border), but does not include waters of the Gulf area or Southwest Florida area. A "shark gillnet vessel" means any vessel fishing with gillnet gear that targets or is capable of taking shark, or any vessel possessing shark that has gillnet gear on board. "Fishing" or "to fish" has the meaning specified under 50 CFR 217.12 and includes operations in support of or in preparation for the catching of fish, including having gillnet gear on board a vessel (unless that gear is stowed below deck or covered so that it is in a condition that makes it unavailable for fishing). "Gillnet gear" includes any net designed to be suspended vertically in the water and to entangle the head or other body parts of fish passing through the net, including drifting nets and nets anchored or attached to the sea bottom, the fishing vessel or any other object.

NMFS hereby notifies owners and operators of shark gillnet vessels fishing in the shark gillnet restricted area that they must carry a NMFS-approved observer on board such vessel(s) if requested to do so by the Regional Director for the NMFS Southeast Region upon written notification sent to either the address specified for the vessel under the Marine Mammal Exemption Program or the address specified for vessel registration or documentation purposes or otherwise served on the owner or operator of the vessel. A shark gillnet vessel fishing in the shark gillnet restricted area must comply with the terms and conditions specified in such written notification.

The requirements and provisions of 50 CFR 216.24(f)(1), (f)(2), and (f) (5) through (7) applicable to vessel certificate holders under the marine mammal observer program apply to shark gillnet vessels as if the observers required under this action were marine mammal observers. For example, no person may forcibly assault, impede, intimidate, interfere with, influence, attempt to influence, or harass an observer.

Any person who does not comply with any requirement in this document, including any term or condition in any written notification issued hereunder, is in violation of the interim final regulations (57 FR 40861, September 8, 1992), codified at 50 CFR 227.71(b)(3).

Additional Sea Turtle Conservation Measures

The Assistant Administrator, at any time, may modify the requirements of this action through notification in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, if he determines that shark gillnet vessels are having a significant adverse effect on sea turtles. Likewise, conservation measures may be modified if monitoring to assess turtle mortality indicates that the incidental take level for the program is approaching the incidental take level established by the biological opinion for this action issued as a result of consultation under section 7 of the ESA. That level is one documented take by injury or mortality of a Kemp's ridley, or green, or hawksbill, or leatherback turtle; or two lethal takes of longgerhead turtles.

The Assistant Administrator will impose additional conservation measures on this fishery if the incidental take level is exceeded, or if significant or unanticipated levels of lethal or nonlethal takings or strandings of sea turtles associated with fishing activities in the restricted area occur. Such additional restriction may include requirements to reduce the soak time of nets or reduce the length of nets. Notification will be published in the **Federal Register** announcing any additional sea turtle conservation measures including any extension of the 30-day requirement to carry an observer upon request on shark gillnet fishing vessels.

Classification

The Assistant Administrator has determined that this restriction is necessary to respond to an emergency situation to provide adequate protection for listed sea turtles, and is consistent with the ESA and other applicable law. This restriction does not require a regulatory impact analysis under E.O. 12291 because it is not a "major rule."

The Assistant Administrator, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), finds there is good cause to take this action on an emergency basis and that it is impracticable and contrary to the public interest to provide prior notice and opportunity for comment. Emergency action is needed to insure the conservation of endangered and threatened sea turtles.

Because neither section 553 of the APA nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the interim final rule (57 FR 40861, September 8, 1992). A supplemental EA prepared specifically for this action concludes that, with specified mitigation measures, this action will have no significant impact on the human environment.

Dated: October 6, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 92-24784 Filed 10-7-92; 12:46 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of the shortraker/rougheye rockfish species group (SRRE) in the Central Regulatory Area of the Gulf of Alaska (GOA) and is requiring that catches of SRRE be treated in the same manner as prohibited specie and discarded. This

action is necessary because the total allowable catch (TAC) for SRRE in the Central Regulatory Area has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 7, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fisher of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The SRRE TAC is the Central Regulatory Area was established by the final notice of specifications (57 FR 2844, January 24, 1992) as 1,290 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for SRRE in the Central Regulatory Area has been reached. Therefore, NMFS is prohibiting retention of SRRE in that area effective from 12 noon, Alaska local time (A.l.t.), October 7, 1992, through 12 midnight, A.l.t., December 31, 1992.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–24799 Filed 10–7–92; 2:14 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 198
Tuesday, October 13, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[Docket No. PRM–170–3]

American College of Nuclear Physicians and Society of Nuclear Medicine; Request for Comment on a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) requests public comment on a petition for rulemaking filed by the American College of Nuclear Physicians and the Society of Nuclear Medicine. The petition has been docketed by the Commission and has been assigned Docket No. PRM–170–3. The petitioners request that the NRC amend its regulations governing the licensing, inspection, and annual fees charged to its licensees because of the recent increase in these fees.

DATES: Submit comments by December 14, 1992. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

For a copy of the petition, write: Rules Review Section, Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–492–7758 or Toll Free: 800–368–5642.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–4301.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1992, the Nuclear Regulatory Commission (NRC) received a petition for rulemaking submitted by the American College of Nuclear Physicians and the Society of Nuclear Medicine. The petition was docketed as PRM–170–3 on February 28, 1992. The petitioners requested that the NRC amend 10 CFR Parts 170 and 171 concerning fees for facilities, materials licenses, and other regulatory service under the Atomic Energy Act of 1954, as amended. The petitioners requested this amendment to mitigate the substantial adverse impacts experienced by its members because of the recent increase in the NRC's license and annual fees.

In the **Federal Register** of May 12, 1992 (57 FR 20211), the NRC published a notice of receipt of this petition. In that document, the NRC announced that it would consider the issues raised by the petitioners after the rulemaking action necessary to establish the license and annual fees for FY 1992 was completed. The NRC indicated that it would consider the petitioners' concerns within the context of the review and evaluation of the fee program for FY 1993 which will be conducted as part of the NRC's continued implementation of Public Law 101–508. As part of the review concerning the fee program for FY 1993 and succeeding years, the NRC now requests public comment on the issues raised in PRM–170–3.

Fee Schedule Rulemaking

On April 12, 1991 (56 FR 14870), the NRC published proposed amendments to its regulations governing the licensing, inspection, and annual fees charged to its licensees. The proposed revisions were necessary to implement Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), passed by the Congress on November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year 1991, and the four succeeding fiscal years, through the assessment of license, inspection, and annual fees. The proposed rule affected all applicants, licensees, and holders of certificates of compliance, registrants of sealed sources and devices and approvals of quality assurance programs. The proposed revisions, when adopted, would increase fees substantially for those entities currently subject to fees. Other entities previously exempt from fees would become subject to the fees in these proposed schedules.

In response to this rule, the American College of Nuclear Physicians and the Society of Nuclear Medicine submitted comments on May 13, 1991. The petitioners' comments discussed the issue of assessing user fees to medical licensees and what the petitioners believed would be the potential damage that could occur as a result.

On July 10, 1991 (56 FR 31472), the NRC published the final rule implementing the requirements of Public Law 101–508. This final rule, which became effective on August 9, 1991, revised the fees charged to NRC licensees for FY 1991. With regard to the impact on NRC licensees, the Commission concluded that "to eliminate the adverse effects, the annual fees would have to be eliminated or reduced. Because Public Law 101–508 requires the NRC to assess and collect approximately 100 percent of its budget authority, a reduction in the fees assessed for one class of licensee would require a corresponding increase in the fees assessed for another class. Therefore, the impact noted cannot be eliminated without creating adverse effects for other licensees. For this reason, consideration has been given only to the effects that NRC is required to consider by law (i.e., the Atomic Energy Act, the Energy Reorganization Act, and the Regulatory Flexibility Act)."

The NRC reconciled the mandate of Public Law 101–508 with the requirements of the Regulatory Flexibility Act to consider the impacts of its regulations on small entities by establishing a maximum small-entity fee for a licensee who qualifies as a small entity. In an effort to further mitigate the impact of the annual fee on a small entity, the NRC published a proposed rule (57 FR 847; January 9, 1992) to establish a lower-tier, annual fee for a small-entity licensee that has relatively low annual gross receipts or supporting populations. The final rule adopting this proposed amendment was published on April 17, 1992 (57 FR 13625), and became effective on May 18, 1992.

The proposed rule necessary to establish the license and annual fees for FY 1992 was published on April 29, 1992 (57 FR 18095). The comment period for this action closed on May 29, 1992. The

NRC published the final rule establishing the FY 1992 licensing and annual fees on July 23, 1992 (57 FR 32691). The provisions of the final rule became effective August 24, 1992. Now that the fee cycle for FY 1992 is complete, the NRC is beginning its evaluation of the fee program for FY 1993. As part of that action, the NRC is soliciting public comment on the petition submitted by the American College of Nuclear Physicians and the Society of Nuclear Medicine (PRM–170–3).

The Petitioners

The American College of Nuclear Physicians (ACNP) is an organization of 1,450 members, including 1,100 physicians who are qualified to use radioactive byproduct materials for diagnostic and therapeutic medical purposes. The Society of Nuclear Medicine (SNM) is an association of 11,300 members with about 4,750 physicians who practice nuclear medicine. Members of the ACNP/SNM who use byproduct radioactive materials must be licensed by either the NRC or an Agreement State.

Adverse Impacts on the Petitioners

The petitioners have submitted this petition for rulemaking because they believe they have been adversely affected by the current license fee rule. The petitioners state that the fees imposed by the NRC unfairly burden medical licensees and threaten the continuation of many nuclear medicine practices. The petitioners state that fees for its member physicians have increased by up to 1400% and that this constitutes a substantial, additional expense for the practice of nuclear medicine. The petitioners state that since the fee increase over 400 nuclear medicine licensees have either terminated or applied to terminate their NRC licenses.

The petitioners state that, in addition to the direct fee increase, they are also affected indirectly. Increased user fees are also reflected in the cost of radiopharmaceuticals due to the increase in fees for radiopharmaceutical manufacturers and radiopharmacy licenses. The petitioners state that this additional fee is passed on to the practitioner, thereby raising their operating costs.

The petitioners state that substantial numbers of their members practice in hospitals because these hospitals are required to provide nuclear medicine services. The petitioners also state that about 40% of all fees for nuclear medicine service are covered by Medicare. However, according to the petitioners, Medicare reimbursement limits do not consider NRC license fee increases. Thus, the recent substantial increases in NRC license fees have had to be absorbed into the non-reimbursable costs of nuclear medicine practices.

The petitioners believe that the recent amendments to the license fee rule have had an inequitable impact on them. They believe they are in a unique situation and should be given special consideration similar to what the NRC has given to other limited categories of licensees. For example, non-profit educational institutions retained their fee exemption under part 170 and were given an additional exemption under part 171 in recognition of their unique contributions to society. The petitioners believe that their unique contributions to socity should also warrant an exemption.

The petitioners believe that the NRC discounted the unique societal benefits provided by members of the ACNP/SNM, their unique circumstances regarding reimbursement, and the hardships imposed on individual physicians by the fee rules. In addition, the petitioners assert that fees for the remaining NRC medical licensees may rise substantially again under the present fee recovery policy because several hundred medical licensees have terminated their licenses. The petitioners believe the increases could further extend the competitive disadvantage in favor of alternative modalities and identical services in Agreement States. The petitioners indicate that the fee increase may also impact medical practice resulting in limiting patient choices in some geographical areas.

The Petitioner's Proposals

The petitioners request that parts 170 and 171 be amended to minimize the inequitable impacts of NRC-imposed fees on the practice of nuclear medicine. The petitioners request that the NRC amend its regulations in 10 CFR parts 170 and 171 to recognize factors the petitioners contend the NRC considers for other licensees. The petitioners' specific suggestions include the following items. The NRC should—

1. Provide an exemption for a medical service similar to the exemption provided for a non-profit institution.

2. Provide for uniform consideration of each licensee's particular circumstances. For example, the petitioners suggest that the NRC develop a simple template for structuring exemption requests.

3. Adopt a sliding scale of fees depending on the size of an entity and not just providing a fee cap for those entities who qualify as "small entities."

4. Allow licensees a greater voice in the NRC's decision-making process for developing new programs where the development costs could have substantial economic impacts. The petitioners believe that if the NRC proposes to develop a regulation which is not necessary for the adequate protection of the public health and safety, the NRC should be required to show that the regulation would result in a substantial increase in safety and that the benefits exceed the costs.

Petitioners' Conclusion

The petitioners have identified several significant adverse impacts which they assert have affected its members as a result of the recent increases in NRC license and annual fees. The petitioners believe that the fees imposed by the NRC unfairly burden medical licensees and threaten the continuation of many nuclear medicine practices, and request that the NRC consider its proposals to amend the rules in parts 170 and 171.

Dated at Rockville, Maryland, this 6th day of October 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–24747 Filed 10–9–92; 8:45 am]

BILLING CODE 7590–01–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 612 and 617

RIN 3052–AB33

Personnel Administration; Referral of Crimes and Suspected Crimes

AGENCY: Farm Credit Administration (FCA).

ACTION: Proposed rule.

SUMMARY: The FCA, by order of the FCA Board, issues for public comment a proposed regulation governing the referral of known and suspected criminal violations. Proposed part 617 would mandate the use of a uniform FCA Criminal Referral Form (FCA 8058, hereinafter, Referral Form) which will replace the various form that are currently being used by Farm Credit System (FCS) institutions. Conforming amendments to part 612 would be.

DATES: Comments must be submitted on or before November 12, 1992.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–

5090. Copies of all comments received will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, or
Anthony N. Torres, Litigation and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4040, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: Pursuant to the Farm Credit Act of 1971, as amended, the FCA regulates and examines FCS institutions for safety and soundness and compliance with laws and regulations. FCS institutions have the responsibility to establish and maintain safeguards designed to detect, deter, and report criminal activity involving the assets, operations, or affairs of the institution. Violations of Federal criminal statutes may affect the safety and soundness of FCS institutions and may undermine public confidence in the FCS. Additionally, the law enforcement agencies need to receive timely and specific information on known or suspected criminal activity to permit them to determine whether investigations and prosecutions are warranted.

The Interagency Bank Fraud Working Group (Working Group), a task force consisting of Federal financial institution regulators and law enforcement agencies, has designed a uniform referral form (Referral Form, FCA 8058) to facilitate the reporting of criminal activity by financial institutions and to enhance the law enforcement agencies' ability to investigate and prosecute the matters reported. In order to promote use of the Referral Form and ensure proper reporting, the FCA proposes to adopt regulations that would (1) mandate uniform procedures for filing criminal referrals and (2) mandate the use of the Referral Form in making certain criminal referrals.

The Referral Form, with instructions explaining how to complete, file, and distribute the form, can be obtained from the Office of General Counsel (OGC) of the FCA. Filing of the Referral Form would be required in all cases in which one of the circumstances listed in § 617.2(a) exists, but only when such circumstances exist. However, nothing in this proposed regulation should be construed as reducing in any way the general responsibility to report criminal activities in which these circumstances do not exist to the appropriate investigatory and/or prosecuting authorities, whether State or Federal. Therefore, the FCA strongly encourages institutions to report all known or suspected criminal activity to the appropriate Federal, State, or local law enforcement authorities.

Comments are sought on all the provisions contained in the regulation.

List of Subjects

12 CFR Part 612

Agriculture, Banks, banking, Conflict of interests, Rural areas.

12 CFR Part 617

Criminal referrals, Criminal transactions, Defalcations, Embezzlement, Insider abuse, Institutions of the Farm Credit System, Money laundering, Theft.

For the reasons stated in the preamble, parts 612 and 617 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 612—PERSONNEL ADMINISTRATION

1. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act; 12 U.S.C. 2243, 2252, 2254.

2. Section 612.2180 is amended by revising paragraph (b) to read as follows:

§ 612.2180 Enforcement.

* * * * * *

(b) The bank, Funding Corporation, or service organization shall promptly notify the Farm Credit Administration of those cases where it has determined that there is a known or suspected criminal violation (*See* part 617).

* * * * * *

3. Part 617 is revised to read as follows:

PART 617—REFERRAL OF CRIMES AND SUSPECTED CRIMES

Sec.
617.1 Purpose and scope.
617.2 Referrals.
617.3 Notification of board of directors and bonding company.

Authority: Secs. 5.9, 5.17 of the Farm Credit Act; 12 U.S.C. 2243, 2252.

§ 617.1 Purpose and scope.

(a) This part applies to all institutions of the Farm Credit System as defined in section 1.2(a) of the Act (12 U.S.C. 2002(a)) including, but not limited to, associations, banks, service corporations chartered under section 4.26 of the Act, the Federal Farm Credit Banks Funding Corporation, the Farm Credit System Financial Assistance Corporation, and the Federal Agricultural Mortgage Corporation (hereinafter, institutions). The purpose of this part is to reduce potential losses to institutions resulting from certain known or suspected criminal activities by requiring notification on forms designed to help law enforcement agencies determine whether investigations or prosecutions are warranted. This part requires that institutions use FCA Criminal Referral Form (FCA 8058, hereinafter, Referral Form) to notify the appropriate Federal authorities when any known or suspected Federal criminal violations of the type described in § 617.2 are discovered by an institution.

(b) The specific referral requirements of this part are limited to known or suspected criminal violations of the United States Code involving the assets, operations, or affairs of an institution in certain cases. This part prescribes procedures for referring those violations to the proper Federal law enforcement agencies and the FCA. Nothing in this part shall be construed as reducing in any way the general responsibility to report criminal activities to the appropriate investigatory and/or prosecuting authorities, whether State or Federal.

§ 617.2 Referrals.

(a) Each institution shall refer known or suspected criminal violations of the United States Code involving or affecting its assets, operations, or affairs to the appropriate regional offices of the United States Attorney and the Federal Bureau of Investigation in the manner required by this section in circumstances where there is:

(1) Any known or suspected criminal activity (e.g., theft, embezzlement), mysterious disappearance, unexplained shortage, misapplication, or other defalcation, regardless of amount, where an institution employee, officer, director, agent, or other person participating in the conduct of the affairs of such an institution is suspected;

(2) Any known or suspected criminal activity involving an actual or potential loss (before reimbursement or recovery) of $1,000 or more where the institution has a substantial basis for identifying a possible suspect or group of suspects and the suspect(s) is not an employee, officer, director, or agent of the institution;

(3) Any known or suspected criminal activity involving an actual or potential

loss (before reimbursement or recovery) of $5,000 or more where the institution has no substantial basis for identifying a possible suspect or group of suspects; or

(4) Any known or suspected criminal activity involving a financial transaction that used the institution as a conduit for such criminal activity (such as money laundering/structuring schemes).

(b) Each referral required by paragraph (a) of this section shall be made on the Referral Form in accordance with the Referral Form Instructions relating to its filing and distribution and the requirements of paragraphs (c) and (d) of this section.

(c) No later than 14 days after the institution's management has determined that there is a known or suspected criminal violation, the Referral Form shall be filed and a copy shall be provided to the FCA's Office of General Counsel. In circumstances where there is also a known or suspected violation of State criminal law, the institution shall also notify the appropriate State law enforcement authorities.

(d) In addition to the requirements of paragraph (c) of this section, the institution shall immediately notify by telephone the offices specified on the Referral Form upon discovery of cases involving known or suspected criminal violations requiring urgent attention or where a referable violation is ongoing. Such cases include, but are not limited to, those where:

(1) There is a likelihood that the suspect(s) will flee;

(2) The magnitude or the continuation of the known or suspected criminal violation may imperil the institution's continued operation; or

(3) Key institution personnel are involved.

§ 617.3 Notification of board of directors and bonding company.

(a) The institution's board of directors shall be notified, not later than their next meeting, of the filing of any Referral Form by the institution. Each institution shall establish effective policies and procedures designed to ensure compliance with this part, including, but not limited to, adequate internal controls.

(b) If any losses can be recovered under a surety bond or other contract for protection against losses, the institution involved shall promptly make all required notifications.

Dated: October 7, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-75, Notice No. SC-92-6-NM]

Special Conditions: Airbus Industrie Model A340 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This document proposes special conditions for the Airbus Industrie Model A340 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). This document contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 25.

DATES: Comments must be received on or before November 27, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-75, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked Docket No. NM-75. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Holt, FAA, Standardization Branch, ANM-113, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action on this proposal is taken. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-75." The postcard will be date stamped and returned to the commenter.

Background

Special conditions are prescribed under the provisions of § 21.16 of the FAR when the applicable regulations for type certification do not contain adequate or appropriate standards because of novel or unusual design features.The new Airbus Model A340 incorporates a number of such design features.

Airbus Industrie, 1 Rond Point Maurice Bellonte, 310707 Cedex, France, has applied for French type certification of their Model A340 by the French Direction Generale de l'Aviation Civile (DGAC) in accordance with existing European standards and for U.S. type certification under the provisions of a bilateral agreement between the governments of the U.S. and France.

The bilateral agreement was reached in 1973 to facilitate French acceptance of aeronautical products exported from this country and of such products imported from France. It provides, in part, for U.S. acceptance of certification by the DGAC that a product, in this case the Model A340, complies with the applicable U.S. laws, regulations and requirements (the U.S. type certification standards). Alternatively, the bilateral agreement provides for U.S. acceptance of certification by the DGAC that the product complies with the applicable French laws, regulations and requirements (the French type certification standards) plus any additional requirements the U.S. finds necessary to ensure that the product meets a level of safety equivalent to that provided by the U.S. type certification standards.

The type certification standards of both the U.S. and France are amended from time to time to impose more stringent standards and to reflect the advancing state of the art in aircraft

technology. As provided in the bilateral agreement, the type certification standards of the importing country used (in this case the U.S.) are those in effect on the reference date for the type of certification basis of the exporting country (France). The reference date for the French type certification basis is June 15, 1988, and is therefore the date that establishes the U.S. type certification standards.

The DGAC has elected to certify that the Model A340 complies with the French type certification standards plus any additional requirements identified by the FAA. Based on the above reference date, the DGAC has advised that the French type certification standards include Joint Airworthiness Requirements-25 (JAR–25) with Changes 1 through 12 thereto, and Joint Airworthiness Requirements-All Weather Operations (JAR–AWO). In addition, Airbus has elected to comply with certain portions of JAR–25 as further amended by Change 13.

Joint Airworthiness Requirements-25 is a document developed jointly and accepted by the airworthiness authorities of various European countries, including France, for type certification of transport category airplanes. It is similar to part 25 of the FAR; however, there are certain specified differences in the requirements of the two documents.

Based on this same reference date, the U.S. type certification standards are part 25 of the FAR, as amended by Amendments 25–1 through 25–63 thereto, and the special conditions proposed in this notice. (As noted above, special conditions are prescribed under the provision of § 21.16 when the applicable regulations for type certification do not contain adequate or appropriate safety standards because of a novel or unusual design feature.) Airbus has elected to comply with portions of part 25 amended by Amendments 25–64 applicable to passenger seats. In addition, Airbus has also elected to comply with the sections of part 25 amended by Amendments 25–65, 25–66 and 25–77.

Special conditions are also prescribed by the DGAC when JAR–25 does not contain adequate or appropriate safety standards. In order to preclude confusion with the special conditions proposed in this notice, those special conditions will be referred to herein as the "French special conditions."

Because the DGAC has elected to certify that the Model A340 complies with the French type certification standards, the FAA will make a comparison of the French type certification basis and the U.S. type certification standards described above. Based on this comparison, the FAA will prescribe any additional requirements that are necessary to ensure that the Model A340 meets a level of safety equivalent to that provided by the U.S. type certification standards. The U.S. type certification basis for the Model A340 will, therefore, consist of the French type certification basis, these additional requirements, and the special conditions proposed in this notice.

Noise certification is beyond the scope of the bilateral agreement; however, French test data are accepted by separate arrangement. The French noise certification basis is their "Arrete" (order) dated November 26, 1991 (ICAO Annex 16). The U.S. noise certification basis for the Model 340 is part 36 of the FAR, as amended by Amendments 36–1 through 36–18 and subsequent amendments adopted prior to the date on which the U.S. type certificate is issued. French noise certification test data will be reviewed by the FAA for compliance with the U.S. noise certification basis. In addition to compliance with part 36, the statutory provisions of Public Law 92–574, "Noise Control Act of 1972," require that the FAA issue a finding of regulatory adequacy pursuant to section 611 of that Act.

The Model A340 must also comply with the fuel venting and exhaust emission requirements of part 34 of the FAR, including any amendments in effect on the date the type certificate is issued. Emission requirements are also beyond the scope of the bilateral agreement; however, certification of compliance by the DGAC will be accepted by separate arrangement.

A340 Design Features

General

The Model A340 Airplane presented for U.S. type certification is a long range, four engine, transport category airplane powered by CFMI CFM56–5C2 engines with 31,200 lb. thrust ratings. The airplane has a seating capacity in a typical three class long range configuration of 262 and a range of 7,500 nautical miles. The maximum takeoff weight is 558,900 lbs. The maximum landing weight is 399,000 lbs. The maximum operating altitude is 41,000 ft.

The structure of the A340 is generally of conventional design and construction, but with considerable use of composite materials. Elements of the primary structure (the fin and horizontal tail) are constructed of composites, as well as components such as flaps, spoilers, ailerons, and engine cowls. The composite horizontal tail is also an integral fuel tank, both inboard and outboard of the fuselage contour. The landing gear system employs a center landing gear for use during ground handling conditions with heavy airplane weights. The structural design also makes use of a speed limiting system, and the electronic flight control system provides the potential for a wide range of structural and system interactions.

The Model A340 utilizes fly-by-wire (FBW) flight controls for the elevators, ailerons, spoilers, tailplane trim, slats and flaps, speed brakes, trim in yaw, and engine control. The aerodynamic surfaces are positioned relative to the pilot's command by electronic signals sent via airplane wiring from the flight control computers to hydraulic actuators. Conventional mechanical control is provided for the rudder and tailplane trim hydraulic actuators. Should a short-term interrupt occur in the electronic flight controls, flight could be maintained for a period of time through the use of mechanical control of rudder and tailplane trim.

Hydraulic power to the flight control system is simultaneously provided by three independent hydraulic systems. Functions are shared among these systems in order to ensure airplane control in the event of loss of one or two systems. The three systems are pressurized by variable displacement pumps driven by the engine accessory gearbox. In addition, the systems can be powered by electrically driven pumps.

Normal electrical power is supplied by four constant frequency generators, one on each engine. An auxiliary power unit (APU)-driven electrical generator is also available. Two batteries and a hydraulically driven constant speed motor generator (CSMG) provide an alternative source of electrical power for the continuous operation of the A340 fly-by-wire flight controls. The CSMG is powered by the green hydraulic circuit. The CSMG can also be powered by the ram air turbine (RAT) which is automatically deployed in case of loss of the green hydraulic power. Deployment of the RAT may also be selected manually by pushing an electrical switch.

The engine control system consists of a dual channel full authority digital engine control (FADEC) mounted on the fan case of each engine. Each FADEC interfaces with various airplane computer systems. The FADEC provides gas generator control, engine limit protection, power management, thrust reverser control, and engine parameter inputs for the flight deck displays. In addition to control of the engines from the flight deck through changes in power

lever position, an autothrust mode is provided that commands thrust changes directly to the FADEC without a corresponding change in power lever position. In this mode of operation, the position of the power lever sets the upper limit for thrust, except when alpha floor is reached. Alpha floor is a design feature in the airplane whereby, upon reaching a specific angle of attack, the engines are automatically commanded to full thrust, regardless of lever position, to provide high angle-of-attack (AOA) protection. The autothrust mode can be disengaged by pushing a button on the power lever. The engine FADEC and associated airplane related systems form the complete propulsion control system.

Pitch and roll control inputs are made through flight deck side-stick controllers mounted on the lateral consoles of the pilot and copilot positions, in place of central control columns. The flight instruments are displayed on six cathode ray tube (CRT) displays. Two CRT's are mounted directly in front of both the pilot and copilot and display primary flight instruments and navigational information. The other two CRT's are located in the center of the instrument panel and display engine parameters, warnings, and system diagnostics.

The proposed type design of the A340 contains novel or unusual design features not envisioned by the applicable Part 25 airworthiness standards and therefore special conditions are considered necessary in the following areas:

Systems

1. Operation Without Normal Electrical Power.

In the A340, a source of electrical power is required by the electronic flight control system. Service experience with traditional airplane designs has shown that the loss of electrical power generated by the airplane's engines is not extremely improbable. The electrical power system of the A340 must therefore be designed with standby or emergency electrical sources of sufficient reliability and capacity to power essential loads in the event of the loss of normally generated electrical power. The need for electrical power for electronic flight controls was not envisioned by Part 25 since in traditional designs, cables and hydraulics are utilized for the flight control system. Therefore, Special Condition No. 1 is proposed.

2. Electronic Flight Control System (EFCS) Failure and Mode Annunciation

The A340 flight control system architecture utilizes redundant elements, as well as alternative operational modes, to deal with losses of equipment and/or signal interfaces.

Existing Part 25 has been considered adequate for stability and automatic flight systems in traditional airplane designs because those designs did not have submodes of operation (they are either on or off), the airplane handling qualities were adequate with the systems either on or off, and the systems were not actively participating in load relieving functions. These rules are not sufficient for the A340 because they do not address differences in handling qualities and levels of envelope protection between submodes of operation and because elements of the automatic system must remain active in order to maintain safe flight and landing. Therefore, Special Condition No. 2 is proposed.

3. Command Signal Integrity

Command and control of the control surfaces will be achieved by fly-by-wire systems that will utilize electronic interfaces (AC, DC, or digital data buses). These interfaces involve not only the commands to the control surfaces, but all the control feedback and sensor input signals as well. These signal paths, as well as the digital electronics that manage them, can be susceptible to spurious signals that may cause unacceptable or unwanted control responses. These spurious signals may originate from electromagnetic or electrostatic sources, or from failures of subsystems in the control loop. Therefore, special designs are needed to maintain the integrity of the fly-by-wire interfaces to an immunity level equivalent to that of traditional hydro-mechanical designs. In addition, similar to the conventional steel cable controls, routing of wire bundles must provide separation and redundancy to ensure maximum protection from damage due to a common cause. Therefore, Special Condition No. 3 is proposed.

4. Protection From Lightning and Unwanted Effects of High Intensity Radiated Fields (HIRF) and Radio Frequency (RF) Energy

The use of fly-by-wire designs to command and control engines and flight control surfaces increases the airplane's susceptibility to lightning and HIRF sources external to the airplane. The airworthiness regulations do not provide adequate requirements for protection from lightning and unwanted effects of HIRF.

Lightning interaction with an airplane can result in numerous problems. Physical damage (direct effects) can result from a lightning attachment to the airplane. Such damage is characterized by burning, eroding, and blasting, and is the consequence of either the extreme heat loading and accompanying acoustic shock wave, or deforming by magnetic forces from the high current component of lightning. An additional effect (indirect) results from the fast changing electrical and magnetic fields produced by the high currents of a direct or near strike. These fields can couple voltage transients into the airplane wiring and subsequently reach the electrical and electronic systems within.

High intensity radiated fields also have the potential to cause adverse and potentially hazardous effects on fly-by-wire systems if design measures are not taken to ensure the immunity of such systems. This particularly true with the trend toward increased power levels from ground based transmitters and the advent of space and satellite communications.

The A340 is being designed with only electrical interfaces between crew inputs and: (1) The elevator, aileron, spoiler flight control surfaces and, (2) the engines. These interfaces, and the interconnection among the electronic subsystems controlling these functions can be susceptible to disruption of both command/response signals and the operational mode logic as a result of electrical magnetic interference. Traditional airplane designs have utilized mechanical means to connect the primary flight controls and the engine to the flight deck. This traditional design results in control paths that are substantially immune to the effects of lightning strike and effects of HIRF. A special condition is required to ensure that critical and essential systems be designed and installed to preclude component damage and system upset or malfunction due to both the direct and indirect effects of lightning, and the unwanted effects of HIRF. Therefore, Special Condition No. 4 is proposed.

Airframe

1. Interaction of Systems and Structures

The airplane has a full time electronic flight control system in the pitch, yaw, and roll axes and automatic trim of the horizontal stabilizer. These systems can directly, or as a result of failure or malfunction, affect structural performance. This degree of system and structures interaction was not

envisioned by the structural design regulations for transport airplanes contained in part 25. To provide comprehensive criteria in which the structural design safety margins are dependent on systems reliability, Special Condition No. 5 is proposed.

2. Structural Design Speed With a Speed Protection System

The structural design dive speed is established in order to provide structural integrity during inadvertent overspeed above the maximum operating speed. The A340 has an overspeed protection system as well as protection against extreme attitudes (pitch and roll) and stall. These systems provide for automatic protection against inadvertent upset and subsequent overspeed which was not envisioned by § 25.335(b). That section provides criteria for establishing the structural design dive speed which accounts for inadvertent upsets and inadvertent overspeeds which could result from pilot inattention. This is provided by assuming that the airplane is in a prescribed dive condition for a specified time that includes pilot recognition and reaction time. These criteria do not take into account systems which automatically protect against inadvertent upsets and which automatically initiate recovery. Therefore, to establish appropriate criteria for determining an adequate structural design dive speed with speed protection, Special Condition No. 6 is proposed.

3. Design Maneuver Requirements

In a conventional airplane, pilot inputs directly affect control surface movement (both rate and displacement) for a given flight condition. In the A340, the pilot provides only one of several inputs to the control surfaces, and it is possible that the pilot control displacements specified in §§ 25.331(c)(1), 349(a) and 351 of the FAR may not result in the maximum displacement and rates of displacement of the elevator. The intent of these noted rules may not be satisfied if literally applied. Because of certain bank angle and roll rate limits provided by the electronic flight control system, it may not be possible to obtain full aileron deflections at the design maneuvering speed (V_A). On the other hand, the flight control system may, under some conditions, produce higher aileron spoiler or elevator deflections than the pilot input is capable of providing. Therefore, Special Condition No. 7 is proposed.

4. Limit Pilot Control Forces

The pilot effort loads in § 25.397(c) for the cockpit pitch and roll controls are based on a two-handed effort with conventional controls. In the A340, the cockpit pitch and roll controls are designed for a one-handed operation. Therefore, to provide structural design pilot effort loads for the side stick controllers, Special Condition No. 8 is proposed.

5. Tailtank Emergency Landing Loads

The A340 carries fuel in the horizontal tail. Since the horizontal tailtank is located to the rear and above the fuselage, the failure of this tank in an emergency landing could result in fuel spillage on, and adjacent to, the rear fuselage and rear emergency exits. Section 25.963(d) provides structural design criteria for fuel tanks that could become a hazard from spillage in an emergency landing, however, this applies only to tanks inside the fuselage contour. Therefore, to provide emergency landing design load factors for the tail tank, Special Condition No. 9 is proposed.

6. Limit Engine Torque Loads

The limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category airplanes since 1957. The size, configuration, and failure modes of jet engines has changed considerably from those envisioned by § 25.361(b) when the engine seizure requirement was first adopted. Engines have grown much larger and are now designed with large bypass fans capable of producing much higher torque loads if they become jammed.

Relative to the engine configuration that existed when the rule was developed in 1957, the present generation of engines as used in the A340 are sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards. The latest generation of jet engines are capable of producing engine seizure torque loads that are significantly higher than previous generations of engines. The FAA is developing a new regulation and a new advisory circular that will provide more comprehensive criteria for treating engine torque loads resulting from sudden engine stoppage. In the meantime, a special condition is needed to establish appropriate criteria for the Airbus A340 type designs.

The proposed criteria distinguished between the more common seizure events and those rare seizure events results from structural failures. For these more rare but severe seizure events, the proposed criteria would allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by providing a higher factor of safety for those structures. To provide appropriate structural design criteria for the engine torque on the A340, Special Condition No. 10 is proposed.

7. Center Landing Gear

The A430 landing gear arrangement includes a central unbraked landing gear under the fuselage. The purpose of the central landing gear is to assist the main landing gear during ground handling conditions for heavy airplane weights. This center landing gear is not intended for energy absorption during landing, even if it can participate in the impact under certain conditions. The current landing gear design criteria are applicable to conventional landing gear arrangements. Therefore, to provide additional taxi, takeoff, and landing criteria for this arrangement, Special Condition No. 11 is proposed.

Flight Characteristics

The A340 will employ an EFCS which has no direct coupling from controllers to surface in pitch and roll; it has response-command control laws in these axes for primary operating modes, and it has designated back-up control laws that are utilized when the normal operating state is unavailable. With fully augmented airplanes like the A340, almost all the flying qualities characteristics are independent of each other, and individual characteristics cannot, therefore, be used as predictors of acceptable flying qualities in other areas.

1. Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases

The technology of the A340 EFCS has outpaced existing regulations (written essentially for unaugmented airplanes with provisions for limited ON/OFF augmentation.) The existing regulations assume that the pilot receives immediate direct feedback in response to control inputs, but this is not the case for a EFCS airplane. Interpretive material for § 25.672(c) and related subpart B requirements of the FAR need to be provided to aid in evaluating EFCS failure cases. Therefore, Special Condition No. 12 is proposed.

2. Longitudinal Stability

The A340 and similar airplanes with command-type control systems lacking airspeed or angle of attack (AOA) feedback will not pass the current part 25 demonstration for "static longitudinal stability," even though the basic airframe may have constant Mach gust stability. In the "normal" flight regime, these airplanes have short-term flight path stability, tending to hold zero pitch rate 1-g normal to the flight path when stick force is zeroed at a new speed away from initial trim. Benefits for such a command-control system are quick, accurate pitch response, minimization of pitch overshoots, and lack of transients associated with gear/flap/speed brake extension and thrust changes. Pilot adaptation and pilot ratings have been favorable for airplanes of this type for most of the flight envelope and flight phases. Because the A340 does not meet the part 25 requirements for static longitudinal stability, and since the pitch damping is also defined by the control laws, the simple requirement for "heavy damping" may not be appropriate for this design. Therefore, Special Condition No. 12 is proposed.

3. Lateral-Directional Stability

Because of the A340 roll axis design feature in which aileron force commands roll rate, a stabilized constant heading sideslip will result in zero aileron forces, which does not comply with § 25.177 of the FAR. This condition will exist for bank angles up to 33°. Therefore, Special Condition No. 12 is proposed.

4. Control Surface Awareness

With a response-command type flight control system and no direct coupling from cockpit controller to control surface, the pilot is not aware of actual surface position utilized to fulfill the requested demand. Some unusual flight condition, arising from atmospheric conditions and/or airplane or engine failures, may result in full or near-full surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, piloted or auto-flight system control of the airplane might be inadvertently constrained in such a manner to cause an unsatisfactory stability or performance characteristic. Therefore, Special Condition No. 12 is proposed.

Flight Envelope Protection

1. General Limiting Requirements

The manufacturer has elected to develop extensive flight envelope protection features integral to the basic EFCS design. Envelope protection parameters include AOA, normal load factor, bank angle, pitch angle, and speed. To accomplish this envelope limiting, a significant change (or multiple changes) occurs in the EFCS control laws as the limit is approached, or exceeded. When EFCS failure states occur, envelope protection features can likewise either be modified or, in some cases, eliminated. The current regulations were not written with comprehensive envelope-limiting systems in mind. Therefore, Special Condition No. 13 is proposed.

2. Angle-of-Attack Limiting

The A340 design incorporates a low speed protection feature (alpha limit) which cannot be overridden by the flightcrew. When operating normally, the low speed protection system limits the ability to demonstrate steady speeds lower than, essentially, 1.06 times the 1-g stall speed (V_{SIG}), i.e., at coefficients of lift (C_L) less than the maximum aerodynamic coefficient of lift (C_{LMAX}). Airbus Industrie believes that the strict application of § 25.103 of the FAR will impose a takeoff and landing performance penalty on the A340 in comparison with conventional-control airplanes.

Stalling speed (V_S) is defined as $V_S = V_{CLMAX}/\sqrt{N_{NZ}}$, where N_{NZ} is the normal flight path load factor. The speed is determined from the certification stalling maneuver with all aspects of the EFCS operating normally, except auto thrust is disengaged or overridden and a higher than production AOA limit is set so that aerodynamic C_{LMAX} can be achieved. The flight characteristic at the AOA for C_{LMAX} must be suitable in the traditional sense at forward and aft center of gravity (CG) in straight and turning flight at IDLE power. Although for a normal EFCS and a steady full aft stick, this AOA for C_{LMAX} cannot be achieved, the AOA can be obtained momentarily under dynamic circumstances and deliberately in a steady state sense with some EFCS failure conditions.

A re-definition of the stalling reference speed for the A340 will have impact on various performance and flying qualities requirements currently prescribed in part 25. Areas of re-evaluation are principally: (1) Factors for trim speed and speed range requirements for flying qualities tests, and (2) the operating speed selection for performance conditions and tests. Therefore, Special Condition No. 13 is proposed.

3. Normal Load Factor (g) Limiting

The A340 flight control design incorporates normal load factor limiting on a full-time basis that will prevent the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. The limiting feature is active in all normal and some alternate flight control modes and cannot be overridden by the pilot. This feature is unique in that traditional airplanes are limited in the pitch axis only by the elevator surface position limit, which is normally sized for adequate controllability and maneuverability but which may allow limit structural design values to be exceeded. Therefore, Special Condition No. 13 is proposed.

4. High-Speed Limiting

The longitudinal control law design of the A340 incorporates an overspeed protection system in the normal mode; this would prevent the pilot from inadvertently or intentionally exceeding a speed equivalent to the maximum speed for stability characteristics (V_{FC}) or attaining the maximum demonstrated flight diving speed (V_{DF}). The regulations do not contain requirements for a high speed limiter which might preclude or modify flying qualities assessments in the overspeed region. Therefore, Special Condition No. 13 is proposed.

5. Pitch and Roll Limiting

Airbus Industrie proposes to implement pitch and roll attitude limiting via the EFCS normal modes that will prevent the pilot from commanding pitch attitudes greater than approximately +35° and −15° body attitude and roll angles greater than ±65°. In addition, positive, artificial spiral stability is introduced for roll angles greater than 33° for speeds below the maximum operating limit speed (V_{MO}) or the maximum operating limit Mach (M_{MO}) and 0° for speeds above V_{MO}/M_{MO}. At speeds greater than V_{MO} and up to V_{DF}, maximum aileron force will command only 40° maximum bank. Conventional airplanes are not limited in pitch and roll. While limits may provide certain benefits such as protection from upsets, these limits should not restrict normal and emergency maneuvering. Therefore, Special Condition No. 13 is proposed.

Side Stick Controllers

1. Pilot Strength.

The A340 design incorporates side stick controllers for pitch and roll in lieu of conventional wheel controls. the temporary and prolonged force requirements of § 25.143(c), and related flying qualities force requirements in other paragraphs, are valid for wheel control only. Appropriate force

requirements must be established for side stick controllers. Therefore, Special Condition No. 14 is proposed.

2. Controller Coupling

The side stick controllers are not mechanically interconnected, as in conventional airplanes; instead, electronic coupling is used to meet the requirements of § 25.671 of the FAR. Therefore, Special Condition No. 14 is proposed.

3. Pilot Control

Side stick controllers for A340 pitch and roll are a relatively new controlling method for transport airplanes. The regulations do not address these types of airplane controlling devices. Therefore, Special Condition No. 14 is proposed.

4. Autopilot Quick-Release Control Location

The A340 autopilot quick-release is located on the side stick controllers. Since the A340 do not have a yoke, the A340 cannot literally comply with the regulations. Therefore, Special Condition No. 14 is proposed.

Airplane Flight Manual

The A340 flight manual performance section will eliminate traditional performance charts and replace them with reference to a computer-based, first principles calculation method, and corresponding data files which will yield the same information. The computer program proposal is ground-based, and not related to onboard processing or up-linking. This proposal requires a different interpretation of the relevant regulations (particularly § 25.1587(b)) since the required performance information would not be in a directly usable form in the airplane flight manual (AFM) itself. Therefore, Special Condition No. 15 is proposed.

Special conditions may be issued and amended as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.17(a)(2).

Conclusion: This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplanes.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus Industrie Model A340 series airplanes.

1. Operations Without Normal Electrical Power

In lieu of compliance with § 25.1351(d), it must be demonstrated by test, or combination of test and analysis, that the airplane can continue safe flight and landing with inoperative normal engine generated electrical power (electrical power sources excluding the battery and any other standby eletrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

Discussion: The Electronic Flight Control System installations establish the criticality of the electrical power generation and distribution systems, since the loss of all electrical power may be catastrophic to the aircraft.

The A340 fly-by-wire control system requires a continuous source of electrical power in order to maintain the flight control system. The current § 25.1351(d), "Operation Without Normal Electrical Power," requires safe operation in visual flight rules (VFR) conditions for at least five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical control cables for flight control while the crew took time to sort out the electrical failure and was able to re-establish some of the electrical power generation capability.

In order to maintain the same level of safety associated with traditional designs, the A340 design must not be time limited in its operation without the normal source of engine generated electrical power. It should be noted that service experience has shown that the loss of all electrical power which is generated by the airplane's engines is not extremely improbable. Thus, it must be demonstrated that the airplane can continue safe flight and landing with the use of its emergency electrical power systems (batteries, auxiliary power unit, hydraulic motor driven generator, etc.). This emergency electrical power system must be able to power loads that are essential for continued safe flight and landing. Also, the availability of emergency electrical power sources, including any credit taken for APU start reliability, must be validated in a manner acceptable to the FAA.

The emergency electrical power system must be designed to supply:

—Electrical power required for immediate safety, which must continue to operate without the need for crew action following the loss of the normal electrical power system;

—Electrical power required for continued safe-flight and landing;

—Electrical power required to restart the engines.

For compliance purposes:

1. A test demonstration of the loss of normal engine generated power is to be established such that:

a. The failure condition should be assumed to occur during night instrument meteorological conditions (IMC) at the most critical phase of flight relative to the electrical power system design and distribution of equipment loads on the system.

b. After the unrestorable loss of the source of normal electrical power, the airplane engines must be capable of being restarted and operations continued in IMC until visual meteorological conditions (VMC) can be reached. (A reasonable assumption can be made that turbojet transport category airplane will not have to remain in IMC for more than 30 minutes after experiencing the loss of normal electrical power).

c. After 30 minutes of operation in IMC, the airplane should be demonstrated to be capable of continuous safe flight and landing in VMC conditions. The length of time in VMC conditions must be computed based on the maximum flight duration capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.

2. Since the availability of the emergency electrical power system operation is necessary for safe-flight, this system must be available before each flight.

3. The emergency electrical power system must be shown to be

satisfactorily operation in all flight regimes.

2. Electronic Flight Control System (EFCS) Failures and Mode Annunciation

(a) In lieu of compliance with § 25.672(c) of the FAR, it must be shown that after any single failure or combination of failures of the flight control system that are not shown to be extremely improbable—

(1) The airplane, has the following characteristics:

(i) Suitable handling qualities (Refer to proposed FAA Special Condition No. 12, entitled "Flight Characteristics,", paragraph (a) "Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure causes."

(ii) Structural margins as identified by proposed FAA Special Condition No. 5, entitled "Interaction of Systems and Structures."

(2) The airplane has suitable handling qualities for continued safe-flight and landing.

(b) In addition to § 25.672 of the FAR—

(1) If the design of the electronic flight control system or any other automatic or power-operated system has submodes of operation that significantly change or degrade the flight or operating characteristics of the airplane, a means must be provided to indicate to the crew the current submode of operation. Crew procedures must be available to ensure safe and proper operation for the annunciated flight control submode; and

(2) The electronically signalled flight control system (including its electrical or hydraulic power supplies), must be designed so that its total loss is shown to be extremely improbable if its loss would prevent continued safe flight and landing.

Discussion: The A340 flight control system requires the use of electronics in order to maintain safe flight and landing. To achieve this level of availability, the system architecture utilizes redundant elements as well as alternative operational modes to deal with losses of equipment and/or signal interfaces. For the case of temporary loss of the electronics, short term safe-flight is anticipated to be maintained through the use of mechanical control of the rudder and pitch trim. Parts 25.671 and 25.672 in Subpart D "Design and Construction," are the pertinent rules covering flight control systems. Section 25.672 contains the design guidelines for automatic and power-operated systems for the aerodynamic control surfaces. This regulation, in essence, states that the design must: (a) Provide a warning for failures in the system which could result in an unsafe condition which requires crew attention (i.e., a "red" condition of § 25.1322); (b) allow for crew counteraction of failures specified in § 25.671(c) either by deactivation or overriding the control movement in a normal sense; (c) that single failures of the system do not impair the handling qualities below a level needed to permit continued safe flight and landing after control system malfunctions associated with (1) all single failures excluding jams, (2) combinations of failures not shown to be extremely improbable excluding jams, and (3) jams in any control position which can be encountered in flight; and (d) the airplane be controllable if all engines fail.

These rules have been considered adequate for stability and automatic flight systems in traditional aircraft designs since those designs did not have submodes of operation (they are either on or off), the aircraft handling qualities were adequate with the systems either on or off, and the systems were not actively participating in load relieving functions. However, with the A340, elements of the automatic system must remain on in order to maintain safe-flight and landing. Therefore, in order to maintain the level of safety provided for by the regulations for these novel and unusual features, special conditions are necessary.

Suitable handling qualities, for the purpose of this special condition are those determined from compliance with Special Condition No. 12(a).

Note that Special Condition No. 12(a) is also proposed in lieu of § 25.672(c).

3. Command Signal Integrity

In addition to compliance with § 25.671 of the FAR, it must be shown that the Electronic Flight Control System (EFCS) signals cannot be altered unintentionally, or that the altered signal characteristics are such that:

(a) Stable gain and phase margins will be maintained for all aerodynamically closed loop flight control systems.

(b) The control authority characteristics will not be degraded to a level that will prevent continued safe-flight and landing.

Failures which would otherwise prevent the airplane from continued safe flight and landing need not be considered, provided they are extremely improbable.

Discussion: The A340 will be using fly-by-wire (FBW) as a means to command and control flight control surface actuators. In the FBW design being presented, command and control of the control surfaces will be achieved by electronic interfaces (AC, DC, or digital data buses). These interfaces involve not only the direct commands to the control surfaces, but all the feedbacks and sensor signals as well.

In fly-by-wire systems, the occurrence of spurious signals coupling into the command signal loop may lead to unacceptable system response, with consequent flight hazards. Malfunctions could cause system instabilities, loss of function or freeze-up of the control actuator. It is imperative that the command signal remain continuous within the sampling interval and no command signal discontinuities shall be observed when sampling successive finite time intervals.

The current regulations, which primarily address hydro-mechanical flight control systems, §§ 25.671 and 25.672, make no specific or implied reference that command and control signals remain unaltered from internal or external interferences. Present designs feature steel cables and pushrods as a means to control hydraulic surface actuators. These designs are inherently immune to electromagnetic spurious signals, unlike the FBW designs which may exhibit a safe degree of immunity only after special attention.

It should be noted that:

—The proposed working "signals cannot be altered unintentionally" is used in the Special Condition to emphasize the need for design measures to protect the FBW control system from the effects of electromagnetic interference (EMI and RF), fluctuations in electrical power, accidental damage caused by contained rotary machinery debris (engine burst is addressed in § 25.903d), environmental factors such as temperature, local fires, and any other spurious signals or disruptions that affect the command signals as they are being transmitted from their source of origin to the Power Control Actuators.

—A gain margin is the minimum change in loop gain, at nominal phase, which results in an instability beyond that allowed as a residual oscillation.

—A phase margin is the minimum change in phase, at a nominal loop gain, which results in an instability.

—"Control authority characteristics" refers to the ability of the aerodynamic control surfaces to move the airplane.

—"Aerodynamically closed loop" are those elements (electrical signals, cables, bellcranks, etc.) which connect sensors and command signals to the Power Control Actuator that moves

the aerodynamic control surface (aileron, spoiler, stabilizer, etc.).

4. Protection from Lightning and Unwanted Effects of High Intensity Radiated Fields (HIRF)

(a) In the absence of specific requirements for protection from the unwanted effects of HIRF, the following apply:

Each airplane system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

Discussion: The Airbus A340 airplanes will utilize electrical and electronic systems which perform critical functions. These systems include the electronic displays, integrated avionics computer, electronic/engine controls, engine overspeed/ overtemperature protection, etc. The existing airworthiness regulations do not contain adequate or appropriate safety standards for the protection from the effects of HIRF which are external to the airplane.

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of HIRF energy from ground-based and airborne transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, the immunity of the airplane to HIRF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

For the purposes of this special condition, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

At this time the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service. Therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the critical systems, as installed in the airplane, are protected from the external HIRF threate environment defined in the following table:

Frequency	Field strength (V/m)	
	Peak	Average
10 KHz–500 KHz	60	60
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	150	33
200 MHz–400 MHz	56	33
400 MHz–1 GHz	4020	935
1 GHz–2 GHz	7850	1750
2 GHz–4 GHz	6000	1150
4 GHz–6 GHz	6800	310
6 GHz–8 GHz	3600	668
8 GHz–12 GHz	5100	1270
12 GHz–18 GHz	3500	551
18 GHz–40 GHz	2400	750

or,

(2) The applicant may demonstrate by a laboratory test that the critical system elements and their associated wiring harnesses can withstand a peak electromagnetic field strength of 100 volts per meter, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz.

Compliance Method:

This paragraph describes an acceptable method of showing compliance with the HIRF energy protection requirements.

(1) Compliance Plan: The applicant should present a plan for the cognizant airworthiness authority approval, outlining how compliance with the HIRF energy protection requirements will be attained. This plan should also propose pass/fail criteria for the operation of critical systems in the HIRF environment.

(2) System Criticality: A hazard analysis should be performed by the applicant for approval by the cognizant airworthiness authority to identify electrical and/or electronic systems which perform critical functions. These systems are candidates for the application of HIRF energy protection requirements.

(3) Compliance Verification: Compliance with the HIRF energy protection requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof as acceptable to the cognizant airworthiness authority. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environmental condition.

(4) Pass/Fail Criteria: Acceptable system performance is attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to the required electromagnetic fields. Deviations from system specification may be acceptable depending on an independent assessment of the deviations for each application.

(5) Test Methods and Procedures: RTCA document DO–160C. Section 20, provides information on acceptable test procedures. In addition, the following information on modulation is presented to supplement that found in DO–160C.

Equipment and subsystem radiated susceptibility qualification tests should be conducted by slowly scanning the entire frequency spectrum with an unmodulated signal which produces the required average electric field strength at the equipment under test (EUT) and its wiring. A peak level detector should be used to monitor the peak values of the signal and these values should be recorded at each test point. The EUT should not be damaged by this test and should operate normally for frequencies below 400 MHz. Deviations from normal operation for test frequencies above 400 MHz should be recorded. The test should be repeated with an appropriate modulation applied to the test signal. At each test point, the amplitude of the RF test signal should be adjusted to the peak values recorded during the unmodulated test. The modulation should be selected as the signal most likely to disrupt the operation of the equipment under test based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for CRT displays may be susceptible to 400 Hz sinusoidal modulation. If the worst case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1KHz sine wave with 80% depth of modulation in the frequency range from 10 KHz to 400 MHz and 1KHz square wave with greater than 90% depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal caused deviations from normal operation of the EUT, several different modulating signals with various waveforms and frequencies should be applied.

Modern laboratory equipment may not be able to continually scan the spectrum in the manner of older analog equipment. These units will only generate discrete test frequencies. For such equipment, the number of test points and the dwell time at each test point must be specified. For each decade of the frequency spectrum (a ten times increase in frequency, i.e., 10 KHz to 100 KHz) there should be at least 25 test points, and for the decades from 10 MHz to 100 MHz, and 100 MHz to 1 GHz,

there should be a minimum of 180 test points each. The dwell time at each test point should be at least 0.5 second.

(6) Data Submittal: An accomplishment report should be submitted to the cognizant airworthiness authority showing fulfillment of the HIRF energy protection requirements. This report should contain test results, analysis, and other pertinent data.

(7) Maintenance Requirements: The applicant (manufacturer) must provide maintenance requirements to assure the continued airworthiness of the installed system(s)."

(b) In addition to compliance with the requirements of §§ 25.581 and 25.954 of the FAR concerning lightning protection:

(1) Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

(2) Each essential function of new or modified electronic systems or installations must be protected to ensure that the essential function can be recovered in a timely manner after the airplane has been exposed to lightning.

For the purpose of these special conditions, the following definitions apply:

Critical Functions: Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions: Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

Discussion: Lightning interaction with an airplane can result in numerous problems. Physical damage (direct effects) and result from a lightning attachment to the airplane. Such damage is characterized by burning, eroding, and blasting, and is the consequence of either the extreme heat loading and accompanying acoustic shock wave or deforming by magnetic forces from the high current component of lightning. An additional effect (indirect effect) results from the fast changing electrical and magnetic fields produced by the high currents of a direct strike. These fields can couple voltage transients into the airplane wiring and subsequently reach the electrical and electronic systems within.

The A340 is being designed with electrical and electronic systems which perform critical and essential functions. These systems may be susceptible to disruption to both the command/response signals and the operational mode logic as a result of electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing operating airplanes, special conditions will be needed which require that systems performing critical and essential functions, including all dispatchable states, be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning. To provide a means of compliance to these proposed special conditions, a clarification of the threat definition for lightning is needed.

The following "threat definition", based on FAA Advisory Circular (AC) 20-136, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition:

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon the systems installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems.

To evaluate the induced effects to these systems, three considerations are required:

1. First Return Stroke (Severe Strike—Component A, or Restrike—Component D) This external threat needs to be evaluate to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. Multiple Stroke Flash: (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect systems performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation; and,

3. Multiple Burst: (Component H) In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes made up of repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10 microseconds, the maximum is 50 microseconds. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. The individual "Multiple Burst" Component H waveform is defined below. The following current waveforms constitute the "Severe Strike" (Component A), "Restrike/Swept/Stoke" (Component D), "Multiple Stoke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential equation:

S-340999 0012(00)(09-OCT-92-21:06:18)

$i(t) = I_o (e^{-at} - e^{-bt})$ where:

t = time in seconds,
i = current in amperes, and

	Severe stroke (component A)	Restrike (component D)	Multiple stroke (⅓ component D)	Multiple burst (component H)
I_o(a) =	218,810	109,405	54,703	10,572
a(s^{-1}) =	11,354	22,708	22,706	187,191
b(s^{-1}) =	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

i_{peak} =	200KA	100KA	50KA	10KA
$(di/dT)_{max}$ (A/S)t=0+ sec =	1.4×10^{11}	1.4×10^{11}	0.7×10^{11}	2×10^{11}
di/dt (A/S) =	1.0×10^{11}@t = .5 μs	1.0×10^{11}@t = .25 μs	0.5×10^{11}@t = .25 μs	
Action Integral (A^2s) =	2.0×10^6	$.25 \times 10^6$	$.0625 \times 10^6$	

5. Interaction of Systems and Structures

(a) *General.* For an airplane equipped with flight control systems, load alleviation systems or flutter control systems, which directly or as a result of a failure or malfunction affect its structural performance, the influence of these systems and their failure conditions shall be taken into account in showing compliance with subparts C and D of part 25 of the Federal Aviation Regulations (FAR).

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the systems from all the deterministic limit conditions specified in subpart C, taking into account any special behavior of such systems or associated functions or any effect on the structural performance of the airplane which may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds or any other system non-linearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

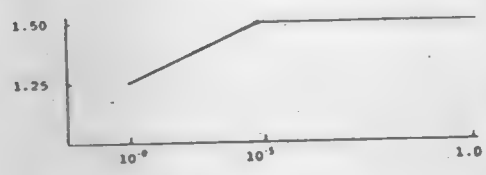
(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of non-linearities must be investigated beyond limit conditions to ensure the behavior of the systems presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that make it impossible to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

(c) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) *At the time of occurrence.* Starting from 1–g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure. The airplane must be able to withstand these loads, multiplied by an appropriate factor of safety, related to the probability of occurrence of the failure. These loads should be considered as ultimate loads for this evaluation. The factor of safety is defined as follows:

Factor of Safety at Time of Occurrence



Probability of occurrence (per hour)

(i) The loads must also be used in the damage tolerance evaluation required by § 25.571(b) if the failure condition is probable. The loads may be considered as ultimate loads for the damage tolerant evaluation.

(ii) Freedom from flutter and divergence must be shown at speeds up to V_D or $1.15V_C$, whichever is greater. However, at altitudes where the speed is limited by Mach number, compliance need be shown only up to M_D, as defined by § 25.335(b). For failure conditions which result in speed increases beyond V_C/M_C, freedom from flutter and divergence must be shown at increased speeds, so that the above margins are maintained.

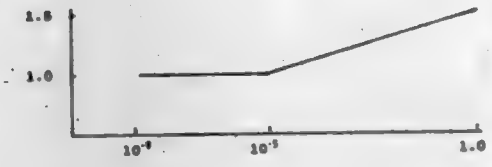
(iii) Notwithstanding subparagraph (1) of this paragraph, failures of the system which result in forced structural vibrations (oscillatory failures) must not produce peak loads that could result in permanent deformation of primary structure.

(2) *For the continuation of the flight.* For the airplane, in the failed configuration and considering any appropriate flight limitations, the following apply:

(i) Static and residual strength must be determined for loads induced by the failure condition if the loads could continue to the end of the flight. These loads must be combined with the deterministic limit load conditions specified in subpart C.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in subparagraph (2)(i) of this paragraph multiplied by a safety factor depending on the probability of being in this failure state. The factor of safety is defined as follows:

Factor of safety for Continuation of Flight

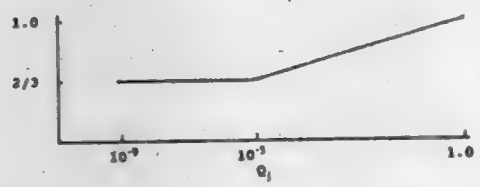


Q_j = Probability of being in failure state j
$Q_j = T_j * P_j$ where:
T_j = Average time spent in failure condition
P_j = Probability of occurrence of failure mode

Note: If P_j is greater than 10^{-4} per flight hour then a safety factor of 1.5 must be used.

(iii) For residual strength substantiation as defined in § 25.571(b), for structures also affected by failure of the system and with damage in combination with the system failure, a reduction factor may be applied to the residual strength loads of § 25.571(b). However, the residual strength level must not be less than the 1-g flight load combined with the loads introduced by the failure condition plus two-thirds of the load increments of the conditions specified in § 25.571(b) in both positive and negative directions (if appropriate). The reduction factor is defined as follows:

Residual Strength Reduction Factor

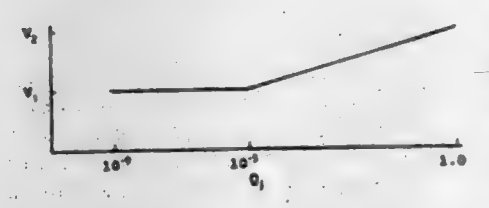


$Q_j = T_j * P_j$ where:
T_j = Average time spent in failure condition
P_j = Probability of occurrence of failure mode

Note: If P_j is greater than 10^{-3} per flight hour then a safety factor of 1.0 must be used.

(iv) Freedom from flutter and divergence must be shown up to a speed determined by the following figure:

Flutter Clearance Speed



$V_1 = V_D$ or 1.15 V_c whichever is greater.
V_2 = Flutter clearance speed required for normal (unfailed) conditions by § 25.629.

$Q_j = T_j * P_j K$ where:
T_j = Average time spent in failure condition
P_j = Probability of occurrence of failure mode.

Note: If P_j is greater than 10^{-3} then the flutter clearance speed must not be less than V_2.

(v) Freedom from flutter and divergence must also be shown up to V_1, in the above figure, for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(vi) If the time likely to be spent in the failure condition is not small compared to the damage propagation period, or if the loads induced by the failure condition may have a significant influence on the damage propagation, then the effects of the particular failure condition must be addressed and the corresponding inspection intervals adjusted to adequately cover this situation.

(vii) If the mission analysis method is used to account for continuous turbulence, all the systems failure conditions associated with their probability must be accounted for in a rational or conservative manner in order to ensure that the probability of exceeding the limit load is not higher than the prescribed value of the current requirement.

(d) *Warning considerations.* For system failure detection and warning, the following apply:

(1) Before flight, the system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level as intended in paragraph (b) of this special condition. The crew must be made aware of these failures, if they exist, before flight.

(2) An evaluation must be made of the necessity to signal, during the flight, the existence of any failure condition which could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations. The assessment of the need for such signals must be carried out in a manner consistent with the approved general warning philosophy for the airplane.

(3) During flight, any failure condition, not shown to be extremely improbable, in which the safety factor existing between the airplane strength capability and loads induced by the deterministic limit conditions of subpart C of part 25 is reduced to 1.3 or less must be signaled to the crew if appropriate procedures and limitations can be provided so that the crew can take action to minimize the associated reduction in airworthiness during the remainder of the flight.

(e) *Dispatch with failure conditions.* If the airplane is to be knowingly dispatched in a system failure condition that reduces the structural performance, then operational limitations must be provided whose effects combined with those of the failure condition allow the airplane to meet the structural requirements as described in paragraph (b) of this special condition. Subsequent system failures must also be considered.

Discussion

This special condition is intended to be applicable to flight controls, load alleviation systems and flutter control systems. The criteria provided by the special condition only address the direct structural consequences of the systems responses and performances and therefore cannot be considered in isolation but should be included into the overall safety evaluation of the airplane. The presentation of these criteria may in some instances duplicate standards already established for this evaluation. The criteria are applicable to structure, the failure of which could prevent continued safe flight and landing.

The following definitions are applicable to this special condition.

1. Structural performance: Capability of the airplane to meet the requirements of Part 25.

2. Flight limitations: Limitations which can be applied to the airplane flight conditions following an inflight occurrence and which are included in the flight manual (e.g., speed limitations, avoidance of severe weather conditions, etc.).

3. Operations limitations: Limitations, including flight limitations, which can be applied to the airplane operating conditions before dispatch (e.g., payload limitations).

4. Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in this special condition should be understood as defined in AC 25.1309–1.

5. Failure condition: The term failure condition is defined in AC 25.1309–1, however this special condition applies only to system failure conditions which have a direct impact on the structural performance of the airplane (e.g., failure conditions which induce loads or change the response of the airplane to inputs such as gusts or pilot actions).

6. Design Dive Speed: In lieu of compliance with § 25.335(b)(1) of the FAR, if the flight control system includes functions which act automatically to initiate recovery before the end of the 20 second period specified in § 25.335(b)(1) the greater of the speeds resulting from the following conditions may be used:

(a) From an initial condition of stabilized flight at V_C/M_C, the airplane is upset so as to take up a new flight path 7.5 degrees below the initial path. Control application, up to full authority, is made to try to maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a load factor of 1.5g (0.5g acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. The speed increase occurring in this maneuver may be calculated, if reliable or conservative aerodynamic data are used. Power as specified in § 25.175(b)(1)(iv) of the FAR, is assumed until recovery is made, at which time power reduction and the use of pilot controlled drag devices may be assumed.

(b) From a speed below V_C/M_C, with power to maintain stabilized level flight at this speed, the airplane is upset so as to accelerate through V_C/M_C, at a flight path 15 degrees below the initial path (or at the steepest nose down attitude that the system will permit with full control authority if less than 15 degrees). The pilots controls may be in the neutral position after reaching V_C/M_C and before recovery is initiated.

(c) Recovery may be initiated three seconds after operation of high speed warning system by application of a load of 1.5g (0.5g acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which is authorized up to the highest speed reached in this maneuver, may be used. The interval between successive pilot actions must not be less than one second.

Discussion

This special condition relates to the structural design dive speed which is established at a sufficient margin above the operating speed to provide structural integrity in the event of inadvertent overspeed conditions. this special condition establishes criteria for determining the minimum value of the design dive speed taking into account the automatic operation of speed protection systems.

7. Design Maneuver Requirements

(a) In lieu of compliance with § 25.331(c)(1) of the FAR, the airplane is assumed to be flying in steady level flight (point A1 within the maneuvering envelope of § 25.333(b)) and, except as limited by pilot effort in accordance with Special Condition No. 9 concerning pilot effort forces, the cockpit pitching control device is suddenly moved to obtain extreme positive pitching acceleration (nose up). In defining the tail load condition, the response of the airplane must be taken into account. Airplane loads which occur subsequent to the point at which the normal acceleration at the center of gravity exceeds the maximum positive limit maneuvering factor, n, need not be considered.

(b) In addition to the requirements of § 25.331(c), it must be established that pitch maneuver loads induced by the system itself (e.g. abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

(c) In lieu of compliance with § 25.349(a) of the FAR, the following conditions, speeds, spoiler and aileron deflections (except as the deflections may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the required aileron and spoiler deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b).

(1) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(2) AT V_a, sudden deflection of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

(3) AT V_c, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate of roll not less than that obtained in paragraph (2).

(4) AT V_d, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate of roll not less than one third of that obtained in paragraph (2) of this paragraph.

(5) It must also be established that roll maneuver loads induced by the system itself (i.e. abrupt changes in orders made possible rather than mechanical combination of different inputs) are acceptably accounted for.

(d) In lieu of compliance with § 25.351, the airplane must be designed for loads resulting from the conditions specificed in sub-paragraphs (a) and (b) of this paragraph. Unbalanced aerodynamic moments about the center of gravity must be reacted in a rational or conservative manner considering the principal masses furnishing the reacting inertia forces. Physical limitations of the aircraft from the cockpit yaw control device to the control surface deflection, such as control stop position, maximum power and displacement rate of the servo controls, and control law limiters may be taken into account.

(1) Maneuvering. At speeds from V_{mc} to V_a, the following maneuvers must be considered. In computing the tail loads, the yawing velocity may be assumed to be zero:

(i) With the airplane in unaccelerated flight at zero yaw, it is assumed that the cockpit yaw control device (pedal) is suddenly displaced (with critical rate) to the maximum deflection, as limited by the stops.

(ii) With the cockpit yaw control device (pedal) deflected as specified in sub-paragraph (1) of this paragraph, it is assumed that the airplane yaws to the resulting side slip angle (beyond the static side slip angle).

(iii) With the airplane yawed to the static sideslip angle with the cockpit yaw control deflected as in sub-paragraph (1) of this paragraph, it is assumed that the cockpit yaw control device is returned to neutral.

8. Limit Pilot Forces

For airplanes equipped with stick controls designed for forces to be applied by one wrist and not arms, the limit pilot forces are as follows:

(a) For all components between and including the handle and its control stops.

Pitch	Roll
Nose Up 200 lbf..... Nose down 200 lbf.....	Nose left 100 lbf. Nose right 100 lbf.

(b) For all other components of the side stick control assembly, but excluding the internal components of the electrical sensor assemblies, to avoid damage as a result of an in-flight JAM.

Pitch	Roll
Nose Up 125 lbf..... Nose down 125 lbf.....	Nose left 50 lbf. Nose right 50 lbf

9. Tailplane Tank Emergency Landing Loads

In addition to the requirements of § 25.963(d), the following applies:

(a) The tailplane tank in the horizontal stabilizer must be able to resist rupture and to retain fuel, under the inertia forces prescribed for the emergency landing conditions in § 25.561.

(b) For the side load condition the quantity of fuel need not exceed 85% when determining pressure loads outside the fuselage contour for the 3g lateral direction.

10. *Limit Engine Torque*

In lieu of § 25.361(b) the following special condition is proposed:

For Turbine engine and auxiliary power unit installations, the mounts and local supporting structure must be designed to withstand each of the following:

(a) The maximum limit torque load imposed by;

(1) Sudden deceleration due to a malfunction which could result in a temporary loss of power or thrust capability, and could cause a shut down due to vibrations, and

(2) The maximum acceleration of the engine or auxiliary power unit.

(b) The maximum torque load, considered as ultimate, imposed by sudden engine or auxiliary power unit stoppage due to a structural failure including fan blade failure.

(c) The load condition defined in paragraph (b) of this special condition is also assumed to act on adjacent airframe structure, such as the wing and fuselage. This load condition is multiplied by a factor of 1.25 to obtain ultimate loads when the load is applied to the wing and fuselage structure.

11. *Ground Load Conditions for Center Landing Gear*

Notwithstanding § 25.477, the requirements of §§ 25.473 and 25.479 through 25.485 apply except as noted:

(a) In addition to the requirements of § 25.473, the landing should be considered on a level runway and on a runway having a convex upward shape that may be approximated by a slope of 1.5 percent with the horizontal at main landing gears stations. The maximum loads determined from these two conditions must be applied to each main landing gear and to the central landing gear.

(b) The requirements of § 25.483 apply and, in addition, the condition represented by the following figure also applies:

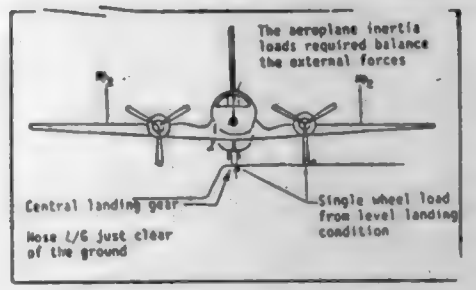


Figure 1. Center gear landing condition

(c) In lieu of the requirements of § 25.485, the following apply:

(1) The airplane is considered to be in the level attitude with only the main and central wheels contacting the ground.

(2) Vertical reactions of one-half of the maximum vertical reaction obtained at each main and central gear in the level landing conditions should be considered. The vertical loads must be combined with side loads that for the main gear are 0.8 of the vertical reaction (on one side) acting inward and 0.6 of the vertical reaction (on the other side) acting outward, and for the central gear are 0.7 of the vertical reaction acting in the same direction as main gear side loads. (Drag load=0)

(d) In lieu of § 25.489 "Ground handling conditions," the following applies: The airplane should be considered to be on a level runway and on a runway having a convex upward shape that may be approximated by a slope of 1.5 percent with the horizontal at main landing gears stations. The ground reactions must be distributed to the individual landing gear units in a rational or conservative manner (zero lift, shock struts in the static position).

(e) In lieu of the requirements of § 25.503, the following apply:

(1) The airplane is assumed to pivot about one of the outer main gears with the brakes locked on the selected gear. The limit vertical load factor must be 1.0 and the coefficient of friction must be 0.8.

(2) The airplane is assumed to be in static equilibrium, with the loads being applied at the ground contact points.

(3) All of the main gear units must be designed for the scrubbing or torsion loads, or both, induced by pivoting during ground maneuvers produced by;

(i) Towing at the nose gear, no brakes applied, and

(ii) Application of symmetrical or unsymmetrical forward thrust to aid pivoting and with or without braking on the outside main gear closest to the pivot center.

(f) The following applies to the central gear in lieu of § 25.723 "Shock absorption tests":

(1) The central landing gear should not fail in a test demonstrating its reserve energy absorption capacity at design landing weight assuming airplane lift no greater than the airplane weight acting during an impact simulating:

(i) A center gear descent velocity of 120 percent of the maximum aircraft descent velocity at the time of central landing gear ground contact, or

(ii) A 12 fps airplane landing impact taking into account both main and central gear acting during the impact, whichever is more critical.

12. *Flight Characteristics*

(a) *Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases.* In lieu of compliance with § 25.672(c) and affected paragraphs of subpart B and affected paragraphs of subpart B of the FAR, a handling qualities rating system will be used for evaluation of EFCS configurations resulting from single and multiple failures not shown to be extremely improbable. The handling qualities ratings are:

(1) Satisfactory: Full performance criteria can be met with routine pilot effort and attention;

(2) Adequate: Adequate for continued safe flight and landing; full or specified reduced performance can be met, but with heightened pilot effort and attention.

(3) Controllable: Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelop and/or reconfiguration so that the handling qualities are at least adequate. Handling qualities will be allowed to progressively vary with failure state, atmospheric disturbance level, and flight envelope. Specifically within the normal flight envelope, the pilot-rated handling qualities must be satisfactory/adequate in moderate atmospheric disturbance for probable failures, and must not be less than adequate in light atmospheric disturbance for improbable failures.

(b) *Longitudinal Stability.* In lieu of compliance with the requirements of §§ 25.171, 25.173, 25.175, and 25.181(a) of the FAR, the airplane must be shown to have suitable dynamic and static longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance.

(c) *Lateral-Directional Stability.* (1) In lieu of compliance with § 25.171 of the FAR, the airplane must be shown to have suitable static lateral-directional

stability in any condition normally encountered in service, including the effects of atmospheric disturbance.

(2) In lieu of compliance with §§ 25.177(b) and 24.177(c), the following applies: In straight, steady, sideslip (unaccelerated forward slips) the rudder control movements and forces must be substantially proportional to the angle of sideslip, and the factor of proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has suitable sideslip indication, there must be enough bank and lateral control deflection and force accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

(d) *Control Surface Awareness.* In addition to compliance with §§ 25.143, 25.671, and 25.672 of the FAR, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelop and/or continuation of safe flight requires a specific crew action, a suitable flight control position annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action.

Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

13. *Flight Envelope Protection*

In the absence of specific requirements for flight envelope protection, the following apply:

(a) *General Limiting Requirements*—(1) Normal Operation. (i) Onset characteristics of each envelope protection feature must be smooth, appropriate to the phase of flight and type of maneuver, and not in conflict with the ability of the pilot to satisfactorily change airplane flight path, speed, or attitude as needed.

(ii) Limited values of protected flight parameters (and if applicable, associated warning thresholds) must be compatible with:

(A) Airplane structural limits;

(B) Required safe and controllable maneuvering of the airplane; and

(C) Margin to critical conditions. Unsafe flight characteristics/conditions must not result in dynamic maneuvering, airframe and system tolerances (both manufacturing and in-service), and non-steady atmospheric conditions, in any appropriate combination and phase of flight, can produce a limited flight parameter beyond the nominal design limit value.

(iii) The airplane must be responsive to intentional dynamic maneuvering to within a suitable range of the parameter limit. Dynamic characteristics such as damping and overshoot must also be appropriate for the flight maneuver and limit parameter in question.

(iv) When simultaneous envelope limiting is engaged, adverse coupling or adverse priority must not result.

(2) *Failure States.* Electronic flight control system (including sensor) failures must not result in a condition where a parameter is limited to such a reduced value that safe and controllable maneuvering is no longer available. The flightcrew must be alerted by suitable means if any change in envelope limiting or maneuverability is produced by single or multiple failures of the EFCS not shown to be extremely improbable.

(3) *Abnormal Attitudes.* In case of abnormal attitude or excursion of any other flight parameters outside the protected flight boundaries, the operation of the EFCS, including the automatic protection functions, must not hinder airplane recovery.

(b) *Angle-of-Attack Limiting*—(1) Part 1, § 1.2, Abbreviations and Symbols.

(i) In lieu of the definition of V_s in § 1.2, the following applies in subparts B, E, F, and G of part 25 of the FAR: "V_{SR} means the reference stalling speed."

(ii) In lieu of the definition of V_{SO} given in § 1.2, the following applies: "V_{SRO} means the reference stalling speed in the landing configuration."

(iii) In lieu of the definition of V_{SI} given in § 1.2, the following applies: "V_{SRI} means the reference stalling speed in a specific configuration."

(iv) In addition to the definitions given, the following also apply:

"V_{REF} means the steady landing approach speed."

"V_{FTO} means final takeoff speed."

"V_{SW} means the speed at which onset of natural or artificial stall warning occurs."

(2) Part 25—Airworthiness Standards: Transport Category Airplanes. (i) In lieu of compliance with § 25.21(b), the following applies: "The flying qualities will be evaluated at speeds based upon the forward CG stalling speed."

(ii) In lieu of compliance with § 25.103(a), the following applies: "V_{SR} is a calibrated airspeed as defined in paragraph (c) of this section. V_{SR} is determined with—"

(iii) In lieu of compliance with § 25.103(a)(1), the following applies: "Stalling speed may be determined at not greater than IDLE thrust. (Note: automatic go-around thrust application feature must be disengaged)."

(iv) In lieu of compliance with § 25.103(a)(1), the following applies: "Engines idling, or, if that resultant thrust causes an appreciable decrease in stalling speed, not more than zero thrust at the stall speed;"

(v) Compliance with § 25.103(a)(2) is not required.

(vi) In lieu of compliance with 25.103(a)(3), the following applies: "The airplane in other respects (such as flaps and landing gear) in the condition existing in the test in which V_{SR} is being used;"

(vii) In lieu of compliance with § 25.103(a)(4), renumber the old 25.103(a)(3) and change "V_S" to "V_{SR}."

(viii) In lieu of compliance with § 25.103(a)(5), the following applies: "The center of gravity position that results in the highest value of reference stall speed; and"

(ix) In addition to compliance with § 25.103(a)(5), the following also applies: "The airplane trimmed for straight flight at a speed selected by the applicant, but not less than 1.13 V_{SR} and not greater than 1.30V_{SR}."

(x) In lieu of compliance with § 25.103(b), the following applies: "Starting from the stabilized trim condition, apply elevator control to decelerate the airplane so that the speed reduction does not exceed one knot per second."

(xi) Compliance with §§ 25.103 (b)(1) and (b)(2) is not required.

(xii) In lieu of compliance with § 25.103(c), the following applies: "The reference stall speed, V_{SR}, may not be less than a 1-g stall speed, which is a calibrated airspeed determined in the stalling maneuver and expressed as: $V_{SR}=V_{CLMAX}/\sqrt{n_{ZW}}$ where $-V_{CLMAX}$=Speed occurring when lift coefficient is first a maximum; and n_{ZW}=Flight path normal load factor (not greater than 1.0) at V_{CLMAX}."

(xiii) In lieu of compliance with § 25.107(b)(1), the following applies: "1.13V_{SR} for * * *"

(xiv) In lieu of compliance with § 25.107(b)(2), the following applies: "1.08V_{SR}."

(xv) In addition to compliance with § 25.107(c)(3), the following also applies: "A speed that provides the maneuvering capability specified in § 25.143(f)."

(xvi) In addition to compliance with § 25.107(f), the following also applies: "V_{FTO}, in terms of calibrated airspeed, must be selected by the applicant to

provide at least the gradient of climb required by § 25.121(c), but may not be less than—

(A) 1.18V_{SR}; and

(B) A speed which provides the maneuvering capability specified in § 25.143(f)."

Note: Unless AOA protection system production tolerances are acceptably small, so as to produce insignificant changes in performance determinations, the flight test settings for features such as Alpha floor and stall warning should be set at the low AOA tolerance limit; high AOA tolerance limits should be used for characteristics evaluations.

(xvii) In lieu of compliance with § 25.111(a) the following applies: "V_{FTO} is reached."

(xviii) In lieu of compliance with § 25.119(b), the following applies: "A climb speed of not more than V_{REF}."

(xix) In lieu of compliance with § 25.121(c) the following applies: "For four-engine airplanes, at V_{FTO} and with—"

(xx) In lieu of compliance with § 25.121(d), the following applies: "In a configuration corresponding to the normal all-engines-operating procedure in which V_{SR} for this configuration does not exceed 110 percent of the V_{SR} for the related all-engines-operating landing configuration, the steady gradient of climb may not be less than 2.1 percent for two-engine airplanes, 2.4 percent for three-engine airplanes, and 2.7 percent for four-engine airplane, with—"

(xxi) In lieu of compliance with § 25.121(d)(3), the following applies: "but not more than 1.4V_{SR}; and" In addition to compliance with § 25.121(d), the following also applies: "Landing gear retracted."

(xxii) In lieu of compliance with § 25.125(a)(2), the following applies: "A stabilized approach, with a calibrated airspeed of not less than V_{REF}, must be maintained down to the 50-foot height. V_{REF} may not be less than:

(A) 1.23 V_{SRO}, and

(B) a speed that provides the maneuvering capability specified in § 25.143(f)."

(xxiii) In addition to compliance with the requirements of § 25.143, the following also apply: "The maneuvering capabilities in a constant speed coordinated turn, as specified in the following table, must be free of stall warning, alpha floor, or other characteristics that might interfere with normal maneuvering. "The airplane must be shown to have suitable flight-path stability and control characteristics both in normal flight and when wind shear is encountered in a takeoff or landing configuration. This may be shown by an appropriate combination of simulation and flight test."

Note: Suitable characteristics are those no worse than conventionally controlled aircraft in similar conditions.

(xxiv) In addition to the requirements to § 25.143, the following also applies: "Operation of automatic features (such as significant EFCS stability or control changes) must not adversely affect normal flight operations, including during expected levels of atmospheric disturbance."

Configuration	Speed	Maneuvering bank angle	Thrust representative of
Takeoff.....	V_2	30° (stall warning).	Asymmetric.
		25° (alpha floor).	[1] Wat-limited.
Takeoff.....	V_2+XX	40°.....	All-engines-operating [2]Climb.
Enroute....	V_{FTO}	40°.....	Asymmetric Wat-limited.
Landing..::	V_{REF}	40°	Symmetric for −3° flight path angle.

(A) A combination of Weight, Altitude and Temperature (WAT) such that the thrust or power setting produces the minimum climb gradient specified in 25.121 for the flight condition.

(B) Airspeed approved for all-engines-operating initial climb.

(C) That thrust or power setting which, in the event of failure of the critical engine and without any crew action to adjust the thrust or power of the remaining engines, would result in the thrust or power specified for the takeoff condition at V_2, or any lesser thrust or power setting that is used for all-engines-operating initial climb procedures.

(xxv) In lieu of compliance with § 25.145(a), and (a)(1), the following applies: "It must be possible at any speed between the trim speed prescribed in § 25.103(a)(6) and the minimum speed obtained in conducting a stalling maneuver to pitch the nose downward so that the acceleration to this selected trim speed is prompt with—

(A) The airplane trimmed at the speed prescribed in § 25.103(a)(6);"

(xxvi) In lieu of the speeds given in the following part 25 regulations, comply with speeds as follows:

§ 25.145(b)(1)–(4), 1.3V_{SR1}, in lieu of 1.4V_{S1}.

§ 25.145(b)(1), 30 percent, in lieu of 40 percent.

§ 25.145(b)(1), reference stall speed, in lieu of stalling speed.

§ 25.145(b)(6), 1.3V_{SR1}, in lieu of 1.4V_{S1}.

§ 25.145(b)(6), V_{SW}, in lieu of 1.1V_{S1}.

§ 25.145(b)(6), 1.6V_{SR1}, in lieu of 1.7V_{S1}.

§ 25.145(c), 1.08V_{SR1}, in lieu of 1.1V_{S1}.

§ 25.145(c), 1.13V_{SR1}, in lieu of 1.2V_{S1}.

§§ 25.147(a), (a)(2), (c), (d), 1.3V_{SR1}, in lieu of 1.4V_{S1}.

§ 25.149(c), 1.13V_{SR}, in lieu of 1.2V_{S1}.

§§ 25.16(b), (c)(1), (c)(2), (c)(3), (d), 1.3V_{SR1}, in lieu of 1.4V_{S1}.

§ 25.161(e)(3), 0.013V_{SRO}^2, in lieu of 0.013VSO^2.

§§ 25.175(a)(2), (b)(1), (b)(2), (b)(3), (c)(4), 1.3V_{SR1}, in lieu of 1.4V_{S1}.

§ 25.175(b)(2)(ii), $(V_{MO}+1.3V_{SR1})/2$, in lieu of $(V_{MO}+1.4V_{S1})/2$.

§ 25.175(c), V_{SW} and 1.7V_{SR1}, in lieu of 1.1V_{S1} and 1.8V_{S1}.

§ 25.175(d), V_{SW} and 1.7V_{SRO} in lieu of 1.1V_{SO} and 1.3V_{SO}.

§ 25.175(d)(5), 1.3V_{SRO} in lieu of 1.4V_{SO}.

Note: The stability requirements of §§ 25.173 and 25.175 are further amended by the Special Condition associated with longitudinal stability.

§§ 25.177(a), (b)(1), 1.13V_{SR1} in lieu of 1.2V_{S1}.

§ 25.181(a), (b) 1.13V_{SR} in lieu of 1.2V_S.

§ 25.201(a)(2), 1.5V_{SR1} in lieu of 1.6V_{S1} and,V_{SR1} in lieu of V_{S1}, and reference stall speeds in lieu of stalling speed.

(xxvii) In lieu of compliance with § 25.207(a), the following applies: "With the AOA limiter operating normally, stall warning is not required. For failure states with the AOA limiter inoperative, sufficient stall warning margin must be provided in the following straight and turning flight conditions:

(A) Stall-free characteristics must be shown in power-off, straight ahead stall approaches to a speed five percent (but not less than five knots) below V_{SW}.

(B) Stall-free characteristics must be shown in turning flight stall approaches, at entry rates up to three knots per second, when recovery is initiated not less than one second after the onset of stall warning."

(xxviii) The requirements of § 25.207(c) are not applicable.

(xxix) In lieu of compliance with the requirements of §§ 25.233(a) and 25.237(a), (b)(1), and (b)(2), the following applies: "0.2V_{SRO} in lieu of 0.2V_{SO}."

(xxx) In lieu of the requirements of § 25.735(f)(2), the following applies: "$KE=0.0443(WV^2/N)$"; Change the V definition to read: "$V=V_{REF}/1.3$" and: "V_{REF} = Airplane reference landing speed, in knots, at the maximum design landing weight and the lowest authorized landing flap setting for that weight at sea level; and"

(xxxi) In lieu of compliance with § 25.735(g), the following applies: "The minimum speed rating of each main wheel-brake assembly (that is, the initial speed used in the dynamometer tests) may not be more than the V used in the determination of kinetic energy in accordance with paragraph (f) of this section, assuming * * *"

(xxxii) In lieu of the speeds given in the following Part 25 regulations, comply with speeds as follows:

§ 25.773(b)(1)(i), $1.5V_{SR1}$ in lieu of $1.6V_{S1}$.
§ 25.1001(c)(1) and (c)(3), $1.3V_{SR1}$ in lieu of $1.4V_{S1}$.
§ 25.1323(c)(1), $1.23V_{SR1}$ in lieu of $1.3V_{S1}$.
§ 25.1323(c)(2), $1.23V_{SR0}$ in lieu of $1.3V_{S0}$.
§ 25.1325(e), $1.23V_{SR0}$ in lieu of $1.3V_{S0}$, and $1.7V_{SR1}$ in lieu of $1.8V_{S1}$.

(3) *Part 36—Noise Standards: Aircraft Type and Airworthiness Certification*

Note: It has been determined that the following is equivalent for the purposes of FAR part 36 certification.

(i) In lieu of the requirements of Appendix C, Sec. C36.9(e)(1), the following applies: "V_{REF}=10 knots."

(c) *Normal Load Factor (g) Limiting.* In addition to compliance with the requirements of § 25.143, the following apply:

(1) The positive limiting load factor must not be less than 2.5g (2.0g with high-lift devices extended) for the EFCS normal state.

(2) The negative limiting load factor must be equal to or more negative than minus 0.5g (0.0g with high lift devices extended) for the EFCS normal state.

Discussion

This allows an incremental plus or minus 1.5g for maneuvering flaps up, and plus or minus 1.0g flaps extended. This Special Condition does not impose an upper bound for the limiter, nor does it require that the limiter exist. If the limit is set at a value beyond the structural design limit maneuvering load factor "n" of §§ 25.333(b) and 25.337(b) and (c), there should be a very positive tactile feel built into the controller and obvious to the pilot that serves as a deterrent to inadvertently exceeding the structural limit.

(d) *High-speed Limiting.* In addition to compliance with the requirements of § 25.143 of the FAR, the following applies: "Operation of the high-speed limiter during all routine and descent procedure flight must not impede normal attainment of speeds up to overspeed warning."

(e) *Pitch and Roll Limiting.* In addition to compliance with the requirements of § 25.143 of the FAR, the following applies: "Operation of the pitch and roll limiter must not:

(1) Impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engine takeoff, plus a suitable margin to allow for satisfactory speed control.

(2) Restrict or prevent attainment of roll angles up to 65 degrees or pitch attitude necessary for emergency maneuvering."

14. *Side Stick Controllers*

(a) *Pilot Strength.* In lieu of the "strength of pilots" limits of § 25.143(c) for pitch and roll, and in lieu of specific pitch force requirements of §§ 25.145(b) and 25.175(d), the following applies: "It must be shown that the temporary and maximum prolonged force levels for the side stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal."

(b) *Controller Coupling.* In the absence of specific requirements for controller coupling, the following applies: "The electronic side stick controller coupling design must provide for corrective and/or overriding control inputs by either pilot with no unsafe characteristics. Annunciation of controller status must not be confusing to the flighcrew."

(c) *Pilot Control.* In the absence of specific requirements for side stick controllers, the following applies: "It must be shown by flight tests that the use of sidestick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control/tasks and turbulence."

(d) *Autopilot Quick-Release Control Location.* In lieu of compliance with § 25.1329(d) of the FAR, quick release (emergency) controls must be on both side stick controllers. The quick release means must be located so that it can readily and easily be used by the flighcrew.

15. *Computerized Airplane Flight Manual (AFM) Performance Information*

In the absence of specific requirements for computerized AFM performance information, the following apply: If computerized AFM performance information is used for the purpose of compliance with § 25.1587(b) of the FAR then it must be shown that such information will:

(a) Provide at least the same level of accuracy as traditional paper AFM charts.

(b) Have an availability and ease of use equivalent to that provided by paper AFM charts.

(c) Be protected from inadvertent or deliberate alteration outside of an FAA approved revision process.

Discussion

1. General Requirements.

a. Official Reference

(1) The conventional hardcopy portion of the AFM shall contain appropriate references about applicability of the FAA-approved AFM software application. Each change to FAA-approved AFM software will lead to a revision of this reference (see paragraph 3.d.).

(2) The AFM should contain a statement similar to the following: "Generation of FAA-approved performance information may be accomplished only by use of the FAA-approved AFM software application. Any modification to the FAA-approved AFM software application and/or subsequent alteration to the generated output will cancel the approval of the information, unless this change was approved by the appropriate airworthiness authority. This will be applicable independently of the printed approval status on the generated output."

b. Approved and Unapproved Information.

(1) Approved performance information must be clearly identified and segregated from unapproved information that may be presented. Therefore, the approval status of generated output must be clearly indicated on the screen and printed on each printout page of any calculated results. If the program is capable of being used for calculations to more than one certification basis (i.e., FAA rules vs. JAA rules), the certification basis being used must be identified and included on generated output.

c. Software Usage Aspects. Airbus Industrie shall substantiate that the A340 computerized AFM is designed to:

(1) Provide generated output that contains all the information required by Part 25 of the FAR in the conventional AFM that is replaced or supplemented by the computerized AFM. This includes all relevant information (e.g., variables used for a specific condition) to determine operating condition and applicability of the generated output. Further, the total AFM performance presentation (hardcopy plus software) to the air carrier must be such to allow that carrier to comply with the FAR:

(2) Provide equivalent or conservative results to that obtained by direct use of a first principles calculation utilizing certified baseline parameters (e.g., lift, drag, thrust):

(3) Provide two-way performance interrogation (ability to switch independent and dependent variables), as appropriate;

(4) Preclude calculations that generate FAA-approved results by:

(i) Extrapolation of data outside of performance bounds approved by the FAA and the manufacturer, and;

(ii) Use of unapproved methods; A note must be added to the AFM performance section, where reference is made to computerized performance, to read essentially as follows: "The various gross weight, operational, and environmental limitations provided in the limitations section of this AFM take precedence over what otherwise may be listed as approved performance results from the computerized output."

(5) Provide at least the standard of transparency (e.g., understanding of performance relations and limitations) and accessibility of the data (e.g., usage time to generate a result) that is available by use of conventional AFM presentation;

(6) Prevent mistakes or misunderstanding by a skilled user during data input and interpretation of output. Emphasis should be placed upon ease of use. If multiple screens are required to fully enter input data, it should be possible to access entries on previous screens and review, or correct, input data prior to final program execution.

2. Computerized Airplane Flight Manual Contents

a. Performance Section.

(1) The computerized portion of the A340 AFM may include the information and capability that is required to generate all FAA-approved performance data.

(2) Independent of, and in addition to performance presented in the computerized portion of the A340 AFM, the following information, as a minimum, shall be presented in conventional form in the hard copy AFM, unless this information is available to the flight crew aboard the airplane from an FAA approved source intended for this purpose (e.g., Flight Crew Operating Manual): (i) Stalling Speeds (calibrated airspeed); (ii) Alternate Static Source Position Error Calibrations (if corrections are significant); (iii) Stabilizer Trim Setting for Takeoff; (iv) Engine Thrust Settings for Takeoff, Maximum Continuous, and Go-Around Ratings;(v) V_{2MIN} Speeds (indicated airspeed); (vi) One-Engine-Inoperative En Route Flight Path Gradients; (vii) Two-Engines-Inoperative En Route Flight Path Gradients, if applicable; (viii) Approach/Landing Climb Weight Limits; (ix) Reference Landing Speeds (indicated airspeed); (x) Landing Field Lengths; (xi) Configuration Deviation List; (xii) Noise Characteristics.

Note: This does not preclude calculation of information by the FAA-approved computerized AFM and subsequent inclusion of the output as a permanent part of the hardcopy AFM.

(3) Configuration Deviation List (CDL) and Master Minimum Equipment List (MMEL) effects on performance may be included if they are FAA-approved and applications are clearly identified on the generated output.

(4) Although it is intended that the output from computations should be usable without adjustment, corrective factors through hard copy AFM instructions may be acceptable in the following cases: (i) CDL and MMEL information; (ii) Urgent temporary FAA-approved revisions made necessary for safety reasons; (iii) Any case where the appropriate data are not available from the computer and it is clear to the user that hard copy corrective factors must be applied. In these cases, the official reference as indicated under paragraph 1.a. (1) must be changed accordingly.

(5) Supplementary performance information may be included in accordance with paragraph 1.b. (e.g., runways contaminated with standing water, slush, snow, or ice).

(6) The manufacturer must request FAA-approval of supplementary computerized AFM applications e.g., Optimized Runway Performance). This supplementary software application will not be required by the FAA for type Certification.

3. Software Integrity, Development, and Documentation Requirements.

a. Software Integrity.

(1) The computation of hazardously misleading primary information such as takeoff speeds schedules, landing approach reference speeds, engine thrust, engine limit data or other related airplane performance data, should be improbable. The AFM software application shall, as far as practicable, be designed to be protected from inadvertent, or unauthorized, deliberate alterations.

(2) The level of integrity established for the computerized AFM is the basis for the software development process and should be addressed in the plan for software aspects of certification (see paragraph 3.b.).

(3) Each part of the FAA-approved AFM software application (e.g., program, data) should bear a unique notation, a unique date and/or revision number.

(4) A means to check the original status of programs and data to avoid undetected failures should be provided (e.g., a checksum routine, tabular data to verify a check case, or provisions for a line-by-line file comparison).

(5) No unapproved software may be used to process data identified as "FAA-approved," unless the use of these software elements is agreed to by the FAA. Operating systems (e.g., DOS or equivalent software) will not be approved, but will have to be specified and agreement obtained.

(6) If unapproved software is an integral part of the software delivery, it must be justified that there is no interference between approved and unapproved parts that would jeopardize correct functioning of the FAA-approved AFM software application.

b. *Software Development.*

(1) The manufacturer must propose the software development process in the plan for software aspects of certification, documenting the methods, parameters, and allowable range of conditions contained in the computerized portion of the AFM. The results obtained from the computerized portion of the AFM must be shown to meet all applicable part 25 requirements. This compliance may be shown using substantiation documentation, demonstrations, or other means mutually agreed upon by the FAA and the manufacturer. The software development process described in AC-115A (RTCA DO-178A) is valid, in general, for developing either airborne or ground-based software, and is an acceptable approach for developing software for the computerized AFM. Some of the specific guidance provided in AC 20-115A, however, may not apply to the computerized AFM.

(2) The manufacturer must submit a description of the computerized portion of the AFM and the plan for software aspects of certification to the FAA for review early in the certification process. This plan must propose the schedule and means by which compliance with the requirements will be achieved, and the means by which certification data and supporting records will be made available for review.

c. Hardware and Software Environment. The AFM software application may be FAA-approved independent of the hardware and software environment in which it is installed (e.g., the development of computerized AFM software application to be run in a commercial-off-the-shelf hardware and software environment). The manufacturer must provide for

below items (1), plus either item (2) or (3), as appropriate:

(1) A mechanism, such as an installation utility function or test set, that verifies the proper functioning of the AFM software application in the target software and hardware environment;

(2) If the computerized portion of the AFM is intended for a commercial-off-the-shelf hardware and software environment, installation information that describes the minimum requirements, including limitations and constraints, for the software and hardware environment;

(3) If the computerized portion of the AFM is intended for a specific hardware/software system, installation information that describes the specific hardware and software environment in which the AFM software application must be installed. Additionally, the manufacturer should provide a configuration management scheme that ensures the hardware and software environment that will be used in service is identical to the environment specified in the FAA-approved installation data.

d. Revisions to A340 AFM Software Application.

(1) Revisions to the FAA-approved computerized portion of the AFM must be submitted for evaluation and FAA-approval in accordance with software development methodology established in paragraph 3.b. A log of FAA-approved AFM software application parts must be furnished by the manufacturer. For historical purposes, records should be maintained by the manufacturer, which will permit the reproduction of the computerized AFM for any past approved revision level.

(2) The manufacturer must submit a description of the proposed changes and an updated plan for software aspects of certification. In addition, the manufacturer must: (i) Re-assess the software integrity level (paragraph 3.a.) of the revised computerized AFM; (ii) Demonstrate that the revisions do no affect any of the unrevised portions of the computerized AFM; and (iii) Demonstrate that the revisions are compatible with the hardware and software environment intended for the AFM software application.

(3) When revisions are incorporated, a means (e.g., document) of indicating those parts of the software that have been changed must be provided.

(4) Each revised software element must be identified in the same manner as the original with the exception of the new date and/or revision notation (see 3.a.(3)).

e. Submittal and FAA-Approval of Software.

(1) The manufacturer will be considered the responsible party for all matters pertaining to AFM application software, including submitting for, and obtaining FAA-approval.

(2) Data structures and calculation models shall be discussed between the manufacturer and the FAA, and agreement obtained.

(3) The manufacturer is responsible for ensuring that the FAA certification office is provided with the equipment specification to use the computer files and any required initial instruction on use of the computer program.

(4) The FAA may require assessment of program details and data structures as deemed necessary to allow judgement about software integrity. Any hardware environment required to accomplish this which is not readily available to the FAA shall be provided by the manufacturer.

f. Documentation requirements. Documentation containing the following information shall be provided to the FAA for agreement before FAA-approval is granted.

(1) Approval Plan that describes the software aspects of certification, including an outline of the desired applications, design objectives for software and data integrity, and a statement to the effect of impact on flight safety.

(2) Software Development Plan, including methods to provide the design objectives.

(3) Software Descriptions, including substantiation that program structures and calculation models are appropriate to their intended function.

(4) Data Conformity Document, including substantiation for data conformity of airplane performance characteristics (e.g., tested performance data) and the developed software (e.g., FAA-approved data files) and/or generated output.

(5) Operating Instructions, that include all information for proper use of the AFM software, including installation instructions and identification of suitable hardware and software environment.

(6) Software Configuration Reference, including a log of approved software elements.

4. Provisions For FAA Post Certification Access To Computerized portion of AFM. In the plan for software aspects of certification, the manufacturer must propose which components of the computerized AFM will be submitted to the FAA. In cases where the AFM software application can be installed on FAA equipment, then only the AFM software application, which includes the installation data and operating guide need be provided. However, if the AFM software application requires a hardware and software environment that is not available to the FAA, then the manufacturer must also provide to the appropriate FAA certification office, access to the necessary components for the hardware and software environment.

Issued in Renton, Washington, on September 30, 1992.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-24507 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 921053-2253]

Request for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make this determination, BXA is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

Although the Export Administration Act of 1979, as amended (EAA), expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12730 of September 30, 1990.

DATES: Comments must be received by November 20, 1992 to assure full consideration in the formulation of export control policies.

ADDRESSES: Written comments (six copies) should be sent to Patricia Muldonian, Regulations Branch (room 4054), Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Bolsteins, Foreign Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482–4252.

SUPPLEMENTARY INFORMATION: The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set froth in the Export Administration Regulations (EAR), Parts 776 (Special Commodity Policies and Provisions), 778 (Proliferation Controls), and 785 (Special Country Policies and Provisions). These controls apply to: supercomputers (§ 776.11); crime control and detection commodities (§ 776.14); regional stability commodities and equipment (§ 776.16); equipment and related technical data used in the design, development, production, or use of missiles capable of delivering nuclear weapons (§ 778.7); chemical precursors and biological agents and associated equipment and technical data related to the production of chemical and biological agents (§ 778.8); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 778.9); embargoed countries (§ 785.1); South Africa (§ 785.4(a)); countries designated as supporters of acts of international terrorism (§ 785.4(d)); and, Libya (§ 785.7).

Effective January 21, 1992, the Secretary of Commerce extended for one year all foreign policy controls then in effect. Changes in foreign policy controls since the date of that extension have included the publication of Supplement No. 6—Missile Technology Destinations (57 FR 26773 of June 16, 1992), the termination of the embargo against Cambodia (57 FR 11576 of April 6, 1992), the expansion of controls on supercomputers (57 FR 20963 of May 18, 1992), and the revision of the embargo on Vietnam that eases restrictions on exports of humanitarian items (57 FR 31685 of July 17, 1992).

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria the Departments of Commerce and State consider in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or the economic well-being of individual United States companies and their employees and communities does not exceed the benfit to United States foreign policy objectives; and

6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with these controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." BXA will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by BXA as confidential will be protected from public disclosure to the extent permitted by law. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Margaret Cornejo, BXA Freedom of Information Officer, at the above address or by calling (202) 377–5653.

Authority: Pub. L. 96–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.*); Pub. L. 96–72, 93 Stat. 503, (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990); and E.O. 12769 of July 10, 1991 (56 FR 31855, July 12, 1991).

Dated: October 6, 1992

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92–24741 Filed 10–9–92; 8:45 am]

BILLING CODE 3510–07–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–224, RM–8074]

Radio Broadcasting Services; Dardanelle, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Ramsey Communications, Inc., licensee of Station KWKK(FM), Channel 272A, Dardanelle, Arkansas, seeking the substitution of Channel 272C3 for

Channel 272A and modification of its license accordingly to specify operation on the higher powered channel. Coordinates for this proposal are 35–13–41 and 93–15–20.

Petitioner's modification proposal complies with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 272C3 at Dardanelle, Arkansas, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before November 27, 1992, and reply comments on or before December 14, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Marvin Rosenberg and Robert D. Primoech, Esqs., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–224, adopted September 11, 1992, and released October 5, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–24695 Filed 10–9–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB

Endangered and Threatened Wildlife and Plants; Notice of Public Meeting on California Candidate Plant Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public meeting.

SUMMARY: As part of the 1991 settlement of litigation over the Fish and Wildlife Service's (Service) progress in proposing for listing as endangered or threatened species approximately 159 California plants designated as "category 1" listing candidates, the Service is holding the second annual public meeting. The meeting will provide a forum for discussing issues related to proposing the plants for listing under the Endangered Species Act (16 U.S.C. 1531–1544).

DATES: The public meeting will be held from 9:30 a.m. to 12:30 p.m. on October 29, 1992 in Santa Barbara, California.

ADDRESSES: The public meeting will be held at the Santa Barbara Botanic Garden, 1212 Mission Canyon Road, Santa Barbara, California.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Branch Chief for Listing and Recovery, Southern California Field Station, Ventura Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003 (telephone 805/644–1766 or 818/904–6040).

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1991, the U.S. District Court for the Eastern District of California approved a settlement of a lawsuit brought by the California Native Plant Society to challenge delays by the Service in proposing to list 159 species of California plants as endangered or threatened. Under the terms of the settlement approved by the court, the Service is holding the second annual public meeting to discuss the Service's progress in proposing the plants for listing as well as other issues related to development of listing proposals for the plants. The meeting will be held in Santa Barbara, California on October 29, 1992, at the time and place specified above.

Author

The primary author of this notice is Connie Rutherford, Botanist, U.S. Fish and Wildlife Service, Southern California Field Station, Ventura Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003 (telephone 805/644–1766 or 818/904–6040).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–11407; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: September 30, 1992.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92–24745 Filed 10–9–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90927–2255]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notification of Flexible Area Action System #6.

SUMMARY: NMFS issues this document to inform the public and the fishing industry that the New England Fishery Management Council (Council) is considering Flexible Area Action System #6 under Amendment 3 to the Northeast Multispecies Fishery Management Plan (FMP). The purpose of the action would be to protect a concentration of yellowtail flounder that are smaller than the legal minimum landing size but are being caught and wastefully discarded at sea. The area affected is located offshore of Massachusetts and New Hampshire and is generally described as Ipswich Bay.

DATES: Written comments on the proposed action must be received by October 22, 1992.

ADDRESSES: Copies of the NMFS Northeast Regional Director's (Regional Director) fact-finding report and the Council's impact analysis will be available on October 16, 1992, upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01960.

Send comments on the proposed action, the fact-finding report and the Council's impact analysis to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, NMFS, Resource Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: This action is taken under 50 CFR 651.26 as established by Amendment 3 to the FMP. Amendment 3 was approved by the Secretary of Commerce on November 24, 1989, and published on December 22, 1989 (54 FR 52803), with the regulations effective on December 19, 1989. Section 651.26 specifies a Flexible Area Action System (FAAS) whereby protection can be provided to concentrations of juvenile, sublegal, or spawning fish. As part of this process, the Regional Director initiates a fact-finding investigation of the alleged discard problem. The Council also provides an impact analysis of alternative measures that might be implemented under this action.

The Council received a request for action after it was reported that operators of vessels using scallop dredge gear are landing and discarding significant amounts of sublegal (less than 13 inches in length) yellowtail flounder in the vicinity of Ipswich Bay. These vessels have appeared in the area in the past 2 years and tend to remain in the area until December. To determine the extent of the problem and whether it is appropriate to take action, the Council has initiated this action. Both the Regional Director's fact-finding report and the Council's impact analysis will be available by October 16, 1992, at the Council office (see **ADDRESSES**). The Council will hold a public hearing on October 22, 1992, at 9 a.m. at the King's Grant Inn, Danvers, Massachusetts, in conjunction with a meeting of the Council to solicit comments on the proposed action. More specific information is below.

(1) The area of the proposed action is Ipswich Bay, which is located off the Massachusetts and New Hampshire coast. Ipswich Bay is bounded by the following: 42°42′ N. Latitude on the south, 70°30′ W. Longitude on the east, 43°00′ N. Latitude on the north and the territorial sea on the west.

(2) The principal species that will be affected by any action will be yellowtail flounder, Atlantic cod, northern shrimp, pollock, winter flounder, American plaice (dab), haddock, silver hake, angler (monkfish), and American lobster.

(3) The types of gear that could be affected by this action are all types of gear capable of catching groundfish, including, but not limited to, otter trawls, midwater trawls, gillnets, scallop dredges, and hook-and-line gear, both commercial and recreational.

(4) The fisheries that potentially will be impacted are the commercial and recreational groundfish fisheries that operate in the area of the proposed action and use the gear types listed above.

(5) The principal ports that will be affected are Boston, Massachusetts, Gloucester, Massachusetts, New Bedford, Massachusetts, Portland, Maine, Portsmouth, New Hampshire, Provincetown, Massachusetts, and other small ports in the vicinity of Ipswich Bay.

(6) The expected duration of the action is up to 180 days. If implemented as early as October 27, 1992, the action could last until April 24, 1993.

(7) The Committee expects to recommend that those areas that are determined to have large concentrations of small yellowtail flounder (less than 13 inches in length) be closed to fishing with the types of gear described in (3) above.

Other actions which might be considered are: (a) A prohibition on the use of scallop dredges in the area; (b) a minimum mesh size in the trawl and/or gillnet fisheries; (c) a prohibition of mobile net gear; and (d) a prohibition of all fishing, except with hook gear.

(8) The Council will begin analyzing the potential impacts from possible actions upon publication of this notice.

(9) The Council's impact analysis will be available on October 16, 1992.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 6, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–24701 Filed 10–6–92; 4:08 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 198
Tuesday, October 13, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Fourth Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, Public Law 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1992 by section 2(c) as adjusted under section 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on January 7, 1992 (57 FR 553), the estimated aggregate quantity of meat articles other than products of Canada prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1992 is 1,192 million pounds.

In accordance with the requirements of the Act, I have determined that the fourth quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1992 is 1,311.1 million pounds.

Done at Washington, DC this 5th day of October, 1992.

Edward Madigan,
Secretary of Agriculture.

[FR Doc. 92–24719 Filed 10–9–92; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Marine Recreational Fishery Statistics Survey.

Agency Form Number: None.

OMB Approval Number: 0648–0052.

Type of Request: Revision of a currently approved collection.

Burden: 18,426 hours.

Number of Respondents: 557,966.

Avg Hours Per Response: Ranges between 30 seconds and 7 minutes.

Needs and Uses: Catch and effort statistics are fundamental for assessing the influence of fishing on any stock of fish. Because recreational fishing impacts fish resources, catch, effort and participation data are collected from recreational fishermen. The data are used to develop, implement and monitor fishery management plans.

Affected Public: Individuals or households, small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ron Minsk, OMB Desk Officer, room 3019, New Executive Office Building, Washington, DC 20503.

Dated: October 6, 1992.

Edward Michals,
Departmental Forms Clearance Officer, Office of Management and Organization.

[FR DOC. 92–24744 Filed 10–9–92; 8:45 am]
BILLING CODE 3510–CW–F

International Trade Administration

[A–580–812]

Notice of Postponement of Preliminary Antidumping Duty Determination: Dynamic Random Access Memory Semiconductors of one Megabit and Above From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 482–3464.

Postponement

On May 12, 1992, the Department of Commerce (the Department) initiated an antidumping duty investigation of dynamic random access memory semiconductors of one megabit and above (DRAMs) from the Republic of Korea. The notice stated that we would issue our preliminary determination on or before September 29, 1992 (57 FR 28483, June 25, 1992). On September 3, 1992, petitioner requested that the Department postpone our preliminary determination by one week. On September 8, 1992, the Department granted this request and postponed the preliminary determination until October 6, 1992 (57 FR 42544, September 15, 1992).

On October 5, 1992, the Department notified petitioner and respondents that it intended to postpone the preliminary determination by 14 days. In accordance

with 19 CFR 353.15(b), the Department finds this investigation extraordinarily complicated due to certain complex issues regarding the cost information submitted by the three respondents. Additionally, the respondents are cooperating in this investigation. Therefore, we are postponing the date of this preliminary determination in this investigation until not later than October 20, 1992. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended (the Act).

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: October 6, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-24804 Filed 10-9-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review, application No. 92-00009.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Northern Textile Export Trading Company, Inc ("NTETC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Fibers, yarns, and fabrics for both commercial and apparel uses in every segment of the textile industry including, but not limited to, man-made fiber, wool, cotton, elastic, flock, felt, and luxury fiber products.

2. Services

Engineering, design, and affiliated services related to the Products and to articles that incorporate the Products.

3. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, technical expertise, physical and computer modeling and designs associated with the Products, Services, and/or Export Trade Facilitation Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Technical service; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; testing and certification; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

3. Export Trade Activities and Methods of Operations

3.1 Activities and Operations. NTETC and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and/or Services in the Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to specifications and engineering requirements demanded by specific potential customers for Products and Services for Export Markets;

d. With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-Members to sell the Products and/or Services of such non-Members or to offer Export Trade Facilitation Services provided by such non-Members through the certified activities of NTETC and/or its Members;

g. Coordinate with respect to the servicing of Products and/or Services in Export Markets;

h. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing or enhancing existing or new Export Market opportunities;

i. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product requirements of specific export customers of Export Markets;

j. Form and operate joint ventures and/or jointly owned entities, such as for-profit subsidiaries, partnerships, and/or other enterprises owned exclusively by Members, for the purpose of engaging in the Export Trade Activities and Methods of Operation herein certified, subject to such entities' adherence to the terms of paragraph 3.2(c) below;

k. Enter into contractual arrangements with non-Members in the Export Markets (including, but not limited to, sales agents, exclusive or non-exclusive distributors, and joint ventures formed and operated by NTETC and/or one or several Members) to distribute the Products and/or Services;

1. Provide Export Trade Facilitation Services as an exclusive or non-exclusive Export Intermediary for the Members whereby NTETC and/or one or more of the Members may:

i. Arrange to have NTETC and/or one or more of the Members and/or non-Members act as an exclusive or non-exclusive Export Intermediary for the Members; and

ii. Establish an entity owned jointly and exclusively by Members to act as an exclusive or non-exclusive Export Intermediary for the Members.

m. Agree that any information obtained pursuant to this Certificate shall not be provided to any non-Member;

n. Forward inquiries to the appropriate individual Members concerning requests for information received from entities in the Export Markets;

o. Refuse to provide Export Trade Facilitation Services or participation in Export Trade, Export Trade Activities and Methods of Operation to non-Members;

p. Individually purchase Products and/or Services for export to the Export Markets;

q. Enter into agreements whereby one or more Members, or an entity owned jointly and exclusively by Members, will provide transportation services to Members, such as the chartering and space chartering of vessels, the negotiation and utilization of intermodal rates with common and contract carriers for inland freight transportation for export shipments to United States export terminals, ports, or gateways;

r. Provide any Member or Supplier the benefit of any Export Trade Facilitation Services to facilitate the export of Products, Services or Technology Rights to Export Markets. This may be accomplished by NTETC itself, or by agreement with Members or other parties;

s. Meet to engage in the Export Trade, Export Trade Activities, and Methods of Operation certified herein; and

t. Agree that, should a Member withdraw from NTETC, such withdrawing Member will not, directly or indirectly for a period of two years from the date of such withdrawal, sell to, through, or with the assistance of any customer, consultant, co-venturer, employee, distributor, sales agent, or other representative of NTETC the Products and/or Services it has sold on the Export Markets as a Member. This prohibition, however, shall not restrict a Member from resuming a business relationship with any party with which that Member was doing business prior to becoming a Member.

3.2 *Licensing Technology Rights.* Any Member may license and sub-license Technology Rights in the Export Markets to non-Members, provided that all such licenses shall be negotiated and concluded between the Member and such non-Member without coordination with NTETC or any other Member. Such licenses and sub-licenses may:

a. Convey exclusive or non-exclusive rights in the Export Markets;

b. Impose requirements as to the prices at which Products and/or Services incorporating, manufactured, or produced using Technology Rights may be sold or leased in the Export Markets;

c. Impose requirements as to pricing and other terms and conditions of licenses or sub-licenses of Technology Rights in the Export Markets;

d. Restrict licensees and sub-licensees as to the field of use, or maximum sales or operations, in the Export Markets;

e. Impose territorial restrictions relating to any Export Market on foreign licensees and sub-licensees;

f. Require the assignment back or exclusive or non-exclusive grant back to the licensor Member of rights in the Export Market to all improvements in Technology Rights, whether or not such improvement falls within the field of use authorized in such license;

g. Require package licensing of Technology Rights; and

h. Require products and/or services (including, but not limited to, Products and/or Services) to be used, sold, or leased as a condition of the license of Technology Rights.

3.3 *Information Exchange.* NTETC and/or the Members may exchange and discuss the following types of information with respect to the Export Markets only:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale; or United States business plans, strategies, or methods) that is already generally available to the trade or public;

b. Information about sales or marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demand in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices therefor; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export; provided, however, that exchanges of information and discussions as to export prices, Product quality and/or quantity, source, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members which are participating or have a genuine interest in participating in such transaction;

d. Information about terms, conditions and specifications of particular contracts for sales in Export Markets to be considered and/or bid on by NTETC or the Members;

e. Information about joint bidding, selling or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about NTETC's or the Members' export operations, including without limitation sales and distribution networks established by NTETC or the Members in Export Markets, and prior export sales by Members (including prior export price information).

3.3 *Definitions.* a. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

b. "Members" (within the meaning of § 325.2(1) of the Regulations) means the firms listed as follows: Cascade Woolen Mill, Inc., Oakland, Maine; L.W. Packard & Co., Inc., Ashland, New Hampshire; Charles W. Fifield, Jr., Co., Inc., Hingham, Massachusetts; and Woolrich, Inc., Woolrich, Pennsylvania.

c. "Suppliers" means a person who produces, provides, or sells Products, Services, or Export Trade Facilitation Services.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: October 6, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-24805 Filed 10-9-92; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Permit (P77#57).

On April 17, 1992, notice was published in the **Federal Register** (57 FR 13709) that an application had been filed by the National Marine Mammal Laboratory, Northwest and Alaska Fisheries Science Center, National

Marine Fisheries Service, 7600 Sand Point Way, N.E. BIN C15700, Seattle, Washington 98115, for a Permit to collect and import an unspecified number of specimen materials taken from dead individuals of all cetacean species, all pinniped species, and sea otters worldwide.

Notice is hereby given that on October 1, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service and the Fish and Wildlife Service issued a Permit for the above taking and importation, subject to certain conditions set forth therein.

The application and accompanying documentation satisfy the issuance criteria for scientific research permits and the requested activities are consistent with the purposes and policies of the MMPA and ESA. The research will further a *bona fide* scientific purpose that does not involve unnecessary duplication of other research.

Issuance of this Permit for the taking of endangered species as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973.

Documents submitted in connection with this Permit are available for review, by appointment, in the:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway., suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, National Marine Fisheries Service, NOAA, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206–526–6150);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4015);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard., St. Petersburg, FL 33702 (813/893–3141);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200); and

U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203 (703/358–2104).

Dated: October 6, 1992.

Nancy Foster,

Director, Office of Protection Resources, National Marine Fisheries Service.

Dated: October 6, 1992.

I. Teiko Saito,

Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 92–24705 Filed 10–9–92; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council's Law Enforcement Advisory Panel (Panel) will meet on October 14, 1992, from 1 p.m. until 5 p.m., at the Stouffer Riverview Plaza Hotel, 64 Water Street, Mobile, AL; telephone: 205–438–4000.

The agenda is as follows: (1) Review draft Amendment #5 to the Reef Fish Fishery Management Plan (FMP) including fish trap restrictions, special management zones, landing requirements, permit requirements, and red snapper minimum size limits; (2) review the mutton snapper options paper; and (3) review draft Amendment #6 to the Reef Fish FMP (if available), which includes implementation in the Reef Fish FMP of the Proposed Emergency Action Provisions.

For more information, contact Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: October 6, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–24703 Filed 10–9–92; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council (Council) and its Demersal Species Committee (DSC) will meet on October 27 and 28, 1992, at the Danford's Inn, 25 East Broadway, Port Jefferson, Long Island, NY; (telephone: 516–928–5200).

The DSC will meet on October 27, at 9 a.m. The Council will begin its one-day meeting on October 28 from 8 a.m. until adjournment at 5 p.m. The agenda is as follows: (1) Hear Committee reports; (2) adopt Amendment #3 to the Summer Flounder Plan for public hearings; (3) adopt the preferred alternative for the Scup and Sea Bass Amendment; and (4) discuss other fishery management matters as deemed necessary.

The meeting may be lengthened or shortened depending on the progress of the agenda. The Council may also meet in closed session (not open to the public) to discuss personnel and/or national security matters. For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: October 5, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–24704 Filed 10–09–92; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on October 26–29, 1992, at the Sheraton New Bern Hotel and Marina, One Bicentennial Park, New Bern, NC, telephone: (919) 638–3585.

The Council's Sea Scallop Committee will meet on October 26 at 3 p.m., to review Amendment #4 to the Sea Scallop Fishery Management Plan (FMP), before it is taken to public hearings by the New England Fishery Management Council, lead council on scallops.

The last public scoping meeting on marine fishery reserves will be held on October 26 at 6 p.m., to solicit input on the concept of reserves within which fishing for snapper and grouper would be prohibited.

The Snapper-Grouper Committee will meet on October 27 at 1:30 p.m. and on October 28 at 8:30 a.m., to discuss developing quotas for amberjack, golden tilefish, blueline (gray) tilefish, and snowy and yellowedge grouper as part

of Amendment #6 to the Snapper-Grouper FMP. Other items in the amendment to be reviewed by the Committee include quotas, a definition of allowable gear, and a requirement for Federal dealer permits. The Committee also will request an extension to the 90-day emergency rule that redefines sea bass pots and removes restrictive possession limits for sea bass fishermen off North Carolina and South Carolina. The Committee will approve an amendment to implement the new sea bass pot definition on a permanent basis.

The Council will hold closed sessions (not open to the public) of the Personnel Committee and Advisory Panel Selection Committee on October 27 at 8:30 a.m. and 9:30 a.m. respectively.

A detailed agenda with specific meeting times is available to the public. For more information contact Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366.

Dated: October 5, 1992.

David Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–24705 Filed 10–09–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations with the Government of Bahrain on Certain Cotton and Man-Made Fiber Textile Products

October 6, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On September 16, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Bahrain with respect to men's and boys' cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in Bahrain.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Bahrain, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Bahrain and exported during the twelve-month period which began on September 16, 1992 and extends through September 15, 1993, at a level of not less than 99,458 dozen.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Bahrain.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of Bahrain, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Bahrain

Category 340/640—Men's and Boys Cotton and Man-Made Fiber Woven Shirts

September 1992

Import Situation and Conclusion

U.S. imports of men's and boys' cotton and man-made woven shirts, Category 340/640, from Bahrain reached 99,458 dozen during the year ending June 1992, over four times the 24,005 dozen imported during the year ending in June 1991. During the first six months of 1992, imports of Category 340/640 from Bahrain reached 63,810 dozen, over eight times the 7,669 dozen imported during the same period a year earlier and one and one half times Bahrain's total calendar year 1991 Category 340/640 imports.

The sharp and substantial increase in Category 340/640 imports from Bahrain is causing disruption in the U.S. market for men's and boys' cotton and man-made fiber woven shirts.

Import Penetration and Market Share

U.S. production of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined 28 percent falling from 16,401,000 dozen in 1988 to 11,729,000 dozen in 1991. U.S. production during the year ending March 1992 remained relatively even with the year ending March 1991 level. U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined in 1990 and 1991. However, Category 340/640 imports surged in 1992, increasing 30 percent in the first half over the January-June 1991 level and reaching 27,298,374 dozen in the year ending in June 1992, 18 percent above the 23,196,118 dozen imported during the year ending June 1991 and the highest 12 month level since the year ending in July 1987.

The ratio of imports to domestic production increased from 157 percent in 1988 to 205 percent in 1991. This trend

continued in 1992, with the ratio of imports to production reaching 208 percent during the year ending March 1992. The domestic manufacturers' share of the market for men's and boys' cotton and man-made fiber woven shirts fell from 39 percent in 1988 to 33 percent in 1991. This decline continued in 1992, with the domestic manufacturers' share of the market falling to 32 percent during the year ending March 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 89 percent of Category 340/640 imports from Bahrain during the year ending June 1992 entered the U.S. under HTSUSA number 6205.20.2065—other men's cotton shirts, other than yarn dyed. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable shirts.

[FR Doc. 92-24743 Filed 10-9-92; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations with the Government of Qatar on Certain Cotton and Man-Made Fiber Textile Products

October 6, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On September 24, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Qatar with respect to cotton and man-made fiber women's and girls' woven shirts and blouses, produced or manufactured in Qatar.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Qatar, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 341/641, produced or manufactured in Qatar and exported during the twelve-month period which began on September 24, 1992 and extends through September 23, 1993, at a level of not less than 100,089 dozen.

A summary market statement concerning Categories 341/641 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 341/641, or to comment on domestic production or availability of products included in Categories 341/641, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Qatar.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 341/641. Should such a solution be reached in consultations with the Government of Qatar, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Qatar

Category 341/641—Women's and Girls' Cotton and Man-Made Fiber Woven Shirts and Blouses

September 1992

Import Situation and Conclusion

U.S. imports of women's and girls' cotton and man-made fiber woven shirts and blouses, Category 341/641, from Qatar reached 100,089 dozen in the year ending in June 1992, triple the 32,963 dozen imported during the year ending June 1991. During the first six months of 1992, imports of Category 341/641 from Qatar surged to 78,067 dozen, six and one half times the 12,028 dozen imported in January-June 1991, and double Qatar's total calendar year 1991 imports.

The sharp and substantial increase in Category 341/641 imports from Qatar is causing disruption in the U.S. market for cotton and man-made fiber woven shirts and blouses.

U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' cotton and man-made fiber woven shirts and blouses, Category 341/641, declined in every year since 1987, falling from 23,838,000 dozen in 1987 to 14,875,000 dozen in 1991, a decline of 38 percent. U.S. production in the year ending in March 1992 was 5 percent below the year ending March 1991 level. U.S. imports of women's and girls' cotton and man-made fiber woven shirts and blouses, Category 341/641, were volatile between 1987 and 1991, declining in 1988, increasing in 1989, dropping again in 1990, and increasing in 1991. However, Category 341/641 imports surged in 1992, increasing 22 percent in the first half over the January-June 1991 level and reaching 23,926,420 dozen in the year ending in June 1992, 15 percent above the year ending June 1991 level.

The ratio of imports to domestic production increased from 95 percent in 1987 to 144 percent in 1991. This increase continued in 1992, with the ratio of imports to domestic production reaching 147 percent for the year ending March 1992. The domestic manufacturers' share of the U.S. women's and girls' cotton and man-made fiber woven shirt and blouse market fell from 51 percent in 1987 to 41 percent in the year ending March 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 80 percent of Category 341/641 imports from Qatar during the year ending June 1992 entered the U.S. under HTSUSA number 6206.40.3030—women's man-made fiber woven blouses

and shirts, other than yarn dyed. These blouses and shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable women's and girls' woven blouses and shirts.

[FR Doc. 92-24742 Filed 10-9-92; 8:45 am]

BILLING CODE 3510-DS-F

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 27 October 1992.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92-463, as amended (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: October 6, 1992.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-24756 Filed 10-9-92; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, 28-29 October 1992.

ADDRESSES: The meeting will be held at Fort Monmouth, NJ, Myer Center, Bldg 2700 (HEX), room 4D121.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: October 6, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-24757 Filed 10-9-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Military Personnel Testing

Pursuant to Public Law 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on Nov 12, 1992 and from 8:30 a.m. to 4:30 p.m. on Nov 13, 1992. The meeting will be held at the Inn of the Governors, 234 Don Gaspar, Santa Fe, NM. The purpose of the meeting is to review planned changes in the Department of Defense's Student Testing Program and progress in developing paper-and-pencil and computerized enlistment tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (703) 695-5525, no later than Oct 30, 1992.

Dated: October 6, 1992.

L.M. Bynum,

Alternate ODS Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-24755 Filed 10-9-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Nuclear Agency

Membership of the Defense Nuclear Agency Performance Review Board

AGENCY: Department of Defense, Defense Nuclear Agency.

ACTION: Notice of membership of the Defense Nuclear Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Nuclear Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Board shall provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance and performance awards to the Director, Defense Nuclear Agency.

EFFECTIVE DATE: The effective date of service for the appointees of the DNA PRB is on or about 10 November 1992.

FOR FURTHER INFORMATION CONTACT: D. Dial-Alfred, Workforce Effectiveness Branch (CVWE), Defense Nuclear Agency, Washington, DC 20305-1000, (703) 325-7593.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the DNA PRB are set forth below. All are DNA officials unless otherwise identified:

Dr. George W. Ullrich, Deputy Director
RADM Hugh D. Wisely, Director for Operations
Dr. Don A. Linger, Director for Test
Mr. Robert L. Brittigan, General Counsel
Mr. Curtis L. Dierdorff, Director of Personnel, Defense Mapping Agency
Dr. Robert L. Drummond, Acting Director, Defense Network Systems Organization
Defense Information Systems Agency

The following DNA officials will serve as alternate members of the DNA PRB, as appropriate.

Dr. E. John Ainsworth, Scientific Director
Dr. Paul H. Carew, Comptroller
Mr. Frederick S. Celec, Deputy Director for Operations
Mr. Jonathan Z. Farber, Special Assistant to the Deputy Director
Mr. David G. Freeman, Director, Acquisition Management Office
Dr. Kent L. Goering, Chief, Structural Dynamics Division
Mr. Richard L. Gullickson, Chief, Electromagnetic Applications Division
Mr. Joseph W. LaComb, Chief, Nevada Operations Office
Dr. Don A. Linger, Director for Test
Mr. Clifton B. McFarland, Jr., Director for Shock Physics
Mrs. Joan Ma Pierre, Director for Radiation Sciences
Mr. Robert C. Webb, Chief, Electronic Effects Division
Dr. Leon A. Wittwer, Chief, Atmospheric Effects Division

Dated: October 5, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-24758 Filed 10-9-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Subject Area Committee #1 of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: October 14, 1992.

TIME: 3:30 p.m. (e.t.).

LOCATION: 800 North Capitol Street, suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC 20002-4233, telephone (202) 357-6738.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 U.S.C. 1221e-1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Subject Area Committee #1 of the National Assessment Governing Board will meet October 14, 1992, from 3:30 p.m. until 5 p.m. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The purpose of this teleconference meeting is to take final action on the 1993 NAEP Geography and U.S. History field test items in preparation for the committee's report to the full Board at its quarterly meeting, November 1992. The public is given less than fifteen days notice of this teleconference because unforeseen technical changes in several of the items resulted in the analysis not being completed until October 1, 1992.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: October 6, 1992.

Mary Ann Wilmer,

Acting Executive Director, National Assessment Governing Board.

[FR Doc. 92-24766 Filed 10-9-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Environmental Restoration; Departmental Response

AGENCY: Office of Environmental Restoration, [DOE EM-43], Department of Energy.

ACTION: Notice.

SUMMARY: DOE published a notice in the September 6, 1991, **Federal Register** (56 FR 44078) requesting public comments on the Priority System being developed and implemented for its Office of Environmental Restoration. This **Federal Register** Notice explains the main issues raised in the comments and summarizes DOE responses to these comments. DOE has also prepared a "Priority System Comment-Response Document" responding in more detail to public comments and is sending it to all commenters. Copies of this **Federal Register** Notice, of the detailed comment-response document, and of all comments received by DOE are available in DOE reading rooms.

ADDRESSES AND FURTHER INFORMATION: To receive a copy of the Priority System Comment-Response Document, or to receive further information about the Priority System, please contact: Frank Baxter, U.S. Department of Energy, Office of Environmental Restoration, EM-433, 1000 Independence Avenue, SW., Washington, DC 20585, or call (301) 903-7435, or FAX (301) 903-8134.

DOE is providing a copy of this **Federal Register** Notice and a copy of the more comprehensive Priority System Comment Response-Document to each signatory of the comment letters, to members of the State and Tribal Government Working Group, to members of the Priority System External Review Group, and to participants in the October 1991 National Workshop on the Priority System.

Copies of this **Federal Register** Notice, of the comment-response document, and of the public comments will also be available in DOE reading rooms. These reading rooms are located at:

U.S. Department of Energy, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585.
U.S. Department of Energy, Albuquerque Field Office, National Atomic Energy Museum, Building 20358, Kirkland Air Force Base, Wyoming Boulevard, Albuquerque, NM 87115.
U.S. Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120.
U.S. Department of Energy, Chicago Field Office, 9800 South Cass Avenue, Argonne, IL 60439.
U.S. Department of Energy, Fernald Environmental Management Project, Public Environmental Information Center, Jamtek Building, 10845 Hamilton Cleves Highway, Harrison, OH 45030.
Idaho National Engineering Laboratory, Pocatello Office, 215 North 9th, Pocatello, ID 83201.
Idaho National Engineering Laboratory, Twin Falls Office, 1061 Blue Lakes Blvd., North, Suite 106, Twin Falls, ID 83001.
U.S. Department of Energy, Idaho Field Office, 1776 Science Center Drive, Idaho Falls, ID 83402.
U.S. Department of Energy, Nevada Field Office, 2753 South Highland Avenue, Las Vegas, NV 89192-8518.
U.S. Department of Energy, Oak Ridge Field Office, 200 Administration Road, Oak Ridge, TN 37831-8510.

U.S. Department of Energy, Richland Field Office, 825 Jadwin Avenue, Richland, WA 99352.
Rocky Flats Public Reading Room, Front Range Community College, 3645 West 112th Avenue, Westminister, CO 80030.
U.S. Department of Energy, San Francisco Field Office, 1333 Broadway, Oakland, CA 94612.
U.S. Department of Energy, Savannah River Operations Office, Gregg-Granite Library, University of South Carolina-Aiken, 171 University Parkway, Aiken, SC 29801.

SUPPLEMENTARY INFORMATION: DOE received 14 letters in response to the September 6, 1991, **Federal Register** Notice requesting public comment on the Priority System being developed by the Office of Environmental Restoration of DOE's Office of Environmental Restoration and Waste Management (EM) for use in its environmental restoration (ER) program. Many of the letters raised similar points and DOE has organized its response to the letters by grouping the comments into 14 topics, summarizing the issues raised by commenters, and explaining DOE's responses to these issues in the Priority System Comment-Response Document. This **Federal Register** Notice submission contains a summary of these issues and DOE responses.

1. Use of the Priority System in the DOE Budget Planning Process

Issue. Commenters expressed concern that DOE proposes to apply the Priority System to create budget requests that are insufficient to meet all of DOE's commitments. One commenter objected to using the Priority System to establish initial funding requests and said that using the system as a budget planning technique is suspect.

Response. DOE does not plan to use the Priority System to justify budget requests insufficient to meet legal commitments. DOE intends to request sufficient funds to support compliance with applicable environmental standards, as required by Executive Order 12088. In carrying out its program activities, DOE is committed to comply with applicable State and Federal laws, regulations, agreements, and treaty rights and to consider the cultural interests of Native Americans. In the available documentation on the Priority System, DOE has stated that the Priority System would be useful in developing the total budget request. However, several parties have suggested that this is not an appropriate use of the Priority System. DOE agrees with this recommendation. Priority System outputs that seem to imply a "recommended" total funding level will be eliminated. DOE will not use the Priority System to develop the total Environmental Restoration budget request level.

2. Regulatory Issues

Issue. Commenters suggested that the Priority System should be used only in instances where Congress has allocated insufficient funds to meet all legal requirements or when there are funds available beyond those required to meet all such requirements. Other commenters added that even if regulators and stakeholders were adequately involved in implementing the prioritization system, the results would still have to be used only in consensual contexts. That is, the results could be used in negotiating or renegotiating permit or agreement schedules.

Response. DOE agrees that Priority System results will be most useful in instances where more or less money is available than is called for by the requirements case; that is, when more or less money is available than is required to perform all the activities necessary to meet all legal requirements. DOE further agrees that the system could be useful in consensual situations. If the Priority System results suggested that certain activities mandated by environmental agreements were not an efficient or effective use of resources, and if DOE believed it could justify a proposal to delay or cancel those activities, then DOE would work with the regulators to resolve the issue.

3. Public Involvement

Issue. Commenters said that DOE should establish definitive procedures for public and regulatory involvement in the Priority System implementation. Commenters also said that States, Tribes, and the public should be informed of and involved in every aspect, judgment, and decision in the Priority System's application and ongoing development, including input to, review of, and, in the view of some commenters, concurrence with proposed activities, cost estimates, scores, rankings, cases, sensitivity analyses, and weights. Commenters said that numerous budget decisions are made beyond the application of the Priority System and that there is a great deal of concern regarding the appropriate degree of external involvement in each of these stages.

Response. DOE is developing a public participation process that will integrate public participation in all EM programs. Public participation in Priority System applications will be integrated with public participation in other EM programs.

4. System Complexity

Issue. Some commenters said that the Priority System is too data-intensive and complex for its purposes. Others stated that the Priority System it too simple for accurately assessing risk and too complex to be a practical budgeting tool. Some commenters stated that parts of the system are overly simplistic, while others said that the complexity of the system would continue to hamper public participation during the implementation of the system.

Response. DOE's goal has been to make the Priority System no more complex than necessary to address the problem it is meant to aid. Unfortunately, the problem of allocating environmental restoration funds among DOE field offices and their projects is itself complex. Problem complexities include: (1) The large number of hazardous waste problems that must be addressed, (2) the nature and number of criteria (prioritizing considerations) that must be accounted for by the Priority System, and (3) the varying amount and quality of available data that must be accommodated. The complexities of the Priority System reflect the inherent complexities of the problems facing the Environmental Restoration program. The Priority System could be simplified, but not without losses in system accuracy, defensibility, or usefulness. Asked to comment on the degree of system complexity, and independent expert from the Electric Power Research Institute concluded that, although the system seems complicated, it would be difficult to simplify it without reducing its usefulness. The Priority System is quantitative, which may contribute to the perception that it is complex. The independent Technical Review Group (TRG) concluded that a quantitative approach is appropriate and much to be preferred over qualitative approaches. The TRG also labeled the theory underlying the system, multiattribute utility, as the best approach for a problem of this difficulty. Finally, while DOE agrees that the system is too simple for accurately assessing risk, this is not the function of the Priority System. The system's function is to aid in making environmental restoration funding allocation decisions (wherein risk is a date input).

5. Screening

Issue. Commenters addressed the Priority System screening process. One commenter strongly supported separate funding for emergency and time-critical activities. Another agreed with the specific criteria used to determine

whether an activity is time-critical, stating that all these factors are important. One commenter suggested that the DOE defined the category of emergency activities too narrowly. Others suggested specific additions to the list of factors which qualify an activity as emergency or time-critical.

Response. DOE appreciates the generally positive view of the screening process and considers the screening process to be a very useful part of the system. DOE does not believe that the emergency activities category has been too narrowly defined. The screening criteria are deliberately narrow, since the criteria are designed to identify activities that would be funded regardless of the competition for funding other activities. In response to suggestions from commenters, DOE will update system documentation and scoring instructions to address significant further spread of off-site contamination as a "time-critical" problem, and to clarify that all other activities required by regulations are included in the "other high benefit" category.

6. Criteria and Weighting Factors

Issue. Commenters discussed the criteria and the weighting factors used in the system. One commenter stated that the objectives outlined are appropriate and comprehensive, while others suggested additional criteria or revisions and clarifications to existing criteria. Additional criteria suggested included: The quantity and quality of remediated and closed sites; timing of environmental risk; response to laws and treaties pertinent to Indian tribes and Nations; remediation worker health effects, and DOE's 30-year cleanup goal. However, a few commenters argued that the system is too ambitious in its objectives and suggested that the uncertainty reduction criterion could be eliminated or combined with other criteria.

Response. In deciding on objectives to include as criteria in the Priority System, DOE considered it desirable to include all significant factors that motivate ER activities. At the same time, DOE had to consider the complexity added to the system by additional criteria and the level of effort required to provide the system inputs. DOE developed a list of candidate factors for making environmental restoration budgeting decisions through an extensive process involving DOE Headquarters and field office personnel, as well as external parties (through the External Review Group). This list was reduced to the current criteria included in the system by eliminating factors that are generally less significant or difficult to formalize. DOE believes that this set of criteria adequately captures the main drivers for conducting environmental restoration activities. That is, if a project is not intended to reduce health risks, reduce environmental risks, reduce uncertainty over risks and costs, reduce adverse socioeconomic impacts, or respond to regulatory agreements, it should generally be a lower priority. While all the suggested additions have merit, their inclusion would result in increased complexity, which is another concern about the system. DOE does not believe the objectives currently included in the system are too ambitious. Furthermore, DOE believes that eliminating any of the current objectives would reduce the system's usefulness and credibility. In particular, removing the uncertainty reduction criterion would lead the system to drastically undervalue characterization activities.

7. Scoring and Professional Judgment

Issue. Commenters had questions and comments about the scoring process. Some concerned specific criteria, but most related to the role of professional judgment in developing the scores and the subjectivity of some of the judgments required. General concerns about the scoring process included: That the scoring process is inherently subjective, that the usefulness of the scoring instructions is a function of the expertise and experience of people making the judgments, and that the subjectivity of the inputs makes the outputs essentially meaningless. Among commenters who felt that some type of professional judgment is necessary in this system, the primary concern was the question of who is qualified to make those judgments. Several commenters suggested that DOE's credibility was too low to engender any faith in their estimates and suggested that these judgments should instead be made by an independent party.

Response. DOE agrees that the scoring process requires subjective judgment and depends upon the expertise of the scorer. Virtually any professional undertaking depends to a large degree upon professional judgment and the expertise of the participant, whether that person is a doctor, lawyer, remediation project engineer or manager. DOE has adopted the following approach to increase the accuracy of the judgments and, therefore, the credibility of the inputs. DOE provides specialized training to scorers and the scoring process includes a formal review of each score by Priority System experts and program managers. DOE does not agree that inputs based on subjective expert judgments result in meaningless outputs. In any situation in which objective, undisputed data are not available, there are two choices: Make no decisions until better data are available or base the decisions on the best data available, including professional judgments. Given that budgeting decisions must be made on an annual basis, DOE chose the latter approach. DOE believes that budgeting decisions made in light of the insights provided by the system are much better than decisions made without the benefit of the system. The issue of who is to make the judgments required by the system is a difficult one. DOE has assigned responsibility for generating inputs to field office managers, whom DOE considers best equipped with the knowledge required to answer the site-specific questions asked. Scorers develop the inputs for the system using the best available data in consultation with site experts in the relevant areas.

8. Quality of Data

Issue. Several commenters were concerned about the quality of data available to support the scoring judgments, particularly in the area of risks. One commenter stated that the lack of reliable data makes use of the Priority System premature at best. One commenter said that the data limitations are severe enough to warrant abandoning the system. Several commenters suggested that in the past, DOE's position has been that the weapons complex poses no immediate threat to public health and that this position is unsubstantiated and somewhat misleading. These commenters also said that because of this history, DOE should not have a significant role in performing risk assessments, but rather than any risk assessments should be performed by independent agencies.

Response. Hard data concerning environmental problems that DOE must address are, indeed, largely lacking. What to do in the face of data of varying degrees of quality is a difficult problem. DOE's philosophy is that it is better to make decisions by applying logic and using the best data available than to make no decisions until better data is available. DOE recognizes the need to improve the quality of available data, not only for the Priority System, but for general planning purposes as well. The Priority System is not intended to be a substitute for efforts to collect better information. As better data become available, that data will be used as input to the system. DOE is particularly disturbed by the suggestion that the

Priority System be abandoned until some time in the future when better data is available at all sites. The Priority System represents an explicit and defensible logic for combining available information and data. Limited data does not obviate the need for sound logic. DOE believes the system is a valuable aid to the finding allocation decision making process. It helps improve the quality of funding decisions and also provides a means for clearly documenting the logic underlying the choices which must be made. In making multimillion-dollar investments designed to reduce human health risks, DOE must estimate levels of risk and the potential effectiveness of expenditures to reduce risk. Therefore, it is essential that the Priority System incorporate available risk information, even as DOE makes efforts towards improving the quality of that information. DOE also recognizes that the issue of current health impacts from DOE installations needs to be further explored and that statements about the risk from DOE sites will have much more credibility if they come from an agency other than DOE. Accordingly, DOE has been working with the Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service to conduct health consultations at DOE sites. In particular, DOE and ATSDR signed an Interagency Agreement on August 19, 1991. This allows ATSDR to staff-up and begin their activities in 1992.

9. Sensitivity Analyses

Issue. Commenters provided suggestions concerning sensitivity analyses, stating that a sensitivity analysis is necessary to conduct a thorough assessment of the technical aspects of the system. One commenter stated that the sensitivity analyses conducted by DOE consider the impact of only relatively small changes to individual system components.

Response. DOE has conducted numerous sensitivity analyses, as summarized below. However, in response to this comment, DOE will request that the National Academy of Sciences perform an independent review of this issue and determine if additional sensitivity analyses are warranted. DOE has conducted analyses of the sensitivity of Priority System outputs to changes in weights and scores. DOE has conducted analyses that investigated systematic changes in scores and changes in weights on regulatory responsiveness, individual health risk, environmental risk, and socioeconomic impacts. DOE has also conducted analyses to discern the sensitivity of system results to joint changes in weights and scores. These analyses show that the results are not very sensitive at the programmatic level, but are sensitive at the field office and project levels. That is, if the weights are changed, the amount of funding the Priority System would allocate to On-Site Remediation, Decontamination and Decommissioning, UMTRA, and the FUSRAP does not vary significantly, but the amount of funding the system would allocate to a particular field office or project can vary quite significantly.

10. Risk and Risk Assessment

Issue. Commenters expressed concern that risk assessment is an inexact science, that risk assessments are based on assumptions that are subject to some controversy, and that risk assessments are not consistent across installations.

Response. DOE agrees that risk assessment is an inexact science. Risk assessment is a relatively new and evolving discipline and is often viewed as an art as much as a science. Because risk assessments are not consistent across projects, scorers are required to provide risk inputs to the Priority System using the best data available and in accordance with a clearly defined quantitative scale. (For example, a score of 4 on the individual health risks scale indicates that the highest risk posed to any individual from the waste problems being scored is 10^{-4}; a score of 5 indicates an individual risk of 10^{-5}.) The use of a consistent, quantitative scale helps to ensure that two projects where DOE managers believe the risks to be similar are scored similarly, rather than scored differently depending, perhaps, on the varying degrees of conservatism in the risk assessments for the two sites. DOE also supports the use of quantitative risk models, such as the Multimedia Environmental Pollutant Assessment System, at all of its field offices. DOE currently has an agreement with the ATSDR to conduct health consultations as input to the Priority System.

11. Detailed Technical Questions and Comments

Several commenters asked questions about technical aspects of the Priority System and how it works and commented on the techniques and methodologies implemented in the system. These comments and the DOE responses are listed in the Priority System Comment-Response Document.

12. Priority System in Relation to Other Systems

Commenters asked questions about the Priority System's relationship to the EM Programmatic Environmental Impact Statement (PEIS), to the EM Office of Waste Management's Resource Allocation Support System (RASS), to the EM Five Year Plan, and to other priority setting approaches. These comments and the DOE responses are listed in the Priority System Comment-Response Document.

13. Comments on the Preliminary Design Report as a Document

Several commenters made very useful suggestions and comments about the Preliminary Design Report, the document which describes the Priority System. Wherever possible, DOE will update the documentation to incorporate these suggestions and to clarify passages which commenters thought were misleading. The comments and the DOE responses are listed in the Priority System Comment-Response Document.

14. Other Issues

Commenters raised several issues related to the Priority System which cannot be addressed easily in any of the categories above. These comments and the DOE responses are listed in full in the Priority System Comment-Response Document.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92-24676 Filed 10-9-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP93-3-00]

Arkla Energy Resources a Division of Arkla, Inc.; Proposed Changes in FERC Gas Tariff

October 6, 1992.

Take notice that on October 1, 1992, Arkla Energy Resources ("AER"), a division of Arkla, Inc. tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 1-A. AER states that the proposed tariff sheets reflect an annual overall jurisdictional rate increase of approximately $61 million, based on the 12-month period ending June 30, 1992, as adjusted. AER states that the rates approved in the settlement in Docket No. RP91-65 were based on the cost of service and throughput levels in AER's previous rate case filed in 1987. Since that time, much has changed in terms of AER's investment in and services rendered on its system. AER states that its currently-

effective rates do not reflect AER's current cost of service or throughput levels.

AER states that in this filing it proposes to recover in its rates costs associated with Line AC, and requests removal of the "at-risk" condition imposed with respect to Line AC. AER states that it proposes to amend its Rate Schedule FT to modify its currently-effective capacity assignment program to be consistent with the capacity release program outlined in Order Nos. 636 and 636-A and to provide for flexible delivery point procedures, also as outlined in Order Nos. 636 and 636A. AER further proposes to provide cash balancing as an option to design gathering rates using the enhanced fixed variable methodology, to require that all transportation customers provide fuel in-kind, and to exclude all products extraction costs from its jurisdictional rates.

AER states that copies of the filing were served on AER's jurisdictional customers and interested state public commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24707 Filed 10-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-723-000]

Massachusetts Electric Company; Filing

October 6, 1992.

Take notice that on October 1, 1992, New England Power Service Company, on behalf of the Massachusetts Electric Company (MECo), tendered for filing an amendment to MECo's initial filing of its FERC Electric Service Tariff, Volume No. 1. MECo's proposed tariff would govern its borderline sales to other utilities. The amendment provides additional data regarding such sales.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24708 Filed 10-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-537-000]

Union Electric Company Filing

October 6, 1992.

Take notice that Union Electric Company, on September 28, 1992 tendered for filing a Second Amendment to the 25 Hertz Wholesale Power Agreement between Union Electric Company (UE) and Iowa Electric Light and Power Company (IELP), and a Second Amendment to the Interchange Agreement between UE and IELP.

UE states that the purpose of the Second Amendment to the 25 Hertz Agreement is to specify a cap in the rates based on the maximum demand and energy charges for UE's Callaway Plant.

The purpose of the Second Amendment to the Interchange Agreement is to make changes to the caps for IELP's Short Term Power, System Participation Power, Term Energy, and its FERC Order 84 Adder. Also, the Second Amendment changes the FERC Order 84 Adders of both IELP and UE to make explicit that the $1/Mwh charge for hard to quantify costs shall only apply to transactions of less than one year's duration.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 16, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-24709 Filed 10-9-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-61-NG]

P.M.I. Comercio Internacional, S.A. de C.V.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting P.M.I. Comercio Internacional, S.A. de C.V. blanket authorization to export up to 219 Bcf of natural gas during the first year and 292 Bcf during the second year of a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-24802 Filed 10-9-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-4520-8]

National Air Pollution Control Techniques Advisory Committee; Open Meeting

ACTION: Notice of open meeting.

SUMMARY: A meeting of the National Air Pollution Control Techniques Advisory Committee will be held at the Durham Hilton, Trinity Ballroom, 3800 Hillsborough Road, Durham, North Carolina 27705. The telephone number is (919) 383–8833.

DATES: November 17 and 18, 1992.

FOR FURTHER INFORMATION CONTACT: All meetings are open to the public. Anyone wishing to make a presentation must contact Ms. Mary Jane Clark at the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, by November 6, 1992. The telephone number is (919) 541–0386.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is as follows:

November 17 (Tuesday)—9:00 a.m.
Emission Standards Division (ESD)—overview for committee*
ESD Title III Activities—Requirements of 1990 Clean Air Act Status Reports on 11 Projects Under Development (Description of Program, Overview of Issues, and Future Schedules)
—Source Categories Schedule (A–91–14)
—Early Reductions (A–90–47)
—General Provisions (A–91–09)
—Hazardous Organic NESHAP (HON) (A–90–19)
—Modification, Section 112(g) (A–91–64)
—State Program Guidance, Section 112(1) (A–92–46)
—Dry Cleaning (A–88–11)
—Coke Ovens (A–79–15)
—Municipal Waste Combustors (MWC) (A–90–45)
—Pulp and Paper (Non-Combustion Sources) (A–92–40)
—Secondary Lead (A–92–43)
ESD Title I Activities—Overview
Source Category Deletion Petition Process (A–91–62)
(Section 112(c) of the Clean Air Act)
National Emission Standards for Hazardous Air Pollutants (NESHAP)
(Section 112 of the Clean Air Act)
Gasoline Distribution (Stage I), Status Report (A–92–38)
Halogenated Solvent Cleaning-Degreasing, Regulatory Development (A–92–39)
November 18, (Wednesday)—8:30 a.m
Continuation of November 17—As Required
National Emission Standards for Hazardous Air Pollutants (NESHAP)
(Section 112 of the Clean Air Act)
Polymers and Resins Industry (Basic Liquid Epoxy and Wet Strength Resins), Regulatory Development (A–92–37)
Magnetic Tape Manufacturing Industry, Regulatory Development (A–91–31)
Cleanup Solvents Control Techniques Guidelines

A lunch break will be taken from 1–2 p.m. each day (breaks will be taken at approximately 11 a.m. and 4 p.m. each day)

*This session is designed to provide information to the Committee members regarding ongoing ESD activities. Only EPA presentations will be given during this session.

The dockets numbers are shown beside each subject on the agenda, if appropriate. Dockets containing material relevant to these subjects are located in the U.S. Environmental Protection Agency, Air Docket, room M1500, 1st floor-Waterside Mall, 401 M Street, SW., Washington, DC 20460. The dockets may be inspected between 8:30 a.m. and 3:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Dated: October 2, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–24786 Filed 10–9–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1911]

Petitions for Reconsideration or Clarification Application for Review of Actions in Rulemaking Proceedings

October 6, 1992.

Petitions for reconsideration or clarification and application for review have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452–1422. Oppositions to these petitions and application must be filed by October 28, 1992. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices for Conveyances of Capital Interests in Overseas Communications Facilities Between or Among U.S. Carriers. (CC Docket No. 87–45) Number of Petitions Filed: 1

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Neenah-Menasha, Rhinelander and Rudolph, Wisconsin) (MM Docket 89–308, RM Nos. 6891 & 7008) Number of Petitions Filed: 1

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Decatur, Petal and Newton, Mississippi) (MM Docket No. 90–566, RM Nos. 7421, 7656 & 7657) Number of Petitions Filed: 1

Subject: Amendment of Section 73.606(b), Table of allotments, TV Broadcast Stations, (Bellingham and Anacortes, Washington) (MM Docket No. 92–47, RM No. 7929) Number of Petitions Filed: 1

Application for Review

Subject: Amendment of § 73.202(b), Table of allotments, FM Broadcast Stations, (Elkins, West Virginia; Mountain Lake Park and Westernport, Maryland) (MM Docket No. 89–580, RM Nos. 6977, 7177 & 7446) Number of Applications Filed: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–24698 Filed 10–9–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–961–DR]

Hawaii; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Hawaii (FEMA–961–DR), dated September 12, 1992, and related determinations.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Hawaii, dated September 12, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 12, 1992: The island of Molokai for Individual Assistance and Public Assistance.

Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-24778 Filed 10-9-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-961-DR]

Hawaii; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 18, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Hawaii (FEMA-961-DR), dated September 12, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 18, 1992, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to Wallace E. Stickney, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Hawaii, resulting from Hurricane Iniki on September 11, 1992, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration, which limited the Federal reimbursement share for certain categories of expenditures, and I hereby authorize an increase in Federal reimbursement to 100 percent of eligible public assistance costs exceeding $10 per capita, where allowed under the law for extreme disasters. This 100 percent reimbursement for costs above $10 per capita applies to all authorized public assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities. Temporary housing assistance, mortgage/rental assistance, crises counseling assistance and disaster unemployment assistance will continue to be 100 percent federally funded, where allowed under the law. Funds for public assistance up to $10 per capita will be reimbursed pursuant to the conditions set forth in my previous declaration. However, if the eligible costs of responding to Hurricane Iniki in Hawaii do not reach the level of $10 per capita, then the cost sharing formula which I set forth in my original declaration letter of September 12, 1992 still applies.

This waiver of State and local cost-sharing requirements above $10 per capita applies to all public assistance costs eligible for such a waiver under the law. The law specifically prohibits a similar waiver for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

This amended declaration is consistent with the request made to you by the Governor of the State of Hawaii.

Please notify the Governor of the State of Hawaii and the Federal Coordinating Officer of this amendment to my major disaster declaration.

Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.

Wallace E. Stickney,

Director.

[FR Doc. 92-24779 Filed 10-9-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Agency Form Submitted for OMB Review

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: The Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") has sent to the Office of Management and Budget the following proposal for the collection of information under the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be received on or before November 12, 1992.

ADDRESSES: Send comments to Paul N. Romani, Associated Director for Administration, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., Suite 200; Washington DC 20037, and Gary Waxman, Clearance Officer, Office of Management and Budget, New Executive Office Building, room 3228, Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Paul N. Romani, Associated Director for Administration, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., Suite 200; Washington DC 20037, or at (202) 634-6520, from whom copies of the information collection and supporting documents are available.

Summary of Proposal(s)

(1) *Collection title:* 12 CFR part 1102, subpart D, Freedom of Information Act implementation.
(2) *Form(s) submitted:* Not applicable.
(3) *Frequency of collection:* On occasion.
(4) *Use:* The information will be used by the ASC and its staff in terminating whether requests for access to ASC records should be provided and whether appeals from adverse agency decisions regarding access should be granted under the Freedom of Information Act, 5 U.S.C. 552.
(5) *Estimated number of respondents:* 11.
(6) *Frequency of response:* Once.
(7) *Estimated hours for respondents to provide information:* 20 minutes per respondent.
(8) *Estimated total annual reporting and recordkeeping burden:* 3.67 hours.

Dated: 6 October 1992.

By the Appraisal Subcommittee, Federal Financial Institutions Examination Council.

Edwin W. Baker,

Executive Director.

[FR Doc. 92-24723 Filed 10-9-92; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Performance Review Board; Membership; Senior Executive Service

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the member of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Donald P. Heffernan, Director of Personnel, General Services Administration, 18th & F Streets, NW., Washington, DC 20405, (202) 501-0398.

SUPPLEMENTARY INFORMATION: Section 4313 (c)(1) through (5) of title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management one or more Performance Review Board(s). The Board(s) shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the Review Board are:

1. James A. Lobmaster, (Chairperson), Chief of Staff.

2. Carlene Bawden, Associate Administrator for Administration.

3. June V. Huber, Deputy Regional Administrator, National Capital Region.
4. Roger D. Daniero, Commissioner, Federal Supply Service.
5. Richard H. Hopf, Associate Administrator for Acquisition Policy.
6. Delwyn D. Stromer, Regional Administrator, Region 6.
7. Steven R. Mead, Controller, Public Buildings Service.
8. Judith A. Parks, Assistant Commissioner for GSA Information Resources Management.
9. John F. Wynn, Director, Office of Small and Disadvantaged Business Utilization.

Dated: October 5, 1992.

Donald P. Heffernan,

Director of Personnel.

[FR Doc. 92-24730 Filed 10-09-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 305]

Program Announcement and Availability of Funds for Fiscal Year 1993 Cooperative Agreements for National/Regional Minority Organization HIV/STD Prevention, Immunization, and TB Projects

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Request for comments.

SUMMARY: CDC is preparing to announce the availability of fiscal year (FY) 1993 funds to provide support to national and regional minority organizations to carry out human immunodeficiency virus and sexually transmitted diseases (HIV/STD) prevention, immunization, and tuberculosis (TB) projects. This program announcement will assist the Nation's disease prevention efforts by broadening current partnerships between CDC and NMO and RMOs to include collaborative efforts directed at HIV/STD prevention, Immunization of preschool children, and TB elimination. Opportunities will be provided to strengthen capacities of national and regional minority organization and, through the technical assistance and training provided, community-based organizations, governmental agencies and other state/local organizations and agencies to address multiple public health problems and needs of racial/ethnic minority populations. This program will provide a foundation for even broader partnerships in the future capable of addressing additional public health problems affecting racial/ethnic minority populations. Because of the unique nature of this program, CDC invites comments from organizations and individuals on the draft of this announcement which is included in its entirety. Based on comments received, revisions will be made in this draft and the final announcement will be published in early calendar year 1993.

DATES: Written comments in response to this notice should be submitted to the Office of the Director, National Center for Prevention Services, Attention: Gary West, Centers for Disease Control, Mailstop E-07, Atlanta, GA 30333. Comments must be received on or before November 12, 1992.

FOR FURTHER INFORMATION CONTACT: Gary West, Office of the Director, National Center for Prevention Services, Centers for Disease Control, (404) 639-1480.

SUPPLEMENTARY INFORMATION: The following is the complete text of the draft program announcement for the national and regional minority HIV/STD prevention, Immunization, and TB projects.

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1993 funds for cooperative agreements with national and regional minority organizations. These agreements will support national and regional racial and ethnic minority organizations assisting community-based organizations (CBOs), state and local health agencies, and other organizations and agencies serving racial/ethnic minority populations for (I) HIV/STD prevention, (II) Preschool immunization, and (III) tuberculosis (TB) prevention and control. A cooperative agreement is a legal agreement between CDC and the recipient in which CDC provides financial assistance to and substantial Federal programmatic involvement with the recipient during the project.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement pertains to the priority areas of Educational and Community-Based Programs, HIV Infection, Sexually Transmitted Diseases (STDs), and Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION**).

Authority

This program is authorized under sections 301(a) and 317 of the Public Health Service Act, (42 U.S.C. 241(a) and 247b), as amended.

Eligible Applicants

Eligible applicants include national (NMOs) or regional minority organizations (RMOs) that provide documentation proving they meet all of the following criteria. To be eligible a national or regional organizations must:

A. Be an established nonprofit organization (a nongovernmental, nonprofit corporation or association whose net earnings in no part lawfully accrue to the benefit of private shareholders or individuals). The following is acceptable evidence of nonprofit status:

- A reference to the applicant's organization in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code; or
- A copy of a currently valid IRS tax exemption certificate.

B. Have the specific charge from its Articles of Incorporation or Bylaws or a resolution from its governing body or board to operate nationally or regionally (multistate) within the United States and its Territories.

C. Have at least 12 months documented experience in operating and centrally administering a coordinated public health or related program serving racial/ethnic minority populations within a major portion or region (multistate) of the United States through its own offices, organizational affiliates, or the participation of other minority organizations.

D. Have a governing body or board that is composed of more than 50% racial or ethnic minority group members who are representative of the population to be served.

E. Document that each of the participating affiliates, chapters, or other participating minority organizations has a governing body or board whose membership is composed of more than 50% racial or ethnic minority group members.

F. Document that its program and administrative staff and the affiliates and participating organizations involved in the project are representative of the population to be served.

Proof of nonprofit and organizational status in accordance with other eligibility criteria must be submitted with the application for determination of

eligibility. No application will be accepted without proof of nonprofit status.

Availability of Funds

I. HIV/STD Prevention (HIV/STD)

On the basis of the President's FY 1993 budget, $7,000,000 is expected to be available to fund approximately 15 to 20 NMOs or RMOs to provide technical assistance, training, and other priority assistance in support of HIV/STD prevention services. At least 8 of these awards will be made to national organizations serving racial/ethnic minority populations in a major portion of the United States. Awards will range from $300,000 to $600,000 with an average award of $400,000.

Consideration will be given to supporting HIV/STD projects for each of the following racial and ethnic minority populations: African-Americans, Alaskan Natives, American Indians, Asian Americans, Latinos/Hispanics, and Pacific Islanders. These groups are identified in accordance with OMB Directive 15. Organizations serving subgroups which have significant portions of their members at increased risk, such as Caribbean Americans, will also have priority for funding.

II. Immunization

On the basis of the President's FY 1993 budget, $500,000 is expected to be available to fund approximately 1 to 3 NMOs or RMOs to provide technical assistance and training in support of preschool immunization activities. Awards will range from $175,000 to $500,000.

III. TB Prevention and Control (TB)

On the basis of the President's FY 1993 budget, $500,000 is expected to be available to fund approximately 1–3 NMOs or RMOs to provide technical assistance and training in support of TB screening, prevention and treatment activities. Awards will range from $175,000 to $500,000.

Applicants may apply for funds under any one or any combination of the funding categories (i.e., HIV/STD, Immunization, or TB), but the proposal must clearly state under which category funds are being requested. Regional affiliates of national organizations may not apply if the parent national organization submits an application.

Awards will be made for a 12-month budget period within a 5-year project period. (*Budget period* is the interval of time into which the project period is divided for funding and reporting purposes. *Project period* is the total time for which a project has been programmatically approved.) Continuation awards for new budget periods within an approved project period are made on the basis of satisfactory performance and the availability of funds.

These funds may not supplant or duplicate existing funding. Although contracts with other organizations are allowable under these cooperative agreement awards, applicants themselves must perform a substantive portion of the activities for which funds are requested. No funds will be provided for direct patient medical care or purchase of drugs or vaccines.

Background

Racial and ethnic minority populations have many important public health needs. Among these are disproportionate rates of HIV and other STDs, low levels of immunization among preschool children, and an increasing prevalence of tuberculosis. All three of these are important problems in themselves, however, factors such as poverty, underemployment, and poor access to the health care system, contribute to their disproportionate impact on the public health of racial and ethnic minority communities. The following provides background information concerning needs in these three critical public health program areas:

I. HIV/STD Prevention

Racial and ethnic minority populations have been disproportionately affected by HIV infection and AIDS since the beginning of the epidemic in the United States. Through June 1992, the CDC had received reports of 67,972 Blacks, 38,113 Hispanics, 1426 Asians/Pacific Islanders and 388 American Indians/Alaska Natives who have AIDS. In 1991, 50% of all reported AIDS cases were among Blacks and Hispanics, while they represent only 21% of the U.S. population. Men who have sex with men and injecting drug users continue to account for the majority of AIDS cases in minority populations; however, heterosexual cases are increasing. Minority women and children have been particularly hard hit. In New York State and New Jersey, AIDS is already the leading cause of death among Black women 15–44 years of age. And in New York State in 1988, AIDS became the leading cause of death among Hispanic children 1–4 years of age, and the second leading cause of death among Black children in the same age group.

During the past 40 years, there have been dramatic increases in the scope and complexity of STDs. Currently, U.S. STD rates are among the highest in the industrialized world and, in some areas, rival those in developing countries. In FY 1990, reported syphilis rates among Blacks were 56 times higher than in whites, and rates among Hispanics were 7 times higher. Increases in women have been echoed by at least a five-fold increase in congenital syphilis. The multiple, long term, debilitating consequences of STDs disproportionately affect women and infants. These consequences are particularly common among racial and ethnic minority populations. In addition, STDs promote HIV transmission. Simultaneously, HIV infection may increase susceptibility to several STDs and make it more difficult to treat these diseases. As a result, STD and HIV infection can greatly amplify each other, so STD control is essential to HIV prevention.

These statistics do not indicate individuals are at risk just because they are a member of a racial or ethnic minority group—these numbers simply reflect the fact that many minority populations are disproportionately represented in communities that have a high incidence of HIV and other sexually transmitted infections.

During FY 1993, CDC will award cooperative agreements to NMOs and RMOs to: (1) Assist in providing culturally competent/relevant technical assistance and training to organizations and agencies providing HIV/STD prevention services to racial/ethnic minority populations, (2) assess and help address the unmet HIV/STD prevention needs of racial and ethnic minority populations in the United States, and (3) implement programs intended to change community norms pertaining to safer behavior.

II. Immunization

In the United States, the immunization levels of children entering school have been at least 95 percent for many years. However, among preschool children the rates of vaccine coverage are far lower. Retrospective surveys of children entering school in urban areas were recently conducted to determine their immunization status as of their second birthday. Complete coverage (4 Diphtheria, Tetanus, Pertussis (DTPs), 3 Oral Polio Vaccine doses (OPVs), and 1 Measles, Mumps, and Rebella (MMR) immunization) ranged from a low of 10 percent to a high of 42 percent in some urban areas.

The most visible consequence of these low immunization levels in preschool children has been the recent increases in measles morbidity. Since 1989, CDC

has received reports of over 50,000 measles cases and 160 measles related deaths. The highest risk of disease occurred among infants and preschoolers. Almost one half of all reported cases occurred among unvaccinated preschool children, with Black and Hispanic children having 4–9 times the disease incidence of white preschool children. The greatest risk was among children living in inner cities.

During FY 1993, CDC will award cooperative agrements to NMOs and RMOs to provide culturally competent/relevant technical assistance and training to organizations and agencies providing immunization services to racial and ethnic minority populations, and to help assess and address the immunization needs of racial/ethnic minority populations.

III. TB Prevention and Treatment

From 1953, when nationwide TB reporting was first implemented, to 1984, the United States experienced an average decrease of 5% each year in the number of TB cases reported. In 1985, this decrease leveled off and in 1986 and subsequent years there has been an actual increase. During 1991, 26,283 cases were reported, an 18% increase since 1985. Using the trend data from 1980 through 1984 to estimate the number of cases from 1985 through 1991, CDC estimates that in the past seven years there have been over 39,000 more cases than would have been expected had the previous downward trend continued. From 1985 to 1991, TB cases increased 26% in Blacks, 72% in Hispanic, and 32% in Asian-Americans. The largest increase in the number of TB cases has occurred in the 25 to 44-year-old group. This is of particular interest because 76% of all reported AIDS cases are in this age group. In this age group, from 1985 to 1991, reported TB cases increased 52%; there was a 30% increase among non-Hispanic whites, a 60% increase among Blacks, a 96% increase among Hispanics, and a 24% increase among Asian-Americans.

During FY 1993, CDC will award cooperative agreements to NMOs and RMOs to assist in providing culturally competent/relevant technical assistance and training to organizations and agencies providing TB prevention and treatment services to racial and ethnic minority populations and to help assess and address the TB awareness, prevention and treatment needs of racial and ethnic minority populations in the United States.

National Program Goals

I. HIV/STD Prevention

A. Establish and maintain effective HIV/STD provention programs implemented in collaboration with state and local health departments' other state and local agencies, CBOs' healths care providers' and national organizations throughout the United States and its territories.

B. Effect and evaluate the initiation and maintenance of behavior change among persons whose behavior places them at risk of HIV infection and other STDs.

C. Increase access to prevention and early intervention services for HIV-infected persons in order to reduce risks of further transmission, as well as to maintain the health of asymptomatic clients.

D. Increase collaboration and support among agencies, organizations, groups, and constituencies providing HIV prevention services.

II. Immunization

A. Establish and maintain effective vaccine delivery services and immunization programs implemented in collaboration with state and local health departments, other state and local agencies, CBOs, health care providers, and national organizations throughout the United States and its territories.

B. Effect and evaluate the initiation and maintenance of behavior change among parents whose behavior places their children at risk for low immunization levels or high morbidity of vaccine-preventable diseases.

C. Increase access to vaccine delivery services and early intervention activities for persons at risk for low immunization levels and high morbidity of vaccine-preventable diseases in order to reduce risk of further transmission, as well as to maintain the health of preschool children.

D. Increase collaboration and support among agencies, organizations, groups, and constituencies providing vaccine delivery and immunization services.

III. TB Prevention and Treatment

A. Increase awareness among populations about risk factors for TB, TB symptoms, and the availability of TB screening, prevention, and treatment services in the community.

B. Increase participation of at-risk populations in tuberculin skin testing, preventive therapy and treatment programs.

C. Increase the skills of community leaders and health care professionals in carrying out TB awareness, tuberculin skin testing, and directly observed therapy (DOT) for persons with TB infedtion or disease.

D. Develop and maintain effective referral systems between CBOs and state, local, and county TB control programs for clients with symptoms of TB, with TB infection or disease, or with risk factors for TB.

E. Establish and maintain effective DOT services for individuals with TB infection or disease through collaboration among state and local health departments, other state and local health care providers, and national organizations throughout the United States and its territories.

F. Increase collaboration and support among agencies, organizations, groups, and constituencies providing TB screening and DOT services.

Purpose of NMO/RMO Cooperative Agreement Programs

This program announcement will assist the Nation's disease prevention efforts by broadening current partnerships between CDC and NMO and RMOs to include collaborative efforts for immunization of preschool children, and TB elimination in addition to HIV/STD prevention. Opportunities will be provided to strengthen capacities of national and regional minority organizations and, through the technical assistance and training provided, community-based organizations, governmental agencies and other state/local organizations and agencies to address multiple public health problems and needs of racial and ethnic minority populations. This program will provide a foundation for even broader partnerships in the future capable of addressing additional public health problems affecting racial and ethnic minority populations. Specifically this program will:

I. HIV/STD Prevention

A. Strengthen and increase the effectiveness of HIV/STD prevention for racial and ethnic minority populations at high risk, including men who have sex with men (gay-identified and non-gay identified), substance abusers, persons with repeated STD infections, women in high-risk situations, youth in high-risk situations, sex partners of persons at high risk for HIV infection, and residents in areas of high HIV seroprevalence. A more detailed description of high risk populations is attached to this announcement.

B. Work toward improving the organizational capacities, programmatic efforts, and coordination of the HIV/STD prevention efforts of governmental and nongovernmental agencies and

organizations serving racial/ethnic minority populations. These might include CBOs, state/local health departments, affiliates of NMOs and RMOs, state offices of minority health, HIV prevention service agencies, youth service organizations, criminal justice systems, substance abuse agencies, primary health care providers, women's health care providers, and other organizations and agencies serving racial and ethnic minorities at high risk for HIV/STD infection.

II. Preschool Immunization

A. Strengthen and increase the effectiveness of immunization activities for racial and ethnic minority preschool (children younger than 5 years with especially those under 24 months of age) populations with low immunization levels and high morbidity of vaccine-preventable diseases.

B. Work toward improving the organizational capacities, programmatic efforts, and coordination of preschool immunization efforts of governmental and nongovernmental organizations. These might include CBOs, state/local health departments, Head Start programs, affiliates of NMOs and RMOs, HIV prevention service agencies, youth service organizations, criminal justice systems, substance abuse agencies, primary health care providers, women's health care providers, other child care providers, and other social service agencies who contribute to the health and welfare of preschool racial and ethnic minority children.

C. Increase consumer demand for immunization and vaccine services.

III. TB Prevention and Control

A. Strengthen and increase the effectiveness of TB prevention and treatment efforts for racial and ethnic minority populations, especially the 25 to 44 year old age group.

B. Work toward improving the organizational capacities, programmatic efforts, and coordination of TB awareness and prevention efforts of governmental and nongovernmental organizations. These might include state and local health departments, primary health care providers, CBOs, substance abuse agencies, criminal justice systems, and other health and social service agencies.

C. Promote TB prevention and control, information dissemination, and training and education.

Program Requirements

In conducting the activities to achieve the goals of this program, the recipient shall be responsible for conducting the activities under A, B, and C, below, and CDC shall be responsible for conducting activities under D, below:

A. Recipient Requirements and Guidance

All applicants must develop realistic, specific, time-phased objectives for proposed activities and services under each of the funding categories for which support is requested: (I) HIV/STD prevention activities, (II) preschool immunization activities, or (III) TB awareness and prevention activities. All proposed projects must undertake priority activity 1 and may also propose undertaking optional priority activity 2. HIV applicants may also propose to undertake priority activity 3. Applicants may elect to defer requests for assistance for priority activities 2 or 3 until future budget years in the project period.

B. Priority Activities

1. National/Regional Technical Assistance and Training Programs (Required of all applicants).

National and regional organizations must undertake activities a, b, and c. In planning programs and determining which technical assistance and training activities to undertake, national and regional organizations should, in collaboration with the organizations/agencies to be served, first identify and interpret the findings of ongoing and completed needs assessments or, if unavailable or inadequate, conduct such assessments to identify and interpret unmet HIV/STD, immunization, or TB prevention-related technical assistance and training needs.

a. Provide capacity-building technical assistance and training to minority CBOs and other organizations and agencies serving racial and ethnic minority populations. Such assistance should include technical assistance and training on resource development; grant writing, fiscal management; board development and training; information dissemination; networking and collaboration with local health departments, other CBOs and other state/local agencies and organizations; staff and volunteer recruitment and retention; and program development, evaluation, and quality assurance. National and regional minority organizations that are unable to provide technical assistance and training in all of these selected areas may acquire this expertise through collaboration with other organizations or through the use of consultants subsequent to award. However, priority will be given to applicants who demonstrate current ability to provide the technical assistance and training described above.

b. Provide programmatic technical assistance and training to organizations and agencies serving racial and ethnic minority populations including CBOs, state and local health departments, substance abuse agencies, criminal justice systems and institutions, professional organizations, and other national and regional organizations participating in the respective disease prevention activities (HIV, Immunization, or TB). Specifically, assistance should be provided to organizations and agencies serving racial and ethnic minority populations and communities in planning, implementing, and evaluating programs and providing services that are:

(1) Within a culturally competent system (i.e., a system of care which acknowledges and incorporates at all levels the importance of culture, the assessment of cross-cultural relations, vigilance towards the dynamics that result from cultural differences, the expansion of cultural knowledge, and the adoption of services to meet culturally unique needs.

(2) Developmentally appropriate (i.e., information and services provided at a level of comprehension that is consistent with the skills of the persons to be served);

(3) Linguistically specific and appropriate (i.e., information is presented in dialect and terminology consistent with the target population's language and style of communication and is educationally appropriate); and

(4) Feasible, based on, or predicted by, organizational experience or social, organizational, behavioral, or psychological theory.

The following are examples of the types of technical assistance and training services that may be offered:

—Assistance in the development of scientifically sound and culturally competent assessments of unmet prevention needs.

—Assistance in increasing the collaboration and the coordination of services among organizations and agencies serving racial and ethnic minority populations.

—Assessment and analysis of the cultural competence of paid and volunteer staff (including administrators, program managers, and personnel responsible for direct services).

—Staff training in issues related to cultural competency/relevancy and special needs of racial and ethnic minorities.

—Assistance in developing plans for improving the access to and the quality of (I) HIV/STD prevention

services, (II) immunization services to preschool children, or (III) TB prevention and therapeutic services for racial/ethnic minority populations.
—Assistance in evaluating the cultural competency/relevancy of (I) HIV/STD prevention interventions and educational materials, (II) immunization educational materials, or (III) TB information and educational materials for racial and ethnic minority populations.
—Production and dissemination of materials such as pamphlets, audiovisuals, guidelines, manuals, and funding alerts.

Note: Before funds awarded through this cooperative agreement are used to develop HIV/AIDS-related materials, an inquiry must be made through the CDC National AIDS Clearinghouse to determine if suitable materials are already available.

c. Disseminate information on prevention technologies and successful and unsuccessful (I) HIV/STD prevention programs, (II) immunization programs, or (III) TB prevention and treatment programs for racial and ethnic minorities through case studies, workshops, and other mechanisms.

2. Racial/Ethnic Minority Community Needs Assessment and Targeted Technical Assistance (Optional): Develop and implement a consensual, participatory, time-phased process that includes CBOs, state and local health departments and other local agencies, to identify and assess the unmet (I) HIV/STD prevention, (II) immunization, or (III) TB prevention and treatment needs of racial and ethnic minority populations in a specific geographic community or region of the United States. Based on the results of the assessment, in coordination with CDC, provide tailored technical assistance, to nongovernmental and governmental organizations serving this population.

Although this activity incorporates some elements of the previous program activity, it is distinctive in three important ways. First, it is targeted to specific geographic communities (e.g., a region, state, or metropolitan area) or specific racial/ethnic minority populations within a geographic community (e.g., gay men of color, minority substance abusers, minority women or minority youth at risk). Secondly, it involves a planned and coordinated assessment of both HIV prevention and technical assistance/training needs prior to the development of a technical assistance plan. Thirdly, it requires the active participation of the local community (e.g., CBOs, health department, other governmental agencies, local universities and other researchers) in the interpretation of the needs assessment and in the development of a prioritized plan to address the identified technical assistance needs. CDC will not consider supporting, under this activity, needs assessments that do not include use of the information collected to design and target technical assistance programs.

In conducting this activity: a. Using a scientifically sound methodology, identify and assess the unment (I) HIV/STD, (II) immunization, or (III) TB prevention needs of racial and ethnic minority populations and the technical assistance and training needs of the prevention programs serving racial and ethnic minority communities or populations in:

(1) Metropolitan areas, or regions heavily affected by HIV, STDs, TB or low levels of immunization or (2) in smaller cities and rural areas where racial/ethnic minority populations are underserved. The assessment should determine, describe, and document:

(1) Access to and the availability of prevention services for racial/ethnic minority populations at high risk (e.g., gay and non-gay identified men, IDU, women and youth in high-risk situations), barriers to obtaining services, and specific unmet prevention needs.

(2) Technical assistance and training needs of nongovernmental organizations and governmental agencies, serving, or proposing to serve, racial and ethnic minorities. The types, the extent, and the use of current technical assistance from all identified sources should be thoroughly documented and evaluated as part of the assessment.

b. Use information from the needs assessment and other sources to:

(1) Develop with the CBOs, health departments, and other local agencies serving or proposing to serve racial and ethnic minorities: (i) a prioritized technical assistance and training program and (ii) prioritized program strategies and plans to provide services responsive to the needs and the issues identified through the assessment. Program strategies and services may include:

(a) Community-specific workshops for the personnel of organizations and agencies serving racial and ethnic minority individuals at risk.

(b) Establishment or expansion of systems for providing long-term technical assistance to CBOs, health departments, health care providers, and other organizations and agencies serving racial and ethnic minority populations in the target community or area.

(2) Document, in a case study format, the procedures used to identify and assess prevention needs, the actual unmet needs and their priorities, the actions taken to address the identified priority needs, and the lessons learned from the needs assessment and the technical assistance services, so that this information can be shared with other organizations and agencies.

3. Community Intervention Programs (Optional, HIV/STD Applicants Only): Applicants may propose to conduct community intervention programs on a national or regional basis. Community intervention programs are prevention programs directed at the community level, rather than individuals, to influence community norms in support of those behaviors known to reduce the risk of HIV/STD infection and transmission. The primary goals of these programs are to improve health status, to promote healthy behaviors, and to change factors that affect the health of community residents. Community intervention programs should target racial and ethnic, populations whose behavior places them at high risk for infection with HIV and other STDs. CDC will not consider supporting proposed community intervention program unless they undertake all of the activities described in a. through c. below:

a. Identifying, assessing, and prioritizing the significant structural, environmental, behavioral, and psychosocial facilitators and barriers to risk reduction, including:

(1) Sources and patterns of communication and social influence surrounding the initiation and maintenance of risk-reduction behavior;

(2) Individual and community beliefs and attitudes about the acceptance of safer behaviors and primary and secondary HIV/STD prevention activities and services;

(3) The significance of condom and contraceptive use within sexual and family relationships;

(4) Cultural, linguistic, and religious influences;

(5) Incentives and disincentives to risk reduction; and

(6) Alcohol and drug use associated with HIV/STD transmission.

6. Developing and implementing culturally competent/relevant and linguistically specific/appropriate interventions to influence specific structural, environmental, behavioral, and psychosocial factors thought to promote risk reduction such as:

(1) Changing community norms to support abstinence from sex and drugs, mutual monogamy, condom and contraceptive use, and other risk-reduction strategies through

communications such as role play and persuasion;

(2) Identifying and enlisting family, peer, and community networks (e.g., HIV family networks, parents of youth-at-high-risk, women's networks) to promote and reinforce risk reduction;

(3) Creating and mobilizing networks of communication in support of risk reduction;

(4) Providing opportunities for acquiring skills in risk reduction and reinforcing behavior change; and

(5) Involving community leaders as role models in locally developed media to present information and persuasive messages about risk reduction.

c. Persuading community members who are at risk of acquiring or transmitting HIV and other STDs to accept and use HIV/STD prevention services such as: HIV prevention counseling, HIV-antibody testing and follow-up, STD detection and treatment, HIV early intervention, and psychosocial support.

C. General Requirements

All applicants must undertake the following:

1. Collaborate with and coordinate on programs, activities, services and technical assistance with other organizations and agencies serving racial and ethnic minority populations, especially state and local health departments, state offices of minority health, state/local substance abuse agencies, state/local Ryan White CARE consortia, other organizations and agencies providing HIV/STD, Immunization, or TB-related services, especially those receiving Federal funds for such purposes, and criminal justice systems. Applicants should submit evidence of collaboration or document efforts made to initiate collaboration that were rejected or ignored. Such efforts might include jointly developed plans for providing technical assistance, or evidence of past partnerships or joint projects with other national and regional organizations, state and local health departments, or community-based organizations.

2. Conduct an on-going process evaluation of activities funded through this cooperative agreement. Process evaluation is a quantitative and qualitative description of the program activities, the services, and the recipients of services. Each applicant must develop and implement an on-going evaluation plan, using process evaluation. The evaluation plan should be detailed and clearly articulated. It should present an evaluation design appropriate to the project objectives and activities. Applicants proposing to undertake optional priority activity number 3 do not need to submit an evaluation plan for this activity in their application. CDC will collaborate with successful applicants to develop evaluation plans for this activity.

The required evaluation plan should be capable of answering the following questions related to priority activities numbers 1 and 2 and the answers should be included in quarterly reports:

A detailed description of each program activity and progress in achieving each objective.

b. Detailed answers to the following questions:

(1) To which organizations or agencies were the services provided and how many representatives participated?

(2) What was the service and who provided it?

(3) When, how often, how long was the service provided?

(4) Where was it provided?

(5) How were the services provided?

(6) Was the service useful to the recipient organizations and agencies as assessed by them?

(7) Was the service delivered in a timely manner?

(8) What was the impact of providing the service on the recipient organizations and agencies (e.g., what specific capacities were increased; what changes in programmatic strategies or services occurred; how has collaboration between organizations improved; and what new programs were implemented based on the findings of the needs assessment)?

Applicants should ensure that they will be able to answer all these questions before undertaking any of the priority activities. To answer questions 6, 7, and 8, organizations will need to conduct follow-up data collection efforts of recipients of technical assistance and training.

c. Describe internal problems that affect the planning or implementation of program activities (e.g., problems in recruiting, hiring, or retaining staff; training of staff; monitoring and ensuring staff performance). Also document and describe problems related to the administrative and financial management and accounting systems.

d. Describe program successes, barriers, and other external problems encountered in planning, implementing, or providing services. This may include difficulty in initiating or maintaining effective collaborative relationships or in coordinating services with other organizations and agencies serving the target population.

Because of the additional cost and need for scientific support beyond the scope of these cooperative agreements, NMOs and RMOs are not expected to conduct individual behavioral or health outcome evaluations with these funds (i.e., long-term effects of the program in terms of changes in behavior or health status, such as changes in HIV seroincidence after intervention).

D. Centers for Disease Control Activities

1. Provide consultation and technical assistance in planning, operating, and evaluating program activities under this announcement.

2. Provide up-to-date scientific information on: I. HIV/STD: (a) The risk factors for HIV/STD infection, (b) the increases in HIV/STD rates and AIDS cases for various behavioral populations of racial and ethnic minority men and women, and (c) prevention and program strategies for preventing HIV infection. II. Immunization: the risks and benefits of immunization, recommended immunization schedules and practices, information on immunization levels in racial and ethnic minority populations, and the epidemiology of vaccine-preventable diseases in the U.S. III. TB: the risks and benefits of early diagnosis, treatment and preventive treatment, and appropriate follow-up for those with TB infection.

3. Assist in developing plans for evaluation of all program activities and services and interpreting evaluation findings. CDC will provide special assistance and collaborate with applicants awarded funding for community intervention activities to jointly develop an evaluation plan.

4. Assist successful applicants in collaborating with state and local health departments and other PHS grantees.

5. Facilitate the transfer of successful prevention interventions and program models to other areas.

6. Monitor the successful applicant's program activities, protection of client confidentiality, and compliance with other requirements.

7. Facilitate the exchange of program information and technical assistance among community organizations, health departments, and NMOs and RMOs.

Reporting Requirements

A. Subject to OMB approval under the Paperwork Reduction Act, quarterly narrative progress reports will be required 30 days after the end of each quarter. Quarterly progress reports should document services provided and problems encountered. Successful applicants should pay careful attention to answering the evaluation questions and documenting accomplishments and problems encountered in meeting

program objectives as described in the evaluation requirements section in their reports. The quarterly progress report is intended not only as a way of informing CDC of the progress made by cooperative agreement recipients in implementing programs and services and evaluating their success, but also as a tool for documenting and sharing information of importance to other organizations and agencies. NMOs and RMOs are encouraged to use the progress report to document successful programs and activities that can be models for other organizations as well as unsuccessful efforts as lessons learned which are presented for the benefit of other organizations. The CDC will share portions of progress reports with other NMOs, RMOs, and other recipients of CDC funds. NMOs and RMOs may choose to send copies of their progress reports directly to other interested organizations and agencies.

B. Annual financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of the project period.

Applicant Content

All applicants must prepare their applications in accordance with PHS Form 5161–1, information contained in the program announcement, and the general instructions outlined below. When writing the application, careful consideration should be given to the "Review and Evaluation Criteria" section below. The applicant should provide a detailed description of the objectives, program plan, intended collaboration, and evaluation activities for the first-year budget period only and briefly describe future activities during the project period in the "Program Plan" section.

Applicants may submit applications for (I) HIV/STD, (II) Immunization, and (III) TB. If applying for financial assistance for more than one of the funding categories (HIV, Immunization, or TB), a separate budget and narrative, including information relevant to the appropriate sections of the application content instructions, is required for each. Organizations requesting financial support for more than one priority activity within a single funding category must clearly describe plans for each activity and how its progress and achievements will be evaluated.

Proof of nonprofit and organizational status and compliance with all other eligibility criteria must be submitted with the application for determination of eligibility. No application will be accepted without proof of nonprofit status.

All applicants must attach a listing of the offices, affiliates, and organizations participating in the proposed national or regional program. NMOs or RMOs administering programs through participating affiliates, chapters, or other minority organizations should identify the racial and ethnic composition of the membership of the governing bodies. The governing bodies must consist of more than 50% racial or ethnic minorities. In addition, letters from each of the organizations must be provided showing that they agree to participate in the proposed program.

Application Narrative Format

Applicants must use the following format for the narrative portion of their applications and refer to the relevant program requirements and guidance, address requirements and issues in A–J as follows, and consider the review and evaluation criteria when developing the application.

A. Abstract (not to exceed 1 page): Summarize the program category (i.e., HIV/STD, Immunization, TB) for which funds are requested, including the organizations and target racial and ethnic minority population(s) to be served and the priority activities to be undertaken. The applicant's organizational structure must also be summarized as well as proposed collaboration and coordination with CBOs, state and local health departments, and other organizations and agencies.

B. Experience in Providing Technical Assistance and Training (Not to exceed 4 pages): Describe the applicant's experience in providing (I) HIV/STD-related, (II) immunization, (III) TB, or other relevant technical assistance and training to affiliates, and other organizations and agencies serving racial and ethnic minority populations.

C. Program Rationale and Need (Not to exceed 4 pages): Describe the rationale for the program and include a summary of existing information on unmet prevention needs that the proposed program will help address in the geographic area in which it will be implemented. This should include a summary of the technical assistance and training needs of organizations, agencies and providers serving the target racial and ethnic minority population(s).

D. Program Objectives (Not to exceed two pages): Specify the program objectives and show how they will relate to the identified needs. Include at least one objective for each priority activity within each program category which will be undertaken.

E. Plan to Provide National and Regional Technical Assistance and Training (Not to exceed 5 pages):

1. Describe the applicant's plan to conduct a national or regional technical assistance and training program for affiliates, organizations or agencies serving the target racial/ethnic minority population.

2. Summarize the applicant's capacities to develop, implement, and evaluate the proposed program. Specify the geographic area in which the program will be implemented.

3. Provide an estimate of the number and identify the types of organizations and agencies that will be eligible to receive technical assistance and the populations they are serving.

4. Explain how each of the technical assistance activities listed under the national and regional technical assistance program will be conducted. The plan must clearly describe how, in what format, and under what circumstances organizations and agencies will be provided technical assistance and training.

5. Describe the procedures that organizations will have to use to access and obtain technical assistance and training. How frequently will organizations be able to obtain technical assistance.

6. Show how the plan will meet the identified prevention needs and objectives and increase the capacities of organizations and agencies receiving technical assistance and training.

7. Indicate how lessons learned will be disseminated to other organizations and agencies.

F. Collaboration/Coordination (Not to exceed 4 pages):

1. Describe in detail the intended collaboration, coordination and contractual relationships with community-based organizations, other national organizations, state/local health agencies, and other organizations and agencies serving the target racial/ethnic minority population.

2. Describe the roles of each of the collaborating organizations including the specific activities each of the organizations will undertake in the proposed program plan. Summarize unsuccessful efforts to secure collaboration in the proposed program plan.

3. Describe past experience, if any, in collaborating and coordinating programs and activities with these organizations.

4. Include in the attachments evidence of intended and past collaboration and coordination such as jointly developed work plans or memoranda of understanding.

G. Evaluation Plan (Not to exceed 3 pages): Describe the plan for evaluating program activities and services. Indicate how progress made in achieving objectives will be measured and how the quality of services provided will be ensured. Describe how needs for technical assistance and training will be identified and monitored, and specify the process through which program objectives and plans will be modified to meet the emerging and changing needs of target populations and the organizations and agencies serving them.

H. Applicants seeking funds for community needs assessments and targeted technical assistance and training must provide the following additional information (not to exceed 5 pages).

1. A summary of the proposed activities to ensure representation of the target racial and ethnic minority community or population in planning and implementing the project.

2. A description of how the racial/ethnic minority community or population for which needs will be assessed will be identified and prioritized. How many needs assessments are proposed? How will the cooperation and assistance of CBOs, health departments, and other organizations serving the target racial and ethnic minority population be secured?

3. A description of how scientific input and support will be obtained for planning, implementing, monitoring, and evaluating the needs assessments and targeted technical assistance.

4. A description of how the needs assessments will be carried out: which prevention needs will be assessed; what sources of information will be used; and what procedures will be used to collect and analyze information about the needs of the target racial/ethnic minority community or population and the needs and capacities of organizations and agencies serving them.

5. The timeframe for the needs assessments.

6. A description of how the findings of the needs assessments will be documented (e.g., case study format, report of findings, other publication).

7. The procedures for developing and implementing the targeted technical assistance and training programs for both the short (within the next 12 months) and long term (5 year period).

8. The plan for evaluating the assessments and the resulting technical assistance and training programs.

I. Organizations seeking funding for community intervention programs (HIV/STD applicants only) should provide the following information (Not to exceed 5 pages):

1. A summary of the proposed activities to ensure representation of the target racial/ethnic minority community or population in planning and implementing the project.

2. A description of how scientific input and support will be obtained for planning, monitoring, implementing, and evaluating the community intervention program.

3. A description of the target racial and ethnic minority community or population and information regarding the community's or the population's acceptance of safer behaviors (sex and drug use) and HIV prevention services.

4. A description of the target community norms and the specific behaviors the applicant is intending to influence. Summarize how these specific norms were identified and given priority. What ethnographic or other research has been accomplished or consulted that supports this determination?

5. A summary of the plan for identifying and describing the structural, environmental, behavioral, and psychosocial facilitators and barriers to risk reduction.

6. A description of existing related prevention services for the target racial and ethnic minority community or population.

7. A description of the proposed procedures for developing or implementing the interventions intended to influence perceptions of community norms.

J. Attachments (Attach, at a minimum, the following documents):

1. Proof of the applicant organization's non-profit status.

2. A copy of the applicant organizations's Articles of Incorporation, Bylaws, or Board resolution authorizing activities within a region or the nation.

3. A list of participating offices, affiliates, or organizations.

4. A list of the members of the Board or Governing body for the applicant and participating affiliates, chapters, and organizations, and their race/ethnicity.

5. A list of current and proposed staff and their race/ethnicity, their area of expertise, and relevant experience.

6. Evidence of collaboration/coordination with affiliates, participating minority organizations, state/local health departments, and other organizations and agencies.

Evaluation Criteria

Eligible applications submitted under this announcement will be evaluated through a competitive review process which will include review of an application describing and justifying the proposed program and may also include a predecisional site visit conducted by CDC staff to evaluate organizational capacities and technical assistance needs.

A. Application Review and Evaluation Criteria

Applicants may apply for funding to support national or regional technical assistance and training programs under any of the funding categories (HIV, Immunization, and TB) and propose to undertake one or more of the optional priority activities.

The CDC-convened committees will evaluate each application on an individual basis according to the following criteria:

1. The extent to which the applicant documents experience in providing (I) HIV/STD, (II) immunization, or (III) TB technical assistance and training from a national or regional level to organizations and agencies serving racial and ethnic minority populations. (20 points)

2. The extent to which the applicant documents other relevant experience in providing technical assistance and training on public health issues other than HIV/STD, Immunization or TB from a national or regional level to racial and ethnic minority populations. (10 points)

3. The extent to which the applicant demonstrates and documents its understanding of the types, magnitude, and priority of the unmet prevention needs of the target racial and ethnic minority communities, populations, organizations and agencies that will be addressed through the proposed program. (15 points)

4. The extent to which the proposed objectives are specific, measurable, time-phased, consistent with the program purpose and the proposed activities, and consistent with the applicant organization's overall mission. (10 points)

5. The quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives. (25 points)

6. The extent to which the applicant demonstrates support and intended collaboration on the program plan and activities from CBOs, health departments, organizations and agencies serving racial and ethnic minority group populations. (10 points)

7. The extent to which the evaluation plan measures the achievement of

program objectives and monitors the implementation of proposed activities. (10 points)

B. Predecisional Site Visits

Site visits may be conducted before final funding decisions are made by CDC. Only the organizations with high ranking applications will be visited. During the visit, CDC staff will meet with project staff, a representative of the board of directors, and other outside consultants to assess the applicant's ability to implement the proposed program, review the application and program plans for current or planned activities; and determine the special programmatic conditions and technical assistance requirements of the applicant. As part of these visits, CDC and its consultants may visit state/local health departments and CBOs serving the geographic area in which the program will be implemented.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and to receive instructions on the state process. For proposed projects that serve more than one state, the applicant should contact the SPOC for each state served. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them no later than 60 days after the application deadline, to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305. The CDC does not guarantee to accommodate or explain state process recommendations it receives 60 days after that date.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers are 93.939, HIV Prevention Activities—Non-governmental Organization Based; 93.185, Immunization Research, Demonstration, Public and Professional Education; 93.947, Tuberculosis Demonstration, Research, Public and Professional Education.

Other Requirements

A. Review of Materials

HIV funding recipients must comply with the terms and conditions in the document entitled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (June 1992) and must establish or use existing program review panels. At least one member of each funded organization's panel must also be a designated representative of a state or local health department. The names of review panel members must be listed on the Assurance of Compliance Form CDC 0.113. Cooperative agreement recipients must provide to CDC, as attachments to quarterly progress reports, signed statements of the chairperson of the Program Review Panel specifying the vote for approval or disapproval for each proposed item or activity that is subject to this guidance.

B. Requirement for a Certified Public Accountant

The services of a certified public accountant licensed by the State Board of Accountancy or equivalent must be retained throughout the budget period as a part of the recipient's staff or as a consultant to the recipient's accounting personnel. These services may include the design, the implementation, and the maintenance of an accounting system in which to record receipts and expenditures of Federal funds, in accordance with accounting principles, Federal regulations, and cooperative agreement terms.

The funds claimed by the recipient for reimbursement under this cooperative agreement must be audited by an independent certified public accountant. This audit must be performed within 60 days after the budget period, or at the close of an organization's fiscal year. The audit must be performed in accordance with generally accepted auditing standards (established by the American Institute of Certified Public Accountants), governmental auditing standards (established by the General Accounting Office), and Office of Management and Budget Circular A–133.

C. Confidentiality of Records

All identifying information obtained in connection with the provision of services to any person in any program that is being carried out with a cooperative agreement made under this announcement shall not be disclosed unless required by a law of a state or political subdivision or unless written, voluntary informed consent is provided by persons who receive services.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application and Submission Deadline

The original and two copies of the application (Form PHS–5161–1) must be submitted to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, GA 30305 on or before 60 days following publication.

A. Deadline

Applications meet the deadline if they are either received on or before the deadline date or sent on or before the deadline date and received in time for submission to the independent review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

B. Late Applications

Applications that do not meet these criteria are late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

Information on application procedures may be obtained from Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, (404) 842–6575.

I. HIV Prevention

Programmatic technical assistance may be obtained from Jack Kirby, Division of Sexually Transmitted Diseases/Human Immunodeficiency Virus Prevention (DSTD/HIVP), National Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639–0500.

II. Immunization

Programmtic technical assistance may be obtained from Karen White, Division

of Immunization, National Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639–1867.

III. TB Prevention and Treatment

Programmatic technical assistance may be obtained from Harry Stern, Division of Tuberculosis Elimination, National Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639–2501.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone (202) 783–3238). Information on standard immunization practices and the national plan to combat Tuberculosis may also be obtained by writing CDC. For your information, the HIV, Immunization, and TB-related objectives are included in the application kit.

Dated: October 6, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

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BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing an amendment to the agenda of a meeting of the Vaccines and Related Biological Products Advisory Committee which is scheduled for October 28 and 29, 1992. This meeting was announced in the **Federal Register** of September 28, 1992 (57 FR 44573). The change is being made to delete one agenda item and replace it with another. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Anna J. Baldwin, Center for Biologics Evaluation and Research (HFB–5), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8226.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 28, 1992 (57 FR 44573), FDA announced that a meeting of the Vaccines and Related Biological Products Advisory Committee would be held on October 28 and 29, 1992. On page 57 FR 44573 at 44574, column 1, the open committee discussion portion of the agenda is amended as follows:

Open committee discussion. On October 28, 1992, the committee will discuss a DTP/Haemophilus b combination vaccine (Lederle Laboratories) and two Haemophilus b conjugate vaccines (Merck, Sharp, and Dohme, Pasteur-Merieux). On October 29, 1992, the committee will discuss a vaccine for the prevention of typhoid fever (Pasteur-Merieux).

Dated: October 5, 1992.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 92–24699 Filed 10–9–92; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* New; *Title of Information Collection:* Impact of Home Health Care Plan Management and Evaluation, Home Care Quality Study; *Form Number:* HCFA–R–146; *Use:* Results of this study will permit HCFA to examine the impact of providing care plan management and evaluation as a Medicare home health treatment following the acute phase of a home health stay on access to care, quality of care, and the use of Medicare services; *Frequency:* One-time; *Respondents:* Individuals/households, businesses/other for-profit, and non-profit institutions; *Estimated Number of Responses:* 6,780; *Average Hours per Response:* .16; *Total Estimated Burden Hours:* 1,085.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* End-Stage Renal Disease (ESRD) Medical Case Review; *Form Number:* HCFA–R–1; *Use:* Sections 1881(c)(2) (E) and (F) of the Social Security Act require ESRD network organizations to perform reviews of ESRD facilities, utilizing defined standards of care to assure that ESRD beneficiaries receive proper medical care; *Frequency:* Monthly; *Respondents:* Individuals/households, businesses/other for-profit, Federal agencies/employees, non-profit institutions, and small businesses or organizations; *Estimated Number of Responses:* 216; *Average Hours per Response:* 16; *Total Estimated Burden Hours:* 3,456 (reporting) and 21,600 (recordkeeping) for a total of 25,056.

3. *Type of Request:* Revision; *Title of Information Collection:* Medicare/Medicaid Hospital Swing-Bed Survey Report Form; *Form Numbers:* HCFA–1537C and 605; *Use:* In order to participate in the Medicare program as a "swing-bed" hospital, a provider must meet Federal standards. This form will be used by State survey agencies to record providers' compliance with the standards and report this information to the Federal Government; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,500; *Average Hours per Response:* 5; *Total Estimated Burden Hours:* 750.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Quarterly Medicaid Statement of Expenditures; *Form Number:* HCFA–64; *Use:* This form is submitted by Medicaid State agencies to report actual program benefit costs and administrative expenses to HCFA. HCFA uses the information to compute the Federal financial participation (FFP) for the States' Medicaid program costs; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 228; *Average Hours per Response:* 47.5; *Total Estimated Burden Hours:* 10,830.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicaid Program Budget Report; *Form Number:* HCFA–37 (formerly HCFA–25); *Use:* This form is prepared by the State Medicaid agencies and is used by HCFA for (1) developing national Medicaid budget estimates, (2) quantifying budget assumptions, and (3) issuing quarterly Medicaid Grant Awards; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 228; *Average Hours per Response:* 35; *Total Estimated Burden Hours:* 7,980.

6. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements in Final Peer Review Organization (PRO) Sanction Regulations—42 CFR 1004.40(c), 1004.50(a), (b), and (c), 1004.60(a) and (b), and 1004.70(a) and (b); *Form Number:* HCFA–R–65; *Use:* The PRO is responsible for identifying situations where obligations are violated and afford the practitioner or

other person notice of the violation and the opportunity to discuss them. These requirements describe the notices to be sent and the report that is sent to the Office of the Inspector General (OIG) if violations are not resolved. The report to the OIG assists the OIG in making its final decision; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses or organizations; *Estimated Number of Responses:* 1,080; *Average Hours per Response:* 28.4; *Total Estimated Burden Hours:* 30,104.

7. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements in 42 CFR 498, Appeals Procedures for Determinations That Affect Participation in Medicare; *Form Number:* HCFA–R–103; *Use:* The Social Security Act provides for a hearing for any institution or agency dissatisfied with a Medicare program determination. This rule sets forth the procedures for appeals on determinations that affect participation of providers, suppliers, etc. in the program; *Frequency:* On occasion; *Respondents:* Individuals/households, businesses/other for profit, and small businesses or organizations; *Estimated Number of Responses:* 60; *Average Hours per Response:* 5; *Total Estimated Burden Hours:* 300.

8. *Type of Request:* Extension; *Title of Information Collection:* Request for Medical Review Information for Part B Intermediary Outpatient Therapy Bills and Other Part B Outpatient Bills; *Form Numbers:* HCFA–700–701, 9027; *Use:* Medicare contractors require certain medical information to determine that requirements for Medicare coverage are met. The information is used to determine if billed services are payable in accordance with Medicare law, regulations, and guidelines. The services in question may be provided by hospitals, SNFs, CORFs, RHC, Hospices, ESRD facilities and Christian Science hospitals and SNFs; *Frequency:* On occasion; *Respondents:* Non-profit institutions, businesses/other for profit, and small businesses or organizations; *Estimated Number of Responses:* 2,100,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 525,000.

9. *Type of Request:* New; *Title of Information Collection:* Medicaid—Limitations on Provider-related Donations and Health Care-related Taxes; Limitations on Payments to Disproportionate Share Hospitals; *Form Number:* HCFA–R–148; *Use:* As a result of sections 2, 3, and 4 of Public Law 102–234, States are required to report information related to provider-related tax and donation programs and aggregate disproportionate share hospital payments. These requirements implement the statutory requirements; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 224; *Average Hours per Response:* 34.43; *Total Estimated Burden Hours:* 7,712.

Additional Information or Comments: Call the Reports Clearance Office on 410–966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: October 5, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92–24702 Filed 10–9–92; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Advisory Committee on Infant Mortality Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Ms. Kyungeun Carol Han, Public Health Analyst, Office of the Planning, Evaluation and Legislation, Health Resources and Services Administration, room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1900.

Dated: October 6, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–24700 Filed 10–9–92; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

National Park Service

Completion of Inventory of Native American Human Remains and Associated Funerary Objects From Four Sites in Tuolumne County, California, in the Possession of the California Department of Parks and Recreation

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains and associated funerary objects from four sites in Tuolumne County, California, in the possession of the California Department of Parks and Recreation. Representatives of culturally affiliated Indian tribes are advised that the human remains and associated funerary objects from Tuolumne County will be retained by the Department at it headquarters facility until November 12, 1992, after which they may be repatriated to culturally affiliated groups.

The detailed inventory and assessment of the human remains and associated funerary objects from these four Tuolumne County sites has been made by the California Department of Parks and Recreation curatorial and archeological staff, contract specialists in physical anthropology and prehistoric archeology, and representatives of the Tuolumne Band of Me-wuk Indians and the Central Sierra Me-Wuk Cultural and Historic Preservation Committee.

Three of the collections [from CA–TUO–331, CA–TUO–342, and CA–TUO–S497 (the Lucas Gulch site)] were surface-collected in 1970 prior to flooding of the Don Pedro reservoir. The collection from CA–TUO–342 contains one human tooth which is probably late prehistoric or protohistoric, based on a desert side-notched point and olivella disc beads found during the survey. The collection from CA–TUO–331, a small village site with many bedrock mortar pits, and the collection form CA–TUO–S497 each contain one human bone fragment which are presumed to be late prehistoric or historic based on the degree of their preservation. No funerary objects have been identified from these surface-collections.

The fourth collection was excavated in 1968 from CA–TUO–395 (the Columbus Junior College site). The collection includes one cremation, two burials, and 60,050 funerary objects,

most of which are fire-exposed beads. The burials date from about 1860.

Two of the collections, CA-TUO-342 and CA-TUO-395, are clearly identifiable as being affiliated with the historic Central Sierra Miwok people, as they come from known historic or late prehistoric village sites and have artifacts which are consistent with this attribution. The two other collections, from CA-TUO-331 and CA-TUO-S497, can reasonably be believed to be affiliated with the historic Central Sierra Miwok people as they were collected from an area believed by archeologists to be inhabited by the Central Sierra Miwok since about AD 1400, with no contradictory evidence of the presence of another group.

This notice has been sent to officials of the Tuolumne Band of the Me-wuk and the Central Sierra Me-wuk Cultural and Historic Preservation Committee. Representatives of any other Indian group which believes itself to be culturally affiliated with the human remains and associated funerary objects from these four Tuolumne County collections should get in touch with Pauline Grenbeaux Spear, Committee on Repatriation, P.O. Box 942896, Sacramento, CA 94296-0001, (916) 324-6800 before November 12, 1992.

Dated: October 6, 1992.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 92-24760 Filed 10-9-92; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 3, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by October 28, 1992.

Beth L. Savage,

Acting Chief of Registration, National Register.

ARKANSAS

Marion County

Cold Springs School (Public Schools in the Ozarks MPS), Cold Spring Hollow, just E of Buffalo R., Big Flat vicinity, 92001494

Washington County

Prairie Grove Battlefield (Boundary Increase), US 62 N side, E of Prairie Grove, Prairie Grove vicinity, 92001523

CALIFORNIA

Los Angeles County

Mount Lowe Railway, N of Altadena in Angeles NF, Altadena vicinity, 92001522

FLORIDA

Duval County

Woman's Club of Jacksonville, 861 Riverside Ave., Jacksonville, 92001505

Young Men's Hebrew Association, 712 W. Duval St., Jacksonville, 92001486

GEORGIA

Coweta County

Goodwyn—Bailey House, 2295 Old Poplar Rd., Newnan, 92001520

KENTUCKY

Carter County

Olive Hill C & O Depot, Railroad St. S side, W of jct. with Plum St., Olive Hill, 92001487

Monroe County

Evans, Thomas P., House, 701 N. Main St., Tompkinsville, 92001488

LOUISIANA

Ouachita Parish

St. James United Methodist Church, 916 Adams St., Monroe, 92001519

Richland Parish

Rayville High School, 109 Madeline St., Rayville, 92001491

MAINE

Androscoggin County

Big Ram Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, Ram Island vicinity, 92001515

C. Varney Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, Keens Mills vicinity, 92001514

Cape Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, West Leeds vicinity, 92001511

Irish Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, East Auburn vicinity, 92001517

Moyer Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, Keens Mills vicinity, 92001518

Quartz Scraper Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, Keens Mills vicinity, 92001508

Wilson I Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, East Auburn vicinity, 92001512

Wood Island Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, Keens Mills vicinity, 920015016

Oxford County

Rumford Falls I—IV Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, South Rumford vicinity, 92001513

Rumord Falls V Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, South Rumford vicinity, 92001513

Smith I Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, Rumford vicinity, 92001506

Smith II Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, Rumford Center vicinity, 92001510

Town of Rumford Site (Androscoggin River Drainage Prehistoric Sites MPS), Address Restricted, Rumford vicinity, 92001507

MICHIGAN

Eaton County

Sunfield Grand Army of the Republic Post No. 283 Hall, 115 Main St., Sunfield, 92001502

Sanilac County

SPORT (tug) Shipwreck Site, Address Restricted, Lexington vicinity, 92001503

MISSISSIPPI

Oktibbeha County

Bell House, 1280 MS 25 S., Starkville, 92001480

NEW JERSEY

Somerset County

Raritan Bridge (Metal Truss Bridges in Somerset County MPS), Nevius St. over Raritan R., Bridgewater and Hillsborough Townships, Raritan, 92001526

Sussex County

Newton Town Plot Historic District, Roughly, Church St., Park Pl. and Spring St. from Main St. to High St. and Main and High from Church to Spring, Newton, 92001521

OHIO

Montgomery County

Schantz Park Historic District, Roughly bounded by Far Hills, Irving, Mahart and Schenck Aves., Oakwood, 92001492

Summit County

Boston Mills Historic District, Roughly, Riverview, Boston Mills and Stanford Rds. and Main St., Boston Mills, 92001490

PENNSYLVANIA

Adams County

Spangler-Benner Farm, 230 Benner Rd., Mt. Joy Township, Gettysburg vicinity, 92001493

Allegheny County

Lobb's Cemetery and Yohogania County Courthouse Site [Whiskey Rebellion Resources in Southwestern Pennsylvania MPS], Calamity Hollow Rd. at Lobb's Run, Jefferson Borough, West Elizabeth vicinity, 92001501

Bedford County

Defibaugh Tavern [Whiskey Rebellion Resources in Southwestern Pennsylvania MPS], US 30 N side, E of Bedford, Snake Spring Valley Township, Bedford vicinity, 92001498

Fayette County

Rabb, Andrew, House [Whiskey Rebellion Resources in Southwestern Pennsylvania MPS], Off PA 166 N of Masontown, German Township, Masontown vicinity, 92001497

US Post Office—Connellsville, 115 N. Arch St., Connellsville, 92001495

Green County

Crawford, William, House [Whiskey Rebellion Resources in Southwestern Pennsylvania MPS], Off jct. of Brown's Ferry Rd. and Stevenson's Ln., Cumberland Township, Carmichaels vicinity, 92001496

Washington County

Huffman Distillery Chopping Mill [Whiskey Rebellion Resources in Southwestern Pennsylvania MPS], LR 62155, 2 mi. N of jct. with PA 917, Somerset Township, Cokeburg vicinity, 92001499

Mingo Creek Presbyterian Church and Churchyard [Whiskey Rebellion Resources in Southwestern Pennsylvania MPS], Jct. of PA 88 and Mingo Church Rd., Union Township, Courtney vicinity, 92001500

VERMONT

Caledonia County

Gilkerson, William and Agnes, Farm, Town Hwy. 5 W of jct. with US 5, Barnett, 92001504

Orange County

Post Mills Church, VT 244 E of jct. with VT 113, Thetford, 92001489

Rutland County

Mission of the Church of Our Savior, Mission Farm Rd., Sherburne, 92001479

Windsor County

Bridgewater Corners Bridge (Metal Truss, Masonry and Concrete Bridges in Vermont MPS), VT 100A over the Ottauquechee R., Bridgewater, 92001525

West Hartford Bridge (Metal Truss, Masonry and Concrete Bridges in Vermont MPS), Town Hwy. 14 at VT 14 over the White R., Hartford, 92001524

WEST VIRGINIA

Brooke County

Brown, Danforth, House, 555 Washington Pike (US 27), Wellsburg vicinity, 92001484

Inn at Fowlerstown, 1001 Washington Pike (WV 27), Wellsburg vicinity, 92001483

Greenbrier County

Blue Sulphur Springs Pavilion, Co. Rt. 25, 9 mi. N of Alderson, Blue Sulphur Springs, 92001481

Jackson County

Clerc—Carson House, 121 North St., Ripley, 92001482

Marshall County

McMechen Lockmaster Houses on the Ohio River, 623—625 Grant St., McMechen, 92001485

[FR Doc. 92–24761 Filed 10–9–92; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0030), Washington, DC 20503, telephone 202–395–7340.

Title: State Process for Designating Areas Unsuitable for Surface Coal Mining Operations, 30 CFR part 764.

OMB Approval Number: 1029–0030.

Abstract: This part establishes the minimum requirements for designating areas as unsuitable for all or certain types of surface coal mining operations. The information requested will be used by the regulatory authority to make its decision to approve or disapprove a petition to designate an area as unsuitable for surface coal mining or to terminate such as designation. The information will also be used to maintain a data base and inventory system.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Persons petitioning to have land designated as unsuitable for surface coal mining operations or to have such a designation terminated, and State regulatory authorities who compile and maintain a data base and inventory system.

Estimated Completion Time: 1766 hours.

Annual Response: 6.

Annual Burden Hours: 10,597

Bureau Clearance Officer: John A. Trelease 202–343–1475.

Dated: September 2, 1992.

John Mosesso,

Chief, Division of Technical Services.

[FR Doc. 92–24728 Filed 10–9–92; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on:

Date: November 17–18, 1992

Location: U.S. Department of State

This meeting is the second in a two-meeting module which will examine the A.I.D./PVO relationship from the perspective of U.S. private voluntary organizations. The purpose of the meeting will be to examine the operational considerations of this relationship. Members of the committee and persons attending will hear from a variety of PVO, cooperative development and foundation representatives in this regard.

The meeting is free and open to the public. However, notification by Friday, November 13, 1992, through the advisory committee headquarters is required.

Persons wishing to attend the meeting must call Theresa Graham or Suasan Saragi (703) 351–0202, or facsimile (703) 351–0212. Persons attending must include their name, organization, birth date and social security number for security purposes.

Dated: September 29, 1992.

Lou Stamberg,

Deputy Assistant Administrator, Office of Private and Voluntary Cooperation (Acting), Bureau for Food and Humanitarian Assistance.

[FR Doc. 92–24776 Filed 10–9–92; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree

A proposed Consent Decree in *United States* v. *American Seating Co., et al.*, No. 91–C–0835–S, was lodged with the United States District Court for the Western District of Wisconsin on September, 15, 1992. The Consent Decree is a cost recovery decree under the Comprehensive Environmental Response, Compensation, and Liability Act as amended ("CERCLA"), and resolves claims of the United States under section 107 of CERCLA, 42 U.S.C. 9607, against four potentially responsible parties that arranged for treatment or disposal of hazardous substances at the Mid-State Disposal Landfill Site in Marathon County.

Wisconsin. Under the terms of this Consent Decree, the defendants will pay the United States $1,578,958 of its unreimbursed response cost incurred at the Site.

The Department of Justice will receive comments relating to the proposed Agreed Order Modifying Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC. 20530, and should refer to *United States* v. *American Seating Co., et al.*, D.J. Ref. No. 90–11–3–392A.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin, Office of the United States Environmental Protection Agency, 111 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC. 20004 (202–347–2072). A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $20.00 (25 cents per page) for reproduction costs, payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–24909 Filed 10–9–92; 8:45am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Re-Solve Inc., et al.*, Civil Action No. 90–10490K, was lodged on October 1, 1992 with the United States District Court for the District of Massachusetts. The four settling defendants are generators who arranged to have hazardous substances sent to Re-Solve, Inc. Superfund Site in North Dartmouth, Massachusetts for treatment. The proposed concent decree requires the defendants to pay the United States $330,000.00.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Re-Solve, Inc., et al.*, D.J. reference #90–11–2–58A

The proposed concent decree may be examined at the Office of the United States Attorney for the District of Massachusetts, 1107 J.W. McCormack Building, POCH, Boston, Massachusetts; the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts; and at the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $7.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–24725 Filed 10–9–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

U.S. v. Cookson Group, plc, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Cookson Group, plc, et al.*, Civil Action No. 92–2206.

The Complaint alleges that the proposed acquisition of Hollis Automation Co. of Nashua, New Hampshire by Electrovert U.S.A. Corp. of Providence, Rhode Island violates section 7 of the Clayton Act by substantially lessening competition in the North American high performance and mid-range wave soldering machine markets.

Electrovert and Hollis manufacture wave soldering machines, which are used to attach electronic components to a printed circuit board. Electrovert is the largest North American producer of mid-range wave soldering machines in 1991. Hollis was the second largest North American producer of mid-range wave soldering machines in 1991 and the largest North American producer of high performance wave soldering machines in 1991.

The proposed consent decree would require Electrovert to grant North American rights to all of Hollis' wave soldering technology to two other firms presently selling wave soldering machines in the United States. The technology that would be licensed includes Hollis' patented "hot air knife," a device that improves the quality of soldering.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, Department of Justice, room 10–437, 555 Fourth Street NW., Washington, DC 20001 (telephone: (202) 307–0924).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Cookson Group PLC, Electrovert Ltd., and Electrovert U.S.A. Corp., Defendants. Judge Hogan.

Filed: September 29, 1992.

Civil Action No. 92 2206.

Stipulation

It is hereby stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

(2) The parties consent that a Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (5 U.S.C. 16(b)–(h)), and without further notice to any part or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment.

(4) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this stipulation shall be without

prejudice to any party in this or any other proceedings.

Dated: September 29, 1992.

For Plaintiff United States of America.

Charles A. Jones,
Acting Assistant Attorney General.
John W. Clark,
Constance K. Robinson,
P. Terry Lubeck,
John F. Creaney,
Attorneys, U.S. Department of Justice, Antitrust Division.
Willie L. Hudgins,
Weeun Wang,
Erin L. Carter,
John J. Murphy,
Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, 555 Fourth Street NW., room 10-437, Washington, DC 20001, (202) 307-0931.
Robert Pitofsky,
D.C. Bar #125332, Arnold & Porter, 1200 New Hampshire Avenue, NW., Washington, DC 20036, (202) 872-6358.

Counsel for Cookson Group plc, Electrovert Ltd., and Electrovert U.S.A. Corporation.

Stipulation Approved for Filing
Done this 29th day of September, 1992.

Thomas F. Hogan,
United States District Judge.

United States of America, Plaintiff, v. Cookson Group PLC, Electrovert Ltd., and Electrovert U.S.A. Corp., Defendants.
Civil Action No. 92-2206.
Filed: September 29, 1992.
Judge Hogan.

Final Judgment

Whereas plaintiff, United States of America, having filed its Complaint herein on September 29, 1992, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas the essence of this Final Judgment is prompt licensing of certain wave soldering technology to ensure that competition in the sale of wave soldering machines is not substantially lessened;

And whereas defendents have represented to plaintiff that the remedial action required below can be undertaken and that defendants will later raise no claim of financial hardship arising out of this Final Judgment or the license agreements required by this Final Judgment a grounds for asking the Court to modify any of the provisions contained below;

Now Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged, and Decreed as Follows:

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "Cookson" means defendant Cookson Group plc, each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

B. "Electrovert Ltd." means defendant Electrovert Ltd., each subsidiary and division thereof, and each officer, director, employee, agent, and other person action for or on behalf of any of them.

C. "Electrovert" means defendant Electrovert U.S.A. Corp., each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

D. "Hollis" means the Hollis automation Co. whose assets were acquired by Electrovert on or about March 30, 1992.

E. "Wave soldering technology" means all intellectual property currently owned by Hollis relating to any wave soldering machine, equipment, parts, or processes produced, sold, utilized, or under development by Hollis, including all rights under any patents, patent applications, and patent improvements; all know-how, design specifications, drawings, and parts specifications; and a current list of all approved parts suppliers. Wave soldering technology includes, but is not limited to, Hollis' hot air knife, nitrogen, oil itermix, and horizontal conveyor technologies.

III

A. The provisions of this Final Judgment shall apply to defendants, to each of their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. No portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

C. Cookson, Electrovert Ltd., and Electrovert shall require, as a condition of the sale or other dispositon of all or substantially all of their assets or capital stock, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

A. Electrovert is hereby ordered and directed, by no later than 90 days following the stipulation by the parties as to this Final Judgment, to license in perpetuity all North American rights to the wave soldering technology to two of the following four firms: Technical Devices Company, Sensbey Incorporated, Soltec International B.V., and Seitz & Hohnerlein. As to each proposed licensee it must be demonstrated to plaintiff's satisfaction and in plaintiff's sole discretion that, in view of the terms of the proposed technology license, the proposed licensee has the capability and incentive to produce wave soldering machines incorporating a "hot air knife" and to compete effectively in the sale of such wave soldering machines in North America within one year from the date of the license. If plaintiff objects to any proposed licensee, any grant by Electrovert of a license to that proposed licensee shall not satisfy the requirements of this paragraph.

B. If within 90 days Electrovert has not secured the two licenses as required by Paragraph IV.A., the Court shall, upon application of plaintiff, appoint a trustee selected by plaintiff to secure the required licenses. The trustee shall have the full power and authority to secure the licenses, including the power to grant worldwide rights to the wave soldering technology on such terms as are then obtained upon a reasonable effort by the trustee and shall have such other powers as the Court deems appropriate to secure such licenses. Defendants shall, as requested, use all reasonable efforts to assist the trustee in accomplishing the required licensing. Defendants shall not object to any license by he trustee on any grounds other than malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within 10 days after the trustee has notified Electrovert of the proposed license.

C. The trustee shall serve at the cost and expense of Electrovert, pursuant to a fee agreement between them that provides for a fixed fee plus an incremental fee for each license secured. The trustee shall account for all monies

derived from the licenses and all costs and expenses incurred. After the accounting is completed to the parties' and the trustee's satisfaction, or upon Court approval if the parties and the trustee cannot agree, all monies derived from the licensing shall be paid to Electrovert and the trust shall be terminated. The trustee shall have six months from the time it receives the right to license the wave soldering technology to secure the necessary licenses.

D. The trustee shall have full and complete access to such personnel, books, and records of Electrovert that the trustee believes is necessary to enable the performance of the trustee's duties. Subject to appropriate confidentiality agreements, the trustee may disclose to prospective licensees such relevant information regarding wave soldering technology that the trustee believes is necessary to secure the aforementioned licenses.

E. The trustee shall file monthly reports with plaintiff, Electrovert, and the Court setting forth the trustee's efforts to accomplish the licenses ordered by this Final Judgment. If the trustee has not accomplished such licenses within six months after the trustee's appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required licenses and (2) the reasons, in the trustee's judgment, why the required licenses have not been accomplished. To the extent such report contains information the trustee deems confidential, that portion of the report containing the confidential information shall not be filed in the public docket of the Court. Upon application by plaintiff, the Court may, in order to carry out the purpose of the trust, extend the term of the trust and the term of the trustee's appointment by no more than 90 days.

F. Defendants shall give 60 days notice to the Department of Justice prior to:

(1) Acquiring any interest in any assets of any person that, at any time during the 12 months immediately preceding the acquisition, used such assets to produce or sell wave soldering machines in the United States;

(2) Acquiring any capital stock, or any other securities with voting rights, of any supplier of wave soldering machines, that at any time during the twelve (12) months immediately preceding the acquisition had produced wave soldering machines for sale in the United States;

(3) Selling or transferring to any firm engaged in the production or sale of wave soldering machines in the United States any of defendants' assets that at any time during the 12 months immediately preceding the sale or transfer were used in the production or sale of wave soldering machines in the production or sale of wave soldering machines in the United States;

(4) Selling or transferring to any firm engaged in the production or sale of wave soldering machines in the United States any defendant's equity securities or any other securities with voting rights.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice made to any defendant at its principal offices, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, employees, agents, or other persons acting for or on behalf of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to any defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by any representatives of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of privilege under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than grand jury proceedings) to which the defendant is not a party.

VI

Jurisdiction is retained by this Court for the purpose of enabling plaintiff and defendants to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement or compliance herewith, and for the punishment of any violations hereof.

VII

This Final Judgment will expire on the fifth anniversary of its date of entry.

VIII

Entry of this Final Judgment is in the public interest.

Dated: _____.

United States District Judge.

United States of America, Plaintiff, v. Cookson Group PLC, Electrovert LTD., and Electrovert U.S.A. Corp., Defendants.

Civil Action No. 92 2206.

Filed: September 29, 1992

Judge Hogan.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA") (15 U.S.C. 16(b)–(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Cookson Group plc, Electrovert Ltd., and Electrovert U.S.A Corp. in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On September 29, 1992, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, 15 U.S.C. 25, alleging that the acquisition by Electrovert U.S.A. Corp. ("Electrovert") of the wave soldering machine assets of Hollis Automation Co ("Hollis") violated section 7 of the

Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that the effect of the acquisition may be substantially to lessen competition in the North American high performance and mid-range wave soldering machine markets.[1] Electrovert Ltd. is the largest producer of such wave soldering machines, and Hollis was the second largest producer. The Complaint seeks an order requiring Electrovert to divest the wave soldering machine assets it acquired from Hollis to a purchaser able promptly to replace competition lost as a result of the acquisition.

On September 29, 1992, the United States and the defendants filed a Stipulation by which they consented to the entry of a proposed Final Judgment. Under the proposed Final Judgment, Electrovert is required to license Hollis' wave soldering technology, including Hollis' patented hot air knife, [2] to other industry participants. See Section III, *infra*. The United States and the defendants have agreed that the proposed Final Judgment, which is designed to eliminate the anticompetitive effects arising from Electovert's acquisition of Hollis' wave soldering machine assets, may be entered after compliance with the APPA, unless the government withdraws its consent after considering public comments on the proposal. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the Judgment, and to punish any violations.

II

Events Giving Rise to the Alleged Violation

On or about March 30, 1992, Electrovert, a wholly owned subsidiary of Electrovert Ltd., acquired all of the assets of Hollis in a transaction valued at approximately $10 million. These assets included the production equipment in its wave soldering machine facility in Nashua, New Hampshire, and intellectual property.

Electrovert is engaged in the production and sale of wave soldering machines. Until its assets were acquired by Electrovert, Hollis was also engaged in the production and sale of wave soldering machines as an independent competitor of Electrovert.

The United States' investigation indicated that wave soldering machines are the only viable method used in mass production of printed circuit boards using pin-through-hole components. Such components have leads that are inserted through holes in the printed circuit board and are attached to circuits on the reverse side of the board with solder applied by a wave soldering machine. The other type of components are "surface mounted" and can be attached to the board by means of a different machine, called a reflow machine. The design and technical features of the circuit board will determine which type of component is needed, and thus which type or types of machines will be used for soldering. About 90 percent of printed circuit boards produced today contain both pin-through-hole components and surface-mounted components. Wave soldering machines are always used on these hybrid boards, and reflow machines may also be used, depending on the location of the components. Thus, wave soldering machines and reflow machines are not substitutes, and manufacturers will not use a reflow machine instead of a wave soldering machine in response to a small but significant and nontransitory price increase of wave soldering machines.

As noted above, high performance and mid-range wave soldering machines are significantly different from each other and from other types of wave soldering machines in production capability, complexity, and cost. Manufacturing customers would not switch from either type of machine to any other in response to a small but significant and nontransitory price increase. Consequently, the United States determined that high performance wave soldering machines and mid-range wave soldering machines were the appropriate product markets within which to analyze this transaction.

Because the cost associated with shutting down an assembly line is extremely large in relation to the cost of wave soldering machines, United States circuit board manufacturers strongly prefer to purchase from wave soldering machine companies that have a proven reputation in North America for supplying a reliable machine, as well as the ability to supply spare parts and to service the wave soldering machine within 24 hours. As a result, customers are unlikely to switch purchases to suppliers that have not sold in North America and do not have North American service and spare parts facilities in the face of a small but significant and nontransitory increase in price. Consequently, the United States determined that the relevant geographic market within which to analyze this transaction is North America.

The United States further concluded that the North American high performance and mid-range soldering machine markets are highly concentrated. In 1991, Electrovert accounted for about 33 percent of the sales of high performance wave soldering machines, and Hollis accounted for about 36 percent. In the same year, Electrovert accounted for over 50 percent of sales of mid-range wave soldering machines, and Hollis accounted for about 17 percent. Electrovert's acquisition of the wave soldering machine assets of Hollis increased the Herfindahl-Hirschman Index ("HHI") [3] by about 2400 to over 5200 in the high performance wave soldering machine market, and by about 1700 to nearly 5000 in the mid-range wave soldering machine market. Such increases in concentration in already concentrated markets potentially raise significant concerns, depending on other factors, that the transaction may result in the exercise of market power.

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[1] Wave soldering machines are machines used by manufacturers to apply solder to connect electronic components to a printed circuit board using a process that applies a wave of solder to the underside of the board. Electronic firms and their subcontractor assemblers are the primary customers of these machines; appliance, automotive and aerospace firms are also significant purchasers. Such customers base their purchasing decisions upon a variety of technical considerations, such as throughput, pre-heat capability, solder wave configuration, number of waves, computer controls, and conveyor board width.

High performance wave soldering machines are used primarily by large assemblers of printed circuit boards, which may produce as many as one million boards per production run. These machines usually have 30 to 50 percent higher production capacity than mid-range machines, and have greater width capacity and computer sophistication. High performance wave soldering machines generally sell for between $100,000 and $250,000.

Mid-range wave soldering machines are used primarily by medium-sized assemblers of printed circuit boards, which produce boards in lower volumes that high performance machine customers, and therefore do not require a machine with as high production capacity, complexity and durability. Such customers, however, have sufficient volume that they cannot substitute low-end wave soldering machines which have smaller width capacity than mid-range machines. Mid-range wave soldering machines generally sell for between $25,000 and $100,000.

[2] A hot air knife is used to blow excess solder off the surface of the printed circuit board and is used to minimize the defects of soldering.

[3] The HHI is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30%, 30%, 20%, and 20%, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2600$). The HHI takes into account the relative size and distribution of the firms in the market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

Further investigation revealed that Electrovert was the oldest and most recognized name in wave soldering machines. While wave soldering machines are differentiated products, that is wave soldering machines sold by different companies are not perfect substitutes for one another, Hollis machines were considered by many customers as close substitutes for Electrovert machines, primarily due to Hollis' optional "hot air knife" technology. About 75 percent of the wave soldering machines Hollis sold in the past few years contained a hot air knife. The patent for the hot air knife, now owned by Electrovert, will not expire for another thirteen years.

Because many customers considered the Electrovert and Hollis high performance machines to be close substitutes, relative to the wave soldering machines of other firms, a small but significant increase in the price of either machine prior to the acquisition would have caused a significant number of customers to purchase a high performance wave soldering machine of the other, thereby rendering the price increase unprofitable. The same situation was true for Electrovert's and Hollis' mid-range wave soldering machines. After the acquisition, however, such a price increase would be profitable because Electrovert, now owning the Hollis assets, would retain the profits associated with the customers who switched from one to the other as a result of the price increase. Without technology such as Hollis' hot air knife, other firms would be unlikely to reposition themselves to replace Hollis as the primary competitive alternative to Electrovert.

In addition, the Untied States determined that entry into the North American high performance and mid-range wave soldering machine markets would not mitigate the likely anticompetitive effects of the transaction. Entry would not be timely, because it takes three years or longer to design, develop, and test a line of high performance or mid-range wave soldering machines. New entrants, moreover, face difficulty in achieving market acceptance because customers are very reluctant to try machines that do not have a proven track record, given the high cost imposed by shutting down an assembly line in the event that the machine fails. Thus, consumers have a preference for producers with well-established reputations for supplying a reliable machine in North America, as well as the ability to supply spare parts and to service the wave soldering machines within 24 hours.

Based upon all these factors, the United States concluded that, without divestiture, Electrovert would be able to exercise market power unilaterally in the manner described above.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment, which requires Electrovert to license Hollis' wave soldering machine technology, including the patented hot air knife, provides relief that ill assure the continuation of a competitive marketplace. As discussed above in Section II, the acquisition raised the likelihood that Electrovert unilaterally could raise the price of Electrovert's or Hollis' high performance and mid-range wave soldering machines a small but significant amount without fear of losing a significant amount of sales to other producers. Electrovert's ability to exercise market power in that way, however, could be constrained if a significant number of customers would instead turn to other firms producing wave soldering machines.

Licensing Hollis' wave soldering technology to less established but current industry participants will enable these firms effectively to meet the full variety of customer needs for high performance and mid-range wave soldering machines. Licensees of the hot air knife, in particular, will be able to reposition their products to replace competition that would otherwise be lost by Electrovert's acquisition of Hollis's wave soldering machine assets.

Section IV(A) of the proposed Final Judgment would require Electrovert to grant North American rights to all of Hollis' wave soldering technology to two of the following four producers of wave soldering machines, all of which currently sell wave soldering machines in the United States: Technical Devices Company, Sensbey Incorporated, Soltec International B.V., and Seitz & Hohnerlein. As to each proposed license, Electrovert must demonstrate to the satisfaction of the United States that, in view of the terms of the proposed technology license, the proposed licensee has the capability and incentive to produce wave soldering machines incorporating the hot air knife technology and to compete effectively in the sale of such wave soldering machines in North America within one year from the date of the license. If the plaintiff objects to any proposed license, any grant by Electrovert of a license to that proposed licensee shall not satisfy the requirements of that portion of the proposed Final Judgment.

Section IV(B) of the proposed Final Judgment states that the Court will appoint a trustee to secure the required licenses if Electrovert has not secured the two required licenses within 90 days after the Stipulation to this proposed Final Judgment is entered. The trustee will have the full power to obtain the required licenses, including, if necessary, the power to grant worldwide rights to the acquired Hollis wave soldering technology.

Section VII provides that the Final Judgment will expire five years from the date of entry.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions under the Clayton Act. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V

Procedures available for Modification of the Proposed Final Judgment

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. All comments and the responses of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street NW., room 10–437, Washington, DC 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and that any party may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI

Alternative to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment filed with this Court, litigation to seek an order requiring Electrovert to divest the acquired Hollis wave soldering machine assets. The Untied States rejected that alternative because the relief in the proposed Final Judgment should prevent the acquisition from having significant anticompetitive effects in the North American high performance and mid-range wave soldering machine markets, while allowing any procompetitive effects the acquisition may produce.

VII

Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any documents to the proposed Final Judgment.

Dates: September 29, 1992.

Respectfully submitted,

Willie L. Hudgins, Jr.,

Weeun Wang,

Erin L. Carter,

John J. Murphy,

Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, 555 Fourth Street NW., room 10–437, Washington, DC 20001, (202) 307–0931.

[FR Doc. 92–24727 Filed 10–9–92; 8:45 am]

BILLING CODE 4410–01–M

United States v. Greater Bridgeport Individual Practice Association, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given, pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Connecticut, New Haven, Connecticut in *United States* v. *Greater Bridgeport Individual Practice Association, Inc.*, Civil Action No. 5:92CV00575 EBB.

The Complaint in this case alleges that Greater Bridgeport Individual Practice Association, Inc. ("GBIPA") engaged in an illegal boycott of a health-maintenance organization, Physicians Health Services of Connecticut, Inc. (PHS), by agreeing that its members would not contract individually with PHS in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The proposed Final Judgment enjoins GBIPA from entering into any contract, agreement, understanding or practice not to enter into, withdraw from, or threaten not to enter into or withdraw from any proposed or actual individual contract with any third-party payer. The proposed Final Judgment further prohibits GBIPA from engaging in activities that may facilitate such conduct and also from holding itself out of serving as an exclusive negotiating agent for its member physicians with third-party payers. The proposed Final Judgment also requires GBIPA to establish and maintain an antitrust compliance program.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Robert E. Bloch, Chief, Professions & Intellectual Property Section, room 9903, Antitrust Division, Department of Justice, 555 4th Street NW., Washington, DC 20001 (telephone: (202) 307–0467).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court for the District of Connecticut

United States of America, Plaintiff, v Greater Bridgeport Individual Practice Association, Inc., Defendant.

Civil Action No. 592CV00575 EBB

Filed: September 30, 1992.

Judge Burns.

Stipulation

It is stipulated by the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do any time before the entry of the proposed Final Judgment by serving notice on defendant and by filing that notice with the Court.

2. If the plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: September 29, 1992.

For the Plaintiff.

J. Mark Gidley,

Acting Assistant Attorney General.

Joseph H. Widmar,

Robert E. Block,

David C. Jordan,

Attorneys, Antitrust Division, U.S. Department of Justice.

For the Defendant

Richard S. Order,

Updike, Kelly & Spellacy, P.C., One State Street, P.O. Box 231277, Hartford, Connecticut 06123–1277, Telephone: (203) 548–2659.

Steven Kramer

Patricia A. Brink,

Attorneys, Antitrust Division, U.S. Department of Justice, 555 4th Street, NW., Washington, DC 20001, Telephone: (202) 307–0997.

United States District Court for the District of Connecticut

United States of America, Plaintiff, v Greater Bridgeport Individual Practice Association, Inc., Defendant.

Civil Action No.

Filed: September 30, 1992.

Judge Burns.

Final Judgment

Plaintiff, United States of America, having filed its Complaint on September 30, 1992, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of fact or law;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and over the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

As used in this Final Judgment:

(A) "GBIPA" means defendant Greater Bridgeport Individual Practice Association, Inc. and each of its

directors, members of any committee responsible for negotiating a collective service agreement with any third-party payer, officers, representatives, agents, employees, successors, and assigns.

(B) "Physician" means a doctor of medicine or osteopathy.

(C) "Individual service agreement" means any agreement or contract, oral or written, directly between any physician and any third-party payer, that sets forth the terms, including compensation, under which a physician will provide covered services to covered persons. The term does not include a service agreement GBIPA and any third-party payer or a physician agreement between GBIPA and any of its members.

(D) "Third-party payer" means any person or entity that reimburses for, purchases, or pays for health-care services provided to any other person and includes, but is not limited to, health-maintenance organizations, preferred-provider organizations, health-insurance companies, prepaid-hospital, medical, or other health service plans such as Blue Shield and Blue Cross plans, government health-benefits programs, administrators of self-insured health-benefits programs, and employers or other entities providing self-insured health-benefits programs.

III

This Final Judgment shall apply to GBIPA and to all other persons (including GBIPA members) acting in concert or participation, with GBIPA, who receive actual notice of this Final Judgment by personal service or otherwise.

IV

GBIPA is enjoined from, directly or indirectly:

(A) Encouraging, facilitating, assisting or entering into any contract, agreement, understanding or practice among GBIPA physicians concerning

(1) Not entering into, withdrawing from, or threatening not to enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer; or

(2) Any of the terms upon which they would enter into, withdraw from, or threaten not to enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer;

(B) Discussing, providing advice, or making recommendations to any GBIPA member physician concerning

(1) Any of the terms contained in any proposed or actual individual service agrement with any third-party payer;

(2) Entering into, not entering into, withdrawing from, or threatening not to enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer; or

(3) That physician's or any other GBIPA member physician's intention or decision to enter into, not enter into, withdraw from, or threaten to not enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer;

(C) Communicating to any third-party payer that any physician will or may not enter into or withdraw from any proposed or actual individual service agreement with any third-party payer;

(D) Encouraging, advocating, advising or recommending that any GBIPA member physician support GBIPA's negotiating position with any third-party payer that has offered individual service agreements to GBIPA member physicians; and

(E) Entering into any contract, agreement, understanding or practice

(1) To hold itself out or serve as an exclusive negotiating agent for GBIPA member physicians with any third-party payer; or

(2) That impedes or prohibits GBIPA member physicians from negotiating or entering into any proposed or actual individual service agreement with any third-party payer.

V

Nothing in Section IV shall prohibit any person to whom this Final Judgment applies form engaging solely with any other member or employee of such person's partnership, professional corporation, or other bona fide group practice in activities otherwise prohibited by section IV.

VI

GBIPA is ordered to establish and maintain an antitrust compliance program that shall include at a minimum:

(A) Appointing a person, and any necessary successor, to coordinate compliance activities;

(B) Establishing, adopting, and maintaining a written statement setting forth GBIPA's policy regarding compliance with the antitrust laws and this Final Judgment;

(C) Distributing by certified mail, return-receipt requested, within 60 days of the entry of this Final Judgment, copies of this Final Judgment, the Complaint and Competitive Impact Statement in this matter and the policy statement required by section VI(B) to each member and employee of GBIPA;

(D) Holding a briefing annually at a general membership meeting on the meaning and requirements of this Final Judgment and the antitrust laws;

(E) Providing a copy of this Final Judgment along with the Complaint and Competitive Impact Statement in this matter to each person joining GBIPA within 60 days of that person joining;

(F) Obtaining from each GBIPA director and officer an annual written certification that he or she: (1) Has read, understands, and agrees to abide by the terms of this Final Judgment; (2) has been advised and understands that noncompliance with this Final Judgment may result in his or her conviction for criminal contempt of court and imprisonment and/or fine; and (3) is not aware of any violation of this Final Judgment;

(G) Maintaining for inspection by plaintiff a record of recipients to whom the Final Judgment has been distributed and from whom the certification required by section VI(F) has been obtained; and

(H) Conducting an audit of its activities within 60 days from the entry of this Final Judgment, and annually thereafter, to determine compliance with this Final Judgment.

VII

(A) Within 75 days after the entry of this Final Judgment, GBIPA shall certify to plaintiff that it has appointed a person to coordinate compliance activities, whom it shall identify; that it has established and adopted a written antitrust compliance policy, and shall provide a copy of the policy to plaintiff; that it has distributed copies of this Final Judgment, the Complaint and Competitive Impact Statement, and the policy statement, as required by Sections VI(A)–(C) above; and that it has conducted an audit of its activities; and

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, GBIPA shall certify annually to plaintiff whether GBIPA has complied with the provisions of sections VI(D)–(H) above.

VIII

Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against GBIPA or any person any other relief available under any applicable provision of law for violation of this Final Judgment.

IX

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General

or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable written notice to GBIPA be permitted:

(1) Access during office hours of GBIPA, or its designated agent, to inspect and copy all records and documents in the possession or under the control of GBIPA, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of GBIPA, to interview GBIPA officers, employees and agents, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to GBIPA, and subject to any legally recognized privilege, GBIPA shall submit such written reports, under oath if requested, to plaintiff relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X

Jurisdiction is retained by this Court to enable either of the parties to this Final Judgment, but no other person, to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the enforcement or modification of any of its provisions, and for the punishment of any violation hereof.

XI

This Final Judgment shall expire ten (10) years from the date of entry.

XII

Public Interest Determination

Entry of this Final Judgment is in the public interest.

Dated:
United States District Judge.

United States District Court for the District of Connecticut

United States of America, Plaintiff, v. Greater Bridgeport Individual Practice Association, Inc., Defendant.
Civil Action No. 592CV00575EBB
Filed: September 30, 1992.
Judge Burns.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust action.

I

Nature and Purpose of the Proceeding

On September 30, 1992, the United States filed a civil antitrust Complaint alleging that defendant Greater Bridgeport Individual Practice Association, Inc., ("GBIPA") and its conspirators conspired not to contract individually with Physicians Health Services of Connecticut, Inc. ("PHS"), a health-maintenance organization, in violation of section 1 of the Sherman Act, 15 U.S.C. 1. According to the Complaint, the conspiracy unreasonably restrained price competiton among GBIPA physicians for the sale of their services to PHS and deprived PHS of the benefits of free and open competition in its purchase of physician servcies.

The Complaint seeks injunctive relief that would prevent and enjoin defendant from engaging in the same or similar violations if PHS or any other third-party payer for health-care services seeks to initiate, maintain, or renegotiate individual service agreements with GBIPA member physicians. This relief attempts to ensure through various remedial provisions that when a third-party payer seeks to contract, or has already contracted, with otherwise competing GBIPA physician members, GBIPA will not act to thwart individual contracting.

Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for further proceedings that may be required to interpret, enforce, or modify the Judgment, or to punish violations of any of its provisions.

II

Description of the Practices Involved in the Alleged Violation

At trial, the United States would have offered evidence to establish the following:

1. Defendant GBIPA is a not-for-profit corporation organized and existing under the laws of the state of Connecticut and maintaining an office in Bridgeport, Connecticut. During the period of the alleged violation, its membership comprised approximately 670 greater Bridgeport area physicians, representing 85–95% of the physicians practicing in the area. GBIPA member physicians control GBIPA.

2. From 1980 to date, GBIPA has contracted with PHS to provide physician services to PHS members in the greater Bridgeport area. Pursuant to the contract, PHS pays GBIPA a set monthly capitation fee for each PHS member eligible to be served by GBIPA physicians. In 1990, GBIPA received over $60 million in such payments from PHS to provide physician services to approximately 82,000 PHS members in the greater Bridgeport area.

3. GBIPA contracts directly with individual physicians to obtain physician services for PHS members. Those contracts provide for payment for services rendered to PHS members, from the capitation fees paid to GBIPA by PHS, in accordance with a fee schedule and a percentage withholding arrangement. Most GBIPA physicians are in independent, private practices and are in potential or actual competition with other GBIPA physicians, in the same or overlapping specialties, to provide services to PHS members.

4. Before and during the period of the alleged violation, contracts between GBIPA and individual physicians did not authorize GBIPA to be the exclusive bargaining agent for GBIPA physicians in contractual negotiations with PHS, nor did the contracts prohibit GBIPA physicians from contracting individually with PHS.

5. From 1980 until 1989, the contract between PHS and GBIPA was renewed automatically each year. On May 8, 1989, GBIPA notified PHS that the contract would not be automatically renewed, and on May 11, 1989, PHS notified GBIPA that if PHS were unable to reach an agreement with GBIPA, PHS might seek to contract directly with individual GBIPA physicians.

6. Subsequent contractual negotiations reached an impasse around September 1, 1989. The major issues of disagreement concerned GBIPA's role in the governance of PHS and the amount that the capitation paid by PHS to GBIPA should increase. GBIPA had subordinated negotiations on the fee increase issue to the issue of governance on the stated view that the governance issue subsumed the fee issue.

7. After suspending negotiations with GBIPA, PHS sought to contract directly with individual GBIPA physicians to provide services to PHS members after its contract with GBIPA expired. On September 5, 1989, PHS mailed proposed individual contracts to GBIPA member physicians.

8. During several weeks preceding September 5, 1989, GBIPA's leadership, in anticipation of a negotiating impasse and PHS's pursuit of individual contracts, sent several letters to all GBIPA physicians seeking support for GBIPA's negotiating position and discouraging them from contracting individually with PHS should the contingency arise. Similar exhortations were made at the medical-staff meeting of at least one Bridgeport hospital.

9. After PHS has ceased negotiations with GBIPA and mailed individual contracts to GBIPA physicians, GBIPA leaders sent GBIPA physicians several additional letters urging them to support GBIPA and not sign the individual contracts. Two of those letters advised GBIPA physicians that the GBIPA Board of Directors and Negotiating Committee had unanimously agreed that PHS must negotiate with the GBIPA.

10. GBIPA's repeated communications urging GBIPA physicians to support its negotiating position and not sign individual contracts culminated at a called meeting of GBIPA physicians on September 20, 1989, attended by nearly 300 physicians. Among the presentations made at the meeting, at least two GBIPA speakers expressly urged the physicians not to sign individual contracts with PHS and warned them of adverse economic consequences of signing. Speakers also urged that individual contracts that had already been signed be withdrawn. Other speakers also warned of the adverse consequences.

11. In the context of the numerous letters sent over previous weeks urging GBIPA physicians to support the GBIPA negotiating position and not sign individual contracts with PHS, and after presentations urging that a resolution be sent to signal their group solidarity behind pursuing only joint negotiations to the exclusion of individual contracts, the GBIPA physicians at the September 20th meeting voted on a resolution expressing their full support for GBIPA's efforts to negotiate an improved contract with PHS and authorizing GBIPA to continue negotiations with PHS to take action to protect and enhance the interests of its members. Near the end of the meeting, the physicians' overwhelming support for the resolution was announced.

12. One of the speakers at the September 20th meeting recognized that approval of the resolution would require PHS to resume negotiations with GBIPA. As predicted, PHS decided to resume contractual negotiations with GBIPA. The contract that GBIPA and PHS eventually negotiated for 1990–92 provided for fees at significantly higher levels than those in the individual contracts and those earlier offered in negotiations with GBIPA.

III

Explanation of the Proposed Final Judgment

The Untied States and GBIPA have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by either party concerning any issue of fact or law.

Under the provisions of 15 U.S.C. 16(e), the Proposed Final Judgment may not be entered unless the Court finds that its entry is in the public interest. Section XII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that defendant GBIPA does not disrupt individual contracting initiatives or arrangements and does not hold itself out or serve as an exclusive negotiating agent for its member physicians with third-party payers.

A. Prohibitions and Obligations

Section IV(A) of the proposed Final Judgment enjoins GBIPA from directly or indirectly encouraging, facilitating, assisting or entering into any contract, agreement, understanding or practice among GBIPA physicians concerning (1) not entering into, withdrawing from, or threatening not to enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer; or (2) any of the terms upon which they would enter into, not enter into, withdraw from, or threaten not to enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer. "GBIPA" is defined in section II of the proposed Final Judgment as "defendant Greater Bridgeport Individual Practice Association, Inc. and each of its directors, members of any committee responsible for negotiating a collective service agreement with any third-party payer, officers, representatives, agents, employees, successors, and assigns." "Individual service agreement" is defined in section II of the proposed Final Judgment as "any agreement or contract, oral or written, directly between any physician and any third-party payer, that sets forth the terms, including compensation, under which a physician will provide covered services to covered persons. The term does not include a service agreement between GBIPA and any third-party payer or a physician agreement between GBIPA and any of its members." "Third-party payer" is defined in section II of the proposed Final Judgment as "any person or entity that reimburses for, purchases, or pays for health-care services provided to any other person and includes, but is not limited to, health-maintenance organizations, preferred-provider organizations, health-insurance companies, prepaid-hospital, medical or other health service plans such as Blue Shield and Blue Cross plans, government health-benefits programs, administrators of self-insured health-benefits programs, and employers or other entities providing self-insured health-benefit programs."

Section IV(B) enjoins GBIPA from directly or indirectly discussing, providing advice, or making recommendations to any GBIPA member concerning (1) any of the terms contained in any proposed or actual individual service agreement with any third-party payer; (2) entering into, not entering into, withdrawing from, or threatening not to enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer; and (3) that physician's or any other GBIPA member physician's intention or decision to enter into, not enter into, withdraw from, or threaten to not enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer.

Section IV(C) enjoins GBIPA from directly or indirectly communicating to any third-party payer that any physician will or may not enter into or withdraw from any proposed or actual individual service agreement with any third-party payer.

Section IV(D) enjoins GBIPA from directly or indirectly encouraging, advocating, advising or recommending that any GBIPA member physician support GBIPA's negotiating position with any third-party payer that has offered individual service agreements to GBIPA member physicians.

Section IV(E) enjoins GBIPA from directly or indirectly entering into any contract, agreement, understanding or practice (1) to hold itself out or serve as an exclusive negotiating agent for GBIPA member physicians with any third-party payer; or (2) that impedes or prohibits GBIPA member physicians from negotiating or entering into any proposed or actual individual service agreement with any third-party payer.

Section V of the proposed Final Judgment provides that nothing in section IV shall prohibit any person to

whom the Final Judgment applies from engaging solely with any other member or employee of such person's partnership, professional corporation, or other bona fide group practice in activities otherwise prohibited by section IV.

Section VI requires GBIPA to establish and maintain in antitrust compliance program that shall include at a minimum: (A) Appointing a person, and any necessary successor, to coordinate compliance activities; (B) establishing, adopting, and maintaining a written statement setting forth GBIPA's policy regarding compliance with the antitrust laws and the Final Judgment; (C) distributing by certified mail, return-receipt requested, within 60 days of the entry of the Final Judgment, copies of the Final Judgment, the Compliant, this Competitive Impact Statement, and the required policy statement to each member and employee of GBIPA; (D) holding a briefing annually at a general membership meeting on the meaning and requirements of the Final Judgment and the antitrust laws; (E) providing a copy of the Final Judgment along with the Complaint and this Competitive Statement to each person joining GBIPA within 60 days of that person joining; (F) obtaining from each GBIPA director and officer an annual written certification that he or she (1) has read, understands, and agrees to abide by the terms of the Final Judgment, (2) has been advised and understands that noncompliance with the Final Judgment may result in his or her conviction for criminal contempt of court and imprisonment and/or fine, and (3) is not aware of any violation of the Final Judgment; (G) maintaining for inspection by plaintiff a record of recipients to whom the Final Judgment has been distributed and from whom the required certification has been obtained; and (H) conducting an audit of its activities within 60 days from the entry of the Final Judgment, and annually thereafter, to determine compliance with the Final Judgment.

Section VII of the proposed Final Judgment requires GBIPA to make specified certifications. Section VII(A) requires GBIPA to certify to plaintiff within 75 days after the entry of the Final Judgment that it has appointed a person to coordinate compliance activities, whom it shall identify; that it has established and adopted a written antitrust compliance policy, which shall be provided to plaintiff; that it has distributed copies of the Final Judgment, the Complaint and this Competitive Statement, and the policy statement as required by sections VI(A)–(C); and that it has conducted an audit of its activities. Section VII(B) requires GBIPA to certify annually to plaintiff whether GBIPA has complied with the provisions of sections VI (D)–(H).

Section VIII provides that nothing in the Final Judgment shall bar the United States from seeking, or the Court from imposing, against GBIPA or any person any other relief available under any applicable provision of law for violation of the Final Judgment.

Section IX(A) provides that an authorized representative of the Department of Justice may visit GBIPA's office after providing reasonable notice, to review its records and may conduct interviews regarding any matter contained in the Final Judgment. Section IX(B) requires GBIPA to submit, upon request, written reports, under oath, relating to any matter contained in the Final Judgment.

B. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment applies to GBIPA and to all other persons (including GBIPA members) acting in concert or participation, with GBIPA, who receive actual notice of the Final Judgment by personal service or otherwise.

Section XI of the proposed Final Judgment provides that the Final Judgment shall expire 10 years from the date of entry.

C. Anticipated Effects of the Proposed Judgment on Competition

Entry of the proposed Final Judgment should significantly deter GBIPA from engaging in anticompetitive conduct against PHS, or any other third-party payer, that seeks to enter into, maintain, or renegotiate individual service agreements with GBIPA physicians. Such individual contracting should assist third-party payers to contract with GBIPA physicians upon competitively determined terms. Third-party payers' ability to resort to individual contracting should also provide an incentive to GBIPA physicians, when negotiating as a group, to offer terms approximately the competitive level.

The Department of Justice believes that the proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the judgment has no *prima* facie effect in any subsequent lawsuits that may be brought against GBIPA.

V

Procedures Available for Modification of the Proposed Final Judgment

As provided in section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), any person believing that the proposed Final Judgment should be modified may submit written comments to Robert E. Bloch, Chief; Professions and Intellectual Property Section; U.S. Department of Justice; Antitrust Division; 555 4th Street NW.; room 9903; Judiciary Center Building; Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. Section X of the proposed Final Judgment provides that the Court retains jurisdiction to enable either of the parties to the Final Judgment to apply to the Court for any order necessary or appropriate for the modification,interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be litigation, possibly including a full trial of the case. In the view of the Department of Justice, such litigation would involve substantial cost to the United States and is not warranted because the Final Judgment provides the relief that the United States sought in its Complaint.

Stuctural relief was not considered to be appropriate in this case. The Complaint alleges a conduct violation, and the conduct relief chosen by the Department should deter recurrence of the violation alleged in the Complaint.

The Department also considered a provision that would have enjoined GBIPA from seeking to initiate, continue,

or resume contract negotiations with any third-party payer that had offered individual service agreements to GBIPA member physicians, unless expressly requested to do so in writing by the third-party payer. The Department of Justice concluded that the other extensive injunctive relief agreed to by GBIPA was sufficient to prevent further violations of the nature challenged in the Complaint and that such a provision might interfere with possible procompetitive relationships between GBIPA and third-party payers.

VII

Determinative Materials and Documents

No materials and documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment.

Respectfully submitted.

Steven Kramer, by P.A.B.

Patricia A. Brink,

Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Washington, DC 20001, telephone (202) 307-0997.

[FR Doc. 92-24724 Filed 10-9-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 Fuel Cell Commercialization Group

Notice is hereby given that, on August 12, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Fuel Cell Commercialization Group ("FCCG) filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of fourteen members to the FCCG. The notification was filed for the purpose of invoking and extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the FCCG advised that Arizona Electric Power Cooperative, Benson, AZ; Baltimore Gas & Electric Co., Baltimore, MD; Charter Oak Energy, Berlin, CT; City of Burbank Public Service Department, Burbank, CA; City of Manassas Electric Department, Manassas, VA; City of Riverside, Riverside, CA; General Public Utilities, Johnstown, PA; Minnesota Power, Duluth, MN; New York State Electric & Gas, Binghamton, NY; Niagara Mohawk Power Corporation, Syracuse, NY; Northern California Power Authority, Roseville, CA; Rochester Gas & Electric Corporation, Rochester, NY; Sacramento Municipal Utility District, Sacramento, CA; and Wisconsin Public Service Corporation, Green Bay, WI have become members of the FCCG.

No other changes have been made in either the membership or planned activity of the FCCG. Membership in the FCCG remains open subject to certain adjustments in the membership benefits available to members joining the FCCG hereafter. The FCCG intends to file additional written notification disclosing any future change in membership.

On September 21, 1990, the FCCG filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 25, 1990, 55 FR 43050. The last notification was filed with the Department on September 20, 1991. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 16, 1991, 56 FR 51917.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-24726 Filed 10-9-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-27,339; TA-W-27,340]

All Fab Corp., Everett, WA and Certified Aerospace Inc. Shelton, WA Negative Determination Regarding Application for Reconsideration

By an application dated September 15, 1992, the company requested administrative reconsideration of the Department's denial of adjustment assistance for workers at the subject firms. The denial notice was signed on August 6, 1992 and was published in the **Federal Register** on August 28, 1992 (57 FR 39241).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Company officials state that All Fab and Certified Aerospace, both subsidiaries of Certified Holding Corporation have been adversely affected by foreign competition. Its alleged that domestic airlines have imported aircraft from foreign companies (Airbus Industries) which has resulted in reduced production schedules for Boeing 737 for which the subject firms produce aircraft parts.

The workers produce aircraft parts—aircraft door latch assemblies, structural fittings and aircraft subassemblies. Imports of finished articles (airplanes) cannot be considered like or directly competitive with their component parts (aircraft parts) which are incorporated into the finished article. Only increased imports of articles that are like or directly competitive with those produced at the workers' firm (aircraft parts) can be considered as contributing importantly to worker separations and declines in sales or production.

Further, the loss of future business for aircraft parts on Boeing's 777 aircraft would not form a basis for a worker group certification. One of the worker group criteria needed for certification is that there be an actual decline in sales or production of the article produced.

The Department's denial was based on the fact that the "contribution importantly" test of the increased import criterion was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of the subject firms' major lost bids shows that they were awarded to other domestic companies.

The findings show that a large portion of the subject firms' parts production was for the Boeing 737 aircraft. However, the findings show no imports of these parts. Instead, Boeing has spread out its delivery of the aircraft at the request of the airlines which in turn are hurt by declining industry profits and fare wars. Since airline deregulation in the late 1970s, many airlines have ceased operations (Eastern, Pan Am, Midway and Braniff) others are in bankruptcy (TWA, American West and Continental) while others have merged. Further, the current economic slowdown is not helping airline profits either.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of

Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 2nd day of October 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92-24737 Filed 10-9-92; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,498; Allied Signal Aerospace Co., Garrett Fluid Systems Div., Tempe, AZ

TA-W-27,437; Soricon Corp., Boulder, CO

TA-W-27,511; Victor Fluid Power, Granite Falls, MN

TA-W-27,554; Sew Wright Apparel, Miami, OK

TA-W-27,416; Rogge Forest Products, Inc., Bandon, OR

TA-W-27,428; Lees Carpets, A div. of Burlington Industries, Inc. A Div. of Burlington Industries, Inc., Hillsville, VA

TA-W-27,477; Laser Magnetic Storage Co., Norristown, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,576; Whitaker Oil Tools, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,493; Major Electric Co., Inc., Odessa, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,501 & TA-W-27,502; Online Resource Exchange, Inc., New Orleans, LA and Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,589; Commodore Semiconductor Group, Norristown, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,602; Nokia-Maillefer, Inc., South Hadley, MA

U.S. imports of machines for working wire decreased in 1991 compared to 1990 and in the latest twelve month period July through June 1991-1992 compared to the same period July through June 1990-1991.

TA-W-27,285; Scott Paper Worldwide, Winslow, ME

U.S. imports of sanitary paper products are negligible.

TA-W-27,591; Timex Corp., Torrington, CT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,560; General Electric Aerospace Operations Defense Systems Department, Pittsfield, MA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,497; New England Die Casting, Inc., West Haven, CT

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

TA-W-27,436; Sterling Group, Sewickley, PA

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threated thereof, and to the absolute decline in sales or production.

TA-W-27,601; Dril-Quip, Inc., Houston, TX

U.S. imports of oil and gas field machinery were negligible in 1991 and in January-July 1992.

TA-W-27,498; General Motors Corp., Truck & Bus Div., Shreveport, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,453; Welltech, Inc., Dickinson, ND

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,559; Grasso Supply Co., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,547; Eastern States Exploration Co., Eastern States Production Co., Snow Shoe, PA

Increaes imports did not contribute importantly to worker separations at the firm.

TA-W-27,512; Wilson Industries, Wilson Supply Co., Tioga, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,555; United Gas Pipe Line Co., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-27,606; Frigidaire Distribution Center, Ontario, OH

A certification was issued covering all workers separated on or after August 6, 1991.

TA-W-27,457; Wilmer, Inc., Bowanstown, PA

A certification was issued covering all workers separated on or after June 26, 1991.

TA–W–27,353; Morrilton Plastic Products, Morrilton, AR

A certification was issued covering all workers separated on or after May 26, 1991.

TA–W–27,509 & TA–W–27,510; Shelton Welltools, Inc., Woodwards, OK and Oklahoma City, OK

A certification was issued covering all workers separated on or after July 9, 1991.

TA–W–27,529; Ansewns Shoe Co., Skowhegan, ME

A certification was issued covering all workers separated on or after June 6, 1991 and before March 1, 1992.

TA–W–27,427; J. Gilmore Hill, Denver, CO

A certification was issued covering all workers separated on or after June 15, 1991.

TA–W–27,487 and TA–W–27,487A; American Tree Co., Inc., Jingle Bell Lane and Beasley Street, Lexington, KY

A certification was issued covering all workers separated on or after July 2, 1991.

TA–W–27,454; Benton Casing Services, Inc. Winnie, TX and Operating at the Following Locations: A; Victoria, TX, B; Lake Charkes, LA, and C; Houma, LA

A certification was issued covering all workers separated on or after June 15, 1991.

TA–W–27,479; Kneat Knits, Allentown, PA

A certification was issued covering all workers separated on or after June 30, 1991.

TA–W–27,613; Sure-Fit Products Co., El Paso, TX

A certification was issued covering all workers separated on or after August 4, 1991.

TA–W–27,615; Banner Elk Glove Co., Banner Elk, NC

A certification was issued covering all workers separated on or after August 7, 1991.

TA–W–27,567; Hosking Geophysical Corp., Mt. Pleasant, MI

A certification was issued covering all workers separated on or after July 24, 1991.

TA–W–27,600; M–I Drilling Fluids, Kalkaska, MI

A certification was issued covering all workers separated on or after July 30, 1991.

TA–W–27,603; M–I Drilling Fluids, Olney, IL

A certification was issued covering all workers separated on or after July 31, 1991.

TA–W–27,289; Kerr-McGee Chemical Corp., Headquartered in Oklahoma City, OK and Operating at the Following Locations: A—Henderson, NV, B—Ellington, MO, C—Springfield, MO

A certification was issued covering all workers separated on or after May 4, 1991.

TA–W–27,460; Exxon Corp., Exxon Co USA, Production Dept, South Texas Div., Corpus Christi, TX

A certification was issued covering all workers separated on or after June 19, 1991.

TA–W–27,792; Exxon Corp., Exxon Co., USA, Production Dept., Central Production Div., Houston, TX

A certification was issued covering all workers separated on or after August 28, 1991.

TA–W–27,456, & TA–W–27,456A; Conoco, Inc., Exploration and Production, North America, Oklahoma City, OK & Operating Out of Other Locations in The State of Oklahoma

A certification was issued covering all workers separated on or after June 18, 1991.

TA–W–27,480 and TA–W–27,480A; Conoco, Inc., Exploration and Production, North America, New Orleans, LA & Operating Out of Other Locations in the State of Louisiana

A certification was issued covering all workers separated on or after June 30, 1991.

TA–W–27,812; Conoco, Inc., Exploration and Production, North America Headquartered in Houston, TX & Operating Out of the Other Locations in the Following States: A—AK, B—CA, C—MI, D—MS, E—ND, F—NM, G—TX, H—WY

A certification was issued covering all workers separated on or after August 13, 1991.

TA–W–27,545; Conoco, Inc., Exploration and Production, North America, Midland, TX

A certification was issued covering all workers separated on or after July 20, 1991.

TA–W–27,632; Rupe Oil Co., Inc., Wichita, KS

A certification was issued covering all workers separated on or after August 13, 1991.

TA–W–27,699; Flory Fashions, Inc., Swoyersville, PA

A certification was issued covering all workers separated on or after August 5, 1991.

TA–W–27,575; Shape, Inc., Audio Products Div., Biddeford, ME

A certification was issued covering all workers separated on or after July 13, 1991.

I hereby certify that the aforementioned determinations were issued during the month of September 1992. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: October 5, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–24736 Filed 10–9–92; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 23, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Directors, Office of Trade Adjustment Assistance, at the address shown below, not later than October 23, 1992.

Total Estimated Burden: 30,080.

Roberta Dunn,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 92-24784 Filed 10-9-92; 8:45 am]

BILLING CODE 7537-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by October 30, 1992, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by October 20, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, D.C 20506; (202-682-5434).

FOR FURTHER INFORMATION CONTACT: Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5434).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:.

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) and estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93 International Projects Initiative Application Guidelines

Frequency of Collection: One time

Respondents: State, regional or local arts agencies; non-profit institutions

Use: Guideline instructions and application elicit relevant information from non-profit organizations and state, regional or local arts agencies that apply for funding under the International Projects Initiative category guidelines.

This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

Estimated Number of Respondents: 250.

Average Burden Hours per Response: 24.

Total Estimated Burden: 6,000.

Roberta Dunn,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 92-24759 Filed 10-9-92; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chorus Section) to the National Council on the Arts will be held on October 27-28, 1992 from 9 a.m.-5:30 p.m., and October 29, from 9 a.m.-5 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 29 from 3 p.m.-5 p.m. for policy discussion and guidelines review.

The remaining portions of this meeting on October 27-28 from 9 a.m.-5:30 p.m. and October 29, from 9 a.m.-3 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: October 7, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endownment Endowment for the Arts.

[FR Doc. 92-24785 Filed 10-9-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 52, "Early Site Permits; Standards Design Certifications; and Combined Licenses for Nuclear Power Plants".

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion and every ten to twenty years for applications for renewal.

5. Who will be required or asked to report: Designers of commercial nuclear power plants, electric power utilities, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

6. An estimate of the number of responses: One application for an early site permit and two applications for certification of a standard design are expected over the next three years.

7. An estimate of the total number of hours needed to complete the requirement or request: 45,940 (Applicants for an early site permit, 1,940 per response; applicants for a design certification, 22,000 hours per response.)

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: 10 CFR part 52 establishes requirements for the granting of early site permits, certifications of standard nuclear power plant designs, and licenses which combine in a single license a construction permit and an operating license with conditions (combined licenses). This part also establishes requirements for renewal of these permits, certifications, and licenses; amendments to them; exemptions from certifications; and variances from early site permits.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0151), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 5th day of October 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–24764 Filed 10–9–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–29]

Yankee Atomic Electric Co., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR 50.54(q). This exemption would be granted to the Yankee Atomic Electric Company (Yankee or the licensee) for the Yankee Nuclear Power Station (Rowe) located in Franklin County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from certain emergency preparedness requirements of 10 CFR 50.54(q) which in turn references 10 CFR 50.47(b) and appendix E. The licensee requested this action in their letter of July 2, 1992, which also requested our approval of a Defueled Emergency Plan for Rowe.

The Need for the Proposed Action

The licensee's letter of July 2, 1992, stated that the plant has permanently ceased power operation and that all nuclear fuel has been removed from the containment to the spent fuel pool and therefore the requirements of 10 CFR 50.54(q), which references 10 CFR 50.47(b) and appendix E, are no longer needed because there could not be any possible release of fission products into the environment resulting from reactor system pressure boundary releases. This exemption would permit the licensee to discontinue offsite planning activities and reduce the scope of its onsite response. The staff has issued an exemption dated July 24, 1992, which removes all training and drill requirements for offsite exercises and permits the licensee to postpone a scheduled November 1992 exercise into calendar year 1993.

Environmental Impacts of the Proposed Action

The proposed action does not have any effect on accident risk and the possibility of environmental impact is extremely remote.

The licensee submitted a safety analysis in a letter dated May 22, 1992, which analyzed the most credible accident with the fuel in the spent fuel pool. This accident was the drop of a fuel bundle and subsequent release of all gaseous gap activity. The staff reviewed the licensee's analysis and found it acceptable; our review was conducted as part of our exemption of July 24, 1992, referenced above.

Based on our review, we have concluded that the consequences of accidents which may potentially result in a radiological release are greatly decreased given the plant's permanently shutdown and defueled status.

Therefore, the proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant operation and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed prior to the requirement for issuance of a Final Environmental Statement.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated July 2, 1992, which contains the Defueled Emergency Plan, and is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at a local public document room at Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 5th day of October 1992.

For the Nuclear Regulatory Commission.

Morton B. Fairtile,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 92–24754 Filed 10–9–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on October 21 and 22, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 21, 1992—8:30 a.m. until the conclusion of business
Thursday, October 22, 1992—8:30 a.m. until the conclusion of business

The Subcommittee will begin its review of the Final Safety Evaluation Report (FSER) for the GE ABWR design and the remainder of the SSAR submittals. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, GE Nuclear Energy, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 6, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–24748 Filed 10–9–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Co.; South Texas Project, Units 1 and 2 Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action Under 10 CFR 2.206 received from Mr. Thomas J. Saporito, Jr., dated February 10, 1992, with regard to the South Texas Project, Units 1 and 2.

The Petitioner requested that the NRC institute a proceeding pursuant to 10 CFR 2.202 and take a number of immediate and swift actions in the areas of physical security, maintenance activities, compliance with Technical Specifications and procedures, and training.

The Director of the Office of Nuclear Reactor Regulation has determined to grant the Petition in part and to deny the Petition in part. The reasons for this decision are explained in the "Director Decision Pursuant to 10 CFR 2.206," (DD–92–05) which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the South Texas Project, Units 1 and 2, located at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 5th day of October 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92–24763 Filed 10–9–92; 8:45 am]

BILLING CODE 7590–01–M

Power Authority of the State of New York

[Docket No. 50–286]

Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Power Authority of the State of New York (the licensee) to withdraw its June 18, 1990, application for proposed amendment to Facility Operating License No. DPR–64 for Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

The proposed amendment would have revised the facility technical specifications pertaining to containment air lock limiting conditions for operation and surveillance requirements.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 25, 1990 (55 FR 30309). However, by letter dated October 1, 1992, the licensee withdrew and proposed amendment.

For further details with respect to this action, see the application for amendment dated June 18, 1990, and the licensee's letter dated October 1, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 5th day of October 1992.

For the Nuclear Regulatory Commission.

Nicola F. Conicella,

Project Manager Project Directorate I–I, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 92–24762 Filed 10–9–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31289; International Series Release No. 467; File No. SR-NASD-92-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Issuer Notification Requirements and Fees For the Issuance of Additional Shares or the Certain Stock Plans.

October 5, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s9)(1), notice is hereby given that on June 17, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Schedule D to the NASD By-Laws; Part II—Qualification Requirements for NASDAQ Securities

Sec. 1 Qualification Requirements for Domestic and Canadian Securities

* * * * *

(c) * * *

(15) The issuer shall be required to file on a form designated by the Association notification of the creation of a stock option, stock purchase or similar plan or arrangement to issue additional shares or the issuance of additional shares of any class of securities included in the NASDAQ System no later than 15 calendar days prior to the creation of the plan, arrangement or issuance.

(16) The issuer of any class of securities included in the NASDAQ System shall notify the Association promptly in writing of any change in the issuer's transfer agent or registrar.

Subsections (15)–(17) are renumbered (17)–(19) repectively.

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Sec. 2 Qualification Requirements for non-Canadian Foreign Securities and American Depositary Receipts

* * * * *

(e) * * *

(14) The issuer shall be required to file on a form designated by the Association notification of the creation of a stock option, stock purchase or similar plan or arrangement to issue additional shares or the issuance of additional shares of any class of securities include in the NASDAQ System, except for American Depositary Receipts, no later than 15 calendar days prior to the date of creation of the plan, arrangement or issuance.

(15) The issuer of any class of securities included in the NASDAQ System, except for American Depositary Receipts, shall notify the Association promptly in writing of any change in the issuer's transfer agent of registrar.

Subsections (14)–(16) are renumbered (16) to (18) respectively.

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Part IV—Listing Fees; The NASDAQ Stock Market-National Market System

* * * * *

B. Additional Shares

1. The issuer of each class of security, other than American Depository Receipts, which is listed in the National Market System shall pay to the Corporation the fee set forth in paragraph 2. below in connection with the issuance or additional shares of each class of listed security set forth in paragraph 3. below.

2. The fee in connection with additional shares shall be $2,000 or $.02 per additional share, whichever is higher, up to a maximum of $17,500 per issuer.

3. The fee in connection with additional shares is applicable to the following issuances of securities:

a. Acquisitions, mergers or consolidations;

b. Public offerings;

c. Rights and subscription offerings;

d. Exchange offers; and

e. Private placements.

4. Payment of the fee to the Association shall be included with the issuer notification to the Association of the issuance of additional shares of securities as required under provisions of Sections 1(c)(15) and 2(e)(14) of Part II to Schedule D of the NASD By-Laws.

[B]*C* Annual Fee-Domestic and Foreign Issues

* * * * *

[C]*D* Annual Fee-American Depositary Receipts (ADRs)

* * * * *

Regular NASDAQ System

[D]*E.* Entry Fee

* * * * *

F. Additional Shares

1. The issuer of each class of security other than American Depositary Receipts which is listed in the Regular NASDAQ System shall pay to the Corporation the fee set forth in paragraph 2. below in connection with the issuance of additional shares of each class of listed security set forth in paragraph 3. below.

2. The fee in connection with additional shares shall be $1,000 or $.01 per additional share, whichever is higher, up to a maximum of $7,500 per issuer.

3. The fee in connection with additional shares is applicable to the following issuances of securities:

a. Acquisitions, mergers or consolidations;

b. Public offerings;

c. Rights and subscription offerings;

d. Exchange offers; and

e. Private placements.

4. Payment of the fee to the Association shall be included with the issuer notification to the Association of the issuance of additional shares of securities as required under provisions of Sections 1(c)(15) and 2(e)(14) of Part II to Schedule D of the NASD By-Laws.

Subsections E–G are renumbered G–I respectively.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[1] On August 6, 1992, the NASD submitted a letter to the Commission which provides further clarification regarding the basis for the fee on the issuance of additional shares in the NASDAQ system as proposed in the additional shares in the NASDAQ system as proposed in the instant proposed rule change. Letter dated August 6, 1992, from Suzanne E. Rothwell, Associate General Counsel, NASD to Katherine A. England, Branch Chief, SEC. The contents of that letter are reflected in this notice.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD currently does not require an issuer included in either the Regular Nasdaq System ("Nasdaq") or the Nasdaq National Market System ("Nasdaq/NMS") to file with the Association notification of the issuance of additional shares of securities included in the Nasdaq System or notification of creation of stock plans, stock purchase plans or other remuneration plans under which securities in the Nasdaq System will be issued. Upon review, the NASD believes that notification of such security-related activities would supply the NASD with relevant information regarding Nasdaq issuers and the purpose for which the securities are being issued. The NASD, specifically, believes that issuers [2] of securities included in Nasdaq or Nasdaq/NMS should be required to provide a detailed notification [3] to the NASD when additional included securities are issued. The NASD, therefore, proposes that domestic and foreign issuers of securities included in Nasdaq or Nasdaq/NMS, except for issuers having such securities held in American Depository Receipts ("ADRs"),[4] be required to file on a NASD designated form, notification regarding the issuance of additional shares of any class of securities included in the Nasdaq System no later than 15 calendar days prior to such issuance.[5] Issuances of additional securities would include securities issued in connection with dividends, stock splits, rights and exchange offers, public and private offers, acquisitions, mergers or consolidations. Issuances of additional shares would not include securities *issued under* a stock option, stock purchase or other similar plan or arrangement.

The NASD believes, however, that issuers of securities included in Nasdaq or Nasdaq/NMS should be required to provided a detailed notification to the NASD upon the *creation* of stock option, stock purchase or similar plans or arrangements. The NASD believes such plans have the potential for impacting the market of such issuers in the Nasdaq System. This notification will further facilitate NASD oversight of the Nasdaq/NMS criteria for shareholder approval of certain remuneration plans under Section 5(i) of Part III to Schedule D. In the case of such plans, the NASD believes only notification of creation of the plan would be necessary for oversight purposes and not actual notification of the periodic issuance of stock under the plan. The NASD, therefore, proposes that domestic and foreign issuers of securities included in Nasdaq or Nasdaq/NMS, except for issuers having such securities held in ADRs, be required to file on a NASD designated form notification regarding the creation of a stock option, stock purchase or similar plan or arrangement in connection with any class of securities included in the Nasdaq System no later than 15 calendar days prior to creation of such plan.

Notification of Change in Transfer Agent or Registrar

The NASD currently does not require an issuer in the Nasdaq System to notify the NASD when there is a change in the issuer's transfer agent or registrar. The NASD believes prompt receipt of such information is relevant to the NASD's oversight of the Nasdaq System. It is, therefore, proposed that foreign and domestic issuers of securities included in Nasdaq or Nasdaq/NMS, except for issuers of securities held in ADRs, notify the NASD promptly in writing of any change in the issuer's transfer agent or registrar. The exception for ADRs is proposed because notifications to U.S. holders of ADRs are provided by the U.S. depository bank that created the ADR and not the registrar or transfer agent of the foreign issuer.

Fee for Additional Issuances

The NASD is also proposing to impose a fee on Nasdaq and Nasdaq/NMS issuers to be paid when such issuers notify the NASD of the issuance of an additional amount of an already included security in connection with the following transaction: (a) Acquisitions, mergers or consolidations; (b) public offerings; (c) rights and subscription offerings; (d) exchange offers; and (e) private placements.[6] Under the proposed rule change, the issuance of additional share of an already included security in connection with a transaction that is not listed above would not have a fee for additional shares imposed. For example, the issuance of additional shares in connection with a stock option, dividend reinvestment plan, stock split or stock dividend would not result in a fee under the proposed rule change. Moreover, no fee is proposed in connection with the establishment of a stock option, stock purchase or similar plan.

The NASD is proposing a separate fee schedule for Nasdaq and Nasdaq/NMS issuers that the NASD believes reflects the different level of service and exposure provided to such respective issuers in the Nasdaq System. For securities designated on Nasdaq, it is proposed that issuances or plans to issue additional securities under the specific circumstances set forth above be subject to a fee of $1,000 or $ .01 per additional share, whichever is higher, up to a maximum of $7,500 per issuer. For securities included in Nasdaq/NMS, it is proposed that issuances or plans to issue additional securities be subject to a fee of $2,000 or $.02 per additional share, whichever is higher, up to a maximum of $17,500 per issuer.[7]

The fees obtained from the proposed rule change are intended to fund additional issuer-related operations that

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[2] The term issuer for purposes of Schedule D of the NASD By-Laws and the proposed rule change includes both corporations and partnerships.

[3] In contrast to the application and approval procedures required by the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") for issuance of additional securities, the NASD proposes to require issuers only to submit notification to the NASD of the issuance of additional shares. *See* Section 703.00, NYSE Manual and Sections 301–343 of Part 3 to the Listing Standards, Policies and Requirements of the AMEX Guide, Vol. 2. The NYSE and AMEX do not permit a listed company either to issue or to authorize the company's registrar or transfer agent to issue or register additional securities of a class listed on the exchange until the company has filed an application with the exchange. The application requirements of the NYSE and AMEX also apply to the creation of stock option, stock purchase and other remuneration plans involving listed securities.

[4] The NASD proposes to exempt foreign issuers having securities held in ADRs traded on the Nasdaq System because an increase or decrease of shares in an ADR normally reflects U.S. investor demand for such securities and may not reflect an increase or decrease of outstanding shares of the foreign issuer.

[5] Rule 10b–17 of the Act requires certain issuers to provide notification to the NASD in connection with: a dividend or other distribution in cash or in kind; a stock split or reverse split; or a rights or subscription offering. To avoid duplicate reporting to the NASD for issuers in the Nasdaq System who are commencing stock splits, rights offers, subscription offers, or a dividend or other distribution involving the issuance of additional shares, the NASD designated notification form would include the information required to be submitted to the NASD pursuant to Rule 10b–17. Following the approval of the proposed rule change, the NASD will inform issuers in the Nasdaq System by means of an NASD "Notice to Issuers" that compliance with the proposed rule change's notification requirements for purposes of a stock split, a rights offer, a subscription offer, or a dividend or other distribution involving the issuance of additional shares, will also satisfy Rule 10b–17's notification requirements to the NASD.

[6] The NYSE and the AMEX currently impose a fee when listed companies file an application to issue an additional amount of an already listed security. *See* Section 902.02b. of the NYSE Listed Company Manual and Section 142 to Part 3 of the Listing Standards, Policies and Requirements of the AMEX Guide, Vol. 2.

[7] The fee schedule for Nasdaq/NMS is equivalent to the AMEX fee schedule under Section 142 to Part 3 of the Listing Standards, Policies and Requirements of the AMEX Guide, Vol. 2.

include educational initiatives, issuer service initiatives, and NASD surveillance measures currently being created, or improved, which the NASD believes will enhance the quality of the Nasdaq System for issuers and improve the capital raising-capabilities for such issuers.

It is intended that the revenues obtained from the proposed fee will permit ongoing educational programs for different constituencies of the Nasdaq System that will increase interest in Nasdaq securities and further enhance the capital raising capabilities of Nasdaq/NMS and Nasdaq issuers. Specifically, educational programs are planned for registered representatives of NASD members to increase their knowledge of the market structure of the Nasdaq System. Training programs are also planned for the entry level personnel of NASD members to increase their knowledge of the NASD and the Nasdaq System by focusing on issues such as NASD market surveillance procedures, Nasdaq trading practices, and the qualifications criteria for companies in the Nasdaq System. Also planned is the development of educational programs for international investors regarding the qualification requirements of the Nasdaq System. In addition, the revenues obtained from the proposed fee will supplement current advertising to make the public more aware of the opportunities of investing in the stock of Nasdaq companies.

Revenues obtained from the proposed fee also will be used to enhance the ability of the Nasdaq System to educate individual companies on market-related issues whenever such individual corporate inquires arise. Specifically, a program is planned to increase the expertise of the Nasdaq representatives whose duty it is to help designated Nasdaq/NMS and Nasdaq issuers on a day-to-day basis with inquiries regarding the Nasdaq System, the securities markets, and questions of capital formation. It is also anticipated that the revenues obtained from the proposed fee will be used for the development and maintenance of experimental issuer information services including: (i) A system that would permit certain issuers to access current and historical trading data of the company via a personal computer, and to set-up and track the company's stock in comparison to the stock of peer companies; (ii) a surveillance system that would monitor trading in certain stocks pursuant to parameters set by the issuer and provide a next-day report to those companies; and (iii) a system that would provide certain issuers with quarterly and annual customized records of the company's stock trading activity. Revenues from the proposed fee are also intended to support further automation and streamlining of the Nasdaq/NMS and Nasdaq issuer application procedures, and for further automation of the work-flow process and analysis of maintenance qualifications. In particular, it is intended that monitoring and reviewing the issuances of additional shares of Nasdaq/NMS issuers will be enhanced to ensure compliance with Nasdaq/NMS corporate governance requirements imposed pursuant to Part III, Section 5 of Schedule D to the NASD By-Laws.

It is anticipated that revenues from the proposed fee will also support further development and ongoing implementation of NASD Market Surveillance procedures including the implementation of an incident tracking surveillance system, enhancements to the StockWatch automated tracking system ("SWAT"), procurement of additional commercially available surveillance data to better monitor issuer price and volume movement, the development of a surveillance system for the proposed high-yield fixed-income pricing system, enforcement of Rule 10b–6 in accordance with the NASD's passive market-making proposal, and enforcement of the proposed NASD short-sale rule.

Waiver of Fees for Issuances Pending on Effective Date of The Rule Change

The NASD recognizes that the board directors of some issuers in the Nasdaq System may have approved the issuance of additional shares without notice of the proposed fee herein and that the approved issuance may be pending on the effective date of the proposed rule change. To ensure that all Nasdaq insurers have adequate notice of the proposed fee prior to action by its board of directors, the NASD will waive the proposed fee for the issuance of additional shares if the company's board approved the issuance prior to the effective date of the proposed rule change.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires the rules of a national securities association be designed to "promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and setting, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest" in that notification of additional issuances of securities will provide the NASD with greater oversight of such securities and such monitoring should further perfect the Nasdaq System and provide better protection to investors and the public interest. The NASD believes the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of a national securities association "provide for the equitable allocation of reasonable dues, fee and other charges among members and issuers and other persons using any facility or system which the association operates or controls" in that the proposed rule will allow the NASD to fund additional issuer-related operations that include educational initiatives, issuer service initiatives, and NASD surveillance measures currently being created, or improved, which the NASD believes will enhance the quality of the Nasdaq System for issuers and improve the capital raising-capabilities for such issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary of appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceeding to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and coping at the principal office of the NASD. All submissions should refer to the file number in the caption above and be submitted by November 3, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3 (a) (12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24773 Filed 10-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18997; 811-6141]

Mexico Capital Growth Fund, Inc., Application for Deregistration

October 5, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company act of 1940 (the "ACT").

APPLICANT: Mexico Capital Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on September 28, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 30, 1992 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Tower 49, 12 East 49th Street, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Maryland corporation and a close-end, non-diversified management investment company registered under the Act. SEC records indicate that on July 23, 1990, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement on Form N-2 under the Securities Act of 1933. The registration statement never became effective, and applicant never made a public offering of its shares.

2. Applicant has never had any securityholders, assets, nor liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged in, nor does it presently intend to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24772 Filed 10-9-92; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; (The Money Store, Inc., Common Stock, No Par Value) File No. 1-10785

October 6, 1992.

The Money Store, Inc. ("Company") has filed an application with the Securities and Exchange Commission) "Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on September 10, 1992, to withdraw the Company's Common Stock from listing on the American Stock Exchange ("Amex") and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/ National Market Systems ("NASDAQ/ NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS will offer the Company's stockholders more liquidity than that presently available on the Amex and less volatility in quoted prices per share when trading volume is slight. On NASDAQ/NMS the Company will have an opportunity to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(3) The Company believes that firms making a market in the Company's Common Stock will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before October 28, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-24722 Filed 10-9-92; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration; (Pall Corporation, Common Stock, $0.25 Par Value; Common Share Purchase Rights) File No. 1-4311

October 6, 1992.

Pall Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on October 5, 1992 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its Common Stock and Rights from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock and Rights on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Common Stock and believes that dual listing would fragment the market for the Common Stock.

Any interested person may, on or before October 28, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G Katz,

Secretary.

[FR Doc. 92-24720 Filed 10-9-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Historian; Advisory Committee on Historical Diplomatic Documentation; Meeting

[Public Notice 1708]

The Advisory Committee on Historical Diplomatic Documentation will meet November 5-6, 1992, at 9:30 a.m. in the Department of State.

The Committee will meet in open session from 9:30 a.m. on the morning of Thursday, November 5, 1992, until noon of that day, in room 1205, Main State. The remainder of the Committee's sessions, until the end of this session on Friday, November 6, at 4 p.m., will be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of Historian, Washington, DC, 20520, telephone (202) 663-1123.

Dated: October 1, 1992.

William Z. Slany,

Executive Secretary.

[FR Doc. 92-24731 Filed 10-9-92; 8:45 am]

BILLING CODE 4710-11-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended October 2, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48375.
Dated filed: September 28, 1992
Parties: Members of International Air Transport Association
Subject:
Telex—Comp Mail Vote 596
Conversion to Sudanese dinar
Telex—Amending Mail Vote
Telex—Declaring Mail Vote Adopted
Proposed Effective Date: December 1, 1992

Docket Number: 48376.
Date filed: September 28, 1992
Parties: Members of the International Air Transport Association
Subject:
TC2 Reso/P 1282 dated September 18, 1992
Within Europe Expedited Resos—R-1 to R-2
Intended effective date: October 25, 1992
TC2 Reso/P 1283 dated September 18, 1992
Within Europe Expedited Resos—R-3 to R-7
Intended effective date: November 1, 1992
TC2 Reso/P 1284 dated September 18, 1992
Within Europe Expedited Resos—R-8
Intended effective date: November 15, 1992
TC2 Reso/P 1285 dated September 18, 1992
Within Europe Expedited Resos—R-9 to R-14
Intended effective date: January 1, 1993
TC2 Reso/P 1286 dated September 18, 1992
Within Europe Expendited Resos—R-15 to R-16
Intended effective date: November 1, 1992
TC2 Reso/P 1287 dated September 18, 1992
Within Europe Expedited Resos—R-17 to R-18
Intended effective date: October 25, 1992
TC2 Reso/P 1288 dated September 18, 1992
Within Europe Expendited Resos—R-19 to R-20
Intended effective date: November 1, 1992
TC2 Reso/P 1289 dated September 18, 1992
Within Europe Expedited Resos—R-21 to R-22
Intended effective date: January 1, 1993
TC2 Reso/P 1290 dated September 18, 1992
Within Europe Expedited Resos—R-23 to R-26
Intended effective date: October 25, 1992
TC2 Reso/P 1291 dated September 18, 1992
Within Europe Expedited Reso—R-27

to R-32
Intended effective date: November 1, 1992

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 92-24795 Filed 10-9-92; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 2, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48374.
Date filed: September 28, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 26, 1992.
Description: Application of Family Airlines, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the act, applies for a certificate of public convenience and necessity authorizing it to engage in interstate and overseas scheduled air transportation of persons, property and mail.

Docket Number: 48378.
Date filed: October 1, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 29, 1992.
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for amendment of its certificate of public convenience and necessity for Route 470 so as to add a new segment authorizing foreign air transportation of persons, property, and mail between the terminal point San Jose, California, and the terminal point Vancouver, British Columbia, Canada.

Docket Number: 48381.
Date filed: October 2, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 30, 1992.
Description: Application of Capital Air Express, pursuant to section 401(d)(3), of the Act and subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing interstate, overseas, and foreign charter air transportation.

Docket Number: 47023.
Date filed: September 30, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 28, 1992.
Description: Application of Federal Express Corporation, pursuant to section 401 of the Act and subpart Q of the Regulations, for renewal of its existing certificate authority and frequency allocation to provide foreign air transportation of property and mail between New York, N.Y., on the one hand, and Moscow, Russia, on the other hand, as contained in Segment 4 of Federal Express' certificate of public concenience and necessity for Route 119.

Docket Number: 47730.
Date filed: September 28, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 26, 1991.
Description: Amendment No. 1 to the Application of South African Airways, pursuant to section 402 of the Act and subpart Q of the Regulations for a foreign air carrier permit seeking Third and Fourth Freedom authority to engage in regularly scheduled service and charter foreign air transportation of persons, property (i.e., baggage and cargo) and mail between any point or points in South Africa, its territories and possessions, and any point or points in the United States, its territories and possessions.

Docket Number: 48113.
Date filed: September 30, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 28, 1992.
Description: Amendment No. 1 to the Application of Dash Airlines, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, for a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property, and mail from Miami, Florida to Grand Turk and Providenciales, Turks and Caicos Islands with onward service to Nassau, Bahamas Islands. (Supplemental Information).

Docket Number: 48114.
Date filed: September 30, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 28, 1992.
Description: Amendment No. 1 to the Application of Dash Airlines, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing it to engage in scheduled interstate air transportation. (Supplemental Information).

Phyllis. T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 92-24793 Filed 10-9-92; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Approval of Noise Compatibility Program Ohio State University Airport, Columbus, OH

AGENCY: Federal Aviation Administration. DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by The Ohio State University under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On March 2, 1992, the FAA determined that the noise exposure maps submitted by The Ohio State University under part 150 were in compliance with applicable requirements. On August 24, 1992, the Assistant Administrator for Airports approved the Ohio State University Airport noise compatibility program.

A total of three (3) measures were included in the Ohio State University recommended program. Of the three (3) measures one (1) is listed as a Noise Control Measure, one (1) is listed as a Land Use Management Measure and One (1) is listed as a Program Management Measure. The FAA has approved all three (3) of the measures.

EFFECTIVE DATE: The effective date of the FAA's approval of the Ohio State University Airport noise compatibility program is August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Robert H. Allen, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487-7296. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Ohio State University Airport, effective August 24, 1992.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979

(hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government: and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noises compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The Ohio State University submitted to the FAA on July 2, 1990, noise exposure maps, descriptions and other documentation. This documentation was produced during the Airport Noise Compatibility Planning (Part 150) Study at Ohio State University Airport from August 1987 through July 1990. The Ohio State University Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 2, 1992. Notice of this determination was published in the Federal Register on March 25, 1992.

The Ohio State University Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1994. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 2, 1992, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program proposed by the airport sponsor contained three (3) measures for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective August 24, 1992.

One (1) of the three measures submitted is listed as a "Noise Control Measure". The one noise control measure was approved which deals with development of an informal procedure to be implemented as a voluntary noise abatement measure. One of the three measures submitted is listed as a "Land Use Management Measure", which was approved. This measure includes sound attenuation and/or easement purchase for residential homes. One of the three measures submitted is listed as a "Program Management Measure" which was approved outright. This measure includes updating plan as necessary. These three determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on August 24, 1992. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to FAA are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Ohio State University, Administration Building, 2160 West Case Road, Columbus, Ohio 43235.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, September 25, 1992.

Dean C. Nitz,

Acting Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 92-24770 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-13-M

Intent to Prepare an Environmental Impact Statement and 4(f) Statement for an Airport Surveillance Radar Model 9 (ASR-9) Facility for Washington National Airport, Washington, DC and Conduct Scoping

AGENCY: Department of Transportation, Federal Aviation Administration.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and 4(f) Statement, and conduct public scoping.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to assess the potential effects of constructing and operating an Airport Surveillance Radar Model 9 (ASR-9) facility at either a site within Ward 8 of the District of Columbia or at Washington National Airport, Arlington County, Virginia. The purpose of this facility is to improve existing radar

coverage provided to air traffic control servicing Washington National Airport and the airspace over Washington, DC. To ensure that all significant issues related to the proposed action are identified, the FAA will conduct a public scoping meeting.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Mr. Charles Hoch (AEA–400), Manager, Airway Facilities Division, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Mr. Mike Lanz, AEA–451.1, (718) 553–1198 or Mr. Thomas J. Schrope, Louis Berger & Associates, Inc. (202) 331–7775.

SUPPLEMENTARY INFORMATION: The FAA will prepare an EIS on constructing and operating an ASR–9 facility for Washington National Airport and the airspace over Washington, DC. Preliminary environmental documentation, including a site selection report and draft Environmental Assessment (EA), will be used as the basis for the Draft EIS. These documents presented preliminary analyses of potential alternative sites for the ASR–9 facility and the no action alternative. Several sites within Ward 8 of the District of Columbia, a site adjacent to the existing radar facility at Washington National Airport, Arlington County, Virginia, and the no action alternative will be evaluated in the EIS. Under the no action alternative the FAA would not proceed with the proposed construction and operation of the ASR–9 facility, and would continue to operate the existing ASR–7 radar facility located at Washington National Airport. The environmental review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371, et seq), Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the Department of Transportation (DOT) Act of 1966, DOT/FAA Orders, and all applicable Federal regulations and District of Columbia ordinances.

Public Scoping Meeting

The FAA solicits public comments for consideration and possible incorporation in the Draft EIS through a public scoping meeting on the proposed action. To ensure the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Interested parties are invited to attend a public scoping meeting that will be conducted at 6:30 p.m. on October 20, 1992 in the Basement Meeting Room, Washington Highlands Library, 115 Atlantic Street, SW, Washington, DC. Written comments will be accepted until November 3, 1992.

Dated: October 2, 1992.

Charles Hoch,

Manager, Airway Facilities Division.

[FR Doc. 92–24771 Filed 10–9–92; 8:45 am]

BILLING CODE 4910–13–M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on November 24, 1992, at 9 a.m. Arrange for oral presentations by November 13, 1992.

ADDRESSES: The meeting will be held at the Hyatt Regency Washington (on Capitol Hill), 400 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on November 24, 1992, at the Hyatt Regency Washington (on Capitol Hill), 400 New Jersey Avenue, NW., Washington, DC. The agenda will include:

- A discussion of proposed revisions to the committee charter.
- A discussion of the criteria applied by the FAA for assigning a task to a subcommittee.
- A discussion of economic and legal support for the subcommittees and working groups.
- A briefing on the products the FAA expects to receive from the subcommittees.
- Status reports from the chairs of the subcommittees.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by November 13, 1992, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 15 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangement may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT:**."

Issued in Washington, DC, on October 2, 1992.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–24806 Filed 10–9–92; 8:45 am]

BILLING CODE 4910–S–M

National Highway Traffic Safety Administration

[Docket No. 92–26; Notice 2]

Determination that Nonconforming 1989 Bentley Turbo R Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1989 Bentley Turbo R passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1989 Bentley Turbo R passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards, and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

(I) the motor vehicle * * * is substantially similar to a motor vehicle originally

manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. After it receives a petition, NHTSA publishes notice in the **Federal Register** to solicit comments from interested members of the public. Following close of the comment period, NHTSA reviews the petition and comments, and publishes its determination in the **Federal Register.**

Liphardt & Associates, Inc., of Ronkonkoma, New York (Registered Importer No. R–90–004), petitioned NHTSA for a determination that 1989 Bentley Turbo R passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on June 5, 1992, to afford an opportunity for public comment (57 FR 24079).

As stated in that notice, the vehicle that Liphardt claimed to be substantially similar is the version of the 1989 Bentley Turbo R that Rolls-Royce Motors offered for sale in the United States and certified as conforming to all applicable Federal motor vehicle safety standards. The petitioner alleged that it had carefully compared the two vehicles, and found them to be substantially similar with respect to most applicable Federal motor vehicle safety standards.

Specifically, the petitioner claimed that the non-U.S. certified 1989 Bentley Turbo R is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluids*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials.*

The petitioner also contended that the vehicle was capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporated sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 114 *Theft Protection*: Installation of a buzzer relay in the steering lock electrical circuit, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems*: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: Installation of an ignition switch-actuated seat belt warning buzzer.

Additionally, the petitioner stated that the energy absorbers on the front bumper of the 1989 Bentley Turbo R had to be replaced to comply with the Bumper Standard found in 49 CFR part 581.

One comment was received in response to the notice of the petition, from Rolls-Royce Motor Cars Inc. ("Rolls-Royce"), the United States importer of new Rolls-Royce and Bentley motor cars manufactured by Rolls-Royce Motor Cars Ltd. In its comment, Rolls-Royce stated that it is opposed to the importation of the 1989 Bentley Turbo R "or any similar vehicle not originally manufactured to conform to all applicable Federal motor vehicle safety standards." It contended that the vehicle meets neither of the criteria for import eligibility specified in section 108(c)(3)(A)(i) of the Act, 15 U.S.C. 1397(c)(3)A)(i), and that it should therefore be refused admission into the United States.

Specifically, Rolls-Royce stated that the testing that confirmed that the U.S. certified version of the 1989 Bentley Turbo complied with applicable occupant safety standards was performed on a left-hand drive vehicle, as opposed to the right-hand drive vehicle that it contends is the subject of the petition. Additionally, Rolls-Royce contended that its records, and those of the vehicle's manufacturer, indicate that when the non-U.S. certified 1989 Bentley Turbo R was manufactured, it did not comply with Standard Nos. 101, 108, 110, 111, 114, 115, 118, 208, and 209, nor did it comply with the Bumper Standard found in 49 CFR part 581. Without specifying the nature of these purported noncompliances, Rolls-Royce claimed that "considerable work and expense would be required" to bring the vehicle into compliance with the standards it identified.

NHTSA has reviewed each of the issues that Rolls-Royce has raised regarding the petition. The petition specified the modifications that are necessary to bring a non-U.S. certified 1989 Bentley Turbo R into compliance with all standards specified by Rolls-Royce, with the exception of Standard Nos. 111 and 209. As they have been performed with relative ease on thousands of vehicles imported over the years, none of the modifications described in the petition would preclude NHTSA from determining that the 1989 Bentley Turbo R is eligible for importation. With respect to Standard No. 111, NHTSA's review of compliance data for other Rolls-Royce vehicles revealed that they were all equipped with flat passenger side exterior mirrors that require no markings to comply with the standard. All Rolls-Royce vehicles for which compliance data was submitted were also equipped with seat belts that bore the requisite markings to indicate compliance with Standard No. 209. Although the petitioner did not identify the vehicle that it seeks to import as a right-hand drive model, it did furnish NHTSA with information revealing that there is no significant distinction in the parts equipped on the left or right-hand drive version of the 1989 Bentley Turbo R.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the Form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #16 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 Bentley Turbo R that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards is substantially similar to a 1989 Bentley Turbo R that was originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that it is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8

Issued on: October 6, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-24708 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-55; Notice 1]

Isis Imports Ltd.; Receipt of Petition for Temporary Exemption From Federal Motor Vehicle Standard No. 208

Isis Imports Ltd. of San Francisco, California, has petitioned for a temporary exemption from the automatic restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*. The basis of the petition is that compliance would cause substantial economic hardship, and that the petitioner has, in good faith, attempted to meet the requirements of the standard.

This notice is published in accordance with statutory requirements (15 U.S.C. 1410(a)) to provide notice and an opportunity to comment, and does not represent any agency determination of the merits of the petition.

Petitioner was previously granted a 3-year exemption from paragraphs S4.1.2.1 and S4.1.2.2 of Standard No. 208, which expired October 1, 1992 (54 FR 43647).

The make and type of passenger car for which exemption is requested is the Morgan convertible. The British manufacturer of the Morgan has not offered its vehicle for sale in the United States since the early days of the Federal motor vehicle safety standards. In recent years, however, Isis has bought a small number of disassembled vehicles from Morgan, imported the parts, assembled the vehicles, and sold them in the United States. They differ from their British counterparts, not only in equipment items and modifications necessary for compliance with the Federal motor vehicle safety standards, but also in their engines, which are propane fueled. As the assembler of the vehicle, Isis certifies conformance to all applicable Federal motor vehicle safety, bumper, and theft prevention standards. The vehicle assembled by Isis in the U.S. is deemed sufficiently different from the one produced by Morgan in England that Isis may be regarded as its manufacturer, not its converter, even though the brand names are the same.

Isis assembled 11 Morgans for sale in the U.S. in the 12-month period preceding the filing of its petition. It asked for a further 3-year exemption from the automatic restraint requirements of Standard No. 208, during which time it would continue to provide protection through its current three-point lap-shoulder belt system. However, before the end of that time, it hopes to be able to offer an air bag system.

In arguing that compliance would cause it substantial economic hardship and that it had in good faith attempted to meet the requirements of the standard, Isis related its efforts to conform while the previous exemption was in effect. Initially, it had continued to pursue research on automatic belt systems, obtaining seat belt hardware and motor drive assemblies, and created a mock-up. However, both petitioner and Morgan's engineering staff concluded that this system was not feasible because, over time, the seat belt track would deform, rendering it unusable. Further, modelling of the path of belt travel over the legs of the driver and passenger indicated an unacceptable degree of contact between the belt and occupant legs. It also noted simultaneously a growing level of consumer resistance to the use of automatic belt systems. Consequently, in the Spring of 1991, it once again began to seek out air bag suppliers. The petition recounts in considerable detail the unsuccessful efforts of Isis to obtain air bag systems from Jaguar, Rover, Rolls-Royce and Lotus. The proposals that it received from Lotus and Breed to develop a vehicle-specific air bag system were prohibitive in cost.

However, two possible sources are awaiting development. The petitioner hopes to obtain eventual access to a system that Range Rover is developing for its vehicles. It has heard from the British Department of Transport that some retrofit components will be coming on the market over the next 2 years. Until these developments materialize, it will be unable to offer an air bag system, and will require an exemption.

The petitioner's net income in 1991 was $10,698. For the 4-year period 1988-91, it had a cumulative net loss of $4,414. The company states that it will have to cease business if its petition is denied. Sales of spare parts and service would be inadequate to fund development of an automatic restraint system without new car sales.

Petitioner argues that an exemption would be in the public interest and consistent with the objectives of The National Traffic and Motor Vehicle Safety Act because it would allow it to continue to support existing owners of Morgan cars (it has been the major supplier of Morgans in the U.S. since 1975, and supplies parts for older cars). An exemption would also allow it to contribute toward the diversity of vehicles for sale in the U.S. The small number of vehicles likely to be produced during the time that the exemption is in effect will not materially affect safety. Finally, the petitioner enclosed photographs showing the effect on a Morgan of a collision at an estimated closing speed of 90 mph, after which the Morgan's driver, restrained by the 3-point belt system, walked away from the accident with only a cracked rib caused by the seat belt crushing a ball point pen in his shirt pocket.

Interested persons are invited to submit comments on the petition. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: November 12, 1992.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on October 6, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-24721 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party To an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of the application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before October 28, 1992.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
3121-X	U.S. Department of Defense, Falls Church, VA (See Footnote 1).	3121
6874-X	Degussa Corp., Ridgefield Park, NJ (See Footnote 2).	6874
9001-X	Chesterfield Cylinders Ltd., Chesterfield, Derbyshire, EN (See Footnote 3).	9001
10130-X	UF Strainrite, Lewiston, ME (See Footnote 4).	10130
10184-X	Praxair, Inc., Danbury, CT (See Footnote 5).	10814
10336-X	Morton International, Inc., Ogden, UT (See Footnote 6).	10336
10340-X	Schutz Container Systems, Inc., North Branch, NJ (See Footnote 7).	10340
10694-X	Polymet Alloys, Inc., Rima Electrometalurgia, S.A., Birmingham, AL (See Footnote 8).	10694
10870-X	Anderson Products, Inc., Chapel Hill, SC (See Footnote 9).	10870

[1] To renew and modify exemption to eliminate the operational emergency response plan requirement for nitrogen tetroxide for highway transportation routes.

[2] To modify exemption to increase the plywood thickness to 3/8 inch in the construction of non-DOT specification wooden boxes for use in transporting sodium cyanide, solid classed as Poison B.

[3] To amend exemption to allow a ten year retest of non-DOT specification cylinders for use in transporting flammable and nonflammable gases.

[4] To authorize specially reinforced, skid mounted non-reusable bulk bags containing various solid hazardous materials to be transported via privated or contract carriers without being shipped in full truckloads quantities.

[5] To modify exemption to provide for additional nonflammable, noncorrosive mixtures classed as nonflammable gases to be transported in DOT specification cylinders.

[6] To modify exemption to provide for 3½ gallon reusable plastic shipping container for use in transporting propellant explosives, solid, Class B.

[7] To modify the exemption to provide for a smaller polyethylene portable tank with a 169 gallon capacity to be used in transporting various material, flammable, combustible and corrosive liquids.

[8] To reinstate exemption originally issued on an emergency basis to authorize shipment of calcium silicon, Class 4.3 contained in a hermetically sealed steel sheath which is shrink wrapped and placed inside a metal cage.

[9] To reissue exemption originally issued on an emergency basis to authorize the transporation of ethylene oxide packaged in glass ampoules within a fiberboard box and to authorize cargo aircraft as an additional mode.

Application No.	Applicant	Parties to exemption
4884-p	Praxair, Inc., Danbury, CT.	4884
6614-p	B's Pool Supplies, Ontario, CA.	6614
7943-p	HASA of Arizona, Inc., Eloy, AZ.	7943
8074-p	GenEx, Ltd., Des Moines, IA.	8074
8426-p	Rich Sand Ethridge Co., San Ardo, CA.	8426
8451-p	Automotive Systems Laboratory, Inc., Farmington Hills, MI.	8451
8451-p	Accurate Arms Company, Inc., McEwen, TN.	8451
8451-p	Universal Propulsion Co., Phoenix, AZ.	8451
9108-p	Beta Chemicals, Inc., Cerritos, CA (See Footnote 1).	9108
9275-p	Scent Overnight, Inc., Port Washington, NY.	9275
9723-p	J.B. Hunt Special Commodities, Inc., Lowell, AR.	9723
10032-p	Ermetainer S.A., Geneve, France.	10032
10346-p	James River Corp., Camas, WA.	10346
10413-p	Occidental Chemical Corp., Dallas, TX (See Footnote 2).	10413
10709-p	Dowell Schlumberger, Inc., Tulsa, OK.	10709

[1] To authorize party status and provide for additional packaging consisting of 70 pounds of 25% water wetted PEDN, classified as initiating explosive, Class A explosive, 4 mil polyethene bag overpacked in 21C115 fiber drum.

[2] To reinstate exemption to authorize a one time shipment of approximately 148 non-DOT specificational drums containing sodium chlorate, solid, classified as an oxidizer.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 6, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-24796 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 12, 1992.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW, Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10885-N	U.S. Department of Energy, Washington, DC.	49 CFR 172.101 Col. 9(b), 172.204(c)(3), 173.27(b)(2)+(3), 179.27(f) Table 2, 175.30(a)(1).	To authorize the transportation of Class A, B and C explosives which are forbidden or exceed the quantity limitations authorized for shipment by air. (Mode 4.)
10887-N	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.245	To authorize the transportation of dinitrogen tetroxide liquid, classed as poison gas, inhalation hazardous zone A; oxidizers and other liquid hazardous materials in non-DOT specification portable tanks comparable to the DOT-51 portable tank specification. (Mode 1.)
10888-N	The Clorox Co., Forest Park, GA	49 CFR 174.67(i)+(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (Mode 2.)
10889-N	Safe Way Disposal Systems, Inc., Middletown, CT.	49 CFR 173.197	To authorize shipment of certain regulated medical waste contained in plastic bags overpacked in polyethylene carts of 150 gallon capacity. (Mode 1.)
10891-N	Inmark, Inc., Atlanta, GA	49 CFR 172.400, 172.402(a)(2), 172.504(a)+Table 1, 173.25(a), 173.3, 175.3.	To manufacture, mark and sell specifically designed composite type packaging, for shipment of small quantities of various flammable, corrosive, and poison B liquids and solids without labels. (Modes 1, 2, 4.)
10892-N	Pfizer Inc., Groton, CT	49 CFR 174.67(i)+(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (Mode 2.)
10893-N	Olin Corp., Stamford, CT	49 CFR 173.31(c)(1), 173.31(c)(5)	To authorize the one-time shipment of an empty chlorine GATX41503 tank car in need of retest. (Mode 2.)
10895-N	Kansas City Missouri Water/Pollution Control, Dept. Kansas City MO.	49 CFR 174.67(i)+(j)	To authorize to chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (Mode 2.)
10896-N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.211(b)	To authorize the transportation of magnesium hydride (dangerous when wet) in specially designed containers constructed of type 316L welded stainless steel having a maximum operating pressure of 250 psig. (Modes 1, 3, 4.)
10898-N	HYDAC Corp., Bethlehem, PA	49 CFR 173.302	To authorize the transportation of nitrogen, classed as nonflammable gas, in precharged accumulators of various sizes not to exceed 5000 psig designed in accordance with ASME pressure vessel code. (Modes 1, 2, 3, 4.)
10899-N	Tuscarora Inc., Conyers, CA	49 CFR 173.158(b)(2)(e)	To authorize the manufacture, mark, and sell of a non-reusable, molded expanded polystyrene inner packaging for a 6.5 gallon glass carboy receptacle overpacked in a 4G box for use in transporting nitric acid of 70% or less. (Modes 1, 2, 3.)
10900-N	Mainwaire East, Inc., Dallas, TX	49 CFR 172.101, 173.27, 175.75	To authorize the transportation of Class A, B, and C explosives that are not permitted for shipment by air, or in quantities greater than those prescribed for shipment by air. (Mode 4.)
10901-N	Alabama River Pulp Company, Inc., Perdue Hill, AL.	49 CFR 174.67(i)+(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (Mode 2.)
10904-N	InVitro International, Irvine, CA	49 CFR 173.136, 173.137	To authorize an alternative mechanical type test method to determine corrosivity and specific packaging group. (Mode 1.)
10905-N	Comdyne I, Inc., West Liberty, OH	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To manufacture, mark and sell non-DOT specification composite cylinders to be used in transporting certain flammable and non-flammable compressed gases. (Modes 1, 3, 4, 5.)
10906-N	United Parcel Service Co., Louisville, KY	49 CFR 172.204(c)(2), 175.30(a)(2), 175.35(a).	To authorize the air carrier engaged in transporting hazardous materials to collect one copy of the shipper certification, instead of the required two copies and provide for the five past shipping paper form as a substitute for the certificate to travel with the shipment. (Mode 4.)
10907-N	Russell-Stanley Corp., Red Bank, NJ	49 CFR 173.227(c)	To authorize the manufacture, mark and sell of 1H1 polyethylene drums for the shipment of Division 6.1, Hazard Zone B materials without a steel overpack. (Modes 1, 2, 3.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 6, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-24797 Filed 10-9-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 5, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0176
Form Number: None
Type of Review: Reinstatement
Title: Record and Disclosure Requirements—Fed Regs B, E, M and Z
Description: Burden allocated to OCC by OMB. This burden is attributable to Fed Regs B (Equal Credit Opportunity), E (Electronic Funds Transfer), M (Consumer Leasing), and Z (Truth-in-Lending)
Respondents: Business or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 3,750
Estimated Burden Hours Per Recordkeeper: 1,283 hours, 24 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 4,812,630 hours
Clearance Officer: John Ference (202) 874-4697, Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-24780 Filed 10-9-92; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 5, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550-0047
Form Number: OTS Form 1393
Type of Review: Extension
Title: Notice of Hiring of Senior Executive Officer or Director
Description: Title IX, Section 914 of the Financial Institutions Reform, Recovery and Enforcement Act requires agency notification for the addition to senior executive officers and directors of financial institutions. The approved OMB Form No. 1393, Biographical and Financial Report, is used to evaluate the competence, experience, character and integrity of individuals being considered for directorships and senior executive positions
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 900
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: Other (whenever change occurs in senior management)
Estimated Total Reporting Burden: 1,800 hours
Clearance Officer: Colleen Devine (202) 906-6025, Office of Thrift Supervision, 2nd Floor, 1700 G Street, NW., Washington, DC 20552
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-24781 Filed 10-9-92; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 6, 1992.

The Department of Transportation has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0170
Form Number: None
Type of Review: Extension
Title: Manufacturer/Shipper Identification Required at Time of Entry
Description: This information collection will require that all importers provide the name and complete address of the individual or firm who is responsible for invoicing the merchandise (for example, the manufacturer or the shipper). This information will enhance Customs ability to perform its cargo documentation and realize the full potential of the Automated Commercial System (ACS)
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 500
Estimated Burden Hours Per Respondent: 3 minutes
Frequency of Response: Other (Daily)
Estimated Total Reporting Burden: 5,978
Clearance Officer: Ralph Meyer (202) 927-1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-24782 Filed 10-9-92; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy; Meeting

AGENCY: United States Information Agency.

ACTION: Notice for the Federal Register.

The United States Advisory Commission on Public Diplomacy will meet in room 600, 301 4th Street, SW. on October 14 from 10:15 a.m. to 12:30 p.m.

The meeting will be closed to the public from 11 a.m.—11:45 a.m. because it will involve discussion of classified information relating to U.S. international broadcasting. (5 U.S.C. 552b(c)(1)).

From 10:15 a.m. to 11 a.m. the Commission will meet in open session with Mr. Michael Pack, Director of the U.S. Information Agency's Office of Worldnet Television and Film Service for a discussion of Worldnet television policies and programs. From 11:45 a.m. to 12:30 p.m. the Commission will meet with Mr. Leonard Baldyga, Director of the U.S. Information Agency's Office of European Affairs for a discussion of the Freedom Support Act and public diplomacy programs in Europe.

Please call Gloria Kalamets, (202) 619–4468 for further information.

Dated: October 6, 1992.

Eugene P. Kopp,

Acting Director.

[FR Doc. 92–24794 Filed 10–9–92; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee; Meetings

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Tuesday, October 20, 1992, at 2:30 p.m.
Wednesday, November 18, 1992, at 2:30 p.m.
Wednesday, December 2, 1992, at 2:30 p.m.
Wednesday, December 16, 1992, at 2:30 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1161, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: October 5, 1992.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–24783 Filed 10–9–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 199
Tuesday, October 13, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY

There will be a Public Hearing to accept proposals for inclusion within the boundary of the Blackstone River Valley National Heritage Corridor by the Boundary Subcommittee. Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that this hearing will be held. The Commission was established pursuant to Public Law 99-647, in order to protect and interpret the nationally significant resources in the Blackstone Valley.

PLACE: Sutton Town Hall, 4 Uxbridge Road, Sutton, MA.

DATE: Thursday, October 15, 1992.

TIME: 7:00 p.m.

The Boundary Subcommittee is holding this hearing to entertain proposals from neighboring towns to be included in the Blackstone River Valley National Heritage Corridor boundary.

Presentations of proposals will be limited to 10 minutes each and proposals must also be provided in writing. All proposals must be received in the Commission office no later than October 14, 1992.

Written proposals to the subcommittee should be mailed to: Blackstone River Valley National Heritage Corridor Commission, 15 Mendon Street, P.O. Box 730, Uxbridge, MA 01569.

James Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor.

[FR Doc. 92-24844 Filed 10-8-92; 3:58 pm]

BILLING CODE 4310-70-M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: October 14, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 966th Meeting—October 14, 1992, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 8430-092, Smith Falls Hydropower
CAH-2.
Omitted
CAH-3.
Project No. 9088-022, Northwest Power Company, Inc.
CAH-4.
Project No. 10819-001, Idaho Water Resources Board
Project No. 10830-001, Nez Perce Tribe
Project No. 10832-001, Pacific Western, Inc.
CAH-5.
Project Nos. 2179-012 and 014, Merced Irrigation District
CAH-6.
Project Nos. 2322-008, 2325-003 and 2552-003, Central Maine Power Company
Project No. 2574-007, Merimil Limited Partnership
Project No. 5073-010, Benton Falls Associates
Project No. 2611-009, Scott Paper Company and UAH-Hydro Kennebec Limited partnership
CAH-7.
Docket No. UL90-34-008, Consolidated Hydro, Inc.
CAH-8.
Project Nos. 1962-014 and 1988-019, Pacific Gas and Electric Company, Sacramento Municipal Utility District, the Northern California Power Agency, and the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California

Consent Electric Agenda

CAE-1.
Omitted
CAE-2.
Docket Nos. ER92-644-000 and EC92-18-000, Duquesne Light Company
CAE-3.
Omitted
CAE-4.
Docket No. ER92-236-002, Delmarva Power & Light Company
CAE-5.
Docket No. ER92-679-001, Central Power and Light Company
Docket No. ER92-676-001, West Texas Utilities Company
CAE-6.
Docket Nos. ER92-434-002, ER92-453-002 and ER92-477-001, United Illuminating Company
CAE-7.
Docket No. EL92-36-001, Arkansas Power and Light Company, System Energy Resources, Inc., New Orleans Public Service, Inc., Louisiana Power and Light Company, Mississippi Power and Light Company and Entergy Power, Inc.
Docket Nos. ER92-341-002 and EL92-35-002, Arkansas Power and Light Company
CAE-8.
Docket No. ER92-67-001, Western Massachusetts Electric Company
CAE-9.
Omitted
CAE-10.
Omitted
CAE-11.
Docket Nos. ER92-346-001 and ER92-347-001, Central Hudson Gas and Electric Corporation
Docket No. ER92-379-001, Kansas Power and Light Company
Docket Nos. ER92-382-001 and ER92-550-001, New England Power Company
Docket No. ER92-430-001, Potomac Electric Power Company
Docket Nos. ER92-446-001 and ER92-538-001, Kansas Gas and Electric Company
Docket No. ER92-473-001, Puget Sound Power and Light Company
Docket No. ER92-486-001, UtiliCorp United, Inc.
Docket Nos. ER92-495-001, ER92-496-001, ER92-497-001, ER92-498-001, ER92-499-001, ER92-500-001, ER92-501-001, ER92-502-001, ER92-503-001 and ER92-504-001, Tucson Electric Power Company
Docket No. ER92-525-001, Florida Power and Light Company
Docket No. ER92-529-001, Centerior Energy
Docket No. ER92-532-001, Washington Water Power Company
Docket No. ER92-534-001, St. Joseph Light and Power Company
Docket No. ER92-535-001, UNITIL Power Corporation
Docket No. ER92-539-001, Pacific Gas and Electric Company
Docket Nos. ER92-540-001, ER92-541-001 and ER92-452-001, Duke Power Company
Docket No. ER92-544-001, Montaup Electric Company
Docket No. ER92-547-001, PacifiCorp Operations
Docket No. ER92-548-001, Southern California Edison Company
CAE-12.
Omitted

CAE–13.
Docket Nos. ER92–341–001, Arkansas Power and Light Company
CAE–14.
Docket No. EL88–10–001, Industrial Cogenerators v. Florida Public Service Commission
CAE–15.
Docket No. ER89–48–000, Southern Company Services, Inc.
CAE–16.
Docket No. ER91–494–000, PacifiCorp Electric Operations
CAE–17.
Docket Nos. ER78–205–012 (Phase II), ER79–150–020 (Phase II), ER81–177–014, ER82–427–009, ER84–75–014, ER86–271–001, and ER88–83–006, Southern California Edison Company
CAE–18.
Docket Nos. ER91–150–007, ER91–204–002, ER91–205–002, ER91–326–002, and ER91–570–006, Southern Company Services, Inc.
CAE–19.
Docket No. ER92–33–000, Cincinnati Gas and Electric Company
CAE–20.
Docket No. EL87–52–000, Midland Cogeneration Venture L.P.
CAE–21.
Docket No. ER92–409–000, Commonwealth Edison Company

Consent Oil and Gas Agenda

CAG–1.
Docket Nos. TQ–93–1–20–000, TQ–92–5–20–000 and TM–93–2–20–000, Algonquin Gas Transmission Company
CAG–2.
Docket Nos. TA–92–1–63–002, TM–92–5–63–001 AND TQ–92–7–63–001, Carnegie Natural Gas Company
CAG–3.
Docket Nos. TA90–1–29–006, and TA91–1–29–002, Transcontinental Gas Ploe Line Corporation
CAG–4.
Docket Nos. TA91–1–9–000, TA91–2–9–000, and RP91–16–000, Tennessee Gas Pipeline Company
CAG–5.
Docket Nos. TA91–1–17–000, 003, 005 and TM91–2–17–002, Texas Eastern Transmission Corporation
CAG–6.
Docket Nos. TA92–1–28–000, 003, 005 and 006, Panhandle Eastern Pipe Line Company
CAG–7.
Docket No. RP88–259–053, Northern Natural Gas Company
CAG–8.
Docket Nos. RP91–41–004, RP91–90–000, TM92–2–21–000, TM92–3–21–000, TM92–9–21–000, TM92–10–21–000, TM92–11–21–000, and TM91–12–21–000, Columbia Gas Transmission Corporation
CAG–9.
Docket No. RP92–215–001, Columbia Gas Transmission Corporation
CAG–10.
Docket Nos. RP91–224–005 and RP91–1–009, Northern Natural Gas Company
CAG–11.
Docket No. RP91–166–013, Northwest Pipeline Corporation
CAG–12.
Docket Nos. RP91–152–022, and RP89–183–044, Williams Natural Gas Company
CAG–13.
Omitted
CAG–14
Docket Nos. RP92–181–001, CP89–629–022, and CP90–639–013, Tennessee Gas Pipeline Company
CAG–15.
Omitted
CAG–16.
Omitted
CAG–17.
Docket Nos. RP90–104–017, RP88–115–028, RP90–120–010, and CP88–686–008, Texas Gas Transmission Corporation
CAG–18.
Docket No. RP92–145–001, Natural Gas Clearinghouse v. Panhandle Eastern Pipe Line Company
CAG–19.
Docket Nos. RP92–137–002 and RP92–108–001, Transcontinental Gas Pipe Line Corporation
CAG–20.
Docket Nos. CP91–687–003 and CP90–2275–004, ANR Pipeline Company
CAG–21.
Docket Nos. RP91–208–000 and 001, Ozark Gas Transmission System
CAG–22.
Omitted
CAG–23.
Docket No. RP91–232–000, Pacific Interstate Transmission Company v. El Paso Natural Gas Company
CAG–24.
Docket Nos. RP90–108–018, 000, 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, and 017, Columbia Gas Transmission Corporation Docket Nos. RP90–107–015, 000, 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, and 014, Columbia Gulf Transmission Company
CAG–25.
Docket No. PR92–45–001, ANR Pipeline Company
CAG–26.
Docket No. PR92–17–000, Louisiana Resources Pipeline Company, Limited Partnership
CAG–27.
Docket No. PR92–16–000, Sonat Intrastate-Alabama Inc.
CAG–28.
Docket No. CP93–1–000, Louisiana Office of Conservation, Tight Formation Determination — Hosston B Zone, Louisiana-13, FERC No. JD92–06945T
CAG–29.
Omitted
CAG–30.
Docket No. CP–92–298–001, Northwest Pipeline Company
Docket No. CP–92–289–002, El Paso Natural Gas Company
CAG–31.
Docket No. CP–92–166–001, Algonquin LNG, Inc. and Algonquin Gas Transmission Company
CAG–32.
Docket No. CP–84–654–022, 023, CP86–480–003 and CP87–264–001, Algonquin Gas Transmission Company
CAG–33.
Docket No. CP–91–2704–001, Blue Lake Gas Storage Company
Docket No. CP–91–2705–001, ANR Pipeline Company
Docket No. CP–91–2730–001, ANR Storage Company
CAG–34.
Omitted
CAG–35.
Docket No. CP–92–240–001, Mojave Pipeline Company
Docket No. CP–92–241–001, Kern River Gas Transmission Company
CAG–36.
Docket Nos. CP90–316–002 and CP90–317–002, Empire State Pipeline
Docket Nos. CP90–854–003, 001, CP90–920–002, CP90–967–002 and CP90–968–002, National Fuel Gas Supply Corporation
Docket Nos. CP90–1989–003 and 001, CNG Transmission Corporation
Docket Nos. CP91–724–002 and CP91–2251–001, Tennessee Gas Pipeline Company
Docket No. CI92–63–000, Rochester Gas and Electric Corporation
CAG–37.
Docket Nos. CP89–629–024, CP90–639–015 and CP92–701–000, Tennessee Gas Pipeline Company
CAG–38.
Docket No. CP88–433–006, El Paso Natural Gas Company
Docket Nos. RP89–48–022, CP89–1126–004, RP89–222–008, RP89–254–007, CP88–133–007 and CP89–886–005, Transwestern Pipeline Company
Docket No. TA91–1–86–004, Pacific Gas Transmission Company
Docket No. CP91–2466–002, Windward Energy & Marketing Company v. Pacific Gas Transmission Company and Pacific Gas and Electric Company
CAG–39.
Docket No. CP–92–543–000, Panhandle Eastern Pipe Line Company
CAG–40.
Omitted
CAG–41.
Docket No. CP92–423–000, Equitrans, Inc.
CAG–42.
Docket No. CP92–189–000, Superior Offshore Pipeline Company
CAG–43.
Docket No. CP92–405–000, Transcontinental Gas Pipe Line Corporation
CAG–44.
Docket Nos. CP90–1389–001, CP91–1884–000 and 001, Great Lakes, Gas Transmission Limited Partnership
CAG–45.
Docket Nos. CP89–7–022 and CP89–710–008, Transcontinental Gas Pipe Line Corporation
CAG–46.
Docket No. CI89–343–000, GPM Gas Corporation
Docket No. CI92–477–000, Transwestern Pipeline Company
CAG–47.
Docket Nos. RP92–120–003, 004, and 005, Panhandle Eastern Pipe Line Company
CAG–48.
Docket No. RP91–229–007, Panhandle Eastern Pipe Line Company

CAG–49.
Docket Nos. RP88–259–055, CP89–1227–014, RP90–124–010 and RP90–161–006, North Natural Gas Company
CAG–50.
Docket No. RM 87–3–022, Green Canyon Pipe Line Company
CAG–51.
Docket Nos. RS92–24–001, RP88–115–030, RP90–104–018, RP90–192–011, CP89–1119–002, Texas Gas Transmission Corporation

Hydro Agenda

H–1.
Reserved.

Electric Agenda

E–1.
Docket No. RM92–12–000, Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978. Notice of Proposed Rulemaking.

Miscellaneous Agenda

M–1.
Docket No. PL92–1–000, Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines, and Electric Utilities. Statement of Policy.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket Nos. RP91–26–000, *et al.*, RP91–162–000 and RP92–18–000, El Paso Natural Gas Company. Order on outstanding issues and take-or-pay costs.
PR–2.
Docket No. RP92–133–001 (Phase II), Gas Research Institute. Order on 1993 funding.

II. Restructuring Matters

RS–1
Reserved

III. Pipeline Certificate Matters

PC–1
Reserved
Dated: October 7, 1992.

Lois D. Cashell,

Secretary

[FR Doc. 92–24869 Filed 10–8–92; 8:45 am]
BILLING CODE 6717–01–M

LEGAL SERVICES CORPORATION

Board of Directors and Committee Meetings

TIME AND DATE: Meetings of the Legal Services Corporation Board of Directors and Operations and Regulations Committee will be held on October 19, 1992. The meetings will commence at 8:00 a.m. and will be held in the following order, with each meeting continuing until all business has been concluded:

1. Operations and Regulations Committee Meeting; and
2. Board of Directors Meeting.

PLACE: The Legal Services Corporation, 750 1st Street, NE., The Board Room, Washington, DC 20002, (202) 336–8896.

OPERATIONS AND REGULATIONS COMMITTEE MEETING:

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of September 24, 1992 Meeting.
3. Consideration of Proposed Changes to Parts 1607, 1609, 1610, 1611, 1612 and 1626 of the Corporation's Regulations.
4. Consideration of Whether to Publish for Comment in the **Federal Register**, a Notice of Proposed Amendments to the corporation's Freedom of Information Act Regulation, 45 CFR Part 1602.

BOARD OF DIRECTORS MEETING:

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed if a majority of the Board of Directors votes to hold an executive session. At the closed session, pursuant to receipt of the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the executive session held on September 26, 1992. In addition, the Board will hear and consider the report of the General Counsel on litigation to which the Corporation is a party. The Board will also hear and consider the report of the Inspector General on several investigations. Likewise, the Board will discuss the future of the Corporation's regional offices and personnel assigned to the same. The Board will also consider the employment contract of the Corporation's Inspector General. Finally, the Board will hear and consider the report of the Board's Special Counsel for the matter of *Gawler* v. *LSC, et al,* including the consideration of whether portions of the transcripts of certain executive sessions of the Board should be released. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), (7)(C), (D) and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d)(e), (f)(3), (4) and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, DC, 20002, in its two reception areas, and will otherwise be available upon request.

[1] As to the Board's consideration and approval of the draft minutes of the executive session held on the above-noted date, the closing is authorized as noted in the **Federal Register** notice corresponding to that Board meeting.

BOARD OF DIRECTORS MEETING (Continued)

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of September 26, 1992 Meeting.
3. Presentations by Elvera Anselmo, Director, Arizona Statewide Legal Services Project, and Other Representatives of the National Organization of State Support Units Regarding Provision of Support to Legal Services Programs at the State Level.
4. Chairman's and Members' Reports.
   a. Consideration of Meeting Schedule for Calendar Year 1993
5. Consideration of Operations and Regulations Committee Report.
6. Consideration of Office of the Inspector General Oversight Committee Report.
7. Consideration of Provision for the Delivery of Legal Services Committee Report.
8. Consideration of Audit and Appropriations Committee Report.
   a. Consideration of Report on Affect of a $500,000 Reduction in the Corporation's Monitoring Budget in Fiscal Year 1993
   b. Consideration and Review of Proposed Fiscal Year 1993 Consolidated Operating Budget

OPEN SESSION: (Continued)

9. Consideration of Reauthorization Committee Report.
10. Consideration of Efforts to Retain an Independent Insurance Consultant for the Corporation
11. President's Report.
   a. Presentation by James Caldwell, Jr., Chief Deputy Clerk, and Sandra Montrose, Executive Attorney to the Chief Judge, U.S. Court of Veterans Appeals, and Bart Stichman, Co-Executive Director, National Veterans Legal Services Project, on the Veterans Grant Project.
12. Inspector General's Report.

CLOSED SESSION:

13. Consideration of Results of Annual Assessment of the Job Performance of the Corporation's Inspector General.
14. Consideration of the Inspector General's Report on Several On-going Investigations Involving Allegations of Violations of Criminal Laws.
15. Disposition of the Corporation's Regional Offices and Regional Office Personnel.
16. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is a Party.
17. Consideration of Report of the Board's Special Counsel for the Matter of *Gawler vs. LSC, et al.*

CLOSED SESSION: (Continued)

   a. Counsel's Report on the Litigation
   b. Consideration of Whether Portions of the Transcripts of the Following Executive Sessions of the Board, Disclosure of Which Has Been Requested Pursuant to the Freedom of Information Act, Should be Released: July Through November 1991; February, May and July 1992

(i) Consideration of Whether Any Remaining Confidentiality Accorded Pursuant to the Government in the Sunshine Act and/or the Attorney Work Product Doctrine Should be Relinquished.

18. Approval of Minutes of Executive Session Held on August 10, 1992.

OPEN SESSION: (Resumed)

19. Consideration of Disposition of the Corporation's Regional Offices.

20. Consideration of Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8896.

Date Issued: October 7, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–24844 Filed 10–7–92 4:35 pm]

BILLING CODE 7000–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 12, 1992.

An open meeting will be held on Thursday, October 15, 1992, at 10:00 a.m., in room 1C30.

The subject matter of the open meeting scheduled for Thursday, October 15, 1992, at 10:00 a.m. will be:

Consideration of whether to adopt several amendments to the Commission's proxy rules under Section 14(a) of the Securities Exchange Act of 1934. The amendments as initially proposed were issued for public comment on June 17, 1991 (Rel. Nos. 34–29315; IC–18201; File No. S7–22–91) and were reproposed for public comment on June 23, 1992 (Rel. Nos. 34–30849; IC–18803; File No. S7–15–92). The Commission also will consider whether to adopt new disclosure requirements regarding executive compensation. The executive compensation disclosure amendments were proposed for public comment on June 23, 1992 (Rel. Nos. 33–6940; 34–30851; File No. S7–16–92). The Commission received a combined total of more than 1100 letters in response to its request for comment on the reproposed proxy rule and proposed executive compensation amendments. For further information regarding the proxy rule amendments, contact: David Sirignano at (202) 272–3097, or Elizabeth Murphy or James Budge at (202) 272–2589. For further information regarding the executive compensation amendments, contact: Catherine Dixon at (202) 272–2589, or Gregg Corso at (202) 272–3097.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Atkins at (202) 272–2000.

Dated: October 8, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–24943 Filed 10–8–92; 3:57 pm]

BILLING CODE 8010–01–M

Federal Register

Tuesday
October 13, 1992

Part II

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2550

Final Regulation Regarding Participant Directed Individual Account Plans (ERISA Section 404(c) Plans); Final Rule

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AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation under section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). That section provides that, where a participant or beneficiary of an employee pension benefit plan exercises control over assets in an individual account maintained for him under the plan; the participant or beneficiary is not considered a fiduciary by reason of his exercise of control and other plan fiduciaries are relieved of liability under part 4 of title I of ERISA for the results of the participant's or beneficiary's exercise of control. Section 404(c) specifically contemplates the issuance of regulations. The regulation describes the circumstances in which section 404(c) applies to a transaction involving a participant's or beneficiary's exercise of control over his individual account.

In general, in order for a participant or beneficiary to exercise control over the assets in his account, the participant or beneficiary must have the opportunity, under the plan, to: (1) Choose from a broad range of investment alternatives, which consist of at least three diversified investment alternatives, each of which has materially different risk and return characteristics; (2) give investment instruction with a frequency which is appropriate in light of the market volatility of the investment alternatives, but not less frequently than once within any three month period; (3) diversify investments within and among investment alternatives; and (4) obtain sufficient information to make informed investment decisions with respect to investment alternatives available under the plan. The regulation will affect employee benefit plans, their sponsors, participants and beneficiaries as well as plan fiduciaries.

EFFECTIVE DATE: This regulation is effective with respect to transactions occurring after the first day of the second plan year beginning after October 13, 1992, except with respect to transactions occurring under a plan maintained pursuant to a collective bargaining agreement. For plans maintained pursuant to one or more collective bargaining agreements, the regulation is effective after the later of the first day of the second plan year after October 13, 1992, or the date on which the last collective bargaining agreement terminates.

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SUPPLEMENTARY INFORMATION: On September 3, 1987, the Department of Labor published a notice in the **Federal Register** (52 FR 33508) containing a proposed regulation (the "1987 proposal") that would describe the circumstances in which section 404(c) of ERISA [1] would apply to a transaction involving a participant's or beneficiary's exercise of control over his account and the effect of such application. The Department received more than 230 letters of comment regarding that proposal. A public hearing on the proposal was held in Washington, DC, on February 10 and 11, at which time 23 speakers testified.

After consideration of the issues raised by the written comments and oral testimony, the Department made substantial changes to the regulation. In view of the significance of the changes made to the 1987 proposal, the Department decided that interested members of the public should be afforded the opportunity to comment on the changes prior to the adoption of a final regulation. Accordingly, the Department withdrew the 1987 proposal and proposed a revised section 404(c) regulation on March 13, 1991 (56 FR 10724) (the "1991 proposal" or the "proposal").

The Department received more than 100 letters of comment in response to the proposal. A public hearing on the proposal was held in Washington, DC on July 11 and 12, 1991, at which time 27 speakers testified.

The following discussion summarizes the 1991 proposal and the major issues raised by commentators and explains the Department's reasons for the modifications reflected in the final regulation that is published with this notice.

[1] 29 U.S.C. 1104(c).

DISCUSSION OF THE REGULATION AND COMMENTS

I. The Statute

Section 404(c) of ERISA provides that where a participant or beneficiary of an employee pension benefit plan that provides for individual accounts exercises control over assets in his account, then (1) the participant or beneficiary shall not be deemed to be a fiduciary by reason of his exercise of control; and (2) no person who is otherwise a fiduciary shall be liable under the fiduciary responsibility provisions of ERISA for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

The relief from the fiduciary responsibility provisions of ERISA that is provided by section 404(c) applies only to individual transactions that meet the criteria established by that section, i.e., the transaction must be executed pursuant to the kind of plan described in section 404(c) and the participant or beneficiary must actually have exercised control with respect to the transaction. Thus, a determination whether section 404(c)(1) and (2) apply can only be made on a case by case basis. It is the Department's view that section 404(c) is similar to a statutory exception to the general fiduciary provisions of ERISA and, accordingly, the person asserting applicability of the exception will have the burden of proving that the conditions of section 404(c) and any regulation thereunder have been met.[2]

II. Consequences of Noncompliance With the Regulation

In response to comments on the 1987 proposal, the Department attempted to make clear in the preamble to the 1991 proposal that the regulatory standards established with respect to ERISA section 404(c) plans are limited to describing the requirements for an ERISA 404(c) plan, and the type and degree of independent control on the part of a participant or beneficiary of such a plan necessary to provide the

[2] See *Donovan* v. *Cunningham*, 716 F.2d 1455, 1465, 1467–68 (5th Cir. 1983) in which it was held that a fiduciary of an employee stock ownership plan had the burden of proof to show that the conditions to the availability of the statutory exemption found in section 408(e) of ERISA were met. As support, the court cited *SEC* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953): "As the Supreme Court has observed in a different context, it seems 'fair and reasonable' to place the burden of proof upon a party who seeks to bring his conduct within a statutory exception to a broad remedial scheme. *SEC* v. *Ralston Purina Co.*, 346 U.S. 119, 126, 73 S.Ct. 981, 97 L.Ed. 1494 (1953)." *Id.* at 1467–68, n.27.

transactional relief described in section 404(c) and, therefore, were not intended to establish, by implication or otherwise, standards for all ERISA-covered plans concerning the types of investments a fiduciary must make in order to maintain a prudent investment portfolio. The Department also noted that a plan which does not meet the requirements for an ERISA section 404(c) plan may, nonetheless, have a prudent and well diversified investment portfolio. However, a number of commentators on the 1991 proposal indicated that, while the preamble language was helpful, the Department should, in an effort to avoid any confusion, include a clarification with respect to the limited effect of the section 404(c) standards in the operative language of the regulation inasmuch as preambles are not published as part of the Code of Federal Regulations. In response to these comments, the Department has amended paragraph (a) in the final regulation to include a separate subparagraph (2) which specifically provides that the standards set forth in the regulation are applicable solely for the purpose of determining whether a plan is an ERISA section 404(c) plan and whether a particular transaction engaged in by a participant or beneficiary of such plan is afforded relief by section 404(c). This subparagraph (2) further provides that the standards of the regulation are not intended to be applied in determining whether, or to what extent, a plan which does not meet the requirements for an ERISA section 404(c) plan or a fiduciary with respect to such plan satisfies the fiduciary responsibility or other provision of title I of the Act.

As was the case with the 1987 proposal, a number of commentators on the 1991 proposal suggested that the Department adopt the regulation as a "safe harbor" under ERISA section 404(c), thereby providing a fiduciary of a plan which fails to comport with the requirements of this regulation the opportunity to argue that the particular plan and any particular participant-directed transaction executed pursuant to such plan falls within the statutory definition, and, as such, should be afforded the exception to fiduciary liability described in ERISA section 404(c). After due consideration, the Department has decided not to adopt this suggestion. The Department continues to believe that it can best satisfy its statutory responsibility under ERISA section 404(c) by describing the basic framework necessary for a participant's or beneficiary's exercise of control, thereby providing guidance and clarification as to the application of ERISA section 404(c), while at the same time affording flexibility in the design of ERISA section 404(c) plans. Finally, as previously explained, non-complying plans do not necessarily violate ERISA; non-compliance merely results in the plan not being accorded the statutory relief described in section 404(c).

III. ERISA Section 404(c) Plans

In General

The proposal defined an "ERISA section 404(c) plan" as an individual account plant account plan described in section 3(34) of ERISA that permits a participant to make an independent choice, from a broad range of investment alternatives, regarding the manner in which any portion of the assets in his individual account is invested.[3] This definition permitted a plan to provide for participant control in many different ways and in varying degrees. For example, under the definition, a plan could meet the requirements for treatment as an ERISA section 404(c) plan notwithstanding that it only allows certain participants or beneficiaries to exercise control over their individual account balances and notwithstanding that it only permits participants or beneficiaries to exercise control over a specified portion of their account balances.[4] However, if a plan does not permit a participant or beneficiary to exercise control over all of the assets in his account, the provisions of section 404(c) would not, in any circumstances, apply to transactions involving assets with respect to which the participant or beneficiary is not permitted to exercise control. Thus, until a participant or beneficiary exercises control with respect to assets contributed on his behalf, plan fiduciaries are subject to all of the fiduciary duties and obligations set forth in part 4 of title I of ERISA with respect to such assets.[5]

Two commentators requested clarification concerning whether relief is available under the regulation for transactions involving "hybrid" plans, i.e., plans which include defined benefit features. One commentator stated that, in certain of such arrangements, the individual account portion of the plan has no relationship to the defined benefit portion while in others benefits under the individual account plan are taken into account in determining the benefits payable to the participant or beneficiary under the defined benefit plan. Section 404(c) contemplates separate individual accounting so that the investment decisions of a participant or beneficiary affect only the account of that participant or beneficiary. Accordingly, relief would be available under section 404(c) for the individual account portion of a "hybrid" plan where the decisions of a participant or beneficiary can only affect the account of the directing participant or beneficiary, provided that the other conditions of the regulation are met. However, to the extent that a participant's or beneficiary's investment decisions can affect the benefits which may be paid to others under the particular "hybrid" arrangement, section 404(c) relief would not be available.[6]

One commentator expressed the view that the regulation should provide relief under section 404(c) for transactions in an employee stock ownership plan. In this regard, the commentator urged that the regulation except such plans from the requirement to provide a broad range of investment alternatives. Other commentators contended that 404(c) relief should be available for certain specified decisions by participants and beneficiaries in any plan, without regard to whether the plan satisfies the requirements of the 404(c) regulation. Examples of such decisions included: Voting shares of employer stock allocated to the participant's or beneficiary's account, responses to

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[3] Section 404(c) refers to a pension plan that "provides for individual accounts." However, the regulation limits coverage of section 404(c) to "individual account plans" described in section 3(34) of ERISA because the Conference Report accompanying ERISA, H.R. Rep. No. 1280, 93d Cong., 2d Sess., 306 (1974) (hereafter, the Conference Report accompanying ERISA, H.R. Rep. No. 1280, 93d Cong., 2d Sess., 306 (1974) (hereafter, the Conference Report), refers to individual account plans that provide for participant control and because control and because section 404(c) contemplates separate individual accounting so that each participant or beneficiary will bear the sole risk of loss attributable to his investment decision.

[4] This discussion deals only with the effect of such classifications on a plan's status as an ERISA section 404(c) plan; in certain circumstances such classifications may violate other provisions of law, including conditions to qualification of a pension plan under section 401(a) of the Internal Revenue Code (the Code).

[5] ERISA also imposes certain requirements which are not affected by a participant's or beneficiary's exercise of control over the assets in his individual account; those requirements, of course, continue to apply to plan fiduciaries even though a plan is an ERISA section 404(c) plan. For example, the bonding requirements of section 412 of ERISA would apply to all persons (other than the participant or beneficiary) who handle plan funds under an ERISA section 404(c) plan.

[6] Under an arrangement pursuant to which the defined benefit portion provides the floor or minimum benefit, adverse investment experience in the individual account portion could negatively impact on the ultimate liability of the defined benefit portion to provide the promised benefits.

tender and exchange offers, and decisions to withdraw from the employer stock fund where a plan's investment alternatives do not satisfy the broad range of investments requirement of the regulation. Another commentator indicated that the regulation should not include any plan-wide requirements, but should only require participant control for relief on a transactional basis. The Department has not adopted these requested modifications to the regulation. The Department continues to believe that, while the availability of section 404(c) relief is conditioned on the actual exercise of control by a participant or beneficiary over the assets in his account and, therefore, is transactional in nature, the plan itself must meet certain minimum conditions, such as offering a broad range of investment alternatives, to ensure that participants and beneficiaries are afforded a reasonable opportunity to exercise meaningful control over the assets in their accounts.

One commentator requested clarification as to whether relief would be available under the regulation when alternate payees direct investment of amounts which have been allocated to their accounts under qualified domestic relations orders. In this regard, the Department notes that alternate payees are considered to be beneficiaries under ERISA.[7] Accordingly, if the conditions of this regulation are otherwise satisfied, relief under ERISA section 404(c) would be available when alternate payees exercise control over assets which have been allocated to their accounts under qualified domestic relations orders.

The Department also received comments concerning several of the specific requirements of the definition of an ERISA section 404(c) plan contained in the proposal (paragraph (b)). These are discussed below.

1. Opportunity to Exercise Control

Paragraph (b)(1) of the proposed regulation provided that, to be an ERISA section 404(c) plan, a plan must (among other things) provide an opportunity for a participant or beneficiary to exercise control over the assets in his individual account in the manner described at paragraph (b)(2). In turn, paragraph (b)(2) set forth the rules with respect to a participant's or beneficiary's opportunity to exercise control. First, the terms of the plan must provide that participants and beneficiaries have a reasonable opportunity to submit investment instructions to an identified plan fiduciary who is obligated to comply with such instructions. Second, a plan may impose reasonable restrictions on the frequency with which participants and beneficiaries may give investment instructions. Third, certain other reasonable limitations may be imposed on the participant's or beneficiary's ability to exercise control. As discussed below, the general rules of paragraph (b)(2) have been retained with some modification, including new disclosure provisions, in response to comments on the 1991 proposal

A. The Identified Plan Fiduciary

Paragraph (b)(2)(i) of the 1991 proposal provided that a plan affords a participant or beneficiary with an opportunity to exercise control over assets in his account if, under the terms of the plan, the participant or beneficiary has a reasonable opportunity to give written investment instructions, or oral instructions followed by a written confirmation, to an identified plan fiduciary who is obligated to comply with such instructions.

A number of commentators requested that the regulation be clarified so as not to preclude the use of electronic or telephonic communications of investment instructions. It was not the intention of the Department to preclude the use of such communications. Accordingly, paragraph (b)(2)(i)(A) of the final regulation requires only that the participant or beneficiary be afforded a reasonable opportunity to provide investment instructions (written or otherwise) and an opportunity to obtain a written confirmation of such instructions. The Department believes that the ability of a participant or beneficiary to obtain a written confirmation of his investment instructions is considerably more important than the means by which investment instruction is communicated. In this regard, the Department notes that, unlike the 1991 proposal, the final regulation requires that the opportunity to obtain written confirmation of investment instructions be extended to all participants and beneficiaries who give investment instructions. A commentator also requested that the Department clarify that the specific means by which investment instructions are communicated are not required to be described in the plan document. The Department does not believe that the specific means by which participants and beneficiaries are to communicate investment instructions necessarily has to be in the plan document as long as the plan has written procedures for such communications and information concerning those procedures is furnished to participants and beneficiaries (see 2550.404c–1(b)(2)).

Other commentators requested that the Department clarify that the plan fiduciary responsible for receiving and acting on investment instructions may be identified in the plan by position rather than name inasmuch as responsible individuals often change and frequent plan amendments would be required to reflect such changes. It is the view of the Department that the identification of a fiduciary by position or function (e.g., plan administrator, investment committee, etc.) would satisfy the requirements of the regulation for an identified plan fiduciary under paragraphs (b)(2)(i)(A) and (b)(2)(i)(B)(*1*), and for a designated plan fiduciary for purposes of paragraph (d)(2)(ii)(E)(*4*)(*viii*). In this regard, the Department notes that the requirement for an identified plan fiduciary who is obligated to comply with participant and beneficiary instructions is applicable to all ERISA section 404(c) plans, including those which do not designate investment alternatives, i.e., those plans which permit investments in any asset which it is administratively feasible for the plan to hold and do not specifically describe any investment alternative.

In order to make clear that a fiduciary's obligation to follow investment instructions is not without limitation, the final regulation (paragraph (b)(2)(i)(A)) has been modified to recognize the exceptions to following investment direction described in paragraphs (b)(2)(ii)(B) and (d)(2)(ii).

B. Disclosure of Investment Information

The Proposal

Under the 1991 proposed regulation, the obligation to disclose investment information was limited to only those investment alternatives which were intended to be taken into account for purposes of the "broad range" of investment alternatives requirement. Specifically, paragraph (b)(3)(iii) of the proposal provided that an investment alternative would not be deemed to be part of a broad range of investment alternatives unless sufficient information as to that investment is available to the participant or beneficiary so as to permit informed investment decisions. However, the proposal would not have established an affirmative obligation on the part of ERISA section 404(c) plan fiduciaries to furnish the required information to participants and beneficiaries. Rather,

[7] See ERISA section 206(d)(3)(J).

broad public availability generally would have been sufficient. Where investment alternatives are limited to a designated group of investments, the proposal would have required that, at a minimum, an identified plan fiduciary be available to direct participants and beneficiaries as to means by with the required information could be obtained. With respect to the disclosure of investment information, the Department noted in the preamble to the proposal that the requirement that sufficient information be available to permit informed investment decisions applies not only to the initial investment decision but also to subsequent decisions with regard to that investment. The Department also noted that a participant must be given sufficient information to make informed decisions with regard to rights incident to the holding of an ownership interest in that investment in order for an investment to be taken into account for purposes of the broad range requirement. For example, in the case of a security, such information would include information sufficient to permit the participant to make informed decisions in exercising any voting rights attendant to such ownership.

The disclosure provisions of the proposal were the subject of considerable comment and concern. In general, commentators on the proposal recognized the importance of ensuring that participants and beneficiaries have sufficient information about their investment alternatives to make meaningful investment choices. Many commentators suggested that the Department should enhance and broaden the disclosure requirements of the regulation and made specific suggestions as to what information should be required to be disclosed. Other commentators, while acknowledging the need for more disclosure, recommended the retention of a general disclosure rule (e.g., only require that sufficient information be made available to enable participants and beneficiaries to make informed investment decisions), with examples in the preamble of the types of disclosures that might be necessary to satisfy the general rule. The following represents a summary of some of the specific comments on the issue of disclosure.

Comments

Various commentators recommended that the Department require mutual fund prospectus-type disclosures for bank and insurance company fixed rate investment contracts (e.g., bank investment contracts, savings and loan investment contracts and "guaranteed investment contracts" issued by insurance companies) and other look-through investment vehicles. Some commentators recommended prospectus-type disclosure for all investments made available to participants and beneficiaries under an ERISA section 404(c) plan, while other commentators took the position that prospectus-type disclosures should not be required at all because such disclosures would generally not be understood by participants and beneficiaries. The information commentators suggested should be disclosed or made available to participants and beneficiaries included information concerning: The investment objectives, risks and rewards associated with available investment alternatives; a description of the investment philosophy of the investment alternative; the composition of the portfolio of investment vehicles offered to participants and beneficiaries; past performance of the investments; whether or not investments are subject to wide fluctuations in value; the identity and rating of issuers of fixed rate investment contracts (e.g., insurance companies); the proportion of fixed rate investment contracts of each issuer comprising an investment alternative; the average maturity of fixed rate investment contracts in an investment alternative; restrictions on transfers in and out of investments; current financial information regarding an investment alternative; fees and other expenses charged by an investment alternative; and criteria utilized in selecting, holding and selling investments in an investment vehicle designed to hold securities of multiple issuers.

In addition to the comments from the general public, the Division of Market Regulation of the Securities and Exchange Commission (the "Division") submitted a number of recommendations relating to the disclosure of investment information to participants and beneficiaries in ERISA section 404(c) plans. Among other things, the Division recommended that the regulation require the identified plan fiduciary to, at a minimum, provide adequate investment information when requested regarding any investment permitted by the plan, including information about the current value of the investment and the financial condition of the issuer. The Division also expressed the view that the regulation should only provide relief for investment alternatives where participants and beneficiaries have access to readily available information about the alternatives. The Division recommended that the regulation specifically require the plan administrator to forward copies of prospectuses, proxies, periodic reports and similar materials to those who invest in registered securities.

The Division further suggested that the final regulation require a disclosure concerning the limited liability of plan fiduciaries with regard to participant-directed investments and that ERISA section 404(c) plans include, as appropriate, certain legends in their Summary Plan Descriptions ("SPDs"). For plans which designate investment alternatives, the Division recommended a legend stating that important additional information about the plan's designated investment alternatives is available and should be read carefully. For plans which do not designate investment alternatives but which allow investments in publicly offered securities, it recommended a legend encouraging participants to obtain and read a prospectus or other offering document, where available, and noting that public information is available with respect to investment managers who are registered under the Investment Advisers Act of 1940. For all ERISA section 404(c) plans, it recommended a legend disclosing the fact that fiduciaries of such plans may be relieved of certain fiduciary obligations and liabilities to which they would otherwise be subject.

With respect to mutual funds, the Division commented that a prospectus should be available from the identified plan fiduciary where the plan designates a mutual fund as an alternative, and that plans should be required to disclose that the price of fund shares does not reflect the same kind of market information about the issuer that may be reflected in the share price of publicly-traded securities. The Division also recommended that, where investment managers are designated by a plan or manage alternatives designated by a plan, the identified plan fiduciary should be required to provide the brochure described in Rule 204–3 under the Investment Advisers Act to participants and beneficiaries on request.

The Final Regulation: General Rule

After careful consideration of all the comments concerning the disclosure of investment information, the Department has concluded that changes in the disclosure requirements contained in the 1991 proposal are necessary to ensure that participants and beneficiaries in ERISA section 404(c) plans have sufficient information to make informed

investment decisions. As recognized by many commentators, the investment decisions made by participants and beneficiaries in ERISA section 404(c) plans will directly affect the funds available to such individuals at retirement. For this reason, participants and beneficiaries should be assured of having access to that information necessary to make meaningful investment decisions.

The following is a discussion of the changes in the disclosure requirements contained in the final regulation.

First, the Department has concluded that the obligation of an ERISA section 404(c) plan fiduciary to disclose information should not be limited to information concerning those investment alternatives intended to satisfy the "broad range" requirement of the regulation, but rather should extend to information concerning the plan itself and each investment alternative made available under the plan. The Department can find no reasonable basis for distinguishing between information concerning investment alternatives which are intended to satisfy the "broad range" requirement and information concerning any other investment alternative made available under a plan in terms of value to participants and beneficiaries in evaluating their investment options and making informed investment decisions. Second, the Department has concluded that fiduciaries of an ERISA section 404(c) plan should have an affirmative obligation to ensure that participants and beneficiaries are provided or can obtain basic information concerning the investment alternatives made available under the plan. The Department is persuaded that merely referring participants and beneficiaries to a source for investment information and requiring them to obtain the information is insufficent to ensure that participants and beneficiaries are in a position to make informed investment decisions. While, as discussed below, there is nothing in the regulation which precludes a plan fiduciary from designating another person or persons to actually furnish the required information, the regulation contemplates that the identified plan fiduciary will remain responsible for ensuring disclosure.

In implementing the foregoing changes, the "investment information" section of the 1991 proposal (2550.404c–1(b)(3)(iii)) has been eliminated and a new paragraph (b)(2)(i)(B) has been added to the final regulation. Under paragraph (b)(2)(i) of the final regulation, an ERISA section 404(c) plan will be considered to provide a participant or beneficiary an opportunity to exercise control over the assets in his account only if, in addition to affording the participant or beneficiary a reasonable opportunity to give investment instructions in accordance with paragraph (b)(2)(i)(A), the participant or beneficiary is provided or has the opportunity to obtain sufficient information to make informed investment decisions with regard to investment alternatives available under the plan and incidents of ownership appurtenant to such investments in accordance with paragraph (b)(2)(i)(B).

Disclosures Made to All Participants

In addition to the foregoing general rule, paragraph (b)(2)(i)(B) provides that a participant or beneficiary will not be considered to have sufficient investment information unless certain delineated items of information concerning the plan and available investment alternatives are provided to the participant or beneficiary and certain other information concerning both "designated investment alternatives" [a] and other available investment alternatives is provided upon request to the participant or beneficiary. The Department is persuaded that certain information is so fundamental to making informed investment decisions that such information should be available to all participants and beneficiaries in an ERISA section 404(c) plan. This information is generally described in subparagraphs (*1*) and (*2*) of paragraph (b)(2)(i)(B) of the final regulation.

Pursuant to subparagraph (*1*) of paragraph (b)(2)(i)(B), each participant and beneficiary is required to be provided the following information by an identified plan fiduciary (or a person or persons designated by the plan fiduciary to act on his behalf). First, an explanation that the plan is intended to constitute an ERISA section 404(c) plan, as decribed in this regulation, and that fiduciaries of the plan may be relieved of liability for any losses which are the direct and necessary result of investment instructions given by the participant and beneficiary. The Department believes that such an explanation will serve to reinforce participant and beneficiary awareness of the limited liability of the plan fiduciaries and of their own individual responsibility with respect to investment decisions concerning their assets.

Second, a description of the investment alternatives available under the plan and, with respect to each designated investment alternative, a general description of the investment objectives and risk and return characteristics of each such alternative, including information relating to the type and diversification of assets comprising the portfolio of the designated investment alternative. This requirement is intended to ensure disclosure of the most basic of information necessary to a participant's or beneficiary's investment decision. In the case of plans which permit participants and beneficiaries to invest in any asset administratively feasible for the plan to hold, a general statement so apprising participants and beneficiaries would be adequate, although participants and beneficiaries should be encouraged to obtain and review materials relating to potential investments prior to actually making an investment. In this connection, it should be noted that, to the extent that copies of prospectuses, financial statements and reports, or similar materials relating to the investment alternatives available under the plan, are furnished to the plan, such information would be required to be made available to the participant or beneficiary pursuant to paragraph (b)(2)(i)(B)(*2*)(*ii*). Third, if relevant, identification of any designated investment managers. Fourth, an explanation of the circumstances under which participants and beneficiaries may give investment instructions and an explanation of any specified limitations on such instructions under the terms of the plan, including any restrictions on transfers to or from a designated investment alternative, and any restrictions on the exercise of voting, tender and similar rights appurtenant to a participant's or beneficiary's investment in an investment alternative. This disclosure is intended to ensure that participants and beneficiaries are apprised as to how, when and to whom they may give investment instructions under the plan. This disclosure is also intended to ensure that participants and beneficiaries are aware of limitations on their ability to give investment instructions. For example, insofar as a withdrawal from an investment alternative prior to the maturity date of the investment may trigger a penalty or a valuation adjustment to the participant's or beneficiary's account,

[a] Paragraph (e)(4) defines "designated investment alternative" as a specific investment identified by a plan fiduciary as an available investment alternative under the plan. For example, if a 404(c) plan permitted its participants and beneficiaries to invest in any investment which it was administratively feasible for the plan to hold and specifically described an equity fund which was managed by the plan sponsor, the equity fund would be a "designated investment alternative" within the meaning of paragraph (e)(4) of this section.

information concerning the penalty or adjustment is required to be disclosed pursuant to subparagraph (*iv*) of paragraph (b)(2)(i)(B)(*1*). Finally, this disclosure is intended to ensure that participants and beneficiaries are aware of the extent to which voting, tender and similar rights attendant to ownership of an interest in an investment alternative are passed through to them under the terms of the plan when choosing to invest in such investment alternative.

Fifth, with respect to each investment alternative available under the plan, a description of any transaction fees and expenses which affect the participant's or beneficiary's account balance in connection with the purchase or sale of interests in such investment alternative (e.g., commissions, sales loads, deferred sales charges, redemption or exchange fees). With respect to investment alternatives which are not designated alternatives, the description need only state whether, or to what extent, transaction fees and expenses incurred in connection with the purchase or sale of interests in the investment alternative will be charged against the account of the participant or beneficiary. This requirement relates to the disclosure of fees and expenses directly assessed against the participant's or beneficiary's account, not expenses, fees or commissions incurred by the investment alternative attendant to the operation and management of the investment alternative.

Sixth, identification of the plan fiduciary (and, if applicable, any person or persons designated by the plan fiduciary) responsible for providing the information described in paragraph (b)(2)(i)(B)(*2*) upon request of a participant or beneficiary, and a description of the information described in paragraph (b)(2)(i)(B)(*2*) which may be obtained on request. As indicated earlier, plan fiduciaries may be identified by position (e.g., plan administrator, trustee, etc.), rather than by name, so long as participants have an available source for obtaining the information.

Seventh, in the case of plans offering as an investment alternative the ability to directly or indirectly acquire or sell any employer security, a description of the procedures established to provide for the confidentiality of information relating to such investments by participants and beneficiaries and the identification of the plan fiduciary responsible for monitoring compliance with those procedures. The Department believes that, given the elimination of the independent fiduciary requirement for most transactions involving employer securities (see discussion relating to employer securities and subparagraphs (d)(2)(ii)(E)(*4*)(*vii*)–(*ix*) below), participants and beneficiaries should be apprised of the procedures which have been established to ensure the confidentiality of information relating to investments in employer securities and that there is a plan fiduciary who is responsible for monitoring compliance with those procedures.

Eighth, in the case of an investment alternative which is subject to the Securities Act of 1933 (the Securities Act), and in which the participant or beneficiary has no assets invested, immediately following the participant's or beneficiary's initial investment, a copy of the most recent prospectus provided to the plan. Paragraph (b)(2)(i)(B)(*1*)(*viii*) provides that this condition will be deemed satisfied if the participant or beneficiary has been provided with a copy of such most recent prospectus immediately prior to the participant's or beneficiary's initial investment in such alternative. Thus, where a participant is furnished the most recent prospectus provided to the plan in connection with an opportunity to give investment instruction, and the prospectus is received by the participant prior to instruction being given, subparagraph (*viii*) does not require a copy of the same prospectus to be furnished to the participant immediately following his initial investment. This disclosure requirement is intended to ensure that, either immediately before or immediately after an investment in an investment alternative required to prepare prospectuses under the federal securities laws, participants and beneficiaries are afforded the opportunity to review such prospectuses, without mandating that every prospectus furnished to the plan subsequent to a participant's or beneficiary's initial investment be passed through to the participants and beneficiaries. Having been afforded the opportunity to review a prospectus in connection with his initial investment, a participant or beneficiary will be in the best position to determine the extent to which such disclosures are necessary to his making informed investment decisions with respect to continued investments in such investment alternatives. It should be noted that all prospectuses furnished to the plan must be made available to participants and beneficiaries upon request pursuant to paragraph (b)(2)(i)(B)(*2*)(*ii*).

Finally, subsequent to a participant's or beneficiary's investment in an investment alternative, the participant or beneficiary is required to be furnished any materials provided to the plan relating to the exercise of voting, tender or similar rights which are incidental to the holding in the account of such participant or beneficiary of an ownership interest in such investment alternative to the extent that such rights are passed through to participants and beneficiaries under the terms of the plan (paragraph (b)(2)(i)(B)(*1*)(*ix*)). Subparagraph (*ix*) also requires that, if there are any plan provisions which relate to the exercise of voting, tender or similar rights, participants and beneficiaries must be furnished either a description of or reference to such plan provisions.

To the extent that a plan provides for the pass-through of voting, tender and similar rights, participants and beneficiaries must be provided that information furnished to the plan pertaining to those rights if the participant or beneficiary is to be considered to have exercised control with respect to such rights. See paragraph (c)(1)(ii). The department notes that, except for investments in employer securities, there is nothing in the regulation which requires a pass-through of voting, tender or similar rights to plan participants and beneficiaries. However, to the extent that a plan does not provide for such a pass-through of rights, no 404(c) relief would be available to the plan fiduciaries with regard to the exercise of such rights by such plan fiduciaries.[9] With regard to the requirement that a reference to any relevant plan provisions be included with materials relating to incidents of ownership of an investment, the Department notes, for example, that, to the extent that there are plan provisions which govern voting, plan participants and beneficiaries should be on notice as to such provisions. This is particularly true where the plan provisions relate to situations where participants and beneficiaries do not affirmatively exercise their right to vote. This disclosure can either describe the applicable plan provisions, or reference participants to the relevant portions of the plan document where such provisions are described.

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[9] The Department notes that, for purposes of the Securities Exchange Act of 1934, participants in an employee benefit plan are considered to be beneficial owners entitled to receive proxy materials if they have the right under the plan or otherwise to vote the securities held on their behalf. See Shareholder Communications Facilitation, Securities Exchange Act Release No. 23847 (Nov. 25, 1986), 51 FR 44287.

Disclosures Made Upon Request to Participants

In addition to the general information required to be furnished to each participant and beneficiary, subparagraph (*2*) of paragraph (b)(2)(i)(B) of the final regulation requires that certain specified information relating to designated investment alternatives be furnished by an identified plan fiduciary or person(s) designated by the fiduciary to act on his behalf, to the extent not otherwise provided, upon request of a participant or beneficiary. This subparagraph requires that the plan provide the following information, which shall be based on the latest information available to the plan: first, a narrative description of the annual operating expenses of each designated investment alternative, such as investment management fees, administrative fees and transaction costs, which reduce the rate of return to the participants or beneficiaries, and the aggregate amount of such expenses expressed as a percentage of average net assets of the designated investment alternative (paragraph (b)(2)(i)(B)(*2*)(*i*)); and, second, copies of any prospectuses, financial statements and reports, and any other materials relating to investment alternatives available under the plan, to the extent such information is provided to the pan (paragraph (b)(2)(i)(B) (*2*) (*ii*)). The Department notes that, for example, to the extent that the operating expenses described in subparagraph (*i*) of paragraph (b)(2)(i)(B) (*2*) are included information required to be provided on request pursuant to subparagraph (*ii*), such as in a prospectus, the requirements of subparagraph (*i*) would be satisfied by providing the prospectus. This requirement is not intended to mandate that plan fiduciaries create materials relating to the investment alternatives available under the plan where they are not provided to the plan. However, because the general rule of paragraph (b)(2)(i)(B) (which requires that a participant or beneficiary must be provided or have the opportunity to obtain sufficient information to make informed investment decisions) remains applicable to all investment alternatives offered by a 404(c) plan, including, for example, investment alternatives managed by the plan sponsor, relief will not be available for investments in investment alternatives managed by the plan sponsor unless a participant or beneficiary is provided or has the opportunity to obtain sufficient information to make informed investment decisions with regard to investments in such alternatives.

Paragraph (b)(2)(i)(B)(*2*) also requires the following to be disclosed upon request with respect to designated investment alternatives: a list of the assets comprising the portfolio of the designated investment alternative which constitute plan assets within the meaning of 29 CFR 2510.3–101, the value of each such asset (or the proportion of the investment alternative which it comprises), and, with respect to each such asset which is a fixed rate investment contract issued by a bank or similar institution (e.g., savings and loan association) or insurance company held in the portfolio of the investment alternative, the name of the issuer of the contract, the term of the contract and the rate of return on the contract (paragraph (b)(2)(i)(B)(*2*)(*iii*)). Subparagraph (*iv*) of paragraph (b)(2)(i)(B)(*2*) requires the disclosure of information concerning the value of shares or units in designated investment alternatives available to participants and beneficiaries under the plan, as well as the past and current investment performance of such alternatives determined, net of expenses, on a reasonable and consistent basis (taking into account the nature of the investment alternatives). Finally, subparagraph (*v*) of paragraph (b)(2)(i)(B)(*2*) requires the disclosure of information concerning the value of shares or units in designated investment alternatives held in the account of the participant or beneficiary.

On the basis of a number of comments, the Department believes that, with the exception of certain plan and participant specific information, the information required to be furnished and made available to participants and beneficiaries pursuant to subparagraphs (*1*) and (*2*) is information which is typically furnished by, or readily available from, investment managers, investment advisers, and issuers of securities. In addition, although the information required to be furnished to participants and beneficiaries upon request must be based on the latest information available to the plan, it is expected that, in most instances, fiduciaries will not have to create special disclosures to satisfy individual requests if such requests do not involve the disclosure of information pertaining to an individual participant's account. For example, paragraph (b)(2)(i)(B)(*2*)(*iii*) requires that an ERISA section 404(c) plan provide, on request, a list of plan assets, within the meaning of 29 CFR 2510.3–101, comprising the portfolio of each designated investment alternative and the value of each such asset (or the proportion of the investment alternative which it comprises). This information should be readily available to plan fiduciaries since it is essentially the same information required to be reported as part of a plan's annual report (Form 5500) under ERISA. It is anticipated that the disclosure of plan asset information based on the plan's latest annual report will satisfy the requirement of paragraph (b)(2)(i)(B)(*2*)(*iii*) so long as such information is sufficiently accurate to enable the participant or beneficiary to make an informed investment decision. Inasmuch as the exercise of control by a participant or beneficiary is dependent on the participant or beneficiary having sufficient information to make an informed investment decision, fiduciaries will have to consider, for example, whether any changes with respect to the investment portfolio of the investment alternative since the last annual report are sufficiently material that failure to disclose such changes would deprive the participant or beneficiary of the opportunity to make an informed investment decision. With regard to information concerning the value of shares or units in designated investment alternatives (paragraphs (b)(2)(i)(B)(*2*) (*iv*) and (*v*)), such information also may be based on the latest information available to the plan, which, in most cases, would be valuation information obtained in connection with the most recent opportunity afforded participants and beneficiaries to give investment instructions with respect to that investment alternative. Finally, the Department notes that the informational requirements of subparagraphs (*1*) and (*2*) of paragraph (b)(2)(i)(B) are described in the regulation in general terms in order to afford plan fiduciaries and plan sponsors the flexibility necessary to accommodate the variations in plan design and investment alternatives which may be available to participants and beneficiaries under the plan. For these reasons, compliance with the disclosure requirements of the final regulation should not impose any significant costs and burdens on plans or plan sponsors.

Timing of Disclosures

Several commentators on the 1991 proposal requested clarification regarding when investment information must be furnished. The following is intended to address these requests in the context of the disclosure requirements under paragraph (b)(2)(i)(B) of the final regulation. Under

paragraph (b)(2)(i)(B) of the final regulation, a participant or beneficiary will not be considered to have been provided an opportunity to exercise control over the assets in his account unless the participant or beneficiary is provided or has the opportunity to obtain sufficient information to make an informed investment decision. Accordingly, in order to ensure the availability of relief under section 404(c), plans must provide the required information to participants and beneficiaries in sufficient time to give the participant or beneficiary a reasonable opportunity to make informed decisions with regard to his investment options or, where rights are passed through to the participants or beneficiaries, incidents of ownership appurtenant to his investments (e.g., the exercise of voting rights). In this regard, it is expected that each participant and beneficiary will be furnished the information delineated in subparagraphs (*i*)–(*vii*) of paragraph (b)(2)(i)(B)(*1*) prior to the time he is permitted to give investment instructions and that any subsequent material changes in the information will be furnished in sufficient time to enable the participant to take into account such changes prior to making an investment decision. With respect to participant or beneficiary requests for copies of prospectuses (see paragraph (b)(2)(i)(B)(*2*)(*ii*)), and with respect to materials relating to the exercise of voting, tender and similar rights (see paragraph (b)(2)(i)(B)(*1*)(*ix*)), it is expected that the participant or beneficiary will be provided such information in a sufficiently timely manner to enable the participant or beneficiary to make informed investment and voting decisions. The Department notes that to the extent that any of the information required by the regulation has been included in a plan's most recent summary plan description or otherwise provided to participants and beneficiaries prior to the effective date of this regulation, such information is not required to be provided again to such participants or beneficiaries subsequent to the effective date of the regulation unless changes in the information have occurred which are sufficiently material that failure to disclose such changes would deprive the participant or beneficiary of the opportunity to make an informed investment decision.

Two commentors asked that the final regulation indicate that plans are not required to disclose the value of participants' accounts. One commentator stated that this information is not relevant to making an informed choice to invest a percentage of the account in a particular investment alternative. Another stated that the valuation of investment alternatives is often not completed until after elections are made by participants and beneficiaries and monies are allocated to the chosen investments. The Department believes that information concerning the value of investments held in a participant's or beneficiary's account may be critical to a participant or beneficiary in evaluating investment performance and alternative investment options. For this reason, the Department believes that participants and beneficiaries should have access to information concerning the value of shares or units in investment alternatives held in their individual accounts. In this connection, the Department notes that such information is required to be disclosed upon request of a participant or beneficiary under paragraph (b)(2)(i)(B)(*2*)(*v*) of the final regulation. The Department also notes, however, that such requests may be satisfied by using the latest valuation information available to the plan. Inasmuch as valuations are necessary to effectuate investment instructions, the Department does not believe the provision of this information should result in additional costs. Furthermore, there is nothing in the regulation which would preclude a plan from establishing procedures which would serve to limit the frequency of requests for account balance information or from requiring that such requests be made only at particular times as long as such limitations did not result in participants or beneficiaries being prevented from obtaining sufficient investment information to make informed investment decisions within the meaning of paragraph (b)(2)(i)(B) of the final regulation.

Disclosure: Miscellaneous Comments

With regard to the types of information which the 1991 proposed regulation required to be made available, one commentator asked for clarification that plan sponsors are not required by the regulation to release information on competitors or to bring participants and beneficiaries up to the level of financial expertise of the fiduciaries of the plan. No such requirement is imposed by the final regulation.

Several commentators requested a clarification that expenses which represent a share of general fees charged to a fund, such as investment management and brokerage fees, did not have to be disclosed pursuant to paragraph (b)(2)(ii)(A) of the proposal. The Department believes that information concerning such expenses is readily available to plan fiduciaries or investment managers and should be available to participants and beneficiaries because it is the type of information which may affect a participant's or beneficiary's investment decision. For this reason, and as noted earlier, paragraph (b)(2)(ii)(B)(*2*)(*i*) requires that participants and beneficiaries be provided, on request, a narrative description of each designated investment alternative's annual operating expenses (e.g., the investment management fees, administrative fees, transaction costs) which reduce the rate of return to participants and beneficiaries on interests in the investment alternative, and the aggregate amount of such expenses expressed as a percentage of average net assets of the designated investment alternative.

One commentator inquired whether plans are required to revise quarterly reports provided by investment advisers to make them more readily understandable before distributing them to participants and beneficiaries. The final regulation does not require any information forwarded to participants and beneficiaries regarding the investments held by the plan on their behalf to be revised.

Another commentator inquired whether all proxies must be passed through the participants and beneficiaries. As stated previously, with regard to all investment alternatives other than employer security alternatives, the final regulation requires, as a condition to 404(c) relief, only that participants and beneficiaries be provided, subsequent to an investment, with materials relating to voting and similar rights if such rights are passed through to participants and beneficiaries under the terms of the plan (see paragraph (b)(2)(i)(B)(*1*)(*ix*)). Of course, if a plan does not provide for such a pass-through of rights, no 404(c) relief would be available to the plan fiduciaries with regard to the exercise of such rights by such plan fiduciaries.

Lastly, several commentators expressed concern that the providing of investment information to participants and beneficiaries might be construed as rendering "investment advice", within the meaning of section 3(21)(A)(ii) of the Act, resulting in fiduciary responsibility with respect to such advice. It is the view of the Department that providing the disclosures described in subparagraphs (*1*) and (*2*), as well as any other general information concerning available investment

alternatives, including research materials, would not, in and of itself, constitute the rendering of "investment advice."

C. Frequency of Opportunity to Give Investment Instructions

The General Volatility and Three-Month Minimum Rules

The Proposal

Both the 1987 and 1991 proposals were based on the principle that the frequency of opportunity to give investment instructions (i.e., to transfer account assets to or from an investment) is properly judged in relation to the anticipated volatility of the investment. As was explained in the preamble to those proposals, in order to assure that participants and beneficiaries in fact exercise control over the investment of their plan accounts, they must have the ability to transfer their account assets from investment alternatives at intervals reasonably commensurate with the anticipated volatility of the investment in order to minimize the risk of loss. What is reasonable in turn depends on the nature of the investment alternatives which are made available to participants and beneficiaries by the plan.

The 1991 proposed regulation provided a more specific framework than had the 1987 proposal with respect to this issue, while retaining the basic concept concerning the relationship between frequency of transfer opportunity and the volatility of the related investment alternative. This revised framework assigned a specific minimum frequency of transfer opportunity and the volatility of the related investment alternative. This revised framework assigned a specific minimum frequency of transfer opportunity to at least three investment categories made available by a plan to its participants and beneficiaries to satisfy the broad range requirement of paragraph (b)(3) of the proposed regulation. These three (or more) categories subject to the minimum are referred to elsewhere herein as the "core" investment alternatives or categories.[10] Thus, paragraph (b)(2)(ii)(C) of the proposal provided generally that, with respect to each investment alternative made available by a plan, the opportunity to exercise control will not exist unless participants and beneficiaries are afforded the opportunity to give investment instructions with a frequency which is appropriate in light of the volatility to which the investment may reasonably be expected to be subject. This principle is referred to herein as the "general volatility rule". However, subparagraph (*1*) of paragraph (b)(2)(ii)(C) of the proposal required that, regardless of the frequency warranted by an investment's volatility, with regard to at least three of the investment categories designed to satisfy the terms of paragraph (b)(3)(i)(B) (relating to a broad range of investment alternatives), an ERISA section 404(c) plan must at a minimum provide a participant or beneficiary an opportunity to give investment instructions at least once within any three month period (referred to elsewhere herein as the "three-month minimum"). Paragraph (b)(2)(ii)(C)(*1*) of the final regulation clarifies that the minimum of three core alternatives subject to the three-month minimum must itself constitute a broad range of investment alternatives.

Comments

A number of commentators asserted that the general volatility rule was unnecessary and should be eliminated in favor of transfers once every three months for all alternatives, regardless of their volatility. Others urged that, in view of the objective of pension plans to accumulate funds for retirement, the regulation's transferability rules should be structured to require only infrequent ability to transfer to and from investment alternatives.

The Department continues to believe that the ability to transfer to and from each investment alternative with a frequency commensurate with the volatility of the particular investment alternative is needed in order to permit participants and beneficiaries the opportunity to give investment instructions with a frequency commensurate with the volatility of an investment alternative within the framework of a pension plan in any way compromises the general purpose of a pension plan to provide retirement income. Inasmuch as section 404(c) relief under this regulation is conditioned on participants and beneficiaries having the opportunity to give investment instructions with respect to amounts invested in each investment alternative, with a frequency commensurate with the volatility of each such investment alternative, fiduciaries of an ERISA section 404(c) plan should periodically review the volatility of its investment alternatives to ensure that the transfer frequency permitted with respect to each alternative continues to be appropriate.

Other commentators requested that the general volatility rule be clarified by way of example. In this regard, the Department notes that meaningful clarification by way of example is not feasible because the application of the general volatility rule depends upon the particular facts and circumstances which characterize each investment alternative, including its economic environment.

A number of commentators requested clarification of the three-month minimum requirement. Some commentators were concerned that the requirement could be read to require that the three-month period within which participants and beneficiaries must be offered an opportunity to give investment instruction be determined with respect to each participant or beneficiary individually and measured from each individual's last investment instruction. While a plan may offer transfer opportunities on a participant by participant basis, the regulation does not require a plan to do so. In this regard, the Department has included two examples in the regulation at subparagraphs (*2*) and (*3*) of paragraph (f) which are intended to clarify the application of this rule.

One commentator inquired whether investment instructions must be permitted once within any three month period with respect to each core investment alternative, or whether participants and beneficiaries could be limited to transfers with respect to a single investment alternative. The regulation requires that investment instructions must be permitted with respect to each core investment alternative. Several commentators asked if the three-month minimum is applicable only to tranafers among the core investment alternatives. The three-month minimum is applicable only to such transfers and does not apply to transfers between core investment alternatives and other alternatives. For example, if an ERISA 404(c) plan offered participants and beneficiaries the opportunity to invest in real estate limited partnership which prohibited transferability of ownership during the first three years as one of only three investment alternatives available under the plan designed to satisfy paragraph (b)(3)(i)(B), the inability to freely transfer assets out of such investment at least once within any three month interval would cause the plan to fail to meet the requirements of paragraph (b)(2)(ii)(C)(*1*). If, on the other hand, an investment opportunity to invest in such

[10] When referring to the proposal, the final regulation uses the term "category" rather than "alternative" where "category" was used therein. Otherwise, in order to be consistent in usage, the final regulation uses the term "alternative" rather than "category" throughout.

a limited partnership were offered simply as an additional investment alternative and the plan made available at least three other investment alternatives for purposes of satisfying the terms of paragraph (b)(3)(i)(B), and permitted investment instruction no less frequently than once within any three month period with respect to each such alternative, the three month minimum prescribed at paragraph (b)(2)(ii)(C)(*1*) would not apply to the limited partnership interests. Such an investment alternative would, however, be subject to the general volatility rule contained in paragraph (b)(2)(ii)(C) (which requires that the frequency of opportunity to give investment instructions be determined relative to the frequency of opportunity to give investment instructions be determined relative to the anticipated market volatility of the investment) as a condition to affording section 404(c) relief for amounts invested in that alternative#.

Some commentators did not view the three-month minimum as beneficial to plan participants and beneficiaries and requested either no minimum or a different minimum frequency requirement. For example, commentators were concerned that the three-month minimum could adversely impact on the rates of return provided in connection with fixed-rate investment contracts. The Department did not accept these comments. The Department believes that participants and beneficiaries must be afforded the opportunities to give investment instructions at least once within any three month period if they are to have any meaningful control over the assets in their accounts. Moreover, the Department believes that, given the flexibility in plan design afforded by the final regulation, the adoption of the three-month minimum rule should have little, if any, impact on investment returns available to participants and beneficiaries.

A number of commentators inquired about the result under the regulation where a plan which in all other respects meets the requirements for the ERISA section 404(c) plan offers, in addition to three investment alternatives constituting a broad range of investments, an investment alternative with restrictions on investment instructions which would cause the investment alternative to fail the general volatility rule in paragraph (b)(2)(ii)(C). The offering of such an investment alternative would not in and of itself cause a plan otherwise meeting the requirements for an ERISA section 404(c) plan to lose its status as an ERISA section 404(c) plan. However, there would be no section 404(c) relief accorded to plan fiduciaries with respect to amounts invested in an investment alternative which does not permit investment instructions with a frequency commensurate with the reasonably expected volatility of the investment alternative.

With respect to the general volatility rule and the three-month minimum rule, the Department notes that while there is nothing in the regulation that precludes the assessment of a penalty or valuation adjustment for early or premature withdrawals from an investment alternative, any penalties or adjustments for such withdrawals must be reasonable in light of the investment. Substantial penalties or adjustments upon withdrawal from an investment alternative may have the effect of limiting the ability of participants and beneficiaries to give investment instructions in accordance with the general volatility or three-month minimum transferability rules of the regulation, thereby depriving participants and beneficiaries of the opportunity to exercise control with respect to such investment alternative.[11]

The Volatile Investment Transferability Rule

The Proposal

In addition to the foregoing rules, paragraph (b)(2)(ii)(C)(*2*) of the proposed regulation would have required that the least volatile of the core investment alternatives permit the participant or beneficiary to give investment instructions no less frequently than he is permitted to give such instructions with respect to the most volatile investment alternative made available by the plan (referred to elsewhere herein as the "volatile investment transferability rule"). The notice of proposed rulemaking explained that this rule was necessary because the ability to transfer assets to or from a volatile investment has meaning only where there is in fact another investment vehicle available which can just as readily transfer out or accept assets.

Comments

Many commentators expressed the view that the volatile investment transferability rule should either be eliminated or significantly changed. Several commentators indicated that the rule could interfere with the operation of fixed rate investment contracts. Other commentators expressed concern about the necessity of ongoing volatility measurements to permit compliance with the regulation, particularly with regard to core investment alternatives. Commentators also indicated that, if the rule were to be retained, the requirement should apply only to transfers out of the most volatile alternative into the least volatile core alternative, and not to transfer out of the least volatile core alternative. A number of commentators made specific suggestions concerning the kinds of alternatives which would be used to satisfy the requirement that an alternative be available to receive transfers out of the most volatile investments. Suggestions included: a default-type fund; any "temporary investment fund"; any "low-risk" vehicle; and any "less volatile" investment alternative.

A number of commentators expressed the view that the general volatility rule should serve as the standard for determining the required transfer frequency under the volatile investment transferability rule. Accordingly, they urged that, with respect to a plan which permits transfers into and out of its most volatile investment alternative more frequently than would be required by the volatility of the fund, the regulation requires only that a participant or beneficiary be permitted to give investment instructions with respect to transfer into the least volatile core investment alternative no less frequently than would be required by the volatility of the most volatile investment alternative.

The Department continues to believe that, given the transferability and diversification requirements applicable to core investment alternatives, participants and beneficiaries must be afforded the opportunity to direct their investments from more volatile investments into a core investment alternative with a frequency commensurate with the volatility of the more volatile investment alternative. However, in response to the concerns raised by commentators, the Department has provided additional flexibility under the final regulation, which is discussed below.

The Final Regulation

The volatile investment transferability rule contained in the final regulation is substantially different in a number of

[11] Whether any given penalty or adjustment is unreasonable or otherwise limits a participant's or beneficiary's ability to give investment instructions in accordance with the general volatility or three-month minimum rule is a factual determination which must be made on an investment by investment basis, taking into account factors such as the nature of the investment alternative, its rate of return, market forces, *etc.*

respects from the rule that was proposed. First, the final regulation provides two alternative methods for accommodating transfers out of more volatile investments (other than investments in employer securities with respect to which a special rule has been adopted). Second, transfers from more volatile investments are not required to be accommodated by the least volatile of the core investment alternatives. Third, the final regulation requires only that a core investment alternative accept transfers *into* the alternative (rather than both into and out of the alternative) with a frequency commensurate with the more volatile investments. Fourth, the volatile investment transferability rule, as adopted, is framed in terms of when participants and beneficiaries are permitted to give investment instructions with respect to an investment alternative, rather than with respect to the volatility of the investment alternative. This change was made in view of the fact that an ERISA section 404(c) plan could provide for participant instruction with respect to an investment alternative more frequently than would be required by the general volatility rule, which provides that, as a condition to section 404(c) relief, participants and beneficiaries must, at a minimum, be permitted to give investment instruction with a frequency commensurate with the reasonably expected volatility of each investment alternative. Lastly, the volatile investment transferability rule, as adopted, assures that transfers are available from any investment alternative available under the plan which permits participants and beneficiaries to give investment instructions more frequently than once within any three month period. The following is a discussion of the methods for accommodating transfers provided for in the final regulation.

The first method for accommodating transfers is contained in paragraph (b)(2)(ii)(C)(*2*)(*i*). Under this method, at least one of the core investment alternatives meeting the requirements of paragraph (b)(2)(ii)(C)(*1*) (rather than only the least volatile of the core investment alternatives, as in the proposal) must permit participants and beneficiaries to give investment instructions as frequently as they are permitted to give investment instructions with respect to any investment alternative made available by the plan which permits participants and beneficiaries to give investment instructions more frequently than once within any three month period. In addition, as noted above, the core investment alternative selected to satisfy this requirement need only permit such instructions with regard to transfers into the alternative (rather than both into and out of the alternative, as in the proposal).

Rather than permitting transfers directly to a core investment alternative, a plan may elect the alternative method for accommodating transfers, contained in paragraph (b)(2)(ii)(C)(*2*)(*ii*). In general, this method permits the establishment and use of a "cash-equivalency" type fund, subfund or account for the temporary holding of proceeds from investments pending the next opportunity afforded participants and beneficiaries to direct investments into one of the core investment alternatives. Specifically, the final regulation provides that, with respect to each investment alternative which permits participants and beneficiaries to give investment instructions more frequently than once within any three month period, participants and beneficiaries must be permitted to direct their investments from such alternative into an income producing, low risk, liquid fund, subfund or account as frequently as they are permitted to give investment instructions with respect to the particular investment alternative. In addition, participants and beneficiaries must be permitted to direct investments from such low risk fund, subfund or account into one of the core investment alternatives (which must permit investment instructions at least once within any three month period pursuant to paragraph (b)(2)(ii)(C)(*1*)), as frequently as they are permitted to give instruction with respect to such core alternative.

The following example illustrates the application of the second method. In addition to offering three core investment alternatives, which constitute a "broad range" of investments (alternatives A, B and C), Plan P offers a high risk equity fund which permits investment instructions more frequently than once within any three month period and a one year certificate of deposit which is fully insured by a Federal agency. Plan P permits participants and beneficiaries to direct investments from the equity fund into an income producing, low risk, liquid subfund of the equity fund as frequently as they are permitted to give investment instructions with respect to the equity fund. Subsequently, participants and beneficiaries are permitted to direct their investments from the subfund into core investment alternative A at such time as investment instructions are permitted with respect to alternative A. No similar direction into a low-risk fund, subfund or account is permitted with respect to investments from the certificate of deposit. Plan P meets the conditions of the second method for accommodating transfers, provided that the fiduciary of Plan P has determined that the volatility of the certificate of deposit does not require (and the Plan does not permit) investment instructions more frequently than once within any three month period with respect to the certificate of deposit.

The foregoing methods of accommodating transfers apply to investment alternatives, other than investment alternatives which permit the direct or indirect acquisition or sale of any employer security ("employer security alternatives"). As noted earlier, a special rule is contained in the final regulation for employer security alternatives. The Department believes that a special rule for dispositions of interests in employer security alternatives is appropriate given the concerns of Congress and others about the potential for employer influence over participant investment decisions.[12]

In general, the methods for accommodating transfers from employer security alternatives are essentially the same as for other alternatives, except that participants and beneficiaries directing their investments from an employer security alternative (either directly to core investment alternatives or indirectly, through a low-risk, liquid fund, subfund or account, to core alternatives) must be afforded the opportunity to direct their investments from the employer security alternative into any of the available core investment alternatives. The Department believes that affording participants and beneficiaries the opportunity to invest proceeds from an employer security alternative in the core investment alternative of their choice is necessary in order to avoid the intentional or unintentional establishment of disincentives to dispose of interests in an employer security alternative. Such disincentives could result, for example, where plan design requires that participant proceeds from an employer security alternative may only be transferred to a particular core alternative.

Specifically, the final regulation provides that, for each investment alternative which is designed to permit the direct or indirect acquisition or sale of any employer security, contained in paragraph (b)(2)(ii)(C)(*3*)(*i*) of the final

[12] See n.29

regulation, all of the core investment alternatives must permit participants and beneficiaries to give investment instructions with regard to transfer *into* each of the alternatives as frequently as participants and beneficiaries are permitted to give investment instructions with respect to the employer security alternatives(s).

As an alternative, paragraph (b)(2)(ii)(C)(*3*)(*ii*) of the final regulation permits plans to provide for participant and beneficiary direction of investments from each employer security alternative(s) into an income producing, low risk, liquid fund, subfund or account as frequently as the participants and beneficiaries are permitted to give investment instructions with respect to the employer security alternative(s). Under this method, participants and beneficiaries must be permitted to direct investments from such low risk fund into each of the core investment alternatives as frequently as they are permitted to give investment instructions with respect to each such core investment alternative. The special rule is designed to assure that participants and beneficiaries will be permitted to choose from a broad range of investment alternatives when deciding to transfer assets from an alternative which permits the direct or indirect acquisition or sale of any employer security.

The Uniformity Requirement

Paragraph (b)(2)(ii)(C) of the proposed regulation provided that, in order for a restriction to be deemed reasonable, it must be applied on a uniform and consistent basis to all directing participants and beneficiaries of that plan (referred to herein as "the "uniformity requirement").

A number of commentators believed that two requirements contained in the proposed regulation would, if finalized, conflict with the transfer restrictions set forth in the rules under section 16 of the Securities and Exchange Act of 1934 (the '34 Act). These requirements were the uniformity requirement, and the general rule contained in paragraph (b)(2)(ii)(C), which required that the frequency of opportunity to give investment instructions with respect to an investment alternative must be determined relative to the anticipated market volatility of the investment.

Section 16 of the '34 Act imposes sanctions on "insiders", including officers and directors of an issuer of securities, if they do not comply with restrictions on transfers of securities of certain issuers. The restrictions generally impose sanctions if a purchase and sale occur within six months of each other. Rule 16b–3 provides that the plan itself may preclude certain transfers of securities as one method of complying with the restrictions contained in section 16(b). Under the proposal, if a plan imposed such restrictions only upon "insiders", the plan would lose its status as a section 404(c) plan as it would not comply with the uniformity requirements.

In this regard, commentators urged the Department to provide in the final regulation that transfer restrictions on transactions in employer securities by insiders which are included in a plan to compel insiders to comply with section 16 of the '34 Act will not cause a plan to lose its status as an ERISA section 404(c) plan. Another commentator contended that the uniformity requirement should be deleted because there are situations in which plan sponsors have a legitimate need to make distinctions between participants. The commentator stated that a plan sponsor may want to have different rules for participants in a subsidiary's portion of its plan, or for union and non-union employees. Another commentator noted in this connection that fixed rate investment contracts may prohibit the entrance of acquired company participants in order to make the provider's costs and risks predictable. Other commentators were concerned that the uniformity requirement not be interpreted to prohibit variation in frequency restrictions among different plans maintained by the same affiliated group.

In view of the concerns expressed by the commentators, the Department has decided to eliminate the uniformity requirement. Accordingly, under the final regulation, if a plan contains restrictions with respect to investments in securities in order to facilitate compliance with section 16 which are applicable only to "insiders", such restrictions will not affect the plan's status as a section 404(c) plan; but if such restrictions are not consistent with the general volatility rule, investments in securities by "insiders" made subject to the restrictions will not be afforded relief by section 404(c).

While the final regulation does not contain a uniformity requirement, the Department notes that section 401(a)(4) of the Internal Revenue Code prohibits discrimination in favor of highly compensated employees in the contributions or benefits provided under a plan and may be applicable to the specific restrictions contained in an ERISA section 404(c) plan.

D. Other Limitations on the Exercise of Control

The Proposal

Paragraph (b)(2)(ii)(A) of the proposal provided that a plan did not fail to provide the participant or beneficiary with an opportunity to exercise control over his individual account merely because it charges the participant's or beneficiary's account for the reasonable expenses of carrying out his instructions, if reasonable procedures are established under the plan to inform participants and beneficiaries that such charges are made and to inform each participant and beneficiary periodically of the actual expenses incurred with respect to his individual account. Two commentators indicated that expense information is not currently provided and would be very costly to provide, and therefore, urged that only the nature of expenses charged against accounts should be required to be described in the SPD or another document.

The Department continues to believe that participants and beneficiaries should be periodically apprised of the actual expenses charged to their respective individual accounts, as this information is directly relevant to the amount of assets in their account and future investment decisions. Accordingly, this requirement has been retained in the final regulation. However, paragraph (b)(2)(ii)(A) has been modified to delete the requirement to inform participants and beneficiaries that such charges are made inasmuch as this information is required to be disclosed to participants and beneficiaries pursuant to paragraph (b)(2)(i)(B)(*1*)(*v*) of the final regulation.

One commentator inquired whether anything in the regulation would preclude a plan from charging only the accounts of former employees for the expenses of implementing their investment instructions. Nothing in the regulation would prevent a plan from charging such expenses only to the accounts of former employees. However, the Department notes that sections 403, 404 and 408(b)(2) of ERISA would require that such charges be reasonable.[13]

Paragraph (b)(2)(ii)(B) of the proposal provided that a plan did not fail to provide an opportunity for a participant or beneficiary to exercise control merely because the plan permits a fiduciary to decline to implement certain instructions of a participant or

[13] See ERISA section 408(b)(2) relating to the provision of services by a party in interest to the plan, and 29 CFR 2550.408b–2.

beneficiary. As stated in the 1991 proposal, the delineated list was not intended to constitute an exhaustive list of allowable limitations on a participant's or beneficiary's exercise of control. In response to a request for clarification on this point, paragraph (b)(2)(ii)(B) of the final regulation has been modified to make clear that the instructions which a plan may permit a fiduciary to decline are not limited to those listed in the regulation.[14]

Paragraph (b)(2)(ii)(B) of the proposal had listed, among the instructions which a plan could permit a fiduciary to decline to implement, instructions which could result in a loss in excess of the directing participant's or beneficiary's account balance. In the final regulation, this type of instruction has been moved from paragraph (b)(2)(ii)(B) to paragraph (d)(2)(ii)(D) [15] to clarify that a plan fiduciary would not be relieved of liability with respect to a participant's or beneficiary's instructions which could result in a loss in excess of that participant's or beneficiary's account balance.

Another change was made to paragraph (b)(2)(ii)(B) of the final regulation relating to the types of instructions listed in paragraph (d)(2)(ii). Rather than listing instructions which are described at paragraph (d)(2)(ii), as did paragraph (b)(2)(ii)(B) of the proposal, paragraph (b)(2)(ii)(B) of the final regulation provides that a fiduciary may decline to implement participant and beneficiary instructions which are described at paragraph (d)(2)(ii) of this section, as well as instructions specified in the plan, including those which would result in a prohibited transaction and those which would generate income that would be taxable to the plan. This change was made in order to permit a fiduciary to decline to implement participant instructions where the regulation provides that he would not be relieved of any liability resulting from implementing such instructions (see paragraph (d)(2)(ii)), even where the plan does not specifically authorize him to do so.

Comments

Commentators asked for clarification regarding various technical aspects of plan operation which may impact upon a participant's or beneficiary's opportunity to exercise control within the meaning of paragraph (b)(2) or (b)(3) (relating to a broad range of investment alternatives) of the regulation. Some commentators inquired whether a plan may require notice before a designated transfer date to provide time for implementation of instructions. Other commentators requested clarification that, as long as transfer opportunities are provided, an affirmative election may be given effect with respect to all future contributions until it is affirmatively revoked. Similarly, one commentator expressed the view that, with respect to former employees, the requirement that participants be permitted to exercise independent control should be met where a plan provides that the account balances of former employees who are permitted to withdraw their funds at any time will be invested in accordance with the most recent investment election made prior to termination. Another commentator urged the Department to indicate that sufficient control exists where a plan provides that, if a beneficiary fails to direct with respect to assets in his account, the plan will promptly distribute the account assets to the beneficiary.

The Department notes that there is nothing in the final regulation which precludes a plan from providing for a notice period to provide time for implementation of instructions, as long as such notice period does not interfere with or compromise a participant's or beneficiary's opportunity to exercise control. Also, as long as transfer opportunities are made available to participants and beneficiaries in accordance with the regulations including former employee-participants, an affirmative election may be given effect until affirmatively revoked by the participant or beneficiary. With regard to the permissibility of providing that assets will be distributed to a beneficiary if he fails to direct, the Department notes that a distribution pursuant to such a provision would not constitute the exercise of control, within the meaning of the regulation, by the participant or beneficiary. Therefore, the relief afforded by section 404(c) would not be available with respect to the distribution.

A number of commentators requested a clarification regarding the permissibility of specific types of transfer restrictions. For example, some urged the Department to permit provisions requiring direction with respect to specified increments of the account balance. One commentator requested that the Department specifically permit ERISA section 404(c) plans to place maximum limits on the portion of a participants's account balance which may be invested in each equity fund offered by the plan.

In this regard, it is the view of the Department that conditioning the ability of participants and beneficiaries to give investment instruction on the transfer of a minimum amount or percentage, e.g., $100 or 5%, of transferable assets would not, in and of itself, cause the plan to fail to be a section 404(c) plan, provided that the amount or percentage had some reasonable relationship to administrative costs attendant to such transfers and provided that such limitations are applied on a reasonable and consistent basis. On the other hand, it is the view of the Department that limitations on the maximum amount or percentage that a participant or beneficiary may invest in any investment alternative which is necessary to satisfy the broad range requirement of the regulation would so restrict a participant's or beneficiary's opportunity to exercise control that the plan would fail to be a section 404(c) plan. The imposition of such limitations on investment alternatives which do not constitute part of a plan's broad range of investment alternatives, however, would not affect the status of the plan as a section 404(c) plan inasmuch as participants and beneficiaries would nonetheless have the opportunity to exercise control with respect to a broad range of investment alternatives. See example in paragraph (f)(4).

One commentator inquired whether a plan may preclude transfers into an investment vehicle when it decides to eliminate the vehicle as an alternative. Although the regulation would not preclude such a restriction, the Department notes that the plan would nevertheless be required to offer a broad range of investment alternatives within the meaning of the regulation subsequent to elimination of the investment alternative as a condition for section 404(c) relief.

2. Broad Range of Investments

The Proposal

The 1991 proposal provided, in paragraph (b)(3)(i), that a plan offers a broad range of investments only where participants and beneficiaries are afforded a reasonable opportunity to materially affect the potential risk and return on amounts in their accounts; choose from at least three diversified investment categories; and diversify investments so as to minimize the risk of

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[14] Although a plan may impose other reasonable limitations, the totality of such restrictions must not so restrict a participant's or beneficiary's opportunity to exercise control so as to in effect cause the plan to fail to provide participants and beneficiaries an opportunity to exercise control within the meaning of paragraph (b)(2) of this section.

[15] Paragraph (d)(2)(ii) of the final regulation was designated paragraph (e)(2)(ii) in the proposal.

large losses. Unlike the 1987 proposal, which described the specific categories of investments which were required to be made available by an ERISA section 404(C) plan, paragraph (b)(3)(i)(B) of the 1991 proposal was based upon the general requirement that participants and beneficiaries have the opportunity to choose from at least three diversified categories of investments. Specifically, paragraph (b)(3)(i)(B)(*1*) required that each category have materially different risk and return characteristics. Paragraph (b)(3)(i)(B)(*2*) of the proposal required that the three categories of investments in the aggregate enable the participant, by choosing among them, to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant, thereby enabling participants and beneficiaries to construct a portfolio with risk and return characteristics appropriate to their circumstances. Finally, paragraph (b)(3)(i)(B)(*3*) of the proposal required that each of the investment categories, when combined with investments in either of the other categories, must tend to minimize the risk of a participant's portfolio at any given level of expected return. With the exception of certain minor modifications, discussed below, the Department has adopted the proposed broad range of investments requirement in the final regulation.

Comments

Most of the commentators supported the Department's approach to defining a broad range of investment alternatives by reference to risk and return characteristics, rather than prescribing specific investment objectives, as was the case in the 1987 proposal. Nonetheless, a number of comments were submitted on the broad range of investment alternatives provisions of the proposed regulation. These comments are summarized and addressed below.

Several commentators requested clarification that the regulation requires both that the categories be different from each other and that they contain diversified investments. One commentator pointed out that the other requirements in paragraph (b)(3)(i)(B) ensure that the categories must be different from each other, and suggested changing the language of this paragraph to "three categories of diversified investments". In response to these comments, the text of the regulation has been changed to make it clear that each of the three investment alternatives intended to satisfy the broad range requirement must be diversified. (See paragraph (b)(3)(i)(B)(*1*) of the final regulation).[16]

Several commentators argued that the regulation should only require two investment categories. One commentator urged the Department to adopt a special rule in this regard for collectively bargained plans. The Department continues to believe that a plan offers a broad range of investment alternatives only where participants and beneficiaries are provided with the opportunity to invest in at least three investment alternatives meeting the requirements of paragraph (b)(3)(i) of the regulation. The Department is unable to agree that participants and beneficiaries are afforded a reasonable opportunity to exercise meaningful control over the assets in their account where such participants and beneficiaries are limited to two investment choices. Accordingly, the Department has retained the requirement that participants and beneficiaries be provided the opportunity to choose among at least three investment alternatives.

Two commentators urged that the regulation either require or endorse specific types of investment instruments. One of the commentators suggested that the regulation which contains instruments guaranteed either directly or indirectly by the U.S. Government, or permit participants to transfer at five year intervals to a plan in which the investment options are unlimited. The other commentator urged the Department to specify that U.S. Savings Bonds can serve as one of the minimum of three diversified categories required by paragraph (b)(3)(i)(B) and to except them from the minimum transfer opportunity requirement. The Department believes that the general approach of requiring at least three diversified investment alternatives with materially different risk and return characteristics will better serve the needs of both plant sponsors and participants and beneficiaries than would an approach which attempts to specify particular investment alternatives which are necessary to constitute a broard range of investments.

Similarly, several commentators indicated that the standards contained in paragraph (b)(3)(i)(B) for the minimum of three broad range investment alternatives are vague and difficult to apply, and urged the Department to include examples in the final regulation of combinations of investment alternatives which meet the risk and return criteria of the regulation. The final regulation is intended to give plan sponsors broard latitude in developing combinations of investment alternatives which meet the broard range requirement. For this reason, the Department is concerned that providing examples of combinations of investment alternatives which meet the broad range requirement may be construed as an endorsement by the Department of such combinations of investment alternatives and thereby serve, directly or indirectly, to limit the flexibility in plan design intended by the regulation. Therefore, the Department has not adopted this suggestion.

Two commentators raised the question of whether employer securities may be one of the minimum of three broad range investment alternatives. Inasmuch as employer securities would not themselves represent a diversified investment alternative, as required by paragraph (b)(3)(i)(B)(*1*), employer securities or a fund of such securities could not be used as one of the investment alternatives intended to satisfy the broad range of investments requirements of the regulation.

A number of commentators asserted that the types of restrictions often contained in fixed rate investment contracts issued by banks and insurance companies should not cause the contracts to fail to qualify as one of the minimum of three diversified categories of investments required by paragraph (b)(3)(i)(B). The commentators mentioned a number of different types of restrictions, including "equity wash" restrictions, prohibitions on direct transfers from such investment contracts to competing fixed income funds, requirements that investments in contracts remain for a certain minimum period, and a fee or charge for pre-maturity redemption or a market value adjustment for suspension of a contract. An "equity wash" restriction is one which requires that transfers to and or from a fixed rate investment contract be made through an equity fund where the funds must remain for a specified period of time.

There is nothing in the regulation which would specifically preclude offering a bank (or similar institution) or insurance company fixed rate investment contract as one of the investment alternatives intended to satisfy the broad range requirement merely because such contract imposes

[16] Even if a plan offers a diverse portfolio of investments in each of the investment alternatives, it may not meet the general diversification standard of the final regulation. For example, a plan may fail to provide a participant or beneficiary an opportunity to diversify his account if all of the available investment alternatives relate to one industry.

fees or charges for premature withdrawls, provided that, as noted earlier, such fees or charges are reasonable in light of the investment and are not so substantial as to have the effect of depriving participants and beneficiaries of the opportunity to exercise meaningful control over such investment. To the extent that any investment alternative intended to satisfy the broad range requirement of the regulation contained restrictions that would effectively limit the ability of a participant or beneficiary to give investment instructions at least once within any three month period with respect to transfers between the core investment alternatives, the plan would fail to satisfy the requirements of paragraph (b)(2)(ii)(C)(*1*). Thus, an equity wash or similar restriction on any core investment alternative, such as a fixed rate investment contract, which would serve to preclude direct transfers from the core investment alternative to any of the other core investment alternatives meeting the requirements of paragraph (b)(2)(ii)(C)(*1*) would prevent the investment alternative with such a restriction from serving as one of the core investment alternatives. However, there is nothing in the regulation which would preclude an investment alternative with an "equity wash" or similar restriction from being offered as an investment alternative in addition to the core investment alternatives. The mere fact that an "equity wash" restriction may require participants to transfer assets from such a non-core investment alternative into an equity fund, which is offered as one of the core investment alternatives, would not in and of itself affect a plan's status as an ERISA section 404(c) plan, or the availability of section 404(c) relief with respect to transactions involving the non-core investment alternative. An ERISA section 404(c) plan must, however, permit any assets transferred from the non-core investment alternative pursuant to an equity wash or similar restriction to a core equity fund to be transferred to and from the other core alternatives as frequently as are other assets in the core equity fund, and, in no event, less frequently than once within any three month period. (See the general volatility rule in paragraph (b)(2)(ii)(C) and the three month minimum rule in paragraph (b)(2)(ii)(C)(*1*).)

Two commentators requested clarification that the requirement in paragraph (b)(3)(i)(B)(*1*) (designated (b)(3)(i)(B)(*2*) in the final regulation) that each of the categories of investments have materially different risk and return characteristics does not require a 404(c) plan to offer either a very conservative or a very risky investment alternative. The Department notes that paragraph (b)(3)(i)(B)(*2*) of the final regulation merely requires that each of the categories of investments have materially different risk and return characteristics, without specification as to the nature of the risks. Paragraph (b)(3)(i)(B)(*3*) does, however, require, for purposes of the broad range of investment alternatives requirement, that the available investment alternatives enable participants and beneficiaries to achieve a portfolio with aggregate risk and return characteristics at any point within the range "normally appropriate for the participant."

A number of commentators indicated that the language of paragraph (b)(3)(i)(B)(*3*) of the proposal (redesignated (b)(3)(i)(B)(*4*) in the final regulation) should be clarified. This paragraph required that each of the three investment categories intended to satisfy the broad range of investments in either of the other categories, tends to minimize the risk of a participant's portfolio at any given level of expected return. Several commentators made suggestions on how to modify the language, while others suggested that this provision should be deleted or, at a minimum, explained. In an effort to provide clarification, the language of paragraph (b)(3)(i)(B)(*3*) of the proposal has been modified to read: "each of which when combined with investments in the other alternatives tends to minimize through diversification the overall risk of a participant's or beneficiary's portfolio".[17]

The Department believes that the criteria set forth in paragraph (b)(3)(i)(B) reflect well established investment principles which are appropriate to the defining of a broad range of investment alternatives. The Department also believes that adoption of these principles provides plan sponsors the design flexibility necessary to accommodate changes in participant needs and changes in investment products and markets. Accordingly, the Department has retained the criteria set forth in paragraph (b)(3)(i)(B), with the minor modifications discussed above. The purpose of the broad range requirement is to enable participants and beneficiaries to achieve various levels on the risk and return spectrum while at the same time minimizing the risk presented by their portfolio through the allocation of the assets in their accounts.

[17] The language in paragraph (b)(3)(i)(B)(*3*) of the proposal stated: "[e]ach of which when combined with investments in either of the other categories tends to minimize the overall risk of a participant's or beneficiary's portfolio". This language implied that a play may have only three core investment alternatives. The words "either of" were deleted to indicate that three is the minimum number of alternatives required by paragraph (b)(3)(i)(B).

A. Diversification

In addition to requiring that participants and beneficiaries be provided a reasonable opportunity to choose from among at least three diversified investment categories, paragraph (b)(3)(i)(C) of the proposal required that ERISA section 404(c) plans provide participants and beneficiaries the opportunity to diversify the investments of that portion of their individual accounts with respect to which they are permitted to exercise control so as to minimize the risk of large losses, taking into account the nature of the plan and the size of participants' accounts. The proposal explained, in paragraph (b)(3)(ii), that where look-through investment vehicles are available as investment alternatives to participants or beneficiaries, the underlying investments of the look-through investment vehicle shall be considered in determining whether the plan satisfies the requirements of paragraph (b)(3)(i)(B) and paragraph (b)(3)(i)(C) (relating to diversification of investments).[18] With regard to the diversification requirement contained in paragraph (b)(3)(i)(C), the Department recognizes that a participant may need a substantial amount of investment capital to achieve such diversification if investment alternatives are limited to direct investment in individual instruments (such as common stocks, bonds, etc.). However, broad diversification may be achieved with a much smaller amount of capital where assets are held in the form of an undivided interest in a pool of broadly diversified investment instruments. Therefore, paragraph (b)(3)(i)(C) of the final regulation stresses that where a plan provides the opportunity to invest

[18] As is further explained below, the concept of a "pooled investment fund" contained in the 1987 proposal was expanded in the proposal to include investments which do not permit the investors to share in the gains or losses of the underlying assets of the investment vehicle. Thus, the investment vehicles defined in paragraph (e)(1) are referred to in the final regulation as "look-through investment vehicles" because of the treatment provided these vehicles under paragraph (b)(3)(ii). That provision permits consideration of the underlying investments of these vehicles in determining whether the diversification requirements of paragraph (b)(3)(i) are met. Such designation is relevant to this regulation only and should not be read to imply that the underlying assets of such entities include plan assets. (See 29 CFR § 2510.3-101 for plan asset rules regarding investment vehicles).

solely in individual investment instruments, such an opportunity will not meet the broad range requirement of paragraph (b)(3)(i) unless the portion of the account balance over which a plan participant or beneficiary is permitted to exercise control is large enough to permit diversification through that form of investment. Where such portion of the account balance of any participant or beneficiary is not sufficiently large, a plan can meet the requirements of paragraph (b)(3)(i) only by making available the opportunity to invest in look-through investment vehicles.[19] Of course, a plan which permits a participant to invest his account assets in any available investment implicitly makes available all look-through investment vehicles and therefore would meet the requirements of paragraph (b)(3)(i) regardless of the account balances of the participants.

One commentator requested that the Department clarify how frequently the underlying investments of look-through investment vehicles must be monitored for compliance with paragraphs (b)(3)(i)(B) and (b)(3)(i)(C) of the regulation. The extent to which fiduciaries are required to monitor any designated investment will depend on the facts and circumstances of each case and vary from investment to investment, depending on, among other things, the degree of risk and the economic environment.

B. Definition of "Look-Through Investment Vehicle"

Paragraph (f)(1) of the proposed regulation defined "look-through investment vehicle" as: (i) An investment company described in section 3(a) of the Investment Company Act of 1940, or a series investment company described in section 18(f) of the 1940 Act and the regulations thereunder,[20] or any of the segregated portfolios of such companies; (ii) a common or collective trust fund or a pooled investment fund maintained by a bank, a bank deposit, or a guaranteed investment contract of a bank; (iii) a pooled separate account or a guaranteed investment contract or an insurance company qualified to do business in a state; or (iv) any entity whose assets include plan assets by reason of a plan's investment in the entity. For purposes of the final regulation, paragraph (f) of the proposal has been redesignated paragraph (e).

The types of vehicles encompassed within the definition of look-through investment vehicle were intended to be those for which the underlying assets could properly be considered in determining whether the diversification requirement of section 404(a)(1)(C) is met. In this regard, the Conference Report indicates at page 305 that a determination of diversification with regard to a plan investment in a mutual fund, a bank investment vehicle or insurance company contracts would be achieved through an examination of the underlying assets and investments of the bank or insurance company. Paragraph (e)(1) of the final regulation retains the definition of look-through investment vehicle contained in the proposal with minor modifications discussed below.

As noted in the preamble to the proposal, in general, a determination of whether any particular investment vehicle comes within the definition of the term "look-through investment vehicle" is a factual determination and, thus, must be made on a case by case basis. However, the Department did note that group trusts as defined in IRS Rev. Rul. 81–100 would , at a minimum, meet paragraph (f)(1)(iv) of the definition (paragraph (e)(1)(iv) of the final regulation) since they are entities whose assets include plan assets by reason of a plan's investment in them.[21] As such,they would be considered look-through investment vehicles for purposes of the regulation.

Commentators on the 1991 proposal were concerned about the status under the regulation of employer-managed arrangements,[22] commonly referred to as "in-house funds", and which, according to these commentators, are not typically considered to be entities separate from a plan's trust. As described, such arrangements, holding plan assets, would constitute look-through investment vehicles pursuant to subparagraph (iv) of paragraph (e)(1). Other commentators were concerned about the status of other portfolios and subfunds which are not typically considered to be entities separate from a plan's trust. These arrangements also would constitute look-through investment vehicles described in subparagraph (iv) if their assets contain plan assets pursuant to 29 CFR 2510.3–101.

Several commentators requested that the Department clarify whether the term "look-through investment vehicle" is applicable to certain arrangements involving fixed rate investment contracts and investment contract-type instruments and requested that, if not, the regulation be modified to include such investments. In this regard, commentators specifically mentioned "guaranteed investment contracts" funds, "synthetic guaranteed investment contracts", "immediate participation contracts" and "deposit administration contracts". In addition, several commentators urged the Department to amend the definition of look-through investment vehicle to include all insurance company general account products and annuity contracts. In general, the record does not contain sufficient information with respect to these contractual arrangements to permit the Department to make a determination as to whether and to what extent such contracts should constitute look-through investment vehicles for purposes of this regulation. However, the Department notes that funds of fixed rate investment contracts would appear to meet subparagraph (iv) of the definition of look-through investment vehicle because the contracts contained in the funds constitute plan assets. In addition, subparagraph (ii) of the definition of look-through investment vehicle, contained in paragraph (e)(1) of the final regulation, has been modified in the final regulation to indicate that, for example, fixed rate investment contracts issued by savings and loan associations are look-through investment vehicles for purposes of the regulation. Paragraph (e)(1)(ii) of the final regulation now reads: "[a] common or collective trust fund or a pooled investment fund maintained by a bank or similar institution, a deposit in a bank or similar institution, or a fixed rate investment contract of a bank or similar institution."

[19] In this regard, a plan which is designed to be an ERISA 404(c) plan for all plan participants may fail to meet the "broad range of investment alternatives" requirement because the investment alternatives offered by the plan would not permit those participants with small account balances to diversify their investments. In such circumstances, the plan would be considered an ERISA section 404(c) plan solely with regard to those transactions which are directed by a participant or beneficiary who may direct investment of an amount in his account which is large enough to permit broad diversification through the investment alternatives offered by that plan, and only to the extent that all other requirements of this regulation were met.

[20] 17 CFR section 270.18F–2.

[21] This concept is described and clarified in the Department's regulation at 29 CFR 2510.3–101, 51 FR 41262 (November 13, 1986).

[22] ERISA section 404(c) does not provide relief with respect to any section 406 violation which may occur based on a fiduciary's choice of itself or a person or entity in whom it has an interest to provide services for the plan for a fee or other compensation, or based on a fiduciary's limitation of investment alternatives to include those managed by itself or its affiliates.

3. The Special Rule for Designated Look-Through Investment Vehicles and Designated Investment Managers

The proposed regulation included a special rule which would apply to plans which made available one or more designated look-through investment vehicles or one or more designated investment managers as investment alternatives. The proposal provided that a plan whose investment alternatives include any specified look-through investment vehicle or the right to appoint a designated investment manager is an ERISA section 404(c) plan only if, among other things, an independent plan fiduciary is required to designate the look-through investment vehicles or investment managers offered as investment alternatives. The proposal included an exception to the special rule for designated look-through investment vehicles and investment managers for plans sponsored by entities described in section 3(38) of ERISA. The exception permitted such entities (without using an independent fiduciary) to designate themselves or an affiliate as an available investment manager or designate a look-through investment vehicle managed by themselves or an affiliate as an available investment alternative under their own plans under certain limited circumstances.

A number of commentators on the 1991 proposal expressed the opinion that the requirement for an independent fiduciary is unnecessary, since any fiduciary (independent or not) who selects a look-through investment vehicle or an investment manager must bear responsibility under the fiduciary responsibility provisions of ERISA to do so prudently and solely in the interest of participants and beneficiaries.

After carefully reviewing the public comment on this matter, the Department has determined that the general fiduciary provisions are sufficient to ensure that the interests of plan participants and beneficiaries are protected. The Department emphasizes, however, that the act of designating investment alternatives (including look-through investment vehicles and investment managers) in an ERISA section 404(c) plan is a fiduciary function to which the limitation on liability provided by section 404(c) is not applicable. All of the fiduciary provisions of ERISA remain applicable to both the initial designation of investment alternatives and investment managers and the ongoing determination that such alternatives and managers remain suitable and prudent investment alternatives for the plan. Therefore the particular plan fiduciaries responsible for performing these functions must do so in accordance with ERISA. For the aforementioned reasons, paragraph (c) of the proposal has been deleted from the final regulation and the remaining paragraphs of the regulation have been redesignated.

IV. The Independent Exercise of Control

The Proposal

In view of the transactional nature of the relief provided by section 404(c), the 1991 proposal provided that a determination as to whether a participant or beneficiary has in fact exercised control must necessarily be made on a case by case basis, taking into account the relevant facts and circumstances.

The proposal also stated that sections 404(c)(1) and 404(c)(2) apply only where the participant's exercise of control has been independent. This is consistent with the Conference Report discussion of section 404(c).[23] In this regard, the proposal described certain factors that indicate the absence of independent control. These are: (1) Improper influence by a plan fiduciary or plan sponsor with respect to the transaction; (2) concealment from the participant or beneficiary by a plan fiduciary of material nonpublic facts regarding the transaction that are known by the plan fiduciary, unless the disclosure of such information by the plan fiduciary to the participant or beneficiary would violate securities or banking laws; and (3) the legal incompetence of the participant or beneficiary where the plan fiduciary accepting his instructions knows him to be incompetent.[24]

Paragraph (d)(3) of the proposal (redesignated paragraph (c)(3) in the final regulation) also stated that where a participant or beneficiary exercises control over the assets in his account to engage in a sale, exchange or leasing of property, or a loan with a plan fiduciary or an affiliate of such fiduciary, such exercise of control will not be "independent" (regardless of whether it meets the other requirements of the regulation) unless the terms of the transaction are fair and reasonable to the participant or beneficiary at the time of the transaction. A transaction will be deemed to be fair and reasonable to the participant or beneficiary if he pays no more than, or receives no less than, adequate consideration as defined in section 3(18) of the Act in connection with the transaction. These standards were adopted from established principles relating to the circumstances under which consent of a beneficiary of a trust will relieve a trustee from liability for breach of his fiduciary duties.[25]

The Department points out that, for some instructions which would result in a direct or indirect transaction between an ERISA section 404(c) plan and a plan fiduciary or an affiliate of such a fiduciary who is also a plan sponsor or an affiliate of the sponsor, paragraph (d)(2)(ii)(E) provides that no relief is available under section 404(c). For other instructions which would result in such transactions, paragraph (d)(2)(ii)(E) provides that no relief is available unless certain conditions are satisfied.

Paragraph (d)(4) of the proposed regulation (paragraph (c)(4) of the final regulation) contained a provision intended to clarify the effect of the independent exercise of control on the duties of plan fiduciaries. It stated that a fiduciary has no obligation to provide advice to a participant or beneficiary with respect to an investment made pursuant to the participant's or beneficiary's independent exercise of control under an ERISA section 404(c) plan. The wording of paragraph (c)(4) of the final regulation has been modified to clarify that there is no obligation to provide investment advice at any time.

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[23] Conference Report at 306.

[24] With respect to the third factor, the Department did not intend to impose an affirmative duty on the implementing fiduciary to evaluate a participant's or beneficiary's competence. However, the Department is of the opinion that the implementing fiduciary should not be able to invoke section 404(c) to avoid liability for losses resulting from the imprudent instructions of a participant where the fiduciary has actual knowledge of such incompetence.

[25] Restatement (Second) of Trusts section 216 (1959) provides:

Section 216. Consent of Beneficiary

(1) Except as stated in Subsections (2) and (3), a beneficiary cannot hold the trustee liable for omission of the trustee as a breach of trust if the beneficiary prior to or at the time of the act or omission consented to it.

(2) The consent of the beneficiary does not preclude him from holding the trustee liable for a breach of trust, if—

(a) The beneficiary was under an incapacity at the time of such consent or of such act or omission; or

(b) The beneficiary, when he gave his consent, did not know of his rights and of the material facts which the trustee did not reasonably believe that the beneficiary knew; or

(c) The consent of the beneficiary was induced by improper conduct of the trustee.

(3) Where the trustee has an adverse interest in the transaction, the consent of the beneficiary does not preclude him from holding the trustee liable for a breach of trust not only under the circumstances stated in Subsection (2), but also if the transaction to which the beneficiary consented involved a bargain which was not fair and reasonable.

See also III Scott, Trusts section 216 (3rd ed. 1967); Bogert, Trusts section 941 (2d ed. 1980).

Comments

The Department received substantive comment on several areas of paragraph (d) of the proposal, *i.e.*, improper influence by a plan fiduciary or the plan sponsor, disclosure of material information, the failure to provide for fiduciary relief in the absence of affirmative instruction, and the lack of an obligation to advise.

One commentator asked for clarification regarding what constitutes improper influence within the meaning of proposed paragraph (d)(2)(i) (paragraph (c)(2)(i) of the final regulation). While the Department is not prepared to give specific examples, the question of whether there has been improper influence by a plan sponsor or fiduciary in a given situation is inherently factual in nature and can only be determined on a case by case basis, taking into account all surrounding facts and circumstances.

A number of commentators urged the Department to either eliminate or clarify or narrow the scope of the disclosure requirement of paragraph (d)(2)(ii) of the proposed regulation. In response to the concerns of the commentators, the Department has modified the disclosure requirement, now set forth in paragraph (c)(2)(ii) of the final regulation. As modified, paragraph (c)(2)(ii) provides that a plan fiduciary must reveal material non-public information regarding the investment unless such disclosure to the directing participant or beneficiary would violate any provision of federal law or any provision of state law which is no preempted by the Act. The only exceptions to this disclosure requirement under the proposal were violations of securities or banking laws. The Department also notes that the regulation is not intended to require a plan fiduciary to disclose information to the general public.

Two commentators expressed concern that paragraph (d)(4) of the proposed regulation might be interpreted to suggest that, in the case of a non-404(c) plan which provides for some degree of participant and beneficiary direction, there may be an affirmative duty to advise participants and beneficiaries. The Department notes that fiduciaries of a plan that is not a section 404(c) plan are not afforded the transactional relief from the ERISA fiduciary responsibility provisions provided by ERISA section 404(c). A discussion of the duties of fiduciaries of non-404(c) plans is beyond the scope of this regulation.

Absence of Affirmative Instruction

A number of commentators on the 1991 proposal requested that section 404(c) relief be extended to certain situations where there is an absence of affirmative participant direction. Such relief was provided in the 1987 proposal if, among other conditions, amounts were invested in a "safe fund", which was required to be one of two specifically described vehicles—*i.e.*, an interest-bearing deposit in a bank or similar financial institution fully insured against loss by the United States or an agency of the United States, or a pooled investment fund, the assets of which consist solely of cash and securities issued or guaranteed by the United States or one of its agencies. This "safe/default" fund was not included in the proposal because commentators indicated that obtaining relief under an approach requiring that amounts be invested in the vehicles described in 1987proposal would interfere with the operation of fixed rate investment contract alternative [26] and that sponsors would rather retain fiduciary responsibility for contributions as to which participants and beneficiaries have not submitted instructions than avail themselves of the relief described in the proposal. Further, the comments and the statistical evidence submitted indicated that very few plans providing for direction by participants and beneficiaries offered the vehicles specified, and that for plans which did, a negligible amount of plan assets was directed into such, options.

Some commentators on the 1991 proposal favored a reinstatement of the 1987 approach, modified to permit the use of other vehicles. Suggestions included: Any "safe" investment vehicle which is "designed to preserve principal and provide income and liquidity", and adding to the types of vehicles included in the 1987 proposal money market mutual funds and bank collective investment funds.

In view of the record indicating that the vehicles described in the 1987 proposal would reduce flexibility in plan design and investments, in addition to the fact that such options were rarely offered or utilized when offered, the Department has decided not to reinstate a default option in the final regulation. Accordingly, the final regulation retains the approach of the 1991 proposal, pursuant to which plan fiduciaries will not be relieved of responsibility for investment decisions under an ERISA section 404(c) plan unless those decisions have affirmatively been made by participants and beneficiaries who have exercised independent control. In this regard, it should be noted that, as in any other type of ERISA-covered plan, fiduciaries of ERISA section 404(c) plans have a duty to provide for the investment of idle plan assets, and lack of participant direction will not absolve a fiduciary from such duties. The Department also notes that plan provisions providing for investments in the absence of an affirmative exercise of control may be followed only if the fiduciary determinations that following such provisions would not violate his fiduciary duties, including his duties under sections 404 and 406 of ERISA.

Once a participant or beneficiary in a section 404(c) plan exercises independent control by giving investment instruction with respect to assets or future contributions, section 404(c) relief will continue to be available with respect to that instruction as long as the participant or beneficiary continues to have the opportunity to exercise control over such assets and contributions. Consistent with this principle, it should be recognized that, until an affirmative instruction is given, there can be no relief under ERISA section 404(c).

Finally, although the regulation requires an affirmative investment instruction from a participant or beneficiary in order for the relief provided by section 404(c) to be available, the final regulation also provides that a participant or beneficiary will be deemed to have exercised control with regard to the exercise of voting, tender and similar rights under the circumstances described in new subparagraph (ii) of paragraph (c)(1). Paragraph (c)(1)(ii) of the final regulation provides that, once 404(c) relief is provided for an investment held in a participant's or beneficiary's account as a result of the independent exercise of control within the meaning of paragraph (c) of this regulation, a participant or beneficiary will be deemed to have exercised control with respect to the incidents of ownership of such investment (i.e., voting, tender and similar rights) to the extent that: (1) The participant or beneficiary is provided a reasonable opportunity to give instruction with respect to such incidents of ownership, including the provision of the information described in paragraph (b)(2)(i)(B)(*1*)(*ix*), and (2) the participant or beneficiary has not failed to exercise independent control with respect to such incidents of ownership by reason of the circumstances described in paragraph

[26] Commentators explained that the issuer of a fixed rate investment contract would view the described alternatives as competing vehicles, and that the availability of such a vehicle in a plan would result in a lowering of the return on the fixed rate investment contract.

(c)(2)). The Department notes, however, that, because the right to tender is fundamental to the ability of a participant or beneficiary to exercise control over his investment in an investment alternative, notwithstanding the fact that the investment was itself the result of an exercise of control within the meaning of paragraph (c) of this section, if an opportunity to exercise the right to tender occurs with respect to the investment and such right is not passed through to the investing participant or beneficiary, the investment will cease to be considered to be held as the result of an exercise of control within the meaning of this section.

Two commentators suggested that a participant or beneficiary should be considered to have made an affirmative instruction where the Summary Plan Description (SPD) discloses the investment alternative which is used when no affirmative instruction is received and where the participant or beneficiary signs an instruction form which notifies him of what will be done with money contributed to the plan if no instruction is received. The Department notes that a participant or beneficiary will not be considered to have given an affirmative instruction merely as a result of being apprised that certain investments will be made on his behalf in the absence of instructions to the contrary. On the other hand, a participant or beneficiary will be considered to have given affirmative instruction where the participant or beneficiary signs an instruction form specifying how assets in his account will be invested if he has exercised independent control in fact within the meaning of paragraph (c) of this section with respect to such signature. In this regard, the Department notes that the form and manner in which investment alternatives are presented to participants and beneficiaries of a plan would be facts taken into consideration in determining whether a participant or beneficiary, in fact, exercised independent control in giving investment instructions.

V. Effect of Independent Exercise of Control

In general. As provided in section 404(c)(1), paragraph (e)(1) of the proposal (paragraph (d)(1) of the final regulation) stated that, if a participant or beneficiary of a 404(c) plan exercises independent control in the manner described in paragraph (d) of the proposal (paragraph (c) of the final regulation), such participant or beneficiary is not a fiduciary by reason of such exercise of control. The two primary effects of this provision are: (1) Because a participant or beneficiary is not a fiduciary, he would not violate the prohibited transaction provisions of Title I of ERISA if he exercises control over assets in his account to engage in a transaction with a party in interest; and (2) other fiduciaries generally would have no co-fiduciary liability under section 405 of the Act with respect to participant and beneficiary investment decisions under ERISA section 404(c) plans.

With regard to other plan fiduciaries, section 404(c) provides that plan fiduciaries are relieved of liability for losses, or with respect to breaches of the requirements of Title I, which "result" from a participant's or beneficiary's exercise of control over individual account assets. Thus, given the transactional nature of the relief provided by section 404(c), it is necessary to determine in any particular case whether alleged losses or violations resulted from participant's or beneficiary's investment decision.

It should be noted that, in following any particular participant's or beneficiary's instruction under a section 404 (c)plan, a fiduciary is relieved of liability only with respect to the consequences to the account of the individual participant or beneficiary whose instruction he is following; that fiduciary is not, however, relieved of any fiduciary obligation he may owe to any other plan participant or beneficiary. The proposal illustrated the scope of the relief provided by section 404(c) by giving an example which stated that, if a participant in an ERISA section 404(c) plan directs the investment of a portion of his individual account in a bank-managed collective trust fund pursuant to an arrangement with the bank manager of the fund under which the manager will loan a portion of the fund's assets to the participant's cousin, who is a service provider to the plan, the fund manager may be relieved of liability with respect to losses sustained by the account of the directing participant by reason of section 404(c), but would not be relieved of liability with respect to any other plans or plan participants that have interests in the collective trust fund. Four commentators asserted that section 404(c) was intended to further limit liability on the part of plan fiduciaries. After careful consideration, the Department has determined not to change the scope of the limitation of liability afforded by the regulation.

The proposal stated that a fiduciary is relieved of responsibility only for the direct and necessary consequences of a participant's exercise of control.[27] Accordingly, if a participant gives investment instruction to a plan fiduciary, and, due to the imprudence of the fiduciary in carrying out the instructions, the participant suffers a loss, then the fiduciary is liable for such loss because it resulted from a breach of his duties as a fiduciary rather than from the participant's exercise of control.

Similarly, the preamble to the proposal stated that if a participant gives investment instructions that may be carried out in more than one way, and the fiduciary chooses a method of carrying out the instructions that results in a breach of his obligations as a fiduciary, then he is liable for any resulting losses because such losses would not be a necessary consequence of the participant's exercise of control. Thus, if a participant directs a fiduciary to acquire certain securities, but does not specify the manner in which the acquisition is to be effected, and the fiduciary causes a party in interest to execute the transaction, the fiduciary would be liable with respect to the resulting prohibited transaction (unless an exemption is otherwise available) notwithstanding the participant's exercise of control. Example 7 in paragraph (f) of the final regulation contains a similar illustration.

Paragraph (e)(2)(iii) of the (proposal (d)(2)(iii) of the final regulation) also specifically stated that the individual investment decisions of an investment manager are not direct and necessary results of the participant's designation of the investment manager or of investment in a pooled investment fund managed by the investment manager. However, the proposal also provided that this rule should not be construed to

[27] In this regard, the Department points out that the act of limiting or designating investment options which are intended to constitute all or part of the investment universe of an ERISA 404(c) plan is a fiduciary function which, whether achieved through fiduciary designation or express plan language, is not a direct or necessary result of any participant direction of such plan. Thus, for example, in the case of look-through investment vehicles, the plan fiduciary has a fiduciary obligation to prudently select such vehicles, as well as a residual fiduciary obligation to periodically evaluate the performance of such vehicles to determine, based on that evaluation, whether the vehicles should continue to be available as participant investment options. Similar fiduciary obligations would exist in the case of an investment universe consisting of investment alternatives which are not look-through investment vehicles but which are specifically designated by plan fiduciaries. In those situations where the ERISA section 404(c) plan by its own provisions limits the investment universe by designating specific investment alternatives which are not look-through investment vehicles, the plan fiduciary must comply with the requirements of ERISA section 404(a)(1)(D

impose co-fiduciary liability on a fiduciary who would otherwise be relieved of liability under section 404(c). Thus, if a participant chooses an investment manager who imprudently invests plan assets, the investment manager will not be relieved of liability because his imprudence is not a direct and necessary result of the participant's exercise of control. However, other plan fiduciaries would be relieved of liability under section 405, even if, for example, they had knowledge of the investment manager's imprudence decisions. The preamble to the proposal explained that a fiduciary that designates an investment manager or pooled fund would, however, be required to take any known imprudence of the manager into account in determining whether to continue the designation of the manager.[28] This paragraph has been retained in the final regulation, and examples 8, 9, 10 and 11 in paragraph (f) of the final regulation illustrate these statements.

Comments

A number of commentators raised questions about liability on the part of both fiduciaries and participants and beneficiaries in 404(c) plans. One commentator asked for clarification that section 405 of ERISA remains applicable to determinations of fiduciary liability in a 404(c) plan. Where a fiduciary is not relieved of co-fiduciary liability by reason of section 404(c)(2), section 405 remains applicable. See examples 7 and 8 in paragraph (f) of the final regulation.

A question was asked about the possible results where a plan permits a fiduciary to decline to implement certain described instructions, but the fiduciary implements one of the described instructions. Under these circumstances, the plan fiduciary has discretion with respect to whether to implement the instruction, and would be responsible for exercising such discretion in a prudent manner (see ERISA section 404(a)(1)(B)). If the fiduciary exercises his discretion in a prudent manner, he would be relieved of responsibility for the results of such decision under paragraph (d)(2) of the final regulation.[29] Under paragraph (d)(1) of the final regulation, the directing participant or beneficiary would continue to be relieved of liability under section 404(c) whether or not the plan fiduciary acts prudently with respect to such instructions.

1. Limitation on Liability of Plan Fiduciaries

Paragraph (e)(2)(ii) of the 1991 proposal (redesignated paragraph (d)(2)(ii) of the final regulation) contained four exceptions to the general rule regarding the relief provided to a fiduciary. Under these exceptions, a plan fiduciary would not be relieved of liability with respect to a participant's instructions which: (a) Would not be in accordance with the documents and instruments governing the plan; (b) would cause a fiduciary to maintain the indicia of ownership of any assests of the plan outside of the jurisdiction of the district courts of United States (other than as permitted by section 404(b) of the Act); (c) would jeopardize the plan's tax qualified status under the Code; or (d) would result in a direct or indirect: (1) sale, exchange, or lease of property between a plan sponsor or any affiliate of the sponsor and the plan except for the purchase or sale of any qualifying employer security which meets the conditions of section 408(e) of ERISA and paragraph (e)(2)(ii)(D)(4) of the proposal (redesignated paragraph (d)(2)(ii)(E)(e) of the final regulation), (2) loan to a plan sponsor or any affiliate of the sponsor, (3) acquisition or sale of any employer real property, or (4) acquisition or sale of any employer security, whether or not the transaction involved the employer, unless it meets the conditions of paragraph (e)(2)(ii)(D)(*4*) of the regulation (paragraph (d)(2)(ii)(E)(*4*) of the final regulation).

The final regulation adds two provisions to paragraph (d)(2)(ii) to clarify the intent of the proposed regulation. First, as discussed earlier, instructions which could result in a loss in excess of a participant's or beneficiary's account balance have been moved from paragraph (b)(2)(ii)(B) to clarify that a plan fiduciary would not be relieved of any liability resulting from implementing such instructions. Second, in response to a request for clarification concerning the effect of implementing an instruction to purchase an interest in a plan sponsor-managed arrangement, often called in "in-house fund", subparagraph (E)(*1*) of paragraph (d)(2)(ii) has been modified to make clear that the relief provided by paragraph (d)(2)(i) of the regulation would not be unavailable to a plan fiduciary for implementing an instruction to purchase or sell any interest in a fund, subfund or portfolio managed by a plan sponsor or an affiliate of the sponsor merely because such an instruction may result in a direct or indirect sale or exchange of property between a plan sponsor or an affiliate of the sponsor and the plan. However, the Department notes that the relief provided by paragraph (d)(2)(i) of the regulation is inapplicable to any section 406 violation which may occur based on a fiduciary's designation of an affiliated entity as an available investment alternative under the plan.

Paragraph (e)(2)(ii) of the proposal (paragraph (d)(2)(ii) of the final regulation) made the exceptions listed therein applicable only to plan fiduciaries. Thus, the effect of paragraphs (1) and (2) of paragraph (e) of the proposal was to provide that plan participants and beneficiaries who exercise independent control to instruct a fiduciary of an ERISA section 404(c) plan to engage in a transaction described in paragraph (e)(2)(ii) were, nonetheless, not fiduciaries by reason of such exercise of control. One commentator inquired whether the distinction between plan fiduciaries and participants and beneficiaries was intended. The distinction was intended. No changes have been made to these provisions in the final regulation.

The Department received a number of comments relating to participant loans and employer securities. Each of these is discussed below.

A. Participant Loans

As noted above, paragraph (e)(2)(ii)(D)(*2*) of the 1991 proposal provided that the relief from fiduciary liability provided under ERISA section 404(c) does not extend to transactions in which assets of a participant's account are loaned to the plan sponsor or any affiliate of the plan sponsor. Paragraph (f)(4) of the proposal defined an "affiliate" of a person as including an employee of that person. Therefore, no relief from fiduciary liability was available under the 1991 proposal for loans of a participant's account assets to the participant. A number of commentators argued that 404(c) relief should be available for participant loans

[28] This provision, dealing with the individual investment decisions of an investment manager relates only to the scope of the relief provided by section 404(c)(2), and is not intended to create fiduciary duties which would not otherwise exist. Thus, even though the individual decisions of the investment manager of an investment company registered under the Investment Company Act of 1940 would not be considered to "result" from a participant's decision to invest in the investment company, the manager would have no liability under ERISA for any losses experienced by the mutual fund because mutual fund assets are not plan assets and, therefore, mutual fund investment advisers are excluded from the statutory definition of "fiduciary" in ERISA (see sections 3(21)(B) and 401(b)(1) of ERISA).

[29] Of course, if the instruction is one which is listed in paragraph (d)(2)(ii) of the final regulation, the limitation on fiduciary liability provided by section 404(c) contained in paragraph (d)(2)(i) of the regulation would be unavailable to the plan fiduciary pursuant to the provisions of that paragraph.

which comply with the terms of ERISA section 408(b)(1), the statutory exemption for such loans. Several of the commentators indicated that the effect of giving 404(c) relief for such loans would be to obviate the need for a prudence determination as to the availability of these loans.

Compliance with the conditions of section 408(b)(1) requires, among other things, that loans bear a reasonable rate of interest and are adequately secured. These and the other conditions of the statutory exemption require a plan to make determinations which are similar to prudence determinations. Therefore, including a provision in the final regulation which would extend section 404(c) relief to participant loans would potentially undermine compliance with the conditions of the statutory exemption. Accordingly, the Department has decided not to extend relief under section 404(c) to such loans. The terms of paragraph (e)(2)(ii)(D)(*2*) of the proposal have been adopted in paragraph (d)(2)(ii)(E)(*2*) of the final regulation, without change.

B. Employer Securities

Paragraph (e)(2)(ii)(D)(*4*) of the 1991 proposal stated that the relief from the fiduciary responsibility provisions provided by section 404(c) of ERISA would extend to any participant instruction which, if implemented, would result in the acquisition or sale of any employer security unless certain conditions were met. The condition which elicited the most comments was the requirement that activities relating to the purchase, sale, and exercise of voting and similar rights with respect to such securities must be the responsibility of an independent fiduciary who carries out such activities on a confidential basis. The proposal provided that, for this purpose, a fiduciary is not independent if the fiduciary is affiliated with any sponsor of the plan.

The Independent Fiduciary and Confidentiality Requirements

A significant number of commentators argued that the independent fiduciary and confidentiality requirements of the proposal are unnecessary. Some of the commentators argue that the general rule in paragraph (d)(2)(i) of the proposed regulation (paragraph (c)(2)(i) of the final regulation), which states that no relief is available under section 404(c) where a participant or beneficiary is subjected to improper influence by a plan fiduciary or the plan sponsor, provides sufficient protection. Other commentators argued that the fact that the burden of proving compliance with section 404(c) is on the person asserting applicability of the section, when combined with all of the provisions of paragraph (d)(2), offered sufficient protection to participants and beneficiaries.

A number of commentators stated that the independent fiduciary and confidentiality requirements should be limited to particular situations where the potential for undue influence is greatest, such as tender offers, exchange offers and contested board elections. Others stated that the requirements may be justified for all voting decisions.

Many commentators argued that, in most or all situations, the regulation should permit internal administration of employer securities transactions as long as adequate safeguards with respect to confidentiality and insulation from improper influence are provided, with the burden of proving that confidentiality had been maintained being placed on the plan sponsor. In this regard, they stated that plan sponsors that had invested significant resources in establishing in-house plan administration should not be forced to choose between restructuring their plan administration and relief under section 404(c) for investments in employer securities.

The discussion in the Conference Room on section 404(c) expresses concern regarding participant-directed investments which may inure to the benefit of a plan sponsor and indicates that Congress expected that regulations under section 404(c) would impose stringent standards with respect to such investments.[30]

In this regard, the Department notes that it received over 32 written comments on the independent fiduciary and confidentiality requirements of the proposal, in addition to testimony at the public hearing. With the exception of one comment from a service provider who offers employer securities administrative services, there were no comments or testimony in support of the proposal's requirement for an independent fiduciary to handle all activities relating to the purchase, sale, and voting of employer securities. Virtually all of the comments on this aspect of the regulation expressed strong objection to the proposal's requirement for an independent fiduciary. These commentators argued that the final regulation should permit in-house administration of employer securities. The majority of these commentators indicated that internal safeguards can be established to ensure that participant investment information relating to employer securities is maintained on a confidential basis and that such safeguards should be required. The majority of commentators also recognized that there may be instances when the engagement of an independent fiduciary may be appropriate, but not with respect to every transaction involving employer securities. There were no comments which suggested that the establishment of internal plan procedures would be inadequate to ensure the confidentiality of participant-directed investments in employer securities.

On the basis of these comments, the Department has determined to modify the conditions under which 404(c) coverage would be extended to participant-directed investments in employer securities. In this regard, the final regulation eliminates the requirement that an independent fiduciary must be responsible for activities relating to the purchase, sale and exercise of rights with respect to employer securities except in situations which involve a potential for undue employer influence. This condition has been replaced by a requirement that an ERISA section 404(c) plan have in place procedures designed to safeguard the confidentiality of information relating to the purchase, sale and holding and exercise of voting and similar rights with respect to such securities. Further, an ERISA section 404(c) plan must designate a plan fiduciary to monitor plan compliance with these procedures. These requirements are contained in paragraphs (d)(2)(ii)(E)(*4*)(*vii*)–(*ix*) of the final regulation. It should be noted that the confidentiality requirements of the final regulation are not limited to only purchases and sales of employer securities, but also apply to the holding of such securities by participants and beneficiaries.

In addition to requiring that a designated plan fiduciary be responsible for monitoring compliance with the confidentiality procedures, paragraph (d)(2)(ii)(E)(*4*)(*ix*) of the final regulation requires that an independent fiduciary

[30] The relevant passage of the Conference Report states:

"The conferees expect that the (section 404(c)) regulations will provide for stringent standards with respect to determining whether there is an independent exercise of control where the investments may inure to the direct or indirect benefit of the plan sponsor since in this case participants might be subject to pressure with respect to investment decisions. (Because of the difficulty of ensuring that there is independence of choice in an employer established individual retirement account, it is expected that the regulations will generally provide that sufficient individual control will not exist with respect to the acquisition of employer securities by participants and beneficiaries under this type of plan)."

Conference Report at 305.

be appointed to carry out activities relating to any situations which the designated plan fiduciary (i.e., the fiduciary responsible for monitoring the confidentiality procedures) determines have a potential for undue employer influence upon participants and beneficiaries. The Department agrees with the commentators who indicated that situations where the potential for undue employer influence may exist include tender offers, exchange offers and contested board elections.

The Department believes that the aforementioned requirements for procedures to ensure confidentiality, for the designation of a plan fiduciary, who is responsible for monitoring compliance with such procedures, and for the appointment of an independent fiduciary when the designated plan fiduciary determines a potential for undue employer influence exists, when combined with the disclosure requirement of paragraph (b)(2)(i)(B)(*1*)(*viii*), the other requirements in paragraph (d)(2) of the final regulation, and the general rule in paragraph (c) of the final regulation that the relief provided by section 404(c) is available only where a participant or beneficiary has exercised independent control in fact with respect to the investment of assets in his individual account, significantly limit the potential for undue influence by the employer. For purposes of subparagraph (*ix*), a fiduciary is not independent if the fiduciary is affiliated with any sponsor of the plan. The term "affiliate" is defined in paragraph (e)(3) of the final regulation.

One commentator inquired whether a bank which serves as the transfer agent for a plan sponsor's stock could be an independent fiduciary. In general, any party, including the transfer agent for a plan sponsor's stock, which is not an "affiliate" of the plan sponsor, as defined in paragraph (e)(3), may be an independent fiduciary for purposes of paragraph (d)(2)(ii)(*4*)(*ix*). However, whether any non-affiliated party is capable of discharging his duties as an independent fiduciary solely in the interest of the plan's participants and beneficiaries and independently of the plan sponsor is a factual determination which must be made on a case by case basis by the designated plan fiduciary responsible for appointing the independent fiduciary. Lastly, it should be noted that the appointment of an independent fiduciary is itself a fiduciary act governed by the provisions of sections 403 and 404 of ERISA.

Publicly Traded Securities

The requirements in paragraphs (e)(2)(ii)(D)(*4*) (*iii*) and (*iv*) of the proposal that employer securities be publicly traded on a national exchange or other generally recognized market with sufficient frequency and in sufficient volume to assure prompt execution of buy and sell orders were proposed to ensure that participants can dispose of such securities in a public market which is not subject to the influence of the employer. These conditions, which have been retained in the final regulation in paragraphs (d)(2)(ii)(E)(*4*) (*iii*) and (*iv*), also limit the potential for overreaching by ensuring that participants have ready access to price quotations for the securities, as well as the ability to direct trades which will be promptly executed.

The requirement in paragraph (e)(2)(ii)(D)(*4*)(*iv*) of the proposed regulation that employer securities for which 404(c) relief is available must be traded with sufficient frequency and in sufficient volume to assure that participant directions to buy or sell the security may be acted upon promptly and efficiently concerned a number of commentators. They urged the Department to permit plan fiduciaries to exercise discretion, while retaining 404(c) relief, in timing the execution of participant instructions to buy and sell employer securities in order to minimize the impact on the market for the employer's securities. In this regard, the Department notes that the relief provided by section 404(c) is transactional in nature and applies only to the direct and necessary consequences of a participant's exercise of control. Therefore, a fiduciary who exercises discretion as to the timing of the execution of transactions in employer securities would be responsible under Part 4 of Title I of ERISA for the exercise of discretion in timing of the purchase or sale.

Shareholder Information

One commentator asked for clarification of the scope of the requirement in subparagraph (*v*) of the proposed regulation that information provided to shareholders of employer securities be provided to participants and beneficiaries with accounts holding such securities. Subparagraph (*v*), which is retained in the final regulation, requires that participants and beneficiaries receive all information provided to non-plan shareholders of employer securities.

Pass-Through of Voting and Similar Rights

Two commentators requested either clarification or elimination of the requirement in subparagraph (*vi*) of the proposal that voting and similar rights with respect to employer securities be passed through to participants and beneficiaries with accounts holding such securities. With regard to this requirement, the Department notes that the word "tender" has been added to subparagraph (*vi*) in the final regulation in order to clarify that tender rights with respect to employer securities must also be passed through. Similarly, the word "tender" has also been added to subparagraph (*vii*) of paragraph (d)(2)(ii)(E)(*4*) of the final regulation to indicate that information relating to the exercise of tender rights with respect to employer securities must be maintained in accordance with procedures designed to safeguard the confidentiality of such information.

Subparagraph (*vi*) of the final regulation requires that all proxies be passed through to participants and beneficiaries. Further, if both information and voting, tender and similar rights are not passed through, no relief under this regulation would be available with respect to any transaction involving employer securities, including the acquisition, holding and sale of such securities. However, the Department notes that paragraph (c)(1)(ii) of the regulation provides that a participant or beneficiary will be deemed to have exercised control with respect to the incidents of ownership of an interest in any investment alternative held in his account as a result of the independent exercise of control if he has a reasonable opportunity to give instruction with respect to such incidents of ownership, and the participant or beneficiary has not failed to exercise control by reason of the circumstances described in paragraph (c)(2). Thus, where participants and beneficiaries have the opportunity to vote securities and the trustee of an ERISA section 404(c) plan has not received direction, the trustee generally has no obligation to vote securities which are held in the accounts of participants and beneficiaries as a result of the independent exercise of control.[31]

[31] As stated above, paragraph (c)(1)(ii) of the final regulation requires that the participant or beneficiary not file to exercise control with respect to incidents of ownership by reason of the circumstances described in paragraph (c)(2). Thus, for example, a participant or beneficiary will not be deemed to have exercised control with regard to a

Continued

If the trustee does exercise voting rights in such cases, it would be responsible under Part 4 of Title I of ERISA for the exercise of such discretion.

Confidentiality Requirement

A number of commentators perceived a conflict between the confidentiality requirement and the reporting requirement under section 16 of the Securities Exchange Act of 1934 (the '34 Act). Under section 16 of the '34 Act, officers, directors and ten percent beneficial owners of a company's class of equity securities registered under the '34 Act ("insiders") are required to file reports with the SEC concerning their ownership of and transactions in any class of equity securities of the company. Insiders are required to file copies of these reports with the issuer (typically the plan sponsor), and the issuer is required to monitor these filings and disclose in Form 10–K reports, Form N–SAR reports and proxy and information statements any violations of reporting requirements. Commentators urged the Department to either specifically exclude purchases and sales by persons covered by section 16 from the confidentiality requirement or clarify that compliance with the securities laws does not cause plan fiduciaries to lose 404(c) relief. The Department agrees that the confidentiality requirement would, if implemented, present the potential for the conflict described by the commentators. Accordingly, the final regulation contains an exception to the confidentiality requirement contained in subparagraph (*vii*) of paragraph (d)(2)(ii)(E)(*4*) which permits disclosure as necessary to comply with other Federal laws or state laws not preempted by the Act.

Employer Stock Funds

Several commentators requested clarification regarding the treatment under the regulation of employer stock funds, in which participants and beneficiaries receive units of interest. They stated that these funds are widely used, and were concerned that the regulation might be read to provide relief only where identified securities are allocated to the accounts of participants and beneficiaries. The final regulation does not preclude the use of such funds. However, the requirements of the regulation, including all of the requirements of paragraph (d)(2)(ii)(E)(*4*), remain applicable to transactions in units of interest in an employer stock fund. Therefore, the underlying securities in the fund must be traded with sufficient frequency and in sufficient volume to assure that participant and beneficiary instructions to buy or redeem units in the fund may be acted upon promptly and efficiently. Further, information provided to non-plan shareholders of employer securities, as well as voting, tender and similar rights with respect to the securities in the fund, must be passed through to participants and beneficiaries invested in the fund. Also, the fund must permit participants and beneficiaries to give investment instructions with a frequency appropriate to the anticipated volatility of the underlying securities.

Qualifying Employer Securities

A number of commentators asked that the regulation permit other types of qualifying employer securities to qualify under paragraph (e)(2)(ii)(D)(*4*) of the proposal (paragraph (d)(2)(ii)(E)(*4*) of the final regulation) for section 404(c) relief. One commentator asserted that convertible securities which have the same dividend and liquidation rights as publicly traded stock should be permitted. Another stated that non-publicly traded securities that are subject to put options should be included. Two stated that publicly traded partnership interests which are qualifying employer securities within the meaning of section 407(d)(5) should be permitted. Finally, one argued that 404(c) relief should be available for all qualifying employer securities.

The Department believes that, for purposes of 404(c) relief, important protections are provided by the requirements relating to employer securities that such securities must be qualifying employer securities which are stock which is publicly traded with sufficient frequency and in sufficient volume to assure that participant and beneficiary instructions to buy or sell the securities may be acted upon promptly and efficiently. The commentators have not suggested alternate mechanisms which would offer similar protections.

Therefore, the final regulation retains these conditions (with one modification) in paragraphs (d)(2)(ii)(E)(*4*) (*i*), (*ii*), (*iii*), and (*iv*) (paragraphs (e)(2)(D)(4) (*i*), (*ii*), (*iii*), and (*iv*) of the proposal). However, because section 407(d)(5) of ERISA defines the term "qualifying employer security" to include certain publicly traded partnership interests, and because such securities are publicly traded, the Department has amended paragraph (d)(2)(ii)(E)(*4*)(*ii*) to include such publicly traded partnership interests which are equity interests. All of the requirements of paragraph (d)(2)(ii)(E)(*4*) are applicable to such partnership interests. For example, such partnership interests must be traded with sufficient frequency and in sufficient volume to assure that participant and beneficiary directions to buy or sell the interests may be acted upon promptly and efficiently.

Effect of Failure to Comply

A number of commentators asked for clarification that a plan which fails to comply with the requirements of paragraph (d)(2)(ii)(E)(*4*) loses section 404(c) protection only for transactions in employer securities. A plan which otherwise qualifies as an ERISA section 404(c) plan would not cease to be an ERISA section 404(c) plan merely because a particular non-core investment alternative offered under the plan (e.g., an employer security investment alternative) fails to meet the requirements for section 404(c) relief. Accordingly, to the extent that an employer security investment alternative fails to comply with the requirements of paragraph (d)(2)(ii)(E)(*4*), the fiduciaries of a plan which otherwise meets the requirements of section 404(c) would lose section 404(c) protection and would be responsible as fiduciaries only with respect to transactions involving the employer security investment alternative. Relief under section 404(c) for other investment alternatives would not be affected.

2. Tax on Prohibited Transactions

Paragraph (e)(3) of the proposal explained that the relief provided by section 404(c) of ERISA applies only to the provisions of part 4 of Title I of ERISA. There is no provision in the Internal Revenue Code corresponding to section 404(c) of Title I. Thus, there is no statutory exemption from the excise taxes imposed by the Code on prohibited transactions involving an ERISA section 404(c) plan. Moreover, the authority to grant administrative exemptions for section 404(c) transactions remains with the Treasury Department pursuant to the Reorganization Plan No. 4 of 1978. Thus, nothing in section 404(c) or the regulation would relieve a disqualified person from the taxes imposed with respect to prohibited transactions by section 4975 of the Internal Revenue Code even though the transaction was a direct and necessary result of a participant's instructions. Two commentators expressed the opinion

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proxy where he is subjected to improper influence by a plan fiduciary or the plan sponsor with respect to the proxy. See paragraph (c)(2)(ii). The trustee may have an obligation to vote in this situation.

that disqualified persons should be relieved of those taxes.

Section 404(c) of ERISA expressly states that where a plan participant exercises control over his account assets in the manner contemplated by that section, no fiduciary with respect to that plan will be liable "under this part," i.e., under Part 4 of Title I of ERISA. No similar relief is granted with respect to any other provision of law, including the Internal Revenue Code. Moreover, as explained in the preamble to the proposal, the Department has no authority to provide exemptive relief for a disqualified person's liability for the excise taxes imposed by section 4975 of the Code with respect to a transaction that results from a participant's exercise of control. The Internal Revenue Service (the Service) has, however, informed the Department that interested parties who wish the Service to consider exemptive relief for participant-directed transactions with respect to which section 404(c) relief would be available under this final regulation, but which may nevertheless result in a prohibited transaction under section 4975 of the Code, should file an exemption request with the Service in accordance with Rev. Proc. 75–26, 1975–2 C.B. 722.

For the foregoing reasons, the provisions of paragraph (e)(3) of the proposal have been retained without modification as paragraph (d)(3) of the final regulation.

VI. Reporting and Disclosure

As with the proposal, the final regulation does not address the reporting and disclosure provisions of ERISA with respect to their applicability to ERISA section 404(c) plans. The Department invited comments in the proposal discussing the application of the existing reporting and disclosure requirements of ERISA to such plans and whether it would be appropriate for the Department to develop an alternative method of compliance under section 110 of ERISA for ERISA section 404(c) plans. No comments were received regarding this issue. Therefore, the final regulation does not address the reporting and disclosure provisions of ERISA.

VII. Effective Date

The 1991 proposal provided that the regulation would have been effective with respect to transactions occurring 180 days after the date of publication of a final regulation. Many commentators expressed the view that the proposed effective date did not provide adequate time for modifying existing self-directed plans to conform with the regulation. Several commentators suggested a special effective date for collectively bargained plans. Other commentators suggested special effective dates or other provisions to accommodate plans with insurance company or bank fixed rate investment contracts entered into prior to the effective date of the regulation and which do not expire until a date subsequent to the effective date of the regulation.

In order to provide existing participant directed plans more time to accommodate the provisions of the final regulation, the Department has extended the effective date of the final regulation. In this regard, the final regulation will generally be effective with respect to transactions occurring on or after the first day of the second plan year beginning after the date of publication of the final regulation. Further, in response to comments, the regulation provides for a special effective date for collectively bargained plans. For these plans, the regulation is effective for transactions occurring after the later of the date determined under the general rule or the date on which the last collective bargaining agreement terminates, determined without regard to any extension or renegotiation of such agreement which is ratified on or after October 13, 1992. The Department believes that the extended effective dates will serve to accommodate many of the problems identified by the commentators. Moreover, the Department believes that, given the significant modifications contained in the final regulation, sponsors and fiduciaries will be able to conform to the requirements of the regulation in a shorter period of time than that which may have been required under the 1991 proposal. Finally, the regulation provides that transactions occurring before the applicable effective date of the final regulation will be governed by section 404(c) of the Act without regard to the regulation.

VIII. Regulatory Impact of the Regulation

In the preamble to the 1991 proposal, the Department expressed the view that, as a result of the plan design flexibility afforded by the regulation, adoption of the proposal as a final regulation would have little, if any, impact, economic or otherwise, on the establishment and maintenance of participant directed individual account plans. In order to fully analyze the effect of the proposed regulation, however, the Department invited interested parties to include with their comments information and data on questions relating to the following topics: Investment alternatives; frequency of investment direction, investments selected by participants; and administrative costs. The following discussion summarizes the questions posed by the Department and information received by the Department which addressed those questions.

In general, information received by the Department in response to these questions supports the Department's view that adoption of the proposed regulation would have little, if any, adverse impact on the establishment and maintenance of participant directed individual account plans. The Department believes, moreover, that to the extent that the regulation does have any impact, it will encourage the establishment and maintenance of participant-directed individual account plans by clarifying, through the establishment of general principles, the circumstances under which relief is afforded by section 404(c) of ERISA, while at the same providing plan sponsors with the plan design flexibility necessary to accommodate changes in the needs of plan participants and beneficiaries and changes in investment vehicles and markets.

1. *Investment alternatives.* The Department asked several questions relating to the number and types of investment alternatives offered in participant-directed plans, the number of plans offering competing interest-sensitive investment alternatives (such as a fixed rate investment contract issued by an insurance company or a bank—a "GIC" or "BIC"—and a money market fund) and any conditions imposed with respect to transfers between such alternatives. The Department also asked about the effects that the proposed regulation might have on participants, investment alternatives and rates of return thereon, various industries, and the economy as a whole.

Information received by the Department indicated that the vast majority of participant-directed plans offer specific combinations of investment alternatives, and that most currently offer at least three investment alternatives. According to information provided in the form of both surveys and comments, the most frequently offered investment alternatives were "GICs", diversified equity funds, employer stock funds, money market mutual funds, balanced funds, and bond funds.

Commentators indicated that competing interest-sensitive investment alternatives (e.g., fixed rate investment contracts issued by banks, savings and loans or insurance companies and money market funds) were not uncommon. Where such competing investments were offered, comments

indicated that the majority of such plans did not permit direct transfers between the competing investment alternatives, but did allow indirect transfers provided that assets were first transferred into a third fund (often an equity fund) for some period of time, usually three to six months. Some commentators indicated that, if frequent opportunities for direct transfers between competing interest-sensitive investments were to be necessary for compliance with section 404(c), rates of return on fixed rate investment contracts would be reduced. In this regard, the Department notes that the final regulation's three-month minimum transfer opportunity requirement applies only to the three core investment alternatives, and not to additional investment alternatives that may be offered by a plan. Thus, this problem is avoided if only one of the competing interest-sensitive investments is used as one of the three core alternatives. Furthermore, the preamble explains that an equity fund to which assets are required to be transferred (from a non-core interest-sensitive investment alternative) which permits transfers at least once within any three month period could itself serve as a core alternative if it meets the other requirements of the regulation.

According to the information received, the types of investment alternatives generally offered did not seem to be affected significantly by plan size, although larger plans were somewhat more likely to offer more investment alternatives. Some commentators indicated that they would have to add investment alternatives in order to comply with the proposed regulation. A few commentators indicated that adding additional investment alternatives would be costly to the plan and not important to participants. Although one commentator felt that the regulation might have a deleterious effect on the insurance industry, this did not appear to be the view of most insurance industry commentators. Another commentator stated that extra paperwork and administrative costs will be inefficient for the economy. While a few commentators suggested that the regulation would cause some plans to terminate and therefore have an adverse effect on coverage, those comments appeared to be based in large part upon a misunderstanding of section 404(c) of ERISA, which is not mandatory.

2. *Frequency of transfer opportunities.* The Department requested information with regard to how often participants are permitted to transfer between investment alternatives and how often they make transfers; what restrictions exist with regard to transfers; and the incremental costs of increasing transfer opportunities from two to three times a year and from three times a year to quarterly. The Department also asked who bears transfer costs, and what factors affect the types of restrictions that are placed on transfers.

Responses indicated that a majority of participant-directed individual account plans permit quarterly or more frequent transfers. According to information received, quarterly or more frequent transfer opportunities were more common in plans with 500 or more participants and plans offering mutual fund investments. One large survey that broke down frequency of transfer opportunities by plan size found that approximately 46 percent of plans with 250 or fewer participants, and also of plans with 250 to 500 participants, offer quarterly or more frequent transfer opportunities. According to this survey, between 53% and 69% of larger plans offered quarterly or more frequent transfers. This information also showed that approximately 80% of the plans that did not permit quarterly or more frequent transfer opportunities allowed transfers on a semiannual basis. Comments consistently indicated that the majority of participants transfer much less often than they are permitted to under the plan.

Comments also indicated that restrictions on transfers vary widely. Commentators stated that most plans having competing interest-sensitive investment alternatives do not allow direct transfers between such interest-sensitive alternatives. Others indicated that they restricted or did not permit transfers out of the employer stock fund or ESOP. Some plans reported that they offered more frequent opportunities to re-allocate new contributions than to transfer amounts already in the plan's investment alternatives. Comments indicated that many plans require changes in specific percentage increments, most often in increments of 5% or 10%. While several commentators stated that their plans required transfers in increments of 25%, information included with another comment indicated that there was a movement among such plans to change to 10% increments. Only one commentator mentioned plans requiring transfer in increments larger than 25%. Some plans reported no transfer restrictions. Other commentators stated that their plans require that any changes be requested in writing a certain number of days before the effective date of a transfer.

The Department received only two comments that specifically addressed a question regarding the incremental costs of increasing the frequency of investment direction opportunities from two to three times a year and from three to four times a year. These two commentators estimated cost increases of 30 and 50 percent for changing frequency of transfer opportunities from two to three times a year, and of 33 and 60 percent, for increasing transfer opportunities from three to four times a year. Most commentators who attempted to answer this question stated that they did not know what additional costs would be incurred.

A number of other commentators commented on the general issues of costs associated with the proposal's requirements regarding frequency of transfer opportunity. While some indicated that they expected no additional costs or that any additional costs would be negligible or not unduly high, others stated that a quarterly or more frequent transfer opportunity requirement would impose significant or high additional costs, primarily due to more frequent valuations, and additional accounting and transfer costs. One of these commentators estimated that moving from annual to quarterly transfer opportunities would increase administrative costs by approximately 200 percent to 250 percent. Others projected increases of varying amounts due to plan amendments and communication materials, transaction fees, and reprogramming of accounting systems. One plan projected savings as a result of changes it was making which were consistent with the proposed regulation.

The extent to which additional administrative costs were expected to be incurred as a result of increasing the frequency of transfer opportunities appeared to vary depending upon the types of investment alternatives offered, the frequency with which they were valued and the size of the plan. The costs of moving to quarterly transfers appeared to be of greatest concern to smaller plans (200 or fewer participants) with investments that are not frequently valued, many of which indicated that they currently permit only semi-annual or annual transfers. Two commentators that provide services to smaller plans indicated that their fees would increase substantially due to increases in the number of investment alternatives to be accounted for, increased frequency of transfer opportunities, and increased administration of transfer activity. Several commentators also expressed concern that additional transfer opportunities would encourage plan participants to attempt to "time" the

market, thereby reducing returns on their investments.

Commentators indicated that, in general, all administrative costs associated with investment transfers (e.g., allocation costs) are borne by the plan sponsor. Operating costs are borne by the funds experiencing those costs (e.g. investment management fees), which in turn are allocated among participants investing in the fund. A few commentators stated that they anticipated that as plan-level administrative costs rise, some of the costs associated with transfers may be shifted from plan sponsors to participants, possibly in the form of transfer fees.

3. *Investments selected by participants.* The Department asked about the value of assets in participant directed individual account plans; the percentage of assets invested in various types of investment alternatives and whether this varied by plan size or other factors; and what effect investment preferences of plan participants had on the investment alternatives offered.

Information about the value of assets in participant directed individual account plans showed that these plans vary widely in asset size. None of the commentators attempted to provide information on what the total value of such assets might be.

Comments on the percentages of assets invested in various types of investment alternatives varied widely but indicated that, in general, over half (approximately 50 to 70 percent) of all plan assets was invested in fixed rate investment contract-type funds. The next largest percentages (approximately 10 to 50 percent) were reported to be in diversified equity funds or employer stock funds, followed by smaller percentages in balanced funds, money market mutual funds, government securities funds and other bond funds. The percentages of assets invested in various alternatives did not appear to vary much by plan size, but did seem to be affected by other factors. For example, commentators noted that some employers offer matching contributions to participants investing in employer stock and/or restrict transfers out of the employer stock funds. Another commentator stated that its 401(k) plan provided fewer investment options for amounts representing "before-tax contributions" than for amounts representing "after-tax contributions". Comments consistently indicated that participants tend to put the largest percentage of their account assets in what they perceive to be the safest investment alternatives.

Comments indicated that the preferences of participants have little, if any, effect on investment alternatives offered by a plan, although some plans reported that they do take such preferences into consideration. Most who responded to this question stated that they generally select a set of investment alternatives that meet employee needs and that give participants distinct choices in terms of risk and return. One commentator noted that plans of law firms and medical partnerships were more likely to reflect participant preferences than plans of other employers, and that participants in these plans tended to be more risk tolerant.

4. *Administrative costs.* Information was requested on what, if any, increases in administrative costs would result from requiring a minimum of three diversified investment alternatives having different risk and return characteristics and to what these costs would be attributable. The Department also asked how plan size would affect these administrative costs, and to what extent any increases in administrative costs attributable to plan changes required to accommodate the regulation would outweigh the benefits of limiting fiduciary liability. Finally, the Department asked what cost savings would be attributable to limiting fiduciary liability.

Several commentators indicated that they would have no additional costs as a result of meeting the three diversified investment alternatives requirement, or that any such costs would be nominal. As mentioned earlier, a few commentators stated that adding additional investment alternatives would be costly. Further, several others indicated that plans needing to add investment alternatives to their plans will incur some additional administrative expense in connection with selection of managers, recordkeeping, monitoring the experience of the added alternatives and effecting transfers. One commentator estimated the additional costs associated with the establishment and maintenance of one additional investment alternative to be approximately 15 percent of the plan's administrative costs for a typical plan with three investment alternatives including an employer stock fund.

Commentators indicated that administrative costs for small plans tend to be larger as a percentage of assets than they are for larger plans, because of economies of scale. In general, however, the requirement of a minimum of three diversified investment alternatives with different risk and return characteristics did not, in and of itself, cause a great deal of concern among commentators about costs. Rather, commentators were more concerned by additional administrative costs incurred in connection with complying with the requirements of the proposed regulation regarding frequency of transfer opportunities, as well as its requirements that an independent fiduciary designate "look-through investment vehicles" which are managed in-house, and that an independent fiduciary be retained for plan administration in plans desiring section 404(c) protection for employer stock funds.

In response to the Department's inquiry into whether cost savings would be attributable to limiting the liability of the plan fiduciaries, some commentators stated that any such cost savings are uncertain. Others indicated that there would be no cost effect. The Department also asked to what extent any increases in administrative costs attributable to plan changes required to accommodate the regulation would be outweighed by the benefits attributable to limiting the liability of plan fiduciaries. The Department received a wide variety of responses to this question. Some commentators stated that any increased compliance costs would be more than outweighed by the benefits of the limitation on liability. Others stated that the costs and benefits of the regulation represented a modest trade-off or that the benefits were somewhat outweighed by the additional costs that would be incurred to comply. Many commentators indicated that they did not know whether any increases in costs would be outweighed by the benefits of limiting the liability of plan fiduciaries. A few commentators expressed the view that the regulation does little to limit the liability of plan fiduciaries, and some comentators stated that the costs of compliance with the proposed regulation would not be outweighed by its limitation of the liability of the plan fiduciaries. Other commentators mentioned other benefits of the regulation, such as the ability of plan participants to exercise greater control over their investments.

The Department notes that several modifications have been made in the final regulation to accommodate concerns expressed by commentators about administrative costs. As noted in the discussion of the final regulation elsewhere in this notice, the Department has substantially curtailed or eliminated the requirements that were of most concern to commentators. For example,

the Department eliminated the requirement that an independent fiduciary must be responsible for activities relating to the purchase, sale, and exercise of rights with respect to employer securities, except for situations which a designated plan fiduciary determines involve a potential for undue employer influence, such as tender offers or contested board of directors elections.

Paragraph (e) of the proposal, which contained the requirement that an independent fiduciary designate any designated look-through investment vehicles and investment managers was also eliminated from the final regulation.

Technical Revisions

Pursuant to recent amendments to the rules for publication of the Office of the Federal Register, this final regulation contains an amendment of the authority citation for part 2550 of chapter XXV of title 29 of the Code of Federal Regulations.

Executive Order 12291 Statement

The Department has determined that this final regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action does not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act Statement

The Department has determined that this regulation would not have a significant economic impact on small entities. While small plan sponsors that want to take advantage of the relief provided by this regulation may need to amend their plans in order to meet the requirements necessary to obtain relief under the regulation, no small entity is required to amend its plan under the regulation. Thus, unless a small entity voluntarily decides to modify its plan, this regulation would not impose any increased burden on small entities that sponsor pension plans that conform with ERISA generally. Although it would not be appropriate to provide simplified requirements for small entities under the regulation, it should be noted that in response to public comments the burden associated with plan amendments necessary to obtain relief has been reduced for all plan sponsors regardless of size.

Paperwork Reduction Act Statement

This regulation is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

Statutory Authority

The final regulation set forth herein is issued pursuant to sections 404(c) (Pub. L. 93–406, 88 Stat. 877, 29 U.S.C. 1104) and 505 (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1135) of the Act and under Secretary of Labor's Order No. 1–87.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

In view of the foregoing the Department proposes to amend part 2550 of chapter XXV of title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. By revising the authority citation for part 2550 to read as set forth below and the authority citations following all the sections in part 2550 are removed.

Authority: 29 U.S.C. 1135.

§ 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., 332.

§ 2550.404c–1 also issued under 29 U.S.C. 1104.

§ 2550.407c–3 also issued under 29 U.S.C. 1107.

§ 2550.412–1 also issued under 29 U.S.C. 1112.

§ 2550.414b–1 also issued under 29 U.S.C. 1114. Secretary of Labor's Order No. 1–87.

2. By adding a new § 2550.404c–1 to read as follows:

§ 2550.404c–1 ERISA section 404(c) plans.

(a) *In General.* (1) Section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) provides that if a pension plan that provides for individual accounts permits a participant or beneficiary to exercise control over assets in his account and that participant or beneficiary in fact exercises control over assets in his account, then the participant or beneficiary shall not be deemed to be a fiduciary by reason of his exercise of control and no person who is otherwise a fiduciary shall be liable for any loss, or by reason of any breach, which results from such exercise of control. This section describes the kinds of plans that are "ERISA section 404(c) plans," the circumstances in which a participant or beneficiary is considered to have exercised independent control over the assets in his account as contemplated by section 404(c), and the consequences of a participant's or beneficiary's exercise of control.

(2) The standards set forth in this section are applicable solely for the purpose of determining whether a plan is an ERISA section 404(c) plan and whether a particular transaction engaged in by a participant or beneficiary of such plan is afforded relief by section 404(c). Such standards, therefore, are not intended to be applied in determining whether, or to what extent, a plan which does not meet the requirements for an ERISA section 404(c) plan or a fiduciary with respect to such a plan satisfies the fiduciary responsibility or other provisions of Title I of the Act.

(b) *ERISA section 404(c) plans*—(1) *In general.* An "ERISA section 404(c) Plan" is an individual account plan described in section 3(34) of the Act that:

(i) Provides an opportunity for a participant or beneficiary to exercise control over assets in his individual account (see paragraph (b)(2) of this section); and

(ii) Provides a participant or beneficiary an opportunity to choose, from a broad range of investment alternatives, the manner in which some or all of the assets in his account are invested (see paragraph (b)(3) of this section).

(2) *Opportunity to exercise control.* (i) a plan provides a participant or beneficiary an opportunity to exercise control over assets in his account only if:

(A) Under the terms of the plan, the participant or beneficiary has a reasonable opportunity to give investment instructions (in writing or otherwise, with opportunity to obtain written confirmation of such instructions) to an identified plan fiduciary who is obligated to comply with such instructions except as otherwise provided in paragraph (b)(2)(ii)(B) and (d)(2)(ii) of this section; and

(B) The participant or beneficiary is provided or has the opportunity to obtain sufficient information to make informed decisions with regard to investment alternatives available under

the plan, and incidents of ownership appurtenant to such investments. For purposes of this subparagraph, a participant or beneficiary will not be considered to have sufficient investment information unless—

(*1*) The participant or beneficiary is provided by an identified plan fiduciary (or a person or persons designated by the plan fiduciary to act on his behalf):

(*i*) An explanation that the plan is intended to constitute a plan described in section 404(c) of the Employee Retirement Income Security Act, and title 29 of the Code of Federal Regulations Section 2550.440c–1, and that the fiduciaries of the plan may be relieved of liability for any losses which are the direct and necessary result of investment instructions given by such participant or beneficiary;

(*ii*) A description of the investment alternatives available under the plan and, with respect to each designated investment alternative, a general description of the investment objectives and risk and return characteristics of each such alternative, including information relating to the type and diversification of assets comprising the portfolio of the designed investment alternative;

(*iii*) Identification of any designated investment managers;

(*iv*) An explanation of the circumstances under which participants and beneficiaries may give investment instructions and explanation of any specified limitations on such instructions under the terms of the plan, including any restrictions on transfer to or from a designated investment alternative, and any restrictions on the exercise of voting, tender and similar rights appurtenant to a participant's or beneficiary's investment in an investment alternative;

(*v*) A description of any transaction fees and expenses which affect the participant's or beneficiary's account balance in connection with purchases or sales of interests in investment alternatives (e.g., commissions, sales load, deferred sales charges, redemption or exchange fees);

(*vi*) The name, address, and phone number of the plan fiduciary (and, if applicable, the person or persons designated by the plan fiduciary to act on his behalf) responsible for providing the information described in paragraph (b)(2)(i)(B)(*2*) upon request of a participant or beneficiary and a description of the information described in paragraph (b)(2)(i)(B)(*2*) which may be obtained on request;

(*vii*) In the case of plans which offer an investment alternative which is designed to permit a participant or beneficiary to directly or indirectly acquire or sell any employer security (employer security alternative), a description of the procedures established to provide for the confidentiality of information relating to the purchase, holding and sale of employer securities, and the exercise of voting, tender and similar rights, by participants and beneficiaries, and the name, address and phone number of the plan fiduciary responsible for monitoring compliance with the procedures (see paragraphs (d)(2)(ii)(E)(*4*) (*vii*), (*viii*) and (*ix*) of this section); and

(*viii*) In the case of an investment alternative which is subject to the Securities Act of 1933, and in which the participant or beneficiary has no assets invested, immediately following the participant's or beneficiary's initial investment, a copy of the most recent prospectus provided to the plan. This condition will be deemed satisfied if the participant or beneficiary has been provided with a copy of such most recent prospectus immediately prior to the participant's or beneficiary's initial investment in such alternative;

(*ix*) Subsequent to an investment in a investment alternative, any materials provided to the plan relating to the exercise of voting, tender or similar rights which are incidental to the holding in the account of the participant or beneficiary of an ownership interest in such alternative to the extent that such rights are passed through to participants and beneficiaries under the terms of the plan, as well as a description of or reference to plan provisions relating to the exercise of voting, tender or similar rights.

(*2*) The participants or beneficiary is provided by the identified plan fiduciary (or a person or persons designated by the plan fiduciary to act on his behalf), either directly or upon request, the following information, which shall be based on the latest information available to the plan:

(*i*) A description of the annual operating expenses of each designated investment alternative (e.g., investment management fees, administrative fees, transaction costs) which reduce the rate of return to participants and beneficiaries, and the aggregate amount of such expenses expressed as a percentage of average net assets of the designated investment alternative;

(*ii*) Copies of any prospectuses, financial statements and reports, and of any other materials relating to the investment alternatives available under the plan, to the extent such information is provided to the plan;

(*iii*) A list of the assets comprising the portfolio of each designated investment altenaive which constitute plan assets within the meaning of 29 CFR 2510.3–101, the value of each such asset (or the proportion of the investment alternative which it comprises), and, with respect to each such asset which is a fixed rate investment contract issued by a bank, savings and loan association or insurance company, the name of the issuer of the contract, the term of the contract and the rate of return on the contract;

(*iv*) Information concerning the value of shares or units in designated investment alternatives available to participants and beneficiaries under the plan, as well as the past and current investment performance of such alternatives, determined, net of expenses, on a reasonable and consistent basis; and

(*v*) Information concerning the value of shares or units in designated investment alternatives held in the account of the participant or beneficiary.

(ii) A plan does not fail to provide an opportunity for a participant or beneficiary to exercise control over his individual account merely because it—

(A) *Imposes charges for reasonable expenses.* A plan may charge participants' and beneficiaries' accounts for the reasonable expenses of carrying out investment instructions, provided that procedures are established under the plan to periodically inform such participants and beneficiaries of actual expenses incurred with respect to their respective individual accounts;

(B) *Permits a fiduciary to decline to implement investment instructions by participants and beneficiaries.* A fiduciary may decline to implement participant and beneficiary instructions which are described at paragraph (d)(2)(ii) of this section, as well as instructions specified in the plan, including instructions—

(*1*) Which would result in a prohibited transaction described in ERISA section 406 or section 4975 of the Internal Revenue Code, and

(*2*) Which would generate income that would be taxable to the plan;

(C) *Imposes reasonable restrictions on frequency of investment instructions.* A plan may impose reasonable restrictions on the frequency with which participants and beneficiaries may give investment instructions. In no event, however, is such a restriction reasonable unless, with respect to each investment alternative made available by the plan, it permits participants and beneficiaries to give investment instructions with a frequency which is

appropriate in light of the market volatility to which the investment alternative may reasonably be expected to be subject, provided that—

(*1*) At least three of the investment alternatives made available pursuant to the requirements of paragraph (b)(3)(i)(B) of this section, which constitute a broad range of investment alternatives, Permit participants and beneficiaries to give investment instructions no less frequently than once within any three month period; and

(*2*)(*i*) At least one of the investment alternatives meeting the requirements of paragraph (b)(2)(ii)(C)(*1*) of this section permits participants and beneficiaries to give investment instructions with regard to transfers into the investment alternative as frequently as participants and beneficiaries are permitted to give investment instructions with respect to any investment alternative made available by the plan which permits participants and beneficiaries to give investment instructions more frequently than once within any three month period; or

(*ii*) With respect to each investment alternative which permits participants and beneficiaries to give investment instructions more frequently than once within any three month period, participants and beneficiaries are permitted to direct their investments from such alternative into an income producing, low risk, liquid fund, subfund, or account as frequently as they are permitted to give investment instructions with respect to each such alternative and, with respect to such fund, subfund or account, participants and beneficiaries are permitted to direct investments from the fund, subfund or account to an investment alternative meeting the requirements of paragraph (b)(2)(ii)(C)(*1*) as frequently as they are permitted to give investment instructions with respect to that investment alternative; and

(*3*) With respect to transfers from an investment alternative which is designed to permit a participant or beneficiary to directly or indirectly acquire or sell any employer security (employer security alternative) either:

(*i*) All of the investment alternatives meeting the requirements of paragraph (b)(2)(ii)(C)(*1*) of this section must permit participants and beneficiaries to give investment instructions with regard to transfers into each of the investment alternatives as frequently as participants and beneficiaries are permitted to give investment instructions with respect to the employer security alternative; or

(*ii*) Participants and beneficiaries are permitted to direct their investments from each employer security alternative into an income producing, low risk, liquid fund, subfund, or account as frequently as they are permitted to give investment instructions with respect to such employer security alternative and, with respect to such fund, subfund, or account, participants and beneficiaries are permitted to direct investments from the fund, subfund or account to each investment alternative meeting the requirements of paragraph (b)(2)(ii)(C)(*1*) as frequently as they are permitted to give investment instructions with respect to each such investment alternative.

(iii) Paragraph (c) of this section describes the circumstances under which a participant or beneficiary will be considered to have exercised independent control with respect to a particular transaction.

(3) *Broad range of investment alternatives.* (i) A plan offers a broad range of investment alternatives only if the available investment alternatives are sufficient to provide the participant or beneficiary with a reasonable opportunity to:

(A) Materially affect the potential return on amounts in his individual account with respect to which he is permitted to exercise control and the degree of risk to which such amounts are subject;

(B) Choose from at least three investment alternatives:

(*1*) Each of which is diversified;

(*2*) Each of which has materially different risk and return characteristics;

(*3*) Which in the aggregate enable the participant or beneficiary by choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant or beneficiary; and

(*4*) Each of which when combined with investments in the other alternatives tends to minimize through diversification the overall risk of a participant's or beneficiary's portfolio;

(C) Diversify the investment of that portion of his individual account with respect to which he is permitted to exercise control so as to minimize the risk of large losses, taking into account the nature of the plan and the size of participants' or beneficiaries' accounts. In determining whether a plan provides the participant or beneficiary with a reasonable opportunity to diversify his investments, the nature of the investment alternatives offered by the plan and the size of the portion of the individual's account over which he is permitted to exercise control must be considered. Where such portion of the account of any participant or beneficiary is so limited in size that the opportunity to invest in look-through investment vehicles is the only prudent means to assure an opportunity to achieve appropriate diversification, a plan may satisfy the requirements of this paragraph only by offering look-through investment vehicles.

(ii) *Diversification and look-through investment vehicles.* Where look-through investment vehicles are available as investment alternatives to participants and beneficiaries, the underlying investments of the look-through investment vehicles shall be considered in determining whether the plan satisfies the requirements of subparagraphs (b)(3)(i)(B) and (b)(3)(i)(C).

(c) Exercise of control. (1) *In general.* (i) Sections 404(c)(1) and 404(c)(2) of the Act and paragraphs (a) and (d) of this section apply only with respect to a transaction where a participant or beneficiary has exercised independent control in fact with respect to the investment of assets in his individual account under an ERISA section 404(c) plan.

(ii) For purposes of sections 404(c)(1) and 4040(c)(2) of the Act and paragraphs (a) and (d) of this section, a participant or beneficiary will be deemed to have exercised control with respect to the exercise of voting, tender and similar rights appurtenant to the participant's or beneficiary's ownership interest in an investment alternative, provided that the participant's or beneficiary's investment in the investment alternative was itself the result of an exercise of control, the participant or beneficiary was provided a reasonable opportunity to give instruction with respect to such incidents of ownership, including the provision of the information described in paragraph (b)(2)(i)(B)(*1*)(*ix*) of this section, and the participant or beneficiary has not failed to exercise control by reason of the circumstances described in paragraph (c)(2) with respect to such incidents of ownership.

(2) *Independent control.* Whether a participant or beneficiary has exercised independent control in fact with respect to a transaction depends on the facts and circumstances of the particular case. However, a participant's or beneficiary's exercise of control is not independent in fact if:

(i) The participant or beneficiary is subjected to improper influence by a plan fiduciary or the plan sponsor with respect to the transaction;

(ii) A plan fiduciary has concealed material non-public facts regarding the investment from the participant or beneficiary, unless the disclosure of

such information by the plan fiduciary to the participant or beneficiary would violate any provision of federal law or any provision of state law which is not preempted by the Act; or

(iii) The participant or beneficiary is legally incompetent and the responsible plan fiduciary accepts the instructions of the participant or beneficiary knowing him to be legally incompetent.

(3) *Transactions involving a fiduciary.* In the case of a sale, exchange or leasing of property (other than a transaction described in paragraph (d)(2)(ii)(E) of this section) between an ERISA section 404(c) plan and a plan fiduciary or an affiliate of such a fiduciary, or a loan to a plan fiduciary or an affiliate of such a fiduciary, the participant or beneficiary will not be deemed to have exercised independent control unless the transaction is fair and reasonable to him. For purposes of this paragraph (c)(3), a transaction will be deemed to be fair and reasonable to a participant or beneficiary if he pays no more than, or receives no less than, adequate consideration (as defined in section 3(18) of the Act) in connection with the transaction.

(4) *No obligation to advise.* A fiduciary has no obligation under part 4 of Title I of the Act to provide investment advice to a participant or beneficiary under an ERISA section 404(c) plan.

(d) *Effect of independent exercise of control*—(1) *Participant or beneficiary not a fiduciary.* If a participant or beneficiary of an ERISA section 404(c) plan exercises independent control over assets in his individual account in the manner described in paragraph (c), then such participant or beneficiary is not a fiduciary of the plan by reason of such exercise of control.

(2) *Limitation on liability of plan fiduciaries.* (i) If a participant or beneficiary of an ERISA section 404(c) plan exercises independent control over assets in his individual account in the manner described in paragraph (c), then no other person who is a fiduciary with respect to such plan shall be liable for any loss, or with respect to any breach of part 4 of Title I of the Act, that is the direct and necessary result of that participant's or beneficiary's exercise of control.

(ii) Paragraph (d)(2)(i) does not apply with respect to any instruction, which if implemented—

(A) Would not be in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of Title I of ERISA;

(B) Would cause a fiduciary to maintain the indicia of ownership of any assets of the plan outside the jurisdiction of the district courts of the United States other than as permitted by section 404(b) of the Act and 29 CFR 2550.404b–1;

(C) Would jeopardize the plan's tax qualified status under the Internal Revenue Code;

(D) Could result in a loss in excess of a participant's or beneficiary's account balance; or

(E) Would result in a direct or indirect:

(*1*) Sale, exchange, or lease of property between a plan sponsor or any affiliate of the sponsor and the plan except for the acquisition or disposition of any interest in a fund, subfund or portfolio managed by a plan sponsor or an affiliate of the sponsor, or the purchase or sale of any qualifying employer security (as defined in section 407(d)(5) of the Act) which meets the conditions of section 408(e) of ERISA and section (d)(2)(ii)(E)(*4*) below;

(*2*) Loan to a plan sponsor or any affiliate of the sponsor;

(*3*) Acquisition or sale of any employer real property (as defined in section 407(d)(2) of the Act); or

(*4*) Acquisition or sale of any employer security except to the extent that:

(*i*) Such securities are qualifying employer securities (as defined in section 407(d)(5) of the Act);

(*ii*) Such securities are stock or an equity interest in a publicly traded partnership (as defined in section 7704(b) of the Internal Revenue Code of 1986), but only if such partnership is an existing partnership as defined in section 10211(c)(2)(A) of the Revenue Act of 1987 (Public Law 100–203);

(*iii*) Such securities are publicly traded on a national exchange or other generally recognized market;

(*iv*) Such securities are traded with sufficient frequency and in sufficient volume to assure that participant and beneficiary directions to buy or sell the security may be acted upon promptly and efficiently;

(*v*) Information provided to shareholders of such securities is provided to participants and beneficiaries with accounts holding such securities;

(*vi*) Voting, tender and similar rights with respect to such securities are passed through to participants and beneficiaries with accounts holding such securities;

(*vii*) Information relating to the purchase, holding, and sale of securities, and the exercise of voting, tender and similar rights with respect to such securities by participants and beneficiaries, is maintained in accordance with procedures which are designed to safeguard the confidentiality of such information, except to the extent necessary to comply with Federal laws or state laws not preempted by the Act;

(*viii*) The plan designates a fiduciary who is responsible for ensuring that: The procedures required under subparagraph (d)(2)(ii)(E)(*4*) (*vii*) are sufficient to safeguard the confidentiality of the information described in that subparagraph, such procedures are being followed, and the independent fiduciary required by subparagraph (d)(2)(ii)(E)(*4*)(*ix*) is appointed; and

(*ix*) An independent fiduciary is appointed to carry out activities relating to any situations which the fiduciary designated by the plan for purposes of subparagraph (d)(2)(ii)(E)(*4*)(*viii*) determines involve a potential for undue employer influence upon participants and beneficiaries with regard to the direct or indirect exercise of shareholder rights. For purposes of this subparagraph, a fiduciary is not independent if the fiduciary is affiliated with any sponsor of the plan.

(iii) The individual investment decisions of an investment manager who is designated directly by a participant or beneficiary or who manages a look-through investment vehicle in which a participant or beneficiary has invested are not direct and necessary results of the designation of the investment manager or of investment in the look-through investment vehicle. However, this paragraph (d)(2)(iii) shall not be construed to result in liability under section 405 of ERISA with respect to a fiduciary (other than the investment manager) who would otherwise be relieved of liability by reason of section 404(c)(2) of the Act and paragraph (d) of this section.

(3) *Prohibited Transactions.* The relief provided by section 404(c) of the Act and this section applies only to the provisions of part 4 of title I of the Act. Therefore, nothing in this section relieves a disqualified person from the taxes imposed by sections 4975 (a) and (b) of the Internal Revenue Code with respect to the transactions prohibited by section 4975(c)(1) of the Code.

(e) *Defintions.* For purposes of this section:

(1) *Look-through investment vehicle* means:

(i) An investment company described in section 3(a) of the Investment Company Act of 1940, or a series investment company described in

section 18(f) of the 1940 Act or any of the segregated portfolios of such company;

(ii) A common or collective trust fund or a pooled investment fund maintained by a bank or similar institution, a deposit in a bank or similar institution, or a fixed rate investment contract of a bank or similar institution;

(iii) A pooled separate account or a fixed rate investment contract of an insurance company qualified to do business in a State; or

(iv) Any entity whose assets include plan assets by reason of a plan's investment in the entity;

(2) *Adequate consideration* has the meaning given it in section 3(18) of the Act and in any regulations under this title;

(3) An *affiliate* of a person includes the following:

(i) Any person directly or indirectly controlling, controlled by, or under common control with the person;

(ii) Any officer, director, partner, employee, an employee of an affiliated employer, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or sister, of the person; and

(iii) Any corporation or partnership of which the person is an officer director or partner.

For purposes of this paragraph (e)(3), the term "control" means, with respect to a person other than an individual, the power to exercise a controlling influence over the management or policies of such person.

(4) A *designated investment alternative* is a specific investment identified by a plan fiduciary as an available investment alternative under the plan.

(f) *Examples.* The provisions of this section are illustrated by the following examples. Examples (5) through (11) assume that the participant has exercised independent control with respect to his individual account under an ERISA section 404(c) plan described in paragraph (b) and has not directed a transaction described in paragraph (d)(2)(ii).

(1) Plan A is an individual account plan described in section 3(34) of the Act. The plan states that a plan participant or beneficiary may direct the plan administrator to invest any portion of his individual account in a particular diversified equity fund managed by an entity which is not affiliated with the plan sponsor, or any other asset administratively feasible for the plan to hold. However, the plan provides that the plan administrator will not implement certain listed instructions for which plan fiduciaries would not be relieved of liability under section 404(c) (see paragraph (d)(2)(ii)). Plan participants and beneficiaries are permitted to give investment instructions during the first week of each month with respect to the equity fund and at any time with respect to other investments. The plan provides for the pass-through of voting, tender and similar rights incidental to the holding in the account of a participant or beneficiary of an ownership interest in the equity fund or any other investment alternative available under the plan. The plan administrator of plan A provides each participant and beneficiary with the information described in subparagraphs (*i*), (*ii*), (*iii*), (*iv*), (*v*), (*vi*) and (*vii*) of paragraph (b)(2)(i)(B)(*1*) upon their entry into the plan, and provides updated information in the event of any material change in the information provided. Immediately following an investment by a participant or beneficiary in the equity fund, the plan administrator provides a copy of the most recent prospectus received from the fund to the investing participant or beneficiary. Immediately following any investment by a participant or beneficiary in any other investment alternative which is subject to the Securities Act of 1933, the plan administrator provides the participant or beneficiary with the most recent prospectus received from that investment alternative (see paragraph (b)(2)(i)(B)(*1*)(*viii*)). Finally, subsequent to any investment by a participant or beneficiary, the plan administrator forwards to the investing participant or beneficiary any materials provided to the plan relating to the exercise of voting, tender or similar rights attendant to ownership of an interest in such investment (see paragraph (b)(2)(i)(B)(*1*)(*ix*)). Upon request, the plan administrator provides each participant or beneficiary with copies of any prospectuses, financial statements and reports, and any other materials relating to the investment alternatives available under the plan which are received by the plan (see paragraph (b)(2)(i)(B)(*2*)(*ii*)). Also upon request, the plan administrator provides each participant and beneficiary with the other information required by paragraph (b)(2)(i)(B)(*2*) with respect to the equity fund, which is a designated investment alternative, including information concerning the latest available value of the participant's or beneficiary's interest in the equity fund (see paragraph (b)(2)(i)(B)(*2*)(*v*)). Plan A meets the requirements of paragraphs (b)(2)(i)(B)(*1*) and (*2*) of this section regarding the provision of investment information.

Note: The regulation imposes no additional obligation on the administrator to furnish or make available materials relating to the companies in which the equity fund invests (e.g., prospectuses, proxies, etc.).

(2) Plan C is an individual account plan described in section 3(34) of the Act under which participants and beneficiaries may choose among three investment alternatives which otherwise meet the requirements of paragraph (b) of this section. The plan permits investment instruction with respect to each investment alternative only on the first 10 days of each calendar quarter, i.e. January 1–10, April 1–10, July 1–10 and October 1–10. Plan C satisfies the condition of paragraph (b)(2)(ii)(C)(*1*) that instruction be permitted not less frequently than once within any three month period, since there is not any three month period during which control could not be exercised.

(3) Assume the same facts as in paragraph (f)(2), except that investment instruction may only be given on January 1, April 4, July 1 and October 1. Plan C is not an ERISA section 404(c) plan because it does not satisfy the condition of paragraph (b)(2)(ii)(C)(*1*) that instruction be permitted not less frequently than once within any three month period. Under these facts, there is a three month period, e.g., January 2 through April 1, during which control could not be exercised by participants and beneficiaries.

(4) Plan D is an individual account plan described in section 3(34) of the Act under which participants and beneficiaries may choose among three diversified investment alternatives which constitute a broad range of investment alternatives. The plan also permits investment instruction with respect to an employer securities alternative but provides that a participant or beneficiary can invest no more than 25% of his account balance in this alternative. This restriction does not affect the availability of relief under section 404(c) inasmuch as it does not relate to the three diversified investment alternatives and, therefore, does not cause the plan to fail to provide an opportunity to choose from a broad range of investment alternatives.

(5) A participant, P, independently exercises control over assets in his individual account plan by directing a plan fiduciary, F, to invest 100% of his account balance in a single stock. P is not a fiduciary with respect to the plan by reason of his exercise of control and F will not be liable for any losses that necessarily result form P's investment instruction.

(6) Assume the same facts as in paragraph (f)(5), except that P directs F to purchase the stock from B, who is a party in interest with respect to the plan. Neither P nor F has engaged in a transaction prohibited under section 406 of the Act: P because he is not a fiduciary with respect to the plan by reason of his exercise of control and F because he is not liable for any breach of part 4 of Title I that is the direct and necessary consequence of P's exercise of control. However, a prohibited transaction under section 4975(c) of the Internal Revenue Code may have occurred, and, in the absence of an exemption, tax liability may be imposed pursuant to sections 495 (a) and (b) of the Code.

(7) Assume the same facts as in paragraph (f)(5), except that P does not specify that the stock be purchased from B, and F chooses to purchase the stock from B. In the absence of an exemption, F has engaged in a prohibited transaction described in 406(a) of ERISA because the decision to purchase the stock from B is not a direct or necessary result of P's exercise of control.

(8) Pursuant to the terms of the plan, plan fiduciary F designates three reputable investment managers whom participants may appoint to manage assets in their individual accounts. Participant P selects M, one of the designated managers, to manage the assets in his account. M prudently manages P's account for 6 months after which he incurs

losses in managing the account through his imprudence. M has engaged in a breach of fiduciary duty because M's imprudent management of P's account is not a direct or necessary result of P's exercise of control (the choice of M as manager). F has no fiduciary liability for M's imprudence because he has no affirmative duty to advise P (see paragraph (c)(4)) and because F is relieved of co-fiduciary liability by reason of section 404(c)(2) (see paragraph (d)(2)(iii)). F does have a duty to monitor M's performance to determine the suitability of continuing M as an investment manager, however, and M's imprudence would be a factor which F must consider in periodically reevaluating its decision to designate M.

(9) Participant P instructs plan fiduciary F to appoint G as his investment manager pursuant to the terms of the plan which provide P total discretion in choosing an investment manager. Through G's imprudence, G incurs losses in managing P's account. G has engaged in a breach of fiduciary duty because G's imprudent management of P's account is not a direct or necessary result of P's exercise of control (the choice of G as manager). Plan fiduciary F has no fiduciary liability for G's imprudence because F has no obligation to advise P (see paragraph (c)(4)) and because F is relieved of co-fiduciary liability for G's actions by reason of section 404(c)(2) (see paragraph (d)(2)(iii)). In addition, F also has no duty to determine the suitability of G as an investment manager because the plan does not designate G as an investment manager.

(10) Participant P directs a plan fiduciary, F, a bank, to invest all of the assets in his individual account in a collective trust fund managed by F that is designed to be invested solely in a diversified portfolio of common stocks. Due to economic conditions, the value of the common stocks in the bank collective trust fund declines while the value of publicly-offered fixed income obligations remains relatively stable. F is not liable for any losses incurred by P solely because his individual account was not diversified to include fixed income obligations. Such losses are the direct result of P's exercise of control; moreover, under paragraph (c)(4) of this section F has no obligation to advise P regarding his investment decisions.

(11) Assume the same facts as in paragraph (f)(10) except that F, in managing the collective trust fund, invests the assets of the fund solely in a few highly speculative stocks. F is liable for losses resulting from its imprudent investment in the speculative stocks and for its failure to diversify the assets of the account. This conduct involves a separate breach of F's fiduciary duty that is not a direct or necessary result of P's exercise of control (see paragraph (d)(2)(iii)).

(g) Effective date. (1) *In general.* Except as provided in paragraph (g)(2), this section is effective with respect to transactions occurring on or after the first day of the second plan year beginning on or after October 13, 1992.

(2) This section is effective with respect to transactions occurring under a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before October 13, 1992 after the later of the date determined under paragraph (g)(1) or the date on which the last collective bargaining agreement terminates. For purposes of this paragraph (g)(2), any extension or renegotiation of a collective bargaining agreement which is ratified on or after October 13, 1992 is to be disregarded in determining the date on which the agreement terminates.

(3) Transactions occurring before the date determined under subparagraph (g)(1) or (2) of this section, as applicable, are governed by section 404(c) of the Act without regard to the regulation.

Signed at Washington, DC, this 2d day of October 1992.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 92-24357 Filed 10-9-92; 8:45 am]

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VOL
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federal register

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Part III

Department of Transportation

Federal Highway Administration

Studies of the Regulation of Emergency Vehicles on the Interstate System and Transporters of Water Well Drilling Rigs on Public Highways; Request for Comments; Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 92-35]

Studies of the Regulation of Emergency Vehicles on the Interstate System and Transporters of Water Well Drilling Rigs on Public Highways; Request for Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This is a request for information to assist the Secretary in responding to a provision of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) requiring two studies of vehicle weight laws. One is a study of State laws regulating the use of the Interstate System by emergency vehicles during delivery to or operation by a firefighting agency, as well as the issuance of permits to exempt such vehicles from the maximum weight limits on the Interstates. The other is a study of State or Federal regulations which place a burden on transporters of water well drilling rigs on public highways without enhancing safety or preservation of public highways. The emergency vehicle study must be submitted to Congress by June 18, 1993 and the water well drilling rig study by December 18, 1993. All the responses and comments will be fully considered before the studies are submitted to Congress.

DATES: Responses to this request must be received on or before January 11, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 92-35, Federal Highway Administration, room 4232, HCC-10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management, at (202) 366-2212 or Mr. Charles Medalen, Office of the Chief Counsel, at (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Sections 1023(e)(2), (3), and (4) and 1023(g) of the ISTEA (Pub. L. 102-240, 105 Stat. 1914, 1954-1955) require the Secretary to conduct two studies of vehicle weight limits, one involving vehicles used for the purpose of protecting persons and property from fires and other disasters that threaten public safety (hereafter referred to collectively as emergency vehicles) when being delivered to or operated by a firefighting agency, and the other involving water well drilling rigs.

Emergency Vehicle Study

This study consists of two parts. The first part is to determine if emergency vehicles being delivered to or operated by a firefighting agency should be exempted from Interstate gross weight limits, or if any Interstate weight limits, including the bridge formula, should be modified to accommodate emergency vehicles. The purpose of the bridge formula is to protect bridges by allowing gross vehicle weight to increase only as the distance between axles or axle groups increases, up to an overall maximum gross weight limit. This protects bridges by spreading the weight of heavier vehicles over a larger area of bridge decking and supporting members.

The second part is to study the issuance of permits by States which allow emergency vehicles to exceed the federally required axle, gross, and bridge formula maximum weight limits on the Interstates. Permits are issued for two types of overweight vehicles and loads, those which are divisible and those which are not. Divisible vehicles or loads are those which can be easily divided, such as grain. Nondivisible vehicles or loads are those which cannot be easily divided, such as large generators.

Authority for individual States to issue divisible load permits for emergency vehicles to exceed Interstate weight limits depends on whether they issued such permits in 1956 when the Interstate System was authorized. If they did so, they may continue to issue such permits under what is called "grandfather" authority. A similar "grandfather" authority was established in 1974 when the Federal bridge formula was adopted.

Federal law allows all States to issue overweight permits for nondivisible vehicles or loads on the Interstates. Some States may be defining emergency vehicles with some or all of their equipment and supplies as nondivisible and issuing overweight permits for them to operate on the Interstates.

In a notice of proposed rulemaking published on March 20, 1992, 57 FR 9900, the FHWA proposed to define "Loads Which Cannot Be Easily Dismantled or Divided." Until such time as that proceeding is concluded, States may, within reason, define what constitutes a divisible or nondivisible vehicle or load. The definition is of interest here, however, since it would affect whether States could issue divisible or nondivisible permits for overweight emergency vehicles in the future.

The study covers emergency vehicles being delivered to or operated by a firefighting agency. We are seeking information about what types of firefighting agencies there are and what kind of emergency equipment they operate. This would include not only Federal, State, and local political jurisdictions but also the Forest Service, the military services, and any other firefighting organizations that operate emergency equipment.

Water Well Drilling Rig Study

Section 1023(g)(1) of the ISTEA requires the Secretary to conduct a study of State and Federal regulations pertaining to transporters of water well drilling rigs on public highways to identify any requirements which place a burden on such transporters without enhancing safety or preservation of the highways. Unlike emergency vehicles, water well drilling rigs are not exempted by 49 CFR 390.3(f)(5) from the Federal Motor Carrier Safety Regulations published in 49 CFR 350 to 399. Therefore, information is sought on weight, safety, and any other Federal or State regulations applicable to water well drilling rigs which do not enhance safety or the preservation of the highways.

In order to conduct these studies, comments are requested on the following matters and any others relating to the subject matter of the studies.

Emergency Vehicle Study

1. What types of emergency vehicles are there (pumpers, ladder trucks, foam spreaders, ambulances, etc.)? (Pictures or illustrations showing the distinguishing features of each would be helpful.)

2. How much weight is carried on each single axle or set of axles (such as tandems or tridems) for each type of emergency vehicle when ready for use? When being delivered to a firefighting agency?

3. What are the shortest, longest, and average distances, in feet and inches, between all axles on such vehicles? (Pictures or illustrations showing the distances would be helpful.)

4. What are the weight limits for emergency vehicles operating on the Interstate System (single axle, tandem axle, tridem axle, maximum gross weight, pounds per inch of tire width)?

5. In your opinion, is there a need to change the axle, gross, or bridge formula Interstate System weight limits for overweight emergency vehicles on the Interstate System? If so, please specify what changes should be made.

6. Are all or some emergency vehicles divisible or nondivisible? Please specify which are and which are not and why.

7. If the State allows operation of overweight emergency vehicles on the Interstate System under permit, what conditions in addition to weight limits are imposed, such as driver or vehicle requirements?

8. If permits are issued for overweight emergency vehicles to operate on the Interstate System, what basis is used to determine the cost of such permits? Is it the cost of highway damage, the administrative cost, the value of the service, or some other basis?

9. Please explain any significant regulatory problems encountered during movements of emergency vehicles on the Interstate System when responding to or returning from emergencies, during training, or when vehicles are being delivered to a firefighting agency.

10. What agencies fight fires? (Federal, State, or local governments, Forest Service or military services, or other agencies?) What kind of emergency equipment is operated on the Interstates when being delivered to or operated by each such agency?

11. Describe design changes that could bring emergency vehicles into conformity with State and Federal regulations, such as the use of lightweight materials, multiple axles, etc. What costs or operational problems would be associated with these designs?

12. How many miles per year is each type of emergency vehicle driven in response to emergencies? How many miles is each type driven for training and other purposes? How many of these miles are on the Interstate System?

13. Do you have any further comments regarding the use of the Interstates by emergency vehicles?

Water Well Drilling Rig Study

1. What types of water well drilling rigs are there? (Pictures would be helpful).

2. How much weight is carried on each axle or set of axles (such as tandems or tridems) for each type of water well drilling rig when ready for use?

3. What are the shortest, longest, and average distances, in feet and inches, between all axles on such vehicles? (Pictures or illustrations showing the distances would be helpful.)

4. What impact do State weight limits, on and off the Interstate System, have on the operation of water well drilling rigs?

5. If water drilling rigs have a problem complying with weight limits, could they be redesigned using light-weight materials, multiple axles, or other techniques to conform to legal weight limits? Please explain the basis for your answer.

6. What State or Federal regulations governing the use of water well drilling rigs on public highways need to be changed? What would be the effect on safety or the preservation of highways and why?

7. Does lack of uniformity between the laws or regulations of various States or among local communities within a State place a burden on the highway movement of water well drilling equipment? If so, please give examples.

8. Do you have any other comments regarding State or Federal regulations which place a burden on water well drilling rigs on public highways? Please be as specific as possible.

Authority: Sec. 1023, Pub. L. 102–240, 105 Stat. 1914; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: October 2, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92–24706 Filed 10–9–92; 8:45 am]

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Tuesday
October 13, 1992

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Interpretation of the Regulations; Transition to an All Stage 3 Fleet Operating in the Contiguous United States; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Interpretation of the Regulations Regarding the Transition to an All Stage 3 Fleet Operating in the Contiguous United States

AGENCY: Federal Aviation Administration, DOT.

ACTION: Interpretation of rules.

SUMMARY: This document presents a compilation of requests for interpretation of the regulations regarding the transition to an all Stage 3 fleet operating in the contiguous United States. These requests have been submitted to the Federal Aviation Administration (FAA) since the regulations became effective on September 25, 1991. The FAA is aware that significant public interest in these opinions exists, and this document is being published to give notice of the issuance of these interpretations to all interested parties.

ADDRESSES: Further requests for interpretation of these regulations may be addressed to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Assistant Chief Counsel for Regulations, AGC–200, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Karen L. Petronis, Airworthiness Law Branch, AGC–210, Office of the Chief Counsel, FAA, 800 Independence Ave., SW., Washington, DC, 20591; telephone (202) 267–8018.

SUPPLEMENTARY INFORMATION: On September 25, 1991, the Federal Aviation Administration (FAA) published regulations governing the operation of large Stage 2 airplanes in the contiguous United States. These regulations codified into the Federal Aviation Regulations the provisions of sections 9308 and 9309 of the Airport Noise and Capacity Act of 1990 (ANCA) (49 U.S.C. App. 2157, 2158).

Since that time, the FAA has received many requests for interpretations of the regulations. Because of the broad scope of the regulations, many persons have expressed an interest in these interpretations and have requested that they be made available generally. To facilitate the dissemination of the information contained in these interpretations, the questions and responses are being published here. The questions are presented by topic area. Individual topic areas may include questions from several requesters, and individual requesters are not identified.

Return of Foreign-leased Airplanes

1. *Question:* If a U.S.-owned Stage 2 airplane is leased to a non-U.S. operator, must it physically return to the United States within six months after expiration of the lease before being re-leased to qualify under the return rule of § 91.855(f)?

Response: No. Nothing in the language or legislative history of ANCA § 9309 suggests that physical contact with U.S. soil is necessary to make a leased airplane returnable, nor does any practical argument exist for such a requirement. This applies to any number of successive leases to the same or other non-U.S. airline so long as no more than six months elapses between the end of one lease period and the beginning of the next.

The FAA cautions that the eligibility of a Stage 2 airplane to return after a foreign lease in no way confers any operational status as far as the phased transition requirements of part 91 are concerned. Any operator that chooses to use a returned Stage 2 airplane to conduct operations in the contiguous United States must ensure that the airplane fits in the operator's fleet requirements under § 91.865 or § 91.867.

Alaskan Operations

2. *Question:* Since operations in the state of Alaska are not affected by either the nonaddition rule or the phased transition, are operators that operate exclusively in Alaska exempt from §§ 91.851 through 91.875?

Response: No. Each operator of a large Stage 2 airplane is subject to the transition rules, including the nonaddition rule and the reporting requirements of § 91.875. Each operator of a covered airplane must establish its base level and report its compliance. Section 91.801(c) indicates that the operating noise limits and related requirements codified in §§ 91.851 through 91.875 apply to:

> Any civil subsonic turbojet airplane with a maximum certificated weight of more than 75,000 pounds operating to or from an airport in the 48 contiguous United State and the District of Columbia under this part [part 91], part 121, 125, 129, or 135 of this chapter on and after September 25, 1991.

The fact that an operator restricts operation of its airplanes to Alaska is not relevant to coverage. It is true, however, that the operation of Stage 2 airplanes in Alaska is not affected by the statutory prohibition or the interim compliance requirements. At this time, the FAA foresees allowing operators of affected airplanes that operate solely outside the contiguous United States to amend their operations specifications to remove these airplanes from operation in the contiguous United States. Any airplane that is restricted to operation outside the noncontiguous United States may be used to achieve compliance with the statutorily mandated restriction on the operation of Stage 2 airplanes.

The FAA realizes that operators that operate airplanes solely in Alaska (or other locations outside the contiguous United States) fall into a special category as far as the transition to an all Stage 3 fleet. While these operators must be treated the same as other domestic operators, they nonetheless present a special case since their Stage 2 airplanes are not restricted from their usual flight areas. For this reason, all operators are required to establish a base level and phase into an all Stage 3 fleet of airplanes operating in the contiguous United States. Any operator may comply with the transition requirements by removing its Stage 2 airplanes from operation in the contiguous United States.

While § 91.857 addresses the operation of Stage 2 airplanes that are "imported" into the noncontiguous United States, these same provisions would apply to any currently operated airplane that an operator wishes to remove from operation in the contiguous United States. Thus, an operator may take advantage of § 91.857(a) to change its operations specifications to meet the interim compliance dates, as necessary, and may use § 91.857(b) to obtain a special flight authorization to operate a restricted Stage 2 airplane into the contiguous United States for the purpose of maintenance.

Dual-Certificated 747–100 Aircraft

3. *Question:* Since a number of Boeing 747–100 airplanes were originally certificated to operate as either Stage 2 or Stage 3 airplanes, what is the status of these airplanes under the phased transition rules?

Response: Until notified, the FAA considers all dual-certificated Boeing 747–100 airplanes to be Stage 2 airplanes for noise compliance purposes. Each operator of these airplanes may choose to permanently reclassify these airplanes as Stage 3 to count them toward compliance with the Stage 3 transition rules.

This reclassification involves changes in the airplane flight manual to delete the parameters that describe Stage 2 operation, and the addition of a placard in the affected airplane indicating that the airplane may not be flown in a Stage 2 configuration. In addition, the FAA

will require each operator to submit a written statement identifying the reclassified airplane and certifying that the airplane will not afterward be flown as a Stage 2 airplane to or from a point in the contiguous United States.

The only exception to this permanent reclassification is in the case of leased airplanes. The lessee of a dual-certificated 747 will be allowed to make the Stage 3 reclassification election effective for the length of the airplane lease. This exception provides that no lessor/owner of a dual certificated 747 is bound irrevocably by the action of its lessee, while the lessee retains the flexibility to continue operation of the airplane in a configuration that is compatible with its needs under the Stage 3 transition.

While notice to the FAA must be made in writing, there is no precise form in which the owner or operator must declare its actions to reclassify an individual airplane. The FAA is looking into the development of an optional form for this purpose. The FAA anticipates that operators would file these certifications at the time it submits its annual report, but they may be filed at any time. This form, or any such written certification from an owner or operator, will not fulfill any other recordkeeping requirement made necessary by changes to the airplane flight manual or the airplane itself.

Airplanes Leased From Non-U.S. Entities

4. *Question:* Section 91.855(c) allows for the operation of Stage 2 airplanes that were leased by non-U.S. owners to U.S. operators before September 25, 1991. May a wholly-owned U.S. subsidiary of a non-U.S. corporation take advantage of this provision?

Response: If the wholly-owned U.S. subsidiary has established a voting trust to register its airplanes in the United States, it may not claim that it leased the airplane as a non-U.S. entity under § 91.855(c). The voting trust means that the subsidiary's airplanes are considered U.S.-owned. If the trust acquired a Stage 2 airplane before November 5, 1990, it may lease the airplane to another U.S. entity to operate in the contiguous United States without restriction. If a Stage 2 airplane was acquired after November 5, 1990, by a subsidiary, the airplane could not be leased to a U.S. operator for operation in the contiguous United States because of the nonaddition rule.

5. *Question:* For a Stage 2 airplane operating under the leasing provisions of § 91.855(c), may that airplane be sold to another non-U.S. entity and continue to operate subject to that lease? May it be sold to a U.S. entity and continue to operate subject to the lease?

Response: If a Stage 2 airplane is owned by a non-U.S. entity and transferred to another non-U.S. entity subject to a lease to a U.S. operator, the airplane may continue to operate under § 91.855(c). The FAA will not view the continuation of the lease as a violation of § 91.855(c), as though a new lease from a non-U.S. entity were occurring.

This allowance presumes that the airplane is sold subject to the express terms of the existing lease. Any change in the terms of the lease at the time of the sale would be considered a new lease from a foreign entity. Any extensions of that a lease would be limited to the terms in the original lease. Once the lease expires, the airplane may not be operated in the contiguous United States by a U.S. operator.

Conversely, a non-U.S. owned Stage 2 airplane that is currently leased by a U.S. operator may not continue to operate if the airplane is sold to a U.S. entity. Stage 2 airplanes purchased by a U.S. entity after November 4, 1990, are prohibited from operating in the contiguous United States. To allow a newly purchased airplane to continue operation based on the original lease from the non-U.S. entity is clearly prohibited by the terms of the statutory nonaddition rule. If the airplane is allowed to transfer to a U.S. entity and is allowed to continue operating subject to the lease, the transfer would serve as a means around the nonaddition rule. By protecting the lease, the receiving U.S. entity would be purchasing an airplane that, without the lease, would be prohibited from operation in the contiguous United States.

The continued operation of this airplane, if sold to a U.S. entity, could be viewed as consistent with the nonaddition rule since it does not increase the amount of Stage 2 noise in the United States—the airplane is already operating here. However, a change to U.S. ownership thwarts the very intent of Congress in codifying the nonaddition rule—to limit the liability of all U.S. owners of Stage 2 airplanes to that which existed on November 5, 1990. While it may be argued that limiting operation to the length of the lease would not effect any change as far as operation of Stage 2 airplanes, the new U.S. owner would enjoy a benefit unavailable to most others, and that benefit would have been gained by a means that clearly violates the nonaddition rule.

The anomaly that arises from this situation was recognized by the FAA at the time the regulations were promulgated, and is caused by the difference between the statutory cutoff for importation of Stage 2 airplanes and the regulatory cutoff for leasing non-U.S. airplanes. The anomaly resulted when the FAA "closed the loophole" of leased non-U.S. airplanes. The FAA concluded that the September 25, 1991, cutoff date was the only viable alternative to declaring those leases void retroactively, since they were expressly limited by the ANCA.

The FAA will not now interpret the rule in a manner that would, in effect, violate the spirit of the legislation by allowing the continued operation of these leased airplanes should they become U.S.-owned. Allowing this operation could easily lead to numerous sales of leased non-U.S. Stage 2 airplanes, effectively foiling the purposes of the nonaddition rule and unfairly favoring those who already have the advantage of a previously-leased Stage 2 airplane. Further, allowing these operations would place upon the FAA the burden of monitoring leases to which it is not a party and over which it exercises no control.

Base Level

6. *Question:* Can base level be held by anyone other than an operator of Stage 2 airplanes?

Response: Yes. Base level is created by operators (or others in certain other circumstances) because it is based on the number of Stage 2 airplanes on their operations specifications as of a chosen day. Base level is thus held by an operator until the operator decides to transfer it.

Section 91.863 does not specify either who may hold base level, or who makes the decision whether base level will transfer in a given transaction. Because base level may be transferred to non-operators, the FAA has no way of knowing the parties involved in any individual transfer. Once an operator establishes its base level, it holds that base level until it decides to transfer all or part of it with the corresponding airplanes. The FAA's statement in the preamble to the final rule establishes the starting point by saying that base level established with leased airplanes stays with the operator.

The decision on whether the base level will transfer thus belongs to the party that holds the base level and airplanes before the transaction. In a chain of airplane transfers together with base level, any party may choose to transfer the airplanes and retain the base level.

7. *Question:* May a transfer of base level be made now for an airplane

transfer that occurred before the issuance of § 91.863?

Response: Yes. Since the establishment of base level was a "look back," the FAA currently allows the transfer of base level for airplane sales or lease returns made *after* the transferring owner/operator established its base level. These transactions are to be negotiated by the parties to the airplane transfer and are to be reported pursuant to § 91.863(c).

The transferring parties must report the original date of the airplane transfer. The related base level transfer will be valid only if the airplane transfer occurred after the date established by the transferring party as its base level date. Airplane transfers that predate the establishment of the transferring party's base level would be invalid since no base level had yet been established to transfer.

The FAA anticipates that this "look back" procedure may not exist indefinitely. After gaining more experience with base level transfers and the complexity of tracking base level, the agency may decide that after a certain date, no further "look back" transactions will be approved. If made, the FAA will publish a notice of this decision before the cutoff date.

8. *Question:* If an airplane is returned by a lessee to the lessor without base level, and the airplane is subsequently re-leased without base level, may the subsequent lessee obtain the base level from the original lessee without the involvement of the lessor under § 91.863(a)?

Response: No. This transfer is prohibited under § 91.863. Base level may only transfer with a Stage 2 airplane and cannot "leapfrog" an intervening transferee of the Stage 2 airplane. Base level does not attach to an individual airplane and follow wherever the airplane goes. Base level may be transferred only with a Stage 2 airplane, and may be either (1) retransferred with the subject airplane, (2) retained by the receiving party, or (3) transferred with another Stage 2 airplane of the receiver's choosing. Base level may transfer only at the discretion of the parties to individual Stage 2 airplane transfers.

In the situation described in the question, the original lessor may choose to hold onto its base level from the transferred airplanes, transfer the base level with other Stage 2 airplanes, or transfer the base level to the recipient of the subject Stage 2 airplanes, its lessor. The subsequent transferee of the airplanes is not eligible to receive base level directly from the original lessee because it did not obtain the airplanes from the original lessee.

9. *Question:* Can a bankrupt operator hold base level even through it has no valid use for it? Does base level automatically transfer to the lessor of an aircraft when the operator/lessee has declared bankruptcy and returned the airplane to the lessor?

Response: A bankrupt operator may validly hold base level. The transition rule makes no provision for the FAA to decide that base level may only be held by operators that have a "valid" use for it. If that were true, then a logical extension of that premise would allow base level to be held only by viable operators, since no one else will ever "need" it for compliance purposes. When the FAA decided to make base level transferable, it did so to facilitate the trade in Stage 2 airplanes and with the intent that these transfers would be negotiated between the parties to the transfer. At no time did the FAA anticipate having any decisionmaking authority over whether base level would transfer in an individual transaction. The FAA reserved only the right to approve transfers pursuant to its policies and deny the use of base level for compliance if the transfers involved compromise the transition goals.

The creation of base level is unrelated to the provisions of the Bankruptcy Code that deal with the disposition of the original lease of an airplane. Unless that original lease included the airplane's base level in its provisions, the lessor has no right to demand its transfer. The FAA does not view the retention of base level by any party validly holding it to diminish the value of any airplane when the base level was not part of the original transaction, and the base level is validly in the possession of the holder.

Base level is established by the fact that an airplane appeared on an operator's operations specification on the date the operator chose to establish its base level. Base level is otherwise severable at the discretion of the holder. Section 1110 of the Bankruptcy Code appears irrelevant to the discussion of base level since base level does not "attach" to the airplane itself, nor become part of the leased property.

Accordingly, the FAA will not interpret the rule to require the "automatic" transfer of base level from an operator that has ceased operations to the lessor of its airplanes. To do so would violate the policy established in the final rule that the decision to transfer base level remains with the party holding it at the time an airplane is transferred. To require transfers in the case of operators that have filed for bankruptcy would further involve the FAA in a matter over which it has no control. The transfer of base level may well be viewed by a bankruptcy court as a disposition of an operator's assets, a matter in which the FAA will play no role.

Base level, as a concept, was created by the Federal Aviation Administration (FAA) as a means to tract the compliance of operators in their transition to an all Stage 3 fleet. This is the reason that base level is presumed to remain with the operator when a leased airplane is returned to a lessor, unless the parties otherwise agree and inform the FAA of the transfer. Compliance is required by the operators, not by the lessor of the airplanes. If an operator chooses the phaseout method of compliance, it demonstrates its compliance by the base level it holds. The FAA will not interpret any of the transition regulations to take away base level from an operator without its consent.

10. *Question:* If an aircraft is held "in reserve" by one operator for another operator's occasional use, may it be counted in the base level of the operator for who it is held in reserve?

Response: Section 91.861 allows each operator to choose the date on which it establishes its base level. Only airplanes that appeared on an operator's operations specifications on the date chosen may be counted. A Stage 2 airplane that was on an operator's operations specifications on the day the operator chooses its base level may be included, even if the airplane was returned subsequently to the lessor.

Airplanes that are held in reserve for use but that did not appear on operations specifications on the date chosen to establish base level may not be counted in establishing base level. The right to count those airplanes and the responsibility for them under the transition rule belong to another entity. The reserved airplane may continue to be used after the first interim compliance date provided that the operator otherwise meets the criteria of the transition rules as to the number of Stage 2 airplanes eligible for operation in the contiguous United States.

11. *Question:* Can base level be leased?

Response: Yes. Section 91.863(a) states that base level may be transferred only with a corresponding number of Stage 2 airplanes. By choosing the word "transfer," the FAA intended that all airplane transactions be included. The FAA specifically foresaw the inclusion of base level in the lease of Stage 2

airplanes, with the base level "leased" as part of the deal.

The FAA anticipated that the final disposition of the base level would appear in the lease agreement—whether it would be returned to the lessor or retained by the lessee. The regulation was written so as not to preclude any transaction involving the transfer of the airplane from including a disposition of the base level that is available to transfer with it.

12. *Question:* Does leased base level return automatically to the lessor at the end of a lease?

Response: No. While return of base level may be a term of the lease, there is no automatic transfer in FAA records.

At present, if a Stage 2 airplane was leased to an operator at the time the operator established its base level (between January 1, 1990 and July 1, 1991), then the base level is presumed to stay with the operator at the termination of the lease. This may be changed by an amendment to the lease concerning base level as negotiated by the parties.

For any other airplane that was the subject of a lease agreement dated after July 1, 1991, if the lease agreement is silent as to the base level, it is assumed that no base level was transferred as part of the lease; there is no presumption that the lessor had any base level to transfer. Again, this may be amended at the agreement of the parties to the lease.

The FAA has determined that this disposition of "leased" base level is the most consistent with other base level concepts and is the fairest to all parties. Operators need to be able to rely on their base level, which they were allowed to establish based on their individual circumstances. After the period for choosing the base level date closed, however, operators can have no such expectation and the forces of the market take over.

Further, this interpretation addresses the possibility that a lessee might refuse to sign a recordation of transfer of base level. Either the lessee created the base level itself, in which case it is presumed retained, or base level must be a subject of the lease itself. If a lessee refuses to honor the terms of a lease agreement, the FAA presumes that the lessor would pursue its legal remedies under the contract, a situation that does not involve the FAA.

Moreover, no "automatic" statute will be presumed for reporting purposes. The FAA will not assume the responsibility for tracking the expiration of leases that would transfer base level back to the lessor. There are several circumstances under which a lease agreement might end. The FAA is not a party to these agreements and presumes no knowledge of them, nor will the FAA assume the responsibility to monitor individual leases.

As to the terms and conditions of the lease, the FAA has no expectations. The FAA considers the transfer of base level at the inception of the lease to be covered under § 91.863(c), a transfer that must be reported to the FAA. At present, the FAA expects only the information required by that section, plus the fact that the reported base level is part of a lease transaction. Accordingly, the transfer back to the lessor at the termination of the lease must also be reported as a transfer of base level under § 91.863(c). During the term of the lease, the base level will appear as being held by the lessee.

The FAA will take no other action under the lease, including enforcement of the terms of the lease regarding the base level. The parties to the transaction are expected to protect themselves. At no time will the FAA accept the lease document as a report of base level transfer, nor accept any responsibility for staying abreast of the terms of a lease over which it has no interest or control. For this reason, the original transfer and return of leased base level are considered separate base level transactions for FAA reporting purposes.

Further, since base level can only be "transferred" with a Stage 2 airplane, base level alone cannot be leased or sold, and the transaction in base level must be coincident with the transfer of airplane, whether by lease or sale. The terms of the lease or sale cannot provide for the base level to transfer before or after the lease begins or ends or the sale is consummated by transfer of the airplane. The only exception is the FAA's current policy of allowing transfers of base level to "look back" to airplane transfers made before the regulations were promulgated.

13. *Question:* Can a lessee of an airplane with base level sublease the base level?

Response: As indicated previously, the FAA presumes that the terms of any lease of base level would establish the rights of the lessee with regard to the use of the leased base level. The regulation does not specifically restrict any transfer of base level, as long as it accompanies the transfer of a Stage 2 airplane.

14. *Question:* Does § 91.861 allow every U.S.-owned Stage 2 airplane that was leased to a foreign entity to increase a U.S. operator's base level when it returns, regardless of when the airplane was leased to the non-U.S. entity?

Response: No. The FAA interprets § 91.861 as allowing a U.S.-owned Stage 2 airplane to increase the base level of a U.S. operator when the airplane returns from a foreign lease within six months of the expiration of that lease. However, the limiting factor on this rule is not when the airplane was leased to the non-U.S. entity, but whether the airplane had previously been used by a U.S. operator to establish base level.

For example, if a Stage 2 airplane was originally leased to a non-U.S. entity before January 1, 1990, then it may return to the United States and increase the base level of the operator that buys or leases it. However, for airplanes leased to non-U.S. entities after January 1, 1990, further base level may only be established if the airplane was not used to establish base level before it left the United States, i.e., was not on the operations specifications of a U.S. operator at the time that operator established its base level.

This limitation is essential to the integrity of the base level concept. If the airplane had already been used to establish base level domestically, it will not be allowed to generate base level domestically again. Were this permitted, the FAA anticipates that a steady market in short-term leases to non-U.S. entities would arise solely to create new base level upon return of the airplanes. This overcreation of base level directly contradicts both the goals of the legislation and the purposes behind the creation of the base level concept.

The statutory allowance in 49 U.S.C. 2158(c) is not rendered meaningless by this interpretation. The legislation states that a U.S.-owned airplane returning from a non-U.S. lessee within six months of the end of that lease shall not be considered an imported airplane for purposes of the nonaddition rule. This provision allows these airplanes to escape the operating limitation imposed by the nonaddition rule, in case there was any question as to their status. The status of those airplanes in connection with the regulatory base level system is a separate consideration. In creating the base level system, the FAA was well aware that the mere ability to operate domestically is meaningless without the right to do so. Accordingly, a returning airplane is allowed to increase the base level of the U.S. operator that subsequently operates it, as long as it was not used in the prior establishment of base level.

This interpretation is not inconsistent with the FAA's statement that an airplane may be leased at any time and still return if it does so within six months of the end of the lease. In

drafting this statement, the FAA was aware that the statutory ability to return as a U.S.-owned airplane did not guarantee the unconditional right to fly the airplane until the 1999 statutory deadline. For that reason, the actual right to return is presented in § 91.855 and the establishment of base level is presented in § 91.861. The Congress left the FAA to establish the method by which Stage 2 airplanes would be phased out of operation. To interpret section 2158 of the Airport Noise and Capacity Act of 1990 as an unrestricted right to operate at every return would result in returned airplanes having a higher status than those that stayed in the United States, an interpretation that the FAA is confident was not the intent of Congress in its inclusion of the import limitation in 49 U.S.C. 2158(c).

Nor does the FAA consider this interpretation inconsistent with the fact that one airplane may have been used to establish base level for two or more operators by virtue of its appearance on the operations specifications of two or more operators. The FAA knew this situation could occur, and accounted for it when the rule was written. However, the FAA recognizes that the number of these occurrences is limited and that they cannot occur again. Further, the transfers that occurred during the base level establishment period were done without knowledge of the base level system, and therefore cannot be interpreted as an attempt to manipulate that system. Finally, instances of base level being created by two U.S. operators does not carry the possibility of constant overcreation, since the situation can no longer occur.

The FAA will not allow an expansion of this concept that results in the unlimited creation of base level by the manipulation of short-term foreign leases by persons familiar with the system. If the airplane already created base level by its presence on a U.S. operator's operations specifications, its ability to create base level is exhausted. The underlying theme of the base level system is one-per-Stage-2-airplane. The exception noted above prevents U.S. operators from being harmed by a system they did not know would exist later. This harm is not imposed on a U.S. owner whose airplane was used to establish base level and now has full knowledge of the system.

15. *Question:* Will the FAA establish a "safe harbor" of base level that results from bankruptcy or liquidation transfers, with these transfers free from the review function established in § 91.863(d)?

Response: The FAA will not make these types of decisions on individual transfers, whether in the context of an interpretation or at the time of an individual transfer. The FAA views this as the equivalent of a request for a "no action" statement as is sometimes issued by other federal agencies, but which the FAA does not use.

As indicated in the preamble to the final rule and reiterated in the question, the FAA has reserved the right to review any transaction or series of transactions that appear to have been made to avoid compliance with the regulations. That series of transactions may take place over time, and the FAA will not make individual determinations that insulate a transaction from any later transfers.

The FAA understands that this review function may cause some transferring parties to lack a sense of finality in a transfer. However, the FAA has intention of scrutinizing every simple transaction or imputing bad intent upon the parties to every transaction. While several ways of circumventing the base level rules were foreseen, the agency is sure that not every permutation was considered. Accordingly, § 91.863 was inserted to give the agency the ultimate right of review when abuse is suspected.

For these same reasons, the FAA will not create a "safe harbor" of base level transactions that result from transfers made pursuant to bankruptcy or liquidation actions. It appears that the concern is if one "bad" transfer is identified, all related transfers of base level will be invalidated for compliance purposes. The FAA does not anticipate that, in the case of a suspect transaction, every related transaction would be found tainted. While it is impossible to judge every possible future transaction in a vacuum, parties may presume that a transfer mandated by a bankruptcy court would be difficult to challenge retroactively.

16. *Question:* Is the beneficiary of a trust able to acquire base level in a transaction although the airplane actually transfers between the owner trustee and a lessee?

Response: For several reasons, these transfers will not be allowed. Acceptance of these circumstances would require that an entity not even party to the transfer of the airplane be designated as the transferee of base level. This is expressly denied by the language of the regulation that indicates that base level transfers must accompany the transfer of a Stage 2 airplane. To allow this transfer would be to deny the right of the owner-trustee that is expressed in the regulation.

Second, by allowing this transaction, the FAA would be responsible for determining the identity of the trust beneficiary in an arrangement to which the FAA is not a party. The FAA will not assume this liability. Further, the FAA must be able to easily track the ownership of the base level and the subject airplane. Presumable, a transfer of base level to the beneficiary would result in another transfer by the beneficiary, although at neither time would the beneficiary transfer a Stage 2 airplane. The FAA will not allow a third party uninvolved in the transfer of Stage 2 airplanes to trade in base level; to do so would violate the reasons for the prohibition that was built into the regulation.

Finally, allowing the transfer of base level to a beneficiary would be in direct opposition to the interpretation concerning leased base level. Transactions in base level are not allowed to skip over any transferee of the subject airplane, regardless of the financing circumstances of an individual airplane.

The FAA does not consider the problem faced in the transfer of a Stage 2 aircraft held in trust to be insurmountable. As we have indicated previously, any person may hold or transfer base level as long as it is transferred with a Stage 2 airplane. Although the transfer process may involve more pieces of paper than would otherwise be desired, the FAA will consider any unique multiparty transfer documentation as long as the transfer does not violate the basic policies expressed here and in the regulations.

17. *Question:* Must an airplane be on a transferring party's operations specifications for the transfer to include base level?

Response: No. The transferring party need only have the legal right to transfer a Stage 2 airplane (and actually accomplish the transfer) to transfer base level with that airplane. Anyone is allowed to hold base level, or transfer it with a Stage 2 airplane, but only operators have operations specifications. The only use of operations specifications with regard to base level is the initial establishment of base level by an operator. Base level is created only by an airplane's appearance on an operator's operations specifications (or other limited circumstances under § 91.855) on the date chosen by the operator. The subsequent transfer of an airplane with base level is unrelated to its appearance on any operator's operations specifications at the time of the transfer.

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Kenneth P. Quinn,

Chief Counsel.

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Reader Aids

Federal Register

Vol. 57, No. 198

Tuesday, October 13, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

45261–45958 1
45959–45708 2
45709–45972 5
45973–46078 6
46079–46294 7
46295–46476 8
46477–46748 9
46747–46944 13

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6482 45961
6483 45963
6484 45965
6485 46747
6486 46749

Executive Orders:
12775 (Continued by Notice of September 30, 1992) 45557
12779 (Continued by Notice of September 30, 1992) 45557
12813 (Amended by EO 12815) 45709
12815 45709

Administrative Orders:

Notices:
September 30, 1992 45557

Presidential Determinations:
No. 92-48 of September 30, 1992 46751
No. 92-49 of September 30, 1992 46753

5 CFR

630 45261

Proposed Rules:
831 46512
835 45753
837 46512
841 46512
842 46512
844 46512
846 46512

7 CFR

400 46295
729 46477
916 45559
917 45559
920 ..... 45973, 46243
948 45560
955 45974
987 45975
1065 ..... 45562, 45563
1126 46079
1137 45564
1421 46477
1494 45262
1980 45968

Proposed Rules:
725 45993
726 45993
727 45993
728 45993
739 45993
740 45993
741 45993
742 45993
910 45561
944 45754
956 45993
1106 45583
1030 45995
1098 45996

10 CFR

30 45566
35 45566

Proposed Rules:
34 46345
35 46522
170 46818
171 46818

11 CFR

Proposed Rules:
110 46346
114 46346

12 CFR

5 46081
11 46081
18 46081
230 46480
327 45263
328 45977
506 45977
563 ..... 45977, 46085
563g 46085
611 46480
614 46755
615 ..... 46480, 46755
619 46755
627 46480

Proposed Rules:
1 45756
545 46098
563 46098
567 ..... 45757, 46098
571 46098
612 46819
617 46819
935 45338
940 45336

13 CFR

Proposed Rules:
120 46523

14 CFR

21 46243
36 46243
39 46755–46772
71 ..... 45981–45983, 46099
91 46944
97 ..... 46774, 46776

Proposed Rules:
21 46821
25 46821
39 ..... 45584–45586, 46348
71 ..... 45660, 45997

15 CFR

Proposed Rules:
Ch. VII 46838

16 CFR

1500 46624

Proposed Rules:
4 45676
435 45998
1500 46349
1505 46349

17 CFR

180 46090
210 45287
240 45287
249 45287
259 45287
274 45287

Proposed Rules:
1 ..... 45999, 46101
30 46101
33 46101
180 46101
190 46101

18 CFR

2 46487
284 ..... 46487, 46496

Proposed Rules:
401 46354

19 CFR

10 46502

Proposed Rules:
10 ..... 45758, 46112
191 46113

20 CFR

404 45878
416 46431

21 CFR

5 45294
310 ..... 45310, 46067
510 45984
520 45984
558 46504

Proposed Rules:
864 46068
872 46068
1401 45353

22 CFR

514 46676

Proposed Rules:
514 46679

24 CFR

91 46068
888 45468

25 CFR

101 46470
103 46470

26 CFR

1 ..... 45568, 45660, 45711, 45878, 46243
43 45713
602 ..... 45711, 46243

Proposed Rules:
1 ..... 45587, 46355, 46525
301 ..... 45759, 46355

27 CFR

Proposed Rules:
9 45588
17 45357
19 45357
70 45357
170 45357
194 45357
197 45357
250 45357

29 CFR

541 46742
1602 45570
2550 46906
2602 45713

30 CFR

914 45985
917 45295

31 CFR

Proposed Rules:
10 46356

32 CFR

706 46299

Proposed Rules:
623 46246

33 CFR

100 ..... 45570, 45985, 46300
117 ..... 46301, 46302, 46505
165 46506–46508
334 46303

Proposed Rules:
117 46361
151 45591
164 45662–45667
165 45596

36 CFR

51 46509
1254 46304
1258 46304

37 CFR

202 45307

39 CFR

20 45570
111 45882

40 CFR

35 45311
52 ..... 45715, 46306, 46778, 46780
80 46316
146 46292
271 ..... 45514, 45717–45722
272 45575
721 46458

Proposed Rules:
Ch. I 45597
51 46114
52 ..... 45358, 45360
58 46003
63 45363
300 ..... 45597, 45599, 46527
308 46527

41 CFR

101–16 46317

42 CFR

57 45725
412 46509
413 46509
435 46093
447 46431

Proposed Rules:
417 46119
531 46362
440 46362
442 46362
488 46362
489 46362
498 46362

43 CFR

Public Land Orders:
1567 (Revoked in part by PLO 6948) 45325
5712 (Revoked by PLO 6946) 45322
6944 45321
6946 45322
6948 45324
6949 45576
6950 45725

45 CFR

205 46782
1224 45325
1305 46718

46 CFR

514 46318
581 46318

Proposed Rules:
35 45667
197 46126

47 CFR

0 45747
73 ..... 45577–45579, 46325, 46812, 46813
87 45748
90 45751

Proposed Rules:
63 46366
73 ..... 45601, 46132, 46367–46369, 46839

48 CFR

30 45422
52 45878
202 45422
204 45422
208 45422
210 45422
214 45326
215 45422
216 45422
219 45422
223 45422
225 45422
226 45422
227 45422
228 45422
231 45422
232 45422
236 45422
237 45422
239 45422
242 45422
245 45422
252 45422
253 45422

Proposed Rules:
1512 46007
1516 46007
1552 46007
5415 45759
5452 45759

49 CFR

107 45446
171 ..... 45442, 45446
172 ..... 45446, 46624
173 45446
174 45446
176 45446
177 45446
178 45446
179 45446
180 45446
214 45446
571 ..... 45327, 45422
665 46814
1023 45751

Proposed Rules:
552 45759
571 45760
1039 45602

50 CFR

17 ..... 45328, 46325, 46340
217 46815
222 46815
227 ..... 45986, 46815
285 45579
661 45751
663 ..... 45987, 46097
672 ..... 45580, 45988, 46344, 46510, 46816
675 46511
685 45989

Proposed Rules:
17 ..... 45761, 45762, 46007, 46528, 46840
651 46840
672 46133
675 ..... 45602, 46133, 46139

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List October 9, 1992

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
0-26	(869-017-00007-8)	17.00	Jan. 1, 1992
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
900-999	(869-017-00016-7)	29.00	Jan. 1, 1992
1000-1059	(869-017-00017-5)	17.00	Jan. 1, 1992
1060-1119	(869-017-00018-3)	13.00	Jan. 1, 1992
1120-1199	(869-017-00019-1)	9.50	Jan. 1, 1992
1200-1499	(869-017-00020-5)	22.00	Jan. 1, 1992
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
1940-1949	(869-017-00023-0)	23.00	Jan. 1, 1992
1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-017-00026-4)	17.00	Jan. 1, 1992
9 Parts:			
1-199	(869-017-00027-2)	23.00	Jan. 1, 1992
200-End	(869-017-00028-1)	18.00	Jan. 1, 1992
10 Parts:			
0-50	(869-017-00029-9)	25.00	Jan. 1, 1992
51-199	(869-017-00030-2)	18.00	Jan. 1, 1992
200-399	(869-017-00031-1)	13.00	[4] Jan. 1, 1987
400-499	(869-017-00032-9)	20.00	Jan. 1, 1992
500-End	(869-017-00033-7)	28.00	Jan. 1, 1992
11	(869-017-00034-5)	12.00	Jan. 1, 1992
12 Parts:			
1-199	(869-017-00035-3)	13.00	Jan. 1, 1992
200-219	(869-017-00036-1)	13.00	Jan. 1, 1992
220-299	(869-017-00037-0)	22.00	Jan. 1, 1992
300-499	(869-017-00038-8)	18.00	Jan. 1, 1992
500-599	(869-017-00039-6)	17.00	Jan. 1, 1992
600-End	(869-017-00040-0)	19.00	Jan. 1, 1992
13	(869-017-00041-8)	25.00	Jan. 1, 1992
14 Parts:			
1-59	(869-017-00042-6)	25.00	Jan. 1, 1992
60-139	(869-017-00043-4)	22.00	Jan. 1, 1992
140-199	(869-017-00044-2)	11.00	Jan. 1, 1992
200-1199	(869-017-00045-1)	20.00	Jan. 1, 1992
1200-End	(869-017-00046-9)	14.00	Jan. 1, 1992
15 Parts:			
0-299	(869-017-00047-7)	13.00	Jan. 1, 1992
300-799	(869-017-00048-5)	21.00	Jan. 1, 1992
800-End	(869-017-00049-3)	17.00	Jan. 1, 1992
16 Parts:			
0-149	(869-017-00050-7)	6.00	Jan. 1, 1992
150-999	(869-017-00051-5)	14.00	Jan. 1, 1992
1000-End	(869-017-00052-3)	20.00	Jan. 1, 1992
17 Parts:			
1-199	(869-017-00054-0)	15.00	Apr. 1, 1992
200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
1-149	(869-017-00057-4)	16.00	Apr. 1, 1992
150-279	(869-017-00058-2)	19.00	Apr. 1, 1992
280-399	(869-017-00059-1)	14.00	Apr. 1, 1992
400-End	(869-017-00060-4)	9.50	Apr. 1, 1992
19 Parts:			
1-199	(869-017-00061-2)	28.00	Apr. 1, 1992
200-End	(869-017-00062-1)	9.50	Apr. 1, 1992
20 Parts:			
1-399	(869-017-00063-9)	16.00	Apr. 1, 1992
400-499	(869-017-00064-7)	31.00	Apr. 1, 1992
500-End	(869-017-00065-5)	21.00	Apr. 1, 1992
21 Parts:			
1-99	(869-017-00066-3)	13.00	Apr. 1, 1992
100-169	(869-017-00067-1)	14.00	Apr. 1, 1992
170-199	(869-017-00068-0)	18.00	Apr. 1, 1992
200-299	(869-017-00069-8)	5.50	Apr. 1, 1992
300-499	(869-017-00070-1)	29.00	Apr. 1, 1992
500-599	(869-017-00071-0)	21.00	Apr. 1, 1992
600-799	(869-017-00072-8)	7.00	Apr. 1, 1992
800-1299	(869-017-00073-6)	18.00	Apr. 1, 1992
1300-End	(869-017-00074-4)	9.00	Apr. 1, 1992
22 Parts:			
1-299	(869-017-00075-2)	26.00	Apr. 1, 1992
300-End	(869-017-00076-1)	19.00	Apr. 1, 1992
23	(869-017-00077-9)	18.00	Apr. 1, 1992
24 Parts:			
0-199	(869-017-00078-7)	34.00	Apr. 1, 1992
200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
500-699	(869-017-00080-9)	13.00	Apr. 1, 1992
700-1699	(869-017-00081-7)	34.00	Apr. 1, 1992
1700-End	(869-017-00082-5)	13.00	Apr. 1, 1992
25	(869-017-00083-3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1-1.60	(869-017-00084-1)	17.00	Apr. 1, 1992
§§ 1.61-1.169	(869-017-00085-0)	33.00	Apr. 1, 1992
§§ 1.170-1.300	(869-017-00086-8)	19.00	Apr. 1, 1992
§§ 1.301-1.400	(869-017-00087-6)	17.00	Apr. 1, 1992
§§ 1.401-1.500	(869-017-00088-4)	38.00	Apr. 1, 1992
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1, 1992
§§ 1.1401-End	(869-017-00094-9)	26.00	Apr. 1, 1992
2-29	(869-017-00095-7)	22.00	Apr. 1, 1992
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00099-0)	20.00	Apr. 1, 1992
500-599	(869-017-00100-7)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992
27 Parts:			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–017–00103–1)	11.00	[6]Apr. 1, 1991
28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–013–00107–9)	27.00	July 1, 1991
900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
1911–1925	(869–017–00111–2)	9.00	[7] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–013–00113–3)	25.00	July 1, 1991
30 Parts:			
1–199	(869–013–00114–1)	22.00	July 1, 1991
200–699	(869–017–00115–5)	19.00	July 1, 1992
700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–013–00117–6)	15.00	July 1, 1991
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–013–00119–2)	25.00	July 1, 1991
190–399	(869–013–00120–6)	29.00	July 1, 1991
400–629	(869–017–00121–0)	29.00	July 1, 1992
630–699	(869–017–00122–8)	14.00	[9] July 1, 1991
700–799	(869–013–00123–1)	17.00	July 1, 1991
800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–013–00125–7)	15.00	July 1, 1991
125–199	(869–013–00126–5)	18.00	July 1, 1991
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–013–00128–1)	24.00	July 1, 1991
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–013–00130–3)	26.00	July 1, 1991
35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–013–00134–6)	15.00	July 1, 1991
38 Parts:			
0–17	(869–013–00135–4)	24.00	July 1, 1991
18–End	(869–013–00136–2)	22.00	July 1, 1991
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
1–51	(869–013–00138–9)	27.00	July 1, 1991
52	(869–013–00139–7)	28.00	July 1, 1991
53–60	(869–013–00140–1)	31.00	July 1, 1991
61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–013–00142–7)	11.00	July 1, 1991
86–99	(869–013–00143–5)	29.00	July 1, 1991
100–149	(869–013–00144–3)	30.00	July 1, 1991
150–189	(869–013–00145–1)	20.00	July 1, 1991
190–259	(869–013–00146–0)	13.00	July 1, 1991
260–299	(869–013–00147–8)	31.00	July 1, 1991
300–399	(869–017–00148–1)	15.00	July 1, 1992
400–424	(869–017–00149–0)	26.00	July 1, 1992
425–699	(869–013–00150–8)	23.00	[7] July 1, 1989
700–789	(869–013–00151–6)	20.00	July 1, 1991
790–End	(869–013–00152–4)	22.00	July 1, 1991

Title	Stock Number	Price	Revision Date
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–013–00153–2)	8.50	[8] July 1, 1990
101	(869–013–00154–1)	22.00	July 1, 1991
102–200	(869–017–00155–4)	11.00	[9] July 1, 1991
201–End	(869–013–00156–7)	10.00	July 1, 1991
42 Parts:			
1–60	(869–013–00157–5)	17.00	Oct. 1, 1991
61–399	(869–013–00158–3)	5.50	Oct. 1, 1991
400–429	(869–013–00159–1)	21.00	Oct. 1, 1991
430–End	(869–013–00160–5)	26.00	Oct. 1, 1991
43 Parts:			
1–999	(869–013–00161–3)	20.00	Oct. 1, 1991
1000–3999	(869–013–00162–1)	26.00	Oct. 1, 1991
4000–End	(869–013–00163–0)	12.00	Oct. 1, 1991
44	(869–013–00164–8)	22.00	Oct. 1, 1991
45 Parts:			
1–199	(869–013–00165–6)	18.00	Oct. 1, 1991
200–499	(869–013–00166–4)	12.00	Oct. 1, 1991
500–1199	(869–013–00167–2)	26.00	Oct. 1, 1991
1200–End	(869–013–00168–1)	19.00	Oct. 1, 1991
46 Parts:			
1–40	(869–013–00169–9)	15.00	Oct. 1, 1991
41–69	(869–013–00170–2)	14.00	Oct. 1, 1991
70–89	(869–013–00171–1)	7.00	Oct. 1, 1991
90–139	(869–013–00172–9)	12.00	Oct. 1, 1991
140–155	(869–013–00173–7)	10.00	Oct. 1, 1991
156–165	(869–013–00174–5)	14.00	Oct. 1, 1991
166–199	(869–013–00175–3)	14.00	Oct. 1, 1991
200–499	(869–013–00176–1)	20.00	Oct. 1, 1991
500–End	(869–013–00177–0)	11.00	Oct. 1, 1991
47 Parts:			
0–19	(869–013–00178–8)	19.00	Oct. 1, 1991
20–39	(869–013–00179–6)	19.00	Oct. 1, 1991
40–69	(869–013–00180–0)	10.00	Oct. 1, 1991
70–79	(869–013–00181–8)	18.00	Oct. 1, 1991
80–End	(869–013–00182–6)	20.00	Oct. 1, 1991
48 Chapters:			
1 (Parts 1–51)	(869–013–00183–4)	31.00	Oct. 1, 1991
1 (Parts 52–99)	(869–013–00184–2)	19.00	Oct. 1, 1991
2 (Parts 201–251)	(869–013–00185–1)	13.00	Dec. 31, 1991
2 (Parts 252–299)	(869–013–00186–9)	10.00	Dec. 31, 1991
3–6	(869–013–00187–7)	19.00	Oct. 1, 1991
7–14	(869–013–00188–5)	26.00	Oct. 1, 1991
15–End	(869–013–00189–3)	30.00	Oct. 1, 1991
49 Parts:			
1–99	(869–013–00190–7)	20.00	Oct. 1, 1991
100–177	(869–013–00191–5)	23.00	Dec. 31, 1991
178–199	(869–013–00192–3)	17.00	Dec. 31, 1991
200–399	(869–013–00193–1)	22.00	Oct. 1, 1991
400–999	(869–013–00194–0)	27.00	Oct. 1, 1991
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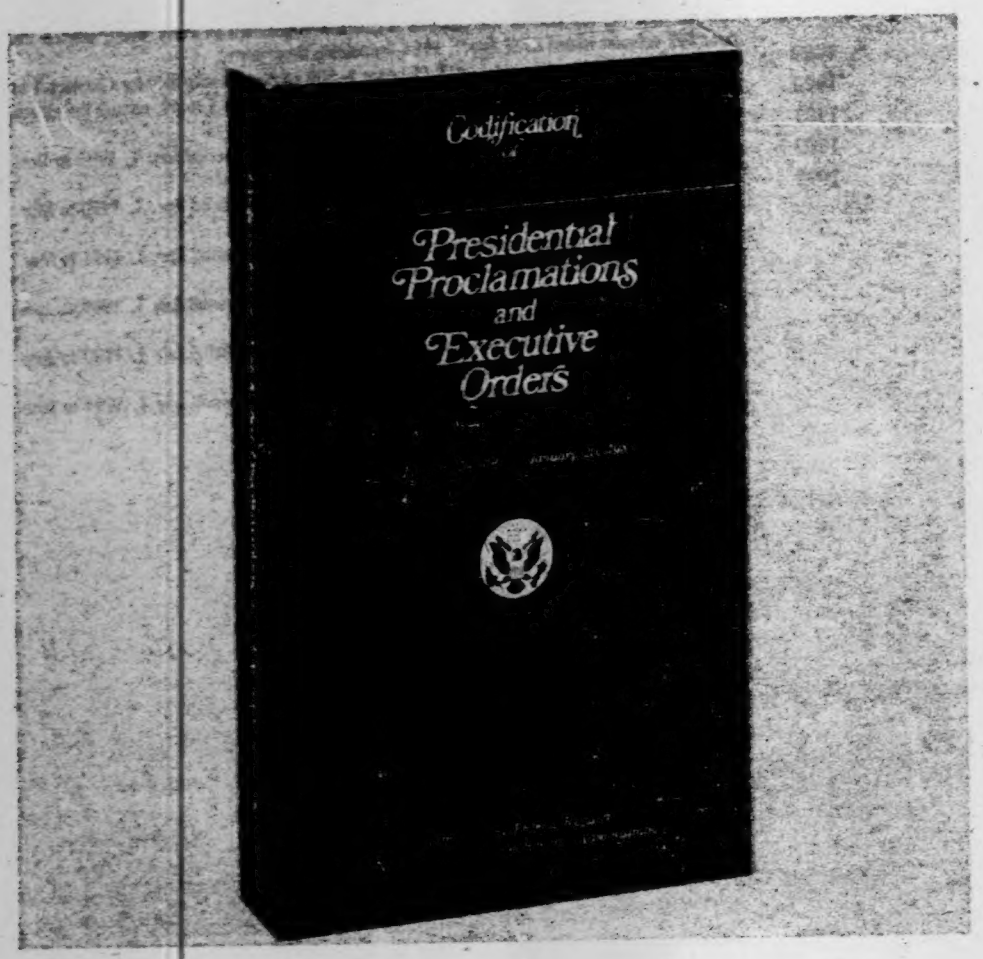

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